

**Misconduct in the Bar Examinations:
Consequences and the Need for Reflection and Learning
Re Tay Quan Li Leon [2022] SGHC 133 and *Re Wong Wai Loong Sean and other matters*
[2022] SGHC 237**

I. Executive summary

The cases of *Re Tay Quan Li Leon* [2022] SGHC 133 (“**Re Leon Tay**”) and *Re Wong Wai Loong Sean and other matters* [2022] SGHC 237 (“**Re Sean Wong**”) arose from the cheating of several candidates while they were taking the examinations for the Part B course of the Singapore Bar (the “**Part B Exams**”) in 2020.¹ It transpired that at least 11 candidates had cheated in some way in the Part B Exams. *Re Leon Tay* and *Re Sean Wong* deals with five of those candidates.²

After they were found out, the five candidates involved in these two cases (the “**Applicants**”) applied to withdraw their applications for admission to the Bar (the “**Withdrawal Applications**”). One of the five, Leon Tay (“**Leon**”), also applied for a sealing and redaction order (“**Sealing Order Application**”) with respect to his admission application.³

The High Court (“**HC**”) rejected Leon’s Sealing Order Application (in *Re Leon Tay*). However, it allowed all five Applicants’ Withdrawal Applications (in both cases), subject to different terms and conditions based on the severity of each Applicant’s misconduct.

In doing so, the HC stressed the following:

Lawyers are called to be ministers in the temple of justice. Because of this defining feature of what it means to be a lawyer, requirements such as fulfilling the requisite course of study or passing the prescribed examinations are necessary, but ultimately *insufficient* conditions to warrant admission to the Bar. Beyond these technical requirements, there was the overarching question of character. Specifically, where one manifests a real deficit in the crucial attributes of honesty and integrity, one cannot be trusted to appropriately serve as an officer of the court aiding in the administration of justice.

Nonetheless, the HC also stressed that the Applicants should, after withdrawing their applications, spend some time in reflection and learning. They should use this time to consider all that they could do with it, with a sincere desire to learn and be transformed. They must not allow themselves to look at this interval as dues to be paid for mere lapses in judgment or, worse, “getting caught”.

On a procedural note, the case of *Re Leon Tay* also clarified the court’s inherent power to seal and redact case files: the court can seal a file to protect an adult wrongdoer from *imminent* risks, danger or harm.

II. Material facts

¹ *Re Leon Tay* was decided before *Re Sean Wong*. However, as the same judge (Chief Justice Sundaresh Menon) presided over both cases, and as the underlying concerns and legal principles discussed are similar, this summary will discuss both cases together.

² The remaining six candidates were dealt with in the earlier judgments of *Re CTA and other matters* [2022] SGHC 87 (“**Re CTA**”) and *Re Monisha Devaraj and other matters* [2022] SGHC 93 (“**Re Monisha Devaraj**”).

³ Generally, to seal a document is to make it inaccessible to members of the public, and to redact a document is to conceal or blank out certain information in it.

The five Applicants involved were: Leon (*Re Leon Tay*), and Sean Wong, Joleen Ong, Lim Zi Yi and Annabelle Au (*Re Sean Wong*).

A. Leon Tay (*Re Leon Tay*)

Leon had colluded with another candidate, Lynn Kuek.⁴ However, he initially did not admit to such misconduct. When asked by the Dean of the Singapore Institute of Legal Education (“SILE”)⁵ about the similarities in their answers, he said that they arose because both of them had studied and prepared notes together. Some of these notes consisted of “stock answers” from which both Leon and Lynn could copy and paste into their answers. This purportedly explained the similarities in the answers. When SILE asked for Leon’s notes, he sent them PDF files dated 15 February 2021, which was well after the 2020 Part B Exams. SILE then asked for the source documents with the document information intact, which Leon provided. After reviewing the materials, the Director of the Part B course reported to the Student Disciplinary Committee (“SDC”) that he thought there was reason to believe that Leon had “cheated and/or facilitated the cheating of another student in the 2020 Part B Exams”.

