Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore
[2009] SGHC 190

Case Number : OS 1547/2008

Decision Date : 26 August 2009

Tribunal/Court : High Court

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Vergis S Abraham and Vikna Rajah (Drew & Napier LLC) for the applicant; K Anparasan (KhattarWong) for the Law Society of Singapore; Jeffrey Chan Wah Teck SC and Stanley Kok (Attorney-General's Chambers) for the Attorney-General

Parties : Kalpanath Singh s/o Ram Raj Singh — Law Society of Singapore

Legal Profession – Professional conduct – Application for reinstatement to Roll of Advocates and Solicitors of the Supreme Court of Singapore – Whether applicant fit to be restored to the Roll – Section 102 Legal Profession Act (Cap 161, 2001 Rev Ed)

26 August 2009 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This application is made by one Kalpanath Singh s/o Ram Raj Singh ("the Applicant"), who is seeking to be reinstated to the Roll of Advocates and Solicitors of the Supreme Court of Singapore ("the Roll") after having been struck off the Roll on 17 May 1996 for misconduct.

2 On 3 August 1995, the Applicant was found guilty by the High Court of two charges brought against him, namely, that of cheating a client of $5,000 under s 420 of the Penal Code (Cap 224, 1985 Rev Ed) and of attempting to cheat the same client of a further $5,000 under s 420 read with s 511 of the Penal Code. He was sentenced to imprisonment for 18 months on each charge and both sentences were ordered to run consecutively.

3 Following his conviction, the Law Society applied to the Court of Three Judges ("the Court"), requiring the Applicant to show cause why he should not be disciplined under s 83 of the Legal Profession Act (Cap 161, 1994 Rev Ed). On 17 May 1996, the Court, having heard the Law Society and the Applicant, held him to have displayed an "extreme defect in character" and, pursuant to the powers conferred under s 83, struck him off the Roll. The Court's judgment relating to the striking-off order may be found in *The Law Society of Singapore v Kalpanath Singh s/o Ramraj Singh* [1996] SGHC 129.

4 On 5 December 2008, at the age of 67, and about 12½ years after being struck off, the Applicant applied to have his name reinstated to the Roll pursuant to s 102(1) of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the LPA"). This is the application that is now before us.

Background facts

5 Prior to his being called to the Bar in 1979, the Applicant had served some eighteen years as a senior police officer in the Singapore Police Force ("SPF"). In the same year that he was admitted to the Bar, he was promoted to be a Deputy Superintendent of Police. While in the SPF, he received many accolades, which showed that he had made positive contributions to the Force. However, in

May 1979, the Applicant decided to terminate his career with the SPF and embark on a law practice under his own name, M/s Kalpanath & Co, where he handled both civil litigation and criminal matters.

6 In 1987, the Applicant was retained by one Ms Lee Sim Yow ("Lee") in an action for copyright infringement. By then, the Applicant was already an advocate and solicitor of eight years' standing. It was alleged by Lee that the Applicant had misrepresented to her on two occasions that refundable court deposits of $5,000 were required in the legal proceedings pertaining to her action. Hence, on or about 18 September 1987, Lee paid over the sum of $5,000 by way of a cheque made in favour of the Applicant's firm. On 21 January 1988, on a similar request, a second cheque for the same amount was issued. However, Lee later discovered the deception and managed to stop payment on the second cheque. In March 1992, the Applicant was charged in court on the following two charges:

> You, Kalpanath Singh s/o Ramraj Singh, male, 47 years old, NRIC No 1116101/D, are charged that you, on or about 18 September 1987, at No 101A, Upper Cross Street, #12-17, People's Park Centre, Singapore, did cheat one Madam Lee Sim Yow by deceiving her into believing that a sum of $5,000 was required to be paid into court as a deposit in S 2425/87 and thereby dishonestly induced the said Lee Sim Yow to deliver a sum of $5,000 to you, and you have thereby committed an offence punishable under s 420 of the Penal Code (Cap 224).
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> [And]
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> You, Kalpanath Singh s/o Ramraj Singh, male, 47 years old, NRIC No1116101/D, are charged that you, on or about 21 January 1988, at No 101A, Upper Cross St, #12-17, People's Park Centre, Singapore, did attempt to cheat one Madam Lee Sim Yow by deceiving her into believing that a sum of $5,000 was required to be paid into court as a deposit in S 2425/87 and thereby dishonestly induced the said Lee Sim Yow to deliver a sum of $5,000 to you, and you have thereby committed an offence punishable under s 420 read with s 511 of the Penal Code (Cap 224).

7 Though initially acquitted by the district court on the ground that the Prosecution had failed to prove its case beyond a reasonable doubt, the High Court, on appeal by the Public Prosecutor, overturned the ruling of the district court on 1 September 1995 and convicted the Applicant on the said two charges (see *PP v Kalpanath Singh* [1995] 3 SLR 564). The Applicant was sentenced to 18 months' imprisonment on each charge, and the two sentences were ordered to be served consecutively. On 17 May 1996, he was struck off the Roll. The Applicant was released from prison on 14 August 1997, after having earned one-third remission for good behaviour.

8 After his release, the Applicant entered the food and beverage business, operating from one of his properties which was left vacant during his imprisonment. In July 2001, the Applicant operated another food and beverage outlet in Little India Arcade. At the time of his maiden business venture, the Applicant was financing his son's overseas education. He stated in his affidavit that "despite numerous setbacks, [he] persevered and worked extremely hard" and sometimes even worked up to 14 hours a day. He said that later, the management of these outlets were handed over to other people because they had become overwhelming for him. In June 2007, the Applicant relinquished his business to "focus on [his] reinstatement to the Roll".

