25, 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL NO. 44 OF 1981

ON APPEAL FROM

THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

BETWEEN

H. L. WEE .. Appellant

AND

THE LAW SOCIETY OF SINGAPORE .. Respondents

(In the Matter of Originating Summons No.55 of 1981)

In the Matter of the Legal Profession Act (Cap.217,1970 Edn)

AND

In the Matter of an Advocate & Solicitor

CASE FOR THE APPELLANT

Record

1. This is an appeal from a Judgment and Order of the High Court in Singapore dated 27th August 1981 suspending the Appellant from practise as an Advocate & Solicitor for a period of 2 years on the ground that the Appellant had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84 2(b) of the Legal Profession Act ('the Act') It affirmed the Report of the Disciplinary Committee dated 19th November 1980 which found the Appellant 'to be dishonourable to himself and to his profession' by delaying for 13 months the making of a report of the misappropriation of funds by a legal assistant and in consequence thereof

Pt.I pp 518-9

pp 502-518

pp 461-501

p 500 ll 39

p 501 ll 6

enable such guilty legal assistant to continue in practice.

2. The principal questions that arise for determination in this Appeal are:-

(1) Whether the Disciplinary Committee was entitled to:

(a) Allow an affirmative case to be made against the Appellant namely that the 13 months delay in reporting a criminal breach of trust by his Assistant Solicitor, one Santhiran, was caused by a dishonourable motive, or

(b) Investigate and take into account the consequences of the said failure to report, in particular that Santhiran was thereby able to continue to practice as a solicitor.

When the Appellant was not given any notice or opportunity to deal with these matters by the Inquiry Committee pursuant to s 87(5) of the Act, and, when neither of the said matters were referred to the Disciplinary Committee pursuant to s 93(1) of the Act.

(2) Alternatively, if the Disciplinary Committee was entitled to consider and take the said consequences into account, whether it attached far too much weight to the alleged consequences in that,

(a) It misdirected itself and/or failed to appreciate that, on the proper construction of the Act and the Solicitors Practising Rules 1970, if Santhiran obtained employment elsewhere as a solicitor, he could not be prevented from practising until he was struck off the rolls by the Law Society.

(b) It failed to take into account or appreciate that both the Prosecuting Authorities and the Law Society were guilty of considerable delay, the former in obtaining Santhiran's conviction and the latter in ensuring that Santhiran was struck off the rolls.

(3) Whether the Disciplinary Committee were entitled to ignore a large amount of unchallenged evidence that was favourable to the Appellant and draw inferences adverse to the Appellant, when the said inferences were contrary to or unsupported by the evidence.

(4) Whether the sentence of the High Court that the Appellant be suspended from practice for a period of two years was so severe in all the circumstances of the case as to be wrong and unjustified.

3. Relevant facts admitted or not challenged by the Law Society

Record

(1) That the Appellant was an Advocate and Solicitor of the Supreme Court who practised under the name of Braddell Brothers, a firm of which he was the sole proprietor. p 173 ll 18-25

(2) That in early March 1976 it came to the knowledge of the Appellant that his Senior Legal Assistant, a solicitor named Santhiran, had misappropriated or otherwise misapplied large sums of monies from the clients account of the firm. The Appellant ordered him to repay all missing monies unless he could prove that the monies had been genuinely paid to the clients. p 174 ll 17-22; p 175 ll 1-7; p 175 ll 20-33

(3) That by the 18th March 1976 Santhiran had repaid $267,956 which sum the Appellant thought (at the time) constituted the bulk of the misappropriate monies. By the 10th June 1976 the totel restitution made by Santhiran amounted to $297,956. P 186 ll 2-5; p 201 ll 4-9

(4) That the Appellant did not report (until April 1977) Santhiran to the Law Society but appointed one Lisa Choo (Secretary and Office Assistant) and one Chan Lai Meng (an Assistant Solicitor) to investigate Santhiran's misappropriations. Exhb A3 Pt.II p^2 p 177 ll 15-22; P 209 ll 20-23

Record

(5) That by August or September 1976 Lisa Choo informed the Appellant that they could take the investigation no further. — P 202 ll 30-35

