IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 167

Originating Summons No 1 of 2021

Between

Selena Chiong Chin May

… *Applicant*

And

(1) Attorney-General of Singapore
(2) The Law Society of Singapore

… *Respondents*

EX TEMPORE JUDGMENT

[Legal Profession] — [Reinstatement] — [Interest of the public] — [Whether applicant fully rehabilitated] — [Section 102 Legal Profession Act (Cap 161, 2009 Rev Ed]

Chiong Chin May Selena
v
Attorney-General and another

[2021] SGHC 167

Court of Three Judges — Originating Summons No 1 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Chao Hick Tin SJ
30 June 2021

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

1 This is the application of Selena Chiong Chin May, who we refer to as "the applicant", seeking reinstatement to the roll of advocates and solicitors of the Supreme Court of Singapore ("the Roll") pursuant to s 102 of the Legal Profession Act (Cap 161, 2009 Rev Ed). The applicant was struck off the Roll on 20 August 2014, following her conviction on several counts of criminal breach of trust ("CBT"). The application is opposed by the Attorney-General and by the Law Society of Singapore ("Law Society").

2 Having considered the parties' argument and the evidence, we dismiss the application. In our judgment, the applicant has not discharged the burden of demonstrating that she has been fully rehabilitated.

Background facts

3 We briefly recount the background facts. The applicant was struck off the Roll in 2014 following her convictions on several counts of CBT. The applicant had faced two sets of disciplinary proceedings prior to being struck off. A common theme running across the applicant's various disciplinary issues was her mental illness. After the birth of her first child in 1996, she was diagnosed, first with depression, then later with bipolar disorder.[1]

4 In 2013, she was convicted of several counts of CBT. She had retained client monies instead of placing the sums in question in the client account as she was required to. She was sentenced to nine months' imprisonment. She appealed against both the conviction and sentence. In March 2014, the High Court dismissed the appeal on conviction, but allowed the appeal on sentence and reduced the sentence to a day's imprisonment and some fines. The High Court was sympathetic to the applicant's mental condition, finding that she "had a long history of Bipolar Disorder which could have affected her judgment adversely".[2]

5 In March 2014, after the appeal was disposed of, disciplinary proceedings ensued. We struck the applicant's name off the Roll because the CBT offences involved an element of dishonesty. However, we also took note of the applicant's mental illness as follows:[3]

> … [the applicant's] acts are to be seen through the prism of her mental illness. While we accept that [the High Court] on appeal was sufficiently moved by her condition to substantially reduce her sentence, it is also a fact that [the High Court] affirmed the

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1 Applicant's affidavit at pp 47 – 48, paras 3, 5–6.

2 Minute Sheet for MA 172/2013/1 at para 3.

3 Minute Sheet for OS 262/2014 at pp 1–2.

> conviction. … It seems to us that [the applicant] needs help and attention of professionals to help resolve her mental issues. When that is done and we are satisfied that her issues are behind her … it may well be that we would view sympathetically an application for reinstatement that is brought much earlier than is customarily the case.

6 In January 2021, the applicant made this application for reinstatement on the Roll.

Our decision

7 The law is settled that three crucial factors must be considered when assessing an application for reinstatement (see *Nathan Edmund v Law Society of Singapore* [2013] 1 SLR 729 at [10]):

(a) Whether an adequate period of time has passed between the striking off order and the reinstatement application (we refer to this as the "interval");

(b) Whether the applicant has been fully and completely rehabilitated; and

(c) Whether allowing the application would undermine or prejudice the protection of the public interest and the reputation of the legal profession.

We briefly consider each of these factors.

Adequacy of time

8 A period of almost seven years has passed since the date on which the applicant was struck off (namely 20 August 2014). As a general rule, a period that is significantly longer than five years should have passed before an

application for reinstatement will be considered favourably: *Knight Glenn Jeyasingam v Law Society of Singapore* [2007] 3 SLR(R) 704 ("*Knight Glenn*") at [15]. In that context, a passage of time of seven years may not typically be regarded as sufficient. However, both the Attorney-General and the Law Society do not take issue with the adequacy of the interval in this case. In the particular circumstances before us, we agree for two reasons.

