

Speech by Karen Cheah Yee Lynn, President, Malaysian Bar

Opening of the Legal Year 2024
Putrajaya International Convention Centre
15 January 2024

A. Salutations

1. Yang Amat Arif Tun Tengku Maimun binti Tuan Mat, Ketua Hakim Negara;
2. Yang Amat Arif Tan Sri Datuk Amar Abang Iskandar bin Abang Hashim Presiden Mahkamah Rayuan;
3. Yang Amat Arif Tan Sri Dato' Mohamad Zabidin bin Mohd Diah, Hakim Besar Malaya;
4. Yang Amat Arif Tan Sri Dato' Abdul Rahman bin Sebli, Hakim Besar Sabah dan Sarawak;
5. Yang Berbahagia Datuk Ahmad Terrirudin Mohd Salleh, Peguam Negara Malaysia;
6. Yang Arif Hakim–Hakim dan Pesuruhjaya–Pesuruhjaya Kehakiman;
7. Ahli–ahli dari Perkhidmatan Kehakiman dan Perundangan;
8. Para peguam dari Semenanjung Malaysia, Sabah dan Sarawak;
9. Tuan-tuan dan Puan-puan yang dihormati.

Yang Amat Arif,

Sepanjang suku terakhir tahun 2023, khususnya pada bulan Oktober hingga ke bulan Disember, kepentingan Bahasa Melayu di Malaysia sebagai identiti kebangsaan telahpun dipertegaskan oleh Kerajaan Malaysia¹ dan menjadi tumpuan perbincangan hal-hal kewarganegaraan di dewan Parlimen.² Badan Peguam Malaysia turut menghargai nilai Bahasa Melayu kerana ianya dijamin di bawah Perlembagaan Persekutuan³ dan Akta Bahasa Kebangsaan 1967.

Justeru itu, Badan Peguam Malaysia, bersama dengan Dewan Bahasa dan Pustaka dan Universiti Kebangsaan Malaysia telahpun berjaya menganjurkan '*Pertandingan*

¹ 'Guna bahasa Melayu dalam surat rasmi kerajaan dapat pelihara identiti kebangsaan', oleh Fahmy A Rosli (26 Oktober 2023), BH Online: <https://www.bharian.com.my/berita/nasional/2023/10/1169436/guna-bahasa-melayu-dalam-surat-rasmi-kerajaan-dapat-pelihara>; 'Official letters to govt depts must be in Malay, says Anwar', by Martin Carvalho (25 October 2023), The Star: <https://www.thestar.com.my/news/nation/2023/10/25/official-letters-to-govt-depts-must-be-in-malay-says-anwar>

² 'Tahap penguasaan bahasa Melayu kekal syarat utama mohon warganegara', oleh Omar Zin (12 Disember 2023), Utusan Malaysia: <https://www.utusan.com.my/nasional/2023/12/tahap-penguasaan-bahasa-melayu-kekal-syarat-utama-mohon-warganegara/>; 'Proficiency in Bahasa Malaysia a requirement for Malaysian citizenship' by Bernama (12 December 2023), New Straits Times: <https://www.nst.com.my/news/nation/2023/12/989409/proficiency-bahasa-malaysia-requirement-malaysian-citizenship>

³ Perkara 152(1) Perlembagaan Persekutuan

*Berbalas Pantun Undang-Undang Peringkat Kebangsaan*⁴ pada 3 hingga 5 November 2023 dengan objektif untuk memperkasa dan mempertingkatkan tahap bahasa kebangsaan Malaysia.

Meskipun penggunaan Bahasa Melayu adalah penting untuk pengamal undang-undang di Malaysia, namun, sebagai bahasa perantaraan antarabangsa, demi manfaat para hadirin yang datang dari negara-negara asing, pada pagi ini, saya dengan rendah diri memohon izin Yang Amat Arif untuk meneruskan ucapan saya dalam Bahasa Inggeris.

Much obliged My Lady.

