

LAW SOCIETY OF HONG KONG

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19 January 2016

Dear Sir,

Complaint against the Unprofessional conduct of Wilkinson & Grist and its irresponsibility and indifference to remedy the aftermaths of its unprofessionalism in the Federal Court case SAD 17 of 2007 in South Australia

I am going to publish a case about the perceived injustice imposed on me by the South Australian regulatory organisations, including the Legal Practitioners Disciplinary Tribunal. As it involves the ignorance or unprofessional standard of the law firm in Hong Kong, your society is informed in advance in case the outcry from the public is out of expectation. It would be better if you can offer help as this involves the Hong Kong population living in Australia or the human rights of the Hong Kong people there.

In 2002, when we found parallel importation of drugs represented by our company, Australian Medic-care Co Ltd or AMC, from Australia, we hired Wilkinson & Grist to sue the companies involving in the sale of the products for infringement of our trademarks in Hong Kong. However, the manufacturer in Australia, Hamilton Pharmaceuticals, claimed the ownership of the trademarks. Upon the advice of Ms Anne Choi, the partner of Wilkinson & Grist, we turned to the Federal Court of South Australia to sue Hamilton for infringement of trademarks and failure to supply goods. Litigation started by the filing of the Statement of Claim in February 2007.

However, Wilkinson & Grist did not ask our company, Australian Medic-care Co Ltd (AMC), to sign an agreement with the law firm in Australia, Piper Alderman. Instead, the engagement letter was signed between Wilkinson & Piper Alderman on 23 March 2006. As seen from the **Attachment 1 p 7**, Wilkinson was taken as the contractual client in the court case SAD 17 of 2007 without any alertness for years. As a result, Piper Alderman now got a second guarantee of payment from this firm if AMC could not afford paying the lavish and exorbitant charges as the court case proceeded. In addition, as described below, Piper Alderman recruited Kenneth KEUNG in the said court case by the induction of an issue of breach of confidence through the discovery of documents to get a third guarantee to ensure payment of all legal fees charged.

After warranties of payment made, Piper Alderman used all sorts of misconduct to bill AMC. At first, as the supervisor of the court case for AMC, Ms Anne Choi wrote

a few letters to the Australian law firm to complain about the exorbitant charging of Piper Alderman only.

The methods used by the solicitor, Mr. Tony Abbott of Piper Alderman, for overcharging were printed on the Form I for charges (**Attachment 2**) filed with the Legal Practitioners Disciplinary Tribunal on 17 April 2015. Ms Anne Choi knew part of them but only argued with Piper Alderman on the issue of overcharging occasionally and half-heartedly. Therefore, Mr. Tony Abbott applied more and more malpractice to enable more charges billed as they knew that their jobs claimed to have been done would not be successfully challenged by Wilkinson & Grist. Actually, confronted with the exorbitant charges, Ms Anne Choi only advised me to get the final bills taxed at the end of the trial of the court case SAD 17 of 2007 without informing me how tedious this process was.

In the discovery of documents in November 2007 and January 2008, Piper Alderman induced cross-claims from Hamilton by discovering documents that were confidential unnecessarily, including the formula and method of manufacture of our company's products, leading to the issue of breach of confidence. All these acts of misconduct did not seem to be noticed at all by Wilkinson although all the letters of Piper Alderman were intentionally sent to Wilkinson as it was the contractual client. Strangely, as a lawyer, Ms Anne Choi did not notice her duty with its implied responsibility when she received all the letters from Piper Alderman.

In the compilation of the Closing or Written Submissions, Piper Alderman charged much more than the fees for counsels with the lie of unavailability of counsel and the replacement of his jobs by solicitors. Again there was not any awareness from Wilkinson although it was the supervisor and client of the court case SAD 17 of 2007.

On 20 April 2009, Wilkinson terminated its engagement with Piper Alderman after knowing that AMC could not afford paying AUD\$580000 to Piper Alderman due to the unexpectedly lavish overcharging. Piper Alderman was then employed by AMC until 6 February 2010 for the post-verdict jobs.

On 9 November 2010, Piper Alderman filed statements of claim for payment of legal fees owed Piper Alderman in the Supreme Court of South Australia against Wilkinson as well as AMC and on 5 December 2011, Wilkinson had to settle with Piper Alderman before the trial in Action 983/2010 and 1531/2010. (**Annexure 25 in 6 August 2015 Submissions or attachment 3**)

On 24 June 2010 and 8 September 2010 I filed complains about the solicitors and counsels in the case SAD 17 of 2007 with the Legal Practitioners Conduct Board or Board. As Mr. Tony Abbott was the presiding member of the Board, an external law firm, Cosoff Cudmore Knox, was hired to investigate my complaints by the Board.

The external investigation was completed on 5 October 2011. There were 31 complaints, Complaint 30 was about lying to the Conduct Board during investigation and Complaint 31 concerned generalized misconduct. Both were devised and coined by the external investigator late in the investigation.

