50/84

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

In the Matter of Originating Summons
Number 456 of 1982

and

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

and

In the Matter of an Advocate and Solicitor

BETWEEN:

H.L. WEE — Appellant

- and -

THE LAW SOCIETY OF SINGAPORE — Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an appeal pursuant to leave granted by the Court of Appeal of the Republic of Singapore (Kulasekaram, Sinnathuray and Rajah, J.J.) on 12th March 1984 from the judgment of the High Court (Wee, C.J., Sinnathuray and Chua, J.J.) given on 31st January 1984 upon the application of the Law Society of Singapore that the Appellant show cause why he should not be dealt with under the provisions of section 84(2)(a) of the Legal Profession Act (Cap. 217) in such manner as the Court shall deem fit. On 31st January 1984 the High Court refused to discharge the show cause order and sentenced the Appellant to be suspended from practice for a period of two years and to pay the costs of the proceedings.

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2. The main issues on this appeal are:

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page 135 (i) that the High Court erred in law in not discharging the show cause order on the grounds:

(a) of autrefois convict;

and/or

(b) of a doctrine of estoppel, namely issue estoppel or res judicata in its wider sense

and/or

(c) of the court's inherent jurisdiction to stay proceedings on the grounds that they are oppressive and an abuse of its process.

page 145 (ii) that the High Court misdirected itself in law in holding, on the facts of the Appellant's case, that his convictions under Section 213 of the Penal Code implied a defect of character which makes the Appellant unfit for his profession within the meaning of Section 84(2)(a) of the Legal Profession Act.

page 147 (iii) that, bearing in mind that the Appellant had, in the course of previous disciplinary proceedings, already been sentenced on 27th August 1981 for the selfsame activity to two years' suspension of practice, the sentence passed by the High Court:

(a) was excessive and wrong in principle

and/or

(b) arbitrary in that it was unduly delayed

and/or

(c) offended against the fundamental principle of natural justice enshrined in the maxim "nemo debet bis puniri pro uno delicto".

FACTS

page 123 3. The Appellant was admitted as an advocate and solicitor of the Supreme Court in 1948. He was the President of the Law Society for three successive years from 1975 to December 1977 and during this period and for many years previously he practised under the name of Braddell Brothers of which he is the sole proprietor.

page 123 4. In February 1976 he discovered that S.

Santhiran, a legal assistance in his firm who had been in his employment since 1971 had misappropriated monies from the firm's Clients Account and on 8th March 1976 he knew that the misappropriations exceeded $200,000. He confronted Santhiran with the facts and ordered him to repay all missing monies unless Santhiran could prove that the monies had been genuinely paid to clients. By 18th March 1976 Santhiran had repaid $267,956 which sum the Appellant thought (at the time) constituted the bulk of the misappropriated monies. By 10th June 1976 the total restitution made by Santhiran amounted to $297,956.72. RECORD page 124

5. After the confrontation with Santhiran in early March 1976 the Appellant did not immediately report to the police and did not inform the Council of the Law Society Santhiran's misdeeds. He continued to employ Santhiran as a legal assistant until December 1976 when Santhiran left and set up a practice of his own. The Appellant came to know of this in January 1977. The Appellant's contention was that without Santhiran's continued assistance, the Appellant was unable to identify the Clients whose money Santhiran had stolen, or the amount reimburseable to each of their accounts. page 197

6. On 30th April 1977 in a private and confidential letter to the Law Society marked for the attention of the then Vice-President of the Law Society the Appellant disclosed that Santhiran had misappropriated Braddell Brothers clients' monies and that he would shortly be presented a complaint against Santhiran for action to be taken by the Law Society. On 26th May 1977 he reported Santhiran's misappropriations to the police and on 27th May he made a formal complaint against Santhiran to the Law Society. page 169 page 170

7. In its judgment, the High Court stated that the Appellant made an offer to Santhiran that if he admitted his offences and made full restitution of all misappropriated monies, he would not report the matter to the police. However, such a finding had no evidential basis. Indeed, the only admissible evidence on this point before the Disciplinary Committee was that of the Appellant who throughout maintained that at all times he intended to report the said Santhiran's defalcations to the authorities once he had obtained from the said Santhiran the maximum information possible, in particular the identities of the clients whose accounts had been affected. page 124 page 198

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page 198 8. The said Santhiran was arrested on 9th April 1978 and on 10th May 1978 he pleaded guilty to certain offences of criminal breach of trust, and asked for others to be taken into account.

page 198 9. On 23rd April 1979 the said Santhiran was struck off the rolls.

