

LCRO 53/2013  
LCRO 91/2013  
LCRO 115/2013

**CONCERNING**

applications for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

determinations of the [Area] Standards Committee

**BETWEEN**

**MR NH**

**AND**

**DHIRENDRA (SHEAN) SINGH**

**Except for the Respondent the names and identifying details of the parties in this decision have been changed**

**DECISION**

**Introduction**

[1] When the subject matter of Mr NH's complaint arose, Mr Singh, who is a lawyer and sole principal of EFG Firm, was also a:

- (a) Beneficiary of XYZ Trust, a trust settled and administered by his brother, and another trustee.<sup>1</sup>
- (b) Director and shareholder of QRS Limited (QRS);
- (c) Trustee of HIJ Partnership (HIJ), until he resigned in around March 2009.

[2] Mr NH and his wife were clients of EFG, as were various entities with which they were associated. They were beneficiaries of HIJ and Mr NH was director of LMN Limited (LMN).

[3] Mr NH makes wide-ranging allegations involving Mr Singh, but the essence of his complaint is that Mr Singh betrayed his trust over an extended period by concealing his interests in respect of a loan of \$100,000 made to Mr NH and his wife by QRS, and acted to their disadvantage.

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<sup>1</sup> Oral Evidence of Mr Singh at Review Hearing on 24 June 2014; XYZ Trust Deed, 23 December 1993; Deed of Variation of XYZ Trust, dated 23 August 1996.

[4] QRS pursued Mr and Mrs NH for the debt when the loan was not repaid. Mr NH was affronted by Mr Singh's role in that process and complained about his conduct to the New Zealand Law Society (NZLS).

### **Standards Committee**

[5] The Standards Committee inquired into the complaint, held a hearing and recorded the facts in its decision dated 12 December 2012 in detail.

[6] The Committee found that Mr NH's allegations spanned a period from 2007 to August 2009, so the provisions of the Law Practitioners Act 1982 (LPA) and the Lawyers and Conveyancers Act 2006 (LCA) applied to Mr Singh's conduct.

[7] The Committee took no further action with respect to some aspects of Mr NH's complaints, but concluded that in other respects Mr Singh's conduct as a lawyer before and after 1 August 2008 had been unsatisfactory.

[8] The Committee applied the relevant legislation and found that Mr Singh had abused his relationship of confidence and trust with Mr NH by failing to properly declare his interests with respect to the loan from QRS. The Committee concluded that his breaches of the Rules of Professional Conduct for Barristers and Solicitors<sup>2</sup> were conduct unbecoming under the LPA,<sup>3</sup> and his breaches of the Conduct and Client Care Rules<sup>4</sup> after 1 August 2008 constituted unsatisfactory conduct pursuant to s 12 of the LCA.

[9] The Committee found that Mr NH's complaint that Mr Singh had been misleading and deceptive as to the identity of the lender was valid. Although the loan documented the lender as QRS, Mr Singh repeatedly referred to the lender as "she" or "it" in a way that suggested that the lender was not, in fact, QRS. When it appeared Mr NH may be unable to repay the loan on time, Mr Singh was actively involved in registering securities and taking steps to protect the lender's interests.

[10] The Committee considered Mr Singh was deliberately evasive as to the identity of the lender, and as a director and shareholder of QRS he effectively was the lender. The Committee considered Mr Singh did not go far enough to ensure that Mr NH understood the extent of his involvement as lender. The findings were based on Mr NH having signed loan documents and a waiver indicating that he was aware of Mr Singh's involvement in QRS, when the evidence did not support a finding that he appreciated the significance of Mr Singh's involvement when he signed a waiver.

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<sup>2</sup> Rules of Professional Conduct for Barristers and Solicitors, Rules 1.01, 1.03, 1.04 and 1.06.

<sup>3</sup> Law Practitioners Act 1982, ss 106 and 112.

<sup>4</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Rules 3-5.3, 5.4, 5.6, 6.0, 11.0 and 11.1.

[11] The Committee considered the waiver was inadequate to protect Mr Singh. It found it had sufficient evidence to support Mr NH's assertion that he believed the loan was funded by an unrelated person, and that Mr Singh did not take the opportunity to disabuse him of that understanding. This was particularly damning for Mr Singh as it became increasingly apparent that Mr NH may be unable to repay the loan, and after QRS had registered judgment in Australia, when QRS apparently maintained the fiction that the investor (whoever she was) had an interest in recovering the debt from Mr NH.

