PRAXIS

CHRONICLE OF THE MALAYSIAN BAR

NOVEMBER / DECEMBER 2005

PLUS

Liberalisation and the Legal Profession

Asian governments should uphold human rights

Judges are the guardians of individual rights : Cherie Booth QC

THE EFFECTS OF GATS AND AFAS ON THE LEGAL PROFESSION

PRAXIS
CHRONICLE OF THE MALAYSIAN BAR

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contents

Preface

Hj Vazeer Alam Mydin Meera
Editor

A global dimension now prevails on the legal profession. A "no walls" working culture is fast becoming the norm. The internet, its related medium and tools are ever changing the landscape of the profession. The government is giving grants to brand the name of a law firm and export their service. The Publicity Rules are seen by some as being archaic. Others view the profession as a business. Change is in the air. Change and adapt we must.

The membership of the Malaysian Bar has grown steadily over the years. Now it stands at slightly more than 11,000. The majority of whom are below 7 years in practice. The second oldest profession is suddenly very young. The composition and make of the profession has evolved over the years. The large numbers have seemed to have had its bearing on the camaraderie of the Bar. Some members merely view the Bar Council as the body to issue them the Sijil Annual and nothing more. There is a need to reach out to members, to keep them informed, to get them involved, and to constantly improve the professional environment. The Bar must be robust. To achieve this, there is a need to improve the medium through which news and views are currently disseminated to members. The Bar Council recognises this.

Kudos to our new *master of the web* (whose energy and enthusiasm knows no bounds); the Malaysian Bar website has improved by leaps and bounds. The website is updated daily and has become a treasure throve of information and resources. The eADIL is clearly an innovative addition by the Webmaster. Another toast to our Webmaster. He is a real spider-man. Not of the spinning variety; but a true master *webber* .

The Bar Council also recognised the need for the current print medium newsletter, the Infoline, to be improved. Thus, this new look magazine, with a new name – PRAXIS. The search for a new name for the magazine started some months ago. Having poured our collective minds into this search, the Editorial Team settled for - Praxis.

Praxis is a Latinate English noun, referring to the process of putting theoretical knowledge into practice. It is the practical application or exercise of a branch of learning. The *freedictionary* website defines Praxis as *"the process by which a theory or lesson becomes part of lived experience"*. To the Greeks Praxis meant the *"the correct or right practice"*.

Star Trek buffs will remember Praxis, as the moon of the planet *Qo'nos*, the homeworld of the *Klingon* empire. Praxis was the key energy production and dilithium mine facility for *Qo'nos*, until it exploded due to unsafe mining practices in the year 2293. Even in the futuristic world of science fiction, the correct practice is deemed important. Let's take heed from this.

In the world of reality, Praxis is a standardised test used by some states in the United States for teachers embarking on a training program in entering the profession. I suppose it is thus named to set these fresh teachers on the path to the right practice; and consequently practice that which is correct.

Praxis has many positive attributes to its meaning and application. Thus, it is my hope, that the Malaysian Bar's Praxis, will be a beacon and guide in our endeavour to practice the profession in the correct manner – the right practice.

Editorial

'*Kerana mu, Malaya*' bah!

Malaysia is, and for some time now, has been, an independent country. Malaysia was one of the 5 founding members of, and continues to be one of the 10 independent countries that now forms, the Association of South East Asian Nations, or ASEAN, whose stated purpose is to foster co-operation and mutual assistance amongst (independent) member countries. Malaysia is also one of the 57 members of the Organisation of the Islamic Conference, or OIC, a body dedicated to serving the interests of the 1.3 billion Muslims worldwide (irrespective of their State of origin). Malaysia is one of the 191 member states in the United Nations, or UN, which humbly considers itself a "global association of governments facilitating co-operation in international law, security, economic development, and social equity". Malaysia is … well, I think you get the picture.

Now, although the actual number of years that this has been so may still be open to interpretation, there is no denying Malaysia has stood on her own two feet for a good many years now. More than merely being 'independent', Malaysia has been a social, economic and political force to be reckoned with. In 1963, a date before half the present membership of the Malaysian Bar was even born, the Federation of Malaya, having bloodlessly, nay peacefully even, through consultation and negotiation, achieved a much desired independence from the British some seven years before, must have seemed a noble enough entity. That the soon-to-be sovereign states of Sabah and Sarawak paused to consider, and did eventually willingly embrace, a partnership with the Federation speaks well of what Malayans had achieved and were a part of in 1963, that we worthy of joining with in the onward march of our citizenry towards continued peach and prosperity.

George Santayana's paraphrased advice, that "those who fail to learn the lessons of history are doomed to repeat them" must needs be tempered with Aldous Huxley's admittedly cynical observation that "history's most important lesson ... is that man has not learned much at all from history". With respect, the question of whether Sabah and Sarawak (they dislike being called East Malaysia) joined the Federation or whether the two States and the Federation merged to form a separate entity seems, to us at least, a distinction without a difference. Suffice it to say that more than 40 years along, it ill becomes us to emphasise what makes us different when we ought, instead, be working to make a success of what we have in common.

Consider, as Mark T Banke suggests, how attempts to "learn history's lessons" influence events being then examined. Such consideration must necessarily lead one to the sobering, sometimes scary, conclusion that we often learn the wrong lessons from history. This is not to suggest there is only one "politically correct" lesson to be learned. The point here is that in seeking to avoid "past mistakes" we often err in new, completely unanticipated, sometimes ingenious ways. Indeed, those who sanctimoniously justify their actions by pointing to the "lessons of history" often produce more glaring consequences than the misfortunes they seek to avoid.

Where we come from is only a small part of the picture. Where we are headed is of vastly greater importance. Failing to recognize this is akin to our driving towards our combined future with our gaze fixed steadfastly on the rear-view mirrors of our separate history. This is no way to drive. We must focus on the road ahead, bumpy and uncertain as it is, with its treacherous curves and blind corners. We must shrug off the old cloaks blinkered self-interest. Having come this far, we must not lose our focus and permit ourselves to be driven off the road to prosperity and well being.

Reading the article National Birthrights by Ruben Sario (The Star, Lifestyle 18 September 2005) on when, actually, Independence Day ought to be celebrated in Sabah and Sarawak, one cannot help but get the impression that here, again, is a non-issue being pounced on and harped upon by politicians and their ilk for their own benefit. Nothing more than the 'vote-for-me-because-I-am-one-of-you' mentality at work.

As a people, we Malaysians aspire to the same things. Peace in the country that we may each pursue our calling, to earn an honest livelihood, to aspire to, and to work towards, a better world for our children. In the grim realities of today's global village, this must necessarily mean an honest day's pay for an honest day's work. A fitting and final end to racism, cronyism, parochialism and the ascendancy of meritocracy and a level playing field for all, man and woman alike.

Whereas all ASEAN members have agreed to have total liberalisation of trade and services by 2020, ASEAN Ministers have agreed to expedite the liberalisation of trade and some of the service sectors (including legal services) by 2008. The country's commitment to AFAS and GATS means no less than

this. That the services sector in Malaysia will be open, slowly but surely, to the global society and that the global society will, in equal turn, open itself up to Malaysian service providers. It heralds the end of an era, the era of a protected parochial society, protected for all intents and purposes against none other than itself.

In seeking to fulfil our commitments to AFAS and GATS then, we find ourselves facing this ludicrous scenario: Malaysians of all races, creeds and colour will be permitted, as of right, to compete in the global marketplace with peoples of various nationalities. In turn, these varied nationalities will be permitted to 'set up shop' here in Malaysia, whether in the Peninsula (Malaya) or in Sabah or Sarawak.

Nothing ludicrous in that. But, because of the supposed sanctity of an Agreement penned some 42 years ago, Peninsula Malaysians (see how ridiculous it sounds!) will not be permitted to 'set up shop' in Sabah or Sarawak nor, having once 'set up shop' to continue to operate that shop, except at the sufferance of the respective states. The States of Sabah and Sarawak are, of course, not totally unreasonable. They may permit any West Malaysian who has resided in the State for no less than five years the privilege of thenceforth seeking to earn a living in that State. However that begs the question: How is a person to get to the State and to support himself for five years BEFORE being entitled to earn an honest living? That then is the continuing effect of the "Malaysia Agreement' as interpreted by the states of Sabah and Sarawak.

The full import and effect of the separation of the markets for the people of the peninsula is obvious to any local, East or West Malaysian, but may be gleaned, for the benefit of the outsider, from the decisions in Sugumar Balakrishnan. To recap but briefly, Sugumar was a Malaysian from the Peninsula state of Negri Sembilan. He went to Sabah as a teacher and studied law. He graduated and spent some 20 years successfully practicing law in Sabah. His clientele is clear evidence of his effectiveness as a lawyer and his fearless championing of his clients' cause, even as against the State.

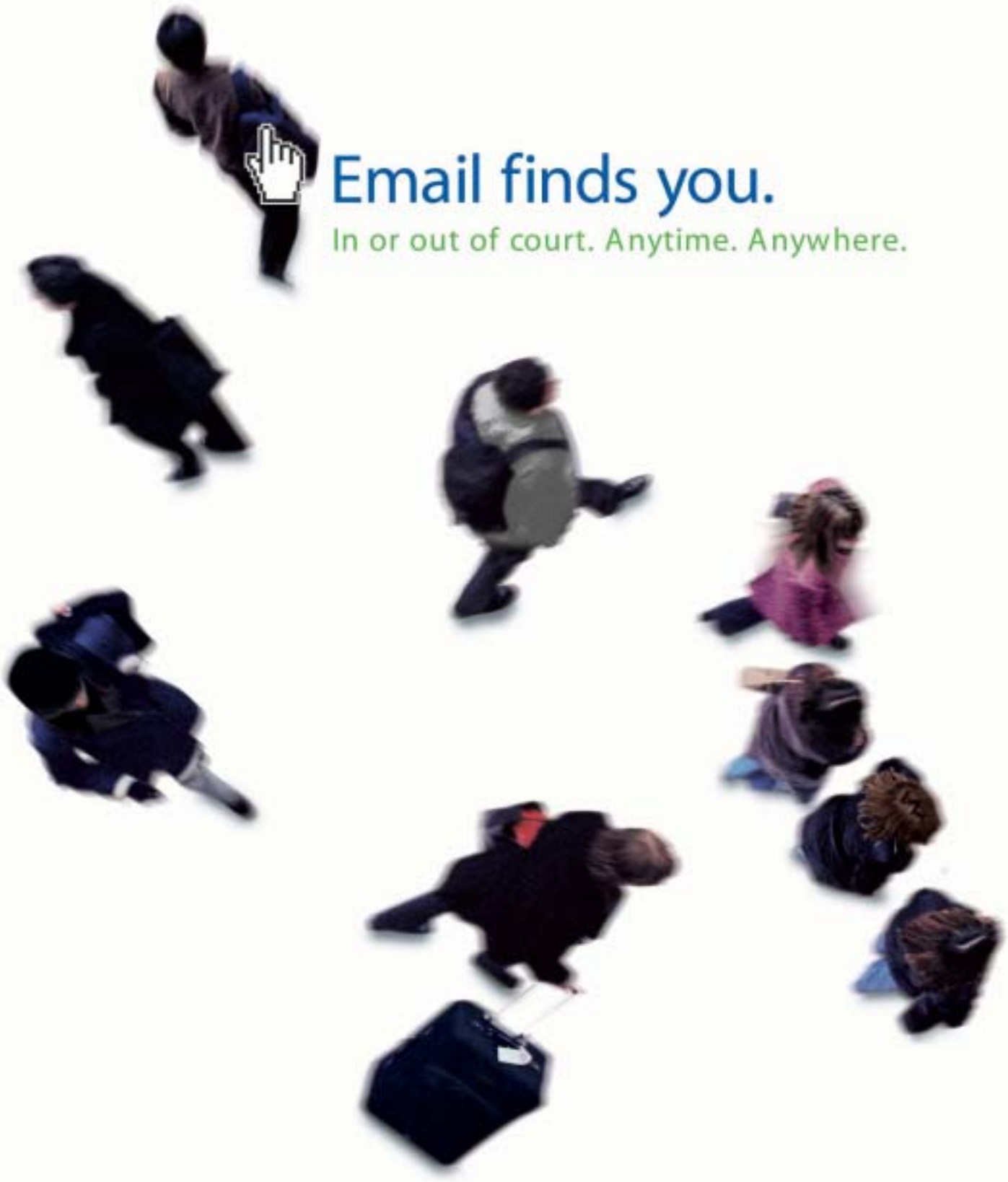
Suddenly, after all these years, on the basis of nothing more than innuendo and outright lies, the State sought to evict him from Sabah. Both the High Court and the Court of Appeal felt the need to balance Sugumar's constitutional right to life and livelihood against Sabah and Sarawak's overriding rights under the Malaysia Agreement and the laws passed in furtherance to such rights (specifically those relating to immigration). Even though, following the Federal Court decision on the matter, Sugumar, as evidence of the largesse of the State of Sabah, was granted permission to remain, it was, and is, at the sufferance of the State, for so long as Sugumar continues to 'behave'.

The separation of the High Courts of Malaya and Borneo (now 'Sabah & Sarawak') is well documented. Art 121 of the Federal Constitution makes it plain that the two High Courts are to have co-ordinate (i.e. of equal importance, in rank, degree and) jurisdiction. However, how that can be interpreted to deny the right of a West Malaysian lawyers to appear in a labour dispute in the Industrial Courts in Kuching and Kota Kinabalu is beyond the powers of comprehension of the Bar. Now steps are afoot to extend the parochialism. Henceforth, if the powers that be have their way, members of the Bar in West Malaysia will not be permitted to appear in the appellate courts in Putrajaya if the case in question originated from either Sabah or Sarawak.

ASEAN, fashioned as it is after the likes of the EU, no doubt hankers after a free market open to all, with a free flow of capital and labour within it. It is already provided for that citizens of ASEAN countries enjoy visa-free entry into member countries, albeit for limited periods. No doubt ASEAN envisions a stellar society where undocumented travel within its extended borders is no luxury but a fact of life. If it is to be, however, we must first break down the barriers within Malaysia itself, where, in this day and age, West Malaysians require a passport and a visa to go to East Malaysia. Even then, as Karpal Singh discovered, much to his chagrin, it is no guarantee that the West Malaysian will be allowed in.

All is not lost. The Attorney General of Malaysia Tan Sri Abdul Gani Patail (not to be confused with the A-G of the Sabah or Sarawak - yes, they have their own A-Gs even) is certainly in agreement with the Malaysian Bar on the need to open up the local markets (read 'Sabah & Sarawak' here - under the *Malaysia Agreement*, East Malaysian have the full run of the West Malaysian market. He as much as said so at an event held in Kota Kinabalu recently, attended by the President of the Malaysia Bar, and the Presidents of the respective Sabah and Sarawak Law Societies and subsequently reiterated the same at the just concluded Malaysian Law Conference.

Also *ad idem* with the Bar on this are the *de facto* Minister of Law, Minister in the Prime Minister's Department Datuk Radzi Sheikh Ahmad and Minister of International Trade and Industry Datuk Seri Rafidah Aziz. We are, of course, strongly opposed by elements in the respective State political hierarchy, to whom we appeal to exercise greater reasonableness. If we are to continue to be a force in the international arena we must ensure that we do not degenerate into a farce in the international arena.



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Office Bearers' Audience with his Majesty the Yang Dipertuan Agong

His Majesty the Yang DiPertuan Agong granted an audience to the Office Bearers on 28th September 2005 at the Istana Negara. The President Mr Yeo Yang Poh led the delegation comprising the Vice-President Ms Ambiga Sreenevasan, Secretary Mr Ragunath Kesavan, Treasurer Tuan Haji Vazeer Alam Mydin Meera and the Executive Director Ms Catherine Eu.

The Office Bearers had an informative exchange of views and ideas with His Majesty, on a variety of issues. The audience which was scheduled for 45 minutes went on for slightly more than an hour.

The photograph shows His Majesty the Yang DiPertuan Agong with the Office Bearers and Executive Director.

YAA Chief Justice at Bar Functions

YAA Chief Justice Tun Ahmad Fairuz bin Sheikh Abdul Halim was in Alor Star, Kedah, for four days at the end of September 2005 to attend the convocation ceremony at the University Utara Malaysia, where Tun Fairuz is the Pro-Chancellor.

Tun Fairuz took time from his busy schedule to visit the new court complex at Alor Star. The Magistrates, Sessions and High Court in Alor Star are now housed in this magnificent new building, situated at Suka Menanti. The name Suka Menanti was given to that area of Alor Star, even before lawyers were seen waiting (*menanti*) in its corridors and court rooms. Whether they *suka menanti* is another issue.

Tun Fairuz and Toh Puan sharing a light moment with the Kedah/Perlis Bar Chairman

The Kedah/Perlis Bar Committee hosted dinner in honour of YAA Chief Justice on the night of September 26th. Tun Fairuz and Toh Puan were the guest of honour. Also present were High Court Judges YA Datuk Zainal Adzam bin Abdul Ghani and YA Datuk Hassan Lah and YA Datuk Mohd Sofian bin Tan Sri Abdul Razak our former Bar Treasurer and Secretary, who was recently appointed Judicial Commissioner. Several other judicial officers were also seen at the dinner.

Subsequently, on 1st October 2005, Tun Fairuz attended the Perak Bar Annual Dinner as the guest of honour. The members of the Perak Bar turned up in full force.

Tun Fairuz and Toh Puan arriving at the venue of the Perak Bar Annual Dinner

Unity wins the day

Contributed by Web Reporter, Website of the Malaysian Bar

It was unity that won the day for the Malaysian Bar.

Members turned up in unprecedented numbers for the reconvened 59th AGM held today at Legend Hotel here. By 10.10 a.m., the quorum of 2,404 lawyers representing one-fifth of the 12,020 members was met. By 11.35 a.m., 3,020 lawyers had also signed up and the total number of lawyers who actually turned up for the AGM was 3,027. (Click here to view the Picture Gallery)

The meeting commenced at 10.15 a.m. with 2,441 members observing a minute's silence for departed members of the Bar and also the late Datin Seri Endon Mahmood, the wife of the Prime Minister who passed away on Oct 20.

There was unity among the members of the Malaysian Bar when they voted unanimously not to abolish the 'No-Discount' Rule.

There was unity too among those who proposed the various resolutions with some withdrawing and accepting the earlier decisions made at the invalidated AGM held on March 19 in order to save time for debating new and more important resolutions. Datuk Param Cumuraswamy graciously withdrew his motion after the House was informed now that the litigation has come to a close, the legal opinions given earlier in respect Louis Van Buerle case would be published on this Website and in the Infoline and/or Insaf.

Most of all, there was unity in the first Council meeting held immediately after the AGM when Yeo Yang Poh, Ambiga Sreenevasan, Ragunath Kesavan and Vazeer Alam Mydin Meera were unanimously re-elected as the President, Vice-President, Secretary and Treasurer respectively.

It was indeed a great day in the history of the Bar, and every member of the Malaysian Bar should be proud of it.

MLC: East Malaysia position an 'embarrassing anomaly', says Bar President

Contributed by Loo Lai Mee, LexisNexis, Website of the Malaysian Bar

The President of the Malaysian Bar, Yeo Yang Poh today called the current position in East Malaysia where Peninsular Malaysian lawyers are not allowed to practise there as an 'embarrassing anomaly' in the present globalisation era, and is one that must be corrected.

He said this in his speech to the delegates at the 13th Biennial Malaysian Law Conference this morning at PWTC Kuala Lumpur.

He said it is not difficult to see why it would be unacceptable to open our doors to foreign lawyers while some domestic doors remain shut for lawyers within the same country. This drew much interest and response from the floor. He again assured members of the Bar that the Bar Council has engaged the Sabah and Sarawak Bars regarding this issue, and will continue to do so. Thus far the Sabah and Sarawak Bars appear to remain firm in resisting any move to allow Peninsular Malaysian lawyers a foothold in East Malaysia, including a move that involves a gradual process of change.

Ensure win-win formula,

Turning to globalisation, Yeo said all empirical evidence suggests that globalisation has already taken root here, as in other countries, more than we realise. Modern technologies, in particular Information Technology, underpin the increasing need to dismantle geographical and political boundaries. In fact globalisation is not a new phenomenon. What is new is the rate at which the changes it brings are occurring, made possible by modern technologies. The issue now is no longer whether globalisation will inevitably come. It is already here, or at least the first wave of it. It is also here to stay, for the foreseeable future.

Yeo urged members of the Bar to work towards ensuring a 'win-win formula' to combat the inequitable state of affairs brought about by globalisation. Globalisation is not about charitable development nor is it a scheme to bridge the gap between richer and poorer nations. Despite attempts to dress it up as such, globalisation is not about trying to create a more level playing field, nor about seeking to achieve a more equitable environment for societies weaker in bargaining power. Globalisation unfortunately is predominantly about entrenching the status quo of the inequitable state of the world today. Globalisation is a framework containing rules set largely by the rich and powerful nations, and thrust upon the less powerful ones, with the occasional thrown in for good measure. There may be new winners and new losers in the globalisation exercise. But the 'globalised' world as a whole is unlikely to end up more egalitarian than the present.

Yeo said there are 2 reasons why we embrace globalisation. First, the process of globalisation is an inevitable one. As Kofi Annan said, 'Arguing against globalisation is like arguing against the laws of gravity'. Secondly, all is not lost. There is hope yet for the less powerful players in the globalisation game and there is a reason for expanding effort to manage globalisation.

Instead of resisting globalisation outright, or adopt a 'wait and see' attitude, the Bar Council preferred, and still prefers, Yeo said, to engage and help shape the path of the globalisation and liberalisation of the Malaysian legal profession. It participates in the AFAS and some FTA discussions. It has drafted detailed proposed amendments to the Legal Profession Act, together with the corresponding regulations, seeking to permit foreign lawyers to practise specified areas of the law in Malaysia within a regulated environment. These proposals have been submitted to MITI as well as the Attorney General's Chambers, and working-group discussions are on-going.

The Bar could, and would, try to make those things that globalisation ought to become at least part of the actual business of globalisation through careful planning and management. In managing the globalisation of the legal profession, and bearing in mind that globalisation is essentially built upon commerce, members of the profession must always be vigilant that the core values common to the legal profession allover the world, such as the integrity and independence of the Bar and the paramount consideration of justice and equality, must not be sacrificed at the altar of international trade.

"This belief has guided the philosophy and action of the Bar Council with regard to globalisation in the past few years", said Yeo.

MLC: Welcoming foreign lawyers to Singapore was an economic necessity, says Singapore's AG

Contributed by Loo Lai Mee, LexisNexis, Website of the Malaysian Bar

Mr Chan Sek Keong, the Attorney General of Singapore presented an inspiring Special Address on 'Globalising the Legal Profession' at the 13th Biennial Malaysian Law Conference this morning.

The entry of foreign law firms into Singapore started in early 1970s and picked up speed steadily after 1980. Mr Chan said that the incipient globalisation was met with a robust response from Singapore lawyers and 'catalysed the profession to put its house in order through restructuring and modernization'. The profession took seriously the challenge of US and English law firms ('the Atlantic law firms'), and it affected profoundly, even traumatically, the psyche of Singapore lawyers in exposing their vulnerability in the face of global standards of service delivery, management and marketing skills of the Atlantic law firms.