(6) That on the 9th November 1976 an independent firm of auditors, Medora Tong & Co were appointed to continue the investigation and Lisa Choo continued to work under their direction. — p 205 ll 25-29

(7) That on the 21st December 1976 Santhiran left the Appellant's employment. — p 205 ll 22-30

(8) That on the 31st December 1976 Medora Tong & Co sent their first Draft Report to the Appellant who asked them to do a reconciliation of their figures and those of Lisa Choo, which said reconciliation was done on the 26th January 1977. — p 208 ll 13-17; p 218 ll 30-42; p 219 ll 1-16; p 321 ll 7-39

(9) That on the 10th March 1977 the Appellant, for the first time, informed his auditors, Turquand Young & Co of Santhiran's misappropriations. That at the end of March 1977 the Appellant orally informed the Vice President of the Law Society and the Attorney General of Santhiran's misconduct and said that a complaint was forthcoming. — p 283 ll 7-35; p 286 ll 11-16; Exhb A3 Pt.II p 1

(10) That on the 1st April 1977 Medora Tong & Co produced a further report. A joint Accountants Report of Turquand Young & Co and Medora Tong & Co was signed on the 27th April 1977. On the 30th April 1977 the Appellant formally reported Santhiran's misappropriations to the Law Society. On the 27th May 1977 he sent a detailed 'complaint' to the Law — Exhbs 40-41 Pt.II p 193-204; Exhb R3 Pt.II pp 10-11; Exhb 1 Pt.II p 12; Exhb 2 Pt.II p 13-22

Record

Society having on the previous day sent a similar complaint to the police.

(11) That on the 11th April 1978 Santhiran was charged on five charges under Section 408 of the Penal Code. On the 10th May 1978 he pleaded guilty of one charge and asked for the remaining four charges to be taken into consideration. He was sentenced to 9 months imprisonment. He was released from prison on the 13th October 1978. On the 23rd April 1979 he was struck off by the Law Society.

Exhb $A3_3$ Pt.II p^3 p 3 ll 17-26

Exhb $A3_3$ Pt.II p^3

(12) That by a letter dated the 18th March 1978 the Inquiry Committee notified the Appellant that it had decided on its own motion to enquire into his conduct (inter alia) in the following matters, 'the delay in reporting the defalcations in the accounts of Messrs Braddell Brothers of which firm you were at the material time the sole proprietor'.

Exhb 5 Pt.II pp 52-53

(13) That the Appellant gave the Inquiry Committee a written explanation on the 19th April 1978 and also appeared before them on the 26th May 1978. No allegations of a dishonourable motive or as to consequences arising out of his delay in reporting were put to him by the Inquiry Committee either on 26th May 1978 or at all.

Exhbs 9,9A,9B, 37 Pt.II pp 58-62,63-64 65-77, 103-136

PtI p 26 136 ll 1-13

Record

(14) That on the 20th July 1978 the Appellant was informed by the Law Society that the Council had accepted the finding of the Inquiry Committee that there should be a formal investigation by a Disciplinary Committee into the following complaint against him, 'Failure to report the criminal breach of trust committed by Mr S. Santhiran when he was a Legal Assistant in the firm of Braddell Brothers to the Law Society earlier'. Thereafter a Disciplinary Committee was appointed. Exhb 13 Pt.II p 81

(15) That on the 24th September 1980 the Disciplinary Committee held that in determining whether the Appellant was guilty of grossly improper conduct, it was open to them to consider:- pp 67-72 ll 1

(a) The natural and probable consequences of the Appellant's delay in reporting the criminal breach of trust of Santhiran to the Law Society.

(b) The alleged dishonourable motive for the delay; and further that the Law Society were entitled to put forward an affirmative case in respect of such dishonourable motive, namely :-

'That reckless of the interest of clients, of the profession and of the public, the Appellant was wholely preoccupied with the matter of recouping to the greatest possible extent the monies that Santhiran had taken, so that he himself need not be answerable to his clients for any loss'.

4. The First Question:

(1) It is respectfully submitted that s 87(5) of the Act imposes a statutory duty on the Inquiry Committee before any inquiry or investigation begins, to deliver to the Advocate or Solicitor concerned a notice setting out any or any further particulars that may be necessary to disclose the reason for the inquiry or investigation. Such a duty is an imperative duty, and, if not complied with, renders any subsequent inquiry based thereon null and void.

