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**Challenges of an ASEAN Community:
Rule of Law, Business, and Being People-Oriented**



Pushing Back Against Shrinking Democratic Space

By Louis Liaw and Syahredzan Johan

The final — and arguably most anticipated — session of the second day of IMLC 2016 was the popular “Hard Talk” plenary session titled “Challenges of Enhancing Democratic Space at Federal and State Levels”. The panellists consisted of **The Right Honourable Lim Guan Eng**, Chief Minister of Penang; **Dr Terence Gomez**, Professor of Political Economy, University of Malaya; **Maria Chin Abdullah**, Chairperson of BERSIH 2.0 (Coalition for Clean and Fair Elections); and **Dato’ Dr Ahmad Farouk Musa**, Chairman and Director of Islamic Renaissance Front. The session was moderated by **Dato’ Ambiga Sreenevasan**, the President of the National Human Rights Society (“HAKAM”), who formerly served as the 27th President of the Malaysian Bar.

The session commenced with YB Lim Guan Eng’s brief elucidation of the Penang State’s efforts in pushing back against the shrinking democratic space faced at both Federal and State levels across Malaysia. The Chief Minister stated that Penang is the only state in Malaysia to have a “Speaker’s Corner”, and took the opportunity to commend the Penang police for never having arrested anyone for speaking his or her mind.

He reminded the audience that Penang had passed the Freedom of Information Act to guarantee to the general public the access to information, on the only condition that the information is not used for commercial purposes. Penang’s attempts to strengthen democracy have not been limited to just social rights, but also economic rights, which include the State’s efforts in improving the infrastructure, especially digital infrastructure, of the State.

The next panellist, Dr Terence, focused on the monetisation of politics in Malaysia. He claimed that the funding of elections and political activities in Malaysia is problematic and lacks transparency, resulting in the erosion of free and fair elections in Malaysia. Dr Terence complemented his speech with infographics and charts detailing how companies linked to the Federal Government controlled the funding of elections, leading to certain parties enjoying an unfair advantage during elections.

He offered three major reform recommendations — formulating a Political Parties Act that, among others, bans secret and foreign funding; strengthening the Election Commission, which includes protecting its autonomy and independence; and lastly, enabling equitable access to funding through, for example, regulating private funding of politics. He, however, expressed his disappointment that the opposition parties themselves seem reluctant to take on these reforms.

The next speaker, Ms Maria, highlighted the shrinking of democratic space through more apparent ways, allegedly carried out by the current Government. Ms Maria gave the example of the recent questionable arrests of former journalist



Sidek Kamiso and a blogger who goes by the moniker “Ratu Naga”. She stated that it seems that the Government is trying to control not only what we say, but what we think, and emphasised the increasingly restrictive laws passed by Parliament, such as the National Security Council Act 2016.

She pointed out that the role of civil society organisations is to raise legitimate concerns to the Government, and the Government should address these concerns rather than retaliating through drastic measures such as arrests. The Government’s actions were intended to instil fear and inhibit critical thinking and dissent, and she therefore urged members of the public to work together to fight against the oppression, and continue to reclaim their rights and freedoms.

The final speaker was Dr Farouk, who raised another facet of shrinking democratic space in Malaysia, namely in respect of freedom of religion and conscience. Dr Farouk reminded the audience that freedom of conscience is one of the most fundamental rights of every human being, and is encapsulated in Article 18 of the Universal

Declaration of Human Rights. Dr Farouk contended that Malaysia is facing the problem of increasing institutionalisation of religion. He pointed out that the State is trying to control how religion is interpreted and professed in this country, and is growing increasingly resistant towards diverse interpretations of religion. The Government, Dr Farouk argued, is not tolerant of differences of opinion on how people practise their beliefs, leading to animosity and divisiveness not only between religions, but even within a religion.

Dr Farouk concluded by stating that the fight against the diminution of public space for free debate and discourse should be spearheaded by intellectuals, who ought to constantly challenge minds and the *status quo*, rather than conforming to the dictates of the State. “We must be the change we want to see”, he quipped, quoting Mahatma Gandhi.

With the speakers having articulated their preliminary thoughts on the topic, the speakers were then given the third degree by Dato’ Ambiga.

Topics that were touched on included the bill that PAS President, Datuk Seri Abdul Hadi Awang, plans to table; local council elections; and action taken against dissenters through the State apparatus. The session became rather heated at one point as Dr Terence and YB Lim Guan Eng went head to head on the lukewarm attitude of the opposition parties with regard to reforms on political funding. Dato’ Ambiga also questioned the Chief Minister on the Penang Government’s efforts in implementing local council elections, stating that although the implementation of a formal local council election is not permitted by the Federal Court, the State could proceed with an informal election. The Chief Minister ultimately agreed to reconsider the issue, so long as a thorough and holistic proposal is submitted.