The Applicant's submissions

9 The Applicant submitted that considering the nature of the offences for which he was convicted and disbarred as a result, a sufficient period of time had since elapsed. He also highlighted

the fact that the offences had been committed more than twenty years ago and were the only blemishes on his otherwise spotless record. Further, he averred to cases where other lawyers guilty of more serious offences had been reinstated. Asserting that he has been rehabilitated and is now a changed man, the Applicant has adduced 19 testimonials from various people including senior members of the Bar and business acquaintances to attest to his integrity and fitness to be restored to the Roll. He also pointed out that post disbarment, he has been involved in charity work and rendered free advice to people with legal problems. Iterating his love for the law, which was underscored by the fact that he had left a distinguished career in the SPF to practise law, the Applicant stated that despite his disbarment, he has been keeping abreast of the developments in the law. He is assisted in this regard by the fact that his daughters are also lawyers.

10 Over and above these considerations, the Applicant submitted that there were three "special circumstances" in relation to his application. First, he was advanced in years – at 67 years old, any deferment of his reinstatement would effectively act as a permanent bar from re-admission. Second, restrictions and conditions could be imposed on his practising certificate (see [11] below), if deemed necessary so as to protect public interest and maintain the reputation of the legal profession. Third, the Applicant, if reinstated, would re-join his erstwhile firm, M/s Kalpanath & Co, which is now run and managed by a daughter and her husband, alongside with other independent partners. This, the Applicant submitted, would provide familial support and serve as another safeguard against him faltering.

Law Society's position

11 At the oral hearing before this Court, whilst the Law Society did not object to the Applicant's application to be reinstated, it did however insist upon certain conditions to be attached to the practising certificate of the Applicant should he be reinstated. In its submission, the Law Society also noted that whilst the Applicant's offences were undeniably reprehensible, they were arguably less so than the offences committed by other lawyers who have been reinstated to the Roll.

The Attorney-General's objection

12 The Attorney-General ("AG"), represented by the Deputy Solicitor-General ("Dy SG"), objected to the application. His arguments were three-fold: (a) that the Applicant's offences of dishonesty were "serious" and "of the gravest kind"; (b) reinstatement of the Applicant "may" adversely affect public confidence in the legal profession; and (c) the various testimonials exhibited were "overall a patently inadequate basis" for the Court to assess whether the Applicant has been rehabilitated and should be reinstated.

13 The AG argued that the gravity of the Applicant's offences stemmed from the fact that the sums of $10,000 were not trifling; that the Applicant had been utterly dishonest and violated the trust that is so paramount in a solicitor-client relationship, and had invoked the authority of the court in effecting his deception. All these meant that if the Applicant were to be reinstated, the public's confidence in the legal profession would be diminished.

14 As regard the testimonials, the AG highlighted the fact that many of them were from members of the Bar who had known the Applicant for a long time. In their testimonials, these lawyers stated that they had been surprised and shocked at the material time when the Applicant was charged and convicted of the offences. The AG argued that this only meant that the Applicant had, prior to his conviction, been successful in concealing his "darker" and sinister side from his friends, and if he could have pulled wool over their eyes back then, there was "little confidence" that his friends could now be right about him. Furthermore, the AG argued that many of the references did not attest to the

Applicant's honesty and integrity, but only to other virtues which were not as pertinent in relation to an application such as this.

15 In the premises, the AG opposed the application but added that should this Court be inclined to restore the Applicant to the Roll, then the Applicant should be required to undertake the Legal Practice Management Course before resuming practice as a lawyer.

Applicable provisions

16 The application for reinstatement is made pursuant to s 102 of the LPA which provides that:

> (1) Where the name of a solicitor has been removed from, or struck off, the roll, the court may, if it thinks fit, at any time order the Registrar to replace on the roll the name of the solicitor —
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> (*a*) free from conditions; or
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> (*b*) subject to such conditions as the court thinks fit.
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> (2) Any application that the name of a solicitor be replaced on the roll shall be by originating summons, supported by affidavit, before a court of 3 Judges of the Supreme Court… .
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> (3) The originating summons shall be served on the Society which shall —
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> (*a*) appear at the hearing of the application; and
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> (*b*) place before the court a report which shall include —
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> (i) copies of the record of any proceedings as the result of which the name of the solicitor was removed from or struck off the roll; and
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> (ii) a statement of any facts which have occurred since the name of the solicitor was removed from or struck off the roll and which in the opinion of the Council or any member of the Councils [*sic*] are relevant to be considered or to be investigated in connection with the application.

Period of time which has lapsed between disbarment and the present application

17 Although the LPA does not prescribe a minimum period of time which must elapse before a reinstatement application can be made, case law has established that "a significantly longer period than five years should have passed before [an applicant] should consider making such [a reinstatement] application": *Knight Glenn Jeyasingam v Law Society of Singapore* [2007] 3 SLR 704 ("*Glenn Knight*") at [11] (see also *Re Nirmal Singh s/o Fauja Singh* [2001] 3 SLR 608 ("*Nirmal Singh*") at [13]).The period of five years was referred to because under s 83 of the LPA, five years was the maximum period a Court of Three Judges could suspend an advocate and solicitor for misconduct. Indeed, this has been the approach of the Court in many cases, dating from *Re Chan Chow Wang* [1982-1983] SLR 413 to *Re Gnaguru s/o Thamboo Mylvaganam* [2004] SGHC 180 ("*Gnaguru 2004*"). The more serious the offence committed, the longer a period of time must elapse before an applicant could be restored to the Roll: *Narindar Singh Kang v Law Society of Singapore* [2007] 4SLR 641

("*Narindar Singh Kang*") at [44].

18 Given that, up to the present, it has been thirteen years since the Applicant was struck off the Roll and this is the first time the Applicant is applying to be reinstated, the present application, could not, on the basis of time alone, be considered to be premature. However, it bears emphasis that the mere fact that a lengthy period of time has elapsed between the striking off and the reinstatement application does not give rise to an automatic right to be reinstated and the Court had so observed in *Glenn Knight*. Indeed, many other crucial factors have also to be considered. Equally important, it must further be borne in mind that reinstatement is the exception rather than the rule (*Gnaguru s/o Thamboo Mylvaganam v Law Society of Singapore* [2008] 3 SLR 1 ("*Gnaguru 2008"*) at [44]).

