Law Society of Singapore *v* Ravi s/o Madasamy
[2015] SGHC 120

Case Number : Originating Summons No 265 of 2015
Decision Date : 29 April 2015
Tribunal/Court : High Court
Coram : Sundaresh Menon CJ
Counsel Name(s) : Sean La'Brooy and Tan Wei Ser Venetia (Colin Ng & Partners LLP) for the applicant; Eugene Thuraisingam (Eugene Thuraisingam LLP) for the respondent.
Parties : Law Society of Singapore — Ravi s/o Madasamy

Legal Profession —Disciplinary Proceedings

Legal Profession —Professional Conduct

29 April 2015 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 This is an application for leave for a Disciplinary Tribunal to be appointed to conduct an investigation into a complaint of misconduct on the part of a non-practising solicitor.

2 The applicant is the Law Society of Singapore ("the Law Society"), and the respondent is Ravi s/o Madasamy, an advocate and solicitor of the Supreme Court of Singapore of 17 years' standing ("the Respondent"). I heard the Law Society's application on 9 April 2015. Notwithstanding that it was meant to be an *ex parte* hearing, I allowed the Respondent and his counsel, Mr Eugene Thuraisingam ("Mr Thuraisingam"), to be present. Mr Thuraisingam made it clear that he was not present with a view to making any submissions, save to the extent there were any questions I might direct to him. As it transpired, Mr Thuraisingam did address me on some aspects of the case upon my invitation, as I will outline below. At the end of the hearing, I also raised some concerns with the Law Society and adjourned the matter for one week. On 16 April 2015, the Law Society addressed these concerns by filing a further affidavit. Having considered all that was put before me, I have decided to grant the leave sought by the Law Society for the reasons that follow.

The facts

3 The present application arose out of the Respondent's conduct which occurred during a period when he had been suspended from practice. The Council of the Law Society ("the Council"), based on circumstances that are not directly relevant to the present application, was satisfied that the Respondent's fitness to practice was impaired by reason of his mental condition, and on 10 February 2015, directed him to stop practising until he had submitted to a medical examination ("the Council's Direction"). The Council's Direction was issued pursuant to s 25C(7) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA").

4 A copy of the Council's Direction was served on the Respondent on the same day at or around 12.15 pm. A few hours later, at or around 5.45 pm, the Respondent appeared at the Law Society's

premises with three companions and was alleged to have:

(a) caused, encouraged or permitted an unauthorised video clip of the staff and premises of the Law Society to be taken, and thereafter to be published online for public viewing;

(b) directed vulgarities at the staff and/or failed to prevent the same from being done by his companions; and

(c) restrained or attempted to restrain the staff from leaving the premises by obstructing the exit and/or permitted the same being done by his companions.

5 The Council wrote to the Respondent on 13 February 2015 in relation to the incident on 10 February 2015 and demanded that he apologise for his conduct, undertake not to repeat the same and further, that he remove the video clip and not further disseminate it. The Respondent complied with these demands by way of a letter to the Law Society dated 16 March 2015, in which he apologised for his conduct on 10 February 2015 and undertook both not to repeat such conduct and to remove the video clip.

6 However, in the period between the incident at the premises of the Law Society on 10 February 2015 and the Respondent's apology and undertaking that was proffered on 16 March 2015, other events, which are material to the present application, had taken place.

7 On 11 February 2015, one day after the incident at the premises of the Law Society, the Respondent sent an email to the Straits Times news desk and a senior reporter, Mr K C Vijayan, of the Singapore Press Holdings. The Respondent's email primarily concerned his suspension by the Law Society but also contained an allegation that Mr Colin Phan ("Mr Phan"), also an advocate and solicitor of the Supreme Court, had been practising without a practising certificate. In the same email, the Respondent included various letters from the State Courts registry and the Supreme Court registry and two letters from Drew & Napier LLC ("D&N"), one of which was marked "without prejudice". He also attached a photograph which showed, in the words of the Respondent, "the police being called to arrest [Mr Phan]".

