IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 174

Originating Summons No 7 of 2017

Between

Law Society of Singapore

… *Applicant*

And

Chia Choon Yang

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings]
[Legal Profession] — [Show cause action] — [Grossly improper conduct] — [Appropriate sanction]

Law Society of Singapore
v
Chia Choon Yang

[2018] SGHC 174

Court of Three Judges — Originating Summons 7 of 2017
Sundaresh Menon CJ, Steven Chong JA and Chao Hick Tin SJ
2 May 2018

31 July 2018

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This is the application of the Law Society of Singapore ("the Law Society") for Mr Chia Choon Yang of Chia Choon Yang Law Practice ("the Respondent") to show cause as to why he should not be made to suffer punishment under s 83(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA"). After hearing the parties' submissions, we found that due cause was made out and ordered that the Respondent be suspended from practice for a period of 15 months from the date of our decision. We now set out the detailed reasons for our decision.

Facts

2 The Respondent was admitted to the bar on 12 November 1969, and was practising as a sole proprietor at the time of the offence. At the time of the show

cause proceedings before us, he did not hold a practicing certificate. He had voluntarily suspended his practice from April 2017.

3 In April 2016, a complaint was lodged against the Respondent for falsely attesting in a notarial certificate that he had witnessed the signing of a power of attorney ("the POA"), when he had not in fact done so. For this, he was charged with grossly improper conduct in the discharge of his professional duty under s 83(2)(*b*) of the LPA ("the Charge"):

CHARGE

> You, Chia Choon Yang of Chia Choon Yang Law Practice, an advocate and solicitor, while exercising the functions of a notary public, falsely attested and testified in your Notarial Certificate dated 14th July 2015 that New Eastern (1971) Pte Ltd, a Singapore registered company had issued the attached certified original power of attorney dated 14 July 2015 which was signed by its duly authorized officer Loy Teu Wee ("Loy"), director, as witnessed by you, when in fact the said power of attorney was not signed in your presence by the said Loy, and accordingly, you are guilty of gross[ly] improper conduct in the discharge of your professional duty within the meaning of section 83(2)(b) of the Legal Profession Act (Cap. 161, Rev Ed 2009).

4 For the same act, the Respondent also faced an alternative charge of misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court under s 83(2)(*h*) of the LPA ("the Alternative Charge").

5 Before the Disciplinary Tribunal ("the Tribunal"), the Respondent did not contest the charges, and he unreservedly admitted to the statement of facts detailing his misconduct. On 14 September 2017, the Tribunal rendered its decision and determined that there was sufficient cause for disciplinary action under s 83 of the LPA.

The charges

6 The facts pertaining to the charges are simple and undisputed. On 14 July 2015, Mr David Li ("Mr Li"), a client of the Respondent, brought a document to the Respondent's office. On the face of it, the document was a POA granted to Mr Li by a company known as New Eastern (1971) Private Limited ("New Eastern"). Notably, when it was presented to the Respondent, the POA evidently already bore the signature of one of New Eastern's directors, Mr Loy Teu Wee ("Mr Loy"). The POA was in the Chinese language and purportedly conferred wide-ranging powers on Mr Li, stating as follows when translated into the English language:

> POWER OF ATTORNEY
>
> This is hereby to authorize David Li I/C No. SXXXXXXXB to handle various matters relating to the Principal NEW EASTERN (1971) PTE LTD on behalf of the Principal. The Power of Attorney shall come into force from this present day. The Power of Attorney is transferrable, and enables the agent to act on behalf of the Principal to sign contract, decide judicial proceedings and arbitrations, etc.

7 Mr Li told the Respondent that two other persons had witnessed Mr Loy signing the POA, which was to be used in the People's Republic of China for business purposes, and thus needed to be notarised and then legalised by the Chinese embassy in Singapore. The Respondent accepted Mr Li's representations and accordingly appended his signature and affixed his seal of office as a notary public under the words "Notarized / Witnessed by" on the POA.

8 The Respondent then prepared a notarial certificate stating that he had witnessed Mr Loy signing the POA, and presented it to the Singapore Academy of Law, which authenticated the Respondent's signature. The notarial certificate

was subsequently presented to the Chinese embassy for further authentication. It stated as follows:

> TO ALL TO WHOM THESE PRESENTS SHALL COME
>
> I CHIA CHOON YANG NOTARY PUBLIC duly appointed in the Republic of Singapore DO HEREBY CERTIFY THAT
>
> NEW EASTERN (1971) PTE LTD a Singapore registered company has issued as attached a certified original of a Power of Attorney dated 14 July 2015 signed by the duly authorised officer Loy Teu Wee Director and witnessed by me as notary public in the Republic of Singapore appointing its representative named therein to act as stated.
>
> IN TESTIMONY WHEREOF I the said Notary Public have hereunto subscribed my name and affixed my seal of office this 14th day of July 2015.

9 Slightly less than a year later, on 20 April 2016, a complaint was lodged by a director of New Eastern against the Respondent for falsely attesting that he had witnessed Mr Loy signing the POA. Mr Li had purportedly used the POA to enter into a supply contract with a Chinese company without New Eastern's knowledge or consent.

