IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 92

Originating Summons No 4 of 2018

Between

Law Society of Singapore

… *Applicant*

And

Ezekiel Peter Latimer

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings]
[Legal Profession] — [Conflict of interest]
[Legal Profession] — [Professional conduct] — [Grossly improper conduct]

Law Society of Singapore
v
Ezekiel Peter Latimer

[2019] SGHC 92

Court of Three Judges — Originating Summons No 4 of 2018
Sundaresh Menon CJ, Tay Yong Kwang JA, and Belinda Ang Saw Ean J
17 January 2019

9 April 2019

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Background

1 Ezekiel Peter Latimer ("the respondent") was called to the Singapore bar on 25 May 1996. At the time of the proceedings before the disciplinary tribunal ("DT") that was appointed to investigate a complaint against him, he was an advocate and solicitor of the Supreme Court of Singapore of 21 years' standing and practised as a sole proprietor in the firm Peter Ezekiel & Co.

2 The complainant, Sunil Prasad ("Sunil"), was the respondent's client. He had been charged and was eventually convicted of an offence under s 22(1)(*d*) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) ("the EFMA"), for making a false declaration to the Ministry of Manpower ("MOM") in his application for a work permit ("AWP"). The false declaration pertained to the amount of his salary. Sunil's employer counter-signed Sunil's

AWP and was also charged with an offence under s 22(1)(*d*) read with s 20(1)(*a*) of the EFMA. The disciplinary charges against the respondent arose out of allegations of conflict of interest that stemmed from the respondent's concurrent representation of both Sunil and his employer. The issues that this gave rise to present us with the opportunity to examine how these cases should be dealt with in the context of professional disciplinary proceedings.

Facts

3 We begin by outlining the brief facts concerning the criminal charge against Sunil, for which the respondent was engaged to represent Sunil, as background to the allegations of conflict of interest that were raised against the respondent.

4 Sunil is an Indian national, who was recruited by representatives from Dipsi Productions (S) Pte Ltd ("the Company") to work in Singapore as a performing artiste at a restaurant. Mistry Diptiben Kasturchand ("Dipti") was a director and representative of the Company. Sunil was told that his monthly salary would be between 50,000 Indian Rupees ("INR") and INR60,000. However, he did not know how much this amounted to in Singapore dollars at that time. On the then prevailing exchange rate of INR48.5 to S$1, it worked out to between S$1030 and S$1237.

5 On 5 August 2014, while Sunil was still in India, Dipti prepared and lodged Sunil's AWP with the MOM in her capacity as the Company's representative. In the AWP, Sunil's fixed monthly salary was reflected as S$1,800. An in-principle approval was thereafter granted by MOM and Sunil was permitted to come to Singapore.

6 After arriving in Singapore, on 8 September 2014, Sunil signed the AWP, which was also counter-signed by Dipti as a director of the Company.

7 Officers from the MOM raided Sunil's workplace sometime in October 2014. Both Sunil and Dipti were subsequently charged in August 2015 under s 22(1)(*d*) of the EFMA, with making a false declaration in the AWP as to Sunil's fixed monthly salary.

8 Sunil and Dipti each engaged the respondent as counsel in relation to the charge that had been brought against each of them under the EFMA. The respondent represented both of them *concurrently* at some point in time.

9 The disciplinary charges against the respondent arose out of allegations that he had placed himself in a position of conflict of interest and had preferred the interest of Dipti over that of Sunil in the course of his concurrent representation of them both. Sunil subsequently discharged the respondent from acting for him and lodged a complaint with the Law Society of Singapore ("the applicant"). He had, in the meantime, sought assistance from a non-governmental organisation ("NGO") and eventually pleaded guilty to the charge under the EFMA on 23 June 2016. He was fined S$6,000 for the offence.

10 A significant aspect of the applicant's case against the respondent related to a Letter of Representation which the respondent had sent to the Attorney-General's Chambers ("AGC") on 9 November 2015 on Sunil's behalf ("the Representations"). The applicant claimed that in preparing that letter on Sunil's behalf, the respondent had in fact advanced the interest of Dipti in preference to or ignoring the interest of Sunil, by omitting or inaccurately stating in the Representations key aspects of the instructions that Sunil had conveyed to him.

Charges

11 On 20 July 2017, the DT was appointed pursuant to s 90(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") to hear and investigate the complaint against the respondent. The applicant brought four charges against the respondent before the DT. However, at the DT hearing, the applicant withdrew the third charge and renumbered the fourth charge as the third charge. We summarise the three charges that were proceeded with as follows:

(a) First charge: That while acting for Sunil in respect of the criminal charge that he was facing, the respondent failed to advance Sunil's interests unaffected by his own interest and/or the interest of Dipti, by acting in or preferring his own interest and/or the interest of Dipti, which amounted to:

(i) grossly improper conduct in the discharge of his professional duty as an advocate and solicitor of the Supreme Court of Singapore under s 83(2)(*b*) of the LPA;

(ii) or in the alternative, a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under s 83(2)(*b*) of the LPA read with rr 25(*a*) and/or 25(*b*) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the LPPCR") ("first alternative charge");

(iii) or in the further alternative, misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under s 83(2)(*h*) of the LPA.

(b) Second charge: That while acting for Sunil in respect of the criminal charge that he was facing, and knowing that the instructions given by Sunil were opposed to those given by Dipti, the respondent failed to decline to advise Dipti and failed to advise Dipti to obtain independent legal advice, which amounted to:

(i) grossly improper conduct in the discharge of his professional duty as an advocate and solicitor of the Supreme Court of Singapore under s 83(2)(*b*) of the LPA;

(ii) or in the alternative, a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under s 83(2)(*b*) of the LPA read with r 30(1) of the LPPCR;

(iii) or in the further alternative, misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under s 83(2)(*h*) of the LPA.

(c) Third charge: That while acting for Sunil in respect of the criminal charge that he was facing, the respondent included an explanation, in the Representations to the AGC, as to how the offence was committed, which explanation did not reflect the actual instructions that the respondent had received from Sunil, and the respondent thereby knowingly deceived or misled the AGC or other person or body associated with the court proceedings, which amounted to:

(i) grossly improper conduct in the discharge of his professional duty as an advocate and solicitor of the Supreme Court of Singapore under s 83(2)(*b*) of the LPA;

(ii) or in the alternative, a breach of a rule of conduct amounting to improper conduct and practice as an advocate and solicitor under s 83(2)(*b*) of the LPA read with r 56 of the LPPCR ("third alternative charge");

(iii) or in the further alternative, misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under s 83(2)(*h*) of the LPA.