The speakers then expressed their opinions on the one thing they would change if they became the Government of the day. Dr Terence would demand greater transparency in how political parties conduct themselves, while Ms Maria wished for a more representative and accountable election system, as well as the establishment of an Independent Police Complaints and Misconduct Commission. The Chief Minister said he would ensure the Government is one that upholds the Federal Constitution and the rule of law, while Dr Farouk said he would replace the Attorney General with one who is independent and honourable.

It might appear, from the tone and discussion of the session, that Malaysia is facing vast challenges when it comes to democratic spaces and practices. However, there is a silver lining, which was empathically stressed by Dr Terence and Ms Maria: as long as the people are doing their part, all is not lost.

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How (Not) to Handle Expert Witnesses

“It’s a different playing field.”

By Brendan Navin Siva

This session was structured by the Bar Council Advocacy Training Committee (“ATC”) to showcase advocacy skills required in the context of the handling of expert witnesses.

It was a privilege to have **The Honourable Mrs Justice Audrey Campbell-Moffat**, Judge of the Court of First Instance, Hong Kong, participate in the session. Formerly a leading barrister and currently a senior advocacy trainer, Justice Campbell-Moffat has been involved in advocacy training throughout the common law world.

Justice Campbell-Moffat started by emphasising that the session was merely an “appetizer” as to what is on offer at the actual, substantive advocacy training courses organised by the Bar Council.

She then highlighted the objectives of putting an expert on the stand, and identified how much the counsel needs to understand about the area of expertise of the witness and the level of preparation required of counsel. Substantive practical tips were given by the speaker as to how to prepare for the handling of the expert witness. Justice Campbell-Moffat also made the very salient point regarding the importance of ensuring

the expert witness puts the evidence in a language easily understandable by the tribunal or court. She further related the perspectives from the Bench, and the expectations of Judges when dealing with expert evidence.

The highlight of the session was the live demonstration of three skills that are important when handling expert witnesses. Justice Campbell-Moffat was assisted by three of ATC’s senior trainers — **Robert Low**, **Andrew Chiew Ean Vooi** and **James Khong Yoon Hong** — who demonstrated the “how not to” and “how to” methods of handling experts. The audience were treated to excerpts in relation to the following aspects: (1) how to undermine the expertise of the expert; (2) the language of the expert in court; and (3) how to attack the underlying assumptions, and not the expertise.

All throughout the “show”, Justice Campbell-Moffat explained very succinctly the relevance and importance of these skills, and how to utilise them effectively. The trainers’ demonstration of how not to perform and then how to perform effectively gave the audience a clear contrast, to better appreciate the skills being highlighted.



The audience appeared to have acknowledged the practical and interactive nature of the session, which was followed by a lively, albeit brief, question-and-answer segment.

The session ended with **Ira Biswas** — the Chairperson of the ATC, who moderated the

session — emphasising the value and importance of the intensive two- to three-day advocacy training courses organised by the ATC in honing advocacy skills in simulated courtroom training.

The Hague Convention: Beacon of Light in a Dark Tunnel

By Goh Siu Lin



The distinguished speakers at the session on the Hague Convention on the civil aspects of international child abduction — **The Right Honourable Justice Dato’ Dr Hj Mohd Na’im Hj Mokhtar**, Chief Syarie Judge of Selangor; **Anselmo Reyes**, Professor of Legal Practice at Hong Kong University; **Malathi Das** from Joyce A Tan & Partners LLC, Singapore; and **Kiran Dhaliwal** of YN Foo & Partners — shed light on the fraught area of international child abduction. The session was moderated by **Goh Siu Lin** of Shook Lin & Bok.

Mr Reyes provided a global overview of the experiences of Hague and non-Hague Convention signatory countries. He spoke about the long-term effects and child trauma caused by parental child abduction, and the urgent need to have a cross-border mechanism to speedily return children. Some countries have held back from becoming signatories on the misunderstanding that changes in domestic law are involved. Hague laws operate to return the child to the jurisdiction of habitual residence. The issues of custody, access and maintenance are to be decided by the courts of the home country.

Mr Reyes explained that the Convention has been working well and is constantly being fine-tuned. The Central Authority acts to smoothen the process of child recovery to assist the left-behind parent who may lack the resources and finances.

Ms Kiran spoke from the civil practitioner’s perspective, illustrated by two case studies. First, the Gillespie case which posed the legal quandary

caused by Malaysia’s dual system. The mother was non-Muslim, and the children, Muslims. The issue arose as to which court was to have jurisdiction over the custodial dispute.

The second case involved a 10-year-old Malaysian child who was removed to Singapore in defiance of a Malaysian custody order obtained by the father. The matter was resolved amicably through the cooperation of lawyers. If Malaysia had been a Hague signatory country, an administrative application could have been filed for the child’s immediate return. This would prevent forum shopping.

Finally, she spoke about the practical problems when a parent seeks the return of an abducted child. Regrettably, as a non-Hague signatory country, Malaysia is viewed with suspicion, resulting in reluctance to order a return, which is exacerbated by the issue of unilateral conversions to Islam.