Changes in legal practice due to globalisation

This has caused corporate lawyers to make meaningful and positive changes to their practice very quickly, and dramatically, with special focus on the ways to deliver legal services competitively. It led to the emergence of large Singapore firms which have since become players on its own right in the banking, corporate finance and securities sectors in Singapore. Currently, their legal capability and competitive pricing in executing financial transactions are generally recognized by domestic and international consumers in Singapore. Today, Mr Chan believed that the concern of Singapore lawyers that they would be marginalized or lose their autonomy has receded.

"Indeed Singapore law firms have made such great strides in acquiring new and improved legal skills and efficiency in the last 10 years that they have the confidence to think about how to regionalize their services", said Mr Chan.

Benefits from globalisation

Today Singapore is host to 61 foreign law firms and 4 representative offices from Austria, Australia, China, Germany, Holland, India, Indonesia, Malaysia, Norway, Switzerland, UK and USA. Foreign lawyers now number 286 private practitioners and 137 in-house counsel from all over the world. He added that Singapore has benefited tremendously from this influx of foreign lawyers.

"The legal services sector is [now] diversified and vibrant and is able to supply the legal needs of the region in all important economic sectors, such as banking and financial services, air and marine transport, logistics and distribution, oil and gas exploration, energy and power distribution, manufacturing and information technology and biotechnology", he added.

He said that if Singapore had rejected foreign law services, it would have inflicted substantial damage to its own financial services sector.

"The rationale for welcoming foreign law services particularly from Atlantic law firms, was economic necessity. Without them, Singapore's objective to become regional finance centre would have been jeopardised", said Mr Chan. Singapore, he added, has responded to globalisation of US and English Law services in the way it has done to serve her national economic interest. This policy of liberalizing Singapore's legal service markets to the extent necessary to meet her economic needs allows foreign law firms to compete among themselves, and ensures that they do not control the domestic legal services and marginalize domestic law firms.

Mr Chan drew a distinction between 'globalising' and 'liberalising' the legal profession. It is natural for Anglo-American lawyers and commentators to think in terms of globalizing their legal services rather than liberalizing them since they see their role as exporters of legal services and not as importers of legal services. Most Asian countries however do not have legal services to globalise, but only markets to liberalise.

MLC: AG calls on Malaysian lawyers to develop competency to equal foreign firms

Contributed by Loo Lai Mee, LexisNexis, Website of the Malaysian Bar

The Attorney General of Malaysia Tan Sri Abdul Gani Patail today urged the legal profession to examine the options available in the local market and overseas to ensure their survival in the onslaught of globalisation.

In his keynote address at the launching of the 13th Biennial Malaysian Law Conference organised by the Malaysian Bar Council, he said that Malaysian law firms will soon encounter stiff competition from within and outside forces. Foreign lawyers will penetrate the perimeters of our legal profession's comfort zone indirectly due to their specific legal expertise, greater mobility physically and through the internet and other wireless communication since legal services may be provided from afar due to developments in ICT.

By being over protective, the Attorney General said the Bar will be limiting the expertise required to be shared with local lawyers by foreign lawyers in which international firms / multinationals in Malaysia might have opted to use. The priority now is to develop the level of competency of legal firms to equal, if not rival that of foreign firms. To achieve that level, the Bar must advocate on investment in infrastructure, ICT, human resources and training.

The Attorney General also said that the mushrooming of small legal firms is another area of concern in a competitive legal climate. It is worth emulating the Malaysian banking sector to merge small legal firms to stay financially stronger, more efficient and more specialised. Thus in this, legal firms should not be complacent and continue doing what they had done in the last century. He urged lawyers to look beyond litigation and court appearances as the big bucks are where the big players are namely the big international firms and big business deals and enterprises.

At present, the direct impact of globalisation on our legal services stems from the liberalisation of trade under the GATS (General Agreement on Trade in Services) in which Malaysia is a signatory. GATS allows for progressive liberalisation of the legal profession to full liberalisation in 2015 (currently, foreign legal firms are only allowed to be set up in the Federal Territory of Labuan, and services are limited to offshore corporations established in Labuan). The significance of liberalisation of legal services should not be under-rated. With globalisation which sees an acceleration of world economic integration, law firms will become increasingly important in advising clients on trade-related matters. The legal services can encompass a wide spectrum of the business matters ranging from mergers and acquisitions with foreign companies to contractual agreements for franchises, dealerships and product sales.

Tan Sri Gani also discussed the liberalisation of the legal profession in several foreign jurisdictions:

1. England and Wales – practitioners need not be British nationals. Legal advice and services can be offered with some restrictions. Certain limited areas are reserved for nationally qualified solicitors and barristers and they include conducting litigation, drawing up of court documents, rights of audience, property transfers and successions. Immigration advice and services are also reserved for British nationals.

2. Germany – not dependent on nationally to practice law in Germany. A foreign lawyer needs to acquired the law degrees necessary to be admitted to the German Bar in the territory falling under the jurisdiction of a district court. In accordance to GATS, lawyers originating from Member Countries of the WTO are allowed to practice in Germany with a reduced scope of activities – they may give advice in legal matters concerning their home country and the law of nations. They are excluded from services in other parts of international law and EU law as well as from the law of third countries.

3. China – with effect from 1 July 1992, foreign law firms were allowed to open offices inside China and to date, 80 over law firms from more than a dozen countries and 20 over firms from Hong Kong have established offices in various big cities in China.

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Lifetime Humanitarian Award

Cecil Rajendra, a member of the Malaysian Bar and a long serving Bar Council member, was recently conferred the first ever Malaysian Lifetime Humanitarian Award in a glittering ceremony held at Nikko Ballroom in Kuala Lumpur.

Cecil received the award for his pioneering legal aid work, his service to under-privileged/disabled children (Cecil has served the Penang Spastic Children's Association for over 25 years) and his inspirational poetry that has helped "awaken people to the burning social issues that afflict Malaysia and the Third World". Cecil's poetry had also earned him a Nobel Prize nomination.

Also recognized for their humanitarian work were Balasupramaniam Krishnan, who received the Young Humanitarian Award; and , the National Cancer Society of Malaysia, which received the Team Humanitarian Award.

The awards, inaugurated by the New Straits Times Press and Price-Waterhouse Coopers, were presented by Deputy Prime Minister Datuk Seri Najib Razak.

The winners were selected by an independent panel of judges led by former Deputy Prime Minister, Tan Sri Musa Hitam.

Cecil's award which carried a donation of RM20,000 to be given to two organizations of his choice went to the Spastic Children's Association and the National Human Rights Society of Malaysia (HAKAM).

On receiving the award Cecil paid tribute to Mahatma Gandhi, who had been his lifelong inspiration and, paraphrasing the great man, Cecil said, "the only life worth living is one lived in the service of others".

The Malaysian Bar congratulates Cecil. May his shining example light the path for us all.

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4. United States – a foreign lawyer has 3 options: (a) they may seek dual admission through the same process as an individual wanting to become a lawyer in the US; (b) they could be employed by or consult for either a law firm or company; (c) they can seek licensing as a foreign legal consultant.

5. Japan – foreign lawyers are limited to advising clients only on the laws of their own jurisdiction but are allowed to establish joint ventures with Japanese firms.

Recognising the need and importance in international matters and foreign legal matters, the 6th Division of the Attorney General's Chambers (the International Affairs Division) was established on 1 June 2003 to protect and improve Malaysia's rights and interests in the international arena, to give legal advice and views to the Malaysian government, public interest and domestic laws and to ensure that Malaysia's international obligation under any agreements, treaties and conventions which have been signed, agreed upon, ratified or participated by the Malaysian government are carried out in accordance with Malaysian laws and policies.

Tan Sri Gani also said it has also dawned upon his Chambers that local expertise is limited in various disciplines of the law which have become increasingly important. Hence his Chambers have embarked aggressively to work in collaboration with foreign institutions, firms and trainers. In some cases, the Chambers' officers were sent overseas for the exposure while foreign trainers and speakers were also invited to come to teach its legal officers.

Tan Sri Gani also stressed the importance of Alternative Dispute Resolution (ADR) in the forms of arbitration, mediation and conciliation. Lawyering in this millennium must take into account processes of dispute resolution other than litigation. In both large and small jurisdictions, the lawyer of today requires a marriage of both litigation and dispute resolution skills.

Acknowledging that ADR is truly beneficial and is important dispute settlement mechanism, the Malaysian government, Bar Council and other professional bodies in Malaysia have taken proactive steps to promote the usage of arbitration, mediation and conciliation for settlement of disputes.

He also highly commended the work of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) in promoting ADR among its members and the business community.

President-Elect of LawAsia

LawAsia is delighted to advise that Mr Mah Weng Kwai, a member of the Bar Council Malaysia, and a LawAsia vice president, was elected unanimously by the international LawAsia Council to the role of president –elect at its meeting on 9 October in Ho Chi Minh City, Vietnam.

The election of Mr Mah to this role sees him join notable former presidents of LawAsia from Malaysia, including Dato' Param Cumaraswamy and GTS Siddhu in taking on leadership of LawAsia. He will assume the presidential mantle in October 2006 at LawAsia's 40th anniversary conference, to be held in Goa, India 30 September to 2 October 2006. In view of the great support LawAsia has always received from the Malaysian Bar, Mr Mah's election is a particularly popular one and it is viewed as very fitting that LawAsia's senior-most role will be assumed by a representative of the Malaysian profession during an important anniversary year

Since joining the LawAsia ExCo in 2001, Mr Mah's contribution to LawAsia has been significant and has earned him the respect of management and members alike. He has generously and tirelessly shared his legal expertise as well as his deep understanding of professional issues through delivery of numerous papers at LawAsia conferences. His input into management meetings has been practical, highly effective and has enhanced considerably LawAsia's understanding of legal and professional issues in Malaysia and the region.

He chaired the Malaysian Bar Council's host committee for the 6th LawAsia Business Law Conference in October 2004 and in early 2005, was a member of a LawAsia observer mission to Nepal that sought to offer support to Nepali colleagues in their current efforts to reinstate the rule of law in their country. During that visit, he spoke at the Nepal Bar Association about the experiences of the Malaysian Bar in its dealings with government and in doing so, provided a voice of encouragement and inspiration. In this and all other LawAsia activity Mr Mah has ensured that the Malaysian profession has been represented within the international legal community in a manner that has earned respect for him personally, as well as the profession he represents.

Current LawAsia president, Mr Jung Hoon Lee of Korea, said, following Mr Mah's election, "it gives me the greatest pleasure to be supported by such a talented successor during my presidential year and deep confidence that LawAsia leadership will pass into very capable hands".

Mah with the LawAsia ExCo in HCM City

KL Bar Annual Dinner & Dance 2005

Hendon, Ambiga, Ragunath, Dennis Appaduray & Zainuddin Ismail

Amidst much pomp and pageantry, the Kuala Lumpur Bar held its Annual Dinner and Dance at the Mayang Sari Ballroom, JW Marriott, in Kuala Lumpur on 10th September 2005. The theme of this year's gala was international costumes and counsel substituted their usual staid, conservative attire for large swathes of cloth of vibrant colour.

The Guests of Honour were none other than the President of the Court of Appeal YAA Tan Sri Dato' Haji Abdul Malek bin Haji Ahmad and his wife Puan Sri Datin Roziah bt Sheikh Mohamed.

Other guests present included currently serving Judges of the Court of Appeal, Dato' Hashim bin Dato' Haji Yusoff, Datin Paduka Zaleha bt Zahari and serving High Court judges, Dato' Vincent Ng Kim Khoay, Dato' T Selventhiranathan, Dato' Tee Ah Sing.

The President of the Industrial Court Tuan Haji Yussof bin Ahmad, the Director for the Regional Centre for Arbitration and former High Court judge Dato' Syed Ahmad Idid and the supervising judge for the Criminal Section of the KL Lower Courts Tuan Akhtar Tahir were also conspicuously present.

Retired judges Datuk Wira Wan Yahya bin Pawan Teh, Dato' Shaik Daud Ismail, Dato' Mahadev Shankar, Dato' K C Vohrah, Tan Sri L C Vohrah, Tan Sri Dato' Hj Mohd Azmi Kamaruddin, Mr Richard Talalla and Mr Ong See Seng were also present to grace the occasion.

The feast consisted of an 8-course Chinese Dinner and as they tucked in, they were entertained by famed stand-up comedian Harith Iskandar, best known as Malaysia's own Mr Bean and a slick live band going by the moniker *Slick Material*.

The KL Bar Committee Chairman with the Guest of Honour

Former justices Dato' Syed Ahmad Idid and Dato' Shaik Daud Ismail

There was also a competition for Best Dressed. The award for Best Dressed Guy went to Lee Shih from Skrine all decked out in a grand matador costume while Lauren Tan Chiang–Ling of Raja Darryl & Loh, dressed in a fetching green Korean costume, took the Best Dressed Gal award. They each walked away with a 4 days 3 nights stay at Bali, separately, we hope!

The Best Dressed Guy & Girl

for Guys while Diyana took away the 3rd prize for Gals. Prizes were all provided by the KL Bar sponsored in large part by, inter alia, the likes of RR Sethu, Amanah Raya Bhd, LexisNexis and Jardine Lloyd Thompson, just to name a few.

There was a also quiz competition featuring questions prepared by the KL Bar's Social & Pupils' Welfare Committee. The firm of Raja Darryl & Loh certainly seemed to be on a roll that day and won the quiz competition. They get to spend RM1,000 worth of Isetan vouchers. The runners-up from RaslanLoong walked away with a hamper courtesy of the publishers, Sweet & Maxwell Asia.

There were also Lucky Draw Gifts, with a Grand Prize of Holiday Vouchers worth RM3,000, going to the lucky winners! Our heartiest congratulations to all the winners! All in, quite a sterling event. "Well done!" to the KL Bar for pulling it off yet again.

International costomes galore

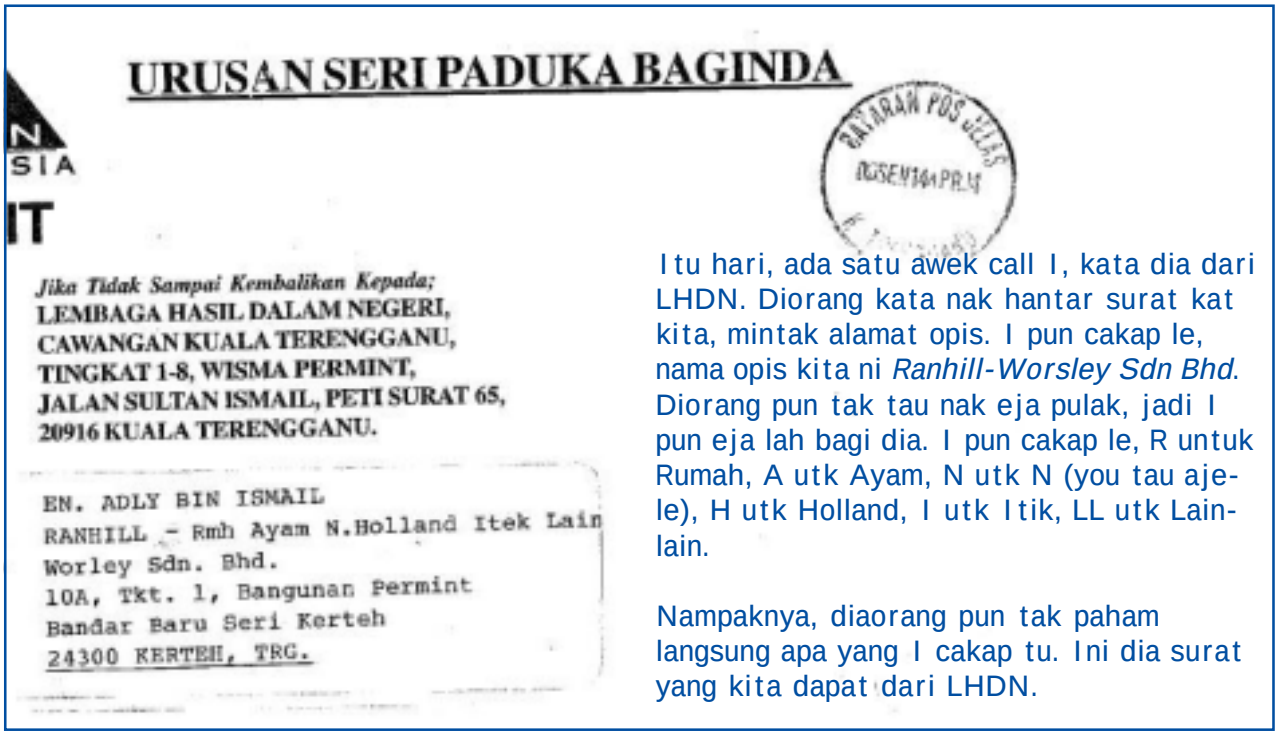
Getting the runners-up awards for Best Dressed Guy was Muhammad Ashraf bin Abdul Jabar of Raja Darryl & Loh and for Best Dressed Gal was Teh Bee Yeow (Mrs Leong Tuck Onn). Mr Leong Tuck Onn of Megat Najmuddin Leong & Co, trailing only slightly behind his better, and lovelier, half, grabbed 3rd prize

Justice Shankar Trophy Chess Competition

The second annual Malaysian Bar Chess Tournament was held on 24 September 2005 at the Royal Selangor Club, Bukit Kiara, Kuala Lumpur. Although only 8 contestants were able to attend, the contest was keen, so much so that, after the scheduled four rounds, three contestants were tied for the lead each with 3 wins. A series of play-off matches were held, with each of the three leaders playing the other leader twice, once playing white and once black. These too proved inconclusive, with Yeap Kim Hock beating Roy Joseph in the last game to leave all three tied on two minutes apiece. As a result, the magnificent Justice Shankar Trophy was shared between Christopher Lee, Roy Joseph and Yeap Kim Hock. It gives great pleasure to record that Justice Shankar was present to award the trophy to the three winners, together with some well-chosen words of advice and encouragement.

Justice Shankar also presented Mr. Jax Tham, the RSC resident coach, with a token of the Bar's appreciation for his help in organising and running the competition. Thanks must also be given to the staff of the Bar Council Secretariat, without whom the competition could not have been so well co-ordinated, or indeed held at all.

A quietly intense moment



URUSAN SERI PADUKA BAGINDA

N
SIA
IT

Jika Tidak Sampai Kembalikan Kepada;
LEMBAGA HASIL DALAM NEGERI,
CAWANGAN KUALA TERENGGANU,
TINGKAT 1-8, WISMA PERMINT,
JALAN SULTAN ISMAIL, PETI SURAT 65,
20916 KUALA TERENGGANU.

EN. ADLY BIN ISNAIL
RANHILL - Rmh Ayam N.Holland Itek Lain
Worley Sdn. Bhd.
10A, Tkt. 1, Bangunan Permint
Bandar Baru Seri Kerteh
24300 KERTEH, TRG.

I tu hari, ada satu awek call I, kata dia dari LHDN. Diorang kata nak hantar surat kat kita, mintak alamat opis. I pun cakap le, nama opis kita ni *Ranhill-Worsley Sdn Bhd*. Diorang pun tak tau nak eja pulak, jadi I pun eja lah bagi dia. I pun cakap le, R untuk Rumah, A utk Ayam, N utk N (you tau aje-le), H utk Holland, I utk Itik, LL utk Lain-lain.

Nampaknya, diaorang pun tak paham langsung apa yang I cakap tu. Ini dia surat yang kita dapat dari LHDN.

Bar meets with Minister for Law

True to its promise to seek to resolve the lack of quorum impasse, representatives from the Malaysian Bar Council met with the Honourable Minister in the Prime Minister's Department, Datuk Seri Radzi Sheikh Ahmad at his office at Putrajaya recently.

The delegation from Bar Council was led by the President, Yeo Yang Poh, and comprised the immediate Past President, Hj Kuthubul Zaman Bukhari, the Vice-President, Ambiga Sreenevasan, the Treasurer, Hj Vazeer Alam Mydin Meera and the Executive Director, Catherine Eu.

The main purpose of the meeting was to expedite the tabling of proposed amendments to the Legal Profession Act 1976 (' the LPA'), with a view to resolve, once and for all, the difficulty of meeting the quorum at many of its general meetings.

[The Bar Council had previously met with Minister in the Prime Minister's Department, Datuk Seri Mohamad Nazri Abdul Aziz, the de facto Minister for Parliamentary Affairs and Attorney-General, Tan Sri Abdul Gani Patail, to discuss the Bar Council's proposed changes to the LPA, a precursor to a more complete revamp of the entire Legal Profession Act 1976. Both Datuk Seri Nazri and Tan Sri Abdul Gani responded positively to the Bar's proposals.]

Quorum for General Meetings

At the meeting, the Bar Council presented the Honourable Minister with detailed a memorandum on Quorum for General Meetings of the Bar. The Bar Council explained their stand that the current version of the LPA was unhappily worded and was open to varied interpretation. The Bar Council also maintained that a one-fifth quorum for a general meeting of the Bar and a one-third quorum for the State Bar, if and when required, was an onerous

Minister in the Prime Minister's Dept, Datuk Seri Radzi Sheikh Ahmad

obligation and certainly not commensurate with the functions and duties carried out at the respective annual general meetings

The Bar respectfully pointed out that such obligations were in stark contrast to those imposed on other professional bodies in the country e.g. the Malaysian Institute of Accountants, membership in which is compulsory for all the approximately 22,000 practicing accountants, almost twice the number of practicing lawyers,

has a quorum requirement of a mere 100 members only.

The Bar noted that the governing bodies of the medical, engineering, quantity surveying professions all have no quorum requirement as there is no requirement that they hold an AGM at any time. There are, however, several professional associations where membership is open, on a purely voluntary basis, only to those in the profession. The Malaysian Medical Association ('MMA') to which membership is open to 16,000 doctors, the Architects Association of Malaysia ('PAM') with a membership of 2,300 architects and the Malaysian Dental Association with a membership of 1,750 dentists) each have a quorum requirement of only 50 persons each.

The Bar also cited the example of neighbouring Singapore which has no quorum requirement for an AGM and a the prescribed quorum for a general meeting (other than an AGM is a mere 50 members.

On the Repeal of Section 46A of the Legal Profession Act 1976.

The representatives of the Bar informed the Honourable Minister that this section, which restricts the lawyers who can serve on the Council and in Committees, was a serious encroachment of the right of every member of the Bar to vote according to his conscience.

While every lawyer is allowed to argue life and death cases in court, handle transactions amounting to several million ringgit and is held in high esteem by all and sundry, some of them are barred, by this section, from holding office in the Bar Council and in the State Bar Committees, or even from serving on the various Committees of the Bar Council and the State Bars, merely because they have less than seven years' standing, serve as Members of Parliament or hold office in a political party or trade union.

Tan Sri Abdul Gani Patail and Datuk Seri Nazri Aziz both responded positively to the Bar's proposals

The sense of discrimination is especially acute in the case of young lawyers (those with less than seven years' standing) who already make up more than 60% of practising lawyers. (see report on page ???)