8 On 17 February 2015, the Council applied to the High Court by way of Originating Summons No 161 of 2015 ("OS 161/2015") for an order that the Respondent submit to a medical examination. This was done to comply with the requirement under s 25C(8), read with s 25C(1), of the LPA, that the Council shall apply to a Judge for such an order within seven days of having issued a direction to suspend practice pursuant to s 25C(7) of the LPA.

9 The next day (*ie*, 18 February 2015), the Respondent allegedly made certain remarks regarding Mr Thio Shen Yi SC ("Mr Thio"), the President of the Law Society, on what appeared to be the Respondent's Facebook page. The relevant parts read:

> Mr Ravi is bemused if not surprised that the President of the Law Society, Thio Shen Yi, head of the Council of the Law Society) had arrogated himself the knowledge of psychiatric medicine in suspending Mr Ravi from practice. Mr Ravi earnestly feels Mr Thio Shen Yi needs to go for psychiatric treatment and also it will be helpful if he could ask his sister, the infamous Ms Thio Li-Ann (supposedly leading authority on Constitutional Law and who is doggedly opposed to the decriminalization of homosexuality and internationally disgraced for her bigotry on human rights versus Charismatic Christianity). Mr M Ravi seriously hopes Mr Thio Shen Yi does not end up being disgraced by the members of the Bar by way of an EOGM, a similar situation which his mother Prof Thio Su Mein faced during the AWARE saga and it would seem that the Thio family has not

carefully examined its own antecedents.

Thio Shen Yi needs a serious examination of his own head before he goes head to head on this matter with Mr Ravi. Mr Ravi will commence his slew of legal action against the Council members in the coming days and will be suing them jointly and severally.

10 The Council's application by way of OS 161/2015 was heard by Quentin Loh J on 24 and 26 February 2015. On 26 February 2015, Loh J ordered that the Respondent be suspended from practice until further order.

11 On the same day (*ie*, 26 February 2015), the Respondent allegedly made further statements on Facebook. In particular, through a Facebook post, he alleged misconduct on the part of Mr Pradeep Pillai ("Mr Pillai") from Shook Lin & Bok LLP who was acting on behalf of the Law Society in OS 161/2015. The relevant parts of the post read:

At the hearing this afternoon on the Law Society's application to suspend Mr Ravi from practice, which was made after he had announced his intention to contest the next general elections against the prime minister at Ang Mo Kio GRC, the proceedings turned into a mess towards the end of the morning hearing.

The law society's lawyer Mr Pradeep of M/s Shook Lin & Bok shouted at Mr Ravi in front of the Judge that Ravi should not attend court anymore and he shouted at Mr Ravi directly instead of addressing the court. The judge, His Honourable Justice Quentin Loh visibly looked disconcerted at the Law Society counsel's misbehaviour.

Mr Ravi appealed to the court to control the emotions of Mr Pradeep which ran high through his veins. At the close of the hearing as the Judge returned to his chambers, Mr Pradeep assaulted Mr Ravi. This was captured in the court's camera footage. Mr Ravi immediately responded to Mr Pradeep who was trying to agitate Mr Ravi before and throughout the hearing but to no avail, putting Mr Pradeep on immediate notice that he will be commencing a Magistrate Complaint against Mr Pradeep and also commencing legal action against Mr Pradeep, lawyer for the Law Society, for assaulting Mr Ravi in committing the tort of battery and for his shouting at Mr Ravi directly.

12 On 19 March 2015, the Respondent filed an application for an order to lift the suspension (by way of Summons No 1269 of 2015). Loh J heard the parties on 1 April 2015. At the hearing, counsel for the Respondent, Mr Thuraisingam, sought leave to withdraw the application as the issue had become moot by the expiry of the Respondent's practising certificate on 31 March 2015. Loh J allowed the application to be withdrawn.