9 First, at the time of the striking off order, we had noted that the CBT offences were committed by the applicant at a time when she was suffering from a psychiatric illness which reduced her culpability (see [5] above). As a result, we had observed that we might view "sympathetically" an application for reinstatement that was brought somewhat earlier than would customarily have been expected to be the case.

10 Second, the applicant had voluntarily ceased practice in July 2010, some four years before the striking off order. By way of background, in July 2010, police reports were made against the applicant which eventually culminated in criminal proceedings being brought against her. At the request of the Law Society, the applicant had then agreed to surrender her Practicing Certificate ("PC"). In this light, the effective period during which the applicant has not been practising is in fact *11 years*.

11 We make some brief observations on the relevance of a voluntary suspension in such circumstances. As a matter of principle, this can be considered as a mitigating factor or as a factor that weighs on the adequacy of the interval, if and to the extent the court is satisfied that it demonstrates genuine remorse and contrition on the part of the errant lawyer (*Knight Glenn* at [16]–[17]). Furthermore, there is a public interest in suitable cases to incentivise a solicitor who may be facing disciplinary proceedings to cease practice

voluntarily in advance of the formal determination by the relevant disciplinary bodies (*Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [52]). However, it is a matter for the court's *discretion* as to just how this should be factored in the analysis. This should be done with due regard to all the relevant circumstances of each specific case (*Re Lim Cheng Peng* [1987] SLR(R) 582 at [25]). The court will typically *not* give credit for the *full* period of voluntary suspension, because it is ultimately not for the lawyer to determine his own punishment (*Chia Choon Yang* at [53]).

12 In the context of this application, we accept that the applicant's voluntary suspension of her PC in July 2010 was borne out of a genuine sense of remorse and contrition and we do therefore recognise that in all the circumstances, the interval is substantially and adequately in excess of five years.

Rehabilitation of the applicant

13 We turn to the rehabilitation of the applicant. In this regard, it is incumbent upon the applicant to demonstrate by reference to her conduct during the interval that she has been fully rehabilitated (see *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore* [2009] 4 SLR(R) 1018 ("*Kalpanath*") at [19]). To this end, the objective evidence of what she has been involved in during the interval, as well as references (particularly from members of the legal fraternity) are key. Having considered the evidence, we are not satisfied that the applicant has discharged her burden of demonstrating that she has been fully rehabilitated. We come to this view for three reasons.

14 First, we are not satisfied that the applicant has adequately resolved her psychiatric issues. The applicant relies on a report issued by her psychiatrist,

which certifies her as "[f]it to [r]eturn to [w]ork as an Advocate and Solicitor, provided she continues to maintain strict adherence to her medication and follow-up appointments". However, the same report in recounting the history of the applicant's illness and progress, also states that prior to the commission of the CBT offences in 2010, the applicant had been "assessed and deemed to be fit to return to work as a lawyer, as long as she was compliant with her appointments and medication".[4] In short, the present psychiatric assessment is not materially different to that which was made before the applicant committed the CBT offences. Yet nothing in the present report explains how or in what way the risk of a recurrence of misconduct can be or has been adequately managed or addressed. In the circumstances, on the material before us, there is nothing to suggest that the risk of further misconduct arising from the applicant's psychiatric condition can be discounted.

15 Further, the report states that the applicant must be compliant with her treatment regimen, if she is to remain in a stable state. Indeed, this is expressed as a proviso to the medical opinion that she is fit to practice. However, such compliance cannot be assumed in this case. We note, for instance, that the report also notes that the applicant had been somewhat irregular in keeping her medical appointments in the past.[5] The applicant submits that because her three children are now grown up, they can intervene if she relapses. But even assuming that there was sufficient ongoing interaction between the applicant and her children for this to be a relevant factor, this seems to us not to address the issue in the sense that such intervention would come too late. The real question, which remains unsatisfactorily addressed, is what are the steps that have been taken,

4 Applicant's affidavit at p 48, para 7.

5 Applicant's affidavit at p 47, para 3.

and will be taken, to assure that the applicant will remain compliant with her treatment regimen.

