Subbiah Pillai v Wong Meng Meng and Others
[2001] SGCA 50

Case Number : CA 143/2000

Decision Date : 20 July 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Teh Guek Ngor Engelin SC and Sim Yuan Po Thomas (Engelin Teh & Partners) for the appellant; Chelva Rajah SC and Chew Kei-Jin (Tan Rajah & Cheah) for the respondents

Parties : Subbiah Pillai — Wong Meng Meng

Legal Profession – Disciplinary procedures – Inquiry committee proceedings – Nature of inquiry committee proceedings – Whether natural justice applicable to proceedings – Requirements of natural justice – Whether fairness breached by inquiry committee – Whether witness must be interviewed in presence of solicitor under inquiry – Whether inquiry committee required to invite or allow written submission in support of complaint – Period of notice to be given to solicitor regarding complaint – ss 86, 88 Legal Profession Act (Cap 161, 2000 Ed)

(delivering the judgment of the court): This appeal raises the question as to the proper procedure to be observed by an Inquiry Committee of the Law Society of Singapore appointed to inquire into a complaint lodged by a client against an advocate and solicitor. This, in turn, involves an examination of the extent to which, and how, the rules of natural justice apply in the context of the scheme for disciplinary action prescribed under the Legal Profession Act (Cap 161, 2000 Ed) (`the Act`).

The appellant was the subject of such a complaint. Half way through the proceedings of the Inquiry Committee (`IC`), the appellant commenced action by way of an originating summons (`OS`) to challenge the manner in which the IC went about its task and asked the court to nullify the proceedings. Members of the IC were cited as defendants. At the hearing below, the judicial commissioner did not think, having regard to the essential nature of the IC, that it had, in the way it went about its task, infringed the rules of natural justice. Thus, this appeal by the appellant.

The facts

By a letter dated 10 August 1999, Mr S Shanmugan and Mdm S Sudhendra (`the complainants`) lodged a complaint against the appellant in relation to the latter`s conduct as the solicitor for the complainants in their purchase of two properties (Nos 19 and 21 Upper Dickson Road). The complaint was referred to the IC, chaired by Mr Wong Meng Meng, SC (hereinafter referred to as `IC Chairman` or `Mr Wong` as may be appropriate in the context). On 18 November 1999, the IC Chairman informed the appellant of the complaint and furnished him with a copy of it. On 2 December 1999, the appellant gave his written explanation.

The IC scheduled a meeting for 25 February 2000 at the IC Chairman`s office. The appellant appeared with his then counsel, Mr Cheong Yuen Hee. On that day, the IC interviewed Mr Shanmugan first for about an hour in a conference room while the appellant and his counsel were waiting in an adjacent room. Later, the IC interviewed the appellant in the presence of Mr Cheong, as well as Mr Shanmugan. This was followed by the IC interviewing Mr Shanmugan again after the appellant and Mr Cheong had left the room. No exception was then taken that the IC had interviewed Mr Shanmugan in private.

On 20 April 2000, there was a second meeting of the IC at Mr Wong`s office. The appellant and his

counsel were present. So were the complainant Mr Shanmugan and his counsel. The IC heard the appellant`s former partner, Mr Patrick Koh, as well as the appellant`s sister, Vasanthi Pillai. The appellant was asked to make his written submission by 10 May 2000. At the meeting, the complainants` counsel further informed the IC of an earlier complaint, in a letter dated 16 July 1999, which the complainants had made against the appellant relating to certain moneylending activities of the appellant (`moneylending complaint`). Mr Wong directed that the letter, which was handwritten, be transcribed before the IC could consider it. This was done on 24 April 2000. The complainants` solicitors also furnished the IC with a statement of a Mr Leow Kok Keng, supporting the allegations in the moneylending complaint.

Also on 24 April 2000, the IC gave written notice to the complainants and the appellant to make their written submission by 10 May 2000. In another notice of the same date, the IC further asked the appellant to submit in respect of the question of conflict of interest in relation to the fact that the appellant acted for both the complainants and the appellant`s sister in the sale of the two properties. The appellant made his submission on 10 May 2000. So did the complainants.

The third meeting of the IC was held on 25 July 2000. The aim of scheduling this meeting was to enable the IC to clarify matters raised in the written submissions of the parties. The appellant and Mr Shanmugan and their respective counsel were present. Queries were put by the IC to the parties, including queries to the appellant based on points raised in the complainants` submission. At this meeting, Mr Wong also brought up the letter of 16 July 1999. When Mr Wong realised that a copy of this letter and the statement of Mr Leow were inadvertently not furnished to the appellant, this was done straightaway. Mr Cheong complained to the Committee about being confronted with documents he had never seen before, which concerned the sale and purchase of Mr Shanmugan`s house at 30 Woodsville Close and being asked to explain matters unrelated to the complaint under inquiry. Mr Cheong also objected to the IC inquiring into the moneylending complaint, raising a question of jurisdiction. Apparently, this letter of 16 July 1999 was considered by the Council of the Law Society (`the Council`) and was rejected without reference to an Inquiry Committee. This was a ground of Mr Cheong`s objection to the IC taking up the moneylending complaint.

While Mr Wong thought that the IC had jurisdiction to hear the second complaint, relying in this regard on s 86(8) and (9) of the Act, he nevertheless invited Mr Cheong to make submission on it by 3 August 2000. Mr Wong made it clear that this submission was only on jurisdiction and not on the merits of the moneylending complaint. The IC scheduled its next meeting for 7 August 2000, to continue with the inquiry, which date was agreed to by the appellant.

On the 25 July 2000 meeting, the appellant had also asked for a copy of the complainants` written submission of 10 May 2000. Although the IC Chairman thought the appellant was not entitled to a copy as of right, he nevertheless decided to let him have it. This was done the next day. The IC Chairman accordingly also extended a copy of the appellant`s submission to the complainants.

