

SIXTH PARLIAMENT OF SINGAPORE

Second Session

**REPORT OF THE SELECT COMMITTEE ON THE
LEGAL PROFESSION (AMENDMENT) BILL
[BILL NO. 20/86]**

Parl. 7 of 1986

**Presented to Parliament on
16th October, 1986**

**SELECT COMMITTEE ON THE
LEGAL PROFESSION (AMENDMENT) BILL
[BILL NO. 20/86]**

The Legal Profession (Amendment) Bill [Bill No. 20/86] was committed to the Select Committee by resolution of Parliament on 22nd September, 1986. The Committee consisted of: -

Mr Speaker (Dr Yeoh Ghim Seng, B.B.M., J.P.) (Chairman)

Mr E.W. Barker, Minister for Law

Mr Bernard Chen

Mr Chua Sian Chin

Prof S. Jayakumar, Minister for Home Affairs and
Second Minister for Law

Mr Lee Kuan Yew, Prime Minister

Dr Tan Cheng Bock

Mr Tang See Chim.

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**REPORT OF THE SELECT COMMITTEE ON THE
LEGAL PROFESSION (AMENDMENT) BILL
[BILL NO. 20/86]**

The Select Committee to whom the Legal Profession (Amendment) Bill (Bill No. 20/86) was committed has agreed to the following Report: -

1. In accordance with Standing Order No. 75 (Advertisement when Bill committed to a Select Committee), an advertisement inviting written representations on the Legal Profession (Amendment) Bill was published in the Berita Harian, Lianhe Zaobao, Tamil Murasu and Straits Times of 23rd September, 1986. Publicity was also given to the invitation by a press release. Written representations could be submitted in Malay, Chinese, Tamil or English and the closing date was 8th October, 1986.

2. Three written representations are reproduced as Papers 1, 2 and 3 at Appendix II. They were from -

- (1) Mr Wee Han Kim (Paper 1);
- (2) The Council of the Law Society of Singapore (Paper 2); and
- (3) The Law Club, National University of Singapore (Paper 3).

3. The Committee also received a memorandum from Mr Justice P. Coomaraswamy, providing a background to the enactment of the Legal Profession Act 1966. This memorandum is reproduced at Appendix II.

4. Oral evidence was heard upon oath from -

- (1) Mr Tan Boon Teik, Attorney-General;
- (2) Mr Er Kwong Wah, Secretary, Legal Service Commission, Secretary, Public Service Commission, and Deputy Secretary, Public Service Division, Ministry of Finance;

- (3) Mr Francis T. Seow, President, Law Society of Singapore;
- (4) Mr Harry Elias)
- (5) Mr Warren Khoo)
- (6) Mr C.R. Rajah) Members of the Council of the Law
- (7) Mr J.S. Khosa) Society of Singapore;
- (8) Mr Mirza M. Namazie)
- (9) Mr Mohan Das Naidu)
- (10) Miss Teo Soh Lung, Chairman, Special Assignments Sub-Committee of the Law Society;
- (11) Ms Tang Fong Har, Member of the Special Assignments Sub-Committee of the Law Society;
- (12) Mr Lim Chor Pee, Chairman, Working Sub-Committee of the Law Society;
- (13) Mr Subhas Anandan, Advocate and Solicitor; and
- (14) Mr Patrick Nathan, Executive Secretary, Law Society of Singapore.

The Minutes of Evidence taken are annexed to this Report as Appendix III.

5. Mr Tan Boon Teik, the Attorney-General, and Mr Jeffrey Chan, Deputy Senior State Counsel, were invited to attend meetings during the hearing of oral evidence to assist the Committee.

6. The Committee held 4 meetings.

7. The amendments to the Legal Profession (Amendment) Bill which the Committee recommends are incorporated in the reprint of the Bill which is annexed to this Report as Appendix I.

*Reprint of the Legal Profession (Amendment) Bill
[Bill No. 20/86] as amended by the Select Committee.*

A BILL

intituled

An Act to amend the Legal Profession Act (Chapter 217 of the Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

1. This Act may be cited as the Legal Profession (Amendment) Act 1986. Short title.

5 2. Section 2 of the Legal Profession Act (referred to in this Act as the principal Act) is amended by deleting the definition of "Inquiry Committee" and substituting the following definitions: Amendment of section 2.

10 " "Inquiry Committee" means an Inquiry Committee constituted under section 86;

"lay person", in relation to an Inquiry Committee or Disciplinary Committee, means an architect, accountant, banker, company director, insurer, professional engineer, medical practitioner or a person who possesses such other qualifications as may be approved by the Chief Justice and the Attorney-General;". 5

Amendment
of section 39.

3. Section 39 (1) (c) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it". 10

Amendment
of section 51.

4. Section 51 of the principal Act is amended by inserting, immediately after subsection (2), the following subsection: 15

"(2A) Subject to subsection (2B), a practitioner member who has been struck off the roll or suspended from practising as an advocate and solicitor for a period of 6 months or more or has been convicted of an offence involving fraud or dishonesty shall not be eligible for election as a member of the Council. 20

(2B) A practitioner member may, after 5 years following the date of his conviction or the date he was reinstated to the roll or the date of the expiry of his suspension, whichever is the later, with the leave of a court of 3 judges one of whom shall be the Chief Justice, be eligible for election or appointment as a member of the Council. 25

(2c) Where an application for leave under subsection (2B) has been turned down, the applicant shall not be entitled to make another application under subsection (2B) within the period of 5 years from the date the first-mentioned application was dismissed. 30

(2D) An application for leave under subsection (2B) shall be made by motion. 35

(2E) The court of 3 judges shall not give leave under subsection (2B) unless -

(a) notice of intention to apply therefor and all documents in support thereof have been served at least 14 clear 40

days before the date of the hearing on the Attorney-General and on the Society, either or both of whom may be represented at the hearing of, and may oppose the application;

(b) the applicant satisfies the court that his conduct since his conviction, striking-out or suspension did not make him unfit to be a member of the Council; and

(c) the applicant exhibits affidavits of at least two practitioner members who are and have been in active practice in Singapore for a total of not less than 5 out of the 7 years immediately preceding the date of the application attesting to the applicant's good behaviour from the date of his conviction, striking-out or suspension and stating whether in their opinion he is a fit and proper person to be a member of the Council.

(2F) A practitioner member shall before his appointment or election as a member of the Council file a declaration with the Society stating that he is not disqualified from holding office as a member of the Council by virtue of subsection (2A) or, if he is so disqualified, stating that he has obtained the leave of the court under subsection (2B) for election or appointment as a member of the Council.

(2G) Any person who fails to comply with subsection (2F) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000."

5. Section 59 of the principal Act is amended -

Amendment
of section 59.

(a) by deleting paragraph (a) and substituting the following paragraph:

"(a) he has been struck off the roll or suspended from practising as an advocate and solicitor or has been convicted of an offence involving fraud or dishonesty"; and

(b) by inserting, immediately after subsection (3), the following subsection:

"(4) Subsections (2) and (3) shall not apply to a member of the Council who has obtained the leave of the court under section 51 (2B) prior to his election or appointment as a member of the Council.".

Amendment
of section 61.

6. Section 61 (1) (d) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it".

Repeal and
re-enactment
of section 85.

7. Section 85 of the principal Act is repealed and the following section substituted therefor:

"Appoint-
ment of
Inquiry
Panel.

85.-(1) For the purpose of enabling Inquiry Committees to be constituted in accordance with this Part, the Chief Justice shall appoint a panel (hereinafter referred to as the Inquiry Panel) consisting of not more than 20 advocates and solicitors (whether in practice or not) and not more than 20 lay persons.

(2) An advocate and solicitor shall be eligible to be appointed as a member of the Inquiry Panel if he has not less than 12 years' standing.

(3) A member of the Inquiry Panel shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(4) The Chief Justice may at any time remove from office any member of the Inquiry Panel or fill any vacancy in its membership.

(5) The Chief Justice shall appoint a member of the Inquiry Panel to be the Chairman.".

Amendment
of section 86.

8. Section 86 of the principal Act is amended -

(a) by deleting the words "Inquiry Committee" at the end of subsection (1) and substituting the words "Chairman of the Inquiry Panel";

(b) by deleting subsections (2) and (3) and substituting the following subsections:

"(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information

touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Chairman of the Inquiry Panel to constitute an Inquiry Committee or apply to the Chief Justice to appoint a Disciplinary Committee where the Supreme Court or the judge thereof or the Attorney-General requests that the matter or complaint be referred to a Disciplinary Committee.

(2A) Where a written application or complaint is referred to the Chairman of the Inquiry Panel, he shall forthwith constitute an Inquiry Committee consisting of -

- (a) two members of the Inquiry Panel who are advocates and solicitors;
- (b) one member of the Inquiry Panel who is a lay person; and
- (c) a legal officer who has not less than 10 years' experience,

to inquire into the application or complaint.

(2B) The chairman of an Inquiry Committee shall be an advocate and solicitor and shall have a casting vote.

(2c) All the members of an Inquiry Committee shall be personally present to constitute a quorum for the transaction of any business.

(3) Every written application or complaint received by the Society shall be supported by such statutory declarations or affidavits as the Chairman of the Inquiry Panel or an Inquiry Committee may require."; and

(c) by deleting subsection (5).

9. Section 87 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

Amendment of section 87.

"(1) An Inquiry Committee shall, within two weeks of its appointment, commence its inquiry into the matter and report its findings to the Council as expeditiously as may be reasonably expected of it but in any event not later than two months after the commencement of such inquiry.".

Repeal and
re-enactment
of section 90.

10. Section 90 of the principal Act is repealed and the following section substituted therefor:

"Application
to appoint
a Disciplinary
Committee.

90. Where -

(a) the Council determines under section 88 that there should be a formal investigation; or 5

(b) an advocate and solicitor has been convicted of an offence of criminal breach of trust under section 409 of the Penal Code or any other offence involving fraud or dishonesty, 10

Cap. 103.

the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter."

Amendment
of section 91

11. Section 91 of the principal Act is amended - 15

(a) by deleting subsection (1) and substituting the following subsection:

"(1) The Chief Justice may from time to time appoint one or more committees comprising — 20

(a) a person from a panel of not more than 5 persons appointed by the Chief Justice being persons who have been Judges of the Supreme Court or who have had not less than 12 years' experience as advocates and solicitors; 25

(b) an advocate and solicitor who has in force a practising certificate;

(c) a legal officer who has at least 10 years' service; and 30

(d) a member of the Inquiry Panel who is a lay person,

to be known for the purposes of this Act as Disciplinary Committees."; 35

(b) by deleting the words "consist of such number of members not being less than three nor more than five as the Chief Justice may from time to time think fit and shall" in subsection (2); and

(c) by inserting, immediately after subsection (5), the following subsections: 40

"(6) The lay person who is a member of a Disciplinary Committee shall not vote on any question or matter to be decided by the Disciplinary Committee and need not be present at every meeting of the Disciplinary Committee.

(7) Except as provided in subsection (6), all members of a Disciplinary Committee shall be personally present to constitute a quorum for the transaction of any business of the Disciplinary Committee.

(8) A member of a Disciplinary Committee not being a lay person who is not a practising advocate and solicitor shall be paid for each case such remuneration as the Chief Justice may determine."

12. Section 92 (1) of the principal Act is amended -

Amendment
of section 92.

(a) by deleting the colon at the end of the third line;
and

(b) by deleting the proviso.

13. The principal Act is amended by inserting, immediately after section 92, the following section:

New section
92A.

"Person who
made the
complaint,
etc.

92A. Where the Supreme Court or a judge thereof or the Attorney-General has referred to the Society any information touching upon the conduct of an advocate and solicitor in his professional capacity, all references in this Part to a person who made the written application or complaint shall be construed to include a reference to the Attorney-General."

14. Section 93 of the principal Act is amended -

Amendment
of section 93.

(a) by inserting, immediately after subsection (2), the following subsection:

"(2A) A Disciplinary Committee shall carry out its work expeditiously and the Society may apply to the Chief Justice for directions to be given to the Disciplinary Committee if the Disciplinary Committee fails to make any finding and determination within 6 months from the date of its appointment.";

- (b) by deleting the words "and to the person who made the application or complaint" in subsection (3) (b); and
- (c) by inserting, immediately after subsection (3), the following subsections:

"(4) The findings and determination of the Disciplinary Committee shall be published.

(5) A copy of the entire record of the proceedings of the Disciplinary Committee including its findings and determination shall be made public and copies thereof shall be made available to the members of the public upon payment of the prescribed fee."

Amendment
of section 97.

15. Section 97 of the principal Act is amended -

- (a) by inserting, immediately after the word "complaint" in the eighth and ninth lines of subsection (1), the words "or the Council";
- (b) by deleting the word "he" in the ninth line of subsection (1) and substituting the words "that person or the Council";
- (c) by inserting, immediately after the word "applicant" in subsection (3) (b), the words "or the Council"; and
- (d) by inserting, immediately after the words "subsection (3)" in the second line of subsection (4), the words "on the application of a person other than the Council".

Amendment
of section 98.

16. Section 98 of the principal Act is amended by inserting, immediately after subsection (7), the following subsection:

"(7A) The Chief Justice or any other Judge of the Supreme Court shall not be a member of the court of 3 judges when the application under subsection (6) is in respect of a complaint made or information referred to the Society by him."

Transitional
provisions.

17. Notwithstanding the amendments made to the provisions of the principal Act by this Act -

- (a) all persons appointed before the commencement of this Act as members of an Inquiry Committee or

a Disciplinary Committee shall continue to act until their appointments have been revoked; and

- (b) all investigations, inquiries and proceedings commenced or instituted before the commencement of this Act may be carried on or continued in accordance with the provisions of the principal Act as amended by this Act with such modifications as are necessary or proper in order to bring them into conformity with those provisions.

WRITTEN REPRESENTATIONS AND MEMORANDUM

Written Representations

<u>Paper No.</u>	<u>Representor</u>	<u>Pages</u>
1	Mr Wee Han Kim.	A 1-2
2	The Council of the Law Society of Singapore ..	A 3-10
3	The Law Club, National University of Singapore	A 11-36
<hr/>		
	Memorandum from Mr Justice P Coomaraswamy . .	A37-40

Paper 1

From: Mr Wee Han Kim
c/o Messrs Wee Eng Lock & Son
Advocates & Solicitors
1 Sophia Road #07-05
Peace Centre
Singapore 0922

Dated: 25th September, 1986.

RE: THE LEGAL PROFESSION (AMENDMENT) BILL 1986

Further to your advertisement for public representations on the above Bill, I enclose a copy of my letter dated 1st September 1986 to the Secretary, The Law Society of Singapore, proposing the setting up of an independent tribunal for disciplinary proceedings.

I am prepared to give verbal evidence if required.

Copies of extracts* from the Commonwealth Law Bulletin are enclosed.

WEE HAN KIM

1st September 1986

The Secretary
The Law Society of Singapore
1 Colombo Court #07-18
Singapore 0617.

Dear Patrick

RE: DISCIPLINARY PROCEEDINGS

I refer to the meeting of the Legal Profession Act Committee last Friday and have since read the material which you produced on latest developments and proposals in the U.K. concerning disciplinary proceedings.

* Not reproduced.

I would like to propose the following set-up as being appropriate in the Singapore context: -

1. An independent tribunal to be established purely concerned with disciplinary proceedings and complaints against solicitors in their professional capacity.
2. Within the tribunal, an inquiry committee comprising a panel of solicitors nominated by the Council.
3. Complaints to be dealt with by the inquiry committee under three broad categories: -
 - (a) Complaints of professional misconduct from members of the public.
 - (b) A quasi-arbital panel to deal with complaints by the public concerning negligent, delayed or incompetent work.
 - (c) Complaints by solicitors against other solicitors for breaches of professional etiquette in their conduct of business with each other.
4. Appeals from inquiry committees and referral by inquiry committees for punishment of more serious offences to a disciplinary committee comprising three solicitors, one lay watchdog and one officer in the legal service (the last two preferably not having voting power).
5. No appeal from disciplinary committee or possibly appeal direct to Privy Council.

I understand that the Council is having a meeting today. Perhaps there will be time for you, to put my proposals to the Council.

Yours sincerely

WILFRED WEE HAN KIM

Paper 2

From: The Council of the Law Society of Singapore
1 Colombo Court #07-18
Singapore 0617.

Dated: 3rd October, 1986.

RE: THE LEGAL PROFESSION (AMENDMENT) BILL 1986

I have the honour to enclose ten (10) copies of a Memorandum prepared by the Council of the Law Society of Singapore relating to the Legal Profession (Amendment) Bill 1986.

The Memorandum is in two parts: -

a) PART I:

Deals with the Disqualification from Council Membership.

b) PART II:

Deals with the Disciplinary Proceedings.

The Council will welcome an opportunity to appear before the Select Committee for any clarification of its Recommendations.

Kindly acknowledge receipt.

PATRICK NATHAN
Executive Secretary

MEMORANDUM ON
THE LEGAL PROFESSION (AMENDMENT) BILL 1986

A. Part I - Disqualification from Council Membership

A.1 This part of the representations is directed to the proposed amendments dealing with disqualification of certain categories of advocates and solicitors from being members of Council namely, those who have been suspended for six (6) months or more, struck off or convicted of a crime involving fraud or dishonesty.

A.2 The object of the amendments, as we understand it, is to prevent advocates and solicitors with an adverse record from holding office in Council. The rationale for this, we assume, is that regardless of how such persons may be viewed by their peers in practice, public confidence in the profession demands that they should not hold office.

A.3 While public confidence in the leadership of the legal profession is important, we do not believe that in order to maintain such confidence it is necessary to impose a debarment for life as the Bill seeks to do. If and when an offending solicitor resumes practice at the end of his suspension or is reinstated by the Court after a period of being off the roll and he continues to practise satisfactorily for a period of, say, five (5) years, we believe that he can be presumed to be fit for office. We feel that the demands of public confidence would be satisfied after such a period of satisfactory conduct.

A.4 Accordingly, we suggest that if there be a disqualification, it should be not for life, but for a period of five (5) years after the advocate and solicitor concerned has resumed practice subsequent to his striking off or suspension or his conviction whichever is the later.

A.5 We further suggest that in cases of disqualification on the ground of having been suspended from practice, such suspension should be for a period of one (1) year or more, rather than the six (6) months or more provided in the Bill. Our suggestion would be more in keeping with the object of the Bill of barring persons guilty of the grosser kinds of misconduct of fraud and dishonesty. Such misconduct would in the normal course attract a suspension of at least one (1) year or more, whereas a shorter suspension is likely to be for other and less serious irregularities, not necessarily involving fraud or dishonesty.

B. Part II - Disciplinary Proceedings

B.1 This part of the representations is directed to the proposed amendments dealing with disciplinary proceedings against solicitors.

B.2 The object of the amendments, as we understand it, is to ensure the speedy and efficient handling of complaints against members of the Bar and to allow public participation in the disciplinary process.

B.3 The proposed amendments are based on certain perceived problems in the present system. These perceived problems can conveniently be summarised as follows: -

a) The legal profession is not willing to take action against its errant members.

b) When it does so, it takes too long over it.

B.4 We use the word 'perceived' advisedly. Because of the confidentiality requirements of the law, all disciplinary proceedings against members of the Bar are kept from public view. Only when a case finally goes to court is the public aware of it. Cases that go to Court are serious ones, where the penalties which the profession itself is authorised to impose are considered to be inadequate. Less serious cases are dealt with and disposed of within the profession itself, normally fairly quickly. Unfortunately, the public does not know about such cases.

B.5 The result is that the public sees only the serious cases, and sees them at the tail-end of the proceedings, usually after a considerable time after the commission of the offence. What is perceived, therefore, does not represent the reality, or the whole reality.

B.6 What can be stated with confidence is that the legal profession does take the matter of disciplining its errant members seriously. However, the public is not adequately informed about the vigorous efforts the profession makes in this direction. It may be that this is the only justification for some form of public participation in our disciplinary process. On the assumption that public participation would result in a greater awareness of what the profession does in this field and therefore greater public confidence in the profession, it is to be welcomed in principle.

Public Participation

B.7 The stage at which public participation is to be allowed merits serious consideration. We note that the Bill has opted for such participation at the Disciplinary Committee stage. We do not think that this would achieve the declared purpose of the amendments. The Annex to this memorandum shows that very few cases go up to a Disciplinary Committee. The majority of the cases are dealt with at the Inquiry Committee level. We would have thought that public participation would serve its purpose better at the Inquiry Committee level than at the Disciplinary Committee level.

B.8 We support the Government's approval to increase the membership of the Inquiry Committee to fifteen. We also support the proposal to entrust the actual work on individual cases to panels to be drawn from this pool, but we suggest that the panels should be constituted in the manner recommended in Paragraph B.10.

B.9 We suggest that a pool of lay members, say 10 in number, be similarly appointed. They could include the categories of persons proposed in the Bill. But we think the net should be cast wider. Representatives of Chambers of Commerce, the Consumers Association of Singapore, tertiary education institutions and Members of Parliament, should in our view be included. They could all play a useful role in generating public awareness of and confidence in the disciplinary process.

B.10 We recommend that two lay appointees should sit with the three solicitor members of a panel of the Inquiry Committee to deal with all cases received by the Committee, with the exception of complaints by one solicitor against another in regard to purely etiquette matters.

Lay Participation on Disciplinary Committee

B.11 The Disciplinary Committee is a quasi-judicial tribunal conducting quasi-criminal adversarial proceedings. Members of the Disciplinary Committee need to have a good grasp of court procedures and rules of evidence, and an ability to determine questions of fact and law. They also need to be knowledgeable about the rules and standards of professional conduct and practice. A failure in any of these areas may affect the validity of the Committee's decision when it later goes up to the court.

B. 12 With perhaps rare exceptions, we do not believe that a lay person would ever be able to play any effective role in such a setting. We do not consider lay participation on a Disciplinary Committee would serve any useful purpose.

B.13 Decisions of Disciplinary Committee must command the respect of the profession itself even as they should inspire the confidence of the public. Diluting the composition of the Disciplinary Committee by the inclusion of lay members on it would not be conducive to this end.

Legal Officers

B.14 The present system of having three practising solicitors on the tribunal has its merits. Having this number enables checks to be made, and minimises (though of course it never eliminates) the chances of mistakes vitiating the Committee's decision.

B.15 However, Legal and Judicial officers, provided they are of sufficient seniority and have relevant experience, could in our view play a useful role on Disciplinary Committees. They could represent the public interest as well as make a contribution to the substantive work of such Committees. The Bill should be enlarged to include Judicial Officers as well as Legal Officers.

B.16 We recommend that a Disciplinary Committee should consist of a majority of solicitors for the reason stated in Paragraph 13 above. We recommend that one Legal Officer or Judicial officer be included where the Committee consists of three members (inclusive of the Legal or Judicial officer), and up to two Legal or Judicial Officers (but at least one) be included in the rare cases of a Committee of five (inclusive of the Legal or Judicial officer or Officers).

Seniority of Members of Disciplinary Committee

B.17 We recommend that all members of a Disciplinary Committee should be of 12 years' standing and above. We consider the 8 years' standing proposed in the Bill for a Legal Officer to be wholly inadequate.

Rules of Natural Justice

B.18 It is appropriate to reaffirm the need to observe the rules of natural justice in the composition of Panels of the Inquiry Committee, and in the composition of the Disciplinary Committees.

B.19 In particular, we are of the view that a Legal Officer should not sit on any case arising from a complaint of the Attorney-General or the Chief Justice. This is to ensure that the decision of the body concerned will not be impugned in a court of law, as well as to command respect and confidence.

B.20 In such cases, the Legal Officer could attend the proceedings as observers, but should not take any part in the deliberations.

B.21 We think it might be useful to make express provisions in the Bill in this regard.

B.22 In line with this, we recommend that where a Judge of the Supreme Court, including the Chief Justice, is the originator of a complaint against a solicitor, that Judge should not hear the case when it eventually comes up from the Disciplinary Committee.

B.23 The present provisions concerning the Chief Justice under Section 98(6) has given rise to criticisms in the Privy Council in a case where he had made the complaint in the first place. Amendments should be made accordingly.

Direct References of Attorney-General's & Judges' complaints to the Disciplinary Committee

B.24 We now refer to the proposed new Section 90(c), providing for a direct reference of an information of the Attorney-General or a Judge to a Disciplinary Committee without the interposition of the Inquiry Committee. We submit that this amendment is not necessary having regard to the following factors: -

- a) There would be sufficient degree of public participation in the Inquiry Committee under our proposal.
- b) The Chairman of the Inquiry Committee is under the Bill to be appointed by the Chief Justice and is likely to be a person with sufficient competence.

Delays

B.25 The majority of disciplinary cases are dealt with, with a fair degree of efficiency and speed. We think, however, that improvement can be made in the legislative framework in order to eliminate unnecessary delays. A balance should be maintained between the need to handle complaints speedily and efficiently and the need to ensure that a solicitor under inquiry is given every reasonable opportunity of being heard.

Legislative Amendments to Minimise Delay

B.26 We recommend that the following amendments be made to the Act to help speed up the disciplinary process without sacrificing its quality: -

- 1) The requirement in Section 98(1) of applying to a single judge after a Disciplinary Committee has found against a solicitor and before the matter goes to a three-judge tribunal under Section 98(6), should be dispensed with. The additional procedure under Section 98(1) does not serve any useful purpose. The single judge's role could be confined to giving interlocutory directions, such as those relating to service to documents.
- 2) There have unfortunately been instances where Disciplinary Committees have been guilty of inordinate delays in making its findings after conclusion of the hearings. A new provision should be enacted requiring a Disciplinary Committee to complete and submit its report within, say, six (6) months after the conclusion of its hearings, failing which the Society may apply to Court for an order directing it to do so and such further order as the court may think fit. This would provide the necessary sanction against a Disciplinary Committee which delays its work for no good cause.

B.27 We believe that, with the above recommended amendments, disciplinary proceedings could be speeded up. This, coupled with a degree of public participation in the way we have suggested, should achieve the purposes the amendments seek to achieve.

Recommendation on Legislative Procedure

B.28 A diversity of views within the profession is to be expected on the Bill as well as on the matters raised in this Memorandum. It is important, in our submission, that the Parliament should have available to it as wide a range of views as possible before it is asked to enact the Bill. For this reason, we welcome the Government's proposal to refer the Bill to a Select Committee of the House.

B.29 But prior to this, if the proposals that we have made are accepted, a substantial redrafting of Part VII of the Legal Profession Act is called for. It may be that a working group composed of representatives of the Attorney-General's Chambers and practising solicitors might be set up for such a drafting task with a view to presenting a fresh bill within a certain time-frame.

Dated this 3rd day of October 1986.

ANNEX

**STATISTICS FOR THE COMPARISON OF THE PERCENTAGES OF COMPLAINTS HANDLED BY THE DISCIPLINARY & INQUIRY COMMITTEE
OVER THE NUMBER OF PRACTISING LAWYERS**

	1979	1980	1981	1982	1983	1984	1985	1986
Number of lawyers (As per practising year)	809	912	988	1,062	1,139	1,215	1,285	1,335
Number of complaints referred to the Disciplinary Committee	10	3	3	7	7	2	2	4
Percentage of complaints referred to the Disciplinary Committee over the number of practising lawyers	1.2%	0.3%	0.3%	0.7%	0.6%	0.2%	0.1%	0.3%
Number of new complaints referred to the Inquiry Committee	33	19	43	32	41	24	28	48
Percentage of new complaints over the number of lawyers	4%	2%	4%	3%	4%	2%	2%	4%

Paper 3

From: The Law Club
National University of Singapore
Kent Ridge Campus
Singapore 0511.

Dated: 8th October, 1986.

RE: THE LEGAL PROFESSION (AMENDMENT) BILL 1986

The proposed amendments to the Legal Profession Act have aroused interest amongst law students as these amendments would affect their interests in future.

The Law Club, as the representative body of law students, convened a sub-committee to study the effects and ramifications of the amendments.

We now are respectfully submit this report for the Select Committee's kind consideration. The Club would be willing to provide written replies to any queries that the Select Committee may pose

LIM BIOW CHUAN
President
Law Club

INTRODUCTION

The following report examines every clause of the Legal Profession (Amendment) Bill No. 20/86, save for clauses 1 and 11.

The report discusses each clause both in principle and detail.

The clauses are discussed in numerical order and the discussion is structured as follows:

- 1) Description of the provision.
- 2) Comment on the effect, merits and demerits of the provision.
- 3) Recommendations.

The conclusion summarises all the recommendations made.

DESCRIPTION

This amendment seeks to disqualify for life a lawyer suspended for six months or more or struck off or convicted of an offence of fraud or dishonesty from standing at Council elections (proposed s51 (2A)).

COMMENT

Our submissions in brief

The object of this amendment is laudable insofar as it seeks to guarantee the high moral fibre of leaders of the Bar.*

We submit, however, that this provision has problems. These include importation of several assumptions concerning, inter alia, the reprehensibility of suspended members and the permanence of the character defect of a person convicted.

There may also be a problem concerning the constitutionality of S51 (2A) as proposed.

We will now elaborate on our submissions.

Assumption 1

That a suspension of six months or more implies a defect of character rendering one incapable of holding office

Disciplinary proceedings may be initiated against Law Society members for any of the grounds set out in s84 (2) of the LPA. Among these grounds is s84 (2) (b) - that of "grossly improper conduct". (This ground is used in many cases). The standards of acceptable professional conduct are very high and lawyers guilty of relatively minor breaches would violate s84 (2) (b) and be liable for suspension. "Grossly improper conduct" was explained by the Privy Council in Rajasooria v. Law Society¹: "a finding of an intention to deceive is not always required for grossly improper conduct".

* Note that, in this regard, para (a) of the Explanatory Statement accompanying the Bill is most misleading. It should read "to disqualify an advocate and solicitor who has been convicted ..." and not "to disqualify a member of the Council ...". As presently framed the impression conveyed is that the Bill is directed against current Councillors.

1. (1955) 21 MLJ 65.

If the purpose of amending s51 is to prevent advocates and solicitors guilty of fraudulent or dishonest conduct from holding Council office, as stated in Explanatory Statement (a) and (b) of the bill, then it is clear that the proposed section would be too wide as persons not guilty of such conduct may be caught by the section and prevented from holding Council office even though their suspension was for example because of negligence. Two examples illustrate this.

Illustration (a)

Re: Francis T Seow²

Facts: FTS' partner, R, had sent a letter to KL instructing company to remove evidence relevant to its criminal liability. R sent letter out without first circulating it within office. FTS later saw a copy in the file, realised it was trying to suppress evidence, and told R to send a remedial letter to KL telling them to ignore the first letter. R did not do so.

Later police arrived at FTS' firm to search for documents. FTS refused to allow a search and undertook with the Attorney-General over the phone that he would hand over all relevant documents. R then handed some files over. FTS confirmed with Attorney-General that all documents were delivered. Subsequently other relevant documents were found in office.

Sentence: Suspended for 1 year for gross negligence violating s84 (2) (b).

Note: None of the violations was deliberate.³ Further, R was FTS' partner, not employee, and partnerships are generally founded on mutual trust.

Illustration (b)

Re: Rajasooria⁴ Privy Council from Federation of Malaya.

Facts: R submitted a false requisition on behalf of his client company. He had cut off a part of a previous requisition bearing the signatures of shareholders and affixed it onto a new requisition.

2. (1973) 1 MLJ 199.

3. Supra at 201 col. 2, I to 202 col. 1, A.

4. (1955) 21 MLJ 65.

Sentence: Suspended for 6 months for violating s84 (2) (b)

Held: R had no intention to deceive nor defraud, but so acted for administrative convenience. The Privy Council stressed that a finding of an intention to deceive is not always required for grossly improper conduct.

Conclusions from illustrations

The above are but two examples which show that a suspension of 6 months or more is meted out for violations that do not necessarily imply such a defect in character as to make one incapable of holding office.

The proposed amendment to s51 is far too wide as it would debar lawyers who are not necessarily morally defective from running from Council.

The criteria should not be suspension or being struck off the Roll per se.

Assumption 2

That a conviction of fraud or dishonesty implies a permanent defect of character

There are 2 main areas of concern.

(1) The rate of recidivism among errant lawyers is not revealed

A high rate of recidivism among lawyers convicted of fraud or dishonesty would justify the lifelong debarment from standing for Council - this would show permanence in the character defect.

What causes concern is that the rate was not revealed. We suspect that there have been extremely few cases where a lawyer has been repeatedly convicted. If this is true we cannot agree that a previous conviction implies a permanent defect in character. We do not condone fraud nor dishonesty but we do believe in a person's capacity to be fully rehabilitated.

(2) The already dire consequences of a lawyer being convicted must have some deterrent effect

A lawyer convicted of fraud or dishonesty already faces dire consequences: a fine or jail sentence and the invariable adverse publicity from the press, his colleagues' scorn in this closely-knit profession; all these are highly humiliating for a professional and will surely be a deterrent against relapsing.

This must be so as it is the aim of our penal system - the belief that punishment can be corrective.

Our point here is simply that such dire consequences are already safeguards against recidivism,

Assumption 3

That the profession is likely to elect incompetent persons to office and thereby bring the whole legal system into disrepute

The profession has no reason to jeopardise the legal system as it has as large a stake as the government in ensuring proper administration of justice. Its reputation is, after all, on the line. The profession will not act in a manner detrimental to itself by electing incompetent persons into office. Occasionally a previously suspended member may be elected, but as aforesaid, a suspension does not necessarily make one incompetent to hold office.

Assumption 4

The reinstatement standard is inadequate

This applies to cases where a lawyer has been struck off.

A lawyer, who has been struck off must apply to a court of three judges of which the CJ shall be one (s102 (2)) to be reinstated. Reinstatement is within the discretion of the court.

This means that in being reinstated the errant member has received a vote of confidence of the highest order - the CJ and two other judges consider him fit to assume fiduciary duties in practice once more and to be trustworthy enough to handle client's money and confidential matters.

A lawyer not previously proceeded against need face no higher standard in running for Council than his colleagues' confidence. A lawyer who has paid his dues for past wrongs should be subject to the same standard.

A Possible Constitutional Problem

Art 12(1) of our Constitution (1980 Reprint) states: "All persons are equal before the law and entitled to the equal protection of the law".

Though widely framed, the courts have never regarded this right to equal treatment as absolute. Parliament is allowed to legislate in favour of or against a class, so long as "like persons in like

circumstances are treated alike". This was so held by the Privy Council in Ong Ah Chuan v. pp⁵ and the Malaysian Federal Court in Datuk Haji Harun b. Haji Idris v. pp⁶. The Privy Council categorically stated that "what Art 12(1) assures to the individual is the right to equal treatment with other individuals in similar circumstances".

Presently Parliament seeks to group together lawyers suspended for six months or struck off for reasons not involving fraud or dishonesty with those previously convicted of offences involving fraud or dishonesty. These two groups are not in like circumstances as the legal guilt is different. Indeed the Explanatory Statement states that the disqualification is meant for those "convicted of an offence involving fraud or dishonesty" - see paras (a) and (b). Parliament by the proposed s51(2A) will be overincluding persons within the disqualification - persons outside the targeted group.

Our courts have the jurisdiction to strike down unconstitutional laws. As our constitution is our supreme law, we urge Parl to examine this constitutional point in view of possible litigation in the future.

RECOMMENDATIONS

1. We recommend that the current s51 remain and the amendment clause be dropped.
2. If, however, some safeguard must exist against morally defective lawyers, we recommend a change in the criteria for disqualification - only those convicted of fraud or dishonesty should be precluded from running for office. Thus would bring s51(2A) in line with paragraphs (a) and (b) of the Explanatory Statement.
3. If Parliament must debar errant members, we suggest a time limit be set on such debarment - as to exactly how long this period should be, we have no recommendation - we feel Parliament would be better placed to decide what a reasonable limit is. It can however be noted that the 5 year debarment period for Members of Parliament disqualified under Art 45(1) can be used as a guide (Art 45(2)).

5. (1981) 1 MLJ 64 at 72.

6. (1977) 2 MLJ 155 at 165.

Clause 3 - Amendment to S59(1)

DESCRIPTION

This amendment seeks to disqualify for life a lawyer suspended for six months or more or struck off or convicted of an offence of fraud or dishonesty from becoming a statutory member of the Council. By s50(1), the statutory members consist of 3 nominees of the Law Minister and the immediate past President of the Society.

COMMENT

All the arguments made under Clause 2 (supra) apply with equal force here.

RECOMMENDATIONS

We make the same recommendations as under Clause 2 (supra).

Clause 4

DESCRIPTION

This is an amendment to section 85." Appointment of the Inquiry Committee".

COMMENT

- (a) The Inquiry Committee is enlarged from a minimum of 5 and a maximum of 9 members currently to a minimum of 6 and a maximum of 15 advocates and solicitors.

This amendment is consistent with the move to expedite the disciplinary process at the Inquiry Committee stage (paragraph d, Explanatory Statement). It will make available more advocates and solicitors to sit on "Panels" of the Inquiry Committee (provided for by the proposed amendment to section 86) meaning that a minimum of 2 and a maximum of 5 Panels of the Inquiry Committee may be constituted under the Act.

The greater number of members provides for greater diversity, range and expertise to be represented on the inquiry Committee and allows a greater flexibility when Panels are appointed to inquire into complaints.

- (b) The Chief Justice is given the power to appoint the Chairman of the Inquiry Committee where currently the members can choose their own chairman under section 85(7).

As all the members of the Inquiry Committee are and will be appointed by the Chief Justice himself under section 85(1), all members should be of high moral integrity and honour and should be competent to choose a suitable chairman from amongst their numbers. The fact that the Chairman under the proposed amendment to section 86(2) will choose the members making up the various Panels ought not to make a difference.

RECOMMENDATIONS

- 1) Clause 4(a) is commended.
- 2) Clause 4(b) and (c) ought not to be enacted as they are in our opinion unnecessary.

Clause 5

DESCRIPTION

This is an amendment to section 86 concerning "Applications and Complaints".

The Chairman of the Inquiry Committee is to constitute a Panel of 3 members to inquire into each written application or complaint received.

Currently, the Inquiry Committee as a whole is charged with this task, meaning that only one application or complaint can be dealt with at one time. With this amendment, more than one inquiry can be held at this stage.

RECOMMENDATIONS

This amendment is commended.*

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- * It is to be noted contrary to the newspaper report, "Bill to tighten up legal profession" ST dated 28 August 86, this amendment does not affect the discretion of the Inquiry Committee or a Panel thereof, not to commence inquiry if it is not satisfied that there are grounds for the complaint as this discretion is preserved under section 87 (1) (c) - see Appendix 1.

Clause 6

DESCRIPTION

This is an amendment to section 87 and merely modifies the section to bring it in line with the amendments to section 86.

COMMENT

One problem however exists. Section 87(1)(a) provides for the receipt of a "written order" by the Inquiry Committee and the section directs the Committee to commence inquiry. The current section 86(2) provides for the power of the Council to issue such a written order to the Inquiry Committee when a matter concerning professional conduct was referred to the Council by the Supreme Court, a judge thereof or the Attorney General.

However, section 86(2) is to be repealed and replaced by Clause 5 paragraph (a) of the amending Act.

Thus, there seems to be some ambiguity as to who and in what circumstances may issue a 'written order' to the Inquiry Committee.

RECOMMENDATIONS:

Section 87(1)(a) appear to be redundant and should be repealed.

Clause 7

Clause 7 - Amendment to S90

DESCRIPTION

This is an amendment to s90 LPA and lists 3 situations in which a Disciplinary Committee is to be appointed.

COMMENT

The proposed s90a merely re-enacts current law. The proposed s90b also merely re-enacts current law which was contained in s86(5).

The proposed s90c is a new substantive provision which forces the council to apply to the CJ to appoint a Disciplinary Committee (DC) whenever the Supreme Court or a judge or the Attorney-General refers matters of professional conduct of advocates and solicitors to the council.

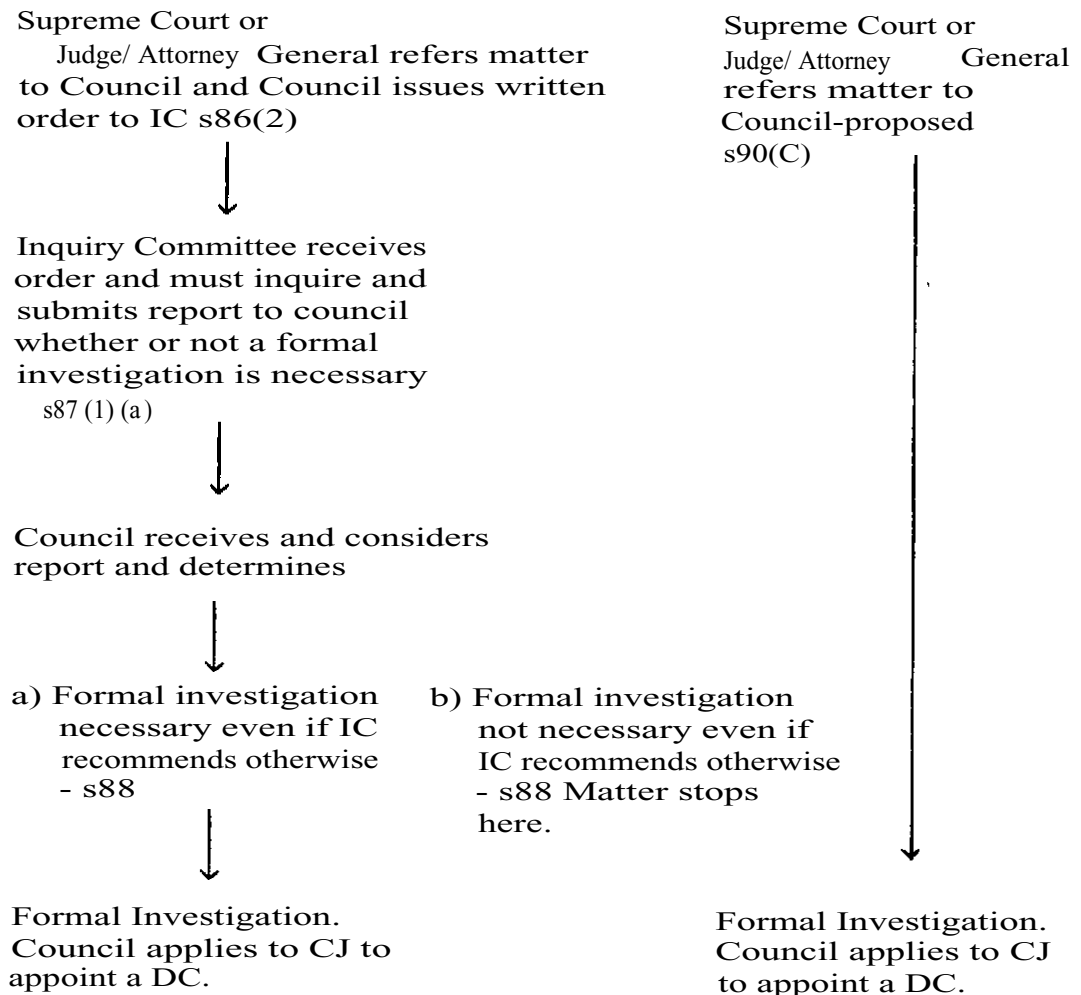
Previously, s86(2) and s87(1), provided that in such a case the Inquiry Committee should inquire into the matter and report its findings to the council.

When the Council received and considered the report, it had the discretion under s88 to apply or not to apply for a formal investigation by a DC whether or not the Inquiry Committee recommends one (s88 (1A) (a)) or recommends that it is not necessary (s88(1A) (b)).

See Chart.

CHART CONTRASTING

CURRENT LAW WITH PROPOSED LAW



Under the proposed law, the disciplinary process is shortened and matters are expedited. Note that the IC and the Council are by-passed.

This amendment is laudable insofar as it serves to abridge (see paragraph (h) of EXPLANATORY STATEMENT) the disciplinary process where the Supreme Court or a judge thereof or the Attorney-General refers a matter to the Law Society.

However there are still several issues to be addressed.

- (1) Why is the Inquiry Committee (IC) and the Council being by-passed?

The IC and the Council currently serve the very useful function of weeding out groundless complaints. Of the complaints submitted to the Inquiry Committee, few are referred to the DC. Though the government is of the view that this shows permissiveness on the part of the Inquiry Committee it must also be true that some of the complaints were groundless.

Note that we do not allege any bad faith on the part of the Supreme Court or a judge thereof or the Attorney-General. Our point is that even where these persons merely suspect some wrongdoing the rigidity of the proposed system would set the DC in motion where previously they (DC) need not set their minds to the onerous task until a prima facie case is made out.

- (2) Time will no longer be a problem with the proposed expedited inquiry process

Under Clauses 4 and 5 of the Bill a total of 5 Inquiry Panels can be working simultaneously. There should then be no worry that action will not be taken expeditiously where it is due.

- (3) The reduction of lawyer's participation and its likely detrimental effect in the long run

S61(1) gives the Council the specific power, inter alia, (b) to answer questions affecting the practice and etiquette of the profession and the conduct of the members thereof; (c) to take cognisance of anything affecting the professional conduct of its members ... and make any recommendations and take such action as it thinks fit in relation thereto

If the regulation of professional standards is to be within the province of the profession there is no doubt that the amendment curtails this power. The Inquiry Committee and the Council are by-passed and the practitioners will potentially have only 1/3 say in the Disciplinary Committee.

There could be a detrimental effect on the profession in the long run if its Council is not autonomous in regulating the modes of acceptable conduct. Although this argument has been made ad nauseam elsewhere, it must be remembered that the profession is a profession, and a Council seen to be impotent must demoralise the profession as a whole and deter enthusiastic persons from running for office.

- (4) The function of the Disciplinary Committee must be consistently defined. Setting the DC into motion initiates formal investigations against an advocate and solicitor. Currently, and in our view rightly, only when a prima facie case to show cause has been made out (either via s88 by the Council through the Inquiry Committee and via s86(5) by a conviction of criminal breach of trust or an offence involving fraud or dishonesty) will the DC be set into motion.

Under the proposed law a referral by the Supreme Court or a judge thereof or the Attorney-General is given equal weight to a Council or Inquiry Committee finding and to a conviction of CBT or fraud or dishonesty. This is inherently illogical.

There is a vast difference between the first and the other two. The Council in making its decisions has the benefit of the Inquiry Committee's investigation report and its own intimate knowledge of the case. A conviction in a court of law is secured only if the accused's guilt is proved beyond reasonable doubt, having heard the evidence of law enforcement agencies and the expertise and testimony of sworn witnesses.

The proposed amendment groups all three categories together when they are plainly different in the extent of conclusiveness against the member.

Some thought should also be given to a member referred under the proposed s90c. He will be under great psychological stress as a Disciplinary Committee investigation could render him facing show cause proceedings at the High Court where he could be suspended/ struck off. Such a threat should only exist where a prima facie case is made out.

RECOMMENDATIONS

If it is perceived that the Inquiry Committee and the Council have been too lenient, corrective measures might take less drastic means.

- (1) It is recommended that the proposed section 90(c) be deleted and the current section 86(2) be preserved, provided that the reference to the Supreme Court as a corporate body should be deleted.
- (2) If, however, an abridgement of current practice is deemed necessary, we recommend the provision be modified. Where a judge of the Supreme Court or a judge thereof or the Attorney-General refers a matter to the Society, they should have the option to allow their complaint dealt with by the Inquiry Committee and the Council, where they merely suspect a wrongdoing.

Clause 8 - Amendment to S91
- Appointment of Disciplinary Committee

DESCRIPTION

The amendment allows for the Chief Justice (C.J.) to appoint a Disciplinary Committee (D.C.) comprising: -

- A an advocate and solicitor who has in force a practising certificate
- B a legal officer of at least 8 years service
- C a lay member (defined under sub-section 6)

According to the Explanatory Statement (paragraph (f)) this is to provide for a wider representation in the Disciplinary Committee. The effect as such is that practitioners only have 1/3 representation in any action taken by the D.C. The legal service (as represented by the legal officer) and the public is represented with a 1/3 representation each.

COMMENT

While agreeing with the objective of the amendment in providing for a wider representation, there are certain disadvantages in having such an apportionment of members of the Disciplinary Committee. It is submitted that:

- (a) With regards to the appointment of only one practising advocate and solicitor, the interests of the community of practitioners are not sufficiently represented.

Since the matter at hand would involve a member of the Society, a greater representation is necessary to give a better understanding as to the problems faced by a member and as to the effect of any disciplinary action that may be taken against him/her.

There is a higher possibility that the other two members of the D.C. may not have a clear picture if only one practitioner is present. They may either get a totally biased point of view or may not be given sufficient facts. Since the only source of first hand experience regarding a practitioner's life from within the Disciplinary Committee is the sole practitioner nominated, the other two members may be influenced by just one member of the Bar in arriving at a decision. This is highly undesirable as it may not be representative of the views of the profession as a whole. If another member of the Bar is present, there is a better chance of arriving at a more considered decision.

- (b) The legal service is represented by one member in the Disciplinary Committee. This is desirable in many circumstances. However there is one occasion where this is not desirable. If the complainant happens to be either the Chief Justice or the Attorney-General, a conflict of interest situation may arise. Legal officers, by virtue of their position in the Singapore Legal Service hierarchy with the Singapore Legal Service Commission having jurisdiction over the service (by virtue of Article 111 of the Constitution¹), are subordinate to both the Chief Justice and the Attorney General.
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1. 111.-(1) There shall be a Legal Service Commission, whose jurisdiction shall extend to all officers in the Singapore Legal Service.

(2) The Legal Service Commission shall consist of -

- (a) the Chief Justice, as President;
- (b) the Attorney-General;
- (c) the Chairman of the Public Service Commission;
- (d) a Judge of the Supreme Court nominated generally or specially by the Chief Justice; and
- (e) not more than two members of the Public Service Commission nominated generally or specially by the Chairman of the Public Service Commission.

(3) subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of the Legal Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, dismiss and exercise disciplinary control over officers in the Singapore Legal Service.

Consequently, where the complainant is either the C.J. or the A.G. a conflict of interest arises. This is a breach of an important principle of our law. The law of Singapore, as in all other common law jurisdictions is based on the Rule of Natural Justice. One component of this rule is the Rule against Bias or Nemo Judex in Causa Sua. (No man may be a judge in his own cause).

The Rule has two main limbs. First, an adjudicator must not have any direct financial or proprietary interest in the outcome of the proceedings. Secondly, he must not be reasonably suspected, or show a real likelihood, of bias.² The second limb of this Rule has been succinctly illustrated in the ancient and authoritative case, Dr Bonham's³ case, which was adjudicated by the eminent jurist of the 17th Century, Lord Coke C.J. It was held there that the College of Physicians in England could not, under the Act for the incorporation of the College, detain one Thomas Bonham for an offence against the said Act despite the fact that the said Act provided for the college to punish offenders. It was held that this was contrary to the Rule against Bias.

This principle extends to bodies like committees of trade unions and clubs exercising disciplinary functions.⁴ It has also been held that it is enough to establish a real likelihood that in the circumstances of the case an adjudicator will be biased⁵ or that a reasonable man may have reasonable grounds when looking at the outward appearance of the situation for suspecting bias⁶. In such instances, the court would set aside the proceedings. It is submitted that having a legal officer, who is subordinate to the C.J. or A.G., when the complainant is either the C.J. or A.G. may appear to breach this rule.

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2. For a more detailed study of this rule, reference should be made to books like Constitutional and Administrative Law by de Smith from which the rule has been stated in this manner.
 3. (1610) 8 Co. Rep 114.
 4. See Taylor v. National Union of Seaman (1967) 1 AER 767.
 5. See R v. Rand (1866) 1 QB 230.
 6. Metropolitan Properties Co (F.C. 6) Ltd v. Lannon (1969) 1 QB 577.

It may be argued that in the strictest sense members of the D.C. are not adjudicators to be equated to judges and therefore there would not be a breach of Natural Justice. However if one were to observe the development of the law a wider interpretation is to be applied. Members of the D.C. have to decide whether a case merits punishment or not. In a sense they are deciding the guilt or innocence of an advocate and solicitor. They should therefore be seen to be independent and not be subject to possible bias.

An anomalous but grave situation would arise where the C.J. is the complainant. He already appoints the members of the D.C. and is one of the judges to whom an advocate and solicitor has to show cause. It would then appear that at each step, the C.J. is involved. This would be undesirable as it would be repugnant to the Rule against Bias.

It is to be emphasized here that we are not implying that the C.J. or A.G. would exert any influence on any legal officer who is appointed a member of the D.C., or that they would act in bad faith or mala fides. However one of the maxims of the common law is that it is of "fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".⁷ Therefore to uphold this fundamental principle it is necessary to ensure that no legal officer be appointed in such instances a member otherwise it would seem that Parliament is allowing a breach of Natural Justice.

A Possible Constitutional Problem

In Ong Ah Chuan v PP (supra) the Privy Council held that:

In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to "law" in such contexts as "in accordance with law" "equality before the law", "protection of the law" and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by the makers of the Constitution that the "law" to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which

7. R v. Sussex J.J., Ex parte McCarthy (1924) 1 KB 256, 259 per Lord Hewart C.J.

affords "protection" for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by Article 5) of Article 9(1) and 12(1) would be little better than a mockery.⁸

By this, the Privy Council has entrenched natural justice firmly into our constitutional law as one of its foundations. This was affirmed in Haw Tua Tau v. PP⁹, another Privy Council appeal from Singapore. As aforementioned, natural justice includes hearing before an impartial tribunal.

In incorporating the Rule against Bias into Art 12, all persons are equally entitled to a fair hearing if they are to have the equal protection of the law. By Art 111(3) of the Constitution, the Legal Service Commission, of which the Chief Justice (CJ) and the Attorney-General (AG) are crucial parts, has the duty, "to appoint, confirm, emplace promote, transfer, dismiss and exercise disciplinary control" over legal officers. Where the matter before the DC was referred to the Law Society by the Chief Justice or Attorney-General, there is both a possibility and a likelihood that the legal officer will be biased. In applying Art 12 to the situation where the CJ or AG makes a complaint and a legal officer is a member of the DC,¹⁰ the first question to be asked is whether the law is discriminatory.