PROCEEDINGS

10. Arising out of the aforesaid facts, the Appellant has had to face three different sets of proceedings, namely:

(i) First Disciplinary Proceedings (hereinafter referred to as "the Delay Proceedings").

(ii) Criminal Proceedings

page 149 (iii) Second Disciplinary Proceedings (hereinafter referred to as "the Conviction Proceedings")

This appeal arises out of the Conviction Proceedings. The history of the various proceedings is set out hereunder.

11. The Delay Proceedings

pages 250-252 In March 1978 the Inquiry Committee appointed by the Council of the Law Society wrote to the Appellant to inform him that the Inquiry Committee had decided of its own motion to enquire into his conduct in delaying reporting Santhiran's admitted defalcations to the Law Society and his offer to Santhiran that he would not report to the police Santhiran's misappropriations as long as Santhiran admitted having committed them and made full restitution.

12. The Appellant gave a written explanation and also appeared before the Inquiry Committee in May 1978. After the Inquiry Committee had reported its findings to the Council of the Law Society,

page 254 the Council informed the Appellant in a letter dated 20th July 1978 that the Council would apply to the Chief Justice for the appointment of a Disciplinary Committee to investigate into the Appellant's "failure to report the criminal breach of trust committed by Santhiran when he was a legal assistant in the firm of Braddell Brothers to the Law Society earlier."

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13. On 13th December 1978, on the application of the Council of the Law Society pursuant to section 90 of the Legal Profession Act, the Chief Justice appointed a Disciplinary Committee to hear and investigate the charge against the Appellant for the delay in reporting to the Law Society Santhiran's misappropriations of clients' monies. page 263

14. On 19th November 1980 the Disciplinary Committee made its finding that cause of sufficient gravity for disciplinary action exists for the Appellant to show cause why he should not be struck off the roll or suspended or censured. page 302

15. Meanwhile, the Appellant had been convicted in the Criminal Proceedings (see paragraphs 17 to 19 hereunder), and the Conviction Proceedings had been set in motion (see paragraphs 20 to 25 hereunder). On 15th January 1981 the Appellant's solicitors wrote to the President of the Law Society requesting deferral of the show cause hearing on the Delay Proceedings so that the hearing could be consolidated with any show cause hearing arising out of the Conviction Proceedings. pages 194-195

That request was refused by letter dated 21st January 1981. page 196

16. On 31st January 1981 the Law Society applied by way of Originating Summons (No. 55 of 1981) to the High Court for an order that the Appellant do show cause why he should not be dealt with under section 84 of the Legal Profession Act in relation to the delay charge. On 13th February 1981 a show cause order was made by the High Court. On 16th March 1981 the High Court heard the show cause matter and on 27th August 1981 delivered judgment suspending the Appellant from practice for two years: IN THE MATTER OF AN ADVOCATE AND SOLICITOR (1981) 2 MLJ 215. The Appellant appealed to Your Lordships' Committee, which dismissed the appeal on 13th July 1982: (1982) 2 M.L.J. page 293. page 304

17. Criminal Proceedings

On 6th June 1978 the Appellant was brought before a District Court on 9 charges under section 213 of the Penal Code. All these 9 charges were based on allegations that the Appellant had obtained or attempted to obtain restitution of monies from Santhiran in consideration of his concealing offences of criminal breach of trust

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by Santhiran. The Appellant was convicted on all 9 charges on 7th November 1978. He gave immediate notice of appeal against the convictions.