On 26 July 2000, the appellant wrote to the IC Chairman asking for the following:

> *(i) When and from whom did the Committee receive the handwritten letter from the Complainants to the Law Society (covering letter, if any);*
>
> *(ii) When and from whom did the Committee receive the alleged statement of Leow Kok Keng (covering letter, if any);*
>
> *(iii) When did the Committee send a copy of my Counsel`s submission to the Complainants or their Counsel (covering letter, if any);*

(iv) When did the Complainants send their written submission to the Committee (covering letter, if any);

*(v) When and how did the Complainant express their `request` to the Committee to investigate the **new** allegation of moneylending (letter, if any).*

However, on that same day, Mr Wong left for an overseas engagement and did not see this communication of the appellant. So the following day Mr Wong`s secretary wrote to the appellant notifying him of the same and stating that Mr Wong would `reply to you when he returns early next week`.

On 28 July 2000, the appellant wrote again stating that, in view of Mr Wong`s absence, the appellant`s counsel would not `be able to give a proper submission on the issue to be dealt with by 4th August` and asked for an extension of time. On the same day, Mr Wong`s secretary replied, having spoken to Mr Wong on it, in these terms:

Mr Wong`s absence from Singapore will not in any way affect your Counsel`s ability to submit his submission.

Mr Wong also states that the date by which your Counsel was to give his submission was agreed by you and your Counsel at the last hearing.

In the circumstances, Mr Wong regrets that the application for extension of time is not acceded to.

Thereafter, events took a turn as the appellant wrote further, also on the same day, to say that he would not be participating any further in the inquiry. As the contents of this letter are crucial, we shall set them out in full:

I am disappointed that you have ignored my request for the information and the documents which will be necessary for my Counsel to fully deal with the issue raised.

My Counsel agreed to the date suggested by you before a copy of the Complainant`s Submission was received. Upon reading the Submission it became clear that the information and documents sought would be relevant. Furthermore, this view is reinforced by the contents of the Complainant`s handwritten letter and the so-called Statement of Mr Leow Kok Keng and the other documents which neither I nor my Counsel had sight of previously. Copies were furnished upon the request of my Counsel at the end of the hearing when it transpired that they were in the Committee`s possession for a long time. The request for a new date for the submission to be made in the light of the foregoing circumstances and in view of the fact that you were out of Singapore and presumably unable to deal with my request in time.

In the meantime, please be informed that I will be commencing legal proceedings to declare the Inquiry proceedings null and void and for an injunction preventing any further inquiry very shortly.

I will therefore cease to participate further in the Inquiry until further notice.

On 1 August 2000, Mr Wong, having returned from overseas, replied stating that he did not ignore the appellant`s request for information and also gave an account on how the moneylending matter came before the IC and on what transpired at the meeting of 25 July 2000. This was how Mr Wong put it:

> *I informed your Counsel and you that as you had not seen the typewritten copy (and I believe the handwritten) complaint and the Statement of Mr Leow before, it would not be fair to require you to respond to that immediately. I also stated that in those circumstances, I will give your Counsel time to make a submission on the issue of jurisdiction but not on the merits of the complaint on the money-lending activities. I further stated that if your Counsel`s submission on jurisdiction were to succeed, then it would not be necessary for the Committee to look into the complaint of the money-lending activities. Your Counsel could reserve his submission on the merits of the alleged money-lending activities until a ruling on the jurisdiction issue was given. Your Counsel did not object to that course of action and indeed agreed to making a written submission on the issue of jurisdiction only (in) respect of the money-lending activities by Thursday 3 August 2000. It was also agreed that there would be a hearing on Monday 7 August 2000 to continue the proceedings. Again, there was no objection by you or your Counsel.*

Turning to the written submissions tendered by the parties, Mr Wong stated that the IC had treated them as closing submissions for the IC to consider but in the light of what transpired at the 25 July 2000 meeting, he decided to extend the submissions of the parties to each other.

Mr Wong`s letter concluded with the following clarifications:

> *For the avoidance of doubt I should state that:-*
>
> *(a) the hearing on 25 July 2000 (and all previous hearings) did not at all discuss the Complainant`s complaint relating to your alleged money-lending activities;*
>
> *(b) your Counsel and you had no objection in making a submission (to be submitted by Thursday 3 August 2000) on the issue of jurisdiction relating to the alleged money-lending activities;*
>
> *(c) there had been no complaint whatsoever todate in respect of the proceedings relating to the main complaint.*
>
> *...*
>
> *Notwithstanding your letter of 31 July 2000, as Chairman of the Inquiry Committee, I hereby invite you to set out fully and clearly the grounds on which you are now seeking an extension of time for your Counsel to make his submission. You will appreciate that your letter of 28 July 2000 stated reasons which were not acceptable to me, and I had already ruled on it in response.*
>
> *Unless you are prepared to set out fully and clearly the grounds for an*

extension of time, my decision as set out in my letter dated 28 July 2000 remains. In the circumstances, the Inquiry Committee will convene on Monday 7 August 2000, subject of course to any court order that you may obtain.

This drew another response from the appellant who, on 2 August 2000, challenged Mr Wong`s assertion that he did not ignore the appellant`s request. On 7 August 2000, the IC continued with its hearing in the absence of the appellant, having waited for the appellant to turn up for about 45 minutes. On the same day, the present proceedings in court were commenced by the appellant.

Relevant provisions

The disciplinary process under the Act involves three distinct stages: the inquiry stage; the formal investigation stage by a disciplinary committee (`DC`); and the hearing before the court of three judges which has the authority to impose the appropriate punishment. In the present case, what is under scrutiny is the procedure for the first stage.

Before we proceed to consider the issues canvassed before us, it is necessary that we set out the relevant provisions of the Act relating to the inquiry stage:

85(6) Where any complaint or information touching upon the conduct of an advocate and solicitor is referred to the Chairman of the Inquiry Panel under subsection (1), (2) or (3), he shall forthwith constitute an Inquiry Committee consisting of [a chairman and three others] to inquire into the complaint or information.

(7) An Inquiry Committee may meet for the purposes of its inquiry, adjourn and otherwise regulate the conduct of its inquiry, as the members may think fit.

