

18/85

IN THE PRIVY COUNCIL

No. 66 of 1984

ON APPEAL FROM THE HIGH COURT OF THE
REPUBLIC OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING
Appellant

and

THE LAW SOCIETY OF SINGAPORE
Respondents

CASE FOR THE APPELLANT

Introduction

Record

10 (1) This is an appeal, by leave of the High Court of the Republic of Singapore (Wee C.J., Lai and Thean JJ.), from an Order of that Court dated the 3rd September 1984 whereby it was ordered that the Appellant's name be struck off the roll of Advocates and Solicitors of the Supreme Court of Singapore and that the Appellant should pay the costs of the proceedings, including the costs of the earlier proceedings before the Disciplinary Committee. Leave to appeal was granted by Order of the High Court of Singapore dated 10th September 1984.

Pt II pp.349-368

Pt II p.369

Pt II pp.373-4

(2) Shortly stated, the questions which arise in this appeal are:-

20 (a) whether upon the proper construction of the relevant provisions of the Legal Profession Act the Respondents were entitled to institute the proceedings which led to the Order appealed against and/or had locus standi so to do;

(b) whether the principles of natural justice were observed at all stages of the said proceedings;

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(c) whether the High Court of Singapore properly applied its mind to the findings of the Disciplinary Committee which considered the Appellant's case; and

(d) whether having regard to all the relevant facts and circumstances, the penalty imposed upon the Appellant was not too severe.

The Facts

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- Pt II pp.349-350
11 32-10
- (3) The Appellant joined the legal section of the Inland Revenue Department of Singapore on the 29th April 1970. He was admitted to the roll of Advocates and Solicitors of the Supreme Court on the 11th July 1973 and on the 1st May 1979 he was promoted Senior Legal Officer to head the Legal Section. He was 'interdicted from duty' on the 8th August 1980 and dismissed on the 11th February 1983. 20
- Pt III (Exhibits)
p.12
- (4) The effect of 'interdiction from duty' was that the Appellant was suspended from duty without pay but forbidden to engage in any trade or business or to take up work for any employer without the approval of the Government of Singapore.
- Pt III (Exhibits)
p.14
- Upon his ultimate dismissal all the Appellant's emoluments for the period from 8th August 1980 - a period of some 30 months - were forfeited. Although after dismissal on the 11th February 1983 the Appellant was thereafter free to seek employment, he did not, in view of the currency of the disciplinary proceedings, seek to do so, nor did he take out a practising certificate (he had not required one whilst in Government Service). 30
- Pt II p.368
11 16-18
- Pt I pp.196-197
Pt I pp.257-286
Pt II p.350
11 11-35
- (5) On the 14th November 1981 the Appellant was convicted by District Judge Soon Kim Kwee, sitting alone, of an offence of Cheating contrary to s. 420 of the Penal Code: in short summary, the essence of the offence charged was that the Appellant had dishonestly induced Tong Eng Bros Pte. Ltd. ("Tong Eng") to deliver to him a Bank Draft in the sum of £800, drawn in favour of Mr. D.C. Potter Q.C., by falsely representing 40

