

IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 246

Originating Application No 4 of 2023

Between

Mohd Sadique bin Ibrahim
Marican

... Applicant

And

- 1 The Law Society of Singapore
- 2 The Attorney-General

... Respondents

GROUND OF DECISION

[Legal Profession — Reinstatement]

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Mohd Sadique bin Ibrahim Marican
v
The Law Society of Singapore and another

[2023] SGHC 246

Court of Three Judges — Originating Application No 4 of 2023
Sundares Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
5 September 2023

5 September 2023

Tay Yong Kwang JCA (delivering the judgment of the court):

1 C3J/OA 4/2023 (the “**Reinstatement Application**”) was an application by Mr Mohd Sadique bin Ibrahim Marican (“**Mr Sadique**”) under s 102(2) of the Legal Profession Act 1966 (2020 Rev Ed) (“**LPA**”) to be reinstated to the roll of advocates and solicitors of the Supreme Court of Singapore (the “**Roll**”). Mr Sadique was struck off the Roll on 20 January 2011 in *Law Society of Singapore v Zulkifli bin Mohd Amin and another matter* [2011] 2 SLR 620, following the misappropriation of clients’ funds of more than \$11m by his then partner, Mr Zulkifli bin Mohd Amin (“**Mr Zulkifli**”).

2 Two issues arose for consideration in the Reinstatement Application. First, whether Mr Sadique should be reinstated to the Roll. Second, whether his reinstatement should be “subject to any conditions that the court thinks fit” under s 102(1)(b) of the LPA.

3 After hearing the parties on 5 September 2023, we allowed the Reinstatement Application subject to the conditions imposed at [37] below. These are our detailed grounds.

Background to the Reinstatement Application

Events leading up to Mr Sadique being struck off the Roll

4 Mr Sadique was admitted as an advocate and solicitor of the Supreme Court of Singapore in 2000. In 2004, Mr Sadique and Mr Zulkifli set up the law practice called M/s Sadique Marican & Z M Amin (the “**Firm**”). Mr Zulkifli was the Firm’s managing partner and managed the Firm’s client and office accounts while Mr Sadique was responsible for matters concerning staff salaries and the monthly review of the balances in the client account.

5 On 19 November 2007, Mr Sadique discovered that both the Firm’s client and office accounts were overdrawn. One day later, Mr Zulkifli absconded.

6 On 22 November 2007, Mr Sadique and another partner of the Firm informed the Compliance and Conduct Department of the Law Society of Singapore (the “**Law Society**”) that Mr Zulkifli was untraceable and that they suspected that he had misappropriated moneys from both the client and the office accounts. A police report was also made on the same day.

7 On 23 November 2007, the Compliance and Conduct Department of the Law Society informed Mr Sadique that the Council of the Law Society (the “**Council**”) would inspect the Firm’s accounts for the period 1 January 2007 to 22 November 2007. The subsequent inspection by the Law Society revealed that the Firm had not prepared any bank reconciliation statements after

June 2007. Further, contrary to the Legal Profession (Solicitors' Accounts) Rules (Cap 161, R8, 1999 Rev Ed) ("**SAR**"), the Firm had issued cash cheques totalling \$5,660,357.02 and the propriety of issuing those cheques could not be verified due to insufficient documentation supporting the payments.

8 On 3 June 2008, the Council referred the matter to an Inquiry Committee which recommended a formal investigation by a Disciplinary Tribunal ("**DT**"). Before the DT, the Law Society preferred three charges against Mr Sadique for his breaches of the SAR:

(a) The "**First Charge**" was that for the period August to October 2007, Mr Sadique failed to conduct any reconciliation of the balances in the clients' cash books and the monthly bank statements of the Firm's client account and also to keep a statement showing the reconciliation in a cash book or other appropriate accounting documents.

(b) The "**Second Charge**" was that for the period 3 January 2007 to 20 November 2007, Mr Sadique failed to record or cause to be recorded all transactions concerning the Firm's client account in ledgers required to be maintained.

(c) The "**Third Charge**" was that for the period 3 January 2007 to 20 November 2007, Mr Sadique breached his duty as a co-signatory of the Firm's client account by failing to adequately supervise transactions involving this account and by failing to safeguard clients' moneys in the account such that unauthorised transactions were made from it.