Justice Dato’ Dr Mohd Na’im said there have only been two reported cases of international child abduction handled by the Syariah Courts: the Gillespie case and Ismail Arifin (Lepat). The Judge opined that the court represents the ruler and the civil/Syariah court is to show obedience to an order for custody. If the return of the child cannot be materialised without using certain instruments, then the Hague Convention can be used as a basis of returning the child to the custodial parent. The Judge acknowledged that existing domestic laws are insufficient, and felt it was timely for Malaysia to consider acceding to the Convention.

Third-Party Funding in International Arbitration

by Clinton Tan



Justin D’Agostino



Tatiana Polevshchikova



Kevin Prakash



Ranajit Dam

Legal Profession, Practice and Ethics

8:30 – 9:45 am | 23 Sept 2016 (Friday) | Taming Sari 2

Arbitration — international or otherwise — is significantly costlier than litigation in national civil courts. This fact has arguably contrived an environment where less wealthy litigants are often constrained to seek third-party funding to arbitrate, ie where a commercial funder agrees to fund all or part of the arbitration, in exchange for an agreed return.

There are conflicting reasons for and against third-party funding. On the one hand, every person (or entity) should have a right to legal redress, and international arbitration should be no different. On the other hand, it would be undesirable to permit parties to treat international arbitration as a “race track” for investors to gamble for profit.

This session will explore the various approaches taken by ASEAN countries on the issue of third-party funding. Recent and noteworthy developments in this area include the publication by Singapore’s Ministry of Law, on 30 June 2016, of draft legislation to legalise and regulate third-party funding for arbitration in Singapore. In Malaysia, the High Court of Malaya had cause to visit the issue briefly in *MEASAT Broadcast Network Systems Sdn Bhd v AV Asia Sdn Bhd* [2014] 3 CLJ 915.

Ms Malathi spoke on the Singapore experience as a new Hague signatory party in 2010, and the application of the Convention in the first local case, which was litigated up to the Court of Appeal.

She also looked into the principles adopted by the Singapore courts in cases involving non-Convention countries and concluded

Further, the draft Free Trade Agreement between the European Union and Vietnam is paving the way for regulating third-party funding in treaties.

Ranajit Dam, Managing Editor of Thomson Reuters’ Legal Media Group, will moderate this session. A former lawyer, Ranajit brings with him more than a decade of experience as a journalist, having worked in the USA, China, India and Singapore.

Expect to hear from **Justin D’Agostino**, Global Head of Herbert Smith Freehills’ Dispute Resolution Practice and the firm’s Regional Managing Partner for Asia and Australia, who represented the Malaysian Government in the high-profile “Railway Lands” arbitration; **Tatiana Polevshchikova**, International Case Counsel at Kuala Lumpur Regional Centre for Arbitration (“KLRC”), who is involved in the administration of international and domestic arbitrations, and adjudications; and **Kevin Prakash**, President of the Malaysian Institute of Arbitrators, who has an active practice in dispute resolution and has been involved in complex disputes in various forms since being called to the Malaysian Bar in 1998.

with how the Hague laws in Singapore apply uniformly to Muslims and non-Muslims. She said that the success of the Convention would ultimately depend on the re-education of the government, judiciary and child welfare authorities to abandon the practice of using the child’s interests to justify retaining the child in the country of abduction.

CIMB's Journey into ASEAN

By Arina Ong



Tengku Dato' Sri Zafrul Tengku Abdul Aziz, Group Chief Executive Officer of CIMB Group Holdings Berhad, addressed the topic of "The CIMB Journey into ASEAN: Knowledge, Expertise and Foresight" at IMLC 2016. This session was moderated by **HE Edmund Bon Tai Soon**, Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights ("AICHR").

Tengku Zafrul started the session by stating that many were interested in knowing the success stories and the challenges faced by CIMB when expanding into ASEAN countries. He shared characteristics about ASEAN that prompted CIMB to venture into the region. Firstly, ASEAN is a region of rapid economic development — home to the industrialised economies of Singapore, Malaysia, Indonesia and Thailand, alongside the developing Mekong economies of Laos, Cambodia and Vietnam. The world's economic centre of gravity has in recent years shifted to Asia. He opined that there is a large growth potential in ASEAN, which continues to be a major trading partner among its members and with the world.

ASEAN is also a region of diversity in the aspects of colonial experiences, economy, and demographic and geographic factors. For example, there are countries rich in resources like Brunei, contrary to those poor in resources like Laos.

He opined that CIMB has to constantly face challenges in those ASEAN countries with diverse elements and especially when national security takes centre stage. Despite that, the "ASEAN way" of diplomacy and cooperation characterised by caution, pragmatism and consensus-based decision-making has lessened the hurdles in CIMB's expansion. Therefore, a good expansion strategy is a major step forward in realising the agenda set by the organisation.

