

PRAXIS

CHRONICLE OF THE MALAYSIAN BAR

MARCH / APRIL 2007



PLUS

RPGT Exemption - Queries Answered

**Bar Council Secretariat achieves
ISO 9001:2000 Certification**

National Maritime Conference

Roundtable Discussion on National Unity

KOMPLEKS
MAHKAMAH KUALA LUMPUR

**BAR AGM
RATIFIES ELECTIONS**



20th Biennial **LAWASIA** Conference



5 – 8 June 2007

Hong Kong Convention & Exhibition Centre



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PRAXIS

CHRONICLE OF THE MALAYSIAN BAR



BAR COUNCIL OF MALAYSIA

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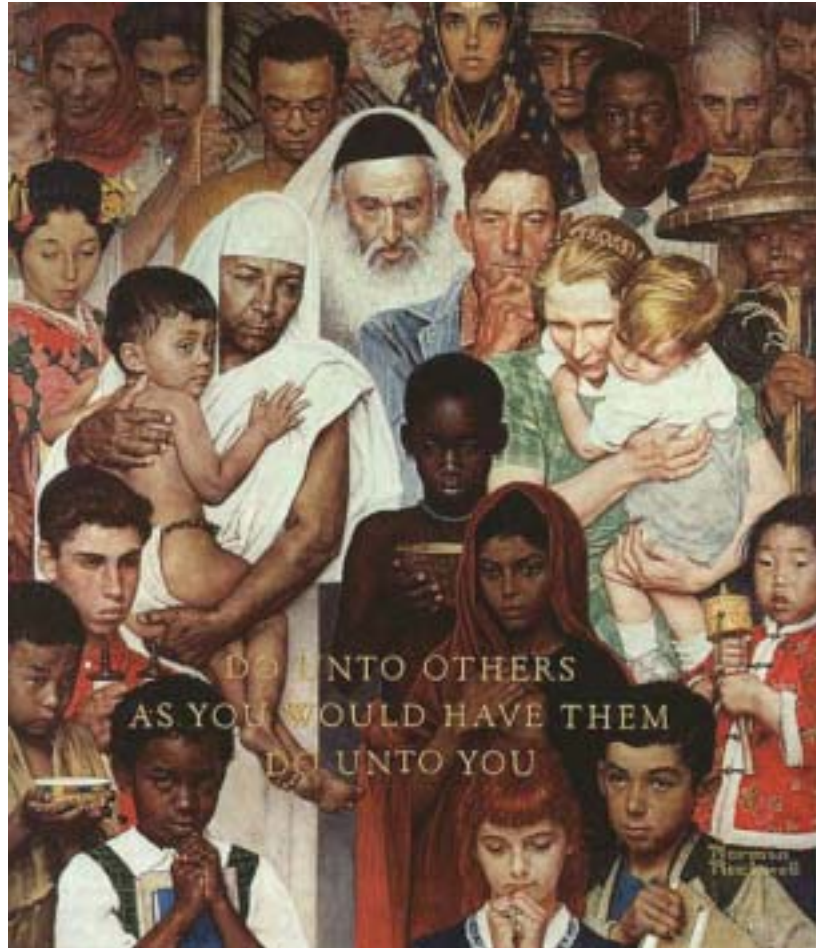
HJ Vazeer Alam Mydin Meera
Editor

Recently, Datuk Zaid Ibrahim MP, in commenting on the Court of Appeal decision in the case of Subashini v. Saravanan concluded by saying, *“To Muslims, I say it is unfair to expect non-Muslims like Subashini to go the syariah court even if there is perfect justice in the syariah system because the law gives her the right to pursue her remedy in the civil courts and nowhere else. Muslims can do away with the civil courts if they so wish. They can seek changes to the law to incorporate criminal, contract, property laws, etc. as part of syariah law. What Muslims cannot do is to expect non-Muslims to submit to the syariah court.*

How would we feel if it was the other way round? How would the Muslims feel if they have to submit to a Hindu court or to any other religious court? We should not do unto others what we do not want others to do unto us. That is the ultimate test of reasonableness. That is the test of a just legal system.”

I couldn't agree more with Zaid. Do not do unto others what you do not want others to do unto you. This golden rule, this ethic of reciprocity, is a fundamental moral principle that is a common thread found in all major world religions, faith and believe systems; flowing from ancient writings to the modern. Simply put, it extols us to treat others just as we would expect to be treated. Among its earliest appearance in English is Earl Rivers' translation of a saying of Socrates (Dictes and Sayenges of the Philosophirs, 1477): “Do to others as thou wouldst they should do to thee, and do to none other but as thou would be done to.”

In many ancient cultures, traditions, and value systems, this golden rule has been a cornerstone of its teachings. I had occasion to browse the web to see how far and wide this rule is applied and was pleasantly surprised to find that it is indeed a universally extolled principle of human behaviour. I reproduce below some excerpts from my research, using secondary sources from the internet. The following are some of my findings.



The Golden Rule – by the American Painter Norman Rockwell, 1961

Baha'i World Faith:

“Ascribe not to any soul that which thou wouldst not have ascribed to thee, and say not that which thou doest not.” “Blessed is he who preferreth his brother before himself.” Baha'u'llah

“And if thine eyes be turned towards justice, choose thou for thy neighbour that which thou choosetest for thyself.”
Epistle to the Son of the Wolf

Buddhism:

“...a state that is not pleasing or delightful to me, how could I inflict that upon another?” Samyutta NIKaya v. 353

Hurt not others in ways that you yourself would find hurtful.” Udana-Varga 5:18

Christianity:

“Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.” Matthew 7:12, King James Version.

“And as ye would that men should do to you, do ye also to them likewise.” Luke 6:31, King James Version.

“...and don't do what you hate...”, Gospel of Thomas 6. The Gospel of Thomas is one of about 40 gospels that were widely accepted among early Christians, but which never made it into the Christian Scriptures (New Testament).

Confucianism:

“Do not do to others what you do not want them to do to you” Analects 15:23

“Tse-kung asked, ‘Is there one word that can serve as a principle of conduct for life?’ Confucius replied, ‘It is the word ‘shu’ — reciprocity. Do not impose on others what you yourself do not desire.’” Doctrine of the Mean 13.3

“Try your best to treat others as you would wish to be treated yourself, and you will find that this is the shortest way to benevolence.” Mencius VII.A.4

Ancient Egyptian:

“Do for one who may do for you, that you may cause him thus to do.” The Tale of the Eloquent Peasant, 109 - 110 Translated by R.B. Parkinson. The original dates to 1970 to 1640 BCE and may be the earliest version ever written. 3

Hinduism:

“This is the sum of duty: do not do to others what would cause pain if done to you.” Mahabharata 5:1517

Humanism:

“(5) Humanists acknowledge human interdependence, the need for mutual respect and the kinship of all humanity.”

“(11) Humanists affirm that individual and social problems can only be resolved by means of human reason, intelligent effort, critical thinking joined with compassion and a spirit of empathy for all living beings. “ 4

“Don't do things you wouldn't want to have done to

you, British Humanist Society. 3

Islam:

“None of you [truly] believes until he wishes for his brother what he wishes for himself.” The Sunnah of Prophet Muhammad - “Al-Nawawi's Forty Hadiths.”

“Hurt no one so that no one may hurt you.” — The Farewell Sermon of Prophet Muhammad

Jainism:

“Therefore, neither does he [a sage] cause violence to others nor does he make others do so.” Acarangasutra 5.101-2.

“In happiness and suffering, in joy and grief, we should regard all creatures as we regard our own self.” Lord Mahavira, 24th Tirthankara

“A man should wander about treating all creatures as he himself would be treated. “Sutrakritanga 1.11.33

Judaism:

“...thou shalt love thy neighbor as thyself.”, Leviticus 19:18

“What is hateful to you, do not to your fellow man. This is the law: all the rest is commentary.” Talmud, Shabbat 31a.

“And what you hate, do not do to any one.” Tobit 4:15 6

Native American Spirituality:

“Respect for all life is the foundation.” The Great Law of Peace.

“All things are our relatives; what we do to everything, we do to ourselves. All is really One.” Black Elk

“Do not wrong or hate your neighbor. For it is not he who you wrong, but yourself.” Pima proverb.

Roman Pagan Religion:

“The law imprinted on the hearts of all men is to love the members of society as themselves.”

Shinto:

“The heart of the person before you is a mirror. See there your own form”

“Be charitable to all beings, love is the representative of God.” Ko-ji-ki Hachiman Kasuga

Sikhism:

Compassion-mercy and religion are the support of the entire world". Japji Sahib

"Don't create enmity with anyone as God is within everyone." Guru Arjan Devji

"No one is my enemy, none a stranger and everyone is my friend." Guru Arjan Devji

Sufism:

"The basis of Sufism is consideration of the hearts and feelings of others. If you haven't the will to gladden someone's heart, then at least beware lest you hurt someone's heart, for on our path, no sin exists but this." Dr. Javad Nurbakhsh, Master of the Nimatullahi Sufi Order.

Taoism:

"Regard your neighbor's gain as your own gain, and your neighbor's loss as your own loss." T'ai Shang Kan Ying P'ien.

"The sage has no interest of his own, but takes the interests of the people as his own. He is kind to the kind; he is also kind to the unkind: for Virtue is kind. He is faithful to the faithful; he is also faithful to the unfaithful: for Virtue is faithful." Tao Teh Ching, Chapter 49

Unitarian:

"We affirm and promote respect for the interdependent of all existence of which we are a part." Unitarian principles.

Wicca:

"An it harm no one, do what thou wilt" (i.e. do what ever you will, as long as it harms nobody, including yourself). One's will is to be carefully thought out in advance of action. This is called the Wiccan Rede

Yoruba: (Nigeria):

"One going to take a pointed stick to pinch a baby bird should first try it on himself to feel how it hurts."

Zoroastrianism:

"That nature alone is good which refrains from doing unto another whatsoever is not good for itself". Dadistan-i-dinik 94:5

"Whatever is disagreeable to yourself do not do unto others." Shayast-na-Shayast 13:29

The above are some examples of the Ethic of Reciprocity found in the major religious and ethic systems of the world. If we use this ethic as the starting point in finding solutions to inter-faith issues, such as those that challenging us in present times, I am sure we would be able to arrive at a just solution.

It was encouraging to note that the defacto Minister of Law, Datuk Seri Nazri Abdul Aziz, in the Dewan Rakyat, had recently assured Parliament that the Attorney General has been directed by the government to look into mechanisms to resolve contentious issues such as those arising from cases like Lina Joy, Moorty and Subashini, in a manner where excess to justice is not denied to any one party. Nazri further assured Parliament that Syariah law would not be forced upon the non-Muslims. It is imperative that a just solution be found. I for one am eagerly awaiting the final solution to be adopted by the government. More than ever, I am inclined to believe that the solution to these problems would have to come by way of legislative reform.

When I read Zaid's conclusion in his article in The Sun, it brought to mind the 1961 masterpiece by the great American painter, Norman Rockwell, entitled the "The Golden Rule". Rockwell wanted to illustrate how the Golden Rule was a common theme of all the major religions of the world, and depicted people of every race, creed and colour with dignity and respect with the words "Do unto others as you would have them do unto to you" running across the canvas. This painting evokes such emotion, it surely did for me when I first saw it, so much so that a mosaic mural reproduction of it by Venetian artisans is now to be found in the United Nations Secretariat at New York. This mosaic was presented to the United Nations by Mrs. Nancy Reagan, the then First Lady, on behalf of the United States, on the occasion of the fortieth anniversary of the United Nations in 1985.

We should all be reminded of the words of President Lyndon Johnson. "We live in a world that has narrowed into a neighbourhood before it has broadened into a brotherhood." Our lives have become intertwined with one another. We must wish well for neighbours and brothers, just as much as we wish a peaceful and meaningful life for us.



The Mosaic Mural at UN Building New York

Judith Sihombing Land Law Series

Understanding the Essential Principles of Indefeasibility, Assignments and Novation & the Caveat

Tuesday, 22 May 2007 • 9.00am – 5.30pm • Crowne Plaza Mutiara Hotel, Kuala Lumpur

Conference Programme •

Indefeasibility Today

- Section 340 of the National Land Code
- The Federal Court and *Boonsom Boonyanit v Adorna Properties Sdn Bhd*
- Can the effect of the decision in *Boonsom Boonyanit* be avoided?
- Exceptions to indefeasibility

Vesting under Sections 431-433 of the National Land Code

- Danaharta's special power on statutory vesting
- Bank mergers and vesting
- *The National Land Code (Amendment) Act 1998*
- Section 431: Service of notices
- *Zubir Mustafa v. Tenaga Nasional Bhd & Anor [2005]*
- *Alagarsamy v Tan Phaik Kee & Anor [1992]*
- The operation of sections 432 and 433

Assignments and Novation

- How is an assignment effected?
- Anti-assignment clauses
- Can an assignment be revoked?
- Duties and obligations of the 'debtor', the assignee and the assignor
- Novation: when must it be used?

Section 256 of the National Land Code

- Defective or improper notice of demand
- Fraud
- Contravention of statutes

The Caveat: Who Can Enter It? What Does It Do?

- The Registrar's caveat
- A private caveat
- The statutory lien and the lienholder's caveat
- The trust caveat
- How do the different types of caveats work?

Sections 417 & 418: General Authority of the Court and Appeals to the Court

- General powers of the Court
- *Che Dah & Anor v Commissioner of Land Titles (Penang & Malacca) [1973]*
- Does section 417 affect the operation of section 340?
- Rectification under section 380(1)
- Defeasibility and rectification
- The right of appeal

2nd Annual Islamic Wills, Trust and Estate Administration

Thursday, 21 June 2007 (9.00 am – 5.30 pm) Prince Hotel, Kuala Lumpur

SPEAKERS

Tn. Hj. Azman Ismail
Technical Advisor, IIFIN Planners Sdn Bhd
CEO, Articulate Innovation

Tn. Hj. Othman Yaacob
Advisor, CIMB Trustee Bhd

Pawancheek Marican,
Consultant, Wan Marican, Hamzah & Shaik

Rafie bin Omar
CEO, Amanah Raya Legacy Services Sdn Bhd

Dr. Aimi Zulhazmi Hj. Abdul Rashid
Principal Officer, BIMB Trust Bhd

YM Raja Amir Shah
CEO, Arab Malaysian Trustee Bhd

TOPICS

Calculating and distributing through *Faraid*

Exploring the Islamic Will (*Wasiyyah*)

Panel Discussion: Examining practical strategies for Islamic Estate Planning and Administration

Examining Islamic Trust and its role in modern banking

Developing the direction of Islamic Trust industry

Malaysian Bar 61st AGM

by Web Reporter

At its 61st annual general meeting held on 17 March 2007 at the Legend Hotel, Kuala Lumpur, the Malaysian Bar overwhelmingly voted for lawyer A. Kanesalingam's motion on the recent Bar Council election after a debate lasting more than an hour. When the motion was put to vote, 350 members voted for the motion, and 13 voted against it. There were 32 abstentions, essentially from Bar Council members.



Inderjit Singh

During the debate, the House roared in applause and admiration for former scrutineer Inderjit Singh when he walked to the rostrum and admitted in his maiden speech at an annual general meeting that at the heat the moment, he had made a mistake and acknowledged that the scrutineers did not have the power to declare the Bar Elections null and void.

Indeed, it takes a brave man to admit his mistakes, and the House was moved by his humility and sincerity. It follows that the motions by P. Suppiah and Chew



A Kanesalingam

Swee Yoke calling for fresh elections were defeated by overwhelming majorities 343 members voted against, 19 voted for and 34 abstained

from voting on Suppiah's motion. On the other hand, 276 voted against, 18 voted for and 32 abstained from voting on Swee Yoke's motion.

Kanesalingam's motion reads as follows:

In the premises the Malaysian Bar RESOLVES that:

The action of the members of the Bar Council, who were not themselves candidates, in terminating the appointment of Inderjit Singh, S Radhakrishnan and Yaacob Hussain Merican and appointing Zain Azahari bin Zainal Abidin, Zainuddin bin Ismail and M Puravalen as new or alternate scrutineers for the

Elections and their determination of the valid ballots, counting of the valid ballots and declaration of the results to the Secretary of the Bar Council be ratified and commended.

Members' apathy

In fact, the members' apathy is astounding. It appears that most members have stayed away from this year's AGM thinking that it would not be a problem for the Bar to achieve the quorum of 500 members after the amendments to the Legal Profession Act, 1976.



M Puravalen

Earlier, the Secretariat sent out SMSes twice to more than 10,500 members' mobile phones. But at 10am yesterday, only 402 had turned up. The meeting only started at 10.10 after 514 had signed up. By 2.25 pm, less than 1,000 members had made an effort to attend the AGM with only 954 members signing up.

When the motion on SRO Enforcement was moved by Penang lawyer, Louis



An overwhelming "NO" to the motion nullifying election results and calling for fresh elections

Edward Van Buerle at about 5pm, only about 150 members were present to make a decision on such an important issue for the entire Bar comprising more than 12,300 members!

Motions

All in all, 15 motions were proposed, but 2 were deferred and 1 was withdrawn. The deferred motions were those proposed by the Bar Council and Suppiah on the rules governing general meetings whilst Kamraj Nayagam withdrew his motion.

The outcome of the motions is as follows:

- T. Kuhanandan's motion on the Professional Indemnity Insurance (10 for; 116 against and 19 abstained)
- Dato' MS Murthi's motion on appointments to the Disciplinary Board (76 for; 83 against and 9 abstained)
- Dato' RR Sethu's motion (amended) on the conduct of Bar Elections (28 for; 113 against and 11 abstained)
- P. Uthayakumar's motion (amended) on the IPCMC (87 for; 67 against and 15 abstained)
- R. Kengadharan's motion (amended by Shanmuga Kanesalingam) on demolishments of Hindu temples (100 for and 13 against)
- Motion by Charles Hector and Francis Pereira on RELA (carried unanimously)
- Motion by Renuka Balasubramaniam and Latheefa Koya on the corporal punishment of whipping (carried unanimously)
- Motion by Latheefa Koya and Renuka Balasubramaniam on one legal aid file per lawyer (carried unanimously)
- Louis Edward Van Buerle's motion on suspending SRO Enforcement (64 for and 77 against)



The new Office Bearers, Ambiga, Ragu, George and Chee Wee at the Press Conference

"People think we are not united. That is not true. What we have is a robust Bar with diverse views and we all respect each other's views. We may not agree, but we respect each other's views and I can honestly say certainly from the outcome of today's meeting that on the major issues, the bar is very much united," she said.

Election of Bar Council Office Bearers

After the AGM ended at about 5pm, the Bar Council members held a meeting to elect the office bearers.

Ambiga Sreenevasan and Ragnath Kesavan were unchallenged and elected respectively as the President and Vice-President of the Malaysian Bar.

As regards the position of Secretary, Lim Chee Wee was challenged by Negri Sembilan Chair, Tee Kim Chan whilst George Varughese faced a challenge from Steven Thiruneelakandan for the position of Treasurer. After election by way of secret

ballot, Lim and George were duly elected as the Secretary and Treasurer respectively.

Annual Dinner & Dance

In the evening, the annual dinner and dance was held in the same hotel. The Guest of Honour was the Attorney General, Tan Sri Gani Patail. Federal Court Judge, Justice Datuk Abdul Hamid bin Haji Mohamad, Court of Appeal Judge, Datuk Gopal Sri Ram, some High Court judges, retired judges and ambassadors were also present. The Malaysian Bar also



The 1st Bar Council meeting to elect the Office Bearers

paid tribute to Tan Sri Siti Norma Yaakob who recently retired as the Chief Judge of Malaya.

The first prize of the lucky draw being a return ticket to London was won by former Court of Appeal Judge and a Past President of the Malaysian Bar, Datuk VC George.



Datuk VC George flanked by Lim Chee Wee and George Varughese

At a press conference after the AGM, Ambiga said the goal of the Bar would be two-fold; one was to ensure development and maintaining of standards of the profession and the other, to pursue vigorously on human rights matters.

Annual Dinner 2007



Bar Council Secretariat achieves ISO 9001:2000 Certification

by Rebecca Anthony (HR Manager)

On 6 March 2007, the Bar Council Secretariat was certified ISO 9001:2000 compliant by National Quality Assurance Limited. It was a wonderful moment.

This signalled what we would describe as the first phase of change. The ISO certification provides a high degree of assurance that the internal processes of the Secretariat have been individually identified and improved so that the organisation becomes more competitive and able to respond and adapt to the changing needs of the Bar Council and members of the Bar.

The ISO 9001:2000 certification will bring the Secretariat at par with other organisations that have done so.

It captures processes, ensures service levels are kept and streamline internal processes and reduce bureaucracy. It also means (1) putting down the processes on paper and forcing us to be systematic in our approach; (2) we had to consider in a rationale and measured manner the best way in which a job ought to be done; (3) the procedure would survive even if people left the organisation. Increased focus on costs will soon inevitably take a centre stage, to meet service level driven by escalating members' expectations.

The Secretariat is a powerhouse for generating, keeping and storage of huge databank relevant to the successful administration of Malaysian Bar. It is a busy organisation that sometimes handles

complex and difficult issues. Besides that, the organisation handles daily administrative matters that affect our practice and interest as practising lawyers.

The Secretariat passed the ISO audit exercise. Essentially the purpose of an audit was to ensure that there was compliance with written procedures and identify areas of improvement. From 3 January - 10 January we conducted an internal audit for all departments and practice areas. It was an eye opening experience understanding and learning about the way in which different parts of the whole functioned! In addition to being a learning experience we also helped one another identify non-conformities and areas of improvement.

Everyone in the department needed to know what the departmental quality objectives were and how these objectives were to be achieved. Quality objectives as they are known under ISO 9001:2000 are just another way of describing targets or KPI's (Key Performance Indicators).

After series of requisite exercises towards getting the certifications, finally, NQA auditor carried out a compliance audit on 28 February, 1 March and 2 March 2007.



This was the crucial second stage of the certification process. The auditor went to different departments and interviewed staff on a random basis. Records were reviewed to ensure that there was compliance with the written procedures.

The audit findings and the corrective action plan were then submitted to NQA's UK office for an independent review. We waited anxiously for the result!

On 6 March 2007, we were presented with the ISO 9001:2000 certificate by NQA. All the hard work had paid off.

We wish to thank Chong Wei Lung of Cheang & Ariff (an ISO 9001:2000 certified legal firm) for his assistance. He had kindly assisted the Secretariat over the past 1-½ years.

We also wish to thank Tejwinder Singh from Quality Issues. An experienced trainer of many years, Tejwinder was well known for assisting many organisations achieve ISO 9001:2000 certification.

The Council wishes to thank the Secretariat's top management and employees who have sacrificed their time and energy to make this exercise a great success.

National Maritime Conference

by Selva Rani Thiyagarajan

The day kicked off with the President of the Bar, Yeo Yang Poh in his welcome address emphasising the need to focus on reforms to take the shipping industry in the direction it wants to head.

The Attorney-General, Tan Sri Abdul Gani Patail followed on in his speech praising the Bar Council for taking the initiative to co-organize the Conference, and inviting members to provide feedback to Chambers on maritime issues as they lack the necessary expertise in shipping law. He also hoped that the Conference would be a place for an open and frank discussion of current issues which will lead to positive endeavors.

The Deputy Prime Minister's Keynote address was read out by the Transport Minister, Datuk Seri Chan Kong Choy and touched on various developments in the field including the MISC and the establishment of Admiralty Court which evidenced the seriousness the Government placed in the industry.

The Attorney-General was the first speaker on the topic of international conventions, and he gave a general overview discussing among others the Vienna Convention and international bodies responsible for maritime conventions, such as the United Nations the International Maritime Organization (IMO). He went on to elaborate legal aspects of the domestic legislation such as the Customs Act and Port Authorities Act, and the need for the ship-owners to comply with these laws.

The next speaker, Zahar Mohd Hashim, the Vice President for Offshore Business, MISC Bhd spoke on "Phased-Out Vessels and Offshore Structures – Life After". He

focused our attention on how old ships can be given "new lives" by being converted into "Floating Production Storage Offloading" (FPSO). FPSOs are moving oil tankers that can harvest oil from the sea and keep them in their tanks on the unit before shuttling it off in tankers to be sold. This has been a revolutionary idea which worked well, e.g. the FPSO Bunga Kertas, FPSO Brasil and others.

The following paper on "Port Security and Responsibility" was presented by the Chairman of NCB Holdings Bhd, Tan Sri Dato' Seri Ahmad Sarji Bin Abdul Hamid who explained the types of problems faced in a port such as cargo theft, illegal immigrants and drug smuggling. He concluded that the lack of security at the ports do hamper the businesses of the nation.

At the question and answer session, Captain Abdul Aziz who is a Malaysian working in the Marine Department, Brunei, asked whether IMO rules were "forced" by Europe and America, and if so, how can Malaysia's views be heard? Tan Sri Gani Patail answered that current negotiations in relation to IMO rules are being held with Chambers, and in future, members of the Bar should also participate in them.

Tan Sri Ahmad Sarji dealt with a question whether there was a need for additional security at ports post-9/11 incident by saying that this was not necessary as the current system is working well.

In relation to the question as to whether FPSO ships were still single hull tankers or double hull tankers, Zahar answered that they are all single hull and to another

question as to the disposal of the FPSO after its life span, he answered that he said technology on this is being developed.

After lunch, Dr. S. Darumalinggam, the Vice Chairman on Malaysian National Shipper's Council discussed the topic "Consumers' (Shippers) Expectations". It was an engaging talk on a shipper's pitiful work, where they need to obtain a good sea crew and reduce the costs of transportation but at the same time maintain the safety and security of the fleet. He highlighted the number of the charges incurred by the shippers and proposed a "one-stop center" to facilitate one payment for all costs. He also raised 13 recommendations that shippers wanted to in the shipping industry.

We had our first inter-active panel session on the "Admiralty Court: The Need and The Viability". It was chaired by Dato' Cecil Abraham and one of the panellists was Justice Dato' Vincent Ng. The concern raised was whether there may be delays in cases before the Court, and whether the Court had the expertise to deal with admiralty cases.