Ratnam v Law Society of Singapore 1 MLJ 195, 1976

Prior to the Act disciplinary proceedings were governed by s 26 of the Advocate and Solicitors Ordinance, under which a Bar Committee examined the complaint and decided whether there was to be a formal investigation. The Bar Committee were under no statutory obligations to give notice or particulars against the Advocate who

was the subject matter of the complaint. If the Bar Committee decided that there was to be a formal investigation, then a Disciplinary Committee was set up. The Act created a two tier system of investigation under which:

(a) An Inquiry Committee inquired into the complaint, after having given the Advocate statutory notice of the complaint that had necessitated their inquiry or investigation. As part of their inquiry and investigation they would consider any written and oral explanations that the Advocate might wish to give.

(b) After the Inquiry Committee had submitted its report to the Council of the Law Society, then if the Council determined that there should be a formal investigation, a Disciplinary Committee would be set up to investigate 'any matter referred to it'.

It is respectfully submitted that the purpose of s 87(5) is

a) to ensure that the Advocate or Solicitor has clear notice of what is alleged against him,

b) to enable the Advocate and Solicitor to furnish the Inquiry Committee with his written explanation and appear (if he should so wish) before the Inquiry Committee and furnish such an answer as to ensure that the report of the Inquiry Committee so exculpates him that the Law Society may determine either that no formal investigation is necessary or that the case may be met by a small penalty. It is for this reason, it is respectfully submitted, that s 87(5) of the Act has been construed as an imperative provision.

(2) The Inquiry Committee never suggested to the Appellant either in their letter dated 18th March 1978 or at the hearing before them on the 26th May 1978 that in addition to enquiring into the 13 months delay in reporting to the Law Society, they proposed to enquire into

Exhb 5 Pt.II pp 52-53

a) some dishonourable motive of the Appellant and/or,

b) the actual or possible or potential consequences that did or might flow from the said 13 months delay. The Appellant thus had no opportunity to satisfy the Inquiry Committee that he had no dishonourable motive and that

the consequences arising out of the 13 months delay were not of sufficient seriousness to transform such delay into grossly improper conduct.

(3) When the Law Society by their letter of the 20th July 1978 gave notice to the Appellant that they had accepted the findings of the Inquiry Committee, and that a Disciplinary Committee was going to investigate the complaint of failure to report Santhiran's criminal breach of trust earlier, they never suggested to the Appellant that the Disciplinary Committee would also be investigating the following matters: Exhb 13 Pt.II p 51

(i) Dishonourable motive behind the delay to report.

(ii) Consequences flowing from the delay to report. Neither in their Statement of Case dated 14th March 1979 nor in their Amended Statement of Case dated the 23rd September 1979 did the Law Society give any notice or warning of any such proposed investigation. pp 1-4

In the premises the Appellant respectfully submits:

(a) That the Inquiry Committee were precluded from enquiring into the Appellant's alleged dishonourable motive or the consequences arising out of the 13 months delay (and indeed they did not seek to do so), and

(b) That the only matters referred to the Disciplinary Committee by the Council of the Law Society were those set out in their letter of the 20th July 1978 and their Amended Statement of Case and, accordingly, the Disciplinary Committee was precluded by s 93(1) of the Legal Profession Act from hearing and investigating any other matters not specifically referred to it by the Council, including matters relating to dishonourable motives or consequences of the 13 months delay.

v <u>In the Matter of an Advocate and Solicitor 1978 2 MLJ 7</u>

It is respectfully submitted that the Disciplinary Committee misdirected themselves as to the true purport and effect of s 87(5) and 93(1) of the Act, as did the High Court of Singapore. In particular the Disciplinary Committee:- pp 466-476

(1) Failed to appreciate the difference between

the provisions of the Ordinance and those of the Act in that they thought that in respect of disciplinary proceedings the relevant provisions in the Ordinance were re-enacted in the Act.

(2) Attached far too much weight to a decision namely Lau Liat Meng 1967 2 MLJ 141 which was simply a case under the Ordinance where the Privy Council stressed the need for natural justice, as opposed to a case where s 87(5) and s 93(1) of the Act fell to be construed.