Tengku Zafrul elucidated the merger and acquisition of CIMB Niaga in Indonesia, how CIMB is growing organically in Cambodia by turning profitable after operating for five years, and also how CIMB's digital banking operation is working in Singapore since the country is a hotbed for financial innovation, with a digital-savvy consumer base. In all these situations, he advised that one

must be nimble and always receptive to changes.

Tengku Zafrul told the crowd that the CIMB group is now established in the home country and also across ASEAN countries, with a huge and diverse network. He reminded the listeners about the key takeaways of "Know Your Customers" and "Know Your Economy" approaches by understanding the macro landscape, respecting cultural diversities and anticipating possibilities and limitations, as they vary according to countries.

He noted that CIMB frequently engages with tax advisors and lawyers to ensure compliance with regulations, and also with non-governmental organisations and the community, to contribute to society.

ASEAN's growth is expected to continue, to become the world's 5th-largest economy by 2020. Last but not least, he ended the session by quoting Charles Darwin: "It's not the strongest of the species that survives nor the most intelligent that survives. It's the one that is most adaptable to change."

Online/Offline: Addressing Child Sexual Abuse

by Aneera Chowdhury

International Law and Human Rights
10:00 – 11:15 am | 23 Sept 2016 (Friday) | Taming Sari 3



Alan Davis



Marianne Clark



Srividhya Ganapathy



Ajeet Kaur

In this digital age, we place great reliance on the Internet although it remains a largely unregulated territory.

Children of the 21st-century learn and teach themselves the ways of the world from the World Wide Web; it has become central to their society. Yet the Web — which remains largely accessible to children — is also a dark place, where modern-day predators lurk.

The sexual exploitation of children has achieved new levels of heinousness, due to affordable technology, secure payment methods and easy online access. The circulation and streaming of live child sexual abuse material is rife. There is a global demand for children on webcams. Online, children are being transacted or groomed.

Only recently, shockwaves reverberated through Malaysia when the acts of the criminal paedophile, Richard Huckle, came to light. He bragged online: "Impoverished kids are definitely much easier to seduce than middle-class Western kids." Huckle abused up to 200 children, and possessed more than 20,000 indecent pictures and videos of children, which he shared with others on a hidden website.

The session at IMLC 2016 will venture into this arena of concern, with consideration of trigger factors in child abuse, recidivism, the ASEAN response to this matter, and the non-legal measures available to tackle this pervasive problem.

Alan Davis teaches criminal law at Monash University, Australia, and is completing a doctorate examining the compliance of Australian youth restorative justice programmes with child rights. He was called to the Bar at Middle Temple in 2007.

Marianne Clark-Hattingh assumed leadership of the United Nations Children's Fund ("UNICEF") Malaysia's country office in January 2016. She has extensive knowledge in child protection, change management and social policy development.

Srividhya Ganapathy was admitted to the Malaysian Bar in 1996, and practises in family law, civil litigation and conveyancing. A child rights trainer, she is a Co-Chairperson of the Bar Council Child Rights Committee ("CRC").

The moderator, **Ajeet Kaur**, was called to the Malaysian Bar in 1996 and is also a Co-Chairperson of CRC. She was part of the inaugural group of participants for a training of trainers for ethical representation of children in conflict with the law, organised by UNICEF.

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- Grand Prize: 2 complimentary passes to ADD 2017
- Two Runner-Up Prizes: 1 complimentary pass each to ADD 2017

You must participate in all three days of the survey in order to be eligible to win a prize. Don't forget to include your name and email address in your survey form each day, so that we can contact you if you are one of the lucky winners!

Legal Rights for Hazy Days

by Sarah-Ann Yong Jenlee



Environmentalists, academics and concerned netizens filled the conference hall for the IMLC 2016 session entitled “Hazy Days Ahead: Legal Rights under International and Domestic Law”, as it revolved around the recurring disastrous haze episodes in Malaysia, Singapore and Indonesia.

This session was moderated by **Roger Chan Weng Keng**, Member of the Bar Council and Co-Chairperson of the Bar Council Environment and Climate Change Committee, who introduced the three eminent speakers — **The Honourable Justice Tan Sri Azahar Mohamed**, Judge of the Federal Court of Malaysia; **Dr Azmi Sharom**, Associate Professor at the University of Malaya; and **Etelles Higonnet**, Campaign and Legal Director of Waxman Strategies, Washington, and former Regional Research Manager of Greenpeace Southeast Asia.



Justice Tan Sri Azahar highlighted his concerns over the fact that Malaysians have had to deal with the annual migration of haze from Indonesia to its neighbouring countries for the past 20 years or so. He discussed the possible remedies that citizens and State authorities could take via both criminal and civil route, in seeking remedies against the wrongdoers who carry out and/or promote open burning both inside and outside our jurisdiction.

While the ASEAN Agreement on Transboundary Haze Pollution 2002 has been in force since November 2003, the question which arises is how effective this Agreement has been in resolving the haze problem.

