

James Chia Shih Ching

Appellant

v.

The Law Society of Singapore

Respondent

FROM

THE HIGH COURT OF THE  
REPUBLIC OF SINGAPORE

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REASONS FOR DECISION OF THE LORDS OF THE  
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE  
30TH APRIL 1985, DELIVERED THE 10TH JUNE 1985

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*Present at the Hearing:*

LORD SCARMAN  
LORD ELWYN-JONES  
LORD KEITH OF KINKEL  
LORD BRIDGE OF HARWICH  
LORD BRIGHTMAN

*[Delivered by Lord Scarman]*

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This is an appeal by an advocate and solicitor ("the solicitor") of the Republic of Singapore from an order of the High Court directing that he be struck off the roll of advocates and solicitors. The solicitor has put forward four grounds of appeal:-

- (a) that in the circumstances of this case the Law Society, the respondent to his appeal, had no right to apply to the High Court for the order and that the High Court had no jurisdiction to make it (the jurisdiction point):
- (b) that there was a failure of natural justice in the proceedings before the High Court:
- (c) that the High Court failed to apply its mind "properly" to the findings of the Disciplinary Committee which had investigated the matter:
- (d) that in any event the penalty of striking off was too severe in the circumstances.

The jurisdiction point is a pure question of statutory construction. Was the Law Society entitled

to apply to the court under section 97 of the Legal Profession Act (cap. 217), "the Act"? If the Society was not so entitled, the appeal has to be allowed: for, as Lai J. who delivered the judgment of the High Court recognised, "the entire proceedings [would] fail in limine". Their Lordships, therefore, decided to hear argument first on the jurisdiction point, treating it as a preliminary question, which indeed it is. After hearing full argument their Lordships concluded that in the circumstances of this case the High Court acted without jurisdiction, and that the appeal would have to be allowed. Their Lordships have not, therefore, given any consideration to the other grounds of appeal. The merits of the case for or against the solicitor have not been canvassed before their Lordships, who accordingly express no view upon any of the matters in issue other than the jurisdiction point. Upon conclusion of argument on the point, their Lordships announced their decision to allow the appeal, indicating that they would give their reasons later. This they now do.

The course of the proceedings in the case can be shortly stated. The appellant was admitted a solicitor (their Lordships will use this abbreviation for "advocate and solicitor") on 11th July 1973. On 14th November 1981 he was convicted by a district judge of an offence of cheating contrary to section 420 of the Penal Code. His appeal against conviction was dismissed on 20th October 1982.

Upon application by the Council of the Society pursuant to section 86(5) of the Act the Chief Justice appointed a Disciplinary Committee to hear and investigate the matter. The Society had the conduct of the proceedings as plaintiff or applicant (both terms are used) before the Committee. After a full hearing the Committee on 2nd July 1983 determined that, while no cause of sufficient gravity existed for disciplinary action to be ordered against the solicitor by the Supreme Court under section 84(1) of the Act, the solicitor should be reprimanded; and the Committee reprimanded him.

Dissatisfied with the determination of the Committee, and being, as the Society submits, a person who had made the written application or complaint, the Society on 15th July 1983 applied to a judge of the High Court under section 97 of the Act for a review of the determination and for an order of the court directing the Society to make an application under section 98 of the Act.

On 2nd December 1983 the High Court set aside the determination of the Disciplinary Committee and directed the Society to make an application to the court under section 98 for the solicitor to show cause why he should not be dealt with under section

84(1) of the Act; the sub-section empowers the Supreme Court upon cause shown to order that a solicitor be struck off, suspended from practice, or censured. The Society thereupon made application under section 98: the High Court ordered the solicitor to show cause: and on 3rd September 1984 the High Court ordered that he be struck off.

The issue in the appeal is whether the Society is a person entitled to invoke section 97 of the Act. If it is, the jurisdiction of the High Court to proceed to an order against the solicitor plainly exists: but, if it is not, the High Court was not competent to make the order. The point of principle in the case is whether the appeal (or review) procedure established by section 97 is available to the Society. It is a question as to the true meaning and effect of nine words in sub-section (1) of the section, namely "the person who made the written application or complaint".