The second inter-active panel session was titled "Time for a Multi-Modal Regime". The panellists explained the transportation of cargo which may involve various modes such as shipping, rail, road or air.

One of the panellists, K. Patmanathan raised the thought provoking question asking why all Malaysian owned or registered ship companies must have at least 30% Bumiputras? This was not beneficial because it is keeping foreign companies away.

National Maritime Conference



Nallini and Hamid Sultan made Judicial Commissioners

Nallini Pathmanathan and Hamid Sultan Abu Backer, both members of the Bar were appointed as Judicial Commissioners.

Nallini graduated with a Bachelor of Science degree in Physiology from the University of London in 1982 and obtained a Diploma in Law from the University of Westminster, United Kingdom in 1983. She was called to the English Bar (Middle Temple) in 1984 and to the Malaysian Bar on 15 February 1986. She commenced legal practice with Messrs. Skrine in 1986 and in 1995, became a Partner of Skrine. For a few years prior to her elevation to the High Court of Malaya on 1 March 2007, Nallini served as the Chairman of the Executive Committee of Skrine.



Nallini served on committees of the Bar Council and was a member of the Disciplinary Committee Panel of the Advocates & Solicitors Disciplinary Board. She is also a Fellow of the Chartered Institute of Arbitrators.

Hamid Sultan or 'Janab' as he is known widely, holds a LLB Degree and an LLM from the University of London, and was made a Barrister of the Lincoln's Inn in 1987. His other qualifications include a PGD in Shariah Law & Practice, a PGD in Islamic Banking, and other professional qualifications like Mci. Arb (London), and a BA degree in Economics.

Hamid was a member of the Bar Council for the past six years and had chaired several committees including the Bahasa Melayu Committee and the Admiralty Law Committee.



Hamid is a prolific writer. It would not be wrong to say that in Malaysia, no one has, to this date, authored quite as many legal texts in quite the way he has done.

These books are standard reference material in legal institutions throughout the country, and include Janab's Key to Civil Procedure, (in its third edition), a vastly successful work, Janab's Key to the Law of Criminal Procedure, Evidence, Advocacy and Professional Ethics'.

Conveyancing, Land Law, and Islamic Banking. In 2005, he published a practitioner's handbook, encompassing many areas of law within the impossible compass of 2 volumes, entitled Janab's series to Law, Practice and Legal Remedies, which cover Civil Procedure, the laws of Contract, Guarantees, Bailment, Agency, Specific Relief, Hire Purchase, Partnership, Sale of Goods, Probate and Administration, Personal Injury, Family Law, Industrial Law, Arbitration, Bankruptcy, Winding Up and the law relating to Receivers and Managers.

Nallini has been posted to the High Court at Shah Alam while Hamid Sultan is serving at the High Court at Kuching. The Malaysian Bar wishes both Yang Arif Nallini Pathmanathan and Yang Arif Tuan Haji Hamid Sultan a successful career on the Bench and look forward to their considered and learned decisions.

"It is in justice that the ordering of society is centered."

Aristotle
Greek critic, philosopher, physicist, & zoologist (384 BC - 322 BC)

State Bar Chairmen & Representatives 2007/2008

The following is a brief collation of the results of State Bar elections for the positions of Chairman and State Bar Representative to the Council. These positions serve ex officio membership on the Bar Council 2007/2008.

Selangor

RV Lingam was elected unopposed as the Selangor Bar Chair whilst the outgoing Chair George Varughese was returned as the Bar Representative.



Kedah/Perlis

G Balakrishnan was elected the new Kedah/Perlis State Bar Chair while R Subramaniam was elected the new Bar Representative



Perak

Incumbent Chairman of the Perak Bar, Ngan Siong Hing was returned unopposed for a second term and Shan Theivanthiran was elected unopposed as new State Bar Representative.



Pahang

Syed Azimal Amir b Syed Abu Bakar was elected as the new Chair of the Pahang Bar. The outgoing Chair Mohamed Sazali Abd Aziz was elected the new Bar Representative for Pahang.



Johor

Johor Bar elected K Mohan as its new Chairman. The new Johor Bar Representative is Loh Wann Yuan.



Terengganu

Anuwar B Mohd was elected unopposed as the new Chair of the Terengganu State Bar and Asmadi Awang as its State Bar Representative to the Bar Council.



Kelantan

Datuk Sukri bin Haji Mohamed was returned unopposed as the Chairman of the Kelantan Bar for a second term. Its former Chairman, Aziz Hanif was elected its new State Bar Representative to the Bar Council.



Kuala Lumpur

Ravindra Kumar was elected as the new Chair of the Kuala Lumpur Bar while Steven Thiruneelakandan was elected as its Bar Representative for the second year running.



Negeri Sembilan

Tee Kim Chan was elected the State Bar Chair while Pretam Singh s/o Ujagar Singh was elected as the State Bar Representative from Negeri Sembilan.



Malacca

The incumbents Ng Kong Peng and R R Chelvarajah were returned unopposed as the State Bar Chair and Bar Representative respectively.



Penang

The incumbents Lalitha Menon and Datuk V Sithambaram were returned unopposed as the State Bar Chair and State Bar Representative respectively for the second year running.



Report by three Scrutineers to Complete the Tasks In Relation to the Bar Council Elections 2007/2008

The Chairman of the Bar Council, Mr. Yeo Yang Poh sent individual letters dated 23 February 2007 to us: Zain Azahari, Zainudin Ismail and M Puravalen, appointing us as Scrutineers for the purposes of completing the tasks in relation to the Bar Council Elections 2007/08.

2. We were requested to perform the following tasks:

- (a) Verify the authenticity of all the returned ballots;
- (b) After the authenticity (or otherwise) of each of the ballots has been ascertained, to count the votes cast on the authenticated ballots (discounting any spoilt or otherwise disqualified ballots), and to derive at the sum total of votes each candidate had received;
- (c) To declare the result of our findings on the above to the Secretary of the Bar Council.

3. We started at 8.45 a.m. Our venue was the conference meeting room of the Bar Council. We were assisted by Mr. Kenneth Goh and 30 Secretariat staff. In attendance were three representatives of the Royal Malaysian Police comprising of ASP Koh, ASP Tarmizi and Chief Inspector Franky Wong. A police photographer, Corporal Mustapha Dick, was also present. The Secretariat had a video cameraman to record relevant stages of the proceedings.

4. ASP Koh handed to us two sets of keys to two boxes. The first box was opened and found to contain 2 cardboard boxes containing 135 sets of counterfoil books. The second box was opened and found to contain two cardboard boxes containing 68 bundles of ballot papers and one cardboard box of envelopes containing returned ballot papers.

5. We found 3,403 ballot papers from the second box. We proceeded to authenticate them.

6. The overall details are as follows:

(i) Total ballots received : 3403

Out of these we found the following:

- (a) Number of replacement ballots : 18**
 - (b) Total number of forged ballot papers : 52**
 - (c) Total number of spoilt ballots : 38**
- (ii) Total number of valid ballots : 3313**

7. We decided to accept the replacement ballots as valid on the basis of decision made by the Bar Council at its meeting held on 17 November 2006 which decided that replacement ballots be issued with the same serial number but with a different colour. "If both the replacement ballot paper and the original ballot paper are returned, only the replacement ballot paper will be counted."

8. The results of counting the valid ballot papers are as follows:

No.	Candidate	No of Votes
1.	Hendon Mohamed	1874
2.	Muhammad Shafee Abdullah	1349
3.	Edmund Bon Tai Soon	1282
4.	Cecil Rajendra	1266
5.	Hamid Sultan bin Abu Backer	1257
6.	Low Beng Choo	1213
7.	Kuthubul Zaman Bukhari	1181
8.	Ragunath Kesavan	1156
9.	Christopher Leong	1142
10.	Roger Tan Kor Mee	1115
11.	Lim Chee Wee	1035
12.	Vazeer Alam Mydin Meera	1004
13.	Yasmeen binti Haji Muhamad Shariff	999
14.	Zulkifli B Noordin	984
15.	Jerald Gomez	971
16.	Mohd. Rafie bin Mohd. Shafie	930
17.	Andrew Khoo Chin Hock	921
18.	Abdul Fareed bin Abdul Gafoor	904
19.	Steven Thiruneelakandan	902
20.	Zarizana binti Abdul Aziz	892

21.	Shamsuriah binti Sulaiman	862
22.	Ramdas Tikamdas	837
23.	George Varughese	815
24.	G K Ganesan	787
25.	Lee Swee Seng	751
26.	Murad Ali bin Abdullah	708
27.	Md. Radzi bin Mustafa	691
28.	Augustine a/l Anthony	636
29.	Vernon Ong Lam Kiat	603
30.	Boniface Lobo a/l Robert V Lobo	461
31.	Raphael Tay Choon Tien	448
32.	P Suppiah	387
33.	Jegadeeson Thavasus	313
34.	Wong Tat Chung	309

9. We hereby confirm and declare the above result of the Bar Council election 2007/2008 as in paragraph 8 above.

Dated this 26th day of February 2007 (10.15 p.m.)

Zain Azahari

Zainudin Ismail

M Puravalen



Zain Azahari, Kenneth Goh, Puravalen and Zainuddin Ismail scrutinising the ballots



Bar Council Secretariat staff assisting in the counting of the ballots

Who's Who in the Bar Council 2007

Office Bearers

Ambiga Sreenevasan (Chairperson)

Ragunath Kesavan (Vice-Chairman)

Lim Chee Wee (Secretary)

George Varughese (Treasurer)

Council Members

Yeo Yang Poh (Immediate Past President)

Hendon Mohamed

Muhammad Shafee Abdullah, Dato'

Edmund Bon Tai Soon

Cecil Rajendra

Low Beng Choo

Kuthubul Zaman Bukhari, Datuk Hj

Christopher Leong

Roger Tan Kor Mee

Vazeer Alam Mydin Meera

Yasmeen Hj Muhamad Shariff

K Mohan a/l K Kumaran (Johor)

Loh Wann Yuan (Johor)

G Balakrishnan (Kedah/Perlis)

R Subramaniam (Kedah/Perlis)

Sukri bin Haji Mohamed, Datuk (Kelantan)

Aziz bin Haniff, Hj (Kelantan)

Ravindra Kumar (Kuala Lumpur)

Steven Thiruneelakandan (Kuala Lumpur)

Ng Kong Peng (Melaka)

R R Chelvarajah (Melaka)

Tee Kim Chan (Negeri Sembilan)

Pretam Singh s/o Ujagar Singh (Negeri Sembilan)

Syed Azimal Amir Bin Syed Abu Bakar (Pahang)

Mohamed Sazali Abd Aziz, Hj (Pahang)

Lalitha Menon (Penang)

V Sithambaram, Datuk (Penang)

Ngan Siong Hing (Perak)

Shan Theivanthiran (Perak)

R V Lingam (Selangor)

Anuwar B Mohd (Terengganu)

Asmadi Awang, Hj (Terengganu)

■ *New Bar Council members*

■ *Retained Bar Council members*

■ *(Replacing Hamid Sultan Abu Backer following his appointment as Judicial Commissioner)*

Malaysian Bar ready to host the premier event of the year - the 14th Malaysian Law Conference

by Syirin Junisya Mohd Ali (Executive Officer)

The Malaysian Bar is going full steam to make its premier conference add colour to the 50th Merdeka joy, said Roger Tan after chairing the 14th Malaysian Law Conference Organising Committee this evening.

Tan said the conference to be held from 29-31 October 2007 at the Kuala Lumpur Convention Centre will carry the theme - "50 Years of Merdeka".

He added that local and foreign delegates comprising lawyers, legal counsel, academics, members of the judicial and legal services, other professionals and members of various industries from Malaysia and overseas are expected to attend. The areas which will be discussed include developments in Constitutional Law, Globalisation, Islamic Commercial Law, Local Government, Property Law, Intellectual property Law, Criminal Law and Protection of Heritage.

Tan said the Committee is working very hard to finalise the list of eminent speakers, and hopes to send out flyers inviting registrations for the conference in May.

REHDA to work with Bar Council

Tan also revealed that the Real Estate and Housing Developers Association (REHDA) has agreed to work with the Committee in organising one afternoon session on property law.

Tan, who is also the Chairman of the Conveyancing Practice Committee, said the decision of the REHDA's National Council on March 30 to work with the Bar Council in this Conference will help improve the relations between the two bodies after years of disagreement over the no-discount rule.

"I am happy that REHDA's Chairman, Ng Seing Liong was very positive when I mooted the idea to him about jointly organising a session on property law in the Malaysian Law Conference.

"While we may agree to disagree on the no-discount rule, we believe both bodies can work something out which is beneficial to our members", said Tan.

Tan added that sponsorships will be sought among the top corporations in the country for the identified segments of the three-day conference to meet the expected expenditure of RM0.5 million.

"This is an opportunity for our leading corporations to make history by sponsoring some parts of the conference," Tan said.

It will be a historic opportunity to showcase the success stories of leading Malaysian corporations which should take this opportunity to "blow their trumpets".

Among other significant features includes keynote addresses by eminent local and Commonwealth jurists and the Inspector-General of Police or his Deputy. The other feature is that the National Young Lawyers Committee will organise the events on third day of the conference.

"It will be their show and you can be sure that the multi-talents of our young lawyers will be adequately displayed," Tan said.

Tan urged members of the Malaysian Bar to keep 29-31 October free, and make every effort to attend the conference, making the premier event of the Malaysian Bar for 2007 a great success.

For more information and updates, members can log on from time to time to <http://www.malaysianbar.org.my/mlc> or email mlc2007@malaysianbar.org.my



Interview with Yeo Yang Poh, Immediate Past President of the Malaysian Bar

1 . Can you describe your feeling when your term came to an end on the evening of Saturday, 17th March 2007?

There was a mixture of feelings. Most prominent was the sense of relief as I passed on to my successor the responsibility of leading and protecting the Bar. There was also a sense of elation, the kind that one gets upon successful completion of a race.

2. How would you describe your 2 years at the helm of the 12,000 strong Malaysian Bar?

It was challenging and demanding throughout, both externally (because the Malaysian Bar has a unique role in society) and internally (because it is not easy to manage the various demands of such a large number of members with strong but diverse views and needs). It was a series of hyper-activity, because there was always more to do than time had permitted. However, I am interested to know how others would describe it though.

3. You served as Vice-President for 2 years under Khutubul Zaman. Was that sufficient preparation when you took office as President in March 2005?

Zaman was a nurturing leader. I observed his strengths and learned from it. However, there is a big switch from being the vice president to being the president. It is like switching from playing in a large orchestra to being the lead or solo violinist. One needs to quickly adjust to the role. The learning process continued throughout my tenure of presidency.

4. How much time did you spend in the Bar Council Secretariat in Kuala Lumpur in a typical week during your Presidency?

Three to four days a week, but not always at the secretariat. There were lots of meetings and functions to attend to outside of the secretariat as well.

5. One assumes that you were also attending to Bar affairs when you were not in the Secretariat. How much time would you have spent in a typical week attending to Bar matters?

Very much so. Apart from the meetings and functions, a lot of time away from the secretariat was also spent in things like preparing press releases, memoranda, position papers, etc. I would say that attending to Bar matters took the best part of 5 to 6 days a week.



6. What happened in the meantime to your practice in Johor Bahru?

What practice? Oh, you mean that little office that I occasionally visited when I needed a rest? (I hope my partners are not reading this. More importantly, I hope my clients do not get to read this.)

I managed to spend one day in a week, and if I was lucky two days, on my practice. I could not take on more than that. It also meant a 7 working-day week for me for the past two years. I had to sneak in very short breaks here and there.

7. With the benefit of your experience, would you support a move for a full-time President who takes leave from his or her practice for 2 years and in return is partially compensated by the Bar with a decent remuneration?

I would strongly support such a system for the future. I am aware of the arguments on both sides, but in my view the factors in favour far outweigh those against. However, this issue is more complex than it appears, and needs to be well thought-out. For instance, a total absence from practice is unlikely to be practical; so guidelines may be needed instead.

8. What was your relationship with your fellow office-bearers?

Fabulous. We worked so well together. We supported one another. When one was busy, the others would readily help. There was no such thing as "this is not my job". But that did not mean that we always agreed with one another. In fact, we from time to time held differing views on some issues, openly argued our respective positions in Council, and voted differently.

We had the greatest respect for one another. I enjoyed the camaraderie. We had a special kind of natural loyalty to one another. It was not the type of blind loyalty given unconditionally to a person or persons. No, none of us would have wanted that. Rather, it was the kind of reasoned loyalty born of our shared objectives when it came to serving the Bar, and strengthened through working closely together. This is the only kind of loyalty worth having.

I could not have asked for a more mature and united team. Every one of us cooperated and did our share of work; and no one had anything to prove to the others. Teamwork was so pleasant when it was totally free from “ego” issues, and from any desire to claim individual credit for work done. It was wonderful. There were attempts to divide us, i.e. to turn one against another, but none of which had the slightest chance of success.

9. What about the Bar Council?

The same can be said about the support and teamwork that we had in the Council. Most of us had a wonderful working relationship with one another, motivated by a great deal of mutual respect. That was the case notwithstanding differences in opinion that occurred from time to time. Dissenting views within the Council were never a problem to us, so long as the majority positions reached by the Council were not undermined. Again there were attempts to split the Council, especially during turbulent weather. However, by and large we stayed united, once more not because of any blind loyalty, but due to common bondage by our shared objectives in putting the interest of the Bar above our own. This was the reason why the ship managed to sail through rough seas, and successfully come ashore. I am extremely proud of, and grateful to, the Council of the past 2 years as a whole. It

was teamwork at its best.

One of the most beautiful lessons I have learned in leading the Bar for 2 years is that, if you are sincere and put your case forward honestly, using nothing more than the power of persuasion, there will be enough decent people (including those who are strangers to you) who would go out of their way to support what you are doing. This lesson is heart-warming. It gives me hope and encouragement about people and society in general.

I know some had said that I had “ruled” the Council with a “brutal majority”. This is a pathetic and desperate allegation. It implies dictatorship on my part, and cowardly conduct on the part of the other Council members. But dictatorship obviously cannot exist without brute power, and without the ability to either handsomely reward loyalists or savagely punish detractors, none of which power is possessed by the President of the Bar. Worse still, this irresponsible allegation insults the intelligence and integrity of Council members, reducing them to cowardly followers who could not think for themselves. The mischievousness of such false insinuations must be pointed out.

10. Traditionally, the Secretary of the Bar is the Head of the Secretariat to whom the Executive Director reports. As President, were you more hands on with regard to Secretariat matters than your predecessors?

The Secretary remained the Head of the Secretariat during my tenure as President. That did not change. What happened was that, because of the teamwork that developed, and because reform was on our agenda, more secretariat matters were brought out for discussion and collective decision than ever before. Ideally, the President should not have to bother with

secretariat matters. But I had no choice because I had to use the secretariat support, and I emphasized a lot on good system, efficiency, and effective result. So when I found that even simple systems were not in place (e.g. mail room system, filing system, KIV system), I could not take the attitude that these were matters I was not to be concerned with. We (the office bearers) had to initiate reform; and I participated in that process. In this sense I was indeed more “hands on”. But the bulk of it was implemented and supervised by Ragu, the Secretary.

11. What were your relationships with persons with whom you had to work, such as the Prime Minister, the Attorney General, the Minister in charge of law, and the Courts? What were your difficulties?

I tried always to maintain a good working relationship with them, without of course compromising the principles for which the Bar stood. That was not always easy, however, because I frequently took strong positions on certain issues that might not have been to their liking, and sometimes I felt some subtle reaction. That of course did not mean that I would stop taking those positions. It only meant that I had to maintain workable relationships notwithstanding our obvious differences. I tried to do that by consistently illustrating my bona fide, over time, and, when I had to, by remembering to disagree without being disagreeable.

One important aspect was to convince them, by conduct more than by words, that it was never a personal thing when the Bar took strong opposing positions; that it was not directed at them as a person, but at the thing that was done or omitted.

I had varying degrees of success with different persons, as it needed two hands to clap. Some, like the Attorney General

and the CJM, adopted a very mature and professional approach, and did not let any differences affect our cooperation in other areas.

In this aspect, another area of difficulty lies with the demands of some Bar members who are highly passionate about one issue (whatever it may be), and feel most strongly that the Bar must not only take a firm position on the issue, but must also pursue it with maximum might. Anything less is unacceptable to them. This does create a problem, because the Bar is not a “single-issue” organization. As a Bar leader, one has to strike a balance among the simultaneous pursuits of multiple causes. This was what I understood to be what the Bar had wanted. It would have been different if the membership had decided that we are to pursue one issue (whatever it may be) to its fullest, and to the exclusion, or at the expense, of other matters of importance to the Bar.

12. How did you cope with the Bar’s website, and the Internet generally?

This is a new medium that Bar leaders will have to deal with increasingly. The Bar website is both a source of the Bar’s pride (thanks to Roger Tan) and a source of increased workload. The Internet gives rise to the continuous requirement of faster responses, and calls for the management of a much wider audience unrestricted by geographical limits. At one stage, I was too busy working in the conventional manner and did not realize the full extent of Internet’s importance quickly enough, and I paid a price for that, until I took steps to remedy the situation. But it is also not reasonable to expect Bar leaders to have to respond to so many comments, queries and allegations in cyberspace. For the future, the Bar must come to an understanding as to what members can realistically expect of their leaders’ response over cyberspace.

This is something that needs to be worked out sooner or later.

13. You seemed often to be in the press, including the Chinese press. How did that happen?

It developed naturally. I think it was because I took a humble, cooperative and appreciative approach right from the start. Journalists came to realize my appreciation for the important job that they were doing, especially in circumstances of limited freedom. I tried to be helpful and, whenever I could, to make their job easier. Looking back, I think these were the reasons that drew them closer. As for the Chinese press, the fact that my first language is Chinese was definitely a big factor. The reporters from the Chinese press found it easier to understand my comments and to report them more accurately than if I were to communicate with them in English.

Somehow, reporters liked calling me for comments. I thought it had something to do with my voice. But my colleagues dismissed that possibility entirely, and came up with much less flattering reasons.

Sometimes I wished I did not have to spend so much time answering calls from the press and giving all sorts of comments. This is one of the most difficult tasks of a President, because the press expects you to be able to give off-the-cuff comments on anything and everything they may care to ask you, and because the responsibility of speaking on behalf of the entire Bar is a heavy one. But I realized that press coverage was important for the Bar’s image in our society, and so I persevered.

14. You were quoted considerably in the press, whether by way of Official Statements, interviews, letters or articles. Did you have a speechwriter?

I wished I had. A good speechwriter would

have saved me a lot of time. I did enjoy writing, though the difficulty was in having to do it in between the millions of other things that I had to attend to. I think Bar Council should work towards providing a good speechwriter for future Presidents.

Oh, there was this rumour that Ragu was my speechwriter. He came back one day from Penang and told me about the rumour. We laughed about it. I told him that he ought to admit to being my speechwriter for the Chinese press.

There were several members of the Bar on whom I called upon from time to time to help me look up certain points of law. These members, some of whom did not even know me well, were ever so helpful. I am sure there were times that I caught them when they were very busy, and still they helped me as much as they could. For example, I recall an occasion on a Saturday when I had to quickly find out about the laws on gambling as they applied to electronic bookmakers. I called Kitson Fong, whom I hardly knew. Within a couple of hours, he faxed me the relevant summary and materials. There were many others like him, and I want to thank all of them.

By the way, compared with presidents of other law societies (such as in Singapore, Australia and the U.K.), the president of the Malaysian Bar does not have the same level of secretariat support. For example, having to regularly spend time to correct or re-draft even simple letters cannot be a sign of adequate secretariat support. Also, a large portion of the substantive work (e.g. the preparation of memoranda and position papers) currently depends heavily on volunteer lawyers rather than professional secretariat staff. All these will have to change in the future, if the Bar Council is going to keep up with the

increasing demand on its services.

15. Under your leadership, the Bar Council has started to work more closely with NGOs. Was that a conscious effort on your part?

Yes. For some time I was told that civil society perceived the Bar Council as elitist. I felt that there was a lot that we could achieve in collaboration with NGOs that share certain common objectives with us. After getting Council's approval, we started a few projects with NGOs and other bodies, e.g. the IPCMC petition, on refugees and migrant issues, on issues of fundamental freedoms, and even matters such as the "build then sell" concept. From the feedback I get, I am glad that such collaborations have enhanced the standing of the Bar in the eyes of the public.

16. Apparently, your hand-phone number was known to thousands of members of the Bar. With the increasing popularity of sms, how did you cope with the incessant and non-stop accessibility to you?

I don't know if it was known to thousands. But it was certainly known to many, and was not difficult for anyone to find out. Fortunately, the number of telephone calls, sms, and emails, though many, were spread out and still manageable. It did occur to me at one stage that the time might come when I could no longer cope with rendering the courtesy of answering or replying each person. But it did not come to that. There were 2 or 3 matters, though, that came in February and March, that I was unable to complete, and had to leave them for Ambiga to deal with.

Not all the sms were enquiries or requests for some form of action. Sometimes they were simply expressions of support and encouragement. There were lots of those around the time of the November EGM.

Some of them were extremely moving and unforgettable.

17. There is talk that you met, at regular intervals, with a group of former Bar Presidents who advised on how you should handle the job. If so, was this necessary?

No, I did not meet them on a regular basis. I do not know why you have that impression. But I did meet them whenever they requested a meeting. To be fair, some of them would give me their views, which I appreciated, and simply leave it to me to decide. I saw nothing wrong with that.

I did not accord previous Presidents special treatment. I would meet them just as I would meet other members who asked to meet me. I would carefully consider their opinion just as I would the views of other members. In fact, I think it was precisely because I did not give them special status, or treat their advice as binding on me or as superior to the Council's views, that upset a few of them.

18. The 2006 amendments to the Legal Profession Act, which resulted in an EGM on 18 August 2006, seemed to have hit a raw nerve among some members of the Bar. Would you have handled the whole exercise differently?

