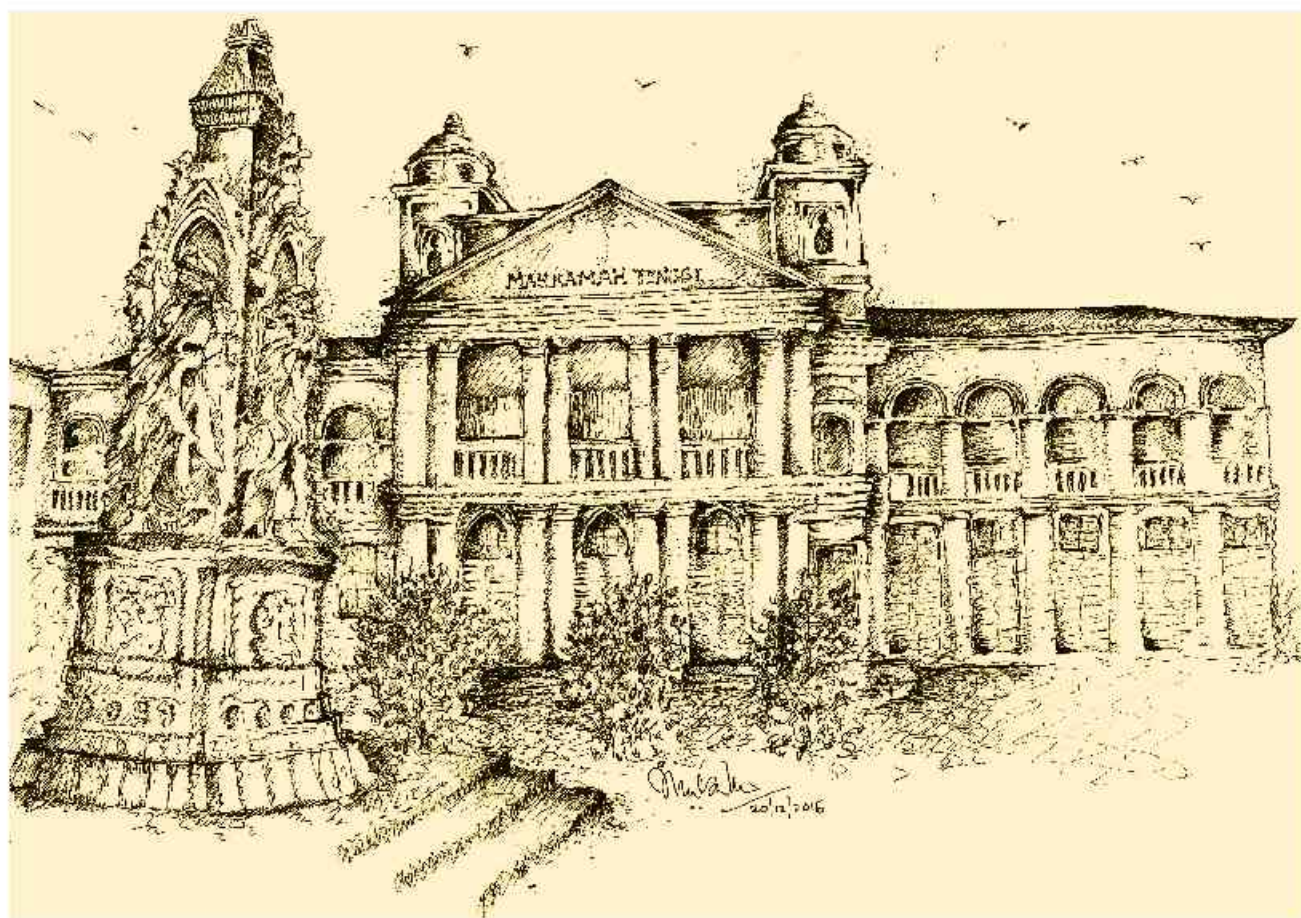
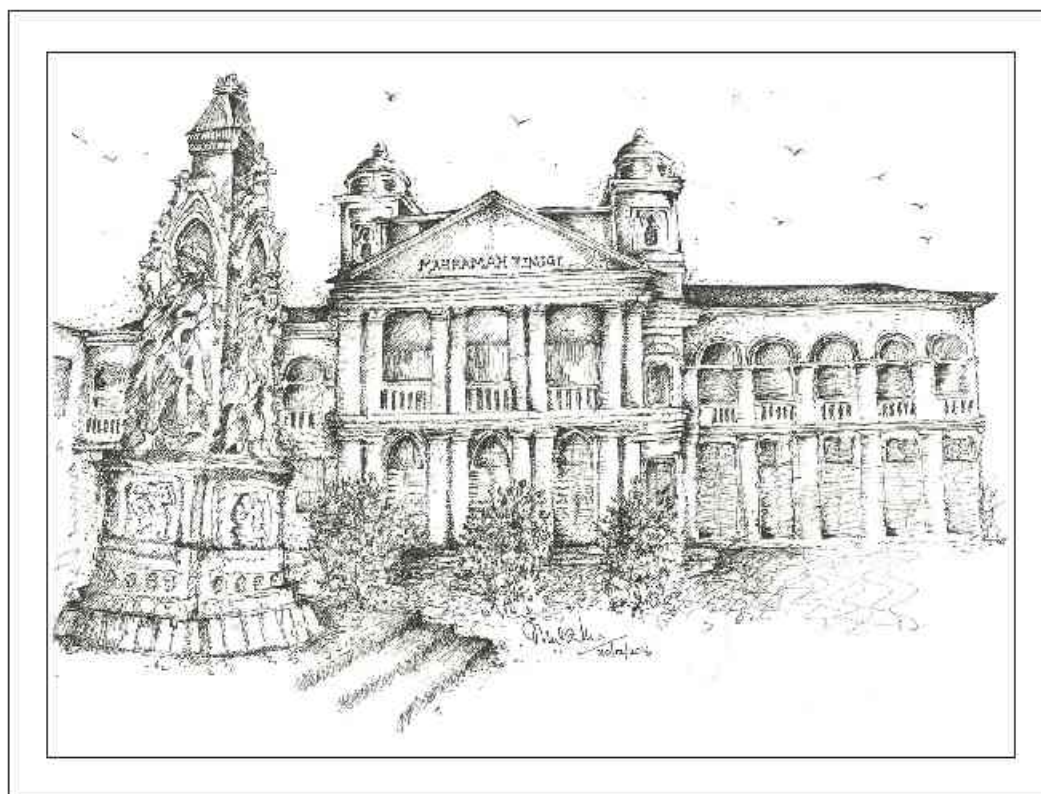


# THE MALAYSIAN JUDICIARY



YEARBOOK 2016



# **THE MALAYSIAN JUDICIARY**

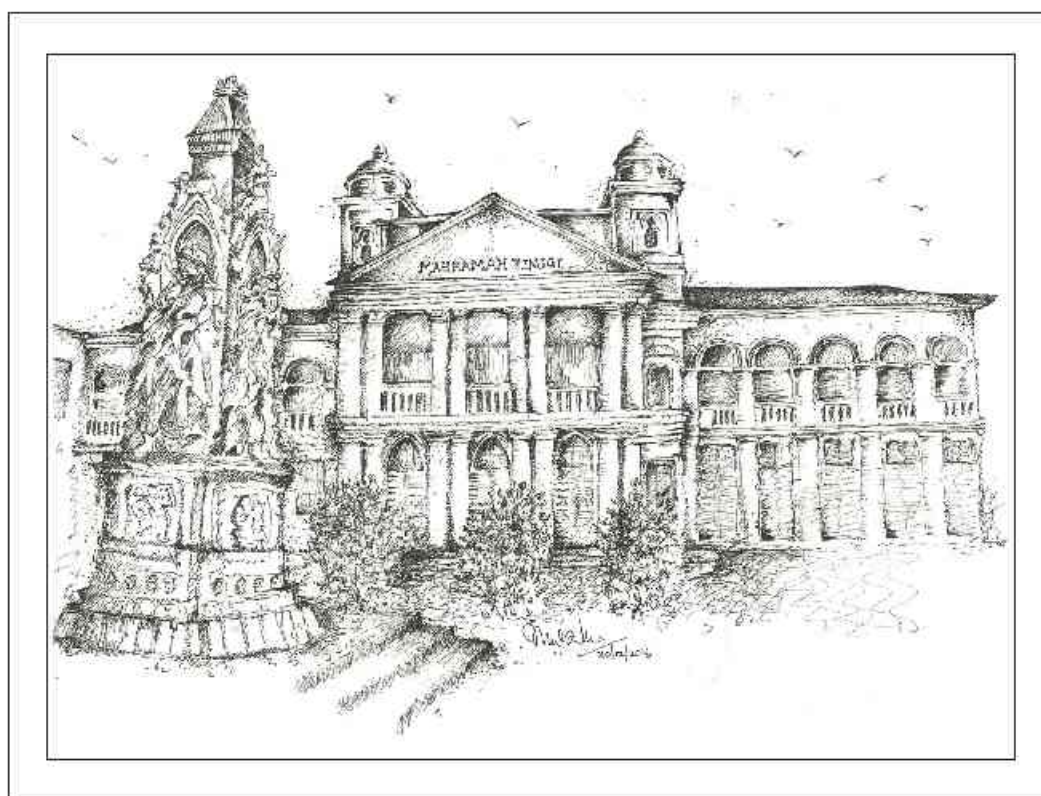
## **YEARBOOK 2016**



Cover Sketch

**"Logan Memorial – Penang High Court"**

By Justice S.Nantha Balan E.S. Moorthy



# **THE MALAYSIAN JUDICIARY**

## **YEARBOOK 2016**



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The Right Honourable Tun Arifin Zakaria  
Chief Justice of Malaysia

# Foreword

by The Right Honourable Tun Arifin Zakaria  
Chief Justice of Malaysia

**T**he Malaysian Judiciary Yearbook is an annual event, and is now in its sixth year of publication. I have had the privilege of writing its foreword for five years in a row and whilst the task was and is always done with so much pleasure and pride, the present one is also tinged with some measure of sadness for it would be my last.

As in the past, this present edition not only features stories and articles written by judges but also significant events happening during the year in the courts throughout the country. Its editorial committee has also included a piece on the recollections and insights of the second Lord President of the Federal Court, the late Tun Syed Sheh-Al Haj Syed Hassan Barakbah. The articles written by the judges, in turn seek to highlight legal issues and encourage further discourse in order to enhance knowledge on the topics written and this is part of the Judiciary's effort in promoting continuous learning for our judges and judicial officers. With that same aim in mind and with a view to equipping judges and judicial officers with the necessary skills in discharging their judicial functions, the Judicial Academy conducted various courses and seminars for their benefit and this effort has been complemented by those conducted in collaboration with international institutions of high repute. That which is worthy of mention here are the ones conducted in Boston, Massachusetts and New York by the U.S. Department of Justice Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) for six judges who specialised in anti-terrorism cases. This training was as a result of the Court Security Assessment Meetings held in February 2016 between the USA Marshals Service, OPDAT and my office. I am certain that the exchange of experiences between the judges with their U.S. counterparts, the U.S. prosecutors, marshals and members of the NYPD Counter-terrorism unit on terrorism cases and exposure to, amongst others, U.S.'s federal judicial security measures

and their best practices in this area would further benefit the judges when trying these offences back home.

Another interesting meeting was the International Association of Women Judges' Conference held in Washington in May 2016, attended by two of our women judges.

This conference is important because when so many forms of gender-based violence persist in our society, the impact of having the perspectives of women judges cannot be understated.

Another milestone worthy of note is the establishment of the new specialised court – the Cyber Court which for now is only set up in the Kuala Lumpur Court Complex but with plans for further expansion to other parts of Malaysia in future. As borne out by its name, this court hears cyber-related civil and criminal matters and this includes bank fraud, hacking, online gambling and pornography. The judges and judicial officers manning the Cyber Court are specially trained in this area and the courtroom itself is equipped with the latest technology to facilitate the hearing conducted in it.

One of the more important events in our calendar was the Joint Judicial Conference ("the JJC"). This biennial meeting was held from 4<sup>th</sup>-6<sup>th</sup> November 2016 at the Palace of Justice, Putrajaya. Judges from the Supreme Courts of Brunei, Singapore and Malaysia converged for a joint session to discuss issues which are critical to them as adjudicators. One of the objectives of the JJC is of course the promotion of mutual understanding of each other's laws and judicial process, as well as enhancing public perception of each other's institution.

This is a useful reminder that apart from the confidence that inter-curial collaboration can engender, the sharing of information about the perspective of other courts will also be of intrinsic



value as litigation becomes increasingly international in nature. I would like to thank the Hon. Chief Justice Sundaresh Menon the Chief Justice of Singapore and his team and the Right Hon. Dato' Seri Paduka Hj. Kifrawi bin Dato' Paduka Hj. Kifli, Chief Justice of Brunei and his team for being with us for this purpose.

This Yearbook edition is particularly interesting too in that some artistic talent from amongst our ranks are "unearthed." I would like to extend my congratulations to Justice S.Nantha Balan E.S. Moorthy for his fine piece of art on the cover and Justice Zainun Ali for her painting on page 130. I would also like to thank the officers of the Penang High Court: Mdm. Zaharah Hussain and Mdm. Nurzafirah Mohamed Ali for providing us the factual background of the said court.

In conclusion, I would like to personally thank all judges, judicial officers and staff of all the courts in Malaysia for their dedication and hard work which have immensely contributed to the Judiciary's excellent performance for all the years that I have been the Chief Justice. I would like to also thank our stakeholders such as the Attorney General, his officers as well as the three law associations for their continuous support and cooperation with the Judiciary. My special thanks also goes to Tan Sri Haidar Mohamed Noor, Justice Zulkefli Ahmad Makinudin, Justice Nallini Pathmanathan, Justice Ong Lam Kiat Vernon, Justice Azizah Nawawi, Justice Ravinthran Paramaguru, Justice Azizul Azmi Adnan and Justice Mohd Nazlan Mohd Ghazali for kindly contributing an article each for this publication.

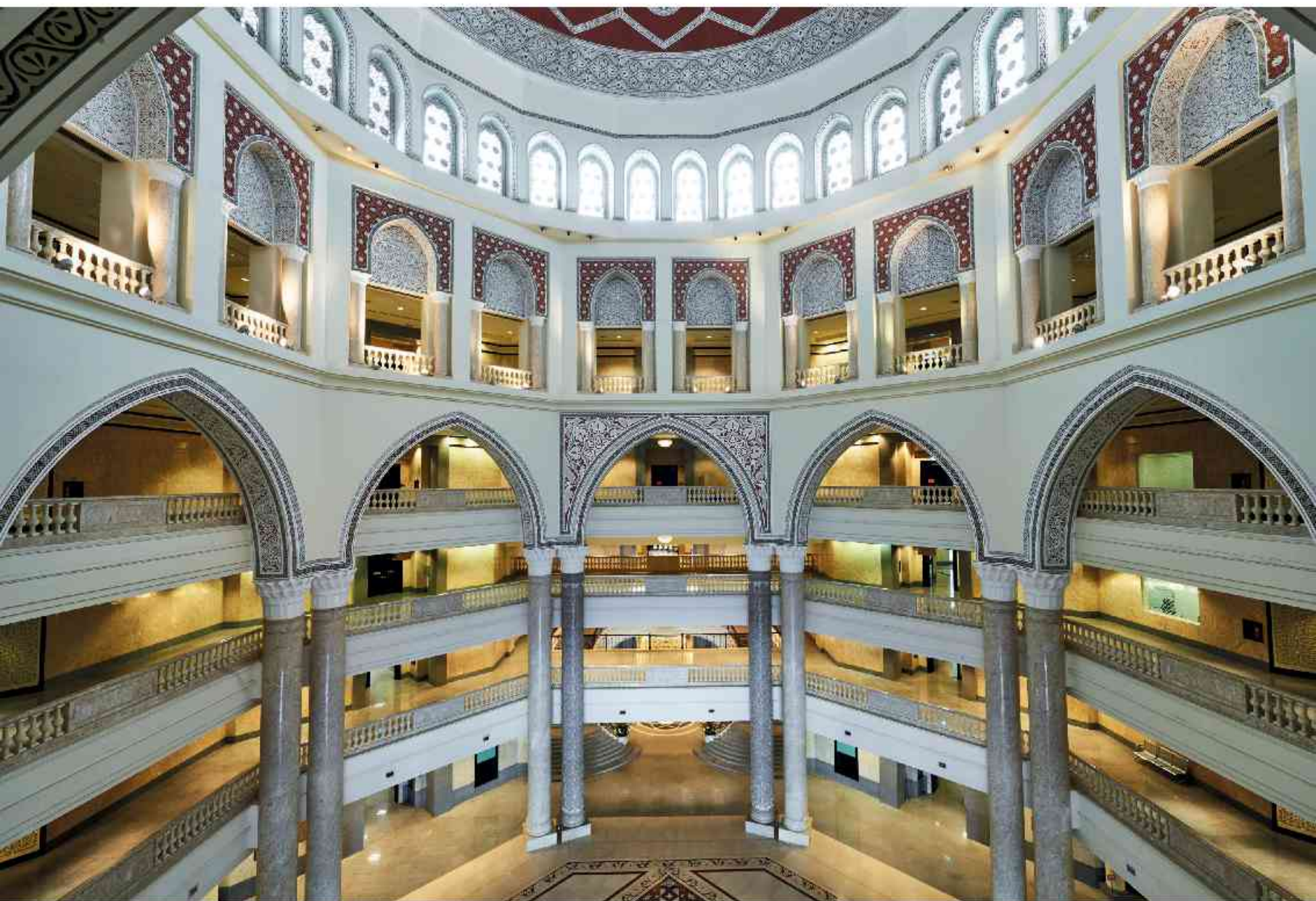
**Tun Arifin Zakaria**  
Chief Justice of Malaysia

I am indebted to the family of the late Tan Sri Abdul Malek Ahmad for kindly sharing with us their thoughts on our former President of the Court of Appeal.

My thanks are extended also to our photographers Mr. Syafiq Samsurdin, Mr. Pang Xie Fung, Mr. Weng Soon Leong and artist Mr. Muhammad Nur Hazimi Khalil (Jimmy) who have done well in making sure this Yearbook is graced with their work. Thank you too to the Percetakan Nasional Malaysia Berhad who have ensured the publication of this Yearbook.

Last but not least, my appreciation goes to this year's Yearbook Committee, helmed by Justice Zainun Ali who have selflessly contributed their time and effort in making this Yearbook a success and a reality. Thus, I owe my thanks to Justice Zainun Ali, Justice Alizatul Khair Osman Khairuddin, Justice Lim Yee Lan, Justice Tengku Maimun Tuan Mat, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Mr. Azrol Abdullah, Mr. Sabri Othman, Mdm. Maimoonah Aid, Mr. Noorhisham Mohd Jaafar, Mdm. Sharifah Norazlita Syed Salim Idid, Mdm. Syahrin Jeli Bohari, Ms. Norhafizah Zainal Abidin, Mdm. Parvin Hameedah Natchiar, Mr. Shazali Hidayat Shariff, Mr. Syahrul Sazly Md Sain, Mdm. Chang Lisia, Mr. Muhammad Iskandar Zainol, Ms. Hazmida Harris Lee and Ms. Ainna Sherina Saipolamin.

Wishing one and all happy reading and all the best in your future undertakings!



The spectacular curves of the Palace of Justice's main lobby.





A burst of bloom in the precincts of the Palace of Justice

# P r e f a c e

The late Oscar Hammerstein (of the Rodgers and Hammerstein fame) wrote wisely and accurately in the preface to his own published book of selected lyrics that the perfect lyric for a musical should be inspired directly by the story and the characters contained in it.

This sentiment is echoed in our publication. After all, the stories we narrate in our Yearbook encapsulate our worth as judges, quintessential or imperfect as they may be.

Only that to top it, this publication has a poignancy all its own; for in this volume the final chapters for our retiring Chief Justice will be written. After taking over the mantle of office in 2011 from Tun Zaki Tun Azmi, Tun Arifin Zakaria successfully wrought his own brand of leadership, borne as it were, from his Lordship's aspiration for judicial excellence. Under his watch, important milestones in judicial benchmarking has taken place, not least the enhanced regime of Environmental law and the establishment of various dedicated courts.

The Chief Justice believes that as judges, we are infallible. The work we do is held up to scrutiny by stakeholders, academicians and the public, in equal measure. Our work entails an increased number of public policy issues, with the growth of judicial review, human rights and business and commercial disputes.

All this simply means that judges must be on top of things. The Chief Justice's directive for a comprehensive judges' training programme is laid out with renewed vigour.

Meanwhile the Editorial Committee remains true to its promise to continue the serialised chapters on Malaysia's Chief Justice/Lords President and issues of human rights. In this publication, we bring readers into the life and times of Tun Syed Sheh Barakbah, our second Lord President. We can visualise the unswerving path taken by Tun Syed Sheh Barakbah, culminating in his appointment as the Governor of Penang.

In the human rights series the spotlight in this outing is on the rights of children. We believe that it is time these issues are brought to the public's consciousness as otherwise they would remain mere rhetoric. The vulnerability of children render it necessary that their needs are fulfilled, and as nature had intended, their parents are the most appropriate persons to take on this job. The laws and customs of most countries have enforced this precept of universal law. However, as the pressures of economic competition intensifies with social consolidation, the family unit sometimes disintegrates; sometimes too, the children reject parental authority, leading to social problems. This is particularly true when children become potential victims of negligence and abuse.

At the same time it is in this sphere (family law) that the dualism between a global outlook and a domestic rootedness is at its most instinctive. Justice Azizah Nawawi's resonant article on this subject therefore poses some issues as to why compliance with the Convention on the Rights of the Child (CRC) is incumbent. Thank you Justice Azizah.

Although family law and its cases are not heavy in our court dockets, its importance is inimitable. Each case must, of necessity, be treated with all requisite skill and attention if an egregious outcome is to be avoided.

The last publication of the Yearbook saw the narration of our niche in the regional and global capital market; this time around, our attention is focussed on our burgeoning maritime regime.

In fact the succinct article by Justice Nallini Pathmanathan underscores the importance of this industry. What is interesting is that the nascent beginnings of mediation in maritime disputes have now grown in momentum. Hopefully, with the consent of litigants, senior counsel from the Malaysian Shipping and Admiralty Committee will avail themselves for nomination for mediation in maritime disputes.

This publication makes a conscious effort in reporting on some of the international conferences attended by judges. These meetings no doubt provided tangible benefits to those involved.

For some time now, we have strived to claim ownership to this publication in more ways than one. The obvious way of course is to chronicle our time on the bench and sometimes, off it. It is only through graphic accounts given by judges past and present, that we are able to truly appreciate the essence of judgeship.

Take the chapter on A Judge's Musings, for example; it is indeed rare that one can have access to the inner workings of the judicial mind, unless of course that judge gives an autobiography, or allows a biography to be written.

In this publication, we are privileged to have access to the thoughts of our former Chief Judge of Malaya, Tan Sri Haidar Mohamed Noor, who left an indelible mark in our judicial history. Though he is not one to make much of the turbulence of his time, the recounting of his story is perhaps a rare glimpse into the inner sanctums of authority. Thank you Tan Sri for your illuminating outline.

On another note, I am sure readers will particularly enjoy sound bites from our Justices in the Court of Appeal, the High Courts of Malaya and Sabah & Sarawak. Justices Vernon Ong, Ravinthran Paramaguru and Mohd Nazlan Mohd Ghazali respectively, have each shown the way that what really matters in judicial work is the unerring sense of justice that each judge can and should bring with him on the Bench. Thank you Justices Vernon, Ravinthran and Nazlan, for your valuable insight.

Then we have the refreshingly candid views of our former Chief Justice Tun Zaki Tun Azmi on how he brought the Judiciary to its level of preparedness, in terms of judicial reform. Thank you Tun Zaki and Justice Azizul, for that scintillating interview.

The Committee is privileged too, in obtaining from the Chief Judge of Malaya Tan Sri Zulkefli Ahmad Makinudin, an input on issues relating to the criminal justice system in Malaysia. Not

since **Roe v. Wade** 410 U.S. 113 (1973) has the jurisprudence of criminal law gained greater impact and buoyancy. Thank you Tan Sri.

The Committee is immensely grateful to the family of the late Tan Sri Abdul Malek Ahmad (our former President of the Court of Appeal), for sharing with us the stellar presence of the late Tan Sri. His Lordship was indeed a shining example of judgeship. Thank you Puan Sri Roziah Sheikh Mohamad and Mr. Farhan Ashraq.

One of the plus factors of being in this Committee is the occasional discovery of unexpected talent in our midst. In this case, the artistic genius of Justice Nantha Balan showed up in his interpretation of the 'Logan Memorial-Penang High Court' as beautifully sketched on our front cover. Clearly an engagement with our creative side will bring its rewards! I am hopeful that there will be more "surprises" in the next publication. I am sure that indulging in a bit of creativity does not hurt, as I was to find out myself. Thank you Justice Nantha Balan.

Keeping the best for last, our heartfelt gratitude goes to our Chief Justice Tun Arifin Zakaria. His Lordship's guiding hand has never failed to propel us further in pushing the benchmark several notches higher in ensuring that the content of our past and present publications continue to embody all that is good and great in our institution.

The Chief Justice is always conscious that the work we do should not be confined within limitations of space, time or even academic disciplines.

We are thus inspired to include in our publication, inter-disciplinary issues, fragments of history and related problems that make up the entire fabric of judicial work.

The Editorial Committee and I would like to place on record our gratitude to the Chief Justice for his continuing faith in us carrying out this immense responsibility for the past six years. Thank you Yang Amat Arif Tun.

On behalf of the Judiciary I would like to thank the Editorial Committee whose attentive watch and lively banter have allowed this publication with all its intrinsic bellyaches to be printed within the



time line. Thank you Justice Alizatul Khair Osman Khairuddin, Justice Lim Yee Lan, Justice Tengku Maimun Tuan Mat, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Mr. Azrol Abdullah, Mr. Sabri Othman, Mdm. Maimoonah Aid, Mr. Noorhisham Mohd Jaafar, Mdm. Sharifah Norazlita Syed Salim Idid, Mdm. Syahrin Jeli Bohari, Ms. Norhafizah Zainal Abidin, Mdm. Parvin Hameedah Natchiar, Mr. Shazali Hidayat Shariff, Mr. Syahrul Sazly Md Sain, Mdm. Chang Lisia, Mr. Muhammad Iskandar Zainol, Ms. Hazmida Harris Lee and Ms. Ainna Sherina Saipolamin.

The Committee's thanks are also owed to the photographer Mr. Weng Soon Leong, our faithful artist Muhammad Nur Hazimi Khalil (Jimmy) whose fine portraits never fail to intrigue us; we thank

the PNMB, whose careful work is much appreciated and finally we are grateful to the unsung heroes of this committee i.e. Mdm. Azniza Mohd Ali, my Registrar, Mdm. Sabreena Bakar @ Bahari, Mdm. Rohani Ismail my Secretary and Mr. Mohd. Nasir Hussin my Orderly.

Their stoic participation saw endless streams of copies and coffees being made available to the committee, thus ensuring that this publication is not in want.

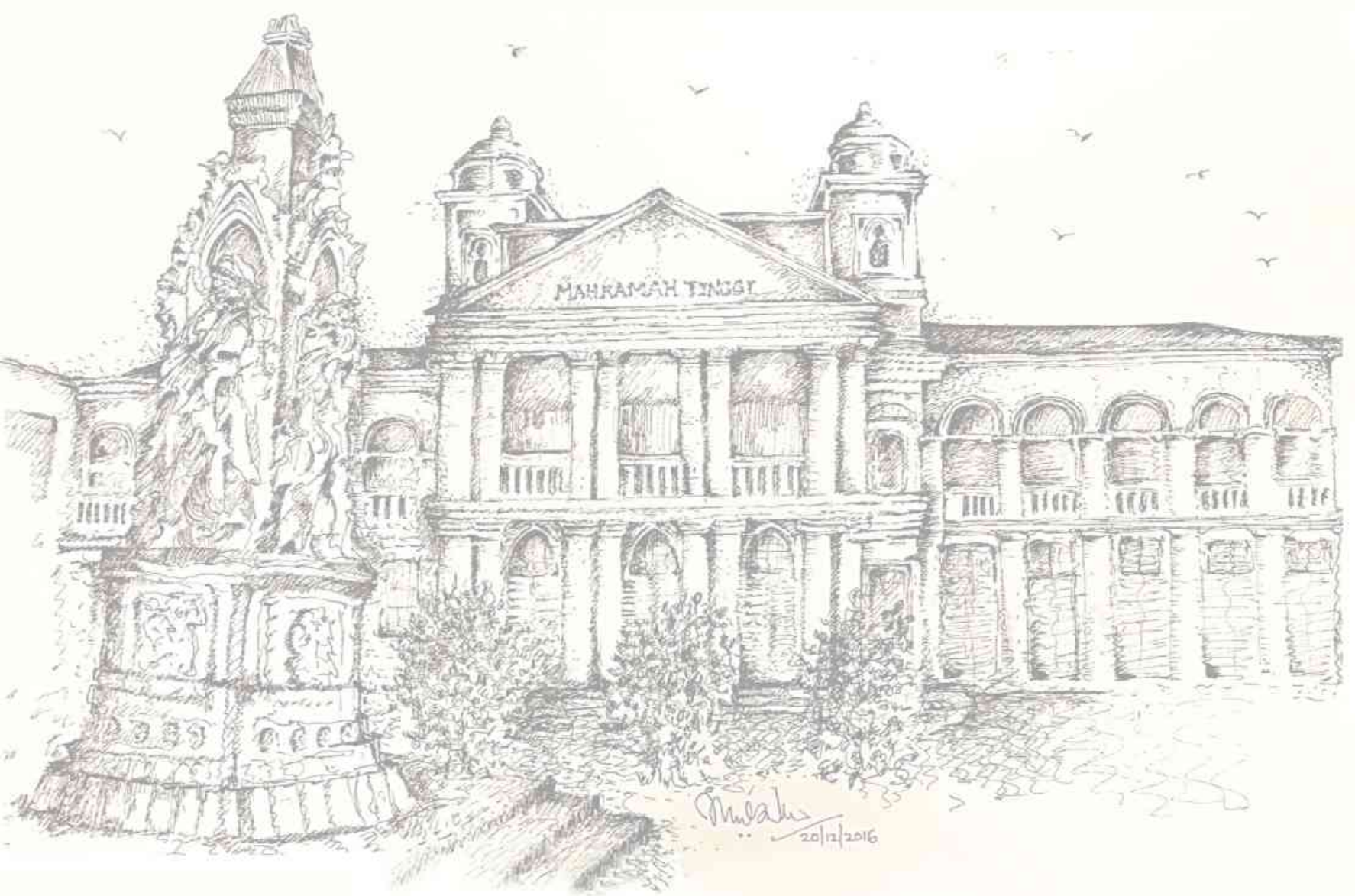
Like most virtues, resilience more than any other, is certainly required in a publication such as this.

Enjoy the read !

**Justice Zainun Ali**  
Editor







## THE PENANG HIGH COURT

The history of the Judiciary can be traced back to the time when Penang Island (then known as Prince of Wales Island) was acquired by Captain Sir Francis Light on 11<sup>th</sup> August 1786. Penang became a strategic trading post and a proper adjudication system was needed to govern the settlement.

In 1801, John Dickens was appointed the First Magistrate in Penang. In 1807, the Royal Charter of Justice was granted for a statutory reception of English Law, to exercise jurisdiction in all civil, criminal and ecclesiastical matters. It also provided for the setting up for a Supreme Court. A British Recorder (Judge) Sir Edmund Stanley, who arrived in Penang in 1808 was entrusted with the establishment of the Court of Judicature.

At that time, there was no courthouse and court proceedings were held in the Government House. A new courthouse at Light Street was completed towards the end of 1809. The construction of the eastern portion of the Penang Supreme Court commenced in 1901 and was officiated by the Chief Justice of the Strait Settlements, Sir Lionel Cox on 9<sup>th</sup> September 1903. The western portion was completed in 1905. The entire court complex was designed by the municipal engineer.

An annexed building was built next to the Supreme Court Building (now known as the Penang High Court) to house the Subordinate Courts. The construction was completed in 2007 and was launched by the Governor of Penang, Tun Dato' Seri Utama (Dr.) Haji Abdul Rahman bin Haji Abbas.

### The Composition

At present, the Penang High Court building accommodates eight courtrooms with six Judges and Judicial Commissioners, 13 Registrars and 73 High Court staff.

### Sources:

- i. Y.A.A Tan Sri Dato' Abdul Hamid Omar, Administration of Justice in Malaysia, The Denning Law Journal, page 2-4.
- ii. Marcus Langdon, Georgetown's Historic Commercial & Civic Precincts, Georgetown World heritage Inc. 2015 Ed.

### The Cupola – The Hidden Gem

At the time the building was being restored, construction workers found a carved wooden ceiling at the western portion of the building. When the ceiling was removed they discovered a cupola with all its intricate stone works and carvings intact.

The cupola is indeed an exquisite work of art, with peacock motive stain glass and copper carvings. It is believed that the cupola was done during the time of the East India Company.

### The Logan Memorial

The Logan Memorial was erected as a memorial for James Richardson Logan. He arrived in Penang in 1839 with his elder brother, Abraham. He was renowned for defending the rights of the Europeans and non-Europeans alike.

Thus, when he died on 20<sup>th</sup> October 1869 due to malaria, his death was deeply felt by the people of the Straits Settlement. In his honour, they pooled a fund to erect this monument. The Logan Memorial stood on the grounds of the then Supreme Court for 138 years, to commemorate his contributions to their well being. In 2007, the memorial was relocated to a new location across the Penang High Court Building.

### World Cultural Heritage Site

The Penang High Court is the genesis of the judicial system in Malaysia. With a history of administration of law stretching back over 200 years, the Penang High Court building remains a symbol of the public's right of access to justice. This historical building received international recognition when the United Nations Educational, Scientific and Cultural Organization (UNESCO) designated it as a World Cultural Heritage Site on 7<sup>th</sup> July 2008.





The Hidden Gem - Cupola of the Penang High Court.  
(This was discovered when a wooden plank on the ceiling of the court  
was removed during the court's restoration.)



# **CHAPTER 1**

THE OPENING OF THE LEGAL YEAR 2016



## THE OPENING OF THE LEGAL YEAR 2016 – PENINSULAR MALAYSIA



Chief Justice Arifin Zakaria leading the procession.

The Opening of the Legal Year 2016 for Peninsular Malaysia was held on 8<sup>th</sup> January 2016 at the Grand Ballroom of the Kuala Lumpur Convention Centre (KLCC).

The occasion was graced with the presence of Tun Dato' Seri Mohamed Dzaiddin Abdullah and Tun Dato' Seri Zaki Tun Azmi, both former Chief Justices of Malaysia, the Honourable Mr. Nurak Marpraneet, President of the Constitutional Court of Thailand and his wife, Mdm. Sumpun Marpraneet, Tan Sri Abu Zahar Ujang, President of the Senate, Dato' Sri Nancy Shukri, Minister in the Prime Minister's Department, Tan Sri Dato' Seri Mohamed Apandi Ali, Attorney General of Malaysia, Mr. Steven Thiru, President of the Bar Council, as well as representatives from foreign judiciaries and law associations.

The President of the Bar Council delivered the first speech. The thrust of his speech was that in the year 2015 there were challenges to the rule of law which affected fundamental constitutional liberties and universal standards of good governance. He called upon public institutions to be independent and not submit to pressure. He also touched upon topics such as the Continuing Professional Development ("CPD") Scheme, the liberalisation of legal services and the work done by the National Legal Aid Foundation. He raised concerns that lawyers were being targeted by the police for performing their obligations to their clients and that the principle of legal professional privilege was under threat.

He ended his speech by declaring the Bar Council's commitment to uphold the rule of law and hoped that the working relationship between the Bar Council, the Judiciary and the Attorney General's Chambers would continue.

The Attorney General began his speech by remarking that it was his first time attending the Opening

of the Legal Year since he was appointed the Attorney General.

The Attorney General's speech focused on the boundary between confidentiality and transparency. He cautioned that the two principles must be balanced and reminded the audience that the Attorney General's Chambers is bound by laws pertaining to the secrecy and confidentiality of government information and is subject to the disciplinary rules applicable to civil servants.

The Attorney General ended his speech by pledging anew to the Chief Justice the commitment of the Attorney General's Chambers to the fair and efficient administration of justice in Malaysia.

Chief Justice Arifin Zakaria spoke on the rule of law and the role of the Judiciary in upholding the rule of law. He asserted that the Judiciary would enforce the law without fear or favour, and stated "*...it is not the role of the courts to make popular decisions.*"

The Chief Justice emphasised the difference between the standards of human rights applicable to western countries and to Malaysia which is a multi-cultural society which holds the values encapsulated in the Rukun Negara pledge. He firmly stated that the Federal Constitution is the supreme law of Malaysia and other laws must be promulgated in accordance to it.

Before ending his speech, the Chief Justice briefly informed the attendees about the 2015 statistics and of the new initiatives introduced to streamline the courts' system.

After the conclusion of the ceremony, light refreshments were served before the Judges departed to the Sheraton Imperial Hotel, Kuala Lumpur for the 50<sup>th</sup> Annual Meeting of the Council of Judges which commenced that afternoon and ended on 10<sup>th</sup> January 2016.





Judges of the Federal Court marching into the hall.





Judges of The Federal Court, Stakeholders and Delegates at The Opening of the Legal Year 2016





JUDGES OF THE SUPERIOR COURT AT





THE OPENING OF THE LEGAL YEAR 2016



## THE OPENING OF THE LEGAL YEAR 2016 - SABAH AND SARAWAK



L – R: Datuk Azailiza Mohd Ahad, Justice Richard Malanjum, Chief Justice Arifin Zakaria, Dato' Sri Nancy Shukri and Datuk Tiong Thai King leading the procession.

The Opening of the Legal Year 2016 for Sabah and Sarawak was held on 22<sup>nd</sup> January 2016 in Sibu, Sarawak. The theme was "Justice with Quality and Efficiency".

The procession was led by Chief Justice Arifin Zakaria which began at the Municipal Council Field, Wisma Sanyan, Sibu and ended at the Sibu Court Complex. The Chief Justice was accompanied by the Chief Judge of the High Court in Sabah and Sarawak, Justice Richard Malanjum, Minister in the Prime Minister's Department Dato' Sri Nancy Shukri, the Solicitor General of Malaysia Datuk Azailiza Mohd Ahad, Chairman of the Sibu Municipal Council, Datuk Tiong Thai King, Presidents of the Sabah Law Association and the Advocates' Association of Sarawak, the State Attorney Generals of Sabah and Sarawak and followed by Judicial Officers.

After the prayers and singing of the national anthem and the state song of Sabah and Sarawak, the ceremony continued at the High Court 1, Sibu Court Complex.

The Chief Judge of Sabah and Sarawak expressed his gratitude to the Chief Justice for making time to attend this ceremony despite his busy schedule.

Justice Richard Malanjum urged the attendees to prepare themselves to meet new challenges and the possibility of economic woes in 2016. He briefly spoke on the statistics and stated that cases on Native Customary Rights (NCR) take a long time to be disposed of due to the variety of dialects of the parties involved as well as the cultural and traditional aspects which are important to the natives.



Mr. Brenndon Keith Soh, President of the Sabah Law Association reinforced the association's pledge to the universal legal principle of the rule of law. He spoke on the association's involvement in the National Legal Aid Foundation and the Borneo Advocacy Training Centre ("BATC"). He also recorded the association's deep condolences to the victims of the earthquake on 5<sup>th</sup> June 2015.

On behalf of the association, he lauded the Bar Council's consensus on the exclusivity of the Sabah and Sarawak advocates to practice in Borneo. He suggested that the practice of co-opting a Borneo Judge from the High Court on each appellate panel in Sabah to be revived.

Mr. Leonard D. Shim, President of the Advocates' Association of Sarawak emphasised that the courts should assist ordinary citizens who turn to them for help, and not be another level of bureaucracy. He urged the courts to continue to be the bastion of justice, fairness and equality. He then briefly reported the activities of Advocates' Association of Sarawak for the year 2015 and ended with a pledge to continue to support the Judiciary and the Attorney General's Chambers in the administration of justice in Sarawak.

The Deputy State Attorney General of Sabah, Mdm. Zaleha Rose Datuk Pandin pledged to continue to give proper advice to the State Government to uphold the principles of justice and fairness to all,

to protect the interest of the State Government and the general public and to ensure that the relevant authorities in Sabah enforce State laws fairly and equitably. She also gave an assurance that Chambers would give full and undivided support and cooperation to the courts to enhance the administration of justice.

The State Attorney General of Sarawak, Datu Abdul Razak Tready praised the Video Conferencing System which linked up the Technology Courts in Kuching, Sibul, Miri, Bintulu and Limbang and benefitted the Chambers by enabling officers to attend hearings in different districts with time and costs effective. He also informed of a new State law, i.e. the Forests Ordinance 2015 regarding the administration and management of forests in the State.

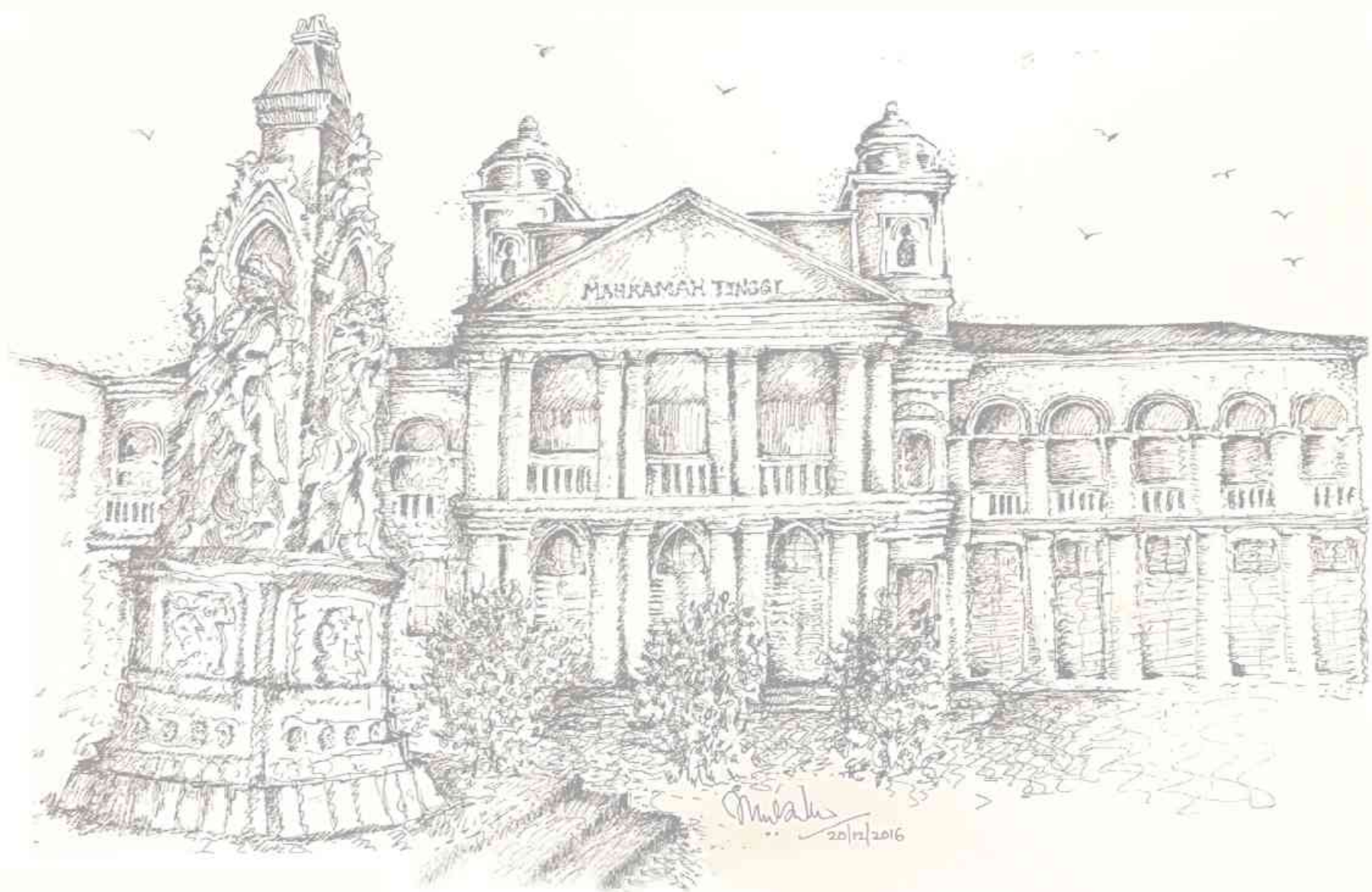
The Solicitor General of Malaysia, Datuk Azailiza Mohd Ahad, delivered the speech on behalf of the Attorney General of Malaysia. She spoke on the unilateral conversion of minors, terrorism, safety of prosecutors (which applies equally to judges and lawyers), the implementation of administrative empowerment of the Sabah and Sarawak State Governments, the liberalisation of the legal services and legal aid. She looked forward to the continuation of the cooperation between the Chambers, the Judiciary and the Sabah and Sarawak Bar.

The ceremony ended at noon.



Judges and Stakeholders at the Opening of the Legal Year 2016 - Sabah and Sarawak assembling in front of the Sibul Court Complex.





## **CHAPTER 2**

### **THE FEDERAL COURT**







## THE FEDERAL COURT

The Federal Court's schedules and fixtures of cases in 2016 remained as busy as it was in the preceding year. The number of cases registered in the Federal Court has been steadily increasing in the past few years.

The three main categories of cases that come up before the Federal Court are leave applications, civil appeals and criminal appeals.

However, leave applications form the bulk of the cases in the Federal Court as leave to appeal to the Federal Court must be obtained beforehand by a party intending to bring an appeal before the Federal Court in a civil case pursuant to section 96 of the Courts of Judicature Act 1964.

In 2016, a total of 702 leave application cases were registered, an increase of 16% to the number of cases registered in 2015 (605 cases). The Federal Court succeeded in disposing of 762 cases out of 1281 cases pending in 2016. The balance of leave application cases as at 31<sup>st</sup> December 2016 stood at 519 cases. It is noteworthy that the disposal rate of leave applications as compared to the cases registered for the year is an impressive 99%. For the record, a total of 158 leave applications were allowed in 2016, the same exact number of leave applications allowed in 2015. This translates to 22% of the total leave applications being disposed of in 2016.

As for civil appeals, a total of 155 cases were registered in 2016 showing a decrease of 2% in the number of cases registered as compared to 2015 (158 cases). The high number of leave applications allowed by the Federal Court again contributed to high number of civil appeals registered. The Federal Court succeeded in disposing of a total of 157 civil appeals out of 361 pending civil appeals, leaving a balance of 204 civil appeals as at 31<sup>st</sup> December 2016. The disposal rate as compared to the civil appeals registered for the year is 101%. In comparison, only 137 civil appeals were disposed of in year 2015.

A total of 339 criminal appeals were registered in 2016, an increase of 9% to the number of cases registered in 2015 (309 cases). The Federal Court succeeded in disposing 353 criminal appeals out of 417 criminal

appeals pending, leaving a balance of 403 criminal appeals as at 31<sup>st</sup> December 2016. The disposal rate as compared to criminal appeals registered for the year is 104%. It is also interesting to note that there was a significant increase in the registration of criminal appeals relating to habeas corpus application before the High Court. In 2015, only 32 criminal appeals relating to habeas corpus were registered. The number of criminal appeals relating to habeas corpus more than doubled to 83 cases in 2016 or an increase of 159%.

In this regard, I would like to take this opportunity to record my sincere appreciation to all my learned sister and brother Judges, officers and staff of the Federal Court for their continuous commitment and hard work throughout the year.

In 2017, the Federal Court continues its pursuit of clearing pre-2016 cases by the end of the year with a target disposal rate of 100%. This will be done by fixing the hearing date of a case to not more than three months from the date of case management provided that the particular case is ready for hearing. Priority will also be given to ageing cases and cases stemming from interlocutory applications before the courts below. In 2016, the Federal Court managed to dispose of 779 pre-2016 cases leaving a balance of 274 cases. The disposal rate as compared to the pending cases on 1<sup>st</sup> January 2016 is 74%.

The practice of a single Federal Court Judge conducting case management for leave applications will be continued. In addition, the Federal Court plans to have in-house training for Registrars of the Federal Court which will be conducted by Judges. The objective of this programme is to further improve the efficacy of case managements conducted by Registrars.

In line with the phrase "towards a greener environment", the Federal Court plans to introduce an "e-correspondence" system where all correspondences with the Federal Court are done electronically through e-mail. As such, all correspondences from the Federal Court will no longer be sent by fax or post. The prime objective in the implementation of this is to reduce the usage of paper and reduce costs for all parties.



The advancement of the e-court system in Malaysia will also see the full implementation of the e-filing system in the Federal Court in May 2017 to include civil appeals and criminal appeals. Currently, only leave applications utilise the e-filing system.

Finally, the Federal Court is in the midst of conducting a study on all the practice directions currently in force with regard to the administration of the Federal Court. The objective of this endeavour is to produce a single and comprehensive set of practice direction covering all aspects of the administration of the Federal Court.

The year 2016 witnessed the retirement of Justice Abdull Hamid Embong. On behalf of my colleagues in the Federal Court, I would like to record my sincere appreciation to Justice Abdull Hamid Embong for his immense contribution to the Judiciary. I wish him a happy and prosperous retirement.

Last year we witnessed the elevation of Justice Balia Yusof Wahi and Justice Aziah Ali to the Federal Court Bench. I welcome and congratulate them on their appointment.

In addition, I would also like to welcome our learned brother Justice Jeffrey Tan Kok Wha to the Federal Court Bench following his appointment as an additional Judge of the Federal Court pursuant to Article 122 (1A) of the Federal Constitution.

All good things would eventually come to an end. My tour of duty as Chief Justice of Malaysia is no exception. The past six years have certainly been an enriching and fulfilling experience for me. I would like to take this opportunity to record my heartfelt gratitude to my learned sister and brother Judges, officers of the Judicial and Legal Service and staff personnel of all the courts throughout Malaysia. My thanks are also owed to the stakeholders and the entire Malaysian legal fraternity for their cooperation and contribution during my tenure as the Chief Justice of Malaysia.

Finally, I would also like to take this opportunity to express my utmost and sincere gratitude to members of my family for their unwavering support throughout my entire career.

Justice Arifin Zakaria  
Chief Justice of Malaysia

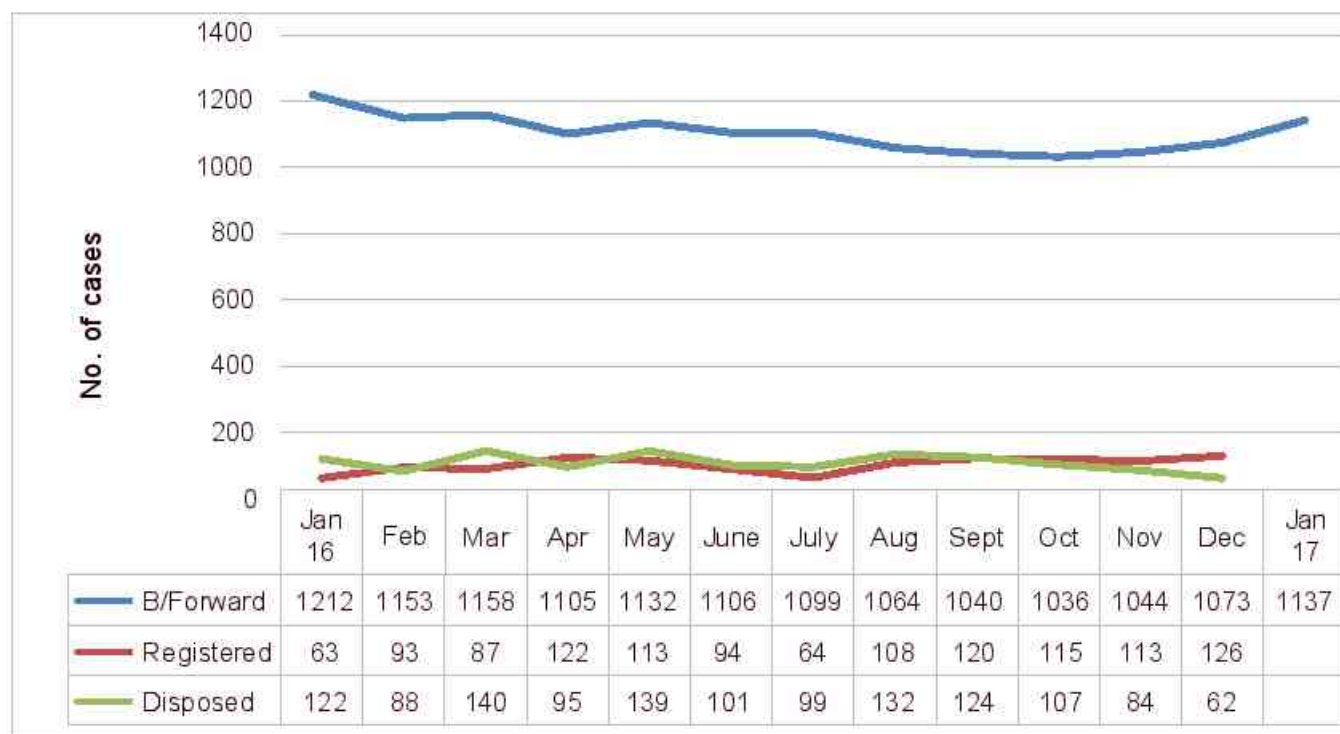
#### Judges of the Federal Court

1. Justice Abdull Hamid Embong
2. Justice Suriyadi Halim Omar
3. Justice Ahmad Maarop
4. Justice Hasan Lah
5. Justice Zainun Ali
6. Justice Abu Samah Nordin
7. Justice Ramly Ali
8. Justice Azahar Mohamed
9. Justice Zaharah Ibrahim
10. Justice Balia Yusof Wahi
11. Justice Aziah Ali
12. Justice Jeffrey Tan Kok Wha

## PERFORMANCE OF THE FEDERAL COURT IN 2016

The performance of the Federal Court in 2016 is shown below in graphical form:

TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
FOR THE YEAR 2016

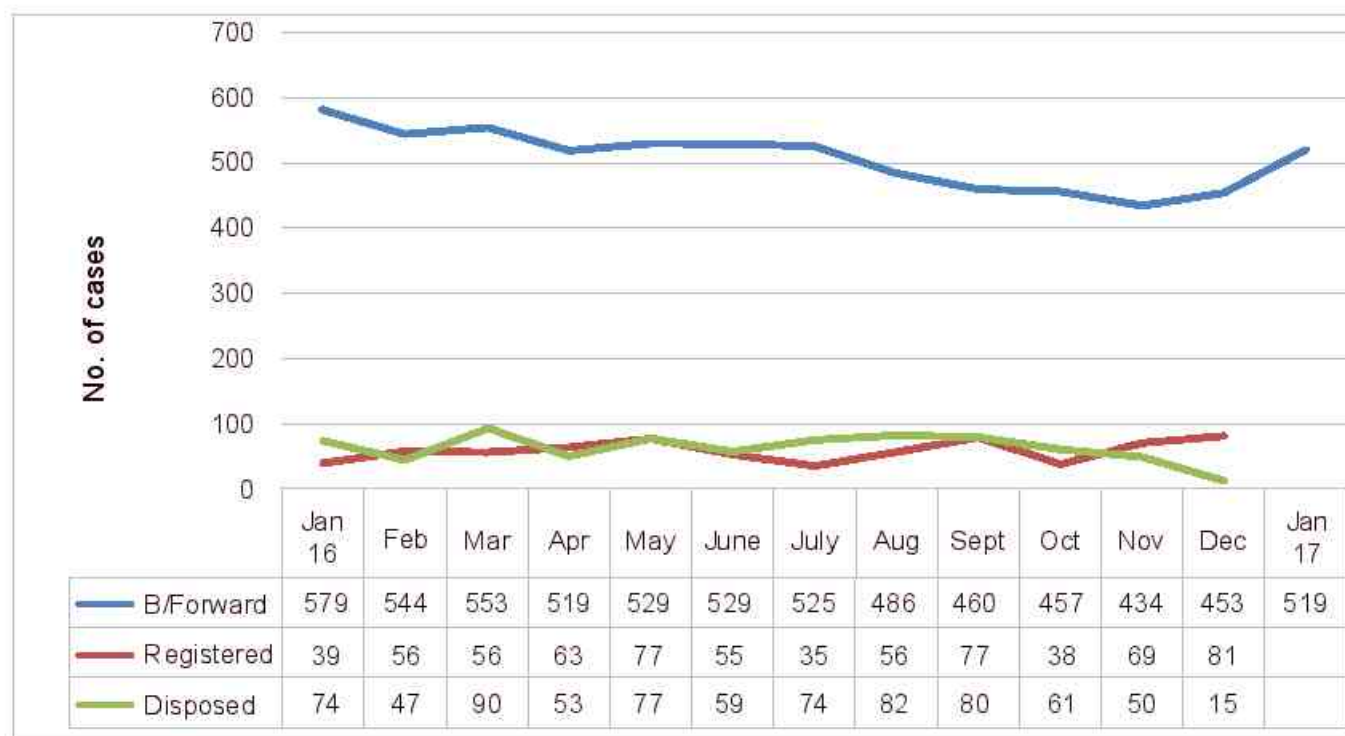


The three main categories of cases in the Federal Court are motions for leave to appeal, civil appeals and criminal appeals. Other matters include civil and criminal references, criminal applications and cases where the Federal Court exercises its original jurisdiction pursuant to Article 128(1) of the Federal Constitution.

