FACV No. 3 of 2000

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

FINAL APPEAL NO. 3 OF 2000 (CIVIL)
(ON APPEAL FROM CACV NO. 260 OF 1999)

Between:

THE MEDICAL COUNCIL OF HONG KONG **Appellant**

- and -

DAVID CHOW SIU SHEK Respondent

Court: Chief Justice Li, Mr Justice Litton PJ, Mr Justice Ching PJ, Mr Justice Bokhary PJ and Sir Anthony Mason NPJ

Date of Hearing: 24 May 2000

Date of Judgment: 1 June 2000

J U D G M E N T

Chief Justice Li:

I agree with the judgment of Mr Justice Bokhary PJ.

Mr Justice Litton PJ:

I agree with Mr Justice Bokhary PJ's judgment.

Mr Justice Ching PJ:

I agree with the judgment of Mr Justice Bokhary PJ.

Mr Justice Bokhary PJ:

Issue

In certain circumstances the Medical Council of Hong Kong ("the Council") is empowered to order that the name of a registered medical practitioner be removed from the General Register ("the Register"). The Council may order such removal indefinitely. Or it may order such removal for a specified period. These powers of the Council are conferred by s.21(1) of the Medical Registration Ordinance, Cap. 161. In so far as is material, s.21(1) reads:

> " If … the Council is satisfied that any registered medical practitioner —
> (a) has been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment;
> (b) has been guilty of misconduct in any professional respect;
> …
> the Council may, in its discretion —
> (i) order the name of the registered medical practitioner to be removed from the General Register; or
> (ii) order the name of the registered medical practitioner to be removed from the General Register for such period as it may think fit … "

As to restoration to the Register s.25(3) of the same Ordinance provides that:

> "Any person whose name has been removed from the General Register under the provisions of this Ordinance, or whose name had been, prior to the commencement of this Ordinance, removed under the provisions of the Medical Registration Ordinance 1935 (41 of 1935) from the register kept in accordance with the provisions of that Ordinance, may apply to the Council for the restoration of his name to the General Register and the Council in its absolute discretion and after such inquiry and subject to the submission of evidence that he has not been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment and has not been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere and to such conditions, as it may consider desirable, may either allow or refuse the application, and if it allows the same, shall order the Registrar on payment by the applicant of the prescribed fee to restore the name of the applicant to the General Register, and thereupon the Registrar shall restore the name accordingly."

Take a registered medical practitioner whose name has been ordered to be removed from the Register for a specified period. Is he automatically entitled to have his name restored to the Register once that period has elapsed or is he covered by s.25(3)? That is the issue before the Court. Whether or not such a person is covered by s.25(3) is a significant issue. For, as we have just seen, s.25(3) enables the Council to refuse restoration if, quite apart from what led to the removal of his name from the Register in the first place, the person seeking restoration has otherwise "been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment" or has otherwise "been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere"

Having thus identified the issue before the Court, I turn to the context in which such issue arises. The background is as follows.

Background

In November 1990 the respondent Dr Chow Siu Shek, a registered medical practitioner, was convicted in the High Court on two counts of conspiracy to defraud. He was sentenced to two years' imprisonment. In February 1993 — following a delay irrelevant to the present issue — those convictions and that sentence were affirmed by the Court of Appeal. Dr Chow served his sentence. In

May 1994 he came out of prison and resumed his medical practice.

On 23 August 1994 the appellant the Council ordered that Dr Chow's name be removed from the Register for a period of three years. In making this order ("the order for removal"), the Council based its decision on Dr Chow's conspiracy convictions, and invoked its power under s.21(1)(ii). The order for removal was published in the gazette on 16 June 1995 and took effect from that date.