In a meeting of the Conduct Board dated 9 November 2011, Complaint 17 was resolved to be unsatisfactory conduct and the solicitor, Mr. Tony Abbott, was to be asked to receive Reprimand and return the charges to AMC. However, no further action taken after this resolution (**Annexure 7 p 3 in Attachment 3**).

On 11 January 2012, I filed another complaint of overcharge with the Conduct Board.

On 20 March 2012, the Legal Practitioners Conduct Board overruled 30 out of 31 of my complaints without any reason given, leaving Complaint 17 for later decision. The chronology of events was fully documented in my Submissions to the Tribunal dated 6 August 2015 (**attachment 3**).

I then asked the Board for the investigation report. However, it was not given with the excuse of legal professional privilege. When I turned to the Ombudsman SA for the reports under the Freedom of Information (FOI) Acts in August 2013, a Provisional Determination (**Annexure 8 in Attachment 3**) recommended the release of the investigation report but on 12 December 2014 another Statement of Reasons was declared. It stated that the Conduct Commissioner was exempted from the FOI Acts from 1 July 2014 and so the report could not be released. (**Annexure 9 in Attachment 3**). In fact, my application started before the Amended Acts came into effect on 1 July 2014 with the Conduct Commissioner exempted from the FOI Acts after this date.

On 20 November 2014, the Conduct Commissioner declared that there was no misconduct found in Complaint 17 although the unsatisfactory conduct of which had been confirmed for years since 9 November 2011. In addition, he declared that there was no misconduct in the Complaint of Overcharge although a lot of the charges of the solicitors were canceled in the Adjudication conducted in the Supreme Court on 14 August 2012.

On 18 December 2014, I appealed to the Legal Practitioners Disciplinary Tribunal against the Determination of the Conduct Commissioner. Due to the requirement in the Legal Practitioners Act 1981 I lost in the appeal.

On 17 April 2015, I asked the Tribunal to inquire into the conduct of the practitioners complained of (**Attachment 2**). The practitioners challenged that the conduct for laying charges was out of the time limit (**Attachment 6**). As you can see in the Notice of Appeal (**Attachment 5**) to the Judgment dated 1 October

2015 (**Attachment 4**), the Tribunal actually supported “**Decisions without reasons, Investigation without reports and Justice delayed is actually Justice denied**” and said that the 5 counts of misconduct in the laying of charges were all out of the time limit except Count 3, the lying to the Conduct Board during investigation. Therefore, I appealed to the Supreme Court against the Orders of the Tribunal (**Attachment 5**). The first directions hearing for the Appeal was held on 27 November 2015.

In summary, the essential issue was due to the failure of Wilkinson to ask AMC to sign an engagement letter with Piper Alderman. The latter then made use of the unprofessional standard of the Hong Kong law firm as well as its ignorance in the implication of the engagement letter and its failure to fulfill its role as the supervisor of the conduct of the Court Case SAD 17 of 2007. Without any alertness, Wilkinson & Grist was trapped into the conspiracy of contractual client and gave the guarantee of payment for Piper Alderman to bill lavishly with all sorts of misconduct, such as those printed on Form 1 for charging (**Attachment 2**) filed with the Tribunal on 17 April 2015.

Originally, the Conduct Board asked an external law firm Cosoff Cudmore Knox to investigate for any misconduct to avoid conflict of interest as one of the lawyers complained of was the presiding member of the Board. At the end of the investigation or the delivery of the report on the external investigation on 5 October 2011, Mr. Tony Abbott resigned from the post of presiding member and the investigation was turned to an internal one as decided in the Board meeting on 14 December 2011 (**Attachment 3: Annexure 7**).

As all these matters were due to the unprofessional standard or its failure to get aware of the misconduct practised by the practitioners in the present court case, I have asked Wilkinson & Grist to help complaining the practitioners on many occasions and informed the firm about the complication of the complaints. However, there was not any action taken by this firm although it was the supervisor of the court case SAD 17 of 2007 and in fact, the contractual client. The former role was denied by the said firm but the receipt of all letters from Piper Alderman and Wilkinson’s advice on the bills and the settlement negotiations confirm its role of supervision by conduct. In this case, the firm has not only shown unprofessional standard but also failed to protect the interests of their clients. Whether there was any breach of its fiduciary obligation needs to be confirmed by the Law Society. As Wilkinson was taken as the contractual client and it was a law firm, it was very hard for AMC to proceed with the complaints against Piper Alderman because it used the excuse that the contractual client or Wilkinson did not make any complaints and that all the documents in SAD 17 of 2007 had been scrutinized by Wilkinson which was also a law firm.