I am honoured and privileged to address Your Ladyship and this esteemed assembly on the occasion of the Opening of the Legal Year 2024. It is my distinct pleasure to do so on behalf of the Malaysian Bar, the Advocates Association of Sarawak, and the Sabah Law Society. My esteemed colleagues, Gurvir Singh Sandhu and Mohd Nazim Maduarin, are in attendance, serving as Presidents of the Advocates Association of Sarawak and the Sabah Law Society, respectively.

I am equally delighted to acknowledge the presence of the Speaker of the House of Representatives, the Honourable Minister in the Prime Minister's Department (Law and Institutional Reforms), The Right Honourable Syarié Chief Judge, The Honourable Deputy Inspector General of Police, esteemed members of the judiciary representing various foreign jurisdictions, and distinguished members of the diplomatic corps.

Also in attendance this morning are our esteemed colleagues from foreign bars, law societies, and law associations. My Lady, allow me the privilege of introducing them:

1. Ms. Lisa Sam (President of the Law Society of Singapore)
2. Mr C. M. Chan (President of the Law Society of Hong Kong)
3. Mr. Shyam Divan (President of Lawasia)
4. Mr. Peter D Maynard KC (President of the Commonwealth Lawyers Association)
5. Mr. On Hung Zheng (Vice President of The Law Society of Brunei Darussalam)
6. Isaac Chan (Council Member of the Hong Kong Bar Association)
7. Mr. Hung HSIEH (Chairman of the International Affairs Committee of the Taiwan Bar Association)
8. Mr. Tran Tuan Phong (Chairman of the International Relations Committee of the Vietnam Bar Federation)

⁴ Pekeliling No 283/2023 | Pertandingan Berbalas Pantun Undang-Undang Peringkat Kebangsaan (3–5 Nov 2023)

9. Mr Siva Kumar Kanagasabai (Jurisdictional Council Member for Malaysia of the Inter Pacific Bar Association)
10. Mr. Nitin Thakker (President, Bombay Bar Association).

The Malaysian Bar expresses our utmost appreciation of for your presence this morning.

B. Introduction

My Lady,

1. Permit me to address some of the events in the preceding year and the aspirations of the Malaysian Bar in facing these events moving forward. I choose to focus a significant part of the speech circling around the issue of *Law Reform* and the strengthening of institutions.
2. At the dawn of 2024, I am pleased to report the progress and inroads made on the key Law Reforms that took place in the past year, and reflect of some of the reforms that have not taken place despite strong views put in place by the Malaysian Bar.

C. 2023 Law Reform Highlights

3. Firstly, in 2023, Malaysia abolished the mandatory death penalty via the Abolition of Mandatory Death Penalty Act 2023, the Criminal Procedure Code (Amendment) Act 2023, the Penal Code (Amendment) Act 2023 and the Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Act 2023. This was seen as a progressive step towards aligning with international human rights norms and growing global opposition to capital punishment.
4. The Abolition of Mandatory Death Penalty Act 2023 now eliminates the mandatory death penalty for 12 offences, including drug trafficking, murder, treason, and terrorism. Additionally, the Act completely eliminates the death penalty for seven offences, such as attempted murder and kidnapping. The practice of “*natural life imprisonment*”, confining individuals until death, is now replaced with prison terms ranging from 30 to 40 years.