Three months later, on 22 September 1995, Dr Chow pleaded guilty in the Magistrate's Court to 19 charges of failing to keep proper records of dangerous drugs, contrary to regulation 5(1) as read with regulation 5(7) of the Dangerous Drugs Regulations, Cap. 134, and was fined $3,000 on each charge. As it happens, each of those 19 offences were committed on 22 August 1994, one day before the order for removal was made. But the order for removal was based solely on the 1990 High Court convictions and not in any way on the 1994 offences. It is to be noted that the maximum penalty for failure to keep proper records of dangerous drugs is a fine of $450,000 and imprisonment for two years. Regulation 5(7) so provides.

Application to the Council for restoration

Three years passed from the time when the order for removal took effect. Then another three months passed. And then on 3 September 1998 Dr Chow lodged a written application with the Council seeking the restoration of his name to the Register. He did so in the standard form by which such applications are made. And in accordance with the usual practice, he supported his application by a statutory declaration in which he set out the background facts.

On 18 January 1999 the Council wrote to Dr Chow. The letter notified

him that the Council would meet on 3 February 1999 to consider his application. It forewarned him that his 1995 Magistrate's Court convictions were regarded as relevant to his application. It invited him to attend, represented by solicitors and counsel if he chose. And it informed him of his right to seek a postponement of the hearing if he chose. As it happened, Dr Chow did not seek a postponement. The application was heard and decided on 3 February 1999. Counsel for Dr Chow addressed the Council.

Restoration refused by the Council

At the conclusion of the hearing, after retiring to consider its decision, the Council refused the application. Prof. Felice Lieh-mak, who chaired the hearing, gave the Council's reasons. After saying that the Council viewed the 1995 Magistrate's Court convictions as being "particularly serious from a professional point of view", Prof. Lieh-mak continued by noting that after Dr Chow came out of prison he

> "… was warned after an inspection conducted by the Department of Health on June 7th, 1994. Despite proper advice given, no improvement was observed during searches conducted on 22nd August, 1994. The quantity and the variety of dangerous drugs kept without proper record poses a serious threat to society. That concludes this meeting."

Leave to apply for judicial review of the Council's refusal of restoration

The scene now shifts to the civil courts. On 22 March 1999

Dr Chow filed an application for leave to apply for judicial review. He sought such leave for the purpose of seeking: (i) an order of *certiorari* to quash the Council's decision of 3 February 1999 refusing to restore his name to the Register; (ii) such further or other order as to the court may seem just; and (iii) costs. Originally such leave was sought only on the ground that the Council's decision was, so Dr Chow contended, irrational.

However in granting leave to apply for judicial review, Keith J (as he then was) raised another issue, being the one which I identified at the beginning of this judgment as the issue now before the Court. This is how the learned judge put it in a note which he appended to his Order of 25 March 1999 granting leave to apply for judicial review:

> " I grant the Applicant leave to apply for judicial review. However, in addition to the grounds relied on, the application appears to me to raise another issue, unless there is an express provision relating to the issue which I have not found. The issue is whether section 25(3) of the Medical Registration Ordinance (Cap. 161) has any relevance to a case in which a registered medical practitioner's name has been removed from the General Register for a specified period pursuant to section 21(1)(ii), rather than for an unspecified period pursuant to section 21(1)(i). Unless expressly provided for, it is arguable that when the three years had elapsed in June 1998 since the Applicant's name had been removed from the Register, the Applicant was automatically entitled to have his name restored to the Register, unless fresh disciplinary proceedings had been commenced and adjudicated upon in the meantime."

Result in the courts below

At the hearing of the application for judicial review before Keith JA (sitting as an additional judge of first instance), Dr Chow did not pursue any point other than this one as to automatic entitlement to restoration.

