IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 54

Tribunal Appeal No 11 of 2015

In the matter of section 31H(1) of the Professional Engineers Act (Cap 253, 1992 Rev Ed) and Order 55 of the Rules of Court (Cap 322, 2014 Rev Ed)

And

In the matter of an order by the Disciplinary Committee of the Professional Engineers Board, Singapore made on 2 June 2015 under section 31G of the Professional Engineers Act (Cap 253, 1992 Rev Ed) against Fong Chee Keong

Between

FONG CHEE KEONG

… *Appellant*

And

PROFESSIONAL ENGINEERS BOARD, SINGAPORE

… *Respondent*

GROUNDS OF DECISION

[Professions] — [Engineers]

Fong Chee Keong
v
Professional Engineers Board, Singapore

[2016] SGHC 54

High Court — Tribunal Appeal No 11 of 2015
Lee Seiu Kin J
25 January 2016

5 April 2016

Lee Seiu Kin J:

1 This is an appeal against the finding of the respondent, the Professional Engineers Board, Singapore ("PEB"), that the appellant, Mr Fong Chee Keong ("Fong"), was guilty of a disciplinary charge. The PEB cancelled his registration as a professional engineer and ordered him to pay $10,000 as costs of the disciplinary proceedings. The disciplinary charge arose from a complaint in relation to Fong's conviction under s 57(1)(*k*) of the Immigration Act (Cap 133, 2008 Rev Ed), for making false statements to immigration authorities. At the conclusion of the hearing, I upheld the finding of guilt but reduced the penalty from cancellation of registration to two years' suspension

from practice. I also upheld the costs order against him. I now give the reasons for my decision.

Background and facts

2 Fong is a registered professional engineer. On 18 July 2013, he was convicted under s 57(1)(*k*) of the Immigration Act for making false statements to immigration authorities in an attempt to obtain a visit pass for a female Chinese national, with whom he was in an intimate relationship. He also faced three other criminal charges which were taken into consideration, and was sentenced to four weeks' imprisonment. Fong did not appeal against the conviction and sentence. The PEB subsequently received a complaint pertaining to Fong's conviction and instituted disciplinary proceedings against him.

3 On 4 December 2014, the PEB sent Fong a notice informing him of the disciplinary proceedings and the charge levelled against him.

4 The disciplinary charge read:

> That you, Er. Fong Chee Keong … a Professional Engineer registered under the provisions of the Professional Engineers Act (Cap 253), are charged that you, on 18 July 2013, were charged and convicted of a criminal offence under Section 57(1)(k) of the Immigration Act (Cap 133, 2008 Rev Ed) and punished with 4 weeks' imprisonment under Section 57(1)(vi) of the said Act, in that you, on 4 July 2012, did attempt to obtain a Visit Pass for one Tang Qiuxia, a People's Republic of China national, by making false statements in her application for Visit Pass submitted online through the Electronic Visit Pass (Long Term) System, to wit, by stating in the Visit Pass online application that:

> a) Tang Qiuxia had been staying at 'Apt Blk 351 Canberra Road #03-299 Singapore 752351' for '1 month' since 4 June 2012; and
>
> b) Tang Qiuxia was pregnant and that her 'Expected Delivery Date' is '30.01.2013'
>
> which statements you knew to be false, and by reason whereof you are in contravention of Section 31G(1)(a) and/or Section 31G(1)(b) of the Professional Engineers Act (Cap 253), and/or in contravention of Rule 2(1) of the Professional Engineers (Code of Professional Conduct and Ethics) Rules (the "**Rules**") by virtue of your contravention of Provision 2(1) of Part I of the Schedule to the Rules (i.e. the Code of Professional Conduct and Ethics), which are punishable under Section 31G of the Professional Engineers Act (Cap 253).
>
> [emphasis in original]

5 On 23 December 2014, the PEB sent Fong a further notice requiring him to attend a disciplinary hearing on 20 January 2015 at 9.30am.