5. Despite these changes, the new legislation still retains the death sentence for drug trafficking under the Dangerous Drugs Act 1952, which remains the most common cause of death row convictions.⁵
6. As expressed in many press statements issued in the past, the Malaysian Bar firmly asserts that the death penalty is both cruel and degrading, violating fundamental rights such as the right to life and the right to live free from torture, as enshrined in the Universal Declaration of Human Rights and Article 5(1) of the Malaysian Federal Constitution, which expressly condemns arbitrary deprivation of life. Complete abolition of the death penalty marks true 'progress' of our societal values. The irreversible, irreparable, and non-deterrent nature of the death penalty alone warrants its immediate abolition for all crimes.
7. Secondly, since our independence in 1957, the criminalisation of attempted suicide has remained a vestige of colonial influence within Malaysia's criminal justice system, resulting in the stigmatization of mental health issues. In 2023, Malaysia finally took concrete steps towards full decriminalisation of attempted suicide with the passing of the Mental Health (Amendment) Act 2023, Criminal Procedure Code (Amendment) (No.2) Act 2023 and the Penal Code (Amendment) (No.2) Act 2023.
8. Decriminalizing suicide marks a pivotal stride in prioritizing mental health and well-being, shifting our approach from punitive measures to empathy and understanding for those grappling with mental health challenges. Malaysia has begun to foster open conversations on mental health issues, and dismantling the associated stigma on suicide, with the aim of creating an environment that ensures no one is left behind in accessing mental health support. Decriminalising suicide is progressive, wise and a humanistic approach on the part of our lawmakers.
9. The third progressive law reform pertains to the criminalisation of stalking⁶ which saw its first case being heard in court on 9 August 2023.

⁵ 'Malaysia Repeals Mandatory Death Penalty: Meaningful Move Should Pave Way to Full Abolition' (11 April 2023), Human Rights Watch: <https://www.hrw.org/news/2023/04/11/malaysia-repeals-mandatory-death-penalty>

⁶ See: Penal Code (Amendment) Act 2023; Criminal Procedure Code (Amendment) Bill 2023.

10. Then on 15 December 2023, a pre-Merdeka law that punishes men who entice married women was unanimously ruled by the Federal Court that section 498 of the Penal Code is unconstitutional, as it unlawfully discriminates on the ground of gender, thereby violating Article 8(2) of the Federal Constitution.
11. These are development and reforms which the Malaysian Bar applauds wholeheartedly.

D. Ongoing Law Reforms

12. Moving on to ongoing law reforms, the Malaysian Bar has welcomed the Government's commitment and efforts in looking into the separation of the Attorney General's offices to divide the role of the Attorney General and that of the Public Prosecutor. In November 2023, on invitation by the Parliamentary Special Select Committee on Human Rights, Elections and Institutional Reform ("PSSC"), the Malaysian Bar provided a briefing to the PSSC and submitted a written response in connection with the separation proposal. It is our hope that this reform materialises this year, the sooner the better, especially seen in light of applications for discharge not amounting to acquittal in public interest cases.
13. The Malaysian Bar further notes that amendments to the Communications and Multimedia Act 1998 are being proposed – and the Malaysian Bar has recently submitted a comprehensive paper to Malaysian Communications and Multimedia Commission providing its views premised upon the fundamental rights enshrined in the Federal Constitution, supported by cases in Malaysia and other jurisdictions. There is much to work on and we hope the Malaysian Bar will be given the platform to further present its views. In connection to this, we also reiterate our call that the Sedition Act 1948, the Printing Presses and Publications Act 1984 and section 233 of the Communications and Multimedia Act 1998 be repealed for encroaching into fundamental liberties of citizens of Malaysia.

E. The need for better consultation

My Lady,

14. The Malaysian Bar welcomes some progressive Law Reforms that have taken place over the past year, and recognises that throughout the past year, many consultations were conducted by the Government on various areas of law and institutional reform — all of which took the form of briefing sessions, workshops, dialogues, call for responses and submissions in table formats, all of which the Malaysian Bar took pains to participate in. While these consultations are good starting points and should be continued, equal emphasis ought to be placed on meaningful dialogues resulting in mutual outcome — where consultation process is not a mere tokenistic exercise of public engagement.
15. A meaningful consultation encompasses more than just a one hour briefing session and a rushed collation of superficial responses. Engagement sessions must involve several evocative discourse, with points raised by stakeholders being taken seriously and incorporated into the proposed policy and/or legislation, unless there are proper justifications why those points should not be incorporated. With so many more other major law reforms in the pipeline, the Malaysian Bar hopes for significant improvements in the consultation process prior to the passing of these laws.
16. My Lady, Law is shaped not by the privileged few, but by the collective of ordinary citizens in the society that it governs. In support of my call for improvement on meaningful engagements in relation to Law Reforms, I will highlight three points.
17. First, with reference to the much-celebrated Human Rights Commission of Malaysia (Amendment) Act 2023 passed last year in November. The Malaysian Bar observes that efforts should have been made to shield SUHAKAM from direct or indirect influence by the Executive. The foundational international principles guiding the establishment of SUHAKAM explicitly emphasize its independence from the government and the necessity to avoid financial control that may compromise its autonomy. However, upon reviewing sections 7 and 8