The disciplinary proceedings

The parties' cases before the DT

12 One of the key issues which the DT had to determine was the content of Sunil's instructions to the respondent, and in particular, whether the Representations drafted by the respondent accurately conveyed to the AGC Sunil's instructions to him. In the Representations, the respondent informed the AGC that:

(a) Sunil had asked Dipti *before* signing the AWP, why the AWP reflected his salary as S$1,800 per month when he would only in fact receive about S$1,200 per month.

(b) Dipti explained that the sum of S$1,800 reflected the total amount that Dipti would be spending on him, having taken into account the expenses already or to be incurred for his meals, lodging and airfare.

(c) Based on what he had been told by Dipti, Sunil thought that it was not incorrect or dishonest of him to declare that his monthly salary

was S$1,800 per month because he equated what his employer was spending on him with his monthly salary.

13 That case, in effect, proceeded on the basis that Sunil knew all along that the AWP reflected an amount higher than the amount he would in fact be receiving, but that he was content to proceed on this basis because he thought the difference had been properly accounted for by Dipti. However, the applicant's case before the DT was that the Representations (as summarised at [12] above) misstated key aspects of Sunil's instructions to the respondent. According to the applicant, Sunil's instructions to the respondent were as follows:

(a) When Sunil signed the AWP, he genuinely believed that he would be paid S$1,800 as his monthly salary. He was not aware at that time that he was going to be paid a lower salary of S$1,200.

(b) Sunil only found out that his salary was lower, that is, S$1,200, *after the MOM raid*, when he was asked to sign a salary voucher by Dipti. When he then asked why the salary voucher was for S$1,200 and not S$1,800, he was told by Dipti that he would receive only S$1,200 as the sum of S$1,800 that had been declared in the AWP included the accommodation, airfare and food expenses that she bore for him.

(c) Sunil had been deceived into signing the AWP which stated that his fixed monthly salary was S$1,800 when Dipti had only intended to pay him S$1,200.

The applicant submitted, on this basis, that the case presented to the AGC by the respondent was materially different from the instructions conveyed to him by Sunil.

14 As against this, the respondent claimed that he had in fact drafted the Representations based on Sunil's instructions. According to him, these instructions were as follows:

(a) *Before Sunil signed the AWP* prepared by Dipti, Sunil had asked Dipti why his salary was stated as S$1,800 per month in the AWP when he would only receive a lower salary. Dipti then explained to him that the salary he was to declare in the AWP had to include the cost of lodging, food and transport which Dipti would be paying for him.

(b) Believing the explanation given by Dipti, Sunil declared his salary to the MOM as S$1,800 per month.

(c) Sunil *did not instruct* the respondent that he had been deceived or misled by Dipti.

15 This was materially different to Sunil's version of the facts both in terms of what Sunil believed his actual salary would be at the time he signed the AWP, and when and how he subsequently discovered that there would be a significant difference.

The DT's findings

16 Faced with this conflict in the evidence, the DT preferred Sunil's evidence over that of the respondent. Specifically, the DT found that Sunil was truthful and that his evidence was "consistent and unshaken throughout". On the other hand, it found that the respondent's evidence was "vague and inconsistent and often tailored to suit his purpose".

17 The DT accordingly accepted Sunil's version of the material events, and found that:

(a) At the time he signed the AWP prepared by Dipti, Sunil believed that the sum of S$1,800 that was stated in the AWP accurately reflected his fixed monthly salary given that no other sums were indicated as deductions. The AWP form required any monthly deductions to be reflected separately from the fixed monthly salary. On a plain reading, the AWP was meant to convey that the fixed monthly salary was S$1,800 with no deductions. Sunil could not have been aware at the time the AWP was signed that his employer would in fact pay him less and intended to charge S$600 for expenses, which were going to be deducted from his fixed salary of S$1,800.

(b) *After the raid by MOM*, when Sunil was asked to sign a salary voucher by Dipti which reflected Sunil's salary as S$1,200, he questioned Dipti about the discrepancy between this amount and that declared in the AWP and was told that the sum of S$600 out of the total of S$1,800 had been deducted for expenses incurred or to be incurred in respect of food, accommodation and transport. Upon hearing Dipti's explanation, Sunil was upset but could do nothing about the situation he was in and so signed the voucher. In essence, Sunil really had no other option in the circumstances. This was especially likely to be the case given that in the confused state of affairs at the material time, Sunil would not have been in a position to disagree or dispute with Dipti.

(c) Sunil told the respondent that he had been misled or cheated by Dipti.

18 In addition, the DT found beyond reasonable doubt that the respondent was already acting for Dipti before he was engaged by Sunil, and that the respondent had not dealt with Sunil's allegation of deceit in the Representations

to the AGC because it would have adversely affected the interest of Dipti, whom he was already representing. As an experienced lawyer, the respondent would have realised that he was in a position of conflict of interest having regard to Sunil's allegation that Dipti had deceived him.

19 Significantly, the DT also found that the Representations had been prepared as "a carefully drafted letter to give the impression that Sunil had believed what he was told by Dipti. This is not the same as stating [that] he was misled or deceived." This omission was "material and would have given the AGC the wrong impression of the facts when they were considering Sunil's representation at the time".

20 In the circumstances, the DT was satisfied beyond reasonable doubt that the misconduct described under the first and third charges had been made out. The DT found that the misconduct amounted to a breach of the LPPCR rules stated in the charges, namely:

> (a) rr 25(*a*) and/or 25(*b*) under the first alternative charge for not advancing Sunil's interest unaffected by any interest of any other person; and
>
> (b) r 56 under the third alternative charge for knowingly misleading the court, or other person or body involved in or associated with court proceedings.

21 However, while the DT found that the respondent's conduct amounted to "improper conduct or practice as an advocate and solicitor" under s 83(2)(*b*)(i) of the LPA for breach of the two LPPCR rules, it was not satisfied that such misconduct was either "grossly improper conduct" under s 83(2)(*b*) or

"misconduct unbefitting an advocate and solicitor" under s 83(2)(*h*) of the LPA.

22 The DT therefore found the respondent guilty of the first alternative charge and third alternative charge under s 83(2)(*b*)(i) of the LPA.

