Law Society of Singapore v Ravi Madasamy
[2007] SGHC 20

Case Number	: OS 1361/2006, SUM 3522/2006
Decision Date	: 13 February 2007
Tribunal/Court	: High Court
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; Judith Prakash J
Counsel Name(s)	: Mirza Namazie and Chua Boon Beng (Mallal & Namazie) for the applicant; The respondent in person
Parties	: Law Society of Singapore — Ravi Madasamy

Legal Profession – Disciplinary procedures – Whether Law Society's power to amend disciplinary charges similar to Public Prosecutor's powers in relation to prosecution of criminal charges

Legal Profession – Show cause action – Respondent admitting to displaying rude and discourteous behaviour to district judge – Whether respondent's conduct amounts to misconduct unbefitting an advocate and solicitor – Appropriate punishment in light of respondent's two antecedents of similar misconduct – Section 83(2)(h) Legal Profession Act (Cap 161, 2001 Rev Ed), r 55(a) Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)

13 February 2007

Chan Sek Keong CJ (delivering the grounds of decision of the court):

1 This was an application by the Law Society of Singapore ("the Law Society") under s 98 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("the Act") for Mr Ravi Madasamy ("the respondent"), an advocate and solicitor of seven years' standing, to show cause why he should not be dealt with under s 83(1) of the Act.

The amended charge

2 The amended charge made against the respondent before the Law Society's Disciplinary Committee ("DC") ("the amended Charge") reads as follows:

> That Ravi Madasamy is guilty of such misconduct unbefitting an advocate and solicitor, as an officer of the Supreme Court, or as a member of an honourable profession within the meaning of Section 83(2)(h) of the Legal Profession Act (Chapter 161) in that on the morning of 9th October 2003 at Court 26, Subordinate Courts, Havelock Road, Ravi Madasamy failed to act with due courtesy to the District Judge Wong Choon Ning before whom he was appearing by:-
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> a) turning his back on the said District Judge while being addressed;
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> b) remaining seated while being addressed by the said District Judge;
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> c) speaking in loud tones to the Prosecuting Officer whilst mention cases were being carried out, thereby interfering with the court proceedings;
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> d) responding to the said District Judge in an unbecoming manner.

3 Having heard the submissions of the respective parties, we granted the Law Society's

application at the conclusion of the hearing and ordered that the respondent be suspended from practice for a period of one year and bear the costs of the application. We now give the reasons for our decision.

Agreement by parties to amend the original charge

4 Before we consider the submissions of counsel for the Law Society and the respondent, who appeared in person, it would be helpful to the understanding of our views on some of the issues that were raised before us if we first set out the background to the actual disciplinary case that was brought against the respondent.

5 The *original* statement of case ("SOC") had set out in full several complaints lodged by the Senior Deputy Registrar of the Subordinate Courts concerning the respondent's conduct before District Judge Wong Choon Ning ("the District Judge") on 9 October 2003. In his defence, the respondent denied the bulk of the allegations contained in the original SOC.

6 However, the parties later reached an agreement ("the Agreement") whereby in consideration of the Law Society amending the original SOC and the original charge as proposed by the respondent, the respondent would:

(a) admit to the *amended* SOC and the *amended* Charge;

(b) withdraw his defence and not make any submissions that the amended Charge was not made out; and

(c) make submissions only in mitigation.

7 The Agreement is evidenced by a letter written by counsel for the Law Society to counsel for the respondent on 25 June 2005 ("Letter of 25 June 2005") where the terms stated in [6] above were set out. It is also significant to note that in the Letter of 25 June 2005, counsel for the Law Society stated that he would not address the DC on the penalty to be imposed and thus the penalty would be left entirely to the DC to decide. On 5 July 2005, counsel for the respondent replied ("Letter of 5 July 2005")and conveyed the respondent's unqualified agreement to the proposals contained in the Letter of 25 June 2005.

8 It is not disputed that both parties had something to gain from the Agreement. On the one hand, the proceedings were considerably shortened because under the Agreement, it became unnecessary for the District Judge to testify before the DC or for the Law Society to file an affidavit of evidence in chief ("AEIC") of the District Judge. On the other hand, the gravity of the allegations contained in the original SOC was greatly tempered under the terms of the Agreement. For example, statements alleging that the respondent had stared at the District Judge and accused the District Judge of committing a criminal offence were removed in the amended SOC. Furthermore, the Law Society withdrew limb (e) of the original charge, which charged the respondent as follows:

(e) threatening the said District Judge and the Court Officer with complaints to the Ministry of Law and the Legal Service Commission.