Encouraging Response

The Honourable Minister, who is the *de facto* Minister for Law, was an active member of the Bar until 2003. He was most gracious and agreed to look into the Bar's several suggestions. He explained that Parliament is currently in recess and will, in its next session, deal mainly with issues related to the national budget and supplies.

The Honourable Minister agreed to consult the Attorney General on the proposals. He was confident that, with the backing of the present administration, the proposals would be in place before Parliament by March 2006.

In addition to the two memoranda presented (above), the Minister was also receptive to the Bar's idea of a common Bar examination for all law graduates intending to practise. The Minister informed the Bar representatives that a Parliamentary Select Committee would be established to study proposed amendments to the Criminal Procedure Code, specifically the provisions relating to arrest, detention and the use of confessions in trials, with a view to bringing the Code up to date with current developments in the country. The Minister invited the Bar to make representations to the Parliamentary Select Committee.

The Bar places on record its gratitude to the Honourable Minister for kindly consenting to meeting with the delegation from the Bar, for his hospitality during their visit and for his words of encouragement and guidance. The Bar looks forward to a fruitful partnership with the present administration, in facing the challenges ahead and leading the profession into the global marketplace.

"Tan Sri AG Sir, you are wrong": says the Bar

Contributed by Web Reporter, Website of the Malaysian Bar

In an immediate response to the Attorney General Tan Sri Gani Patail's remarks published in the *New Straits Times* today that lawyers were generally the main cause of delays in civil cases, the Malaysian Bar President, Yeo Yang Poh *(picture)* said while it is not denied that individual lawyers do from time to time contribute towards delay in the disposal of certain cases, it is equally clear that lawyers are not the main cause of delays in court proceedings, civil or criminal.

In a press statement issued today, Yeo said the Malaysian Bar has for many years been urging the authorities to review our system of justice, including increasing the capacity of its legal infrastructure in order to cope with the ever increasing volume of cases that the system has to handle.

"This call is again renewed," said Yeo adding that it is no doubt important that cases should be disposed of in a speedy and efficient manner, but in so doing, it must never be forgotten that the need to give a fair trial to each and every case cannot be compromised in the process.

Delaying justice, Yeo said, is certainly not a desirable state of affairs, but speedily dispensing injustice will be far worse.

Meanwhile, lawyer Aedyla bin Bokari in his comments posted on this website said he found it quite "disgusting" to read the comments by the Attorney General that delays were mainly the cause of lawyers. He asked the Attorney General to check his fact as this morning he had a mention heard before another Kuala Lumpur High Court because of judicial vacancies in the Kuala Lumpur High Courts. He added that his case had been fixed many times since 2001 only later to be postponed because there was no available judge to preside over it.

The bamboo and the fern

One day I decided to give it all up, to quit ...
I wanted to quit my job, my relationships, my spirituality ...
I wanted to quit my life.
I went into the woods to have one last talk with God.
"God," I said. "Can you give me one good reason why I should not quit?"
His answer surprised me ...
"Look around," He said. "Do you see the fern and the bamboo?"
"Yes", I replied.
"When I planted the fern and the bamboo seeds, I took very good care of them. I gave them light. I gave them water. The fern quickly grew from the earth. Its brilliant green covered the floor. Yet nothing came from the bamboo seed. But I did not quit on the bamboo.
"In the second year the Fern grew more vibrant and plentiful. And still, nothing came from the bamboo seed. But I did not quit on the bamboo.
"In the third year there was still nothing from the bamboo seed. But I would not quit.
In the fourth year, again, there was nothing from the bamboo but I would not quit.
"Then in the fifth year a tiny sprout emerged from the earth. Compared to the fern, it was seemingly small and insignificant ...
"But, just 6 months later, the bamboo rose to be more than 100 feet tall. It had spent the five years growing roots. Those roots made it strong and gave it what it needed to survive.
"I would not give any of my creations a challenge it could not handle. Did you not know, that all this time you have been struggling, you have actually been growing roots?
"I would not quit on the bamboo. I will never quit on you. Don't compare yourself to others.
"The bamboo had a different purpose than the fern. Yet they both make the forest beautiful. Your time will come", God said to me. "You will rise high"
"How high will I rise?" I asked.
"How high will the bamboo rise?" He asked in return.
"As high as it can" I questioned.
"Yes." He said, "Give me glory by rising as high as you can."
I left the forest to bring back this story. I hope these words can help you see that God will never give up on you.

Dato' Sofian made a JC

Contributed by Web Reporter, Website of the Malaysian Bar

Dato' Mohd Sofian bin Tan Sri Abd Razak, 49, a current Bar Council member, was appointed a judicial commissioner today.

Dato' Sofian was also the Secretary of the Malaysian Bar from March 2002 - March 2004 and Treasurer from March 1997 - March 2002. He is married with Datin Norhuda Binti Hussin and they have four children. Dato' Sofian was admitted to the Honourable Society of Lincoln's Inn in 1982 and the Malaysian Bar on 11 August 1984. In 1999, he was awarded the Darjah Indera Mahkota Pahang (D.I.M.P) by His Royal Highness the Sultan of Pahang on the 24 October 1999.

Fifteen others also received their letters of appointment as JCs from Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim this afternoon and among them were Treasury Solicitor, Puan Lim Yee Lan, 54, Kedah State Legal Adviser, Dato' Aziah Bt Ali, 53, Head of International Affairs of AG Chambers, Tuan John Louis O'hara, 54, Deputy Head of Civil Division I of AG Chambers, Dato' Abd. Rahim bin Uda, 51, and CEO of Companies Commission of Malaysia, Tuan Abdul Alim bin Abdullah, 56.

Earlier in the morning, Court of Appeal Judge Dato' Abdul Kadir Sulaiman received the credential letter of appointment as a Federal Court Judge from Yang di-Pertuan Agong Tuanku Syed Sirajuddin Syed Putra Jamalullail at a ceremony in Istana Negara here. Dato' Abdul Kadir, 66, was admitted to the Middle Temple, London as a barrister in 1971. He had also held positions of Deputy Parliamentary Draughtsman in the Attorney General's Chambers, Industrial Court President, Commissioner of Justice and High Court Judge.

The Malaysian Bar extends our heartiest congratulations to all the appointees.

Bar Council revising existing rulings

Contributed by Web Reporter, Website of the Malaysian Bar

The Bar Council is currently in the process of revising its existing rulings to bring them in harmony with the Legal Profession (Publicity) Rules 2001.

The Councillors met in a special meeting on 5 August to deliberate on the proposed revised rulings but were unable to finish the task as special attention has to be given to each of the rulings. They will meet again in a second special meeting on 9 September to continue where they left off.

In fact, the Bar Council in its meeting on 6 August did specially discuss at length the issue of whether it would be a conflict for a solicitor acting for the purchaser in the purchase transaction to also act for the purchaser's financier in the loan transaction. The issue cropped up because the Council was asked to revisit this practice in the absence of express provision in the Legal Profession Act 1976 and the Legal Profession (Practice & Etiquette) Rules 1978 dealing with the matter.

However, for the 2005 PII policy, the insurers have introduced a disclaimer notice that is required to be signed by a purchaser waiving his right to independent legal representation and agreeing that his solicitor (in the purchase) may also act for the financier in respect of the loan documentation.

In the Council meeting on 6 August, majority of the Councillors voted to preserve the status quo, that is, the mere fact that a solicitor acts for both the purchaser and the financier in a conveyancing transaction does not per se give rise to a conflict.

The *Web Reporter* was given to understand that the majority decision was reached mainly because there is no absolute or definite legal answer to this vexed question, either in the written law or at common law.

Note: "The new website rules came into effect on 1 Sept 2005". For more on the website rules please visit the malaysian bar website

Judges are guardians of individual rights, says Cherie Booth QC

Contributed by Web Reporter, Website of the Malaysian Bar

In a human rights world, the responsibility for a value-based substantive commitment to democracy rests largely on judges, and the importance of the judiciary in this context is that judges in constitutional democracies are set aside as guardians of individual rights.

Cherie Booth QC said this when delivering her lecture entitled "*The Role of the Judge in a Human Rights World*" at the 19th Sultan Azlan Shah Law Lecture at Shangri-La Hotel here this afternoon. More than 1,000 people attended the Lecture organised by the Law Faculty of the University of Malaya and among them were the University's Chancellor, HRH Sultan of Perak Sultan Azlan Shah and HRH Sultan of Selangor Sultan Sharafuddin Idris Shah.

Cherie added that it is an inherent aspect of the judiciary's institutional role in a constitutional democracy to do justice for all individuals - including the worst and weakest in a society. "In an age of human rights, the difference of course is that judges are afforded the opportunity and duty to do justice for all citizens by reliance on universal standards of decency and humaneness", said Cherie.

For those states that have their own human rights bills or that allow regard to be had in judicial decision-making to international or regional human rights standards, Cherie said there is a potential for judges to look beyond the remit of the common law to universal notions of justice embodied in the idea of fundamental rights. This potential is of undoubted importance for the citizens who are the direct beneficiaries of these rights.

"I can speak from my own experience here. As you may know the United Kingdom has recently taken steps to 'bring human rights home' through its Human Rights Act. These fundamental rights extend from the right to life to the right to marry; from the right not to be subjected to inhuman or degrading treatment to the right to a fair trial; from the right to free speech to the right of privacy: to name but a few. While Britain was very much involved in the drafting of the European Convention on Human Rights and was one of the first countries to sign it, up until five years ago, a British citizen could not stand before a British court and assert that his or her fundamental rights under the Convention had been violated. That was not an available option, for although Britain had signed the Convention, it had no direct force of law. The only use that could be made of the Convention in Britain was to refer to it as an aid in deciding the meaning of British legislation. Quite incredibly, we had to leave our shores and travel to Strasbourg to the European Court to seek protection of our Convention rights. And even if then, after that long and expensive road, the European Court agreed that British laws were incompatible with fundamental rights and freedoms, there was no *legal* obligation on our government to change them...

"Under the UK's Human Rights Act this historical justice deficit has been corrected by an invigorated potential for judges to

do right by reference, domestically, to standards respected globally. Now, because of the Human Rights Act, British citizens, like citizens in almost every European country, can rely in their Convention rights in their own Courts, before their own judges, and with the knowledge that their country has committed itself to the fulfilment of the highest ideals of human rights."

Cherie also touched on the conflict that arises between the need for national security and human rights. She said in the recent decision of the House of Lords in *A v Secretary of State for the Home Department* [2004] UKHL 56, 16 December 2004, the House had to grapple with this conflict when faced with a challenge to indefinite detention of foreigners at Belmarsh prison, but not nationals, under the UK's Anti-terrorism, Crime and Security Act of 2001. In that case, the House ruled that such detention was a breach of the European Convention on

Human Rights. She added that what this landmark decision makes clear is that the government, even in times when there is a threat to national security, must act strictly in accordance with the law.

She said: "To my mind what the *A* case further demonstrates is the potential for judges to educate the public about the real meaning of democracy. In this age of human rights, constitutional courts the world over have found themselves cast as educators in a national forum. With each and every contentious matter that these courts hear, judges are forced to grapple with opinions held by the public, often exemplified in parliamentary legislation subject to constitutional challenge. Judges are forced in their judgments to respond in a way that teaches citizens and government about the ethical responsibilities of being participants in a true democracy committed to universal human rights standards. This is so even when - one might say particularly when - a nation is confronted by the threat of terrorism. A judge's decision becomes then the vehicle by which one arm of the government reminds citizens of what it means to live in a democratic society. In the *A* case Lord Bingham powerfully addressed this issue in the following passage:

> 'I do not accept the distinction which (the Attorney General) drew between democratic institutions and the courts. It is of course true that the judges in this country are not elected and are not answerable to Parliament. It is also of course true... that Parliament, the executive and the courts have different functions. But the function of independent judges charged to interpret and apply the law is universally recognised as a cardinal feature of the modern democratic state, a cornerstone of the rule of law itself. The Attorney General is finally entitled to insist on the proper limits of judicial authority, but he is wrong to stigmatise judicial decision-making as in some way undemocratic...'

In our troubled times, where terrorism, division, and suspicion of others are order of the day, Cherie stressed that this role for judges is perhaps more vital than ever before. It is also a chance for judges to play a vital role as teachers in a national seminar on the topic of meaningful, inclusive democracy in the twenty-first century. In this role, the rhetorical possibility exists for judgments to draw upon relevant comparative and international rights experience to paint enriched and enriching tapestries of our common human rights and international law commitments.

In her ending note, she said: "We live in challenging times. Our institutions are under threat; our commitments to our deepest values are under pressure; our acceptance of difference and others is at a low point. It is at this time that our understanding of the importance of judges in a human rights age should be at its clearest. And it is at this time that our support for the difficult task that judges have to perform must be at its highest."

Cherie who is also the wife of the British Prime Minister, Tony Blair was born in Bury in 1954. She read law at the London School of Economics and Political Science (LSE) and created history when she became the first and only person to obtain an LSE degree with a first class in all her subjects. She then excelled in her Bar examinations and was called to the Bar in 1976. In 1995, she became Queen's Counsel, and was appointed as a Recorder in the County Court and Crown Court in 1999. She is also a Bencher of Lincoln's Inn and an Honorary Bencher of King's Inn, Dublin. She is a practising barrister and her areas of specialisation include public law, human rights, media and information law, employment law and European Community law. Recently, in *R (Shabina Begum) v Head Teacher and Governors of Denbigh High School* [2005] EWCA Civ 199 (Court of Appeal Civil Division), Cherie successfully represented a girl who was expelled from school for wearing a *hijab*, a case which raised the important issue of the right to manifest religious beliefs.

Perhaps it is about time the Publicity Rules for lawyers in Malaysia were relaxed further?

Let us have your views.

COMMONWEALTH LAW CONFERENCE 2005 REPORT

Roy Rajasingham
[Council Member of the Commonwealth Lawyers Association]

The 2005 Commonwealth Law Conference held in London, England from 11 - 15 September 2005 was a tremendous success and about 1,500 participants from 53 countries attended this memorable conference that had as its theme "Developing Law and Justice". It was the 50th Anniversary of the Commonwealth Lawyers Association [CLA].

The Conference was held at the Queen Elizabeth II Conference Centre in Westminster, London.

The Conference commenced with a welcome reception where all participants including most of the law lords and other eminent judges and jurists from the Commonwealth countries, senior practising counsels, professors of law and other prominent and eminent personalities mingled freely throwing aside status, title or their standing. Members of the legal fraternity interacted as members of one happy family.

There were keynote addresses on each day during the duration of the Conference, the Speakers being:-

1. HE Chief Olesegun Obasanjo, President of the Federal Republic of Nigeria and Chairperson in Office of the Commonwealth:

2. Sir Sridath Ramphal, former Secretary-General of the Commonwealth;

3. Rt Hon. Lord Bingham of Cornhill KG; and

4. Baroness Helena Kennedy QC.

The speech by Sir Sridath Ramphal was simply magnificent and inspiring and he received an overwhelming standing ovation from the hall that was filled to capacity. He spoke at length on the Commonwealth and that it is the common law that unites the Commonwealth countries. He also touched on human rights law extensively. He, inter alia, also said that "The common law approach with its distinctive methodology is interesting to other people. The global nature of transactions also dictates that commercial law in one jurisdiction has to be reconciled with another. If we can reinforce each other, talk with each other about standing up where judicial independence is threatened - show solidarity with our colleagues - this very much makes a difference."

He also alluded at length to the independence of the judiciary and the Bar arid the important Irole the CLA has played todate and has to play henceforth.

The other speakers were equally most impressive and made keynote speeches that will remain in the memory of all those present for a long, long time.

The Malaysians' presence at the Commonwealth Law Conference was well recognised and appreciated which included, amongst others, the Honourable Chief Judge of Malaya, YAA Tan Sri Dato' Siti Norma Yaakob, YA Dato' P.S. Gill [Federal Court] and YA Dato' Gopal Sri Ram [Court of Appeal].

Bar Councillors meet young lawyers over their Pangkor Convention Statement 2005

Contributed by Web Reporter, Website of the Malaysian Bar

About 40 young lawyers turned up at the Bar Auditorium yesterday evening to dialogue with Bar Councillors over their Statement issued at the National Young Lawyers' Convention in Pulau Pangkor on January 30 this year.

The dialogue began at 5.05 p.m. with Bar President Yeo Yang Poh, Vice President Ambiga Sreenevasan and Secretary Ragunath Kesavan taking the attenders through the Pangkor Statement paragraph by paragraph. Also present were Immediate Past President, Hj. Kuthubul Zaman Bukhari, National Young Lawyers Committee Chairman Indran Rajalingam and other Bar Councillors - Christopher Leong, Lim Chee Wee, Hj. Aziz Haniff and Roger Tan.

As a whole, it was a constructive engagement for the young lawyers with the Bar Councillors. Initially, it was feared that it would be another boring discourse as the first 40 minutes were spent discussing whether the Pangkor Statement ought to be adopted by the Bar Council. Yeo said it would be rather odd for the Council to adopt the Statement which called, *inter alia*, for the Council to be censured for failing to do enough to cause section 46A of the Legal Profession Act, 1976 to be repealed. "How can the Council censure itself by adopting the Statement as the Council's?", asked Yeo. Ambiga suggested that this Statement should just remain the Statement of the young lawyers so that they could say it in the way they liked. Then in walked Bon, Edmund Bon who was one the framers of the Statement.

Edmund said what the young lawyers wanted the Council to do was to go through the Statement and "endorse or where appropriate, adopt". Yeo was adamant that adoption would be difficult as what is appropriate or not would be subject to different opinions. For a moment, the room temperature rose as the exchanges between Edmund and Yeo appeared to get more heated. Richard Wee, Chairman of the Young Lawyers Committee of the Kuala Lumpur Bar said perhaps some parts of the Statement have now become academic as they were already overtaken by events, for example, the Council's efforts to get section 46A repealed have also received ministerial intervention.

Young lawyers, sometimes also known as young Turks of the Bar because of their fiery speeches, this time conducted themselves in a respectable manner and eloquently ventilated their views. One could easily notice the difference in the restrained tone of their speeches from the peevish tone in the Statement. Some of them like Edmund is also now a practitioner of more than seven years' standing. All in all, the dialogue did proceed to deal with a number of issues raised in the Statement in a cordial atmosphere.

Shadow Council

The Statement called for the inception of a Shadow Council which would consist of duly elected young lawyers and pupils similar to the composition of the Bar Council, and that the Bar Council should meet with members of the Shadow Council on a monthly basis to, *inter alia*, discuss decisions of the Bar Council and dialogue issues affecting the Malaysian Bar. Edmund conceded that this may no longer be necessary as there has been a big improvement by the current Council in the way information is disseminated to members, the most notable one being the revamp of the website of the Malaysian Bar. Roger said the term 'Shadow Council' is a misnomer as this term is often used by an opposition party in waiting to take over the Government and in this case the Bar Council. Roger suggested, perhaps it is more accurate to name it 'Young Lawyers Council'.

Reform of the Bar Council elections

A number of young lawyers spoke on this issue. They felt that there should be hustings for the Bar Council elections. "Every year we see the same old faces getting elected over and over again but we do not know what they do," said one young lawyer. Ragunath disagreed with the proposal not to tell members the attendance record of the incumbents at the Bar Council meetings as it is an important factor to be taken into account when voting Bar Council members. As regards hustings, Roger suggested that perhaps as a start, beginning with the next Council elections, candidates if they so wish may give a 2-minute audio election speech published on the Bar Website on what they will do for the Bar if elected. This appeared to find consensus among those present.

Amer Hamzah repeated the call that office-bearers of the Council ought to be elected at the Annual General Meeting of the Malaysian Bar. Ragunath said if this is allowed then capable outstation leaders such as Yeo may not stand a chance of being elected as the majority of those attending the AGM would be members of the Kuala Lumpur Bar. Amer said this might not be the case as outstation members would feel even more compelled to attend the AGM if they wanted their State leaders to be elected.

Continuing legal education

Simranjit Kaur Gill spoke at length about the revamp of the Ethics lectures. She was unhappy with the Council allegedly using the Ethics lectures as a sieve in the admission of new lawyers when the law does not give the Council such powers. She argued vigorously that at the first place no pupil should be failed at all in the Ethics examinations. Ambiga replied that if anyone had failed the Ethics examination, it was because he or she truly deserved to fail. She lamented over the standard in some of the answers given by the pupils who did not seem capable even to comprehend simple questions. Yeo revealed that there was one case when the pupils were asked which account should the money received from the clients be deposited into. One pupil just answered simply, "bank"! Chee Wee agreed with Ambiga about the appalling standard in some of the pupils' answers and their command of English, and he attributed this to several factors including our education system. One young lawyer, Fahri Azzat broke ranks with Simranjit and said bluntly that we do not need "crap" lawyers and if a pupil could even fail simple Ethics examination, then he or she must be "stupid", and just "stupid" and nothing else! Yeo however conceded that Simranjit raised a very pertinent point and he hoped the Qualifying Board would be able to push through the proposal for a Common Bar Examination (CBE) as soon as possible as there was some delay due to opposition coming mainly from the local universities.

Pupils' welfare

Yeo agreed to look into the proposal that a survey be conducted by each State Bar Committee on a pupil's minimum allowance having regard to the cost of living and rate of inflation to see if a mandatory minimum allowance ought be implemented.

Touting

On the proposal that the Bar Council should immediately form a Committee Against Touting which shall be mandated to investigate complaints and report its findings and recommendations to the Bar Council as well as to initiate disciplinary action, Yeo asked whether this is necessary when we already have so many Committees and any complaint can be directly lodged with the Disciplinary Board anyway. S. Karthigesan of Perak Bar explained that this statement was inserted because the mover of it, a young lawyer in Perak, spoke so passionately about how his livelihood had been affected by touts. Karthigesan also related an incident involving another lawyer who alleged that very shortly after his motorcar accident, he was approached by a Police Inspector to engage a particular lawyer for his services. He also alleged that some wealthy touts were also taking care of medical bills of the lawyers. Roger said he was very disturbed with what had been said about the influence and power of touts and he said the Council ought to look into this proposal. "If we can set up the SRO Enforcement Committee, I do not see why we cannot set up a Committee to combat touting. If we don't, conveyancing lawyers will say we are discriminating against them as we are not enforcing this law against touting with similar zeal and resolve like the way we enforce the no discount rule," said Roger.

With that note, the dialogue ended at 7.00 p.m. and Yeo thanked all the young lawyers for turning up even though it was a small number. He hoped this new trend of engagement with young lawyers would continue.

Outside the Auditorium, Richard told the *Web Reporter* that he was very happy to note that these days young lawyers are no longer afraid of speaking up on issues affecting the legal profession. "This is an encouraging sign and I also hope more young lawyers will come forward and take part in the many activities organised by the National Young Lawyers Committee of the Bar Council," said Richard.

Humour

Filial Piety

A sister and brother are talking to each other when the little boy gets up and walks over to his Grandpa and says, "Grandpa, make a frog noise."

The Grandpa says, "No."

The little boy goes on, "Please Grandpa...please make a frog noise."

The Grandpa says, "No, now go play."

The little boy then says to his sister, "You go tell Grandpa to make a frog noise."

So the little girl goes to her Grandpa and says, "Make a frog noise, Grandpa."