By the judgment which he delivered on 25 June 1999, Keith JA accepted the "automatic entitlement to restoration" point as being correct, but witheld relief from Dr Chow for the reasons to which I will turn in a moment. The formal order which the learned judge made was that: (i) "there be no order on the application"; and that (ii) "there be no order as to costs". His reasons for so

ordering appear by the last two paragraphs of his judgment, which read:

> " The grant of relief on an application for judicial review is entirely discretionary, though, of course, the discretion must be exercised judicially. In the circumstances, the course which I propose to take is to make no order on the application. The application is not dismissed because the decision challenged should not have been made. However, that decision will not be quashed because a decision having the same effect, for the time being, would have been made if fresh disciplinary proceedings had been commenced.
>
> That does not leave Dr Chow in limbo. It will be open to him, when he deems the time to be right, to apply to the Council for the restoration of his name to the Register. I do not think that there will be any problem over the Council's jurisdiction to hear such an application. After all, for the purpose of deciding what relief to grant today, the court has been treating the hearing in February as if it had been fresh disciplinary proceedings rather than an application for the restoration of Dr Chow's name to the Register."

The Council appealed to the Court of Appeal, seeking the dismissal of Dr Chow's application for judicial review. The Council also sought its costs in that court and at first instance.

On 26 November 1999 the Court of Appeal (Nazareth VP and Hartmann J, Burrell J dissenting) dismissed the Council's appeal, affirmed the orders made by Keith JA and awarded Dr Chow his costs of that appeal.

The question of the correctness or otherwise of the "automatic entitlement to restoration" point is obviously one of great general or public importance. On that footing the Court of Appeal, by an order which it made on 19 January 2000, exercised its power under s.22(1)(b) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484, to grant the Council leave to appeal to this Court. By the same order the Court of Appeal suspended the operation of its judgment of 26 November 1999 pending the determination of the Council's appeal to this Court.

Reasoning in the courts below

At first instance Keith JA reasoned as follows:

> " If the Council has an absolute discretion to refuse to restore a practitioner's name to the Register, even though the time limit on the original order has expired, what was the point of setting a time limit on the original order in the first place? I accept entirely that subsequent conduct on the part of the practitioner, or the subsequent discovery of events

> which occurred prior to the date of the original order, may well justify the Council in concluding that the practitioner's name should not be restored to the Register. But that does not have to be achieved by requiring the practitioner to apply for the restoration of his name to the Register pursuant to section 25(3), notwithstanding the expiration of the time limit on the original order. It can be achieved by the commencement of fresh disciplinary proceedings and by new orders under sections 21(1)(i) or 21(1)(ii)."

In the Court of Appeal, Nazareth VP said this:

> " To sum up the matter, the meaning and effect of s.21(1), as I have already outlined it, seems to me to be quite plain; likewise the effect of s.25(3). The latter has no application to those persons who have been removed from the Register for specified periods which have expired, as they would already be back on the Register. It applies to all other persons whose names have been removed from the Register, i.e. under paragraph (i) indefinitely or permanently, and those under paragraph (ii) who have been removed for specified periods which have not expired. This construction gives effect to the plain or primary meaning of both provisions and must prevail over the interpretation contended for by the Council, which would result in s.21(1) being stripped of all or most of its effect. Full effect can be given to s.21(i) and (ii), and to s.25(3), each in the context of their own provisions and of the remainder of the Ordinance."

Agreeing with the learned Vice President, Hartmann J quoted s.25(3) of the Medical Registration Ordinance and continued thus:

> " In respect of this section, it is submitted that the simple and literal interpretation makes it clear that all doctors who have been removed from the Register, be it for an indefinite period or a time specific, must, if they wish to practise again, apply for restoration. It is a matter for the discretion of each individual doctor who has been removed whether to apply or not, hence the phrase 'may apply'.
>
> But if that were the primary meaning of section 25(3) it would mean that in respect of every removal for a time specific the Council would still have the power, 'in its absolute discretion' and after due 'inquiry', to refuse to accept the restoration of that doctor's name to the Register. If that was the case, it seems to me that a doctor removed for a limited period would be deprived of the cold comfort that such a specified period of removal is meant to bring. The period duly calculated by the Council as appropriate, would not end the matter for the doctor would then have to apply for restoration and be subject to further inquiry. In short, the imposition of removal for a time certain would give no certainty."