10 The Respondent admitted that by his conduct, he had falsely represented that he had verified the identity of the signatory (namely, Mr Loy) and that Mr Loy had signed the POA before him.

Proceedings before the Tribunal

11 In its report, the Tribunal considered only the Charge, finding that it was unnecessary to consider the Alternative Charge because both charges dealt with the same incident. The Tribunal noted that the Respondent was deeply remorseful for having done what he did, and also noted that this was his first disciplinary case in his "almost half century in the profession". But the Tribunal

nevertheless concluded that the Respondent's misconduct was so serious as to warrant disciplinary action under s 83 of the LPA, observing as follows:

> While the Tribunal is of the view that the Respondent is genuinely remorseful, and his conduct after the complaint was made has been entirely honourable, thereby allowing this disciplinary hearing to proceed expeditiously, the Respondent's lapse was a serious one. A Notary Public plays an important role and a failure to discharge such role with sufficient diligence can give rise to serious consequences including the perpetration of fraudulent acts. There was therefore a public interest that had been adversely affected.

Our decision

12 We find, and it is undisputed, that the Respondent was guilty of grossly improper conduct, the gravity of which must not be understated. A notary public has an important role in assuring the authenticity of documents and the identities of the signatories. The failure to properly discharge such a role compromises public confidence in notaries public and inevitably in the legal profession as a whole. Indeed, such is the severity with which the court treats cases of false attestation that a solicitor who "falsely attests to witnessing the signature of a person on a document commits a disciplinary offence *even if he is certain that the document was signed by that person*" [emphasis added] (*Law Society of Singapore v Sum Chong Mun and another* [2017] 4 SLR 707 ("*Sum Chong Mun*") at [42]).

Appropriate sanction

13 As to the appropriate sanction, the Law Society submitted that actual harm had been caused by the Respondent's misconduct because the POA had been used by Mr Li to cause New Eastern to enter into a contract. It also submitted that the fact that the Respondent had voluntarily ceased practice did not mean that the court ought not to order a period of suspension. In this regard,

the Law Society initially sought a suspension for a period not exceeding two years but later submitted that a suspension period of one year would be sufficient. In support of its submission for a suspension, it relied on two cases, namely, *Sum Chong Mun* and *Law Society of Singapore v Low Seow Juan* [1996] SGDSC 4 ("*Low Seow Juan*"). We examine these cases in greater detail below (see [32]–[34] and [45]–[46] below), and it suffices to note here that both those cases concerned misconduct involving false attestation, for which the errant solicitors were sanctioned with periods of suspension ranging from one to two years.

14 On the other hand, the Respondent submitted that a censure or a fine would be adequate. He argued that a period of suspension would be excessive, highlighting his deep remorse and the clean record that he had maintained over the course of several decades. He also claimed that there was no dishonesty in his misconduct, and that he only received a total of $75 in notarial fees. He further averred that he had no reason to disbelieve Mr Li, whom he had previously dealt with. He also submitted that a suspension order would be excessive because he had voluntarily suspended his practice since April 2017, and that this self-imposed suspension (which had lasted more than a year by the time of his show cause proceedings before this court) would otherwise be wholly overlooked and attract no credit at all. If a term of suspension was to be ordered, the Respondent submitted that the period should be less than one year.

15 At the outset, we disagreed with the Respondent that his offence did not involve *any* dishonesty. It has been noted that the submission of a false document by an errant solicitor with the intention that it be acted on involves an element of deceit (*Rajasooria v Disciplinary Committee* [1955] MLJ 65 at 70). The Respondent's act of false attestation in this case *necessarily* involved

dishonesty given that he had asserted a fact or a state of affairs that he knew was untrue. Even on the assumption that the Respondent had no reason to disbelieve Mr Li's assurance that Mr Loy had signed the POA, the fact remains that by signing the POA as a witness and then affixing his seal and completing the notarial certificate, the Respondent had falsely asserted that he had personally witnessed the execution by Mr Loy of the POA. Further, he did so knowing that third parties would or might rely on his seal and notarial certificate in treating the POA as genuine and validly executed. The Respondent might not have known whether Mr Loy had in fact signed the POA. But he did know that Mr Loy had done no such thing *in his presence*. Yet this is what he falsely asserted had taken place, and it cannot seriously be disputed that the making of such a statement, which the Respondent knew to be false and which he knew would likely be relied on by third parties as true, involved dishonesty.

General sentencing principles

16 The question that then arose for our determination was the appropriate sanction that should be imposed in the light of the Respondent's dishonesty. We have repeatedly and consistently held that dishonesty on the part of a solicitor will be viewed with utmost gravity and generally be met with the direst consequences. In this context, it will be useful, first, to reiterate the well-established general objectives and principles that guide us in the determination of sanctions for errant solicitors and these are as follows (*Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [86]; *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi s/o Madasamy*") at [31]):

(a) to uphold public confidence in the administration of justice and in the integrity of the legal profession;

(b) to protect the public who are dependent on solicitors in the administration of justice;

(c) to deter similar offences being committed by the errant solicitor, or for that matter, by other like-minded solicitors; and

(d) to punish the errant solicitor for his misconduct.