16 For completeness, we also have regard to a supplementary report that was submitted to the court on the eve of the hearing by the same psychiatrist. This was submitted without any leave having been sought and without any explanation being offered by the applicant. It was also not filed as part of an affidavit. Upon reading it, we deduced that it had in fact been sought by the applicant because the text of the report indicated that it was being provided in conjunction with "your application for reinstatement" even though it was addressed to the solicitors for the Law Society and copied to the Attorney-General. Despite the irregular manner in which it was submitted to us, we have considered it, but it does not help the applicant's case. Indeed, having considered the applicant's past records with the Institute of Mental Health, the psychiatrist in effect confirms that there is a real risk of relapse which may be triggered by, among other things, major changes in the applicant's life, over-exertion, insufficient rest, emotional stress or poor attention to her own health. Again, there is nothing before us to satisfy us that these concerns have been adequately addressed by the applicant prior to making this application.

17 This also leads to our second point, which is that nothing has been put before us to demonstrate that the applicant will be able to cope with the stresses and rigours of *legal practice*. This is important for at least two reasons. First, as noted in the supplementary psychiatric report that we have just referred to, major changes and over-exertion are specifically identified as potential triggers for a relapse and it is evident that embarking on legal practice would give rise to new and particular stresses and challenges. Second, such evidence would help establish the restoration of her mental balance and stability which is essential if she is to do the work that she aspires to: see *Choy Chee Yean v Law Society of*

Singapore [2020] 3 SLR 1268 at [13]. In this regard, over the course of the past eleven years, the applicant's only interaction with the law was a stint as an adjunct research fellow at the National University of Singapore's Faculty of Law, which began in August 2020, less than a year ago. However, this only required the applicant to work *eight hours a week*.[6] We do not think that this suffices to show that the applicant can cope with the stresses and strains of legal practice.

18 Further, it is also not clear exactly what the professional demands of the fellowship were on the applicant. While academic work can and undoubtedly does entail its own stresses, these are quite likely to be different in nature from what is expected of a legal practitioner. We agree with the Law Society and the Attorney-General, that the applicant's ability to cope with the rigours of legal practice would be better demonstrated through a full-time stint for a sufficient period at law firms, for instance, as a paralegal. To this, the applicant contends that she has not been able to secure a job as a paralegal despite her efforts. With respect, this cannot affect our consideration of her application. It is incumbent on the applicant to show that there is a viable way forward for her to realise her aspiration to be a legal practitioner and that begins with her ability to find employment at a suitable level. We also note that the Law Society is prepared to assist the applicant in her efforts to find employment as a paralegal in a law firm. In our judgment, this should be the first step for this applicant. Indeed, the difficulties faced by the applicant in finding employment as a paralegal suggests that she will face even greater difficulties in finding employment as a solicitor in due course. A stint as a paralegal would therefore enhance the applicant's ability to secure gainful employment as a solicitor in time to come.

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6 Applicant's affidavit at p 56, cl 3.

19 Third, the applicant has not proffered satisfactory testimonials to demonstrate her rehabilitation. She provided us with testimonials concerning her time as a law student. With respect, these are not relevant, because they do not pertain at all to the applicant's conduct and character during *the interval*: *Kalpanath* at [26]. This may be a consequence of the fact that the applicant has not secured employment in any law firms during this period. Perhaps, once the applicant does secure such employment, if necessary with the assistance of the Law Society, she may be in a better position to obtain testimonials from practitioners with whom she would have worked.

Public interest

20 Given that the applicant has not satisfied us that she has been adequately rehabilitated, it would also not be in the public interest to allow the application for reinstatement: *Narindar Singh Kang v Law Society of Singapore* [2007] 4 SLR(R) 641 at [39].

21 We also note that between July 2010 (when the applicant voluntarily surrendered her PC) and August 2020 (when she commenced her part-time fellowship), the applicant had a ten-year break from the law. Given this long period, it would also not be appropriate for her to be reinstated at this juncture, considering the public interest in ensuring that solicitors are *competent*: *Narindar Singh Kang v Law Society of Singapore* [2013] 4 SLR 1157 at [29].

Conclusion

22 For these reasons, we dismiss the application. We make no order as to costs.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Justice of the Court of Appeal	Chao Hick Tin Senior Judge

The applicant in person;
Jeyendran s/o Jeyapal and Enoch Wong Lok Hang (Attorney-General's Chambers) for the first respondent;
Rajan Sanjiv Kumar and Mehaerun Simaa d/o Ravichanran (Allen & Gledhill LLP) for the second respondent.