Law Society of Singapore v Ong Ying Ping
[2005] SGHC 120

Case Number : OS 1084/2004, NM 27/2005

Decision Date : 15 July 2005

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JC; Yong Pung How CJ

Counsel Name(s) : Ramesh Tiwary (Edmond Pereira and Partners) for the applicant; C R Rajah SC (Tan Rajah and Cheah) and Chia Boon Teck (Chia Yeo Partnership) for the respondent

Parties : Law Society of Singapore — Ong Ying Ping

Legal Profession – Show cause action – Person accompanying advocate and solicitor to interview with prisoner was prisoner's wife – Advocate and solicitor misleading prison officers as to identity of person accompanying by failing to disclose person's relationship with prisoner in disregard of prison rules on visitation – Whether advocate and solicitor's conduct amounting to misconduct unbefitting an advocate and solicitor – Whether appropriate for court to grant application – Appropriate penalty – Sections 83(2)(h), 98(5) Legal Profession Act (Cap 161, 2001 Rev Ed)

15 July 2005

Andrew Phang Boon Leong JC (delivering the judgment of the court):

Introduction

1 The present case involves a charge against the respondent pursuant to s 83(2)(*h*) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA"). The charge itself, as formulated by the Law Society of Singapore ("the Law Society"), reads as follows:

Charge

> That Ong Ying Ping [the respondent] is guilty of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession within the meaning of section 83[(2)](h) of the Legal Profession Act (Chapter 161) in that he on [10th] October 2001 at Queenstown Remand Prison did fail to disclose that one Ms Tan Teck Cheng Linda is related to the prisoner he was interviewing, Ivan Ng Chin Hoe and misled the prison officers to believe that she was his assistant.

2 Section 83 of the LPA itself reads as follows:

> **Power to strike off roll or suspend or censure**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding 5 years or censured.
>
> (2) *Such due cause may be shown by proof that an advocate and solicitor —*
>
> (*a*) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;
>
> (*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;

(*c*) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in section 124 (5) (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*h*), (*i*), (*k*), (*l*) or (*m*) of the Bankruptcy Act (Cap. 20);

(*d*) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor;

(*e*) has, directly or indirectly, procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;

(*f*) has accepted employment in any legal business through a person who has been proclaimed a tout under any written law relating thereto;

(*g*) allows any clerk or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision;

(*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*;

(*i*) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling;

(*j*) has contravened any of the provisions of this Act in relation thereto if such contravention warrants disciplinary action; or

(*k*) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country.

(3) Pupils shall, with the necessary modifications, be subject to the same jurisdiction as can be exercised over advocates and solicitors under this Part; but in lieu of an order striking him off the roll or suspending him, an order may be made prohibiting the pupil from petitioning the court for admission until after a date specified in the order.

(4) The jurisdiction given by subsection (3) shall be exercised by a single Judge.

(5) *In any proceedings under this Part, the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.*

(6) In any proceedings instituted under this Part against an advocate and solicitor consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Committee and a court of 3 Judges of the Supreme Court referred to in section 98 shall accept

his conviction as final and conclusive.

[emphasis added]

3 The Disciplinary Committee of the Law Society ("DC"), after hearing the evidence of both the prison officers as well as the respondent, found that cause of sufficient gravity existed for disciplinary action to be taken against the respondent pursuant to s 83 of the LPA (reproduced above at [2]). Hence, the present application was taken out by the Law Society under s 98(5) of the LPA against the respondent to make absolute an order to show cause.

4 After hearing arguments by counsel for the Law Society as well as for the respondent, we ordered that the respondent be suspended from practice for two years and that the costs of the present proceedings be borne by the respondent. We now give the detailed grounds for our decision.

The background

5 The brief background to the above charge against the respondent is based in the main on the Report of the Disciplinary Committee ("DC Report"). However, we also note (as well as rule upon) those portions of the DC Report which engendered controversy.

6 The respondent is an advocate and solicitor of the Supreme Court of Singapore. He was, at the material time, a practitioner of some 12 years' standing as well as a partner in a law firm in which he was practising at the time of the present proceedings.

7 On or about October 2001, the respondent, who was acting for a client (Ivan Ng Chin Hoe ("the prisoner")) who had been remanded in Queenstown Remand Prison ("the prison"), requested by way of a letter (dated 5 October 2001 and transmitted via fax) to interview the prisoner. Permission was not sought for any other person to attend this particular interview.

8 Permission was granted by the prison authorities to the respondent by way of a letter (also dated 5 October 2001) in response to his request. However, this letter of approval permitted the respondent, *only*, to be present at the interview. The interview was scheduled for 10 October 2001 between 10.00am and 11.00am. It is significant, in our view, that the letter of approval granted permission to the respondent to interview the prisoner "for the purpose(s) stated in [the respondent's] letter", *viz*, for the purpose of interviewing the prisoner (see [7] above). It is equally significant that this particular letter also stated (under the sentence "The following person(s) is/are permitted to be present at the interview") *only* the respondent's name – and *no other*.

9 The respondent informed the prisoner's wife, Ms Tan Teck Cheng Linda ("Ms Tan"), of this interview session.

10 On the day of the interview (10 October 2001), Ms Tan arrived at the prison before the respondent. Ms Tan in fact approached the Chief Wardress to ask if she could accompany her husband's lawyer (the respondent) for his interview with the prisoner. According to one of the prison officers, Sergeant Mohamed Ridzal bin Abdul Razak ("Sgt Ridzal"), who had been on duty at the time with the Chief Wardress, the latter had told Ms Tan that "it would not be possible" to accede to her request. Sgt Ridzal later learnt that, despite this, Ms Tan had been present at the interview. This prompted him to report the matter to the duty officer.

11 We note that Ms Tan herself gave a slightly different version in a statutory declaration annexed to the respondent's affidavit of evidence. In particular, she stated that the Chief Wardress

had told her that she "was not likely to be allowed in". The DC attached "no weight to this statement". This was due to the fact that Ms Tan had "declined to give evidence, and thus to be subjected to cross-examination". Although she could have been subpoenaed to give evidence at the DC's hearing, she was not. In the circumstances, the DC, in the DC Report, relied on illus (*g*) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed), which holds that the court may presume "that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it". We hold that this was an approach that the DC was perfectly entitled to take. Indeed, counsel for the respondent, Mr C R Rajah SC, accepted as true the Law Society's submission in the present proceedings to the effect that Ms Tan "was aware that she would not be allowed to follow the Respondent for his interview of her husband and therefore would have told the Respondent this when she met him at the prison, on the day of the interview".

