Wee Soon Kim Anthony v The Law Society of Singapore (No 4)
[2001] SGHC 365

Case Number : OS 1573/2000

Decision Date : 07 December 2001

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Plaintiff in person; Yang Lih Shyng (Khattar Wong & Partners) for the defendant

Parties : Wee Soon Kim Anthony — The Law Society of Singapore (No 4)

Legal Profession – Professional conduct – Plaintiff lodging complaint against fellow solicitors with Law Society – Council of Law Society accepting and adopting report of inquiry committee – Plaintiff unhappy with Council's decision – Application by plaintiff for order directing Law Society to apply to Chief Justice for appointment of disciplinary committee – Whether to allow application – Whether complainant may raise points not raised before inquiry committee – s 96 Legal Profession Act (Cap 161, 2000 Ed)

Legal Profession – Professional conduct – Council accepting and adopting report of inquiry committee – Whether Council to give reasons for accepting and adopting report of inquiry committee

Legal Profession – Professional conduct – Role of inquiry committee – Extent to which inquiry committee may investigate complaint

Legal Profession – Professional conduct – Preparation of client's affidavit – Whether counsel under duty to verify truth of client's deposition in affidavit

Legal Profession – Professional conduct – Whether inquiry committee to follow particular procedure – Failure to give plaintiff an oral hearing – Whether inquiry committee acting contrary to rules of natural justice

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Background

Wee Soon Kim Anthony (`Mr Wee`) is the plaintiff in this action. The Law Society of Singapore (`the Law Society`) is the defendant.

Mr Wee and his family had entered into a banker-customer relationship with UBS AG (`UBS`).

On or about 14 April 1999, UBS filed Originating Summons No 546 of 1999 (`OS 546/99`) against Mr Wee, his wife and their son in respect of the return of assets held by UBS.

On 24 June 1999, OS 546/99 came up for hearing before Lee Seiu Kin JC. There were settlement talks then and the matter was settled with costs to be decided by the court. Lee JC heard the arguments on costs and ordered costs to be borne by Mr Wee.

Subsequently Mr Wee lodged a written complaint dated 18 August 1999 with the Law Society against Mr Davinder Singh SC (`Mr Singh`) and Mr Hri Kumar (`Mr Kumar`) who had acted for UBS in OS 546/99. I will refer to Mr Singh and Mr Kumar collectively as `the solicitors`.

Mr Wee is himself an advocate and solicitor. Indeed, he is a very senior member of the bar.

In the letter of complaint, Mr Wee alleged that the solicitors had knowingly prepared an affidavit of one Shirreen Sin Meng Mei (`Ms Sin`), an employee of UBS, which contained certain false allegations and/or otherwise permitted Ms Sin to perjure herself in a court of law.

The reference to perjury was also in relation to the same affidavit complained of. The affidavit complained of was the second affidavit of Ms Sin filed on or about 27 May 1999 in OS 546/99.

The letter of complaint referred to various falsehoods in Ms Sin`s affidavit as Falsehoods [num]1 to [num]4.

The Council of the Law Society considered Mr Wee`s complaint and came to the conclusion that on the authority of **Tang Liang Hong v Lee Kuan Yew** [1998] 1 SLR 97 , no information of misconduct was disclosed in the letter of complaint and the Council accordingly would not take any further action on the complaint.

Mr Wee was not satisfied and after an exchange of correspondence with the Law Society, he filed OS 37/2000 against the Law Society where he sought various declaratory and other reliefs.

Originating Summons No 37 of 2000 came before Justice Lai Kew Chai for hearing on 25 April 2000. Following the authority of **Suppiah v Law Society of Singapore** [1984-1985] SLR 311 [1986] 1 MLJ 459 , Lai J ruled, inter alia, that Falsehood [num]4 should have been referred to the Chairman of the Inquiry Panel.

Pursuant to this decision, the Council of the Law Society referred the matter to the Chairman of the Inquiry Panel and an inquiry committee was constituted to look into the complaint with regard only to Falsehood [num]4.

The members of the inquiry committee (`IC`) were:

(1) Mr Quentin Loh Sze On SC (Chairman);

(2) Mr Aloysius Leng;

(3) Mr Rahim Jalil; and

(4) Dr James Chang.

The IC`s report was dated 19 September 2000. The IC were of the unanimous view that there was no substance in the complaint and recommended that no further action be taken save as to dismiss the complaint.

The Council adopted the IC`s recommendation.

