In the Barristers Disciplinary Tribunal

Between

The Bar Council

And

Wong Kwai Sang also known as
Raymond Wong K.S. and Raymond Wong

Before: Edward Chan SC, Anthony Chan and James Chiu
Date of Hearing: 19 September 2019
Date of Reasons: 20 November 2019

Reasons for Sentence

Procedural history

1. On 3 July 2018, the Bar Council laid two complaints against the Respondent, relying on as evidence his convictions in DCCC 158 of 2013 (**"Convictions"**).

2. Complaint 1, in brief, alleged that the Respondent:

   2.1. Propounded a false will.

   2.2. Made an affirmation falsely stating that the deceased had made the false will appointing the Respondent as sole executor.

   2.3. Used a copy of the false will to induce a police officer to accept it as a genuine instrument.

3. Complaint 2, in gist, alleged that the Respondent, between 7 January and 4 March 2010, stole a total sum of HK$15,400 being property belonging to Mr Cheung Wai-ming.

4. The Respondent's conduct, in the manner as alleged under complaints 1 and 2, is said to be contrary to paragraph 6(b) of the Code of Conduct of the Bar of the Hong Kong Special Administrative Region in force at the material time, which provided that:

"It is the duty of every barrister not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession into disrepute, or which is prejudicial to the administration of justice."

5. On 9 January 2019, we ruled that for the purpose of defending the two complaints, the Respondent is not entitled to challenge the Convictions, which constitute evidence that the Respondent did commit the offences for which he was convicted of by the Convictions unless the Respondent could show exceptional circumstances within the rule in *Hunter's* case.[1] We also held that the Respondent had not shown that he could rely on any of the exceptions to the rule.

6. In the second ruling of 5 August 2019, we found the Respondent guilty of the two complaints laid against him by the Bar Council.

7. We do not propose to repeat our discussions in the two earlier rulings – although they should be read together with these Reasons for Sentence for proper context – except that at the end of our second ruling (at §83), we directed that:

"...a date be fixed for the hearing of (1) the question of sanction that we should impose; (2) the question of costs of this inquiry including all interlocutory applications; (3) the question of publication of our decision; (4) any application for stay of our decision; and (5) any other matter that we should deal with. We further direct that all authorities and materials intended to be used in the further hearing must be properly bundled and submitted to this BDT at least 7 days before the next hearing. All

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[1] It should be said that at §10 of the ruling, we inadvertently said that Mr Au died on 7 August 2009 whereas the correct date should be 10 July 2009. Whilst the mistake was immaterial to the outcome, the mistake was entirely ours and we meant no disrespect.

late materials will not be admitted unless exceptional circumstances are given to justify the lateness."

8. On 8 August 2019, this Tribunal, having not received any information from the Respondent as to his unavailable dates, notified the parties that a further hearing would be held on 21 August 2019 at 5:30 pm.

9. On 12 August 2019, the Respondent submitted various documents (with paginated numbers 1065 to 1352) to this Tribunal.

10. On 14 August 2019, the Bar Council submitted its Submissions and List of Authorities on Sanction.

11. On 15 August 2019, the Respondent informed this Tribunal for the first time that he was in fact *"not available around the end of August including 21-08-2019"* and asked if the hearing could be re-fixed. It subsequently transpired that the Respondent had sought the Bar Council's agreement on re-fixing the hearing date and the Bar Council's solicitors had turned down the request.

12. On 16 August 2019, this Tribunal responded as follows:

"2. It is to be noted that on 5 August 2019 when you were sent a copy of our decision, we asked the parties for dates in August which were not available to them for the further hearing on this matter.

3. We received no reply from you.

4. On 8 August 2019, we fixed the date of 21 August 2019 which was communicated to you by e mail on the same day. Still we have not heard anything from you on the date fixed for the further hearing.

5. It was only today, only 5 days before the resumed hearing date that you claimed that you would not be available.

6. The attempt to get an agreed date with the legal team of the Bar Council is NOT an excuse. It is for the BDT to fix a hearing date

even though normally the BDT will also try to accommodate the parties. We have tried to accommodate your dates, but we received no reply from you.