12 What is therefore incontrovertible is that Ms Tan knew that she would *not* be permitted to accompany the respondent to visit her husband that particular day. One key question is the reason why she had been denied permission and which we will consider in more detail below.

13 Returning to the sequence of events on the day of the interview itself (10 October 2001), Ms Tan then met with the respondent who, as already mentioned, arrived later. As already alluded to above (at [11]), Ms Tan *had informed the respondent that she would not be permitted to accompany him for the interview with her husband*. The respondent himself testified that he had told Ms Tan that only he had received permission to interview the prisoner but that he would seek permission for Ms Tan to attend as well. Indeed, Mr Rajah also accepted as correct the Law Society's submission "that *the Respondent therefore knew that* Ms Tan would not be permitted to be present at the interview when he met her at the prison" [emphasis added].

14 Both the respondent as well as Ms Tan then approached, first, the *wicket gate* of the prison at 10.38am, where Sergeant Mohamed Sah bin Shukor ("Sgt Mohamed Sah") was on duty. At this juncture, in response to a question by Sgt Mohamed Sah as to who Ms Tan was, the respondent had answered: "She's my assistant". Their arrival was duly recorded in a journal maintained at the wicket gate, where Sgt Mohamed Sah recorded "assistant" beside Ms Tan's name. It had been argued before the DC, on behalf of the respondent, that the respondent had, in effect, told Sgt Mohamed Sah that approval had not been obtained for Ms Tan but that he (the respondent) had nonetheless asked whether Ms Tan could be allowed "to assist [him] in the interview", and that Sgt Mohamed Sah had asked them to wait and left the wicket gate for a while. In fact, the respondent had testified that Sgt Mohamed Sah had also informed him that Ms Tan could accompany him to the interview session. He also testified that the officer had added, in his own hand, Ms Tan's name as well as identity card number on the letter of approval and had asked him (the respondent) to write Ms Tan's name as well as the purpose of her visit on the letter of request itself. The respondent further testified that Sgt Mohamed Sah had asked neither he nor Ms Tan whether Ms Tan was related to the prisoner and also that Ms Tan was not dressed in normal lawyer's attire (she was dressed in a short-sleeved shirt and light pants). Sgt Mohamed Sah, not surprisingly, emphatically denied this version of events.

15 It is significant to note at this juncture that, in the present hearing, Mr Rajah also accepted as true the Law Society's submission that the respondent "did not inform the officer on duty that Ms Tan was the prisoner's wife" and that "[i]nstead he told the officer [Sgt Mohamed Sah] that she was his assistant".

16 It is also noted that it was not part of Sgt Mohamed Sah's duty to decide whether or not Ms Tan should be allowed to attend the interview. Permission in this regard was to be decided upon by the gate officer who was stationed at the gate house.

17 We also note that the respondent had referred to Ms Tan as his assistant. This was a possibly neutral reference. However, even if the reference had been to Ms Tan as a *legal* assistant, we do not think that it would be clear that she was *not* what she had been described to be based purely on her attire at the material time (as described at [14] above). We do not think that laypersons would have been aware of what the proper attire for lawyers would be. In any event, somewhat less formal wear outside the courtroom is not something wholly unusual in so far as lawyers are concerned.

18 The respondent and Ms Tan duly proceeded from the wicket gate to the *gate house or office*, where they surrendered their respective identity cards for visitors' passes. It bears emphasis (and this was not disputed) that the respondent indicated his *office address* for *both* himself as well as Ms Tan in the column in the record book headed "address". The respondent testified that he had done this out of convenience, as opposed to attempting to give the impression that Ms Tan was a member of his firm.

19 Also, in response to a question by the officer stationed at the gate office, Sergeant Jamil bin Abdullah ("Sgt Jamil"), as to who Ms Tan was, the respondent replied she was his assistant. Sgt Jamil believed the respondent and duly added Ms Tan's name and identity card number on the letter of approval. *However*, Sgt Jamil had also wanted to check first with the Records Office as to whether Ms Tan was related to the prisoner, as family members were not permitted on "open visits", of which the present (to interview the prisoner) was one. This was in accordance with the procedure to be adopted when a person (here, Ms Tan) not named in the letter of approval had sought to be present at the lawyer's (here, respondent's) interview with the prisoner. He duly telephoned the Records Office, but the line was busy. Sgt Jamil then allowed both the respondent and Ms Tan in, but instructed a subordinate, Corporal (now Sergeant) Chai Kuo Fatt ("Sgt Chai"), to contact the Records Office. Sgt Chai then escorted the respondent and Ms Tan to the interview room. The respondent wrote both his and Ms Tan's name in the record book.

20 There was some dispute as to what happened at this juncture. The respondent had claimed that he had inserted, after the word "undersigned" in the second paragraph of the letter of request (which read "For the purpose of taking instructions, please allow the undersigned to interview the prisoner on Wednesday, 10 October 2001 at 10.00am."), the words "and Ms Tan Teck Cheng Linda to assist in obtaining information from the prisoner". Indeed, the respondent's signature also appears to have been appended after these added words. Sgt Jamil, however, denied this under cross-examination during the hearing before the DC and asserted that these words must have been added later in the interview room. He also vigorously denied that he had asked the respondent to insert those words in the letter of request after the respondent had told him that Ms Tan was there to assist him (the respondent) in obtaining information from the prisoner. Indeed, he added that when he handed the letter of request to Sgt Chai to take to the interview area, there were no handwritten words on it. There appeared to be some evidence in favour of the respondent's version in the letter of complaint preferred by the prison authorities against the respondent. However, the author of the letter of complaint, Melvin Wong Heng Yuen ("Mr Wong"), the then Head of Operations Control at Prison Headquarters, clarified that that portion of his letter was inaccurate and that the respondent had (consistent with Sgt Jamil's account above) in fact been asked to make the necessary declaration in the interview room itself rather than at the gate office. The actual explanation as to how these words came to be written down on the letter of request will now be considered. However, before proceeding to do so, it is important, in our view, to note that Mr Rajah again accepted as accurate the Law Society's submission that "when [the respondent] met the second prison officer (Sgt Jamil) at the gate office, the Respondent again told him that she was his assistant".

