IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 265

Originating Summons No 5 of 2018

Between

The Law Society of Singapore

… *Applicant*

And

Kangatharan s/o Ramoo Kandavellu

… *Respondent*

EX TEMPORE JUDGMENT

[Legal Profession] — [Disciplinary procedures] — [Direct application to Court of Three Judges] — [Section 94A(1) Legal Profession Act (Cap 161, 2009 Rev Ed)]

Law Society of Singapore
v
Kangatharan s/o Ramoo Kandavellu

[2018] SGHC 265

Court of Three Judges — Originating Summons No 5 of 2018
Sundaresh Menon CJ, Andrew Phang Boon Leong JA, and Steven Chong JA
28 November 2018

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Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Introduction

1 This is an application by the Law Society of Singapore ("Law Society") under s 98(1)(a) read with s 94A(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") that the respondent suffer such punishment as is provided under s 83(1) of the LPA. The application is brought on the basis of the respondent's conviction under s 37J(2) of the Income Tax Act (Cap 68, 2012 Rev Ed) ("ITA") for providing the Comptroller of Income Tax ("CIT") with false information to support his claim under the Productivity and Innovation Credit ("PIC") scheme without reasonable excuse. The respondent did not file any submissions or appear before us. Instead, he wrote a letter requesting leniency from this court. Nevertheless, in fairness to him, and having examined the matter, we addressed our minds to a potential difficulty that might be faced by the Law Society, and which was also flagged out at the outset by counsel for

the Law Society, Mr Colin Liew, namely, the satisfaction of the jurisdictional threshold stipulated in s 94A(1) of the LPA, which allows and indeed obliges the Law Society to bring a disciplinary matter directly before this court if, but only if, an advocate and solicitor "has been convicted of an offence involving fraud or dishonesty". The difficulty that arises in this case is that fraud or dishonesty is neither a constituent element of the offence under s 37J(2) of the ITA, nor does it appear on the face of the charge, of which the respondent was convicted. Yet, the Statement of Facts ("SOF") which formed the basis of the respondent's plea of guilt makes it clear that the respondent acted dishonestly in the commission of the offence. A narrow view of s 94A(1) would suggest that it may only be invoked where fraud or dishonesty is a constituent element of the underlying offence; whereas a broader view would permit us, subject to some limits, to take account of the surrounding facts.

2 We note at the outset that we were greatly assisted by the thoroughness of Mr Liew's research and the trouble he took to locate and bring to our attention a number of authorities that appeared to support either view as to the correct interpretation of s 94A(1). Having considered the relevant cases and Mr Liew's submissions, we are satisfied that we do have jurisdiction to hear and decide this application. We are also satisfied that the appropriate sanction in this case is for the respondent to be struck off the roll, for the reasons which follow.

Background

The circumstances of the respondent's offence

3 On 4 August 2017, the respondent pleaded guilty to a charge under s 37(2) of the ITA of providing false information without reasonable excuse. He

was convicted and sentenced in the State Courts to a fine of $4,500 and a penalty of $49,212.

4 In the SOF dated 2 June 2017, the respondent admitted to the following facts without qualification:

(a) At the time of the offence, the respondent was practising as a sole proprietor of the law firm Kanga & Co ("KC").

(b) The respondent, together with a PIC promoter named S Chandran ("Mr Chandran") and Mr Chandran's wife, was involved in a scam to defraud the Government through an abuse of the PIC Scheme.

(c) The respondent "was aware that he was not eligible for the PIC scheme", but he nevertheless made the following false declarations in a PIC cash payout application form dated 1 July 2014 ("PIC Application Form"):

(i) That KC had generated $1,000.00 of revenue for the relevant financial period in Year of Assessment 2015;

(ii) That KC had incurred expenditure of $16,010 for:

(A) a Content Management System Software and a website;

(B) a Business Development and Marketing Essentials course; and

(C) an iOS App;

(iii) That the respondent's sister and son were local employees of KC.

(d) To substantiate his claim that he had incurred the expenditure of $16,010, the respondent signed an invoice which stated that the relevant items had been purchased, "[e]ven though [he] was aware that he had neither purchased nor paid for the items listed in the invoice." This invoice was submitted together with the PIC Application.

