

“I AM AN OFFICER OF THE COURT”

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The administration of justice is dependent upon the integrity of lawyers. This article explores what it means for lawyers to make the declaration, “I am an officer of the Court”. Whilst lawyers may owe obligations to different parties which may pull in opposing directions, the duty to the court is paramount. This article explores the different facets of a lawyer’s duty to the court.

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I. Introduction

1 The legal profession in Singapore welcomes approximately 600 new entrants to its ranks every year, who become officers of the Supreme Court under s 82(1)(a) of the Legal Profession Act 1966.² This year’s Mass Call involved a new declaration (the “Declaration”) proposed by the Ethics and Professional Standards Committee and refined with input from the Senior Counsel Forum. The Declaration reiterates, in its first line, the lawyer’s role as an officer of the court.³

2 This role is not to be taken lightly as it brings with it attendant responsibilities in upholding the legal framework in Singapore.⁴ Chief amongst these responsibilities is the duty to assist the court in the administration of justice.⁵ The courts

1 I am grateful to my former law clerk, Reuben Tong, for his assistance in the preparation of this article and Assistant Registrars Bryan Ching and Perry Peh on the Ethics and Professional Standards Committee Secretariat for comments and review.

2 2020 Rev Ed.

3 Legal Profession (Admission) Rules 2024, First Schedule.

4 *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449 at [26].

5 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [109].

are “inextricably and inescapably” dependent on the integrity of lawyers appearing before it – the confidence reposed by the Bench in the Bar undergirds the effective administration of justice.⁶ This article explores the practical implications of this multi-faceted duty.

II. A lawyer’s paramount duty to the court

3 This article first touches on the interplay between a lawyer’s duty to his client and his duty to the court. While lawyers are expected to use “all legal means to advance their clients’ interests, to the extent that [they] may reasonably be expected to do so”,⁷ this does not operate to the exclusion of all other interests. Our courts have recognised that “[w]hile advocates within an adversarial system are constrained to engage in legal combat, they are not entitled to pursue victory at all costs, regardless of the means”.⁸ Instead, lawyers owe a paramount duty to the court, which is reflected in r 4(a) of the Legal Profession (Professional Conduct) Rules 2015 (“PCR 2015”):

4. The following principles guide the interpretation of these Rules.

(a) A legal practitioner has a paramount duty to the court, which takes precedence over the legal practitioner’s duty to the legal practitioner’s client.

4 Difficult as assertive clients may be, it is the very essence of being a lawyer to balance various duties he owes in the administration of justice, to the court as an officer of the court, to the client, to the public and to the profession.⁹ When a client’s instructions run contrary to a lawyer’s professional duties, lawyers should communicate their view to the client; they should frankly and firmly explain what they regard to be the acceptable limits of what they can do. In such circumstances, a lawyer must dispense his professional duties with moral courage and

6 *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449 at [1] and [31].

7 Legal Profession (Professional Conduct) Rules 2015 r 5(2)(j).

8 *Goh Seng Heng v Liberty Sky Investments Ltd* [2017] 2 SLR 1113 at [62].

9 *Law Society of Singapore v Kasturibai d/o Manickam* [2024] SGHC 55 at [27]; *BOI v BOJ* [2018] 2 SLR 1156 at [4].

independence – even in the face of pressures from his clients.¹⁰ If necessary, the lawyer may wish to seek the assistance of either a more senior lawyer within his firm or an independent counsel’s advice before deciding what to do.¹¹ If the client remains adamant in their position, the lawyer should discharge himself.¹² In this connection, the salutary remarks of Lord Chief Justice Cockburn have been endorsed by our courts (see *BOI v BOJ*¹³ at [3]; *Goh Seng Heng v Liberty Sky Investments Ltd*¹⁴ at [62] and [63]):¹⁵

... an advocate should be fearless in carrying out the interests of his client; but I couple that with this qualification and this restriction — that the arms which he wields are to be the arms of the warrior and not of the assassin. It is his duty to strive to accomplish the interests of his clients *per fas*, but not *per nefas*; it is his duty, to the utmost of his power, to seek to reconcile the interests he is bound to maintain, and the duty it is incumbent upon him to discharge, with the eternal and immutable interests of truth and justice.

