

18/85

IN THE PRIVY COUNCIL

No. 66 of 1984

O N A P P E A L

FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING

Appellant

- and -

LAW SOCIETY OF SINGAPORE

Respondent

RECORD OF PROCEEDINGS

PART II

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O N A P P E A L
FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING Appellant

- and -

LAW SOCIETY OF SINGAPORE Respondent

RECORD OF PROCEEDINGS
PART II

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2	Pages 456.2 to 456.12 of The Record (duplicated part of cross-examination of D.C.Potter, Q.C.)	
3	Pages 456.13 to 456.23 of the Record (duplicated part of cross-examination of J.A. Brown)	
4	Exhibits to Affidavit of Tan Kok Quan already reproduced in this Record	

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

RECORD OF PROCEEDINGS

PART II

10

No. 13

In the
Disciplinary
Committee

STATEMENT OF CASE

IN THE MATTER OF JAMES CHIA SHIH CHING
AN ADVOCATE AND SOLICITOR

No.13
Statement
of Case
31st January
1983

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT

STATEMENT OF CASE

20

1. On 29th April 1970, JAMES CHIA SHIH CHING (hereinafter called "the Respondent") 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.

2. On 11th July 1973, the Respondent 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.

30

3. On 14th November 1981, the Respondent was convicted on a charge under Section 420 of

PARTICULARS OF THE CHARGE

No.13
Statement
of Case
31st January
1983

(continued)

- " 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. "
- 10
4. Upon conviction as aforesaid, the Court sentenced the Respondent to one day imprisonment and a fine of \$3000.
5. On appeal by the Respondent against conviction and sentence, the High Court on 20th October 1982 dismissed the Appeal. 20
6. In the premises, the Respondent has been convicted of a criminal offence which implies a defect in the Respondent's character, rendering him unfit to practise as an advocate and solicitor or remain on the roll of Advocates and Solicitors.
7. The Council of the Law Society submits that cause of sufficient gravity exists for disciplinary action against the Respondent. 30

Dated the 31st day of January 1983

Sgd: Tan Kok Quan
(TAN KOK QUAN)

Solicitor for the Council of Law Society of
Singapore

IN THE MATTER OF JAMES CHIA SHIH CHING
AN ADVOCATE AND SOLICITOR

No.14
Defence
16th March
1983

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT
CHAPTER 217 (1970 ED.)

D E F E N C E

- 10 1. On 29th April 1970, James Chia joined the Legal Section of the Inland Revenue Department as a legal officer. On 1st May 1979, he was promoted to the post of Senior Legal Officer to head the Legal Section. As Senior Legal Officer, he had occasions to instruct Queen's Counsel on behalf of his Department concerning advice and litigation. One of the chambers which James Chia had instructed was that of Mr. Michael Nolan Q.C.
- 20 As a result of his dealings with the said chambers, James Chia became friends with Mr. Donald Charles Potter and Mr. Joseph Anthony Brown, chief clerk of the said chambers.
2. In 1978, James Chia was introduced by Dr. Tan Poh Lin, Deputy Chairman of the Industrial & Commercial Bank to Mr. Teo Tong Wah, a director of Tong Eng Brothers Pte. Ltd. James Chia and Mr. Teo Tong Wah (hereinafter referred to as "Mr. Teo") became close friends.
- 30 3. Tong Eng Brothers Pte. Ltd. (hereinafter referred to as "Tong Eng Brothers") completed the development of a building called Tong Eng Building at the end of 1979. It was then realised that arising from this fact, the profits of Tong Eng Brothers would be quite substantial both for the year ending 1979 and the year ending 1980. The Board of Directors of Tong Eng Brothers believed that if the company were to cease operations in 1981, tax could be avoided for either 1979 or 1980 in view of the cessation provisions in the Income Tax Act (Chapter 141).
- 40 4. Around October 1979, Mr Teo on a personal basis as a friend enquired from James Chia of his company's intention to cease operations and conferred with him on the operation of the cessation

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(continued)

provisions. James Chia told Mr. Teo that the cessation provisions would be applicable. Mr. Teo and James Chia discussed the matter again subsequently. This time, James Chia advised Mr. Teo that his company should consult a Queen's Counsel. This advice was accepted. When James Chia said that a brief of the company's history and operations had to be prepared for the purposes of consulting Queen's Counsel, Mr. Teo required James Chia to assist in the preparation of the brief as his company's legal officer was new.

10

5. Around Christmas of that year, James Chia produced a brief in Mr. Teo's house and both of them went through the brief together. Mr. Teo agreed the brief. James Chia indicated that he would send the brief to Queen's Counsel by post.

6. In January 1980, the brief which was sent by James Chia reached the chambers of Mr. Michael Nolan. One of the silks in the chambers was Mr. Donald Charles Potter. The chief clerk of the chambers was Mr. Joseph Anthony Brown. The brief was for the attention of Mr. Donald Charles Potter.

20

7. On 14th February 1980, Mr. Potter gave his Opinion (hereinafter referred to as "the Opinion") and it was sent to James Chia. Shortly after receiving the Opinion, James Chia went to Mr. Teo's house. James Chia read the Opinion to Mr. Teo. The latter's reaction to the Opinion was that it was a "Yes" and "No" answer and as a layman he felt that the cessation of his company's operations could be carried out. James Chia on his part did not fully agree with the Opinion of Mr. Potter.

30

8. The Opinion itself concluded with the words that Counsel would be happy to advise further, if he had misunderstood any part of his Instructions, or if any further point might arise. A letter in Mr. Potter's handwriting also invited further discussion.

40

9. In evidence, Mr. Teo agreed that both he and James Chia were dissatisfied with the Opinion. The Court chose to believe Mr. Teo when he said he could not remember if James Chia had suggested that there should be clarification from Queen's Counsel. The Court also accepted the evidence of Mr. Teo when he said that James Chia handed him a note with the word "Potter" and the figure "£800" written on it and that while handing over the

50

note James Chia had said that the £800 was for payment to Queen's Counsel for his fees. The note itself was mislaid by Mr. Teo. James Chia's evidence was as follows :-

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(continued)

10 ".....I raised this question of payment. I had not received a fee note at that time. With my past experience, I expect the fee note to come towards the end of 1980. After the opinion was discussed, I raised the question of payment with him and said that we have to pay for the opinion provided by Mr Potter. I handed Mr Teo Mr Potter's name, the address and a figure of £800. It was in my handwriting. It did not look like a fee note from Chambers.

20 When I handed the slip of paper to him, I did say to Mr Teo, "I have not received the bill yet but we must pay for the opinion rendered by Mr Potter. £800 should be sufficient to cover his opinion". From my dealings with Mr Potter, the charges which he has billed the Inland Revenue Department of opinions varies from £250 to £750. The average would be £400. Mr Teo's matter is a private matter. I took the precaution of doubling it.

30 I say it is a private matter, I mean as opposed to government matter I did not think of getting a concessionary rate for Mr Teo."

40 10. On the afternoon of 7th March 1980, James Chia telephoned Mr Teo and informed him that he would be going to Dr Tan Poh Lin's office later that day and asked Mr. Teo to obtain a bank draft for Mr. Potter's fee so that he, James Chia, could collect it from Dr. Tan Poh Lin's office. Accordingly, Mr. Teo telephoned Dr. Tan Poh Lin and asked him to authorise the debiting of the account of Tong Eng Brothers for £800 and that James Chia would be going to his office to collect the bank draft. As a result a bank draft in the name of Mr. Potter for the sum of £800 was prepared and handed to James Chia for onward despatch to Mr. Brown, Mr. Potter's clerk.

50 11. On 10th March 1980, James Chia wrote a letter to Mr. Brown. The text of the letter was as follows :-

In the
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1983

(continued)

"Dear Tony,

RE: CESSATION OF BUSINESS
SECTION 35 OF THE INCOME TAX ACT

I am in receipt of the opinion by
Mr. Charles Potter a week ago on the
above.

I believe the average fee charged
by Mr. Potter is £400 with zero VAT.
I attach herewith a bank draft for
£800 leaving a remainder of £400 to be
credited to my account which may be
utilized in the near future for other
purposes.

10

Thank you.

Yours sincerely,
JAMES S C CHIA "

12. Mr. Brown had on 18th January 1980 made
a note in his diary that the instructions
was a matter personal to James Chia. At that
time, no firm decision was taken to waive
the fees. When Mr. Brown received the letter
of 10th March 1980, 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 James Chia's, he
decided to waive the fees. In consequence
of that, Mr. Brown wrote a letter to James
Chia on 13th March 1980. The text of that
letter reads :

20

30

"Dear Mr. Chia,

Cessation of Business
Section 15 of the Income Tax Act

I thank you for your letter of
10th March 1980 enclosing your cheque
for £800.

I have credited your account with
this full figure because Mr. Potter does
not wish to charge anything for the
Opinion in the above matter.

40

I hope you are keeping well and look
forward to seeing you again soon.

Yours sincerely,
Tony Brown "

10 13. When Mr. Brown received the bank draft from James Chia together with James Chia's request in his letter of 10th March to credit £400 into his, James Chia's account, he could not carry out James Chia's request as barristers do not keep a client's account. The bank draft therefore was not banked in and Mr. Brown merely kept the draft with him. It will be observed from the evidence that James Chia assumed that barristers in London keep clients' accounts.

20 14. It should be explained that the wording of this Defence follows very closely the wording of the judgment except where changes have been made so that the Defence reads better and makes the story clearer. The immediately preceding paragraph is to be found in the second paragraph of page 8 of the Grounds of Decision.

15. Appendix A is the extract of the cross-examination of Mr. Potter.

16. Appendix B is the extract of the cross-examination of Joseph Anthony Brown, clerk to Mr. Potter.

30 17. Upon receiving the letter dated 13th March 1980 from Mr. Brown, James Chia wrote a letter to Mr. Brown on 20th March 1980. The text of the letter is as follows :

"RE: CESSATION OF BUSINESS UNDER
SECTION 35 OF THE INCOME TAX ACT

1. I thank you for your letter of 13 March 80 on the above.

2. I am indeed grateful to Mr Potter, QC, for his kind gesture.

40 3. In view of the high interest rates prevailing in Britain I would be delighted if you could kindly transfer the £800 to my external deposit account in Midland Bank Limited, 82 Strand Branch, 82 Strand, London WC2R OER. My deposit account number is 23027554 under the name of S.C.J.Chia. Kindly effect the transfer before 1st April.

4. I enclose herewith two photographs

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of Mr Potter taken by me when he
was in Singapore in October. Kindly
forward it to him.

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Thank you. "

(continued)

18. In accordance with this letter, Mr Brown had the sum of £800 paid into James Chia's bank account in London on 28th March 1980. It was James Chia's contention that the £800 was in his hands for further consultation and disbursements.

10

19. Before 7th March 1980 and 21st March 1980, Mr. Teo took steps to apply for names for three companies with a view to cease the operations of Tong Eng Brothers. In April 1980, Tong Eng Brothers had second thoughts about ceasing its operations. However, this was not disclosed to James Chia.

20. On 21st May 1980, James Chia had lunch with Mr. Teo. On that day, James Chia was scheduled to leave for London on official duties. He informed Mr. Teo that he would be seeing Mr. Potter and would clarify the Opinion rendered.

20

21. On 23rd May 1980 in London, James Chia gave lunch to Mr. Potter. After lunch, James Chia saw Mr. Potter in conference for at least an hour. James Chia sought advice on two matters, namely, matters concerning Nakhoda Investments and the Opinion rendered by Mr. Potter concerning Tong Eng Brothers. The discussion on Tong Eng Brothers was general in nature. Immediately after the conference, James Chia gave to Mr. Brown the name of the two matters discussed, namely, Nakhoda Investments and Tong Eng Brothers, and asked for what the fees was. Mr. Brown had the two fee notes typed. Mr. Brown fixed the fee for Nakhoda Investments at £350 whilst the fee for Tong Eng Brothers was £450. The fee notes were handed to James Chia on 6th June 1980. At that time, Mr. Brown was unaware that the matter of Tong Eng Brothers discussed in the conference was the same matter as the Opinion rendered by Mr. Potter. The Nakhoda Investments matter was nothing to do with Tong Eng Brothers.

30

40

22. On 7th June 1980, James Chia returned to Singapore. He then visited Mr. Teo and went through with Mr. Teo the steps to be taken to end the operations of Tong Eng Brothers.

50

23. On 9th July 1980, the Corrupt Practices Investigation Bureau interviewed James Chia. On 19th July 1980, Mr. H.E. Cashin was retained by James Chia. On 22nd July 1980, James Chia was questioned about the matter concerning the £800.

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1983

24. On 4th August 1980, James Chia wrote a letter to Mr. Teo. The text of the letter is as follows :

(continued)

10

"Dear Tong Wah,

RE: BRIEF AND OPINION BY MR.POTTER Q.C.

I refer to the £800 which I was holding for you against the possibility of instructing Mr. Potter Q.C. further. Please note that the £800 is in Mr. Potter's hand. Do you wish it to be returned to you in Singapore in which case I will so advise Mr. Potter Q.C.

Waiting to hear from you soonest.

20

Thank you. "

25. When Mr. Teo received this letter, he could not understand the first paragraph for two reasons. First, as far as he was concerned, the £800 had been paid to Mr. Potter as fees. Secondly, he said he did not discuss with James Chia the possibility of consulting Mr. Potter further after James Chia's return from London.