(e) The respondent also made Central Provident Fund ("CPF") contributions to his sister and his son, even though they were not in fact KC's employees. He did so solely to fulfil the conditions for the PIC claim. His son was unaware that his name had been used for this purpose; as for his sister, the respondent told her that should she receive any query from the Inland Revenue Authority of Singapore ("IRAS") about the PIC claim, she was to inform IRAS that she worked as an administrative clerk at KC and drew a monthly salary of $100.

(f) When the respondent's PIC claim was rejected, he pursued his claim and assisted in the drafting of an appeal letter. He also sent an email to IRAS to declare that he had the requisite number of employees to qualify for the PIC scheme.

(g) The respondent agreed to pay Mr Chandran 50% of the amount that he would receive from the IRAS, if his PIC claim was successful.

(h) In total, the respondent made a claim for a PIC cash payout of $9,606 and a PIC bonus of $15,000. However, IRAS detected that the information contained in the respondent's PIC claim was false and did not make any payment on his claim.

5 On 27 November 2018, the respondent sent a letter addressed to the court, in which he stated that he was remorseful for his actions and had not renewed his practicing certificate since 2015. He sought the court's leniency and requested that he be sanctioned with no more than a suspension from practice of five years.

Fraud or dishonesty is not a constituent element of the offence

6 It is important to note that fraud or dishonesty is not a constituent element of the offence that the respondent was convicted of. This is clear from an examination of the structure of s 37J of the ITA.

7 Sections 37J(1)–(4) of the ITA provide for four "tiers" of offences. These tiers correspond to PIC scams of escalating severity by reference to the mental state of the offender:

(a) Sub-section (1) deals with the provision of false information to the CIT *per se*. It prescribes a penalty that is equal to the amount of PIC incentives paid out or that would have been paid out if the offence had not been detected. No other punishments are prescribed for this offence.

(b) Sub-section (2) deals with the provision of false information to the CIT "without reasonable excuse or through negligence". It prescribes a penalty that is double the PIC incentives paid out (or that would have been paid out) as well as a maximum fine of $5,000 and a maximum term of 3 years' imprisonment.

(c) Sub-section (3) deals with provision of false information to the CIT "wilfully with intent" to obtain a PIC payout to which one is not

entitled. It prescribes a penalty that is treble the PIC incentives paid out (or that would have been paid out) as well as a maximum fine of $10,000 and a maximum term of 3 years' imprisonment.

(d) Sub-section (4) deals with someone who, "wilfully with intent", falsifies any books of account, or makes use of any fraud, art or contrivance, to receive a PIC payout to which one is not entitled. It prescribes a penalty that is quadruple the PIC incentives paid out (or that would have been paid out) as well as a maximum fine of $50,000 and a maximum term of 5 years' imprisonment.

8 It is evident that the mere provision of false information to the CIT does not necessarily imply fraud or dishonesty. One could, for instance, provide false information negligently. The respondent was convicted under sub-section (2) of s 37J of the ITA, under the "without reasonable excuse" limb. It was not necessary for the respondent to have behaved fraudulently or dishonestly in order for the charge to be made out. All that was required is that the criminal act be performed "without reasonable excuse", which is plainly less egregious than performing the same criminal act fraudulently or dishonestly.

9 Similarly, nothing on the face of the charge brought against the respondent under s 37J(2) of the ITA suggested fraud or dishonesty. The charge reads:

> You … are charged that you, as the sole proprietor of [KC], on or about 1 July 2014, in Singapore, did without reasonable excuse, give to the Comptroller of Income Tax information under section 37I(2) of the ITA that was false in a material particular, to wit, by stating in KC's PIC Cash Payout Application Form dated 1 July 2014 that (a) Kala D/O Ramoo Kandavellu … and (b) Navin Kangatharan … were local employees of KC, when in fact they were not, and you have

> thereby committed an offence under section 37J(2) of the ITA and punishable under the same.

The procedure under s 94A(1) of the LPA

10 In typical disciplinary matters, there is a stepped process through which any alleged misconduct by an advocate and solicitor is investigated, considered, and the appropriate sanction imposed (*Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [28]–[32]). This process involves a consideration of the alleged misconduct by several organs, including a Review Committee, an Inquiry Committee, the Law Society Council and a Disciplinary Tribunal ("DT"). It is only after a DT has found that cause of sufficient gravity exists, that show cause proceedings will be brought before this court. The principle underlying this disciplinary process is that complaints against advocates and solicitors should first be adjudged by their peers before they are brought before the court (*Wee Soon Kim Anthony v Law Society of Singapore* [1988] 1 SLR(R) 455 at [17]). Seen in this light, s 94A(1) of the LPA reflects an exception to the approach that is generally applicable. It provides for a procedure which bypasses the usual prior steps in the disciplinary process and obliges the Law Society to make an application directly to this court (*Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905 at [9]).

