Law Society of Singapore *v* Choy Chee Yean
[2010] SGHC 162

Case Number : Originating Summons No 131 of 2010

Decision Date : 25 May 2010

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Chao Hick Tin JA; Andrew Phang Boon Leong JA

Counsel Name(s) : Michael Khoo SC and Josephine Low (Michael Khoo & Partners) for the applicant; Sundaresh Menon SC, Aurill Kam, Paul Tan and Tan Liang Ying (Rajah & Tann LLP) for the respondent.

Parties : Law Society of Singapore — Choy Chee Yean

Legal Profession

25 May 2010 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 This is an application by the Law Society of Singapore ("the Law Society") pursuant to section 98(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the Act") for an order that the Respondent be made to suffer such punishment as provided for in section 83(1) of the Act.

2 The Respondent was admitted to the roll of advocates and solicitors of the Supreme Court of Singapore ("the roll") on 20 March 1993 and, at all material times, he practised as a Partner in a leading Singapore law firm ("the firm"). On 21 April 2008, the Respondent pleaded guilty, in the District Court of the Hong Kong Special Administrative Region, to a charge of burglary contrary to ss 11(1)(b) and (4) of the Hong Kong Theft Ordinance (Cap 210) ("the HK Theft Ordinance"). The charge stated that on 17 January 2008, the Respondent had entered a hotel room in Hong Kong and stolen a bag, a blue tooth earphone, a charger, an iPod, a mobile phone, a mobile phone SIM card as well as a Palm Pilot (PDA). These items were valued by the police to be worth HK$9,500. On 23 April 2008, the Hong Kong District Court convicted and sentenced the Respondent to 12 months imprisonment, suspended for two years.

3 On 24 April 2008, the Respondent wrote to inform the Law Society of his conviction and stated that he had voluntarily suspended himself from practice. Since 2 January 2009, he has been employed by the firm in a non-practising capacity. On 3 July 2009, a Disciplinary Tribunal ("the Tribunal") was appointed to hear and investigate the complaint against the Respondent pursuant to s 90(1) of the Act.

4 The Law Society was of the view that the offence committed by the Respondent would, if committed in Singapore, be an offence contrary to s 380 of the Penal Code (Cap 224, 2008 Rev Ed) ("the Penal Code"). The Law Society formulated the following charge against the Respondent, as follows (though see now below at [8]):

> You, [the Respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you, on or about 17th January 2008 at the Novotel Citygate Hotel, Hong Kong,

having entered Room 1935 as a trespasser, stole a bag, a blue tooth earphone, a charger, an i-Pod, a mobile phone, a mobile phone SIM card, and a Palm Pilot PDA, which was an offence of burglary committed under section 11(1)(b) and (4) of the Hong Kong Theft Ordinance Cap. 210, and you have thereby committed an act of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court of Singapore or as a member of an honourable profession contrary to section 83(2)(h) of the Legal Profession Act (Cap 161).

Sections 83(1) and 83(2)(*h*) of the Act provide as follows:

(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —

(*a*) to be struck off the roll;

(*b*) to be suspended from practice for a period not exceeding 5 years;

(*c*) to pay a penalty of not more than $100,000;

(*d*) to be censured; or

(*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).

(2) Such due cause may be shown by proof that an advocate and solicitor —

…

(*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession

…

The criminal proceedings in Hong Kong

5 On 17 January 2008, the Respondent arrived in Hong Kong on a business trip and checked into Room 1939 of the Novotel Citygate Hotel. The occupant of Room 1935 had left the room at 10.45pm and was unsure whether he had properly closed the door of his room. At 11.50pm, when the occupant of Room 1935 returned to his room, he found some items missing. He immediately contacted the hotel staff who subsequently viewed the video recording of the CCTV which monitored the corridor outside that room. The Respondent was seen in the video to be at the door of Room 1935 five times. There was no image of the Respondent entering the room due to the position of the camera. There were two occasions when the Respondent was out of sight for about one minute. He was later seen walking with some items in his left hand towards Rooms 1938 and 1939. Room 1938 was unoccupied while Room 1939 was occupied by the Respondent. The lobby manager, along with the hotel's security manager and some police officers, went to the Respondent's room. They searched his room and discovered the missing items under the Respondent's bed. A fingerprint was lifted on the outside of the door at Room 1935 and was found to match the fingerprint impression of the right middle finger of the Respondent.

6 The Respondent was subsequently charged with the offence of burglary under ss 11(1)(*b*) and (4) of the HK Theft Ordinance. Section 11 of the HK Theft Ordinance reads as follows:

(1) A person commits burglary if-

…(*b*) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

…

(4) Any person who commits burglary shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 14 years.

Section 2 of the HK Theft Ordinance equates the meaning of "steal" with that of "theft". Section 2 reads as follows:

(1) A person commits theft if he *dishonestly appropriates property* belonging to another with the intention of permanently depriving the other of it; and "thief" and *"steal"* shall be construed accordingly.

(2) It is immaterial whether the appropriation is made with a view to gain, or is made for the thief's own benefit.

…

[emphasis added]

7 The Respondent subsequently appointed a leading criminal lawyer, Mr Andrew Bruce SC, to represent him in the criminal proceedings before the Hong Kong District Court. He also consulted two psychiatrists in Hong Kong. They were Dr Stephen Ng Wai Mang ("Dr Ng") and Dr Lo Chun Wai ("Dr Lo"), respectively. Both the psychiatrists diagnosed the Respondent as suffering from Major Depressive Disorder. On 21 April 2008, the Respondent pleaded guilty to the charge and did not dispute the elements of the charge. However, in mitigation, the Respondent submitted that he was suffering from Major Depressive Disorder at the time of the offence which affected his judgment and awareness of his conduct. Dr Ng and Dr Lo were called to give evidence. As already mentioned, the Hong Kong District Court convicted and sentenced the Respondent to 12 months imprisonment, suspended for two years.

The proceedings before the Disciplinary Tribunal in Singapore

8 At the proceedings before the Tribunal on 22 September 2009, the Law Society tendered the following Amended Charge upon receiving representations from the Respondent ("the Amended Charge"):

You, [the Respondent], an Advocate and Solicitor of the Supreme Court of Singapore, are charged that you, on or about 21st April 2008, were convicted by the District Court of the Hong Kong Special Administrative Region of an offence of burglary under section 11(1)(b) and (4) of the Hong Kong Theft Ordinance Cap. 210, the particulars of the offence in Hong Kong being that you -

"on the 17th day of January 2008, in Hong Kong, having entered as a trespasser part of a building known as Room 1935, Novotel Citygate Hotel, No. 51, Man Tung Road, Tung Chung, Lantau Island, New Territories, stole therein one bag, one blue tooth earphone, one charger,

one iPod, one mobile phone, one mobile phone SIM card and one palm pilot".

and you have thereby committed an act of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court of Singapore or as a member of an honourable profession contrary to section 83(2)(h) of the Legal Profession Act (Cap 161).

