

BETWEEN

ONG JIN HUAT

Appellant/Defendant

AND

THE LAW SOCIETY OF BRUNEI DARUSSALAM

Respondent/Plaintiff

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No.8 of 2022)

Lunn, Sir Peter Gross and Woolley, JJA

Date of Hearing: 3rd June, 2024.

Date of Judgment: 29th July, 2024.

- *Headnote: Civil law: appeal, against judge's dismissal of Deputy Chief Registrar's dismissal of counterclaim, dismissed.*
- *Costs: costs of appeal to Respondent. No order as to costs orders below.*
- *Appellant complains of conduct of three lawyers who had previously acted for him, alleging collusion.*
- *Two complaints advanced to Law Society.*
- *Law Society dismissed first complaint summarily.*
- *Law Society considered second complaint, found no evidence of collusion, and decided that no formal investigation was necessary.*
- *Appellant counterclaimed seeking (inter alia) an order that the complaint lodged against the three lawyers be reassessed and reinvestigated by a new panel of inquiry committee.*
- *Whether Appellant's counterclaim in the nature of judicial review and therefore prohibited by Art. 84C of the Constitution.*
- *Purpose and scope of s.71 of the Legal Profession (Law Society of Brunei Darussalam) Order ("the Order"), made pursuant to the Legal Profession Act (Cap 132) – bad faith carve-out – burden of proving bad faith.*
- *Statutory remedy under s.61 of the Order and time within which it is to be exercised.*

- *Public interest in and importance of Law Society’s statutory role (s.4(1)(a) of the Order) in maintaining and improving the standards of conduct of the legal profession in Brunei Darussalam.*

Conclusions:

- (i) *Art. 84C-counterclaim in nature of judicial review, prohibited by Art. 84C- paras. 34-37;*
- (ii) *s. 71-Appellant failed to discharge burden of proof to establish bad faith- para. 40;*
- (iii) *s. 61-remedy of appeal to a Judge to direct the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Committee to be exercised in 14 days; no application-para. 38(2);*
- (iv) *s.4(1)(a)-role of the Law Society: to act transparently, fairly and without undue delay-para. 44.*

Mr Ong Jin Huat In Person for Appellant/Defendant.

Ms Veronica K Rajakanu (M/S V.K.Rajakanu & Associates) for Respondent/Plaintiff.

Case cited:

Law Society of Brunei Darussalam v Sivabalan a/l Sankaran (Court of Appeal of Brunei Darussalam) (Civil Appeal No. 1 of 2012); [2012] BLR 222

J U D G M E N T

Sir Peter Gross, J.A.:

INTRODUCTION

1. The Appellant (“Mr Ong”) appeals from the Decision of Haji Abdullah Soefri, JC “the Judge”), given on 3 October 2022, together with the reasons for that Decision given subsequently (“the Judgment”), dismissing Mr Ong’s appeal to the Judge (in Chambers) from the Deputy Chief Registrar’s Decision handed down on 17 December 2020 (“the 2020 Decision”).
2. By the 2020 Decision, the Deputy Chief Registrar dismissed the application of the Respondent (“the Law Society”), then the Plaintiff in Originating Summons No. 34 of 2020 (“OS/34”), for Mr Ong to disclose the identity of the person or persons who had drawn or prepared any or instruments on

Mr Ong's behalf in relation to HCCS No. 36 of 2017 ("HCCS/36"). Furthermore, by the 2020 Decision, the Deputy Chief Registrar dismissed Mr Ong's counterclaim. Both the Law Society and Mr Ong appealed to the Judge in Chambers from the 2020 Decision.

3. By his Judgment, the Judge dismissed both the Law Society's appeal and (as already recorded) Mr Ong's appeal. No more need be said of the Law Society's appeal to the Judge save that, as will appear, the Law Society's application played a significant background role in these proceedings. Our direct concern lies solely with Mr Ong's appeal.