Proceedings before the DC

9 In the event, when the matter came on for hearing before the DC, the DC allowed the Law Society's application to amend the original SOC, but not before questioning counsel for the Law

Society, on its propriety. The respondent then confirmed that he was withdrawing his defence and also specifically admitted to each and every paragraph in the amended SOC.

10 The facts contained in the amended SOC to which the respondent admitted are as follows:

> 1. RAVI MADASAMY (hereinafter referred to as "RM") is an Advocate & Solicitor of the Supreme Court of the Republic of Singapore and is of 7 years standing.
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> 2. RM appeared as Defence counsel in DAC 4771 of 2003 at a mention in Court No. 26 of the Subordinate Courts, Havelock Road, at 9.00 am on 9th October 2003. District Judge Wong Choon Ning ("the DJ") was sitting on the day in question.
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> 3. Once the DJ sat, RM went over to the Prosecuting Officers repeatedly and communicated with them in a loud tone which was clearly audible and as such was interfering with court proceedings.
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> 4. Sometime between 9.00 am and 10.05 am, RM requested that his case be mentioned. He also complained that it was not possible to understand the Prosecuting Officer. RM was advised by the DJ that he should wait his turn for the case to be mentioned and not interrupt the proceedings. RM resumed his seat shortly thereafter but continued going over to the Prosecuting Officer and walking to and fro in the court room muttering even louder than before.
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> 5. A short while later, while charges were being read by an interpreter to an accused person in another case, RM was advised by the DJ to refrain from speaking too loudly in Court. When he was addressed by the DJ, instead of responding in a courteous and professional manner, he turned his back to the DJ, walked away and sat on the sofa at the further end of the court room. He continued to remain seated. The DJ then indicated to RM that he was the counsel she was addressing and informed him that he should rise when being addressed.
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> 6. Instead of apologising for his behaviour, RM stated that the DJ had not addressed him properly and expressed his unhappiness at being pointed at. He informed the DJ that he would report her to the Legal Service Commission and the Ministry of Law.
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> 7. RM was then informed by the DJ that it was rude of him to ignore her and turn his back to her while being addressed and furthermore remain seated whilst the DJ was addressing him. RM was also directed by the DJ not to speak to the Prosecuting Officer or to other counsel in loud tones, RM replied that different people spoke in different tones.
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> 8. At this point, RM made known for the first time to the DJ that he had a case pending in the High Court and that the prosecution did not have RM's case file in Court. The DJ also directed RM not to speak to the prosecuting officer or to other counsel in Court in a loud voice to which RM replied that he wished that the Court would address him properly.
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> 9. When RM's case was finally called for mention, he remarked inter-alia that if the prosecution were to ask for a high bail he would raise the matter with the Ministry of Law.

11 On the basis of the admitted facts contained in the amended SOC, the DC determined that cause of sufficient gravity existed for disciplinary action to be taken against the respondent pursuant to s 83 of the Act. An order to show cause was subsequently granted under s 98(1) of the Act and the application before us was taken out to make that order final.

Proceedings before this court

The Law Society's case

12 The proceedings before this court started unexceptionally with counsel for the Law Society making his submissions on the facts, including the events leading to the original SOC and the original charge being amended. Given that the respondent had admitted to the facts contained in the amended SOC, counsel for the Law Society submitted that there were only two main issues for this Court to consider, *viz*, whether due cause had been shown under s 83(2)(*h*) of the Act and, if so, whether the respondent should be struck off the roll or suspended from practice for any period not exceeding five years or censured. Given that the DC had already found that the respondent's misconduct as an advocate and solicitor was of sufficient gravity for him to be sanctioned under s 83(2)(*h*) of the Act, the case for the Law Society was straightforward.

The respondent's preliminary objection to the Law Society's case

13 Before we consider the respondent's arguments, we note that the respondent did not file an AEIC in these proceedings. He also did not file any written submissions or skeletal arguments as he should have done given that he had known about the hearing for many months. In the proceedings before us, he gave some excuse that he was busy, although we note that he had taken the trouble to write a letter to the Law Society on 29 July 2006 ("Letter of 29 July 2006") (which letter was produced by the Law Society at the hearing of this application) alleging, *inter alia*, that the findings of the DC were completely contradictory to their recommendation, and that the DC had found that the Law Society "felt" that the respondent ought not to be referred to the "Court of Appeal [*sic*]" and that he had all along been given that impression. The contents of the respondent's Letter of 29 July 2006 are reproduced in full below:

> 1. I refer to the findings of the Disciplinary Committee ("DC") in respect of the above matter, a copy of which you would have received.
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> 2. The findings of the DC are completely contradictory to their recommendation.
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> 3. Their recommendation to refer to the Court of Appeal of Three Judges cannot stand based on what they have stated. It is incumbent on the Law Society to rectify the defects in the entire proceedings that has caused serious injustice to me.
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> 4. The DC has stated in paragraph 14 that:
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>> "*the correct approach then would be to either withdraw the entire Charge against the Respondent or proceed with the original Charge and leave the Committee to make its findings without the benefit of the Learned District Judge's evidence, which could possibly lead to the Charge not being proved on the evidence, depending on whether there were other witnesses to the incident*".
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> 5. From the above it can be seen that the DC had drawn the following conclusions:
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>> a. The Law Society ought not to have proceeded with the Charge.
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>> b. Even the original Charge without the benefit of the Learned District Judge's evidence would lead to the Charge not being proved.