86(1) Subject to subsections (2), (3) and (4), an Inquiry Committee shall, within 2 weeks of its appointment, commence its inquiry into any complaint or information ... and report its findings to the Council ...

...

(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.

(7) The report of the Inquiry Committee shall, among other things, deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee and, if in the view of the Inquiry Committee no formal investigation by a Disciplinary Committee is required, the Inquiry Committee shall recommend to the Council -

(a) a penalty sufficient and appropriate to the misconduct committed; or

(b) that the complaint be dismissed.

(8) Where in the course of its inquiry an Inquiry Committee receives information touching on or evidence of the conduct of the advocate and solicitor concerned which may give rise to proceedings under this Part, the Inquiry Committee may, after giving notice to him, decide on its own motion to inquire into that matter and report its findings to the Council.

(9) Where in the course of its inquiry an Inquiry Committee receives information touching on or evidence of the conduct of the advocate and solicitor concerned which discloses an offence under any written law, the Inquiry Committee shall record the information in its report to the Council.

...

(12) For the purposes of conducting an inquiry, an Inquiry Committee may -

(a) appoint any person to make or assist in the making of whatever preliminary inquiries it thinks necessary;

...

87(1) The Council shall consider the report of the Inquiry Committee and according to the circumstances of the case shall, within one month of the receipt of the report, determine -

(a) that a formal investigation is not necessary;

(b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 88;

(c) that there should be a formal investigation by a Disciplinary Committee; or

(d) that the matter be adjourned for consideration or be referred back to the

Inquiry Committee for reconsideration or a further report.

88(1) If the Council determines under section 87 that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty, it may order the advocate and solicitor to pay a penalty of not more than $5,000.

...

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

Under s 91 of the Act, parties are empowered to issue subpoenas to persons they require to attend as witnesses. Witnesses may be required to give evidence on oath (s 86(11) read with s 91(2)-(6)).

For completeness, we would add that should the IC recommend there be a formal investigation in respect of the complaint, the Council shall decide accordingly and shall apply to the Chief Justice to appoint a DC to hear the matter. Before the DC, all evidence will be tendered de novo, and counsel for the solicitor under investigation will be entitled to cross-examine all witnesses called by the prosecution and he may call such witnesses as he deems fit for his defence. If the DC determines that cause of sufficient gravity for disciplinary action exists, the Law Society shall apply to the High Court for an order calling upon the solicitor to show cause.

Issues

In the OS, the appellant asked that the proceedings of the IC be declared null and void and also for an injunction to restrain the IC from proceeding with the inquiry. In the affidavit filed in support, the following circumstances were advanced to contend that the IC had acted in breach of the rules of natural justice:

(i) when it interviewed the complainant, Mr Shanmugan, in private without the presence of the appellant;

(ii) when it gave a copy of his explanation of 2 December 1999 to the complainants as well as a copy of his written submission of 10 May 2000;

(iii) when it considered the money-lending complaint without giving a copy of the letter of 16 July 1999, together with the accompanying statement of Leow and when that complaint was not referred to it by the Council of the Law Society;

(iv) when it used the complainants` written submission to question the appellant.

The refusal of the IC to grant an extension of time to make the submission on the jurisdictional point was not a matter advanced in the affidavit to seek the reliefs though in his counsel`s submission to the court below, as well as before us, this was raised.

Finally, we would state that it is common ground between the parties that nothing in this action, and consequently this appeal, relates to the merits of the complaint the IC was charged to inquire into.

Decision below

In coming to his decision, the judicial commissioner below noted that under the scheme for disciplinary action set out in the Act, the IC`s work is inquisitorial, not adversarial, investigative and not prosecutorial. It would be unreasonable to say that a person under investigation has a right to be present whenever the IC interviews the complainant or witnesses. The IC 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`. As regards the allegation that the complaint of 17 July 1999 and the statement of Leow were not given to the appellant, it was clear that this was due to an oversight. But as soon as the IC realised the omission, it was immediately put right. There was really nothing in this point.

As regards the moneylending complaint, the judicial commissioner noted that Mr Cheong made two points: (1) that it was not a new complaint as it was already dealt with by the Council of the Law Society; (2) the appellant was not given 14 days` notice to respond: s 86(6)(a)(ii). The judicial commissioner held that the IC was entitled under s 86(8) of the Act to inquire into the complaint provided it gives notice to the solicitor concerned. Section 86(8) only requires that notice be given to the solicitor and that must mean reasonable notice. It does not refer to notice as laid down in s 86(6)(a)(ii). In any event, in this case, the notice was just a little short of 14 days as notice was given on 25 July 2000 and response was to be on 7 August 2000. When the date 7 August 2000 was fixed, no objection was taken that there was inadequate time. The appellant`s counsel had also agreed that the jurisdictional point be taken first.

As regards the question of the refusal of an extension of time requested by the appellant, the judicial commissioner held that the position taken by the IC Chairman was reasonable in the circumstances.

Requirements of natural justice

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.

It seems to us that this question involves a consideration of what is the scope of s 86(6)(a)(ii) and (c) of the Act. It is only through a proper appreciation of the nature of the IC`s proceedings that what is required under the rules of natural justice can be determined. Under s 86(6)(a)(ii), the notice which the IC gives to the solicitors should (1) invite him to give his written explanation within not less than 14 days; and (2) ask him if he wishes to be heard by the IC. In the context, `to be heard` must

mean to be heard orally. Ordinarily `to be heard` could also mean to be heard in writing: see **Najar Singh v Government of Malaysia** [1976] 1 MLJ 203 at 205 (per Viscount Dilhorne). But this could not be the sense here. Therefore, under s 86(6)(c), if the solicitor wishes to be heard orally, he should be given a `reasonable opportunity` to be so heard. It is the determination of what is `reasonable opportunity`, which will be decisive. For this purpose there is a need to consider the authorities.

