IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 196

C3J/Originating Summons No 8 of 2017

In the matter of
Sections 94(1) and 98(1) of the Legal Profession
Act (Cap 161, 2009 Rev Ed)

And

In the matter of
Wong Sin Yee,
an Advocate and Solicitor of the
Supreme Court of the Republic of Singapore

Between

THE LAW SOCIETY OF SINGAPORE

… *Applicant*

And

WONG SIN YEE

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings]

Law Society of Singapore
v
Wong Sin Yee

[2018] SGHC 196

Court of Three Judges — Originating Summons No 8 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Steven Chong JA
2 May 2018

7 September 2018

Judith Prakash JA (delivering the grounds of the court):

Introduction

1 Counsel are entrusted with the power to press difficult and sensitive questions in cross-examination in the faith that such power will be used to assist the court in achieving a just result. In the course of testing a witness's evidence, there is no doubt that intrusive questions may sometimes have to be asked. But at all times, it is the responsibility of counsel to conduct themselves with decency and to show due respect for the dignity of the witness as they probe the evidence. This was an unfortunate case where counsel fell so gravely short of these standards that a weighty sanction was required.

2 The complaint before us concerned the conduct of Mr Wong Sin Yee ("the Respondent"), an advocate and solicitor, when he acted on behalf of a client charged with outraging the modesty of a woman. The Law Society of

Singapore ("the Law Society") applied to this court for an order that the Respondent be made to suffer such punishment provided for in s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") on the basis that a disciplinary tribunal had found him guilty of improper conduct for the way in which he cross-examined the victim. After hearing the parties on 2 May 2018, we were satisfied that the disciplinary charges against the Respondent had been made out and that cause had been shown for sanctions to be imposed. Having regard to the nature of his misconduct, his lack of remorse and the long list of his antecedents, we suspended the Respondent for the maximum duration of five years. His suspension commenced on 16 May 2018. We also ordered the Respondent to pay the costs of the Law Society which we fixed at $5,000 plus disbursements as prayed for by the Law Society. We now issue the detailed reasons for our decision.

3 As the conduct forming the subject matter of the disciplinary charges against the Respondent occurred in August 2015, all references to the LPA and the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Ed) ("the PCR") in these grounds of decision are references to the versions in force as at August 2015.

Background

4 The Respondent was admitted to the Roll of Advocates and Solicitors of the Supreme Court of the Republic of Singapore on 12 August 1998. The Respondent spent many of the almost 20 years thereafter in private practice, most recently as the sole proprietor of the law firm known as S Y Wong Law Chambers.

5 In August 2015, the Respondent, together with a colleague, acted as counsel for an accused person on trial for the criminal offence of outrage of modesty. The trial was heard before District Judge Shawn Ho ("the District Judge"). The Respondent's client was charged with intentionally brushing his forearm against the victim's breasts whilst both of them were in a train.

6 On 3 August 2015, the Respondent cross-examined the victim on her testimony regarding the alleged offence. In the course of doing so, the Respondent pressed the victim on whether she thought she was attractive and even suggested that he thought she was. During the same line of questioning, he required the victim to stand up and subjected her to physical scrutiny. When the victim asked if this was necessary and said that she was offended by it, he told her that he would be asking her even more insulting questions. The District Judge then intervened to find out what the point of the cross-examination was. It emerged that the Respondent was trying to mount a case that the victim was unattractive such that his client would not have been motivated to outrage her modesty and any contact that took place was accidental. The Prosecution subsequently objected to any questioning which was indecent or scandalous or intended to insult or annoy, but the Respondent maintained that his questions were relevant to the facts in issue.

7 A year later, on 3 August 2016, both sets of counsel appeared before the District Judge again for oral closing submissions. The District Judge gave the Respondent another opportunity to explain why he had conducted his cross-examination in such a manner by staring at the victim's breasts and asking about her physical appearance. The Respondent reiterated that he was trying to see if it could be inferred from the victim's appearance that anybody would molest her. According to him, the "[p]ropensity to be molest[ed] by people are [*sic*]

higher if, of course, she dress [*sic*] scantily, has got a very attractive appearance and sexy".

8 On 4 August 2016, the District Judge released his written grounds of decision (see *Public Prosecutor v Xu Jiadong* [2016] SGMC 38). The District Judge dedicated a section of his written grounds to criticising the Respondent's "[i]nsulting questions/inquiries during cross-examination". In his view, the Respondent's line of questioning "[did] not relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed" (at [101]). Rather, it appeared to be intended to insult or annoy the victim and was needlessly offensive in form.

9 On 8 August 2016, the Attorney-General's Chambers lodged a complaint against the Respondent with the Law Society. On 4 October 2016, a Disciplinary Tribunal (the "DT") was constituted under s 90 of the LPA to investigate the complaint.

