

## A CLARION CALL TO LAWYERS TO BE “UNFLINCHINGLY LOYAL” TO THEIR CLIENTS

The High Court has reiterated on several occasions that the advocate and solicitor owes his client the duty of “unflinching loyalty” (the terminology used in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [74] and *Law Society of Singapore v Tan Phuay Khiang* [2007] SGHC 83 at [62]). In the latter case, which involved the interests of certain persons in the client’s property transaction (the client had been referred to the respondent for this purpose), the High Court warned that an advocate and solicitor who permits his client’s interests to be compromised in any way in such circumstances is liable to be struck off the roll of advocates and solicitors. The case is particularly significant as an admonition to advocates and solicitors in the face of the increasingly common practice of referrals by third parties.

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### I. Introduction

1 For the second time in a period of six months, the High Court has had to re-emphasise its concern, and express its displeasure, over the failure of lawyers to be uncompromising in their loyalty to their clients in the context of arrangements involving the conflicting interests of other persons. In both cases, *Law Society of Singapore v Vardan Vasantha Lakshmi*,<sup>1</sup> and *Law Society of Singapore v Tan Phuay Khiang*<sup>2</sup> (the latter case being the focus of this article), the respondents were suspended from practice for two years.

2 The rules which govern ethical conduct (whether formulated in legislation, codes or practice directions) are merely aspects of fundamental, underlying values which must be integral to the lawyer’s

1 [2007] 1 SLR 240. See *Ethics and Professional Responsibility: A Code for the Advocate and Solicitor* (Academy Publishing, 2007), at paras 01-082, 14-022, 14-056, and 16-053.

2 [2007] SGHC 83.

conscience. The principle in the Legal Profession (Professional Conduct) Rules (“the PCR”), r 2(2)(c) – that the rules of ethics are to be *interpreted* in a manner which must be consistent with the lawyer’s duty to “act in the best interests of his client” – must always be at the forefront of the lawyer’s mind.<sup>3</sup> It may be that even this phrase in r 2(2)(c) is a little too vague to fully capture the essence of the special commitment and loyalty which must characterise the lawyer’s attitude to his client. It is more than simply achieving the client’s best interests through effective representation and a favourable outcome. There is a deeper ethical dimension here which impacts upon the personal relationship between the lawyer and his client. It is a responsibility which requires the lawyer to (a) vigorously guard and protect his client’s interests against any adverse influence whatsoever (however slight), (b) to have the professional sensitivity to understand his client’s particular needs, and (c) to make every possible effort to meet those needs.

3 Burdensome though it may be, the responsibility which has just been outlined is fundamental to the lawyer’s office. Having pointed out in *Law Society of Singapore v Tan Phuay Kiang*<sup>4</sup> that “It is established law that an advocate and solicitor owes a duty of unflinching loyalty to his client”, V K Rajah JA went on to state that the obligation is “... an essential cornerstone of the solicitor-client relationship as it ensures that a client may confidently expect to receive impartial and frank advice and in turn repose complete trust in a solicitor to safeguard his interests”<sup>5</sup>.

## II. The charge, the facts and the decision in *Tan Phuay Kiang*

4 In *Tan Phuay Kiang*, the respondent was found guilty of conduct unbecoming an advocate and solicitor in the discharge of his professional duties (pursuant to s 83(2)(h) of the Legal Profession Act<sup>6</sup>). The charge against him before the High Court was that in the course of acting for his clients (the complainants) in respect of the sale of a flat, he

3 Rule 2(c) is singled out because this article concerns duties to the client. The other principles stated in r 2(2) (a)-(d) have the same impact.

4 *Supra* n 2, at [62].

5 *Ibid.* The full text of [62] is set out at para 7 of this article. The advocate and solicitor’s duty of “unflinching loyalty” to his client is also referred to in the judgment of the High Court in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [74].