23 As for the second charge, the DT found that the charge and its alternatives were not made out as they were premised on the respondent having acted for Sunil before taking on Dipti's case. The DT had found, however, that the respondent was already acting for Dipti at the time he was engaged by Sunil (see [18] above).

24 In relation to the appropriate sanction, the DT found that while no cause of sufficient gravity for disciplinary action existed, the respondent should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed pursuant to s 93(1)(*b*) of the LPA. It proposed that a sum of S$1,500 be imposed as the penalty for the first alternative charge and the third alternative charge, totalling S$3,000. The DT also ordered that the respondent pay the applicant's costs in the amount of S$3,000 plus disbursements.

25 Dissatisfied with the determination of the DT, the applicant filed the present application on 26 March 2018 pursuant to s 94(3)(*b*) of the LPA.

The parties' cases

26 At the outset, it should be emphasised that neither the applicant nor the respondent challenged the factual findings made by the DT. The applicant's challenge was against the DT's conclusion that even though the respondent's conduct that was the subject of the first and third charges amounted to improper

conduct, these did not amount to "grossly improper" conduct within the meaning of s 83(2)(*b*) of the LPA; nor did it amount to "misconduct unbefitting an advocate and solicitor" pursuant to s 83(2)(*h*). It did not challenge the DT's finding that the second charge was not made out.

27 The respondent likewise did not challenge the tribunal's findings on liability for the first and third alternative charges. He further submitted that the DT's findings that no sufficient cause of gravity existed in respect of the charges and the DT's views on the appropriate penalty, namely, a total fine of S$3,000 ought to be upheld by this court.

The applicant's case

28 The applicant submitted that the conduct of the respondent was grave, in that he had deliberately and knowingly suppressed the truth in the Representations. The applicant also emphasised that the consequence of the respondent's misconduct was extremely serious in that Sunil eventually was left in a state where he had to plead guilty to and was convicted of an offence, when, in fact, on the basis of his instructions, which the DT accepted were true, he would have had a legitimate defence, which the respondent had failed to present to the AGC. Irreparable prejudice had thus been suffered by Sunil and the respondent had failed in his duty to prevent a miscarriage of justice.

29 The applicant therefore submitted that the respondent's conduct was "grossly improper" under s 83(2)(*b*) of the LPA or alternatively, "misconduct unbefitting an advocate and solicitor" pursuant to s 83(2)(*h*), and due cause for sanction under s 83(1) of the LPA had been shown. It was further submitted that on the precedents, where a serious conflict of interest was involved, the general

trend was for a suspension for a period of between two and three years to be imposed.

30 Lastly, the applicant also drew attention to the respondent's disciplinary antecedents as well as pending complaints against him that had been referred to another DT. This, according to the applicant, showed the many brushes the respondent had had with professional misconduct, and which ought to be taken into account in the sanction imposed by this court.

The respondent's case

31 As already noted, the respondent did not contest the DT's findings of fact and liability under the charges. However, the respondent disagreed with the applicant that due cause had been shown for sanctions to be imposed under s 83(1) of the LPA. Even if due cause was shown, the respondent submitted that a penalty of S$3,000 for the first and third alternative charges was the appropriate sanction under s 83(1)(*c*) of the LPA.

32 The respondent acknowledged that his conduct was improper within the meaning of s 83(2)(*b*)(i) of the LPA, but maintained that it was not sufficiently grave as to amount to due cause under s 83(1) of the LPA. He further argued that the precedents in which due cause had been found for misconduct involving a conflict of interest were distinguishable from the present case. Those involved errant lawyers who had been indifferent to their client's interests when faced with a conflict of interest between two clients, or who had withheld information pertaining to the conflict of interest, or stood to gain personally from preferring one client's interest over another. The respondent in the present case, on the other hand, did not conceal from Sunil that he was acting for Dipti, and did not in fact have a long-standing relationship with Dipti.

33 Further, even though the Representations had not fully advanced the merits of Sunil's case, the respondent contended that his conduct "[fell] short of falsely stating" Sunil's position.

34 In addition, the respondent submitted that although Sunil had ultimately been convicted of a criminal offence, this did not stem from the respondent's misconduct. The respondent had ceased to act for Sunil in March 2016 and thereafter Sunil had been assisted in his case by an NGO. Sunil pleaded guilty in June 2016, after receiving such assistance from the NGO. It was also not clear that the charge would have been withdrawn or that Sunil would have been acquitted of the charge even if the respondent had communicated to the AGC, on the basis of Sunil's instructions, that he had been deceived by Dipti.

The issues in this application

35 In view of the DT's findings and the parties' cases as presented, the key issues for our determination were as follows:

(a) whether the respondent's misconduct was grossly improper within the meaning of s 83(2)(*b*) of the LPA or amounted to conduct unbefitting of an advocate and solicitor within the meaning of s 83(2)(*h*) of the LPA, and relatedly whether there was due cause for the respondent to be subject to sanction pursuant to s 83(1) of the LPA; and, if so,

(b) the appropriate sanction to be imposed on the respondent.

Grossly improper conduct, conduct unbefitting advocate and solicitor, and due cause for sanction

36 The relevant provisions of s 83 of the LPA read as follows:

> **Power to strike off roll, etc.**
>
> **83.**—(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown —
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> (*a*) to be struck off the roll;
>
> (*b*) to be suspended from practice for a period not exceeding 5 years;
>
> (*c*) to pay a penalty of not more than $100,000;
>
> (*d*) to be censured; or
>
> (*e*) to suffer the punishment referred to in paragraph (*c*) in addition to the punishment referred to in paragraph (*b*) or (*d*).
>
> (2) Subject to subsection (7), such due cause may be shown by proof that an advocate and solicitor —
>
> …
>
> (*b*) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any of the following as amounts to improper conduct or practice as an advocate and solicitor:
>
> (i) any usage or rule of conduct made by the Professional Conduct Council under section 71 or by the Council under the provisions of this Act;
>
> …
>
> (*h*) has been guilty of such misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession;

37 The principles relating to s 83(2)(*b*) of the LPA can be briefly stated. Whether a particular conduct is "grossly improper" within the meaning of s 83(2)(*b*) of the LPA depends on whether the conduct is dishonourable to the solicitor concerned as a man and dishonourable in his profession (*Re Marshall David; Law Society of Singapore v Marshall David Saul* [1971–1973] SLR(R) 554 at [23]; *Law Society of Singapore v Rasif David* [2008] 2 SLR(R) 955 at