Full and complete rehabilitation of the Applicant

19 In every application for reinstatement, one of the critical factors, which may be termed the threshold factor which the Court must carefully consider, is the extent to which the applicant has rehabilitated himself. Nothing short of full rehabilitation will do. This is a judgment call which the Court will have to make in every case. In *Gnaguru 2008* at [24]–[25], the Court usefully set out the fundamental principles governing a reinstatement application by reference to recent case law:

> 24 The basic principles that guide the court in relation to an application for reinstatement to the Roll were recently restated by this court in *Knight Glenn Jeyasingam v Law Society of Singapore* [2007] 3 SLR 704 ("*Glenn Knight*") and *Narindar Singh Kang v Law Society of Singapore* [2007] 4 SLR 641 ("*Narindar Singh Kang*"). In *Glenn Knight* (which constitutes the seminal decision), Chan Sek Keong CJ observed thus (at [43]): …
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> 25 In *Narindar Singh Kang*, this court emphasised two related aspects (or factors) which would guide the court in arriving at its decision – both of which were described (at [38]) as "often pivotal to applications of this nature". Further, this court pointed out that both of these factors are "*equally* important" [emphasis in original] and "both interact – and [are] integrated – with each other" (*ibid*). These two factors correspond to a focus on the *individual applicant* and the *public interest*, *respectively*, as embodied in the following observations (*Narindar Singh Kang* at [39]–[41]):
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> > 39 The first is the focus on the *applicant* himself or herself. More specifically, the issue is whether or not the applicant has demonstrated, through his or her conduct and actions during the interim period, that he or she has been fully rehabilitated and is now a fit person to be restored to the roll. Or is it likely that the applicant might, on the contrary, lapse into the same (or similar) conduct that resulted in him or her being struck off the roll in the first instance? In this regard, both the objective evidence of what he or she has been involved in during the relevant period (between being struck off the roll and applying for restoration to the roll) as well as references (particularly from members of the legal fraternity) would constitute the best evidence as to whether or not the question just posed ought to be answered in the affirmative. The categories of evidence are, of course, not closed and would include evidence of the applicant's medical condition (in particular, where it is alleged that the applicant is suffering from a medical condition that renders him or her unfit for practice, albeit through no fault of his or her own …). This particular consideration is, in many ways, a threshold one because if, for example, the applicant might lapse back into the same (or similar) conduct that resulted in him or her being struck [off] the roll in the first instance, then it is clear beyond peradventure that the applicant cannot be restored to the roll. It is important to note, at this juncture, that this (first) focus *overlaps* with one key element of the

second inasmuch as in so far as the applicant is found to be fully rehabilitated and is now fit to be restored to the roll, to *that* extent, there is *no likelihood of danger of any harm to the wider public*. …

40 The second broad area of focus is on the *public interest …* In this regard, the *key considerations or elements* are, respectively, the *protection* of the public *and public confidence* in *the general reputation of the legal profession*. This particular area of focus is broader than the first inasmuch as it extends beyond the applicant's own circumstances and personal situation. …

41 It is important to emphasise that whilst the possible (and *specific*) *harm* which might be caused to *the public* is clearly a factor that must be considered, this is (as already mentioned above) *related*, in point of fact, to the issue as to whether or not the *applicant* is sufficiently rehabilitated and therefore has ceased to pose a danger to the public in this particular respect. *However*, this factor is, as alluded to above, *but one* of the *two elements of public interest* which this court must consider. There is a *further* (and *second*) element … This relates to *the need to maintain public confidence in the general reputation and standing of the legal profession*. Put simply, would the restoration of the applicant concerned *diminish public confidence in the general reputation and standing of the legal profession*? A *negative* answer to this question is, in our view, necessary before the applicant can be restored to the roll. In other words, the fact that the applicant can demonstrate to this court's satisfaction that he or she has repented fully and will not commit the same (or a similar) disciplinary infraction again is a necessary, *but not sufficient*, condition for restoration to the roll. …

[emphasis in original]

20 It would be seen that, while the focus of rehabilitation is in a sense individual-centric, it is not entirely so because implicit in that consideration is really the desire on the part of the Court to ensure that the applicant is not likely to revert to his previously wrongful ways. Thus, this factor is inextricably linked to the other broad factor of whether it would be in the public interest to restore him to the Roll. An errant advocate and solicitor, who is not fully rehabilitated, continues to pose a threat to society and will cast a pall of doubt over the integrity and reputation of the legal profession.

Protection of the public interest and the reputation of the legal profession

21 That the *public* dimension as opposed to the *individual* dimension, is the predominant concern in any reinstatement application should be readily apparent. The rationale for this is neatly encapsulated in *Nirmal Singh* ([17] *supra*) at [20], where the Court stated that:

… the court must be every bit as jealous of the honour of those admitted to the Singapore legal profession as a man is of his own reputation, for the i*ntegrity of the profession is [dependent] wholly on the character and virtue of its members*. At the same time, we must be conscious of the *ever-compelling need to protect the public from errant lawyers and the serious harm which such lawyers could inflict on the public and the reputation of the legal profession* . [emphasis added]

22 We would add that the stance of according overriding importance to the concern of public interest and public confidence in the legal profession over the individual's worthiness of being reinstated is not one which is peculiar to our courts. In *Meredith v Legal Profession Admission Board*

of New South Wales [2008] NSWSC 1170 ("*Meredith*"), the Supreme Court of New South Wales at [17] of its judgment cited the remarks of Kirby P in *Kotowitz v Law Society of New South Wales* (Court of Appeal, 2 August 1987) (unreported) ("*Kotowitz*") wherein Kirby P emphasised that:

