

CHAPTER IV  
DISCIPLINARY BODIES

The existence of a profession without any control over the activities of its members is dangerous as it would ultimately lead to undesirable consequences. A body concerned with professional discipline is highly essential, with such power of surveillance that would look after the interests of the profession and the public. A constant scrutiny on the activities of the members of the legal profession is needed to guarantee the competence and integrity of the members. Failure to observe professional standards may deprive a practitioner of his membership in the profession.

In regulating the activities of the members of the legal profession, the task of handling such disciplinary action is entrusted on a statutory body which is constituted of the legal profession itself. The general powers of the disciplinary body is conferred by statutes, leaving the framework of details to be filled in by the profession itself. This is justifiable as the special knowledge required to enforce the standard of competence and integrity of the profession could only be done so by the members of the legal profession itself.

The executive control of the practice and conduct of all advocates and solicitors in the exercise of the profession is vested in a body called the Bar Council.<sup>1</sup> It is provided with enabling powers for the purposes of making rules regulating practice and discipline.<sup>2</sup> It is also answerable for questions affecting the practice and etiquette of the

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1. S.47 (1), Legal Profession Act, 1976

2. S.77 (1) Ibid.

profession and the conduct of members and to make recommendations and take action in relation to such questions.<sup>3</sup> This means that any complaints or suggestions that affect that profession as a whole or matters affecting its members are brought before the Council who would consequently take the necessary steps to act upon it. It is the general duty of the Council to see that no advocate and solicitor remains on the Roll if guilty of conduct which renders him unfit to do so, but "the functions of the Council is like that of an auditor which is to be a watchdog and not a bloodhound."<sup>4</sup> It does not possess disciplinary powers itself and any complaints made against any member of the Bar would first be referred to the Council or the State Bar Committee. These powers form a section of the whole scheme of professional regulations provided by the Legal Profession Act, 1976.

It is, therefore, seen that the Bar has such wide powers vested in them for the purposes of management and performance of its affairs under the Act. It is within the competence of the Council as a body concerned with the honour and well-being of those engaged in the legal profession, to lay down rules concerning professional and non-professional activities, if such activities are harming or thwarting a proper adherence to professional standard and behaviour. However, it is not within the power of the Council to impose restrictions upon its members unless such restrictions are either necessary or desirable for the purposes of maintaining the honour of the members or for purposes of promoting the interests of members.

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3. Op Cit, 5. 57 (b)(c)

4. Cordery, Cordery's Law relating to Solicitors, 5th Edition, Butterworths, London, 1961, p.440.

The judicial control, disciplinary proceedings and also the enforcement of the standards of the advocates and solicitors is to be vested in another body known as the Disciplinary Committee.<sup>5</sup> Its constitution is derived from the Legal Profession Act, 1976.<sup>6</sup> Complaints that affect the profession or its members are first brought before the Bar Committee, who, in turn, would refer the matter to the Chief Justice. The complaint may be brought by the Bar Council acting as the guardian of the profession or by any aggrieved persons for disciplinary measures on the grounds of misconduct or other similar reasons. It is only then, under S.99 (1), that the Chief Justice may appoint the Disciplinary Committee to take the necessary steps to handle the complaints. It had been stressed by Lord Hewart that the Committee is a specialised tribunal created by Parliament to deal with the question of professional duty peculiarly within the knowledge of the profession itself and for that reason, constituted by members of that profession specially selected for their knowledge, experience and position.<sup>7</sup> It could, therefore, be seen that in the preliminary stages, before a complaint is investigated, there is this layer of steps that had to be undergone. It is only for the Disciplinary Committee to decide on the question whether the practitioner has committed a breach of any rules made under the statutes or has fallen short of the required standard of professional conduct and if so, to take the necessary actions to penalise the offender.

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5. Op Cit, S.99 (1)

6. Part VII

7. Re A Solicitor (1928) 72 Sol. Jo. 368.

The Disciplinary Committee is an entirely separate and distinct body. It is often erroneously believed that it is simply a committee of the Bar Council and that it is the Bar Council which is the body that enforces discipline among solicitors. Its members are appointed by the Chief Justice from among advocates and solicitors of not less than seven years standing in the legal profession and having valid practising certificates.<sup>8</sup> It consists of a maximum of five members and a minimum of three.<sup>9</sup> The Committee does not have a permanent composition, for it is within the power of the Chief Justice to make any revocation or alteration as he may think fair and reasonable.<sup>10</sup>

The Disciplinary Committee have similar powers as the courts to make orders affecting advocates and solicitors. Its functions are judicial, not administrative. The orders range from the most extreme penalties as in the case of striking off the Rolls to a mere imposition of a fine.<sup>11</sup> However, in cases of dissatisfaction, there is still the power of appeal to the courts.

The method of investigating complaints against the members of the legal profession is provided for in the new Act. S.95 (3) recognises the fact that complaints could be petty and frivolous and without merit, made by disgruntled people who are not aware that they have no cause for complaint. In handling such situations, the section makes it a condition that a deposit not exceeding \$100/- would be imposed to cover the necessary costs of expenses. The deposit would only be refunded, if it is shown that the complaints had incurred no expenses.

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8. S.99 (1), Legal Profession Act, 1976

9. Ibid. S.99 (2)

10. Ibid.

11. Op Cit., S.101

As for the number of complaints received, the Selangor State Bar Committee receives an average of two complaints per week.<sup>12</sup> Most of the complaints are frivolous and unjustified. The most common complaint is overcharging. However, little could be done about this as there are no charging scales that govern the profession especially in matters relating to contentious business, where the issues are brought to court for adjudication. Charges are often made as a result of agreements made between the practitioners and the clients. In doing so, the more experienced and better-established practitioners would feel that they are entitled to charge extra for their services rendered.

