

**Video briefing on queries arising from the judgment of CACC 297/2019
(including issues like section 53(3) of the Legal Practitioners Ordinance)**

19 August 2021

I. Background

1. On 22 July 2021, the Court of Appeal overturned the conviction of Mr. Ma Ka Kin after he was sentenced to 23 years' imprisonment on 16 April 2019 for attempting to traffic in dangerous drugs.
2. Judges of The Court of Appeal handed down their reasons for judgment on 11 August 2021, pointing out the “extraordinary, if not unprecedented, features” to this case, as well as criticising the appellant’s former legal team and the prosecution.
3. The Appeal Court believed that the appeal has raised more questions than it has been able to answer, including how was a person with convictions able to secure employment with a firm of solicitors, as well as how was a solicitor’s clerk with such a criminal record able to visit, let alone “advise”, a client in custody.
4. It was reported in the news media that Mr. Paul Chan who was described as the solicitor’s clerk who persuaded Mr. Ma into pleading guilty to the charge, as well as Ms. Dorothy Cheung, the barrister who represented Ma and handled his hearing, turned themselves in to the Police on 17 August 2021. The two were subsequently arrested for perverting the course of justice.

II. How was a person with convictions able to secure employment with a firm of solicitors?

5. One of the questions raised by the court in the judgment was “How was a person with convictions able to secure employment with a firm of solicitors?”
6. Under section 53(3) of the Legal Practitioners Ordinance, “no solicitor or foreign lawyer shall, in connection with his practice as a solicitor or foreign lawyer, without written permission of the Society, which may be given for such period and subject to such conditions as the Society may think fit, employ or remunerate any person, who, to his

knowledge, has been convicted of a criminal offence involving dishonesty". Such regulation applies to all staff employed by any solicitors or foreign lawyers.

7. The Law Society periodically issues, by way of Circulars, lists of names to which section 53(3) of the Legal Practitioners Ordinance applies to remind members that prior permission from the Law Society is required for employing or remunerating any of those names.
8. However, there are around 16,000 unqualified staff in Hong Kong and foreign law firms. The Law Society does not have access to each and every one of their criminal conviction records. The operation of section 53(3) of the Ordinance is to offer a more practical way to enforce the provision by requiring the law firm as the employer to be the first gatekeeper to ensure that its staff comply with the rules and those with criminal convictions involving dishonesty be first submitted to the Law Society as the regulatory body for approval.
9. Once the Law Society comes into possession of information about the criminal records of current or former staff of law firms, it will publish the information to all members by way of Circulars. This serves to remind members that if they intend to employ anyone on the list, they have to apply for prior approval from the Law Society before engaging him or her, pursuant to section 53(3) of the Ordinance.
10. In the current case, as soon as the Law Society has received a confirmation from the Police of the criminal conviction records of Mr Paul Chan, the Law Society issued an urgent circular to members on 17 August 2021, informing them that Section 53(3) of the Legal Practitioners Ordinance Cap. 159 is applicable to Mr. Chan, and that any member who wishes to employ or remunerate him should apply in writing to the Law Society to seek its approval.
11. However, since the Law Society does not have access to all the criminal records of unqualified staff in law firms, the lists of names in the Circulars are for reference, but to ensure its compliance with section 53(3) of the Ordinance, a law firm must also make enquiry with potential candidates on their previous record.
12. However, the difficulty arises where a candidate deliberately hides the fact of his criminal

convictions from the employer law firm, or where the law firm deliberately omits to ask for such information from the candidate, using lack of knowledge as a defence to section 53(3).

13. The Law Society is actively reviewing the provision to examine how to improve it.

14. The Law Society will also liaise with the Police on the procedure of criminal record check to see if a more effective channel can be created to enable law firms to verify information provided by job candidates under section 53(3).

III. How was a solicitor's clerk with such a criminal record able to visit, let alone "advise", a client in custody?

15. Another question raised in the judgement was how was a solicitor's clerk with such a criminal record able to visit, let alone "advise", a client in custody?

16. Legal visits to detained persons are closely scrutinised by the various law enforcement agencies. The Law Society has detailed agreements with each of the law enforcement agencies on legal visits to detained persons under their respective remit, including who can attend a legal visit, what proofs of identity and authorisation have to be produced upon arrival etc.

17. A clerk of a law firm cannot attend a legal visit on his own.

18. To conduct a legal visit, the person must be an "authorised clerk", one who has been approved by the Law Society to have this status. Even for an authorised clerk, not all legal visits can be conducted by him on his own. In some situations, even an authorised clerk have to be accompanied by a solicitor when attending a legal visit.

19. The Law Society has issued Circulars setting out clearly the legal visit requirements to members.

20. All applications for legal visits are scrutinised by the relevant law enforcement agencies.

We will also liaise with them to see how the Law Society can assist in reviewing the process.

IV. Questions about the past employment history of Paul Chan

21. The Law Society is not in a position to discuss the past employment history of any specific individual.

22. However, if there is reason to believe that any solicitor or foreign lawyer has breached the Ordinance, the Law Society will conduct investigation in accordance with the established procedures. The Law Society may also refer the case to the Tribunal Convenor of the Solicitors Disciplinary Tribunal for a disciplinary hearing where necessary.