18/85

IN THE PRIVY COUNCIL No. 66 of 1984

ON APPEAL

FROM THE HIGH COURT IN SINGAPORE

BETWEEN:-

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE Respondent

CASE FOR THE RESPONDENT

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1. This is an appeal from a judgment of the High Court of Singapore (Wee Chong Jin C.J., Lai Kew Chai and L.P. Thean J.J.) dated the 3rd day of September 1984 whereby it was ordered that p.369 l.3 p.369 l.36

(a) the Appellant's name be struck off the roll of Advocates and Solicitors of the Supreme Court of Singapore; and p.369 l.27

(b) the Appellant do pay the costs of the proceedings before the Disciplinary Committee to be taxed. p.369 l.31

2. The question for decision involves

(a) the construction of the Legal Profession Act of Singapore (Chapter 217) (hereinafter called "the Act").

Section 86(5) of the Act provides that whenever an advocate and solicitor has been convicted of, inter alia, an "offence involving fraud or dishonesty, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter".

Section 94(2) of the Act provides that if the determination of the Disciplinary Committee is that no cause of sufficient

gravity for disciplinary action exists, it shall not be necessary for the Society to take any further action in the matter unless so directed by the Court.

Section 97(1) of the Act provides that where a Disciplinary Committee has determined, inter alia, that while no cause of sufficient gravity for disciplinary action exists under that section, the advocate and solicitor should be reprimanded and "the person who made the written application or complaint is dissatisfied with the determination he may within fourteen days of being notified of the Disciplinary Committee's decision apply to a judge under this section".

Sub-section (3) of Section 97 of the Act provides that upon the hearing of the application the judge may make one of the following orders:-

(i) confirm the report of the Disciplinary Committee

(ii) direct the applicant to make an application calling upon the solicitor to show cause why he should not be struck off the roll or suspended from practice or censured

(iii) direct the advocate and solicitor concerned to show cause why he should not be struck off the roll or suspended from practice or censured.

(b) whether the order that the Appellant's name be struck off the roll of Advocates and Solicitors of the Supreme Court of Singapore is an appropriate penalty under the provisions of Section 84(1) of the Act.

3. The points raised by this appeal are:

(a) whether the Respondent had the necessary locus standi under the relevant provisions of the Act to apply for the Appellant to show cause why he should not be struck off the roll or suspended from practice or censured

(b) whether there had been a breach of the rules of natural justice

(c) whether the order that the Appellant's name be struck off the roll was unduly severe in view of the amounts involved

(d) whether the reasons given for the order that the Appellant's name be struck off the roll were adequate so that justice was not only done but had been seen to be done.

4. On 29th April 1970, the Appellant joined the Legal Section of the Inland Revenue Department as a Legal Officer and on the 1st May 1979 he was promoted to the post of Senior Legal Officer to head the Legal Section. p.38 l.16 p.293 l.18

5. On 11th July 1973, the Appellant was admitted as an Advocate and Solicitor of the Supreme Court of the Republic of Singapore and has since then remained on the Roll of Advocates and Solicitors. p.293 l.24

6. On 14th November 1981, the Appellant was convicted on a charge under Section 420 of the Penal Code of Singapore (Chapter 103) (hereinafter called "the Penal Code"):- p.196 l.27 p.2 l.19

PARTICULARS OF THE CHARGE

"that you, on or about the 7th March 1980, in Singapore, cheated Tong Eng Brothers Pte Ltd by deceiving the Company into believing that a sum of Pound Stg. 800, was due and payable to one D.C. Potter, Queen's Counsel as legal fees for work rendered when you knew that such sum was not in fact determined nor due and payable and thereby dishonestly induced the Company to deliver to you a bank draft for Pound Stg. 800 which it would not do if it were not so deceived and thereby committed an offence punishable under Section 420 of the Penal Code."

7. Section 420 of the Penal Code reads as follows:-

"Whoever cheats and thereby dishonesty induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment for a term which may extend to seven years, and

shall also be liable to fine."