The Law Society also removed all references to the Penal Code from its Statement of Claim. The understanding between the Law Society and the Respondent was set out in a letter from the firm dated 10 September 2009 to counsel for the Law Society, as follows: [note: 1]

a) even if the Law Society agrees that dishonesty is not one of the elements of the charge levied against [the Respondent], the Law Society is not (and should not be seen to be) agreeing that [the Respondent] was not dishonest;

b) all that the Law Society is saying is that the law does not require it to prove dishonesty to succeed in its charge that [the Respondent] was guilty of conduct unbefitting an advocate and solicitor and that as such, the Law Society will not be seeking to prove dishonesty as an element of the charge;

c) whether [the Respondent] was or was not dishonest is, so far as the Law Society is concerned, a matter which remains open for consideration on the basis of the evidence before the Court of Three Judges when deciding on the appropriate sanction to be imposed on [the Respondent] notwithstanding that the Law Society is not seeking to prove dishonesty for the purpose of securing a conviction on the charge; and

d) although the conviction of [the Respondent] in Hong Kong is not conclusive evidence of his dishonesty, it is a fact that [the Respondent] pleaded guilty to an offence which under Hong Kong law contains an element of dishonesty. This is a fact which [counsel for the Respondent is] not disputing although [the firm] will be arguing that the significance of this fact to the issue of whether [the Respondent] was in fact dishonest will depend on all the evidence that will be before the Court of Three Judges including [the Respondent's] evidence as to his state of mind and motivation/reasons for deciding to plead guilty to the offence in Hong Kong.

9 The Respondent pleaded guilty to the Amended Charge. However, he informed the Tribunal that he would be leading evidence on the issue of dishonesty in order to refute the plea of guilt. The Respondent filed two affidavits, his own and that of the psychiatrist he had been consulting since 2 May 2008, Dr Ko Soo Meng ("Dr Ko"). Dr Ko was cross-examined by counsel for the Law Society, Mr Michael Khoo SC. The Respondent contended that he had pleaded guilty because he felt that he was unable to undergo the approximate one-year period that the actual criminal proceedings might take if he did not plead guilty before the Hong Kong court, not least because he was afraid that his mental condition would deteriorate further as a result. There was also the prospect of at least three years of incarceration if he was convicted after trial [note: 2] (which was apparently the "tariff" in Hong Kong for such cases). [note: 3] Dr Ko was of the opinion that the Respondent had been suffering from a psychiatric condition known as a Major Depressive Episode before and up to the date of the incident in Hong Kong. In his view, the Respondent's conduct on the date of the incident was the result of and consistent with a Major Depressive Episode and the Respondent could not have formed the intention to carry out the acts in question in order to cause gain to himself or loss to the victim. [note: 4]

10 The Law Society did not adduce any psychiatric evidence to refute the diagnosis made by

Dr Ko. However, it was submitted that Dr Ko's evidence was weak as it was overly reliant on the reports of Dr Ng and Dr Lo. There was no credible evidence that the Respondent was suffering from a Major Depressive Episode at the time of the offence and even if there was, this did not detract from the fact that the Respondent had the requisite *mens rea* for the offence. The Respondent's guilty plea in Hong Kong was proof (albeit inconclusive) of his having acted dishonestly.

11 The Tribunal found that sufficient gravity for disciplinary action against the Respondent existed under s 83(2)(*h*) of the Act. The Tribunal found that the evidence given by Dr Ko was flawed and weak. Dr Ko was overly reliant on the reports of Dr Ng and Dr Lo and he appeared to have had a limited knowledge of the facts. Significant weight had to be placed on the Respondent's guilty plea and resulting conviction in Hong Kong. His plea was unequivocal and he had expressly admitted to the elements of the offence. However, the Tribunal found that the Law Society had failed to discharge the burden of proving, beyond a reasonable doubt, that the Respondent had been dishonest. The Tribunal was of the view that the Law Society had failed to comprehensively test the evidence adduced by the Respondent and that the Law Society could also have adduced evidence from a psychiatrist to affirmatively prove that the Respondent's behaviour and CCTV footage demonstrated that the Respondent had not, in fact, been acting under the influence of a Major Depressive Episode.

The disciplinary proceedings in Hong Kong

12 The Respondent had also been admitted as a solicitor in Hong Kong on 4 January 2000. However, he did not hold a practising certificate at the time of commission of the offence. Following his conviction in Hong Kong, the Director of Compliance of the Law Society of Hong Kong applied under s 9A of the Hong Kong Legal Practitioners Ordinance (Cap 159) that the Respondent be required to answer the allegation in the following Complaint:

> That you, [the Respondent], being a solicitor and an officer of the court, failed to conduct yourself appropriately in private matters in that you were convicted of one count of Burglary on 21 April 2008 on your own plea and was sentenced to 12 months imprisonment, sentence to be suspended for 2 years and was thereby in breach of principle 1.02 of the Hong Kong Solicitor's Guide to Professional Conduct Volume 1. Such conduct unbefitting a solicitor.

Practice Direction I2, which came into effect on 1 June 1995, states that solicitors in Hong Kong are required to comply with the standards of practice and rules of conduct set out in *The Hong Kong Solicitors' Guide to Professional Conduct* first published by the Law Society of Hong Kong in 1995 and revised from time to time. Principle 1.02 of *The Hong Kong Solicitor's Guide to Professional Conduct Volume 1* reads as follows:

> A solicitor is an officer of the Court (see s 3(2) of the Legal Practitioners Ordinance (Cap. 159)) and should conduct himself appropriately in professional and private matters.

13 The Respondent appeared before the Hong Kong Solicitors Disciplinary Tribunal ("the Hong Kong Tribunal") on 17 December 2009. The Tribunal suspended the Respondent for five years and imposed some conditions on his right to practise after the suspension (see also below at [42]).

Summary of the Law Society's arguments before this court

14 In its written submissions to this Court, the Law Society argued that the Tribunal had erred in holding that the burden was on the Law Society to positively establish that the Respondent was dishonest at the time of the offence. According to the Law Society, the Respondent had pleaded guilty to the disciplinary charge but there was a divergence between the parties on the factual basis

for sentencing, *ie*, whether the Respondent should be considered to have been guilty of dishonest conduct for the purposes of sentencing. Therefore, the Tribunal conducted a particular form of a Newton hearing: a reverse Newton hearing to determine the issue of dishonesty. In the reverse Newton hearing, the Respondent was required to prove that he was not dishonest because the issue of dishonesty related to extraneous matters which the Law Society could not have proved as part of its case had there been a trial. The disputed facts as to whether the Respondent was dishonest were within the Respondent's exclusive knowledge and, therefore, the Respondent had the burden of disproving dishonesty on a balance of probabilities. The Respondent had failed to discharge this burden as the relevant evidence clearly demonstrated that the Respondent had a dishonest intent at the time he misappropriated the items concerned.

15 Further, in oral submissions before this court, Mr Khoo, argued, *inter alia*, that the Respondent, having pleaded guilty to the charge of burglary which itself incorporated the element of dishonesty, could not now argue that he had not been dishonest because the absence of the element of dishonesty would have entailed a rejection of the Respondent's plea of guilt in the first place. The attempt by the Respondent in the present proceedings to argue that he had not been dishonest was, in substance, a collateral attack on his conviction.