30

26. On 21st July 1980, Counsel advised James Chia to transfer £800 to Mr. Brown to show that there was no impropriety.

27. On 24th July 1980, James Chia wrote a letter to Mr. Brown. In his letter, James Chia stated that he had written to the Midland Bank in London to transfer the sum of £800 from his account to Mr. Brown. He requested the latter to credit the £800 to the account of "Tong Eng Brothers Ltd. - for future consultation".

40

28. On 18th August 1980, Mr. Brown replied to James Chia's letter. In his letter, Mr. Brown informed James Chia that the sum of £800 had been transferred to Mr. Potter's account. He suggested that instead of putting the sum against Tong Eng Brothers for future consultation, it should be utilised to settle the two fee notes in respect of Nakhoda Investments and Tong Eng

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(continued)

Brothers.

29. In the meantime, on 17th August 1980, James Chia wrote another letter to Mr. Brown reiterating his request to have the £800 transferred to Mr. Potter's account.

30. On 26th August 1980, James Chia replied to Mr. Brown's letter of 18th August giving his consent for part of the £800 to be used to settle the fee note of £450 in respect of Tong Eng Brothers and that the balance of £350 be credited to Mr. Potter's account. In respect of the fee note concerning Nakhoda Investments, James Chia stated that a sum of £350 was on its way in settlement of that note. 10

31. It was basically on the evidence of Mr. Teo and the letters that were written from the 10th of March 1980 onwards that James Chia was convicted (for convenience sake the letters are bundled and annexed hereto as Appendix C). 20

32. James Chia does not deny his conviction but says that a conviction in these circumstances does not imply a defect in his character rendering him unfit to practise as an advocate and solicitor or to remain on the rolls of advocates and solicitors. He states that it is clear that he did not understand that barristers do not keep accounts in the same way as advocates and solicitors in Singapore and that the £800 was initially in the hands of Mr. Potter. It is true that the money was later paid back to an account of his, James Chia's, but that out of the £800, £450 had been paid to Mr. Potter for the later consultation and the balance has since all been repaid. Subsequent to the appeal the bill of \$798 was presented to Mr. Teo for expenses incurred by James Chia on his behalf during the period from January 1980 to March 1981. All the later letters from the time the investigation commenced were written on the instructions of his solicitors. James Chia's contention is that the investigation interrupted the course of the affairs and that the money would have been fully accounted for and returned eventually although this was not believed by the Court. 30 40

33. It is for the consideration of this Committee that the date of suspension from Government service was 8th August 1980 and that he has received no salary from that date, nor was 50

10 he permitted to work in any capacity at all from that date. The official date of dismissal from Government service is 9th February 1983 and his salary as Senior Legal Officer at the time of his suspension was \$79,644-44 per annum. It therefore means that James Chia was unable to work or earn a living from 8th August 1980 until 9th February 1983 (see bundle of letters from the Ministry of Finance annexed as Appendix D).

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Defence
16th March
1983

(continued)

Dated this 16th day of March 1983

Sd: Murphy & Dunbar
MURPHY & DUNBAR
Solicitors for the Respondent

No. 15

NOTES OF EVIDENCE

No.15
Notes of
Evidence
30th March
1983

RE: DISCIPLINARY COMMITTEE
(JAMES CHIA SHIH CHING)

20 Hearing on 30th March 1983 at M/s. Godwin & Co.'s office.

CORAM:-

Chairman - L.A.J.Smith
A.P.Godwin - Committee member
P. Selvadurai - Committee member
S.B.Shah - Secretary
Tan Kok Quan - for Law Society of
Singapore

30 H.Cashin with Choo Han Teck for Respondent and James Chia (Respondent)

Hearing commence at 9.45 a.m.

TAN KOK QUAN Facts of Law Society's case are set out in Record of proceedings of District Court. On 29th April 1970, the Respondent James Chia joined Inland Revenue as a Legal Officer and on 1st May 1979 he was promoted to Senior Legal Officer. On 11th July 1973

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(continued)

Respondent was admitted as Advocate and Solicitor of Supreme Court of Singapore and since then he has remained on the roll. On 19th November 1981 the Respondent was convicted under Section 415 of Penal Code and punishable under S.420 of the Penal Code. The charge was that Respondent on 7th March 1980 in Singapore cheated, one M/s Tong Eng Bros Private Ltd. by deceiving the company that on 14th November 1981, the Respondent was convicted on a charge under Section 420 of the Penal Code:- 10

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 know 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." 20 30

S.415 of Penal Code is read out by Tan Kok Quan.

S.420 of Penal Code is read out by Tan Kok Quan.

The charge is that Respondent dishonestly induced Tong Eng Brothers Pte.Ltd. to part with a draft of Pound Stg.800 which they would not have done. The deception was that the Respondent induced M/s Tong Eng Brothers Pte.Ltd. to part with Pound Stg.800. He was convicted and sentenced to 1 day and fine of \$3000.00. He appealed and on 28th November 1982 his appeal was dismissed. The Law Society's case is that since Respondent has been convicted it implies defect in character. Therefore 40

	he cannot remain in the roll.	In the Disciplinary <u>Committee</u>
CHAIRMAN	What is deception?	
TAN KOK QUAN	The deception was that the said company was induced to part with Pound Stg.800 to Mr. Potter when that money was not due to Mr. Potter. That was on 7th March 1980. The subsequent facts support the Law Society's case in that it shows the motive in requesting for Pound Stg.800. The Respondent was charged with three charges. The first 2 charges were charges of attempted criminal breach of trust and he was acquitted of the said 2 charges. He was convicted on alternative third charge of cheating.	No.15 Notes of Evidence 30th March 1983 (continued)
10		
20		
CHAIRMAN	What did Tong Hwa say?	
TAN KOK QUAN	He said that I would not have given him the draft of Pound Stg.800 if Respondent had not asked for it.	
H. CASHIN	Look at second last question of pg.79 and continued to pg.80 of Record of Evidence.	
30		
TAN KOK QUAN	The words "due and payable for Mr. Potter" was not used by Respondent to Tong Hwa.	
H. CASHIN	I told Chief Justice on appeal that something was due and payable in due course to Mr. Potter.	
40		
TAN KOK QUAN	On 7th March 1980 no money was due and payable as no bill was rendered. Potter's clerk in his evidence said that on that day (i.e. 7th March 1980) no money was due and payable.	
H. CASHIN	Look at middle of pg.80 in Record of Evidence. (Potter's evidence) and pgs.46 & 47 of Record of Evidence (Potter's Chief Clerk's evidence).	

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Notes of
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(continued)

TAN KOK QUAN	My submission is that you look at conviction and nothing else.	
CHAIRMAN	S.84 of Legal Profession Act is a general section.	
TAN KOK QUAN	The Law Society had no Inquiry Committee. We are proceeding under S.86(5) of Legal Profession Act. The Law Society of its own motion has brought this up. This Committee can investigate under Sections 91 onwards of Legal Profession Act.	10
H. CASHIN	I draw attention to S.93(5) of Legal Profession Act.	
TAN KOK QUAN	You are to investigate whether the criminal conviction of which the Respondent is charged implies a defect in character. You cannot go behind the charge.	
CHAIRMAN	I thought to the contrary. If we cannot go behind, what are we investigating?	20
H. CASHIN	Look at Section 86(5). It rules out investigation.	
A.P. GODWIN	The Privy Council in the case of Retnam says that you look behind and consider what penalty he got against the charge he was charged with. In this case, the Respondent got only 1 day against 7 years imprisonment and he got \$3000.00 fine against unlimited fine.	30
H. CASHIN	I refer to F & G (on right hand side) of pg.201 of Privy Council's case of Retnam. The Court to have regard to moral obliquity. The mere "nature" of the offence will often be of little guidance to the moral obliquity actually involved.	40
CHAIRMAN	It does not say that you cannot challenge conviction.	
H. CASHIN	I refer to pg.200 at A.B. & C. on right hand side of the said Privy Council case of Retnam.	

The High Court assumed that you can and then again at pg.200 and continued to pg.201 up to A.

In the Disciplinary Committee

No.15

Notes of Evidence 30th March 1983

(continued)

10 TAN KOK QUAN

We cannot go on S.84(2)(b) of Legal Profession Act as there has to be appointment of Inquiry Committee. Here there was no Inquiry Committee so we are going on S.84(2)(a) of Legal Profession Act.

H. CASHIN

Even if you accept conviction, does this imply a defect in character. I have got English case to show that in England you can go behind.

20

(1) Re A Solicitor Ex parte. The Incorporated Law Society (1890) L.T. 842, 843 & 844. Then on appeal at (1889) 37 W.L.R. 598.

(2) In Re Weare - a Solicitor - (1893) 2 Q.B. 439 (C.A.) Headnote + at Pg.445 - 6th line down from top of Pg.445 and Pg. 447.

CHAIRMAN

All those cases were before you had a statute.

30

TAN KOK QUAN

My submission is that the Investigation should be to look into the offence and consider whether it implies a defect in character. To look at all the facts of and before 7th March 1980 which facts I briefly set out as follows :-

40

(1) No one had asked for Pound Stg.800 on 7th March 1980. Not due and payable. He was rightly convicted.

(2) He, the Respondent requested Tong to give him a bank draft of Pound Stg.800 in the name of Mr. Potter.

(3) The request was made in form of a note with a figure of Pound Stg.800 and Potter's name written thereon and the note was handed over by the

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Evidence
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1983

(continued)

the Respondent to Tong
Hwa with the words to the
effect that the Respondent
said that Pound Stg.800 was
meant as fees for Potter.

- (4) At that time he, the Respondent had no intention of paying whole amount to Potter. He hoped he could change and some amount he could pocket. 10
- (5) On 7th March 1980 the Respondent telephoned Teo Eng Hwa of Tong Eng Company Pte. Ltd. that Respondent will be going to Dr. Tan's office at Industrial & Commercial Bank and asked Teo to obtain bank draft of Pound Stg.800 for Potter's fee and Respondent could collect it from Dr.Tan's 20 office. Teo gave instructions and on 7th March 1980 afternoon, Respondent collected the said draft from Dr. Tan's office.

Subsequent Facts :-

- (6) On 10th March 1980, Respondent wrote to Potter's clerk (the letter at pg.40 - Volume A of Statement of Case) wherein he wanted Pound Stg. 30 400 to go to Potter and Pound Stg.400 to go to his account. Pg.41 of said Volume A is letter of 13th March 1980. Pg.42 of Volume A is Respondent's letters of 20th March 1980 asking Potter's clerk to transfer the Pound Stg.800 into Respondent's external account at Midland 40 Bank.
- (7) After Respondent realised that Potter had waived his fees, Respondent never informed Tong Eng Brothers Pte.Ltd. that there was a waiver until after investigation by Police had started CPIB investigation commenced on 9th July 1980. Respondent informed on 4th 50 August 1980 see A-45, which is

Respondent's letter to said Teo - "what shall I do with Pound Stg.800". Teo said that he thought that Pound Stg.800 fees was already paid to Potter.

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Notes of
Evidence
30th March
1983

10

To sum it up the Respondent had no intention of paying fully the amount of Pound Stg.800.

(continued)

H. CASHIN

(1) The District Judge was not a practitioner. He had no understanding that barristers do not keep clients' account.

20

(2) To see the circumstances of the Respondent. He was at the top of this field in Inland Revenue. When Respondent was being investigated on the other matters this was one of the charge. Other matters were charged and he was acquitted of. At that time of charge he was worth several hundred thousand dollars and for a person of his stature and young age and his whole life before him, would he have intended to pocket Pound Stg.400, when that would affect his whole career. His 5 years contract with the Government was expiring in July 1980. He was assisting members of public whilst he was still with Inland Revenue but whether that was right or wrong, was never charged and/or decided.

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(3) Opinion of Potter was received on 14th February 1980. Tong Hwa knew that the sum note was not fee note. The magistrate did not believe James Chia when he said that he did not know how much Counsel's fees were. I draw attention to A-40 and

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In the
Disciplinary
Committee

No.15
Notes of
Evidence
10th March
1983

(continued)

- this letter is construed that there was an intention by him to pocket part of money. Potter's and Brown's evidences were that he could not know that the fee was to be waived or the "amount of his (Potter's) fees and other purposes" were for future consultation. A-41 perpetuates Respondent's belief that barrister kept clients' account. A-45 is "higher interest" letter. 10
- (4) James Chia was due to go to London and Tong Hwa knew that he was going to London.
- (5) The dispute turns on whether Tong Hwa knew that there was going to be further consultation by the Respondent with Potter. For this further consultation, Respondent was charged Pound Stg.50 by Potter's chambers and the Respondent paid. James Chia says that he informed Tong Hwa about waiver but Tong Hwa denies it. District Judge believed Tong Hwa. 20
- A.P.GODWIN Who would get interest in putting Pound Stg.800 into external account at Midland Bank? 30
- H. CASHIN Tong Hwa would get interest. I submit that on 7th March 1980 nothing can be imputed to James Chia and District Judge and on appeal His Lordship the Chief Justice were wrong on their interpretation of 10th March 1980's letter. 40
- P.SELVADURAI Cannot go behind the decisions of these 2 Courts as regards 10th March 1980's letter. We can look at the record of the proceedings if there was anything in them which related to moral turpitude involving character. 50

	CHAIRMAN	Everybody agrees thst we have to consider whether there was moral turpitude.	In the <u>Disciplinary Committee</u>
	P. SELVADURAI	It involves character.	No.15
	H. CASHIN	Yes and it involves degrees. Even the District Judge did consider this as not being of great moral turpitude for the Respon-	Evidence 10th March 1983 (continued)
10		dent was sentenced to only 1 day till the Court rises. The District Judge (Adrian Soon) gave him the absolute minimum imprisonment. Prosecution did not appeal on sentence. I do not know whether you are entitled to take mitigating circumstances.	
20		He was suspended since 1980 and he has not worked for 3 years. They refused to accept his resignation and they interdicted him under Public Services Rules and Regulations. To strike off a man for a muddle of what the monies or fees were and that also for Pound Stg.350, it is too much.	
30	P. SELVADURAI	It should involve defect in character or moral turpitude.	
	A.P. GODWIN	S.86(5) of Legal Profession Act is specific.	
	TAN KOK QUAN	The Law Society's case is whether it is of such a moral turpitude that it implies a defect in character.	
40	P. SELVADURAI	Look at A-42 and A-43. In A-42 what is so peculiar about 1st April.	
	H. CASHIN	It would be beginning of the month to give interest.	
	P. SELVADURAI	A-43. What is peculiar about correspondence to be sent to Respondent's home.	
	H. CASHIN	To cultivate clients for his future practice.	