Section 415 of the Penal Code defines "cheat" as "whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person .....is said to 'cheat'".

8. Upon conviction as aforesaid, the Court sentenced the Appellant to one day's
p.197 l.1 imprisonment and a fine of $3,000.

9. On appeal by the Appellant against
p.292 l.9 conviction and sentence, the High Court on 20th October 1982 dismissed the Appeal.

10. The facts that led to the Appellant's conviction were:-

p.44 l.9 (a) In 1978 the Appellant was introduced to Teo Tong Wah (hereinafter called "Teo") a director of Tong Eng Brothers Pte Ltd (hereinafter called "Tong Eng") by a mutual friend, Dr. Tan Poh Lin, Dy. Chairman of the Industrial and Commercial Bank Ltd.

p.44 l.28 (b) Teo informed the Appellant of Tong Eng's intention to cease operations and conferred with the Appellant on the operation of the cessation provisions under the Income Tax Act in relation to the avoidance of tax on profits. The Appellant advised Teo that Tong Eng should consult a Queen's Counsel. This advice was accepted. At the request of Teo, the Appellant assisted in the preparation of the brief. Around Christmas of 1979, the Appellant produced a brief in Teo's house and both of them went through the brief together. Teo agreed with the brief. The Appellant sent the brief to the Queen's Counsel by post.

p.20 l.12 (c) In January 1980, the brief which was sent by the Appellant reached the chambers of Mr. Michael Nolan. One of the silks in this chambers was Mr. Donald Charles Potter. The chief clerk of the chambers was Mr. Joseph Anthony Brown. In the course of accepting briefs
p.11 l.7 and instructions from the Inland Revenue

Department, Singapore, Mr. Potter came to know the Appellant fairly well. The Appellant became a friend of Mr. Brown too as a result of his dealing on behalf of the Inland Revenue Department with Mr. Nolan's Chambers. p.27 l.49 - p.28 l.1

(d) On 18th January 1980, Mr. Brown made a note in his diary that the instructions was a matter personal to the Appellant. This note was made after a trunk call from the Appellant to Mr. Brown. p.20 l.29-43

(e) On 14th February 1980, Mr. Potter gave his Opinion (hereinafter referred to as "the Opinion") and it was sent to the Appellant. Shortly after receiving the Opinion, the Appellant went to Teo's house. The Appellant read the Opinion to Teo. Teo's reaction to the Opinion was that it was a "Yes" or "No" answer and he felt that the cessation of operation of his company could be carried out. The Appellant on his part did not fully agree with the Opinion of Mr. Potter. After reading the Opinion to Teo, the Appellant handed to Teo a note with the name "Potter" and the figures "Pound Stg. 800" written on it. While handing over the note, the Appellant said that the Pound Stg. 800 was for payment to the Queen's Counsel for his fees and told Teo to make the payment. Teo subsequently mislaid the note. p.4 l.18 p.45 l.1-7 p.45 l.15

(f) On the afternoon of 7th March 1980, the Appellant telephoned Teo and informed him that he would be going to Dr Tan Poh Lin's office later that day and asked Teo to obtain a bank draft for Mr.Potter's fee so that the Appellant could collect it from Dr. Tan Poh Lin's office. Accordingly, Teo telephoned Dr. Tan Poh Lin and asked him to authorise the debiting of the account of Tong Eng for Pound Stg. 800 and that the Appellant would be going to his office to collect the bank draft. As a result, a bank draft in the sum of Pound Stg. 800 for Mr. Potter was prepared and handed to the Appellant. p.45 l.45

(g) As on 7th March 1980, the fee for the Opinion had not been determined by Mr. Brown. In fact it was only after receiving the letter dated 10th March 1980 from the Appellant that a decision on the fee was made; p.21 l.9 - p.21 l.11

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the decision being that no fee would be charged. As such no fee note had been issued before 7th March 1980. In the circumstances, the fee for the Opinion was not due and payable.