17 All of these matters are to be taken into account when determining the appropriate sanction. But we have also held that where these matters pull the court in different directions in any given case, it is the interest of the public that will be paramount and must therefore prevail (*Ravi s/o Madasamy* at [32]). Because of this, we have held that mitigating factors do not carry as much weight in disciplinary proceedings as they do in criminal proceedings. This is because the principal purpose of sanctions is not to punish the errant solicitor but to protect the public and uphold confidence in the integrity of the legal profession. Hence, even if a particular sanction might appear excessive when assessed solely from the perspective of the errant solicitor's culpability, such sanction may nonetheless be warranted to protect the public and uphold confidence in the profession (*Ravi s/o Madasamy* at [33]). As noted in *Bolton v Law Society* [1994] 1 WLR 512 at 519, the "reputation of the profession is more important than the fortunes of any individual member" because "[a] profession's most valuable asset is its collective reputation and the confidence which that inspires". How then are these considerations applied in the specific context of misconduct that entails dishonesty on the part of the solicitor?

Approach to dishonest conduct

Dishonesty almost invariably leads to striking off

18 As noted above, misconduct of a solicitor that involves dishonesty is treated with utmost severity, and that is the case even where the dishonesty might be described as being "technical" in nature (*Udeh Kumar* at [101]–[104]). In *Udeh Kumar*, in the context of a solicitor who made false statements to the court and who encouraged his client to procure a medical certificate under false pretences in order to avoid attending court, we rejected the notion that there is a "spectrum of dishonesty" inviting a "spectrum of punishment", and held that such dishonesty will almost invariably lead to an order for the striking off of the solicitor (*Udeh Kumar* at [104]). Such an uncompromising stance is maintained for good reason. As Yong Pung How CJ observed in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 ("*Ravindra Samuel*"), the public and the courts repose a great deal of confidence and reliance on the honesty of solicitors, who play a crucial role in the administration of justice (at [12]):

> 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.

19 In *Udeh Kumar*, we identified three broad categories of cases where dishonesty will almost invariably lead to an order for striking off (at [105]–[108]):

(a) First, where the errant solicitor has been convicted of a criminal offence involving dishonesty that implies a "defect of character" that renders him unfit for the profession;

(b) Second, where the errant solicitor fails to deal appropriately with his client's money or his firm's accounts. This category of cases would also include instances where the solicitor has been dishonest in his dealings with the client such that there is a violation of the relationship of trust and confidence that inheres in the solicitor-client relationship; and

(c) Third, where the errant solicitor is fraudulent in his dealings with the court, or breaches his duty of candour to the court and violates his obligations as an officer of the court. This is rooted in the fact that at the core of the solicitor's role is the duty to assist in the administration of justice.

20 These categories of cases illustrate the overarching principle that striking off will be the presumptive sanction in cases involving dishonesty that is indicative of a character defect rendering the solicitor unfit for the profession, or if it undermines the administration of justice. We briefly alluded to this in *Ravi s/o Madasamy*, where we observed at [48] that:

> [C]ases involving dishonesty stand apart because if a solicitor is found to be dishonest, he is presumptively unfit to be accredited as a member of the profession, which has, as its central calling, an important role in the administration of justice. Dishonesty attacks the very core of the trustworthiness and integrity of a solicitor, and in a broader sense, the integrity of the profession and the legitimacy of the administration of justice.

21 A few illustrations would be apposite here. Beginning with criminal convictions, there are numerous instances where errant solicitors have been struck off upon conviction of an offence involving dishonesty, even where the offence had not been committed in the course of their professional duties. Examples include *Law Society of Singapore v Amdad Hussein Lawrence* [2000]

3 SLR(R) 23 and *Law Society of Singapore v Ong Lilian* [2005] SGHC 187, where the court ordered the striking off of the errant solicitors after they were convicted of theft under the Penal Code (Cap 224, 2008 Rev Ed). More recently, a solicitor was struck off in *Law Society of Singapore v Ong Cheong Wei* [2018] 3 SLR 937 ("*Ong Cheong Wei*") for evading taxes, thus committing an offence under the Income Tax Act (Cap 134, 2004 Rev Ed). Most noteworthy for present purposes is *Law Society of Singapore v Choy Chee Yean* [2010] 3 SLR 560 ("*Choy Chee Yean*"), which we noted in *Udeh Kumar* at [102] as best exemplifying the severity with which the court deals with dishonesty. In *Choy Chee Yean*, the errant solicitor was convicted in Hong Kong of burglary, and the court ordered that he be struck off notwithstanding the evidence that he was suffering from a mental disorder at the time of the offence. The court accepted that the errant solicitor's dishonest act was uncharacteristic, likely to be one-off, and was due to his impaired state of mind at the material time. But it nevertheless ordered him to be struck off, noting only that on account of the strong mitigating factors that were present in that case, he could conceivably apply for reinstatement before the normal extended waiting period (at [52]).

