

IN THE JUDICIAL COMMITTEE

OF THE PRIVY COUNCIL

No. 22 of 1976

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N:

KENNETH EDWARD HILBORNE

Petitioner

- and -

THE LAW SOCIETY OF SINGAPORE

Respondents

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CASE FOR THE APPELLANT

Record

1. This is an appeal by special leave from the Judgment of the Court of Appeal in Singapore (Wee Chong Jin, C.J., Winslow and Kulasekaram, JJ.) dated the 5th March, 1973 which dismissed the Appellant's appeal from an Order of Chua, J. dated the 20th June, 1972, affirming an Order made by the Respondents on the 5th May, 1972, that the Appellant should pay a penalty of \$250 pursuant to section 89(1) of the Legal Profession Act (Cap.217 of Singapore Statutes, Revised Edition, 1970).

pp.26-30

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ll.24-28
and p.19
pp.92-93

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2. The relevant statutory provisions are set out in the Annexure hereto.

3. The Appellant is an advocate and solicitor of the Supreme Court of Singapore and a member of the firm of Messrs Hilborne & Company. The Appellant's firm acted for the Brothers of St. Gabriel, the Plaintiffs in Suit No.1093

Record

p.36 of 1970, the Writ of Summons wherein was issued on the 29th May, 1970. The Appellant had the conduct of the action on behalf of the Plaintiffs.

p.36 4. The Defendants in Suit No.1093 of 1970 were Tan Eng Huat, the First Defendant, and Golden Place Private Limited, the Second Defendants. The Plaintiff's claim was for the sum of \$2,510.00 being the unpaid balance of the agreed price of furniture manufactured and delivered by the Plaintiffs at the request of the First Defendant, the Second Defendants' Managing director, to the Second Defendants' premises. The Plaintiffs claimed in the alternative against the Second Defendants, if the First Defendant ordered the said furniture on behalf of the Second Defendants. Both Defendants were joined as a result of the First Defendant's Solicitors' letter dated the 1st April, 1970 to the Appellant's firm, stating that the First Defendant had ordered the said furniture for and on behalf of the Second Defendants and he was under no personal liability. In his Defence, filed on the 12th June, 1970 the First Defendant stated that he had ordered the said furniture in March, 1969, as the Second Defendants' managing director, to be manufactured for the Second Defendants for use at the Second Defendants' night club and restaurant known as Gold Pagoda Garden Nite-Club and Restaurant and the said furniture was duly delivered. 10 20 30

pp.40-41 5. By their Solicitors' letter dated the 4th June, 1970 to the Appellant's firm, the Second Defendants made two material statements, namely:-
p.40 (a) that the said furniture was ordered by the
ll.20-24 First Defendant for the firm of Golden Pagoda Garden Nite-Club and Restaurant of which the First Defendant was a partner and (b) that the said furniture was at no time ordered by the Second Defendants or by the First Defendant on their behalf nor was any part of the said furniture ever made use of by the Second Defendants. 40

p.9 6. On the 14th July, 1970, the Second Defendants having failed to file their Defence, the Plaintiffs obtained judgment against them in default for the amount claimed and costs. ll.39-42

p.9 7. On the 21st July, 1970, the Second Defendants applied for an order setting aside the said judgment. That application was supported by an ll.42-47 50

affidavit sworn on the 21st July, 1970 by Mokhtar bin Shariff, a clerk employed by the Second Defendants' Solicitors. That affidavit, inter alia, repeated the two statements set out in paragraph 5 hereof and stated that the Second Defendants at no time had any interest in the Golden Pagoda Nite-Club and Restaurant. There was thus a clear conflict between the accounts of the First and Second Defendants as to the ordering and use of the said furniture.

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11.21-32

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8. The Second Defendants' application to set aside the default judgment was heard by Wee Chong Jin, C.J. in Chambers on the 27th July, 1970. Without giving any reasons, the learned Chief Justice ordered that the said judgment be set aside.