It is suggested that in such a situation there would be discrimination because the advocate and solicitor referred would not be entitled to a properly constituted DC (i.e. one constituted in accordance with the principles of natural justice) whereas in any other case, the principles of natural justice would at this stage be preserved.

There is therefore a possibility that the amendment may be unconstitutional as it might infringe Art 12.

The issue of the Rule against Bias as a constitutional principle has to our knowledge not been litigated here. We are unable to find judicial guidance as to what extent natural justice may be modified.

We suggest two possibilities.

8. (1981) 1 MLJ 64, 71 col. 1 A - E.
9. (1981) 2 MLJ 49.
10. Datuk Harun v. PP (1977) 2 MLJ 155 at 166.

One may be that natural justice is absolute and is only modified by the common law exception.¹¹ We are uncertain whether this breach is within the common law exceptions. There can be no statutory exceptions as Parliament, is not competent to legislate contrary to our Constitution.

The second possibility is that natural justice is qualified in Art 12 by the same test that applies to a discriminatory law. That test is the "reasonable classification test."¹² The test requires that the classification must be founded on intelligible differentia which distinguishes persons that are grouped together from others left out of the group. Furthermore the differentia must have a rational relation to the object of the law in question.

If this test applies it is submitted that there is no intelligible differential which distinguishes persons complained against by the CJ or AG and persons complained against by others to justify a breach of natural justice.

We therefore believe there is a possible constitutional argument that might be brought up to challenge the amendment in the situation aforementioned.

(c) Lay Membership¹³

We agree in principle that it is desirable for lay representation in the Disciplinary Committee. The lay representative is useful in safe-guarding consumer interest¹⁴ and minimises the risk of the profession forwarding its interest at the expense of public interest. There are, however, two points we would like to raise.

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11. Anwar Siraj V. Tang I Fang (1982) 1 MLJ 308, 310 1st col D-F where Rajah J quoted Flick on Natural Justice.
 12. Datuk Harun's case (supra) at 166 1st col B-E.
 13. We have considered the report of New South Wales Law Reform Committee Legal Profession Discussion Paper No. 1. We agree in principle with the points raised therein.
 14. We understand this to mean clients' interest - clients being "consumer" of legal services.

- (1) Since the inclusion of the lay person is to represent consumer interest, he will be redundant in a matter concerning professional etiquette. The case of Re Hilborne¹⁵ best illustrates this. In that case, the solicitor uttered "dastardly" words at a judge. It is hard to see the usefulness of a layman in such a case.
- (2) Questions of consumer interest arise at the Inquiry stage as well. Therefore, lay representation is also useful at that stage. The Inquiry Committee handles the bulk of consumer complaints and therefore inclusion of lay membership there will be most useful.

RECOMMENDATIONS

It is recommended that in the light of the discussion above, the composition of the D.C. should be amended as follows:

- i. two advocates and solicitors with practising certificates in force.
- ii. one legal officer when cases do not involve the C.J. or A.G. as complainant. In such cases, a practitioner should be appointed.
- iii. one lay member should be appointed when consumer interests are involved. When consumer interests are not involved, an advocate and solicitor should be appointed instead, as lay members would be redundant wherever professional etiquette is involved.

It may seem that having four members constituting the Disciplinary Committee may present certain difficulties when the Disciplinary Committee has to arrive at a decision whether to proceed with a show cause action or not. It is submitted that should there be a deadlock between the members when deciding a case, then the decision not to proceed should be adopted.

Should the complainant be dissatisfied with this decision, he still has recourse by appealing. Even if he does not wish to appeal the Council can on its own volition appeal under the proposed amendment.¹⁶ There is therefore no possibility of any complaint not being properly and thoroughly considered.

15. (1984) 2 MLJ 94.

16. See clause 10 of the Bill.

However if an odd number of Disciplinary Committee members is desirable to avoid a deadlock, it is submitted that the representation of practitioners be increased to three bases on the same reasons discussed before. With regard to the legal officer and lay representation, their number should remain at one each, subject to the qualifications suggested by us in ii and iii.

It is further submitted that lay members be included at the Inquiry stage as well.

Clause 9

DESCRIPTION

This creates a new section to the LPA, section 92A.

The purpose according to Explanatory Statement, paragraph (c) is to enable the Attorney-General to have recourse to the same procedures available to other complainants, presumably under section 96 and 97 whereby the person who has made a written application or complaint may appeal against the Council's and the Disciplinary Committee's decision respectively.

COMMENT

It is to be noted that the amendment gives the Attorney-General the right of appeal where "the Supreme Court or a judge thereof or the Attorney-General has referred a matter to the Society". What this means is that the Attorney General is to be given a right of appeal for himself, as well as for the Supreme Court or a judge thereof.

This is anomalous because a Supreme Court judge does not have recourse to such procedures and means in effect that the Attorney-General has even greater powers of bringing disciplinary action against an advocate and solicitor than a Supreme Court judge and even the Chief Justice. The Attorney-General will in fact have greater powers of complaint than anyone in the land when it is noted that under the proposed amendment to section 90, a reference by the Attorney-General will bypass the Inquiry Committee and the Council. The anomaly is most acute when a judge makes a complaint and is satisfied with the determination of the Disciplinary Committee while the Attorney-General is not; or conversely, where the judge is not satisfied but the Attorney-General is.

This one sided right of appeal is not recommended because the Attorney-General is, by virtue of his office, head of the legal service, which might make him less impartial relative to a Supreme Court judge when deciding to appeal.

RECOMMENDATIONS

- (1) In conjunction with our recommendations under Clause 7 (no by-pass of Inquiry Stage) a right of appeal should be given to a Judge of the Supreme Court or the Attorney-General whenever they are dissatisfied with the determination of the Council or the Disciplinary Committee. This will ensure that judges of the Supreme Court and the Attorney-General will have the same rights as other complainants under sections 96 and 97. The reference to the Supreme Court as a corporate entity in section 86(2) should be removed.
- (2) To prevent a breach of natural justice, the judge who made the reference to the Council should not be the judge, who hears the appeal under section 96 and 97, and should not sit on the show cause proceedings before the High Court under section 98.

Clause 10

DESCRIPTION

This is an amendment to section 97 LPA. The purpose is to be found in Explanatory Statement, paragraph (g).

"(g) to enable the Council of the Law Society to apply for review of a decision of a Disciplinary Committee in the light of the decision of the Privy Council in James Chia Shih-Ching v. The Law Society of Singapore."

COMMENT

The Privy Council in James Chia v. Law Society¹ held that section 97, under which "the person who made the written application or complaint may appeal if dissatisfied with the determination of the Disciplinary Committee that no cause of sufficient gravity for disciplinary action exists or that the advocate and solicitor should only be reprimanded, is available only to a person making an application or complaint in writing under section 86(1) of the Act.² The section is limited by "the legislature's deliberate and consistent use of the term" application or complaint as indicating an application or complaint made by a person under section 86(1) of the Act³.

1. (1985) 2 MLJ 169.

2. Supra at 181 col 1 F, H.

3. Supra at 181 col 2 C to E.

Furthermore, the Law Society or its Council "in applying for the appointment of a Disciplinary Committee is not exercising a right of application or complaint but is performing a statutory duty laid upon it in circumstances specified by the statute."⁴

The High Court in that case held that where the Law Society applied for an appointment of a Disciplinary Committee

- (a) under section 86(5), "whenever an advocate and solicitor has been convicted of the offence of criminal breach of trust punishable under section 409 of the Penal Code or any other offence involving fraud or dishonesty" OR
- (b) where the Inquiry Committee acts in its own motion under section 87(1)(b) and makes a determination under section 88(1)(c).

Then the Law Society must be considered as "the person who made the written application or complaint" in section 97.⁵

This decision was overruled. It was assumed in the judgment that the Law Society was not the applicant or complainant within the meaning of section 97 where an ordinary person had made a written application or complaint in accordance with section 86(1), Legal Profession Act.

If this is correct then the obvious conclusion must be that the proposed amendment is to allow the Law Society or its Council to appeal against the determination of the Disciplinary Committee when it does not recommend disciplinary action where the Disciplinary Committee was appointed

- (a) when the Council makes an application under section 86(5).
- (b) when the inquiry Committee acts on its own and makes a determination under section 88(1)(c) and the Council makes an application under section 90.

The proposed amendment, however, is wider than this. The effect of the amendment will be that the Council of the Law Society will have the right to appeal against the Disciplinary Committee's decision not only in the two cases aforementioned, but also where an ordinary person had made a written application or complaint in accordance with section 86(1) which resulted in the appointment of the Disciplinary Committee and where the Supreme Court or a judge thereof or the Attorney-General had made a reference under the proposed section 90.

4. Supra at 181 col 2 E to F.

5. Supra at 173 col 1 A to E.

In other words, the section gives the Law Society the locus standi to appeal in all cases where the Disciplinary Committee determines that no cause of disciplinary action exists.

Nevertheless, while the amendment is wider than necessary to correct the defect in the law as enunciated by the Privy Council, this amendment will allow the Law Society through its Council to better regulate professional conduct and ensure a high standard of moral integrity. The Council is given the specific power under section 61(b) & (c).

- (b) to answer questions affecting the practice and etiquette of the profession and the conduct of the members thereof;
- (c) to take cognisance of anything affecting ... the professional conduct of its members ... and make any recommendations and take such action as it thinks fit in relation thereto ...

The complainant or applicant or the Supreme Court or judge thereof or the Attorney-General may decide not to appeal for a variety of reasons. As the Council has a stake in regulating professional conduct, it is thus right that it should have a general right of appeal against a finding of the DC if the Council feels that standards would otherwise be compromised.

RECOMMENDATION

This amendment is commended.

CONCLUSION:

The proposed Bill in our opinion has its merits and demerits. In particular, we commend the expansion of the Inquiry Committee (Clause 4), the division of the Inquiry Committee into Panels (Clause 5), the introduction of a legal officer and lay participation into the Disciplinary Committee (Clause 8) and the right of the Council to appeal against Disciplinary Committee decisions (Clause 10).

However, we have several reservations concerning permanent debarment from Council office for advocates and solicitors suspended for six months or more, struck off the roll or convicted of an offence involving fraud or dishonesty (Clauses 2 + 3); the appointment of the Chairman of the Inquiry Committee by the Chief Justice (Clause 4); the by-pass of the Inquiry Committee and the Council when a reference is made by the Supreme Court, a judge thereof or the Attorney-General (Clause 7); the inclusion of a legal officer in the Disciplinary Committee where the Chief Justice or the

Attorney General is the complainant and the inclusion of a lay member in that Committee where no consumer interests are involved (Clause 8); and finally, a right of appeal given only to the Attorney-General (Clause 9).

A summary of our recommendations is as follows:

- 1) Clauses 2 + 3 - Ought not be enacted.

In the alternative, we suggest

(a) that only those convicted of offences involving fraud or dishonesty be affected. This is in line with the objectives spelt out in paras a & b of the Explanatory Statement.

(b) that a reasonable time limit be set on such debarment.

- 2) Clause 4 - The Chairman of the Inquiry Committee should be elected by the members thereof.
- 3) Clause 6 - Section 87(1)(a) ought to be repealed.
- 4) Clause 7 - Section 90(c) ought not be enacted.

The current section 86(2) ought to remain but a right of appeal should be given to a Supreme Court Judge and the Attorney-General similar to that available to an ordinary applicant or complainant under section 96 and 97. In the case that s90c is deemed necessary a choice should be given to the Supreme Court or a judge thereof or the Attorney-General not to by-pass the inquiry stage where there is only a suspicion of wrongdoing. The Judge who complains should not hear the appeal nor sit on the show cause proceedings.

- 8) Clause 8 - Section 91 ought to be modified. It should empower the Chief Justice to appoint a Disciplinary Committee with the following composition.
 1. 2 practitioners to be appointed so as to ensure more considered decisions.

2. 1 legal officer of 8 years experience who will be replaced by a practitioner whenever the Chief Justice or Attorney General is the complainant.
3. 1 lay member who will be replaced by an advocate and solicitor when no consumer interest is involved in the complaint.

Lay participation should also exist at the Inquiry Committee level.

9) Clause 9 - Ought not be enacted.

A right of appeal should be given to both judges and the Attorney-General under the terms aforementioned.

Memorandum

From: Mr Justice P Coomaraswamy
Judge's Chambers
Supreme Court
Singapore 0617.

Dated: 7th October, 1986.

THE LEGAL PROFESSION ACT 1966

When I happened to meet him last week, Prof S Jayakumar, Minister for Home Affairs and Second Minister for Law, raised with me the background to the enactment of the Legal Profession Act, 1966. When I told him I initiated the move to have it enacted and made the first draft, he said that the reasons I did so and the reasons for some of the provisions can provide a useful background to the Select Committee. I am therefore writing this letter to provide background information and not as a representation for or against the Legal Profession (Amendment) Bill.

2 The old Advocates and Solicitors Ordinance dated from the mid-thirties when the profession was small and largely European. Having been associated with the then Bar Committee since 1959 I felt the need for some changes with the increase in numbers and the change in racial complexion.

3 I will first deal with the trigger which finally led me to make the first draft and then deal with some specific provisions in the way of background.

4 **The Trigger:** In the late fifties out of a Bar of about 180, about 15 or 20 at most would normally attend the Annual General Meeting (AGM) at which the Committee was elected. This meant that anyone who could persuade about 20 sympathisers to attend an AGM would virtually be in a position to dictate composition of the new Committee.

5 I was a member of the 1963/64 Committee. Shortly before the 1964 AGM in April that year, I had heard rumours someone anticipating disciplinary proceedings against him was moving to pack the meeting so that the Committee for 1964/65 would be sympathetic to him when his matter came before the Committee. In view of this, I persuaded many who did not normally attend AGMs to come so that the purposes of the person in question would be defeated.

6 A complaint against the solicitor concerned for making an allegedly champertous agreement was about to come or had come to the Bar Committee. He failed in his AGM objective. However, I think one or two of those he wanted to have elected who may not have known the full reasons for their candidatures, were, in fact, elected.

7 Subsequently, the solicitor concerned was struck off the rolls in early 1966 and restored more than three years later.

8 It was this attempt to pack the Committee which also led me to feel that only half the elected governing body should be replaced each year. This would have ensured continuity and also ensured that no one with an improper cause can have his candidates fill the entire Committee (or Council) for any one year.

9 The 1964 AGM incident led me to draft the Legal Profession Act which I subsequently got the Bar Committee to approve before sending it to the State Advocate-General. I will now deal with certain other provisions.

10 **Sources:** Before doing so, let me indicate that section numbers I use in this letter are, for convenience, section numbers of the November, 1981 reprint of the Act. In my draft bill, while some provisions were new, many had their origin in the old Ordinance, the Singapore Society of Accountants Act, 1963 (now Cap 212) and in legislation on the legal profession in many various parts of the Commonwealth. These sources were listed on pages in a comparative table annexed to the draft bill. This table appears on pages 566 to 569 in Gazette Bills Supplement No. 18 of 6 December 1966. Legislation from England, Kenya, Tanganyika, Manitoba, Saskatchewan, Alberta and Victoria were the main non-Singapore sources.

11 **Board of Legal Education:** With graduates of our law school having emerged in 1961, "post-final courses" were conducted by the University with professional help. This accounted for sections 3 to 8 setting up the Board of Legal Education, a controlling body with representation from the legal profession, the administration of the law and teaching.

12 **Ad Hoc Admissions:** I thought it farcical that eminent silk from England had to pretend to undergo a period of pupillage, appear before a examining panel of advocates and solicitors and then apply for shortening of pupillage to one day before seeking admission. This device also gave them permanent rights of practice. This led to Section 18 for admission of QCs from England and elsewhere without the previous farce but for the purposes of a single case.

13 **Law Society:** Under the Advocates and Solicitors Ordinance, we had a Committee but there was no name for the general body. I sought to remedy this by section 38. This and sections 39 and 40 draw heavily from our 1963 legislation on Accountants.

14 **The Council and Elections:** Although the Comparative Table describes sections 52 to 57 dealing with membership as 'new' the provisions came from the various Commonwealth sources indicated but not in toto from any one. Ideas for various sub-sections came from diverse sources and were subject to change that it was impossible to make links except, if at all, by sub-section. Even then, there were substantial changes and this is what led me to identify these provisions as "new".

15 **Statutory Members:** The idea for statutory members came from Canadian legislation. Each Canadian province had statutory (i.e. non-elected) members ranging from the current and retired Attorneys-General of the province (and, in some cases, of Canada) and persons appointed by the Chief Justice of the province to past members (Benchers) of the Council who had held office for a specified number of years. The number of statutory members varied from province to province and in some cases, I believe, almost equalled the number of elected members.

16 **Modifying the Canadian Provisions:** In the draft bill, I restricted statutory members to persons who had held office as President for three full terms and to the immediate past-President and past-Vice-President. (The original section has since been changed by Act 11/79 to the present section 50).

17 **Weightage for Seniority:** By Clause 54 (now section 51, amended) I gave weightage to the more senior members. I cannot recall the precise origin of this idea. It could be the Ontario or African legislation. I felt that with the very rapid increase in new practitioners any attempt by them to capture the Council for reasons which by now should be obvious or for any other reason, should be thwarted.

18 Even if my memory has failed me on the possible origin of the weightage for seniority provision I have no qualms at all on having put it into the Bill. The respective positions on seniority are not permanent. Every 'junior' will, in due course, become a senior. In my own experience, in eight out of ten cases at least, with increasing seniority comes maturity and greater responsibility. That is what is required in a governing body that can maintain and improve the standards of conduct and learning in the profession, protect the interests of its members and at the same time, carry out what I have always regarded during my years on the Bar Committee and since, as the paramount duty to protect the public interest and assist the public.

19 I digress to say that the English Solicitors Act was of no help. There, progress in the Council of the Law Society is heavily bound by convention and tradition and leads to a knighthood soon after the President completes his term. If my memory serves me right, the only solicitor who broke convention and tradition to become President failed to get his knighthood.

20 **Continuity:** In para 8, I have given replacement of half the elected Council each year as a means of ensuring continuity and preventing any interested party "capturing" the whole Council for any one year. The addition of statutory members was another device to this end. Further to ensure continuity and maturity during the early years of the Society, in the transitional provisions (Clause 147), provision was made for temporary statutory members. A maximum of three appointed by the Chief Justice and every Chairman of the Bar Committee since 1962 was to be a statutory member of the Council till 31 December 1970.

21 **Housing Developers:** The mid-sixties were the early years of our housing boom. I saw great possibility of conflict of interest if a developer persuaded or cajoled a purchaser to instruct the developer's solicitor. This led to section 80.

22 **Disciplinary Proceedings:** Sections 83 to 106 deal with this topic. The bulk came from the old ordinance, our Accountants Act, and the Solicitors Act of England, the Alberta Act and the Saskatchewan Act.

23 I believe I have covered most of the provisions in the 1966 Act which were not in the old Advocates and Solicitors Ordinance. What I have written will, I trust, go some way to assisting the Select Committee on the background to the 1966 Act in the course of its deliberations.

Punch Coomaraswamy

MINUTES OF EVIDENCE

Witness examined	Pages
Mr Tan Boon Teik, Attorney-General, Singapore	B 1 - 23
Mr Er Kwong Wah, Secretary, Public Service Commission	B 183 - 190
The Law Society of Singapore:	
Mr Francis T. Seow, President	(B 53 - 90
	(B 163 - 175
Mr Patrick Nathan, Executive Secretary	(B 91 - 94
	(B 121 - 124
	(B 140 - 142
Mr Harry Elias	B 24 - 46
Mr Warren Khoo Leang Huat	B 204 - 213
Mr C. R. Rajah	B 214 - 219
Mr J. S. Khosa	B 47 - 49
Mr Mirza M. Namazie	B 50 - 52
Mr Mohan Das Naidu	B 202 - 203
Special Assignments Sub-Committee:	
Miss Teo Soh Lung, Chairman	(B 95 - 120
	(B 125 - 139
	(B 154 - 162
Ms Tang Fong Har	B 176 - 182
Working Sub-Committee:	
Mr Lim Chor Pee, Chairman	B 143 - 153
Mr Subhas Anandan	B 191 - 201

SELECT COMMITTEE ON THE
LEGAL PROFESSION (AMENDMENT) BILL

MINUTES OF EVIDENCE

THURSDAY, 9 OCTOBER 1986

11.00 am

(2nd Meeting)

Present:

Mr Speaker (in the Chair)

Mr E. W. Barker	:	Mr Lee Kuan Yew
Mr Bernard Chen	:	Dr Tan Cheng Bock
Mr Chua Sian Chin	:	Mr Tang See Chim
Prof. S. Jayakumar	:	

In Attendance:

Mr Tan Boon Teik, Attorney-General.

Mr Jeffrey Chan, Deputy Senior State Counsel.

The Chairman: The Select Committee is sitting today to hear oral evidence in respect of the Legal Profession (Amendment) Bill. In this connection, a number of witnesses have been summoned to appear before the Committee. I now call upon the Attorney-General, Mr Tan Boon Teik, to take the stand.

Examination of Witness

Mr Tan Boon Teik, Attorney-General, called in and examined under oath.

Chairman

1. Mr Tan, for the record, will you please state your name and status? --- (Mr Tan Boon Teik) Tan Boon Teik, Attorney-General.

2. Thank you? --- (Mr Tan Boon Teik) Mr Speaker, Sir, Hon. Members of the Select Committee, the initial steps that were taken to introduce the present amendments to the Legal Profession Act in the Bill before you now, were taken early this year when the Prime Minister wrote to me on the 8th January 1986 inquiring whether the Legal Profession Act can be amended to enable the Government to have a greater say on disciplinary matters and whether the Government should be represented on the Bar Council either by nomination by the Minister for Law or by the Attorney-General. I think I should read the letter from the Prime Minister to me dated the 8th January this year. It is a short letter dated the 8th January which I received on the 9th. It is addressed to the Attorney-General:

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

' Can we change the Legal Profession Act so that we have a greater say on disciplinary matters? Should we not be represented on the Bar Council either by nomination by the Minister for Law or the Attorney-General.

(Signed) Lee Kuan Yew'

At the time when the Prime Minister wrote to me, I was already considering some of the deficiencies in the present disciplinary procedures of the legal profession. My Chambers have been following with interest the developments in the regulatory procedures elsewhere in the Commonwealth. In 1974, for example, the Solicitors Act in England was amended to provide for lay representation on the disciplinary tribunal of the Law Society there, which until that moment had been composed entirely of solicitors. Therefore, when the Prime Minister wrote to me on the 8th of January this year, I was already aware of the concerns in England and elsewhere in the Commonwealth over the role of the respective law societies and disciplinary procedures in those various jurisdictions. Furthermore, I was aware also that here in Singapore there have been some concerns expressed over the manner in which the Law Society of Singapore had handled complaints. I myself had occasion to complain to the Law Society over the conduct of some of these disciplinary cases. I was aware of the occasions when investigations took an inordinately long time. I was also aware that some quite incomprehensible findings had been made by Disciplinary Committees of the Law Society from time to time. In addition, there have also been certain instances when obviously unprofessional behaviour was not taken to task by the Inquiry Committee of the Law Society who had, in fact, dismissed the complaint after its preliminary investigations. The Inquiry Committee may well have reasons for doing all this but we do not know. Because, as I shall explain later, the procedures are such that once a complaint is before an Inquiry Committee, a shroud of secrecy descends over the whole proceedings. I have selected a few such instances from those which I have had knowledge of and I produce them now before you. If I may, I would like to read those instances. They are in chronological order, according to the dates of the appointment of the Disciplinary Committees. The first one goes back to 13th of December 1978 concerning Mr Harry Wee.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

Chairman (cont.)

3. Mr Tan, can you go a bit slower? --- Mr Harry Wee was a former President of the Law Society. When he discovered that his legal assistant had misappropriated moneys belonging to his firm, instead of reporting the crime, he used his knowledge of it against his assistant by threatening to report him unless the assistant made restitution. This itself is a crime and Wee was eventually convicted for it. A Disciplinary Committee was appointed on 13th December 1978 to inquire into Wee's conduct. It did not submit its report until the 19th November 1980, a delay of some two years. The second case is the case of P.T. Wong (22nd August 1979). P.T. Wong was alleged to have breached the Solicitor's Accounts Rules, ie, an allegation of misappropriation of client's moneys. The Disciplinary Committee took, again, over two years to complete its report. The third case which I would like to mention by way of illustration is the case of Lee Tat Loong who was alleged to have misappropriated his client's moneys. At the hearing, counsel for the Law Society stated that the Society's complaint was merely that Lee delayed in returning to his client the moneys due to that client. This was despite the fact that even after Lee ceased practice, the money was never returned to the client. In a remarkable report submitted after a lapse of some 32 months, the Disciplinary Committee made several findings of fact but drew no conclusion as to whether disciplinary action should be taken against Lee. When this was drawn to their attention, the Disciplinary Committee added a supplementary report stating that it found no cause of sufficient gravity for disciplinary action but that Lee need only be reprimanded. The fourth case is one concerning Palakrishnan. A Disciplinary Committee was appointed on 23rd September 1982. Here, my Chambers complained that Palakrishnan attempted to mislead a member of the Chambers by supplying him with a copy of a letter where a crucial paragraph was deliberately not reproduced. A Disciplinary Committee was appointed on 23rd September 1982. It took the Disciplinary Committee 38 months to submit its report dismissing the complaint of the AG's Chambers. Although the delay was some 38 months, the actual hearing lasted barely a day. The fifth case is that of James Chia (2nd December 1982). Chia was convicted of cheating by a District Court. A Disciplinary Committee was appointed to investigate into the matter. However, the Disciplinary Committee found no cause of sufficient gravity for disciplinary action and merely gave Chia a reprimand. Cheating, if I may remind Members of the Select Committee, is an offence involving dishonesty on the part of the accused. The sixth case is that of one Rajagopal (29th January 1983). Rajagopal was alleged to have threatened to implicate a person in a criminal offence if that person failed to pay him fees owed to him by a close friend of that

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

person who happened to be his client. The Disciplinary Committee was appointed on 26th April 1983 but did not submit its report until 13th September 1985, ie, after a delay of some 29 months. The Committee found that Rajagopal did the acts alleged but went on to say that because Rajagopal was inexperienced and there was no fraudulent intent, he need only be reprimanded. The strange thing about this case is that neither fraudulent intent nor lack of experience was really in issue, not really the gravamen of the allegations in the complaint. The seventh case is of Kalpanath Singh (14th April 1983) a case of inordinate delay again. Singh deceived a Magistrate into postponing a case by telling an untruth that his case had been referred to the AG's Chambers. In fact, there was no such referral. The Disciplinary Committee was appointed in April 1983. Until today, nothing has been heard of it. The complaint was lodged by one of my DPPs. The eighth case is of Joseph Linus (29th June 1983). Linus was brought before a disciplinary tribunal for contravening the Solicitor's Account Rules, suggesting misappropriation of client's moneys and permitting an employee who was not legally trained to act as an advocate and solicitor. The Disciplinary Committee was appointed on 29th June 1983. It did not submit its report until 4th June 1985, ie, after 23 months. Despite establishing the facts alleged against Linus, the Committee said that there was no cause of sufficient gravity for disciplinary action and merely recommended a reprimand. The Disciplinary Committee's action here can be contrasted with the actions of the Board of Architects in similar circumstances in the case of one K.N. Lekshmanan. Lekshmanan was the structural engineer for the Hotel New World which collapsed recently. He was found guilty of sharing fees with a non-registered person. The Board of Architects struck him off. The ninth case is that of T.U. Naidu (21st July 1983). Naidu was brought before a Disciplinary Committee on charges of improper conduct. The complainant was his client who alleged that Naidu made a secret profit of \$9,600 from money which the client paid towards the purchase of an apartment. The Disciplinary Committee took 32 months in order to complete its report which was submitted only as recent as 31st March 1986, the Committee having been appointed on 21st July 1983. The Disciplinary Committee found Naidu guilty of the main allegation against him of making a secret profit of \$9,600 and held that there was cause of sufficient gravity for disciplinary action under the Legal Profession Act. Contrast these delays in the disciplinary proceedings of the Law Society with recent Police investigations, such as the one in relation to Thomas Tham, an advocate and solicitor. Tham allegedly committed criminal breach of trust on the 20th January this year. His client lodged a report with the Police instead of reporting to the Law Society. Police investigations were

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

completed by the 20th August 1986. We in the Chambers took some time cogitating over it and it was not until the 25th September 1986 that he was charged in court. The tenth case is that of Winston Chen (28th October 1983). Winston Chen was convicted in a District Court for his role in a fraudulent scheme to launch a private proprietary club, the City Country Club. Chen's main role was to find a way to avoid the investor protection provisions of the Companies Act. Pursuant to this, Chen attempted to deceive an Assistant Registrar of Companies to obtain exemption for the scheme, obliging him to comply with the protection provisions of the Act. The Committee found that Chen's conduct in this respect was "far from honourable". Yet, it went on to find no cause of sufficient gravity for disciplinary action against him on this count. The eleventh case is that of Lim Chor Pee (28th October 1983). Lim Chor Pee was convicted of an offence under the Income Tax Act. Disciplinary proceedings were taken against him for manipulating and falsifying his firm's accounts and attempting to suborn a prosecution witness. However, when the hearing began, the Disciplinary Committee just refused to inquire into the more serious allegations. The Law Society has applied to the High Court to compel the Disciplinary Committee to hear all the charges. Now I come to the more recent instances where there was, in fact, no investigation by a Disciplinary Committee despite complaints. On the 17th August last year, a complaint was lodged by the Attorney-General to the Law Society concerning a copy of a letter written by Howard Cashin, an advocate and solicitor, to H.M. Dyne, another advocate and solicitor. Both were acting for various interests in a trust matter. Cashin proposed to Dyne a scheme to avoid carrying out a direction of the High Court to apply the trust moneys cypres. His idea was to devise and propose to the Court various schemes which would be clearly unworkable, the object being to frustrate the Court's direction to use his funds cypres, thus would the trust moneys revert to his clients on grounds of impossibility of application of funds cypres. I wonder how he ever came to that conclusion because the law of cypres does not allow these happenings. Anyway, such conduct was complained of as improper and unbecoming of a conduct of the Court. Until today no action has been taken by the Law Society apart from asking the Attorney-General under which provision of the law he was acting.

Mr Barker

4. Mr Attorney-General, can you explain to us the meaning of the word "cypres"? --- It refers to instances where a trust is created with certain objects, and there is failure in carrying out these objects and then the trustees would then go to Court and ask

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

the Court permission to apply those funds in a way that would comply with the intention of the testator or donor of the trust as closely as possible. Hence, the French word "cypres", as closely as possible.

Mr Barker (cont.)

5. Thank you? --- The other case I would like to refer to as a recent instance where no investigation by a Disciplinary Committee had taken place is one in regard to J.G. Advani. The Law Society received a complaint from Messrs Drew & Napier on 9th May 1985 alleging that Advani attempted to forge a Will and had destroyed evidence relating to the commission of the offence. The complaint was referred to the Inquiry Committee on the 26th July last year. Under the Legal Profession Act, the Inquiry Committee was bound to commence its inquiry within two weeks after receipt of the complaint and to report its findings not later than two months after the commencement of the inquiry. In this case, the Inquiry Committee did not submit its report until 18th February this year, ie, seven months after the complaint was referred to it. They recommended that there be a formal investigation by a Disciplinary Committee. On the 6th March this year the Chief Justice was requested to appoint a Disciplinary Committee. When the matter came up before him, the Chief Justice immediately directed that the Law Society refer the matter to the Attorney-General as the complaint had disclosed a serious criminal offence. But all I received was an exculpatory letter written by the accused. Up to date the complaint of Drew & Napier has not been sent to the Attorney-General. The Police are presently investigating this case. In this instant case, the complaint itself disclosed a serious criminal offence. The Society chose to refer it to the Inquiry Committee rather than the Police. That discretion, of course, is entirely theirs. Had it not been for the direction of the Chief Justice, it is likely that this criminal offence may not have been brought to the attention of the Police. A cloak of secrecy descends over all inquiries by the Law Society on the grounds that all inquiries by the Law Society are strictly confidential. The third case, that of one Susan Kong. On 23rd April this year, the Law Society received a complaint from the Directors of a company under liquidation alleging that Kong had acted for both the petitioning creditor as well as the provisional liquidators, a conflict-of-interest situation arising. A similar complaint had been made to the Singapore Society of Accountants. The Law Society dismissed the complaint on 24th September this year. The Singapore Society of Accountants, however, replied to the effect that in their view Susan Kong should not have acted for the petitioning creditors as well as the provisional liquidators. Because all the proceedings of the Law Society - this is the point I would like to make - because all the proceedings are secret, we do

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

not know what explanation which might well be reasonable was furnished to the Law Society by Kong which led them to dismiss the complaint. I think it is nonetheless fair to say on the facts as we know it, that the complaint prima facie does disclose a case of professional misconduct. Until an explanation is forthcoming, members of the public might well reasonably conclude that here is another instance of a cover-up, the Law Society protecting its own members. Now I turn to the last case of Francis Seow, currently the President of the Law Society. In 1972 Seow's firm caused the property of his client, the Gemini Chit Fund, to be removed to prevent them from being seized by creditors. The actual offender was his partner, Issac Paul Ratnam. Seow failed to stop Ratnam's actions even though he knew of them. In addition, Seow breached an undertaking which he gave to the Attorney-General to hand over to the Police all files pertaining to the Gemini Chit Fund. He gave the undertaking to prevent the Police from searching his office. Files kept by Isaac Paul Ratnam (I think there were two of them) were not handed over. A Disciplinary Committee was appointed on the 14th September 1972. It submitted its report on 18th January 1983. The Disciplinary Committee found cause of sufficient gravity for disciplinary action. Seow was suspended for a year by a Court of three Judges. The Court had remarked that Seow's conduct was "wholly deplorable and dishonourable to his profession". In 1973 an ex-client complained that Seow over-charged him for services rendered, failed to advise him of a conflict-of-interest situation, and had falsely attested that a document was executed before him on a certain date. A Disciplinary Committee was appointed to investigate the false attestation charge on 27th August 1975. In its report dated 12th February 1976, the Disciplinary Committee therein established that Seow falsely attested that the complainant and his wife were present before him when a seal was affixed on the document. In fact, the complainant and his wife were then in Hong Kong. However, the Disciplinary Committee found no cause of sufficient gravity for disciplinary action but gave Seow a reprimand. In 1982 Seow was convicted by the High Court for making a false statutory declaration to the effect that he was entitled to a practising certificate when, in fact, he was not, having been disqualified from applying for a practising certificate as he had an outstanding judgment against him for more than \$100,000. That was the bar against one applying for a practising certificate. The Law Society had come to know of this and had applied to the Court to cancel his practising certificate. The Chief Justice had directed that disciplinary proceedings be commenced against him. A Disciplinary Committee was appointed on 28th July 1982. The Committee submitted its report on 5th November 1983 finding cause of sufficient gravity for disciplinary action. Seow was suspended for

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six months by a Court of three Judges. Seow is presently appealing to the Privy Council against his suspension. His appeal is pending. Now, if I may turn to my address again. After the 8th January 1986, I replied to the Prime Minister on the 11th January 1986, to his letter which I had received on the 8th January 1986, and which I had just read out. I informed the Prime Minister that in my view the Legal Profession Act should be amended to improve some procedures now existing. A copy of the relevant extract of that letter dated 11th January 1986, I will now read. It is from me to the Prime Minister.

'Dear Prime Minister

I refer to your note dated 8 Jan 86.

The Legal Profession Act ought to be amended to remove the cumbersome procedures now existing. They had been designed to afford undue protection, resulting in even the most blatant cases of indiscipline taking years to conclude. We are, in fact, looking into this matter. Proposals to amend the law will be put up shortly. The views of the Bar had been canvassed [that is in regard to matters relating to delays.] I am giving them a deadline within which their comments and counter-proposals must be received.

One proposal which has been mooted is that the regulatory and disciplinary functions of the Law Society should be administered by a separate body within the Law Society where there can be a heavier representation of Government nominees. Any structure devised for this must not detract from the principle that advocates and solicitors are officers of the Court and responsible to the Court for their conduct.

As for representations in the Council, the Minister for Law already appoints three members out of the 19. The present Ministerial nominees are:

1. Sat Pal Khattar
2. Henry Moseley Dyne; and
3. Warren Khoo'

That is my letter addressed to the Prime Minister on the 11th January this year. The Prime Minister then replied to me on the 13th January, and I would like, if I may, to read his reply.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

13 Jan 86

Attorney-General

Refer to your letter 11 Jan.

Adopt the principle that no profession should be relied upon to self regulate itself. Self-regulation is a myth, a myth that grew out of the eminence of the British imperial tradition. It helped cover up wrong doings, especially those in the City of London. Herewith copy of the Listener article on the subject. We should have representation from outside the profession to be regulated. The users of their services should have their interest protected. Therefore, non-lawyers who are big users of legal services, for example, bankers, can be appointed to a board that regulates lawyers. So too non-architects for boards regulating architects and so on. A good mechanism to discipline all professions is to incorporate representation for the group most interested or affected by malpractices in professionals of that group. Get a junior in your Chambers to list the controlling boards, the representation, the disciplinary mechanisms and powers of the important professions. Let me have a copy for study.

(Signed) Lee Kuan Yew

That was the letter dated 13th January this year. Pursuant to the Prime Minister's letter to me, I directed my office to conduct a study of the various governing bodies' disciplinary procedures of the major professions in Singapore. When this was completed, I forwarded the results of my study to the Prime Minister which I now produce. If I may, I would like to read that letter. It is dated 24th of January this year:

'Dear Prime Minister

I refer to your letter dated 13th January in which you have requested for a list of controlling boards, representation, disciplinary mechanism, powers of important professions. I enclose herewith the list. It sets out in brief the particulars requested.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

The profession in England, I am reliably informed, is also moving away from total self-regulation. I am informed by a member of the Law Society's governing council in England that they too are thinking of an outside body to be in charge of disciplinary proceedings. I have requested for a copy of their study paper which will be sent to me soon.

Yours sincerely

Tan Boon Teik'

In fact, in England, that has already come about because there is a Solicitors' Complaints Bureau that came into operation on the 27th day of August this year which is a body entirely separate and distinct from the Law Society dealing with complaints against solicitors. All manner of complaints except negligence suits which continue to be tried in the courts. Subsequent to this letter of mine, the Prime Minister requested me to put up proposals for amendments relating to the disciplinary control of the legal profession. My officers and I took some time to gather relevant material, mainly those pertaining to the disciplinary processes in various parts of the Commonwealth and to think out various proposals which could be workable, taking into consideration our own special needs. I forwarded my preliminary thoughts to the Prime Minister's Secretary, Mr Wong Chooi Sen. It is quite a longish letter which I do not think I would like to read but I will submit it as an exhibit. Subsequent to this advice to the Prime Minister, I continued to have discussions with the Prime Minister as well as the Minister for Law and the Second Minister for Law. The point I would like to make, Members of the Select Committee, is that all these steps towards amending the Legal Profession Act in so far as it related to disciplinary control and so on were initiated well before the Law Society released its press statement on the proposed amendments to the Newspaper and Printing Presses Act. The final proposals which found acceptance with all those persons involved in the discussions were crystallized some-time during the latter half of the year and they are now in the Bill before you. I would now like to set out in brief the reasons for these present amendments and also explain the effect of each of the clauses in the Bill. I would like first to stress that the Government's objective in introducing these amendments is to assure the general public who deal with legal practitioners that standards must be maintained and I am sure in this regard it must be also welcomed by the Law Society. The proposed amendments seek to achieve this by ensuring that persons who sit on the body governing the legal profession are persons of integrity whose professional record is unblemished. That

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

is the only way one can judge, objectively, integrity. Fortunately or unfortunately, that is so. Also, the second objective is to improve the disciplinary structure of the legal profession. The new provisions have therefore found their way into this Bill. As to the ground of disqualification for council membership, this was introduced by clauses 2 and 3 of the Bill. Gentlemen, the Council of the Law Society is the governing body of the profession. The Council has powers to enact subsidiary legislation prescribing rules of etiquette for the profession. The Council also plays a crucial role in disciplinary processes. The Law Society is the only profession in Singapore where there are no Government officers holding responsible positions on the governing body. All members of the Council are members of the profession, even those appointed by the Minister for Law. They are lawyers. It is therefore important that the public do see that all members of the Council are persons of integrity whose leadership, whose supervision of the profession, is beyond reproach. This amendment would bar persons who have been convicted of offences involving fraud or dishonesty or have been struck off or suspended from practice for a period of six months or more. If presently holding office in Council, they will have to vacate office on the coming into force of these amendments. The bar imposed by this new ground is a permanent bar. It is felt that as the Council of the legal profession conducts its affairs in strict confidence, public perception of the Council, its actions, will not be enhanced, will not be improved, if one who has been convicted or struck off, convicted of fraud or dishonesty that is, or struck off, or punished for professional misconduct serious enough as to merit suspension for six months or more, is allowed to sit in the Council even though the offence may have been committed sometime ago. Whilst it is perhaps in the nature of human beings to forgive and forget, there is one important aspect of the whole matter which, I would say, transcends all such considerations, and that is, the public interest. This is especially important in respect of the conduct of business in a self-regulatory profession, like the legal profession in Singapore. This amendment ensures the observance of this principle. It is not directed against any particular member nor must it be read as a punishment meted out on the profession. Its purpose is to maintain standards, I repeat, as well as the image of the Bar. The majority of lawyers in Singapore are men of integrity. These amendments should not have been necessary but for the fact that events contemplated by these amendments have taken place. Council members must have a clean record if they are to set standards. I do not believe that any self-regulating profession, or indeed, any profession, would want to have in their governing body persons who have a record of misdeeds, however much it may be thought of as being unkind, unforgiving, to exclude them.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

Consideration for the profession as a whole must come before feelings for any individual. The scope of this new ground of disqualification, in so far as it affects persons who have been suspended from practice, is however limited to those who have been suspended for six months or more. Persons who are suspended from practice for six months or more would have committed more than technical breaches of professional etiquette or conduct. It is not possible to define with precision when an instance of professional misconduct is sufficiently serious in the eyes of the public for the person so disqualified from holding office to remain in Council. But it is thought that a punishment of suspension from practice for six months or more would be a reasonable enough yardstick to gauge the seriousness of the misconduct. Now I come to the changes to the Inquiry Committee. Those are to be found in clauses 4, 5 and 6 of the Bill and they amend sections 85 and 86 of the Act and seek to streamline the proceedings before the Inquiry Committee. The Inquiry Committee is being expanded to 15 members whose investigations can be carried out by panels of three, Chairman of the Inquiry heading them. This would reduce the pressure of the time of individual members of the Committee. The Chairman will now be appointed by the Chief Justice rather than elected by the members themselves. Panels of the Inquiry Committee will investigate only complaints against legal practitioners who are referred to them. The Inquiry Committee as a whole would continue with its present functions under the Legal Profession Act of acting as the general overseer of the professional conduct of advocates and solicitors here in Singapore. It will still be able to institute proceedings on its own motion where instances of professional misconduct are brought to its notice. With this new structure, the Inquiry Committee will be a far more efficient, I would say, investigation body and thus be able to do its work much faster than before. There has also been some thought given to the fact that in order to help these Inquiry Committees and the Disciplinary Committees, some paid secretary could be appointed to help them write their judgments which I found to my regret to be the cause of a lot of these delays. Direct references to the Disciplinary Committee. This is to be found in clause 7 of the Bill which amends section 90 of the Act. Under the present Legal Profession Act, the Supreme Court or any Judge of the Supreme Court or the Attorney-General can refer information to the Law Society concerning the professional conduct of an advocate and solicitor. These complaints are first investigated by the Inquiry Committee. It is only when the Inquiry Committee determines that there is a case made out that a formal investigation is to be commenced by a Disciplinary Committee. The requirement that complaints by Judges or the Attorney-General must first be subject to this preliminary investigation does seem to me

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

to be somewhat incongruous. All advocates and solicitors are subject to the control of the Judges of the Supreme Court. There should therefore be no objection to giving special treatment to the complaint made by a Judge. As for the AG, by long tradition he has been recognized as a leader at the Bar. All these persons can be counted upon to act judicially or quasi-judicially in coming to their decisions whether or not to report. They would, I am sure, not complain unless they are first satisfied that there are grounds for making a complaint. Changes in the composition of the Disciplinary Committee. These are to be found in clause 8 of the Bill which amends section 91 of the Act. The Disciplinary Committee under this proposed amendment will consist of a legal practitioner and a member of the Legal Service of at least eight years' seniority and a lay member. If it is thought that a Legal Service member of eight years is too junior, then some more senior officer could well be appointed. The fact that all members of a Disciplinary Committee are legal practitioners creates the impression that the profession is being a judge in its own cause. This impression is compounded by known instances, which I have just touched upon, of lapses on the part of Disciplinary Committees. Because proceedings of Disciplinary Committees are, as in the case of Inquiry Committees, held in strict confidence, it is not possible to gauge with accuracy the record of Disciplinary Committees of the Law Society in carrying out their functions. The Government's perception of the conduct of Disciplinary Committees of the profession as well as the perception of the public as a whole are formed by the instances which have come to public knowledge. Unfortunately, they are the unsavoury ones. It is these instances that have created the impression that Disciplinary Committees have been somewhat tardy in the discharge of their duties and are indeed prepared to cover up. We are not alone in this. The same concerns have been expressed in England. Even the presence of lay members on Disciplinary Committees of the UK Law Society since the year 1974 has not sufficiently allayed these concerns. Recently, another body which I have just referred you to - the Solicitors Complaints' Bureau - was set up to investigate and adjudicate upon all complaints against solicitors. The Complaints Bureau is dominated by lay members. The Bureau functions independently of the Law Society. The present amendments do not seek to go that far, the present amendments in our Bill. They are therefore more favourable to lawyers in Singapore compared to lawyers in UK. They provide not only for a lay member but also for a member of the Legal Service which includes a judicial officer to sit on the Disciplinary Committee. Lawyers therefore form the majority in a Disciplinary Committee under this new proposal. The presence of a lay member and a legal officer will, it is hoped, remove grounds for cynicism, criticism of the profession's

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disciplinary processes as a whole, and will be seen to place the public interest in some decision of importance. Decisions of a Disciplinary Committee in relation to professional conduct in effect sets the standards of professional conduct of the profession here. Furthermore, the presence of a legal officer in a Disciplinary Committee is beneficial. For this reason, he would be able to bring to bear his experience in investigation and judge issues more objectively. He is not bothered, as would a practising solicitor, with looking after clients' monies. He would not be open to the same temptations. Some concern has been expressed over the presence of a legal officer at the hearing where the complaint is from the Attorney-General. There is no reason for such concern. The Disciplinary Committee is a quasi-judicial body and must comply with the laws governing such bodies, including rules of natural justice. The Chief Justice is charged with the responsibility of appointing the Disciplinary Committee. He will surely have regard to these rules, these basic rules of natural justice, in appointing members of a Disciplinary Committee. Where the complaint is by the AG, the CJ may well appoint a judicial officer. There has been some suggestion that lay members should be included in the Inquiry Committee as well. I believe this is one of the recommendations from the Law Society. There is merit in this suggestion and it can seriously be considered by the Select Committee. Supreme Court Judges and Attorney-General will now, under the proposed amendment, have a right of appeal where they think a Disciplinary Committee has gone wrong. Under the present Legal Profession Act, a person who made a written application of complaint can apply to the High Court for a review of a decision of the Inquiry Committee or Disciplinary Committee dismissing his complaint. In James Chia's case, the Privy Council held that these words refer only to persons who have actually complained under section 86(1) of the Legal Profession Act. When the Supreme Court or a Judge of the Supreme Court or the Attorney-General makes a complaint, they do so under section 86(2) of the Legal Profession Act. The decision in James Chia's case means that they cannot invoke the provisions of the Legal Profession Act to apply for a review of a decision of a Disciplinary Committee dismissing their complaint. Clause 9 of the Bill seeks to put that right. And it is expected now that when a Supreme Court Judge or the AG is aggrieved by a decision of the Disciplinary Committee, they can now have the matter reviewed. Council will also, under this amendment, be given a similar right. In James Chia's case, the Privy Council had held that even the Council of the Law Society had no such power to apply for a review. This will all be set right now. Clause 10 of the Bill is the Bill that would amend the law, setting right this decision. Consequential amendments have been made to sections 86, 87 to give a Panel to the Inquiry Committee the

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same powers as those enjoyed by the Inquiry Committee itself. In clause 11, the Bill provides for continuity of current appointments and pending proceedings.

Chairman

5A. Mr Attorney-General, can you go a bit slower because it is difficult to take down the words? --- I am sorry. These amendments have been drafted with care after much thought over its purpose and effects. Its acceptance would, I submit, strengthen our Bar in that public confidence in its leadership as well as its ability to ferret out and punish its errant members will be renewed. It will bring the regulation of our profession closer to those in other jurisdictions, where the principle of self-regulation still obtains. In their representations to this Committee, the Law Society in Singapore has emphasized the importance of an independent Bar. This is not altogether new as in all my readings on this subject (and they range from Australia to Canada and the UK) this point has been made, an independent Bar, lawyers that are fearless to take on, to represent, unpopular causes. That is all recognized. Points quite rightly made. But it has also to be recognized as has been reported in a recent inquiry into the legal profession in Australia that the independence of the Bar as it relates to professional regulation cannot be taken to mean total freedom from control and accountability. If you want that reference, it is the Legal Profession Discussion Paper No. 1, Sydney Law Reform Commission 1979, pages 124 to 125. If I may, I would like to conclude with a quotation, a quotation from the Royal Commission in Ontario, Canada. This Commission had been appointed to consider the status of self-regulating professions, not just the legal profession. And it sums up the *raison d'être* for these amendments, our amendments:

"The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest. The power is not conferred to give or reinforce a professional or occupational status. The relevant question is not, 'do the practitioners in this occupation desire the power of self-government?', but 'is self-government necessary for the protection of the public?' No right of self-government should be claimed merely because the term 'profession' has been attached to the occupation."

That is a quotation, Gentlemen, from the Commission of inquiry into Civil Rights (Ontario), 1968, page 1162.

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Chairman] Do Members of the Committee have any questions to ask?

Prof. Jayakumar

6. Mr Chairman, if I may just ask one or two questions of the Attorney-General. Mr Tan, I want to be clear on one or two points. First, you are telling the Committee that these amendments were initiated as early as January 1986 and you have brought, as evidence, your correspondence with the Prime Minister? --- That is correct.

7. You also told us that in one of your letters to the Prime Minister that you had been thinking of these problems even before the Prime Minister had asked you to comment on the amendments? --- Indeed.

8. I believe you also told us that you had from time to time expressed your concern on these matters to Members of the Council? --- Yes.

9. Could you elaborate on that? --- I did talk to one past President. I think it was Mr Menon. I more recently talked about these matters to Mr Warren Khoo. And he told me of the efforts the Bar has also been making in this regard, that there was a Committee of the Council or the Bar that was looking into the Disciplinary Rules.

10. Was Mr Warren Khoo a member of the Council at the time you spoke to him? --- I believe so. He has been in the Council for some years now.

Prof. Jayakumar] Thank you.

Mr Barker

11. I just want to ask you two questions. Your present amendment would bar someone who is disqualified, would bar him permanently from holding office? --- That is so.

12. We have received the representation from the Bar suggesting that this disqualification should not be for life but for a period of five years, after the solicitor has resumed practice. What do you of their suggestion?--- In the course of my address this morning, I had emphasized the public interest. I had also emphasized the secrecy, the defence on all these inquiries. Accordingly, I concluded that one who is in charge of these

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

disciplinary procedures must be beyond reproach. I know it does appear somewhat harsh to have a man debarred for life. But I would like to draw this distinction between holding office and having a right to practise. Here, I think the more important consideration would be the public interest, maintenance of standards, the image of the Bar, if you like. The man who is debarred has done some wrong. He is forgiven in so far as the right to practise is concerned. He is restored to that position. It is said he can now handle clients' accounts, be trusted with other people's monies. Therefore he should be honest enough to hold office. I am not for one moment saying that he cannot therefore be trusted with other people's moneys. That's quite a separate issue. One has to consider the public perception.

Mr Barker (cont.)

13. What about a period of disqualification, say, for five years, and then an application to the Courts for permission to stand for election? In other words, nothing automatic happens after five years but if the solicitor can show that he has been of good behaviour, say, for more than, five years, would it not be fair to allow the Courts to decide a matter like that? --- You mean, the solicitor concerned is debarred from holding office?

14. For five years? --- Five years, perhaps even more. But when the time comes, after the five years, he can then apply to Court to lift this debarment?

15. Yes? --- In such circumstances, perhaps if a Court sees fit to restore the man's right to hold office. But then it will be putting a burden on the Court, quite an unfair burden on the Court who would then have to consider.

16. Why unfair? --- Well, to adjudicate upon the worthiness of a man, what sort of evidence is needed.

17. Evidence that he has been of good behaviour for the last five years. I will take you to another submission of theirs. They suggested that suspension should be for a period of one year or more, rather than six months as provided in the Bill. I quote from paragraph A.5:

'Our suggestion would be more in keeping with the object of the Bill of barring persons guilty of the grosser kinds of misconduct of fraud and dishonesty. Such misconduct would in the normal course attract a suspension of at least one (1) year or more, whereas a shorter suspension is likely to be for other and less serious irregularities, not necessarily involving fraud or dishonesty.'

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

Mr Barker (cont.)

Can I have your views on that? --- That may be so. As I said in my submission earlier on, the difficulty is finding a proper gauge whereby one could judge the seriousness of an offence that has been committed. I would say six months' suspension awarded for a misdeed is sufficiently serious to merit debarment.

~~Mr Barker~~ Thank you. Sir, may I propose that members of the Council who are here today be given the opportunity to ask the Attorney-General any questions that they would like to.

