

Wong Tim Kai

AND

Attorney General of Brunei Darussalam

**(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 19 of 2007)**

Power, P.; Mortimer and Chong JJ.A.
15th May, 2008.

Mr. Balwant Sidhu and Rudi Lee (M/S Fathan, Rudi Lee & Associates) for Appellant.
Ahmad Jefri Rahman and Nurhayana Janis Abdullah Lim for Attorney General.

Case(s) cited in the Judgment:

Re Evatt (1987) 92 Federal Law Reports 380

Thomas v Legal Practitioners Admissions Board [2004] QCA 407

Power, P.:

On 25th August 2007 an Originating Motion was filed by Fathan, Rudi Lee and Associates, the solicitors for the Applicant Wong Tim Kai who is the defendant in Criminal Trial No. 38 of 2004. It sought, inter alia a Declaration that the Applicant's Counsel, Manjeet Singh Dhillon (Mr. Dhillon) was entitled to a right of continued audience in that trial. The Attorney General was made respondent to that motion.

The motion was supported by an affidavit of 13th July 2007 from Mr. Dhillon which sets out that the motion was taken out consequent to an unfortunate clash between the Chief Justice and Mr. Dhillon in the Criminal Trial.

The affidavit details that this incident culminated in the Chief Justice directing that the Mr. Dhillon would not longer address the court. We are not concerned with the events which led to that ruling.

The motion sought to reverse that ruling and to allow Mr. Dhillon to continue to be heard in the trial. In his affidavit in support of the motion Mr. Dhillon stated in para 24 "To date I have not been suspended, censured or had any form of disciplinary actions instituted against me." (Emphasis supplied)

On 10th October, 2007 counsel for the Attorney General filed the Respondent's submissions. In these a preliminary issue was raised asking that the Court first determine whether the applicant was, in effect, seeking a Judicial Review and, if that be so, whether the Court had jurisdiction to grant such on application given the provisions of Article 84C of the Constitution of Brunei Darussalam and s. 62 of the Specific Relief Act.

On 16th October, 2007, the Applicant filed a further affidavit from Mr. Lee Kim Boon a solicitor of Fathan, Rudi Lee and Associates. Mr. Lee affirmed that when the motion came on for hearing on 10th October 2007 the Chief Justice directed that he wished to hear counsel in relation a letter of 18th February, 2006 from the Attorney General to Fathan, Rudi Lee and Associates and the reply on 20th February 2006 to that letter. The matter was then adjourned to 18th October 2007 to allow Mr. Dhillon to respond to the matters raised in the letter of the 18th February which stated:

“On 4th October 2004 you filed a Petition and supporting documents including an affidavit by yourself dated 30th September 2004 for the admission of Mr. Manjeet Singh Dhillon under the Ad Hoc admissions provisions of the Legal Profession Act, Chapter 132 in respect of the above matter. You subsequently filed an affidavit in support of the Petition on 9th October 2004.

It has recently been drawn to my attention that in 1990 before the Supreme Court at Kuala Lumpur, Malaysia, Mr. Manjeet Singh Dhillon was found guilty of contempt of court and fined the sum of RM\$5,000. This matter was not brought to my attention or the court’s attention in any of the documents filed in support the Petitioner’s Ad Hoc admission.

In consideration of this matter, could you please explain whether you were aware of this matter at the time the relevant papers were filed and, if you were, why there was no mention of it in any of those papers.

I look forward to your early response”.

In reply Mr. Rudi Lee stated:

“I refer to your letter date 18th February 2006. At all material time, I was not aware of the contempt of court proceeding against Mr. Manjeet Singh Dhillon. I believe by 1990, I was in full time practice in Brunei Darussalam”.