6 On the eve of the scheduled hearing, 19 January 2015, the PEB received a letter from Fong stating that he would be overseas and requesting that the hearing be postponed to the fourth quarter of 2015. The PEB postponed the hearing, but only to 25 February 2015 at 9.00am, for Fong to make the necessary travel arrangements to attend. This was communicated to Fong in a letter dated 21 January 2015. The letter also notified Fong that the PEB's disciplinary committee ("DC") may proceed with the hearing in his absence under r 31(2) of the Professional Engineers Rules (Cap 253, R 1, 1990 Rev Ed) ("PE Rules"), and enclosed documentary evidence which the PEB intended to adduce in support of the disciplinary charge. This included Fong's criminal charge sheets, statement of facts, registrar's certificate on his criminal charges, and an Immigration and Checkpoints Authority ("ICA") press release

detailing the circumstances of Fong's offences. Copies of the letter and documentary evidence were also emailed to Fong on 22 January 2015.

7 On 25 February 2015, the day of the postponed hearing, Fong sent the PEB an email at 9.07am stating that he was unable to attend as he was involved in a traffic accident. He enclosed an email purporting to be from "SPF_Electronic_Police_Centre@spf.gov.sg" which confirmed receipt of his police report, report no. "E/20150225". Fong requested another postponement to 29 April 2015 as he would be overseas from early March 2015. The PEB was unable to confirm the authenticity of Fong's police report at the time as the report number provided was incomplete, and the DC decided to proceed with the hearing in his absence. After the DC heard the PEB's submissions, it adjourned the hearing to 2 June 2015 at 9.30am to give Fong one more opportunity to respond to the disciplinary charge against him. Subsequently, the PEB managed to obtain a police report which revealed that the alleged traffic accident occurred on 16 February 2015, and not on 25 February 2015 as Fong had sought to imply.

8 On 9 April 2015, the PEB sent Fong a notice to inform him of the further hearing date. A copy of the said notice was also emailed to Fong on 20 April 2015. The PEB also claimed to have emailed Fong soft copies of all its written submissions, bundle of documents and bundle of authorities referred to at the 25 February 2015 hearing. However, Fong denied receiving them all.

9 On 1 June 2015, the day before the further hearing date, Fong sent the PEB another email at 3.10pm enclosing a medical certificate and stating that he would not be able to attend the hearing on 2 June 2015.

10 On 2 June 2015, the DC decided to proceed with the hearing in Fong's absence on grounds that:

(a) The substance of the disciplinary charge was uncontroversial. It was clear from the documentary evidence that Fong was convicted of the said criminal charge and sentenced to four weeks' imprisonment.

(b) Fong had been given two opportunities to respond to the disciplinary charge but "had chosen not to attend the proceedings".

11 The DC found Fong guilty of the disciplinary charge as he had acted dishonestly with the intention to deceive the ICA, and made the following orders:

(a) Fong's registration as a professional engineer was to be cancelled.

(b) Fong was to pay $10,000 for costs of the disciplinary proceedings against him.

Grounds of appeal

12 Fong brought the present appeal under s 31H of the Professional Engineers Act (Cap 253, 1992 Rev Ed) ("PE Act"), and sought to set aside the

entirety of the DC's decision. Broadly speaking, this was an appeal against both the finding of guilt and the punishment imposed.

13 Fong tendered lengthy and comprehensive written arguments in support of his appeal. His key grounds can be summarised as follows:

(a) There had been a breach of natural justice in the conduct of proceedings.

(b) The disciplinary charge was not made out.

(c) In the event the conviction was upheld, the sentence imposed by the DC was manifestly excessive.

14 With regard to the first ground, Fong contended that:

(a) He was denied the opportunity to be heard.

(b) He was not provided with the relevant documents in respect of the disciplinary proceedings.

15 With regard to the second ground, Fong contended that:

(a) The relevant limb under s 31G(1)(*a*) of the PE Act, on which his disciplinary charge was based, should be "has been convicted of any offence involving fraud, dishonesty or moral turpitude … *which makes him unfit for his profession*" (emphasis added).

(b) In any case, his conviction was not of an offence involving fraud, dishonesty or moral turpitude.

(c) Even if his conviction was of an offence involving fraud, dishonesty or moral turpitude, the offence was not one which makes him unfit for his profession.

16 Before examining these grounds of appeal, it is perhaps appropriate to first outline the powers of this court in hearing appeals arising from decisions of the PEB's disciplinary committees.