There is an increase in the number of pending cases in the Federal Court as at 31<sup>st</sup> December 2016, which is 1137 as compared to 1212 as at 31<sup>st</sup> December 2015. In 2016, 1218 cases were registered as compared to 1097 cases in 2015, showing an increase of 10%. Out of all these cases, 1293 cases were disposed, achieving a disposal rate of 106% against the total number of registered cases in 2016.

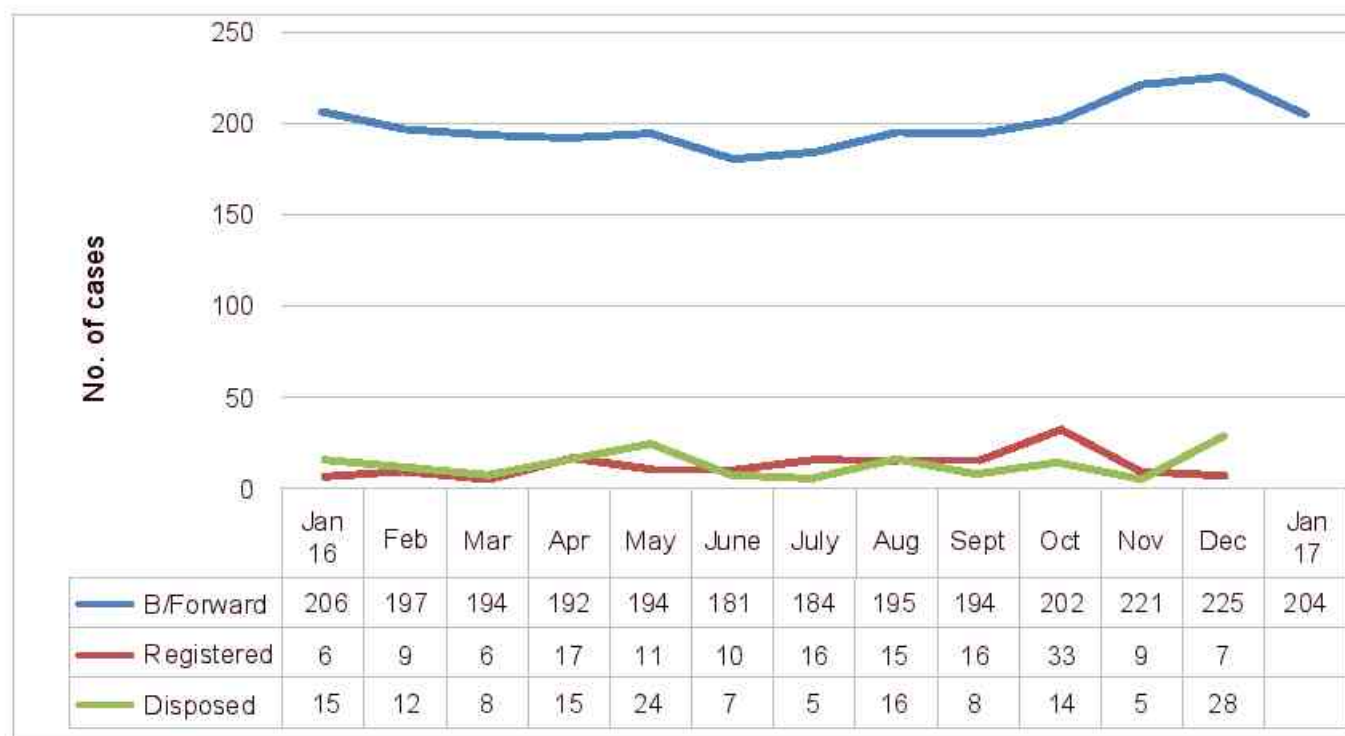


**TRACKING CHART**  
**TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES**  
**AS AT 31<sup>ST</sup> DECEMBER 2016**  
**(LEAVE APPLICATIONS)**



Registration for leave applications showed an increase of 16% from 605 in 2015 to 702 in 2016. The number of cases disposed in 2016 is 762 as compared to 667 cases in 2015. As at 31<sup>st</sup> December 2016, the total number of leave application before the Federal Court is 519 cases. The disposal rate of leave application against the cases registered is at 99%.

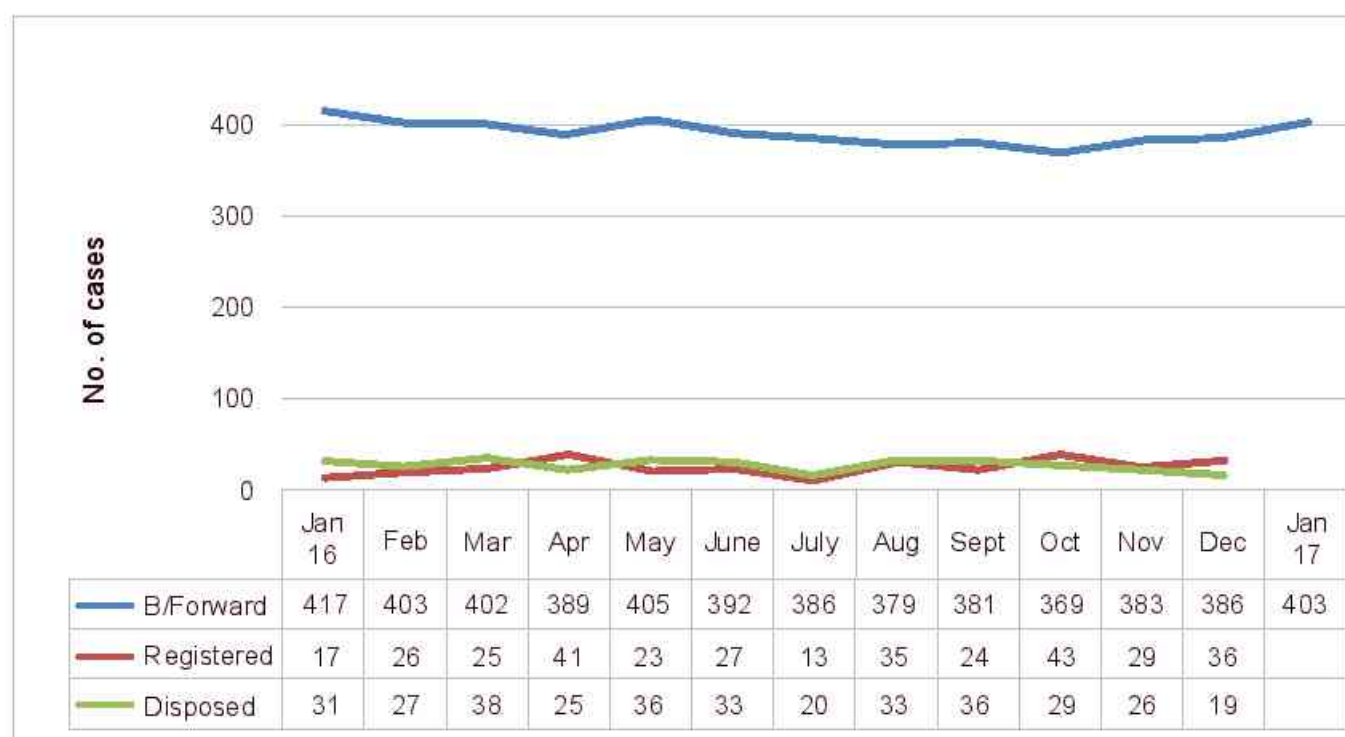
TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31<sup>ST</sup> DECEMBER 2016  
(CIVIL APPEALS)



For civil appeals, the registration showed a decrease of 2% from 158 in 2015 to 155 in 2016. The Federal Court disposed of a total of 157 civil appeals out of 206 pending appeals, leaving a balance of 204 civil appeals as at 31<sup>st</sup> December 2016. The disposal rate of civil appeals against the cases registered is 101%.

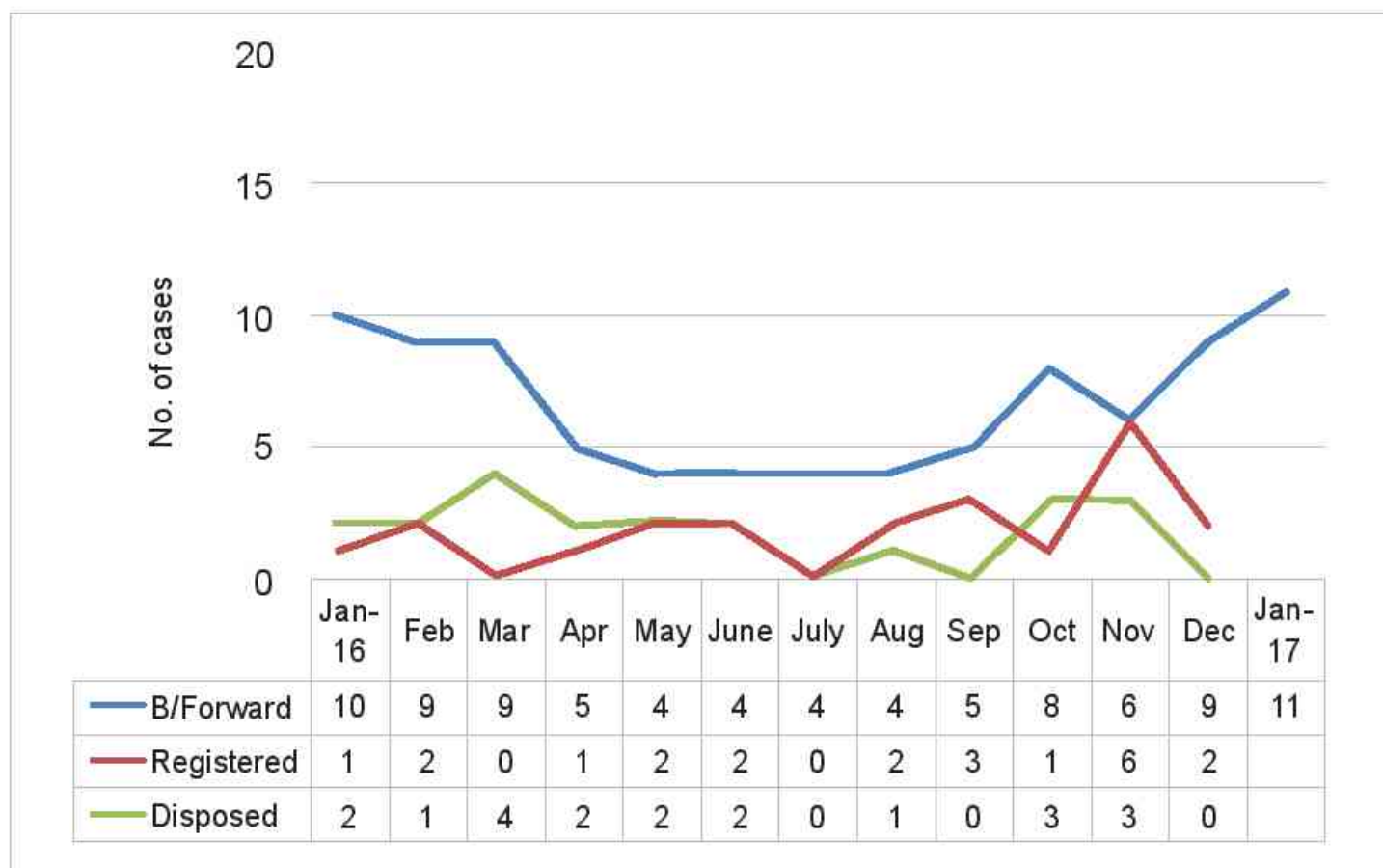


TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31<sup>ST</sup> DECEMBER 2016  
(CRIMINAL APPEALS)



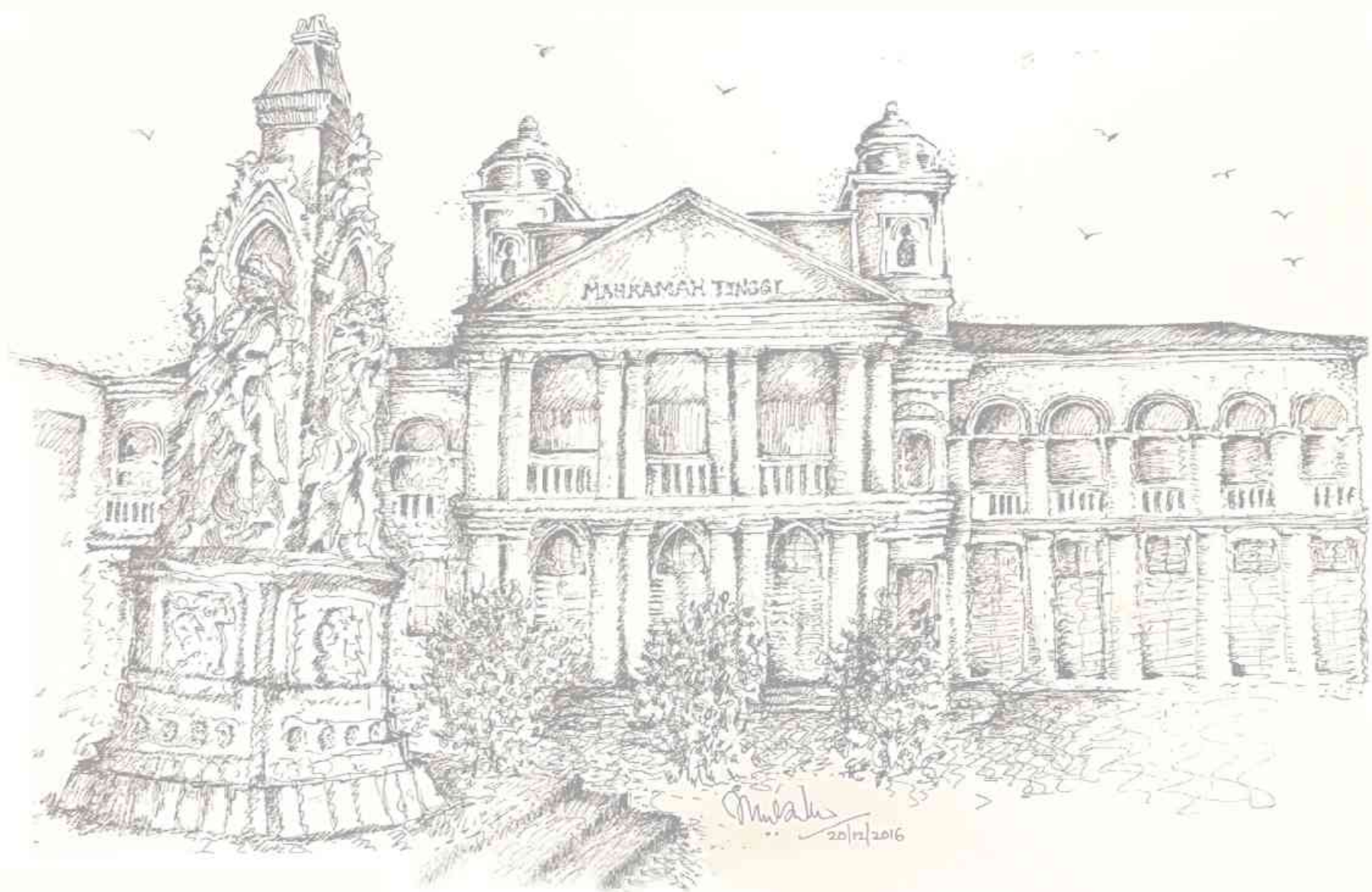
For criminal appeals, the number of cases registered in 2016 is 339 as compared to 309 cases in 2015. The Federal Court managed to dispose of 353 cases in 2016 as compared to 460 appeals in 2015, leaving a balance of 403 as at 31<sup>st</sup> December 2016. The disposal rate of criminal appeals against the cases registered is 104%.

TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31<sup>ST</sup> DECEMBER 2016  
(ORIGINAL JURISDICTION/CRIMINAL APPLICATION/  
CIVIL REFERENCE/CRIMINAL REFERENCE)



For other matters comprising original jurisdiction, criminal application, civil reference and criminal reference, there were 22 cases registered in the Federal Court throughout 2016, out of which 21 cases were disposed in 2016. As at December 2016, there were only 11 cases pending.





## **CHAPTER 3**

### **THE COURT OF APPEAL**







## THE COURT OF APPEAL

This is my sixth policy statement for the Court of Appeal. Looking back, I must say that, it is a great pride and honour to lead the Court of Appeal and see its accomplishment.

When I was appointed as the President of the Court of Appeal in 2011, my first priority was to clear the backlog of cases. At that time, the number of appeals pending stood at a staggering 10,771. With the unwavering commitment and the *esprit de corps* amongst the Court of Appeal Judges, court officers and support staff, we managed to reduce the number of pending appeals in 2011 to 8302. It was further reduced to 5553 in 2012, 4221 in 2013, 3209 in 2014, and 2627 in 2015.

Unfortunately, in 2016, our disposal rate could not match the number of appeals registered. A total of 4091 appeals were disposed of as against 4481 appeals registered. Thus, making the percentage of disposal against registration at 92% and leaving the number of appeals pending to 3017 as at 31<sup>st</sup> December 2016. However, I take comfort that the increase in the number of pending appeals was largely due to a 20% increase in registration of new appeals, and out of 3017 appeals pending, only 214 cases were pre-2016 appeals. The rest are 2016 appeals which constitute 93% of the appeals pending. In effect, only 7% of 3017 pending appeals are more than one year. It is targeted that the 214 pre-2016 appeals will be disposed of within the first quarter of 2017. I am confident that the target will be achieved.

In fact, in some categories of appeal, we are current. All pre-2016 Muamalat and Admiralty Appeals had been disposed of. Similarly, criminal appeals from the Subordinate Courts (Code 09) as well as appeals involving government servants (Codes 06A and 06B) are now current except for four cases. Likewise, cases relating to death penalty appeals (Code 05M), we have only five pre-2016 appeals pending. The rest of the cases are 2016 appeals filed in 2016.

I must acknowledge that the success of the Court of Appeal in disposing the appeals expeditiously could not have been possible without the cooperation and hard work of the Judges as well as officers

and staff of the Court of Appeal now headed by the Registrar of the Court of Appeal, Madam Norsharidah Awang.

At the same time, I would like to take this opportunity to acknowledge the efforts of our stakeholders, especially the Attorney General's Chambers and the Bar for their considerable efforts in working cooperatively with us. With their continued support, I am optimistic that the Court of Appeal will accomplish its mission.

For the year 2017, the Court of Appeal will continue its effort to hear and dispose of all appeals within the time line. I am confident that the long waiting period for appeals to be heard in the Court of Appeal will be a thing of the past. It is my ultimate target that all appeals fixed before the Court of Appeal will be heard without any adjournments. Success in this regard can only be ensured with shared cooperation of the Bar and the Attorney General's Chambers.

With the acceptable number of appeals pending at the Court of Appeal, I have decided for 2017, to limit the number of sitting days for judges to 10 days in a month. This is to allow the Judges to take a breather from hearing cases and by doing so it would give them more time to read the appeal records as well as to write their grounds of judgments. In 2016, although the Court of Appeal Judges were busy with the daily schedule in the Open Court, they had produced a total of 465 judgments, of which 284 grounds of judgments were in respect of civil appeals whilst 181 grounds of judgments were in respect of criminal appeals.

On a different note, the year 2016 witnessed the retirement of the Court of Appeal Judge, **Justice Abdul Aziz Abdul Rahim**. I am deeply grateful to him for his immense contributions to the Court of Appeal. I wish him a blissful retirement and every success in his future undertakings.

The year 2016 also witnessed the elevation of **Justice Balia Yusof Wahi** and **Justice Aziah Ali** from the Court of Appeal to the Federal Court. I would like to congratulate both of them and at the same time thank them for all their contributions



rendered as Judges of the Court of Appeal.

At the same time, I am also pleased to welcome the appointments of new Court of Appeal Judges, namely **Justice Zaleha Yusof, Justice Kamardin Hashim, Justice Mary Lim Thiam Suan, Justice Yaacob Md Sam, Justice Zabariah Mohd Yusof, Justice Hasnah Mohammed Hashim, Justice Harmindar Singh Dhaliwal, Justice Abdul Karim Abdul Jalil and Justice Asmabi Mohamad** to the Court of Appeal. I take this opportunity to congratulate them and I look forward to working with them. I am confident that their diverse backgrounds will be invaluable to the Court of Appeal.

As a parting note, I would like to convey my optimism for 2017. To the Court of Appeal Judges as well as the officers and staff, let us reach new heights together and work towards the betterment of the Court of Appeal and the Malaysian Judiciary as a whole.

Thank you.

**Raus Sharif**  
**President**  
**Court of Appeal, Malaysia**

## JUDGES OF THE COURT OF APPEAL

1. Justice Alizatul Khair Osman Khairuddin
2. Justice Mohtarudin Baki
3. Justice Abdul Aziz Abdul Rahim
4. Justice Lim Yee Lan
5. Justice David Wong Dak Wah
6. Justice Rohana Yusuf
7. Justice Tengku Maimun Tuan Mat
8. Justice Mohd Zawawi Salleh
9. Justice Dr. Hamid Sultan Abu Backer
10. Justice Zakaria Sam
11. Justice Abang Iskandar Abang Hashim
12. Justice Umi Kalthum Abdul Majid
13. Justice Varghese George Varughese
14. Justice Ahmadi Asnawi
15. Justice Idrus Harun
16. Justice Nallini Pathmanathan
17. Justice Dr. Badariah Sahamid
18. Justice Vernon Ong Lam Kiat
19. Justice Abdul Rahman Sebli
20. Justice Dr. Prasad Sandosham Abraham
21. Justice Zamani A. Rahim
22. Justice Zaleha Yusof
23. Justice Kamardin Hashim
24. Justice Mary Lim Thiam Suan
25. Justice Yaacob Md Sam
26. Justice Zabariah Mohd Yusof
27. Justice Hasnah Mohammed Hashim
28. Justice Harmindar Singh Dhaliwal
29. Justice Abdul Karim Abdul Jalil
30. Justice Asmabi Mohamad

## PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2016

As at 31<sup>st</sup> December 2016, there were 3017 appeals pending in the Court of Appeal. Out of 3017 appeals pending, there are only 214 pre-2016 appeals. The rest are 2016 appeals which constitute 93% of the appeals pending. Thus, in the Court of Appeal, except for 7% of the appeals, the rest of the appeals are current.

In 2016, a total of 4091 appeals were disposed of as against 4481 cases registered. The percentage of disposal is 92%. This is the first time in the last six years that the number of disposal is lower than the number of cases registered. The main reason being that the registration of appeals had increased by 20%.

As in the last six years, appeals adjudicated upon in the Court of Appeal are broadly categorised into Interlocutory Matters Appeals (IM), Full Trial Civil

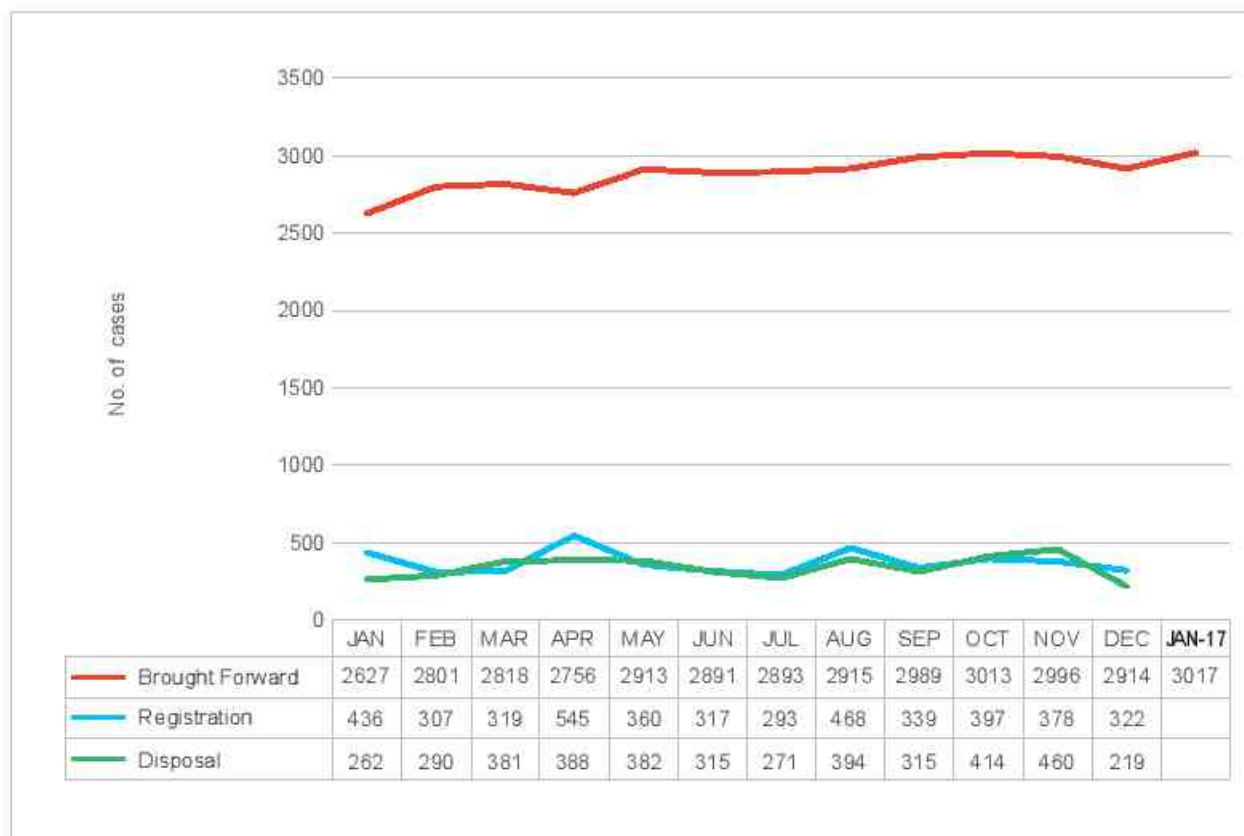
Appeals (FT) and Criminal Appeals. For monitoring purposes, the FT Appeals are further categorised into five sub categories namely, the New Commercial Court Appeals (NCC), New Civil Court Appeals (NCvC), Intellectual Property Appeals (IPCV), Muamalat Appeals and Admiralty Appeals. In 2014, a Construction Court Appeals has been added as another category.

In addition, the Court of Appeal also hears application for leave to appeal to the Court of Appeal which are mostly appeals that originate from the Subordinate Courts.

The overall performance of the Court of Appeal in 2016 can be seen in GRAPH A below:

GRAPH A

### NUMBER OF APPEALS REGISTERED AND DISPOSED OF IN 2016



It can be seen that the number of appeals brought forward to 2017 is 3017. Unlike the previous years, the disposal rate is slightly lower than the number of cases registered. However, we have less ageing

appeals. As at 31<sup>st</sup> December 2016, there were only 214 pre-2016. It comprises only 7% of the pending appeals. It is targeted that all these appeals will be disposed of within the first quarter of 2017.



## Interlocutory Matters Appeals

In 2016, a total of 299 Interlocutory Matters Appeals (IM Appeals) were registered. On top of that, there were 140 IM Appeals brought forward from 2015. Out of these, 280 IM Appeals were disposed of, making the percentage of disposal against registration at 93.64%.

As at 31<sup>st</sup> December 2016, there were 159 IM Appeals pending, out of which, 12 appeals were pre-2016 appeals. It is targeted that these 12 pre-2016 appeals will be disposed of within the first quarter of 2017.

As for the appeals registered in 2016, it is targeted that it will be disposed of within three to six months, and the very least not exceeding more than a year.

### GRAPH B

#### INTERLOCUTORY MATTERS APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING



## Full Trial Civil Appeals

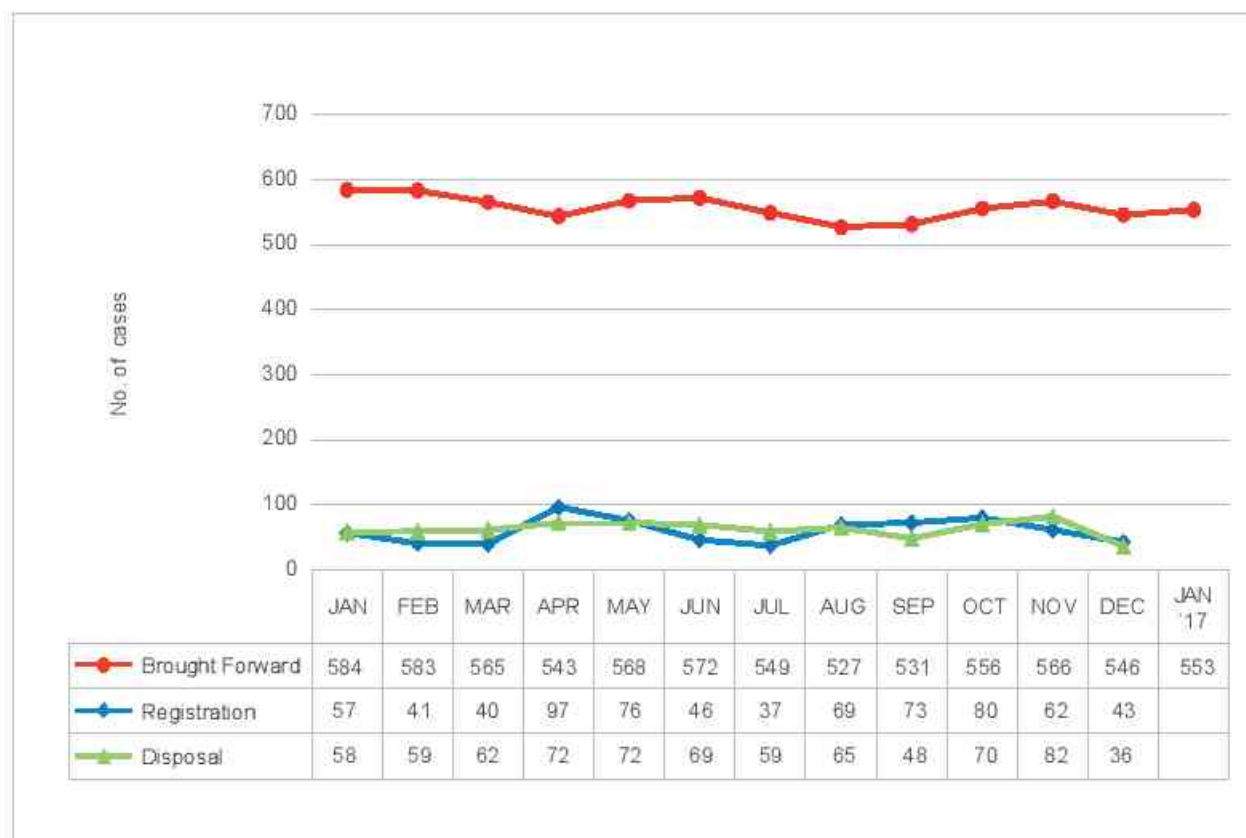
In 2016, a total of 721 Full Trial Appeals (FT Appeals) were registered. 584 FT Appeals were brought forward from 2015. Out of these, 752 appeals were disposed of, making the percentage of disposal against the number of registration at 104%.

In 2016, the registration of FT Appeals increased by 30% from 557 in 2015 to 721 in 2016. For the FT Appeals registered in 2016 alone, the Court of Appeal successfully disposed of a total of 232 appeals.

As at 31<sup>st</sup> December 2016, there were 553 FT Appeals pending in which 78 are pre-2016 FT Appeals. The target is to dispose of all 78 appeals within the first half of 2017.

### GRAPH C

#### FULL TRIAL CIVIL APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING





## New Commercial Court Appeals

511 New Commercial Court Appeals (NCC Appeals) were registered in 2016. 258 appeals were brought forward from 2015. Out of these appeals, 426 appeals were disposed of, making the percentage of disposal against registration at 83.36%.

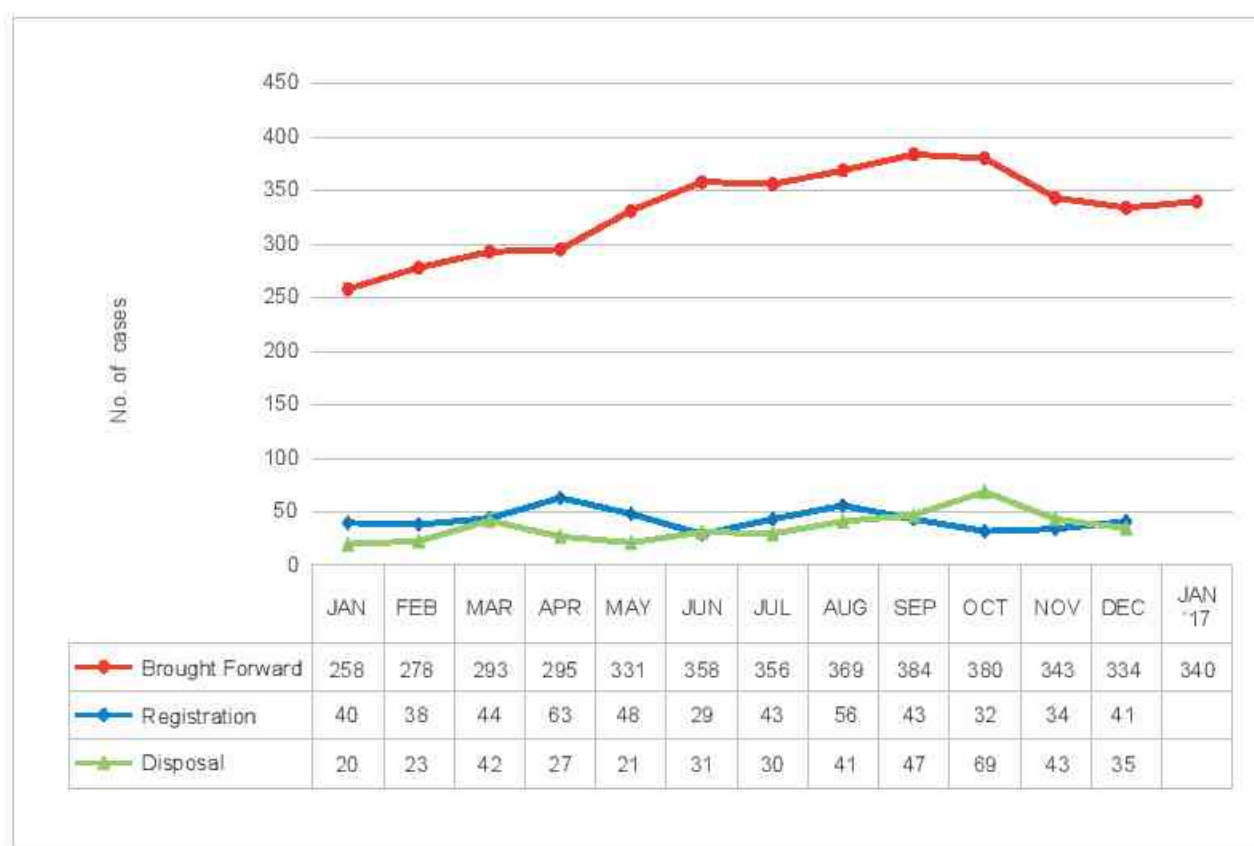
In 2016, 258 NCC Appeals registered in 2015 had been disposed of except for 12 appeals. It is our priority to dispose of all these 12 appeals within the first quarter of 2017.

For the NCC Appeals registered in 2016, 189 had been disposed of leaving a balance of 340.

The number of NCC Appeals registered, disposed of and pending in 2016 is shown in GRAPH D.

GRAPH D

### NEW COMMERCIAL COURT APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING



## New Civil Court Appeals

1764 New Civil Court Appeals (NCvC Appeals) were registered in 2016. 875 appeals were brought forward from 2015. Out of these appeals, 1588 were disposed of, making the percentage of disposal against registration at 90%.

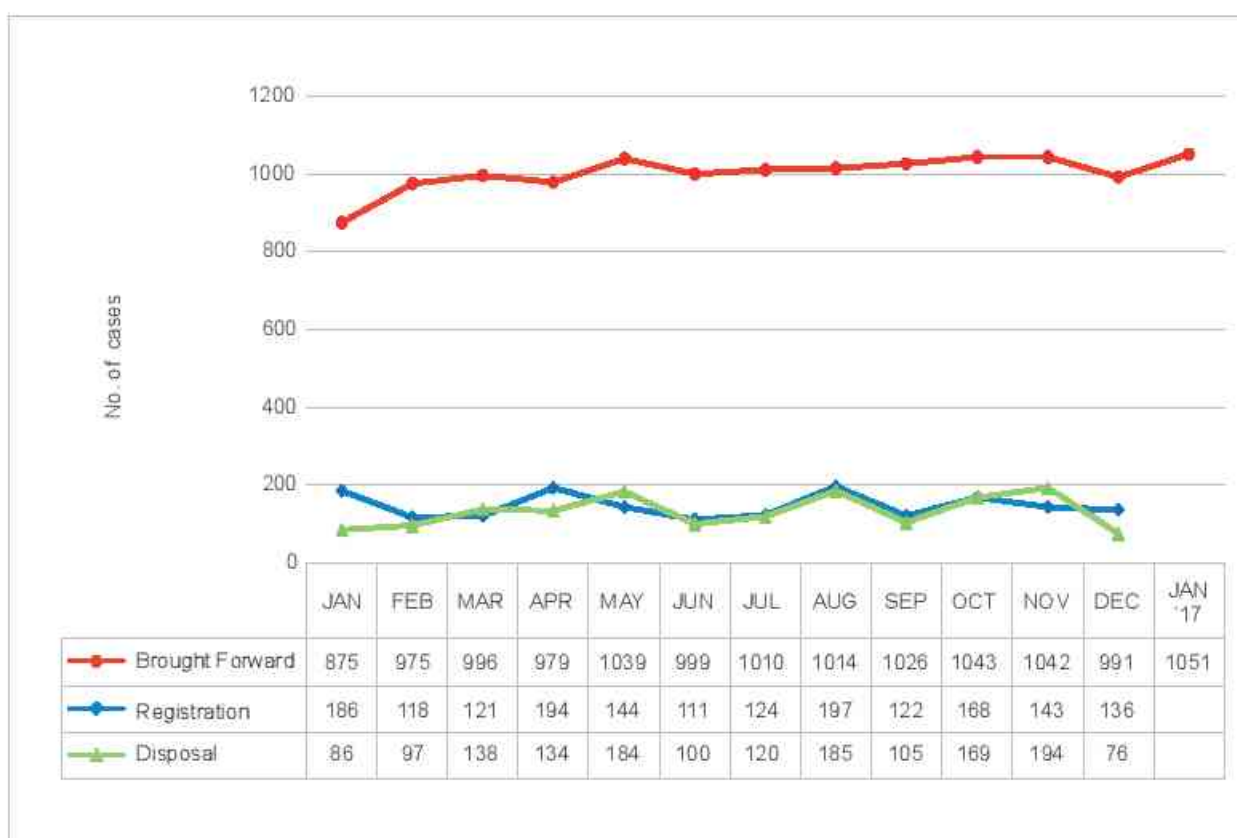
As at 31<sup>st</sup> December 2016, there were 49 pre-2016 NCvC Appeals pending. These 49 appeals have been fixed for hearing in the first quarter of 2017.

With regard to 1764 NCvC Appeals registered in 2016, 753 appeals were disposed of, leaving a balance of 1011.

The number of registered, disposed of and pending NCvC Appeals in 2016 can be seen in GRAPH E.

GRAPH E

### NEW CIVIL COURT APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING





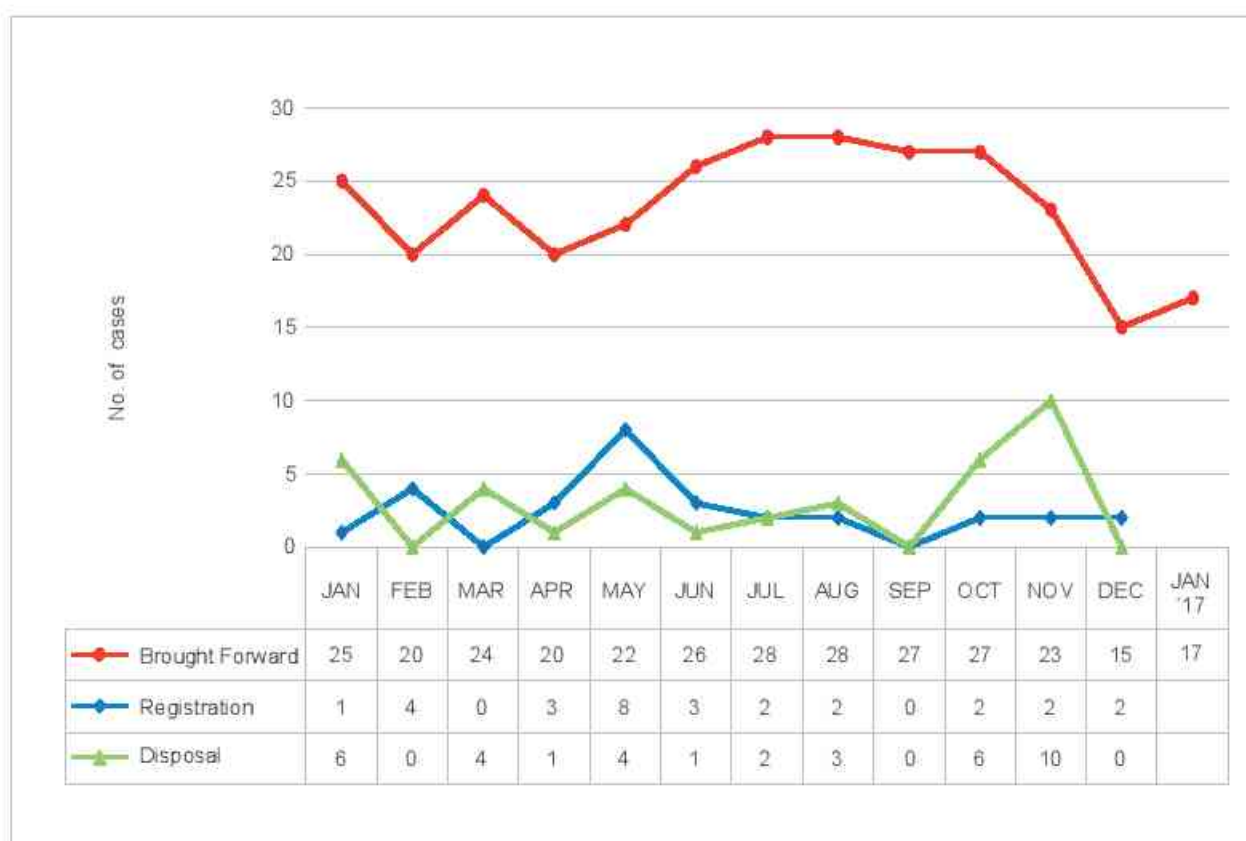
## Muamalat Appeals

Muamalat Appeals are now current. All 25 Muamalat Appeals registered in 2015 brought forward to 2016 had been disposed of.

In 2016, out of the 29 appeals registered, 12 appeals had been disposed of, leaving a balance of 17 appeals. The number of registered, disposed of and pending Muamalat Appeals in 2016 can be seen in GRAPH F.

### GRAPH F

#### MUAMALAT APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING



## Intellectual Property Appeals

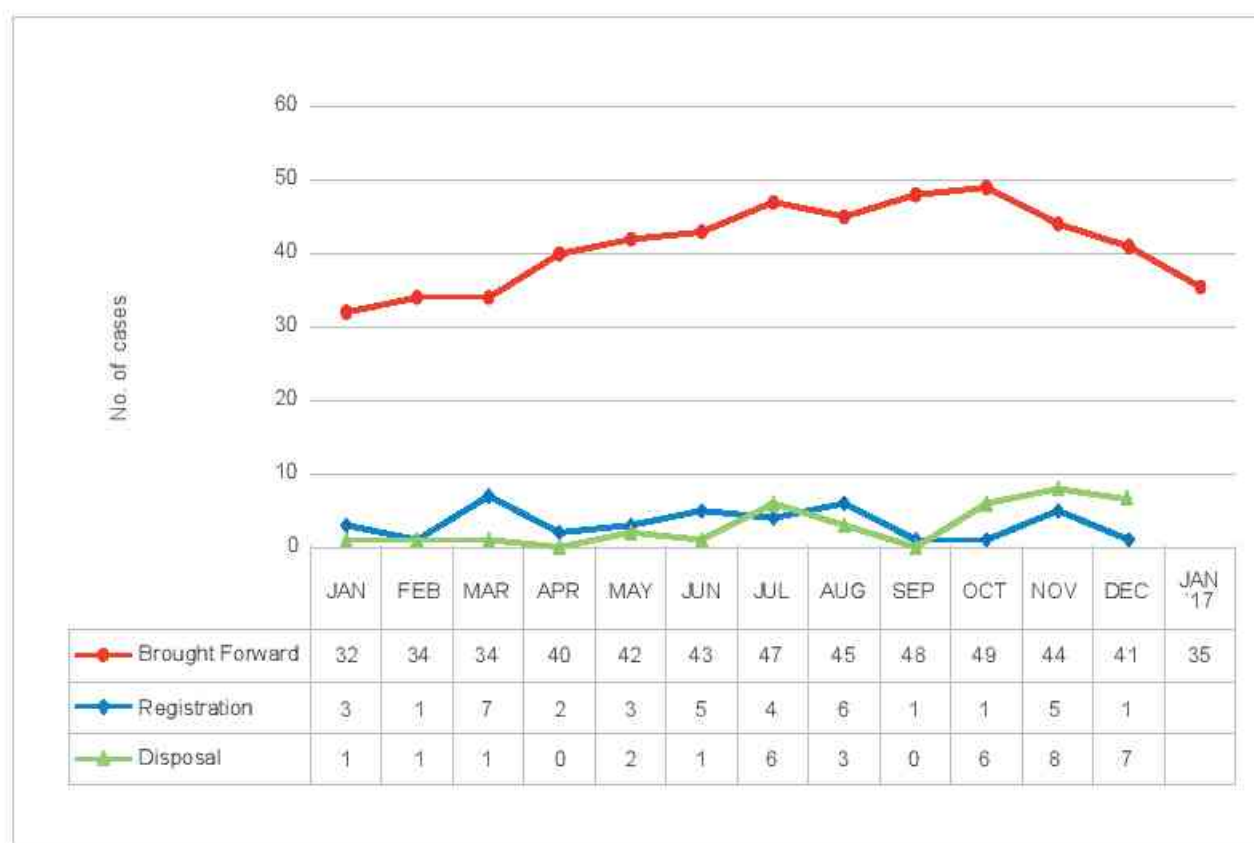
There were 32 Intellectual Property Appeals (IP Appeals) brought forward to 2016 and there were 39 appeals registered in 2016. Out of these appeals, 36 appeals were disposed of, making the percentage of disposal against registration at 92%.

As at 31<sup>st</sup> December 2016, there were 12 pre-2016 IP Appeals pending, of which 10 appeals had been heard and judgment was reserved. The other two appeals have been fixed for hearing in January and February 2017.

With regard to 39 appeals registered in 2016, 11 appeals had been disposed of leaving a balance of 28 appeals.

### GRAPH G

#### INTELLECTUAL PROPERTY APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING





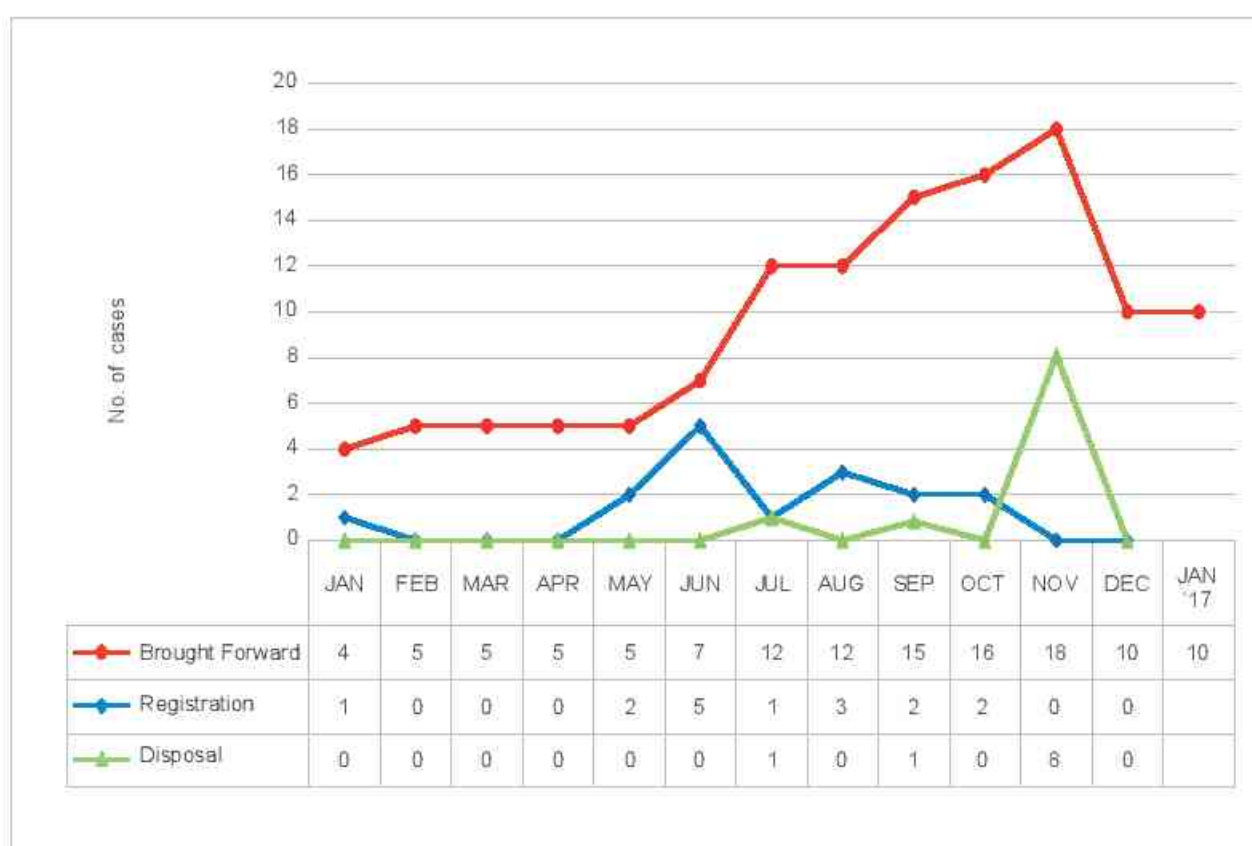
## Admiralty Appeals

Admiralty Appeals are now current. All four Admiralty Appeals registered in 2015 brought forward to 2016 were disposed of.

