

SPEECH TO MEMBERS OF THE DISCIPLINARY BOARD, DISCIPLINARY
COMMITTEE, INVESTIGATING TRIBUNAL AND THE STATE BAR
COMMITTEES

9th March 2002
(Johor Bharu)

By

Dato' Abdul Hamid bin Haji Mohamad
(Chairman, Advocates and Solicitors' Disciplinary Board)

I welcome you all to this meeting and thank you for coming. We appreciate your sacrifices.

This is the second meeting of this kind we have had had so far, the first being in Penang on 12th. January 2002. Even though the response in Penang in terms of the number of people attending the meeting was poor, but the participation of those who attended was very encouraging. They showed their willingness to sacrifice their time (and with it income) not just to attend the meeting, but also to sit as members of the Disciplinary Committee and the Investigating Tribunal.

Special mention must be made of the non-lawyer members. Percentage-wise, the number of non-lawyer members who attended the meeting in Penang was many times more than the lawyer members. A special thanks to them.

We decided to have these meetings because we think that there is a need to meet the members of the Disciplinary Board, the Investigating Tribunal as well as members of the State Bar Committees. Through these meetings we hope to enlighten you of the number of complaints received, the number disposed of, the backlog, the need to speed up the disposal of complaints, the problems we are facing and to find ways to overcome them, to hear your grouses and suggestions and to seek your co-operation to effectively and fairly deal with the complaints. That is why we are here. And that is why we invite you to be here.

The Board was established in 1992 and I was appointed Chairman in February 2001 for a period of two years. One year has gone and another year left. Time really flies.

Through the hard work of our new Director, Ms. Lim Eye Thun (I must make a special mention of her), not forgetting the officers and staff of the Board and members of the Board (who I find are very committed in the discharge of their duties), and through the computerisation of the office, we now know exactly (almost) the volume of work that we have.

To give you some idea about it, according to the latest statistics compiled by the officers and staff of the Board, we find that the number of complaints registered from 1992 until the end of February this year is 5195. In year 2001 alone 655 complaints were registered, i.e. nearly two complaints a day, be it a public holiday or not. During the same period, 2563 complaints were disposed off i.e. about 50%. We still have 2622 complaints pending, i.e. 50%. In year 2001 we managed to dispose off 656 complaints, an increase of 323% compared to the previous year's disposal of 203 cases. Indeed as the statistics show, year 2001 was the first year in the history of the Board that more cases were disposed of than registered, that too only by one case. I thank all of you, especially the members of the Board for the hard work they have put in.

Whilst we should be quite happy with our achievement in year 2001, we should not allow ourselves to be misled by the statistics and to have a false sense of satisfaction and confidence. The reason is this. A large number of the cases disposed of were cases that the Board found to have no merits, after initial study by the Board, to refer to the Investigating Tribunal. In legal terms, we can say that they were dismissed summarily, somewhat like what the Courts do under Order 18 rule 19 of the Rules of the High Court, 1980.

The complaints that are pending or going for investigation (or "trial", in legal terms) still form the bulk of those pending. These are the ones that will take time to hear. These are the ones that will involve the members of the Investigating Tribunal.

To give you an idea of the volume pending before the Investigating Tribunal and the Disciplinary Committee, at the end of February 2002, about 200 cases have been referred to and are pending before the Investigating Tribunal. About 200 more have been decided by the Board to be referred to the Investigating Tribunal. So you can expect some of them to reach you soon. 60 cases have been referred to the Disciplinary Committee. More will definitely go to the Investigating Tribunal as the Board completes the initial study of the complaints and subsequently to the Disciplinary Committee and finally to the Board. It is interesting, indeed worrying, to note that, according to our record, in year 2001 only 11 cases were completed by the Disciplinary Committee and 43 investigations were completed by the Investigating Tribunal. (Sometimes I wonder why I accepted this job, but I only have one more year to go. That is a small consolation).

