IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 174

Originating Summons No 1178 of 2019

Between

Law Society of Singapore

… *Applicant*

And

Govindan Balan Nair

… *Respondent*

GROUNDS OF DECISION

[Legal Profession] — [Disciplinary proceedings] — [Conflict of interest] — [Adverse interest]
[Legal Profession] — [Professional conduct] — [Breach]

Law Society of Singapore
v
Govindan Balan Nair

[2020] SGHC 174

High Court — Originating Summons No 1178 of 2019
Valerie Thean J
8, 27 July 2020

19 August 2020

Valerie Thean J:

1 Where a legal practitioner is aware that he has been negligent in his duty toward his client in allowing default judgment to be entered against his client, does he have a duty, when queried by his client and if the default judgment is irregular, to inform his client of the circumstances of his omission, prior to seeking his client's consent for the next step in the future conduct of the matter? The Disciplinary Tribunal ("DT") answered this question in the negative in DT/08/2018. Two charges, brought by the Law Society of Singapore ("Law Society") against Mr Govindan Balan Nair ("the respondent") premised on r 22(3)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("LPPR"), formed its context. The Law Society, being of the opposite view, applied under s 97 of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") to review the DT's decision. Rule 22 of the LPPR, which

formed the focus of the application, concerns situations of conflict or potential conflict of interests between the interests of a legal practitioner and his client.

Background

2 The complaint against the respondent had been lodged with the Law Society by the sole director of MSK Building Services Pte Ltd ("MSK") ("the complainant"). The facts, as found by the DT, upon which the conflict of interest was said to have arisen, are briefly these. The respondent had acted for MSK in a dispute with JKC Consultant ("JKC"), MSK's sub-contractor on a building project. JKC had served a writ and statement of claim on MSK on or around 2 August 2017 to claim the value of electrical works they had performed. The complainant had initially approached Mr Gurdaib Singh. The two men agreed that Mr Singh would find another lawyer to deal with the matter. Mr Singh then approached the respondent who agreed to do so, and the respondent filed a memorandum of appearance on behalf of MSK on 10 August 2017. By this point, the retainer relationship would have commenced between the respondent and MSK.

3 The respondent met his client for the first time on the day MSK's defence was due. This was on 24 August 2017. At the meeting, he failed to appraise his client of the deadline although he was himself aware of it.[1] The respondent also advised the complainant that MSK had a good defence and counterclaim. Terms of engagement and a warrant to act were signed on this occasion. The respondent, who had been provided the necessary documents,

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[1] ROP Vol III pp 196 – 197 – NE 2 May 2019 p 155 line 22 – p 156 line 10, ROP Vol II p 11 – Mr Srivathsan's Affidavit dated 26th April 2019 at [23]

was told to file the Defence. On his part, the respondent asked the complainant to check if he had other documents for the counterclaim. On 25 August 2017, the complainant sent an email stating that he could not find the documents for the counterclaim, and gave instructions for the Defence to be filed without the counterclaim. The Defence was not filed, and enquiries from the client went unattended.[2]

4 Default judgment was entered against MSK on 31 August 2017.[3] Although notice of the default judgment was served on the respondent on 31 August 2017,[4] he was unaware of it. When the complainant went to the respondent's office unannounced on 5 September 2017 to check on the matter, the complainant was assured that a Defence would be filed in due course. Concerned that the respondent had not responded to any of his reminders, the complainant went to the State Courts on 18 September 2017 to check on the status of the suit.[5] There, he discovered that default judgment had been entered against MSK.[6] He confronted the respondent at his office on the same day, seeking an explanation for these developments. On this occasion, the respondent sought to persuade the complainant to file an affidavit stating that the Defence was filed late due to MSK's delay in providing details to its lawyers. The complainant refused because he had given instructions timeously and had specifically instructed the respondent to file the Defence earlier. Meeting the

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2 ROP Vol I p 342 – 25 August 2017 Email "Re: Document for your reference", ROP Vol II p 12 – SRIV 26 APR at [26]