The foregoing views naturally merit respectful consideration. So, however, does the opposite view taken by Burrell J who dissented in the Court of Appeal. As to the implications of the "automatic entitlement to restoration" point, he said that:

> "This creates a risk that a thoroughly reprehensible character (by virtue of misconduct during the disqualification) is entitled to the status of doctor until such time that the Council successfully applies to strike him off again."

And he went on to say that:

> "It is perhaps worthy of note at this stage that virtually all cases of doctors being struck off are cases under s.21(1)(ii), i.e. a specific period. Cases of doctors being struck off permanently are very rare indeed. This was a matter which this Court was informed of and agreed by both counsel on appeal. I simply cannot accept that s.25(3) was intended to apply only to those very rare cases where a doctor had been indefinitely struck off or where he boldly and unusually tried to persuade the Council that he should be restored to the register before the end of the period of removal. To confine it to such a small and narrow group of struck off doctors could, in my judgment, lead to a manifest public mischief, namely that almost all struck off doctors are automatically restored to the register without any regard to their conduct during the period of removal."

Statutory interpretation

The issue before the Court is one of statutory interpretation. There is a good deal of discussion in the cases and in academic writings of the rules or so-called rules of statutory interpretation. No useful purpose would be served by attempting to catalogue, let alone calibrate, all of them. But a proper appreciation of the law's history being essential to its structured and enlightened development, it is worthwhile noting that historically the most significant rules of statutory interpretation appear to have been:

(i) the "literal rule" which accorded primacy to the literal meaning of the language used in the legislation unless and until some other factor or factors demonstrated that some other meaning represented the true intention of the legislature;

(ii) the "golden rule" which was that, whatever the literal meaning of the language which the legislature used, there was a presumption that it did not truly intend to bring about an absurd result; and

(iii) the "mischief rule" which presumed that the legislature has targetted a particular mischief and provided a remedy for it.

These old rules are of a complementary nature or at least have the potential for complementing each other. Elements of each of them can still be found in how the courts interpret statutes nowadays. And the modern tendency to give statutes a purposive construction may, I think, be viewed as being to an

appreciable extent a development from the mischief rule in particular.

I turn now to s.19 of the Interpretation and General Clauses Ordinance, Cap. 1, which provides that:

> "An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit."

The opening statement in the section that "An Ordinance shall be deemed to be remedial" is plain enough. But then the section becomes less and less plain as one reads on. Reasonable people may differ — and frequently do differ — over what would be "fair, large and liberal". And merely calling for the interpretation which "will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit" does not of itself provide any practical guidance on how to go about achieving that interpretation.

Section 19 plainly establishes that legislation is to be interpreted as being remedial. But beyond that the section deals with what is to be done rather than how to do it. As a general statement of the proper approach to be followed in most if not all cases calling for statutory interpretation, I think that there is much to be said for the statement in "Francis Bennion: Statutory Interpretation", 3rd ed. (1997) at p.424 that:

> "the basic rule of statutory interpretation is that it is taken to be the legislator's intention that the enactment shall be construed in accordance with the general guides to legislative intention laid down by law; and that where these conflict the problem shall be resolved by weighing and balancing the interpretative factors concerned."

What interpretative factors are concerned in any given instance must depend on its circumstances.

The upshot, as I see it, is as follows. When the true position under a statute is to be ascertained by interpretation, it is necessary to read all of the relevant provisions together and in the context of the whole statute as a purposive unity in its

appropriate legal and social setting. Furthermore it is necessary to identify the interpretative considerations involved and then, if they conflict, to weigh and balance them.

The provisions to be interpreted in the present case

With the foregoing in mind, I turn to examine the provisions to be interpreted in the present case, namely ss 21(1) and 25(3) of the Medical Registration Ordinance, which provisions are set out earlier on in this judgment. It is no use interpreting each of them on its own and literally. That would tend to yield conflicting positions. Reading s.21(1)(ii) on its own and literally, I can see something in the point that if a registered medical practitioner's name is ordered to be removed from the Register for a specified period, then it would seem to follow that he is automatically entitled to have his name restored to it once that period has elapsed.