Out of 16 appeals registered in 2016, six were disposed of leaving a balance of 10 appeals.

### GRAPH H

#### ADMIRALTY APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING



## Construction Court Appeals

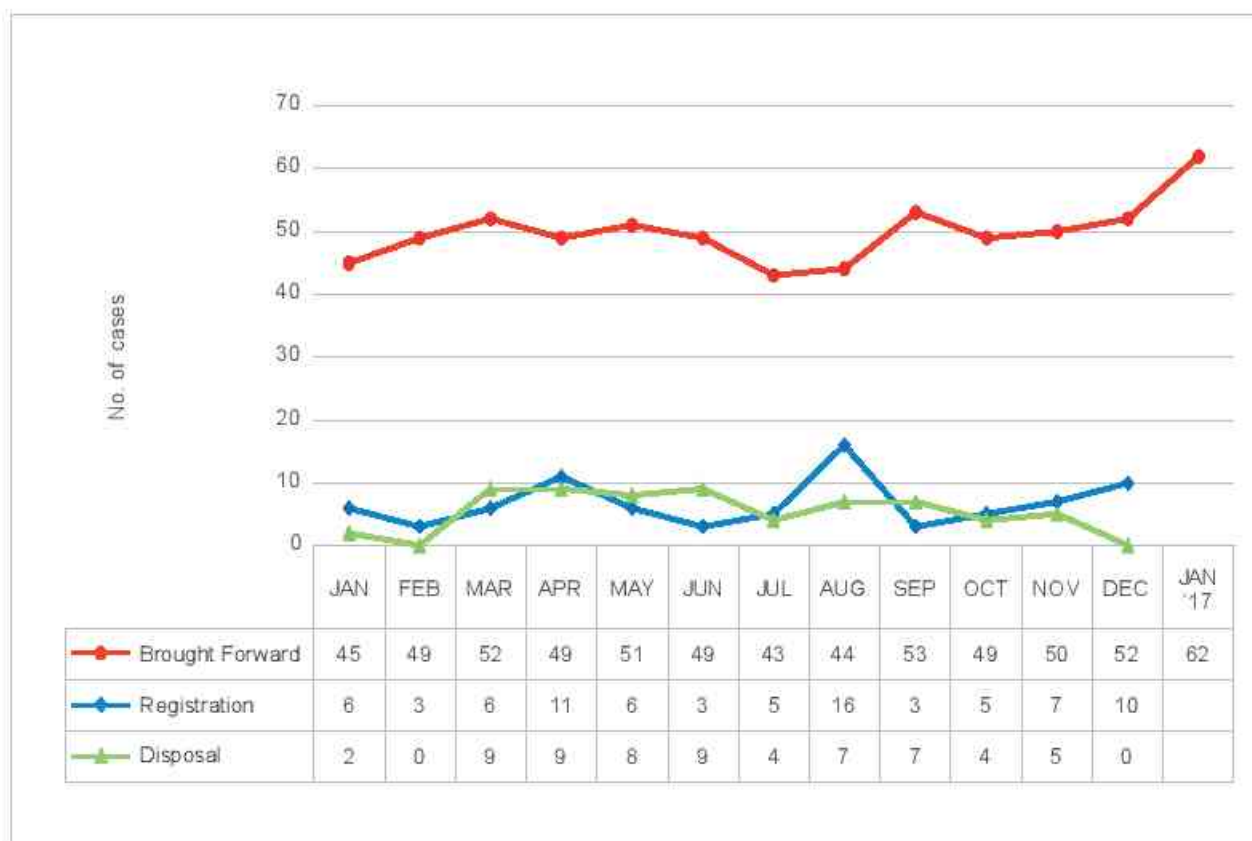
All 45 Construction Court Appeals registered in 2015 that were brought forward from 2015 were disposed of except four appeals.

In 2016, a total of 81 Construction Court Appeals were registered. Out of these 81 appeals, 19 appeals had been disposed of leaving a balance of 62 appeals.

In this regard we are grateful to the Construction Industry Development Board (CIDB) for equipping the courtroom with the latest technologies, which have been of a great assistance to the court's efficient disposal of Construction Court Appeals.

### GRAPH I

#### CONSTRUCTION COURT APPEALS IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING





## Leave Application

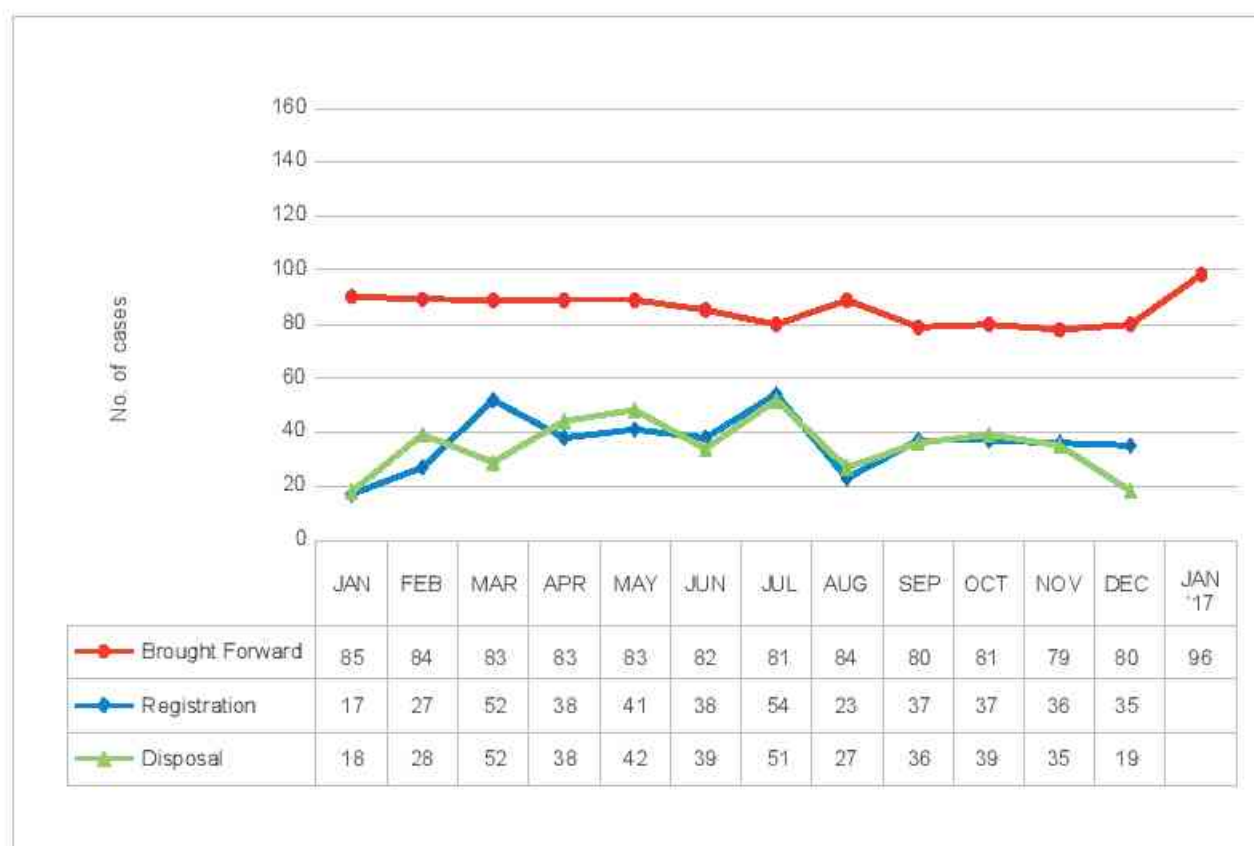
The 85 Leave Applications brought forward from 2015 had been successfully disposed of in early 2016.

In 2016, there were 435 Leave Applications registered and 424 Leave Applications were disposed of, making the percentage of disposal against the number of applications registered at 97%.

The number of registered, disposed of and pending Leave Applications in 2016 can be seen in GRAPH J.

**GRAPH J**

### LEAVE TO APPEAL IN 2016 NUMBER OF REGISTERED, DISPOSED OF AND PENDING



For Leave Applications, the time line for disposal is three months.

In 2016, a total of 435 Leave Applications were registered of which 339 were disposed of. The remaining 96 are well within the three month time line, except for 17 applications as can be seen below:

### LEAVE TO APPEAL 2016 MONTHLY REGISTRATION AND DISPOSAL

REGISTERED		DISPOSED OF	PENDING
MONTH			
Jan	17	17	
Feb	27	27	
Mar	52	52	
Apr	38	38	
May	41	41	
June	38	36	2
Jul	54	51	3
Aug	23	21	2
Sept	37	27	10
Oct	37	21	16
Nov	36	6	30
Dec	35	2	33
Total	435	339	96

### Criminal Appeals

In 2016, there were 1020 Criminal Appeals registered. There were 664 Criminal Appeals brought forward from 2015. Out of these appeals, 930 Criminal Appeals were disposed of, making the clearance rate at 93%. For the appeals registered in 2016, 270 appeals had been disposed of.

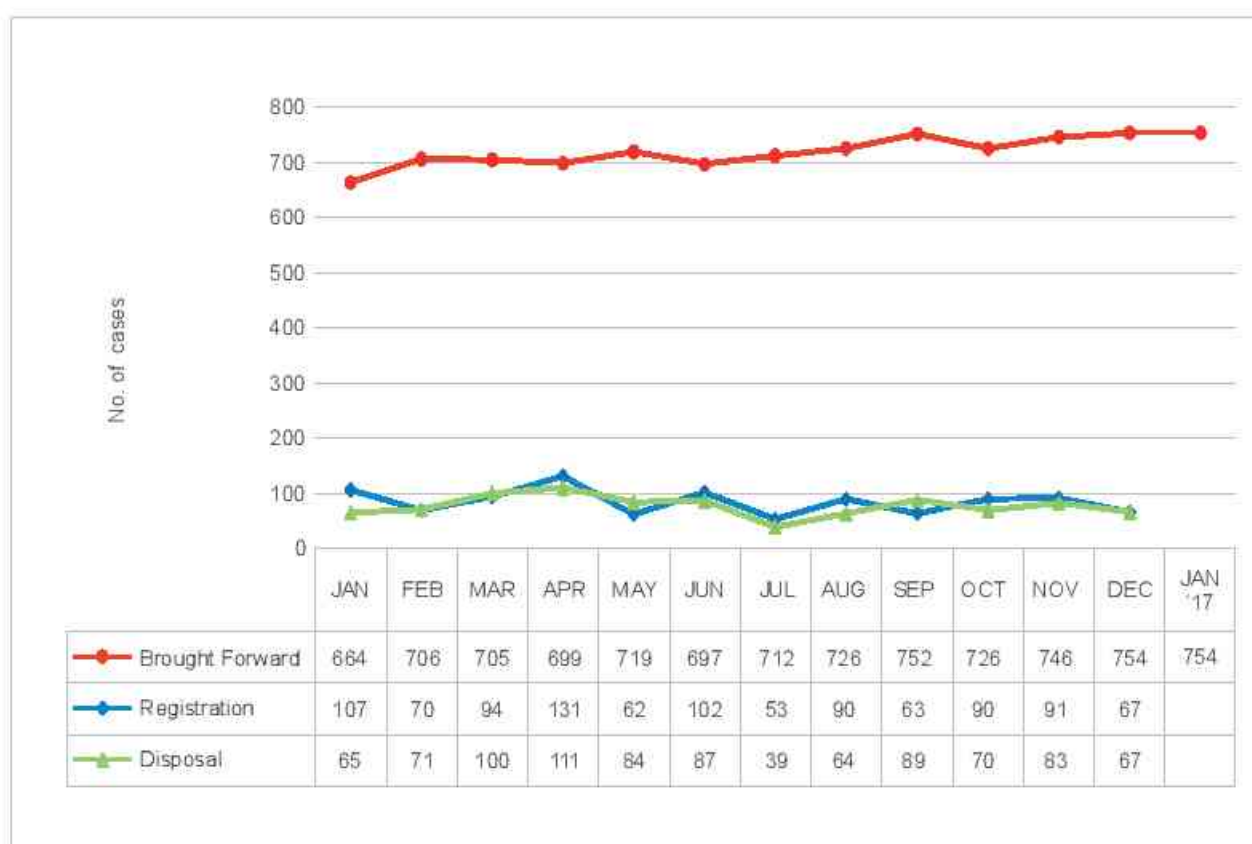
All 54 pre-2016 Criminal Appeals in Sabah that was brought forward to 2016 had been disposed of except two appeals which have been fixed for hearing in February 2017. Similarly, all 42 pre-2016 Criminal Appeals in Sarawak that was brought forward to 2016 had been disposed of. Therefore, all the Criminal Appeals in Sabah and Sarawak are now current.



The Criminal Appeals from the Subordinate Courts (Code 09) as well as appeals involving government servants (Codes 06A and 06B) are now current except for four cases. Likewise, cases relating to death penalty appeals (Code 05), we have only five pre-2016 appeals pending. The rest are appeals filed in 2016.

The pending Criminal Appeals as at 31<sup>st</sup> December 2016 can be seen in GRAPH K.

**GRAPH K**  
**CRIMINAL APPEALS IN 2016**  
**NUMBER OF REGISTERED, DISPOSED OF AND PENDING**



### Conclusion

Despite the 20% increase in registration of appeals in 2016, these statistics show that the Court of Appeal has still managed to maintain a relatively high total disposal rate of 92%.

For 2017, our aim is to ensure that all appeals registered in the Court of Appeal will be disposed of within one year from the date of registration. It is also our aim to minimise the number of adjournments and to ensure that once a case is fixed, it will be heard and will be disposed of.



A panel of the Court of Appeal Judges comprising an all-female coram.  
(L-R): Justice Nallini Pathmanathan, Justice Alizatul Khair Osman Khairuddin (Chairman) and  
Justice Zabariah Mohd Yusof



## THE COURT OF APPEAL SITTING AT THE QUEEN ELIZABETH HOSPITAL, KOTA KINABALU

**SUADIN @ SHUHAIDDIN BIN LANGKAB v. PENDAKWA RAYA**  
**(Criminal Appeal No: S-09-144-06/2014)**

The sitting of the Court of Appeal on 23<sup>rd</sup> September 2016 comprising Justice Rohana Yusuf (Chairman), Justice Ong Lam Kiat Vernon and Justice Hasnah Mohammed Hashim in Kota Kinabalu, took an interesting turn when the appellant in one of the cases, Suadin @ Shuhaidin bin Langkab fell ill and was admitted to hospital, prior to the hearing. This case was an appeal by the said Suadin @ Shuhaidin bin Langkab against the decision of the High Court which affirmed the decision of the Sessions Court. The appellant was charged with two offences under the Anti-Corruption Act 1997. The Sessions Court had convicted the appellant on both charges and sentenced him to 18 months imprisonment and a fine of RM2 million for the first charge and 12 months imprisonment and a fine of RM750,000.00 for the second charge.

The medical officers at the Queen Elizabeth Hospital in Kota Kinabalu who attended to the appellant however confirmed that despite his illness, the appellant was nevertheless fit to be tried. Since this case had been postponed for too many times, the Court of Appeal decided to carry on with the hearing. For purposes of expediency, the Court of Appeal declared the hospital ward an open court, pursuant to section 7 of the Criminal Procedure Code (Act 593). The hearing of Suadin @ Shuhaidin's appeal was thus conducted under the supervision of medical staff of the said hospital. The appellant was represented by Counsel Nelson W. Angang and Loretto S. Padua while Deputy Public Prosecutor Norzilati Izhani @ Zainol appeared for the prosecution. The Court of Appeal dismissed the appellant's appeal and affirmed the decision of the courts below.



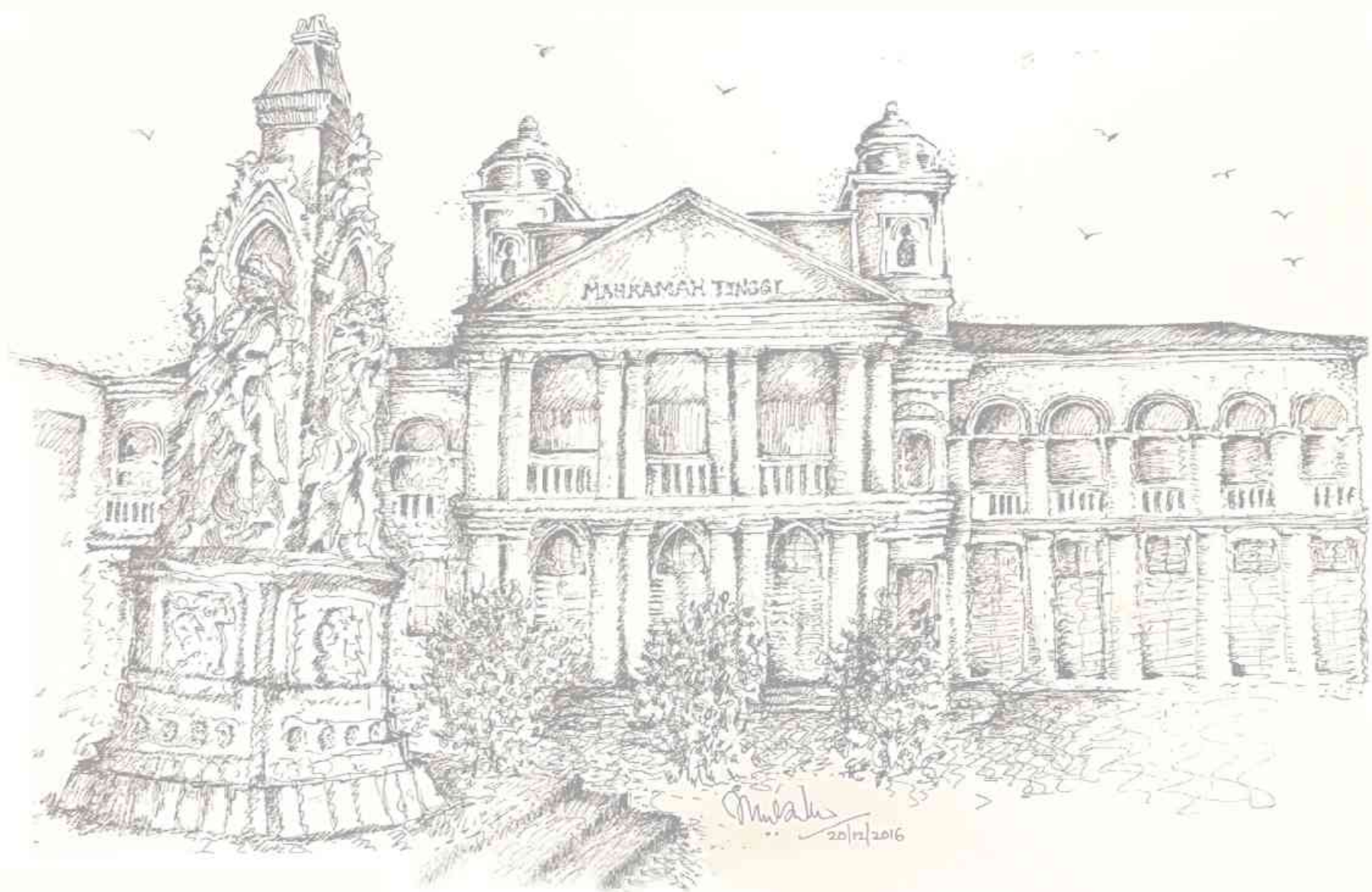
Seminar room in the general ward at the Queen Elizabeth Hospital, Kota Kinabalu, Sabah was declared as an open court to facilitate the hearing of the appeal on 23<sup>rd</sup> September 2016.  
(The Court of Appeal Judges are seen in the foreground.)





Up the garden path at the Palace of Justice





# CHAPTER 4

## THE HIGH COURTS







## THE HIGH COURT IN MALAYA

For the year 2016, the High Court in Malaya and the Subordinate Courts have again successfully addressed the clearing of backlog of cases. The Judges and Judicial Officers have discharged their judicial duties tirelessly to ensure that cases fixed and heard before them are disposed without undue delay. However, it has been impressed upon them that the expeditious disposal of cases should never be at the expense of justice. All cases are to be resolved in a fair and just manner. With the Case Management System in place and the Managing Judges appointed amongst the senior members of the Superior Courts to manage and supervise the registration and disposal of cases before the Courts, we are on the right track towards achieving the status of being current in the disposal of the cases for all level of the Courts.

For the year 2016, the High Courts have disposed 48,412 civil cases and 4,253 criminal cases. The Sessions Courts have disposed 42,855 civil cases and 35,446 criminal cases. The Magistrates' Courts have disposed 277,350 civil cases and 184,789 criminal cases. The high number of cases disposed by these Courts reflect the hard work and efforts made by Judges and Judicial Officers in dispensing their judicial duties. The detailed statistics are as per Appendix A.

It is to be noted that since the year 2009, the Judiciary has successfully embarked on its transformation programme to further enhance the efficiency of the Court's delivery system. The E-Court project was introduced, which includes the Court Recording and Transcription System (CRT), the Case Management System (CMS) and the E-Filing System. These systems have enhanced the level of efficiency in the registration and disposal of cases and the results are reflected in the high rate of case disposal over the past years.

The second phase of the E-Court project, which was launched in early 2016 is focused on extending the use of CMS and E-Filing to all Courts in every state in Peninsular Malaysia. The CMS would also be expanded to include the administration of criminal cases. The second phase would also include the process of filing the Power of Attorney

by electronic means. Parties would no longer need to file in hard copies of the relevant documents and by doing so, they would be able to file their applications from their respective offices. On the electronic bidding for the court auction proceedings, that is the *E-Lelong* (E-Auction) project, it is in its final stage and expected to be fully implemented by 2017. This project aims to facilitate and improve the Court's current procedure on auction proceedings in order to make it more transparent and more accessible to the public.

Over the years the Judiciary had taken the initiative to establish a number of specialised courts with a view to the disposing of cases without undue delay. The time line set for the disposal of cases by these specialised courts is between six to twelve months from the date of registration of the cases until the hearing of the case to its final conclusion. The latest addition to this specialised court is the Cybercrime Court, which is to deal with cybercrime offences under the relevant legislations, including the Sedition Act 1948 and the Communications and Multimedia Act 1998.

On judicial education and training, the Judges and the Judicial Commissioners of the High Court will continue attending courses, seminars and workshops conducted by the Judges of the Federal Court and the Court of Appeal through our own Judicial Academy set-up by the Judicial Appointments Commission (JAC). Topics and subject matter of interests, which are relevant to the Judges in the discharge of their judicial duties are chosen for the training programme conducted over the weekend wherein a group of 15-20 Judges and Judicial Commissioners are selected to attend at any one programme. It is expected that through this programme the Judges would be able to further improve themselves in the discharge of their judicial functions and keeping abreast with the development of the laws and changes that are taking place.

Finally, going into the final year of my tenure of office as the Chief Judge of the High Court in Malaya and before my retirement, I would like to take this opportunity to convey my sincere appreciation and thanks to all the Managing Judges, Judges



and Judicial Commissioners, Judicial Officers and supporting staff for their support and cooperation in enabling me to discharge my role and responsibility. I am quite confident that with the hard work and dedication shown, it would pave the way for the Judiciary towards achieving greater heights.

**Zulkefli Ahmad Makinudin**  
Chief Judge of Malaya

## JUDGES OF THE HIGH COURT IN MALAYA 2016

1. Justice Su Geok Yiam
2. Justice Lau Bee Lan
3. Justice Siti Mariah Ahmad
4. Justice Wan Afrah Wan Ibrahim
5. Justice Mohamad Zabidin Mohd Diah
6. Justice Abdul Halim Aman
7. Justice Zulkifli Bakar
8. Justice Mohd Azman Husin
9. Justice Mohd Sofian Abd Razak
10. Justice Ghazali Cha
11. Justice John Louis O'Hara
12. Justice Rosnaini Saub
13. Justice Suraya Othman
14. Justice Ahmad Zaidi Ibrahim
15. Justice Mariana Yahya
16. Justice Azman Abdullah
17. Justice Mohd Yazid Mustafa
18. Justice Zainal Azman Ab Aziz
19. Justice Halijah Abbas
20. Justice Akhtar Tahir
21. Justice Hue Siew Kheng
22. Justice Noraini Abdul Rahman
23. Justice Nor Bee Ariffin
24. Justice Yeoh Wee Siam
25. Justice Amelia Tee Hong Geok Abdullah
26. Justice Has Zanah Mehat
27. Justice Hadhariah Syed Ismail
28. Justice Nik Hasmah Nik Mohamad
29. Justice Hanipah Farikullah
30. Justice See Mee Chun

31. Justice Samsudin Hassan
32. Justice Lee Swee Seng
33. Justice Kamaludin Md Said
34. Justice Ahmad Nasfy Yasin
35. Justice Teo Say Eng
36. Justice Rosilah Yop
37. Justice Hashim Hamzah
38. Justice Azizah Nawawi
39. Justice Vazeer Alam Mydin Meera
40. Justice Siti Khadijah S. Hassan Badjenid
41. Justice Mohd Zaki Abdul Wahab
42. Justice S.Nantha Balan E.S. Moorthy
43. Justice Abu Bakar Jais
44. Justice Che Mohd Ruzima Ghazali

#### JUDICIAL COMMISSIONERS OF THE HIGH COURT IN MALAYA 2016

1. Judicial Commissioner Zakiah Kasim
2. Judicial Commissioner Gunalan Muniandy
3. Judicial Commissioner Wong Teck Meng
4. Judicial Commissioner S.M. Komathy Suppiah
5. Judicial Commissioner Rozana Ali Yusoff
6. Judicial Commissioner Abu Bakar Katar
7. Judicial Commissioner Ab Karim Ab Rahman
8. Judicial Commissioner Lim Chong Fong
9. Judicial Commissioner Azimah Omar
10. Judicial Commissioner Nordin Hassan
11. Judicial Commissioner Mat Zara'ai Alias
12. Judicial Commissioner Azmi Ariffin
13. Judicial Commissioner Noorin Badaruddin
14. Judicial Commissioner Collin Lawrence Sequerah
15. Judicial Commissioner Wong Kian Kheong

16. Judicial Commissioner Azizul Azmi Adnan
17. Judicial Commissioner Mohamed Zaini Mazlan
18. Judicial Commissioner Dr. Sabirin Ja'afar
19. Judicial Commissioner Dr. Choo Kah Sing
20. Judicial Commissioner Ahmad Bache
21. Judicial Commissioner Mohd Firuz Jaffril
22. Judicial Commissioner Mohd Nazlan Mohd Ghazali
23. Judicial Commissioner Roslan Abu Bakar
24. Judicial Commissioner Abdul Wahab Mohamed
25. Judicial Commissioner Al-Baishah Abd Manan
26. Judicial Commissioner Siti Mariam Othman
27. Judicial Commissioner Hassan Abdul Ghani
28. Judicial Commissioner Chan Jit Li
29. Judicial Commissioner Muhammad Jamil Hussin
30. Judicial Commissioner Hayatul Akmal Abdul Aziz
31. Judicial Commissioner Wan Ahmad Farid Wan Salleh
32. Judicial Commissioner Mohamad Shariff Abu Samah
33. Judicial Commissioner Khadijah Idris
34. Judicial Commissioner Tun Abd Majid Tun Hamzah
35. Judicial Commissioner Azmi Abdullah







## THE HIGH COURT IN SABAH AND SARAWAK

As in the past years and will be the same for 2017 the fundamental belief of the Courts in Sabah and Sarawak is guided by what Lord Denning LJ said in the case of **Packer v. Packer** [1953] 2 All E.R 129 (C.A):

*"If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on, and that will be bad for both."*

But of course the main emphasis has been and will be to do and deliver quality and expeditious justice in accordance with the Rule of Law to all under any circumstances.

Thus for 2017 the Courts in Sabah and Sarawak will continue to enhance the Mobile Court Program for the poor rural folks in Sabah and Sarawak. Legal representation through the National Legal Aid Foundation (YBGK) for those who could not afford to engage lawyers will also be further promoted. Hopefully these twin programs could improve access to justice to many deserving cases.

The program to protect the environment including the wild life and the marine life will be continued as well. Environmental cleanliness and improvement of air quality will be carried out through activities such as the planting of One Million Trees within 2017 in Sabah under the One Heart One Tree Campaign.

Emphasis on continuing judicial and legal education will also be given priority. Through this program quality justice should be enhanced. Guidebooks on several areas of the law have been published in 2016 for the benefit of the legal fraternity. More topics would to be covered in 2017.

In doing the above it is not overlooked the need to maintain discipline and integrity among Judges, Judicial Officers and staff at all level. Legal practitioners are also expected to do the same.

*"Somebody once said that in looking for people to hire, you look for three qualities: integrity, intelligence, and energy. And if you don't have the first, the other two will kill you. You think about it; it's true"* Warren Buffett

For completeness, the performances of the Courts of Sabah & Sarawak have been consistent and reflected from the statistics of the cases for 2016 as per Appendix B.

### JUDGES OF THE HIGH COURT IN SABAH AND SARAWAK 2016

1. Justice Nurchaya Arshad
2. Justice Yew Jen Kie
3. Justice Rhodzariah Bujang
4. Justice Supang Lian
5. Justice Stephen Chung Hian Guan
6. Justice Ravinthran N. Paramaguru
7. Justice Lee Heng Cheong
8. Justice Douglas Cristo Primus Sikayun

### JUDICIAL COMMISSIONERS OF THE HIGH COURT IN SABAH AND SARAWAK 2016

1. Judicial Commissioner Azahahari Kamal Ramli
2. Judicial Commissioner Mairin Idang @ Martin
3. Judicial Commissioner Dr. Alwi Abdul Wahab
4. Judicial Commissioner Ismail Brahim





A sweeping view of the inner sanctum from the balcony in the Palace of Justice



## THE OFFICE OF THE CHIEF REGISTRAR



Dato' Sri Latifah Mohd Tahar  
Chief Registrar of the Federal Court

The year 2016 was a challenging year for the Office of the Chief Registrar, Federal Court of Malaysia (PKPMP). It has also been a rewarding and a fulfilling year as well. Under the leadership of Chief Justice Arifin Zakaria and together with the unwavering support from the Judges, officers and staff, we have been able to administer the courts well.

In 2016, PKPMP formed a partnership with the National University of Malaysia (UKM). A Memorandum of Understanding was signed to signify this partnership with the aim of achieving cooperation between PKPMP and UKM. The areas of cooperation are the rights of access to publications, implementation of the judicial clerkship programme for UKM law graduates, student and academician placement and internship programme, mentoring activities, joint courses and conferences and utilisation of research facilities such as the library and online access to research materials. The

ceremony to officiate this collaboration was held on 15<sup>th</sup> July 2016 at Istana Kehakiman, Putrajaya. The Vice Chancellor of UKM, Prof. Datuk Dr. Noor Azlan Ghazali and I were the signatories to this partnership at the ceremony.

As a government agency, PKPMP is dedicated to meeting the needs of court users with an emphasis on accessibility. In 2016, PKPMP welcomed some 13,000 local and overseas visitors, including justices, legal officers and legal practitioners from other judiciaries. More than half of these visitors were academicians and students. These visits allowed the visitors to gain some insight into Malaysia's rich and long judicial history and the administration of the PKPMP.

Throughout 2016, PKPMP has organised several conferences including the Judicial Officers Conference 2016 from 29<sup>th</sup> – 31<sup>st</sup> July 2016 in Kuala Lumpur. The Judicial Officers Conference is a conference



for all Judicial Officers serving all over Malaysia. The Conference provides an avenue for all Judicial Officers in Malaysia to engage in a legal discourse and acts as a platform to exchange ideas, thoughts and opinions for the betterment of the PKPMP.

Despite these events and major developments, PKPMP has remained firmly focused on administering justice efficiently for the public. In this regard, Chief Justice Arifin Zakaria launched Phase Two of the Electronic Court System known as the e-Kehakiman II Project on 11<sup>th</sup> March 2016. The e-Kehakiman II Project is a continuation of the e-Kehakiman I which started since 2009. It will allow the Judicial Officers to conduct case management effectively, and legal practitioners would have better access to the court filing system. The electronic filing system is now extended to criminal cases as well. The e-Kehakiman II Project also aims to improve the quality of services by enhancing the capacity of the storage server to accommodate the increasing number of users.

Various training programmes that are relevant to the current needs of the public service were also conducted to ensure that the Judicial Officers are kept abreast with current legal knowledge. Parallel to the government's policy to develop human capital, in 2016, the Training Unit has been allocated with a budget of RM 1,216,850.00 to organise training courses for all Judicial Officers and staff from all over Malaysia. Below are several courses organised by the Training Unit throughout the year 2016:

Date	Course
19 <sup>th</sup> - 20 <sup>th</sup> January 2016	Workshop on the Enforcement of Forfeiture Order
2 <sup>nd</sup> - 4 <sup>th</sup> February 2016	Course on Electronic Evidence
16 <sup>th</sup> - 18 <sup>th</sup> February 2016	Course on Crime Scene Evidence and Investigation
10 <sup>th</sup> - 11 <sup>th</sup> May 2016	Workshop on Declaratory Relief And Injunctions (Sessions Court Judges)
5 <sup>th</sup> - 7 <sup>th</sup> September 2016	Workshop on Aviation Law : Domestic and Regional Air Passenger Rights Regime (Foreign Expert)
20 <sup>th</sup> - 21 <sup>st</sup> September 2016	Course on Personal Data Protection - Issues and Challenges
27 <sup>th</sup> - 28 <sup>th</sup> September 2016	"You Lead The Ship" : A Leadership Course

Date	Course
5 <sup>th</sup> October 2016	Seminar on Etiquette of Judicial Officers
18 <sup>th</sup> October 2016	Course on Preparing Cabinet Paper/ Note
25 <sup>th</sup> November 2016	Dialogue on Current Issues in Collaboration with <i>Biro Tatanegara</i>

The constantly changing needs of clients and stakeholders require PKPMP to continue inculcating an up to the minute of work culture, based on good governance, positive work values and good work ethics. In recognition of the services and contributions of employees who showed outstanding performances for the year 2015, PKPMP awarded the Excellent Service Awards 2015 to 276 officers and staff.

Realising the greater fact that the Malaysian Judiciary will be facing greater challenges, PKPMP has taken the initiative to reassess and re-evaluate its strategic plan from the existing 2011-2015 Plan with the new and more comprehensive 2016-2020 Plan. The PKPMP Strategic Plan 2016-2020 takes into account the transformation agenda set out by the Chief Justice. The two Strategic Thrusts of the 2016-2020 Plan are:

- (i) to re-engineer the human resource management, finance, security and services to improve the Malaysian Judiciary; and
- (ii) empowering the administration and the delivery of justice to improve the Malaysian Judiciary as an enforcer of justice and the rule of law.

Based on these two Strategic Thrusts, 11 strategies were selected to ensure that the Vision of PKPMP, "Towards Judicial Excellence by 2020", is achievable through the programmes arrangement, fixed target indicators and the target period. Above all, this Strategic Plan 2016-2020 is to ensure that PKPMP strives to become an excellent judicial body by 2020.

Recognising the growing task of managing the workloads, PKPMP has reorganised its administrative structure including strengthening and rebranding the Policy Division to Policy and Legal Division, and the setting up of two new divisions namely, the International Affairs Division and the Mediation and Judicial Execution Division.



Chief Justice Arifin Zakaria during the opening ceremony of the Judicial Officers Conference 2016.  
(L-R): Justice Richard Malanjum, Justice Raus Sharif, Chief Justice Arifin Zakaria, Justice Zulkefli Ahmad Makinudin and Dato' Sri Latifah Mohd Tahar

The Policy and Legal Division has contributed to the long list of PKPMP's achievements in past year which include:

- (i) preparing the Courts (Modes of Commencement of Civil Actions) Bill 2016;
- (ii) preparing the Cabinet Paper for the Establishment of the Special Cyber Court; and
- (iii) drafting various Practice Directions and Circulars to simplify court proceedings: -
  - o *Arahan Amalan Bil. 1 Tahun 2016 – Pindaan Kepada Garis Panduan, Tatacara dan Tanggungjawab Peguam Lantikan Mahkamah Bagi Kes-Kes Kesalahan Hukuman Mati* (date of enforcement: 15<sup>th</sup> February 2016);
  - o *Arahan Amalan Hakim Besar Malaya Bilangan 1 Tahun 2016- Pengendalian Kes-Kes Jenayah Jalanan Secara 'Fast-Track' di Mahkamah Rendah Malaya* (date of enforcement: 1<sup>st</sup> March 2016);
  - o *Arahan Amalan Bil. 2 Tahun 2016- Penyediaan Rekod Rayuan Kes Rayuan Jenayah Ke Mahkamah Tinggi yang melibatkan Kes Jenayah bagi Mahkamah Persekutuan* (date of enforcement: 1<sup>st</sup> May 2016);
  - o *Arahan Amalan Bil. 3 Tahun 2016- Kes Sivil di bawah Akta Cukai Barang dan Perkhidmatan 2014 [Akta 762]* (date of enforcement: 6<sup>th</sup> May 2016);
  - o Practice Direction No.4 of 2016 – Practice Direction on Mediation (date of enforcement: 30<sup>th</sup> June 2016);
  - o *Arahan Amalan Hakim Besar Malaya Bilangan 3 Tahun 2016- Penyediaan Rekod Rayuan Kes Rayuan Jenayah Ke Mahkamah Tinggi yang melibatkan Kes Jenayah bagi Mahkamah Sesyen dan Mahkamah Majistret Seluruh Semenanjung Malaysia* (date of enforcement: 1<sup>st</sup> July 2016);
  - o *Arahan Amalan Pendaftar Mahkamah Tinggi Malaya Bil. 1 Tahun 2016- Bayaran Fi Pemfailan Surat Cara Kuasa Wakil* (date of enforcement: 1<sup>st</sup> July 2016);
  - o *Arahan Amalan Bil. 5 Tahun 2016- Kod Pendaftaran Khas bagi Kes Siber (Jenayah) dan Kes Siber (Sivil)* (date of enforcement: 30<sup>th</sup> August 2016); and



- o *Pekeliling Ketua Pendaftar Bil. 1 Tahun 2016- Wang Diserah Simpan ke Dalam Mahkamah* (date of enforcement: 23<sup>rd</sup> September 2016);

The International Affairs Division has undertaken several challenging tasks which include:

- (i) preparing the Cabinet Paper for the signing of the Memorandum of Understanding between the Government of Qatar and the Government of Malaysia;
- (ii) preparing a paper entitled "Climate Change: Malaysian Judiciary's Perspective" for the Third Asian Judges Symposium on Law, Policy and Climate Change on 26<sup>th</sup> - 27<sup>th</sup> September 2016 in Manila, Philippines which was attended by the Chief Justice;
- (iii) preparing a paper entitled "Cross-Border Disputes Involving Children-custody, abduction and protection" for the Council ASEAN Chief Justice (CACJ) Working Group For Cross-Border Dispute Involving Children, held on 26<sup>th</sup> - 30<sup>th</sup> September 2016 in Singapore, attended by Justice Rohana Yusuf, Judge of the Court of Appeal;
- (iv) attending the ASEAN Intergovernmental Commission on Human Rights (AICHR) Training Programme on the Rights of Persons with Disabilities that was held in Bangkok, Thailand from 11<sup>th</sup> - 14<sup>th</sup> October 2016;
- (v) extending assistance in drawing up the National Human Rights Action Plan for the Prime Minister's Department, including the international obligations thrust for the Ministry of Foreign Affairs;
- (vi) rendering legal opinion on the viability of Malaysia's Federal Court to be a member of the World Conference on Constitutional Justice; and
- (vii) collaborations with the Ministry of Foreign Affairs with regards to the perspective of the Malaysian Judiciary pertaining to questions posed at the Regular Session Meetings of the

Human Rights Council of the United Nations, the Informal Dialogue between Malaysia and the European Union, both held in Geneva, Switzerland and at the ASEAN Summits.

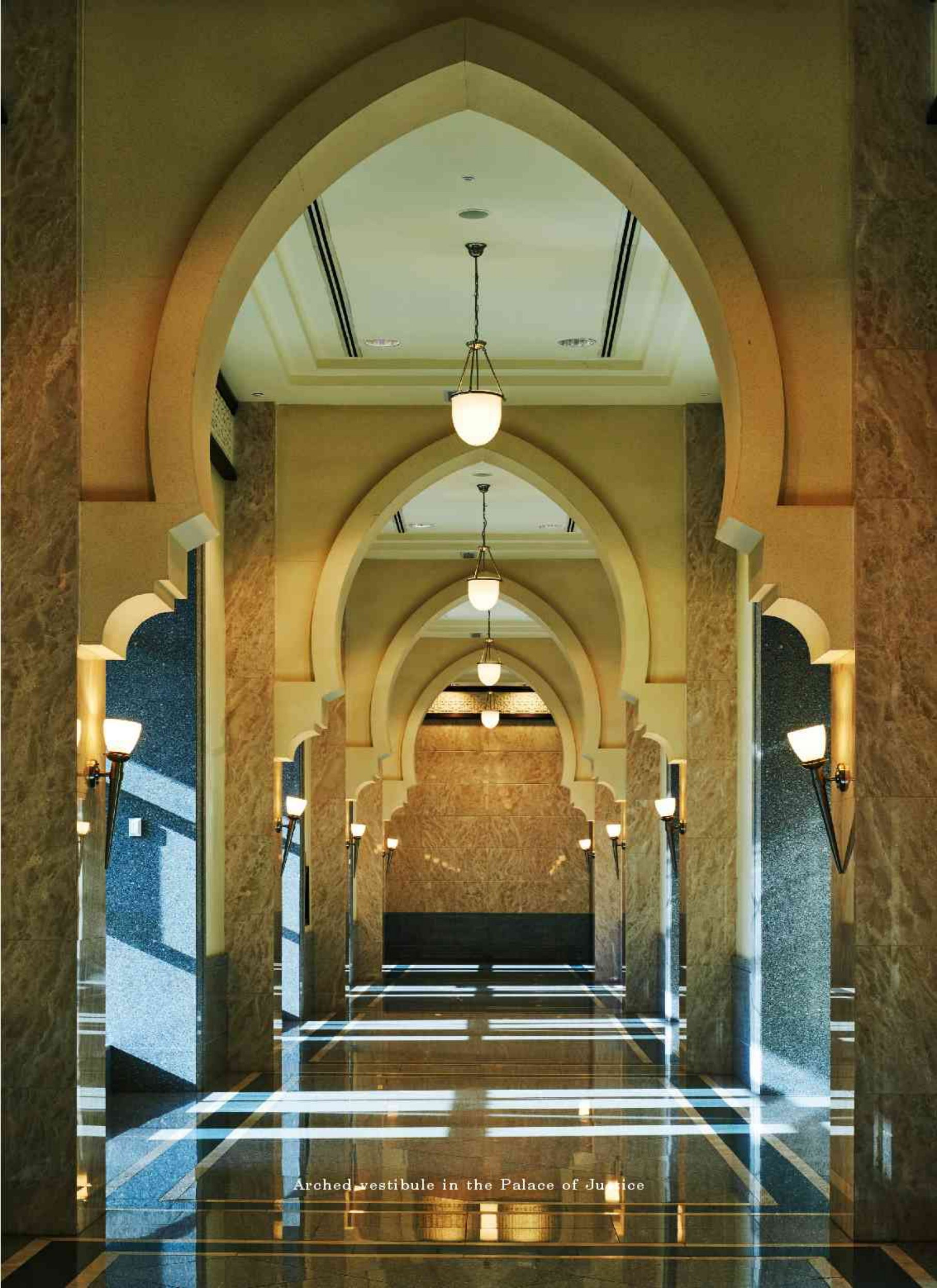
Meanwhile, the Mediation and Judicial Execution Division aims to set up a Mediation Centre in every state so that each state will have its own court-annexed mediation programme. This is a free mediation programme where Judges act as mediators to mediate the cases for the disputing parties as an alternative to a court proceeding. In addition to that, this division is also responsible for administering the enforcement of the court's execution orders all over Malaysia.

In 2016, PKPMP was awarded with the Malaysian e-Payments Excellence Awards under the category of Top FPX Merchants by My Clear Corporation Sdn Bhd (a subsidiary to Bank Negara Malaysia). This award recognises the outstanding achievements of banks, businesses and government agencies that had contributed significantly towards excellence, innovation and growth in e-Payments. The usage of e-filing and e-court finance system had placed PKPMP in the ranking of top 5 agencies after Lembaga Hasil Dalam Negeri, Celcom Axiata, Jabatan Kastam Di Raja Malaysia and Jabatan Bomba dan Penyelamat Malaysia. 2016 also witnessed PKPMP received Excellence Service Award from the Permodalan Nasional Berhad that recognises PKPMP quality services.

PKPMP will continue to strive through collective effort to achieve excellence in its delivery system in order to maintain public confidence in the justice system.

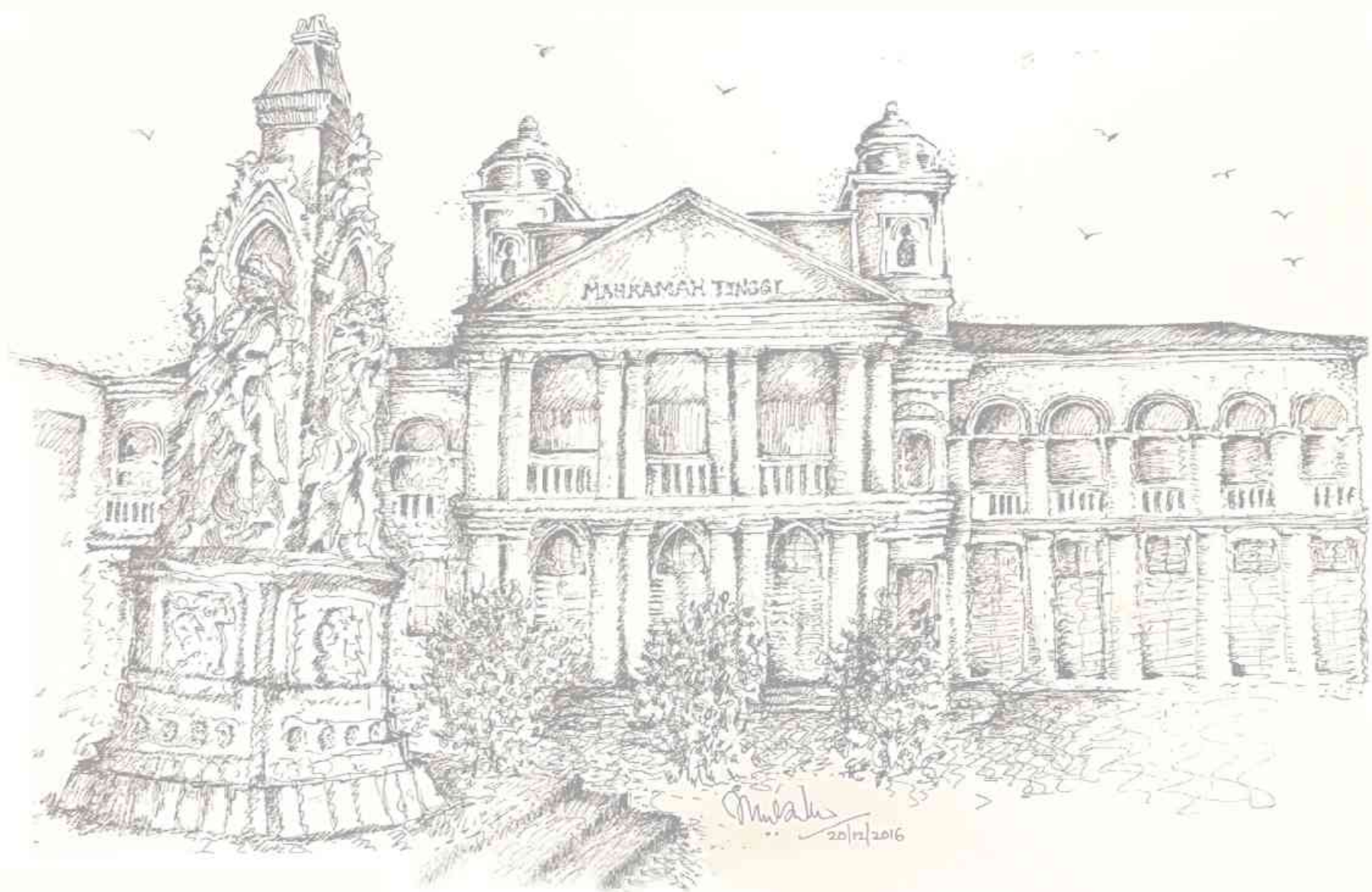
**Dato' Sri Latifah Mohd Tahar**  
**Chief Registrar**  
**Federal Court of Malaysia**





Arched vestibule in the Palace of Justice





# CHAPTER 5

## JUDGES



## JUDGES' ELEVATIONS AND APPOINTMENTS

The year 2016 witnessed the elevation of two Court of Appeal Judges to the Federal Court of Malaysia on 21<sup>st</sup> March 2016 and the re-appointment of a retired Federal Court Judge to the Bench namely Justice Jeffrey Tan Kok Wha, who was appointed as an additional judge of the Federal Court on 1<sup>st</sup> July 2016.

On 21<sup>st</sup> March 2016, nine Judges were elevated to the Court of Appeal while five Judicial Commissioners were sworn in as High Court Judges. At three separate ceremonies, four members of the legal fraternity took the oath of office as Judicial Commissioners of the High Courts in Malaya and Sabah and Sarawak in 2016.

The list of Judges elevated and Judicial Commissioners appointed in 2016 is as follows:

Position	Date of Appointment	Name
Judges of the Federal Court	21 <sup>st</sup> March 2016	1. Justice Balia Yusof Wahi 2. Justice Aziah Ali
	1 <sup>st</sup> July 2016	1. Justice Jeffrey Tan Kok Wha
Judges of the Court of Appeal	21 <sup>st</sup> March 2016	1. Justice Zaleha Yusof 2. Justice Kamardin Hashim 3. Justice Mary Lim Thiam Suan 4. Justice Yaacob Md Sam 5. Justice Zabariah Mohd Yusof 6. Justice Hasnah Mohammed Hashim 7. Justice Harmindar Singh Dhaliwal 8. Justice Abdul Karim Abdul Jalil 9. Justice Asmabi Mohamad
Judges of the High Court	21 <sup>st</sup> March 2016	1. Justice Siti Khadijah S. Hassan Badjenid 2. Justice Mohd Zaki Abdul Wahab 3. Justice S.Nantha Balan E.S. Moorthy 4. Justice Abu Bakar Jais 5. Justice Che Mohd Ruzima Ghazali
Judicial Commissioners	11 <sup>th</sup> January 2016	1. Judicial Commissioner Khadijah Idris
	16 <sup>th</sup> March 2016	1. Judicial Commissioner Ismail Brahim
	1 <sup>st</sup> August 2016	1. Judicial Commissioner Tun Abd Majid Tun Hamzah 2. Judicial Commissioner Azmi Abdullah



Justice Balia Yusof Wahi taking the oath of office before the Chief Justice of the Federal Court.

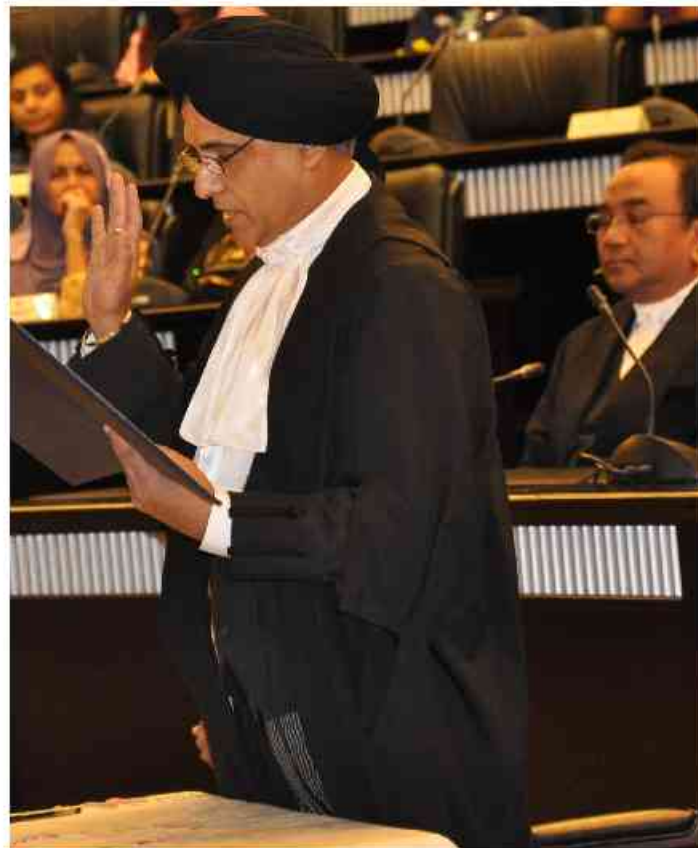


Justice Aziah Ali taking the oath of office before the Chief Justice of the Federal Court.





Justice Zaleha Yusof taking the oath of office before the President of the Court of Appeal.



Justice Harmindar Singh Dhaliwal taking the oath of office before the President of the Court of Appeal.



Justice Hasnah Mohammed Hashim taking the oath of office before the President of the Court of Appeal.



Justice S.Nantha Balan E.S. Moorthy taking the oath of office before the Chief Judge of Malaya.



Justice Abu Bakar Jais taking the oath of office before the Chief Judge of Malaya.



Justice Che Mohd Ruzima Ghazali taking the oath of office before the Chief Judge of Malaya.



