DISCIPLINARY TRIBUNAL

DT/11/2019

In the Matter of **CONSTANCE MARGREAT PAGLAR** (NRIC NO. SXXXX694J) an Advocate & Solicitor

And

In the Matter of the Legal Profession Act (Chapter 161)

REPORT

TRIBUNAL MEMBERS

PRESIDENT:	**MR ANDRE YEAP, SC**
ADVOCATE & SOLICITOR:	**MR G. RADAKRISHNAN**

PARTIES

COUNSEL FOR LAW SOCIETY OF SINGAPORE:	**MR. SHASHI NATHAN/MISS J JAYALETCHUMI**
COUNSEL FOR RESPONDENT:	**MR. K ANPARASAN/MISS AUDREY WONG**

DATED THIS 12th **DAY OF MAY 2020**

INTRODUCTION

1. Constance Margreat Paglar ("**Respondent**") was admitted to the roll of advocates and solicitors of the Supreme Court of Singapore on 21 March 1998 and was, at all material times, the sole proprietor of C Paglar & Co ("**CPC**").

2. These proceedings arose out of a complaint made by way of a letter dated 7 August 2018 against the Respondent by one Lim Beng Heng Bernard ("**Complainant**").

3. In the Statement of Case filed by the Law Society against the Respondent dated 5 November 2019, the original charges preferred were as follows:

   i) The main charge was that the Respondent was guilty of a breach of **rule 5(2)(a)** of the Legal Profession (Professional Conduct) Rules, Legal Profession Act (Chapter 161) ("**PCR**") in that she renegotiated and accepted a higher global settlement sum for the Complainant without informing or obtaining his authorization for the same after he had instructed her to accept the offer of a lower sum and she purported to keep the difference as her fee without the Complainant's authorization or instruction and this breach of Rule 5(2)(a) amounted to improper conduct or practice within the meaning of **section 83(2)(b)** of the Legal Profession Act (Chapter 161) ("**LPA**").

   ii) The first alternative charge was that the same conduct as in the main charge also amounted to misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession under **section 83(2)(h)** of the LPA.

   iii) The second alternative charge was that the Respondent was guilty of a breach of Rule 17 of the PCR in that she failed to act in the best interests of the Complainant, to wit, by renegotiating and accepting a higher global settlement sum for the Complainant without informing or obtaining his authorisation of the same after he had instructed her to accept the offer for a lower sum and she purported to keep the difference as her fees without the Complainant's authorisation or instruction and

such breach of Rule 17 amounted to improper conduct or practice as an advocate and solicitor within the meaning of **section 83(2)(b)** of the LPA.

4. By a letter dated 4 March 2020 from the solicitors for the Law Society, the Tribunal was informed that based on representations from the Respondent's solicitors, the Law Society was amending the main charge under **rule 5(2)(a)** to a charge under **rule 5(2)(e)** of the PCR, and that the Respondent was willing to plead guilty to the amended charge which was that:

   i) the Respondent was guilty of a breach of Rule 5(2)(e) of the PCR in that she failed to inform the Complainant of the progress of the matter by failing to inform him when she negotiated a higher settlement sum with the insurance company and by failing to explain the breakdown of the settlement sum to him and such breach of Rule 5(2)(e) amounts to improper conduct or practice as an advocate and solicitor within the meaning of **section 83(2)(b)** of the LPA.

5. By separate emails dated 18 March 2020, the solicitors for the Law Society provided the Agreed Statements of Facts ("**ASOF**") whilst the solicitors for the Respondent submitted the Mitigation Plea ("**MP**"). The facts as agreed between the parties are set out below from [7] to [16].

6. A hearing was fixed for 23 March 2020 but at the start of the hearing the Tribunal was informed that the Respondent was denied entry to the Supreme Court due to certain answers made in the Heath Declaration Form required by the Supreme Court. The hearing was accordingly adjourned and re-fixed for 2 April 2020. At this hearing, the amended charge was duly read to the Respondent and she pleaded guilty.

THE ASOF

7. The Complainant had engaged CPC to make a claim for personal injuries that he sustained in a road traffic accident on 28 September 2017 ("**Accident**").

8. On 21 March 2018, CPC issued a letter of demand to India International Insurance Pte Ltd ("**III Pte Ltd**"), the insurers of the motor vehicle that was involved in the Accident. CPC, on the Complainant's instructions, demanded a sum of S$9,418.05 inclusive of S$2,996.00 as costs.