The Law Society's submissions

13 The Law Society submits that the Respondent had, by his conduct, brought the legal profession as a whole into disrepute and lowered its esteem in the eyes of the general public. In particular, the Law Society identifies four acts or aspects of misconduct, namely:

(a) the Respondent attended the Law Society's premises on 10 February 2015, at or around 5.45 pm, with three companions and acted in a manner which constituted harassment or caused alarm or distress to the Law Society's staff ("the 1st allegation");

(b) the Respondent sent an email to the press on 11 February 2015 in which he alleged that

Mr Phan was acting without a practising certificate, included various confidential documents relating to client matters, as well as one "without prejudice" communication from D&N, and a photograph which he claimed showed the police being called to arrest Mr Phan ("the 2nd allegation");

(c) the Respondent made derogatory and defamatory remarks against Mr Thio on what appeared to be his Facebook page on 18 February 2015 ("the 3rd allegation"); and

(d) the Respondent falsely alleged that Mr Pillai had assaulted him on what appeared to be his Facebook page on 26 February 2015 ("the 4th allegation").

14 The Law Society submits that leave should be granted for a Disciplinary Tribunal to be appointed to hear and investigate these matters.

Leave under s 82A(6) of the LPA

15 In cases of misconduct involving Legal Service Officers and non-practising solicitors, leave must be granted by the Chief Justice before an investigation may be conducted into the complaint of misconduct. This is clear from s 82A(4) of the LPA, which provides that:

> No application for a Legal Service Officer or non-practising solicitor to be punished under this section shall be made unless leave has been granted by the Chief Justice for an investigation to be made into the complaint of misconduct against the Legal Service Officer or non-practising solicitor concerned.

16 The Law Society brought the present application on the basis that the Respondent was, at the time of the alleged misconduct, a "non-practising solicitor". Whether or not the Respondent was a non-practising solicitor at the time of the alleged misconduct was not argued before me as both parties were content to proceed on that basis. For completeness, I pause to consider this issue briefly.

Whether the Respondent was a non-practising solicitor at the time of the misconduct

17 The term "non-practising solicitor" is defined in s 82A(1) of the LPA as "any advocate and solicitor who does not at the time of the misconduct have in force a practising certificate". To determine if a practising certificate is "in force", one is drawn to s 25(3) of the LPA, which provides that every practising certificate "shall, subject to sections 26(9) and 27B, be in force from the date of the issue to the end of the year". Section 26(9)(*a*) of the LPA provides that a practising certificate issued to a solicitor shall cease to be in force when the solicitor ceases "to practice" or "to be employed as provided in [s 26 of the LPA]". It would appear that a solicitor who, in compliance with a direction of the Council under s 25C(7) of the LPA, stops practising until he has submitted to a medication examination would fall within the first limb of s 26(9)(*a*) of the LPA. In keeping with this, s 27B(1)(*b*) of the LPA states that a Judge may, on application of the Attorney-General or the Council, order that the solicitor's practising certificate be suspended if "the solicitor's fitness to practise has been determined under section 25C to be impaired by reason of the solicitor's physical or mental condition".

18 In the present case, the Council's Direction was issued on 10 February 2015. On 26 February 2015, Loh J, after hearing arguments, agreed with the Council that the Respondent's fitness to practise appeared to be impaired by reason of his physical or mental condition and ordered that the Respondent be suspended from practice under s 27B(1)(*b*)(i) of the LPA.

19 In the light of the Council's Direction, it appears that the Respondent would have been considered a "non-practising solicitor" at the time of the alleged misconduct for the purpose of s 82A of the LPA. This may have been why both parties were satisfied to proceed on this basis. In any case, even if there were no requirement for the Law Society to have applied for leave, I am satisfied that no prejudice was suffered by the Respondent by virtue of the Law Society having taken out these proceedings. I therefore go on to consider the question of whether leave should be granted under s 82A(6) of the LPA.

Threshold for granting leave

20 Section 82A(6) of the LPA, which governs whether leave should be granted, states:

> Where the Chief Justice is of the opinion that the applicant has *made out a prima facie case* for an investigation into his complaint, the Chief Justice *may* grant such leave and appoint a Disciplinary Tribunal under section 90. [emphasis added]

21 Section 82A(6) involves a two-stage process. First, I must be satisfied that there is a *prima facie* case for an investigation into the complaint (*ie*, the evidence, if accepted, would suffice to prove the elements of the alleged misconduct in question). Second, and this is only if a *prima facie* case is made out, I need to consider if there are any relevant factors that might influence my decision on whether leave should be granted. This is supported by the plain language of s 82A(6) of the LPA and accords also with the view of Chan Sek Keong CJ (as he then was) in *Re Nalpon Zero Geraldo Mario* [2012] 3 SLR 440 ("*Nalpon (Leave)*")) at [27]–[28].

