

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

Penang 12th. January 2002

By

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(Chairman, Advocate and Solicitors' Disciplinary Board)

I welcome you all to this meeting and thank you for coming. We have decided to have this meeting because we think there is a need to meet the members of the Disciplinary Committee, the Investigating Tribunal as well as the members of the State Bar Committees to explain the problems the Board is now facing, discuss the ways to overcome them and to get your co-operation in so doing. We are also prepared to hear the problems that you are facing, discuss them and find ways to solve them.

We plan to have three more similar meetings, one in Kuala Lumpur, one in Johor Bharu and one in Kuala Trengganu.

The Board was established in 1992. I was appointed Chairman in February 2001 for a period of two years.

Before I chaired the first meeting of the Board I asked the then Director to get me the statistics regarding the complaints. As no such statistics had ever been prepared or kept prior to that date, the staff had to go through all the files, so I was told. This is what they came up with.

From 1992 until and including year 2000 the number of complaints registered ranges from 346 in 1992 to 594 in year 2000, totaling 4520 cases, giving an average of 502 per year. The number of complaints disposed of during the same period was 2316 (i.e. 51%) leaving a balance of 2204, which roughly means that at the end of year 2000 there was pending complaint for every five practising lawyers. Taking the average number of cases disposed of per year since the establishment of the Board (1992) until year 2000 i.e. 257, it will take eight years and a half just to clear the pending complaints. If we take the number of cases disposed of during year 2000, i.e. 340, as the divider, it will take about six and a half years to clear the backlog.

I do not vouch for the accuracy of the figures. But, at least, they give us some indication of the volume that we have.

In year 2001, 790 complaints were lodged. 655 have been registered. 107 have been rejected for non-compliance. 28 are pending compliance. In the same year (2001) the Board itself has studied 750 cases out of which 294 cases were instructed to be referred to I.T and 73 cases to be referred to D.C. During the same year the Board has disposed of 295 cases (including those disposed of summarily), the D.C completed 11 cases and the I.T completed 43 investigations.

We are now in the process of computerizing the office. We have started about two months ago and should be able to complete it in the next few months. Once it is completed we will have all the details about every complaint and at what stage it is. We will know the movement of the cases, whether the I.T. or D.C. appointed to investigate the complaint has been working or dormant. We will know whether orders made by the Board have been complied with or not. We will know the expenditure incurred per complaint. And many other things.

In the process we are also reopening the "closed files" to ensure that they were rightly closed. We do not want files that should not have been closed to be closed.

Even though the process, which is very tedious, is still incomplete, we now know more or less that there are about 3000 complaints pending, out of which 185 have been referred to I.T. and 55 have been referred to D.C. Some of you are already complaining that you have too many cases already to investigate but you will notice that what have been referred to you is only a small fraction of what is yet to come.

We have to solve the problem. There is no alternative. If we do not, I fear that the Board will be accused as being ineffective and the Bar may even lose the right to discipline its members. I may be pessimistic, but let us err on the side of caution.

What we have to do is to dispose of more complaints per year and more quickly.

One of the first things I noticed when I was appointed Chairman and I spoke about it in my first speech at the Board meeting, is that the present procedure is too cumbersome. At present, there are three tiers before the matter goes to the High Court, i.e. I.T., D.C. and D.B. If we take into account the High Court, the Court of Appeal and the Federal Court, in all, there are six tiers. Even a murder case goes through three tiers only. If we count the number of people involved to decide the case from the I.T stage to the Federal Court stage, there will be 32 in all (3 I.T, 3 D.C., 17 D.B., 3 High Court, 3 Court of Appeal and 3 Federal Court) as against 7 in a murder case (1 High Court, 3 Court of Appeal and 3 Federal Court). What is so special or so difficult about complaints against lawyers?

So, we have to reduce then number of tiers. I think that the I.T should go. Investigation should only be done by the D.C. Appeal to a three-judge High Court may have to go. Since the Board is already chaired by a Judge, the last two

being judges of the Court of Appeal, appeal may go direct to the Court of Appeal. That will reduce two tiers and six judges in the process.

I am happy to inform you that our Amendment Sub-Committee has been working very hard and has come up with the proposed amendments. I will take it up with the relevant authorities.

In the meantime, more cases will have to be disposed of per year in order to reduce the backlog. Until the law is amended we have to work within the present provisions of the law. We have to appoint more I.T. and D.C. members. We have to give them more cases to investigate.

During the process of computerization, we notice that the cases have not been evenly distributed among the members, be it the I.T. or D.C., be it lay-members or otherwise. Some members have been given too many cases, some too little, some not at all. There are cases where lay-members from a different State is appointed to sit at an inquiry in another State. That has caused unnecessary expenses. In fact, upon assuming my duties as Chairman, I noticed that the then Director was travelling all over Peninsular Malaysia to act as Secretary of the Tribunal of Committee. That had caused unnecessary expenditure besides delaying the investigations as he can only be at one place at any one time. It also means that he spent less time attending to the work in the headquarters.

So, one of the first things I did was to stop him from travelling. That may be an unpopular decision. But, as far as I am concerned, and I am speaking generally here, the interest of the Board comes first. I have a duty entrusted on me. I will discharge it as best I can no matter how unpopular I will be. The duty is a public duty. The money is trust money, money paid by you all. It is my responsibility to see that the Board functions efficiently, fairly and transparently and that the Board's money is spent wisely.

I hope that you all will be prepared to make a small sacrifice by sitting on the I.T. or D.C., accepting the cases assigned to you and holding the inquiries and completing them as fast as you can. I promise you that there will be a fairer distribution of cases. We should be able to do that once we have completed the computerization process.

We are also considering whether claims for travelling, sitting allowance etc. should only be made once, after the inquiry is completed, either by the I.T or D.C., as the case may be. This will have the following advantages: First, it will reduce the workload at the headquarters. Secondly, at the end of each stage we will know exactly, how much is spent at each stage of the inquiry.

I thank you all for the co-operation and the sacrifice that you have given in the past. I ask for more. The Board is your baby. I am only the godfather. If you do not look after it well enough, I fear that you may lose your guardianship over it.

Let us not give any ground for such a thing to happen. Indeed, let us strive to make the Advocates and Solicitors Disciplinary Board a model for all professional disciplinary boards.

Thank you.