The Grandpa says, "I just told your brother no, and I'm telling you no."

The little girl pleads, "Please...please Grandpa make a frog noise."

The Grandpa says, "Why do you want me to make a frog noise?"

"Because," the little girl replies, "Mommy says when you croak we can go to Disney World!"

Asian Governments Should Uphold Human Rights

Contributed by Web Reporter, Website of the Malaysian Bar

It is important, not only to international law, but to the very survival of all peoples, that those in power should further the noble cause of upholding human rights in their countries.

Chief Justice of Western Australia, The Rt Hon David K Malcolm said this at the Inaugural Tun Hussein Onn Lecture entitled "*Development of Human Rights throughtout the Asia-Pacific Region*" at the Crowne Plaza Mutiara Hotel here this morning.

The Lecture is one of the highlights of the three-day Asia Pacific Lincoln's Inn Meet 2005 organised by the The Honourable Society of Lincoln's Inn Alumni Association of Malaysia (LIAAM). Present were HRH Sultan of Perak, Sultan Azlan Shah, several children and grandchildren of the late Tun Hussein Onn, a former Prime Minister of Malaysia, President of the Court of Appeal, Tan Sri Dato' Haji Abdul Malek, senior lawyers and LIAAM members.

Earlier, the President of LIAAM who is also an Honorary Bencher of Lincoln's Inn, Justice Dato' Gopal Sri Ram paid tribute to the late Tun Hussein Onn who was our third Prime Minister from 1976 to 1981. Dato' Gopal Sri Ram said as Prime Minister, Tun Hussein Onn always advocated the rule of law citing an example when the late Tun had no qualm of appearing in court to give oral evidence despite his heavy schedule as Prime Minister. The Lecture, said Dato' Gopal Sri Ram was therefore aptly named in honour of the late Tun Hussein Onn.

In his lecture, Chief Justice Malcolm said assertions of cultural differences to explain the failure of nations to guarantee even the most fundamental of human rights, such as the protection of the individual, could no longer be accepted. He said there must be an acceptable minimum standard of protection for human rights common to all cultures, an obvious reference to remarks made by some Asian leaders - Singapore's Deputy Foreign Secretary who said in 1993 that human rights and freedom of the press were Western concepts; Thai Prime Minister, Chuan Leekpai who argued in 1993 that human rights should vary in their application according to differences in socio-economic, cultural and historical background; Indonesia and Malaysia for maintaining that the "Asian way" must emphasise national security, economic progress, local cultures and the needs of the society as a whole and that the free-wheeling, individual-oriented approach to human rights is unsuitable to Asia's developing countries, and Dr Mahatir Mohamad who suggested when he was the Prime Minister that the effort to settle upon a universally accepted standard of human rights protections and adherence to the rule of law was an attempt to impose a new form of Western imperialism.

Chief Justice Malcom added that apart from cultural objections to the application of human rights norms, some Asian governments have used the shield of sovereignty to refuse to accept international practice on the ground that

a State cannot be forced to follow the practice of other States or agree to honour the terms of any treaty.

However, he said it was encouraging to note that China being the largest country in the Asia-Pacific region and a former communist stronghold is actually making significant steps towards reform. He said it was significant to note that the People's Republic of China did not prevent the incorporation of the *International Covenant on Civil and Political Rights* into the domestic law of Hong Kong by enacting amendments to the country's Constitution, inserting a clause that "the state respects and protects human rights".

Chief Justice Malcolm concluded by saying: "... I would note that it is important, not only to international law, but to the very survival of all peoples, that the argument between cultures not be bogged down in semantic arguments about Western 'rights' and Asian 'duties'... For our own part, as members of the legal fraternity, the maintenance of public confidence in the independence of judiciary is essential to the public acceptance of the law and the legal system. A loss of that confidence can lead to instability and threaten the very existence of society."

Three other distinguished speakers delivered their papers and they were :

- The Development of Medical Negligence Litigation in England and Wales: *The Hon. Sir Michael Wright, rtd. Judge of the High Court of England and Wales.*
- The Contemporaneous protection of Economic, Social and Cultural Rights: *The Rt. Hon. Arrianga Govindasamy Pillay, Chief Justice of Mauritius.*
- Banking and Finance: The Law in Transition: *William Blair, QC, Visiting Professor of Law, London School of Economics and Part Time Chairman, Financial Services and Markets Tribunal, UK.*

Colonel David Hills, Under Treasurer of Lincoln's Inn spoke on the proposed changes to the Framework of the Provision of Legal Services in England and Wales. Later an Advocacy Skills Workshop was conducted by Patrick Talbot QC, John Randall QC and Michele O'Leary. The Meet ended with a Gala Dinner .

HRH Sultan Azlan Shah with VIP Guests and LIAAM Committee Members

Malaysia / Singapore Bench & Bar Games 20-22 May 2005, Singapore

by Web Reporter

The Annual Malaysia/Singapore Bench and Games 2005 was hosted by Singapore between the 20th to the 22nd of May 2005. The Malaysian contingent was headed by our Honourable Court of Appeal Judge, YA Ariffin Zakaria. The Singaporeans were led by their Malaysian-born Chief Justice Yong Pung How.

The Malaysian contingent, participants and supporters alike, arrived around mid-day on 20th May 2005 and checked into Rendezvous Hotel located at Jalan Bras Basah.

Following tradition, this year's curtain raiser to the games begun at the hockey pitch. True to our status as the region's hockey power-house, our boys notched our first point after thrashing Singapore 1-0, albeit being forced to play on a grass pitch akin to a *padi* field. Our boys definitely passed the versatility test with flying colours, had that been the intention of the host in the pitch selection. Our boys now have the honour to say that no matter turf or grass, it's supremacy no less.

The host then treated us to a welcome reception at the Little Bali where the participants mingled with old foes and the newcomers made new friends. We had a cake cutting ceremony to officiate the start of the games followed by a welcome speech by the President of the Malaysian Bar, Mr. Yeo Yang Poh and the President of the Law Society of Singapore, Mr.Philip Jeyaratnam, SC. As the next day was going to be a long and grueling day, the participants, save for the hockey boys who had already completed their task, called it a day by midnight.

Badminton

Swimming

The second day started early with the racquet games being played at the Singapore Swimming Club. Our Badminton team went into battle in the courts as defending champions and excelled under pressure to maintain our winning streak by trouncing their Singapore counterparts 4-1. We swept almost all the matches at stake but in true traditional sportsmanship spirit, we sacrificed our Ladies Doubles team to allow Singapore to have their sole point.

Then, our traditional losing streak in the other racquet games continued in squash, table-tennis and tennis.

The squash competition where the Singaporeans have in recent emerge victorious however went down to the wire. The Malaysians gave it all they had. They were not going to let the Singaporeans take the crown without a fight till the end. It

was definitely a nail-biting extravaganza as the score was even right down to the last match. Unfortunately for us, luck was not on our side again and we conceded the decider after a close battle. The final score was 4-3.

In table-tennis, the score was 3-2 in favour of the Singaporeans. Although the defeat came as no surprise it is probably about time that we search for the elusive secret weapon to turn the tables on the Singaporeans in the forthcoming games.

In tennis, our lack of women participants led to our defeat to the Singaporeans who won the competition with a score of 6-1.

Then we had the first friendly event of the games at the Singapore Recreation Club. It was time for the age-old board game of chess. The battle of the supremacy of the minds ended in favour of the Singaporeans with a score of 4-1.

By mid-day on the second day of competition, the overall score stood at 3-2 in favour of the host.

At the Tessensohn Clubhouse, our reigning champion bowlers headed to Planet Bowl to defend their crown and to attempt at leveling the overall score for Malaysia. True to our reputation, the Malaysian bowling team trashed the Singaporeans 10-3. The Singaporeans yet again could not keep up to the beat of our dynamic keglers and were left to count their loss again.

At 4.00 p.m., our very determined Netball girls headed to Kallang Ground to redeem the walkover defeat conceded to the host team two years ago in Singapore. As the girls warmed up, the clouds above darkened. But our Netball girls had no fear, for come rain or shine they were all ready to go for the 'kill'. The Singaporeans probably smelled the rage of fire in our girls and somehow took almost 'forever' to warm up before the match finally got under way. Our girls went on the attack from the first blow of the whistle and barely 10 minutes into the game the score was already at 6-1 in favour of the Malaysians. Unfortunately, the inevitable rain came and the match was halted. As the rain subsided, the Singaporean team who probably knew that their defeat was imminent if they continued play, decided to call it quits and proposed for it to recorded as a draw. The Malaysians refused to agree to the draw and persuaded vehemently for the umpire to call for continuation of the game. However, the Singaporeans were adamant that it was too dangerous for them to resume play on a wet ground. Our girls were undaunted by the supposed danger and insisted on recommencing the game. We even had some Malaysian men supporters to their feet picking up the mop and drying the ground to displace the fear of the Singaporeans and for play to carry on. The Singaporeans stubbornly refused to proceed and all the persuasion and effort of the Malaysians was in vain as the game was declared a draw. Sadly for the Malaysians, the team was robbed of a victory.

Netball

Ladies Football Team

Our girls, determined not to disappoint the Malaysian supporters then assembled two teams among themselves and gave a heartfelt display of true talent, grit and preservation in a friendly game, much to the embarrassment of the Singaporeans who expectedly left the ground as swiftly as they could.

Next on the agenda, was the Veterans soccer match where our old boys were out to prove they still have what it takes to battle it out with their old nemesis. The Singaporeans were however out to regain the crown they lost last year and after a slippery and wet game in the rain, the Veteran Singaporeans claimed victory with a score of 4-1.

The night ended on a low note for the Malaysians who were trailing Singapore 3 ½ -4 ½ in the overall standing

The final game for the night was another friendly at the Guild House at Adams Park where the respective Sports Chairman of both countries led the team to a game of darts. It was a close fight between the teams as the teams took turns to lead the game. However, the Malaysians were unlucky as they failed to hit the bulls-eye and lost to Singapore with a score of 2-1.

The final day of competition started with Golf, which was played at the Singapore Island Country Club. Led by our Chef-de-mission, the Honourable YA Ariffin Zakaria, it was judgment day for the Malaysian team and the golfers knew the burden was on their shoulders to deliver a point to get Malaysia back on even ground in the overall standing. The golfers played hard for their hole-in-one and ended the game by retaining their victorious crown against the Singaporeans to garner the point Malaysia needed to be back on level with the Singaporeans.

At the cricket ground, our cricketers started their battle for supremacy for the Dhillon Trophy. It was a grueling match which went on for 6 hours. Malaysia won the toss and sent Singapore in to bat. Our bowlers kept the runs down to a respectable score of 67 runs after 20 overs but we lacked a couple of effective bowlers to tie down Singapore during the last part of their innings which proved to be costly. The Singaporeans amassed a score of 4 for 195. The wicket takers for Malaysia were A. Sivam who took 1-19, Sanjay Mohanasundram who took 1-28, Mark Talalla who took 1-33 and Safwan who took 1-36. At the change of innings, Malaysia went into bat and our batsmen kept the run rate ticking. At the halfway point of our innings we were 66 runs after 20 overs. There was some batting from Conrad Young who scored 43 (and won another bat) and Rienzie Delilkan who scored 23. However, they lacked support from the remaining batsmen and by 30 overs, we were chasing almost 100 runs. It was an uphill task from then and Malaysia closed their innings at 157 runs.

Then in the afternoon, it was action at the pool where our swimmers were looking to put their defeat last year behind them and to regain their supremacy in the pool. However, the Singaporeans had other plans on their mind and swam to victory.

With the Malaysians on the verge of defeat in the Games, our Ladies Soccer team was left to shoulder the burden of getting a point for Malaysia. Our Ladies Soccer team, who have never won or scored any goal in all the previous Games so far and who always ended up as the whipping girls, was committed to give their best and to make life as difficult as possible for the confident Singaporeans.

The match started in the steaming hot afternoon sun in the grounds of the New Town Secondary School. Our girls charged into the pitch and scored the first goal of the game and the first ever for a Malaysian Ladies Soccer team in the first minute much to the shock and disbelief of the Singaporeans. It was a historic 1-0 lead for the Malaysians and the Singaporeans knew then it was not going to be stroll in the park for them this time around. The Malaysians gave it their all and held on the lead until the Singaporeans found an opening and scored the equalizer. Malaysia defended hard and as fatigue was seeping in with the punishing hot afternoon sun, the Singaporeans found their next goal. The Malaysians did not give up and kept on the attack. Unfortunately the Singaporeans were awarded a penalty, which they had no trouble converting to take their familiar lead with the score at 3-1. The gritty girls were not about to let the Singaporeans go without a fight till the end. In the closing minutes, the Malaysians were rewarded with a penalty and our girls had their second goal. But it was too much to ask of our girls as time ran out and the final score was 3-2 for the Singaporeans. But our girls left the pitch with their head held high as it they gave the best display of ladies soccer than any of their predecessors in the Games. The Singaporeans, who took the Malaysians for granted, knew that our goals were no fluke and they would be foolish to think that next year will be another sure-fire victory for them. Our Ladies Soccer team will be waiting to scalp them of their pride when the teams meet again next year.

The other traditional, pulsating friendly game of Tug-of-War, which was supposed

to take place the same evening at the same venue was however cancelled as the venue was deemed unsuitable for the event by the host.

Elsewhere, at the MacRitchie Reservoir, the Cross-Country team did their part for the friendly competition in a 4km run through the hill and roads. The Malaysian team emerged champions ahead of the Singaporeans and scored Malaysia its first point in the friendly games.

As the Premier Soccer match begun, a wave of sadness overcame the Malaysian contingent as we knew that defeat for Malaysia in the overall standing was certain and Singapore would be crowned Champion of the Games to end Malaysia's hat-trick victory at the last three Games.

Nevertheless, our Premier Soccer boys knew that it was not over till the last whistle was blown and they were out to show the Singaporeans that in Premier Soccer, Malaysia was still a class above them. Singapore with a couple of players of European descent was out to snatch a win from the Malaysians who have been reigning Premier Soccer champions for many years. But Malaysia had a secret weapon in our nationally qualified goalkeeper who made many of the Singaporeans' attempts at goal futile. Our strikers did their part and tore the Singaporeans goal four times to take the game to a final score of 4-2. The Malaysians took the Premier game yet again and the Singaporeans knew that they have to do much more than having two European blooded players to boost their chances of stealing the heavily guarded crown of Premier Soccer champions in years to come.

The games ended on a desolate note for the Malaysian team. After months of training and preparation, we conceded defeat to the Singaporeans with a final score of 7 ½ to 5 ½

The participants were then treated to an evening of fun at the traditional Dinner & Dance which was held at the Oriental Hotel where the talented retired Judicial Commissioner RR Chelvarajah entertained the crowd with his witty emceeing. All competitiveness of the games was forgotten and the Singaporeans hosted their Malaysian counterparts from the Bench and the Bar, to an evening of good food, ample variety of drinks and entertainment. The conventional performance by volunteers from both countries had the host providing a two-sister team performance of a rendition of old songs while the Malaysian team had a duo team from Johor, Karen Denise d'Silva and Tng Poh Ying perform on keyboard and guitar.

As the scores of each game were read out by the emcee, the respective victorious teams were applauded. However, the biggest applause for the night was definitely for the Ladies Soccer team who almost snatched victory from the very confident and strong Singaporeans. Our Netball girls were also unofficially deemed by the Malaysian contingent, Champions of their match over the 'sporting' Singaporean team.

The epitome of the evening was none other than the age-old pride of the Boat Race friendly competition. The Malaysian team, who takes great pride in being Boat Race champions for several years until the unexpected defeat last year was confident of redeeming themselves this time around. Three men and one woman took the stage and had the whole Ballroom to their feet cheering them on. The Malaysian team took revenge and re-emphasized the notion that the Malaysian Bar still has the best and fastest drinkers in the region. The victory of the Boat Race team no doubt brought cheers back into the Malaysian contingent.

As the participants slowly enjoyed the night away, dancing, drinking, socializing and making new friends, the night came to an end. As farewell, goodbyes and name cards were exchanged, the Games drew to close.

The Malaysian team will certainly be back next year as host to reclaim the Judge's Trophy that we had for three consecutive years. For now, we shall be contented with the privilege of holding the Lawyer's Mug, which in recent years has been in the Singaporean realm.

First Quadrangular Golf Competiton

by Balan Nair

The Inaugural Quadrangular Golf meet was staged by the Sarawak Law Society in Kuching on 2nd July. The champion's trophy for the event was donated by Tan Sri Steve Shim, the Chief Judge of Sabah and Sarawak, thus the moniker for the event, Tan Sri Steve Shim's Trophy. The teams that participated were the peninsular Malaysian Bar, the Singapore Law Society, the Sarawak Advocates Association and the Sabah Law Association, comprising in all 75 players. The Sarawak contingent included the evergreen Chief Judge himself, a keen golfer likes to, and always does, put fright into members of his flight with his terrific grasp of the game. The writer can say this for certain for he was once a victim of the judge's mean strokes.

It had always been a burning desire to play in the courses of Sarawak for they are known for the challenging fairways and tricky greens. Staying in Kuching and playing in the Sarawak Golf Club, where the competition was to be held, was an added pleasure for Kuching is one of the most pleasant cities in Malaysia to visit and to live in. The city is clean and habitable and the locals are friendly. The writer is never bored to visiting this city, and did so recently for the Pan Malaysia Hash bash. The message here is: if the Sarawak Advocates Association wishes to host another or other golf competitions, no matter under the guise – we will be there again, and again.

As is always the case the peninsular team was the largest forty in all. Our great number and the event that we were going for was even announced by the caption of the Air Asia plane while in flight. The exhilaration was however engulfed by trepidation on touchdown as rumours wafted in the air that we were in for a slaughter. Even as we checked into the downtown Harbour View Hotel we were warned of what a terrible course Sarawak Golf Club was. A good number of the participants thought that the way to avert a massacre was to go play a practice round there just to "get the feel". Alas the mere mortals that we are make us forget the adage "Man proposes God disposes". How true, for the majority of those who went there to get the feel never had it when it mattered the next day. This is not to derogate on the beauty of the course or its layout. It was indeed a challenging course, and it should rightfully be. Otherwise it would be like playing in a kiddie course

The winners - Malaysian Bar Team

where there will be too many winners and not enough prizes to go around.

Dinner after the bruising (to the ego) game was held in the Holiday Inn. The atmosphere was cheerful despite the lousy game most of us had. Many were in high spirit as they were happily imbibing spirits, probably to drown their sorrows. The guest-of-honour was Tan Sri Steve Shim who had not only played well, but brought along his lovely wife to watch him gloat. The challenge trophy predictably went to the peninsular Malaysian Bar, the winner of this inaugural meet, and the individual merit for the best gross score went to Abdul Rashid Hassan of the Johore Bar. This guy's on a winning spree currently and unassailable for the moment. Good for him.

The night after the dinner and prize-giving was wild to some and mild to others. Groups of marauding golfers were streaming towards the pubs and restaurants in search of … foods and drinks? There indeed was some active night life going on in Kuching although the city during the day gives an impression of dullsville. These spots are well frequented by the locals, and by those who have friends among them, as some of us did. Those of us who hung around the friends of the friend stood to gain the warmth and friendliness of Sarawakian hospitality. Those who did not went early to bed enjoy the warmth of their beds.

As usual going back home the following day was a painful chore, what more with the thrice-delayed night flight. But go we must, as we were not eligible for Sarawak residence status. That issue continues dogging the cross-straits affair, and remains a dichotomy in nation-building. It is hoped that common sense will prevail soon.

Once again a big hurrah to the organizers and to the Sarawak Advocates Association in staging the event so successfully, in particular to Richard Liow and his committee or having slogged it out to ensure its success. A special mention also goes to Tan Sri Steve Shim for graciously consenting to present a trophy for the event and in participating in the game and prize-giving ceremony. The next quadrangular event will be staged in Sabah where it is promised by the Sabah Law Association's golf convenor Anuar Ghani Gilong that the fun and merriment will be double that in Kuching. The competition is slated to be held in Tawau. The game may be boring to some and expensive to others, but it certainly has its dividends. Any new converts to golf??

The Captains exchanging mementos. Joseph Liow (Singapore), K Puspalingam (Malaysia), Richard Poh (Sarawak) and Anuar Ghani (Sabah)

The top scorers Malaysian Team

Dinner hosted by HSBC Private Bank, Tan Sri, Puan Sri, Mrs Leau

Liberalisation and the legal profession

The General Agreement on Trade in Services ('GATS') came into force in 1995. Under GATS, the Malaysian Government is committed to liberalising 14 local sectors including legal services. There has been increasing pressure from foreign countries, notably, Australia and New Zealand keen to have the Malaysian legal services market open up. Conversely, Malaysia has also requested several ASEAN countries to open up their legal services market. Within the Malaysian Government itself, a major proponent of GATS is Miti Minister, Datuk Seri Rafidah Aziz, according to a report filed by Elizabeth John and K T Chelvi of *The New Straits Times*.

When the idea of opening up the legal services market was first mooted, the Bar Council, in a typical knee-jerk reaction, was adamantly against it. There was a not-unreasonable fear that opening up the doors would allow an influx of foreign lawyers into the country to compete against the home-grown talent. We also feared huge foreign firms would take away the more lucrative cases.

We have, however, come to realise, in the words of the Borg, that resistance is futile, that liberalisation is the way of the future. Thus the Bar, under the leadership of its then president, Mah Weng Kwai conducted a survey to obtain the views of the members. Only 10% of the members returned the questionnaire. These members were agreeable to liberalisation provided certain safeguards were in place. The remaining 90% either did not care or laboured under the belief that liberalisation would have no effect on them. The Bar despite its initial reluctance to open up services, is now of the view that liberalisation is inevitable. The only question is whether we act to introduce it on our terms or eventually have it forced on us.

A major part of the Bar's say on liberalisation is contained in proposed amendments to the Legal Profession Act (LPA) 1976. These proposed amendments are based on the Singapore experience with liberalisation. This means that, for the time being at least, foreign lawyers seeking to practise here would have to be employed by a local firm or a foreign firm would have to enter into a joint venture with a local firm. Whether the joint venture would be within the purview of an enhanced (and empowered) Bar Council or, as in Singapore, come under the purview of a department of the Attorney-General's Chambers Secretariat, is left to be seem.

The Bar Council's proposed amendments and guidelines include the definition of foreign lawyers, their permitted areas of practice, the structure of practice, entry qualifications and a requirement for technology transfer. Foreign lawyers who are permitted to come in must have sufficient seniority, be in active practice at home and have recognised expertise.

The areas of practice open to them in Malaysia is restricted to specialised fields like cross-border transactions, international capital markets, asset securitisation and such other work as may be prescribed by the Bar Council.

The Bar Council's proposed amendments and rules were drafted some two years ago and have since been presented to the A-G's Chambers. The council has had working meetings with the A-G's Chambers to fine-tune the proposed rules and amendments. The fine-tuning process ought to be completed by the end of this year.

Under these rules, foreign lawyers would be subject to Malaysian laws and disciplinary rules, including publicity rules. These rules are essential to protect the interests of the local Bar. As Mah Weng Kwai, Chairman of the Bar's GATS Committee puts it, "We don't want the legal profession to be used as a bargaining chip to further the interests of other professions that are keen for an overseas market."