7. At the moment, I am still enquiring with other members of the Tribunal on their possible alternative available dates. But meanwhile the date of 21 August 2019 is still retained.

8. Unless a very good reason is shown, we are not minded to accept that you could not be available at all for the rest of August 2019.

9. Entirely without prejudice to the retention of the 21 August 2019 hearing date, we are also interested in knowing by return what other dates in August and September 2019 that you could not be available. If I do not hear from you before 11.00 a.m. tomorrow, the hearing date on 21 August 2019 will be retained and we may even have to proceed in your absence."

13. On 18 August 2019 (a day after the deadline imposed by this Tribunal), the Respondent wrote back claiming to be suffering from certain health conditions and, on that basis, asked for the hearing to be fixed after 5 September 2019. He also indicated he would not be available on 23, 26, 28-29 August 2019.

14. On 19 August 2019, in view of the Respondent's representation, this Tribunal reluctantly directed that the hearing on 21 August 2019 be adjourned to 19 September 2019 at 5:30 pm. We also extended the deadline for filing submissions or materials to 31 August 2019 and warned that any late submissions or materials will not be looked at.

15. On 31 August 2019, the Respondent submitted further documents (with paginated numbers 1353 to 1384) to this Tribunal.

16. At the beginning of the hearing on 19 September 2019, the Respondent, who acted in person as he did in all the hearings before us, tried to submit further documents (with paginated numbers 1386 to 1420) out of time, despite our clear direction on 19 August 2019.

17. Initially, we were minded to disallow all these new documents on the basis that they were filed late. Indeed, the Chairman remarked that: *"the general starting point is we have made it very clear as to the timing for the submission of documents and as such prima facie the documents are not acceptable."*

18. Nevertheless, bearing in mind what was at stake for the Respondent, we carefully considered the late documents, and gave the following directions:

    18.1. For pages 1386 to 1388: we disallowed them on the basis of their irrelevance.

    18.2. For pages 1389 to 1390, which was an incomplete copy of the judgment *Cheng Lai Chun v Cheung Wai Ming Turbo* (HCA 1726/2009, 15 Jul 2013) where the Respondent was the 3rd Plaintiff, we allowed those pages on a *de bene esse* basis subject to the Respondent justifying their relevance.[2]

    18.3. For pages 1391 to 1394, which was an incomplete copy of the judgment of *Nina Kung v Wang Ding Shin* (FACV 12/2004, 16 Sept 2005), we disallowed those pages on the basis that they were irrelevant.

    18.4. For pages 1395 to 1420, which was a judgment in *HKSAR v Leung Pui Shan* (CACC 317/2007, 5 Feb 2008), we allowed the judgment because, on the face of it, it seemed relevant to the issue of mitigation, for which we are presently concerned with.

19. For completeness, we should record the following:

    19.1. At different stages of the hearing on 19 September 2019, the Respondent made three separate applications to adjourn the

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[2] It turned out that the Respondent did not rely on that judgment and we therefore now disallow those two pages from being admitted.

hearing (a) to enable him to instruct counsel (b) pending the revocation of the probate granted on Mr Au's forged will and (c) pending his application to obtain legal aid to appeal against the Court of Appeal's upholding the Convictions. We rejected the applications as they were made late in the day and that they were devoid of any merit. We rejected the third application on the additional basis that the Court of Final Appeal had already dismissed his earlier application for leave to appeal pursuant to rule 7 of the Hong Kong Court of Final Appeal Rules (Cap 484A).

19.2. After the hearing, the Respondent tried to file further materials, which we rejected on the basis that the hearing had been concluded. More egregiously, on 18 October 2019, the Respondent applied to re-open the hearing arguing that the hearing on 19 September 2019 was *"unfinished and adjourned"*. We dismissed this ill-advised and misconceived application by our ruling on 22 October 2019.

19.3. On 30 October 2019, the Respondent applied for (yet) a further hearing to deal with various matters. We gave permission to him to file written submissions only on the issue of publication of the decisions of this inquiry by 5:00 pm on 11 November 2019 and made clear that no further submissions will be entertained unless the same is served by the deadline. The deadline has passed, and we received nothing from the Respondent.