10 Three alternative charges were laid against the Respondent in relation to his conduct of the cross-examination of the victim during the trial. He was accused of:

(a) grossly improper conduct in the discharge of his professional duty within s 83(2)(*b*) of the LPA by conducting cross-examination of the victim in a dishonourable manner; or

(b) misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court of Singapore or as a member of an honourable profession within s 83(2)(*h*) of the LPA by conducting cross-examination of the victim in a dishonourable manner; or

(c) improper conduct or practice as an advocate and solicitor within s 83(2)(*b*) of the LPA in that he made statements and asked questions which were scandalous and unnecessarily offensive, made with the intent to insult, annoy, traumatise and/or humiliate the witness and the court, contrary to r 61(*a*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Ed) ("the PCR").

11 The Law Society relied on the following particulars for all the charges:

PARTICULARS

(a) You asked the following questions and made the following statements to the victim:

a. "*Do you think you're a pretty girl?*";

b. "*You are quite a pretty girl*";

c. "*I mean, it's normal human being that we see pretty girl, we look--- like to look at it. Even I normally even turn back and have a second look*";

d. "*Because I think you are quite pretty*"; and

e. "*do you look at handsome guy? You know, a handsome guy, you also like to have a look*".

(b) You asked the victim to stand up so that you could see how attractive she was.

(c) You did ask the victim to stand whilst staring inappropriately at the victim's breasts.

(d) After you asked a series of insulting questions and made an improper request of the victim to stand for you to look at her, you told the victim: "*I'm going to ask you even more insulting question later on*".

(e) You then made use of scandalous and highly inappropriate language, including:

a. "*I want to see whether how—what's the size of —* ";

b. "*if she is wearing very low cut*";

c. "*with a very voluptuous breast protruding out, half cut*";

d. "*her breast size and all these thing*"; and

e. "*whether there is this temptation for anybody or the accused to do such a thing*".

(f) The Court had to tell you to stop three times before you indicated that you would change your line of questioning.

The DT's decision

12 The hearing before the DT took place in March 2017. The Law Society called one witness, the Deputy Public Prosecutor who had acted for the Prosecution during the trial. The Respondent's counsel chose not to cross-examine the DPP. At the close of the Law Society's case, the Respondent's counsel submitted that there was no case to answer. Satisfied that at least a *prima facie* case had been shown, the DT called upon the defence. The Respondent elected not to give evidence and closed his case.

13 On 11 October 2017, the DT issued its Tribunal Decision ("the Decision") in which it held that all three charges had been proved beyond a reasonable doubt. The DT was of the view that the Respondent's conduct had crossed the line and reached the level of egregiousness that amounted to grossly improper conduct under s 83(2)(*b*) of the LPA (the Decision at [49]).

14 The DT approached the Respondent's conduct as an entire sequence to be evaluated as a whole rather than in isolated parts. The DT found that his conduct was indeed objectionable and went beyond what was permissible (the Decision at [26]). He had engaged in an objectionable line of questioning on whether the victim was (or thought she was) attractive, including asking her to stand up and sit down. He had also used needlessly offensive and intemperate language, including references to breast size, in the exchange with the District Judge while the victim was still on the stand, until the District Judge had to tell him thrice to stop. In the absence of further explanation by the Respondent for

his professional considerations in adopting this strategy, the DT found that it was an irresistible inference that the Respondent had embarked on this line of questioning specifically to humiliate the victim (at [33]). This inference was supported by the nature of the Respondent's comments that she was a "pretty girl" and the Respondent's abrupt request for the victim to stand up and sit down after he had questioned her about her physical attributes (at [34]–[35]). The DT found this request to be insulting and offensive (at [37]). The offensive line of questioning was then compounded by the unnecessary, inappropriate and embarrassing references to the victim's breasts in his exchange with the District Judge (at [39]).

15 The DT concluded its written grounds with remarks on the latitude afforded to counsel in the course of cross-examination. While recognising that it may be necessary for counsel to intrude into areas that cause a witness discomfort, the DT noted that this latitude is not without limits (the Decision at [52]–[53]). The level of mindfulness and restraint expected of an advocate is more exacting in situations where victim blaming may arise, particularly in cases of sexual offences (the Decision at [57]). The DT urged counsel to take heed of the court's direction in *Public Prosecutor v Ong Jack Hong* [2016] 5 SLR 166 ("*Ong Jack Hong*") (at [23]) to be mindful of the importance of ensuring the appropriateness and relevance of their questions and submissions. The onus is on counsel to exercise appropriate judgment and discretion. The DT noted that in the present case, there was no difference of opinion as to whether the Respondent's questions and statements had crossed the line (the Decision at [60]).

Parties' submissions

16 The Law Society submitted that the scandalous and insulting manner in which the Respondent had conducted cross-examination of the victim of a sexual offence clearly overstepped the latitude afforded to him in cross-examination. It considered it grossly improper conduct under s 83(2)(*b*) of the LPA that was dishonourable to him as a human being or dishonourable in his profession. The Law Society also submitted that it was unbefitting of an advocate and solicitor under s 83(2)(*h*) of the LPA as it brought discredit to, and undermined the integrity and dignity of, the legal profession. Further, the Respondent was said to have breached r 61(*a*) of the PCR by making scandalous statements and asking insulting questions. The Law Society also highlighted the inappropriateness of victim-blaming, citing in this respect the remarks made by Sundaresh Menon CJ in *Ong Jack Hong* and See Kee Oon JC (as he then was) in *Ng Jun Xian v Public Prosecutor* [2017] 3 SLR 933.