of the 2023 Act, it becomes apparent that the Prime Minister is vested with the authority to appoint members of an Investigation Tribunal and determine the allowances for members of the SUHAKAM Investigation Tribunal and Commission established under section 11A of the Human Rights Commission of Malaysia Act 1999.

18. If these comments appear to be an exercise of the Malaysian Bar to find a cloud behind the silver lining – I make no apology for it. Our concerns have been raised on multiple occasions in the past during a briefing session, and focus group discussion. The most recent communication regarding this matter was conveyed in our correspondence to the Law and Institutional Reform Minister, Deputy Minister, and SUHAKAM on October 25, 2023 where the Malaysian Bar submitted a full-length Memorandum on this point, as well as a whole host of other improvements to the SUHAKAM Act.
19. These missed opportunities for proper reforms to strengthen the SUHAKAM institution could have been prevented if an effective consultation process was conducted and serious considerations were given to the views provided by stakeholders.
20. Secondly, the Malaysian Bar has commended the Government's decision in approving constitutional amendments to the Federal Constitution relating to citizenship to address the current discriminatory laws, to grant automatic citizenship to children born overseas to Malaysian mothers but non-Malaysian fathers. However, we have objected to further proposed amendments which would, alarmingly, have the effect of removing existing constitutional protection for some categories of stateless children, leaving them without any constitutional safeguards, thus aggravating the stateless issue in Malaysia.
21. The proposed amendments to Part III of the Federal Constitution on citizenship matters which includes entirely removing Sections 1(e) and 2(3) of the Second Schedule, provisions which fundamentally protect persons from becoming stateless. Additionally, other causes for concern from the proposed amendment include removing the right of foundlings, including abandoned children, to

citizenship by operation of law under Section 19B of the Second Schedule, Part III of the Federal Constitution.

22. The Malaysian Bar is deeply concerned with these proposed amendments that lack justification and empirical data. The detrimental repercussions on the lives of stateless individuals, encompassing political, economic, and social spheres, are profound. Denial of fundamental rights such as formal education, healthcare, official employment, and access to justice exacerbates their vulnerability. These disadvantages mark them for potential abuse and mistreatment, rendering them susceptible to becoming victims of social ills.
23. Despite immense pushback from multiple stakeholders at various platforms, we note that the Government appears to assert their course of action.
24. The Malaysian Bar has conveyed its grave concerns through various correspondence to the Minister of Home Affairs on several occasions last year, and we continue to urge that these proposed amendments be halted. Ultimately, in carrying out our duties in the law reform process, we must be guided by the rule of law and fundamental human rights, not the retention of power.
25. This incident underscores the need for a true and public, and transparent consultation with the relevant stakeholders during such Law Reform process.
26. As for my third point, beyond providing a platform for diverse perspectives and input, the consultation process also serves as a powerful means for the government to effectively communicate its intentions and purposes to relevant stakeholders. Often overlooked, this facet of the consultation process fosters transparency and understanding between the government and the public, creating a symbiotic relationship built on trust and informed decision-making.
27. For example, throughout the latter half of 2023, our local media was consumed with the ongoing conflict in Gaza, and the escalating violence resulting in civilian casualties, widespread suffering, and the displacement of countless innocent

individuals and families as a result of serious breaches and flagrant violations of international laws.