21 Sgt Chai, who, as earlier noted, had escorted the respondent and Ms Tan to the interview

room, called the Records Office to verify whether or not Ms Tan was related to the prisoner. This was not the normal procedure, but Sgt Chai gave evidence that because the respondent had been late (the respondent had himself admitted that he was late due to an appearance in court that morning), he had escorted both the respondent and Ms Tan to the interview room first before contacting the Records Office in order to furnish the respondent with more time to interview the prisoner.

22 Sgt Chai was then instructed by the Records Office to ask the respondent to write down the purpose of Ms Tan's visit as well as to state that she was not related to the prisoner. At this juncture, Sgt Chai's colleague, Sergeant V Rajakumar ("Sgt Rajakumar"), was just outside the waiting room and in fact held both the letter of request as well as the letter of approval. In accordance with the said instructions from the Records Office, Sgt Rajakumar testified that he had entered the interview room and asked the respondent to furnish the particulars just mentioned (this was denied by the respondent who stated that at no time was the interview with the prisoner interrupted). According to Sgt Chai, he had heard the respondent say "later", or words to that effect. After the interview had been concluded, Sgt Chai saw the respondent handing the letter of request to Sgt Rajakumar, although he did not see what had been written on it. He then escorted both the respondent and Ms Tan to the main gate. He was told, afterwards, that Ms Tan was in fact the prisoner's wife. Sgt Rajakumar himself testified that the respondent had not in fact declared, on the letter of request, that Ms Tan was not related to the prisoner. The respondent had merely passed both the letter of request and the letter of approval to him. Although he then called the gate office, he had been told that both the respondent and Ms Tan had left.

23 Sgt Chai added that, in the normal course of events, the lawyer concerned would have received a declaration form for accompanying visitors to declare that they had no relationship with the prisoner. However, no such form had been sent to the respondent in this particular instance because the respondent's letter of request had made no mention of a second person wishing to participate in the interview as well. Hence, he stated that "the best way to cut down the time is that the lawyer declare itself [*sic*] in black and white [on the letter of request]" and that "it cuts a lot of time. And he can just proceed with the interview".

24 The Prison Superintendent subsequently wrote to the respondent twice (in letters dated 24 October 2001 and 6 November 2001, respectively) in order to clarify Ms Tan's status. However, he received no response from the respondent.

25 On 6 November 2001, the respondent's partner, Ms Susan Tay, received a telephone call from the prison, following up on the letters mentioned in the preceding paragraph. She informed the caller that Ms Tan was a client and not an employee of the respondent's firm. That same day, the respondent replied by letter to the prison. In this letter, the respondent apologised for not responding earlier "due to a very pressing caseload". He proceeded to state that during his interview with the prisoner on 10 October 2001, he "was assisted by Ms Linda Tan Teck Cheng … as [he] was not familiar with the prisoner's way of speaking, the way he remembers or fails to remember details of his case". He proceeded to add:

> Ms Linda Tan Teck Cheng is the prisoner's wife and is not employed by my firm. However, her presence greatly assisted in reducing the time required to complete the interview and proceed with the prisoner's case.

26 The respondent then concluded his letter thus:

> I sincerely hope that I have not caused any inconvenience and unreservedly apologise if any is caused to your staff and administration.

27 On 24 December 2001, the respondent was informed by the Law Society that a complaint had been lodged against him by the Prison Superintendent. The respondent then wrote to the Prisons Department, Ministry of Home Affairs. This particular letter was considerably less contrite in its tenor. What is significant for our present purposes are the following statements by the respondent. First, he alleged that Ms Tan had met him outside the prison "without prior notice and requested to assist me in interviewing [the prisoner] as she believed that she had a better recollection of the circumstances surrounding the complaint made against him". This was in fact inconsistent with his own testimony at the subsequent hearing before the DC to the effect that he had "asked Ms Tan to meet him at the prison on the day of the interview, as he wished to follow up on the instructions he will have received from the prisoner". He also alleged that he had "repeated the request verbally to the guard at the first controlled barrier".

28 The respondent further stated that he had at no point represented that Ms Tan was an employee of his firm.

29 However, the general tone and tenor of this letter then became unduly combative, to say the least. In particular, the respondent wrote:

> In such a case, you should note that it is the easiest of procedures to create documentation for a lawyer's firm to employ a prisoner's family member around the time of a scheduled visit. After the visit, the "employment" would be terminated "for personal reasons".
>
> It is immensely regretful that instead of approaching me, your administration had instead chosen to make allegations about my integrity or competency to third parties without clarifying the matter with me. *In this regard I am entitled to a written apology and confirmation of my situation, failing which it should be regarded as a sign of bad faith from your office.*
>
> *In the interest of administering law and order, I am prepared to overlook this matter if the written apology and confirmation requested is received from your office within fourteen (14) days hereof.*
>
> [emphasis added]

30 The DC found that the respondent had *conceded* that he had not informed any of the prison officers he encountered on the day of the interview that Ms Tan was the prisoner's wife. In this regard, it is equally important to note that Mr Rajah accepted as true the Law Society's submission that "the Respondent 'did *not* inform *any* of the prison officers that he encountered the day of the interview that Ms Tan was the prisoner's wife'" [emphasis added].

31 The DC also found that it was a reasonable inference that Ms Tan "who was anxious to attend the interview, told the Respondent about her conversation with the Chief Wardress – specifically that she would not be allowed entry". Hence, even if the respondent had not known before his arrival at the prison that Ms Tan would not be permitted to attend the interview, "he was … apprised of the situation when he met up with Ms Tan".

32 In so far as the events at the *wicket gate* were concerned, the DC found that not only did the respondent fail to inform the officer concerned that Ms Tan was the prisoner's wife and that she wished to see him but that he had also intended "to give the impression that Ms Tan was there primarily to assist him in his work as a lawyer".

33 The DC proceeded to consider the evidence of the other prison officers the respondent had

encountered. In particular, it preferred Sgt Rajakumar's testimony as to what had happened at the interview room area (see [22] above).