I know that some lawyers are already complaining that they have been given too many cases to investigate. But, I am sorry, we have no choice.

But, to reduce the burden, we are doing two things. First, we are increasing the number of Investigating Tribunal and Disciplinary Committee members. Secondly, we are distributing the case more fairly amongst the members. With the help of the computer, we are in a position to know how many have been

given to whom. I urge all of to give to give top priority to hear those complaints and complete them as soon as possible. The law requires that the investigation be completed in two months. In most cases they are not and I have been extending the time as a matter of course, because I have no choice. I hope a time will come when we will be able to comply with the requirement of the law, i.e. without extension of time.

We have also identified that quite a large number of complaints concern delay in obtaining the Sijil Annual. These are straight forward cases. We have decide to put them on a fast track by appointing “special” Investigating Tribunal and fixing a number of such cases per day, first for “mention” (to borrow the Court’s terminology) and subsequently, “for hearing” (again borrowing the Court’s terminology) of cases in which the respondents dispute the complaints. That way we hope to clear the bulk of those Sijil Annual cases.

We have now also identified what we call “serial offenders”, i.e. lawyers with more than five complaints against them. We decide to take the most serious of the complaints and deal with it first, so that if he is struck off the role, we will save the time for the hearing of the other cases.

We realise that the present procedure of is very cumbersome, protracted and costly. It delays the disposal of the cases. It takes too much of too many people’s time. Quite often, along the way, even the complainant loses interest and does not turn up at the haring.

Indeed, under the present procedure, a complaint, if it goes through the full course, goes through six tiers i.e. the Investigating Tribunal, the Disciplinary Committee, the Disciplinary Board, the High Court, the Court of Appeal and the Federal Court compared to only three tiers that a murder case goes through i.e. the High Court, the Court of Appeal and the Federal Court. If you count the number of people involved in the investigation and adjudication, you will be surprised that as many as 32 people are involved compared to only seven in a murder case. There is something clearly very wrong here unless lawyers are very special people, more special than the Rulers whose cases are heard by only a one-tier Court of five Judges.

So, we are in the process of putting up a proposal to amend the Legal Profession Act, at least, to do away with the Investigating Tribunal and, may be, the appeal to the High Court so that it will go direct to the Court of Appeal.

You must have noticed that the Director no longer travels around, sitting as Secretary to every, or almost every, hearing of the Investigating Tribunal and Disciplinary Committee. We made this decision because we found that it delayed proceedings (as only one hearing can go on at any one time if he were to attend all of them), costly and left very little time for the Director to attend to the work at the office.

Some members of the Investigating tribunal and the Disciplinary Committee are not happy with the decision because they want the luxury of having someone to record the notes of evidence for them, a luxury which Judges never enjoy. Personally, I do see no problem of you taking down the notes of evidence yourselves, something which I think should not and cannot be delegated to someone else. The hearing is not a meeting of a Board of Directors of a company. It is a "judicial proceeding". Whatever the law, in most cases, they do not run into very many pages compared to what Judges have to take down. The Board will pay for the typing which may be done by your secretaries or typists. Indeed, if some of you wish to be appointed Judges one day, it is a good practice.

We have also standardised the claim form and the rates payable for sitting allowance for non-lawyer members and travelling allowances and expenses for all member of the Investigating Tribunal and Disciplinary Committee.

I call on all of you to make some sacrifices for the sake of your profession. This is your profession. It is in the interest of your profession, besides the interest of the nation, that the members of the legal profession are disciplined. It is the wish of the members of the legal profession that the power to discipline their errant members remain with them. It is, therefore, your duty to make some sacrifices to ensure that the Board, the Committee and the Tribunal function efficiently, speedily and fairly. Otherwise, if and when the public loses confidence in us, you may even lose that right. I admit I am being pessimistic. But, I think it is better to err on the side of pessimism than to be wrongly over confident.

Thank you.