3 ROP Vol I p 448 – O 19 Default Judgment

4 ROP Vol I p 450 – Certificate of Service

5 ROP Vol II p 13 - SRIV 26 APR at [29]

6 Mr Govindan's Affidavit dated 14 November 2019p 4 at [18]

complainant again on 21 September 2017, the respondent again did not explain how default judgment had been entered. This was despite the complainant's repeated request for an explanation of the same. Instead, pointing to the purported procedural defects in the default judgment, the respondent obtained the complainant's signed consent on a letter to JKC's solicitors. The letter communicated that the respondent had instructions to set aside the default judgment (on the basis of those procedural defects) and sought JKC's indulgence for MSK to file its Defence and Counterclaim in the suit.[7]

5 By a letter of 4 October 2017, the respondent requested instructions from the complainant to continue the suit.[8] The complainant replied on the same day asking for an explanation in respect of the default judgment.[9] Again when the respondent replied, he did not answer the questions but informed that he had drafted a simple affidavit to set aside the default judgment and that the Defence and Counterclaim were ready to be filed subject to a few clarifications.[10] The complainant did not respond to this letter: instead, he lodged a complaint with the Law Society against the respondent on 16 October 2017.[11] Eventually the respondent informed the complainant on 24 October 2017 that he would discharge himself[12] and rendered his invoice for work done in the suit.[13]

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7 Mr Govindan's Affidavit dated 14 November 2019, p 37

8 ROP Vol I p 359

9 ROP Vol I p 360

10 ROP Vol I p 364

11 ROP Vol I p 365

12 ROP Vol I p 375

13 ROP Vol I p 376

6 The primary charge against the respondent read as follows:

> **1st CHARGE**
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> You, GOVINDAN BALAN NAIR … are charged that whilst acting for MSK Building Services Pte Ltd in respect of DC Suit No. 1180 of 2017, you:
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> (a) failed to withdraw in a timeous manner from representing MSK Building Services Pte Ltd, when you had an adverse interest to that of your client, upon discovering that your client had a potential claim against you by reason of your failure to file your client's defence in DC Suit No. 1180 of 2017 and occasioning in default judgment being entered against them in the Suit, and you had an interest not to admit to any negligence on your part with respect to the non-filing of your client's defence; and
>
> (b) continued to act for your client, MSK Building Services Pte Ltd, when you had an adverse interest to that of your client, in the circumstances as aforesaid, without first:
>
> (i) making a full and frank disclosure of the adverse interest to the client;
>
> (ii) advising the client to obtain independent legal advice or ensuring that the client is not under an impression that you were protecting the client's interests; or
>
> (iii) obtaining from MSK Building Services Pte Ltd its informed consent in writing to continue acting for them consequently,
>
> and you are thereby guilty of a breach of Rule 22(3)(*a*) of the Legal Profession (Professional Conduct) Rules 2015 amounting to improper conduct or practice as an advocate and solicitor within the meaning of Section 83(2)(*b*)(i) of the Legal Profession Act (Chapter 161).[14]

The alternative charge was worded in exactly the same manner, save that it alleged that the same actions amounted to "misconduct unbefitting an advocate

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14 ROP Vol I p 10 – Statement of Case; 1st Charge

and solicitor as an officer of the Supreme Court of Singapore or as a member of an honourable profession within the meaning of Section 83(2)(*h*) of the Legal Profession Act (Chapter 161)".[15]

7 The gravamen of Law Society's charges against the respondent was that upon finding out about the default judgment, the respondent did not follow the procedure set out in r 22(3)(*a*) of the LPPR. Instead, the respondent evaded the complainant's questions as to why judgment in default had been entered and simply assured the complainant that the default judgment could be set aside.[16] He continued to act for MSK, and on 21 September 2017, procured written consent from the complainant to send a letter to JKC's solicitors to inform that he had instructions to set aside the default judgment and was seeking JKC's indulgence for MSK to file its Defence and Counterclaim in the suit.[17] Before the DT, the respondent relied on this written consent to raise a defence of waiver.[18]