16 On the appropriate sentence, the Law Society, in its written submissions, argued that the Respondent should be struck of the roll in accordance with established case law involving solicitors guilty of proven dishonesty. Interestingly, during oral submissions, after Mr Khoo had sight of the sentence imposed by the Hong Kong Tribunal, Mr Khoo submitted that the sentence imposed here should be at least the same as that imposed by the Hong Kong Tribunal.

Summary of the Respondent's arguments before this court

17 Before this court, counsel for the Respondent, Ms Aurill Kam, submitted that the Law Society had the burden of proving, beyond a reasonable doubt, that the Respondent had been dishonest. Having secured a plea of guilt by the Respondent to a disciplinary charge without dishonesty (and thereby avoiding the burden of proving dishonesty), it would be unfair for the Law Society to have the Respondent sentenced on a more serious charge involving dishonesty and yet also have the burden of proof transferred to the Respondent. The Respondent submitted that a Newton hearing was not necessary and could not be used as a pretext or disguise for inflating the misconduct beyond the elements alleged and pleaded to in the Amended Charge. The Respondent emphasised that it was common ground between the parties that the Hong Kong conviction was not conclusive as to any issue in the current proceedings. As we point out below, this raises the key issue as to whether the Hong Kong conviction can be considered by this court and, if so, what weight should be placed upon it (see also below at [22]) – an issue which we will consider in more detail below.

18 The Respondent had explained his reasons for pleading guilty although he felt that he did not possess any criminal intent at the time he allegedly misappropriated the items. It was therefore incumbent on the Law Society to challenge the Respondent with regard to his reasons for pleading guilty. Yet, the Law Society had chosen not to call any evidence of its own before the Tribunal to demonstrate that the Respondent had been dishonest and sought to rely solely on the fact of the Respondent's plea of guilt in Hong Kong. In any event, the evidence demonstrated that the Respondent had not acted dishonestly. The Respondent was suffering from a Major Depressive Episode that impaired his ability to form a dishonest intent.

19 On the issue of sentence, the Respondent submitted that he should not be struck off the roll as he had not been dishonest. This was a case where the misconduct stemmed from mental infirmity. The decision of this court in *Law Society of Singapore v Chiong Chin May Selena* [2005] 4 SLR(R) 320

("*Chiong Chin May Selena*") was referred to by the Respondent as guidance on the approach to be taken in such cases. In that case, the solicitor had failed to prepare or maintain (for her sole proprietorship) any of the requisite financial records or documents that was mandated by the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R8, 1999 Rev Ed). She was found to have been suffering from manic-depressive psychosis and had earlier been hospitalised and underwent intensive electro-convulsive therapy for post-natal depression. The court in that case suspended her from practice for one year, coupled with an undertaking that she would not commence another sole proprietorship. The court had observed (at [34]) that "the appropriate punishment must be tempered by some measure of sensitivity to the [solicitor's] plight …. The [solicitor] is clearly an able person who ought to be able to practice once her medical condition [stabilised]". The Respondent submitted that a fixed term of suspension would be inappropriate and arbitrary in the current case as there was no certainty as to when the Respondent would recover from his mental illness. The paramount consideration of the protection of the public would be adequately served by the Respondent's voluntary undertakings not to apply for a practising certificate without: (i) medical certification of fitness; (ii) consent of the Law Society; and (iii) leave of court. Therefore, the Respondent argued, the appropriate punishment was a censure coupled with the undertakings.

Our decision

20 The approach adopted by the Respondent in the present proceedings was not unlike that adopted in the Hong Kong disciplinary proceedings (with one salient difference, which we will touch on below (at [26])). The gist of the Respondent's case before this court was that he had pleaded guilty to the charge of burglary before the Hong Kong District Court for extralegal reasons. In point of fact, his argument goes, he did not possess any criminal intent at the time he allegedly misappropriated the items concerned. Put simply, he did not know what he was doing and, hence, could not have been guilty of any dishonesty.

21 On the other hand, counsel for the Law Society, Mr Khoo, in his oral submissions before this court, pointed out, *inter alia*, that the Respondent had clearly pleaded guilty to the charge of burglary which itself necessarily incorporated the element of dishonesty (see also above at [15]). He had admitted to dishonesty at least twice, once before the Hong Kong District Court and then before the Hong Kong Tribunal. In the circumstances, any argument to the effect that there had been no dishonesty on the part of the Respondent could not now be made as it would have entailed the rejection of the Respondent's plea of guilt in the first place. Mr Khoo submitted that the only issue before this court was the appropriate sentence to order and that, in any event, the relevant evidence clearly demonstrated that the Respondent had a dishonest intent at the time he misappropriated the items concerned.

22 Having considered the submissions proffered by both parties, the key issue centres, in our view, on this main question: Can the Hong Kong conviction be considered by this court and, if so, what weight should be placed upon it?

23 Turning first to the threshold question: can this court have regard to the Hong Kong conviction? The answer to this question seems to us to be clear (and both parties accepted it) – that we can indeed consider the Hong Kong conviction. It is a relevant – indeed, crucial – fact in the context of the present proceedings. As a matter of fact, if the conviction had been meted out in Singapore, the Respondent would not even have been able to argue against his conviction as it would have been conclusive pursuant to s 83(6) of the Act. We pause to observe that it was precisely because the present proceedings involved a criminal conviction in a foreign jurisdiction that the Law Society brought the charge against the Respondent pursuant to s 83(2)(*h*) of the Act (instead of s 83(2)(*a*) of the Act). We also note that whilst s 83(2)(*h*) is, indeed, a "catch all" provision (see, for

example, the decision of this court in *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 at [40]), it *also* encompasses the *more serious* forms of misconduct (including dishonest conduct) and can also furnish the legal basis for striking the advocate and solicitor off the roll (see, for example, the decision of this court in *Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490).

24 The *further* issue (also alluded to above) is what *weight* we should accord to that conviction in the context of the present proceedings – an issue to which our attention now turns.

25 It is clear that when the Respondent pleaded guilty before the Hong Kong court in the criminal proceedings, he knew precisely what that plea of guilt meant and entailed. After all, he was himself a lawyer of considerable experience and was also represented by counsel (in fact, a Senior Counsel who is described, in the Respondent's own affidavit, as "a leading criminal silk in Hong Kong" [note: 5] (see also above at [7]). In the circumstances, he had more than adequate legal resources available to him in order to enable him to arrive at an informed decision as to whether or not to plead guilty to the charge concerned. He also fully understood the charge that was preferred against him, which charge clearly – by its very nature – involved an element or ingredient of dishonesty (this was confirmed during proceedings before the Tribunal in the context of the present proceedings). [note: 6] He also knew – and, in fact admitted – that there was no assurance that the decision would, if he had claimed trial, not have gone against him and that he would then have faced the prospect of a three year jail term (see also above at [9]). Indeed, we would have thought that if the Respondent had, at the material time, been convinced of his innocence, he should have claimed trial and contested the charge at that particular point in time. In his affidavit, the Respondent admitted that his counsel for the criminal proceedings had taken pains to make his position clear because, "before the hearing, the Prosecution had queried if a plea of guilt was appropriate given the medical evidence tendered". [note: 7] This is, indeed, also clear from the opening statement by counsel himself. [note: 8] With respect, however, this is neither here nor there.