Section 97 provides what may not inappropriately be described as an appeal procedure available to persons dissatisfied with the determination of a Disciplinary Committee that there should be no further investigation of their case against the solicitor. In effect, the Disciplinary Committee has in this case decided against disciplinary action by the court. In effect, the section enables certain persons to appeal against such a decision. The section is in these terms:-

"97. (1) Where a Disciplinary Committee has determined -

- (a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act; 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.

(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.

(3) Upon the hearing of the application the judge, after hearing 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; or
- (b) directing the applicant to make an application under section 98 of this Act; or
- (c) directing the advocate and solicitor concerned under sub-section (1) of section 98 of this Act 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 sub-section (3) of this section the applicant shall have the conduct of proceedings under section 98 of this Act and any such proceedings shall be brought in the name of the applicant."

The critical words are in sub-section (1). Their true meaning can, in their Lordships' view, be determined only by a study of the Act as a whole, and particularly of Part VII (sections 83 to 106) of the Act, which deals with disciplinary proceedings.

The respondent Society is a body corporate created by the Act and has among its statutory purposes that of maintaining and improving the standards of conduct and learning of the legal profession in Singapore: section 38 and section 39 (1)(a). The management of the Society is vested in the Council, (section 60), which is given wide and specific powers by sections 60 and 61. The Chief Justice and such other judges of the Supreme Court as the Society may elect are the visitors of the Society: section 40. This link between the Society and the judges of the Supreme Court reflects the control of the profession by the Supreme Court, and particularly by the Chief Justice which is a key principle of the legislation. This control, which is in practice exercised by the Chief Justice and judges of the High Court, is a notable feature of Part VII of the Act, to which their Lordships now turn.

In discussing the Act their Lordships will use the numbering of the sections used by the High Court, although, as their Lordships understand, a revised edition of the Act re-numbered so as to incorporate subsequent (textual) amendments is now available. A characteristic of the drafting of Part VII of the Act is the vocabulary of words and phrases which are used in the sections which establish the complex and elaborate procedures for handling disciplinary proceedings. Their Lordships have no doubt that the vocabulary must be consistently construed in the absence of express statutory direction to the contrary: for the use of the vocabulary is no accident, but is plainly a deliberate choice of the

legislature. A significant inclusion in the Act's vocabulary is the term with which this appeal is concerned, namely "the written application or complaint" relating to the professional conduct of a solicitor.

Solicitors are officers of the Supreme Court and subject to the control of the Supreme Court: sections 83 and 84. They are liable on due cause shown to be struck off the roll or suspended from practice for a period of years or censured: section 84(1). These penalties, as later sections make abundantly clear, can be imposed only by the Supreme Court.

The procedures established by the Act are elaborate. They may conveniently be considered in four stages:-

- I Initiation (section 86);
- II Inquiry by an Inquiry Committee; (sections 85, 87-89);
- III Appointment of and hearing by a Disciplinary Committee; (sections 86(5), 90-93 and 96);
- IV Cause proceedings in the Supreme Court (sections 94, 97 and 98).

#### Stage I - Initiation

Proceedings are initiated pursuant to section 86. There are four ways in which this can be done. First, any person can make an application or complaint which is in the first place to be made to the Society and is to be referred by the Council to the Inquiry Committee: sub-section (1). Secondly, any judge of the Supreme Court or the Attorney-General may refer any matter relating to the professional conduct of a solicitor to the Society, and the Council "shall issue" a written order to the Inquiry Committee: sub-section (2). Thirdly, whenever a solicitor has been convicted of a criminal offence involving fraud or dishonesty (this case), the Council "shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter": sub-section (5). Fourthly, the Inquiry Committee may decide of its own motion to inquire into any matter: section 87(1)(b). Three of these initiatives are rights available to persons or bodies who choose to commence proceedings, namely the application or complaint by any person under section 86(1), the reference under section 86(2) and the "own motion" decision of the Inquiry Committee. The fourth permits of no option: given the conviction, there is a statutory duty laid by section 86(5) upon the Council of the Society to move forthwith without inquiry to the third stage of the procedure, the appointment of a Disciplinary Committee.