9 On 5 August 2009, the DT heard the charges against Mr Sadique and found that the First Charge was proved only in relation to the month of October 2007 but not August and September 2007. The DT found that Mr Sadique was

guilty in respect of the Second Charge and the Third Charge. The DT was of the view that there was sufficient cause for disciplinary action to be taken against Mr Sadique. An application was then taken out in Originating Summons No 219 of 2010 (“**OS 219**”) for Mr Sadique to show cause why he should not be sanctioned under s 83 of the LPA.

10 The Court of Three Judges (the “**Court**”) heard OS 219 and issued its decision on 20 January 2011. In respect of the First Charge, the Court affirmed the DT’s finding that the reconciliation statements for October 2007 had not been prepared. The Court further held that the August and September 2007 reconciliation statements were also not prepared.

11 In respect of the Second Charge, the Court agreed with the DT’s findings. The Court noted that Mr Sadique was unable to produce the Firm’s actual ledger as he claimed that it was missing.

12 In respect of the Third Charge, the Court agreed with the DT’s findings. The Court observed that Mr Sadique’s failure to supervise the Firm’s accounts and to put in place an adequate system of periodic checks allowed Mr Zulkifli to commit a massive fraud over a relatively short period of time.

13 The Court was of the view that the appropriate penalty was for Mr Sadique to be struck off the Roll for the following reasons:

- (a) First, while Mr Sadique did not misappropriate the clients’ moneys and there was no dishonesty on his part, he allowed Mr Zulkifli to manage the Firm’s accounts alone and without a framework for periodic checks. This resulted in no checks being conducted during the period when the misappropriations took place. This was in spite of the

fact that Mr Sadique would have known that the Firm had a sizeable conveyancing practice and that the client account would contain substantial funds.

(b) Second, an advocate and solicitor could be struck off the Roll for serious transgressions other than dishonesty in exceptional circumstances. The present facts amounted to such an exceptional case due to the huge financial loss caused to the Firm's clients.

(c) Third, Mr Sadique's dereliction of duty was a serious breach of professional responsibility as it facilitated losses to more than 80 clients of a sum of more than \$11m. While the Firm was able to repay about \$1m to its clients, there was still an amount of \$10m that the Firm was unable to repay.

Salient events after Mr Sadique was struck off the Roll

Mr Sadique's bankruptcy

14 Following Mr Zulkifli's abscondment, Mr Sadique and the Firm arranged to pay out more than \$1m to the Firm's clients. However, as Mr Sadique was unable to pay the majority of the debts owed to the Firm's clients and creditors, bankruptcy proceedings were commenced against him in 2009. He was declared a bankrupt on 4 February 2010.

15 Thereafter, Mr Sadique made monthly payments averaging \$1,000 for a period of 12 years until the Official Assignee applied for him to be discharged from bankruptcy on the grounds of his good conduct, regular payments and a serious medical condition that he was suffering from. None of Mr Sadique's creditors objected to this application and Mr Sadique was discharged from bankruptcy on 7 February 2022.

Mr Sadique's health issues

16 As alluded to at [15] above, Mr Sadique was diagnosed with cancer of the oesophagus in 2013 which eventually led to the removal of his stomach. The cancer recurred in 2015 and he sought further treatment in July that year that involved aggressive chemotherapy. Mr Sadique has since made a full recovery.

Mr Sadique's continued engagement with the law

17 Mr Sadique continued to be actively involved and engaged in legal work overseas after he was struck off the Roll. From January 2011, he took up a variety of in-house legal roles in Dubai and won awards for his work as general counsel. Between June 2022 and February 2023, Mr Sadique joined a UAE private practice in Dubai as the Head of Arbitration.

18 Aside from his core legal work in Dubai, Mr Sadique was involved in law-related speaking engagements and he has published law-related articles. Mr Sadique also attended legal courses even after he was struck off the Roll. He obtained a Master of Science Degree with Distinction in Construction Law and Dispute Resolution from the British University in Dubai in association with King's College London in 2014.