18. The Appellant's appeal against his convictions was heard by the High Court on 25th and 26th February 1980. On 12th March 1980 the High Court (Choor Singh, J.) affirmed the convictions in respect of eight of the nine charges, but reduced the sentence to a fine of $1500 in respect of each charge: HARRY LEE WEE -v- PUBLIC PROSECUTOR (1980) 2 MLJ 56.

19. On 12th January 1981 the Court of Criminal Appeal refused the Appellant's application for leave to appeal against his convictions. On 20th May 1981 Your Lordships refused the Appellant's application for special leave to appeal against his convictions.

20. The Conviction Proceedings

Following the Appellant's conviction on 7th November 1978 in the criminal proceedings
page 171 (paragraph 17 supra), on 13th December 1978 the Inquiry Committee wrote to the Appellant informing him of its decision to enquire into the Appellant's conduct in relation to his said convictions under section 213 of the Penal Code.

21. The Appellant appeared before the Inquiry Committee on 14th May 1979. As a result of legislative changes which altered the composition of the Inquiry Committee, the Inquiry Committee which had been inquiring into the convictions matter was deemed functus officio. The Appellant submits that on a proper interpretation of the relevant legislative provisions, they had no retroactive effect, and the original Inquiry Committee could and should have continued its enquiry into the Appellant's conduct. The Appellant sets out his reasons for such submission in paragraph 26 submission C(vi)(d) hereunder. In the event, a new Inquiry Committee was
page 174 appointed on 15th October 1979. On 19th March 1980 the Secretary of the Law Society made a fresh complaint against the Appellant to the new Inquiry Committee arising out of his criminal convictions.

22. On 19th November 1980 the Appellant appeared before the Inquiry Committee and was heard. On 22nd November 1980 the Inquiry Committee reported its findings to the Council of the Law Society, who decided that there should be a formal investigation by a Disciplinary Committee.

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On 2nd January 1981 the Council applied to the Chief Justice to appoint a Disciplinary Committee, and informed the Appellant of such application. page 192 page 193

23. On 15th January 1981 the Appellant wrote the letter referred to in paragraph 15 hereinabove. pages 194-195

24. On 26th August 1981 the Disciplinary Committee made its report on the convictions charge, finding that cause of sufficient gravity for disciplinary action exists under section 84 of the Legal Profession Act. pages 105-116

25. On 10th August 1982 the Law Society applied by way of Originating Summons (No. 456 of 1982) to the High Court for a show cause order. On 17th September 1982 a show cause order was made. On 21st and 22nd February 1983 the show cause hearing took place, and on 31st January 1984 the High Court delivered the judgment being appealed against. page 121 pages 123-149

26. SUBMISSIONS

A. that the High Court erred in law in not discharging the show cause order on the grounds: pages 135-145

(a) of autrefois convict; and/or

(b) of a doctrine of estoppel, namely issue estoppel or res judicata in its widest sense; and/or

(c) of the court's inherent jurisdiction to stay proceedings on the grounds that they are oppressive and an abuse of its process.

(i) The Appellant's criminal convictions and the Delay Proceedings both arose out of the same incident involving a common set of facts, namely the Appellant's failure to report the said Santhiran's defalcations at an earlier stage, such failure being attributed to his determination to seek recovery from the said Santhiran of the monies defalcated.

(ii) As a result of this common set of facts arising from the same incident, the Appellant has had to face three different sets of proceedings, namely the criminal prosecution, the disciplinary Delay Proceedings and the disciplinary Conviction Proceedings.