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9. The Plaintiffs appealed to the Court of Appeal from the learned Chief Justice's Order. Before the hearing of the appeal, a Defence was filed on behalf of the Second Defendants which stated in paragraph 3 that "the First Defendant became a shareholder in the Second Defendant Company on the 2nd July, 1969 when 1,000 shares of \$100.00 each fully paid in the capital of the Second Defendant Company were allotted to him". Thus the position before the hearing of the Plaintiff's appeal was that the Second Defendants had put forward their defence to the Plaintiff's claim by making the following statements, namely:-

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11.16-18

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11.19-end

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(a) that the First Defendant was a partner in the firm of Golden Pagoda Garden Nite-Club and Restaurant (set out in the said Mokhtar bin Shariff's affidavit);

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11.21-32
& p.40
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(b) that at no time was any furniture ordered by or on behalf of the Second Defendants (set out in the said affidavit);

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& p.40
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(c) that no part of the said furniture was ever used by the Second Defendants (set out in the said affidavit);

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(d) that no time did the Second Defendants have any interest in the night club (set out in the said affidavit);

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(e) that it was on the 2nd July, 1969 that the First Defendant became a shareholder in

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Record

the Second Defendants (set out in the Defence of the Second Defendants).

The status of the First Defendant and his relationship with the Second Defendants at the time of ordering the said furniture in March, 1969 were therefore important matters in the determination of the Plaintiff's appeal.

p.11 11.1-4	10. On the 21st January, 1971, the Plaintiff's appeal was heard by the Court of Appeal (Tan Ah Tah, Winslow and Choor Singh, JJ.) and was dismissed.	10
p.11 11.19-26	11. On the 13th March, 1971, before the Order of the Court of Appeal dismissing the Plaintiff's appeal had been passed and entered, the Appellant applied to the Court of Appeal to re-open the Plaintiff's appeal on the grounds that the learned Chief Justice and the Court of Appeal had been misled as to the true facts concerning the status of the First Defendant and his relationship with the Second Defendants at the material time. The Appellant relied, in making the application to re-open the Plaintiff's appeal, upon a Statutory Declaration made on the 4th March, 1971 by one Ong Swee Keng, an advocate and solicitor of the Supreme Court of Singapore and a director of the Second Defendants since the 28th February, 1969. In the Statutory Declaration, the said Ong Swee Keng stated, <u>inter alia</u> , that the First Defendant, <u>Tang Eng Huat</u> , had been a director of the Second Defendants since the 28th February, 1969, and with the approval of the Second Defendants' Chairman and all other directors, the First Defendant took charge of the management of the Second Defendants' business, which was known as Golden Palace Holiday Resort, from the 8th February, 1969. It had then been agreed that the First Defendant would be appointed the Second Defendants' managing director at the next board meeting: that agreement was re-affirmed in writing on the 28th February, 1969 and the appointment formally confirmed at a board meeting on the 18th April, 1969. When the furniture was ordered in or about March, 1969, the Second Defendants had recently started business and all the equipment necessary for carrying on the business had to be purchased by the Second Defendants. Ong Swee Keng did not understand the Second	20
pp.68-70 p.68 11.22-26		
p.68 1.36-69 1.2 p.69 11.14-18		30
p.69 11.18-21		
p.69 11.26-32		40
p.69 11.43-47		

- Defendants' statement that the said furniture was ordered by the First Defendants for the firm of which he was a partner. Ong Swee Keng stated that the First Defendant became a lessee of the Nite-Club as from the 1st August, 1969, but the Second Defendants carried on the running of the Nite-Club for some three weeks in July 1969, before leasing it to the First Defendant; the lease included the furniture. According to the said Ong Swee Keng, it was not correct to say that the Second Defendants never made use of any part of the furniture. The Appellant further relied upon an invitation card issued by the Second Defendants for the opening of the night club, wherein appeared the words:- "The Management of Golden Palace (Pte) Ltd. On the opening of their Golden Pagoda Garden Nite-Club cordially invites the company of"
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12. The Appellant's application came before the Court of Appeal (Tan Ah Tah and Choor Sing JJ., Winslow, J. being indisposed) on the 13th March, 1971. The Appellant stated before judgment was given that if they refused to reopen the appeal (a course which the Court appeared likely to follow), the learned Judges would be setting a seal on dishonour. Neither of the learned Judges took objection to the Appellant's statement. Mr Chung, who was appearing for the Second Defendants, challenged the Appellant to repeat his forensic statement outside the court. Accordingly the Appellant did so by writing to the Second Defendants' Solicitors (Mr Chung's firm) a letter dated the 13th March, 1971.
13. Messrs Chung & Co. wrote to the private secretaries to Tan Ah Tah and Choor Singh, JJ on the 15th March, 1971, enclosing a copy of the Appellant's letter of the 13th March and asking whether any action would be contemplated by the Bench. The Registrar of the Supreme Court wrote to the Respondents on the 19th March, 1971 on the direction of Tan Ah Tah and Choor Singh, JJ., referring the Appellant's letter of the 13th March and Messrs Chung & Co.'s letter of the 15th March to the Respondents under section 86(2) of the Legal Profession Act.
14. The Inquiry Committee of the Respondents

