

50/84

No. 14 of 1984

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM  
THE HIGH COURT IN SINGAPORE

BETWEEN:

H.L. WEE

Appellant

and

THE LAW SOCIETY OF SINGAPORE

Respondent

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Case for the Respondent

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RECORD

1. This is an appeal, with leave of the High Court in Singapore, by the Appellant, from an Order of that Court (Chief Justice Wee Chong Jin, Mr. Justice Kulasekaram and Mr. Justice Sinnathuray) dated the 31st January 1984 that the Appellant be suspended from practice as an Advocate and Solicitor of the Supreme Court of the Republic of Singapore for a period of two years from that date.

pp. 149/150.

THE FACTS

2. The Appellant was admitted as an Advocate and Solicitor on the 26th November, 1948. At the time in 1977 when the events complained of by the Respondent occurred, the Appellant was the President of the Respondent, and had been since 1975. He had also held office at various times as a member of the Council of the Respondent.

p. 279 [i] and  
[iii]

3. At all the material times, the Appellant practised under the name and style "Braddell Brothers" ("the Firm") of which practice he was the sole proprietor. In or about 1971, the Appellant employed one Santhiran ("S"), as an assistant Advocate and Solicitor in the Firm.

p. 279 [ii]

p. 279 [iv]

4. In February 1976, the Firm had in its service four assistant Advocates and Solicitors, of whom S was the senior. At the end of February 1976, the Appellant had reason to believe that S had misappropriated monies from the Firm's Clients' account. On or about the 8th or 9th March 1976, S

p. 280 [vii]

admitted to the Appellant that he had misappropriated sums from the Clients' account.

5. The Appellant caused an investigation into the accounts of the Firm to be carried out by Lisa Choo, an employee of the Firm, and by or about mid-March 1976 it had been established, as a consequence of this investigation, that S had committed criminal breach of trust of a sum of \$298,270.75 ("the offence"). By the 10th June 1976, S made restitution to the Appellant of \$297,956.12.

p. 283[i]

p. 280[viii]

6. The Appellant did not report the offence to the Respondent Society, or inform the Firm's auditors of it. He instructed Lisa Choo to continue her investigation with a view to establishing whether any further monies had been misappropriated by S.

p. 281[xi] and [xiv]

p. 283[iii]

p. 280[ix]

7. The money repaid by S to the Firm (the sum of \$297,956.12 referred to in 5 above) was paid into a Suspense Account ("the Suspense Account") and transferred

out of the Suspense Account to various Clients' accounts as and when Lisa Choo was able to identify the Clients' accounts from which monies had been misappropriated.

8. In or about August 1976 Lisa Choo informed the Appellant that she was unable to make further progress in her investigation of the Firm's accounts. The Appellant, p. 281[x] believing that further sums had been misappropriated by S, sought and obtained the consent of S to the appointment of a firm of auditors, Medora and Tong, who p. 281[xi] were not the Firm's auditors, to continue the investigation. The Firm's auditors were not told of this appointment. The p. 283/284[v] terms of reference of Medora and Tong were, in effect, to make, with the assistance of S, "a final report on the actual amount of the defalcation".

9. Following discovery of the offence in February 1976, S remained in the employment of the Firm for a period of nine months. He continued to see and attend to clients, and generally to carry

out his duties as an assistant Advocate and Solicitor.

p. 280/281[ix]

10. On the 21st December 1976, S left the employment of the Firm.

p. 281[xii]

11. In January 1977, the Appellant learned that S had commenced practice as an Advocate and Solicitor on his own account. He made no report to the Respondent or the police and sanctioned the release of certain of the Firm's files to S.

p. 281[xiii]

p. 284[vi]

12. On the 10th March 1977, the Firm's auditors became aware of the offence, and by letter dated the 17th March 1977 wrote to the Appellant placing on record the fact that the Appellant had not informed them when he had discovered the offence, and had instructed Medora and Tong not to inform them of their (Medora and Tong's) appointment.