28. The current Gaza conflict serves as a poignant reminder of the pressing need for Malaysia to reconsider becoming a party to the Rome Statute of the International Criminal Court ("ICC"). The Rome Statute establishes four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression; and represents a crucial instrument in the global effort to combat impunity and hold perpetrators of the most heinous war crimes accountable for their actions at the ICC.
29. This reminder relates to my point on the importance of the consultation process as we may recall in 2019, Malaysia had signed the Rome Statute but made a U-turn when, with all due respect, misguided concerns were raised that Malaysia's accession would jeopardize the position of our Malay Rulers. A misunderstanding that could have been avoided with a two-way communication, by way of proper consultation.
30. My Lady, please permit me as an aside, to mention that the Palestinian Bar has reached out to the Malaysian Bar in recent times seeking our support as they go through such horrific times, and the Malaysian Bar wishes to hereby declare that we stand shoulder to shoulder with our brothers and sisters at law in Palestine, to condemn the atrocities of genocide and war crimes committed by Israel in Gaza - and wholly support the legal proceedings commenced by South Africa at the International Court of Justice. The Malaysian Bar stands ready to render all assistance at the ICJ proceedings, by way of intervention if necessary, so that no country can use genocide as a defence and an excuse to commit war crimes.

F. Efforts from the Malaysian Bar

31. As the Malaysian Bar remains committed in constructively engaging with the Government and relevant stakeholders for Law Reform initiatives, My Lady, allow me to highlight some of our efforts in the past year.

32. On 23 February 2023, the Malaysian Bar submitted more than 60 submissions with respect to institutional and law reforms to the Minister and Deputy Minister in the Prime Minister's Department (Law and Institutional Reform).
33. In the interest of time, and given that we had prepared 8 volumes of submission which are publicly available on the Malaysian Bar website⁷, I will briefly highlight two submissions that we made.
34. First, our case for the repeal of **ouster clauses**. The Malaysian Bar takes the position that ouster clauses violate the principle of the separation of powers by restricting the judiciary from exercising its crucial role in checking and balancing decisions made by the Executive and Legislature.
35. Essentially, due to these ouster clauses, decisions from administrative bodies become immune to judicial review. Such clauses are incompatible with the principles of the Rule of Law and democracy, as they undermine the essential requirement of accountability for administrators and decision-makers.
36. In our submission, the Malaysian Bar highlighted a total of 46 statutes which contain ouster clauses.
37. Following the Federal Court cases of **Nivesh Nair a/l Mohan v Dato' Abdul Razak bin Musa, Pengerusi Lembaga Pencegahan Jenayah**⁸ and **Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah**⁹ where ouster clauses were declared to be unconstitutional, in 2023, the Federal Court in the case of **Haris Fathillah bin Mohamed Ibrahim v Tan Sri Dato' Sri Hj Azam bin Baki**¹⁰ reasoned as follows, I quote:

'An ouster clause is a self-imposed legislative immunity against judicial scrutiny. What happens if a law is unconstitutional but it cannot be challenged because of the ouster clause? Surely, the ouster clause must yield to the supremacy of

⁷ Circular No 108/2023 | Submissions on Institutional and Law Reforms to the Minister of Law and Institutional Reform and Invitation for Feedback

⁸ Nivesh Nair a/l Mohan v Dato' Abdul Razak bin Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors [2021] 5 MLJ 320

⁹ Dhinesh a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors [2022] 3 MLJ 356

¹⁰ Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Hj Azam bin Baki & Ors [2023] 2 MLJ 296

the FC and not the other way around. And what then if a law or a legal provision (ouster clause or otherwise) is void? Surely there is a forum to address this. The answer lies in Part IX of the FC and Article 121(1) wherein they collectively repose the judicial power of the Federation in the Superior Courts. This is how powers or mechanisms are determined to exist by inferring them from design and taking them to their natural conclusion. This is all derived from context.'