The second speaker — the pony-tailed lecturer Dr Azmi — who is the first-ever academic to be charged under the Sedition Act 1948 in Malaysia,

began his speech by thanking the organisers for giving him a topic to speak on that would not get him into trouble, inviting chuckles from the already amused crowd.

On the principle of extra-territoriality, Dr Azmi bluntly pointed out that he had written an article 11 years ago entitled “Untying the Gordian Knot: Extending Jurisdiction to Combat Transboundary Haze Pollution”, addressing the issues of extra-territorial legislation to combat this environmental calamity, yet his article was never taken seriously until the Singaporeans decided to legislate the Transboundary Haze Pollution Act 2014!

Dr Azmi pointed out the difficulty in bringing another country, such as Indonesia, to the international courts for its inability to control and/or for even encouraging large-scale land clearance through open burning, because of

the issue of State responsibility, exhaustion of domestic measures, and the voluntary nature of the International Court of Justice (“ICJ”). Dr Azmi also drew attention to the ASEAN Coordinating Centre for Transboundary Haze Pollution Control, which has the primary duty of gathering and disseminating data to facilitate the exchange of information required by Malaysia about fires in Indonesia, if action against the companies involved is to be taken in the domestic courts.

Etelles Higonnet spoke on the delicate dance between collection of evidence and the legal initiatives to take, as well as the negative health consequences that we suffer as a result of the haze crisis. She also provided staggering World Bank statistics on the percentage of premature deaths in Malaysia, attributable to haze — an estimated 131,315 in 2006 and 151,655 in 2015. Ms Higonnet further expounded on one of the most toxic elements of haze, which is the particulate matter of 2.5 micrometres or less. Also known as PM2.5, these are particles so minute that they can pass through our lungs and into our bloodstreams, causing heart, lung and chronic respiratory diseases, and even death.

In concluding, the “ASEAN way” of resolving disputes about the haze amicably, by being non-confrontational and invoking principles of politeness, has been said to be ineffective thus far. Instead, the political will of countries and governmental cooperation with State authorities and the people to push for public accountability in resolving the haze issue, are necessary as part of the way forward.

The Times are A-Changing: The Bar Council — Gatekeeper or Facilitator?

By Joachim Xavier

It is without a doubt that the legal profession is currently facing a wind of change propelled by a strong stream of technological innovation that is challenging the traditional methods of legal practice. The four speakers in this session, moderated by **Syahredzan Johan**, Member of the Bar Council, discussed how these changes are managed in the various Asian jurisdictions.

Melissa Kaye Pang, the Vice-President of the Law Society of Hong Kong (“LSHK”) was of the view that LSHK was both a gatekeeper and a facilitator of the legal profession in Hong Kong. Changes have been made to the legal ownership of law firms there, to keep abreast with market trends. Further, LSHK is also looking into start-ups that review legal documents using software applications. Ms Pang added that Limited Liability Partnerships (“LLP”) and group practice business models had been recently introduced.

Peter Cuthbert Low, from Peter Low LLC, Singapore, shared about the liberalisation of the legal profession since the 1990s, which included relaxing of publicity rules. He observed that there has been a rise of non-lawyers providing legal services, such as start-ups that design software which assist small and medium-sized enterprises to draft contracts. However, Mr Low’s view was that in the Singaporean context, such innovations are unlikely to sustain in the long run, because of the demanding Singaporean public. In terms of facilitating the practice of law, Singapore has introduced LLP, group law practice, and foreign law practice, to name a few.



Karen Cheah Yee Lynn, Secretary of the Malaysian Bar, presented the five categories of “disruptive innovations” currently sweeping the Malaysian legal scene. The first category is “innovation and technology within the law firm” where software, office management/administrative programmes, and online research databases are utilised to work more efficiently. The second — “innovation and technology with government and relevant authorities” — includes online services such as the Court e-Filing system, e-Hartanah and e-Hasil, which are utilised by law firms. The third is “innovation and technology within the Bar” where

legal practitioners can use an online option that facilitates the renewal of their Sijil Annual and Practising Certificates. The fourth — “innovation and technology outside the law firm” — poses the biggest ethical challenge to the legal profession, and includes client-lawyer matching services and legal document template provision services. Some of these innovations have met with resistance from the Bar Council because of possible breach of client confidentiality, touting, and fee-sharing arrangements, all of which are not permitted. The final category is the “New Business Model”. In this regard, the Bar Council is studying a few models but has rejected the “virtual office” model, owing to various concerns.