## THE 50<sup>TH</sup> ANNUAL MEETING OF THE COUNCIL OF JUDGES



From (L-R): Justice Zulkefli Ahmad Makinudin, Chief Justice Arifin Zakaria, Justice Raus Sharif, and Justice Richard Malanjum at the 50<sup>th</sup> Annual Meeting of the Council of Judges 2016

The 50<sup>th</sup> Annual Meeting of Council of Judges was held from 7<sup>th</sup> - 10<sup>th</sup> January 2016 at the Sheraton Hotel, Kuala Lumpur. The opening ceremony was officiated by the Chief Justice Arifin Zakaria, on 8<sup>th</sup> January 2016. This meeting is mandated by section 17A (1) of the Courts of Judicature Act 1964 which provides that the Chief Justice may convene the meeting when his Lordship deems necessary at least once a year. The three-day meeting was attended by Judges of the Federal Court, the Court of Appeal and the High Courts in Malaysia. The meeting aims to provide opportunities for Judges to interact and discuss various issues of law and matters pertaining to the administration of justice. The series of sessions during the meeting are summarised as follows:

### Judicial Performance in 2015

The meeting started with presentations on yearly statistics of the Federal Court, the Court of Appeal

and High Courts in Malaysia. During the session, statistics on disposal of cases in 2015 was illustrated and explained by Judges through the aid of charts and graphs. Overall, the courts maintained a satisfactory rate of disposal of cases and most importantly, backlog of cases before the courts had been substantially cleared. It was highlighted that with continuous hard work and commitment of all Judges, officers and stakeholders it can be assured that the performance of the courts will continue to flourish in 2016.

### The Importance of Leading a Healthy Lifestyle

In the evening session, a health talk was conducted by Ms. Mary Easaw who is a Senior Manager of Dietetics and Food Services from the National Heart Institute in Kuala Lumpur. She explained about sedentary behavior and its ill-effects. Sedentary behavior is known as a lifestyle behavior that is low in energy expenditure. This is characterized

by prolonged sitting time be it at work or home. Due to the fact that extended sitting hours can pose as an occupational hazard, she asserted that regular intervention is needed to interrupt the prolonged sitting activity in order to avoid the risks of developing health complications such as heart disease.

She further emphasised on the importance of eating healthily and stressed upon the dangers of over eating. She also gave various suggestions on how we could improve our diet such as increasing the intake of fruits and vegetables, learning to eat according to recommended portion size as well as engaging in regular exercise.

### Issues Relating to Judicial Ethics

The third day of the meeting started off with a talk on judicial ethics by Dr. Venkat Iyer who is a senior lecturer of Law at Ulster University. The speaker defined ethics as a moral principle which governs one's behavior and conduct. He highlighted that as a result of increasing awareness and scrutiny on the behavior of Judges, there is a current rise in attempting to promote judicial ethics such as codes that govern the principles of judicial conduct. Nonetheless, he stated that these ethical codes by their nature do not have the force of law and therefore lack coercive sanction. He further explained the possible sanctions that are available in circumstances where there is breach of judicial ethics. They include informal resolution, judicial training, mentorship programmes and the issuance of informal warnings. The talk continued with case studies and lively discussion amongst the participants.

### Development of Cybercrime Technology and Electronic Evidence in the United States

The meeting continued with another engaging talk by Mr. Thomas Dougherty, Regional Advisor of Cybercrime in Asia, US Department of Justice. The speaker began his session by emphasising the need to build a strong and dynamic partnership between the United States and Malaysia in addressing issues pertaining to cybercrime and cyberterrorism. In

the first part of the talk, the speaker illustrated the definition of cyberspace and the type of crimes related to it. He pointed out that cybercrime cases can be complex due to the distinct features of the internet which are easily tailored for international organised crimes. He further explained digital evidence and its admissibility as evidence in law. The speaker added that the Budapest Convention on Cybercrime is the first international treaty that came into force in 2004. The Convention had established a strong cooperation between the nations in combating cybercrimes. The speaker concluded his talk by highlighting several landmark cybercrime cases reported in the United States.

### Evidence Law: Practice and Procedure

The following session was another engaging talk entitled *"Expert Evidence – The Way Forward"* conducted by Justice David Wong Dak Wah and Justice Mary Lim Thiam Suan. Justice David Wong began his talk by explaining the role of expert evidence in assisting the courts in arriving at a decision. Justice David Wong also explained Hong Kong's approach in dealing with expert evidence and its practicality. It is important that the witness is qualified as an expert to provide evidence on the area concerned. In addition, the subject matter of the opinion must be well within the area in which such expert opinion ought to be given. The talk on expert evidence continued with a comparison of practices in Malaysia, Singapore and Hong Kong by Justice Mary Lim. The areas discussed included the modes of appointment of an expert between the countries. Justice Mary Lim also highlighted the procedures in accepting concurrent expert evidence.

The final day of the meeting involved a session for discussion on current issues and problems that are affecting the administration of justice. The Chief Justice in his closing remarks expressed his satisfaction for the active participation of all Judges who attended this meeting. The Chief Justice further thanked the Chief Registrar's Office and committee members who took the effort to ensure the success of this meeting.





Justice David Wong Dak Wah, Judge of the Court of Appeal delivering his talk entitled "*Expert Evidence – The Way Forward*."



Judges at the 50<sup>th</sup> Annual Meeting of the Council of Judges 2016.





Old Law Reports are never out of date (in the library at the Palace of Justice)



## RETIRED JUDGES

Tan Sri Dato' Seri Abdull Hamid Embong



Tan Sri Dato' Seri Abdull Hamid Embong was born in Kuala Terengganu on 12<sup>th</sup> August 1949. He had his early education at the Malay College Kuala Kangsar and pursued his studies in law in the United Kingdom and was admitted as a Barrister-at-Law of the Honourable Society of Lincoln's Inn, London in 1976.

Upon his graduation, Tan Sri Dato' Seri Abdull Hamid Embong joined the Judicial and Legal Service in 1976. Throughout his career he held various important posts including Magistrate, Deputy Public Prosecutor, Senior Federal Counsel, Deputy Treasury Solicitor at the Ministry of Finance and Legal Advisor to the State of Negeri Sembilan and Pahang.

Tan Sri Dato' Seri Abdull Hamid Embong was appointed a Judicial Commissioner on 1<sup>st</sup> November 1994. He was appointed a Judge of the High Court in Malaya on 4<sup>th</sup> July 1996.

Tan Sri Dato' Seri Abdull Hamid Embong was elevated to the Court of Appeal in 2006, and subsequently to the Federal Court in 2009. Tan Sri Dato' Seri Abdull Hamid Embong retired on 11<sup>th</sup> February 2016.

On the Bench, Tan Sri Dato' Seri Abdull Hamid Embong was known to be a patient, courteous but firm Judge; qualities which endeared him to lawyers, Federal Counsel and Deputy Public Prosecutors who appeared before him.

In his long tenure on the Bench, Tan Sri Dato' Seri Abdull Hamid Embong presided over a number of landmark cases notably in the cases of *Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2015] 2 CLJ 145 and *Damai Freight (M) Sdn Bhd v. Affin Bank Bhd* [2015] 4 CLJ 1.



#### **Dato' Abdul Aziz Abdul Rahim**

Dato' Abdul Aziz Abdul Rahim was born on 23<sup>rd</sup> September 1949 in Kuantan, Pahang. He received his early education in Kuantan and proceeded to obtain his bachelor's degree in Arts from the University of Malaya. He pursued his LL.B in the same university and graduated in 1981. Dato' Abdul Aziz went on to pursue his LL.M at the King's College, University of London and graduated in 1986.

Dato' Abdul Aziz Abdul Rahim started his career by joining the Judicial and Legal Service in 1975 and during his long career of 28 years he held various important posts, such as Magistrate, Senior Assistant Registrar, State Legal Advisor to the State of Negeri Sembilan and Deputy Head of the Civil Division at the Attorney General's Chambers.

Dato' Abdul Aziz Abdul Rahim was then appointed a Judicial Commissioner of the High Court in Sabah and Sarawak and he was appointed a Judge of the High

Court in Malaya on 21<sup>st</sup> December 2004. He was elevated to the Court of Appeal on 4<sup>th</sup> April 2012.

Dato' Abdul Aziz Abdul Rahim retired as a Judge of the Court of Appeal on 23<sup>rd</sup> March 2016. He was known for being courteous and patient on the Bench and is well-liked by lawyers who appeared before him.



#### **Dato' Mat Zara'ai Alias**

Dato' Mat Zara'ai Alias was born on 26<sup>th</sup> May 1958 in Perak. Dato' Mat Zara'ai obtained his LL.B degree from the University of Malaya in 1982. He joined the Judicial and Legal Service in 1982 and held various posts during his service, including Magistrate in Alor Setar, Sessions Court Judge in Kota Bharu, Registrar of the High Court in Malaya, Legal Advisor to the State of Perlis from 2001 to 2005 and thereafter Legal Advisor to the State of Pahang from 2006 to 2014.

Dato' Mat Zara'ai was appointed a Judicial Commissioner of the High Court in Malaya on 20<sup>th</sup> June 2014. His tenure ended on 19<sup>th</sup> June 2016.





#### **Datuk Dr. Sabirin Ja'afar**

Datuk Dr. Sabirin Ja'afar was born in Masjid Tanah, Melaka on 16<sup>th</sup> July 1963. He obtained his LL.B from the International Islamic University of Malaysia in 1987. He received his LL.M from the University of Wales, United Kingdom. In 2006, he obtained his Ph.D in Maritime Studies from the University of Greenwich, London.

Datuk Dr. Sabirin Ja'afar was appointed a Judicial Commissioner on 13<sup>th</sup> October 2014. Before his appointment, Datuk Dr. Sabirin Ja'afar had a long career in the Judicial and Legal Service which he joined in 1987, during which he held various posts, including Magistrate, Senior Assistant Registrar of the High Court and Head of the Research and Bahasa Malaysia Unit at the Chief Registrar's Office. In 1994, he was posted to the Attorney General's Chambers and held various posts including Deputy Public Prosecutor and Senior Federal Counsel at the Advisory Division.

Between 2002 to 2006, Datuk Dr. Sabirin Ja'afar took leave from his duties to complete his Ph.D in London. He came back to Malaysia in 2006 and served as Director of the Legal and Investigations Department in the Malaysian Maritime Enforcement Agency. He went on to serve as Legal Advisor to the Ministry of Defence from 2007 to 2009. He opted to retire from the Judicial and Legal Service on 1<sup>st</sup> August 2011. His tenure ended on 12<sup>th</sup> October 2016.

## JUDGES IN REMEMBRANCE

### THE LATE DATUK MOKHTAR SIDIN



The late Datuk Mokhtar Sidin was born on 21<sup>st</sup> March 1941 in Kampong Kampai, in the district of Jelebu, Negeri Sembilan. He read law at the University of Singapore.

Datuk Mokhtar began his career on 15<sup>th</sup> March 1966 as an Administrative Officer in Malayan Civil Service. On 7<sup>th</sup> September 1966, he joined the Judicial and Legal Service and was appointed a Magistrate in Sungai Petani, Kedah. In 1974, he pursued his Masters in Law at the School of Oriental and African Studies at the University of London and received his LL.M in 1975.

Datuk Mokhtar had an illustrious career in the Judicial and Legal Service. Among the posts he held were President of the Sessions Court, Deputy Registrar, Senior Federal Counsel, Deputy Public Prosecutor at the Inland Revenue Board, Official Assignee and Parliamentary Draftsman. His last post in the Judicial and Legal Service was as Chairman of the Advisory Board at the Prime Minister's Department.

Datuk Mokhtar was appointed a Judicial Commissioner on 1<sup>st</sup> December 1988. On 11<sup>th</sup> March 1991, he was elevated to the Bench as a High Court

Judge. During his tenure as Judicial Commissioner and Judge of the High Court, Datuk Mokhtar served at the High Court at Kuala Lumpur and Malacca.

On 1<sup>st</sup> March 1996, he was elevated to the Court of Appeal. After serving for 16 years on the Bench, Datuk Mokhtar retired on 21<sup>st</sup> September 2007. During his tenure on the bench, he presided over several high profile cases including *PP v Juraimi bin Husin*, *PP v Mohd Affandi & Anor*, *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors & Other Appeals*<sup>1</sup>. In *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor*<sup>2</sup>, Datuk Mokhtar said that:

*"... in Malaysia the aborigines' common law rights include, inter alia, the right to live on their land as their forefathers had lived and this would mean that even the future generations of the aboriginal people would be entitled to this right of their forefathers."*

Datuk Mokhtar passed away on 24<sup>th</sup> July 2016 at the age of 75, leaving a wife and five children.

1 [1997] 4 CLJ 253

2 [1997] 1 MLJ 418



## THE LATE DATO' THIRIPURASINGHAM VEERASINGHAM



The late Dato' Thiripurasingham Veerasingham, better known as Dato' V.T. Singham by his colleagues and the Bar, was born on 28<sup>th</sup> June 1948 in Batu Gajah, Perak.

Datuk V.T. Singham started his career as a part time correspondent with the "Straits Times" in 1965. He went on to study law and qualified as a Barrister at Law at Lincoln's Inn, London, United Kingdom. Prior to joining private practice, Dato' V.T. Singham was the Editor for the Malaysian Current Law Journal and Industrial Law Reports.

He joined private practice in 1988 and continued in practice until year 2000. On 1<sup>st</sup> June 2000, he was appointed a Judicial Commissioner of the High Court in Malaya.

Dato' V.T. Singham was elevated as Judge of the High Court on 15<sup>th</sup> May 2002. During his tenure as Judicial Commissioner and Judge of the High Court, Dato' V.T. Singham served in the High Court at Temerloh, Taiping, Georgetown, Ipoh, and Kuantan. His last post before retirement was as Judge in the Civil Division, in the High Court at Kuala Lumpur.

On 28<sup>th</sup> June 2013, after serving 13 years on the Bench, Datuk V.T. Singham opted for early retirement at the age of 65. During his tenure on the Bench, he presided over several high profile cases including *Dr Shafie Abu Bakar v Pegawai Pengurus N 26 Bangi & Ors*<sup>1</sup> and *Datuk Seri Anwar bin Ibrahim v Utusan Melayu (M) Sdn Bhd*<sup>2</sup>. In *N. Indra A/P Nallathamby (Administratrix of the Estate and Dependant of Kugan a/l Ananthan, Deceased) v Datuk Seri Khalid b. Abu Bakar & Ors*<sup>3</sup>, Datuk V.T. Singham said:

*"The recommendation of the Royal Commission should not be kept in 'cold storage' and continue to freeze but must be activated or implemented as soon as possible in order to ensure that all concerned members of society including the family members of deceased persons or victims may feel assured that the independent agency is looking into the matter without any influence imposed by the local police officers. It is important to state, with respect, that howsoever dutifully or faithfully the local police officers may carry out the investigation against disciplinary offences committed by police officers, the same will lack credibility since the allegations are against their own officers or colleague. The power to investigate allegations against police officers, particularly, custodial torture or death must be exercised with great care, caution and circumspection so as not to affect its efficiency, reliability and transparency and so as to eliminate any suspicion that some kind of influence is being exerted by the police officers or the police authority."*

Dato' V.T. Singham passed away on 24<sup>th</sup> March 2016 at the age of 68. Dato' V.T. Singham was known as a hardworking and committed Judge by his colleagues and lawyers who appeared before him.

1 [2005] 5 CLJ 349

2 [2013] 3 MLJ 534

3 [2014] 8 MLJ 625

## THE LATE DATO' CHAN NYARN HOI



The late Dato' Chan Nyarn Hoi (better known as Dato' NH Chan) was born on 27<sup>th</sup> March 1935 in Ipoh, Perak. He was called to the English Bar by the Middle Temple in 1959.

Dato' NH Chan was admitted to the Malayan Bar in 1961. He ventured into private practice for almost two decades until his appointment as Judicial Commissioner on 1<sup>st</sup> January 1979. His first posting was at the High Court in Kuala Lumpur. Later, he was transferred to the High Court at Ipoh, Perak.

On 31<sup>st</sup> March 1980, Dato' NH Chan was elevated to the Bench as Judge of the High Court. On 17<sup>th</sup> September 1994, Dato' NH Chan was elevated to the Court of Appeal. He was among the pioneer Judges to sit in the Court of Appeal. After serving for 21 years on the Bench, Dato' NH Chan retired on 27<sup>th</sup> March 2000.

During his tenure on the Bench, he presided over several high profile cases including *Muhammed Hassan v PP*<sup>1</sup> and *Tan Tek Seng v Pesuruhjaya Perkhidmatan Pendidikan & Anor*<sup>2</sup>. In *Ayer Molek Rubber Company Berhad & Ors v Insas Berhad & Anor*<sup>3</sup>, Datuk NH Chan said:

*"The fact that the proceedings were filed in the wrong Division does not render the proceedings to be in any way invalid but may, coupled with other considerations in the present case,*

*give the impression to right-thinking people that litigants can choose the Judge before whom they wish to appear for their case to be adjudicated upon. This, we consider, may lead to very unhealthy negative thinking and since justice must not only be done but must also be seen to be done, it is incumbent on the trial Judge, upon perusal of the pleadings, to have taken the initiative of transferring the proceedings to the right Division so as to dispel any notion that he is partial to any party. This is yet another added reason that strengthened our conviction that it is right and proper that we exercise our inherent power to prevent an injustice being done by the issue of an interim injunction restraining the respondents from enjoying the fruits of the registration of the infamous shares into their names. These observations are made so that people will not say, "Something is rotten in the state of Denmark." Shakespeare, Hamlet, 1."*

During his retirement, Datuk NH Chan continued to be active in the legal field by giving talks and lectures. He even authored two books namely, "Judging the Judges" and "How to Judge the Judges".

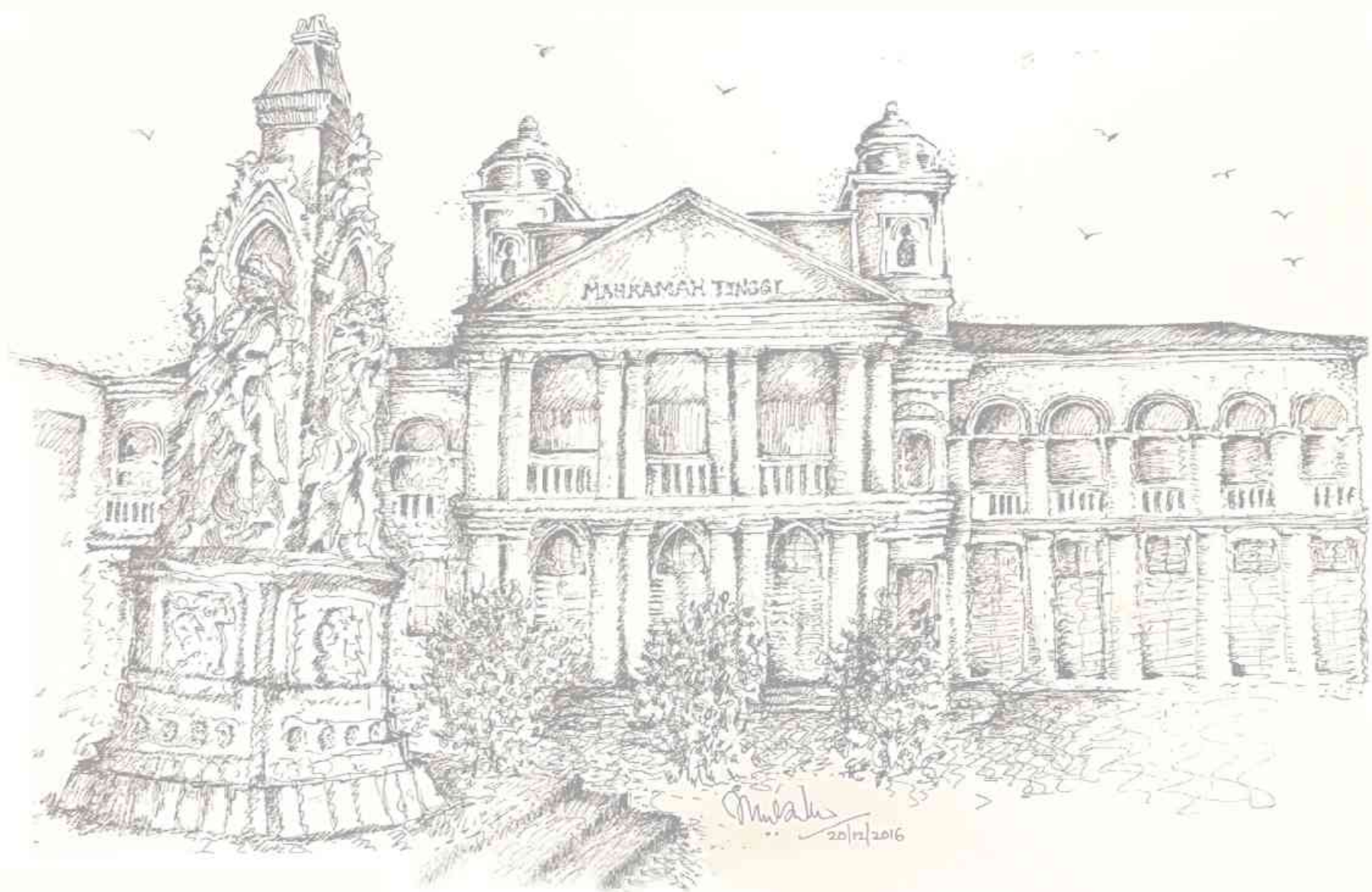
Datuk NH Chan passed away on 22<sup>nd</sup> December 2016 at the age of 81, leaving a wife and three children.

1 [1998] 2 CLJ 170

2 [1996] 2 CLJ 771

3 [1995] 3 CLJ 359





## **CHAPTER 6**

### **JUDICIAL TRAINING AND EVENT**



## COURSES ORGANISED BY THE JUDICIAL ACADEMY IN 2016

As part of its continuing functions, the Judicial Academy organises and provides several modules a year to facilitate judicial training. We have provided an overview of the courses run in 2016.

### **Judge Craft and Judgment Writing Session 1/2016**

A well-reasoned judgment is the hallmark of a good judge. Hence, a staple course in the Judicial Academy is a three-day course on Judge Craft and Judgment Writing. In the course of the year a session was held from 19<sup>th</sup> February 2016 to 21<sup>st</sup> February 2016 to assist newly appointed Judicial Commissioners and Judges to enhance their writing skills. The course was held in Putrajaya and facilitated by Justice Raus Sharif, Justice Azahar Mohamed, Justice Zaharah Ibrahim, Justice Balia Yusof Wahi and Justice Aziah Ali.

The course was divided into two segments: Judge Craft and Judgment Writing. A video entitled "Judge in Jeans: The Business of Judging" was played to the participants. It showcased the relevant issues Judges would encounter in performing their duties. The video presentation was also intended to stimulate discussion among the participants.

The participants were then divided into three groups and each group was tasked to deliberate on three topics: (i) the making of a Judge, (ii) pending hearing and (iii) sitting in judgment.

As for the second part of this training, that is the Judgment Writing, the participants were divided into a group of four and together with the assigned facilitators, the participants critically analysed and discussed actual grounds of judgment selected by the facilitators.

### **How to Read Statutes**

New statutes enacted each year have increased considerably, and this together with the complex nature of the new legislation, has led to changes to the rules of statutory interpretation. Judges were left to search long and hard to determine the correct interpretation and meaning to be accorded to such legislation.

The Judicial Academy recognises the importance of statutory interpretation and how essential this skill is in the making of a good Judge. As such, with the help of Justice Zaharah Ibrahim, the Judicial Academy had, on 19<sup>th</sup> March 2016 in Putrajaya, conducted a course entitled "How to Read Statutes". This course was in fact the second course in a series of two conducted by the Judicial Academy in relation to statutory interpretation.

The first series was held during the Induction Programme for Judicial Commissioners on 15<sup>th</sup> December 2015 until 22<sup>nd</sup> December 2015. It was conducted in the form of a lecture and ended with a question and answer session.

### **Case Management in Civil Cases**

The management of a case is crucial in ensuring justice is delivered in a timely and efficient manner. The Judicial Academy has taken the proactive step of organising a yearly course on effective case management. For the year 2016, the course on Case Management in Civil Cases was held for two days.

It was held from 26<sup>th</sup> March 2016 until 27<sup>th</sup> March 2016. Three High Court Judges and 13 Judicial Commissioners participated in this course. It was conducted via group discussions, interactive and open discourse and case studies.

This course was led by Justice Zulkefli Ahmad Makinudin together with Justice Ahmad Maarop and Justice Vernon Ong Lam Kiat.

The course covered a whole wide range of topics which were as follows:

- (i) Rules of Court 2012, Case Management and Court – Annexed Mediation;
- (ii) Effective Case Management for Writ / Originating Summons and Interlocutory Applications;
- (iii) Effective Case Management for Family Cases, Land Reference cases and cases under the Companies Act 1965; and
- (iv) Effective Case Management for Appeals, Judicial Review and Contentious Probate Proceedings.



Justice Vernon Ong Lam Kiat highlighting on the importance of case management in civil cases.



#### Course on Case Management in Civil Cases

1st row: (L-R) Justice Choo Kah Sing, Justice Siti Khadijah S. Hassan Badjenid, Justice Mohd Yazid Mustafa, Justice Ahmad Maarop, Justice Zulkefli Ahmad Makinudin, Justice Vernon Ong Lam Kiat, Justice Zainal Azman Ab. Aziz, Justice Abu Bakar Katar and Justice Azmi Ariffin.

2nd row: (L-R) Justice Khadijah Idris, Justice Chan Jit Lee, Justice Al-Baishah Abdul Manan, Justice Siti Mariam Othman, Justice Ismail Brahim, Justice Dr. Alwi Abdul Wahab, Justice Wan Ahmad Farid Wan Salleh, Justice Hassan Abdul Ghani, Justice Noorin Badaruddin and Justice Hayatul Akmal Abdul Aziz





### Course on Appeals and Sentencing

1st row: (L-R) Justice Mariana Yahya, Justice Ghazali Cha, Justice Idrus Harun, Justice Ahmad Maarop, Justice Raus Sharif, Justice Aziah Ali, Justice Mohamad Zabidin Mohd Diah, Justice Abdul Halim Aman and Justice Mohd Azman Husin

2nd row: (L-R) Justice Nor Bee Ariffin, Justice Has Zanah Mehat, Justice Abu Bakar Katar, Justice Azahahari Kamal Ramli, Justice Samsudin Hassan, Justice Hashim Hamzah, Justice Azman Abdullah, Justice Ahmad Zaidi Ibrahim, Justice Ahmad Bache and Justice Mohamad Shariff Abu Samah

### Appeals and Sentencing

A course on Appeals and Sentencing was held in Putrajaya from 22<sup>nd</sup> April 2016 until 23<sup>rd</sup> April 2016. This course was attended by a total of 16 participants consisting of 11 Judges of the High Court and 5 Judicial Commissioners.

The course was facilitated by Justice Raus Sharif together with Justice Ahmad Maarop, Justice Aziah Ali and Justice Idrus Harun.

The course was divided into two parts: individual assignment presentation and case study. Justice Azman Abdullah and Justice Mariana Yahya were the two selected Judges to present individual assignments on a specific issue relating to appellate intervention in sentencing.

In addition to that, the participants also discussed the object of punishment and circumstances in which the appellate court could interfere with findings of fact by the trial court, with reference to specific cases.

Apart from that, the participants were also required to carry out a case study based on a record of appeal from the lower courts to the higher courts and to provide reasons for the judgment in respect of these case studies.

### Lectures on Section 39B of the Dangerous Drugs Act 1952

The Judicial Academy had on 28<sup>th</sup> May 2016 organised a half day course for 13 Judges of the High Court and 19 Judicial Commissioners. The course was conducted in the form of a seminar and the guest speakers were as follows:

- (i) Justice Azahar Mohamed on the topic of "Duty of A Trial Judge at the end of Prosecution's Case";
- (ii) Justice Raus Sharif on the topic of "Chain of Evidence and Section 114 (g) of the Evidence Act 1950 [Act 56]"; and
- (iii) Justice Ahmad Maarop on the topic of "Duty of a Trial Judge at the Conclusion of a Trial".



### **Regulating the Capital Market: Deterring Misconduct through Governance and Enforcement**

A course on Capital Market was conducted in collaboration with the Securities Commission Malaysia from 17<sup>th</sup> August 2016 to 18<sup>th</sup> August 2016 at the Le Meridien Hotel, Kuala Lumpur.

The course aimed to facilitate discussion on the importance of corporate governance and the steps required to create a good governance culture and business conduct. It also addressed the nature, extent and impact of serious misconduct such as insider trading and market manipulation and its consequences on the capital market and investors. It was also intended to generate discussion on the roles of the court and the regulator in maintaining the integrity of the capital market and deterring market misconduct. Apart from that, the course sought to provide practical insight into the detection, investigation and prosecution of market misconduct offences across jurisdictions.

The course boasted a line of distinguished personalities as the invited speakers, including amongst others, Justice Abang Iskandar Abang Hashim and Justice Idrus Harun from the Court

of Appeal, Dato' Seri Johan Raslan, Senior Adviser to the Chairman and Director of AMMB Holdings Berhad, Mr Shamoil T. Shipchandler, Regional Director for the U.S. Securities and Exchange Commission's Fort Worth Regional Office and Ms Leong Wai Leng, the General Manager and Head of Corporate Surveillance Department, Securities Commission Malaysia.

The opening remarks were delivered by Chief Justice Arifin Zakaria whilst Justice Raus Sharif had the honour of delivering the closing remarks which marked the end of the two-day highly informative programme.

### **Course on Intellectual Property Law**

Intellectual property protection is critical to fostering innovation. Without protection of ideas, businesses and individuals would not reap the full benefits of their inventions and would focus less on research and development. Similarly, artists would not be fully compensated for their creations and cultural vitality would suffer as a result. Intellectual property protection is not only important to the nation economically but with the necessary and adequate protection, it would encourage creative and artistic endeavours.



Participants attending the course on 'Regulating The Capital Market: Deterring Misconduct Through Governance and Enforcement' together with Chief Justice Arifin Zakaria (seated eighth from left) and the Chairman of the Securities Commission Malaysia, Tan Sri Dato' Seri Ranjit Ajit Singh (seated seventh from left)



The Intellectual Property Law course was initiated to underscore the said concept and to enhance the understanding and problem solving skills of the participants. The course on Intellectual Property Law was held from 3<sup>rd</sup> September 2016 to 4<sup>th</sup> September 2016 in Putrajaya. The course consisted of a three-part seminar conducted by

Justice Ramly Ali on "Trade Marks, Passing Off, Patents and Industrial Designs: A Practical Approach", followed by Justice Azahar Mohamed on "Adjudicating Intellectual Property Litigation" and ended with Justice Zaharah Ibrahim on "An Overview of Intellectual Property Law".



Justice Ramly Ali giving a lecture on "Trade Marks, Passing Off, Patents and Industrial Designs, A Practical Approach".



Justice Azahar Mohamed giving a lecture on "Adjudicating Intellectual Property Litigation".



Justice Abdul Wahab Mohamed participated in the course and presenting his group's findings on the topic discussed.

### Criminal Law: Evidence and Procedure

The course on Criminal Law: Evidence and Procedure was held from 22<sup>nd</sup> October 2016 to 23<sup>rd</sup> October 2016 at the Marriott Hotel Putrajaya, IOI Resort City. The two-day course was attended by 16 judges from both the High Court in Malaya and High Court in Sabah and Sarawak.

The facilitators for this course were Justice Ahmad Maarop, Justice Azahar Mohamed and Justice Tengku Maimun Tuan Mat.

The course was conducted in a workshop mode where the Judges were divided into four groups

and the participants had to work on the assigned topics with their group members.

Some of the topics discussed and presented by the participants in this two-day course were on "Section 90A of the Evidence Act 1950: Admissibility of Documents Produced by Computer" by Justice S.M. Komathy Suppiah, "Admissibility of Documentary Evidence" by Justice Nordin Hassan, "Section 30 of the Courts of Judicature Act 1964: Reference of Constitutional Question by Subordinate Court" by Justice Azmi Ariffin, "Section 425 of the Criminal Procedure Code and Evidence in Rebuttal" by Justice Nurchaya Arshad and "Section 133A of the Evidence Act 1950: Evidence of a Child of Tender Years" by Justice Hayatul Akmal Abdul Aziz.



The facilitators for the course on "Criminal Law: Evidence and Procedure".

(L-R) Justice Azahar Mohamed, Justice Zulkefli Ahmad Makinudin, Justice Ahmad Maarop and Justice Tengku Maimun Tuan Mat





Justice S.M. Komathy Suppiah giving a presentation on Section 90A of the Evidence Act 1950: Admissibility of Documents Produced by Computer



Justice Nordin Hassan presenting a topic on the Admissibility of Documentary Evidence.



## The Law of Defamation

The Law of Defamation course was held from 18<sup>th</sup> November 2016 to 19<sup>th</sup> November 2016 at the Marriot Hotel Putrajaya, IOI Resort City. The facilitators for this course were Justice Zulkefli Ahmad Makinudin, Justice Azahar Mohamed and Justice Vernon Ong Lam Kiat.

16 Justices of the High Court in Malaya participated in this course. The course attempted to explore the philosophy and the jurisprudence of the law of

defamation and scrutinized the types of defamation such as libel, slander, criminal defamation and the defences available.

Some of the presentations on assigned topics were presented by the participants, inter alia, "Ingredients of the Tort of Defamation" by Justice Tun Abd Majid Tun Hamzah, "Remedies after full trial and mitigating factors" by Justice Wong Kian Kheong, "Assessment of Damages for Defamation Cases and Cyber Defamation" by Justice Mohamed Zaini Mazlan.



### Course on the Law of Defamation

1<sup>st</sup> row: (L-R) Justice Nik Hasmat Nik Mohamad, Justice Hue Siew Kheng, Justice Azahar Mohamed, Justice Zulkefli Ahmad Makinudin, Justice Vernon Ong Lam Kiat, Justice Mariana Yahya and Justice Siti Khadijah S. Hassan Badjenid

2<sup>nd</sup> row: (L-R) Justice Al-Baishah Abdul Manan, Justice Azimah Omar, Justice Rozana Ali Yusoff, Justice Che Mohd Ruzima Ghazali, Justice Zainal Azman Ab. Aziz, Justice Abdul Wahab Mohamed, Justice Samsudin Hassan, Justice Lee Swee Seng and Justice Mohd Zaki Abdul Wahab

3<sup>rd</sup> row: (L-R) Justice Mohamed Zaini Mazlan, Justice Mairin Idang @ Martin, Justice Roslan Abu Bakar, Justice Mohamad Zabidin Mohd Diah, Justice Tun Abd Majid Tun Hamzah, Justice Wong Kian Kheong and Justice Ahmad Bache



## A REPORT ON THE U.S. BASED TRAINING AND STUDY TOUR FOR MALAYSIAN JUDGES ON COURT SECURITY AND JUDICIAL COUNTER-TERRORISM TRIAL BEST PRACTICES

By Justice Balia Yusof Wahi  
Judge of the Federal Court

From 18<sup>th</sup> to 27<sup>th</sup> July 2016, the Department of Justice's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) and the Resident Legal Advisor Program conducted the U.S. Based Training Study Tour for the Malaysian ISIL-Specialist Trial (Anti-Terrorism Court, ATC), Judges and Judicial Officers of the Malaysian Judiciary.

The objectives of this study tour include:

- i) to study the U.S. federal judicial security measures;
- ii) to exchange experiences between the U.S. and the Malaysian Judiciary in trying terrorism cases and/or court security measures/systems;
- iii) to expose the participants to the U.S. federal and state best practices in trying to counter terrorism cases and implementing security systems/measures; and
- iv) to draft the Standard Operating Procedure manual for cases of terrorism in Malaysia.

Date of travel : 18<sup>th</sup> – 28<sup>th</sup> July 2016

Locations visited : Courts in Boston and New York, United States Marshals Office that is housed in the said courts, Federal Bureau of Investigation in New York and New York Police Department.

Participants:

Head of Delegation

Justice Balia Yusof Wahi (Judge of the Federal Court)

Malaysian Anti-Terrorism Court Judges

Justice Azman Abdullah  
Justice Ravinthran N. Paramaguru  
Justice Ab Karim Ab Rahman  
Justice Nordin Hassan

Judicial Officers of the Chief Registrar's Office

Mr. Ahmad Kamar Jamaluddin  
Mr. Jamaluddin Mat  
Mr. Saifulakmal Said

The study tour was supervised by Ms. Karyn Kenny who is the Resident Legal Advisor of the United States Embassy in Kuala Lumpur. There are two essential components of the study tour. The first component is about gaining an insight into the best trial practices adopted by the American Judges who had tried terrorism related cases. It entailed briefings and discussions with the State as well as Federal Judges who presided over terrorism related cases.

The second component touches on identifying the best practices adopted by the American Courts relating to courthouse security and the personal security of Judges, court officers and prosecutors. This aspect of the study tour included briefings by senior officers of the United States Marshals Service and other federal and state enforcement agencies.

In Boston, the delegation met with Magistrate Judge Marriane B. Bowler, who heard the pre-trial motions in the Boston Marathon bombing case. The delegation was also briefed and viewed the court electronic filing system where simple applications were disposed of without the attendance of parties. The delegation also met and had a discussion with the trial Judge in the Boston Bombing case, Justice George A. Toole.



(L-R): Justice Azman Abdullah, Mr. Jamaluddin Mat, Mr. Ahmad Kamar Jamaluddin, Justice Ab. Karim Ab. Rahman, Justice Ravinthran N. Paramaguru, Justice Laura A. Ward of the Supreme Court New York County Criminal Division, Justice Balia Yusof Wahi, Justice Nordin Hassan and Mr. Saifulakmal Said



(L-R): Mr. Saifulakmal Said, Mr. Bryan Richard, Justice Nordin Hassan, Justice Ravinthran N. Paramaguru, Justice Azman Abdullah, Justice Balia Yusof Wahi, Mr. Thomas Galati, Head of Intelligence Bureau of the New York Police Department, Justice Ab. Karim Ab. Rahman, Mr. Jamaluddin Mat, Mr. Ahmad Kamar Jamaluddin and Ms. Karyn Kenny



On court security, the delegation met with TJ Abernathy of the United States Marshals Service who briefed the delegation on the special security measures taken for the Boston Bombing case which lasted for five months. The delegation was given a general briefing by the U.S. Marshal Service which is devoted in providing the best security to courts and Judges apart from being its enforcement arm to carry out court orders, summons and supervising the movement of prisoners. The U.S. Marshals Service has emergency evacuation plan at the courthouse in case of a terrorist attack. As for the state courts, the security arrangements are under the control of the in-house court police force which is placed under the supervision of the court's administration.

On the last date of the study tour in Boston, the delegation was given a general overview on the global threat posed by the Islamic State (IS) terrorist group by two Federal Bureau of Investigation's (FBI) analysts, Rima Hijaj and Karen McKenning. During the visit to New York City, the delegation was taken to meet Judges, prosecutors and enforcement agency officers. At the FBI's New York Office, the delegation was briefed by the FBI on the tracking of terrorism threats through the Joint Terrorism Task Force (JTTF) which is a partnership of several enforcement agencies such as the Department of Homeland Security (DHS) and its notable components such as the U.S. Coast Guard (USCG), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), the Transportation Security Administration (TSA), the U.S. Secret Service (USSS), the U.S. Armed Forces and the Department of State (DOS), Diplomatic Security Service (DSS), state and local law enforcement agencies, and specialised agencies, such as the railroad police to share information for a planned joint action. The delegation also made site visits to the New York State Criminal Courts and the New York Police Department.

During the visit to the New York County District Attorney's Office, four District Attorneys and a Defence Attorney specialised in terrorism cases shared their experience in a discussion on two specific terrorism cases, **People v. Ahmed Ferhani** and **People v. Jose Pimental**. The delegation also visited the Manhattan District Attorney's Office and met with several prosecutors specially assigned to do terrorism cases.

On the delegation's visit to the New York Police Department, the Head of the Intelligence Bureau, Thomas Galati briefed the delegation on the specific tasks of the Bureau which has its officers based in major cities of the world to monitor terrorism threats. The delegation also had a peek at the Department's Surveillance Control and Monitoring Centre featuring a high tech and state of the art surveillance camera system covering the city.

The delegation also visited the District Court of the Southern District of New York where most of the major terrorism cases such as the World Trade Bombing case was heard. Among the special features of this court is that there is a special prison built which is connected by an underground passage for secure movement of its prisoners and this court is often chosen as the venue for high profile terrorism trials. The delegation also had a round table discussion with the Chief Judge and several other District Judges in this court in sharing their experiences on terrorism cases heard in the Southern District of New York.

As an outcome of the study tour, the delegation had identified some of the best practices to be adopted by the Malaysian Anti-Terrorism Court Judges in handling terrorism cases. On Court security arrangements, the delegation had identified various security measures adopted by the American Courts to be studied with a view for its implementation for the safety of the Malaysian court houses and its personnel.





Overhanging boughs at the Palace of Justice



## THE INTERNATIONAL ASSOCIATION OF WOMEN JUDGES (IAWJ)

On 26<sup>th</sup> May 2016, Justice Zainun Ali of the Federal Court Malaysia and Justice Alizatul Khair Osman Khairuddin of the Court of Appeal Malaysia joined 1,000 other women judges in Washington D.C. for the 25th Anniversary of the establishment of the International Association of Women Judges.

The IAWJ traces its beginnings in Washington D.C. when the National Association of Women Judges (NAWJ) United States, held its 1989 Annual Meeting and they invited about 50 women judges from 42 countries to consider the formation of a global association of women judges.

This ambitious collaboration of the world's women judges was spearheaded by Judge Arline Pacht of the United States who was elected as the IAWJ's founding President at the 1991 inaugural meeting in San Diego, California, with 80 women judge from 42 countries in attendance.

Today the IAWJ has grown to a staggering 4,600 over members in 107 countries and areas all over the world. At its inaugural meeting members were asked to propose issues that would become emblematic. The issue of domestic violence was chosen as its priority call, and each national association was asked to address this signature issue, bearing in mind its respective local laws. This proposal was unanimously adopted and IAWJ became the first judicial organisation in the world to address domestic violence by means of a training programme offered to hundreds of judges in countries throughout the world.

The IAWJ's Human Rights Education Department developed a unique, interactive training manual that became a template for all future manuals tailored to the law and issues of each nation in which the Department training was offered. This programme was one of the first programmes to train judges to apply applicable human rights convention to cases involving violence and discrimination against women arising in domestic courts worldwide.

**The IAWJ 13<sup>th</sup> Biennial Conference Washington D.C. (26-29<sup>th</sup> May 2016)**

The conference which has on its theme, "Women Judges and the Rule of Law: Assessing the Past,

Anticipating the Future," was attended by 1,000 women judges worldwide, and began with great pomp and pageantry on Thursday, 26<sup>th</sup> May 2016.

We joined a formidable team of Justices, discussing issues such as the role of law in the mandates for fair and equal treatment; new developments in international human rights and humanitarian law; challenges faced by women and girls in seeking access to justice; maintaining the rule of law in emergency situations; restorative justice and finally a discussion of a case in a moot court session.

The speakers included the Rt. Hon. Lady Brenda Hale, Deputy President of the Supreme Court of the United Kingdom, Deputy Chief Justice Elena, Justice Highten de Nolasco of the Supreme Court of Argentina, Justice Teresita Leonardo de Castro of the Supreme Court of the Philippines, Associate Justice Sonia Sotomayor of the Supreme Court of the United States, Justice Tamarin Dunnet of the Ontario Supreme Court of Justice, Judge Hanan Elshaarawy of the Cairo Family Appeals Court, Egypt, Judge Francoise Carnivet of the Court of Cassation, France, Chief Justice Dana Fabe of the Alaska Supreme Court and the Hon. Ruth Bader Ginsburg, Associate Justice of the U.S. Supreme Court, among others.

It was a tremendous privilege to interact with and hear the voices of so many prominent women justices speaking of the need for courageous women judges to confront the hostility, insensitivity and bias residing in justice systems around the world. From all accounts, it is clear that many forms of gender based violence still persist, in the midst of emerging new and different challenges such as counter-terrorism, migration and citizenships issues and their impact on women and girls.

The lessons learnt from this unique conference are invaluable. It is hoped that this would inspire us in establishing our own National Association of Women Judges.

**Justice Zainun Ali**

**Justice Alizatul Khair Osman Khairuddin**



(L-R): Justice Alizatul Khair and Justice Zainun Ali



The Hon. Justice Ruth Bader Ginsburg



(L-R) : Justice Alison Shepherd, Justice Zainun Ali, the Rt. Hon. Lady Hale and Justice Alizatul Khair



## WOMEN LEADERSHIP DIALOGUE

On 23<sup>rd</sup> November 2016, the Palace of Justice in Putrajaya welcomed a delegation of women leaders from the United Kingdom led by Her Excellency Victoria Treadell, the British High Commissioner to Malaysia for a dialogue session with the Chief Justice Arifin Zakaria and selected Judges of the Federal Court, the Court of Appeal and the High Court. This dialogue is one of the many programmes held in conjunction with the Women Leadership Dialogue, a programme to recognise high achieving British women from various disciplines and background.

The delegates were given a quick tour of the Palace of Justice, including a tour of the Judicial Museum and a chance to observe proceedings in the Court of Appeal. Before the dialogue commenced, the delegates were invited for tea at Justice Zainun Ali's chambers.

Thereafter the delegates were ushered into the Banquet Hall for the dialogue session with the Chief Justice. Present together with the Chief Justice were Justice Lim Yee Lan, Justice Alizatul Khair Osman Khairuddin, Justice Rohana Yusuf, Justice David Wong Dak Wah, Justice Idrus Harun, Justice Mary Lim Thiam Suan, Justice Azizah Nawawi and Justice Hue Siew Kheng.

Justice Zainun Ali commenced the session with a welcome speech in which she acknowledged and congratulated the achievements of all the women attending the dialogue. She also expressed her pride in how much women had accomplished in Malaysia generally and in the Judiciary specifically.

Justice Zainun Ali noted that as with their male counterparts, the women in the Judiciary had contributed significantly to the development of the law in Malaysia.

The dialogue session then continued with a brief introduction to the Malaysian Judiciary, by Registrar

Arleen Ramly. She gave an overview of the courts' hierarchy and the jurisdiction of the courts at each level of the hierarchy.

This section was intended to give the delegates a brief overview of the Malaysian judicial system as not all of the delegates came from a legal background.

After the briefing, questions were posed by the delegates to the Judges leading to an interesting discussion between the delegates and the Judges on various topics and subjects relating to the career path for women in the legal arena, legal reforms that could promote gender equality and the protection of women's rights.

One notable exchange was when a delegate sought the view of the Chief Justice on the possibility of a woman holding the top post in the Malaysian Judiciary and the criteria he deemed to be essential for such a post. The Chief Justice emphasised that the ultimate criteria for the post would be integrity and the knowledge of the law, with a firm emphasis on integrity as the other qualities which a candidate might possess would be meaningless without integrity.

Another interesting exchange was on the dynamics and diversity that women judges bring to the Judiciary.

The diversity and differences in the way a man and a woman approaches and analyses analysis a written law, for instance, would only serve to enrich the Judiciary.

The consensus was that diversity is not only beneficial but essential for a more inclusive Judiciary and ultimately for a more impartial and independent Judiciary.

Before they departed, the delegates were treated to lunch at the Banquet Hall of the Palace of Justice, hosted by the Chief Justice.



Chief Justice Arifin Zakaria and Justice Zainun Ali presenting a memento to H.E. Victoria Marguerite Treadell.



The delegates of the Women Leadership Dialogue posing for a group photograph with Chief Justice Arifin Zakaria.





Justice David Wong Dak Wah, Judge of the Court of Appeal weighed in his thoughts on the achievements of the women justices in the Malaysian Judiciary.



Justice Mary Lim Thiam Suan, Judge of the Court of Appeal sharing some of her experiences as a woman in the Judiciary.



Justice Rohana Yusuf, Judge of the Court of Appeal answering a query from the delegates.





A candid moment of some of the delegates during the dialogue session.



Ms. Sharmila Mehta, a Consultant and an expert in UK Immigration and Nationality Law sharing her thoughts during the dialogue session.



## THE 4<sup>TH</sup> JOINT JUDICIAL CONFERENCE 2016

The inaugural meeting of the 4<sup>th</sup> Joint Judicial Conference 2016 was hosted by Malaysia on 19<sup>th</sup> March 2011. The Joint Judicial Conference held on a biennial basis is between the Judiciaries of Malaysia, Brunei and Singapore. The Malaysian Judiciary was both proud and honoured to host the 4<sup>th</sup> Joint Judicial Conference and to receive our distinguished guests from Brunei and Singapore. The conference was held from 4<sup>th</sup> November 2016 to 6<sup>th</sup> November 2016 at the Palace of Justice, Putrajaya.

The arrival of the delegates was marked by a welcome dinner which was graciously hosted by the Chief Justice of Malaysia at his official residence. The official session started on 5<sup>th</sup> November 2016 at the Conference Hall, Palace of Justice, Putrajaya. The session started with the welcome address by the Chief Justice Arifin Zakaria and was followed by addresses by the Chief Justice of Singapore, Sundaresh Menon and the Chief Justice of Brunei Darussalam, Dato Seri Paduka Haji Kifrawi bin Dato Paduka Haji Kifli.

The day long conference was divided into three sessions. The first panel discussion was on judicial recusal. The session was moderated by Justice Nallini Pathmanathan and the panellists were the Chief Justice of Brunei Darussalam, Justice Idrus Harun from Malaysia and Justice Steven Chong from Singapore.

The delegates presented the relevant tests utilised in their respective jurisdictions to determine when recusal was justified. There was considerable reference by each of the speakers to case-law. The delegates from the floor participated extensively in discussion after the individual presentations, to the extent that the session exceeded the prescribed time.

The second session was on the topic of scientific evidence and expert testimony. This session was moderated by Justice Tay Yong Kwang from Singapore and the panellists were the Chief Justice of Brunei Darussalam, Justice David Wong Dak Wah from Malaysia and Justice Hoo Sheau Peng from Singapore.

In their individual presentations, each of the speakers highlighted the role of experts in assisting the courts. They focused on case-law and examples in their own jurisdictions. Topics focused on included the importance of impartiality in such witnesses and methods of ensuring independence and impartiality. The importance of procedural aspects of expert evidence including pre-trial case management were highlighted. "Hot-tubbing" was discussed.

The third and final panel discussion session for the day was a discussion on "Media and Criticism of Judges: How should the Judiciary react?" The moderator for this session was Justice Mohd Nazlan Mohd Ghazali from Malaysia and the panellists were the Chief Justice of Brunei Darussalam, Judicial Commissioner Aedit Abdullah from Singapore and Justice Azizul Azmi Adnan from Malaysia.

In this session, the speakers explored the relationship between the media and the Judiciary. They attempted to highlight some of the challenges that the Judiciary face and also offered some possible solutions in tackling the criticism of Judges from the media as well as the public. It was very well received and there was again, considerable participation from the floor.

The session ended on the following note, namely that a balance had to be struck between responding to criticism from the media and upholding the integrity and independence of the judicial office.

To mark the closing of the Conference, a gala dinner was held at the Garden Ballroom of the Putrajaya Marriott Hotel. Representatives of the delegates from all three jurisdictions showed off their musical and dancing skills and kept the delegates highly entertained.

The strong bonds and camaraderie among the delegates were on display and the goodwill fostered throughout this conference was immeasurable. This conference achieved consensus amongst the three jurisdictions that their close relationship would facilitate the movement towards harmonisation of our respective laws. The next host for this conference is Singapore in 2019.





Chief Justice Arifin Zakaria (left) and Chief Justice Sundaresh Menon (right) admiring the sketched photo of the Palace of Justice, Putrajaya on a postcard; a token from the host to all the delegates of the conference.



The Chief Justices of Brunei Darussalam, Malaysia and Singapore at the holding room at the Palace of Justice, Putrajaya before the commencement of the first session of the 4<sup>th</sup> Joint Judicial Conference 2016.





Justice Nallini Pathmanathan, the moderator for a panel discussion on Judicial Recusal.



Judicial Commissioner Hoo Sheau Peng from the Supreme Court of Singapore, one of the panellists for a panel discussion on "Scientific Evidence and Expert Testimony".



Justice Idrus Harun as one of the panellists for a panel discussion on "Judicial Recusal".

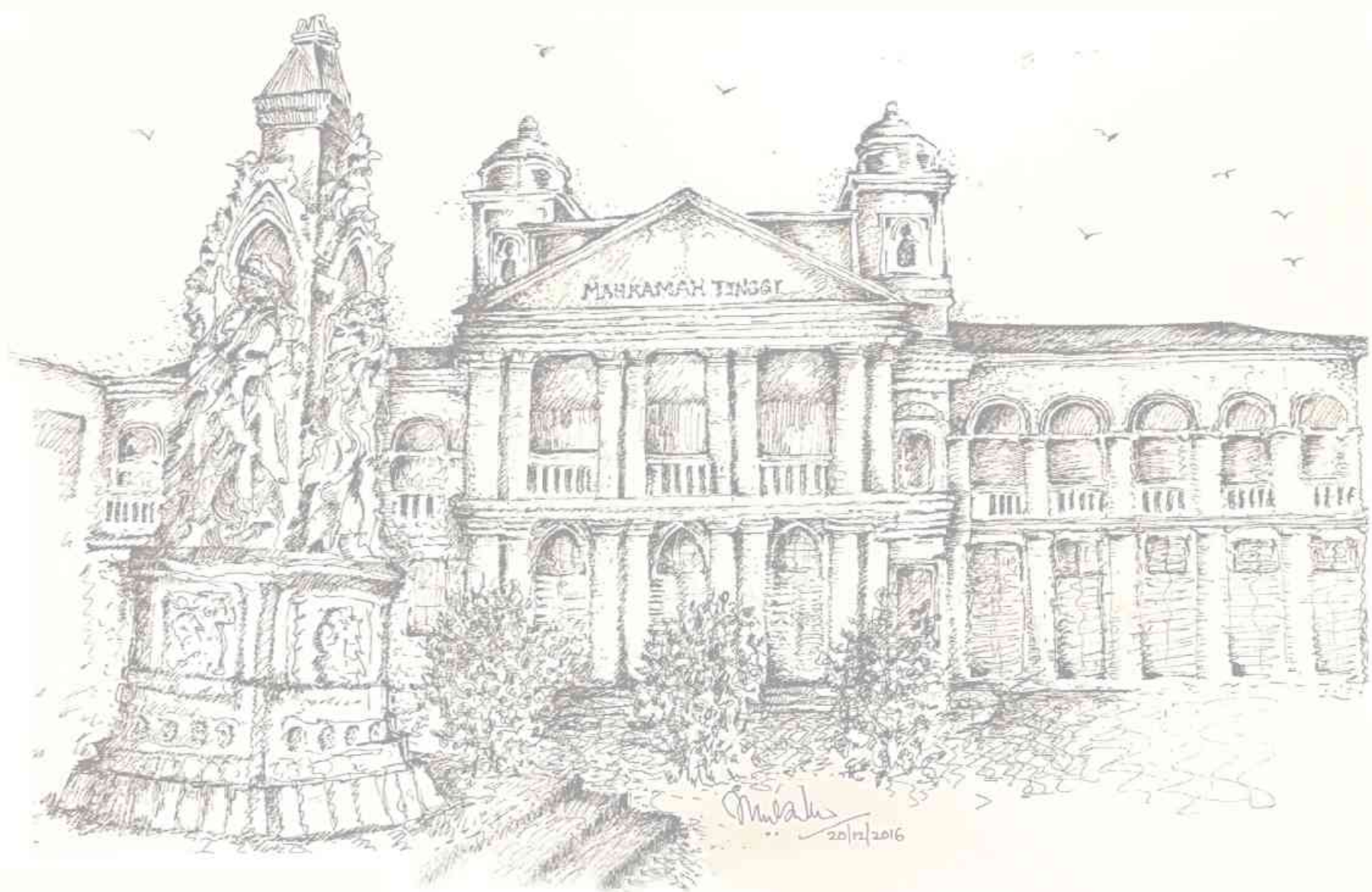


Justice Raus Sharif, the President of the Court of Appeal delivering a token of appreciation to Justice Steven Chong from the Supreme Court of Singapore.