38. This brings me to the second submission I hope to highlight – amendments to Article 121(1) of the Federal Constitution.
39. While amendments are designed to refine the law, unfortunately, what resulted from the Constitution (Amendment) Act 1988 is the belief or misconception by some quarters that the courts are powerless to address issues and do justice wherever there is a lacuna in the law as the courts are confined to merely interpreting and implementing acts of Parliament without being able to make and develop common law.
40. Due to such aforementioned misconceptions, we have cases such as **Sivarasa Rasiah v Badan Peguam Malaysia**¹¹ which relied on the celebrated Indian case of **Keshavananda Bharati v State of Kerala**¹² to adopt the Basic Structure Doctrine into our local jurisprudence.
41. It is therefore the Malaysian Bar's position that the critical language of the provision, that is: *"The judicial power of the Federation shall be vested in the [... Superior Courts/Judiciary]..."* should be reinstated so as to obviate such misconceptions from recurring again. In our submission, we relied on exemplary jurisdictions such as India, Canada, New Zealand and Australia.

Penalised as to costs for public interest litigation

42. My Lady – please permit me to turn to the issue of public interest litigation. The advocacy of public interest litigation can effectively benefit a section of the community or the community as a whole. It is meant to raise awareness of good

¹¹ Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2010] 2 MLJ 333

¹² Keshavananda Bharati v State of Kerala AIR 1973 SC 1461

governance among the public. Whether such public interest litigation succeed is immaterial. Given the widespread attention that public interest litigation typically attracts, its impact on public perception is ample to underscore the significance of good governance. This serves as a check and balance against executive actions in Malaysia.

43. The role of public interest litigation becomes especially pivotal in judicial review proceedings. This is because confining access to judicial review solely based on personal interests could significantly weaken the court's jurisdiction to oversee administrative authorities. Therefore, the engagement of public interest litigation in judicial review processes plays a crucial role in upholding the rule of law.
44. Despite the boundless benefits of meritorious public interest litigation to society at large, hostility towards these cases in the area of costs remains in 2023 as seen in the Court of Appeal's decision in **Fahri, Azzat & Co and Another v Pengarah Pendaftaran Negara Wilayah Persekutuan Kuala Lumpur**.¹³
45. The risk of having to pay an adverse costs order, and prohibitive at that, can have a chilling effect. Many cases are abandoned due to this risk, particularly when there is no monetary compensation involved. For brave litigants with little to lose, or organisations with few assets, the risk of an adverse cost order may not be such an insurmountable obstacle. But for ordinary Malaysians who have limited capacity to manage large and unexpected costs – this cost risk is particularly challenging. Penalising parties on costs in public interest litigation is counter-productive for the strengthening of institutions and betterment of nation building.

Judges Remuneration

46. Speaking of costs, I turn to rising costs of living. This pertains directly to income My Lady. I take this opportunity to highlight that during the 77th Annual General Meeting of the Malaysian Bar held on 18 March 2023, we passed a resolution

¹³ COA Appeal No. W-01(A)-469-07/2022

regarding the remuneration of Judges and establishment of a Judges' Remuneration Commission.

47. Recognising that there has been no revision to the salaries of judges since 2015, i.e. 9 years ago, we view the current state of affairs as unacceptable. As provided in the Commonwealth (Latimer House) Principles on the Three Branches of Government, compensating judges appropriately is a necessary component of judicial independence.
48. Accordingly, an independent Commission to periodically assess judicial compensation stands as the most promising approach to realizing the sought-after goals of independence, objectivity, transparency, and consistency. This initiative would be advantageous for judges, those aspiring to a judicial role, and, ultimately, the general public.
49. On 14th April 2023, the Malaysian Bar submitted a copy of the resolution to the Attorney General's Chambers, Minister in charge of Law and Institutional Reforms, Prime Minister of Malaysia and the Leader of the Opposition.
50. The Malaysian Bar will continue to drive this initiative in 2024. Attracting talent to the judiciary, maintaining talent within the judiciary while preserving independence of the judiciary, is a benchmark we will be striving for.

JAC Act

51. In the interest of the Judiciary, it is also timely for us to reform the composition of and appointments to the Judicial Appointments Commission ("JAC"), and restructure the process of appointment and appointment criteria of Judges to the Superior Courts.
52. We take the position that there has to be amendments to the Judicial Appointments Commission Act 2009 ("JAC Act 2009") to incorporate the participation of all stakeholders in the judicial appointment process. It is also crucial to eliminate the Prime Minister's involvement, particularly in appointing members to the JAC.

