

# **JOHORE BAR COMMITTEE**

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**FOR MEMBERS ONLY**

**Internal Circulation**

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**PRIVATE & CONFIDENTIAL**

**TO ALL MEMBERS OF THE JOHORE BAR**

**BY COURT BOX/EMAIL/FAX/JBC WEBSITE**

**(Note: As the circular is distributed via e-mail/fax, in the event it is forwarded to one person in a firm, Kindly print the same and distribute amongst the other lawyers and pupils in your office)**

### **PRESERVING THE INTEGRITY OF THE BAR**

This is not the usual circular to inform you of forthcoming events and activities of the Johore Bar but an earnest appeal to all members of the Johore Bar to help preserve the integrity of the Bar.

This unprecedented move has been prompted by certain recent events that appear to have undermined the integrity and credibility of the Johore Bar. We view this with grave concern and feel that unless immediate steps are taken to address this issue bravely and honestly, the Johore Bar may soon end up losing its clout and stature.

**PLEASE CONTINUE READING THIS CIRCULAR** as it concerns the future of the Johore Bar.

Let me state the facts first.

On 25<sup>th</sup> March 2011 the Johore Bar Committee (hereinafter referred to as "the JBC") received a letter from a member of the Johore Bar, claiming to represent a group of 20 concerned members of the Johore Bar to take certain action in respect of a poison-pen letter that was in circulation. The JBC after due consideration replied to the said member vide letter dated 29<sup>th</sup> March 2011, stating inter alia, that:

- (a) the JBC was unable to act on her representation for the reason that the said letter was an anonymous letter which was neither addressed to nor copied to the JBC and that it had always been the policy of the JBC to refrain from acting on such letters;
- (b) the JBC could not accede to the demand to meet up with a certain ophthalmologist named in the said letter to obtain her confirmation in writing as to whether or not she had written the said poison-pen letter for the reason that the powers of the JBC to conduct investigation or inquiry, if any, were confined to the members of the State Bar and that it was not within our powers to seek an explanation from outsiders such as the said ophthalmologist; and
- (c) the JBC was nevertheless open to suggestions as to how else the matter could be handled and offered to meet the group of concerned lawyers on 31<sup>st</sup> March 2011 to explore the matter further.

The said member however declined to meet the JBC as proposed by us.

The JBC left the matter at that until we were notified by the Bar Council that at a recent meeting between the office bearers and the Chief Justice of Malaysia ("the CJ") and the Chief Judge of Malaya ("the CJM") the office bearers were shocked to learn that the CJ had received a letter purportedly from 68 members of the Johore Bar which was contrary to all representations made to him previously both by the JBC and the Bar Council on the matter in issue.

Needless to say, that revelation was most embarrassing for the the Bar Council that had in fulfilling its statutory duties under the Legal Profession Act 1976 ("hereinafter referred to as the LPA") and in absolute good faith pursued the complaints received from the Johore Bar, with the relevant authorities, only to be told now that

there was a letter from some members of the Johore Bar with a contrary view.

The JBC has since learnt that:

- (a) a court interpreter had been freely handing out the said poison-pen letter to lawyers, sought their views on the same and encouraged them to do something about it;
- (b) a few members of the Johore Bar who were instrumental in sending the letter to the Chief Justice had gone and seen the ophthalmologist in question and persuaded her to write a letter to the Chief Justice denying that she was the author of the said poison-pen letter; and
- (c) among the 68 members of the Johore Bar who had signed the said letter were those who had previously held a different view and complained bitterly to the JBC.

It is common knowledge that since about the middle of last year members of the Johore Bar had been complaining incessantly about the indiscriminate implementation of the KPI measures to dispose off cases by certain exuberant judicial officers, that caused tremendous hardship to themselves and their clients, and resulted in gross injustice on many occasions. The situation forced two Extra-Ordinary General Meetings of the Johore Bar to be held, which led, inter alia, to the election of a Task Force, comprising of Datuk Haji Kuthubul Zaman bin Bukhari, Datuk Yeo Yang Poh, Mr. Roger Tan, Mr. Norman Fernandez and Mr. S. Gunasegaran, entrusted with the task of compiling a list of problems faced by members in court and forwarding the said report to the Bar Council to be pursued with the relevant authorities.

The Task Force held a series of meetings with members of the Johore Bar and based upon their feedback compiled a Memorandum and forwarded it to the Bar Council as per the resolution passed at the 1<sup>st</sup> EGM of the Johore Bar.

At the invitation of the CJ, on 23<sup>rd</sup> September 2010, the Task Force, together with some invited members of the Johore Bar met the CJ, the CJM and other senior Judges of the Federal Court and the Court of Appeal, to discuss the problems faced by our members in court. At the said meeting the grouses and concerns of the Johore Bar were relayed to the CJ and the other senior members of the Judiciary.