I am not sure how things could have been done differently, given the circumstances and the constraints. I would be grateful if I could be shown how, with specifics. What the episode showed, to my understanding, was that accurate and in-depth information regarding the amendments was not adequately disseminated and properly understood. A careful reading of the ad hoc committee's report will show that.

There are members who believe that while the amendments are certainly not perfect, they are not fundamentally wrong either.

I am one of them. Let me quote you what Karpal Singh said about the amendments. He said: *"I read the amendments. There was only one provision that I did not agree with, i.e. that a decision of the DB in which Bar Council members were present would not be invalidated where the Bar Council is the complainant. The Minister agreed, and that provision was removed. So much has been made about the removal of judicial review, but no one talks about what has replaced judicial review. There is now a 3-tier appeal process, i.e. appeal to the High Court, Court of Appeal and the Federal Court. There cannot be judicial review when there is an alternative remedy like an appeal."*

I agree with Karpal. If by holding that view I should be castigated, as a few have clamoured, I will have no problem with that. In any event, the ad hoc committee's report has made several useful improvements to the amendments, but it certainly did not find the amendments to be draconian.

19. Were you concerned with the no-confidence motion against the office-bearers and 2 others at the 16 November 2006 EGM, and were you relieved at its outcome?

Of course. One could hardly be unconcerned if such a motion was on the table. But more than that, I was concerned that 5 other good people were pushed into the mud pool with me, which made it 5 times more unfair. Their inclusion convinced me that there was some other plan afoot, and that it was not a simple exercise to unseat me. You do not challenge 6 persons to a fight if all that you desire is to beat up one of them. Developments leading to 16 November 2006 fortified my assessment of the situation. All kinds of rumours were about, including even one concerning the involvement of a sitting judge.

That experience taught me an invaluable lesson. After the event, a number of persons asked me how I managed to stay so calm throughout the conduct of the EGM that day, when things were so nasty. I reflected on it, and I realized that it was because I was at peace with myself, knowing that my colleagues and I had done an honest day's job and that the accusations were trumped up. I was not presumptuous about the outcome that day. Rather, I was prepared for any outcome. The precious lesson I learned from the experience is this: when you are at peace with yourself, it becomes clear that the way the journey is travelled matters even more than the outcome. Once that becomes clear, calm ensues.

I was more than relieved at the outcome of the November EGM. I was encouraged by it. I think most others were, too; except a few who felt disappointed at that outcome. The overwhelming support we received gave us renewed enthusiasm to continue working hard in serving the Bar.

20. What do you make of the election fiasco? Was the election process held any differently in 2006 than from previous years?

As I had explained at the AGM, the October/November election was conducted in the same manner as in all previous years. As for those who suddenly became anxiously concerned with the election procedure in November 2006, I wonder what they had been doing in the past 30 years?

It was thus a normal election. What was abnormal was that a fraudster decided to crawl out of the woodwork to sabotage it. The act was done in such a clumsy way that it was probably meant to be discovered. When discovered, there was a simple (and right) way to deal with it. But things took an unexpected turn.

If you ask me, there was no election fiasco as such. What we had was a normal election, sabotaged by an abnormal crook, and then somehow turned into a fiasco by a few. Things were eventually sorted out, but not until after unnecessary spotlight was shone on the Bar, to no one's benefit except those who do not wish the Bar well.

The outcome of the AGM on 17 March 2007 was exceedingly conclusive of the wishes of the Bar. The Council's action was firmly ratified and commended. The number of members who wanted to insist on a fresh election was reduced to less than 20. It is crystal clear what the Bar feels is in its interest.

Of course now there is this suit by Ronnie Wong. Let that take its course. The Bar has already spoken.

21. Did you put Foo Ton Hin up to his litigation?

I have not spoken a word to him. But I do hope to meet him some time in the future, because I am interested in getting to know members of the Bar who have the Bar's interest at heart.

Another thing I learned on the job is that ridiculous allegations of this nature will be made against Bar leaders. The only thing we can do is to ignore them. But sometimes it can get too much.

For example, I have heard that I paid some members of the Bar to write on the Bar forum and e-groups. I must be quite rich according to this rumour! Then there was talk that I got Karpal to come to the November EGM and to say what he said.

I must be pretty powerful, to be able to move into action someone who has fought against kings and prime ministers, and who would not do or say anything that he himself does not believe is right.

On the one hand I may laugh at these childish rumours. But on the other hand I sometimes feel angry, because they insult the intelligence and integrity of good people. That is not right.

22. What would you regard as your greatest success during your term?

The first thing that comes to my mind is the enhancement of the Bar's image and standing in the public's eyes. But, hold on, I think there is something else. I would say it was the fact that I was able to lead a Council that had (by majority at least) consistently and over a long period of time remained steadfast in making decision after decision through thorough debate and principled considerations, never bowing to undue pressure nor taking the easy way out. We spent a lot of time debating issues before coming to our decisions. My colleagues sometimes had to put up with my long-windedness when doing so.

But that was not my success. That was the collective success of the team. It might at times be tempting to say, when things got tiresome, "let us just give them what they want, even though we don't believe they are right". But we never did that. We never succumbed. For that I am very proud of, and grateful to, my colleagues. I think this spirit that I have described is the best legacy that we have jointly left behind.

23. And the worst failure?

I did not manage to nip Bar politics in the bud, and so had to spend too much time and energy to overcome it. This left too little time to devote to the meaningful and constructive work of the Bar. I could have undertaken more projects than I did.

24. Any regrets?

Not for myself. I am thankful that I was given the opportunity to have the experience of leading the Malaysian Bar, even though it was not that every minute

of it had been enjoyable.

But I do regret that my colleagues were put through a rough and bumpy ride. Sometimes I have wished that it were otherwise.

25. One gets the impression that your presidency of 2 years had been more eventful and troublesome than usual. Why was that so?

I used to joke about being a lightning conductor. Chee Wee said my hair was too straight. But seriously, there were a number of reasons. Most of them had their root in my desire and determination to introduce a number of changes and reform, in an institution that has been entrenched in the way it was run. That was the start of all my “troubles”. Change creates discomfort, discomfort produces resistance, and resistance turns into an opposing force. If you introduce more than one change, you will find more than one opposing force.

One of the methods of resistance was to enlist the help of some elders in the Bar to “knock some sense into me”. I listened, but I was unconvinced. I discussed with my colleagues, and most of them were unconvinced. So I carried on. I knew it was politically unwise to break rank with a few Bar elders (and others) all at the same time. I knew it would also open the door for opportunists to attack. But I had no choice, because I was not prepared to give up my independence of thought in return for peace and quiet.

That was what happened. I lost the support of a number of Bar elders, whose support I used to previously enjoy, to differing degrees. (But I must hasten to add that I had the support of other Bar elders and people of high standing in the

Bar as well.) But what is most important ultimately is the verdict of the majority of the Bar.

Ambiga once gave me a very apt analogy, which I will share here. She said that I was like a driver of a car who embarked on a journey. Those who felt I drove too slowly knocked me from behind. Those who did not like the way I steered the car rammed me from the sides. When I was parked, some others would still drive into my car. And then they gathered together and accused me of being accident-prone. I think her observation was spot-on.

Let bygones be bygones. Blame it, if you like, on the character of a particular president. That is not important to me. What is important is that what had transpired in the past 8 months should not be repeated in future. It is not right to impede democratically elected Bar leaders in that manner. It affects the meaningful work of the Bar. This is the appeal I am making. I urge everyone to act responsibly and honourably.

I will be a very happy person if what had occurred does not recur in the future. But I have little reason to be optimistic about that, because of the new suit and the threat of another suit by another member. It seems to me that those determined to disturb the status quo will not give up, even though the Bar has spoken loud and clear. In fact, this is the main reason why I agree to this interview and to say the things I have said above; because it remains relevant for me to state and convey my views to members of the Bar. The latest developments make it necessary for me to do so. Otherwise I would have preferred to let bygones be bygones.

So, if history should repeat itself, it will

again be up to the good people in the Bar to continue to rise to the occasion (no matter how frequently called upon) in order to defeat maneuvers that are not in the interest of the Bar. You can count on me for that.

26. Have you any advice for your successor?

Be yourself. Lead with your own style. By all means seek views and advice, but make up your own mind. Occasionally have someone check the letters-to-editor columns. Beware of grievance collectors. Deal with them early. Do not underestimate the nasty obstacles some may place before you.

But, in Ambiga’s case, it will be like teaching a dolphin how to swim.

27. Any message to Bar members?

Most of all, a big thank you. You were there when we needed you. Please continue to be there when my successors and future Councils need you. They need your support and encouragement in order to give their best to the Bar.

28. How has life been treating you since 18th March 2007?

Gentle and kind, for a change! I am enjoying my relaxed schedules. I am back to my daily exercises. I do have office work to catch up, but I am choosing to do it at a more leisurely pace. My experience these 2 years has made me reflect on many issues, such as my work, my time management, and my life. I hope to continue to contribute to the Bar and society. But I also want to make use of what I have learned, make some changes within myself, move on to other things, and generally try to lead the rest of my life in a way that I may find happy and fulfilling. That is a tougher challenge.

It's not over yet, lawyer wants Bar Council Elections 2007-2008 nullified

by Web Reporter

Just as everyone thought the Bar has moved on after resolutions calling for fresh Bar Council elections were overwhelmingly defeated at the March 17 annual general meeting, lawyer Ronnie Wong Chim Yam is obviously of a different view.

Last Friday, Wong decided to proceed with the originating summons he filed with the Kuala Lumpur High Court on March 15, 2 days before the AGM, by serving a copy on one of the 12 successful candidates.

Wong, who did not sign in for the March 17 AGM, named the Malaysian Bar as the sole defendant.

In his summons, Wong, who is represented by M/s Chambers of Murthi & Partners, seeks the following reliefs:

- that by the true construction of section 50, 58 and 57 of the Legal Profession Act, 1976, the appointment of the 2nd team of scrutineers namely, Zain Azahari, Zainuddin Ismail and M. Puravalen on 23 February 2007 by the President of Malaysian Bar Yeo Yang Poh is *ultra vires* the Legal Profession Act 1976 and accordingly the said appointment and the declaration of the 2nd team of scrutineers dated 26 February 2007 is null and void and inoperative;
- consequent thereto, an injunction be granted to restrain the Malaysian Bar from allowing or permitting all person or persons purportedly declared as elected to the Bar Council 2007/2008

by the 2nd team of scrutineers *vide* their report dated 26 February 2007, from taking and or continue in office as elected members of the Bar Council on the 17 March 2007 or at anytime thereafter;

- liberty to parties to apply for further consequential directions or order;
- such further or other reliefs, order or directions as may seem just; and
- the costs of the suit.

In his affidavit, Wong states, *inter alia*, the following grounds to support his application:

- the original scrutineers have declared the election null and void and unless the declaration is set aside, the declaration of invalidity remains operative.
- the Bar Council itself is *functus officio* in the appointment of the second team of scrutineers and the LPA has not vested the Council with any power to appoint second set of scrutineers after the month of November in the calendar year.
- there is no letter of resignation from any of the original scrutineers and as such the Council has no power to superimpose a second set of scrutineers.
- the court ought to make the consequential reliefs in order to prevent a recurrence of the forgery and fraud

and to maintain honesty, impartiality, independence, integrity and openness and to seal the opportunity to manipulate the incomplete ballots by inserting the name of favoured candidates.

- as a voter, he feels that he has been denied a clean election conducted under a process which is beyond reproach.
- as a member, he fears that the huge funds to which he has personally contributed may not be safe in the hands of a body of which one third of the membership has a dubious claim to legitimacy and a doubtful right to hold office.



“It is forbidden to kill; therefore all murderers are punished unless they kill in large numbers and to the sound of trumpets.”

- Voltaire

Tun Dzaidin Trophy Report

by Muralee Menon, Golf Cenvenor

Preliminary

The details of the event were as follows :

Date: 3rd March 2007

Place: Palm Garden Golf Club, Putrajaya

Time: 1.30pm

Participants: 43 persons

The above event was a great success with a total of 22 members of the bench and 21 members of the bar. Due to a miscommunication 1 member of the bar 'forgot' to turn up.

The Malaysian Bar Team overwhelmed the Judiciary Team by 293 points as against 270 points and regained the Trophy they lost in 2005. The mode of play was based on stableford best combined score.

Detailed Result

Malaysian Bar Team

Champions	Maria Stanislaus Mesnor Bujang	81 points
2 nd Placing	SS Ravichandran Rasheed Hassan	80 points
3 rd Placing	T.K. Sunther P.Param	79 points

Judiciary Team

Champions	Tn. Mohd. Jamil Husain Tn. Nu' aman Mahmud Zuhudi	77 points
2 nd Placing	Tn. Harminder Singh En. Sharkawi Alias	76 points
3 rd Placing	Tn. Hj. Zaini A. Rahman Tn. Hamidon A Fatah	73 points

Individual Placing

Champion	SS Ravichandran	45 points
2 nd Placing	Mesnor Bujang	44 points
3 rd Placing	Y.A. Dato' Raus Sharif	43 points

Dinner

The dinner was attended by the golf participants and by Ms. Ambiga Sreenevasan and Mr. George Varughese from the Bar Council. The event ended at 10.00pm

Sponsors

The following sponsors were acknowledged :

- i) Mr. Roger Loo - Golf instructor Kiara Driving range
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- iii) Auto Bavaria (M) Sdn. Bhd.
- iv) Galeri Trofi
- v) Crescent Links (M) Sdn. Bhd.
- vi) Palm Garden Golf Club
- vii) Palm Garden Hotel



BAR COUNCIL

Diary of upcoming Events

APRIL

17th April 2007

at Bar Council Auditorium
Judicial Commission Debate
Officer in Charge: Mr. Rajen

24th April 2007

at Bar Council Auditorium
Judicial Commission Debate
Officer in Charge: Mr. Rajen

MAY

4th - 5th May 2007

at Bar Council Auditorium
Training by Guna & Prabha
Officer in Charge: Ms. Marianna

9th - 10th May 2007

at Bar Council Auditorium
Ethics Lecture Programme
Officer in Charge: Ms. Lilian

11th May 2007

at Bar Council Auditorium
Talk on Corporate & Securities Law
by Mr. Kenny Poon
Officer in Charge: Ms. Emily Lee

22nd - 23rd May 2007

at Bar Council Auditorium
Judicial Commission Debate
Officer in Charge: Mr. Rajen

OCTOBER

29-31st October 2007

at KL Convention Centre
14th Malaysian Law Conference
Officer in Charge: Ms. Lynette Tan

* For updates/changes, please visit our website at
www.malaysianbar.org.my

RECENT EVENTS



Talk by Subramaniam A Nambiar - Even if there is a Will there is a Way on 23 March 2007



Courtesy visit by the School of Law-University of East London on 26 March 2007



Press Conference - Young Malaysians Roundtable discussion National Unity & Development in Malaysia on 29 March 2007

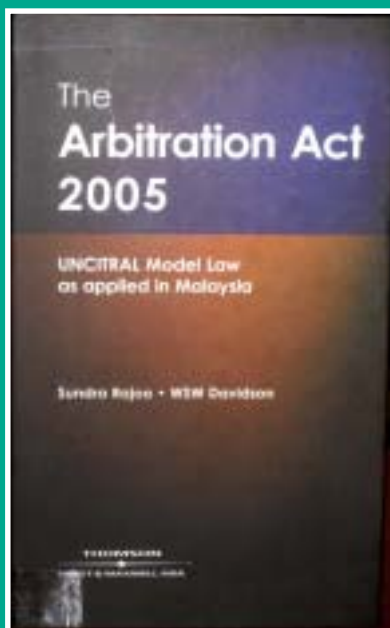
Book Review - The Arbitration Act 2005: UNCITRAL Model Law as Applied in Malaysia

Some of the common ailments with which law books are reputed to suffer are their excessive bulk, lengthy footnotings and an ‘elephantine laboriousness’ (if one may borrow this phrase from Lord Mustill) which oozes out of their every page. Obviously, these ‘attributes’ make the law books difficult to read, except as a helping device to overcome insomnia, and not so easy to buy. Books on the law of arbitration are no exception. These are also obese, as well as fat priced.

Sundra Rajoo and Davidson’s *The Arbitration Act 2005: UNCITRAL Model Law as Applied in Malaysia* is a forceful refutation of the ‘theory’ that law books cannot be slim, readable and affordable. Sweet & Maxwell Asia deserve praise for publishing this sleek and lovely 293 page beauty, wrapped in artistic bluish black with a tinge of burnt amber hardcover, and still affordably priced. Adding to the beauty of the book is a very poetic and literary Foreword by Dato’ Mahadev Shankar, who as a

lawyer, ex-Judge and Omar Khayyam all rolled into one has his own personal eloquence and style which has turned the Foreword into a valuable asset to the book.

Coming within a few months of the enactment and implementation of the Arbitration Act 2005, the book is indeed the first commentary written on this Act. The authors have purposely written it to provide, on a section by section basis, a commentary, brief background information, relevant case law and some indications to the changes introduced by the new Act. The writing style is direct and lucid, unlike the style in which law books are generally written. For instance, there is not a single footnote in the entire book, making it easier to read, citations are given in the text itself. There are a total of only 245 cases cited in this book, taken mainly from five jurisdictions: Malaysia, U.K., New Zealand, India and Australia. The job of selecting these few cases should have posed for the authors an equally serious problem as



Book Review of:

Sundra Rajoo & WSW Davidson,

The Arbitration Act 2005:

UNCITRAL Model Law as Applied in Malaysia

(Sweet & Maxwell Asia, Malaysia, 2007)

xxxvi + 293 pp., hardbound

by

Prof. Dr. Syed Khalid Rashid

Professor of Law

International Islamic University Malaysia

selecting finalists in a beauty contest

The book contains the usual Table of Cases, Table of Statutes, a list of publications (bibliography) and a detailed index. In the two Appendices are given the texts of the UNICITRAL Model Law and the 'New York Convention' 1958. It is really good to have these texts, as several provisions of the 2005 Act are literally or loosely based on these.

A complete absence of the judicial precedents arising out of the 2005 Act has indeed posed a serious problem for the authors in interpreting the new Act. But they nevertheless enjoy the unique privilege and advantage of being associated with the drafting of this Act, in their capacity as the members of the ad hoc committee set up by the Malaysian Bar Council to formulate a draft for the new law. They have effectively utilized their rich experience in writing this book with a deeper than usual insight and understanding.

However, as usually happens when authors of this high stature as Sundra and Davidson write a book, expectations of readers tend to rise in direct proportion to their stature. Here, probably, lies something to be desired. The book might have contained a relatively more detailed introductory chapter listing all the negative elements in the Arbitration Act 1952 which awaited reform and the corresponding improvements brought about by the new Act. For example, it might have been useful for the readers to know why section 34 of the 1952 Act has not found a place in the new Act, in spite of its insertion into the old Act in 1980 with so much of fanfare. Why, for instance, the concept of 'umpire' so prominently contained in the old Act has lost favour in the new. For the authors these might be things trite, but surely not so for many of the readers. Similarly, many of the innovative provisions in the new Act deserve to be highlighted more sharply. There are very many judicial precedents relating to the 1952 Act which are still relevant in the context

of the new Act, so also many cases from other jurisdictions. The authors presumably omitted their mention for the sake of brevity, an objective they followed with unwavering conviction and commitment. The book could also have contained at least a mention, if not detailed discussion, of some of the much talked about lacunae in the drafting of the new Act. It would have assisted possible future amendments in the Act. Dato' Mahadev Shankar rightly says that a great responsibility lies on the shoulders of the first commentators of the 2005 Act because as the authors of this work they will now "find their names recorded in the sands of time".

It is to be acknowledged that the authors have given a good account of some of the important provisions of the 2005 Act. A few of those worth mentioning are: the extent of court intervention (pp. 33-39); interim measures (pp. 53-58); appointment of arbitrators (pp. 61-66) and challenge procedure (pp. 73-77); competence of arbitral tribunal to rule on its jurisdiction (pp. 84-91); form and contents of award (pp. 147-154); grounds for refusing recognition or enforcement (pp. 184-190), reference on questions of law (pp. 196-203), and cost and expenses of an arbitration (pp. 206-213). Useful references are embedded in the text to guide the curious ones to other relevant sources and material. The book is free from printer's devil, is neatly printed and nicely bound. Sweet & Maxwell Asia have done a good job in publishing this nice book at an affordable price. Every student, academic and professional will welcome its publication and will eagerly look forward to have its second edition which, as the authors have promised, will come soon and "will contain more Malaysian material".

As rightly said by Dato' Shankar, "it will be a very bold practitioner who would dare venture into the field of arbitration in Malaysia without this book at his elbow". Well done Sundra and Davidson to have ushered in the era of slim, beautiful and affordable law books in Malaysia.

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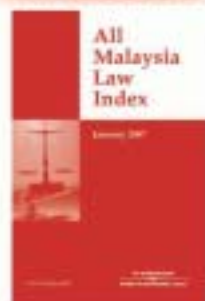
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Malacca Bar Committee to work together with the police

by Wong Fook Meng

The Malacca Bar Committee, led by Ng Kong Peng, paid a courtesy call to the Malacca Police Chief, Senior Assistant Commissioner 1 Datuk Ayub Yaakob.

The others who were present at the meeting were the Melaka Tengah OCPD, the Jasin OCPD and representatives from the Special Branch, Traffic, Narcotics and Commercial Crime divisions.

In his welcoming address, Datuk Ayub Yaakob said that the police force is working hard to gain the confidence of the people and is open to ideas from the legal fraternity in improving its services.

The several key issues that were discussed are as follows:

- There will be a liaison person from the police department whom the Bar Committee can contact to seek assistance and information regarding matters arising in the future.
- For drug cases, suspects will not be detained on the basis of non-confirmatory urine tests alone but will be released on police bail. However, if a person is arrested for possession of dangerous drugs or other seizable offences, the person will be detained.
- Family members have the right of information on detainees, especially detainees who are minors.
- For accident cases, the complainant and their lawyers are entitled to obtaining copies of the police reports and the police assured that there should be no difficulty in the extraction of the reports.

- The police will exercise their discretion in detaining people who are suspected for dangerous driving offences.

Datuk Ayub Yaakob said that the police and the legal fraternity are part of the same criminal justice system and that we should work together to serve the community. On that note, the Malacca Bar Legal Aid Subcommittee and the police agreed to have a joint project in the near future to conduct talks in secondary schools on issues of crime prevention.

Datuk Ayub also invited the Malacca Bar Committee to visit the various police stations in the State and give suggestions for improvements. He said the police are very serious in protecting and serving the community but they need the co-



operation from all quarters, including the legal profession. He encouraged members of the Malacca Bar Committee to participate in the Rakan Cop programme and give information on criminal activities to the police.

The meeting ended on a positive note and is a precursor for future collaboration between the Malacca Bar Committee and the police. It is noteworthy to mention that while lawyers and police are often at opposing ends in the court, there is still much common ground where we can work together in serving the community.

HO KEE POH @ HO KHEE POH DECEASED

We act for Mr Ng Aik Pung, the next of kin of the abovenamed who passed away in Ipoh on 19.12.2006.

We are instructed to enquire if any firm of solicitors or anyone has knowledge of or is in possession of a Will executed by the deceased in Malaysia. Parties with any information are kindly advised to contact:-

CHAN & ASSOCIATES

Advocates & Solicitors

No.1 (1st Fl) Jalan Tun Sambanthan

30000 Ipoh

Tel: 05-254 5293

Fax: 05-253 4091

Growing in Compassion, Courage and Understanding

by Raymond Mah

On 1 March 2007, some 80 pupils gathered in the KL Bar Auditorium for the exit evaluation of their legal aid programme.

Stephanie, the Administrator of the KL Legal Aid Centre, opened the session with a simple and sincere message to the pupils. She urged pupils to continue their participation in legal aid as volunteer lawyers. After being divided into groups, pupils shared with each other their experiences during the programme. The room quickly filled with smiles, laughter and tales of almost comical experiences, including a man who misunderstood the court interpreter and dropped his pants! But to match every light moment was a sober story of empathy.

For many, the legal aid programme was 'something that had to be completed'

before being called to the Bar. Those with less reluctance, began thinking they would gain some 'practical experience' from the programme. Most students, however, had not anticipated growing in compassion, courage and understanding in they ways that they described.

In their sharing, some pupils expressed how they were challenged with fears of dealing with accused persons and working in prisons. Others struggled to maintain their objectivity amidst stories by clients of victimisation and misfortune. It seemed that the pupils, through their interactions with their clients, had come to shed the commonly held stereotypes of accused persons. They had come to realise that every person is not so different, and at all times deserving of compassion and dignity.

Rajen from the Orientation Committee closed the sharing session with a challenge to the pupils – always remember to do the right thing in any given situation.

Listening attentively to the sharing by the pupils was Yeo Yang Poh, President of the Malaysian Bar. Having described the sharing as a "most interesting session", Yeo went on to note that the stories shared were less about the law, and more about human life.

And reflecting briefly on life, Yeo warned of the danger to society when humans cared only about their own "little turf".

"Don't forget today. Don't be numbed by your experiences in life. Your family and friends are important. But you can and must continue to contribute to society."

Veteran Penang lawyer slips away

by Stephen Tan Ban Cheng

Veteran Penang lawyer Yeap Ghim Guan, 66, slipped away at 3.30pm on 12th March 2007 without recovering from a coma sustained after a fall ten days ago. Yeap was called to the Malayan Bar on March 23, 1964.

Yeap, leaves behind his wife, Rita Wong, and three daughters, one of whom, Su Lynn, is a practising lawyer.

The former Penang State Assemblyman for Kelawei from 1969 to 1974, had earlier suffered a stroke in his daughter's apartment in Kuala Lumpur in 2004

when preparing to attend the Malaysian Bar annual general meeting, and was partially paralysed after that.

As leader of the Penang State Opposition, he challenged the Penang State Government, then led by Dr (now Tun Dato') Lim Chong Eu, on the State Government's financial capacity to build the Penang Bridge, stating that if the Penang State Government could build the bridge, he would be the first to jump down from it.

