

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF KANDIAH CHELVA-NAYAGAM, (The Respondent)

Upon the application of Paul Robert Milton  
on behalf of the Solicitors Regulation Authority

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Mr D Green (in the chair)  
Mrs E Stanley  
Mr S Marquez

Date of Hearing: 23rd June 2010

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**FINDINGS & DECISION**

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**Appearances**

Mr Paul Milton of the Solicitors Regulation Authority, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE for the Applicant.

Mr Francis Gilbert of Counsel for the Respondent.

The Application was dated 9<sup>th</sup> November 2009.

**Allegations**

1. The Respondent, Kandiah Chelva-Nayagam, in breach of Rule 1.06 of the Solicitors Code of Conduct 2007, behaved in a way that was likely to diminish the trust of the public in him and in the reputation of the solicitors' profession following his:
  - (a) Conviction on 13<sup>th</sup> January 2009 at Wimbledon Magistrates Court for driving whilst unfit through drink;
  - (b) Conviction on 26<sup>th</sup> January 2009 at Wimbledon Magistrates Court for indecent exposure;
  - (c) Conviction on 9<sup>th</sup> September 2009 at Kingston Upon Thames Magistrates Court for indecent exposure.
2. The Respondent admitted the allegation.

## **Factual Background**

1. The Respondent, born in 1945, was admitted as a solicitor on 1<sup>st</sup> August 1990. His name remained on the Roll of Solicitors.
2. On 13<sup>th</sup> January 2009 following a guilty plea, the Respondent was convicted at Wimbledon Magistrates Court of driving whilst unfit through drink contrary to Section 4(1) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. He was fined £600, disqualified from holding or obtaining a driving licence for 16 months and ordered to pay costs of £70 to the Crown Prosecution Service.
3. On 26<sup>th</sup> January 2009 following a summary trial at Wimbledon Magistrates Court, the Respondent was found guilty of an offence of indecent exposure contrary to Section 66 of the Sexual Offences Act 2003. The Respondent was made the subject of a 15 month Community and Supervision Order which required him to attend appointments with the National Probation Service. The Respondent was required to sign on the Register of Sex Offenders for a period of five years. He was also required to pay compensation of £250 as well as Crown Prosecution costs totalling £250. The Respondent appealed against conviction and sentence. His appeal was dismissed at Kingston Crown Court on 19<sup>th</sup> June 2009 and the community and supervision order was extended for a period of 3 years.
4. On 9<sup>th</sup> September 2009 following a summary trial at Kingston Upon Thames Magistrates Court, the Respondent was found guilty of an offence of indecent exposure contrary to Section 66 of the Sexual Offences Act 2003. The Respondent was sentenced to 12 weeks imprisonment suspended for 2 years. He was made the subject of a Sexual Offences Prevention Order (SOPO) for 5 years that required him not to “travel on public transport between the hours of 1900 and 0700”. He was also made the subject of a curfew for 3 months and it was ordered that he be electronically monitored to ensure compliance with the curfew. He was required to pay Crown Prosecution costs totalling £300.
5. The Tribunal reviewed all the documents submitted by the Applicant which included:
  - (i) Rule 5 Statement together with all enclosures;
  - (ii) Schedule of Costs dated 19<sup>th</sup> April 2010.

The Tribunal reviewed all the documents submitted by the Respondent which included:

- (i) His letter dated 21<sup>st</sup> June 2010 to the Tribunal, together with all enclosures.

## **Witnesses**

6. No witnesses gave oral evidence.

### **Findings as to Fact and Law**

7. The Tribunal found the allegation proved, indeed it was admitted by the Respondent.

### **Mitigation**

8. Mr Gilbert, on behalf of the Respondent, provided the Tribunal with details of the Respondent's professional history. He had been married for 28 years. He did not have any children and his wife was crippled with arthritis and had not worked for many years. Money was financially tight and he had incurred significant legal costs in defending the prosecutions. He did not receive a pension and was unlikely to do so. The Tribunal were provided with details of the amount of his mortgage on the matrimonial home and it was submitted he needed to be able to continue to work.
9. Mr Francis submitted that the case of Bolton v The Law Society [1994] CA could be distinguished from the facts relating to the Respondent in that in the case of Bolton, there had been financial irregularities and these were wholly different circumstances. Mr Gilbert submitted the Respondent had not acted dishonestly or in the course of his work and what he had done had not impacted on the profession, his clients or his firm.
10. The Respondent was currently employed by a firm in South London doing conveyancing work. In order to avoid the ultimate professional sanction, the Respondent was willing to voluntarily surrender his practising certificate without limitation of time. This would enable him to continue working without financial ruin.

### **Costs Application**

11. The Applicant requested an Order for his costs in the sum of £850 and provided the Tribunal with a schedule giving a breakdown. The Respondent had no comments to make on the schedule but reminded the Tribunal of his financial circumstances.

### **Previous Disciplinary Sanctions Before the Tribunal**

12. The Respondent had appeared previously before the Tribunal on 5<sup>th</sup> October 2004 and 20<sup>th</sup> February 2007.

### **Sanction and Reasons**

13. The Tribunal had listened carefully to the submissions of both parties and had considered all the documents. This was a very sad case and the Tribunal had thought carefully about how to proceed.
14. Whilst Mr Gilbert had sought to persuade the Tribunal that the case of Bolton v The Law Society could be distinguished on its facts, the Tribunal rejected this submission. Sir Thomas Bingham MR had stated in that case:

“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.”

Sir Thomas Bingham MR had also stated:

“The reputation of the profession is more important than the fortunes of any individual member.”

15. The Tribunal were mindful that the Respondent had appeared previously on two occasions, both of which related to breaches of the Solicitors’ Accounts Rules. The Tribunal were concerned this was the Respondent’s third appearance before the Tribunal.
16. The Tribunal were satisfied that the Respondent’s conduct had diminished the public’s trust in him and had adversely affected the reputation of the solicitors’ profession. His conduct had fallen below the required standards of integrity, probity and trustworthiness and the nature of the convictions was very serious indeed. In the circumstances, the Tribunal were satisfied that the public needed protection from the Respondent and that he should be struck off the Roll of Solicitors.

#### **Decision as to Costs**

17. On the question of costs, the Tribunal considered the amount claimed in the sum of £850 to be reasonable. The Respondent had not provided the Tribunal with any schedule giving details of his assets, capital, liabilities, income and expenditure and it was clear from the Respondent’s submissions that there was some equity available in his matrimonial home. Accordingly, whilst the Tribunal did consider the case of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin), the Tribunal were satisfied that the Respondent was in a position to pay the relatively modest costs claimed. The Tribunal ordered the Respondent do pay the costs of £850.

#### **Order**

18. The Tribunal Ordered that the Respondent, Kandiah Chelva-Nayagam, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £850.

Dated this 17<sup>th</sup> day of August 2010  
On behalf of the Tribunal

D Green  
Chairman