As shown in my 6 August 2015 Submissions or **Attachment 3**, the management of the complaints, the decision without reasons and the concealment of the reports on investigation by the Conduct Commissioner and Ombudsman SA showed that the misconduct of Mr Abbott and the other lawyers is being hidden through suppression of open justice. Wilkinson & Grist, as a lawyer and the originator of the issues through its failure to advise AMC to sign an engagement letter with Piper Alderman and being the contractual client and supervisor of the court case SAD 17 of 2007, should have the obligation to guide and help AMC solving the chaos of matters before the Supreme Court right now. Failure to do so would mean that the firm is irresponsible and indifferent to the problems created through its own unprofessional standard and so is committing serious unprofessional conduct. That is why I want the Law Society to see if Wilkinson is willing to offer help in my Appeal to the Supreme Court on 6 November 2015 (**Attachment 5**) and this letter of complaint is also sent to Wilkinson & Grist to seek its opinion or advice since it was the contractual client of the Court case SAD 17 of 2007 and it is a law firm. The Appeal to the Supreme Court is the last opportunity for the firm to remedy its severe negligence due to unprofessional standard.

After the brief narration of the events above, I would present the following complaints to the Law Society of Hong Kong against Wilkinson & Grist.

Unprofessional Standard & Conduct: Role of Contractual Client imposed on the firm without any alertness from Wilkinson & Grist

1. Failure to advise AMC to sign a proper letter of engagement with Piper Alderman, giving the opportunity for this firm to treat Wilkinson as the contractual client and so to get double guarantee of payment of lavish or exorbitant charges achieved through legal malpractice. In addition, the practitioners being complained of misconduct argued that the contractual client was Wilkinson and so their conduct of SAD 17 of 2007 was approved by a client who was a law firm of solicitors, making it very hard to complain and sue the lawyers. It was astonishing that Wilkinson did not even know that this would allow it to be considered as the contractual client and compelled to pay when AMC could not afford payment of the lavish charges gained through legal malpractice.

Unprofessional supervision

2. Upon the knowledge that Piper Alderman charges AMC lavishly, there was no advice given for AMC to retreat from this firm except taxation of its bills at the end of the trial. As a supervisor, Ms Anne Choi did not fight against overcharging more energetically and advise AMC to hire another law firm or stop the litigation.

Failure to challenge misconduct of Piper Alderman for AMC

3. Failure of Wilkinson & Grist to help AMC filing complaints with the Conduct Board upon full knowledge of the misconduct of Piper Alderman in the conduct of the court case SAD 17 of 2007 which Wilkinson & Grist did not recognize whilst performing the role of supervision in the said court case and when it was the contractual client.

Betrayal of clients

4. When Wilkinson was sued for failure to settle the outstanding legal fees obtained by Piper Alderman through malpractice, it did not tax the charges in the Supreme Court as it advised AMC to do previously but settled with Piper Alderman without letting AMC know the content in the deed of settlement signed on 5 December 2011.

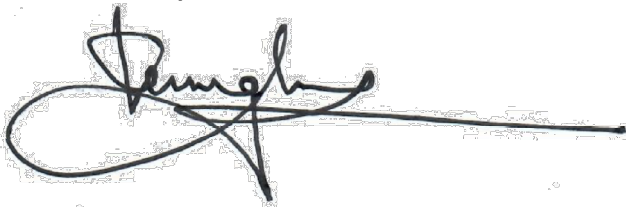
Failure to help AMC getting justice legally in view of obvious intimidation of AMC by the regulatory organisations in SA

5. Upon being informed that the regulatory organisation did not release reasons of overruling my complaints, no help was offered from Wilkinson & Grist to counteract "Decision without reasons, investigation without reports, justice delayed and denied" by the Conduct Board and Commissioner. The failure of Wilkinson to help complaining misconduct having prima facie evidence concerns breach of fiduciary obligation requiring further clarification.

This chaos of investigation by the Conduct Board of South Australia showed obvious suppression of open justice and perceived injustice imposed on Kenneth KEUNG or AMC. I will announce this manoeuvre of complaints by regulatory organisations to the public. During the announcement the names of involved or related parties or law firms are certain to be mentioned. I hope the Law Society of Hong Kong can give some guidance on this aspect apart from scrutinizing the unprofessional conduct of the lawyers.

In case of queries or further documents are required, please do not hesitate to contact me. Looking forward to your response soon.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kenneth Kin Wah KEUNG', with a long horizontal flourish extending to the right.

Kenneth Kin Wah KEUNG

Documents enclosed

- Enclosure 1: Letter dated 8 February 2010 from Dr Malcolm Quirey representing the solicitors complained of to Mr. James Cudmore, the external investigator of the law firm Cosoff Cudmore Knox. On Page 7 it was printed the reasons for confirming the role of Contractual Client of Wilkinson & Grist in the court case SAD 17 of 2007
- Enclosure 2: Form 1 for laying charges filed with the Legal Practitioners Disciplinary Tribunal dated 17 April 2015
- Enclosure 3: Outline of Submissions dated 6 August 2015 of Kenneth Keung on Application for discretion to grant extension of time to lay charges
- Enclosure 4: Judgment of the Tribunal dated 1 October 2015 on the time limit for laying charges against the practitioners complained of
- Enclosure 5: Notice of Appeal dated 6 November 2015 to the Judgment of the Tribunal dated 1 October 2015
- Enclosure 6: Application dated 18 June 2015 for dismissal of the laying of charges in the Legal Practitioners Disciplinary Tribunal by the practitioners, Mr. Tony Abbott & Mr. Timothy Magarey