Mr Wee then filed the present OS 1573/2000 under s 96 of the Legal Profession Act (Cap 161, 2000 Ed) (`the LPA`) for the following primary reliefs:

> *(1) An order that the defendants do apply to the Chief Justice for the appointment of a disciplinary committee (as defined in the Act) to investigate into the plaintiff`s complaint dated 18 August 1999.*

> *(2) An order that the plaintiff shall have the conduct of proceedings before the disciplinary committee and of any subsequent proceedings before the court under s 98 of the Act, and that any such proceedings shall be brought in the name of the plaintiff.*

The complaint - Falsehood [num]4

Paragraph 5 of Ms Sin`s second affidavit states:

> *I introduced Wee to the Plaintiff`s banking services sometime in August 1997. My discussions with Wee took place in Singapore. As a result of these discussions, the Defendant opened a joint account No. 110628 ("the Singapore Account") on 18 August 1997 and two accounts in Hong Kong: a joint account No. 207012 on 18 August 1997 and an account in Wee`s sole name No. 207038 on 26 August 1999 (**sic**). The account opening forms for all the three accounts were prepared by the Plaintiff in Singapore and executed by the Defendants in Singapore.*

Mr Wee`s complaint was that para 5 was false and was made to found an argument on the doctrine of forum non conveniens. This falsehood was knowingly made because the `internal records` of UBS revealed that the account opening documents for account Nos 110628, 207012 and 207038 were not all prepared in Singapore.

The complaint went on to state the following facts:

(1) only two sets of the standard account opening forms relating to 110628 and 207012 dated 18 August 1997 were prepared and duly witnessed by Ms Sin in Singapore;

(2) one similar set of standard account opening forms relating to 207038 and dated 26 August 1997 was prepared and duly witnessed by one Sheila Wong of UBS in Hong Kong;

(3) Mr Wee was in Hong Kong on 26 August 1997 when Sheila Wong attended to him and presented the account opening forms for the purposes of obtaining his signature thereon to open his personal account 207038 in Hong Kong. The complaint exhibited pages of Mr Wee`s passport to show that he was in Hong Kong from 24 August to 11 September 1997.

The solicitors` explanation (with a statement from Ms Sin and one from Matthias Lee)

The solicitors gave a written explanation dated 21 July 2000. Paragraph 4(6) thereof asserted that Mr Wee did not file any affidavit disputing that the account opening forms for the three accounts were executed in Singapore.

The solicitors` counsel, Mr Jimmy Yim SC, who appeared before the IC noted that Falsehood [num]4 was never raised as an issue before Lee JC.

On the other hand, para 5 of the written explanation noted that Mr Wee did assert that the account opening form for Account No 207038 was executed by him in Hong Kong (see para 33 of Mr Wee`s

second affidavit executed on 10 June 1999 in OS 546/99), although it was apparently true that Falsehood [num]4 was never raised as an issue before Lee JC.

The written explanation enclosed, inter alia, a statement by Ms Sin dated 21 July 2000 (`Ms Sin`s first statement`). She stated that although Mr Wee was in Hong Kong on 26 August 1997, this did not prove that the account opening form relating to Account No 207038 was signed in Hong Kong.

She explained in her statement that:

> *6 Account opening forms are not always dated the same day that they are signed. Sometimes, the forms are signed by clients and dates later inserted. In particular, forms relating to accounts to be opened in foreign branches of the Bank are sent to that branch to be processed. The foreign branch may then insert the date.*
>
> *7 The bank officer who signs on the account opening form may not necessarily have witnessed the signature. The bank officer is only required to verify the customer`s signature on the account opening form. He or she is not required to witness it. The verification may take place on a later date by comparing the customer`s signature against the records maintained by the bank.*
>
> *8 As an illustration, I annexed hereto and mark "A", a copy of the Letter of Charge executed by Wee in respect of Account No. 207038. The Letter of Charge was executed by Wee in Singapore in my presence. The Letter of Charge is dated 3 September 1997. According to Wee, he was in Hong Kong from 24 August 1997 to 11 September 1997 but I was not in Hong Kong over that period.*

In other words, Mr Wee was relying on a letter of charge in respect of Account No 207038 dated 26 August 1997 which appeared to be witnessed by Sheila Wong in Hong Kong but Ms Sin was pointing out that there was another letter of charge, also in respect of Account No 207038, but dated 3 September 1997. This second letter of charge was signed by Mr Wee before her in Singapore.

Ms Sin`s signature was on the second letter of charge. Yet, if reliance was to be placed solely on the date thereon and Mr Wee`s passport, Mr Wee could not have signed it before Ms Sin on that date as she was not in Hong Kong then.

Ms Sin added:

> *9 To the best of my recollection and belief, Wee did execute all the account opening forms in Singapore. I recall that I personally handed a number of account opening forms to Wee at his residence in Singapore at 38 Jalan Arnap, Singapore 249344. All the forms were subsequently returned to me in Singapore duly executed. I therefore honestly believed that all the forms were executed in Singapore.*
>
> *10 Wee alleges that Ms Sheila Wong ("Ms Wong"), an employee of the Bank`s Hong Kong branch, witnessed his signature on the form in Hong Kong. It appears from the form that Ms Wong verified Wee`s signature. As explained above, this*

does not necessarily mean that Ms Wong witnessed Wee`s signature. Ms Wong left the Bank in or about late 1997/early 1998. I therefore did not speak with Ms Wong before I affirmed my 2nd affidavit as she had by then already left the Bank.

11 I recall that I dealt with a colleague, Mr Matthias Lee ("Mr Lee"), a legal officer of the Bank, on the contents of my 2nd affidavit. Mr Lee has also left the Bank. I also met Mr Kumar and his assistant, Ms Arul Selvi, together with Mr Lee on 19 May 1999 to discuss the said contents.