The irony of talk about opening the doors to globalisation, when the door to the East Malaysian legal sector remains shut to their West Malaysian counterparts (but not vice versa) is not lost to the Bar. There are some who feel the issue of a private East Malaysian Bar be tackled first before going global. However, the accepted wisdom is that we do not have the luxury of time. If we do not open up, and open up soon, we risk being left behind, missing the market, expertise and technology. And this applies to the East Malaysians as much as it does to us.

The effects of GATS and AFAS on the legal profession

Contributed by Web Reporter, Website of the Malaysian Bar

What is GATS? What is AFAS? How do they affect the legal profession? In this age of globalisation, when must we face the inevitable, that is, opening up our legal services to competition with foreign lawyers in Malaysia? What is the role of the Bar Council and its GATS Committee in this? These are but some of the written questions posed by the *Web Reporter* to the Chairman of the GATS Commitee, *Mah Weng Kwai* (pic) whose answers are a must-read for all members.

1. What is GATS?

It refers to the General Agreement on Trade in Services, otherwise known by its acronym, 'GATS'.

The GATS must not be confused with the GATT (General Agreement on Tariffs and Trade). The GATS actually came about as a result of the negotiations under the GATT. The GATT (which came into effect in January 1948) was concerned with trade and tariff concessions in goods. There were several rounds of negotiations under the auspices of the GATT and the most comprehensive round of negotiations was the Uruguay Round which began in 1986 and was finally concluded on December 15, 1993. New issues, including 'services' were included in the Uruguay Round. The results of the Uruguay Round were set out in the 'Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations'. The Final Act was signed on 15 April 1994 and the principal agreement to this 'Final Act' is the Agreement Establishing the WTO (or the WTO Agreement). Annexed to the WTO Agreement are various agreements, including the GATS.

On 6 September 1994, Malaysia formally ratified the establishment of the WTO. Malaysia was the 23rd country (out of 117 countries at that time) to ratify the WTO Agreement.

The GATS came into force on 1 January 1995 and is binding on all Members of the WTO. The GATS established for the first time, a multilateral framework for the progressive liberalisation of trade in services. Under the GATS, successive rounds of negotiations will be undertaken to continue opening up world trade in services.

The current round of trade negotiations under the GATS is known as the 'Doha Development Agenda'. This current round began in 2001 and was to have been completed by January this year. The new deadline is the end of 2006. The WTO will be holding its ministerial conference in Hong Kong in December this year and the framework and principle, based on which detailed measures on certain liberalisation processes are to be taken by each Member state, will be decided upon.

2. How does the GATS affect our legal profession?

The GATS applies in principle to all services sectors, including professional services. Certain services are excluded from the GATS. Article I (3) excludes services supplied in the exercise of governmental authority - these are services supplied neither on a commercial basis nor in competition with other suppliers, e.g. the judiciary.

Legal services, being one of the professional services, is included under the GATS. Legal services are listed as a sub-sector of business services and professional services in the WTO ' Services Sectoral Classification List'.

By agreeing to become a WTO Member state, a country agrees to abide by the GATS. The GATS includes some provisions that are generally applicable and thus apply to trade in legal services in every country, including Malaysia. The most important generally applicable provisions are:

(i) Most Favoured Nation requirement ('MFN') (Article II) ;
(ii) Transparency (Article III);
(iii) Procedural review section of the domestic regulation provision (Article VI para 2) ; and
(iv) Recognition (Article VII)

The MFN provision requires a Member state to accord all Member states the same treatment with respect to measures affecting trade in services that it accords to any Member state. At the time the GATS was signed, a WTO Member state was entitled to place legal services on an MFN exemption list. The countries that have MFN exemptions for legal services are Brunei Darussalam, Bulgaria, Dominican Republic and Singapore.

Pursuant to the transparency obligations under Article III, Member Bars (including the Bar Council) are expected to work to ensure that all measures regulating legal services in their respective Member states are, or will be published or publicly available.

Article VI is the domestic regulation provision. The domestic regulation provision includes a country's licensing and qualification rules for its own lawyers. Article VI has six subsections, only one of which, i.e. para 2, is generally applicable to all WTO Member states. This particular provision requires each WTO Member state to maintain or institute procedures which will allow for an objective and impartial review of any negative decisions by a country to exclude foreign lawyers. However, this will not apply if it would be against the country's constitutional structure or nature of its legal system.

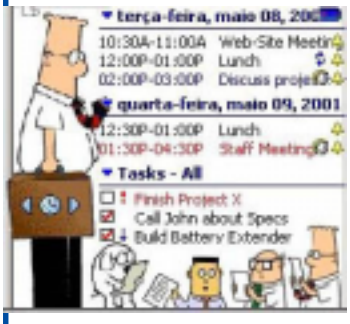
Pursuant to Article VII, recognition issues (i.e recognition of the qualification of lawyers who are already licensed to practise in another Member state) may be handled through 'Mutual Recognition Agreements' (MRAs) that are negotiated between Member states. An MRA is a bilateral or multilateral agreement to establish mechanisms of equivalency that recognise qualifications of professionals from another jurisdiction as equivalent to that of domestic qualifications.

Apart from these generally applicable obligations, there are certain provisions in the GATS that apply only if a country has listed legal services in its Schedule of Specific Commitments. Schedules of specific commitments form an integral part of the GATS agreement. Initially when each Member state filed its Schedule of Commitments, there was a specific format to be used. This format required a country's Schedule of Commitments to distinguish among the following 4 different modes by which legal services may be offered:

Mode 1 (Cross border supply) – e.g. when lawyers offer advice to a client in a different country by phone, fax or e – mail.

Mode 2 (Consumption abroad) – involves the purchase abroad by a country's citizens of the services of foreign lawyers;

Humour



A magazine recently ran a "Dilbert quotes" contest. They were looking for people to submit quotes from their real-life Dilbert-type managers. Here are the top ten finalists:

1. "As of tomorrow, employees will only be able to access the building using individual security cards. Pictures will be taken next Wednesday and employees will receive their cards in two weeks." (This was the winning quote from Fred Dales, Microsoft Corp. in Redmond, WA)
2. "What I need is an exact list of specific unknown problems we might encounter." (Lykes Lines Shipping)
3. "E-mail is not to be used to pass on information or data. It should be used only for company business." (Accounting manager, Electric Boat Company)
4. "This project is so important, we can't let things that are more important interfere with it." (Advertising/ Marketing manager, United Parcel Service)
5. "Doing it right is no excuse for not meeting the schedule."(Plant manager, Delco Corporation)
6. "No one will believe you solved this problem in one day! We've been working on it for months. Now, go act busy for a few weeks and I'll let you know when it's time to tell them." (R&D supervisor, Minnesota Mining and Manufacturing/3M Corp.)
7. Quote from the Boss: "Teamwork is a lot of people doing what I say."(Marketing executive, Citrix Corporation)
8. My sister passed away and her funeral was scheduled for Monday. When I told my Boss, he said she died on purpose so that I would have to miss work on the busiest day of the year. He then asked if we could change her burial to Friday. He said, "That would be better for me ." (Shipping executive, FTD Florists)
9. "We know that communication is a problem, but the company is not going to discuss it with the employees." (Switching supervisor, AT&T Long Lines Division)
10. One day my Boss asked me to submit a status report to him concerning a project I was working on. I asked him if tomorrow would be soon enough. He said, "If I wanted it tomorrow, I would have waited until tomorrow to ask for it!"

Mode 3 (Commercial presence) – involves foreign lawyers establishing a permanent presence in a country, e.g. by setting up a branch office.

Mode 4 (Movement of natural persons) – involves foreign lawyers entering a country in order to offer legal services. This is linked to mode 3 but it also covers foreign lawyers who fly in temporarily to provide services.

Malaysia has listed legal services in its Schedule of Commitments, covering only advisory and consultancy services relating to home country laws, international law and offshore corporation laws of Malaysia. Market access in terms of commercial presence (i.e. mode 3) is allowed only in the Federal Territory of Labuan and legal services can only be supplied by a corporation incorporated in the Federal Territory of Labuan to offshore corporations established there.

When making a commitment, a government undertakes not to impose any new measures that would restrict entry into the market or the operation of the service. Commitments can only be withdrawn or modified after an agreement of compensatory adjustments with affected countries. Commitments can however be added or improved at any time.

If a country has listed legal services in its Schedule of Commitments then it will be subject to other obligations under the GATS, in addition to the generally applicable obligations.

3. How are negotiations carried out under the GATS?

It is carried out based on a request – offer system. At the end of this current round of negotiations, what has been agreed upon among the Member states, based on the requests and offers, will be scheduled in the respective Member states' Schedule of Commitments.

Malaysia tabled its initial offer on 3 December 2004 in the following sectors:

(i) computer & related services;
(ii) telecommunications;
(iii) construction & related services;
(iv) architectural services;
(v) health-related services & social services;
(vi) higher education services

4. Have we made any offers in legal services?

Malaysia has not made any offers in legal services. Except as provided for under section 18 and 28A of the Legal Profession Act 1976, foreign lawyers are currently not permitted to practise in Malaysia.

5. Which countries have made initial offers in legal services?

The countries which have made offers in legal services are Australia, China, EC, Poland, Korea and Japan

6. Have any countries made requests to Malaysia in respect of legal services?

Yes, Australia, Unites States of America, Canada, China, EC, Japan, New Zealand and Switzerland have made requests. Generally, these requests are for the removal of the restriction that legal services can only be provided through a corporation incorporated in Labuan.

7. Has Malaysia made requests in legal services?

Yes, Malaysia has made requests to Thailand, Indonesia, Myanmar, Philippines, Singapore and Brunei.

8. Are we required or expected to open our market to foreign lawyers under the GATS?

Article XIX of the GATS provides that Member states shall enter into successive rounds of negotiations with a view to achieving progressively higher levels of liberalisation and that this process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual members. Although it is not a requirement that we must open up our market to foreign lawyers, there is an expectation that sooner or later, foreign lawyers should be allowed to practise here.

9. What steps have been taken by the Bar Council in addressing these developments?

The Legal Profession Committee and the GATS Committee of the Bar Council have prepared draft legislation, comprising an amendment to the Legal Profession Act 1976 (to add a new Part IVA) and the introduction of a set of rules to facilitate the admission of foreign lawyers. The proposed legislation has been approved by the Bar Council. Pursuant to the proposed Part IVA of the Act, foreign firms will be allowed to form Joint Law Ventures (JLV) with Malaysian law firms. The Malaysian firm shall have at least 70% of the equity and voting rights in the JLV. Further, a JLV shall only be entitled to engage in 'Permitted Practice Areas', which at the moment are defined to include legal work relating to transactions regulated by Malaysian law and at least one other national law, transactions regulated solely by any law other than Malaysian law, international capital markets, asset securitization and such other categories of work as may from time to time be prescribed by the Bar Council.

The proposed legislation seeks to strike a balance between the liberalisation of the domestic legal services market on the one hand and protection of the interest of the public in Malaysia on the other. It is important to remember that while the GATS requires liberalisation of restrictive trade rules, it does not necessarily require deregulation. In some cases, the process of liberalisation could lead to the need for more regulations, rather than less regulations.

The Bar Council has recently formed a working group with the Attorney General's Chambers to discuss the proposed legislation. A working group meeting was held on 6 April, 2005 and we shall be following up with the Attorney General's Chambers on the matter.

10. What happens when the proposed legislation comes into force?

When the proposed legislation is in force, the Bar Council could adopt an autonomous liberalisation approach, meaning that the liberalisation measures will not be scheduled in our Schedule of Commitments. This is allowed under the GATS. Article XIX (3) provides that: 'Negotiating guidelines shall establish modalities for the treatment of liberalisation undertaken autonomously by Members….'. Domestic laws which are not scheduled in the Schedule of Commitments can be revised or repealed if necessary.

However, if certain measures are included in the Schedule of Commitments, e.g., market access limitations such as limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding, it will be very difficult for the government to withdraw or modify such commitments. Pursuant to Article XXI, if a commitment is withdrawn or modified, the Member state making that modification or withdrawal may have to make compensatory adjustments to an affected Member state. Compensatory adjustments are not in the form of monetary payment but the government of the Member state concerned may have to open up other sectors in its country.

While we may adopt an autonomous liberalisation approach, we must be aware that the government itself may be under some pressure from other Member states to schedule commitments in respect of legal services. Foreign trading partners may prefer that the Malaysian government schedule certain measures on the admission of foreign lawyers in its Schedule of Commitments to avoid the unpredictability arising from the possibility that domestic laws could be amended or repealed. This is turn, may result in the government asking the Bar Council to make an offer in legal services under the GATS with a view to scheduling in the Schedule of Commitments.

11. Does the GATS have any force of law?

The WTO does not monitor a country's regulations and the GATS may not be enforced by individuals. It is a government to government agreement. It may only be enforced by governments, which allege that another WTO member state has not honoured its commitments. Should a Member state fail to honour its commitments, it can be subject to trade sanctions.

12. Apart from the GATS, are there any other developments affecting legal services?

Yes, legal services will also be affected under the AFAS.

13. What is 'AFAS'?

It is the ASEAN Framework Agreement on Services (AFAS). It was signed on 15 December 1995 with the aim of enhancing the liberalisation of services within ASEAN. Its objective is to eliminate substantially, restrictions to trade in services amongst ASEAN countries and to liberalise trade in services by expanding the depth and scope of liberalisation beyond that taken by ASEAN countries under the GATS.

Under the AFAS, 7 sectors were selected as priority sectors. These are air transport, business services, construction, financial services, maritime transport, telecommunications and tourism. Legal services comes under business services.

During the signing of the Bali Concord II, concrete goals were drawn up towards realising the establishment of the ASEAN Economic Region (AEC), which envisaged a common economic region, with free flow of goods, investments, capital and services by 2020. There will be progressive liberalisation under the AFAS, on a three-year cycle, towards full liberalisation of services by the year 2020. Liberalisation would cover all four modes of service supply – i.e., cross-border supply, consumption abroad, commercial presence and movement of natural persons. The negotiations towards liberalisation of services are conducted through the Coordinating Committee on Services (CCS). The CCS was established in January 1996 and has seven negotiating groups under its purview corresponding

to the above seven priority sectors. To date, there have been 3 rounds of negotiations and the 4th round is currently underway.

During the 42nd CCS meeting in Brunei in June, 2005, it was recommended that the deadline for the liberalisation of non-priority sectors (including legal services) be brought forward from 2020 to 2015. It was also recommended that the targets for foreign equity participation of the non-priority sectors be as follows:

Year	Equity Target
2006	30%
2008	49%
2010	51%
2015	70%

14. What was the Bar Council's response to this recommendation

The Bar Council sent a letter to MITI dated 14 July 2005 confirming that the Bar Council will not be making any offers this round of negotiations and that foreign equity participation should not be more than 30% by 2015. The Bar Council also stated that if foreign lawyers are admitted to practise in Malaysia, they should be allowed to practise in permitted areas of practice only.

15. It has been reported in the press that Malaysia is pursuing free trade agreements. Will these agreements affect legal services?

According to MITI, Malaysia's trade policy is to pursue trade liberalisation through the multilateral trading system under the WTO. However, to complement the multilateral liberalisation approach, Malaysia has also chosen to pursue regional and bilateral trading arrangements.

Malaysia is now in negotiations relating to various FTAs, both regionally and bilaterally, including ASEAN – China, ASEAN-Australia/New Zealand, Malaysia – Australia, Malaysia – New Zealand and Malaysia – Japan.

At the moment, legal services is included in the agenda of the Malaysia – Australia and Malaysia – New Zealand FTA negotiations. The Bar Council is represented at these negotiations.

16. What is the role of the GATS Committee?

The Committee liaises with various governmental agencies such as MATRADE, NAPSEC (the advisory council of MATRADE), MTEN, MITI and PSDC. These bodies are looking into the various issues arising from the globalisation of services. The Committee members attend the meetings organised by these bodies. In addition, members of the Committee also attend the ongoing negotiations in regional and bilateral free trade agreements which concern legal services.a

Life

Just 5 more minutes

While at the park one day, a woman sat down next to a man on a bench near a playground.
"That's my son over there," she said, pointing to a little boy in a red sweater who was gliding down the slide.
"He's a fine looking boy" the man said. "That's my daughter on the bike in the white dress."
Then, looking at his watch, he called to his daughter. "What do you say we go, Melissa?"
Melissa pleaded, "Just five more minutes, Dad. Please? Just five more minutes."
The man nodded and Melissa continued to ride her bike to her heart's content. Minutes passed and the father stood and called again to his daughter. "Time to go now?"
Again Melissa pleaded, "Five more minutes, Dad. Just five more minutes."
The man smiled and said, "OK."
"My, you certainly are a patient father," the woman responded.
The man smiled and then said, "Her older brother Tommy was killed by a drunk driver last year while he was riding his bike near here. I never spent much time with Tommy and now I'd give anything for just five more minutes with him. I've vowed not to make the same mistake with Melissa. She thinks she has five more minutes to ride her bike. The truth is, I get five more minutes to watch her play."

Life is all about making priorities, what are your priorities? Give someone you love 5 more minutes of your time today!

— Author Unknown

Sabah and Sarawak told to open up their legal services to Peninsular lawyers

Contributed by Web Reporter, Website of the Malaysian Bar

In the second part of the Q & A the Web Reporter had with Mah Weng Kwai, Chairman of the GATS Committee of the Bar Council on liberalisation of legal services, Mah said the Bar Council has on numerous occasions raised the issue of Sabah and Sarawak openaing their legal services to Peninsular lawyers with the Attorney General's Chambers and the Ministry of International Trade and Industry, but the main fear of our East Malaysian counterparts is an influx of lawyers from the Peninsula if they were to change this policy.

So what is the position of the Bar Council and what did or will the Bar Council do under the circumstances? These are the main questions posed to Mah in the second part of the Q & A which deals essentially with the admission of Peninsular lawyers into Sabah and Sarawak:

Q. *What is the position in respect of Sabah and Sarawak – are members of the Malaysian Bar allowed to practise in Sabah and Sarawak?*

A. No, we do not have an automatic right to practise in Sabah and Sarawak. An application for an ad hoc admission licence must be made to the High Court in Sabah and Sarawak. The Sabah Law Association or Advocates' Association of Sarawak may choose to object to such an application. Even if an ad hoc admission licence is granted by the court, the lawyer applying for the ad hoc admission must then obtain a work permit from the Immigration Department there.

Q. *Why is this so?*

A. The Legal Profession Act 1976 has not been extended to Sabah and Sarawak. The legal profession in Sabah is governed by the Advocates Ordinance of Sabah while in Sarawak, the legal profession is governed by the Advocates Ordinance of Sarawak. The legal profession in the States of Sabah and Sarawak come under the purview of their respective regulatory bodies which are distinct from the Bar Council of Malaysia.

Q. *How does this fit in with the developments under the GATS and the AFAS?*

A. This situation is highly anomalous in view of the developments in the liberalisation of legal services under the GATS, as well as under the ASEAN Framework Agreement on Services (AFAS) . The recent proliferation of free trade agreements involving Malaysia may contribute to the rate and extent of liberalisation and this will only serve to accentuate the anomaly.

Q. *What is the Bar Council's position in this matter?*

A. The Bar Council is of the view that Sabah and Sarawak should open their legal services sector to lawyers from Peninsula Malaysia. There should not be any need for lawyers from Peninsula Malaysia to have to apply for an ad hoc admission licence.

Q. *What steps have been taken by the Bar Council?*

A. The Bar Council has raised this issue with the Attorney General's Chambers. The Bar Council has also raised this issue on numerous occasions with the Ministry of International Trade and Industry. At the recent MITI Annual Dialogue which was held on 14 April 2005, we suggested to the Minister of International Trade &

Industry that the Sabah and Sarawak law associations should consider allowing lawyers from Peninsula Malaysia the right to practise in Sabah and Sarawak in certain practice areas.

At the Annual Tripartite Consultative meeting which was held on 3rd July 2004 between the Bar Council, Advocates' Association of Sarawak and Sabah Law Association, the issue of liberalisation was discussed. We informed the Advocates' Association of Sarawak and Sabah Law Association that the Bar Council had drafted rules on the admission of foreign lawyers where it is proposed that foreign lawyers will only be allowed to practise in permitted areas of practice in Peninsula Malaysia and foreign lawyers will be required to enter into a joint venture with a local firm. We also explained the process of liberalisation under the ASEAN Framework Agreement on Services (AFAS) which is on a GATS Plus basis. When asked whether they intend to liberalise, both the Sarawak and Sabah delegations expressed their concerns that if they did so, there will be an influx of lawyers from the Peninsula. We did suggest that they consider a gradual process of liberalisation with limited or restricted areas of practice.

As regards the Industrial Court, the Bar Council has written to the President of the Industrial Court with its views that the current prohibition in respect of appearances in court (in Sabah and Sarawak) does not extend to an Industrial Court as the Industrial Court is in fact not a court of record. A lawyer from Peninsula Malaysia seeking to appear in the Industrial Court sitting in Sabah or Sarawak should not be refused permission to do so even if there are objections by the Sabah and Sarawak law associations.

"HERE I GROW AGAIN!"

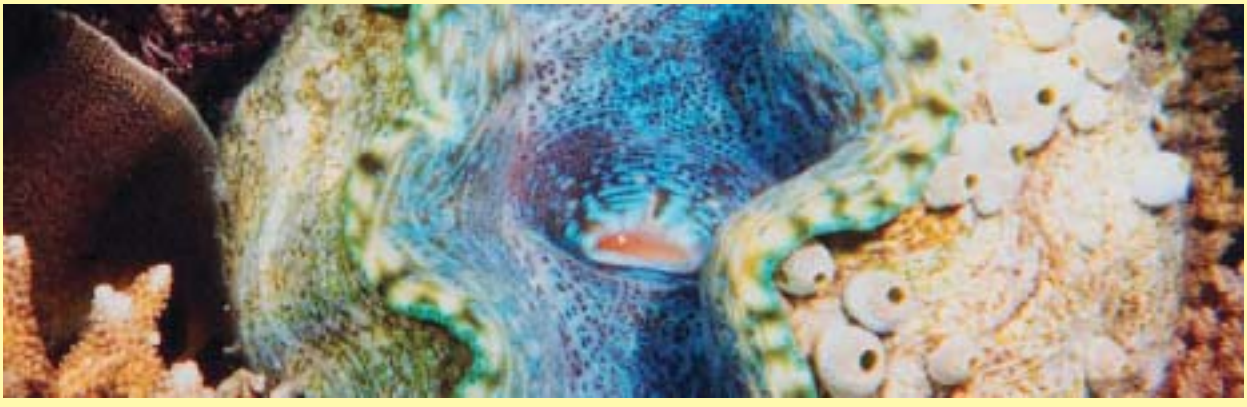
Don't worry if you have problems!

Which is easy to say until you are in the midst of a really big one, I know. But the only people I am aware of who don't have troubles are gathered in little neighborhoods. Most communities have at least one. We call them cemeteries. If you're breathing, you have difficulties. It's the way of life. And believe it or not, most of your problems may actually be good for you! Let me explain.