In subsequent elections, his Gerakan detractors were believed to have twisted that simple argument by asking him to jump from the bridge



since it has been built. However, to those in the know, including this writer, the challenge remained unresponded since the federal government, and not the State government, implemented the bridge project.

The Indomitable Spirit

Recently, Akbar Hussain Meera Hussain, a member of the Malaysian Bar, was the guest of His Excellency Dr A.P.J. Abdul Kalam, President of India, at the Presidential Palace, the Rashtrapati Bhawan in New Delhi. Knowing that I am an avid reader of President Abdul Kalam's writings, Akbar presented me an autographed copy of President Kalam's latest book entitled "Indomitable Spirit". President Kalam is a prolific writer. Indomitable Spirit is a collection of President Kalam's thoughts and observations on various issues facing his nation and the world at large. It is a wonderful reflection of his life's journey – collection of gems of wisdom and some proffered prescription for the ailments of modern society and how we can better ourselves and give our children a more meaningful future. The following are two of such reflections. The first is about the spirit of helping others win, and the second is on leaving a legacy. I hope you enjoy reading it, as much as I did. (*Editor's note*)

A Noble Action

"At a sports meet for the physically handicapped children conducted by the National Institute for the Mentally Handicapped, Hyderabad, I witnessed an unforgettable incident. In one race, nine contestants, all physically or mentally disabled, assembled at the starting line for a 100-metre race. At the starting signal, they all started out, not exactly in a dash, but with a relish to run the race to the finish and win. But one little boy stumbled on the asphalt, tumbled over a



Akbar with His Excellency President Dr APJ Abdul Kalam at Rashtrapati Bhawan, New Delhi

couple of times, and began to cry. The other eight heard the boy cry. They slowed down and looked back. And then they all turned around and went back, every one of them. One girl with Down's syndrome bent down and kissed him and said, "This will make it better." Then all nine linked their arms together and walked together till they reached the finish line. Everyone in the stadium stood and clapped and the cheering went on for several minutes.

People who were there that day are still telling the story. Why? Because deep down we know this one thing: what matters in this life more than winning for ourselves is helping others win, even if it means slowing down and changing our course. I would say that you do not have to slow down. Rather by helping others through the difficult areas, the feedback will make

you go faster. If you pass this on, we may be able to change our hearts as well as someone else's. A candle loses nothing by lighting another candle"

What will You be Remembered For?

"The two questions I often ask people I meet are:

"What have you learnt so far in life?"

"What will you be remembered for?"

Asha Ramaiah, an HIV/AIDS patient, who works as a National Advocacy Officer for the Indian Network for people with HIV/AIDS gave touching answers to both these questions.

"True learning in my life began when it was discovered that I had HIV/AIDS and had to face the reality of my situation. My husband's family turned me away from their home and even my father told me to leave his house. My plight was like that of any other abandoned woman left to face life alone as a fallen leaf just drifting with the wind. At the first instance I had to face up to the challenge of mere existence itself. Thanks to the strength of my womanhood, I could absorb the feeling of shock, and overcome the trauma of being thrown out of my home. I realised that it was my responsibility to make efforts to bring about a change in the lives of other people affected with HIV/AIDS in India.

Today because of my constant efforts and support from my fellow people living with HIV, I am not only accepted in my community but even people of high positions come to me for my opinion, guidance and counselling on various personal issues. My parents are proud that I have become a role model for others to follow. With family and a good peer support, I got remarried to a person suffering from HIV. My husband encourages and supports me to work with my HIV fellow patients for betterment of our lives.

When we had to decide about having a child, I learnt how difficult it is to make decisions in the face of uncertainties; plunging into the unknown that may have the risk of having a HIV positive child. We followed all medical guidelines to reduce the risk and came out

victorious when, after waiting for years, it was confirmed that our child had no infection. Now we have the responsibility of planning the future of my child for the next twenty years. Our quality life time can be utilised for imparting our parental responsibility by ensuring him education, security and a future. We learnt that dreams do come true but only when you own them and accept the responsibility of the possible risk in pursuing them.

I will be remembered by the people afflicted with HIV/AIDS living in various parts of the country and my family, relatives and associates for the courage I showed to stand up and face life, and for my efforts in sharing the light I have acquired in the midst of struggle.”

We see how Asha, with courage, not only defeated the disease but more important how she withstood the onslaught of stigma hurled at her by her parents, husband and society. This I call an indomitable spirit.

What would you like to be remembered for? Would you like to be remembered for your Ph.D thesis? Would you like to be remembered for your innovative thinking? You have to evolve yourself and shape your life. You should write it on a page. That page may be a very important page in the book of human history. And you will be remembered for creating that one page in the history of the nation – whether that page is the page of invention, the page of innovation or the page of discovery or the page of fighting injustice.”

Excerpt from “Indomitable Spirit” by A.P.J. Abdul Kalam. Rajpal & Sons, Delhi 2006.



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Young Malaysians' Roundtable Discussion on National Unity and Development in Malaysia: Prospects and Challenges for Nation Building

Keynote Address by

Duli Yang Teramat Mulia Raja Muda Perak Darul Ridzuan Raja Nazrin Shah Ibni Sultan Azlan Muhibuddin Shah on 3 April 2007

Ladies and Gentlemen:

It is my pleasure to be here to deliver the keynote address at this *Roundtable Discussion on National Unity and Development in Malaysia: Challenges and Prospects for Nation Building*. I am always happy to take part in an event where



there are many young informed Malaysians. I find that this is time well spent. Not only does it give me a chance to share my thoughts, but it also lets me do a bit of opinion research among the younger generation. We like to say that our youth are the future of this country, but then we proceed to ignore or marginalise them. We want our future generations to be able to think and act wisely, but then we do not give them sufficient opportunities to do so.

2. In my view, this is not a good way to prepare those who will take our place. If the young are to be good leaders and citizens, they must be exposed to more than just abstract concepts. Even those nation states which have failed miserably have had great political ideals. I believe that good and upright leadership must be demonstrated. It has to be both taught and observed at work. Then, those who are found to be able must be mentored by those who are capable. In this way, success can be learned and replicated. Finally, the young must be given responsibilities they can handle. They should be allowed to

make mistakes along the way as part of their overall learning process. If we do these things, our actions will echo loudly into the future.

3. My address this morning is on the challenges and prospects of nation building, a topic that is of

the greatest and gravest importance. Nation building is essential to national unity which lies at the heart of what this country was, is and will be. With the passage of time, it seems that we are starting to forget this and it is imperative that we do not. In the time available, I hope to say enough to provide some fuel for the discussions to follow. It is my earnest wish that you will gain some further perspectives on the nature of nation building and that you will also deliberate on specific actionable ways to further it in this country.

4. Confucius insisted that language must be properly used if things are to get done, if justice is not to go astray, and if people are not to “stand about in helpless confusion.” He disapproved of those who misused words to hide their true intentions and actions. So what exactly is nation building? Not surprisingly, there are many definitions, some which differ by a little and others by quite a lot. In his book, *The Making of a Nation*, for example, Professor Cheah Boon Kheng defined it as “both economic progress and

socio-political integration of a nation, i.e. prosperity and national unity.” This captures what are hopefully the two end results of nation building, but it makes no mention of its nature and process. I prefer the more common understanding, which is that it is the use of state power across different dimensions to ensure that a country is politically stable and viable in the long term. These dimensions include ethnicity and religion.

5. As a brief footnote, it should be noted that nation building is a heated and even hated notion in some parts of the world. The main reasons for this are, first, that it is taking place in the midst of great domestic turmoil and, second, that it is primarily initiated and managed by foreign powers. Trying to cobble a functioning state by papering over deep social and political rifts is, of course, easier said than done. History has shown us time and again, that it is much easier to break down, rather than build up, nations.

6. In the case of Malaysia, nation building has occurred in generally peaceful circumstances. It was not imposed by another country. And it is undertaken mainly by collective choice rather than compulsion. The fact that we have been able to forge a nation without resorting to the rule of the gun has made us something of a rarity and a case to be studied, if not emulated. It has allowed a relatively effective system of governance to develop. Our track record at development and

resolving problems such as illiteracy, poverty and poor health has been good.

7. There is, of course, much more that can be done. Our institutions of governance are far from perfect and quality improvements will probably occupy us for at least the next fifty years, if not longer. Nevertheless, for all the criticisms that have been made, it is only common sense that we could not have survived, let alone prosper, these last fifty years if government institutions had not been responsive or effective.

8. So what are the central challenges to nation building going forward? Let me speak first more generally about the world, and then move specifically to Malaysia. To my mind, there are many challenges, but the one that stands out most is that of having to balance the need for change with that of continuity. Globalisation, in particular, has unleashed sweeping economic, political, social and cultural transformations that have weakened national institutions, values and norms. It is as if all the boats on the ocean had suddenly lost their anchors, rudders and compasses overnight. Naturally, this has produced a strong reaction in the form of a desire to preserve identity, character and tradition. These are among the strongest motivations known to mankind and have been at the foreground or background of practically every conflict that has ever been waged. Add to this, a deep sense of deprivation, powerlessness and injustice, both real and imagined, and the tension between change and continuity mount greatly.

9. Managing change on a national level is never easy, and certainly not on the scale and speed that we are witnessing. Multi-ethnic countries have to be

especially watchful, and particularly if they have a weak sense of national collective identity. In the absence of a strong binding nationalism, they are prone to polarisation and competition along ethno-religious lines. The state, which may well start out by being a relatively honest broker, can become increasingly pressured to act in ways that favour the interests of one group over another. If the pendulum swings too far in one direction, dissatisfaction and frustrations will inevitably result. These can be expressed in ways that range from passive non-



cooperation to active opposition and even violent conflict. To a large extent, this has led to the fragmentation of states.

10. Countries need to recognise the larger macro forces at work and understand their implications. They have to engage creatively to ensure that there are sufficient investments in social capital and cohesion. They must create and capitalise on cooperative systems within societies. In recent times, it has become usual to try and place the blame for the disintegrating state of world affairs on the doorstep of religion. This is a misunderstanding of the first order. Religion is not the cause of societal dystrophy; it is the antidote. It is a social stabiliser that allows believers to reconnect to values that are fast being lost in today's ever more materialistic and self-centred

world.

11. What does Malaysia have to do to ensure that it continues to be successful at nation building? Psychologists say that our short-term memory can only hold seven items. Let me outline seven guidelines that I think will have to be borne in mind in future national building efforts.

12. First, Malaysians of all races, religions, and geographic locations need to believe beyond a shadow of a doubt that they have a place under the Malaysian

sun. Only when each citizen believes that he or she has a common home and is working towards a common destiny, will he or she make the sacrifices needed for the long haul. In Malaysia, the Federal Constitution, the Rukun Negara and Vision 2020 encapsulate the rights, hopes and aspirations of the population in a way that no other documents do. The integrity of these documents must be defended and promoted, especially the first.

13. Second, when we seek solutions to problems in nation building, we must be careful not to assume away problems. Nation building is required precisely because there are stark differences within society. If we all walked, talked and thought the same, it would probably not be needed. There will therefore be

chauvinistic groups in this country, just as there are in others. They will fight the idea of national unity, block social change and try to be politically dominant. The existence of these groups, however, does not mean that nation building is a futile exercise. It does mean that we must be prepared to negotiate our way through and around these differences. We can, for example, create social movements that aim to enlighten and dissuade popular support being given to them.

14. Third, nation building requires accommodation and compromise. In our haste to be prescriptive, we should not be so idealistic that we are incapable of also being practical. We should not allow perfection to be the enemy of the good. Yes, we should seek the best solutions and expect the highest standards of performance. But we should also be prepared to sacrifice some part of our positions for the good of the whole. The virtues of pure self-interest are largely a myth. What seems to be a reality is that individuals end up worse off when they act out of self-interest, as opposed to acting in their collective group interests.

15. Fourth, if nation building is to be successful, enforced solutions must be avoided. Nation building is effectively rendered null and void by coercion or the threat of violence. 'Might' cannot and must not be shown to be 'right'. If solutions cannot be found within the political and social structures, there will be a strong temptation to resort to illegitimate ways and means.

16. Fifth, nation building occurs when society is open, tolerant and forward-looking. So important are these values that they are embedded in Vision 2020's nine strategic challenges, as are those of mature

democracy, caring society and innovation. Only by being inclusive and participative can the various sectors of our society be productively engaged. It follows that all forms of extremism, chauvinism, racism and isolationism must be guarded against. They must be soundly sanctioned socially, politically and, if necessary, also legally.

17. Sixth, nation building is a process rather than an outcome. When Malaysia started off fifty years ago, there were no examples to study. There were no manuals to follow. Mistakes were made and, to a greater or lesser extent, lessons have been learned. While a sense of impatience is perhaps fully understandable, nation building takes place over a period of time and only with persistence. Where there is no trust, trust has to be built. Where there is no cooperative network, one has to be established. Building on layers of foundation is the only way to ensure that the process is solid and sustainable.

18. Seventh, the political, social and economic incentives must reward good behaviour and penalise bad. I know that this statement is virtually self-evident, but it is a fact that many countries are as likely to punish good behaviour as to reward it. After all, if there are benefits for corruption, then there is a real cost to being honest. The incentives for building up a nation must be greater and more compelling than breaking it down. The price of racial and cultural intolerance must be made prohibitively high.

Ladies and Gentlemen:

19. I believe fostering national unity is the responsibility of every Malaysian. However, schools, institutions of higher learning and sports centres have a very special role to play. This is because the sense of national unity is best inculcated in the

young. Through textbooks, sports and interaction, educators should eliminate ethnic stereo-types. Through the imaginative teaching of the history of Islamic, Chinese and Indian civilization, educators could foster greater understanding among different ethnic groups.

20. It is said that it takes a village to raise a child. I believe this is true. To me the village comprises three main institutions - family, school and community. From birth we should be taught to respect and honour each other's culture and heritage. Learning to interact with others is part of this process. Playing with children of other races on the play ground and in friends' homes, we learn to go beyond the colour lines early in life. In school we should be taught about other cultures and beliefs under the same roof as others of different ethnic groups - once again cutting through the colour lines.

Ladies and Gentlemen:

21. I am aware that there are many Malaysians who are deeply troubled at the state of national unity in this country. What I have tried to do today is disabuse you of the notion that there are any "quick fix" solutions in nation building. If you look closely enough at any country, even ones that are regarded today as highly successful such as Japan, you will find there have been episodes in its past where events were very tenuous. I hope we will do our best to guard against cynicism and hopelessness. And I hope we will all stay the course. Failure, may I remind you all, is a costly option.

22. I wish all speakers, facilitators and participants a constructive and fulfilling day ahead.

National Maritime Conference Malaysia As A Maritime Nation: Meeting Expectations

Keynote Address by

Dato' Seri Chan Kong Choy

On behalf of the Deputy Prime Minister, YAB Dato' Sri Mohd Najib bin Tun Hj Abdul Razak
on 8 March 2007

Yang Berbahagia Abdul Gani Patail, the Attorney General of Malaysia, Mr Yeo Yang Poh, the President of Malaysian Bar, Ms Sitpah Selvaratnam, Co-Chair of the Organising Committee, Honourable Judges, members of the media, distinguished guests, ladies and gentlemen. Selamat pagi dan salam sejahtera.

First and foremost, please accept my very sincere apology on behalf of the Deputy Prime Minister who is not able to have his presence here this morning and on behalf of the Deputy Prime Minister to convey his warmest greetings from Japan. Can I have your kind permission to read out the speech of the Deputy Prime Minister.

Multi-cultural Malaysia is what she is today, because of the seas. The voyages and adventures of traders and travelers from all corners of the world and spanning more than 600 years, have shaped our nations' heritage, culture and composition. The ships of old were not only laden with treasure and commodity, but more importantly they contributed shaping the people and culture of Malaysia. These ships sailed our surrounding seas and plied the Straits of Malacca in the name of trade, territory and religion and along the way they contributed to the tapestry of our history.

The Straits of Malacca has sustained its strategic position as the main highway connecting the East and the West, with

more than 60,000 vessels plying the Straits each year. 30% of the world's trade and 50% of the world's energy pass through our Malacca Straits. Its biodiversity continues to be a source of livelihood to many Malaysians, and people of the region.

The mission by our forefathers to develop Malaysia into a dominant developed maritime nation was clearly justified in strategic and economic terms. The challenges towards this end however remains onerous.

I must congratulate the Bar Council and the Attorney General's Chambers for their wisdom and initiative in jointly hosting this Conference as a National Event, to identify the maritime milestones achieved to date, and the tasks ahead of us as we move forward in our quest to become a Maritime Nation.

Malaysia has come a very long way in her maritime achievements. In 1968 we had one National carrier, Malaysia Shipping Corporation Berhad which owned 2 vessels, and there were 2 major ports, Port Swettenham and Penang Port. Regardless of these modest beginning, the vision was firm - to nurture Malaysia's maritime development to make it a significant player in the region.

From the Third Malaysia Plan, in the late 1970s, maritime enhancement was aggressively driven. Tax incentives were



introduced by an amendment in 1979 to the Income Tax Act of 1967, for total exemption from tax of income derived from the carriage of cargo or passengers by sea, and from the voyage or time charter of Malaysian owned vessels. Concurrently, the Cabotage Policy was introduced to promote domestic trade on board Malaysian owned vessel, implemented through the Domestic Licencing Board. This was towards reducing reliance on foreign ships, for savings in foreign exchange, and the development of expertise in the Malaysian shipping industry.

The 1970s also saw the formation of MASA, the Malaysian Shipowners' Association (1976) as a common voice for Malaysian shipowners; the Maritime Training Centre (1977), now known as Akademi Laut Malaysia, ALAM to groom ships' officers and seamen; and Bank Pembangunan Malaysia Berhad (1973) to invest in the shipping sector. Bank Pembangunan, was later to develop into the custodian of the Shipping Fund of RM1.3 billion allocated by the Government for the provision of ship

financing on advantageous terms, and to encourage the establishment of world class shipyards in Malaysia. Institutes of learning and research have contributed significantly to the advancement, adoption, and application of superior technology in the maritime sector.

The privatization of the ports from the 1980s further inspired creative and productive joint ventures between port operators and main line shipowners, increasing manifold the traffic of cargo and vessels in our 7 international ports, in Penang, Port Klang, Johor, Tanjung Pelepas, Kuantan, Kemaman and Bintulu.

Today we have achieved an enviable position in terms of our ports, specially Port Klang and Port Tanjung Pelepas, both of which have regularly broken records and received international awards, securing admirable rankings in the world as among the best seaports and container terminal operators. All of our ports have directly contributed to achieving the record trade value of RM1 trillion in revenue for the nation.

Our shipowning in tonnage, although experiencing some fluctuation, earned us a place as the 20th most important Maritime Nation under the Review of Maritime Transport 2006 released by UNCTAD. MISC Berhad, 40 years later, has a fleet of 106 vessels, with 26 new ship constructions in the pipeline. Her fleet includes 23 LNG carriers, 45 Petroleum tankers and 13 chemical tankers, making MISC Berhad the largest single owner-operator of LNG tankers in the world. The strategic acquisition by PETRONAS of MISC Berhad in 1998, created integrated and rationalized logistics and shipping support for PETRONAS' operations in LNG crude oil and petroleum product

export.

PETRONAS, where I began my young working life, also the brainchild of the 1970s (1974), was incorporated pursuant to the Petroleum Development Act 1974 passed by the Government to provide for a structured exploration and exploitation of resources of the seas. From her first export of crude oil in 1975, PETRONAS has now grown into a world giant, entering into major joint ventures for exploration, exploitation and retailing in Myanmar, Vietnam, South Africa, China, Gabon, Pakistan, Algeria, India, Morocco, Mozambique, Indonesia, Turkmenistan, Sudan, Egypt, Ethiopia, United Kingdom, Iran, Philippines and Switzerland.

These achievements, in all sectors of the maritime industry do us Malaysians proud. But, there remains much more to be done. In this present age of rapid changes and high expectations, there is no time nor room for complacency, lethargy or indifference.

We are 13 years away from attaining our common dream of a developed nation. It is now the moment of self-audit and critical analysis, of constructive criticism and positive action.

The maritime sector is fundamental to the continued success of this nation. 95% of the country's RM1 trillion trade finds its entry and exist by sea. Sea freight is projected to more than triple to 751 million tonnes by 2020. The efficiency of the entire maritime network is heavily depended upon, to support the manufacturers and traders, and in itself generates employment and revenue on-shore and off-shore for many. Ladies & Gentlemen, the seas clearly continue to impact on our lives, directly and indirectly.

It is undisputed that the maritime industry's comprehensive and wholesome development must be, and will be, afforded high priority. In so doing, the concerns of all sectors within the industry need simultaneous attention, be it the ports, the shipowners, the logistic operators, the insurers, the shipyards, the ship financiers, the shippers, and the national and international consumers of all these services.

Underlying the capacity for great maritime success is the soundness in foundation of the maritime laws that govern Malaysia's maritime dealings. The laws are the bedrock of any society. The unseen protection, and the threat. The protector and the prosecutor. The law-makers, regulators, the lawyers, the Judges and the entire legal system are therefore vital to



the proper and effective workings of the maritime cycle. The confidence to use Malaysian ships, to deal with Malaysian traders, and to ply Malaysian waters are premised on the fairness and relevance of Malaysia maritime laws, in ensuring that anticipated rights are recognized and upheld expeditiously through an effective legal system.



In the context of maritime rights, much of these are governed by International Conventions, custom and practice. To meet Expectations, is to know, understand, and where compatible with national circumstances, to apply such international yardsticks of rights and responsibilities, through our laws, in our Courts and our alternative dispute resolution centers.

I am therefore, tremendously pleased to learn that an Admiralty Court was established in July 2005, within the Commercial Division of the High Court of Malaya at Kuala Lumpur. This sends a positive message that maritime interests are properly looked after by a dedicated Admiralty Court, that can ensure speed, uniformity and quality maritime decisions. I believe that Practice Directions for Admiralty Actions, a first of its kind in Malaysia, has come into effect in the High Courts of Malaya from 1st February 2007, to procedurally compliment the smooth and consistent determination of maritime disputes in Malaysia. These efforts are commendable, but we must continue to strive to be a foremost forum for resolution of maritime disputes.

Consistent with Malaysia's intent to co-exist uniformly, and harmoniously with the international shipping community,

Malaysia participates as a member at the IMO, International Maritime Organization, which is concerned primarily with safety, and pollution of the seas. Many international conventions have been adopted and implemented in Malaysia, including UNCLOS, the Third United Nations Convention of the Law of the Seas 1982, which defines amongst others, the sovereign rights of nations over their Territorial Waters, and their exploration and exploitation entitlement within the Economic Zone and Continental Shelf.

In recent times, UNCLOS has proven useful in dealing with the differing views on the rights to police the safety of waters, such as the Straits of Malacca, against attacks of piracy.

The right of Transit Passage under UNCLOS through the Straits of Malacca is clear in its preservation of a balance between the usage of territorial waters of a country by foreign vessels, with the sovereign right of the coastal states to manage the affairs of security and safety in their waters. Whilst suggestions on means to overcome the hazards of piracy are welcomed, the ultimate control over the measures taken in protecting the Straits remains with the littoral states. The recent

reports of the IMB, International Maritime Bureau, prove that the measures taken by Malaysia, both unilaterally and with the co-operation of its neighboring countries, have proven to be effective in reducing the instances of attacks significantly in 2005 and 2006, such that the controversial categorization of the Straits of Malacca as a

War Risk Zone, has been properly revoked.

The MMEA, Malaysia Maritime Enforcement Agency, was established in 2005 to provide an authoritative presence of organized patrol in the Straits, both as a deterrent and as a responsive mechanism to combat piracy. I have no doubts that at the Conference, the MMEA will be drawn into hearty discussion on the measures taken, and to be further taken, in enhancing the safety and security of Malaysia waters.

On the issue of safety and security there can be no compromise. There can be no hint of their neglect to meet bottom lines. Malaysian commerce must place security and safety as paramount considerations, and effect all measures necessary in ensuing their fulfillment. One life lost is one life too many. Security extends to responsibility over cargo and commodities moving on our ships, through our ports and over our soil. One consignment lost, is one too many. The highest quality of services are demanded by consumers, and the highest quality of service is the very Expectation to be met.

Malaysia has fared well in terms of her technological know how. We need

seriously to focus on our investment in human capital; the development of the intellect and the maturity of the mind. Our training centers, our universities, and our research institutes must prime themselves to produce the best. This can only work with the co-operation of the business sector. Opportunities for training the best must be made available by commercial entities, viewed as a vital investment component of their future, and the maritime future of the nation.

There is so much potential for growth in the Malaysia maritime industry. We are well placed to assume the role of a Global Halal Hub. The Governments' allocation of RM95 million towards this development, needs the dedicated support of the maritime industry to provide impressive, world class services, using world class technology. That is the Expectation.

Transshipment traffic through Malaysia increases significantly each year. Malaysia must be geared to harness these opportunities. The anticipated shortage of shipping space for palm oil in 2007, with the introduction of new pollution prevention rules, must be effectively addressed within the Malaysian maritime sector. We cannot continue to allow over 75% of our trade volume to board foreign shipping lines. The Third Industrial Master Plan, IMP 3, for the years 2006 to 2020, strives to achieve for Malaysia a three fold trade growth, anticipated to reach RM2.8 trillion in 2020. Significant emphasis is placed on exports. In recognition of the need to complement trade growth with a duly corresponding ship fleet, the IMP 3 focuses on the development of shipbuilding and shiprepairing activities to increase the capacity to build and maintain Malaysian

ships. For all these Government efforts to bear result, there must be co-operation within the maritime industry, and faith in local talent. The Malaysia maritime industry cannot afford to be fragmented.

The Malaysian maritime industry must act in concert to support one another. In turn, the industry must, at all times, conduct its affairs with utmost good faith, with complete integrity and relentless diligence. This is a pledge you, the maritime industry must make, to take this nation to great heights. You can rest assured that the Government will be fully behind you.