(3) Failed to understand the decision in Paul Ratnam 1976 1 MLJ 195 which they wrongly thought was a case concerned with a defect in the proceedings resulting in a denial of natural justice, whereas at page 200 Lord Simon of Glaisdale expressly pointed out that there was no failure of natural justice in that case. They wrongly thought that the decision in Paul Ratnam was 'a minor departure from the decision in Lau Liat Meng', whereas in fact the decision in Paul Ratnam was not based on a failure of natural justice but on the imperative provisions of s 87(5) of the Act.

(4) Failed to understand the decision in the Matter of an Advocate and Solicitor 1978 2 MLJ 7 in that they thought that this decision 'completely ignored the ruling of the Privy Council in the Lau Liat Meng case'.

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(5) Wrongly considered that even if the matters were 'new grounds' they would have followed the Lau Liat Meng case and allowed an amendment even though one was not sought by the Law Society, and, even though it is submitted that there was no power to grant an amendment in respect of any matters not referred to them by the Council of the Law Society under s 93(1) of the Act. (pp 274-275)

In September 1979 the Law Society sent to the English Law Society a proposed Statement of Claim which, at paragraph 10, included a fresh charge, 'By reason of the Appellant's delay in reporting Santhiran he caused, permitted or enabled Santhiran to continue in practice as an Advocate and Solicitor until the 31st December 1976 as a Legal Assistant to Braddell Brothers and thereafter for some months on his account'. This of course was a plea based on the consequences of the Appellant's failure to report Santhiran. The Law Society never in fact included the said paragraph 10 in their case. It is of interest to note that Counsel for the Law Society, when explaining this to the Disciplinary Committee in his closing speech, said:-

Exhb 14 Pt.II pp 82-83

Exhb R3 Pt.II pp 5-9

'The reason why I didn't is because it was pointed out to me, quite correctly, by Mr Wu, that in that proposed amendment I was seeking to raise another charge which would have flown in the face of Lau Liat Meng and the other cases'.

p 437 ll 30

p 438 ll 9

It is respectfully submitted that the Counsel for the Law Society was right when he said that this would amount to another charge.

5. The Second Question:

It is respectfully submitted that an Advocate and Solicitor in Singapore, who is employed by other Advocates and Solicitors cannot be prevented from obtaining a Practising Certificate and practising until he is struck off, even if he has been accused or convicted of serious criminal offences.

By s 29 of the Act 'The Registrar shall thereupon issue to the Solicitor a Practising Certificate' ..... so long as the solicitor produces:

(1) A declaration as to his name and address.

(2) Proof that he has paid all the necessary subscriptions.

(3) The prescribed fee.

(4) An Accountant's Report or (in the case of a solicitor who is employed) a Certificate from the council that owing to the circumstances of his case, such a report is unnecessary.

The issuing of Certificates from the Council were governed by the Solicitors Practising Certificate Rules 1970 and the Forms attached thereto. The Appellant would respectfully submit that so long as the solicitor is in a position to fill up Form D, the Council of the Law Society has no discretion to refuse him a

certificate, its only discretion being to require evidence in support of his application.

It follows that even if the solicitor is accused or convicted of serious criminal offences, the Council of the Law Society cannot refuse him his Certificate and, once he has complied with s 29 of the Act, the Registrar must issue him with his Practising Certificate.

By s 30(3) of the Act, a Practising Certificate only ceases to have effect when the solicitor ceases to practise or ceases to be employed as provided in this section and does not cease to have effect because a solicitor is accused or convicted of a serious criminal offence. Again the powers of cancelling a Practising Certificate under s 32(1) of the Act are limited to where the Practising Certificate has been issued 'contrary to the provisions of the Act or when the Accountant's Report does not comply with s 75 of the Legal Profession Act'.

Before the High Court, Counsel for the Respondent conceded that 'technically a solicitor is entitled to a Practising Certificate if he fills up Form D'. The High Court made no specific findings thereon, though in arguendo the Chief Justice stated 'Find employment from someone else in March and get a Certificate. That seems to be the position in law'.

