

Sender's Fax: 6533 5700
Sender's DID: 6530 0238
Sender's Email: communications@lawsoc.org.sg

Our Ref: LS/4(Media)/2008/ST
Your Ref:



THE LAW SOCIETY
OF SINGAPORE

39 South Bridge Road
Singapore 058673
Tel: 6538 2500
Fax: 6533 5700
Email: lawsoc@lawsoc.org.sg
Website: www.lawsociety.org.sg

PRO BONO SERVICES OFFICE
1 Havelock Square Level 5
Subordinate Courts Complex
Singapore 059724
Tel : 6536 0650
Tel : 6534 1564 (CLAS)
Fax: 6534 5237
Email: ProBonoServices@lawsoc.org.sg
Email: CLAS@lawsoc.org.sg

FROM THE PRESIDENT

09 September 2008

Ms Agatha Koh Brazil
Editor of Voices, TODAY
24 Raffles Place, #28-01/06
Clifford Centre
Singapore 04861

Via Fax No
6534 4217

Dear Editor

NOT THE ROLE OF DEFENCE COUNSEL IN A CRIMINAL CASE TO DISPUTE THE TRUTH OF WHAT HIS CLIENT INSTRUCTS HIM

The Law Society refers to the letter titled "Don't take on cases willy-nilly" published in TODAY on 4 September 2008.

We note that the Minister's statement, as mentioned in the first paragraph of the letter, was made in response to a question raised at a recent parliamentary seating on the issue of acquittal and presumption of innocence in criminal proceedings and the proposal of the State paying compensation to accused persons who were acquitted after a trial.

Generally, all criminal prosecutions in Singapore are decided on and carried out by the Public Prosecutor. It is only in a relatively small category of cases that private persons are permitted by the law to initiate, without the intervention of the Public Prosecutor, private prosecutions against persons alleged to have committed criminal offences.

A lawyer does not act on his accord but only upon the instructions of his client. In the small category of private prosecution permissible by law, the lawyer would advise a client whose case has no merit, not to pursue the case and his advice would usually prevail upon the client. If however the client decides nevertheless to proceed with the prosecution, the lawyer is bound to act on his client's instructions. Based on the instructions given to him by his client, a lawyer is under the professional and ethical duty to act in the best interests of the client and to put forward the case as best as he could. It would be a question of fact for the court to determine whether a case is "malicious or vexatious".

In a criminal prosecution by the State, it is the duty of the prosecution to prove the guilt of an accused person beyond reasonable doubt. It is not the role of the defence counsel in a criminal case to dispute the truth of what his client instructs him and the lawyer is bound to act as his client has instructed. Under the Legal Profession (Professional Conduct) Rules, a lawyer is under the duty to defend any person on whose behalf he is instructed on a criminal charge irrespective of any opinion which he may have formed as to the guilt or innocence of that person.

With reference to Mr Rajaratnam's statement in paragraph 3 of his letter that "*Lawyers should also be legally bound to pay costs to an innocent accused person*", he may wish to note that a large majority of criminal prosecution in Singapore is carried out by the State and the Minister has stated that the Government is not presently considering the payment of compensation to accused persons who were acquitted after a trial.

Yours sincerely

Michael Hwang, SC
President

Council Members 2008

Michael Hwang, SC (President)
Malathi Das (Vice President)
Yap Teong Liang (Vice President)
Gary Pryke (Treasurer)

Philip Jeyaretnam, SC (Immediate Past President)

Wong Meng Meng, SC
Gan Hiang Chye
Jimmy Yim, SC
Lok Vi Ming, SC
Young Chee Foong
Wong Siew Hong
Francis Xavier
Leo Cheng Suan
Joseph Tan
Rajan Chettiar
Lisa Sam
Michael S Chia
Anand Nalachandran
Lee Terk Yang
Laura Liew
Smitha Menon
Wilma Muhundan

Secretariat

Chief Executive Officer
Chua Lik Teng

Representation & Law Reform
Kenneth Goh

Conduct

Yashodhara Dhoraisingam

Compliance
Kenneth Goh

Pro Bono Services
Lim Tanguy

Communications/
Membership Interests
Shawn Toh

Publications
Sharmaine Lau

Finance
Jasmine Liew
Clifford Hang