In the
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Evidence
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1983

(continued)

RESPONDENT	Can I say something about that?	
CHAIRMAN	Since you want to give evidence, then you will have be administered oath.	
RESPONDENT	Is administered oath on Bible.	
H. CASHIN	First of all so far as your evidence before District Court do you stand by that.	
RESPONDENT	Yes.	
H. CASHIN	On 7th March 1980, did you know what fees Potter would have charged?	10
RESPONDENT	No.	
H. CASHIN	Did you believe that barrister kept clients' account?	
RESPONDENT	Yes.	
H. CASHIN	When you wrote your letter A-40 - on 10th March 1980. Can you tell us why you said £400.00 was charged for fees of Potter.	20
RESPONDENT	Pound Stg.400 was charged by Potter for Government briefs. I hoped to get concessionary rate of fees for Tong Eng.	
H. CASHIN	Did you know on 7th March 1980 that Potter was going to waive his fees.	
RESPONDENT	No.	
H. CASHIN	A-40 - Pound Stg.400 to be credited into account. What did you mean?	30
RESPONDENT	It refers to clients' account.	
H. CASHIN	Did you mean your own account?	
RESPONDENT	No.	
P. SELVADURAI	Who would be Potter treating as client.	
RESPONDENT	I was looked upon as quasi Solicitor.	

	P. SELVADURAI	When you said Potter's clients' account.	In the Disciplinary Committee
	RESPONDENT	It would mean myself.	
	H. CASHIN	What do you mean by crediting into your account?	No.15 Notes of Evidence 10th March 1983
10	RESPONDENT	I understand Brown as having said that crediting into my personal account. "I have credited your account" meant that crediting into Potter's chambers' account.	(continued)
	H. CASHIN	Did you intend to cheat Teo Hwa or M/s. Tong Eng Brothers Pte.Ltd. of Pound Stg.800 or any lesser sum.	
	RESPONDENT	No.	
20	CROSS-EXAMINATION OF RESPONDENT	I have said that I would not have known on 7th March 1980 what fees Potter would have charged. A-40 would mean that I was trying to persuade Potter to charge concessionary rate of Government to the matter of Tong Eng Brothers Pte. Ltd.	
	P. SELVADURAI	Why did you ask Pound Stg.800?	
30	RESPONDENT	Because Potter may not have charged Pound Stg.400 but could have charged more. I asked for full rate, there was no idea in my mind that Tong Eng Brothers Pte.Ltd. would not pay the additional charges.	
	H. CASHIN	I do not intend to re-examine.	
	CHAIRMAN	Apart from his subsequent conduct after 7th March 1980, there was nothing to suggest that he wanted to pocket it or part of it.	
40	TAN KOK QUAN	Yes, that is true only for the time between 7th to 10th March 1980. There was nothing in it but it was never explained to Court either.	
	CHAIRMAN	Between 7th March 1980 and 10th March 1980, there is nothing	

In the
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Notes of
Evidence
10th March
1983

(continued)

- sinister about it.
- TAN KOK QUAN Yes but subsequent conduct showed motive.
- CHAIRMAN Apart from motive, there is nothing.
- TAN KOK QUAN The charge says that to part with property. There is nothing wrong about asking for Pound Stg.800 fees of Potter but when nothing was due and payable on 7th March 1980 then to ask for the said sum of Pound Stg.800 that itself was wrong. Here the wrongful gain to himself was Pound Stg.400. 10
- P. SELVADURAI At the time he asked for Pound Stg.800 he did not know that Potter's fees was to be Pound Stg.400 or more or even none. There is nothing wrong about that. 20
- TAN KOK QUAN Yes. But the "other purpose" in letter of 10th March 1980 (A-40) meant personal purposes of Respondent and not purpose of Tong Eng Brothers Pte.Ltd.
- H. CASHIN Potter's and Brown's evidence does not show that as regards interpretation of "other purposes", in letter of 10th March 1980. To impute all these to Respondent is impossible and is not supported by evidence. 30
- TAN KOK QUAN This Committee if it finds for the Law Society, then has to apply Section 86 of Legal Profession Act.
- H. CASHIN When this Committee give its finding, may I ask for a copy of the same. 40
- CHAIRMAN We will consider it.

Hearing ended at 12.20 p.m.

Sd: S.B.Shah
Secretary of Ad Hoc
Disciplinary Committee

No. 16

In the
Disciplinary
Committee

REPORT OF DISCIPLINARY
COMMITTEE

No.16
Report of
Disciplinary
Committee
2nd July 1983

IN THE MATTER OF JAMES CHIA SHIH CHING
AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION
ACT CHAPTER 217 (1970 EDITION)

REPORT OF DISCIPLINARY
COMMITTEE

10

comprising L.A.J.Smith (Chairman), A.P.Godwin
and P. Selvadurai appointed by The Honourable
the Chief Justice on the 2nd December 1982

COMPLAINTS

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1. The Statement of Case against James Chia
Shih Ching ("the Respondent") alleges that he
was convicted on the 14th November 1981 by
the District Court of an offence of cheating
punishable under Section 420 of the Penal Code,
and was sentenced to one day's imprisonment
and to fine of \$3000. It is further alleged
that the Respondent's appeal against conviction
was dismissed on the 20th October 1982. On the
basis of such conviction, The Law Society says
that the Respondent has been convicted of a
criminal offence which implies a defect in the
Respondent's character rendering him unfit to
practise as an advocate and solicitor or remain
on the roll of Advocates and Solicitors and
that cause of sufficient gravity exists for
disciplinary action against the Respondent.

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2. The Charge on which the Respondent was
convicted was that he cheated Tong Eng Brothers
Pte. Ltd. ("Tong Eng") on or about the 7th
March 1980 by deceiving Tong Eng into believing
that a sum of 800 Pounds was due and payable
to Mr. D.C.Potter, Q.C., as legal fees, when
he, the Respondent, knew that such sum was not
in fact determined nor due and payable, and he
thereby dishonestly induced Tong Eng to deliver
a bank draft for 800 Pounds which Tong Eng
would not have done if it had not been so
deceived.

3. In his Defence, the Respondent admits his
conviction but says that a conviction in the
circumstances described in the Defence does not

In the
Disciplinary
Committee

No.16
Report of
Disciplinary
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2nd July
1983

(continued)

imply such a defect in character as is
alleged. The Defence goes into considerable
detail as to the circumstances surrounding
the said conviction.

HEARING

The hearing took place on the 30th
April 1983, when The Law Society was represented
by Mr. Tan Kok Quan, and the Respondent by
Mr. H.E.Cashin and Mr. Choo Han Teck.

No evidence was called, save for a
brief examination-in-chief and cross-
examination of the Respondent, as both The
Law Society and the Respondent called on the
evidence contained in the transcript of the
Notes of Evidence of the learned Trial Judge,
and their submissions were based thereon.

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SUBMISSIONS OF COUNSEL

It was common ground that, whereas the
Disciplinary Committee is not entitled to
consider whether the said conviction was
good in law, the Disciplinary Committee was
entitled, and indeed bound, to look into
the circumstances and facts upon which the
conviction was based. This Committee was
appointed pursuant to the provisions of
Section 86(5) of the Legal Profession Act
("the Act") which requires the Council of
The Law Society to apply to the Chief Justice
to appoint a Disciplinary Committee whenever
an advocate and solicitor has been convicted
of an offence involving fraud or dishonesty,
and the function of such Disciplinary
Committee is to "hear and investigate the
matter". It was also common ground that
a conviction of cheating under Section 415
of the Penal Code is a conviction of an
offence involving fraud or dishonesty.

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Counsel for the Respondent relied on
Re A Solicitor Ex Parte THE INCORPORATED
LAW SOCIETY (1890) of LT 842 and 598 and
In RE WEARE (1893) 2 Q.B. 439 as authorities
for showing that conviction of a felony or
other serious criminal offence is not
conclusive evidence that a man is unfit to
be a member of the legal profession, and the
court has a discretion to and will inquire
into the nature of the crime itself. In the
more recent case of Isaac Paul Retnam v. The
Law Society of Singapore (1976) 1 MLJ 195,
the Privy Council, obiter, at pages 200-201,

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expressed the view that it was open to the court to go behind the conviction and enquire if it was correctly made but only in exceptional circumstances, which their Lordships did not define although an example was given. In the same case, the Privy Council said that in determining whether a conviction (properly made) could or could not be said to imply a defect in character making a person unfit for his profession within Section 82(2)(a) of the Act, it is necessary to examine the nature of the offence and the conduct which led to the conviction together with the sentence imposed, which are relevant to the question of the moral obliquity actually involved. In that case, because the Privy Council held that by reason of a procedural irregularity, the conviction itself could not be relied upon, their Lordships' dictum was applicable to Section 84(2)(b) rather than (a). In the instant case, the Statement of Case invokes only Section 84(2)(a) and this Committee must look only at Section 84(2)(a) and (b) because, as stated, its appointment is under Section 84(2)(5) which dispenses with the prior involvement of an inquiry Committee, with the consequence that for us to investigate any complaint other than the one under Section 84(2)(a) would be improper because it would deprive the Respondent of the benefit afforded to him under Section 87(5) of the Act which is an imperative provision (Ratnam's case, supra, at p.200A). But the principle referred to applies, and the same matters for determining obliquity must be looked into.

In the
Disciplinary
Committee

No.16
Report of
Disciplinary
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2nd July
1983

(continued)

THE CIRCUMSTANCES OF THE CONVICTION

This Committee adopts and repeats (what is in fact common ground) the narrative contained in paragraphs 1 to 30 of the Defence. It is clear on the evidence that on or about the 7th March 1980, the Respondent could not have known that Mr. Potter would make no charge whatever for the opinion rendered in respect of Tong Eng's matter, nor could he have known that, if such a charge were to be made, it would not be less nor more than 800 Pounds. It has not been suggested in the Prosecution case nor in the submissions by The Law Society before us that the Respondent did know or should have known either of these matters at that date.

It is quite clear that, in the words of

In the
Disciplinary
Committee

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2nd July
1983

(continued)

the Charge, the Respondent "knew that such sum (800 Pounds) was not in fact determined nor due and payable" as at the 7th March 1980 and it was on this basis that the conviction proceeded. The maximum sentence under Section 420 of the Penal Code for this offence is seven years' imprisonment and a fine. The sentence which was passed was one day's imprisonment, and a fine of \$3,000 as already stated, and the prosecution did not appeal against this sentence.

10

FINDINGS

1. We find that this is not a case in which we are entitled to go behind the conviction to enquire if it was correctly made.

2. We find, however, that on a consideration of the whole of the circumstances of this case, and bearing fully in mind that a conviction of cheating is a conviction which, in all but exceptional circumstances, (In Re WEARE; Re a Solicitor; supra) would necessarily entail disciplinary action under Section 93(1) (a), read with Section 84 of the Act, such circumstances do exist in this case, which may be summarised as follows:

20

(a) The basis of the said conviction was that there was no sum of money due to Mr Potter as at the date on which the Respondent deceived Tong Eng as to Mr. Potter's fee, but the degree of turpitude in such deception and in requesting the issue of the draft, which was in Mr. Potter's favour, was in our view minimal, because the Respondent had no way of knowing at that time whether Mr. Potter's fee for the opinion which had been delivered would be 800 Pounds, 400 Pounds, or more or less than either of those sums, and in particular he had no way of knowing that Mr. Potter would waive his fee altogether, but rather had no reason to expect that a fee would not be charged in the ordinary course;

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(b) The minimal sentence passed on the Respondent is a clear indication that the District Judge did not regard the offence as much more than a minor one within the ambit of the Section;

(c) The Public Prosecutor did not appeal against the sentence, and it was not

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criticised by the High Court as being too lenient, and;

(d) Tong Eng has no suffered any material detriment.

We are of the opinion, and so find, having carefully and anxiously considered the whole of the evidence before us, that while no cause of sufficient gravity exists for disciplinary action under Section 84 of the Act, the Respondent should be and is hereby REPRIMANDED.