Mr Francis Seow

18. Mr Chairman, with your leave, may I ask the Attorney-General some questions? He referred to a letter dated the 11th January 1986 in reply to the Prime Minister who wrote to him on the 8th January wherein he stated that the views of the Bar regarding disciplinary controls and/or procedures have been canvassed. I would like to know from the Attorney-General when did he canvass the views of the Bar and with whom? --- As I said to you, gentlemen, I talked to Mr Menon, Mr Khoo and a few other lawyers whose names I cannot recall. We discussed the defects in the disciplinary proceedings.

19. Am I right in saying that apart from Mr Menon and Mr Warren Khoo, no other views of the Council members were solicited or canvassed? --- That would not be correct because I did talk to some others.

20. You did. Excellent. Can you tell us who they were? --- I cannot. As I said to you, I cannot recall.

21. When did you speak to Mr Menon, the Past President? --- One or two years ago.

22. One or two years ago? --- Yes.

23. And with Mr Warren Khoo, when was that? --- Within the last few months.

24. At that time, am I correct in saying that the amendments which you had in mind relate essentially to disciplinary controls and/or procedures? --- As well as the disqualification on members holding office.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

Mr Francis Seow (cont.)

25. Would you be so kind as to refer to your own letter, unless I have misheard you, dated the 11th January 1986 and point to us where is there any reference made to what I call for convenience, the FTS amendments? --- Mr Chairman, it would be wrong to refer to the FTS amendments because, as I said earlier on, this Bill is not directed against any person.

The Prime Minister

26. What is FTS? --- Francis T. Seow.

27. I see. Thank you? --- Maybe not in this letter. But I did discuss with the people concerned these disqualification provisions.

Mr Francis Seow

28. So it was not in the letter dated 11th January 1986? ---
- No.

29. Am I correct in saying that in all the exchange of correspondence between you and the Prime Minister in January 1986, no reference was ever made to this particular amendment? --- Mr Chairman, these letters do not pretend to be exhaustive.

30. Oh, I accept that. I accept that? --- Then why this question?

31. You have put them here? --- No. If you accepted them, then may I ask why this question? If you accepted that the exchange of correspondence between the Prime Minister and myself is not exhaustive, then why this question?

32. Right. Please answer my question. In the letters dated the 8th January, the 11th January, the 13th January and 24th January, is there any reference made to this particular amendment? Please answer yes or no? --- No. Should there be?

33. No, no, Mr Attorney-General. We are here to assist the Committee? --- Of course. I want to assist the Committee. Hence my question to you.

34. Can you tell us whether it is in any of the letters that I have just referred? --- I said no.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

Mr Francis Seow (cont.)

35. No. Thank you very much. Would you be able to tell the Select Committee when was it that this amendment first see print? In other words, when was it first referred to either in letter form or in any other form? --- I cannot say. There are so many Bills that go for print to the Government Printer. I would not know. It is of no moment to me.

36. Would you be able to assist us roughly the date? --- I do not think the Committee is interested in this. I do not know, I said to you.

37. This arose as a result of the questions put to you by the Second Minister for Law. I just want to clear my own mind on this point and I am sure the Council members would too would like to know? --- I am sorry. I cannot clear your mind in that respect.

Mr Francis Seow] That is all, Mr Chairman.

The Prime Minister

38. Mr Attorney-General, you have not disclosed all the letters I have written to you? --- That is correct, Sir.

39. Out of consideration for me or for consideration for those named in the letters? --- It is out of consideration for those named in those letters.

40. You knew what I was referring to? --- Yes.

41. How did you know? --- I guess we were on the same wave-length. You were referring to people whose past you knew.

42. If I understand Mr Seow correctly, the disqualification clause only arose after he made his statement on the Newspaper and Printing Presses (Amendment) Bill? --- That would be quite incorrect.

43. That it arose in January? --- Indeed. If I may say so, it arose after the report in the newspaper of Mr Seow's speech at the opening of this Legal Year, 1986.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

The Prime Minister (cont.)

44. I wrote to you or you wrote to me? --- You wrote to me.

45. Without prejudicing the contents of the letter, what was the thrust of it? I do not want to prejudice people in my letters to you, but what was the thrust of it? --- You had asked me how it came about that Mr Seow was in that capacity.

46. These proposals are much more generous to the profession than my own proposals to you? --- Indeed they are, very much so.

47. And they have been refined out of a series of discussions between the two Ministers for Law, you and I? --- Yes, that is correct.

48. I should express publicly my reservation that a legal officer being one of the three in a Disciplinary Committee does not necessarily mean that discipline will be enforced more rigorously, fairly and justly? --- I thought that it would be an improvement to the present situation. If we had one that is quite divorced from the burly burly of practice and in the course of ----

49. That all your legal officers are also advocates and solicitors? --- Indeed they are.

50. And you have, particularly over the years of economic buoyancy, consistently had a high turnover? --- Indeed.

51. Since we made these proposals (the amendments) we have discovered that 10 members of the Bar had been previously disciplined or dismissed by some other organizations. Has Prof. Jayakumar given you the list? --- I do not recall.

52. There are members of the profession who have slipped through the net and you had not objected to their admission to the Bar to practise. We have discussed this, that we should now maintain computerized records of people who have been dismissed or disciplined or convicted of crimes so that when their application for admission is made to the court, you would be in a position to intervene, which you have not done so? --- Not having such evidence.

53. You have not objected to any? --- No, I have not.

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9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

The Prime Minister (cont.)

54. And if you knew that members who have been either a graduate of a university or a barrister or a solicitor of the High Court of England had had a previous disciplinary action as dismissal from disciplined bodies, you would have objected? --- I would.

55. Do you not think we should have another provision that all those who seek election to the Council should declare that they have not been disciplined or done anything which connote less than moral rectitude? --- The difficulty with regard to such a declaration, Sir, would be, where to draw the line?

56. Disclosure must be made surely? --- Of all manner of transgressions?

57. Indeed. If a man has been sacked from the SAF for misconduct, should he not declare that? --- I suppose if you want to have members in council altogether free from any blemish, that would be one way.

58. You know the practice of certain disciplinary tribunals in Britain where the Chairmen are full-time, as in the Medical Council? --- Yes.

59. And they regularly hear disciplinary cases and dispose of them expeditiously? --- Yes.

60. You know my view that if your amendment does not work, this course of action must be considered? --- Yes. I hope it may not be necessary.

61. That depends not on you but on your legal officers who do not necessarily, when sitting on these quasi-judicial bodies, act as legal officers but as future advocates and solicitors. They must have those interests in mind? --- The idea is not altogether a new one even to the legal profession, because I believe, in the Solicitors' Complaints Bureau recently set up in Britain ----

62. But the Solicitors' Complaints Bureau does not discipline. It investigates and sends up for disciplinary action. The awful moment comes when the man is before you and your decision would mean either his suspension or disbarment. That is different, is it not? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Tan Boon Teik, AG (cont.)

The Prime Minister (cont.)

63. And that is exactly the reason why, you remember, in 1969 we abolished the juries. Singaporeans were not willing to take the decision that would lead to severe punishment for the person they are asked to sit in judgment over? --- Yes.

64. Has the Singaporean changed? --- I regret to say no, if one has regard to the list I just submitted.

Chairman] Do the other Members want to ask any question?

Hon. Members indicated none.

Chairman] What about members of the Council?

Members of the Council indicated none.

Chairman

65. Thank you, Mr Attorney-General. Your presence may still be required in our proceedings. Thank you very much. You may step down? --- Thank you.

(The witness withdrew.)

The Chairman: The witnesses have been summoned to appear before the Select Committee to assist it in its consideration of the Legal Profession (Amendment) Bill. The Committee has decided that all witnesses shall be examined on oath. I wish to remind the witnesses that under the Parliament (Privileges, Immunities and Powers) Act, you are required to answer all questions put to you by the Committee. Now may I call on Mr Elias?

Mr Harry Elias: May I take my papers with me, Sir?

The Chairman: Please do that.

Mr Harry Elias: Thank you.

MINUTES OF EVIDENCE

Examination of Witness

Mr Harry Elias was called in and examined under oath.

Chairman

66. Can I have your name and status, please? --- My name is Harry Elias. I am a partner in the legal firm of Drew & Napier.

Chairman] Thank you. Prof. Jayakumar.

Prof. Jayakumar

67. Mr Elias, just for purposes of general information and record, could you tell us how long you have been a member of the Council? --- It is difficult to tell you with precision. In excess of eight years. Two years as Vice-President, two years as President.

68. What were the years when you were President? You were the Immediate Past President? --- I am indeed the Immediate Past President. I was President in 1984 and 1985, for the entire calendar year.

69. Do you recall during that period instances where you had to meet with me as Second Minister for Law to discuss matters which affected the Council or lawyers, and did you have any difficulty in having access to me to discuss these matters? --- I not only recall it, but I have taken the liberty of compending an entire brochure of all the meetings we have had and the correspondence we had. There were many.

70. Since it has been said that there have not been any consultation, during the period you were President, do you recall my sending you copies of bills affecting the legal profession or affecting other matters which may be of concern to the legal profession, in advance of their publication? --- I recall distinctly, not the legal profession as much as other bills, yes. You have also mentioned to me in some of your letters that I was getting it in advance of even Members of Parliament.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

Prof. Jayakumar (cont.)

71. Mr Elias, you know that we have a representation from the Council before us? --- Yes, I am aware of it. I took part in discussions.

72. You were involved in the discussions? --- Yes, indeed.

73. Mr Barker has referred to some of the provisions on which this memorandum commends. Can I ask you to give your comments on one of the proposals here? I am sure other Members of the Select Committee will refer to other representations. With regard to lay participation in Disciplinary Committees, the proposal of the Law Society is generally to accept, in principle, the concept of lay representation proposed in the Bill? --- That is correct, Sir.

74. But the point of departure appears to be that the Council would prefer lay representation to be in the Inquiry Committee stage? --- That is so, Sir.

75. If I were to say that in our view we will consider that proposal seriously, but not in lieu of lay representation in the Disciplinary Committee, but in addition. In other words, we have lay representation ---?--- In both stages?

76. Both. Lay representation in both. Would you, as an experienced member of the Council, have serious reservations to that? --- Two, Sir. One, I think one must look at the amount of Disciplinary Committees that are set up on a yearly basis. If you look at the memorandum that we sent, the statistics show only two per year. So there will be no advantage if we want to get rid of these perceived notions by inviting lay people on to it. So it is not going to achieve the reason for opening it up, so to speak, to lay people. Secondly, as you know, Sir, in Disciplinary Committee, it is almost adversarial. You have got a lot of law. And I think we may find that the lay person will have inevitably to lean on the other two members. I would have preferred to see it on the Inquiry Committee where there is fact-finding, there is a lot more from Council to Inquiry Committee than there would be from Inquiry Committee through Council to Disciplinary Committee. I would have preferred that on a wider ambit than just merely to Disciplinary Committee. Those are my reasons.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

Prof. Jayakumar (cont.)

77. It may be true that the lay representative would have to be guided by the legal minds on questions involving intricacies of the law. But would you not agree that in respect of public presentation and in respect of ensuring that the public perceives that their interests are represented in both stages of the disciplinary process, that it does no harm to have a lay representation on the Disciplinary Committee as well? --- The legal officer, judicial or otherwise, would serve the same purpose. It would not be lop-sided. You will have three on the panel and the layman, if you can call him that, would include the judicial officer or the legal officer. In my view, I think it will achieve the same purpose.

The Prime Minister

78. The Solicitors' Tribunal, Discipline Tribunal in Britain since 1975, has lay representative? --- It has indeed, Sir.

79. They had no problems in administering discipline with the lay representative sitting on the Committee. Don't you think there is some advantage in it? --- I think the advantage is there, as has been set out. But I think it might probably, Sir, be a bit too much for the layman in the disciplinary processes as opposed to the investigation ----

80. You mean, a lay Englishman can cope but a lay Singaporean cannot? --- Possibly. He might be over-awed.

81. Just as he can't cope with juries? --- Your point has been made, Sir.

82. So he shouldn't be asked to cope with disciplining solicitors? --- Not for that reason only, Sir, because I do feel sincerely that if you give the layman, powers, so to speak, in the Inquiry Committee stage, it would already suffice, sufficient enough.

83. But the Inquiry Committee stage is not when the decisions are taken which will carry penalties. The penalty follows from the finding of a Disciplinary Committee, not an Inquiry Committee? --- I accept that. But any perceived notion is on the basis that the public should see participation by lay people so that there is no allegation of cover-up. Not so much on the penalty, Sir, with respect, but in the perceived notion that we are shrouded in secrecy.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

84. Or shouldn't you now discard the secrecy and publish all your hearings and the findings? --- I am not against that, Sir.

85. You represent a fair body of the senior members of the Bar in that sentiment? --- I would say so, Sir. The secrecy is not important as long as we tell the public, with clarity, what we do.

86. In other words, you are prepared to publish records of the proceedings and the judgment? --- I see no reason why not.

87. How long have you been an advocate and solicitor? --- I was called in 1965 in the Bar in Malaysia. So that is, I think, 21 years now, Sir.

88. And here? --- Since 1969.

89. What did you deem as your most important duty when you were President of the Law Society Council? What is the purpose? ---- I think to uplift the standard, internally and externally, to give the Bar the image, to work towards a consultative machinery with the Government, have better rapport with the Judiciary, and get things going in terms of our own internal difficulties. At that point of time, ie, we needed information, the dissemination of information to members, to the press, a better rapport with the press. I set it all out actually in a speech I made, in which I think the Second Minister for Law was our guest of honour. I call it my Ten Commandments.

90. But your most important commandment is to maintain the integrity and standards of professional conduct? --- Axiomatic. Yes, Sir.

91. You are a barrister or a solicitor? --- A barrister.

92. Do you know how self-regulation grew? The origins? ---- Roughly, Sir.

93. That it means an induction as an apprentice into the system, a system that has lasted a few hundred years? --- I see it too.

94. That they have a responsibility to conduct lectures, to educate students in order that they can be properly trained and to examine them. They conduct examinations. You took your Bar examinations? --- I did indeed, Sir.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

95. They were conducted by? --- The Inns of Court, Council of Legal Education.

96. And thereafter you had to be in chambers? --- We had the viva too. We had the post-final.

97. And you absorbed it by osmosis, a certain code of honour. The Law Society does not teach the law as done by the University of Singapore or the National University now? --- We do supplement that in the post-finals.

98. Very recently? --- For some time now. Post-final is one. Legal workshops are another.

99. But the basic training, four years at the University, the Bar or the Law Society and its Council have nothing to do with it? --- To an extent, we do, Sir. We supplement it by providing lecturers from time to time.

100. You don't send the lecturers. The University chooses from amongst your members those competent and willing? --- Quite.

101. So you have no connection with the training and disciplining of students before they are qualified for admission? --- Apart from the Board of Legal Education where we do have representatives of the Law Society, the answer to your question is no, apart from that.

102. And you are aware now that of 1,300 members on the Bar, some 800 members or more have been graduates of the University of Singapore or the National University of Singapore? --- I know it forms the majority now of our members.

103. There has been no formal induction into the system? --- Pupillage. Pupillage, Mr Prime Minister.

104. Mr Elias, in busy Singapore, having a buoyant economy over the last 20 years, what lawyers spend time correcting his pupil's work? --- Probably the minority.

105. Or even taking pupils which has been a problem, isn't it? --- As of this year, it has become a problem. But it should be all right from previous years.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

106. Do you agree with the submissions made by the Attorney-General? --- In its entirety, Sir?

107. Nett? --- I feel some of the submissions ----

108. You disagreed in your memorandum on specifics. I am asking you whether you agree with the basis on which the amendments have been put forward - that those on the Council of the Law Society must be unblemished men before they can exercise discipline over 1,300 members, growing at the rate of 200 graduates a year? --- With two riders, if I may. The first one is I do feel that after a period of five years and coupled with what the First Minister for Law has said, an application to court. Just as you have directors who have been disbarred can apply to court for being reinstated. I think subject to that over-ride, the answer to your question is yes. The second one. I do feel that if one is suspended, you have to have that moral turpitude situation linked to it. You can get suspended, with respect, for non-moral turpitude situations. I don't think it is fair to link such a suspension with disbarment. You could be rude. You could be rude to a Judge. You might probably have had a breach of etiquette rule by not giving the 48-hour notice. It could be any of those things.

109. He could be suspended for more than six months for a breach of etiquette? --- I don't know. I don't know, Mr Prime Minister.

110. Has anybody been suspended for a breach of etiquette? --- Not to my knowledge. But we have a case in which a member of the Bar was rude to the Judge. He has been struck off.

111. That is contempt, isn't it? --- I don't know if it was on the face contempt. But we had a situation such as that, and if one looks at it and says that man is not fit, given no chance, five years and application to court, that is my reservation.

112. Suppose you accept my standards, not moral turpitude but moral rectitude, that any man sitting on the Council which is to decide whether a member has been errant and must be disciplined must have clean hands? --- You have got to be uniform, Mr Prime Minister. Forgive me. We have to be uniform. Members of Parliament have a chance. Ambassadors have a chance. Why can't we have an equal chance?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

113. Ambassadors don't sit in judgment over members of a profession whose relationships with their clients are often of the utmost confidence. Members of Parliament do not hold themselves out to lay members of the public as intermediaries to negotiate with the Government. They cannot sell their services. A member of the Council is allowed to sell his services like every other member of the Bar. But when he is on the Council, he is sitting in discipline, jealously guarding standards. It is different, isn't it? --- Mr Prime Minister, I beg to differ. If you sit on the Council, discipline has very little to do with you because ultimately the DC is appointed by the Chief Justice and they are the persons who will recommend and then it goes to the court on a nisi basis and thereafter on the full court. We play the role of merely postmen, once the DC says so. We tried to intervene in James Chia's case, Mr Prime Minister.

114. You thought you had the right to intervene? --- And we got ---

115. No. Before James Chia's case was decided, you thought, the Attorney-General thought, and the Government thought, that the Council had the right to intervene, the Council's where the final authority was. We discovered in James Chia's case that the Privy Council in its interpretation of the Legal Profession Act --- ? ---- It didn't extend ----

116. It did not. Whereupon an amendment is necessary. Right? --- Quite.

117. Where is this final repository? --- It will still be with the DC, with respect, Mr Prime Minister.

118. No? --- And the courts.

119. The final repository is in the courts. But the Council has to assist the court and there are cases where the DC feels that it is not serious enough to send it to the court, the Council can impose a fine of up to \$5,000? --- That is so.

120. Don't you think we should have men of unquestioned integrity before they decide whether or not a person should be fined \$500 or sent before a banc of three judges for more severe punishment? --- I still feel that a five-year period ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

121. No. Let's not talk about personal feelings. I am posing you a juridical point? --- Without having to use my own personal feelings, you mean?

122. Yes, leave them aside? --- The answer to your question must be yes.

123. Yes. Therefore, if you have in the Council men who have been suspended and reprimanded, men who have been dismissed or asked to resign from honourable associations, that's something wrong, isn't it? --- Mr Prime Minister, you are saying what do I feel from a juridical point and nothing personal.

124. I am asking you: that is contrary to the concept that a Judge which is, in effect, what the Law Society Council is, it has to sit in judgment over its own members must be beyond reproach? --- A five-year period plus the court allowing it takes it away, Mr Prime Minister.

125. I am asking you to establish the principles first, then you can put your proviso and qualifications and escape clauses? --- OK. I buy that, Mr Prime Minister. We put it in provided we have the escape clauses. That is the feeling.

126. But on principle they should not be there, or they should disclose the fact? --- Yes. The disclosure is axiomatic.

127. And that therefore you would be surprised if you knew that on your present Council, it is not only one, Mr Francis Seow who has been disciplined, but two others? --- You mean by the Law Society or by outside bodies?

128. By other societies where standards have to be maintained. That would surprise you, wouldn't it? --- Indeed.

129. Yes. If I told you somebody was sacked from the police force for bordering on corruption? --- I would be surprised.

130. And that somebody else was asked to resign from the Legal Service for cheating in examinations? --- I would be surprised.

131. Yes. And that's wrong, isn't it? --- Yes.

132. And that the Attorney-General should, when any member

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

applies for admission as advocate and solicitor, check the criminal records and the disciplinary proceedings against all those who are applying for enrolment? --- I cannot disagree.

133. You know the Advocates and Solicitors' Ordinance that preceded the Legal Profession Act? --- Familiar with part of it, Mr Prime Minister.

134. It is the same as in the Federation? --- Yes.

135. In all your years, have you considered the Bar a unique organization to intervene in the public interest on matters of moment, unconnected with the law and the profession? --- Unconnected with the law, no. With the profession, definitely yes, and on matters that would concern the ordinary citizen's rights, yes, we have. But it is a question of method, not what.

136. Let's put it simply. You have been here for some years? --- I was born here, Mr Prime Minister.

137. Did you hear Mr Francis Seow when he made his submission to the Chief Justice, his address? --- I was sitting next to him.

138. Did your ears prickle? --- My heart fluttered too.

139. Which parts made you flutter? --- I think my style is quite a different one from Mr Seow. If you have to say anything to the Judges, it has always been my contention you speak to them privately and in chambers. What he said in open court, much of it that was directed towards the judiciary, ought to have been said in the closed quarters of chambers. I made this view known immediately after we adjourned, not to Mr Seow, but to several members of the profession.

140. I want you to read two short excerpts of Mr Seow's speech. I have sidelined them. Read it aloud, please? --- Right from the top.

141. No. It will save time if you read the sidelined part? --- "We have ourselves partly to blame for this erosion." From there?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

'We have ourselves partly to blame for this erosion. We are resolved that there should be no such further erosions. In the meantime, I question the random judicial requests for medical certificates. I have not been able to ascertain the whys and wherefore of the practice requiring an advocate who happens to be ill at or during a trial, to produce a medical certificate regarding the state of his health before he is excused by the court from further attendance. This practice detracts from the dignity of the profession. I recommend its early demise.'

The Prime Minister (cont.)

142. Let's pause there. You heard the Chief Justice's reply?
--- Yes. I can't remember his exact wordings but I did hear his reply.

143. Do you expect him to order his Magistrates and District Judges not to ask for medical certificates because Mr Seow has stood up on his hindlegs and barked at the Chief Justice? --- I would have expected if one had approached the Chief Justice in the quiet atmosphere of his Chambers and told him of his difficulties, I am positive he would have responded.

144. And it is also quite possible that advocates have abused an existing practice which might have prevailed some many years ago before the Bar became so large where you need only tell him through another advocate that he was unwell? --- I haven't seen any of that, Mr Prime Minister. I haven't seen any of that in which there has been this abuse. Perhaps one case if my memory takes me back ---

145. No. But it used to be a different practice? --- Well, with 270 at the time when I started practising, it is different, but this is still sacrosanct. I think if a lawyer says he is unwell, I believe in almost all cases that I know, it is a fact.

146. Now, read the next paragraph? ----

'The Society is there, for amongst other things, to look after the interests of its members. If a member has fallen by the wayside, he should, wherever possible, be helped. If the circumstances should, however, warrant it, there is the disciplinary machinery of the Society. The discipline of a member belongs to the

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

Society and to the Society alone. We cannot allow any persons in authority, however pretentious, other than the Society, to arrogate to himself the power to determine, extra-judicially, whether a member of the Society is a fit and proper person to continue to practise his profession. The day this power of the Society is shared or usurped will be a grievous day for the profession of the law. And, as long as I have anything to do with the Society, I shall resist it to the utmost.'

The Prime Minister (cont.)

147. That's a belligerent statement, isn't it? --- I think the emphasis there is "extra-judicially".

148. No. My question is: is it not a belligerent statement? --- Depending on the emphasis, Mr Prime Minister, with respect. I think what Mr Seow was saying, no person should extra-judicially determine our right to practise our profession. If I use that as my emphasis, I think it is a fair belligerent statement to make, because we shouldn't allow anybody extra-judicially to debar us from practice. And if that is ----

149. Read the first sentence? --- First sentence of that paragraph.

'The Society is there, for amongst other things, to look after the interests of its members.'

150. That is hardly a reason for self-regulation, isn't it? If the Society exists to look after the interest of its members, and I believed that, I would revoke and repeal the Legal Profession Act. Don't you think it would become my duty in the public interest? --- If it merely looks after its own members?

151. Yes. If that is the paramount consideration? --- It can't be, Mr Prime Minister.

152. It cannot be. Good? --- - Cannot be. The legal profession cannot ---

153. Read the second sentence? ----

'If a member has fallen by the wayside, he should, wherever possible, be helped.'

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

154. Yes? --- Wayside, Mr Prime Minister.

155. That's right? --- Again, I read it to mean those who become paupers, those who go into old men's home. I didn't read it. I mean, Mr Seow can answer. But the way I looked at it, it says ----

156. You practise the criminal law too? --- No, Mr Prime Minister.

157. Read the next sentence? ----

'If the circumstances should, however, warrant it, there is the disciplinary machinery of the Society.'

158. It contradicts your earlier explanation? --- In that way, yes.

159. You read the statement Mr Seow issued about the Newspapers and Printing Presses (Amendment) Act? --- You mean, his letter to the Straits Times?

160. Yes? --- Yes.

161. You also knew that he was going to appear before the Commission of inquiry on the Executive Interference with the Subordinate Judiciary? --- Only on the fourth term of reference, not on the first, second or third.

162. Only on the? --- Fourth term of reference.

163. Why was that? --- Because I think it was quite clear in what we stated. We were only interested in making our representation known if there was any evidence on (i), (ii) or (iii) If there was none, we did not want to make representations.

164. You were President in 1984? --- 1984/85.

165. 1984/85. Did you have any reason to want to make representations on terms of reference (i), (ii), and (iii)? --- No.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

166. You did not know of public disquiet, or you had no public disquiet? --- Disquiet of the public is not the words I would choose. Let me use my own, if I may, Mr Prime Minister.

167. No. My question was: did you or any member of your Council have any notice of public disquiet or personal disquiet? --- I wouldn't like to use the word "disquiet" in my answer, Mr Prime Minister. Let me use my own. I think there was a feeling amongst lawyers that his transfer was a sad day. We thought that Michael Khoo was an able, competent, very very straightforward, honest, integral part, if you like, of the entire system. And we felt unhappy that he had been transferred. I wouldn't like to use words like "disquiet".

168. Unhappy because he was a kind and humane judge? --- No, Mr Prime Minister. No, more than that. Competent, able, somebody who should have or should have been considered for elevation to the High Court Bench. That is my personal feeling. I think I express the sentiments of the Bar almost universally on that.

169. Who is the appointing authority? --- Yourself, Mr Prime Minister.

170. Do you know I take soundings of the Bar before I make any appointments to the High Court Bench? --- I don't know of any from you to me when I was President. So I wouldn't know about soundings from the Bar.

171. Do you know I made two appointments before he was transferred? --- Yes, I am alive to that.

172. Sorry, I made three appointments? ---Mr Punch Coomaraswamy and Justice Thean.

173. Three appointments, before he was transferred? --- I don't know about the third one. I only know about Justice Thean and Punch Coomaraswamy.

174. You don't think he was transferred because we had to fix Mr Jeyaretnam, do you? --- I don't think that was in our minds. All we were thinking about was ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

175. Was that you lost a kind, humane judge ---? --- Mr Khoo was a good trial judge.

176. --- because the Chief Justice transferred him? --- Beyond that. Beyond the kind and humane man, a competent man. I have appeared before Mr Michael Khoo, as Deputy Registrar, on innumerable occasions. I have no doubt in my mind that he is a competent, able man. And I was unhappy that we couldn't tap his talent.

177. You had seen my three appointments before his transfer? --- Could you remind me of the third one because I was looking at L.P. Thean, Punch Coomaraswamy, and Sek Keong came much later. Lai Kew Chai.

178. Lai Kew Chai? --- Yes, I had. Quality men.

179. Men of quality? --- Undoubtedly.

180. And undoubtedly would rank above Michael Khoo, if you had to make that choice? --- I would say equal.

181. That's a question of opinion? --- That you asked me, Mr Prime Minister, I express it from the heart. I would say equal.

182. Would you say that the Bar has a unique role in the social affairs of Singapore? --- I think we have a role to play, a very positive and a contributory role to play, in the social affairs of Singapore. I would give you an illustration.

183. That it should engage in a public debate with the Government over the Newspaper and Printing Presses (Amendment) Bill? --- In a debate, yes, but not public.

184. And once it became public because the President issued a statement, it must lead to a join-in of issues? --- That was not my style, Mr Prime Minister.

185. Has it been done by any other President? --- I don't think it's fair to say that Mr Francis T. Seow was the man that joined issue. I think Mr Francis Seow ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

186. No. Mr Elias, before I press you harder, let me remind you that we are here to elucidate issues so that we can come to the right conclusions. And if you take a defensive position or if you feel you have got to defend the Council, and you more and more get into a join-in of issues position, the end-result must be an amendment which is much less sympathetic than what you would have got, wouldn't it? If I felt confidence in the profession and the way it is run by the Council, I would repose a great deal of responsibility on it, wouldn't I? Because I moved from the old Advocates and Solicitors Ordinance to the Legal Profession Act in 1967 when Mr Punch Coomaraswamy was the Speaker, and he persuaded me to constitute the Law Society. If I had come to the conclusion that it was wrong, that the Society is incapable of rising up to its responsibilities, I would go back to the old Advocates and Solicitors Ordinance or Act. Right? --- That would be from your point of view. Yes, Mr Prime Minister.

187. Yes. Therefore let me ask again: has any previous President taken on the Government on amending legislation publicly, or have they made their representations as lawyers? --- Publicly?

188. Yes, as lawyers, to the Minister to improve the law? --- Publicly. The emphasis is that word.

189. Yes? --- No.

190. No. And when the Council takes it on publicly, the Government must reply publicly? Yes? --- The meeting of the minds, Mr Prime Minister.

191. You are not surprised that you are here, are you, Mr Elias? --- Not at all. I come prepared.

192. Mr Elias, please. I don't mean you are surprised today. But from the day Mr Seow made his speech before the Chief Justice, you must have expected that at some time we must meet? --- Yes.

The Prime Minister] Yes. Thank you.

Chairman] I think it is time to adjourn. We shall adjourn now We shall meet again at half past Two.

Sitting accordingly suspended
at 1.00 pm until 2.30 pm.

MINUTES OF EVIDENCE
Sitting resumed at 2.30 pm
[Mr Speaker in the Chair]

9 OCT 86 - Witness: Mr Harry Elias (cont.)

Chairman

193. Mr Elias, the Prime Minister has more questions to ask you. You are still on oath, are you not? --- (Mr Harry Elias) Yes.

The Prime Minister] I think we will wait for your Special Assignments Committee to be removed from the Chamber. We will see them later.

[Members of the Special Assignments Sub-Committee withdrew.]

The Prime Minister

194. Mr Elias, you said Mr Seow was going to make a submission on term of reference No. 4 about the Subordinate Judiciary? --- Yes, Sir.

195. There was a Council meeting on it? --- Yes, Sir.

196. What was the gist of the submission? --- To the best of my recollection, Sir, it was to follow the English practice of having a judicial service commission.

197. English practice of a judicial service commission? --- That is to the best of my recollection.

198. There is no such judicial service commission in British law? --- I stand corrected on that. But that was the gist of what, I think, we were discussing.

199. You spent your years in England as a student? --- Yes, I did.

200. There is a judicial service commission in England? --- To the best of my recollection ---

201. To appoint whom, what? --- Judges, in transfer of subordinate and equivalent of district judges. I may be wrong, Mr Prime Minister.

202. I think you are. What else? Who controls them then? --- The commission itself, appointed in the same way as the Legal Service Commission is.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

203. I see. Then having appointed them, who sits in judgment over them? --- Judgment in what sense, Mr Prime Minister?

204. Their work? --- The commission itself.

205. The commission sits in judgment over the work of the subordinate judges? How? --- In terms of appointments, in terms of assignments, in terms of transfers.

206. Transfer, where to? --- In different courts, in different jurisdictions, around the peninsula or in terms of the island itself. We are talking about England now. But in Singapore in terms of transfers ----

207. Where to? --- Within various judicial officers' capacities in statutory boards, etc.

208. I beg your pardon? --- In terms of assignments. As it now stands, Mr Prime Minister, we have the Legal Service Commission doing the statutory bodies, doing the AG and doing the district courts. The judicial service commission would only deal with district judges and magistrates, and nothing else. This is to the best of my recollection of the memorandum that was prepared.

209. There was a memorandum? --- To the best of my knowledge, yes.

210. And the Commission never came to term of reference No. 4? --- No.

211. Did you submit the memorandum to the Minister? --- To the best of my knowledge, no.

212. Why not? --- I can't answer that, Mr Prime Minister.

213. Was it an important document? --- In the fourth term of reference, yes.

214. Surely if there was something wrong with the Subordinate Judiciary, the memorandum should have been sent to the Minister? ---- I think we were deliberating on the fourth term. If called upon, we would submit that. If not, we were making no recommendations.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

215. So it purely turned out upon a fortuitous circumstance whether or not there was a finding that would lead to the fourth term? --- Yes.

216. There were no strong feelings about the memorandum? ----
No.

217. No? But I have strong feelings because when I read this, it implies that something is seriously wrong and I ought to know about it. What is seriously wrong? --- In the fourth term of reference?

218. Yes. How do we improve it? --- I think if you have a judicial service commission per se, as opposed to the Legal Service Commission, the two can be separated.

219. Yes. And who sits on the judicial service commission? --- The Chief Justice.

220. Who else? --- Judges and other appointments that you would make.

221. What is the difference between the judicial service commission and the Legal Service Commission then? --- A transfer, I think, probably is the answer, Mr Prime Minister.

222. You mean there is no difference in the personnel or the persons constituting the commission? --- I cannot see any difference.

223. So they should not be transferred out of the judicial service? --Basically, yes.

224. But you have just told me that they could be transferred to the statutory boards? --- No. I am saying the Legal Service, forgive me. The Legal Service Commission.

225. We were talking about the judicial service? --- Let me correct myself then, Mr Prime Minister. The Legal Service Commission was what I meant.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

226. So the personnel would be the same. You will have the Chief Justice? --- Judges.

227. The Judges, the Attorney-General and three members of the PSC. You will divide them into two? --- Yes.

228. So they don't transfer in and out? --- Yes.

229. How does that improve it? --- The feeling that you get, Mr Prime Minister, that the judicial officer remains purely a judicial officer. He doesn't change into an Attorney-General's Chambers' man and then he comes back again into the judicial service from the Attorney-General's Office. It is a clear distinct separation.

230. How does that make for a better Subordinate Judiciary? --- Because when you join it, you know that it is your commitment and that is your career, that you pursue it only in that direction.

231. And if they are unsuitable? --- Dismiss.

232. Who dismisses them? --- The commission on a report that it receives.

233. So all you are now suggesting is that you have exactly the same commission but it is called a different name and you do not transfer officers out from one to the other? --- Yes.

234. Do you know of any country that does that? --- I thought we were modelling ourselves on the UK, but again I stand corrected.

235. Not at all. Mr Elias, I was a member of the Constitutional Commission which discussed these problems with the British. On our side, we had Walter Raeburn, QC, Sir Ivor Jennings, I think, QC, who drew up the Constitution of Ceylon. And on the British side, three eminent Treasury draftsmen who had drafted 15 to 20 constitutions by them. Do you know of any country that does this? --- Perhaps the question would be better posed if I looked at the memorandum again and then tell you what the sub-committee, that was appointed to look into it, recommended. I do not have those papers with me at this moment. I did not see them for quite some time, Mr Prime Minister.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

236. But your Council did not think it was important enough to pursue the matter? --- We were just looking at the fourth term.

237. Yes? --- And if the fourth term did not come into fruition, the answer was no.

238. Do nothing about it? --- Yes.

239. Just to clarify. The first three terms never arose. You were not going to make representations because there was, as far as you were concerned, no Executive interference. I want to make that clear? --- That is absolute.

240. Because you spoke up for Mr Michael Khoo and I think he deserves all the help and approbation that the Bar can give him or indeed that anybody can give him. But did you or any member of your Council associate his transfer with his handling of the Jeyaretnam trial? --- Not at all.

241. Not at all? --- Not at all.

242. Nor have you heard that mentioned by any member of your Council or any lawyer to you? --- No.

243. How many years did you spend in England? --- From 1960 to 1964.

244. You know there are associations of Conservative lawyers, there are associations of Labour lawyers, there are associations of Liberal lawyers. There was no Social Democratic lawyers then? --- I do.

245. Have you ever seen the Law Society or the Bar involved in any public exchange with the government over legislation? --- It is a difficult question for me to answer.

246. Have you ever seen it? Mr Elias, all we need do is to be honest. Have you read in the newspapers of the Law society issuing a statement against the Government of impending legislation? --- I can't answer that. With honesty, I cannot.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

247. Have you ever read of it? Because these are ascertainable facts? --- You take me into my memory banks regarding the recent Bar Council movement against fees for undefended or defended ---

248. That is different. That is fees relating to the legal profession and they were taking on the Lord Chancellor and the Prime Minister for not revising their fees upwards? --- That is one instance.

249. That is the legal profession's concern. But have you ever read either the Bar Council or the Law Society issuing statements of impending legislation? --- I can't answer that.

250. Have you ever seen it in the newspapers? I can ascertain this by cabling the High Commission and they can approach the law society? --- I can answer your question, no, easily, Mr Prime Minister.

251. Yes. That you have not read it. That is all I am asking, that you have not read it? --- It is possible that I have not read it. I can't remember at this moment of time.

252. You mean if you have, you would not remember? --- Possibly.

253. That the Law Society issued a statement against the Labour Government or the Conservative Government of pending legislation? --- It is so difficult, Mr Prime Minister, to say that.

254. It is, isn't it? --- It is.

255. Yes. It is, because you know they are not that unaware of their responsibilities to the profession and that they represent in their members people of all political colours. And that they do not take positions which support or oppose any particular party. Right? --- It is possible, Mr Prime Minister. I have a difficulty here. I have a difficulty in answering you straight out loud whether I have read or I haven't read.

256. If you have read? --- I should know it.

257. You should know it? --- That is the best answer I can give you at this moment, Mr Prime Minister.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

258. Do you know it? --- Not that I can recall off-hand.

259. So you haven't? --- I can't recall.

260. Why do we want to waste time? I thought I would take about six minutes with you and we have taken 30 minutes? --- Mr Prime Minister, I can't recall it.

261. You can't. Well, say that? --- The inference is because I can't recall it. I haven't read it. So be it. That is the inference.

262. That you could infer. In other words, by your admission, although you may not have recalled it, in fact, you may have read of it and you can't remember? --- Possibly.

263. The Law Society coming out on side or the other to oppose legislation? --- Possibly.

264. Do you want me now to get our High Commission to clarify with the Law Society? --- No, not at all.

265. Because I will set the work into motion. It means work but I will establish a point. And the point in this case will be your reluctance to admit the obvious? --- It is not a reluctance.

266. It doesn't speak well, does it? --- Mr Prime Minister, it is not a reluctance. I can't off-hand think of one single situation where I can answer you straight. If you say to me that you do not know ----

267. But you remembered the Law Council? --- I could remember about the fees.

268. The Council of the Bar? --- Yes, because that is fairly recent.

269. Yes. That is to do with fees? --- It is fairly recent. I remembered it because ---

270. Have you read recently of any statement made by the Law Society or the Council of the Bar? --- Not recently, no.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Harry Elias (cont.)

The Prime Minister (cont.)

271. Do you think it will be necessary for the Government, because we are still in Committee Stage, and if we want all doubts resolved, we could just go back to the wording of the 1966 Advocates and Solicitors Ordinance and that will settle it? Should we do that? --- No.

272. Do you think the Law Society has learnt its lesson? --- I think the Law Society would and should have quiet dialogue with the Government, as it has had in the past.

273. But if it doesn't, the Government would be fully justified to clarify any doubts by going back to the exact wording of the 1966 Advocates and Solicitors Ordinance or Act? --- You are asking me this question personally, Mr Prime Minister?

274. Yes. You have to answer honestly and to the best of your ability? --- I have always felt that quiet dialogue was the modus vivendi. Anything else probably would result ----

275. My question is, if there is no quiet dialogue but a raucous, noisy one, the Government's response would be to go back to the wording of the Act before the 1967 Legal Profession Act which we passed. It wasn't at the request of the Law Society. It was Mr Justice Punch Coomaraswamy, then Speaker? --- Probably it is justifiable.

The Prime Minister] Yes. Thank you.

Chairman] Thank you, Mr Elias. You may step down.

[The witness withdrew.]

The Chairman: I would now like to call on Mr J.S. Khosa.

MINUTES OF EVIDENCE

Examination of Witness

Mr J.S. Khosa was called in and examined under oath.

Chairman

276. Can I have your name and status, please? --- My full name is Jernal Singh Khosa. I am practising in a firm as a partner called Khosa and Caines.

Chairman] Thank you.

The Prime Minister

277. Mr Khosa, I do not want to go into more detail than I have to. But if you make me go into the details, you know I will not flinch from it. Therefore, please be circumspect because I do not want to have to injure you more than necessary. Up till May 1969 you were the Officer-in-Charge, 'G' Division, Joo Chiat Police Station? --- That is true.

278. And in your duties you had to do with the suppression of chap-ji-ki in the area? --- Not directly.

279. Not directly. But you had to deal with such people? ---- I was the Uniformed Branch OC, mainly administrative.

280. You were put on a disciplinary charge, three disciplinary charges, in connection with loans, cheques, from people connected with the chap-ji-ki syndicates? --- Mr Chairman, one loan of \$2,000 and some cheques in repayment thereof.

281. And you were dismissed from the service? --- That, is so.

282. You did not appeal? --- No.

283. Did you become a member of one of the Inns of Court? ---- That is true.

284. Which one? --- Middle Temple.

285. Did you disclose to them? --- There was no requirement.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr J.S. Khosa (cont.)

Prime Minister (cont.)

286. You had a requirement to show that you were a fit and proper person to be admitted. You had to produce two guarantors or people who say you were of good behaviour? --- I had those certificates.

287. You never told them that this has happened to you? --- Not the Inns, no.

288. No, your sponsors to the Inns, they were Singaporeans, were they not? --- These letters were received before these charges.

289. I see. You had the letters before the charges? --- I was admitted long before this trouble.

290. I see. So the letters were honest letters then? --- That is right.

291. Before the troubles, when you applied to join the Bar here, you had to get certificates of honourable conduct? --- That's right.

292. At least two. The same gentlemen? --- I can't recollect now.

293. It would have been perfectly legitimate for the Attorney-General had he been aware of it to have objected to your admission to the Bar, would he not? --- I can't answer that. I do not know.

294. You can't answer that. But it would have come as no surprise to you? --- Not really, because the ----

295. Mr Khosa, you were considered unfit for the Singapore Police Force. By becoming a member of the Bar, you became an officer of the Supreme Court? --- That's true.

296. Which is more important? A Police Officer, 'G' Division, or a member of the Supreme Court? --- A member of the Supreme Court.

The Prime Minister] Thank you.

Chairman) Are there any other Members who want to question Mr Khosa?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr J.S. Khosa (cont.)

Hon. Members indicated none.

Chairman] Thank you, Mr Khosa. You may step down.

[The witness withdrew.]

Chairman] I would like to call on Mr M. Namazie.

MINUTES OF EVIDENCE

Examination of Witness

Mr Mirza M. Namazie was called in and examined under oath.

Chairman

297. May I have your full name and your status? --- My full name is Mirza Mohamed Namazie.

298. Your status? --- I am a lawyer. I am a Council Member.

Chairman] Thank you.

The Prime Minister

299. Mr Namazie, after you graduated you joined the Legal Service? --- That is right, Sir.

300. You were asked to resign from the Legal Service? ---- That's right, Sir.

301. Would you tell us the reason? --- Yes, Sir. After I graduated from the University of Singapore, to be admitted to the Bar you must go through a practical course. This practical course was a three-month course and ----

302. No, let's not go into that. Mr Namazie, it pains me to have to put this to you, but it is my duty to bring home to the Bar that when you are elected or when they elect a member to the Council he must be a person with enough moral rectitude to exercise discipline over the profession and be an example to the others. And by your answering me in this roundabout way, you are enhancing my suspicion that far from learning from that, experience, you are trying to scrub it off? --- No, Sir. If you will give me a chance, I will explain it. What happened was that 10 or 12 people were said to have copied at the practical course and they were asked to do it again. But I want to say that it is only fair to me, Sir, that I should be given the opportunity to say that the course was never conducted in a proper manner. It was a farce. One examiner on the Board wrote the answers at the time of the test and said that "if you can't copy it within two minutes, I am rubbing it off". Those who could copy it quickly, got it. That was how the practical course was held, year after year. It was only after our year when somebody made a complaint ---

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Mirza M Namazie (cont.)

The Prime Minister (cont.)

303. Therefore it is an indictment of the Law Society and its Council? --- No, Sir, I don't agree with that. It was a loosely conducted practical course, not in the examination sense ----

304. Conducted under the authority of the ---? --- Board of Legal Education.

305. Which came under the Law Society? --- In a way, yes.

306. Yes. Put it bluntly, you and three other officers of the Legal Service were asked to resign because you cheated? --- Well, I was never accused of cheating, but I was told that one of the papers I had submitted was similar to another paper that was submitted, and I was called up by the Attorney-General, and he said another legal officer told him that I copied it from him. That was the position.

307. That wasn't true? He copied from you, you mean? --- In that particular subject, he copied it from me. But I want to say, Sir, that ----

308. He copied from you and not you copied from him? --- Yes, in that subject.

309. What about other subjects? --- In other subjects ----

310. You copied from each other? --- Yes. Not from him, but lots of people were doing it. Those who copied from books were never punished. Those who copied from each other had similar answers and therefore they were asked to do it again.

311. But it was silly, wasn't? --- Sir, it was very silly. We had just graduated. The whole course was not conducted properly.

312. Never mind whether the course was conducted properly or improperly. To copy from each other in a public examination which was required by the Board of Legal Education before you were admitted as an advocate and solicitor was a reckless disregard of the rules of propriety, of right and wrong? --- Yes, I agree with that. But, Sir, you must look at it in the sense it was done. Here you have an examiner saying, "These are the questions. These are the answers. Copy them down. If you don't do it in two minutes, that's it." And he starts rubbing. That was the whole atmosphere of the course. If you will ask other lawyers ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Mirza M Namazie (cont.)

The Prime Minister (cont.)

313. You have to look at his answers? --- Yes, you have a look at his answers. They are on the board.

314. Did you have to look at his answers to be able to answer your questions? --- I can't recall. There were several subjects, Sir. That was the first subject that was held.

315. How many elected members are there in the Law Society Council? --- There are 15 elected members, one statutory member and three Minister's nominees.

316. Out of 15, we have three, with less than unblemished records. That shouldn't be, should it? --- Well, Sir, that was 13 years ago when I was a student. Am I ----

317. You had graduated, Mr Namazie? --- Yes, but I was a student during the practical course.

318. Thank you? --- May I be released?

Chairman] Yes.

[The witness withdrew.]

Chairman] I would like to call Mr Francis T. Seow.

MINUTES OF EVIDENCE

Examination of Witness

Mr Francis T. Seow was called in and examined under oath.

Chairman

319. May I have your full name and status? --- Francis T Seow, advocate and solicitor, practising under the same name and style.

Chairman] Thank you.

Prof. Jayakumar

320. Mr Seow, may I first ask you a few questions about this question of consultation, in particular whether we had consulted the Law Society Council on bills, and in particular the Legal Profession (Amendment) Bill. You have heard Mr Elias earlier when I asked him questions? --- I have.

321. And you have heard him say that when he was President there was no difficulty on his part in having access to the Ministers. You also heard him say that he and his Council had been kept informed of bills which were relevant to the Council? --- I have.

322. Do you recall, Mr Seow, that shortly after your election you requested to see me? --- I do. And you were very kind to see us.

323. You know now, of course, from the testimony of the Attorney-General that at that time already there was correspondence between him, the Ministers and the Prime Minister, concerning amendments to the Legal Profession Act arising from your election as President. You have heard that this morning? --- That is correct. I had.

324. Yet when you asked for an appointment to see me, I agreed. And you and your Vice-President, Mr Ramason, came to see me? --- That is correct.

325. Do you recall that amongst the things we discussed, you raised the question of the Law Society Council being consulted on bills? Do you remember raising that? --- I think I did. That is correct.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

Prof. Jayakumar (cont.)

326. And do you recall also my assuring you that the practice, which I had instituted with Mr Harry Elias, your Immediate Past President, would be continued and I was prepared to have occasions when you could consult me and you could see me at any time? --- I think so.

327. Do you also recall that you asked me whether I agreed that the Law Society comprising legal practitioners was placed in a good position to comment on legislation and for the Law Society to give its comments to the Government on legislation. Do you recall that? --- Yes, I think I do.

328. Do you recall my reply that I agreed with you and Mr Ramason that, yes, the Law Society comprising legal practitioners would be well placed to comment on matters affecting the legal profession. Do you remember my doing that? --- I do.

329. But do you remember that I made a distinction, and I have it in the notes recorded, do you remember there was the Deputy Secretary present in that meeting who recorded notes? --- Yes.

330. Do you remember that I made a distinction that when it came to matters outside the purview of the Society, I would treat it differently? --- I don't recall that but I am prepared to accept what you say.

331. Yes. Because the notes were recorded by my Secretary? --- Yes, I accept that.

332. On matters of policy outside the purview of the legal profession, the Law Society cannot expect to be given any special priority or premium on their views on these matters. On the question of consultation, would you agree that consultation in the context of Government and the Law Society must, in essence, be a two-way process? --- Yes, I accept that.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

Prof. Jayakumar (cont.)

333. With regard to the Newspaper and Printing Presses (Amendment) Bill and the Law Society's press statement which was issued in your name, do you recall that there was one paragraph in your press statement which said even if the Bill --- ? --- May I correct you there, Mr Minister? That statement admittedly went out under my hand. But it was deliberated, voted by the entire Council, and therefore of course I assume full responsibility, therefore, as the President.

334. Which must be the case? --- Of course, I do not shirk from that responsibility at all.

335. I come back to this. There was a paragraph here. "Even if the Bill succeeds in cutting down sales of such publications, a brief survey conducted by the Law Society shows that its effects are minimal." Do you remember that sentence? --- Oh yes, of course, I do.

336. You are aware that subsequently there was correspondence from the Permanent Secretary, Ministry of Law, which asked for information about the details, raw data of the survey which this public press statement said was conducted. You are aware of that? --- Yes, of course, I remember, because they were deliberated by the Council.

337. And the final reply of the Law Society was to refuse to accede to this request on the grounds that the information was confidential? --- That is correct. But may I say this though. We had rather anxious deliberations on your Permanent Secretary's request for disclosure of that information. We had obtained it under confidential cover and we were in a difficult position as to whether or not we should disclose, and therefore the upshot of the whole deliberations was that we should respect the confidence of that particular newspaper that sent back its reply.

338. Before you wrote your final letter stating that it was confidential and cannot be disclosed, my Permanent Secretary wrote on 30th June and said this. It is addressed to you. Mr Hochstadt asked:

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

' If you are concerned about not disclosing the identity of the persons or companies interviewed, you could either seek their consent to disclosure or decline to divulge their identity where they do not consent. But what objection can the Law Society have to supplying other information I sought on your brief survey when you have already gone public on it.'

This was before the Law Society said it cannot accede to the request? --- Yes, I accept that.

Prof. Jayakumar (cont.)

339. Can I ask whether the Law Society Council attempted to seek the consent of the company or persons involved in that brief survey? --- Not as far as I know from the newspapers concerned, no. But we did ask the advice and comments of the Sub-Committee.

340. Mr Seow, I am asking whether --- ? --- Not as far as I am aware.

341. --- you acted on the suggestion of the Permanent Secretary, because the Permanent Secretary of Law took into account the possibility of confidentiality and suggested a way whereby the Law Society could either suppress the identity or could get the consent of those surveyed. And I am asking you before the Law Society refused to give the details, did the Law Society contact the newspapers or company and ask their consent? --- Not as far as I am aware. I think no.

342. Why? --- We were discussing it in Council and the view was that there was no necessity and that we should not disclose it.

343. So you did not even to attempt to ask the persons concerned if they were willing? --- You could put it that way, yes.

344. You were aware of the reasons which I gave in Parliament in answer to Mr Jeyaretnam's question as to why the Law Society was not consulted. Do you recall? --- No, I do not recall. Perhaps you could refresh my memory.

345. Do you read the newspapers, Mr Francis Seow? --- Hardly ever, for reasons which must be quite obvious to you gentlemen on the bench.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

Prof. Jayakumar (cont.)

346. The President of the Law Society does not read the newspapers? --- I read other newspapers. But I do glance, of course, occasionally at the Straits Times.

347. And you expect us, other lawyers and the public, to assume that the President of the governing body of the legal profession in Singapore does not keep abreast of events and happenings in Singapore by reading the daily Singapore newspaper. Is that what you are saying? --- Not assiduously, no. I agree. Perhaps I should.

348. Astonishing. But we will let that pass. I said in Parliament that the consultation is a two-way process? --- That I recall, yes.

349. And here the Law Society had refused to give information on a matter concerning a survey which it had rightly proclaimed. Now, you have agreed that consultation is a two-way process? --- I do.

350. And we have now heard you --- ? --- May I say this? In hindsight, perhaps it would have been much better if we had, in fact, done what your Permanent Secretary had suggested we do.

[The Prime Minister] Why don't we do it now?

[Prof. Jayakumar] The Prime Minister has made a suggestion.

The Prime Minister

351. Not too late, Mr Seow? --- To what?

352. To do exactly what the Permanent Secretary suggested? --- To disclose to you?

353. Yes? --- Yes, certainly. I will seek the decision of the Council because I don't act alone, and we will certainly bear what the ----

354. But if they act contrary to your interests, which would be the case if they refused to accede after this meeting, there must be something damning to hide, isn't it? --- I am not quite sure I understand you. Could you please repeat your question?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

355. You are suggesting that you are quite prepared to act in accordance with the way the Minister has suggested? --- Yes, speaking personally for myself. Yes, certainly.

