Subbiah Pillai v Wong Meng Meng and Others
[2000] SGHC 212

Case Number : OS 1172/2000

Decision Date : 23 October 2000

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Cheong Yuen Hee and Subbiah Pillai (Pillai & Pillai) for the plaintiff; CR Rajah SC and Chew Kei-Jin (Tan Rajah & Cheah) for the defendants

Parties : Subbiah Pillai — Wong Meng Meng

Administrative Law – Natural justice – Whether rules of natural justice breached in conduct of proceedings – Whether interview of complainant must be conducted in plaintiff's presence – Whether refusal to grant extension of time for filing of submissions unreasonable

Legal Profession – Disciplinary procedures – Inquiry Committee – Interview of witnesses – Disclosure to person under investigation – Procedure

Legal Profession – Disciplinary procedures – Inquiry Committee – Inquiry into complaints – Reasonable notice – s 86(8) Legal Profession Act (Cap 161)

: This was an application by Subbiah Pillai, an advocate and solicitor, to nullify the proceedings of the Law Society`s Inquiry Committee No 45 of 1999. The defendants are members of the Inquiry Committee. Mr Pillai alleged that the rules of natural justice were not observed in the conduct of the proceedings. The proceedings commenced with a letter dated 18 November 1999 from the chairman of the Committee, Mr Wong Meng Meng, to Mr Pillai informing him that a complaint had been lodged against him by Mr S Shanmugam and Madam S Sudhendra in a letter dated 10 August 1999 which I shall refer to as `Mr Shanmugam`s letter` for convenience.

The complaint related to Mr Pillai`s conduct as solicitor for the complainants in their purchase of 19 and 21 Upper Dickson Road (`the property`). It appears from Mr Shanmugam`s letter that he (Mr Shanmugam) was unable to service the bank loan that he had taken for the purchase of the $4.5m property. Mr Pillai then offered to buy the property in his (Mr Pillai`s) sister`s name. His sister was then studying the in United States of America. Mr Pillai then informed the bank`s solicitors that his sister had paid the ten (10) per cent deposit and it was held by his firm, Yong Koh & Pillai. Mr Shanmugam alleged that no deposit was in fact paid by Mr Pillai`s sister (Miss Vasanthi Pillai). He also alleged that from the completion accounts he learnt that he was made to pay the stamp fees for Miss Vasanthi when he had not agreed to do so, and neither did he agree to a direct debit of $12,564.80 to Yong Koh & Pillai. There was also a complaint that Mr Pillai completed the initial purchase before the Temporary Occupation Permit (TOP) was issued.

The second part of Mr Shanmugam`s complaint was that Mr Pillai subsequently told him that his sister would not be purchasing the property after all and, threatening him with violence from gangsters, forced Mr Shanmugam to re-purchase the property. Mr Shanmugam pleaded with Mr Pillai to allow his (Shanmugam`s) brother to take over as purchaser. His brother consequently signed three purchase agreements as purchaser and Miss Vasanthi as vendor. These agreements were witnessed by Mr Pillai. Mr Shanmugam also suspected that Miss Vasanthi`s signature might be forged because she was not in Singapore at the material times.

Mr Shanmugam`s complaint was written in a rambling style and was insufficiently detailed. It was not a complete story. For example, it was not known from this letter whether the sale of the property was eventually completed. It was also not apparent how much he sold the property for and how much

his brother paid to purchase it from Miss Vasanthi. Nonetheless, it carried aspersions of a sufficiently serious nature to require an explanation from the solicitor concerned.

On 2 December 1999 Mr Pillai gave his written explanation. He qualified his explanation by saying that he had not received the file from his former firm Yong Koh & Pillai. Mr Pillai`s position was that he was introduced to Mr Shanmugam in early 1994 by a mutual friend. He was asked to help Mr Shanmugam purchase the property, but he passed the matter to his partner Mr Patrick Koh because he had never done any conveyancing work at all. He had no knowledge of what transpired thereafter as he was not in Singapore most of that time. Mr Pillai also asserted that it was obvious from the documentary evidence that Mr Shanmugam was aware that a TOP was necessary.

