



SUB-COMMITTEE REPORTS

SELANGOR BAR REPRESENTATIVE



Kanarasan Ghandinesen

This term, the Bar Council (BC) was involved in many initiatives and dealt with various issues concerning members of the Bar and the public at large. Some of the significant ones are as follows:-

1. Proposal by Bank Negara Malaysia to revamp Third Party Insurance

Bank Negara had proposed to revamp the Third Party Bodily Injury and Death Insurance (TPBID) Scheme. The essence of the new Scheme was to cap claims and limit heads of damages.

BC took the view that the proposed Scheme was not viable in both concept and implementation, and that it only served to protect the insurance industry to the detriment of the public. BC argued that the issue of liability and quantum of damages should be decided based on existing legal principles. Damages is to put the claimant in a position which is similar to the position had he not met the accident. To now cap claims would be inconsistent with this principle. Claimants who are awarded higher quantum of damages deserve it as they have suffered more. In fact, the loss of life and limb can never be compensated sufficiently, and therefore should not be reduced further.

BC further argued that immediate measures can be implemented to improve the current framework of claims. Such measures include introducing time frames for provision of documents from relevant authorities, time frames for insurers to make reasonable offers, fine tune guidelines on quantum of awards and limit increase in premiums. Other measures proposed by BC include insurers paying an initial sum on notification of claim to relieve victim's immediate difficulties and establishing a joint committee with the Attorney General's Chambers and insurers to review legislation dealing with



multiplicand to reflect present conditions in employment tenure, money value for bereavement and other issues.

Various efforts have been taken to address these issues. BC had repeatedly engaged Bank Negara on the issues and submitted a Memorandum with our feedback on their proposal. BC organised various roadshows with the State Bar Committees to educate members as well as the public on the proposal. BC also held meetings with members of Parliament and the Backbencher's Club to inform them about the proposal and its consequences.

Finally, Bank Negara agreed it will not revamp the existing system or cap claims. Instead they agreed to focus on improving the current framework on insurance claims and expediting payment of claims to accident victims. To this end Bank Negara has already agreed to implement time lines for hospitals and the police on issuing of relevant documentation. Bank Negara has also agreed to BC's request for the formation of a joint committee consisting of all stakeholders.

2. Matters relating to Courts

BC held meetings with the Chief Justice (CJ) and other senior Judges to discuss various issues affecting members of the Bar. BC also handed over to the CJ a set of specific complaints that had been forwarded to the Secretariat by members of the Bar. BC again raised the issue of over-emphasis on 'kpi'.

From the said discussions, CJ has agreed to various suggestions from BC. These include taking administrative measures to speed up the process of registration of probate and LA cases, Court sittings at 8.30am would not be applied strictly and cases would not be struck off until close of sitting for the day, judges hearing a case should not mediate the case and practice directions on basic guidelines on implementation of mediation will be issued, appellate courts should write grounds of judgment even when there is no further appeal, adjournments should be granted in deserving cases even for pre-2008 cases, courts should not sit beyond 5.00pm as a matter of practice, hearings should not be brought forward unless with the agreement of all parties concerned, and many others.

To ensure that all Judges and Magistrates implement these agreed suggestions, BC has forwarded a draft circular incorporating the same to CJ for approval before disseminating the circular to all members of the Bar and Bench. However, we are still waiting approval on the circular. Nonetheless, in a dialogue session with members of the Bar and members of the KL and Selangor Bench on 8.1.2011, CJ openly reiterated the aforementioned suggestions particularly stating that Judges should not be guided by 'kpi' in carrying out their duties.

3. Declaration that SRER 2004 made under s. 57(a) of LPA is null and void



On 26 April 2010, the KL High Court ruled that the Solicitors' Remuneration (Enforcement) Rules 2004 (SRER) made under section 57(a) of the LPA are null and void, on the ground that BC's powers under section 57(a) of the LPA do not include the power to make enforcement rules.

However the Court dismissed the other prayers seeking declarations that members are allowed to waive fees in non-contentious matters. The Court further upheld the SRO 2005 but opined that the SRO may not be capable of being enforced because there are no specific powers granted to BC or to the Solicitors' Costs Committee to make rules to enforce the same.

The Bar Council has filed an appeal against the decision. Members are reminded that any breach of the SRO would amount to misconduct for which disciplinary action may follow.

4. Assistance relating to disciplinary proceedings

BC has established a "help desk" to provide support for members of the Bar who face disciplinary proceedings. Separate informational brochures (FAQs) have also been prepared to assist both Members of the Bar and members of the public.

5. Yayasan Bantuan Guaman Kebangsaan (YBGK)

Recognising the need to expand legal aid to reach the needy and the limited volunteer base at the Legal Aid Centres, BC has been lobbying the government to establish a comprehensive national legal aid scheme to fund and administer legal aid. A formal proposal for setting up a foundation was submitted to the government in 2009 and revisited in 2010. The government has responded by setting up the YBGK.

The YBGK would fund the conduct of legal aid for criminal proceedings. Legal aid would be offered to all Malaysians in criminal proceedings at the point of arrest, remand hearing and bail application. However Malaysians who require representation during hearings would have to pass a 'means test' before they qualify for legal aid.

The Board of Directors of YBGK will include the Attorney General and the President of the Malaysian Bar. The government has agreed to provide YBGK an initial grant of RM5 million and lawyers who provide legal assistance under this scheme would be paid. BC is looking into various methods to ensure the long-term funding of YBGK.

During this term the Selangor Bar Chairman was appointed as Chairperson of the Criminal Law Committee. I was appointed as Chairperson of the Law Care Committee and Deputy Chairperson of the Law Reform & Special Areas Committee. During this term Selangor Bar had an unprecedented five members in BC.



BC continues to keep members informed of its activities and decisions by its regular publications, circulars and notices as well as updating its website. BC further continues to issue General Statements and Decisions after every BC meeting as well as weekly e-BC inTouch Newsletters which carries reports of current events and information of forthcoming events.

Members are requested to take note of the following upcoming major events and urged to attend/participate in the same:

- 1) National Young Lawyers Committee Convention 2011 at Concorde Hotel from 19 to 20 February 2011.
- 2) Asian Mediation Association Conference at Sheraton Imperial Hotel from 24 to 25 February 2011.
- 3) Malaysian Bar AGM on 12 March 2011. The venue is to be confirmed.
- 4) Bench & Bar Games hosted by Singapore from 29 April to 1 May 2010.

There were 12 BC meetings up to the time of this report. The Chairman attended 12 and I attended 9.

This term proved to be hectic and challenging. It was demanding juggling and managing BC duties, SBC commitments, legal practice and personal trials. Nonetheless I have enjoyed the challenge and experience. For this I thank the members of the Selangor Bar for giving me the opportunity to serve the Bar.

Finally I wish to thank the Chairman and my colleagues in the Committee for all the support and encouragement as well as the secretariat staff for all the assistance rendered during this term.

Report submitted by :

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Selangor Bar Representative to the Bar Council 2010/2011