Annexed to Mr. Lee’s affidavit was a statutory declaration sworn by Mr. Dhillon. In it he stated that in 1988 during a major crisis, affecting the Malaysian judiciary he as secretary of the Malaysian Bar and in the discharge of his duties in that office, swore an affidavit setting out the various resolutions of the United Malaysian Bar carried at Annual General Meetings and an Extraordinary General Meeting which agreed that the Malaysian Bar would commence contempt proceedings against TAN SRI DATO ABDUL HAMID who had been appointed to chair a six member tribunal to consider the propriety of the removal of the Lord President of the Supreme Court from that office.

The declaration goes on to state that:

- (a) As a result of this affidavit the Malaysian Attorney General commenced contempt proceedings against Mr. Dhillon and on 5th November 1999 he was found guilty by a court consisting of 3 judges by a majority of 2 to 1.

- (b) This finding was made notwithstanding a Press Statement issued by the Malaysian Bar on 24th May 1989 which set out that Mr. Dhillon's affidavit was based on independent legal advice, was not devised by him and had the approval of the Bar Council.
- (c) One of the majority judges was satisfied that Mr. Dhillon's responsibility was "vicarious".
- (d) Mr. Dhillon was never subjected to any disciplinary action by the Bar or by the Supreme Court and thereafter he continued his practice with no blemish on his record.

We cannot help but observe that it is hardly surprising in the circumstances, that there was no action by the Bar and that the Supreme Court had, it seems clear, taken the action which it considered appropriate by finding Mr. Dhillon guilty of contempt and fining him RM\$5,000.

Mr. Dhillon finally states in his declaration that it did not occur to him that the contempt proceedings could be used to question his professional standing or character and that he "saw no reason to recite that unhappy episode in Malaysian Judicial history in any application to be admitted ad hoc to the High Court of Brunei Darussalam."

On 18th October 2007, Mr. Dhillon stated in a further affidavit that "the issue of the contempt proceedings against me some 15 years earlier were not in the forefront of my mind when I applied to be admitted ad hoc to this jurisdiction. I did not deliberately omit that information."

On the 18th October, 2007 the Attorney General in a further affidavit took issue with, as he put it, "Mr. Dhillon's attempt to brush aside his conviction for contempt of court by his belief that the contemptuous act was made vicariously, the fact remains that Mr. Dhillon was duly convicted of contempt of court".

The Attorney General goes on to state that the failure to disclose was "a gross discourtesy and is conduct unbecoming an advocate and solicitor"

Before turning to consider the decision of the Chief Justice it is pertinent to consider the facts surrounding the admission of Mr. Dhillon in 2004.

Mr. Dhillon was admitted to practice in Brunei Darussalam on 22nd November 2004. The application was made by Mr. Rudi Lee to the Chief Justice on 28th November 2004.

The application was supported by affidavit from Mr. Foo Yong Teng of Fathan, Rudi Lee and Associates in which he set out, inter alia, the Curriculum Vitae of Mr. Dhillon. It detailed, in extenso, his career as counsel at the Malaysian Bar from 1970 to 2004 and set out details of his extensive pro bono activities and his publications. Nowhere, however, was mention made of his conviction for contempt on 5th November 1990. This document clearly put forward Mr. Dhillon as an advocate whose career was without blemish.

Indeed that contention was pursued in the affidavit of 13 July 2007 in support of the original motion in which Mr. Dhillon affirmed that he had “not been suspended, censured or had any form of disciplinary action instituted against me”

On 28th November 2007 the Chief Justice having heard the parties in relation to the matters raised in the Attorney General letter of 18th February 2006 was satisfied that Mr. Dhillon’s conduct, “completely lacking as it was in the obligation of candour to the court”, fell “squarely within the ambit of suppression of a material fact concerning his conviction in Malaysia”. He went on to order that his name be removed from the Roll. From that ruling appeal has been brought to this court.

Mr. Sidhu, who appeared for Mr. Dhillon, came quickly to the crux of his submission which was that there had been no deliberate misleading and no deliberate attempt to withhold facts. He submitted that Mr. Dhillon had been at all times acting in his capacity as the Secretary of the Malaysian Bar and that his liability had been found by one of the majority judges to be “vicarious”. He submitted further that this matter was in the back not the forefront of Mr. Dhillon’s mind and it had never occurred to him that he should make disclosure of it. He contended that, in such circumstances, the Chief Justice was wrong to order that Mr. Dhillon’s name be removed from the roll.