p. 284[viii]

13. On the 30th April 1977, some thirteen months after the discovery of the offence, the Appellant wrote to the Respondent

stating that "certain defalcations and misappropriation of moneys from various Clients' accounts and costs in my Firm appears to have been carried out by S. Santhiran, a former employee of this Firm".

p. 281/282[xi]

14. Throughout the period between the discovery of the offence and eventual reporting of it to the Respondent, the Appellant attended formal meetings of the Respondent. He said nothing about the offence to his colleagues on the Council of the Respondent.

p. 293

15. On the 26th May, 1977, approximately 14 months after he had discovered the offence, the Appellant wrote to the Officer Commanding, Commercial Crimes Department, stating that S had "unlawfully transferred and dealt with various moneys from various accounts held by or belonging to" the Firm. This was the Appellant's first report to the police of the commission by S of the offence.

p. 170

16. On the 18th March 1978 the Inquiry Committee of the Respondent Society ("the IC") wrote to the Appellant requesting an explanation for, inter alia, the delay in reporting the criminal breaches of trust by S. The Appellant furnished a written explanation. p. 245

17. On the 10th May, 1978 S, who had been charged with five charges of criminal breach of trust under Section 408 of the Penal Code, pleaded guilty to one charge. The four remaining charges were taken into consideration and S was convicted and sentenced to 9 months' imprisonment. p. 258

18. The IC heard the Appellant on the 26th May 1978, and reported its conclusions to the Respondent thereafter. p. 245

19. The Appellant was arrested on 6th June 1978 and charged with nine charges of accepting restitution of various sums of money from S in consideration of concealing S's criminal breaches of trust of monies in the Clients' account of the Firm. p. 245

20. On the strength of the IC's report to it (referred to in paragraph 18), the Respondent wrote to the Appellant on the 20th July 1978, informing him of its determination that there would be a formal investigation by a Disciplinary Committee (the first DC) into the Appellant's "failure to report the criminal breach of trust committed by Mr. Santhiran when he was a Legal Assistant in the firm of Braddell Brothers to the Law Society earlier" (the delay charge).

p. 245

21. On the 7th November 1978 the Appellant was convicted of eight out of the nine charges of concealment, and on the 13th December 1978 the IC wrote to the Appellant informing him that in its view the convictions implied a defect in his character making him unfit for the profession, within the meaning of section 84(2) (a) of the Legal Profession Act ("the Act"). The Appellant was invited to furnish any explanation he might wish to offer. The Appellant furnished a written explanation, and was heard by the IC, which subsequently reported to the Respondent.

p. 245



22. On the 12th March, 1980, a Judge of the High Court heard an Appeal by the Appellant against his convictions. The appeal was dismissed but the fines imposed upon the Appellant were reduced. On the 1st September 1980, the learned Judge who dismissed the appeal refused the Appellant special leave to appeal to the Court of Criminal Appeal. The Appellant applied thereafter to the Court of Criminal Appeal for leave to Appeal.

p. 245

23. The first DC heard the delay charge between the 23rd September and the 2nd October 1980, and delivered its report on the 19th November 1980. It concluded that the Appellant had been guilty of grossly improper conduct in the discharge of his professional duty, within the meaning of section 84(2)(b) of the Act, and that cause of sufficient gravity for disciplinary action against the Appellant existed under section 84(1) of the Act.

p. 245

p. 263-303

24. By letter dated the 2nd January 1981, the Respondent informed the Appellant that there was to be a formal investigation by a

Disciplinary Committee (the second DC) into the complaint that the Appellant's convictions implied a defect in his character which rendered him unfit to practise within the meaning of section 84(2) (a) of the Act ("the convictions charge").

p. 193

25. On the 12th January 1981, the Court of Criminal Appeal refused the Appellant leave to appeal against his convictions.

p. 246

26. By Order of the High Court dated the 13th February, 1981, the Appellant was required to show cause ("the first show cause") why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Chapter 217) arising out of the finding of the first DC on the delay charge. On the 15th January 1981, the Appellant's Solicitors wrote to the President of the Respondent requesting that the hearing of the first show cause be postponed until the second DC had reached a determination on the convictions charge, so that if it reported adversely leading to the Appellant being required to show cause why he should not be dealt

p. 194

with on the convictions charge, he would be in a position to show cause on both the delay and convictions charges at the same time.