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- that the said sum was due and payable to Mr. Potter as his fee for work done for Tong Eng. Two further charges laid in connection with the said draft, one of attempting to commit a criminal breach of trust and one of committing a criminal breach of trust, had earlier been dismissed on a submission of no case to answer made at the conclusion of the Prosecution's case. The Appellant was sentenced to 1 day's imprisonment and to a fine of Singapore \$3,000.
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- (6) The Appellant appealed against his conviction: on the 20th October 1982 his appeal was dismissed by the Chief Justice (Wee C.J.).
- (7) Following the conviction of the Appellant, the Respondents, as they were required to do by s. 86(5) of the Legal Profession Act, applied to the Chief Justice 'to appoint a Disciplinary Committee which shall hear and investigate the matter'; on the 2nd December 1982 the Chief Justice appointed such a Disciplinary Committee.
- 20
- (8) The Disciplinary Committee, consisting of three practising Advocates and Solicitors (L.A.J. Smith, A.P. Godwin and P. Selvadurai), sat to hear the matter on the 30th April 1983 after which they reserved their decision until the 2nd July 1983 when they determined that 'while no cause of sufficient gravity exists for disciplinary action under s. 84 of the Act' the Appellant 'should be and is hereby reprimanded'. The said determination was one of three possible alternative determinations open to the Committee under s. 93 of the Act and was in the form provided for by s. 93(1)(b) thereof.
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- (9) On the 15th July 1983 the Respondents, purporting to act under the provisions of s. 97 of the Act, issued an Originating Summons in the High Court of Singapore for an Order that the determination of the Disciplinary Committee should be set aside and that the Respondents 'be directed to
- Pt I pp.1-2
Pt I p.71
ll 26-27
- Pt I p.197
ll 1-3
- Pt I pp.287-291
Pt I p.292
- Pt II p.350
ll 36-43
- Pt II p.346
- Pt II pp.293-314
- Pt II pp.315-319
- Pt II pp.320-321

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- Pt II pp.342-343 make an application under s. 98 of the Legal Profession Act' (under which section a Solicitor may be required to show cause why he should not be struck off the roll, suspended from practice or censured.) The Defendants to the said Originating Summons were the members of the Disciplinary Committee and the Appellant was not a party thereto. On the 2nd December 1983, the Chief Justice (Wee C.J.) ordered that the determination of the Disciplinary Committee should be set aside and that the Respondents should make application under s. 98 of the Act. 10
- Pt II pp.343-344 (10) On the 19th January 1984 the Respondents issued an Originating Summons for an Order that the Appellant do show cause why he should not be dealt with under s. 98 of the Act; the said Pt II pp.348-349 summons was heard ex parte by the Chief Justice (Wee C.J.) on the 10th February 1984 and an Order made in the terms sought. 20
- Pt II p.369 (11) On the 3rd September 1984 the Supreme Court of Singapore (Wee C.J., Lai and Thean JJ.) Ordered that the Appellant's name be struck off the roll of Advocates and Solicitors of the Supreme Court.
- If and so far as it may be necessary so to do, the Appellant will also seek Special Leave to appeal also against all or any of the earlier Orders referred to in paragraphs 9 and 10 hereof. 30
- The Facts Surrounding the Conviction of the Appellant
- Pt I p.258 (12) During 1978 the Appellant was ll 41-47 introduced to Mr. Teo Tong Wah ('Teo') a Director of Tong Eng. The Appellant and Teo thereafter became close personal friends.
- Pt I p.259 (13) During the latter part of 1979 ll 14-19 Teo informally sought the views of the Appellant as to the operation of certain provisions of Singapore Revenue Law as it applied to Tong Eng. The Appellant advised Teo to seek an opinion from Leading Counsel: he said that Teo should arrange for Tong Eng's own legal officer to prepare 40
- Pt I p.259 ll 19-29