The parties' cases

Mr Sadique's submissions

19 Mr Sadique made three broad arguments in support of the Reinstatement Application:

- (a) an adequate period of time of 12.5 years had elapsed between the time he was struck off the Roll on 20 January 2011 and the filing of the Reinstatement Application;

- (b) he was completely rehabilitated during the 12.5 years that elapsed after he was struck off the Roll and the 15.5 years since the occurrence of the breaches for which he was struck off; and
- (c) his reinstatement to the Roll would neither endanger the public nor diminish public confidence in the general reputation and standing of the legal profession.

Before us, counsel for Mr Sadique stated that Mr Sadique is willing to accept all the conditions for reinstatement proposed by the Law Society and the AG (set out below).

The Law Society's Submissions

20 The Law Society did not object to the Reinstatement Application. However, it proposed that the following conditions be imposed:

- (a) Mr Sadique would not be permitted to practise as a sole proprietor for a period of two years from the date of issuance of his practising certificate. He would also not be permitted to practise as a partner (including managing partner or salaried partner) or director (including managing director, executive director, senior associate director or associate director) of any law practice for a period of 12 months from the date of issuance of his practising certificate (“**Law Soc Condition 1**”).
- (b) Mr Sadique would not be permitted to hold or to receive client money and/or trust money or act as a signatory to or operate any client or office or trust account of a Singapore law practice for a period of two years from the date of issuance of his practising certificate (“**Law Soc Condition 2**”).

(c) Mr Sadique would be required to attend conferences, lectures, seminars and/or workshops (which must include courses on ethics and the SAR conducted by accredited institutions under the Continuing Professional Development Scheme (“CPD”) with a view to obtaining 16 CPD points per year for a period of three years from the date of issuance of his practising certificate (“**Law Soc Condition 3**”).

21 The Law Society’s reasons for the imposition of its three conditions were as follows:

(a) Law Soc Condition 1 was proposed out of an abundance of caution and was intended to serve the twin purposes of: (i) removing any lingering doubts which the public might entertain as to the honesty or integrity of Mr Sadique; and (ii) facilitating Mr Sadique’s return to the profession in a manner which would enable him to discharge his services to his clients per *Nirmal Singh s/o Fauja Singh v Law Society of Singapore* [2011] 1 SLR 645 (“*Nirmal Singh*”) at [25].

(b) Law Soc Condition 2 was proposed to remove any lingering doubts which the public might entertain as to Mr Sadique’s fitness for reinstatement. The period of two years would allow Mr Sadique the time to attend the requisite courses under Law Soc Condition 3 before he undertakes any responsibility for the financial management of a Singapore law practice.

(c) Law Soc Condition 3 was proposed to account for the significant lapse of time since Mr Sadique was struck off the Roll. The Law Society cited the decision of *Narindar Singh Kang v Law Society of Singapore* [2013] 4 SLR 1157, where the court observed that given the length of time that the applicant there had been away from the practice of law, it

would be useful both in the public interest and for the applicant himself to impose additional conditions relating to his legal knowledge and competence. The Law Society considered this condition to be appropriate because Mr Sadique was working in Dubai since 2011 and may not be sufficiently familiar with the substantial developments and continual enhancements in both Singapore law and the Singapore legal system in the last decade.

The AG's Submissions

22 The Attorney-General (“AG”) also supported the Reinstatement Application on the basis that the following conditions be imposed:

- (a) For a period of 12 months from the issuance of Mr Sadique’s first practising certificate after reinstatement, Mr Sadique is:
 - (i) not to be a sole proprietor, partner (including managing partner or salaried partner), or director (including managing director, senior executive director, executive director, senior associate director or associate director) of any law practice (“**AG Condition 1**”);
 - (ii) not to hold or receive any client or trust account moneys, or operate any client or trust account of any law practice (“**AG Condition 2**”); and
 - (iii) not to be a signatory to any client or trust account of any law practice (“**AG Condition 3**”).
- (b) Mr Sadique would also be required to undergo courses on ethics and the SAR conducted by the Law Society (“**AG Condition 4**”).