p.260 l.29 p.260 l.47 (h) On 10th March 1980, the Appellant wrote a letter to Mr. Brown to say that he believed that the average fee charged by Mr. Potter was Pounds Sterling 400. The Appellant attached a bank draft for Pounds Sterling 800 and stated that the remainder of Pounds Sterling 400 was to be credited to the Appellant's account which might be utilised in the future for other purposes.

p.21 l.7 - p.21 l.12 (i) When Mr. Brown received the letter he consulted Mr. Potter on the question of the charging of fees. As Mr. Potter was under the impression that the opinion rendered concerned a "private matter" or "family matter" of the Appellant, he decided to waive the fees.

p.261 l.15 - p.261 l.27 Mr. Brown then wrote to the Appellant on 13th March 1980 to inform the Appellant that he had credited the Appellant's account with the full sum of Pounds Sterling 800 as Mr. Potter had decided to waive the fees.

p.21 l.24 When Mr. Brown received the bank draft from the Appellant together with the Appellant's request to credit Pound Stg. 800 into the Appellant's account, he could not carry out the Appellant's request as barristers do not keep a clients' account. So Mr. Brown merely kept the draft with him.

p.261 l.39 - p.262 l.14 (j) The Appellant replied to Mr. Brown on 20th March 1980 to thank Mr. Potter for waiving the fees and to request Mr. Brown to transfer the Pounds Sterling 800 to the Appellant's external deposit account in the Midland Bank before 1st April 1980.

p.23 l.37 (k) In accordance with the Appellant's request Mr. Brown had the sum of Pound Stg. 800 paid into the Appellant's bank account in London on 28th March 1980.

(l) When the Appellant was informed about the waiver of the fees, he not only

failed to inform Teo of this but instead on his own instructed Mr. Brown to have the Pound Stg. 800 belonging to Tong Eng deposited in his own personal account in London without the knowledge of Teo. p.46 l.27

(m) Towards the end of May and early June 1980, the Appellant went to London to attend the Privy Council in connection with a tax proceeding. Just before he left for London, he suggusted to Teo that he should take this opportunity to consult Mr. Potter to clarify certain points in Mr. Potter's opinion. Teo agreed to this suggestion. The Appellant saw Mr. Potter in conference on 23rd May 1980 and returned to Singapore on or about 7th June 1980. p.46 l.45 - p.47 l.7 p.7 l.15

(n) CPIB investigations on the Appellant began on 9th July 1980. The investigations were multi-faceted and it was on 22nd July 1980 that the Appellant was questioned by the CPIB on matters connected with the Pound Stg. 800. p.59 l.20 p.60 l.10

(o) On 24th July 1980, the Appellant wrote to Mr. Brown to inform Mr. Brown that he had written to the Midland Bank to transfer Pounds Sterling 800 from the Appellant's account to Mr. Brown and to request Mr. Brown to credit immediately the sum of Pounds Sterling 800 to the account of "Tong Eng Brothers Limited - for future consultation". The Appellant informed Mr. Brown that the reason for so crediting the sum of Pounds Sterling 800 was that there would be future consultation. p.263 l.31

(p) On 4th August 1980 the Appellant wrote to inform Teo that he was holding the sum of Pounds Sterling 800 with Mr. Potter against the possibility of instructing Mr. Potter further. The Appellant asked Teo whether Teo wanted the Pounds Sterling 800 to be returned to Teo in Singapore. p.263 l.10

(q) Mr. Brown was on leave in the latter part of July 1980 and did not see the Appellant's letter of 24th July till 18th August 1980. On seeing the letter, he replied to suggest that instead of p.22 l.26 p.22 l.37

putting the Pounds Sterling 800 against Tong Eng for future consultation the the money should be used as to Pounds Sterling 350 to settle the Nakhoda Investments matter and as to Pounds Sterling 450 for advising in conference on 23rd May under Tong Eng.

p.24 l.3 Nakhoda Investments is unconnected with Tong Eng Brothers. The Appellant replied to Mr. Brown on 26th August 1980 and asked him to set off the Pound Stg. 450 being the fees for advising in conference on 23rd May 1980 in respect of Tong Eng against the Pound Stg. 800 which he has caused to be transferred into Mr. Potter's account.