III. Duty of candour

5 At the heart of the tension between a lawyer’s loyalty to the client and the court is the lawyer’s duty of candour owed to the court. The Court of Three Judges recently explained in *Attorney-General v Shahira Banu d/o Khaja Moinudeen*¹⁶ (“*Shahira Banu*”) that:¹⁷

33 As noted by V K Rajah JA in *Bachoo Mohan Singh* ... at [114] ..., the duty of candour is equivalent to an A&S’s duty not to mislead the court, and this is a ‘touchstone of our adversarial system’. It is incapable of being exhaustively defined given the broad spectrum of activity it encompasses, but can nevertheless be said with confidence to be indivisible, uncompromising,

10 *Law Society of Singapore v Seah Zhen Wei Paul* [2024] SGHC 224 at [157].

11 *Law Society of Singapore v Seah Zhen Wei Paul* [2024] SGHC 224 at [157].

12 *Loh Der Ming Andrew v Koh Tien Hua* [2021] 2 SLR 1013 at [81].

13 [2018] 2 SLR 1156.

14 [2017] 2 SLR 1113.

15 George P Costigan Jr, “The Full Remarks on Advocacy of Lord Brougham and Lord Chief Justice Cockburn at the Dinner to M. Berryer on November 8, 1864” (1931) 19(5) *California Law Review* 521 at 523.

16 [2024] 4 SLR 1324.

17 *Attorney-General v Shahira Banu d/o Khaja Moinudeen* [2024] 4 SLR 1324 at [33] and [34].

and enduring ... It applies when performing any act in the course of practice as an A&S ... and extends to both the passive concealment of material facts and active misrepresentation (*Public Trustee* at [30]; *Law Society of Singapore v Nor'ain bte Abu Bakar and others* [2009] 1 SLR(R) 753 at [46]).

34 The importance of the duty of candour stems from the public interest in maintaining the dignity and honour of the legal profession through the preservation of the highest ethical and moral standards amongst solicitors (*Public Trustee* at [35]). It takes precedence over the duty to one's client (see r 4(a) of the PCR). Breaches of this duty will be viewed sternly by the court (*Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 at [23]; *Loh Der Ming Andrew v Koh Tien Hua* [2022] 3 SLR 1417 at [67]).

6 While lawyers are to present facts, evidence and arguments in a light that is most favourable to their client, they nonetheless have an obligation to present them *accurately*.¹⁸ This aspect of a lawyer's duty to the court finds expression in r 9 of the PCR 2015, which states:

(2) When conducting any proceedings before a court or tribunal on behalf of a client, a legal practitioner must not do any of the following:

(a) knowingly mislead or attempt to mislead in any way, whether by doing anything referred to in sub-paragraph (b) or (c) or otherwise —

(i) the court or tribunal;

...

(b) fabricate any fact or evidence in any communication with, or representation or submission to, the court or tribunal;

(c) include, in any document used for those proceedings, any statement of fact which the legal practitioner knows to be false;

...

(f) knowingly or recklessly cite the law out of context, interpret the law in a manner calculated to mislead the court or tribunal, or otherwise advance

18 *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449 at [31].

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any submission, opinion or proposition which the legal practitioner knows or ought reasonably to know is contrary to the law;

(g) concoct any evidence or contrive any fact, whether or not that evidence or fact will assist in advancing the client’s case;

...

(3) When conducting proceedings before a court or tribunal, a legal practitioner —

(a) must inform the court or tribunal of every relevant decision, and every relevant legislative provision, of which the legal practitioner is aware, whether that decision or provision supports or rebuts the legal practitioner’s contentions before the court or tribunal; and

...

(5) Subject to rule 6, where a legal practitioner unknowingly contravenes any provision of this rule, the legal practitioner must, as soon as practicable after the legal practitioner becomes aware of the contravention, disclose the contravention to each person affected by the contravention, and take reasonable steps to remedy the contravention.

7 These provisions reflect a number of propositions. First, rr 9(2)(a), 9(2)(b), 9(2)(c), and 9(2)(g) reflect the basic principle that lawyers should not mislead or deceive the court. This issue may arise when lawyers attempt to suggest facts without any basis, especially when the facts are mentioned in passing and the evidence is buried within voluminous affidavits. Nonetheless, lawyers should not make misleading statements. The courts rely on lawyers appearing before them to be candid and truthful.¹⁹ The trust reposed in the Bar by the Bench has been recognised as the “most effective of all accelerators of the quick flow of justice”, and a breach of this trust would be inimical to the efficient resolution of disputes. This much was astutely observed by the Right Honourable Lord Tomlin in his address at the Fifteenth Annual Meeting of the Canadian Bar Association:²⁰

19 *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449 at [53].