Maybe you have seen the Great Barrier Reef, stretching some 1,800 miles from New Guinea to Australia. Tour guides regularly take visitors to view the reef. On one tour, the guide was asked an interesting question. "I notice that the lagoon side of the reef looks pale and lifeless, while the ocean side is vibrant and colorful," a traveler observed. "Why is this?"

The guide gave an interesting answer: "The coral around the lagoon side is in still water, with no challenge for its survival. It dies early. The coral on the ocean side is constantly being tested by wind, waves, storms - surges of power. It has to fight for survival every day of its life. As it is challenged and tested, it changes and adapts. It grows healthy. It grows strong. And it reproduces." Then he added this telling note: "That's the way it is with every living organism."

That's how it is with people. Challenged and tested, we come alive! Like coral pounded by the sea, we grow. Physical demands can cause us to grow stronger. Mental and emotional stress can produce tough-mindedness and resiliency. Spiritual testing can produce strength of character and faithfulness. So, you have problems – no problem! Just tell yourself, "Here I grow again"



What Kind of Extremist Will You Be?

by Cindy Sheehan

[This article first came to our attention in the website www.LewRockwell.com and is reproduced here with their kind permission – Ed.]

> Early morning, April 04, a shot rings out in the Memphis sky,
> Free at last, they asked for your life,
> But they could not take your pride.
> In the name of love, one more in the name of love.
> ~ U2: Pride (In the name of love)

Most everyone who is reading this knows what happened to Dr. Martin Luther King, Jr. on 4 April 1968. Some of you may even know what happened to my son, Spc. Casey Austin Sheehan on 4 April 2004. If you don't know, Dr King and Casey were murdered by the same malevolent entities: People and ideologies that say that we have to be mortally afraid of the "ism" du jour and we, as Americans who have the "moral high-ground" in the world can send our innocent children to invade innocent countries and kill innocent people to fight the "ists" that go with the "isms." In Vietnam we were fighting the evil Communists and in Iraq we are fighting the evil terrorists. Our war against Communism out-stayed its welcome in the 1980's and the military industrial war complex was running out of excuses to build bombs, tanks, bullets, ships, submarines, and soldiers; so in 2001, our leaders who serve the war machine had to switch our enemy of the state to terrorism.

Dr King had the temerity to challenge the war machine and war racketeers on 4 April 1967 in his famous speech on Vietnam...and he paid for that bit of inspired, courageous, honesty with his life exactly one year later. Casey had the naïve gall to join the US Army thinking he would be making the world a better, safer place... and he paid for that kind of immature (but honest) patriotic mistake with his wonderful life.

Casey was a brave and honorable man who we were told volunteered to go on the mission that killed him to save the lives of his buddies. He was shot in the back of the head and died a little while later in a medic's station while a medic was trying to hold his brains in while the doctors tried to keep him breathing. We have heard many wildly disparate stories of Casey's last few minutes on earth, I don't know if we will ever know the truth. One thing I do know, however, is that like Dr King, Casey's murder will be to advance the cause for peace and in the name of love.

I am wholly and completely convinced that this aggression on Iraq is illegal, immoral and appallingly unnecessary. I am also convinced that one drop of blood was one drop of blood too much to be shed for this abomination in Iraq. Now oceans of blood - both Iraqi and American - have been spilled for ruinous and disturbing policies of very bad people in our government who have based their reasons for invasion and occupation on their twisted imaginations and their seemingly bottomless lust for power, profits, chaos and confusion.

Martin Luther King, Jr. wrote this from the Birmingham Jail in 1963 and it is so relevant today:
We will have to repent in this generation not merely for the hateful words and actions of bad people, but for the appalling silence of the good people.

I must regretfully admit that before my son was killed, I didn't publicly speak out against the invasion/occupation of Iraq. I didn't shout out and say: "Stop! Stop this insane rush to an invasion that has no basis in reality - don't invade a country based on cherry-picked, prefabricated intelligence and contemptible scare tactics!"

I didn't stand up and scream: "Congress, don't you dare abrogate your constitutional rights and responsibilities! Do not, under ANY circumstances give the keys to our country to power-drunk, irresponsible and reckless maniacs!"

When George threateningly stated in his disordered and defiant headlong rush to disaster: "If you're not for us, you're against us," I will regret forever not calling him on the phone and screaming: "I am SO against you and your repulsive policies, you self-important man. I am against killing innocent people and I am against you telling me it's unpatriotic to be against you and your murderous philosophy!"

Why, oh why, was I silent when the cowardly and capricious arm-chair warriors of the Pentagon sent my son and over a million other brave young Americans to an atrocious excuse (that never should have been fought in the first place) for a war without the proper equipment, armor, training, supplies, or planning? I should have boldly strode up the Pentagon and said: "Look here, Donald, not only do you not go to war with the Army you "have", you make sure our precious life blood is well protected if you do send them off to fight and how about not sending our kids to die in the sand or soil of another country UNLESS it is absolutely necessary to defend our own sand and soil?"

If I had broken the bonds of my slavery to silence sooner, would Casey (and scores of others) still be alive? I don't know. There were and still are so many good people working for peace and justice and they have been for so many years. One thing I do know, however, is that no matter how much I scream and cry and rail against God, country, and humanity, I cannot bring Casey back. But, I have not shut up since Casey was killed, nor will I be silent until every last one of our nation's sons and daughters are brought back from this morally repugnant and ill-fated war!! Nor, will I give up when this occupation is finished. I will continue fighting for the children of the world and make sure a tragedy of historic proportions like this never happens again. If I can save even one mother here or there from the pain and agony I'm going through, then it will have been so immensely worth it.

I encourage and challenge every citizen of the world to do one small thing for peace each day. Even if it is to nag your elected officials to demand the keys of our country back from the all but convicted felons, liars and self-proclaimed pro-life hypocrites who have them now.

Casey and Dr King were both violently killed on 4 April in different years and during different wars...two wars that are really just two different sides of the same coin. I want their deaths to mean something. I want them to count for peace and justice, not violence and hatred.

I can feel my son's presence urging me on to save his buddies. I can hear him whispering in my ear and in my dreams: "Mom, finish my mission. Bring my buddies home alive" I can hear Dr King's words similarly challenging me to action: "The question is not whether we will be extremists, but what kind of extremists will we be?" Well, Casey, my son, my hero. Well, Dr King, the hero of millions, I pledge to be the kind of extremist who works for peace with justice and who will never take "No" for an answer. I will strive to hold the bad people in our government accountable for all of the heartache and emptiness they have caused our world by their deliberate lies and deceptions and by their misuse of power and their abuse of our nation's precious human resources. I will be the kind of extremist who believes that our country can be taken back from the corporatocracy and unethical war profiteers that have control of it now. I will be the kind of extremist who believes that the people of Iraq can rebuild their own country without the dangerous "help" of the American military presence and I will be the kind of extremist who strives to bring our kids home from the Middle East immediately.

If there ever was a time in our nation's history that required the passion and compassion of extremists, it is now: This very minute.

What kind of extremist will you be?

"Because I do it with one small ship, I am called a terrorist. You do it with a whole fleet and are called an emperor."

- A pirate, from St Augustine's "City of God"

Homebuyer Claims Tribunal: the Art of Judging

YA Datuk Wira Low Hop Bing J*

The art of judging requires not only a sound working knowledge of the law but also a fine judicial temperament, coupled with a passion and ability to bring about a fair and just resolution to the disputing parties. This seminar paper seeks to cover all the practical essential elements which an adjudicating authority may encounter when presiding in the Tribunal.

THE TRIBUNAL

The Homebuyer Claims Tribunal ('the Tribunal') was established under s 16B Part VI of the Housing Development (Control and Licensing) Act 1966 ('the Act'), as amended by Amendment Act A1142 with effect from 1 December 2002 in order to provide an alternative avenue specifically to homebuyers to seek redress against licensed housing developers. Unless otherwise stated, a reference to a section or a regulation is respectively a reference to that section in the Act or that regulation in the Housing Development (Tribunal for Homebuyer Claims) Regulations 2002 (PU (A) 476/2002) made under s 16AI.

Membership of the Tribunal is impressive in that the Minister appoints the Chairman and Deputy Chairman from amongst members of the Judicial and Legal Service ('the Service'), with not less than five other members appointed from either the Service or advocates and solicitors of the High Court who have practised for not less than seven years: s 16C(1)(a) and (b).

There is no fixed tenure for the Chairman and Deputy Chairman, while other appointed members shall hold office for a term not exceeding three years, after which they shall be eligible for re-appointment for not more than three consecutive terms: s 16C(2)(a) and (b).

COMMENCEMENT OF CLAIM

The commencement of a claim may be effected by a homebuyer lodging with the Tribunal a prescribed form (Form 1) together with the prescribed fee (RM10) claiming for any loss suffered or any matter concerning his interests as a homebuyer under the Act: s 16L.

JURISDICTION

The jurisdiction of the Tribunal is to hear and determine a claim where the total amount in respect of which an award of the Tribunal is sought does not exceed RM25,000 which may include loss or damage of a consequential nature: s 16M(1) and (4).

The claim must be based on a cause of action arising from the sale and purchase agreement entered into between the homebuyer and the licensed housing developer which is brought by a homebuyer not later than twelve months from the date of issuance of the certificate of fitness for occupation for the housing accommodation or the expiry of the defects liability period as set out in the sale and purchase agreement: s 16N(2).

However, the absence of a sale and purchase agreement shall not affect the claim if there exists a previous dealing between the homebuyer and the licensed housing developer in respect of the acquisition of the housing accommodation: s 16N(3).

Where the amount or value of the subject matter claimed or in issue exceeds RM25,000, the Tribunal shall have jurisdiction to hear and determine the claim if the parties have entered into an agreement in writing that the Tribunal shall have jurisdiction to hear and determine the claim: s 160(1).

The agreement under s 160(1) may be made:

(1) before a claim is lodged under s 16L;
(2) at any time before the Tribunal has recorded an agreed settlement under s 16T(3); or
(3) before it has determined the claim under s 16Y.

As in other civil litigation, a respondent to a claim may raise a debt or liquidated demand in Form 2 as a defence or

* Judge of the High Court of Malaya, presiding at Malacca. This article is based on a speech delivered by His Lordship in conjunction with a workshop on The Homebuyers Claims Tribunal held at Genting Highlands, Pahang DM on 12 June 2005.

counter-claim which, if proved, the Tribunal shall give effect to the defence, or hear and determine the counter claim although the original claim is withdrawn, abandoned or struck out: s 16M(2) and (3).

EXCEPTIONS TO JURISDICTION

Under s 16N(1)(a) and (b), the Tribunal shall have no jurisdiction: (1) in respect of any claim for the recovery of land, any estate or interest in land: s 16N(1)(a); and (2) a dispute concerning:

(a) the entitlement of any person under a will or settlement or on intestacy (including partial intestacy);
(b) goodwill;
(c) any chose in action (i.e. a right of proceeding in court to procure payment of money in e.g. a bill of exchange, a policy of insurance, annuity or debt); or
(d) any trade secret or other intellectual property right. (2A)

A settlement is an instrument or deed by which property or enjoyment of property, is limited to or held in trust for person or persons by way of succession. 11A. Section16N(2) limits the jurisdiction of the Tribunal to a claim brought by a homebuyer not later than 12 months from the date of issuance of the certificate of fitness for occupation for the housing accommodation, or the expiry date of the defects liability period as set out in the sale and purchase agreement (see also reg. 3).

ABANDONMENT OF PART OF CLAIM

A claimant may abandon so much of a claim as exceeds RM25,OOO in order to bring the claim within the jurisdiction of the Tribunal s 16P(1).

Where a part of the claim has been abandoned, the Tribunal's record of an agreed settlement under s 16T(3) or the Tribunal's award under s 16Y, in relation to the claim, shall operate to discharge the person who is a party to the agreed settlement; or the respondent, from liability in respect of the amount so abandoned: s 16P(2).

SINGULAR CLAIM ONLY

A claimant may not split his claim or bring more than one claim in respect of the same matter against the same party for the purpose of bringing it within the jurisdiction of the Tribunal: s 16Q.

MUTUALLY EXCLUSIVE JURISDICTION

Under s 16R(1)(a), where a claim within the Tribunal's jurisdiction is lodged with the Tribunal, the issues in dispute in that claim shall not be the subject of proceedings between the same parties in any court unless:

(a) the proceedings before the court were commenced before the claim was lodged with the Tribunal; or
(b) the claim before the Tribunal is withdrawn, abandoned or struck out.

Where s 16R(1)(a) applies, the issues in dispute shall not be subject to proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

NOTICE OF HEARING

Upon a claim being lodged under s 16L, the Secretary of the Tribunal shall give notice of the details of the day, time and place of hearing in the prescribed form (Form 4) to the claimant and the respondent: s 168.

NEGOTIATION FOR SETTLEMENT

Avenue is open to the Tribunal to adopt the inquisitorial system and assess whether, in all the circumstances, it is appropriate to assist parties to negotiate an agreed settlement in relation to the claim by having regard to the factors that are likely to impair the ability of the parties to negotiate an agreed settlement: s 16T(1) and (2).

Where the parties have reached an agreed settlement, the Tribunal shall approve and record the settlement in the form of an award of the Tribunal: s 16T(3).

20. In the absence of an agreed settlement, the Tribunal shall proceed to determine the dispute: s 16T(3).

PARTIES' RIGHT OF AUDIENCE

Section 16U(1) embraces the rules of natural justice by providing that at the hearing of a claim, the parties are entitled to attend and be heard.

However, under s 16U(2), parties do not enjoy a general right of representation by an advocate and solicitor at a hearing, unless in the opinion of the Tribunal: (1) the matter in question involves complex issues of law; and (2) one party will suffer severe financial hardship if he is not legally represented.

Section 16U(2) creates a built-in balance of equal right to legal representation where a party is so represented.

A corporation, e.g. a company registered under the Companies Act 1965, or an unincorporated body of persons such as a partnership firm, may enjoy lay

representation by its employee, while a minor or any other person under a disability, e.g. one who does not have sound mental health, may be represented by his next friend or guardian *ad litem:* s 16U(3). In such a case, the Tribunal may impose necessary conditions to ensure that the other party to the proceedings would not be substantially disadvantaged: s 16U(4).

OPENNESS

Section 16V mandates that all proceedings before the Tribunal shall be open to the public.

EVIDENCE

The procurement and reception of evidence involves the exercise of judicial or quasi-judicial powers which are substantially similar to those exercisable by a subordinate court such as the magistrate's court.

Under s 16W(1), the Tribunal has the power to:

(a) procure and receive evidence on oath or affirmation, whether written or oral, and examine all witnesses as the Tribunal thinks necessary to procure, receive or examine;
(b) require the production of books, papers, documents, records and things;
(c) administer the necessary oath, affirmation or statutory declaration;
(d) seek and receive other evidence and make such other inquiries as it thinks fit;
(e) summon parties or other persons to attend before it to give evidence (*subpoena ad testificandum*) or to produce any document, records or other thing in his possession (*subpoena duces tecum*) or otherwise to assist the Tribunal in its deliberations;
(f) receive expert evidence; and
(g) generally direct and do all necessary or expedient things for the expeditious determination of the claim.

Section 16W(2) provides for the service of a summons issued under this section as if it were a summons issued by a subordinate court.

Section 16W provides for the conduct of the Tribunal's proceedings which are more akin to the inquisitorial system in which the Tribunal plays a proactive part in embarking on the procedural steps leading to the procurement and reception of evidence of its own motion rather than to wait for the parties to drag their feet in the conduct of their own case.

Section 16W allows the Tribunal to move away from the adversarial system governing civil litigation in which the adjudicating authority, such as the court, plays a neutral role and does not normally initiate and take an active part in all the steps enumerated under s 16W, as those steps are usually undertaken by the parties or their respective counsel.

Where the Act and the regulations made thereunder contain no provision for procedure, the Tribunal shall adopt such procedure as it thinks fit and proper: s 16AE.

ABSENCE OF PARTY

Under s 16X, the Tribunal is empowered to hear and determine the claim before it if it is proved to the satisfaction of the Tribunal that a notice of hearing has been duly served on the absent party. This is equivalent to the power of the courts to enter judgment in default of appearance.

AWARD

It is mandatory for the Tribunal to make its award without delay and, where practicable within 60 days from the first day of the hearing before the Tribunal: s 16Y(1).

Humour

Men are like …

Laxatives ... They irritate the shit out of you.
Bananas ... The older they get, the less firm they are.
Weather ... Nothing can be done to change them..
Blenders ... You need One, but you're not quite sure why.
Chocolate Bars ... Sweet, smooth, & they usually head right for your hips.
Commercials ... You can't believe a word they say.
Department Stores ... Their clothes are always 1/2 off.
Government Bonds ... They take soooooooo long to mature.
Mascara ... They usually run at the first sign of emotion.
Popcorn ... They satisfy you, but only for a little while.
Snowstorms ... You never know when they're coming, how many inches you'll get or how long it will last.
Lava Lamps ... Fun to look at, but not very bright.
Parking Spots ... All the good ones are taken, the rest are handicapped.

Under s 16Y(2), the award may include one or more of the following:

(a) monetary payment by one party to the other party;
(b) refund of the price or other consideration;
(c) compliance with the sale and purchase agreement;
(d) compensation for the loss or damage suffered by the claimant;
(e) variation or setting aside, wholly or in part, the contract;
(f) costs;
(g) interest, not exceeding 8% per annum or the contractual rate, on the sum awarded;
(h) dismissal of the claim.

It is mandatory for the Tribunal to give reasons for its award: s 16AA. This is of special significance as the reasons would provide guidance for future cases involving similar facts, thereby providing a body of case law in line with the awards handed down by the Industrial Court. I would venture to recommend the implementation of the Homebuyer Claims Tribunal Report along the same lines as the Industrial Law Report.

Section 16Y(3) says that the Tribunal is not empowered to award damages for non-pecuniary loss or damage. This is consistent with the provisions of s 16N.

Any person who fails to comply with an award within the period specified therein commits an offence which carries a maximum fine of RM5,OOO or maximum imprisonment of two years or both: s 16AD(1); and in a continuing offence, a maximum fine of RM1,OOO per day or part of a day which the offence continues after conviction: s 16AD(2).

REFERENCE ON A QUESTION OF LAW

Under s 162, before making an award under s 16Y, the Tribunal may refer to a Judge of the High Court a question of law–

(a) which arose in the course of the proceedings;
(b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; and
(c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt as to merit such reference.

Section 162(2) makes it mandatory for the Tribunal to make an award in conformity with the Judge's decision.

For this purpose, a Federal Counsel authorised by the Attorney-General may appear on behalf of the Tribunal: s 162(3).

RECORD IN WRITING

It is incumbent upon the Tribunal to record in writing the terms of an agreed settlement reached by the parties under s 16T(3), and an award made by it under s 16Y: s 16AB.

FINALITY

Section 16AC(1) declares that the recorded agreed settlement under s 16T(3) and award under s 16Y shall be final and binding on the parties and deemed to be an order of a magistrate's court for purposes of enforcement: s 16AB(1)(a) and (b).

The Secretary of the Tribunal must send a copy of the award to the relevant magistrate's court for it to be recorded in the court: s 16AC (2).

Of particular significance to the Tribunal is that our High Courts may exercise the power of judicial review by way of the issue to any person or authority, e.g. the Tribunal, directions, orders or writs including writs in the nature of *certiorari* for the enforcement of rights conferred by Part II of the Federal Constitution or

Typoglycemia

This may look weird, but believe it or not, you can read it.
Go on, try reading it!

I cdnuolt blveiee taht I cluod aulaclty uesdnatnrd waht I was rdanieg.
The phaonmneal pweor of the hmuan mnid.
Aoccdrnig to rscheearch taem at Cmabrigde Uinervtisy, it deosn't mttaer in waht oredr the ltteers in a
wrod are, the olny iprmoatnt tihng is taht the frist and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can sitll raed it wouthit a porbelm. Tihs is bcuseae the huamn mnid deos not raed ervey lteter by istlef, but the wrod as a wlohe.
Such a cdonition is arppoiately cllaed Typoglycemia :)- Amzanig huh? Yaeh and yuo awlyas
thought slpeling was ipmorantt.

for any purpose under para 1 of the Schedule of the Courts of Judicature Act 1964.

By way of illustration, the first reported decision concerning the exercise of the powers of judicial review by the High Court *vis-a-vis* the Tribunal was *Puncakdana Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah & Ors* [2003] 7 CLJ 350. The essential facts reveal that awards were made against two licensed housing developers. Being aggrieved thereby, these developers applied to the High Court by way of judicial review to seek an order of *certiorari* to quash the awards made by the Tribunal in respect of sale and purchase agreements executed before 1 December 2002. The common legal issue for determination was whether the Tribunal had the jurisdiction to hear and adjudicate in these situations. Raus Sharif J answered in the negative, on the grounds that s 16N(2) could not give the Tribunal retrospective jurisdiction.

The Tribunal, being dissatisfied with the decision of the High Court, had appealed to the Court of Appeal, *sub nom. Tribunal Tuntutan Pembeli Rumah v. Westcourt Corporation Sdn Bhd & Other Appeals* [2004] 2 CLJ 617 CA. The appeal was allowed. The Court of Appeal, speaking through Richard Malanjum JCA, held, *inter alia*, that the Tribunal has jurisdiction to entertain and adjudicate upon claims lodged with it, notwithstanding the sale and purchase agreements were entered into before 1 December 2002. The Court of Appeal added that:

(1) It is a settled principle of law that statutes must be read as a whole (see *Kesultanan Pahang v. Sathask Realty Sdn. Bhd* [1998] 2 CLJ 559);

(2) There are circumstances where the nature and purpose of a particular legislation must be considered when construing its various provisions so as not to defeat the intention of Parliament (see: *Akberdin bin Hj Abdul Kader & Anor v Majlis Peguam Malaysia* [2002] 4 CLJ 689; *Sea Housing Corporation Sdn Bhd v Lee Poh Choo* [1982] CLJ 355; [1982] CLJ (Rep) 305);

(3) The Act as amended by the Amendment Act is a piece of social legislation and hence its provisions should be given liberal and purposive interpretation Le. to promote the general legislative purpose underlying the provisions (see s 1 7 A of the Interpretation Acts 1948 and 1967).

(4) The other social legislation which is given liberal and purposive interpretation is the Industrial Relations Act 1967: per Steve Shim CJ (Sabah & Sarawak) in *Kesatuan Kebangsaan Wartawan Malaysia & Anor v Syarikat Pembangunan Sinar Sdn. Bhd. & Anor* [2001] 3 CLJ 547 FC; per Lord Denning MR in *Nothman v Barnet London Borough Council* [1978] 1 WLR 220; per Gopal Sri Ram JCA in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687; *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 CLJ 748.

The licensed housing developers were given leave to appeal to the Federal Court on the abovestated legal issue. The Federal Court through he judgment of Ahmad Fairuz CJ Malaysia dismissed the appeal and affirmed the decision of the Court of Appeal, thereby settling beyond doubt that:

(1) the Tribunal has jurisdiction to hear a claim that arose from an agreement that was entered before 1 December 2002, as the intention of Parliament is to provide a simple forum for homebuyers to file their claim;

(2) the choice of forum from the Court to the Tribunal is a matter of procedure and not a matter of substantive right and that a new Act would have retrospective effect so far as the choice of forum is concerned is well settled; and

(3) breach of agreement was not an offence under s 16AD, but non-compliance with an award of a Tribunal was. However, that could not operate retrospectively since the Tribunal could only give the award after 1 December 2002.