6 Cap 161, 2001 Rev Ed.

“failed to advance the complainants’ interests unaffected by the interest of any other person, by acting in or preferring the interests of certain entities (including a company which provided credit and a property agency) and persons.”<sup>7</sup> The High Court made certain observations about the following factual scenario, which it considered to be “a worrying aspect of legal practice”:<sup>8</sup>

It is fairly common for some law firms to receive substantial amounts of work via referrals made by property agents and/or licensed moneylenders. When loan transactions are involved, the transaction is typically structured in the following manner: a home-owner may borrow a sum of money from a licensed moneylender by offering his flat as security. The home-owner will typically be required to execute a power of attorney in favour of a servant or agent of the moneylender, who is then empowered to act in relation to the sale or the letting of the flat. The moneylender then later appoints or works with a related housing agent to sell the flat. Often, one of these parties may refer the home-owner to a law firm with an existing referral relationship.<sup>9</sup>

5 The High Court said of the facts of *Tan Phuay Kiang* that they “... more than hint at an existing pattern of referrals and relationships between the respondent and some of the other identified parties.”<sup>10</sup> Briefly, the facts were as follows:<sup>11</sup> The complainants (a married couple) were the clients of the respondent. They employed A to sell their HDB flat and relied on him to make the necessary arrangements, which involved the purchase of a new HDB flat. A introduced the complainants to B (a company which provided credit) so that the complainants could borrow funds for the purpose of purchasing the new flat. A loan agreement between the complainants and B was concluded and the complainants were informed to proceed to the respondent’s office to sign certain documents. The complainants were accompanied by C, who represented D (a property agency). At the respondent’s office, the complainants signed a power of attorney which had been prepared by the respondent. The power of attorney appointed a certain person (E) (who was unknown to the complainants) to act in respect of the property transactions. The respondent informed the manager of D to collect the

7 This was originally the first charge against him. The 2nd and 3rd charges were dismissed by the disciplinary committee.

8 *Supra* n 2, at [73].

9 *Ibid.* Also see [117].

10 *Id.*, at [74].

11 For a detailed account of the facts, see *id.*, at [3]-[17].

power of attorney despite the fact that the complainants gave no authorisation to the respondent for this purpose.<sup>12</sup> The complainants were also requested by the respondent to execute a statutory declaration authorising the respondent's law practice to make payments to various entities and persons including *B*, *C*, *D* (as well as the previous money lender whose business had been taken over by the manager of *D*)<sup>13</sup> and the respondent.<sup>14</sup>

6 The High Court pointed out that unknown to the complainants, "an intricate web of relationships existed between almost all of the payees named in the statutory declaration apropos each other, as well as with the respondent."<sup>15</sup> *B* and *D* had engaged the respondent to act for them on previous occasions and had also referred to potential clients to the latter. *D* also appeared to have an indirect interest in the execution of the statutory declaration as *C* (*D*'s representative) had accompanied the complainants to the respondent's office.<sup>16</sup> As for *A*, he failed to pay the complainants the full amount due to them and "eventually disappeared".<sup>17</sup> Suspecting that they they had been defrauded, the complainants wrote to the respondent requesting copies of the documents relating to the loan. The respondent resisted the request for ten months (from the date of the initial request) but eventually responded (after the complainants engaged a law practice which made an official written demand on their behalf).<sup>18</sup>

7 The High Court confirmed the decision of the disciplinary committee to convict the respondent for having "failed to advance the complainants' interests unaffected by the interest of any other person, by acting in or preferring the interests of" *A*, *B*, *D* and *E*.<sup>19</sup> The respondent argued that as he had not acted for any of these parties in the course of his retainer, he had no duty to disclose his prior dealings with *B* (the company providing the loan) and *D* (the property agency).<sup>20</sup> He further submitted that a potential conflict of interests would only arise in a

12 *Id.*, at [77].

13 *Id.*, at [13].

14 *Id.*, at [12].

15 *Id.*, at [13].

16 *Ibid.*

17 *Id.*, at [14].

18 *Id.*, at [15].

19 *C* was not included in the charge.