While the SDC was investigating, they told Leon to be forthcoming with information that would assist with the investigation, but Leon did not come forward with further explanations. The SDC subsequently found that Leon had cheated in three out of six of the subjects, as some errors reflected in both Leon and Lynn’s scripts for those subjects were errors that could not have arisen from material prepared in advance, e.g. common errors in the application of the law to the facts and the summaries of the facts. The SILE then issued a notice which stated that the SILE’s Board of Directors had refused to issue the certificate required for admission to the Bar until Leon had retaken and passed the Part B Exams in 2021 (the “SILE Notice”).

After retaking and passing the Part B Exams in 2021, Leon applied to be admitted to the Bar. Leon asked SILE what further details he needed to declare aside from the SILE Notice. Despite SILE telling him that he should “provide sufficient information to enable all parties concerned to understand the matter”, Leon did *not* disclose the cheating incident in his accompanying affidavit. When the Attorney-General (“AG”) sought further details regarding the SILE Notice, Leon merely filed a supplementary affidavit saying that the Director of the Part B course had reported to the SDC that “there was reason to believe that there was collaboration with another student of the Part B Course, based on similarities in answer scripts for certain subjects”. He did not clarify what the SDC said, found or recommended. Nor did he exhibit any report of the SDC or any other document. The AG then requested for further information, whereupon he finally disclosed the SDC’s findings and related correspondence.

After judgment in *Re CTA* was delivered (in which the admission applications of six other candidates (including Lynn) who had cheated in the 2020 Part B Exams were adjourned), Leon applied to withdraw his application. He also applied for a sealing and redaction order, which would require the Supreme Court Registry to redact his personal particulars, including his name, so that it would not be accessible through an e-Litigation search.⁶

B. Sean Wong (*Re Sean Wong*)

⁴ Her situation was dealt with in the earlier judgments of *Re CTA* and *Re Monisha Devaraj*.

⁵ SILE administers the Part B Exams.

⁶ e-Litigation is an online platform where parties file applications and documents for court cases. One may make a Request for Inspection to see the case file of any given case. The case file would ordinarily contain the personal particulars of the parties involved, which is why Leon requested to redact his personal particulars.

Sean Wong (“**Sean**”) was found to have cheated for the Mediation Advocacy (“**Mediation**”) paper for the 2020 Part B Exams. He sat for the paper in accordance with the rules, and submitted his answer at 12.06pm, within the additional 15-minute window after 12pm given to candidates to upload their answers (the “**upload window**”). Thereafter, he communicated with another candidate, within the upload window. After confirming that both of them had submitted their answers, he requested to see the other candidate’s script to compare to his own answers. This was technically a breach of the examination rules but was not objected to by the AG, the Law Society or the SILE (“the **Stakeholders**”).

However, after looking through his friend’s script, Sean realised that he had failed to attempt one entire question. He panicked and copied his friend’s answer to that question into his own script, without seeking his friend’s permission. At 12:14pm, Sean resubmitted his edited script. The examination rules permitted multiple submissions within the upload window and SILE would mark only the latest script submitted. Hence, the final script Sean submitted for the examiners’ consideration included the copied answer.

The SILE called Sean up for an investigation. Unlike Leon, Sean was quick to admit his misconduct to the SILE interviewers, and was cooperative in assisting with the investigation. Similar to Leon, the SILE gave a SILE Notice to Sean. After Sean had passed the 2021 Bar Exams, he likewise applied for admission to the Bar (an “**Admission Application**”). On 22 April 2022, he filed his admissions affidavit in support of the latter application, but neither mentioned that he was issued an SILE Notice nor that he was deprived of a “pass” in the Mediation paper for cheating, even though these would have had to be disclosed under paragraph 7(j) of the affidavit. The SILE asked Sean to file a further affidavit disclosing the fact that disciplinary action had been taken against him. On 19 May 2022, Sean filed a supplementary affidavit disclosing all the events relevant to his cheating in the Mediation paper. But he did not explain his failure to disclose these facts in his first affidavit. Hence, the Attorney General’s Chambers asked Sean to file a further affidavit explaining this failure to disclose. Sean claimed that he “genuinely believed that the SILE had forgiven the cheating incident, and, therefore, that it did not need to be disclosed”. The representatives of the Stakeholders did not accept this explanation. The HC found that Sean’s decision not to disclose the cheating incident did not amount to dishonesty but did show a lack of candour.