The role of this court

17 The High Court generally has broad powers of rehearing in the exercise of its appellate jurisdiction (see s 22 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed)). The court's role in this appeal is set out in s 31H(1) and s 31H(3) of the PE Act:

> **Appeal against order by Disciplinary Committee**
>
> 31H. — (1) Any person aggrieved by a decision of the Disciplinary Committee referred to in section 31G(2), (3) or (4) [an order of the DC] may, within 30 days after the service on him of the notice of the order, appeal to the High Court against the order.
>
> …
>
> (3) In any appeal to the High Court against a decision referred to in section 31G(2), (3) or (4), *the High Court shall accept as* ***final and conclusive*** *any finding of the Disciplinary Committee relating to any issue of ethics or standards of professional conduct unless such finding is in the opinion of the High Court* ***unsafe, unreasonable or contrary to the evidence****.*
>
> [emphasis added in italics and bold italics]

18 In exercising the Court's appellate jurisdiction, therefore, the critical question before me in this matter is whether or not the DC's findings relating to issues of ethics or standards of professional conduct were "unsafe, unreasonable or contrary to the evidence".

19 Guidance may be obtained from cases that deal with s 46(8) of the Medical Registration Act (Cap 174, 2004 Rev Ed) ("MR Act"), which the wording of s 31H(3) of the PE Act substantially mirrors. The section reads:

> In any appeal to the High Court against an order referred to in subsection (6) [an order of the Disciplinary Committee], the High Court shall accept as *final and conclusive* any finding of the Disciplinary Committee relating to any issue of medical ethics or standards of professional conduct unless such finding is in the opinion of the High Court *unsafe, unreasonable or contrary to the evidence*. [emphasis added]

20 In *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 ("*Low Cze Hong*") at [39]–[40], a three-judge panel recognised that the provision required the High Court to make the following findings before it could intervene:

(a) There is something clearly wrong either:

(i) in the conduct of the disciplinary proceedings; and/or

(ii) in the legal principles applied; and/or

(b) The findings of the disciplinary committee are sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence has been misread.

This approach had also been accepted by the Court in *Chia Yang Pong v Singapore Medical Council* [2004] 3 SLR(R) 151 at [7].

21 Furthermore, in considering an appeal, a court would be slow to interfere with the findings of a disciplinary committee as the latter is a specialist tribunal with its own professional expertise and understands what the profession expects of its members. However, the court should not give undue deference to a disciplinary committee's views which would render its appellate powers under legislation nugatory: see *Low Cze Hong* at [39]–[42].

22 In my view, the principles enunciated above are equally applicable to proceedings under s 31H(3) of the PE Act as the statutory provisions are similar. With these considerations in mind, I now turn to address the grounds of appeal pursued by Fong.

Analysing the grounds of appeal

Was there a breach of natural justice?

23 Although breach of natural justice was not raised at the oral hearing itself, it was canvassed extensively in the parties' written submissions. In the present case, the issues were straightforward and do not require an in-depth discussion on the rules of natural justice, which are well-established here. It suffices to bear in mind that the duty to act in accordance with natural justice is nowadays consonant with a duty to act fairly, and its content varies with the circumstances of each case: see *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 at [6].

24 The present ground of appeal essentially rested on two contentions, which I will address in turn:

(a) That Fong was denied the opportunity to be heard.

(b) That Fong was not provided with the relevant documents in respect of the disciplinary proceedings.

Was Fong denied the opportunity to be heard?

25 According to Fong, the PEB did not give him the opportunity to present his case in person and proceeded with the disciplinary hearings in his absence. By virtue of its unilateral actions and decisions, the PEB had acted unfairly in the conduct of proceedings.

26 In response, the PEB contended that Fong was given ample opportunity to be heard. First, the DC was under no legal obligation to hear the matter in Fong's presence as long as it had complied with the procedural requirements under s 31E of the PE Act: see r 31(2) of the PE Rules. Section 31E of the PE Act required the Registrar to serve on Fong a notice of the hearing at least 21 days in advance of the hearing date, and this was duly effected. Second, the PEB had, on multiple occasions, accommodated Fong's requests for postponement and re-fixed hearing dates for him to attend. Third, Fong was not precluded from submitting written representations to the DC in any event, an option which he did not take advantage of.