20. For the avoidance of doubt, it should be said that whilst the Respondent had repeatedly flouted our directions, and a reasonable person may legitimately think that it is both wrong and unprofessional to persistently disregard directions from the Tribunal, that did not affect our consideration of the appropriate sanction.

Law

21. Section 37 of the Legal Practitioners Ordinance (Cap 159) (**"LPO"**) provides that:

"On completion of its inquiry, the Barristers Disciplinary Tribunal may do one or more of the following—

(a) censure the barrister;

(b) suspend the barrister from practising for a period it specifies;

(c) order that the barrister's name be struck off the roll of barristers;

(d) order the barrister to pay to the complainant an amount not exceeding the amount or amounts paid or payable to the barrister in relation to the complainant's matters in dispute;

(e) order the barrister to pay a penalty not exceeding $500,000, which shall be paid into the general revenue;

(f) order the barrister to pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed by a Master of the High Court on a full indemnity basis, or an amount that the Tribunal considers to be a reasonable contribution towards those costs;

(g) make any other order it thinks fit."

22. Mr Steven Kwan for the Bar Council reminded us the purpose of disciplinary sanctions, particularly in a case such as the present where a disciplinary tribunal is considering the appropriate disciplinary sanctions against a professional who has already satisfied the criminal penalty imposed on them for the misconduct in question, by referring to *Bolton v Law Society* [1994] 1 WLR 512 at 518F-519A in which Sir Thomas Bingham MR (as he then was) held:

"It is important that there should be full understanding of the reasons

why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission…Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

23. Counsel referred to *Bolton* for a second point, *viz* what is the likely appropriate sanction where dishonesty is proven. At p 518C-E, the eminent Judge held:

"Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a

solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension."

24. This second point was followed in a later case in the context of a disciplinary case against a barrister: *White v Bar Standards Board* [2015] EWHC 3583 (Admin) at §§50-51 (Garnham J).

25. In *Law Society v Wilson* [2006] EWHC 1022 (Admin) at §§8-9, Jack J, referring to *Bolton* and other authorities, held that:

"In short, in cases of proven dishonesty striking off will almost invariably be the appropriate penalty, and, in addition to any punitive or preventative purpose, the reason will be to maintain the profession as one that can be trusted. It follows that mitigation which is personal to the offending solicitor will commonly be largely irrelevant in a case of dishonesty because it is irrelevant to the maintenance of the reputation of the profession.

Mr Barton referred us to a number of cases which, he submitted, showed that striking off was the only appropriate outcome in the present case. Mr Michael Tomlinson representing Miss Wilson submitted that when their facts were examined they could be seen to be much more serious cases than her own, and that they should be distinguished. The real assistance that those cases provide is that they emphasise the need to protect the reputation of the profession by

expelling dishonest persons from it and emphasising that mitigation personal to the solicitor has little relevance in these cases."

26. We consider the aforementioned *dicta*, made in the context of disciplinary proceedings against solicitors and barristers in England and Wales, to be equally applicable to disciplinary cases against barristers in Hong Kong.

27. On the other hand, the Respondent referred us to the *Leung Pui Shan* case at §14 for the proposition that sentencing cannot be too mechanical. More specifically, Stock JA (as his Lordship then was) held:

"But sentencing is an art which must carefully be moulded not only to the category of offence but to the offender. There is a danger of sentencing becoming over-mechanical with too little regard for unusual circumstances that might arise in relation to the commission of particular offences and too little regard to circumstances peculiar to the offender. Experience suggests that mitigation advanced sometimes takes the form of a mantra in our courts; with the courts being told of the age, health circumstances and number of an offender's family members and of other matters which have little to do whatsoever with what has led the particular offender to the commission of the offence and what circumstances peculiar to the offender go in mitigation of sentence. There are certain offences – and these are well-known – in which personal circumstances and the circumstances leading to an offence will count much less than in others, because those offences demand, as a matter of public protection, deterrence as an overwhelming consideration. That said, the circumstances of this case provide an opportune moment in which to stress the need for individual justice having regard, of course, to the policy considerations that might dictate in a category of case a stern general approach but never forgetting the fact that the courts are on each sentencing occasion dealing with an individual whose peculiar circumstances, if they exist, always deserve careful attention. Consistency in sentencing is important but consistency does not dictate blindness to individual

circumstances of a case and to those of an offender. An overly rigid pre-occupation with uniformity can be inimical to individual justice."