C. Joleen Ong, Lim Zi Yi and Annabelle Au (Re Sean Wong)

Joleen Ong (“**Joleen**”), Lim Zi Yi (“**Zi Yi**”) and Annabelle Au (“**Annabelle**”) were part of a study group, in which they prepared “stock answers” that they could copy and paste into their answer scripts. Such copying-and-pasting was not against the rules of the 2020 Part B Exams. They met online for their study group using an online communication platform called Discord. Joleen and Zi Yi left Discord running on their respective computers during at least two of the Part B Exams papers: Mediation and Ethics and Professional Responsibility (“**Ethics**”). Annabelle also left Discord running during the Ethics paper. The HC accepted that there was no basis for it to view the fact that the three of them had left the Discord application running as indicative of premeditation. Instead, the communications (as detailed below) were spontaneous and triggered by Joleen’s panicked calls for assistance.

Joleen was unable to complete the final question of the Mediation paper. She claimed that she panicked and asked Zi Yi (through Discord) for his answer to that question. When he obliged, she copied his entire response into her own paper and submitted the paper. Joleen asked for help again during the Ethics paper. That paper was released approximately 10 minutes late, which Joleen claimed put her in a state of panic and anxiety for the entire paper. She

purportedly also did not realise that the SILE had extended the timing of the paper by 15 minutes because of the delayed release. When Joleen was near what she thought was the end of the Ethics paper, she asked Zi Yi and Annabelle to help her by providing their answers to the questions that she had not attempted. Joleen similarly wholly copied the responses from her friends into her answer and submitted it.

Joleen was not immediately cooperative with the ensuing investigation into her misconduct. When interviewed about the Ethics paper, she denied communicating with Zi Yi and Annabelle, and did not volunteer information about the Mediation paper. In her written representations after the interview, she did not admit to communicating with Zi Yi and Annabelle during the Mediation and Ethics papers. She only confessed when she was asked in the second interview on 17 February 2021. In contrast, both Annabelle and Zi Yi disclosed their misconduct to the SILE fully.

The three of them re-sat and passed the Bar Exams in 2021. While all three of them made general disclosures about the breach of the examination rules in their admissions affidavits, they did not elaborate on the full details of their misconduct. The HC, however, found this reasonable. First, the three of them claimed to have believed that they were only required to make general declarations in their admissions affidavits. In so believing, they relied on the guidance provided on the Law Society's website. Second, it was improbable that they were setting out to conceal their misconduct given that they had: (a) made at least *some* declaration in their admissions affidavits; and (b) already admitted such misconduct to the SILE.

III. Issues

The HC decided the following issues:

- (a) in *Re Leon Tay*, whether it should grant the Sealing Order Application by Leon; and
- (b) in *Re Leon Tay* and *Re Sean Wong*, whether it should allow the Withdrawal Applications; if so, what conditions should be imposed.

A. Sealing Order Application

The HC in *Re Leon Tay* first noted that the grant of a Sealing Order is a departure from the “hallowed” principle of open justice, and is therefore an exception instead of the norm. The principle of open justice ensures the important public policy consideration that “justice must not only be done but must also be seen to be done”. The open justice principle is especially important where, as was the case in *Re Leon Tay*, the proceedings concern the legal profession: admissions to the Bar are matters of public interest, given the role of the legal profession in upholding the justice system.