27 In the present case, I did not find that the PEB had acted unfairly. The procedural requirements under s 31E of the PE Act had been complied with.

Parties did not dispute this. The DC was thus entitled under the PE Rules to proceed with the hearing in Fong's absence. However, the further issue, of whether the PEB had acted unfairly *in the exercise of these powers*, remained.

28 On the facts, even though Fong never appeared in person to make representations, the correspondences clearly showed that the PEB had given Fong a *fair* opportunity to be heard. While it is a trite rule of natural justice that no one should be condemned unheard, the right is not an unlimited one. Indeed, it was apparent from the narration of the facts above that the PEB was not only prepared to hear Fong, but had also bent over backwards to accommodate him. The PEB had acceded to Fong's multiple requests to postpone the hearing. On each occasion, Fong was duly notified of the time and location of each hearing with at least a few weeks' notice. In any event, the PEB had expressly informed Fong that it was empowered to proceed with the hearing even if he failed to attend. Conversely, Fong sought to delay the matter time and again, at short notice and on rather tenuous bases. On one occasion, he claimed that his inability to attend was due to a minor traffic accident which had in fact occurred more than a week prior to the actual hearing date. Under these circumstances, it defies logic that the PEB would be under an obligation to postpone the matter indefinitely for someone who was seeking to evade it. Indeed, this is a case where Fong had been given every reasonable opportunity to be heard but had not made use of it. The law requires the tribunal to give Fong an opportunity to be heard; it is up to Fong to make use of that opportunity. The court will, of course, examine the circumstances to decide whether a person has been given a reasonable opportunity to be heard, including whether the tribunal was merely going

through the motions. In the present case, however, I found that the PEB had acted with utmost reasonableness and it was Fong who had been unreasonable with his demands and deceptions.

29 Furthermore, Fong was also informed of the case he had to meet at the outset. Over the course of the letters and emails exchanged between parties, the PEB had also furnished Fong with the disciplinary charge against him as well as the evidence which it had intended to adduce at the hearing. With all this information at hand, Fong could have made representations to the DC in the course of their extended correspondences even if he was unable to personally attend the hearing. Again, the fact that Fong did not take advantage of the opportunities available to him cannot then be used to support the allegation that he was denied the right to be heard.

30 Therefore, on the particular facts of this case, I found that the PEB had not acted unfairly in the conduct of proceedings by hearing the matter in Fong's absence.

Was Fong provided with the relevant documents in respect of the disciplinary proceedings?

31 Fong's argument rested on two limbs:

(a) The PEB had failed to disclose relevant evidential material on the disciplinary charge against him.

(b) The PEB had failed to disclose the reasons for the decision against him.

32 For the first limb, Fong listed a wide-ranging series of documents which the PEB allegedly failed to provide and which would otherwise have enabled him to make representations against the disciplinary charge. According to him, the PEB was "required to provide the full [documentation] used in the entire course [of proceedings] from when the sworn complaint is received until the order was made". This included the "list of bundle documents", "PEB's or its Counsel's representations", "printed documents", and "transcripts and minutes" which were "used, referred [to] and relied [on] by [the] PEB".

33 Against this, the PEB argued that it had sent Fong copies of all the documents it intended to, and eventually did, adduce at the disciplinary hearing. This was carried out more than a month in advance of the 25 February 2015 hearing and in compliance with r 32(1)(*d*) of the PE Rules, which required Fong to be given access to evidential material at a "reasonable time" before they were tendered. The PEB also claimed to have gone a step further, and on 20 April 2015 emailed Fong soft copies of all its written submissions, bundle of documents and bundle of authorities referred to at the 25 February 2015 hearing, even though it was under no obligation to do so.