6. I am in agreement with the findings of the Disciplinary Committee that the Law Society felt that I ought not to be referred to the Court of Appeal. I was all along given this impression.

7. I was taken aback during the DC hearing when the Law Society chose to be silent when the DC asked what was their position with regard to the appropriate sanction.

8. Be that as it may, there is a serious miscarriage of justice based on the glaring errors on the face of the record itself.

9. The DJ had accepted my apology and had elected not to give evidence. Whilst chiding the Law Society for not having understood the legal implications, the DC have decided to go beyond the amended Charge which is wrong in law, and concluded that I ought to be referred to the Court of Appeal.

10. I wish to highlight to the Law Society that the DC has stated in no uncertain terms that the Law Society had misdirected itself.

11. As a result of a series of misdirections, I am now a victim.

12. I humbly urge the Law Society to apply to the Court to quash the findings of the DC and take responsibility for the misdirection on the part of The Law Society.

13. It is surprising that I have to write to you to take these steps, when the duty to do so lies squarely on your shoulders.

The letter was addressed to the President and the Council of the Law Society and copied to Amnesty International, Human Rights Watch, the United Nations Rapporteur for Human Rights, members of the European Parliament, the American Bar Association, the International Commission of Jurists and the International Bar Association.

14 Having aired his grievances to these organisations as early as July 2006, the respondent did not consider it proper to accord some courtesy to this court by filing a written submission before the hearing. He gave the excuse that he had been recently discharged from a private psychiatric hospital. We might add that in the light of his "antecedents" which we will mention later, the respondent's disregard for procedural rules, court decorum and etiquette was typical of his attitude and behaviour to the courts and judicial officers. However, it was just as well that counsel for the Law Society anticipated what the respondent was going to say to us and brought with him to court the relevant exchange of correspondence between the parties.

15 Even then, counsel for the Law Society was taken by surprise when the respondent began his defence by submitting that the Law Society was estopped from making the present application to discipline him. The respondent's argument was that he had only agreed to the proposals in the Letter of 25 June 2005 on the understanding that he would *not* be referred to the Court of Three Judges and further that he would be let off with a mere censure. He even went to the extent of claiming that the Law Society had given him a "guarantee" that he would not be referred for disciplinary action, but when pressed for evidence in support, later admitted that there was only a "70% chance" that he would not be so referred. The tenor of the respondent's argument was that he had been misled by the Law Society and had suffered prejudice as a result.

16 To say that the respondent's argument was without merit would be an understatement. It was totally absurd and was also a mischievous attack on the integrity of counsel who conducted the case

on behalf of the Law Society. Every right-thinking lawyer would know that the respondent's argument was absurd because the Law Society was in no position to guarantee that the DC would not refer him to the Court of Three Judges. In fact, the Law Society's Letter of 25 June 2005 set out with absolute clarity the conditions for accepting the respondent's proposals as set out in his letter of 17 June 2005, namely, that the respondent would:

> a) admit to the Amended Statement of Case and Charge;
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> b) withdraw [his] Defence and not make any submissions that the Charge is not made out;
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> making submissions <u>only</u> in mitigation.
>
> [emphasis in original]

The said letter went on to say that the Law Society would not be addressing the DC on the penalty which would be left entirely to the DC.

The respondent's arguments on the merits

17 As forewarned in his Letter of 29 July 2006, the respondent argued that he should be spared from disciplinary action because the Law Society had misdirected itself in these proceedings. The respondent made this argument forcefully but it was apparent to us that he had either chosen to misrepresent the criticisms of the Law Society by the DC or had been deficient in understanding the DC's expressions of its concerns in relation to the withdrawal of the charge of threatening the District Judge. The respondent argued that there had been a "serious miscarriage of justice" and that he was now a "victim" of the Law Society's "misdirections". Some elaboration is now required.