8 The DT rejected the respondent's defence on waiver[19] but found that no adverse interest arose between MSK and the respondent by virtue only of the default judgment that had been obtained by JKC against MSK.[20] There was therefore no contravention of r 22 of the LPPR and both the charge and the alternative charge were not made out. The DT, however, did indicate that it was

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15 ROP Vol I p 11 – Statement of Case; 1st Alternative Charge

16 ROP Vol II p 14 - SRIV 26 APR p 11 at [31a]

17 Mr Govindan's Affidavit dated 14 November 2019 at p 37

18 ROP Vol I p 596 – Respondent's Written Submissions DT 8/2018 p 23 at [40]

19 ROP Vol IV p 14 – Report of the Disciplinary Tribunal at [24]

20 ROP Vol IV p 15 – Report of the Disciplinary Tribunal at [26]

prepared to find that there had been a negligent omission on the respondent's part.[21] It then administered a reprimand on the respondent for conduct which had fallen short of the standards of professionalism expected of an advocate and solicitor.[22] The reprimand, however, was not based on or made in reference to any of the charges raised. The DT also ordered that the respondent pay the Law Society's costs of $8,000.

9 The Law Society sought to invoke both the appellate and supervisory jurisdiction of the High Court under s 97 of the LPA. On the charges brought, the Law Society asked that I substitute the decision of the DT with a conviction on one of the charges premised on r 22(3) of the LPPR, and to substitute the DT's recommendation to the Council of a reprimand for that of a fine under $20,000. In the alternative, the Law Society asked that if I disagreed with them on the substantive merits regarding r 22(3) of the LPPR, to set aside that part of the decision ordering a reprimand to the solicitor and to remit the matter to the DT on an amended charge premised on r 5 of the LPPR regarding the negligent omission found by the DT.[23]

10 I deal first with the procedural issue of the reprimand, before turning to the substantive merits of the DT's decision.

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21 ROP Vol IV p 15 – Report of the Disciplinary Tribunal at [27]

22 ROP Vol IV p 17 – Report of the Disciplinary Tribunal at [35]

23 Law Society's Submissions dated 19 February 2020 at [4a]

Procedural impropriety

11 The DT's reprimand was not based on either of the two charges for which the respondent was investigated. This constituted a breach of natural justice. The DT ought to have requested the Council of the Law Society to prefer amended or additional charges, and thereafter ascertained if the respondent or the Law Society required any relevant evidence to be brought before it, before coming to a conclusion as to the penalty to be meted out. The failure to do so was a procedural defect.

12 For completeness, while the DT appears to have reprimanded the respondent at paragraph 35 of its determination, I should mention that the scheme of the LPA envisages that it is for the Council of the Law Society to administer any fine or reprimand under s 94(3) of the LPA or order remedial measures under s 94(3A) of the LPA. The DT's role, as a fact-finding tribunal, is to determine whether the practitioner should be reprimanded: see s 93(1)(*b*)(ii) of the LPA.

Analysis of DT's decision on r 22(3) of the LPPR

13 Turning to the substantive issue under review, this was whether the present situation involved a breach of r 5 or r 22 of the LPPR. The DT's decision assumed a breach of r 5 and not r 22. If I agreed with the DT on their interpretation of the two rules, the proper course would have been to set aside the reprimand, and remit the matter to the DT for the charge to be amended and due process to thereafter follow. I was of the view, however, that r 22 applied, for reasons explained below.

Scope of r 22(3)

