

**ADVOCATES AND SOLICITORS DISCIPLINARY BOARD**  
**CHAIRMAN'S ADDRESS**

**10<sup>th</sup> MARCH, 2001**

Ladies and gentlemen,

I have been appointed Chairman of this Board. I did not ask for it. However, I have accepted the appointment. So, I will do my best to discharge my duties. If I do something right, please support me. If I do something wrong, please counsel me.

I consider myself lucky to have you all, most of whom I have known for years, not only as learned counsel, but more importantly, as people of integrity. That does not mean that those of you whom I happen not to know earlier are not people of integrity. You must be. Otherwise you will not, indeed should not, be here. I am looking forward to you all to guide me, especially on points of procedure of this Board as most, if not all, of you have been members of this board for a long time.

Administration of justice is not the function of the Court alone. The part played by the Bar and the Attorney General's Chambers are equally important. If we want the administration of justice in this country to be fair, efficient and transparent, the officers and members of the three components must necessarily be fair, efficient and transparent. Our job is to discipline the members of the Bar. The image of the Bar in this country, to a great extent, will depend on what we do here. The public will be watching us and judging us whether we are discharging our duties as expected, or not. The members of the Bar will be making their own assessment whether we are effective or not and whether we should be taken seriously or not.

Under the circumstance, I believe that we have to be **strict**, we have to be **transparent**, we have to be **fair** and we have to be **efficient**. We are going to discipline others. We must first discipline ourselves. The safest thing, and indeed the only correct thing, for the Board to do is to strictly comply with the law and the rules governing the Board, be it in matters or procedure or otherwise.

I do not want to rock the boat, certainly not immediately and, as far as possible, not violently. I prefer to continue to sail from where I take over from the previous captain. Of course, as we sail along, we will keep our eyes and ears open. We may, at times, have to make some adjustments, may be to change course and/or speed, may be to repair or even overhaul our ship, to suit new challenges.

However, first of all, I have to know the condition of and in the boat. For that purpose, I have asked Mr. Ram with the assistance the staff to come up with the figures of the number of complaints registered, disposed of and pending

according to the year they were registered – see appendix “A” for detail. These are the figures:

<b>Year</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>Total</b>
Registered	346	508	800	386	541	363	546	436	594	<b>4520</b>
Disposed of	331	493	697	229	290	82	74	19	101	<b>2316</b>
Pending	15	15	103	157	251	281	472	417	493	<b>2204</b>

(Note: The number of complaints disposed of as shown against each year is **not** the number of complaints disposed during that year, but the number of complaints **registered** during that year that have so far been disposed of).

These figures show that, first, of the total number of complaints registered, 51% have been disposed of. Secondly, it shows that the average number of complaints registered per year is 502, the average number of complaints disposed of per year is 257. (Of course, we have to bear in mind that for the first few years of the establishment of the Board, the Board could not function to dispose of the complaints because the Rules had not been made yet). Thirdly, taking the average number of complaints disposed of per year since the Board's establishment, it will take the Board 8 1/2 years ( $2204/257=8.57$ ) just to dispose of all pending complaints. I have also asked for the actual number of complaints disposed of in year 2000 irrespective of when they were registered. The number is 340. If we take the number of complaints disposed of in year 2000 as the divider, it will take the Board about 6 1/2 years ( $2204/340=6.48$ ) just to dispose of the backlog. Fourthly, you will notice that out of 2204 complaints pending, 1910 (86.6%) are yet to be sent for study. In other words, a great majority of the backlog is here. Of course, it will be said, quite rightly so, that if we send more out, the Investigating Tribunal and the Disciplinary Committee will not be able to cope. The backlog will be transferred there. But, if they are studied by the Board, at least some of them will be disposed of summarily thus reducing the number of complaints pending.

Of course, statistics do not tell the whole truth. Hypothesis may not become reality. But statistics do give us some indications of the magnitude of the problem that we are facing.

Let me be very clear here that I am not passing judgment of what the Board, the Disciplinary Committee and the Investigating Tribunal have been doing over the years. I am very sure that they have been doing the best they could. All I say is that that is the situation, “my finding of facts” as we usually say.

So, we have to find ways and means to overcome the problem, i.e. how to dispose of more cases per year.