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(iii) There was nothing to prevent the Council of the Law Society from consolidating the two sets of disciplinary proceedings, as specifically
pages 194-195 requested by the Appellant in his letter dated 15th January 1981. Failure to do so led to grave injustice to the Appellant, as more fully set out in paragraph 26, submission C(vi) hereunder. Moreover, the High Court in its judgment made a grave error of fact when it stated:

pages 141-142

> "Thereafter, the (Appellant) made no application to the Law Society or to the High Court to adjourn the hearing of the show cause order in respect of the delay charge until the Disciplinary Committee appointed by the Chief Justice to investigate into the convictions charge had completed its investigation and made its report."

pages 194-195 page 196 On the contrary, the letter dated 15th January 1981 was precisely such application, which the Law Society, it is submitted wrongly and unfairly, rejected in its reply dated 21st January 1981.

(iv) It is a fundamental principle of justice that no proceedings, whether criminal or civil, should be instituted in a manner that is oppressive or prejudicial to an accused or a Defendant. In a criminal case, the Court would stay a prosecution if it is satisfied that the charges are founded on the same facts as charges brought in an earlier prosecution, or form part of a series of offences of the same or similar character as the offences charged in an earlier prosecution that has been tried, even though the nature of the actual charges brought on the different occasions may technically be different, unless there are just and compelling reasons for separate prosecutions on the different charges. This is because a failure to join such charges under one prosecution is oppressive and prejudicial to the accused.

(v) Similarly, in civil proceedings, a claimant is obliged to bring forward his whole case in one action, and the doctrine of res judicata prevents a litigant from raising in subsequent proceedings matters that could and should have been litigated in earlier proceedings between the same parties. Needless multiplicity of proceedings amounts to an abuse of process.

(vi) The leading authorities in support of the propositions made in paragraphs (iv) and (v) above are CONNELLY -v- DIRECTOR OF PUBLIC PROSECUTION (1964) A.C. page 1254 (and in particular the judgments of Lords Devlin and Pearce commencing

from page 1346) and YAT TUNG CO. -v- DAO HENG BANK (1975) A.C. page 581 (Lord Kilbrandon's judgment commencing from page 590 line E). RECORD

(vii) An examination of the factual issues relied upon by the prosecution in the Criminal Proceedings and by the Law Society in the disciplinary Delay Proceedings, will show that these issues are identical in all respects. At page 6 of his Judgment, Mr. Justice Choor Singh identified the ingredients of the 8 criminal charges as follows: page 212

> "To bring hom the first eight charges, the prosecution have to prove in respect of each charge:
>
> (1) that Santhiran had committed criminal breach of trust;
>
> (2) that the Appellant had knowledge of Santhiran's criminal breach of trust;
>
> (3) that the Appellant demanded restitution;
>
> (4) that restitution was made by Santhiran; and
>
> (5) that the Appellant accepted restitution in consideration of his concealing Santhiran's criminal breach of trust."

(viii) The Law Society relied on the same five ingredients plus the added ingredient of "consequence" in making out its case of "delay" in the disciplinary Delay Proceedings. The first and second ingredients are pre-requisites to the charge of delay; the third, fourth and fifth ingredients represent the "motive" aspect which the Law Society introduced to stress the gravity of the "delay" charge.

(ix) A comparison of the following passages extracted from the Criminal and the Delay Proceedings will illustrate the similarity of the factual issues:

A. On Concealment

1. Choor Singh, J. : "Restitution was accepted by the Appellant. Santhiran's offences were concealed by the Appellant for more than a year." page 213

Disciplinary Committee: "In March 1976 after page 214

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Santhiran had admitted the misappropriation and made restitution in the sum of $267,956.12, the Respondent decided to delay making any report of Santhiran's misdeeds to the police or the Law Society...." (page 18 sub-paragraph (ix) of the Committee's Report)

page 215

2. Choor Singh, J : "The Appellant failed to inform his auditors of Santhiran's defalcations..."

page 216

Disciplinary Committee: No report was made to Braddell Brothers' long standing auditors Messrs Turquand Young" (page 19 sub-paragraph (xi) of the Committee's Report).

page 217

Mr Grimberg : "....it seems to me that it is therefore quite proper for me to deal with this question of not telling Turquand Youngs because it goes to the extent to which the Respondent was prepared to go in order to keep the matter secret in order to get the money from Santhiran" (Transcript of Delay Proceedings at page 111).