28. Whilst *Leung Pui Shan* was an application for leave to appeal against sentence in a criminal case, and not a disciplinary case, we have no difficulty accepting that proposition, bearing in mind that it is trite that any sanction imposed by a disciplinary body must be appropriate and proportionate having regard to all relevant circumstances. How that proposition is to be applied to the present case is of course a different question.

29. It should also be said that Mr Kwan also highlighted in his written submissions (a) the relevant past sanctions imposed by the Barristers Disciplinary Tribunal and (b) the relevant considerations that we should bear in mind when deciding the appropriate sanction. We have carefully read the materials supplied to us and, where appropriate, we will mention them in these Reasons.

Respondent's submissions

30. The Respondent's **first submission** was that §3 of the Bar Council's written submissions was inaccurate. More specifically:

    30.1. §3 provided that *"The proven course of conduct in Complaint 2 is that the Respondent stole HK$15,400 belonging* [to] *another person."*

    30.2. The Respondent claimed that the money belonged to the estate of the deceased Mr Au and therefore not *"another person"*.

31. At the hearing, we made clear to the Respondent that we had serious difficulty following that submission. We set out our reasons here:

    31.1. As we understand the facts, the money was withdrawn after Mr Au's demise from a bank account he jointly held with Mr Cheung Wai-ming, and there was no evidence that the money actually belonged to a third party beneficiary. It follows that the

prima facie position was that Mr Cheung was the owner of the money by operation of the principle of survivorship.

31.2. Indeed, Complaint 2, for which we found to have been established, was premised upon the Respondent stealing funds belonging to Mr Cheung.

31.3. But even supposing for the sake of argument that the Respondent were right that the money belonged solely to Mr Au's estate, we fail to see how the Bar Council's submission that the Respondent had taken money from *"another person"* can be said to be inaccurate. At the risk of stating the obvious, the Respondent and Mr Au's estate are different persons.

32. Upon further queries from us and having heard the Respondent's explanations, it seems to us that the Respondent's first submission really boils down to the following:

32.1. That the identity of the victim mattered to the issue of appropriate sanction, and he claimed that the victim in the present case was Mr Au's estate (or alternatively his eldest sister Natalie Wong who was the sole beneficiary of Mr Au's estate under the "will" he propounded) but not Mr Cheung.

32.2. Further, there was no real victim because the Respondent took the money he did to reimburse himself or someone for (a) expenses of Mr Au's funeral including religious ceremony and (b) posthumous donations made on Mr Au's behalf.[3]

33. It should be said at the outset that we reject the entirety of this submission for the reason that on the facts, the money the Respondent had stolen belonged to Mr Cheung, and not Mr Au's estate: see §31.1 above.

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[3] We saw evidence that suggests the Respondent donated HK$3,000 in Mr Au's name in November 2009. The Respondent asked us to infer he had made further donations in Mr Au's name, although he said he had misplaced the relevant evidence.

34. In any case, even assuming for the sake of argument that the money did not belong to Mr Cheung, we also reject this submission on its substance for reasons explained below.

35. In terms of the identity of the victim, the reason why the Respondent claimed this mattered was because if the victim was "domestic" – as opposed to an outsider or stranger – the offence should, on the Respondent's argument, be regarded as less serious and the sanction should be more lenient.

36. We should add that "domestic" was a term used by the Respondent, and we understand him to mean a case where the perpetrator of the crime and the victim are connected or related, for instance by blood or marriage.

37. The Respondent's justification for his contention was that *"Firstly, if there's no victim. Secondly, if there's no identified victim. Thirdly, if the so-called victim did not make an actual complaint to the injury..."*

38. We unhesitatingly reject the contention:

    38.1. Even in a such "domestic" case, we cannot accept there would be no victim or no identifiable victim.

    38.2. On the Respondent's primary case, Mr Au was the victim. Plainly, he could not have complained about money being taken away from him after his demise. Even had the money been withdrawn during Mr Au's lifetime, we cannot assume that he would not have complained.