22 Equally common are cases where errant solicitors have been struck off for acting dishonestly against their clients' interest. It has been noted that such acts of dishonesty are particularly egregious because they strike at the heart of a solicitor's duty to act in his client's best interests, and that in turn has the tendency to severely erode public confidence in the legal profession (see Jeffrey Pinsler, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007) ("*Ethics and Professional Responsibility*") at paras 13–001 and 13–047). Thus, in *Ravindra Samuel*, the court struck off an errant solicitor who dishonestly failed to account for two sums of client money. And, in *Law Society of Singapore v Wee Wei Fen* [1999] 3 SLR(R) 559, the errant solicitor was struck off for, among other things,

forging an order of court under the Mental Disorders and Treatment Act (Cap 178, 1985 Rev Ed) declaring that her clients' mother was of unsound mind. Her clients had instructed her to obtain such an order of court, but she took no action and later forged the order of court instead. Similarly, in *Law Society of Singapore v Quan Chee Seng Michael* [2003] SGHC 140, which concerned a conveyancing matter, the court struck off an errant solicitor who acted against the interests of his clients by dishonestly failing to advise them that excessive interest had been charged and went on to effect payment (including of such interest) from the proceeds of sale without informing the affected clients (at [36]).

23 Finally, it is a solicitor's imperative duty "to ensure that he never communicates information, makes submissions, presents evidence or facts which would mislead the court" (*Ethics and Professional Responsibility* at para 04–001). The very fabric of our adversarial system hinges on this duty, and it has been noted that the court is "inextricably and inescapably dependent … on the integrity of solicitors appearing before it" (*Public Trustee and another v By Products Traders Pte Ltd and others* [2005] 3 SLR(R) 449 at [1]). It is thus unsurprising that the court takes a very stern view of errant solicitors who deceive the court and fail in their duty of candour. In *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR(R) 587 ("*Chung Ting Fai*"), it was observed at [50] that an errant solicitor who knowingly drafts a false affidavit for self-serving reasons would generally be struck off. In the same vein, in *Law Society of Singapore v Dhanwant Singh* [1996] 1 SLR(R) 1, the errant solicitor was struck off for helping his clients avoid attending court by procuring false medical certificates for them. We also noted in *Udeh Kumar* at [108] that the suspension of six months imposed in *Re Ram Goswami* [1988] 2 SLR(R) 183, where the errant solicitor lied to the court in a bid to prevent the bail money

furnished by his client (a bailor) from being forfeited, was manifestly inadequate and decided wrongly.

24 In our judgment, these are cases that warranted the sanction of striking off because they either indicated a character defect in the solicitor which made him unfit for the profession or where the misconduct struck at the heart of the administration of justice. But in exceptional cases, where the dishonesty does not fall into these categories, an order for striking off might conceivably be disproportionate. In such circumstances, it will be necessary to examine the facts more closely to determine the appropriate sanction.

Where striking off could be excessive

25 That not every instance of dishonesty will warrant striking off is manifest in the authorities, which bear out the proposition that indeed there is a small category of cases that fall outside the foregoing categories of cases in which striking off is the presumptive penalty to be imposed on the solicitor who has been dishonest. In this small category, as we have noted above, the court will have to examine the facts of the case closely in order to determine whether striking off is in fact warranted. This view finds support in *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin) where it was observed at [13] that while striking off is "the normal and necessary penalty in cases of dishonesty", "[t]here will be a small residual category where striking off will be a disproportionate sentence in all the circumstances".

26 The decision of the English High Court in *John Irvine Burrowes v Law Society* [2002] EWHC 2900 (Admin) ("*Burrowes*") provides a useful illustration of such a case. The errant solicitor, Mr John Burrowes ("Mr Burrowes") helped prepare a will for his clients, who attended at his office to execute it. But there were no witnesses to the execution, which would have

rendered the will invalid. Against his advice, the clients instructed him that they wanted to execute the wills there and then without witnesses. Mr Burrowes complied. He wrote on the will the names of two persons and listed them as witnesses, when they had not in fact witnessed the execution of the will. A new will was properly executed a few days later, and a complaint against Mr Burrowes was subsequently lodged. For his misconduct, the disciplinary tribunal ordered that he be struck off the roll.

27 On appeal by Mr Burrowes, the disciplinary tribunal's order was quashed. The English High Court noted that the solicitor had an unblemished record, and that his misconduct was an isolated incident that was out of character. It was further observed that he was suffering from clinical depression at the material time, and that he had been pressured by his clients into having their will executed without witnesses. It was further accepted that his misconduct had not benefited him, and that the error was corrected within days. It was thus thought that an order for striking off would be a disproportionate sanction, and that the maximum statutory fine might have been appropriate. But no fine was imposed in the circumstances given that his practice had effectively been suspended for two months by that time, and the loss of income was deemed sufficient as a penalty for his misconduct.