B. On Motive

page 218

1. Choor Singh J : "This (error of judgment) is not borne out by the evidence which shows that the delay was calculated, purposeful and motivated..."

page 219

Disciplinary Committee: "The real motive for delay was the Respondent's anxiety to see himself repaid by Santhiran ..." (page 23 sub-paragraph (xi) of the Committee's Report).

pages 220-221

2. Chandran Mohan D.J. : "In my view he (the Appellant) was not merely concerned with obtaining restitution. He was obsessed with it...." (pages 91-92 of Grounds of Judgment)

page 222

Mr Grimberg : ".... the Respondent was wholly pre-occupied with the recouping to the greatest possible extent the monies that Santhiran had taken...." (Transcript of Proceedings page 71).

page 223

Mr. C.C. Tan: ".... the Committee holds the view that the two matters in question ("motive" and "consequence") need not, and should not form the subject matter of new charges, but are so closely related to the existing charge ("delay") that they can be dealt with as being intrinsically bound." (Transcript of Delay Proceedings page 73).

page 224

Disciplinary Committee: "We find that the evidence produced before the Committee very clearly lead to the irresistible inference that the motive for the

Respondent's elaborate scheme for delaying the report was the intention to recover the misappropriated monies from Santhiran." (page 34 of the Committee's Report). RECORD

(x) The disciplinary charges arising in the Conviction Proceedings bear directly on the Appellant's convictions in respect of the eight charges brought against him under section 213 of the Penal Code. If the material aspects of the criminal charges are identical to those of the Law Society's "delay" charge investigated in the Delay Proceedings, it has to follow that the material aspects of the "Delay" and "Conviction" disciplinary Proceedings must necessarily also be identical.

(xi) The charge of "delay" forms an intrinsic part of the prosecution's case of "concealment" and in investigating the "delay" charge, the Disciplinary Committee in the Delay Proceedings had, at the suggestion of the Law Society, taken cognizance of the Appellant's motive for delay, the issues of "motive" and "consideration" being one and the same, as they both relate to the Appellant's efforts at seeking and obtaining restitution from Santhiran.

(xii) It is therefore submitted that the disciplinary Delay and Conviction Proceedings instituted by the Council of the Law Society against the Appellant represent a duplication, the charges of "delay" and "conviction" being founded on a common set of facts arising from the same incident. The result of this duplication has clearly been unjust, prejudicial and oppressive to the Appellant, irrespective of the fact that this could not have been intended by the Council. The Appellant submits that it is these elements of injustice, prejudice and oppression which motivated Mr Grimsberg, Counsel for the Law Society of Singapore at the hearing before the Disciplinary Committee on the Conviction Proceedings on 3rd August 1981, to make the following remarks in concluding his submissions in Reply:

> "But I would like to conclude by saying this: I approach these proceedings with absolutely no enthusiasm and with some disquiet. But I do believe and think that Mr Wee should not have been brought before two different Committees on complaints arising out of the same facts." page 98

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(xiii) It is respectfully submitted that the High Court should have exercised its inherent jurisdiction to stay the present charge for reasons of prejudice and oppression based on the authorities cited. The rule against double jeopardy is fundamental to the proper administration of justice. This rule cannot be any less applicable in disciplinary proceedings, as otherwise such proceedings may be conducted with impunity and with total disregard for the rule against oppression and prejudice, which is clearly absurd.

(xiv) The matters referred to in paragraphs (vii) to (xi) above, also bring into issue the doctrine of autrefois convict, which is succinctly summarised in Archbold 41st Edition at paragraph 4-68 (principle 2) as follows:

> "A man may not be tried for a crime:
>
> (i) in respect of which he has previously been acquitted or convicted;
>
> (ii) in respect of which he could on some previous indictment have been lawfully convicted;
>
> (iii) if the crime is in effect the same or substantially the same one in respect of which
>
> (a) he has previously been acquitted or convicted, or
>
> (b) he could on some previous indictment have been convicted."