But the opposite view arises if s.25(3) is read on its own and literally. Doing that, one might well consider it plain that any person whose name has been removed from the Register cannot have his name restored to it unless the Council allows his application for such restoration. On Dr Chow's behalf, some play has been made on the use of the permissive word "may" rather than the mandatory word "must" in s.25(3) when it says that a person "may apply to the Council". But there is no basis for attributing the use of the word "may" to anything other than the fact that s.25(3) is not aimed at creating the absurdity of forcing people to seek restoration even if they do not want it.

The overall purpose of the Medical Registration Ordinance as indicated by its long title is "To consolidate and amend the law by making more comprehensive provisions regulating the registration of practitioners in medicine and surgery". The Register, as one sees from s.6(1), contains the names, addresses

and qualifications of all such practitioners and such other particulars of theirs as the Registrar of Medical Practitioners ("the Registrar") considers it necessary to include. As one sees from s.16, registration confers the entitlement to practice medicine. And as one sees from s.28, practising medicine without registration is a criminal offence punishable by up to five years' imprisonment. None of these provisions would come as a surprise to anyone. Indeed the absence of provisions like them would be astounding.

On the one hand, the tendency of the law is to frown upon any restraint of trade. And inevitably there will be some adverse impact on the public as well as on the professional person concerned whenever someone who is qualified and competent to practise a profession is prevented from doing so. To the extent that this adverse impact lands on the professional person, it is of course to be remembered that no law should be construed so as to inflict a hardship on anyone unless that is eventually found to be the clear effect of the law in question.

On the other hand, as Lord du Parcq said in delivering the advice of the Privy Council in *Province of Bombay v. Municipal Corporation of Bombay* [1947] AC 58 at p.63, "Every statute must be supposed to be 'for the public good', at least in intention". And qualification and competence are not the only qualities in a professional person that matter to the public. Integrity too is vitally important. And this means integrity both in general and in regard to professional matters in particular. If maintaining integrity within a profession involves the exclusion of certain persons who are otherwise qualified and competent to practise, then that is a price that has sometimes to be paid. At the end of the day, a balance has to be struck.

Five considerations

There arise, in my view, five considerations which determine the result

of the present case. It makes no difference to such result whether such considerations are (to use the expressions in "Bennion") viewed as "general guides to legislative intention laid down by law" or as "interpretative factors".

One: striking a balance

The first of these considerations is the need to strike the balance to which I have just referred. In my view, this consideration militates to some extent against automatic entitlement to restoration. I say "to some extent" for this reason. On the one hand, automatic entitlement to restoration would not mean that an unsuitable person would necessarily remain on the Register. Fresh disciplinary proceedings would be possible. On the other hand, it would nevertheless mean (as Burrell J pointed out) that for a time at least an unsuitable person would be on the Register. Even that would be highly undesirable.

As to what is desirable or undesirable, I should note the argument advanced on Dr Chow's behalf that rejection of automatic entitlement to restoration would create total uncertainty as to when an unsuccessful applicant for restoration under s.25(3) could expect eventually to be restored to the Register. This argument ignores the Council's ability to include in its decision some indication as to when an unsuccessful applicant may make a fresh application with reasonable prospects of success. In particular, if an applicant invites the Council to give some such indication in the event of it refusing restoration, the Council may well feel it right to give some such indication in that event.

Two: interpretation in the context of other statutes in pari materia

It is well-established that the context in which a statute is to be interpreted includes other statutes *in pari materia* i.e. other statutes dealing with

comparable matters. For the reasons which I am about to give, I view this consideration as one which militates against automatic entitlement to restoration.

In the context of the Medical Registration Ordinance, other statutes *in pari materia* include the Dentists Registration Ordinance, Cap. 156, and the Legal Practitioners Ordinance, Cap. 159. Doctors and dentists are professional persons who are registered by statutory registrars and entered on registers. Barristers and solicitors are professional persons who are admitted by the High Court and entered on rolls.