20 “Law and Practice” (1930) 8(10) *Canadian Bar Review* 729 at 733–734.

There is ... the advocate's obligation to the court owed by reason of his being engaged in assisting the court properly to perform its functions. It is an obligation of frankness and candour founding that confidence reposed by the Bench in the Bar which is the most effective of all accelerators of the quick flow of justice. By virtue of this obligation the advocate must with regard to facts be careful to display accuracy in his description of the materials before the court, while presenting them in the light which seems to him most favourable to his client.

8 Deceptive conduct also encompasses *passive* conduct, such as where lawyers conceal material facts or rely on half-truths;²¹ *suppressio veri, suggestio falsi*. Lawyers have a duty to raise material facts to the court, and their deliberate failure to disclose information that would be material to the decision of the court can amount to misleading or fraudulent conduct.²² While advocates are expected to further their client's cause, they must not passively mislead the court on the facts or the law.²³ Of topical relevance is a recent decision by the Court of Three Judges to suspend two experienced lawyers for three years for misleading the Court of Appeal.²⁴ In *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd*²⁵ ("*Nicky Tan*"), the parties to the appeal had in fact arrived at a settlement of the dispute, but nonetheless continued to present the appeal as an important appeal with a real controversy for a five-judge coram to resolve.²⁶ There were even extensive negotiations to ensure that the respondent would remain silent and effectively act as a nominal respondent.²⁷ The extent of the deception was such that the parties had even agreed on how to respond to the court if questions were to be posed; the true state of affairs only came to light because the court had

21 *Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [33].

22 *Law Society of Singapore v Nor'ain bte Abu Bakar* [2009] 1 SLR(R) 753 at [59]–[68].

23 *Law Society of Singapore v Nor'ain bte Abu Bakar* [2009] 1 SLR(R) 753 at [90].

24 Selina Lum, "Two Lawyers Suspended 3 Years Each for Misleading Court, Wasting Time of Five Judges", *The Straits Times* (9 April 2024) <<https://www.straitstimes.com/singapore/courts-crime/two-lawyers-suspended-3-years-each-for-misleading-court-wasting-time-of-five-judges>> (accessed 23 May 2024).

25 [2021] 1 SLR 1135.

26 *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [85] and oral remarks of the Court of Three Judges.

27 *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [86].

persisted in its inquiries.²⁸ The gravity of this misconduct led the Court of Appeal to “deplore the conduct of all involved in the strongest possible terms”.²⁹

9 Second, r 9(2)(f) of the PCR 2015 forbids lawyers from recklessly citing the law out of context or advancing a submission which they ought to know is contrary to the law. An example of this would be if lawyers cite passages from judgments out of their proper context – this may even amount to *intentionally* misleading the court if there is an obviously inconsistent or qualifying passage within the same judgment.³⁰ Due care should be taken to ensure that a case stands for the proposition advanced by counsel. It is also helpful for lawyers to check that the proposition applies to the facts of the case; there is a difference between a proposition of general application and one which is meant to be confined to a specific scenario. Moreover, lawyers should check that the passage they wish to cite has not been reversed or critiqued in subsequent cases.³¹ Lawyers have a duty to ensure that all authorities cited reflect the state of the law *as at the time of citation*.³² Propositions of law in older legal authorities may have been qualified, or worse – wholly departed from, in subsequent decisions. Alerting the court to these critical comments may even offer the lawyer the opportunity to deal with the adverse authorities, if he is of the view that such a contention is reasonably arguable.

10 Third, r 9(3)(a) of the PCR 2015 imposes an obligation on lawyers to inform the court of authorities that are relevant to the dispute at hand, even if they are adverse to their client’s position.³³ The wording of the rule makes clear that this duty applies even where opposing counsel has failed to raise the adverse authority,³⁴ and continues even after the hearing of the

28 *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [86].

29 *Tan Ng Kuang Nicky v Metax Eco Solutions Pte Ltd* [2021] 1 SLR 1135 at [91].

30 *Salaya Kalairani v Appangam Govindhasamy* [2023] SGHC(A) 40 at [37] and [38].

31 *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR(R) 538 at [22].

32 *Koh Soon Pheng v Tan Kah Eng* [2003] 2 SLR(R) 538 at [22].