Mr Pillai stated that Mr Shanmugam had to sell the property so soon after buying it because he had run into debt. He denied agreeing to buy the property from Mr Shanmugam who, after that, approached Mr Pillai`s mother directly for help. Mr Pillai`s mother then asked his sister Vasanthi to purchase the property. He stated that his sister, being a lawyer herself, imposed certain conditions on Mr Shanmugam. These included a `buy-back` clause. He stated that his sister was led to believe that her mortgage payments would be met by rentals of $25,000 a month which Mr Shanmugam would pay to her; a promise unfulfilled. Thus, a frustrated Miss Vasanthi decided to exercise her right to demand that Mr Shanmugam buys back the property. I have set out the nature of the complaint in order to cast this action in its context. The merits of the complaint are of no importance in the proceedings before me.

The Inquiry Committee (the `Committee`) scheduled a meeting with Mr Pillai and his counsel Mr Cheong Yuen Hee on 25 February 2000 at Mr Wong Meng Meng`s office. Mr Pillai stated in his affidavit of 7 August 2000 that the complainants (Mr Shanmugam and Madam Sudhendra) were also present and were interviewed by the Committee for about an hour in a separate room. The Committee then interviewed Mr Pillai (accompanied by Mr Cheong) in the presence of Mr Shanmugam.

The Committee then interviewed Miss Vasanthi and examined her passport. Mr Pillai was questioned again after her. Mr Pillai asserted that at this meeting on 25 February 2000 the Committee `did not touch upon any question of possible misconduct on my part arising out of the fact that my sister had purchased the properties from the complainants and their subsequent re-sale to Mr Shanmugam`s brother`. A second meeting was held on 20 April 2000 at Mr Wong`s office. The complainant and his counsel also attended this meeting. Mr Pillai was orally asked to submit his written submission by 10 May 2000. The complainants` counsel Mr Nathan, informed Mr Wong Meng Meng that his clients had a complaint against Mr Pillai concerning money lending which was set out in a handwritten letter to the Law Society dated 16 July 1999. Mr Wong told him that he should have the letter transcribed before the Committee will consider it.

On 24 April 2000 the Committee wrote to the complainants and Mr Pillai to submit their written submissions. In addition, it requested Mr Pillai to make his submissions in respect of the question of a conflict of interests in acting for the complainants and his own sister in the sale of the properties. Mr Pillai`s counsel submitted a written submission dated 10 May 2000 to address all the issues raised thus far, including the question of a conflict of interests. He complained, however, that Mr Pillai felt aggrieved that unknown to him, the complainant`s counsel had also sent a written submission to the Committee.

On 25 July 2000 the Committee held the third meeting with Mr Pillai and his counsel at Mr Wong Meng Meng`s office. Mr Cheong submitted that the Committee unfairly confronted Mr Pillai with documents he had never seen before. These concerned the sale and purchase of Mr Shanmugam`s house at 30 Woodsville Close. He was also asked to explain matters not related to Mr Shanmugam`s original

complaints. Further, Mr Wong Meng Meng took out the letter dated 16 July 1999 written by Mr Shanmugam to the Law Society complaining against Mr Pillai. The letter was now in a type-written form as directed by Mr Wong previously. In this complaint Mr Shanmugam alleged that Mr Pillai was introduced to him by a Mr Leow as a money lender. He borrowed $95,000 from Mr Pillai. It was later explained by the complainants that this loan was for the purchase of 19 and 21 Upper Dickson Road. A signed statement from Mr Leow was also produced. When Mr Wong realised that the Committee had inadvertently failed to send copies of these documents to Mr Pillai, he provided them straightaway.