[12] The Committee considered that the transaction was not an "arm's length commercial transaction" for reasons including the relationship between Mr Singh and QRS as director and shareholder, and Mr Singh's trusteeship of HIJ. The Committee considered there was a clear possibility that the interests of Mr Singh conflicted with those of Mr and Mrs NH. The conflict was particularly evident, the Committee considered, when Mr Singh emailed Mr NH in terms that strongly suggested he was assisting the lender, or trying to protect the lender's interests, and when he persuaded Mr NH to agree to QRS taking a registered security over property owned by Mrs NH and the company of which she (but not Mr NH) was a director.

[13] The Committee recorded various breaches of the Rules of Professional Conduct<sup>5</sup> and Conduct and Client Care Rules<sup>6</sup> in the decision dated 12 December 2012, and invited the parties to provide submissions on publication and other orders that might follow from those findings.

[14] Mr NH and Mr Singh applied for a review of the 12 December 2012 decision.

[15] The Committee convened a penalty hearing, and imposed orders under s 156 of the LCA. Mr Singh was censured, ordered to apologise to Mr NH, pay a fine and costs to NZLS, and to undergo further training to help him identify and manage conflicts of interest. The Committee also directed publication of details identifying Mr Singh, subject to the approval of the NZLS Board.

[16] Mr Singh applied for a review of the penalty decision.

### **Review applications**

[17] Mr NH's review application refers to a range of matters that the Committee did not deal with to his satisfaction, including his allegations that Mr Singh's conduct was wrong and unethical both before and after 1 August 2008, with reference to the conflicts between his interests as a lawyer, lender and borrower. Mr NH maintains that Mr Singh misled him as to the identity of the investor; failed to protect and abused

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<sup>5</sup> Above n 2 Rules 1.01, 10.3, 1.04 and 1.06.

<sup>6</sup> Above n 4 Rules 4.3, 5-5.6, 6.0, 11 and 11.1.

Mr NH's confidential information; and used QRS as a front for debt recovery proceedings, to Mr NH's detriment. Mr NH seeks compensation, an apology, and a range of other remedies that are beyond the jurisdiction of this Office, including an order that QRS cancel its judgment against him.

[18] Mr Singh's primary concern on review is that the Committee did not inquire into the source of the \$100,000 QRS lent to Mr NH, before making findings against him. Mr Singh said the Committee considered irrelevant issues, reached conclusions based on incorrect assumptions, and says the decisions and penalty orders should be reversed.

### **Role of the Legal Complaints Review Officer**

[19] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee without good reason.

### **Scope of review**

[20] The LCRO has broad powers to conduct her own investigations, including the power to exercise for that purpose all the powers of a Standards Committee or an investigator, and seek and receive evidence. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review, and the extent of the investigations necessary to conduct that review.

### **Review hearing**

[21] Mr Singh attended a review hearing on 24 June 2014, with Mr NH attending by telephone.

### **Review issues**

[22] At the review hearing Mr Singh conceded that his interests conflicted with those of Mr and Mrs NH and their related entities. The only residual issue on review is whether there is good reason to modify the decision or orders. The answer to that question is no.

### *Summary*

[23] Although Mr Singh and Mr NH are at odds over various aspects of the evidence, Mr Singh disclosed at the review hearing that his interests in the source of the funds

lent to Mr NH by QRS was XYZ Trust. Mr Singh is a beneficiary of XYZ Trust and Director of QRS. He did not clearly disclose his interest in XYZ Trust until the review hearing, and that is a compelling reason for confirming the Committee's findings on review.

[24] All of the Committee's findings were made in the absence of the evidence from Mr Singh that XYZ Trust provided the funds for the loan, and that Mr Singh is a beneficiary of XYZ Trust. That further evidence helps to cement the Committee's findings.

[25] The findings of unsatisfactory conduct and orders made against Mr Singh are confirmed on review, although the Committee's direction to publish details that identify him is reversed for the reasons discussed below. In its place, a direction is made pursuant to s 206(4) to publish this decision including details identifying Mr Singh, but excluding references to XYZ, EFG, QRS, the complainants and their associated entities.

## **Facts**

[26] The facts found by the Committee that are set out in detail in the decision dated 12 December 2012, are further illuminated by the evidence provided on review and are largely undisputed by the parties.