34 The DC also preferred Mr Wong's explanation of the apparent contradiction referred to above (see [20] above). In any event, it held that this particular issue did "not touch on the real question before us which is whether the Respondent failed to disclose that Ms Tan was the wife of the prisoner, with a view to misleading the prison officers into permitting her to attend the interview".

35 Indeed, the DC answered "this central question in the affirmative, and [found] that the charge against the Respondent fully made out, the required standard of proof referred to in the submission of Counsel for the Respondent having been achieved". It then concluded thus in words that (because of their pivotal significance to the proceedings themselves) merit setting out in full:

> The Respondent set out to dupe the prison officers into allowing Ms Tan into the interview area, by describing her as his assistant. The Respondent was not aware that, in the normal course of events, a contemporaneous check would have been carried out with the Records Office. In the event, this checking procedure was delayed such that both the Respondent and Ms Tan were allowed into the interview room. More than one witness stated that they trusted the Respondent, as a lawyer, and believed his statement that Ms Tan was his assistant. We also take account of the fact that the Respondent wrote, in the book maintained at the gate office, that Ms Tan's address was that of his firm, and we reject the Respondent's evidence that this was done as a matter of convenience.
>
> The Respondent intentionally misled the prison officers, and abused the belief and trust they reposed in him. The Committee concludes that the Respondent's conduct was unacceptable and, in the words of Sir Thomas Bingham in *Bolton v Law Society* [1999] 2 All ER 486, at p 491 fell "below the standards of integrity, probity and trustworthiness" reasonably to be expected of an advocate and solicitor.
>
> Accordingly, the Committee determines under section 93(1)(c) of the Act that cause of sufficient gravity exists for disciplinary action against the Respondent.

36 We now turn to consider the arguments raised by Mr Rajah on behalf of the respondent in the present proceedings.

The arguments for the respondent considered

37 Mr Rajah, in effect, accepted *all* the submissions by the Law Society as tendered in its skeletal submissions to this court (see generally [13] *ff* above). *However*, he argued that, notwithstanding the acceptance of these submissions, the respondent was nevertheless not guilty of the charge brought against him (see [2] above). In particular, Mr Rajah argued that the respondent *did not know that Ms Tan* had been denied permission to accompany him to interview the prisoner *on the ground that she was the prisoner's wife*. Learned counsel further argued that the respondent had, *instead*, thought that Ms Tan had been denied permission to accompany him to interview the prisoner *because she (Ms Tan) had not been granted permission earlier (although he, the respondent, had)*. Hence, his argument proceeded, it was inappropriate to infer that the respondent knew of the *rule* prohibiting relatives of prisoners accompanying the respective prisoner's lawyer to interviews with the prisoner.

38 Indeed, Mr Rajah argued that the rule that the respondent had in fact contravened was little-known to all but the most experienced criminal practitioners.

39 Although Mr Rajah's arguments appeared persuasive at first blush, we were unable to accept them for several reasons.

40 In the first instance, Mr Rajah admitted, in response to related questions from this court, that the prison authorities had not exercised their right of refusal arbitrarily but, rather, must have done so in accordance with a *rule*.

41 It would appear that Mr Rajah would then be arguing, as a matter of logic, that the rule concerned stipulated that no person could accompany a lawyer to interview the prisoner if he or she had not obtained prior permission from the prison authorities. Hence, in the present situation, Ms Tan had to be denied permission to accompany the respondent to interview the prisoner because she (Ms Tan) had not been granted prior permission. Taking the most generous interpretation we can of this argument, this would mean that Ms Tan had been denied permission because she had not, unlike the respondent, applied for permission earlier. In point of fact, however, Ms Tan had in fact approached the Chief Wardress to ask for permission to accompany the respondent – a fact that was conceded by counsel for the respondent (see [10]–[11] above). It was still possible for Mr Rajah to argue that a distinction ought to be drawn between a written application (such as that tendered by the respondent (see [7] above)) and an oral application (such as that made by Ms Tan to the Chief Wardress). However, this is too fine a distinction to draw. Indeed, there is another (and closely related) reason why, *even if* such a distinction could reasonably have been held (even from the respondent's perspective, or from anyone's perspective for that matter) in the first instance, the respondent would still fail in so far as the charge in the present proceedings is concerned.

42 In point of fact, the actual rule concerned was, of course, that no close relative of a prisoner would be allowed to accompany the prisoner's lawyer to the interview between lawyer and client/prisoner because it was the prison's policy not to allow close (and, in effect, unsupervised) contact between the prisoner and his family. It was not, and in our view could not, be argued that this particular rule was without principle – in relation both to the specific situation concerned as well as with regard to fairness to all prisoners generally. Indeed, the then Head of Operations Control at Prison Headquarters, Mr Wong, explained that "lawyers are given the privilege of unsupervised visits to their prisoner clients", but that "[o]n these occasions, family members are not permitted to accompany the lawyer" in order "to avoid, for example, contraband being passed to the prisoner by family members". Indeed, "[w]hen family members visit, they speak to the prisoner through a partition".

43 In our view, *regardless of the precise content of the rule* the respondent had in mind at the material time, he was under an obligation to ensure that there was compliance with the rule in so far as Ms Tan's visit was concerned. If he had attempted to comply with the rule, he would have discovered the actual content of the rule (which was contrary to what his counsel alleged he thought it was). *However, the respondent did not even attempt to comply with any rule whatsoever.*

44 It was *clear*, in fact, that the respondent *had not only disregarded the rule but had adopted, instead, a diametrically opposite approach: an approach that was clearly intended to – and did – mislead the prison officers concerned. This was itself improper conduct that was unbefitting an advocate and solicitor as an officer of the Supreme Court and as a member of an honourable profession and which was therefore conduct that fell foul of s 83(2)(h) of the LPA*. Indeed, this is the very pith and marrow of the charge as set out at [2] above. In other words, Mr Rajah's argument, well-intentioned and argued as it was, was, with respect, a "red herring" of sorts. It bears repeating that the respondent, at no point, bothered to ascertain what the rule was. As we shall elaborate on below, this was due to the fact that he knew – or ought to have known – of the rule concerned. At this juncture, however, it is imperative to reiterate the fact that the act of misleading the prison

officers concerned was, in and of itself, conduct that fell within the ambit of s 83(2)(h) of the LPA.