18 The DC devoted a large portion of its report to commenting on the unsatisfactory manner in which the Law Society had conducted its case. In particular, it was unhappy with the fact that notwithstanding the deletion of limb (e) from the original charge (*viz*, that the respondent had threatened the District Judge and the court officer with complaints to the Ministry of Law and the Legal Service Commission), para 6 of the amended SOC contained facts that supported limb (e). The relevant part of para 6 of the amended SOC read: "He informed the DJ that he would report her to the Legal Service Commission and the Ministry of Law." The DC felt that it had been placed in a rather awkward position in that the respondent would admit to having said to the District Judge that he would report her but yet the DC would be unable to deal with the import of this admission as a threat since the allegation that the respondent had threatened the District Judge would be deleted from the original charge. At para 14 of its report, the DC was of the view that if the Law Society's reason for agreeing to the deletion was that it could not get an AEIC from the District Judge or persuade her to testify:

> [T]he correct approach then would be to either withdraw the entire Charge against the Respondent or proceed with the original Charge and leave the Committee to make its findings without the benefit of the learned District Judge's evidence, which could possibly lead to the Charge not being proved on the evidence, depending on whether there were other witnesses to the incident.

19 Notwithstanding its comments, the DC, as we have mentioned earlier, accepted the principle of self-regulation in disciplinary matters, and allowed the amendment on the ground that it was for the Law Society to determine what charges should be brought against the respondent. The DC proceeded to hear the Law Society's case against the respondent based on the amended SOC and the amended

Charge.

20 However, by reference to some kind of fuzzy logic, the respondent latched on to the DC's comments in para 14 of its report to argue that:

(a) the Law Society ought not to have proceeded with the amended Charge;

(b) without the evidence of the District Judge, the original charge could not be proved;

(c) the DC's findings against the respondent were completely contradictory to its recommendations; and

(d) the DC went beyond the amended Charge, which was wrong in law, and therefore wrongly concluded that the respondent ought to be referred to this court.

21 We have stated earlier that the respondent, in claiming that he was a victim of a serious miscarriage of justice because of the Law Society's "misdirections", had either chosen to misinterpret the DC's concerns or had been deficient in understanding their import. In para 14 of its report, the DC was not saying that the Law Society did not have a case against the respondent under the amended SOC and the amended Charge. The DC was merely showing its concern that the Law Society, in agreeing to withdraw limb (e) of the original charge for the reasons it had given, might have erred in letting the respondent off the hook, as limb (e) could be proved even without the testimony of the District Judge. What the respondent had said in court was an objective fact that could be proved by other witnesses, even if the respondent were to deny it. There were court officers and reporters present in court. In expressing its unhappiness, the DC was well aware that threatening a judge in the performance of her duties in the manner the respondent was alleged to have done in the original SOC was an extremely serious disciplinary offence.

22 For example, in *Re Hilborne* [1984-1985] SLR 343*,* the advocate concerned marched unannounced and without appointment into the judge's private chambers and was discourteous, rude and insolent to the judge. He also addressed the judge in an angry tone of voice and threatened to report the judge to "high authority". The court held that the conduct of the advocate was such as to come within s 83(2)(*b*) of the Act and ordered his name to be struck off the roll. We should, however, add that in *Re Hilborne*, the advocate concerned displayed further disrespect to the court by refusing to appear before it. He had by then retired from practice and was living overseas.

23 Thus, it came to pass that the respondent, instead of showing his gratitude to the Law Society for agreeing to amend the original charge, chose to attack the Law Society for having resiled on an impossible promise to him and to blame the DC for inconsistency and acting *ultra vires.* It is abundantly clear from the record of the proceedings that neither complaint against the DC had any merit as the DC had made its findings against the respondent on the basis of the amended SOC and the amended Charge. We will now deal with these issues.

Issues

Had due cause been shown?

24 The first issue we considered was whether due cause had been shown under s 83(2)(*h*) of the Act. The scope of this provision has been explained by Yong Pung How CJ in *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165, where he held at [40] that s 83(2)(*h*) was a catch-all provision which could be invoked when the conduct did not fall within any of the other enumerated grounds but

was nevertheless considered unacceptable. There is no doubt that rude and discourteous behaviour to the Bench is a clear example of unacceptable behaviour that would fall under s 83(2)(*h*) of the Act. The importance of courtesy and respect towards judicial authority is so fundamental that these professional values have been prescribed in r 55(*a*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed) ("the Professional Conduct Rules"), which provides that "[a]n advocate and solicitor shall at all times … act with due courtesy to the Court before which he is appearing". Recently, in *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR 449, V K Rajah J observed at [33] that the Professional Conduct Rules codified "several time-honoured and established ethical and professional conventions, practices and customs into statutory obligations [that] must now unfailingly and assiduously be observed by all solicitors". Viewed in this light, breaches of the Professional Conduct Rules have to be dealt with seriously.