Stage II - Inquiry

This is the stage which is by-passed by section 86(5) where there is a conviction. It follows upon application or complaint, reference, or by decision of the Inquiry Committee itself. The inquiry is conducted by the Inquiry Committee which is a standing committee of solicitors appointed by the Chief Justice under section 85. The Committee is an independent body whose duty is set out in section 87. Sub-sections (1) and (2) are couched in the distinctive vocabulary of Part VII to which their Lordships have already adverted. The sub-sections are in these terms:-

"87. (1) Where the Inquiry Committee has -

- (a) received a written order;
- (b) decided of its own motion to inquire into any matter; or
- (c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

(2) The Inquiry Committee shall also report to the Council where the Inquiry Committee is satisfied that there are no grounds for such an application or complaint."

Their Lordships draw attention to the section's identification of the three options which impose the duty of inquiry and report, namely the written order which follows upon a reference which itself is an option, the "own motion" decision, and the written application or complaint. The word "written" appears in the description of the third option mentioned in the section, because an application or complaint under section 86(1), if it is to entitle the applicant or complainant to require an inquiry as of right, must be in writing. And, if it is in writing, certain consequences follow: see section 86(3) and (4).

The Inquiry Committee reports to the Council. The Council must consider the report and is under a duty to make a determination. Section 88 sets out the four possible determinations in sub-section (1):-

- "(a) that a formal investigation is not necessary; or
- (b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 89 of this Act; or

- (c) that there should be a formal investigation by a Disciplinary Committee; or
- (d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration."

Stage III - Appointment of and Hearing by a Disciplinary Committee

If the Council determines that there should be a formal investigation, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter: section 90. The inquiry procedure at this point joins the criminal conviction procedure: the Council's application under section 90 is "*pari passu*" with the Council's application under section 86(5) and the wording of the two provisions follows the same pattern.

If the Council determines that no cause of sufficient gravity exists for a formal investigation, it may impose a financial penalty: section 89. But, whether it does or not, section 96 provides a procedure for dissatisfied complainants to obtain a review of the Council's determination. Section 96 is in these terms:-

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

- (a) that a formal investigation is not necessary; or
- (b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

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 to the Society together with a copy of the Council's reasons in writing supplied to the applicant under sub-section (2) of section 88 of this Act.

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

(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.

(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 of this Act, and any such proceedings shall be brought in the name of the applicant."

It was not suggested by the Society that upon the true construction of this section the Society could be a person who has made a written application or complaint. The Society accepted that it could not invoke the section, even though it might be dissatisfied with its own Council's determination. The High Court was of the same opinion. Their Lordships agree. The relevance of the section to this appeal (which of course is concerned with section 97) is its wording. The section is, *mutatis mutandis*, drafted in the same style as section 97 and makes use of terms, words, and phrases which recur with frequency in other sections of Part VII of the Act. The section's procedure is available to "a person who has made a written application or complaint to the Society" and is dissatisfied with the determination of the Council upon consideration of the report of the Inquiry Committee. If the applicant's appeal succeeds, the court will order the Society to apply for the appointment of a Disciplinary Committee but at the same time will also order that the applicant, not the Society, shall have the conduct of the proceedings before the Committee. There can be no doubt that the section confers a right to invoke its appeal procedure only upon a person who has made an application or complaint under section 86(1) of the Act and who has put it into writing.

