IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 140

Originating Summons No 1163 of 2020

In the matter of Sections 82A(5) and 82A(6) of the
Legal Profession Act (Cap 161, 2009 Rev Ed)

Between

The Law Society of Singapore

… *Applicant*

And

Chia Chwee Imm Helen
Mrs Helen Thomas

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary procedures]
[Legal Profession] — [Disciplinary proceedings]

Law Society of Singapore
v
Chia Chwee Imm Helen Mrs Helen Thomas

[2021] SGHC 140

General Division of the High Court — Originating Summons No 1163 of 2020
Sundaresh Menon CJ
21 April 2021

14 June 2021

Sundaresh Menon CJ:

Introduction

1 This was an application under s 82A of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") for leave to investigate a complaint of misconduct against a non-practising solicitor and for a Disciplinary Tribunal ("DT") to be appointed for this purpose ("the Present Application").

2 The applicant was the Law Society of Singapore ("the Law Society"), and the respondent was Chia Chwee Imm Helen Mrs Helen Thomas ("the Respondent"), an advocate and solicitor of the Supreme Court of Singapore ("the Supreme Court") of 21 years' standing. I heard the Present Application on 21 April 2021. Notwithstanding that it was an *ex parte* hearing, I permitted the Respondent to be present through her counsel, Mr Peter Cuthbert Low ("Mr Low"), and to make some brief submissions on the legal questions

pertaining to whether leave should be granted to investigate the complaint made against her. At the end of the hearing, I allowed the Present Application and granted the leave sought by the Law Society. I now set out the grounds for my decision.

Background

3 The Present Application had its origins in a complaint made to the Law Society by a former client of the Respondent ("the Client"). I set out below the factual background to the complaint and the Present Application. It should be noted that this was essentially the case *alleged* against the Respondent, and I did not make any final findings as to any contested factual matters.

The Respondent's alleged misconduct

4 The complaint had its foundation in, among other things, the fact that the Respondent did not have a practising certificate between 17 December 2016 and 30 May 2018, during which time she was an undischarged bankrupt. According to the Client, she was unaware of this when she engaged the Respondent in or around December 2016 to advise and represent her in matrimonial proceedings concerning the care and custody of her child.

5 In November 2017, about a year after engaging the Respondent as her solicitor, the Client, on the Respondent's advice, applied to the Family Justice Courts for the care and custody of her child. The firm at which the Respondent claimed she was then practising appeared on record as the Client's solicitors, with one Mr Ee Kwong Rong Clement, instead of the Respondent, named as the solicitor in charge.

6 The parties were directed to proceed to mediation, which was scheduled to take place on 28 December 2017. On 18 December 2017, just over a week before the scheduled mediation, the Respondent informed the Client that she was an undischarged bankrupt, and was therefore unable to represent the Client in the mediation. The Client was anxious to have the Respondent represent her. Following discussions with the Respondent, the Client purportedly agreed to lend the Respondent a sum of $40,000. According to the Client, this loan, which was reflected in a simple note naming the Respondent's husband as the borrower, was extended to the Respondent to enable her to discharge her bankruptcy so that she could continue to represent the Client. As things turned out, the mediation scheduled for 28 December 2017 did not proceed because the Respondent could not attend on behalf of the Complainant.

7 In February 2018, the Respondent allegedly approached the Client's mother for a loan, and borrowed a further sum of $20,000 from her.

8 In early March 2018, the Respondent informed the Client that she was leaving the firm at which she claimed she was then practising and would be joining another firm, and that the Client's matter would also be transferred to the new firm as a result. The Client told the Respondent that this was acceptable to her "[a]s long as [the Respondent was] still [her] lawyer". On 20 March 2018, the new firm filed a Notice of Change of Solicitors to formally take over as the solicitors for the Client in the care and custody proceedings. Again, the named solicitor in charge was not the Respondent, but one Mr Say Chin Phang Sean ("Mr Sean Say"). At that time, unbeknownst to the Client, the Respondent was still an undischarged bankrupt and did not have a valid practising certificate.

9 As the mediation scheduled for 28 December 2017 had not taken place (see [6] above), the Client's care and custody application was fixed for hearing. In Whatsapp messages exchanged with the Client, the Respondent gave the impression that she had discharged her bankruptcy, and would be appearing and making submissions at the hearing as the Client's counsel. In April 2018, the hearing of the Client's care and custody application took place. The Client was apparently surprised to learn that the counsel who appeared on her behalf at the hearing was Mr Sean Say, and not the Respondent. As things turned out, the Client's application failed.

10 In May 2018, the Respondent's bankruptcy was finally discharged. The Client had in the meantime filed an appeal in respect of her earlier unsuccessful application in the care and custody proceedings. Between June and mid-September 2018, the Client and the Respondent had various discussions concerning the appeal, and also over the repayment of the sums owed by the Respondent to the Client and her mother. The relationship between the parties deteriorated as a result of the loans, which remained unpaid, as well as the Client's unhappiness over how the Respondent had handled her care and custody application. In September 2018, the Client discharged the Respondent as her solicitor and engaged new solicitors to handle her appeal in respect of that application. Later that month, the loans that had been extended to the Respondent by the Client and her mother were finally repaid following numerous acrimonious Whatsapp exchanges between the parties and a letter of demand sent by the Client's new solicitors.