> The purpose of the jurisdiction which is exercised by the Court is not the punishment or further punishment of the former solicitor. That is the province of the criminal law. Rather the Court's jurisdiction is for the *protection of the public which deals with solicitors on the basis that they are members of an honourable profession who can be expected, without reservation, to conduct the affairs of their clients with honour and in whom the clients can place unbounded confidence. …*
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> …
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> *Because the jurisdiction is for the protection of the public, regard also may be had, to the public's interest in the restoration to the Roll of such persons as have demonstrated, including by their work, activities and life, a fitness to be restored*. For cultural and historical reasons, redemption and forgiveness are important attributes of the shared morality of our society. In part, this is because of the teachings of religious leaders who have profoundly influenced our community's perception of justice and fairness, reflected from earliest times in the courts. See eg St Matthew's Gospel, 18, 11 ff, The Acts, 3, 19. In part it derives from the self interest which any community has to encourage the rehabilitation of those who lapse and to hold out to them the hope that, by diligent and honourable efforts over a period, their past may be forgiven and they may be restored to the good opinion of their family, friends, colleagues and society. *The public's interest also includes the economic interest which is involved in utilising, to the full, the skills of talented people who have undergone years of rigorous training but who, having misconducted themselves, have had to be removed for a time from positions of responsibility and trust. Disbarment or removal from the Roll of Solicitors is not necessarily intended to be permanent in fact. …*
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> …
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> … *where the offences are isolated*, where there is no evidence of prolonged deliberate conduct and where, to the full extent possible in the circumstances, the funds of clients have been restored so that there is no eventual pecuniary loss, the *public interest which this Court protects includes the public interest, certain matters being affirmatively proved, in the restoration of the practitioner to the Roll*.
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> *There is no public interest in denying forever the chance of redemption and rehabilitation to former practitioners. On the contrary, the public is better served if, in appropriate cases, those who have offended are afforded a second chance, under whatever conditions and after whatever time lapse, the court considers appropriate*. T*his Court has full power to protect the public by imposing appropriate conditions relating to such matters as limitations on practice or preconditions as to refresher legal education which take account of developments in the law during the period of removal from the Roll*.
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> [emphasis added]

23 Unlike New South Wales and other jurisdictions, we recognise that ours is a secular society, in the sense that there is no one single religion to which the people of Singapore generally subscribe to. However, this does not mean that there cannot be shared values that our society, as a collective

whole, may adopt. We believe that one such common value is forgiving those who have trespassed against us. We would also concur with Kirby P that there is a public interest in encouraging the rehabilitation of those who have gone astray and allowing those who are now reformed, to re-enter society and contribute to its well-being. Further, we would agree, as counsel for the Applicant urged this Court during the hearing, that the Court has *inter alia*, a redemptive role especially in an application for reinstatement to the Roll.

The hearing

24 Based on the arguments as they stood at the date of the hearing on 25 February 2009, we were quite favourably inclined towards the Applicant's application for reinstatement. This was because, in the light of the Applicant's affidavit and testimonials from various members of the Bar and the general public, our tentative view was that the Applicant had probably learned the error of his ways and was unlikely, if given the chance, to repeat his wrongdoing. He should be able to discharge the duties of an advocate and solicitor with integrity and dignity. In short, he had been rehabilitated and was unlikely to re-offend the law or commit breaches of professional ethics. In the premises, we did not think that the Applicant would pose a threat to public interest or endanger the legal profession's reputation if he were reinstated. And although $10,000 was by no means a paltry sum, we felt that it was not such a huge sum as to justify a permanent disbarment. Moreover, he also had the support of the Law Society, the guardian and custodian of the legal profession (see *Narindar Singh Kang* [17] *supra* at [34]), which made impassioned and reasonably persuasive arguments in favour of the Applicant's reinstatement.

25 We would hasten to add that although the Court is not bound to accept the views of either the AG or the Law Society, their views are certainly deserving of the most careful consideration by this Court before arriving at its decision (*Narindar Singh Kang* at [34]). As stated above (at [12] to [14]), the AG objected to the application on the ground that the offences of cheating and attempted cheating for which the Applicant was struck off the Roll involved "dishonesty or fraud". Moreover, what made the wrongdoing even more grave was the fact that as an officer of the court, instead of ensuring that the authority and dignity of the court was not sullied, the Applicant went on to do just the opposite, *viz*, in the words of the AG, he had "tainted the dignity and integrity of the court with his tale of a fictitious court deposit, in order to attain a pecuniary benefit for himself and his practice". The AG also pointed out that when the Applicant's fraud was exposed he even tried to "retrospectively justify retaining the bulk of the money received by claiming that the sum retained was his legal fees". The AG reiterated that honesty and integrity are the hallmark of an honourable profession which the law profession is. We fully agree with these points made by the AG. Nevertheless, the question which this Court has to address is whether, does it follow that just because an advocate and solicitor has committed a crime involving dishonesty, even as against his own client, he should not thereafter be allowed to practise law. We think the answer to this question should be in the negative. The circumstances of each case would vary and so would be the amount, or the value of the subject matter, involved. We also recognise that the misconduct here could be considered to be more serious than that in *Gnaguru* where the applicant advocate and solicitor had assisted his client in obtaining a medical certificate so that his client would be excused from attending court. In *Gnaguru*, the applicant advocate and solicitor was not acting dishonestly for a direct personal pecuniary gain; he could be said to be acting under a misguided desire to be helpful to his client. The Dy SG, when asked if it was his view that the Applicant should never be allowed to return to practice, answered it in the negative but added that the application at this time would be premature. He further indicated that the Applicant could re-apply in a couple of years' time.

26 However, the objection of the AG has directed our minds to the fact that the current reinstatement procedure would clearly require some tweaking. For example, testimonials for such

applications do not have a fixed template. Whilst not in and of itself a problem, it means that quite often, such testimonials do not address directly and immediately the Court's underlying concern which is the applicant's fitness to be restored to the Roll. Laudatory remarks alluding to an applicant's industry and flair for the law or that he is a nice and friendly person, do not really aid the Court in assessing an applicant's integrity and moral worthiness or his suitability for reinstatement. We are not saying that such laudatory remarks may not be made. But to be really useful, each testimonial must not fail to address those attributes of the applicant with which the Court would be most concerned about.

