

Legal Profession / Civil Procedure

Service of connecting general public to firms providing legal assistance – Service advertised – Whether appellant’s acts contravened provisions of the Legal Profession Act 1976 – Interlocutory and *quia timet* injunction – Whether Malaysian Bar had *locus standi* to commence the action and apply for injunction

Index Continent Sdn Bhd v Bar Malaysia

[2013] 9 CLJ 433, Court of Appeal

Facts The appellant, a private limited company, launched a service of connecting the general public to respective law firms providing legal assistance (“the impugned service”). The impugned service was advertised on the internet and by e-mail. The respondent (Malaysian Bar), a body corporate established by the Legal Profession Act 1976 (“the LPA”), alleged that the appellant’s acts contravened the LPA, and thereafter sought an interlocutory and *quia timet* injunction (“the said injunction”) against the appellant. The appellant claimed the respondent lacked the necessary *locus standi* (legal standing) to commence the action, since the act of providing the impugned service constituted a criminal act which is strictly within the Attorney General’s purview under article 145 of the Federal Constitution. The High Court granted the injunction in favour of the respondent and held that the respondent had *locus standi* to commence the action in the interest of the public. The appellants appealed to the Court of Appeal against the said injunction order.

Issues The main issue before the Court of Appeal was whether the respondent had the substantive *locus standi* to apply for the said injunction.

Held The Court of Appeal allowed the appeal and set aside the said injunction order. It was held that the respondent did not have *locus standi* to apply for the said injunction as the respondent, a corporate body, must act through some functionary or representative, which in this case, is the Bar Council, established under section 47 of the LPA to manage the Malaysian Bar’s affairs. Since the respondent’s powers to commence an action through the Bar Council are strictly limited to matters concerning the affairs of the Malaysian Bar, an infringement of section 37¹ of the LPA which is criminal in nature falls under the jurisdiction of the Attorney General as the Public Prosecutor instead.

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¹ This section provides for a list of circumstances and the respective punishment for an unauthorised person who acts as an advocate and solicitor.