11 In August 2019, the Client succeeded in her appeal in the care and custody proceedings. The following month, she lodged a complaint with the

Law Society in connection with the Respondent's conduct concerning the matters set out above.

The proceedings before the Inquiry Committee

12 By the time the Client lodged her complaint with the Law Society in September 2019, the Respondent had obtained a practising certificate. Because the Law Society thought that the complaint had been made against the Respondent in her capacity as a regulated legal practitioner, an Inquiry Committee ("IC") was constituted in December 2019.

13 The Respondent did not object to the constitution of the IC, and sought extensions of time to submit her written explanations in response to the complaint. She eventually informed the IC that she would not be submitting any written explanation, but wished to be heard at the IC hearing.

14 The hearing before the IC took place in March 2020, and the Client and the Respondent each attended separately. Two months later, in May 2020, the IC issued its report with its findings and recommendations ("the IC Report"). The IC's key findings were as follows:

(a) The Respondent did not dispute most of the background facts which led to the complaint (summarised at [4]–[10] above). She claimed that at the material time, she was suffering from depression because of several emotionally draining matters that she had conduct of. However, she did not adduce any medical reports to substantiate this.

(b) Between December 2016 and May 2018, the Respondent did not have a valid practising certificate. She had therefore breached s 33 of the

LPA by falsely pretending that she was duly authorised to practise as an advocate and solicitor during this period.

(c) Because the Respondent was not authorised to practise as an advocate and solicitor during this period, no further findings were made by the IC in respect of the other matters complained of by the Client, especially in relation to the purported loans extended to the Respondent by the Client and her mother (described at [6]–[7] above) and the conduct of the hearing of the Client's care and custody application in April 2018 (summarised at [9] above).

The filing of the Present Application by the Law Society

15 After the issuance of the IC Report, the Law Society realised that the crux of the Client's allegations against the Respondent related to a period *when she did not have a practising certificate*. The Law Society thus made the Present Application in November 2020.

The Respondent's application in HC/SUM 123/2021

16 Following the filing of the Present Application by the Law Society, the Respondent filed HC/SUM 123/2021 ("SUM 123") seeking leave to: (a) file an affidavit responding to the Present Application; and (b) make submissions. In her supporting affidavit for SUM 123, the Respondent contended that the Present Application was procedurally defective because the Law Society was not the proper applicant. She seemed to take the position that the Present Application could only be made by her putative client (that is to say, the Client) in respect of the matters complained of. She also indicated that she wished to be permitted to address the court in response to the Present Application.

17 SUM 123 was not opposed by the Law Society. However, during the hearing before me, Mr Low only made submissions on the question of whether the Law Society had standing to bring the Present Application. No affidavit was filed by the Respondent on the factual matters that were presented to me. As it turned out, it was in fact unnecessary for the Respondent to have filed SUM 123 in the circumstances since, in line with the prevailing case law, I would in any event have permitted her to address me on such matters as the question of the Law Society's standing to prosecute the Client's complaint (see *Law Society of Singapore v Ravi s/o Madasamy* [2015] 3 SLR 1187 ("*Ravi*") at [52]–[53]; *Re Parti Liyani* [2020] 5 SLR 1080 ("*Parti Liyani*") at [20]–[22]). Accordingly, I made no order on SUM 123.

The parties' arguments

The Respondent's position

18 As mentioned above (at [16]), the Respondent raised a specific procedural objection to the Present Application: that it was only the Client, and not the Law Society, who could bring the Present Application. The Respondent made three points in support of her position:

(a) First, Parliament had intended that the Law Society would regulate only *practising* solicitors under s 85 of the LPA. Non-practising solicitors and Legal Service Officers were to be regulated by "the Courts" (to be more precise, the Supreme Court: see s 82A(2) of the LPA) instead under s 82A. It followed that the Law Society had no disciplinary control over non-practising solicitors, and it therefore could not properly bring an application under s 82A for leave to investigate a complaint of misconduct against a non-practising solicitor.

(b) Second, the Legal Profession (Disciplinary Tribunal) Rules (Cap 161, R 2, 2010 Rev Ed) ("the DT Rules") clearly provided that an application under s 82A of the LPA was to be made by the putative client of the non-practising solicitor concerned (referred to hereafter as the "putative client" for short), and not by the Law Society. This was said to follow from various provisions of the DT Rules.

(c) Third, the Law Society had already conducted an investigation into the complaint against the Respondent based on s 85 of the LPA, and this lent credence to the notion that its jurisdiction was *confined* to those governed by that provision, meaning advocates and solicitors who had a practising certificate in force. Having convened the IC and completed the inquiry process, the Law Society could not now invoke "a different and incorrect route of DT proceedings to investigate the complaint".