It is recognized that in meeting Expectations of a Maritime Nation, laws may need to be introduced, rules may need to be amended, systems may require refining. There should be no hesitation in placing these reforms as matters deserving of immediate attention. The fact that the private and public sector lawyers have combined their efforts in slaving over this Conference, generously sponsored by PETRONAS and MISC Berhad, with the objective of maritime reform is most heartening. The nation requires the combined strength of all institutions and organizations in the Malaysian maritime industry, working with the public maritime authorities, to channel collective resources to inspire and implement reforms that fully benefit Malaysia as a superior maritime nation.

I am confident that this Conference will meet its objective of laying strong foundations towards joint and unified efforts in improving maritime standards in Malaysia, to meet national and international Expectations; in taking Malaysia Towards Global Competitiveness. I wish all participants a

meaningful Conference.

I have pleasure in Opening the National Maritime Conference, and hope that it will be the first of many.

Summary

Malaysia has achieved tremendously but there remains much more to be done. The foundation in maritime success in Malaysia is premised on the fairness and relevance of Malaysian maritime legal system. To this end, the Admiralty Court was established in 2005 within the Commercial Division of the High Court of Malaya and Practice Directions for Admiralty Actions were introduced to ensure smooth and consistent determination of maritime disputes in Malaysia. Malaysia is also a member at the International Maritime Organisation, concerned with safety and pollution at sea, and also UNCLOS 1982. The UNCLOS has been effective in dealing with the safety of the waters of Malacca Straits against piracy attacks. The Malaysia Maritime Enforcement Agency in 2005 as a deterrent and responsive mechanism to combat piracy. Malaysia now needs to focus on the investment in human capital. Our training centers, universities and research institutes must work with the cooperation of the business sector. The country's role to assume the role of a Global Halal Hub needs dedicated support of the maritime industry to provide world class service. To capture the 75% of our trade volume currently onboard foreign shipping lines and to capture the increasing transshipment traffic through Malaysia, the Third Industrial Master Plan, the focus is on the development of shipbuilding and shiprepairing activities. In meeting expectations of a maritime nation, legal reforms may need to be introduced.

Roundup on Bar Council's Public Forum on "Senior Citizens' Protection : Is there a need to enact laws?"

by Helen L.M. Chin

T rue to the tenet of ensuring that proposed laws are legislated to serve the needs of society and move with society trends, the Law Reform and Special Areas Committee held a public forum to gather views of senior citizens and professionals involved with the welfare of the elderly.



Approximately 50 people from non-governmental organisations, retirement homes, senior citizen clubs, universities and government departments attended the forum at the Bar Council Auditorium and participated actively. However, it was sad to note that very few lawyers besides the organising committee members were present despite several announcement notices earlier.

The opening message by Yeo Yang Poh, the Chairman of Bar Council who noted that in our society nowadays, senior citizens are sometimes revered but sometimes are regarded as 'excess baggage' in some families set the mood for healthy debate when he invited participants to consider how society should go about resolving problems peculiar to aging population through formulating appropriate legislation or improving cultural values of respecting the elderly.

Dato' M. Ramachelvam, the Chairman of the Law Reform and Special Areas Committee emphasised on the importance of the subject in the light of society's needs. Participants were very keen

generally and one participant professed to be touched to his soul by the eminent speakers and called for a more altruistic society. Session chairmen, Su Tiang Joo and RV Lingam were called to exercise their dexterity of thought and leadership in moderating the question and answer sessions skillfully. Needless to say, they had very good support from Lee Swee Seng who was his usual eloquent self.

Gerontologist, Prof. Madya Dr. Tengku Aizan binti Hamid of Universiti Putra Malaysia stressed that the number of older persons has increased from 1.03 million in 1991 to 1.73 million in 2005. Based on Statistics Department data, the proportion of people aged 60 years or over is expected to increase to 9.9% of the total population by 2020 as compared to 4.8% in 1960.

Emphasising that laws are essential to protect senior citizens, she pointed out that specific legislation for older persons already exist in the Philippines, Thailand, Singapore, Australia, Israel, Canada and United States.

To ensure an effective national policy for the well being of older persons, other professionals besides lawyers should be involved to achieve social inclusion rather than exclusion of the elderly in our society.

Cognisant of the family structure where both the child and the spouse would be

working, Prof. Madya opined that resources on a community level be explored to support the elderly.

Welfare Department Elderly and Family Division Director, Nik Omar bin Abdul Rahman informed participants of the National Advisory and Consultative Council for Older Persons under the chairmanship of the Minister of Women, Family and Community Development for drawing up programmes to protect the elderly and improve their quality of life through subcommittees for social and recreation, health, education, training and religion, housing, research and publicity.

During question time, he disclosed that elderly persons without sources of regular income and without any offspring capable of supporting him / her is eligible to receive the "*Bantuan Orang Tua*" of RM200 per month from Welfare Department. Administrative delays in payment of the monthly allowance and the inadequacy of this amount in the light of rising costs for basic living were highlighted by participants and the speaker noted it for the attention of the consultative council at its next meeting on 13th March 2007.

Dr. S. Chandra Mohan a practising lawyer and former District Court Judge as member of the Tribunal for the Maintenance of Parents in Singapore enlightened forum participants on the working of the Maintenance of Parents' Act 1995 in the island state.

It places the obligation on the child /

children of the elderly citizen as the first line of support instead of the state and is based on the equitable principle that a child should financially support a parent if the parent has supported him. Provisions for mediation conducted in a non-adversarial manner, in privacy and dignity are hallmarks of the system. A parent aged 60 years and over who is unable to maintain himself / herself is entitled to apply for a maintenance order or the application may be made by the Commissioner for the Maintenance of Parents or any approved organization or person in whose care the parent resides. The Maintenance Order is enforceable as District Court Orders and variation of maintenance orders as well as appeals can be filed in the High Court.

The Asian model of laws for maintenance of parents and elderly persons in India was highlighted during the forum. According to a press article in the *Times of India*, *New Delhi* on February 23, 2007 the Cabinet in India had on 22 February 2007 cleared the Maintenance and Welfare of Parents and Senior Citizens' Bill imposing a jail term of three months and a fine payable by children who refuse or fail to provide a life of dignity to their elders. It provides for offenders under this Act to lose his / her rights of inheritance for not taking care of his / her elders. The age limit for elderly parents entitled to maintenance orders is 60 years but it includes parents below the age of 60 years if they need care by their offspring due to sickness or other reasons.

Dr. Raj Karim representing SUHAKAM referred to various international plans of action including the Copenhagen Plan of

Action, the UN Principles for Older Persons vide Resolution 46/91 at Geneva and the International Plan of Action on Ageing Population vide United Nations Resolution 37/51 December 1982 subscribed to by the Malaysian Government which hold that all people should have adequate economic and social provisions including the disabled and the aging population.

She emphasised that diseases associated with ageing can be very debilitating especially for women. Social problems highlighted include the loneliness



experienced by elderly commonly referred to as "empty nest syndrome" when children grow up and lead their own lives or migrate from rural to urban areas and when the elderly spouse passes away. Dr. Raj asserted that whilst responsibility for the care of the elderly parent is to be on the child, the state should provide housing facilities for older people near the residence of their children, community day care centres for elderly people and opportunities for willing and capable older persons to participate in the community and community clubs. In New Zealand and Japan, there is no compulsory retirement age and there is a Register of Volunteers of Older Persons. Other provisions recommended by SUHAKAM are the imposition of more severe sentences

by court for offenders guilty of abusing or assaulting older persons and that the Government adopts the tribunal approach in Singapore for maintenance of parents and / or the Australian model as well. Her final observation was on the practice in Samoa where community and family support is so strong that legislation is not required. Being devoted Christians predominantly, the inhabitants of Samoa are faithful in observing a regular family prayer time and adopting a healthy lifestyle.

Husain b. Haji Anjang Pulau, Secretary General of the Government Pensioners' Association lamented the general indifference amongst the general public to problems of senior citizens in the family structure and in daily activities. Moral training to inculcate respect for the elderly is felt to be urgently needed. To protect senior citizens, he surmised that specific legislation and amendments to existing legislation are required urgently. He referred to the Pensions Act 1980 (Act 227) Section 22(1) where the maximum pension is capped at half of last drawn salary amongst several other provisions.

Participants were chagrined when it was pointed out that ministers' pensions were based on their full salaries for each position held during his/her term of office after five years of service and that in Sri Lanka, retirees' pensions are based on the last drawn salaries.

Adjunct Professor Puan Mehrun Siraj of International Islamic Universiti Malaysia held a unique view when she asserted that

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Speaking our Hearts and Minds through Dialogue: Working towards greater acceptance and understanding of our nation's problems

by Syirin Junisya Mohd Ali (Executive Officer, Syariah Law Committee)

A groundbreaking closed-door dialogue titled “Issues Affecting a Multi-Racial Society” among members of the Bar was held on 2 March 2007 with the intention of strengthening ties through discussion and understanding of different views and perceptions regarding ethnic and religious relations in the country. The event was co-organised by the National Young Lawyers Committee, Syariah Law Committee and Human Rights Committee. More than 100 members of the Bar and pupils-in-chambers attended the Dialogue. Tan Sri Anuar Bin Dato’ Zainal Abidin, former Chief Judge of Malaya and ex-SUHAKAM Commissioner was the moderator for the dialogue.

Our ertswhile President, Yeo Yang Poh in his welcome note said that the Dialogue was an opportunity for members to “listen to one another with humility and an open mind”. He added that this was a difficult challenge as lawyers are used to arguing and debating, but participating in a dialogue is entirely different.

A brief compendium of the participants’ key reflections is as follows:

- ♦ Touching on racial polarisation in schools, a participant related how his daughter was upset when she was called derogatory names in reference to her race in school and resorted to violence to shut them up. Children would pick up things from their parents and likewise, negative traits are passed on. Hence, if race relations is not handled constructively, violence would definitely be an undesirable option. India’s President, Abdul Kalam, was quoted as saying that to eradicate corruption, one needs to start with the mother and father.
- ♦ Another participant said that there are many challenges faced in schools, especially that of government schools. She thought the school would facilitate her son’s exposure to a multi-racial environment, and was shocked to find that segregation is practiced in schools and perpetuated by the education authorities. An example cited was that only Muslim festivals are celebrated in schools but there is no recognition of other religious festivals. Such issues are driving non-Malay students away from government schools and we need to address the root causes of this situation.
- ♦ There was another view which spoke about the problems of labels. We hear of Islamisation and fundamentalism but what is fundamental about Islam is in understanding the religion. The essence of this is destroyed since it is now associated with terrorism. The majority of detainees held under the Internal Security Act at present under charges of terrorism are Muslims simply because they practice a certain type of Islam.
- ♦ The central idea of a harmonious multi-racial society is that we need not to have divisions along racial lines. With these divisions, the tendency is to identify oneself with race first, and citizenship second. The government’s portrayal of Malaysia as an Islamic state is not fair in views of the existence of multi-racial groups in this country.
- ♦ Another related that her father had great ambitions for her and enrolled her in a Chinese school in Penang where she was discriminated but under the conditions she kept her emotions in check and prevailed to prove her worth. She thinks of herself as a social reformer in the quest to end discrimination against women under Syariah. She supports the Article 11 initiative as she is for freedom of religion. But the coalition appears to only push for Article 11(1) in their agenda, and does not give much attention to Article 11(2). The animosity to the coalition may be due to the feeling that those for Article 11(1) are also imposing their views vis-à-vis Article 11(2). But she hopes that these factions can find a solution together.
- ♦ One member remarked that we need to understand the country’s journey to this point where we have seen increased polarisation. Our political system has evolved around ethnicity and that is a fundamental problem.

Secondly, the prevailing authoritarian system does not offer public space for civil discourse. In recognising this, changes must be made both at personal and institutional levels. The country needs to move away from politics based on race and religion. We need to build on that. Further, we need to instill the right values such as greater freedom of information in our society as a way to deal with unjust practices such as detention under the Internal Security Act.

- ◆ A member spoke about politicisation that is happening outside. As this dialogue is between members of the Bar, the opportunity should be taken to explore the reason for politicisation within the Bar along racial and religious lines. He wondered how it had got to the point where the supremacy of the Constitution is now being slowly eroded in the name of religion. He also posed a question whether members want a united Bar on questions of the Constitution.

- ◆ A member spoke of Pol Pot and how upon seizing power, the first group of people he went for were the lawyers. During Tun Mahathir's administration, a similar move was made and the Bar was infiltrated. He recalled that he grew up confused whether we are "satu bangsa" because if we are, why do we still need to identify our race and religion every time. We should decide on this.

- ◆ "We are all victims of political plays where my discrimination is bigger than yours". If we want to effect change, it is not about pushing out "the wrong", but doing what is "right". Since we want a non-polarised society it is our duty as lawyers to place more effort into this.

- ◆ A comment was made that there are concerted efforts by some quarters not to dialogue on issues affecting the country. This is unfortunate because many Malaysians are willing to listen and understand, and wish to clear many doubts which are lingering in their minds.

Tan Sri Anuar in his summation said that the issues discussed focused on the need to have greater education for our citizens, to eradicate corruption and to forge a united nation despite our diversity.

In his closing statement, Yeo Yang Poh thanked all present for their frank views and expressed that the prevalent sentiment is to continue this dialogue. He said that perhaps one reason certain quarters do not participate actively in dialogue could be due to fear, and he thought that if we want to have a genuine dialogue we need to undertake the heavy responsibility to understand the reasons behind the fear.

Feedback regarding the Dialogue has been positive, and much hope has been entrusted on the leaders of the Bar to continue this approach in nation-building. The success of the Dialogue has dispelled anecdotal myths that the peoples of Malaysia, in particular lawyers cannot peacefully and cordially express themselves and listen to one another with an open heart in a manner befitting a civilised country.

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poor parenting is the cause of the failure of children to care for their elderly parents. As such, she advocates that training for filial piety in children has to start from young in the family and in the community through the media. However she feels that maintenance of the elderly should be a family responsibility and failing that, the state should shoulder the task of providing for the elderly. For implementing legislation relating to maintenance of senior citizens, many programmes to promote understanding of the statutory responsibility and other provisions involves

are important. In order to adopt the Singapore tribunal approach, Malaysia needs to have sufficient manpower trained in family mediation techniques and counseling practices. She stressed that the state should organize a nationwide survey to obtain an overall view of society's needs in this respect.

Other demands requested by participants related to automatic entitlement to full medical benefits, 50% discount on air travel, emphasis on filial piety in religious education through experiential learning

and not ritualistic memorising and increase in the maximum age limit by commercial banks for housing loan applications to 75 years as is practised by Citibank and speedier implementation of statutory provisions to protect senior citizens.

In closing the forum, Ramachelvam thanked the participants and gave an assurance that the Law Reform and Special Areas Committee would be studying the deliberations and submit a memorandum to the Government of Malaysia in due course.

Bar's NYLC Solomon Islands Earthquake and Tsunami Fund (E&T Fund)

Circular No. 82/2007

Dear members and pupils-in-chambers

The Solomon Islands Bar Association (SIBA) has requested financial assistance for victims of the recent earthquake and tsunami there. See: <http://www.malaysianbar.org.my/content/view/8322/2/>. Attached herewith is the letter from Andrew Radclyffe of SIBA dated 3 April 2007.

We are also informed that "all donations would then be made available to the Red Cross or other relief agencies in order to obtain water tanks, medical supplies and other much needed items for the worst affected areas".

We have set up an E&T Fund at the Bar for this purpose, and we strongly urge members to donate generously. Details for payment are as follows:

1. By Cheque

Please write the cheque payable to "BAR COUNCIL" and state on the reverse side of the cheque as follows: "For Solomon Islands Fund"

2. By Direct Deposit / Inter-Account Transfer

Name of Payee : "BAR COUNCIL"
 Bank : HSBC Bank Malaysia Berhad
 No 2 Leboh Ampang
 50100 Kuala Lumpur
 Account No. : 301-022166-001

If you are making a direct deposit, please keep the deposit slip, and fax the same to the Bar Council (Attention: Ms Lily Aw) with the note "For Solomon Islands Fund". This would ease the administration of the account.



The deadline for collections is 9 May 2007 after which we will close the Fund and proceed to channel the money to SIBA. It will represent the Bar's donation to the peoples of the Solomon Islands.

Alternatively, members who wish to expedite their donations may directly channel funds as set out in SIBA's letter.

Just as we collected more than RM20,000 in a short space of time for victims of the floods in our south, we believe we can do the same for our friends in the Islands.

Dated this 9th day of April 2007

Yours sincerely
Edmund Bon Tai Soon
 Chairperson
 National Young Lawyers Committee

Legal Practice Review

The PII & RM Department will continue with our Legal Practice Review project this year and we'd like to visit 30 legal firms! We've scheduled June to September 2007 for the Legal Practice Review.

Each session will take no longer than 3 hours. Our officers will talk to you about your firm's operational processes, methods and systems. Four (4) main areas will be discussed: office management, accounts management, general litigation and real estate conveyancing.

Our aim is to provide an objective assessment and to subsequently make recommendations (if any) to help reduce or eliminate any identified issues that may lead to increased exposure to risk of claims. A report of the findings and recommendations will be made available to your firm.

There will not be any costs involved on your part in this Review! For more information, do call the PII & RM Department at 03 – 20313003 (LiChin ext 150; Corrinne ext 190).



Subashini v Saravanan - A commentary on the Court of Appeal decision

by Norman Fernandez

In the recent majority decision of the Court of Appeal in *Subashini a/p Rajasingham v Saravanan a/l Thangathoray* the appellant Hindu wife was effectively told to submit to the jurisdiction of the Syariah court and seek recourse through the Syariah Appeals Court to stop her Muslim convert husband from converting their children without the wife's permission.

The majority decision is most worrying in the sense that it permeates not only a feeling of uneasiness and hopelessness among non-Muslims but also of greater significance is the implications hereon and the worrying precedent the case and particularly the decision of Justice Hasan Lah has for future cases. Justice Hasan Lah had held that the wording of s.53 of the Administration of Islamic Law (Federal Territories) Act, was wide enough to enable Subashini to apply to the Syariah Appeals Court to rule on the legality of her husband's application and the interim order he had obtained.

While there is every possibility that Subashini may find justice and fairness in the Syariah court, had she submitted herself, the fact is that the Syariah court has no jurisdiction over non-Muslims. It begets the question why couldn't the civil courts grant her the appropriate remedies instead of shunting her to a court which under the Federal Constitution has no jurisdiction over her. Stranger still is the fact that the civil court was prepared to construe to s.53 of the Administration of Islamic Law (Federal Territory) Act wide

enough for Subashini a non-Muslim to seek redress in the Syariah Court while feeling hapless and constrained to interpret s.121(1A) beyond the narrow interpretation and do justice for Subashini.

In Malaysia, the Federal Constitution is the supreme law of the country and by virtue of Article 4(1), all other laws must be constitutionally consistent and thus also making Malaysia constitutionally secular. In contrast, Pakistan's constitution states that all laws must be consistent with Syariah. Further, Schedule 9, List 2(1), of the Federal Constitution clearly limits the jurisdiction of the Syariah Courts to persons professing the religion of Islam. Thus it is unconstitutional to elevate and extend the jurisdiction of syariah court (which is constitutionally subordinate to the civil court) to non-Muslims when none exist. And that is precisely what has happened in Subashini's case.

In Subashini's case and as in previous cases, the unfolding saga is almost similar. Marriage breaks down and an inevitable tussle for the custody of the children of the marriage begins. The husband (more often than not), confronted with the knowledge that under civil laws, the courts are generally minded to give custody of children and particularly children of tender age to the wife/mother and fearing the inevitable, in quick time not only converts to Islam but also their children. The matrimonial dispute then rears its ugly head by having the Syariah Court dragged in and a party to the dispute. In the ensuing saga, it is most unfortunate

that the religion of Islam becomes tarnished.

To some extent, the civil courts are at fault too. When marriages break down, the innocent child unwittingly becomes the pawn. In divorce proceedings/custody applications there is a tendency for many judges to maintain status quo and favour or lean towards the wife by giving custody and care to the wife while giving the husband / father limited access to the child. In many instances it is the fear of loss of custody and limited access to the child which is fuelling the husband to seek redress in the Syariah court. Rightfully, unless there are overwhelming and compelling reasons, courts in such circumstances should grant joint custody and if such an order is not ideal then grant the husband / father liberal access, instead of giving restrictive, limited and regulated visitation rights as the courts are more inclined to do now. It is the husband and wife who are at logger-heads. Not the unfortunate child.

A husband caught in such a situation often turns the Syariah court as a court of convenience. His conversion and the immediate conversion of the child provides the easiest and fastest route to gaining full custody of the child easily defeating the wife's similar claim in the civil court. Thus, Syariah courts are indeed being abused by "non-Muslims" who are embroiled in marital dispute. It is well worth noting that almost in every instances, the husband's conversion of convenience and the conversion of the child in secrecy

occurred only after the husband and wife becoming embroiled in marital dispute and fighting to have custody of the child.

Coming back to the main issue, the civil courts when called upon to adjudicate regretfully, take the easy way out by referring to Article 121(1A) of the Federal Constitution which prevents the civil courts from interfering with the decisions of the Syariah courts. Article 121(1A) ought not to be an escape clause or an excuse for the courts to abdicate responsibility. It is strange that in many civil courts, judges in divorce proceedings in order to do justice insist on the presence of both parties before a decree nisi is made. Yet, when the issue facing the court is the legitimacy and legality of the conversion of a child in secrecy and which occurred without consent and knowledge of one parent, the courts are constrained to do justice.

At the parliamentary Roundtable on Article 121(1A) on Jan 5, 2006, the former Attorney General who incidentally was responsible for drafting the said Article) had this to say to the judges of the civil court:-

“In a democratic country, one has to accept the view of the majority. 121A(1A) will not be a problem if the civil court has the courage to act fairly and independently. The system is just if the judicial process is in place. The reason for such a clause was that the Syariah court was more competent to deal with Islamic affairs.

Schedule 9 of the constitution is clear that the Syariah Court only has jurisdiction over people professing Islam. Yet it has constantly been ignored. However,

the constitutionality of law rests upon civil court. But none of the civil judges are prepared to look at it this way. It is an abdication of power and function.

Therefore, it is the problem of the court and not the legislation. If the civil court judge is true to the oath, there will be no problems like we are facing now. 121(1A) is not intended to limit the civil courts.”

In Subashini's case, Justice Gopal Sri Ram said “at the end of the day, the courts decide on justice and remedy of individuals and not the legislative body”. Surely, the civil courts can see that the wife is not disputing or even contesting the conversion by her estranged husband. Instead what matters to the wife is the attempt or the act of the husband without knowledge or consent of the wife coveting their child by converting their child. Could the courts not see that the husband is in truth abusing the legal process - both civil and syariah courts. Surely they can. In the circumstances should the court still reward him.

Just like Subashini and many anguished mothers before her caught in such a predicament, sees the judiciary as the last bastion of hope and the bulwark of justice. No doubt in cases such as this, the judges must also be wrestling not only with difficult issues but also issues pertaining to his faith. Nevertheless, the hapless mother expects the judge not to allow his personal and religious sentiment to cloud his judgment but instead to be compassionate, sensitive and courageous enough to do justice. If not for the wife at least for the child caught in a legal tussle. Is that asking too much? Thus, having taken the oath of office and sworn to

defend the constitution, the civil courts judges should do just that - defend the constitution and not shy away from deciding by using Article 121(1A) as an excuse or the fear that his own faith may become compromised. It is a worrying trend that civil courts are simply unwilling to take up disputable cases like this.

In Subashini's case, Justice Suriyadi Halim Omar called on Parliament to cap any obvious lacuna promptly and as equitably as possible to harmonise the two systems. Justice is never irreconcilable. Similarly in *S. Shymala v Dr Jeganesh Mogarajah*, the then High Court Judge, Justice Faiza Tamby Chik in rejecting the wife's application that the conversion of their two children was null and void said “the answer is not for the court to legislate and confer jurisdiction on the civil courts but for parliament to provide the remedy.” Could the court not instead interpret liberally and expand the spirit of the law instead of maintaining a narrow interpretation of Article 121(1A). But if the law as it presently stands mean that the civil courts in these situations are unable to grant remedies to the non-Muslim wife, then it is time for legislative intervention to ensure equal justice.

It is worth reminding that, just as the father who takes advantage of Article 121(1A) and abuses the Syariah courts for the sole purpose of gaining custody of the child, in the light of the majority decision of the Court of Appeal in Subashini's case, the non-Muslim mother recognizing that she will not be able to find legal redress or justice in the civil courts may in the circumstances decide that the best and the right option is to simply disappear with the child. Such a situation has already occurred. Article 121(1A) and judicial predicament is no concern for her.

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Law & Realty: RPGT queries answered

by Roger Tan

WHEN Prime Minister Datuk Seri Abdullah Ahmad Badawi announced on March 22 at the Invest Malaysia Conference 2007 that the real property gains tax (RPGT) would be scrapped (see *theSun* report, “*Real Property Gains Tax scrapped*”, March 23), many conveyancing lawyers were immediately faced with the following consequential issues:

- (1) Is this an exemption from RPGT under the Real Property Gains Tax Act 1976 or a total abolition of RPGT?
- (2) Do sellers/disposers still need to file the CKHT 1 form (“Cukai Keuntungan Harta Tanah Borang 1”), and buyers/acquirers, the CKHT 2 form;
- (3) Does this announcement also apply to corporations and foreigners;
- (4) If a sale and purchase agreement (SPA) is dated prior to April 1, 2007, whether the seller/disposer and buyer/acquirer still need to file CKHT 1 and 2 forms, and what if it is after April 1, 2007. In other words, which is the cut-off period – date of the SPA or date of completion of the purchase in the SPA?; and
- (5) If a property is disposed prior to April 1, 2007, is the seller/disposer required to declare any gain in his personal income tax returns and what if it is after April 1, 2007.

Of course, whenever such an important policy is made by the government, two parties will be immediately affected – the party that implements it and the other party which is affected by it, all the more so when the change in law would take effect about one week after the announcement.