14 Rule 22(3) of the LPPR reads as follows:

> **Conflict, or potential conflict, between interests of client and interests of legal practitioner or law practice, in general**
>
> **22.**—
>
> **…**
>
> (3) Where a legal practitioner, any immediate family member of the legal practitioner, or the law practice in which the legal practitioner practises has an interest in any matter entrusted to the legal practitioner by a client of the legal practitioner —
>
> > (*a*) in any case where the interest is adverse to the client's interests, the legal practitioner must withdraw from representing the client, unless —
> >
> > > (i) the legal practitioner makes a full and frank disclosure of the adverse interest to the client;
> > >
> > > (ii) the legal practitioner advises the client to obtain independent legal advice;
> > >
> > > (iii) if the client does not obtain independent legal advice, the legal practitioner ensures that the client is not under an impression that the legal practitioner is protecting the client's interests; and
> > >
> > > (iv) despite sub-paragraphs (i) and (ii), the client gives the client's informed consent in writing to the legal practitioner acting, or continuing to act, on the client's behalf; or
> >
> > (b) in any other case, the legal practitioner must withdraw from representing the client, unless —
> >
> > > (i) the legal practitioner makes a full and frank disclosure of the interest to the client; and
> > >
> > > (ii) despite sub-paragraph (i), the client gives the client's informed consent in writing to the legal practitioner acting, or continuing to act, on the client's behalf.

15 Rule 22(3)(*a*) of the LPPR is predicated on a legal practitioner possessing an interest in the matter which is "adverse" to the client's interest. The Law Society argued that in the present case, once it was discovered that default judgment had been entered, there were three issues that compromised the respondent's ability to advance his client's best interest. First, the client could take up disciplinary proceedings against him. A default judgment is a serious matter. The DT at paras 18 and 27 of their Report[24] and by their decision, accepted that the respondent's actions, in allowing judgment in default to be entered, amounted to breach of r 5 of the LPPR. Second, a civil suit in negligence was a possibility. During the DT hearing, the respondent admitted in cross-examination that he had been negligent in allowing the default judgment to be entered.[25] That said, the respondent pointed out that no harm had been occasioned because the judgment was irregular and could have been set aside as of right.[26] This did not take his case very far. He still had an interest in avoiding any allegation of negligence. Further, the rule that an irregular judgment may be set aside as of right simply means that a court in setting it aside will not go into the actual merits of the defence; the courts would, however, continue to scrutinize the surrounding circumstances in the exercise of its discretion in deciding whether to depart from or adhere to the rule (see *Mercurine Pte Ltd v Canberra Development Pte Ltd* [2008] 4 SLR(R) 907("*Mercurine*") at [73] and [76]). Finally, there were potential cost implications arising from having to set any default judgment aside, even an irregular one. The client would bear those costs if the lawyer did not.

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24 ROP Vol IV p 9 and 15

25 ROP Vol III p 205; ROP Vol I p 525 – Law Society's Written Submissions DT 8/2018 [78] – [90]; pp 33 - 45

26 Respondent's Written Submissions dated 1 July 2020 at [38]

16 The issue in this case is whether these reasons were sufficient to found an interest "adverse" to the client. Professor Pinsler suggests in his commentary on the LPPR that the word would include any interest that could "actually or potentially compromise his duty to advance the client's best interest in any way and to whatever extent": Jeffrey Pinsler, *Legal Professional (Professional Conduct) Rules 2015:A Commentary* (Academy Publishing, 2016) at para 22.011. In considering this, I looked, first, to the ordinary meaning of the word "adverse". In its natural meaning, "adverse" simply reflects any situation that would give rise to any disadvantage to the client. This interpretation is consistent with that offered by the Law Society. *Obiter* views from two cases support this interpretation. In *Law Society of Singapore v Khushvinder Singh Chopra* [1998] 3 SLR(R) 490 ("*Khushvinder Singh Chopra*"), Yong Pung How CJ, delivering the opinion of the court, ruled that the solicitor's "questionable conduct in procuring the statutory declaration for the [purpose] of averting […] apprehended disciplinary proceedings" placed him in "a position of aggravated conflict of interest": *Khushvinder Singh Chopra* at [67]. Similar sentiments can be found in *Law Society of Singapore v Chung Ting Fai* [2006] 4 SLR(R) 587 ("*Chung Ting Fai"*), where the High Court found that an attempt to "pre-empt legal proceedings" (though not proven on the facts of that case) would have been similarly objectionable: *Chung Ting Fai* at [50]. In these cases, legal or disciplinary proceedings had not yet been brought against the legal practitioner, but the remarks made by the courts suggest that an adverse interest could arise even at that stage, when the *risk* of such proceedings had arisen.