17 As for the appropriate sanction, the Law Society argued that the Respondent's past conduct ought to be taken into account. To protect the public and uphold public confidence in the integrity of the legal profession, the Law Society submitted that an appropriate sentence would be a term of suspension of between 12 and 18 months.

18 The Respondent submitted that the charges had not been made out beyond a reasonable doubt. He argued that he had not intended to annoy, insult, humiliate or intimidate the witness, but had sought merely to advance a line of argument which he honestly and reasonably considered to be legally relevant to his client's defence. This argument was that since the victim was a "normal" girl, "not a very sexy person who was dressing provocatively", his client did not have a motive for molesting her. As he explained to the District Judge, he

honestly and reasonably thought that his line of questioning about her attractiveness and his request for her to stand up were relevant to this argument and that this argument was a reasonable one. Further, although he conceded that his remarks to the District Judge were unfortunately expressed in an indelicate way, he stressed that he was not referring to the victim's dressing or breast size because he had already established that the victim was dressed in a T-shirt, not a low-cut top. It was not his intention to shift blame to the victim. Thus, he submitted that even if he were found guilty of misconduct, the appropriate charge was of conduct unbefitting an advocate and solicitor, not "grossly improper" conduct.

19 As for the appropriate sanction, the Respondent submitted that, should he be found guilty of misconduct, a suspension of three months would suffice. He claimed to have acted in foolish neglect rather than wilfully, to have expressed remorse and to have promptly withdrawn his line of questioning of his own accord. In mitigation, the Respondent claimed that there were no clear rules on the ethical boundaries of cross-examining witnesses; in particular, there were no cases in which these ethical boundaries had been breached. As such, he found it unclear how to strike the delicate balance between the solicitor's duty to defend his client and the duty owed to the court to ensure the administration of justice. Lastly, the Respondent urged the court to place little weight on his antecedents because they were very different in nature from the present case.

20 In response, the Law Society submitted that the Respondent's subjective intention was irrelevant to assessing whether his conduct fell within ss 83(2)(*b*) or (*h*). In any event, the Respondent did not give direct evidence before the DT of his purported subjective intention, which, the Law Society argued, was contradicted by the objective facts. Second, the Law Society emphasised that regardless of whether similar precedents could be found, counsel bore the onus

of exercising personal judgment and responsibility for statements made and questions asked in court. Third, the Law Society urged us to give significant weight to the Respondent's numerous antecedents, particularly those where Judges had previously noted defects in the Respondent's character. Lastly, the Law Society drew attention to the Respondent's lack of remorse and continued belief that his conduct was justified.

Issues

21 The issues before this Court were:

(a) Had due cause for disciplinary action under s 83(2)(*b*) or s 83(2)(*h*) of the LPA been established?

(b) If so, what would be the appropriate sanction?

Due cause

Applicable standards

22 Subsections 83(2)(*b*) and (*h*) of the LPA provide:

> **Power to strike off roll, etc.**
>
> **83.**—(2) Such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (b) has been guilty of fraudulent or *grossly improper conduct* in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as amounts to *improper conduct* or practice as an advocate and solicitor;
>
> …
>
> (h) has been guilty of such *misconduct unbefitting an advocate and solicitor* as an officer of the Supreme Court or as a member of an honourable profession …

[emphasis added]

23 Section 83(2)(*b*) of the LPA focuses on whether the conduct of the lawyer is "dishonourable to [him] as a man or dishonourable in his profession" (*Re Han Ngiap Juan* [1993] 1 SLR(R) 135 ("*Re Han Ngiap Juan*") at [25]). In this case, the primary charge is for "grossly improper conduct" in relation to his profession, while the second alternative charge is for "improper conduct" due to the serious breach of professional rules, specifically r 61(*a*) of the PCR. Conduct may be grossly improper notwithstanding that there is no dishonesty, fraud or deceit (*Re Han Ngiap Juan* at [27]).

24 Section 83(2)(*h*) of the LPA is broader than s 83(2)(*b*). It is a "catch-all provision" operating when a solicitor's conduct does not fall within any of the other subsections of s 83(2) but is nonetheless considered unacceptable (*Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 ("*Ng Chee Sing*") at [40]). The standard of "unbefitting conduct" is less strict, and a solicitor only needs to be shown to have been guilty of such conduct as would render him unfit to remain as a member of an honourable profession. As a practical guide, it may be asked whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it (*Ng Chee Sing* at [41], citing *Wong Kok Chin v Singapore Society of Accountants* [1989] 2 SLR(R) 633 at [17]). It is sufficient if his conduct brings him discredit as a lawyer or brings discredit to the legal profession as a whole.

Ethical rules relating to cross-examination

25 Contrary to the Respondent's assertion, the ethical duties of counsel conducting cross-examination are clear. In fact, the Respondent's remarks to the District Judge suggested that he was well aware of these ethical standards.

