

# The role of lawyers in court

Zealous advocacy is permitted – but only within the bounds of the law.



## With all due respect

ROGER TAN

THE Aug 27 press statement of the Universiti Malaya Law Society on recent court cases caught my attention because it came from students at the best law school in this country whose alumni include the current Prime Minister, Chief Justice and Attorney General.

They wrote, "As future rule of law bearers perusing the recent incidents, we believe that much is expected from legal luminaries to set a model of respect, courtesy and dignity. However, what is occurring thus far has been the downfall of such expectations even in the soil's highest avenue of justice – the Federal Court."

It would be a tragedy if these prospective lawyers should feel disillusioned by the alleged conduct of some senior lawyers even before they join the legal profession. As a senior member of the Malaysian Bar, it behoves me to assure these future entrants to the profession that what they have learnt at law school relating to ethics, virtues, values and ideals of the legal profession still apply and will not be easily tossed away. There are still many senior lawyers out there who practise law with the highest standards of professional integrity and honesty, and who possess unblemished characters and reputations.

These students should also be assured that there is an independent judicial system in this country worth associating with and defending for. Together with an independent Bar, we are in the vanguard of preserving, protecting and defending the Constitution and upholding the rule of law. Otherwise, it is meaningless if at almost every National Day parade, our leaders and citizens raise hands, pledging aloud to uphold the five fundamental principles of Rukunegara which include the supremacy of the Constitution and the rule of law.

In this respect, we are often reminded of what the late Lord President (as the position of chief justice was previously called) Tun Mohamed Suffian Hashim said when he was first elevated to the Bench on Oct 26, 1961: "I yield to no one in recognition of the difficulty and importance of the office which I now have the honour of occupying. In evenly balancing the scales of justice, I will help to maintain the rule of law, and two essentials of that rule are the independence of the Bar and the independence of the Judiciary."

His words were echoed by the other Lord President, the late Sultan Azlan Shah: "The Judiciary, however, is only a part of our administration of justice. The fact is that the true responsibility for the effectiveness of judicial control lies with the legal profession which fosters and nurtures it. There cannot be an independent Judiciary without an independent Bar. The Judiciary cannot



**Dedicated:** (From left, anti-clockwise) Lawyers Jaspal Singh, Lee Guan Tong, HR Dipendra, Kevin Wong and Janet Chai with others at the recent extraordinary general meeting of the Malaysian Bar. — Photo provided



## Profile of practising lawyers in Peninsular Malaysia

as at Aug 31, 2022

**Total: 21,926**

| Gender  | Ethnicity                         | No of lawyers |
|---|-----------------------------------|---------------|
| Men<br>9,690 (44.2%)  | Chinese<br>9,162 (41.8%)          | 280           |
| Women<br>12,236 (55.8%)                                       | Malays<br>8,691 (39.6%)           | 10            |
|   | Indians<br>3,274 (14.9%)          | 31            |
|   | Punjabis and others<br>799 (3.6%) | 5             |
| Qualifications  |                                   | No of lawyers |
| Advance Diploma In Law (Adil) - Institut Teknologi Mara (ITM) |                                   | 280           |
| Articleship   |                                   | 10            |
| Australian National University                                |                                   | 31            |
| Bar-at-law  |                                   | 5             |
| Certificate In Legal Practice (CLP)                           |                                   | 7,216         |
| CLP/Lincoln   |                                   | 10            |
| CLP/Middle  |                                   | 3             |
| Gray's Inn  |                                   | 218           |
| Inner Temple  |                                   | 223           |
| International Islamic University (IIUM)                       |                                   | 3,811         |
| King's Inn, Ireland   |                                   | 7             |
| Lincoln's Inn   |                                   | 1,488         |
| Middle Temple   |                                   | 915           |
| Multimedia University (MMU)                                   |                                   | 1,424         |
| Singapore   |                                   | 177           |
| Solicitor from the Senior/Supreme Courts of England and Wales |                                   | 17            |
| Universiti Kebangsaan Malaysia (UKM)                          |                                   | 1,152         |
| Universiti Malaya (UM)  |                                   | 1,778         |
| Universiti Sains Islam Malaysia (USIM)                        |                                   | 8             |
| Universiti Sultan Zainal Abidin (UNISZA)                      |                                   | 157           |
| Universiti Teknologi Mara (UiTM)                              |                                   | 1,945         |
| Universiti Utara Malaysia (UUM)                               |                                   | 590           |
| Universities in Australia and New Zealand                     |                                   | 461           |
| <b>TOTAL</b>  |                                   | <b>21,926</b> |

Source: Malaysian Bar Council

TheStar graphics

function without the legal profession and for the Judiciary to remain independent, so must the profession."