45 Even if we assume that the respondent had his own "noble" reasons for doing what he did, *the ends could never justify the means*. One cannot divorce the means from the ends. Where improper means are utilised, the ends, no matter how noble or desirable they might otherwise be, are almost invariably tainted and sullied. There are in fact two consequences arising as a result. The first is that the use of improper means is *itself* wrong and the second (as just mentioned) is that the otherwise noble ends themselves are also tainted and sullied as a result. This would of course be, *a fortiori*, the case if the respondent had less than noble reasons. We do not in fact desire, nor do we need, to speculate on the respondent's motivations simply because, as already stated, the *conduct perpetrated by the respondent on the prison authorities in general and the prison officers concerned in particular was anathema to the honourable practice of law. This is itself sufficient, therefore, to dispose of the arguments tendered by the respondent's counsel*.

46 We also note that the respondent did not merely act improperly during one particular moment of folly. An even cursory examination of the material events reveals that there was a series of acts perpetrated by the respondent and consisted, in the main, in his respective responses to the prison officers concerned. At each and every stage, unfortunately, he chose to act in a misleading manner when a simple act of candour or directness would have served to have avoided this lamentable situation altogether.

47 However, as the respondent's precise motivations were not really examined by the DC, we are not prepared to hold that the respondent was clearly dishonest. This will in fact be relevant in so far as the issue of any sentence meted out is concerned. As we have pointed out, the respondent may well have had "noble" reasons. It is nevertheless by no means clear that this was the case. It bears reiterating that even if this were so, this did not excuse his conduct. His act of misleading the prison authorities in general and the prison officers concerned in particular, although not constituting a premeditated and deliberate course of dishonest conduct, was at least reckless and certainly unbefitting that of a member of an honourable profession.

48 For completeness, we observe that *even if* we were to consider seriously Mr Rajah's arguments that focused on the specific *content* of the relevant rule, this would not assist the respondent.

49 In the first instance, as we have already pointed out above, the argument to the effect that the respondent thought that Ms Tan had been denied permission because she had not applied for *written* permission earlier is too unreasonable and fine an argument to accept (see [41] above). *Even if* we were to consider seriously such an argument (which we do not), the respondent ought then to have sought permission, thus ensuring that the rule that *he* thought was applicable (that Ms Tan had been denied permission because she had not applied for written permission earlier) was in fact complied with (or, at the very least, waived). Indeed, the respondent ought to have sought the permission there and then. He had, in fact, several opportunities to do so, commencing at the wicket gate. Instead, he sought entry on behalf of Ms Tan by stating that she was his "assistant", knowing full well that Ms Tan was not a lawyer or member of his firm but, rather, the prisoner's wife. Hence, even if we accept the respondent's version of the reason as to why he thought that Ms Tan had been denied permission, he had nevertheless not only neglected to comply with the rule (by applying for the necessary permission in writing) but had, instead, engaged in the misleading conduct already mentioned.

50 The respondent sought to rationalise this action by arguing that he was of the view that Ms Tan might in fact be of some assistance. We find this argument to be wholly unpersuasive. Even

allowing for the most generous interpretation that can be accorded to the respondent's argument, this did not, in and of itself, justify the respondent ignoring the rule laid down by the prison authorities. *It cannot be emphasised enough that the respondent chose not only to ignore the rule but also took his own positive (and illicit) steps in an attempt to enable Ms Tan to accompany him to see her husband* – steps which, as it turned out, were successful.

51 We have hitherto given the respondent the most generous benefit of the doubt. Even so, we find his attempt to explain away the conundrum he found himself in utterly unconvincing. We would, however, go *further*. In our view, it is wholly unreasonable and even inconceivable that Ms Tan would not have known the reason why she was denied permission to see her husband that day. Indeed, if she truly was not told, and therefore did not know, the reason, she could have simply come forward during the DC hearing and stated so. As we have seen, however, she refused to testify, together with the adverse evidential consequences that followed (see [11] above).

52 If, in fact, Ms Tan had been told or informed what the reason for the denial of permission was, it is (again) wholly unreasonable and even inconceivable that Ms Tan would not have told the respondent what the reason was.

53 We also need to adopt a practical approach to the matter at hand. If one placed oneself in Ms Tan's shoes, it would have been *highly probable* that the reason for the denial of permission to visit her husband together with the respondent was *due to her status as the prisoner's wife*. Equally, from the *respondent's* perspective, even if he had not been told specifically what the reason was for this denial of permission to Ms Tan, it would follow, *a fortiori*, that a *highly probable* reason that occurred or at least ought to have occurred to the *respondent* was one that somehow centred on Ms Tan's status as the prisoner's wife. Or put another way, any reasonable lawyer would have enquired into the reasons for Ms Tan being refused access.

54 However, as already mentioned, we do not even need to go so far. As already noted earlier, it was plain that the actual reason for refusing Ms Tan permission to accompany the respondent on his interview with the prisoner was unknown at worst and unclear at best. A reasonable course of action on the part of the respondent would have been to have confirmed what the reason was with the various prison officers. Instead, he took it upon himself to tell an apparent literal *half*-truth (that Ms Tan was his "assistant") which not only did not address the issue at hand (the reason for the denial of permission to Ms Tan) but also created a false impression on the part of the prison officers concerned. We add that such a reason could only have been, as already mentioned, a half-truth at best because it was *highly improbable* that that was the *only* reason why Ms Tan was seeking to accompany the respondent.

55 Indeed, as we have also already mentioned, it was, in any event, highly probable that the respondent knew that Ms Tan could not accompany him and that, therefore, some alternative form of improper conduct was necessary in order to facilitate access for her.

56 It seems to us, in fact, that *even if* the respondent did *not literally know* what the actual reason for denial of permission to Ms Tan was, he nevertheless *all but knew*. In other words, we are of the view that the respondent, *at the very least, strongly suspected what the reason was but deliberately shut his eyes to the entire situation and claimed, instead, that Ms Tan was his "assistant".* He knew that he had to take *but the shortest of steps (indeed, perhaps only one further step) to ascertain the rule and the truth of the matter as a whole.* (Significantly, perhaps, we also note that the substance of the rule itself is available online (at the time of writing) at <http://www.prisons.gov.sg/pbs/FAQ.htm>, as the responses to questions 8 and 14 under the heading "FAQ for Lawyers".) In such circumstances of "Nelsonian blindness", the respondent can in

fact be taken as having had, in *law*, *actual* knowledge. (For a very recent and illuminating discourse on this concept, see Michael P Furmston, "Some Themes and Thoughts" (2005) 17 SAcLJ 141 at 144–147.)