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If that is 'the position in law' then so long as Santhiran found other employers he could not be prevented from obtaining a Practising Certificate and practising as a solicitor until he was struck off the rolls by the Law Society. This placed a duty on the Law Society to take urgent steps to get Santhiran struck off the rolls as soon as possible, yet though the Appellant had reported Santhiran's misappropriations to the Law Society by the 30th April 1977, it took the Law Society approximately 24 months to get Santhiran struck off and it took them over 5 months after Santhiran had been released from prison before they had him struck off the rolls. Though the Appellant lodged with the police on 26th May a detailed complaint that amounted to an 'open and shut' case against Santhiran, the police did not arrest Santhiran until the 9th April 1977, a delay of approximately 11 months.

Exhb A3 Pt.II pp 2-3

The Appellant would respectfully submit that in view of the foregoing the fact that he delayed reporting Santhiran to the Law Society for 13 months may not have necessarily stopped Santhiran practising for several months thereafter and would not necessarily have led to Santhiran being struck off 13 months earlier.

In the premises the Appellant would further respectfully submit that the Disciplinary Committee (who did not accept the above mentioned legal submissions based on s 29 of the Act), were wrong in holding that the consequences of 'enablingSanthiran to continue in practise for another 13 months added very seriously to the gravity of the act complained of'. They should have found that in all the circumstances of the case, such consequences bore a less serious aspect that at first glance. If they had so found, it is possible that they might have taken a far less serious view of the 13 months delay and held that it amounted at most to a grave error of judgment.

6. The Third Question:

A It was conceded by Counsel for the Law Society before the Disciplinary Committee that:

(1) The Onus of proof was on the Law Society to satisfy the Disciplinary Committee beyond reasonable doubt that the Appellant was guilty of grossly improper conduct.

(2) That an error of judment, even a grave error of judgment, does not necessarily amount to grossly improper conduct.

v In the Matter of the Incorporated Law Society and Four Solicitors 7 TLR 672

(3) That the High Court of Singapore appeared to have accepted that for a Disciplinary Committee to draw an inference from the evidence, such evidence must be 'irresistible'.

The Appellant respectfully submits that bearing in mind the burden of proof and the gravity of any such finding in respect of a professional man, the High Court of Singapore were right to approach these matters on the basis that a Disciplinary Committee should not draw inferences adverse to an Advocate or Solicitor unless such inferences were 'irresistible'.

In re an Advocate and Solicitor (1978) 2 MLJ 7

Bhandari v Advocates Committee 1956 1 WLR 1442 & 1452

B To a very large extent the primary facts were agreed or not disputed and, in particular, the evidence of Lisa Choo and Ramanugan (given by Statutory Declaration) was not challenged by the Law Society. Accordingly, the Disciplinary Committee should have taken into account and accepted the following facts and inferences drawn therefrom:

(1) That on the 18th March 1976 the Appellant thought that the $267,956 repaid by Santhiran constituted the bulk of the misappropriated monies. P 298 ll 11-17

(2) That though Santhiran had repaid some $267,000 by the 18th March 1976, without his co-operation it was not possible to identify which monies belonged to each individual client. p 289 ll 31-2 p 290 ll 20 p 328 ll 29 p 329 ll 2

(3) That by the third week in March, Santhiran was admitting that he had misappropriated $194,897 but was not admitting that he had misappropriated a further $217,063 and was taking the attitude that there were further items which he could not recall one way or the other. Between March and May 1976 Santhiran retracted various admissions already made, but also made further admissions in respect to misappropriations. p 324 ll 30 p 328 ll 28 Exhb 9B Pt.II pp 66-67 Exhb 37 Pt.II pp 103-106

(4) That during Lisa Choo's investigation she found that the files of clients dealt with by Santhiran were often missing and on the 16th July 1976 no less than 48 files were missing. Further, that contrary to office procedure, she found that Exhb 36 Pt.II pp 101-102 Pt.II p 322 ll 10 p 324 ll 20

Santhiran had used the same file number for each client irrespective of whether that client had one or several matters being dealt with, instead of giving each matter a separate file number. This made the investigation far more difficult.