20 *Supra* n 2, at [61].

situation where the lawyer actually acts for the other parties in the same transaction.<sup>21</sup> The High Court emphatically rejected this proposition:<sup>22</sup>

It is established law that an advocate and solicitor owes a duty of unflinching loyalty to his client. This is encapsulated, *inter alia*, in rr 2(2)(c) and 25(b) of the Rules, which require a solicitor to advance his client's interests unaffected by the interests of any other person during the course of a retainer. This obligation is derived from the fiduciary nature of the solicitor-client relationship, which requires a solicitor to place his client's interests above those of his own as well as those of third parties. In fact, the obligations of a fiduciary go beyond the avoidance of actual conflicts of interest, and extend to proscribe perceived or ostensible conflicts as well. While onerous in its requirements, the duty of unflinching loyalty is an essential cornerstone of the solicitor-client relationship as it ensures that a client may confidently expect to receive impartial and frank advice and in turn repose complete trust in a solicitor to safeguard his interests.

### III. How the respondent failed in his duty of “unflinching loyalty”

8 The High Court endorsed the disciplinary committee's finding that the respondent had put himself “in a position of actual or potential conflict of interest” by omitting to inform the complainants that he had “prior dealings and existing relationships” with *B* and *D*. In the course of examining how the respondent “repeatedly faltered in his indivisible duty to wholeheartedly advance the complainants' interests”,<sup>23</sup> the court focussed on his conduct concerning the statutory declaration and power of attorney.<sup>24</sup>

#### A. *Statutory declaration*

9 With regard to the statutory declaration, the respondent had failed to disclose to the complainants that he had previously acted for *B*

21 *Ibid.*

22 *Id.*, at [62].

23 *Id.*, at [64].

24 The context in which these documents were prepared and used is explained under the heading: “II. The charge, the facts and the decision in *Tan Phuy Kiang*”. Although the statutory declaration and power of attorney were the subjects of the 2nd and 3rd charges, which had been dismissed by the disciplinary committee (*id.*, at [21]), the conduct relating to these documents was relevant to the first charge on which the disciplinary committee had found the respondent guilty and which was the only charge before the High Court (*id.*, at [56]-[57]).

and *D* (two of the stated payees), and that *D* had previously referred work to him, despite the existence of an actual or potential conflict of interests between the complainants and *B* and *D*. The respondent should have enquired or advised the complainants about the basis and/or the reasons for the intended payments to the payees: “In failing to do so, the respondent appears to have allowed his personal interest in receiving future referrals from these parties, as well as the immediate interests of *B* and *D*, to take precedence over those of the complainants.”<sup>25</sup> The court pointed to the PCR, r 11A(2), which requires the lawyer: to ensure that the referrer does not undermine his professional independence;<sup>26</sup> not to allow the referral to affect the advice he gives to his client;<sup>27</sup> to advise the client “impartially and independently” and not to permit the referrer’s interest to compromise his advice to his client;<sup>28</sup> and to be unaffected by any influence of the referrer.<sup>29</sup> In a more general context, the PCR, r 25(a) and (b) respectively provide that the lawyer must advance his client’s interest unaffected by his own interest and the interest of any other person. The High Court considered “... the preparation of the statutory declaration as casting a long shadow of dubiousness over the respondent’s conduct.”<sup>30</sup> It added: “... the respondent had been solely motivated by self-interest and preservation; the statutory declaration had been clumsily executed for the primary purpose of immunising the respondent (and perhaps the other payees) from the consequences of his serious professional lapse.”<sup>31</sup>

### **B. Power of attorney**

10 As for the power of attorney, the High Court found that this was “completely superfluous”.<sup>32</sup> It was unnecessary because the complainants were both Singaporeans and had no plans to travel.<sup>33</sup> They could have personally signed the documents at any time. As they had retained the respondent to represent them in respect of the sale of the flat, he would

25 *Id.*, at [64].

26 PCR, r 11A(2)(a).

27 *Id.*, r 11A(2)(c).