THE BACKGROUND

4. Some unravelling of the background is necessary to understand the genesis of the matter. In this regard, Mr Ong's Affidavit, filed on 13 September 2023, provides a helpful guide.
5. The starting point is that in OS/54/2010 ("OS/54") Mr Ong was the defendant in proceedings brought by a Mr Lim Eng Suan the plaintiff in that matter. Mr Ong was represented by Mr Lim Boon Khai ("Mr Lim"). The plaintiff, Mr Lim Eng Suan was represented by Mr Rudi Lee ("Mr Lee"). In the event, on 18 July 2012, Findlay JC decided OS/54 against Mr Ong. In HCCS/36, Mr Ong alleged that Mr Lim had been negligent in conducting his defence in OS/54.
6. In 2017, Mr Ong lodged a complaint with the Law Society against Mr Lim. That complaint was summarily dismissed by the then-President of the Law Society, Mr Rozaiman Bin Abdul Rahman ("Mr Rozaiman").
7. Matters did not end there. In the course of the proceedings in HCCS/36, Mr Lim changed solicitors and appointed Mr Lee to act on his behalf. As Mr Lee had represented the opposing party in OS/54, Mr Ong was not best pleased and applied to amend his Statement of Claim in HCCS/36 to include an allegation of collusion between Mr Lim and Mr Lee. Mr Ong, it may be noted, also sought to prevent Mr Lee from continuing to act but was unsuccessful in this regard.
8. In the event, on or about 12 October 2018, Mr Ong made a second complaint ("the second complaint") to the Law Society, now advancing allegations of collusion against Mr Lim, Mr Lee and additionally, it is to be noted, Mr Sheikh Noordin Mohammed ("Mr Sheikh Noordin"). So far as

concerns Mr Sheikh Noordin, he represented Mr Ong in HCCS/36 at the material time. Mr Lim, Mr Lee and Mr Sheikh Noordin were all members of the Law Society. Thereafter, it would appear that Mr Ong has appeared in all proceedings in person.

9. It is difficult to avoid the observation that though the Law Society established an Inquiry Committee (the "Inquiry Committee") in response to the second complaint, its handling of that complaint cannot be described as expeditious.

10. Ultimately, on 20 September 2019, the Law Society wrote to Mr Ong, saying this:

"The Council [of the Law Society] has considered the report of the Inquiry Committee received on 10 September 2019 and has determined that formal investigation is not necessary pursuant to paragraph 51(1)(a) of the Legal Profession (Law Society of Brunei Darussalam) Order."

11. Mr Ong was not satisfied with this response and pressed the Law Society further. In due course, the Law Society responded with a letter dated 10 October 2019 ("the 10 October" letter) and attached a copy of the Report of the Inquiry Committee ("the Report"). The 10 October letter included the following:

"The Council of the Law Society ('Council') has considered the Inquiry Committee's Report and findings dated 10 September 2019 ('the Report') and have agreed that no formal investigation is necessary..."

The Council finds that the Inquiry Committee has dealt with the complaint and cannot find any evidence or credible evidence to support Mr Ong's allegations that there was collusion between Messrs Rudi Lee, Kelvin Lim and also Sheikh Noordin and as such has agreed with the Report."

12. We express no view on the merits of the Report's conclusions, which are not a matter for us. Without straying into the merits, however, it can be said that, although brief, the Report, on its face, addressed Mr Ong's allegations but, unfortunately for him, reached clear and adverse conclusions on all of them.

13. Mr Ong was deeply dissatisfied with the Law Society's handling of the second complaint. He complains, *inter alia*, that he was never called for an interview by the Inquiry Committee. He alleges that the Law Society has been protecting its own.

THE PROCEEDINGS BEFORE THE JUDGE

14. These matters might have ended. However, in a decision which, at least with hindsight, might seem unfortunate, the Law Society commenced proceedings under OS/34, seeking the disclosure relief already set out. The Deputy Chief Registrar ruled against the Law Society. Undaunted, the Law Society appealed to the Judge, who dismissed the Law Society's appeal on the straightforward ground that (as Mr Ong had contended):

"...this matter has been dealt with before Justice James Kerr Findlay in his order given on 25th April 2018. The said order is also in relation to HCCS No. 36 of 2017 and on the same matter. I agree with...[Mr Ong]...that if they [the Law Society] are not satisfied with the decision given by Justice James Findlay, they could challenge the decision by way of an appeal."

15. With refreshing candour, in his written Submissions in Reply (and repeated orally), Mr Ong described his reaction to the Law Society's commencement of OS/34:

"...I had virtually run out of options and avenues for recourse against the 3 said lawyers and had just about given up when I was served with OS/34 by the ...[Law Society]...The [Law Society] had initiated OS/34 and have only themselves to blame for opening a door for me to finally seek recourse and remedy."

16. The door having been opened, Mr Ong needed no second invitation and pursued his counterclaim. As summarised by the Judge:

"The main crux of the counterclaim is that when the [Law Society] received [Mr Ong's] complaint, the [Law Society] has no public interest in mind and also that there is 'bad faith' in the part of the [Law Society] who did not even bother calling Mr K. Lim, Mr R. Lee and Mr Sheikh Noordin in for questioning before dismissing the complaint."