356. But the Council may not agree and therefore you may be thwarted in the attempt? --- I doubt whether they will disagree. But anyway I will certainly use all the persuasive powers at my command ----

357. That is exactly what I suggested. And I doubt whether they will disagree because if they disagreed they will put you --- ? --- In an awkward position as it were.

358. Yes? --- Yes. I am prepared to accept that.

Prof. Jayakumar

359. One or two more points. Notwithstanding the refusal of the Law Society Council to give us the information, when the Legal Profession (Amendment) Bill was introduced in Parliament on 25th August for its First Reading, my Permanent Secretary sent a copy of the Bill that very day? --- That very day, that is correct, yes.

360. Can this letter be handed to him? [Document handed to the witness.] Do you see that the letter is dated 25th August from my Permanent Secretary, addressed to you? --- Yes, I remember seeing this letter.

361. I want to confirm something. In Parliament, in the Second Reading, this is what Mr Jeyaretnam said. He said:

'I have spoken to the President this morning [ie on 22nd September] and he said there was no communication whatsoever to him before the Bill was introduced in Parliament. So would the Minister put this right and not try to mislead the House?'

And he said,

'Mr Seow says the first communication was a letter of the 15th September from the Permanent Secretary of the Ministry of Law.'

I will show you another letter dated 15th September. Would you please look at it? --- [Document handed to the witness.] Yes, I recall it.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

Prof. Jayakumar (cont.)

362. This was the second letter where the Permanent Secretary informed you that the Bill was going to be sent to a Select Committee? --- That is correct.

363. Did you tell Mr Jeyaretnam that the Bill had been sent to you way back on 25th August? --- Can I clear up this misunderstanding? I was in the Supreme Court that morning when I was told by the Executive Secretary that Mr Jeyaretnam wanted to talk to me. I was on the point of going into court. He was rather anxious to speak to me about this and I did not have any records before me when he spoke to me, and I asked him to check it with the Secretary because I did not carry the dates in my head. So it could well be that Mr Jeyaretnam misunderstood me.

364. But you agreed? --- Oh, yes, definitely.

365. --- that the Bill was sent to you on 25th August? --- I accept that.

366. Which was before even the Members of Parliament got their copy? --- That I do not know. But I can confirm that we received this that very day.

367. One final point. Going back again to your conversation with me in January when I assured you that you could have access to me at any time? --- Yes, I remember that.

368. When the Bill was introduced on 25th August, between that date and the date of your Extraordinary General Meeting, did you at any time seek any appointment with me to discuss this Bill? --- I don't recall.

369. Your Secretary will know if he had sought a meeting with me or Mr Barker to discuss the Bill? --- No, I don't think so.

370. Despite the fact that I assure you that I am at all times available for discussion. You did not seek a consultation with me? --- No.

Prof. Jayakumar] Thank you.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister

371. Mr Seow, you know me? --- I know you very well.

372. You saw me a few weeks before you resigned? --- I did.

373. Pause before you answer because I have two options. One, not to go into the details; the other, to have to go into the details which would be a matter of some regret because you did serve the Government well? --- I think so. Very well, if I may say so.

374. I thought so too. You were bold, you were resolute when you had to deal with extremely difficult and dangerous men as DPP, and you had conducted the inquiry on the Chinese Middle School students before the Chief Justice. It is therefore with great reluctance that I have to refer to this but I have to because it will explain why I wrote immediately to the Attorney-General when I read your speech. Do you remember the discussion we had? --- I think I did. You are referring to the ----

375. Before your resignation? --- At the Istana Annexe?

376. Yes? --- Yes. I think I do. Some of the words are still in my mind; your words, I mean.

377. If you had listened to me and those words had been uppermost in your mind, we wouldn't be having this encounter, would we? --- in fact, I listened to you and therefore I did not embark upon the course for which you sent me. And therefore I blazed my own lonely furrow.

378. Mr Seow, you were faced with an alternative of either having your actions investigated which would lead to odious consequences or, because of what you have done, to have your actions overlooked and that you would be allowed to resign? --- Mr Prime Minister, may I say this? In all fairness to myself as well as to you, I decided to resign the Service. Before doing that, I wanted your blessings, the blessings of the Minister for Law and the blessings of the Minister for Defence, Dr Goh Keng Swee.

379. But had you not resigned and investigations proceeded, there would have been unpleasant consequences? --- I was not aware of any investigations then being undertaken.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

380. Mr Seow, four police officers were dismissed from the Service because they had raided a flat of a girl friend of yours? --- Correct. But before I go on any further, may I ask Mr Chairman, the Speaker, whether all this is relevant to the purpose for which I am here today.

Chairman

381. Well, you were given two alternatives, Mr Seow? Which one would you choose? --- What alternatives are there? What is the purpose of this Select Committee except to examine and assist on the question of the Legal Profession (Amendment) Bill.

382. Yes. It is purely on that we are examining you? --- My private life, the number of girl friends that I may have are all completely irrelevant to the issues before you.

Chairman All right. You can assume that. Perhaps the Prime Minister can carry on.

The Prime Minister

383. I am not worried about your girl friends, Mr Seow. I am worried about what you did to these police officers through Mr Yoong Siew Wah, then Director, CPIB, whom you knew very well and had worked with when he was in the Special Branch and later Director, Internal Security Department? --- Before I go on to answer this, Mr Speaker, is this relevant to the issue before us?

Chairman It is probably very relevant.

The Prime Minister

384. It has to do with the disqualification clause and why it arose when I immediately wrote to the Attorney-General in January after reading your speech. You have a choice, Mr Seow? --- Very well, I have nothing to hide. And if you think, Mr Prime Minister, with great respect, by delving into my private life for which I may go about it ---

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

385. This is not your private life. This is your public life. You were using your position as Solicitor-General and your close association with Director, CPIB, whom you knew when he was in the Special Branch, to exert pressure in his investigations on four police officers which led to their unlawful dismissal from the police force? --- That is a matter of opinion. In fact, do you realize that we found evidence that led to their being placed on disciplinary charges? Or were you not told about that?

386. As consequence of the faulty evidence and the faulty faulty procedures, the Attorney-General had to intervene to get them reinstated? --- Well, that I do not know.

387. Not even now? --- Now you are telling me.

388. You would not have known. You mean, after all these years you did not know that the four officers were reinstated? ---- Of course, they were. I say I did not know.

389. And why do you say you have to depend on me to tell you? --- Allow me to explain. These officers were being investigated upon my complaint. That is quite correct. It was difficult for the police force or for the particular Division from which these four officers were then stationed to investigate because, as you probably know, they would cover up evidence or there was a likelihood that that might be so. And therefore I then instructed the Director of the CPIB to look into it and he was able to uncover evidence which suggested that, in fact, the allegations of a theft within a theft did, in fact, take place. And they were then placed, if my memory serves me right, on disciplinary charges. How the disciplinary charges were conducted and so on and who sat on them, I do not recall and I do not know. But I know the upshot of it all was that they were recommended to be dismissed.

390. But you do recall talking to Mr Yoong Siew Wah and ---? --- Oh, certainly I do.

391. And initiating the proceedings?. --- I beg your pardon.

392. And initiating the investigations? --- Yes, of course. Of course, I have just stated it.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

393. But this was a criminal offence. What were you doing getting the Director, CPIB, to investigate a non-corruption activity? --- For reasons which I have just been explaining to you, Mr Prime Minister.

394. Which is that it was more convenient to use your special friendship with him to put the heat on the four officers? --- That, I am afraid, is a misinterpretation or misreading by you.

395. Do you know as a consequence that he was boarded out of the Service? --- Well, I don't know about he being boarded out. But I know he was not then he was a quite sick man.

396. And you took advantage of him? --- Oh, no, please. Please.

397. Mr Seow, at that time when you were a Government servant, every year - I must add that investigations went on despite your resignation, that no action was taken, investigations into your affairs? --- Oh, they are still going on, incidentally, if you don't know.

398. At that time in 1971, Mr Seow? --- Yes?

399. Let's not be impertinent? --- I am not being impertinent.

400. In 1971, investigations still went on? --- I know that.

401. And I am suggesting to you that when you resigned, you were heavily in debt? --- What has the fact that I am in debt got to do with this, Mr Chairman, Sir. May I have a ruling on this?

Chairman

402. Perhaps the Prime Minister can ---? --- He can ask anything he likes?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister

403. Mr Seow, it will save you and us a lot of time because you are not going - I have given you a choice, not to go into the details but if you choose to, we shall? --- I do not choose anything, Mr Prime Minister. I am here to answer questions, questions which are relevant to this inquiry.

404. Well, do so? --- Yes. Why don't you direct your questions, relevant questions, to me? I accept the fact that I was in debt.

405. Mr Seow, you are not conducting this Select Committee. The Chairman and we are. I am suggesting to you that you are unfit to be a member of the Law Society Council and it is an outrage that you should be the President? --- That is a matter of opinion. My peers ----

406. That for five years, or rather for seven years, every year you signed a declaration of non-indebtedness which was necessary when, in fact, you were overdrawn from \$50,000 in 1965 to \$199,000 in 1971 with the United Malayan Banking Corporation on an unsecured debt? --- Well, is there anything wrong with that?

407. It was a lie, it's a false declaration. It's against the Instruction Manual, section 111(c), "an officer is considered to be financially embarrassed if at any time his total unsecured debts and liabilities are more than three months' pay"? --- May I, Mr Prime Minister, read to you the rear portion of this particular declaration of indebtedness? The prohibition prescribed is not applicable to overdrafts approved by recognized banks. But the fact is that I got overdraft from them, yes.

408. And unsecured? --- So what about it? How many people can get unsecured overdrafts?

409. That you were owing them \$199,000 at the time of your resignation? --- Yes. So I had.

410. That you were deeply financially embarrassed and yet you signed these declarations? --- Because, as I have told you and which you have refused to see, it does not refer to overdrafts taken from approved banks. That's the reason why.

411. You signed it? --- Of course, I did.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

412. With the same nonchalance as you signed your declaration that you were entitled to a practising certificate when you had a judgment debt of \$100.000 against you ? --- That, my dear Prime Minister, was an oversight. If I had known it at the time, as far as I am concerned, that was a technical offence that I committed. An offence it is. So I admit that.

413. So you are saying that this is only a technical matter and that technically you can get off? --- This particular declaration of indebtedness which I signed every year when I was in the Service is completely true.

414. Do you know why those investigations proceeded? --- Why? It is quite obvious why.

415. Why? --- Okay, you tell me why?

416. If it is obvious, I want to hear your explanation? --- Well, maybe my explanation is different from yours.

417. Tell us. I will tell you mine in a moment? --- Yes. You don't like me to be the President of the Law Society. It is simple as that.

418. No. I am astounded and outraged that a person with your moral qualities is being asked to uphold the integrity of the Bar? --- And why not, may I ask? If my peers, if the rest of the members of the Bar who know the full circumstances of my two suspensions and convictions still see me fit to elect me, it is not for this Committee nor for you or indeed anyone to say that I should not be.

419. Mr Seow, when we legislated it never occurred to us for one moment, first, that lawyers of more than 12 years' standing would vote you into the Council and, second, that the Council members, 10 of them, would vote and make you President. And when that happens, the law will be changed because obviously the lawyers are not fit to look after their own affairs. By the time they elected you as President, I am entitled to tell Members of Parliament and Singaporeans that are unfit to govern themselves, a right of government which we, as legislators, have delegated. That is why we are here --- ? --- I accept that.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

420. To change the law. And if you convince me further that we have not changed it adequately, I will go another step to make sure that this does not happen ever again. It is for me. It is not for you to decide? --- I accept that. But as of now, the fellow members of the Bar, knowing fully what the position is. Look, my life has been an open book. The Straits Times has been canvassing everything about my convictions, my suspension, almost ad nauseam. So these members know it when they voted me in. They are also thinking people and they know what is right and what is wrong.

421. By that you mean that they can absolve you from all moral blame because they have reposed confidence in you by voting for you? --- I do not know what you mean by morality or ----

422. You have no sense of right or wrong or shame? --- Of course, I have the sense of right and wrong as well as the expression of shame, as I am sure all of you do have. As a matter of record, may I mention this, that I was in fact suspended for one year from the 30th April 1973 to the 29th April 1974. That was my first suspension over that unfortunate Gemini affair. I stood and was elected as a Council member in 1976 and 1977.

423. Carry on? --- I resigned on the 23rd April 1977.

424. Mr Seow, do your assets exceed your liabilities, now at this moment? --- My assets?

425. Can you meet your debts? --- Mr Chairman, Sir, may I again ask you what relevance has this got to do with it?

Chairman Mr Prime Minister, you better go to another point.

The Prime Minister

426. No. I am suggesting to you, Mr Seow, that such a person is unfit to be Chairman and President of the Law Council? ---- Because I have no money?

427. That you owe money? --- That I owe money?

428. That you cannot pay. Is that not correct? --- I don't think I have to answer this question. Do I, Mr Chairman?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

429. That you owe money and you cannot pay, that you are unfit to exercise discipline over 1,335 members? --- Mr Chairman, may I have a ruling? Must I answer this?

Chairman

430. Yes, about the discipline of the members? --- Well, as Mr Elias before me has told you, the question of discipline vests basically or mainly in the Supreme Court, in the Chief Justice.

The Prime Minister

431. Mr Seow, read your speech before the Chief Justice. Let him have the copy which was given to Mr Elias. Read your speech? --- Which part do you wish me to read?

432. Read page 5, a photostat of the Law Society Journal, the second paragraph. "The Society is there, for amongst other things, ...

" Read it? ----

'The Society is there, for amongst other things, to look after the interests of its members. If a member has fallen by the wayside, he should wherever possible, be helped. If the circumstances should, however, warrant it, there is the disciplinary machinery of the Society. The discipline of a member belongs to the Society and to the Society alone.'

433. Yes, stop there. That's your claim that "discipline belongs to the Society and to the Society alone"? --- Those are the powers given under the Act, of course.

434. Carry on? ----

'We cannot allow any persons in authority, however pretentious, other than the Society, to arrogate to himself the power to determine, extra-judicially, whether a member of the Society is a fit and proper person to continue to practise his profession. The day this power of the Society is shared or usurped will be a grievous day for the profession of the law. And, as long as I have anything to do with the Society, I shall resist it to the utmost.'

435. You claim there that you do have the power to discipline and to maintain discipline of your members? --- Yes, of course, it is given to us under the Act.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

436. Yes. Now, look at the Act. Let him have the Legal Profession Act? --- I have a copy here. Which section would you like me to have a look at?

437. Look at the index, Part V, the Law Society of Singapore? --- Yes, I have it before me.

438. Where does discipline come under? Part VII, isn't it? Right? --- Part VI and Part VII.

439. Now, look at section 83(1). Read it? ----

'Any person duly admitted as an advocate and solicitor shall be an officer of the Supreme Court.'

440. Now, read section 84(1) ----

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

441. So, first, your powers are subject to the control of the Supreme Court? --- Absolutely.

442. You forgot that when you addressed the Chief Justice? --- Well, it's a question of who prepares what speech really.

443. You are making a claim there which was unfounded in law? --- Well, I don't want to go into the nitty gritty.

444. I have just asked you to look at the section? --- Yes, of course, I accept what you said.

445. That it is unfounded in law? --- Well, if you want to put it that way, I am not here to quarrel with you.

446. And that the powers that do reside in you, namely, to fine advocates and solicitors up to \$5,000 are improperly placed in your hands, that you are in no position to exercise discipline over your members? --- And pray tell me why?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

447. Because you are flawed? --- I do not accept that for one moment. The men you are looking for, Mr Prime Minister, you can find them probably in heaven.

448. You mean, all your members of the Council --- ? --- We are all human beings.

449. 15 of them equally reprehensible as you? --- Well, I don't know about me being reprehensible.

450. You signed declarations you don't believe in, that you know to be untrue? --- I do not accept that for one moment. I am sorry. I would like to agree with you but I cannot. I have already pointed out to you and if you do not wish to see it, then I am sorry.

451. You are saying that you have as good a clean and shining a record as any one of the other 18 members of your council? ---- What I am trying to say here is that none of us, not including all of you there seated on the panel ---

452. That's a very dangerous accusation to make? --- No. We are all human beings with all our faults and all our failings.

453. Financially untrustworthy? --- What do you mean by "financially untrustworthy"?

454. You owed UMBC? --- You have already mentioned that, you know. You don't have to repeat it.

455. And it went on and grew to \$340,000 until they threatened to take judgment against you? --- Yes. So what? The point remains, Mr Prime Minister, that I did not dip my finger in the till, and that's where you do not understand character.

456. You are suggesting that you are broke, that you owe more than you have, and that it is all right because you have not dipped your finger in the till, because it's not been proven? --- I have never said that at all. I am trying to tell you - you see, the way you are trying to put it across to me to prove that I am not worthy is nothing but an exercise in trying to assassinate character.

457. Well, read the interview you gave to the Singapore Law Review. Give it to him? --- Singapore Law Review?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

458. You gave them an interview after you became President. Look at page 43, last paragraph "S" for Seow. Read it. They are your words? --- "I was once asked", is that the part you want me to read?

459. Yes? ---

'I was once asked if I would consider being a High Court Judge. My answer was that I would prefer to be on my feet than on my bottom.'

460. Who asked you to be a High Court Judge, Mr Seow? --- Do you want to know?

461. Yes? --- I am talking to him.

462. I asked you to be a High Court Judge? --- You did not. It was not put in this way.

463. I asked you to be a High Court Judge? --- You did not.

464. Are you suggesting I am out of my mind? --- Please, Mr Prime Minister. In those days, I was referred to as your blue-eyed boy. Now, let me recall to you, what really happened.

465. Mr Seow, pause. You are on oath? --- Of course, I am on oath.

466. So either you are committing perjury, or ---? --- Your recollection is faulty.

467. No. I will also go on oath, to explain why I could not have made such a proposition? --- Let me explain.

468. Because I knew you. And whilst you may be a good DPP, whilst you may be prepared to take on the communists, and lead an investigation in the Commission of Inquiry against them, for you to be a High Court Judge? --- No. Let me explain the circumstances.

469. How old were you in 1971 when you resigned? How old were you when you resigned in 1971? --- Can I tell the story in my own way?

470. Answer my question. How old were you when you resigned in 1971? --- I do not know.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

471. You don't know when you were born? --- Of course I know when I was born.

472. Tell us? --- What has that got to do?

473. I am going to show that you are a liar? --- And I am going to show to you, Prime Minister, that your recollection is absolutely faulty. And this is not being put in the way how I said it.

474. Mr Seow, you are making a very serious mistake if you think that I am going to take this lightly? --- And let me assure you that I am not standing here and telling you a fib. You summoned me ---

475. In 1971, how old were you? --- Round about 40-ish, I would say, or close to it.

476. Fortyish? What year were you born? --- Yes, 40-ish.

477. When did I make this offer to you? --- That is the trouble with you, Prime Minister. If you will only exercise a little patience, you don't have to ask me all these questions. I will unfold it for you. You summoned me to City Hall. In those days ----

478. What year? --- Oh, I cannot remember the year. I was then Acting Solicitor-General. You summoned me to City Hall. Do you wish to hear the rest?

479. Yes, of course. Because this is a matter of great moment? --- Yes.

480. As to your veracity? --- It is unquestioned.

Chairman

481. Carry on, Mr Seow? --- You summoned me to City Hall, and you told me this, that you were considering me for the appointment of Solicitor-General.

The Prime minister (cont.)

482. It is not in my hands, the Solicitor-General ship. The Attorney-Generalship is in my hands? --- Can I go on, if you want to hear some more?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

483. Please? --- So I dutifully trotted over to see you at the little room which you used to occupy in City Hall. I was told by you that had it not been for you and your Minister for Law I would have been passed over as Solicitor-General, because I had two persons who were my enemies, and you named them. Because they had seen me, in your own words, "walking across High Street, hand-in-hand with a woman who is not my wife." You understood me, you understood life, this was just after the Commission of Inquiry, to which you made reference earlier on. All right. So I told you that if I was not being promoted or confirmed as Solicitor-General, then I would resign. And you said, "That is not the point why I have asked you to come here. So I said, "Well then?" Then you asked me, "Aren't you interested in becoming a High Court Judge one day?" And I told you, "No, I was not." That took you a little bit by surprise because at that time everybody wanted to be a High Court Judge. Then you told me, "Surely, you should be interested in becoming Chief Justice one day." And I told you, or rather, I replied, "Well, that, Prime Minister, was a different proposition."

484. Mr Seow, this was immediately after the Commission of Inquiry? --- Well, shortly after that, when my good friend, Mr Tan Boon Teik, was then still in England, I think, or he had just come back. So you summoned me. And you told me many more things why it was very important that your recommendation of me should be such that there should be no suggestion, like the opinion that I gave on the paper should not be like the former State Advocate-General's opinion being not worth the paper upon which it was written, because of his involvement with another woman. And I assured you that that would not be so. And you said that you knew me. You knew my character and you knew that I would not let you down. And I promise you I would not let you down.

485. Mr Seow, you have to be very careful? --- I am very careful.

486. The Commission of Inquiry took place in 1963 and 1964? --- Correct.

487. It is not 1969 or 1971? --- Did I say 1969? No, it was not 1969. It was after that that you called me. When exactly I was summoned to your little office in the City Hall, I cannot recall.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

488. Mr Seow, I am getting the dates checked. But you would be in some difficulty explaining these dates. The Commission of Inquiry is in the early 60s and the Attorney-General tells me it is either 1961 or 1962, either 1963 or 1964? --- Correct.

489. And you did not become Solicitor-General till 1969? ---- Correct.

490. So why should I see you and tell you all this in 1961, 1962, in order to hold you back as Solicitor-General in 1969? --- No, no, it was not that. I am sorry. The years may have been telescoped, but, certainly, before my confirmation as Solicitor-General I was summoned by you, none other than you.

491. Mr Seow, the Solicitor-General ship is not in my hands. The Attorney-Generalship and the Judgeships in the Supreme Court, they are in my hands. You know that? --- Prime Minister, unless I was dreaming, unless I was befuddled by drugs, I went across to see you.

492. You went across to see me often on your duties? --- This was a special summon by you to tell me that I was going to be confirmed as Solicitor-General.

493. And I offered you a High Court Judgeship? --- No, you didn't. Because when I told you that if I was not confirmed ----

494. So I did not offer you. What are you saying now? I did offer you or I did not? --- You did not offer me. You mentioned to me, "Are you not interested in becoming a High Court Judge one day?"

495. You are now admitting that I did not offer you a High Court Judgeship? --- No, of course not. And even if you had, I would have turned it down.

496. So your words here, "I was once asked if I would consider being a High Court Judge"? --- Oh, I do not accept what the reporters or the students ----

497. You don't accept that? --- No, no.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

498. Well, that's a misrepresentation. It was once mentioned to you. What did you tell them? This is a figment of their imagination? --- No. You see, this is where you have reporters and you have editors and so on. I mean, I don't know. I mean, I want to be fair to you.

499. Read it, and tell me where it's wrong? ----

'I was once asked if I would consider being a High Court Judge.'

Well, that is not quite correct, in the light of what I have just told you. Because I was summoned by you in connection with being confirmed as Solicitor-General of Singapore.

500. You were in the Service long enough to know that the Solicitor-General ship of Singapore is not in my hands? --- Of course, I do. And you do it too.

501. Thank you? --- But the ways the Government move, quite mysteriously sometimes.

502. You are suggesting? --- Nothing.

503. Mr Seow, those words cannot mean nothing? --- Because I am telling you the truth. And you have seen fit to cast doubt.

504. One of us must be committing perjury? --- Well, I don't know about you. Certainly not me.

505. All right, Mr Seow. So be it. Mr Seow, since we have that document, read it? --- Which document are you referring to?

506. Your interview with the Law Society, the students. Look at page 42, at the top, "Of course, the drafting of laws", read it? ---

'Of course, the drafting of laws is entirely within the province of the Attorney-General's Chambers. But we can see real problems before us, for example, in a simple case of mischief - under the Penal Code there is no draconian punishment; but the penalty under the Vandalism Act includes caning. Laws can be unduly harsh; like using a steamroller to crack a nut.'

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

507. You were the Solicitor-General and you enforced those laws, did you not? --- That is quite correct.

508. Did you protest to the Attorney-General? --- As a matter of fact ----

509. Or to me? --- Not to you. But I think I discussed this with the Attorney-General.

510. You protested? --- Well, if discussion could be protest, yes.

511. So it was a discussion, not a protest? --- Well, I told him that I was not in favour. But in any event, Mr Chairman, Sir, in what way is this relevant?

512. Your general veracity, Mr Seow, is now at stake as against mine. Your truthfulness as a witness? --- Mr Prime Minister, I am not impugning anything. You know whether what I am telling is the truth or not.

513. Mr Seow, read the last sentence on that page, page 42, and your answer on page 43. Read it? --- "On the 21 March", is that the one?

514. Yes, please? ----

'On 21 Mar 1986 Mr J.B. Jeyaretnam made some observations in Parliament regarding the independence of the Subordinate Court judiciary which have caused some concern. Do you personally think District Judges are independent?'

515. Your answer now? --- "Now, now, now - that's a very contemporary issue."

516. No, no. Read it. That's not what you said. This was from a tape recorder? --- Where is it?

517. At the top of page 43? --- Yes, that is what I am reading it.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

518. Yes, read it out? ----

' Now, now, now - that's a very contemporary issue. In all fairness to them, I think they are. It's the system, if at all, that is at fault.'

519. Well, tell me what is wrong with the system that made you say "Now, now now"? --- The "now, now, now" was I did not want to be drawn into a discussion on something that was quite delicate. All right?

520. What is so delicate about the system being at fault? Tell us? --- Oh, what you are trying to say, and this is where earlier on my colleague, Mr Harry Elias, was trying to explain to you about the Fourth Frame of Reference to the Commission of Inquiry. Do you remember that? He was trying to explain to you about the Legal and Judicial Service. What we were trying to put across to you ----

521. To me? --- Sorry. To the Commission at that time, the fourth frame, was that this was to avoid - how shall I put it - avoid suggestions or that the Judiciary is not independent.

522. How? --- We accept that it is independent but we want it - so that people could ---

523. You accept that it is independent? --- Of course, we do.

524. You served in the Service and you know it? --- Oh, yes, of course, I did.

525. Now, tell us how? --- We wanted to recommend a system modelled on the Hong Kong system. There they have a legal and judicial service. So a legal officer will start ---

526. Not under British system? --- No, the Hong Kong system.

527. I thought Mr Elias --- ? --- I knew he ---

528. He was wrong?--- Yes. His recollection on this particular point is not as accurate as it should be.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

529. Yes. What about the Hong Kong system? --- I beg your pardon.

530. What about it? --- Yes. In the Hong Kong system, you have persons starting off rather early either in the Attorney-General's Chambers or in the judiciary and they have to opt at a very early stage as to whether they want to be, say, in the Attorney-General's Chambers and in the executive arm, as it were, of government or to go into the judicial side. Once they are in the judicial side, let us say, for example, they opt to become a magistrate. So they start off as a magistrate. So the promotions and what have you will all the time be within the judicial service. So from as a magistrate, you become a senior magistrate, you become a district judge. Then from there you will be considered to the High Court Bench.

531. Who will consider them? --- It will be exactly the same as the legal Service Commission presently constituted today except only that these officers will then just be transferred either laterally or vertically within that particular sphere of the activity.

532. So your proposal is to split them into two segments? --- Correct. And it is very rare that a judicial officer, after he has opted it, would return to the AG's Chambers.

533. Who appoints him? Who removes him? Who controls him? --- That will be exactly like in the Legal Service Commission as presently constituted here.

534. So the same members of the Legal Service Commission will be on the Judicial Service Commission? --- Correct. Therefore, the idea was to try to avoid these suggestions that if an officer from the magistrate or district judge is transferred out to the AG's Chambers and therefore it could be said that this was ----

535. We have powers to summon documents, Mr Seow? --- Yes.

536. And I suggest to you that that is not the proposal that would have been put forward to the Commission of inquiry? --- This was what we were interested in.

537. Is that what your documents say? --- This is the import. I am trying to summarize.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

538. We have Mr Nathan here, the Secretary. Is that what your documents say - that the same members of the Legal Service Commission would be the members of the Judicial Service Commission? --- (Mr Patrick Nathan) As far as I can recollect, Mr Prime Minister, I believe that was to be separate.

539. They would be separate, wouldn't they? --- (Mr Patrick Nathan) They would be separate.

540. Yes? --- (Mr Patrick Nathan) It would be separate.

541. That was the whole crux of the matter? --- (Mr Patrick Nathan) They would be separate but there was a committee that ----

542. There would a different Judicial Service Commissioner. Right? --- (Mr Patrick Nathan) I am not so sure about that, Mr Prime Minister.

543. And you also suggested that the Law Society should be on the Commission? --- (Mr Patrick Nathan) I can't recollect that, Mr Prime minister, because these were papers that were sent to the Council.

The Prime Minister] That's a perfectly valid proposal. All I am suggesting is, it is different from what your President has just said in the box, and I am impugning his credibility which can be supported by the documents. We can ask the Serjeant-at-Arms now to go with you and collect the documents. I think we should do that, Mr Speaker.

Chairman] Why not. Serjeant-at-Arms.

The Prime Minister

544. Collect the documents. So either you are telling the truth, or Mr Seow is telling the truth, or I am telling the truth? --- (Mr Francis Seow) No, that is as far as my recollection went.

545. Ah! --- That was the idea. I mean, documents don't lie, so we can ... exactly.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

547. And they will show that that was not the proposal? ---
As far as my memory goes and in the discussion that I took part in,
that was what was discussed, and I believe that is basically the ----

548. If that was discussed, Mr Seow, there would have been no
improvement on the present system. It will be worse because the
same people are in charge of appointments and promotions? --- No.
There is one big difference.

549. And the only difference is they can't transfer in and out
without special permission? --- No. The point here is this. You
will then avoid what people are saying, or suggesting or possibly
suggesting that the transfer of a District Judge or a Magistrate
could be as a result of Executive interference. It was to obviate
that particular situation that we thought this probably would be the
best way of overcoming that situation.

550. No. It was suggested that, amongst others, you, the
President of the Law Society, could also be on the Commission? ----
That was within my contemplation.

551. Yes? --- Not necessarily mean ----

552. But whoever is President should be on the Commission? ---
Correct.

553. And choose who the judges should be? --- But I don't
think we mooted it. I think it was discussed very briefly but I
cannot recall whether it was ---

554. It is amazing your memory is faulty on all the crucial
points except where you can't be contradicted with documentary
evidence? --- I beg your pardon.

555. You don't have to, Mr Seow. As you yourself suggested, I
knew you very well? --- As I know you too.

556. And since you do, you must know when you made that speech
before the Chief Justice that I would react, wouldn't I? We have
not met since some three or four weeks before your resignation, in
1971? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

557. Then I read of you as the President of the Law Society Council, making an aggressive, unbecoming speech as the President, claiming and arrogating powers which you did not have before the Chief Justice. And I must ask myself: what is the man doing there? What has happened to the Bar? --- Well, the Bar is improving.

558. You are an improvement of Mr Elias? --- It is a matter of opinion. But may I say this. Since that speech, there has been better rapport between the Bench and the Bar, believe you me.

559. The Bench were terrified that the prospect of the Bar ---
? --- No, no. They saw that it was so necessary to have this good rapport between Bench and Bar.

560. You heard the Chief Justice's reply? --- Of course, I did.

561. Would you say there was great rapport? --- Yes, I think so.

562. Mr Seow, read the Chief Justice's reply? --- I don't have a copy. Perhaps you could let me know what parts of that speech of his.

The Prime Minister Do you have a copy?

Chairman

563. Have you got a copy, Mr Seow? --- No. We did not anticipate that this has anything to do with the Legal Profession Act.

The Prime Minister

564. Read it. The Chief Justice in reply, "Mr Attorney, Mr Seow"? --- Yes. Where do you want me to read? The whole lot?

565. Start "As the President of the Law Society has just remarked"? ---

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

'The bar, the law officers of the state and the judiciary complement one another. Though we may be a trinity, we are not an equal trinity. The main responsibility for the administration of justice rests on the judiciary and it is the responsibility of the bar and of the law officers of the state whenever they appear before the courts to assist the judiciary in the administration of justice. It is said by the President of the Law Society that it must not be forgotten that the advocate plays an essential role and that he is as vital and is necessary as is the judiciary. That is a truism. Whether or not an individual member of the bar who appears before the Bench deserves the respect which he claims depends on him and on him alone. He has to earn it. He has to earn it if he shows competence, discipline, integrity, dedication to the cause of his client and an appreciation of his role as an officer of the court. The bar is an institution which has been with us for a very long time. It is for each member of the bar to demonstrate, not with words, but when before the courts in the way they handle the affairs of their clients that would earn them both the respect of the public in general as well as the courts. The Judge's role is to dispense justice according to law. His role is to give a fair hearing and an impartial hearing to all who seek justice in the courts.'

566. Stop there, Mr Seow. Pause there. Read again "whether or not an individual member of the bar ... [this is in the middle] who appears before the Bench deserves the respect which he claims depends on him and on him alone."? --- Yes.

567. Yes? --- Yes.

568. He has to earn it? --- All right. I accept that.

569. "He has to earn it if he shows competence, discipline, integrity, dedication to the cause of his client and an appreciation of his role as an officer of the court."? --- Yes, what about it?

570. The Chief Justice has sat in judgment on you? --- Yes.

571. A few years ago? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

572. And in 1973 he had this to say of you. "In our judgment, the respondent [that's you] was not only guilty of an error of judgment in relying on and placing his trust in a partner but was also guilty of grossly improper conduct in the discharge of his professional duties. It was wholly deplorable contract, dishonourable of him as a man and dishonourable of him as a profession." And he was politely telling you that your being President of the Law Society makes no difference. He was judging you as a man? --- My dear Prime Minister, when did he say this?

573. Please forgo the endearments or I will ask the Chairman to treat you in contempt. We are not here to make friends with each other, Mr Seow? --- I accept that.

574. But to get down to the facts? --- I accept that.

575. So cut out the endearment and cut out the impertinence? --- I am not being impertinent nor am I trying to be endearing to you.

576. Mr Seow, you issued this statement on the Newspaper and Printing Presses (Amendment) Bill? --- I did under my hand in circumstances which I have already told you.

577. You drafted it? --- No.

578. Who did? --- I think it was our Sub-Committee. After which it was gone over by members of the Council and later on, yes, by some members of the Council. I cannot really recall that. But the draft was prepared by the Sub-Committee.

579. And the Sub-Committee is headed by Miss Teo Soh Lung? --- I believe she is one of the Committee members.

580. She heads the Sub-Committee? --- If you say so, I am prepared to accept that.

581. Mr Seow, read page 2 of your statement, "Ambiguous and subjective"? --- Where? I have so many documents before me. Which one?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

582. Law Society note paper, press release. Read it. "There are ambiguities in the Bill." "Ambiguous and Subjective", that is the headings ? --- Which part do you wish me to read?

583. Starting from there? --- "There are ambiguities in the Bill. For example", is that the one?

584. Yes? ---

'For example, the terms "engaging in" and "domestic politics" are not defined although these terms form the basis of the Bill. Since this Bill is aimed at foreign publications, which, - in the words which have been attributed to the Minister - "have been commenting frequently on local issues and distorting the truth", these terms should have been defined. The omission to define them will result in subjective interpretation and implementation of the Bill.'

585. Mr Seow, you served in the AG's Chambers as Solicitor-General? --- I did.

586. Is this legislation which decides a justiciable issue, or is it legislation which gives administrative discretion? --- Administrative discretion?

587. Yes. You know the difference. A newspaper banned is not able to go to court to determine whether it is right or wrong. The newspaper stays banned. Why are you feigning ignorance? Why did you sign this document? Miss Teo may be ignorant but you are not. The legislation is enabling administrative legislation, like powers to detain, are you ---? --- Yes, I accept that.

588. So this was a misrepresentation that it was a justiciable issue? --- No. I would not accept what you say in that context. What we are trying to say here, what the Sub-Committee is trying to say here is that this should have been defined. The expression should have been defined.

589. Why should it be defined? --- All right. If that is the way the Legislature or Parliament feels, then so be it. But we are only doing our honest best.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

590. It is enabling legislation to allow the Minister to exercise administrative powers, not for the Courts to decide whether or not the Minister acted within the judicial definition of those words, "domestic politics". You have appeared for the State against political detainees? --- Yes, I have.

591. Yes. We don't argue about whether or not they are a threat to the security of the State. The Minister certifies that they are, and they remain a threat. Right? --- Yes, I agree.

592. Now, read Punishments, next page? --- Which part do you wish me to read?

593. The legislators seek to punish? ---

'The legislators seek to punish the publishers of offending publications by allegedly depriving them of revenue. However, as we see it, the Bill does not achieve this purpose.

Even if the Bill succeeds in cutting down sales of such publication, a brief survey conducted by the Society shows that its effects are minimal. According to the publishers of a foreign publication, the revenue derived from the sale of such publications in Singapore "just barely exceeds" the costs of distribution. Profits come more from advertisements than from circulation.

We are of the view that the penalties provided under the Bill are not appropriate for the offences created. If the Bill is aimed ---'

594. Stop there. Is this a matter within the professional competence of the Law Society Council - whether a newspaper earns its revenue by advertising or by sales? How do lawyers become experts, develop expertise on these matters, to advise the Government, to assist the Government in these matters? --- Correct.

595. How? --- If you were to isolate it in the way you have done, then of course it looks a bit incongruous. Certainly.

596. It is absurd, isn't it? --- If you isolate it in the way that you have done. Yes, I agree with you but ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

597. Well, put it against your background? --- No. You have to look at the purpose of the entire release. It was to put across to the Government the views of the Law Society concerning the ---

598. The views of the Law Society? --- Concerning the Newspapers and Printing Presses (Amendment) Bill.

599. Yes. That the punishments ---? --- I mean, you have to take it in its totality.

600. --- would not be effective because the effects are minimal? --- Yes. We have to take it in its totality, this press release.

601. How does your Council become experts as to how to control or inflict punishment on the press? What particular experience have you got with the press that makes you say that the Bill does not achieve this purpose? Have you had experience working with the press or defending them or whatever? --- No, I don't have.

602. This is a statement of opinion? --- Yes, an opinion.

603. Unconnected with your position as lawyers? --- Well, I wouldn't say so. I wouldn't say so.

604. Put it in a different way. Who would know more about revenue of newspapers - an advertising agency, a survey agency, or lawyers? --- Of course, the advertising agency naturally.

605. Then why do you want to blunder into a terrain which is not yours? You are not experts in this. The Government has taken expert advice from people who do know? --- Prime Minister, before we did this there was a brief survey conducted by the Sub-Committee. Based on the feedback that we got, you have therefore this piece of information that is put in there. We were only interested in the Bill as such, no more, no less, to put it across to you our views. If you do not agree with our view honestly held, then that is the end of the matter.

606. It wasn't the end of the matter? --- Of course it wasn't the end of the matter because someone or someones decide to blow this matter completely out of proportion. And that is how we are here before you.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

607. No. Amongst other reasons, Mr Seow? --- Okay, if you like.

608. It started with your being the President of the Law Society. You heard the Attorney-General this morning? --- I heard him loud and clear.

609. What did you do by way of a survey? A survey is a detailed study or inspection as by gathering information through observations, questionnaires, etc, and analysing it. What did you do by way of a survey? You want to sample opinion. You have 100,000 people. To find out how many are unemployed, you survey 500. What did you do, without telling me who they are or what they are? Tell me, what did you do? --- I did not do anything. My Sub-Committee sent out, I believe, a questionnaire to several newspapers operating or circulating in this region.

610. Several, meaning 10, 15, 20? --- I cannot tell you.

611. How many? -- I think probably four.

612. Four newspapers? --- I think four.

613. And you have seen fit to make representations on their behalf? --- Oh, no, no, no.

614. That it would not be effective? --- We hold no brief for any, of them. I don't think any of us have any shares in any of these companies.

615. When you say "brief", how long a period did this survey last? One year, one month, one week? --- I think questionnaires, as I told you earlier, were sent out. And then based on their replies, a report was put up by the Sub-Committee, and then they submitted their views, their comments, to the General Council.

616. Where is your authority to carry out a survey as Council of the Law Society? --- I don't understand you. What do you mean, where is my authority?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

617. Under what power? --- Oh, I see what you are trying to say.

618. How do you hold a survey? Because it means activity on behalf of 1,335 members. You carried out a survey. Where is your authority to carry out a survey? Your authority is defined in the Act, is it not? --- That is correct.

619. Where in the Act is it defined that for the purposes of what you are going to do, you can carry out a survey? --- You are putting it in a very, how shall I say, over-simplistic approach to the whole Legal Profession Act. Of course, it's not spelt out in that form.

620. You have no authority? --- No.

621. You have done it, one out, because you thought that it was in the public interest? --- No, no. This is a Bill. We are invested with certain powers under this particular Act to comment on existing or pending legislation. Before we can comment intelligently on such legislation, proposed or otherwise, we have to do certain homework. And that homework includes a survey amongst the newspapers that operate and circulate in Singapore. Of course, if you are looking for the word "survey" as such, you will never find it, not in a thousand years.

622. Look at the purposes and powers of the Society? --- Yes.

623. What does it say? --- Would you like me to read them?

624. Yes? --- Section 39(1).

'The purposes of the Society shall be:

(a) to maintain and improve the standards of conduct and learning of the Legal Profession in Singapore.'

Do you wish me to read each and every one of them?

625. Please? --- Or shall I read only the ----

626. Go on till (c)? --- Yes, very well. (c) then. "To assist ---

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

627. No. Read the second? --- I see.

' to facilitate the acquisition of legal knowledge by members of the Legal Profession and others.

(c) to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Singapore.'

628. Yes. How does your statement assist the Government and the courts on matters affecting legislation and the administration and practice of the law in Singapore? --- Well, for one thing it will open up your eyes to the errors of your ways, if you agree with us. If you don't, ---

629. By coming out in a statement in public and not telling the Minister, "Look, if this is what you are going to do, it is not effective. We suggest you consider alternatives." But you went public. How did that assist the Government? --- We did write in.

630. It doesn't say "to oppose the Government". It says "to assist the Government"? --- Naturally. By publishing this, we had no intention of opposing the Government.

631. No. None at all? --- None at all.

632. You were wanting to be of assistance? --- Absolutely.

633. Thank you. Now, you therefore would not mind if we went back to the old wording of section 39(1)? --- Section 39(1).

634. The old Advocates and Solicitors ordinance, which says "of matters submitted to it"? --- I am afraid I am not familiar with the particular section. Where is it? Is it section 39(1)(c)?

635. Section 39(1)(c) with the words "submitted to it"? --- "To assist the Government and the Courts in all matters affecting legislation". No, I am not with you here, I am afraid.

636. Well, no President of the Law Society or the Bar, the old committee of the Bar, has ever gone public and criticized Government legislation? --- Are you making a statement or are you asking me a question?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

637. Yes, I am making a statement of fact? --- That may be so.

638. In my knowledge, first, as an advocate and solicitor and, secondly, as Prime Minister? --- I think you are correct.

639. Yes. And that when you do, you know that you are engaging in politics and you must in the nature of things join issue with the Government? --- We were not trying to criticize you.

640. My question was: did you not know that by going public, you must join issue with the Government? --- My answer to that it is not necessarily, no. If you had taken it in the spirit in which it was given and released ----

641. And the spirit was one of helpfulness? --- I would think so, yes.

642. You had the interest of the Government at heart? --- Of course.

643. Mr Seow, you made a speech at the dinner of the Law Society recently? --- I did.

644. Let him have a copy, please. Read page 2, paragraph 5? --- You want me to read the whole paragraph?

645. Start off with the first sentence and then go on to the last three sentences where it has been sidelined? --- I see.

'Now, ladies and gentlemen, it is absolutely imperative that the Bar should continue to be united for it is only in unity that the Bar can discharge adequately its unique role invested in it by the Legislature.'

646. Let us carry on now with the second last paragraph, "Whether one likes it or not"? --- Okay.

'Whether one likes it or not, politics permeates every fabric or society. Laws are being introduced and passed in Parliament in great numbers and at equally great speed. It is for the Law Society in proper cases to examine and comment on current or proposed legislation and any other legal matters.'

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

647. You are in fact saying, yes, politics permeates every fabric of society? --- Yes.

648. Therefore, the Law Society should engage in politics? ---- I do not read it that way, I am afraid.

649. Or else what were you doing? Why else are we here? If you were being helpful about legislation, why should we have considered it necessary to meet you? The matters could have been resolved between the ministers for Law. Why do you think it is necessary for us to make it quite clear to you why we are moving these amendments, and through you to all your members? --- I don't know. You tell me.

650. You know, Mr Seow, that if the other members of your Council take the attitude you have taken, then these amendments will not be adequate? --- I don't see how you could read in my answer to you --

The Prime Minister] Since Mr Nathan is back, Mr Chairman, I think we should get those documents from him to confirm.

The Chairman] Yes.

The Prime Minister] I think it would be necessary for him to go into the witness box. So we will have the right procedure and we know how it came about.

Chairman

651. Mr Seow, could you please step down and let Mr Nathan get into the witness box? --- Yes.

(The witness withdrew.)

MINUTES OF EVIDENCE

Mr Patrick Nathan, Executive Secretary, Law Society of Singapore, called in and examined under oath.

Chairman

652. Mr Nathan, could you please let us have your name and status? --- (Mr Patrick Nathan) Mr Chairman, Sir, my name is Patrick Nathan. I am currently the Executive Secretary of the Law Society of Singapore. Mr Chairman, Sir, perhaps I need your guidance and perhaps all the Hon. Members of the Select Committee. I am an employee of the Law Society and there is a specific provision in the Legal Profession Act that talks about secrecy, section 68, which also governs me. Perhaps with your kind indulgence, you could guide me.

The Prime Minister

653. Mr Nathan, this is a document on which Mr Seow, your President, was going to make a submission personally to Mr Justice Sinnathuray sitting as Commissioner. There is nothing secret about it. Let's hear it. These are important matters on how we can improve our Subordinate Courts, the judicial system in the Subordinate Courts. Let us know what the memorandum was. Let us have the copy. Simple? --- Mr Prime Minister, in the premises then, perhaps the relevant part was what the Law Society recommended, its recommendations.

654. Where is the memorandum? --- It is right inside this file.

655. Sorry? --- It is all inside this file.

656. We want the memorandum that formed the basis of Mr Seow's submissions which he did not have the chance to make. Let's have it. If there is any particular part you want to read beforehand, read it. Let's hear it if it is relevant? --- I think the particular part is the part which says "that in order to ensure that the two services are clearly separate and independent of each other, the Law Society recommends that there should be established a Singapore Judicial Service comprising judicial officers under the control of a Judicial Service Commissioner ---"

657. A Commissioner? --- Judicial Service Commissioner.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Patrick Nathan (cont.)

The Prime Minister (cont.)

658. That's right. One person? --- "With powers to make judicial appointments other than the High Court Bench. (2) Officers of the Singapore Legal Service in the public service should continue to be under the control of the Legal Service Commission. Finally (3) Both services should be independent of and separate from one another. However, an officer in one service may apply for transfer to the other service or to be considered for a higher grade post in the other service whenever a vacancy occurs."

659. Yes. So it is not a Judicial Service Commission but a Judicial Service Commissioner. Yes? --- Yes.

660. And the Commissioner, in your submission or the submission of the President, should be someone from the Council of the Law Society, like the President? --- Well, in fact ----

661. Mr Nathan, you have admitted that just now? --- That is right.

662. You remember telling me that? --- I said they were separate.

663. Yes? --- They were separate. That is what I said.

664. That your submission is not based on the Hong Kong system where the Commission for both the legal service and the judicial service were the same people. And that was incorrect. Yes? --- Mr Prime Minister, in fact ----

665. That is incorrect. Yes? --- Yes, it is incorrect.

666. Yes or no? --- It is incorrect.

667. So either they knew it was incorrect and they lied, or what, Mr Nathan? --- I would not know, Mr Prime Minister. Honestly, I can't really comment on that because the point we all came with the view, at least I came with the view, and I was being subpoenaed here, that the ---

668. In order that we can hear? --- Yes, was about the Legal Profession (Amendment) Bill.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Patrick Nathan (cont.)

The Prime Minister (cont.)

669. Yes, which came about because, first, Mr Seow got himself elected into the Council. Second, the Council members were in their wisdom rash enough to believe that he could exercise discipline over the profession. Thirdly, he then embarked on this political exercise before the Chief Justice on behalf of fallen members of the Bar. Fourthly, he made statements challenging the Government's knowledge of how to control the foreign press from interfering in domestic politics. And, lastly, because he was going to make a submission on how to improve the Subordinate Courts. But because it never came to it, the fourth term of reference, he didn't have the advantage of the court as a forum, and we heard nothing more. Surely it was something important. If the Council took itself seriously, as indeed I must take the Council seriously, that memorandum should have been sent to the Minister. Yes? If it is going to improve the Singapore system of Subordinate Judiciary and not tucked away in your file waiting for another Commission of Inquiry so that the President can hold forth? --- Yes, Mr Prime Minister. But I am in a rather difficult position, Mr Prime Minister, because as the Executive Secretary I cannot tell them, "Please go ahead in any case." I cannot.

The Prime Minister] No. Mr Nathan, I am not suggesting that you are a decision maker. I am asking you to produce the file which you have done and is there anything else in that file which we ought to know now. Because we are going to read the file anyway. Somebody is going to read the file because I want to make quite sure that if there are any faults and flaws in the judicial system of the Subordinate Courts, we should put it right. We should take the Council of the Law Society seriously and we want them to take their jobs seriously. It should be submitted.

[File submitted to the Committee.]

Chairman] Thank you, Mr Nathan. You may step down.

(The witness withdrew.)

The Prime Minister] We will continue with Mr Francis Seow tomorrow.

Chairman] Mr Seow, we will examine you again tomorrow. The next witness will be Miss Teo Soh Lung.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Mr Patrick Nathan (cont.)

Mr Francis Seow] Mr Chairman, Sir, may I have a copy of that memorandum to refresh my memory this evening because I would like to make certain submissions tomorrow?

Mr Barker] Certainly.

Mr Francis Seow] I am much obliged.

Chairman] Please call Miss Teo Soh Lung.

Mr Francis Seow] Mr Speaker, Sir, just on a point of clarification here. You have been given an entire file. I believe the Prime Minister is interested in the memorandum.

Chairman] Yes, we will extract the memorandum from the file.

Mr Francis Seow] Yes. Can we have the file back?

The Chairman] Sure.

Mr Francis Seow] I would like, if I may, to have a copy of that memorandum to study it tonight?

The Chairman] Yes.

Mr Francis Seow] I am much obliged.

MINUTES OF EVIDENCE

Examination of Witness

Miss Teo Soh Lung was called in and examined under oath.

Chairman

670. May I have your name and your status, please, Miss Teo?
--- Teo Soh Lung.

671. And your status? --- Single.

672. No. Your profession? Your job? --- A lawyer.

673. Yes, which firm? You are independent? You are on your own or with a firm? Are you on your own? --- Yes. In partnership.

674. What is your partnership's name? --- Teo, Lai and Lee.

Chairman] Thank you. Prof. Jayakumar, you would like to ask questions?

Prof. Jayakumar

675. Miss Teo, you are a graduate of our Law Faculty? ----
That's right.

676. Could you just tell us and the others who are not familiar when you graduated? --- I think I graduated in 1973.

677. The nature of your practice is more criminal or civil?
--- It is a mixed practice.

678. How many lawyers are there in your firm? --- There are three lawyers, including myself.

679. And where is your firm located? --- In Geylang.

680. Am I right in saying that you were one of the moving forces at the recent EGM on the Legal Profession Bill? Yes? You were the proposer of the draft resolution? --- I was the proposer of a motion.

681. Could a copy of the draft resolution be handed to Miss Teo? --- [Copy handed to Miss Teo]. Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

682. And you also gave the keynote speech at the EGM? --- Yes, I did.

683. All right. It was reported that, I think it is no secret, to be very influential in bringing about support for your resolution. Maybe you can give her a copy of her speech, please. [Copy of speech handed to Miss Teo.] And I believe there was also a report in the Straits Times on the 25th September headed "Lawyers want Government to hear the views before passing the Bill". I think you remember that? --- Yes, I do.

684. It was substantially based on your speech, I believe, that newspaper account? Wasn't that so? It was largely based on your speech? --- I think so.

685. Not entirely, but largely? --- Yes.

686. Thank you. The key points which were raised in your draft resolution as well as in your speech turned on several proposals in the amendments which you described as unjustified and radical changes. Right? --- Yes.

687. If I may just briefly touch on some of the points that you raised. In your draft resolution you talked of the right of lawyers in paragraph 1(a), paragraph 1(b) right of members to elect, paragraph 1(c) the right of having a complaint, various references to rights. Is there anywhere in the draft resolution where you talk of responsibility or duty of lawyers to the public? Is there anywhere in the resolution where you refer to responsibility and duty of lawyers to the public? I don't see any? --- Paragraph No. 2 states that "the independence of the legal profession is essential in maintaining a strong and fearless Bar to safeguard the rights of all persons."

688. "Right of all persons"? --- Right.

689. Would you agree that the public has a right to an honest and competent legal profession? --- I agree.

690. Would you refer to your objections to the proposal and the amendments for Judges and the Attorney-General's complaints to go direct to the Disciplinary Committee. That was one of your objections, right? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

691. You want those complaints also to go through the Inquiry Committee, am I right? --- That is right.

692. Have you served in an Inquiry Committee, Miss Teo? ----
Never.

693. Well, I have served on the inquiry Committee. And if you speak to the others who have served, you will know that one of the reasons why the Inquiry Committee is established is to sieve, to separate, the frivolous complaints from the valid complaints from members of the public, many of whom do not know the workings of law and the legal firms? --- Yes.