26 Ethical obligations during cross-examination are informed by both the PCR and the Evidence Act (Cap 97, 1997 Rev Ed). The Respondent's conduct did not directly injure the credit or character of the victim or make imputations that the victim was guilty of any crime or misconduct, but it did engage the ethical rules pertaining to scandalous, annoying or humiliating conduct.

27 Rule 61 of the PCR provides as follows:

> **Scandalous or annoying statements or questions**
>
> **61.** In all cases, an advocate and solicitor —
>
> (*a*) shall not make statements or ask questions which are scandalous or intended to insult or calculated only to vilify insult or annoy either the witness or any other person or are otherwise an abuse of the function of the advocate and solicitor; and
>
> (*b*) shall exercise his own judgment both as to the substance and the form of the questions put or statements made.

28 Sections 148 to 156 of the Evidence Act also control the cross-examination process. Implicit in the provisions of the Evidence Act is the understanding that a balance must be struck between giving the cross-examiner sufficient latitude to challenge and discredit a witness's evidence and protecting the witness from abuse or personal attack. As acknowledged by Professor Jeffrey Pinsler in *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) at para 08–025:

> Ethical considerations apply here because there must be limits placed on the manner in which cross-examination is carried out in the interest of protecting the witness from abuse or unmitigated personal attack. It is a matter of balance between giving the cross-examiner sufficient leeway to do his job but stopping him when his methods are unreasonable in the circumstances.

29 Where questions that may damage the character or reputation of a witness are concerned, the law grants latitude for counsel to ask these questions if they are based on reasonable grounds and are necessary to determine the issues before the court (see ss 150–152 of the Evidence Act). Reasonableness and relevance are key. The "guiding principle" is that "the cross-examination should be constructive and purposeful and should not be abused as a licence for indiscriminate attack": *Modern Advocacy – Perspectives from Singapore* (Eleanor Wong, Lok Vi Ming SC and Vinodh Coomaraswamy SC, gen eds) (Academy Publishing, 2016) ("*Modern Advocacy*") at para 07.096.

30 Of direct relevance to the present case are ss 152–154 of the Evidence Act, which are set out in full here:

> **Procedure of court in case of question being asked without reasonable grounds**
>
> **152.** If the court is of the opinion that any such question was asked without reasonable grounds, the court may, if it was asked by any advocate or solicitor, report the circumstances of the case to the Supreme Court in order that the Judges may, if they think fit, exercise the power to suspend or strike off the roll of advocates and solicitors given to them under the Legal Profession Act (Cap. 161).
>
> **Indecent and scandalous questions**
>
> **153.** The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.
>
> **Questions intended to insult or annoy**
>
> **154.** The court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the court needlessly offensive in form.

31 Thus, where questions are "indecent or scandalous", the criterion for permitting them is *relevance* to the facts in issue. This is directed at ensuring that "evidence essential to the determination of the case is not shut out even if the question asked is 'scandalous'" (see *Modern Advocacy* at para 07.100, citing Geoffrey D E Adair QC, *On Trial: Advocacy Skills, Law and Practice* (Toronto: Butterworths, 1992) at p 372).

32 Questions "intended to insult or annoy" or which are "needlessly offensive in form" are, however, to be absolutely forbidden even if they may have some bearing on the issues before the court (s 154 of the Evidence Act). This rule, which complements r 61(*a*) of the PCR, is so fundamental that it has been said to "[lie] at the core of an advocate and solicitor's duty to uphold the integrity of the profession and to conduct himself with dignity and restraint": *Modern Advocacy* at para 07.101.

33 Besides these statutory provisions, the courts have at times made remarks about the need for counsel to exercise discretion in their use of the powerful tool of cross-examination. In *Kwang Boon Keong v Public Prosecutor* [1998] 2 SLR(R) 211 at [20], Yong Pung How CJ reminded lawyers that "[c]ross-examination, a powerful weapon entrusted to counsel, should be conducted with restraint and with a measure of courtesy and consideration to the witness". Lord Sankey LC's observations in *Mechanical & General Inventions Co v Austin* (1935) AC 346 (at 359) also continue to be instructive:

> Cross-examination is a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story. It is *entrusted to the hands of counsel in the confidence that it will be used with discretion*; and with due regard to the assistance to be rendered by it to the Court, not forgetting at the same time the burden that is imposed upon the witness. We desire to say that in our opinion the cross-examination did not conform to the above conditions, and at times it failed to display that measure of courtesy to the

> witness which is by no means inconsistent with a skilful, yet powerful, cross-examination. [emphasis added]

34 It is a lawyer's responsibility to exercise his or her own judgment to perform cross-examination in a respectful and honourable manner (r 61(*b*) of the PCR). Counsel's duty to conduct himself honourably is not lessened by the existence of the court's power to forbid improper or offensive questions (James Lindsay Glissan, *Cross-Examination: Practice and Procedure* (Butterworths, 2nd Ed, 1991) at 175).

35 We would add that the duties owed by lawyers to witnesses during cross-examination are integral to the lawyers' overriding duty to the court and the administration of justice. Counsel are granted freedom to engage in more probing and intrusive inquiry than is socially acceptable outside the courtroom. Counsel who abuse this freedom not only bring dishonour to the profession but also obstruct the administration of justice by compromising the quality of the evidence and therefore the public interest in determining cases based on truth and fairness.