Mr. Rahman who appeared for the Attorney General referred to s 11(1) of The Legal Profession Act of Brunei Darussalam which states:

“11. (1) If at any time after the admission and enrolment of any petitioner as an advocate and solicitor it is shown to the satisfaction of a judge that any petition, affidavit, certificate or other document filed by a petitioner, contains any statement which is false or misleading in substance or a suppression of any material fact, the judge may order the Chief Registrar to remove the name of such petitioner from the roll.”

He submitted that there was a clear duty placed by this section upon an applicant to ensure that there was no statement which was false or misleading and no suppression of any material fact.

Mr. Rahman referred to the following passages in the judgment of de Jersey C.J in *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407 at 333:

“As to lack of candour the Board had in mind the following observations made in *Re Hampton* [2002] QCA paras [26]-[28]:

“Of considerable additional concern, is the feature that the applicant did not initially disclose these significant matters to the Board when making his application. He certainly should have been aware of the seriousness of the Board’s approach to such applications, and the seriousness of the court’s ultimate determination of them. An applicant for admission is obliged to approach the Board, and later the court, with the utmost good faith and candour, comprehensively disclosing any matter which may reasonably be taken to bear on an assessment of fitness for practice.”

...In this situation the court cannot allow the legitimacy of its endorsement, or otherwise, of a person as fit to practice, to depend on such intervention. By taking a strong line in a case like this, the court must take the opportunity to emphasize the primacy of the pro-active obligation of an applicant to make candid, comprehensive disclosure. If it emerges an applicant has not, in some significant respect, been frank with the court, then the application should ordinarily be rendered doubtful at least.

...The applicant's either having failed to appreciate that, or having determined not voluntarily to place those matters before the Board, provides further confirmation that he is not a person who should at this stage be held out by the court as fit to practice as a solicitors." (Emphasis supplied)

de Jersey went on to refer to the passage at p.334:

'By making candid and comprehensive disclosure of relevant information an applicant demonstrates a proper perception of his of her duty and will thereby seek to demonstrate his or her good character.'

We need refer further only to *Re Evatt* (1987) 92 Federal Law Reports 380 at 383:

"We state unequivocally that it is not for an applicant to decide what is or is not relevant to place before the Court on the question of whether that person is a fit and proper person to be admitted to practice. The applicant's duty is to place before the Court any matter that might reasonably be regarded by the Court as touching on the question of fitness to practice."(Emphasis supplied)

Mr. Rahman submitted that there was an absolute duty of comprehensive disclosure and it was not for the applicant to determine what he thought appropriate to place before the Court.

In reply Mr. Sidhu contended that in Thomas's case there had been a failure to disclose criminal conduct which was very different from the failure of Mr. Dhillon to disclose his "vicarious" involvement in the contempt.

We cannot help but observe that all that has been argued on Mr. Dhillon's behalf would have merited serious consideration by a Court hearing an application to admit to practice if full disclosure had been made. No such disclosure was, however, made and we find no merit in the reasons advanced to explain and excuse that failure.

Contempt of court by an advocate is on its face a serious offence. Moreover, in the present case, the Malaysian Court clearly regarded it as such for it recorded a conviction and imposed a fine RM\$5,000. We adopt what was said in the cases of both *Thomas* and *Evatt*. In the present case there was a material fact that should have been disclosed to the Court.

The Chief Justice was right to find that there was "suppression" of a material fact and to order under s.11(1) of the Legal Profession Act (Cap. 132) that the name of Mr. Dhillon be removed from the roll.

We observe finally that, although the Chief Justice did not place reliance thereon, it seems to us that Mr. Dhillon in his affidavit of 13th July 2007 was less than frank with the Court when he stated that up to that time he had never been “censured or had any form of disciplinary actions instituted against” him.

By agreement these will be no order as to costs.