Complaints are only brought before the Disciplinary Committee after a prima facie case has been established. Complaints, whether they are justified or otherwise, would first be investigated by the State Bar Committee and absolute discretion is vested in the State Bar Committee in conducting the inquiry.<sup>13</sup> Where an inquiry is being carried on, the advocate and solicitor concerned would be duly informed and an opportunity to be heard will be duly given.<sup>14</sup> This method is open to criticism as it would arouse unnecessary alarm in the practitioner of the possibility of disciplinary proceedings when in fact, no sufficient evidence had been disclosed yet. The State Bar Committee would then determine whether the inquiries and investigation would warrant a formal investigation or not. If it is justified, the State Bar Committee would forthwith apply to the Chief Justice who shall appoint a Disciplinary Committee which shall further hear and investigate the complaint. Therefore, before a case could reach the disciplinary

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12. An interview with the Chairman of the Selangor Bar Committee.

13. S.96 (1), Legal Profession Act, 1976

14. Ibid. S.96 (1)(a)(i)(ii).

machinery proper, they are first filtered by the individual State Bar Committees. The findings of the Disciplinary Committee would be referred, once again, to the Chief Justice. From then, an appeal could be lodged to the High Court.

It is seen that the disciplinary process is a lengthy business, time-consuming and costly. This greatly affects the expediency of investigating complaints. The public is often unsympathetic at the delay of investigating process for the system of enforcing discipline is quite foreign to them. Complainants are often more interested in the outcome of their complaints, rather than the way it is conducted. The long wait and delay would lead to the question of the effectiveness of the disciplinary machinery. Consequently, the faith of the public in the disciplinary system would thereby be affected. The different layers of the disciplinary action tend to reduce the effectiveness of the enforcement of discipline, as it would convey the impression that the disciplinary machinery is slow and not functioning well, and that complainants are often left unsatisfied.

Another criticism of the system is where the Disciplinary Committee has to refer its findings to the Chief Justice. The Disciplinary Committee has again to refer its findings to the Chief Justice. The situation should be that, where an action had been taken against an advocate and solicitor, all powers should be vested in the hands of the Bar Council instead of having to refer the matter to the Chief Justice. This additional layer in the investigating process tends to slower the whole investigation of disciplinary action. In the case of the medical profession, such power

is vested in the Malaysian Medical Council, the general body that controls the profession.<sup>15</sup> It is only in cases of appeal against the orders of the High Court that the matter could be brought before the courts.<sup>16</sup> If such disciplinary powers are vested in the Medical Council, the legal profession should also be in the same position, without having to make any further reference to the Chief Justice. It should not be a reason that, just because the legal profession is so closely intertwined with the courts, the proximity should not be disturbed!

The composition of the Disciplinary Committee is made up of advocates and solicitors. The question arises whether the lawyers are acting as judges in their own cause. Disciplinary bodies have the tendencies of not keeping the complainants fully informed of the investigations or making its findings public. This would allow the idea that the Committee is biased and, therefore, has failed to perform their duties to the satisfaction of the aggrieved complainant. The system of legal membership, of course, has its advantages as it would mean that they have the special knowledge and therefore, effectively and speedily undertake to handle the disciplinary measures peculiar to their profession.

The situation in England today is that the old Disciplinary Committee has now been replaced by a newly named body known as the "Solicitors Disciplinary Tribunal"<sup>17</sup>. Major changes had been made by the 1974 Act in the sections relating to this tribunal and the new provisions<sup>18</sup> took effect from 1st May, 1975. As in the repealed statute, the members of the tribunal are still appointed by the Master of Rolls<sup>19</sup> but now they

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15. S.30 Medical Act, 1971

16. Ibid., S. 31(1)

17. S.46, Solicitors Act, 1974

18. Ibid., S.46 - 49

19. Ibid., S.46(2)

consist of two categories of members;<sup>20</sup> "solicitor members" who must be practising solicitors and "lay members" namely persons who are neither solicitors nor barristers. These changes were brought about as a result of public scepticism in England that the Disciplinary Committee had been merely a committee of the Law Society, which was seen as a kind of a solicitors' trade union. It was consequently thought desirable that it should be renamed the "Solicitors Disciplinary Tribunal" and, despite of the few changes, there is no change in its functions.

Such a change is also worth a thought in this country. The present system of investigating complaints has led to an impression created among the people that the ineffectiveness of the disciplinary machinery is due to the fact that it is the offender's own colleagues who act as adjudicators and thus would be rather reluctant to take action on their own professional brothers and bring them to book.

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20. Ibid, s.46 (3)

**CONCENTRATION OF PRACTITIONERS IN VARIOUS STATES OF MALAYA**

**TABLE A**

1. Alor Star*	20
2. Batu Pahat	11
3. Bentong	1
4. Bukit Mertajam	2
5. Butterworth	10
6. Ipoh	107
7. Johore Bahru*	83
8. Kajang	2
9. Klang	16
10. Kluang	3
11. Kota Bharu*	17
12. Kuala Lumpur	474
13. Kuala Pilah	1
14. Kuala Trengganu*	7
15. Kuantan*	21
16. Malacca*	37
17. Muar	5
18. Penang*	110
19. Petaling Jaya	7
20. Segamat	2
21. Seremban	34
22. Sitiawan	3
23. Sungai Petani	3
24. Taiping	3
25. Teluk Anson	5
26. Temerloh	1
	<u>985</u>
Total:	<u>985</u>

**LOCAL PRACTITIONERS IN FOREIGN CITIES**

1. Singapore	8
2. Jakarta	1
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**Source:** Drawn from the Bar Council, States of Malaya, Law List, 1975.

\* Capital towns.