17 Second, looking to the statutory provision in its context, r 22 of the LPPR, as a whole, is targeted at both actual and potential conflicts of interest. This is explained in the r 22(1) principles:

> **Conflict, or potential conflict, between interests of client and interests of legal practitioner or law practice, in general**
>
> **22.**—(1) The following principles guide the interpretation of this rule and rules 23, 24 and 25. —
>
> *Principles*
>
> (*a*) A legal practitioner owes duties of loyalty and confidentiality to a client of the legal practitioner, and must act prudently to avoid any compromise of the lawyer-client relationship between the legal practitioner and the client by reason of a conflict, or potential conflict, between the interests of the client and the interests of the legal practitioner.
>
> …

18 In furtherance of that broad rationale, the specific duty is articulated in r 22(2) of the LPPR as follows:

> **22.**—(2) Except as otherwise permitted by this rule, a legal practitioner or law practice must not act for a client, if there is, or may reasonably be expected to be, a conflict between —
>
> (a) the duty to serve the best interests of the client; and
>
> (b) the interests of the legal practitioner or law practice.

This reflects that the expectation that the standard expected of the legal practitioner is to act in the best interests of the client at all times. Conflicts arise under r 22(2) once his own interests derogate from the pursuit of the best course for his client. The opening words "[e]xcept as otherwise permitted" make clear that in such a situation, he must not act for the client save as permitted in r 22(3) of the LPPR.

19 The object of r 22(3)(*a*), therefore, should not be considered in isolation, but within the specific context of the r 22(2) duty to serve the best interests of the client. It mandates full and frank disclosure to the client wherever a conflict or potential conflict arises between the duty to serve the best interests of the client, and the interests of the legal practitioner. The word "adverse" in

r 22(3)(*a*) must be read with the text of r 22(2) to include *any* reason that would detract a legal practitioner's duty to serve the best interests of his client.

20 A conflict arose in the present case because, once there was negligence and a breach of r 5 of the LPPR, the best interests of MSK would have been served by being informed of the circumstances of the legal practitioner's negligence and breach, as well as its rights in that situation. This was the interest that was adverse to the legal practitioner's, since giving such information and advice would expose the legal practitioner to potential liability, disciplinary action, or simply a decision by the client not to engage that legal practitioner's services any longer. In other words, the legal practitioner would have an interest in keeping these matters from MSK and would thereby have an interest that led him away from the *client's best interests*. Once this adverse interest arose, the legal practitioner should have first made full and frank disclosure to the client of the adverse interest; secondly, he ought to have advised the client to obtain independent legal advice; and thereafter, and only thereafter, should he obtain the client's informed consent to continue acting. In absence of this process, the rule mandates that the practitioner should withdraw from acting timeously, in effect removing himself from that same relationship where his responsibility was to act in his client's best interest.

21 I deal with the DT's reasons for holding to the contrary. First, the DT held that the interests of the solicitor and his client were aligned in that both wanted to set aside the default judgment.[27] This fact alone, nevertheless, does

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[27] ROP Vol IV p 15 – Report of the Disciplinary Tribunal at [27]

not preclude adverse interests. Alignment on one issue could co-exist with a lack of alignment on other issues.

22 Second, the DT held that harm must have been caused to the client, before an adverse interest can arise.[28] On a related note, the DT also held the view that any adverse interest was *de minimis* since the negligent omission was reversible.[29] In my view, because the rule is concerned with potential as well as actual adverse interests, there need not be harm caused before it is contravened. Further, in considering harm in this context, courts consider the impact of the legal practitioner's misconduct upon (a) those directly or indirectly affected by the misconduct; (b) the public; and (c) the reputation of the legal profession: see *Law Society of Singapore v Ezekiel Peter Latimer* [2019] 4 SLR 1427 ("*Ezekiel Peter Latimer*") at [55]. The respondent's failure here to adhere to the standards imposed by the LPPR had effects on his client, the reputation of the legal profession and the confidence of the public at large in the profession.