Dated the 2nd day of July, 1983

Sd: L.A.J.Smith
L.A.J.Smith

Sd: A.P.Godwin
A.P.Godwin

Sd: P. Selvadurai
P. Selvadurai

In the
Disciplinary
Committee

No.16
Report of
Disciplinary
Committee
2nd July
1983

(continued)

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In the
High Court

No. 17

ORIGINATING SUMMONS

No.17
Originating
Summons
15th July
1983

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

O.S.No.528 of 1983

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor

And

In the Matter of Section 97
of the Legal Profession Act 10
(Cap.217)

Between

The Law Society of Singapore
Plaintiff

And

1. L.A.J.Smith
2. A.P.Godwin
3. P. Selvadurai
(all members of the
Disciplinary Committee) 20
Defendants

ORIGINATING SUMMONS

Let the Defendants (as members of the
Disciplinary Committee) attend before the Judge
in Chambers on Fri the 2nd day of Sept. 1983
at 10.30 a.m. on the hearing of an application
by the Plaintiff for an order that the
determination of the Disciplinary Committee made
on the 2nd day of July 1983 may be set aside,
and that the Plaintiffs be directed to make an 30
application under Section 98 of the Legal
Profession Act.

Dated the 15th day of July 1983

Sd: Illegible
ASST. REGISTRAR

This summons is taken out by Mr. Tan Kok
Quan care of Messrs. Lee & Lee, Level 19, UIC
Building, Shenton Way, Singapore, 0106,
solicitor for the said plaintiff whose address
is 518, 5th Floor, Colombo Court, Singapore, 0617 40

Note:- This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

In the
High Court

No.17
Originating
Summons
15th July
1983

(continued)

10 To: Mr S.B.Shah
The Secretary of the Disciplinary
Committee
14 Collyer Quay, #10-04
Singapore Rubber House
Singapore 0104

No. 18

AFFIDAVIT OF T.P.B.MENON

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE
O.S.No. 528 of 1983

No.18
Affidavit of
T.P.B.Menon
22nd
September
1983

20 In the Matter of James Chia
Shih Ching an Advocate and
Solicitor

And

In the Matter of Section 97
of the Legal Profession Act
(Cap.217)

Between

The Law Society of Singapore
Plaintiff

30 And

1. L.A.J.Smith
2. A.P.Godwin
3. P. Selvadurai

(all members of the Disciplinary
Committee)

Defendants

A F F I D A V I T

In the
High Court

No.18
Affidavit of
T.P.B.Menon
22nd
September
1983

(continued)

I, T.P.B. Menon of Rooms 906 and 907,
Tat Lee Building, Market Street, Singapore
do affirm and say as follows :-

1. I am the President of the Plaintiff,
The Law Society of Singapore (hereinafter
called "the Society").

2. This application is made by the Society
pursuant to Section 97(1) of the Legal
Profession Act (Cap.217) (hereinafter called
"the Act") as the Society is dissatisfied
with the decision of the Disciplinary Committee
as set out in its report dated the 2nd July
1983. The Defendants are members of the
Disciplinary Committee appointed under Section
81 of the said Act. 10

3. On 29th April 1970, Mr. James Chia Shih
Ching (hereinafter called "James Chia") joined
the Legal Section of the Inland Revenue
Department as a Legal Officer. He was
subsequently promoted to the post of Senior
Legal Officer to head the Legal Section. 20

4. On 11th July 1973, James Chia 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.

5. On 14th November 1981, James Chia was
convicted under Section 420 of the Penal Code
on the following charges :-

PARTICULARS OF THE CHARGE 30

"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. " 40

6. Upon conviction as aforesaid, the Court
sentenced James Chia to one day's imprisonment
and a fine of \$3,000.

James Chia appealed against the conviction and sentence but on the 20th October 1982 the High Court dismissed the Appeal.

In the
High Court

No.18
Affidavit of
T.P.B.Menon
22nd
September
1983

10 7. The Society is of the view that the conviction of James Chia for an offence of cheating under Section 420 of the Penal Code implies a defect in character rendering him unfit to practise as an Advocate and Solicitor or to remain on the Roll of Advocates and Solicitors.

(continued)

8. The Society is dissatisfied with the findings of the Disciplinary Committee that no cause of sufficient gravity exists for disciplinary action under section 84 of the Act on the ground that an examination of Isaac Paul Ratnam's case shows that the Disciplinary Committee had the following options open to it:

20 (a) It could accept the conviction as it stood.

(b) It could refuse to accept the conviction and go behind the conviction in exceptional circumstances to ascertain whether the solicitor was properly convicted.

(c) what are exceptional circumstances will depend on the facts of the case particularly whether there was an opportunity to appeal.

30 (d) when it has accepted the conviction as in (a) above then it can only examine

(i) the nature of the offence

(ii) the conduct which led to the offence

(iii) the sentence passed

to ascertain whether the matter fell within the provision of section 84(2)(a) of the Act.

40 9. An examination of the nature of the offence, the conduct of which led to the offence and the sentence passed shows :

(i) that the nature of the offence is one of cheating and therefore involving a defect in character and moral turpitude

In the
High Court

No.18
Affidavit of
T.P.B.Menon
22nd
September
1983

(continued)

(ii) that James Chia's conduct which led to the offence was one of intention to deceive Tong Eng into parting with a bank draft of Pound Stg.800

(iii) that no distinction can be drawn in respect of the sentence passed in Isaac Paul Ratnam's case and James Chia's case

10. For the above reasons, the Society prays that the determination of the Disciplinary Committee made on the 2nd July 1983 may be set aside and that the Society be directed to make an application under Section 98 of the Legal Profession Act. 10

AFFIRMED by T.P.B.Menon)
this 21st day of)
September 1983 at) Sd: T.P.B.Menon
Singapore)

Before me,

20

Sd: Steven Chan Swa Teck
A Commissioner for Oaths

This affidavit is filed on behalf of the Plaintiffs.

No. 19

In the
High Court

WRITTEN SUBMISSION OF
PLAINTIFF

No.19
Written
Submission of
Plaintiff
1st November
1983

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

O.S.No. 528 of 1983

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor

10

And

In the Matter of Section 97
of the Legal Profession Act
(Cap.217)

Between

The Law Society of Singapore
Plaintiff

And

20

1. L.A.J.Smith
2. A.P.Godwin
3. P. Selvadurai

(all members of the
Disciplinary Committee)
Defendants

WRITTEN SUBMISSION OF PLAINTIFF

1. (a) This application is made by the The
Law Society of Singapore ("the Society") pursuant
to Section 97(1) of the Legal Profession Act
(Cap.217) ("the Act") as the Society is
dissatisfied with the determination of the
Disciplinary Committee's decision made on the
2nd July 1983.

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(b) The Society submits that it has locus
standi to make this application as the Society
is "the person who made the written application
or complaint" as provided in Section 97(1) of
the Act. The written application to the Honourable
the Chief Justice was made by the Society through
its Council pursuant to Section 86(5) of the Act.

40

2. The events leading to the Disciplinary
Committee's said decision are set out in
paragraphs 3 to 13 hereunder.

3. On 29th April 1970, Mr. James Chia Shih Ching

In the
High Court

No.19
Written
Submission
of Plaintiff
1st November
1983

(continued)

(hereinafter called "James Chia") 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.

4. On 11th July 1973, James Chia 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.

10

5. On 14th November 1981, James Chia was convicted on a charge under Section 420 of the Penal Code :-

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 as 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. "

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6. Upon conviction as aforesaid, the Court sentenced James Chia to one day's imprisonment and a fine of \$3,000.

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7. On appeal by James Chia against conviction and sentence, the High Court on 20th October 1982 dismissed the Appeal.

8. In the premises, James Chia has been convicted of a criminal offence which implies a defect in his character, rendering him unfit to practise as an advocate and solicitor or remain on the roll of advocates and solicitors and the Council pursuant to Section 86(2) of the Act applied to the Honourable the Chief Justice to appoint a Disciplinary Committee to hear and investigate the matter.

9. The Defendants are members of the Disciplinary Committee so appointed.

10. The Society submits that cause of sufficient gravity exists for disciplinary action against

James Chia under Section 84(2)(a) of the Legal Profession Act.

In the
High Court

11. James Chia does not deny the conviction but says that the conviction in these circumstances does not imply a defect in his character rendering him unfit to practise as an advocate and solicitor or to remain on the roll of advocates and solicitors.

No.19
Written
Submission of
Plaintiff
1st November
1983

(continued)

10 12. The undisputed facts that led to James Chia's conviction were :-

(a) In 1978 James Chia was introduced to Teo Tong Wah ("Teo") a director of Tong Eng Brothers Pte.Ltd. ("Tong Eng") by a mutual friend, Dr. Tan Poh Lin, Dy. Chairman of the Industrial and Commercial Bank Ltd.

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

40 (c) In January 1980, the brief which was sent by James Chia 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 and instructions from the Inland Revenue Department, Singapore, Mr. Potter came to know James Chia fairly well. James Chia became a friend of Mr. Brown too as a result of this
50 dealings on behalf of the Inland Revenue Department with Mr. Nolan's Chambers.

In the
High Court

No.19
Written
Submission
of Plaintiff
1st November
1983

(continued)

- (d) On 14th February 1980, Mr.Potter gave his Opinion (hereinafter referred to as "the Opinion") and it was sent to James Chia. Shortly after receiving the Opinion, James Chia went to Teo's house. James Chia 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. James Chia on his part did not fully agree with the Opinion of Mr. Potter. After reading the Opinion to Teo, James Chia handed to Teo a note with the name "Potter" and the figures "Pound Stg.800" written on it. While handing over the note, James Chia 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. 10
- (e) On the afternoon of 7th March 1980, James Chia 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 James Chia 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 James Chia 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. 20 30
- (f) 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 James Chia that a decision on the fee was made; 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. 40 50
- (g) On 7th March 1980, Teo who was acting on behalf of Tong Eng authorised a bank draft of Pound Stg.800 in

favour of Mr. Potter to be handed to James Chia. This was done pursuant to James Chia's representation to Teo that the fee of Pound Stg.800 had to be paid to Mr. Potter for the Opinion.

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Plaintiff
1st November
1983

10

(h) On 10th March 1980, James Chia wrote a letter to Mr. Brown. The letter reads as follows:

(continued)

"Dear Tony,

RE: CESSATION OF BUSINESS
SECTION 35 OF THE INCOME TAX ACT

I am in receipt of the opinion by Mr. Charles Potter a week ago on the above.

20

I believe the average fee charged by Mr. Potter is Pound Stg.400 with zero VAT. I attach herewith a bank draft for Pound Stg.800 leaving a remainder of Pound Stg. 400 to be credited to my account which may be utilized in the near future for other purposes.

Thank you,

Yours sincerely,

JAMES S C CHIA "

30

13. James Chia was convicted on a charge under Section 420 of the Penal Code. Section 420 reads as follows :-

40

"Whoever cheats and thereby dishonestly 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'

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High Court

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(continued)

14. There were 2 issues in the cheating charge. They were :

- (a) Did James Chia deceive Tong Eng into believing that Potter's fees was determined at Pound Stg.800 and was due and payable?
- (b) Did he dishonestly induce Tong Eng to deliver to him a bank draft for Pound Stg.800?

15. The answers to both questions are clearly "Yes". 10

16. The subsequent conduct of James Chia support the above answers.

Potter on receipt of the letter of 10th March 1980 decided to waive his fees as he understood that the Tong Eng matter was a personal matter to James Chia. James Chia accepted this waiver of fees and wrote to thank Potter for his kind gesture. James Chia also requested that the Pound Stg.800 be transferred to his bank account to earn interest. He did not inform Teo of this waiver. 20

17. The Society therefore submits that the conviction of James Chia of an offence of cheating under Section 420 of the Penal Code implies a defect in character rendering him unfit to practise as an advocate and solicitor or to remain on the roll of Advocates and Solicitors.

18. The Society is dissatisfied with the finding of the Disciplinary Committee that no cause of sufficient gravity exists for disciplinary action under Section 84 of the Act on the following grounds : 30

- (a) The Disciplinary Committee relied on the case of Isaac Paul Ratnam v Law Society of Singapore (1976) 1 MLJ 195. An examination of this case shows that the Disciplinary Committee had the following options open to it: 40

- (i) It could accept the conviction as it stood.

- (ii) It could refuse to accept the conviction and go behind the conviction in exceptional

circumstances to ascertain whether the solicitor was properly convicted.

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- (iii) what are exceptional circumstances will depend on the facts of the case particularly whether there was an opportunity to appeal.

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- (iv) when it has accepted the conviction as in (i) above, then it can only examine:

(continued)

- (I) the nature of the offence
(II) the conduct which led to the offence
(III) the sentence passed

to ascertain whether the matter fell within the provision of Section 84(2) (a) of the Act.

20

- (b) An examination of the nature of the offence, the conduct of which led to the offence and the sentence passed shows :

(i) the nature of the offence is one of cheating and therefore implying a defect in character and moral turpitude.

30

(ii) that James Chia's conduct which led to the offence was one of intention to deceive Tong Eng into parting with a bank draft of Pound Stg.800. (See elaboration in Paragraph (c)(i) below)

(iii) that no distinction can be drawn in respect of the sentence passed in Isaac Paul Ratnam's case and James Chia's case. (See elaboration in Paragraph (c)(ii) below)

40

- (c) Assuming that the Disciplinary Committee while accepting the conviction could nevertheless consider if there are exceptional circumstances, it is submitted that the Disciplinary Committee erred in concluding that the following exceptional circumstances exist in this case :

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(continued)

- (i) Para 2(a) of the Disciplinary
Committee's findings states:

"The basis of the said conviction was that there was no sum of money due to Mr. Potter as at the date on which the Respondent deceived Tong Eng as to Mr. Potter's fees, but the degree of turpitude in such deception and in requesting the issue of the draft, which was in Mr. Potter's favour, was in our view minimal, because the Respondent had no way of knowing at that time whether Mr. Potter's fee for the opinion which had been delivered would be 800 Pounds, 400 Pounds or more or less than either of those sums, and in particular he had no way of knowing that Mr. Potter would waive his fee altogether, but rather had no reason to expect that a fee would not be charged in the ordinary course."