694. Do you think, seriously, that a Judge would make a frivolous complaint? --- No, I do not think so.

695. Then you opposed the amendments to include even one layman in the Disciplinary Committee. Here, you differ from the Law Society Council which, in principle, agrees with the layman being represented, but they would depart in that they would like the representation to be in the Inquiry Committee. But you opposed in your speech any representation of the public. Why is it that you oppose a move which would give the public a representative in the processes of discipline? --- Here, I would like to clarify. I don't think I said that I oppose it, as such. I think this point of the layman being in the Disciplinary Committee was merely mentioned in passing because I felt that there was no justification for the present system to be changed.

696. Is there anywhere in your speech where you welcome, in principle, lay representation? --- No, I have no objection to layman, in the ----

697. Did you say so in your speech? --- But it was mentioned there that I did say that I object to the amendment. This is because the amendment is not justified. And I brought the layman in there. But I did not touch on the question of whether a layman should sit.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

698. Have you researched the current trends in other countries? In the United Kingdom, Australia, Canada, United States? Have you done a study? --- I have done a little study.

699. Are you aware that we are 10 to 12 years behind time? ---- This I am not aware. But can I clarify here? In principle, I am not objecting to a layman sitting in the Disciplinary process.

700. You did not say so in your speech? --- No, I did not say so. I could not possibly touch ----

701. Can we go on to the next point. But you do not object to the layman being represented? --- I do not to that. There are pros and cons to this.

702. But you did object to the amendment? --- I did.

703. Another amendment which you objected to, Miss Teo, was the proposal to disqualify lawyers who are suspended and convicted for fraud and dishonesty, and suspended for six months or more? --- Yes.

704. You said that once an errant lawyer has been allowed to practise again, to quote your words, "I see no reason why he should be disqualified from holding office as a member of the Council". That was your position? --- Yes.

705. You don't attach any importance to integrity, honesty, moral fibre? --- My view is this. If the three High Court Judges, including the Chief Justice, see fit to admit a member who has been struck off the roll to the Bar again, then he must be a fit and proper person to practise.

706. So you make no distinction between the right to be reinstated to practise from holding office in the leadership position to governing Council. It does not matter to you? --- If he is fit to practise, then I see no reason why he should not hold an office in the Council.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

707. I see. Do you realize that on this point your position is different from the Law Council and even the students who have sent in a memorandum from the University? You are aware of that? ---- I do not know about the students' representation. But I am aware that my view would be different from the draft memorandum that would have been presented to this Committee.

708. Now, Miss Teo, your speech that you gave at the EGM, reportedly "coolly delivered". You are credited with that. But it was different from the Law Society memorandum which was presented seriously, analysed the issues, but your speech was described as playing on the emotions of the day, and it was agitational. Would you agree with that description? --- I think this is very subjective. Everyone is entitled to his own opinion.

709. Yes. Now, apart from the Legal Profession (Amendment) Bill, as Chairman of the Special Assignments Committee, you have also been involved in other representations, I believe. For example, the Newspaper and Printing Presses Act (NPPA) question. You chaired the Sub-Committee which drafted the first draft of the Law Society memorandum. Yes? The report on which the Law Society memorandum was eventually based? --- Yes. In fact, that is the only Bill that the Committee dealt with.

710. You also drafted the article which later became a press release? --- Mr Chairman, can I clarify here? I did not draft the report. It was my Committee which drafted it.

711. Yes. You are the Chairman of the Committee? --- I am the Chairman.

712. You played a leading role in that? Lets not be modest. If you did, let us know? --- I don't see the question here because as Chairman ---

713. Who drafted it? Who put out the first draft? --- All of us did.

714. All of you did the first draft? --- Everyone in the Sub-Committee put out the first draft. We did it in parts.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

715. But how was that possible? --- It is possible.

716. Miss Teo, when a draft is put to a Committee, somebody has to put up the initial outline, the initial sketch of the draft, isn't it? Who did it? --- Mr Chairman, can I ask for a ruling here? I thought I have come here to just speak on the Legal Profession Act and not the Newspaper and Printing Presses (Amendment) Bill. I am not prepared to answer these questions.

Chairman] You are not prepared?

The Prime Minister] Mr Chairman, you have got to rule.

Chairman

717. Miss Teo, in this Committee you have to answer all questions asked? --- Yes, if you so rule.

Prof. Jayakumar

718. Who put up the first draft? --- All of us sat down and worked on it. We worked in parts. Some members worked the first part and the others worked the second and third parts. Then it was a collective effort, put them altogether. Then we presented it to the Council.

719. Who put them together? --- All of us had a hand in it.

720. You played the leading role in that draft, did you not? --- I wouldn't say I played a leading role. I mean, we all played our roles

721. What about the article, the press release, which was later issued? Did you have a hand in drafting that? --- I had no hand in the press release. What we did was that we did an article meant to be published in the papers for the laymen.

722. Who drafted it? --- My Committee did it.

723. What was your role in it? --- As a Chairperson. In fact, I did very little on the article itself. It was a joint effort.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

724. As Chairman, you were also involved in a Sub-Committee which helped to draft a report on the independence of the Judiciary with a view to the President submitting it to the Commission of Inquiry headed by Justice Sinnathuray? You were involved in the Sub-Committee? --- Not the whole Committee. It was only me.

725. No, it was a Committee which you were involved? --- I was involved. That is a separate Committee.

726. Right. You have been involved as Chairman of this Special Assignments Committee, in the Legal Profession (Amendment) Bill, NPPA, in the independence of the Judiciary, you were the proposer of the draft resolution, you gave the keynote speech at the EGM. Did you have any political motives in the role that you played in all these areas? --- Not at all.

727. Not at all? --- No.

728. You are on oath, Miss Teo. First of all, are you not a very active supporter of the Workers' Party? Have you not accepted appointment as Treasurer in Mr Jeyaretnam's Anson Council, Pro-tem Committee? Can the document be handed to her, her application as Treasurer of the Anson Council? Have you not accepted the appointment as Treasurer? --- Yes, that was sometime ago. I believe the Society has not been registered.

729. But you have accepted appointment as Treasurer in the Pro-tem Committee? --- I did.

730. And do you know that one of the reasons why it has still not been registered is that the Workers' Party and Mr Jeyaretnam have refused to accede to the Registrar of Society's request that they include the standard clause in all non-political societies "that the society shall not indulge in any political activity". And he has written a letter to the Registrar to say that indeed some of the activities of the proposed Anson Council may be considered political. You have accepted appointment as Treasurer? --- I was not aware of that. I was not aware of that letter.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

731. Now that you are aware, would you resign? Are you saying you would resign? --- Yes, I would.

732. But that's not all. You were a polling agent of the Workers' Party candidate, Mr M.P.D. Nair, in the 1984 general election. Were you not? --- I was.

733. Could you hand a copy of the document submitted to the Elections Office? [Copy handed to Miss Teo] Were you also not an authorized election agent for the Workers' Party also in the same elections to conduct election activities on behalf of the Workers' Party candidate, Mr J.C. Corera in Alexandra constituency? --- Yes.

734. Could the document also be released? [Copy handed to Miss Teo] Anson Council treasurer, polling agent in 1984 elections for Mr M P D Nair, Workers' Party, authorized to conduct election activities for Mr Corera, what other activities have you been involved in with the Workers' Party? Have you contributed funds, for example, to Mr Jeyaretnam's defence fund? --- Funds to the party?

735. Or to Mr Jeyaretnam? --- To Mr Jeyaretnam's defence fund, yes, because he told me that he had no money.

736. You have contributed in the past? --- I have.

737. Can you tell us the amount that you contributed? --- It was a very negligible amount.

738. How much? --- I cannot remember.

739. You cannot remember the amount? --- I cannot remember. It was a very negligible amount, if any.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

740. More than \$100? More than \$200? More than \$300? ----
Maybe it was about \$100.

741. What else have you been involved in formulation of policy or editorial policy of the publications? --- No.

742. In other words, you are an active political supporter, and you would have the world believe, Miss Teo, that you are fighting a righteous cause in the Law Society but all along you are, in fact, using the Law Society, its name, using the EGM to promote the political objectives of the Workers' Party to embarrass the Government and to take the Government on. Isn't that so? --- Mr Chairman, can I explain here? I think as far as the election agent is concerned, it was in December 1984 and I helped Mr Corera because he asked me to help him. That was only for that period of time. After that, I did not contact him and there were no further political activities at all. As for being M.P.D. Nair's polling agent, it was Mr Nair who asked me if I could help him. He was short of polling agents and I offered the half-day's work for him, that's all, without any idea of helping him in furtherance of his political career. It was just for the day.

743. For the day? --- Yes.

744. Two Workers' Party political candidates in an election? Polling agent, conducting election activities, being Treasurer? Did you divulge any of these to any of the Council members here? ---- There was no opportunity. They never asked me.

745. I am asking you: did you ever reveal to any of the Council members your political affiliation and inclination and support for the Workers' Party? --- I should think they know.

746. I am asking you whether you divulged this information to them on your own? --- I think I did tell Mr President when he asked me whether I was a supporter of the Workers' Party, and I said I was a sympathiser of the Workers' Party.

747. Sympathiser? --- I did tell him that.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

748. How many of the 400-or-so lawyers who turned up at the EGM and who were inspired by the speech were told of your position, your political affiliation, and the fact that you are a sympathiser of the Workers' Party? Did you declare your sympathies before you started to speak? --- I see no reason to declare that.

749. Why not? --- Why? I called the EGM as a member of the Bar.

750. Why didn't you declare this? Let them know so that they can decide whether you are genuine or whether you are mixing politics with your role in the EGM. Why did you suppress and conceal this information? --- Mr Chairman, if any member had asked me whether I sympathized with the cause of the Workers' Party, I would have answered yes. There were a few people who asked me and I admitted that, including the President of the Law Society. I made no secret of it.

751. You made no secret, but you did not tell all those people who came there so that they can judge your true motives. Your activities in the Law Society were politically motivated. You were acting in concert with Mr Jeyaretnam. You began to be active in the Law Society after helping the Workers' Party in 1984. Your views on the NPPA, independence of the judiciary, Legal Profession Act, are similar to those of Mr Jeyaretnam? --- Mr Chairman, can I clarify this? I was going to say that, since I became a member of the Special Assignments Committee, I did indicate to Mr Jeyaretnam that I would not be helping him with his political work. And you can ask Mr Jeyaretnam, I had not been active at all.

752. But you have just told us you are a sympathiser of the Workers' Party? --- I am a sympathiser. How do you define "sympathiser"? I sympathize with their cause, yes.

753. Miss Teo, you have been mixing politics with professional matters, making use of the Law Society to agitate against the Government. Mr Jeyaretnam was not at the EGM, was he? --- He was not.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar (cont.)

754. Right? --- I think so.

755. If he was there, he knows and the Workers' Party knows that he will be accused and the Workers' Party will be accused of manipulating the Law Society. But there was no need for him to attend because his trusted lieutenant, yourself, could be entrusted to be in the forefront with others to work up the ground, to work up the feelings of the lawyers with stirring speeches? --- Mr Chairman, I do not think that is a fair allegation. When I called the EGM, Mr Jeyaretnam had nothing to do with it. He did not instruct me to call the EGM. I called it together with others, 61 others.

756. Miss Teo, you have heard of Dr Toh's call? His lamentation - the professionals, particularly lawyers, are not coming out into politics. There is nothing wrong. Let me make it clear. There is nothing wrong in you or others becoming a sympathiser or supporter of the Workers' Party or a member of the Workers' Party. It is your right? --- Yes, I thank you for that assurance.

757. But what the Government will not tolerate is sympathisers and political activists working their way into professional organizations and other bona fide organization, establishing themselves in positions of influence, concealing their sympathies and activism from others, and using the umbrella of the organization for political purposes? --- Mr Chairman, I don't think Mr Jayakumar's allegation is fair. Members can judge for themselves at the EGM whether they want to go along with me or not, and in fact the motion that was passed was not my motion. It was the motion of Mr Fergusson and Mr Sat Pal Khattar. They had minds of their own. I cannot influence them.

The Prime Minister

758. Miss Teo, do you propose to carry on now that you are faced with this choice? Do you propose to carry on your activities with the Law Society or with the Workers' Party? --- I would like to carry on with my activities in the Law Society.

759. And you will not use the Law Society to advance the causes of the Workers' Party? --- No. Why should I?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

760. That would be wrong, wouldn't it? --- It would.

761. And that would bring upon the Law Society all the difficulties, flak, fire, which the Workers' Party must attract as a political party. Right? --- Yes.

762. So you are quite sure that now that you are faced with this choice of either carrying on with your activities in the Law Society or the Workers' Party, you will leave the Workers' Party and carry on with the Law Society? --- Yes.

763. And you will not carry on with this Anson Council, now that you know Mr Jeyaretnam says it is political? --- If it is political, then I would resign.

764. You would resign? --- Yes.

765. Well, it is. Let her have a copy. It is, and you will resign? --- Yes.

766. You will also not act as election agent or polling agent for Workers' Party candidates? --- I think I have to make a distinction here. Polling agents are there to see to the fairness of the elections, and it is only a day's attendance at the polling centre.

767. But you are not going campaigning, are you? --- No.

768. That would be open identification? --- Yes.

769. But you are still secretly in sympathy with what they are doing? --- Mr Chairman, can I have ----

770. There is nothing wrong? --- I sympathise with them.

771. All you have to do is to tell us yes or no? --- Yes, I sympathise with the Workers' Party, yes.

772. But you will remember that if *you* allow your sympathies to sway your activities in the Law Society, to influence it and influence the outcome and if both are moving in tandem, then the fire which we direct at the Workers' Party must inevitably hurt the lawyers. Right? --- But if what the Law Society is doing coincides with what the Workers' Party is doing, then I see no reason why it should not be done.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

773. Let's go through this joint statement, the result of you and your committee, the statement of Mr Francis Seow on the newspapers. Let her have a copy. Press release of the Law Society. Turn to page 2, Miss Teo. "Ambiguous and Subjective", read it. They are the work of your committee. Read it aloud? ---- "Ambiguous and Subjective. There are ambiguities in the Bill. For example, the terms "engaging in" and "domestic politics" are not defined although these terms form the basis of the Bill. Since this Bill is aimed at foreign publications, which, - in the words which have been attributed to the Minister - "have been commenting frequently on local issues and distorting the truth", these terms should have been defined. The omission to define them will result in subjective interpretation and implementation of the Bill."

774. Yes. You studied at the University of Singapore? --- Yes.

775. You know the difference between administrative discretion and a justiciable issue? --- I am not so sure now.

776. When the Minister signs a detention order against a political detainee or communist, when he certifies that he is a security threat, there is no definition of security threat. He just certifies it is a security threat. It is an administrative power that has been given him. You studied that? --- Yes.

777. You also studied that under the Criminal Law (Temporary Provisions) Act, the Minister can detain for up to two years all those who are associated with secret societies or otherwise and were a danger to public security? --- Yes.

778. Yes. And there is no definition of these words. They are enabling legislation to give the Minister administrative powers. What is the difference between those powers and gazetting a foreign publication? Why should they be defined? They shouldn't be, should they? Or have you forgotten your law? --- In this case, I am suggesting that it should be defined because these terms are very wide terms.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

779. You are suggesting that, because this is a submission made by a group of lawyers to the Law Council and has been issued in the name of the President, that it is defective law not to define it? --- In order to do away with the ambiguities that we should define these terms.

780. What is there ambiguous? The Minister has decided that a magazine or a newspaper has engaged in domestic politics and gazettes it under section 18(A)(1) of the Act as amended. That's the end of the matter. Have you not learned that in the law school? --- Yes, I learned that in law school. But in order to ----

781. But you are being difficult? --- I am not being difficult, Mr Lee.

782. Read page 3 on Punishments. What does it say? This is your handwork? Read it aloud, in case the other members haven't got copies? ---

'The legislators seek to punish the publishers of offending publications by allegedly depriving them of revenue. However, as we see it, the Bill does not achieve this purpose.

Even if the Bill succeeds in cutting down sales of such publications, a brief survey conducted by the Society shows that its effects are minimal. According to the publishers of a foreign publication, the revenue derived from the sale of such publications in Singapore "just barely exceeds" the costs of distribution. Profits come more from advertisements than from circulation.

We are of the view that the penalties provided under the Bill are not appropriate for the offences created.'

783. Stop for a while. Mr Seow has told us that he issued this in order to assist the Government in its legislation. Do you agree? --- Yes.

784. That was the intention of your Sub-Committee? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

785. Now you are telling us in the statement that the penalties were not appropriated for the offences created. What do you suggest are the appropriate penalties, because your duty is to assist us? If you say these penalties are not appropriate, what penalties would be appropriate? Your duty under the Act is to assist, not to oppose. How do you assist us? Tell us, because we would be obliged to you? --- Mr Chairman, I must say that I have forgotten most of the things about this Newspaper and Printing Presses Act. And if Mr Lee wants me to enlighten him or to clarify things ----

786. No. Miss Teo, I am asking you about the document you drafted with your Committee a bare three months ago. And if you withhold information and refuse to answer relevant questions, you know that there are penalties. So let us not be difficult? --- I am aware.

787. I want to know from you now, since you say that these penalties were not appropriate, what would be appropriate? --- Mr Chairman, I am aware that there would be consequences if I do not answer the questions here. But what I am saying is that if Mr Lee wants me to check on that, what is the appropriate punishment, then I need to refer back to the Bill, to the Act itself and to the papers that I have. I just need time. It's not that I want to avoid answering his question.

788. You need time to look up papers which has the answer or you need time to think up a plausible reply? --- Perhaps if you could furnish me with the Act itself, I ----

789. No. You are the drafter of this document? --- Yes, but I need to know what was the penalty that ----

790. The penalty was that their circulation could be reduced in numbers. And you are telling us that that's a waste of time. You have carried out a bare survey which shows effects are minimal. Well, how do we have maximal effects? Tell us. You have graduated in law. You have practised for how many years, 12 years, 10 years? How many years, Miss Teo? --- 12 years.

791. Yes. Well, tell us. Have you had any association with newspapers or journals? --- I have none.

792. Special knowledge? --- I have none.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

793. So how do you say that it will be ineffective? --- Mr Chairman, this was the result of a survey, a brief survey, that was done. If I recall, that was the results of the survey done.

794. If you look at your files and the results of the survey, you will tell us tomorrow or later this evening how to make it effective? Yes? --- No, what the survey ---

795. Yes or no? How do you make it effective? It is in your files. Your valuable data, very confidential, secret, will tell us how to deal with these difficult newspaper publishers and their circulations? --- Mr Chairman, I now recall that actually on this point I think the Minister did say that ----

796. No. We are talking about penalties that we want you to propose. How to make it effective? Because you have dismissed the Minister's penalties as minimal? --- Yes, the Minister's penalty is that the publishers should be sent to prison, I believe.

797. No. The Minister's penalty in gazetting a publication is to restrict its circulation. You know that. Read your own paragraph, "allegedly depriving them of revenue". It's all here. They are your words. You can't have amnesia at your age, Miss Teo. You don't get senile so quickly? --- No, I don't. But I am standing here as a witness and I didn't expect you to ask me about this Bill.

798. But why not? --- I came here to testify on the Legal Profession Bill.

799. Why not? --- Because my subpoena says that I am to come here and testify on the Legal Profession Bill.

800. Exactly. As a result of all these activities, first Mr Seow gets elected. You helped him in his election, didn't you? There is nothing to be ashamed of. It is not a crime? --- Yes.

801. He is obliged to you? --- Right. I encouraged some seniors to vote for him.

802. Yes, to vote for him. You encouraged him too to stand for election? --- I did not.

803. You just encouraged seniors to vote for him? --- Yes.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

804. Others encouraged him, your friends? --- Yes, my friends. When he was nominated, I didn't know.

805. There was a caucus. There was a caucus of young people who wanted an oldie as the frontman? --- That's not fair, Mr Chairman. We had no idea that Mr Francis Seow was standing for election until we saw the notice from the Law Society.

806. Mr Francis Seow is on record telling us that a group of young lawyers came to see him and arranged or offered to have him elected. And not only elected to the Council but elected to more than just a Council member? --- Mr Chairman, can I just answer this question?

807. That you arranged for Mr Seow or helped him in his election and you can then make use of him? --- Mr Chairman, can I clarify this? I did not know Mr Seow was standing for election as President until I received the circular from the Law Society saying that he was standing for election. And I did ask senior members to vote for him. That was all. I was not instrumental in asking him to stand for election. In fact, I did not know him last year.

808. But since then you have worked very closely with him? --- Not really.

809. You have got him to accept your document? --- We presented the report to the Council, and if Council accepts it ----

810. You also worked on the Committee to make representations to the Sinnathuray Commission of Inquiry? --- Yes.

811. That's your good work, wasn't it, to have a Judicial Commissioner in charge of the Subordinate Judiciary? Yes? --- Mr Chairman, I do not know what is the meaning of "my good work".

812. No. This is the work of your Committee of which you are Chairman. I congratulate you because you were able to persuade a much more experienced man to adopt your memorandum, which is quite a feat of persuasion? -- Mr Chairman, I am not the Chairman of that Committee that prepared the ----

813. You prepared the first draft? --- Of this report? Are you talking about this report?

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

814. No. I have moved. I am now giving you credit for another piece of good work which brought Mr Seow to prominence before Mr Justice Sinnathuray? --- No, it wasn't. Again here I am not prepared to answer that question because I didn't expect Mr Lee to ask me questions touching on other Committee's work. But if I recall, that first draft was also a joint effort presented by ----

815. With your Committee? --- Not my Committee, not this Special Assignment Committee. Definitely not.

816. Which persons, which Committee? --- I think it was a Committee of four members and maybe ----

817. Let's have their names? --- Mr Patrick Seong, myself.

818. Who else? There are four. You've named two? --- Mr Chairman, because Committees and proceedings in the Law Society are confidential, I do not know whether this is confidential or not. Perhaps Mr President could answer this question.

819. They are members of your Committee, Miss Teo. I am asking you who they are. There is nothing illegal about the document. I am just amazed at your persuasive powers? --- Well, Miss Farideh Namazie ----

820. Miss Farideh Namazie? --- And Mr Lim Chor Pee.

821. Mr Lim Chor Pee. And the four of you settled this draft memorandum which was adopted by Council for Mr Seow to present orally before Mr Sinnathuray? --- Yes.

822. Yes. We are approaching your time, Mr Chairman. Perhaps we could ask one last question before we adjourn till tomorrow. Turn to the last page of this document of yours, page 5. Read it, the last paragraph? ----

'In any event, it is clear that the existing laws are more than adequate to "control" foreign publications, which are thought to be harmful and deleterious to the moral, social and political health of the nation.'

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

823. Not morale, moral? --- Moral.

824. Yes? --- Thank you.

825. You picked these words up from a political or a legal pamphlet? "Harmful and deleterious to the moral, social and political health of the nation." Is this a law, a particular judicial phrase which has been used with some aptness in some legislation or judgment or is this a political tract? --- Mr Chairman, can I clarify this? I just realize that this is the press release that was given by the Law Society. What my Committee did was to present an article and the article must have gone through the Council, amended by them.

826. You mean somebody toned it down and you lost a few words? Or somebody improved on it? Which is it? --- I do not know whether it is an improvement or toning down.

827. Let us have a look at the original. Maybe the original had some astringent, pungent, sharp, cutting, words which might have shaken the Ministers to their senses? --- But reports are presented to the Council and this should be confidential, I believe.

828. Don't be so shy, Miss Teo. There is nothing which you have done which requires you to be so ashamed of it? --- No, I have done nothing wrong.

829. That's right. All you did was to put up this remarkable document and whatever wrong that was done was done by the President. He issued it? --- Not by the President but by the Council. I do not think there is anything wrong but ----

830. How do you know that it was by the Council? You mean you were present when the votes were taken? --- No. We presented an article to the Council and ----

831. Did Mr Francis Seow tell you of it? --- No. And the ----

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

832. Why are you so keen to defend Mr Francis Seow. He is quite capable of looking after himself? --- Mr Chairman, I am not defending him. He is surely capable of defending himself. But what I am saying is that my committee presented a report to the Council and whatever is adopted finally must necessarily be amended. And it is not fair for Mr Lee to say that the last paragraph is entirely my Committee's words. It may not be.

833. You mean you disagree with the tendentious nature of those words? It sounds too much like rebel rousing? --- No. I did not disagree. But if you ask me why, whether these words are rebel rousing or not, it is not fair for me to answer that.

834. I suggest you get hold of your original document, your draft, make a comparison and tell us about it tomorrow and let us have a look at the original. Because there is a serious purpose behind all my questions and the answers you are giving. At the end of these proceedings, I have to decide whether the amendments will stand as they are or whether they should be further added to or lessened, in order that the Law Society and the Council of the Law Society can exercise its proper functions with as much independence and freedom to exercise their judgment as is possible. If I am convinced that this was an aberration with Mr Seow or few others and that, in fact, the majority of members including you and your sub-committee are serious men and women determined to uphold the integrity, the honesty, the fearlessness, the independence, of the Bar and working within those professional confines, you will find this Government, including myself, a strong supporter because I was a member of the Bar. But if I come to the conclusion that, in fact, as was the case with so many Chinese old boys' associations and musical gong societies, that some activists, through the indifference of the majority of members, have misled the Society to wilful ways unconnected with the profession, then I will find an answer to it. Because it is my job as the Prime Minister in charge of the Government of Singapore to put a stop to politicking in professional bodies. If you want to politick, come out. That is why I asked you. You want to politick, you form your own party or join Mr Jeyaretnam. But if you stay in the Law Society Council and politick, and at the same time you unconsciously or sub-consciously ally these activities to those of the Workers' Party, then inevitably damage must be done, unless the other members get up and

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

(The Prime Minister) (cont.)

do something about it. Because I am not taking flak from the lawyers without giving them as good a response as they would expect from me if I were a counter party in an action. Whether young or old, I think I am sufficiently known to all members never to evade, hide from or dodge an argument, a debate, a collision, a confrontation, whatever way it is. That is the reason why we are the Government. Whether you are communist, Workers' Party or whatever, if you want a scrap with the Government, sure you will get one. But if you want to improve the profession, then it is the business of this Government to raise standards. Because if Singapore is to thrive and to prosper as a financial and a banking centre, we need at least two of these items. (1) A good strong judiciary, competent and winning the confidence of bankers and people who decide where is the locus of the contract. At the moment, all contracts are interpreted in New York or London. One day they may have it interpreted in Singapore. So we need a strong judiciary. And for that strong judiciary to discharge its duties, it needs an able, independent, competent Bar, men of integrity, men whose words can be believed, so that when they give you an undertaking, either as a fellow lawyer on the other side or to the Judge, you can accept it as an honourable commitment. Then we shall thrive. But if we are going to reduce ourselves into a shambles of a Workers' Party-Law Society Council, the answer is simple. An alteration in the law which leaves you without that cover and therefore you have to form yourselves properly into a political society or political association and the lawyers will have to learn the lesson of having allowed themselves to be manipulated. And in an interregnum until things are restored, they will be, as so many others are, without the special privileges of self-regulation. It is as simple as that. That is why I think it is important that all members of the Council should be here and that perhaps after this, there should be a proper EGM to get the message across. I am completely with my colleague, Mr Barker, who saw several of you. I told him to see those representatives of the Council who wanted to see the Government, and to make quite clear that if you play it straight and honourably as lawyers, you will find this Government responsive. You think you can be smarter than the Government and outsmart it, well, if you win, you form the Government. If I win, we have got a new Law Society. It is as simple as that. You do not find that funny, Mr Fergusson? You have been here for some time? --- (Mr Fergusson) I have been here for sometime.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

(The Prime Minister) (cont.)

835. Yes. You understand the thrust of my message? --- (Mr Fergusson) Very well indeed.

836. It does not come as a surprise to you? --- (Mr Fergusson)
No. I took on everything that the Hon. Minister for Law said that are emerging.

837. Yes. But you must make sure that that message gets across to the members. It is not meant just for you and the few who accompanied you? --- (Mr Fergusson) That I understand, Sir.

The Prime Minister Because you cannot play it double-handed or double-faced. When you see the Minister, you send the honourable straight men who are very reasonable. I do not know who they were, Mr Warren Khoo I am told, who else?

Prof. Jayakumar Mr Chandra Mohan.

The Prime Minister Mr Chandra Mohan.

Prof. Jayakumar Mr Giam.

The Prime Minister Mr Giam.

Prof. Jayakumar Mr Ramason.

The Prime Minister Mr Ramason.

Prof. Jayakumar Mr Patrick Nathan.

The Prime Minister He is the Secretary.

Prof. Jayakumar He is the Secretary.

The Prime Minister And who else? Mr Fergusson.

Prof. Jayakumar Yes, Mr Fergusson.

The Prime Minister We are dealing with you as a representative body. And if you are double-faced, we can only present one face and that is a very firm one. If you are honest and you want a strong Bar, that is what this Government is also for.

MINUTES OF EVIDENCE

9 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Chairman] Miss Teo, you may step down.

[The witness withdrew.]

The Chairman] We will now adjourn and meet again tomorrow at 11.00 o'clock.

Committee adjourned at 5.40 pm to Friday,
10th October, 1986 at 11.00 am.

**SELECT COMMITTEE ON THE
LEGAL PROFESSION (AMENDMENT) BILL
MINUTES OF EVIDENCE**

FRIDAY, 10 OCTOBER 1986
11.00 am
(3rd Meeting)

Present:

Mr Speaker (in the Chair)

Mr E. W. Barker	:	Mr Lee Kuan Yew
Mr Bernard Chen	:	Dr Tan Cheng Bock
Mr Chua Sian Chin	:	Mr Tang See Chim
Prof. S. Jayakumar		

In Attendance:

Mr Tan Boon Teik, Attorney-General.
Mr Jeffrey Chan, Deputy Senior State Counsel.

Chairman] I would like to call Miss Teo Soh Lung, please, to the stand.

Examination of Witness

Miss Teo Soh Lung was re-examined under oath.

Chairman

838. Miss Teo, you are still on oath? --- Yes.

Chairman] Thank you.

The Prime Minister

839. Miss Teo, will you look at this memorandum which was the brief for your President, Mr Francis Seow, before the Commission of Inquiry on the Subordinate Judiciary, page 12, which was given from the file given by Mr Nathan yesterday. Look at page 12? --- Yes. (Mr Francis Seow) May I just interrupt, with your leave. My Secretary has received a call from the then Chairman of the Sub-Committee which prepared the memorandum to draw attention to the fact that there has been a typing error at page 12, paragraph 1, under the Recommendations, that the word "Commissioner" should in

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Miss Teo Soh Lung (cont.)

Mr Francis Seow (cont.)

fact read "Commission". "That there should be established a Singapore Judicial Service comprising judicial officers under the control of a Judicial Service Commission with powers to make judicial appointments."

The Prime Minister (cont.)

840. When was this telephone call? --- (Mr Francis Seow) This morning. My Secretary -- (Mr Patrick Nathan) This morning, Mr Prime Minister.

841. Why should he telephone you and not you telephone him? --- (Mr Patrick Nathan) I do not know, Mr Prime Minister, but I received the call this morning.

842. Who is the Chairman? --- (Mr Patrick Nathan) Mr Lim Chor Pee.

843. I think we need him. You did not tell me it was a typing error yesterday, did you, Mr Nathan? --- (Mr Patrick Nathan) No, Mr Prime Minister.

844. You are the Secretary. When you read it you must know whether it is an error or not? --- (Mr Patrick Nathan) Yes, Mr Prime Minister. But I was only told this morning.

845. It is a matter of some importance, is it not, the difference between a "Commissioner" and a "Commission"? --- (Mr Patrick Nathan) Yes. He told me it was a typographical error. Mr Prime minister.

846. He out of the blue rung you up this morning and said it was a typographical error? --- (Mr Patrick Nathan) Yes, he did.

847. You did not ring him up? --- (Mr Patrick Nathan) I did not ring him up.

848. Who had rung him up? --- (Mr Patrick Nathan) I do not know. I received this call this morning.

Mr Barker] We can call him later on.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

849. No, we will call him immediately. We will call him after Miss Teo. Get him here. How long did you speak to him on the phone? --- (Mr Patrick Nathan) It was a brief conversation, only about two minutes.

850. I think we should have you back in the box, Mr Nathan, before Miss Teo? --- (Mr Patrick Nathan) Yes, all right.

The Prime Minister] Because I read this document yesterday and I commented on it yesterday afternoon, remember. "Commissioner". I gave you three opportunities. Because the significance was not lost on me and I am sure it was not lost on other members of your Council.

Chairman] Should we ask Miss Teo to step down?

The Prime Minister] Yes.

[The witness withdrew.]

(Miss Teo Soh Lung) Mr Chairman, can I be allowed to sit here or in the next room?

Chairman

851. Here? --- (Mr Francis Seow) Mr Chairman, just on a point here. Could somebody send for Mr Lim Chor Pee?

852. We will be doing that? --- (Mr Francis Seow) I see. Rather than the Secretary.

MINUTES OF EVIDENCE

Examination of Witness

Mr Patrick Nathan was re-examined under oath.

Chairman

853. Mr Nathan, you are still on oath? --- I am still on oath.

The Prime Minister

854. Mr Nathan, who types this in your secretariat? --- No, this was done by the Sub-Committee itself. It was given to us ----

855. There was no typing done by your secretariat? --- No. This was done by the Sub-Committee itself.

856. And it was produced as that? --- Yes. They made copies and we circulated it to members.

857. So you do not know who typed it? --- It was done by Mr Lim Chor Pee's, probably his secretary, Mr Prime Minister.

858. He gave you this as it is? --- Yes. That is right.

859. Then there was a meeting to discuss this paper? --- Yes, there was a meeting.

860. On photostat copies? --- That's right.

861. Can I see? Can I have the original file? Could you turn it over to page 11 or page 12? There was a meeting of the Council based on the paper with photostat copies? --- Yes.

862. How long did the meeting last? This is your original copy? --- Yes, that is right, Mr Prime Minister. I cannot really recollect how long the meeting lasted.

863. Five minutes? Half an hour? One hour? Two hours? --- Probably one hour.

864. Who were present? --- We did.

865. You got minutes of who were present? --- I do not have the minutes there. But as far as I can remember, most of the Council members were present. We did also meet representatives from the Sub-Committee also. They were also present.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Patrick Nathan (cont.)

The Prime Minister (cont.)

866. Was it a five-minute conversation before it was adopted or was it a half-hour discussion? --- As far as I could recall, there were certain questions that were raised. The Sub-Committee agreed to go back again to somewhat explain a few things. I believe members of the Council were asking a few matters that were raised in the report.

867. I am now going to ask you about you yourself, not your Council? --- Yes.

868. You followed the discussion? --- I listened to the discussions, yes.

869. You were not just idly sitting at in the meeting. You followed the discussion? --- I followed the discussions, but I did not participate in it, Mr Prime Minister.

870. You told me yesterday that there was a proposal that the President of the Law Society was to be the judicial commissioner? --- Mr Prime Minister, I ----

871. Please, Mr Nathan. You were on oath? --- Yes.

872. We have got video recordings? --- Yes.

873. So it is difficult to go back. Nobody forced you to say those words? --- Mr Prime Minister, if I could explain.

874. No. Did you say yesterday, "Yes, the judicial commissioner was to be President of the Law Society"? --- It was an error on my part. Because, Mr Prime Minister, I believe you were asking me about the judicial services commissioner. You were going on with it and I just read exactly the recommendations that were in the file. It was an error on my part.

875. What was an error? That he was to be the Commissioner or one of the Commissioners? --- I do not know about being one of the Commissioners, but definitely not the Commissioner.

876. You have had a discussion yesterday? --- No.

877. On the folly of this? --- No, Mr Prime Minister. If I had made a mistake, I think it is my duty to tell you that it was a mistake.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Patrick Nathan (cont.)

The Prime Minister (cont.)

878. When did you discover it was your mistake? --- No, because when after that, I started recollecting and I said, "How can I possibly say that the President would be the judicial legal commissioner?" Because the whole thing is this, Mr Prime Minister. The whole Sub-Committee's report was done by the Sub-Committee itself. I never participated in it. And I would not have the locus standi to say ---

879. But you have suggested, have you not, never mind the locus standi, you have suggested, you have proposed, that the President of the Law Society, Mr Francis Seow, should be a judicial commissioner or the judicial commissioner. I thought it was a judicial commissioner. When I received this file yesterday, I discovered it was the judicial commissioner, to the exclusion of all other judicial commissioners. There is a very marked difference between a judicial commissioner in a Commission and a judicial commissioner simpliciter? --- It may be.

880. Yes. When did you realize that they were talking about a judicial commission and not a judicial commissioner? --- Very honestly, Mr Prime Minister, I was only told this morning that it was a typographical error.

881. So until this morning you were under the impression it was a judicial commissioner? --- That is right. That is what the papers were. And he told me it was a typographical error.

882. So throughout the whole of the discussions your belief was that it was a judicial commissioner? --- The way I read it out, it was the judicial legal commissioner.

883. Yes. We will hear you again after I have heard Mr Lim Chor Pee? --- Thank you, Sir.

884. He was present at the discussions? --- He was present at the discussions.

885. With the Council? --- With the Council, yes.

886. And until this morning you thought it was a judicial commissioner? --- Yes, I thought it was.

The Prime Minister Thank you.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Patrick Nathan (cont.)

Chairman] You may step down.

[The witness withdrew.]

Chairman] Miss Teo, please.

MINUTES OF EVIDENCE

Examination of Witness

Miss Teo Soh Lung was re-examined under oath.

The Prime Minister

887. Miss Teo, this brief for your President, Mr Francis Seow, was the work of the four, Mr Lim Chor Pee, you, Miss Namazie, and Mr Patrick Seong? --- That is right.

888. You will read paragraph 4, the three recommendations of the Law Society? --- Yes.

889. Read it. No. 1? ---

' There should be established a Singapore Judicial Service comprising Judicial officers under the control of a Judicial Service Commissioner with powers to make judicial appointments other than to the High Court Bench.

2. Officers of the Singapore Legal Service in the public service should continue to be under the control of the Legal Service Commission.

3. Both services should be independent of and separate from one another. However, an officer from one service may apply for transfer to the other service or to be considered for a higher grade post in the other service whenever a vacancy occurs.'

890. Who was going to appoint this Judicial Service Commissioner?
--- Mr Chairman, I must clarify here.

891. My question is: who was going to appoint the Judicial Service Commissioner? --- Mr Chairman, there is clearly a typographical error. Throughout our discussion ----

892. Why is it clearly a typographical error? You have spoken to Mr Lim Chor Pee this morning? --- I did not speak to Mr Lim this morning but it was clearly a typographical error. We had discussed ---

893. Between a "Commission" and a "Commissioner"? --- Yes. We had discussed this in our meetings and we had all along used the name "Judicial Service Commission". It is clearly a typographical error.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

894. Can you produce the original document which said "Commission" before the typographical error was committed? Have you got your drafts? Produce an old draft which shows "Commission"? --- I do not have the draft. But I believe some other draft may show, this. If you will give me time, I will go back and look at it.

895. You will produce it before Mr Lim Chor Pee? --- Yes.

The Prime Minister] We are getting Mr Lim Chor Pee - where is his office?

Prof. Jayakumar

896. Does anybody know? --- (Mr Francis Seow) In the Arcade Building.

The Prime Minister

897. That is a five-minute travel. You can produce from your files? --- (Miss Teo Soh Lung) I did not bring the entire ----

898. Where is your file? --- The file is , in the High Court, the Bar Room.

Chairman] It is quite near.

The Prime Minister

899. Can't you send somebody to collect it? --- No, it is in the locker. I can go back and ---

900. Let me settle a few items and perhaps Mr Lim Chor Pee will arrive by then and we could then deal with Mr Lim Chor Pee whilst you get the files. You say it was a Legal Service Commission? --- Yes.

901. Apart from that one typographical error, there are no other errors? --- I can't see any.

902. You can't see any. Right. Miss Teo, you are on oath and that is the absolute truth? --- Yes.

903. You have had 12 years' practice? --- I have.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

904. Mr Lim Chor Pee has 25 years, 20 years' practice? --- I do not know.

905. But a very senior member of the Bar? --- I think so.

906. You made a recommendation to have a Legal Service Commission without saying how many members there should be on the Commission? --- Mr Chairman, when we made this recommendation, we came to this conclusion on studying the Constitution.

907. No. Answer my question, Miss Teo. You may get into deeper difficulties if you try to cover up for the Council. This is not your work. You just did the preparation, the drafting. Mr Francis Seow has interjected this morning and said that there was a telephone call from Mr Lim Chor Pee who, out of the blue, in a seance, decided that there was a typographical error. Let Mr Lim Chor Pee help Mr Francis Seow. You'd better help yourself. I am asking you how many members of the Judicial Service Commission? ---- We did not discuss this.

908. Mr Francis Seow was going to go before Mr Justice Sinnathuray and the Commission of Inquiry and say have a Judicial Service Commission without saying how many, who? --- These will be the details of what ---

909. Details? --- the Judicial Service Commission would comprise of and all that we are saying in this report is that the Constitution provides for two separate commissions.

910. It does not say anywhere that it will consist of two separate commissions. It will consist of the Legal Service Commission which is in paragraph 2. Read paragraph 2, "under the control of the Legal Service Commission" and paragraph 1, "A Judicial Service Commissioner". Right? --- As I said, Mr Chairman, this is a typographical error.

911. You know that the Legal Service Commission is properly enunciated in the Constitution? --- I am aware of that.

912. Six members - the Chief Justice, the Attorney-General, one High Court Judge, Chairman of the PSC and two other PSC members? --- Yes, I am aware of that.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

913. You made a proposal that there should be a Judicial Service Commission. You didn't make a proposal who should be on it when you know it is very necessary because you have referred to the Legal Service Commission. I am suggesting you are covering up with the rest of them? --- No. It is definitely not. Why should I cover up for them? It is the work of this Sub-Committee and it is a typographical error. We have all along discussed this as two separate commissions and this is the truth. If you do not want to believe it, I leave it to you.

914. I will believe it when you produce me the draft or the original before the typographical error and minutes of the meeting discussing this in which all participants described a commission and who were going to comprise the members of the commission. But I am told by Mr Nathan there were no minutes, Mr Nathan? --- (Mr Patrick Nathan) Mr Prime Minister, the minutes that I recorded are in a different file. For every Council meeting I record the minutes.

915. We can get the file. I think we should. Perhaps the Serjeant-at-Arms should go with Mr Nathan and get the file. I will withdraw all this the moment I see discussions took place on the basis of a commission, not on the basis of a Commissioner. I was given this document yesterday evening. I read it last night. At the time I heard it being read out, my ears pricked up. I am now told this is a typographical error. You have confirmed that there was a discussion on it. I said, have the minutes. If the minutes revolve around a commissioner, that settles it. If it revolves on a commission, that also settles it. Let's get it? --- (Mr Patrick Nathan) Mr Prime Minister, again by the provisions of section 68 ----

916. Let's get it? --- (Mr Patrick Nathan) All right, Mr Prime Minister. Where is the serjeant?

The Prime Minister] Where is the serjeant?

Chairman] He has gone to ---

The Prime Minister

917. Get another one. Get a Deputy Serjeant. Let's go into this. You put up a proposal to have a Judicial Service Commission without settling whether it would be a Commission of 1 or 2 or 3 or 4 or 5 or 6 or 7 or 8. That was never discussed? --- (Miss Teo Soh Lung) Those are details that could be gone into.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

918. It was never discussed? --- No.

919. So you were sending the Chairman of the Council bald and naked. He, as a lawyer of some 30 years' standing was going to appear before a Commission of inquiry to hear proposals on how to improve the Subordinate Judiciary and he will make a bald, naked proposal that there should be a Judicial Service Commission? --- I don't think this proposal is bald and naked.

920. All right. It is not bald and naked because it does not say how many members? --- It is not, yes.

921. Who appoints the Judicial Service Commission? --- You can have the Chief Justice appoint or the President or the Prime Minister.

922. You mean it wasn't discussed. It wasn't settled? --- No. We did not discuss it. We felt that looking through the Constitution and the Interpretation Act that there should be a separate Judicial Service Commission.

923. Who appoints the Legal Service Commission? --- The Chief Justice. No. It is established by the Constitution.

924. So it was a necessary part of the recommendation. If you say that there should be a Judicial Service Commission, you must immediately spell out how is it to be constituted. How? --- This could be an oversight but if you want the details of it, the Sub-Committee could work on it again.

925. You mean work wasn't done? --- If you agree with the proposal that there should be a separate Judicial Service Commission, we are prepared to work on it on the constitution.

926. Supposing I say to you now, "Yes, of course", and we take the same Legal Service Commission and label it Judicial Service Commission and they wear two hats. Are you happy with that? --- Not quite.

927. Ah! So tell me what would make you happy? --- It is essential that Judges should not be called legal officers. If they are Magistrates, District Court Judges, Registrars, then they should be in the Judicial Service and there should be a Judicial Service Commission.

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

928. And so? Who appoints them? What makes them different?
--- The difference would be that if you are a Judge it is better that you do not get transferred from the Bench to the Attorney-General's Chambers and vice-versa.

929. You know that Mr Francis Seow told us that they wanted to copy the Hong Kong constitution on the Judicial Service Commission?
--- I saw that on TV yesterday, yes.

930. You didn't know that before? --- No.

931. You didn't know that the Secretary of the Law Society wrote to the Hong Kong Registrar? --- I know that. I have got the documents attached.

932. So you don't have to know that from the TV. You knew that from the documents. Right? --- No. We were studying the various commissions.

933. I will go through your argument now. You say the Hong Kong system is the one which you modelled it on? --- I wouldn't say that we model the system on the Hong Kong system.

934. That was where you got the idea from? --- We got the idea from reading the Constitution and Interpretation Act and the various Supreme Court of Judicature Act and the Subordinate Courts Act.

935. How did the Hong Kong model come up? --- The Hong Kong model came up when we were just looking at the system there.

936. Why did you look for Hong Kong? --- I think it was a coincidence here. I believe Mr Patrick Nathan had gone to Hong Kong once to study the criminal legal aid scheme, I believe, and he had been acquainted with the High Court there or with the Registrar there. I do not know. But he had written there for some information regarding the Judicial and Legal Service Commissions.

937. So you wanted more information about Hong Kong? --- That is right.

938. So they have a Judicial Service Commission. So you decided to have one. That reinforced your proposal or the --- ? --- - It is not just merely copying the Hong Kong system. But we look at the local legislation here and find that there is provision for

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

this, not spelt out in the Constitution, but there seems to be a lacuna here where the Judicial Service Commission is not spelt out in the Constitution and we came up with this argument. The arguments are set out in the memorandum.

The Prime Minister (cont.)

939. You are going to argue jurisdictionally or juridically that there should be a Judicial Service Commission because it is implied in the Constitution? --- Yes.

940. Let's go back. All right. I take you - now talking as lawyers - let's go to page 11. This is the considered opinion of your Committee which I read yesterday with some wonderment. Second last paragraph, read it? --- "Under the Constitution, the Judiciary is independent of and separate from the Government whereas the Legal Service is part of the Government."

941. Yes. I agree. Read the last paragraph? --- "It could be argued from the abovementioned provisions that the law has provided for two services, ie, Judicial and Legal, which are separate and independent of one another."

942. How do you argue that? --- You have to go back.

943. I have read the whole thing. Just tell me how you argue that? --- Right.

944. Because I want to know, if you are right, how is that the Chief Justice, the Attorney-General, all the Judges, all the lawyers in Singapore have been parties, accomplices to a complete misrepresentation of the Constitution and had done without a Judicial Service Commission? --- Mr Chairman, the memorandum represents our views. Mr Lee can disagree with it.

945. Your views are based on the law? --- Yes.

946. It is a justiciable matter? --- Yes.

947. May I explain this in case you did not learn this at law school. It is unlike the powers to ban newspapers or to detain gangsters or extremists or communists which is not justiciable, cannot be decided in the courts in accordance with the written words. This is a proposition you are putting forward, spelling it out from the written words of the Constitution. In other words, either your interpretation of the Constitution is right, in which

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

case we have been doing things wrong as a Government all these 28 years, or you are talking absolute balderdash. I read this with wonderment. Tell me how from the Constitution you came to the conclusion that it implied there should be a judicial service commission all these years. The lousy Chief Justice and the Attorney-General and the Prime Minister and all these people did nothing about it. Explain? --- Mr Chairman, as I have said, the reasons are all spelt out in the memorandum.

948. You know that. Give me now, in simple words, your argument why it was unconstitutional, not to have comprised the judicial service commission? --- Right. In our view, we begin with the Chief Justice, the Chief Justice is appointed by the President on the advice of the Prime minister and all the other High Court Judges are appointed ----

949. Carry on. I am waiting. Miss Teo, can I help you? Just go back to page 11 and read the first paragraph after section 28. Mr Lim Chor Pee had summarized it there for you? --- Yes.

950. Read it? ----

'The Chief Justice, High Court Judges and Judicial Commissioners, District Court Judges, Coroners, Registrars, Deputy Registrars and Assistant Registrars of the Supreme Court are all appointed by the President, in the case of the Chief Justice, acting on the advice of the Prime Minister, and in the case of the High Court Judges, on the advice of the Prime Minister after consultation with the Chief Justice, and in all other cases, on the advice of the Chief Justice.'

And further down, we talked of the District Judges being appointed by the ----

951. Yes? --- That the judiciary will therefore comprise of the Chief Justice, High Court Judges, Judicial Commissioners, District Court Judges, Magistrates, Coroners and Registrars and their Deputies. And then we went on to section ----

952. No, no. Don't mumble. This is a matter of grave importance. There are four lawyers on the Select Committee. Sorry, five. There are five of us, all with not less than 20 years' experience. From paragraph 1, you go on and say the judiciary therefore comprises the Chief Justice, the High Court Judges,

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

Judicial Commissioners, District Court Judges, Magistrates, Coroners, Registrars and their Deputies and Assistants. What is the common factor or the golden thread that runs through all these appointments that makes them a judicial service? --- The golden thread is that they are all appointed by the President.

953. Yes. So that makes them a judicial service? --- Yes. And the President under the Interpretation Act, if you were to refer to section 28, an officer who appoints has also the powers to dismiss or suspend.

954. But how does that make it a judicial service? Never mind about he who appoints can dismiss. How does that make it a judicial service? --- Well, it is clear that you cannot appoint someone and then allow another party to dismiss or transfer or suspend. This is how we arrived at. We said that there is this commission.

955. I see. That is a circuitous argument. That's a new one. It's a very clever one. I mean it is novel. Sorry. Because the President appoints on the advice of the Chief Justice, therefore the Legal Service Commission should have no power to dismiss them for misconduct? --- Yes.

956. How does that follow? The President appoints on the advice of the Chief Justice who has to choose from members of the Legal Service for their appointment. So when that person ceases to be a member of the Legal Service, he ceases to be qualified to hold that appointment? --- That's why we are arguing that ----

957. How does that make them into judicial service? --- I know the present position is that judicial officers in the Subordinate Courts are also appointed by the Legal Service Commission. But what we are saying is that this may not be the case or it should not be the case. There should be a separate judicial service to open up applications for the judicial service.

958. Miss Teo, let me tell you that this Legal Service Commission was first promulgated by an order in Council long before we joined Malaysia and became an independent state within Malaysia? --- Yes, I am aware.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

959. It was promulgated by order in Council issued from the Queen. It was the result of three constitutional conferences, 1956, 1957, 1958. I attended all three of them. On the Singapore side, we were advised by Sir Ivor Jennings who drafted the Constitution of Ceylon before it came independent and an independent constitution of Ceylon was drafted by him, a man of considerable eminence who wrote a book on constitutional law. He was assisted or he worked together with - I think "assisted" is not the word because he was in active practice - we had an active practitioner called Walter Raeburn QC. On the British side were three highly experienced, skilled parliamentary draftsmen who had drafted no less than 15 constitutions of independent countries or countries that were to be independent in the Commonwealth. And I as a non-expert - because I was only an advocate and solicitor, not a constitutional expert - found the proposals sound and correct and agreed to it. It is also the arrangements, with some changes because they have many more states in Malaysia of the Legal Service Commission in Malaysia. To my knowledge, my recollection, so has Malta, so has Jamaica. You are saying now that we have misread this whole thing, that we were wrongly advised and, in fact, we have drafted a Constitution which implied that there should have been a judicial service commission and we did nothing about. This is a little preposterous, isn't it? --- It may sound a little preposterous. But can I refer you to the Order in Council that you are referring to?

960. Yes? --- Order in Council 93. It has a heading here, Legal Service Commission, Appointment, etc. of Subordinate Judiciary and other Legal Officers. It is very clear that the words "Subordinate Judiciary and other Legal Officers" are stated here which means to say that under the Order in Council, the Legal Service Commission actually takes control of both judicial and legal officers.

961. That's right? --- Right. But if you look at our own Constitution of Singapore, that words "judicial officers" are missing. It is present in Malaysia but it is missing here.

962. It is missing from what particular section? --- Article 111.

963. Yes, all right? --- It says it "shall extend to all officers in the Singapore Legal Service." It did not say "judicial officers" there. So the person who drafted it could have made an omission or it could have been ----

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

964. "All officers in the Singapore Legal Service". But I thought there is an interpretation clause at the beginning which says that "legal officers will include judicial officers". In the Legal Profession Act, we define a legal officer, page 7, Chapter 217, means a qualified person in the judicial or legal service of Singapore? --- Yes, but the Constitution is superior to the Legal Profession Act.

965. Miss Teo, is that the only basis on which you are claiming that there should be a judicial service commission? Because when we became independent on our own in 1965, a group of lawyers got together and had to, not redraft, but they are to tighten up and make the Constitution which was in bits and pieces, part from the Federal Constitution of Malaysia, part from the State Constitution in Singapore, they sewed it up and they sewed it up in this particular way. Therefore it means that we have departed from the original and we have therefore now to comprise ourselves into a judicial service commission? --- It could have been an accidental omission. I do not know why.

966. No. I am told by the Attorney-General that it wasn't accidental. It was their way of sewing up the Constitution between the state and the Federal portions? --- I don't know. I think if I can recall, the Malaysian Constitution has the word "judicial officers" there also.