12 To the best of my recollection, I was asked at the meeting by Mr Kumar where the account opening forms were executed. I told him that they were executed in Singapore. I based my instructions on my recollection of events and my genuine belief as set out above. As Wee admits, the forms for two of the accounts were executed in Singapore. Drew & Napier did not have access to the Bank`s records, save for such documents as were given to them by us.

Ms Sin`s second statement

Ms Sin subsequently made a second statement dated 30 August 2000. She elaborated that the document which Mr Wee had relied on to assert that the account opening form for Account No 207038 was executed by him in Hong Kong was in fact a letter of charge. She asserted in her second statement:

3 I understand that reliance has been placed on the documents exhibited at page 56 and 63 of the exhibit "SSMM-2" to my 1st affidavit in Originating Summons No. 546 of 1999 filed on 14 April 1999 in support of the allegation that the account opening form for Account No. 207038 was executed by Wee in Hong Kong.

4 The document at page 56 is a Letter of Charge executed by Wee. A Letter of Charge is not an account opening form. It is not necessary for a customer to sign a Letter of Charge when he opens an account with the Bank. The Letter of Charge is only necessary when facilities are to be extended to the customer.

5 It was not my evidence that the Letter of Charge exhibited at page 56 was executed in Singapore. In any event, the Letter of Charge pertaining to Account No. 207038 which was executed by Wee in my presence is annexed as "A" to my statement [meaning her first statement]

6 & 7 [paras 6 and 7 deal with the document at p 63 which was not relevant to me]

According to para 39 of the report of the IC, there was also a corroborating statement by Matthias Lee, the legal officer mentioned by Ms Sin. He had liaised with Mr Kumar on the preparation of Ms Sin`s affidavit. He and Ms Sin met Mr Kumar on 19 May 1999. Mr Kumar had asked Ms Sin where the

account opening forms had been executed and she replied accordingly.

Mr Singh was not present when Ms Sin`s second affidavit was prepared but he accepted full responsibility for the same.

At the first meeting before the IC on 30 August 2000, Mr Yim offered to bring Ms Sin and Mr Lee before the IC who subsequently decided to avail themselves of the offer in respect of Ms Sin.

Ms Sin`s attendance

Ms Sin attended at the next meeting of the IC on 12 September 2000. According to the report of the IC, she confirmed her two statements and that the solicitors did not put words into her mouth. The statement in para 5 of her second affidavit was hers.

She went further. She said that even as at the date of her appearance before the IC, she believed that the said para 5 was true (para 54 of the report).

The IC noted that she was almost indignant at any suggestion otherwise (para 69 of the report).

The IC were of the unanimous view that she was telling the truth as she gave her answers in a forthright manner without prevarication (para 56 of the report).

As I have mentioned in [para]15 above, the IC were of the unanimous view that there was no substance in the complaint and recommended that no further action be taken save as to dismiss the complaint.

The report was adopted by the Council of the Law Society.

Mr Wee`s submissions

Mr Wee had a number of points before me.

FIRST POINT BY MR WEE

Mr Wee submitted that the Council had merely rubber-stamped the report of the IC when it adopted the report without assigning any reason. In his written submission before me, he referred to the issue of rubber-stamping at least six times (see paras 1, 6, 10, 54, 62 and 68 of his written submission).

Mr Wee did not submit any authority for the proposition that the Council must assign reasons when it adopts a report from an inquiry committee.

There was authority to the contrary. In **Whitehouse Holdings v Law Society of Singapore** [1994] 1 SLR 315 , the High Court was of the view that there was no relevant determination by the Council on the basis that it had not deliberated on the matter at all when it merely accepted and adopted the report of the inquiry committee there.

However, the Court of Appeal disagreed with this decision (see [1994] 2 SLR 476).

At p 484G, Chief Justice Yong Pung How, delivering the judgment of the Court of Appeal, said:

> *However, with respect to the learned judicial commissioner, we are unable to agree that the Council by merely accepting and adopting the report had not made a determination. We cannot see any objection to this practice. The Council need not supplement the reasons given by the inquiry committee in its report, when the Council in effect is in agreement with and accepts the findings of the inquiry committee and makes a determination consistent with that in the report ...*

SECOND POINT BY MR WEE

Mr Wee`s second point was that once the IC found that para 5 of Ms Sin`s second affidavit appeared to be untrue, then the IC must refer the matter to the disciplinary committee. As I understood his submission, he was suggesting that it was for the disciplinary committee, and not the IC, to embark on an investigation.

I did not agree that the role of an inquiry committee was as restricted as Mr Wee was advocating.