23 The AG’s reasons for the imposition of these four conditions were as follows:

(a) AG Condition 1 was proposed so that Mr Sadique could re-acquaint himself with legal practice and because it would provide him the opportunity to adjust to the pressures of being an advocate and solicitor after not being involved in the management of a law practice for a substantial period. AG Condition 1 was also proposed to help remove any lingering doubts that the public might have about Mr Sadique’s honesty or integrity. While the AG accepted that Mr Sadique was not dishonest, it stressed that he “committed a gross dereliction of duty which caused exceptional financial loss to his clients”.

(b) AG Conditions 2 and 3 were proposed because they complemented AG Condition 1 by addressing any concerns the public might have regarding the possibility of Mr Sadique committing a subsequent offence of dishonesty with trust or clients’ moneys and would also serve as a recognition of the severity of Mr Sadique’s wrongdoing.

(c) AG Condition 4 was proposed as it would be appropriate for Mr Sadique to attend courses on the SAR given that he was struck off the Roll due to inadequate supervision of clients’ moneys. However, the AG took the position that there is no need to impose any conditions relating to Mr Sadique’s legal knowledge and competence in the light of his work experience and the testimonials that the applicant has adduced. Further, Mr Sadique would be subject to Continuing Professional Development requirements in any event.

Our decision

Whether Mr Sadique should be reinstated

24 It was common ground between the parties that an applicant must satisfy all of the following three factors before the court will consider him for reinstatement to the Roll under s 102 of the LPA (*Nathan Edmund v Law Society of Singapore* [2013] 1 SLR 719 (“*Nathan Edmund*”) at [10] and [26]):

- (a) first, whether an adequate period of time has passed between the striking off order and the reinstatement application (the “**Time Factor**”);
- (b) second, whether the applicant has been fully and completely rehabilitated (the “**Rehabilitation Factor**”); and
- (c) third, whether allowing the application would undermine or prejudice the protection of the public interest and the reputation of the legal profession (the “**Public Interest Factor**”).

The Time Factor

25 In determining whether adequate time has passed between the striking off order and the reinstatement application, the general principle is that the greater the severity of the offences committed, the longer would be the intervening period before the court would consider reinstatement: *Nirmal Singh* at [20]. In other words, the adequate intervening period must be ascertained in relation to the severity of the offence that led to the striking off in the first place. In general, a period that is significantly longer than five years is required: *Chiong Chin May Selena v Attorney-General and another* [2021] SGHC 167 at [8].

26 On the present facts, the parties agreed that the 12.5-year intervening period since Mr Sadique was struck off from the Roll is sufficient. We agreed that the Reinstatement Application was not premature as the intervening period was in keeping with previous cases, where the average time between striking off and the successful reinstatement application was about 13 years.

The Rehabilitation Factor

27 In determining whether an applicant for reinstatement to the Roll is fully rehabilitated, the court will consider the extent to which the applicant has rehabilitated himself and will expect nothing short of full rehabilitation: *Kalpanath Singh s/o Ram Raj Singh v Law Society of Singapore* [2009] 4 SLR(R) 1018 (“*Kalpanath Singh*”) at [19]. In this regard, a key factor in determining whether an applicant is reformed is an examination of how he has conducted himself post-striking off, particularly in employment where he was entrusted with responsibilities, financial or otherwise: *Nirmal Singh* at [16]. Objective evidence of what the applicant has been involved in, as well as references (particularly from members of the legal fraternity) are thus key: *Choy Chee Yean v Law Society of Singapore and another* [2020] 3 SLR 1268 (“*Choy Chee Yean*”) at [11]. Further, references must not contain mere laudatory remarks but must be able to aid the court in assessing an applicant’s integrity, moral worthiness and suitability for reinstatement: *Kalpanath Singh* at [26].

28 In our judgment, Mr Sadique had adduced sufficient evidence to show that he was fully and completely rehabilitated through his continued engagement with the law and the testimonials from various members of the legal profession who have worked with him while he was in the Middle East. They had all attested to Mr Sadique’s competence and professionalism and his honesty in the management of substantial funds.