967. Let's suppose for the moment that we do that and put "judicial officers", does that then demolish your case? --- Then that would be the case.

968. Thank you. I will ask the Attorney-General's Chambers to seriously put your mind at rest and all those of your associates who worked on you so laboriously on this. We will just put the word "judicial officers" back where it belongs and all will be well. Yes? --- Well, if Mr Lee does not want to accept the recommendation, then it's your discretion.

969. No. Your recommendation is based on our having moved the word "judicial officers" from the Constitution of the Order in Council into the Legal Profession Act? --- No. Our recommendation is that there should be two separate service.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

970. So even if we put it back into the Constitution, you want a judicial service commission? --- No, it is really entirely up to you whether you want two separate service. We are just making our recommendation.

971. I am quite happy with what has worked for 28 years. It is your Committee that want to make a change. And a change to the Hong Kong model and let me take you to the Hong Kong model. Let me ask you to read the letter from the Registrar of Hong Kong which is in this bundle of documents we have photostated, letter from the Registrar, 14th April. Have you got it now? --- Yes, I have.

972 Yes. Read the last two paragraphs? ---

'When a judicial vacancy arises, it is open to any lawyer in Hong Kong to apply to be considered for appointment, provided that he has the requisite amount of experience. No distinction is made between applications from lawyers in other Government legal departments and those in private practice.

Similarly, if a vacancy arises in one of the Government legal departments, which is at a higher level, than that of say a Magistrate, that Department will send details thereof to the Registrar, Supreme Court, who, in turn, will circulate the same to magistrates."

973. Yes. Now, read the last paragraph on the next page? --- "I would not pretend that there are a large number of transfers between the various Government legal departments, either between themselves or with the Judiciary. However, equally it is right to say that there have been a number of such transfers over the last few years, so the procedures outlined above are not merely an academic exercise."

974. Yes. Now, if you got the same bundle, refer to the Laws of Hong Kong - Judicial Service Commission Ordinance, page 1, Chapter 92, section 3. Read it? --- "(1) There is hereby established a Judicial Service Commission, which shall consist of -

- (a) the Chief Justice, who shall be the Chairman;
- (b) the Attorney-General;
- (c) the Chairman of the Commission established by the Public Service Commission Ordinance; and (Amended, 15 of 1979, s.8).
- (d) not more than 3 members appointed by the Governor, one of whom may be a judge of the High Court."

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

975. Yes. You see, you have a clear model in front of you at the time you drafted this memorandum, that if you want a Judicial Service Commission as distinct from a Commissioner, you must have the body defined. And you have got a model which says the Chief Justice shall be the Chairman, the Attorney-General is number two. It is exactly like our Legal Service Commission. The Chairman of the PSC is number three. It is again like our Legal Service Commission. And three members appointed by the Governor, one of whom may be a High Court Judge. So again it is very close to what we have. If I remember right from the discussions I had in the constitutional meetings over three years, there is a rationale for this. So in a Commission of six, there is the Chief Justice as Chairman, he is legally qualified; there is the Attorney-General who is the number one legal officer; there is one High Court Judge. So there are three legally qualified men. Then there is one Chairman of the PSC who is independent by the Constitution. In our case, two other members of the PSC also independent. If the three legally qualified men are on one side and the three non-legal men are on the other, the Chief Justice has the decisive say because he has the casting vote. And it concerns the legal or judicial service. So he has more say than the Chairman of the PSC. You see, whoever drafted this Hong Kong Ordinance has hoisted in that principle. He has copied. Nobody drafts things out of the blue, thin air. You always go back to what precedents there are. Who have worked what system, what problems have they run into, what should we not repeat of the errors they have made and discovered? You say you settled on a commission. Who? --- The question of who can again be studied if you so want.

976. You do not know. Just the Chief Justice? --- As I said, we did not discuss this. But if you want us to go into the details, we are prepared to look into it.

977. But it was your duty, was it not, before you send your President to make learned submissions to Mr Justice Sinnathuray to have something which was viable, something which was complete in itself. Here is a document which on the face of it is a nonsense? --- I disagree that the document on the face of it is nonsense.

978. You tell me what sense it makes. Because if we say, "Yes, we accept it", how do we run it, how do we operate it? --- Mr Chairman, may I ---

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

979. No, no, please answer. Mr Chairman is not here to help you answer. Just answer. How does it work? --- As I said, we can look into it but right now you are already saying that you are not interested in a Judicial Service Commission.

980. No. I am not interested --- ? --- You are just going to amend Article 111.

981. I am not interested in something which is patently absurd. Here you have in Hong Kong a Judicial Service Commission to look after the Subordinate Courts Judiciary. They have no Legal Service Commission. They have no Legal Service as such. And every vacancy in the Judicial Service is advertised and everybody can apply and it is not promotion from within the Service. You read that? --- Yes.

982. It is open to the private lawyers, open to other government officials. How they keep their Magistrates and District Judges happy by regular pay rises or promotions, I do not know. But they have no Legal Service as a whole. Each department hires and fires. And a Magistrate is circulated with vacancies so that he can transfer out. And you have read that letter? --- Yes.

983. Significant numbers do transfer out because they cannot move up in the Judicial Service. They have to compete with abler men applying from the private sector and other government departments. They move out. How is that superior to ours? --- Well, Mr Chairman ---

984. Let me help you. They were not designed for self-government. So the British in Hong Kong, the colonial officer in charge of Hong Kong, did not move abreast with the other colonies. Singapore was not alone. There was a wide broad front over which constitutional concessions were given towards self-government and full independence. It went across a broad front unequally but the legal draftsmen copied from other precedents. Hong Kong was different. They did not want to offend China. It was kept separate as a colony. Then in 1975, originally 1965, they decided, "No, this won't do." They will have a Commission for just this segment. If they start now to have a whole set-up like us, a Civil Service, a Legal Service and so on, it may well be they will have difficulties with the People's Republic of China with whom they have signed this memorandum to take back in 1997. So how does that improve our situation, to go backwards in time? It is a little

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

absurd, do you not think? --- No, Mr Chairman, I do not think it is going backwards in time. I believe the Legal Service Commission is a very large Commission now. I do not know how many legal officers there are but it is a substantial number. Similarly, the Judicial officers ----

985. I am not worried about the numbers. I am talking about the principle. You are suggesting we move towards the Hong Kong model when I am pointing out to you that that model was a colonial model never designed for self-government and it was moving ad hoc. I am told Mr Lim Chor Pee is here. Perhaps he can help you. So we will have Mr Lim Chor Pee.

Chairman] You may step down, Miss Teo.

(The witness withdrew.)

The Prime Minister] In the meantime, could we have Mr Nathan with his document. I think it is important.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Patrick Nathan (cont.)

Chairman

986. Yes. Mr Nathan, could you take the stand, please? You are still on oath? --- (Mr Patrick Nathan) Yes, Mr Chairman.

The Prime Minister

987. Is this document the only minutes of meeting on this? --- Mr Prime Minister, you asked specifically for the minutes where the council met the working committee.

988. No. I am asking for the minutes of the meeting which discussed this paper, adopted it and sent it to the Chairman, Commission of Inquiry? Do not feign such ignorance, Mr Nathan? --- No, I am not, Mr Prime Minister.

989. We were discussing whether the word was "Commission" or "Commissioner". And I said it would settle the matter if we had the minutes of the meeting which settled this paper. If it was a discussion turning on the word "Commissioner", I accept it was a typographical error. If the discussion took place on "Commission" that settles it too either way. You have brought us a document of a meeting on the 2nd June which is completely silent on this point? --- There is the Commission of Inquiry there, Mr Prime Minister, below. It is under the heading "Commission of Inquiry".

990. Yes. But it does not say what the discussion was about? --- I believe, if I remember correctly, the President welcomed the members and they discussed the report and they were not quite happy ---

991. I see from your list of people present, Miss Teo Soh Lung was present too? --- Yes. Earlier I informed you, Mr Prime Minister, that the council did meet the working committee and they were present, all four of them.

The Prime Minister] She told us just now that she was not present?

Miss Teo Soh Lung] You did not ask me whether I was present or not.

The Prime Minister] You said you were not present when they discussed whether it was Commission or Commissioner. I asked you about the meeting of the Law Society council. Were you present then?

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Patrick Nathan (cont.)

Miss Teo Soh Lung] I was.

The Prime Minister] And the discussion turned on Commission or Commissioner?

Miss Teo Soh Lung] Commission.

The Prime Minister] And the documents in front of everybody said Commissioner.

Miss Teo Soh Lung] It could have slipped the eye.

The Prime Minister

992. It cannot slip the eye. It may have slipped the mind. You have no other documents? --- These are the only minutes for this particular meeting, Mr Prime Minister.

993. No. I want the meeting where the paper was adopted, where you discussed whether it was a Commission or Commissioner. A discussion took place? --- I will go back and look further for it.

994. Please do. If necessary, we will get people who are accustomed to search and help you ferret out the documents? --- Mr Prime Minister, I do it very well. In fact, I do it very fast.

995. Well, why have you not got it? --- No, Mr Prime Minister, because initially when we were discussing, you asked me about the working paper. You asked me and, in fact, I informed you that we did meet the representatives of the working committee. And you said, "Where are the minutes?" Those are the actual minutes in front of you.

996. I wanted the meeting where you discussed this paper. If this meeting discussed this paper, this meeting should have in the minutes, "Yes, we adopted the recommendation" and there shall be? --- But you notice in those minutes, Mr Prime Minister, there were certain things that were being raised because, from my recollection, I believe a number of questions were asked of the working committee where they had to come back ---

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Patrick Nathan (cont.)

Prof. Jayakumar

997. Mr Nathan, was there a subsequent meeting where an amended version of the report was submitted and further discussion took place and a final decision was taken? --- No, Prof. Jayakumar, not that I can remember. The reason being because once the Commission never sat to hear the fourth term of reference, I believe it just stopped there.

Chairman

998. Mr Nathan, I suggest you go back and look? --- All right.

The Prime Minister

999. Look for it, Mr Nathan? --- I will look for it.

Chairman] Get Mr Lim Chor Pee.

MINUTES OF EVIDENCE

Examination of Witness

Mr Lim Chor Pee was called in and examined under oath.

Chairman

1000. May we have your name and status, please? --- My name is Lim Chor Pee, staying at 30, Mount Elizabeth, #20-34, Singapore.

1001. You are a lawyer? --- I am an advocate and solicitor.

The Prime Minister

1002. We were told that you rung up Mr Seow this morning ---
? --- (Mr Francis Seow) No, Sir. That is incorrect. Mr Patrick Nathan

1003. Mr Nathan, I am sorry. I beg your pardon. Thank you. You rung up Mr Nathan this morning to tell him that there has been a typographical error in the paper that was produced before this Select Committee? --- That is correct, Sir. Because page 12 was typed in my office and I prepared it. The word "commissioner" ---

1004. How did you come to know that we have got a copy which had a typographical error? --- I did not know, Sir. I only saw it. I heard you questioning one of the witnesses last night on television, that you read out the word ---

1005. I did not read out the word. It was being read out for me by Mr Nathan? --- Well, it was read out. He says "judicial service commissioner". Then I realized to my horror that it was not correct. It was not intended to be one judicial service commissioner. It was never the intention.

1006. So your call to Mr Nathan arose from watching the report of these proceedings? --- Correct. Then I went and looked at my copy ---

1007. Let me have a look at your copy? --- And I found that the same thing was there, "commissioner".

1008. Then where is the copy which said "commission"? --- No, there was no copy to say "commission" because my girl made the error when she typed it. So it was just in a rush ---

1009. You mean this was an original draft and the error was committed on the original draft and sent up as such? --- That is right.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1010. There was no re-typing? --- No. I did not realize the mistake.

1011. You did not realize all these months until you watched the proceedings last night? --- No, Sir. Because I did not look at the copy any more.

1012. You were present when they had a discussion on this subject with the whole Council? --- Let me explain to you, Sir. When we first put up the first draft, these three recommendations were not there. When the Committee were asked to appear before the Council in their first draft, these three recommendations were not there. After a lot of discussions the Council was not happy with our first draft. They said we did not make any recommendation and some members of the Council told us to go back and put in the recommendation. Hence I went back and retyped (I got page 12 retyped) with these three recommendations as suggested by the Council members and then it was sent to the Law Society in a rush. That was that.

1013. Sent the same day? --- No. Subsequently.

1014. The meeting showed the 2nd June? --- It was several days after the meeting.

1015. The Commission of Inquiry started on the 3rd June. Right? So when did you revise this? --- I think it was a few days after.

1016. A few days after? --- Yes, I have the letter here. It was on the 3rd June in which ---

1017. You gave this document? --- Yes. I made further amendments to pages 11 and 12, and sent it along to him.

1018. All right. You have got the original document without these three recommendations so that we can compare what was before the Council and what you subsequently produced? --- There are so many little drafts. I think Patrick Nathan should have it. I don't have it anymore. Oh, I have it here actually. I have a page 12 without these recommendations.

1019. Where does it end? Let me have a look at it? --- The draft I have got it here is 29th May, Sir.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1020. This shows the three recommendations? --- I have it here. The one on 29th May, for example, and then you would see from page 12, it stops at the first paragraph. There may be another one, 30th May, which is a slightly improved version. This is the one which was considered at the meeting, page 12, stopping half-way.

1021. Let us have a look? --- That one was done up the day before.

1022. So you went back and changed the last paragraph of this draft and added 1, 2, 3, 4, 5, paragraphs? --- Right. At the request of Council members.

1023. Well, I accept that. This is in your possession and these are the facts? --- Yes.

1024. So you were discussing about a Legal Service Commission? --- Correct.

1025. Right. You made no constitutional requirement who is to comprise the Commission, numbers, who were to appoint? --- These were just very, shall I say, very rough principles done in a hurry. It was not our task to go into detailed constitutional examination of the other points.

1026. So had this been presented to Mr Justice Sinnathuray, it would have been half-baked, is it not? --- In fact I did not want the Council to submit it to Mr Justice Sinnathuray at all.

1027. The Minutes of the Council meeting was that the Council agreed that the President ought to make a submission rather than give oral evidence. In other words, he was going to take this and this is the submission. He was not going to give oral evidence. This submission is, and was, in the face of it, totally incomplete. The cake would not have risen. It could not have been baked. Yes? --- Yes.

1028. Right. In your unamended page 12, you've said, "In our submission, the law has already provided for two distinct services, i.e. judicial and legal, which are separate and independent of one another and the distinction must be maintained in practice." Those were the words of your Committee? --- Yes.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1029. Then you changed it. Page 11 of the final memorandum: "It could be argued from the abovementioned provisions that the law has provided for two services, i.e. judicial and legal, which are separate and independent of one another." You have toned it down. You have heard a little less certain about the law. It is less emphatic, more cautious. You have 20-plus years of experience. Read the sentence before the last paragraph on page 11, of the final memorandum? --- You have my copy of the final memorandum. Which paragraph. Sir? The last but one?

1030. Yes? --- "Under the Constitution, the Judiciary is independent of and separate from the Government, whereas the Legal Service is part of the Government."

1031. That is correct. Now read what follows? --- "It could be argued from the abovementioned provisions that the law has provided for two services, i.e. judicial and legal, which are separate and independent of one another."

1032. Mr Lim, you are not like Miss Teo. You were trained in a very reputable school of law. Remember, we had met when you were a student there. I visited the University and I was entertained by Singapore and Malaysian students? --- I remember, Sir.

1033. Yes. You know Sir Ivor Jennings? --- Yes.

1034. He was Master of Trinity Hall. He was a distinguished Constitutional lawyer. Did you know that the Singapore Government had him as our Legal Adviser when we engaged in Constitutional talks with the British Government in 1956, 1957, and I think 1958? --- I may have read about it.

1035. He was working with Walter Raeburn, QC, practising at the Bar, specialist on constitutional matters. On the British side were three experienced Parliamentary draftsmen who had drafted at least 15 other Constitutions. I was the non-expert. I was just an ordinary barrister-at-law. I read it. It made sense to me. Three legally trained men, in the Legal Service Commission, the Chief Justice, the Attorney-General and one High Court Judge. Three, not necessarily legally trained men, Chairman, PSC, and two other PSC members, whose constitutional independence is guaranteed in the Constitution as members of the PSC. If three legally trained members, on one side, and three non-legally trained on the other side, the Chief Justice has the casting and decisive vote. It is

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

all carefully thought out. And you have seen the Hong Kong Commission. It is exactly the same. I was interested when I read it last night. Chief Justice, Attorney-General, one High Court Judge, Chairman, PSC, and two others appointed by the Government. So obviously this is a principle of some long standing. Yes? ---- Yes.

1036. What makes you say, Mr Lim, this Constitution which we have observed in practice for 28 years has provided for a judicial service commission which we have not implemented? How does that follow? Between paragraph 1, the second last and the last paragraph, how does that follow, although you have toned it down, mind you? In your original draft you were more emphatic? How does that follow? You are not pitting your opinion against mine. We are non-experts. When you made this proposition, my mind goes back to the very skilled and crafted and gifted men who advised us on these matters. *Why* did you come to this conclusion? --- It would seem from the reading of the Constitution that the two services are separate.

1037. This is a matter which is justiciable. It can be determined in the Supreme Court in Singapore. You can take it up to the Privy Council and go before his lordships who are very eminent in the law and he will rule whether or not we have been acting constitutionally or unconstitutionally. It is not a matter of executive discretion like the Minister detaining gangsters, extremists or whatever. You think your Council would like to take a writ and take it all the way up to the Privy Council that we have been acting unconstitutionally all these years, that on the face of the Constitution we are wrong? --- I cannot speak for the Council, Sir. That's why I say it is arguable.

1038. Speak for yourself now? --- Yes.

1039. What would you do? --- That's why I say it is arguable.

1040. It is arguable? --- Yes.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1041. Would you like to argue this if the Council paid your fees and stake your reputation on this argument? Ivor Jennings is dead. Probably Walter Raeburn too. But we could find other QCs. You wouldn't like to, would you? Let's be honest as one graduate of the Cambridge Law School to another. Would you like really to stand up before the Privy Council and advance this argument? --- I would say it is not an easy point to argue.

1042. You say it is not an easy point to argue. But if pressed, to save face, you would argue? --- That depends, Sir. As a counsel and solicitor, you are like a taxi driver, you have to argue.

1043. Let me now make it easier for you and go to the Hong Kong provisions which you have read? --- Yes.

1044. They have a judicial service for the Subordinate Courts? --- Yes.

1045. Chief Justice, AG, one Judge, Chairman, PSC, two others appointed by the government. Right? --- Correct.

1046. They have independent legal departments, hired and fired by the Attorney-General or official Assignee or whoever is in charge. Right? --- Correct.

1047. Any vacancy in the judicial service advertised publicly, private practitioners will apply, members of the various departments and in-service magistrates for promotion. Magistrates can move out into legal departments. You have read them? --- Yes.

1048. Do you know why they don't have a Legal Service Commission? --- No, I do not.

1049. I will hazard a guess. As all the colonies moved towards self-government and had the civil service localized or Malayanized or whatever, Hong Kong stayed British, not to offend China. Then, for some reason, I don't know why, if you look at the Ordinance you will see it started in 1975, they had a separate commission just for the Subordinate Courts. But the AG, Official Assignee, everybody else still appointed by the government and they hire and fire their subordinates. How does moving into the Hong Kong situation improve our constitutional arrangements? --- May I also hazard a guess? I think the Hong Kong system probably followed that of the British system.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1050. No. The documents are in your file. Mr Elias tried to make the point yesterday. You heard Mr Elias or you saw the proceedings. He tried to make the point. He wanted to opt for a more prestigious model. Then I pointed out to him there wasn't such a model. The British system is totally different. It grew out of their chequered history with legislation in recent years on the crown courts. You stayed in Cambridge for three years, four. You know the recorder. You know the lay magistrates. You know the stipendiary magistrate. They don't have a Legal Service Commission or a Judicial Service Commission. There is a Lord Chancellor and all kinds of quaint legal officers. How does this improve us because we have been moving in tandem with a wide spectrum of other colonies that have moved towards self-government and many of them like Jamaica, I am told, and Malta, Malaysia, still have the system. It is not something they specially minted for us. It was tested in many parts of the world. Do you think moving to Hong Kong model would be an improvement? --- You are asking my opinion, Sir?

1051. Yes? --- Yes, in the sense that if there is a separate Judicial Service Commission and if there is a separate body of Subordinate Court Judges then there won't be any opportunity for anybody to come and make any kind of allegation as has been made.

1052. But why should anybody be in a position to make any allegation. Every time such an allegation is made, the matter can be investigated? --- But we don't need to have any investigation because it is like High Court Judges who are ---

1053. But somebody has to control the judiciary. The High Court Judges are controlled by Parliament? --- That is right.

1054. They are appointed for life. They cannot be removed.

Therefore it is a matter of grave importance that they be men of high character, upright, just, honourable. Right? --- Right.

1055. The only way to remove them is in Parliament. You impeach them, a two-thirds majority, very grave, unpleasant move. By this Legal Service Commission, the Chief Justice with five others control the Subordinate Courts. You are suggesting that the Chief Justice with the same five others control the Judiciary? --- Yes. I mean in the sense that if you have the two Commissions instead of having one, you have two. That's all.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1056. And they can still ask to transfer in and out, as in Hong Kong? --- Yes.

1057. How does that improve our situation? --- Improve in the sense that it shows that it is completely independent of each other.

1058. When they meet as members of the Judicial Service, they put one hat. Then they say, "Right. Dissolved. Meeting concluded." Put another hat - Legal Service? --- No. I think they should be separate and different people of course. For example ---

1059. You are now saying that they should be different people? --- Yes.

1060. That is a different proposition. Why did you not say so in your memorandum? --- Because, as I have said, it was a very ---

1061. But that is a crucial point? --- Sketchy point.

1062. If your recommendation is to make any sense, they must be different people? --- Yes. I think that is implied, of course. In the sense that we would expect the Chief Justice to be the head of the Judicial Service Commission and the Attorney-General to be the head of the Legal Service Commission.

1063. The Attorney-General to be the head of the Legal Service Commission? You are going to change the Legal Service Commission? --- Or whoever. What I am saying is that the people should be different. The composition of the people should be different. One could be a member of the other, like the Hong Kong one, for example ---

1064. Hong Kong has only one Commission? --- Yes. The Attorney-General is also a member.

1065. Yes. So the Attorney-General will be a member of ours too. It must be so because he is the highest legal officer next to the Chief Justice. So? You now say it must be different. I am asking you who would you make on this Commission or you don't want me to take you seriously? --- On the Judicial Service Commission?

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1066. Yes. How different should it be from the Legal Service Commission because I want to leave the Bar and Members of Parliament in no doubts whatsoever that if there is any proposal that merits serious consideration it will be considered and amendments will be made to our Constitution. But it must be a serious proposal, complete and workable? --- This is my personal opinion, if you ask me. I should imagine that the Judicial Service Commission should comprise the Chief Justice, the Attorney-General, perhaps two High Court Judges as well and two lay people, two lay representatives because ----

1067. Chairman and one other member of the PSC? --- Yes.

1068. So the only difference would be instead of three members of the PSC, two and one extra Judge? --- Two extra Judges because the Chief Justice and two extra Judges.

1069. You have the Chief Justice, two extra Judges, Attorney-General --- And two lay members.

1070. Two PSC members? --- Yes.

1071. So whenever they move from one to the other Commission, a Judge moves out and a PSC member moves in or vice-versa. So you have made a distinction? --- Yes.

1072. But otherwise you can still transfer in and out because you have got to have some lateral movement, career experience? ---- Yes.

1073. If you are serious about that and you want that to be subject to scrutiny and adopted, put it down in writing that by changing one member of the Legal Service Commission from a PSC member to another High Court Judge to be comprised another Commission and spell out the advantages. I will give it serious consideration. But I advise you to consult legal draftsmen because since our discussion with the British which ended in 1958, there have been no less than 25 or 30 other Commonwealth countries that have become independent and they have models. Just see how they have worked, the system elsewhere. You sit down and just draw things out from the back of your mind. It is likely to run into a lot of problems, don't you think? Since you are here, Miss Teo Soh Lung put up the original draft. Right? --- That was an interim report.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1074. That was an interim report. I am told it covered a lot of Joints other than the Subordinate Courts? --- It was put up when I was out of town.

1075. And you had to scratch them? --- Yes. I didn't like them.

1076. You saved them embarrassment, Mr Lim. They should be grateful to you. My notes say, "Purported delegation of powers to the Chief Justice was ultra vires because of Article 111(4)." You scratched that one out? --- Yes,

1077. It was nonsense, wasn't it? It also said "the very composition of the LSC opens the door to suggestions of Executive interference which is not the case in the composition of the PSC." You scratched that one out too? --- I didn't agree with the whole approach.

1078. You were a valuable filter, Mr Lim. They ought to be grateful to you. Then they went on to say that "Except for 1984 the LSC had failed to produce an annual report of its activities as stipulated in Article 119 of the Constitution." You scratched that out too as irrelevant? --- That is right.

1079. "And that in 1984 the LSC's annual report did not mention whether Michael Khoo's transfer was discussed by the three LSC meetings held in 1984 or dealt with by circulation of papers." You scratched that one out too? --- Correct.

1080. They wanted to make representations to the President of Singapore to change the Commission's terms of reference. You scratched that one out too? --- Yes. That is rubbish, yes.

1081. That is rubbish. And they made the point that "the gazetted terms of reference were totally at variance with what transpired in Parliament between the Prime Minister and J.B. Jeyaretnam on 21st March 1986." That is also rubbish, isn't it? You are lawyers and not politicians? --- Yes. Let me say that after the terms were published of the Sinnathuray inquiry, I felt that the inquiry had nothing totally to do with my Sub-Committee any more.

1082. Yes. Because you were bringing your mind to bear on a legal problem? --- That's right.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Lim Chor Pee (cont.)

The Prime Minister (cont.)

1083. You see, Miss Teo is an activist, supporter, sympathiser in the Workers' Party and so are several of the others. You didn't know that, did you? --- No, I did not know.

1084. But you saved them considerable embarrassment. And even if they don't thank you, I think I should mention it because it shows - if I may mention this to other members of the Bar - that if you take your job seriously and you have somebody apply himself as a lawyer, you are less likely to wander into minefields. Thank you, Mr Lim? --- Thank you, Sir.

Chairman] You can step down, Mr Lim.

[The witness withdrew.]

MINUTES OF EVIDENCE

Examination of Witness

Miss Teo Soh Lung was re-examined under oath.

Chairman

1085. Miss Teo, could you please take the stand again? You are on oath, Miss Teo? --- Yes.

The Prime Minister

1086. Miss Teo, you have heard what I read out to Mr Lim Chor Pee? --- I did.

1087. I made my point yesterday. I just want to take you through your speech at this EGM. You have said yesterday that you intend to concentrate your work in the Law Society. I think you are wise. You may yet make a contribution as a lawyer but I will take you through your speech, if I may, to show you or to highlight the problems that you will create for yourself if you continue along this particular line of education. Because these are not legal arguments, this is agitprop. Read your first paragraph. I have sidelined it for you to make it simple. "We call this meeting simply because...", read it? --- Mr Chairman, can I ask a question? This speech appears to me to have been a transcript of what I said at the EGM. And I would like to know how this managed to get into the hands of Mr Lee.

1088. In the age of the tape recorder, you want to know how I am able to get a transcript of what you said? --- But how did the tape recorder get into the EGM room?

1089. I am not interested, Miss Teo. I am interested in taking you through what you said. I didn't make the speech. You did. If you didn't make the speech ---? I don't deny making the speech.

1090. Let's go through it? --- But I would like to know how that ---

1091. How I was given the speech? By the Ministry of Law? --- So the Minister of Law had set a tape recorder in the room.

1092. Yes, please. I assume that? --- Right, thank you.

1093. Read it? --- Where do you want me to read?

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

1094. I said, "We call this meeting"? ---

'We call this meeting simply because we want the Government to have a dialogue with us and to listen to our views before they pass an amendment that will deeply hurt us and render us incapable of performing our duties to members of the public without fear or favour. The Government has now referred the Bill to a Select Committee. We must not sit back and relax and leave the entire work of persuading the Government to withdraw the Bill to a few individuals. We must seize the time allotted for this meeting to air all our views frankly so that members who are appearing before the Select Committee can relay the feelings, anger, frustration or perhaps pleasure expressed at this meeting tonight.'

1095. So you wanted to seize the time allotted which I have given you? Right? --- Yes. I wanted to seize the time at the EGM.

1096. "The amendments would render us incapable of performing our duties." How does that follow, Miss Teo? You have read the Attorney-General's submission? It is in the newspapers and also circulated yesterday? --- I did not read it.

1097. That in Britain in 1975 they had a Solicitors Disciplinary Tribunal with lay members. And that in 1986, there is a Complaints Bureau paid for by the Solicitors, by the Law Society with more lay members than solicitors. They were not incapacitated. They were not rendered incapable of performing their duties. How does it follow? --- Mr Chairman, when I wrote that ---

1098. You did not know? --- No. I knew full well. But I was not thinking of that. I was not objecting to laymen being present in the Disciplinary Committee. It was Mr Jayakumar who put words into my mouth and misread what I had said in my speech. But what I had in mind was this particular amendment, and this is an amendment to section 90 of the principal Act that has been repealed and replaced by 90(a), (b) and (c). And I object to (c) which says:

'Where the Supreme Court or any judge thereof or the Attorney-General refers to the Society any information touching upon the conduct of an advocate and solicitor in his professional capacity, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter.'

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Mr Chairman, I am not saying that --- _

The Prime Minister (cont.)

1099. That is the reason why you felt so strongly? --- Yes. And I have to explain why I felt so strongly here and I wish you will give me an opportunity.

1100. You are not worried about all the other provisions? --- No.

1101. Let me be clear. Lay members taking part, that's all right? --- That's all right with me, yes.

1102. That people who have been suspended, otherwise dishonourable, should be disqualified, that's all right? --- You mean the Council members?

1103. Yes? --- No. I object to that also. But when I talked about ----

1104. How does that cripple you? How does that render you incapable? Miss Teo, you have read the newspapers. You have read how three out of 15 elected members were less than unblemished men. We remove the three and we have three others without such taints, doesn't that strengthen the independence of the Council? How does it weaken it? --- Mr Chairman, I disagree with what Mr Lee says. When I said that it would render us incapable of performing our duties, maybe this is the way a speech is delivered. You will write it differently if you were giving an academic speech.

1105. You had written out the speech? --- But I had this in mind.

1106. I was told it was so simple to copy because it was written out? --- This speech is not a copied speech. This is a transcript. I had said words that were not in my speech. They were not in my written script. I had this particular provision in mind, Mr Chairman, and that is this. We are not saying the Supreme Court or the Attorney-General at any moment would be lodging frivolous complaints. But there can be instances in which members of the public may misuse this provision here. For instance, if member of the public lodges a complaint, at the moment it goes to the Inquiry Committee, but if you have this provision, a member of the public can bypass the Inquiry Committee and lodge a complaint with the

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

Attorney-General. In this case he will bypass the inquiry Committee and the case goes before the Disciplinary Committee, and that would cause a lot of unnecessary or maybe it is necessary trouble for the lawyer who is complained against. And I don't think this is fair.

1107. The Inquiry Committee cannot punish the errant lawyer. It can only recommend that he goes before the Disciplinary Committee? --- The Inquiry Committee - I stand corrected - has the power to recommend to the Law Society Council and the Council can then impose a fine up to \$5,000, if I am not mistaken. That is a penalty.

1108. Before the Council imposes a fine, there must be a Disciplinary Committee? --- No.

1109. You can't have an Inquiry Committee? --- No, I disagree with that.

1110. Sorry, I stand corrected. You can? --- You can.

1111. Well, all it means is that the Attorney-General and the Judges when they send a case up, it means that it must be of a gravity or seriousness that takes it out of the Council's hands. Surely by the time they consider that it merits more than \$5,000, you don't want an Inquiry Committee, do you? --- Mr Chairman, I am only thinking of hypothetical cases that may arise. I am not saying that the Attorney-General will lodge frivolous complaints or minor complaints to the Disciplinary Committee. But when this provision is there, it can be abused.

1112. How? It has to go before a Disciplinary Committee? ---- Right. When a lawyer is being brought before a Disciplinary Committee, because he is defending his rice bowl - he would have to engage another lawyer to defend him, and it is a serious matter.

1113. If it were not a serious matter, would a Judge or the Attorney-General have lodged the complaint? --- No, Sir, Mr Chairman. I am not saying that at any one time that the Attorney-General or the Supreme Court will lodge frivolous complaints. But I am saying that you open up this floodgate for members of the public to complain to the Attorney-General and the Attorney-General will have to sit down and sieve out all the complaints, whether it is serious or not, before he sends to the Disciplinary Committee. This is not necessary.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

1114. The Attorney-General and his department, his Chamber, sieves out thousands of cases every month and decides whether they proceed to charge a man or toss the case out. The police files go at an unending flow? --- Yes. But this would be an additional burden to the Attorney-General, complaints against lawyers.

1115. The Attorney-General who has drafted this felt that this would expedite the disciplinary processes of the profession and will improve standards. Why do you want to worry about the Attorney-General being overworked? --- It's taxpayers' money, Sir.

1116. I see There was a desire to economize that led you to this conclusion? --- Yes.

1117. Thank you? --- It is open to abuse. I am not saying that every complaint will go to the AG or the Supreme Court.

1118. Turn to page 3, read the second sentence. "I cannot therefore see the necessity ..."? ---

'I cannot therefore see the necessity of introducing a layman and a Legal Officer to sit in the Disciplinary Committee.'

You want me to continue?

1119. So you now retract that? --- No, I am not retracting. You should read what I said before. I said the statistics don't show that it is necessary to amend the particular provision. I am not retracting. I did not speak in this speech ----

1120. But you've just told us ---? --- I did not speak specifically on the layman being present in the Disciplinary Committee. I am objecting to it as a whole.

1121. Objecting to what as a whole? --- That there is no necessity to change the present system.

1122. But you've just told me, Miss Teo, with the aid of the videotape, we could go back in no time at all and produce what you said that you have no objections to the other provisions? --- I have no objection to the layman as such, Mr Chairman. I would not deny that. But here I am saying it is the principle behind it. You are amending a particular section of the Legal Profession Act saying

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

that it is necessary to put a layman in and a legal officer in together with one lawyer. I am saying that there is no necessity here because the figures don't justify that. That's all.

The Prime Minister (cont.)

1123. You want no change? --- Yes.

1124. You want no change? --- No change, yes.

1125. So you were wrong then when you said you had no objections. You meant you had objections, fundamental objections. You wanted no change? --- Yes, there is no justification for the change at the moment. That is what I am saying only. But on the question of whether a layman can be present ----

1126. You have read all the cases the Attorney-General gave yesterday? --- I glanced through it this morning.

1127. Do you not think he had made out a case why he made these recommendations and why the Government decided to adopt them? --- The question here is the Attorney-General complained about the delay. If you could expedite the process, I think in the draft memorandum sent in by the Law Society, they made some recommendations about how the Society could expedite the clearance of complaints. And even in your amendment, you have provided for inquiry committees sitting in a panel of three. I think that would expedite the clearance of complaints. Therefore, you do not need to change the other part of the section.

1128. The resolution you passed rejected that also? --- Yes.

1129. So you were against it on principle? --- On principle, there are sections in the Bill which I object. That is true.

1130. You passed a resolution at this meeting to reject all amendments in toto? --- Yes.

1131. Yes, including the 15 members of the inquiry committee who can work in five committees at any one time? --- Yes.

1132. Yes. Now you tell us it is a very sensible amendment, that it will help expedite cases. You see, Miss Teo, you have to be consistent? --- I am not being inconsistent here. It is you who are inconsistent.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

1133. You have just taken this amendment and said there is no need for the other one because this one will solve the problem. In other words, you are conceding that expanding the inquiry committee into 15 members and three at any one time and not in banco, nine of them, is a solution. So the Attorney-General is wise in that proposal. Right? --- Mr Chairman, the EGM was called to express a sentiment.

1134. You mean when you express a sentiment, you ignore whether it is right or wrong? --- No.

1135. Specific provisions? --- The Bill was introduced without the Society having a draft before its presentation to Parliament. If I recollect, it was given to the Society on the day it was presented to Parliament. Speaking for myself, I felt that if the Bill could have been given to the Law Society for consideration before it is presented, it would help. So generally, the sentiment was one that you give us a slap even before we could speak and definitely we were angry about that. I think it is only a question of expressing a sentiment.

1136. I see. You felt that we had slapped you before you could speak, so you felt angry. So therefore if the Minister had consulted the council, there would have been something reasonable agreed upon? --- There could be.

1137. Yes. So it was a procedural matter then? --- If you want to term it that way.

1138. Yes. If it is that way, it is procedural. He did not engage the council in discussions and come to agreed proposals. Yes? --- Yes.

1139. But you have heard him. He gave the Law Society a copy of the Bill even before Members of Parliament? --- I think not on this particular Bill, if I recollect.

1140. He did? --- It was on the day the Bill was presented.

1141. But he was not prepared to engage in any more consultations because the Law Society refused to give him the results or the raw material of their survey? --- No, Mr Chairman. Can I seek a clarification? Is Mr Lee saying that the Bill was given to the Law Society before it was presented to Parliament?

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

Prof. Jayakumar

1142. It was given to the Law Society on the day it was introduced but before it was published and before Members of Parliament received it? --- Right. So I am right that it was given on the day it was presented to Parliament.

The Prime Minister

1143. But before Members of Parliament received it? --- Right. It makes very little difference here.

1144. But you heard why he did not consider the Law Society should be consulted? --- Well, that is his opinion. It is very sad that he should not want to have a dialogue with the Society.

1145. Should not the Society produce the survey without the names or get the newspapers to give the information? --- I think I saw it on television that the President has agreed to ask the newspapers for their opinion before the statistics can be released.

1146. You said there were only four newspapers? --- (Mr Patrick Nathan) Four. (Miss Teo Soh Lung). Yes.

1147. Is that a survey? --- Yes.

1148. Four newspapers' opinion and that is a survey? --- With the largest circulation here.

1149. Lastly, read paragraph 4, page 4? --- "The independence of the Bar is essential in safeguarding the rights of all persons. We cannot work under these terms where our professional conduct can be referred to a disciplinary committee without going through an investigation by an inquiry committee. We cannot work under these terms. [I don't think I used the word "terms".]

1150. Carry on? --- " ... under these terms where we have the fear that the person who sits in judgment of us may be biased because the complainant is his boss. In strengthening the cause of our clients, we must be able to perform our duties without any of these fears. I am told that the cost involved in defending a case before the disciplinary committee is very high. Is it fair to put us through this expensive exercise whenever there is a complaint lodged by the Supreme Court or the Attorney-General."

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Miss Teo Soh Lung (cont.)

The Prime Minister (cont.)

1151. You are suggesting there that because of this change, we have weakened the cause of your clients and made it impossible for you to work because you will be harbouring the fear that the person who sits in judgment over you may be biased because the complainant is his boss? --- Yes.

1152. A legal officer, one lay person whom you do not object to, one advocate and solicitor and that one legal officer who is also an advocate and solicitor can sway the result of the proceedings? --- Mr Lee, I hope you understand. I think you know the principle that justice must not only be done but must be seen to be done. I think that is fundamental.

1153. How is justice not seen to be done? --- Because you have a legal officer in the disciplinary committee and the complaint is lodged by the Attorney-General.

1154. But you heard the Attorney-General. If he makes the complaint, the Chief Justice can appoint a judicial officer? --- No, I did not hear that.

1155. You have read it? --- No, I have not read today's papers thoroughly.

1156. Let me tell you that when he is the complainant, a judicial officer will be appointed? --- That is not stated in the Bill.

1157. Therefore, you will withdraw this? --- Yes.

1158. Therefore, this is no longer a source of worry? --- Yes.

The Prime Minister Thank you, Miss Teo.

Chairman

1159. Miss Teo, you may step down? --- Am I released?

1160. Miss Teo, you may go off. We do not require your services anymore? --- Thank you.

(The witness withdrew.)

MINUTES OF EVIDENCE

10 OCT 86 - Mr Francis Seow recalled and examined under oath.

Chairman

1161. Mr Seow, may I remind you that you are still on oath?
--- I am.

The Prime Minister

1162. Mr Seow, you made the point yesterday about your false declaration of non-indebtedness? --- I did.

1163. That I was wrong because there was something overleaf which entitles you to borrow from a bank? --- I think it says that the prohibition does not extend to overdrafts from approved banks, if my memory serves me right.

1164. I was not a member of the Legal Service or the public service. So I could not contradict you but my information came from people who are familiar with these rules. Can I ask you to turn over the back page? --- I do not have a copy.

1165. Give him this copy, 1971. Turn to the back page, under Financial Embarrassment. "An officer will be deemed to be financially embarrassed if:- (a), (b), (c)". Read (c)? --- "at any time the total of his unsecured debts and liabilities exceeds 3 months' emoluments."

1166. That is right? --- Correct.

1167. So whether it is a bank overdraft or whatever, when it exceeds three months of his emoluments he is financially embarrassed and he cannot sign this declaration. So it was false? --- I disagree with you entirely. Why do you not refer to the top, to that part where I read to you, that the prohibition does not apply to bank overdrafts? And that was a bank overdraft properly taken.

1168. Let me show you this document which explains it very clearly. It is Instruction Manual No. 2? --- Mr Chairman, may I again ask you for your ruling? In what way is this alleged financial embarrassment on my part during the years of my service in Government relevant to the terms of your inquiry?

Chairman

1169. I think it is relevant? --- We have covered areas which I am astounded that we have gone through, things that have got nothing to do with the Legal Profession (Amendment) Bill.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister

1170. They have to do with your moral standing, Mr Seow. You signed seven successive declarations falsely and they are relevant?
--- Can I have a ruling from you, Mr Chairman?

Chairman] Would you like to read it?

The Prime Minister

1171. Read it, Instruction Manual No 2? --- Can I have a ruling from you first?

Chairman

1172. You read it first. I do not know what it is all about?
--- You should, Mr Chairman, with great respect, you are chairing this Select Committee. However, in deference to you, what is it you wish me to read, Mr Prime Minister?

The Prime Minister

1173. The highlighted sentence? --- "No officer may sign a promissory note or an acknowledgement of indebtedness in any form either as principal or surety. This prohibition does not apply to bank overdrafts. An officer will be deemed to be financially embarrassed if at any time the total of his unsecured debts and liabilities exceeds 3 months' emoluments." It is exactly the same.

1174. In other words, you owed \$199,000 in 1971 and that was more than three months' emoluments? --- Do we have to go through all this?

1175. That is so, is it not? --- I have already admitted yesterday.

1176. That therefore it was a false declaration? --- It is not.

1177. It is not and that you were not financially embarrassed? --- As I have explained to you, this is a loan taken from a bank.

Chairman) All right, I think we will stop there. It is 1 o'clock now. We shall adjourn and we will meet again at 2.30 pm.

Sitting suspended at 1.00 pm
until 2.30 pm.

Sitting resumed at 2.30 pm

[Mr Speaker in the Chair]

Chairman] May I now invite Mr Francis Seow to take the Stand.

Examination of Witness

Mr Francis Seow was re-examined under oath.

The Prime Minister

1178. Mr Seow, I want to make this quite clear that I have not misrepresented you. You said yesterday that the declarations were not false because you were entitled to bank overdrafts? --- I think the words I used is that this prohibition of being indebted does not extend to overdrafts from approved banks. That is correct.

1179. And that therefore the declarations you have made were not false? --- That is correct, in conformity with this particular form. That is so.

1180. It is false, is it not, the declaration? --- No, Sir.

1181. Mr Seow, read it carefully. First, under "Instructions". "No officer may sign a promissory note or an acknowledgement of indebtedness in any form either as principal or surety. This prohibition does not apply to: (b) Bank overdrafts." Now, read paragraph 61 of Instruction Manual 2. Read it? --- I have read it.

1182. Read it again? --- I do not think it is necessary.

1183. I said read it again, Mr Seow, because there are conjunctions after each clause. You knew this. I didn't. You took advantage of my ignorance to suggest that you signed the declaration quite correctly. I could not challenge you because I am not familiar with the Instruction Manual. I therefore challenged those who presented me with a brief. They have clarified my brief and they are prepared to assert here, now or anywhere, that you signed those declarations falsely? --- I do not accept that.

1184. Read? --- Incidentally, it is not conjunctive. It is disjunctive.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1185. Read it. Thank you? --- "An officer will be deemed to be financially embarrassed if: (a) he is an undischarged bankrupt; or [it does not say 'and'] (b) he signs a promissory note or an acknowledgement of indebtedness in contravention of paragraph L 58 of instruction Manual No. 2; or (c) at any time the total of his unsecured debts and liabilities exceeds 3 months' emoluments."

1186. That applied in your case, did it not? --- I do not accept it.

1187. That applied in your case. That was the reason for my intervention. Otherwise you would have been dismissed from the Service. I allowed you to resign. Have you forgotten? --- Mr Prime Minister, that is wholly untrue. I resigned of my own accord.

1188. Mr Seow, you resigned of your own accord after discussions with me because investigations were proceeding? --- You never disclosed to me at that time, with great respect that ---

1189. You knew you were under a cloud? --- If there were investigations going on at that time.

1190. You are claiming that you are not responsible for signing seven false declarations? You want me to prove that? And prove you a liar? You want me to prove that they are false and that you are a liar? --- What I am saying here is this. That I signed seven certificates of non-indebtedness and that they are correct.

1191. They were incorrect. They were false? --- Well, I beg to differ.

1192. I handed you? --- This is the interpretation which you are now seeking to put on it, which I do not accept. It is as simple as that.

1193. You still claim that despite your attention having been drawn to something you already knew, paragraph L 62 of the Instruction Manual No. 2? --- Yes.

1194. You have not signed falsely? --- No, of course, not. As I have tried to explain, which you have refused to see, that this prohibition does not apply to loans and overdrafts from approved banks.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1195. We will come back to that. We will get someone to give evidence from the Establishment Department. I will get an Establishment officer and a legal officer, if you like, and we shall prove it? --- Well, the thing is this. My interpretation and theirs may not be the same. In any event, Mr Chairman, I ask you for a ruling earlier on. In what way is this all relevant?

Chairman] This is relating to your position as the President of the Council.

The Prime Minister

1196. And your veracity as a witness of truth? --- I challenge the fact that I am an untruthful witness.

1197. Let us have the tape where he was asked who had offered him a High Court Judgeship? --- No one offered me a High Court Judgeship.

The following text was replayed (9 Oct 86):

'Well, read the interview you gave to the Singapore Law Review. Give it to him? --- Singapore Law Review?

You gave them an interview after you became President. Look at page 43, last paragraph "S" for Seow. Read it. They are your words? --- "I was once asked", is that the part you want me to read?

Yes? --- "I was once asked if I would consider being a High Court Judge. My answer was that I would prefer to be on my feet than on my bottom."

Who asked you to be a High Court Judge, Mr Seow? --- Do you want to know?

Yes? --- I am talking to him.

I asked you to be a High Court Judge? --- You did not. It was not put in this way.

I asked you to be a High Court Judge? --- You did not.

Are you suggesting I am out of my mind?'

1197A. Do you insist that you were a witness of truth? --- Absolutely.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1198. When you said, "I am talking to him"? --- Absolutely. Certainly.

1199. That I have offered you a High Court Judgeship? --- You did not offer to me in the sense in which it was reported. Please do not take my evidence out of context. Let me try to refresh your memory. I was summoned by you to go to your office at the City Hall for a special purpose, and that was to tell me that had it not been for you and the Minister for Law, I would have been passed over as Solicitor-General. And I told you that if that had happened, I would have resigned the service. And you told me "that is not the purpose why you are here." Then you went on to ask me, because you were rather taken aback. And you said, "Do you not wish to be considered one day?" "Are you not interested," or words to that effect, "becoming a High Court Judge one day?" And I said, "No." Then you asked me "Why?", in your curt way. And I replied that I would rather be on my feet than on my bottom. Then you went on to say to me, "Are you not interested in becoming Chief Justice one day?" And I told you, "Prime Minister, that was a different proposition altogether." Then we went on to discuss the State Advocate-General and various other matters, and my personal life.

1200. Then you say that I have offered you the High Court Judgeship? --- No, of course, not.

1201. No? --- You see, my Prime Minister, you are twisting my words. You are taking it out of context.

1202. I am not, Mr Seow? --- I am trying to explain to you ---

1203. Those are your words. And you said you are talking to the person who offered it. And I who knew you, and knew that you could not even get your LL.B (London University) would offer you a Judgeship and hold up the prospect of being a Chief Justice? Are you out of your mind? --- I am not, far from it, Prime Minister.

1204. I do not know? --- Are you trying to imply that if a person were to have, or must have an LL.B degree before he is eligible for High Court Bench?

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1205. In my estimation, Mr Seow, you were completely unsuited and unqualified to be on the Bench. Not only because your scholastic and legal abilities were deficient, but because you were not of that character to be sitting on the Bench. That you were a good prosecutor. That you could conduct Commissions of inquiries ---? --- Good enough to be Solicitor-General.

1206. With panache. Yes? --- Good enough. And good enough to be awarded by you personally the Public (Gold) Administration Medal.

1207. Indeed. Because you showed great courage? --- Which I was not too happy to receive, by the way.

1208. Yes, you showed great courage. And you handled the Commission of inquiry in 1962? --- Yes, of course.

1209. You did not become Acting Solicitor-General until 1967. Five years later? --- Correct. So? It does not detract ----

1210. When did this conversation take place? --- It does not detract one bit from what I have just told you. I cannot tell you or pinpoint the exact date, but it was sometime after. All I remember was ---

1211. Sometime after the Commission of Inquiry? --- Oh, yes, of course.

1212. When you were a mere DPP? --- Yes, a mere DPP.

1213. And I offered you the prospect of a Judgeship and a Chief Judgeship? --- The conversation was between you and me, and no one else. I have recounted to you the conversation that took place between us. If you choose not to recall it, or if you cannot recall it, it is not my fault.

1214. I am therefore suggesting to you, Mr Seow, that because you are prepared to lie about the seven declarations you have made, similarly you are lying here because I could not have made that offer to you, because it is not in the nature of my thoughts and my evaluation of people. I assess them from a dossier that they are competent and qualified to do? --- I am sorry that your recollection is so poor.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1215. And you stand by that statement? --- I stand by this statement, as I stand before God.

1216. That what you said was correct? --- What? About what happened at the City Hall? Yes. Every word. Including the fact that I walked across High Street with a woman who is not my wife, hand in hand. And this was brought to your attention.

1217. That I may well accept because it is well-known? --- Of course.

1218. Your extramural activity was well-known and I did not hold that against you? --- Because I never hide anything that I do.

1219. It is not my concern. But it is my concern who I appoint to the High Court Bench? --- That may be well be so.

1220. And I am suggesting to you that such an offer was never made and that you have made it up to justify what you have said to the students? --- My Prime Minister, I did not use the word "offer". It is reported here as such. I was recounting to the students what in fact happened, what transpired.

1221. You can't remember when, shortly after the Commission of Inquiry, when you were a mere DPP? --- No, no. It is not immediately after or very shortly after but one thing I can assure you and that is this. That this conversation between you and me did in fact take place. As the conversation between you and me did take place in the Annexe at the Istana.

1222. Now, Mr Seow, you are making this more complicated? --- I am not.

1223. The dates are important, Mr Seow. When you say Annexe at the Istana, you are taking it into the 1970s because I did not move into the Istana. You told us yesterday that the conversation took place in my small room at the City Hall? --- Correct.

1224. Now you are saying the conversation took place at the Annexe, at the Istana? --- I did not, please.

1225. You have just said so? --- Please. Hold it. And let me explain. I said just as another conversation took place between you and me at the Annexe at the Istana just before or shortly before I left the service. Do you remember or do you not recall that?

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1226. That I well remember? --- Yes. That is the meeting to which I am referring.

1227. So you are talking of two different meetings now? --- Correct.

1228. And the first meeting took place in the City Hall? --- Correct.

1229. After the Commission of inquiry? --- Not immediately after but ---

1230. When you were DPP? --- I think by that time - if my memory serves me right and here I do not wish to be tied - I think I probably either was Senior State Counsel or acting. I think about that time and I also recall that after that conversation with you, which made me very happy, of course, because there were other persons who were contending for the same post, I communicated this to the Attorney-General, my good friend, Mr Tan, of the conversation which I had with you and because you asked me whether ---

1231. I thought you said yesterday he was on leave? --- Subsequently I told him what in fact happened between you and me because you asked me also in that conversation in City Hall whether I could work with Tan Boon Teik and I said yes. And then I spoke to Mr Tan subsequently - don't tie me down to dates because these are things I don't carry in my head - and I told him that it was essential that we should try to work together and in fact we have worked together very well as a Solicitor-General and Attorney-General.

1232. Then why did you, with the prospect of the Chief Justiceship ahead of you, resign from the service in 1971? --- I was not interested. This I have explained to the Minister for Law as one of the reasons why I wished to leave the service when I saw him and I also discussed this with the Attorney-General. I saw no further prospects for myself. I have reached the highest point that I could reach at that time and ---

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1233. But I thought you just told us there was the prospect of the Chief Justiceship which you aspired to but not of a judgeship? --- Unless of course a bus were to happen to knock the Chief Justice down as he crosses High Street or the prospect of waiting to step into a dead man's shoes is one which I do not relish. In fact, I discussed this with the Attorney-General and with the Minister for Law.

1234. Let me now take you through the memorandum that you have submitted on behalf of the Council? --- Which memorandum is it?

1235. The memorandum to the Select Committee. Ignoring the clauses on disqualification which affect you? --- Are you referring to Part II?

1236. Yes. Can I ask you if you are in agreement with the submissions? --- I do.

1237. Do you agree with Mr Elias that confidentiality (B.4) can be waived and reports be published? --- I think I would accept that because from what has transpired here in the last 1 ½ days it would appear that this shroud of secrecy has tended to cloud the vision of a number of people and I think there is much to be said for the lifting of that particular section.