In **Subbiah Pillai v Wong Meng Meng** [2001] 1 SLR 59 , Choo Han Teck JC said, at [para]16:

> *It is against that background that we must examine the work of the inquiry committee. Its primary role is that of the investigator, a role that is sometimes not fully appreciated because of the slightly misleading description attached to the function of the disciplinary committee (the conduct of a `formal investigation`) when, in fact, by that stage the bulk of the investigative work ought to have been completed by the inquiry committee although the prosecuting counsel for the Law Society may still wish to verify or augment various aspects of the Law Society`s case before the disciplinary committee. The inquiry committee`s role is not merely to uncover only such evidence as is sufficient to pass on to the disciplinary committee for further investigation. The inquiry committee is expected* ***to investigate as fully as it can*** *before presenting its report to the Council.* ***It can scarcely justify making any of the recommendations which the Act empowers it to make unless it had conducted a thorough inquiry into the facts*** *... [Emphasis is added.]*

In the case of ***Whitehouse Holdings*** , Yong Pung How CJ said (supra at p 486):

> *The role of the inquiry committee is merely to investigate the complaint. It does not have to make any conclusions on misconduct or whether an offence was committed but simply to consider whether or not there is a prima facie case for a formal investigation.*

This passage was cited with approval by Chao Hick Tin JA in **Subbiah Pillai v Wong Meng Meng** [2001] 3 SLR 544 (see [para]33 of the judgment). In [para]32, Chao JA also said:

> *Under the Act, the function of the IC is only to inquire into complaints, to eliminate frivolous complaints and to ensure that only complaints which have been prima facie established will proceed to be heard formally and determined by the DC.*

Mr Wee relied on this passage as well as the one cited above from ***Whitehouse Holdings*** .

I did not see how they assisted him.

An inquiry committee cannot determine if a prima facie case has been made out if its role is as restrictive as Mr Wee was suggesting.

Mr Wee also relied on another case. In para 73 of his written submission, he said:

> *In the unreported Civil Court of Appeal No 600018* ***Wee Soon Kim v The Law Society & Davinder Singh/Hri Kumar*** *[see [2001] 4 SLR 25] the court approving the decision in* ***Subbiah Pillai v Wong Meng Meng*** *[see [2001] 3 SLR 544] held: The proceeding before the IC is to ensure that clearly frivolous complaints should not be allowed to go further. But is not the mandate of the IC to come to a firm view as to the merits where there is conflict as to the facts.* ***That would be the task of the DC****. Thus the entire scheme is one where the primary consideration is the protection of the public. An adverse decision by a judge in such an OS application does not mean that the solicitor`s rights are affected: no definitive decision has been taken. All it means is that the solicitor must explain formally (with the support of witnesses if any) before the DC. [Emphasis is Mr Wee`s.]*

Mr Wee was citing from parts of [para]16 and 17 of the judgment in CA 600018/2001 (see [2001] 4 SLR 25) and putting those parts together.

However, it must be borne in mind that in CA 600018/2001 (see [2001] 4 SLR 25), the issue was whether the solicitors had a right to intervene and be heard by the High Court hearing an application under s 96 of the LPA.

I was of the view that there was nothing in the judgment there that detracted from what the Court of Appeal had said in ***Subbiah Pillai v Wong Meng Meng*** in CA 143/2000.

The sentence emphasised by Mr Wee, when read in context, meant only that it was for a disciplinary committee and not for an inquiry committee to reach a conclusion where there was a conflict on the facts. It did not mean that the IC was restricted only to determining whether para 5 of Ms Sin`s second affidavit was untrue.

In any event, the IC did not find that para 5 of Ms Sin`s second affidavit was untrue.

Secondly, even if it did, it had to go further because the crux of Falsehood [num]4 was not simply that the said paragraph was untrue but that the solicitors knew that it was untrue when the second affidavit was prepared.

I was also of the view that contrary to Mr Wee`s submission (see para 3 thereof), the IC did deal with the question as to the necessity or otherwise of a formal investigation by a disciplinary committee. Also, contrary to Mr Wee`s submission (see paras 68 and 69 thereof), the IC did not go beyond dealing with the question of the necessity or otherwise of a formal investigation and had not acted ultra vires.

THIRD POINT BY MR WEE

Mr Wee`s third point was that the Chairman of the IC had misunderstood the nature and scope of his duties (para 70 of his written submission). The basis for this submission was a response from Mr Loh to a fax from Mr Wee.

The fax from Mr Wee was undated although it was apparently received by Mr Loh on 17 August 2000. The third paragraph of the fax states:

> *Be that as it may, I trust that you will forgive me if I say, with all due respect to you and your committee, that before I subject myself to what I fear would turn out to be an inquisition for having dared to lodge a complaint of professional misconduct against Davinder Singh an elected Member of Parliament on a pap ticket with the distinction of being one of the early birds appointed by the Chief Justice Yong Pung How as "Senior Counsel".*

To this, Mr Loh replied on 25 August 2000. In the second paragraph of his reply, he said:

> *First and foremost, please rest assured that an Inquiry Committee constituted under the Legal Profession Act to look into a complaint against an advocate & solicitor is not an "**inquisition" by any means**, whether with respect to the Complainant **or the Respondent**. Secondly, you have exercised your undoubted right to lodge a complaint of professional misconduct against two advocates and solicitors and the fact that one of them is a Member of Parliament, a Member of the People`s Action Party or a Senior Counsel is irrelevant. For the purpose of the Legal Profession Act, they are advocates and solicitors against whom a complaint is being lodged. [Emphasis is added.]*

I was of the view that Mr Wee had taken Mr Loh`s reply out of context. Mr Wee had expressed his concern about subjecting himself to an inquisition, not an inquiry, and Mr Loh was simply trying to allay that concern. In so doing, Mr Loh was indicating that the solicitors also would not be subject to an inquisition. Mr Loh was not suggesting that there would be no inquiry.

