

THE SINGAPORE EXPERIENCE IN APPLICATIONS FOR RE-INSTATEMENT

Key Points:

(A) The approach taken by the Singapore Courts to applications for re-instatement

The factors that are relevant for such applications were examined in these cases, namely, Re Chan Chow Wang [1983-1984] SLR(R) 55, Re Lim Cheng Peng [1987] SLR(R) 582, Re Ram Kishan [1992] 1 SLR(R) 260, Knight Glenn Jeyasingam v Law Society of Singapore [2007] 3 SLR (R) 704 ("Glenn night"), Narindar Singh Kang v Law Society of Singapore [2007] 4 SLR(R) 641 ("Narindar"), Gnaguru s/o Thamboo Mylvaganam v Law Society of Singapore [2008] 3 SLR(R) 1 and Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore [2009] 4 SLR(R) 1018 ("Kalpanath").

The following key points may be extracted from these decisions:

- (a) The order for restoration is discretionary and is to be exercised judicially;
- (b) The outcome of each application must necessarily depend on the precise circumstances of the case itself; precedents are useful only for the principles they enunciate but not in relation to the outcome;
- (c) The applicant bears the onus of convincing the court that he has been fully rehabilitated and is now a fit person to be restored to the roll and that he is a person on whose integrity and honour reliance may be placed by the public;
- (d) The court's primary duty in the consideration of the application is in ensuring the protection of the public and

the public confidence in the general reputation of the legal profession

- (e) The court is not bound by the observations of the Attorney-General and/or the Law Society but their views would be given due weight and consideration as the Attorney General is charged with the duty of safeguarding the public interest and the Law Society is one of the guardians of the legal profession;
- (f) The application for restoration is subjected to stricter scrutiny than an application by a new entrant to the profession;
- (g) There is no fixed time frame for restoration but a significantly longer period than five years after striking off should elapse before an applicant applies for reinstatement; and
- (h) An applicant will not generally be prevented from being reinstated unless in the most exceptional or egregious circumstances.

Please see Annex A for a Guidance Note issued by Council for the Law Society on the information to be provided by applicants in such an application.

More recently, in *Narinder Singh Kang v Law Society of Singapore [2013] SGHC 195 the Court was of the view that in the context of public interest "the competence of the reinstated advocate and solicitor should also be deserving of careful consideration"*.

As a result, applicants are now required to satisfy the Court not only on whether they are fit to be replaced on the roll (fitness criteria) but also on whether they are competent (competency criteria) to be replaced on the roll.

(B) The Law Society's role

1. The Law Society's role is to:
 - (a) appear at the hearing of the application; and
 - (b) place before the court a report which shall include:
 - (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
 - (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 Council, are relevant to be considered or investigated in connection with the application

See section 102 of the Legal Profession Act (Annex B)

2. Under section 102 of the Legal Profession Act the Court 'must consider the views of the Council of the Law Society of Singapore contained in its report placed before the Court': *Re Lim Cheng Peng* [1987] SLR 486 at 489, para A. However the Court is not bound by the Law Society's views as it has full discretion to allow the application for reinstatement or otherwise. In practice, the Law Society would state its reasons for not opposing an application in its report to the Court.
3. In practice, potential applicants would write to the Law Society to seek the Law Society's in principle approval to their application by submitting a draft of the application, before filing the application.
4. The Council of the Law Society will then consider the application and decide on whether in principle approval should be granted. In this regard, the Law Society would further consider the conditions to be imposed on the applicant's practising certificate if the court was inclined to reinstate the applicant onto the Roll.