SUBSTANCE NOT FORM

The proceedings before the Tribunal are intended to produce substantial justice in a claim and no proceeding, award or document of the Tribunal shall be set aside or quashed for want of form: s 16AF. Hence, there is no room for argument on grounds of procedural technicalities.

DISPOSAL OF DOCUMENTS

At the conclusion of the proceedings, the Tribunal may order that any document, record, material or other property produced during the proceedings to be delivered to the rightful owner or be disposed of in such manner as it thinks fit: s 16AG(1).

Where no person has taken delivery of such document etc, the ownership therein shall be deemed to have passed to and become vested in the Government: s 16AG(2).

IMMUNITY IN GOOD FAITH

Under s 16AH, immunity is conferred upon the Tribunal, its member or a person authorised to act for or on behalf of the Tribunal, to the extent that no action or suit shall be instituted or maintained in any court against any of them for any act or omission done in good faith and the exercise of its or his powers under the Act.

REGULATIONS

Pursuant to s 16AI, the Minister has made the Housing Development (Tribunal for Homebuyer Claims) Regulations 2002 (PU(A) 476/2002) which together with the Amendment Act came into operation on 1 December 2002.

The Regulations provide for the simple procedure in the commencement of proceeding in the Tribunal in order to allow for speedy disposal of the claim by the Tribunal.

Simplicity of proceeding is shown in the use of the following Forms:

- Form 1 Claim
- Form 2 Defence and counterclaim
- Form 3 Defence to counter-claim
- Form 4 Notice of hearing
- Form 5 Award in default of defence
- Form 6 Award upon defence admission of claim
- Form 7 Dismissal of claim, and award for counter-claim, if any, where claimant does not appear
- Form 8 Award, where respondent does appear the not
- Form 9 Award by consent
- Form 10 Award after full hearing
- Form 11 Summons to appear
- Form 12 Application to set aside award made in default

Forms 1, 2 and 3 may be signed or thumb printed by the party personally or, where a party is a body corporate, the relevant form shall be signed by its director, manager, secretary or similar officer.

The Tribunal may award costs not exceeding RM500 to any one party: Reg. 28.

Regulation 29 makes it mandatory for the President to:

(a) take notes of evidence;
(b) state the terms of any particular question or answer;
(c) make a note of the award; and
(d) sign or initial the notes of evidence.

The Secretary must keep records of all proceedings of the Tribunal: Reg. 30(1), while other records shall be kept by making entries in the respective case file: Reg. 30(2).

Fees are economical, as the filing fee for Form 1, 2 or 3 respectively is RM10.00.

CONCLUSION

The intention of Parliament in creating the Tribunal is plain and obvious, i.e. to provide an effective, efficient, economical and expeditious alternative avenue, which is broadly based, in order to enable home buyers, who is mainly the man in the street, to seek redress and resolution to his disputes or grouses against errant or recalcitrant licensed housing developers, bearing in mind three essential elements contained in the acronym I.F.O. *viz* impartiality, fairness and openness.

I complete this paper by saying that the usefulness and pervasiveness of the Tribunal have been well reflected in the article entitled 'Long live the tribunal' by Rocky's Bru, Ahirudin Attan published in the *New Sunday Times*, 29 May 2005.

Information Please

When I was quite young, my father had one of the first telephones in our neighborhood. I remember well the polished old case fastened to the wall. The shiny receiver hung on the side of the box. I was too little to reach the telephone, but used to listen with fascination when my mother used to talk to it. Then I discovered that somewhere inside the wonderful device lived an amazing person - her name was "Information Please" and there was nothing she did not know.

My first personal experience with this genie-in-the-bottle came one day while my mother was visiting a neighbor. Amusing myself at the tool bench in the basement, I whacked my finger with a hammer. The pain was terrible, but there didn't seem to be any reason in crying because there was no one home to give sympathy. I walked around he house sucking my throbbing finger, finally arriving at the stairway.

The Telephone! Quickly I ran for the footstool in the parlor and dragged it to the landing. Climbing up I unhooked the receiver and held it to my ear.

"Information Please," I said into the mouthpiece just above my head. A click or two and a small, clear voice spoke into my ear.

"Information"

"I hurt my finger..." I wailed into the phone. The tears came readily enough now that I had an audience.

"Isn't your mother home?" came the question.

"Nobody's home but me." I blubbered.

"Are you bleeding?"

"No," I replied. "I hit my finger with the hammer and it hurts."

"Can you open your icebox?" she asked. I said I could.

"Then chip off a little piece of ice and hold it to your finger," said the voice.

After that, I called "Information Please" for everything. I asked her for help with my geography and she told me where Philadelphia was. She helped me with my math. She told me my pet chipmunk that I had caught in the park just the day before would eat fruits and nuts.

Then, there was the time Petey, our pet canary died. I called "Information Please" and told her the sad story. She listened, then said the usual things grown-ups say to soothe a child. But I was un-consoled. I asked her, "Why is it that birds should sing so beautifully and bring joy to all families, only to end up as a heap of feathers on the bottom of a cage?" She must have sensed my deep concern, for she said quietly," Paul, always remember that there are other worlds to sing in." Somehow I felt better.

Another day I was on the telephone. "Information Please."

"Information," said the now familiar voice.

"How do you spell fix?" I asked.

All this took place in a small town in the Pacific Northwest. When I was 9 years old, we moved across the country to Boston. I missed my friend very much. "Information Please" belonged in that old wooden box back home and I somehow never thought of trying the tall, shiny new phone that sat on the table in the hall.

As I grew into my teens, the memories of those childhood conversations never really left me. Often, in moments of doubt and perplexity I would recall the serene sense of security I had then. I appreciated now how patient, understanding and kind she was to have spent her time on a little boy.

A few years later, on my way west to college, my plane put down in Seattle. I had about half an hour or so between planes. I spent 15 minutes or so on the phone with my sister, who lived there now. Then without thinking what I was doing, I dialed my hometown operator and said, "Information, Please". Miraculously, I heard the small, clear voice I knew so well,

"Information."

I hadn't planned this but I heard myself saying, "Could you please tell me how to spell fix?"

There was a long pause. Then came the soft spoken answer, "I guess your finger must have healed by now." I laughed.

"So it's really still you", I said. "I wonder if you have any idea how much you meant to me during that time."

"I wonder", she said, "if you know how much your calls meant to me. I never had any children and I used to look forward to your calls."

I told her how often I had thought of her over the years and I asked if I could call her again when I came back to visit my sister.

"Please do," she said. "Just ask for Sally."

Three months later I was back in Seattle. A different voice answered "Information." I asked for Sally.

"Are you a friend?" she said.

"Yes, a very old friend," I answered.

"I'm sorry to have to tell you this", she said. "Sally had been working part-time the last few years because she was sick. She died five weeks ago."

Before I could hang up she said, "Wait a minute. Did you say your name was Paul?"

"Yes."

"Well, Sally left a message for you. She wrote it down in case you called. Let me read it to you." The note said, "Tell him I still say there are other worlds to sing in. He'll know what I mean."

I thanked her and hung up. I knew what Sally meant.

-Anonymous

Never underestimate the impression you may make on others!

Humour

Pain for progress

As Lao-Tzu said, "A journey of a thousand miles begins with a single step." So what if that first step is a little painful?

You see, if you want to accomplish something, there are two kinds of pain you might encounter: the pain of discipline and the pain of regret.

Whenever you take that first step toward a new goal, you often experience the pain of discipline: the pain of hard work, the pain of sacrifice, as you single-mindedly pursue your dream.

On the other hand, if you don't go after your dreams, you might experience an even greater type of pain: the pain of staying stuck, which eventually turns into the pain of regret.

Remember, as Sydney J. Harris wrote, "Regret for the things we did can be tempered by time; it is regret for the things we did not do that is inconsolable."

When you're really ready to make a change in your life, you'll find, as writer Anaiis Nin did, that the "risk to remain tight in a bud was more painful than the risk it took to blossom."

The great thing about discipline is if you discipline yourself on a daily basis, eventually something "magical" will happen, almost without your realizing it-one day, the discipline will turn into desire.

A runner who "makes" herself run on a daily basis, one day gets up "wanting" to run. The same holds true for writing, public speaking, or anything else.

So today, start that project, make that call, do what you need to do to begin. Here's a guarantee: If you work through a little pain, you'll see a little progress.

-Sunita Singhi

To sell-and-build or build-and-sell?

by Roger Tan

When Malaysia should adopt the "build-then-sell" (BTS) concept seems to be a hot issue these days among housing industry players, especially after Prime Minister Datuk Seri Abdullah Ahmad Badawi said in 2004 that we should look into the feasibility of adopting it.

But how feasible is the BTS concept when for the past 40 years the inveterate "sell-then-build" (STB) system has been so ingrained in our housing industry?

Firstly, it must be emphasised that our current laws do, in fact, encourage developers to practise BTS as the STB system has also over the years become the *bête noire* of those who champion the rights of house buyers.

Currently, a developer is not required to open and maintain a housing development account or adopt the statutory Schedule G or H sale and purchase agreement (SPA) if the properties offered for sale have already been issued with the certificates of fitness for occupation (CFO).

This is partly the result of a revamp of the housing laws pushed through by the Housing and Local Government Minister Datuk Seri Ong Ka Ting in 2002.

During his first term of office, Ong managed to revamp our housing laws, and some of the changes include:

- The inception of the Tribunal for Homebuyer Claims.
- Extending protection to purchasers of housing units built by Federal and State government agencies and statutory bodies.
- Enhancing the investigation and enforcement powers of housing inspectors as well as increasing manifold, penalties for various offences.
- Requiring developers to submit periodical progress reports.
- Amending the Uniform Building By-Law 25 to state that in the event Form E has been submitted to a local authority and CFO is not issued within 14 days thereafter, then CFO will be deemed to be issued and this amendment has been gazetted by all the State Authorities.
- Giving the purchaser a right to terminate the statutory SPA due to his inability to obtain financing as a result of his ineligibility of income, in which case he is entitled to a refund of 99% of all monies paid to the developer.

But all these do not seem to impress the proponents of BTS who still feel that this is one concept which Malaysia should embrace as soon as possible. But groups like the National House Buyers Association do acknowledge that it may be too early for us to adopt a full form of BTS.

So they are now supporting a hybrid form of BTS whereby a developer can sell housing units before completion, but he may only collect a certain percentage of the purchase price (e.g. 10%) upfront with the balance payable only upon delivery of the housing unit with CFO. This system, first mooted by Ong, is better known as the 10/90 system.

The idea first came about in July 2004 after Ong's trip to Australia to study the BTS concept practised there.

It appears to be modelled upon S9AA of the Sale of Land Act 1962 of the State of Victoria which provides as follows:

(1) A person shall not sell a lot in a plan of subdivision (whether certified or not) to anyone except a statutory body or authority if the plan has not been registered by the Registrar, unless-

(a) the contract for the sale of that lot provides that the deposit moneys payable by the purchaser are to be paid-
  (i) to a legal practitioner or licensed estate agent acting for the vendor to be held by the legal practitioner or licensed estate agent on trust for the purchaser until the registration of the plan of subdivision; or
  (ii) into a special purpose account in an authorised deposit-taking institution in Victoria specified by the vendor in the contract in the joint names of the purchaser and the vendor until the registration of the plan of subdivision; and

(b) the deposit moneys payable under the contract do not exceed 10 per cent of the purchase price of the lot.

(2) The deposit moneys paid by the purchaser prior to the registration of the plan under a prescribed contract of sale of

a lot shall be paid (as the case requires)-

(a) to the legal practitioner or licensed estate agent acting for the vendor; or

(b) into a special purpose account in the authorised deposit-taking institution in Victoria specified in the contract in the joint names of the purchaser and the vendor.

(3) An account established under sub-section (2)(b) may be drawn upon only with the signature of both the vendor and the purchaser or the personal representative of the vendor or purchaser (as the case may be).

The following have often been advanced as the pros and cons of the BTS model:

Pros

- The purchaser gets to view the completed housing unit before paying any money to the developer. He gets also to examine the property and its workmanship and quality before committing himself legally to enter into the SPA as most of the time, advertisements do not give an accurate impression of the design, layout and specifications of the property.
- The purchaser is insulated from any risk of the completion of the project being abandoned or delayed, hence having to pay unnecessary amount of interest to his financier.
- This will in due course exterminate financially unsound, fly-by-night and errant developers.
- The purchaser only pays when the property is ready for occupation because the developer is solely and singly responsible for financing the construction and completion of the project.
- It will also promote the building of better quality houses if the developer wants its completed products to sell.
- The developer is exempted from the licensing provisions and also the requirement of having to maintain the Housing Development Account and adopt the statutory standard Schedule G & H SPAs.
- The developer gets to be paid a lump sum of the full purchase price and the risk of a purchaser defaulting in payment will not arise.

Cons

- There will be a fewer number of developers who will have the financial capacity to carry out housing developments and the industry will be monopolised by only big players who will dictate the cost and pricing of properties.
- Projects carried out by developers may also be on a smaller scale as developers will try to avoid their projects being abandoned due to poor sales.
- The costs of funding will also increase and this will be passed on to purchasers, resulting in higher selling prices.
- Where there are a lesser and smaller size developments, this will result in shortage of housing units, fueling further hikes in selling prices.
- Home buyers will have lesser choice of types of housing as developers will tend to build those types which are popular with the purchasers, hence discouraging genuine innovative products to be made available to the public.
- Developers will undertake housing development in more affluent locations and they will more likely not embark on any major housing development in remote areas and this will deprive lower income groups of owning properties even if it is a low-cost or medium-cost housing unit.
- It will require huge shareholders' funds and capital commitment if a housing developer is unable to secure bank borrowings and banks will be reluctant to finance a project under a BTS concept due to the nature of the risks involved. Previously unknown developers will stand little chance of securing any project financing. Having said that, how many companies are there with huge market capitalisation which can adopt the BTS concept and how many times can they develop projects based on BTS?
- There will also be implications on downstream businesses as reduction in housing projects and the scale of housing development will affect other industries such as construction, building materials, professionals and banks and this may have severe social, economical and political implications.

But there are other drawbacks to the 10/90 model too.

Firstly, section 9AA is not so much about selling and delivery of a housing unit. It is more about a sale of land prior to the approval of plan. Even though "land" as defined includes buildings, in comparison, the issue of fairness does arise whether 10% is a reasonable sum to bind a developer as it is more akin to a situation where the winner takes all and the loser loses everything.

Secondly, is it fair for the purchaser to opt out of the sale if the completion of his housing unit is delayed when he can be adequately compensated with damages for late delivery?

Further, can a purchaser also opt out for any other reason? Whilst a developer is most likely to get the purchaser's financier

to undertake to pay the 90% of purchase price upon completion, there is really nothing to prevent a purchaser to opt out, say if upon completion the property price should plummet to a level which does not make sense for the purchaser to continue with his purchase. Under these circumstances, is the developer entitled to specific performance? If not, will this not lead to the completed project being abandoned?

It is envisaged that under this practice, the developer will impose many conditions allowing him to withdraw from the contract as quickly as possible, for example, if not many units are sold.

Financial institutions may not also come on board to finance a project unless a certain number of units have been pre-sold.

Therefore, is Schedule G or H SPA still required to be used? If so, it really does not make a lot of difference from the present system and the 10/90 system may in fact cause the purchaser to be embroiled in more legal battles over the current usual late delivery and poor workmanship complaints.

In this respect, it may not be so attractive for the developers to adopt the 10/90 system if they still have to comply with the existing strict housing development laws and State Governments' polices on bumiputra ownership, low-cost housing and improvement service funds for infrastructure.

In fact, we should pride ourselves as one country which requires developers to follow a statutory SPA and open a housing development trust account compared to other countries which practise the STB concept.

What is more important is the provision of affordable housing to the people. The BTS and 10/90 concepts are more commercially-driven with little emphasis on the social aspect of a housing development.

While the purchaser's rights may be strengthened under the 10/90 concept, he may be more disadvantaged economically as his need for affordable housing may no longer be within his reach.

We should focus more on the enforcement aspect and give a little more time for the 2002 amendments to bite in and if necessary, strengthen further the current laws.

Since the revamp of the housing laws in 2002, we have seen a vast improvement in the housing industry – reduction in abandoned projects, effective enforcement and effective dispute resolution by the Tribunal for Home Buyer Claims.

It may be too soon to adopt a system which is not universally practised. After all, this model is not practised throughout Australia as section 9AA only applies to the State of Victoria.

However, if the government still goes ahead with the 10/90 model, then the next question is how to sort out the legal framework, particularly whether a new set of laws has to be drafted. If so, do the new laws run parallel with the existing ones or otherwise. In my view, it is best have a total substitution of the existing laws. There are two reasons. Firstly, *albeit* the current laws allow 9/10, not many developers actually practise it. Secondly, it is discriminatory in nature as purchasers will opt for those who practise 9/10 against those who do not.

In any event, credit should go to the minister for making this possible by revolutionisng Malaysia's housing laws.

Disciplinary Orders

Suspended

Order under s 103D Legal Profession Act 1976

1. Winston Gracias Lopez, Prem Jawahar, M/s Lopez & Co (one year from the date that Sijil Annual may be issued in the future)
2. Paneerselvam Pandian s/o S Seeralan, M/s Azian & Co (six months with effect 21 day from 20 August 2005)
3. Mohd Rawi bin Haji Abdul Hamid, M/s Mohd Rawi & Associates (30 months from the date that Sijil Annual may be issued in the future)

Penalty

Order under s 103D Legal Profession Act 1976

1. Lokman bin Mohd Yusof, M/s Lokman & Assoc - 16 July 2005 (RM50,000)
2. Muzamil bin Hashim, M/s Lokman & Assoc - 16 July 2005 (RM50,000)
3. Mohd Azhari bin Ariffin, M/s Azhari Ariffin & Assoc - 16 July 2005 (RM5,000)
4. Phua Kia Wui, M/s Phua & Partners - 16 July 2005 (RM5,000)
5. Khaliza binti Simat, M/s Ashirin Jamilah & Nor - 23 July 2005 (RM5,000)

Struck Off

Order under s 103D Legal Profession Act 1976

1. Mohd Hussain bin Ariffin, M/s Hussain Ariffin & Assoc (w.e.f. 21 days from 23 July 2005)
2. Sazali bin Abd Wahab, M/s Sazali Wahab & Co (w.e.f. 21 days from 23 July 2005)
3. Mohd Zawawi bin Awang Nik, M/s Mohd Harris & Associates (w.e.f. 21 days from 20 August 2005)
4. Badrul Hisham bin Haji Mohammad, M/s Badrul Hisham & Assoc (w.e.f. 21 days from 20 August 2005)
5. Mohammad Rahim bin Selamat, M/s Rahim & Co (w.e.f. 21 days from 20 August 2005)
6. Shamzul Razni bin Abdul Razak, M/s Choong & Co (w.e.f. 21 days from 20 August 2005)
7. Kow Chee Kang, M/s C K Kow & Co (w.e.f. 21 days from 20 August 2005)

UN goes for a new Human Rights Council

Contributed by Web Reporter, Website of the Malaysian Bar

The General Assembly hall

The current president of the UN General Assembly, Jan Eliasson of Sweden, has been tasked to "conduct, open, transparent and inclusive negotiations to be completed as soon as possible during the 60th session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures" for a new Human Rights Council, intended to replace the discredited Geneva based Commission on Human Rights which has come under fire for allowing countries with bad records of human rights violations like Cuba, Sudan, and Zimbabwe to hold seats.

In reaffirming the "universality, indivisibility, interdependence, and interrelatedness of all human rights", the 35-page outcome document adopted by the General Assembly today said the new Council would be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.

The statement added that the Council would further strengthen the United Nations human rights machinery and should address situations of violations of human rights, including gross and systematic violations and make recommendations thereon.

"It should also promote effective coordination and the mainstreaming of human rights within the UN system."

In pushing for the inception of the new Human Rights Council, Prime Minister of Canada, Paul Martin said at the United Nations summit today: "Respect for human rights is the living heart of democracy, the key to unlocking the potential of every person to contribute to their own welfare and to the prosperity and security of their communities. The UN's Commission on Human Rights has a serious credibility problem. Its membership, its increasing politicization and its overall lack of effectiveness at tackling human rights violations around the world have overwhelmed its achievements. We need a standing body at a higher level in the UN system, commensurate with the importance of human rights. That is why we support the proposal for an effective Human Rights Council.

"I cannot disguise our profound disappointment that we were not able to agree at this Summit on all of the elements required to make it operational. Canada will not cease to promote actively, bringing a standing council into being, with credible membership criteria. In the meantime, we welcome the universal endorsement of the work of the United Nations High Commissioner for Human Rights, Louise Arbour and our collective decision to double the resources available to her office."

The General Assembly of the United Nations, seen here in session, is made up of representatives of all member countries of the UN. Functioning as a global town hall, the Assembly may address any matter covered by the UN's charter. However, because it has no authority to enforce its decisions, the Assembly's resolutions are not legally binding.

U.N. headquarters in New York

Swiss President Samuel Schmid said on Thursday that the creation of the new Human Rights Council, which stems from a Swiss proposal , must be a priority "By establishing this council, we should succeed in adapting the UN's architecture in order to make human rights as much a priority as development, peace and security.

"In Switzerland's view, this new body will have to be both more legitimate and more efficient, hold a higher place in the United Nations' hierarchy than the current Human Rights Commission, and should hold its sessions in Geneva," said Schmid.

In echoing these views, the international human rights body, Human Rights Watch said through its global advocacy director, Peggy Hicks that world leaders could help redeem the promise of the U.N. summit by establishing the Human Rights Council without delay.

Earlier, the Amnesty International said in a press release on Tuesday that the proposed text on the Human Rights Council was woefully inadequate in failing to call for minimum elements essential for an improved and more authoritative human rights body.

"It offers people around the world little more than the discredited Commission on Human Rights with a different name.

"It is totally unacceptable that a small number of countries with deeply troubling human rights records led by China and Russia are being allowed to block the creation of a new, stronger, more effective and authoritative Human Rights Council. The United States of America and the United Kingdom also bear a particular responsibility by failing to stand up for a strong Human Rights Council at crucial moments in the negotiations," said Yvonne Terlingen, Amnesty International's UN representative.

"It must include a commitment to double the Office's resources from the regular budget over the next five years.

"If world leaders do nothing more than adopt a broad, vague text that defers all substantive decisions to the General Assembly, they will have squandered a historic opportunity. Such a damning failure of global leadership will cast a dark shadow over the whole summit and represent a betrayal of millions of the world's most vulnerable people," said Yvonne Terlingen.

From 1941 to 1945, United States President Franklin Roosevelt, British Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin held various conferences in which they discussed their respective strategies in World War II. Their experiences helped them to formulate a plan to create an international peacekeeping organisation with a goal of preventing future wars on the scale of World War II. In April 1945, representatives from 50 countries met in San Francisco to create the charter of the organisation that would be called the United Nations.