29 We noted that Mr Sadique was involved in several cases of regulatory offences after his striking off from the Roll. These included two summonses from the tax authority in 2011 and 2012 relating to the non-filing of tax returns and several summonses in 2012 and 2016 relating to unpaid parking fines. All these summonses were eventually withdrawn by the relevant authorities. In 2017, the Land Transport Authority issued Mr Sadique a parking summons. However, after considering his explanation, the composition amount was refunded to him. In 2020, Mr Sadique was investigated by the police for having allegedly failed to report a change in his address. After considering the applicant's written explanation, the police took no further action against him.

30 We did not think that these summonses showed a lack of respect for the law. First, they were relatively minor regulatory offences. Second, they took place fairly long ago between 2011 and 2017. Third and most importantly, all the summonses were eventually withdrawn by the authorities.

31 We were also aware of an adverse observation that was made against Mr Sadique by the DT in *The Law Society of Singapore v Krishna Morthy S V* [2015] SGDT 7 ("**Krishna Morthy**"). We did not consider the DT's observation to be relevant for the purpose of the Reinstatement Application because Mr Sadique was not a named party in the proceedings in *Krishna Morthy* nor was he aware or notified of them. In any event, both the AG and Law Society agreed that no weight should be attached to the DT's observation.

32 In all these circumstances, we were satisfied that Mr Sadique was fully rehabilitated.

The Public Interest Factor

33 The applicable principles that apply in determining whether allowing the Reinstatement Application would undermine or prejudice the protection of the public interest and the reputation of the legal profession are as follows:

(a) First, the reinstatement of an applicant to the Roll must necessarily be subject to stricter scrutiny than a new entrant to the profession with no adverse record. Nonetheless, there is also a collective interest in the rehabilitation and redemption of the individual applicant such that the court would have to balance the protective and redemptive elements of public interest: *Nirmal Singh* at [23]; *Choy Chee Yean* at [14]–[15].

(b) Second, in determining the weight to place on the redemptive element, the court would generally consider the period of disbarment and the severity of the offences committed. The longer the period of disbarment or the lesser the severity of the offences committed, the greater the weight to be given to the redemptive element: *Nirmal Singh* at [23].

34 In applying these principles to the present case, it was clear to us that reinstating Mr Sadique to the Roll would not undermine or prejudice the protection of the public interest or the reputation of the legal profession. Mr Sadique’s striking off was not due to any defect in his character but due to his lack of competence in failing to have adequate supervision over the client account of the Firm. Moreover, a substantial period of more than 12 years had elapsed since he was struck off the Roll. We therefore held the view that there was lesser need for the court to exercise its protective role in the present case.

35 Nevertheless, the importance of maintaining public confidence in the legal profession necessitated the imposition of suitable conditions for an appropriate period to send a clear signal to Mr Sadique’s potential clients that practical measures were in place to protect their interest: *Choy Chee Yean* at [17]–[18]. We now set out these conditions and the period that we determined that they should be in force.

The appropriate conditions to be imposed

36 Pursuant to s 102(1)(b) of the LPA, the Court may order that a solicitor be reinstated to the Roll “subject to any conditions that the court thinks fit”. We accepted the AG’s proposed four conditions and agreed with the reasons given by the AG for the imposition of these conditions (set out at [22] and [23] above) since Mr Sadique did commit breaches of the SAR which contributed to the fraud committed by Mr Zulkifli. We also accepted that a period of 12 months after the issue of Mr Sadique’s first practising certificate would be sufficient to help him reintegrate into Singapore law practice while providing his potential clients with an adequate measure of assurance and protection.

37 We therefore reinstated Mr Sadique to the Roll subject to the following conditions. For a period of 12 months from the issuance of Mr Sadique’s first practising certificate after reinstatement to the Roll, he is:

- (a) not to be a sole proprietor, partner (including managing partner or salaried partner), or director (including managing director, senior executive director, executive director, senior associate director or associate director) of any law practice;
- (b) not to hold or receive any client or trust account moneys, or operate any client or trust account of any law practice;

- (c) not to be a signatory to any client or trust account of any law practice; and
- (d) to undergo courses on ethics and the SAR conducted by the Law Society.

Conclusion

38 We allowed the Reinstatement Application subject to the imposition of the four conditions set out at [37] above. Both the Law Society and the AG did not seek costs for the Reinstatement Application. We therefore made no order as to costs.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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