    38.3. Further, there was no evidence that the Respondent was connected or related to Mr Au by blood or marriage and hence, this proposition contended for, even if it were correct, which we do not think it is, simply has no application in the present case.

    38.4. As for the Respondent's latter case that the victim was his eldest sister Natalie Wong, there was no evidence whether she

complained, and we cannot assume she has not or will not. Furthermore the evidence was that Natalie Wong was not married to Mr. Au and Mr. Wong's counsel Mr Yeung, who represented him at trial and on appeal, had not heard that she had made such claim.

39. In terms of the Respondent's contention that there was no real victim because he had used the money for Mr Au's benefit, the Respondent is essentially trying to re-run his defence of honest belief, which was rejected by the criminal courts. In our view, the contention is nothing more than a blatant attempt at making a collateral challenge against the factual findings of the criminal courts.

40. For present purposes, we set out the relevant parts of HHJ CP Pang's Reasons for Verdict:

40.1. §34 recorded PW10's evidence that on 11 February 2010, the Respondent paid for a trip overseas using money from the account he had specifically opened to deposit the money he had taken from Mr Au and Mr Cheung's joint account.

40.2. §40 recorded the Respondent's defence as regards the withdrawal of funds, namely: he believed the money in the joint bank account was part of Mr Au's estate and he had authority to administer the same.

40.3. §89 recorded that the Respondent's explanation of why he withdrew HK$15,400 from the joint bank account and how he used it subsequently was extremely unclear. However, the bank records showed that the Respondent withdrew the sum in 7 tranches between 7 January and 4 March 2010 and deposited them into a newly opened bank account, and the Respondent did use the funds therein. Apart from paying for the trip, he also withdrew funds from it such that on 8 April 2010, the remaining balance was HK$29. The learned Judge queried that if the Respondent was holding the money for Mr Au's estate, why did

he withdrew significant sums from the newly opened bank account, including paying for his own trip overseas.

40.4. §90 recorded that the Respondent explained that after he withdrew the money from the newly opened bank account, he paid 3 tranches of HK$5,000 each to his father for safekeeping, and told his father he could, if he thought appropriate, pay the money to Mr Au's bank account. In fact, his father did pay the money into Mr Au's bank account maintained with Bank of China. The learned Judge thought the Respondent's explanation was contrary to common sense.

40.5. At §91, the learned Judge added that what was even more perplexing was that the money was paid into Mr Au's Bank of China account on 7 April 2010, after Wong Choi Chuk was invited to attend the police station to assist in police investigation.

40.6. At §92, the learned Judge noted that also on 7 April 2010, the Respondent paid a further HK$15,000 into Wong Choi Chuk's account, having forgotten he had already paid his father HK$15,000, because of Mr Au's wish that Wong Choi Chuk should take care of the funeral matters and the Respondent feared she did not have sufficient funds. His Honour found the Respondent's explanation unpersuasive: §§93-94.

40.7. At §95, His Honour noted that the Respondent claimed that he donated HK$3,000 in November 2009 in Mr Au's name[4] but commented that since the money did not come from Mr Au's and Mr Cheung's joint bank account, the Respondent ought to have deducted the same sum as reimbursement from either the sum he paid Wong Choi Chuk or his father, but he did not.

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[4] This appears to be the same donation, for which we were provided with a document, which seems to evidence such donation.

40.8. At §99, his Honour noted that Wong Choi Chuk's explanation as to why the Respondent paid her HK$15,000 was contrary to the Respondent's explanation and also to common sense.

40.9. At §§147, 149 & 150, the learned Judge rejected the Respondent's defence that as Mr Cheung owed Mr Au at least HK$250,000, the Respondent was not dishonest as he thought he was entitled as trustee or executor to handle the funds in Mr Au's and Mr Cheung's joint account. His Honour found that the Respondent was dishonest as he had used the withdrawn funds as if it belonged to him, instead of holding it on Mr Au's behalf.