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11.50-end
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11.28-32
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11.8-15
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11.25-26
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p.72
pp.72-73

Record

- p.74 wrote to the Appellant on the 12th April 1971 inviting the Appellant to explain his statement to the Court of Appeal. The reference in this letter to section 90(4) of the Legal Profession Act, 1966 should now be to section 87(5) of the Revised Edition, 1970.
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l.17
- pp.75-79 15. By letter dated the 24th May, 1971, the Appellant explained the position fully. He wrote, inter alia, as follows :- 10
- "It seemed, and still seems, to me that for a litigant to misinform the Court in circumstances such as these was dishonesty in the legal, if not the actual, sense, and for a Court, having been apprised of the nature of the falsity, to fail to express any disapproval of the same, let alone investigate the matter further, was tantamount to condonation of that dishonesty. It was there circumstances which led to the observations which I made. No doubt it was a somewhat blunt expression of opinion but I do not recall either of their lordships taking objection at the time, either to the content of the words or the manner in which they were expressed. The letter written to Mr Chung's firm was in response to a challenge by him, in front of their lordships, to repeat the substance of my remarks in circumstances where privilege would not obtain". 20 30
- pp.91-92 The Appellant further referred to and enclosed a letter dated the 30th April, 1971, from the Solicitors to the Liquidator of the Second Defendants, admitting that the Second Defendants were liable for the full amount of the Plaintiff's claim in respect of the said furniture.
- pp.92-93 16. By letter dated the 5th May, 1972 the Respondents informed the Appellant that an order had been made under section 89 of the Legal Profession Act for the payment by the Appellant of a penalty of \$250. 40
- pp.6-7 17. By an Originating Summons dated the 26th May, 1972 the Appellant applied for the said Order dated the 5th May 1972 to be set aside. By an affidavit sworn on the 25th May, 1972 in support of the said summons, the
- pp.8-12

Appellant further explained the position as follows :-

10 "Their Lordships (in the Court of Appeal) notwithstanding the facts brought to their notice, did not see fit to entertain further hearing of the appeal, and it was during the course of his hearing that I uttered the words which are the subject of these proceedings No comment was made by either of their Lordships at the time when I uttered the words complained of, and in the light of the further material and relevant information which had come to my knowledge and which knowledge I put before their Lordships it seemed to me that to take no cognisance thereof nor express disapproval thereof was to approbate conduct which had caused false or misleading facts to be put before no less than four Judges. I am therefore aggrieved at the Order made against me .. and desire that it be set aside".

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18. On the 19th and 20th June, 1972, the said summons was heard by Chua, J. Counsel for the Respondents submitted that the Appellant was guilty of contempt of court and being an officer of the Court also guilty of attacking the honesty of the Judges. He further submitted that the Appellant was guilty of "grossly improper conduct" under section 84(2)(b) of the Legal Profession Act, a section setting out the circumstances in which advocates and solicitors may be struck off the roll or suspended from practice or censured. As far as the Appellant is aware, the Respondents did not purport to act under that section. Chua J. dismissed the summons with the following words:-

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pp.12-18

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40 "In my view Mr Hilborne was guilty of contempt of Court and the Council was perfectly right in imposing the penalty which it did. The O.S. is dismissed with costs. The penalty imposed is affirmed."

p.18
11.24-28

Counsel for the Appellant applied for leave to appeal which Chua, J. granted, Counsel for the Respondents having no objection.

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11.33-36

19. The Court of Appeal (Wee Chong Jin, C.J., Winslow and Kulasekaram JJ.) dismissed the Appellant's appeal. Wee Chong Jin, C.J.

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delivered the judgment of the Court on the 5th March, 1973.