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. [Emphasis is added.]*

In **Lloyd v McMahon** [1987] AC 625[1987] 1 All ER 1118, a case relied upon by the appellant, Lord Bridge of Harwich said ([1987] AC 625 at 702-703; [1987] 1 All ER 1118 at 1161):

> *My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals* ***depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates****. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. [Emphasis is added.]*

We would emphasise that the three specific matters identified by Tucker LJ and Lord Bridge should be borne in mind in determining what fairness demands in a particular situation: (1) the character of the decision-making body; (2) the kind of decision it has to make; and (3) the applicable statutory or other relevant framework. 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.

In **Whitehouse Holdings v Law Society of Singapore** [1994] 2 SLR 476 , which concerned an application by a dissatisfied complainant asking the court for an order directing the Law Society to apply for the appointment of a DC, this court said that (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.*

In the earlier case, **Law Society of Singapore v Chan Chow Wang** [1972-1974] SLR 636 [1975] 1 MLJ 59 , where it was alleged that the IC had breached the rules of natural justice by not extending to the solicitor under inquiry a copy of the complainant`s statutory declaration, the court of three judges also made a similar observation as to the character of the IC ([1972-1974] SLR 636 at 654; [1975] 1 MLJ 59 at 67):

> *The Inquiry Committee in cases such as the present one do not either condemn or criticise. They merely report in regard to a complaint and if at a later date there follows a charge, Part VII of [the Act] lays down specifically the tribunal, viz a Disciplinary Committee, to hear and investigate and to determine the matter and lays down the procedure regulating such hearing and investigation.*

In **Seet Melvin v Law Society of Singapore** [1995] 2 SLR 323 , it was the complainant who alleged that the IC did not comply with the rules of natural justice in its deliberation because the IC, after having heard the explanation of the solicitor under inquiry, did not hear the complainant and this failure amounted to a breach of the principle ***audi alteram partem*** . This argument was rejected. This court held that natural justice did not require that the complainant should be heard orally. The court reiterated the views expressed in ***Chan Chow Wang*** (supra) and ***Whitehouse Holdings*** (supra) as to the nature of the IC proceedings (at p 341):

> *It must be noted, however, that the inquiry process is not adversarial but `inquisitorial`. The IC was only required to determine whether there was a prima facie case which would merit formal investigation. The requirements of natural justice must depend on the particular circumstances of each case and the subject-matter under consideration (per Wee Chong Jin CJ in **Law Society of Singapore v Chan Chow Wang**, at p 67). The IC sits to conduct an inquiry; it does not either condemn or criticize. As held by this court in **Whitehouse Holdings Pte Ltd v Law Society of Singapore**:*
>
> *`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 formal investigation.`*
>
> *... All that natural justice requires is that the person or body charged with making the decision should act fairly.*

A Privy Council authority, which the appellant has elaborated at great length in his case and which he sought to distinguish is **Furnell v Whangarei High Schools Board** [1973] AC 660[1973] 1 All ER 400. There a teacher in New Zealand, whose conditions of contract were set out in the Secondary and Technical Institute Teachers Disciplinary Regulation 1969 made under s 161A of the Education Act 1964, was notified by the Chairman of his school board, pursuant to a complaint and an investigation by a sub-committee set up under reg 4, that it was decided he be charged with certain disciplinary offences. He was suspended from duty. As required by reg 5(2), the teacher was asked to state whether he admitted or denied the charges and to forward any explanation he might wish to give. He was also told he could give his explanation orally to the board. Upon his solicitor`s request, details relating to the charges were furnished to him. The teacher denied the charges. In view of the denial, the school board referred the charges to the Director-General of Education, who, in turn, referred the

charges to the Teachers` Disciplinary Board for hearing and determination. The teacher was notified of the same. A hearing was fixed and the teacher was informed that he could either present his own case or be represented at the hearing by counsel or agent. The hearing never took place as the teacher commenced proceedings seeking prohibition against the Teachers` Disciplinary Board from hearing and determining the charges. He also asked that the decision of the school board be quashed. His grounds of complaint were that there had been a denial of natural justice in that he had not been told that his conduct was being investigated by the sub-committee under reg 4 and had not been given any opportunity of being heard by the sub-committee before it reported to the school board or by the school board. The Privy Council (by 3-2 majority) upheld the New Zealand Court of Appeal`s decision that the procedure laid down in the regulations was not unfair, that the principles of natural justice that a person must be given a fair opportunity of correcting or contradicting what was said against him before he was condemned or criticised, had not been violated by the action of the sub-committee because under the scheme of procedure set out in the regulations they neither condemned nor criticised and on the evidence there were no grounds for thinking that they had acted unfairly.

We agree with the appellant`s counsel that ***Furnell*** (supra) is distinguishable from our case because here the Act requires the IC to consider the solicitor`s written explanation and, if the solicitor so desires, to hear him orally. In ***Furnell*** there was no such requirement on the part of the sub-committee. In ***Furnell*** there was a detailed and elaborate code which prescribed the procedure to be followed and that was complied with. However, what we find germane is that even in the dissenting judgment of the minority, read by Viscount Dilhorne, they did not go so far as that advanced by the appellant concerning what natural justice requires in an inquiry process, ie that the person under inquiry must be present whenever the IC interviews a witness or even the complainant. This was what Viscount Dilhorne said ([1973] AC 660 at 685; [1973] 1 All ER 400 at 417):

> *The proceedings of an investigating committee can be quite informal. If their investigation leads them to the conclusion that the complaints against a teacher are unjustified, and they propose so to report to the board, there is no need for them to communicate with the teacher before they report. If, however, they are minded to report adversely on the teacher, and a fortiori if they are thinking of recommending his suspension, the committee must before they report, to be fair, give the teacher an opportunity to put his case; and to enable him to do so, must tell him the case against him with sufficient particularity to enable him to counter it either in writing or orally. If they do not do so, the board will not get a proper picture of the case.*

Counsel for the appellant further relied upon the following passage of Viscount Dilhorne ([1973] AC 660 at 687; [1973] 1 All ER 400 at 418):

> *What is meant in this context by investigation? Surely not just hearing the evidence in support of the charge, the evidence for the prosecution. If, as I think, investigation by the committee in the context means hearing both sides, allowing both sides to call witnesses and to cross-examine and allowing the teacher to give evidence if he wishes, then the section gives the accused teacher those rights which natural justice requires an accused person to have. But if I am wrong about this and investigation is not to be so interpreted, natural justice requires those rights to be imported.*

But in this passage Viscount Dilhorne was referring to `investigation` before the Teachers` Disciplinary Board which had the task of investigating into the charges and making a determination.