[23]). It is well established that deceit is not necessary for a finding of grossly improper conduct. Indeed, s 83(2)(*b*) of the LPA makes it clear that the requirement is for either fraudulent *or* grossly improper conduct to be shown (*Re Han Ngiap Juan* [1993] 1 SLR(R) 135; *Re Lim Kiap Khee*; *Law Society of Singapore v Lim Kiap Khee* [2001] 2 SLR(R) 398 ("*Lim Kiap Khee*") at [19]). Whilst simple negligence or want of skill would not necessarily constitute grossly improper conduct, it has also been noted that there are degrees of negligence, and that the gravity of a negligent act must be viewed in the context of the matter, taking into account all the circumstances of the case (*Lim Kiap Khee* at [19]). Grossly improper conduct will also be found where a solicitor prefers his own interests to that of his client (*Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490 ("*Khushvinder Singh Chopra"*) at [49]; *Law Society of Singapore v Ng Chee Sing* [2000] 1 SLR(R) 466 ("*Ng Chee Sing*") at [36]).

38 As for s 83(2)(*h*) of the LPA, this provision is broader than s 83(2)(*b*). The standard of unbefitting conduct will be met if a solicitor is shown to have been guilty of such conduct as would render him unfit to remain as a member of an honourable profession (*Law Society of Singapore v Wong Sin Yee* [2018] 5 SLR 1261 ("*Wong Sin Yee*") at [24]). The relevant test is to consider whether reasonable people, on hearing what the solicitor had done, would have said without hesitation that as a solicitor he should not have done it (*Ng Chee Sing* at [41]; *Wong Sin Yee* at [24]).

39 Applying these principles, which are well-established and uncontroversial, we were amply satisfied that the DT erred in finding that the respondent's conduct was merely improper conduct under s 83(2)(*b*)(i), and not *grossly* improper conduct under s 83(2)(*b*) of the LPA. The DT also erred in finding that the respondent's conduct did not constitute misconduct unbefitting

an advocate and solicitor under s 83(2)(*h*). We were satisfied that the DT's findings of fact clearly showed that the respondent's conduct was both grossly improper and unbefitting an advocate and solicitor.

40 It was clear from the findings of the DT that the respondent's misconduct could not be classified as simple negligence or want of skill. The findings of the DT, as stated at [18] above, were that the respondent had not pursued Sunil's allegation of deceit *because* it would have affected the interests of Dipti, by whom the respondent had first been engaged. Of particular significance was the unchallenged finding that the respondent had "carefully drafted" the Representations in a way that mischaracterised Sunil's position so as not to undermine Dipti's position, the effect of which was to mislead the AGC, to the detriment of Sunil (see [19] above).

41 In other words, this was not a case where the respondent simply failed to advance Sunil's interest with the utmost diligence and zeal that one would expect from an honourable solicitor, but rather one where the respondent deliberately compromised Sunil's interests in order to prefer the interests of another client. This went against the very essence of the duty owed by an advocate and solicitor to a client, which duty was to do one's best to advance the client's interest and which, on no conceivable basis, could countenance harming a client. The respondent's conduct thus amounted to grossly improper conduct in the discharge of his professional duties as an advocate and solicitor within the meaning of s 83(2)(*b*) of the LPA and conduct unbefitting an advocate and solicitor under s 83(2)(*h*).

42 As for the third charge, the gravamen of which was that the respondent had misled the AGC in a matter that affected the exercise of the Attorney-General's constitutional discretion and control over the prosecution of pending

criminal proceedings, we were simply unable to see how this could possibly be said not to amount to either grossly improper conduct or conduct unbecoming of an advocate and solicitor.

43 A finding that a solicitor's conduct falls within one of the limbs under s 83(2) is a necessary but insufficient condition for a finding of due cause (*Law Society of Singapore v Jasmine Gowrimani d/o Daniel* [2010] 3 SLR 390 at [35]). In addition to finding that the solicitor's conduct falls within one or more of the limbs under s 83(2), the court must also be satisfied that on the totality of the facts and circumstances, the solicitor's conduct was sufficiently serious to warrant the imposition of sanctions under s 83(1) of the LPA (*Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369 ("*Udeh Kumar*") at [30]). In view of our observations at [40] to [42], we had no difficulty in finding that due cause had been made out in the present case given the severity of the misconduct.

The appropriate sanction

44 The question that remained pertained to the appropriate sanction to be imposed on the respondent.

General principles

45 The general objectives that guide the determination of appropriate sanctions for errant solicitors are well-established, and can be summarised as follows (*Udeh Kumar* at [86]; *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 ("*Ravi s/o Madasamy*") at [31]; *Law Society of Singapore v Chia Choon Yang* [2018] 5 SLR 1068 ("*Chia Choon Yang*") at [16]):

(a) to uphold public confidence in the administration of justice and in the integrity of the legal profession;

(b) to protect the public who are dependent on solicitors in the administration of justice;

(c) to deter similar offences being committed by the errant solicitor, or for that matter, by other like-minded solicitors; and

(d) to punish the errant solicitor for his misconduct.

46 Further, it is also trite that where these matters pull the court in different directions in any given case, it is the *interest of the public* that will be paramount and must therefore prevail (*Ravi s/o Madasamy* at [32]; *Chia Choon Yang* at [17]). Hence, the principal purpose of sanctions is not to punish the errant solicitor but to protect the public and uphold confidence in the integrity of the legal profession, and a particular sanction that might appear excessive when assessed solely from the perspective of the errant solicitor's culpability may nonetheless be warranted to protect the public and uphold confidence in the profession (*Ravi s/o Madasamy* at [33]; *Chia Choon Yang* at [17]). For this reason, personal mitigating factors carry less weight in disciplinary proceedings than in criminal proceedings; but factors which aggravate the errant solicitor's personal culpability, which would generally tend also to aggravate the adverse impact on the public's confidence in the administration of justice, would tend to be of particular relevance (*Ravi so/Madasamy* at [33]–[34]).

Misconduct involving a conflict of interests

47 At its heart, the respondent's misconduct was one involving a conflict of interests, specifically in preferring the interests of Dipti over the interests of

Sunil. Before we turn to the issue of the appropriate sanction to impose in the particular circumstances of this case, it is apposite to examine in greater detail the principles applicable in cases involving conflict of interests, with a view to establishing a coherent framework for determining the appropriate sanction for such cases.