11 Section 94A(1) of the LPA provides as follows:

> **Society to apply to court for cases involving fraud or dishonesty, or under section 33**
>
> 94A.—(1) Where a regulated legal practitioner has been convicted of an offence involving fraud or dishonesty, whether the offence was disclosed as a result of an investigation under section 87(3)(*b*) or otherwise, the [Law Society] shall, without further direction, proceed to make an application in accordance with section 98.

12 As can be seen, a key requirement for triggering s 94A(1) is that the regulated legal practitioner must be "convicted of an offence involving fraud or dishonesty".

13 Although fraud or dishonesty is not a constituent element of s 37J(2) of the ITA, there is no doubt that the respondent acted dishonestly in the commission of the offence. The SOF which formed the basis of the respondent's plea of guilt disclosed acts that were plainly dishonest. As mentioned (see [4] above), the respondent connived with other individuals to defraud the Government by abusing the PIC scheme and he then planned to split the gains from the abuse with a co-conspirator. Despite knowing that he did not qualify for the PIC scheme, he concocted various measures to give the appearance that he did qualify for the scheme. The respondent made false declarations, signed a false invoice, made CPF contributions to non-employees and specifically told his sister to lie if she was queried by IRAS. The respondent even pursued an appeal when his initial claim was rejected. In the course of doing all this, he maintained his false declarations.

14 Therefore, the critical question in the present case is whether the s 94A(1) procedure is available, even though fraud or dishonesty is not a constituent element of the relevant offence. If this question is answered in the affirmative, the further question arises as to whether due cause has been shown, and consequently, the appropriate sanction that should be imposed on the respondent.

Our decision

Whether the s 94A(1) procedure is available

15 We begin with the availability of the s 94A(1) procedure which in turn depends on whether one takes what we have earlier described as a narrow or a broader view of that provision. The strongest authority in favour of the narrow construction of s 94A(1) is the decision of the Appeal Panel of the NSW Civil and Administrative Tribunal in *Farah v Director General of the Department of Finance and Services* [2014] NSWCATAP 23 ("*Farah*"). That case concerned a question of whether an offender who dealt with money, reckless to the fact that the money may have been the proceeds of crime, and was then convicted of a money-laundering offence, was guilty of an offence involving dishonesty. The question was relevant in the context of the grant of a real estate agent's licence. The Appeal Panel considered a number of authorities and took the narrow view, holding that it was only permissible to have regard to such a conviction where the offence itself involved dishonesty having regard only to the constituent elements of the offence alone and not to the underlying facts or any sentencing remarks.

16 It should be noted that the provision in question in that case was a disqualifying provision, in the sense that a person coming within its terms by virtue of having been convicted of an offence involving dishonesty, would not be allowed to hold the licence. In coming to its conclusion, the Appeal Panel relied on three main reasons:

(a) First, that the provision refers to a conviction for an *offence* involving dishonesty. The Panel thought that this excluded consideration

of the subject's state of mind or of any facts outside the constituent elements of the offence;

(b) Second, that a broader view of this provision would require the decision maker faced with deciding on the grant of a licence to embark on a separate factual inquiry; and

(c) Third, that a narrow view should be preferred because the provision has the potential to affect the subject's livelihood

17 In our judgment, the reasoning in *Farah* is not compelling at least in the present context, and we decline to adopt it. First, it should be noted that s 94A(1) prescribes a particular abbreviated *procedure* for disciplinary proceedings. To the extent that an advocate and solicitor against whom the process is invoked might end up facing serious sanctions, including being struck off the rolls, this would be the consequence of the original offence that was committed. The invocation of the s 94A(1) process is merely the modality in this context.

18 Related to this, it should be noted that the purpose underlying the availability of the abbreviated process set out in s 94A(1) is the public interest in ensuring that an advocate and solicitor who has been convicted of an offence involving fraud or dishonesty, is expeditiously dealt with by this Court, whose duty it is to determine whether such a person is fit to continue to practise.

19 Further, in our judgment, a broader interpretation of s 94A(1) does not do violence to its text. The provision is triggered by a conviction for "an offence *involving* fraud or dishonesty" [emphasis added]. These words do not limit the search for fraud or dishonesty to the constituent elements of the offence, but is phrased in a manner wide enough to include the circumstances surrounding the

commission of the offence. Significantly, the section does not concern only an offence "of" fraud or dishonesty.

