

Making justice accessible

LITIGATION SHOULD BE SIMPLIFIED AND THE PUBLIC SHOULD BE GIVEN ALTERNATIVE AVENUES TO SEEK REMEDIES.

ATTORNEY-GENERAL TAN SRI ABDUL GANI PATAIL SAT DOWN WITH **R. NADESWARAN, TERENCE FERNANDEZ**

AND **LLEW-ANN PHANG** TO ARTICULATE THE WHYS AND HOWS. IN THIS FIRST OF A TWO-PART SERIES, HE TALKS ABOUT SPEEDING UP CASES, PROSECUTION AND MEDIATION.

Chief Justice Tun Zaki Azmi lamented about the problems judges faced in clearing backlogs, when lawyers and deputy public prosecutors (DPP) request for postponements.

It is not just the problem of the judiciary; everybody in the legal fraternity is affected. But you must remember there are other parties involved: plaintiffs, defendants, accused. There are (also) witnesses and the staff. When cases are delayed, it means more work. No reasonable lawyer would be happy if cases are delayed, nor would the accused or the witnesses. Witnesses get tired of going to court.

What will happen generally is that after five to six years, people lose interest. Their faith in the legal system, the whole process of justice, is also gone because people don't see justice. As far as the chambers is concerned, we are not doing cases for ourselves. It's either doing cases on behalf of the government or the public interest - our main clients. So we believe it should be done as fast as possible.

On postponements, there is a standing direction from my office that no requests for postponement (must) be made from the chambers. If you notice the number of requests for postponement, I think the Bar far exceeds requests than prosecution and we can prove it with statistics.

But too many cases have been fixed in one day. In Klang Valley itself there are 7,000 lawyers but only (chuckles) 300 DPPs nationwide.

Can the chambers tell us, say in the case of (Abdul) Razak Baginda, what would have been your cost? So people understand the magnitude of the problem - the manpower, the research; the cost to taxpayers?

I wouldn't be able to tell you what the cost per case is. But for civil, the cost covers going to the courts. We do our own billing for the government. It's not an official billing, just to give us a fair idea of what it is about. Prosecution, we don't have it. In UK, they go on a tiered basis. When they employ people, we're talking about £500 (RM2,731) an hour for a lawyer. Retention fee is apart from that. Then if he works at night, it's also calculated so the figures can be very high. But for Malaysia, I think my colleagues are underpaid. Very, very much underpaid. So our cost relatively, I must admit, is very much lower than the UK.

In the case of the demonstrators vs the police, they were awarded RM50,000 each. But you look at the cost over the years and the amount of time you spent defending the police and the government. Is it worthwhile? Couldn't you have gone for arbitration or settled out of court?

I agree with you. I have no problem with this. That is why we have also looked into a Mediation bill to settle this as fast as

possible. But as usual, everybody has got their views and objections.

But you are the authority. If you say we will lose this case, they've got to accept it.

I'm not the authority. We can draft the bills and forward it to the government and see what they want. Since I took over, I've encouraged participation from the public and the Bar in drafting bills. We take into consideration what everybody feels including government departments. So we have these objections and so on. But let me assure you, that has not dampened our enthusiasm. We will push ahead with the bill.

Why can't we take a simpler approach - get members of the Bar to take simple cases like Intellectual Property and Copyright?

The whole issue is this. It is the same number of courts. There's only one judge there, right? So that is the problem. It is not so much "Oh! I can add in another 1,000 DPPs" but it's not going to solve my problem.

So each judge can only deal with a certain number of cases. The idea is finding an optimum. You mentioned the cost. If we compare with legal firms, what is their cost an hour? I tell you all my officers will want to leave the service. I also would like to leave and get paid on per appearance basis.

But what is more important is the number of courts. How many cases can one judge dispose of? You quote the Altantuya case. Here's the gentleman who prosecuted in the case (points to head of prosecution Datuk Tun Abdul Majid Tun Hamzah). Some cases take very long because you find all kinds of interlocutory applications; lawyers file this and that.

Sometimes I look at it and say it's all unnecessary. Go to the merits of the thing and finish with it. But I cannot say that it must be done according to my wish because that person has rights accorded by the constitution. And who am I to stop him from exercising his rights - how many questions, what questions he wants to pose and objections - is his right. We have to allow that in the interest of justice. In any case, that is a matter for the courts to decide and I'm sure the courts will decide in the interest of justice.

What about civil cases? When somebody sues a doctor from a government hospital, you look at the files you'll know the doctor botched up. Why go fight it and use public money?

I have made it clear, for those we charge in court, we will not defend. But in negligence cases, we know the doctors have botched up. But when they go to court, you look at the affidavits and how they put it up - they say we have no problem, we admit liability. But there is the other aspect of contributory negligence



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and all that we have to put up to the court. That's why we're not defending the way you put it but we're actually cutting down; putting our case to the government to cut down the costs that we have to pay. The quantum is the issue. So when you look at the quantum, you're looking at the facts of the case to determine the quantum. But maybe you were right to say in some cases we went a bit overboard but when we check on them ... it was the right thing to do.