(5) That more than half the entries in the ledger relating to Santhiran's activities turned out to be false or misleading. p 329 ll 3 p 330 ll 14

(6) That between March and September 1976, with Santhiran's co-operation, Lisa Choo was able to identify the individual clients in respect of about half the $297,956 repaid by Santhiran; without Santhiran's co-operation she would only have been able to identify the clients in respect of about 10% or 15% of the monies repaid. P 333 ll 5 p 334 ll 6

(7) That in June 1976 Santhiran took the attitude that he had repaid too much and he was given an opportunity to prove that he actually paid the clients. p 344 ll 31 p 345 ll 4

(8) That in June and July 1976 clients were called in to the offices of Braddell Brothers to verify statements made by Santhiran that he had paid the monies to the clients. In some cases the clients told lies in order to assist Santhiran. Exhb 9B Pt.I p 71 Exhb 37 p 10 ll 20 p 106 ll 3 Pt.I p 346 ll 18 p 347 ll 20

(9) That after the appointment of Medora Tong & Co in November 1976, Lisa Choo continued the investigation under their direction having handed p 362 ll 33-37

them a list showing $405,669 missing. On the 31st December 1976 Medora Tong & Co produced a first draft report showing $499,440 missing. On or about the 26th January 1977 Medora Tong & Co did a reconciliation of these figures. On the 26th May 1977 they adjusted the figures to $372,109 and finally, on the 7th June 1977, readjusted the figures to $351,025.90.

Exhb 9B pp 67-68

Exhb 41 Pt.II p 196

Exhb 43 Pt.II pt 207

(10) At the end of June 1976 Lisa Choo thought (at that time) that not all, but the bulk of clients monies, had been recovered, and, in November 1976, she thought (at that time) that any monies that had not been recovered were the firm's money; but by May 1977 she was not sure how much of the monies not yet recovered were office monies and how much were clients monies.

p 352 ll 34

p 355 ll 8

(11) That early in January 1977 the Appellant instructed Lisa Choo to draft a complaint both to the police and the Law Society. On the 25th January 1977 the Appellant informed Chan Lai Meng that if she thought it necessary she might proceed to make a short brief report on Santhiran 'without the further statement which have ready for me as soon as I get back'. On the 12th February 1977 the Appellant pressed Lisa Choo for the report stating 'it is now 4 weeks' old' and again pressed her for it on the 23rd February 1977.

p 209 ll 7-10

P 209 ll 26
p 210 ll 14

p 214 ll 8-18
Exhb 34 Pt.II pp 93, 94 Pt.I
p 215 ll 18-22

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(12) That in January 1977 Ramanugan, an employee of Medora Tong & Co. at the request of Santhiran, asked the Appellant to drop any criminal charges and Santhiran would pay up such amounts as were due. The Appellant replied that he could not do so as it was not a question of money but a question of principle. At the request of Santhiran on the 26th March 1977, Ramanugan again approached the Appellant with the same request and met with the same refusal. Exhb 9A Pt.II pp 63-64

C. The Appellant respectfully submits that if his evidence had been the sole evidence adduced, the Disciplinary Committee would have been entitled to reject it, though they should not have drawn inferences thereupon adverse to him unless such inferences were irresistible. But the Law Society and the Disciplinary Committee had agreed to admit Ramanugan's Statutory Declaration without the necessity of calling him as a witness and thus accepted his evidence. Further, Lisa Choo's evidence was unchallenged by the Law Society and the Disciplinary Committee and in part relied upon by both of them. To a large extent the evidence of Ramanugan and Lisa Choo not only supported vital parts of the Appellant's evidence, but actually made out his case in the following respects:

(1) That without Santhiran's co-operation it was impossible to identify the clients in order to repay them their monies.

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(2) That even though Lisa Choo thought that by November 1976 only the firm's monies were outstanding, it was reasonable to await Medora Tong & Co.'s Report.

(3) When Medora Tong & Co's first report was given on 31st December 1976 there were discrepancies of almost $95,000 between their report and that of the firm, and it was reasonable to attempt to reconcile the two.

(4) That the first complaint to the Law Society was drafted by Lisa Choo early in January 1977 but was unsatisfactory.

(5) That during February and March 1977 the Appellant was pressing his staff to produce the said complaint.

(6) That at all times the Appellant was determined to report Santhiran's misappropriations once the figures had been ascertained in a detailed Accountant's Report and once the clients had been properly identified.

