

ROBERT TIBBO

*B.Eng-Chemical Engineering (McGill), LL.B. (Auckland), G.D.LL (Melbourne), P.C.LL (Hong Kong),
Certified Mediator (HKMC)*

Barrister-at-Law

EASTERN CHAMBERS

Suite 223, 2/F., Midland Plaza

328 Queen's Road Central

Hong Kong

Tel: 852-2815-3879

Fax: 852-2545-0722

Email: robert.tibbo@easternchambers.com

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BY EMAIL

(charles@hkba.org)

5 (five) pages

Anson Wong S.C.
Chairman
Standing Committee on Discipline
Hong Kong Bar Association
LG2, High Court
38 Queensway
Hong Kong

Dear Mr Wong,

**Re: Anonymous Complaints based on Newspaper Reports
in relation to Mr Edward Snowden
("Snowden Complaint")**

I write further to my letter of 24 August 2017, and in further reply to your letter reply of 3 August 2017 (1st Letter).

I do apologise for the delay in writing back to you, and the Standing Committee on Discipline ("SCD") in relation to more time being necessary to provide the SCD with a full substantive reply to its Snowden Complaint of 8 March 2017.

This delay has been due to firstly, the Queen's Counsel requiring more time to provide legal advice to me (due significantly to his own full diary). Secondly the requested disclosure requested of the SCD in my letter of 10 May 2017 has not been made in full and based on the SCD letter of 23 August 2017, further disclosure is requested (as set out below) and is required by Queen's Counsel before final advice is provided. Thirdly, due to extraordinary circumstances relating to the Snowden Refugee TCAB appeals, coupled with the arbitrary and obstructive conduct of the Director of Immigration, I have been overwhelmed by USM and TCAB filing dates confined to late August to early December 2017, which has exhausted my capacity to address numerous complaints made by the Bar Council, the Bar Complaints

also contributing to creating further strain and difficulty (Which has been a less significant factor in the cause of any delay).

I would stress that the delays in no way reflect anything else other than the practical reality of Queen's Counsel having an extremely full diary, and secondly his requirement for full disclosure by the SCD. What is necessary is more time to address the Snowden Complaint in light of these circumstances as set out above. I would seek to avoid having this matter addressed in a rush, without due consideration of the difficulties faced by Queen's Counsel and myself, resulting in an arbitrary and highly prejudicial procedure and decisions.

Returning to your letter of 3 August 2017 (1st Letter), I am still awaiting final legal advice from Queen's Counsel. That advice is contingent upon the SCD (and the Bar Council (current and past)) making full disclosure, as I had requested in my letter to the SCD dated 10 May 2017.

The Anonymous Source of the formal complaint

I have carefully considered the 'Anonymous Complaint' and have been advised by Queen's Counsel that the following particulars are required to be disclosed, per my first request dated 10 May 2017. Thus I request a second time, disclosure of:-

- (1) The exact number of the anonymous complainants in the "*Large Group of Exasperated Barristers*"; and
- (2) the full identities of each and every anonymous complainant member of the "*Large Group of Exasperated Barristers*".

Furthermore:-

- (3) How was the. Anonymous Complaint delivered to and received by the Bar Association / Bar Chairman (addressee)? Please provide a copy of the envelope which the Anonymous Complaint was delivered in, and the identity of the person(s) who delivered it.

The SCD wholly failed to respond to my clear request for the identities of those members of the Bar whom made the said "Anonymous Complaint". I do have a right to know whom my accusers are, which is fundamental to being afforded a fair procedure, which inherently requires necessary transparency and accountability.

No rational basis exists for a large number of barristers to conceal their identities, intentionally hiding behind the unknown collective of "Large Group of Exasperated Barristers". This raises significant questions about the legitimacy, merit and evidential

foundation of this “Anonymous Complaint”. A large number of barristers have withheld their identities which is extremely disturbing in itself. It necessarily raises issues of whether such complaint has been made in good faith, considering these large numbers of barristers choose to hide their identities.

All Relevant Documentation

In relation to my previous request concerning disclosure of all documentation relating to this complaint and investigation, it is formally requested, also a second time, that:-

- (4) A full copy of all documentation contained in the SCD file and /or within the capacity of the SCD to obtain (Ref: “Discipline 01/2017”), be disclosed including the documents and communications alleged to be “...*privileged and confidential*”

It is not seen on what legal basis that the documents you have in hand, or have the capacity to obtain, should not be disclosed to me, whether or not the SCD views them as being ‘...*privileged and confidential.*’

In light of the extremely wide scope and nature of the investigation brought against me, the ambiguity of the SCD admitted complaints being made in “...*broad terms...*” and based on 4 (four) news articles, the serious and anonymous allegations made (without particulars being provided to me and based on what was written in the media), the enormous legal costs (The Bar Professional Indemnity Insurance does not apply as the Bar Association has stated that legal costs are part of the punishment of a barrister), and penalties involved (including financial penalties), in the event of this matter going before a Bar Disciplinary Tribunal (“BDT”), the SCD decision to withhold documentation that relates to this complaint and investigation, is not accepted.