10

20

The Society submits that the Disciplinary Committee failed to consider James Chia's evidence on Pages 224 to 237 of the Record of Magistrate Appeal No.209 of 1981 which shows the following :

- (I) James Chia did not give an answer to the question as to why he was anxious in wanting Mr. Teo of Tong Eng to settle the fee of Mr. Potter which had not been determined 30
- (II) The Pound Stg.800 was James Chia's estimate. This estimate was the upper end of the amount and James Chia had some confidence that Mr. Potter's clerk would accept his suggestion of a fee of Pound Stg.400 leaving a balance of another Pound Stg.400. 40
- (III) It is clear that on 10th March 1980, James Chia had not been notified of the fees for the opinion. James Chia stated in his letter that he believed the average fee of Mr.Potter is Pound Stg.400 and assumed that Mr. Potter would charge the average fee of Pound Stg.400 for the opinion. Thus although James Chia was forwarding a bank draft for Pound Stg.800 he expected the fee to be only Pound 50

10 Stg.400. It is also to be noted that James Chia instructed the balance to be credited to his account. Furthermore, it is significant that James Chia stated in the letter that the balance "may be utilised in the near future for other purposes". The two words "other purposes" read with the words "my account" clearly meant work concerning matters other than the matter concerning the cessation of business of Tong Eng. This would mean that the balance of Pound Stg.400 which belonged to Tong Eng may be used to pay for matters other than the cessation of business of Tong Eng.

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(continued)

20 (IV) James Chia stated that he intended to leave the balance in Mr.Potter's hands for further matters involving Tong Eng but Mr. Teo in his evidence said that he disagreed with Mr. Potter's opinion and it was not until the 21st May that he agreed to further consultation. Further James Chia did not tell Teo what he intended to do if there was to be a balance.

30

40 It is therefore submitted that the Disciplinary Committee erred in concluding that exceptional circumstances exist when the evidence clearly showed that James Chia's intention was to deceive Tong Eng into parting with the bank draft for Pound Stg.800 with the intention to use the balance sum for other purposes. This is further supported by the fact that when Mr. Potter eventually waived his fees, James Chia did not inform Mr. Teo about this.

(ii) Para 2(b) and (c) of the Disciplinary Committee's findings state:

2(b) "The minimal sentence passed on the Respondent is a clear indication that the District Judge did not regard the offence as much more than a minor one within the ambit of the Section"

50 2(c) "The Public Prosecutor did not appeal against the sentence, and it was not

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High Court

criticised by the High Court
as being too lenient"

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(continued)

In arriving at these findings, the Disciplinary Committee relied on the case of Isaac Paul Ratnam v The Law Society of Singapore (1976) 1 MLJ 195 in which the Privy Council, obiter, at Page 201 said "of course, the mere nature of the offence will often be of little guidance to the moral obliquity actually involved. But it is in the penalty that the court will have regard to the moral obliquity". 10

However, the Disciplinary Committee failed to note that in Isaac Paul Ratnam's case, he was convicted of a charge of instigating the dishonest removal of property under Section 108A of the Penal Code and punishable under Section 424 read with section 116 of the said code. This offence carried a maximum penalty of 2 years' jail or with a fine or with both. In addition a second charge (causing evidence to disappear) under Section 201 of the said code was taken into consideration. This charge carried a maximum penalty of 7 years' jail and a fine. 20

Isaac Paul Ratnam was sentenced to one day's imprisonment and a fine of \$4,000/-. The High Court held that Isaac Paul Ratnam was guilty of grossly improper conduct and ordered him to be struck off the Roll of Advocates and Solicitors. 30

In James Chia's case the sentence was one day's imprisonment and a fine of \$3000. The Society submits that as no distinction can be drawn between James Chia's case and Isaac Paul Ratnam's case in respect of the sentences passed on them, the Disciplinary Committee erred in considering "the minimal sentence" passed on James Chia as an exceptional circumstance. 40

(iii) Para 2(d) of the Disciplinary Committee's findings states "Tong Eng has not suffered any material detriment".

The Society submits that this is irrelevant to the Disciplinary Committee's inquiry as to whether there is a defect in James Chia's character which makes him unfit for his profession and should not be considered as an exceptional circumstance.

19. For the above reasons, the Society submits that the determination of the Disciplinary Committee made on the 2nd July 1983 should be set aside and that the Society be directed to make an application under Section 98 of the Legal Profession Act.

Dated this 1st day of November 1983

Sd: Illegible

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SOLICITOR FOR THE LAW SOCIETY

In the
High Court

No.19
Written
Submission
of Plaintiff
1st November
1983

(continued)

No. 20

WRITTEN SUBMISSION OF
DEFENDANTS

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

O.S.No.528 of 1983

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor

20

AND

In the Matter of Section 97
of the Legal Profession Act
(Cap.217)

BETWEEN

The Law Society of Singapore
Plaintiff

AND

1. L.A.J.Smith
2. A.P. Godwin
3. P. Selvadurai
(all members of the Disciplinary
Committee)

30

Defendants

WRITTEN SUBMISSION OF DEFENDANTS

1. In my submission the Law Society of Singapore

In the
High Court

No.20
Written
Submission of
Defendants
14th November
1983

(continued)

are not entitled to make the application pursuant to Section 97(1) of the Legal Profession Act on the ground that they are dissatisfied with the decision of the Disciplinary Committee.

2. Section 86(1) provides that any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct on an advocate and solicitor in his professional capacity shall in the first place be made to the Society and the Council shall refer the application or complaint to the Inquiry Committee. 10

3. By the Legal Profession (Amendment) Act No.11 of 1979 Section 15 Section 86 was amended by inserting immediately after subsection (4) Section 5 which reads as follows :-

"(5) Notwithstanding the provisions of this section, whenever an advocate and solicitor has been convicted of the offence of criminal breach of trust punishable under section 409 of the Penal Code or of any other 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." 20

4. This particular Disciplinary Committee was formed as a result of Section 86(5).

5. Section 96(1) enables a person who has made a written application or complaint to the Society and.....and that person if he is dissatisfied with the decision may. 30

6. Section 97(1) gives rights to "the person who made the written application or complaint" when he is dissatisfied with the determination of the Disciplinary Committee.

7. In the context it relates to the same person referred to in Section 96(1) i.e. a person who first made a written application or complaint to the Society. 40

8. Section 86(5) deals with a different situation altogether.

9. There is no application or complaint to the Society. It provides that the Council will apply to the Chief Justice not the Society to appoint a Disciplinary Committee.

10. Section 97(1) in our submission gives rights to persons who have applied to the Society for disciplinary action against solicitors and these rights were essentially for members of the public who were dissatisfied with the findings of either the Disciplinary Committee or the Inquiry Committee. They do not deal with the appointment of a Disciplinary Committee as a result of the statutory obligation on the Council to apply to the Chief Justice for the appointment of the Disciplinary Committee.

In the
High Court
No.20
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Submission of
Defendants
14th NOVember
1983

(continued)

11. The Council is a statutory body and is dealt with in particular by Sections 49 to 57 of the Legal Profession Act.

12. Section 49(2) states that the Council shall consist of statutory members and elected members as provided in Sections 50 and 51 of the Act and Section 49(1) provides for the appropriate management of the affairs of the Society and that for the proper performance of this function under the Act there shall be a Council.

13. Finally I would point out that in the instant case the application is made by the Law Society of Singapore and the Affidavit in support states that the application is made by the Society pursuant to Section 97(1) as the Society is dissatisfied with the decision of the Disciplinary Committee.

14. The Law Society has not made any application to anybody. If the proceedings are maintainable they would only be so maintainable by pointing to some provision in the Act giving rights to the Council who had made an application to the Chief Justice as opposed to an application by any person to the Society.

MERITS

15. If I am entitled to add to what has already been said and to criticize the submission of the Law Society if they can make it then I would point out the following.

16. Particulars of the charge - These are set out in paragraph 5 of the Affidavit of T.P.B.Menon. The charge states that James Chia induced the company to deliver to him James Chia a bank draft of £800.00. The bank draft was payable to Mr. Potter and not to James Chia.

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(continued)

17. Tan Kok Quan on behalf of the Law Society specifically alleged that there was no dishonesty in his conduct from the facts up to the 7th March 1980 but suggested that his motive for asking for a bank draft in favour of Mr. Potter was to benefit himself. Page 14 of the Notes of Evidence.

18. That was not the charge or the conviction. The so called offence of cheating was simply that Mr. Chia had arranged for Tong Eng Brothers to make available to Mr. D.C.Potter the sum of £800.00 for his fees when the exact or any amount "was not in fact determined nor due and payable".

10

19. The service had been rendered and it transpired that the amount asked for was the usual fee, the fee payable to the Singapore Government being half the usual fee. The only point is that a fee note had not been sent.

20. The original submission by Mr. Tan Kok Quan is set out at page 4 of the Notes of Evidence "My submission is that you look at conviction and nothing else".

20

21. This was explained further down "You are to investigate whether the criminal conviction of which the Respondent is charged implies a defect in character, You cannot go beyond the charge".

22. Page 6 "My submission is that the Investigation should be to look into the offence and consider whether it implies a defect in character. To look at all the facts of and before 7th March 1980 which facts I briefly set out as follows:-"

30

23. The "facts" (1) to (5) pages 6 and 7 deal with facts leading up to the obtaining of the draft.

24. "The subsequent facts" deal with the facts from the 10th March 1980 onwards.

25. At page 8 Mr. Tan Kok Quan introduced for the first time "the Respondent had no intention of paying fully the amount of Stg. 800".

40

26. In response to my question page 14 "Apart from his subsequent conduct after 7th March 1980, there was nothing to suggest that he wanted to pocket it or part of it".

27. Tan Kok Quan answered "Yes, that is true only for the time between 7th and 10th March 1980. There was nothing in it but it was never explained to Court either".

In the
High Court

No.20
Written
Submission of
Defendants
14th November
1983

28. "Between 7th March 1980 and 10th March 1980, there is nothing sinister about it".

10 29. Tan Kok Quan "Yes but subsequent conduct showed motive".

(continued)

30. Bottom of page 14 he states "Here the wrongful gain to himself was Pound Stg. 400".

31. This seems to be what Mr. Tan Kok Quan on behalf of the Law Society had against Mr. Chia but it was not the charge.

20 32. There is nothing in the charge which suggested for one instant that Mr. Chia intended to take some or all of the money for himself nor is there anything in the conviction that suggested he took it for himself.

33. In fact we were informed and from the Record it would appear that he had been originally charged with CBT i.e. in connection with the funds subsequent to the receipt of the funds in London. On this he was acquitted.

34. From this it follows that :-

30 a) he did not deal with the funds in London dishonestly;

b) to accept Tan Kok Quan's submission we would have to challenge the acquittal.

35. It was agreed by all parties that we were not to be just a rubber stamp. This may or may not be right in law but it is the basis on which we acted.

40 36. Tan Kok Quan final submission on behalf of the Law Society is at page 14 of the Notes of Evidence "The charge says that to part with property. There is nothing wrong about asking for Pound Stg.800 fees of Potter but when nothing was due and payable on 7th March 1980 then to ask for the said sum of Pound Stg.800 that itself was wrong. Here the

In the
High Court

No.20
Written
Submission
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14th Nōvember
1983

(continued)

wrongful gain to himself was Pound Stg.400".

37. Hence again there seems to be no particular delinquency in the conviction as the money was intended for Mr. Potter and there was no wrongful gain of £400.000 implicit in the conviction on the offence charged.

38. Finally we would submit that if the legislature intended the Council or the Law Society to be able to challenge the findings of the Disciplinary Committee on fact or law within the framework of Section 97(3) one would have expected the legislature to have said so in plain terms. On the contrary, however, the clear implication that the Council or the Society was not intended to be empowered to bring proceedings of this kind is to be gathered from the liberty given to the Society to be heard upon any such application, by Section 97(3).

10

20

Dated this 14th day of November, 1983.

Sd: L.A.J.Smith
L.A.J.SMITH

Sd: A.P.Godwin
A.P. GODWIN

Sd: P.Selvadurai
P. SELVADURAI

MINUTES OF CHIEF JUSTICE

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

No.21
Minutes of
Chief Justice
2nd December
1983

Originating Summons
No.528 of 1983

In the Matter of James
Chia Shih Ching an
advocate and solicitor

10

And

In the Matter of Section
97 of the Legal Profession
Act (Cap.217)

Between

The Law Society of
Singapore

Plaintiff

And

20

1. L.A.J.Smith
2. A.P.Godwin
3. P.Selvadurai
(all members of the
Disciplinary Committee)
Defendants

14/10/83

Coram: Wee, C.J.

To set aside the Order of the
Disciplinary Committee

30

Tan
Godwin
Smith
Selvadurai

Court:

C.A.V.

2/12/83

I am of the opinion that the Council is
entitled, it being the applicant under S.85(6),
to make the present application.