Looking at ss 18(1)(i) and (ii) and s.22(3) of the Dentists Registration Ordinance, one sees that, like doctors, dentists can be removed by their council from their register either indefinitely or for a specified period, and may apply to their council for restoration to their register.

It is significant, I think, that even where removal is for a specified period, it is nevertheless removal rather than suspension (as occurs when, for example, a solicitor is suspended from practice for a specified period under s.10(2)(b) of the Legal Practitioners Ordinance or a barrister is suspended from practice for a specified period under s.37(b) of that Ordinance).

Where someone is merely suspended from something for a specified period, it follows from the very nature of suspension that the mere expiry of that period automatically puts him back where he used to be before he was suspended therefrom. Removal, even if only for a specified period, is of different nature. Where something, here someone's name, has been removed from somewhere, here a register, it naturally takes some positive act to restore it to that place. If the intention were that doctors may automatically return to practice after a specified period, suspension rather than removal would have been the obvious choice. But

for doctors the legislature chose removal rather than suspension.

Three: avoiding circularity

Thirdly, there is the law's tendency to avoid circularity. For a doctor to be propelled back on to the Register despite a fresh or freshly discovered blot on his suitability to be on it only to be taken off it again by reason of that very blot is obviously circular. In my view, this consideration militates against automatic entitlement to restoration. The result reached in the courts below (namely the refusal of relief despite acceptance of the "automatic entitlement to restoration" point) avoids circularity. But it does so by in effect bringing about the removal of Dr Chow's name from the Register indefinitely: not by a decision of the Council under s.21(1)(i) of the Medical Registration Ordinance but instead by a decision of the court under its judicial review jurisdiction. This does not fit well into the statutory scheme in question.

I might here mention something else which does not fit well into this statutory scheme. It is the argument on Dr Chow's behalf that the ill effects of an unsuitable person getting back on to the Register by way of automatic entitlement to restoration and remaining thereon until he is removed therefrom again following fresh disciplinary proceedings can be contained by the Registrar witholding a practising certificate from him. It may be doubted whether the Registrar could properly do so. But even assuming that this course is available, it still may well hold difficulties, drawbacks and limitations of its own. And quite apart from any such difficulties etc., such a course would be a roundabout device. And the mere fact that a proposed interpretation of a statute would create a state of affairs which would have to be catered for by a roundabout device is, if anything, a reason for doubting the correctness of that proposed interpretation.

Four: according meaning and substance to each provision

Fourthly, there is the law's tendency to construe each and every provision of a statute in such a way as to accord the same a due measure of real meaning and substance. In my view, this consideration militates against automatic entitlement to restoration. For such entitlement would confine s.25(3)'s operation to the very rare instances of removal for an indefinite period or of applications for restoration even before the expiry of a specified removal period.

Take in particular the provision that the Council's discretion to allow an application for restoration is subject to the submission of evidence that, apart from the matters which led to the removal of his name from the Register in the first place, the person seeking restoration has not otherwise "been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment" and has not otherwise "been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere". This provision is designed to discover if there are any skeletons in the cupboard, and is obviously an important safeguard against persons of insufficient integrity getting back on to the Register. The legislature added this safeguard to s.25(3) by an amendment made in 1996. If the "automatic entitlement to restoration" point be right, then the legislature would have taken the trouble to enact this important safeguard only to then confine its operation to very rare instances, thus withholding it from the vast majority of cases. That would be a very odd thing to do.

But what about the other side of the coin: would rejection of automatic entitlement to restoration deprive periods specified under s.21(1)(ii) of meaning and substance? In my view, it would not. The real question in a s.25(3) application for restoration after the expiry of a specified period will always be whether, apart from the matters which led to the removal of his name from the Register in the first place, the person seeking restoration has otherwise "been convicted in Hong Kong

or elsewhere of any offence punishable with imprisonment" or has otherwise "been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere". If he has not, then he would in the normal way be entitled confidently to expect that his name would be restored to the Register once his period of removal has elapsed. The meaning and substance of specified periods under s.21(1)(ii) lie in that entitlement.