17. Mr Ong's counterclaim sought the following relief:

“i) For an order that the complaint lodged against Mr Kelvin Lim, Mr Rudi Lee and Mr Sheikh Noordin (the said lawyers) be reassessed and reinvestigated by a new panel of inquiry committee;

ii) That the [Law Society] take disciplinary action against the said lawyers;

iii) That the [Law Society] compensate me my losses arising out of the erroneous decision made by the Inquiry Committee;

iv) Interest, costs and court fees; and

v) Any other relief that this Honourable Court sees fit.”

18. The question, as framed by the Judge, was whether:

“...the nature of the counterclaim is of a judicial review and [is] therefore not permitted under Article 84C of the Constitution of Brunei Darussalam.”

In the Judge’s view, the answer to this question was that the relief sought was in the nature of judicial review and therefore was prohibited under Art. 84C of the Constitution of Brunei Darussalam (“Art 84C”):

“In the present case, the relief sought by [Mr Ong]...[is] that an order is to be made for the complaint against ‘the said lawyers’ to be reassessed and reinvestigated by a new panel of Inquiry Committee. The order sought is to judicially review the decision of the Inquiry Committee and this is prohibited under Article 84C.”

19. Mr Ong had also alleged “bad faith” and the question arose whether the provisions of s.71 of the *Legal Profession Act (Law Society of Brunei Darussalam)* (“s.71”) could override the prohibition contained in Art. 84C. The Judge observed that it was for Mr Ong, who had alleged it, to prove that there was bad faith on the part of the Law Society. The short answer given by the Judge was that *“There is no evidence of bad faith...shown by [Mr Ong] in this matter.”*

20. Accordingly, the Judge dismissed Mr Ong’s appeal against the 2020 Decision.

THE RIVAL CASES ON THE APPEAL

21. Although the Law Society's written submissions included a variety of procedural objections to Mr Ong's appeal, both before and at the Hearing, Ms Veronica (for the Law Society) made it plain that those were not being relied upon. In our view, Ms Veronica was entirely right to jettison those points in all the circumstances of the present appeal. We therefore say no more of them, save to observe: (1) the importance of following the procedural rules for appeals must not be downplayed; they ensure the maintenance of proper discipline in the conduct of appeals; (2) though appropriate allowances will be made for an unrepresented party, procedural rules apply to lawyers and laymen alike – there is no “free pass” simply because a party is unrepresented, a course which would risk unfairness to the represented party and the proceedings as a whole.

22. In his submissions, Mr Ong maintained the thrust of the complaints he had previously advanced before the Judge. He criticised the conduct of the lawyers involved and of the Law Society, which had left him with a bad impression of the profession. Notes had been passed over; Mr Lee should not have been allowed to act for Mr Lim; and an opportunity had been missed to interview Mr Lee – who had now permanently left Brunei. Mr Ong insisted that there had been bad faith (so that s.71 applied) and that he had never applied for judicial review (so that Art. 84C was inapplicable). His counterclaim was perhaps best encapsulated in his first written appeal submissions, where he said this (at [23]):

“...in conclusion, the [Law Society] had failed in their duty as a governing body to practising lawyers in Brunei to investigate or look into the second complaint and instead acted in a manner so as to protect those lawyers complained of...”

23. For the Law Society, Ms Veronica submitted that Mr Ong's counterclaim had no merits, was misconceived and wrong in law. The counterclaim was a repeat of Mr Ong's earlier complaint to the Law Society in relation to the three lawyers. The Inquiry Committee had dealt with the second complaint and found that it lacked merit so that a formal investigation was not necessary. The Appellant had not taken up the option of a statutory remedy available in such circumstances under s.61 of the Order (see further below) and had only pursued the counterclaim after the Law Society had applied for a *Norwich Pharmacal* order against him (see above). As the Law Society had been exercising its statutory powers in the performance of a public function or duty, Mr Ong's claim effectively sought judicial review and was

therefore precluded by Art 84C. S.71 did not “trump” Art 84C but, in any event, there was no evidence of bad faith here.

THE LEGAL FRAMEWORK

24.(A) *Introduction*: The legal framework within which this appeal falls to be considered is provided by:

(1) *Art 84C of the Constitution of Brunei Darussalam* (“Art 84C”, to which reference has already been made);

(2) *The Legal Profession (Law Society of Brunei Darussalam) Order*, made pursuant to the *Legal Profession Act (Cap 132)* (“the Order” and “the Act”, respectively).

This statutory framework is augmented by a single authority, to which we shall come.

25.(B) *Art. 84C*: Art. 84C expressly and plainly precludes claims for judicial review in Brunei Darussalam.