25 Let us recall the acts of misconduct which the respondent was charged with and to which he had admitted at the hearing before the DC. They were as follows:

(a) turning his back to the District Judge and walking away when he was being addressed by the District Judge;

(b) remaining seated while being addressed by the District Judge;

(c) stating that the District Judge had not addressed him properly and expressing his unhappiness at being pointed at;

(d) informing the District Judge that he would report her to the Legal Service Commission and the Ministry of Law;

(e) replying that different people spoke in different tones when he was being directed by the District Judge not to speak to the prosecuting officer or to other counsel in loud tones; and

(f) replying that he wished the court would address him properly when he was once again directed by the District Judge not to speak to the prosecuting officer or to other counsel in loud tones.

26 There was no doubt whatsoever that these acts formed the bases of the amended Charge (see [2] above) that was made against the respondent and that they constituted misconduct under s 83(2)(*h*) of the Act. Lack of courtesy to the court in itself may be a minor infraction if it only shows the lack of a proper upbringing or manners of the advocate and if it does not undermine the authority of the court. However, lack of respect for the court, especially when it is in session, is a different and more serious kind of infraction. When displayed publicly in the presence of court staff, counsel or members of the public, such form of disrespect tends to diminish the standing of the court and undermines its authority in the eyes of the public, especially when it is also displayed in a contemptuous manner. This was precisely what the respondent did in this case.

27 Indeed, we cannot overemphasise the importance of respect for judicial authority. In *Re Kumaraendran, an Advocate & Solicitor* [1975] 2 MLJ 45, a case which was concerned with contempt of court, Abdoolcader J made the following observations at 48 which are equally applicable to the present case since the District Judge could have found the respondent guilty of contempt in the face of the court if she had been minded to:

> Counsel appearing before these courts must equally remember that in the discharge of their duties they must judiciously use the right and privilege of appearing as such in these courts and

not abuse it, and that *their conduct must at all times accord with that decorum and dignity which is absolutely essential to the administration of justice and above all, however frustrated or provoked they may be, they must pay that respect due to the court* which is the embodiment of the institution of justice in the machinery of which both the courts and the Bar are interdependent and vital components. If counsel has any complaint of unfair treatment then his recourse should not be a challenge to the authority of the court but must of necessity be to direct it to the proper quarters either personally or perhaps more appropriately through the appropriate Bar Committee. *Mutual respect and courtesy should always prevail and the utmost restraint exercised from overacting, even at the most trying times. Occurrences of the nature before me will only tarnish the image of justice which we all seek to administer and mar the smoothness of its administration*. [emphasis added]

28 For the reasons set out above, we found that the respondent had acted in a manner that was in blatant disrespect of judicial authority and that due cause had been shown under s 83(2)(*h*) of the Act. We now give reasons for the penalty we imposed on the respondent.

The appropriate penalty and the mitigation plea

29 Upon due cause being shown, s 83(1) of the Act provides that an advocate and solicitor may either be struck off the roll, suspended from practice for a period not exceeding five years, or censured.

30 In determining the proper punishment for the relevant professional misconduct, the oft-cited principles underlying disciplinary sentencing should also be borne in mind. In *Law Society of Singapore v Tham Yu Xian Rick* [1999] 4 SLR 168, Yong Pung How CJ held at [18] that disciplinary action under s 83 of the Act served three functions:

(a) punishment of the errant advocate and solicitor for his misconduct;

(b) deterrence against similar defaults by other like-minded advocates and solicitors in the future; and

(c) protection of public confidence in the administration of justice.

In meting out the appropriate punishment, the court should not only take into account the nature of the misconduct, but also the manner in which the acts were committed and the reasons why the advocate and solicitor did such acts. It is necessary to determine the degree of culpability of the advocate and solicitor by taking into account, *inter alia*, his motivation and his state of mind at the time he misbehaved himself in court.

31 Prior to the incident in this case which occurred on 9 October 2003, the respondent had been involved in two other cases in connection with which he was disciplined. They were as follows:

(a) In IC No 33/2000, the Inquiry Committee of the Law Society imposed a penalty of $500 after finding the respondent guilty of misconduct in making disparaging remarks to the Deputy Public Prosecutor; and

(b) In IC No 67/2003, the Inquiry Committee imposed a penalty of $500 for the respondent’s conduct in being discourteous to Justice Woo Bih Li.