9. Thereafter, the following proposals were exchanged between CPC and III Pte Ltd, as full and final settlement of the Complainant's claim:

   (1) by way of an email dated 20 April 2018, at 3.31 pm, III Pte Ltd offered the sum of S$3,041.35, inclusive of S$1,605.00 as costs and disbursements;

   (2) by way of an email dated 7 June 2018, at 2.38 pm, CPC counter-proposed the sum of S$5,540.65, inclusive of S$2,140.00 as costs; and

   (3) by way of an email dated 7 June 2018, at 4.39 pm, III Pte Ltd offered the sum of S$3,281.35, inclusive of S$1,605.00 as costs and disbursements ("**7 June Proposal**").

10. By way of a letter dated 11 June 2018 ("**11 June Letter**"), CPC informed the Complainant of the 7 June Proposal and enclosed a copy of the email from III Pte Ltd, which stated that the settlement sum was S$3,281.35. In the 11 June Letter, the Respondent explained that the sum the Complainant would get was S$1,552.00, derived as follows:

Breakdown	**Amount (S$)**	
General Damages	1,800	
Medical Expenses	120	
Transport Expenses	20	
At 80% liability		**1,552**

11. The 11 June Letter further stated that after deduction of the sum of S$535.00, being the legal costs incurred by CPC, from the compensation sum of S$1,552.00, the Complainant would get S$1,017.00. The 11 June Letter also contained the Respondent's advice to the Complainant to accept the 7 June Proposal.

12. On 13 June 2018, the Complainant instructed the Respondent to accept the 7 June Proposal. However, the Respondent did not write to III Pte Ltd to communicate the Complainant's acceptance of the 7 June Proposal.

13. Instead, the following proposals were subsequently exchanged between CPC and III Pte Ltd without the Complainant's knowledge or instructions:

    (1) By way of an email dated 21 June 2018, at 2.40 pm, CPC made a revised global settlement offer to III Pte Ltd of S$4,000.00 ("**21 June Offer**").

    (2) By way of an email dated 21 June 2018, at 4.29 pm, III Pte Ltd counter-proposed the sum of S$3,800.00 as global settlement of the Complainant's claim ("**21 June Proposal**").

14. By way of an email dated 26 June 2018, at 11.25 am, CPC accepted the 21 June Proposal. By way of an email dated 27 June 2018, at 11.05 am, III Pte Ltd sent CPC a Discharge Voucher for the sum of S$3,800.00.

15. On 29 June 2018, the Complainant received a Discharge Voucher issued by III Pte Ltd, which stated that the settlement sum was S$3,800.00 and not S$3,281.35, as stated in the 7 June Proposal, which was annexed to the 11 June Letter. The Complainant did not receive an explanation or breakdown of the sum of S$3,800.00.

16. By reason of the foregoing, the Respondent has breached Rule 5(2)(e) of the PCR in failing to keep the Complainant reasonably informed of the progress of his matter, by failing to inform the Complainant when she negotiated a higher global settlement sum with III Pte Ltd, and by failing to explain the breakdown of the $3,800 settlement sum.

THE RESPONDENT'S ARGUMENTS

17. The Respondent submitted that having regard to the matters submitted in the MP, the Tribunal should impose only a reprimand for the misconduct which may bring the legal profession into disrepute.

18. Essentially, the Respondent's main arguments in mitigation were as follows:

(1) She was remorseful and had acknowledged that there were shortcomings in her conduct, had made representations at an early stage and had agreed to plead guilty at the earliest possible opportunity following the reply to her representations, thereby saving time and cost for the parties.

(2) No prejudice was caused to the Complainant. His interest has not been prejudiced or compromised as she had managed to secure the amount of damages which the Complainant was prepared to accept in settlement of his claim. Furthermore, no issue was raised by the Complainant as to the reasonableness of the amount of damages which she had advised the Complainant to accept in full and final settlement of his claim in the 7 June Proposal.

(3) Her conduct was not motivated by personal interest or dishonesty and did not seek to unfairly benefit herself over the Complainant's interest. The lapses in communication with the Complainant was not malicious or motivated by personal interest or dishonesty but stemmed from a genuine belief that the Complainant did not have any interest in the party and party cost component of any offer from III Pte Ltd because of the structure of the solicitor-and-client cost agreed between the Complainant and CPC. She genuinely believed that the 7 June Proposal was reasonable and had advised the Complainant to accept it. Furthermore, the party and party cost which CPC had sought to negotiate with III Pte Ltd was also in line with the Pre-Action Protocol for Personal Injury Claims in Appendix E of the State Court Practice Directions.