D. If the Disciplinary Committee had accepted and/or properly taken into account the evidence of Ramanugan and Lisa Choo, they could not have made the finding that it was 'a premeditated scheme of delay carried out (by the Appellant) for over 13 months' not only because there was no evidence to support such a finding, but also because it was impossible to draw such an inference once the evidence

of Ramanugan and Lisa Choo was accepted. Further, the Disciplinary Committee should not have rejected such parts of the Appellant's evidence as was corroborated or supported by this unchallenged evidence.

The Appellant respectfully submits that in view of the foregoing, that it was not open to the Disciplinary Committee to ignore such evidence and draw the inferences they did, and, that their failure to take into account this evidence was a matter of law and not of fact, and, as such amounted to a serious misdirection.

7. The Fourt Question:

(1) If, contrary to the Appellant's contentions, the Judicial Committee uphold the decisions of the Disciplinary Committee and the High Court of Singapore, the Appellant would respectfully submit that the sentence in all the circumstances was so severe as to be wrong and unjustified.

v McGoan v General Medical Council 1964 1 WLR 1107

The Appellant appreciates that in many instances the Judicial Committee will not interfere with sentence, considering that only a court conversant with the local conditions can judge of the appropriateness of the penalty. The Appellant will however respectfully submit that this is not so in this case, and, that in the circumstances herein below set out,

the Judicial Committee is in as good a position as the local Court to judge of the appropriateness of the penalty. The Appellant has been an Advocate for over 30 years, a member of the Council of the Law Society since 1967 and President of the Law Society during 1976 and 1977; it is his belief, based both on his own experience and enquiries that he has made, the only time in Singapore that an Advocate and Solicitor has been charged with grossly improper conduct in the discharge of his professional duties based on delay in reporting to the Law Society acts of dishonesty of a partner or employee, is the case of Joe Chellam. By a Statement of Case dated the 20th February 1980 the Law Society of Singapore alleged grossly improper conduct based on the facts that Joe Chellam had discovered in December 1978 that his partner was guilty of criminal breach of trust, but did not report this to the Law Society till the 2nd March 1979. The Law Society also alleged certain contraventions of the Solicitor's Account Rules 1967. On the 22nd January 1981 the High Court of Singapore ordered that he should be censured and should pay the costs of the Law Society.

(2) As to the reasons given by the High Court of Singapore in respect of the penalty, the Appellant would respectfully submit:

(a) That though as President of the Law Society (and as an Advocate of 30 years standing) he cannot plead youth or inexperience by way of mitigation, he should not be sentenced to a heavier penalty than the offence deserves.

(b) That if (contrary to his contentions) the delay was premeditated and the object of his scheme was to recover to the greatest possible extent the large sums of money stolen from him in order not be personally liable for any loss, nevertheless no dishonesty was involved and the clients and other members of the public suffered no loss.

(c) That though Santhiran continued to practise his profession as a member of the Respondent's firm, some supervision and restrictions were placed upon him (though it is conceded these were not sufficient) and it was improbable that Santhiran would commit further offences and in fact did not do so.

(3) The Appellant will further respectfully submit that the High Court of Singapore wholely failed or alternatively failed to take sufficiently into account the following mitigating factors:

<u>As to the Offence</u>

(a) There was no dishonesty involved in the failure to report for 15 months.

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(b) All clients whose monies were misappropriated have been paid back, though the Appellant has lost approximately $55,000 in respect of his firm's costs.

(c) Though Santhiran was permitted to practise during these 13 months, it would have been difficult to have prevented him from so practising during this period so long as he found another employer; indeed the Law Society took no active steps to prevent him from practising before the 10th May 1978 and probably for some time thereafter.

(d) That during the 13 months period at the Appellant's expense, both his staff and subsequently Medora Tong & Co conducted a painstaking and detailed enquiry that resulted, not only in all the clients being identified so that they could be repaid, but also in an 'open and shut' case being handed over to the Law Society and the police by the end of May 1977.

