

OPENING ADDRESS BY
THE RIGHT HONOURABLE THE CHIEF JUSTICE OF MALAYSIA,
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*‘Navigating the Present, Exploring the Future
Opening Address for ‘Exploring the future of the Judiciary with
Technology’*

SALUTATIONS

His Royal Highness Yang di-Pertuan Besar Negeri Sembilan
Tuanku Muhriz Ibni Almarhum Tuanku Munawir;

Her Royal Highness Tunku Ampuan Besar Negeri Sembilan,
Tuanku Aishah Rohani binti Almarhum Tengku Besar Mahmud;

The Honourable Dato’ Seri Anwar bin Ibrahim,
Prime Minister of Malaysia;

His Highness Tunku Besar Seri Menanti,
Tunku Ali Redhauddin Ibni Tuanku Muhriz;

His Highness Tunku Zain Abidin Ibni Tuanku Muhriz;

The Right Honourable

Tan Sri Datuk Amar Abang Iskandar bin Abang Hashim

President of the Court of Appeal;

Yang Berhormat – Yang Berhormat;

YA-YA Judges of the Federal Court, Court of Appeal, High Court, and
Judicial Commissioners;

President of the Malaysian Bar;

Members of the IMLC Organising Committee 2023;

Ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuhu and good morning.

INTRODUCTION

[1] I am honoured and privileged to be invited to deliver the Opening Address on the occasion of the International Malaysia Law Conference 2023 ('IMLC'). I would like to thank Ms Karen Cheah, President of the Malaysian Bar for inviting me to deliver this speech and for continuing to include the Malaysian Judiciary.

[2] The theme assigned to me is in the context of '*Exploring the Future of the Judiciary with Technology*'. "Exploring the future", is apt seeing that so much has changed in the past three years alone that we hoped to

achieve several years down the pipeline – especially when it comes to technological advancements.

(A) The Modern Day Court

[3] In 1996, Professor Richard Susskind, in his seminal work ‘The Future of Law’, envisioned us ushering in an era of advanced technology – one in which the predominant method of communication is electronic mail. He made this assertion in a time when the legal fraternity was still deeply entrenched in a conservative legal system that was firmly rooted in manual and paper-based transactions.

[4] 27 years later, not only is email so integral not just to the Malaysian Judiciary as the preferred form of communication and case management method, but to the world’s economic sector. The commonly sighted sign-off, 'Please consider the environment before printing this email' is proof of this digital transformation that paper-based transactions are seriously shunned.

[5] Senior advocates when they were once juniors carrying stacks of MLJ reports for their pupil masters or seniors, now instruct their associates or pupils to prepare digital bundles and even have them highlighted digitally. Lawyers and Judges also have the entire libraries at their disposal in a single portable device such as a laptop. From bulky books, to bulky laptops, to now sleek handheld devices – the very elements of the profession’s tools have evolved in their form and shape entirely.

[6] Courtrooms of today are indeed the culmination of an extensive and methodical digitalisation process, strategically implemented in successive

phases over the years. The courtroom's transformation reflects the broader digital revolution underway in society. Just as bricks and stones built the courtrooms of yesteryears, wires, cables and the Internet are building the courtrooms of today. The Malaysian Judiciary stands as a testament to this evolution, having embarked on its transformative journey towards digitalisation as early as 2009 which was spurred by my predecessor, Chief Justice Tun Zaki bin Tun Azmi.

[7] With the advent of modern technology, the geographical limitations that once dictated the functioning of the Judiciary are gradually eroding. In this digital age, justice can be dispensed over miles and across borders, making the courtroom a more accessible, egalitarian, and inclusive space. The physical presence of all parties in the courtroom is no longer a prerequisite for the dispensation of justice. Video conferencing tools have made it possible for defendants, plaintiffs, attorneys, witnesses, and even judges to attend hearings remotely. Though not always recommended, in extreme cases, witnesses may even give testimony from their homes, offices, or some cases their cars, and even from different time zones.

[8] The nature of disputes being brought before the courts today is also increasingly influenced by advancements in technology. Consequently, the judicial system is now, and will increasingly be, called upon to address novel and complex legal issues stemming from emerging technologies such as artificial intelligence, the Internet of Things, blockchain, and cryptocurrencies. These technological innovations have already given rise to numerous legal disputes, with many more anticipated in the coming decades. As society becomes more interconnected and dependent on technology, our vulnerability to cyberattacks has increased, resulting in a

limitless array of cyber threats. As such, courts are now tasked with navigating and resolving an expanding range of cybercrime offences as well.

Technology and its Role of Enhancing Access to Justice

[9] Access to justice and court technology are two interconnected aspects of the legal system that can significantly impact the administration of justice.