As prime facie there are grounds for doing
so, I order directing the Council make an

In the
High Court

application under S.98. There will be
no order as to costs.

No.21
Minutes of
Chief Justice
2nd December
1983

Intld: W.C.J.

Certified true copy

Sd:

(continued)

Private Secretary to
The Hon. the Chief Justice
Supreme Court, Singapore

No.22
Order of
Court
2nd December
1983

No. 22

ORDER OF COURT

10

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

O.S.No. 528 of 1983

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor

And

In the Matter of Section 97
of the Legal Profession Act
(Cap.217)

Between

20

The Law Society of Singapore
Plaintiff

And

1. L.A.J.Smith
2. A.P.Godwin
3. P.Selvadurai
(all members of the
Disciplinary Committee)
Defendants

ORDER OF COURT

30

BEFORE THE HONOURABLE THE CHIEF JUSTICE
MR. JUSTICE WEE CHONG JIN

IN CHAMBERS

UPON THE ADJOURNED APPLICATION of the abovenamed Plaintiff made by way of Originating Summons No.528 of 1983 coming on for hearing this day AND UPON READING the Affidavit of T.P.B.Menon filed herein on the 22nd day of September, 1983 AND UPON HEARING Counsel for the Plaintiff and the 1st, 2nd and 3rd Defendant IT IS ORDERED that :-

In the High Court
No.22
Order of Court
2nd December 1983

(continued)

10

1. The determination of the Disciplinary Committee made on the 2nd day of July, 1983 be set aside;
2. The Plaintiff do make an application under Section 98 of the Legal Profession Act;
3. There be No Order as to costs.

Dated the 2nd day of December, 1983

ASSISTANT REGISTRAR

No. 23

20

ORIGINATING SUMMONS

No.23
Originating Summons
19th
January 1984

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons
No.54 of 1984

In the Matter of Section
98(1) of the Legal Profession
Act (Cap.217)

And

30

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor of the Supreme Court
of Singapore

ORIGINATING SUMMONS

Let all parties concerned attend before the Judge in Chambers on Friday the 10th day of February 1984 at the hour of 10.10 a.m. on the hearing of an application by The Law Society of

In the
High Court

No.23
Originating
Summons
19th
January
1984

(continued)

Singapore for an order that :-

- (1) The abovenamed James Chia Shih Ching an Advocate and Solicitor of the Supreme Court of Singapore do show cause why he should not be dealt with under the provisions of Section 84 of the Legal Profession Act (Cap.217) in such manner as this Honourable Court shall deem fit.
- (2) The Registrar do fix a date for the abovenamed James Chia to show cause. 10
- (3) The costs of and incidental to this application be costs in the cause.

Dated the 19th day of January 1984

Sd: Illegible

ASST. REGISTRAR

This Summons is taken out by Mr. Tan Kok Quan of Messrs. Lee & Lee, Level 19, U.I.C. Building, No.5, Shenton Way, Singapore, 0106, Solicitor for the Applicant whose address is Room 518, 5th Floor, Colombo Court, Singapore, 0617 and the address for service is Level 19, U.I.C. Building, No.5, Shenton Way, Singapore 0106. 20

I hereby certify that this is an ex parte application

Sd: Illegible
Solicitor for the Applicant

AFFIDAVIT OF TAN KOK QUAN
WITH EXHIBITS THERETO

No.24
Affidavit
of Tan Kok
Quan with
Exhibits
thereto
19th
January
1984

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Originating Summons)
No.54 of 1984)

10

In the Matter of Section
98(1) of the Legal
Profession Act (Cap.217)

And

In the Matter of James
Chia Shih Ching an
Advocate and Solicitor of
the Supreme Court of
Singapore

A F F I D A V I T

20

I, Tan Kok Quan of Level 19, U.I.C.
Building, No.5, Shenton Way, Singapore, 0106,
Advocate and Solicitor, do affirm and say
as follows :-

30

1. On the 14th day of November 1981, James
Chia, an Advocate and Solicitor of the Supreme
Court of Singapore, was convicted under Section
420 of the Penal Code on the following 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. "

40

and was sentenced to one day's imprisonment
and a fine of \$3000.

2. James Chia appealed against the conviction
and sentence and on the 20th day of October 1982

In the
High Court

No.24
Affidavit of
Tan Kok Quan
with Exhibits
thereto
19th January
1984

(continued)

the High Court dismissed the Appeal.

3. On the 2nd day of December 1982, The Honourable The Chief Justice, in the exercise of his power under section 86(5) of the Legal Profession Act, Cap.217 (hereinafter called "the Act") appointed a Disciplinary Committee to hear and investigate a complaint against James Chia.

4. The Law Society of Singapore (hereinafter called "the Society") is of the view that the conviction of James Chia for an offence of cheating under section 420 of the Penal Code implies a defect in character rendering him unfit to practise as an Advocate and Solicitor or to remain on the Roll of Advocates and Solicitors. 10

5. I have been appointed by the Society to appear for the Society at the said Disciplinary Proceedings.

6. The hearing by the said Disciplinary Committee took place on the 30th day of March 1983 at the office of Messrs. Godwin & Co. 20

7. The said Disciplinary Committee on the 2nd day of July 1983 delivered its finding and found that while no cause of sufficient gravity exists for disciplinary action under section 84 of the Act, James Chia should be and was reprimanded.

8. The said Report is now produced and shown to me marked "TKQ-1" and a true photostat copy thereof is hereto annexed. True copies of the Agreed Bundles of Documents in the said Disciplinary Proceedings are now produced and shown to me marked "TKQ 2A-2C" and true copies thereof are hereto annexed. 30

9. An application by way of Originating Summons No.528 of 1983 was made by the Society on the 15th day of July 1983 to this Honourable Court pursuant to section 97 of the Act as the Society was dissatisfied with the determination of the Disciplinary Committee's decision made on the 2nd day of July 1983. 40

10. At the hearing before The Honourable The Chief Justice on the 2nd day of December 1983, it was ordered, inter alia, that :

(1) The determination of the Disciplinary

Committee made on the 2nd day of
July 1983 be set aside;

In the
High Court

- (2) The Society do make an application
under Section 98 of the Act.

No.24
Affidavit of
Tan Kok Quan
with Exhibits
thereto
19th January
1984

The following documents are now produced
and shown to me marked accordingly and
true copies thereof are annexed hereto :-

- (a) Originating Summons No.528 of
1982 - marked "TKQ-3"

(continued)

10

- (b) Affidavit of Mr. T.P.B.Menon
filed herein on the 22nd September
1983 - marked "TKQ-4"

- (c) Order of Court dated 2nd December
1983 - marked "TKQ-5"

11. The Society is directed by this
Honourable Court, as stated in paragraph 10,
to make this application.

AFFIRMED at Singapore)
on 18th day of January) Sd: Tan Kok Quan
1984)

20

Before me,

Sd: Khor Thiam Beng
A Commissioner for Oaths

This affidavit is filed on behalf of The
Law Society of Singapore

In the
High Court

No. 25

ORDER TO SHOW CAUSE

No.25
Order to
Show Cause
10th February
1984

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No.54 of 1984)

In the Matter of Section
98(1) of the Legal Profession
Act (Cap.217)

And

In the Matter of James 10
Chia Shih Ching an Advocate
and Solicitor of the Supreme
Court of Singapore

ORDER TO SHOW CAUSE

BEFORE THE HONOURABLE THE CHIEF JUSTICE
MR JUSTICE WEE CHONG JIN

IN CHAMBERS

UPON the application of The Law Society
of Singapore made by way of Originating Summons
dated the 19th day of January 1984 coming on 20
for hearing this day

AND UPON READING the affidavit of Tan
Kok Quan filed herein on the 19th day of
January 1984 and the exhibits therein referred
to

AND UPON HEARING the Solicitor for the
Applicant

IT IS ORDERED that :-

- (1) The abovenamed James Chia Shih Ching an
Advocate and Solicitor of the Supreme 30
Court of Singapore do show cause why he
should not be dealt with under the
provisions of Section 84 of the Legal
Profession Act (Cap.217) in such manner
as this Honourable Court shall deem fit;
- (2) The Registrar do fix a date for the
abovenamed James Chia Shih Ching to
show cause; and

(3) The costs of and incidental to this application be costs in the cause.

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High Court

Dated the 10th day of February 1984

Sd: Illegible
ASST. REGISTRAR

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The address for service of the Applicant is care of Mr. Tan Kok Quan of Level 19, U.I.C. Building, No.5, Shenton Way, Singapore, 0106.

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No.26

JUDGMENT OF HIGH COURT

No.26
Judgment
of High Court
3rd September
1984

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No.54 of 1984)

IN the Matter of Section
98(1) of the Legal
Profession Act (Cap.217)

And

20

In the Matter of James
Chia Shih Ching an Advocate
and Solicitor of the Supreme
Court of Singapore

Coram: Wee Chong Jin C.J.
Lai Kew Chai J.
L.P.Thean J.

Mr George Carman Q.C. with Mr. H.E.Cashin
for the Respondent
Mr Tan Kok Quan for the Applicant

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[Delivered by Lai J.]

J U D G M E N T

The Respondent, James Chia Shih Ching, is a non-practising advocate and solicitor of the Supreme Court, Singapore. He has been on the roll of advocates and solicitors since

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11 July, 1973. In April, 1970 he joined the Legal Section of the Inland Revenue Department of the Government of the Republic of Singapore as a Legal Officer. On 1st May 1979 he was promoted to the post of Senior Legal Officer to head the Legal Section. He remained as head of the Legal Section until his interdiction on 8 August, 1980 and was dismissed from Government service on 11 February, 1983.

10

On 14th November, 1981, the Respondent was convicted on a charge under section 420 of the Penal Code, Cap.103.

The charge reads as follows :-

"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. "

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30

He was sentenced to one day's imprisonment and was fined \$3,000. Being dissatisfied with the conviction and sentence, he appealed to the High Court which, on 20 October, 1982, dismissed the appeal.

As the Respondent was convicted of an offence involving fraud or dishonesty, the Council of The Law Society of Singapore, in discharge of its statutory duty imposed by sub-section 86(5) of the Legal Profession Act, Cap.217 ("the Act"), applied to the learned Chief Justice to appoint a Disciplinary Committee to hear and investigate the matter.

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The Disciplinary Committee was appointed and its hearing took place on 30 April, 1983. In July, 1983 the Disciplinary Committee delivered its report to the learned Chief Justice and The Law Society. The Committee found that no cause of sufficient gravity existed for disciplinary action under section 84 of the

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Act and that the Respondent should only be reprimanded. In doing so, the Disciplinary Committee made a determination under section 93(1)(b) of the Act.

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The Disciplinary Committee set out its findings and determination in the following terms :

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"FINDINGS

(continued)

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1. We find that this is not a case in which we are entitled to go behind the conviction to enquire if it was correctly made.

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2. We find, however, that on a consideration of the whole of the circumstances of this case, and bearing fully in mind that a conviction of cheating is a conviction which, in all but exceptional circumstances, (In Re WEARE; Re a Solicitor; supra) would necessarily entail disciplinary action under Section 93(1)(c), read with Section 84 of the Act, such circumstances do exist in this case, which may be summarised as follows :

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(a) The basis of the said conviction was that there was no sum of money due to Mr. Potter as at the date on which the Respondent deceived Tong Eng as to Mr Potter's fee, but the degree of turpitude in such deception and in requesting the issue of the draft, which was in Mr. Potter's favour, was in our view minimal, because the Respondent had no way of knowing at that time whether Mr Potter's fee for the opinion which had been delivered would be 800 Pounds, 400 Pounds, or more or less than either of those sums, and in particular he had no way of knowing that Mr Potter would

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waive his fee altogether, but rather had no reason to expect that a fee would not be charged in the ordinary course;

(b) The minimal sentence passed on the Respondent is a clear indication that the District Judge did not regard the offence as much more than a minor one within the ambit of the Section;

(c) The Public Prosecutor did not appeal against the sentence, and it was not

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criticised by the High Court as
being too lenient, and;

(d) Tong Eng has not suffered any
material detriment.

We are of the opinion, and so find,
having carefully and anxiously
considered the whole of the evidence
before us, that while no cause or
sufficient gravity exists for
disciplinary action under Section 84
of the Act, the Respondent should be
and is hereby REPRIMANDED. "

10

As The Law Society was dissatisfied with
the determination of the Disciplinary Committee,
it applied to a Judge under section 97 of the
Act by Originating Summons No.528 of 1983.
In those proceedings The Law Society and all
three members of the Disciplinary Committee
were heard by the learned Chief Justice who
ordered that the determination of the
Disciplinary Committee made on 2 July, 1983
be set aside. Acting under section 97(3)(b)
of the Act, the learned Chief Justice
directed The Law Society to make an applica-
tion under section 98 of the Act for an
order calling upon the Respondent to show
cause why he should not be dealt with in the
manner prescribed by the Act.

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By Originating Summons No.54 of 1984 the
Law Society accordingly made the ex parte
application. On 10 February, 1984 the
Respondent was ordered to show cause.

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In the show cause proceedings before us,
Mr George Carman on behalf of the Respondent
submitted that The Law Society had no locus
standi or jurisdiction to apply under section
97 of the Act nor to plead before us. In other
words, it was submitted that The Law Society
could not in law apply for a judicial review
of the determination of the Disciplinary
Committee.