Five: reluctance to find a radical change by a side-wind

Fifthly and finally, there is the reluctance of the courts to attribute to the legislature an intention to make a radical change by way of a side-wind. In my view, this consideration militates against automatic entitlement to restoration. Let me explain why.

Before ss 21(1) and 25(3) of the Medical Registration Ordinance were amended to take their present form, items (i) and (ii) of s.21(1) used to read as follows:

> "(i) order the name of the registered medical practitioner to be erased from the register; or
> (ii) order the name of the registered medical practitioner to be removed from the register for such period as it may think fit …"

And s.25(3) used to read as follows:

> " Any person whose name has been removed or erased from the register under the provisions of this Ordinance, or whose name had been, prior to the commencement of this Ordinance, removed or erased under the provisions of the Medical Registration Ordinance 1935 from the register kept in accordance with the provisions of that Ordinance, may apply to the Council for the restoration of his name to the register and the Council in its absolute discretion and after such inquiry and subject to such conditions, as it may consider desirable, may either allow or refuse the application, and if it allows the same, shall order the Registrar on payment by the applicant of the prescribed fee to restore the name of the applicant to the register, and thereupon the Registrar shall restore the name accordingly."

Since removal for a specified period was the only type of removal there

was (the alternative being erasure), s.25(3) (which covered both removal and erasure) necessarily covered persons whose names had been removed from the Register for a specified period. So there could not have been any such thing as automatic entitlement to restoration before the 1996 amendments.

Dr Chow's argument that automatic entitlement to restoration was created by the 1996 amendments amounts to saying that such entitlement was created by nothing more than the legislature's unremarkable decision to switch from using two words, "removed" and "erased", to using one word, "removed". That would indeed involve a radical change by a side-wind.

Conclusion

For the foregoing reasons, I interpret ss 21(1)(ii) and 25(3) of the Medical Registration Ordinance as follows. First, I reject the notion of automatic entitlement to restoration. Secondly, I hold that all registered medical practitioners whose names have been removed from the register, including those whose names have been removed for a specified period only under s.21(1)(ii), are covered by s.25(3) which makes it relevant to restoration whether, quite apart from the matters which led to the removal of his name from the Register in the first place, the person seeking the same has otherwise "been convicted in Hong Kong or elsewhere of any offence punishable with imprisonment" or has otherwise "been guilty of misconduct in a professional respect while practising in Hong Kong or elsewhere". I repeat that if he has not, then he can in the normal way confidently expect to be restored to the Register once his period of removal has elapsed.

Accordingly I would allow the Council's appeal so as to (i) dismiss Dr Chow's application for judicial review and (ii) make an order *nisi* awarding the Council costs against Dr Chow here and in the lower courts, such order to become absolute 21 days from today unless a written application for some other costs order,

supported by submissions, is received by the Registrar of this Court within that 21-day period.

Sir Anthony Mason NPJ:

I agree with Mr Justice Bokhary PJ's judgment.

Chief Justice Li:

The Court unanimously allows the Council's appeal so as to (i) dismiss Dr Chow's application for judicial review and (ii) make an order *nisi* awarding the Council costs against Dr Chow here and in the lower courts, such order to become absolute 21 days from today unless a written application for some other costs order, supported by submissions, is received by the Registrar of this Court within that 21-day period.

(Andrew Li) Chief Justice	(Henry Litton) Permanent Judge	(Charles Ching) Permanent Judge

(Kemal Bokhary) Permanent Judge	(Sir Anthony Mason) Non-Permanent Judge

Mr John Bleach SC and Mr David Fitzpatrick (instructed by the Department of Justice) for the appellant council

Mr Graham Harris (instructed by Messrs Boase, Cohen & Collins) for the respondent doctor