5. As a starting point, consideration will be given to whether the applicant has provided the required information as set out in Council's Guidance Note and consider if Council was satisfied that the applicant was fully rehabilitated and was no longer a danger or risk to the public if he were to be reinstated onto the Roll. Further the applicant's reinstatement should not diminish public confidence in the reputation and standing of the legal profession.
6. As a mechanism to ensure that public interest is protected, it is a practice that in the event Council is satisfied that in principle approval be granted, it would require that conditions be imposed on the applicant's practicing certificate to ensure that his re- entry into practice is subject to various controls. In *Nirmal Singh s/o Fauja Singh v The Law Society of Singapore* [2010] SGHC 336, the Law Society required the following conditions to be imposed on the applicant's practicing certificate:
 - (a) that he not practise as a partner or director of any law practice for a period of 2 years, but not as a sole proprietor for 5 years;
 - (b) that he not hold or receive client money and/or trust money for a period of 5 years;
 - (c) that he not act as a signatory to any client or trust account of a Singapore law practice for a period of 2 years;
 - (d) that, for a period of 2 years, he should be employed in a law practice with a sole proprietor or director or partner who should be of at least 12 years standing, and such supervisor shall notify the Law Society of Singapore that he has undertaken such a responsibility;
 - (e) all legal work undertaken by him in the law practice in the said 2 year period is to be overseen by that supervisor; and
 - (f) that within 6 months hereof, he is to complete at least 10 hours of ethics

training conducted by the Law Society of Singapore.

The court was satisfied that these conditions would address any lingering doubts which the public might entertain as to the honesty or integrity of the applicant. Second, bearing in mind that the applicant had been out of touch with practice for a long period of time, some of the conditions would facilitate his return to the profession in a manner which would enable him to competently discharge his services to his clients, e.g., supervision for two years.

7. In more recent cases, applicants were required to undertake that they:

(a) attend conferences, lectures, seminars or workshops conducted by accredited

institutions for the purposes of the Continuing Professional Development ("**CPD**") Scheme with a view to obtaining 16 CPD points during various periods;

(b) read online lectures and materials for the following 5 compulsory subjects

(i) Civil Litigation Practice

(ii) Criminal Litigation Practice

(iii) Insolvency Practice

(iv) Real Estate Practice

(v) Family Law Practice; and

(c) read the annual issue of the Singapore Academy of Law Annual Review of Singapore Cases, for the next 3 years

Guidance Notes 2013

GN 2013, PARAGRAPH 6 - REPLACEMENT ON ROLL OF SOLICITOR WHO HAS BEEN STRUCK OFF [MODIFIED]

[Formerly Council's Guidance Note 2 of 2009]