20 We also accept Mr Liew's submission that restricting the use of s 94A(1) to situations where an advocate and solicitor has been convicted of an offence which features fraud or dishonesty as a constituent element would cause its applicability to turn on the Public Prosecutor's ("PP") exercise of prosecutorial discretion. This would be unsatisfactory because there is a difference in the focus of the PP's exercise of prosecutorial discretion and that of disciplinary proceedings under the LPA. The former is concerned with whether it is in the public interest to charge a particular individual for a particular offence. This is an exercise which involves weighing a variety of factors. The latter is primarily concerned with protecting the public and upholding public confidence in the integrity of the profession. Inasmuch as these objectives may often overlap, these same objectives may also pull in different directions. The present case is a good illustration. The PP has exercised his prosecutorial discretion and determined that it is in the public interest to prosecute the respondent for a charge with a less culpable mental element, despite the dishonesty disclosed in the SOF. However, the mere fact that the respondent was convicted of a lesser offence does not detract from the dishonesty plainly apparent in the circumstances in which he committed his offence. To ignore such dishonesty in considering the availability of the s 94A(1) process in such circumstances, would ultimately undermine public confidence in the integrity of the legal profession.

21 Finally, and rounding up all of our observations, because of the focus on the protection of the public and on upholding public confidence in the integrity of the legal profession, the focus of the s 94A(1) analysis must be on the

substance of the wrongdoing. Where fraud or dishonesty is established as a matter of fact, there is no need to delay the disciplinary process. Indeed, these overarching objectives would be furthered by expediting the process.

22 Such an approach is also supported by various authorities, including the decision of the High Court in *Fong Chee Keong v Professional Engineering Board, Singapore* [2016] 3 SLR 221 (see especially at [45]) and the decision of the Common Law Division of the NSW Supreme Court in *Pollard v Commonwealth Director of Public Prosecution and another* (1992) 28 NSWLR 659 at 663B-D.

23 In all the circumstances, we consider that the correct approach to the interpretation of s 94A(1) is that this provision is engaged as long as the facts surrounding or underlying the commission of the offence disclose fraud or dishonesty, subject to the qualification that: (a) the facts in question must have been finally proved or admitted at the time of the conviction, so that this Court would not have to undertake a separate factual inquiry of the sort that concerned the Appeal Panel in *Farah* (see [16(b)] above); *and* (b) these facts must be closely connected to the charge and the conviction and not be wholly extraneous to it. We do not wish to be unduly prescriptive as to when such facts will be found to be closely connected to the charge or the conviction but in the context of this case, where as Mr Liew framed it, it was evident that the underlying offence was committed fraudulently or dishonestly, the necessary connection will be found.

24 Applying that test, it is plain that the respondent has admitted to the relevant dishonest conduct without qualification in the SOF (see [4] and [13] above). Further, these facts are closely connected with the offence that he was

charged with because the SOF discloses that the respondent in fact committed the offence of providing false information dishonestly or fraudulently. Therefore, s 94A(1) is properly engaged and the court has jurisdiction to hear and decide the matter.

Due cause and the appropriate sanction

25 On the basis of the respondent's conviction for an offence involving dishonesty as aforesaid, we find that due cause has been shown against the respondent under s 83(2)(a) of the LPA.

26 In our judgment, striking off under s 83(1)(a) of the LPA is the appropriate sanction in the present case. The case falls within at least one of the "typical" situations identified by this court in *Law Society of Singapore v Chia Choon Yang* [2018] SGHC 174 at [39] where a striking off order would ordinarily be warranted: the dishonesty is integral to the circumstances surrounding the commission of the offence of which the solicitor has been convicted. In addition, the respondent's dishonest misconduct was egregious and it evidenced not simply a momentary lapse of judgment but a deliberate and elaborate scheme to defraud the Government. In so doing, he demonstrated a fundamental disregard for the law and a severe lack of integrity. There were no other exceptional circumstances to show that a striking off would be disproportionate.

Conclusion

27 We therefore strike off the respondent from the roll of advocates and solicitors with costs fixed at $7,000 in the aggregate sum to be paid by the respondent.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Steven Chong Judge of Appeal

Colin Liew (Essex Court Chambers Duxton (Singapore Group Practice)) for the Applicant;
Respondent in person (absent).