THE LAW SOCIETY'S ARGUMENTS

19. The Law Society, however, argued that the Respondent should be ordered to pay a penalty that is sufficient and appropriate to the misconduct in the sum of $$6,000.

20. The Law Society submitted that relevant precedents show that where a legal practitioner is charged and found liable for breach of Rule 5(2) of the PCR (or its predecessor equivalent, Rule 17), absent aggravating factors, a monetary penalty is appropriate.

21. In *The Law Society of Singapore v Sham Chee Keat* [2018] SGDT 55 ("***Sham***"), the legal practitioner there was found guilty of one charge under Rule 5(2)(c) for failing to act with reasonable diligence and competence in his provision of services to the client by including or causing to be included in an affidavit deposed to by the client statements which he ought to have known were inaccurate and false. The legal practitioner had attended a Pre-Trial Conference ("**PTC**") on behalf of his client, where the bifurcation of the client's case was discussed. The legal practitioner claimed that he misunderstood the outcome of the PTC and subsequently provided inaccurate information to his client about the PTC. Thereafter, the client deposed to an affidavit prepared by the legal practitioner, which contained statements that were inaccurate or false, based on the legal practitioner's misunderstanding of the outcome of the PTC. The Disciplinary Tribunal found that the legal practitioner had "acted carelessly with insufficient professional diligence and competence", and was ordered to pay a penalty of $5,000.

22. Although the legal practitioner in ***Sham*** was sanctioned for a breach of a different rule under Rule 5 [i.e. 5(2)(c)], the Law Society submitted that the case is nevertheless instructive, given that Rule 5(2)(c) (which relates to the duty to act with reasonable competence) and the Rule under which the Respondent here was charged, namely Rule 5(2)(e) (which relates to the duty to keep the client reasonably informed of the progress of the client's matter), both fall under the broad category of duties of honesty, competence and diligence under Rule 5. The duty of reasonable diligence necessarily entails keeping the client reasonably informed of the progress of his case (Legal Profession (Professional Conduct) Rules 2015 Commentary (Academy Publishing 2016) at para 05-041).

23. Accordingly, Law Society's position was that, based on the sanction in ***Sham,*** a penalty of S$5,000, as a starting point, is appropriate in the present case.

24. The Law Society went on to submit that the Respondent's seniority is a significant aggravating factor. As stated by the High Court in *Law Society of Singapore v Nathan Edmund* [1998] 2 SLR(R) 905, it is trite that the more senior an advocate, the more damage he does to the integrity of the legal profession (at [33]). This was acknowledged recently by the High Court in *Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter* [2017] 4 SLR 1369, where the legal practitioner having been in practice for 29 years was found to have warranted a more onerous sentence (at [88]). Likewise, in the present case, the Respondent being a senior practitioner of about 22 years' standing justified a more serious sanction, warranting an uplift of the penalty from $5,000 to $6,000.

25. The Law Society also submitted that the mitigating factors relied on by the Respondent in the MP should be treated with circumspection and not viewed charitably. As acknowledged by the Court of Three Judges in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91, mitigating factors should be viewed in a qualitatively different light in disciplinary proceedings as opposed to in a criminal case (at [48]- [49]):

"**48**. A court that exercises disciplinary jurisdiction is likely to view mitigating factors in a different light than would a court in the exercise of its criminal jurisdiction: *see Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68 at [22]:

> Because orders made by a disciplinary tribunal are not primarily punitive, considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases: *Bolton v Law Society* [1994] 2 All ER 486 at 492. To state the matter another way, whatever might have been the appropriate sentence in the criminal proceedings, the objective there was rather different from that in show cause proceedings, which are civil and not punitive in nature.

49. The point simply is that even if a mitigating circumstance might be found that could weaken the case for *punishment* in a criminal case, this circumstance may often not avail an Advocate and Solicitor in proceedings because an equally, if not more, important consideration is the protection of public confidence in the administration of justice. This interest can legitimately trump the individual offender's interest in having his punishment finely calibrated according to his precise degree of culpability. Where aggravating factors are concerned, there is usually less need to draw this distinction since a factor that aggravates the offender's particular culpability would generally tend also to aggravate the adverse impact on confidence in the administration of justice, although there may be exceptions to this."