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ll.28-30,
ll.30-32

20. Wee Chong Jin, C.J. said that the Court could see no reason to interfere with the Order made by the Respondents. In the Court's view the words uttered by the Appellant were improper and ought not to have been used. The learned Chief Justice said that it was irrelevant whether the Appellant was guilty of contempt of court, because it was for the Respondents under section 88 to determine whether or not in the circumstances the Appellant had said something which in the view of the Respondents ought not to have been said by a member of the profession and, if so, whether or not the impropriety was sufficiently serious to merit the imposition of a monetary penalty. Further, the Court was of the view that the Order made by Chua, J. did not fall within section 29 of the Supreme Court of Judicature Act (Cap.15), because it was not an order made by the High Court in a civil matter either in the exercise of its original or its appellate jurisdiction. The Court therefore considered it did not have jurisdiction to entertain the Appellant's appeal.

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ll.33-46

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ll.37-40

21. The Appellant respectfully submits that in using the words criticised he did not transgress the discretion which should be allowed, and normally is allowed, to counsel in arguing his client's case, and the Respondents should have rejected the complaint and declined to make any order. There was no justification for saying that in the circumstances the Appellant had said something which ought not to have been said by a member of the profession. It is respectfully submitted that there was no impropriety in the observation made by Appellant, and the Order made by the Respondents was made without proper foundation or reason. It is respectfully submitted that the freedom of counsel to present his client's case to the Court fully and frankly should not be restricted by the apprehension that an observation such as that used by the Appellant may lead to the stigma of professional impropriety and the imposition of a penalty. It is further respectfully submitted that the decision of the Court of Appeal that the Appellant's

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observation was improper constitutes an unprecedented and undesirable fetter upon the freedom of counsel in presenting his client's case in Court.

10 22. The Appellant respectfully submits that he was in no sense guilty of contempt of court, and the words used by him were not in the circumstances improper. The Court of Appeal should, in the Appellant's submission, have set aside the Order of Chua, J., based as it was, on a finding that the Appellant was guilty of contempt of court - a finding which was sought by Counsel for the Respondents. It is respectfully submitted that the law of contempt should not be extended so as to apply to an observation such as that used by the Appellant.

20 23. The Appellant further respectfully submits that the Court of Appeal did have jurisdiction to hear the Appellant's appeal. Leave to appeal had been granted by Chua, J.. It is respectfully submitted that the Order of Chua, J. was an order of the High Court in a civil matter in the exercise of its original or appellate jurisdiction within section 29 of the Supreme Court of Judicature Act (Cap. 15). The appeal did not fall within any of the relevant provisions of section 34 of that Act excluding appeals, nor does section 95 of the Legal Profession Act (Cap. 217) exclude appeals to the Court of Appeal.

30 The Appellant respectfully submits that it cannot have been the intention of the legislature to commit a matter of such importance to the reputation, and even the livelihood, of an advocate and solicitor to the final and unappealable decision of a single judge of the High Court in Singapore, and the language of legislation does not reveal any such intention.

40 24. The Appellant respectfully submits that the judgments of the Court of Appeal and of Chua, J. were wrong, and ought to be reversed and the Order of the Respondents made on the 5th May, 1972, ought to be set aside and that this appeal ought to be allowed with costs, for the following (among other)

R E A S O N S

1. BECAUSE the Respondents had no proper ground or reason for making an order under section 89 of the Legal Profession Act.

Record

2. BECAUSE nothing which the Appellant said was improper or gave rise to any professional impropriety or to any need or justification for the imposition of a penalty.

3. BECAUSE the Respondents should have rejected the complaint and declined to make any order.

4. BECAUSE the order of Chua, J. was based on the erroneous view that the Appellant was guilty of contempt of court.

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5. BECAUSE the Court of Appeal erred in law in holding that it had no jurisdiction to entertain an appeal from an order of a Judge affirming an order for payment of a penalty under Section 89 of the Legal Profession Act.

STUART N. MCKINNON

ANNEXURE TO THE CASE FOR THE APPELLANT

Supreme Court of Judicature Act (Singapore
Statutes, Revised Edition, 1970, cap.15).

Ss. 7,
15,
16,
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34.

Legal Profession Act (cap.217).

10 Ss. 84,
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87 (1),
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93 (1),
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98 (1),
(6).

Powers and Jurisdiction of the Supreme Court

Divisions and jurisdiction of Supreme Court.