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- the necessary instructions (referred to throughout the subsequent proceedings as the 'brief') which he (the Appellant) would then arrange to have submitted to Leading Counsel for his Opinion. Teo later asked the Appellant to assist in the preparation of the 'brief' as Tong Eng's legal officer lacked the necessary expertise to prepare the same; the
- 10 Appellant agreed to assist as asked and towards the end of 1979 he and Teo finalised the details of the 'brief'.
- (14) In January 1980 the Appellant sent the 'brief' to Mr. D.C. Potter Q.C. at his Chambers at 4 Pump Court, Temple, London, E.C.4. The Appellant already knew Mr. Potter, having previously consulted him - and other members of those Chambers - in the course of his official duties on behalf of the Inland Revenue
- 20 Department in Singapore. On the 18th January the Appellant spoke by telephone to Mr. Potter's Clerk (Mr. A. Brown) and said that the matter was a 'private' one - by which the Appellant meant that the matter did not relate to the official business of the Government of Singapore but which Brown may have misunderstood to mean that the matter was one which concerned the personal affairs of the Appellant.
- (15) On the 14th February 1980 Mr. Potter gave an Opinion in writing which was sent to the Appellant in Singapore. On receipt the Appellant discussed the terms of the Opinion with Teo: the Opinion itself and also a covering letter expressed Mr. Potter's readiness to give further consideration to the matter if required.
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- (16) At about the same time, the Appellant handed to Teo a piece of paper upon which he, the Appellant, had written Mr. Potter's name and address and the figure £800, and told Teo that that sum was required in connection with paying Mr. Potter's fees.
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- (17) On 7th March 1980 the Appellant received from Tong Eng's Bankers a draft in favour of Mr. Potter in the sum of £800, and on the 10th March 1980 the Appellant forwarded the draft to Mr. Potter's Clerk
- Pt I p.259
11 30-36
- Pt I p.259
11 37-48
- Pt I p.20
11 26-43
Pt I p.74
11 36-41
- Pt I pp.259-260
11 49- 7
- Pt I pp.14-15
11 35- 3
Pt I p.75
11 6-24
- Pt I p.260
11 7-14
- Pt I p.260
11 27-29
- Pt I p.260
11 29-47

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under cover of a letter of that date. It was common ground throughout the subsequent proceedings that whilst the Appellant did not at that stage know what Mr. Potter's fee would be and that no fee note had at that stage been rendered, both the Appellant and Teo expected that a fee would be payable to Mr. Potter for his said Opinion. It was the obtaining by the Appellant, on the 7th March 1980, of that draft which was held subsequently to amount to the offence of cheating of which the Appellant was convicted.

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Pt I p.261
ll 15-27

(18) On the 13th March Brown wrote to the Appellant to the effect that Mr. Potter did not wish to charge a fee for his Opinion. The Appellant received that letter on or before the 20th March 1980 and that letter was the earliest intimation to the Appellant that Mr. Potter did not intend to charge a fee for his said Opinion. The Appellant replied by a further letter dated the 20th March 1980.

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Pt II p.317
ll 42-53

Pt I pp.261-2
ll 35-14

(19) The charges, of which the Appellant was subsequently acquitted (on a submission of no case to answer), of attempted criminal breach of trust and of criminal breach of trust were based, respectively, upon the letters of 10th and 20th March 1980 from the Appellant to Brown referred to above. Although the District Judge did not give detailed reasons for holding that there was no case to answer on those charges, the fact that they both involved imputations of attempted or successful misappropriation by the Appellant of some or all of the proceeds of the draft already referred to is, it is submitted, highly material to any assessment of the grounds for, and seriousness of, the conviction for the offence of Cheating of which alone the Appellant was convicted.

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Pt I p.262
ll 25-30

(20) On the 21st May 1980 the Appellant left Singapore for London in connection with the hearing of an appeal before the Privy Council, the hearing date for which had been fixed and known for some

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10 months. Before leaving Singapore the Appellant spoke to Teo and said that while in London he would have the opportunity of seeing Mr. Potter and of discussing further the matters upon which Mr. Potter had already advised: Teo was content that the Appellant should do so. The Appellant had a consultation with Mr. Potter on the 23rd May 1980 in connection with the affairs of Tong Eng for which consultation Mr. Potter charged a fee of £450. The fee note for the said consultation was drawn up and was handed by Brown to the Appellant on the 6th June.

Pt I p.262
ll 32-46

20 (21) On the 7th June 1980 the Appellant returned to Singapore. On the 3rd July 1980 he made arrangements for the sum of £450 to be transferred from his Deposit Account to his Current Account at the Midland Bank, Pall Mall in order that he might settle Mr. Potter's said fee of £450, the whole of the sum of £800 having been paid into his said Deposit Account in March of that year.