Finally, **Khaizan Sharizad Ab Razak** of AmerBON took to the stage. She called for greater openness to innovations in the legal profession, even if it means revisiting some traditional methods. She was of the view that the advent of social media has shaped the legal profession and has somewhat levelled the playing field. Small firms rely on these channels because they cannot compete with big, established firms using traditional methods. Acknowledging that there are some risks inherent in the use of social media, she was quick to point out that these channels allow for easier and faster access to legal services. Ms Khaizan Sharizad also opined that the “virtual office” model has the potential of driving costs down — which ultimately means more affordable legal services to the public — and thus should be encouraged. Noting that the Bar Council had recently rejected the “virtual office” model, Ms Khaizan Sharizad called for more interaction between the Bar Council and stakeholders before making decisions on such innovations.

Overall, the session was well-received, and left the participants with some sense of optimism that change was inevitable in the legal profession.

Press-ing Challenges: Whither Media Freedom?

By Puspawati Rosman

Social media users are among those who face a high risk of being penalised or prosecuted for expressing their views online. Those in media-related industries such as the print news publications, online news portals and radio stations also face pressure for the news they report and/or publish. **Gayathry Venkiteswaran**, the moderator of this session entitled “Independence of Media Ownership and Press Freedom: The Law and the Challenges”, described this as a “sad story” because the so-called pressure does not only come from the authorities, but also from the current practice of journalism itself.

The three speakers — **Tan Lee Chin**, Chief Content Officer of Media Chinese International Limited Group; **Malek Ali**, Chief Executive Officer of BFM 89.9: The Business Radio Station; and **Shanmuga Kanesalingam**, human rights lawyer, and Director of Malaysian Centre for Constitutionalism and Human Rights — shared their expertise and experience in dealing with the issues.

The first speaker, Ms Tan, an active online journalist who runs a weekly online show, Pockettimes.my, and the online news portal, SinChew.com.my, said that the ways media-related laws are being enforced in this country are building a climate of fear and self-censorship among the practitioners. She gave examples such as the Sedition Act 1948 that is used against journalists, the Defamation Act 1957, and the proposed amendment to the Communications and Multimedia Act 1998 that includes a proposal to register all political bloggers.

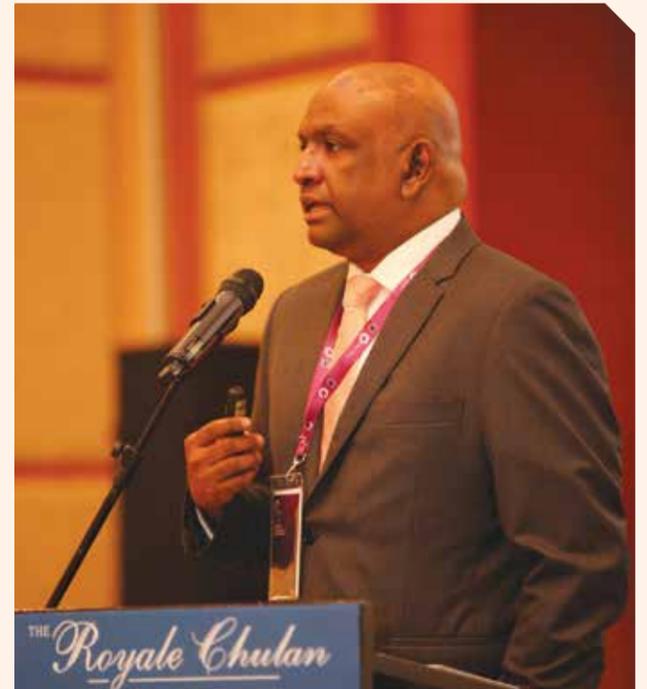
Ms Tan was a journalist at the Sin Chew Daily print newspaper and thought that she would get more freedom working online but now realises that the Internet space is also getting narrower and being limited by the law. She expressed the need for an independent media council to regulate media ownership, and also to create awareness among media practitioners of their rights and the laws.

The second speaker, Mr Malek stated that the authorities, whilst enforcing media-related laws, do not always observe the rule of law. However interesting the interviews might be, the content needs to be informed to and approved by the relevant bodies.



Each licence holder needs to provide its weekly transmission schedule and is bound by rules and regulations that prohibit certain types of content.

BFM radio station was once fined by the Malaysian Communications and Multimedia Commission after it broadcasted its interview with the famous Iranian-American religious scholar and author, Reza Aslan, regarding the usage of the word “Allah” among non-Muslims. The final speaker for the session, Mr Shanmuga, presented slides entitled “Balancing Free Speech and National Security”, and stated that journalists should not be investigated unless the published content incites violence. He gave the example of the Johannesburg



Principles, and talked about what constitutes a legitimate national security interest, which is subject to the requirements of proving the elements of, among others, the intention to incite imminent violence and actual violence.

Mr Shanmuga also provided some recommendations to overcome the issues. He was of the view that laws such as the Sedition Act 1948 and the Printing Presses and Publications Act 1984 need to be repealed in their entirety, and some provisions of the laws that link speech to imminent violence need to be amended.

ASEAN Legal Harmony: How Sweet the Sound?