[27] Briefly, towards the end of 2007, Mr Singh became aware that Mr NH was experiencing financial difficulties and struggling to obtain a short-term loan. Before the Committee Mr Singh denied Mr NH's claim that the loan funds offered by QRS had been provided by an undisclosed and unrelated investor (the investor).<sup>7</sup> On review, however, Mr Singh says he approached the trustees of XYZ Trust and suggested the trustees lend \$100,000 of trust money to QRS so that the directors of QRS could lend it to Mr NH (the loan).<sup>8</sup> There is therefore no dispute that Mr Singh as a director of QRS and as a beneficiary of XYZ Trust agreed to lend HIJ \$100,000.

[28] The parties also agree that, on advice from Mr JR an employee of EFG, Mr and Mrs NH signed a loan agreement with QRS (the loan agreement). Mr Singh also signed the loan agreement as a trustee of HIJ, which authorised QRS to register securities against three properties in which Mr and Mrs NH had registered interest personally or through associated entities. At the same time, a guarantee of the loan was also signed by Mr NH personally, and as the director of LMN (the guarantee), and an undated waiver of independent legal advice was signed by Mr and Mrs NH, and Mr NH as director of LMN (the waiver), also on Mr JR's advice.

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<sup>7</sup> Letter NH to NZLS (25 August 2011) at [8]. Mr NH refers to a Chinese lady from Tahiti.

<sup>8</sup> Above n 1.

[29] The waiver said:

Waiver of Independent Legal Advice

Shean Singh  
Solicitor

ADVANCE OF \$100,000 FROM QRS LIMITED

We, MR NH, Mrs NH & LMN Limited acknowledge your advice that D Singh<sup>9</sup> of your firm is a director and shareholder of QRS Limited (“the Lender”).

You have strongly advised us to obtain independent legal advise [sic] before we sign the loan and mortgage documents in respect of the advance of \$100,000.00.

We have considered your advice and hereby waive our right to seek independent legal advise [sic] and instruct you to act for us.

[30] Mr NH says that Mr Singh then registered securities for QRS over properties he and his wife owned interests in, and when he challenged Mr Singh, his response was that the investor had instructed him to secure the money she had lent to QRS, and he had registered the securities pursuant to her instructions.

[31] When the loan fell due for repayment and Mr NH was unable to repay it, QRS commenced legal proceedings against Mr and Mrs NH and LMN Ltd to recover the debt.

[32] Mr and Mrs NH moved to Australia and Mrs NH passed away in July 2009.<sup>10</sup>

[33] QRS applied for judgment by default against Mr and Mrs NH and LMN Ltd, and judgment was sealed on 19 August 2009, (the New Zealand Judgment). QRS arranged for an agent in Australia to serve the New Zealand Judgment on Mr NH.

[34] Shortly after he was served, Mr NH filed for voluntary bankruptcy in New Zealand, and was declared bankrupt on 3 September 2009.

[35] QRS applied for the New Zealand Judgment to be registered in Australia, and later advised Mr NH it had sealed judgment against him in Australia.

[36] Mr Singh says he was then advised by the Official Assignee that Mr NH had been declared bankrupt after the application had been placed before the Australian Court, and that QRS later decided not to pursue its debt.

[37] Mr NH said that he came to believe that Mr Singh had lied to him about the identity of the investor, and that it was a surprise to him when Mr Singh said QRS itself had funded the loan. As a result Mr NH laid his complaints against Mr Singh.

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<sup>9</sup>At the review hearing Mr Singh said that “D Singh” was a reference to him.

<sup>10</sup> Queensland Death Certificate, Mrs NH XXXX/XXXXXXXX dated [date omitted].

### Mr Singh's Position

[38] Mr Singh's submission to the Committee was that "there were funds available in QRS...",<sup>11</sup> and that "the funds advanced were not from QRS there was no third party involvement, nor did QRS act as a conduit of another".<sup>12</sup>

[39] In his review application Mr Singh said "the funds advanced were ~~not~~ from QRS there was no third party involvement nor did QRS act as conduit of another. Further my firm did not represent QRS in this matter". He says he fully and fairly informed Mr and Mrs NH of his position as shareholder and director of QRS, gave Mr and Mrs NH sound advice, and offered them every opportunity to seek independent advice.

[40] It became apparent in the course of the review hearing that Mr Singh's earlier submissions had been misleading in important respects.

[41] The day before the review hearing Mr Singh filed submissions and disclosed bank statements for QRS and EFG's trust account which revealed his interest as a beneficiary of XYZ Trust, and XYZ's role in funding QRS's lending to Mr and Mrs NH.