28 Similarly, in *Fraser v The Council of the Law Society of New South Wales* [1992] NSWCA 72 (unreported) ("*Fraser*"), the New South Wales Court of Appeal dealt with a case analogous to the one before us. The errant solicitor, Mr Paul Fraser ("Mr Fraser"), signed a "certificate of explanation" certifying that he had explained certain mortgage documents to two mortgagors. He did so at the request of Ms Peta Goode ("Ms Goode"), who worked for a firm providing land title conveyancing services. Ms Goode had informed Mr Fraser that the mortgagors had already had the documents explained to them by a non-

practising barrister, Mr Robert McConnell ("Mr McConnell"), whom Mr Fraser thought highly of. But the mortgagees had declined to accept a certificate from a non-practising barrister, and a fresh certificate of explanation was required. Ms Goode had also informed Mr Fraser that it was difficult to contact the mortgagors, and that there was some urgency in completing the transaction, which necessitated a certificate of explanation. On Ms Goode's assurances, Mr Fraser proceeded to sign a certificate of explanation notwithstanding that he had never spoken to the mortgagors. For this, the disciplinary tribunal ordered that he be struck off the roll.

29 Mr Fraser appealed against the tribunal's decision, and the New South Wales Court of Appeal allowed his appeal, substituting the striking off order with a fine. It found that his conduct was fraudulent, but observed that not all acts of fraud necessitated an order for striking off. Kirby P noted as follows at p 8:

> The duty of this Court is to protect the public, to uphold the standards of the legal profession and to mark the disapprobation of the conduct of legal practitioners who engage in fraud of whatever kind. … Solicitors enjoy special privileges and submit to special duties as a consequence. However, fraud clearly manifests itself in a multitude of different ways. The fraud to which [Mr Fraser] admitted in this case was potentially serious. But in the event, it had serious consequences only for [Mr Fraser] himself. I do not believe that fraud as such, admitted or proved, requires in every case, without more, the removal of the name of a solicitor from the roll. It is necessary to examine in each case the nature of the fraud involved. Many acts of fraud will indeed require removal from the roll. In other cases, a less drastic determination will be appropriate.

30 On the facts, the court found that there were a few factors that militated against the tribunal's decision to strike him off the roll. Among other things, it acknowledged that his misconduct stemmed from an isolated and momentary lapse of judgment. It also accepted that he did not stand to personally benefit

from the signing of the certificate. Crucially, it noted that Mr Fraser had believed in Mr McConnell's ability to give the explanation necessary for the certificate, and that this was not a case where the errant solicitor signed a certificate with "total indifference to the rights of the client to legal advice" (at p 7).

31 *Burrowes* and *Fraser* are clear examples of cases involving dishonesty that indicated a grave error of judgment on the part of the solicitors in question rather than a character defect that rendered them unfit for the profession; nor did these cases involve a breach of duty that undermined the administration of justice. They also illustrate the sort of factors that the court ought to consider in assessing whether striking off is appropriate. In that regard, we note that there are a number of similarities between both cases. First, the dishonest acts were done in the belief that it was what the client wanted and there appeared to be no ill-intent underlying the request. Rather, the acts appeared to be driven by what was thought to be a harmless pursuit of convenience. This does not justify these acts but it helps explain why it is more correct to see these acts as having stemmed from lapses of judgment rather than as demonstrating a defect in the characters of the solicitors in question. Second, the solicitors had not acted with total disregard to their clients' interests. Mr Burrowes' act was brought about by pressure from his clients to improperly execute their will notwithstanding his advice to the contrary; and Mr Fraser's act was done on the seemingly credible assurance that the mortgagors had received the necessary explanation from a non-practising solicitor that he held in high regard. Third, it was accepted in both cases that the solicitors did not benefit from their misconduct. Fourth, the misconduct in both cases ultimately (and perhaps fortuitously) did not cause any loss.

32 Turning to our jurisprudence, our recent decision in *Sum Chong Mun* provides another example of when a solicitor who has acted fraudulently may nonetheless escape an order for striking off. There, we dealt with a case of false attestation involving two errant solicitors, Mr Sum Chong Mun ("Mr Sum") and Ms Kay Swee Tuan ("Ms Kay"). The brief facts were as follows. Sometime in December 2011, Ms Kay certified a form creating a lasting power of attorney ("the LPOA") under the Mental Capacity Act (Cap 177A, 2010 Rev Ed) ("MCA"). However, the LPOA was rejected by the Office of the Public Guardian because Ms Kay was related to the donee of the LPOA. To address this, Ms Kay approached Mr Sum to certify the LPOA, and assured Mr Sum that she had explained the LPOA to the donor and that she had personally witnessed the donor's signature. Thereafter, without having seen or spoken to the donor, Mr Sum certified the LPOA and attested to having witnessed the donor's signature and having explained the purpose of the LPOA to him. For this, he neither sought nor received any payment. The validity of the LPOA was subsequently challenged, and on discovering this, Mr Sum promptly made a statutory declaration admitting that he had certified and signed the LPOA without having seen or advised the donor. The LPOA was eventually successfully revoked.