40

Before we consider the submission in
detail, we turn first, as is our duty, to
the Act, Part VII of which deals with
disciplinary proceedings which may be taken
against any advocate and solicitor in certain
circumstances. All advocates and solicitors
are subject to the control of the Supreme
Court and an advocate and solicitor may be
liable on due cause being shown to be struck
off the roll or suspended from practice for

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any period not exceeding two years or censured.

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10 Any application for disciplinary action by any person and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to The Law Society and its Council shall refer the application or complaint to the Inquiry Committee: see Section 86(1) of the Act for its full terms. The Supreme Court, a Judge or the Attorney-General may also initiate disciplinary proceedings: see 86(2).

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20 We want to mention one other route by which disciplinary proceedings may be initiated as it has not featured in the arguments before us. Under section 87 (1)(b) of the Act, which remained unamended by Act No.11 of 1979, the Inquiry Committee may decide "of its own motion" to inquire into any matter relating to the professional conduct of any advocate and solicitor and report its findings to the Council of The Law Society. In this situation, there is evidently no outside applicant or complainant and if the Council determines that there should be a formal investigation by a Disciplinary Committee, the Law Society must be the applicant or complainant.

30 For our present purposes, we do not think it necessary to set out the elaborate procedures of the Inquiry Committee.

40 We have to mention two sets of amendments to the Act which were enacted by Act No.11 of 1979. By section 86(5) of the Act, promulgated by Parliament in 1979, provision was made to dispense with the Inquiry Committee stage of any disciplinary proceedings where an advocate and solicitor has been convicted of the offence of criminal breach of trust or of any other offence involving fraud or dishonesty. Section 86(5) are in these terms :-

50 "Notwithstanding this section, whenever an advocate and solicitor has been convicted of the offence of criminal breach of trust punishable under section 409 of the Penal Code or of any other offence involving fraud or dishonesty, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary

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Committee which shall hear and
investigate the matter."

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The other set of amendments made in 1979 effected two changes in the law. First, the Council was thenceforth required to determine that there should be a formal investigation if the Inquiry Committee so recommended. The Council's former right to review and disagree with the recommendation of the Inquiry Committee was taken away. Secondly, and on the other hand, the Council may disagree with the Inquiry Committee, if the latter recommends that a formal investigation is not necessary, and in such a case may request the learned Chief Justice to appoint a disciplinary committee. These changes are set out in section 88(1A) (a) and (b) of the Act which are in these terms:

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"If the Inquiry Committee in its
report recommends -

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(a) that there should be a formal
investigation, then the Council shall
determine accordingly under subsection
(1); or

(b) that a formal investigation by a
Disciplinary Committee is not necessary,
the Council may, if it disagrees with
the recommendation, request the Chief
Justice to appoint a Disciplinary
Committee."

30

There are procedures in the Act whereby "complainants", and here we are only for convenience adopting the abbreviation of the marginal notes to the Act, who are dissatisfied with the decisions of the Council of The Law Society or of the decisions of the Disciplinary Committee, may within a prescribed period apply to a Judge of the High Court. These procedures are set out in sections 96 and 97 of the Act.

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Before we set them out in the following paragraphs, we should mention in passing that section 97, dealing, as it does, with that stage of disciplinary proceedings which is antecedent to the Disciplinary Committee stage, should have more appropriately found its place before section 91 of the Act.

Section 96 provides :

"(1) Where a person has made a written application or complaint to the Society and the Council has determined -

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(a) that a formal investigation is not necessary; or

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(b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

(continued)

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that person, if he is dissatisfied with the decision may within fourteen days of being notified of the Council's determination apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint originally made in the Society together with a copy of the Council's reasons in writing supplied to the applicant under subsection (2) of section 88.

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(3) The application accompanied by a copy of each of the documents referred to in subsection (2) shall be served on the Society.

30

(4) Upon the hearing of the application the judge may make an order -

(a) affirming the determination of the Council; or

(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,

and such order for the payment of costs as may be just

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(5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the Court under section 98, and any such proceedings shall be brought in the

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name of the applicant.

Section 97 provides:

"(1) Where a Disciplinary Committee has determined -

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

(b) 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.

10

(2) Such an application shall be made by originating summons and shall be served on the Society and the secretary of the Disciplinary Committee who shall thereupon file in court the record and report of the hearing and investigation by the Disciplinary Committee.

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(3) Upon the hearing of the application the judge, after the applicant and the Disciplinary Committee and, if it desires to be heard, the Society, may make an order -

(a) confirming the report of the Disciplinary Committee;

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(b) directing the applicant to make an application under section 98; or

(c) directing the advocate and solicitor concerned under subsection (1) of section 98 to show cause,

and such order for the payment of costs as may be just.

(4) If the judge makes an order under paragraph (b) or (c) of subsection (3) the applicant shall have the conduct of proceedings under section 98 and any such proceedings shall be brought in the name of the Applicant."

40

We now return to the submissions of counsel for the Respondent on the competence of The Law Society. It was submitted on his behalf that The Law Society is not "the person who made the written application or complaint....." within the meaning of that expression in section 97(1) of the Act. If that interpretation is right in law, The Law Society was not competent to have applied under section 97 of the Act and is not properly before us and the entire proceedings must fail in limine. In support of this reading of the expression, Mr George Carman argued that we should look at the whole of section 97 of the Act, particularly sub-sections (2), (3) and (4), and the opening words of section 96, underlining the words "to the Society", to which section 97, he submitted, is inextricably linked. If The Law Society is "the person" referred to in section 97, it is absurd, according to him, that sub-section 97(2) should require it to serve the originating summons on itself and equally absurd to provide in the following sub-sections (3) and (4) that The Law Society "may be heard" and that it should have the carriage of the proceedings.

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Counsel for the Respondent also relied heavily on section 94 which deals with what The Law Society must and need not do after the determination of the Disciplinary Committee. Section 94 provides :

"(1) If the determination of the Disciplinary Committee under section 93 is that cause of sufficient gravity for disciplinary action exists under section 84 the Society shall without further direction or directions proceed to make an application in accordance with section 98.

(2) If the determination of the Disciplinary Committee under section 93 is that no cause of sufficient gravity for disciplinary action exists under section 84 it shall not be necessary for the Society to take any further action in the matter unless so directed by the court."

Counsel further submitted that Parliament has not expressly given any power to The Law Society to seek a review of or to appeal against the determination of the Disciplinary

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Committee, in contradistinction to the provisions of section 88(1A)(b) under which The Law Society is expressly empowered to disagree with the recommendation of the Inquiry Committee.

We are unable to accept the restrictive interpretation of section 97 of the Act as canvassed by Mr George Carman. In our view, the words in section 97(1) of the Act, to which we have referred, on their true construction include The Law Society where disciplinary proceedings were initiated under section 86(5) by the Council. Mr Tan Kok Quan, counsel for The Law Society, in his reply submitted that by section 86(5) The Law Society, through its executive body, 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.

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 sub-section (5) requires elaboration. The application by the Council under sub-section 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 sub-section (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.

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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.

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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, friction or confusion.

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We are persuaded that as a matter of construction we must in the present case adopt the rule of construction laid down in *Shannon Realities v Ville de St Michel* (1924) AC 185. It was held that where alternative interpretations are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

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We are also of the view that the references to the Law Society, directly or indirectly in sub-sections 97(2) to (4) are, in proceedings similar to those before us, merely procedural surplusages which may be ignored because these references do not involve any substance or any matter of principle. Accordingly, we are of the opinion that The Law Society had locus standi or jurisdiction to apply under section 97 and is properly and competently before us.

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The next question is whether the Respondent has shown any cause why he should not be dealt

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with under section 84 of the Act. In considering this question, we reiterate what the High Court of three Judges said in the Matter of an Advocate and Solicitor, Harry Wee. In a judgment delivered by the learned Chief Justice, it was said at [194] 1 MLJ 331, 338 :-

(continued)

"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."

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The Respondent in showing cause before us did not deny the conviction, but his counsel invited us 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 £800.

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We now set out briefly the facts and circumstances of this case. In 1978 the Respondent was introduced to one Teo Tong Wah ("Teo") by a mutual friend, one Dr. Tan Poh Lin, the then Deputy Chairman of the Industrial and Commercial Bank Limited. Teo was a director of Tong Eng Brothers Limited (hereinafter referred to as "the Company") which had developed a commercial complex at Cecil Street, Singapore and known as "Tong Eng Building".

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Teo told the Respondent of the Company's intention to cease operations and conferred with the Respondent on the operation of the cessation provisions in the Income Tax Act, Cap.141, in relation to a scheme for the avoidance of tax on the profits of the Company. Teo accepted the Respondent's advice that the Company should consult a Queen's Counsel. At Teo's request, the Respondent assisted in the preparation of the brief to counsel. Around Christmas 1979, the Respondent produced a brief in Teo's house. Both of them settled the brief, after which the Respondent despatched it to counsel's chambers in London.

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During the period when the brief to counsel was prepared, the Respondent in his capacity as the Head of the Legal Section of

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the Inland Revenue Department had in his possession the Department's Tax file of the Company.

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In January, 1980, the brief reached the chambers of Mr Michael Nolan. In the course of his official work, the Respondent had come to know Mr Donald Charles Potter of those chambers and the chief clerk, Mr Joseph Anthony Brown. On 18 January, 1980 Mr Brown made a note in his diary that the instructions was a matter personal to the Respondent, following a trunk call conversation with the Respondent who phoned him.

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Mr Potter gave his written opinion on 14 February, 1980, which was sent to the Respondent. Shortly after the receipt of the opinion, the Respondent went to Teo's house and considered the opinion. Teo thought that the opinion was ambivalent whilst the Respondent, on his part, did not fully agree with the opinion. But Teo thought that the cessation of operations of the Company could be carried out.

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After reading the opinion to Teo, the Respondent handed to Teo a note with the name "Potter" and the figures "Pound Stg.800" written on it. In the course of handing over the note, the Respondent said that the sum was for payment to the Queen's Counsel for his fees and told Teo to make the payment. Teo subsequently mislaid the note. In the event, Teo obtained a bank draft for Pound Stg.800 in favour of Mr Potter which he handed to the Respondent on the latter's representation to him that the fee had to be paid to Mr Potter for the opinion. On 10 March, 1980 the Respondent wrote a letter to Mr Brown as follows :

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"Dear Tony,

RE: CESSATION OF BUSINESS

I am in receipt of the opinion by Mr Charles Potter a week ago on the above.

I believe the average fee charged by Mr Potter is Pound Stg.400 with zero VAT. I attach herewith a bank draft for Pound Stg.800 leaving a remainder of Pound Stg. 400 to be credited to my account which may be utilised in the near future for other purposes.

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Thank you,
Yours sincerely, JAMES S C CHIA "

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(continued)

On receipt of the abovementioned letter Mr Brown consulted Mr Potter on the question of the charging of his fees. As Mr Potter was under the impression that the opinion rendered concerned either a private matter or a family matter of the Respondent, he decided to waive the fees. It is a fair inference that that impression had its source in Mr Brown. Accordingly, Mr Brown wrote to the Respondent on 13 March, 1980 along the following terms :

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"Dear Mr Chia

Cessation of Business
Section 35 of the Income Tax Act

I thank you for your letter of 10th March 1980 enclosing your cheque for Pound Stg.800. I have credited your account with this full figure because Mr Potter does not wish to charge anything for the Opinion in the above matter.

20

I hope you are keeping well and look forward to seeing you again soon.

Yours sincerely,
Tony Brown "

To that letter the Respondent promptly replied on 20th March, 1980 as follows :

"RE: CESSATION OF BUSINESS UNDER
SECTION 35 OF THE INCOME TAX ACT

1. I thank you for your letter of 13th March 1980 on the above.

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2. I am indeed grateful to Mr Potter, QC, for his kind gesture.

3. In view of the High interest rates prevailing in Britain, I would be delighted if you could kindly transfer the Pound Stg.800 to my external deposit account in Midland Bank Limited, 82, Strand Branch, 82, Strand London WC2R OEH. My deposit account number is 23027554 under the name of S.C.J. Chia. Kindly effect the transfer before 1st April.

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4. I enclose herewith two photographs of Mr Potter taken by me when he was in

Singapore in October. Kindly forward it to him.

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Thank you. "

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Pursuant to the Respondent's request, Mr Brown caused the sum of Pound Stg.800 to be paid into the Respondent's bank account in London on 28 March, 1980.

(continued)

10 For the Respondent, it was urged by Mr Carman that the Respondent had made the suggestion for payment as he had had no previous experience of paying counsel personally. In his official capacity, he had merely passed on the fee notes to his accounts section to effect payment. In this case, he had made the suggestion to discharge what to him was a 'moral' debt due to counsel.

20 In our view, the matter was not that innocent. The learned District Judge, who tried the Respondent, had found that the Respondent was evasive and untruthful. He found that the Respondent had led Mr Brown to believe that the brief was a matter personal to him by saying to Mr Brown that it was a "personal matter". By not disclosing that the matter was that of a company of a friend, the Respondent had, according to the learned District Judge, suppressed the truth in order to suggest a
30 falsehood, leading eventually to the fee for the opinion being waived. We agree with that finding and the inference drawn by the learned District Judge.

The crucial findings of the learned District Judge are set out in the following passages in his Grounds of Decision :

40 "(vii) The evidence shows that the accused had asked Mr Teo for a bank draft for £800 to be sent to Mr Potter in payment of the fees for the Opinion. The accused had done so despite the following facts :

(i) The fee note had not been received;

(ii) The accused did not expect Mr Brown to sent the fee note until 9 - 12 months after the Opinion was rendered; and

(iii) The accused did not know the fee

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to be charged by Mr Potter as it was the first time he had consulted Mr Potter other than a governmental matter.