By Ariel On



The ASEAN Economic Community (“AEC”) became a reality on 31 Dec 2015, and consists of 10 countries. Does that mean that ASEAN law consists of ten

sets of domestic legal systems? What are the changes awaiting us, as lawyers advising clients on multi-jurisdiction transactions? What are the dispute settlement mechanisms available in ASEAN?

This session, jointly held with the ASEAN Law Association, examined a number of these issues, with the highly respected retired Court of Appeal Judge, **Dato’ Mah Weng Kwai**, moderating the discussion between two distinguished speakers: **Haliza Aini Dato’ Othman**, Deputy Head of International Affairs Division 1 of the Attorney General’s Chambers; and **Locknie Hsu**, Professor of Law at the Singapore Management University.

The session began with a slide presentation by **Dr Johan Shamsuddin**, Associate Professor at University of Malaya, on the ASEAN Legal Information Centre (“ASEAN LIC”), which is an online platform that will provide free, easy and meaningful access to the laws of the Southeast Asian countries. The initiative by the University of Malaya, in partnership with MKMS Online Publishing, will be launched in January 2017.

The first speaker, Ms Haliza Aini, has led the negotiations of various free trade agreements between Malaysia and other regions. She gave the audience an insight into what has been achieved under the AEC 2015 Blueprint, and the targets and



aims in the AEC 2015 Blueprint. She discussed the benefits of the harmonisation of trade laws in the ASEAN region, which includes increased business confidence if uncertainties are reduced by

streamlining processes; better quality of services due to competition; and also reduced costs of doing business. The barriers to harmonisation of laws were also highlighted, which includes disparities in economic policies, labour laws, legal systems, education, as well as language obstacles; and limited access to information.

The second speaker was Ms Hsu, a specialist in international trade and investment law, dispute settlement mechanisms, as well as ASEAN integration.



She started her presentation by putting forward two very important questions to the audience: what is our role in the harmonisation of laws in ASEAN, and why are we trying to harmonise the laws?

There is vast potential and numerous opportunities for everyone in ASEAN. Lawyers find themselves advising clients in multi-jurisdictional transactions within the ASEAN market. Therefore, it is necessary for ASEAN lawyers to keep up with their clients as well.

The harmonisation of laws in ASEAN is not a task that should be left with just the policymakers. In Ms Hsu’s words: “We are in a world of disruptive information”. Thus, our challenge as lawyers within ASEAN is how to properly utilise the information so that we are better able to serve our clients.

In respect of the idea of introducing a regional court to resolve commercial disputes in ASEAN, Ms Hsu voiced her view that perhaps the more pertinent question is whether ASEAN is ready for such an approach. She suggested that the focus should be on looking into how the present landscape of courts and arbitral tribunals, among others, can be made more seamless.

A takeaway point from the session was that accessibility of information is one of the best ways forward towards the harmonisation of laws in ASEAN, and the ASEAN LIC is a step in the right direction.

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10 October 2016

ICC-KLRCA International Arbitration Conference

As Asia gains prominence on the world's investment stage, the rise of disputes and the need for effective dispute resolution is imperative. This first-of-its-kind conference, co-organised by two of the world's leading arbitral institutions, reflects a joint effort to address key issues in international arbitration from an Asian perspective. This conference will also foster discussion around the continuing changes in the international arbitration paradigm in Asia.

19 – 23 November 2016

The KLRCA Certificate in Adjudication

After its resounding success in May 2016, the next KLRCA Certificate in Adjudication is set to take place again this November. This intensive 5-day training course is designed to cater to budding adjudicators and will feature a comprehensive syllabus to provide them with the necessary skills and knowledge. This is recognised by the regulations as a necessary qualification to be a CIPAA adjudicator under CIPAA 2012.



24 November 2016

KLRCA Mediation Forum

This forum is designed to help practitioners explore mediation and its development in the Asia Pacific region and beyond. Participants will be given an overview of the mediation process as well as the opportunity to examine mediation benefits for international and domestic commerce disputes.

This forum is most opportune in light of the recent development as the Chief Justice of Malaysia, The Right Honourable Tun Arifin bin Zakaria, recently issued a Practice Direction which states that the KLRCA is an institution where the judiciary may refer parties to mediate disputes. The Right Honourable Tun Arifin bin Zakaria will also be delivering the keynote address at the event.

1 – 2 December 2016

Domain Name Dispute Resolution Conference & Course

With the implementation of ICANN's new generic Top Level Domain (gTLD) programme, hundreds of new gTLDs are up and running in cyberspace. The best way to tackle online infringements in relation to these new gTLDs has become a matter of great concern to many intellectual property (IP) rights owners.

This conference will be followed by a full day training course which will cover key topics in ADNDR and will be conducted by prominent lecturers and tutors. This event is designed for brand owners, IP practitioners as well as many other professionals from the international community.



4 – 12 February 2017

Diploma in International Commercial Arbitration

The CI Arb 2017 Diploma Course in International Commercial Arbitration is set to take place from 4-12 February 2017. This intensive nine-day course will be held in collaboration with the Chartered Institute of Arbitrators (CI Arb) Malaysia Branch.