41. The Court of Appeal upheld His Honour's findings: CACC 429/2013, 21 April 2015.

42. In our ruling on 9 January 2019, we held that the Respondent is not allowed, for the purpose of defending the Bar Council's two complaints, to lead evidence to contradict the findings of the criminal courts as that would be an impermissible collateral attack of those findings. By the same token, the Respondent is precluded from – and we reject any attempt by him at – re-running his defence of honest belief, which was rejected by the criminal courts, for the purpose of the issue of sanction or mitigation.

43. Before leaving the Respondent's first submission, we would make two further observations.

44. First, at the hearing on 19 September 2019, the Respondent mentioned several times that he had spent the money he had withdrawn from Mr Au's and Mr Cheung's joint account on things like buying a meal and shampoo for himself. If what the Respondent said were true, that would tend to:

44.1. Contradict his own argument before the criminal courts (which he attempted to revive before us) that the sums were used as reimbursements for expenses incurred on Mr Au's behalf.

44.2. Add to the Respondent's criminality or culpability in committing the offences he did in stealing money belonging to another.

45. Second, it seems to us that in persistently insisting that he was entitled to, or that he honestly believed he was entitled to, withdraw the funds he did from Mr Au's and Mr Cheung's joint account, the Respondent has shown no remorse for doing what he did, for which he was convicted.

46. The Respondent's **second submission** was that notwithstanding the criminal courts' findings that the will the Respondent propounded was forged, because in fact there was a grant of probate of the will to him as executor, the Probate would have the effect of making Natalie Wong the beneficial owner of Mr Au's estate with power to make application to the Probate Judge to freeze the assets of Mr Au's estate or to make suitable distribution. Further, in view of the Probate and relying on the rule in *Hunter's* case, the Bar Council was not entitled to challenge in these disciplinary proceedings the Respondent's position *qua* executor and Natalie Wong's position *qua* beneficiary unless the Bar Council or someone else had successfully applied to the Probate Judge to set aside the Probate.

47. We reject this submission for at least the following reasons:

47.1. First, as we have said at §31.1 above, on the facts, the money that the Respondent had stolen belonged to Mr Cheung, and not Mr Au, by operation of the principle of survivorship. Hence, the submission, which predicated on the funds in the joint account belonging to Mr Au, fails *in limine*.

47.2. Second, in our view, nothing the Bar Council did in these proceedings can even begin to be said to amount to a challenge to the Probate. All it did was to rely on the Convictions and the findings of the criminal courts, the latter for the purpose of invoking the rule in *Hunter's* case, to set up a case that the Respondent had acted dishonestly, or had

brought the profession into disrepute, or had prejudiced the administration of justice.

47.3. Third, with respect, we have to say the Respondent's contention that he is still the executor of Mr Au's estate notwithstanding the criminal courts' finding that the will he propounded was forged is utterly unattractive. Whilst because of the unsubstantial size of the estate or for any other reasons, there may be no incentive for anyone to revoke the Probate, it would be quite extraordinary if the Respondent were to continue representing to anyone that he is still entitled to exercise any powers *qua* executor of Mr Au's estate.

47.4. Fourth, given the Bar Council was not a party to the Probate granted in common form, we fail to see how the rule in *Hunter's* case would apply to bind the Bar Council and this Tribunal to take the view that the will propounded by the Respondent was genuine and that the Respondent had and still has all the powers of a rightful executor to Mr. Au's estate.

47.5. Fifth, the Respondent mentioned five authorities, but he did not even have the courtesy of supplying copies of the judgments to us or to Mr Kwan. Relying on the three citations he read out at the hearing, we have been able to locate the judgments, which appear to go either to the principle precluding re-litigation of issues or the rule in *Hunter's* case.[5] We have no quarrel with the propositions of law, but we fail to see their relevance. As for the remaining two authorities, the Respondent claimed they concern the same propositions of law so it would seem they add nothing to the discussion. Further, he did not provide any citation or the judgments and in such circumstances, we have no obligation to do his research for him. In any event, we have

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5 The Respondent gave three citations and judging from them, it would appear he was referring to *Lee Siu Hong t/a Hong Lee & Co v Law Society* (CACV 155/2014, 7 Apr 2016) at §§37 & 40 (Kwan JA, as she then was); *Choy Bing Wing v Chief Executive* [2006] 1 HKLRD 666 at §11 (Lam J, as he then was); *Wong Shui Kee t/a Roger SK Wong & Co v Gareth Huw Thomas* (HCA 2207/2003, 17 Sept 2013) at §19 (Reyes J).

tried, but have not been able to discern which two cases he was referring to.[6]

48. The Respondent's **third submission** was that counsel for the Bar Council failed to produce the relevant authorities on sanction, in particular those authorities where the barrister found to be dishonest was not struck off the roll of barristers.