26. The Law Society's position is that the mitigating factors relied on by the Respondent should be disregarded in the present proceedings, for the following reasons:

(1) The Respondent's assertion that no prejudice was caused to the Complainant, and that her conduct was not motivated by personal interest or dishonesty, is of no help to the Respondent. A similar line of argument was pursued in *Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68, where the High Court found that the legal practitioner not having benefitted from his misdeeds apart from earning the usual conveyancing fees "was beside the point", given that "because orders made by a disciplinary tribunal are not primarily punitive, considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of the disciplinary jurisdiction than on sentences imposed in criminal cases". The mitigating factors highlighted by the Respondent should therefore not be relied on.

(2) Further, and in any event, the Respondent's "remorse and plea of guilt at the earliest opportunity" was a mischaracterization of the events that transpired in the present proceedings. The Respondent did not plead guilty at the earliest possible opportunity, and her conduct cannot be said to have saved costs and time for all parties involved. Affidavits of Evidence-in-Chief were exchanged on 25 February 2020, and the matter was fixed for 2 days of trial, on 10 and 11 March. It was only 6 days before the hearing on 4 March 2020 that the Respondent agreed to plead

guilty. Therefore, the Respondent's plea of guilt was not timeous, and should not be considered a mitigating circumstance.

MATTERS OF CONCERN TO THE TRIBUNAL

27. The Tribunal struggled to understand the position of the Law Society in amending the original charges to the amended charge as it appeared not to give adequate weight to the possible severity of the actions of the Respondent which was clearly detrimental to her client, the Complainant. The amended charges appeared to trivialise the Complaint and do disservice to the Complainant and any other client who was in a position similar to that of the Complainant.

28. However, the Tribunal felt it had no option but to respect the prosecutorial discretion of the Law Society when it chose to prefer the amended charge instead of the original charges. Furthermore, it was not apparent whether the relevant representatives of the Law Society who made the decision to prefer the amended charge were aware of the Respondent's antecedent misconduct referred to later in this report.

29. In particular, the Tribunal noted the facts set out below.

30. In CPC's letter dated 11 June 2018 to the Complainant, which attached the 7 June Proposal which had provided for an offer aggregating $3281.35 comprising, *inter alia,* "Cost and Disbursements including GST-$1605", CPC had also informed the Complainant that:

    (1) "Pursuant to the Warrant to Act, the sum of $535, inclusive of GST, will be deducted from the compensation amount";

    (2) "Given the injuries diagnosed, we would advise you that the offer made thereon is reasonable and can be seriously considered for acceptance"; and

(3) " you may be required to sign a Discharge Voucher for an amount that is higher than what is stated herein as that amount will include our legal costs and disbursements incurred for this file".

31. The 11 June 2018 letter contemplated that the cost of $535 pursuant to the Warrant to Act was in addition to the costs of $1605 payable by III Pte Ltd and this appears to have been so understood and accepted by the Complainant in the Complaint. The Warrant to Act, dated 5 October 2017, provided that the Respondent could deduct from any settlement sum received party and party costs, described as "costs paid by the third party on [the client's] behalf" as well as the solicitor and client costs, the minimum of which was stated to be $500 plus GST. It appears that in accepting the 7 June Proposal for a total of $3,281.35, the Complainant was aware and agreed that the Respondent would charge as her cost a sum of $535 plus $1,605, totalling **$2,140**, which amounted to 65.2% of the proposed settlement sum.

32. Instead of acting in accordance with the Complainant's instructions to accept the 7 June Proposal, the Respondent without authorization or instruction from the Complainant, made an increased offer by way of CPC's 21 June Offer to III Pte Ltd for a global settlement sum of $4,000. In the 21 June Offer, the Respondent had stated "Purely to facilitate an amicable settlement, we counter proposed global sum of $4,000 all-in and no less". This was a counter offer which in law rejected the 7 June Offer, including the offer to pay party and party costs of $1605, and was totally opposite and contrary to the Complainant's instructions to accept the 7 June Proposal which the Respondent had advised the Complainant to accept. Indeed, had III Pte Ltd rejected the 21 June Offer and sought to reduce its proposal to an amount less than that in the 7 June Proposal, it would have been legally entitled to do so.

33. As it turned out, III Pte Ltd made an increased global settlement offer of $3,800 vide its 21 June Proposal which was accepted vide CPC's email response dated 26 June 2018.