26 However, the Respondent now argues that he had pleaded guilty for the extralegal reasons set out briefly above (at [9]) and that he had never possessed a dishonest intent at any time. If so, as Mr Khoo correctly pointed out, the Respondent's plea of guilt ought to have been *rejected* by the judge. We also agree with Mr Khoo that what the Respondent is now attempting, in quite distinct and separate proceedings, is to effect what is (in substance) a collateral attack on the Hong Kong conviction. The Respondent vehemently denies this but we must look, in the final analysis, at the substance and not merely the form of any argument placed before us. As importantly, we must also examine the relevant arguments made for both their logic as well as their coherence. Having adopted this approach, we are of the view that – on any reasonable as well as logical view – the Respondent *is*, in substance, mounting a collateral attack on the Hong Kong conviction. Put simply, either the Hong Kong conviction was premised on an appropriate legal basis or it was not. If the Respondent is correct in arguing that he pleaded guilty to the charge even though he did not possess the necessary criminal intent, his plea of guilt ought to have been vitiated. We pause to observe, parenthetically, that he did not appeal against his conviction. Be that as it may, he attempted the same argument in the context of the Hong Kong *disciplinary proceedings* before the Hong Kong Tribunal. However (and this is the difference from the present proceedings), because counsel for the Law Society of Hong Kong argued (as did Mr Khoo in the present proceedings) that the Respondent was attempting a collateral attack on the Hong Kong conviction, the Respondent refrained from continuing to pursue that argument (a fuller account of the proceedings before the Hong Kong Tribunal can be found below at [40]–[42]). Unfortunately, the Respondent did not similarly desist in the context of the present proceedings.

27 As Mr Khoo pointed out – correctly, in our view – the Law Society, in amending the charge against the Respondent, was *not* conceding that the Respondent was not dishonest (that this was indeed the Law Society's position was demonstrated in no uncertain terms by a letter written by Mr Khoo, on behalf of the Law Society, to the Respondent's solicitors (dated 16 September 2009) [note: 9] and, indeed, by the correspondence between the Respondent's solicitors and Mr Khoo generally (including the letter just mentioned) [note: 10]). However, as the relevant conviction was one meted out in a foreign jurisdiction (here, Hong Kong), there could *not* (as we have just noted) have been *a conclusive presumption* of the element of dishonesty as such (pursuant to s 83(6) of the Act). It was therefore – at least theoretically – open to the Respondent to argue that he had not been guilty of dishonesty but this would have entailed (as we have been at pains to point out) a collateral attack on the Hong Kong conviction.

28 Whilst it is true that the Tribunal found that the Respondent was not dishonest, this is a finding that was, with respect, based on erroneous grounds. With respect, we are of the view that the Tribunal should not have embarked on an *independent* inquiry as to whether or not the Respondent was dishonest. The focus ought to have been the Hong Kong conviction in general and how it was arrived at in particular. Whilst the Tribunal did refer to the Hong Kong conviction, it did not focus on it as such, preferring, instead, to consider the psychiatric evidence independently. In any event, we agree with Mr Khoo that the main reason why the Tribunal held that no dishonesty had been proved *vis-à-vis* the Respondent was itself premised on an erroneous ground, *viz*, that the Law Society had not adduced any psychiatric evidence to rebut the psychiatric evidence tendered on behalf of the Respondent. Whilst we leave open the reason proffered by Mr Khoo, *viz*, that there was no point in the Law Society adducing psychiatric evidence as any evidence would have been too far removed in point of time from the Respondent's mental state at the material juncture and would therefore have been simply unhelpful, we are of the view that the omission by the Law Society to adduce its own psychiatric evidence was not relevant in any event. We pause at this juncture to note that although the Respondent did adduce psychiatric evidence, this was – in and of itself – neither here nor there. It is, in fact, significant to note that, in any event, such evidence merely repeated (in substance) the psychiatric evidence tendered in the Hong Kong criminal proceedings. Such evidence was only relevant in order to demonstrate (as we have already noted) that the Hong Kong conviction was (in substance) erroneous. But that merely brings us back full circle, so to speak, to the weight (if any) that ought to be placed on the Hong Kong conviction in the first instance. Hence, the fact that the Law Society did not adduce psychiatric evidence did not, with respect, justify the Tribunal's finding to the effect that no dishonesty had been proved *vis-à-vis* the Respondent.

29 It is of the first importance to note, at the outset, that the Hong Kong legal system was – like its Singapore counterpart – inherited from Britain. As former colonies, the common law system was introduced into both these countries and they share – to a large extent – the same legal heritage. More particularly, although Hong Kong is now part of the People's Republic of China, it continues to administer a (separate and quite distinct) common law system. Looked at in this light, it appears to us that – absent exceptional circumstances – the greatest weight ought to be placed upon the Hong Kong conviction. Indeed, this would be an appropriate juncture to consider the Hong Kong conviction in its context. In particular, – and as we shall see – the judge's reasons in arriving at the sentence imposed on the Respondent not only speaks volumes but also serves to simultaneously undermine the very foundation of the Respondent's argument before this court, *viz*, that he (the Respondent) did not possess dishonest intent because his mind was, at the time he allegedly misappropriated the items in question, a complete blank. It was, in effect, an argument centring on a state of "automatism" in which the Respondent was not aware at all of his actions. Even a moment's reflection will reveal that this is an argument that is based on an extreme mental state which, whilst not necessarily unconnected to depression, goes *much further* inasmuch as it attributes to (here) the

Respondent a (temporary) "robotic existence" from the time he took the items concerned until he arrived back at his room. If the Respondent's story is to be believed, he then "snapped out" of this "robotic state", panicked and (as a consequence) placed the items under his bed (where they were subsequently discovered) as well as took the SIM card out of the mobile phone and placed it in his coat pocket (which account was supported by the psychiatrists concerned). We pause to observe that it is *not* sufficient – in order for the Respondent to succeed in his argument – that the Respondent was conscious of the fact that he was misappropriating the items concerned although he could not help himself. His argument – we reiterate – was premised on *a total absence of consciousness of all of his actions and their respective consequences*. This is an important point which, as we shall see, was before the judge during the criminal proceedings in the Hong Kong District Court and (more importantly) which he took into account in *both* accepting the Respondent's plea of guilt *and* in sentencing him. Let us elaborate.