In any event, it was quite clear to me from reading the report of the IC that an inquiry had in fact been conducted.

FOURTH POINT BY MR WEE

Mr Wee`s fourth point was in respect of a solicitor`s duty regarding the preparation of affidavits for his client. He relied on two cases.

The first case was **Re Gray, ex p Incorporated Law Society** [1869] 20 LT 730. At p 731, Lord Romilly said:

> *Considering the enormous amount of affidavit evidence which the courts of equity have to deal with, it would be impossible to proceed with safety, were it not that the body of solicitors connected with the Court of Chancery most carefully investigate, and, as far as possible, correct the statements of their clients on these points; and here is a gross and manifest falsehood sworn to by Mostran, known to be such by his solicitor, and yet not corrected by him, but allowed to be sworn, and the affidavit is actually filed by him.*

The second case was **Re An Advocate and Solicitor** [1962] MLJ 125 . Rose CJ said (at p 126):

> *It is, of course, clear that the preparation by a professional man of an affidavit that is untrue, and that is **known** to him to be untrue, is a very serious offence. [Emphasis is added.]*

I did not think the judgment of Rose CJ assisted Mr Wee much. As regards the judgment of Lord Romilly, it had to be read in the context of subsequent and more recent local judgments.

In one of the relatively recent local cases, **Wee Soon Kim Anthony v Law Society of Singapore** [1988] SLR 510 [1988] 3 MLJ 9 , Chan Sek Keong JC (as he then was) said ([1988] SLR 510 at 515-516; [1988] 3 MLJ 9 at 12):

> *The complaint against TKQ was in two parts. The first was that he had made libellous statements against the plaintiff recklessly. The second was that he had failed to take steps to verify the truth of those statements ...*
>
> *In respect of the second part of the complaint, the inquiry committee was of the view that TKQ was under no duty (i) specifically, to take statements from the clients named in GSH`s affidavit; (ii) generally, to verify the source of information of GSH. Counsel for the plaintiff was unable to cite any authority to support his contention that an advocate and solicitor has such a duty generally or in the circumstances of this case. Nor was he able to persuade me, in principle, that such a duty existed. In my view, no such duty existed generally or in the circumstances of this case. It is not for an advocate and solicitor, whether in his capacity as counsel or solicitor, to believe or disbelieve his client`s instructions, unless he himself has personal knowledge of the matter or unless his client`s statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements.*
>
> *Here, I would refer to an ex curia opinion of Lord Halsbury on this subject. His Lordship said (as quoted in (1889) 15 LQR at p 264):*
>
> *`A thesis has been propounded on the other side more extravagant, and certainly more impossible of fulfilment; that is, that an advocate is bound to convince himself, by something like an original investigation, that his client is in the right before he undertakes the duty of acting for him. I think such a contention ridiculous, impossible of performance, and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favour with us. Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability.`*

The decision of Chan JC was reiterated by LP Thean JA with approval in an even more recent case, ie **Tang Liang Hong v Lee Kuan Yew** [1998] 1 SLR 97 .

Thean JA also said, at [para]74:

In any case, we think it would be placing an unduly onerous burden on counsel on every instance to verify the truth or otherwise of what their clients have deposed to in affidavit.

It seemed to me that Mr Wee was not only advocating that the solicitors should have conducted an investigation but that they should also have disbelieved Ms Sin when she told them explicitly that all the account opening forms had been prepared and executed in Singapore.

On this point, I reiterate that (1) Ms Sin had pointed out in her second statement that the letter of charge is not an account opening form and (2) she had given her reasons to the IC for her statement in para 5 of her second affidavit. Her reasons were not inherently incredible or logically impossible.

I would add that in the two cases which Mr Wee was relying on, the facts were different and the culpability of the solicitor concerned was obvious.

FIFTH POINT BY MR WEE

Mr Wee`s fifth point was in respect of the second letter of charge. In his written submission (paras 65, 66 and 74 thereof) he submitted that the top of the copy of the second letter of charge was blurred to conceal the fact that it was transmitted from Hong Kong on 5 September 1997. He also further submitted that it was a physical impossibility for him to have executed it in Singapore in the presence of Ms Sin on 3 September 1997 which is the date thereon since Ms Sin could not have received the second letter of charge before 5 September 1997.

I noted that this submission was not based on what Mr Wee could recollect from his memory and the document.

Indeed he stopped short of saying categorically that he remembered that the second letter of charge was signed after 5 September 1997. His submission was based simply on the date of a fax transmission from Hong Kong.

This submission assumed that Ms Sin was in possession of the second letter of charge only after it was transmitted to her from Hong Kong. This was not necessarily the case. She could have easily sent it to Hong Kong after obtaining Mr Wee`s signature thereon and when the complaint was made, she could have asked the Hong Kong office to transmit a copy back to her.