34 On the facts, Fong's argument was clearly untenable. Here, it bears highlighting the propositions in Rt Hon the Lord Woolf *et al*, *De Smith's Judicial Review* (Thomson Reuters, 7th ed, 2013) ("*De Smith's*") at para 7-057 on the duty of disclosure in administrative decisions:

> If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. *The*

> *level of detail required must be such as to enable the making of "meaningful and focused representations". …* [emphasis added]

From the PEB's bundle of documents, it was not evident that it had in fact emailed Fong soft copies of the documents as claimed, and indeed Fong disputed that he received them all. However, I was satisfied that the documentary evidence which was provided to Fong more than a month prior to the 25 February 2015 hearing, including the criminal charge sheets, statement of facts, registrar's certificate on his criminal charges, and the ICA Press Release detailing the circumstances of his offences, was sufficient to inform him of the particulars of the case against him and for him to make the necessary representations. The proceedings against Fong were straightforward, and the nature of the disciplinary charge did not warrant disclosure to the level of detail which he argued was necessary.

35 For the second limb, non-disclosure of reasons may give grounds for challenging the procedural propriety of an administrative decision where such disclosure is required under statute, by common law, or to enable an effective right of appeal: see *De Smith's* at pp 448-452. The reasons for the DC's decision in the present case were set out in the record of disciplinary proceedings. However the PEB is not required by the PE Act or the PE Rules to disclose those reasons to him. Nevertheless, the record of disciplinary proceedings was provided to Fong after he took out the present proceedings. Fong submitted that his ability to appeal against the DC's decision had been impaired as a result of this.

36 It is good practice to disclose reasons because this would enable the affected party to understand the basis for the decision and might even obviate an appeal. However failure to do so does not invalidate the PEB's decision because there is no statutory requirement for it to be done. At most, it made it more difficult for Fong to prepare for the current appeal. And if the PEB had refused his request to be provided with the record of proceedings, Fong could have applied to court for it. But that was not the case as the record of proceedings was tendered as part of the PEB's documents in this appeal and had been availed to Fong prior to the hearing of this appeal.

37 Having found no breach of natural justice in the conduct of disciplinary proceedings, I now turn to Fong's alternative grounds of appeal raised at the hearing.

Was the disciplinary charge made out?

38 While the DC relied on more than one basis to convict Fong on the disciplinary charge, his main contention at the hearing was with its finding on s 31G(1)(*a*) of the PE Act, which provides as follows:

> **Findings of Disciplinary Committee**
>
> 31G. — (1) Where, upon due inquiry into a complaint or matter, a Disciplinary Committee is satisfied that the registered professional engineer concerned —
>
> > (*a*) has been convicted of any offence involving fraud, dishonesty or moral turpitude, or such defect in character which makes him unfit for his profession[,]

> ...
>
> the Disciplinary Committee may exercise one or more of the powers referred to in subsection (2).

What is the meaning of s 31G(1)(a) of the PE Act?

39 A threshold issue was the meaning of s 31G(1)(*a*) of the PE Act. On Fong's proffered interpretation at the hearing, for the DC to take disciplinary action under subsection (2), the conviction under s 31G(1)(*a*) must pertain to an offence which not only involves fraud, dishonesty or moral turpitude, but there is to be a further test, that it makes him unfit for his profession. There being no case authority on this point, it falls to this court to examine the meaning of the provision.

40 Based on the language of the provision, there are two plausible interpretations, which differ in where the bifurcation occurs in the limbs under s 31G(1)(*a*). On the first interpretation, the bifurcation occurs after the word "has" in the following manner:

> has:
>
> (a) been convicted of any offence involving fraud, dishonesty or moral turpitude; or
>
> (b) such defect in character which makes him unfit for his profession.

The second interpretation has the bifurcation after the word "involving", as follows:

has been convicted of any offence involving:

(a) fraud, dishonesty or moral turpitude; or

(b) such defect in character which makes him unfit for his profession.

The critical distinction is that unlike the first interpretation, the second interpretation requires a conviction under limb (b) to support a disciplinary charge.