1238. You agree with B.6 that you welcome public participation in principle? --- I hold no strong views on this. But may I say this, Mr Prime Minister, to save a lot of time for both you and me that I accept the recommendations of my Society or my Council.

1239. You know that the position of the Committee is that there should be lay representation on the Disciplinary Committee? --- So I have been told and so I have read.

1240. You have been here listening to the Attorney-General? --- Exactly. That is what I told you. So I have been told. And I have also read it.

1241. Your proposal, how is it to be amended so that there will be lay representation? --- I beg your pardon.

1242. Your proposal of the Disciplinary Committee, as amended, as proposed, how do you amend it further so that there can be lay representation? --- I am afraid I am not too clear on what you are trying to drive at.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1243. You don't know that your Committee or you, on behalf of the Committee, have made the recommendation? --- Yes, I do know that. But I don't understand what you are trying to drive at. Perhaps you could enlighten me.

1244. Your recommendation is that there should be three members? --- Yes. It is all set out here.

The Prime Minister] I am asking you how do you amend it further so that you get what you want and we get what we want, lay representation?

Mr Barker] At what stage?

The Prime Minister

1245. At the Disciplinary Committee stage? --- I think our recommendation, if my memory serves me right, is that it will be better to have lay representation at the Inquiry Committee stage so that the lay persons could see - usually that is where most of the action is - and they can see for themselves what in fact has transpired, the nature of the complaint, whether they are trivial or otherwise.

1246. But not at the disciplinary stage? --- No.

1247. Why not? --- For one thing, I feel that in many of these cases it may not even reach the disciplinary stage and if the idea is to educate public awareness and instil public interest in what goes on in the Law Society, it is my view that and I believe it is also the view of my Council that they would best serve their purpose at the inquiry stage because that is the stage really where they are doing investigative work, where they hear witnesses and so on.

1248. You know that in England, since 1975, the Solicitors Disciplinary Tribunal has lay representation? --- I believe that to be so, yes.

1249. What is your objection to our adopting that practice? --- Again here I have no strong views.

1250. So you would concede if the Government insists that that would be right and proper? --- I would accept that, yes.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

The Prime Minister (cont.)

1251. I am asking you if you accept that, how would we amend your proposal so that you will get what you want and we will get what we want. Or don't you know what your proposal is? --- I would be perfectly frank with you. I have read through the report. This was put up by separate members of the Council and this was discussed. And we have come here with two Council members in particular who have in fact spent some time on it to answer the more difficult points and the problems attending this and I hope that they will be given the opportunity to put this across to you and to the Members of the Select Committee.

1252. We are now in Select Committee? --- Yes, I appreciate that.

1253. I am asking you, since you concede it is not objectionable in principle, how would you incorporate it? --- I would like to pass that honour over to the Council member who has been given charge of presenting this aspect of our representation.

1254. Do I understand you to mean that you have really no interest in this? --- No, no. Please, Prime Minister, you must not read more into a situation than the situation warrants it. It does not mean that ----

1255. You issued a statement on the newspaper amendment. You appeared before the Commission of Inquiry to give evidence or make a submission on the Subordinate Judiciary? --- That is correct.

1256. Neither of those two items concern the legal profession as deeply and directly as this particular Bill. You have issued no statement. You have made this submission and you say you pass the honour over? --- Yes.

1257. You are the President? --- That is so. Just like you, you have your various Ministers to handle various other aspects of government. That does not mean that you are not interested in what they do. Mr Chairman, may I say this. We are not here to score points off one another. That is not our intention. We have come here to be of assistance to help you and tell you what we feel about the proposed amendment Act. We may be right. We may be wrong. Or we may be half-right and half-wrong. But we are putting across our views in an honest way for you to consider.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Francis Seow (cont.)

Chairman

1258. Mr Seow, may I have the names of the two Council members you have mentioned? --- Yes. I think Mr Warren Khoo will discuss on the question of the disciplinary aspect.

1259. Who is the other one? --- And then Mr Chelva Rajah on the first part because each of them prepared one part of the memorandum.

The Prime Minister] Let's have Warren Khoo then.

Chairman

1260. Could you please step down, Mr Seow? --- Do I understand by this that I am released?

The Prime Minister

1261. I think we need you because I am getting two persons from the Establishment Branch to show that they were false declaration and you ought to be here. You have to be here --- Prime Minister, if they say it is false, so be it. But I do not maintain that.

The Prime Minister] Well, you have to be here.

Chairman

1262. You may step down? --- Yes, very well.

[The witness withdrew].

Chairman] Can we have Ms Tang Fong Har?

MINUTES OF EVIDENCE

Examination of Witness

Ms Tang Fong Har called in and examined under oath.

Chairman

1263. Can you please take the stand, Ms Tang? --- (Ms Tang Fong Har) Yes.

1264. What is your status, Ms Tang? --- I am a solicitor, Mr Chairman.

Prof. Jayakumar

1265. Ms Tang, for the information of those who are not familiar with your background, could you tell us when you graduated, how long have you been practising? --- I graduated in 1980, Mr Jayakumar, and I was called to the Bar, admitted to the Bar on, I think, the 14th day of January, 1981.

1266. And you are practising in which firm? --- I am practising in the firm of Messrs Lai Mun Onn and Company.

1267. Can I ask you to look at this article, a translation of an article, which appeared in Lianhe Zaobao, 7th October? If you look at page 3 of the translation, it refers to the fact that Miss Teo Soh Lung, Ms Tang Fong Har were members of a study group which submitted a report on the Newspaper and Printing Presses (Amendment) Bill. Is that correct? This refers to the Special Assignments Committee probably? --- Mr Jayakumar, this is partially correct. Miss Teo Soh Lung and myself were some of the members. It is not a study group. It is what you call members of the Civil Legislation Special Assignments Sub-Committee.

1268. Yes. Thank you. You are also a member of the Law Society Special Assignments Sub-Committee? --- Yes, I am.

1269. And in that capacity, working with Miss Teo Soh Lung, you were involved in a study on the Newspaper and Printing Presses amendments? --- We were involved because we were assigned to study this Bill by the Council.

1270. That's my question. And the reports which you put up eventually after amendments were accepted by the Council and formed the basis of the Council's memorandum? --- Mr Chairman, may I make a qualification. I am subpoenaed here to offer my views in respect of the Legal Profession (Amendment) Bill. So I am not very well prepared for this. I will try to recall as much as I can.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

Prof. Jayakumar (cont.)

1271. That's exactly what we would like you to do? --- Yes. What was your question, Mr Jayakumar?

1272. My question was: as a member of that Special Assignments Sub-Committee, the drafts which you and Miss Teo Soh Lung prepared with others were eventually the basis of the Council? --- The draft prepared by the Special Assignments Sub-Committee, yes.

1274. Thank you. Turning now to the Legal Profession (Amendment) Bill and ---? --- Is this over already, Mr Jayakumar?

1275. Will you please keep it there? You were also one of the key figures in the moves to form a EGM, to call the EGM? --- Can you clarify what is the meaning of a key figure?

1276. Did you take part in getting the signatories, the 62 signatories? Did you canvass them? --- I am one of the 62 who signed up and I did attend the meeting.

1277. Yes. Did you also press and ask for an earlier EGM date than the original date of 30th September? --- I think so. I did.

1278. Could I ask you to look at this document? It was a letter which you wrote just before the 1980 general elections, when you wrote to the press together with others complaining of insufficient air time for opposition political parties? Is your signature amongst those? In 1980 elections, the second signature to bottom, on page 2 of the letter? --- Before I answer this question, Mr Chairman, this is a letter to the press, to the editor. Can I know how Prof. Jayakumar obtained the letter?

1279. Can you turn to the 4th page where it is carbon copied ---? --- Mr Chairman, could I have an answer to that, please?

1280. Yes. The answer is on the 4th page. It is carbon copied to all political parties and to the SBC, including People's Action Party? --- Thank you, Prof. Jayakumar.

1281. Is that your signature on page 2? --- Yes, you can note this is my name and my signature on page 1 and it is number 2.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

Prof. Jayakumar (cont.)

1282. Yes. Thank you. In 1984 general election, you were authorized to conduct election activities for Workers' Party candidate, Mr Corera, in the Alexandra Constituency. Is that correct? --- That is so.

1283. You are, in fact, Ms Tang, a pro-Opposition, an anti-government activist allied with the Workers' Party? --- Mr Chairman, I would like to have that corrected.

Chairman

1284. Yes? --- I do hold some views which may differ from the Government at certain point of time and I do hold some views which may differ from the Opposition parties. I don't know how many are there? 20, 23, the range of opposition parties. That by no means make me anti-government.

Prof. Jayakumar

1285. Have you served in any capacity in any election for any other political party as a polling agent or as a person authorised to conduct? --- As far as I recall, none.

1286. None. Except for this general election in 1984, you cannot recall any other instance? --- No.

1287. Although there were 22 or 23 other political parties as you mentioned just now. Yes? --- Yes.

1288. Thank you. Who introduced you to the Workers' Party, Mr Jeyaretnam's party? --- I am not introduced to the Workers' Party.

1289. All right. You went on your own? --- Mr Corera approached a couple of us, perhaps more others whose names were not here and who may have turned him down. And I was one of those.

1290. Ms Tang, you have read this morning what Miss Teo Soh Lung said yesterday. Did you watch the telecast last night? - --- Yes. But I have not read this morning's papers, not the full text.

1291. You heard or read of options put to Miss Teo. Do you recall that part of yesterday's proceedings? --- Can you refresh my memory?

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

Prof. Jayakumar (cont.)

1292. Whether she wants to work within the Law Society for the betterment of the standards and interest of the Law Society or she wants to pursue Workers' Party interest in the Law Society? --- Yes, that is so far in respect for her.

1293. You have heard her reply? --- She says she prefers to work for the Law Society.

1294. Can I ask what is your answer to the same question if I put it to you? --- If the Workers' Party or any Opposition party has some seminars, has some workshops, and I would like to go and listen in the audience, would that be labelling me as an Opposition?

1295. We are not talking about that. There is nothing wrong about that. Please answer the question. Between working for the interest of the Law Society, for the purposes for which the Law Society was set up, and the other option of working in the Law Society to pursue the political cause of a political party - which is the option? --- Mr Chairman, I must correct that. I do not work in the Law Society to pursue any cause, either for Workers' Party or for the People's Action Party.

1296. I am asking you, of these two options ---? --- I go into the Law Society to serve the Society as a member of the profession.

1297. Thank you. That is the proper thing to do? --- That is always what I aim to do, Prof. Jayakumar.

The Prime Minister

1298. On behalf of the profession, you called a general meeting to reject all these amendments? --- I beg your pardon, Mr Lee.

1299. You called for a general meeting to reject all these amendments? --- I am one of the 62 who signed up to call for the meeting. As I have stated earlier, I am one of the 62 who called for a meeting to discuss the Legal Profession (Amendment) Bill.

1300. You have read the memorandum put up by the Law Society Council? --- It was circulated to all members.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

The Prime Minister (cont.)

1301. Do you disagree with it? --- Mr Lee, can you hold on a minute? Let me refer to it, if I have it. Mr Lee, in principle I have some reservations on the necessity of the amendment Bill. But I have read through, though not study very much in detail the memorandum, and I think that in principle the suggestions brought up by the Ad-hoc Committee studying this Bill, most of them would be acceptable.

1302. I see. You now ---? --- Except for the disqualification, Mr Lee. I also have some reservations on whether this suggestion by the Ad-hoc Committee that if there be, in the first place they have said that no, they think there shouldn't be a disqualification, but they concede that if there be a disqualification, it should not be for life but for a period of five years after the solicitor concerned has resumed practice subsequent to his striking off or suspension or his conviction, whichever is the later. That is on page 2 of the memorandum.

1303. Other than that, you are in agreement with the proposals put up by the Council? --- There is one other point. I have no objections to lay participation and I agree with them that lay participation is most effective at the inquiry committee stage.

1304. But that is what they have suggested. I am asking you whether you agree with them? --- Yes, I agree with that.

1305. So you do not disagree with that? --- No disagreement.

1306. So your only disagreement is --- ? --- Except there is one amendment, Mr Lee. My opinion is if the Supreme Court or any Judge refers to the Society any information touching upon the conduct of an advocate and solicitor in his professional capacity, the council shall forthwith apply to the Chief Justice to appoint a disciplinary committee which shall hear and investigate the matter. My opinion is that perhaps the Supreme Court or any Judge thereof or the Attorney-General should have the option whether to apply to the Chief Justice to appoint either an inquiry committee or a disciplinary committee.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

The Prime Minister (cont.)

1307. Either/ or, you mean the Chief Justice should interpose between the Attorney-General and the other Judges and the disciplinary committee? --- To give an option to the Judge or the Attorney-General as to whether if he is of the view that there is some unbecoming conduct of the advocate and solicitor, if it is not serious enough to merit going to the disciplinary committee direct but he has no option to refer it to the inquiry committee.

1308. Any other disagreements? --- I do not think so, Mr Lee.

1309. In other words, you no longer hold fast to your position taken at the EGM on the 22nd September that all these amendments should be rejected? --- Mr Chairman, the purpose and the scope of the Select Committee is to have a more minute study of the Bill. I have already stated that I am still of the view that, in principle, I object. But be that as it may, I agree with the ad hoc committee on the memorandum except for the two points that I have stated.

1310. Therefore, having made a protest demonstration, you are prepared to accept the more sober proposals of the council of the Law Society? --- It is not a protest demonstration at the general meeting in so much as it is a reflection of sentiments. There was no thumping of chairs. There was no throwing of chairs. I think everybody behaved in a dignified manner.

1311. You understand from Miss Teo Soh Lung's cross-examination yesterday that if you run with the hares and hunt with the hounds, if you run around with the Workers' Party and run around with the Law Society, both will become quarries? --- In so far as that applies to her, if that applies to her, I see no relevance to me.

1312. But she did. Then she said she would not want to run around with the hares any more? --- If that is what she said, then so be it.

1313. What is your position? --- My position is what I stated to Prof. Jayakumar just now, that I am a member of the legal profession and that I am a member of the sub-committee and I would do my best in the sub-committee within the constraints of my work.

1314. And you will not bring in the Workers' Party's ideas, proposals, resolutions? --- I will not bring in any Opposition party's or the ruling party's ideas.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Ms Tang Fong Har (cont.)

The Prime Minister (cont.)

1315. Nobody has asked you, Ms Tang? --- Yes, I understand that you must be invited to join the ruling party.

Mr Barker

1316. Not necessarily? --- Thank you, Mr Barker.

The Prime Minister

1317. But you understand? --- I think I understand as well as anyone else in the committee.

1318. But you understand if you do that, flak which was intended, ammunition intended for you in the Workers' Party may well hit the Law Society. Because they are two --- ? --- It would appear to be so, if you put it this way.

1319. Yes. It must be so, isn't it? --- It would appear to be so.

1320. Because you have to wear different uniforms, one, Workers' Party and the other, the Law Society. The Law Society is on a different footing. We do not treat them as political adversaries. When they make serious propositions, amendments, we consider them seriously and try to meet their needs. But when a political party puts up propositions, we look at it very carefully because we know it is intended to do the ruling party harm. So you have hoisted in that message? --- Mr Chairman, are there any more questions?

Chairman

1321. No. Thank you very much. You may step down? --- Thank you.

[The witness withdrew.]

The Prime Minister] Can I take Mr Er Kwong Wah, Mr Chairman, the Secretary of the Legal Service Commission?

Chairman] Yes. Please call Mr Er Kwong Wah.

MINUTES OF EVIDENCE

Mr Er Kwong Wah, Secretary of the Legal Service Commission, called in and examined under oath.

Chairman

1322. May I have your full name and status, please? --- (Mr Er Kwong Wah) My name is Er Kwong Wah. I am the Secretary of the Legal Service Commission and the Public Service Commission. I am also the Deputy Secretary of the Public Service Division in the Ministry of Finance.

The Prime Minister

1323. Mr Er, I just want you to clear up this point about the declaration every legal officer has to sign of non-indebtedness every year? --- Yes.

The Prime Minister] It says at the back of the form, "No officer may sign a promissory note or an acknowledgement of indebtedness in any form either as principal or surety. This prohibition does not apply to: -

- (1) sums borrowed on sufficient security
- (2) Bank overdrafts;"

Mr Francis Seow has said because he took a bank overdraft, therefore he was all right. Under Financial Embarrassment, I am told that it has nothing to do with whether you take a bank overdraft and have signed a promissory note or acknowledgement of indebtedness. "An officer will be deemed to be financially embarrassed if: -

- (a) he is an undischarged bankrupt; or
- (b) he signs a promissory note or an acknowledgement of indebtedness ...; or
- (c) at any time the total of his unsecured debts and liabilities exceeds 3 months' emoluments."

This is a photostat copy of a 1970 form signed by Mr Francis Seow. I want you to watch on video what Mr Francis Seow said and I want you to tell us whether or not an officer who owes more than three months's salary when he made the declaration was making a declaration falsely that could lead to his dismissal.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Er Kwong Wah (cont.)

[The following text was replayed.]

[The Prime Minister] For seven years, every year you signed a declaration of non-indebtedness which was necessary when, in fact, you were overdrawn from \$50,000 in 1965 to \$199,000 in 1971 with the United Malayan Banking Corporation on an unsecured debt?

Mr Francis Seow] Well, is there anything wrong with that?

The Prime Minister] It was a lie, it's a false declaration. It's against Instruction Manual, section 111(c): "An officer is considered to be financially embarrassed if at any time his total unsecured debts and liabilities are more than his 3 months' pay."

Mr Francis Seow] May I, Mr Prime Minister, read to you the rear portion of this particular declaration of indebtedness? The prohibition prescribed is not applicable to overdrafts approved by recognized banks. But the fact is that I got overdraft from them, yes.

The Prime Minister] And unsecured?

Mr Francis Seow] So what about it? How many people can get unsecured overdrafts?

The Prime Minister] That you were owing them \$199,000 at the time of your resignation?

Mr Francis Seow] Yes. So I had.

The Prime Minister] That you were deeply financially embarrassed and yet you signed these declarations?

The Prime Minister

1324. Is he right that there was this provision which enabled him to have an overdraft with the bank and is all right to sign the declaration? Or is he wrong because he was overdrawn for more than three months' salary? --- He is wrong, Mr Prime Minister.

1325. No question about that? --- No question about it. It is explained very clearly in the form.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Er Kwong Wah (c ont.)

The Prime Minister (cont.)

1326. Just explain it to us briefly? --- I have with me here, Mr Prime Minister, the 1965 form. It says here: "An officer will be deemed to be financially embarrassed if -

(1) he signs a promissory note or an acknowledgement of indebtedness in any form either as principal or surety;" [and it goes down to sub-paragraph (4))

(4) the officer is in fact financially embarrassed because of the aggregate sum to be paid monthly in settlement of his several debts and liabilities; [or sub-paragraph (2)]

(2) at any time the total of his unsecured debts and liabilities exceeds the total gross amount of his emoluments for three months; [and sub-paragraph (4)]

(4) the officer is in fact financially embarrassed because of the aggregate sum to be paid monthly in settlement of his several debts and liabilities; [or sub-paragraph (3)]

(3) he is a judgment debtor or a bankrupt; [and sub-paragraph (4)]

(4) the officer is in fact financially embarrassed because of the aggregate sum to be paid monthly in settlement of his several debts and liabilities.'

This was the 1965 form used at that time. It is quite clear.

1327. No. I have given you the 1970 form. You have it with his signature, a photostat? --- Yes.

1328. Was he signing it falsely if he was overdrawn for three months? --- Yes.

1329. No question about it? --- No question about it.

The Prime Minister] Thank you.

Mr Francis Seow] May I have leave to cross-examine Mr Er?

Chairman] Yes, do that.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Er Kwong Wah (cont.)

Mr Francis Seow

1330. Mr Er, can I have a look at the form to which you were referring? --- This was the old form used in the '60s.

1331. Yes. I heard you say that. Have you got a copy before you? --- No. That is the only copy I have.

1332. I see. Perhaps I could give you this one. And we will go through it together. Under the caption "Instructions" on the reverse side of that certificate, does it not read as follows: No Officer ---"? --- It is an extract from the Instruction Manual.

1333. Yes, that is right? --- Okay.

1334. Is there no other copy? Well, you have exactly the same copy as I have got? --- No, this is a different one. It is an extract from the Instruction Manual.

Mr Francis Seow Oh, I see. Can we have a copy made, Mr Chairman. It would not take too long.

Chairman But meanwhile you can still read it out. All right, have it photostated.

Mr Francis Seow Yes, to be fair to him, so that I can take him through it.

Chairman All right.

Mr Francis Seow Sorry. This is the one. Mr Chairman, in order to save time, perhaps it could be shown the certificates of indebtedness which I have appended my signature, rather than a blank form. Because that would be relevant. From what I have observed, there have been slight amendments to the Instruction Manual from time to time.

The Prime Minister Take my copy. It is up to 1970. [Copy of document handed to Mr Francis Seow.]

Mr Francis Seow

1335. You have one with my signature there? --- Yes.

1336. All right. Let us go through the "Instructions" because that was the one on the reverse side of the form, then issued to every Government officer. I take it you were not then in Government Service, were you, Mr Er? --- 1970?

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Er Kwong Wah (cont.)

Mr Francis Seow (cont.)

1337. Yes, were you? --- The latter part of 1970.

1338. You were? --- Yes. October.

1339. And were you in the ---? --- No, I was in the Ministry of Defence.

1340. I see. When did you become the Secretary to the Public Service Commission? --- 1982, July.

1341. 1982. Very well. Now, let me go through with you the "Instructions" on the reverse side of the relevant certificate.

'An officer is forbidden to sign a promissory note or an acknowledgement of indebtedness in any form either as principal or surety.'

That is very clear, is it not? --- Yes.

1342. "The prohibition prescribed is not applicable to - " And there it sets out a list of circumstances where that prohibition does not apply. Is that so or not? --- Yes.

1343. It is. Now, then, (2) states quite clearly, does it not, that the prohibition is not applicable to "overdrafts approved by recognised banks". Is that not so? --- Yes.

1344. And is the United Malayan Banking an approved or recognized bank? --- I am not sure at that time.

1345. Are you suggesting that they are operating illegally in Singapore? --- No. I do not know.

1346. And therefore we can take it, can we not, that they are a recognized bank or approved by Government? --- No, I am not suggesting that. I am saying that I do not know whether that bank at that time ----

1347. Can we take it that it is an approved bank? --- Okay, let us take it that it was an approved bank.

1348. It must be so? --- Okay.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Er Kwong Wah (cont.)

Mr Francis Seow (cont.)

1349. Otherwise the Prime Minister will come down on that bank like a ton of bricks. It goes on further to say:

' An officer will be deemed to be financially embarrassed if -

(1) he signs a promissory note or an acknowledgement of indebtedness in any form either as principal or surety;'

referring to what I have just read earlier on. Is that not so? --- Yes.

1350. ' (2) at any time the total of his, unsecured debts and liabilities exceeds the total gross amount of his emoluments for three months;'

That is the definition of being financially embarrassed? --- Yes.

1351. ' (3) he is a judgment debtor or a bankrupt; and

(4) the officer is in fact financially embarrassed because of the aggregate sum to be paid monthly in settlement of his several debts and liabilities.'

? --- I do not have it here. Where is it? It doesn't say that.

1352. You see, it was changed from time to time. Now, do you agree with me, putting the case at its possible lowest, that there is a contradiction? --- No, I do not think so. It is stated quite clearly. In this paragraph here, it says:

' An officer will be deemed to be financially embarrassed if: -

(a) he is an undischarged bankrupt; or

(b) he signs a promissory note or an acknowledgement of indebtedness in contravention of paragraph L 58 of instruction Manual No. 2; or

(c) at any time the total of his unsecured debts and liabilities exceeds 3 months' emoluments.'

1353. How do you reconcile it with what I have just read to you earlier on? That the prohibition prescribed is not applicable to all these various loans which may be well in excess of three months' emoluments? --- No, it is stated quite clearly here.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Er Kwong Wah (cont.)

Mr Francis Seow (cont.)

1354. No. Mr Er, let us take the first one.

'borrowing on security of land or house charged or mortgaged with the permission of the Government.'

He will be owing much more? --- No, it does not rank that way.

1355. Right? But that has been excluded ? --- No.

1356. What do you mean no? --- As long as the amount at any time, the total of his unsecured debts and liabilities exceeds three months' emoluments. It is stated quite clearly in the form.

1357. How do you reconcile with the earlier instructions in the first paragraph? --- It has nothing to reconcile, as far as I can see. It is stated very clearly in the explanation. It explains what is meant by financially embarrassed. The explanation is (a) or (b) or (c). There is nothing to reconcile.

1358. That is your interpretation? --- That is my interpretation.

1359. Very well. Tell me, are there not many officers in Government and in statutory boards who have overdraft accounts with various banks in Singapore? --- I am not sure.

1360. Are you saying there are none? --- No, I am not saying that there are none. I said I am not sure.

1361. What about you yourself? Have you an overdraft? --- No.

1362. You do not have. And as far as you know, has there been any officer who has reported that he has got an overdraft account with any banks? --- There should be, because they report to their Permanent Secretary every year.

1363. Are you guessing? --- No, I am not guessing.

1364. How do you know there should be? You think that there should be? --- As Secretary of the Public Service Commission, I am also responsible for disciplinary measures in the Civil Service.

1365. Yes, very well. So therefore this would be within the ambit of your duties? --- That is right.

MINUTES OF EVIDENCE

10 Oct 86 - Witness: Mr Er Kwong Wah (cont.)

Mr Francis Seow (cont.)

1366. Has there been any case, to your knowledge, of any Government officers having overdraft accounts? --- There had been cases where officers were financially embarrassed. But as to overdraft account, I do not have the facts at this moment.

1367. I am only interested in overdraft accounts? --- Okay.

1368. You have none, right now? --- No, I am not saying we have none. I said I do not know.

1368A. You do not know whether you have or you haven't? --- Yes, at this moment. Unless I go back and dig up the files to check to see if there had been cases like this.

Mr Francis Seow] Well, I am afraid I beg to differ with you, Mr Er.

The Prime Minister

1369. Mr Er Kwong Wah, this is the Instruction Manual, financial embarrassment 62 (1)(a) (b) and (c). [Copy of document handed to Mr Er]? --- Yes.

1370. Is there any ambiguity, any doubt? --- No.

1371. Are you sure? --- I am very sure.

The Prime Minister] Thank you.

Chairman] Thank you, Mr Er.

[The witness withdrew.]

Chairman] Can we call Mr Subhas Anandan, please.

MINUTES OF EVIDENCE

Examination of Witness

Mr Subhas Anandan was called in and examined under oath.

Chairman

1372. Mr Anandan, what is your status? --- I am an advocate and solicitor, Sir, with the firm of M.P.D. Nair & Co.

Chairman] Prof. Jayakumar.

Prof. Jayakumar

1373. Mr Subhas Anandan, can you tell us, first of all, whether you are a Singapore citizen? --- I am not, Sir.

1374. Were you ever a Singapore citizen? --- No, Sir.

1375. But you have been allowed to stay in Singapore by the Government? --- Yes, Sir, for the past 38 years.

1376. Yes. After you have been admitted as an advocate and solicitor, is it not true that you were arrested and detained for involvement in secret society activities? --- Yes, Sir, under the Criminal Law (Temporary Provisions) Act, I was detained without a trial.

1377. That was in January 1976? --- Yes, Sir. I was released in November.

1378. You were released in November. With regard to the Legal Profession (Amendment) Bill and the Extraordinary General Meeting, you were one of the 62 signatories? --- That is correct, Sir.

1379. Which called for the meeting? --- Yes, Sir.

1380. You canvassed actively for persons to attend the EGM? --- I won't say "actively", Sir.

1381. You canvassed? --- I told my friends to attend.

1382. You spoke in support of the draft resolution? --- Yes, Sir.

1383. Proposed by Miss Teo Soh Lung? --- That is right, Sir.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

Prof. Jayakumar (cont.)

1384. Which deplored the introduction of the Bill? --- Yes, Sir.

1385. Which called on the Government to withdraw the Bill? --- That is right, Sir.

1386. In other words, you were in total opposition to the Bill? --- At that time, yes, Sir.

1387. At that time? --- Yes.

1388. At that time, you also strongly criticized those in the EGM who wanted another resolution based on the Council's draft representation? --- It was not another resolution, Sir. A report that the Council wanted to discuss, I think.

1389. You were against that? --- Yes, Sir. I told them to call their own meetings.

1390. You were against them discussing it at that meeting? --- The EGM has been called for another purpose.

1391. Can you clarify your point that you made just now, that at that time you were opposed to the Bill? --- Of course. We have discussed the Bill again. At that time, when we called for the Extraordinary General Meeting, it was to express the sentiment that we felt at that time, a sentiment that we felt at that time.

1392. Sentiment? --- Yes. That we were being unfairly treated. We were not consulted and so we were ---

1393. You were not against the provisions of the Bill? --- Well, Sir, I was at that time.

1394. At that time? --- Basically, I was against the provisions of the Bill. But more it was because we were not consulted. It was just an expression of sentiment.

1395. Did you read in the newspapers on 23rd September, the day after Parliament received introduction of the Bill, my explanation as to why I thought the Law Society did not deserve consultation? --- Yes, Sir. We did not know about that reason at that particular time.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

Prof. Jayakumar (cont.)

1396. You did not know? --- No, Sir, because I think it only came about after the Extraordinary General Meeting.

1397. But does it make a difference to you now? --- Yes. As I said, even the President, I think, has admitted on hindsight the attitude taken I think was not really satisfactory.

1398. What is your position now on the Bill? --- Now at least I understand why you did not want to consult the Law Society because you have given your reasons.

1399. Do you agree with those reasons? --- In this particular case, even the Law Society has not even bothered to ask the people concerned whether they would consent or not. I think it was a wrong attitude.

1400. You think the Council was wrong? --- Yes. They should have at least asked the people concerned whether they consent to divulging this information to you. I think not doing that was wrong.

1401. I see. Now that you know that, what is your position on the Bill? Do you still want the Government to withdraw the Bill? --- Not in toto, Sir. I think the Select Committee anyway cannot withdraw it in toto but I ---

1402. Pardon? --- I think the Select Committee would not in any way withdraw the Bill in toto but what I am saying is I go along with the Council's draft amendments asking for certain amendments to the Bill.

1403. You now accept the Council's memorandum? --- Yes, Sir.

1404. Although at the EGM you opposed and told them not to gate-crash that meeting? --- Yes.

1405. Finally, Mr Subhas Anandan, what are your connections with the Workers' Party, Mr Jeyaretnam? --- Purely professional, Sir.

1406. Professional? --- I am not a party member. I do not associate myself with the Workers' Party in any other way other than professionally. My firm is engaged in defending the Workers' Party and I was his defence counsel.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

Prof. Jayakumar (cont.)

1407. You assisted Malaysian lawyer, Mr Karpal Singh, in Wong Hong Toy's contempt case? --- Yes.

1408. You assisted Mr Mortimer? --- Yes, Sir.

1409. In the case of fraudulent transfer of funds? --- Yes, Sir.

1410. And so on? --- Yes, Sir.

1411. Were you paid? --- Not yet, Sir.

1412. Not yet. In any of these cases? --- Not yet. But I think I got some money coming from the Straits Times case.

1413. But were you ever paid? --- No, Sir.

1414. But you say it was on a professional basis? --- Yes, Sir. My office has been given instruction when the re-trial is over to send Mr Jeyaretnam a bill for all services rendered.

1415. Can be quite a sum? --- Yes, Sir. I don't know whether I will be paid but we will be sending it.

1416. Is it just a professional relationship? Are you not close friends, confidante? --- Sir, I could say I became his friend. It ultimately happens when you defend a person on so many occasions, we do become, but that's all. I can't say I am a very close friend of his. He is my client.

1417. You know Miss Teo Soh Lung? --- Yes, Sir, I know her.

1418. Miss Tang Fong Har? --- I know her.

1419. You know of their connections with the Workers' Party? --- I know about Miss Teo being close to Mr Jeyaretnam in the sense that I have seen her with him discussing matters. She has come to the court to record down notes of evidence while the cases were going on. I know that. But I only came to know that she was in the Anson Council yesterday when I heard the TV.

1420. You only knew about it yesterday? --- Yes.

1421. So you worked closely with them with regard to the EGM? --- Yes.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

Prof. Jayakumar (cont.)

1422. I must ask you this. You have read the Prime Minister's statement yesterday? --- I heard it over the TV. I was watching TV.

1423. As to whether lawyers who have political connections should decide whether to work in the Law Society for the betterment of the Law Society, for the profession, or whether they want to pursue political motives within the Law Society? --- I have heard the statement made by the Prime Minister, Sir.

1424. What is your position on the statement? --- I think I agree with the Prime Minister.

1425. You agree? --- Yes. I think if they want to oppose you somebody must start a new political party.

Prof. Jayakumar Thank you.

The Prime Minister

1426. You applied for citizenship? --- Yes, Sir, 1972.

1427. Have you got it? --- 1982 I was told my application was not acceded to.

1428. Have you applied again? --- No, Sir.

1429. Do you know why you were not given citizenship? --- No reasons were given, Sir.

1430. When you were a student, you were active with the pro-communists in the University of Singapore Socialist Club? --- I was in the Socialist Club, Sir.

1431. And you were running around with the pro-communist group? --- I do not know whether they are pro-communist group or not but they were leftists, yes.

1432. Leftists generally? --- Yes, Sir.

1433. In what way? Why would the ISD mark this down against you if they were just generally leftists? --- I would concede, Sir, that we looked more towards the Barisan Sosialis than the People's Action Party. We were leftists in that sense.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

The Prime Minister (cont.)

1434. Barisan Sosialis, Dr Lee Siew Choh is not a communist. Which segment of the Barisan Sosialis. Which faction? --- As far as I know, Sir, we had only meetings with Dr Lee Siew Choh.

1435. So that is a non-communist group. Just the fellow travellers? --- Yes, Sir.

1436. You knew he was a fellow traveller? --- He must be, Sir. He was never arrested.

1437. You also agitated with the students over my address to the students at the National Theatre in 1969? --- I had nothing to do with that, Sir.

1438. That is part of the reasons why you didn't get your citizenship, I wanted to know? --- Sir, that agitation had nothing to do with me.

1439. You are sure? --- I am very sure of this.

1440. So there was a mis-identification then? --- Sir, it was Aran Nair who was the Chairman. I knew him personally. That's all. I had nothing to do with what happened in that.

1441. Who? --- Aran Nair, I think, was the Chairman.

1442. Yes. He led the agitation. You had nothing to do with it? --- I was not even in the lecture theatre. I had no place to go in. It was packed.

1443. I see. So you had nothing to do with it? --- That's right, nothing to do with it.

1444. This is mis-identification? --- I do not know whether it is mis-identification. I had nothing to do with that, Sir. I am quite sure about that.

1445. And you did demonstrate with the students outside the US Embassy over atrocities in Vietnam? --- Yes, Sir. We also demonstrated outside the Russian Trade Embassy.

1446. No, no. Let's concentrate on this. When you come here, Mr Subhas Anandan, you want to put the best of all faces on. Let's concentrate on this? --- As it pleases you, Sir.

1447. Was it true? --- Yes, Sir.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

The Prime Minister (cont.)

1448. Who led that demonstration? --- That demonstration was led by me, Mr Francis Khoo, Mr Peter Chen and I think one or two others.

1449. And Mr Francis Khoo, where is he now? --- He is in London, Sir.

1450. Why is he in London? --- I think we all know the reason, Sir. I think he left because the Internal Security Department was looking for him.

1451. So he left before they could ask him what he was doing? --- Yes, Sir.

1452. You are stateless, aren't you? --- Yes, Sir.

1453. You like to be a citizen? --- Yes, Sir.

1454. You know a citizen has to be loyal to Singapore and not undermine its institutions? --- I know that. I think I will do both.

1455. And you won't be running around? --- With pro-communists, no. I think I have stopped it a long time ago.

1456. You have stopped it. You have also stopped your association with the Sembawang Black Eagle Gang? --- I was never associated with that gang, Sir, even though I am classified as the head of that gang, I was never.

1457. You were not? --- I challenge that, Sir.

1458. What were you doing with them then? --- I was doing nothing with them.

1459. You mean they were separate from you? --- They were separate. I was never. That allegation ----

1460. You just had coffee with them? --- I did not have anything to do with them. Not even coffee or tea.

1461. The revised charge against you is that you were not a hit member but an associate of the Black Eagle Gang? --- I will even deny that, Sir.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

The Prime Minister (cont.)

1462. Then you were involved in a case of settlement talk? --- Settlement talk, yes.

1463. That is peaceful, it is all right? --- It is peaceful.

1464. So when it comes to settlement, you appeared? --- Yes. Because not everybody is asked to settle a problem in Sembawang.

1465. So when they hit you are not there? --- If they hit, I wouldn't know about it. I do not want to know about it.

1466. You will be absent? --- I wouldn't even have the knowledge, Sir.

1467. But on three occasions, hit occasions, you were there? --- No, I was not there. Only one incident where nobody was hit anyway. I think the matter was fully investigated by the CPIB and other police.

1468. CPIB? --- Yes, Sir. I was interviewed in prison by the CPIB and I think subsequently the CPIB charged the inspector.

1469. But the inspector was acquitted? --- Yes. I think he had a good lawyer. I do not know.

1470. Not because he was innocent? --- I don't know, Sir.

1471. That he rightly detained you? --- Sir, sometimes a person can be acquitted but, as some famous judge said, it does not mean that he is innocent. I still think I was framed up, with all due respect, by the police inspector concerned.

1472. By the police inspector concerned. You have a chance, Mr Subhas, of earning credits for your citizenship. I always believe that a man should have hope. Where do you stand now with regard to all these activities by Miss Teo Soh Lung, Tang Fong Har? Do you know that they are active supporters of the Workers' Party? Where do you stand vis-a-vis them? --- Sir, I will not be in favour of the Law Society being taken over by any political party. I would think that the Law Society should be there to protect the interest, to look after the welfare of the lawyers and comment on changes in the profession. But I will not be in favour of any political party taking over the Law Society or manipulating the Council.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

The Prime Minister (cont.)

1473. Or getting the President to issue statements on the Newspaper and Printing Presses (Amendment) Act? --- Sir, I think this President is very hard to make him do something he doesn't want to do.

1474. We've just heard Miss Teo Soh Lung who got him to appear before the Commission of inquiry, issue a press statement? --- If he had allowed Miss Teo to make use of him, I am certainly disappointed at him because I was always under the impression he cannot be manipulated. He is such a strong man. Imagine Miss Teo manipulating him. I find it quite hard to believe.

1475. Yes. Unless he wanted to, he found it convenient? --- Unless he believed in what Miss Teo believed, I do not know.

1476. But do you believe that the Law Society was advancing the cause of lawyers by involving itself on the Newspaper and Printing Presses (Amendment) Bill (NPPB)? --- Sir, I do not know about the Law Society's involvement other than they made a statement criticizing or ---

1477. Carrying out a survey? --- Because I was not involved in the Sub-Committee or what the Council was doing on this.

1478. I want you to clarify your position for your next application for citizenship? This is only half in jest, Mr Subhas Anandan? --- Sir, I believe that the Law Society, where possible, should come to assist the legislator in passing of Bills, give their views. I think the Law Society should do it because they are a group of professional people.

1479. Assist as lawyers, qua lawyers? --- Yes, lawyers.

1480. Not qua politicians? --- Of course not.

1481. How to draft the Bill more professionally? --- Yes.

1482. More accurately? --- Yes.

1483. More effectively? --- Yes.

1484. Not to say that the Government is embarking on legislation which is cruel, harsh, stop the freedom, free of flow information. What does the Law Society know about the free flow information? --- I think you should ask the Council.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

The Prime Minister (cont.)

1485. No, I am asking you whether you are in sympathy with those statements? --- No. As I said, Sir, I think the Law Society, the Council, should comment in the sense that they should be involved with the legislative process because we are a group of professional people.

1486. You've heard Mr Elias. You saw him on television? --- A little bit, yes.

1487. That he and none of his predecessors came out with statements against proposed Government legislation or pending Government legislation and therefore engaged the Government in political argument. What would you do? --- Sir, if I am not mistaken, the only thing that is objectionable to the Government is what the Council did, they published their statement to the press.

1488. That will do? --- But I believe the other councils too. They have commented about laws but ----

1489. I am talking now of you and your position vis-a-vis the Law Society. Would you approve of Mr Elias's position that such statement should not be published? --- I would not agree with him totally.

1490. Oh, you would want to take the Government on, you mean? --- I am not going to take anybody on. As I said, I am thinking of my next application. But I would like to say that I am in agreement with Mr Harry Elias on certain aspects of it. But I am not going to say that the present Council is totally wrong. I think they should be asked to explain why did they take that particular stand.

1491. Explain ---? --- Why did they do.

1492. They should be asked? --- Yes. They should be asked why should they. I have yet to know what is the reason that they published.

1493. You are a member of the Law Society. I think you should call an EGM and ask them. That will raise credit points? --- Maybe I will think about it.

1494. Good. Thank you? --- Much obliged.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Subhas Anandan (cont.)

Chairman

1495. Thank you very much. You may step down? --- Can I take it that I am released?

Chairman] Yes. Thank you.

[The witness withdrew.]

Chairman] I would like to call Mr Mohan Das Naidu.

MINUTES OF EVIDENCE

Examination of Witness

Mr Mohan Das Naidu was examined under oath.

Chairman

1496. Your status, please? --- (Mr Mohan Das Naidu) I am a lawyer, in the firm of M.P.D Nair and Company.

Prof. Jayakumar

1497. Could you tell us, Mr Mohan Das Naidu, how long have you been in practice? --- About nine years now.

1498. How long have you been in the Council? --- Since January this year.

1499. Since January this year. I would not be long with you. Could you please have a look at this document? It is a document which shows that you were a polling agent for Workers' Party candidate? --- Yes. It is no secret.

1500. I am asking you, it is not whether it is secret or not, whether that is a correct document? --- Yes, it is true.

1501. Have you also been supporting the Workers' Party in other capacities? Raise funds for them? --- No, never.

1502. Supported any of the other activities? --- No, never.

1503. You have sat there for the past two days, yesterday and today. And I want to ask you the same question that I have asked the others. And that is, you are connected with the Workers' Party, but what is your position on the question, your proper role in the Council and in the Law Society? --- With respect, Professor, how I backed the Workers' Party, because I was a polling agent?

1504. You were a polling agent? --- Can I explain how I became a polling agent?

1505. Yes? --- Mr M.P.D. Nair approached me and he is a very senior and respected member of the Bar. He asked me for my assistance and I did. And I have no connection whatsoever with the Workers' Party.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Mohan Das Naidu (cont.)

Prof. Jayakumar (cont.)

1506. What is your position on the question, anyway, as to whether a member of the Council or a lawyer, whether he should pursue his interest in the Law Society to further the betterment of the Law Society? Is it proper for a person to pursue political motives of any political society? --- Of course not. Surely not.

The Prime Minister

1507. You know, Mr Mohan Das Naidu, it's the business of the Government to know what is going on in the professional bodies when they start acting unusual? --- Yes.

1508. As a consequence, I now know much more about you than I ever did? --- Yes, I suppose so.

1509. Mr Naidu, have you given any financial support to Mr Jeyaretnam, his defence fund? --- No, Sir.

1510. Or Workers' Party? --- No, Sir.

1511. You would not wish to be associated? --- Of course not.

1512. You would think that would detract from your neutral position? --- Yes.

1513. In the Law Society? --- Not in the Law Society specially. But I am not a politician and I want to ---

1514. You want to stay neutral? --- Yes, Sir.

1515. Good. Thank you? --- Thank you, Sir.

Chairman] Thank you, Mr Naidu. You may step down.

[The witness withdrew.]

Chairman] Mr Warren Khoo now.

MINUTES OF EVIDENCE

Examination of Witness

Mr Warren Khoo Leang Huat was examined under oath.

Chairman

1516. May I have your full name and your status, please? ---
(Mr Warren Khoo) The name is Warren Khoo and I am an advocate and solicitor.

Mr Barker

1517. Where and when did you graduate, Mr Khoo? --- I graduated from the University of London in the year, so long ago, 1961.

1518. When did you join the Legal Service? --- I started practice in Penang in 1966 and left Penang and settled in Singapore in 1970. That was the year when I joined the Legal Service of Singapore.

1519. And you left the Service? --- That was in 1982.

1520. You are a member of the Council? --- Yes, Sir. As your nominee, Sir.

1521. I appointed you. When was that? --- That was at the beginning of last year, 1985.

1522. But you don't represent me on the Council? --- No, Sir. I have never received any directions or anything like that. I would like to believe that I was appointed as your nominee for what I stood for, for what I was thought to stand for.

1523. Since you've been appointed, I haven't even spoken to you on any legal matter? --- Never.

1524. And I only met you a few days ago when you came to my office with some others? --- I don't recall that. But I believe I have met you on several occasions.

1525. Yes. But not to talk on law. All I am asking you is: you are my nominee there, are you completely independent of my views and the Government's? --- Absolutely, Sir.

1526. Thank you? --- As I have said, I have never received any instructions generally or specifically from either you or anyone like the Attorney-General or anybody else in the Government.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

Mr Barker (cont.)

1527. Can I take you through the memorandum of your Council? Have you got a copy? --- Certainly, yes.

1528. One point you made is that a debarment for life would be too harsh? --- May I explain that although I was ----

1529. This is in paragraph A.3? --- A.3, that's right.

1530. These are not necessarily your views. But I want your views, now that you are here. Para A.3 of the memorandum? --- Yes, I subscribe to this view.

1531. Sorry? --- I subscribe to this view that after a few years of satisfactory conduct, after an advocate and solicitor has been restored to the roll, he should be given a chance to play his part in the Council.

1532. Don't you think the court should have something to do with this? --- That would be a sensible ----

1533. Say after a period of five years the person disqualified should make an application to court where his track record will be looked into? --- Yes. I think that would be a very sensible and useful intervening process.

1534. I take you to paragraph A.5? --- Yes.

1535. We have suggested six months. You have suggested one year. Does that make such a difference? --- This was on the assumption, merely an assumption, that suspension of a one year period or more would more likely cover cases of the kind that the Bill seeks to catch.

1536. But not necessarily? --- It is an impressionistic sort of statement, not based on any detailed analysis of cases of suspension.

1537. Can I take you to Part II. I understand that you were responsible for the original draft on disciplinary proceedings? ---- There was an ad hoc committee. I do not claim full credit. I did prepare the preliminary paper for members of that ad hoc committee to focus their attention on. If I may mention the names of that committee ---

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

Mr Barker (cont.)

1538. Please do? --- Mr Giam Chin Toon here, Mr Mohan Das, we always believe in having a younger member of the Society in these committees. And, last but not least, Mr Chelvarajah, who was responsible, when I was absent, for part one of this paper.

1539. He was responsible for part one? --- Yes. I have always been interested in the disciplinary proceedings provisions of the Act.

1540. Public participation. I know it has been the tradition of the Bar that you have always been judged by your peers. In other words, when one of you is complained - against and it reaches the disciplinary stage, three of your colleagues, as it were, will be sitting in judgment over you? --- That is right.

1541. Our proposal is to have a layman. Why such strong objections to this layman? If you have three persons, two of whom are lawyers and one a layman who doesn't know the law and has to be directed by the two lawyers, even if he disagrees, you still have a majority, don't you? Now, why this fundamental strong objections to a layman coming in and sitting in judgment over you? --- Yes. As you will appreciate, there is a whole spectrum of opinions on questions like this. If you are asking for my personal view, I strongly welcome this. In fact, I think this is a timely proposal that we should open the profession to public participation in order to instill public confidence in the profession. We heard the Attorney-General giving a series of cases in which it is said that the legal profession has dragged its feet. It may be that some of the complaints are justified in some of these cases. But in regard to others, it may be because of the confidentiality requirements of the law that the public and therefore the political leadership does not see the whole picture. And there is always this very unfortunate chasm of misunderstanding of what goes on within the profession. So far as I know, the majority of the people in the legal profession take the matter of discipline very seriously. Since my appointment as your nominee on the council, I have taken part in many meetings of the council in which disciplinary matters have been discussed and I can assure you that council members do take these matters very seriously.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

Prof. Jayakumar

1542. Mr Warren Khoo, I find your proposal for lay representation on the inquiry committee personally quite attractive. Two questions. Your proposal is for an inquiry committee of five persons, three lawyers and two lay representatives? --- Yes. Let me explain if I am not interrupting. The reason why we suggested two laymen is that in our experience dealing with lay clients, we find that lay people on the whole do not feel very comfortable in the presence of lawyers. I thought that, and this idea was accepted by the other people in the ad hoc committee, if there were two, they probably could play a more useful role in that they would not be so intimidated by the presence of three lawyers. That is why we suggested a system which we hope would not only be good in form but which we hope would work in practice. And having two laymen there would be better than one.

1543. My only concern is whether an inquiry committee of five will have problems in having regular meetings and quorums as compared to three. Won't it be more practical to have three? --- Well, there is a price to everything, Prof. Jayakumar. If we want to have an effective system, perhaps this is a reasonable price to pay.

1544. Would you have strong objections if our ultimate Bill was to provide for lay representation in both the disciplinary committee, and taking your suggestion, the inquiry committee? --- We have set out the reason why we think that a lay person would not be able to play any effective role on the disciplinary committee in the paper and the reasons have already been canvassed. The Prime Minister has mentioned the system in England where there is a certain amount of lay representation on the adjudicating committee stage, ie, as I understand it, the equivalent of our disciplinary committee in addition to the investigating committee where there is a majority lay representation, the system in England. We do not, I believe, need to follow the English system slavishly. We should, in my view, develop a system which would suit our own needs, that would suit our circumstances. We are a developing country. A lot of people are very busy in their professions and it may be difficult for us to find people of the right calibre, of the right educational background, to be able to play an effective part in the disciplinary committee. In England, it is different. They have a larger pool of people with the right sort of educational background, the right sort of exposure, who can perhaps play an effective role. But that may not be the case in Singapore.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

Prof. Jayakumar (cont.)

1545. So you still maintain your position? --- I maintain that position. But if it is thought necessary, perhaps the lay people, one or two lay people or as many as you care to name, could come in and have a look and take part as observers. There is absolutely no harm in that. There might be some good in that. I think it would be a mistake and I like to emphasize that, it would be a mistake for them to take part in the substantive work of the disciplinary committee. I don't think that we are going to find it very easy to be able to find people in Singapore who are not legally trained, especially who are not practising advocates and solicitors who can really grapple with anything but the simplest of cases.

Mr Barker

1546. So you prefer lay members in the committee at the inquiry stage? --- Yes, where they can take substantive decisions.

1547. But not at the disciplinary stage? --- Absolutely not. But they can come in as observers. I have no objection at all whatsoever to that kind of proposal.

1548. As far as this pool of lay members, you suggested, say, 10 in number? --- That is an open number. It could be any number.

1549. What worries me is the number of complaints. How many do you get, say, a month? --- I think I saw the statistics not long ago. I think 30-40, in the double digits, I think.

1550. 30 or 40? --- A year. I am sorry.

1551. A year? --- Yes.

1552. On the average? --- We have yearly figures. In 1984, there were 24 new complaints referred to the inquiry committee. In 1985, there were 28 and in 1986, there were 48. And to underline our point about the effectiveness and usefulness of lay public participation, may I point out that the number of cases referred to disciplinary committees is very small. In 1984, in contrast to 24 new complaints referred to the inquiry committee, there were only 2 cases dealt with by disciplinary committees. In 1985, there were 2. In 1986, there were 4. So if you are talking about the public confidence, this is a very insignificant set of figures.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

Mr Barker (cont.)

1553. So you need more laymen at the earlier stage. Right?
--- Yes. That is where they can see the complaints that come to the Law Society. Some of them are frivolous. Some of them are not. And where decisions are made whether to refer the matter for the formal investigation of the disciplinary committee.

1554. What are your views on the question of confidentiality?
--- I am in favour of a limited opening up in that respect. Some matters must be kept confidential because of complaints about solicitors and so on. Some of these are frivolous complaints. And it would not be right for everything to be open to the public. My experience with the council is that things are done openly and there is absolutely nothing that we need to hide except for confidentiality matters.

Mr Barker] Can I take you to page 2?

The Prime Minister] You are still on disciplinary committee?

Mr Barker] I just got one last question.

The Prime Minister] Yes, sorry.

Mr Barker

1555. Page 2? --- Which paragraph, Sir?

1556. Rules of Natural Justice, the last three paragraphs. In particular, you are of the view that a legal officer should not sit on any case arising from a complaint of the Attorney-General or the Chief Justice. Otherwise a decision might be impugned in a court of law. Then you say, "We think it might be useful to make express provisions in the Bill in this regard." Are express provisions necessary? --- It may or may not be necessary. It only serves as a guide if the provision is there for the person who appoints the members of the disciplinary committee, as a convenient reminder.

Mr Barker] You may proceed, Prime Minister.

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10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

The Prime Minister

1557. Mr Khoo, if we make the lay representative an observer at the disciplinary stage and we introduce a full-time retired judge as secretary, full voting secretary, and he will write up the reports, would that not be an improvement? You have lay representation. So no question of a cover up. You have an advocate and solicitor in private practice and another advocate and solicitor either from the legal service or the judicial service. You know that the British retired judges usually go back and become referees, chairmen of disciplinary tribunals. You met Sir Alan Rose? You know him? --- No, that was before my time.