The Law Society's position

19 The Law Society made five points in response and contended that it did indeed have the requisite standing to bring the Present Application:

(a) First, the text of s 82A of the LPA did not prescribe *who* could make an application under the section for leave to investigate a complaint of misconduct against a non-practising solicitor. This would therefore suggest that *any* interested party could make such an application.

(b) Second, there was nothing to indicate that Parliament had intended to prevent the Law Society from making an application under s 82A of the LPA. That the Law Society did not have "direct disciplinary control" over non-practising solicitors under s 82A simply meant that

the Law Society was not able to initiate disciplinary proceedings against such solicitors. That, however, was a distinct matter from the question of *standing* to make an application under s 82A. Indeed, the whole point of s 82A was to vest control over disciplinary proceedings against non-practising solicitors ultimately in the hands of the Chief Justice, whose leave was required before such disciplinary proceedings could be initiated. But that said nothing about *who* could make an application under s 82A. The Respondent had in fact erroneously conflated the concepts of *jurisdiction* and *standing.*

(c) Third, there were clear precedents in which the High Court had allowed applications under s 82A of the LPA for leave to convene DTs to investigate complaints of misconduct against non-practising solicitors, *even where these applications were brought by the Law Society*.

(d) Fourth, nothing in the text of the DT Rules prohibited the Law Society from bringing an application under s 82A of the LPA.

(e) Fifth, given that the Respondent currently held a practising certificate which was still active, the Law Society had a clear interest in taking the necessary steps to seek leave to investigate the Respondent's alleged misconduct, *even though the misconduct complained of had taken place at a time when she did not have a valid practising certificate*.

20 The Law Society further submitted that leave should be granted for the Client's allegations against the Respondent to be investigated and for a DT to be convened for this purpose. The Law Society advanced two reasons in support of this submission. First, the evidence was sufficient to support a *prima facie*

finding of misconduct on the part of the Respondent. Second, there was nothing that militated against the grant of leave, especially having regard to the severity of the allegations of misconduct and the strength of the case against the Respondent. The Law Society also took pains to emphasise that it was not relying on the IC Report for the purposes of the Present Application, but, rather, was acting on the *primary evidence* pertaining to the matters complained of.

Whether the Law Society had standing to bring the Present Application

21 I agreed with the Law Society that it had standing to bring the Present Application under s 82A of the LPA. In my judgment, both the Law Society as well as the Client (the putative client in this case) had standing to bring this application. This conclusion rested on the following four prongs: (a) the text of the relevant provisions of the LPA and the DT Rules; (b) the rationale behind s 82A specifically; (c) the case law; and (d) the purpose of disciplinary proceedings under the LPA generally. I now set out my reasons in detail. I also make an additional observation on the relevance of the IC proceedings to the Present Application.

The text of s 82A of the LPA and the DT Rules

22 I begin with s 82A(5) of the LPA, which deals with the procedure for applying for leave to investigate allegations of misconduct against non-practising solicitors. Section 82A(5) reads:

> An application for such leave shall be made by ex parte originating summons and shall be accompanied by an affidavit setting out the allegations of misconduct against the … non-practising solicitor.

23 As noted by the Law Society, the plain text of s 82A(5) does not preclude the Law Society from making an application under s 82A.

Section 82A(5) is silent as to who may bring such an application. This would militate against any suggestion that such an application may only be made by the putative client. Faced with this obvious hurdle, the Respondent focused instead on the text of the DT Rules.

24 The Respondent relied on the following provisions of the DT Rules in support of her contention that it was only the putative client who could bring an application under s 82A of the LPA:

(a) the definition of "complainant" under r 2(1);

(b) the procedures under r 5 that a complainant had to comply with in order to commence disciplinary proceedings against non-practising solicitors;

(c) the requirement under r 7(2) that a complainant had to employ a solicitor and be represented by the solicitor in the conduct of the proceedings before the DT;

(d) the mode of service of any letter, notice or document on the complainant provided for under r 19(5); and

(e) Form 2, which concerns the Statement of the Case.

25 In my judgment, the Respondent's points did not take her very far at all. The DT Rules contemplate that an application under s 82A of the LPA shall be made by a "complainant". I agreed with the Respondent that a "complainant" would clearly *include* the putative client. However, for the reasons set out below, that does not in any way mean that a "complainant" cannot include the Law Society:

(a) Rule 2(1) of the DT Rules defines a "complainant" as "a person … who has made an application under section 82A(5) for leave for an investigation to be made into a complaint against … a non-practising solicitor". Significantly, this definition does not limit the "complainant" to the person who made the complaint, who would typically, although not necessarily, be the putative client. Instead, this definition drives me back to s 82A(5), which, as I have already noted (see [23] above), does not set any limit on who may bring an application under s 82A. Furthermore, the word "person" in this definition can encompass both *natural* and *non-natural* persons, such as the Law Society.