The accused explained that he had asked Mr Teo to pay the fees then because he was anxious that Mr Potter be paid immediately whatever it was. What was the cause for this anxiety? The accused stated that the main reason was that he was personally responsible to Mr Potter for the payment of the fees. He declared, "I do not want this matter to be hanging on my head". In this connection, it must not be forgotten that the accused and Mr Teo are good friends and they had mutual trust. Furthermore, the accused was fully aware that Mr Teo was of considerable financial standing. Why then was the accused so determined to discharge his responsibility so urgently? The accused was rightly asked the following questions (Notes of Evidence, page 225) :

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'Q. Were you anxious that in the end when the fee note came, Mr Teo would not pay you?

A. No.

Q. Were you anxious that Tong Eng will not permit Mr Teo to pay you?

30

A. No. I was dealing with Mr. Teo.

Q. Then what caused your anxiety?

A. I was concerned in putting the £800 in the hands of Mr Potter. '

In the end, the accused did not furnish the answer as to why he had wanted Mr Teo to immediately settle the fee which had yet to be determined. The accused was asked why is it that when he was despatching the instructions to Mr Potter he did not ask that a fee note be forwarded together with the Opinion if indeed he was so anxious to pay the fee. He said that he did not because he did not think of it at that time. When it was asserted that the accused knew it could be done and that it was not

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improper to do so, the accused answered, "I have never done it before." he also claimed that he had not previously or during that period done such a thing. The accused was then confronted with his letter (Exhibit P40) to Mr Rippon Q.C. In paragraph three of that letter, the accused asked for an indication of Mr Rippon's fee in respect of a matter concerning the Inland Revenue Department. Faced with this document, the accused agreed that th t he had done so. Why did he not do the same in this case? The accused stated thst he could have done it but the fact that that was done in this fashion to his mind was not wrong. The point to note is that even if indeed the accused was anxious in discharging his responsibility, he could have first ascertained the amount of fees before asking Mr Teo for it. The following extract reveals that although he was anxious that the fee be paid and that he did not think it was unreasonable to first ascertain the fee, he did not do so (Notes of Evidence, Page 228):

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'Q. Why did you not write to Mr Brown on 7th March if you are anxious?

A. I did not consider that.

Q. Why not?

A. I could have if I wanted to but I did not.

Q. I fail to understand you. You wanted to discharge the debt as soon as possible. You knew Mr Teo will not fail to pay and at the other end, Mr Brown was not asking for payment. If your only anxiety was that the fee be paid, is it not natural to determine what fee was to be paid by asking for the fee note?

A. I could have but I did not.

Q. You will agree that it is not unreasonable to determine what the fee was first?

A. Yes, it will not be unreasonable.

Q. When you wanted to know Mr Rippon's

In the
High Court

No.26
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High Court
3rd September
1984

(continued)

fee, you did not fail to write to
Mr Rippon about his fees?

A. With regard to Mr Rippon's fee,
I was asked by the accountant to
ascertain from Mr Cobbett Mr Rippon's
fee so that he could make provision.

Q. Here you are not making provision
for it. You wanted to pay. In these
circumstances, there is all the more
reason to want to know what Mr Potter's
fees were. Do you not agree? 10

A. When I mentioned the fees and fee
note to Mr Teo stating that I had not
received the fee note and suggested
that £800 would be more than sufficient
to cover the fee, Mr Teo did not
disagree. He agree to give me a
bank draft.

Q. Why did you not first ascertain
what the fees were? 20

A. I did not do it.

Q. Any particular reason?

A. No.

From this extract, it can be seen that
the accused not only failed to give
any reason for not ascertaining the
fee before asking Mr Teo to pay £800,
he had once again demonstrated the
trait of not answering a question
unequivocally. In the circumstances, 30
I rejected the accused's claim that he
had asked for the fees to be paid at
that stage as he was anxious to
discharge his debt. "

Although the Respondent was informed of
the waiver of the fees, he failed to inform
Teo of the waiver. On the other hand he on
his own instructed Mr Brown to deposit the
£800 (belonging to the Company) into his own
personal account in London without the knowledge 40
of Teo.

In late May 1980, the Respondent in his
official capacity went to London to attend
a Privy Council hearing in connection with a
tax matter. Just before he left for London,
he suggested to Teo that he should take the

10 opportunity to consult Mr Potter to clarify certain points in Mr Potter's opinion. Teo agreed to the suggestion. The Respondent conferred with Mr Potter on 23 May, 1980. After the consultation, the Respondent asked Mr Brown for a fee note which was fixed by Mr Brown at £450. Mr Brown also raised another fee note of £350 in connection with another consultation with Mr Potter regarding the tax matters of Nakhoda Investments Pte Ltd which had no connection with Mr Teo or the Company.

20 On 3 July, 1980 the Respondent transferred £450 from his deposit account to his checking account with the Midland Bank with the intention to pay the fees of £450. This internal transfer was in his letter dated 3 July, 1980. It was written 7 days before the Corrupt Practice Investigation Bureau commenced investigations on the Respondent on 9 July, 1980. The investigations were multi-faceted. It was on 22 July, 1980 that the Respondent was questioned by the Corrupt Practice Investigation Bureau on the matters in connection with the £800. The Respondent at the trial claimed he did not intend to cheat Mr Teo or the Company. He was disbelieved by the learned District Judge.

30 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 £800 and were due and payable and thereby had dishonestly induced the Company to deliver to him a bank draft for the £800.

40 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.

50 Having regard to all the circumstances of the case, we are of the view that the

In the
High Court

No.26
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1984

(continued)

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(continued)

Respondent has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession within the meaning of sub-section (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 8 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. 10

In our judgment, it would not be in the public interest or in the 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. We also order that he pays the costs of the present proceedings including the proceedings before the Disciplinary Committee. 20 30

Sd: WEE CHONG JIN
CHIEF JUSTICE

Sgd: LAI KEW CHAI J
JUDGE
(Lai Kew Chai)

Sgd: L.P.THEAN
JUDGE
(L.P.Thean)

Singapore, 3rd September, 1984.

Certified true copy 40
Sd:
Private Secretary to Judge
Court No.7
Supreme Court, Singapore

No. 27

In the
High Court

ORDER OF COURT

No.27
Order of
Court
3rd September
1984

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No.54 of 1984)

In the Matter of Section
98(1) of the Legal Profession
Act (Cap.217)

And

10

In the Matter of James Chia
Shih Ching an Advocate and
Solicitor of the Supreme
Court of Singapore

ORDER OF COURT

CORAM:

THE HONOURABLE THE CHIEF JUSTICE
MR JUSTICE WEE CHONG JIN

THE HONOURABLE MR JUSTICE LAI KEW CHAI

THE HONOURABLE MR JUSTICE L.P. THEAN

20

UPON the application of The Law Society of
Singapore made by way of this Originating Summons
No.54 of 1984 coming on for hearing this day
AND UPON READING the Record of Proceedings filed
herein AND UPON HEARING Counsel for The Law
Society of Singapore and for the abovenamed James
Chia Shih Ching IT IS THIS DAY ORDERED that:-

30

1. The abovenamed James Chia Shih Ching's
name be struck off the roll of Advocates
and Solicitors of the Supreme Court of
Singapore
2. The abovenamed James Chia Shih Ching
do pay the costs of these proceedings
including the costs of the proceedings
before the Disciplinary Committee to be
taxed

Dated the 3rd day of September, 1984

ASSISTANT REGISTRAR

In the
Court of
Appeal

No. 28

NOTICE OF MOTION FOR
LEAVE TO APPEAL

No.28
Notice of
Motion for
Leave to
Appeal
4th September
1984

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 54 OF 1984

Between

James Chia Shih Ching Appellant

And

The Law Society of Respondents 10
Singapore

In the Matter of Originating Summons
No.54 of 1984

In the Matter of Section 98(1) of
The Legal Profession Act (Cap.217)

And

In the Matter of James Chia Shih Ching
an Advocate and Solicitor of the
Supreme Court of Singapore

NOTICE OF MOTION

Take notice that the Court will be moved 20
on the 10th day of Sept. 1984 at 10.30 a.m. or
so soon thereafter as counsel can be heard by
Mr. Howard Edmund Cashin, counsel for the
abovenamed Appellant for the following
orders :-

1. That leave be given under Section 3(1) (a) 30
of the Judicial Committee Act (Cap.8)
and Section 98(6) of the Legal Profession
Act (Cap.217) to appeal to the Judicial
Committee of Her Britannic Majesty's Privy
Council against the whole of the Judgment
of the Court of three Judges sitting
pursuant to Section 98 of the Legal
Profession Act (Cap.217) delivered
herein at Singapore on the 3rd day of
September 1984, and
2. Directions under Section 4(2) of the
Judicial Committee Act.

Dated this 4th day of September 1984.

Sd: Murphy & Dunbar
Solicitors for the Appellant

In the
Court of
Appeal

The address for service of the
Appellant is 585 North Bridge Road #10-03
Blanco Court, Singapore 0718.

No.28
Notice of
Motion for
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Appeal
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September
1984

The Notice of Motion was taken out by
Messrs. Murphy & Dunbar of 585 North Bridge
Road #10-03, Blanco Court, Singapore 0718,
Solicitors for the abovenamed Appellant.

(continued)

10 To: The abovenamed Respondents,
The Law Society of Singapore,
Singapore.

No.29

AFFIDAVIT OF JAMES CHIA
SHIH CHING

No.29
Affidavit of
James Chia
Shih Ching
4th
September
1984

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. OF 1984

Between

James Chia Shih Ching Appellant

20 And

The Law Society of
Singapore Respondents

In the Matter of Originating Summons No.54
of 1984

In the Matter of Section 98(1) of
The Legal Profession Act (Cap.217)

And

30 In the Matter of James Chia Shih Ching
an Advocate and Solicitor of the
Supreme Court of Singapore

A F F I D A V I T

I, James Chia Shih Ching of 70 Branksome Road,

In the
Court of
Appeal

No.29
Affidavit
of James
Chia Shih
Ching
4th
September
1984

(continued)

Singapore, make oath and say as follows:-

1. I am the Appellant herein.
2. On the 3rd day of September 1984, the Supreme Court of Singapore sitting pursuant to Section 98 of The Legal Profession Act (Cap.217) ordered that I be struck off the Rolls of Advocates and Solicitors. I crave leave to refer to the said Judgment of the said Court.
3. I am desirous of appealing to the Judicial Committee of Her Britannic Majesty's Privy Council pursuant to Section 98(6) of the Legal Profession Act (Cap.217) against the whole of the said Judgment and I am advised by my Solicitors and verily believe that the said Judgment is a fit one for appeal. 10
4. The matter in dispute in the proposed appeal is from its nature a fit one for appeal as it involves, inter alia, complicated matters of law. 20

SWORN at Singapore)
this 4th day of) Sd: James Chia Shih
September 1984) Ching

Before me,
Sd: Zain bin Al Noor
Commissioner for Oaths

This affidavit is filed on the 4th day
of September 1984 on behalf of the Appellant.

ORDER GRANTING LEAVE TO
APPEAL TO JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No.30
Order granting
Leave to
Appeal to
Judicial
Committee of
the Privy
Council
10th
September
1984

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Originating Summons)
No.54 of 1984)

10

In the Matter of Section
98(1) of the Legal
Profession Act (Cap.217)

And

In the Matter of James
Chia Shih Ching an
Advocate and Solicitor
of the Supreme Court of
Singapore

ORDER OF COURT

20

CORAM:- THE HONOURABLE THE CHIEF JUSTICE
MR. WEE CHONG JIN
THE HONOURABLE MR JUSTICE L.P.THEAN, and
THE HONOURABLE MR JUSTICE LAI KEW CHAI

30

UPON MOTION preferred unto this Court by
Counsel for James Chia Shih Ching, the Appellant
herein coming on for hearing this day AND UPON
READING the Notice of Motion dated the 10th
day of September 1984 and the affidavit of the
said James Chia Shih Ching filed herein on the
4th day of September 1984 THIS COURT DOTH ORDER
that :-

40

1. Leave be given under Section 3(1)(a) of the Judicial Committee Act (Cap.8) and Section 98(6) of the Legal Profession Act (Cap.217) to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the whole of the Judgment of the Court of three Judges sitting pursuant to Section 98 of the Legal Profession Act (Cap.217) delivered herein at Singapore on the 3rd day of September 1984.
2. The Appellant shall within one month from the date hereof give security in the sum of \$20,000.00, and

In the
Court of
Appeal

3. The costs of and incidental to the application be costs in the cause.

No.30
Order
granting
Leave to
Appeal to
Judicial
Committee of
the Privy
Council
10th
September
1984

Dated the 10th day of September 1984.

ASST. REGISTRAR

(continued)

O N A P P E A L
FROM THE HIGH COURT OF SINGAPORE

B E T W E E N :

JAMES CHIA SHIH CHING

Appellant

- and -

LAW SOCIETY OF SINGAPORE

Respondent

RECORD OF PROCEEDINGS

PART II

CAMERON MARKBY
Moor House
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EC2Y 5HE

Solicitors for the Appellant

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Kempson House
Camomile Street
London
EC2A 7AN

Solicitors for the Respondent