If you know you've got no case, might as well settle.

I'm happy if we can go to mediation. We can sit down like this and say okay, let's talk terms. Here is your part - negligence, this is our part. Let's calculate, set figures and so on, fine. I'd be very happy; that's why we are really pushing for this - if we can settle out of court but more likely than not, what happens is the opposite - but it is their right. But people don't want to accept that settlement out of court.

I lament this because some frivolous applications have also been made against the government where we have to defend ourselves for no reason. We spend a lot of money in terms of man hours ... but what happens is that these kinds of frivolous applications when even if we win, you know how much cost they give us? Because the government is seen to be a charitable body.

When the government is awarded costs how much do

you get?

Majid: Sometimes even RM500.

For all that you've put in? How many man hours?

Majid: Months, years ... RM500.

Gani: Do you know in civil cases, when a minister or a government servant is sued, the papers are handed to us, to produce a statement of claim. My officers have to spend time reading through that; apart from that he's got to prepare defence, affidavits, statement of defence and so on. Calculate what lawyers charge their clients. This is exactly our cost. But when the court awards us, it is merely on the costs. It is not on the client, it is more on (the debating), the papers and so on that they calculate. I don't think the court will also award costs in the sense of how much the lawyers have been paid. Remember this cost is not exactly the total cost that they will determine. But I can assure you what we are paid for in terms of cost is little.

Are people saying the government is easy to sue, there are no risks involved and if I lose, there is very low cost? Is it the public's perception?

I can't say this is the public's perception because I don't know how the public looks (at it). As the A-G, I have to protect the principle of access to court, access to justice. I have no doubts but I agree with you that one cannot abuse that right or the system. At the end of the day, it depends on the individual, whether we want to abuse the system. Every system is good until it is abused.

How do we rectify this situation?

I am glad you're talking about working together. That's the spirit. I think the courts have got to be more sensitive. Because it prevents taxpayers' money from being spent without reason; it prevents - to a certain extent - frivolous applications and all kinds of interlocutory applications. *Satu kes sampai berpuluh* (One case has tens of) interlocutory applications. *Satu-satu nak jawab* (Each needs to be answered). You know, I go to court too, you think I'm not tired? As if we don't have enough work.

For your information we've asked the courts so many times, we've talked to them about needing to improve costs. But I must say, compared to those years the kinds of costs they're giving us have improved but I'm still disappointed with the amount. It has improved. Fixed costs are at RM10,000 but if you ask me, RM10,000 is not enough for even a tooth.

In most instances when we get costs, we cannot recover. Until I have a recovery unit - go chasing after people. But sometimes I pity them. To be honest with you, I had to hire a former Anti-Corruption Agency officer. We took him in and we had to search for our own witnesses, even accused and we have been successful.

You've got the might of the government. If you have the IC number, you go to EPF, you know where he's working.

Doesn't work! Eh, Nadeswaran! You *jangan tipu lah* (laughs). You check everybody's IC now. Mine is perfect, it states my home address. How many of your ICs here (state your current address)?

But if you're an EPF contributor, you can trace or the other way is the Astro bill.

It's easy to find if there's determination. If you want to trace an ex-civil servant, go to the pension issuing centres and post offices, *mesti ada* (surely have). Secondly, you go to the banks, check where his credit card expenditure is - we watch television - we know how it works right? Then there's the telephone. He would be making calls.

So there are ways if you are determined. But you know very well, summonses are not served and so on. So in my office we have taken some recourse to assist the agencies although it is not my job. But I can tell you just one person there, we just recruited apart from their normal job, they are to assist these men - we have on several occasions managed to locate a person who has been acquitted in court for capital offences. Through him we got these people and brought them back to court for an appeal. And normally, when somebody is acquitted everybody will tell you he has run away. Right? We all know these stories. But for us, this man, managed to get them for us. For us, it is not that we're not determined to get them, but we are very limited because it is like taking on other people's jobs.

It shows the inefficiency of the other departments.

(Laughs) I will not deny that everybody has a part to play - government servants, everybody. But if the public themselves cannot turn up and do their part, how?

Blame the system. You issue me a subpoena, asking me to come to court at 8.30am. I am there for three days and my name is not called. So why can't the prosecution say "You're PW15 (Prosecution Witness 15). We'll take three days." Now with a handphone, they can even give two hours notice.

My cases have been thrown out because my officers were asked if they've got their witnesses to the trial, they say "yes". "How many witnesses have you got?" "I've got 20 witnesses." "How many witnesses are here in court today?" "I've got 15 witnesses here." They threw out my case.

This would be recently, with the implementation of the fast-track system right?

Not just recently. Even earlier, our cases have been thrown out. There's more. Investigation Of-