

THE LAW SOCIETY OF SINGAPORE

PRACTICE DIRECTION 8.5.5

[Formerly PDR 2013, para 64; Council's Practice Direction 5 of 2009]

OBTAINING EVIDENCE OF A LEGAL PRACTITIONER'S MISCONDUCT BY ENTRAPMENT OR BY ILLEGAL OR IMPROPER MEANS

This Practice Direction applies to the obtaining of evidence of a legal practitioner's misconduct by entrapment and illegal or improper means. It adopts, with necessary modifications, the definitions of the two modes of obtaining such evidence by the Court of Appeal in *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 at page 389, paragraph 27, as follows:

““Entrapment” involves luring or instigating the [legal practitioner] to commit an offence [or a breach of the rules of professional conduct] which otherwise, or in ordinary circumstances, [he/she] would not have committed, in order to prosecute [him/her]. Entrapment invariably entails unlawful conduct by an *agent provocateur*, in the form of abetment of the offence by instigation or intentionally aiding the [legal practitioner] to commit the offence [or a breach of the rules of professional conduct]. However, obtaining evidence illegally or improperly does not necessarily involve any instigation or inducement on the part of the agent.”

There have been a number of disciplinary cases in the past few years which revealed that one or more legal practitioner(s) had hired private investigators to obtain evidence of touting by another legal practitioner in a different law practice suspected of procuring conveyancing work from real estate agents by giving referral fees. A common issue raised in these cases was whether such evidence had been obtained by entrapment or by illegal or improper means. In most of these cases, the court found that such evidence had not been obtained by entrapment or by illegal or improper means.

However, where a legal practitioner (“Procurer”) obtains evidence of another legal practitioner’s misconduct by entrapment or by illegal or improper means, whether directly or indirectly, a number of ethical issues are raised:

- (a) The Procurer is subject to “the same standards of conduct under the disciplinary code and also the law”: *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at page 264, paragraph 59. If the Procurer is also the *agent provocateur* and is “guilty of wrongdoing, he/she should also be subject to the ordinary processes of the law, like any other offender or tortfeasor, including disciplinary proceedings”: *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 at page 399, paragraph 52.
- (b) The Procurer’s conduct, whether directly or indirectly, in instigating or intentionally aiding another legal practitioner to commit an offence or a breach of the rules of professional conduct is a breach of his/her obligation to treat his/her colleagues with courtesy and fairness under rule 7(2) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015). The Procurer’s conduct is as objectionable as the ensuing breach committed by that legal practitioner.
- (c) The Procurer’s conduct also derogates from the dignity of the legal profession and adversely affects the standing and perception of the legal profession in the eyes of the public. If a legal practitioner becomes aware that another legal practitioner has committed an offence or a breach of the rules of professional conduct, he/she should

lodge a complaint with the Law Society in accordance with established procedures, instead of resorting to entrapment or illegal or improper means to obtain evidence about the other legal practitioner's misconduct.

- (d) The Council also understands that a legal practitioner's act of obtaining evidence of another legal practitioner's misconduct by entrapment is viewed as deceptive conduct in two other foreign jurisdictions.

In view of the above, the Council takes the position that it is improper for a legal practitioner to obtain evidence of another legal practitioner's misconduct by entrapment or by illegal or improper means, whether directly or indirectly, when he/she becomes aware that the other legal practitioner has committed an offence or a breach of the rules of professional conduct. The Procurer may therefore be liable to disciplinary action under section 83 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ('LPA').

The Council's position in the immediate paragraph above should not be taken in any way to excuse the conduct of a legal practitioner who has committed an offence or a breach of the rules of professional conduct. The errant legal practitioner will be equally liable to disciplinary action under section 83 of the LPA, independent of any wrongful conduct by the Procurer. The High Court observed in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 at page 264, paragraph 59:

"[T]he law governing entrapment evidence (whether private or state-sponsored entrapment) in criminal proceedings has no application to disciplinary proceedings. The Court of Appeal in *Rayney Wong CA* also reached the same conclusion on the ground that primacy must be given to the legal profession's ethical and professional code of conduct over any illegal or improper conduct of a member of that profession in procuring evidence to uphold the values of that code. The appropriate remedy in such cases is neither to exclude the evidence nor to stay the proceedings."

As officers of the court, all legal practitioners must maintain the highest ethical standards in their professional practice and conduct and uphold the values of the legal profession.

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THE COUNCIL OF THE LAW SOCIETY OF SINGAPORE