[42] The documents show that XYZ Trust paid \$100,000 to QRS the day before QRS lent the same amount to HIJ.<sup>13</sup> This is in stark contrast to Mr Singh's assertion that funds were available in QRS before XYZ Trust made that deposit. His later evidence shows that funds were not available in QRS until XYZ deposited the money the day before Mr Singh paid it out through EFG's trust account, pursuant to QRS's direction and the loan agreement.<sup>14</sup>

[43] At the review hearing Mr Singh also accepted that his interests conflicted with the NH's, but he maintains that he is protected by the waiver.

### Conflict Of Interest

[44] Professor Webb discusses conflicts between the interests of a lawyer and his client, and says:<sup>15</sup>

Any personal interest of the lawyer which might possibly touch on the client's affairs should...be disclosed. This will be the case even if the lawyer believes the interest does not create a conflict...

The duty on a lawyer to fully disclose all details of the conflict is absolute. It is not sufficient for the lawyer to simply note the lawyer has an interest of a certain nature. For a client to make an informed decision about whether to continue the lawyer-client relationship it is necessary the client understands the full implications

<sup>11</sup> Submissions Singh to NZLS dated 10 September 2012 at [3(a)].

<sup>12</sup> Above n 11 at [3 (b)-(c)] and [3 (h)].

<sup>13</sup> Oral evidence of Mr Singh; Review Hearing 24 June 2014.

<sup>14</sup> Bank Statement QRS dated 28 August 2007.

<sup>15</sup> Duncan Webb *Ethics, Professional Responsibility and the Lawyer* (2<sup>nd</sup> Edition, LexisNexis NZ, Wellington 2006) at [10.4.2].

of the conflict. If the relationship does continue the lawyer will be obliged to inform the client of any changes in the interests held which affect the conflict.

[45] From the time the loan agreement was signed on 18 September 2007 until late June 2014, there is no evidence of Mr Singh having disclosed that the loan funds were provided to QRS by XYZ for the specific purpose of funding the loan to Mr and Mrs NH, or that Mr Singh was a beneficiary of XYZ. In the absence of evidence to the contrary, the unavoidable conclusion is that Mr Singh did not properly declare his interests to Mr or Mrs NH at the time they agreed to enter into the loan, or for almost seven years thereafter, including in the course of the Standards Committee's inquiry.

### **Waivers**

[46] Mr Singh conceded in his oral evidence at the review hearing that there was a "technical" conflict of interest between his interests and those of Mr NH and HIJ, but maintains that Mr and Mrs NH consented to the conflict by signing the waiver. Although the waiver refers to D Singh being a director and shareholder of QRS, it makes no reference to Mr Singh's interests in XYZ. Mr Singh does not say that the advice on the waiver was adequate, but instead he relies on Mr NH's experience as a developer who had previously signed a number of waivers when he had borrowed funds from banks, with EFG acting for the bank and Mr NH.

[47] Mr NH does not deny signing waivers disclosing EFG's involvement when he had previously borrowed from banks.

### **Discussion**

[48] The Committee's view was that the interest of Mr and Mrs NH as borrowers conflicted with those of Mr Singh in his capacities as director and shareholder of QRS, principal of EFG and trustee of HIJ, and that disclosure of Mr Singh's interests had not been sufficient. Mr Singh's recent disclosure of his interest as a beneficiary of XYZ extends the scope of the conflict, which provides further support for the Committee's finding that Mr Singh's conduct was improper.

[49] The impropriety is aggravated by Mr Singh taking steps to register securities over properties in which Mr and Mrs NH owned interests, personally or through their related entities. The Committee considered his conduct in registering securities was tainted by his conflicts of interest such that it constituted conduct unbecoming under the LPA. That finding is underscored by the extended scope of the conflict.

[50] I have carefully considered all of the information provided, including the evidence of the parties at the review hearing. Mr Singh's evidence is a clear acknowledgement that he was in a position where he had personal interests which were likely to touch on



his clients' affairs. He did not disclose those interests fully, and it is irrelevant whether or not he considered a conflict had actually been created, the existence of a prospect was sufficient to trigger his obligation.

[51] Mr Singh was under an absolute duty to fully disclose the details of his interests to Mr and Mrs NH. He did not do so and they were therefore not in a position to make an informed decision about whether to continue their relationship with him as their lawyer. The difficulties were compounded by Mr Singh's involvement as a trustee in the NH's trust.

[52] Although he relies on Mr NH's previous dealings with the banks and signing waivers, borrowing money from a bank also represented by Mr Singh, but in which Mr Singh has no interest in the loan funding is different in important respects to borrowing from QRS using money provided at Mr Singh's suggestion by a trust of which he was a beneficiary. At best, Mr Singh's reliance on the waiver might be relevant only to penalty.