Why due case for sanction was shown

36 We now set out our reasons for finding that the Respondent's cross-examination of the victim amounted to grossly improper conduct within s 83(2)(*b*) of the LPA, misconduct unbefitting of an advocate within s 83(2)(*h*), and a breach of the prohibition in r 61(*a*) of the PCR on putting certain types of questions to a witness.

37 To set the Respondent's conduct in its proper context, we reproduce the relevant section of the transcript of his cross-examination of the victim:

> Q Witness, do you think you are a pretty lady?

A I'm not.

Q Do you think you're a pretty girl?

A I think I'm okay.

Q Okay. Is it common that, normally, guys stare at you?

A What do you mean?

Q I mean, you are okay, you are quite a pretty girl. Is it normal that people like to look at pretty thing---Is it normal that a guy look at you? Do norm---maybe, I rephrase my question. Do, normally, guys look at you?

A What do you mean?

…

A If guys, they want to look at me, it's their own problem. Why do I want to care?

Q Yes, but I'm asking you. Did guy normally look at you? Because you are a pretty lady, right? Do guy normally look at you?

A You mean in a crowded train?

…

Q No, no, no. Anywhere. You know, you go---you know. I mean, it's normal human being that we see pretty girl, we look---like to look at it. Even I normally even turn back and have a second look. So do, normally, guy look at you? You know, when you walk past or when---anywhere, you know? Not in train or anywhere, do normally, guys stare at you, look at you?

A In a train, I don't know.

Q In the train, you don't know? Sorry, what's your answer?

Court: On the train, she doesn't know.

Q Oh. No, my question is not---I never said like "in train" or what. Any normal circumstances, did---in the street or in anywhere, normally, did guy look at you? Because I think you are quite pretty. So do guy look at you normally? Stare at you? Look at you? Just like---do you look at handsome guy? You know, a handsome guy, you also like to have a look. Do you---normally, guy look at you?

A I believe if I dress up nicer, yes.

Q Yes, alright. Witness, I'm sorry to trouble you again. Can you stand up a bit? Stand up. Okay, thank you. Sit down. Witness---

Court: What was that for?

Wong: Sorry.

Court: What was that for?

Wong: Your Honour, I want to see the---I mean, the---how attractive when you stand up, you know, the---see whether is it the---

Witness: Is this necessary? I feel very offending.

Wong: Well, I mean---I think it's important because I'm going to ask you even more insulting question later on.

[DPP]: Your Honour---

Wong: Yes.

[DPP]: ---we'll take objection to any insulting questions at the outset.

Wong: Provided it is insulting, provided it's not relevant, and then, if---provided it's insulting and scandalous, then you can object under the law. But if---

[DPP]: Your Honour, the courtroom is not a place for insulting questions. I don't need to learn the law to know that, my learned friend.

Wong: Provided, Your Honour, the question is really insulting and does not goes into the rel---the case itself, the relevance of the case, then of course Your Honour can object. I mean, if the---but I'm going to ask a question is that---because why I want the accused to stand up and to show---

Court: She's not the accused.

Wong: ---how attractive---sorry, the victim---Your Honour, is how attractive and how---I mean, because she said that she wear a full top T-shirt, blue T-shirt. And then, I want to see whether how---what's the size of---

[DPP]: Your Honour, if I may just interject at this juncture? Is it the defence case that only attractive women will get molested in the train?

Wong: Well, it's always that there must be a tempt---there must be something attractive for a person to do such a thing.

> You see, a motive is there. So if you get a old lady, you think people want to molest her?
>
> So that is important and I want to show that if she is wearing a very low cut with a very voluptuous breast protruding out, half cut, then of course, I mean, the tendency that---the higher tendency that the---people might commit such offence. So I'm trying to put my case that, you know, looking at the day she was dressed and the kind of her---I mean, her breast size and all these thing. So normal, I mean---whether there is this temptation for anybody or the accused to do such a thing.

Court: Stop there, Mr Wong.

Wong: Yes.

Court: Stop there.

Wong: So---

Court: Stop there.

Wong: Okay, I ask other thing.

38 The crux of the Respondent's defence was that he did not intend to insult, vilify, annoy, humiliate or intimidate the victim, but intended only to advance a line of argument which he honestly and reasonably considered to be legally relevant to his client's defence. This argument was that since the victim was a "normal" girl, "not a very sexy person who was dressing provocatively", his client did not have a motive for molesting her. We quote here the Respondent's own summary of the case that he was advancing:

> 8. Near the close of cross-examination of the Victim, the Respondent put the following case theory to the Victim:-
>
> > 8.1. The Client had come into contact with the Victim accidentally.
> >
> > 8.2. It was only the Victim's "*feeling*" that the Client had brushed the Victim intentionally.
> >
> > 8.3. "*You [the Victim] think that the accused [the Client] has touches [sic] you is because I say that you are too sensitive.*"