Guiding principles

48 Misconduct arising from a conflict of interest is reprehensible because it entails a grievous violation of a lawyer's duty of unflinching and undivided loyalty to a client. This duty has correctly been described as a "foundational responsibility on which the integrity of the legal profession and the public interest in securing proper legal representation depend" (Jeffrey Pinsler, *Legal Professional (Professional Conduct) Rules 2015 – A Commentary* (Academy Publishing, 2016) at para 20.004). We would also reiterate the High Court's observations in *Law Society of Singapore v Tan Phuay Khiang* [2007] 3 SLR(R) 477 (at [62]) on the fiduciary nature of the solicitor-client relationship:

> It is established law that an advocate and solicitor owes a duty of unflinching loyalty to his client. This is encapsulated, *inter alia*, in rr 2(2)(*c*) and 25(*b*) of the Rules, which require a solicitor to advance his client's interests unaffected by the interests of any other person during the course of a retainer. This obligation is derived from the fiduciary nature of the solicitor-client relationship, which requires a solicitor to place his client's interests above those of his own as well as those of third parties. In fact, the obligations of a fiduciary go beyond the avoidance of actual conflicts of interest, and extend to proscribe perceived or ostensible conflicts as well. While onerous in its requirements, the duty of unflinching loyalty is an essential cornerstone of the solicitor-client relationship as it ensures that a client may confidently expect to receive impartial and frank advice and in turn repose complete trust in a solicitor to safeguard his interests.

In view of the trust and confidence that is reposed by a lay client in his solicitor, public confidence in the legal profession can only be upheld by the imposition

of appropriate sanctions on misconduct that tends to compromise the interests of a client.

49 In our judgment, in all disciplinary proceedings involving a conflict of interest, the sanction to be imposed should reflect both the culpability of the errant solicitor and the harm caused by his misconduct. As we observed in *Law Society of Singapore v Uthayasurian Sidambaram* [2009] 4 SLR(R) 674 ("*Uthayasurian Sidambaram*") (at [74]–[75]), the appropriate sanction varies depending on the factual matrix of the case; all things considered,

> … the sanction must be *commensurate* with the degree of culpability of the solicitor, the breaches committed and the extent and effect to which public confidence in the administration of justice has been shaken (and consequently, must be restored through punishing the errant ways of the solicitor) … [emphasis in original]

50 A similar approach of considering the harm caused by and the culpability of the errant solicitor when determining the appropriate sanction for conflict of interest misconduct has been adopted in other jurisdictions including the UK (see for instance, UK Solicitors Disciplinary Tribunal, *Guidance Note on Sanctions*, 6th Ed, 2018 ("UK Solicitors Disciplinary Tribunal Guidance Note") at pp 9–10). The UK Solicitors Disciplinary Tribunal Guidance Note lists (at paras 18–19) some of the factors that go towards the culpability of a solicitor and the harm of the misconduct. We consider that these are relevant considerations and we analyse them in the following paragraphs.

(1) Culpability

51 The factors listed in the UK Solicitors Disciplinary Tribunal Guidance Note, which we agree are relevant in examining the solicitor's level of culpability, are:

(a) the solicitor's motivation for the misconduct;

(b) whether the misconduct arose from actions which were planned or spontaneous;

(c) the extent to which the solicitor acted in breach of a position of trust;

(d) the extent to which the solicitor had direct control of or responsibility for the circumstances giving rise to the misconduct;

(e) the solicitor's level of experience; and

(f) whether the solicitor deliberately misled the regulator.

52 That list is not meant to be an exhaustive enumeration of relevant factors, but it provides a guideline of pertinent considerations in assessing culpability. We would add that in connection with factor (c) (see [51(c)] above), it would also be relevant to have regard to the particular characteristics of the client, and specifically whether the client reposed a greater degree of trust and confidence in the solicitor due to his particular vulnerabilities, such that any resulting abuse of that trust was all the more reprehensible. The level of sophistication of the client affects the standard of care that a solicitor should be held to, and a solicitor's indifference to the interests of an unsophisticated client would ordinarily aggravate his culpability (see *Law Society of Singapore v Leong Pek Gan* [2016] 5 SLR 1131 at [17]). A similar sentiment was echoed by this court in *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308 in its consideration of whether or not a retainer had arisen between the solicitor and the beneficiaries of an estate (at [68]):

> While it may not be of critical relevance in analysing whether the respondent was in an implied retainership with the

> beneficiaries, we do note that the beneficiaries were generally unschooled in the law and therefore relied upon the respondent for legal advice. More than that, it is clear to us that they trusted the respondent. A more general – and extremely significant – point arises from this. *It is that the public rely upon lawyers for wise and effective counsel. This is especially the case when clients are particularly vulnerable.* This could be due to a number or variety of reasons – or, indeed, a combination thereof. These include impecuniousness, a lack of schooling and/or language and (invariably, with the exception of legally-trained persons) a lack of legal knowledge. In this last-mentioned regard, it is not merely an absence of legal knowledge. To many laypersons (even highly educated ones), the law constitutes a morass of technical – even arcane – rules. Many even fear the law when the precise opposite should be the case. The law is meant to achieve justice and fairness for all. It is the objective bulwark against tyranny and oppression, anarchy and disorder. It is supposed to facilitate transactions of all kinds in a reasoned and accessible manner. Laypersons ought therefore to embrace the law, or at least not be uncomfortable with seeking legal advice or redress. Even as there have been laudatory moves in a variety of forms towards making the law more accessible to the layperson, we must guard against anything which retards or hinders this process zealously. … [emphasis added]

53 The solicitor's culpability would be aggravated where there has been systematic manipulation or abuse of the trust of a vulnerable client. Thus, in *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 ("*Wan Hui Hong James*"), it was clearly relevant that the solicitor had manipulated a client who had a history of mental illness, in order to "enrich himself financially at her expense by taking advantage of her mental frailty and lack of sophistication" (at [82]). Contrariwise, where a client is savvy and sophisticated, this would not excuse the solicitor's misconduct but it might be a relevant factor indicating that on the facts, there was a relatively lower extent of abuse of trust (see for instance, *Uthayasurian Sidambaram* at [79]).