7. The Supreme Court shall be a court of record and shall consist of -

- (a) the High Court, which shall exercise original and appellate criminal and civil jurisdiction;
- (b) the Court of Appeal, which shall exercise appellate civil jurisdiction; and
- (c) the Court of Criminal Appeal, which shall exercise appellate criminal jurisdiction

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ORIGINAL JURISIDCTION

Criminal jurisdiction

15. (1) The High Court shall have jurisdiction to try all offences committed -

- (a) within Singapore;
- (b) on the high seas on board any ship or aircraft registered in Singapore;
- (c) by any person who is a citizen of Singapore on the high seas or on any aircraft; and
- (d) by any person on the high seas where the offence is piracy by the law of nations.

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(2) The High Court may pass any sentence allowed by law

Civil jurisdiction - general

16. (1) The High Court shall have jurisdiction to try all civil proceedings where -

- (a) the cause of action arose in Singapore;
- (b) the defendant or one of several defendants resides or has his place of business or has property in Singapore;
- (c) the facts on which the proceedings are based exist or are alleged to have occurred in Singapore; or
- (d) any land the ownership of which is disputed

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is situated within Singapore:

Provided that the High Court shall have no jurisdiction to try any civil proceedings which comes within the jurisdiction of the Shariah Court constituted under the Administration of Muslim Law Act

Cap.42

10 (2) The High Court shall also have jurisdiction to try any civil proceedings where all the parties consent in writing to have the proceedings tried in Singapore.

(3) Without prejudice to the generality of subsection (1) of this section, the High Court shall have such jurisdiction as is vested in it by any written law which is in force in Singapore.

PART IV

THE COURT OF APPEAL

20 29. The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

Jurisdiction to hear and determine civil appeals.

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34. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:-

Non-appealable matters

- 30 (a) where the amount or value of the subject matter at the trial is less than one thousand dollars, except with the leave of the Court of Appeal or a Judge of the Supreme Court;
- (b) where a Judge makes an order giving unconditional leave to defend an action;
- (c) where the judgment or order is made by consent of parties;
- 40 (d) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal or a Judge of the Supreme Court;

(e) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) No appeal shall lie from an interlocutory order made by a Judge in chambers unless the Judge has certified, after application, within four days after the making of such order by any part for further argument in court, that he requires no further argument, or unless leave is obtained from the Court of Appeal or from the Judge who heard the application. 10

(3) No appeal shall lie from a decision of a Judge in chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal or a Judge of the Supreme Court, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

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Cap.217 Legal Profession 20

Power to strike off the roll or suspended or censure.

84. (1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

AM. 16 of 1970

(2) Such due cause may be shown by proof that such person -

(a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession; or 30

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor; or 40

(c) has been adjudicated bankrupt and has been guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (d), (e), (f), (h) or (i) of subsection

(6) of section 33 of the Bankruptcy Act;
or

Cap. 18

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- (d) has tendered or given or consented to retention, out of any fee payable to him for his services, of any gratification for having procured the employment in any legal business of himself or any other advocate and solicitor; or
- (e) has directly or indirectly procured or attempted to procure the employment of himself or any advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given; or
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- (f) has accepted employment in any legal business through a person who has been proclaimed a tout under any written law relating thereto, or
- (g) allows any clerk or other unauthorised person to undertake or carry on legal business in his name, that other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision; or
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- (h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore; or
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- (i) carries on by himself or any person in his employment any trade, business or calling that detracts from the profession of law or is in any way incompatible with it, or is employed in any such trade, business or calling; or
- (j) has contravened or failed to comply with the provisions of this Act or of any rules made there under in relation thereto if in the opinion of the court such contravention or failure warrants disciplinary action; or

(k) has been disbarred, struck off, suspended or censured in his capacity as a legal practitioner by whatever name called in any other country.

(3) Pupils and articled clerks shall mutatis mutandis be subject to the same jurisdiction as can be exercised over advocates and solicitors under this Part but in lieu of an order striking him off the roll or suspending him an order may be made prohibiting the pupil or articled clerk for petitioning the court for admission until after a date to be specified in the order;

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Provided that the jurisdiction given by this sub-section shall be exercised by a single judge.

(4) In any proceedings under this Part the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made.

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Appointment
of Inquiry
Committee

85. (1) At the first meeting of the Council held after the 1st day in January in any year, the Council shall appoint an Inquiry Committee comprising five members or former members of the Council of whom three shall constitute a quorum.