53. Given the importance of this reform, further efforts will be made in 2024 to actualize our proposals. The commitment to refining the JAC Act 2009 reflects our ongoing dedication to fostering a transparent and participatory process in the appointment of Judges. These initiatives will underscore a steadfast commitment to upholding the principles of the separation of powers and enhancing the integrity of an independent judicial system in Malaysia.

Legal Professional Privilege

Moving on to my next point, for the benefit of the Members of the Malaysian Bar and the legal profession within the administration of justice system, it would be remiss of me if I did not raise the issue of legal professional privilege – which has been a pressing concern throughout 2023. We highlight 2 instances where there appears to be a constant onslaught and attempt to erode legal professional privilege – (i) Firstly, the Malaysian Bar condemns the actions of the Malaysian Anti-Corruption Commission and the Inland Revenue Board in their unlawful conduct of attempting to misuse their powers which disregards the legal professional privilege accorded to the clients of advocates and solicitors. Our criticism was made in response to the Malaysian Bar having received detailed reports from two law firms where attempts to raid their offices were made by MACC, and in the case of one of the law firms, IRB had also participated in the attempted raid. Despite the fact that the Malaysian Bar had successfully obtained a court order at the High Court as far back as 2018 declaring that privilege is sacrosanct and that the IRB cannot be going on a fishing expedition – a decision which was upheld at the Court of Appeal in 2021 and the Federal Court in 2022 – lawyers continue to face such unwarranted onslaught; AND (ii) Secondly, it was brought to our attention that Bank Negara Malaysia when performing on-site examinations of law firms to ensure compliance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Members of the Bar have reported that Bank Negara Malaysia is actively soliciting the submission of scanned or copied documents and information in advance of their scheduled examinations. The requested documents encompass vital materials such as financial

statements of a law firm, identification documents of clients and transactional documents.

54. The Malaysian Bar is unequivocal in stating that Privilege is an absolute right, and would go so far as to say that it is a constitutional right in ensuring access to justice. Privilege enables clients to repose full trust in their lawyers, sharing sensitive and confidential information to receive accurate and proper professional advice. Without privilege, the legal profession would lose its credibility, and confidence in the integrity of the administration of justice would be compromised.
55. The Malaysian Bar therefore continues to be resolute and unwavering in its commitment to upholding Privilege. Members of the Malaysian Bar have been reminded to remain vigilant and to zealously defend the sanctity of Privilege without fear.
56. On a separate point, the Malaysian Bar has been looking forward to amendments to the LPA 1976. The Malaysian Bar has concluded consultations with the Attorney General's Chambers on the Amendment Bill to the Legal Profession Act 1976 since mid-2023. We were unable to see the Bill tabled last year, but we are hopeful that with the necessary cooperation from the Minister in charge of Law and Institutional Reforms, the Bill will be tabled in Parliament at the next Parliamentary sitting.

H. Conclusion

57. In conclusion, the Malaysian Bar takes heed of Your Ladyship's comment made when delivering the Keynote Speech at the 23rd Commonwealth Law Conference 2023, where Your Ladyship stated that it is the duty of the Attorney General's Chambers and the Bar to safeguard and strengthen the independence of the Judiciary.

58. On this point My Lady, the Malaysian Bar continues to pledge its role in safeguarding the independence of the Judiciary. In 2023, an Extraordinary General Meeting was convened to pass the “*Resolution on the Independence of the Judiciary and Upholding the Rule of Law*”, reaffirming its commitment to defend the independence of the Judiciary and the Rule of Law without fear or favour and condemn the actions of all those persons who had undermined the independence of the Judiciary and violated the Rule of Law.

59. On behalf of the Malaysian Bar, Advocates Association of Sarawak and the Sabah Law Society, I wish members of the Judiciary and the Attorney General’s Chambers, as well as Members of the Bar, a healthy, fruitful, successful and peaceful year ahead.

Karen Cheah Yee Lynn
President
Malaysian Bar
15 Jan 2024