Mr Cheong challenged the Committee`s jurisdiction to inquire into these matters. It is not quite clear to me what the basis of his challenge was. He seemed to think that the matter constituted a fresh complaint and must be properly referred to Mr Pillai as such; at the same time he also believed that the matter could not be delved into at that stage because it had already been considered by the Council of the Law Society and discarded. Mr Wong maintained that the Committee had jurisdiction, but nonetheless invited Mr Cheong to present his arguments on the question of jurisdiction by 3 August 2000. It was made clear to Mr Pillai and Mr Cheong that they need not respond on the merits until the jurisdiction point was settled. A further meeting was scheduled to be held 13 days later on 7 August 2000 with the agreement of Mr Cheong and his client. On the next day, 26 July 2000, Mr Pillai wrote to the Committee himself asking for various particulars, including when the Committee received Mr Shanmugam`s letter of 16 July 1999, and at the same time asked for an extension of time for submitting his arguments. Mr Wong had, in the meantime, left the country and Mr Pillai`s request was not considered. Instead, Mr Wong`s secretary wrote to say that Mr Wong will attend to it when he returns in a week`s time. Mr Wong subsequently wrote to Mr Pillai by letter dated 1 August 2000 setting out his recollection of what transpired at his office on 25 July 2000. A further meeting with the Committee was fixed for 7 August 2000 at Mr Wong`s office. In the morning of 7 August 2000 Mr Pillai filed this action in court and intimated to the Committee that he would not be attending the meeting that day because he considered the Inquiry Committee`s proceedings against him to be null and void. The Committee nonetheless proceeded with the proceedings and, after noting Mr Pillai`s absence, went ahead and prepared its report to the Council of the Law Society. In its report, it recommended that a formal inquiry be instituted against Mr Pillai in respect of the complaint dated 10 August 1999. It also made a similar recommendation in respect of the 10 July 1999 complaint (`the money lending complaint`).

Before me Mr Cheong argued that the rules of natural justice were breached when the Committee held discussions with Mr Shanmugam the complainant, without Mr Pillai`s presence. He also alleged that the Committee was unfair in giving a copy of his written explanation of 2 December 1999 as well as his submission of 10 May 2000 to the complainant. Mr Cheong further asserted that it was also improper for the Committee to invite the complainant to send in his written submission on 10 May 2000, and using that submission to question Mr Pillai. Similarly, he argued that it was contrary to the principles of natural justice for the Committee to rely on the complainant`s letter of 16 July 1999, and a subsequent statement of a witness (Mr Leow) to question Mr Pillai about the allegation of money lending. Mr Cheong argued that the 16 July 1999 letter was initially discarded by the Law Society, but found its way into the bundle of documents despatched to the Committee. He argued that the Committee had no right to refer to that letter especially when a copy was not given to Mr Pillai.

Mr Cheong referred to a host of authorities setting out the requirements of natural justice in disciplinary proceedings, and stressed how abhorrent it is for a tribunal to listen to a witness or a party in the absence of the other. Mr Chelva Rajah SC appearing on behalf of the Committee submitted that those authorities concerned proceedings before a disciplinary tribunal and not proceedings before an inquiry committee save for **Re Pergamon Press** [1971] Ch 388[1970] 3 All ER 535 which was quickly distinguished, by Mr Rajah, on the ground that in that case the inspectors` report would be published and that would lead to action being taken against the directors concerned,

and that, therefore, those directors ought to be given an opportunity to address the inspectors` findings before they were published. Mr Cheong also referred to my decision in **Re Low Fook Cheng Patricia (A Solicitor)** [1999] 2 SLR 326 . In that case the chairman of an Inquiry Committee spoke to a witness privately. Subsequently the Inquiry Committee made a specific finding that Miss Low had misconducted herself in that `she did very little (if at all) to request for an extension of time for her client` to vacate certain premises. The Inquiry Committee recommended to the Law Society that she be fined $1,000. She was in fact fined by the Law Society for a smaller sum. She was not given the opportunity of addressing the Inquiry Committee about the evidence provided privately by the witness to the chairman because she did not know that the conversation had taken place until after the inquiry was over. But more importantly, what the witness said corroborated Miss Low`s written explanation to some extent and she might have been given the benefit of the doubt were she given the opportunity to address the Committee. The Inquiry Committee there went ahead and made a final and conclusive finding that was acted upon by the Council. The fine imposed on Miss Low had to be set aside in those circumstances because she was prejudiced. In the instant case, Mr Rajah referred to a number of cases which supported the view that the rules of natural justice do not apply in an inquiry-type setting such as the proceedings of the Committee here. In **Seet Melvin v Law Society of Singapore** [1995] 2 SLR 323 , the Court of Appeal reinforced the principles enunciated in two other Court of Appeal cases, namely, **Whitehouse Holdings Pte Ltd v Law Society of Singapore** [1994] 2 SLR 476 , and **Law Society v Chan Chow Wang** [1972-1974] SLR 636 [1975] 1 MLJ 59 . In the last case, the court relied on the Privy Council case of **Furnell v Whangarei High Schools Board** [1973] AC 660[1973] 1 All ER 400 as being highly relevant.