The proceeding before the Teachers` Disciplinary Board is clearly akin to the proceeding before the Disciplinary Committee, rather than the IC, under our Act.

We should mention that the majority decision in ***Furnell*** (supra) was not followed in a recent Privy Council decision in **Rees v Crane** [1994] 2 AC 173[1994] 1 All ER 853 involving disciplinary process against a judge of the High Court of Trinidad and Tobago. What must be pointed out is that in both those two cases the individuals concerned (the teacher in ***Furnell*** and the judge in ***Rees***) were also suspended from duty without being heard at all and that seems to have been a significant consideration in the determination of the Privy Council in ***Rees*** . But, in any event, ***Rees*** is certainly no authority for the proposition that the procedure or safeguards of a trial apply totally to a purely inquiry process like that undertaken by the IC.

As stated above, the respondents do not dispute that natural justice would apply to a domestic body such as the IC in the present case. The problem is in determining what the requirement of natural justice is in relation to a body whose task is only to inquire into complaints, to sieve and reject frivolous complaints, and to determine if a prima facie case is made out for a complaint to be formally investigated by a DC.

In support of his contention that a tribunal, such as an IC, is not allowed and should not see a witness in private, in the absence of the solicitor under inquiry, the appellant relies on a number of authorities. First, is **R v Justices of Bodmin, ex p McEwen** [1947] KB 321[1947] 1 All ER 109 where the justices, in relation to a case involving a criminal charge against an accused who admitted to the charge, stood down the case and recalled a witness, who gave evidence as to the character of the accused, into chambers and spoke to him in private without the presence of either the accused or his counsel. Upon returning to court, the justices sentenced him to six months` imprisonment. Goddard CJ quashed the sentences on the ground that justice was not seen to be done because the accused would not know what was said. He ruled that it did not matter that the justices did not have any sinister or improper motive.

Next is **Hibernian Property Co v Secretary of State for the Environment** (Unreported) which concerned a public inquiry conducted in relation to the compulsory purchase of houses alleged to be unfit for human habitation. The complaint there was that the inspector received further information from the occupiers after the close of the public inquiry in the absence of the applicants who were freeholders of the houses. Browne J quashed the compulsory purchase order as he thought the question was whether there was a risk that the additional information obtained might have prejudiced the mind of the Minister who confirmed the order. He said `the applicants had, however, no chance of cross-examining or commenting on this information, and in my view there is clearly a risk that it may have influenced the decision`.

In **Bentley Engineering Co v Mistry** [1979] ICR 47, an employee was dismissed, after inquiry by the assistant personnel officer, for being involved in a fight with another employee. The personnel officer took statements from witnesses and interviewed both employees separately. On appeal, the appeal panel confirmed the decision after perusing the statements of witnesses and interviewing the parties to the fight separately. Slynn J, sitting on the Employment Appeal Tribunal, affirmed the decision of the industrial tribunal below which held that the dismissal was unfair. He said:

> *The real issue here is who or what had provoked the fight, and we consider that the industrial tribunal are really saying that because the employee did not have these various statements, and did not have the opportunity of listening to Mr Singh (the other employee) or of asking him questions, he really did not have an opportunity of knowing in sufficient detail what was being said against him on the issue which really mattered.*

In a local decision, **Re Singh Kalpanath** [1992] 2 SLR 639 the Chairman of the Disciplinary Committee (as opposed to an IC) met the legal assistant of the solicitor, who was under disciplinary action, twice during the course of the proceedings advising the legal assistant (who was a witness for the solicitor), that he should tell the truth. Chan Sek Keong J quashed the finding of the DC and said (at p 667):

> *It is a well-established rule that a decision-maker should not have contact with any party to the proceedings or any of his witnesses in the absence of the other party or his counsel.*

There were also other cases along similar lines, eg **R v Birmingham City Justices, ex p Chris Foreign Foods (Wholesalers)** [1970] 3 All ER 945[1970] 1 WLR 1428 and **R v Barnsley Metropolitan Borough Council, ex p Hook** [1976] 3 All ER 452[1976] 1 WLR 1052, which were cited by the appellant.

We must observe that in all the cases relied on by the appellant, at the end of it a penalty or punishment was meted out or a final decision on guilt was determined or, where it involved a public inquiry, it led to the confirmation of a purchase order. In contrast, the IC makes no determination which would lead to the imposition of a penalty or punishment (except in a case under ss 86(7)(a) and 88(1) which is dealt with in [para]61-64 below). The DC will be hearing the evidence de novo. This, in our opinion, is a very important distinguishing factor which must be placed in the forefront.

The cases do clearly recognise this distinction. In **Herring v Templeman** [1973] 3 All ER 569 the academic board of a teacher training college graded the plaintiff, Herring, as having `failed` and resolved that should this grading be confirmed by the external assessor, it would recommend to the principal that Herring be advised to leave the college. The external assessor confirmed the grading and the recommendation went to the principal who in turn passed the recommendation onto the governing body. A copy of the report of the academic board was given to Herring. The governing body, after hearing Herring, decided that he be dismissed. He then took out proceedings to challenge the dismissal and one of the grounds raised was that the academic board breached the rules of natural justice as he was not accorded a hearing. Upon a motion by the defendant, the English Court of Appeal agreed that the action should be struck out. Russell LJ, in delivering the judgment of the court, said (at p 586):

> *Counsel for the plaintiff`s argument in relation to the academic board (and, indeed, in relation to the proceedings before the governing body) amounted almost to a contention that the proceedings at both stages had to be conducted as if the parties were litigants before a court or before a legal arbitrator. We emphatically disagree. It follows that we are satisfied that there was no breach of natural justice by the academic board and those allegations in the re-amended statement of claim must be struck out.*

Next is **Moran v Lloyd`s** [1981] 1 Lloyd`s Rep 423 where the plaintiff was a member of Lloyd`s and his dealings became the subject of adverse scrutiny. A `Rota Committee`, which was an ad hoc committee consisting of four distinguished members of Lloyd`s, was set up to investigate. The Committee studied all the relevant documents and called before them the plaintiff and the executive officers in the plaintiff`s group. At the hearings the plaintiff was always accompanied by his solicitor.