> 9. In closing submissions on 3 August 2016, the defence advanced among other things the following case theories:-
>
> > 9.1. The Victim might have been "*emotionally*" disposed into perceiving that the Client had touched her intentionally …
> >
> > 9.2. It was physically impossible for the Client to have intentionally touched the Victim, given their height disparity …

39 In our view, the Respondent's conduct of cross-examination of the victim was both irrelevant and wholly impermissible. To begin with, relevance can and should be objectively assessed. The scheme of ss 148 to 154 of the Evidence Act suggests that it is the court that decides whether a question is relevant or purely indecent or scandalous or intended to insult or annoy. Viewed objectively, the Respondent's cross-examination did not relate to facts in issue or matters necessary to determining if the facts in issue existed. As the District Judge noted at [101] of his written grounds, the inquiry into the correlation between the victim's attractiveness and the "temptation" or "motive" to molest was misguided and there was no evidence to support a contention that there was such a correlation.

40 Moreover, how pretty the victim thought she was, and how pretty the Respondent thought the victim was, were entirely irrelevant. The only issue was whether the offender had in fact committed the crime. Thus the exercise of getting the victim to stand up and sit down for the Respondent to see "how attractive [she was] when [she] stand[s] up" served no purpose in the Respondent's conduct of his client's defence. The preceding questions would already have alerted the victim to the fact that her appearance was under scrutiny. Getting the victim to then stand up was tantamount to asking her to parade her physique and appearance for public scrutiny, to the point that she understandably felt uncomfortable and offended.

41 Third, it was cruel and humiliating to suggest to the victim that she was attractive, and to physically scrutinise her to the point that she felt uncomfortable and offended, only to then suggest that she was so unattractive that her testimony that she was deliberately molested could not be believed. This was a clear abuse of the power the Respondent had in relation to the victim in his role as counsel.

42 As for the Respondent's exchange with the District Judge in the victim's presence, the Respondent made much of the fact that his words were not directed at the victim and were not uttered during cross-examination. Nonetheless, his language was inappropriate and needlessly crude, and moreover appeared to blame victims of molestation generally as having prompted the assault by dressing provocatively. Further, his words were said in the victim's presence, after she had just been asked to stand up and sit down for him to appraise her physical attractiveness. His remarks would have confirmed the victim's sense that her physical appearance had just been scrutinised, with particular attention paid to her bosom.

43 It was clear from the transcript that despite being pulled up by the District Judge the Respondent continued with his objectionable line of questioning, a line that he himself recognised at the time to be insulting as evidenced by his statement, when the witness objected, that he would be asking her "even more insulting question [*sic*] later on". It was only because the District Judge imperatively put a stop to the objectionable line of questioning that the Respondent then moved on to other matters.

44 The Respondent did not lead evidence before the DT. He did not testify as to his motives in adopting the line of questioning that he did or why he considered it was justified. Nevertheless, as we have noted in [38] above, the

crux of his defence was that he did not intend to insult or humiliate the victim but was pursuing a line of questioning which he considered legally relevant. Before us, his counsel, Mr Eugene Thuraisingam, accepted we must review the evidence before the DT on an objective basis to ascertain the reason behind the course of examination adopted by the Respondent. From an objective view point, we failed to see how the area of enquiry pursued by the Respondent was relevant to the issues in dispute, or how this area of enquiry could have supported any reasonably arguable defence on behalf of his client. Our reasons for this conclusion have been given in [39] to [43] above.

45 In our judgment, the reasonable conclusion to be drawn, and which we did draw, was that the Respondent had embarked on this line of cross-examination in order to humiliate the victim. To this end, he subjected her to treatment that was wholly demeaning. His conduct was disgraceful and a clear abuse of the privileges of cross-examination that are entrusted to an advocate. The questions were not only asked without reasonable grounds but were also indecent, scandalous and calculated to insult or annoy. In this regard, they clearly infringed the standards set out in the Evidence Act as well as the prohibitions in r 61(*a*) of the PCR. His later exchange with the District Judge when asked to explain his conduct only added more insult and injury. There was no call whatsoever for the Respondent to make remarks about how the style of dress adopted by a woman would tempt a person to molest her, much less in the crude manner in which he did. We were therefore satisfied that all the charges had been made out beyond a reasonable doubt. We found ourselves entirely in agreement with the finding of the DT at [49] of the Decision that "taking into consideration the use of offensive and insulting language, with inappropriate and embarrassing references to body parts – all these done repeatedly – and the intimidation level the Respondent was prepared to take the witness through to

establish a point that was evidenced by his 'stand and sit' command, … the Respondent's conduct crossed the line and reached the level of egregiousness that amounted to 'grossly improperly conduct' under s 83(2)(*b*)".

The appropriate sanction

46 Under s 83(1) of the LPA, when due cause has been shown, there is a variety of sanctions which the court may impose. The most serious of these would be the striking off of the solicitor from the roll of advocates and solicitors. The next most serious sanction is the suspension of the solicitor for a period of up to five years. As stated earlier, the Law Society submitted that an appropriate sentence would be for the Respondent to be suspended for a period of between 12 and 18 months. The Respondent, on the other hand, submitted that should he be found guilty, a suspension of three months would be sufficient to achieve the objectives of deterrence and retribution.