It is important to examine, briefly, the structure of the Law Society`s disciplinary process. A complaint against an advocate and solicitor must be made to the Council of the Law Society which will then refer it to the chairman of the Inquiry Panel (the panel is established under s 84 of the Legal Profession Act (Cap 161)) and inform the solicitor concerned accordingly. The chairman will constitute an Inquiry Committee from members in the panel. The Committee is bound to commence its inquiry into the complaint within two weeks of its appointment. It will then have to report to the Council the result of its findings. The nature and complexity of the complaint will largely determine when the report is submitted. The guidelines and deadlines are set out in ss 86(1) to (4) of the Act. If the Committee is of the view that the solicitor should answer any allegation it is bound by s 86(1) to deliver a copy of the relevant complaint or information touching on his misconduct to the solicitor and invite him to give a written explanation within 14 days, and inform the Committee whether he wishes to be heard. After it has completed its inquiry, the Committee shall report of its findings to the Council and may recommend to the Council that the complaint be dismissed or an appropriate penalty be imposed on the solicitor concerned. It may also report that a formal investigation by the Disciplinary Committee (appointed by the Chief Justice under ss 89 and 90) is necessary. The nature of the process before the Disciplinary Committee is largely adversarial in character. A charge (or charges) is preferred against the solicitor and counsel representing the Law Society will present its case before the Disciplinary Committee. Parties are entitled to issue subpoena against any witness they require; and all witnesses are subject to examination on oath. On completion of the proceedings, the Disciplinary Committee reports its findings to the Chief Justice and the Law Society, and shall in its report record its findings of fact and determine whether there is no cause of sufficient gravity against the solicitor; or that although no cause of sufficient gravity for disciplinary action exists the solicitor ought nonetheless be reprimanded; or that there is cause of sufficient gravity to warrant disciplinary action. In that last situation, proceedings against the solicitor will commence with the view of requiring him to show cause before a court of three judges why he should not be disciplined (by censure, suspension or a striking off).

The disciplinary process against an advocate and solicitor is thus a careful and deliberate undertaking. There will always be the simple straightforward cases which should be dealt with swiftly; similarly,

there will always be complex or difficult ones which will require an investment in time and effort. The Act accommodates both these situations. However, it is in respect of the serious and complicated cases that the dichotomous approach is most needed and best appreciated. In such cases there is first an investigative stage to determine if there is any misconduct to be prosecuted; and if so, the matter then passes to the second - the prosecution - stage. The two stages are kept distinct by dint of their different functions and the desirability of separating the investigator`s role from that of the prosecutor`s so that each will ever maintain a sense of objectivity in their respective tasks.

It is against that background that we must examine the work of the Inquiry Committee. It`s 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. Although the Inquiry Committee may not have the power to summon witnesses itself, it is entitled to consider statements from anyone.