Learn more about our capacity building programmes. Contact the KLRCA Business Development team at +603 2271 1000 or enquiry@klrca.org



#imlc2016

The Malaysian Bar thanks the participants, speakers, moderators, sponsors and supporters, and the behind-the-scenes Bar Council Secretariat staff, as well as volunteers, who are all key to the success of IMLC 2016!



Conference Newspaper Publications Team 2016
(L to R): Ruhil Razak, Joane Sharmila, Baizura, Julie Thomas, Chin Oy Sim, Anneliz George, ACE





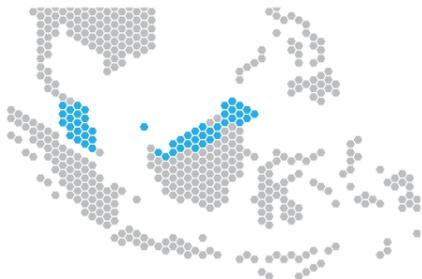
UPCOMING PROGRAMS FOR ASEAN LAWYERS FROM THE COLLEGE OF LAW

The College of Law is developing a suite of new postgraduate educational programs designed for lawyers in the ASEAN region.

As a Self-Accrediting Authority in Australia, the College is drawing on its expertise and experience in developing highly practical accredited programs to ensure these new offerings deliver the same high quality to lawyers in the ASEAN region.

LLM (APPLIED LAW) MALAYSIA

The first program in development is the Master of Laws (Applied Law) written specifically for Malaysian lawyers.



Working with Bar Council Malaysia, the College is identifying Malaysian subject matter practitioners to tailor the content to local needs.

The first subjects planned to be available in 2017 will be –

- Civil litigation practice
- Criminal law practice
- Property law practice
- Commercial and corporate law practice
- Personal injury and torts practice
- Administrative law practice
- Intellectual property practice
- Arbitration and disputes resolution practice
- Family law practice

This program builds on the highly successful LLM (Applied Law) program which has been offered in Australia since 2008.

The program enables lawyers to equip themselves to move into a new area of

practice or to build competence in an existing area.

LLM (APPLIED LAW) IN ASEAN CROSS-BORDER PRACTICE

This unique program is being developed to service the needs of lawyers operating in the ASEAN area. The new ASEAN Economic Community - and its free trade and investment relationships with Australia-New Zealand, China, Japan, Korea, and India - provides the focus for 10 new applied law LLM subjects in cross-border legal practice: It recognises the particular needs - both existing and future - for solid cross-border legal skills and knowledge.



Subjects will include the following –

- Commercial transactions
- Mergers & acquisitions
- Intellectual property
- Banking & finance
- In-house practice
- Arbitration and dispute resolution
- Employment & Immigration
- Trade & investment
- Capital markets
- Competition law

The first subjects will be available in 2017

LLM (APPLIED LAW) COMMON LAW

This program will initially comprise seven subjects with specialist practice area subjects to follow.

Based on the College's New Zealand

Law and Practice Examination (NZLPE) Preparation Course, it not only equips students with a solid grounding in common law but also prepares students for the NZLPE exams that are required for foreign lawyers to be admitted to practice in New Zealand.

Key areas covered are –

- Contract law
- Criminal law
- Property law
- Torts law
- Equity
- Legal System
- Ethics

This program will be ideal for lawyers from civil law jurisdictions who want to be able to practise in a common law jurisdiction.

LEARNING AT A DISTANCE

The College of Law offers its programs in a distance learning or online mode.

However online does not mean passive learning. College programs are characterised by:

- Personal lecturer support via email, audio, video, webex conference and text.
- Guided study programs, so you always know what to do and where to find resources and help.
- A 21st century mobile learning environment – CANVAS.



“The teachers were so quick in giving feedback, nothing was too much for them - they responded to questions quickly and were happy to assist if you were confused with anything or needed more time.”

2016 PLT student

SHORT PROGRAMS FOR MEMBERS OF THE MALAYSIAN BAR

As part of the collaboration with the Bar Council Malaysia, the College will be offering a range of short programs, free of charge, to assist young lawyers to meet the new continuing professional development requirements.

These will be in three areas and will provide a wide range of choice.

International Legal English & Professional Skills

These 30 units provide the opportunity to hone both your Legal English communication skills as well as your understanding of specific, discrete areas of commercial law. For example, advising on commercial transactions or managing complex litigation.

Online seminars

These are recorded webinars, which cover a range of topics including social media, admissibility and discovery of evidence, testamentary trusts, and includes the six major types of drafting.

How to Series

These are interactive online short programs that take the user through a particular skill area, such as how to draft affidavits in commercial matters, or how to exercise termination rights. Ideal for new lawyers or those needing a refresher.

If you would like to be kept informed of any or all of these programs, please visit <http://www.collawanz.net>.