27 In this regard, we note that in some jurisdictions, cross-examination of an applicant desirous of being restored to the Roll is actually conducted by the Law Society or some other relevant body. This allows the court to better assess the applicant's contrition and more importantly, whether the applicant appreciated the ethical complexion of his initial wrongdoing. In some cases, the applicant had been obdurate about admitting that his actions had been wrongful to begin with, and the court had to deny him re-admission despite an impressive paper application to be reinstated (see for *eg*, *Walter Corneille Clement Marie Janus v Queensland Law Society Inc* [2001] QCA 180, *Greg Gregory v Queensland Law Society Incorporated* [2001] QCA 499).

Events subsequent to the hearing

28 At the conclusion of the oral hearing before us, we reserved judgment in order to carefully assess the case. Though as mentioned earlier (see [24] above), we were inclined to view this application favourably, we felt it prudent, mindful of our paramount and non-negotiable duty to the public, to ensure that there was nothing in the interim which would affect his suitability for reinstatement. Accordingly, we made two sequential requests for information. In our first request, we asked whether at the time the Applicant was disbarred, there were any other pending complaints lodged against the Applicant and which complaints were not pursued because of the striking-off order. Counsel for the Applicant disclosed that there were two such pending complaints.

29 The second request asked whether the Applicant had, post his striking off, committed any offence, including regulatory offences. The object of this request was to ascertain if the Applicant had indeed led a blemish-free life during the interim. In response, counsel for the Applicant revealed that between 2003 and 2009, the Applicant had faced several summonses from various bodies and here we will quote from his counsel's letter dated 18 March 2009:

(a) In 2003, our client was summoned by the Ministry of Manpower for employing a foreign worker for 19 days, whose existing work permit did not allow him to work as a cleaner at our client's restaurant in Little India. This worker was supplied by a third party to provide cleaning services and our client's mistake lay in not verifying the worker's work permit details. Our client was fined a sum of $7,680.

(b) In 2007 and 2009 our client was summoned by Traffic Police for driving past a red light. Both summonses were compounded by our client paying a fine of $200 on each occasion.

(c) In 2008, our client was summoned twice by the URA for placing tables and chairs in the parking space outside his establishment in Little India on 1 and 2 December 2007. Both summonses were compounded by our client paying a fine of $400 for each occasion.

(d) In 2008, our client was summoned by the ACRA in his capacity as a director of a company for failing to hold the company's AGM and failing to lodge the company's annual returns in time. This situation arose because the other shareholder in the company refuses to cooperate and attend the company's AGM and as a result, the AGM cannot be convened due to lack of quorum. This matter is still pending and our client faces a maximum penalty of a $5,000 fine for each charge.

30 This Court also caused a search to be carried out in the Subordinate Courts' records and the following additional summonses against the Applicant were revealed:

1	NEA 018091/2006 (Night court offence in Subordinate Courts ("Sub Cts"))	Operating a food establishment without a licence. Section 32(1) Environmental Public Health Act (Cap 95, 2002 Rev Ed). Offence committed on 10 February 2006 and charged on 10 February 2006.	Discharge amounting to an acquittal ("DATA") on 6 June 2006 (offence compounded).
2	NEA 018092/2006 (Night court offence, in Sub Cts)	Operating a food establishment without a licence. Section 32(1) Environmental Public Health Act (Cap 95, 2002 Rev Ed). Offence committed on 12 February 2006 and charged on 12 February 2006.	DATA on 6 June 2006 (offence compounded).

3	NEA 1006528/2005 (Night court offence, in Sub Cts)	Failing to keep the five-foot way and road along frontage of his premises clean and free of litter. Regulation 8(3) Environmental Public Health (Public Cleansing) Regulations (Cap 95, Rg 3, 2000 Rev Ed). Offence committed on 13 January 2005 and charged on 13 January 2005.	DATA on 8 Aug 2006 (offence compounded).
4	IRAS 107357/2005 (Night court offence in Sub Cts)	Failing to furnish audited accounts. Section 65C Income Tax Act (Cap 134, 2004 Rev Ed). Offence committed on 24 May 2004, and charged on 23 December 2005.	DATA on 11 Aug 2006 (offence compounded).
5	CPF 200620308 (Night Court offence in Sub Cts)	Failing to pay contributions to CPF in respect of one employee. Section 58 (*b*), punishable under s 61 CPF Act (Cap 36, 2001 Rev Ed). Offence committed on 15 July 2006, and charged on 2 September 2006.	DATA on 13 Sep 2006 (offence compounded).

31 On 18 May 2009, at our request, parties appeared before us in chambers where we notified them of the abovementioned additional summonses involving the Applicant and invited them to give this Court their overall assessment of the case in the light of what had surfaced post the oral hearing.

32 The AG maintained his position that the Applicant should not be reinstated. In its letter dated 10 June 2009, the Law Society indicated that it no longer wished to support the reinstatement application as it believed that the Applicant's reinstatement would dent the public confidence in the profession. It averred that:

> The Law Society believes that to allow the Application would dent the confidence of the public in the profession, having regard to the numerous instances of the Applicant flouting the law, albeit the offences being essentially regulatory in nature. The Applicant has seen fit not to declare, through oversight or otherwise, important information that might be seen to be detrimental to his case for restoration to the Rolls. …This omission, if anything, indicates a lack of seriousness in the Applicant's handling of the matter and shows that he did not lead an unblemished life.
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> …
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> … in fairness, …the offences are minor, strict liability offences and do not necessarily affect his fitness to practice. However, taking the totality of the facts into account, the repeated breaches do suggest a cavalier attitude in the part of the Applicant. This cavalier attitude raises more questions as to his trustworthiness, in a wider sense and in the public interest.
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> It should also be noted that while there are currently no guidelines on what needs to be disclosed, it must be said that if an applicant has a history of past offences, he should draw attention to the offences in an application for reinstatement. This would allow the Honourable Court to gain a full picture of the state of affairs when they consider the issue of reinstatement.
>
> …
>
> The question remains as to whether the persons giving the testimonials for the Applicant had knowledge of the past offences of the Applicant, and whether they would have indeed tendered the testimonials for the Applicant had they known of the above offences.