In order that it may discharge its duties effectively, the Inquiry Committee is empowered to call such meetings and conduct such inquiries in the manner it deems fit. It is not restrained by strict rules of procedure, or regulations as to how it is to carry out its work which includes the evaluation of the evidence. It may also find it necessary to interview witnesses. Mr Cheong vehemently asserted that the solicitor in question has a right to be present whenever the Committee speaks to a witness. I think that that demand may be too prohibitive because, generally, the Inquiry Committee`s work has been described as inquisitorial, not adversarial, that it is investigative in nature and not prosecutorial. However, it also has the power to make important recommendations which may lead to the imposition of penalties on the solicitor concerned as was the case in ***Low Fook Cheng*** . In those circumstances, the solicitor must have the opportunity of addressing the point and not be condemned by a hidden dagger. In the present case, the Committee spoke to the complainants but it was done openly, without concealment. Given the complicated facts, and bearing in mind the complexity of the disciplinary structure and process, I do not think that the Committee had breached the rules of natural justice. Mr Cheong also made the point very strongly that Mr Pillai felt that the Committee was biased against him. I agree with him that a tribunal which has to adjudicate between two opposing parties must not only be impartial but also appear so, and no solicitor ought to walk away from an inquiry feeling that the panel was biased against him. But it is important to first ascertain whether the allegation of bias was reasonably made. I am also mindful that although an investigative body must act with a sense of fairness and decency, one sometimes see a glint of the hard side to the investigator or inquirer, but this stems from the nature of its work. It is not unreasonable to expect a fact finding inquirer to be skeptical of the stories of those he has to interview. 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. The Committee is obliged to make a full report to the Council, and the latter is entitled under the Act to remit the matter back to the Committee for further inquiry if it is not satisfied with the report. Thus, ultimately, the Committee must report facts which are sufficiently reliable to support its recommendation. 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.

The duty of the Committee can only be discharged properly if there is co-operation from the solicitor in question. The solicitor is certainly entitled to say that he does not wish to respond; but in that case he reaps whatever that silence may sow. But if he does respond or feels a need to respond, he should do so with utmost candour. The inquiry is not adversarial in character and he need not treat it as such. He should provide as clear an explanation as he can (after all, if he has no explanation it is unlikely that anyone else will have) and ask for details where he reasonably feels hampered without them; the reasonableness of the request depends on the facts of each case. An open and candid inquiry ought to be the norm because there are wider interests in the balance; interests which are greater than that of the Committee`s, the Law Society`s, and the solicitor`s; it is the interests of the public which the profession has dedicated itself to serve.

I turn to the law. Mr Cheong`s submissions refer mainly to the rule of natural justice that eschews the condemnation of a person without giving him a chance to be heard. But as has been stated in the ***Seet Melvin*** , ***Chan Chow Wang*** and ***Whitehouse Holdings*** cases, the Inquiry Committee sits to conduct an inquiry. It does not either condemn or criticize. Mr Cheong relied on ***Seet Melvin*** `s case and argued that because the court there ruled that a complainant was not entitled to a right to an oral hearing it must follow that he cannot be entitled to a copy of the solicitor`s written submission. With respect, I think that he had perhaps either overlooked or undervalued the key statement which preceded the passage he relied on. That is found at p 341 of the court`s judgment in ***Seet Melvin*** (approving the point made in ***Chan Chow Wang*** ). It states: `The requirements of natural justice must depend on the particular circumstances of each case and the subject matter under consideration`. The point implicit in the context of that case is that whether the complainant was allowed an oral hearing is a matter for the Committee to decide. It is fair to say that had the Committee there thought fit to hear the complainant, it would not have been a wrong exercise of its discretion unless there were good reasons to conclude that in doing so it would have been acting in an unfair manner. The principle laid down in the cases cited by Mr Rajah is that so long as the tribunal conducting an inquiry or investigation acts within the scope of its discretion the rules of natural justice do not apply. Within that limited scope, the tribunal is master of its own procedure.

Furthermore, the facts presently do not justify Mr Pillai`s claim. Contrary to the protests of Mr Cheong, the evidence before me shows that every document that the Committee wanted to consider was given to Mr Pillai, who had, at all material times, the company and comfort of his counsel. There was a moment when the Committee referred to documents which had not yet been given to Mr Pillai, but as soon as it came to know of it, the wrong was redressed, and Mr Pillai was put in no worse position because he was given time to provide any explanation he wished.