22 At the second stage of the inquiry, factors *in favour of* as well as *militating against* an investigation into the alleged misconduct are relevant. As I will explain later, a respondent or his counsel may, in an appropriate case and subject to leave being given for this purpose, be invited to assist in identifying the factors that might affect the exercise of the court's discretion (see [57] below). To be clear, this remains a matter for the court's discretion and it does not thereby change the nature of the hearing from one that is conducted *ex parte* to one conducted *inter partes*.

23 I should also emphasise that nothing that is said at this stage of the proceedings should have any bearing on the findings and the eventual decision of the Disciplinary Tribunal or the Court of Three Judges (if the matter should reach that stage). While the primary threshold (*ie*, to establish a *prima facie* case) is the same as that applied in certain circumstances in a criminal trial, the analogy goes no further. The purpose of an application under s 82A(5) of the LPA is a limited one, namely, to determine if an investigation should be made into a complaint of misconduct. It is an *ex parte* application at which the respondent has no right of audience (unless leave is granted). In such circumstances, there would be scant opportunity for the respondent's case to be ventilated. It would therefore be inappropriate for the Disciplinary Tribunal (where one is subsequently appointed) to proceed on the basis that the respondent bears the burden of proving his innocence, simply because the *prima facie* threshold had been crossed for the purposes of the application for leave. Under s 82A(7) of the LPA, the Disciplinary Tribunal shall "hear and investigate into the complaint". This must mean that it is obliged to hear the matter *de novo* with the benefit of evidence and submissions led by both parties before making its own findings of facts and law.

24 With these principles in mind, I turn to consider the present case.

Application to the facts

Has the Law Society established a prima facie *case?*

25 The first stage of the inquiry is whether the Law Society can show a *prima facie* case for an investigation into the complaint and this necessitates at least a brief consideration of each of the four allegations identified at [13] above.

(1) The 1st allegation: Incident at the Law Society's premises

26 The essence of the 1st allegation has been outlined above at [4], and revolved around the incident at the Law Society's premises. The incident was reported in the newspapers on 11 February 2015. In support of this allegation, the Law Society has placed several pieces of evidence before me. As mentioned, the Law Society sent a letter to the Respondent setting out the details of the allegation and demanded an apology and certain undertakings in relation to his future conduct. The Respondent replied, albeit slightly more than a month later, with both an unconditional apology and the undertakings sought. At the hearing before me, the Law Society played the video clip which was taken by one of the Respondent's companions during the incident at the premises of the Law Society and which had been made publicly available on the internet.

27 The Law Society took issue with the statements made by the Respondent as well as his conduct at the premises of the Law Society. After the video clip was played, Mr Sean La'Brooy ("Mr La'Brooy"), counsel for the Law Society, highlighted a number of points, namely:

(a) the video carries a "sensationalist" title, namely, "Persecution of Human Rights lawyer M Ravi by the Law Society of Singapore";

(b) the Respondent made the statement that the Law Society has "lost its independence" and calls it the "lost society of Singapore";

(c) the Respondent made the statement that the Prime Minister has said that "he will fix the opposition" and he has started to fix the Respondent by using the Law Society;

(d) the Respondent made the statement that the Law Society has not spoken up for the Hindus "whose rights have been trampled"; and

(e) the Respondent made the statement that the appointment of Mr Lee Hsien Loong as the Prime Minister of Singapore is "unconstitutional" as he was elected because he was Chinese, and that he will be filing an application in the High Court to challenge the appointment.

28 Mr La'Brooy emphasised, in his written submissions, that the racial remarks by the Respondent were "uncalled for, and completely unacceptable in a multi-racial society like Singapore". He also argued that the Respondent had failed to act with self-restraint and moderation expected of an advocate and solicitor.