49. This submission is devoid of merit and we reject it. In his written submissions, Mr Kwan helpfully produced a summary describing the facts and sanctions imposed in relevant past disciplinary proceedings against barristers. There is simply no basis to say Mr Kwan did not disclose relevant past cases known or available to him.

Sanction

50. The Respondent was called to the Hong Kong Bar on 28 December 1996 by virtue of his qualification as having passed the English Bar Final Examination. As we understand it, he is presently not in active practice. We are not aware that he has previously been disciplined. Obviously, he was convicted and had served his sentence.

51. Insofar as we are able to discern, he appears to have been suffering, or is presently suffering, from some non-life threatening condition, although it is not immediately obvious from the evidence what precisely is the condition or whether he has recovered. That said, we are prepared to accept that he is presently enduring some non-critical medical condition.

52. Beyond that, the Respondent has disclosed little about his personal background.

53. What is also tolerably clear from our discussion so far is that the Respondent did not advance any grounds of mitigation in his

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6 The Respondent also tried to refer to the *Nina Wang* case, which we have disallowed because it was irrelevant and the Respondent only produced it late in the day.

submissions despite having been given ample opportunity to do so. Put differently, we are unable to identify any relevant mitigating circumstances from his submissions. On the contrary, some of the points taken by him tend to exacerbate his culpability or demonstrate he remains remorseless about stealing the money he did and in propounding a false will.

54. In any case, bearing in mind that we are satisfied that a most serious case of dishonesty has been established against the Respondent, and applying *Law Society v Wilson*, we take the view that mitigation based on personal circumstances would not have been helpful in the present case anyway. In particular, we note the following:

    54.1. Even though a barrister is technically not an officer of the Court, the Respondent, as a barrister whose words and conduct the Court would normally rely on, knowingly propounded a false will, made an affirmation falsely stating that Mr Au had made the false will appointing him as sole executor and used the Probate obtained by him through such deception to induce the police to accept it as a genuine instrument in obtaining certain items of belongings of the deceased. Such conduct was plainly dishonest conduct of the most serious nature.

    54.2. Whilst the Bar Council did not rely on the "dishonest conduct" limb in paragraph 6(b) of the Code of Conduct, but only the "bring the profession into disrepute" and "prejudicial to the administration of justice" limbs for Complaint 1, the seriousness of the dishonest conduct is nevertheless relevant to the question of sanction as we are presently concerned with the adverse impact that the Respondent's conduct had on the reputation of the profession of barristers and the administration of justice.

    54.3. We have no doubt that the Respondent's serious dishonest conduct brought the profession of barristers into disrepute and patently prejudiced the administration of justice, particularly

given that the Respondent had deliberately and knowingly misled the Probate Registry/Court and the police.

54.4. Having obtained Probate by his dishonest conduct, the Respondent committed further dishonest acts by stealing money that did not belong to him nor Mr Au (i.e. Complaint 2). We take note of the sum stolen was relatively small but the amount stolen represented all the cash in that joint account. In any case, on any point of view, the theft plainly constitutes dishonest conduct on the Respondent's part. Whilst not expressly mentioned in Complaint 2, we consider it obvious that such dishonest conduct brought the profession of barristers into disrepute.