30 In arriving at his decision in the criminal proceedings in the Hong Kong District Court, it is clear, in our view, that District Judge Patrick Li ("DJ Li") did, in fact, take into account the psychiatric evidence tendered on behalf of the Respondent. This is evident from the Reasons for Sentence ("the RS") delivered by the learned judge. [note: 11] In particular, DJ Li noted, first, as follows (see the RS at [5]):

> Mr. Bruce, S.C [counsel for the Respondent] *concedes* that *the [Respondent] does not seek to dispute any elements of the offence. The [Respondent] admits his guilt*. Mr. Bruce, S.C, however, submits that the [Respondent] was suffering from *Major* Depressive Disorder at the time of the offence. *This condition affects his judgement and awareness of his conduct. He urges this court to treat this case as exceptional and adopt a rehabilitation approach in sentencing. He seeks to persuade me to consider community service order or a suspended sentence*. [emphasis added]

31 The learned judge then proceeded to consider the evidence of the psychiatrists (*viz*, Dr Ng and Dr Lo) who were called to give evidence in mitigation on behalf of the Respondent (which clearly stated (in both their respective medical reports as well as on cross-examination by counsel for the Prosecution) the Respondent's position to the effect that he had absolutely no recollection of picking up the items). His summary of this evidence was both succinct, accurate and (as we shall see) significant (see the RS at [6]–[7]):

> 6. Two psychiatrists are called to give evidence in mitigation:
>
> a. Dr. Ng examined the [Respondent] four times and submitted two reports. Dr. Ng opined that the [Respondent] was in a state of disturbed consciousness *and was not fully aware of what he was doing*. The [Respondent] was in heightened anxiety. His conduct may appear to a third party to be rational and deliberate whilst internally he was *not fully aware of his behaviour*. Dr. Ng diagnosed that the [Respondent] was suffering from Major Depressive Disorder. He pointed out that taking items from several locations were consistent with this diagnosis. *The removal of the SIM card from the mobile phone was an attempt to escape from guilt*. Dr. Ng recommended psychiatric treatment and medication. The prognosis is excellent.
>
> b. Dr. Lo also examined the [Respondent] four times and submitted 2 reports. He concluded that the [Respondent] was suffering from Major Depressive Disorder. Dr. Lo pointed out that the [Respondent's] conduct appeared to be rational and deliberate, however, his mind was impaired *and he was not fully aware of what he was doing and the consequence of his conduct*. Dr. Lo recommended treatment but the prognosis is fair. Dr. Lo

pointed out that the taking of items from various places in a small hotel room is not inconsistent with the conduct of a person suffering from depression. *Further, the removal of the SIM card from the mobile phone and the throwing of all items under his bed are irrational conducts seeking release of mental anguish by a depressed person*.

7. Both psychiatrists examined the [Respondent's] diary, letters from his friends and colleague. I do not propose to repeat the content of any of them here. Suffice it to mention that they revealed a long period of mental stress starting from mid-2005. There were escalating stress at work, tension in family and expectations of a career. The [Respondent] eventually sought advice from closed friends and his church pastor.

[emphasis added]

32 It is significant to note, at this juncture, that DJ Li was *fully cognizant* of the evidence of the psychiatrists – not least to the effect that the Respondent was not, as a result of the Respondent's medical condition, "*fully aware* of what he was *doing*" *and* (in the opinion of Dr Lo at least) of "the *consequence* of his conduct" (see the extract of the RS reproduced in the preceding paragraph (emphasis added)). He was also fully cognizant of the evidence resulting from the cross-examination of both psychiatrists by counsel for the Prosecution – especially with regard to this particular issue. [note: 12]

33 In point of fact, therefore, the learned judge had before him all the relevant psychiatric evidence and, if he was of the view that the Respondent had in fact been acting in a "robotic" state or (to put it another way) in a state of "automatism" (thus negativing, *ex hypothesi*, any element of dishonest intent whatsoever), DJ Li would *not* have accepted the Respondent's plea of guilt. As it turned out, the learned judge *was* of the view that the Respondent's mental state *had* an effect – *but only* with regard to *mitigation* of *the sentence* that was to be meted out. Whilst acknowledging *the Respondent's* argument that "[he] *could not recall* how he took the items" (see the RS at [8] (emphasis added)), it was clear that DJ Li did *not* accept this argument from "robotism" or "automatism". Whilst noting that he was "loath to differ from the expert psychiatrists who spent years in the field" (see the RS at [11]), it was clear that, whilst cognizant of the full scope of the psychiatric evidence presented on behalf of the Respondent, the learned judge was *not* convinced with respect to the *entire* diagnosis proffered by both doctors in favour of the Respondent. As DJ Li observed (see the RS at [12]):

Having considered the above, I accept the opinion of the psychiatrists. I accept that the [Respondent] was suffering from *moderate* degree of depression. He was *not fully aware* of *the consequence* of his conduct. [emphasis added]

The following exchange between the learned judge and Dr Ng is also, in our view, instructive and is consistent with the learned judge's findings: [note: 13]

COURT: … I have this question in mind. If the [Respondent] was so scared or out of his mind, why can't he just dump everything in the doorway of the theft scene instead of hiding them under his bed in his room? Can you explain or you think there is no explanation?

A. No explanation. I think this can happen; this can happen.

COURT: Really?

A. Yes. Because I ...

COURT: Actually he can dump everything in a dustbin somewhere else and he won't be caught red-handed.

A. Yes, yes.

COURT: Right?

A. M'm.

COURT: That is a course ...

A. Yes.

COURT: … a clear-minded thief would do.

A. Sure, sure, yes. But I think at that point of time the patient was actually very nervous and very confused. He actually, you know, would not care, you know, what to do. He just, you know, put it under the bed -- in a desk.

COURT: So that shows his irrationality?

A. Yes, that's true.

34 It is clear that the learned judge was of the view that the Respondent was suffering from a Major Depressive Episode of only a moderate degree of severity which did *not*, therefore, go so far as to render him a "robot" or an "automaton". In other words, DJ Li was of the view that the Respondent *did* know what he was doing. Put simply, the ingredients of the offence of burglary (including that of dishonest intent) *had*, in the learned judge's view, been established, although he did take into account the Respondent's medical condition in determining what sentence to mete out to the Respondent. Indeed, DJ Li observed thus (see the RS at [15]):

> While the victim could not be definite, the [Respondent] recalled that the door was half opened. In fact, there was no [prising open] of the room door. I gave the [Respondent] the benefit of the doubt. In my view, the circumstances were akin to an opportunistic burglar. This warrants a departure from the tariff and a lower starting point in sentence.

35 Returning to the issue of sentence, it is clear that DJ Li was extremely merciful and compassionate in meting out the sentence he did because of the Respondent's medical condition. In the learned judge's view (see the RS at [13]–[14]):

> 13. The [Respondent] has a good background. He is a successful counsel earning an annual income of about $500,000 Singaporean currency. He has high professional standing and is of impeccable character before the incident. It does not pay him to take such a great risk and gain so little. There is no explanation except a diseased mind that contributed to his conduct.
>
> 14. While burglary attracts immediate custodial sentence under normal circumstances, this case is exceptional.

36 And, after having made the observations reproduced above (at [34]), DJ Li delivered the following sentence (see the RS at [16]):

> 16. Having considered the background of the [Respondent] and the authorities, I take

> 18 months as the starting point, 6 months discount for his plea, I sentence the [Respondent] to 12 months imprisonment. Bearing in mind the exceptional circumstances, I suspend the imprisonment for 2 years.