(2) Each Inquiry Committee shall hold office until the next Inquiry Committee is appointed.

(3) The Inquiry Committee may act notwithstanding any vacancy in their body and, in case of a vacancy, the Council may appoint a member or former member of the Council to fill the vacancy.

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(4) The Inquiry Committee shall meet from time to time for the dispatch of business and, subject to any rules made by the Council may regulate the convening, notice, place, management and adjournment of such meetings, the appointment of a chairman, the mode of deciding questions, and generally the transaction and management of business.

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Applications
and
complaints

86. (1) Any application by any person that an advocate and solicitor be dealt with under this Part and any complaint of the conduct of 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 (2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Inquiry Committee.

(3) Every written application or complaint received by the Inquiry Committee shall be supported by such statutory declarations or affidavits as the Inquiry Committee may require.

20 (4) Before proceeding to inquire into or investigating into any matter under the provisions of section 87 of this Act the Inquiry Committee may require any person making a written application or complaint to deposit with the Society a reasonable sum not exceeding five hundred dollars to cover necessary costs and expenses and in case the application or complaint is found to be frivolous or vexatious, the sum so deposited or such part thereof as the Inquiry Committee may determine shall be applied for the payment of such costs and expenses; otherwise, the sum so deposited shall be returned to the person making the same.

30 87. (1) Where the Inquiry Committee has - Investigation
(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.

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40 88. (1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall determine - Council's consideration of report
(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. 10

Am. 16 of 1970

(2) The Council shall inform the advocate and solicitor and the person who made the application or complainant of the manner in which it has determined the application or complaint and in the event of the determination being that a formal investigation is unnecessary the Council shall on the request of that person furnish him with their reasons in writing.

Council's power to order penalty Am. 16. of 1970

89. (1) If the Council determines under section 88 of this Act that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty it may order the advocate and solicitor should be ordered to pay a penalty it may order the advocate and solicitor to pay a penalty of not more than two hundred and fifty dollars. 20

(2) The provisions of section 95 of this Act apply to any penalty ordered to be paid under sub-section (1) of this section. 30

(3) Before the Council makes an order for the payment of a penalty under this section it shall notify the advocate and solicitor concerned of its intention to do so and give him a reasonable opportunity to be heard by the Council.

Application to appoint a Disciplinary Committee

90. If the Council determines under section 88 of this Act 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. 40

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Findings of Disciplinary Committee

93. (1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall

determine -

- (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; or
- 10 (c) that cause of sufficient gravity for disciplinary action exists under that section.

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

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

95. (1) Within twenty-one days of being ordered to pay a penalty by the Council the advocate and solicitor concerned may apply to a judge to set aside the order. Provisions as to penalties. Am.16 of 1970

30 (2) Such an application shall be made by way of originating summons and shall be served on the Society and shall be heard in chambers unless the Judge of his own motion or on the application of any party sees fit to order a hearing in open court.

(3) Upon the hearing of the application the judge may -

- (a) affirm or vary the penalty; or
- (b) set aside the order for a penalty,

40 and may make an order for payment of costs by or to either the Society or the applicant as may be just.

(4) If no such application is made or if the order for a penalty is affirmed or varied by the court the advocate and solicitor shall pay the penalty to the Society and the Society shall pay the penalty into the Consolidated Fund.

Am. 16 of
1970

(5) Any penalty not paid may be recoverable by the Society as a judgment debt.

Procedure
for
complainants
dissatisfied
with the
Councils'
decision.

96. (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
- (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.

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(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 subsection (2) of section 88 of this Act.

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

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

X X X X

10 98. (1) An application that a Solicitor be struck off the roll or suspended from practice or censured or that he be required to answer allegations contained in an affidavit shall be made by originating summons ex parte for an order calling upon the solicitor to show cause. Order to show cause

X X X X

20 (6) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) of this section shall be heard by a court of three judges of whom the Chief Justice shall be one and from the decision of that court there shall be no appeal except to the Judicial Committee of Her Britannic Majesty's Privy Council. For the purposes of an appeal to that Committee an order made under this subsection shall be deemed to be an order of an appellate court

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No 22 of 1996

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N:

KENNETH EDWARD HILBORNE

Petitioner

- and -

THE LAW SOCIETY OF SINGAPORE

Respondents

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.
Hale Court,
Lincoln's Inn,
London WC2A 3UL

Solicitors for Appellant