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B. that the High Court misdirected itself in law in holding, on the facts of the Appellant's case, that his convictions under section 213 of the Penal Code implied a defect of character which makes the Appellant unfit for his profession within the meaning of section 84(2)(a) of the Legal Profession Act.

(i) It is common ground that the money the said Santhiran had misappropriated belonged to the Appellant, as it had been taken from his firm's client's account. The Appellant had no idea at the time that his actions could amount to a criminal offence, namely a breach of section 213 of the Penal Code. As far as can be ascertained, no one had previously been prosecuted in Singapore for an offence under section 213. There were no reported decisions on such prosecutions in either Singapore or Malaysia.

(ii) It has since been ascertained that in India there are conflicting authorities as to the necessary ingredients for the offence : see HER CHANDRA MUKHERJEE -v- EMPEROR A.I.R. (1925) Calcutta 85; c.f. BIHARILAL KALACHARAN -v- EMPEROR A.I.R. (1949) Bombay 405.

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(iii) Further, there is in Singapore a conflict of penal provisions in that on the one hand, Section 213 of the Penal Code prohibits the concealment of an offence in consideration of obtaining restitution of one's own property, but on the other hand, there is no duty, and it is not an offence, to fail to report a criminal breach of trust (Section 405 of the Penal Code) - see Section 21 of the Criminal Procedure Code and Section 202 of the Penal Code. Lastly, since 1967, the offence of which the Appellant had been convicted is no longer a criminal offence in England - see section 5(5) Criminal Law Act 1967.

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pages 158-159

(iv) For these reasons, the Appellant did not realise that what he had done would amount to a criminal offence. It is further respectfully submitted that most practitioners in Singapore would not at that time have realised any differently.

(v) On giving judgment at the Appellant's Criminal trial, the learned District Judge said (at page 92 of his judgment):

page 221

> "These offences do not involve any innate dishonesty...."

(vi) In delivering judgment on the Appellant's appeal against the convictions, Choor Singh, J., said:

page 225

> "Before parting with this case I am constrained to observe that the offence of accepting restitution of one's own property in consideration of concealing an offence should be abolished. It seems to me that it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect of it."

(vii) The High Court was obliged to inquire into the nature of the criminal offences in respect of which the Appellant was convicted to determine whether they are offences that imply such a defect of character as to make him unfit to

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practise as a solicitor. It is submitted that the High Court failed at all to identify any defect of character upon which its finding was based.

pages 230-241

(viii) It is submitted that the correct test for the High Court to have applied was that laid down by Lord Esher in RE WEARE (1893) 2 Q.B. page 439 at page 446:

> "The Court is not bound to strike him off the rolls unless it considers that the criminal offence of which he has been convicted is of such personally disgraceful character that he ought not to remain a member of that strictly honourable profession... is it or is it not personally disgraceful? Try it this way. Ought any respectable solicitor to be called upon to enter into that intimate intercourse with him which is necessary between two solicitors, even though they are acting for opposite parties?"

pages 242-244

(ix) Support for the above passage can also be found in the following extracts from the Judgments delivered in RE A SOLICITOR (1889) 37 Weekly Reporter 598:

Lord Coleridge, C.J. : "It is obvious that if it were laid down as a general rule that a conviction must in every case be followed by a striking off the rolls, the rule would break down at once. The court must, it is plain, look into the circumstances of the conviction. There are felonies which are infinitely disgraceful; but there are others which a man of honour might commit without suffering any stain. No doubt the law says that such a man must be punished; but it does not follow that he is unfit to associate with his fellows, or to be trusted with their property or confidence."

Lindley, L.J.: "I wish to protest in the strongest manner against the proposition that because a solicitor has been convicted of a felony he must, as a matter of course, be struck off the roll. Such a proposition is far too wide."