11. As the Appellant had been convicted of a criminal offence which implied a defect in his character, rendering him unfit to practice as an advocate and solicitor or remain on the roll of advocates and solicitors and the Council pursuant to Section 86(5) of the Act applied to the Honourable the Chief Justice to appoint a Disciplinary Committee to hear and investigate the complaint against the Appellant.

12. The hearing before the Disciplinary Committee took place on 30th April 1983. The Disciplinary Committee on
p.315 2nd July 1983 delivered its finding and found that while no cause of sufficient gravity exists for disciplinary action under Section 84 of the Act, the Appellant should be and was reprimanded.

13. As the Respondent was dissatisfied with the determination of the Disciplinary Committee, the Respondent on 15th July 1983 made an application to the Judge by way of
p.320 Originating Summons No. 528 of 1983.

14. Pursuant to the said application of the Respondent, the Chief Justice after hearing the members of the Disciplinary Committee and the Respondent, on 2nd December 1983
p.342 ordered:-

(a) that the determination of the Disciplinary Committee made on 2nd July 1983 be set aside, and

(b) that the Respondent do make an application

under Section 98 of the Act; and

(c) that there be no order as to costs.

15. On 19th January 1984 the Respondent filed the application under Section 98(1) of the Act by way of Originating Summons No.54 of 1984. p.343

16. On 3rd September 1984 the High Court of Singapore ordered the Appellant's name to be struck off the roll of Advocates and Solicitors of the Supreme Court of Singapore and the Appellant do pay the costs of the proceedings including the costs of the proceedings before the Disciplinary Committee to be taxed. The Judgment of the High Court was delivered by Lai Kew Chai J who said the High Court was unable to accept the restrictive interpretation of Section 97 of the Act as canvassed by Counsel for the Appellant. p.369 p.349

He went on to say "Mr. Tan Kok Quan, Counsel for The Law Society, in his reply submitted that by section 86(5) The Law Society, through its executivebody, is made the person who made the application or complaint. He argued that there is no justification whatsoever to discriminate against The Law Society so far as the right to seek a judicial review of the determination of the Disciplinary Committee is concerned. He further said that the implications of the Respondent's construction of section 97, if it be right, are even more grotesque if one bears in mind that the source and origin of a disciplinary action under section 86(5) is the conviction of an advocate and solicitor of the criminal offence of criminal breach of trust or any other criminal offence involving fraud or dishonesty. Mr. Tan submitted that it is wholly untenable, and is against the scheme of Part VII of the Act, if in those serious cases of professional misconduct the determination of a Disciplinary Committee should be final and binding against The Law Society and the Supreme Court. We find there is great force in these submissions. p.358 l.13 - p.359 l.27

Under sub-sections (1), (2) and (5) of section 86 of the Act, there are, it will be recalled, three categories of persons who may make an application or complaint against an advocate and solicitor, and for our purposes only subsection (5) requires elaboration. The application by the Council under subsection 86(5)

is, in effect, by The Law Society, which is a body corporate, seeing that the Council is its executive or management arm. That application must be considered as an 'application or complaint' that the advocate and solicitor concerned has been convicted of an offence of the nature as described in subsection (5). Such an application leapfrogs over the Inquiry Committee stage. In addition, and as we have stated earlier in our Judgment, the Inquiry Committee may act on its own motion under section 87(1)(b). If the Inquiry Committee acts on its own and makes a determination under section 88(1)(c), the Council will have to apply to the learned Chief Justice under section 90 for the appointment of the Disciplinary Committee. Such an application again must be made by The Law Society which must be considered as having made the application or complaint.

In our view 'the person' referred to in section 96(1) of the Act cannot include The Law Society which makes the application through its Council to the learned Chief Justice under section 86(5) or section 90 of the Act. Further, in the case of an application under section 90, the provisions of section 96 are plainly irrelevant.