33 See also *Public Trustee v By Products Traders Pte Ltd* [2005] 3 SLR(R) 449 at [53].

34 Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015* (Academy Publishing, 2nd Ed, 2022) at para 09.099.

matter and until the judgment is delivered.³⁵ Further, where a lawyer has unknowingly contravened his duty under r 9 of the PCR 2015, r 9(5) mandates that he disclose his error to each person affected by it and take reasonable steps to remedy the error, subject to the lawyer's duty of confidentiality to his client. This would include disclosing the error to the court.³⁶

11 *Shahira Banu* made clear that the determination of whether the duty of candour has been breached involves a contextual assessment of the nature and scope of the evidence that ought to have been disclosed, based on the nature and purpose of the proceedings in which the suppression of evidence occurred and the relevant law that applies to those proceedings.³⁷ The issue is whether the nature and purpose of the proceeding, as well as the applicable law, indicate that further information should have been disclosed by the lawyer. In this connection, lawyers should be mindful of the extent of their duty of candour:³⁸

In so far as an A&S has a duty to be candid to the court, the starting and ending point of this duty is that one cannot be parsimonious with the truth; it must be told in full. Anything less than the whole truth is not the whole truth, if what has been omitted is potentially relevant and/or material. Solicitors should be especially mindful of the dangers of erring on the wrong side of this tension when faced with the pressure of a client pulling in the opposite direction of what the solicitor knows or has reason to believe is the duty owed to the court. Because a solicitor is an officer of the court in the administration of justice, nothing should come in the way of the latter duty.

IV. Duty to assist the court

12 Complementary to the duty of candour is the lawyer's active duty to assist the court in arriving at a clear and considered

35 Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015* (Academy Publishing, 2nd Ed, 2022) at para 09.100.

36 Jeffrey Pinsler, *Legal Profession (Professional Conduct) Rules 2015* (Academy Publishing, 2nd Ed, 2022) at para 09.112.

37 *Attorney-General v Shahira Banu d/o Khaja Moinudeen* [2024] 4 SLR 1324 at [37].

38 *Attorney-General v Shahira Banu d/o Khaja Moinudeen* [2024] 4 SLR 1324 at [37].

decision on the merits of the proceedings.³⁹ Rules 9(1)(a) and 9(1)(e) of the PCR 2015 set out as guiding principles of r 9:

(a) A legal practitioner has a duty to assist in the administration of justice, and must act honourably in the interests of the administration of justice.

...

(e) A legal practitioner must, in any proceedings before a court or tribunal, conduct the legal practitioner’s case in a manner which maintains the fairness, integrity and efficiency of those proceedings and which is consistent with due process.

13 Whilst these duties are encapsulated as principles that guide the interpretation of r 9, the Court of Three Judges in *Law Society of Singapore v Seah Zhen Wei Paul*⁴⁰ made clear that these principles impose substantive obligations.⁴¹

14 Clear and succinct submissions are always appreciated by the court at each stage of proceedings.⁴² A corollary of this is diligence in adhering to court processes, which is critical to the efficient resolution of disputes. In the context of expert witnesses, the Court of Appeal has made clear that lawyers are under a continuing duty to properly advise and instruct relevant experts and to ensure that the material placed before the court is useful and relevant.⁴³ Lawyers should familiarise themselves with the guidelines on expert evidence and should bring those guidelines to the expert’s attention.⁴⁴ A failure to do so could result in disciplinary and costs consequences for the lawyer involved. In *Miya Manik v Public Prosecutor*,⁴⁵ a lawyer sought to adduce psychiatric evidence relating to the mental state of his client. However, the medical reports were only one page long each, devoid of detail, and contained bare assertions.⁴⁶ The lawyer’s attempt to adduce such reports, despite their “patent

39 *POA Recovery Pte Ltd v Yau Kwok Seng* [2022] 1 SLR 1165 at [55].

40 [2024] SGHC 224.

41 *Law Society of Singapore v Seah Zhen Wei Paul* [2024] SGHC 224 at [120]–[122].

42 See, for example, the remarks of the Appellate Division of the High Court in *POA Recovery Pte Ltd v Yau Kwok Seng* [2022] 1 SLR 1165 at [54] and [55].

43 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [27].

44 *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [74].

45 [2021] 2 SLR 1169.

46 *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [49], [56] and [61].

lack of any value”, led the Court of Appeal to conclude that the application was patently unmeritorious.⁴⁷ The court observed that the lawyer might have been subject to disciplinary and costs consequences had he not apologised unreservedly and had the Prosecution applied for an adverse costs order.⁴⁸

15 In similar vein, it is contrary to these duties where lawyers make arguments that are irresponsible. This is addressed by r 9(2)(h)(ii) of the PCR 2015:

(2) When conducting any proceedings before a court or tribunal on behalf of a client, a legal practitioner must not do any of the following:

...