(x) The Appellant relies upon the matters stated above, namely:

(1) that the offences involved no dishonesty;

(2) that the offences would not have been recognisable as such to most practitioners in Singapore at the time;

(3) that the offences no longer exist in England; and

(4) that Choor Singh, J., expressed the view that these offences should be abolished in Singapore,

in support of his submission that in all the circumstances the High Court should have felt compelled to conclude that the Appellant's convictions do not imply a defect of character making him unfit for the profession within the meaning of Section 84(2)(a) of the Legal Profession Act.

C. that, bearing in mind that the Appellant had, in the course of previous disciplinary proceedings, already been sentenced on 27th August 1981 for the selfsame activity to two years' suspension of practice, the sentence passed by the High Court: page 149

(a) was excessive and wrong in principle; and/or

(b) was arbitrary in that it was unduly delayed; and/or

(c) offended against the fundamental principle of natural justice enshrined in the maxim "nemo debet bis puniri prouno delicto."

(i) In support of the proposition that the sentence passed was excessive and wrong in principle, the Appellant repeats his submissions made under (A) and (B) above.

(ii) It is submitted that where a person is charged (whether on one occasion or on different occasions) with offences arising out of a single transaction, it is wrong in principle to penalise him twice, by passing consecutive sentences rather than concurrent ones.

(iii) The "totality" principle requires a sentencer passing sentence in respect of more than one offence to consider not mrely each sentence in isolation, but to review the aggregate sentence and consider whether the aggregate is "just and appropriate", and that the sentence of two years' suspension from practice passed on 27th August 1981 at the determination of the Delay Proceedings, fully reflected the sentence which the High Court felt to be just and appropriate arising out of the Appellant's conduct.

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The mere fact of conviction arising out of the selfsame conduct (for which punishment was imposed on the Appellant) did not merit additional disciplinary sentencing.

(iv) The Law Society could and should have acceded to the reasonable request of the Appellant in the
pages 194-195 letter sent by his solicitors dated 15th January 1981 to consolidate the show cause hearings in both disciplinary proceedings. Such a course would have led to a fair sentencing result. It is submitted that the Law Society were wrong in concluding that the Council was obliged to proceed forthwith with the show cause hearing upon receipt of the finding of the Disciplinary Committee in the Delay Proceedings. On the contrary, a short stay would have led to greater fairness to the Appellant. Moreover, if the Law Society felt it so vital to proceed with expedition in pressing ahead with the show cause hearing arising under the Delay Proceedings, the Appellant cannot understand why
pages 134-135 the same body allowed a delay of almost one year in pressing ahead with the show cause hearing after receiving the findings of the Disciplinary Committee in the Conviction Proceedings.

(v) It is submitted that section 84(1) of the Legal Profession Act, on its proper construction, does not provide the High Court with jurisdiction to impose two consecutive sentences of two years' suspension from practice resulting from one activity, even though such activity may be formulated in such a manner as to constitute two disciplinary offences.

(vi) The timing of the second period of two years' suspension from practice was wholly arbitrary and unfair to the Appellant. It could and should have run concurrently with the period of two years' suspension from practice imposed as a punishment in the Delay Proceedings, for the following reasons:

page 134 (a) the two years' suspension from practice in the Delay Proceedings was imposed on 27th August 1981, and ran for two years from that date.

(b) the timetable in the Conviction Proceedings is as scheduled hereunder.

	SCHEDULE	RECORD
Date	Event	
13.12.78	Inquiry Committee decides to enquire into Appellant's conduct	page 171
14.05.79	Appellant appears before Inquiry Committee	page 128
	(04.05.79 Legal Profession (Amendment) Act 1979 published in Government Gazette)	page 128
15.10.79	New Inquiry Committee appointed	pages 128-129
19.03.80	Fresh complaint against Appellant by Law Society to new Inquiry Committee	page 174
19.11.80	Appellant appears before new Inquiry Committee	page 130
22.11.80	Report of Inquiry Committee to Council of Law Society	page 130
02.01.81	Application by Council of Law Society for appointment of Disciplinary Committee	page 192
26.08.81	Report of Disciplinary Committee finding cause	pages 105-116
10.08.82	Law Society application to High Court for show cause order	page 149
21.02.83	show cause hearing	page 149
31.01.84	High Court judgment imposing further 2 years' suspension from practice.	page 149