Due to the urgency of the matter, I then spoke to the Treasury Solicitor of the Finance Ministry, Hue Siew Kheng, who referred me to the Ministry’s Tax Analysis Division.

On March 29, I was able to speak to the Senior Deputy Secretary of the Division, Siti Halimah Ismail who kindly on the same day directed her assistant, Kamariah Ahmad, to provide us with oral answers

**REAL PROPERTY GAINS TAX 1976
REAL PROPERTY GAINS TAX (EXEMPTION) (No. 2) ORDER 2007**

IN exercise of the powers conferred by subsection 9(5) of the Real Property Gains Tax Act 1976 [Act 169], the Minister makes the following order:

Citation and commencement

1. (1) This order may be cited as Real Property Gains Tax (Exemption) (No. 2) Order 2007.
- (2) This Order comes into operation on April 1 2007.

Exemption

2. The Minister exempts any person from all provisions of the Act in respect of any disposal of chargeable assets after 31 March 2007.

Made 27 March 2007
[Perb.CR(8.09)248/59/6-1 Vol.5 (SK.1); LHDN. 01/55(S)/42/25/7;
PN(PU2)325/III]

TAN SRI NOR MD. BIN YAKCOP
Second Minister of Finance

[To be laid before the Dewan Rakyat pursuant to subsection 9(4) of the Real Property Gains

to the above queries over the phone, subject to a written reply and confirmation from her division to our said letter.

As April 1 is a Sunday and armed with the oral responses, the Council was able to provide legal practitioners and their clients before April 1 the answers to be expected from the division to the above-mentioned queries.

On April 1, the Real Property Gains Tax (Exemption) (No. 2) Order 2007 was published in the Gazette vide P.U. (A) 146: (see attachment)

The Division of Tax Analysis replied officially with the answers to our queries in its letter dated April 4 to the Council's Conveyancing Practice Committee as follows:

“• The Real Property Gains Tax Exemption Order which has been gazetted as P.U.(A) 146 on April 1, 2007 exempts the application of all provisions of the Real Property Gains Tax Act 1976. This Order came into force from April 1, 2007 and will apply to all disposals that occur with effect from April 1, 2007.

- If a disposal occurs on April 1, 2007 or thereafter, both the seller/dispenser and buyer/acquirer will no longer need to file CKHT 1 and 2 forms for any sale and purchase of property;

- If a disposal occurs before April 1, 2007, both the seller/dispenser and buyer/acquirer are required to file CKHT 1 and 2 forms;

- The RPGT abolition applies to all categories of sellers/dispensers and buyers/acquirers i.e. individuals and corporations including nonresidents;

- The date of disposal of a property is based on the date the sale and purchase agreement is executed or on the date of completion if the agreement is a conditional contract (new amendment to paragraph 16 of Schedule 2 to the Real Property Gains Tax Act 1976 through the 2007 Budget) or on the date of the transfer/completion if no sale and purchase agreement has been signed; and

- If a property is sold/dispensed prior to April 1, 2007 then the seller/dispenser must declare any real property gains tax in the personal income tax returns.

However, if it is sold/dispensed on April 1, 2007 or thereafter, a declaration need not be made.”

With this, members of the public are now advised that unless there is a requirement to file CKHT 1 and 2 forms after April 1, 2007 as explained above, no solicitor will now charge his clients the fees for preparation, filing or witnessing of CKHT 1 and 2 forms which are fixed at RM300 and RM200 per form respectively under the Solicitors Remuneration Order 2005.

Lastly, the Bar Council wishes to commend the Finance Ministry, in particular Siti Halimah of its Tax Analysis Division, for being so helpful and quick to attend to our queries. We also note that we are able to reach the relevant Ministry officials quickly because their contact details are published on its website at <http://www.treasury.gov.my>.

All these speak volumes about the importance of having a business-friendly and effective public delivery system whenever the government wishes to implement new policies and undertakings. The exemplary working attitudes of these civil servants should be emulated by their other colleagues.

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To prevent the existing situation from morphing into racial and religious lines, a judicious and equitable solution has to be expeditiously found so as to prevent any party from abusing the legal process be it civil or Syariah. Until such time, civil court judges should ensure that the unfortunate child should not become a pawn to be fought over by parties embroiled in marital disputes. That would mean requiring judges to interpret Article 121(1A)

courageously and following the spirit of the law. Courts more importantly must ensure that no one parent can unilaterally decide the child's religion

Zaid Ibrahim, a lawyer writing in *theSun* March 27, 2007 rightfully expressed the views of the non-Muslims when he said “To Muslims, I say it is unfair to expect non-Muslims like Subashini to go to Syariah court even if there is a perfect justice in the shariah system because the

law gives her right to pursue her remedy in the civil courts and no where else. Muslims can do away with the civil courts if they so wish. They can seek changes to the law to incorporate criminal, contract, property laws etc as part of syariah law. What Muslims cannot do so is to expect non-Muslims to submit to syariah court.” Rightfully said.

Potential Impact of the Changes in the Malaysian Penal Code

by Baljit Singh Sidhu*

Introduction

July 2006 marked an important milestone in criminal jurisprudence in Malaysia for on the 18th day of July, the Penal Code (Amendment) Bill 2004¹ (hereinafter referred as the “Penal Code”) and the Criminal Procedure Code (Amendment) Bill 2004² were passed by the Parliament. The amendments were to commence on 1st January 2007. It was reported that the Minister in charge of Legal Affairs in the Prime Minister’s Department Datuk Seri Nazri Aziz has deferred the enforcement of both Acts until further notice. Therefore as of now both Acts have not come into operation.³

I will now deal with the amendments to the Penal Code.

The Amendments

Basically the amendments relate to the following areas:-

a. Sexual Offences

- Revisit the definition of rape. A new classification was added;⁴
- Creation of a new category of offence committed during marriage, somewhat akin to marital rape;⁵
- Creation of a new category of offence categorized as sexual connection by objects;⁶
- Bifurcating the category of rape into:-
 - i. Rape; and
 - ii. Aggravated rape

each attracts different kind of punishment with the latter category incurring greater punishment.⁷

b. New category of robbery

- Matters involving snatch thefts are categorized as robbery as a specific illustration is now inserted.⁸

c. Amendment Pertaining to Terrorism Offences

- The penal Code (Amendment) Act,⁹ which has yet to come into force, is further amended.¹⁰ Various categories of offences are listed.

d. Increase in the punishment.

e. Miscellaneous other amendments.

I will in this short period of time allude only to certain key areas.

*LL.B (Hons), Lond, LL.M (Malaya), CLP, DSLP (IIU), Advocate & Solicitor High Court of Malaya

¹ See Act A1273

² See Act A1274

³ Section 1(2) of the respective Act provides that the amendment would come into force on that date appointed by the Minister in the Gazette.

⁴ See the Act A 1273, section 5 wherein a new paragraph is now added to section 375, which states as follows:-

(f) with here consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her.

⁵ See section 6 of Act A1273 where a new section 375A is introduced which reads:-

Husband causing hurt in order to have sexual intercourse 375A. Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.

⁶ See section 8 of Act A1273 where a new section 377CA is introduced which reads:-

377CA. Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the person without the other person’s consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping

⁷ See Section 7 of Act A1273 where section 376 is amended to reclassify the categories of rape. See also sub-section (3) of the all new section 376 which introduces the category of aggravated rape which carries a minimum sentence of 8 years imprisonment and not more than 30 years and whipping of not less than ten strokes. It is clear from the language of this sub-section this new category covers the incidence of incestuous rape.

⁸ See section 9 of Act A1273 which inserted a new illustration in section 390 which reads

(e) Z is walking along a road. A on a motorcycle snatches Z’s handbag and in the process causes hurt to Z. A rides away with Z’s handbag. A has therefore committed robbery.

⁹ Act A1210

¹⁰ See section 26 of Act A1273 where the new section 130B, which was introduced by the Amendment in 2003 vide Act A1210 is further amended.

Amendment to section 375 of the Penal Code

As stated earlier the amendment, introduced a new paragraph to section 375, namely paragraph (f) which reads:

“With her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her”.

This amendment *prima facie* has received thumbs up by the Women Action Groups and various other NGOs.

The Bar Council on the other hand maintained that this provision may open door of abuse in the sense that “an innocent man may be easily accused of rape”.¹¹ The Council went on to illustrate the following:-

- i. Consent obtained by imposing authority or any form of coercion or duress is no consent and therefore rape and hence this offence is redundant and the existing laws are sufficient;
- ii. Consent which is obtained by a professional relationship or relationship of trust is vague. It can be misused for example in a circumstance whereby the relationship fails and this section is used for revenge purposes.
- iii. The women basically have options to refuse since there is no immediate threat or danger posed to them to engage in sexual intercourse. She can

always lodge a report the offender to the authorities, family etc.

- iv. In the event the woman offers herself to submit to the man, but unsuccessful, this Section can be used to accuse the man of rape.
- v. Women can use this Section to “tie” their boyfriends who refused to marry them or even blackmail them.

The fears stated by the Bar Council are not totally unfounded. Indeed during the debates on the Bill members of both Houses repeatedly warned that the provisions may be abused.¹²

It is also pertinent to note that this section covers a much wider spectrum than that originally intent; to address the offence committed by the “bomoh” (medicine man) against women seeking treatment.

The fears aside, in my view the enactment of this provision is necessary to curb the prevalence of abuse on the part of the employer who prey on unsuspecting and naivety of the employee. It is indeed a harbinger of what awaits the offender who got away with sexual harassment and wishes to take it further to a new level.

The insertion of Section 375A

The new Section of 375A reads:

“Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with

imprisonment for a term which may extend to five years”.

At first blush one would be forgiven if he were to think that this section is intended to include marital rape as an offence. A scrutiny of the section however would prove otherwise. This new provision punishes the husband who causes hurt in order to have sexual intercourse with the wife. Therefore the *actus reus* for the offence is hurt¹³ and not the sexual intercourse itself. An example would be where the husband wishes to have sex with the wife but the wife refuses. Not taking “no” for an answer, the husband gave a few slaps and punches or putting fear, without physical touch, to the wife and forces himself into the wife. Therefore, as a result of the slaps and punch or putting fear into the wife, the husband would be committing an offence under this section i.e. for causing hurt to the wife.

Apart from creating a special category of hurt with a greater punishment this section does not appear to come anywhere near to criminalizing marital rape.¹⁴ Although one may be disappointed with the fact that marital rape is still considered lawful, this section at the very least a step in the correct direction and is considered an “unhappily-happy” middle way especially considering the differences of opinion among the races and religious leaders in Malaysia. One may at least say that this is unique to Malaysia where the sexual act is not criminalized but the prelude to that sexual act is criminalized.

¹¹ See *Malaysian Bar Council's Views and Comments on the Laporan Jawatankuasa Pilihan Khas Dewan Rakyat Untuk Mengkaji Rang Undang-undang Kanun Keseksaan (Pindaan) 2004 dan Rang Undang-undang Tatacara Jenayah (Pindaan)*, 21st June 2006.

¹² See Parliamentary Debates especially on 18th July 2006 available at <http://www.parlimen.gov.my/eng-op.php>

¹³ Section 319 of the penal Code defines hurt as “causing bodily pain, disease or infirmity”. In my view the word “infirmity” is wide enough to cover non-physical hurt, as its meaning clearly suggests.

¹⁴ The exception to section 375 proves to be the biggest stumbling block to criminalizing marital rape. It would appear from the Hansard that this new section 375A is intended to be a “middle way” between criminalizing and not criminalizing marital rape. See the Debate on 18th July 2006 especially at page 83;

In terms of evidence, I am of the opinion that this offence is easier proven as compared with the offence of “marital rape” where cogent evidence is required. By emphasizing the *mens rea* of the offence to that of “hurt” instead of sexual intercourse the evidential requirement associated with the offence of rape is side skirted.

The purpose of this section is clear: to protect the wives who have been beaten up by their husbands especially in a failing marriage in order to have sex or the husbands are not fully satisfied. However, the following matters should be reviewed as well:

- i. This Section can easily be abused especially if the marriage is breaking down.
- ii. It is easy for a woman to accuse her husband of putting her in fear of death or hurt and very difficult for the man to rebut as no physical evidence is needed for this accusation.
- iii. A man who causes hurt or fear or hurt on his wife can be charged under other sections of the Penal Code. And this Section is redundant e.g. section 323 and 324 of the Penal Code.
- iv. Women can use this section for revenge purposes against their husbands.

The Amendment to Section 376

As stated earlier the punishment for rape now depends on category of rape.

For the first category the section provides

- (1) Subject to subsections (2), (3) and (4), whoever commits rape shall be punished for a term, which may extend to twenty years, and shall also be liable to whipping.

For the second category (aggravated rape) the section provides

Whoever commits rape on a woman under any of the following circumstances:

- a) At the time of, or immediately before or after the commission of the offence causes hurt to her or to any other person;
- b) At the time of, or immediately before or after the commission of the offence, puts her in fear of death or hurt to herself or any other person;
- c) The offence was committed in the company of or in the presence of any other person;
- d) Without her consent, when she is under sixteen years of age;
- e) With or without her consent, when she is under twelve years of age;
- f) With her consent, when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her; or
- g) At the time of the offence the woman was pregnant,

Shall be punished with imprisonment for a term of not less than five years and not more than thirty years and shall also be liable to whipping.

Few matters may be noted. First, in relation to paragraph (g). The issues arises as to whether the Prosecution has to prove knowledge on the part of the man that the woman is pregnant when convicted with this aggravated rape or is this a strict liability offence, where the man's knowledge that woman pregnant is irrelevant. This new amendment should deal with this issue clearly.

Secondly, in relation to Statutory Rape which falls under section 376 (1), the minimum period of custodial sentence has been taken away where with the new amendment no minimum period is prescribed. At present the minimum period is fixed at not less than 5 years.

In my view this is a welcome amendment as the sentencing ought to be left to the discretion of the Court. For example mandatory imprisonment may not be suitable where sexual relationship was consensual especially involving teenagers, who understand the nature and consequences of their action,

The insertion of Section 377 (CA)

Section 377 (CA) speaks of sexual connection by object. This Section stipulates:

“ Any person who has sexual connection with another person by the introduction of any object into vagina or anus of the person without the other person's consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping”.

Exception- This Section does not extend to where the introduction of any object into the vagina or anus of the other person without the other person's consent shall be punished with imprisonment for a term which may extend to twenty years and shall also be liable to whipping.

It would appear that this Section is applicable to both genders i.e. male and female. The emphasis of this Section is to

the object of “inanimate thing”¹⁵ for example piece of wood, broomstick, cloth, hanger, bottle etc as illustrated in the cases that surface in the media. On the other hand, parts of human body for example fingers or tongue does not fall within the ambit of an object.

Therefore, the element of consent is material in the said Section. In other words the purport of this section is to unsanction the use any object in sexual connection into the vagina or anus of the other person without his/her consent.

An exception to this section was created whereby the introduction of the object is sanctioned for “law enforcement purpose”. This in my view is too wide. It may lead to abuse by the law enforcement authorities.

The amendment to Section 390

This amendment is made by an insertion of paragraph (e) in illustration, which states:

“ Z is walking along the road. A on a motorcycle snatches Z’s handbag and in the process causes hurt to Z. A rides away with Z’s handbag. A has therefore committed robbery”.

The amendment is required due to the rampancy of the offence. The media reports of late are replete with cases involving snatch thefts. In many cases the

victims died or were grievously hurt.¹⁶ The statistics are also alarming. In Penang alone between January to May 2004 there were 374 reported cases.¹⁷ Perak Chief Police Officer reported a total of 374 cases of snatch thefts in the state during January to May 2004.¹⁸ It was revealed in Parliament that there had been an increase in the number of reported snatch thefts these past years: from 14,368 reported cases in 2001, to 14,640 cases in 2002, to 15,798 cases in 2003¹⁹.

The problem is deepening. Based on a survey which it conducted between 1-6 June involving 337 respondents, Nanyang Siang Pau²⁰ reported that 50% of the respondents had been victims of robbery, snatch thefts and sexual harassment. Of these victims, 61% were females while 89% lived in urban areas. Significantly, only about half of the victims (50.3%) had lodged police reports. Among the reasons offered for not reporting to the police were: “Police unable to help” (45.2%); “no evidence” (29%); and “procedure for lodging report was troublesome” (11%). It is pertinent to note that that many victims of snatch thefts did not lodge police reports in the media.

The alarming statistics has lead to a public outcry for a tougher action and in order to arrest further inflammation of this offence which can no longer be described as petty,

which it was once described (this offence was previously categorized as “petty theft”) this illustration was introduced.

Amendment to Section 391

This section cuts down the number of persons acting together to fall under the category of gang robbery. The number of person is reduced from 5 previously to only 2 persons.

Amendment to Section 392

The amendment of this Section is to standardize the punishment for robberies to a maximum 14 years imprisonment, as to whether it was committed between sunset and sunrise is no longer relevant.

Deletion of the Penal Code Sections:

As part of the amendments, certain sections have been deleted for instance in Section 444 (lurking house-trespass by night), Section 446 (house-breaking by night), Section 454 (lurking house-trespass or house breaking in order to commit an offence punishable with imprisonment), Section 456 (punishment for lurking home-trespass house-breaking by night) and Section 458 (lurking house-trespass or house breaking by night after preparation made for causing hurt to any person).

Minor Amendments

Minor amendments were made on the

¹⁵ See the speech by the Minister in the Hansard dated 18th July 2007 at page 113

¹⁶ There are so many cases reported in the media. Chin Wai Fung died in Brickfields in May when she fought back against a snatch thief. Then Chong Fee Cheng fell, went into a coma and died while resisting a snatch thief in Johor Baru in mid-June. This was followed by the killing of Rosli Mohamed Saad who had gone to the aid of an Indonesian woman whose bag was snatched in Ampang in June 29. Rosli chased and caught the thief who then stabbed him twice. Other cases of snatch thefts were also reported. The headlines included: “Four in court for snatch thefts”, referring to cases which occurred in Sungai Petani; “Teenager remanded for seven days for snatch theft”, referring to another case in Kuala Lumpur; “NS trainee helps bring habitual snatch thief to justice”, an incident occurring in Tampin; “Policewoman’s handbag snatched,” a case in Malacca; “Suspect pays with his life in botched handbag grab” in Klang. “Victim who was left paralysed”, was the headline of an interview with a victim of a snatch theft in Damansara in 1996; “Snatch thief gets 30 months”, a case in Kuala Lumpur; and “Snatch thieves get MPs’ attention”.

¹⁷ The Star, 16 June 2004 and 19 June 2004

¹⁸ The Star, 8 July 2004

¹⁹ The Star, 6 July 2004.

²⁰ 6 July 2004

following sections:-

- i. Section 406;
- ii. Section 160;
- iii. Section 186;
- iv. Section 225B;
- v. Section 408;
- vi. Section 447;
- vii. Section 448;
- viii. Section 453;
- ix. Section 455;
- x. Section 457A;
- xi. Section 460

Amendment under Section 130B:

These amendments are in relation to amendments pursuant to the Penal Code Amendments 2003 [Act 1210]. The amendment provides for a meaning of “terrorist act” that is:

“an act or threat of action within or beyond Malaysia”.

This amendment stipulates that the act is done or threat is made with the intention of advancing political, religious or ideological cause and thereby would constitute a terrorist act but the act or threat is intended to intimidate the public or to influence them.

The amendment is required to restrict any abuse of interpretation and to provide a better meaning.

Before the amendment, it does provide a broad ambit. The opposition political parties and other NGOs are worried and concerned whether the section will also include demonstrations, speech condemning the Government etc. They are worried that such acts will also be considered as a terrorist act.

Nonetheless, the meaning of “terrorist act” is now somewhat limited to embrace an act done for the purpose of extending a

political, religion or ideology. The previous interpretation does not contain these three elements. The new interpretation excludes an act of advocacy, protest, dissent and any industrial actions for example a strike, which is not intended to cause hurt, harm or death or to create a serious risk towards health and safety of the public. Therefore, the new interpretation provides much needed clarification. With this amendment, the meaning of the section is clearly understood. It resolves the concerns of the opposition political parties and other NGO who fear that their rights to voice out their stands or comments as falling under the section.

Conclusion

The Amendments took two year before they saw the light at the end of the tunnel. Now that the date of coming into force has been deferred an eclipse appears to have greeted the amendments. One hopes that the amendments should be enforced soon.

I have had the privilege of appearing before the Select Parliamentary Committee representing the Bar Council and forwarded the views of the Bar Council on the amendments. We have emphasized the need to look at the draft Bills very carefully and undesirability of making piecemeal amendments as mere stopgaps. We have forwarded the view that the entire Code is in need of an overhaul to ensure consistency and to avoid conflicting provisions.

I have when discussing the relevant amendment set out my view on the merits of the amendments. I wish to say a few words on the general tenor of the amendment. One would easily noticed that with every amendment one disturbing fact is ever present: the increase in the

punishment. It is very much doubtful that by the increase of sentence from 20 to 30 years the crime sought to be prohibited would go on the decline. It must be pointed out that the aim of prevention and aim of deterrence have taken over as the foremost consideration in the aims of sentencing. Needless to say, the aim of retribution is the last sword to invoke. The aim of rehabilitation has been abandoned sadly, even for first time offenders. Perhaps the clarion call by the eminent judge Wan Yahya J in *Ram Segal v Public Prosecutor* [1981] 1 MLJ 165 went unheeded. This what the eminent judge said.

“Our courts have a long time since progressed from the “eye for an eye” and “tooth for a tooth” type of justice. The avowed aims of punishments are retribution, justice, deterrence, reformation and protection, but it is never intended to act as a vehicle of vengeance. This court does not sit here to hand out to victims of aggression their “pound of flesh” but generally to protect society by enforcing justice”.

It is clear that based on public sentiment and outcry, the sentence of many sexual offences has been raised to 30 years by the recent amendment. Does it indicate that in the years to come we would increase the punishment to 40 years to reflect the seriousness of the offence?

The amendments have not addressed the issue of counseling, medical treatment to the offender for purpose of reformation, alternative sentencing such as structure community service.

Sadly this is the sorry impact of the recent amendment. It reflects our stand of obstinately clinging on to the retributive concept of punishment at the expense of rehabilitation.

All statements were issued by Ambiga Sreenevasan, Chairman, Bar Council 2007/2008 unless stated otherwise

Delays in court proceedings

22 March 2007

The right to be heard without delay is a human right. The Bar Council welcomes the Chief Justice's move to look seriously into the issue of delays in court cases.

However, singling out "popular lawyers" as a cause is to ignore the many other factors that contribute substantially to the delays in courts.

There is also the important principle that cannot be derogated and that is that an accused person or a litigant has a right to the counsel of his choice.

On the 7th and 8th of April 2005, SUHAKAM held a forum on the right to an expeditious and fair trial. A written report was then prepared by SUHAKAM that dealt comprehensively with the issue of delay and made several recommendations.

The workshop also identified the many factors that contribute to delays in Courts and they include the acute shortage of judges and judicial officers, insufficient support staff, the method of the recording

of evidence and the process by which an accused is charged.

Clearly a holistic approach is required as even without a lawyer handling many cases, the court diaries are unable to accommodate early disposal of the cases.

The Malaysian Bar has always been concerned at the ever increasing number of cases that are being filed in our courts and believes the recommendations of SUHAKAM in this regard ought to be seriously considered and implemented.

Seniority important factor in judicial appointments

6 April 2007

The position of Chief Judge of Malaya has been vacant since the retirement of Tan Sri Dato' Siti Norma Yaakob on 5 January 2007. Clearly it is desirable that this position be filled as soon as possible.

Article 122 B (3) of the Federal Constitution provides that in the case of an appointment of a Chief Judge the Prime Minister shall consult the Chief Judge of each of the High Courts. In our view this suggests that the consultation process for the new Chief Judge ought to have taken place during the tenure of the retired Chief Judge whom the Prime Minister must consult prior to her retirement. This would ensure a smooth transition in respect of positions of such importance as, we believe, was envisaged under the Federal Constitution.

We are concerned that seniority does not appear to presently feature in the criteria for selection to the position of Chief Judge, when we do not yet have a less-

subjective and more-transparent system of appointment such as a Judicial Appointment & Promotion Commission. The Chief Justice has been reported to have stated that all Federal Court judges are eligible candidates. Naturally one would assume that all Federal Court Judges have achieved the highest standards before appointment to the Federal Court. In that case there is no apparent reason why seniority should not be the first applicable criterion. If there is any departure from seniority as the first criterion there must be strong, cogent and acceptable reasons for doing so, reasons that will pass public scrutiny.

In any event seniority is not an irrelevant factor in the Judiciary as is reflected in Section 8 of the Courts of Judicature Act 1964, which provides that all judges shall take precedence in the order of their seniority.

If the issue of seniority is outdated, as

suggested by the Chief Justice (and we do not agree that it is so), then all the more so is the present method of appointment and promotion of judges. The Bar Council has always maintained that it is time for us to catch up with other jurisdictions that have already changed their system of judicial appointments to one that is more transparent and with clear criteria set out.

Disregard of seniority without convincing reasons, especially in the absence of a Judicial Commission system, will only encourage speculation that is unfair to both the promoted judges and the bypassed judges, and unhealthy for the system as a whole.

The Bar Council would urge and invite the Chief Justice to open a dialogue with the Bar Council on the issue of judicial appointments so that we may exchange views on this issue in the interest of the administration of justice and the public interest.

All Malaysians need to believe that they have a place under the Malaysian sun

by Coenraad ter Welle (Intern, Centre for Public Policy Studies)

Probably for the first time in the history of the Bar, royalty officially graced a program at the Bar, namely the 1st Young Malaysians Roundtable Discussion on National Unity & Development in Malaysia “Challenges & Prospects for Nation Building” co-organised by the Centre for Public Policy Studies, Asian Strategy & Leadership Institute (ASLI) and the National Young Lawyers Committee, Bar Council. The Crown Prince of Perak, His Royal Highness Raja Dr. Nazrin Shah arrived at the Bar Council Secretariat building at about 9am to deliver the Keynote Address and officially open the Roundtable.