Mr Wee also assumed that the date of 3 September 1997 was the date on which the second letter of charge was signed but Ms Sin`s point was that the date stated on the second letter of charge was not the date when Mr Wee signed it because although he was in Hong Kong then, she was not.

She was making this point to illustrate that as regards the first letter of charge, the date thereon need not necessarily be the date when Mr Wee signed that.

I also noted that Mr Wee`s complaint about Falsehood [num]4 was premised on the date stated on the first letter of charge and the signature of Ms Sheila Wong, both of which Ms Sin had addressed in her first statement.

Even if Ms Sin was wrong as to whether the letter of charge is an account opening form and where the first one was signed, the point was that the solicitors were not aware that she was wrong.

SIXTH POINT BY MR WEE

Mr Wee`s sixth point was the way in which the IC had handled the inquiry process. He had many grievances about this:

(1) The IC had failed to tell him that it had received the solicitors` written explanation when it wrote to ask him to meet with the IC so that the committee could ask him questions or clarify any portion of his complaint (para 40(5) of Mr Wee`s affidavit in the originating summons before me).

(2) The IC should not have given the solicitors a copy of Mr Wee`s letter dated 2 August 2000 which Mr Loh had described as a `rehash` of the original complaint (para 40(7) of Mr Wee`s affidavit).

(3) The IC should not have given the solicitors a copy of Mr Wee`s undated fax (which Mr Wee described as dated 17 August 2000 presumably because Mr Loh received it on 17 August 2000) without his express permission (para 40(8) of Mr Wee`s affidavit in which he also asserted that he did not know what was going on behind his back).

(4) When Mr Wee met with the IC on 30 August 2000, he was not informed that the IC had already received the solicitors` written explanation (with a statement from Ms Sin and one from Mr Matthias Lee). Nor was he given an opportunity to look at the written explanation for an appropriate response (para 40(10) of Mr Wee`s affidavit).

(5) It was unfair of the IC to deny him the opportunity of addressing the written explanation when, on the other hand, copies of his correspondence had been forwarded to the solicitors without his knowledge (para 48 of Mr Wee`s affidavit and see also para 51).

To Mr Wee, all the above were contrary to the basic rules of natural justice.

Mr Wee also asserted that he would have liked to ask Ms Sin to answer various questions `on oath` (paras 53 to 57 of his affidavit).

In **Yusuf Jumabhoy v Law Society of Singapore** [1988] SLR 236 [1988] 1 MLJ 491 , Chan Sek Keong JC (as he then was) said that save for the then s 87(5) of the Legal Profession Act (Cap 217, 1970 Ed), which was similar to s 86(6) of the LPA, the then Legal Profession Act did not prescribe any procedural requirement that an inquiry committee must follow. That is still generally the position under the LPA.

Chan JC went on to say that the then s 87(5) was not intended to confer any rights on a complainant but to provide an opportunity to the advocate and solicitor complained against to reply to the allegations against him and to request an oral hearing.

He added that there was nothing in the then s 87(5) to say that if the advocate and solicitor were to request an oral hearing, he would be automatically entitled to one.

In **Seet Melvin v Law Society of Singapore** [1995] 2 SLR 323 , Chief Justice Yong Pung How, delivering the judgment of the Court of Appeal, said, at p 341:

> *The concept of fairness in IC proceedings need not extend to affording the complainant a right to an oral hearing. Natural justice does not dictate that the appellant be given a right to fire a final salvo in reply, as it were, once Thangaveloo has furnished his explanations, bearing in mind the fact that the IC*

proceedings are neither adversarial nor accusatorial. All that natural justice requires is that the person or body charged with making the decision should act fairly. In the circumstances, and having regard to the role of the IC, we were of the view that the allegations as to breaches of natural justice were not tenable.

In ***Subbiah Pillai v Wong Meng Meng*** , Choo Han Teck JC said ([2001] 1 SLR 59 at [para]17):

It would, however, be unreasonable for a person under investigation to expect that he can, as a matter of right, cling to his investigator throughout every step of the investigation; to be present each time a question is put by the committee to the complainant and his witnesses ... To this end, the committee ought to be given the latitude of deciding how best it wishes to conduct the interview of witnesses provided that the persons whom it interviews are disclosed to the solicitor concerned, and the information provided by them are put to the solicitor for him to explain if necessary.

In the appeal from Choo JC`s decision in CA 143/2000, Chao Hick Tin JA said ([2001] 3 SLR 544 at [para]28 and 30):

Requirements of natural justice

28 In the appellant`s case, a large part of it is devoted to dealing with the question whether natural justice applies in the proceedings before the IC. The respondents do not deny that natural justice applies, but rather whether natural justice as defined by the appellant applies, having regard to the nature of IC proceedings. The crux of the question is whether it was wrong of the IC to have interviewed the complainant, Mr Shanmugan, without the appellant being also present. A related issue is whether the IC Chairman was correct to hold that the appellant was not entitled to a copy of the complainants` written submission.

29 ...