(b) Rule 5(*b*)(i) provides that within eight days after leave is granted for a DT to be empanelled to investigate a complaint of misconduct against a non-practising solicitor, the "complainant" shall provide (among other things) the name and contact particulars of "his solicitor". Rule 5(*b*)(i) simply contemplates that the "complainant" will be represented by a solicitor in the proceedings before the DT, and in this regard, the Law Society can and does engage solicitors to represent it in disciplinary proceedings which are commenced pursuant to an application made under s 82A.

(c) Rule 7(2) provides that where disciplinary proceedings are commenced pursuant to an application by a "complainant" under s 82A, the "complainant" shall "employ a solicitor and be represented by the solicitor in the conduct of proceedings before the [DT]". Once again, the Law Society, much like any putative client, can engage and be represented by a solicitor in such proceedings.

(d) Rule 19(5) provides that service of any letter, notice or document on a "complainant" may be effected by: (a) leaving the letter, notice or document in an envelope addressed to the "complainant" at any address for service provided by the "complainant"; (b) sending the letter, notice or document to the "complainant" at any address for service provided by the "complainant"; or (c) serving the letter, notice or document on the "complainant's" solicitor. The Law Society does have a correspondence address for the service of documents, and, again, it can and does engage solicitors to act for it in disciplinary proceedings which are commenced pursuant to an application made under s 82A.

(e) Rule 5(*b*)(ii) stipulates that within eight days after leave is granted for a DT to be empanelled to investigate a complaint of misconduct against a non-practising solicitor, five copies of the Statement of the Case (as well as the affidavit referred to in s 82A(5)) are to be furnished. The Statement of the Case, as set out in Form 2 of the First Schedule to the DT Rules, is to be signed by either the "[c]omplainant" or the "[s]olicitor representing the [c]omplainant". Once again, there is nothing to prevent the Law Society from being the "[c]omplainant" or from engaging solicitors to act for it in respect of a complaint of misconduct against a non-practising solicitor.

26 In fact, a closer examination of the text of the DT Rules shows that a person *other than the putative client* may bring an application under s 82A of the LPA. As I have already noted, r 2(1) defines a "complainant" in relation to such an application simply as "a person … who has made an application under section 82A(5) for leave for an investigation to be made into a complaint against … a non-practising solicitor". As stipulated in s 82A(5), such an application is

to be made by *ex parte* originating summons and supported by an affidavit setting out the non-practising solicitor's alleged misconduct. Rule 2(1), read with s 82A(5), contemplates that the "complainant" in this context is simply the person who affirms or swears the affidavit in support of the application under s 82A. Significantly, *there is no requirement, either in the LPA or in the DT Rules, that the person affirming or swearing the affidavit in support of an application under s 82A must be the putative client.*

27 In a similar vein, r 2(1) defines a "complaint" for the purposes of an application under s 82A of the LPA simply as "a complaint of the conduct of … a regulated non-practitioner", and states that it includes "the affidavit referred to in section 82A(5) setting out the allegations of misconduct against the … non-practising solicitor". There is nothing in this definition which indicates that the affidavit cannot be affirmed or sworn by someone other than the putative client.

28 In sum, it appears from a plain reading of the relevant provisions of the LPA and the DT Rules that there are no limits on the categories of persons who may make an application under s 82A of the LPA; nor, specifically, is there any basis in those provisions to exclude the Law Society from making such an application. The absence of any such limitations would suggest that persons *other than* the putative client and the Law Society may also make applications under s 82A. This can lead to situations where such applications are brought by "busybodies" who have little to no connection with the non-practising solicitor concerned, which could give rise to the potential for abuse. However, as I explain below at [39]–[40], it is unnecessary for me to decide determinatively whether any limitations should be imposed to guard against such abuse, given that the present case is concerned with the narrower question of *the Law*

Society's standing to make an application under s 82A. As to this, I am satisfied that the answer is that it has such standing.

The rationale behind s 82A of the LPA

29 I turn to the rationale behind the enactment of s 82A of the LPA, which is my second basis for holding that the Law Society did have standing to bring the Present Application (see [21] above). The Respondent cited the following observations of the then Minister for Law, Prof S Jayakumar ("the Minister for Law"), at the second reading of the Legal Profession (Amendment) Bill (Bill No 34/1993) (see *Singapore Parliamentary Debates*, *Official Report* (12 November 1993) vol 61 at col 1163) in support of her contention that the Law Society lacked the requisite standing:

> … Clause 13 provides for a new section 82A setting out a new procedure for [the] disciplining of legal officers (meaning members of the Legal Service) and non-practising lawyers. *The Society henceforth will have no jurisdiction over such persons*. …
>
> … [T]he Bill provides that both *legal officers and non-practising lawyers will be subject to the direct disciplinary control of the Court and not of the Law Society*, which means that the Law Society's control is with respect to those who are practising advocates and solicitors. …
>
> [emphasis added]

30 The Respondent relied on the above extract to make two points: first, that the Law Society does not have disciplinary control over non-practising solicitors; and, second, that the Law Society is therefore not the proper person to make an application under s 82A of the LPA for the grant of leave for a DT to be appointed to investigate a complaint of misconduct against a non-practising solicitor.