27. The Respondent, by its Solicitors, rejected the Appellant's request for a postponement of the first show cause by letter dated the 21st January, 1981.

p. 196

28. The first show cause was heard by the High Court (the Chief Justice, Mr. Justice Chua and Mr. Justice Kulasekaram) on the 17th, 18th and 19th March, 1981. The Court reserved judgment.

29. On the 3rd August 1981, the second DC heard and concluded its investigation into the convictions charge. It took time to report.

30. In a reserved judgment delivered on the 27th August 1981, in the first show cause the High Court suspended the Appellant from practice as an Advocate and Solicitor for a period of two years from that date, that is to say until the

p. 246

26th August, 1983, ("the first Order") upholding the finding of the first DC that the Appellant had been guilty of grossly improper conduct by reason of his "failure to report the criminal breach of trust committed by Mr. S. Santhiran ... earlier".

31. On the 26th August 1981 the second DC published its report. It concluded that the Appellant's convictions implied a defect of character which rendered him unfit for the profession within the meaning of section 84(2) (a) of the Act, and found that cause of sufficient gravity for disciplinary action existed under section 84(1) of the Act. p. 246  
p. 105-116
32. The Appellant appealed against the first Order to the Judicial Committee. Their Lordships, on the 13th July 1982 dismissed the appeal and affirmed the first Order. p. 246
33. By an Order dated the 17th September 1982, the Appellant was ordered by the High Court to show cause why he should not be dealt with under the provisions of p. 246  
p. 121

section 84 of the Act, ("the second show cause") arising out of the convictions charge.

34. The second show cause was heard by the High Court on the 21st and 22nd February 1983. The High Court took time to consider. By an Order dated the 31st January 1984, ("the second Order") the High Court ordered that the Appellant be suspended from practice as an Advocate and Solicitor for a further period of two years from that date, that is to say up to the 30th January, 1986.

p. 149

p. 123-148

35. In the result, the Appellant was suspended from practice for a total of four years, in two tranches of 2 years each with a gap of approximately five months between tranches, for

- (i) grossly improper conduct by reason of his failure to report the criminal breach of trust of S earlier; and

(ii) for being unfit to practise his profession arising from his convictions for concealment, such convictions implying a defect in the Appellant's character.

36. It is from the second Order that the Appellant now appeals.

37. There is annexed to this Case, as a Schedule, the chronology of the first and second proceedings.

#### THE ISSUES

38. It was contended on behalf of the Appellant before the High Court in the second proceeding that he was entitled to a discharge of the second Order to show cause on the grounds of:

- (1) autrefois convict; and/or
- (2) issue estoppel and res judicata;  
and/or

(3) the Court's inherent jurisdiction to stay proceedings on the grounds of oppression and abuse of its process; and/or

(4) the convictions not implying a defect in the Appellant's character such as to render him unfit to practise.

39. The High Court concluded that none of the Appellant's pleas were made out.

THE RESPONDENT'S SUBMISSIONS

40. The Respondent submits that the judgment of the High Court in exercise of its jurisdiction under section 98 of the Act was right and ought to be affirmed, and prays that this appeal be dismissed with costs for the following REASONS (amongst others):

(1) autrefois convict

(a) The first and second DCs dealt with separate and distinct charges under section 84(2)

sub-sections (b) and (a) of the Act, respectively. Different evidence was required to make out each charge. Sub-section (a) requires evidence of a criminal conviction of a certain character; sub-section (b) requires evidence of the Respondent's improper conduct, which may or may not be sufficient to support a conviction for a criminal offence.