29 The essence of this aspect of the complaint against the Respondent was that he had turned up at the premises of the Law Society with a number of his companions and made certain statements and behaved in an unruly manner. His actions were presumably motivated by his desire to demonstrate his displeasure with the Council's decision to temporarily suspend him from practice under s 25C(7) of the LPA. Even if the Respondent was unhappy with that decision, he ought to have resorted to the proper avenues to voice his concerns. In particular, a solicitor directed by the Council to stop practising under s 25C(7) of the LPA may, under s 25C(8)(*c*) of the LPA, either inform the Council that there has been a change in the circumstances or that there is good cause for the direction to be rescinded or apply to a Judge for an order that the direction be set aside. It does not appear that the Respondent had tried to do any of that.

30 It is well established that the use of abusive language and unruly behaviour may constitute misconduct unbefitting an advocate and solicitor (see *The Law Society of Singapore v Gopalan Nair (aka Pallichadath Gopalan Nair)* [2010] SGDT 11 at [35], citing *The Law Society of Singapore v Wong Sin Yee* [2002] SGDSC 5 at [17]). On the evidence before me, I am satisfied that the Law Society has established a *prima facie* case against the Respondent in relation to the 1st allegation, in so far as it is alleged that he had failed to act with self-restraint and moderation expected of an advocate and solicitor and failed to resort to the appropriate avenues to voice any grievances he may have had over his suspension.

(2) The 2nd allegation: Email to the press

31 As to the 2nd allegation, the Law Society asserts that the Respondent had sent an email to the press which included:

(a) serious allegations against Mr Phan, namely, that Mr Phan had been practising without a valid practising certificate and that he was a "crooked lawyer";

(b) information, the disclosure of which, might have breached solicitor-client privilege and/or confidentiality; and

(c) a "without prejudice" letter from D&N.

32 The Respondent's email and the attachments were exhibited in the affidavit filed in support of the application. The question is whether the act of sending the email with attachments of the sort described above to the press can be considered as coming within the ambit of misconduct unbefitting an advocate and solicitor. I will deal with this question in three parts, corresponding to each of the three aspects of the 2nd allegation.

33 I start with the second aspect, which involves the disclosure of allegedly sensitive information. The Respondent's email included letters from the State Courts registry and Supreme Court registry on the scheduling of various hearing dates involving matters concerning the Respondent's clients. The Law Society initially contended that the disclosure of these letters breached client confidentiality. Rule 24(1)(*a*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("PCR") states that an advocate and solicitor "shall not, in any way, directly or indirectly disclose any confidential information which the advocate and solicitor receives as a result of the retainer" subject to certain exceptions (none of which appear to apply in the present case). However, I am not satisfied that the mere act of disclosure can constitute either a breach of the r 24(1)(*a*) or misconduct without having regard to the *nature of the information* disclosed. There can only be a breach of confidentiality if, to begin with, the information was confidential in nature (see *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 at [45]). The letters in question concerned hearing dates which might, in any case, have been publicly available from the published hearing lists. There is also a further point: there was no evidence before me that the respective clients involved had not consented to the disclosure of the letters. In the circumstances, during the hearing, I expressed some doubts as to whether this aspect of the 2nd allegation could support a *prima facie* finding of misconduct. In the event, it is not necessary for me to decide this point as the Law Society subsequently informed me that it would no longer be pursuing this aspect of the 2nd allegation. This leaves the remaining two aspects of this allegation, namely that concerning Mr Phan and disclosure of the "without prejudice" letter from D&N.

34 I turn now to the first aspect – the allegation concerning Mr Phan. In Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) ("*Ethics*

and Professional Responsibility"), it is stated at para 20-008 that:

> An advocate and solicitor's duty as a professional also requires him to *act responsibly* when he makes a complaint ... concerning the alleged misconduct of another advocate and solicitor. The complaint must be *substantiated and properly communicated* to the Law Society. [emphasis added]

35 The issue here is not whether Mr Phan was or was not practising without a practising certificate at the material time. Rather, the focus is on the Respondent's conduct. The Respondent made grave accusations against a fellow solicitor in an email to the press. Had he legitimate concerns regarding Mr Phan's professional conduct, he ought instead to have lodged a formal complaint against Mr Phan with the Law Society; he did not do so.