As I have stated, the merits of the complaint are unimportant to me in these proceedings, but it is relevant to note that the documents were drafted in such a way that it is not easy to understand what constituted the crux of the complaint. That is not to say that the complaint therefore has or has not any merit, but simply that it justified the Committee in seeking views from both sides by way of submissions since the complainant and Mr Pillai were represented by counsel. The matter was a complex and serious one. For example, at one point the Committee appeared to think that Mr Pillai might have acted in conflict of interests in acting for the complainant as well as his own sister; but if the allegations are true, the real conflict of interests may lay with Mr Pillai acting for a client while advancing his own personal interests. This is a prominent example of the many tangled aspects of the complaint that must be probed and clarified; and that duty lay with the Committee and no one else.

Finally, I shall address the allegation that the Committee breached the rule of natural justice which required it to give proper notice of the moneylending complaint. Mr Cheong`s first point here was that the Committee had no jurisdiction to hear a complaint that stems from a letter which had previously

been discarded by the Council and did not form part of the complaint being inquired into. Secondly, he argued that the Committee was unfair in not granting his client an extension of time to make submissions on the jurisdiction point. It will be remembered that the money lending complaint emerged from a combination of the allegations set out in the complainants` letter to the Law Society dated 16 July 1999 and his counsel`s written submission of 10 May 2000. These documents were first examined by the Committee in the course of the inquiry. In the last meeting between the Committee, Mr Cheong and Mr Pillai, that is 25 July 2000, Mr Wong Meng Meng told Mr Cheong that the Committee had the power to inquire into the matter under s 86(8) of the Act. Nonetheless, he informed Mr Cheong that the Committee would like to have his submission only in respect of the jurisdiction point by 3 August 2000. He told Mr Cheong and Mr Pillai that if the Committee did not accept Mr Cheong`s submission on the jurisdiction point a further meeting would be conducted on 7 August for Mr Pillai to answer the allegation of money lending. Mr Cheong and Mr Pillai left the meeting of 25 July on that note, but on the next day Mr Pillai wrote to the Committee asking for details relating to how the Committee came into possession of the money lending documents. Mr Wong`s secretary replied to say that Mr Wong was away and will reply when he returned in a week`s time. Mr Pillai then wrote asking for an extension of time to submit on the jurisdiction point. A message was conveyed to him that Mr Wong did not think that his absence would hinder Mr Cheong and Mr Pillai in the preparation of their submission. On 31 July 2000 Mr Pillai wrote to inform Mr Wong Meng Meng that because his request for particulars and an extension of time were rejected he would be commencing legal proceedings to declare the inquiry null and void, and that he would `cease to participate further in the inquiry until further notice`. Mr Wong wrote a lengthy reply disputing various interpretations of the events. He also stated that the reasons given by Mr Pillai for wanting an extension of time were not acceptable to him and that his decision remains unless Mr Pillai is able to `set out fully and clearly the grounds for an extension of time`. He then reminded Mr Pillai that the Inquiry Committee will convene again on 7 August 2000 `subject to any order of court that Mr Pillai may obtain`. He also informed Mr Pillai that by reason of the many delays in the inquiry he had sought an extension of time from the Chairman of the Inquiry Panel for the Committee to submit its report. The Chairman had agreed and the Committee`s deadline was extended to 30 August 2000. Mr Pillai wrote again on 2 August reiterating that he will not participate in the inquiry any further. On 7 August he wrote again to inform the Committee that he had commenced this action. Mr Wong wrote to Mr Pillai to tell him that on 7 August 2000 the Committee waited for him until 5.45pm before proceeding its deliberations in his absence, and that the Committee would proceed to prepare its report subject to any court order that he might obtain.

Before me Mr Cheong argued that the Committee had no jurisdiction to refer to the money lending allegation because it was not a new complaint. He submitted that the Law Society had the relevant complaint dated 16 July 1999 in its possession even before the present inquiry started. He also submitted that the Committee`s refusal to grant Mr Pillai an extension of time was unreasonable and in breach of natural justice. His basis was that without the information they asked for it was not possible for Mr Pillai to prepare his submission. In my view, the Committee was entitled to ask Mr Pillai to explain the allegation of money lending. Whether a document had been seen by the Council of the Law Society was of no relevance to the Committee. Its duty was to inquire into whatever complaint it was directed to inquire, which in this case was the complaint dated 10 August 1999. In the course of its inquiry its attention was drawn to the other complaint by the same complainant, that is the 16 July 1999 complaint. The Committee was entitled under s 86(8) of the Act to inquire into that complaint as well provided it gives notice to the solicitor concerned. In this case, all the relevant documents relating to this complaint had been given to Mr Pillai and a date was given for him to meet with the Committee.