It may perhaps be opportune here to recollect an incident that took place soon after the Task Force returned from the meeting with the CJ. One of the members of the Johore Bar who had accompanied the Task Force for the meeting with the CJ came back from the said meeting and on his own and without consulting the Task Force, sent an SMS to the CJ commending him for the efforts that he had taken to clear the backlog of cases. This directly contradicted the position taken by the Task Force that was established by members of the Johore Bar at the EGM and caused us much embarrassment. We do not dispute the right of members of the Bar to write to the CJ to express their personal views on any matter, but it would be improper for any person who had accompanied the Task Force to the meeting with the CJ, specifically to voice our grievances, to come back and send a note of commendation to the CJ, in direct conflict with the official stand of the Johore Bar.

The letter by the 68 members of the Johore Bar also contradicts the position taken by the JBC in the matter. Adding insult to injury is the fact that some of those who had caused the said letter to be sent to the CJ were amongst those who had previously complained strongly to the JBC. They had perhaps not realized that their action could undermine the JBC and by extension the Johore Bar.

We have since been cautioned by the Bar Council that unless the Johore Bar speaks in one voice regarding issues of general concern, it would be extremely difficult for it to act upon our complaints and representations. We have also been requested to advise our members to refrain from taking a position that is contrary to the stand of the JBC and from making representations directly to the authorities. If this incident sets the trend for the future, the authorities may stop listening to the official voice of the Bar and that would have disastrous consequences for all of us.

The position of the JBC is simple and clear. Members of the Johore Bar elect the JBC to run the affairs of the Johore Bar. The powers and functions of the JBC are set out in section 73 of the LPA. Quite clearly, the executive functions of the Johore Bar are vested in the JBC. This means that save in respect of their own cases and matters that are strictly personal, members of the Johore Bar must always act collectively through the JBC in respect of all matters that affect the interest of the Bar as a whole. All complaints and representations to the authorities must be channeled through the JBC. Thus it is imperative that we speak in unison on all issues that concern the members as a whole.

From time to time the JBC receives complaints and representations from our members regarding various matters, in particular about problems faced by them in court. The JBC takes a serious view of such complaints and tries to resolve the same within the shortest possible time. The stand that we take in respect of any complaint or representation that is made to us is always arrived at after due deliberation and is based upon the interest of the profession. There are however instances when we have to decline to act upon the complaint or representation made by members for a good reason. For instance, we would as a matter of policy, refrain from acting upon anonymous poison-pen letters and on matters that do not fall within our purview. We also take care to avoid acting in excess of our powers. In short, at all times the JBC would act strictly within the parameters set by statute and convention.

Members who refer matters to the JBC must accept the decision made in good faith. To refer a matter to the JBC merely as a matter of formality and to proceed to act on one's own if the decision of the JBC is not to one's liking not only shows contempt and disregard to your Committee but also amounts to usurpation of the functions of the JBC. If this situation prevails it would inevitably erode the credibility of the JBC, cause confusion among members of the Johore Bar and lead to a chaotic situation.

Whilst the JBC takes great pain to arrive at the right decision, we do not lay any claim to infallibility. If members feel strongly that any of our decision is erroneous they have the right to call for an Extra-Ordinary General Meeting of the Johore Bar to compel us to reconsider the decision, and if need be, to overrule it. The LPA provides for this and it is also an integral part of the democratic process. At the end of the day the will of the majority will prevail and the JBC would have no qualms about being bound by it.

The members of the JBC spend a great deal of time and effort in managing the affairs of the Johore Bar properly, particularly in difficult and challenging times like this. Our primary duty is to promote and safeguard the interests of our members. But we need your undivided support and co-operation to make it possible. The act of the 68 lawyers in writing to the CJ is most disheartening. We do not for a moment think that they did so in defiance of the authority of the JBC. We are inclined to believe that in their enthusiasm and haste to send the said letter they had inadvertently failed to give sufficient consideration to the possible consequences of the letter that they were sending.

It is not our intention to quarrel with fellow members of the Bar. The interest of the profession and the Johore Bar however obliges us to act in accordance with the established ground rules. The JBC must be allowed to function independently and without fear or favour in order to remain relevant. If there are genuine grievances, they must be ventilated through established procedure and not arbitrarily. We have a common duty to ensure that we do not fail as an organization.

The Bard said "What's done cannot be undone." But at the least we could attempt some damage control by learning from past mistakes and pledging not to repeat them in future. This is necessary to ensure that that we remain relevant. Our strength lies in our unity and we must refrain from any activity that might jeopardize it.

My dear fellow members of the Johore Bar, kindly permit me to conclude by appealing to all of you to support us in our endeavor to protect our integrity and credibility of the Johore Bar. We know that with your support we will not fail in our mission.

**S. GUNASEGARAN**  
**Chairman**  
**Johore Bar Committee**

(This is a computer-generated letter. No signature is required)