41 In my view, the second interpretation is to be preferred. It is well-established in Singapore that, whether or not there is ambiguity on the face of the provision, the courts must adopt a purposive approach to statutory interpretation and that reference may be made to extrinsic materials in doing so: see *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [18]–[20]. In the present case where there is a possible ambiguity, extrinsic materials are all the more relevant. In the second reading of the Professional Engineers (Amendment) Bill (see *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 at col 1245), the Minister of State for National Development, Mr Heng Chee How, explained that the revised disciplinary procedures under the PE Act were modelled after the medical, dental and accounting professions in Singapore. A review of the corresponding regulations, which were all similarly worded at the time these amendments were introduced, lends support to the second interpretation. Taking the MR Act as an example, the relevant provision reads as follows:

Findings of Disciplinary Committee

> 45. — (1) Where a registered medical practitioner is found or judged by a Disciplinary Committee —
>
> (*a*) to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty; [or]
>
> (*b*) to have been convicted in Singapore or elsewhere of any offence implying a defect in character which makes him unfit for his profession[,]
>
> ...
>
> the Disciplinary Committee may exercise one or more of the powers referred to in subsection (2).

42 Except for the fact that two separate grounds under s 45(1) of the MR Act had been conflated into one under the PE Act, s 31G(1)(*a*) is almost *in pari materia* with these provisions. The corresponding provisions in the Dental Registration Act (Cap 76, 2009 Rev Ed) and Accountants Act (Cap 2, 2005 Rev Ed) are drafted in the same fashion as the MR Act. It is therefore clear from the genesis of s 31G(1)(*a*) of the PE Act that it was intended to operate in a similar fashion. That is, s 31G(1)(*a*) is only relevant when there is a conviction in which there is "fraud, dishonesty or moral turpitude" or which involves "such defect in character which makes him unfit for his profession". Further, the qualifying words "which makes him unfit for his profession" apply only to the second limb concerning "defect in character" and not the first limb covering "fraud, dishonesty or moral turpitude".

Did the offence involve fraud, dishonesty or moral turpitude?

43 The next prong of Fong's ground of appeal was that his conviction was not of an offence which involved fraud, dishonesty or moral turpitude. When pressed further at the hearing, however, he was unable to justify his position.

44 On the other hand, the PEB submitted that it was clear and undisputed that Fong had been convicted under s 57(1)(*k*) of the Immigration Act for making false statements to immigration authorities. This was an offence which involved dishonesty.

45 I considered the nature of the offence, the relevant facts of which were found in the statement of facts. In July 2012, Fong submitted an online visit pass application through the Electronic Visit Pass (Long Term) System in an attempt to obtain a visit pass for a female Chinese national, Tang Qiuxia ("Tang"). At the time, Fong was in an intimate relationship with Tang. In the online application, he knowingly furnished a false address and a false statement that Tang was pregnant. On the facts, this was a clear attempt to deceive a government agency. Therefore, it cannot be seriously disputed that Fong's offence involved fraud, dishonesty or moral turpitude.

Was the offence one which makes him unfit for his profession?

The final prong of Fong's ground of appeal was that even if his conviction was of an offence involving fraud, dishonesty or moral turpitude, it was not one which makes him unfit for his profession. This was not fully explained by Fong at the hearing. In any event, having determined above that this is not a

requirement for a disciplinary charge under the first limb of s 31G(1)(*a*) to be made out, it was not necessary for me to decide on this issue.

Conclusion on Fong's disciplinary charge

46 In the result, I was of the opinion that Fong's disciplinary charge had been established. I therefore found that the DC's finding of guilt on s 31G(1)(*a*) of the PE Act was made out and there were totally no grounds to interfere with it.

Was the sentence imposed by the DC manifestly excessive?

47 I now turn to the question of sentence. Although the precise powers of the High Court on appeal will depend on the particular statutory provision conferring a right of appeal, the Court has jurisdiction to consider whether the sanctions imposed by the professional disciplinary body were appropriate and necessary in the public interest or disproportionate and excessive: see *Ghosh v General Medical Council* [2001] 1 WLR 1915 at [34]. This view is accepted in Singapore: see *Huang Danmin v Traditional Chinese Medicine Practitioners Board* [2010] 3 SLR 1108 ("*Huang Danmin*") and *Gan Keng Seng Eric v Singapore Medical Council* [2011] 1 SLR 745. The principles governing the High Court's approach to reviewing sentences passed by professional disciplinary bodies are set out in *Huang Danmin* (at [59] and [60]):

> 59 … The present approach of the court is to give a measure of deference to the decisions reached by a disciplinary committee but not in a way that will effectively render nugatory the appellate powers granted to the court under respective statutes. …