The HC stressed that the ambit of the court's inherent powers to seal and redact a case file is limited to situations where there are grounds “correspondingly strong to outweigh the principle of open justice in that case”. In deciding whether a given case consists of these grounds, the court may be guided by instances where Parliament has allowed the court to depart from the principle of open justice. The court will also consider all the circumstances of the case.

For situations involving adult wrongdoers, the court generally grants sealing orders to protect vulnerable witnesses or victims, or to protect national security or other public interest considerations. The court *can* grant a sealing order to protect the *wrongdoer*, but *only* where “there is credible evidence that the publication of the name of a litigant would pose *imminent* risks or danger to that litigant, or if the sealing and redaction order was necessary in order to spare the litigant from an imminent harm” (emphasis in original). Whether this threshold is met

in any given case ultimately turns on the facts, as well as whether the countervailing interests outweigh the pre-dominant interest in open justice.

Here, Leon argued for the sealing order on two grounds: (a) that he was seeking to *withdraw* his Admission Application and therefore the public had no interest in knowing either his name or the circumstances of his Admission Application as well as its subsequent withdrawal; and (b) that a medical memo put forward by a psychologist hired by Leon suggested the possibility of grave harm to Leon if the Sealing Order Application were to be denied.

The HC rejected ground (a), as the mere fact that an applicant no longer wished to pursue the relief he initially sought did not lead to the principle of open justice applying with limited or no force. Indeed, Leon's case dealt with questions of public interest, that pertain to the character that is required of a candidate seeking admission to the Bar.

The HC also rejected ground (b), for two reasons. First, the medical memo, which Leon sought to use as evidence that the disclosure of Leon's name could trigger in him a severe psychiatric reaction due to mental health issues which he had been suffering from, did not meet the criteria expected of a forensic psychiatric report. An expert report, including a psychiatric report, "is worth nothing if it provides conclusions without presenting the underlying evidence and the analytical process by which and the reasons upon which these conclusions are reached". Here, there was no reasoning or analysis to speak of in the medical memo: the psychologist merely *asserted* that Leon suffered from symptoms of anxiety and depression, and that the publication of his name *could* trigger a severe depression. Second, even if the memo's conclusions were accepted at face value, the conclusions were at best tentative. The memo did not say that publishing Leon's name *would* aggravate his pre-existing mental condition; it merely said that it *could*. It also contained no reasoning to explain, or diagnostic criteria by which to distinguish between, the pre-existing disorder and its potential aggravation. The memo was also largely based on Leon's self-reported symptoms, with nothing to suggest any effort to verify the severity of these self-reported symptoms. Hence, the memo did not satisfy the HC that publishing Leon's name would lead to an *imminent and credible threat of real harm* to Leon. The HC therefore did not grant the sealing order.

Leon also sought, in the alternative, a partial sealing order against information in the court papers relating to Leon's mental health issues, including the medical memo itself. The HC rejected this request, as the sealing order application rested entirely on the medical memo. It would have been impossible for the court to explain the reasons for declining to accord weight to the medical memo while not being able to refer to it.

B. The Withdrawal Applications

The HC observed that under Order 21 rule 3 of the Rules of Court (2014 Rev Ed) (now reflected in Order 16 rule 3 of the Rules of Court 2021), in granting leave to discontinue an originating summons, the court has broad discretion to grant leave on terms "it thinks just". This may include a term requiring an undertaking not to commence certain proceedings for a stipulated period. The HC decided that the best way to deal with these cases (in both *Re Leon Tay* and *Re Sean Wong*) was to allow the Withdrawal Applications, but subject to the imposition of certain conditions for each Applicant, such as the exclusion of each Applicant's ability to bring a fresh application for Bar admission for a suitable minimum period of time.