The construction of the words 'the person who made the written application or complaint' in section 97(1) must include the Law Society, having regard to the general scheme of the Act and particularly having regard to sections 86(5), 87(1)(b) and 90 of the Act. The exclusion of The Law Society, as canvassed by Mr. George Carman, would introduce uncertainty, fiction or confusion."

p.359 l.51 — 17. The next question considered by the High Court was whether the Appellant has shown any cause why he should not be dealt with under Section 84 of the Act. In considering this question, Lai J reiterated what the High Court said in the Matter of an Advocate and Solicitor (1984) 1 MJL 331, 338:-

p.360 l.2 - p.360 l.14

> "Whether or not an advocate and solicitor's conviction of a criminal offence implies a defect of character which makes him unfit for his profession depends on the facts and circumstances of that particular case and the nature of that criminal offence."

p.360 l.15 — 18. The Appellant in showing cause before the High Court did not deny the conviction but invited

the High Court "to look at the inferences which ought to be made from the findings of the District Judge who convicted the Respondent, particularly the background that the Respondent only did a favour for a friend, which started it all, and the claim that he did not intend to make any personal gain in relation to the sum of Pound Stg. 800".

19. The High Court then went on to consider the facts and circumstances of the Appellant's case and the nature of his criminal offence in detail and stated "We are satisfied on all the evidence that the Respondent deceived Teo, a director of the Company into believing that Mr. Potter's fees were determined at Pound Stg. 800 and were due and payable and thereby had dishonesty induced the Company to deliver to him a bank draft for the Pound Stg. 800. p.367 l.29 - p.368 l.27

In the circumstances, we do not accept the view of the Disciplinary Committee that the degree of turpitude for the deception was minimal. We also do not agree with the Disciplinary Committee that the minimal sentence passed on the Respondent was a clear indication that the learned District Judge did not regard the offence as much more than a minor one. We note that the Respondent's former counsel in his mitigation plea represented to the learned trial Judge and, we quote, that the Respondent "(would) not be able to follow his chosen career'. The Respondent cannot have it both ways.

Having regard to all the circumstances of the case, we are of the view that the Respondent has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession within the meaning of subsection (2)(a) of section 84 of the Act.

We come now to the question of sentence. It was urged on behalf of the Respondent that he is a young man, now aged 41, with little experience in settling counsel's fees, as a result of which he was convicted. It was also submitted that he was interdicted from duty with no pay with effect from 8th August, 1980 and that he had suffered dismissal from Government service. The Respondent's emoluments withheld during his interdiction

were forfeited at the time of his dismissal. It was also pointed out that he had voluntarily refrained from practising since his dismissal.

In our judgment, it would not be in the public interest of the profession, on all the facts and circumstances of the present case, that the Respondent's name remains on the roll of advocates and solicitors. We find that his conduct was reprehensible. We accordingly order that his name be struck off the roll of advocates and solicitors of the Supreme Court."

20. On 10th September 1984 the High Court of Singapore made an order granting the Appellant leave to appeal to Her Majesty in Council.

21. The Respondent submits that this Appeal should be dismissed with costs for the following amongst other:-

R E A S O N S

(1) BECAUSE as the Court below has rightly held, upon a true construction of the provisions of the Act, the Respondent had locus standi or jurisdiction to apply under Section 97 of the Act and to plead before the High Court.

(2) BECAUSE, although this point was not raised or canvassed in the Court below, the rules of natural justice had not been breached.

(3) BECAUSE the penalty given was not unduly severe in view of the facts and circumstances of the Appellant's case and the nature of his criminal offence.

(4) BECAUSE adequate reasons were given for the penalty so that not only had justice been done but it had been seen to be done.

TAN KOK QUAN

No. 66 of 1984

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE HIGH COURT IN SINGAPORE

B E T W E E N:

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE
Respondent

CASE FOR THE RESPONDENT

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