37 In the circumstances, it is clear, in our view, that significant weight ought to be placed upon the Hong Kong conviction. We pause to observe that the additional psychiatric evidence adduced on behalf of the Respondent in respect of the present proceedings is, with respect, unhelpful inasmuch as the psychiatrist concerned (albeit the Respondent's personal psychiatrist) focuses, in the main, on the reports by the Hong Kong psychiatrists (see above at [31]). [note: 14] And the subsequent reports by the Hong Kong psychiatrists which were obtained, presumably by way of updates, [note: 15] merely restate what was in the respective psychiatrists' original reports.

38 Having regard to the Hong Kong conviction, we arrive at the conclusion that the Respondent was, in fact, guilty of dishonesty although, as pointed out by DJ Li, there were powerful mitigating factors that stemmed from the Respondent's medical condition.

39 Having considered all the circumstances (including the fact that the Respondent was in fact guilty of dishonesty), we find the Respondent guilty of the Amended charge. And, as we shall see below, the element of dishonesty would be of particular significance in the context of the sanction that should be imposed on the Respondent.

40 It is appropriate to observe, by way of a coda, that the Respondent (who represented himself in the proceedings before the Hong Kong Tribunal) adopted (as also alluded to above) a similar approach before the Hong Kong Tribunal in so far as he sought to argue that his conduct had not been dishonest and only changed his mind later; as the Hong Kong Tribunal observed in its Statement of Findings ("the SOF") (at [4]–[5]): [note: 16]

> 4. Initially the Respondent indicated that he did not admit to the Complaint, although he agreed to a number of facts and did not challenge the authenticity of the information and evidence advanced by the Applicant. Essentially, his case was that he had no dishonesty during the events which constituted the burglary offence he was charged in the criminal case.
>
> 5. At the substantive hearing before the Tribunal on 17th December 2009, after addressing the Tribunal in the opening, he informed the Tribunal that he changed his attitude to the Complaint to that of admission and would no longer assert that he did not have dishonesty at the time of committing the criminal offence.

41 Indeed, during the disciplinary proceedings in Hong Kong, the Respondent sought to interpret DJ Li's Reasons for Sentence in a manner that was wholly contrary to that adopted by this court – arguing, in essence, that the learned judge had, by accepting the evidence of the psychiatrists during the criminal proceedings, also accepted that the Respondent was a complete "robot" or "automaton" in so far as the alleged misappropriation of the items was concerned. [note: 17] Counsel for the Applicant (the Law Society of Hong Kong) adopted – not surprisingly – a completely contrary view, which was very similar to that adopted by this court and which pointed out (correctly, in our view) that the Respondent was, in effect, mounting a collateral attack on the Hong Kong conviction). [note: 18] It suffices for the purposes of the present proceedings to state that the stance adopted by the Respondent was wholly without merit as it was not only a "creative interpretation" of the learned judge's Reasons for Sentence but would also have rendered DJ Li's Reasons for Sentence (as set out and explained above at [30]–[34]) both illogical as well as incoherent. Indeed, the Hong Kong Tribunal

itself was confused by the approach that the Respondent had initially adopted as the latter appeared to be arguing – at one and the same time – that he had voluntarily pleaded guilty to a criminal charge involving dishonesty and yet was not dishonest for the purpose of the disciplinary proceedings. [note: 19] However, as the Hong Kong Tribunal noted (see the preceding paragraph), the Respondent ultimately admitted that he was dishonest after the Chairman of the Hong Kong Tribunal had asked him the following question (which he (the Respondent) then answered in the affirmative): [note: 20]

> So your position now is no longer that you were not dishonest at the time of the offence but then you may be submitting on the degree of dishonesty?

42 In the event, the Hong Kong Tribunal held, as follows (see the SOF at [9]–[14]):

> 9. It is hardly open to the Respondent to challenge the [Law Society of Hong Kong] to prove he was dishonest at the time of the offence. He was convicted on his own plea and admission of facts. Under section 62 of the Evidence Ordinance, which applies to proceedings before the Tribunal under rule 35 of the Solicitors Disciplinary Tribunal Proceedings Rules, it befalls on the Respondent to prove that he actually did not commit the burglary offence, which entailed an element of dishonesty on the part of the Respondent. The Tribunal could see great force in the submission by Ms. Maggie Wong, Counsel for the [Law Society of Hong Kong], that the conviction was virtually conclusive against the Respondent unless he could point to special circumstances justifying an argument otherwise. See [Re a Solicitor], CO/3076/95, 27th February 1996, Queen's Bench Division (Crown Office List) and [Re a Solicitor], CO/1632/95, 6th June 1996, Queen's Bench Division (Crown Office List). Up to the time of the Respondent's admission of his dishonesty in the commission of the burglary offence, he has neither pointed out any special circumstances nor proved that he was not dishonest.
>
> 10. The offence of burglary committed by the Respondent is very serious hence constituted disgraceful, dishonourable and discreditable conduct on his part. The Tribunal therefore finds the Complaint against the Respondent proved.
>
> **REASONS AND ORDER**
>
> 11. The Tribunal has considered the Respondent's mitigation submissions. At the time of the offence, he was suffering from serious depression and did not know the consequences of his actions. Since the conviction, he has returned to Singapore, where he originated. There he took active steps to have his mental condition treated. He has followed his doctors' recommendations and taken the necessary treatments. He has substantially recovered.
>
> 12. Normally, in relation to a case of misconduct by a solicitor concerning an offence involving dishonesty, the Tribunal should pass the sanction of striking off. However, having carefully considered the submissions by the Respondent and the psychiatrists' reports he produced, the Tribunal is prepared to consider this case an exceptional one. He was labouring under mental depression when he committed the offence and has taken active and effective steps to receive treatment. He has taken the conscientious approach of not resuming legal work pending treatment of his mental condition.
>
> **ORDER**
>
> 13. In the circumstances, the Tribunal considers it appropriate to suspend the Respondent rather than to strike him off.

14. The Tribunal orders as follows:

a. The Respondent be suspended from practising as a solicitor in Hong Kong for a period of 5 years from the Clerk's filing of the Order with the Registrar of the High Court.

b. After the suspension of practice, the following conditions be imposed on the Respondent's right to practise for the cumulative period of the first three (3) years of his practice:

i. He cannot practise as a sole-proprietor or partner but only as an employed solicitor; and

ii. He must practise under the close supervision of another solicitor of at least ten (10) years' standing, who is either a senior partner or sole practitioner of a law firm.

c. For avoidance of doubt, the period of three (3) years mentioned in sub-paragraph b above shall only start to run when he actually resumes his practice as a solicitor in Hong Kong.

d. The costs of these proceedings, including the costs of the [Law Society of Hong Kong] in investigating into the matter and in prosecuting the Complaint and the costs of the Clerk, be borne and paid for by the Respondent, such costs to be taxed, if not agreed, on a party-and-party basis.

e. The filing of this Order with the Registrar of the High Court be deferred until the lapse of the appeal time limit or, if the Respondent does appeal against the decision of the Tribunal, until determination or abandonment of such appeal.