Clearly there were communications to the Bar Council from 6 September 2016 onwards, and before the AGM on 19 January 2017, communications within the “*Large Group of Exasperated Barristers*”, and communications within the Bar Council (in both written and oral forms). There were certainly written and oral communications with and within the Bar Council leading up to and including 19 January 2017. There were also communications within the Bar Council and to the SCD, in both written and oral forms, from 19 January 2017 up to and including the date of the formal “Snowden Complaint”.

Bar Council - Annual General Meeting held on Thursday 19 January 2017

On 19 January 2017, clear reference was made by certain Bar Council members clearly identifying me by my nationality and through other references, and making negative and prejudicial statements about me. That is a fact.

The fact that the SCD decided not to look any further into this specific aspect of the matter (Despite the highly prejudicial discussion held at the AGM), is of grave concern. The Anonymous Complaint in itself, the Bar Council referring to me at the AGM and complaining about me, and the subsequent Bar Complaint letter with its list of questions (lifted in part from the Anonymous Complaint letter from the "*Large Group of Exasperated Barristers*"), makes the discussions concerning and related to me, that took place at the AGM, of very significant relevance to the present SCD complaint and investigation.

As of natural consequence, I also require the following to be disclosed (my second request) earlier, rather than later:-

(5) The Full 19 January 2017 AGM minutes in transcript and hand written note forms.

Serious issues of significant concern exist, based on the SCD having only "...*reviewed materials concerning the AGM and is presently unable to identify any such alleged discussions.*" The discussions concerning me and related issues that took place at the AGM were led by certain members of the Bar Council. That is a fact.

It is also requested that the following be disclosed:-

(6) All other documents/communications (including emails, SMS texts, Whatsapp texts, etc.) concerning discussions raised by the Bar Council about an unnamed "Canadian" national who is also a member of the Hong Kong Bar, and the identity of that Canadian barrister.

As previously stated in my letter of 10 May 2017, at all material times up to present day, Mr Snowden's case has involved the greatest sensitivity. In particular, a fundamental and crucial part of my role as counsel has been to ensure that at all material times I have acted in his best interests and have ensured absolute trust and confidence is maintained.

Under no circumstances will I breach Mr Snowden's trust and confidence. I will not disclose any privileged communications or make further disclosures beyond what already exists in the public domain. As for the Snowden Refugees (The refugees whom provided food, shelter, kindness and had shown humanity to Mr Snowden), I will not breach their respective trust and confidence. I will not disclose any privileged communications or make further disclosures beyond what already exists in the public domain.

The present inquiry, with its "Anonymous" source of a "*Large Group of Exasperated Barristers*", an extraordinarily wide and ambiguous scope of questions (many of which have no relation or rational connection to the Anonymous Complaints, and were obviously lifted from the Anonymous Complaint letter, and put in the complaint letter list of questions), is in

an unacceptable state. It is so unsatisfactory that it puts the propriety of the present SCD investigation into serious doubt.

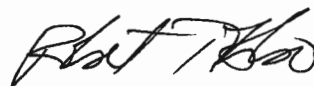
My Queen's Counsel has pointed out to me that bar disciplinary committees in England, Australia and Canada would not act on Anonymous Complaints which could have been motivated by personal malice or political spite. He has advised that the anonymous letter could, in my case, for example, have been sent by a CIA operative with the intention of using the disciplinary committee as a means of injuring my client and myself. He is critical of your letter of 3rd August, when you say that the requested documents "*are either not in existence or are privileged and confidential*". If they are not in existence, you should say so specifically in relation to my request, and if they relate to me, they should be disclosed so that I know the case I have to meet and can be confident that documents supplied to the SCD are fair and accurate and that members of the committee are independent and impartial. I am advised that your questions in any event trespass on the right of my clients to assert their legal professional privilege and I must obtain their consent in order to waive it. It is essential, therefore, in order to proceed (and I want to proceed - these misguided allegations have been hanging over my head for too long) that they meet the appropriate disclosure standards.

I do not want to give the impression that I am reluctant to defend my conduct. I believe it was in the tradition of a bar that is independent of government and of outside pressures, including pressure from foreign governments. However, given the racially discriminatory remarks about a Canadian barrister and the extraordinary decision to act on an anonymous complaint, which could have come from a foreign agency, I really must insist on a fair process that is my right as a member of the Bar Association.

As it stands, the evidence on hand strongly indicates that the present SCD complaint and investigation is predicated upon prejudice rather than reason and concealment in place of disclosure.

I require the above information and documents as requested above at items (1) to (6) inclusive, be disclosed to me at the earliest time. I require such information and documents for my consideration and the consideration of Queen's Counsel, before I am able to obtain full legal advice. I require that legal advice before I make any written substantive reply to the SCD.

Yours sincerely



Robert Tibbo