Justice Azizul Azmi Adnan, one of the panellists for a panel discussion on "Media and Criticism of Judges: How Should the Judiciary React?".





# **CHAPTER 7**

## **SPECIAL FEATURES**



## FORMER LORD PRESIDENTS/ CHIEF JUSTICES OF MALAYSIA (1963 – PRESENT)



THE RT. HON. TUN SIR JAMES BEVERIDGE THOMSON

S.S.M., P.M.N., P.J.K.

16<sup>th</sup> September 1963 – 31<sup>st</sup> May 1966

(THE 1<sup>ST</sup> LORD PRESIDENT)



THE RT. HON. TUN SYED SHEH SYED HASSAN BARAKBAH

S.S.M., P.M.N., D.P.M.K., P.S.B.

1<sup>st</sup> June 1966 – 9<sup>th</sup> September 1968

(THE 2<sup>ND</sup> LORD PRESIDENT)



THE RT. HON. TUN DATO' MOHAMED AZMI MOHAMED  
S.S.M., P.M.N., D.P.M.K., P.S.B., P.J.K.  
10<sup>th</sup> September 1968 – 30<sup>th</sup> April 1974  
(THE 3<sup>RD</sup> LORD PRESIDENT)



THE RT. HON. TUN MOHAMED SUFFIAN MOHAMED HASHIM  
S.S.M., P.S.M., S.P.C.M., D.I.M.P., J.M.N., S.M.B. (BRUNEI), P.J.K., LL.D., D. LITT  
1<sup>st</sup> May 1974 – 12<sup>th</sup> November 1982  
(THE 4<sup>TH</sup> LORD PRESIDENT)





THE RT. HON. RAJA AZLAN SHAH IBNI ALMARHUM SULTAN YUSSUF IZZUDDIN SHAH  
S.S.M., D.K., P.M.N., P.S.M., S.P.C.M., S.P.T.S., S.P.M.P., S.I.M.P., D. LITT, LL.D.

12<sup>th</sup> November 1982 – 2<sup>nd</sup> February 1984

(THE 5<sup>TH</sup> LORD PRESIDENT)



THE RT. HON. TUN DATO' MOHAMED SALLEH  
ABAS

S.S.M., P.M.N., P.S.M., S.P.M.T. D.P.M.T., J.M.N.,  
S.M.T.

3<sup>rd</sup> February 1984 – 8<sup>th</sup> August 1988

(THE 6<sup>TH</sup> LORD PRESIDENT)



THE RT. HON. TUN DATO' SERI ABDUL HAMID  
OMAR

S.S.M., P.M.N., P.S.M., S.S.M.T., S.I.M.T, S.I.M.P.  
S.P.M.S., D.P.M.P. P.M.P.

9<sup>th</sup> August 1988 – 9<sup>th</sup> November 1988

(ACTING LORD PRESIDENT)

10<sup>th</sup> November 1988 – 24<sup>th</sup> September 1994

(THE 7<sup>TH</sup> LORD PRESIDENT/THE 1<sup>ST</sup> CHIEF  
JUSTICE)



THE RT. HON. TUN DATO' SERI MOHD EUSOFF CHIN  
S.S.M., P.S.M., S.P.C.M., D.P.M.J., D.P.M.K., J.S.M., S.M.J.  
25<sup>th</sup> September 1994 – 19<sup>th</sup> December 2000  
(THE 2<sup>ND</sup> CHIEF JUSTICE)



THE RT. HON. TUN DATO' SERI MOHAMED  
DZAIDDIN ABDULLAH  
S.S.M., P.S.M., S.P.C.M., D.S.P.J., D.P.M.P., D.M.P.N.  
20<sup>th</sup> December 2000 – 14<sup>th</sup> March 2003  
(THE 3<sup>RD</sup> CHIEF JUSTICE)



THE RT. HON. TUN DATO' SRI AHMAD FAIRUZ  
DATO' SHEIKH ABDUL HALIM  
S.S.M., P.S.M., S.P.M.K., S.J.M.K., S.P.M.S., S.S.A.P.,  
S.S.M.Z., S.S.D.K., S.P.M.T.,  
D.S.M.T., D.S.D.K., S.M.J., S.M.S., B.C.K., P.I.S.  
16<sup>th</sup> March 2003 – 1<sup>st</sup> November 2007  
(THE 4<sup>TH</sup> CHIEF JUSTICE)





THE RT. HON. TUN ABDUL HAMID MOHAMAD

S.S.M., D.C.P.M., D.M.P.M., K.M.N., P.J.K.

2<sup>nd</sup> November 2007 – 17<sup>th</sup> October 2008

(THE 5<sup>TH</sup> CHIEF JUSTICE)



THE RT. HON. TUN DATO' SERI ZAKI TUN AZMI

S.P.C.M., S.P.M.K., S.S.M., P.S.M., S.S.D.K.,  
P.J.N., D.S.M.T. (TERENGGANU), D.S.D.K. (KEDAH), J.S.M., K.M.N.

18<sup>th</sup> October 2008 – 9<sup>th</sup> September 2011

(THE 6<sup>TH</sup> CHIEF JUSTICE)



THE RT. HON. TUN ARIFIN ZAKARIA

S.S.M., P.S.M., S.P.M.K., S.P.S.K., S.P.M.S., S.P.C.M., S.S.A.P., D.U.P.N., D.S.P.N.,  
S.P.M.P., D.P.M.K., D.P.C.M.

12<sup>th</sup> September 2011 - PRESENT

(THE 7<sup>TH</sup> CHIEF JUSTICE)









A surge of cool beneath the shade at the Palace of Justice.





Tun Syed Sheh Syed Hassan Barakbah

## TUN SYED SHEH SYED HASSAN BARAKBAH

Well respected in the judicial and legal fraternity, the late Tun Syed Sheh Syed Hassan Barakbah was an extraordinary man of many accomplishments. He was the first Malaysian to be appointed as the Lord President of the Federal Court, the highest judicial post in the country. His appointment paved the way for locals to occupy the highest judicial office and marked the end of almost a century and a half of British domination in the judicial institution. His remarkable accomplishment continued even after his retirement from the judicial office when he was appointed the Governor of Penang, the first for a retired Judge.

Of Arab-Malay descent, the late Tun Syed Sheh Syed Hassan Barakbah was born on 10<sup>th</sup> November 1906 in Alor Setar, Kedah. He received his early education at the Sultan Abdul Hamid College, a prestigious institution in Alor Setar, Kedah. He had excelled in his academics and was awarded a Kedah State Government Scholarship to read law in the United Kingdom. He was later admitted as Barrister-at-Law of the Honorable Society of Inner Temple in June 1934.

Upon his return to Malaya in 1935, the late Tun Syed Sheh Syed Hassan Barakbah served in various capacities in the judicial and legal service. He was appointed a Magistrate in Alor Setar, Kedah. He had also served in Alor Setar as the Registrar of the High Court, a Chief Magistrate and the Commissioner of Workmen's Compensation. After the interregnum caused by the Second World War, he served as a District Judge in Kedah and Perlis and later as the President of the Rent Assessment Board and the Chairman of the Licensing Board. In 1948, he was the first Malay to be appointed to the Colonial Legal Service. He was then transferred from Alor Setar, Kedah to Seremban, Negeri Sembilan in October 1955 as the President of the Sessions Court.

The late Tun Syed Sheh Syed Hassan Barakbah was appointed a Judge of the High Court in Malaya in 1956 and was elevated to sit as the Judge of Appeal in September 1962. In December 1962, he sat as the Chairman of the Court of Inquiry into the dispute between the Malayan Railway Administration and the Railwaymen's Union of Malaya.

The late Tun Syed Sheh Syed Hassan Barakbah's illustrious career reached the pinnacle of his calling when he earned the distinction of being the first

Malaysian to be elevated as the Chief Justice of Malaya in 1963 and subsequently as the Lord President of the Federal Court, in succession to the late Tun Sir James Beveridge Thomson who retired in 1966. The installation ceremony was held on 1<sup>st</sup> June 1966 at the Istana Negara in Kuala Lumpur in the presence of His Majesty the Yang di-Pertuan Agong Almarhum Sultan Ismail Nasiruddin Shah Ibni Almarhum Sultan Zainal Abidin before whom he took the Oath of Office and Allegiance.

During his tenure as the Lord President, the late Tun Syed Sheh Syed Hassan Barakbah placed great emphasis on maintaining the highest traditions of the Malaysian Court, a value which was then passed on and upheld by his equally eminent younger brother, the late Tan Sri Syed Agil Syed Hassan Barakbah, who followed his outstanding footsteps. Though born more than a decade apart, their careers followed almost similar routes. His no less prominent brother, the late Tan Sri Syed Agil Barakbah assumed the position of a Judge of the High Court before he was eventually elevated to the Federal Court in 1969. As Judges, these two distinguished siblings had served the Judiciary with their practical wisdom and generous wit.

With a judicial career spanning almost 33 years, the late Tun Syed Sheh Syed Hassan Barakbah's contribution to the Judiciary had been enormous. Under his wise and benign leadership, he set the Judiciary on a progressive path to meet the continuing needs of the time. He delivered numerous judgments, many of which are cited frequently to this day. He retired as the Lord President on 9<sup>th</sup> September 1968.

The late Tun Syed Sheh Syed Hassan Barakbah's illustrious career followed him through even after his retirement. He was appointed a member of the Senate and was subsequently elected as the President of that august body succeeding the late Dato' Abdul Rahman Mohamed Yasin who had retired from the presidency. The late Tun Syed Syeh Syed Hassan Barakbah's tenure of this high office was short-lived, as he was later appointed the Governor of Penang on 6<sup>th</sup> February 1969 by His Majesty the Yang di-Pertuan Agong Tuanku Ismail Nasiruddin Shah Ibni Sultan Zainal Abidin. He was the first retired Judge to hold this very important appointment.



The late Tun Syed Sheh Syed Hassan Barakbah was truly a great man and a great Malaysian. He had served the country very well and for a good length of time, most of which was in his judicial capacity. His record of public service was exemplary which very few Malaysian can attain. His meteoric rise to the high public appointments cannot easily be surpassed by anyone. His success thereafter is well documented in numerous Malaysian legal journals.

In honour of his contributions and services, the late Tun Syed Sheh Syed Hassan Barakbah was bestowed several honours and awards namely: Darjah Yang Mulia Pangkuan Negara Seri Setia Mahkota (S.S.M) which carries the title Tun, Darjah Panglima Mangku Negara (P.M.N) by His Majesty DYMM Seri Paduka Baginda Yang di-Pertuan Agong which carries the title Tan Sri, Darjah Utama Pangkuan Negeri (D.U.P.N) first class from the Penang Government, Darjah Seri Paduka Mahkota Kedah (S.P.M.K) first class and Pingat Sultan Badlishah (P.S.B) from the Sultan of Kedah.

The late Tun Syed Sheh Syed Hassan Barakbah was married to the late Toh Puan Hajah Sharifah Fatimah.

The late Tun Syed Sheh Syed Hassan Barakbah was laid to rest on 8<sup>th</sup> October 1975 at the age of 69. A reference was held at the Federal Court, Kuala Lumpur on 20<sup>th</sup> December 1975 to commemorate his loyal commitment as a true servant of the law. The reference was presided over by the late Tun Mohamed Suffian Mohamed Hashim, the then Lord President who said:

*"Many of his brother judges who ever sat with him will always remember his friendliness even when we have occasion to dissent for he believed that we should disagree if at all in a civilized manner. Members of the Bar who ever appeared before him will always remember his kindness and courtesy extended especially to younger lawyers who still had to make their way. When he asked a question, it was always done in a soothing way, to elicit a point or to clear an obscurity that troubled him; he never asked a rhetorical question in order to ridicule; and having asked a question he always gave counsel a chance to answer it fully and without interruption. His manner of conducting proceedings was a model followed by his brother judges anxious to administer justice without rancor, without ill-will. No counsel who lost a case ever left his court feeling that he had not been allowed to develop his argument, feeling that he had not been given a chance, feeling that he had not been given a fair and patient hearing, feeling that he had been humiliated. Truly the Tun was nature's gentleman."*

*As befits a gentleman endowed with so much consideration for others and filled with such an innate sense of justice, he was also a simple and modest man, a good husband, a good father and a friend to all who seek his advice and his company. Those who share his friendship will also miss his sense of gentle fun as testified by the chuckles that often punctuated conversation with him."*

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- (4) The Malayan Law Journal [1969] 1 MLJ, April 1969, at p. xxi
- (5) *The Late Tun Syed Sheh Barakbah – In Memoriam*, Malayan Law Journal, [1976] 2 M.L.J., August 1976, at p. xlvii.
- (6) The National Archives of Malaysia



Justice S. Chelvasingam Macintyre taking oath as a Judge of the High Court before the late Tun Syed Sheh Barakbah on 14<sup>th</sup> November 1964. (Picture courtesy of the National Archives of Malaysia).



Justice S.M. Yong taking oath as a Judge of the High Court before the late Tun Syed Sheh Barakbah on 1<sup>st</sup> July 1965. (Picture courtesy of the National Archives of Malaysia).





The then Yang di-Pertuan Agong presenting the late Tun Syed Sheh Barakbah the award of Panglima Mangku Negara (P.M.N). (Picture courtesy of the National Archives of Malaysia).



Justice H.T. Ong taking oath as a Judge of the Federal Court before the late Tun Syed Sheh Barakbah on 1<sup>st</sup> July 1965. (Picture courtesy of the National Archives of Malaysia).



The then Yang di-Pertuan Agong presenting the award of Seri Setia Mahkota (S.S.M) to the late Tun Syed Sheh Barakbah on 5<sup>th</sup> June 1968. (Picture courtesy of the National Archives of Malaysia).





The then Yang di-Pertuan Agong presenting the award of Seri Maharaja Mangku Negara (S.M.N) on 26<sup>th</sup> July 1970. (Picture courtesy of the National Archives of Malaysia).



The late Tun Syed Sheh Barakbah taking oath as the Lord President before the then Yang di-Pertuan Agong at the Istana Negara Kuala Lumpur on 31<sup>st</sup> May 1966. (Picture courtesy of the National Archives of Malaysia).

## A JUDGE'S MUSINGS



By Tan Sri Haidar Mohamed Noor  
Former Chief Judge of Malaya

I have long cherished the hope that the time will come when the nebulous narrative of my role in the 1988 judicial debacle will be corrected. That time is now.

I was appointed the Chief Registrar by the then Lord President, His Royal Highness Sultan Azlan Shah. My appointment was for a good number of years i.e. from December 1983 to 14<sup>th</sup> September 1988. When His Royal Highness was installed as the Sultan of Perak on 3<sup>rd</sup> February 1984, Tun Salleh Abas replaced him as the Chief Justice on 3<sup>rd</sup> February 1984.

Tun Salleh Abas as Malaysia's sixth Lord President is an upright man who believed that holding the office of a Judge is one of the greatest distinctions a man can hope to achieve in his life. Tun Salleh's tenure reflects that abiding trust he had in exercising absolute integrity and judicial independence.

Thus in early 1988, when Tun Salleh Abas asked me to accompany him to Singapore to visit Tan Sri Lee Hun Hoe, the Chief Judge of Borneo (as it was known at that time) who was hospitalised there, I was more than happy to go with him.



It was a propitious journey for me; for it was during that trip that Tun Salleh Abas invited me to join the Bench. I was elated and grateful, that not even the fact that my first posting on the Bench would be in far away Kuching (Sarawak) dampened my enthusiasm.

For this appointment, Tun Salleh Abas secured the requisite approval from Tan Sri Lee Hun Hoe, during that hospital visit.

Nothing, it would seem, would stand in my way to becoming Judge of the High Court in Kuching.

However, before Tun Salleh Abas could proceed with my appointment in accordance with the relevant provisions of the Federal Constitution, fate intervened. An event which was unprecedented in scale and form occurred.

Much has been written about this unfortunate event in 1988, i.e. the Tribunal and eventual removal of Tun Salleh Abas as the Lord President. Thus I shall refrain from regurgitating the issue here. What is important is that as the Chief Registrar of the Federal Court then, I was still a public officer. Thus instructions and orders from on high are incumbent to be obeyed. And as the directions went, I had to also comply with the deferment of my appointment to the Bench.

The aftermath of the Tribunal and eventual removal of Tun Salleh Abas as Lord President, meant that a new Lord President was to be appointed. This took place on 9<sup>th</sup> August 1988 when Tun Hamid Omar was appointed as Malaysia's seventh Lord President.

Tun Hamid Omar then took steps towards my appointment as a High Court Judge in Kuching.

The above narrative therefore puts paid to the belief that my appointment to the Bench was not altogether altruistic. Sometimes one cannot dwell too much or too long on these issues. One has to be philosophical and get on with one's life. After all, I must now carry out the trust bestowed on me to dispense justice without fear or favour. I then made my way across the seas, to Kuching.

In those days, before a Judge sits on the Bench for the first time, it was the tradition for an elevation ceremony to be held. This is to welcome

the newly appointed High Court Judge by the local practitioners and relevant stakeholders. Hence, a date was fixed for my elevation ceremony in the Kuching High Court.

The then President of the Advocates' Association of Sarawak, Mr. Sulong Matjeraie (now Tan Sri) came to see me. He intimated to me that the local lawyers wanted to boycott my elevation ceremony. Fortunately, Encik Sulong Matjeraie managed to pacify his colleagues and thereafter good sense and pragmatism prevailed. My elevation ceremony went on without a hitch.

At the elevation ceremony, Mr. Sulong Matjeraie, as the President of the Advocates' Association of Sarawak, presented his speech, welcoming me as a High Court Judge; he expressed the sentiment that the lawyers as officers of the court would render and extend their cooperation to me, in carrying out my duties as a High Court Judge. His speech was followed by the speeches of the representatives of the Honourable Attorney General and the State Attorney General. As was the practice, I then responded to those speeches accordingly. I thanked them for their support in my appointment as a High Court Judge in Kuching.

This was a good start for me and it certainly helped me in my duty as a High Court Judge.

In my view, the elevation ceremony is a good tradition, for it provides an unobtrusive platform in which a Judge can interact and get to know members of the local bar and other stakeholders. A tea party usually follows the ceremony and it is in this social milieu that some lasting bonds of friendship will be forged.

In my view, it is a shame that this tradition is no longer practised, since mutual respect and support between Bench and Bar goes a long way towards the dispensation of justice. I hope this tradition can be reinstated, for otherwise it will die a natural death.

It might be of interest to know that I was the last person to be directly appointed to the High Court Bench as a Judge; because when Tun Hamid Omar took over as the Lord President, he adopted a new policy. His was that there is to be no more direct appointment as a High Court Judge; all



Tan Sri Haider Mohamed Noor wearing the bench wig.

appointees to the High Court would begin as Judicial Commissioners. A probation period would take place and if all conditions are satisfied, the appointee will be confirmed as a Judge of the High Court. There are of course advantages and disadvantages to this system. But this is not the forum for me to ventilate this issue.

During my tenure as a High Court Judge for four years, I must say in all honesty that I learnt a lot. I heard both civil and criminal cases apart from my function as an Appellate Judge in respect of appeals from the Subordinate Courts. Be that as it may, I would like to mention one civil case that I heard. *Hunter Douglas & 3 Ors v Lim Hong Joo Sdn Bhd & Ors (Suit no: 5/KG 204/89)*. It really was a good experience to hear this particular civil case which relates to a "passing off" of a trademark. Both parties were represented by Queen's Counsel. During the course of the trial, both Queen's Counsel conducted themselves with decorum. They were courteous to the Bench. It would have been a good experience for members of the Bar especially those doing chambering to sit in my court and observe them. Their submissions were short and succinct. It helped me greatly in my task in arriving at my decision.

I usually reserved my decision to a date to be fixed as I thought it would be better to give a written judgment as I anticipated that whichever way my decision goes the aggrieved party would surely appeal.

However, the pleasure I had in having the Queen's Counsel appearing in my court in this case quickly dissipated when I was told by my then Senior Assistant Registrar Puan Rhodzariah Bujang (now a High Court Judge in Kuching), that they expressed concern about the apparent tardiness in our courts in delivering our judgments. The Queen's Counsel apparently heard this was the case in the Kuala Lumpur High Court. Puan Rhodzariah however assured the Queen's Counsel that no such thing is likely to occur in my court (and for that matter in other courts as well).

I must confess that their misconception spurred me on to prove them wrong. I felt that it was my duty to correct any negative perception they might have had with regards to our Judiciary.

I worked very hard in ensuring that their apprehension of late judgments was completely misplaced. Within a month, I completed my judgment and delivered it accordingly.

I have this to say. I am aware that the issue of backlog of cases is now a thing of the past. But there are still pockets of problems with regard to the question of arrears of judgments. This miniscule percentage however can upset the smooth running of the administration of justice and tarnish an otherwise efficient and just system.

I suppose a good habit for judges to inculcate, is to immediately write down their thoughts whilst hearing the case. These notes would be a boon when writing their grounds of judgment. And if they have to write that judgment, do it as soon as is practicable so that they will not lose the momentum of the case.

I practised just that. I also made it a point not to leave any cases partly heard, if it can be helped. In this way, I need not go back to that station to continue to hear the part-heard cases.

I am glad to say that when I left Kuching, the necessity of going back there did not arise since all my cases were completed.





Tan Sri Haidar Mohamed Noor (left) and the late Tan Sri Wan Adnan Ismail (former Chief Judge of Malaya) at the elevation ceremony of Federal Court Judges in 1999 at Bangunan Sultan Abdul Samad.

In my view in this way, judicial time and expense would be saved. I hope Judges will adopt this practice.

This was the exact judicial management practise I adopted when I became the Chief Judge of Malaya. Before transferring a Judge from one station to another, I would give the Judge sufficient time to complete his cases and write his judgments before he or she is transferred.

In those early days, I was posted to the High Court Bench in Johor Bahru on 1<sup>st</sup> January 1993.

In working with two other Judges in Johor Bahru, what I can say is that in any setting like this, patience and great interpersonal skills in our social and professional relationship is a necessity.

It is incumbent on Judges to be courteous and respect one another.

Pomposity certainly strikes a discord in social harmony, at least as far as I am concerned. It is acknowledged that the office of a Judge is a highly respectable one. However, one must not forget

that the public looks to the Judge to resolve their grievances, be it between themselves or against the authorities. Thus one should be more mindful of the huge trust placed in oneself rather than being overblown with conceit. It may be appropriate for me to quote this observation by an American Jurist, Harold Medina, cited in an article by Lord Henry Brook where he said:

*"After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe it, he is a lost soul."*

One of the more interesting cases I heard was the case of *H&R Johnson Ltd & Anor v H&R Johnson (M) Bhd* [1998] 4 MLJ 131 where both parties decided to use court reporters from a Hong Kong firm to record the proceedings. The costs were shared equally by both parties. The proceedings went on smoothly and expeditiously.

At the close of the proceedings, the compact discs (CD) were made available to me and both parties verified the content. That was in 1998. I would like to believe that this was the forerunner to our court computer system which is applicable in our courts now.

When I was elevated to the Court of Appeal and then to the Federal Court, the role and responsibilities were totally different. At the Court of Appeal, we sat in a panel of three members, with the President of the Court of Appeal as the Chairman. Sometimes a senior member is assigned as the Chairman by the President. Similarly, in the Federal Court, the Chief Justice presides the panel, or the most senior judge in any given panel will chair the sitting.

What is important is that, in a collegial setting as is the case in the Court of Appeal and the Federal Court, it is crucial that each member participates fully and integrates wholly in the group. Each member of the coram is a judge in his or her own right. Thus it is important that each one contributes equally in the discussion and decision-making process. Thus if a Judge disagrees with the majority decision, he or she is at liberty to dissent; though of course he or she must write a separate dissenting judgment. Even if the Judge agrees with the majority judgment, it is good practise nevertheless, to add a short paragraph to indicate his or her agreement with the said judgment. The concurring Judge may also like to ventilate on one or two issues not expanded by the writer of the judgment.

This is to be encouraged, for not only does it reflect transparency in decision making, it also allows the concurring Judge to express a point not dealt with, one way or another by the writer.

I hope too that this practice now long abandoned, can be reinstated.

As Chief Judge of Malaya, there were occasions when I received complaints against certain Judges who refused to recuse himself or herself, where the parties themselves had requested the said Judge to do so.

The Judge's refusal to recuse himself stems from his belief that it would confirm the doubt in his ability to adjudge the matter impartially.

However, my view is that, it is prudent in the interests of justice to recuse himself in those circumstances.

Anyway I advised the Judge that should he refuse to heed my advice, I may have to resort to invoking my powers under section 20 of the Courts of

Judicature Act 1964.  
Section 20 reads:

#### Distribution of business

*"20. The distribution of business among the Judges of the High Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the Chief Judge."*

If there is a formal application to recuse, then it is entirely up to the Judge to make a decision. Under such circumstances, I cannot interfere. The aggrieved party is then entitled to appeal to the Court of Appeal.

In my time as the Chief Judge of Malaya, there is a Practice Direction (as there is now) which requires judges to complete their grounds of judgments within the prescribed time as set out therein.

Even as my special officer Mr. Nithiyanantham Murugesu monitored the schedule of judgments to be written, I did my part by writing to the Judges, reminding them of the need to comply with the Practice Direction.

I am happy to record that about ninety percent of the time, Judges will capitulate, even if at the 11<sup>th</sup> hour, and their judgments magically appear on my table! I suppose the thought of being marginalised in the next promotion exercise is not a welcome prospect! Moving on to my time as a member of the Judicial Appointments Commission, I must commend the present leadership in the Judiciary for their effort in parlaying off any return to the former time of huge backlogs of cases and making sure Judges keep their arrears of judgment at an acceptable level.

In conclusion I have this to say. I can see that whilst the current school of Judges are usually IT-savvy and hands-on with their workload they would do well to pause for a while and contemplate what it really means to be a Judge.

They must always keep in mind the oath of their office. The well-worn platitudes of maintaining absolute integrity, justice, independence and accountability are never out of date and in fact should be their watchword.





Judges attending a function at the old Istana Negara at Jalan Istana, Kuala Lumpur  
(L-R): Tun Dato' Seri Abdul Hamid Mohamad, H.E. Tan Sri Dato' Michael Chen Wing Sum, Tan Sri Haidar Mohamed Noor, Justice Zainun Ali, Tan Sri Zaleha Zahari, Tan Sri Abdul Malek Ahmad and Tan Sri Siti Norma Yaakob



## REMEMBERING THE LATE TAN SRI ABDUL MALEK AHMAD (FORMER PRESIDENT OF THE COURT OF APPEAL)



Tan Sri Abdul Malek Ahmad

Writing a tribute about my father is not easy for me but I must admit that it is such an honour to represent my mother and my siblings in conveying the myriad of contributions and achievements my father had made throughout his lifetime.

My late father Tan Sri Dato' Seri Dr Abdul Malek bin Haji Ahmad was born in Singapore on 28<sup>th</sup> July 1944. He received his early education at McNair Primary School and later furthered his studies at the prestigious Raffles Institution in the Republic. He read Law at Inner Temple, London, completing his Bar Finals in May 1965 before he reached the

age of 21. He was called to the English Bar by the Honourable Society of Inner Temple in 1966 and returned to Malaysia to join the Judicial and Legal Service.

The same year, on February 1<sup>st</sup>, my late father began his distinguished legal career as a Magistrate in Kuala Lumpur. Thenceforth, over a span of 19 years he went on to serve in various capacities, as Deputy Public Prosecutor, President and Senior President of the Sessions Court, Senior Federal Counsel as well as Parliamentary Draftsman attached to the Attorney General's Chambers.





A picture of my father taken during his tenure as a Judge of the High Court in Malaya.

On 1<sup>st</sup> January 1985, he was elevated as a Judge of the High Court in Malaya at the age of 40, being one of the youngest judicial officers to be elevated as a High Court Judge. On 1<sup>st</sup> December 1995, he was elevated Judge of the Court of Appeal and on 1<sup>st</sup> May 1999, Judge of the Federal Court of Malaysia. On 12<sup>th</sup> July 2004, he was finally appointed President of the Court of Appeal Malaysia, the second highest position in the Malaysian Judiciary. Upon his appointment, the Malaysian Bar released the following statement:

*"Justice Malek Ahmad has in his many years on the Bench demonstrated the right judicial qualities and temperament. He has exhibited judicial independence and integrity, and enjoys widespread respect from the Bar and those who are familiar with the functioning of the judiciary in Malaysia. His proven ability, reputation, standing, seniority and experience (all of which are criteria which the Bar consistently advocates to be relevant to judicial appointments and promotions) make him well suited for this important position. It remains for him in the years to come to draw on these qualities in introducing the necessary changes and improvements to the system in a way that will restore public confidence in the judiciary. The appointment augurs well for the future of the judicial system in Malaysia."*

I was in my second year of completing my law degree in Cardiff University, Wales. As I recollect I was back in Kuala Lumpur during the winter break to witness the oath taking ceremony. The elevation had been very inspirational and had given me the motivation for me to complete my studies and follow in my father's footsteps.

Throughout his tenure as a Judge in the High Court, the Court of Appeal and the Federal Court, my father had participated in over 1000 published judgments and written 200 to 300 judgments. Amongst his notable judgments in the Federal Court was that of *Dato' Seri Anwar Ibrahim v. PP* [2004] 4 CLJ 157 in which he ruled that the Federal Court has the jurisdiction and power to reopen and review any matter already decided by it if there is any allegation of injustice or abuse of the process of the Court.

His overriding sense of justice led him on occasion to dissent from the majority view as seen in the case of *Kam Teck Soon v. Timbalan Menteri Dalam Negeri, Malaysia & Ors and Other Appeals* [2003] 1 CLJ 225 where contrary to the majority view he held that a person who is arrested under the Emergency Public Order and Prevention of Crime Ordinance 1969 is not deprived of his rights under Article 5(3) of the Federal Constitution.





Conferment of Datuk Paduka Mahkota Kelantan (DPMK) by the then Sultan of Kelantan on 30<sup>th</sup> March 1988.

My father was appointed as an Honorary Overseas Benchers of the Honourable Society of the Inner Temple, London on 21<sup>st</sup> February 2005. It was indeed a proud moment for my father as the appointment is the highest honour that an Inn can bestow upon one of its members who has become eminent in his calling and has brought honour to his Inn. To quote the Malaysian Bar, with the appointment, my father joined the ranks of other distinguished international jurists such as Richard Goldstone of South Africa, Patrick Chan of Hong Kong, Yong Pung How of Singapore and three members of the US Supreme Court, Anthony Kennedy, Stephen Breyer and Antonin Scalia.

When the Honourable Society of the Inner Temple received notification of his death on 4<sup>th</sup> June 2007, the Master Treasurer immediately directed that the flag of the Inner Temple in London be flown at half-mast for the whole day as a mark of respect and in memory of my late father. This gesture speaks volumes for the man who dedicated his

life tirelessly to the service of the law and to the development of the jurisprudence of Malaysia and the Commonwealth.

My late father was also honoured with a Doctorate of Laws by the University of West England, Bristol by its Chancellor, the Right Honourable Baroness Elizabeth Butler-Sloss in 2006. However, as he was too ill to travel to Bristol to receive the award, my mother received it on his behalf on 21<sup>st</sup> April 2008, 11 months after his passing in a simple ceremony in Kuala Lumpur attended by relatives and close friends. The University of West England had also established a scholarship in my father's name to honour his various contributions in facilitating the educational links with the UK, for outstanding Malaysian students of law who intend to read for the Bar.

When my father was appointed as the third Pro-Chancellor of the University of Malaya in August 2005 by the then Chancellor of the University, His Royal Highness Paduka Seri Sultan Perak, the late Almarhum Sultan Azlan Shah Al-Maghfur-Lah, he was overjoyed as it was a fitting culmination of his earlier involvement in the premier university as a part time lecturer between 1975-1977 as well as an external examiner of the Faculty of Law. Many were amazed by how a busy Judge can find time and immerse himself in preparing exam questions and marking examination scripts.

A Remembrance Ceremony was jointly organised by the University of Malaya and the Inner Temple of London (Malaysian Alumni) on 31<sup>st</sup> January 2008 at the University's Dewan Tunku Chancellor in memory of my late father. It was well attended by members of the legal fraternity as well as those who knew him. We were overwhelmed by the glowing tributes paid by all the speakers.

One such tribute came from Datuk KC Vohrah, a former colleague and close friend of my father. In his speech he said, and I quote:-

*"The late Malek was an uncommon Malaysian, whose most important characteristics were his natural and tremendous sense of fair play and his unquestioned integrity."*

Expressing his displeasure that my father was bypassed for the top post in the Judiciary, Datuk KC Vohrah famously declared that "He (Malek) was the Chief Justice that this fair country should have had but never had."





Appointment as the President of the Court of Appeal by the then Yang di-Pertuan Agong on 12<sup>th</sup> July 2004.

In recognition of his contribution to the country, my father was conferred the Johan Setia Mahkota (J.S.M) on 1<sup>st</sup> June 1983 and the Panglima Setia Mahkota (P.S.M) which carries the title Tan Sri on 4<sup>th</sup> June 2005. From the state of Kelantan, he was awarded the Dato Paduka Mahkota Kelantan (D.P.M.K) on 30<sup>th</sup> March 1988 and the Darjah Kebesaran Jiwa Mahkota Kelantan Yang Amat Mulia (S.J.M.K) on 30<sup>th</sup> March 1996. He was also conferred the Darjah Panglima Pangkuan Negeri (D.P.P.N) by the Penang State Government on 8<sup>th</sup> July 2006, which carries the title Dato' Seri. My father deeply appreciated each and every award conferred on him as it was a recognition of his sincere contribution and sacrifice for his beloved country.

When not writing his judgments or reading his files, my father filled his time with useful activities. Being a man of many talents he not only played the piano but also compiled songs and wrote lyrics. Some of his songs were sung by famous singers

such as the late Sudirman Haji Arshad, amongst others. He was also a sporting singer who could never say no when asked to sing at judicial or royal functions.

My father had a wry sense of humour and was always so cheerful with a natural ability to keep people in stitches with his sharp wit. However, he can be quite serious especially when it comes to work. Although he had a reputation as a hardworking Judge, he never took his work home as to him his quality time at home is to be spent with his wife and children.

My father had many friends. They loved him as he was so genuine, helpful and kind. My father had lived his life to the fullest. He always spent his time doing things that benefited people around him. He even joined the "Befrienders" in the late 70's till early 80's as he loved to help people in need and listen to their problems.





My father receiving his letter of appointment as Pro-Chancellor of the University of Malaya in August 2005 from the late Sultan Azlan Shah, the then Chancellor of the University of Malaya.

We will always cherish the values our father upheld and instilled in us and we hope to pass on these values to our children. We were raised to be confident, kind and humble and to mix not only with friends from the same race and religion but with everyone in society.

Writing this tribute is something really hard for me. Reading and recollecting various information has brought tears not only to me but also my mother as it brought back memories we had with him. Nonetheless, we realise it has to be done so that his memory will continue to be cherished especially by the legal fraternity.

I remember the day he passed away. We were so touched by the huge crowd that turned up at

our residence to pay their last respects to him. People from all walks of life came to say goodbye to a man so deeply respected and loved. It was a rare sight to see Judges and lawyers weep openly, saddened by the passing of a man who had lived his life in truth, honour and dignity. His demise was deeply and profoundly felt not only by us, but also everyone whose lives he had touched one way or another. Even though he is no longer with us, I believe he left behind a legacy, having served the nation selflessly with his deep sense of commitment, compassion, integrity and courage and for honouring his oath of office to the very end. Even now, we are touched when strangers come up to us and tell us what a remarkable man he was and how lucky they feel to have known him.



May Allah SWT shower His blessings and mercy on this remarkable man, the man we call our father. I would like to end this tribute with a poem:

*A special dad is hard to find,  
You will forever be in my mind,  
I wish you could have stayed forever,  
But I will never forget you, not ever.*

*If dreams weren't dreams and dreams came true,  
I wouldn't be here, I'd be with you.  
Distance is one thing that keeps us apart,  
But Daddy you will always remain in our hearts.*

*A special smile, a special face, a special someone  
we can never replace,  
We love you and we always will,  
You filled a space that no one will ever replace.*

*Al-Fatihah*

Farhan Ashraq Abdul Malek  
December 2016



The late Tan Sri Malek with his wife Puan Sri Roziah Sheikh Mohammed and his children, Farhan Ashraq, Farhana Ashriqin and Fatin Azalea (smallest in front) on the occasion of Tan Sri Malek's elevation to the Federal Court on 1<sup>st</sup> May 1999.





Sprigs of green on the walls of Palace of Justice



THE GENESIS OF TRANSFORMATION  
AN INTERVIEW WITH  
TUN ZAKI TUN MOHAMED AZMI  
(FORMER CHIEF JUSTICE OF MALAYSIA)  
BY JUSTICE AZIZUL AZMI ADNAN



Tun Zaki Tun Mohamed Azmi

There is little dispute that the transformation of the justice delivery system is one of Malaysia's shining success story of the new millennium. The transformation and reengineering of the courts has been deservedly recognised in the international community. The World Bank report on the transformation program stated:

*"The Malaysian Judiciary's recent program offers an interesting model for other countries attempting a backlog and delay reduction program, and in fact for those pursuing other goals in their reforms. The Malaysian model is not radical in its content so much as in its ability to follow best practices, something which few countries in its position manage to do".<sup>1</sup>*

1 Malaysia: Court Backlog and Delay Reduction Program, A Progress Report, August 2011

The Malaysian model is held up as a leading example to be followed by other countries seeking to undertake judicial transformation.

Much has been written about the approach that had been undertaken by the Judiciary — the three pronged strategy of legislative amendment to overhaul the procedural aspects of the justice delivery system; the use of technology to bring the courts' systems up to date with contemporary management systems; and the addressing of the backlogs in cases. There is no need to traverse these familiar grounds here; suffice to say that though the substantial part of the job is done, the maintenance of the standards must nonetheless be monitored with close vigilance to ensure that we do not unconsciously regress into the errors of the past. The story that needs to be told is the genesis of the transformation.

The success of the transformation is however one that is perhaps not lauded enough within Malaysia, and one suspects that there may be a number of reasons why this may be so. First, it is inevitable that any story of transformation would necessarily involve the telling of the tale of what had preceded before, and as a culture we tend to be a little coy about highlighting the extent of our own previous shortcomings. A second reason is that frequently those in the eye of the storm have little appreciation of the enormity of the phenomenon surrounding them; their closeness to the epicentre robs them of perspective.

The aim of this article is to address that.

The story begins with one man, Tun Zaki Tun Azmi, Malaysia's seventh Chief Justice and twelfth head of the Judiciary. Tun Zaki will be the first to volunteer that he did not undertake the changes singlehandedly and that he was reliant on a vast number of capable generals, lieutenants and foot soldiers to push through the reforms that had been undertaken. What is undeniable though is that none of those changes would have been possible without his vision, clarity of thought and unrelenting will. I met Tun Zaki for this article. At 70, he still exudes the nervous energy and, one suspects, the inability to sit still, qualities that no doubt propelled him to the pinnacle of practice, business and the Judiciary. Spend a few short moments with him and you will see the grit, obduracy and the sheer force of will to push himself and others to the limits of ability. I recall meeting him about two years ago, shortly after my appointment as a Judicial Commissioner. I asked him how he was, and he complained of a sore arm and shoulder. The cause? He was in the gym, doing push-ups with a 10kg weight on his back, which resulted in his bicep muscle becoming

detached from his scapula. At an age where others may look forward to winding down and enjoying retirement, Tun Zaki is still a man in a hurry, still pushing himself in more ways than one.

It is important to appreciate the prospective and context of Tun Zaki's elevation. In 2007, the Royal Commission of Inquiry into the VK Lingam Video Clip had been formed. It is fair to say that the image of the Judiciary was then at an ebb, at the nadir of a descent precipitated in 1988. From this perspective, the decision to elevate Tun Zaki would be all the more remarkable. It had all the makings of an unmitigated disaster: with the image of the Judiciary at its ebb, the decision was made to elevate a lawyer with self-acknowledged links to UMNO as a Judge of the Federal Court. An examination of contemporary news commentary will reveal that the news of his appointment was met with much negativity and scepticism. Of course, subsequent events have proven that such scepticism was spectacularly unfounded.

The question in my mind was, how did his appointment come about? I asked the man himself this question.

It all began with a telephone call and a one a half hour car journey. Tun Zaki — then Tan Sri Zaki — received a call from the then Prime Minister Tun Abdullah Ahmad Badawi, summoning him to the MATRADE building. Upon reaching there, Tun Zaki was asked to get into the Prime Minister's car and was instructed to tell his driver to tail the Prime Minister's convoy. The destination: Malacca, where the Prime Minister had a subsequent function.

It was during this fateful journey that it was revealed that the Prime Minister wished for Tun Zaki to be appointed a Judge. He was however reluctant, and recited a litany of reasons why he did not wish to be appointed. The Prime Minister was however steadfast and persuasive, and by the end of the journey Tun Zaki had relented, despite his misgivings, and despite his knowing that his wife would have similar misgivings.

Was there any expectation or understanding that he would be appointed Chief Justice? This was not discussed directly, but what had crossed Tun Zaki's mind was that he would not have been asked if there was no plans for him to ultimately lead the Judiciary. Equally, there was no discussion on what the steps that had to be taken to improve the situation, but it would have been clear that the discussion would have centered on the challenges then faced by the courts.





Tun Zaki (right) with Chief Justice Arifin Zakaria (left) at Istana Negara.

The putting forward of his name as Judge was thus a *fait accompli*, a call of duty that could not be ignored. More than anything else however, the enormity of the task was viewed by Tun Zaki as a challenge. A challenge that appealed to the competitive spirit that burned deep within himself, and which had theretofore propelled him to the top of his profession as a lawyer and his business.

He had no assurance that he would succeed, of course. What he did have was the unshakeable faith that God had thrust him into a position of responsibility and that God would equip him with the tools to be able to succeed. It was up to him to supply the will.

By journey's end, Pak Lah stepped out from the left door of his car to be greeted by the assembled throng. Tun Zaki stepped out unnoticed from the right door, got back into his car, and began his own long journey of judicial reform.

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It was a peculiar feature of the reform undertaken under Tun Zaki that there was no blueprint prepared, no study or diagnosis made, and no recommendation tabled. He just got on with the job

of transforming the system. Where there existed low hanging fruits, change was effected immediately. Frequently these initial changes requested no capital outlay, other than the considerable time and effort of the registry staff involved. Once implemented, these changes often resulted in substantial costs savings.

This approach is best summed up in the following passage of the World Bank report:

*"The reform implementation followed logical steps. One preliminary step usually recommended, a thorough assessment or diagnostic of the judiciary's situation, was skipped in Malaysia. However, the Court's working hypothesis, that there was delay and backlog that could be eliminated rather quickly, was based on prior, if less systematic, observation by the reform leaders (and especially the Chief Justice). Besides, the way the reform was organized (the sequence) meant that the early steps served to verify the hypothesis. Had the inventories discovered, contrary to expectations, that all pending cases were recent ones and moreover active, the program*



*would have needed modification. Furthermore, there was constant monitoring of progress which inter alia allowed the identification and resolution of additional problems along the way. Thus, for the reform's immediate purposes a further diagnostic was probably not needed (it would only have added delays and possibly weakened the initial consensus), but others contemplating similar programs should not assume this applies equally to them."*

Tun Zaki viewed the reforms as posing little downside risks. A proposed change would be first implemented on a small scale as a test case. If these changes proved successful, they would then be rolled out across the country. If proven impracticable, then the test case would simply revert to the *status quo ante*. Thus each change was implemented in bite-sized chunks, with the consequences of failure being relatively small and easily manageable. A picture thus emerges of Tun Zaki as the consummate manager and chief executive.

I asked Tun Zaki whether it made any difference that he is the son of a former Lord President.

"None whatsoever", he shot back with little hesitation. He will be the first to admit that the law interested him less than the challenge of fixing what was essentially a troubled system. Being a hard-nosed trouble-shooter did not mean that he was devoid of

diplomacy and tact. He knew that it was necessary to keep the executives informed of the changes that he was undertaking and ensuring that those in control of the purse strings of government were on the same page as he was.

When the time came to make the capital-intensive investment on to the necessary information technology infrastructure, he had already established a track record and reputation for being a careful and astute manager. The budgets for the new court management information systems and the recording and transcript system were approved with little hesitation.

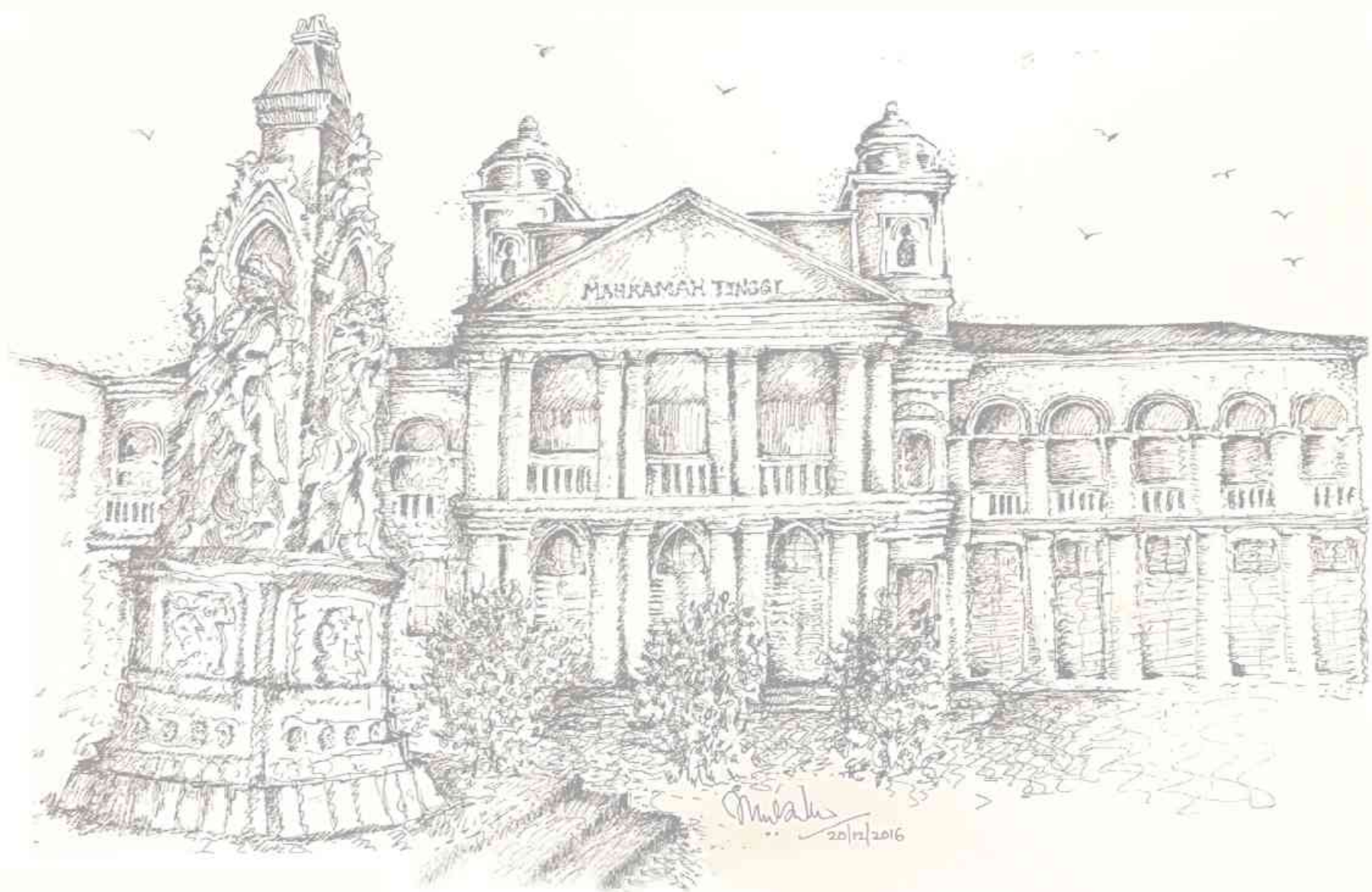
The story of the transformation of the Malaysian Judiciary is one that is still unfolding as I write this. The baton had been passed to Chief Justice Arifin Zakaria in 2011 and the effects of the next phases of change will continue to be felt. As is often the case, the true impact of any change in history can only really be appreciated objectively with the passage of time.

Despite this, one thing is certain. The Malaysian Judiciary's turning point in its recent history occurred when Tun Zaki took that fateful 90-minute drive to Malacca. Those who have been involved in the change brought about with the guidance of the former Chief Justice will have been privileged to have served under his leadership.



Chief Justice Arifin Zakaria with Tun Zaki Azmi and the Managing Judges back in 2010.  
Standing (L-R): Tan Sri James Foong Cheng Yuen, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Abdull Hamid Embong, Justice Ramly Ali, Justice Suriyadi Halim Omar





## **CHAPTER 8**

### **HUMAN RIGHTS - THE RIGHTS OF CHILDREN**





"Little Sisters on the Bench" by Justice Zainun Ali.



## HISTORICAL BACKGROUND – CHILDREN’S RIGHTS

### CHILD : A DEFINITION

The United Nation Convention on the Rights of the Child (CRC) defines a child as every human being below the age of 18 years, unless under the relevant law applicable to the child, the age of majority is attained earlier. Malaysia ratified the CRC on 17<sup>th</sup> February 1995. The Child Act 2011 (Act 611) is one of the key outcomes of the said ratification. Under the Act 611, a “child” refers to a person under the age of 18 years. In criminal proceedings, an adult means a person who has attained the age of criminal responsibility which is 10 years and above, as prescribed in section 82 of the Penal Code (Act 574)<sup>1</sup>.

### CHILDREN'S RIGHTS : THE TRADITIONAL SOCIAL SYSTEM

Children’s rights simply mean the human rights of children. Although human rights have been discussed since the 17<sup>th</sup> century, it was not until the 19<sup>th</sup> and 20<sup>th</sup> centuries that the rights of children began to be considered<sup>2</sup>.

Philippe Aries, the French historian, in his controversial book *Centuries of Childhood* argued that childhood was a very new concept. It did not exist at all in the Middle Ages. The children were integrated into the community as small adults and not distinguished as children, as they were supposed to be<sup>3</sup>. A young person of seven was already considered an adult. Most of them were apprenticed, became workers in the fields and generally, children entered fully into adult society at a very early age<sup>4</sup>. Families put their children to work on their farms

or in whatever labor was necessary for survival. They have not been considered a separate group but were traditionally thought of as the property of their parents<sup>5</sup>. Children and adults in a family worked as one unit, side by side, to make money as one economic team.

### INDUSTRIAL REVOLUTION : CONDITION AND TREATMENT OF THE CHILDREN

When the Industrial Revolution first started, it directly affected the structure of families who used to work together. The family as the core of economic production was replaced by factories and mines which were hungry for workers. Children were also hired. They went to work at the insistence of their parents.

By 1835, 40% of mill workers were under 18 years of age and 16% were under 13. Some children were forced to work in industries because they were orphans who were expected to be productive<sup>6</sup>. Children could operate many of the machines in factories just as efficiently the adults, yet could be hired for less pay. A great number of children were made to work for 12 to 14 hours a day under horrendous conditions. Many were apprenticed to the factory owners and housed in miserable dormitories. Ill-fed and ill-clothed, they were sometimes driven under the lash of an overseer<sup>7</sup>. The image of dark Satanic mills consuming children was a central image of the Industrial Revolution. The life of a child labourer in the early English factories was brutal. Nonetheless, some children not only endured but went on to become adult factory workers<sup>8</sup>.

1 Section 82 of the Penal Code provides “ Nothing is an offence which is done by a child under ten years of age.  
2 <http://www.childrenrightswales.org.uk/history-of-children-rights.aspx>. Retrieved on 1<sup>st</sup> August 2016.  
3 Sandy Hobbs, Jim McKechnie, Michael Lavalette, *Child Labor: A World History Companion*, ABC-CLIO (1999) at page 32.  
4 Bob Corbett, *Centuries of Childhood* by Philippe Aries. New York: Vintage Books. 1962 447 pages. <http://faculty.webster.edu/corbetra/philosophy/children/aries.html>. Retrieved on 5<sup>th</sup> August 2016.  
5 CJ George, *A Brief History of the UNCRC*. [www.childrenrightsindia.org/pdf/Brief%20History%20UNCRC.pdf](http://www.childrenrightsindia.org/pdf/Brief%20History%20UNCRC.pdf). Retrieved on 20<sup>th</sup> September 2016.  
6 Tim McNeese, *The Industrial Revolution*. Milliken Publishing Company (2000) at page 10.  
7 *Steam and Steel*, edited by James Wolfe. *The Age of Revolution - The Industrial Revolution*. Britannica Educational Publishing In Association With Rosen Educational Services. First Edition at page(s) 63-64.  
8 Douglas A. Galbi, *Child Labor and the Division of Labor in the Early Cotton Mills*. *Journal of Population Economic* (1997) 10: 357-375. <http://www.galbithink.org/child.pdf> Retrieved on 21<sup>st</sup> September 2016.