[10] The intersection between access to justice and court technology is evident in various ways. Technology enhances efficiency by automating processes, digitalising documents, and simplifying case tracking, leading to a quicker resolution of cases. Technology improves accessibility by enabling virtual hearings via video conferencing, which bridges the gap for individuals in remote areas and those facing mobility challenges. Costs are also reduced through online filing systems, which minimise physical paperwork and expenses associated with document delivery. Additionally, court technology simplifies procedures for self-represented litigants, providing user-friendly interfaces and guidance, thereby promoting equal access to justice. Technology also facilitates data-driven decision making by collecting and analysing data to identify areas that lack access to justice, which in turn helps policymakers allocate resources effectively and develop targeted interventions.

[11] At the early stages of our endeavour to digitalise our courts, I must admit that there was reluctance on the part of many and criticisms shortly ensued. To my mind, the test to be adopted in ascertaining whether justice is jeopardised is analysing whether the introduction of any changes would

endanger the core elements of the administration of justice, namely uniformity, certainty, impartiality and equality, as envisaged under the Rule of Law. At the end of it all, what matters most is that access to justice in the virtual realm conforms to the indicia of open justice; compliance with the rules of natural justice; an independent legal profession; and an independent Judiciary.

[12] Allow me to highlight some of the technology-driven endeavours undertaken by the Malaysian Judiciary to date. In this regard, one prominent achievement is our full transition towards a paperless system as part of the 'going green' initiative, where manual court processes have been digitalised and integrated under the e-Court system, as exemplified by the implementation of a centralised e-Filing System (EFS), Case Management System (CMS) and Queue Management System (QMS). This has been a progressive step that has not only enhanced efficiency but has also advanced our collective commitment to environmental sustainability.

[13] With the Legislature's expeditious contribution, online hearings have been legislatively endorsed in the newly inserted section 15A of the Courts of Judicature Act 1964¹ and section 101B of the Subordinate Courts Act 1948² for the Superior and Subordinate Courts respectively. The term 'remote communication technology' as defined under these Acts comprehensively encompasses various modes of the same, namely 'a live

¹Section 15A(1) of the Courts of Judicature Act 1964: Without limiting section 15, the Court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology.

² Section 101B(1) of the Subordinate Courts Act 1948: Without limiting section 101, the court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, or hold any inquiry, through a remote communication technology.

video link, a live television link or any other electronic means of communication.’³

[14] Before the onset of the Covid-19 pandemic, the Judiciary had slowly introduced virtual court proceedings comprising e-Review (or online case management) and e-Appellate (or hearings in the Superior Courts to be conducted via video conferencing). The progress was accelerated during the Covid-19 crisis when the Judiciary took the lead and swiftly adapted to the changing circumstances. Meanwhile, criminal appeals and trials are still conducted in person, guaranteeing a just and transparent dispensation of justice as well as the right to a fair trial to the accused.

[15] The Malaysian Judiciary remains firmly committed to Goal 16 of the United Nations Sustainable Development Goals that encourage *‘promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels’*. In this regard, our Court systems for example, e-bail (e-jamin) and e-auction (e-lelong), minimise bureaucracy and intervention by unscrupulous third parties and uniformise Court practices nationwide. All are treated equally through an open and accessible process.

[16] The e-PG system that regulates guilty pleas for certain limited offences, and the reliance on artificial intelligence (‘AI’) in sentencing, in my view also epitomises Articles 5 and 8 of the Federal Constitution in that they respectively minimise the need to come to Court to settle otherwise routine offences and ensure uniformity in sentencing. All

³ Section 3 of the Courts of Judicature Act 1964 and section 2 of the Subordinate Courts Act 1948: "remote communication technology" means a live video link, a live television link or any other electronic means of communication.

persons regardless of who they are, are treated fairly and the same as any other person similarly situated.

[17] On the topic of AI, one report suggests that while the AI industry was worth USD65.25 billion in 2022, it is projected to grow an astounding USD1.8 trillion by 2032.⁴ In light of the excitement and possible opportunities in the recent introduction of the much lauded ChatGPT and its competitor: Google Bard, and upon witnessing what AI is capable of, I am not surprised at the projected surge in growth.

[18] In fact, many have reported that ChatGPT which is still in testing stages, can write reasonable template letters of demand and emails. The next time I receive a letter requesting to adjourn a Federal Court hearing, I will not be astonished that it was authored by AI. Perhaps, I should consider giving AI replies a shot myself.

[19] In 2020, we witnessed a notable milestone in the state of Sabah. In February 2020, AI sentencing was implemented in the first Magistrate Court case of *Denis P Modili v Public Prosecutor* (BKI-83D-3506/122019) on possession of dangerous drugs. As announced by the then Chief Judge of Sabah and Sarawak, Tan Sri David Wong Dak Wah, this landmark development was ‘the first in Asia’ where the court utilise an AI sentencing recommendation premised on the sentencing trend extrapolated from past data. Presently, twenty offences are incorporated into the AI-sentencing mechanism, encompassing offences in the Penal Code, the Dangerous Drugs Act 1952 and the Road Transport Act 1987.