33 We accepted that Mr Sum was remorseful, that he had an unblemished record, and that he had promptly attempted to remedy the situation as soon as he discovered that the LPOA was being challenged. We also observed that Mr Sum had certified and signed the LPOA on the assurances of Ms Kay, a fellow professional. Taking into account all the circumstances, Mr Sum was suspended from practice for a year, which we emphasised was a sanction that could have been *much more severe* but for the mitigating factors that operated in Mr Sum's favour (at [52]–[53]). As for Ms Kay, we found that she was

unremorseful and ordered that she be suspended from practice for 30 months (at [73]–[74]).

34 While we did not expressly characterise Mr Sum's misconduct as dishonest, it cannot be gainsaid that this was the case. That we ordered a period of suspension instead of striking him off the roll should not be taken to mean that acts of false attestation do not involve dishonesty. Rather, it signifies that acts of dishonesty may not warrant an order for striking off where they are neither indicative of a character defect nor do they lead to an assault on the administration of justice. Notably, we found in Mr Sum's favour that his dishonesty was out of character. And like the errant solicitor in *Fraser*, Mr Sum did not act with complete disregard for the donor's right to legal advice – his act of false attestation was in fact done on the representation of Ms Kay, a fellow solicitor, that the donor had been properly advised. In our judgment, taking the facts in the round, *Sum Chong Mun* was a case where the solicitor's misconduct was seen as a case of grave misjudgment rather than as manifesting a character defect that rendered him unsuitable for the profession.

35 In *Chung Ting Fai*, the errant solicitor, Mr Chung Ting Fai ("Mr Chung"), was found guilty of drafting a false affidavit. At the time of the offence, he was representing a client in divorce proceedings. An ancillary order was made in relation to the matrimonial flat, and the client wished to appeal against that order. However, due to Mr Chung's failure in providing timely and proper advice, the time for appeal had lapsed. Mr Chung thus had to apply for an extension of time to file an appeal, for which an affidavit had to be drawn up. To that end, he prepared a draft affidavit containing multiple factual inaccuracies that put the blame for the delay in filing an appeal on the client. The client refused to endorse the affidavit and proceeded to make a complaint against him.

36 The court in *Chung Ting Fai* found that Mr Chung had not acted out of self-interest but instead had been motivated by "misplaced zealousness in order to obtain an extension of time to appeal on behalf of his client" (at [34]–[35]). In the event, it was ordered that Mr Chung be suspended from practice for a period of one year (at [49]). In our judgment, it was also important that the solicitor prepared a *draft* affidavit for the review and approval of the client. While he might have had a misplaced view of the events leading to the need for the application to be made, the court was satisfied that he was not acting in the flagrant pursuit of his self-interest at the expense of his client, who would have been in a position to reject the draft, as indeed it transpired.

37 We also note that the court found that there was no evidence of "dishonest intent" (at [35]). By this, we consider that the court meant that Mr Chung's *dominant* intention was not to mislead the court. Indeed, it is clear that the court was of the view that if Mr Chung had filed the affidavit, his "foolish action would have been consummated, and the result (albeit probably unintended) would have been a *deception* of the court" [emphasis added] (at [37]). The court's concluding observations (at [50]) are also pertinent:

> On a concluding note, it perhaps warrants reiteration that if it were not for the *exceptional circumstances* that exist in the present proceedings, we would have been minded to impose a more severe sentence. Indeed, we should take this opportunity to make it clear that if we had found, instead, that *[Mr Chung] had deliberately drafted the inaccurate affidavit in order to pre-empt legal proceedings against himself and/or his firm, or for some other self-serving reason,* we would have had no hesitation to find the presence of a dishonest act which would, in all probability, warrant a striking off from the roll of advocates and solicitors. [emphasis added]

38 The upshot of these cases is that all forms of dishonesty are treated severely. Where the dishonesty reveals a character defect making the errant solicitor unfit for the profession or where it undermines the administration of

justice, the court will almost invariably order that the solicitor be struck off. And in cases where the dishonest act does not fall within these categories and may fairly be said to reveal an error of judgment (even if a serious one) rather than a grave character defect, striking off will not be the presumptive sanction, and the court will have to examine the facts closely to determine whether there are circumstances that render a striking off order appropriate.

Summary of principles

39 In summary, misconduct involving dishonesty will almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession, or undermines the administration of justice. This would typically be the case (i) where the dishonesty is integral to the commission of a criminal offence of which the solicitor has been convicted; (ii) where the dishonesty violates the relationship of trust and confidence inherent in a solicitor-client relationship; and (iii) where the dishonesty leads to a breach of the solicitor's duty to the court or otherwise impedes the administration of justice. In such cases, striking off will be the presumptive penalty unless there are truly exceptional facts to show that a striking off would be disproportionate. As we have noted in *Ong Cheong Wei* at [7], such a case will be "extremely rare". And as *Choy Chee Yean* shows, personal culpability (as well as mitigating factors generally) has little relevance in cases where the presumptive position of striking off applies, save that the court might entertain an application for reinstatement earlier than would otherwise be the case.