Secretary-General Kofi Annan addressing the Security Council

She added that the Outcome Document should also provide the Office of the High Commissioner for Human Rights with the bare minimum of resources sufficient for the High Commissioner to fulfil her mandate.

The Trusteeship Council, New York, 1992

[For the uninitiated, the General Assembly of the United Nations approved and adopted, after several re-drafts, a final 'outcome document' at the UN World Summit held from 14th to 16th September 2005. This document incorporates proposals for UN reform initially contained in the report of UN Secretary-General Kofi Annan's *High-level Panel on Threats, Challenges and Change* as well as ideas advanced by Kofi Annan in his subsequent report, *In Larger Freedom: Toward Development, Security and Human Rights for All*. The 'outcome document' itself, a 40-page document in PDF fromat, can be viewed and downloaded at http://daccessdds.un.org/doc/UNDOC/LTD/N05/511/30/PDF/N0551130.pdf?OpenElement

National leaders and leaders of thought have since expressed mixed feelings about the document - a few are pleased with the text, while many others feel priority issues had been diluted to the point of meaninglessness. What follows here, then, is UN Secretary-General Kofi Annan's response to the feedback.]

A Glass At Least Half Full

Kofi A Annan

The "outcome document" adopted last Friday [16th September 2005 – Ed.], at the end of the United Nations world summit, has been described as "disappointing" or "watered down". This is true in part – and I said as much in my own speech to the summit on Wednesday. But, taken as a whole, the document is still a remarkable expression of world unity on a wide range of issues.

And that came as welcome news, after weeks of tense negotiations. As late as last Tuesday morning, when world leaders were already arriving in New York, there were still 140 disagreements involving 27 unresolved issues. A final burst of take-it-or-leave-it diplomacy allowed the document to be finalised, but so late in the day that reporters and commentators had no time to analyse the full text before passing judgment. It is no criticism of them to say that many of their judgments are now being revised, or at least nuanced.

Indeed, I would not wish to criticise them, since most were very kind to me. They blamed the alleged failure on nation states – who, supposedly, failed to embrace the bold reform proposals that I had made. It is only fair that I set the record straight.

In March, when I proposed an agenda for the summit, I deliberately set the bar high, since in international negotiations you never get everything you ask. I also presented the reforms as a package, meaning not that I expected them to be adopted without change but that advances were more likely to be achieved together than piecemeal, since states were more likely to overcome their reservations on some issues if they saw serious attention given to others which for them were a higher priority.

In the end, that is precisely what happened.

The outcome document contains strong, unambiguous commitments, from both donor and developing countries, on precise steps needed to reach, by 2015, the development goals agreed on at the Millennium Summit five years ago – an achievement sealed, as it were, by President Bush's personal endorsement of the goals in his speech on Wednesday.

It contains decisions to strengthen the UN's capacity for peacekeeping, peacemaking and peacebuilding, including a detailed blueprint for a new peacebuilding commission, to ensure a more coherent and sustained international effort to build lasting peace in war-torn countries.

It includes decisions to strengthen the office, and double the budget, of the UN High Commissioner for Human Rights; to create a worldwide early warning system for natural disasters; to mobilise new resources for the fight against HIV/AIDS, TB and malaria; and to improve the UN's

Central Emergency Revolving Fund, so that disaster relief arrives more promptly and reliably in future.

It lacks the clear definition of terrorism that I had urged. But it contains, for the first time in UN history, an unqualified condemnation, by all member states, of terrorism "in all its forms and manifestations, committed by whomever, wherever and for whatever purposes", as well as a strong push to complete a comprehensive convention on terrorism within 12 months, and agreement to forge a global counterterrorist strategy that will weaken terrorists while strengthening our international community.

Perhaps most precious to me is the clear acceptance by all UN members that there is a collective responsibility to protect civilian populations against genocide, war crimes, ethnic cleansing and crimes against humanity, with a commitment to do so through the Security Council wherever local authorities are manifestly failing. I first advocated this in 1998, as the inescapable lesson of our failures in Bosnia and Rwanda. I am glad to see it generally accepted at last – and hope it will be acted on when put to the test.

My proposal for a new UN Human Rights Council is also accepted, though without the details that I hoped would make this body a clear improvement on the existing Commission. These are left for the General Assembly to finalise during the coming year. Nations that believe strongly in human rights must work hard to ensure that the new body marks a real change.

Member states have accepted most of the detailed proposals I made for management reform. In the near future we should have more independent and rigorous oversight and auditing of our work; a cull of obsolete tasks and a one-time buy-out of staff, so that we can focus our energies on today's priorities and employ the right people to deal with them; and a thorough overhaul of the rules governing our use of budgetary and human resources.

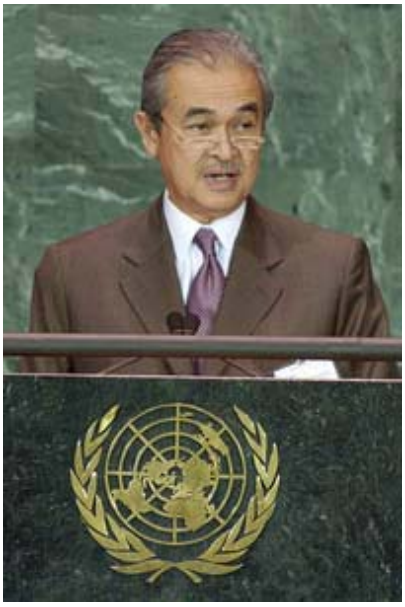
But they held back from a clear commitment to give the Secretary-General the strong executive authority that I and my successors will need to carry out the ever-broadening range of operations that the UN is tasked with.

I had also suggested a reform of the Security Council, making it more broadly representative of today's realities. Here too there is agreement on the principle, but the devil is in the detail. The document commits nations to continue striving for a decision, and calls for a review of progress at the end of 2005.

By far the biggest gap in the document is its failure to address the proliferation of nuclear weapons – surely the most alarming threat that we face in the immediate future, given the danger of such weapons being acquired by terrorists. Some states wanted to give absolute priority to non-proliferation, while others insisted that efforts to strengthen the Non-Proliferation Treaty (NPT) must include further steps towards disarmament. Thus the failure of the NPT review conference in May was repeated.

Surely this issue is too serious to be held hostage to such an Alphonse-and-Gaston* act. I appeal to leaders on both sides to show greater statesmanship, and make an urgent effort to find common ground. Otherwise this summit may come to be remembered only for its failure to halt the unraveling (sic) of the non-proliferation regime – and its other real successes would then indeed be overwhelmed.

H.E. Dato' Hamidon Ali
Permanent Representative of Malaysia to the United Nations



[* *Alphonse and Gaston*, one of the most popular creations of Frederick Burr Opper, were bumbling pair of Frenchmen with a penchant for politeness. They first appeared in *The New Journal* in 1902. Their "After you, Alphonse." and "No, you first, my dear Gaston!" routine entertained readers for more than a decade. – Ed.]

Please be informed that the Headquarters and Main Branch of Amanah Raya Berhad (previously the Public Trustee and Official Administrator's office) has been relocated to a new '*One-Stop' Centre* in the heart of KL City at:

Wisma AmanahRaya,
(Next to Bank Muamalat)
No 2, Jalan Ampang,
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E-mail : crmd@arb.com.my
Web Site : http://www.arb.com.my

wef **1 September 2005**

To All Members of the Bar
Circular No : 59/2005
12 September 2005
Re: LawCare Fund

The Bar Council has issued notices and collected the RM100/- subscription for the LawCare Fund pursuant to the resolution on the matter at the 59th AGM of the Malaysian Bar.

However, at the Bar Council meeting of 11 June 2005, it was decided that pending the appeal to the Federal Court on the matter of the quorum, the LawCare Fund shall be placed in a separate account. Therefore, the insurance cover for death and disability would not be in place until further notice.

Thank you.

(Sgd)
Ragunath Kesavan
Secretary
Bar Council.

To the Members of the Bar

FAILURE TO OBTAIN PRACTISING CERTIFICATE 2006 BY 1 JANUARY 2006

Todate the Secretariat has only received approximately 9,800 applications for renewal of Sijil Annual & Practising Certificates 2006 out of our 12,000 over membership. As the Practising Certificates 2005 would expire by 31 December 2005, all members who intend to practice in 2006 but have yet to submit your applications are urged to do so immediately. For those who have submitted applications but have yet to receive your Sijil Annual & Practising Certificates 2006, please liaise with the Membership Department for the status of your applications.

We wish to remind members that in the event you are not issued with a Sijil Annual & Practising Certificate 2006 by 1 January 2006, you have to cease practice immediately, pending issuance of the same, in order to avoid any injunction proceedings and / or disciplinary action being taken against you.

Similarly, members who have ceased practice in 2005 or wish to cease practice in 2006 are requested to immediately notify the Bar Council of such cessation from practice so that Bar Council records are duly updated.

We thank you for your continued co-operation.

The Membership Department
Bar Council Secretariat

RESULTS OF BAR COUNCIL ELECTION 2006/2007

We declare the first twelve (12) persons belownamed duly elected to the Bar Council for the year 2006/2007 on the assumption that the said persons were not disqualified from being nominated or from holding office under the Legal Profession Act. (Click here to view pictures taken during ballot counting.)

1.	Hendon Mohamed	2310
2.	Sulaiman bin Abdullah, Haji	1934
3.	Low Beng Choo	1696
4.	Kuthubul Zaman Bukhari, Haji	1582
5.	Cecil Rajendra	1569
6.	Hamid Sultan bin Abu Backer, Haji	1522
7.	Yasmeen Shariff	1500
8.	Mah Weng Kwai	1489
9.	Zulkifli Bin Noordin	1380
10.	Jerald Gomez	1369
11.	Edmund Bon	1363
12.	Ragunath Kesavan	1281
13.	Christopher Leong	1255
14.	Charles Hector Fernandez	1181
15.	Shamsuriah bt Sulaiman, Hajah	1164
16..	Andrew Khoo Chin Hock	1154
17.	Lee Swee Seng	1011
18.	Ramdas Tikamdas	951
19.	Murad Ali bin Abdullah	950
20.	Steven Thiruneelakandan	939
21.	S Ravichandran	902
22.	Tony Woon Yeow Thong	857
23.	Bastian Pius Vendargon, Dato'	720
24.	Manjit Singh Sachdev, Dato Dr	679
25.	Ranjit Singh s/o Harbinder Singh	626
26.	Colin Andrew Pereira	608
27.	Jegadeeson Thavasu	578
28.	P Suppiah	542
29.	Wong Tat Chung	339
30.	Sim Ooi Hong, Dato'	329
31.	G Krishnan	288
32.	Krishna Kumar a/l Sivasubramaniam, Dato'	212

Total number of Ballots issued :	12,033
Total number of Ballots received :	3,764
Number of spoilt Ballots :	11
Number of Ballots undelivered :	58

Dated this 1st day of December 2005

Mr Inderjit Singh | Encik Zainudin Ismail | Mr Vernon Ong

All statements were issued by Yeo Yang Poh, Chairman, Bar Council 2005/2006 unless stated otherwise

The Ayah Pin Saga

9 August 2005

Reports that the 45 alleged followers of Ayah Pin who were charged in court had difficulty getting Syariah lawyers to represent them rang an ominous alarm bell. Upon learning of the same, the Bar Council (through its Human Rights Committee and Legal Aid Committee) managed to procure a Syariah lawyer to represent the accused in their bail hearings.

These persons continue to experience difficulty in seeking defence counsel to act for them in relation to the substantive charges, as has been widely reported in the newspapers. The Bar Council has obtained a list of all the Syariah lawyers in Trengganu, and has written to each and every one of them drawing their attention to the dire situation and urging them to avail themselves in providing legal representation to these accused without fear or reservation.

It is a hallmark and a responsibility of lawyers all over the world to provide their professional services without being inhibited by any unpopularity of the client's cause; or by any difference (no matter how great) in ideology or belief between the client and the lawyer or between the client and the society at large. This duty to prosecute a client's case or to defend a client's action to the fullest is as sacred as, for example, the duty of doctors to treat their patients without regard to their personal beliefs.

It is thus hoped that Syariah lawyers in Trengganu will quickly rise to the occasion and come forward to offer their services. The credibility and integrity of any criminal legal system require, among other things, the availability of proper and adequate legal representation for the accused, the absence of which will plunge that system into a state of meaningless existence.

While most of the cases are fixed for mention on 1/9/05, we are informed that one case is fixed for hearing tomorrow (10/8/05). If this accused is unable to obtain proper legal representation by tomorrow, it is hoped that the court will adjourn the matter to allow the accused more time to look for a suitable Syariah lawyer, and that it will in the meantime grant bail.

The Ayah Pin saga has brought to surface other perennial matters of importance as well. The issue of the freedom of belief is no doubt a central one, highlighting once again the impropriety for the State to regulate one's thoughts and beliefs, or to criminalize those who do not subscribe to "mainstream" doctrines.

Unlike in similar incidents in the past where criminal laws alone were used against persons conducting spiritual activities perceived by the authorities to be undesirable, the Trengganu authorities this time sought to use land law in order to wipe out such activities; by invoking the National Land Code in forfeiting and taking possession of the land and demolishing the structures on the land, all of which were carried out with unusual and lightning speed. In so doing, the relevant authorities were even prepared to ignore their knowledge of the existence of a High Court Order granting a stay of further action pending a judicial review of the steps taken by them under the National Land Code, preferring to argue that the sealed Order had yet to be extracted or served on them. This extraordinary move is akin to taking the law into their own hands; something which should not be permitted and ought not to have been done.

In addition, there was an earlier incident of taking the law into one's own hands, when on 18/7/05 a group of masked vigilantes entered the village and committed acts of arson and mob violence. While the relevant authorities have acted quickly to charge Ayah Pin's alleged followers, it appears that no one has yet been charged in respect of the shameful and cowardly crimes that were perpetrated on 18/7/05.

The entire episode is a wake-up call to the authorities and to all Malaysians. We must realise that there is an urgent need to find proper and fairer ways of addressing matters of this nature, and that the ways in which we had dealt with them in the past leave a lot to be desired. The injustices that resulted must be addressed and redressed. Lessons must be learned. Individuals' rights and freedom must be respected.

Delays in Civil Proceedings

18 August 2005

The need to have an independent, fair and efficient system of justice has been a recurring concern for Malaysians in the past 2 decades. It is precisely such a system that the Malaysian Bar has been consistently advocating, hoping that it will become a reality in the foreseeable future.

The New Straits Times today highlighted a case that commenced in the Kuantan High Court in 1979, and which was concluded at the High Court only in 1997. Thereafter the appeal was heard and decided by the Court of Appeal in 2003, and the process finally completed at the Federal Court in August 2005. The time it took for that case to be finally disposed of was, unquestionably, far too long. The report also carried comments attributed to the Attorney General to the effect that lawyers are generally the main cause of delay in civil cases.

The fact that the present justice system requires vast improvement in numerous aspects is not in dispute. In seeking to improve any system, one of the first tasks is to identify the causes of its current deficiencies. To that end, Suhakam had recently organized a forum on "The Right to an Expeditious & Fair Trial". It became clear at the forum that the delay currently experienced at the courts is due to a multitude of factors, including the acute shortage of judges, judicial officers and support staff such as interpreters; and cumbersome and time-wasting procedures such as judges having to painstakingly hand-write notes of proceedings. Suhakam has since released a detailed report, in which it makes several useful recommendations to improve the efficiency of our justice system, which deserve support and serious consideration by the authorities.

While it is not denied that individual lawyers do from time to time contribute towards delay in the disposal of certain cases, it is equally clear that lawyers are not the main cause of delays in court proceedings, civil or criminal.

The Malaysian Bar has for many years been urging the authorities to review our system of justice, including increasing the capacity of its legal infrastructure in order to cope with the ever increasing volume of cases that the system has to handle. This call is again renewed.

It is no doubt important that cases should be disposed of in a speedy and efficient manner. However, in so doing, it must never be forgotten that the need to give a fair trial to each and every case cannot be compromised in the process. Delaying justice is certainly not a desirable state of affairs, but speedily dispensing injustice will be far worse.

WISDOM

There's a time we must run and a time we must stay,
A time to just think and a time that's for play;
A time to stand firm and a time we should sway -
Knowing when to do which is called wisdom.

There's a road to avoid and a road we should take,
There's drifting to do or decisions to make;
We try to be up, being down's a mistake -
Knowing how to do which is called wisdom.

There's a way to bring joy and a way to bring tears,
We can make our way smooth or crunch through the gears;
There's a way to stay bright no matter the years -
And getting it right is called wisdom.

Author Unknown

The Truth is out there!

Contributed by Siva Kumaran

One of the side-effects, I don't know whether to call it an advantage or a drawback, of the information technology age, specifically in having an email account, is that you often receive messages of unknown origin and, oftentimes, of questionable accuracy.

I am not just referring to the calls to 'pass this message along' because some multi-billion dollar person or corporation has promised to donate a pittance to some worthy cause or other. The thinking there obviously is that many times a little bit ought to add to quite a lot.

I am talking here about the 'news' that, like the truth in the *X-files*, is out there! There is even a word for it, 'spin', and the experts in the field are called 'spin doctors'. Take for example the following email I received, complete with the hi-resolution pictures which appear in this article. While the pictures are themselves awe-inspiring, the text of the email was short and simple:

Amazing what $2.55 a gallon gas can buy, isn't it?

In case you're wondering where this hotel is, it isn't a hotel at all. *It is a house!* It's owned by the family of Sheikh Zayed bin Sultan Al Nahyan, the former president of the *United Arab Emirates* and ruler of Abu-Dhabi.

Now you know where your gasoline money goes.

AND WE WERE WONDERING WHY WE ARE PAYING SO MUCH FOR GASOLINE? HMMMMMMMM.

This is where some further knowledge of the internet will come in useful. A little research will often reveal the truth behind the 'news'. Rather than bemoan the uncertainty of the 'news' on the internet, you can learn how to use the internet to satisfy your need to separate the grain from the chaff, to know the facts from the fiction.

It is a matter of official record that the region has nine states or *emirates*, each having its respective *Emir* or Ruler, namely, Abu Dhabi, Ajman, Bahrain, Dubai, Fujairah, Ras al-Khaimah, Sharjah, Qatar and Umm al-Quwain). Bahrain and Qatar declined to join the United Arab Emirates ('the UAE') and sought and obtained full independence. Each of the seven *Emir*s of the UAE sits on the Supreme Council. The Council elects a President, from amongst themselves, at five-year intervals.

His Highness Sheikh Zayed bin Sultan Al Nahyan, born in 1918, was the ruler of the oil-rich emirate of Abu Dhabi and was elected, repeatedly, to serve as President of the UAE. He utilised the oil revenues of Abu Dhabi to fund projects throughout the UAE. Sheikh Zayed was also instrumental in the formation of the Gulf Co-operation Council, which officially started in Abu Dhabi in 1981. Sheikh Zayed passed away on 2nd November 2004. He is succeeded by his son, and former Crown Prince, Sheikh Khailfah.

The internet also reveals that the pictures are real enough and of a building in Abu Dhabi. They are, however, pictures of a hotel, not of a house, specifically of the Emirates Palace Hotel.

Thus, by all means, believe Agent Fox Mulder when he tells us, "The Truth is out there!" But also remember Agent Dana Scully's rejoinder, "So are the lies!", and so many of then at that!

Entrance to Sayad Seafood Restaurant

Khaleej Deluxe Suite Lounge Area (Entrance View)

Khaleej Deluxe Suite Bathroom

Palace Suite Dining Room

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(Malaysian practitioners)

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*** The Fundamentals** programme is designed for lawyers of up to 7 years with limited trial experience.

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DESCRIPTION OF THE SEMINAR

The course provides in depth training and practice in the following areas

- Overview of the litigation process
- Initial case analysis
- Chronologies
- The theory of the case
- Evidence-in-Chief
- Cross Examination
- Re-examination
- Written advocacy and submissions

The Fundamentals programme will deal with the following aspects of advocacy –

- How to prepare your case from pleadings to trial.
- Getting the most out of discovery.
- Structuring your evidence.
- Methods for highlighting weaknesses in your opponent's case.
- Models for evidential proof.
- How to ensure you track all the evidence.
- Techniques in evidence in chief and cross-examination.

Each aspect will be introduced by a short lecture. Participants will then work in smaller groups with individual attention from the course leaders. A strategic approach to preparation and presentation will be emphasised. Participants will focus on a fact situation as it unfolds during the whole course.

The course will comprise some short lectures, demonstrations and discussions but mostly active involvement in advocacy exercises and mock trials, upon which feedback will be provided. Performances will be videoed for immediate feedback.

The emphasis is on *strategic* advocacy. Hence considerable attention will be given to analysis and preparation, but there will also be opportunities to practise on-the-feet advocacy skills, upon which feedback will be given.

MAJLIS PEGUAM

BAR COUNCIL

WITNESS STATEMENTS - PREPARATION, OBJECTIONS, CROSS-EXAMINATION**

Conducted by:
Mike Holland and James Hall
(College of Law Sydney),
Nahendran Navaratnam, Ranjit Singh and Sitpah Selvaratnam
(Malaysian Practitioners)

Date: Monday 16 January 2006
Registration Fee: RM450.00
Venue: Bar Council Auditorium: 1st Floor,
13, 15 & 17 Leboh Pasar Besar; 50050 KL

**** The Advanced** programme is suitable for lawyers of at least 3 and up to 10 years of practice with experience in trial work.

The College of Law The College of Law

Part of The Malaysian Advocacy Programme presented in conjunction with The College of Law Alliance

DESCRIPTION OF THE SEMINAR

The Advanced programme provides in depth training and practice in the following areas:

- How to prepare an effective witness statement.
- Dealing with objections.
- How the form of the statement influences the reception of evidence.
- How closely the witness should be involved in the drafting.
- How to detect coaching.
- Techniques in cross-examination on witness statements.
- Eroding the credibility of the witness statement.
- Effective use of documents in evidence

This course is designed to give practitioners certainty that on walking into court at the start of the hearing:

- your witness's statements will cover the relevant evidence needed to prove your case or disprove your opponent's case,
- your witness's statements will always be in an admissible form,
- you will have the skills to be able to effectively object to your opponent's witness statements, and
- you will have the skills to cross-examine an opponent's witness about his/her statement.

Witness statements are now a common aspect of civil litigation practice. The initial challenge is to know what should and should not be put into a witness statement, and to draft witness statements which are effective and will not be subject to objection. In court, the challenge is to be able to effectively get the witness statement into evidence and to know how to deal with objections. As counsel for the other party, the challenge is to know how to approach cross-examining on a witness statement and how to do that effectively.

This course will help you meet all of those challenges. All participants will be able to attend a preliminary lecture prior to the seminar, or receive it on VCD. In the morning, participants will work in small groups, using a proof of evidence, to draft a witness statement based on a fact situation. A model example will be provided afterwards. In the afternoon, participants will individually cross-examine a witness on his/her witness statement. All cross-examinations will be videotaped and individual and immediate feedback will be provided. There will be some short lectures but most of the day will be devoted to hands-on activities.