54.5. In stubbornly maintaining, even at the hearing on 19 September 2019, that he is the executor of Mr Au's estate (until the Probate is revoked) and that he was entitled to, or that he honestly believed he was entitled to, withdraw the funds he did, he has shown no remorse for the offences, for which he was convicted. If he were to continue to maintain that misconceived belief, it would mean that so long as no one would have the interest to apply to formally set aside the Probate, there is every prospect that the Respondent would continue to exercise the right of being Mr. Au's executor

54.6. That the Respondent apparently spent at least some of the stolen funds for his own benefit (such as the evidence before the criminal courts that he had paid for a trip overseas using the stolen funds and also his claim before us that he had used the money to buy a meal and shampoo for himself) did not do him any favours.

54.7. We are mindful that the Respondent's father had paid HK$15,000 into Mr Au's Bank of China account and the Respondent had paid another HK$15,000 to Wong Choi Chuk. However, we do not consider that to be relevant. In the first place, the Respondent stole money belonging to Mr Cheung. Second, as HHJ CP Pang noted, it was likely the two tranches

of money were paid after the Respondent had learnt about the police investigation.

55. We also note that Complaints 1 and 2 are based on the same set or series of facts. Having regard to all the relevant circumstances, we are of the firm view that censure, payment of penalty, compensation order or suspension would not be adequate or apt sanction to reflect the serious nature of the Respondent's dishonest conduct as established under Complaints 1 and 2. In our judgment, in order to maintain the reputation of, and sustain public confidence in, the profession of barristers, the only appropriate, proportionate and commensurate sanction for Complaints 1 and 2 are to order the Respondent's name to be struck off from the roll of barristers. Even if we were to impose separate sanction on each complaint individually, our decision would have been that for each complaint the sanction would be for the Respondent's name to be struck off the roll of barristers.

56. There is also no reason why costs should not follow the event. We accept Mr Kwan's submission that the Respondent unreasonably contested these proceedings and caused costs to be unnecessarily incurred. But for Mr Kwan's confirmation that the Bar Council is not asking for costs on any particularly higher basis, we would have been inclined to order costs on a full indemnity basis, as provided for in section 37(f) of the LPO.

57. That said, and given the Bar Council's stance, we are prepared to order the Respondent do pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed (if not agreed) by a Master of the High Court on a party and party basis. We consider we have jurisdiction to make this order under section 37(g) of the LPO and in our judgment, it is fit to do so as the Bar Council did not press for a higher basis, notwithstanding the provision in section 37(f) of the LPO.

58. We will also make the usual order regarding publication of the complaints, conviction and sentence.

59. At the end of the hearing, we informed the parties that we are minded to order a stay of the sanctions ordered pending the expiration of the prescribed period for lodging an appeal to the Court of Appeal, and if an appeal were lodged within that period, such stay be extended pending the disposal of the appeal. As neither parties object, we will grant the stay on those terms.

Order

60. For all these reasons, the order we make are as follows:

60.1. The Respondent's name be struck off from the roll of barristers.

60.2. The Respondent do pay the costs of and incidental to the proceedings of the Tribunal and the costs of any prior inquiry or investigation in relation to the matters before the Tribunal, to be taxed (if not agreed) by a Master of the High Court on a party and party basis.

60.3. The complaints, the conviction and the sentence be published by way of a Bar Circular and also be published permanently on the Bar's website in the part which is accessible by the public generally.

60.4. The Statement of Findings (dated 9 January 2019 and 5 August 2019) and this Reasons of Sentence be sent to the Complainant and the Registrars of the High Court and of the District Court, the Chief Judge of the High Court, the Chief District Judge, the Chief Magistrate, all members of the BDT Panel, the Department of Justice (the Secretary for Justice, the Civil Litigation Unit and the Director of Public Prosecutions), the President of the Law Society, the Director of Legal Aid, the Administrator of the Duty Lawyer Service, and the Official Receiver's Office.

60.5. A copy of the Statement of Findings (dated 9 January 2019 and 5 August 2019) and this Reasons of Sentence be kept in the

Bar Secretariat and copies of the same be made available to the public upon request.

61. The order in the preceding paragraph be stayed pending the expiration of the period for lodging an appeal to the Court of Appeal prescribed in section 37B(1) of the LPO, and if an appeal were lodged within the prescribed period, such stay be extended pending the disposal of the appeal.

Dated 20th November 2019

Edward Chan, SC	Anthony Chan	Dr James Chiu
Chairman	Member	Member