36 To accuse another solicitor of misconduct is a serious matter that should not be taken lightly. In this connection, it would generally be inappropriate for a solicitor to allege misconduct on the part of another solicitor for a purpose other than to lodge a formal complaint with the Law Society. Here, there did not seem to be any legitimate purpose for the Respondent to go to the press with the accusations against Mr Phan. In my judgment, this suffices to establish a *prima facie* case of misconduct unbefitting an advocate and solicitor.

37 I turn to the final aspect of the 2nd allegation which relates to the disclosure of the letter from D&N marked "without prejudice" to the press. The Law Society contends that such disclosure undermines the trust and confidence within the legal fraternity which is necessary for dealings within the profession. It is uncontroversial that an advocate and solicitor would expect that his counterpart would not, without his consent, disclose "without prejudice" correspondence to third parties for purposes that are wholly unrelated to the matter. However, it was not initially clear on the material before me whether D&N had given its consent. I granted a short adjournment to allow the Law Society to determine this point, as well as to consider whether to continue to pursue the point on the disclosure of the letters from the State Courts registry and the Supreme Court registry (see [33] above). On 16 April 2015, Ms Ambika Rajendram ("Ms Rajendram"), the director of the Law Society's Conduct Department, filed an affidavit affirming that no consent had been given for the Respondent to disclose the letter from D&N to the press. She was able to affirm this because Mr La'Brooy's firm had written to D&N (on 10 April 2015) to seek clarification on the matter, and D&N had replied (on the same day) indicating that they had not provided any such consent to the Respondent. Ms Rajendram exhibited both letters in her affidavit.

38 In my judgment, the Respondent's unauthorised disclosure of the "without prejudice" letter from D&N could constitute misconduct unbefitting an advocate and solicitor. I am therefore satisfied that the Law Society has established a *prima facie* case against the Respondent in relation to the 2nd allegation (concerning the allegations against Mr Phan and the disclosure of the "without prejudice" letter from D&N).

(3) The 3rd allegation: Facebook post on Mr Thio

39 I turn to the allegation that the Respondent had made offensive remarks against Mr Thio on Facebook on 18 February 2015. The Law Society took the position that the remarks were made on the Respondent's Facebook page. In support, the Law Society produced a screenshot of a Facebook page with the user name "Ravi MRavi". I proceed for the present purposes, as well as for the 4th allegation, on the basis that the relevant posts were indeed made by the Respondent and not by an impostor – indeed there was no suggestion by the Respondent to that effect. I therefore turn to the statements in question. Specifically, the Law Society highlighted the following statements:

> Mr Ravi earnestly feels Mr Thio Shen Yi needs to go for psychiatric treatment ...
>
> Thio Shen Yi needs a serious examination of his own head before he goes head on head on this matter with Mr Ravi.

40 There are two possible interpretations of the statements above. The first is that Mr Thio had been acting in a manner that suggested he was suffering from some form of psychiatric condition. The second interpretation points at an insult targeted at Mr Thio, presumably motivated by revenge for the Council's Direction. Either way, the statements were wholly unwarranted. Furthermore, the Respondent had, in the same post, made other offensive remarks against members of Mr Thio's family (see above at [9]).

41 Rule 47 of the PCR states that "an advocate and solicitor shall treat his professional colleagues with courtesy and fairness". In *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 ("*Ahmad Khalis*") at [81], Andrew Phang JA referred to the profession as "a noble one – one that exists to serve the ends of justice and fairness". In that connection, it has been pointed out by Prof Jeffrey Pinsler in *Ethics and Professional Responsibility* at para 20-001 that:

> Advocates and solicitors are expect[ed] to be "courteous" to each other *because this is the standard of behaviour expected of members of an honourable profession* who respect each other as such. ... Improper conduct such as rudeness, threats and other forms of offensive behaviour only serves to undermine the clients' interests because personal animosity casts a shadow over (even corrupts) ideal objective professional representation. *It also violates the integrity of the profession by giving the impression that its members are incapable of normal, decent conduct*. [emphasis added]

42 Even if the Respondent felt aggrieved that the suspension had been ordered and even if he genuinely believed that the suspension was unjustified, he was not justified in making the remarks that he did against Mr Thio and his family. On the evidence before me, I find that the Law Society has made out a *prima facie* case against the Respondent in relation to the 3rd allegation.