40 But for cases that do not fall into these categories, the court should examine the facts closely to determine whether striking off is warranted. In particular, it should ascertain:

(a) the real nature of the wrong and the interest that has been implicated;

(b) the extent and nature of the deception;

(c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgment on the other;

(d) whether the errant solicitor benefited from the dishonesty; and

(e) whether the dishonesty caused actual harm or had the potential to cause harm that the errant solicitor ought to have or in fact recognised.

41 These factors are not exhaustive. Further, the circumstances must be assessed holistically and the court should bear in mind that the principal purpose of disciplinary sanctions is to protect the public and uphold public confidence in the legal profession. Once it has been determined that striking off is not warranted, the next step is to determine the appropriate sanction. In this regard, given the gravity of misconduct involving dishonesty, we consider that it would be a rare case in which a mere censure or fine would be sufficient.

42 Before turning to the facts of this case, we pause to make one observation on a related issue. We have already noted that a strict approach to punishing misconduct involving dishonesty is warranted and this is justified on account of the public interest in ensuring that trust and confidence can be placed in solicitors who play an integral role in the administration of justice (see [18] above). To this end it is essential that measures are in place to exclude, from this privileged position, those whose characters are found to be unsuitable for

this purpose. But it is so also because solicitors pursue a calling as members of a noble profession. Inherent in this is a commitment to a certain core set of values, which includes "conduct[ing] himself or herself in the spirit of *truth and honesty* – a commitment which is necessarily one that is *ethical* in nature" [emphasis in original] (*Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("*Susan Lim*") at [35]). The commitment to these values is often shared with members of other professions including the medical profession (*Susan Lim* at [41]) and to this extent, we might expect to find some similarity in the way each of the professions responds to grave breaches of such commonly-held core values.

43 Thus, in Singapore *Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("*Kwan Kah Yee*"), we suggested at [62] that the offence of falsely certifying death might warrant the striking off of an errant doctor. This might be justified on the basis that an errant doctor who issues a false death certificate demonstrates a grave disregard for his ethical and professional duty to the community in the critical context of public health (*Kwan Kah Yee* at [52]). Such an offence also leads to an "erosion of public trust in the medical profession [and has] serious implications and consequences for the family of the deceased persons" (*Kwan Kah Yee* at [56]). This can be compared with the case of a solicitor whose dishonesty undermines his core calling of upholding the administration of justice. Similarly, in *Ong Cheong Wei* at [11], we expressed doubt over cases within the medical profession involving criminal offences such as tax evasion, which unlike corresponding cases involving lawyers, did not result in the striking off of the doctor. We say no more on this here and will address the position in relation to other professions when we are called on to decide such cases.

Application to the facts

44 Returning to the present case, we were satisfied that an order for striking off would be excessive. We first noted that the Respondent's dishonesty did not fall within the categories of cases where the presumptive sanction of striking off would apply. This was not a case where there was deception of the court. The Respondent was dealing with a client who made certain representations to him, and there was no violation on his part of the trust and confidence within a client-solicitor relationship. The Respondent knew Mr Li and sincerely believed his assurances that the POA had been signed by Mr Loy. In representing that he had witnessed Mr Loy sign the POA when he had not in fact done so, we accepted that the Respondent was not acting out of self-interest. We noted that the Respondent received a sum of just $75 in notarial fees. On the whole, we did not think his misconduct indicated a defect in character; instead, in our judgment, it arose from a serious lapse of judgment. Consistent with this, we noted that this was the Respondent's first instance of misconduct over the course of several decades of practice. We also noted that the Respondent was genuinely remorseful for his actions, as evidenced by his cooperation in the proceedings before the Tribunal and before us. Accordingly, in the round, we concluded that striking off was not warranted here.

45 What then was the appropriate sanction? In our judgment, a period of suspension was appropriate in this case. We begin this part of our analysis by drawing a distinction between cases where the errant solicitor is found to have made a false attestation and cases where the errant solicitor has procured *others* to make a false attestation. Specifically, we note that the Law Society placed reliance on *Low Seow Juan* in its initial submissions that the Respondent ought to be suspended for two years. In our judgment, this submission was misplaced. In that case, the errant solicitor, Mr Low Seow Juan ("Mr Low") was suspended

from practice for two years for procuring others to attest that they had witnessed the signing of certain documents by his wife, when these had in fact been pre-signed by him. It was subsequently revealed that Mr Low's wife had consented to Mr Low forging her signature on the documents, which pertained to some personal property transactions. Notwithstanding this fact, he was eventually suspended from practice for two years (see *Sum Chong Mun* at [73], where it was noted that there is no report of Mr Low's show cause proceedings before the High Court).