28 *Id.*, r 11A(2)(d).

29 *Id.*, r 11A(2)(e).

30 *Supra* n 2, at [68].

31 *Id.*, at [70].

32 *Id.*, at [65].

33 *Id.*, at [76].

have been expected to advise them as to what to do. No other representative was necessary in the circumstances. Apart from the lack of need for a power of attorney, the High Court was very concerned by the fact that it was released to a third party (the manager of *D*) without the complainants' authorisation:<sup>34</sup>

Why had the respondent handed over the power of attorney directly to [the manager of *D*] without further reference to or clarification from the complainants, who were his clients? *Who were his real clients?* [emphasis added]

The evidence showed that the respondent relied on the manager of *D* as a medium of communication between himself and the complainants.<sup>35</sup> In the circumstances, there was a clear breach of the PCR, r 11A(2)(f), which requires the lawyer to communicate *directly* with his referred client for the purpose of obtaining or confirming instructions.<sup>36</sup> Furthermore, the respondent had breached his fiduciary duty to preserve property belonging to his client.<sup>37</sup>

11 The High Court also determined that it was not necessary for the respondent to represent the complainants because this was a straightforward transaction governed by standard HDB forms and practices. Although the respondent was aware that the complainants could have appointed HDB to give effect to the sale at a much lower cost, he did not advise them of this alternative route.<sup>38</sup> The High Court rejected the respondent's contention that his letter (which was sent after he had been appointed), informing the complainants that they could seek independent legal advice regarding the transaction, was sufficient for this purpose.<sup>39</sup> Simply put, the complainants could have achieved their aims without the respondent and the respondent should have made this abundantly clear. Indeed, he did not even ask the complainants why they needed a power of attorney.<sup>40</sup> These circumstances resulted in the High Court's conclusion that "... the respondent had been indifferent to the

34 *Id.*, at [77].

35 *Id.*, at [48].

36 As the High Court pointed out, the disciplinary committee did not consider the contravention of r 11A(2)(f).

37 *Supra* n 2, at [48].

38 *Id.*, at [65].

39 *Ibid.*

40 *Id.*, at [76].

complainants' interests and was blind to the real possibility that the transaction could have been tainted with impropriety."<sup>41</sup>

**C. Respondent's role: Mere facilitator or professional adviser?**

12 The respondent argued that as he was merely required to perform a ministerial role in relation to the execution of the power of attorney and the statutory declaration,<sup>42</sup> he was not obliged to enquire into why the complainants needed a power of attorney or why they intended to make payments according to a statutory declaration. The High Court considered the contention to be "plainly misconceived".<sup>43</sup> While a lawyer may only have a ministerial function when the scope of his duty is "extremely limited in scope" (as, for example, when he is only required to witness the execution of a document), the position is quite different where the retainer expressly or impliedly involves giving advice and the protection of his client's interests. This was a property transaction which required the respondent to advance his clients' interests unaffected by the interests of any other parties: Indeed, he had a special duty of care because the complainants had "a rudimentary primary education"<sup>44</sup> and were "paradigm examples of vulnerable clients".<sup>45</sup>

The respondent's duties in this case went beyond the essentially perfunctory role of preparing a power of attorney and witnessing its execution. The respondent was obliged to take reasonable care to advise and ensure that the complainants understood the implications of executing a power of attorney in the prevailing circumstances. The respondent ought to have asked the complainants for their reasons in effecting a power of attorney given that the usual reasons for executing a power of attorney were absent on the facts. More significantly, the proposed attorney ([E]) appeared to be a complete stranger to the complainants. The power of attorney prepared by the respondent was extremely broad and far-reaching both in its scope and application. It endowed ([E]) with an almost unfettered discretion and power to dispose of the Flat as he saw fit, at any price and to any party. This effectively exposed the complainants to the risk that ([E]) could sell the

41 *Id.*, at [66].

42 *Id.*, at [92].

43 *Ibid.*

44 *Id.*, at [4].