[emphasis in original]

43 Whilst we sympathise with the plight of the Respondent in relation to his medical condition, this was (as noted above) only relevant in the context of the mitigation of the sentences meted out against him in the various proceedings. As we have already explained above, however, not only was the Hong Kong conviction completely in order, the sentence meted out was *more than* reasonable in the circumstances *and* clearly demonstrated that the learned judge had *more than* taken into account the Respondent's mental state at that particular point in time. Legal principles were also accompanied (where applicable) by no small measure of mercy in appropriate circumstances. Indeed, we are of the view that both the Hong Kong District Court (in the context of the criminal proceedings against the Respondent) and the Hong Kong Tribunal (in the context of the disciplinary proceedings against the Respondent) were more than merciful and compassionate. As already noted above, the Respondent was only given a suspended sentence in the context of the criminal proceedings (see above at [7]) and was only suspended from practice (and not struck off the roll of advocate and solicitors in Hong Kong) in the context of the disciplinary proceedings (see the preceding paragraph). It is therefore unfortunate that the Respondent sought to mount a root and branch attack on the source of the various disciplinary proceedings brought against him both here as well as in Hong Kong, *viz*, the Hong Kong conviction.

The appropriate sanction

44 We turn now to the appropriate sanction to be imposed on the Respondent. In this regard, the relevant precedents are clear. Where the advocate and solicitor concerned has been guilty of

dishonesty, the court will almost invariably, no matter how strong the mitigating factors advanced by the advocate and solicitor, order that he or she be struck off the roll (see, for example, the decisions of this court in *Law Society of Singapore v Amdad Hussein Lawrence* [2000] 3 SLR(R) 23 ("*Amdad Hussein Lawrence*"); *Law Society of Singapore v Ong Lilian* [2005] SGHC 187 ("*Ong Lilian*"); and *Law Society of Singapore v Ezekiel Caleb Charles James* [2004] 2 SLR(R) 256 ("*Ezekiel Caleb Charles James*")).

45 Work pressure or stress should never be an excuse for a lawyer to act dishonestly. Reference may be made to another decision of this court in *Law Society of Singapore v Wee Wei Fen* [1999] 3 SLR(R) 559 ("*Wee Wei Fen*"), which involved blatant acts of dishonesty. Although there was some indication that the advocate and solicitor concerned was suffering from depression, her primary ailment really centred (unlike the present case) on work stress, to which the court in that case responded as follows (at [40]):

> It is a fact that most lawyers work under constant pressure and it is only inevitable that stress levels are high in the workplace. In fact, it is this sort of environment which provides the dynamism and efficiency with which our legal system is well-known to function. Clearly it is not an excuse for a lawyer to act dishonestly and fraudulently simply because he or she could not cope with the demands of work. While mere slip-ups or inadvertence may in situations be condonable, the same cannot be said of a series of deliberate acts of deceit committed over a period of more than a few months, which acts gravely compromised the interests of the solicitor's clients. It cannot be over-emphasised that the function of any disciplinary tribunal is to uphold the good name of the profession and to ensure that that name is not tarnished by the aberrant actions of a mere handful who cross the line. In addition, the court has also to be mindful of the exceedingly compelling interest of protecting those members of the public who find need to use the services of the profession. That no benefit whatsoever accrued to the lawyer through his or her acts is also of no relevance to the question of what is the appropriate order to be imposed when all the offences clearly involved an element of dishonesty …

Reference may also be made, in this regard, to *Amdad Hussein Lawrence* (at [15]–[16]); *Ong Lilian* (at [12]); and *Ezekiel Caleb Charles James* (at [14]).

46 Admittedly, what the Respondent was suffering from here went beyond mere work stress and the dishonest act was a single episode, unlike the conduct of the advocate and solicitor in *Wee Wei Fen* where there was a series of deliberate acts of deceit committed over a period of more than a few months. However, that does not excuse the fact that the Respondent's conduct was dishonest. The precedents have clearly established that even a single act of dishonesty may result in the advocate and solicitor being struck off the roll. In *Ong Lilian*, the solicitor was struck of the roll because she had been convicted of one count of theft in a dwelling place under s 380 of the Penal Code. The court observed (at [11]):

> We recognise that the total value of the items which the respondent stole in the present case was not large and she was only sentenced to four weeks' imprisonment. While the penalty imposed by the criminal court is a relevant consideration (see *Wee Wei Fen*[7] *supra* at [32]), and would go to show how gravely the trial court viewed the offence, it is not determinative of how a disciplinary body, like this court, should view the misconduct, especially where dishonesty was clearly present. In our opinion, the following passage from *Wee Wei Fen* at [39] is an accurate reflection of the position:
>
> > [I]n a case where the court is bound to consider the appropriate order to be made in respect of an advocate and solicitor convicted of a criminal offence – particularly one involving

dishonesty – the paramount considerations must be that of the protection of the public and the preservation of the good name of the profession. Certainly the court will give its consideration to the mitigating circumstances in each individual case but it can do so only so far as is consistent with the above two related objectives: see *Re Knight Glenn Jeyasingam*, supra at p 537. In *Tham Yu Xian Rick*, we held, following *Bolton v Law Society*, supra at p 492, that considerations which ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases as show cause proceedings are primarily civil and not punitive in nature. In any case, the weight to be attached to a plea in mitigation in disciplinary proceedings is negligible where the case is one involving proven dishonesty, as striking off will often be the consequence as a matter of course.

47 Similarly, in *Amdad Hussein Lawrence*, the respondent, an advocate and solicitor of 15 years' standing, pleaded guilty to and was convicted of a single count of theft in a dwelling place under s 380 of the Penal Code. He stole $478.50 worth of items, including a VCD player, VCDs, food items and a toy from a supermarket. He was sentenced to two months imprisonment. During the disciplinary proceedings, the Court held that the fact that the Respondent was suffering from stress and was under medication at the time of the offence had negligible weight as the offence involved proven dishonesty. The Court ordered the Respondent to be struck of the roll and observed thus (at [17]):

> 17 In the criminal proceedings against the respondent, medical reports were tendered in mitigation, suggesting that the respondent's higher mental functioning, judgment and impulse control could have been affected or impaired by the effects of the medication which were taken prior to the incident. Nonetheless, it was not disputed that the respondent possessed the specific intent and retained the ability to distinguish between right and wrong at the material time. *In our view, the weight to be accorded to this mitigating factor was negligible when the offence involved proven dishonesty*. [emphasis added]

48 Admittedly, each case ought to be decided on its own facts. For example, in the present proceedings, the fact situation appears to be somewhat different inasmuch as the Respondent's mental function appears to have been relatively more impaired than that of the advocate and solicitor in *Amdad Hussein Lawrence* although, to the extent that we have found that the Respondent was aware of what he was doing, there is (to that extent) some similarity with the facts of that same case. However, in sentencing the Respondent, the more severe mental condition of the Respondent carries little weight since the offence for which the Respondent was convicted involved dishonesty (in contrast to, for example, the conduct of the advocate and solicitor in the decision of this court in *Chiong Chin May Selena* (where the advocate and solicitor concerned was not struck off the roll but was, instead, suspended from practice for one year)). However, as we shall see below (at [52]–[53]), the relatively more severe mental condition the Respondent was suffering from may have a possible bearing with regard to *the future*.