(b) "For the doctrine of *autrefois* to apply, it is necessary that the accused should have been put in peril of conviction for the same offence as that with which he is then charged. The word offence embraces both the facts which constitute the crime and the legal characteristics which make it an offence." Connelly v. D.P.P. (1964) AC 1254, per Lord Devlin, at p. 1339.



(2) issue estoppel/res judicata

It was contended, for the Appellant, that the matters raised against him in the second proceedings could and should have been raised in the first proceedings. The Respondent asserted before the High Court, and says in this Appeal, that the Respondent was bound and/or entitled to proceed as it did, on the following grounds, inter alia:

(i) On the 20th July 1978, the Appellant was informed that there was to be an investigation by a DC, the first DC, into the delay charge.

(ii) As of that date, criminal proceedings had been initiated against the Appellant for accepting restitution of monies in consideration of the concealment of S's offences. When the first DC was appointed, there was no knowing when those criminal

proceedings would be concluded, still less what their outcome would be.

(iii) The Respondent acted properly in requesting the Chief Justice to appoint the first DC, notwithstanding the then subsisting criminal proceedings against the Appellant.

(iv) Some 4 months after the first DC was appointed, namely on the 7th November 1978, the Appellant was convicted. The IC promptly informed the Appellant on the 13th November 1978 that it would inquire into his convictions and did so on the 19th November 1980. By this time the investigation by the first DC into the delay charge had concluded, and the Respondent had no option but to apply for the appointment of the second DC to investigate the conviction charge.

(v) The second DC was appointed while the Appellant's appeal against conviction was in progress. The second DC quite properly postponed its investigation until the Appellant had exhausted all avenues of appeal, before it proceeded with its investigation.

(vi) Once the first DC had reported adversely against the Appellant on the delay charge, the Respondent was bound to proceed with its application to show cause - S. 94(1) of the Act - notwithstanding the appointment of the second DC.

(vii) There was no impropriety in the appointment of two DC's, nor was there any impropriety in the Respondent's application that the Appellant be required to show cause arising from the first DC's adverse finding, without awaiting a determination by the second DC into the convictions charge. Once the

first DC had been appointed, as it rightly was, and once it had reported to the Respondent its determination that the Appellant had been guilty of dishonourable conduct, it was entirely proper that the Appellant should be called upon to show cause, irrespective of the fact that the second DC had yet to report.

(viii) The first and second proceedings were initiated and conducted in compliance with the requirements of the Act, and in the public interest. This was not a case in which matters which were raised in the second proceeding "could and should" have been raised in the first proceeding. It was neither possible nor feasible for the Respondent to have "brought forward its whole case" in the first proceeding.

- (3) the inherent jurisdiction to  
stay on the grounds of oppression

Assuming that it exists, the discretion to stop a second trial on the grounds of oppression is one that is exercised sparingly, and only in exceptional circumstances, as when the second trial is vexatious, oppressive or amounts to an abuse of the process.

The second proceeding did not fall into any of these categories. In the events that happened it was not vexatious, oppressive or an abuse of the process for the second proceeding to have been initiated and prosecuted to a conclusion in the manner that it was.


- (4) The Respondent submits that it is reprehensible enough when an Advocate and Solicitor suppresses or conceals the fact that another in his employment has committed a criminal breach of trust of Clients' monies.

It is worse when the offence has been suppressed or concealed in consideration of the suppressor's own interest in recovering the monies, reckless of the public interest and the interests of the profession. The Respondent submits that the convictions clearly implied a defect of character of the type contemplated by section 84(2) (a) of the Act.

#### THE SENTENCE

41. The Appellant was suspended for two years arising out of his convictions. It is a fair assumption that the High Court, in imposing that suspension, took into account the earlier suspension of two years arising out of the delay charge, and concluded that suspension for a total of four years for the Appellant's conduct for the period March 1976 to November 1978, during which the events described at paragraphs 4 to 27 of this Case unfolded, was appropriate. The Appellant was one of the Court's most senior

officers, the President of the Respondent Society at all material times, and was a person from whom the Court was entitled to expect complete propriety in his professional conduct.