32 After 9 October 2003, the respondent was involved in another three incidents where he was

also subjected to disciplinary proceedings under the Act. These proceedings were as follows:

(a) In IC No 15/2004, the Inquiry Committee imposed a penalty of $1,000 for the respondent's conduct in acting without instructions while making submissions before District Judge Kow Keng Siong;

(b) In DC No 12/2004, the DC found the respondent guilty of misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the Act when he made improper and untrue remarks about the Singapore Prison Service and also threatened a prison officer with legal proceedings. The DC found that a reprimand was sufficient but ordered that the respondent contribute the sum of $3,000 towards the Law Society's costs; and

(c) In IC No 53/2004, the Inquiry Committee found the respondent guilty of misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the Act after he was convicted for disorderly behaviour and imposed a penalty of $200.

33 Strictly speaking, as the last three cases could not be regarded as antecedents, they could not and should not be taken into account for the purpose of imposing a penalty on the respondent. Nevertheless, the undue delay in these proceedings has also enabled this court to gain a better understanding of the character and mental make-up of the respondent. The majority of the respondent's acts of misconduct arose out of criminal cases involving what the respondent regarded as an infringement of the human rights of his clients. We did not discount the possibility that what the respondent had done in this case was done out of a misplaced sense of bravado, in order to demonstrate to his client that he held no fear of the District Judge.

34 At the hearing before us, the respondent did not submit in mitigation or indicate an intention not to repeat such acts in court. While the respondent claimed to have great respect for the District Judge, he did not show it by reiterating before us the apologies that he claimed he had sincerely made to her. Indeed, the DC found the respondent's apologies to be less than sincere as they were qualified in substance. In this respect, we would express our agreement with the findings of the DC that the respondent's heart was not in his purported apologies.

35 Given this background, we were not surprised that while the respondent acted like a model advocate when he started to make his defence, he suddenly lost his composure and restraint as soon as he was asked to stand up to receive the judgment of this court. Rightly or wrongly, he had prematurely concluded that the Law Society had made out its case against him and that we would not condone his misconduct and let him off without imposing a penalty. His unprovoked and offensive verbal reaction merely confirmed that a censure would be a wholly inadequate penalty as it would have been nothing more than water off a duck's back. It certainly would not have been capable of sending a signal to other advocates and solicitors not to imitate or emulate the conduct or histrionics of the respondent in court.

36 We recognised that the nature of the respondent's misconduct in the present case was consistent with and fitted into the pattern of his well-publicised behaviour in court. However, since the particular misconduct was committed when he was a relatively junior counsel of only about seven years' experience (as he himself reminded us when he began his submissions), we only took into account the two earlier antecedents mentioned earlier and imposed a penalty commensurate with the gravity of the misconduct. We also took into account the likelihood that, being young and impressionable, he behaved the way he did because of an exaggerated or inflated notion that that was the way to impress his clients as a fearless defence counsel. In our view, the respondent's histrionics before the District Judge were far from heroic and, in the light of his subsequent behaviour,

more reflective of an inability to control his temperament.

37 For these reasons, and given the nature of the respondent's misconduct, we considered that striking him off the roll of advocates and solicitors would be too draconian a punishment to be imposed on him.

38 Having excluded censure and striking off as appropriate punishments, we were left only with the penalty of suspension from practice for a period not exceeding five years. In our oral judgment we expressed the view that the respondent was an intense person who was young and inexperienced at the Bar and that if he were given a short period of respite from his legal work he might be able to reflect on his future and find some peace. We were of the view that the respondent was not beyond redemption as an officer of the court and that given a short rest from the rigours of a law practice, he might be able to resume practice as the kind of counsel that we would like to see in court. We felt that it was appropriate to give him a chance to reconstruct his legal career.

39 For the above reasons, we considered that an adequate penalty for the respondent's professional misconduct was a short period of suspension from practice for one year, and that he bear the costs of the proceedings, and we so ordered.

The DC's concerns about the Law Society's agreement to withdraw the charge of threatening the District Judge

40 We will now consider an important issue that counsel for the Law Society has brought up in the course of his submissions. This arose out of the DC's comments on the Law Society's decision to:

> (a) withdraw the most serious limb of the original charge against the respondent, *viz*, the deletion of limb (e) of the original charge stating that the respondent had threatened the District Judge with complaints to the Ministry of Law and the Legal Service Commission; and
>
> (b) keep partially intact para 6 of the original SOC that the respondent had "informed the DJ that he would report her to the Legal Service Commission and the Ministry of Law".

41 With respect to (a) above, the DC expressed its concern at para 11 of its report that the Law Society might be seen as attempting "to spare the Respondent from having to be referred to the Court of Three Judges, given that there is clear authority that such a threat would result in a solicitor being struck out", referring to *Re Hilborne* ([22] *supra*). With respect to (b) above, the DC was also disturbed by the apparent contradiction between the withdrawal of limb (e) from the amended Charge and the retention of para 6 of the original SOC. Although limb (e) was omitted in the amended Charge, the DC noted at para 12 of its report that para 6 of the amended SOC still contained facts that supported limb (e), and furthermore, that the respondent later admitted to the facts in question.