The Committee submitted its report to the Chairman of Lloyd`s who in turn referred it to a sub-committee known as `The Three Chairs` consisting of the Chairman and the two Deputy Chairmen. The Three Chairs decided that the plaintiff had been guilty of grave misconduct and that disciplinary proceedings be instituted against him. `Particulars of Complaint` were served on the plaintiff and, in accordance with established procedure, Lloyd`s appointed an arbitrator and the plaintiff was called upon to do the same. He failed to appoint an arbitrator for three months and Lloyd`s advised the plaintiff that if he still persisted in that stand, Lloyd`s arbitrator would proceed alone. At that stage the plaintiff alleged, inter alia, breach of natural justice and bias on the part of the Rota Committee and the Three Chairs and sought an interlocutory injunction to stop the arbitration. The first instance court refused an injunction on the basis of balance of convenience. It was upheld on appeal. What is of interest are the general remarks of Lord Denning MR in relation to the nature of a preliminary inquiry (at pp 426 and 427):

> *Often enough, nowadays, there is a preliminary inquiry held before a charge is made. Such as those which are held by the Bar and solicitors and other professions and by the Football Association and by other associations. A preliminary inquiry of this kind is held out of a desire to be fair to the man affected. It is done because it is thought that he should not be put to the worry and expense involved in a charge - unless there is sufficient evidence to warrant it. On such a preliminary inquiry there is no need for the man to have notice of it, or to be invited to attend; or to call witnesses or the like ... Afterwards, those who hold the inquiry make a report. Then, on the basis of that report, a charge is formulated.*
>
> *...*
>
> *It is no good for the tactician to appeal to "the rules of natural justice". They have no application to a preliminary inquiry of this kind. The inquiry is made with a view to seeing whether there is a charge to be made. It does not decide anything in the least. It does not do anything which adversely affects the man concerned or prejudices him in anyway. It is simply a preliminary hearing to see if there is going to be a charge. If there is, there will be a hearing in which an impartial body will look into the rights and wrongs of the case. In all such cases, all that is necessary is that those who are holding the preliminary inquiry should be honest men - acting in good faith - doing their best to come to the right decision.*

On the face of it the statement of Lord Denning MR, that `the rules of natural justice` have no application to a preliminary inquiry of this kind, might appear a little too sweeping. But it is along the lines of the Privy Council decision in ***Furnell*** (supra). In any event, he had placed those words in quotes, perhaps indicating that he meant in the sense argued by the plaintiff there. He also emphasised the need for honesty and fairness. We need not have to go so far as Lord Denning MR did, as the statutory scheme under the Act requires the IC to consider the solicitor`s written explanation and hear him orally if he so wishes.

In **Wiseman v Borneman** [1971] AC 297[1969] 3 All ER 275 the Tribunal appointed under the Finance Act 1960 was required to decide whether there was a prima facie case for proceeding with the matter. The Tribunal had before it the statutory declaration of the taxpayer, setting out the facts and circumstances why the relevant provisions did not apply to the transaction in question, as well as the certificate and counter-statement of the Commissioner of Inland Revenue. The taxpayer asked for copies of the Commissioner`s certificate and counter-statement which was refused by the Registrar

of the Tribunal. The taxpayer issued an originating summons asking for a determination of this question. The House of Lords unanimously held that the Tribunal was not required by the rules of natural justice to give copies of the certificate and the counter-statement to the taxpayer. Lord Reid said ([1971] AC 297 at 308; [1969] 3 All ER 275 at 277):

> *If the tribunal were entitled to pronounce a final judgment against the taxpayer, justice would certainly require that he should have a right to see and reply to this statement, but all the tribunal can do is to find that there is a prima facie case against him.*

It is true that Lord Guest did in ***Wiseman*** say ([1971] AC 297 at 311; [1969] 3 All ER 275 at 280) that he could not see any reason why, `if the principles of natural justice have to be applied to a tribunal entrusted with a final decision, the same should not be true of a tribunal which has to decide a preliminary point which may affect parties` rights`. But he also went on to cite the pronouncement of Tucker LJ in ***Russell v Duke of Norfolk*** (supra) that the requirements of natural justice must depend, inter alia, on the nature of the inquiry, the rules under which the tribunal is acting and the subject matter. We do not think Lord Guest meant to suggest that the requirements of natural justice as applicable to a trial should apply to an inquiry to determine if there is a prima facie case for the person to answer.

In ***Wiseman*** (supra), Lord Wilberforce too expressed similar sentiments when he said ([1971] AC 297 at 317; [1969] 3 All ER 275 at 285):

> *I cannot accept that there is a difference in principle, as to the observance of the requirements of natural justice, between final decisions, and those which are not final, for example, decisions that as to some matter there is a prima facie case for taking action.*

This statement is relied upon by counsel for the appellant. Again it will be noted that Lord Wilberforce did not say that the requirements of natural justice are the same for all types of proceedings. Indeed, even in respect of prima facie decisions he recognised that there was a range. He further recognised that how far the general principle was to be carried was a relative one and that the determinant factor was fairness.