Pt I p.263
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Pt II p.367
ll 13-21

30 (22) On the 9th July 1980 the Corrupt Practices Investigation Bureau interviewed the Appellant about other matters and, on the 22nd July 1980 first questioned him as to the circumstances of his having received the said draft for £800. When he was first interviewed by the Corrupt Practices Investigation Bureau, the Appellant immediately sought legal advice and all the further letters written by him both to the Chambers of Mr. Potter and to Teo, upon which considerable significance was placed at his subsequent trial, were written by him upon legal advice.

Pt I p.263
ll 6-9

PtIII (Exhibits)
pp.4-11

The Relevant Legislation

40 (23) Disciplinary Proceedings against Advocates and Solicitors are governed by Part VII (ss.83 to 106) of the Legal Profession Act, as amended. It is the principal contention of the Appellant that, the Disciplinary Committee appointed under s. 86(5) of the Act having determined that no cause of sufficient gravity for disciplinary action existed, the Respondents had no right or standing to

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apply to the Supreme Court, as they purported to do, to overturn that determination of the Disciplinary Committee.

(24) Part VII of the Act establishes comprehensive and multi-tiered machinery for Disciplinary Proceedings. With two exceptions (see ss 86(5) and 87(1)(b)) it contemplates that the process will be initiated by an 'application or complaint' made to the Respondent Society or by a reference by the Supreme Court or a judge thereof or by the Attorney-General made to the Society: see s. 86(1) and (2). Upon receipt of such application, complaint or reference, the Society is required, by its Council, to refer the matter to the Inquiry Committee which is established under s.85 of the Act and the Members of which (who must be Advocates or Solicitors) are appointed by the Chief Justice. The Inquiry Committee then investigates and reports its findings and recommendations to the Council of the Respondents, and the Council is then required to consider what further action should be taken.

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(25) If a formal investigation by a Disciplinary Committee is determined upon, the next stage is for the Council to apply to the Chief Justice to appoint a Disciplinary Committee - see s.90. Whilst the Inquiry Committee is a standing Committee, the members of which need not actually be in practice, a Disciplinary Committee is appointed 'ad hoc' and is required to be composed of Solicitors who hold current practising certificates - see s.91.

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(26) Where, however, an Advocate or Solicitor has been convicted of any of certain offences, then s.86(5) requires the Council forthwith to apply to the Chief Justice to appoint a Disciplinary Committee. In such a case, the preliminary stage of consideration by an Inquiry Committee is elided. Although in the instant case, in view of the conviction of the Appellant, the provisions of s.86(5) applied, so that there was no reference to an Inquiry Committee, the Appellant nevertheless

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submits that for reasons which hereafter appear, the statutory provisions relating to the Inquiry Committee have an important bearing upon the construction of the later provisions of the Act.

10 (27) S.93 of the Act requires the Disciplinary Committee to make and to record findings in relation to the facts of the case and provides also for the three possible forms of determination open to the Committee, namely:-

(a) that no cause of sufficient gravity for disciplinary action exists under s.84;

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded; or

20 (c) that cause of sufficient gravity for disciplinary action exists under that section.

In the instant case, the determination of the Disciplinary Committee was in the form set out at (b) above.

30 (28) By s.94 of the Act, if the determination of the Disciplinary Committee is that formal disciplinary action should be taken, the Respondent Society is required forthwith to apply, under s.98 of the Act, for an Order that the Advocate and Solicitor be required to show cause why the penalties provided for by s.84 should not be visited upon him. S.98 sets out the procedure to be adopted for the initiation and conduct of what are invariably referred to as 'Show Cause Proceedings' and which are required to be heard by a Court of three judges, including the Chief Justice.

40 (29) Ss.96 and 97 contain provisions enabling the person who 'made a written application or complaint to the Society', if dissatisfied with a decision of the Council not to order a formal investigation before a Disciplinary Committee (s.96) or

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 11 11-15

with the determination of the Disciplinary Committee itself that disciplinary action is not required (s.97), to apply to the Court. In the respectful submission of the Appellant, the reasons for which are developed below, the 'person' who is so authorised to apply to the Court is the same person as is referred to in s.86(1) and cannot include the Society itself. So far as s.96 is concerned, this point was indeed accepted by the Court - see the judgment of Lai J. at p.16 - and, in the submission of the Appellant, the same must be true of s.97. In the instant case, however, the Respondents, when applying to the Court to overturn the Report of the Disciplinary Committee, claimed to do so as being within the words '...the person who made the written application or complaint...' in s.97(1): in the submission of the Appellant, that contention was misconceived and in truth the Respondents had no locus standi to challenge the findings, determination or recommendation of the Disciplinary Committee.