47 The Law Society was not able to find any previous case in which a solicitor had been disciplined for actions similar to those of the Respondent here. The only past cases that appear even slightly relevant are those involving discourtesy to the court. There have been at least two such cases in the past 12 years. The first was *Law Society of Singapore v Ravi Madasamy* [2007] 2 SLR(R) 300 where the advocate concerned showed disrespect to and behaved rudely before a district judge in open court proceedings. He had turned his back on the district judge while being addressed, remained seated while being addressed, spoken in loud tones to a prosecuting officer while other cases were on-going and responded to the district judge in an unbecoming manner. This court suspended the advocate for one year, holding that a lack of respect for the court, especially when in session, is a serious infraction as it tends to diminish the standing of the court and undermine its authority in the eyes of the public

(at [26]). This court observed that as the particular misconduct was committed when the advocate was relatively junior, young and impressionable, a punishment of one year's suspension was commensurate with the gravity of the misconduct (at [36] and [38]–[39]).

48 The second case, *Law Society of Singapore v Ravi s/o Madasamy* [2012] SGDT 12, unfortunately involved the same advocate a few years later. In that case, during a High Court hearing, the advocate had alleged that the judge was racially prejudiced and claimed that it would be a disgrace to himself and to his religion if he continued to participate in the hearing before the judge. The complaint came before a Disciplinary Tribunal and the advocate pleaded guilty to a charge of misconduct unbefitting an advocate and solicitor and as an officer of the Supreme Court of Singapore or a member of an honourable profession under s 83(2)(*h*) of the LPA. He was fined $3,000 due to exceptional circumstances which mitigated the gravity of the offence including the advocate's bipolar disorder at the time of the offence, his apology, his admission to the charge and his remorse. Obviously, the advocate's mental condition played a big part in the relative leniency of the sanction imposed.

49 The case before us was far more serious than the two precedents cited. The Respondent had humiliated and insulted a victim of a crime when she was giving testimony against his client, as was her public duty, and when she was in a position in which she was *prima facie* obliged to answer questions put to her. Whilst insulting a judge or the court is wrongful conduct on the part of an advocate and cannot be condoned, the court is not vulnerable and has the power to halt the offence at an early stage. A witness on the other hand is in an unfamiliar environment and unable of his or her own accord to stop offensive behaviour on the part of counsel.

50 The appropriate sanction in any particular case depends on the following considerations (*Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 at [31]):

(a) the protection of members of the public who are dependent on solicitors in the administration of justice;

(b) the upholding of public confidence in the integrity of the legal profession;

(c) deterrence of similar defaults by the same solicitor and other solicitors in the future; and

(d) the punishment of the solicitor who is guilty of misconduct.

51 In the present case, we were satisfied that all four considerations were in play and called for the imposition of a heavy sanction. The heaviest sanction would have been to strike off the Respondent. While this sanction is most often imposed in a case where the solicitor concerned has been found to be dishonest, there are other types of misconduct which may also merit it. In *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266, the court noted at [15] that even if a solicitor had not been showed to have acted dishonestly, but had been shown to have fallen below the required standards of integrity, probity and trustworthiness, he would be struck off the roll of solicitors if his lapse was such as to indicate that "he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner". This proposition was applied in a case where the solicitor concerned had been guilty of serious sexual misconduct (see *Law Society of Singapore v Ismail bin Atan* [2017] 5 SLR 746 ("*Ismail bin Atan*")). In the instant case, we considered this possibility but in the end decided that although

the character of the Respondent was lacking in certain respects, the case merited the longest possible period of suspension rather than a striking off.

52 Reverting to the considerations mentioned in [50] above, we do not think that considerations (a) and (b) require much elaboration. As regards consideration (a), members of the public who are acting as witnesses and thus assisting in the administration of justice should not be humiliated or insulted by solicitors acting for adverse parties. Not only will such conduct upset the witnesses concerned but it may also impact the administration of justice in that if members of the public fear being insulted and humiliated in court, they may be reluctant to testify. As for consideration (b), if the public perceives that lawyers are given free rein to treat witnesses and complainants badly, and that lawyers do in fact do this, the public will not have confidence in either the integrity of the legal profession or in the way that the administration of justice is conducted.

53 We now turn to considerations (c) and (d). These are, respectively, deterrence of the solicitor being disciplined and other solicitors in the future, as well as punishment of the solicitor who has misconducted himself. These considerations can be dealt with together and, in this connection, any mitigating or aggravating factors in the case before the court are relevant.

54 Dealing first with mitigating factors, it was our view that in this case there were no mitigating factors. It is reiterated that the Respondent did not plead guilty to the charges before the DT and that, before this court, he maintained that the charges had not been made out beyond a reasonable doubt and that the DT had erred in its conclusions. During the DT hearing, the Respondent's counsel submitted that the Respondent had apologised to the District Judge for his behaviour during the submission hearing one year later.

