

CACV 60/2012

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF APPEAL

CIVIL APPEAL NO. 60 OF 2012

(ON APPEAL FROM THE ORDER OF THE SOLICITORS
DISCIPLINARY TRIBUNAL DATED 7TH MARCH 2012)

IN THE MATTER OF A
SOLICITOR

and

IN THE MATTER OF THE
LEGAL PRACTITIONERS
ORDINANCE CAP. 159 ("the
Ordinance")

BETWEEN

A SOLICITOR

Appellant

and

THE LAW SOCIETY OF HONG KONG

Respondent

Before: Hon Stock VP, Kwan and Barma JJA in Court

Date of Hearing: 22 March 2013

Date of Judgment: 22 March 2013

J U D G M E N T

Hon Kwan JA (giving the Judgment of the Court):

1. On 11 December 2012, we dismissed an appeal brought by a solicitor (“the Solicitor”) against the findings of the Solicitors Disciplinary Tribunal (“the Tribunal”) on 12 December 2011 and the order on penalty and costs on 7 March 2012. We handed down our reasons for judgment (“the Reasons”) on 21 December 2012. They will not be repeated here.

2. The Solicitor seeks leave to appeal against our judgment to the Court of Final Appeal under section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap 484 on the basis that the intended appeal involves questions of great general public importance and on the “or otherwise” limb.

3. The questions for this purpose as set out in para 5 of the Notice of Motion are as follows:

(1) whether the privilege against self-incrimination is available to a solicitor when being investigated by the Respondent, when it is the Respondent’s position that the privilege is available in Disciplinary Tribunal hearings;

(2) whether decisions in disciplinary matters by the Investigating Committee of the Respondent attract the application of the doctrine of *res judicata*;

(3) if the answer to (2) is in the affirmative, whether it is unfair for the Respondent to refrain to make discovery of such decisions.

4. In the written submission of Mr Coleman, SC and Mr Jonathan Wong, who appeared for the Solicitor in this application¹, question (3) was dealt with first. That was the same order Mr Coleman addressed us today. This seems to us to be putting their arguments back to front, and is indicative of the lack of merits in the case advanced for the Solicitor in this application. Question (3), as framed in the Notice of Motion, is premised on question (2) being answered in the affirmative. If this court is not persuaded that leave should be granted for question (2), there is no need to consider question (3) at all.

5. The unfairness that is alleged in question (3) arose out of the refusal of the Tribunal of the Solicitor's application for disclosure of all the documents in the possession of the Law Society relating to the 1997 Complaint and the 2008 Complaint. This point was but lightly argued in the appeal, as the stance taken by Mr Jonathan Wong was that the argument relating to unfairness would not be pursued as a "standalone ground" but should be read in conjunction with the ground of appeal on *res judicata*². We dealt with the argument relating to unfairness in para 52 of the Reasons. Quite apart from the fact it is premised on the success of the ground on *res judicata*, we are not persuaded of the merits in this argument, whether as advanced in the appeal or in this application.

6. We do not consider the arguments raised on *res judicata* reasonably arguable, for the reasons given in para 51 of the Reasons. It is inappropriate to grant leave to appeal on question (2), leave on question (3) would also be refused.

¹ Mr Jonathan Wong argued the appeal before us but not Mr Coleman, SC.

² Submission of the Appellant, para 5(2)

7. We turn to question (1). Again, the manner in which this ground of appeal was addressed in the written submission is putting the arguments back to front. Counsel chose to deal with the arguments on privilege against self-incrimination first before they dealt with the issue whether the Revised Request was incriminating. Privilege against self-incrimination would not need to be considered if the Revised Request would not expose the Solicitor to punishment, penalty or forfeiture. For the reasons given in paras 29 to 42 of the Reasons, we do not think the arguments raised in respect of question (1) are of any merit and we also decline to exercise our discretion to grant leave to appeal on this question.

8. There are no exceptional circumstances to justify the exercise of discretion to grant leave on the “or otherwise” limb.

9. Mr Coleman referred to the amendments proposed to be made to Principle 6.04 of the Hong Kong Solicitors’ Guide to Professional Conduct as notified by the Law Society to its members by letter dated 8 March 2013. The proposed amendments have no bearing to the present application.

10. For the reasons given above, we dismiss the application with costs to the Respondent.

(Frank Stock)
Vice-President

(Susan Kwan)
Justice of Appeal

(Aarif Barma)
Justice of Appeal

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Mr Russell Coleman SC & Mr Jonathan Wong, instructed by C C Partners, for the Appellant

Mr Abraham Chan, instructed by Sit, Fung, Kwong & Shum, for the Respondent

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