1558. Well, I have met him after his retirement from his job and he was the Chairman of a Disciplinary Tribunal for doctors. He does it every time there is a case. They have got a panel of 12, 15 members. And he has other doctors around. His job is just to hear cases and he develops a certain expertise. Would this not overcome the problem of three amateurs each time meeting with no expertise ever building up, and particularly reluctant amateurs. Not only with the lay members. We are going to have the same problem even with legal officers, because they are advocates and solicitors, and they must have an eye to the profession when they go out to private practice? --- Even without casting anything on people's good faith, there is I think a serious problem, Mr Prime Minister, about consistency of decisions. And I think this is well illustrated by the examples given by the Attorney-General yesterday. This ad hoc arrangement is, in my own view, unsatisfactory. In fact, in the embryonic draft that I prepared, this point was put forward under the heading of "Improvement in the quality of decision making in the Disciplinary Committees". Because, as I see it, the criticism of our present system is that it not only takes too long, but the decisions that come out are not always uniform, they are not consistent, and some of them are not what one would expect from the facts as one knows them. So this problem of consistency of decisions is a real problem. And I do not think you are going to solve it by having a legal officer there, even if he tries his best. And it would not be improved, it would be made worse, if I may say so, if you had a layman there of the three. Under the present arrangement, at least we have three lawyers, and assuming that they take their jobs seriously, each of them will check on the other. And that argues for a sounder decision than if you had a layman in it, who either does not play an active part, or who plays a part and messes up the whole thing.

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

The Prime Minister (cont.)

1559. You have not answered my point of a full-time secretary with full voting powers, preferably a retired Judge? --- A full-time, he should not then be called a secretary. I mean he should be a full member of the Committee. I mean if you want to have consistency, that is one possibility, with respect.

1560. One way? --- One way, yes. To maintain consistency, and because the law in this area has become rather technical, a certain amount of expertise through regular exposure to the work is something to be seriously thought about.

1561. And there will be less of this inertia, this unwillingness to break another man's rice bowl? --- Well, it depends on the person that you choose. I have taken part in one disciplinary case, and although the result was not what I, as Counsel for the Law Society, was happy about, I know that the proceedings were conducted in the most business-like manner. It is nothing less like a full-scale trial that you would expect to see in the High Court or in the District Court. This fear that some lawyers may not be willing to take hard decisions, that may not be true in every case.

1562. Mr Khoo, I knew the profession when it was a very small intimate one. There were about 150 members of the Bar. It has now become 1,330. It will become 2,000 before the year 1995. Just as it has become in Britain and other parts of the world, with consumerism and large numbers being churned up by the law schools, there is no longer that same osmosis, a sense of shared honour and shared responsibility. How do we overcome that? How do we make sure that standards are maintained? Because way back, even as late as 1965, if you read Mr Justice Coomaraswamy's memorandum, he moved these amendments, because in his personal experience as a member of the Bar Committee, as it then was known, people who expected to appear before a Disciplinary Board made sure their friends were present when the voting takes place so that they are well ensconced and they have friends sitting in judgment. Naturally, a Bar of 230, 250 is still manageable. Now, it is 1,300. Is it escapable that we must have professional groups to discipline? You know the Army court martial officers. There are officers designated as Court Martial Officers and Procurator-General. Should we not move in that direction? And perhaps, in the process, a whole generation of new lawyers understand that there are very grave consequences when you do these things. When you breach the rules, it is not your friends who will sit in judgment and smile at you and forgive you, but

MINUTES OF EVIDENCE

10 OCT 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

The Prime Minister (cont.)

people whose job it is to make sure that everybody keeps his nose clean, because the whole profession is diminished as a result of misbehaviour. It is not whether you got three or four disciplinary cases. The three or four disciplinary cases bring disrepute, but people feel that justice is not being done. The letters that we have received are those who felt that they were not even properly investigated. Fees collected, no work done. Shoddy work. The same problems they have in England? --- Yes.

1563. They don't reach the Disciplinary Committee stage. What do you say to this? We could leave this. Make it three. We change to five. Lay representative as an observer. We will be back here amending the Bill again, within a few years. Why not move one professional member, or full-time, paid retired lawyer or retired Judge? --- My feeling is that this new system that has been proposed should be given a try.

1564. You would not risk a full-time man gathering the expertise which is what you have admitted is necessary? --- We could have a panel of lawyers who are regularly appointed to these Disciplinary Committees.

1565. Yes. But they will have to be paid? --- Yes.

1566. When it is done for free, it means abandonment of fees? --- Yes.

1567. But they should be paid? --- Yes. And this is what was suggested in this embryonic paper, which we did not go into in full because we thought that ----

1568. There are certain members of the Bar who command absolute confidence, whose integrity we would not doubt. And I think the public also has some perception of which lawyers are trustworthy. I do not believe there will be any diminution of security, of freedom from any persecution by members of the Bar, if they became full-time on a partial or semi-retirement? --- Yes. I think the preference should be from the legal profession.

1569. And some Judges too when they retire. We need to start with, say, a panel of three. Full-voting rights. And perhaps the right to employ a secretary to keep the minutes and write up the draft report. Somebody full-time, acquiring expertise. It is like listening to running down cases. After you have heard a dozen, you

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10 Oct 86 - Witness: Mr Warren Khoo Leang Huat (cont.)

The Prime Minister (cont.)

know exactly what the witnesses are going to say? --- Yes. But I think a substantial amount, Mr Prime Minister, of participation by the practising lawyers themselves should still be maintained in order to instill confidence in the profession itself.

1570. Why not? --- Yes.

1571. Let us say attendance can be regular. Two lawyers from private practice. Two legal officers, one full-time paid member. Three observers, lay observers. The more we have, the better the spread of confidence, but the more difficult in getting everybody together? --- That is the situation. And that has been one of the reasons why some of these cases have taken some time to be disposed of. But a three-member corps Tribunal should not ---

1572. Plus one lay observer? --- Plus one lay observer, or two. One lay observer will be enough.

1573. You would think that an improvement on the Attorney-General's proposal and yours? --- I would think that would go for permanency and consistency. I think there is something to be said for that. But who is this one man?

1574. We can discuss this between the Bar and the Minister and the Attorney-General. Surely we can find three to start with? ---- Permanently?

1575. On a panel. They need not be fully retired. They can be partially retired. There are people in their 70s now. We are getting, like the developed countries, people in their 70s not doing full-time work. And maybe they will take this on as a public responsibility, what they owe the profession? --- Yes. You mean the lawyers in their semi-retirement?

1576. Yes? --- That would be fine.

Mr Barker Thank you, Mr Khoo.

Chairman

1577. Thank you, Mr Khoo? --- Much obliged.

[The witness withdrew.]

Chairman I would like to call Mr C.R. Rajah.

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Examination of Witness

Mr C.R. Rajah was called in and examined under oath.

Chairman

1578. May I have your full name and status? --- My name, Sir, is Chelva Retnam Rajah. I am an advocate and solicitor and I was called to the Bar in Singapore in 1972.

Mr Barker

1579. You had a hand in drafting this memorandum? --- Yes, Sir.

1580. Which is the part? --- With the rest of my Committee, but I did the actual drafting of, I think, Part I.

1581. Just Part I - Disqualification from Council Membership? --- That is correct, Sir.

1582. There are not many questions that I can ask you. You heard my questions to Mr Khoo? --- Yes.

1583. About debarment for life? --- Yes.

1584. I have suggested that after a suitable period, whether it is five years or seven years, or whatever it is, of disqualification, there should be an application to court before the disqualified advocate can stand again for election. Would you agree with that? --- That is quite acceptable to me, Sir.

1585. Then this six months' or a year's suspension, do you feel strongly on this? --- The reason why we have recommended 12 months as opposed to six months was because we felt that the suspension should in some way be connected to offences which involve fraud or dishonesty. However, we also felt that, say, suspension for six months or whatever period, and putting in as another qualification that that suspension must involve fraud or dishonesty, then it would become difficult at times to decide whether a particular suspension involved fraud or dishonesty or not. Therefore it was felt, at least by me, that if you raise the period of suspension from one of six months to one year, then it would be more likely to catch only offences which merited a suspension on grounds of fraud or dishonesty than if you left your suspension period at six months, in which case, you might catch cases which did not involve fraud or dishonesty.

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10 OCT 86 - Witness: Mr C R Rajah (cont.)

Mr Chua Sian Chin

1586. Mr Rajah, I just like to ask you a few questions on this disqualification from Council membership. You have proposed in your memorandum that those who have been debarred for five years or more should be able to qualify for Council membership? --- That is correct, Sir.

1587. Are most of the members of the Law Society in favour of this proposal? --- I cannot say, Sir. I haven't taken a survey but I would imagine that most of them would be in agreement with this proposal. If there are those who wouldn't agree, then some might say it should be three years or four years, just a question of period. But I think the principle that there should be some kind of time period of disqualification, I think most people would accept and how we arrived at five years, it was just a figure that most of us thought was appropriate.

1588. You have been here for the last two days? --- Yes.

1589. I am sure you must have heard what Miss Teo's and Ms Tang's views on this disqualification and their views are quite different from the one that you drafted? --- I am sorry, Sir. But the impression I had from their testimony which they gave here over the past two days is that they have no great objection to the question of disqualification in principle. That was the impression that I had. I may be wrong.

1590. But I thought what they said was that if a person or a lawyer who is fit to practise after a period of disbarment, then he should be fit to hold office in the Law Society and that is quite different from what you are proposing here? --- If that is their view, then it is quite different but it is not something which I myself accept. I accept Mr Attorney's reasoning that there is a difference between the right to practise your trade and the right to hold office. Whereas one results in your being able to or not able to earn a living the other is not necessary for you to earn your living. However, I do not agree with Mr Attorney on the question that this disbarment or disqualification should be for life. I think we ought to recognize the fact that simply because you have been disqualified from practice or suspended does not make you beyond the pale and I think that if you have conducted yourself well and after a certain amount of time earned the respect of your fellow practitioners, I think you should be allowed to stand for and serve on Council because you must have to a certain extent earned the respect of your fellow practitioners to get on to Council because otherwise they wouldn't have voted for you.

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10 OCT 86 - Witness: Mr C R Rajah (cont.)

Mr Chua Sian Chin (cont.)

1591. Miss Teo's and Miss Tang's views which are rather conscribed, how much support is there for that? --- It is very difficult to say, Mr Chua. I am sure if you brought all the members of the Bar one by one to this box, you will probably find about 90% of them agreeing with me. But I mean if you ask them in a different environment, they may not. So it is a difficult question to answer.

The Prime Minister

1592. You mean whether they have a hands-up vote or a secret vote? --- But I would imagine that most people would not have any strong objection to a period of disqualification.

1593. Mr Rajah, I want the opinion of a younger man on the proposal I have made to Mr Warren Khoo. You are young enough to envisage what is going to happen to this profession in 20, 30, maybe 40 years' time and it is going to change rapidly. It is not the cosy old profession. It is mass production of lawyers, mass work. If we succeed as a banking and financial centre, lawyers won't be wasting their time running around police courts. I say this to you so that I will reach the other members of your Bar. The future does not lie in police court or criminal work. The future lies in our trade, our banking, our financial services and information technology. It means people who can be trusted with information, highly sensitive, very lucrative, if neat. One of the first measures required is raising the level of standards because detection and punishment will be more certain. What if we have full-time members? One out of three, one out of five. He will be a retired practitioner, a retired Judge. He will be paid. He will have secretarial help to write the reports? --- Mr Prime Minister, I would go along with that suggestion but I myself would prefer if it were a panel. If you had perhaps three or five persons forming a panel, from which one of the three sitting on the Disciplinary Committee could ----

1594. Yes. We try and get a panel of five, if possible 10. It is not easy to find such men? --- My own personal view is that if you have just one person as the permanent member of the Disciplinary Committee you could well end up with a situation where in fact it is only he and he alone who in fact decides each Disciplinary Committee hearing.

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10 OCT 86 - Witness: Mr C R Rajah (cont.)

The Prime Minister (cont.)

1595. When you have a panel of three, it will be the same. It will be one of the three? --- That's right. But since he is not the only one who is going to be hearing all Disciplinary Committee hearings, I think probably the reaction of the other two members to his presence as the third member would be somewhat different. This is my personal view.

1596. On the question of procedures in these Disciplinary Committees, you have the Attorney-General's appendices on Legal Ethics and Professional Discipline: The American Experience. A Mr Anthony Davis, MA, LL.M, Solicitor, member of the New York Bar, practising in New York and Adjunct Professor of Law in New York Law School. Have you got a copy for him? [Document handed to witness]. It says:

'In most American states, [he is praising the American system and he is an Englishman] the judiciary are in some way responsible for the determination of disciplinary issues, and, where necessary, the imposition of sanctions. Hearings are more like criminal than civil cases. Because they are controlled by the judiciary the proceedings are much less prone to charges of "cover-up". The prosecutor's role in these proceedings is often undertaken by a full-time paid attorney, appointed by the court responsible for discipline, and all cases involving allegations of professional misconduct, including all complaints from members of the public, are referred to him.'

It is the last paragraph of the centre column? --- Yes.

1597. And you see the last paragraph of the third column:

'For once then the American legal profession may have lessons for us - [that means the British] lessons that will help the profession of solicitors from within, and, therefore, the public it seeks to serve.'

I am attracted by this because, like the Americans, we don't have the tradition of several hundred years of the Inns of Court or the Law Society and all the traditions that lead to habits, practices that reinforce each other in maintaining a certain code of honour. And even then that is breaking down because of mass numbers. The Americans have started from scratch. Each state faces a problem of starting a Bar afresh and they have come to the conclusion, "Let's do it as a proper job." Full-time attorney. A judiciary that sits

10 OCT 86 - Witness: Mr C R Rajah (cont.)

The Prime Minister (cont.)

in judgment over the Bar and proceedings more like a criminal case, not a civil case. It has worked. The American Bar is held in high regard or many American Bars, not one American Bar. Each state has its own Bar. Would your Council be willing to form a committee with the AG's Chambers and pursue this? Meanwhile, let's proceed with a panel of three? --- Mr Prime Minister, I understand what this article which you read an extract from to say two things. That in America, firstly, the judiciary is very closely involved with disciplinary proceedings and, secondly, that they have a paid prosecutor, nothing to do with the Bar Council, who does the prosecution. Examining this in the context of Singapore, comparing this with what happens in Singapore - here our disciplinary proceedings basically involve three bodies, the Inquiry Committee, the Disciplinary Committee and eventually the High Court of three Judges. The Inquiry Committee is appointed by the Chief Justice and only the Chief Justice. The members of the Disciplinary Committee are appointed again by the Chief Justice and only by the Chief Justice. And before a solicitor can be suspended or struck off he has to appear before a High Court of three Judges and only these three Judges can suspend him or strike him off. In that sense, it appears to me that there is a very close connection between the judiciary and the disciplinary process in Singapore. In relation to the prosecution of the case by some other body than the Law Society, I myself would have no great objection to this. In fact, I can imagine the Law Society welcoming it to a large extent, especially financially, because each time we lose a case we are tremendously out of pocket because we are the prosecuting body. If this was not put within our purview or not our responsibility, then we wouldn't be landed with this cost.

1598. You could be represented in all stages of the process without having the primary responsibility to initiate and to pursue the proceedings. You could have an overview of the process to make sure that your member has had a fair hearing. You are not averse to having a committee to study this? --- I think it is an idea that merits consideration and I am sure the Council would be very happy to consider the matter further with Mr Attorney.

1599. You are familiar with the last paragraph of the submission, B.29. "... a working group composed of representatives of the Attorney-General's Chambers and practising solicitors might be set up for such a drafting task with a view to presenting a fresh bill within a certain time-frame." There is no fresh Bill. This is the Bill. We have to report. The Bill can be amended. There is a

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10 OCT 86 - Witness: Mr C R Rajah (cont.)

The Prime Minister (cont.)

time-table which we want to meet. I believe the Attorney-General's Chambers will be happy to settle the amendments. Have you got members of your Committee competent to sit with his draftsmen? --- I am sure we have, Mr Prime Minister.

1600. Or you have got to go outside your Council? --- No. I think we have sufficient members inside this room to be able to do that.

1601. All right. Thank you? --- Thank you.

[The witness withdrew.]

Mr Barker Gentlemen of the Council, we have had you here for two days. We have subpoenaed you. I want to thank you for your views. But before we end, would anyone present here like to give his views in the dock? Anyone of you? --- (Mr Francis Seow) Mr Chairman, I would like to say a few words, if I may.

1602. Please? --- (Mr Francis Seow) Can I say it here or would you like me to go over there?

1603. It depends on what you are going to say? --- (Mr Francis Seow) Well, very nice things actually.

1604. Please? --- (Mr Francis Seow) Mr Chairman and Members of the Select Committee, I welcome very much indeed the remarks made by the Prime Minister at the closing of yesterday's hearing, that he and the Government would be a strong supporter of a fearless and independent Bar within the professional confines laid down by him yesterday. It occurred to me over the night that it might be worthwhile looking into this further aspect that no Members of Parliament or any member of any political party should be eligible or made not eligible to stand for the Council so as to prevent any allegation or suggestion of possible political activities or manipulating the Council. It is a course which you may wish to look into and which I submit does merit some thought and consideration. And, lastly, before I sit down, I have been requested by several members off the Society to ask the Chairman, Mr Speaker, whether it would be possible for the videotape recordings made during these past two days to be available for them to be shown to the other members of the Law Society.

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The Prime Minister

1605. No problem? --- (Mr Francis Seow) The object of the exercise is ---

Mr Barker] The answer is no problem.

Chairman

1606. Any time? --- (Mr Francis Seow) Very much obliged. So that maybe we could bring it to them and perhaps take up the points raised by the Prime minister regarding an Extraordinary General Meeting. Whom do I contact, Mr Chairman?

1607. The Clerk of Parliament? --- (Mr Francis Seow) I am very much obliged.

Chairman] Anybody else who wants to speak?

Mr Barker] You wanted to say something?

Chairman

1608. Please? --- (Mr Patrick Nathan) Mr Chairman and hon. Members of the Select Committee, the Prime Minister referred to a particular paragraph, B.29 of the memorandum, where he said perhaps a working group could meet with the Attorney-General's Chambers. I have got a suggestion and it has always been on my mind. At present, there is the Executive Secretary who is a qualified lawyer and now we have a co-ordinator who is running a criminal legal aid scheme. I was thinking whether it would be within the ambit of this group of Council members to meet the Attorney-General, whether recommendation could be made for us to appear in court because there are so many matters that involve the Law Society.

The Prime Minister

1609. This is not a subject that we can bring our minds to bear on. We have not deliberated on this matter. This is a matter of admission, a prerogative of the Chief Justice. He decides who appears before his courts? --- (Mr Patrick Nathan) I see. I just thought perhaps we can list it.

MINUTES OF EVIDENCE

Chairman) Anyone else? If not, this brings us to the end of our hearing of oral evidence in respect of the Legal Profession (Amendment) Bill. I would like to thank the President and the members of his Council for their presence here for the last two days. It now remains for the Committee to consider the evidence it has heard and various memoranda which have been submitted to it to consider the Bill clause by clause and to finalize our report to Parliament. The meeting is now adjourned to a date to be fixed. Thank you very much.

Committee adjourned at 5.05 pm
to a date to be fixed.

MINUTES OF PROCEEDINGS

1st Meeting

Wednesday 1st October, 1986

3.00 p.m.

PRESENT:

Mr Speaker (in the Chair)

Mr E.W. Barker

Mr Bernard Chen

Mr Chua Sian Chin

Prof S. Jayakumar

Dr Tan Cheng Bock

ABSENT:

Mr Lee Kuan Yew

Mr Tang See Chim (on leave of absence).

The Committee deliberated.

Agreed that the written representation, which had been circulated as Paper 1, be printed.

Ordered, that the Members of the Council of the Law Society of Singapore be summoned to attend before the Committee on 9th October 1986 at 11.00 a.m. to give oral evidence and produce such documents as may be necessary.

Ordered, that the Members of the Special Assignments Sub-Committee of the aforementioned Society be summoned to attend before the Committee on 9th October 1986 at 2.30 p.m. to give oral evidence and produce such documents as may be necessary.

Agreed, that the evidence of witnesses examined before this Committee be taken on oath.

Agreed, that at proceedings of the Committee (other than the deliberations of the Committee), admission of strangers for the purpose of television and other media coverage be allowed, subject to any directions of the Speaker or Chairman of the Committee.

Agreed, that the Committee do meet again at 11.00 a.m. on Thursday, 9th October and Friday, 10th October, 1986.

Adjourned till 11.00 a.m. on
Thursday, 9th October, 1986.

2nd Meeting

Thursday, 9th October, 1986

11.00 a.m.

PRESENT:

Mr Speaker (in the Chair)

Mr E.W. Barker

Mr Bernard Chen

Mr Chua Sian Chin

Prof S Jayakumar

Mr Lee Kuan Yew

Dr Tan Cheng Bock

Mr Tang See Chim.

1. The following witnesses were examined upon oath: -

(1) Mr Tan Boon Teik, Attorney-General;

(2) Mr Harry Elias) Members of the Council of the

(3) Mr J.S. Khosa) Law Society of Singapore;

(4) Mr Mirza M. Namazie)

(5) Mr Francis T. Seow, President, Law Society of Singapore;

(6) Mr Patrick Nathan, Executive Secretary, Law Society of Singapore; and

(7) Miss Teo Soh Lung, Chairman of the Special Assignments Sub-Committee of the Law Society of Singapore.

Adjourned till 11.00 a.m. on
Friday, 10th October, 1986.

3rd Meeting

**Friday, 10th October, 1986
11.00 a.m.**

PRESENT:

Mr Speaker (in the Chair)

Mr E.W. Barker

Mr Bernard Chen

Mr Chua Sian Chin

Prof S Jayakumar

Mr Lee Kuan Yew

Dr Tan Cheng Bock

Mr Tang See Chim.

1. Miss Teo Soh Lung and Mr Patrick Nathan were further examined.

2. Mr Lim Chor Pee, Advocate and Solicitor, was examined upon oath.

3. Miss Teo Soh Lung and Mr Francis Seow were further examined.

4. The following witnesses were examined upon oath:

(1) Ms Tang Fong Har, Member of the Special Assignments
Sub-Committee of the Law Society of Singapore;

(2) Mr Er Kwong Wah, Secretary, Legal Service Commission,
Secretary, Public Service Commission and Deputy
Secretary, Public Service Division, Ministry of Finance;

(3) Mr Subhas Anandan, Advocate and Solicitor;

(4) Mr Mohan Das Naidu) Members of the Council of the

(5) Mr Warren Khoo) Law Society of Singapore

(6) Mr C.R. Rajah)

Adjourned to a date to be fixed

4th Meeting

**Tuesday, 14th October, 1986
3.00 p.m.**

PRESENT:

Mr Speaker (in the Chair)
Mr E.W. Barker
Mr Bernard Chen
Mr Chua Sian Chin
Prof S Jayakumar
Dr Tan Cheng Bock
Mr Tang See Chim

ABSENT:

Mr Lee Kuan Yew.

1. The Committee deliberated.

Agreed, that the written representations, which had been circulated as Papers 2 and 4*, be printed.

Agreed, that the memorandum from Mr Justice P. Coomaraswamy be printed.

2. Bill considered clause by clause.

Clause 1 agreed to.

Amendments made with the consent of the Speaker and the general assent of Members present under S.O. 33, as follows.

Clause 2:

Amendments made -

(1) in page 1, lines 5 and 6, by leaving out "Legal Profession Act (referred to in this Act as the principal Act)" and inserting "principal Act";

* Reproduced as Paper 3 at Appendix II.

- (2) in page 1, line 8, by leaving out "A" and inserting "Subject to subsection (2B), a practitioner";
- (3) in page 1, line 9, by leaving out "practice" and inserting "practising as an advocate and solicitor";
- (4) in page 2, line 3, by leaving out "Council." and inserting "Council. ";
- (5) in page 2, after line 3, by inserting -

"(2B) A practitioner member may, after 5 years following the date of his conviction or the date he was reinstated to the roll or the date of the expiry of his suspension, whichever is the later, with the leave of a court of 3 judges one of whom shall be the Chief Justice, be eligible for election or appointment as a member of the Council.

(2C) Where an application for leave under subsection (2B) has been turned down, the applicant shall not be entitled to make another application under subsection (2B) within the period of 5 years from the date the first-mentioned application was dismissed.

(2D) An application for leave under subsection (2B) shall be made by motion.

(2E) The court of 3 judges shall not give leave under subsection (2B) unless -

- (a) notice of intention to apply therefor and all documents in support thereof have been served at least 14 clear days before the date of the hearing on the Attorney-General and on the Society, either or both of whom may be represented at the hearing of, and may oppose the application;
- (b) the applicant satisfies the court that his conduct since his conviction, striking-out or suspension did not make him unfit to be a member of the Council; and

(c) the applicant exhibits affidavits of at least two practitioner members who are and have been in active practice in Singapore for a total of not less than 5 out of the 7 years immediately preceding the date of the application attesting to the applicant's good behaviour from the date of his conviction, striking-out or suspension and stating whether in their opinion he is a fit and proper person to be a member of the Council.

(2F) A practitioner member shall before his appointment or election as a member of the Council file a declaration with the Society stating that he is not disqualified from holding office as a member of the Council by virtue of subsection (2A) or, if he is so disqualified, stating that he has obtained the leave of the court under subsection (2B) for election or appointment as a member of the Council.

(2G) Any person who fails to comply with subsection (2F) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.".- (Minister for Law).

Clause 2, as amended, agreed to.

Clause 3:

Amendment made, in page 2, by leaving out lines 4 to 10 inclusive and inserting -

"Section 59 of the principal Act is amended -

(a) by deleting paragraph (a) and substituting the following paragraph:

"(a) he has been struck off the roll or suspended from practising as an advocate and solicitor or has been convicted of an offence involving fraud or dishonesty"; and

(b) by inserting, immediately after subsection (3), the following subsection:

"(4) Subsections (2) and (3) shall not apply to a member of the Council who has obtained the leave of the court under section 51(2B) prior to his election or appointment as a member of the Council."." - (Minister for Law).

Clause 3, as amended, agreed to.

Clause 4:

Amendment made, in page 2, line 11, by leaving out from "is" to the end of line 22 and inserting -

"repealed and the following section substituted therefor:

"Appointment of Inquiry Panel. 85.-(1) For the purpose of enabling Inquiry Committees to be constituted in accordance with this Part, the Chief Justice shall appoint a panel (hereinafter referred to as the Inquiry Panel) consisting of not more than 20 advocates and solicitors (whether in practice or not) and not more than 20 lay persons.

(2) An advocate and solicitor shall be eligible to be appointed as a member of the Inquiry Panel if he has not less than 12 years' standing.

(3) A member of the Inquiry Panel shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(4) The Chief Justice may at any time remove from office any member of the Inquiry Panel or fill any vacancy in its membership.

(5) The Chief Justice shall appoint a member of the Inquiry Panel to be the Chairman."." - (Minister for Law).

Marginal title altered to "Repeal and re-enactment of section 85."

Clause 4, as amended, agreed to.

Clause 5:

Amendment made, in page 2, by leaving out line 24 to line 5 in page 3 and inserting -

"(a) by deleting the words "Inquiry Committee" at the end of subsection (1) and substituting the words "Chairman of the Inquiry Panel";

(b) by deleting subsections (2) and (3) and substituting the following subsections:

"(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Chairman of the Inquiry Panel to constitute an Inquiry Committee or apply to the Chief Justice to appoint a Disciplinary Committee where the Supreme Court or the judge thereof or the Attorney-General requests that the matter or complaint be referred to a Disciplinary Committee.

(2A) Where a written application or complaint is referred to the Chairman of the Inquiry Panel, he shall forthwith constitute an Inquiry Committee consisting of -

(a) two members of the Inquiry Panel who are advocates and solicitors;

(b) one member of the Inquiry Panel who is a lay person; and

(c) a legal officer who has not less than 10 years' experience,

to inquire into the application or complaint.

(2B) The Chairman of an Inquiry Committee shall be an advocate and solicitor and shall have a casting vote.

(2C) All the members of an Inquiry Committee shall be personally present to constitute a quorum for the transaction of any business.

(3) Every written application or complaint received by the Society shall be supported by such statutory declarations or affidavits as the Chairman of the Inquiry Panel or an Inquiry Committee may require."; and

(c) by deleting subsection (5)". - (Minister for Law).

Clause 5, as amended, agreed to.

Clause 6:

Amendment made, in page 3, line 6, by leaving out from "by" to the end of line 10 and inserting -

"deleting subsection (1) and substituting the following subsection:

"(1) An Inquiry Committee shall, within two weeks of its appointment, commence its inquiry into the matter and report its findings to the Council as expeditiously as may be reasonably expected of it but in any event not later than two months after the commencement of such inquiry."". - (Minister for Law).

Clause 6, as amended, agreed to.

Clause 7:

Amendments made -

- (1) in page 3, line 16, after "investigation;", by inserting "or";
- (2) in page 3, line 21, by leaving out "; or" and inserting a comma; and
- (3) in page 3, by leaving out lines 22 to 27 inclusive. - (Minister for Law).

Clause 7, as amended, agreed to.

Clause 8:

Amendments made -

- (1) in page 3, line 35, by leaving out "a committee of 3 persons" and inserting "one or more committees";

(2) in page 3, after line 36, by inserting -

"(a) a person from a panel of not more than 5 persons appointed by the Chief Justice being persons who have been Judges of the Supreme Court or who have had not less than 12 years' experience as advocates and solicitors;"

(3) in page 3, line 37, by leaving out "(a)" and inserting "(b)";

(4) in page 4, by leaving out lines 1 to 5 inclusive and inserting -

"(c) a legal officer who has at least 10 years' service; and

(d) a member of the Inquiry Panel who is a lay person,";

(5) in page 4, lines 6 and 7, by leaving out "a Disciplinary Committee" and inserting "Disciplinary Committees"; and

(6) in page 4, by leaving out lines 12 to 22 inclusive and inserting -

"(c) by inserting, immediately after subsection (5), the following subsections:

"(6) The lay person who is a member of a Disciplinary Committee shall not vote on any question or matter to be decided by the Disciplinary Committee and need not be present at every meeting of the Disciplinary Committee.

(7) Except as provided in subsection (6), all members of a Disciplinary Committee shall be personally present to constitute a quorum for the transaction of any business of the Disciplinary Committee.

(8) A member of a Disciplinary Committee not being a lay person who is not a practising advocate and solicitor shall be paid for each case such remuneration as the Chief Justice may determine."." - (Minister for Law).

Clause 8, as amended, agreed to.

Clauses 9 to 11 inclusive agreed to.

New Clauses:

New clause (A) immediately after clause 1 brought up and read a first time: --

"Amendment

of section

2.

Section 2 of the Legal Profession Act (referred to in this Act as the principal Act) is amended by deleting the definition of "Inquiry Committee" and substituting the following definitions:

"Inquiry Committee" means an Inquiry Committee constituted under section 86;

"lay person", in relation to an Inquiry Committee or Disciplinary Committee, means an architect, accountant, banker, company director, insurer, professional engineer, medical practitioner or a person who possesses such other qualifications as may be approved by the Chief Justice and the Attorney-General;"
- (Minister for Law).

New clause read a second time and added to the Bill.

New clause (B) immediately after new clause (A) brought up and read a first time: -

"Amendment

of section

39.

Section 39(1)(c) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it". - (Minister for Law).

New clause read a second time and added to the Bill.

New clause (C) immediately after clause 3 brought up and read a first time:-

"Amendment

of section

61.

Section 61(1)(d) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it". - (Minister for Law).

New clause read a second time and added to the Bill.

New clause (D) immediately after clause 8 brought up and read a first time:-

"Amendment
of section
92.

Section 92(1) of the principal Act is amended -

(a) by deleting the colon at the end of the third line; and

(b) by deleting the proviso." -
(Minister for Law).

New clause read a second time and added to the Bill.

New clause (E) immediately after clause 9 brought up and read a first time:-

"Amendment
of section
93.

Section 93 of the principal Act is amended -

(a) by inserting, immediately after subsection (2), the following subsection:

"(2A) A Disciplinary Committee shall carry out its work expeditiously and the Society may apply to the Chief Justice for directions to be given to the Disciplinary Committee if the Disciplinary Committee fails to make any finding and determination within 6 months from the date of its appointment.";

(b) by deleting the words "and to the person who made the application or complaint" in subsection (3)(b); and

(c) by inserting, immediately after subsection (3), the following subsections:

"(4) The findings and determination of the Disciplinary Committee shall be published.

(5) A copy of the entire record of the proceedings of the Disciplinary Committee including its findings and determination shall be made public and copies thereof shall be made available to the members of the public upon payment of the prescribed fee." - (Minister for Law).

New clause read a second time and added to the Bill.

New clause (F) immediately after clause 10 brought up and read a first time:-

"Amendment
of section
98.

Section 98 of the principal Act is amended by inserting, immediately after subsection (7), the following subsection:

"(7A) The Chief Justice or any other Judge of the Supreme Court shall not be a member of the court of 3 judges when the application under subsection (6) is in respect of a complaint made or information referred to the Society by him." - (Minister for Law).

New clause read a second time and added to the Bill.

Consequential amendments made to the numbering of clauses consequent on the addition of new clauses (A) to (F).

Bill to be reported.

Report

3. The Chairman's report brought up and read the first time.

4. Resolved, "That the Chairman's report be read a second time paragraph by paragraph.

Paragraphs 1 to 7 inclusive read and agreed to.

5. Resolved, "That this report be the Report of the Select Committee to Parliament."

6. Agreed that the Chairman do present the Report to Parliament when typed copies of the Report are available for distribution to Members of Parliament.

OFFICIAL REPORT

TUESDAY, 14TH OCTOBER, 1986

CONTENTS

Clause 1 agreed to

Clause 2, as amended, agreed to

Clause 3, as amended, agreed to

Clause 4, as amended, agreed to

Clause 5, as amended, agreed to

Clause 6, as amended, agreed to

Clause 7, as amended, agreed to

Clause 8, as amended, agreed to

Clauses 9 to 11 inclusive agreed to

New Clauses (A) to (F) inclusive agreed to

Bill to be reported

Report agreed to

OFFICIAL REPORT

Tuesday, 14th October, 1986

The Committee met at 3.00 pm

Present:

Mr Speaker (Dr Yeoh Ghim Seng (Joo Chiat)).
Mr E.W. Barker (Tanglin), Minister for Law.
Mr Bernard Chen (Clementi).
Mr Chua Sian Chin (MacPherson).
Prof. S. Jayakumar (Bedok), Minister for Home Affairs and Second Minister for Law.
Dr Tan Cheng Bock (Ayer Rajah).
Mr Tang See Chim (Chua Chu Kang).

Absent:

Mr Lee Kuan Yew (Tanjong Pagar), Prime Minister.

In attendance:

Mr Tan Boon Teik, Attorney-General.
Mr Goh Phai Cheng, Deputy Parliamentary Counsel.

[Mr Speaker in the Chair]

The Chairman: Gentlemen, the item on the agenda is the consideration of the Legal Profession (Amendment) Bill, clause by clause. A notice of amendments from the Minister for Law is in front of you.

Mr Barker: Yes, Sir. I have given notice of the amendments. Can I move the first amendment?

The Chairman: All these amendments are subject to the consent of the Speaker and, the general assent of Members present, under Standing Order 33. I give my consent. Do I have the general assent of Members to proceed with the Minister's amendments?

Hon. Members indicated assent.

Clause 1 agreed to stand part of the Bill.

Clause 2 - (Amendment of section 51.)

Amendment made:

In page 1, lines 5 and 6, to leave out "Legal Profession Act (referred to in this Act as the principal Act)", and insert "principal Act".- [Mr Barker.]

Mr Barker: Sir, I beg to move,

In page 1, line 8, to leave out "A", and insert "Subject to subsection (2B), a practitioner".

This is all tidying it up, Sir.

Amendment agreed to.

Mr Barker : Sir, I beg to move,

In page 1, line 9, to leave out "practice", and insert "practising as an advocate and solicitor".

Again, a tidying up exercise, Sir.

Amendment agreed to.

Amendment made:

In page 2, line 3, to leave out "Council.".", and insert "Council." - [Mr Barker.]

Mr Barker: Sir, I beg to move,

In page 2, after line 3, to insert -

"(2B) A practitioner member may, after 5 years following the date of his conviction or the date he was reinstated to the roll or the date of the expiry of his suspension, whichever is the later, with the leave of a court of 3 judges one of whom shall be the Chief Justice, be eligible for election or appointment as a member of the Council.

(2C) Where an application for leave under subsection (2B) has been turned down, the applicant shall not be entitled to make another application under subsection (2B) within the period of 5 years from the date the first-mentioned application was dismissed.

(2D) An application for leave under subsection (2B) shall be made by motion.

(2E) The court of 3 judges shall not give leave under subsection (2B) unless -

(a) notice of intention to apply therefor and all documents in support thereof have been served at least 14 clear days before the date of the hearing on the Attorney-General and on the Society, either or both of whom may be represented at the hearing of, and may oppose the application;

- (b) the applicant satisfies the court that his conduct since his conviction, striking-out or suspension did not make him unfit to be a member of the Council; and
- (c) the applicant exhibits affidavits of at least two practitioner members who are and have been in active practice in Singapore for a total of not less than 5 out of the 7 years immediately preceding the date of the application attesting to the applicant's good behaviour from the date of his conviction, striking-out or suspension and stating whether in their opinion he is a fit and proper person to be a member of the Council.

(2F) A practitioner member shall before his appointment or election as a member of the Council file a declaration with the Society stating that he is not disqualified from holding office as a member of the Council by virtue of subsection (2A) or, if he is so disqualified, stating that he has obtained the leave of the court under subsection (2B) for election or appointment as a member of the Council.

(2G) Any person who fails to comply with subsection (2F) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000."

If I may explain, Sir, our original proposal was that the practitioner be permanently barred. The Law Society suggested a period of five years. In Select Committee, I put it to them that after five years, perhaps the applicant can apply to court. And this is a compromise which is set out in these paragraphs. It goes into detail as to how leave is to be obtained from the court of three Judges, that notice of 14 clear days be given to the Attorney-General, and then sets out the evidence, "the applicant exhibits affidavits of at least two practitioner members ..." etc. Paragraph (2F) puts them on notice before they stand for election, that a practitioner member shall file a declaration that he is not so disqualified. In the last paragraph, if he fails to do so, he is guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000.

Briefly, that is what these new paragraphs (2B) to (2G) set out.

Amendment agreed to.

Clause 2, as amended, agreed to stand part of the Bill.

Mr Tang See Chim: Sir, I see that the Minister's amendment does not meet the six months' suspension. It is simply suspension.

Mr Barker: Yes, that is in clause 3.

Mr Tang See Chim: Because I was looking at your original amendment, which says "six months". So I just wanted to make that point.

Mr Barker: Thank you. Can I press on, Sir.

The Chairman: Yes. Now we are at clause 3.

Clause 3 - (Amendment of section 59.)

Mr Barker: Sir, I beg to move,

In page 2, to leave out lines 4 to 10, and insert -

"Section 59 of the principal Act is amended -

(a) by deleting paragraph (a) and substituting the following paragraph:

"(a) he has been struck off the roll or suspended from practising as an advocate and solicitor or has been convicted of an offence involving fraud or dishonesty"; and

(b) by inserting, immediately after subsection (3), the following subsection:

"(4) Subsections (2) and (3) shall not apply to a member of the Council who has obtained the leave of the court under section 51(2B) prior to his election or appointment as a member of the Council."."

Sir, I have already dealt with this.

Amendment agreed to.

Clause 3, as amended, agreed to stand part of the Bill.

Clause 4 - (Amendment of section 85.)

Mr Barker: Sir, I beg to move,

In page 2, line 11, to leave out from "is" to the end of line 22, and insert -

"repealed and the following section substituted therefor:

"Appoint-
ment of
Inquiry
Panel.

85.-(1) For the purpose of enabling Inquiry Committees to be constituted in accordance with this Part, the Chief Justice shall appoint a panel (hereinafter referred to as the Inquiry Panel) consisting of not more than 20 advocates and solicitors (whether in practice or not) and not more than 20 lay persons.

(2) An advocate and solicitor shall be eligible to be appointed as a member of the Inquiry Panel if he has not less than 12 years' standing.

(3) A member of the Inquiry Panel shall be appointed for a term of 3 years and shall be eligible for re-appointment.

(4) The Chief Justice may at any time remove from office any member of the Inquiry Panel or fill any vacancy in its membership.

(5) The Chief Justice shall appoint a member of the Inquiry Panel to be the Chairman."."

May I just explain what clause 4 is about. In the original Bill we suggested that three advocates and solicitors form a panel of the Committee of Inquiry. Now we will have an Inquiry Panel of 20 advocates and solicitors (whether in practice or not) and not more than 20 lay persons. The net result of this is that it is the Chief Justice who appoints the Inquiry Panel, and when they sit, I think, that will be dealt with later.

Amendment agreed to.

The Chairman: The marginal title will be altered to read "Repeal and re-enactment of section 85."

Clause 4, as amended, agreed to stand part of the Bill.

Clause 5 - (Amendment of section 86.)

Mr Barker: Sir, I beg to move,

In pages 2 and 3, to leave out from line 24 to line 5 in page 3 and insert -

"(a) by deleting the words "Inquiry Committee" at the end of subsection (1) and substituting the words "Chairman of the Inquiry Panel";

(b) by deleting subsections (2) and (3) and substituting the following subsections:

"(2) The Supreme Court or any judge thereof or the Attorney-General may at any time refer to the Society any information touching upon the conduct of a solicitor in his professional capacity and the Council shall issue a written order to the Chairman of the Inquiry Panel to constitute an Inquiry Committee or apply to the Chief Justice to appoint a Disciplinary Committee where the Supreme Court or the judge thereof or the Attorney-General requests that the matter or complaint be referred to a Disciplinary Committee.

(2A) Where a written application or complaint is referred to the Chairman of the Inquiry Panel, he shall forthwith constitute an Inquiry Committee consisting of -

(a) two members of the Inquiry Panel who are advocates and solicitors;

(b) one member of the Inquiry Panel who is a lay person; and

(c) a legal officer who has not less than 10 years' experience,

to inquire into the application or complaint.

(2B) The Chairman of an Inquiry Committee shall be an advocate and solicitor and shall have a casting vote.

(2C) All the members of an Inquiry Committee personally present shall constitute a quorum for the transaction of any business.

(3) Every written application or complaint received by the Society shall be supported by such statutory declarations or affidavits as the Chairman of the Inquiry Panel or an Inquiry Committee may require."; and

(c) by deleting subsection (5)."

Under clause 5, an Inquiry Committee will consist of four persons, two from the Bar, one who is from the Legal Service, and one a lay person. If they vote equally, in other words, two-all, the Chairman of the Inquiry will have the casting vote.

Prof. Jayakumar: Mr Chairman, can I refer to page 8 of the Minister's notice? This is on clause 5, subsection (2C).

Mr Barker: Page 8, (2C). At the moment we are agreed that "All the members of an inquiry Committee personally present shall constitute a quorum for the transaction of any business."

Prof. Jayakumar: It should read:

"All the members of an Inquiry Committee shall be personally present to constitute a quorum .. ."

And, likewise, on page 11, Sir, subsection (7) in clause 8:

"Except as provided in subsection (6), all members of a Disciplinary Committee shall be personally present to constitute

Mr Barker: Yes, I think this sounds much better, " All members of a Disciplinary Committee shall be personally present to constitute ...". All right?

Prof. Jayakumar: Yes.

The Chairman: These amendments will be done.

Amendment agreed to.

Clause 5, as amended, agreed to stand part of the Bill.

Clause 6 - (Amendment of section 87.)

Mr Barker: I beg to move, Sir,

In page 3, line 6, to leave out from "by" to the end of line 10, and insert -

"deleting subsection (1) and substituting the following subsection:

"(1) An Inquiry Committee shall, within two weeks of its appointment, commence its inquiry into the matter and report its findings to the Council as expeditiously as may be reasonably expected of it but in any event not later than two months after the commencement of such inquiry."."

We do not want them to go to sleep over these inquiries.

Amendment agreed to.

Clause 6, as amended, agreed to stand part of the Bill.

Clause 7 - (Repeal and re-enactment of section 90.)

Mr Barker: Sir, I beg to move,

In page 3, line 16, after "investigation;" to insert "or".

This is just a tidying up exercise.

Amendment agreed to.

Further Amendments made:

In page 3, line 21, to leave out "; or", and insert a comma.
--- [Mr Barker.]

In page 3, to leave out, lines 22 to 27. --- [Mr Barker.]

Clause 7, as amended, agreed to stand part of the Bill.

Clause 8 - (Amendment of section 91.)

Mr Barker: Sir, I beg to move,

In page 31, line 35, to leave out "a committee of 3 persons",
and insert "one or more committees".

In page 3, after line 36, to insert -

"(a) a person from a panel of not more than 5 persons appointed
by the Chief Justice being persons who have been Judges of the
Supreme Court or who have had not less than 12 years' experience as
advocates and solicitors;"

In page 3, line 37, to leave out "(a)", and insert "(b)".

In page 4, to leave out lines 1 to 5, and insert -

"(c) a legal officer who has at least 10 years' service;
and

(d) a member of the Inquiry Panel who is a lay person,"

In page 4, lines 6 and 7, to leave out "a Disciplinary
Committee", and insert "Disciplinary Committees".

In page 4, to leave out lines 12 to 22, and insert -

"(c) by inserting, immediately after subsection (5), the following subsections:

"(6) The lay person who is a member of a Disciplinary Committee shall not vote on any question or matter to be decided by the Disciplinary Committee and need not be present at every meeting of the Disciplinary Committee.

(7) Except as provided in subsection (6), all members of a Disciplinary Committee shall be personally present to constitute a quorum for the transaction of any business of the Disciplinary Committee.

(8) A member of a Disciplinary Committee not being a lay person who is not a practising advocate and solicitor shall be paid for each case such remuneration as the Chief Justice may determine."."

Sir, if I may deal with this briefly. Previously, three practising advocates and solicitors sat in judgment over a fellow colleague. We proposed in the Bill that there should be three persons - one from the Bar, one legal officer and one layman. The Law Society made representations. They were not happy with this. They said a lay person could not help much. He does not know the law. They suggested that the lay person sits in the Committee of Inquiry which we have accepted. I have explained to you just now. The Committee of Inquiry will now have four persons - two advocates and solicitors, one from the Legal Service, and one layman. If it is a draw, the Chairman has a casting vote. In the Disciplinary Committee, one member will be drawn from a panel of five appointed by the Chief Justice. They may be Judges of the Supreme Court or advocates and solicitors who have retired but have had 12 years' practice. So one person from this panel will sit. In addition, we will have one advocate and solicitor and a legal officer who has at least 10 years' service and then a member of the Inquiry Panel who is a lay person but he will be there just as an observer.

The Chairman : This was proposed by Mr Warren Khoo.

Mr Barker: Yes. But now, instead, we are having two advocates - one permanent member, one from the Bar and one legal officer. So to put it again, three. The Disciplinary Committee will have (1) one member from the panel of five; (2) a practising advocate and solicitor; (3) a legal officer with 10 years' experience. In addition, we will have a layman who will have no casting vote but just to see that justice is being done. We are not allowing him to come in and vote but just to watch.

The Chairman: He has no say.

Mr Barker: He has no say.

The Chairman: He just sits there.

Mr Barker: He just sits there. This is the practice also in England. I hope that is clear.

Dr Tan Cheng Bock: That lay person who is to be the observer in the Disciplinary Committee, is he the same person also in the Inquiry Committee?

Mr Barker: No.

Prof. Jayakumar: He is in the Inquiry Panel.

Mr Tang See Chim : Mr Chairman, that is, in fact, the point I want to take up, whether we should expressly state that if a lay member of the Inquiry Panel has heard a case he should not be the observer at the Disciplinary Committee in that particular case.

Mr Barker: I do not think it is necessary to so specify, because he is only an onlooker.

The Chairman: He has no say. He has got no vote.

Mr Tang See Chim: If our purpose is to give as wide a publicity as possible to disciplinary proceedings, then I think we should have different lay members observing different proceedings.

Mr Barker: It is really not necessary because later on in the Bill we will be providing that all the proceedings be public, in the sense that they will be published.

Mr Tang See Chim: I see.

Amendments agreed to.

Clause 8, as amended, agreed to stand part of the Bill.

Clauses 9 to 11 inclusive agreed to stand part of the Bill.

New Clause (A) -

"Amendment
of section
2.

Section 2 of the Legal Profession Act (referred to in this Act as the principal Act) is amended by deleting the definition of "Inquiry Committee" and substituting the following definitions:

""Inquiry Committee" means an Inquiry Committee constituted under section 86;

"lay person", in relation to an inquiry Committee or Disciplinary Committee, means an architect, accountant, banker, company director, insurer, professional engineer, medical practitioner or a person who possesses such other qualifications as may be approved by the Chief Justice and the Attorney-General;". - [Mr Barker].

Brought up, and read the First time.

Clause read a Second time and added to the Bill.

Mr Barker: Sir, it is intended that this new clause be inserted immediately after clause 1.

The Chairman: This will be done.

New Clause (B) -

"Amendment of section 39. Section 39(1)(c) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it". - [Mr Barker].

Brought up, and read the First time.

Mr Barker: Sir, I beg to move, "That the clause be read a Second time."

This is to tie down the Law Society, as they made representations that they want legislation submitted to them. That is the purpose of this new clause.

Amendment agreed to.

Clause read a Second time and added to the Bill.

Mr Barker: Sir, it is intended that this clause be inserted immediately after new clause (A).

The Chairman: This will be done.

New Clause (C) -

"Amendment of section 61. Section 61(1)(d) of the principal Act is amended by inserting, immediately after the word "legislation", the words "submitted to it". - [Mr Barker].

Brought up, and read the First time.

Clause read a Second time and added to the Bill.

Mr Barker: Sir, it is intended that this clause be inserted immediately after clause 3.

The Chairman: This will be done.

New Clause (D) -

"Amendment
of section
92.

Section 92(1) of the principal Act is amended -

(a) by deleting the colon at the end of the third line; and

(b) by deleting the proviso.". --- [Mr Barker]

Brought up , and read the First time.

Clause read a Second time and added to the Bill.

Mr Barker: Sir, it is intended that this clause be inserted immediately after clause 8.

The Chairman: This will be done.

New Clause (E) -

"Amendment
of section
93.

Section 93 of the principal Act is amended -

(a) by inserting, immediately after subsection (2), the following subsection:

"(2A) A Disciplinary Committee shall carry out its work expeditiously and the Society may apply to the Chief Justice for directions to be given to the Disciplinary Committee if the Disciplinary Committee fails to make any finding and determination within 6 months from the date of its appointment.";

(b) by deleting the words "and to the person who made the application or complaint" in subsection (3)(b); and

(c) by inserting, immediately after subsection (3), the following subsections:

"(4) The findings and determination of the Disciplinary Committee shall be published.

(5) A copy of the entire record of the proceedings of the Disciplinary Committee including its findings and determination shall be made public and copies thereof shall be made available to the members of the public upon payment of the prescribed fee."." - [Mr Barker]

Brought up, and read the First time.

Mr Barker: Sir, I beg to move, "That the clause be read a Second time."

Sir, as we do not want them to delay, we have added the provision under paragraph (a) above.

This clause speaks for itself.

Amendment agreed to .

Clause read a Second time and added to the Bill .

The Chairman: The new clause to be inserted immediately after clause 9. This will be done.

New Clause (F) -

"Amendment of section 98 . Section 98 of the principal Act is amended by inserting, immediately after subsection (7), the following subsection:

"(7A) the Chief Justice or any other Judge of the Supreme Court shall not be a member of the court of 3 judges when the application under subsection (6) is in respect of a complaint made or information referred to the Society by him."." --- [Mr Barker]

Brought up , and read the First time .

Mr Barker: Sir, I beg to move, "That the clause be read a Second time."

Sir, you will remember that in Select Committee a submission made by the Law Society was that we should spell this out expressly. Hence, it is being done.

Amendment agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause to be inserted immediately after clause 10. This will be done.

Mr Barker: Sir, there are consequential amendments to renumber the existing clauses of the Bill consequent on the insertion of these new clauses (A) to (F).

The Chairman: This will be done.

Mr Barker: Sir, I would like to thank members of the Attorney-General's Office for their presence here and for the hard work which they did with the Bar Committee yesterday and this morning. This is a rush job.

Mr Tang See Chim: Mr Chairman, I just want to clarify. Perhaps we could ask the Attorney-General, who is present, to clarify that the Inquiry Committee, here defined as a Committee constituted under section 86, I just want to clarify that the Committee constituted under section 86 does not include all the members. Every member of the inquiry Committee would have to be present rather than a panel of members. Because, Mr Chairman, the Second Minister for Law has just amended, on page 8, section (2C) to say that, "All the members of an Inquiry Committee shall be personally present to constitute a quorum...".

Prof. Jayakumar: That means the four of them.

Mr Tang See Chim: Yes. I just want to ensure that only four of them need to be present and not the whole lot of them.

Prof. Jayakumar: The Inquiry Committee is different from the Inquiry Panel. The Inquiry Committee consists of four persons.

The Chairman: The panel is made up of 20.

Mr Tan Boon Teik: The Panel consists of 20 advocates and solicitors and 20 lay men.

Mr Tang See Chim: I should have thought it should be the other way round. The Inquiry Committee should be the whole lot and panels of four.

Mr Tan Boon Teik: No.

Prof. Jayakumar: It is the terminology.

Mr Tang See Chia: All right. Fair enough.

Bill to be reported.

REPORT

The Chairman: We now come to our Report to Parliament which is the next item on the agenda. Hon. Members have before them a draft Report. Is it agreed that the Chairman's draft Report be accepted as a basis for discussion?

Hon. Members indicated assent.

Chairman's Report brought up, and read the First time.

Question put, and resolved.

That the Chairman's Report be read a Second time, paragraph by paragraph.

Paragraphs 1 to 7 inclusive read and agreed to stand part of the Report.

Question put, and resolved.

That this Report be the Report of the Committee to Parliament.

The Chairman : Is it agreed that the Chairman present the Report of the Committee to Parliament when typed copies thereof are available for distribution to Members of Parliament?

Hon. Members indicated assent.

Mr Barker: Thank you, Sir.

The Chairman : Thank you, gentlemen. The Committee is now functus officio.

Committee adjourned at 3.55 pm.