[53] Bearing in mind that Mr Singh did not fully disclose his interests in the loan funds to the Committee, it is difficult to avoid the conclusion that he was deliberately evasive in failing to disclose the extent of his interests to Mr and Mrs NH. It follows that the Committee's adverse findings with respect to Mr Singh's conduct before and after 1 August 2008 were reasonable, based on the evidence and relevant provisions.

[54] In summary, I can find no reason to depart from any of the Committee's findings with respect to Mr Singh's conduct before or after 1 August 2008. The Committee's determinations were that his conduct was either unbecoming pursuant to the LPA, or fell within the definition of unsatisfactory conduct under s 12 of the LCA.

[55] For completeness, I note that the Committee took no further action in respect of various allegations made by Mr NH, including Mr Singh having improperly involved Mrs NH in the lending; making threatening communications to Mr NH; being responsible for Mr NH not filing defence documents; failing to consider Mrs NH's illness was a valid reason for not repaying the loan; and failing to disclose his bankruptcy to the Australian Courts and not providing disclosure copies of loan related documents. There is no reason to interfere with those aspects of the decision.

## **Outcome**

[56] The decision dated 12 December 2012 is confirmed.

### **Penalty, Costs and Publication decision dated 12 March 2013**

[57] As a consequence of the findings of unsatisfactory conduct, the Committee made the following orders under s 156(1):

- (a) Censure
- (b) Apology
- (c) Fine to NZLS of \$5,000
- (d) Costs to NZLS of \$2,000
- (e) Practical training and education

[58] The Committee also considered directing publication of details identifying Mr Singh, subject to publication being approved by NZLS Board, pursuant to s 142(2) of the LCA.

[59] In considering whether the penalties imposed were reasonable, it is helpful to consider the functions of penalty and to assess the seriousness of Mr Singh's conduct including his knowledge, culpability, and the impacts of his conduct on Mr and Mrs NH.

#### **Functions of penalty**

[60] The functions of penalty orders in a professional disciplinary context include punishing a practitioner, acting as a deterrent to other practitioners, and reflecting the public's and the profession's condemnation or disapproval of a practitioner's conduct.<sup>16</sup> The seriousness of the conduct may affect what specific penalty is selected, depending on which particular function is being met.

#### **Seriousness**

[61] It is helpful in assessing the seriousness of Mr Singh's conduct to consider the purposes set out in s 3 of the LCA, and the fundamental obligations of lawyers in s 4, which relevantly say:

#### **3 Purposes**

- (1) The purposes of this Act are—
  - (a) to maintain public confidence in the provision of legal services and conveyancing services:
  - (b) to protect the consumers of legal services and conveyancing services:
  - (c) to recognise the status of the legal profession and to establish the new profession of conveyancing practitioner.
- (2) To achieve those purposes, this Act, among other things,—
  - (a) reforms the law relating to lawyers:

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<sup>16</sup> *Wislang v Medical Council New Zealand* [2002] NZAR 573 at [21].

- (b) provides for a more responsive regulatory regime in relation to lawyers and conveyancers:
- (c) enables conveyancing to be carried out both—
  - (i) by lawyers; and
  - (ii) by conveyancing practitioners:
- (d) states the fundamental obligations with which, in the public interest, all lawyers and all conveyancing practitioners must comply in providing regulated services:
- (e) repeals the Law Practitioners Act 1982.

#### **4 Fundamental obligations of lawyers**

Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:

- (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand:
- (b) the obligation to be independent in providing regulated services to his or her clients:
- (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
- (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients.

[62] The circumstances around Mr Singh's loan to Mr and Mrs NH were inconsistent with all three purposes of the LCA, and demonstrated non-compliance by Mr Singh with his fundamental obligations as a lawyer over an extended period. Mr Singh's failure to ensure proper disclosure of his interests, and his failure to ensure the NH's received independent legal advice from someone outside EFG at the time they signed the loan agreement and waiver are of particular concern.

[63] Almost without exception there is some risk that a loan may not be repaid. QRS's loan to Mr and Mrs NH was no exception; there would otherwise have been no need for the loan agreement to establish a right for QRS to register securities. The loan attracted risks for Mr Singh as a Director and Shareholder of QRS, and as a beneficiary of XYZ Trust although he must have considered at the time that those were acceptable to him and QRS. It is difficult to avoid the conclusion that his continued lack of candour over XYZ's involvement in providing funds for QRS to lend was a deliberate attempt to obscure the extent of his personal interest in the source of the loan funding from the outset, first to Mr and Mrs NH, and then to the Committee.