(4) The 4th allegation: Facebook post on Mr Pillai

43 I proceed to the last allegation, namely, that the Respondent had falsely alleged that Mr Pillai had assaulted him on 26 February 2015 (see above at [11]).

44 The Law Society's case is that the Respondent had *falsely* alleged that Mr Pillai had assaulted him. The Law Society is hence obliged to provide evidence that Mr Pillai did not actually assault the Respondent. In the affidavit that was filed in support of the application dated 25 March 2015, Ms Rajendram affirmed that the allegation was false and also exhibited a copy of the Law Society's press statement denying the Respondent's allegation against Mr Pillai.

45 As Ms Rajendram was not one of the eye-witnesses and neither was it evident who authored the press statement exhibited, I had concerns in relying on her evidence that the Respondent's allegation against Mr Pillai was "completely false". At the hearing, I asked Mr La'Brooy if Mr Pillai or any of the eye-witnesses would be filing affidavits to support the Law Society's case for the 4th allegation. At that point, Mr Thuraisingam informed me that the Respondent would concede the point and spare the Law Society the trouble. I understood the Respondent's concession as confined solely to the present application; it does not obviate the need for the Law Society to prove its case before the Disciplinary Tribunal.

46 In light of the evidence together with the Respondent's concession, I find that a *prima facie* case has been established in relation to the 4th allegation.

(5) Summary

47 For these reasons, I am satisfied that a *prima facie* case has been established against the Respondent in respect of all four allegations of misconduct. This leads me to the second stage of the inquiry.

Should the discretion be exercised?

48 I begin with an observation as to the degree of involvement that a respondent and his counsel should have in an application for leave under s 82A(5) of the LPA. In *Nalpon (Leave)* at [4], Chan CJ had observed as follows:

> Initially, I was minded to grant the DPP leave to be heard, but subsequently, I decided to hear the present OS on an *ex parte* basis as I was (perhaps overly) concerned that any decision which I made against the DPP at an *inter partes* hearing, in the event of my allowing the Applicant's application in the present OS, might influence the subsequent disciplinary proceedings before a Disciplinary Tribunal. Accordingly, I heard the present OS on an *ex parte* basis.

On this basis, the Law Society submitted that the application should proceed on an *ex parte* basis. I have no doubt that this is technically correct. For a start, I note that s 82A(5) of the LPA states that the application for leave is to be commenced by *ex parte* originating summons supported by an affidavit. It does not allow the respondent to file a reply affidavit or to have a right of reply at the hearing. I also agree that there is a need to guard against any possibility of the decision that is made at the leave stage having a bearing on the subsequent proceedings were leave given, a point I have noted at [23] above.

49 Having said that, I would not go so far as to say that a respondent and his counsel should *never* be allowed to be present at the *ex parte* hearing. In my judgment, in an appropriate case and subject to leave, there may be value in having the respondent or counsel assist, in particular, on the second stage of the inquiry (*ie*, on the question of whether the discretion ought not be exercised notwithstanding that there may be a *prima facie* case). While the Law Society can be expected to draw to my attention the relevant factors that it is aware of that might militate against the granting of leave, the respondent or his counsel would generally be better placed to identify such factors. However, I reiterate that even where this is done, nothing that has been said in an application for leave under s 82A(5) of the LPA should have any bearing on the findings and decision of the Disciplinary Tribunal or, for that matter, the Court of Three Judges (see [23] above).

50 At the close of the submissions by Mr La'Brooy on behalf of the Law Society, I invited Mr Thuraisingam to address me specifically on the issue of whether my discretion to deny leave ought to be exercised in the present case. I did so despite Chan CJ's approach in *Nalpon (Leave)* because I found this to be an appropriate case where I should hear from the respondent on the specific issue of discretion. In particular, I wanted to hear what the Respondent had to say (and the Law Society's response) on the impact that his medical condition should have in relation to whether leave should be granted.

51 In his brief address, Mr Thuraisingam raised three points for my consideration. First, he informed me that the Respondent was remorseful and would undertake to apologise to Mr Phan, Mr Thio and his family, and Mr Pillai. Second, he pointed out that the Respondent had instructed his firm to come up

with a "mechanism", together with the Respondent's doctor and the Law Society, to prevent such an episode from happening again. Third, he wanted me to take into account the Respondent's contribution to the legal profession over the years.