In other words, what will happen if the Judiciary and the Bar are not independent, and they are corrupt? The question brings to mind a Chinese proverb: "Though the sword of justice is sharp, it will not slay the innocent." But we easily forget that the innocent man will be slain if the swordsman is corrupt. In simple terms, a corrupt and a compliant judicial system will slay the innocent.

That said, the recent court decisions in some high-profile cases must have brought cathartic relief to some but probably caused others to feel livid. Be that as it may, we as the rule of law bearers (as so described by those UM students) must respect the decisions of our courts; otherwise it is a perfect recipe for anarchy and tyranny.

Readers must know that the legal profession is an honourable profession. This is stated in the law.

Section 94(3)(n) of the Legal Profession Act, 1976 (Act 166) pro-

vides that it is professional misconduct if the unbefitting conduct of a lawyer brings the legal profession into disrepute. Rule 31 of the Legal Profession (Practice and Etiquette) Rules 1978 requires every lawyer to always uphold the dignity and high standing of the legal profession. An errant lawyer will have disciplinary proceedings instituted against him.

We must confess that some of the unsavoury remarks made against us are partly self-induced, that is, due to our own members' failure and refusal to uphold the high standing of this honourable profession. Some critics would love to make fun of lawyers with the oft-quoted line from Shakespeare's *Henry VI* that "the first thing we do, let's kill all the lawyers"! I am also reminded of the mendacious front-page headline of a local tabloid on July 24, 2003, that claimed "one in four lawyers in Malaysia are cheats!"

Some members of the public have even been told that the services of lawyers can be dispensed with. For example, the introduction of the Housing Integrated Management System (HIMS) by the Housing and Local Government Ministry requires developers to use electronic sales and purchase agreements (eSPAs) via the HIMS. Some officials have commented to developers, "Why must you still get lawyers when you don't have to pay any more fees?"

This is incorrect because a buyer is entitled to legal representation. After signing the eSPA, a buyer still must do the memorandum of transfer, and if he applies for a loan, the loan security documents.

Sadly, the first thing clients tend to ask lawyers is how much discount can they get for legal services. They do not ask this when they consult a doctor. It appears that lawyers are only appreciated when the clients' liberty or property are threatened or taken away!

Interestingly, despite the wide misconception about lawyers, the number of new entrants increases every year. As of Aug 31, there are 21,926 practising lawyers in Peninsular Malaysia (see diagram). This shows that parents still want their children to become lawyers and have no hesitation in investing in their children's legal education notwithstanding jokes about avaricious lawyers feeding on the misfortunes of others.

With all due respect, a lawyer is also an officer of the court. In *Rondel v Worsley* 1966, the celebrated English judge, Lord Denning best explained what is meant by the duties of a lawyer to the court: "As

an advocate he is a minister of justice equally with the judge.... He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants; or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice.

"He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court.

"The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline."

Of course, legal practitioners will know that the above words run contrary to what Attorney General Henry Brougham did in 1820 when he defended his client, Queen Caroline of Brunswick, the estranged wife of King George IV. When Caroline returned to England from abroad that year, the king immediately sought to dissolve the marriage on the grounds of adultery so that Caroline could not become queen. Lord Brougham fervidly and successfully defended Caroline. Without regard whatsoever to the chaos it might have on his country, he threatened to introduce evidence of George IV's extramarital affairs and his secret marriage to one of his mistresses, a Roman Catholic widow, Maria Fitzherbert. A marriage to a Catholic would cause the forfeiture of the Anglican king's crown.

This is Brougham's famous speech in the House of Lords: "An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and amongst them, to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion."

The above speech has often been relied upon by defence counsel, especially in Canada and the United States, to zealously advocate their clients' cause at all costs. To these zealous advocates practising in an adversarial system of justice, the clients' interests override their duties to the court even if they have to behave unethically. However, in almost all jurisdictions today, zealous advocacy is permitted but only within the bounds of the law.

So to my learned friends, do not toss away what we learnt at law school. We need occasionally to go back to basics. I have no doubt that the knowledge and training we acquired there will come handy and constantly guide our conscience when upholding the cause of justice and the rule of law without fear and favour.

The writer is a senior lawyer and a Bar Council member. The views expressed herein are entirely his.