[64] Mr Singh failed to protect Mr and Mrs NH as consumers of legal services. Conduct of that nature tends to undermine public confidence in the provision of legal services, and the status of the legal profession. Mr Singh's conduct was inconsistent with all three of the purposes set out in s 3 of the LCA.

[65] Mr Singh was closely involved in arranging the loan, and then in securing QRS's interests under the loan agreement, both of which are regulated services under the LCA. He could not divest his professional responsibilities to Mr JR. In the

circumstances, Mr Singh's fundamental obligations were to ensure those services were provided to Mr and Mrs NH independently, to act in accordance with all of the fiduciary duties he owed to them and to protect their interests. By camouflaging his interests he failed to meet his fundamental obligations under s 4 of the LCA.

### **Knowledge**

[66] Mr Singh's knowledge at the time he arranged the loan with XYZ and QRS in signing the loan agreement as trustee, the registration of securities on the basis of the loan agreement, and his continued obfuscation of his interests in the loan funding are all relevant factors in considering the disciplinary consequences that should flow from his actions. This is because the breach of an Act, Regulation or Rule will be more serious if the practitioner knows what they are doing is wrong but does it anyway.

[67] Mr Singh does not say he did not realise he was doing wrong. His position is that the conflict, and therefore the breaches of the rules, was "technical" and adequately managed by the signing of the waiver. That is not correct, and is an unconvincing excuse for his conduct.

[68] Mr Singh's approach highlights the risks practitioners take in supporting client borrowing with funds in which they have a personal interest.

[69] Mr Singh is an experienced practitioner.<sup>17</sup> He was a trustee of the borrower, a director of the lender, and principal of the firm that advised on the loan transaction. He was aware of his obligations as a company director.<sup>18</sup> There is no reason to believe he was not aware of his rights and entitlements as a beneficiary in XYZ Trust, and as a shareholder of QRS.

[70] Mr Singh was in a position of trust. His reliance on the waiver was misplaced, and as an experienced practitioner I consider it is more likely than not that he knew what he was doing was wrong, but did it anyway. That conclusion locates his breaches towards the more serious end of the range of unsatisfactory conduct.

### **Punitive and remedial orders**

[71] There is nothing unreasonable in the range of orders the Committee made, or in the terms and conditions the Committee imposed. The orders responded to the Committee's assessment of his culpability, and other relevant circumstances, including the impact of his conduct on Mr and Mrs NH, and the risk that he may reoffend.

### **Culpability**

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<sup>17</sup> Submissions Singh to LCRO dated 7 August 2014 at [22].

<sup>18</sup> Above n 13.

[72] Mr Singh is solely culpable for his conduct as the lawyer principal of EFG. At various times Mr Singh has argued that he was not responsible for QRS' actions as lender, although at the review hearing he acknowledged he was aware of his responsibilities as a director of QRS. He cannot avoid culpability for professional breaches by attributing blame to others, when culpability rests squarely on him.

### **Impact on Mr and Mrs NH**

[73] Mr NH says Mr Singh's conduct added to his and Mrs NH's concerns at a time when she was diagnosed with a terminal illness and their son became critically ill. Mr NH says before and after Mrs NH passed away, Mr Singh's conduct added to his anxiety and distress over an extended period.

[74] It is not possible to assess the extent to which Mr Singh's conduct contributed to Mr NH's difficulties. Mr NH says that at the time the loan agreement was signed his financial position was already difficult, and he needed to borrow money in the short term in the hope he could liquidate some assets to relieve his financial pressure. He says his wife and son were seriously ill. It is also relevant that he was unable to find a way out of his financial difficulties, even with the added support of the loan from QRS, which bought him some time. In that sense, Mr Singh arranging the loan from QRS and XYZ was in the NH's best interests but his personal situation at the time was complex.

### **Orders**

#### **Censure – s 156(1)(b)**

[75] The Committee imposed an order for censure on Mr Singh, and he challenges that. The Court of Appeal discussed censure in the disciplinary context of s 156(1)(b) in *New Zealand Law Society v B* describing censure as:<sup>19</sup>

...formal or official statement rebuking a practitioner for his or her unsatisfactory conduct. A censure...is likely to be of particular significance in this context because it will be taken into account in the event of a further complaint against the practitioner in respect of his or her ongoing conduct...A rebuke of a professional person will inevitably be taken seriously.