34. Clearly, the Respondent knew from experience that it was very unlikely that III Pte Ltd would reject her counter offer and seek to reduce its offer to an amount less than the 7 June Proposal and that it was a safe gamble for her to seek a higher global settlement, which leads to the question: whose benefit was this for? Given that the Respondent had

in the 11 June Letter to the Complainant advised the Complainant to accept the 7 June Proposal and the Complainant agreed to accept the 7 June Proposal, it meant also that the Respondent was prepared to and agreed to accept the party and party costs of $1605 from III Pte Ltd and that the Complainant likewise agreed to this. As such, the counter offer by the Respondent for a global settlement amount larger than the 7 June Proposal, even where made without the Complainant's instructions, which resulted in a global settlement for an amount larger than the 7 June Proposal, would result in the entire final global settlement amount of $3,800, including the increased differential, being held by the Respondent on behalf of and to the benefit of the Complainant, given that the Respondent was at all relevant times an agent and solicitor for the Complainant for which there was a duty on the Respondent's part to account to the Complainant. The Respondent had likely sought a larger "global settlement" from III Pte Ltd, instead of merely seeking an increased amount of "party and party costs", for her own benefit because she wanted to give III Pte Ltd the impression that it was the Complainant who wanted a larger amount of damages to achieve a settlement, which III Pte Ltd obviously believed. If the Respondent truly believed that III Pte Ltd would have agreed to pay a larger amount of "party and party costs", whilst the amount of damages payable to the Complainant remained as per the 7 June Proposal, she could have simply stated that a larger amount of "party and party costs" was required to achieve a settlement.

35. Under cover of an email dated 27 June 2018, III Pte Ltd forwarded to CPC a discharge voucher for the settlement sum of $3,800 and asked that it be signed by the Complainant and returned to them before they issued the cheque for $3,800. As it turned out, the need for the signing of the discharge voucher for the settlement sum of $3,800 became the trigger for the Complaint.

36. As admitted by the Respondent, she did not keep the Respondent informed nor obtained his instructions in making the 21 June Offer or in accepting the final $3,800 global settlement amount. In the Complaint, the Complainant stated that he had been asked to sign a discharge voucher for $3,800 instead of the $3281.35 under the 7 June Proposal and he was concerned that the 7 June Proposal might have been "fabricated" and that "there [was] an unaccounted sum of $581.65 and the issue is whether there [was] an attempt to misappropriate it". In the Complaint, he also stated that he relied on the Respondent's advice in the 11 June Letter (which forwarded the 7 June Proposal) which

he understood to mean that "there was no possibility of getting a higher settlement" as a result of which he accepted the 7 June Proposal under which he was to receive $1,552 (being damages of $1,940 X 80%, accepting 20% contributory negligence on his part), which after deducting the solicitor and client cost of $535 inclusive of GST, meant that he would receive a nett sum of only $1,017. Further, if there had been an uplift in the settlement sum to $3,800, he would have wanted to participate in it.

37. The Respondent has placed emphasis on the argument that the 7 June Proposal which she advised the Complainant to accept was reasonable. As the Tribunal sees it, whether or not the 7 June Proposal was reasonable is not the issue. The issue is whether having advised that the 7 June Proposal was reasonable, and having caused the Complainant to accept that offer for his damages, the Respondent could act in a manner which was not only totally contrary to the Complainant's instructions to accept the 7 June Proposal but amounted to a rejection of the 7 June Proposal, by going back to III Pte Ltd to give the false impression that her client was not agreeable to the 7 June Proposal and to counter offer a larger global settlement without first informing the client and obtaining his authorisation, with the increased differential amount in the counter offer to be attributed to the "party and party costs" at the expense of any potential increase in the amount of damages payable to the Complainant and whether in the absence of any such further agreement or instruction from the client, the Respondent was obliged to account to the Complainant for any increase in the global settlement sum eventually secured and paid. To the Tribunal, the answer to the first issue is in the negative, whilst the answer to the second issue is in the positive.

38. As it turned out, following the Respondent's acceptance of the final global settlement sum of $3,800, the Respondent expected to receive a total cost of $2,658.65, comprising of the solicitor and client cost of $535 plus "party and party costs" of $2,123.65. In short, the Respondent's cost component increased from 65.2% to 70% of the settlement amount, whilst the Complainant's recovery component fell from 34.8% to 30% of the settlement amount.