The HC noted that any imposition of conditions on the Applicants was *not* with a view to *punish* them. The court's disciplinary jurisdiction is exercised only over those who have been

admitted to the legal profession after having been called to the Bar. In exercising its jurisdiction over who can be admitted to the Bar, the court is concerned “principally with the question of suitability which is determined principally by considerations of character and competence”. These concerns could be addressed, for instance, by requiring applicants to undertake not to bring a fresh application for a suitable minimum period of time. The HC could also impose safeguards that would incentivise the applicants to rehabilitate themselves and ensure that they also address questions as to both character and competence.

This would also provide the Stakeholders, and any subsequent court dealing with any applications that the applicants may later bring, the tools with which to satisfy themselves that the applicants have sufficiently rehabilitated themselves. The Stakeholders should be forthcoming with guidance and advice to aid in this process of rehabilitation. They also need to be balanced in this regard and not take an unduly pessimistic view of applicants who have erred. The task of the court in this context is to find the right balance between views that are too optimistic and those that are too pessimistic. The length of this minimum period would inevitably be influenced by the gravity of the character issues.

This was ultimately a question of principle and not one of sympathy; it is rooted in the consideration that those admitted to the Bar are persons who are not only qualified and competent but also of suitable character. In the final analysis, it is incumbent on the court and the legal profession to always acknowledge and remember that they are subject to the highest ethical standards, lest the administration of justice be imperilled.

In the context of applicants who have cheated in an examination, the HC held that it is relevant to look at the following considerations: the circumstances of the cheating; the conduct of the applicant during any investigations which follow the incident of cheating; the nature and extent of subsequent disclosures made in any application for admission; any evidence of remorse; and any evidence of efforts planned or already initiated towards rehabilitation.

(1) Leon’s Withdrawal Application (Re Leon Tay)

The HC required that Leon undertake not to bring a fresh application for admission to the Bar in Singapore or elsewhere for a period of five years. This period of time was appropriate for him to rehabilitate and work out the character issues that had come to the fore. The HC noted that a period of five years was the maximum period of suspension applicable to *punish* Advocates and Solicitors, who are not struck off the roll. Leon also had to undertake that if and when he brought a fresh application for admission, he would satisfy any prevailing statutory or other reasonable requirements as may be imposed by the Stakeholders and/or the court as to his fitness and suitability for admission, including with respect to his medical or any other issues.

In imposing these conditions, the HC rejected the AG’s argument that Leon should not be allowed to withdraw his Admission Application. The AG argued that Leon’s Admission Application should be presented in open court and the AG would then seek a finding of fact that Leon was not a fit and proper person and, on this basis, seek an order dismissing the Admission Application. In the alternative, the AG submitted that the matter should be adjourned (i.e., postponed) indefinitely.

However, the HC held that dismissing both Leon’s Withdrawal Application and Admission Application would not be the most constructive way to approach this matter. *First*, dismissing the applications would not prevent Leon from making a fresh application for admission at

another time when *he* considered he was ready to do so. Adjourning the matter indefinitely was also inappropriate for two reasons. First, it would leave open and unresolved a matter on which there was no real dispute, namely that the Admission Application should not proceed. *Second*, it would leave Leon's future wholly uncertain, which was neither fair nor ultimately constructive. As such, the best way to deal with this matter was to permit Leon to withdraw the Admission Application, but subject to the imposition of suitable conditions.

Alternatively, the AG suggested an even longer preclusion period of 10 or 12 years, arguing that Leon's situation was similar to that of a solicitor who had been struck off the roll. The HC, however, noted that Leon was not being punished. The court order might have a punitive effect but that was not its object. The focus was to allow Leon sufficient time to address, and demonstrate that he has addressed, his character issues. Further, Leon had not been given the opportunity to give evidence and to cross-examine witnesses, unlike in disciplinary proceedings for lawyers. There was therefore no basis for equating the conditions imposed on Leon with the same kind of considerations that would apply in the context of disciplining an errant solicitor.