45 *Id.*, at [99]. Also see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308, at [68] (cited in *Tan Phuai Khiang*, at [99]), which also strongly emphasises this duty.

Flat at an undervalue to a related party, and potentially leave the complainants without any form of meaningful recourse.<sup>46</sup>

Notwithstanding all this, the respondent had not seen it fit to adequately highlight the grave risks that the complainants took in executing the power of attorney. This was despite the patent fact that the complainants were far from being sophisticated consumers and in all probability lacked an adequate understanding<sup>47</sup> about the nature of the power of attorney as well as its attendant risks.

13 The respondent ought to have been aware of the “real possibility” that the execution of the power of attorney could have been initiated by a third party in the latter’s own interest<sup>48</sup> and acted accordingly: “... it was imperative for the respondent to have ... ensured that the complainants were not acting under any misrepresentation or improper influence and could communicate with him freely... and [be] advised on the ramifications of executing a power of attorney and its attendant risks.”<sup>49</sup> The respondent was not a “facilitator” whose task was to simply prepare a technically correct document.<sup>50</sup> Similarly, with regard to the statutory declaration, the respondent was obliged to explain its “intent and purport” to the complainants so that they would be fully aware of its significance and consequences.<sup>51</sup> The High Court concluded: “The respondent’s conduct was especially reprehensible and deplorable, given that the statutory declaration had been motivated by the respondent’s self-serving conduct and was procured in flagrant disregard of his client’s interests.”<sup>52</sup>

#### IV. High Court’s observations on delay

14 Although the respondent’s delay in providing the complainants with copies of the loan documents<sup>53</sup> was only incidental to the complaint

46 *Id.*, at [95].

47 *Id.*, at [96].

48 *Id.*, at [97]. As pointed out by the court, the complainants were accompanied by a property agent (*ie*, C) on the way to the respondent’s office.

49 *Id.*, at [97] and [100].

50 *Id.*, at [98].

51 *Id.*, at [100].

52 *Id.*, at [101].

53 See para 6 of this article.

and unrelated to the charge, the High Court made certain observations “for the purpose of giving some guidance to practitioners.”<sup>54</sup>

15 To recap, as soon as the complainants realised that they may have been the victims of a fraud, they sent a letter to the respondent requesting copies of the loan documents relating to the sale of their property. As the respondent did not respond, the complainants sent a reminder. The High Court outlined the series of events:<sup>55</sup>

Only after a reminder dated 6 July 2002 did they [the complainants] receive a reply dated 10 July 2002 from another law firm, [X Corp], claiming that the respondent’s firm, [Y], had merged with them. The complainants were requested to precisely identify the documents they required. On 17 July 2002, the complainants replied, identifying the documents they required. However, there was no acknowledgement or response from [X Corp] despite a reminder sent on 16 September 2002. The complainants then sent a further reminder on 14 October 2002, to which [X Corp] responded, stating that the respondent had only acted for the complainants in the sale of the Flat, and that the file was closed upon the completion of the sale on 7 July 2000. Dissatisfied, the complainants wrote again on 28 October 2002 insisting on having copies of the documents being sought. Finally, after [X Corp] again failed to respond, the complainants engaged a law firm to make a written demand on their behalf. Only on 19 March 2003, some ten months after the initial request, did the complainants finally receive copies of the documents. All the letters from [X Corp] were drafted and signed by the respondent.

16 The High Court determined that although the rules do not expressly require a lawyer “to furnish copies of documents used in the course of his dealings upon request by an existing or former client”, such a duty exists pursuant to certain general provisions (such as the PCR, rr 14 and 20), which oblige the lawyer to carry out his work and respond to his client within a reasonable period of time.<sup>56</sup> This responsibility, which is established by the cases,<sup>57</sup> stems from the fundamental and

54 *Supra* n 2, at [34].

55 *Id.*, at [15].

56 *Id.*, at [35]. Reference was also made to the PCR, r 2(2).