26. Art. 84C is in these terms:

“(1) The remedy of judicial review is and shall not be available in Brunei Darussalam.

(2) For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise, including any question relating to compliance with any procedural requirement governing such act or decision.

(3) In this Article, ‘judicial review’ means proceedings instituted by any manner whatsoever including, but not limited to, proceedings by way of –

...

(b) an application for a declaration...

...

(d) any other suit or action relating to or arising out of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise

of or refusal or omission to exercise any power, authority or discretion conferred on His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise.”

27.(C) *The Order*: S.3 of the Order established the Law Society of Brunei Darussalam, which is thus a statutory body. S.4 sets out the “*Purposes and powers*” of the Law Society, including so far as here relevant (s.4(1)):

“(a) to maintain and improve the standards of conduct and learning of the legal profession in Brunei Darussalam;

...

(f) to protect and assist the public in Brunei Darussalam in all matters touching or ancillary or incidental to the law;

...”

28.S.49 deals with complaints against advocates and solicitors. S.49(1) provides as follows:

“Any complaint of the conduct of an advocate and solicitor shall be made to the Society, and the Council shall refer the complaint to the chairman of the Inquiry Panel.”

S.49(5) requires the Council (of the Law Society) to inform the advocate and solicitor concerned that a complaint has been referred to the Inquiry Panel.

S.50 outlines a timetable for the work of the Inquiry Committee. S.50(7) provides that the report of the Inquiry Committee shall, *inter alia*, “*...deal with the question of the necessity or otherwise of a formal investigation by a Disciplinary Committee...*”.

29.S.61 addresses the procedure for a complainant dissatisfied with a decision of the (Council of) the Law Society, thus furnishing a statutory route to obtain a remedy. S.61(1) is in these terms:

“Where a person has made a complaint to the Society, and the Council has determined –

(a) that a formal investigation is not necessary; ...

...

that person may, if he is dissatisfied with that determination, within 14 days of being notified of it, apply to a Judge under this paragraph.”

At the hearing of such an application, s.61(4) provides that the Judge may make an order:

“(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee...”

30.S.71 has the heading *“No action in absence of bad faith”* and provides as follows:

“No action or proceeding shall lie against the Attorney General, the Society, the Council, a Disciplinary Committee or an Inquiry Committee or any member thereof for any act or thing done under this Order unless it is proved to the Court that the act or thing was done in bad faith or with malice.”

31.It is important to be clear as to the scope and purpose of s.71:

(1) First, s.71 does not itself create a statutory cause of action. To the contrary, in the generality of matters and as explained in *The Council of the Law Society of Brunei Darussalam v Sivabalan a/l Sankaran* (Court of Appeal of Brunei Darussalam) (Civil Appeal No. 1 of 2012); [2012] BLR 222 (*“Sivabalan”*) below, it bars actions or proceedings to protect those concerned from liability.

(2) Secondly, by way of an exception or carve-out, private law actions, if otherwise well-founded, are not barred if, and only if, *“it is proved”* that there was bad faith on the part of the named persons or bodies. It is not in dispute, alternatively indisputable, that the burden of proving bad faith rests on the person alleging it.

32.(D) *Authority*: So far as concerns authority, it is only necessary to refer to the decision of this Court in *Sivabalan*, where it was held (at p.234) that in conducting disciplinary proceedings:

“...the Law Society and its delegates...were acting in the performance of a public function under the provisions of a written law. Moreover the declarations and injunction were sought and granted to judicially review

those proceedings. Such review was prohibited by section 84C and should not, therefore, have been granted.”

This Court, in *Sivabalan*, also made the following observation (at p.235) regarding the purpose of s.71:

“Its purpose is to exempt any of the named persons or bodies from liability for anything done by them. Were that not so, any of them might be liable in damages for negligence, breach of statutory duty or defamation for anything done by them in the performance of functions under the Order; and if that were so, it would be extremely difficult to persuade persons to serve on any of the bodies constituted by the Order.”

CONCLUSIONS

33. We come to our conclusions.

34. *First*, Art 84C, precluding judicial review, presents an insuperable hurdle to Mr Ong’s counterclaim.

35. We entirely agree with the Judge that the essence of Mr Ong’s counterclaim was judicial review, regardless of whether Mr Ong had expressly sought judicial review. That the counterclaim was redolent of judicial review is clear from the passage in Mr Ong’s written submissions (already cited), focusing on the Law Society allegedly failing in its duty as a governing body by not investigating or looking into the second complaint. The emphasis was thus on the manner in which the Law Society handled the second complaint rather than the correctness of the Law Society’s decision on the substantive merits of the second complaint. A logical consequence of the nature of the counterclaim was the very first heading of relief claimed: namely, that the second complaint be *“reassessed and reinvestigated by a new panel of inquiry committee”*. That *is* judicial review, whatever the precise language used by Mr Ong.