The Appellant's Submissions on the Locus Standi Point

(30) The Appellant respectfully submits that as a general principle of construction, Part VII of the Act, being penal or punitive in its nature and application, must be construed so that any ambiguities or doubts are resolved in his favour.

(31) The primary contention of the Appellant is that s.97 conferred no power right or locus standi upon the Respondents to make the application to the Supreme Court which was in fact made on the 15th July 1983. If this submission is right, then it follows, as was in terms recognised by Lai J. in his judgment, that '...the Law Society was not competent to have applied under s.97 of the Act and is not properly before us and the entire proceedings must fail in limine.'

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 11 8-12

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10 (32) Analysis of Part VII of the Act shows that the Law Society is entirely separate and distinct from the person who makes the application or complaint which leads to disciplinary procedures being implemented and that the role of the Respondent Society, as laid down in the Act, is to receive and to deal with, by referring them to the Inquiry Committee, initial applications or complaints (s.86(1)) or references by the Supreme Court or a Judge thereof or by the Attorney-General (s.86(2)), and, at various later stages of the proceedings, to receive and to act upon reports from the Inquiry Committee and/or the Disciplinary Committee.

(33) That this is so appears clearly from the following:-

- 20 (a) S.86(1) and (2) specifically require the application, complaint or reference, as the case may be, to be made to the Society;
- (b) The Report of the Inquiry Committee is made to the Society - s.87(1), (2) and (3);
- 30 (c) S.86(4) specifically authorises the Inquiry Committee to require any 'person making a written application or complaint' to deposit with the Society a sum by way of security for costs;
- (d) S.88(2) requires the Society to inform, inter alios, '...the person who made the application or complaint....' of the manner in which it has determined it;
- 40 (e) S.92(2), by its reference to '...the Society or the applicant or the person who made the complaint...', clearly contemplates that the Society is not within the definition of 'the applicant or the person who made the complaint';

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(f) S.93(3) - which refers at (a) to the Society as being entitled to receive a copy of the Report and at (b) to the '...person who made the application or complaint' as being entitled to a copy of the Report only upon request - clearly contemplates that the Society is not within the latter definition.

(34) S.96(1), which opens with the words 'Where a person has made a written application or complaint to the Society....' clearly does not include the Society itself within the definition of the persons who are thereby authorised to apply to the Court - as was recognised by Lai J. in his judgment at p.16. When s.97(1) refers to '....the person who made the written application or complaint', that must be a reference to the same person or persons as are referred to in s.96(1). This argument is strengthened by the use, in s.97(1) of the word 'the person'; any construction which gave a different meaning to the phrases in ss.96 and 97, which are plainly a linked pair of sections, would be absurd.

(35) The phraseology used makes it clear that the 'person' referred to in ss.96 and 97 of the Act is the same person as is referred to in ss.86(1), 86(4), 92(2) and 93(3)(b) and is wholly inapt to include the Respondent Society itself. Such a construction, in any case, falls neatly into the scheme of the Disciplinary Procedure as a whole because ss.96 and 97 are a closely interlinked pair of sections designed to give a right to be heard to a dissatisfied complainant at different stages of the proceedings - as is confirmed by the terms of the marginal note.

(36) Further support for these contentions is provided by the terms of ss.(2), (3) and (4)(b) of s.96 and by ss.(2) and (3) of s.97. Additionally, the provisions of ss.96(5) and 97(5), which provide that in the circumstances

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11 11-15

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there contemplated, any further proceedings shall be brought 'in the name of the applicant' show clearly that that person is someone other than the Respondent Society which, in all other circumstances, has the statutory obligation to institute and conduct the various steps in the procedure; see ss.88(1) and (1A), 94(1) and 98.