54 It should also be noted that, in relation to factor (e) (see [51(e)] above), whereas a solicitor's abundant experience might increase his culpability to the

extent that it reveals an inexcusable lack of competence in failing to take necessary steps to disclose or remedy a conflict of interest, the converse is not necessarily true. It was observed by Yong Pung How CJ in *Ng Chee Sing* (at [56]) that a solicitor "should not be allowed to rely upon his inexperience as a mitigating factor. All advocates and solicitors, regardless of the extent of their experience, must behave honourably".

(2) Harm

55 The factor of harm is rather more straightforward and self-explanatory. In determining the level of harm caused by the misconduct, it would be relevant to assess the impact of the solicitor's misconduct upon (a) those directly or indirectly affected by the misconduct; (b) the public; and (c) the reputation of the legal profession. Greater harm to the reputation of the legal profession may be expected to follow where the extent of the solicitor's departure from the integrity, probity and trustworthiness expected of a solicitor is greater (UK Solicitors Disciplinary Tribunal Guidance Note at para 19).

56 In the assessment of the harm caused to those directly or indirectly affected by the misconduct, the focus would naturally be on the harm caused to the solicitor's client. In this regard, the fact that a client has suffered considerable pecuniary losses for which he has not been compensated would be an obvious aggravating factor. As we discuss at [77] below, where the client's life or liberty was jeopardised due to the imposition of a criminal sanction, this would be a further instance of heightened harm.

57 While the harm-culpability framework would apply to all conflict of interest cases, the need for calibration of the appropriate sanction is especially acute in cases where it is clear that a striking off order is not necessary. This is

where the distinction between the different categories of conflict of interests comes to the fore, to which we now turn.

Categories of conflict of interests

58 A useful starting point is the Legal Profession (Professional Conduct) Rules 2015 (GN No S 706/2015), which differentiates between conflict of interests between multiple clients (rr 20–21) and conflict of interests between a client and the solicitor himself or his law practice (r 22). This distinction is grounded in common sense and principle. Broadly speaking, the relevance of this distinction can be observed in past disciplinary cases involving a conflict of interest both before and after the 2015 amendments to the LPPCR came into effect, which introduced more distinct categories of conflict of interests by way of rr 20–22. Such cases generally fell within three categories:

(a) where the errant solicitor preferred his own interests over that of a client ("Category 1");

(b) where the errant solicitor preferred the interests of one client over the other ("Category 2A"); and

(c) where the errant solicitor failed to advise a client of a potential conflict of interest arising out of concurrent representation ("Category 2B").

59 While there are differences between the misconduct in each of these categories, it should be noted that in reality the categories may at times overlap with each other and to that extent may also be conceived as operating on a spectrum. The common thread underlying the cases falling within each category

is nonetheless the same – they involve a solicitor who has acted in breach of the duty of unflinching loyalty that is owed to his client (see [48]) above).

(1) Category 1 cases – conflict of interest between client and solicitor

60 In cases involving a solicitor who has preferred his own interests over that of the client, the misconduct is presumptively more serious and deserving of a more severe sanction than the other categories of conflict of interests. This is so because such misconduct will often entail an abuse of the trust with which the solicitor is cloaked by virtue of the solicitor-client relationship, and this will be to the detriment of the client. Presumptively, therefore, such cases fall on the high end of the harm-culpability spectrum.

61 As alluded to above, a solicitor assumes a position of trust and confidence in a solicitor-client relationship. Thus, it was observed in *Law Society of New South Wales v Moulton* [1981] 2 NSWLR 736 (at 739F) that:

> … Commonly to a great extent, *always to some extent, the solicitor is in a position of special influence in respect of his client.* Clients must be able to rely upon the professional advice of their solicitor and to place him in the fullest confidence that he will protect them and handle their affairs in their interests. [emphasis added]

62 In a similar vein, we observed in *Wan Hui Hong James* (at [8]) that the nature of the solicitor-client relationship is

> … one in which the advocate and solicitor undertakes to act on behalf of his client and to take up his client's cause as his own, which then gives rise to a duty to act in the client's interests. In this relationship *the advocate and solicitor almost invariably assumes a position of ascendancy and influence over his client who then relies on and trusts him.* [emphasis added]

63 Given the solicitor's ascendancy over the client in a solicitor-client relationship, the solicitor's familiarity with the law and with the client's private

affairs, a solicitor who prefers his own interests *inevitably* abuses the trust and confidence that has been reposed in him. Without seeking to exhaustively delineate the circumstances in which such abuse might occur, we note that it appears to arise most frequently in two scenarios – first, where a solicitor enters into a transaction with his client on terms that may be more favourable to the solicitor's own interests; second, where a solicitor receives a substantial gift from the client. In both categories, when the client has not received independent legal advice, it would be impossible, save possibly in exceptional circumstances, to avoid the conclusion that the client had operated under the undue influence of the solicitor in entering into the transaction or making the substantial gift. This is by virtue of the very nature of the solicitor-client relationship, and can be illustrated by reference to two cases.

64 In *Khushvinder Singh Chopra*, the solicitor had earlier acted for the vendors in an unsuccessful re-mortgage and aborted sale of their property. He then obtained from them, after lengthy negotiations, an option to purchase the same property on terms that were less favourable to the vendors than would have been the case under the aborted sale. In particular, the option to purchase allowed the solicitor to purchase the property at a lower price and lower option fee than the aborted sale, and omitted certain stipulations as to when outstanding sums were to be paid to the vendors. When the solicitor later learnt that a complaint had been filed against him by the vendors, he persuaded them to sign a statutory declaration upholding the option granted to himself and purporting to absolve him of all allegations of fraud or impropriety. In setting out general principles applicable where the solicitor and his client are involved in the same transaction, the court endorsed (at [34]) the following *dicta* from *Law Society of New South Wales v Harvey* [1976] 2 NSWLR 154:

> A conflict of interest which is avoidable, and ought to be avoided, is that which arises from a deliberate proposal of the solicitor that his client deal with him. If, for example, a client seeks aid or advice from a solicitor concerning lending or borrowing, or the acquisition or disposal or dealing with assets, *the solicitor will disregard his primary duty as a solicitor referred to so trenchantly by Lord Westbury, if he uses the occasion to become the party who deals with his client.* It can make no difference if he is not a party directly, but the transaction is with a company in which he has an interest … *In varying degrees the trust of and reliance upon the solicitor to act fairly and independently arising from the initial preparedness of the solicitor and client to trade may remain as the reason why the client ultimately deals with the solicitor and not somebody else. It is difficult to be sure it does not. In the absence of very special circumstances, a solicitor who promotes himself as the dealer with his client misuses his position* … The price of being a member of an honourable profession, whose duty to his client ought not to be prejudiced in any degree, is that a solicitor is denied the freedom to take the benefit of any opportunity to deal with persons whom he has accepted as clients. [emphasis added]