[76] For the reasons discussed above, Mr Singh's conduct is serious. In the circumstances, censure will fulfil the functions of punishing Mr Singh, act as a deterrent to other practitioners in similar circumstances, and reflect public and professional condemnation of the type of conduct for which Mr Singh is censured.

[77] The order for censure is confirmed.

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<sup>19</sup> *New Zealand Law Society v B* [2013] NZAR 970 at 983.

**Fine to NZLS – section 156(1)(i)**

[78] The Committee ordered Mr Singh to pay a fine of \$5,000 to NZLS. Section 156(1)(i) enables a Committee or an LCRO to order a practitioner to pay to NZLS a fine not exceeding \$15,000. In considering the reasonableness of the fine, I have taken into account the purposes of the LCA, the fundamental obligations of lawyers, and the relevant circumstances including the relative seriousness of Mr Singh's conduct.

[79] I have also considered whether the fine should be increased to recognise the extended conflict disclosed on review. I have decided not to because Mr Singh voluntarily disclosed XYZ's involvement, before the review hearing. Had he not done so, an increased fine would probably have been appropriate.

[80] A fine of \$5,000 is substantial. It fulfils the functions of punishment and deterrence, and reflects the relative seriousness of Mr Singh's conduct.

[81] The fine of \$5,000 is therefore confirmed.

**Apology - section 156(1)(c)**

[82] The Committee imposed an order requiring Mr Singh to apologise to Mr NH for his conduct. An apology was an appropriate response in circumstances where Mr Singh's conduct defied Mr NH's expectation that he could reasonably expect Mr Singh to disclose any personal interest he may have had that might possibly touch on Mr NH's affairs.

[83] The order for apology is confirmed.

**Practical education or training – section 156(1)(m)**

[84] The Committee imposed the order that Mr Singh undergo practical training or education because it was concerned that he may have lacked a real appreciation of the extent of his conflict. The further disclosures he has made in the course of this review reinforced that concern. Although Mr Singh says he would like to retire in the near future,<sup>20</sup> an order that he undergo practical training or education to assist him in identifying and managing conflicts of interest was a reasonable practical response to his conduct. There is no guarantee that Mr Singh will retire. In the circumstances the order that Mr Singh undergo practical education or training is confirmed.

**Costs and expenses of the Committee – section 156(1)(n)**

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<sup>20</sup> Above n 17 at [22].

[85] The order that Mr Singh pay \$2,000 of costs and expenses of the Committee's investigation is not a penalty order. Payment of the Committee's costs and expenses helps to defray the costs of administering the complaints and disciplinary process under the LCA, which otherwise falls on the legal profession as a whole. The Committee's comprehensive findings have been upheld on review. There is no good reason to interfere with the costs ordered, which was a reasonable response in the circumstances.

[86] The order for costs is confirmed.

#### **Compensation – section 156(1)(b)**

[87] Mr NH seeks compensation, although the Committee did not give consideration to making an order under s 156(1)(d) which says:

Where it appears to the [LCRO] that any person has suffered loss by reason of any act or omission of the practitioner...order the practitioner...to pay to that person such sum by way of compensation as is specified in the order, being a sum not exceeding, as the case may require [\$15,000].

[88] Compensation can only be ordered for actual losses. For the reasons discussed in paragraph 74 above, it is not possible to assess the extent to which Mr Singh's conduct contributed to Mr NH's difficulties. The Committee made no order for compensation, and there is no evidence of actual losses or any other reason on review to order Mr Singh to pay compensation.

#### **Publication – section 142(2)**

[89] The Committee directed publication of details identifying Mr Singh, subject to Board approval pursuant to s 142(2). When considering publication after imposing a censure order, the Committee is required to take into account the facts as set out in Regulation 30.<sup>21</sup> There is no indication in the materials available on review that the Committee made reference to the Regulation 30 factors. Based on that apparent deficiency in the Committee's process, the decision to direct publication pursuant to s 142(2) is reversed.

#### **Publication – section 206(4)**

[90] The LCRO has an independent power to direct publication of decisions pursuant to s 206 of the LCA and the LCRO Publication Guidelines, which provide:<sup>22</sup>

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<sup>21</sup> The Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committee) Regulations 2008.

<sup>22</sup> Lawyers and Conveyancers Act 2006, s 206(3) and (4).

The Legal Complaints Review Officer must perform his or her functions and duties and exercise his or her powers in a way that is consistent with the laws of natural justice.

The Legal Complaints Review Officer may, subject to sub-section (3), direct such publication of his or her decisions as he or she considers necessary or desirable in the public interest.

