

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)
[SAMAN PEMULA NO: WA-17D-33-08/2024]**

Dalam perkara Aduan No DC/22/00328 di Lembaga Tatatertib dan Disiplin Peguambela & Peguamcara (ASDB) di antara Chin Kam Seng, sebagai Pengadu dan Siva Subramaniam a/l M Shanmugam yang beramal di bawah gaya dan nama Tetuan Subramaniam & Shafiq sebagai Responden

DAN

Dalam perkara Seksyen-Seksyen 103D, 103E dan 103EA Akta Profesion Undang-Undang 1976

DAN

Dalam perkara Aturan 55A, kaedah 1(1), (2) dan (4) Kaedah-Kaedah Mahkamah 2012

DAN

Dalam perkara mengenai Aturan 92, kaedah 4 Kaedah-Kaedah Mahkamah 2012

ANTARA

SIVA SUBRAMANIAM

... PERAYU

A/L M SHANMUGAM

DAN

CHIN KAM SENG

... RESPONDEN

DAN

MAJLIS PEGUAM

... PENCELAH YANG DICADANGKAN

JUDGMENT

(Enclosure/L.16: Leave Application for an Intervener)

INTRODUCTION

- [1] The applicant (Bar Council) filed L.16 on 20.09.2024 for leave to intervene in this proceeding under section 103E (6) of the Legal Profession Act, 1957 (LPA) and/or O.15 r.6 (2) (b) Rules of Court, 2012 (RC 2012). It is to be noted that the respondent has no objection to this application.
- [2] On 06.05.2025, after reviewing the cause papers and submissions of the counsels, I find there is merit in L.16 and allowed it with no order as to costs. Dissatisfied, the appellant filed this appeal, and my reasons are as follows:

BRIEF FACTS

- [3] The brief facts discerned from the cause papers are as follows:
- 3.1 The appellant is appealing to this Court against the Order of the Disciplinary Board (DB) dated 27.07.2024 (DB Order), which affirmed the findings of liability against the appellant made by the Disciplinary Committee (DC).

3.2 The DB increased the DC's recommended punishment of suspending the appellant from practice as an advocate and solicitor of the High Court of Malaya for 6 months by:

(1) Suspending the appellant from practice as an advocate and solicitor of the High Court of Malaya for 1 year from 17.08.2024 until 16.08.2025; and

(2) Imposing a fine of RM50,000.00 on the appellant.

3. 3 The DB Order was made after:

The DC had heard the complaint against the appellant for 6 days and found "beyond reasonable doubt" that:

(a) The appellant was guilty of using clients' money without the client's proper authorization, gross disregards of client's interest and monetary dishonesty upon considering the severity of misconduct; and

(b) The DB had considered the DC Report, heard the appellant in mitigation and thereafter, decided to increase the DC's recommended punishment against the appellant.

3.4 On 19.08.2024, upon the appellant's application, a stay of execution and/or enforcement of the DB Order was granted to the appellant.

THE PARTIES ARGUMENTS

I had examined and considered the parties' arguments as follows:

[4] The Proposed Intervener

4.1 The Bar Council is seeking leave to intervene in the present Originating Summons (OS) involving disciplinary proceedings

against the appellant, an advocate and solicitor. The case stems from a complaint by Chin Kam Seng, alleging misconduct by the appellant, including unauthorized use of client funds, disregard for client interests, and monetary dishonesty.

- 4.2 As a background, the Disciplinary Board (DB) affirmed the findings of liability against the appellant and increased the punishment recommended by the Disciplinary Committee (DC) to a one-year suspension and a RM50,000.00 fine. The Appellant has appealed this decision and obtained a stay of execution of the DB Order.
- 4.3 The Bar Council seeks to intervene under section 103E (6) of the Legal Profession Act 1976 (LPA 1976) and O.15 r.6(2)(b) of the Rules of Court 2012 (RC 2012). Its intervention aims to protect public interest, maintain high standards in the legal profession, and assist the court in evaluating the DB's findings.
- 4.4 The appellant:
- (1) Made serious allegations against the DC Chairman and panel, claiming bias, procedural unfairness, and breaches of natural justice.
 - (2) The Bar Council submitted that its participation is essential to address the appellant's allegations and ensure the integrity of the disciplinary process.
 - (3) It emphasises the severity of the misconduct and the importance of upholding professional standards.
- 4.5 Reference was made to several authorities, one of which is as follows:

Amarjeet Singh A/L Mehar Singh v. Muthu Kumar A/L Subramaniam (Majlis Peguam Malaysia, proposed intervener) [2024] MLJU 897, observed that the Bar

Council has a statutory duty under the LPA to maintain and improve the standards of conduct of the legal profession in Malaysia.