57 We are buttressed in our views by other evidence as well. First, there was the issue (already considered above) as to whether or not the respondent was asked if Ms Tan was related to the prisoner at the Gate Office or (subsequently) at the Interview Room. We have already stated that we agree with the DC's findings to the effect that such a request took place at the latter forum instead of at the former. However, *regardless* of *where* the request in fact took place, it was clear that *when* the request was made, the respondent *would have been aware that the relationship between Ms Tan and the prisoner was a vital issue*. Indeed, if we accept the *respondent's* version in so far as this issue is concerned, it would mean that the respondent would have had *even earlier* notice that this particular issue was of vital importance. In the circumstances, the respondent ought *then* to have clarified the issue with the prison authorities, *but did not*.

58 Secondly, we have already noted (at [29] above) that the respondent, in a subsequent response to the prison authorities, not only demanded an apology from them but also stated that "it is the easiest of procedures to create documentation for a lawyer's firm to employ a prisoner's family member around the time of a scheduled visit" and that "[a]fter the visit, the 'employment' would be terminated 'for personal reasons'". Although it is true that we ought not to place too much emphasis on this response, it is nevertheless a possible indication that the respondent was not an "innocent babe in the woods" and consciously engaged in the conduct that was the subject of the present complaint.

59 The cumulative actions stated at [13]–[23] above therefore constitute, in our view, misconduct which was unbefitting an advocate and solicitor both as an officer of the Supreme Court and as a member of an honourable profession within the meaning of s 83(2)(*h*) of the LPA.

60 In summary, we find that:

(a) Instead of attempting to comply with the rule, the *existence* at least of which he must have been aware, the respondent not only did not bother to do so but, *instead*, deliberately misled the prison officers concerned in order to assist Ms Tan in gaining entry into the prison. *This was, in and of itself, improper conduct that fell within the ambit of s 83(2)(h) of the LPA, regardless of the specific rule the respondent had in mind.*

(b) *In any event,* even if the respondent had thought that the reason that Ms Tan could not accompany him was due to the fact that she had not applied for *written* permission earlier, this was (quite apart from the inherent weakness within this particular argument itself) an unacceptable argument since the respondent ought *then* to have *sought permission, thus ensuring compliance with the rule that written permission by Ms Tan was either waived or complied with*. The respondent nevertheless embarked on conduct quite to the *contrary inasmuch as he misled the prison officers instead.*

(c) It was, *in any event*, highly probable that the respondent *knew* that Ms Tan had been denied permission because of *her status as the prisoner's wife*. There was, on the facts, either actual knowledge or something akin to it as the respondent had deliberately shut his eyes to the entire situation and had chosen to mislead the prison officers instead. It was but a short and simple step for the respondent to have confirmed what the real reason for denying Ms Tan permission was by being candid with the respective prison officers, but he refused to do so.

61 In the circumstances, therefore, we find that the respondent was indeed guilty of the charge preferred against him by the Law Society pursuant to s 83(2)(*h*) of the LPA. We turn now to the factors relevant to the sanction to be imposed on the respondent.

The public interest

62 In *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR 696, Yong Pung How CJ, delivering the judgment of the court, observed thus (at [11]–[12]):

> … It is not simply a question of punishing the solicitor concerned. A further consideration must be what course should the court take to protect the public and to register its disapproval of the conduct of the solicitor. In the relevant sense, the protection of the public is not confined to the protection of the public against further default by the solicitor in question. It extends also to the protection of the public against similar defaults by other solicitors through the court publicly marking the seriousness of what the instant solicitor has done. The orders made must therefore accord with the seriousness of the default and leave no doubt as to the standards to be observed by other practitioners. In short, the orders made should not only have a punitive, but also a deterrent effect.
>
> There are also the interests of the honourable profession to which the solicitor belongs, and those of the courts themselves, to consider. The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice. Similarly, the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts.

63 There is, in fact, an inherent, irreducible and non-negotiable public interest in the administration of justice in its multifarious forms (see also generally Tan Yock Lin, "Sentencing for Legal Professional Misconduct" (2000–01) 21 Sing L Rev 62). Should the fabric of the system of justice be torn (worse still, rent apart), the entire fabric of society itself will suffer as a consequence. The public institutions which constitute the foundation of the system of justice (and this includes, *inter alia*, the legal profession and the prisons, both of which were directly and adversely impacted in the present case) constitute not only an extremely important part of the basic structure of society but also simultaneously contribute to the stability and positive growth of that structure itself.

64 All this necessarily entails ensuring that the integrity of the above-mentioned institutions which aid, as pillars, in facilitating the administration of justice is not sullied, tainted or undermined in any way. To this end, any misconduct, such as that perpetrated by the respondent in the present proceedings, can only undermine the system, not merely with regard to the specific situation concerned, but also with regard to the very integrity as well as perception of the institution itself. It ought not – indeed, *cannot* – be the case that a lack of probity and respect be allowed to be demonstrated towards the prison authorities. Indeed, the very *raison d'étre* of the entire prison system depends on the maintenance of integrity that will, in turn, ensure that the security and procedures of the prison concerned are not breached in even the slightest degree. Looked at in this light, an unjustifiably lenient attitude towards the respondent in the present case would not only blatantly militate against the ideals and practices in the prison system that have hitherto been unblemished but would also signal that such ideals and practices are not to be taken seriously. This would clearly also be the thin end of the wedge which, if unchecked, will completely crack open and undermine a most important and integral part of the administration of justice in Singapore.

65 The fact that this is apparently the first case of its kind to come before the court is also significant. Such conduct must be nipped in the bud.

66 We note, further, that the respondent is an officer of the court. His task is to aid in the administration of justice, not to undermine it. Integrity and honesty are not simply necessary; they are the qualities that every legal practitioner *must* possess, for without them, the entire reputation of the law will be forfeit. The legal profession aids, immeasurably, in the administration of justice. Its reputation in the eyes of the public must be maintained and even enhanced wherever possible. The signal importance of this last-mentioned point centring on public confidence is vital and cannot be overemphasised.