30 The starting point is the celebrated pronouncement of Tucker LJ in ***Russell v Duke of Norfolk*** *[1949] 1 All ER 109 at 118:*

`There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. ***The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth*** *. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.`*

Chao JA continued to say at [para]56 to 58 and [para]64 to 67:

56 In our opinion, the position is well summarised in ***Wade on Administrative Law*** *(6th Ed) at pp 570-571 as follows:*

`Natural justice is concerned with the exercise of power, that is to say, with acts or orders which produce legal results and in some way alter someone`s legal position to his disadvantage. But preliminary steps, which in themselves may not involve immediately legal consequences, may lead to acts or orders which do so. In this case the protection of fair procedure may be needed throughout, and the successive steps must be considered not only separately but also as a whole. The question must always be whether, looking at the statutory procedures as a whole, each separate step is fair to the persons affected.`

Our opinion

57 In the light of the authorities above, it is clear that a body, whose function is only to inquire into the facts to determine if the complaint/ matter under inquiry should proceed further, stands apart from those whose function is to determine whether misconduct has been committed and/or to determine the punishment. We also recognise that the exact task of a body within each category may also differ, depending on the applicable rules or regulations. But what is clear is that the requirements of natural justice in relation to a body which falls under the first category are certainly less stringent than the second. Here, we would reiterate what Tucker LJ said in ***Russell v Duke of Norfolk*** *(supra).*

58 The procedure adopted in a court of law or arbitral tribunal undoubtedly is of the highest standard in as far as the requirements of natural justice are concerned because at the end of that process the parties` rights will be determined or affected ... It is always tempting to argue that such a standard should be applied universally to all bodies, whether their function is merely to inquire or otherwise, as that would ensure that justice is done at every stage, whatever is involved at that stage. But as the cases indicate, what must be observed at every stage is fairness. And what is fair must depend on what is the object of the process at that stage. If it is for the purpose of sifting frivolous complaints and only to determine whether a complaint has any merit to go forth then we do not think fairness demands that the vigorous regime applicable to trials should apply. It should not be an elaborate process like a trial. It should be informal. Otherwise, it would unduly burden a process which would not be warranted. It would be a waste of human and financial resources to have two full-blown hearings. It is a question of proportionality and practicality ... Accordingly, we do not think fairness is undermined when an IC interviews a witness, including the complainant, in the absence of the person under inquiry. Nor is such a procedure unjust, bearing in mind it is purely inquisitorial.

...

64 ... In our view, as an inquisitorial body, the IC is entitled to contact whosoever would be able to shed light on the matter, subject always to the proviso that if anything new is alleged against the solicitor concerned, the latter should be given a chance to respond thereto ...

Withholding of complainants` submission

65 We now turn to consider the related point raised by the appellant, that the IC was wrong not to have furnished the complainants` written submission of 10 May 2000 to him. It will be recalled that both parties were reminded by the IC Chairman`s notification of 24 April 2000 that they should make their written submission by 10 May 2000. Both parties did that.

66 In so far as the submission from the complainant is concerned, we think that, having regard to what is required by s 86 of the Act and the inquisitorial nature of the proceedings, an IC has no obligation to invite or allow a complainant to make a submission in support of the complaint, and indeed should not do so. Accordingly, in our judgment, the IC Chairman should not have invited or even allowed the complainant to put in a written submission.

67 Nevertheless, this is not to say that such an invitation would, per se, render the inquiry process unfair. But, as in this case, having asked and obtained the written submission of the complainants, we think, in line with the spirit of s 86(6)(a)(i) of the Act, the IC should have extended a copy of it to the appellant. The written submission of the complainant would, in the circumstances, have to be treated as a supplement to the complaint and a copy forwarded to the appellant.

The judgments of Chao JA and Choo JC show that an inquiry committee may interview anyone in the absence of the solicitor concerned. In my view, the inquiry committee may likewise interview anyone in the absence of the complainant.

A fortiori, Mr Wee had no right to ask questions of Ms Sin. Indeed, what he really wanted was to cross-examine her but he was not entitled to do that.

The cases I have cited also show that the solicitor concerned must be apprised of what is being alleged against him. For this purpose, an inquiry committee may and often does forward correspondence or other documents to the solicitor concerned to meet this objective. It does not require the consent of the complainant to do so.

In my view, the IC was not wrong in forwarding subsequent correspondence from Mr Wee to the solicitors even though one of the letters was considered a `rehash` and another was on Mr Wee`s concern about an inquisition. In so doing, the IC was being cautious. For example, there might well have been something additional in the `rehash` for the solicitors to address and Mr Wee`s undated fax about an inquisition enclosed his skeletal submission.

It did not necessarily follow that Mr Wee, as the complainant, was entitled to be given copies of the

written explanation from the solicitors or of any of the statements enclosed therewith or told about the same.

Mr Yang Lih Shyng for the Law Society submitted that this was because a solicitor against whom a complaint is made has greater rights than the complainant because the solicitor has to answer a complaint whereas the complainant does not.

I agreed that the solicitor concerned stands in a different position from that of a complainant.

However, to say that the solicitor concerned has greater rights than the complainant might give the impression that the solicitor`s rights are paramount. It is the interest of the public that is paramount and that is served if the proceedings before an IC are conducted fairly.