At [61] of the Decision, the DT characterised these apologies as "less than fulsome". It went on to note that the conditional basis upon which the Respondent had proffered his apologies indicated that he did not accept that his conduct was wrong, and that even before the DT he was maintaining that stand (the Decision at [62]). The Respondent's stand before us was equally unremorseful. The Respondent did not accept that his conduct had been wrong or that it merited any rebuke at all. His position was that he had simply been trying to advance his client's interests.

55 Moving to the aggravating factors, we noted that the Respondent had a long list of antecedents which cast doubt over his ability to act in a manner befitting a member of the legal profession. First of all, the Respondent's admission to the Bar was delayed several years because in October 1994 he was convicted of an offence under s 509 of the Penal Code (Cap 224, 1985 Rev Ed) for insulting the modesty of a woman and of a further offence under s 323 of the Penal Code for voluntarily causing hurt. Both offences were committed in the course of the same transaction during which the Respondent used vulgar language towards a woman. The Respondent was fined for both offences and his applications for admission to the Bar in 1994, 1995, 1996 and 1997 were objected to and disallowed because of the convictions. The Respondent was only admitted in August 1998 after his fifth application.

56 The Respondent had another brush with the law in October 1994 when he was convicted of disobeying an order duly promulgated by a public servant under s 188 of the Penal Code. Thereafter he stayed out of trouble for some time. The next episode that was significant in our estimation was an incident of road-bullying that occurred on 26 December 1998. During this incident the Respondent had shouted vulgarities before using his handphone to hit the driver of another car on the latter's mouth. He then challenged the driver to a fight.

This incident led to a conviction in January 2001 on two charges and, eventually, to a sentence of one year's imprisonment and a fine of $1,000. Yong Pung How CJ who heard the Magistrate's Appeal in respect of this case commented that the Respondent had shown himself to be extremely abusive and highly prone to violence and that he had behaved like a gangster throughout the incident (see *Wong Sin Yee v PP* [2001] 2 SLR(R) 63 at [23]). The further consequence of this incident and the Respondent's conviction was that, on 13 August 2003, this court suspended the Respondent from practice for two years. It was held that the Respondent's conduct implied a defective character that rendered him unfit to be an advocate and solicitor (see *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209 at [15] ("*Wong Sin Yee No 2*").

57 From September 2005 to September 2012, the Respondent was detained under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) for his suspected involvement in an international drug syndicate. As we did not know the circumstances behind this detention, we did not rely on the same when assessing the appropriate sanction.

58 The Respondent was released from detention in September 2012 and resumed legal practice. The incident which gave rise to the charges before us took place, as we have said, on 3 August 2015. As noted, the Respondent was reprimanded by the District Judge at the time of the incident but, unfortunately, he did not take heed of the rebuke. About a month later, the Respondent was involved as counsel in another criminal case and during the examination-in-chief of a prosecution witness, he suggested putting a vulgar question to her. During cross-examination of the same witness the next day, 16 September 2015, the Respondent made a vulgar remark about her testimony and on 17 September 2015 he uttered a swear word in response to the witness's answer. This conduct resulted in charges being brought against the Respondent by the

Law Society. On 25 July 2016, he was fined $3,000 for improper conduct of practice as an advocate and solicitor and misconduct unbefitting of an advocate and solicitor in breach of r 61(*a*) of the PCR.

59 We were dismayed by the long list of antecedents and, in particular, by the Respondent's repeated misbehaviour after September 2012. By that time the Respondent was a man of mature years who should have been able to moderate his behaviour and follow the norms of the legal profession. In the previous case involving the Respondent, *Wong Sin Yee No 2*, when considering what constituted a defect in character under s 83(2)(*a*) of the LPA, Chao Hick Tin JA explained at [13] that the word "character" is "wide and encompasses the total quality of a person's behaviour as revealed in his habits of thought and expression, his attitudes and interests, his actions and his philosophy of life. This has to be contrasted with the occasional instances of carelessness". In our view, the Respondent's behaviour in the instant case in addition to his antecedents fully supported the finding that there is a defect in his character.

60 The Respondent argued that little weight should be accorded to his past conduct because the antecedents concern very different kinds of misconduct. However, apart from certain conduct involving drugs, all the other instances of misconduct demonstrated a lack of self-restraint and discretion, as well as a lack of due consideration for the interests and rights of others. The Respondent has shown disrespect to women, to persons carrying out their official duties and to members of the public who have had the misfortune to aggravate him. His language has been indecent and offensive. As a member of the legal profession, he has a duty to uphold and respect the rights of others. Instead of doing so, his behaviour has called into question the legal profession's commitment to the protection of the rights and interests of the public. On the other hand, the Respondent's conduct had not been as deplorable as that of the solicitor in the

Ismail bin Atan case and there was no dishonesty involved.

61 On balance, although the Respondent's behaviour instilled in us deep misgivings as to his character and suitability to practise as a lawyer at all, we concluded that the maximum term of suspension, rather than striking off, would be the appropriate sanction. During this period of suspension, it is hoped that the Respondent will learn what is acceptable behaviour both in court and outside it and that if and when he returns to legal practice he will conduct himself with moderation, discretion and restraint.

Sundaresh Menon Chief Justice	Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal

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