- 10 (37) Yet further support for the Appellant's contentions is provided by the fact that while the Act contains an express provision authorising the Respondent Society to disagree with the view of the Inquiry Committee should the latter not recommend the institution of formal proceedings before the Disciplinary Committee (see s.88(1A)(b)), there is no
20 equivalent provision entitling the Society to disagree with the views of the Disciplinary Committee.

The Reasoning of the Supreme Court and the Appellant's Criticism thereof

- 30 (38) The reasoning and conclusions of the Supreme Court on the locus standi point are set out at pp.5 - 17 of the judgment of Lai J, particularly at pp.14 - 17. They can be shortly summarised as follows:-

Pt II pp.352-359
Pt II pp.358-359
ll 6-50

- (a) Where, by reason of a relevant conviction, the Inquiry Committee stage of the procedure is by-passed, the application which the Law Society is required to make by s.86(5) for the appointment of a Disciplinary Committee 'must be considered as an application or complaint';

Pt II p.358
ll 48-53

- 40 (b) In any case where the Inquiry Committee acts 'of its own motion' - see s.87(1)(b) - the Council of the Respondent Society, if it applies under s.90 for the appointment of a Disciplinary Committee, '....must be considered as having made the application or complaint'

Pt II p.359
ll 8-10

- 50 (c) While the 'person' referred to in s.97(1) cannot include the Society, nevertheless the

(b) As to paragraph 38(c) above, it has already been submitted above that the 'person' referred to in s.97 must be the same as the person referred to in s.96.

10 (c) It is, with respect, quite wrong to say that the Appellant's arguments, if correct, would introduce 'uncertainty, friction or confusion'. The judgment of the High Court strongly suggests that the reason why it cited this phrase was that it thought, erroneously, that it was thereby enabled to put right what it regarded as an unfortunate defect in the legislation.

Pt II p.358
11 6-38
Pt II p.359
11 14-39

20 (d) The provisions of ss.(2), (3) and (4) of s.97, far from being 'procedural surplusage', are in fact clear indications that the construction adopted by the High Court was wrong. It is quite inappropriate to ignore such clear provisions - particularly in a statute dealing with disciplinary penalties.

30 (e) If and so far as the lack of any right in the Law Society to seek to overturn the determination of the Disciplinary Committee was seen as a serious defect in the procedure, as the passage at pp.14 - 15 of the judgment suggests that it was, then that matter must be put right by legislation and not by
40 judicial decision.

Pt II p.358
11 18-38

(40) In the result, if the above submissions are correct, then it follows that:-

50 (a) The Law Society had no locus standi to make the application (to which the Appellant was not a party) to the Chief Justice by Originating Summons issued on the 15th July 1983;

Pt II pp.320-321

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- (b) The Chief Justice ought not to have entertained the same;
- Pt II pp.341-343 (c) The Chief Justice ought not to have made the Order dated 2nd December 1983;
- Pt II pp.343-344 (d) Neither the Application made by the Respondents on the 19th January 1984 nor the Order made thereon by the Chief Justice on the 10th February 1984 were properly made; and 10
- (e) The proceedings against the Appellant under s.98 of the Act were improperly constituted and the Order made thereon should be set aside.
- (41) If and insofar as it may be necessary so to do, the Appellant will seek special leave to appeal also against the Orders referred to at (c) and (d) of paragraph (40) above. 20

Natural Justice

- (42) The recital of the procedural history of the matter which is set out in paragraphs 6 - 11 hereof shows that on numerous occasions the matter came before the Chief Justice. These occasions were:- 30
- Pt I p.292 (a) the Chief Justice dismissed the Appellant's appeal against his conviction;
- Pt II p.346 (b) the Chief Justice appointed the Disciplinary Committee to consider the Appellant's case;
- Pt II pp.342-343 (c) the Chief Justice, at a hearing to which the Appellant was not a party, set aside the determination of the Disciplinary Committee; 40

(d) the Chief Justice made the Order that the Appellant should 'show cause' why the penalties provided for in the Act should not be visited upon him;

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Pt II pp.348-349

(e) the Chief Justice presided over the Court which determined that the Appellant should be struck off the roll of Advocates and Solicitors.