33 The Applicant sought to defend his position quite spiritedly, arguing that these offences should have no material impact on the current application as they did not concern matters of integrity and probity. Further, he contended that there were extenuating circumstances in some of the offences, especially where he had leased out a restaurant with a liquor licence registered in his name. As the registered licensee, the summons was issued against him though in reality, the offence had been committed by the lessee of his restaurant. He reiterated that, bearing in mind that more than twelve years had elapsed since he was struck off the Roll and about twenty-one years had passed since he committed the cheating offences which led to his disbarment (both periods reckoned up to the date the Applicant applied for reinstatement), if the worst that could be said about him was that he had in the interim committed those regulatory offences, that was hardly of any great moment and could not really have reflected adversely on his honour and integrity. As to the lack of candour in disclosing the regulatory offences, he explained that he did not think they would feature significantly in the application, being minor and compoundable offences which "[did not reflect] adversely on his personal integrity, trustworthiness or fitness to be reinstated to the Roll". He also hastened to add that the whole area of reinstatement applications was still "evolving" and hence, more leeway should be afforded to him so that his lack of disclosure of these summonses should not be held against him.

Our decision

34 It is not lost on us that the Applicant is a 67-year-old grandfather who has been struck off the Roll for thirteen years and must have felt the "full effects of the penalty imposed on him" (*Gnaguru 2004* [17] *supra* at [10]). Nor have we disregarded the fact that the cheating offences were committed more than twenty years ago and that should the Applicant be reinstated, he will be

returning to his former firm, where his family members are practising.

35 The question which now falls on this Court to determine is whether, having regard to the offences for which he was struck off the Roll and the various regulatory offences which he had committed in the interim, the Applicant may be considered to be a fit person to be restored to the Roll. We are very conscious that honesty is a critical attribute which every advocate and solicitor must possess. If the Court has any reasonable doubt on this factor with regard to an applicant, his application should *ipso facto* be refused. We cannot agree more with what Prof Jeffrey Pinsler in his work, *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007), states at p 203:

> Honesty is the paramount attribute of the advocate and solicitor for no man seeks the services of a person who cannot be trusted, irrespective of his abilities. An advocate and solicitor must be uncompromising in his responsibility to be honourable at all times and in all circumstances.

36 All the considerations alluded to by the Applicant in [33]–[34] above hold little sway, if the Court is not satisfied that the Applicant has been fully rehabilitated and is fit to be restored to the Roll. Whether an applicant is deserving to be so restored entails many considerations. As we have adverted to earlier (see [19] above), even full and complete rehabilitation, whilst an essential prerequisite, is not necessarily sufficient of itself to enable a disbarred advocate and solicitor to be restored to the Roll. An applicant, desirous of being reinstated, has a heavy burden to discharge as the Court in *Narindar Singh Kang* ([17] *supra*) at [29] had underscored:

> … it is clear, in our view, that the burden of proof must necessarily be a heavy one and ought, in any event, to be higher than the normal civil standard of proof on a balance of probabilities.

37 Elsewhere, in *Greg Gregory v Queensland Law Society Incorporated* ([27] *supra*), the Supreme Court of Queensland at [18] of its judgment iterated that:

> One useful way of dealing with the matter is to ask whether in all the circumstances the Court is justified in putting the applicant before the public as a fit and proper person to follow the honourable calling of a solicitor. *It is recognised that a solicitor applying for reinstatement is in a different and more disadvantageous position than an original applicant, because he must displace the prospect of continuance of conduct of the kind which resulted in his removal*. I also agree … that 'one should in *this inquiry focus on the applicant's intrinsic character*, and not be unduly distracted by his good fame, whether within the legal profession or the wider community.' [emphasis added]

38 In *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655 ("*Meagher*"), Isaacs J expressed a view in similar vein when he said the following at 681 of the judgment:

> It may be that the error, though flagrant, has proved to be a solitary lapse. It may be that after sufficient time has passed the applicant can satisfy the tribunal that his purgation is complete, his repentance real, his determination to act uprightly and honourably so secure that he may be fairly re-entrusted with the high duties and grave responsibilities of a minister of justice. *But that obligation lies upon him, and is no light one*. [emphasis added]

Higgins J remarked at 692 of the same judgment that:

> *The true question is … whether [the applicant] has proved that notwithstanding his [prior] misconduct … he is now a 'fit and proper' person. The presumption in favour of innocence is not applicable*. …[H]as he shown that he is now incapable of it, *or, at the least, that he is no longer likely to err in the direction of deception*? It is not his reputation that is in question, *but his intrinsic character*. [emphasis added]

39 Just to belabour the point a moment longer, Kirby P in *Kotowitz* observed that:

> The claimant, who seeks to establish his fitness to be restored to the Rolls, having been removed therefrom, b*ears the onus of proving his case. It has frequently been said that it is a heavy onus*. See eg Street CJ in *Evatt v The New South Bar Association*, unreported, CA 15 December 1981.*The same view precisely is taken in other jurisdictions eg the United States of America*. See *In the Matter of Sidney J Clark* 406 A 2d 28 (1979). [emphasis added]
>
> (See *Meredith* ([22] *supra*) at [17].)