## CHILD LABOUR : THE CRITICISM

Child labour is not an invention of the Industrial Revolution. From time immemorial children, as said above, were made to work for their living as soon as they were able, and the exploitation of children by their parents is no new thing either. But the Industrial Revolution did bring about great changes in the extent and character of juvenile labour<sup>9</sup>.

The widespread employment of very young children had triggered a series of parliamentary enquiries into the working conditions of children in mines and factories. Their reports famously shocked Elizabeth Barrett Browning and Charles Dickens, inspiring the poem 'The Cry of the Children' and the book 'A Christmas Carol' by them respectively. Child workers also appeared in several other Dickens novels such as 'Oliver Twist'<sup>10</sup>. Many of the period's most vocal and prolific commentators turned their attention to child workers. And of course, the plight of child workers entered the political heart of the nation when reformers such as John Fielden and Lord Ashley, the Seventh Earl of Shaftesbury, took up their cause in Parliament<sup>11</sup>.

John Fielden was a wealthy mill owner in Todmorden (Lancashire). He believed that the welfare of working people should be one of the aims of political action. As MP for Oldham from 1832, he sponsored a number of Bills to reduce working hours, regulate wages and ban child labour<sup>12</sup>. In a speech to the House of Commons, he expounded on the condition of the child worker as follows:

"At a meeting at Manchester a man claimed that a child in one mill walked twenty-four miles a day. I was surprised by this statement, therefore, when I went home, I went into my own factory, and with a clock beside me, I watched a child at her work, and having watched her for sometime,

I then calculated the distance she had to go in a day, and to my surprise, I found out to be nothing short of twenty miles<sup>13</sup>".

## RIGHTS OF THE CHILD : THE BEGINNING

The 19<sup>th</sup> century marked the start of children's rights. The child began to be considered as a being in need of protection. For the first time in Europe, laws were passed governing child labour. Different legal texts progressively encouraged or made education obligatory for young children, and society recognised the fact that the child could not be dealt with in the same way as an adult<sup>14</sup>.

In France in the middle of the 19<sup>th</sup> century, the idea emerged to give children special protection, enabling the progressive development of "minors' rights". Since 1841, laws began to protect children in their workplace. Since 1881, French laws included the right for children to be educated<sup>15</sup>.

## THE LEAGUE OF NATIONS AND THE GENEVA DECLARATION 1924

The history of children's rights accelerated in the 20<sup>th</sup> century where millions died in the First World War and many more were orphaned by the fighting. In 1919 the League of Nations (later to become the United Nations) was formed with the objective of protecting basic human rights standards. At around the same time, two sisters had the vision to realise the rights of children and offer them greater protection. Thus, Eglantyne Jebb, a British teacher (1876-1928), and her sister Dorothy Frances Buxton (1881-1963) decided to begin direct action and campaigning. The Save The Children Fund was launched at a public meeting held in London's Royal Albert Hall in May 1919. Jebb wanted to make the rights and welfare of children a worldwide issue. The Declaration of the Rights of the Child, also known as the Declaration of Geneva, was drafted

9 E. Royston Pike. *Economic History : Human Documents of the Industrial Revolution in Britain*. Routledge Taylor & Francis Group at page 75.

10 In 1824, the father of the novelist Charles Dickens was sent to a debtors' prison and the young Dickens at age 12 had to work in the factory. Dickens later documented the harsh lives of poor children in such novels such as *Oliver Twist* (published 1838).

11 Emma Griffin. *Child Labour*. <https://www.bluuk/romantics-and-victorians/articles/child-labour>. Retrieved on 15<sup>th</sup> September 2016.

12 Rosemary Reese. *Poverty and Public Health 1815-1948*. Heinemann Educational Publisher. at page 43.

13 Ben Berierley. *Cast Upon the World: The Story of a Waif*. Abel Heywood & Son. at page 50.

14 *History of the Rights of the Child*. <http://bice.org/en/history-rights-child/>. Retrieved on 20<sup>th</sup> September 2016.

15 *Children's Rights History : Historical overview of the Children's rights evolution*. <http://www.humanium.org/en/childrens-rights-history/>. Retrieved on 10<sup>th</sup> August 2016.

by her in 1923. It was adopted along with some parts inspired by Janusz Korczak's version (he was known as the father of children's rights) by the League of Nations in 1924<sup>16</sup>.

In five chapters the Declaration gives specific rights to children and responsibilities to adults<sup>17</sup>. It established the basis of child rights in terms of both protection of the weak and vulnerable and promotion of the child's development. The Declaration also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even individual countries; the world as a whole had a legitimate interest in the welfare of all children<sup>18</sup>.

## THE UNITED NATIONS

The League of Nations was not able to prevent another war. It failed to obtain universality of membership and the unwillingness of some states to renounce war as a means of policy<sup>19</sup>. The Second World War (1939-1945) then took place. It engulfed the entire planet, and caused even greater suffering for non-combatants, particularly children<sup>20</sup>.

As the League of Nations was the product of First World War, so was the United Nations a product of the Second World War. In 1945, 51 nations got together at the end of the Second World War. They wanted to keep peace in the world. The United Nation (UN) was then founded in San Francisco<sup>21</sup>.

## UNICEF (UNITED NATIONS CHILDREN'S FUND)

One of the first substantive decisions of the UN General Assembly was to establish UNICEF. It was created on 11<sup>th</sup> December 1946. The immediate purpose was to provide urgent relief to children in Europe who managed to survive the Second World

War. In its early years, UNICEF resources were largely devoted to meeting the emergency needs of the children in post-war Europe and China for food, medicines and clothing. In December 1950, the General Assembly enlarged the organisation's mandate to address the problem of children in the developing countries. In October 1953, the General Assembly decided that UNICEF should continue this work indefinitely and its name was changed to "United Nations Children's Fund" which was earlier known as "United Nations Children's Emergency Fund", though the well-known UNICEF acronym was retained<sup>22</sup>.

## UNIVERSAL DECLARATION OF THE RIGHTS OF THE CHILD 1959

The UN member states first collectively recognised the rights of children in the Universal Declaration of Human Rights, a non binding resolution adopted by the UN General Assembly in 1948. The Declaration states, "Motherhood and Childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection." It was intended only as a general manifesto requiring elaboration in the form of a treaty that would set down legally binding obligations for states. It was only in 1959 the UN General Assembly adopted its own Declaration of the Rights of the Child in recognition of the concept that "mankind owes to the child the best that it can give"<sup>23</sup>. The Declaration of the Rights of the Child lays down the following 10 principles:

- The right to equality, without distinction on account of race, religion or national origin.
- The right to special protection for the child's physical, mental and social development.
- The right to a name and a nationality

16 Brian Milne, *Rights of the Child: 25 Years After the Adoption of the UN Convention*, Springer International Publishing Switzerland 2015, at page 2.

17 Supra at No.11.

18 Rama Kant Rai, *History of child rights and child labour*, <http://menengange.org/wp-content/uploads/2014/06/History-of-child-rights-and-child-labour.pdf>, Retrieved on 29<sup>th</sup> August 2016.

19 Rumki Basu, *The United Nations: Structure and Functions Of An International Organisation*, Sterling Publishers Private Limited, Revised Edition 2004, at page 15.

20 Supra at No.14.

21 Anastasia Suen, *UNICEF: United Nations Children's Fund*, The Rosen Publishing Group Inc. (2002).

22 Pramila Pandit Barooah, *Handbook on Child (with Historical Background)*, Concept Publishing Company, New Delhi, at page 103.

23 Mark Ensaiaco, Linda C. Majka, *Children Human Rights: Progress and Challenges for Children Worldwide*, Rowman & Littlefield Publishers Inc, at page 11.



- The right to adequate nutrition, housing and medical services.
- The right to special education and treatment when a child is physically or mentally handicapped.
- The right to understanding and love by parents and society.
- The right to recreational activities and free education.
- The right to be among the first to receive relief in all circumstances.
- The right to protection against all forms of neglect, cruelty and exploitation.
- The right to be brought up in a spirit of understanding, tolerance, friendship among peoples and universal brotherhood<sup>24</sup>.

## CONVENTION ON THE RIGHTS OF THE CHILD 1989

The possibility of a Convention on the Rights of the Child (CRC) was first raised by the Government of Poland on 7<sup>th</sup> February 1978. At the time of writing, the CRC has been ratified by 196 States. This Convention is supposed to be binding for states. For the next decade, UN member states participated in a UN Commission on Human Rights (now the Human Rights Council) working group to draft the CRC text. The Convention was adopted on 20<sup>th</sup> November 1989 by the UN General Assembly after a decade of negotiations and entered into force on 2<sup>nd</sup> September 1990<sup>25</sup>.

The CRC encompasses a set of autonomy, development and protection norms that relate to the following: the rights and responsibilities of parents; the best interests of the child; non-discrimination; the child's right to life, survival, and development; protection from harmful influences, abuse and exploitation;

respect of the views of the child; and the full participation of the child in family, cultural and social life. It also recognizes a comprehensive list of rights and corresponding state obligations. The Geneva Declaration of the Rights of the Child contains only five paragraphs; the UN Declaration on the Rights of the Child states a mere 10 principles. The CRC, extrapolating from the basic principles enunciated in the earlier declarations, contains 41 substantive articles covering a range of issues and areas, including those not specifically addressed in the earlier conventions but clearly deducible from their principles<sup>26</sup>.

The followings are the four general principles that extend legal recognition to the rights of children<sup>27</sup>:

### 1. Article 2: Non-discrimination

State parties must ensure that all children within their jurisdiction enjoy their rights. No child should suffer discrimination. This applies to every child, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

### 2. Article 3: Best Interests of the Child

When governments make decisions that affect children, the best interests of children must be a primary consideration. This principle relates to decisions by courts of law, administrative authorities, legislative bodies and both public and private social-welfare institutions.

### 3. Article 6: The Right to Life, Survival and Development

This article is related to the right to survival and to development, which governments must ensure "to the maximum extent possible". The term "development" in this context should be interpreted in a broad sense, referring to physical, mental, emotional, cognitive, social and cultural development.

24 Declaration of the Rights of the Child, 1959. <http://www.humanium.org/en/convention/signatory-states/>, retrieved on 28<sup>th</sup> September 2016.

25 Luisa Blanchfield, *The United Nations Convention on the Rights of the Child: Background and Policy Issues*, Congressional Research Service (2009) at page 2.

26 Supra: 22 at page(s) 12-13.

27 [http://www.unicef.org/malaysia/17982\\_crc-core-principles.html](http://www.unicef.org/malaysia/17982_crc-core-principles.html), Retrieved on 15<sup>th</sup> September 2016.

#### 4. Article 12: The Views of the Child

Children have a right to participate in all matters affecting them, and those views should be given due weight "in accordance with the age and maturity of the child". In short, subject to their age and actual understanding, children have the right to be heard and to have their views taken seriously.

#### MALAYSIA AND THE CRC

Malaysia ratified the CRC in 1995 with certain reservations. The reservations are with respect to:

- Article 2 on non-discrimination:

1. State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

- Article 7 on name and nationality:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. State Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

- Article 14 on freedom of thought, conscience and religion:

1. State Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

- Article 28(1)(a) on free and compulsory education at primary level:

1. State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;

- Article 37 on torture and deprivation of liberty: State Parties shall ensure that:

- a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

- b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

- c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a



manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

These reservations were made since there were discrepancies between the above said CRC articles and some national and Syariah laws.

For example, in terms of definition of children under the CRC (defined as less than 18 years old) and the Syariah law, the basis of legal accountability is different. A child has no legal capacity except when he reaches the age of puberty (*baligh*) and this is based on the Islamic principle of "*aql*" (reason)

and may not necessarily be 18 years old. The child acquires capacity when he reaches the age which Islamic law presumes him to have acquired "*aql*". This is interpreted differently by various schools of thought, but it would appear that the "maturity of mind" (*rushd*) in the context of certain transactions which permits the child a limited capacity. Another important issue is the concept of illegitimacy under the CRC which is unacceptable from the Syariah law perspective. So is the concept of adoption, on which many Muslim states have made reservations to the CRC. Adoption is generally not acceptable to any section of Shariah law, although variants of adoption techniques have been introduced by the CRC. The Islamic variant (*kafala*) allows a child to be brought up in another family but stipulates that inheritance rights cannot be given to them. However, the property rights of the adopted child can be protected through other means such as *hibah* (gift inter-vivos)<sup>28</sup>.

Despite the reservations, children's rights in Malaysia have progressed since it acceded to the CRC in 1995 which led to the introduction of the Child Act in 2001. Initiatives to protect and uphold the rights of children are ongoing both by the government and civil society.

28 Prof. Dato' Dr Zaleha Kamaruddin. Regulating Children's Rights. <http://www.ikim.gov.my/index.php/en/the-star/8221-regulating-childrens-rights>. Retrieved on 10<sup>th</sup> September 2016.

## CONVENTION ON THE RIGHTS OF THE CHILD – THE MALAYSIAN PERSPECTIVE



By Justice Azizah Nawawi  
Judge of the High Court

Malaysia ratified the Convention on the Rights of the Child (CRC) in 1995<sup>1</sup>. However, Malaysia maintained five (5) reservations to the CRC, namely article 2 on non-discrimination, article 7 on name and nationality, article 14 on freedom of thought, conscience and religion, article 28(1)(a) on free and compulsory education at primary level and article 37 on torture and deprivation of liberty. The Government of Malaysia expressed these reservations on the grounds that the said CRC Articles "*do not conform to the Constitution, national laws and national policies of the Government of Malaysia, including the Shariah law*". This paper will seek to analyse some aspects of the CRC in the context of Malaysian laws.

The Preamble to the CRC states that "*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including*

*appropriate legal protection.*" Arising from Malaysia's ratification of the CRC, the key reform introduced was the Child Act 2001 ('Act 611'). In conformity with the CRC, section 2 (1) of Act 611 defines a child as a person below the age of 18 years. In line with the CRC, Malaysian law recognizes that children are not mature enough to protect their own rights and interests, and are entitled to special procedural protection. Therefore, Act 611 provides legal provisions for the protective legal environment for children in the country, such as safeguards for children from violence, abuse, neglect and exploitation. Chapter 3 of Act 611 created offences in relation to the health and welfare of children. There are also provisions relating to children in need of care and protection, children in need of protection and rehabilitation, trafficking in and abduction of children, and provisions for separate places of detention and probation hostels.

1 Malaysia acceded the Convention on the Rights of the Child (CRC) on the 17<sup>th</sup> February 1995. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec).



Upon their convictions, children may be placed in special institutions such as Henry Gurney Schools<sup>2</sup>.

Act 611 also established the National Council for the Protection of Children, which holds the role to advise the Government on child protection issues while the National Advisory and Consultative Council for Children acts as a national focal point for children's wellbeing and development<sup>3</sup>. In respect of the administration of juvenile justice, Act 611 provides for the setting up of the Court for Children, consisting of a Magistrate and assisted by two advisers, whose functions are to inform and advise the Court on any consideration affecting the order made upon a finding of guilt and to advise the parent or guardian<sup>4</sup>.

Malaysia has maintained a reservation in respect of article 2 of the CRC. In respect of article 2 on non-discrimination, all persons, including children, are protected under article 8 of the Federal Constitution, which provides that all persons are equal before the law and entitled to equal protection. This is reflected in the preamble of Act 611 which provides that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any status.

Malaysia maintains a reservation to article 2 of the CRC, due to, among others, difficulty in complying with the principle of equal treatment for all children, which include children of refugees and migrant workers. Children who are not citizens cannot enjoy the benefits provided by the State. Thus, the issue of equality is connected to the issue of nationality, and Malaysia also maintains reservation to article 7, in respect of a child's right to a nationality. Article 7, *inter alia*, provides that that States Parties shall ensure the implementation of these rights in accordance with their national law, ".... in particular where the child would otherwise be stateless." This brings us to the issue of stateless children. The term 'stateless person' refers to 'a person who is not considered as a national by any State under the operation of the law' under the Convention Relating to the Status of Stateless Persons 1954, to which Malaysia is not a signatory.

In a statement made in Parliament on 31<sup>st</sup> October 2016, the Home Minister said that there are 290,437 stateless children in Malaysia who are below the age of 18 years. These children were born in Malaysia but do not have Malaysian citizenship. The Home Minister also states that the bulk of the stateless children have parents from Indonesia, the Philippines and Myanmar. There is no automatic right to citizenship for a child born in this country. The right to citizenship is governed by Part III of the Federal Constitution (FC), which provides that there are 4 types of acquisition of citizenship, by operation of law under Article 14, by registration under Article 15, 15A, 16, 16A, and 18, by naturalization under Article 19 and by incorporation of territory under Article 22 of the Federal Constitution.

Article 14 of the FC must be read together with Part II of the Second Schedule, which provides that every person born before Malaysia Day, who is a citizen of the Federation, are citizens by operation of law. After Malaysia Day however, a person is only a citizen of the Federation if the person was born within the Federation of whose parents one at least is at the time of the birth either a citizen or permanently resident in the Federation. From the aforesaid provisions, in order to claim citizenship by operation of law, it is pertinent that the origin of the paternal and maternal side of the said child be ascertained, as well as the existence and registration of a marriage and the place of birth of the said child must be established.

In the case of **Chin Kooi Nah (suing on behalf of himself and as litigation representative to Chin Jia Nee, child) v Pendaftar Besar Kelahiran dan Kematian, Malaysia**<sup>5</sup>, the Court held that:

"[2] In order for the grant of citizenship by operation of law pursuant to art 14(1)(b) read together with s 1(a) of Part II of the Second Schedule of the Federal Constitution, the child must be born in the Federation to biological parents one of whom at least was at the time of the birth either a citizen or permanently resident in the Federation. Given the wording in art 14, the reference to the relationship of the child to the parents was to be determined with relation to the time of the child's birth. The word 'parents' in art 14 had to refer to the biological and

2 Child Act 2001 (Act 611), Chapter 5.

3 Child Act 2001 (Act 611), Part II.

4 Child Act 2001 (Act 611), Part IV.

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*lawful parents of the child. It was not in dispute that in the instant case the identity of the child's lawful and biological parents was unknown. Hence, the child in the instant case could not qualify as a citizen of this country by operation of law..)*"

The legal position is that citizenship cannot be acquired even if the child was adopted by a Malaysian parent. In **Chin Kooi Nah's case**, the Court also held that the Adoption Act 1952 contains no provision affecting an adoption order on the citizenship of a person. The Court noted that although section 9 of that Act provided for what effects an adoption order might have matters of parental rights, future custody, maintenance and education including rights to appoint guardians, to consent to marriage and other rights, it had no express or implied reference to citizenship. The Court then looked at Article 14 of the Constitution, and found that it contained no reference to the implications of an adoption, or to whether an adopted child could be treated as being born to a lawful parent for the purposes of Article 14.

The Court then looked at the position in other jurisdictions and found that the position in Singapore is similar to Malaysia, where an adopted child does not automatically assume the citizenship of the adopted parents. In the United Kingdom however, the British Nationality Act 1981 expressly provides that an adopted child becomes a British citizen upon adoption by an adopter who is a British citizen, or in the case of a joint adoption, if one of the adopters is a British citizen. The same position applies to Australia under Section 13 of the Citizenship Act 2007.

The other option is to apply for citizenship under Article 15A of the FC. However, as noted by the Court in **Chin Kooi Nah's case**, only the Federal Government has the sole discretion to grant citizenship under Article 15A of the Constitution based on political, economic, social and cultural considerations. The case of **Chin Kooi Nah** followed a long line of cases beginning from **Foo Toon Aik (suing on his own behalf and as representative of Foo Shi Wen, Child) v Ketua Pendaftar Kelahiran dan Kematian, Malaysia**<sup>6</sup> to **Yu Sheng Meng (a child represented by his litigator, Yu Meng Quent) v Ketua Pengarah**

**Pendaftaran Negara & Ors**<sup>7</sup>, and has since been affirmed by the Court of Appeal.

Article 3 of the CRC requires governments, when making decisions that affect children, to ensure that the best interests of children must be a primary consideration. This principle is applicable to decisions by courts of law, administrative authorities, legislative bodies and all social-welfare institutions. Under section 30 and 40 of the Child Act 2001, the Court for Children shall treat the best interest of a child as its paramount consideration. Under section 88 of Law Reform (Marriage and Divorce) Act 1976, when deciding the custody of the children, the court's "*paramount consideration shall be the welfare of the child and subject to this the court shall have regard:-*

- (i) *To the wishes of the parent of the child; and*
- (ii) *To the wishes of the child where he or she is of an age to express an independent opinion."*

Malaysia also maintains a reservation to Article 14 of the CRC, on freedom of thought, conscience and religion. Article 14 provides that:

- "1. *States Parties shall respect the right of the child to freedom of thought, conscience and religion.*
- 2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*
- 3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."*

In the case of **Teoh Eng Huat v Kadhi, Pasir Mas & Anor**<sup>8</sup>, the Supreme Court held that a person under 18 years does not have the capacity to choose his/her religion as only the parent or the guardian has the choice of the minor's religion.

6 [2012] 9 MLJ 573

7 [2016] 7 MLJ 628

8 [1990] 2 MLJ 300



Article 12 (4) of the FC provides that the religion of a person under the age of 18 years shall be decided by his parent or guardian. Several high profile cases have emerged over the years where the children of a marriage have been converted to another religion by one parent, without the knowledge of the other parent. The issue arises as to whether the religion of the child can be decided by the mother or father, or must be decided by both of them. In the case of **Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals**<sup>9</sup>, the Federal Court held that the word 'parent' in Article 12(4) of the FC, which states that the religion of a person under the age of 18 years shall be decided by his parent or guardian, means 'a single parent'. Therefore, the Federal Court held that Article 12(4) must not be read as entrenching the right of choice of religion in both parents.

In 2010, Malaysia withdrew its reservation to article 15 of the CRC in respect of freedom of assembly and participation. However, under the Peaceful Assembly Act 2012 ('Act 736'), children under the age of 15 cannot participate in protests and those under 21 are barred from organising one under section 4(1). Under the Second Schedule, a child may only participate in religious assemblies, funeral processions, assemblies relating to customs and assemblies approved by the Minister. Section 4(2)(e) also provides that it is an offence to bring a child to an assembly or to allow a child to attend an assembly other than the assemblies specified in the Second Schedule.

Article 19 of the CRC provides that the State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims. The Child Protection Act 1991 was enacted to cover a wide range of types of abuse and neglect namely physical, emotional or sexual abuse, exposure to moral danger, abandonment, exposure to untreated illness, lack of remedial action by the guardian or even where the child is found begging. Under the Child Protection Act 1991, doctors and medical practitioners are under a legal duty to report any suspected child abuse and neglect cases to the police to carry out investigations. Children

at risk of abuse or neglect who are taken into temporary custody must be produced before the Juvenile Courts within 24 hours and the Magistrates will order the child to continue to be in a place of safety.

Malaysia has maintained her reservation to Article 28(1)(a) of the CRC:

"1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

a) Make primary education compulsory and available free to all;

The Government has declared that "*with the amendment to the Education Act 1996 in the year 2002, primary education in Malaysia is made compulsory. In addition, the Government of Malaysia provides monetary aids and other forms of assistance to those who are eligible.*"<sup>10</sup> However, with regards to access to education, stateless children can only register in government or government aided schools if one of the parents is a Malaysian.

Article 35 of the CRC stipulates that "*State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*" Malaysia has, in compliance with that article, enacted the Anti-Trafficking In Persons and Anti-Smuggling of Migrants Act 2007 ('Act 670'), where section 14 provides that any person "*who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years.*".

As a State Party, Malaysia has agreed to undertake all the appropriate legislative measures to implement the rights in the CRC. On accession, Malaysia made 13 reservations, but over the years, Malaysia has reduced her reservations to five. Malaysia should strive to ensure compliance with the CRC in the future.

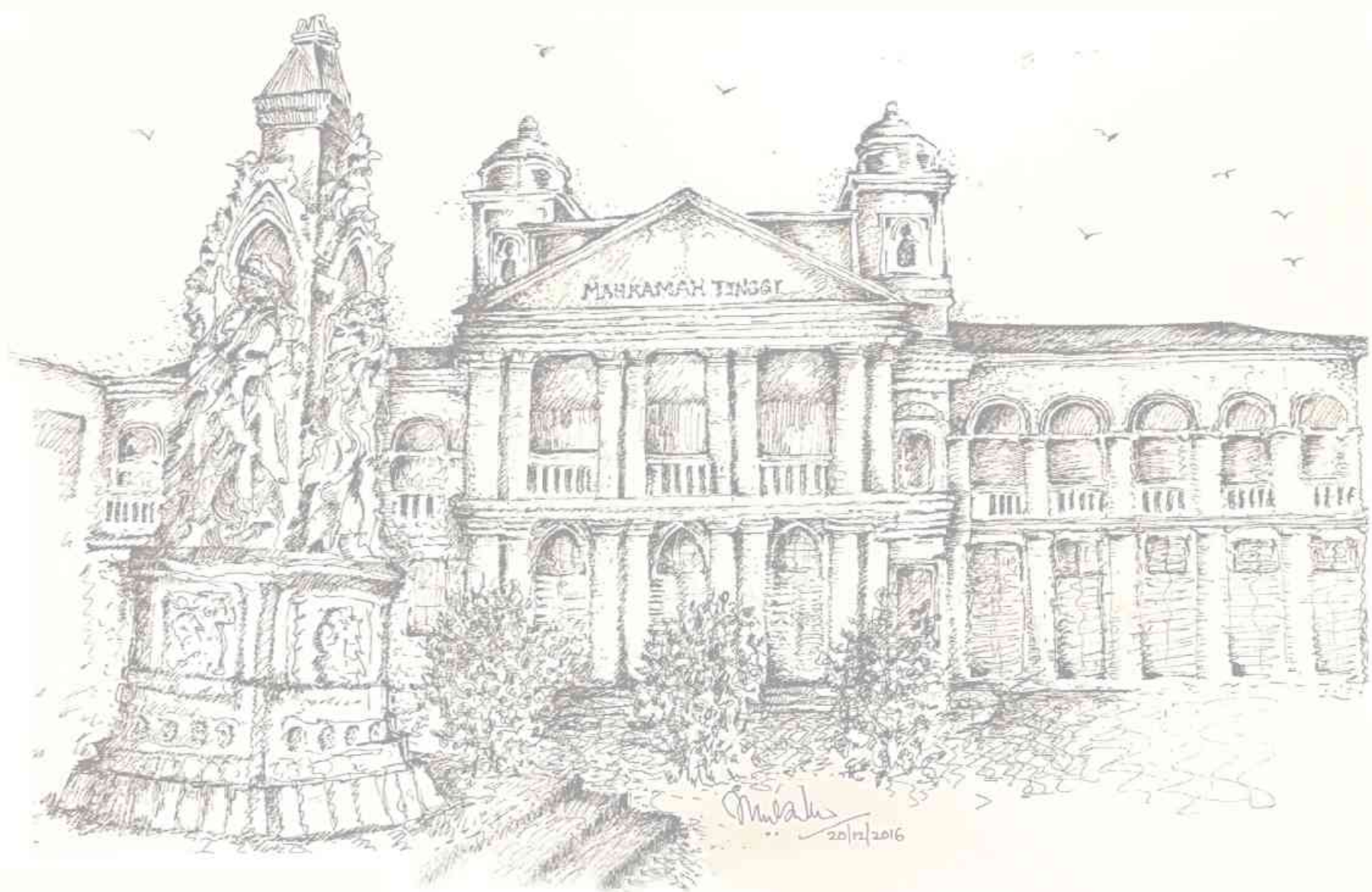
9 [2008] 2 MLJ 147

10 The Supplementary List Treaty Ratification, Accessions, Withdrawal, Etc No. 2 with Treaty index of 2010.



The "New Kid Revival" sketched by Jimmy Khalil based on the original illustration by Heisuke Kitazawa.





## **CHAPTER 9**

### **JUDICIAL INSIGHTS**



## CRIMINAL LAW AND THE CRIMINAL JUSTICE SYSTEM IN MALAYSIA



By Justice Zulkefli Ahmad Makinudin  
Chief Judge of Malaya

### Introduction

The underlying principle in criminal law is the need for a formal means of social control to set limits on the conduct of the citizens. This involves the use of statutes, regulations and rules that are enforceable by the court of law. The possibility of legal restraint, that is imprisonment and other forms of sentencing gives criminal law a greater

force and coercive effect than any other law. The main concern of the criminal law is to prohibit behaviour that represents a serious wrong against the state, an individual or against fundamental social values. The decision to arrest and prosecute the offender for the violation of the criminal law is a public act and something that concerns the state.

## Scope of Criminal Law

The range of criminal offences varies and to name a few, as codified under our Penal Code, are offences affecting the human body which include offences of causing death and hurt, and sexual related offences; offences against the state which include waging or attempting to wage war against the Yang di-Pertuan Agong; and offences against property which include offences of theft, robbery and criminal breach of trust. There are other wide range of criminal offences provided under the relevant legislations to deal with specific criminal acts and wrongdoings.

Criminal law evolves continuously as the needs of the state and certain groups of people are recognised and defined. The ultimate goal is to ensure peace and order in the state and to protect and promote the basic human rights of every person. For instance, engaging oneself in homosexual activities was a criminal act in England before 1967 but it is now legalised. Another good example is the law on abortion. The law in most states in the United States of America which conformed to the thinking of citizen defined abortion as a crime. As social and legal views about the right of the women to control their own reproductive system shifted, the court in **Roe v. Wade**<sup>1</sup>, held that laws restricting abortion were unconstitutional. However, the above laws affecting the moral status of a citizen do not apply in all jurisdictions. Whether certain act or conduct attracts criminal liability may differ from one country to another and from one era to another in the same country. Thus, there is no general standard of moral social test whether certain conduct can be labelled as criminal or otherwise.

In Malaysia, the creation of criminal law today, for most part, is the result of the expansion or revision of existing laws, often reflecting the government's intention to keep peace and order. For instance, the Prevention of Terrorism Act (POTA) 2015 was enacted to complement the existing law i.e. Security Offences (Special Measures) Act 2012 (SOSMA). Whilst the objective of POTA is to prevent the proliferation of acts of terrorism and the rise of threat from the IS (Islamic State) militants, SOSMA was introduced to deal with specific crime prevention against security offences including the

crimes of terrorism, espionage and treason. The amendment of the Prevention of Crime Act 1959 (POCA) is another initiative to combat organised crimes and human trafficking. In view of the real emergence of threat to the national security and public safety based on few incidents that had taken place in our country, there is such a pressing need for these laws to be introduced. The latest addition to such law is the National Security Council Act 2016 (Act 776) which is a new anti-terror law which the government considers necessary to protect Malaysians from internal and external threat of terrorism.

The advancement in communication and information technology can also be a source of threat to public safety. For instance, the use of internet to spread lies and rumours to ridicule any religion, race and important personalities are detrimental to the peace and security of the country. Thus, the law to combat this so-called cybercrime is needed and it should be developed from time to time in tandem with the growing standard of modern society. There are a few laws which are presently enforced to control cybercrime offences including the Sedition Act 1948, the Communications and Multimedia Act 1998 and the latest being the Personal Data Protection Act 2010. The Personal Data Protection Act 2010 was introduced to regulate and protect the collection, holding, processing and use of personal data in a commercial environment, particularly, in internet banking transactions. Under this law, a data user or processor can be criminally liable if the personal data is not handled according to the law as enforced.

## The Role of the Attorney General

The power to decide whether a person ought to be charged or otherwise is vested with the Attorney General. In this regard in Malaysia, the state has conferred the powers on the Attorney General who shall be the Public Prosecutor and shall have the control and direction of all criminal prosecutions and proceedings as provided for under section 376(1) of the Criminal Procedure Code (Act 593). Such powers of the Attorney General are well-rooted under the provision of Article 145(3) of the Federal Constitution which states as follows:

<sup>1</sup> 410 U.S. 113 (1973)



*"The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial."*

It is noteworthy to state here that the discretionary powers given to the Attorney General must not only be exercised in accordance with the law, as it is his duty to uphold the rule of law, it must also be exercised compassionately.

The power, for example, to discontinue proceedings in certain cases, requires the consideration of facts and circumstances that are peculiar to a particular case. His proper exercise of discretion will have a far-reaching effect in upholding justice in the country because unlike the judge in the court room, he is not tied to purely legal considerations alone.

The Attorney General's wide powers and the exercise of his discretion may subject him to criticism if there are perceptions of partiality, favouritism, persecution or malice. It is therefore important that the Attorney General's exercise of his discretion should not only be just and in accordance with the law but it must also be seen to be so exercised. The issue of how the Attorney General is able to respond to public criticisms is becoming increasingly important today in a vibrant democracy that emphasises accountability.

In the United Kingdom (UK), there is an authority known as the Crown Prosecution Service (CPS) which is the principal prosecuting authority for England and Wales, acting independently in criminal cases investigated by the police and other enforcement agencies. The objective and mission of the establishment of CPS is to deliver justice through independent and effective prosecution of crime and fostering a culture of excellence.

In view of the setting up of the CPS, the UK Attorney General has relinquished most of his prosecutorial powers to the Director of Public Prosecutions who is the head of the CPS and operates independently under the superintendence of the Attorney General.

The UK Attorney General as a Government Minister therefore becomes accountable for the work of the CPS. Therefore, it can be seen that there is a perception of accountability to the UK citizens and also greater independence of the CPS.

The creation of the CPS in UK also relieves the Attorney General to focus on duties, such as being the legal adviser to the Government. Hence, if accountability is held as an important ingredient of a responsible democracy, the Malaysian Government may want to embark on reform measures that concern the office of the Attorney General and the Attorney General's Chambers itself. It may be timely consideration in the future that the prosecution powers are delegated to a body akin to the CPS, and our Attorney General is also made a Minister who is answerable to Parliament<sup>2</sup>.

### The Role of the Court

The role of the court in the criminal justice system is mainly to adjudicate the trial process in accordance with the law. It has no power to decide whether a person ought to be charged or otherwise. Such powers are within the purview of the Attorney General. To ensure that the accused gets a just and fair trial, it is important that the court must be independent in administering justice as guaranteed under the Constitution.

In the administration of our justice system, adherence or compliance with the principles of the rule of law is of paramount importance. We may want to ask ourselves first what is meant by "rule of law". A.V. Dicey, a British jurist and constitutional theorist expounded that:

*"The rule of law means the supremacy and predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government".<sup>3</sup>*

A.V. Dicey went on further to state that the underlying principles of the rule of law are that:

<sup>2</sup> Jahaberdeen Mohamed Yunoos, "Accountability of Attorney-General" Malay Mail, 5<sup>th</sup> September, 2016.

<sup>3</sup> Dicey, Albert Venn, "An Introduction to the study of the Law of the Constitution" in Tan, Kevin YL and Thio Li Ann, Constitutional Law in Malaysia and Singapore (2010) at p. 43.

- (a) firstly, the law has absolute supremacy over arbitrary power including the wide discretionary powers of the government;
- (b) secondly, all classes of people are equally subject to the ordinary law of the nation administered in the ordinary courts; and
- (c) thirdly, constitutional law is not the source but the consequence of the rights of individuals, as defined and enforced by the Courts.<sup>4</sup>

Unlike in the UK, we have a written constitution and the word "law" has to be given a wider meaning. It should include the Constitution itself, any written law and by definition should also include the Common Law of England in so far as it is applicable in Malaysia, any custom or usage having the force of law. Under Article 4 of the Federal Constitution, it is declared that the Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with the Constitution shall, to the extent of the inconsistency be void.

It is incumbent upon both the legislature (Parliament and State Legislative Assembly) and the Executive to act within the bounds of the power conferred by the Constitution or by any written law under which it purports to act. Thus, any act of the executive or any law passed by the legislature may be challenged in Court if it exceeds the authority as conferred by the Constitution. Parliament for instance, could not enact law relating to matters in the State List and nor could the State Legislature enact law on matters in the Federal List.

In upholding the rule of law, it is the function and the duty of the Judiciary to enforce the rule of law both of civil and criminal in nature without fear or favour including by providing access to justice to any accused person charged with an offence. On the importance of the role of the Judiciary in upholding the rule of law, I would like to refer to the extract of the speech delivered by Lord Woolf, an eminent English Judge in April 2004 during the Official Book Launch of Constitutional Monarchy,

"Rule of Law and Good Governance: Selected Essays and Speeches of His Royal Highness ("HRH") Sultan Azlan Shah" in Kuala Lumpur:

*"The Rule of Law is the rule by laws that governs a true democracy. They are the laws that provide for a proper balance between the protection of human rights and the interests of the State. Laws which an independent and responsible judiciary can enforce to protect all members of society from abuse of power."*<sup>5</sup>

The above reference by Lord Woolf as to the role of the Judiciary was fully endorsed by HRH Sultan Azlan Shah when HRH later delivered the Opening Address at the 14<sup>th</sup> Malaysian Law Conference on 29<sup>th</sup> October 2007 wherein amongst others, HRH said:-

*"I wish to state with all fortitude that without a reputable judiciary – a judiciary endowed and equipped with all the attributes of real independence – there cannot be the Rule of Law."*<sup>6</sup>

It is therefore appropriate to reiterate here that in upholding the rule of law, we need to have a legal system which accords with the requirements of the rule of law, that is, a legal system in which the judiciary is effective, efficient and independent in order to protect the rule of law. The Judiciary must not only be independent but must also be seen to be independent. In this regard, public perception cannot be ignored because it reflects the measure of confidence that the public has in the Judiciary.<sup>7</sup>

It is expected that a judge, being a member of the Malaysian Judiciary, should always act with integrity and independence. On this point, the Judges' Code of Ethics 2009 spells out the code of conduct that judges have to adhere to. Section 5 of the Judges' Code of Ethics 2009 provides that a Judge shall exercise his judicial functions independently on the basis of his assessment of the facts and in accordance with his understanding of the law, free from any

<sup>4</sup> Ibid

<sup>5</sup> His Royal Highness Sultan Azlan Shah – A Tribute, Visu Sinnadurai, Editor, RNS Publications 2014 at p. 59.

<sup>6</sup> Ibid

<sup>7</sup> Arifin bin Zakaria, Chief Justice, Malaysia, "Rule of Law and the Judicial System", the Law Review (2013), Sweet & Maxwell Asia at pp. 185-197.



extraneous influence, inducement, procurement, threat or interference, direct or indirect from any quarter or for any reason.

The principal quality that a judiciary must possess is impartiality. Judges are supposed to be no respecter of persons who appear before them. Impartiality also means that judges are not only free from influence of external forces, but also of one another. No judge however senior can dictate to his brother or sister judges as to how a decision should be made. It is of the essence of a judge's character that he must be a person of unquestionable integrity who brings an unbiased mind to his task. On this point it has been said like Caesar's wife, he should be above suspicion.<sup>8</sup>

An independent judiciary will not be a reality if there is no clear separation of powers between the three main organs of the government, namely the executive, the legislature and the judiciary. Each organ of the government must be separated and independent from one another. Since our system of government is based on the Westminster model, there is in fact no clear separation of powers between the executive and the legislature. As for the judiciary, there has to exist a clear separation of powers between the judiciary and the other two arms of the government in order to uphold the rule of law.

It is the common belief that the doctrine of separation of powers has always been part and parcel of our constitutional framework. However, this has come into question since the amendment to Article 121 of the Federal Constitution in 1988. Under the new Article 121, the judicial power appears to be no longer vested in the Courts. The Court's jurisdiction and powers are now limited to those conferred by or under the Federal Laws. The question now is whether the amendment to Article 121 had the effect of removing the doctrine of the separation of powers and the independence of the judiciary.

As regards the state of position of the new Article 121, useful reference can be made to the case of **PP v. Kok Wah Kuan**<sup>9</sup>, wherein the accused, who was 12 years and 9 months old at the time of the commission of the offence was charged in the High Court for the offence of murder punishable under

section 302 of the Penal Code. He was convicted and ordered to be detained at the pleasure of the Yang di-Pertuan Agong pursuant to section 97(2) of the Child Act 2001. Upon his appeal to the Court of Appeal, the Court of Appeal upheld the conviction but set aside the sentence imposed upon him and released him from custody on the sole ground that section 97(2) of the Child Act 2001 was unconstitutional.

The Court of Appeal in its decision *inter alia* held that the doctrine of separation of powers is very much an integral part of the Constitution and any post-Merdeka law that violates this doctrine must be struck down as being unconstitutional. The Court of Appeal applying what it called settled principles went on to hold that section 97(2) of the Child Act 2001 had contravened the doctrine of separation of powers by consigning to the executive the judicial power to determine the measure of sentence to be served on the accused. By virtue of Article 39 of the Constitution, the executive power of the Federation vests in the Yang di-Pertuan Agong who, in accordance with Article 40 of the Constitution, must act in accordance with the advice given by the Cabinet.

The Federal Court in the case of **PP v. Kok Wah Kuan**<sup>10</sup> reversed the decision of the Court of Appeal and firmly rejected the view that the amendment had the effect of removing the doctrine of the separation of powers and the independence of the judiciary as basic features of the Constitution. This case shows a divergence in opinion with regard to the issue and in my view the matter is far from being settled. It is quite possible for the Federal Court, being the apex Court in the country, in such later cases to revisit on this issue of the constitutionality of the new Article 121.

### An Effective and Efficient Judiciary

On the need to have an effective and efficient judiciary, it would not be out of place to mention some of the initiatives which were introduced by the Malaysian Judiciary to further improve the administration of criminal justice and the court's delivery system. These initiatives include our computerisation projects and the establishment of specialised courts.

<sup>8</sup> Supra at No. 5 pg 61.

<sup>9</sup> [2007] 6 CLJ 341

<sup>10</sup> Ibid

Through our e-Court project and the use of technology, the Courts managed to dispose cases in a speedy manner without compromising justice. The main components in our e-Court project are the e-Filing System, Case Management System (CMS) and the Court Recording and Transcription System (CRT). With the CRT system, criminal court proceedings are recorded via audio-video recording. To enable the Courts to utilise technology in terms of mechanical means for the recording of criminal proceedings, the CPC was amended to include Chapter XXVA (Sections 272C - 272K). This saves the judges from having to laboriously record the proceedings manually.

The establishment of specialised courts is another initiative by the Malaysian Judiciary to dispose criminal cases without undue delay. Corruption Courts were established in 2011 to address the long delay in the disposal of corruption cases. The timeline for disposal of corruption cases is set within one year from the date of registration. Coroner's Courts were established in 2014 to deal with sudden death cases including custodial death. To ensure a speedy disposal of cases, a 9 month timeline is set from the commencement of an inquiry to its conclusion. Next is the Environmental Court which was established in response to the environmental challenges particularly in relation to environmental crimes and illegal wildlife trade. The latest specialised court set up by the Judiciary is the Cybercrime Court to deal with cybercrime offences under the relevant legislations including the Sedition Act 1948 and the Communication and Multimedia Act 1998.

To enhance the procedure and facilitate the conduct of criminal trials several recent amendments were made to the Criminal Procedure Code [Act 593]. These include the procedure for plea bargaining in criminal cases, pre-trial conference and case management.

The plea bargaining process was introduced to speed up the disposal of criminal cases. Both the accused and the prosecution could resolve their case the best way possible without the need to having a lengthy trial. On the same note, criminal trial could be expedited with the introduction of pre-trial conference and case management. Through these procedures, commonly used in civil proceedings, the

factual and legal issues could be agreed upon by the parties before the commencement of the trial.

### Legal Aid and Access to Justice

As part of the legal reform to address the issue of unrepresented accused persons appearing before the Court, the Government has established the National Legal Aid Foundation (NLAf) on 25<sup>th</sup> January 2011. It has been recorded that an estimated 80% of those tried in Court for criminal offences did not have legal representation. The NLAf provides free legal aid and advice in criminal matters including Syariah criminal matters to all eligible Malaysian citizens at the stage of arrest, remand, charge, bail application, mitigation, hearing and appeal. Under the scheme, the applicant will be subjected to "means test" to determine who is eligible for legal representation.<sup>11</sup>

The NLAf will also represent the arrested person during the remand application before the Magistrate. The legal assistance provided by the NLAf covers all types of criminal offences with the exception of those which carry the death penalty. Offences that carry the death penalty will not be covered by the NLAf as the court will assign counsel to persons charged for all capital offences. This initiative taken by the government is in line with the principle of providing access to justice to all its citizens and ensuring their fundamental rights as enshrined in the Federal Constitution are well protected.

### Conclusion

It can be reasonably stated that the creation of new laws and legal reforms in the criminal justice system come rather naturally as a matter of necessity and expedience to adapt to the changing times. It can also be envisaged that while the field of law is constantly changing, the course of justice is an element that must be protected at all cost. Thus, a proper balancing act between national interests and fundamental rights of every citizen should be allowed to be developed from time to time to accommodate the changes in our growing society.

**Zulkefli Ahmad Makinudin**  
Chief Judge of Malaya

<sup>11</sup> See [www.ybgk.org.my](http://www.ybgk.org.my)



## “WORKING TOWARDS DEVELOPING A COMPREHENSIVE SYSTEM OF ADMIRALTY AND MARITIME DISPUTE RESOLUTION”<sup>1</sup>



By Justice Nallini Pathmanathan  
Judge of the Court of Appeal

Malaysia is an important maritime trading nation. This is borne out to some extent by our trade profiles as produced by the World Trade Organisation. Our rank in world trade in both exports and imports increased between 2008 – 2013, particularly after the global financial crisis of 2008 – 2009, but declined in 2014 and 2015.<sup>2</sup> However, the decline should not

be viewed too negatively as it is, hopefully, a mere blip in the rise of Asian economies as a whole, as compared to Europe and America. The shipping sector plays a key role as it carries an estimated 95% of Malaysia's trade<sup>3</sup>. Of singular importance is the role played by our shipping industry in the oil and gas sector particularly in exploration and

<sup>1</sup> This paper was presented by Justice Nallini Pathmanathan, JCA, at the 2016 Maritime Law Conference : Resolving Disputes Effectively on 26<sup>th</sup> October 2016.

<sup>2</sup> The World Trade Statistical Review 2016, Trade Profiles 2013 and Trade Profiles 2014 and Trade Profiles 2014 which can be accessed on the website [www.wto.org](http://www.wto.org).

<sup>3</sup> See Letter entitled 'Critical period for shipping' dated 10<sup>th</sup> October 2016 by Nazery Khalid, Honorary Secretary Association of Marine Industries of Malaysia.

production. Malaysia is recognized as a major oil and gas player in the region and such success would not have been possible without support from the industry.

The fate of the shipping industry is inextricably intertwined with the progress of our global trade figures and economy. It is therefore important to comprehend and accept that shipping cannot be viewed in isolation or a vacuum. It is an integral part of commerce. In so far as the law is concerned, similarly shipping or maritime law is an important component of commercial law. It does not stand alone.

To strengthen and fortify our position in the region, it is imperative therefore that our laws are in keeping with the pace of economic progress we seek to achieve. Despite recent enactments of several maritime conventions, there has been insufficient reform to match the needs of the industry in the 21<sup>st</sup> century.

It would be useful to remember the origins and evolution of our maritime history.

History demonstrates that since the first millennium A.D., important commercial trading centres have existed along the coast of the Straits of Malacca. These were even then great seaports and comprised a medium of communication that developed in response to the increasing volume of seaborne trade in the Malay waters. The two most significant ports in the early 15th century were the Kuala Kedah port and the Malacca port.

As early as 1424 – 1444, during the reign of Sultan Muhammad Shah, rules were promulgated to regulate the seaport of Malacca. He introduced the Undang-Undang Laut Melaka or Malacca Laws of the Sea. It was a comprehensive digest of maritime laws for that period.

Again, Kedah was one of the earliest west coast trade centres, its location enabling it to become the trade route for the transport of spices by the Arabs, Persians, Tamils and between India and China. In the 17<sup>th</sup> century, Kuala Kedah emerged as the main Kedah port. The Undang-Undang Pelabuhan Kedah or Kedah laws date from 1650 A.D. and comprise some of the earliest port laws prescribing a variety of port regulations.

These laws prove that there existed a complex and structured organisation of seaports prior to colonisation by the Portuguese, Dutch and the British.

With the advent of colonial rule, especially British colonial rule, we adopted the common law system. The development of the admiralty jurisdiction as we know it today took root from the region's acceptance of English law including its admiralty law.

Malaysian maritime law today is still derived mainly from the laws of the United Kingdom. The main statute which prescribes the admiralty jurisdiction of the High Court is section 24(b) of the Courts of Judicature Act 1964. It provides that the High Court has the same jurisdiction and authority in relation to matters of admiralty, as is had by the High Court of Justice in England under the Supreme Court Act of 1981, which is now referred to as the Senior Courts Act 1981.

Notwithstanding our early history of crafting laws to meet our needs as early as the 15<sup>th</sup> century, we do not today have a comprehensive body of legislation specifically promulgated to meet our unique needs. Instead we make do with borrowed legislation from the United Kingdom, much of which is no longer in use even there, such as the Bill of Lading Act 1855. We currently operate under a rather irregular mix of legislation.

Legislation crafted to meet our own individual needs as a country will develop our dispute resolution, whether in terms of the courts or arbitration, quite considerably. Any such move should include enacting our own Admiralty Jurisdiction Act and a total review of the Merchant Shipping Ordinance of 1952 or its equivalent in the States of East Malaysia.

A sustained commitment to change from industry participants, who have the most to gain, is required to bring about comprehensive and updated changes to the current legislation to meet our collective maritime needs. A Malaysian Master Shipping Plan is being drawn up by the Government and is due to be released shortly. Reform of the law, in keeping with other planned improvements and assistance, should comprise a key component of any such plan.





"Malacca" painted by Gasper Correa 1513/1550. Gasper Correa one of Alfonso de Albuquerque secretaries was in Malacca in 1513 and 1514. The Fortress A Famosa, build by Albuquerque is clearly visible, as is a church on St. Paul's Hill. However, the church was only build in 1521. The picture also exaggerates the size and number of the buildings near A Famosa. It seems possible that the picture was painted after 1521. Some historians have dated it to 1536 or 1550.

(Picture courtesy of the Malacca Maritime Museum)

Changes to the currently outdated legislation would also greatly benefit the workings and performance of the Admiralty Court. October 2016 marked the beginning of the seventh year of the Admiralty Court, which was established in 2010. It is a court that was established at the behest of the maritime industry in this country.

Equally, if not more important, is the need for Malaysia to bring itself up to date by the incorporation and application of rules and conventions which are and have been in use in most major maritime jurisdictions for some time now. Primary examples include:-

- (i) The adoption of the Hague-Visby Rules, rather than the Hague Rules currently incorporated and in force as a schedule to / by virtue of our Carriage of Goods by Sea Act of 1950. The majority of our trading partners, like Japan, China and South Korea have incorporated The Hague Visby Rules into their maritime codes. Some others adopt a hybrid of The Hague Visby and Hamburg Rules. More recently there has been considerable attention accorded to the introduction of the Rotterdam Rules (formally, the United Nations Conventions on Contracts for the International Carriage of Goods wholly or partly by sea), which have some 25 signatories and three ratifying states to date. Again, most jurisdictions have progressed from the Hague Rules, unlike Malaysia.
- (ii) The need for the passing of the Bill of Lading and Analogous Documents Act, to remove reliance upon the antiquated test under the English Bills of Lading Act 1855 that links the transfer of bills of lading and the right of suit thereunder, to the passing of property in the relevant goods. Concurrent with this new Bill of Lading and Analogous Document Act, the Sale of Goods Act would need amendment to alter relevant provisions relating to the passing of property in bulk cargo.
- (iii) Judicial sale of ships

Unlike the arrest of ships, addressed by the long standing arrest conventions with which maritime lawyers are familiar, the judicial sale of ships has not been accorded the due

consideration it deserves, which together with matters of the forced sale of ships and recognition of foreign liens and mortgages addressed in the International Convention on Maritime Liens and Mortgages 1993 should be considered for implementation into Malaysian law.

As a matter of reality, a number of problems, in particular the recognition of the judicial sale of ships by a foreign court, have been encountered by the international shipping industry, thus solutions to these problems should be explored and adopted.

The decisions of the English Court in *The "Acrux"*, (1961) 1 Lloyd's Rep., pages 405-410 and *The "Galaxias"*, (1988) LMLN No.240, pg 2 are good examples of some of the problems arising from the judicial sale of ships.

It is clear from these examples that there should be a concerted effort on the part of the relevant authorities to align Malaysia with modern developments in the maritime world as they change and progress from time to time to meet the constantly evolving needs of maritime trade. This would certainly facilitate smoother trading and increase trade volumes, and greater confidence in the Malaysian maritime system.

Changes brought about by the introduction of such international conventions and rules will have the effect of promoting Malaysia as a desired forum for adjudication, whether in the Admiralty Court or by way of arbitration.

#### Limitation of Liability for Maritime Claims

While it is laudable that the Convention on Limitation of Liability for Maritime Claims 1976, as amended by the Protocol of 1996, has been gazetted to apply in West Malaysia through the Merchant Shipping Amendment and Extension Act A1393 of 2011, it would be desirable for East Malaysia to have the same limits apply. In addition to promoting the unification of maritime laws between the Courts of Malaya and Sabah and Sarawak, this would be greatly preferable to the limitation of liability provisions currently remaining applicable under the 1957 Convention pursuant to the Merchant Shipping Regulations of Sabah & Sarawak.



A most attractive feature of the implementation of the 1976 Convention is the abolishment of the 'actual fault and privity' test which could quite easily prevent a shipowner from limiting his liability and thus render a claim potentially unlimited under the convention. That is replaced by the new formula stipulated in article 4 of the 1976 Convention. This article sets out the new test, namely that a party would be precluded from limiting its liability only if it is proved that the loss resulted from his personal act or omission committed with the intent to cause such loss, or recklessly with the knowledge that such loss would probably result. This renders the liability limits in the Convention on Limitation of Liability for Maritime Claims 1976 i.e. the LLMC practically unbreakable.

