
IN THE BARRISTERS DISCIPLINARY TRIBUNAL

BETWEEN

THE BAR COUNCIL

The Applicant

and

Ms CANDY E-FONG FONG

The Respondent

Coram: Cheng Huan S.C.
Juliana Chow, Barrister-at-Law
Marvin Cheung Kin Tung J.P.

Dates of hearings: 17th July 2007, 24th September 2007, 18th October 2007

Date of delivery of Statement of Findings and Sentence: 15th April 2008

Date of handing down Reasons for Sentence: 29th April, 2008.

Cheng Huan S.C.

Reasons for Sentence

1. On 15th April 2008 we gave our Statement of Findings convicting the Respondent on three complaints of misconduct brought by the Bar Council. The particulars of those complaints are to be found in the Statement of Findings and we do not intend to reproduce them here.
2. When we sentenced the Respondent on 15th April 2008 we stated that by mutual consent of both parties and in order to save costs, we

would deliver our sentence on that day but would in due course reduce our reasons to writing. We advised that we would, through the solicitors for the Applicant, send our Statement of Findings and Reasons for Sentence to all the interested parties.

3. This we now do.
4. The Respondent was called to the Bar in 1994. On 13th July 2000 it was gazetted that the Respondent having earlier, on 1st June 2000, been found guilty of four charges by a Barristers' Disciplinary Tribunal, had been suspended from practising as a barrister for two periods, of six months and eighteen months respectively to run concurrently from 1st July 2000. On that occasion the Tribunal also ordered the Respondent to pay \$100,000 in costs.
5. At the June 2000 Tribunal the most serious of the four charges of which the Respondent was found guilty was a charge that involved dishonesty and on that particular charge the Respondent was suspended for eighteen months.
6. It is conceded by the Applicant, which we accept, that none of the present three complaints involved acts of dishonesty.
7. We have listened carefully and taken into account the submissions made by the Respondent in mitigation and in particular submissions concerning a sad matrimonial difficulty that resulted in a divorce. We were also informed about the Respondent's financial situation and have taken into account submissions concerning her financial affairs.
8. All three complaints of which we convicted the Respondent involved her conduct in a trial that she defended before a Permanent Magistrate in Kowloon City Magistracy. The three complaints related to events that took place during a relatively short period of about one to one and a half days.
9. We are conscious of how, while defending a criminal case an advocate may lose his or her composure and equanimity. We are also conscious of the responsibilities imposed on advocates when defending their clients. On the other hand we have also taken into account the important principle that all advocates must display due courtesy and respect to any Tribunal. It has often been said, and one does not need to be reminded of the fact, that the good relationship

between the Bench and the Bar is most important to the good administration of justice.

Complaint 1

10. In complaint 1 the Respondent was both disrespectful and arrogant to the learned magistrate when she suggested that she reserved the right to lodge a complaint against him that might affect the extension of his contract. We have listened to those portions of the tapes that preceded and were subsequent to these remarks by the Respondent. We viewed these remarks to be a serious breach of the Bar code and we had no hesitation in finding that such utterances clearly brought the profession of a barrister into disrepute.
12. In all the circumstances we considered that a term of suspension was inevitable and we imposed a suspension of nine months.

Complaint 2

13. The Respondent made a number of rude and unnecessary remarks to the learned magistrate. After listening to the transcripts we had no hesitation in finding that the Respondent was often sarcastic, rude and arrogant to the learned magistrate.
14. In all the circumstances we considered the second complaint to be less serious in nature than the first complaint and therefore we imposed a sentence of six months' suspension from practice.

Complaint 3

15. Initially the Respondent pleaded guilty to the third complaint but subsequently attempted to convince us that we should find her not guilty of the complaint. The third complaint related to some most disrespectful remarks made by the Respondent to the learned magistrate. Again, taking into account what we heard from the audio recordings we have no doubt that the Respondent's conduct followed a pattern of behaviour which was consistently disrespectful towards the learned magistrate.
16. In all the circumstances on the third complaint we imposed a

sentence of suspension from practice of three months.

17. We also ordered that all the sentences should run concurrently.

18. The orders we now make are as follows:

- a) On the 1st complaint the Respondent is sentenced to a period of nine months' suspension from practice;
- b) On the 2nd complaint the Respondent is sentenced to a period of six months' suspension from practice;
- c) On the 3rd complaint the Respondent is sentenced to a period of three months' suspension from practice;
- d) All these orders are made in pursuance of s.37(b) of the Legal Practitioners Ordinance Cap 159. The periods of suspension are to run concurrently.
- e) Pursuant to s.37 (f) of the Legal Practitioners Ordinance Cap. 159 the Respondent is ordered to pay the costs of, and incidental to, the proceedings of the Tribunal on a full indemnity basis;
- f) Pursuant to s.37A(2) of the Legal Practitioners Ordinance Cap 159 it is ordered that the Registrar be directed to publish the order for the suspension from practice of the Respondent in the Gazette within 14 days of the receipt of the order;
- g) We also order that such period of suspension should commence after the appeal period, such appeal period to run from the day of our written Reasons for Sentence, that is from today's date;
- h) We also order that a copy of our Statement of Findings and a copy of our Reasons for Sentence be sent to the following persons:
 - The Registrar
 - His Honour Judge Li
 - Mr Fred Sham, Permanent Magistrate
 - Mr Ronny Tong S.C., Convenor, Barristers' Disciplinary Tribunal

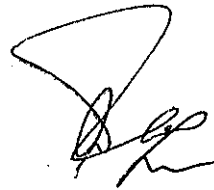
- Chairman and Committee Members of the Hongkong Bar Association. We leave it to the discretion of the Bar Association as to whether members of the Bar should be informed of our Reasons and how they might be so informed. We merely suggest that, at the least, members of the Bar should be informed of the gist of the complaints and the penalties imposed and we further suggest that that the Statement of Findings and Reasons for Sentence be available on the Bar's website.
- President of the Law Society
- The Secretary for Justice
- The Director of Public Prosecutions
- The Director of Legal Aid
- The Administrator, Duty Lawyer Scheme



Cheng Huan, S.C.
Chairman



Juliana Chow
Barrister-at-law



Marvin Cheung Kin Tung J.P.