67 Unfortunately, by his actions, the respondent has not only undermined one important institution in our system of justice (*viz*, the prison system) but has simultaneously also undermined the status and tarnished the image of another important institution to which he belongs (*viz*, the legal profession).

68 Perhaps the respondent did not realise the far-reaching and adverse as well as detrimental consequences his ill-advised actions would have. But that is no excuse. As we have pointed out, his refusal to abide by the rules and his positive actions in misleading the prison authorities are not only objectively wrong in fact but will also objectively have an adverse and detrimental effect on both the prison system as well as the legal profession. We have in mind, in particular, the lack of respect that will be generated for these two vital institutions – both from the public's perspective and even from within, from the perspective of those personnel who are part of those institutions. When the message to both the public from without, and to the personnel manning the institutions from within, is that the ideals and procedures of those institutions do not really matter and can be trifled with, this will (as we have already noted) be the beginning of a bitter and calamitous end. We cannot overemphasise the importance of preventing such consequences unequivocally and unhesitatingly.

69 All these considerations weighed heavily on our minds and, in turn, necessarily weighed heavily against the respondent. Every individual lawyer is an integral part of a larger institution committed wholly towards the administration and attainment of justice. To this end, every lawyer must achieve his or her goals and ideals within the framework of the institution and its rules – in order that the dire consequences referred to above be avoided and the goals as well as ideals of the law be achieved in their fullest measure.

70 However, consistent with the mission and purpose of justice generally, we also considered whether, despite the extremely weighty elements of public interest referred to above, there might be any mitigating circumstances that we could legitimately take into account in the respondent's favour, bearing in mind however that "considerations which usually weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases as show cause proceedings are primarily civil and not punitive in nature" (see *Law Society of Singapore v Ganesan Krishnan* [2003] 2 SLR 251 at [46]; see also *Bolton v Law Society* [1994] 1 WLR 512 at 519; *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168 at [22]; and *Law Society of Singapore v Wee Wei Fen* [2001] 1 SLR 234 at [39]).

71 In addition to the qualification expressed in the preceding paragraph, this court, under s 83(5) of the LPA (also reproduced at [2] above), "may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made". Prof Tan Yock Lin, in *The Law of Advocates and Solicitors in Singapore and West Malaysia* (Butterworths Asia, 2nd Ed, 1998) at p 906, observes that while "[t]he wording seems to comprehend taking into account past misconduct; yet why should past good conduct by way of mitigation be

excluded by an excessively narrow construction of conduct as meaning misconduct". There is much merit in this view. However, be that as it may, the issue of mitigation generally is nevertheless relevant and ought therefore to be considered wherever appropriate.

72 This process of balancing the rights of the public and that of the individual (even of one who has transgressed the law and has either actually and/or potentially injured the fabric of society) is obviously not an easy one to effect. It is nevertheless necessary and an integral part of what the courts do every day. This occasion is no exception. And it is to the specific issue of mitigation that our attention now turns.

The issue of mitigation

73 We note, first, that the respondent, apart from this unfortunate episode, has hitherto had an unblemished record. Mr Rajah added that the respondent was held in high regard by his peers in the profession and this fact was buttressed by confirmation by counsel for the Law Society, Mr Tiwary, who, however, obviously spoke not in his official but in his personal capacity. In this regard, however, it should nevertheless be borne in mind, as this court put it in *Law Society of Singapore v Tham Yu Xian Rick* ([70] *supra* at [17]):

> Next, the fact that s 83(2)(a) adds as a condition that the offence must unfit an advocate and solicitor to be one creates *a particular difficulty common to many of the provisions in s 83(2)*, namely, the difficulty of ascertaining the standard of judgment to be applied in a scrutiny of the misconduct. For instance, if an advocate and solicitor is convicted of the offence of tax evasion, that may nevertheless be a matter which persons who, in their private affairs are altogether rightminded, may regard as not particularly immoral and merely venial. However, a body of reasonable advocates and solicitors or a judge may well feel greater moral repugnance in the appraisal of such conduct. What standard to be applied will be determinative of the case, and the wording in s 83(2)(a) for all its seeming objectivity cannot fail to escape this difficulty. The English authorities espouse the standard of peer judgment (see, eg *Allinson v General Council of Medical Education & Registration* [1894] 1 QB 750), but these are distinguishable on the ground that the determination in those cases was final and not appealable. In Singapore there is no right of appeal but the disciplinary punishment is determined by a court in show cause proceedings, and, since the show cause court is not bound by the standards of the disciplinary committee, the same argument is in principle applicable: Tan Yock Lin, *The Law of Advocates and Solicitors* [(2nd Ed, 1998)] at pp 784 and 793. *The learned author therefore suggests that the proper standard of judgment is not that which would commend itself to a body of reasonable advocates and solicitors but is that which is fixed by the court. We are disposed to think that this is the correct view*. [emphasis added]

(See also *Law Society of Singapore v Heng Guan Hong Geoffrey* [2000] 1 SLR 361 at [23] and Tan Yock Lin ([71] *supra*) at pp 810–811.)

74 The respondent also had a record of public service (including a stint serving on the Council of the Law Society of Singapore itself).

75 We note, further, that the respondent was primarily in civil practice. He seldom accepted instructions in criminal matters and had, apparently, only visited the prison twice before over a period of some 12 years in practice. Whilst we find this to be an extenuating factor, we also note that the respondent was not by any means an inexperienced practitioner, devoid or almost wholly devoid of practical experience. As we have noted above, he knew or ought to have known that something was amiss and that, in the final analysis, proceeding in the manner he did was wrong.

76 We also note that the respondent did not contravene the rule for material gain. In all likelihood, he desired (for reasons best known to himself) to assist Ms Tan in gaining access to her husband (the prisoner). However, whilst the absence of material gain is a mitigating factor we take into account, we must emphasise the fact that it could not exonerate the respondent from the fact that he had clearly contravened the rule and, more significantly, had misled the prison authorities. As already emphasised at [45] above, the ends can never justify improper and unethical means – *a fortiori*, when they are directed at such vital institutions as the prison authorities.

77 Nevertheless, as already pointed out above, it has not been clearly established that the respondent was dishonest, although he was at least guilty of conduct that fell below that which was expected from a member of an honourable profession (see [47] above). Looked at in this light, it did not appear to us that, notwithstanding the gravity of the situation, the respondent ought to be struck off the roll.