57 Including *Law Society of Singapore v Ng Chee Sing* [2000] 2 SLR 165, at [45] and *Law Society of Singapore v Arjan Chotrani Bisham* [2001] 1 SLR 684, both of which are considered in the course of the High Court’s observations in *Tan Phuyay Khiang*, at [37]-[41]. Also see “*Ethics and Professional Responsibility: A Code for the Advocate and Solicitor*”, *supra* n 1, at paras 14-066 to 14-071.

“enduring duty of an advocate and solicitor to supply available documentary records [to his client].”<sup>58</sup> In the view of the High Court, the fact that the complainants were no longer the respondent’s clients was irrelevant: “The fact that the solicitor-client relationship may have ceased upon the completion of the sale did not detract from the respondent’s duty to respond timeously to the queries of the complainants.”<sup>59</sup> The respondent had “contumaciously contravened his general obligation to respond promptly to the complainants’ enquiries.”<sup>60</sup> He had “... employed a myriad of crude ploys to frustrate the complainants’ request for documents.”<sup>61</sup>

## V. Rules of ethics not to be approached in the same way as ordinary legislation

17 The rules of ethics, whether contained in legislation, codes or practice directions, must not be approached in the same manner as ordinary legislation. It is certainly right for a lawyer to offer an interpretation of a statutory provision or rule in a civil or criminal case which would be most favourable to his client.<sup>62</sup> This accords with his duty to present the best possible case on behalf of his client.<sup>63</sup> However, a lawyer who is considering whether a step he intends to take is ethical must not put himself in the position of a party involved in a dispute by construing an ethics rule with the self-interested purpose of minimising his exposure to liability or creating a situation of least resistance to his planned course of action. As stated by the High Court in *Tan Phuyay Khiong*: “It is also axiomatic that it is the spirit and intent, rather than just the plain letter, of the professional ethical rules that breathe life and

58 *Supra* n 2, at [42].

59 *Id.*, at [41].

60 *Id.*, at [39].

61 *Ibid.*

62 As long as the interpretation is viable and based on an accurate presentation of the law.

63 The PCR r 54 states “Subject to these Rules, an advocate and solicitor shall conduct each case in such a manner as he considers will be most advantageous to the client so long as it does not conflict with the interests of justice, public interest and professional ethics.”

legitimacy into the standards that are relevant in assessing whether a lawyer has discharged his professional obligations.”<sup>64</sup>

18 Yet, most disciplinary proceedings reveal just such an attitude on the part of respondents. For example, as has been shown with regard to *Tan Phuay Kiang*,<sup>65</sup> the respondent contended that his duty was to facilitate the sale of the property and, accordingly, had no obligation to advise his clients with regard to the propriety of the power of attorney or statutory declaration.<sup>66</sup> As for the delay of about ten months before the complainants received the documents relating to the property transaction,<sup>67</sup> the fact that the complainants had ceased being clients of the respondent was immaterial. The cessation of the retainer did not lessen the respondent’s duty to respond positively to his former clients within a reasonable time.<sup>68</sup> The High Court reached these conclusions by construing the rules in the context of the foundational values which underpin the relationship between a lawyer and his client.<sup>69</sup> In the view of the High Court, the facts of *Tan Phuay Kiang* “... illustrate that it is plainly insufficient for an advocate and solicitor to claim that he may have literally complied with the codes of practice. In our view, an overly formalistic approach to the interpretation and application of [the] professional conduct rules is to be eschewed.”<sup>70</sup>

19 The rules of ethics must certainly be complied with. However, they are merely facets of the foundational values which more truly reflect the ethical conscience of a lawyer. It must be appreciated that the nature of ethics is such that it is often impossible to frame a rule which gives full expression and effect to the profound moral dimensions of proper conduct. As stated by the High Court in *Tan Phuay Kiang*:<sup>71</sup>

Ethical codes, practices and standards must be religiously observed and adhered to, as an unequivocal affirmation of and testament to the legal

64 *Supra* n 2, at [100]. This approach is also emphasised in other cases such as *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [82] and *Wong Keng Leong Rayney v Law Society* [2006] SGHC 179 at [84].