40 It is thus a settled rule that an applicant has an onerous task to discharge before he can be restored to the Roll. How then, does he go about proving to the Court that he has reformed and is deserving to be brought back into the fold of this honourable profession, where every member "of whatever standing, *may be trusted to the ends of the earth*"? [emphasis added] *(per* Sir Thomas Bingham MR at 518 of *Bolton v Law Society* [1994] 1 WLR 512 ("*Bolton*")). As no two cases are identical, it is not surprising that the Court has often emphasised that how each case should be viewed depends entirely on its own fact situation (*Narindar Singh Kang* ([17] *supra*) at [31], *Gnaguru 2008* ([18] *supra*) at [44]). Harking back to *Kotowitz*, Kirby P there said that:

> The decision to be made in each case depends, ultimately, on the facts proved. There is no simple formula which can be applied by reference to the seriousness of the offences and the passing of time. There is no sure path to restoration to the Roll, guaranteed by engaging in particular activities, whether of employment or of service to the community.
>
> (See *Meredith* ([22] *supra*) at [17].)

41 Clearly, there is a broad discretion reposed in the Court in its consideration of every such application (see *Gnaguru 2004* ([17] *supra*), *Nirmal Singh* ([17] *supra*), *Narindar Singh Kang* and *Re Ram Kishan* [1992] 1 SLR 529). Though the factual matrix in every case will be different and unique, the overriding concern in every application has always been, and will remain the same, *viz*, the question of public interest and its confidence in the legal profession. An errant lawyer, who has not yet been fully reformed, continues to pose a threat of potential harm to the public regardless of how long his disbarment may have been, or how seemingly trifling his offence is compared to those of other disbarred solicitors. This also ties in with the Court's concern as regards the public's esteem of the legal profession – a less than fully rehabilitated lawyer who is reinstated is not only injurious to the interests of society, it simultaneously lowers the public's esteem of the legal profession. Moreover, even if a lawyer is fully rehabilitated, if his infraction is so reprehensible in *nature* that despite his complete reformation and assurances that he will not commit the same or similar offences again, the public's confidence in the integrity of this profession could well be debilitated by his reinstatement.

42 Thus, a disbarred lawyer, who is guilty of an offence of a nature not so grave as to bar him permanently, and who is fully rehabilitated having satisfied the Court that he has no propensity to

commit offences similar to the ones that led to his disbarment, has also to overcome a second hurdle, which is, that the public's regard of the legal profession would not suffer should he be reinstated. This has been described, and rightly so, in *Cordery on Solicitors* (Alexandra Marks, gen ed) (LexisNexis, Looseleaf Ed, 9th Ed, Issue 39: November 2007 release) at para 2406 as being the "second and much more difficult hurdle to clear".

43 We note that among the many references submitted by the Applicant in support of his application for reinstatement, the one from Valerie Cary stood out. She had attested to his honesty and trustworthiness and emphatically stated that the Applicant was one "whose honesty and integrity I have always been completely confident". She recounted how she had entrusted the Applicant with an undated cheque made out in the Applicant's name for $135,000 to be paid into his account if a rights issue offer of some OCBC shares were to be made while she was away in London for six weeks. The rights issue offer never transpired and the Applicant duly and promptly returned the cheque to Ms Cary upon her return from London. She wrote that "[i]t would never occur to me to doubt the safety of my funds (and anybody else's) with [the Applicant]" and that she "would have no hesitation in entrusting [the Applicant] with the same arrangement". Another reference was from one Mr Sunny Yap who also vouched for the Applicant's honesty and integrity as a businessman. He wrote that he found the Applicant to be "honest and straight forward … trustworthy and have given him substantial credit facilities. He has never violated our trust.", adding that the Applicant had also been a good paymaster amongst other things.

44 The new information which came to light after the oral hearing did, however, cast doubts in our minds as to our initial views on the merits of the application. While we acknowledge that the offences were regulatory in nature, and that they do not *per se* reflect adversely on the Applicant's integrity, the Applicant cannot escape the perception that, being a former advocate and solicitor and one who is hoping to be reinstated, he did not try to lead a life within the perimeters of the law and has instead flouted it on several occasions. Those offences for which he had been issued summonses had occurred between 2003 and 2009 and ran the gamut of traffic offences to manpower offences. We would have expected the Applicant to have taken greater care to avoid falling foul of the law *again*. It is immaterial that the offences do not in themselves point towards any want of probity or integrity on the Applicant's part. However, in our opinion, the commission of those offences does indicate a frame of mind which seems to have very little regard for the law. Here, we would agree with the Law Society that the commission of those offences shows a cavalier attitude towards the law and raises concerns about his trustworthiness. We note that the Applicant has strenuously emphasised that those were merely regulatory offences. By attempting to downplay and trivialise those offences and proffering various exculpatory reasons for those infractions, we feel that the Applicant has not fully apprehended the high standards that are expected of the profession that he wishes to re-enter. As we have adverted to earlier, the burden is on the Applicant to prove to this Court that he is fit to be restored to the Roll and it is a heavy burden. Although the Applicant has argued that he has been fully rehabilitated and his regulatory offences are lesser wrongs than his initial wrongdoing, it does not answer the perception that his attitude towards observing the law is a cavalier one. One would have expected the Applicant, who entertains hopes for eventual reinstatement, to have conducted himself with greater circumspection and prudence. Moreover, we would have thought that having gone through the experience of a criminal prosecution and a disciplinary sanction, the Applicant would have been more conscious of the importance of keeping on the right side of the law and not to sail too close to the wind. We cannot ignore the fact that he has committed not one or two, but many regulatory offences.

45 We are also very much concerned by the fact that the Applicant should have failed to see the relevance of the regulatory offences to his application. In his counsel's written submissions to this Court, it was stated under the sub-heading "Clean record" that: "It is significant that apart from his

two criminal convictions, the Applicant has held a clean record both personally and professionally." Let us hasten to add that we do not fault his counsel for this statement as the latter would not know about the Applicant's other transgressions and quite naturally would accept whatever the Applicant had told him. The repeated commission of such offences, though regulatory, has everything to do with a disbarred advocate and solicitor's application for reinstatement because they point towards his "intrinsic character" and thus would have a bearing in our overall assessment of his fitness to be restored.