Mr Cheong then argued that notice must mean notice under s 86(6)(ii) of the Act which states as follows:

(6) Where an Inquiry Committee is of the opinion that an advocate and solicitor should be called upon to answer any allegation made against him, the Inquiry Committee shall -

(a) post or deliver to the advocate and solicitor concerned -

(i) copies of any complaint or information touching upon his conduct and of any statutory declarations or affidavits that have been made in support of the complaint or information; and

(ii) a notice inviting him to give within such period (not being less than 14 days) as may be specified in the notice to the Inquiry Committee any written explanation he may wish to offer and to advise the Inquiry Committee if he wishes to be heard by the Committee;

(b) allow the time specified in the notice to elapse;

(c) give the advocate and solicitor concerned reasonable opportunity to be heard if he so desires; and

(d) give due consideration to any explanation (if any) given by him.

Section 86(8) does not specifically refer to a notice under s 86(6)(ii) and there are good reasons why that may be so. In a s 86(6) situation a solicitor is notified for the very first time of an allegation of misconduct so a fixed statutory period was given as representing a reasonable time for him to respond. Section 86(8) concerns matters arising after the inquiry had begun, and these can concern matters which may only require a short and quick answer. They may, of course, concern different and even more complicated matters than the original complaint. In the circumstances, in my view, the legislature had left it to the discretion of the Committee to decide what is a reasonable notice. In this case, notice was given to Mr Pillai on 25 July for a response to be made by 7 August. It was just short of the 14 days. It is arguable whether this was reasonable time given the nature of the allegation, but Mr Pillai never addressed this point. Instead, he took the view that the Committee had no right to make him answer that allegation. However, he agreed with the Committee to make his submission on the jurisdiction point first. Even that point was eventually not made because Mr Pillai withdrew himself from the inquiry. Under these circumstances, can the Committee be faulted for proceeding without him? I think not. Would it be unfair to Mr Pillai if the Committee is now adjudged to have had the jurisdiction to inquire into the moneylending complaint, but Mr Pillai could no longer address the merits because the Committee`s report had already been submitted? I think not. A supplicant who wants to bring the sword of justice down on the respondent must himself not get in the way lest he be knocked over by the swinging blade. The Council may yet be kind to Mr Pillai and remit the matter back to the Committee to inquire whether he has anything to say about that complaint.

Even if the notice under s 86(8) is the same notice under s 86(6)(ii) in my view, it is not an inflexible provision, the breach of which does not necessarily nullify the proceedings. Time limitations are provided by the legislature for a variety of reasons and each provision must be examined in its own context. In this case, s 86(6)(ii) was to benefit the solicitor. He, however, is at liberty to waive that time allowance and inform the Committee that he required less. In this instant case, Mr Pillai had, by his conduct, indicated to the Committee that notice was no longer relevant to him.

In respect of Mr Pillai`s request for an extension of time, I am of the view that the response by the Committee was not unreasonable. No real or substantially new matter had arisen after Mr Cheong had agreed to make his submission by 3 August other than Mr Wong being away and the Committee`s rejection of Mr Pillai`s request for particulars. Since Mr Pillai was unable to say why the particulars were relevant to the jurisdiction point, I can only conclude that those particulars could not have been relevant and were merely bait. Mr Pillai had therefore denied himself the opportunity of giving his explanation to the Committee on the moneylending allegation. He had simply taken a miscalculated risk.

In my view, there are no grounds for declaring the Inquiry Committee`s proceedings null and void and Mr Pillai`s application is thus dismissed with costs.

Outcome:

Application dismissed.