In this regard, we should make a study to see whether the complaints are being studied, investigated and adjudicated expeditiously enough, and if not, to identify the cause and remedy the fault. We have to reconsider, among other things,

whether the number of panel members of the Disciplinary Committee and the Investigating Tribunal, as provided by law, are sufficient, whether the speed of the investigations is fast enough and whether there should be two different bodies to do the investigation. We should consider whether it would be more efficient, faster and less costly, if only one body were to do the investigation and if the Board finds that further investigation should be carried out on a particular aspect, then the Board may direct the same body and people to do it. At least, they are familiar with the facts of that case and do not have to start all over again.

Besides, we should consider whether we should look for a new office premises considering that our present office is very congested and the building is very old.

We should make a study whether the distribution of work amongst our staff is such it enables them to be most productive and whether additional staff should be employed, and also whether our office equipment need to be replaced or added.

We should make a study whether the existing law and regulations need to be amended to improve the efficiency of the Board and, if required, to propose the necessary amendments. Even a casual reading of the provisions of the Legal Profession Act 1976 shows that at least some cosmetic amendments are necessary in view of the creation of the Court of Appeal and the re-naming of the Lord President and the Chief Justice Malaysia.

As we are also entrusted with money, it is our duty to see that the money is spent wisely. We should get our priorities right in spending. We should emphasize on value for money. We must not be lavish. The money is not our own money. It is trust money.

In this regard, we must review our current expenditures to see whether they are justified and whether there are expenditures that can be reduced without adversely affecting the performance of the Board. For example, are we paying the prevailing market rate for the rental of our premises? Are we spending too much on travelling allowances? These are some examples.

I would like this Board to consider whether it is necessary, in law and in practice, for the Director-cum-Secretary to attend investigation proceedings all over the country, because, besides it being time-consuming for him, it is more costly for the Board and it may even delay the completion of the investigation.

I would also like all the assets of this Board to be audited (either as at 31.12.00 or 15.2.01, whichever is considered the more suitable date) by qualified auditors so that we know exactly what we have and what we do not have but should have.

I am also proposing that an **Annual Report** be prepared and tabled to this Board by the second month of the following year. The annual report should contain,

inter alia, statistics of complaints carried forward from previous years, registered during the year, disposed of during the year and carried forward to following year. May be a copy of the report should be given to the Chief Justice, Malaysia, Chief Judge, Malaya and the Bar Council. I think they should know what is happening. It will also make us more transparent.

(I understand that the monthly and annual audited accounts are tabled to the Board. That practice must continue. The annual audited account that has been approved by the Board should also be given to the persons and bodies mentioned above, for the same reasons.)

I think, ideally, once a year there should be a meeting of all members of the Board and panel members of the Disciplinary Committee and the Investigating Tribunal. In that meeting we shall assess our performance, identify our weaknesses and find solutions for them. But, this will involve additional expenditure, quite a lot, I am sure. I suggest that we make a study of the cost of such a meeting before deciding whether it is worth having it or not.

There is one thing that is troubling me. When I was told that I would be appointed Chairman of this Board, little did I realise that the job involves approving bills for payment, signing cheques and so on. I thought the job is only to decide disciplinary cases, a quasi-judicial function. But, that is not what it turns out to be. It appears that I am also an Office Manager and Financial Controller. I am sure that when Parliament passed the law requiring a Judge to be the Chairman of the Board, the intention was for him to chair the Board that decides the complaints against members of the bar, whether the members complained against have breached the law and/or the rules or not and if they have what punishment to impose. That is why a Judge is required. That is his job.

In this regard, as far as possible I do not want to spend my time on the day to day running of the office. I want to concentrate on adjudicating the complaints. So, we will have to work out new procedures for approving bills and claims, signing cheques, supervising the staff and so on. Of course, important and policy matters, involving expenditure of the Board's fund like renting of premises, and recruitment of officers and staff must be approved by the Board, repeat, I mean the Board.

I am not sure now whether I have not rocked the boat. If I have, so be it.

These are some of the matters that I would like this Board to discuss and decide, if not all at least some of them, today. We may have to appoint Sub-Committees, if necessary. As we go along, if you have any matter to raise, please do so. I would like the decisions of this Board to really be decisions of the Board, made after full, frank and honest deliberations. Let us work together, in a frank and friendly atmosphere, to discharge our duties as best we can. In this world, so

long as we discharge our duties honestly and diligently, no one can fault us, even if we make mistakes, at times.

Thank you.

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