The appellant also relied extensively on the Canadian case **Re Emerson and Law Society of Upper Canada** [1983] 44 OR (2d) 729. Among the many passages of Henry J which the appellant has quoted, is the following (at p 745):

> *The two-stage disciplinary proceeding under the **Law Society Act**, which the Supreme Court of Canada views as a single proceeding, results in a decision reflecting upon the solicitor`s conduct which may include suspension from practice or disbarment. There can be no question that the proceedings as authorized by the **Law Society Act** must be conducted judicially, not only before convocation, which takes the final step in the process, but at all stages.*

With respect, in ***Re Emerson*** , the Canadian court was not dealing with what we have here of an inquiry process. In ***Re Emerson*** , the disciplinary committee found the complaint to have been established and that the solicitor was guilty of professional misconduct. It further recommended that

the solicitor be disbarred. It is of significance to note that Henry J also said:

> *The decision of the disciplinary committee affects the rights of the solicitor in these respects. Its findings and recommendations are the basis of the proceedings before convocation* ***which is not a hearing de novo****. [Emphasis is added.]*

In contrast, in the disciplinary process under our Act, if the IC should determine that there should be a formal investigation by a Disciplinary Committee, the hearing by this latter body will begin de novo.

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 procedure as a whole, each separate step is fair to the persons affected.*

Our opinion

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).

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. Such a procedure, with perhaps slight modification, has been applied to formal disciplinary tribunals and it is often set out in the applicable statutory or domestic rules. 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. Unless there are specific grounds to allege bias, there is no reason why an inquiry body cannot carry out its task fairly and objectively, without subjecting it to a formal regime applicable at a trial. 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.

It is vitally important to remind ourselves of the essential features of the disciplinary process under the Act. Under s 85(1), when the Law Society receives a complaint touching on the conduct of a solicitor, the Council is required to refer it to the Chairman of the Inquiry Panel and under s 85(6) the Chairman of the Inquiry Panel `shall forthwith constitute an [IC]` to inquire into it: see **Wee Soon Kim Anthony v Law Society of Singapore** [2001] 2 SLR 145 . It falls within the purview of the IC to inquire and to determine whether there is anything in the complaint and whether it should go forth to the DC, where charges will be preferred against the solicitor and a formal hearing conducted. It is even empowered (s 86(12)) to appoint any person to make or assist in the making of preliminary inquiries. It may conduct the inquiry in any manner it thinks fit (s 85(7)). But we would hasten to add that this does not mean that the IC could simply ignore all rules of propriety or fairness. Nevertheless, having regard to the inquisitorial nature of the mandate of the IC, we are of the opinion that the requirement of fairness is not infringed when the IC interviews a witness, including a complainant, without the presence of the solicitor complained against. There is no reason why the IC may not establish the true nature of the complaint by a direct interview of the complainant. Neither is it necessary, at this stage, to bring the complainant to confront the solicitor concerned. It is essentially a screening exercise. There will be a full hearing in due course, if the IC should be of the view that the complaint should proceed to the DC. Of course, if in the course of the interview the complainant should make any material allegations against or prejudicial to the solicitor and which was not found in the complaint, then the IC must, as a matter of fairness, refer the allegation to the solicitor and give him a chance to respond thereto.

Counsel for the appellant has argued that, because the IC is empowered to issue writs of subpoena against any witness they require and to question witnesses on oath, a matter which was overlooked by the judicial commissioner, it would not be wrong to classify the IC process as being adversarial in character and not merely inquisitorial. While we accept that such powers are features found in adversarial proceedings, it does not follow that their presence would ipso facto render a process adversarial. In our opinion, it is the outcome of the process which is determinative. It seems to us that the object behind giving those powers to the IC is to ensure that the IC has the necessary `teeth` to carry out its task fully and effectively and not be thwarted by reluctant witnesses. It is as much in the interests of the solicitor under inquiry that the IC should inquire into the complaint as comprehensively as possible.

We now turn to consider how s 86(7)(a) affects the scheme of things we have outlined above. Under s 86(7), if the IC is of the opinion that no formal investigation by a DC is required, it is required to make one of two alternative recommendations to the Council:

> *(a) a penalty sufficient and appropriate to the misconduct committed; or*
>
> *(b) that the complaint be dismissed.*

There would be no difficulties if the IC should recommend that the complaint be dismissed. It is in relation to the other recommendation that the argument might be made that this shows the IC`s function is more than just sifting and rejecting frivolous complaints. In our judgment, basically what this provision shows is that the legislature felt that if the infraction on the part of the solicitor is minor, not warranting a formal investigation, it would be expedient to deal with it in a summary manner.

True, in this eventuality, the IC seems to be making some sort of definitive decision here, but this can in no way alter the fundamental character of the IC, which is only to inquire. Moreover, we would point out that before making the recommendation, the IC would have considered the various explanations of the solicitor and would also have heard him orally, if he so desires. Besides, the Council is not obliged to accept the recommendation of the IC. Indeed, under s 87(2)(b) the Council is entitled to disagree with the IC and proceed to request the Chief Justice to appoint a DC for a formal investigation. Furthermore, even if the Council should accept the recommendation of the IC that the imposition of a penalty should suffice in relation to the alleged misconduct, the Council is required, under s 88(3), to inform the solicitor concerned of its proposed action and to give the solicitor `a reasonable opportunity` to be heard. Obviously, the report of the IC would have been furnished to the solicitor to enable the solicitor to respond thereto.

Thus, before any penalty is imposed by the Council on the solicitor, all the requirements of fairness in the circumstances would have been complied with. Accordingly, we would respectfully differ from the views (obiter) expressed by the High Court in **Re Low Fook Cheng Patricia** [1999] 2 SLR 326 where the court felt that the Chairman of the IC, in making a call to a potential witness to determine what he knew of the matter under investigation, was not acting in accordance with the principles of natural justice as he was expected to be impartial. 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. As it turned out, the potential witness concerned was not of much assistance as he could not remember. As we see it, the main reason upon which the High Court there set aside the penalty imposed (of just $100) was that there was no evidence that the solicitor concerned had committed any misconduct, albeit that what was alleged was a very minor wrongdoing.

Withholding of complainants` submission

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.

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.

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.

In this instance, there is another reason why a copy of it should be extended to the appellant. This is because in the complainants` written submission they had touched on the moneylending matter and had also included additional documents. To the extent that new materials are given to the IC, the same should, in fairness, also be given to the appellant.