(c) the Appellant submits that it is evident from an examination of the Schedule, that there are gaps of many months which appear at various stages in the Conviction Proceedings which were wholly outise of the Appellant's control. Thus, because of the purported legislative changes (dealt with in (d) hereunder) one and a half years' delay was caused in the Appellant's appearance before the Inquiry Committee (see Schedule dates 14.05.79 and 19.11.80). Inexplicably, the Council of the Law Society took one year from the Report of the Disciplinary Committee to take the formal step of applying for a

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show cause order (see Schedule dates 26.08.81 and 10.08.82). The High Court took eleven months to give judgment (see Schedule dates 21.02.83 and 31.01.84). The Appellant submits

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that there is no basis for the inference drawn by the High Court, wholly unsupported by any evidence, that the first Inquiry Committee delayed after the hearing dated 14.05.79 in reporting its findings to the Council because it decided to concur in the Appellant's request to await the determination of the Appellant's appeal against his convictions. In any event, such delay would have been comparatively minimal in the context of the overall delay revealed by the timetable of events. All this delay has resulted in grave prejudice to the Appellant in that no part of the second sentence of two years' suspension from practice was concurrent with the first sentence.

(d) as can be seen from the Schedule, a new Inquiry Committee was appointed on 15th

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October 1979. The High Court in its judgment attributes the appointment of the new Inquiry Committee to the legislative changes brought about by the Legal Profession (Amendment) Act 1979. That Act repealed section 85 of the Legal Profession Act which vested the power to appoint an Inquiry Committee consisting of five members in the Council, and substituted a new section 85 which vested the power to appoint a Committee known as the Inquiry Committee consisting of not less than five nor more than nine advocates and solicitors in the Chief Justice. The amending Act came into force on 15th October 1979. The Appellant submits that the High Court was wrong in concluding that as a result the first Inquiry Committee was functus officio. It is clear that the first Inquiry Committee had been appointed and had entered

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upon its enquiry by May 1979, some five months before the amending Act came into force. The Appellant submits that the clear effect of sections 14, 16(e) and 18 of the Interpretation Act (Chapter 3) (Acts 10 of 1965 and 14 of 1969) is that the first Inquiry Committee was certainly not functus officio, and should have continued upon its enquiry thereby avoiding one and a half years' delay. The relevant provisions are set out hereunder:

Section 14: Where a written law repeals wholly or in part any former written law and

substitutes other provision therefor, the repealed written law shall remain in force until the substituted provision comes into operation.

Section 16: Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not - .....

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty forfeiture or punishment may be imposed, as if the repealing law had not been passed.

Section 18: The expiration of a written law shall not affect any civil or criminal proceeding previously commenced under such written law, but every such proceeding may be continued and everything in relation thereto may be done in all respects as if the written law continued in force.

The Appellant respectfully submits that the judgment of the High Court of the Republic of Singapore was wrong and ought to be reversed, and this appeal ought to be allowed with costs for the following (amongst other)

R E A S O N S

(1) BECAUSE the High Court ought to have discharged the show cause order on grounds of autrefois convict and/or estoppel and/or under the inherent jurisdiction to stay proceedings to prevent oppression and abuse of process

(2) BECAUSE the High Court ought not to have concluded that the Appellant's convictions under Section 213 of the Penal Code implied a defect of character rendering him unfit for his profession

(3) BECAUSE the High Court ought not to have passed a further sentence of two years' suspension from practice.

ALAN NEWMAN

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE HIGH COURT IN THE REPUBLIC
OF SINGAPORE

B E T W E E N :

H. L. WEE — Appellant

- and -

THE LAW SOCIETY OF SINGAPORE — Respondents

CASE FOR THE APPELLANT

Kingsford Dorman,
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Ref: MAS/WO