42 The DC sought an explanation from counsel for the Law Society and was told that, with respect to (a), the respondent had approached the District Judge and had apologised to her. He had also written a letter of apology to her which she had indicated that "she is inclined to accept". Counsel for the Law Society also informed the DC that he did not have an AEIC from the District Judge and without that "it's not very easy for us to proceed with these proceedings". The DC found the explanation given by counsel difficult to follow and expressed its dissatisfaction at para 14 of its report thus:

> If the Law Society's problem was that the learned District Judge was not prepared to swear or affirm an affidavit of evidence in chief, the correct approach then would be to either withdraw

the entire Charge against the Respondent or proceed with the original Charge and leave the Committee to make its findings without the benefit of the learned District Judge's evidence, which could possibly lead to the Charge not being proved on the evidence, depending on whether there were other witnesses to the incident.

43 With respect to (b), counsel for the respondent, Mr Sreenivasan, had attempted to explain the linguistic difference between "threaten" and "inform" in the context of limb (e) of the original charge and para 6 of the SOC respectively. He explained that since the categorisation that what was said was a "threat" came from the original charge, and that the District Judge would not be giving evidence to prove the "threat", limb (e) had to be withdrawn from the original charge. Again, the DC said that it had difficulty in understanding the explanation, and expressed its unhappiness at para 18 of its report thus:

> In our opinion, nothing turns on the removal or otherwise of that categorisation from the Charge. The issue is whether a threat can be proved by the "words" themselves. As learned counsel has himself alluded to, that can be done. In other words, it is only in cases where the words themselves cannot amount to a threat because of subtlety, or it came in the form of an innuendo, or it requires special knowledge of the trade, etc, then an affidavit or oral evidence would be necessary. How can a sentence like, "I will report you to the Legal Service Commission and the Ministry of Law", said to a District Judge not be a threat? The Law Society could have easily proceeded on the words themselves, especially when the Respondent went on to admit having said them. The Law Society could even have changed that categorization of particular (e) from threat to making discourteous and rude statements to the learned District Judge. We therefore could not understand the Law Society's position when it withdrew particular (e) altogether.

44 The DC felt that it had been placed in "a rather awkward position in which the respondent would admit to having said to the learned District Judge that he would report her and yet not be able to deal with that most serious misconduct" as that charge had been removed in the amended Charge. However, at the same time, the DC accepted the Law Society's position that the DC could not go beyond the amended Charge preferred by it against the respondent. Nevertheless, the DC felt that something had gone wrong in this case and stated that what had happened could give rise to concerns about the legal profession's reliability in regulating itself.

The Law Society's submissions on the DC's comments

45 As part of his submissions to us, counsel for the Law Society expressed his disagreement with the comments made by the DC regarding the amendments to the original SOC and the original charge. He complained that the DC's comments, which we have earlier set out, were "unnecessarily harsh and unwarranted". Accordingly, he requested us to confirm that the Law Society was entitled to: (a) agree with the respondent to make changes to the SOC, subject to leave from the DC being obtained; and (b) agree with the respondent's solicitor to the respondent pleading guilty to one of several charges or to an alternative charge, or an amended charge, just as a Public Prosecutor is entitled to do.

46 There are three separate issues to consider here. The first is whether the Law Society was entitled to proceed in the way it had done. The second is whether the Law Society was correct in its assessment that without the testimony of the District Judge, the charge of threatening her could not be made out. The third is whether the Law Society had put the DC in an awkward position in deleting limb (e) from the amended Charge and retaining in para 6 of the SOC the statement that the respondent had "informed the DJ that he would report her to the Legal Service Commission and the

Ministry of Law".

47 On the first issue, the DC accepted that, on the principle of self-regulation, the Law Society had the power to amend the original charge subject to leave being obtained from the DC. That was why the DC allowed the amendments. We agree with the DC that the Law Society was so entitled, but not to the extent that counsel has claimed, *viz*, in the prosecution of disciplinary charges, the Law Society's powers are no different from those of the Public Prosecutor in relation to criminal charges. The two powers are not equiparate. The power of the Law Society to "prosecute" advocates and solicitors for disciplinary offences is a statutory power derived from the Act, whereas, in contrast, the prosecutorial power of the Public Prosecutor, in so far as he is also the Attorney-General, is constitutionally based: see s 336(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) read with Art 35(8) of the Constitution of the Republic of Singapore (1999 Rev Ed). The fundamental difference is vast: the exercise of disciplinary powers by the Law Society is subject to judicial review whilst the exercise of his prosecutorial powers by the Attorney-General *qua* Public Prosecutor is not subject to judicial review.