Although the ship owners' limit is much higher under the 1976 Convention, with the 1996 Protocol, breaking such limit is difficult. This provides greater certainty to parties, who are better able to arrange their business affairs. It is unlike the 1957 Convention, which has a lower limit but is apt to be broken, exposing the ship owner to total and unlimited liability.

The move by West Malaysia from the 1957 Convention to the 1976 Convention and 1996 Protocol, will almost certainly increase Malaysia's attraction as a dispute resolution centre, particularly as costs in this region are significantly lower, while the expertise of the shipping lawyers in this region who specialise in the area is certainly equal to that of lawyers in other jurisdictions.

It is common for maritime litigators to select the jurisdiction that favors them most, in terms of limits to liability. In short, forum shopping. This battle of the courts was observed between Singapore and England, when Singapore was on the 1957 Convention and England on the 1996 Convention for example in *Caltex Singapore v BP Shipping* (1996) 1 Lloyd's rep 286; and between Singapore and Malaysia when Singapore moved to the 1976 Convention and Malaysia was on the 1957 Convention in the case of *The Reecon Wolf* (2012) 2 SLR 289. It is possible that we will see Claimants favoring Malaysia over Singapore, now that West Malaysia is on the 1996 Protocol of the 1976 Convention, whilst Singapore has not as yet adopted the 1996 Protocol. The irony is that the same choice of jurisdiction tussle will be observed

between West Malaysian and East Malaysian claimants for as long as East Malaysia remains under the 1957 Convention regime, a situation of one country with two separate limitation laws.

### Other Conventions

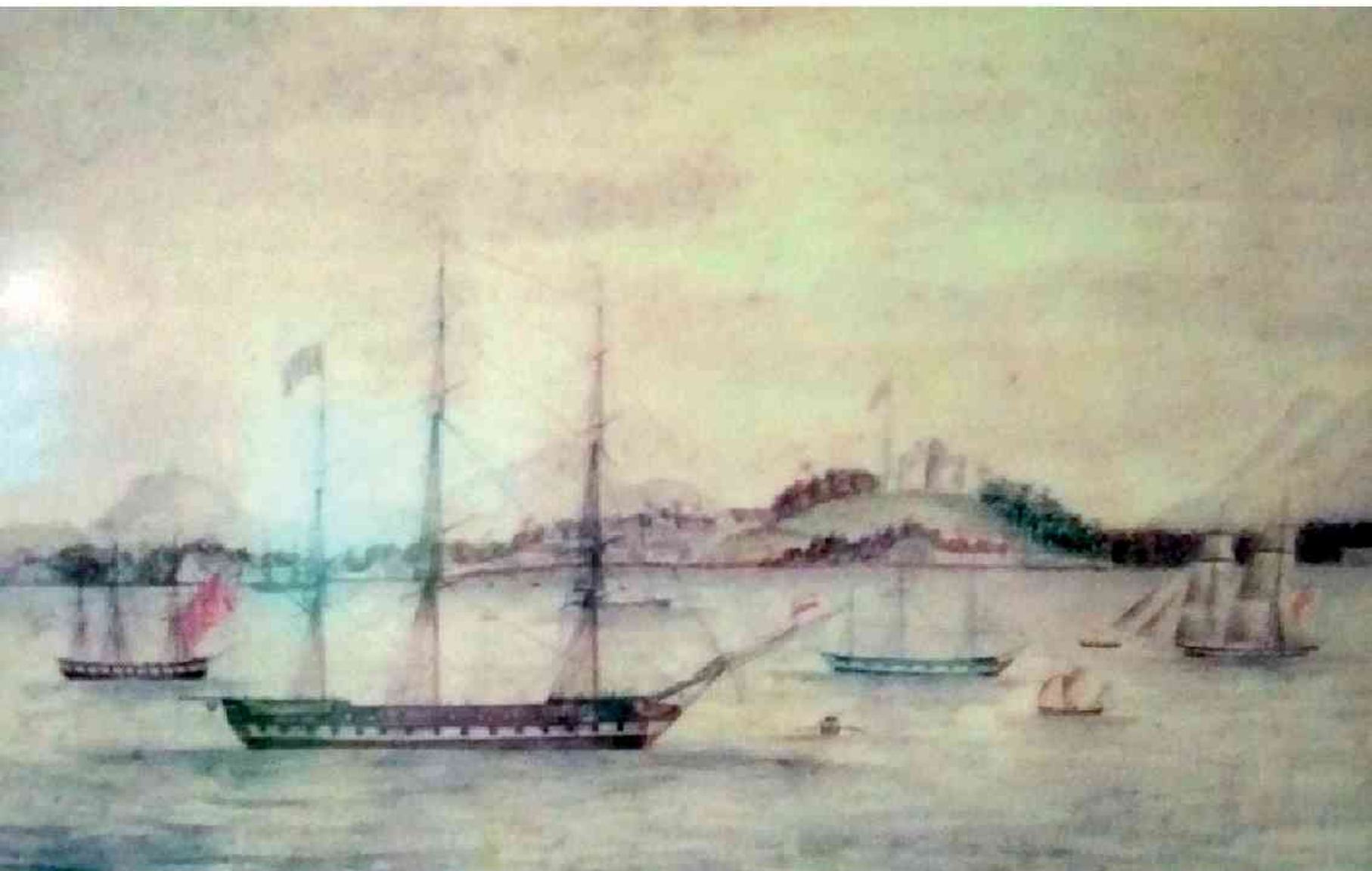
Three other significant maritime conventions that have recently been enacted in Malaysia through the Merchant Shipping (Oil Pollution) (Amendment) Act 2011 include The International Convention for Civil Liability for Oil Pollution Damage 1969, the International Convention on the Establishment of an International Fund for Oil Pollution 1992 and the Bunkers Convention 2001. These conventions that prescribe a strict liability regime provide compensation in respect of oil pollution damage from trading tankers carrying oil as cargo in so far as the Convention for Civil Liability for Oil Pollution Damage 1969 (or CLC) is concerned, and bunker pollution damage for all categories of ships. It further requires compulsory insurance or other financial security with a right of direct action against the Insurer.

### The Admiralty Court

Some interesting developments in the function and performance of the Admiralty Court are highlighted below.

In relation to the enforcement of maritime claims in Malaysia, in particular admiralty warrants of arrest, a situation where an admiralty writ in rem and warrant of arrest issued by the Admiralty Court in Kuala Lumpur was executed by the Sheriff of the High Court in Kuching, pursuant to section 7(2) of the Courts of Judicature Act 1964 on a vessel located in Kuching, Sarawak. After service of the writ in rem, and the arrest of the vessel in Kuching, the action proceeded in the Admiralty Court. The nett result would appear to suggest that a claimant who obtains a warrant of arrest in Kuala Lumpur and seeks to have the claim adjudicated by the Admiralty Court, may proceed to arrest the vessel in any part of Malaysia. In this case there does not appear to have been any objection taken on the issue of jurisdiction, so it will be interesting to see how developments in this area progress, if such disputes arise.

Arising from arrests, there are often applications for cargo to be discharged on an urgent basis.



Water-based paint artwork by an English (Scottish) artist, Adam Howden Crowford (1804 – 1882) depicts the drawing of English Warship (at the front), HMS "Vansittart" that sailed through the Straits of Malacca on 14.8.1831 with background of St. Paul Hill. This warship was commanded by Captain Robert Scott.

(Picture courtesy of the Malacca Maritime Museum)



These applications are heard within a similar time frame as that for warrants of arrest, namely 45 minutes, as far as possible. I even had occasion, when sitting as the Admiralty Judge, to grant just such an urgent injunction in respect of cargo that was inflammable, over the telephone one morning as I was in Putrajaya. Counsel briefed me of the circumstances on the telephone, whereupon an order was granted verbally and the Sheriff instructed to fair and seal the Order.

Similar incidents have arisen since then. One of the most recent was a few months ago when a tanker was arrested in the Port of Tanjung Pelepas on a Friday at mid-day, and as the Sheriff was travelling back to Kuala Lumpur that evening, an application by e-mail and mobile phone was made to him, for the urgent discharge of a sizeable quantum of fuel carried as cargo on board the vessel. Due to the complexity of the ship to ship discharge of cargo, the terms of discharge had to be precise and the Sheriff's final consent to discharge was given at 12.50 a.m., in the early hours of Saturday morning. The same Sheriff was contacted throughout the weekend for further clearance by the Marine Department and the like, and was on standby for a release of the vessel on Merdeka Day, despite it being a public holiday. All of that was promptly addressed with the complete co-operation of the Sheriff, the Marine Department, the port operators, the ship's agent, and the lawyers. That is a commendable example of co-operation and commitment and promotes the reputation of the Admiralty Court, apart from other agencies. Apart from routine arrest work, the Admiralty Court also deals with a significant number of interlocutory applications and a lesser number of trials. Since the passing of the amendment to the Arbitration Act 2005 to allow for arrests of vessels for arbitration conducted in and outside of Malaysia, the numbers of arrests have grown. Malaysia is also emerging as a forum for effective interim relief. One such instance involved parties and a dispute unrelated to Malaysia. The parties had an arbitration pending in London and separately, competing court proceedings in China. Whilst the cargo that was the subject matter of the dispute was being re-shipped out of China and passing through Malaysia, the cargo was traced, detected and placed by the Malaysian Court under an injunctive order preserving it

against disposal, or dealings pending resolution of the substantive dispute abroad. The swiftness with which this interim relief in Malaysia was obtained came as quite a surprise to one of the parties, and it motivated a fresh round of negotiations that led to a satisfactory and total resolution of the substantive dispute in London and China. Expensive litigation and arbitration, and protracted disruption to relations and business, were spared. Such are the benefits of an efficient and effective forum in resolving maritime disputes. This goes only to emphasise the point that laws need to speedily be updated, as was the Arbitration Act, allowing for such interim relief for foreign arbitrations, to keep abreast with commercial demands and developments. They play such an important role in enhancing the image of the country as a maritime nation, by delivering results that the international industry expects and appreciates.

We are cognisant that decisions handed down by the Admiralty Court and the appellate courts will be perused in the Asia-Pacific region and influence decisions on the movement of trade in the region. Lawyers and the Court routinely rely on decisions from the United Kingdom, Singapore, Hong Kong and Australia. Unlike some other jurisdictions, we do not take a 'closed-door' policy when researching the best approach to be undertaken in a particular case. A consideration of authorities from several like jurisdictions, allows us to adopt the best option.

This will be beneficial in ensuring a consistency of approach to admiralty matters in line with international and particularly regional case-law. The international nature of admiralty law requires this. As such individual countries should be slow to depart from that general body of law to which other countries adhere.<sup>4</sup>

### Maritime Mediation

Owing to the large collapse of wealth and businesses in the recent financial meltdown coupled with the drop in the prices of commodities and crude oil, it is anticipated that there will be a sharp rise in maritime and international trade disputes in the coming years involving inter alia, premature termination of time charters, demurrage and detention

<sup>4</sup> See *The Purpose of Admiralty Law* by the Hon. Robert Fisher QC (2004) 18 *MLANZ Journal*.

claims, non-acceptance of delivery of new vessel constructions, issues involving damages, refusal to take delivery of goods by buyers, disputes over Letter of Credit (LC) terms, compliance of sale and purchase contracts etc. In such a difficult international trading environment as we are now confronted with, many parties who cannot afford the high costs of litigation and arbitration would be looking at alternative dispute resolution options. Mediation, which was not a mainstream dispute resolution option in the past, may spring to prominence in the coming years because of its attractiveness in terms of its economical costs, simplicity and preservation of goodwill. It is particularly attractive to cash-strapped disputants who prefer a common sense settlement to that of long, drawn-out litigation or arbitration. Mediation is now a regular feature in dispute resolution in our courts and greatly encouraged. It is particularly useful in maritime litigation and it is indeed a practice of the court to direct mediation whenever possible. This is further emphasized through the recent Practice Direction No. 4 of 2016 where the court at the pre-trial case management stage, may give directions that the parties facilitate the settlement of the matter before the court by way of mediation. A useful practice that could be adopted is for senior counsel from the Malaysian Shipping and Admiralty Bar to be available for nomination for mediation in maritime disputes, with the consent of the litigants.

In conclusion, it is time that we work towards

promoting the excellence of this jurisdiction. It is time we recognised that we have considerable maritime skills in the country, and a satisfactory legal system. I have no doubt that the maritime laws too will be upgraded as desired, to complement the maritime progress already achieved.

Ultimately it is a question of mindset. The current Admiralty Court in Malaysia, manned by a single judge, is as efficient, if not better than most other jurisdictions. The Admiralty Court judge is highly efficient and competent. The costs of litigating in this jurisdiction are far lower than any other jurisdiction and we are certainly one of the, if not the fastest jurisdiction, thanks again to our former Chief Justice Tun Zaki Tun Azmi's reforms.

The work done by the Sheriff of the Admiralty Court is a sterling example of the standards of efficiency such as have been set at the inception of the Malaysian Admiralty Court. Therefore, it is long overdue that the Malaysian maritime industry recognizes the efficiency of our own admiralty courts so that in the near future our ASEAN neighbours and others will follow suit.

In the next decade or so, the shift towards Asia will become a reality. It is not unlikely that a regional centre for maritime dispute resolution and in fact, all dispute resolutions will be formed. We must be prepared to play a pivotal role in the region.



## THE COMMON LAW AT THE CROSSROADS – THE DERBYSHIRE CONUNDRUM



By Justice Vernon Ong Lam Kiat  
Judge of the Court of Appeal

It has been said that the concept of defamation is as old as the hills.<sup>1</sup> The classic definition of the term has been described as a "false statement about a man to his discredit".<sup>2</sup>

In essence, the law of defamation seeks to balance the two conflicting interests of (i) freedom of speech and (ii) the defence of reputation. In *Jones*

*v Skelton*<sup>3</sup>, Lord Morris said that this branch of the law should be hampered as little as possible with any complexity. Unfortunately, the law of defamation has proved to be far from simple. As such, English judges have, on a number of occasions, criticised the complexities and absurdities of the law of defamation.<sup>4</sup>

<sup>1</sup> Mehrotra's Commentary on Law of Defamation, Damages & Malicious Prosecution (Civil & Criminal) 5th Edn 2004.

<sup>2</sup> Cave J in *Scott v Sampson* (1882) QBD 491.

<sup>3</sup> [1963] 1 WLR 1362 at 1373.

<sup>4</sup> May LJ in *Morrell v International Publishing Co.* [1989] 3 All ER 733 at 734-735; Stuart-Smith LJ in *Williams v Mirror Group Newspapers*, *The Independent*, February 12, 1991, C.A.; Neill LJ in *Rechem International Ltd v Express Newspapers plc*, *The Times*, June 19, 1992.

Whilst the law of defamation is based upon the English common law, there is less uniformity in the rules of defamation within the common law world today. This is mainly attributed to two factors: (a) the effect of legislation, and (b) as legal systems mature their courts become more willing to fashion local rules even if they remain within the same broad conceptual structure. For instance, the common law relating to privilege, fair comment and the burden of proof on the issue of falsity in the United States has radically transformed due to the modern interpretation of the First Amendment to the Constitution.

According to a learned text, the laws of Australia, Canada, New Zealand, Ireland, Malaysia and Singapore remain closer to the English Model.<sup>5</sup> In this regard, English common law may be applied to the extent that it is not inconsistent with the Defamation Act 1957<sup>6</sup>. Be that as it may, we have just had a trilogy of Court of Appeal decisions in which divergent stands were taken on the applicability of the common law Derbyshire principle.

### The Derbyshire principle

In 1993 the House of Lords established the Derbyshire principle when it ruled that the Derbyshire County Council being a local authority may not bring an action for defamation.<sup>7</sup> This decision rests not upon any absence of likely damage to such body, but upon the likely chilling effect on free speech of granting a right of action. Consequently, the former view that a local government corporation had a "governing" reputation which was protected by the law of defamation no longer represents English law.<sup>8</sup>

### The first in the trilogy

First to be handed down was *Kerajaan Negeri Terengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors* (No 1)<sup>9</sup>, where the plaintiffs sued for defamation over an article in the publication, *Harakah*, relating to the aid programme of the State Government of Terengganu (the first plaintiff) for

poor students in Terengganu. The defendant raised a preliminary issue that the first plaintiff a State Government cannot be made a party for the cause of action of the tort of defamation. In striking out the first plaintiff's claim, the learned judge adopted the Derbyshire principle and ruled, *inter alia*, that the first plaintiff, being a state government had no locus standi to maintain an action for the tort of defamation. As a state government is a public authority it does not have a personal or governing reputation to protect. The state government is duly elected by members of the public through the democratic process and it should be transparent and accountable to the electorate. There should be freedom of speech and expression by members of the public in order to act as a check and balance on the executive and government. It is not in the public interest that the state government be allowed to institute or maintain any action for libel or slander against any person. Subsequently, the learned judge also struck out the Menteri Besar's (the second plaintiff) claim on the ground that the second plaintiff had no capacity to sue in his official capacity as the Menteri Besar of Terengganu.<sup>10</sup>

The Terengganu State Government's appeal to the Court of Appeal against the ruling of the learned judge was dismissed; leave to appeal to the Federal Court was refused. However, the Menteri Besar's appeal to the Court of Appeal was allowed on the basis that the Menteri Besar was suing in his official and personal capacity. Unfortunately, the grounds of judgment of the Court of Appeal in both instances are unavailable.

### The second and third in the trilogy

Next in the trilogy came *Government of the State of Sarawak & Anor v Chong Chieng Jen*<sup>11</sup> ("**Sarawak case**"). where the issue in the question was whether a State Government and State Financial Authority have standing to sue for defamation.

In the Sarawak case, the Sarawak State Government sued the defendant over statements related to the mismanagement of the State's financial affairs. The

<sup>5</sup> Gatley on Libel and Slander (Ninth Ed., 1998).

<sup>6</sup> s 3 of the Civil Law Act 1956.

<sup>7</sup> *Derbyshire County Council v Times Newspapers* [1993] AC 534.

<sup>8</sup> *Bognor Regis U.D.C. v Campion* [1972] QB 169.

<sup>9</sup> [2013] 7 MLJ 52.

<sup>10</sup> *Kerajaan Negeri Terengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors* (No 2) [2013] 7 MLJ 145.

<sup>11</sup> [2016] 5 CLJ 169.



question of whether the Sarawak State Government (the first plaintiff) and a Government Department (the second plaintiff) have the right to sue and to maintain an action for defamation was raised in an Order 14A application filed by the defendant. At the High Court, the learned judge adopted the Derbyshire principle and held that although the State Government or a statutory body can sue or be sued, that right does not extend to the right to sue for defamation. Consequently, the learned judge dismissed the plaintiffs' claim.

On appeal, the Court of Appeal in a majority decision set aside the order of the High Court. Abdul Rahman Sebli JCA speaking for the majority held that pursuant to the Government Proceedings Act 1956 (GPA 1956) the Federal and State Governments have the right to commence civil proceedings against any person. The Court of Appeal construed section 3 of the GPA 1956 read in conjunction with subsection 2(2) to mean that if a claim affords ground for civil proceedings between private individuals, it would afford ground for civil proceedings between the Government and private individuals. As such there is nothing in the GPA 1956 to prohibit the Government from suing for defamation. Where a provision had been made by statute, the door to the reception of the common law after the dates specified in paragraphs (a), (b) and (c) of subsection 3(1) of the Civil Law Act 1956 is closed. After these dates, the development of the common law in Malaysia was entirely in the hands of the courts of this country. There was no equipollent provision in the UK Crown Proceedings Act 1947 and it would be wrong to apply the Derbyshire principle randomly without regard to section 3 of the GPA 1956. As such, the statutory right given to the Government by section 3 of the GPA 1956 to sue for defamation could not be taken away by the application of the common law principle propounded in Derbyshire, or for that matter, any other common law positions in other common law jurisdictions.

The last in the trilogy appeared in *Utusan Melayu (Malaysia) Bhd v Dato' Sri DiRaja Hj Adnan Hj Yaakob*<sup>12</sup> ("**Utusan case**") where the question was whether a Menteri Besar has locus standi to initiate

a suit for defamation. In the **Utusan case** an article published in the *Mingguan Malaysia* newspaper revolved around the Menteri Besar Pahang and perceived weaknesses of his administration. In applying to strike out the plaintiff's action, it was contended that the plaintiff was, in essence, suing in his official capacity as the Menteri Besar of the State of Pahang; as such the plaintiff lacked locus standi to initiate and maintain the suit on the ground that being in such official capacity he might be subjected to and must be open to public criticism. At the High Court, the learned judge dismissed the application holding that the plaintiff had locus standi to institute and maintain this action.

At the Court of Appeal, the question of law brought into focus the fundamental question of the extent to which public officials of the plaintiff's standing may sue for defamation to protect their reputation and good name under the law of defamation which lies amidst the potential conflict of the right to freedom of speech and expression guaranteed under Article 10 Clause (1)(a) of the Federal Constitution with the protection of reputation of individuals maligned by the press or any calumniator. Idrus Harun JCA speaking for the Court said that by virtue of the plaintiff's public office as the Menteri Besar and as the elected representative, the plaintiff should be open to public criticism and could never be defamed. The public should have the right to discuss their government and public officials conducting public affairs of the government without fear of being called to account in the courts for their expressions of opinion. The impugned article, when read as a whole concerned the plaintiff as the Menteri Besar, the elected representative and political leader as well as the perceived weaknesses of his administration. Further, based on the plaintiff's pleadings, it was clear that the plaintiff had pleaded that the article was an attack on him in his capacity as the Menteri Besar of the State of Pahang. The mere fact that the intitlement to the action only mentioned his name did not form a strong basis upon which the court ought to conclude that the plaintiff filed this action in his personal capacity. Accordingly, the Court of Appeal held that the plaintiff by virtue of his public office, having sued in his official capacity, had no locus standi to do so.

<sup>12</sup> [2016] 5 CLJ 857

In both cases, leave to appeal to the Federal Court have been granted on the following questions of law, *inter alia*:

**Sarawak case**

- a. Whether the GPA 1956, and in particular section 3 thereof, precludes the principle in *Derbyshire* to be extended to the Government of Sarawak, Malaysia?
- b. Whether section 3(1)(c) of the Civil Law Act 1956 precludes the principle in *Derbyshire* to be extended to the Government of Sarawak?

**Utusan case**

- a. Whether the common law principles decided in the case of *Derbyshire* ought to be accepted as part of the common law in Malaysia?

- b. If so, whether the decision in *Derbyshire* effectively prohibits defamation suits from being instituted by public officials in their official capacities?

The divergent positions of the Court of Appeal in the **Utusan case** and the **Sarawak case** reflected in their erudite and well-articulated judgments are illustrative of the robust, vigorous and defining role played by the Court of Appeal in the development of Malaysian common law – the body of law derived from judicial decisions based on case law and precedent and constituting the basis of the Malaysian legal system. Meanwhile, the decision of the Federal Court on these questions of law of public importance is eagerly awaited.



## JUDICIAL INQUIRY PERTAINING TO LATE BIRTH REGISTRATION IN SABAH



By Justice Ravinthran Paramaguru  
Judge of the High Court

### Introduction

Since the launch of the Mobile Court service in Sabah in 2007, people in remote rural areas have had better access to the legal system. Magistrates' Courts have conducted hearings for minor cases in far flung interior corners of Sabah. However, the bulk of the work of the Mobile Court is in respect of judicial inquiries held for the purpose of verifying late birth registration extracts under the Sabah legislation governing registration of births and

deaths. This type of judicial inquiry is unknown in Peninsular Malaysia or Sarawak. However, a similar inquiry is provided for in the Singapore legislation governing registration of births and deaths (Registration of Births and Deaths Act (Cap. 267).

In this article, I shall address the legal backdrop to the judicial inquiry pertaining to late birth registrations in Sabah.

## Applicable Law

In Peninsular Malaysia, the law governing registration of births and deaths is the Births and Deaths Registration Act of 1957 (Revised 1983). In Sabah, it is the Registration of Births and Deaths Ordinance 1951 (Cap.123) (the Ordinance). After the formation of Malaysia, the said Ordinance was declared as federal law. Thus, the responsibility of administering the said Ordinance devolved upon the Federal Registration Department.

## Types of Birth Registration

The Ordinance prescribes three types of birth registration, i.e. ordinary registration, delayed registration and late registration. Section 9 of the Ordinance stipulates that all births are to be reported to the authorities within 14 days of birth. Although this type of registration is not specifically termed as "ordinary registration" in the Ordinance, it can be considered "ordinary" as it complies with section 9.

The second type of birth registration is the "delayed registration". Section 16 provides that a birth can be registered after the 14-day period stipulated in section 9 as long as 42 days have not elapsed from the date of birth. However, section 16 requires the payment of a prescribed fee as a precondition to registration. In the marginal note to section 16, this type of registration is specifically termed as "delayed registration".

The third type of registration is the "late registration" under the Ordinance. Every registration after 42 days of birth is termed as "late registration" under the Ordinance. Under the Ordinance, an extract of a late registration entry in the register is not equivalent to a certificate that is "receivable in evidence" unless it is verified by a Magistrate pursuant to an inquiry. This is the reason that applicants who had been issued an "extract" of a late birth registration by the Registration Department must apply to Magistrates' Court for it to be verified. I shall discuss below the basis of the judicial inquiry and the duty of the Magistrates to verify the late birth registration extracts.

## Requirement for Judicial Inquiry

Section 22 (1) provides that even if the time limit for registration is breached, it is the duty of the Registration Department to make an entry into

the register of births. However, section 22(2) requires that the said entry into the register must be marked "LATE REGISTRATION". Section 22(2) allows extracts of late registration entries to be issued but the said birth extracts do not have the same legal status as extracts of birth registration under section 9 (ordinary registration) and section 16 (delayed registration). This is because of the operation of section 22(3) and section 31(5) of the Ordinance. Section 22(3) provides that an extract of a late registration entry shall not be "receivable in evidence" unless:

*"... the truth of the facts therein entered shall have been found by a court of a Magistrate of the First Class in a proceeding instituted before it under this section and such court has certified its findings in the register."*

Section 31(5) which governs issuance of extracts from registers maintained by the Registration Department enacts that certified extracts of entries in the register are "prima facie" evidence in all courts. However, certified extracts of late birth registrations are excluded in this section.

Thus, it appears that although the Registration Department can register a birth after 42 days and issue a certified copy of the extract from the register, such an extract does not have the same legal status as an extract of an ordinary birth registration unless it is verified by a Magistrate in a proceeding instituted for that purpose.

## Mode of Proceedings

The Ordinance does not spell out the mode of proceeding that is to be conducted before the Magistrate but it appears to be in the form of an inquiry. The provision that throws some light on the mode of proceeding is the second limb of section 22(3) of the Ordinance. It reads as follows:

*"Such a proceeding may be instituted by any person claiming to have an interest in substantiating the record and shall be brought by way of information and summons to be served on the Registrar of the district calling upon him to show cause why a certified copy of such entry should not be entitled to be received in the manner and to the extent provided by section 31."*



The Registrar of Births and Deaths or his officers routinely waive the right to attend the inquiry and object to the application. Nonetheless, there can be no question of a Magistrate granting a "default order" in the absence of objection from the Registration Department as the first limb of section 22(3) enacts that the late birth registration extract is not receivable in evidence unless:

*"... the truth of the facts therein entered shall have been found by a court of the Magistrate of the First Class ... and such court has certified its findings in the register"*

Thus, even if there is no objection from the Registration Department, the Magistrate is not relieved of the duty to verify the particulars stated on the late birth registration extract by holding an inquiry and calling for evidence.

### **Inquiry Procedure**

I shall now give an overview of the inquiry procedure adopted by the Magistrates' Court. The late birth registration extract is issued by the Registration Department based on a statutory declaration by the applicant. The applicants are told in advance that they are required to bring their late birth registration extracts with supporting documents for the hearing. The normal supporting documents are marriage certificates, ante natal clinic cards, birth registration extract of parents or any other document that could verify the particulars stated in the late birth registration extract in question. The Magistrate would orally examine the applicant and one or two witnesses who can testify as to veracity of the particulars stated therein. If the Magistrate verifies the particulars of the late birth registration extract, an endorsement to that effect is made on the extract. Most of the applications heard by the Mobile Court in the interior are successful as the applicants are in a position to produce credible witnesses from the local community who are usually village elders or headmen to give evidence relating to the circumstances of their birth or that of their children.

### **Importance of Inquiry**

In urban areas such as Kota Kinabalu, Tawau and Sandakan where there is a large immigrant population, it is not uncommon for foreigners to obtain the late birth registration extract from the Registration Department by affirming false statutory declarations and later attempt to validate the said extracts by producing false witnesses at the inquiry. Thus, the inquiry serves the crucial role of filtering out fraudulent applications and prevents foreigners from illegally availing Malaysian citizenship on the basis of false particulars in the late birth registration extract.

The judicial inquiry also addresses another issue that is of critical importance to natives of Sabah. Most of the applicants are from rural areas and are natives of Sabah. Native status is all important when it comes to ownership of Native Title land. As all relevant particulars, including that of racial origin are stated on a birth extract, a verified extract would constitute "prima facie evidence" of the native status of the holder in any court that hears a dispute over Native Title land. This issue came to the fore recently in the case of **Jalil bin Tamiang and 170 others v. Maichel Ulik & 8 others**<sup>1</sup> at the High Court in Sabah and Sarawak at Sandakan. The native status of the first defendant who had purchased Native Title land was disputed by the plaintiffs. However, the late birth registration extract of the first defendant had been verified by the Magistrate pursuant to an inquiry under the Ordinance. The High Court dismissed the challenge of the plaintiffs on the ground that the late birth registration extract constituted prima facie evidence of native status of the holder and that it was not rebutted by evidence to the contrary.

### **Conclusion**

Although the judicial inquiry is time consuming, it is mandated by law and acts as a sieve to ensure that only genuine applicants are able to validate a late birth registration extract.

<sup>1</sup> (Civil Suit SDK-22-37/7-2012)

## REFLECTIONS – FROM BANK TO BENCH



By Justice Mohd Nazlan Mohd Ghazali  
Judicial Commissioner of the High Court

I would like to start this modest piece, not quite a vignette, by reproducing my largely factual answer to the first question posed to me a few years ago when I was Group General Counsel & Company Secretary of Maybank in a written interview with the Asian Legal Business, a monthly legal magazine, which from time to time runs interviews with general counsel and legal heads of corporations across Asia.

*"Tell us a bit about your career."*

*I started legal practice with Shook Lin and Bok in Kuala Lumpur, and then joined the Securities Commission of Malaysia as an officer in the Takeovers & Mergers Department. I was Head and General Manager of the Enforcement Division when I left seven years later to re-join legal*



*practice as a partner at Zaid Ibrahim & Co, focusing on financial services laws, and have been in my current position since 2006. So in short, it has been an enriching 22 years of working experience, having gained useful insights as a legal practitioner, securities regulator and in-house counsel".*

So a career in the banking industry was not my only working experience before joining the Judiciary. The above appeared in its 1<sup>st</sup> November 2013 issue. I have in 2015 since made the choice to accept judicial appointment as a new challenge that in my vision would complement and effectively complete the diverse range of my legal experiences, and can now formally seek to apply the law to dispense justice.

This was a decision I have made. In this regard, I am reminded of what Hillary Rodham Clinton wrote at the start of her memoir 'Hard Choices', a personal chronicle of her years at the centre of world events as the U.S. Secretary of State:

*"All of us face hard choices in our lives. Some face more than their share. We have to decide how to balance the demands of work and family. Caring for a sick child or an aging parent.... Finding a good job, and what to do if you lose it.... How to give our kids the opportunities they dream about and deserve. Life is about making such choices. Our choices and how we handle them shape the people we become."*

And of course she later made the choice of running for the presidency of the U.S. The rest, as they say, is now history.

Yet, for me, it was certainly with some measure of trepidation that I decided to make a career change and joined the Judiciary. I say so for two principal reasons, both obvious to many. First, a superior court appointment is not just another vocation or employment. It is a role created by our Constitution, and charged with the duty to perform the requisite judicial functions in an independent and constitutional democracy. The exercise of this function also invariably carries strong considerations of morality and conscience. However, court decisions cannot be influenced by other than the law and evidence.

The other key reason, which is also related to the ability to ensure a proper discharge of judicial duties, concerns my background which equates to a lack of judicial experience and even all things litigation. My dealings and interactions with the judicial institution previously was largely peripheral and tangential. I was never in the Judicial and Legal Service. Neither was I ever a litigation lawyer.

I would like to think that my appointment is an example of the Judicial Appointments Commission invoking the statutory provision in the Judicial Appointments Commission Act 2009 which includes diversity in knowledge as a consideration for judicial appointment. Diversity is a matter that can mean different aspects. In the UK for instance, the recent report released by the Judicial Diversity Committee of the Judges' Council on judicial diversity statistics for April 2016 shows that the number of woman Court of Appeal judges remains the same as the year before at eight out of 39 (21%) and 22 out of 106 High Court Judges are women (21%). Of course our Judiciary has done remarkably well on this score. The other relevant aspect which was a focus in the UK is on the educational background of the judges. The educational charity The Sutton Trust has also published data which shows that as at February 2016, close to three-quarters (74%) of the 147 top judges were educated privately, and the same proportion of 74% attended Oxbridge. And that is considered not good for not promoting diversity.

In our case however, the relevant aspect of diversity specified in Section 23(4) of the Judicial Appointments Commission Act 2009 is prescribed in the following manner:-

*"(4) The Commission in selecting candidates must also take into account the need to encourage diversity in the range of legal expertise and knowledge in the judiciary".*

I tried to seek comfort in the fact, albeit hardly comparable, that Harry Blackmun, who was the 98th U.S. Supreme Court justice, best known for his landmark ruling in **Roe v. Wade**, had actually been the general counsel for the Mayo Clinic for almost a decade prior to his judicial appointment to the U.S. Court of Appeals for the Eighth Circuit before his elevation to the Supreme Court about ten years later. But then, he was a court going lawyer much earlier in his career.

Sometimes lack of experience is no impediment to doing a job well. When Lord Bingham was appointed Lord Chief Justice who in addition to being the most senior judge in England and Wales, also presided over the criminal work in the Court of Appeal, he had very little experience of criminal law. The Bar also considered that there were other candidates better suited to the task. This was what Sir Oliver Popplewell, retired High Court judge wrote on this issue in his book, *Hallmark – A Judge's Life at Oxford*:-

*"However, he quickly falsified those opinions and made it clear that an intelligent person with humanity can readily apply himself to any problem, even with which he is unfamiliar, and do it extremely well".*

This observation, concerning Lord Bingham, is of course a self-evident truism but real life examples are not very common. And I am not unmindful of the exceptional legacy and jurisprudence of Lord Bingham, the first judge in the modern era to act both as Master of the Rolls and then as Lord Chief Justice. In his obituary published by The Guardian, Lord Bingham was said to be *"widely recognised as the greatest English judge since the second world war"*.

I was admitted to the High Court in Malaya more than 24 years ago but my years in practice was entirely non-contentious. As mentioned, I had also served the Securities Commission of Malaysia (SC) and latterly, immediately prior to my appointment, Maybank, for some nine years, then and still is the largest financial group in the country and the most capitalised company on the local stock exchange, with overall and ultimate responsibility over all legal matters affecting the Bank and the Group, locally and internationally.

I recall that my only appearance in the chambers of a High Court Judge, who later became Chief Judge of Malaya, was during my pupillage. The other was for my short call before a High Court Judge who later became Chief Justice. The only substantive appearance in High Court was for my own long call which was before a High Court Judge who also later became President of the Court of Appeal. The representative of the AGC who obviously did not object to the petition for my admission then is now a High Court Judge.

My stint at SC, especially after I was appointed as the first Head of Enforcement Division in 1998 which then was the consolidation of the two different departments of investigation and prosecution (despite, incidentally, my having experience in neither, then) gave me some, albeit in truth limited exposure to criminal proceedings including mainly preferring charges against some top executives of public listed companies in the aftermath of the 1997/1998 Asian financial crisis, and arguing on some preliminary applications.

Whilst in practice, I recall having to deliver a presentation paper on due diligence under securities laws in a rare seminar for superior court judges organised by an investment bank in 2003 and at dinner was seated at the same table with a future Chief Justice. At Maybank, I remember having to accompany the chairman and the CEO to the KL High Court in their unsuccessful applications to have subpoenas issued against them set aside in an action brought by the Bank against some former staff for unlawful losses. In short there is not much court and litigation related work that could be shown, if at all.

That much was my experience and exposure in dealing with the Courts. But my working career, as I have touched on, has throughout and over the years been concerned with the practice and administration of the law. That has proven to be invaluable in my current role. Thus, in practical terms, the only obvious shortcomings at the time of my appointment was the lack of working knowledge of court procedures and law of evidence which are pre-requisites for a presiding judge.

I sought to close this gap by consulting friends in the Judiciary, the AGC and at the Bar, who are few and far between to start with. I also did not have the luxury of time to undertake this exercise for there was not much time from the date I got the letter notifying me of the appointment and the date of oath taking. I had about a month during which I had to serve out my contractual notice of three months within one month, courtesy of my former employer. My last day at Maybank was also the day of the Annual General Meeting of the Bank in 2015, and an AGM would always be one of the busiest days in my previous employment given my role as the sole Company Secretary of Maybank.





Floral motif decorates the tiles in the Palace of Justice



But I think I got good advice. So to better prepare myself, I bought some books I deemed useful. I also tried to read and understand them. These included the great *White Book* on the Rules of Court 2012, which sheer size initially did little to bolster the zeal in my preparations. There was an easier to follow book on *Litigation Guide* which I found quite practical. I also bought a book entitled *A Short Book of Bad Judges* by Graeme Williams QC. This highlighted some real life cases of certain English judges in earlier times considered not to have been very good. It sets out some of the traits deemed negative. Impatience is said to be the most common fault in the judicial character. Supposed omniscience and pomposity are two other defects that can tarnish judicial performance. Excessive intervention or a descent into the arena is another judicial failing. I thought these are useful to know. I made it a point to remind myself to avoid these negative traits when I started hearing cases.

Reading alone is plainly inadequate. The crux of the problem was that I had not clear idea as to what I did not know. So my quest even involved efforts to attend court proceedings in High Court, anonymously at Kuala Lumpur and Shah Alam, to observe how current judges conduct trials. Curiously then, on several occasions, I found the courts I stepped into had no trial proceedings. Now I know that the day's proceedings typically start in chambers.

All in all, by the time I travelled to Johor Bahru to report for duty, I felt that I was quite ready to take on this new challenge. Psychologically, at least. Which was then to me sufficiently reassuring.

Yes, Johor Bahru. It was quite a surprise when I got to know that I would be posted to Johor Bahru to start my life on the Bench. And I think '*surprise*' is an understatement. Although aspiring judicial commissioners often unquestionably agreed to being placed anywhere throughout the country, the posting to Johor Bahru was for me a significant event since that was the first time in my working life (most likely the latter half of it) that I had to live and work outside of Kuala Lumpur. My family too moved with me to Johor Bahru. These changes made the preparation for the true challenge of the new role even more daunting.

However as it eventually turned out, I feel that I could not have asked for a better or different place to start my life on the Bench than at Johor

Bahru High Court where I experienced my own quiet version of baptism of fire. Instead of starting in Kuala Lumpur which, being Kuala Lumpur, I somehow felt would have been more overwhelming, Johor Bahru and the changes it occasioned to me (and to my family as a consequence) managed to bring me closer to fully understanding the trappings of life in the Judiciary more quickly. My posting to Johor Bahru helped make my transition into the new role a smooth one. It even prepared me for greater challenges ahead and I have been fortunate to have had the full and strong support of all stakeholders in Johor Bahru including especially the court staff and judicial officers whom I had worked closely with at the start of my life on the Bench. Their support was truly indispensable and helped me hit the ground running. They helped me understand a prodigious amount of information on all things Court administration and processes, a subject matter which was hitherto almost completely irrelevant to my life.

I also cherished the honour and privilege of having served alongside my brother Judges and Judicial Commissioners in Johor Bahru. Of special note was the ever anticipated weekly lunch meetings where we struggle, often successfully, to find that little window called lunch break where we each take turn to host. This allowed us to get together extra judicially to discuss usually loosely defined issues of interest sans any meeting agenda, and enhance bench collegiality. I found the opportunity to meet and interact like this to be immensely beneficial for I could easily seek and receive the wise counsel of my seniors on any issues, ranging from the legal philosophy of Francis Bacon to the utterly trivial, being everything else. I was made to understand that no other High Court in the country has a similar weekly lunch meeting arrangement.

The lawyers too have on the whole been professional and never in any manner made me wonder if I had made the right decision of changing career. I instead started looking forward to hearing and trying cases. Every day was different (it still is) and the excitement it evoked almost unsurpassed by what I have done before in my career. At Johor Bahru Civil Court, I also got to do the whole range of civil matters which are otherwise housed in specialist courts in Kuala Lumpur such as family, commercial, even construction and especially judicial review cases. I had the opportunity to examine the law concerning indigenous land rights, leave for committal proceedings, leave for statutory derivative



action, supervision order under crime prevention laws, and damages for personal injury and medical negligence, among others. All totally new to me, and all thoroughly refreshing and absorbing at the same time.

My very first hearing on an application in chambers was a family law matter. It was an application by a former husband to have the maintenance payments to the ex-spouse and daughters substantially reduced. I remember I did study family law as a subject in my final examinations at university. I refused the application. I do not think what I studied decades ago was actually relevant to the application though. My decision was not appealed against, but by then I had already been advised that once I started hearing more cases I would have considerably less time to write grounds of judgment. So I decided to write my grounds for dismissing the application and have the judgment sent for publication. This then appeared in three published reports.

My first trial went fairly smoothly from my perspective. I think it helped that the subject matter was essentially a contractual dispute; a claim for specific performance for breach of a joint venture of a housing development project. Looking back, and with the benefit of having tried several other cases since, I surmised that the first case went well because the lawyers on both sides argued little with one another although I must add that I do not know how they viewed my conduct in presiding over the trial. Regardless, I chose to write the judgment for my decision, also dismissing the claim. This judgment too got published in three different reports.

After having served for almost one full year, or eight and a half months to be exact, I received the transfer order to be posted to New Commercial Court (NCC) in Kuala Lumpur. This was a complete surprise. Surprises have almost become a new normal. For what Johor Bahru meant to my family and me, it is difficult for us not to feel a sense of sadness for having to leave. But having to move back to where we lived previously for so many years was certainly more than welcomed. This was despite my tenancy agreement for the Johor Bahru apartment we lived in for a minimum of one year (which I was intent on honouring to the letter, which I did, non-occupation notwithstanding), and the school-change arrangements that my daughter went through within a period of several months.

The Johore Bar Committee was especially kind in insisting that my farewell dinner be held before I left. So that made it two events organized in my honour, a farewell dinner in late December 2015, and a welcoming high tea only in June earlier in the same year. Thus, despite what I perceived to be deficiencies which could potentially stymie the proper discharge of my new responsibilities, my experience, fortunately has seen quite the reverse. And this was attributed in large measure to the support, in every sense of the word, from judges, judicial officers and court staff, as well as lawyers, and of course, first and foremost my family. Johor Bahru has certainly prepared me well for Kuala Lumpur.

Looking back, after having weathered my first year on the Bench, and quickly dealt with the transition and adjustments that had to be made, I have become accustomed to the fact of the heavy workload in the Judiciary. There was in truth no real transition process, for one has to start almost immediately after taking the judicial oath, with the exception of attending a week long induction course before reporting for duty. The reading of case files, presiding over trials, evaluating evidence to arrive at decisions and writing full grounds of judgment, all started from day one, and they form a seamless cycle that could turn vicious if not efficiently managed. Repercussions could be deleterious and debilitating. This could happen if the key tasks cannot be completed within stipulated time lines. Unwillingness to quickly get familiar with the facts and evidence of a case or scheduling the hearing dates too late would delay disposal of the same. Once decisions are made, delay in writing grounds of judgment when appeals are filed would unnecessarily accumulate pending grounds, and interrupt the appellate process. As cases piled up, the challenge to effect disposals becomes even more acute.

This calls for a disciplined approach to the performance of the judicial role at the High Court. Apart from the paramount duty to adhere to the judicial oath as required by the Constitution, administratively, the principal criteria that encapsulate some key performance assessment criteria which are expected to be fulfilled by the High Court are the set time lines for the disposal of cases and the writing of the grounds for appeal purposes, as well as having one's judgments published by law journals. Because these targets are measurable, they can be achieved. This is good for not unlike in

business, measuring performance through, among others, achievable goals helps identify areas for improvement.

The demands of the judicial role in the context of these administrative requirements, designed to make the administration of justice more efficient seem perennially nothing less than onerous. I say so despite my background, including in private sector business environment which I think has been able to facilitate my transition and sufficiently prepare me to handle the intensity of the workload. Time lines and deadlines are key. Where I last practised we had to fill up time sheet to record on hourly basis the files that we worked on during the day, and that could extend beyond office hours. As each partner was assigned a specified chargeable sum per hour, the total figures in the time sheet for a file would then translate into the fees ultimately charged to the clients. Whether they will pay, partly or at all, is a different story.

The challenge in handling heavy workload in the Judiciary is comparable to the demands in private sector. Both expect timely and efficient completion of deliverables. The single distinguishing factor that makes the judicial workload more heavy in comparison is that here the judge must personally perform the more key judicial functions. A High Court Judge (or Judicial Commissioner) must do the reading, the hearing of the cases, the evaluating of evidence and the writing of grounds. Arguably these tasks should only be done by the judge and the judge alone. Judicial officers can and do provide strong support in addition to helping the management of the cases, and even in discussing the merits of the cases. But the bulk of the judicial tasks remain within the remit of the responsibilities of the judge.

The practice is quite different in the private sector. In general, as one joins as a judicial commissioner, one would have attained the level of seniority either in Judicial and Legal Service or as a partner in private practice. But as for the latter (and most probably in JLS as well), it is both known and accepted that most of the actual work is done by other lawyers who assist the partner. They do the research, write the opinions, and accompany the partner at meetings. Of course, the work would rightfully have to be reviewed and endorsed by the partner who would sign off on and still be ultimately responsible for any legal opinions and documents.

But in terms of the time and efforts expended to produce deliverables per one client file, the assisting lawyers play a very significant role. In the Judiciary, in contrast, most of the substantive judicial work, especially the hearing of cases and the evaluating of evidence as well as the writing of judgments are invariably the duty of the judge alone. Whilst presiding over trials and hearing of substantive applications must certainly be performed by the judge, there may be differences of opinions as to whether judicial officers should assist judges write the grounds of judgment.

In the U.S. Supreme Court for instance, it is known and generally accepted that law clerks undertake research and write opinions for the associate justices. Not dissimilar to the situation in private practice here and elsewhere, ultimate responsibility for the opinions of the associate justices rest firmly with the justices themselves who would have reviewed, made amendments and endorsed the opinions before signing them off as the justices' own. While justices are responsible for the substance of their opinions in each case, including the outcome and the explanation of the outcome, their clerks usually do the majority of the writing. That seems to be acceptable practice in the U.S.

The system is not free from criticisms but it is generally considered to be effective. Its greatest benefit is that it promotes efficiency. It facilitates the judges to better manage the unrelenting flow of cases to be decided. It is also understandably familiar since it mirrors the working arrangement of a law firm where associates draft documents and opinions and partners edit them. Further, some may take the view that the law is not a literary pursuit such that the finer points of language can be deemed less important than the underlying substantive logic of the decision.

But the system in the U.S. has been well established. Clerkship is considered a prestige and attracts many top Ivy League law school graduates. Many Supreme Court Justices previously clerked for other Supreme Court Justices. A notable example is the present and 17<sup>th</sup> Chief Justice, John G Roberts Jr. who very many years back had clerked for his predecessor, William H Rehnquist, who was the 16<sup>th</sup> Chief Justice. Whether this system can be replicated here is an entirely different issue, and one that requires a deeper evaluation, if not already done.



Because judges are often pressed for time, and the rate of the number of new cases always seems to grow faster than the number of those disposed of, considerably less precious time is available for judgment writing. Yet it is self-evident that it is the written judgment that signifies the conclusion the process of judicial decision-making, where the quality of the entire process tends to be almost entirely measured by the written judgment being the final product. When judges retire they leave behind a corpus of judgments which cease to be their author's property as soon as they are published. But they are also dissected and examined in a way not done on the work of other professions.

Yet the endeavour of judgment writing, whilst probably a piece of cake to some, is a very taxing exercise for some others. Analytical legal reasoning must not be anathema to judges. But it still usually involves putting in long hours sifting through masses of paperwork and finding the relevant passages to produce a painstakingly researched and intricately reasoned opinion.

Much has been written about what makes a quality judgment. Courses on judgment drafting have been run by the Judicial Academy set up by the Judicial Appointments Commission. I wish to quote only one interesting description of how a judge perceived his approach, which may be seen as less than conventional. The book *'The Strange Alchemy of Life and Law'* written by Albie Sachs, a former Judge of the South Africa Constitutional Court which was newly established after the first democratic election in 1994, tells the story of the complex and surprising ways in which legal culture transforms subjective experience into objectively reasoned decisions. It suggests that both reason and passion are required for law to work in the service of justice. In the prologue, he wrote:-

*"Finally, the story of the story needed to be told. How do I actually make my decision and write my judgments (referred to in the United States as opinion)? When teaching a course at the University of Toronto I opened with the words 'Every judgment I write is a lie.' It captured the attention of the students. I explained that the falsehood lay not in the content of the judgment, which I sought to make as honest as possible, but in the discrepancy between the calm and apparently ordered*

*way in which it read, and the intense and troubled jumping backwards and forwards that had actually taken place when it was being written. I felt a need to dispel the notion, induced by the magisterial tone we judges conventionally adopt, that judgments somehow arrive at their destination purely on rational autopilot. This led me to find out that there were four different logics involved in any judgment I wrote: the logic of discovery, the logic of justification, the logic persuasion, and the logic of preening. And ultimately my thoughts went to relationship between reason and passion, and then to the concepts for human dignity and proportionality: these interconnected and indivisible concepts run right through the book".*

I do not subscribe to any particular convention on judgment writing but try to faithfully abide by the format described in the Judgment Writing course. But sometimes, faced with time constraints, which never quite goes away, quality may suffer. In fact, it was a challenge even to find some time to write this article. Indeed, whilst much thought has been expended to formulate the thrust of the contents of this modest piece, it has not been a smooth endeavour, for the time to engage in any writing activity has, for the last 16 months been the exclusive province of preparing grounds of judgment. Attempts at writing extra-judicially prove challenging not only in real terms but also at a more subliminal level, when even the subconscious mind conditions itself to what may seem like an eternal effort of the nature unheard of in other professional calling, as it becomes as clear as day that at any point in time, presently and in the future there will always be grounds of judgment that must be prepared to respond to the continual accumulation of notices of appeal at the registry.

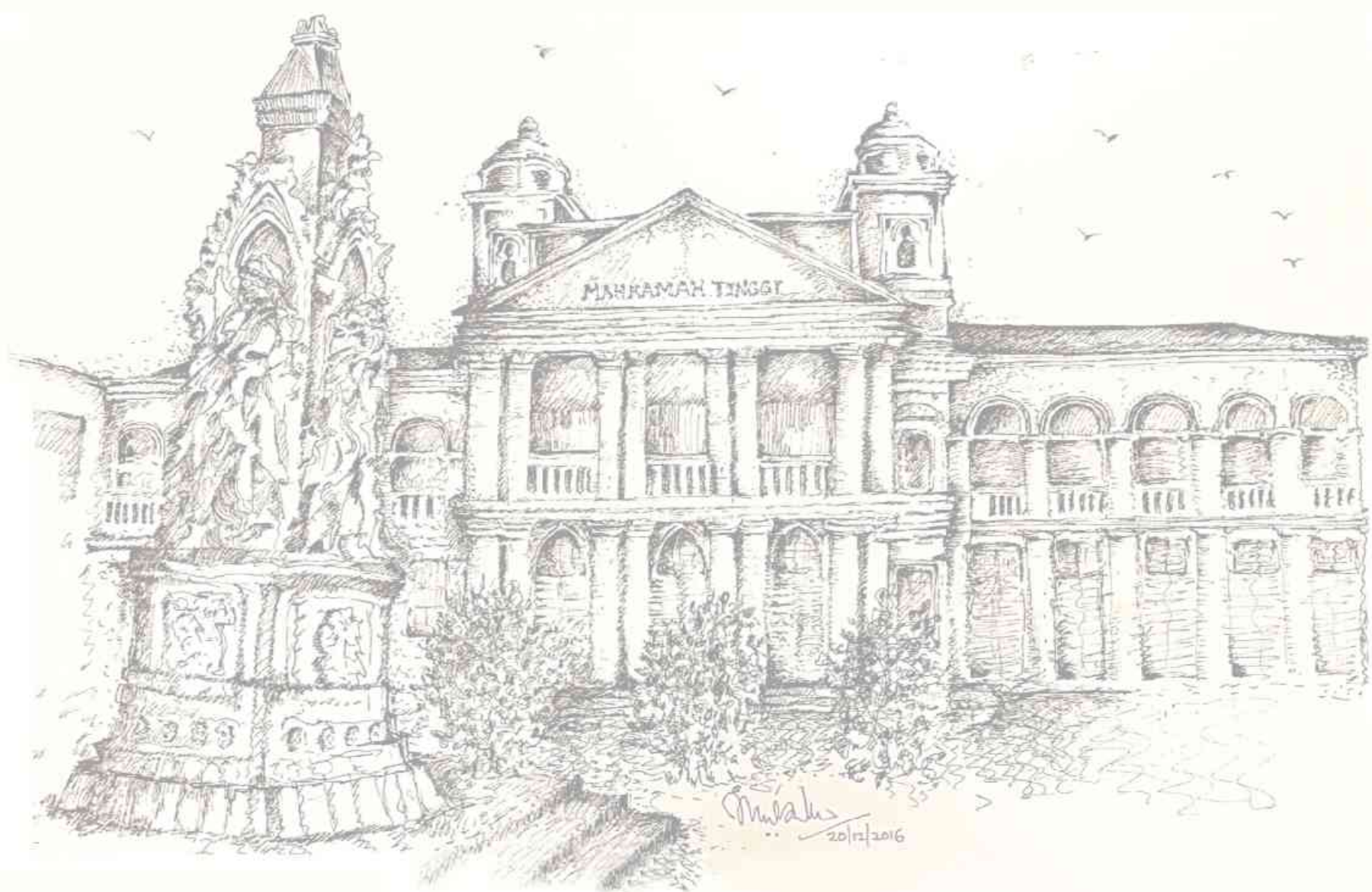
However, this, I think is a problem faced by others too. I am hopeful that in time I would do better and be able to find the right formula to address the same. Yet even this challenge cannot but positively contribute towards making this important journey I have thus far experienced, of dispensing justice to those who seek justice, and the intellectual rigour it demands, whilst I continue learning new things every day, a most enriching and rewarding endeavour, in many ways unparalleled in my work history, at the Bank and earlier.