46 There is no need for us to find whether the Applicant has or has not deliberately suppressed these transgressions from this Court and we make no such finding. But should a similar situation arise in a future case involving another advocate and solicitor, having regard to what has been propounded by us in this judgment, we may not be able to resist making such a finding as there will then be no more excuse for that advocate and solicitor that he did not know what he has to disclose. We would iterate that in order for the Court to efficaciously and efficiently discharge its duties towards the public, it is imperative that the Court is fully apprised of, *inter alia*, an applicant's conduct after the striking-off order. At times, even medical records might be essential to the application, if for instance, the applicant had been struck off owing to misconduct actuated or aggravated by medical conditions (see [19] above). In short, the Court must have a complete picture of the applicant so as to be able to make as accurate an assessment as possible of his suitability to be restored to the Roll. The Court takes great pains to scrutinise each reinstatement application carefully (*Gnaguru 2008* ([18] *supra* at [44]) and the present case is no exception. In *Meagher* ([38] *supra*) at 681, Isaacs J warned that:

> … if … there be deliberate misleading, or reckless laxity of attention, to necessary principles of honesty on the part of those the Courts trust to prepare essential materials for doing justice, these tribunals are likely to become mere instruments of oppression, and the creator of greater evils than those they are appointed to cure. There is therefore a serious responsibility on the Court—a duty to itself, to the rest of the profession, to its suitors, and to the whole of the community to be careful not to accredit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past, it is a question of his worthiness and reliability for the future.

47 We would reiterate it is vital that the Court has in its possession all the relevant information, otherwise it will not be able to adequately discharge its duty to the profession and the public. Naturally, every case turns on its own circumstances, and the Court needs to examine not only the gravity of the applicant's initial offence(s) which led to his disbarment, but also whether post debarment he has done anything which may undermine his suitability to be restored. In order to ensure that a good practice is adopted for all future applications for reinstatement, such that the applicant will be reminded to furnish all relevant information in his application, perhaps the Law Society, in consultation with the Attorney-General's Chambers, could devise a standard template. In any event, nothing should preclude the Court from requesting for such other information as it may deem necessary, or by its own means obtain the same, subject always that the applicant is given an opportunity to explain.

48 Now, for the sake of argument, even assuming that this Court accepts that the Applicant has been fully rehabilitated and his "intrinsic character" is beyond reproach so that the public is protected from any harm, there is still the other aspect of the public dimension to be considered, *ie*, the reputation of the legal fraternity in the eyes of the public.

49 As the Court in *Narindar Singh Kang* ([17] *supra*) elucidated at [41] of its judgment, the further question to be asked once the Court is satisfied that an applicant is fully rehabilitated, is whether the

"restoration of the applicant concerned [would] *diminish public confidence in the general reputation and standing of the legal profession*? A *negative* answer to this question is, in our view, necessary before the applicant can be restored to the roll." [emphasis in original] (see [19] above).

50 In *Re Ram Kishan* ([41] *supra*) at 533, [14], the Court also pointedly remarked that:

> … the onus will be on [the applicant] to convince a court of three judges that he is still a person on whose integrity and honour reliance may be placed. In exercising its judicial discretion as to whether or not to replace the name on the roll, the court of three judges must consider as its *primary duty the protection of the interests of the public and the profession as a whole over and above the interests of the applicant*. [emphasis added]

51 To recap, in relation to the present application, we entertain considerable doubts on two counts. First, for the reasons set out in [44]–[45] above, we are not persuaded that the Applicant has been fully rehabilitated. Second, his reinstatement to the Roll would be damaging to the public's confidence in the legal profession. No one could remain unperturbed that the Applicant had continued to breach the law even after he had been struck off the Roll. Nor can anyone be unconcerned about his vigorous attempts at shirking his responsibility for these regulatory offences or trivialising them, which to our minds indicate that he has failed to appreciate that all those who seek reinstatement must endeavour to keep to the right side of the law during the period between disbarment and application for reinstatement. It is this seemingly blithe indifference towards the law itself that calls into question the Applicant's fitness to be restored to the Roll.

52 In *Bolton* ([40] *supra*) at 519, the court noted that:

> … the essential issue … is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.
>
> The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

We could not agree more. It is vital that this Court should set the tone for maintaining the integrity and standing of the profession and, as far as possible, ensure that every advocate and solicitor is of "unquestionable integrity, probity and trustworthiness". There cannot be any compromise on these matters.

53 The dent in public confidence in the legal profession is invariably the handiwork of some black sheep. If any of these black sheep desire to come back into the flock, he must prove himself to be really white. Here we would quote what the Court said in *Re Ram Kishan* ([41] *supra* at 533, [14]):

> The application of a person who has previously been struck off the roll for grossly improper conduct must necessarily be subjected to stricter scrutiny than that of a new entrant to the profession who has no adverse record.

If we were to now reinstate the Applicant we would be seen to be condoning his apparently cavalier attitude towards the law.

Conclusion

54 As mentioned in [25] above, at the oral hearing, the Dy SG submitted that it was not time yet to reinstate the Applicant and that he should wait a couple more years. The Dy SG maintained that stand after the additional information was revealed. It is not for us to anticipate how long more the Applicant should wait before he can renew his application, assuming he still wishes to do so. At this juncture, all we can say is that we are not precluding that, at some future time, a fresh application could be made by the Applicant. Here, we need only recall that the Court in *Glenn Knight* ([17] *supra*) at [43] and *Narindar Singh Kang* ([17] *supra*) at [33] had opined that, unless the wrongdoing which caused the debarment was really heinous, it did not mean that the disbarred advocate and solicitor should necessarily be barred forever. In any event if, in due course, a fresh application should be made by the Applicant, he must still satisfy the Court that he has fully reformed and rehabilitated and that his reinstatement would not harm or undermine the public's confidence in the profession.

55 In the result, we would dismiss this application. We will rule on the question of costs at a later date after hearing the parties on it.