52 After the hearing, the Respondent filed an affidavit on 15 April 2015. This affidavit, filed without leave, contained evidence to support the first and second points raised by Mr Thuraisingam. Exhibited in the affidavit were letters of apologies allegedly sent by the Respondent to Mr Phan, Mr Thio and his family, and Mr Pillai. Also exhibited were further letters exchanged between Mr Thuraisingam and Dr Munidasa Winslow in relation to the proposed "mechanism" that Mr Thuraisingam mentioned at the hearing. By way of a letter to the court dated 24 April 2015, counsel for the Law Society took the position that the Respondent should not be granted leave to file the further affidavit. In that same letter, counsel for the Law Society highlighted that the Law Society had not accepted the proposed "mechanism" and that the issue of having a "mechanism" to manage the Respondent's condition was a matter that should be left for the Disciplinary Tribunal to decide. As an alternative submission, counsel for the Law Society sought leave to file a further affidavit if leave were granted to the Respondent.

53 Having considered the matter, I granted leave to the Respondent, and admitted his affidavit. I also find there is no need for a further affidavit from the Law Society. I should make it clear that, as a matter of courtesy to the court, the Respondent should have sought my leave before filing the affidavit. Notwithstanding his failure to have done so, I allowed his affidavit to be admitted because I had allowed Mr Thuraisingam to address me on the issue of discretion and the Respondent's affidavit goes no further than to cover the points that had been raised in Mr Thuraisingam's brief address. I have also taken into account the Law Society's responses, and do not think that there is any need for a further affidavit because these points too had been canvassed during the hearing.

54 Returning to Mr Thuraisingam's address, he alluded to the Respondent's psychiatric condition as a factor to militate against the granting of leave. On the evidence before me, the condition seems to have been what sparked off the entire incident. He had been suspended in the first place because of this condition and it appears to be closely related (temporally and perhaps even causally) to the alleged misconduct. Notably, the Respondent tendered his apology and undertaking on the same day (*ie*, 16 March 2015) that his doctor considered him as having "returned to a normal euthymic mood". In these circumstances, it may well be thought that the Respondent's apparent psychiatric condition is a relevant consideration. Nevertheless, I am satisfied that this should not stand in the way of leave being granted. In my judgment, the question of whether the Respondent's alleged psychiatric condition serves to either exculpate the Respondent altogether or mitigate his alleged misconduct should be decided by the Disciplinary Tribunal. This question may well involve expert evidence being called to elucidate on whether the Respondent was suffering from a psychiatric condition at the material time and what its consequences were. This might extend to whether he was aware of his actions or able to control them. There may also be a question as to whether the entire episode, even if causally related to the alleged psychiatric condition, could have been avoided had the Respondent, on 2 February 2015 (and *prior* to the issuance of the Council's Direction), accepted his doctor's recommendation that he be placed "in hospital under observation". All these questions cannot be adequately considered at the leave stage.

55 In addition, there are other factors in favour of granting leave. One such factor is the need to set the record straight by way of the fact-finding process in the disciplinary proceedings. This is important in the present case where there have been various allegations made against a number of people and a high level of media attention and publicity generated around the alleged misconduct (much of which was the result of the Respondent's own acts). Secondly, there is also the apparent severity of the alleged misconduct.

56 On the whole, I am satisfied that leave should be granted.

Costs

57 Before I conclude, I make an observation on costs.

58 The Law Society had asked for costs of the present application. The starting point is s 82A(13) of the LPA, which reads:

> The costs of and incidental to any proceedings under this section shall be in the discretion of the Disciplinary Tribunal, Judge or court hearing those proceedings.

59 Given that at this stage, no findings of liability have been made, I do not consider it appropriate to make an order for costs. Instead, I reserve my decision on costs until after the matter has been concluded either upon the report of the Disciplinary Tribunal or if it reaches that stage, upon the decision of the Court of Three Judges.

Conclusion

60 For these reasons and on these terms, I allow the Law Society's application for leave.