78 It is, however, clear that a solicitor will almost invariably be struck off the roll where the charge against him or her involves proven dishonesty (see the oft-cited English decision of *Bolton v Law Society* ([70] *supra*) at 518, which has been cited with approval many times by this court: see, for but a small sample, *Law Society of Singapore v Ravindra Samuel* ([62] *supra*) at [14] and *Law Society of Singapore v Lau See-Jin Jeffrey* [1999] 2 SLR 215 at [39]). The following words by Sir Thomas Bingham MR (as he then was) in *Bolton v Law Society* (at 518) bear repeating:

> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him … Lapses from the required high standard may, of course, *take different forms and be of varying degrees*. The *most serious* involves *proven dishonesty, whether or not* leading to criminal proceedings and criminal penalties. In such cases the tribunal has *almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors*. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom *serious dishonesty* had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.* [emphasis added]

79 Significantly, *Bolton v Law Society* itself involved a solicitor who had misappropriated funds received from a building society by disbursing them before he ought to have – *inter alia*, to his wife who was involved in the transaction concerned. More specifically, he had paid moneys out prematurely in anticipation of formal completion of a conveyancing transaction which (unfortunately) the purchaser had reneged on. The solicitor had only been admitted recently. The solicitor made good the shortage in a timely fashion. The outstanding interest owed to the building society was also made good after it had obtained a judgment for that sum. The disciplinary tribunal accepted that the solicitor was an honest man and had not stolen clients' money in a premeditated fashion. In particular, the tribunal found that what the solicitor did "did not represent a deliberate course of dishonest conduct" (at 488). However, it did find (see *ibid*) that he was "naïve and stupid" in doing what he did and ordered that the solicitor concerned be suspended from practice for a period of two years. However, the Divisional Court quashed the penalty of suspension and imposed a fine instead. The

English Court of Appeal held that the Divisional Court had erred and that the appropriate sanction was indeed a suspension from practice for two years. However, it held that the lapse of time rendered it oppressive to reinstate the order for suspension.

80 Although the facts in the present proceedings are of course literally different, there are points of similarity, particularly with regard to the conduct of the respondent (see also [45] and [47] above).

81 In the Australian decision of *In re A Practitioner* (1984) 36 SASR 590 (which was, in fact, also referred to in the local decisions cited at [78] above, at [14] and [39], respectively, as well as in *Law Society of Singapore v Tham Yu Xian Rick* ([70] *supra*) at [18]), King CJ expressed the following view (at 593):

> I cannot regard suspension as an adequate response to the type of unprofessional conduct in which this practitioner engaged. *The proper use of suspension is, in my opinion, for those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way 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*. [emphasis added]

82 We are of the view that the principle embodied in the above quotation applies, *on balance*, to the facts of the present case. Notwithstanding the respondent's lack of wisdom and probable recklessness in this particular instance, his otherwise unblemished record suggests that he can still contribute as a legal practitioner. Fortunately, we have found that the respondent's conduct in this situation, lamentable though it may be, was not clearly dishonest and, hence, did not go beyond the pale.

83 We also note that the charge brought by the Law Society was under s 83(2)(*h*) of the LPA (reproduced above at [2]) and not, for example, under s 83(2)(*b*) (also reproduced above at [2]). As was pointed out by this court in *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165 at [40] (see also *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR 684 at [35]):

> Section 83(2)(h) of the Legal Profession Act is a catch-all provision which can be invoked when the conduct does not fall within any of the other enumerated grounds but is nevertheless considered unacceptable. It was stated in *Law Society of Singapore v Khushvinder Singh Chopra* [1999] 4 SLR 775 that unlike 'grossly improper conduct' in s 83(2)(b), 'conduct unbefitting an advocate and solicitor' is not confined to misconduct in the solicitor's professional capacity but also extends to misconduct in the solicitor's personal capacity. It follows that the standard of unbefitting conduct is less strict and, as stated in *Re Weare* [1893] 2 QB 439, a solicitor need only be shown to have been guilty of 'such conduct as would render him unfit to remain as a member of an honourable profession'.

84 However, it was clear that the sanction of a mere censure argued for by learned counsel for the respondent would have been patently inadequate in the circumstances of this case. A period of suspension from practice was, in our view, an appropriate sanction to administer, taking into account all the circumstances of the case.

85 It was also submitted that the respondent was the sole breadwinner of his family which included two young children. While we sympathise with him, we could not, for that reason alone, indulge in undue leniency. In the words of Sir Thomas Bingham MR in *Bolton v Law Society* ([70] *supra*) at 519:

> [I]t can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. *But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.* [emphasis added]

86 The learned Master of the Rolls proceeded to observe a little later in his judgment thus (*ibid*):

> At the end of a period of suspension a solicitor is able to seek employment, or seek to re-establish himself in partnership, perhaps subject to such conditions as the Law Society see fit to attach to his practising certificate. But that puts him in quite a different position from a solicitor who has been struck off, who cannot practise at all as a solicitor unless or until he is restored to the Roll.

Conclusion

87 Balancing the overriding public interest considerations with what mitigating factors that could legitimately be taken into account in favour of the respondent, we made the show cause order absolute and suspended the respondent from practice for two years. This period of suspension was, in response to the request by counsel for the respondent, to commence two weeks after the making of this order to enable the respondent to tie up relevant matters. We further ordered that the costs of the present proceedings be borne by the respondent.

88 We conclude by reiterating the importance of maintaining the highest standards of integrity and practice within the legal profession. This was one of the first cases of its kind in Singapore. Any similar transgressions in the future will be dealt with more severely. Counsel are advised to conduct themselves with both wisdom and common sense at all times. When in doubt, they should double-check to ensure that they are not infringing any rules or procedures. This would, *a fortiori*, be the case in situations such as the present where it was very amply clear that candour was required. In such an instance, as we have already emphasised, the deliberate shutting of one's eyes to the obvious is not only tantamount to actual knowledge but will also not be tolerated. Indeed, the lawyer in the present proceedings went *further* than that: He positively misled the (here, prison) authorities. Such conduct was, *in and of itself*, improper conduct that impacted simultaneously (and in an adverse fashion) on the public interest. In the circumstances, such conduct will, all the more, not be tolerated and will, in fact, be sanctioned accordingly.

Order accordingly.