65 The same reasoning is equally applicable in cases where a client makes a substantial gift to the solicitor. In *Wan Hui Hong James*, the solicitor in question procured a client to grant a power of attorney in his favour, to name the solicitor as the sole trustee and beneficiary of all her assets, and further to sign a letter allowing the solicitor to keep a substantial portion of the sale proceeds of the client's property. This court explained the rationale for r 46 of the LPPCR, which prohibited a solicitor from acting for a client who intends to make a significant gift to the solicitor, by referring to the nature of the solicitor-client relationship. Specifically, the court observed (at [8]) that given the solicitor's position of ascendancy and influence over the client, the solicitor is subject to fiduciary obligations: (a) not to put himself in a position where his personal interests conflict with his duty to act in the interests of his client; and (b) not to exercise undue influence over the client. Where the client makes a gift to the solicitor, even though the parties' interests appear to be aligned, the

solicitor is "deemed to be in a position of conflict because of the presumption that his client is making the gift under his undue influence".

66 The solicitors in *Khushvinder Singh Chopra* and *Wan Hui Hong James* were both struck off. In *Khushvinder Singh Chopra,* the court noted (at [67]) that given that the solicitor there "single-mindedly pursued and preferred his own interest over those of his clients", and behaved in a "cunning and deceitful" way, this revealed a very serious defect in his character which rendered him unfit to remain on the roll. In the case of *Wan Hui Hong James,* we were satisfied that the solicitor had acted dishonestly and manipulated the client in order to prefer his own interests.

67 What these precedents establish is that where a solicitor personally transacts with the client to his own advantage, receives a substantial gift from the client, or in any other manner places himself in a situation where his personal interest conflicts with that of the client, the breach of duty will be treated severely. This is because such cases will often if not always involve an abuse of trust inimical to the solicitor's foundational duty of undivided loyalty to a client and correspondingly also reveal a serious character defect. Thus, striking off would be the presumptive penalty, unless truly exceptional circumstances exist which render it disproportionate.

68 Whether there are exceptional circumstances warranting a less severe penalty would depend on the circumstances of each case, and in particular an assessment of the harm and culpability of the solicitor under the charge. One example of a Category 1 case in which a striking off was not imposed is *Law Society of Singapore v Devadas Naidu* [2001] 1 SLR(R) 65. There, a solicitor who obtained a personal loan of S$28,000 from a client and failed to repay the loan timeously was sanctioned with a term of suspension of two years rather

than a striking off. In distinguishing the case from other cases where solicitors had been struck off for borrowing money from clients, the court took into account the findings of the Disciplinary Committee that the complainant and solicitor had been acquainted socially for some time prior to the solicitor-client relationship and borrowing transaction, and that the complainant was a savvy businessman who extended the loan out of social pressure rather than any fear that the solicitor would otherwise jeopardise his divorce matter.

(2) Category 2 cases – conflict of interest between multiple clients

69 In Category 2 cases, the mischief lies not in the solicitor's abuse of position to prefer his own interests, but rather in the fact that the solicitor, by virtue of his concurrent representation of multiple clients with divergent interests on the same matter, has made it impossible or impracticable to fully advance the interests of each client in a manner that would be expected of an advocate and solicitor. The solicitor is then inevitably placed in a position where he is hampered in fulfilling his paramount duty to act in the best interests of each client.

70 As between Category 2A and Category 2B, misconduct belonging in the former category, where a solicitor acts for multiple parties with diverging interests and in fact prefers the interest of one party over another, should typically attract a higher sanction than misconduct in the latter category. In the latter category, the solicitor's concurrent representation of clients with conflicting interests would have given rise to a *potential* conflict of interests but the interests of either client would not *in fact* have been subordinated to those of the other.

71 Category 2A cases presumptively involve both greater harm and culpability than Category 2B cases by virtue of the actual subordination and undermining of at least one client's interests. In Category 2B by contrast, the mischief lies in an omission, in particular, the solicitor's failure to exercise requisite caution and diligence when he is put in a position of conflict of interest from his representation of multiple clients. In other words, the mischief of the errant solicitor's misconduct in Category 2B cases lies in a lack of conscientiousness in responding to the conflict of interest by discharging himself or by advising the affected client(s) appropriately of the conflict and of the consequences flowing therefrom. In general, Category 2B misconduct will be a subset of Category 2A misconduct though this need not always be the case.

72 In Category 2A cases, we consider that the appropriate sanction will usually be a term of suspension and the starting point would usually be a term of around two years. We would add that a longer term of suspension ought to be imposed on solicitors who, in acting for multiple clients, prefer the interests of clients whose interests are more closely aligned with those of the solicitor himself, such as where the preferred client is a relative. For example, in *Law Society of Singapore v Subbiah Pillai* [2004] 2 SLR(R) 447 ("*Subbiah Pillai*"), the solicitor acted for the complainants as well as his own sister in a conveyancing transaction without advising the complainants of the conflict of interest. The eventual sale and purchase agreement contained terms unfavourable to the complainants. In ordering a suspension term of three years, the court observed (at [27]) that the solicitor "not only placed himself in a position where he had conflicting duties to both parties in the transaction, but also in a situation where his loyalties must surely have been inclined towards one party".

