

**SEMINAR ANJURAN JAWATANKUASA PEGUAM MUDA KUALA LUMPUR****11 Ogos, 2001****DISCIPLINE AND DISCIPLINARY ACTONS OF ADVOCATES AND SOLICITORS**

I am not going to speak about the practice and etiquette rules of advocates and solicitors, about what you can or cannot do, about what you should or should not do, as a practicing lawyer. Most of you know them more than I do as I have never practiced law myself, in the sense that you do. Anyway you can read them or learn about them as you go along. Instead I will speak about "Discipline and disciplinary actions of advocates and solicitors. "

Indeed, the breaches that are committed, are committed not because of ignorance of the rules, but in spite of it. In fact the kind of breaches that are committed are so basic that one does not have to be a lawyer to know that it is wrong. They know that it is wrong but they still do it, usually because of greed and dishonesty. To me, the key word in our lives, personal, public, professional or otherwise, is honesty. So long as one is honest with himself, it is very unlikely that he will get into trouble. It is when a person dishonestly does something that his conscience tells him is wrong, that he will end up in trouble.

Lawyers always speak up very strongly about human rights record, transparency, inefficiency, lack of independence etc., of other people or institutions. I think, they should also look at themselves, at their own weaknesses and try to put their own house in order so that their profession is truly "an honourable profession".

Out of respect for the profession, the bar has been allowed to discipline its own members. This is an honour and a responsibility. Honour is earned and has to continue to be earned in order to keep it. The fact that you have it once upon a time does not mean that it is going to be with you forever. It depends on what you do to keep it. The public is watching very closely whether you take that responsibility seriously, whether you discharge your duties efficiently and fairly. If they think you don't, you lose that respect, and you may lose that honor. This may be a very pessimistic statement. But, I prefer to remember the worst situation that can happen, as a reminder to ourselves, rather than to be mistakenly confident.

Six months ago, out of the blue, I was thrust with the job of Chairman of the Advocates' and Solicitors' Disciplinary Board, a job that I did not ask for nor paid

for. I dutifully accepted it. Even though it is taking a lot of my time, I have no regrets. I promised myself, the Chief Justice and the Chief Judge, Malaya, that I would do my best. Whether my best is good enough is yet to be seen.

The first thing I did was to find out the number of complaints registered, disposed of and pending since the establishment of the Board in 1992. Here are the figures, in brief.

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 per year of 502. 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 one pending complaint for every 5 members of the bar. 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 and a half years just to dispose of the backlog alone. If we take the number of complaints disposed of last year (i.e.340) as the divider, it will take about six and a half years to dispose of the backlog.

Of course, statistics do not tell the whole truth. But they do give us some indications of the problems that we are facing.

While writing this speech, I asked the Board to furnish me with statistics of the number of complaints received, registered and disposed of from January to July this year. It shows that for the period of seven months a total of 535 complaints have been received out of which 462 were registered. Even if we only take the number of complaints registered, that is already 77% of the number registered during the whole of last year. And, out of that 278 (60%) are complaints by the Bar Council concerning Sijil Annual. And during that same period, as much as we have tried, we could only dispose of 201 complaints which is only 43% of the number registered during the same period. Don't you think that this is a matter of great concern?

Of greater concern to me is that a large number of the complaints are complaints regarding misuse of clients' money. Majority of them consists of two categories of money: First, money held by the solicitors as stake holders in sale and purchase transactions. Secondly, money paid by insurance companies to victims in road accident cases.

I also note, rather sadly, that a majority of the lawyers involved are the comparatively younger ones, those below forty, I would say. May be the older ones have already established themselves or that they are quite content to continue to have their offices in rent-controlled premises and are too old to go to Karaukes or that they have been struck off the roll long ago. On the other hand, the younger ones, not only having to face stiff competitions but also have more

expensive tastes or belong to the type that wants to be a millionaire in two years but get suspended after one year! I don't know.

Anyway, I am sure that that is **not** something that we can be proud of.

I started thinking of the ways to dispose of those backlog and speed up the disposal of the complaints. There is one particular area that I think we have to pay special attention to.