39. The statement in CPC's 11 June Letter to the Complainant "*Please note that you may be required to sign a Discharge Voucher for an amount that is higher than what is stated herein as that amount will include our legal cost and disbursements incurred for this*

file" ("**the Higher DV Clause**"), which has been relied on by the Respondent to justify her self-proclaimed entitlement to negotiate and retain the additional "party and party costs", is really of no assistance to the Respondent because:

(1) by advising the Complainant to accept the 7 June Proposal and by the Complainant's acceptance of the proposal, there was effectively a separate agreement between the Respondent and the Complainant whereby the Respondent agreed to charge and the Complainant agreed for the Respondent/CPC to charge the solicitor and client costs of $535 as well as party and party costs of $1,605, notwithstanding any further work which may need to be done as well as further disbursements to be incurred by CPC to bring about the settlement;

(2) if the aforesaid separate agreement did not extend to any further cost and disbursements incurred by CPC to facilitate the settlement, then the application of the Higher DV Clause should be limited to any additional cost and disbursements payable as the party and party cost after the acceptance of the offer and certainly not to an upward variation of the party and party cost already agreed to be paid by III Pte Ltd. As is common knowledge, there is always a reasonable range or estimate of damages for personal injury. It should not be the case that a legal practitioner should advice his client to accept a lower reasonable offer when there is still room to negotiate a higher reasonable figure and then use that headroom to negotiate a higher party and party cost for himself after the client had accepted the lower reasonable offer based on the legal practitioner's advice. Otherwise, it wrongly encourages the acceptance of lower reasonable offers for the benefit of the legal practitioner. If any provision in any letter of engagement or warrant to act is intended to achieve such a purpose, it needs to be spelled out clearly and in no uncertain terms. The reality is that one rarely finds any clearly agreed provision to this effect as most, if not all, reasonable clients would not agree to its insertion as the client would realize that he would be giving the legal practitioner a licence to advise him to accept a lower reasonable offer and then go on to negotiate and secure a higher offer with the upward differential to be kept for the benefit of the legal practitioner's own cost, which would otherwise have been for the benefit of the client.

40. In the Respondent's explanatory letter dated 30 November 2018 to the Inquiry Committee, it was stated that the counter proposal of the global settlement amount of $4,000 which CPC made on 21 June 2018 "*was to take into account disbursements not previously offered as well as to renegotiate costs*". It was clearly not for any party and party cost or disbursements incurred after the acceptance of the 7 June Proposal.

41. More importantly, given that the Respondent's counter-offer by way of the 21 June Offer to III Pte Ltd was for a global settlement of $4,000, and this eventually led to a full and final global settlement of $3,800:

    (1) III Pte Ltd never agreed to pay any part of the said $3,800 as party and party costs. The party and party costs of $1,605 under the 7 June Proposal was no longer operative as it had been rejected by the counter-offer. As such, there was really no basis for the Respondent to claim that any part of it was being paid as "party and party costs" to which she was entitled; and

    (2) strictly speaking, this global settlement overrode the terms of the 7 June Proposal (which had been rejected) so that the entire sum of $3,800 or failing that, the increased differential of $518.65 (being the difference between $3,800 and $3281.35), is for the benefit of the Complainant and the Respondent is duty bound to account to the Complainant for the same. This means that the Respondent has to agree with the Complainant as to her total fees instead of unilaterally seeking to gazump $2,123.65 or the increased differential by self-proclaiming it as "party and party costs".

42. Clearly, the Respondent well knew that had she sought the Complainant's instructions to make the 21 June Offer, or indeed any larger offer, she would have to explain why she had previously advised the Complainant to accept the 7 June Offer in the first place and the Complainant would very likely have wanted all or a substantial part of any increased amount for himself.

43. As such, the Tribunal arrived at the conclusion that the Respondent's failure to inform the Complainant and obtain the Complainant's instructions and authorisation before (a) making the 21 June Offer and (b) accepting the final global settlement offer of $3,800

was not due to any oversight on the Respondent's part, or any misguided belief as to her entitlement to renegotiate the "party and party costs" after the Complainant had accepted the 7 June Proposal, but was instead part of a deliberate approach designed by the Respondent to benefit herself at the expense of the Complainant.

44. Furthermore, in response to the Tribunal's query to the Respondent to clarify whether she was still intending to charge the Complainant for legal fees, and if so, the amount thereof, the Respondent stated that she was intending to recover her "party and party costs" of $2,123.65 pursuant to the $3,800 global settlement but she was still undecided as to whether she would charge the Complainant for the sum of $535 which was the solicitor and client costs which the Complainant had agreed to pay. The Respondent had also explained that her firm was discharged before the settlement monies were paid to her firm, but that she still intended to write to the Complainant's present solicitors to follow up on the recovery of her fees.