⁴ <https://www.precedenceresearch.com/artificial-intelligence-market>.

We hope to expand the subject area coverage of the AI system in the near future.

[20] On this note, I would like to reiterate that AI sentencing -- arguably a form of 'predictive' or 'forecast' justice - should not be devoid of human consideration. The underlying idea is to 'supplement' and not to 'supplant' the role of human judges.

Challenges

[21] The transformation of courtrooms from physical to virtual is not without its challenges. Cybersecurity is a paramount concern. Sensitive legal data, from personal testimonies to case details, must be protected. In the same way that physical courtrooms are secured by locks and guards, digital courtrooms require robust firewalls and encryption to protect the integrity of proceedings. In the past year, even the Judiciary was targeted by certain members of society in pursuit of their ill-willed objectives. The leaked 'draft judgments' in two high profile cases being heard in the Federal Court and the High Court were nothing more than wicked attempts to undermine the Judiciary calculated at disrupting judicial operations and the administration of justice.

[22] In this regard, the Malaysian Judiciary will continue to enhance its cybersecurity measures with a view to continuously preserving the confidentiality and integrity of our judicial processes.

[23] The dawn of the technological era imposes novel challenges upon those of us on the bench, particularly with the proliferation of social media and the internet. Our judgments undergo public discourse; we ourselves

are scrutinised, and, to speak candidly, even our private lives are not immune from such scrutiny. On our part, we harbour a preference for well-informed critique as opposed to baseless criticism. Our earnest hope is for members of the public, who may be uninformed, to harness the power of technology in order to acquaint themselves with our judicial decisions. A judgment or decision must be understood not only for what it decides but also for the reasons that support them. Perhaps the Bar should look into improving greater public literacy and understanding of judicial decisions.

[24] Another foreseeable challenge has to do with the kind of disputes confronting our Courts. With the emergence of disruptive technology, judges are increasingly encountering novel technological evidence coming into their court rooms, whether it be social media evidence, forensic DNA, etc. As such, judges will have no choice but to acquire knowledge about the new technologies that underpin novel legal claims and defences, new types of technological evidence, the systemic changes to the courtroom and the judicial process that are driven by technological advancements.

[25] Additionally, there is a digital divide that cannot be overlooked. For people with limited access to technology or low digital literacy, the shift can be intimidating and exclusionary. To them technology can sometimes even be elusive. In this sense, technology must not impede access to justice for those who do not have the same resources to access the Courts.

Charting the Future with Technology

[26] As one of the core public institutions, the Judiciary plays a vital role in pioneering the judicious adoption and implementation of technology within the sphere of law and legal practice. This should be approached with a distinctive emphasis on problem-solving, paving the way for prompt, affordable and equitable resolution of disputes.

[27] The integration of technology within judicial systems undeniably holds immense potential as the Courts will continue to embrace significant emerging technologies. Nevertheless it is crucial to temper our enthusiasm for technological advancements with the acknowledgement that courts deal with a diverse range of cases. Cases not only vary in their complexity but the nature of their issues. Hence, the suitability of specific technologies may differ remarkably. Different cases necessitate different degrees of flexibility, which must be accommodated even within a technologically advanced environment.

[28] This should not be misinterpreted as a regression against the onward march towards complete digitalisation. What it merely means is that the shift from the traditional mode to digital must be tactfully balanced and executed at a pace that makes relevant parties feel at ease. It is a matter of harmonising the old with the new and the human with the digital, to ensure justice remains accessible, fair and meaningful in an increasingly digital world.

[29] Further, a crucial component of this innovation and adaptation process is the effective dissemination of information, particularly in relation to the services we provide. Our stakeholders and the general

public should be well-informed about these services and their benefits. It is only through consistent, clear and wide-reaching communication that we can ensure our services achieve their intended impact. Inclusivity and accessibility is the key tenet in all our endeavours.

[30] In a nutshell, the future of the Judiciary with technology is not merely about a casual deployment of digitalisation, but instead it involves a conscientious adaptation of the technology, which is contingent on the nature of cases and based on the pillars of justice and equity.

Conclusion

[31] I am pleased to note the topics that this Conference highlights and it is my hope that the discussions on the various topics continue to move our justice system in the right direction.

[32] I would close by extending, once again, my deepest appreciation to the organisers for according me the opportunity to deliver the opening speech. It is an honour and a privilege indeed.

[33] Thank you and I wish you a fruitful conference.