(h) draft any originating process, pleading, affidavit, witness statement or notice or grounds of appeal containing any of the following:

...

(ii) any contention which the legal practitioner does not consider to be reasonably and properly arguable;

16 Under r 9(2)(h)(ii) of the PCR 2015, a lawyer has a duty to ensure that any argument he raises is reasonably and properly arguable. Costs consequences may arise where lawyers abuse the privileges of an advocate and solicitor, and it is no answer for a lawyer to claim that he was merely acting on his client’s instructions. Our courts have recognised that lawyers do not serve as the mere mouthpieces of their clients; instead, they must counsel their clients and appraise them of what steps are permissible in the circumstances.⁴⁹

17 No doubt, in the context of litigation, emotions may run high and clients may want “each and every point to be taken in order to inflict maximum ‘damage’ on the other party”.⁵⁰ The challenges of legal practice cannot be understated. Nonetheless,

47 *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [83].

48 *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [79], [83], [86] and [92].

49 *BOI v BOJ* [2018] 2 SLR 1156 at [3].

50 *BOI v BOJ* [2018] 2 SLR 1156 at [3].

lawyers who advance a case without adequately considering its merits will have misused the court’s time as they will be unable to assist the court in assessing the merits of the case.⁵¹ This would encompass situations where a client’s instructions are plainly baseless, illogical, or unsupported by the evidence.⁵² As the rule itself makes plain, this does not mean that lawyers cannot advance an argument unless they are certain that it will succeed.⁵³ If the lawyer thinks that the submission is fairly arguable, he is entitled to advance it. He must, however, substantiate his argument with *legal reasoning*; it will not suffice for him to state that he is merely holding onto the position on the instructions of his client.⁵⁴

18 The case of *Prometheus Marine Pte Ltd v King, Ann Rita*⁵⁵ (“*Prometheus*”) is illustrative of this. In *Prometheus*, the Court of Appeal ordered the relevant lawyer to bear costs personally on summonses that were ill-considered.⁵⁶ The lawyer had failed to give careful consideration to the observations and concerns of the court, insisted on untenable positions on the basis of his client’s instructions, failed to respond directly to questions from the court, and maintained grave allegations with no factual basis.⁵⁷

V. The wider context

19 Lawyers play an important role in the administration of justice. Sundaresh Menon CJ made the following observation in *Shahira Banu*:⁵⁸

Those called to the Bar play a uniquely important role in the administration of justice. They ensure that the evidence and arguments adduced before the court are skilfully, accurately, and fairly presented. This not only ensures the administration

51 *Zhou Tong v Public Prosecutor* [2010] 4 SLR 534 at [19].

52 *Zhou Tong v Public Prosecutor* [2010] 4 SLR 534 at [20].

53 See also *Zhou Tong v Public Prosecutor* [2010] 4 SLR 534 at [20].

54 *Prometheus Marine Pte Ltd v King, Ann Rita* [2018] 1 SLR 1 at [70].

55 [2018] 2 SLR 1.

56 *Prometheus Marine Pte Ltd v King, Ann Rita* [2018] 1 SLR 1 at [68]–[73], [75] and [76].

57 *Prometheus Marine Pte Ltd v King, Ann Rita* [2018] 1 SLR 1 at [69]–[72].

58 *Attorney-General v Shahira Banu d/o Khaja Moinudeen* [2024] 4 SLR 1324 at [60].

of justice in each instant case; it also helps to build a firm foundation for the system of common law on which our legal system rests, as precedent builds upon precedent.

20 In the same way that a litigator's performance is not limited to the client or case at hand, for lawyers working in other roles, the Declaration reflects the wider responsibility of all who are called to serve the ends of justice. Ethical lawyers are integral to society's access to justice. These societal needs are of broader importance than the transaction or client at hand, whether in or out of court. It is through high ethical and professional standards in multiple fields that Singapore enjoys its status as a trusted global node and individuals, businesses, social enterprises and government entities experience the daily benefits of the rule of law.⁵⁹ As justice becomes more complex in the modern world, the continued attainment of high ethical and professional standards will only become more challenging. And yet, privileges and responsibilities are inevitably intertwined. The practice of law – and the pursuit of justice – is all the richer and more rewarding when advanced with integrity, a quest for excellence, and a heart for service.

59 Ethics and Professional Standards Committee, Interim Report of the Ethics and Professional Standards Committee (Interim Report, 15 December 2023) at para 1.