73 As for Category 2B, the misconduct would often fall at the lower end of the harm-culpability spectrum. That said, a term of suspension may nonetheless be appropriate where there is a larger public interest that is harmed by virtue of the misconduct, notwithstanding the lack of harm to the complainant client. As already mentioned at [55] above, the relevance of harm caused by the solicitor to the court's determination of the appropriate sanction is not limited to the harm caused to the complainant client alone, but also includes an assessment of the harm caused to the public and the reputation of the legal profession. In *Law Society of Singapore v Seah Li Ming Edwin and another* [2007] 3 SLR(R) 401, the solicitors had acted for one client in relation to a road traffic accident. Thereafter, they acted for a second client against the first client in the same accident, before discharging themselves from acting for the first client shortly thereafter. The solicitors, who faced a separate charge for allowing an unauthorised person to undertake legal work in the premises of the firm, were sanctioned with a term of suspension of 18 months. Even though there was no evidence that the first client's interests were actually harmed, the court rejected arguments that the appropriate remedy was a mere censure, having regard to considerations of public interest (at [24]):

> Whilst it is true that the respondents' misconduct did not in fact result in any substantive damage or loss and did not relate to a situation as egregious as that found in other cases (for example, *Law Society of Singapore v Subbiah Pillai* [2004] 2 SLR(R) 447 … we are nevertheless mindful of the *rationale* underlying the prohibition of such misconduct … The first charge involved a breach of the rule proscribing a conflict of interests. The underlying rationale for such a rule is to ensure that the *trust* between lawyer and client is not compromised and that, on the contrary, the confidence of the client is in fact maintained. There is, indeed, a larger public interest that underscores such a rule. The legitimacy of the law in general and the confidence of clients in their lawyers in particular are of fundamental importance and will be undermined if such a rule is not observed. Indeed, the fact that a client may feel that he or she is let down or betrayed by his or her lawyer can be

> very damaging to the standing of the profession as a whole. [emphasis in original]

74 We would also add that although Category 2 cases would presumptively fall at the lower end of the harm-culpability spectrum as compared to Category 1 cases, the court may in appropriate cases impose a harsher sentence. It will all depend on the circumstances. In *Legal Profession Complaints Committee v Chin* [2012] WASC 467 for example, the solicitor had acted for both the vendor and his son as purchaser of a business, and had also financed his son in the purchase of the business. Separately, the solicitor also represented multiple clients in drug-related offences when the interests of the clients were in conflict. In ordering that the solicitor be struck off, the Supreme Court of Western Australia took into account the State Administrative Tribunal's findings that the solicitor demonstrated "a complete lack of understanding as to what a conflict of interest is and a lack of knowledge or appreciation as to how to assess conflict of interest", as well as a "palpable lack of insight into his shortcomings as a practitioner", which led to the inevitable conclusion that he was not a fit and proper person to remain a legal practitioner. Thus, as alluded to at [67] above, where the misconduct is of such severity as to reveal a defect in character that renders the respondent unfit to remain an advocate and solicitor, the appropriate sanction should be an order striking off the respondent.

The appropriate sanction in the present case

75 It is clear that this is a case of Category 2A misconduct, in that the respondent had, in his concurrent representation of Sunil and Dipti, actually preferred the interests of Dipti over Sunil. The starting point in terms of the appropriate sanction is thus one of a term of suspension, with the precise term to be calibrated having regard to the culpability of the respondent and the harm caused by his misconduct.

76 The circumstances of the wrongdoing reflect a relatively high degree of culpability on the respondent's part for the following reasons. First, as alluded to at [18] above, the DT had found that the respondent's continuing concurrent representation of two clients with diverging interests was not a matter of mere inadvertence or negligence, and that he did know or at least ought to have known that there was a conflict of interests. Second, the DT had found that the respondent had *deliberately* crafted the Representations as he did in order to prefer the interests of Dipti over that of Sunil (see [19] above). This was reprehensible in its own right because it entailed the deliberate subordination of the interests of one client to those of another. Further, the Representations was a deliberate misrepresentation of Sunil's defence to the AGC. The third alternative charge itself – which the DT found to be established – stated that the respondent had "knowingly deceived or mislead [*sic*]" the AGC. This essentially prevented the Attorney-General from properly exercising his constitutional discretion and authority in directing public prosecutions.

77 The circumstances of this case also revealed a relatively high level of harm that was caused to Sunil as a direct result of the respondent's misconduct. The present case concerned criminal proceedings, where the stakes are higher, and any misconduct on the solicitor's part could have severe consequences on the client's livelihood or even liberty. In the instant case, Sunil was ultimately convicted of a criminal offence, and was ordered to pay what would have been, to him, a very hefty fine. But over and above this pecuniary loss, the criminal conviction necessarily carried with it an additional stigma, and Sunil was also repatriated to India as a result.

78 On its face, Sunil's instructions to the respondent had communicated what could have afforded him a legitimate defence to the charge. Whereas the respondent has sought to distance his misconduct from Sunil's conviction by

saying that Sunil's defence might not have led to a withdrawal of the charge or an acquittal, it is neither productive nor necessary for us to speculate on what might have happened had the respondent acted in Sunil's best interests. Suffice to say that the DT found that Sunil's evidence was truthful and that at the time he signed the AWP, he believed it reflected his salary. This was not presented to the AGC and had it been, it is reasonable to conclude that it would and certainly could have led to a favourable outcome for Sunil. It follows that irreparable harm was caused to Sunil, and that the respondent's misconduct had a direct bearing on this outcome. The sanction to be imposed thus ought to reflect this.

79 We also note that the respondent was a solicitor of 21 years' standing and that this was not the first time disciplinary proceedings had been brought against him. The respondent's two antecedents pertained to his conduct on separate occasions where he: (a) failed to discharge his undertaking to the court within a reasonable time; and (b) in a civil matter, failed to move things forward and made errors and omissions in his submissions. While the misconduct in the respondent's antecedents were of a different nature from the misconduct in the present case, they did show that the respondent has had previous brushes with disciplinary proceedings and he ought to have had a heightened awareness of his duties and responsibilities as a solicitor, which he, in committing the present serious breaches, had failed once again to display. However, we did not place significant weight on this factor, not least because the relevant matters had not yet been concluded at the time of the respondent's actions, which are the subject of these proceedings.

80 In the circumstances, and based on the unchallenged findings of the DT that were before us, we were satisfied that a term of suspension of three years was the appropriate sanction.

Conclusion

81 For the foregoing reasons, we found that the respondent's conduct was grossly improper under s 83(2)(*b*) of the LPA and was also misconduct unbefitting an advocate and solicitor under s 83(2)(*h*) of the LPA. There was due cause for sanction under s 83(1) of the LPA, and the appropriate sanction was a term of suspension of three years, which term is to commence on 1 April 2019. We also ordered costs in the aggregate sum of S$10,000, inclusive of disbursements, to be paid by the respondent to the applicant.

Sundaresh Menon Chief Justice	Tay Yong Kwang Judge of Appeal	Belinda Ang Saw Ean Judge

Mahendra Prasad Rai (Cooma & Rai) for the applicant;
Chenthil Kumar Kumarasingam and Goh Peizhi Adeline (Oon & Bazul LLP) for the respondent.