Pt II pp.349
et.seq.

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(43) Whilst the Legal Profession Act specifically required the Chief Justice to perform the functions referred to at (b) and (e) of paragraph 42 above, nevertheless the extent to which the Chief Justice was concerned in the proceedings against the Appellant was such that if he could not clearly be seen to bring a fresh and independent mind and judgment to the Appellant's case: in particular, bearing in mind that if 'Show Cause' proceedings were taken, he would be required to sit to hear them (see s.98(6)), he ought not himself to have heard the applications referred to at (c) and (d) above and should have elected not to do so.

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Pt II pp.342-343
Pt II pp.348-349

Did the High Court properly apply its mind to the findings of the Disciplinary Committee?

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(44) The judgment of the High Court dwelt at some length upon the findings of the District Judge: in so doing, the High Court misdirected itself and/or failed properly or at all to apply its mind to the findings of the Disciplinary Committee, composed as the latter was of three experienced practising Solicitors. The Disciplinary Committee correctly directed itself that it should consider the degree of turpitude which the Appellant's actions involved, and took into account all relevant factors including, in particular, the fact that, as was common ground throughout, at the time when the Appellant received the draft (the 7th March 1980) - and it was the obtaining by him of that draft upon which the charge of cheating was founded - whilst no fee note had at that time been received and whilst the Appellant did not know precisely the amount of the fee to be charged, both the Appellant

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ll 1-3
Pt II pp.316-317
ll 38-37
Pt II p.318
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 ll 44-48

and Teo expected that Mr. Potter would charge a fee. The Disciplinary Committee took into account also, as it was entitled to do, the relatively moderate penalty imposed by the District Judge. Having regard to the fact that the Legal Profession Act clearly regards the Disciplinary Committee as being primarily the appropriate tribunal to determine the seriousness or otherwise of the conduct of an Advocate and Solicitor, the High Court ought not to have interfered with the findings of the Committee.

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The Severity of the Penalty

(45) By the time the High Court made the Order appealed from, the Appellant had been out of gainful employment for just over 4 years. During the period of his interdiction from duty, he was suspended from duty, without pay, but at the same time forbidden to obtain alternative employment without the approval of the Government; upon his ultimate dismissal, his 'frozen' salary was forfeited. He thus lost his salary for a period of some 2 1/2 years. Although he was, as from the time of his dismissal from Government Service, theoretically free to take up other employment, he was in practice not realistically able to do so in view of the fact that the Disciplinary Proceedings were still pending.

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(46) In the result, the financial penalty already suffered by the Appellant, taken together with the strain of the prolonged proceedings - both criminal and disciplinary - and the embarrassment and loss of his good name consequent upon the fact of the conviction itself, amounted to a very substantial degree of punishment. Even allowing for the fact that he was convicted of an offence of dishonesty the penalty of striking off the roll was, in all the circumstances, too harsh a penalty.

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Conclusion

(47) The Appellant therefore respectfully submits that the Order of the High Court of Singapore should be set aside and that this appeal should be allowed for the following, among other,

REASONS

- 10 1. BECAUSE the Respondents had no locus standi to institute the proceedings before the High Court of Singapore;
2. BECAUSE the principles of natural justice were not observed at all stages of the proceedings;
3. BECAUSE the High Court of Singapore failed properly or at all to consider and have regard to the findings made by the Disciplinary Committee;
- 20 4. BECAUSE the penalty imposed was too severe in all the circumstances;
5. BECAUSE the Decision and Order of the High Court of Singapore was wrong and ought to be reversed.

GEORGE CARMAN
DUNCAN MATHESON

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