Raja Nazrin started his address by highlighting the importance of nurturing the youth of Malaysia and warned against the danger of neglecting them:

“We like to say that our youth are the future of this country, but then we proceed to ignore or marginalise them. We want our future generations to be able to think and act wisely, but then we do not give them sufficient opportunities to do so. ...In my view, this is not a good way to prepare those who will take our place. If the young are to be good leaders and citizens, they must be exposed to more than just abstract concepts. Even those nation states which have failed miserably have had great political ideals.”

In a strong message of hope and leadership and recognising the problems of unity in Malaysia, Raja Nazrin called upon all Malaysians to “stay the course”.

“I am aware that there are many Malaysians who are deeply troubled at the state of national unity in this country. What I have tried to do today is disabuse you of the notion that there are any “quick fix” solutions in nation building. ...I hope we will do our best to guard against cynicism and hopelessness. ...Failure, may I remind you all, is a costly option.” he said.

His Royal Highness set out 7 guidelines for nation building:

- Malaysians of all races, religions and geographic locations need to believe beyond a shadow of a doubt that they have a place under the Malaysian sun.
- When solutions are sought to problems in nation building, we must be careful not to assume away problems.
- Nation building requires accommodation and compromise, and we should not be so idealistic that we are incapable of also being practical.
- Enforced solutions must be avoided if nation building is to succeed. ‘Might’ cannot and must not be shown to be ‘right’.
- Nation building occurs in a society which is open, tolerant and forward-looking. All forms of extremism, chauvinism, racism and isolationism must be guarded against and soundly sanctioned socially and politically.
- Nation building is a process as opposed to an outcome, and trust is an

imperative which has to be built.

- Political, social and economic incentives must reward good behaviour and penalise bad.

Tan Sri Ramon Navaratnam, Chairperson of the Centre for Public Policy Studies and Ambiga Sreenevasan, President of the Malaysian Bar also spoke to welcome the participants and emphasise the importance of unity in Malaysia.

Attended by more than 150 participants, there were 3 panels of 11 speakers in total discussing the impact of ethno-religious politics in Malaysia, whether the Government’s education policies have been successful instruments in national development and ways to forge a young Malaysian identity towards national unity. Healthy and open discourses were conducted on the issues, and there was insufficient time to accommodate all the participants who wished to speak.

In the round-up at the end of the discussion, participants agreed on a 20-point Consensus Document which culled key concerns from the Roundtable, and made suggestions for lobby efforts with Government and policy-makers.

Feedback received from the participants regarding the Roundtable was extremely positive, and many hoped that the co-organisers will proceed to take concrete steps to influence the relevant parties dealing with national unity in Malaysia.



Young Malaysians reach 20-point consensus on National Unity in Malaysia and urges Government to consult and listen

by the National Young Lawyers Committee

In an engaging and productive roundtable held among young Malaysians including lawyers, researchers, educators, academicians, students, political leaders and NGOs, the 1st Young Malaysians Roundtable Discussion on National Unity & Development in Malaysia “*Challenges & Prospects for Nation Building*” on 3 April 2007 saw important concerns and conclusions drawn on various aspects of national unity.

Officiated by HRH Raja Dr. Nazrin Shah and co-organised by the Committee and the Centre for Public Policy Studies (CPPS) of the influential Asian Strategy & Leadership Institute (ASLI), a 20-point Consensus Document was drafted culling the discussions and points of agreement on national unity.

Taking the lead from HRH Raja Dr. Nazrin Shah’s powerful Keynote Address, the Consensus Document states as follows, among others:

I. On Sustaining Open and Constructive Dialogue

- ♦ We have reached a stage in our nation’s development that necessitates a level of honest and critical introspection and self-examination which are crucial elements in understanding ourselves as a nation.
- ♦ The views of the youth as an essential segment of Malaysian society must be included without restrictions in forging an identity for the nation thereby requiring their greater

education and participation with concomitant strategies and mechanisms for enhanced engagement with them in dialogue.

- ♦ Government, non-governmental organisations, religious groups, business enterprises and in general, civil society are key role-players in initiating and sustaining continuous dialogue in more open and wider public spheres within the scheme set out above.
- ♦ Constructive dialogue is an important tool towards enhancing inter-ethnic and inter-religious relations towards national unity.
- ♦ Dialogue should be conducted in an open yet safe atmosphere of mutual understanding, acceptance and respect, and that knowledge should be exchanged through a process of sharing and discussion in a non-judgmental and non-discriminatory way. In particular, “enforced solutions” including threats of violence or coercion must be avoided.

II On Ethno-Religious Politics and Implications on Nation Building

- ♦ The key to developing a strong and united Malaysia is to be founded on core principles of justice, equality and respect for human rights and fundamental liberties of every person regardless of race or religion, as enshrined in the Federal Constitution.

- ♦ The interests and needs of the disadvantaged, marginalised and vulnerable must be accorded due recognition.
- ♦ Any level of apprehension experienced by young Malaysians towards ethno-religious policies have a real and tangible effect upon nation building, materialised in the present and experienced in the future.
- ♦ Ethnic-based politics and racist ideologies in any form must be rejected.

III. On Education Policies and National Development

- ♦ The Government’s education policies within primary, secondary and tertiary level institutes are important instruments that should promote national unity.
- ♦ The Government’s education policies should however reflect the reality of Malaysians and their ethnic, religious and cultural diversity.

IV. On Forging a Young Malaysian Identity towards National Unity

- ♦ There is a need to forge a Malaysian identity towards shaping a future founded upon national unity, especially among the younger generation which will form the future of our Malaysian leadership.
- ♦ The time has come for Malaysians to move beyond its “accommodation-ist” approach to interacting with one another in terms of mere tolerance;

towards a full appreciation, understanding, acceptance and equal treatment of every person regardless of race or religion and in embracing all diversities and complexities.

- ◆ National unity should move beyond a superficial interpretation based on form (e.g. food, language and traditional festivals) towards one based on essence, substance and shared values (e.g. mutual respect, love, justice and equality).

In conclusion, the Roundtable noted an urgent need to ensure sustained and effective implementation of constructive steps towards achieving the above. In this regard, the Consensus Document states as follows:

- ◆ There is a need to stress common and shared values of every person regardless of race and religion, and to eliminate the misuse of identification by ethnic or religious background.
- ◆ There is a need to de-construct arguments or discussions entrenched along racial or religious paradigms within our nation, moving towards an egalitarian issue-based paradigm.
- ◆ There is a further need to foster and implement strategies to better manage ethno-religious politics, in particular those which are in conflict with

national unity policies.

- ◆ All educational institutes are urged to incorporate programmes and training modules that seek to improve ethnic and religious relations, bearing in mind historical, anthropological and sociological aspects with the aim of promoting national unity and racial harmony.
- ◆ Malaysian educational institutes in particular its educators are urged to enhance teaching and research standards encouraging critical thinking including allowing greater acceptance and diversity for divergent opinions with the aim of being international leaders in their fields.
- ◆ There should be concerted efforts to determine factors which repel young Malaysians from their home country, with a view to encouraging Government and civil society to seek solutions and strategies towards eliminating these negative features.

The Document also calls on the Government to engage, increase its co-operation with, and support the community of young Malaysians through their representation and active participation at youth movements, non-governmental organisations, religious groups and in general, civil society

particularly in relation to the nation building process. Key policy-makers are urged to take into serious consideration the views, perspectives and opinions arising from the Roundtable during the formulation process of Government policies and practices.

With the formulation of these parameters, it paves the way for the Committee and CPPS to explore various strategies in utilising the Consensus Document to lobby Government and key policy-makers. Among the initiatives under discussion include:

- ◆ Engaging official channels including the National Unity and Social Development Department, the National Unity Advisory Panel and the Parliamentary Select Committee on National Unity and National Integration on the various issues.
- ◆ Conducting a quantitative survey on the views of young Malaysians and publishing the findings in a report regarding the matters under consideration, and offering solutions and recommendations.

Early feedback from the participants in relation to the Roundtable have been encouraging and positive, layered with hopes that inter-ethnic and -religious relations among Malaysians will improve in the near future.



“Liberated” junior Bar members secure seats in State Committees across the country

by the National Young Lawyers Committee

As expected, the repeal of section 46A(1)(a) recently garnered greater participation and interest from younger members of the Bar at all State levels. Without a legislative bar to the eligibility of members to stand for positions, post-repeal saw an encouraging number of formerly “disfranchised” members taking up Committee positions for the first time.

It started on *2 February 2007* in Malacca where NLYC Deputy Chairperson Wong Fook Meng, NYLC member Desmond Ho and Nizam Bashir were elected.

In Pahang on *10 February 2007*, Marina Binti Muhammad, Mohd Tasyrif Bin Sabaruddin, Mohd Taufik Bin Md Tahir and Jasmadi Bin Mohd Yunus were elected. 3 other young lawyers, Mohamad Hamizey Bin Mat Taib, Ruhaizah Binti Abdul Hamid and Pahang YL representative Mohd Busyairy Bin Che Muda stood but lost. Busyairy has been co-opted as Secretary of the Committee. On the same day, Johor YL representative Lawrence Chiong and NYLC member Soo Wee Loon were elected to the Johor Bar Committee.

The next day in Kelantan, 3 young lawyers were elected, Alauddin Bin Mat

Nor and both Kelantan YL representatives Nasrul Bin Mohamed and Rezalman Bin Bahran.

On *12 February 2007* in Kuala Lumpur, Dipendra Harshad Rai and NYLC Deputy Chairperson Richard Wee stood for the first time and succeeded. Dipendra was placed 9th and Richard came in 4th in a contest between 12 candidates.

In Penang on *15 February 2007*, Penang YL representative Devkumar a/ Kumaraendran was elected together with Rajdev Singh and Nicholas Tan Soon Teik. Stephen Tan Ban Cheng stood for State Bar Representative to the Bar Council but lost.

After a short lull, the Perak Bar on *23 February 2007* elected NYLC Deputy Chairperson Kenny Lai Choe Ken, Perak YL representative Rashpal Singh, Mohamad Nizam Mohamed Salleh and 2 NYLC members Gavin Tang Cheng Loong and Dara Waheda Bte Mohd Rufin into the Committee.

3 days later in Negeri Sembilan, Karthigesan a/ Shanmugam who is the Negeri Sembilan YL representative and

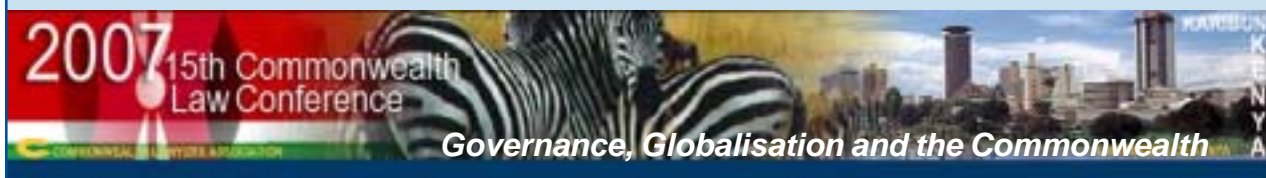
Amy Chong Chai Ling were elected into the Committee.

On *27 February 2007* in Selangor, 2 young lawyers stood but only Ng Chung Yee who is the Selangor YL representative made it to the Committee coming in 10th. Renuka Balasubramaniam lost narrowly and was placed 11th. At the same time up north, Kedah/Perlis Bar Committee welcomed 5 young lawyers, Zul Azri Bin Abd Khalil, Premanand a/ Adaiken, Sulaiman Bin Abu Bakar, NYLC member Lim Yang Yang and Kedah/Perlis YL representative Ernie Suffiani Binti Salim.

The final State Bar to hold its AGM, Terengganu today voted in Terengganu YL representative Ahmad Syukri Bin Yusoff, Mohd Zamri Md Jail and Nadia Binti Razali to complete a good showing for the young lawyers.

Working with senior and more experienced members of the various State Bar committees, the junior members will be able to bring fresh winds of change, and increased effective contribution to the Bar and society at large. It is with fervent hope that all elected members will serve the Bar faithfully and diligently to continue moving us forward.

Further information on the conference is available at the conference website - www.commonwealthlaw2007.org.





Forging A Young Malaysian Identity Towards National Unity*

Wong Fook Meng**

Anation is a community of people who feel that they belong together in a double sense in that they share deeply significant elements of a common heritage and that they have a common future.”¹

Introduction

We are gathered in the Bar Council Auditorium today to engage in a discussion on issues of paramount importance such as nation building, social integration and forging a young Malaysian identity. However, life outside this Auditorium is very different. The average young Malaysian does not wake up early in the morning with thoughts of forging a Malaysian identity or nation building dominating his mind. He is more concerned about beating the traffic jam, getting to work on time, surviving the office ordeal and having enough money to pay his monthly bills.

According to the recent National Youth Survey 2006,² 21% of young Malaysians aged between 18 and 32 felt that fuel and price hikes were the most important issues facing Malaysia right now, as opposed to 3% who responded that it was local politics and 2% the Ninth Malaysia Plan. 32 % of the respondents said that ‘completing their education’ was their biggest personal concern while 16 % responded ‘doing well in jobs and career’.

Very few expressed concern for the wider society.

Another study, which is alarming, is the Cognitive and PsychoSocial Profile of Malaysian Adolescents (CoPs) study³ where a nationwide survey of 4,400 Form Four students was conducted in rural areas, towns and cities across Malaysia including Sabah and Sarawak. The results of the study show that only 52% of the respondents said they had a friend of a different race. Only 12.8% felt that mixing with other races was an issue, demonstrating the fact that racial integration is not high on the priority list.

Thus, we still have a long way to go in instilling civic consciousness among young Malaysians. A useful starting point for discussion is identifying young Malaysian identity in the context of a globalized world and an entertainment saturated society.

Globalization and the entertainment industry

The forces of globalization and the entertainment industry have the tendency of homogenizing Malaysian youth culture. Young Malaysians, regardless of race, religion and geographical location, wear Levi jeans, eat at McDonald’s, watch American movies, support British football

teams and listen to the latest music from MTV. Like it or not, Western influences and pop culture has had a far-reaching impact on our young generation. Andrew Fletcher, a 18th century Scottish political thinker, has this to say: “Give me the makings of the songs of the nation and I care not who writes its laws”. In the eyes of our youth, entertainment celebrities are more popular compared to politicians and law makers.

However, the forces of globalization and entertainment do not completely remove our Asian roots and identities. Our Malaysian identity is a unique blend between a rich Asian heritage and strong Western influence. While we strive to maintain Asian values such as respect for elders, tolerance, communal spirit and strong religious emphasis, we also reach out to the outside world and embrace the larger global culture.

Cultural Diversity

Malaysians embrace and celebrate the cultural diversities of the various races living in this country. We have a colourful kaleidoscope of languages, dialects, food, arts and way of life. Cultural diversity is not a threat but a unifying force of Malaysian society. It is the social glue that keeps us together.

* Edited version of the paper presented at the Centre for Public Policy Studies (Asian Strategy & Leadership Institute) – National Young Lawyers Committee (Bar Council) 1st Young Malaysians Roundtable Discussion on National Unity & Development in Malaysia “Challenges and Prospects for Nation Building” held at the Bar Council Auditorium on 3rd April 2007.

** Advocate & Solicitor, High Court of Malaya and Deputy Chairperson, National Young Lawyers Committee.

¹ Harvard Professor Rupert Emerson, *From Empire to Nation*.

² Merdeka Center for Opinion Research, *National Youth Opinion Poll on Civic Engagement* (2006).

³ The Star, *Survey: Many Youngsters aren’t concerned about Social Integration* (29 March 2007).

Take a look at the mamak stalls around us. Malays, Chinese and Indians drink 'teh tarik' and eat 'roti canai' together while engaging in vigorous conversations about politics and current affairs, often in a mix of butchered English and Malay. The 'mamak' stall is a microcosm of Malaysian society. Regardless of skin colour, we all can share the same food, interests and political destinies. Our lives are enriched by the confluence of Malay, Chinese, Indian and other cultures in this land.

Having said this, and before I am accused of painting a rosy but inaccurate portrait of Malaysia, I hasten to add that race, language and religion are still sensitive issues in Malaysia. This is understandable because these issues involve basic factors of identity and affiliation. However, as young Malaysians, we need to grapple with these issues in an open and sensible manner, and strive to forge a common future for all of us.

'Bangsa Malaysia' - The 'Rojak Pot Approach'

Deputy Prime Minister Datuk Seri Najib Razak, was quoted as saying that 'Bangsa Malaysia' is a general concept and a state of mind. He further said:

"I like to stress that it is more towards a state of the mind, meaning that we lose the prejudice, incompatibility among the races, and unwillingness to mix with other races. If we treat it as a state of mind, I think we can avoid the polemics. And if we try to define it, it will raise a lot of questions and debates on the matter."⁴

What then is 'Bangsa Malaysia'?

Taking our Deputy Prime Minister's cue, I will not try to define it. However, I think I will attempt to illustrate the concept.

In Malaysia, we do not subscribe to the 'melting pot' approach as in the US where all the various traditions and cultures are 'melted' and meshed together to form a new American identity. Ours is more of a 'rojak pot approach' or what some call the 'salad bowl approach'. In a 'rojak' pot, you will find crunchy 'keropok', 'tau foo', 'jambu air', mango, papaya, 'sengkuang' and cucumber all mixed together with thick prawn paste sauce sprinkled with generous amounts of peanuts. The various ingredients in a 'rojak' pot are mixed together but do not lose their individual characteristics. However, by being mixed together, the sum total becomes a new and better entity.

This is what sociologists term as the 'integration approach' juxtaposed to the 'assimilation approach'. With this approach, Malays, Chinese and Indians are integrated into a common society but the various races still preserve their distinctive cultural identities as an integral part of the Malaysian national mosaic.

So, has Malaysia achieve its objective of forming a Bangsa Malaysia? I think the status is still 'work in progress'. Outgoing Gerakan President Datuk Seri Dr Lim Keng Yaik was reported as saying:

"I regret that after 50 years of independence we could not instill a greater sense of nationalism among the people."⁵

I believe he is right. At present, our political landscape is still very much segmented along racial lines and this reinforces ethnic identities as opposed to a Malaysian identity. Our economic policies do not distribute equal assistance to all races. After 50 years of independence, race cannot and should not be used as a criterion for the extension of economic benefits. Meritocracy is still not in wide practice. The participation of non-Malays in civil service still leaves much to be desired. Core matters such as justice, freedom, democracy, economic opportunities and security are commodities which are essential to all of us and not the special privilege of any group. Thus, it is fair comment to say that it is still 'work in progress' in respect of our journey towards creating a 'Bangsa Malaysia'.

Truth Telling

Moving forward, how can we achieve the aims of creating a 'Bangsa Malaysia'? I believe it is fundamentally important for there to be openness, frankness and sincerity as we discuss inter-communal issues. The underpinning concept is that of truth-telling, where we are able to speak the truth to each other in an objective and rationale manner. Under the Badawi administration, there is definitely greater freedom of speech and discussion. This is a positive development as a mature, intelligent and knowledge-based younger generation would want a safe environment where honest views can be articulated within parameters. It is unfortunate that there is a 'ban' on the Article 11 roadshow. Before the imposition of the ban, Article 11 together with the Malacca Bar Committee held a seminar on the freedom of religion in Malacca. There was a huge

⁴ The Sun, *Abdul Ghani draws flak over 'rojak' Bangsa Malaysia remark* (6 November 2006).

⁵ New Straits Times, 'Gerakan Chief Steps Down Next Week' (31 March 2007)

turnout of about 600 people a respectable figure in a state where most people would rather spend their evenings watching television at home. This demonstrates that the common 'rakyat' is interested and vitally engaged in issues such as freedom of religion and other constitutional matters.

The Federal Constitution is our social contract, the Charter of the nation so to speak. It is the blueprint for our pluralistic society. There should be the freedom to engage in a discussion on issues of paramount constitutional importance. Unless we can speak truthfully to each other, we cannot create a united and authentic 'Bangsa Malaysia'. What we can achieve is perhaps a superficial and external form of peaceful co-existence that can easily be undermined by prejudices, suspicions and underlying tensions. I say all this with one important caveat: freedom of speech must be exercised with great responsibility. Freedom of speech does not give us a right to hurt each other and to incite feelings of racial hatred and discord. It is to be used to tell the truth. But the

truth must be under-girded with respect, or else the 'truth' will be repulsive to the listener. I am very confident that the young Malaysian generation is able to handle truth in a civilized and responsible manner.

Role of Young Malaysians

All of us share the Malaysian dream. We cannot change the past but the future is ours to make. As young Malaysians, we need to grow out from our narrow communal concerns, and share and work together on a broader national agenda. Instead of harping on issues of racial marginalization, we need to strive together to ensure that Malaysia is not marginalized in the midst of the competitive global race for economic development. Instead of arguing on distributing the economic pie, we need to help each other to enlarge the pie for our common good. A growing economy will have a positive impact on enhancing the stability of a pluralistic society like ours.

All of us have a common stake in this

country. At the end of the day, it is the choices we make as young Malaysians that count.

On a micro level, we must learn to make friends with people outside our own racial community. Human relationships should never be based on skin colour. That which is more important than what we say or do is what we think of each other deep down in our consciousness. The main question is whether in the secret chamber of our hearts, we regard people of a different race as equals in worth and dignity.

We must have faith in a common future together. After all, we are all in the same 'rojak pot' called Malaysia. A million dreams and hopes are all meshed together in this big pot. Whether our dreams and hopes will turn into reality depends in a large part on whether we are willing to work together as a society. Together, we can build a better and more united Malaysia, and make this a beautiful place where we can all live, work, play and laugh together as equals on this land.



**51st Congress of the International Association of Lawyers
(Union Internationale des Avocats - UIA)**

The above Congress will be held in Paris, France from October 31 to November 4, 2007 at the Meridien Montparnasse Hotel.

Three main themes will be explored during this event -

- Criminal procedure at the crossroads**
- Corporate governance**
- Women's rights: Law as the expression of culture and power**

There will be a special workshop dedicated to the fight against terrorism.
The details regarding the Congress are available on the UIA website - www.uianet.org

Article 121(1A) - what does it really mean?

by Shanmuga Kanesalingam

IN 1964, the family of the late Mohd Said Nabi had a dispute over his estate.

Some of his kin argued that he was no longer a Muslim when he died because he used to eat pork and drink alcohol. Others said he remained a Muslim.

His religious status would determine how his valuable assets would be distributed and who would inherit them.

Justice Chua in the Singapore High Court (then a part of Malaysia) refused to inquire if Said Nabi was a “good” Muslim or not. His Lordship applied a simple test: What religion would Said Nabi have said he was if asked during his lifetime?

The answer to that was clear: Said Nabi had always professed Islam as his religion. He was therefore confirmed “a Muslim” and his estate was administered in accordance with Islamic law.

In Malaysia, our supreme law is the Federal Constitution. All other laws must comply with the Constitution. The Judiciary’s job is to make sure that Parliament and the Government honour the Constitution.

Parliament, the Government and the Judiciary are all meant to be equal and independent bodies, checking and balancing one another so that no one person or body usurps too much power onto itself.

But in 1988, two very significant amendments were made to the Federal Constitution. The material part of clause (1) of Article 121 used to say: “... the judicial power of the Federation shall be vested in” the High Court. After 1988, Article 121(1) said that the High Court

“shall have such jurisdiction and powers as may be conferred by or under federal law”.

Thus, before 1988 the courts derived their powers from the Constitution.

Now, the courts are only meant to have those powers which Parliament decides to give them. The Judiciary was in this way made subservient to Parliament (and hence in our realpolitik the ruling government of the day).

The second significant amendment in 1988 was the inclusion of new clause (1A) into Article 121 that stated: “The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”

Syariah courts are the courts created by State Assemblies to administer certain Islamic laws. The Constitution says syariah courts can only have jurisdiction “over persons professing the religion of Islam ” and in respect only of certain specific matters of Islamic law, listed in the Constitution.

If two Muslims have a problem involving their personal law (for example, a divorce between a Muslim couple), then this is a “matter within the jurisdiction of the syariah courts”. The civil courts should not interfere when one party comes to the civil court after losing a case in the syariah courts.

This was all that was intended with the inclusion of Article 121(1A).

Nothing in the Constitution says that the syariah courts are of equal standing to the civil courts, nor does it say that the civil

courts cannot maintain their traditional supervisory role over the syariah courts when they act outside their boundaries.

We see this in 1991 when the civil High Court decided that the late Ng Wan Chan was a Buddhist despite his purported conversion to Islam. The Court looked at the evidence, heard both parties and decided that the documents allegedly proving Ng’s conversion to Islam were not credible.

The Judge also found that the so-called conversion had been superceded by Ng professing and practising Buddhism thereafter. Although this was after 1988, nobody said the High Court had no jurisdiction to make this determination.

Problems now occur because the powers and jurisdiction of the syariah courts have slowly been expanded beyond the limits permitted by the Constitution.

Syariah courts began to give orders dissolving non-Muslim marriages registered under civil law when only one spouse converted to Islam, and converted infant children to Islam without the knowledge of the non-Muslim parent.

I have seen a syariah court order directing the exhumation of a corpse buried in a Hindu burial ground - something only a Magistrate is empowered to do under the provisions of the Local Government Act. Syariah courts routinely direct government officers and the police to assist in the enforcement of its orders against non-Muslims.

Matters such as the determination of

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SUHAKAM Public Inquiry Report into 'Bloody Sunday' out

by Rajen Devaraj (Executive Officer)

SUHAKAM (23 March 2007) released its Report of the Public Inquiry into the Incident at KLCC on 28 May 2006 making findings that the actions of the police and FRU in dispersing the peaceful assembly on that day were disproportionate and interfered with the rights of the protestors to assemble peacefully.