Accordingly, in our opinion, Mr Wong was wrong to have held that the appellant was not entitled to a copy of that submission. Nevertheless, in spite of what he thought, he did on the day following the hearing on 25 July 2000 furnish a copy of the submission, with the attachments, to the appellant. We should mention that a copy of the appellant`s written submission was also extended to the complainants on the same day, though this was quite unnecessary. Thus, by the time the OS was instituted by the appellant, the IC had put right what s 86(6)(a)(i) and fairness required to be done.

Finally we would briefly refer to the case **Surinder Singh Kanda v Government of the Federation of Malaya** [1962] AC 322 [1962] MLJ 169 which the appellant has relied upon to contend that the IC was wrong to have withheld the complainant`s submission from the appellant until 26 July 2000. We have in the preceding paragraphs explained why we think the IC should have extended the complainants` written submission to the appellant. But well before the IC completed its task, this failure was corrected and thus no relief is warranted. In ***Surinder Singh Kanda*** what went wrong was that an inquiry report, which contained prejudicial matters, was given to the adjudicating officer but it was withheld from the police officer who was the subject of the disciplinary action. Based on the adjudicating officer`s findings, the police officer was dismissed. The breach was only discovered after the dismissal. We should add that the dismissal was also held to be defective on another ground. Thus, in ***Surinder Singh Kanda*** relief was granted. Here, the disciplinary process was only at the IC stage, and that stage had yet to be completed, when a copy of the written submission was extended to the appellant. Further hearing of the IC was scheduled for 7 August 2000. The situation is entirely different from that in ***Surinder Singh Kanda*** .

Moneylending complaint

Another grievance of the appellant against the IC was for taking up the moneylending complaint contained in the letter of 16 July 1999. We would reiterate that what was decided then by the IC was only to ask the appellant to submit on jurisdiction. We do not see how that course could be faulted.

A related argument is that before the IC could take up the moneylending complaint it is required under s 86(8) to give notice to the solicitor concerned. The appellant contends that he should be given at least 14 days` notice as specified in s 86(6)(a)(ii). On this, we would make the following observations:

(1) Section 86(8) does not specify the period of the notice which should be given to the solicitor; neither does it refer to s 86(6)(a)(ii). In the absence of such express reference, it must be implied that what is required is reasonable notice.

(2) Even assuming that the notice which the appellant should be given should be that specified in s 86(6)(a)(ii), the minimum 14-day notice is in relation to the giving of explanation on the merits of the complaint. Here the IC had not yet decided to take up the complaint and the appellant was not yet asked to explain the alleged misconduct. He was only asked, in the light of the challenge as to jurisdiction, to submit on jurisdiction. Therefore, the deadline of 3 August 2000 set for the appellant to make his written submission and the fixing of 7 August 2000 to hear oral clarification, though marginally short of 14 days, do not fall foul of s 86(6)(a)(ii). We would further add that these dates were fixed with the concurrence of the appellant and his counsel.

Refusal of extension of time

We will now turn to the last issue, the refusal on the part of the IC to grant the appellant an

extension of time to make submission on the jurisdictional point relating to the moneylending matter. The appellant alleged that the IC did not act fairly in refusing this request.

On this issue, it is critical to recount the facts. On 26 July 2000, the appellant had asked for certain information/documents on the moneylending complaint. When this letter arrived, Mr Wong had already left Singapore for overseas. His secretary informed the appellant that the request would be dealt with by Mr Wong when he returned the following week. There was, therefore, no disregard by Mr Wong of the request. On 28 July 2000 the appellant asked for an extension of time to file his submission. This was all the reason that he gave:

> *In view of your absence from Singapore and will only return early next week, my counsel will not be able to give a proper submission on the issue to be dealt with by 4th August.*

In refusing any extension of time, Mr Wong`s secretary gave his reason: `Mr Wong`s absence ... will not in any way affect your counsel`s ability to submit his submission` (see [para ]12 above for full text). Up to that point, we do not think there was anything wrong or unfair with Mr Wong`s decision. That was an appropriate ground for refusal. It was certainly not clear why Mr Wong`s absence should hinder the submission on the jurisdictional question, even bearing in mind that the information/documents sought by the appellant in his letter of 26 July 2000 were still outstanding.

Then on 31 July 2000 the appellant dropped his bombshell that he was commencing proceedings to stop the inquiry. It was only in this letter that the appellant gave an idea why an extension of time was needed and even then it was in the most general terms - `the information and documents sought would be relevant` - without indicating how they would be relevant. In our opinion, the response of Mr Wong of 1 August 2000 is entirely proper and we would quote again:

> *Notwithstanding your letter of 31 July 2000, as Chairman of the Inquiry Committee, I hereby invite you to set out fully and clearly the grounds on which you are now seeking an extension of time for your Counsel to make his submission. You will appreciate that your letter of 28 July 2000 stated reasons which were not acceptable to me, and I had already ruled on it in response.*
>
> *Unless you are prepared to set out fully and clearly the grounds for an extension of time, my decision as set out in my letter dated 28 July 2000 remains.*

With respect to the appellant, we think he should have given sufficiently clear reasons to the IC to enable it to consider whether or not to grant any extension of time. It is certainly not clear how the information/documents sought are related to the jurisdictional question upon which the appellant was to give his written submission. That was in fact the basis upon which Mr Wong refused the request. It stands to reason that when a party asks for indulgence he must clearly set out his grounds upon which a tribunal may exercise its discretion. In any case, even if Mr Wong`s appreciation of the situation was not entirely correct, then in the light of what Mr Wong stated through his secretary`s letter of 28 July 2000, the appellant should have clarified matters and disabused whatever misconception Mr Wong might have had on it. The reaction of the appellant was wholly premature and uncalled for. At that point, there was really no cause for any legal proceedings. A simple clarification would have put matters right and yet it was not done. It was not done even after Mr Wong invited him to do so on 1 August 2000. We are left with the impression that the appellant was either entirely

trigger-happy or failed to appreciate that he had the burden of explaining clearly why an extension was necessary.

Judgment

In the result, this appeal is dismissed with costs. The security for costs, with any accrued interest, shall be paid out to the respondents` solicitors to account of the respondents` costs.

Outcome:

Appeal dismissed.