(2) Sean's Withdrawal Application (Re Sean Wong)

The HC noted that Sean's misconduct was not as grave as Leon's – Sean did not communicate improperly with anyone with a view to cheat during the paper, nor did he collude with anyone. However, Sean's misconduct arising from a snap judgment made in a panic displayed his willingness and capacity to cheat when placed under pressure. Sean's willingness to appropriate the work of another as his own without seeking permission pointed to a lack of respect or regard for others. It also suggested a quite serious character defect which required some time to address. While Sean displayed candour with the SILE during its investigations, the HC noted his non-disclosure in his admissions affidavit: on balance, these circumstances were more revealing of character issues than they were not. Nonetheless, Sean's supervising solicitor came forth to attest to Sean's regret and remorse, his generally good character, as well as his willingness to work on his faults. Hence, the HC required Sean to undertake not to apply for admission to the Bar (whether in Singapore or elsewhere) for a period of two years.

(3) Joleen's Withdrawal Application (Re Sean Wong)

The HC noted that Joleen chose to consult her fellow candidates not once but twice. This rendered untenable the optimistic view that her misconduct was reflective of *an* instance of abysmally bad decision-making due to panic. However, Joleen's initial lack of candour was revealing of at least some character faults, but she did admit the facts during the second interview with SILE. Hence, her faults did not rise to the level of Leon's. In contrast, Leon had not been completely forthcoming until he was before the court. Finally, Joleen had set out volunteering activities in which she had been engaged since the cheating incidents and other activities which she planned to undertake to develop her character. As a result, the HC found that Joleen's conduct revealed character issues as more serious than those displayed by Sean but less serious than those displayed by Leon. Hence, an "undertaking period" of three years was suitable.

(4) Zi Yi's and Annabelle's Withdrawal Applications (Re Sean Wong)

The HC found that the essence of Zi Yi's and Annabelle's misconduct was their willingness to oblige Joleen and accede to her obviously improper requests. This suggested a certain lightness with which they treated the importance of the unwavering integrity and honesty expected of legal professionals, particularly in upholding general and institutional standards of conduct. However, their misconduct was plainly less serious than Joleen's. A disregard for the integrity

of an examination cannot be said to be as severe as disregard for such integrity *in furtherance of one's own interests*.

Moreover, Zi Yi and Annabelle were, from the outset, wholly forthcoming with the SILE. The HC also noted that they had, in their affidavits, set out details of volunteer works which they had taken up and had planned. Hence, the HC considered that for Zi Yi, a period of one year was appropriate. For Annabelle, given that she had only assisted Ms Ong with one instead of two papers, a shorter period of nine months was appropriate.

IV. Lessons learnt

On the point of sealing orders, *Re Leon Tay* clarifies that such orders may be given to protect adult wrongdoers from risks, dangers and harm, but these must be imminent. The risks, dangers, harm and their imminence must also be satisfactorily proved – mere assertions in a medical memo, for instance, would not suffice.

There are two points to take away for future cases involving behaviour by prospective applicants to the Bar who demonstrate unsuitability for such admission. *First*, in deciding what actions to take, the court's primary concern is *not to punish* such applicants. Instead, the court's concern is to ensure that such applicants grow to become suitable for admission to the Bar, in terms of character and competence, and achieve such suitability before being allowed to re-apply. *Second*, specific to applicants who have cheated in an examination, the court has laid down a framework of relevant considerations to aid future courts in determining the most appropriate course of action to be taken against such applicants. These considerations are: the circumstances of the cheating; the conduct of the applicant during any investigations which follow the incident of cheating; the nature and extent of subsequent disclosures made in any application for admission; any evidence of remorse; and any evidence of efforts planned or already initiated towards rehabilitation.

Written by: Samuel Tay Hzi Xun, 4th-Year LLB student, Singapore Management University Yong Pung How School of Law.

Edited by: Ong Ee Ing (Senior Lecturer), Singapore Management University Yong Pung How School of Law.