31 In my judgment, the Law Society was correct to say that in advancing this position, the Respondent had improperly conflated quite different concepts. I agreed with the Respondent's first point that the Law Society has no disciplinary *control* over non-practising solicitors. That, indeed, is why s 82A of the LPA was enacted to vest such control in the Chief Justice, whose leave is required before investigations into complaints of misconduct against non-practising solicitors may be commenced. This is consistent with the legislative intent expressed in the extract from the Minister for Law's speech quoted at [29] above. However, the Respondent's first point does not lead to her second point, which is that the Law Society is therefore barred from even applying under s 82A for leave for a DT to be appointed to investigate a non-practising solicitor's alleged misconduct.

32 In my judgment, to say that the Law Society has no disciplinary control over non-practising solicitors means only that the Law Society *cannot, of its own motion,* commence disciplinary proceedings against such solicitors in the same way that it can, of its own motion, commence disciplinary proceedings against practising solicitors (for instance, by appointing an IC under s 85 of the LPA). Instead, as I have already noted, the Chief Justice's leave must be obtained before disciplinary proceedings against non-practising solicitors can be initiated.

33 However, this is conceptually distinct from the question of the Law Society's *standing* to bring an application under s 82A of the LPA for leave to investigate a non-practising solicitor's alleged misconduct. In fact, that the Law Society has to make such an application is *consistent* with the legislative intent referred to above: it is precisely because the Law Society does not have disciplinary control over a non-practising solicitor that it must apply for leave

under s 82A before it can investigate a complaint of misconduct against such a solicitor. Put differently, the Law Society's lack of disciplinary control over non-practising solicitors means only that *it must, like any other "complainant", apply for leave under s 82A before any investigation into a non-practising solicitor's alleged misconduct can be carried out*.

The case law

34 The Respondent's contention that the Law Society had no standing to bring the Present Application also ran contrary to a line of established authorities where, on the application of *the Law Society* under s 82A of the LPA, leave was granted for a DT to be convened to investigate a non-practising solicitor's alleged misconduct: see *Ravi*; *Law Society of Singapore v Mahadevan Lukshumayeh and others* [2008] 4 SLR(R) 116 ("*Mahadevan*"); and *Law Society of Singapore v Gopalan Nair (alias Pallichadath Gopalan Nair)* [2011] 4 SLR 607 at [4].

35 I note that the issue of the Law Society's standing to make an application under s 82A of the LPA was not raised in these authorities, but that suggests that it was perhaps not thought to be a point worth taking.

The purpose of disciplinary proceedings under the LPA

36 Lastly, and, in my judgment, most significantly, the question of the Law Society's standing to make an application under s 82A of the LPA brings me to the underlying purpose of disciplinary proceedings under the LPA. In this regard, I find pertinent the following observations of the High Court in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 ("*Sharma*") on the

question of standing to make a complaint to the Law Society under s 85 of the LPA about the conduct of a *practising* solicitor:

> 59 From the legislative history of s 85(1), it appears that the statutory position … was that *any person* may make an application or a complaint against a solicitor to the Law Society. Although the words "any person" were removed in 1993, Parliament made no statement to the effect that this removal was meant to restrict the type of persons who may make complaints. … [I]t is likely that Parliament's intention was simply to remove the first limb of the old s 85(1) because it had become otiose … and not to introduce a new standing requirement for the making of complaints.
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> …
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> 61 I am reinforced in my view that Parliament had no intention to restrict the kind of persons who may make a complaint [under s 85] by the rationale underlying why solicitors are disciplined for professional misconduct. The rules of professional conduct that govern solicitors in Singapore and the disciplinary process by which they are enforced are established with the aim of maintaining the high standards and good reputation of the legal profession.
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> 62 While disciplinary proceedings may have in certain situations the corollary effect of righting the wrongs that the solicitor's conduct may have inflicted upon individuals, the disciplining of a solicitor for professional misconduct goes beyond the interests of the complainant. This is why disciplinary proceedings against a solicitor do not come to an automatic end when the complainant withdraws the complaint, no matter how voluntarily or unreservedly …
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> 63 As the primary reason for disciplining solicitors is to maintain the high standards and good reputation of the profession, it follows that it should not matter who brings the complaint to the Law Society. If the conduct of the solicitor complained of is so egregious that it brings the profession into disrepute, and if the complaint has substance and is backed up by evidence, there is a public interest in having such conduct investigated and the solicitor disciplined *regardless* of who makes the complaint.
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> 64 No doubt, the public interest in upholding the integrity and standing of the legal profession must be balanced against the impact [that] disciplinary proceedings have on the solicitor's reputation and livelihood, and the strain it places on the solicitor and the Law Society's limited resources. In *Re*