48 On the second issue, we are of the view that the Law Society, in evaluating the strength of its case against the respondent and deciding how to proceed, was entitled to take into account the fact that it did not have the AEIC of the District Judge. The question is whether its evaluation is defensible. In this respect, the DC's comments focused on the Law Society's explanation as to why it could not have proceeded on the original charge without the District Judge's testimony despite there being other witnesses who could testify to the utterance of the respondent's threat.

49 On the third issue, we think that the Law Society has misunderstood the misgivings of the DC, which were that the deletion of limb (e) from the original charge (which contained a reference to "threatening" the District Judge) had put the DC in an awkward position because it could not take into account the respondent's admission that he had informed the District Judge that he would lodge a complaint against her. To the DC, there was no difference in substance between these two actions. The DC saw no difference between the act of "threatening the DJ" and the act of "informing the DJ" that she would be reported to "higher authorities". The information that was conveyed, however it was conveyed, could amount to a threat. Pertinently, the DC asked itself this rhetorical question at para 18 of its report:

> How can a sentence like, "I will report you to the Legal Service Commission and the Ministry of Law", said to a District Judge not be a threat?

We agree with the DC that these words by themselves could constitute a threat in the context of this case. That is why the DC was concerned that the Law Society might be seen to have taken the easy way out by reaching an agreement with the respondent when it was still holding a strong hand of cards against the respondent.

50 Furthermore, the Law Society's stand, which counsel for the respondent attempted to explain, made no sense to the DC since a threat to report the District Judge to higher authorities is a much more serious kind of misconduct than conduct which is merely "unbecoming" of an advocate and solicitor as set out in limb (d) of the amended Charge (see [2] above). It would appear that the DC had a better understanding of the strength and weakness of the case against the respondent than counsel for the Law Society.

51 For the above reasons, we are of the view that the DC was entitled to express its misgivings in the way it had done.

Was the District Judge compellable to give evidence?

52 There is one other issue arising from the DC hearing that we wish to address which was not relevant to the appeal but which is sufficiently important for us to provide a clarification. It is in connection with the statement of the DC that it could order the District Judge to provide an AEIC, in response to counsel for the Law Society's explanation that he did not have the District Judge's AEIC. Counsel for the Law Society agreed with the DC's statement. Without hearing argument on this point, we should not state definitively what the true position is. However, it is not so clear that the position taken by the DC and the Law Society is correct in the present case. As a general rule, founded on public policy and convenience, a judge or judicial officer is not compellable to give evidence on matters that come to his knowledge in court in the course of discharging his judicial functions.

53 This principle is enacted in s 123 of the Evidence Act (Cap 97, 1997 Rev Ed) which provides as follows:

> **Judges and Magistrates**
>
> 123. No Judge and, except upon the special order of the High Court, no Magistrate shall be compelled to answer any question as to his own conduct in court as such Judge or Magistrate or as to anything which came to his knowledge in court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.
>
> *Illustrations*
>
> (*a*) *A*, on his trial before the High Court, says that a deposition was improperly taken by *B*, the committing Magistrate. *B* cannot be compelled to answer questions as to this except upon the special order of the High Court.
>
> (*b*) *A* is accused before a District Court of having given false evidence before *B*, a District Judge. *B* cannot be compelled to say what *A* said except upon the special order of the High Court.
>
> (*c*) *A* is accused of attempting to murder a police officer whilst on his trial before *B*, a Judge of the High Court. *B* may be examined as to what occurred.

54 It may be maintained that what the respondent said to the District Judge about reporting her to higher authority falls within the ambit of the words "anything which came to his knowledge in court as such Judge or Magistrate". If so, the District Judge is not compellable to give evidence except upon the special order of the High Court. However, it may also be argued that this utterance could as well fall within the ambit of the words "other matters which occurred in his presence whilst he was so acting", in which case the District Judge would be compellable to give evidence. In our view, the former approach appears to be more consistent with the rationale of s 123 of the Evidence Act for the reason that the conduct in question in this case, including the utterance of the words of threat, was the basis upon which the complaint was lodged against the respondent to the Law Society. The matters on which a judicial officer, such as a district judge or a magistrate, should not be subject to examination would be any matter which has occurred in his presence whilst so acting, and which affected him in his official capacity.

55 The respondent was given a lifeline in this case. If the original SOC had been proceeded with and the relevant witnesses were called, he could have been found guilty of threatening the District Judge in open court and, if so, he would have been subjected to a heavier penalty, including being

struck off the rolls. Instead of criticising the Law Society for misdirecting itself, the respondent should have expressed his gratitude to the Law Society for agreeing to proceed on the amended SOC and the amended Charge.

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