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J. GRIMBERG

THE SCHEDULE

A. The First Proceeding  
(delay charge)

B. The Second Proceeding  
(convictions charge)

March 1978 - Letter IC to  
Respondent.  
IC to enquire  
into delay.

May 1978 - Respondent  
gives written  
explanation  
and appears  
before IC.

6.6.1978 - Respondent  
charged with  
9 charges of  
concealment.

20.7.1978 - Respondent  
informs  
Appellant that  
it is applying  
to the Chief  
Justice for  
appointment of  
DC.

7.11.1978 - Respondent  
convicted of  
8 out of the  
9 charges,  
and appeals.



A. The First Proceeding  
(delay charge)

13.12.1978 - CJ appoints  
DC to  
investigate  
charge of  
delay.

14.3.1979 - Law Society  
delivers  
Statement of  
Case.

B. The Second Proceeding  
(convictions charge)

13.12.1978 - IC writes to  
Respondent  
informing him  
of its  
intention to  
inquire into  
convictions,  
and inviting  
explanations.

30.3.1979 - IC writes to  
Respondent  
repeating  
request for  
explanations.

A. The First Proceeding  
(delay charge)

23.6.1980 - Respondent  
informs DC  
that he is  
applying for  
special leave  
to appeal  
against  
convictions.

14.7.1980 - DC fixes  
23.9.1980 as  
date for its  
investigation  
into delay.

B. The Second Proceeding  
(convictions charge)

12.4.1979 - Respondent  
requests  
postponement of  
Inquiry into  
convictions  
until his  
appeal against  
convictions  
concluded.

14.5.1979 - IC hearing on  
convictions.

12.3.1980 - Appeal against  
convictions  
dismissed.

A. The First Proceeding  
(delay charge)

B. The Second Proceeding  
(convictions charge)

1.9.1980 - Application for  
special leave  
to appeal to  
Court of  
Criminal Appeal  
dismissed.

23.9 to

2.10.1983 - Investigation  
by DC into  
delay.

19.11.1980 - DC reports.  
It finds that  
cause of  
sufficient  
gravity  
exists for  
disciplinary  
action  
against  
Appellant.

2.1.1981 - Respondent  
informs  
Appellant  
that DC is to  
be appointed  
to investigate  
convictions.

A. The First Proceeding  
(delay charge)

B. The Second Proceeding  
(convictions charge)

12.1.1981 - Appellant fails  
in application  
to Court of  
Criminal Appeal  
for leave to  
appeal.

15.1.1981 - Appellant  
requests  
Respondent to  
postpone  
application  
to Court for  
Order requiring  
Appellant to  
show cause  
until DC  
investigating  
convictions  
has reported.

21.1.1981 - Respondent  
rejects  
Appellant's  
request.

20.5.1981 - Privy Council  
rejects  
Appellant's  
application for  
special leave  
to appeal  
against  
convictions.

A. The First Proceeding  
(delay charge)

27.8.1981 - Appellant  
suspended for  
2 years for  
delay.

13.7.1982 - Appeal to  
Privy Council  
dismissed.

26.8.1983 - Two year period  
of suspension  
ends.

B. The Second Proceeding  
(convictions charge)

26.8.1981 - DC reports on  
convictions and  
finds cause of  
sufficient  
gravity for  
disciplinary  
proceedings.

17.9.1982 - Appellant  
ordered to show  
cause under S.

22,

23.2.1983 - Hearing before  
High Court  
which reserves  
judgment.

A. The First Proceeding  
(delay charge)

B. The Second Proceeding  
(convictions charge)

31.1.1984 - High Court  
suspends  
Appellant for  
2 years arising  
out of  
convictions.

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Between

H.L. WEE

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CASE FOR THE RESPONDENT

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JG

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DREW & NAPIER  
SINGAPORE

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1984.