> *Fordham, Michael QC* [[2015] 1 SLR 272], [Steven] Chong J [as he then was] noted at [31] that if any person may make a complaint to the Law Society, the Law Society may become inundated "with frivolous complaints by persons with no interest other than being busybodies". He also noted that this may be undesirable since it causes the limited resources of the Law Society to be unduly stretched which, in turn[,] may delay the prosecution of more meritorious complaints. I appreciate the concern about busybodies. Nonetheless, I am of the view that the scales fall in favour of the public interest in maintaining the profession's integrity.
>
> [emphasis in original]

37 The High Court's observations in *Sharma* (which, as just mentioned, dealt with the question of who may make a complaint to the Law Society under s 85 of the LPA as regards the conduct of a *practising* solicitor) apply, in my judgment, with equal force to s 82A of the LPA. The goal of securing the high standards and good reputation of the legal profession undergirds disciplinary proceedings against both practising and non-practising solicitors. To that extent, there is a strong, if not overarching, public interest in having substantive complaints of misconduct by solicitors investigated. Importantly, this concerns not just the interest of the client or putative client in question, but also the public interest. It follows that the pursuit of a complaint against a legal practitioner should not be treated simply as a matter of contract, to be acted on only at the behest of the client or putative client who was or is party to a contractual relationship with the legal practitioner. As the High Court noted in *Sharma*, disciplinary proceedings do not come to an end simply because the client (or putative client) decides to withdraw the complaint, no matter how voluntarily or unreservedly.

38 This consideration has particular force in the context of s 82A because it is not difficult to envisage situations where a putative client might have good reason to complain about the conduct of a non-practising solicitor, and yet be

unwilling or unable to bring an application under s 82A. This is because in order to make such an application, the putative client would have to expend time and expense, which might quite reasonably be regarded by the putative client as an impediment to pursuing the matters which he or she is aggrieved about. In such a situation, if no party aside from *the putative client* is able to make an application under s 82A, it could result in meritorious complaints not being investigated. That is plainly not in the public interest.

39 I return here to the point I alluded to earlier (see [28] above), namely, that adopting the position that there are no limits on the categories of persons who may make an application under s 82A of the LPA might give rise to vexatious applications by "busybodies" having little to no connection with the non-practising solicitor concerned. I note that in *Re Fordham, Michael QC* [2015] 1 SLR 272 at [31], the High Court remarked, in relation to complaints against practising solicitors under s 85 of the LPA, that only those who are able to demonstrate "sufficient interest" in making a complaint may properly make a complaint. Without coming to a final decision on the imposition of such a limit on applications under s 82A, I note that this would obviate any concerns of the floodgates being opened, and so ensure that applications under s 82A are not made in an oppressive manner.

40 It is, however, not necessary for me to decide the point because the present case concerns only the narrow question of whether *the Law Society* has standing to make an application under s 82A. In my view, even if a requirement of "sufficient interest" were to apply in the context of s 82A, the Law Society would undoubtedly satisfy this threshold.

41 This is because the purposes of the Law Society, as stipulated in s 38(1) of the LPA, are (among other things):

> (*a*) to maintain and improve the standards of conduct and learning of the legal profession in Singapore;
>
> …
>
> (*f*) to protect and assist the public in Singapore in all matters touching [on] or ancillary or incidental to the law;
>
> …

42 The corollary of these two important mandates must be that the Law Society may, where necessary, bring applications under s 82A of the LPA for leave to investigate complaints of misconduct against non-practising solicitors because in doing so, it would be advancing its statutory purposes of maintaining and improving the standards of conduct of the legal profession, and protecting and assisting the public in all matters relating to the law. In this regard, I consider there to be little, if any, risk of the Law Society being unduly burdened by frivolous complaints. This is because the Law Society is not *compelled* to bring an application under s 82A whenever it receives a complaint of misconduct against a non-practising solicitor, but, rather, has a *discretion* to decide whether to bring such an application.

43 For completeness, I note that there would conceivably be others, aside from *the Law Society* and *the putative client*, who may also be taken to have a "sufficient interest" in bringing applications under s 82A, including at least the Attorney-General, who (among other things) is mandated to uphold the public interest in all matters relating to the law.

The relevance of the IC proceedings

44 Before leaving the issue of the Law Society's standing to bring the Present Application, I address the Respondent's contention that the Law Society, "[h]aving convened the IC and completed the inquiry process, … now seeks to use a different and incorrect route of DT proceedings to investigate the [Client's] complaint" (see [18(c)] above). In my judgment, there was no merit in this argument for two reasons.

45 First, the IC proceedings were *separate* and *distinct* from the Present Application. Further, as I highlighted earlier (at [20] above), the Law Society did *not* rely on the IC's findings in support of the Present Application. Instead, it relied on the *underlying documentary evidence* furnished by the Client.