1. This Guidance Note takes effect on 20 November 2009.
2. Under Section 102(1) of the Act, the Court may, if it thinks fit, order the Registrar to replace on the roll the name of a solicitor who has been removed from, or struck off, the roll.
3. Sections 102(2) and 102(3) of the Act provide for the procedure to be complied with for an application for replacement on the roll. The application is to be made by originating summons supported by an affidavit. The originating summons is to be served on the Society who shall appear before the hearing and place before the court a report which shall include copies of the record of the proceedings leading to the solicitor being struck off the roll and a statement of the facts that have occurred since the solicitor was removed/struck off the roll which in the opinion of Council or any member of the Council are relevant to be considered or to be investigated in connection with the application.
4. The Act does not provide for any specific information that needs to be disclosed by the applicant for the purpose of the application and in order for the court to determine if he is fully rehabilitated to practice and should be replaced on the roll as a matter of public interest and public confidence in the legal profession.
5. This has led the Court in *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore*, [2009] 4 SLR(R) 1018, to observe that it was good practice to make full disclosure of all relevant information in all future applications for replacement on the roll. This was to remind the applicant of the need to furnish all relevant information in his/her application.
6. The Council of the Law Society in consultation with the Attorney-General, sets out in Paragraph 7 below the information that ought to be disclosed in an affidavit in support of an application for replacement on the roll under section 102 of the Act. This is to bring to the attention of the Court information pertaining to the grounds for disqualification as prescribed under the Act.
 - 6.1 if there was/were any pending disciplinary or other criminal or civil action(s) or matter(s) including regulatory action(s) against the applicant in any jurisdiction at the time of the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment; and
 - 6.2 if there was/were any subsequent disciplinary or other criminal or civil action(s) matter(s) including regulatory action(s) against the applicant in any jurisdiction after the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment; and
 - 6.3 if the applicant is an undischarged bankrupt in any jurisdiction; and
 - 6.4 if the applicant has entered into a composition with his/her creditors or a deed of arrangement for the benefit of his/her creditors in any jurisdiction; and
 - 6.5 if the applicant has one or more outstanding judgments against him/her in any jurisdiction amounting in the aggregate to \$100,000 or more which he/she has been unable to satisfy within six months from the date of the earliest judgment; and
 - 6.6 if the applicant has been found under section 7 of the *Mental Disorders and Treatment Act* (Cap 178, 1985 Rev. Ed. Sing) or any other relevant legislation including the *Mental Capacity Act* 2008 (Cap. 177A, 2010 Rev. Ed. Sing) to be of unsound mind and /or incapable of managing himself/herself and/or his/her affairs; and
 - 6.7 if the referees opining to the applicant's fitness to practice and rehabilitation are known to the applicant in an official and/or professional capacity; and
 - 6.8 if the applicant is incapacitated by illness or accident or physical or mental condition which is relevant to his/her capacity to attend to his /her practice; and
 - 6.9 the period that has transpired between the date the applicant ceased practice to the date of the application.
 - 6.10 if the applicant's right to practice in any other jurisdiction is subject to any restriction(s), condition(s), suspension or has been stopped.
7. In particular, the affidavit should contain, amongst other things, disclosure of the following:
 - 6.1 if there was/were any pending disciplinary or other criminal or civil action(s) or matter(s) including regulatory action(s) against the applicant in any jurisdiction at the time of the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment; and
 - 6.2 if there was/were any subsequent disciplinary or other criminal or civil action(s) matter(s) including regulatory action(s) against the applicant in any jurisdiction after the removal/striking off and the outcome (if any) including but not limited to any conviction or sentence to imprisonment; and
 - 6.3 if the applicant is an undischarged bankrupt in any jurisdiction; and
 - 6.4 if the applicant has entered into a composition with his/her creditors or a deed of arrangement for the benefit of his/her creditors in any jurisdiction; and
 - 6.5 if the applicant has one or more outstanding judgments against him/her in any jurisdiction amounting in the aggregate to \$100,000 or more which he/she has been unable to satisfy within six months from the date of the earliest judgment; and
 - 6.6 if the applicant has been found under section 7 of the *Mental Disorders and Treatment Act* (Cap 178, 1985 Rev. Ed. Sing) or any other relevant legislation including the *Mental Capacity Act* 2008 (Cap. 177A, 2010 Rev. Ed. Sing) to be of unsound mind and /or incapable of managing himself/herself and/or his/her affairs; and
 - 6.7 if the referees opining to the applicant's fitness to practice and rehabilitation are known to the applicant in an official and/or professional capacity; and
 - 6.8 if the applicant is incapacitated by illness or accident or physical or mental condition which is relevant to his/her capacity to attend to his /her practice; and
 - 6.9 the period that has transpired between the date the applicant ceased practice to the date of the application.
 - 6.10 if the applicant's right to practice in any other jurisdiction is subject to any restriction(s), condition(s), suspension or has been stopped.

Replacement on roll of solicitor who has been struck off

102.—(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 —

- (a) free from conditions; or
- (b) subject to such conditions as the court thinks fit.

[19/2008]

(2) Any application that the name of a solicitor be replaced on the roll shall be made by originating summons, supported by affidavit, before a court of 3 Judges of the Supreme Court of whom the Chief Justice shall be one.

[41/93; 42/2005]

(3) The originating summons shall be served on the Society which shall —

- (a) appear at the hearing of the application; and
- (b) place before the court a report which shall include —
 - (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
 - (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 Council, are relevant to be considered or investigated in connection with the application.

[42/2005]