As you are aware, the present procedure involves two tiers before the matter goes for final consideration of the Board. First, an investigation is done by a three-member Investigating Tribunal. After that there is another enquiry by the Disciplinary Committee, again consisting of three members, one of whom (as in the case of the Investigating Tribunal) is a lay member, meaning a non-lawyer. Only after that the matter goes to the Board consisting of 17 members in all and chaired by, or a person qualified to be, a High Court, a Court of Appeal or a Federal Court Judge. From the decision of the Board, an appeal lies to a three-member bench of the High Court and thereafter to the Court of Appeal and the Federal Court, provided he gets the leave, of course.

If one were to exhaust all the avenues, the whole process will go through six tiers (i.e. Investigating Tribunal, Disciplinary Committee, Disciplinary Board, High Court, Court of Appeal and Federal Court) and 32 "judges". On the other hand, even to take a person's life, the process goes through three tiers only ( i.e. High Court, Court of Appeal and Federal Court) and only 7 Judges to decide. Why are lawyers so special?

As a result, think of the delay. Even to get free dates of everybody involved to hold the investigation is a problem. The members of the Tribunal or Committee and the are busy people. The more people involved the more difficult it is to assemble them. (May be that is why the late Tun Suffian once said to me," The best committee is a committee of one man"). At every tier there is bound to be postponements, for one reason or another. Before the whole process comes to an end the complainant may have lost interest in the case or confidence in the system.

Think of the costs. Members of the Investigating Tribunal, the Disciplinary Committee and the Disciplinary Board will have to be paid for their attendance for the day and travelling, though only a token sum, wether the proceeding goes on or not. Interpreters have to be paid, whether the investigation is postponed or not. Chinese interpreters, especially, are very scarce and expensive. **And, you are the people paying for it every time you want to renew you Sijil Annual.**

So, I came up with a suggestion that we do away with the two-tier investigating system. Just have one tier instead.

Having mooted the idea, I am happy to know that a few years earlier, Dato' Wrigglesworth had already mooted the same idea. I have also asked the opinions of lawyers about the proposal. Every one of them supports the idea. A sub-committee of the Board is now drafting the proposed amendments to the Legal Profession Act.

On 26.7.01, the day I started writing or typing this speech, I was delighted to see an article written by Tan Sri Harun Hashim (former Supreme Court Judge) in the new Straits Times. He too is concerned about the delay in the disposal of complaints against advocates and solicitors and he too attributes it to the two-tier investigating system. However, in suggesting a solution he goes one step further, that is, creating the Academy of Law and giving the disciplinary power to the Academy .

My suggestion does not go that far, not yet. I do not propose to remove the power from the Bar Council. I only propose to do away with one tier of investigation. But, let that suggestion by Tan Sri Harun Hashim serve as a reminder to all lawyers: if you want to retain that power, you have to prove that you are serious about the discipline of your members, that you are prepared to sacrifice your time to sit on the tribunal/committee, that you are prepared to do the so-called "dirty job" including taking down the notes of evidence at the proceedings and not to expect that there must be a secretary in attendance to take down the notes of evidence which in most cases do not exceed 10 pages. If High Court Judges can take down notes of evidence that runs into hundreds of pages, I see no reason why lawyers sitting on the tribunal or the committee cannot do the same, especially when the notes are very much shorter. I hope that so long as I remain the Chairman of the Board, I will not again hear statements such as "We are doing this job voluntarily" meaning that therefore they should not be burdened with having to take down the notes of evidence themselves. Of course you have to volunteer, you have to sacrifice your time, if you want to keep the right or power to discipline your own members. If you are not prepared to do it, do not complain if that right and power may one day be taken away from you. "Tepuk dada tanya selera".

In the meantime, we cannot stay idle. We have to reduce the backlog. To reduce the backlog we have to dispose of more pending complaints. To dispose of more we have to have more members of the Investigating Tribunal and the Disciplinary Committee. I am waiting for the Bar Council to supply the additional names. If you are appointed, please accept the appointment and make your contribution.

I also hope that lay members will be prepared to sacrifice their time and suffer some loss of income when sitting on the Tribunal or the Committee. They are included supposedly to reflect the transparency of the Tribunal and the Committee. Be that as it may, it should not be an additional cause of delay, in particular, because of the difficulty of getting their free dates for the tribunal sittings.

Ladies and gentlemen,  
The ball is at your feet. If you don't kick it, somebody will.

Thank you.