46 Second, the alleged misconduct by the Respondent took place at a time *when she did not have a practising certificate*. It is clear that "any advocate and solicitor who does not have in force a practising certificate at the time the alleged misconduct occurs would fall within [the] purview [of s 82A]": see *Mahadevan* at [12]. The Law Society was thus correct to make the Present Application in order to pursue the Client's complaint. In truth, the IC proceedings were a nullity since they were initiated by mistake with no jurisdictional basis.

Whether leave should be granted for a DT to be empanelled

47 I turn now to the question of whether leave should be granted for a DT to be empanelled to investigate the Client's complaint. The applicable test in this regard is the two-step framework that is well established in the case law

(see *Parti Liyani* at [25] and *Re Salwant Singh s/o Amer Singh* [2019] 5 SLR 1037 ("*Salwant Singh*") at [30]):

> (a) First, the Chief Justice must be satisfied that there is a *prima facie* case for an investigation into the complaint.
>
> (b) Second, if a *prima facie* case is found, the Chief Justice should then consider any relevant factors in favour of, as well as militating against, an investigation into the alleged misconduct. In other words, the finding of a *prima facie* case at the first step does not entail that leave must necessarily be given for an investigation to be carried out. Instead, the Chief Justice has the discretion to decide whether to grant leave.

48 In the present case, I was satisfied that both steps of this framework clearly led to the conclusion that leave should be granted for a DT to be empanelled to investigate the Client's complaint.

A prima facie *case for an investigation into the Client's complaint*

49 A *prima facie* case for an investigation into a complaint of misconduct against a non-practising solicitor is made out where the evidence, if it is eventually accepted by the court, would be sufficient to prove every element of the alleged misconduct, either directly as a primary fact or inferentially as a secondary fact (see *Re Nalpon Zero Geraldo Mario* [2012] 3 SLR 440 at [22]–[24]).

50 I agreed with the Law Society that there was a *prima facie* case for an investigation into the Client's complaint in relation to *two* distinct acts of misconduct.

51 The first act of misconduct related to the Respondent falsely pretending to be authorised to act as an advocate and solicitor, in contravention of s 33 of the LPA. As I mentioned earlier, the Respondent was an undischarged bankrupt, and thus disqualified from holding a practising certificate, between 17 December 2016 and 30 May 2018. Yet, during this period, she continued to represent to the Client that she was duly authorised to act as the Client's solicitor. This can be seen from the following evidence, which clearly met the threshold of a *prima facie* case for an investigation to be carried out:

(a) The Respondent appeared to have undertaken work typically carried out by solicitors, including advising the Client on substantive matters such as the filing of the Client's care and custody application in the Family Justice Courts, and discussing payment for work done in relation to that application.

(b) Even after the Respondent revealed to the Client on 18 December 2017 that she was an undischarged bankrupt and therefore unable to represent the Client in the mediation scheduled for 28 December 2017 (see [6] above), she appeared to have continued to discuss with the Client payment for work done in relation to the Client's care and custody application. She also appeared to have assured the Client on several occasions that she was handling the Client's matter "personally" as her lawyer, and would be attending and representing the Client at court hearings. On one occasion, the Client asked the Respondent if she would be representing the Client at a forthcoming hearing and the Respondent stated that she would be.

(c) Further, on two occasions, the Respondent appeared to have misrepresented to the Client the true position as regards her bankruptcy

> and consequent inability to act as the Client's solicitor. First, in January 2018, she sent the Client a Whatsapp message stating that the discharge of her bankruptcy was "sorted" (the implication being that she could now hold a practising certificate), even though she was still an undischarged bankrupt at the time. Second, in March 2018, she sent the Client another Whatsapp message stating that she was "in a v [*sic*] happy place … [w]ith [a] monkey off [her] back". When the Client replied saying that she had been "so worried [the Respondent] wouldn't get [a] PC [practising certificate] in time", the Respondent did *not* correct the Client's mistaken impression that she could now obtain a practising certificate and had already done so.

52 The second act of misconduct concerned the loan of $40,000 made by the Client in December 2017 ostensibly to the Respondent's husband but in reality to the Respondent, and the loan of $20,000 made by the Client's mother in February 2018 to the Respondent (see [6]–[7] above). These loans were allegedly made by the Client and her mother to enable the Respondent to discharge her bankruptcy so that she could continue representing the Client in the care and custody proceedings. The Respondent did not seem to contest the loan from the Client's mother. As for the loan from the Client, there was some supporting documentary evidence of this.

53 The taking of loans by a solicitor from his or her client would ordinarily be a contravention of r 23 of the Legal Profession (Professional Conduct) Rules 2015 (Cap 161, S 706/2015) ("the PCR"), which prohibits a legal practitioner from (among other things) borrowing money from a client and procuring his or her immediate family member(s) to borrow money from a client. The question arises as to whether r 23 of the PCR applies to the loans to the Respondent from

the Client and her mother, given that they were extended at a time when the Respondent did not have a practising certificate.