49 The aim here is not to punish the Respondent for his conduct. This task has been performed by the criminal proceedings in Hong Kong. Rather, we have the task of determining whether the Respondent has been guilty of such conduct that makes him unfit to be a member of the legal profession. In sentencing solicitors in such circumstances as the present, a court must keep in mind the need to preserve the good name of the profession and the protection of the public. At this juncture, it will be appropriate to repeat the observations of this Court in *Re Knight Glenn Jeyasingam* [1994] 3 SLR(R) 366 (at [18]):

> More importantly, in our view, in any case where the court is bound to consider the appropriate order to be made in respect of an advocate and solicitor convicted of a criminal offence –

particularly one involving dishonesty – *the paramount considerations must be the protection of the public and the preservation of the good name of the profession. Certainly the court will give its consideration to the mitigating circumstances in each individual case but it can do so only so far as is consistent with the above two related objectives*. As the Law Society of the United Kingdom noted in its *Guide to the Professional Conduct of Solicitors* (1990 Ed) at p 177:

> If the need to protect the good name of the profession ultimately causes hardship to an individual whose misconduct has led to his being struck off, it has to be accepted as the price of maintaining the reputation of the profession and the public confidence in it.

[emphasis added]

50 The legal profession cannot be seen to be tolerant of any act of dishonesty on the part of an advocate and solicitor, even if the dishonesty has been of a technical nature (such as in the present case). We also bear in mind the following observations of this court in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 (at [12]–[13]), which were in fact applied in both *Amdad Hussein Lawrence* and *Ong Lilian*:

> 12 There are also the interests of the honourable profession to which the solicitor belongs, and those of the courts themselves, to consider. The administration of justice can only proceed on the basis that solicitors can place reliance upon the honesty of the solicitors with whom they deal. The public too must be able to repose confidence in a profession which plays so indispensable a part in the administration of justice. Similarly, the courts of this country must be able to depend on the honesty and integrity of all practitioners appearing before them and to expect that they will maintain the highest standards of personal honesty and integrity in their dealings with the courts.
>
> 13 There is therefore a serious responsibility on the court, a duty to itself, to the rest of the profession and to the whole of the community, to be careful not to accredit any person as worthy of public confidence and therefore fit to practise as an advocate and solicitor who cannot satisfactorily establish his right to those credentials. In the end therefore, the question to be determined is whether the solicitor in question is a fit and proper person to be an advocate and solicitor of the court, and the orders to be made are to be directed to ensuring that, to the extent that he is not, his practice is restricted.

51 In the circumstances, we order that the Respondent be struck off the roll and that he bear the costs of the proceedings both here and below.

52 However, in view of the special mitigating circumstances with respect to the Hong Kong conviction (centring on the Respondent's mental depression at the material time), we are of the view that it is quite likely that such conduct on the part of the Respondent will not be repeated (we note, in this regard, the numerous testimonials on behalf of the Respondent, expressing shock and disbelief at what, in their view, was very uncharacteristic conduct on the part of the Respondent). In the circumstances, the Respondent could possibly apply for reinstatement to the roll within a relatively short period of time (in accordance with the principles laid down by this court, in particular, in *Knight Glenn Jeyasingam v Law Society of Singapore* [2007] 3 SLR(R) 704 ("*Knight Glenn Jeyasingam*"); *Narindar Singh Kang v Law Society of Singapore* [2007] 4 SLR(R) 641; *Gnaguru s/o Thamboo Mylvaganam v Law Society of Singapore* [2008] 3 SLR(R) 1; and *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore* [2009] 4 SLR(R) 1018). However, as Chan Sek Keong CJ, delivering the grounds of decision of this court in *Knight Glenn Jeyasingam* observed (at [11]–[12]):

11 Although s 102 does not provide that a minimum period of time should have elapsed before an applicant may seek to be restored as an advocate and solicitor, *it is a well-established rule that a significantly longer period than five years should have passed before he should consider making such an application*: *Re Chan Chow Wang* [1983-1984] SLR(R) 55; *Re Lim Cheng Peng* [1987] SLR(R) 582; *Re Nirmal Singh s/o Fauja Singh* [2001] 2 SLR(R) 494 ("*Re Nirmal Singh*"); and *Re Gnaguru s/o Thamboo Mylvaganam* [2004] SGHC 180.

12 *The reason for this rule is that under s 83(1) of the LPA, the maximum period for which a lawyer may be suspended is five years, and a striking off should normally be more serious than a suspension. The courts have accordingly held that while an application for restoration to the roll might be made at any time, such an application would not be entertained unless it was made after a period significantly longer than five years from the time when the applicant was struck off the roll. He or she ought not to be placed in substantially the same position as one who has been suspended for the maximum period of five years under s 83(1) of the LPA*: see [13] of *Re Nirmal Singh*. The overriding concern is that the application should not be made prematurely, having regard to the nature of the criminal or disciplinary offences that led to the applicant's disbarment.

[emphasis added]

For the reasons aforesaid, this appears to be an exceptional case where the element of dishonesty manifested by the Respondent was in a one-off case at a time when he was under some psychological stress. We also note that the fact that the Respondent had voluntarily ceased practice may also be taken into account in appropriate circumstances (see *Knight Glenn Jeyasingam* (at [14]–[17])). In the circumstances, it seems to us that the normal waiting period before a solicitor who is struck off for dishonest conduct may apply for reinstatement as enunciated in *Knight Glenn Jeyasingam*, *ie*, a period *significantly longer* than five years, may not be appropriate in the context of the present case.

53 Further, whether the Respondent is successful in such an application will obviously depend on all the circumstances of the case at that particular point in time (including the fact as to whether he has recovered from his medical condition and is able to practise law again and, if so, whether appropriate constraints on the extent of his practice ought also to be imposed).

[note: 1] See the Respondent's Bundle of Documents, vol 2 ("2RBD"), pp 517–518.

[note: 2] See also the Respondent's affidavit in the Respondent's Bundle of Documents, vol 1 ("1RBD"), pp 24 and 26.

[note: 3] See the Respondent's affidavit, *ibid*, p 23.

[note: 4] See Dr Ko Soo Meng's affidavit in 1 RBD, p 255.

[note: 5] 1RBD, p 23.

[note: 6] See 2RBD, especially p 494.

[note: 7] 1RBD, p 28.

[note: 8] *Ibid*, pp 84 and 85.

[note: 9] 2RBD, pp 515–516.

[note: 10] See generally, *ibid*, pp 503–528 and 539–544.

[note: 11] 1RBD, pp 211–215.

[note: 12] *Ibid*, especially at pp 104–109 and 117–118, respectively.

[note: 13] *Ibid*, p 100.

[note: 14] See, for example, *ibid*, p 291.

[note: 15] *Ibid*, pp 297–336.

[note: 16] See Documents Relating To Hong Kong Disciplinary Proceedings, p 5.

[note: 17] See generally, *ibid*, especially pp 44–46 and 53–54.

[note: 18] See generally, *ibid*, especially pp 15–19.

[note: 19] See, for example, *ibid*, pp 47, 47 and 49. See also generally the Respondent's Written Opening Submission, *ibid*, pp 81–86.

[note: 20] *Ibid*, p 50.