The Bar Council prays that leave is granted for them to intervene in the present proceedings.

The Appellant

[5] The appellant argued as follows (briefly):

- 5.1 The appeal arises from a decision by the Advocates & Solicitors Disciplinary Board (ASDB) to enhance the punishment for professional misconduct from a six-month suspension and RM50,000.00 fine to a one-year suspension.
- 5.2 The appellant submitted that:
 - (1) BC does not have a legal interest in intervening at the appeal stage, as solicitors already represent the respondent and are not left unrepresented.
 - (2) Whatever opposition he intends to voice during the appeal stage can be done by him.
 - (3) The BC's role was fulfilled during the disciplinary inquiry and ASDB hearing.
- 5.3 Under O.15 r.6(2) RC 2012 and section 103E (6) LPA 1976, which states that the BC "may" intervene but is not obligated to do so. The appellant emphasises that intervention should occur at the commencement of proceedings, not at the appeal stage.
- 5.4 In *Pegang Mining Co Ltd v. Choong Sam & Ors and Chong Fook Sin v. Amanah Raya Bhd & Ors* [1969] 2 MLJ 52, observed that the authoritative law in this area is where the party proposing to intervene had the legal interest and thus was

able to succeed in their intervention application. He argued that the BC has not demonstrated a legal interest in the appeal.

5.5 The appellant avers that there is a potential conflict, as members of the ASDB are also members of the BC, blurring the lines between their roles. Allowing the BC to intervene at this stage would be akin to *res judicata*, as the BC has already played a role in the disciplinary process.

5.6 In *Chong Fook Sin v. Amanah Raya Bhd & Ors* [2010] 7 CLJ 917, the Federal Court ruled:

'[31] On that footing, it is our judgment that the test of 'legal interest'¹ would still be applicable. However, the legal interest in the issue must be an interest in the subject matter of the appeal before the COA.

[32] It would be observed that in some cases, the subject matter of the appeal is the same as the subject matter in the High Court. In such cases, the legal interest would be identical for both.

[33] However, there could arise situations where the subject matter of the appeal of the COA is separate and distinct from, although connected to, the subject matter of the proceedings at the High Court. The present appeal presents one such situation. The interveners assert an interest by reason of being beneficiaries in the Estate of the deceased. This is more relevant to the proceedings in the High Court as they stood prior to being struck off. The appeal only concerns ARB's non-compliance with the unless order made against it. This did not and could not involve the interveners qua beneficiaries.

[34] In such situations, it is incumbent upon the proposed intervener to establish a legal interest in the subject

matter of the appeal before the COA by reference to the matter under consideration in that court. An indirect interest cannot amount to a 'legal interest'.

[35] In addition, the intervener application must be made at first instance where the proposed interveners had knowledge of the proceedings in the High Court and the opportunity to take the necessary steps. (See Tradium Sdn Bhd v. Zain Azahari Zainal Abidin & Anor [1996] 2 CLJ 270 and Fairview Schools Bhd v. Indrani Rajaratnam & Ors [1998] 1 CLJ 285.)

[36] In this regard, 'opportunity' must be understood as meaning legal avenue and entitlement to make such an application. Quite apart from the requisite 'legal interest', an applicant must establish that he is not precluded by any other circumstances from making such an application.

[37] Such precluding circumstances would include a prior determination of the courts that gave rise to an issue estoppel, such as to attract the doctrine of res judicata. A party so impeded would not be in a position to seek leave to intervene."

5.7 The appellant further submitted that the proposed intervener has not demonstrated any legal interest in the affidavit filed other than merely stating it has a duty to look into the conduct of an advocate and solicitor, which befittingly has been thoroughly looked into by the ASDB. The proposed intervener was represented at all stages, right from the point the complaint was lodged to the handing down of the punishment to the appellant. The appellant prays that the present application be dismissed without an order for costs.

THE LAW

[6] The Bar Council has the right to intervene at any stage of an appeal against a decision of the DB pursuant to section 103E (6) of the LPA read together with O.15 r.6(2)(b) RC 2012 because it is the duty of the Bar Council to maintain the standard and conduct of advocates and solicitors pursuant to section 42 of the LPA and the Bar Council's role is to assist the Court in determining whether the finding of misconduct by the DB can be sustained

Section 103E (6) LPA provides:

"103E Appeal from the decision of the Disciplinary Board

...

(6) The Bar Council may in its discretion intervene at any stage of any appeal under this section."