Consideration of the stages leading to an application by the Society to the Chief Justice to appoint a Disciplinary Committee reveals that the Society's application is an obligatory step to a Supreme Court hearing in those cases where the statute requires a hearing by a Disciplinary Committee: sections 86(5), 90 and 96(4). These are cases in which it has been established by full inquiry or by the existence of a criminal conviction



involving dishonesty that a hearing by a Disciplinary Committee is necessary in order to determine whether or not consideration should be given by the Supreme Court to the question whether action should be taken against the solicitor under section 84(1). If the Council has determined under section 88 that there should be a formal investigation or the Court on appeal makes a direction under section 96(4) or if the Council has had to act under section 86(5), the application to the Chief Justice is mandatory. In no case does the Society have an option: it acts because it must, pursuant to its statutory duty, in the circumstances which have arisen.

When the Chief Justice appoints a Disciplinary Committee, he does so for a specific task, namely that of hearing a particular matter. The Disciplinary Committee is not a standing but an ad hoc committee. It consists of solicitors who have in force a practising certificate: section 91. Its duty is stated in section 93. After hearing and investigating the matter referred to it the Committee shall record its findings of fact and determine either -

- (a) that cause of sufficient gravity for disciplinary action exists under section 84; or
- (b) that while no such cause exists, the solicitor should be reprimanded (this case); or
- (c) that cause exists for action under section 84(1).

The Committee must embody its findings and determination in a report which goes to the Chief Justice, the Society, the solicitor concerned, and "the person who made the application or complaint" (emphasis supplied): section 93(3).

#### Stage IV - Cause Proceedings

If the Disciplinary Committee determines that cause exists, the Society is required by section 94(1) without further direction to make an application to the Supreme Court under section 98 for an order calling upon the solicitor to show cause why he should not be dealt with under section 84(1). If on the other hand the Committee determines that no sufficient cause exists, the Society is not obliged to take any further action unless directed by the Court: section 94(2). In the present case the Committee determined that no sufficient cause exists: but the Court has acted under section 97 upon the Society's application, and has set aside the Committee's determination and has directed the Society to make application under section 98 for an order calling upon the solicitor to show cause.

Section 97 is available only "to the person who made the written application or complaint" and is dissatisfied with the determination of the Committee. If the vocabulary of Part VII is to be consistently applied, these words limit the availability of the section to a person making an application or complaint in writing under section 86(1) of the Act. This view of the availability of the section is supported by sub-section (2) which provides that an application under the section for a review of the Committee's determination and an order directing an application under section 98 "shall be served on the Society".

If an application can be made under section 97 and the Court directs cause proceedings under section 98, the Court hears the case under section 98 as it would have done had the Committee determined under section 93 that cause for disciplinary action under section 84(1) exists. A court of three judges of whom the Chief Justice must be one hears the cause proceedings, determines whether disciplinary action under section 84(1) is required and makes the appropriate order.

### Conclusion

In the present case the High Court recognised that the key words in section 97(1) were capable of two meanings. They could be construed, in the Court's view, either consistently with section 96(4) as limiting the availability of the section to persons making a written application or complaint under section 86(1) or as including the Law Society in its capacity as applicant under section 86(5) for the appointment of a Disciplinary Committee. The Court chose the wider meaning as being "consistent with the smooth working" of the statutory system. Their Lordships understand the concern of the High Court: but in their view the language of Part VII is too strong and clear to permit of a policy interpretation of the words in section 97(1) which ignores the legislature's deliberate and consistent use of the term "application or complaint" as indicating an application or complaint made by a person under section 86(1) of the Act. Their Lordships have already analysed the relevant parts of sections 86, 87, 96 and 97. But there are other indications pointing also in favour of the more limited meaning, notably sections 88(2), 92(2), 93(3) and 99. The true position is that the Society, or its Council, in applying for the appointment of a Disciplinary Committee, is not exercising a right of application or complaint but is performing a statutory duty laid upon it in circumstances specified by the statute. In this respect section 86(5) is identical in its effect with sections 90 and 96(4).

For these reasons their Lordships allowed the solicitor's appeal. The order of the High Court striking the solicitor off the roll must be set aside. The determination of the Disciplinary Committee stands. The Society must pay the solicitor's costs in the High Court and in the appeal to the Judicial Committee.