In a 92-page strong report, SUHAKAM made key recommendations calling for the decriminalising of peaceful assembly without a licence under section 27 of the Police Act, 1967 and the repeal of sections 27(2), (2A) to (2D), (4), (4A), (5), (5A) to (5C), (7), (8) and 27A of the Police Act. It further noted that laws regulating assemblies have moved towards a “co-operative model” in several jurisdictions where parties, the police and the organizers, co-operate in the regulation of an assembly.

Datuk K.C. Vohrah, who chaired the public inquiry, said that the submissions made by the Bar Council and the Bar Council Legal Aid Centre (KL) were useful.

The Bar Council and the Bar Council Legal Aid Centre (KL) both made submissions to SUHAKAM giving views on the facts of the case and making recommendations after taking into account laws in different jurisdictions such as America, Hong Kong, Ireland, Australia and United Kingdom.

Members of the Bar present at the press conference lauded the SUHAKAM report and thanked the Panel of Inquiry for its good work. The Bar President, Ambiga Sreenevasan expressed gratitude to SUHAKAM for conducting the Inquiry and making the report, which the Bar fully supported.

When contacted, she extended her appreciation to members of the Bar who represented the Bar and the Bar Council Legal Aid Centre (KL) during the Inquiry and helped draft the said reports. Members of the Bar which took an active part in this process include Amer Hamzah, Chen Hong Lynn, Edmund Bon, Edward Saw, Fahri Azzat, Nik Mohamed Ikhwan, Richard Wee, Ramesh Sivakumar, Chan Weng Keng, Sivarasa Rasiah, M. Moganambal, Latheefa Koya and R. Ragunathanan.

Ambiga also thanked the secretariat and pupils of the Bar Council Legal Aid Center (KL) who provided invaluable assistance throughout the inquiry and Chang Lih Kang, Gowri Balasubramaniam and Yap Swee Seng of SUARAM who assisted in the preparation of the Bar Council Legal Aid Centre Report.

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whether or not a person was a “Muslim” and questions of apostasy from Islam began to be considered matters “within” the jurisdiction of the syariah courts.

In fact, the Constitution does not use the word “Muslim” but uses the phrase “person professing the religion of Islam”. The correct question therefore is whether someone is “a person professing the religion of Islam” at the material time i.e. what does or did that person say was his or her religion when he or she was asked.

Whether or not that person is a “Muslim” under Islamic law is not the relevant question, and should not be an issue at all.

Hence, this is a matter clearly for the civil courts.

The plain words of Article 121(1A) are innocuous. What it says is that the civil courts should not interfere in matters which fall “within” the jurisdiction of the syariah courts.

When the syariah courts overstep their boundaries, the civil courts should stop them but unfortunately the latter now feel they cannot because of the way Article 121(1A) is currently being interpreted.

The constitutional safeguard affirming the civil courts as the repository of the Federation’s judicial power must be restored.

We need to also expressly and clearly limit the syariah courts’ powers.

They must not interfere in any matter where the interests of any non-Muslim is affected; and they should only determine issues where persons professing Islam are involved in a dispute regarding Islamic personal, family or criminal laws which have been expressly legislated upon by the State Legislature.

If there are mixed questions of civil law or matters involving non-Muslims, the syariah courts must not usurp jurisdiction. This may be a start to ensuring that those caught in this quandary have access to a court which can properly hear and determine their grievances.

ASEAN's empty Declaration On The Protection and Promotion of The Rights of Migrant Workers

by Charles Hector

The Heads of State and Government of the Association of Southeast Asian Nations (ASEAN), attending the 12th ASEAN Summit on 13 January 2007 in Cebu, Philippines came out with an ASEAN Declaration On The Protection And Promotion Of The Rights Of Migrant Workers.

Reading the title only, it all sounds very good for the promotion and protection of the rights of migrant workers but a deeper consideration of the said Declaration itself reveals that it does very little for the protection and promotion of rights as everything declared is to be subject to the laws, regulations, and policies of the respective ASEAN member Countries.

In the preamble, it explicitly states “RECOGNIZING further the sovereignty of states in determining their own migration policy relating to migrant workers, including determining entry into their territory and under which conditions migrant workers may remain”.

By the usage of the words “subject to the laws, regulations, and policies of respective Countries”, which is repeated several times in the document, the Declaration basically allows that status quo be maintained as it is now in a particular country. Any advancement and protection when it comes, and if it comes, with regard to rights of migrants will depend on the particular member country and the ASEAN Declaration really does nothing about

determining what or when or even whether anything will change for the better.

Laws and Regulations are written documents and as such it is clear whereas “policy” is a vague creature. What is the policy of Malaysia with regard to migrant rights? No one can at any time for sure say what it is. Some say that that it is what the Prime Minister, relevant Minister or Director General of Immigration states in their speeches and statements made – but this can and do change all the time, and one will find it near impossible to try to claim rights based on such ‘policies’. It may have been reported in the print media – but then one can always turn around and say that the media got it wrong and it was not what was meant. We need to get our governments to lay down written policies (that are accessible to the public) for us to be really clear about a government’s policy on a subject matter really is. In Thailand, the Cabinet made Resolutions and this made policy clear but this is not so in Malaysia, and even if there was such ‘Cabinet Resolutions’ – it has been kept away from the public.

ASEAN Migrants only – not other migrants?

A close reading of the Declaration will reveal that they are only talking about migrants from ASEAN sending countries – and specifically those that are documented or those that become undocumented later by no fault of theirs.

In the case of Malaysia, this Declaration would not even cover the about 170,000 Nepali migrants, being the second largest nationality group of migrants workers, or those from countries like India, Bangladesh, Pakistan and other non-ASEAN countries.

Undocumented Migrants generally are also not covered and the only group of undocumented workers covered is made clear by the usage of the words “[those that] have subsequently become undocumented”, and with regard to families of migrants, it only addresses “family members already residing with them” – not new members of the family of migrants that may come to be in the future of that said receiving country.

As such the millions of undocumented migrants, some of whom who are really refugees, be it from Burma, Aceh, Southern Thailand and Southern Philippines, are just not covered with regard to rights in this Declaration.

The extension of access of consular functions and diplomatic assistance of member ASEAN countries when an ASEAN migrant is arrested or committed to prison or custody or detained in any other manner, under the laws and regulations of the receiving state seem to be a good thing especially when in that receiving country there is no embassy and/or consulate of the country from where the affected ASEAN migrant originates.

Undocumented Workers

As mentioned earlier, the Declaration does not talk about rights of the about 2 to 5 million undocumented migrants in our country. Officially, the number of documented migrants in Malaysia is about 1.8 million, but interestingly a recent AFP report in October 2006 reiterated yet again that Malaysia's 10.5 million strong labour force is made up of 2.6 million foreign workers.

Undocumented Migrant Workers is the most victimized of the lot, but sadly the Declaration clearly states that it is not concerned with the documentation of these group of workers when it stated: "Nothing in the present Declaration shall be interpreted as implying the regularization of the situation of migrant workers who are undocumented"

In some ASEAN countries like Thailand, migrant workers from Burma enter, find employment and then register themselves with the relevant government bodies. Likewise, Malaysian migrant workers in Singapore also get the job first and are then registered by their employers as workers.

An ordinary Malaysian worker gets employed, and then only does his employer informs/registers the said worker with the Employees Provident Fund (EPF), for Social Security (SOCSO). The income tax department is also informed by the Employer. A similar system, where the obligations are placed on the employer (rather than the worker) would also work for migrant workers and that will solve the problem of documentation, and will result in much more cost saving for the receiving country.

In fact, in South East Asia we should be striving for an ASEAN community of peoples, an ASEAN community of workers – and we should be trying to do away with all these sending and receiving agents and government pre-employment documentation procedures. The ASEAN worker should be allowed to enter any ASEAN nation freely, but maybe on a restricted entry permit of 2 to 4 weeks, being the time for him to secure a job, and if he fails to do so, then he may be required to leave generally – but this should not be



the case for those who are refugees.

In Thailand, I believe, if a worker is not satisfied with his employer or his working conditions, he can leave and be allowed to stay in the country for a defined time during which he should find new employment. It is a good practice that Malaysia should also seriously consider.

ASEAN – consensus not majority decision making

The biggest problem with the ASEAN is that decisions are made by consensus and not by majority vote and this is a fact that cripples and impedes ASEAN from moving forward in the field of promotion and protection of rights. For example, if the majority of the ASEAN member nations are not happy with what is happening in Burma – and want to make

a statement of protest about Burma, ASEAN cannot do so because Burma (a member of ASEAN) objects. That's why there may be gross human rights violations committed by some ASEAN member country, and the ASEAN makes no statement or comment. Similarly the fact that some members of the ASEAN are not members of the World Trade Organization prevents the ASEAN from going into the WTO meetings and negotiating as a block for the good of the ASEAN people.

I believe that it is this problem that has brought about this very weak Declaration that has an impressive title and nothing more. It does not even set minimum standards or guarantee basic rights of workers. Maybe, the soon to be ASEAN Charter may be able to set some standards and require strict compliance by all ASEAN member nations within a stipulated time frame. We shall have to wait and see.

Is there a need for the Secretary-General of ASEAN's Report now?

As it is, there really seems to be no sense for this ASEAN Declaration to have the "Secretary-General of ASEAN to submit annually a report on the progress of the implementation of the Declaration to the Summit through the ASEAN Ministerial Meeting". What is he going to report, save that each of the ASEAN member states have complied what is required of them in accordance with the requirement of their respective countries laws and regulations and policies. There were really no specific requirements that had to be complied by ASEAN member nations within any stipulated time frame.

ASEAN instrument on the protection and promotion of the rights of migrant workers

To be fair, there is an indication that an ASEAN instrument on the protection and promotion of the rights of migrant workers is to be developed but alas no time frame was set, and even if such an instrument is developed it must have in place a monitoring system, a complaints procedure and an adjudicating body with penalizing powers that should be accessible to everyone, including the migrant workers and their families and not just the ASEAN member states. We already have UN and ILO conventions dealing with the rights of workers, migrants or otherwise; and also migrant workers and their families that could very easily be adopted in toto or used as a basis for this upcoming ASEAN instrument.

For the protection and promotion of the rights of migrant workers, we cannot just be dealing with just the documented but must also the “undocumented” migrant. For refugees from member ASEAN countries now in other ASEAN nations, something more may be required – especially since most refugees are seeking asylum and protection from the wrath and possible persecution of their own country of origin.

The instrument must also advocate the equality of persons and equal protection of the law in all ASEAN countries of all persons and all workers from ASEAN member nations and even other countries.

One group of workers that are presently left out in most employment laws of most

nations are the domestic workers and this new ASEAN instrument must provide for clear rights for this group of too-long-neglected workers. In Malaysia today, it is reported that there are about 320,000 domestic workers and as such this is no more an insignificant or small group of workers anymore.

ASEAN’s concern about the Protection And Promotion Of The Rights Of Migrant Workers must be applauded but the Declaration that emerged on 13 January 2007 in Cebu, Philippines was a far outcry from what one would have expected from a group of nations that describe themselves as a “caring and sharing Community”. As a first step, it may be alright but lots more is expected and needed from ASEAN.



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BILLS

1. Environmental Quality (Amendment) Bill 2007-DR 1/2007
Tam No.1
First Reading 22.3.2006
Publication date:-29.3.2007
2. Companies (Amendment) Bill 2007-DR2/2007
Tam No.1
First Reading 20.3.2006
Publication date:-29.3.2007
3. Consumer Protection (Amendment) Bill 2007-DR 3/2007
Tam No.2
First Reading 2.4.2007
Publication date:-12.4.2007
4. Employees Provident Fund (Amendment) Bill 2007-DR4/2007
Tam No.2
First Reading 5.4.2007
Publication date:-12.4.2007

PRINCIPAL ACTS 2006**Baselines of Maritime Zones Act 2006 [Act660]**

An Act to provide for the declaration of geographical co-ordinates of base points for the purpose of determining the baselines of Malaysia and for other matters connected therewith.
w.e.f.-1.5.2007 [PU(B)120/2007]

PRINCIPAL ACTS 2007**Building and Common Property (Maintenance and Management) Act 2007 [Act663]**

An Act to provide for the proper maintenance and management of buildings and common property, and for matters incidental thereto.
w.e.f. 12.4.2007-Johore [PU(B)137/2007], Kedah [PU(B)138/2007], Kelantan [PU(B)139/2007], Melacca [PU(B)140/2007], Negeri Sembilan [PU(B)141/2007], Pahang [PU(B)142/2007], Penang [PU(B)143/2007], Perak [PU(B)144/2007], Perlis [PU(B)145/2007], Terengganu [PU(B)146/2007], Selangor [PU(B)147/2007], Federal Territory Kuala Lumpur and Federal Territory of Putrajaya [PU(B)151/2007]

Iskandar Regional Development**Authority Act 2007 [Act664]**

An Act to incorporate the Iskandar Regional Development Authority, to provide for the proper direction, policies and strategies in relation to development within the Iskandar Development Region, to provide for co-ordination between government agencies to promote trade, investment and development within the Iskandar Development Region, and to provide for matters connected therewith or ancillary thereto.
w.e.f.-17.2.2007 [PU(B)55/2007]

AMENDING ACTS 2006**Exclusive Economic Zone (Amendment) Act 2006 [ACT A1277]**

Notes:-Amends s.3
w.e.f.-1.5.2007 [PU(B)132/2007]

Emergency (Essential Powers) Ordinance, No.7 (Amendment) Act 2006 [ACT A1278]

Notes:-Amends s.6, Deletes ss.5 & 7
w.e.f.-1.5.2007 [PU(B)133/2007]

AMENDING ACTS 2007**Architects (Amendment) Act 2007 [Act A1287]**

Notes:-Amends long title, heading of Part II, ss.2, 3, 4, 6, 7A, 8, 12, 15A, 17, 20, 22, 24, 25, 26, 26A, 33, 34, 34A, 34B, 35B and Sch. Inserts new Part VA, 27A, 27B, 27C, 27D, 27E, 27F, 27G, 27H, 27I and 27J.
w.e.f.-1.4.2007 [PU(B)98/2007]

Customs (Amendment) Act 2007 [Act A1282]

Notes:-Amends ss.2, 22A, 135, 142, 143. Inserts new Part IIA Customs ruling- ss.10A, 10B, 10C, 10D, 10E, New Part XIVA Customs Appeal Tribunal-141A-141AB. Deletes s.143A
w.e.f.- 1.4.2007-all sections except ss.6, 8, 9, 10(2), 10(3), 10(4) [PU(B)108/2007]

Excise (Amendment) Act 2007 [Act A1284]

Notes:-Amends ss.2, 18A, 47, 74, 85. Inserts new Part IIA Customs Ruling- ss.5A, 5B, 5C, 5D, 5E and Deletes s.47A.
w.e.f.- 1.4.2007-all sections except ss.2(b),

5, 6, 9(2), 9(3), 9(4) [PU(B)110/2007]

Housing Development (Control and Licensing) (Amendment) Act 2007 [ACT A1289]

Notes:-Amends long title, ss.2, 3, 7, 7A, 8A, 11, 16C, 16E, 16M, 16N, 16O, 16P, 16Y, 16AC, 16AD, 18, 19, 20, 21, 22, 22C and 24. Inserts new ss.3A, 7C, 10K, 22D, 22E and 22F
w.e.f.-12.4.2007 [PU(B)134/2007]

Registration of Engineers (Amendment) Act 2007 [Act A1288]

Notes:-Amends ss.2, 3, 4, 6, 7A, 10, 10A, 15, 17, 19, 22, 24, 24B, 25, 28 and Sch 1. Inserts new Part IIIA-14A, 14B and 14C.
w.e.f.-1.4.2007 [PU(B)102/2007]

Sales Tax (Amendment) Act 2007 [Act A1283]

Notes:-Amends ss.2, 61, 68. Inserts new Part IVA Customs Ruling- ss.11A, 11B, 11C, 11D, 11E and s.12B
w.e.f.- 1.4.2007-all sections except ss.2(b), 6, 7(2), 7(3), 7(4) [PU(B)109/2007]

Service Tax (Amendment) Act 2007 [Act A1281]

Notes:-Amends ss.2, 41 and 50. Inserts new Part IIA Customs Ruling- ss.6A, 6B, 6C, 6D and s.7B.
w.e.f.- 1.4.2007-except ss.2(b), 6, 7(2), 7(3), 7(4) [PU(B)107/2007]

Strata Titles (Amendment) Act 2007 [Act A1290]

Notes:-Amends long title, preamble, ss.2, 4, heading of Part II, SS.6, 7, 8, 9, 10, 10A, 13, 14A, 15, 17, 20, 22B, 37, 39, 40, 41, 41A, 43, 44, 45, 47, 49, 50, 53A, 55, 67A, 67B, 67K, 67L, 67M, 67N, 67O, 67P, 67Q, 67R, 67W, Sch 1, 2 and 3. Inserts new ss.4A, 10B, 40A and Sch 5 and Deletes Part IX.
w.e.f.-12.4.2007 [PU(B)148/2007]-Federal Territory of Kuala Lumpur & Federal Territory of Putrajaya [PU(B)149/2004]-Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu

Street, Drainage and Building (Amendment) Act 2007

*Notes:-Amends ss.3, 58, 65, 70, 70A, 70B, 75, 85A, 123, 127 and 133.
-This Act shall apply only to Peninsular Malaysia.
w.e.f.-12.4.2007 [PU(B)121/2007]*

INDEX TO SELECTED PU(A) SERIES 2007

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613]

Anti-Money Laundering and Anti-Terrorism Financing (Amendment of First Schedule) Order 2007 [PU(A)101/2007]

Issued under s.85, Anti-Money Laundering and Anti-Terrorism Financing Act 2001

*Notes:-Amends Sch 1, Anti-Money Laundering and Anti-Terrorism Financing Act 2001
w.e.f.-9.3.2007*

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613]

Anti-Money Laundering and Anti-Terrorism Financing (Amendment of Second Schedule) Order 2007 [PU(A)102/2007]

Issued under s.85, Anti-Money Laundering and Anti-Terrorism Financing Act 2001

*Notes:-Amends Sch 2, Anti-Money Laundering and Anti-Terrorism Financing Act 2001
w.e.f.-9.3.2007*

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613]

Anti-Money Laundering and Anti-Terrorism Financing (Amendment of Second Schedule) Order 2007 [PU(A)105/2007]

Issued under s.85, Anti-Money Laundering and Anti-Terrorism Financing Act 2001

*Notes:-Amends Sch 2, Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act613]
w.e.f.-9.3.2007*

Optical Act 1991 [Act469]

Optical (Amendment) of Second Schedule) Order 2007 [PU(A)159/2007]

Issued under s.41, Optical Act 1991
*Notes:-Amends Sch 2, Optical Act 1991
w.e.f.-13.4.2007*

Registration of Pharmacists Act 1951 [Act 371]

First Schedule (Amendment) Order 2007 [PU(A)109/2007]

Issued under s.6, Registration of Pharmacists Act 1951

*Notes:-Amends Sch 1, Registration of Pharmacists Act 1951 [Act 371]
w.e.f.-16.3.2007*

Registration of Pharmacists Act 1951 [Act 371]

Second Schedule (Amendment) Order 2007 [PU(A)110/2007]

Issued under s.6A, Registration of Pharmacists Act 1951

*Notes:-Amends Sch 2, Registration of Pharmacists Act 1951 [Act 371]
w.e.f.-16.3.2007*

INDEX TO SELECTED PU(B) SERIES 2007

Anti-Money Laundering (Amendment) Act 2003 [Act A1208]

Appointment of Date of Coming into Operation [PU(B)66/2007]

w.e.f.-6.3.2007 except para 14(a)

Architects (Amendment) Act 2007 [Act A1287]

Appointment of Date of Coming into Operation [PU(B)98/2007]

w.e.f.-1.4.2007

Baselines of Maritime Zones Act 2006 [Act660]

Appointment of Date of Coming into Operation [PU(B)120/2007]

w.e.f.-1.5.2007

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)137/2007]

Notes:-12.4.2007 appointed as the date on

which the Act comes into operation in all the local authority areas in the State of Johore

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)138/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Kedah

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)139/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Kelantan

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)140/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Malacca

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)141/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Negeri Sembilan

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)142/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Pahang

Building and Common Property

(Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)143/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Penang

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)144/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Perak

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)145/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Perlis

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)146/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Terengganu

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)147/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Selangor

Building and Common Property (Maintenance and Management) Act 2007 [Act663]

Appointment of Date of Coming into Operation [PU(B)151/2007]

Notes:-12.4.2007 comes into operation in

the Federal Territory of Kuala Lumpur and the Federal Territory of Putrajaya.

Courts of Judicature (Amendment) Act 2004 [Act A1229]

Appointment of Date of Coming into Operation [PU(B)70/2007]

w.e.f:-6.3.2007

Customs (Amendment) Act 2007 [Act A1282]

Appointment of Date of Coming into Operation [PU(B)108/2007]

Notes:-All the provisions of the Act come into operation except for sections 6, 8, 9 and subsections 10(2), (3) and (4).

w.e.f:-1.4.2007-all sections except ss.6, 8, 9, 10(2), 10(3), 10(4)

Criminal Procedure Code (Amendment) Act 2006 [Act A1274]

Appointment of Date of Coming into Operation [PU(B)68/2007]

w.e.f:- 6.3.2007 ss.9, 20, paragraph 33(b), (f) and (h)

Emergency (Essential Powers) Ordinance No.7 (Amendment) Act 2006 [Act A1278]

Appointment of Date of Coming into Operation

w.e.f:-1.5.2007

Excise (Amendment) Act 2007 [Act A1284]

Appointment of Date of coming into Operation [PU(B)110/2007]

Notes:-All the provisions of the Act come into operation except for paragraph 2(b), sections 5, 6 and subsections 9(2), (3) and (4).

w.e.f:-1.4.2007-all sections except ss.2(b), 5, 6, 9(2), 9(3), 9(4)

Exclusive Economic Zone (Amendment) Act 2006 [Act A1277]

Appointment of Date of Coming into Operation [PU(B)132/2007]

w.e.f:-1.5.2007

Free Zones Act 1990 [Act438]

Free Zones (Amendment) Notification 2007 [PU(B)96/2007]

Notes:-Amends Sch 1, Free Zones Act 1990

w.e.f:-29.3.2007

Housing Development (Control and Licensing) (Amendment) Act 2007 [Act A1289]

Appointment of Date of Coming into Operation [PU(B)134/2007]

w.e.f:-12.4.2007

Iskandar Regional Development Authority Act 2007 [Act 664]

Appointment of Date of Coming into Operation [PU(B)55/2007]

w.e.f:-17.2.2007

Penal Code (Amendment) Act 2003 [Act A1210]

Appointment of Date of Coming into Operation [PU(B)67/2007]

w.e.f:-6.3.2007 except section 9

Pesticides Act 1974 [Act149]

Appointment of Date of Coming into Operation [PU(B)100/2007]

w.e.f:-1.4.2007-s.15 comes into operation throughout Malaysia

Malaysian Health Promotion Board Act 2006 [Act651]

Appointment of Date of Coming into Operation [PU(B)99/2007]

w.e.f:-1.4.2007

Registration of Engineers (Amendment) Act 2007 [Act A1288]

Appointment of Date of Coming into Operation [PU(B)102/2007]

w.e.f:-1.4.2007

Retirement Fund Act 2007 [Act 662]

Appointment of Date of Coming into Operation [PU(B)62/2007]

w.e.f:-1.3.2007

Sales Tax (Amendment) Act 2007 [Act A1283]

Appointment of Date of Coming into Operation [PU(B)109/2007]

Notes:-All the provisions of the Act come into operation except for paragraph 2(b), section 6 and subsections 7(2), (3) and (4).

w.e.f:-1.4.2007-all sections except ss.2(b), 6, 7(2), 7(3), 7(4)

Sales Tax (Amendment) Act 2007 [Act A1283]

Appointment of Date of Coming into Operation [PU(B)116/2007]
Corrigendum
Notes:-Corrigendum to PU(B)109/2007

Service Tax (Amendment) Act 2007 [Act A1281]

Appointment of Date of Coming into Operation [PU(B)107/2007]
Notes:-All the provisions of the Act come into operation, except for paragraph 2(b), section 6 and subsections 7(2), (3) and (4). w.e.f.-1.4.2007 –except ss.2(b), 6, 7(2), 7(3), 7(4)

Service Tax (Amendment) Act 2007 [Act A1281]

Appointment of Date of Coming into Operation [PU(B)115/2007]
Corrigendum
Notes:-Corrigendum to PU(B)107/2007

Strata Titles (Amendment) Act 2007 [Act A1290]

Appointment of Date of Coming into Operation [PU(B)148/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in the Federal Territory of Kuala Lumpur and the Federal Territory of Putrajaya

Strata Titles (Amendment) Act 2007 [Act A1290]

Appointment of Date of Coming into Operation [PU(B)149/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in the States of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu.

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)121/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Johore.

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)122/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Kedah

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)123/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Kelantan

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)124/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Malacca

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)125/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Negeri Sembilan

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)126/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Pahang

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)127/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Penang

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)128/2007]

Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Perak

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)129/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Perlis

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)130/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Terengganu

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)131/2007]
w.e.f.-12.4.2007 appointed as the date on which the Act comes into operation in all the local authority areas in the State of Selangor

Street, Drainage and Building (Amendment) Act 2007 [Act A1286]

Appointment of Date of Coming into Operation [PU(B)152/2007]
Notes:-12.4.2007 appointed as the date on which the Act comes into operation in the Federal Territory of Kuala Lumpur and the Federal territory of Putrajaya.

Subordinate Courts (Amendment) Act 2004 [Act A1228]

Appointment of Date of Coming into Operation [PU(B)69/2007]
w.e.f.-6.3.2007

NEW BOOKS IN THE LIBRARY

1. *Common Applications in Civil Proceedings*. Petaling Jaya, Selangor: Sweet & Maxwell Asia, 2007.
2. Clerk, John Frederic. *Clerk & Lindsell on Torts*. 19th ed. Kuala Lumpur: Sweet & Maxwell Asia, 2006.
3. Chan, N.H. *Judging the Judges*. Petaling Jaya, Selangor: Alpha Sigma, 2007.



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