I was of the view that fairness or natural justice did not mean that Mr Wee was entitled to be given a copy of the written explanation of the solicitors or to be told about it. The solicitors had to know his complaint because they had to address it or risk the consequences. However, he did not need to know their response because he was not obliged to address the response.

It was for the IC to decide whether they required a further response from Mr Wee and, if so, whether he should be given a copy of the written explanation.

Mr Wee, however, said he should have been given the same because the solicitors had been given a copy of his letter of complaint (as well as of subsequent correspondence from him). In my view, one did not follow the other for the reason I have stated.

It seemed to me that Mr Wee wanted a copy of the written explanation because he wanted to fire a final salvo in reply. However, the case of ***Seet Melvin*** (supra) has decided that he had no such right, see [para]90 above.

Under the scheme of the LPA, it was for the IC, and not Mr Wee, to decide how the inquiry should be conducted, provided always that the inquiry was conducted fairly.

SEVENTH POINT BY MR WEE

Mr Wee`s seventh point was that the IC should not have simply accepted the untested explanation of the solicitors and should have looked at `other evidence` (para 47 of his affidavit in the originating summons before me).

However, it was clear to me that the IC did not simply accept the solicitors` explanation without more. There were statements from Ms Sin and the IC had required her to attend before them for the IC to assess for themselves what she had to say.

EIGHTH POINT BY MR WEE

Mr Wee`s eighth point was that he was asked to excuse himself while the members of the IC deliberated in private among themselves on his written submission (para 40(11) of his affidavit).

He said that an IC should have its discussions in public and to have them behind closed doors displayed a sense of unfairness.

In my view, this was a misguided position to take. Even in more formal proceedings like hearings

before a court of law comprising more than one judge, there is nothing unfair about judges conferring in private with each other on a submission.

NINTH POINT BY MR WEE

Mr Wee`s ninth point was that he was made to wait in `solitary confinement` while the IC was deliberating on his written submission (para 40(12) of his affidavit).

However, he did not really pursue this point in submission before me, which point was, in any event, a non-starter.

TENTH POINT BY MR WEE

Mr Wee`s tenth point was that the IC had proceeded on a false premise that:

> *In OS 546 of 1999, UBS sought directions from the court* ***as to the return of the assets previously held in the accounts of the complainant, his wife and son****. [Mr Wee`s emphasis. See para 41 of his affidavit in the originating summons before me.]*

However, the IC had not proceeded on a false premise. It had merely reiterated what UBS was seeking in its action. Whether UBS was correct or not in the substantive relief sought or the description thereof was a separate matter irrelevant to the IC and to me.

ELEVENTH POINT BY MR WEE

Mr Wee`s eleventh point was that the solicitors had allowed UBS to refer wrongly to the assets as having been previously held in the defendants` accounts with UBS when in fact, the assets were held in his sole account.

However, Mr Yang submitted that as this was not the subject of Falsehood [num]4 and was not considered by the IC, it should therefore not be considered by me.

In ***Wee Soon Kim Anthony v Law Society of Singapore*** (supra), Chan JC (as he then was) said ([1988] SLR 510 at 515; [1988] 3 MLJ 9 at 12):

> *The statutory scheme gives the advocate and solicitor concerned a right to be judged first by his own peers, ie the inquiry committee, followed by a determination by the Council, before the complaint can be brought by a dissatisfied complainant before a judge. Section 93(4) should not be construed in such a manner as to deprive the advocate and solicitor concerned of these rights. In my view, a judge has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry.*

This view was adopted by S Rajendran J in ***Tan Yeow Khoon v Law Society of Singapore*** (OS 879/2000) (see [para]31 of the judgment of Rajendran J dated 7 June 2001) in the context of the current legislation under which the scheme referred to by Chan JC (as he then was) has not changed, except that a lay person is now also appointed to the inquiry committee.

I also adopted this view.

TWELFTH POINT BY MR WEE

The twelfth point by Mr Wee was that the solicitors had allowed Ms Sin to refer to him disrespectfully as plain `Wee` instead of `Mr Wee` in her statement attached to their written explanation (para 52 of his affidavit). Her statement referred to `Mr ASK Wee ("Wee")`.

Again, this point was a non-starter.

First, it was not part of Falsehood [num]4 and not inquired into by the IC.

Second, there is nothing improper if in a written document `Mr` is not used in the definition of the person.

Third, Mr Wee himself did the same thing in his affidavit. In para 12 thereof, he referred to the solicitors as `... Senior Counsel Davinder Singh MP and his able assistant Hri Kumar (Singh and Kumar) ...` and subsequently therein referred to them as `Singh` and `Kumar` respectively.

Before me, Mr Wee said that he did not normally refer to solicitors like that but he did it for obvious reasons.

I found this a shallow explanation. If Mr Wee did not think it was proper to use such references, then he should not do so himself. The reality was that he was trying to find fault with the solicitors.

Summary

In the circumstances, I saw no reason to grant the orders sought by Mr Wee and I dismissed his application with costs. In so doing, I was affirming the determination of the Council of the Law Society.

Outcome:

Application dismissed.

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