[7] The law on intervener as provided under O.15 r.6 RC 2012 is trite in that generally an application to intervene is made to prevent injustice and multiplicity of proceedings. In *Chan Yee v. Chan Yoke Fong* [1990] 2 CLJ 732, the Supreme Court held that:

"...under the rule the court has a wide discretion to make the order...so that all matters in dispute could be effectively determined and adjudicated upon".

This would avoid two potentially different decisions being reached regarding the same questions or issues. In *Tajul Ariffin bin Mustafa v. Heng Cheng Hong* [1993] 1 AMR 119/ [1993] 2 MLJ 143, the Supreme Court said:

"The objects of r 6(2)(b) as to joinder of parties are, generally speaking, the same as the object of the rules governing third party proceedings that is to say: (a) to prevent multiplicity of proceedings and to enable the

court to determine disputes between all parties to them in one action; and (b) to prevent the same or substantially the same questions or issues being tried all over again with possibly different results".

[8] The legal criteria required could be seen in the case of ***Pegang Mining Co. Ltd v. Choong Sam & Ors*** [1969] 2 MLJ 52, which said that an applicant is a proper person to be added where he can show:

- (1) His presence before the Court is imperative for the adjudication of the subject matter of the case.
- (2) He has a direct legal or financial interest in the action.
- (3) His rights against or liabilities to any party to the action in respect of the subject matter of the action are directly affected by any order which may be made in the action.

[9] The law requires that the application be made as soon as possible, or as soon as the applicant first becomes aware of the proceedings and has an opportunity to take the necessary steps. In *Jerry WA Dusing & Anor v. MAIWP* [2017] 1 CLJ 133, the Court of Appeal held that the threshold test to be an intervener is for the applicant to demonstrate direct interest. The COA observed as follows:

"The threshold test to be an intervener is for the applicant to demonstrate direct interest. In the instant case, MAIWP will not be affected by any order of the court and had no rights over and owes no liabilities to the appellants..."

[10] A person who is not a party may be added as defendant against the wishes of the plaintiff either on the application of the defendant or on his own intervention, or in rare cases by the court of its own motion under O.15 r.6(2)(b) RC 2012. The jurisdiction of the court under this rule is entirely discretionary. In ***Ramachandran s/o Appalanaidu & 107 Ors v. Dato Bandar Kuala Lumpur & Anor***

[2012] 6 AMR 124; [2012] 6 MLJ 519, CA, the Court of Appeal described the power of the court to join a party to an action as "a matter of the court's discretion in the totality of the circumstances" and "ultimately depends on the factual matrix before the court".

FINDINGS OF THIS COURT

[11] It is settled law that the Bar Council has the right to intervene at any stage of an appeal against a decision of the DB pursuant to section 103E (6) of the LPA read together with Order 15 rule 6 (2) (b) of the RC 2012. It is the duty of the Bar Council to maintain the standard and conduct of advocates and solicitors pursuant to section 42 of the LPA.

[12] In BC's affidavit in support, Puan Murshidah bt Mustafa affirmed at para 5 as follows

(1) In para 5.1:

One of the objectives of the BC is to maintain and improve the standard of the legal profession in Malaysia.

(2) In para 5.4:

DB had made a finding of liability on the issue of the appellant's breach of undertaking.

(3) In para 5.7:

To protect the public interest and to ensure that the standard of the legal profession is maintained.

[13] The BC:

(1) Has a statutory duty under the LPA to maintain and improve the standards of conduct of the legal profession in Malaysia.

- (2) The outcome of this OS, which involves circumstances in which a solicitor's undertaking is considered to have been breached, is so pertinent to the BC in the exercise of its statutory duty.
- (3) In such circumstances, it is sufficient to conclude that O.15 r.6(b)(ii) RC 2012 has been established.

[14] I agree that in this present appeal, there are serious and personal allegations against the Chairman and the entire panel of the DC. Therefore, it is essential for the BC to participate in these proceedings, whose presence before this court is necessary to ensure that all matters in dispute can be fully adjudicated fairly and justly.

CONCLUSION

[15] On the balance of probabilities, I find that BC has proven its application, and in the circumstances, I accordingly allowed this application with no order for costs.

Dated 23 July 2025.

(HAYATUL AKMAL ABDUL AZIZ)

Judge

High court of malaya

Kuala lumpur

Counsel:

For the appellant – Murthi & Siva Subramaniam; M/s Subramaniam & Shafiq

For the applicant - Chok Zhin Teng & Lim Su Yie; M/s Cheah Teh & Su