> 60 When the appeal from the Disciplinary Committee's decision concerns an issue of sentencing, the appellate court is unlikely to overturn the sentence *unless there has been a misapprehension of facts, a misdirection of facts or if the sentence is out of line with other precedents dealing with acts of misconduct that are of equivalent severity*. … [emphasis added]

The appellant's submissions on sentence

48 In the present case, Fong argued that the sentence imposed was manifestly excessive, and tendered a list of decisions published by the DC in support. The instances of professional misconduct and disciplinary charges cited were of a diverse range, encompassing failure to exercise due diligence, doctoring calculations for building projects and furnishing false information to the Energy Market Authority on electrical installation works. In these cases, the sentences imposed ranged from censure to six months' suspension from practice. At the hearing, Fong highlighted a 1998 decision by the DC ("1998 DC decision"), in which an engineer had been convicted under s 6(*a*) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) ("PCA") for receiving gratification of $15,000 as an agent. In that case, the engineer was disciplined under the predecessor provision of the current s 31G(1)(*a*). He was suspended from practice for six months. Based on these precedents, Fong submitted that his conduct was not of sufficient gravity to warrant cancellation of his registration, especially compared to the 1998 DC decision which involved a much more serious offence of corruption.

The respondent's submissions on sentence

49 The PEB submitted that the sanction imposed was an appropriate one. In sentencing, the DC was entirely justified in considering, *inter alia*, the following:

> (a) The applicable principles in the regulation of professional engineers were the (i) punishment of the offender; (ii) the protection of the public; (iii) deterring similar behaviour by other practitioners; and (iv) maintaining public confidence in the honesty and integrity of the profession.
>
> (b) The offence was committed to enable a marriage of convenience between Tang and another man, an act which was criminalised six months later under the newly enacted s 57C of the Immigration Act. Had the provision been enacted earlier, Fong would have been found guilty under s 57C which is an even more serious offence and which carries higher penalties than s 57(1)(*k*).
>
> (c) The offence committed was a serious one, and the criminal court appeared to have taken harsher view by punishing him with four weeks' imprisonment instead of merely imposing a fine as allowed by law.

50 The PEB also highlighted that Fong had made repeated attempts to evade disciplinary proceedings, even doctoring a traffic accident report to create a false alibi. This was demonstrative of Fong's "disturbing willingness"

to deceive government authorities in order to further his personal motives, and should be construed as an aggravating factor.

51 In the proceedings below, the PEB had asked for the cancellation of Fong's registration or at least a two-year suspension from practice and/or the imposition of a monetary penalty. In the present appeal, the PEB maintained that cancellation of registration was the benchmark sentence in such cases. Counsel for the PEB tendered a line of precedents on similar disciplinary charges, wherein cancellation was ordered in the vast majority of decisions. In particular, they highlighted a series of cases that involved offences under s 6(*a*) of the PCA, of corruptly receiving gratification as an agent. The engineers had been convicted on disciplinary charges, which were the equivalent of Fong's present charge at that time, and, in nine out of the 11 cases, had their registrations cancelled. On this basis, the sentence imposed on Fong was not out of line with precedents.

The appropriate sentence

52 While I was mindful that disciplinary committees should be afforded a measure of deference in deciding on the appropriate sentence, I was of the view that there was adequate basis for intervention in the present case.

53 First, the DC had misdirected itself in taking into account the subsequent criminalisation of arranging marriages of convenience under s 57C of the Immigration Act. This was a wholly irrelevant consideration. Fong's offence was committed prior to its enactment, and I could see no reason for attributing any significance to it in the course of sentencing. In effect, the DC

was ascribing retrospective force to a new law which affected a person's rights without any apparent basis for doing so.

54 Second, the sentence was excessive in the light of precedents. The DC decisions cited to me spanned a broad range of misconduct. The relevant cases were those which dealt with equivalents of the present disciplinary charge. These primarily involved offences under the PCA for corrupt receipt of gratification. The following cases are particularly useful for the purposes of comparison:

(a) For receiving gratification amounting to $31,800, Hoa Teng Neng was sentenced by the court to 12 weeks' imprisonment and a fine of $72,000. The PEB cancelled his registration.