23 Third, the DT was of the view that it would be too onerous for a solicitor to withdraw in these circumstances: "[i]t would suggest that every time a solicitor makes a minor error that can be corrected, the solicitor should refrain from further acting for the client (or withdraw from acting) until or unless the client has obtained independent legal advice. This is because short of such independent legal advice, the solicitor cannot be truly certain that his client has arrived at a fully formed consent for the solicitor to continue."[30] I do not agree. First, minor errors (if they are truly minor) would generally not occasion a

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28 ROP Vol IV p 15 – Report of the Disciplinary Tribunal at [27]

29 ROP Vol IV p 16 – Report of the Disciplinary Tribunal at [28]

30 ROP Vol IV p 16 – Report of the Disciplinary Tribunal at [28]

conflict of interest. A commonsensical approach must be taken: for example, there is plainly a distinction between a typographical error and a default judgment. Second, it is full and frank disclosure that r 22(3) of the LPPR mandates, and the need for withdrawal only arises on the failure of the legal practitioner to properly disclose the interests adverse to him. The legal practitioner is certainly permitted to put any negligence in context, for example, in this case, he could well have explained that the judgment was irregular and to undertake not to charge his client for any rectification of a state of affairs caused by his omission. After he informs the client, under r 22(3)(*a*)(iii), the client may choose to seek independent legal advice. Alternatively, the client may choose not to, provided that the practitioner disabuses the client of any impression that he is protecting the client's interests. The choice belongs to the client, and r 22(3) of the LPPR returns that choice to its rightful place.

Distinction from r 5 of the LPPR

24 I turn to r 5 of the LPPR, which the DT thought more applicable. Rule 5 of the LPPR reads as follows:

> **Honesty, competence and diligence**
>
> **5.**—(1) The following principles guide the interpretation of this rule.
>
> *Principles*
>
> (*a*) The relationship between a legal practitioner and his or her client imports a duty to be honest in all dealings with the client.
>
> (*b*) A legal practitioner must have the requisite knowledge, skill and experience to provide competent advice and representation to his or her client.
>
> (*c*) A legal practitioner has a duty to be diligent in the advice and information given to his or her client, and in the manner the legal practitioner represents the client.
>
> (2) A legal practitioner must —

> (*a*) be honest in all the legal practitioner's dealings with his or her client;
>
> (*b*) when advising the client, inform the client of all information known to the legal practitioner that may reasonably affect the interests of the client in the matter, other than —
>
> > (i) any information that the legal practitioner is precluded, by any overriding duty of confidentiality, from disclosing to the client; and
> >
> > (ii) any information that the client has agreed in writing need not be disclosed to the client;
>
> (*c*) act with reasonable diligence and competence in the provision of services to the client;
>
> (*d*) ensure that the legal practitioner has the relevant knowledge, skills and attributes required for each matter undertaken on behalf of the client, and apply the knowledge, skills and attributes in a manner appropriate to that matter;
>
> (*e*) keep the client reasonably informed of the progress of the client's matter;
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> (*f*) where practicable, promptly respond to the client's communications;
>
> (*g*) keep appointments with the client;
>
> (*h*) provide timely advice to the client;
>
> (*i*) follow all lawful, proper and reasonable instructions that the client is competent to give;
>
> (*j*) use all legal means to advance the client's interests, to the extent that the legal practitioner may reasonably be expected to do so; and
>
> (*k*) keep proper contemporaneous records of all instructions received from, and all advice rendered to, the client.

…

25 Rule 5 of the LPPR describes the honesty, competence and diligence that is expected of a solicitor in the ordinary practice of his craft. In contrast,

r 22 of the LPPR specifically governs situations when conflicts of interest arise or could potentially arise.