(e) That in September 1979 the Law Society were minded to bring an alternative charge against the Appellant namely that on the facts set out in an Amended Statement of Case, he was guilty of

Exhb 14
Pt.II
pp 82-83

'such conduct as would render him liable to be struck off the Roll of the Court, suspended from practice or censured if he had been a solicitor in England'. They sent to the Law Society of England a proposed Amended Statement of case which included an allegation that by his delay reporting the Appellant had 'caused, permitted or enabled Santhiran to continue in practise as an Advocate and Solicitor until the 31st December 1976 as a legal assistant with Braddell Brothers and thereafter for some months on his own account'. By letter dated the 9th November 1979 the Law Society of England replied (inter alia)

Exhb R2 Pt.II pp 5-9

Exhb A15 Pt.II p 84

'I think that I should add that our assessment of the gravity of the case lends us to the belief that Disciplinary Proceedings here would not result in a striking off or perhaps a suspension. Our view is that a very substantial fine - perhaps the maximum of £750 would be the likely penalty'.

<u>As to the Offender</u>:

(a) Up to March 1976 the Appellant had had a lengthy and distinguished record both as an Advocate and Solicitor for some 30 years

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and as a man. He had a deep involvement in the formation of, and a lengthy association with the Law Faculty. For some 18 years he gave up time to teach at the Law Faculty. Since 1967 he had served on the Board of Legal Education and the Council of the Law Society. He was President of the Law Society for two years. He had given an immense amount of his time to various committees including the Legislation Rules Committee and assisted in drafting numerous Acts and Rules.

(b) On the 7th November 1978 the Appellant was convicted in the District Court of eight charges under s 213 of the Penal Code, the essential factual ingredient of each charge being the concealment of Santhiran's criminal breach of trust for some 13 months. On appeal, Choor Singh J reduced the fines from $3,500 in respect of each charge to $1,500 and stated, (inter alia)

'It seems to me that it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect of it'.

Thus, the Appellant has already been partially punished for the said delay in reporting Santhiran in that he has had

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the shame and humiliation of a trial and conviction in a Criminal Court, together with a substantial financial penalty.

(c) The Appellant has sustained, due to Santhiran's misappropriations, losses of about $55,000 together with the inevitable loss of a substantial part of his practice due to the adverse publicity. In addition he had incurred very substantial legal costs.

(d) That during the 13 months delay in reporting Santhiran, the Appellant was abroad 89 days; that is nearly a third of the working year and, when in Singapore, a bulk of his time was spent absent from his office working on the 'Haw Paw' case. Exhb 16 Pt.II p 85

The Appellant has, since the 23rd August 1981, been suspended from practice.

8. The Appellant humbly submits that the findings of the Disciplinary and the Judgment and Order of the High Court of Singapore should be set aside and this appeal should be allowed with costs for the following (among other)

Reasons

(1) Because the Disciplinary Committee were wrong to allow an affirmative case to be made against the Appellant in respect of the allegations of

(a) a dishonourable motive, and

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(b) consequences arising out of the failure to report for 13 months when the Inquiry Committee had not given the Appellant notice thereof under s 87(5) of the Legal Profession Act or referred these matters to the Disciplinary Committee under s 93(1) of the Legal Profession Act.

(2) Because the Disciplinary Committee in all the circumstances attached far too much weight to the alleged consequences of the said failure to report.

(3) Because the Disciplinary Committee misdirected themselves in law by failing to take into account the unchallenged evidence of Ramanugan and Lisa Choo and/or drawing inferences that they were not entitled to draw in view of such evidence.

(4) Because the Disciplinary Committee should have found on the evidence and on the proper inferences to be drawn therefrom that the Appellant's conduct amounted at most to a grave error of judgment and not to grossly improper conduct.

(5) Because in all the circumstances of the case the sentence was wrong and unjustified.

(6) Because in any event, the judgment of High Court of Singapore was wrong and should not be affirmed.

Dated

Colin Ross-Munro QC

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL NO.44 OF 1981

ON APPEAL FROM

THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

BETWEEN

H. L. WEE .. Appellant

AND

THE LAW SOCIETY OF SINGAPORE .. Respondents

(In the Matter of Originating Summons No.55 of 1981)

In the Matter of the Legal Profession Act (Cap.217,1970 Edn)

AND

In the Matter of an Advocate & Solicitor

****

CASE FOR THE APPELLANT

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