46 It is clear that *Low Seow Juan* was a case in which the errant solicitor procured others to make false attestations. In our judgment, subject to the qualification that it all ultimately depends on the facts, such misconduct is likely to be viewed even more seriously than the false attestation itself, and accordingly warrants a more severe sanction. This is especially so since a solicitor might perhaps be acting in an understandable, though not pardonable, way in accepting the assurances of a fellow member of the profession in agreeing to make a false attestation. As against this, the solicitor who procures another to make a false attestation will usually be misleading the other as to the true facts or otherwise abusing his position. In *Low Seow Juan*, the solicitor had asked his colleagues, all of whom were junior to him in the firm, to falsely attest that his wife had signed the documents in their presence. The facts there are in fact closer to Ms Kay's position in *Sum Chong Mun*, where she procured Mr Sum to make a false attestation and misled him as to the true position. In order to procure Mr Sum's false attestation, Ms Kay represented to him that she had explained the LPOA to the donor and had personally witnessed the donor signing the LPOA, when she had not in fact witnessed the donor's signature on every part of the LPOA where the donor's signature was needed (*Sum Chong Mun* at [67]). It is therefore unsurprising that Ms Kay was suspended for 30 months, which is a period somewhat similar to the suspension period of two

years imposed on Mr Low. It is equally unsurprising that Ms Kay's period of suspension was well in excess of the 12 months for Mr Sum, whose misconduct arose from his trusting Ms Kay and whose subsequent actions revealed an abundance of mitigating factors.

47 Mr Sum's case in *Sum Chong Mun* was therefore the relevant precedent in determining the period of suspension for the Respondent. But we did not think that a direct comparison could be made. It bears repeating that Mr Sum's misconduct stemmed from the assurances of Ms Kay, a fellow professional, that she had explained the LPOA to the donor and had witnessed the donor signing it. In the present case, the Respondent acted on the representation of Mr Li, who was not a fellow solicitor.

48 Indeed, we considered it noteworthy that Mr Li was the very beneficiary of the POA, which would have given Mr Li wide-ranging powers to commit New Eastern to dealings with third parties. Moreover, the fact that the POA conferred wide-ranging powers on Mr Li also meant that the potential harm was considerable. The POA could have been used to commit New Eastern to contracts that it was unaware of, and to lead third parties into thinking that they were dealing with New Eastern when, in fact, they were not.

49 Notwithstanding this, the Respondent suggested that his contravention was less egregious than Mr Sum's because the latter concerned the attestation of an LPOA under the MCA, which requires the LPOA issuer to explain the effect of the LPOA to the donor. In contrast, the Respondent's case involved a POA, the execution of which does not impose a similar duty of explanation to the signatory on the solicitor.

50 We disagreed that this was a distinction in the Respondent's favour. Although it has been observed that an LPOA is unlike a POA insofar as the former "may enable the donee to make decisions that affect the very life of the donor himself or herself" (*Sum Chong Mun* at [44]), the simple fact is that the two types of instrument are quite different and hence are not directly comparable. In cases of false attestation, it is not the *type* of document that matters, but the *potential harm* that the document can effect. As we have noted above, the POA in this case gave the donee wide powers such that the potential for harm was considerable.

51 Moreover, that Mr Li was both the beneficiary of the POA and the person seeking to have the POA notarised ought to have alerted the Respondent to the potential for mischief. This rendered the Respondent's failure to ensure that he was attesting truthfully more serious, and was a factor to be taken into account in determining the appropriate sanction. In all the circumstances, we were satisfied that the Respondent should be sentenced to a suspension longer than that which was imposed on Mr Sum in *Sum Chong Mun*. Accordingly, as a starting point, we considered that the Respondent ought to be suspended for a term of 18 months.

52 Having said that, we were mindful of the fact that the Respondent had voluntarily ceased practice. In our judgment, there is a public interest in encouraging solicitors in such circumstances to voluntarily cease practice, and it has been noted that a voluntary suspension of practice can be taken into account in determining the appropriate sanction and in assessing whether a solicitor who has been struck off ought to be reinstated (*Choy Chee Yean* at [52]). This would be consistent with the ultimate object in this context, which is to protect the public interest and enhance public confidence in the legal

profession. We therefore thought that some credit should be given to the Respondent.

53 However, as a general rule, such credit will not be to the full extent of the self-imposed suspension because it is not for an offender to determine his own punishment. While we accept that a period of voluntary suspension is in the public interest and can also be a strong indicator of remorse, the fact remains that the Respondent's misconduct had already come to light by then. In that light, to give full credit to his self-imposed suspension would not sufficiently meet the interests of deterrence and denunciation.

54 For these reasons, we suspended the Respondent for a term of 15 months and ordered that he also bear the costs of the application fixed at $3,000, together with disbursements fixed at $400.

Conclusion

55 In closing, we emphasise that the gravity of such offences should not be understated. It is dishonest of a solicitor to sign a false certificate claiming that he had witnessed the execution of a document when he had not in fact done so. Such conduct will be visited with severe consequences and solicitors should ensure that they do not yield to the temptation to lower their guard just because they imagine that no harm will ensue.

Sundaresh Menon	Steven Chong	Chao Hick Tin
Chief Justice	Judge of Appeal	Senior Judge

Liow Wang Wu, Joseph (Straits Law Practice LLC) for the applicant;
Lim Kheng Yan Molly SC and Lim Haan Hui (Wong Tan & Molly Lim LLC) for the respondent.