(b) For receiving gratification amounting to $13.8m, Choy Hon Tim was sentenced by the court to 14 years' imprisonment. The PEB cancelled his registration.

(c) For receiving gratification amounting to $30,000, Chin Kee Kean was sentenced by the court to a fine of $50,000. The PEB suspended him for 6 months.

(d) For receiving gratification amounting to $15,000, Koay Hean Lye Kelvin was sentenced by the court to a fine of $50,000. The PEB suspended him for 6 months.

(e) For receiving gratification amounting to $54,932, Leong Leng Nam was sentenced by the court to a fine of $110,000. The PEB

cancelled his registration. The decision of the PEB was upheld by the High Court on appeal.

(f) For receiving gratification (amount not provided), Lai Kwong Meng was sentenced by the court to 12 months' imprisonment and a fine of $320,000. The PEB cancelled his registration.

55 From the above, my first observation is that there have been cases in which suspension has been ordered. This means that cancellation of registration is by no means the consistent punishment for an infringement of s 31G(1)(*a*) or its predecessor provision. My next observation is that in sufficiently serious cases where imprisonment or a high fine was imposed in the criminal conviction, the penalty ordered by the PEB was cancellation of registration. The third observation I make is that all these cases involved offences directly related to the carrying out of the engineer's professional duties, in that they had corruptly accepted gratification *in the course of their work*. This strikes at the heart of the engineer's professional duties, and the PEB rightly took a stern line in imposing a sufficiently heavy punishment to reflect the gravity of the offence and to deter would-be offenders so as to send the appropriate message to the profession as well as to the public. In the present case, Fong's transgressions were not related to the carrying out of his professional duties as an engineer. It was a moral shortcoming driven by emotional forces in his personal life that may or may not have affected his professional duties. While it was appropriate for the PEB in deciding the appropriate penalty to consider the extent to which this makes him unfit for the engineering profession, unlike the cases cited above, Fong had not, in committing the offence, transgressed the bounds of professional duty. It would

therefore be unfair to punish Fong with the cancellation of his registration in circumstances where even cases involving direct breaches of professional duty by corruptly receiving gratification do not necessarily attract this punishment. I was therefore of the view that suspension would be sufficient in Fong's case.

56 In determining the appropriate period of suspension, I considered that six months would be inadequate in the circumstances of the present case. Fong was not sentenced to a mere fine, but to four weeks' imprisonment. There is no doubt that the offence in question was one involving, at the very least, dishonesty and fraud. Furthermore, I found Fong's conduct in attempting to delay disciplinary proceedings to be a serious aggravating factor. Not only did Fong seek multiple adjournments at short notice and on tenuous bases, he even falsified an excuse for his non-attendance at one point. The PE Act confers on engineers the privilege of practising their profession in Singapore. As a body tasked to regulate the profession and promote standards of professional conduct and ethics under the Act, the PEB is entitled to expect professional engineers to comply dutifully with all respects of the PE Act and to cooperate fully with the PEB, particularly in areas of discipline. Any dishonest manipulation of the process by an engineer would be taken seriously and I am of the view that Fong's conduct in this regard is highly aggravating.

57 Taking into account the factors set out above, I was of the view that imposition of the maximum two-year suspension would be appropriate in the present case.

Conclusion

58 The result of this appeal was that I upheld the PEB's finding of guilt under s 31G(1)(*a*) of the PE Act, that Fong had been convicted of an offence involving fraud, dishonesty or moral turpitude, but allowed his appeal against the punishment of cancellation of registration under s 31G(2)(*a*) of the PE Act. I substituted this with suspension under s 31G(2)(*b*) for the maximum period of two years, commencing from the date of the appeal, 25 January 2016.

59 Having upheld the PEB's finding of guilt on the disciplinary charge, I found it appropriate to also uphold the costs order at the disciplinary proceedings below. Further, I ordered Fong to pay the PEB costs of the appeal which I fixed at $9,000 plus reasonable disbursements.

Lee Seiu Kin
Judge

The appellant in person;
Lim Wei Loong Ian and Lim Wei Wen Gordon (TSMP Law Corporation) for the respondent.