26 Here, a potential breach of r 5 of the LPPR arose when the respondent did not contact his client at all until the day the Defence was due to be filed, failed to inform his client that the Defence was due that very day, failed to abide by his client's instructions to prepare the Defence quickly and was entirely oblivious to the fact that a default judgment had been entered on 31 August 2017. The respondent had admitted in cross-examination his negligence in these areas.[31] The charge concerns r 22 of the LPPR because, in that context, where there was an undisputed breach of r 5 and negligence, it was then incumbent on the respondent as a legal practitioner who was well aware of the interests adverse to his client, to follow the prescription set out in r 22(3) of the LPPR. He did not. Instead, the respondent procured written consent from the complainant to set aside the Writ of Summons and the default judgment. While glossing over that which he needed to disclose, he nonetheless obtained the client's written consent for the next course of action. Absent full disclosure, the consent was not an informed one. Hence, the DT found that there was no waiver. As Law Society pointed out in its submissions, whereas the object of the signed consent envisaged by r 22(3) was to protect the client's interest, the signed consent obtained in this case served to diminish the client's interest.

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[31] ROP Vol I p 525 – Law Society's Written Submissions DT 8/2018 [78] – [90]; pp 33 - 45

Finding and sanction

27 Coming to the two charges, the primary charge premised on s 83(2)(*b*)(i) of the LPA was engaged once there was a breach of the LPPR; the alternative charge was framed on the more general provision of s 83(2)(*h*). As I was of the view that the respondent had breached LPPR r 22(3), I found the primary charge made out.

28 Turning to the sanction, I considered whether there was due cause of sufficient gravity that warranted a referral of the matter to the Court of Three Judges, and, if not, the appropriate penalty that the Council ought to consider. The Law Society proposed that the matter could be dealt with by way of a substantial fine nearer to $20,000, particularly taking into consideration the respondent's age of 82 and his ill health.

29 I took reference from the framework of harm and culpability set out by the Court of Three Judges in *Ezekiel Peter Latimer* ([22] *supra*) to determine the appropriate sanction for charges premised upon conflicts of interest. It was there said that in cases where a practitioner has preferred his own interests over that of the client, striking off would be the presumptive penalty because such situations often reveal an abuse of trust and reflect a serious defect of character. The specific scenarios elaborated in that judgment, however, involved the solicitor's use of his position to pursue financial advantage or substantial gift (see *Ezekiel Peter Latimer* at [67]). In this case, while the respondent acted to the detriment of the client in preferring his own self-protection over his client's best interests, there was no planned pursuit of financial gain aside from his continued representation of the client and the professional fees appurtenant. Notwithstanding conduct falling short of the expectations of the LPPR, defect

of character, dereliction of a legal practitioner's duty of loyalty and abuse of his position of trust, it was a less culpable scenario. There was also less harm caused here than in the cases envisaged in *Ezekiel Peter Latimer.* In that regard, the DT characterised the damage as capable of correction.[32] Although I have decided at [22] that this did not mean that there was no adverse interest, this was relevant to the harm caused. The respondent envisaged being able to rectify the issue for his client and did eventually do so, albeit furtively, when solicitors for JKC agreed to withdraw the default judgment.[33] Therefore, applying the culpability and harm matrix in this case, I concluded that the matter was not sufficiently serious to be referred to the Court of Three Judges. I agreed with the Law Society's position on the sanction to be imposed.

Conclusion

30 Accordingly, I set aside the DT's reprimand. The respondent's conduct was in breach of the LPPR and thus I substituted the DT's determination with a finding of guilt on the primary charge and determined that the respondent should be ordered to pay a penalty sufficient and appropriate to the misconduct committed. The Council, in exercising s 94(3)(*a*) of the LPA *mutatis mutandis* after this review, should have regard to a fine upwards of $15,000 (and below $20,000) against the respondent.

31 Costs of the proceedings below were ordered to stand. I fixed the costs of the review at $5,000, inclusive of disbursements.

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32 ROP Vol IV p 14 – Report of the Disciplinary Tribunal at [28]

33 ROP Vol I p 431 – Transcript of Govindan's Discussions with Complainant (dated 21 September 2017); ROP Vol I p 169 – JKC's Summons Seeking Leave to Amend Plaintiff's Name.

Valerie Thean
Judge

Eng Zixuan Edmund, Brinden Anandakumar and Danica Gan Fang Ling and (Fullerton Law Chambers LLC) for the applicant;
Dhanaraj James Selvaraj (James Selvaraj LLC) for the respondent.