54 However, it is not necessary for me to resolve this issue. That can be addressed by the DT, or by the Court of Three Judges in due course if this matter reaches that court. Further, even assuming that r 23 of the PCR does *not* apply to the loans made to the Respondent by the Client and her mother, the Respondent's acceptance of these loans would nonetheless be a *prima facie* case of misconduct under s 83(2)(*h*) of the LPA. Section 83(2)(*h*) is a catch-all provision that covers "such conduct as would render [a solicitor] unfit to remain as a member of an honourable profession": see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 at [79], citing *In re Weare, a Solicitor; In re the Solicitors Act, 1888* [1893] 2 QB 439. It applies to misconduct by a solicitor in both his or her *professional* and *private* capacities: see *Law Society of Singapore v Heng Guan Hong Geoffrey* [1999] 3 SLR(R) 966 at [25]. In the present case, the Respondent appeared to have told the Client that unless her bankruptcy were discharged, she would not be able to focus completely on representing the Client. This suggests that the Respondent exerted some "pressure" on the Client and her mother to provide the loans outlined at [6]–[7] above. Further, while the loans were received in December 2017 and February 2018, the Respondent's bankruptcy was only discharged in May 2018. Despite this, the Respondent appeared to have misrepresented to the Client in *January 2018* that her bankruptcy had been discharged, and in *March 2018* that she had a valid practising certificate (see [51(c)] above). It appears therefore that there might also have been a lack of candour on the Respondent's part. These actions by the Respondent were sufficient to establish a *prima facie* case that her conduct rendered her "unfit to remain as a member of an honourable profession".

55 Accordingly, I was satisfied under the first step of the two-step framework that there was a *prima facie* case for an investigation into the Client's complaint.

The factors in favour of granting leave

56 Turning to the second step of the two-step framework, I likewise agreed with the Law Society that leave should be granted for an investigation to be made into the Respondent's alleged misconduct. I came to this conclusion for the following four reasons.

57 First, the severity of the allegations of misconduct and the strength of the evidence against the Respondent weighed in favour of granting leave (see *Ravi* at [55] and *Salwant Singh* at [67]):

(a) The allegations levied against the Respondent were serious. In *Mahadevan* at [12], the High Court considered that the wilful misrepresentation by a person of his or her authorisation to act as an advocate and solicitor in breach of s 33 of the LPA would constitute "misconduct unbefitting … an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession" for the purposes of s 82A(3)(*a*) of the LPA.

(b) Further, the allegations levied against the Respondent were supported by objective documentary evidence.

58 Second, there was no delay on the Law Society's part in taking out the Present Application (as to the relevance of delay in this regard, see *Salwant Singh* at [31]). To recapitulate, the Client discharged the Respondent as her solicitor in September 2018 after her care and custody application failed at first

instance. The Client then engaged new solicitors for her appeal in respect of that application, which appeal concluded successfully in August 2019. It was only after the successful conclusion of the appeal that the Client made a complaint to the Law Society, which then initiated the process leading to the Present Application (see [10]–[11] above).

59 The only possible "delay", if any, would pertain to the one-year period between the Client's discharging of the Respondent as her solicitor in September 2018 and her lodging of her complaint with the Law Society in September 2019. As to this, I agreed with the Law Society that it was not at all unreasonable for the Client to have awaited the outcome of her appeal in respect of her care and custody application before lodging a formal complaint, since her complaint, at least in part, arose out of the Respondent's conduct in connection with that application at first instance. To that extent, the findings on appeal might have been relevant to her complaint: see *Parti Liyani* at [45].

60 Third, the prior IC proceedings in no way prejudiced the Respondent. I have already observed that the Present Application was separate and distinct from the IC proceedings, and that for the purposes of the Present Application, the Law Society relied on primary documents and evidence furnished by the Client, and *not* on the IC's findings (see [20] and [45] above). Further, and in any event, the DT which is to be empanelled to investigate the Respondent's alleged misconduct will hear the matter afresh: see *Parti Liyani* at [48]. To that extent, the Respondent will have an opportunity to explain her position and put forward her case during the proceedings before the DT.

61 Fourth, the Respondent's purported medical condition did not militate against the grant of leave. The significance of this condition should be left to be

decided by the DT when it is empanelled: see *Ravi* at [54]. In any case, the Respondent's claim that she was suffering from depression at the material time was not substantiated by any evidence before me.

Conclusion

62 For these reasons, I allowed the Present Application. As to costs, I reserved the order of costs to myself should the DT decide that this matter need not progress further, or to the Court of Three Judges should this matter reach that court.

Sundaresh Menon
Chief Justice

Peh Aik Hin, Chia Su Min, Rebecca and Lim Jie Hao, Sampson (Allen & Gledhill LLP) for the applicant;
Peter Cuthbert Low and Yuen Ai Zhen, Carol (Peter Low & Choo LLC) for the respondent.