36. As the Law Society, a statutory body, was, and was plainly, exercising a public function (as in *Sivabalan*) in investigating the second complaint (regardless of whether it failed in its duties in that regard), Art. 84C applies.

37. This conclusion, from which there is no escape, is sufficient to dispose of Mr Ong’s appeal.

38. We add only these brief observations out of deference to the arguments addressed to us:

- (1) Provisionally at least, there was some force in Mr Ong's criticisms of the conduct of the Inquiry Committee. Both as to the length of time taken and the paucity of evidence of the Inquiry Committee having notified the lawyers of whom complaint was made, our *provisional* view is that the Inquiry Committee's handling of the second complaint left something to be desired. We do not express a final view because even if this conclusion was made good, it would be immaterial in the light of Art. 84C precluding judicial review.
- (2) It should not, however, be thought that Mr Ong – or anyone else in his position – was left without a remedy. There is and was a statutory remedy in place for a person dissatisfied with a determination by the Law Society that there was no sufficient cause for a formal investigation. In such circumstances, S.61 of the Order provided for an application to a Judge seeking an order directing the Law Society to apply to the Chief Justice for the appointment of a Disciplinary Committee. The only constraint was that the application to the Judge had to be made within 14 days of the Law Society's determination. In the present case that means by late October 2019 (the precise date matters not). Mr Ong is thus years out of time for pursuing this route and, realistically, he made no application to extend time. In expressing this view, we have not overlooked that Mr Ong was an unrepresented party (though it may be said a well-informed unrepresented party) but there was plainly no justification for any such extension of time.

39. *Secondly*, we agree with the Judge that s.71 of the Order cannot in any event assist Mr Ong. In this regard, as already discussed with reference to *Sivabalan*, for Mr Ong to circumvent the exemption provided by the section, bad faith needed to be proved. It is not in dispute, alternatively indisputable, that the burden of proving bad faith rested on Mr Ong.

40. In the present case, that is an end of the matter. We again agree with the Judge; simply put, there was no *evidence* – as distinct from vigorous assertion – of bad faith. Mr Ong has failed to discharge the burden of proof resting on him to establish bad faith; accordingly, the carve-out in s.71 cannot assist him.

41.If, which is not the case here, there had been evidence of bad faith, we are far from saying that s.71 could “trump” Art. 84C. Though it is unnecessary to express a final view, our inclination is to agree with Ms Veronica that, were both provisions applicable, Art. 84C, as a constitutional provision, would prevail. On this footing, the bar on judicial review in Art. 84C cannot be overcome by alleging or even proving bad faith. However, in a case where bad faith could be proved, *Sivabalan* suggests that the way would seem to be open for private law claims for damages in negligence or for breach of statutory duty to be pursued – but, as already set out, that is not this case.

42.*Thirdly*, pulling the threads together, Mr Ong’s counterclaim sought to resurrect his previous complaint against a series of lawyers who acted for him at one time or another. The Deputy Chief Registrar’s decision to dismiss Mr Ong’s counterclaim was upheld by the Judge in a Judgment which was clear, succinct and correct. Mr Ong’s counterclaim was plainly in the nature of judicial review of the Law Society’s performance of public functions; it was thus barred by Art. 84C. S.71 of the Order cannot in any event assist Mr Ong, because he has failed to prove bad faith. Mr Ong was not initially left without a remedy; he had open to him a statutory remedy under s.61 of the Order but needed to act timeously; he did not and is now years out of time.

43. For the reasons given, Mr Ong’s appeal fails and is dismissed.

44.In parting from this case and although Mr Ong’s counterclaim has failed, we emphasise the public interest in the Law Society’s statutory role (s.4(1)(a) of the Order) in maintaining and improving the standards of conduct of the legal profession in Brunei Darussalam. That role is of the first importance for public confidence in the legal profession. In performing that role, the Law Society must act, and be seen to be acting, transparently, fairly and without undue delay.

COSTS

45.Mr Ong must pay the Law Society its costs of and relating to the appeal, on the standard basis, to be taxed if not agreed. We do not disturb the orders as to costs made in the courts below.

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SIR PETER GROSS, J.A.

A handwritten signature in cursive script, appearing to read "Michael Lunn".

LUNN, J.A.

A handwritten signature in cursive script, appearing to read "Peter Woolley".

WOOLLEY, J.A.