45. The Tribunal raised the aforesaid query as it wanted to clarify the Respondent's statement in mitigation to the effect that there was no prejudice to the Complainant and that no financial benefit was received or intended to be received from the matters complained off. Indeed, given the Respondent's response as set out in the preceding paragraph, the Tribunal considered her statement to the effect that there was no prejudice to the Complainant and that no financial benefit was received or intended to be received, to be wholly inaccurate and misleading. The solicitors for the Respondent sought to clarify by saying that the Respondent was receiving no financial benefit beyond what she was entitled to. The Tribunal found this explanation to be lacking in substance and that her statement in mitigation, to the effect that there was no prejudice to the Complainant and no financial benefit was received or intended to be received from the matters complained of, was intended to pull wool over the eyes of the Tribunal. In any event, as stated earlier in this report, the entire final global settlement amount of $3,800 or failing that, the increased differential amount of $518.65 was rightfully for the benefit of and belonged to the Complainant and the Respondent was under a duty to account to the Complainant for the same, and her actions were analogous to or, arguably, even constituted potential breaches of trust.

ANTECEDENT

46. The Tribunal had enquired before the hearing on 23 March 2020 whether the Respondent had any antecedents of misconduct and was notified by the Law Society that the Respondent had a recent antecedent in *The Law Society of Singapore v Constance Margreat Paglar* [2019] SGDT 11 (DT 8/2019) ("**Antecedent**"). A copy of the same was provided to the Tribunal before the 23 March hearing.

47. In that case, the Respondent's firm CPC was engaged by various owners of vehicles involved in traffic accidents to claim for losses and/or damages arising therefrom. These various owners, who were her clients, had appointed the complainant there, JKS Motor Works (Accident Claims) Pte Ltd ("**JKS"**) as their agent vis-a-vis the Respondent's firm which was to take instructions from JKS and keep JKS informed. Nineteen (19) charges were originally preferred against the Respondent, but following representations made on her behalf, the Law Society proceeded only with 4 charges, one in relation to each of 4 separate clients, under which the Respondent had failed to provide an update of the case to the client from various dates ranging from 24 December 2015 to 22 July 2016, up to various later dates, and was guilty of having breached **Rule 5(2)(c)** of the PCR as amounted to improper conduct or practice as an advocate and solicitor under section **83(2)(b)(i)** of the LPA. The Respondent pleaded guilty to the 4 charges and the tribunal imposed a penalty of $4,000.

48. The Tribunal invited submissions from the parties as to whether the Tribunal was at liberty to consider the Antecedent for purposes of arriving at the appropriate sanction in view of the guilty plea to the amended charge.

49. The Law Society submitted that it was not its practice to rely on antecedents but was of the view that for purposes of determining the appropriate sanction after the issue of liability had been determined, as in the present case where the Respondent had pleaded guilty, the Tribunal was at liberty to give consideration and weight to the Antecedent, should it choose to do so.

50. The Respondent, however, objected to the Tribunal considering the Antecedent for purposes of determining the appropriate sanction. The Respondent's arguments may be summarised as follows:

(1) The legislative framework only permitted the Court of Three Judges ("**court**") to take into account the past conduct of a respondent to determine what order should be made under section 83(1) of the LPA as provided for in section 83(5) of the LPA which reads: "***In any proceedings under this Part, the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made***."

(2) Section 82B(5) of the LPA, which concerns disciplinary proceedings of regulated non-practitioners, and section 83A(3) of the LPA, which concerns disciplinary proceedings of regulated foreign lawyers, also provide that only the court can take into account a respondent's past conduct when determining what orders should be made.

(3) Under section 91(2) of the LPA, there is no provision for a disciplinary tribunal to request for and take into consideration for purposes of determining the appropriate order a respondent's past conduct. Instead, a disciplinary tribunal is only empowered to administer oaths and "sue out subpoenas to testify or to produce documents".

(4) Under section 93(1) of the LPA, a disciplinary tribunal "shall record its findings in relation to the facts of the case and according to those facts" (**emphasis ours**) make the determination prescribed under that section. This implies that a disciplinary tribunal can only look at the facts of the specific misconduct that was before it and decide the appropriate order and not have regard to any antecedent past conduct.

(5) Section 228 of the Criminal Procedure Code, which is encapsulated under the Criminal Procedure Code's Plead Guilty Procedures, permits the Court to consider an accused's criminal records and any relevant factors which may affect the sentence.

