ABSTRACT

Statutory duties are imposed upon the Qualified Person (QP) who acts as the control arm in enforcing the Building Control Act. In private practice the QP enters into contractual relation with the Client as his architect for design, supervision and administration of the main building contract. The architect in performing his contractual duties act for and on behalf of the Client would owe to the Client, fiduciary duties as the Client's agent.

Design and Build (D&B) procurement brought about changes to the contractual arrangement amongst the Client, the main contractor and the architect. Conflict of interest is inevitably present in a situation where the architect owes contractual duties to both the Client and the main contractor. Not all D&B arrangement involving the QP would place him in a position of such conflict of interest. Nevertheless, attention should be drawn to the Housing Development Board D&B and partial novated D&B where the architect serves both the Client and the main contractor.

For the QP who is involved in the HDB D&B or partial novated D&B, conflict of interest is unavoidable as it is inherent in the situation where he serves both the Client and the main contractor. Findings have shown that in such situation, the QP had breached the fundamental fiduciary obligations in failing to obtain informed consent of his principals when acting for both. Furthermore, the QP is inhibited in the performance of his contractual duties faithfully and effectively to the Client as he is distracted his employment by the main contractor.