[91] The LCRO Publication Guidelines provide guidance on the types of factors that should be taken into account as a minimum:<sup>23</sup>

- (a) the extent to which publication will provide protection to the public including consumers of legal and conveyancing services;
- (b) the extent to which publication will enhance public confidence in the provision of legal and conveyancing services;
- (c) the impact of publication on the interests and privacy of –
  - (i) the complainant;
  - (ii) the practitioner;
  - (iii) any other person.
- (d) the seriousness of any professional breaches; and
- (e) whether the practitioner has previously been found to have breached professional standards.

[92] The LCRO said in *C H v D X* that if the lawyer had “knowingly breached the Rules, then there is a heightened need for public protection”,<sup>24</sup> and noted that a further relevant public interest element in that case was the collective interest of lawyers in maintaining the reputation of the profession. That is also a relevant factor in the present matter because the facts in this case, published without identifying the practitioner concerned, could relate to any of the many lawyers who also act as trustees and company directors. Anonymous publication would do nothing to help maintain public confidence in the reputations of those lawyers whose conduct raises no disciplinary concerns.

[93] Mr Singh provided submissions on review, highlighting the effects publication may have on his employees [text removed] his wife, his children and his clients. He did not identify any reason why the public interest might not be served by him being identified.

[94] The starting point is that reviews are conducted in private,<sup>25</sup> but that subject to specific provisions of the LCA, and the rules of natural justice, the LCRO may publish decisions as she considers necessary or desirable in the public interest.<sup>26</sup>

[95] Two of the LCA’s primary purposes are to protect consumers of legal services and to maintain public confidence in the legal profession more broadly. In considering whether publication is necessary or desirable in the public interest it is necessary to

<sup>23</sup> LCRO Publication Guidelines dated June 2009 at [4].

<sup>24</sup> *CH v DX* LCRO 296/2012 at [33].

<sup>25</sup> Above n 22 at s 206(1).

<sup>26</sup> Above n 22 at s 206(4).



weigh the interests of the public against Mr Singh's interests, including those he has identified.

[96] The public has an interest in knowing when a lawyer has failed to comply with a rule governing his or her professional conduct. That interest is likely to be more acute when the breach is of a more serious kind.

[97] Any decision to publish will almost inevitably affect a practitioner's reputation, have the potential to harm their business, and its effects may ripple out to the practitioner's employees and at times, family members. Mr Singh has not identified any compelling reasons that would prevent publication from occurring.

[98] It is a matter of record that Mr Singh's conduct fell below the standards provided for in the LCA. The decision sets out the details of his breaches, and explains the context in which his conduct occurred. [text removed].

[99] [text removed] This decision recognises that culpability for his professional conduct rests squarely on Mr Singh.

[100] I have considered whether the purposes of the LCA can be met by limiting publication in some way, and have concluded that limiting publication in the following ways meets the purposes of consumer protection and the maintenance of public confidence in the provision of legal services.

[101] Publication of the decision will include reference to Mr Singh's name but exclude details of XYZ, QRS, the complainants and associated entities.

[102] It is relevant that Mr Singh remains in practice, and may continue in practice for some time. Current and potential future clients have an interest in knowing the strength and weaknesses of the lawyer they choose. No general criticism has been made in this decision of the services Mr Singh provides. There is nothing relevant in Mr Singh's previous disciplinary history which calls for mention in this decision.

[103] On the basis of the present facts, I consider it is necessary and desirable in the public interests to publish this decision including details which identify Mr Singh, pursuant to s 204(4) of the LCA.

### **Costs**

[104] Pursuant to s 210 of the LCA and the LCRO's Costs Guidelines, Mr Singh is ordered to pay \$1,200 of costs to the New Zealand Law Society on review.

**Decision**

Pursuant to section 211 of the Lawyers and Conveyancers Act 2006

- (a) the decision to publish pursuant to s 142(2) is reversed;
- (b) the decisions of 12 December 2012 and 12 March 2013 are otherwise confirmed.

Pursuant to section 206(4) of the Lawyers and Conveyancers Act 2006, publication of this decision, including details identifying Mr Singh, but excluding references to QRS, XYZ, the complainants and their associated entities, is directed.

Pursuant to section 210 of the Lawyers and Conveyancers Act 2006, Mr Singh is ordered to pay costs of \$1,200 to the New Zealand Law Society within 28 days of the date of this decision.

**DATED** this 27<sup>th</sup> day of August 2014.

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Dorothy Thresher  
**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr Dharendra (Shean) Singh  
Mr NH  
The [Area] Standards Committee  
The New Zealand Law Society