65 See “Respondent’s role: Mere facilitator or professional adviser?” (at paras 12-13 of this article).

66 *Ibid.*

67 See paras 14-16 of this article.

68 *Ibid.*

69 See paras 9-16 of this article.

70 *Supra* n 2, at [1].

71 *Id.*, at [120].

profession's undivided commitment to probity, competence and diligence in the practice of the law. However, it must also be stressed that a rigid and formalistic adherence to the codes of practice without a proper appreciation of their spirit, purport and intent may from time to time lead to ethical blindness. The legal profession must constantly and vigilantly guard itself against such lapses if it is to inspire and sustain public confidence.

## VI. High Court's clarion call to the legal profession

20 The High Court made the following observations on what it considered to be "certain troubling patterns of legal practice":<sup>72</sup>

It appears that a practice now prevails among certain firms where substantial work is procured through referrals made by estate agents and/or credit companies. It is pertinent to note that such a *modus operandi* can land solicitors who sometimes decide to act for two or more of the parties to the transaction (*ie*, the homeowner, moneylender, and housing agent) into an ethical quagmire. ... [This case] serves as a timely reminder to the legal profession that the onus invariably rests on solicitors to ensure that they conscientiously and assiduously discharge their professional duties. The legal profession plays an integral and crucial part in upholding law and order in society. Solicitors, in addition to facilitating access to justice, are expected to competently advise their clients, unhindered by any actual or potential conflict of interests. While there is nothing wrong in accepting and acting on referrals from other clients or friendly parties, it is impermissible for such practices to threaten or result in the compromise or subordination of the interest of the referred party/client, so as to enhance the interest or advantage of the referring party. *We are prepared to affirm that any similar conduct brought to our attention in future may warrant an order for striking off from the solicitors' rolls.* [emphasis added]

21 Concerned about the erosive effect of the recent spate of disciplinary cases on public confidence in the legal profession, the High Court expressed the need for it to respond robustly to misconduct.<sup>73</sup> It considered the proceedings in *Tan Phuay Khiang* as "a clarion call" to all lawyers and emphasised the paramount duty of the lawyer to "avoid all

72 *Id*, at [117]. Also see [73], where the High Court expresses a similar sentiment.

73 *Supra* n 2, at [118].

manner of conflicts of interest, whether potential or actual” and to meet the specific needs of every client:<sup>74</sup>

Solicitors would also be well advised to be tirelessly proactive in ensuring that clients understand all the attendant legal risks of every transaction they enter into. One might even be tempted to articulate as a rule of thumb that the less familiar a client appears to be with the nature of a particular transaction, the more compelling the need for the solicitor to ensure that his client has an adequate grasp of all the legal ramifications and attendant risks.<sup>75</sup>

## VII. Other issues raised by the case

22 *Tan Phuay Khiang* addresses other important issues which are not within the scope of this article. They include: the approach of a disciplinary committee to the charge(s) against the respondent and the evidence presented to it;<sup>76</sup> the requirement that notice be given to a respondent of all allegations made against him;<sup>77</sup> sentencing considerations including mitigating factors;<sup>78</sup> and the importance of taking attendance notes so that there is a contemporaneous record of the lawyer’s conduct.<sup>79</sup>

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74 *Id.*, at [119]. Also see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR 308 at [68] (cited in *Tan Phuay Khiang* at [99]).

75 Also see para 12 of the article concerning the duty of care which is owed to vulnerable clients.

76 *Id.*, at [30]-[33], [44]-[47], and [88]-[91].

77 Pursuant to the LPA, s 89(4). *Id.*, at [50]-[58].

78 *Id.*, at [102]-[115].

79 *Id.*, at [82]-[87]. In *Tan Phuay Khiang*, at [82], the High Court stated “... the absence of credible contemporaneous written records provides the context in which we came to the view that an adverse inference could be safely drawn against the respondent.”