51. The thrust of the Respondent's submission was that absent a similar express provision enabling a disciplinary tribunal to consider the past conduct of a respondent, the Tribunal was simply not empowered to consider the Antecedent for the purpose of determining the appropriate order where liability has already been established.

52. The Respondent submitted that given the potentially serious ramifications faced under section 83(1) of the LPA, Parliament had enacted section 83(5) of the LPA empowering only the court to ensure that sufficient checks and balances were in place to ensure fair process of the proceedings.

53. The consequences of the submission are that no matter how bad a past misconduct was or how many acts of past misconduct there were, a disciplinary tribunal simply had to ignore them and deal only with the facts of the misconduct that were before it.

54. It would also mean that where there is antecedent misconduct, it would be better to leave it to the court to decide on the appropriate order for the present misconduct so that the order to be made is reflective of the object of disciplining the errant advocate. In a situation like that, a disciplinary tribunal may have no choice but to send the matter up for the appropriate order to be made by the court.

55. By way of illustration, in the Antecedent the Respondent asked for a fine and was given a fine for the past conduct. In the present proceedings, the Respondent asks only for a reprimand, a lower form of punishment. If the Tribunal had not on its own volition asked for antecedents, it would not have known of the Respondent's past conduct and could have resulted in it making a wrong order.

56. Given the above situation, the Tribunal at the conclusion of the hearing invited the Respondent to consider whether the Tribunal could look into the Antecedent in deciding the appropriate sanction for the present misconduct, with the caveat that if she did not agree there was the possibility that the Tribunal may feel constrained to refer the matter to the Court of Three Judges. The Respondent maintained her position that the Tribunal should not consider the Antecedent.

DECISION OF TRIBUNAL

57. Section 93 of the LPA provides as follows:

"**93.**— (1) After hearing and investigating any matter referred to it, a Disciplinary Tribunal shall record its findings in relation to the facts of the case and according to those facts shall determine that —

(a) no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be);

(b) while no cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be), the regulated legal practitioner should be —

(i) ordered to pay a penalty that is sufficient and appropriate to the misconduct committed;

(ii) reprimanded;

(iii) ordered to comply with one or more remedial measures; or

(iv) subjected to the measure in sub-paragraph (iii) in addition to the measure in sub-paragraph (i) or (ii); or

(c) cause of sufficient gravity for disciplinary action exists under section 83 or 83A (as the case may be)."

58. Having regard to only the facts of the case, the Tribunal determines that cause of sufficient gravity for disciplinary action exists under section 83. The Tribunal wishes to clarify that in arriving at this decision, it has not given weight to the Antecedent.

59. Nevertheless, it would be useful if a Court of Three Judges could clarify for the benefit of future disciplinary tribunals whether a tribunal is empowered and be at liberty to consider and give weight to a respondent's antecedent misconduct in arriving at a decision and/or determining the appropriate sanction for the misconduct that is before the tribunal.

COSTS

60. Having determined under s 93(1)(*c*) that there is cause of sufficient gravity for disciplinary action, the Tribunal is permitted under section 93(2) of the LPA to make a costs order. The Law Society submitted that the Respondent should pay costs of $8,000 (all in) for, inter alia, the following reasons:

(1) based on the documents given by the Complainant, the Law Society prepared a Statement of Case and framed charges against the Respondent;

(2) the Law Society prepared a List of Documents;

(3) the Law Society reviewed the Respondent's Defence and subsequent Representations, and engaged in negotiations with the Respondent;

(4) the Law Society had to consider and respond to the Respondent's Mitigation Plea;

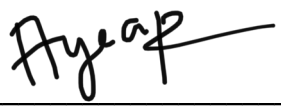
(5) the Law Society had to amend the initial charges that were preferred against the Respondent;

(6) the Law Society prepared a substantive affidavit of evidence in chief for the Complainant, and a Bundle of Documents for the Disciplinary Tribunal;

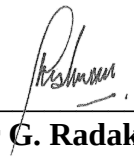
(7) the Law Society prepared Submissions on Sanction for the Disciplinary Tribunal.

61. The Respondent submitted that costs should be about $2,000. Having heard the parties in relation to costs, and taking into account also that the Respondent pleaded guilty to the amended charge, the Tribunal orders that the Respondent pay costs to the Law Society of $4,000 (all in).

Dated this 12th day of May 2020



President: Mr Andre Yeap, *SC*



Member: Mr G. Radakrishnan