A profusion of purple outside the windows of the Palace of Justice.





# **CHAPTER 10**

## **CASES OF INTEREST**





The Penang High Court bathed in evening light.

## CASES OF INTEREST: CIVIL

As in previous years, 2016 saw our Judges delivering important decisions which will have a significant impact on the public and the administration of civil and criminal justice in Malaysia.

### **Tenaga Nasional Bhd v. Bandar Nusajaya Development Sdn Bhd** [2016] 8 CLJ 163

This case involved three separate decisions made by the State Authority in connection with compensation payable to a landowner under the Electricity Supply Act 1990 ("the Act"). Tenaga Nasional Berhad, the appellant, had constructed and installed electricity transmission cables over the respondent's land. An enquiry was held by the District Land Administrator under section 16(1) of the Act to ascertain the amount of compensation payable to the respondent. The District Land Administrator initially assessed the compensation at some RM11.4 million. The respondent however appealed to the State Authority pursuant to section 16(2) of the Act. The State Authority delivered its first decision in February 2002 by which it acceded to the appeal by the respondent and increased the District Land Administrator's award from RM11.4 million to over RM34 million. The appellant, unhappy with this decision, wrote to the Menteri Besar seeking a revision of the State Authority's decision. In its second decision in April 2008, the State Authority revised the compensation payable to an amount that was 30% more than the District Land Administrator's original award of RM11.4 million. However, in 2010 the appellant was informed that the State Authority had issued a third decision which set aside the second decision and declared its first decision as *muktamad* (final). The pertinent issue in this case was: Whether the State Authority has power under section 16(2) of the Act to review its own decision and alter it thereafter?

"70. In the circumstances of this case, the State Authority in determining an appeal under s.16(2) of the Act had acted in a quasi-judicial function. The State Authority had discharged its function under section 16(2) of the Act when it issued the First Decision. The Act does not give the State Authority any

*specific legal power to review its previous decision. The State Authority was in fact functus officio with no power to make another or subsequent decision on the award of compensation. In the circumstances, the State Authority had committed an unlawful act when it issued the Second Decision."*

*per Justice Zainun Ali,  
Judge of the Federal Court*

### **Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah & Anor v. Poh Yang Hong** [2016] 9 CLJ 297

The respondent, Poh Yang Hong entered into an agreement to purchase a piece of land held under GRN 232, Lot 349, Seksyen 71, Bandar Kuala Lumpur from one Ng Lai Yin. Before the execution of the agreement, a private search pursuant to section 384 of the National Land Code was conducted by the respondent's solicitors on the title, which search confirmed that Ng was its registered proprietor. Whilst the registration of transfer was pending, the respondent came to know that the land was in fact held under a different title i.e. PN 20992, Lot 349, Bandar Kuala Lumpur and was registered in the name of one Mohamad Nor bin Mohamad. This was confirmed from an official search at the Land Registry, carried out pursuant to section 385 of the National Land Code. The question before the Federal Court was: In an action for negligence premised on the cause of action of the failure on the part of the Land Administrator to ensure the particulars in the Register of Titles are accurate, is the difference between sections 384 and 385 of the National Land Code of any relevance?

"39. We are of the view that there can be no difference as between a "Private Search" and an "Official Search", as provided for under the NLC, in so far as it relates to the issue of liability arising from a common law claim of damages for the negligent act of the second defendant in its maintenance of the records of Register of Titles. It is also noted that there is nothing in



*either section 384 or section 385 of NLC which excludes the liability of the second defendant from a common law claim of the tort of negligence."*

*per Justice Zulkefli Ahmad Makinudin,  
Chief Judge of Malaya*

**Indira Gandhi A/P Mutho v.  
Ketua Polis Negara  
[2016] 5 CLJ 353**

The appellant, Indira Gandhi A/P Mutho obtained a committal order against her converted husband, Pathmanathan after he failed to adhere to a High Court order to hand over their youngest child to the mother. The appellant also obtained a recovery order directing the bailiff and the police to locate the child and return her to the appellant. The Inspector General of Police (IGP), however, refused to mandate the execution of the warrant of committal and the recovery order on the ground that there were two conflicting custodial orders. One was the Syariah High Court order giving custody of the children to the husband. The other was the Civil High Court order which gave custody to the appellant. The IGP took the position that to execute the latter would cause him to be in contempt of the former. The Federal Court excused the IGP for not taking any action to enforce the recovery order in view of the recent decision of the Federal Court in *Viran Nagapan v Deepa Subramaniam & Other Appeals* [2016] 3 CLJ 505; [2016] 1 MLJ 585. However, the Court found that the IGP had a clear duty under the law to execute the warrant of committal to apprehend the husband and *mandamus* can be directed to the same upon refusal for doing so.

"33. *We are of the view that Pathmanathan must be apprehended to face justice. In order to do so, the warrant of committal needs to be executed and the proper authority to do so has to be the police. The general duties of police officers under the command of the IGP are provided for under section 20(3) of the Police Act 1967 which provides:*"

*"(3) Without prejudice to the generality of the foregoing provisions or any other law, it shall be the duty of a police officer to carry out the purposes mentioned in*

*subsection 3(3); and he may take such lawful measures and do such lawful acts as may be necessary in connection therewith, including:*

(a) *apprehending all persons whom he is by law authorised to apprehend;*

(f) *executing summonses, subpoenas, warrants, commitments and other process lawfully issued by any competent authority;*

*..."*

"34. *It can be seen from the above that the duties of a police officer include the execution of warrants. This must include warrants of committal issued resulting from a contempt proceeding. In that light, we are of the view that on the facts and circumstances of this case the IGP cannot refuse to command his officers to execute the warrant of committal issued by the civil High Court. Thus, when the IGP declared his intention not to execute the said warrant of committal, an order of mandamus can be issued against him."*

*per Justice Raus Sharif,  
President of the Court of Appeal*

**Utusan Melayu (Malaysia) Bhd. v. Dato' Sri  
Di-Raja Hj Adnan Hj Yaakob  
[2016] 5 CLJ 857**

The Court of Appeal in this case ruled that public officials could not sue the media for defamation in their official capacity. The respondent filed a defamation lawsuit against the appellant over an article published in its weekend paper *Mingguan Malaysia* in November 2014 entitled "*Hebat Sangatkah Adnan*". The respondent claimed that the article implied that he had failed in carrying out his duties and should not be the *Menteri Besar*. The appellant then filed an application to strike out the respondent's action under the provisions of the Rules of Court 2012. The High Court dismissed the appellant's application on the ground that the respondent's name was cited without his official position as the *Menteri Besar* of the state of Pahang and therefore the respondent was suing

in his personal capacity. The Court of Appeal reversed the High Court's decision and struck out the respondent's action.

The crucial issue brought in this appeal was whether the respondent lacked the *locus standi* in initiating and maintaining the action on the ground that the respondent was the elected representative and the *Menteri Besar* of Pahang. The Court of Appeal in this case confirms the principle in the case of *Derbyshire County Council v. Times Newspapers Ltd and Others* [1993] 1 ALL ER 101 that a democratically elected Government and individual members holding office in the Government and are responsible for public administration or having conduct of the affairs of the Government should be open to uninhibited public criticism relating to such public administration and affairs. Lord Keith of Kinkel in that case said:

*"It is of the highest public importance that a democratically elected governmental body, or indeed any Governmental body, should be open to uninhibited public criticism. The threat of civil action for defamation must inevitably have an inhibiting effect of freedom of speech."*

However, the principle does not restrict the rights of individuals holding public office from suing in a defamation action in his personal capacity where the individual's reputation has been wrongfully injured.

**Hong Leong Bank Bhd v. Khairulnizam bin Jamaludin**  
[2016] 4 MLJ 302

The primary issue in this case was whether the phrase 'unless he proves to the satisfaction of the court that he has exhausted all avenues to recover debts owed to him by the debtor' in section 5(3) of the Bankruptcy Act 1967 ('the Act') requires a judgment creditor to obtain leave of court prior to commencing a bankruptcy action against a social guarantor (defined as a person who provides a guarantee (*inter alia*) for a hire purchase transaction of a vehicle for personal or non-business use, not for the purpose of making profit).

A bankruptcy notice ('the BN') was issued against the respondent, Khairulnizam in August 2011. He was a guarantor under a Guarantee Agreement for

a Hire Purchase Agreement between Hong Leong Bank, the appellant and the principal debtor who had since been adjudged a bankrupt. The BN was served by way of substituted service in 2011. In March 2012, the appellant presented the creditor's petition against the respondent. The respondent issued a letter in June 2012 proposing to settle his debt. It was however rejected by the appellant. In September 2012, the respondent applied to set aside the BN. The Senior Assistant Registrar allowed the respondent's application on the ground that the appellant failed to show that it had exhausted all avenues to recover the debt owed by the hirer pursuant to section 5(3) of the Act. The appellant's appeal to the judge in chambers was dismissed on the ground that the appellant had not complied with section 5(3) of the Act before commencing the bankruptcy proceeding against the respondent who is a social guarantor as the appellant did not apply for leave to commence the bankruptcy proceeding. The High Court's decision was affirmed by the Court of Appeal.

In allowing the appeal the Federal Court held that: a reading of section 5(3) of the Act would clearly show that there would be sufficient compliance with the provision if a creditor shows by way of affidavit that the creditor has exhausted all avenues to recover debts owed to him by the debtor. There is nothing to say that leave must first be obtained by the creditor before commencing a bankruptcy action against a social guarantor. If the Legislature had so intended one would expect it to have spelt out that requirement in an express and clear provision to that effect.

**Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin and another appeal**  
[2016] 2 MLJ 309

This landmark case dealt with the issue on whether a non-Muslim, in this case one Victoria Jayaseele Martin, can be admitted as a *peguam syarie* to represent parties in any proceedings before the Syariah Court in Kuala Lumpur. There are two questions raised at the Federal Court namely: (a) Whether that part of Rule 10 of the Peguam Syarie Rules 1993 mandating that only Muslims can be admitted as *peguam syarie* is *ultra vires* the Administration of Islamic Law (Federal Territory) Act 1993; and (b) Whether that part of Rule 10 of the Peguam Syarie Rules 1993 mandating that only Muslims can be admitted as *peguam syarie* is in contravention of Article 8(1) and/or Article



8(2) and/or Article 5 and/or Article 10(1)(c) of the Federal Constitution and is as a consequence void.

In respect of the first question, the Federal Court delivered a split decision by a majority of 3:2 when it decided that part of Rule 10 of the Peguam Syarie Rules 1993 mandating that only Muslims can be admitted as *peguam syarie* remains valid as it had not gone beyond the scope of Administration of Islamic Law (Federal Territory) Act 1993. The term 'any person having sufficient knowledge of Islamic law' as found in section 59(1) is to be read harmoniously with section 59(2)(a) Administration of Islamic Law (Federal Territory) Act 1993 which provides powers to the Majlis Agama Islam Wilayah Persekutuan to make rules to provide for procedures, qualifications and fees for the admission of *peguam syarie* in Wilayah Persekutuan. In a dissenting judgment, Justice Suriyadi Halim Omar held that 'it was never the intention of Parliament to shut the doors to academically endowed non-Muslims having sufficient knowledge of Islamic law to appear in any Syariah Court.' On the second question, the court unanimously held that part of Rule 10 of Peguam Syarie Rules 1993 mandating that only Muslims can be admitted as *peguam syarie* is not in contravention of the Federal Constitution's Article 5, Article 8(1) and Article 10(1)(c).

*"One of the most important criteria which makes an upright and virtuous peguam syarie is for the lawyer to have 'Aqidah', which means belief with certainty and conviction in one's heart and soul in Allah and His divine Law."*

*per Justice Raus Sharif,  
President of the Court of Appeal*

**Viran Nagapan v. Deepa Subramaniam &  
Other Appeals  
[2016] 3 CLJ 505**

The appellant and the respondent were married in 2003 under the Law Reform (Marriage & Divorce) Act 1976 (LRA), out of which marriage they had two children, a girl named Shamila and a boy named Mithran. Their marriage was however dissolved first by the Syariah High Court pursuant to section 46(2) of the Islamic Family Law (Negeri Sembilan) Enactment 2003 (the Enactment) and subsequently by the Civil High Court pursuant to section 51 of the

LRA, when the appellant father converted to Islam in 2012. In dissolving the marriage, the Syariah High Court granted permanent custody in respect of the couple's two children to the appellant whilst the Civil High Court granted permanent custody to the respondent mother. Following the High Court order granting custody of the children to the respondent, the appellant took Mithran away from the respondent. On 11<sup>th</sup> April 2014, the appellant filed a notice of appeal against the decision of the High Court Judge in granting custody of the two children to the respondent. The respondent then applied for a recovery order in the Civil High Court under section 52 of the Child Act 2001. The High Court Judge granted the respondent's application and ordered the Inspector General of Police (IGP) to execute the recovery order against the appellant. The appellant also filed an appeal against the recovery order.

The Federal Court, in allowing the appeal, held that the civil court has the exclusive jurisdiction to grant decrees of divorce of a civil marriage under the LRA and to make all ancillary orders thereto. It was an abuse of process for the spouse who had converted to Islam to file for dissolution of the marriage and for custody of the children in the Syariah Courts. The Federal Court also held that, in light of the existence of the two conflicting custodial orders, the High Court Judge should not have entertained the application of the respondent for the recovery order of Mithran from the appellant. The recovery order should not have been given because the pertinent elements under section 52 of the Child Act 2001 had not been fulfilled.

The decision in *Subashini Rajasingan v. Saravanan Thangathoray & Other Appeals*, [2008] 2 CLJ 1 is confirmed in the words of Nik Hashim FCJ (as he then was):

*"The husband could not shield himself behind the freedom of religion clause under art. 11(1) of the FC to avoid his antecedent obligations under 1976 Act on the ground that the civil court has no jurisdiction over him. It must be noted that both the husband and wife were Hindus at the time of marriage. Therefore, the status of the husband and wife at the time of registering their marriage was of material importance, otherwise the husband's conversion would cause injustice to the unconverted wife including the children. A non-Muslim marriage does not automatically dissolve*



The staircase leading to the Judge's chambers at the Johor Bahru High Court.

*upon one of the parties converted to Islam. Thus, by contracting the civil marriage, the husband and wife were bound by the 1976 Act in respect of divorce and custody of the children of the marriage and thus, the civil court continues to have jurisdiction over him, notwithstanding his conversion to Islam."*

**Mohd Ridzwan Abdul Razak v.  
Asmah Hj Mohd Nor  
[2016] 6 CLJ 346**

The appellant was the General Manager of the Risk Management Department in Lembaga Tabung Haji ('the company') whilst the respondent held the position of Senior Manager in the same department. In 2009, the respondent lodged a complaint against the appellant claiming to have been sexually harassed by the appellant. Upon inquiry, it was found that there was insufficient evidence to warrant disciplinary action to be taken against the appellant. The appellant claimed the complaint was defamatory, affecting his reputation as a Muslim and a member of the senior management of the company, resulting in the non-renewal of his contract. The appellant sued the respondent for defamation. In the respondent's defence and counterclaim, she particularised the sexual harassment

and further alleged that she had suffered emotional and mental stress and trauma. The High Court dismissed the appellant's claim for defamation and allowed the respondent's counterclaim. The Court of Appeal dismissed the appellant's appeal, and on the counterclaim found for the respondent on the basis of the tort of intentionally causing nervous shock.

The primary question before the Federal Court was whether harassment was a valid cause of action under Malaysian laws. On the facts, the Federal Court found that nervous shock had not been proven but that the appellant was liable to the respondent under the tort of harassment, in which it was not necessary to show that a claimant had suffered nervous shock.

The Federal Court also held that there is no legal requirement for the allegations to be corroborated by a third party. To hold otherwise would render the victim helpless, since most harassment would take in private. The courts in determining a claim for sexual harassment, will have to scrutinize all evidence before them and arrive at a factual finding.

In making this decision, the Federal Court sent a very strong message about sexual harassment in the workplace:



*"Sexual harassment is a very serious misconduct and in whatever form it takes, cannot be tolerated by anyone. In whatever form it comes, it lowers the dignity and respect of the person who is harassed, let alone affecting his or her mental and emotional wellbeing. Perpetrators who go unpunished, will continue intimidating, humiliating and traumatizing the victims thus resulting, at least, in an unhealthy working environment,"*

*per Justice Suriyadi Halim Omar,  
Judge of the Federal Court*

**Government of India v.  
Petrocon India Limited  
[2016] 6 CLJ 321**

The Government of India ('the appellant') and Petrocon India Limited ('the respondent') were parties to a Production Sharing Contract ('PSC'), in respect of the development of petroleum resources in an area in India known as the Ravva Oil and Gas Field. There were three other parties to the PSC. Disputes arose between the appellant and the respondent in respect of the PSC. Pursuant to the terms of the PSC, the appellant issued three notices to arbitrate to the respondent. The arbitral tribunal had, on 28<sup>th</sup> March 2003, fixed a tentative preliminary meeting of the arbitration to be held in Kuala Lumpur in the week beginning 19<sup>th</sup> May 2003 but due to the outbreak of the SARS epidemic, the arbitral tribunal shifted the venue of its sittings to Amsterdam. On 30<sup>th</sup> June 2003, the preliminary meeting of the arbitration was held in Amsterdam and directions in respect of the conduct of the arbitration were given. Subsequent hearings and proceedings were then held in London. The appellant's application for interim relief was fixed for hearing on 26<sup>th</sup> September 2003 in London. By a consent order made in London, the arbitrators recorded that the seat of the arbitration was shifted to London. A further case management of the arbitration was fixed in London. An Arbitral Tribunal was constituted and arbitration proceedings commenced. Upon hearing the parties, the Arbitral Tribunal published their partial award dated 31<sup>st</sup> March 2005.

The appellant filed an originating motion 'encl. 1' for an order that part of the partial award dated 31<sup>st</sup> March 2005 be set aside or alternatively, an order that the relevant part of the award be remitted to the arbitral tribunal for reconsideration. On

27<sup>th</sup> September 2005, the appellant obtained leave to serve encl. 1 out of jurisdiction. On 1<sup>st</sup> June 2006, the respondent filed an application in 'encl. 9' to set aside 'encl. 1', leave to serve out of jurisdiction and service of 'encl. 1'. The respondent objected to the jurisdiction of the High Court under O. 69 of Rules of High Court 1980 ('RHC 1980') on the ground that the seat of the arbitration was no longer Kuala Lumpur. The High Court ruled in favour of the respondent and held that it had no jurisdiction over the partial award because the seat of arbitration was no longer Kuala Lumpur as it had shifted to London. It was held that the curial law, that is the law governing the arbitration proceedings, would be the laws of England and therefore any challenge to the partial award ought to be filed before the competent courts in England.

The appellant appealed to the Court of Appeal in Malaysia. Simultaneously, the appellant sought a declaration under section 9 of the Indian Arbitration and Conciliation Act 1996 before the Delhi High Court that the seat of arbitration was Kuala Lumpur ('OMP'). The respondent objected to the maintainability of the action, arguing that the Indian Courts do not have jurisdiction. The Delhi High Court dismissed the respondent's objection. The respondent then filed a Special Leave Petition ('SLP') to the Supreme Court of India to challenge the Delhi High Court's order. At about the same period, the respondent also filed a claim before the Commercial Court in London to determine the question of the juridical seat of arbitration.

On 6<sup>th</sup> September 2010, the Supreme Court of India appraised the pending appeal by the appellant in Kuala Lumpur and the action instituted by the Respondent in London, both on the issue of the juridical seat. Both parties agreed to stay the prosecution of these proceedings until the disposal of the SLP at the Supreme Court of India. The Appellant wrote to the Court of Appeal, Malaysia on 23<sup>rd</sup> March 2011 to withhold the hearing of the Malaysian appeal. Accordingly, the parties stayed the appeal at the Malaysian Court of Appeal pending the outcome of the juridical seat issue at the Supreme Court of India.

On 11<sup>th</sup> May 2011, the Supreme Court of India granted leave to appeal in the SLP and allowed the Respondent's Civil Appeal No. 4269 of 2011. Subsequent to the Indian Supreme Court's decision, the Respondent took steps to revive the London proceedings by seeking a declaration that the permanent seat of arbitration is London.

The appellant, on the other hand, brought an anti-suit injunction against the respondent in the Delhi High Court to restrain the respondent from continuing with the London proceedings as the Indian Supreme Court had confirmed that the seat of arbitration remains to be Kuala Lumpur. However, the Delhi High Court declared, *inter alia*, that the juridical seat was put in issue before the Supreme Court by the respondent and the conclusion of the Supreme Court constituted *res judicata* between the parties. The Delhi High Court issued the anti-suit injunction sought by the appellant against the respondent. The respondent then appealed to a full bench.

While the court proceedings outside Malaysia continued, on 8<sup>th</sup> October 2012, the Malaysian Court of Appeal affirmed the decision of the Malaysian High Court but on different grounds. The Court of Appeal held that Clause 34.12 of the PSC was concerned only with "venue" and that with the change of venue to London, English law was the governing law. The Court of Appeal however disagreed with the High Court on the issue of "seat", holding that the seat of arbitration is determined by the governing law of the arbitration agreement. The Court of Appeal accordingly concluded that London is the juridical seat because English law was chosen as the law of the arbitration. As a result, the parties were put in a bind following the Indian Supreme Court's decision and subsequent Delhi High Court's decision which declared Kuala Lumpur as the seat of the arbitration whereas the Malaysian Court of Appeal held that the seat had shifted permanently to London. On 28<sup>th</sup> January 2013, by consent of both parties, the respondent's appeal at the Delhi High Court was disposed of on agreed terms. The respondent also withdrew the London proceeding on 7<sup>th</sup> May 2013 and agreed to the binding decision of the Indian Supreme Court.

Dissatisfied with the decision of the Malaysian Court of Appeal, the appellant appealed to the Federal Court. In delivering judgment of the court, Chief Justice Arifin Zakaria held:

*"... the seat of arbitration will determine the curial law that will govern the arbitration proceeding. The seat here refers to the legal seat rather than the geographical seat. It is a permanent or fixed seat which can only be changed by consent of parties to the arbitration and this must be distinguished from the physical or geographical place where the arbitration was held. In the case of place*

*of arbitration it can be shifted from place to place without affecting the legal seat of the arbitration."*

*"... the word "venue" or "seat" is often used interchangeably in international arbitrations. In the present case, it was common ground that venue of the arbitration was first moved to Amsterdam from Kuala Lumpur due to the outbreak of SARS epidemic in Kuala Lumpur. Subsequently the hearings were shifted to London, culminating in the consent order of 15.11.2003, which shifted the seat of the arbitration to London. Therefore, at the start of the arbitration proceedings, Kuala Lumpur was commonly accepted as the seat of arbitration. This, couple with the filing of the application to set aside the partial award in the Kuala Lumpur High Court by the appellant, go to show that the appellant had accepted Kuala Lumpur as the seat of arbitration. It is trite law that such a challenge can only be made in the jurisdiction which is the seat of arbitration."*

*"Having ruled that the Delhi High Court lacks jurisdiction to entertain the petition by the appellant (respondent in the SLP), therefore as rightly contended by the respondent, it was no longer necessary for the Indian Supreme Court to delve into the issue of the seat of arbitration. Accordingly, we hold that whatever ruling and/or observation made by the Indian Supreme Court on that issue is of no consequence and do not have the effect of barring the respondent from re-agitating the issue before the Malaysian Court. It is our respectful view that once the Indian Supreme Court ruled in favour of the respondent in the SLP which was strictly confined to the issue of jurisdiction of the Delhi High Court, then the matter should appropriately end there. In light of the above, we hold that any ruling made by the Indian Supreme Court beyond the issue of jurisdiction must be taken as mere obiter dicta with no binding effect on the parties. Hence, as rightly submitted by learned counsel for the respondent the observation of the Indian Supreme Court at paras. 12 and 13 of its judgment could not be pleaded as res judicata barring the respondent from raising the same before the Malaysian courts. It is trite law that a decision of a court not clothed with the necessary jurisdiction would not give rise to res judicata."*





Corridor outside the Johor Bahru Criminal High Court.

## CASES OF INTEREST: CRIMINAL

**Dato' Seri Anwar bin Ibrahim v.  
Public Prosecutor  
[2016] 6 CLJ 161**

The Federal Court had earlier dismissed Dato' Seri Anwar bin Ibrahim (DSAI)'s appeal against the decision of the Court of Appeal in allowing the appeal by the Public Prosecutor against the decision of the High Court in acquitting and discharging him for the offence of sodomy. Aggrieved, DSAI applied to review the said decision. By way of motion, DSAI applied to the Federal Court to adduce further evidence under section 93 of the Courts of Judicature Act 1964 ("the CJA 1964") at the hearing of his review application. Reliance was placed on the inherent power of the Court under rule 137 of the Rules of the Federal Court 1995 ("the RFC 1995"). The additional evidence sought to be adduced was the statement given by one Dato' Ramli Yusuff in one civil suit relating to the conspiracy to fabricate the evidence on the so-called "black-eye" incident wherein DSAI had suffered injury in his eye as a result of being punched by the former Inspector General of Police. The conduct in the earlier case, according to DSAI, may be used to show an intention to injure him in his sodomy case. The Federal Court dismissed the application, and held as follows:

"14. *We are of the view that the procedure for admission of additional evidence under section 93 CJA 1964 is only applicable specifically under the jurisdiction of the Appellate Court by means of rehearing but not through a reviewing process. The use of section 93 of the CJA 1964 by the applicant is therefore tantamount to an abuse of the court process since this application constitutes an attempt to bring additional evidence under a review application.*"

"15. *Even assuming that section 93 of the CJA 1964 can be invoked in regard to*

*an application under rule 137 of RFC 1995, the applicant has still to meet the next stage requirement of whether the additional evidence sought to be admitted satisfies the requirement as provided for under section 93 of the CJA 1995; and the requirements under the principles as set out in the case of R v Parks [1961] 3 All ER 633 and other decided case authorities."*

*per Justice Zulkefli Ahmad Makinudin,  
Chief Judge of Malaya*

**Gan Boon Aun v. Public Prosecutor  
[2016] 4 MLJ 265**

The appellant together with one Khiudin Mohd, an executive director of Transmile Group Berhad, were charged in the Sessions Court in 2007, for abetting Transmile in making a misleading statement relating to Transmile's revenue in the company's unaudited consolidated results for the financial year ended December 2006, under section 86(b), read together with section 122(c) of the Securities Industry Act 1983 (the Act). Both the appellant and Khiudin were also charged with an alternative charge for furnishing the same misleading statement to Bursa Malaysia under section 122B(a)(bb) read together with section 122(1) of the Act.

In November 2011, the High Court declared section 122(1) of the Act to be unconstitutional after the Sessions Court transmitted the case to the High Court following an application by the appellant and Khiudin for a referral on a constitutional question. On September 2015, the Court of Appeal overturned the decision of the High Court and held that section 122(1) of the Act was valid.

The questions before the Federal Court were (a) whether the High Court, upon a constitutional issue being referred to by the subordinate court, by



virtue of section 30 (1) of the Courts of Judicature Act 1964 (the CJA), was correct in deciding on the constitutional issue and answering the questions referred to it?; (b) whether the present appeal is properly brought before the Federal Court? ; and (c) whether the High Court was correct in making the order of acquittal and discharge of the accused persons as stated in the grounds of judgment.

The Federal Court in striking out the appeal held that the High Court did not have the jurisdiction and power to decide on constitutional issues from which the record of proceedings has been transmitted to the High Court by a subordinate court. It was further held that under section 30 of the CJA, the High Court judge had to decide whether there was a question of constitutional issue on matters referred to it by the Sessions Court. If the High Court found it was necessary for a legal question to be determined, it was the duty of the High Court judge to state the legal question and transmit the case to the Federal Court.

*"We would like to state here and advise all Sessions Court Judges and Magistrates when dealing with any application made by any party under s. 30 of the CJA to properly ensure that there is merit in such application. It may be just a frivolous application to delay the conduct of the hearing of the trial. If there is no merit in such application the case should proceed to a final conclusion of the trial. A trial should be conducted on a continuous basis without interruption and delay. A trial should not be by instalment. Likewise, High Court Judges when presiding to deal with matters brought before them under s. 30 of the CJA should act and decide promptly and judiciously whether there is merit in such application. If the matter referred to it does not relate to constitutional issue to be determined by the Federal Court, it should be sent back to the transmitting court for speedy disposal of the case."*

*per Justice Zulkefli Ahmad Makinudin,  
Chief Judge of Malaya*

**Ong Teik Thai v. Public Prosecutor**  
[2016] 7 CLJ 1

The charge against the appellant, Ong Teik Thai was that he together with four other persons at large committed the murder of one Choi Yu Ki under section 302 of the Penal Code read together with section 34 of the same Code. The crucial issue which lay at the heart of this case was the identification of the appellant. The evidence in this regard was given by three key prosecution witnesses i.e. SP5, SP6 and SP8, who according to the defence counsel, contradicted each other. Hence, the appellant complained that there was no maximum evaluation of the evidence that had been adduced by the prosecution. In allowing the appeal and reversing the decision of both the High Court and the Court of Appeal, the Federal Court had this to say:

"21. *[S]P5 did not identify the Appellant. As for SP6 and SP8, we have demonstrated how SP6 contradicted himself in his own evidence and how his evidence materially contradicted SP8's evidence in respect of the description and thus the identification of the Appellant. It is true that the learned trial judge did consider the discrepancy in the evidence of SP5 and SP6 respectively regarding the number of persons seen by them alighting from the car. However, there is nothing in his judgment to show that he had considered the material contradictions within SP6's own evidence, and the material contradictions between SP6's evidence and that of SP8 regarding the description and the identification of the Appellant at the scene of the offence, let alone the ultimate vital question whether in view of the contradictions it was safe to rely on their evidence. That failure is a serious misdirection on the part of the learned trial judge in his handling of the issue of identification of the Appellant which was so crucial to the question whether the prosecution had established a prima facie case against the Appellant. In our view*

*this misdirection (by way of non-direction) alone is sufficient to warrant appellate intervention. Additionally, in the second part of his finding, which is the continuation of the first part of the finding, the learned judge said "and his joint involvement with the others in the attack on the deceased at the scene, the intention of which was clearly to cause the death of the deceased". According to the learned judge, this finding was made by him after "having made the maximum evaluation of the evidence of SP5, SP6 and SP8 in their totality". What did he mean by that? What did he mean by "his joint involvement with the others in the attack on the deceased"? He did not make specific finding as to what Appellant did or did not do in "his joint involvement". In his evidence in Court SP6 did identify the Appellant as one the attackers. However, as we demonstrated, there were contradictions within SP6's own evidence, and contradictions between*

*SP6's and SP8's evidence which raise serious doubt on the identification of the Appellant as one of the attackers of the deceased or as one of the culpable participants of the offence. As we have said the learned trial judge did not direct his mind to those contradictions in considering the issue of the identification of the Appellant. There is also nothing to show that he had address his mind to these contradictions in considering what was the act done by the Appellant in participating in the criminal act actually committed to make him liable by the operation of section 34 of the Penal Code. Indeed, there is no finding made by him on the specific act done by the Appellant in furtherance of the common intention which is crucial in a case such as this where reliance is placed on section 34 of the Penal Code. This is another serious misdirection made by the learned judge. We conclude that the learned trial judge had not made maximum evaluation of the evidence at*



Law Reports at the library of the Palace of Justice.



*the close of the prosecution's case, which in our view had occasioned a serious and substantial miscarriage of justice warranting appellate interference."*

*per Justice Ahmad Maarop,  
Judge of the Federal Court*

**Farose bin Tamure Mohamad Khan & 3 Ors.  
v. Public Prosecutor  
[2016] 9 CLJ 769**

All four appellants were charged under section 302 of the Penal Code read together with section 34 of the Code in respect of the death of one Catherine Chong Jang Joon. It was argued for the appellants that the trial judge had failed to make a specific finding on common intention. The Court of Appeal, according to the appellant, was wrong to resort to section 60 of the Courts of Judicature Act 1964 in scrutinizing and re-evaluating the whole evidence to infer common intention when it had agreed that there was a serious error on the part of the trial judge for not making a specific finding on common intention of the appellants. The Federal Court, in dismissing the appeal, held as follows:

*"104. There is no dispute that, the trial judge regretfully did not determine the nature of the common intention among the Accused persons with sufficient clarity. This according to learned counsel, resulted in a misdirection occasioning a miscarriage of justice. However, the Court of Appeal had addressed the issue by resorting to section 60 of the Courts of Judicature Act 1964 and guidance from the decision of the Federal Court in PP v Azilah Bin Hadri & Anor [2015] 1 MLJ 617 where it was held:*

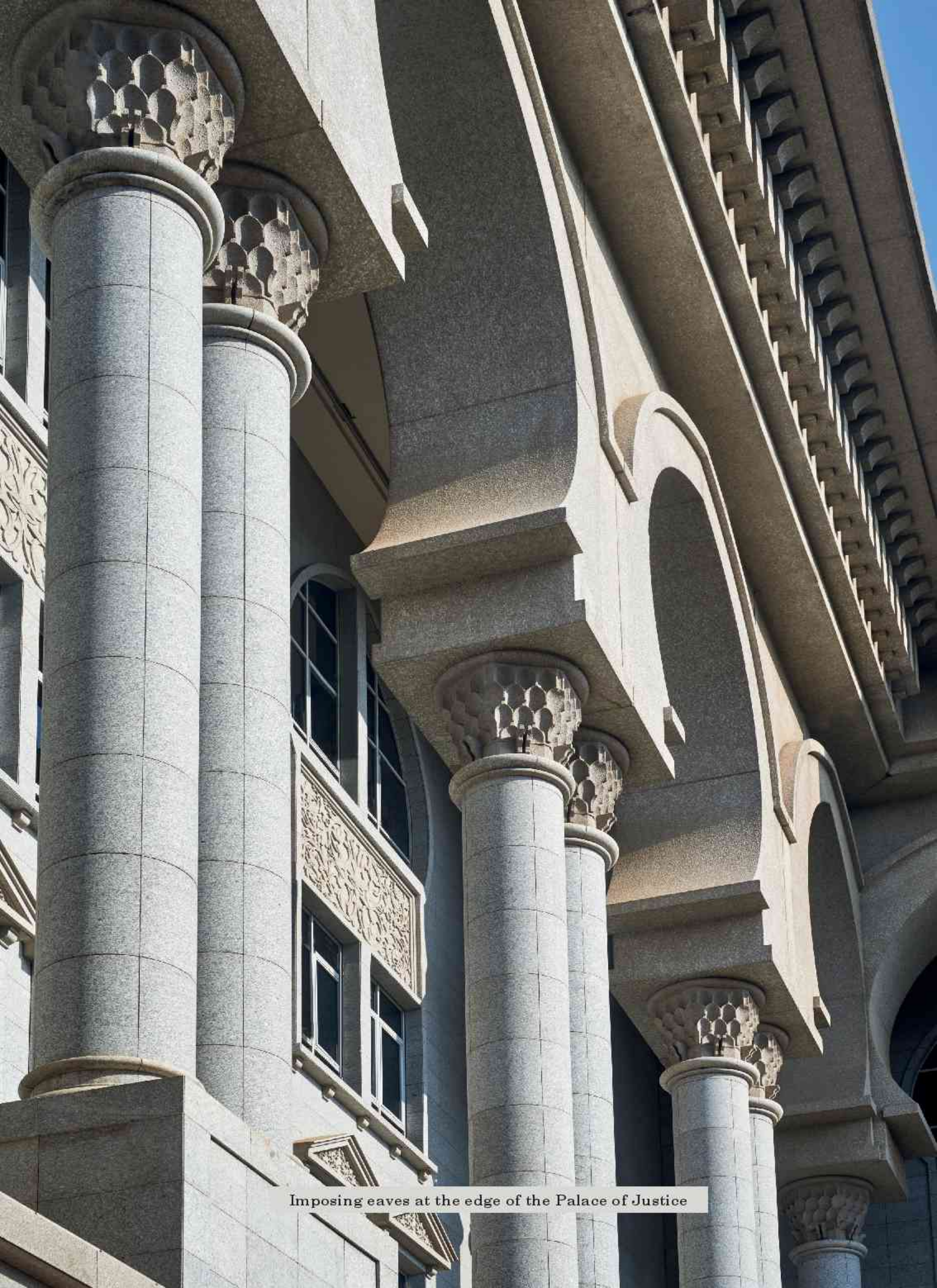
*"We hold the view that even if the trial judge had failed to mention of any evaluation of common intention in his grounds of judgment, the Court of Appeal, which in law reheard the case when exercising its appellate function, was empowered and also duty bound to carry out an evaluation exercise to determine whether common intention did exist. Here the Court of Appeal equally failed to do that. An appeal is a continuation of proceedings by way of rehearing and an appeal court may subject the evidence to critical re-examination (Ahmad Najib Bin Aris v Public Prosecutor [2009] 2 MLJ 613; Mohamad Bin Deraman v Public Prosecutor [2011] 3 MLJ 289)".*

*"105. In the instant appeal, the Court of Appeal did carry out an evaluation exercise to determine whether common intention existed among the Accused persons. The Court of Appeal found that there was "a unity of purpose and there was a meeting of minds between the four Accused as to what was to be done and which was carried out by the 3rd and the 4th Accused".*

*"106. We on our part, as seen from the preceding paragraphs in this judgment, have also undertaken the same evaluation and found that the evidence in this case taken as whole leads us to an irresistible inference that the Accused persons must have commonly intended to cause fatal injury or death to the deceased. Thus, we find no merit on this issue raised on behalf of the Accused persons."*

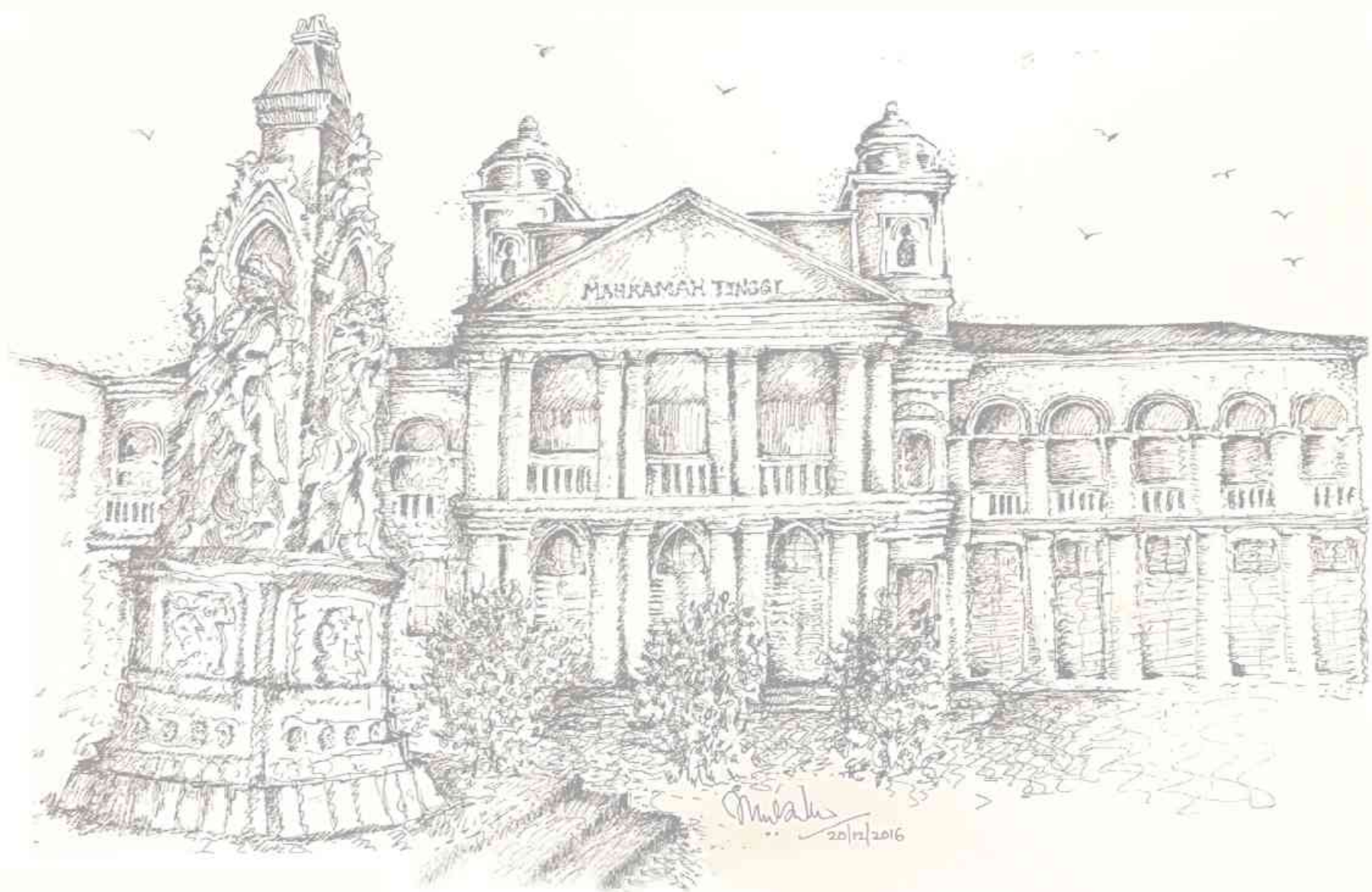
*per Justice Raus Sharif,  
President of the Court of Appeal*





Imposing eaves at the edge of the Palace of Justice





# APPENDIX A

## (MALAYA)



## 1. PERLIS

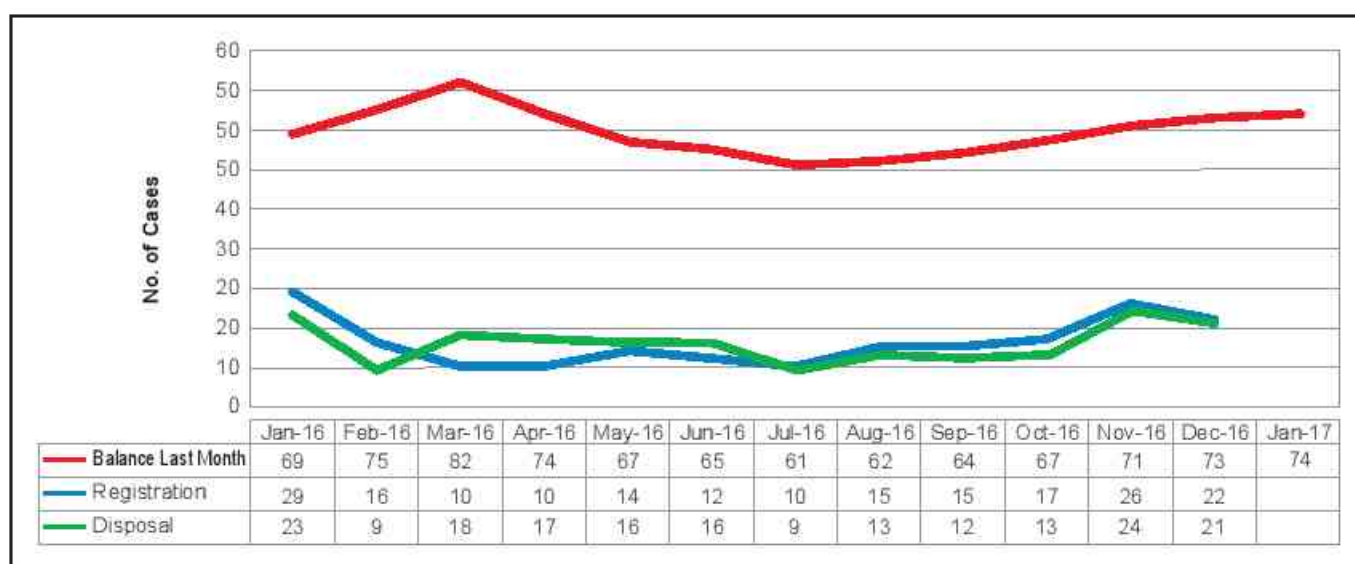
### 1.1 IN THE HIGH COURT AT KANGAR - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kangar for the year 2016. For the period from January to December

2016, the total number of civil cases registered was 196 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 191 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Kangar is 263 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KANGAR (CIVIL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KANGAR (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

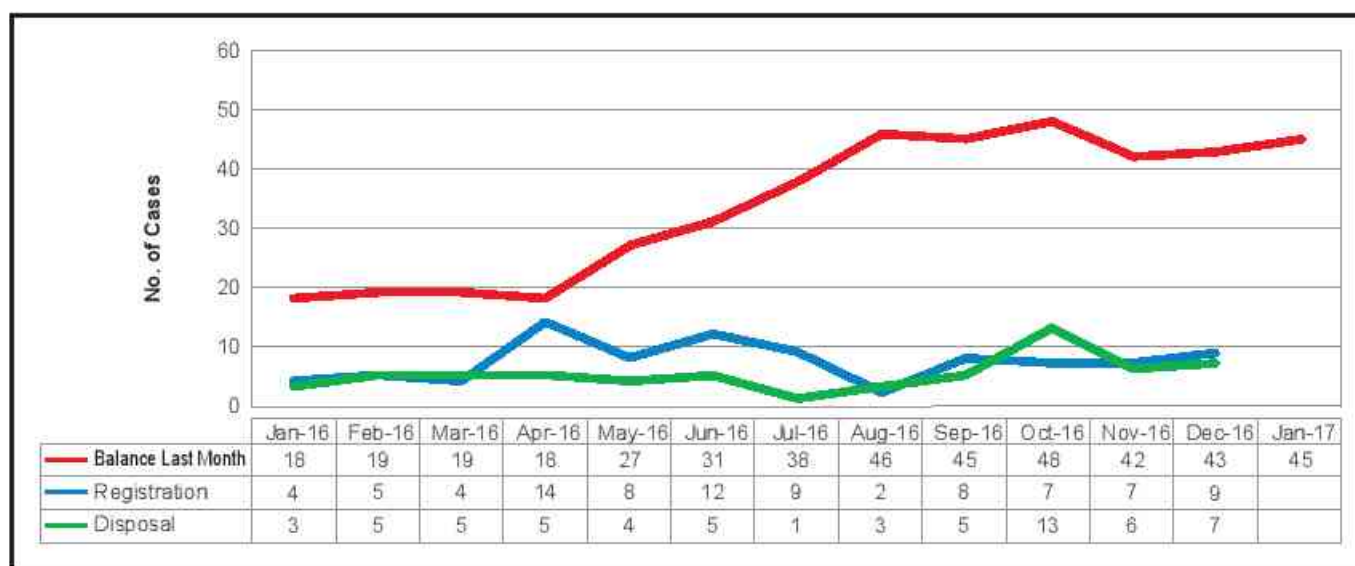
YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2008																							1				1
2009																											
2010																											
2011																											
2012											1																1
2013																											
2014												1															1
2015											1	3			1						2						7
2016		6	1	11			3				3	8			16		1			3	182	2	2	15			253
TOTAL		6	1	11			3				5	12			17		1			3	184	3	2	15			263

## 1.2 IN THE HIGH COURT AT KANGAR – CRIMINAL

For criminal cases in the year 2016, a total number of 89 cases including appeals and trials were registered

and 62 cases were disposed of, leaving a balance of 45 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT KANGAR (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KANGAR (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2014																											1			1
2015								1																						1
2016		10	9			1			7		2	1		7												5		1		43
TOTAL		10	9			1		1	7		2	1		7												5	1	1		45



## 2. KEDAH

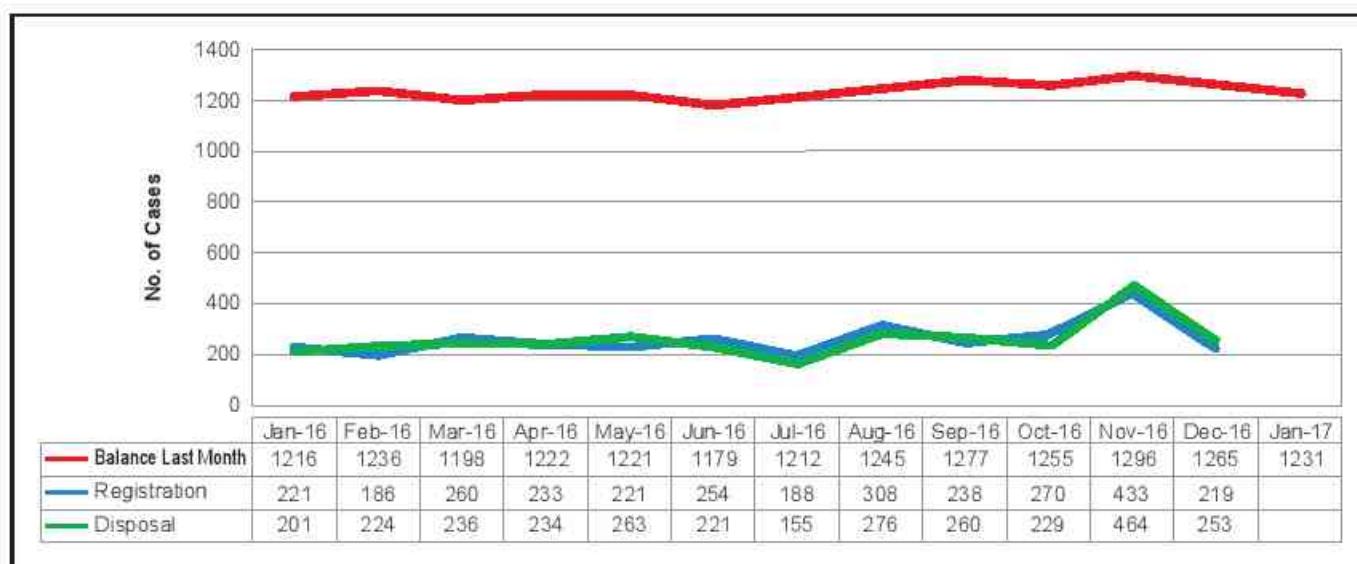
### 2.1 IN THE HIGH COURT AT ALOR SETAR – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Alor Setar for the year 2016. For the period from January to December

2016, the total number of civil cases registered was 3,031 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose 3,016 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Alor Setar is 3,236 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT ALOR SETAR (CIVIL)  
JANUARY-DECEMBER 2016



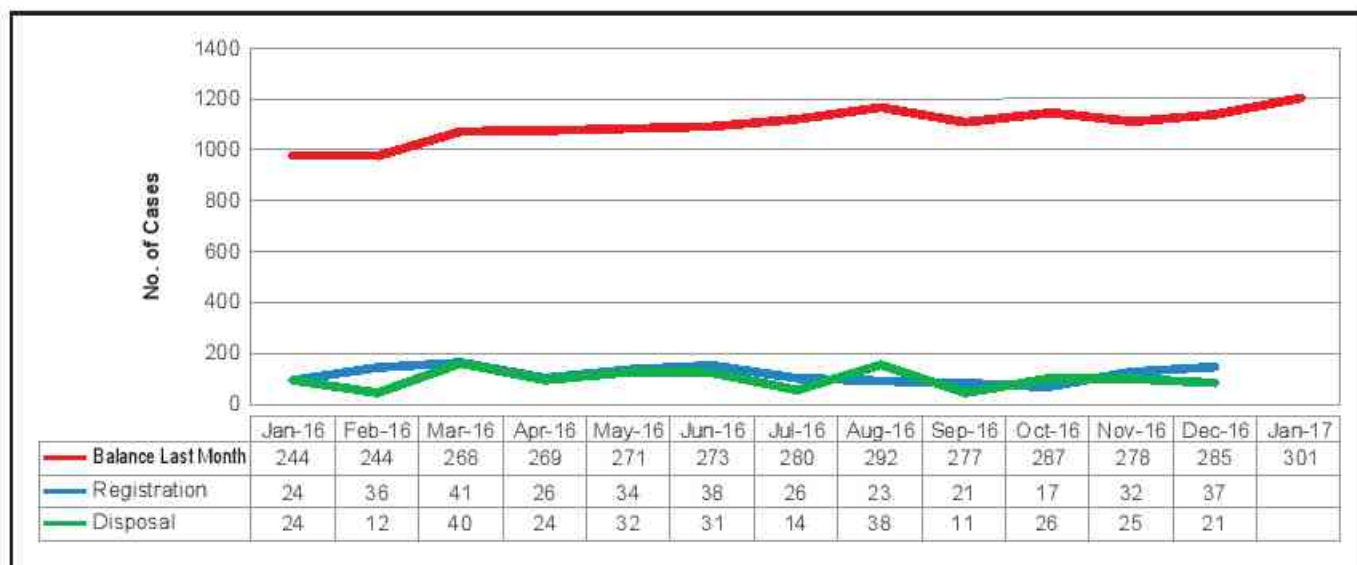
PENDING CASES  
IN THE HIGH COURT AT ALOR SETAR (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2012											1			1													2
2013												3		1	1												5
2014				1			186				2	5									8						202
2015		5	3	2			153				4	19			2						10				2		200
2016	13	72	18	68			65	4	5	1	9	86		2	368		18	1		14	1932	41	14	96		2827	
TOTAL	13	77	21	71			404	4	5	1	16	113		4	371		18	1		14	1950	41	14	98		3236	

## 2.2 IN THE HIGH COURT AT ALOR SETAR – CRIMINAL

For criminal cases in the year 2016, a total number of 355 cases including appeals and trials were registered and 298 cases were disposed of, leaving a balance of 301 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2014							3																		4				7	
2015		1	4		2		3	3		1															30	1	1		46	
2016		14	38		2		36	66		3	3			7											70	1	8		248	
TOTAL		15	42		4		42	69		4	3			7											104	2	9		301	



### 3. PULAU PINANG

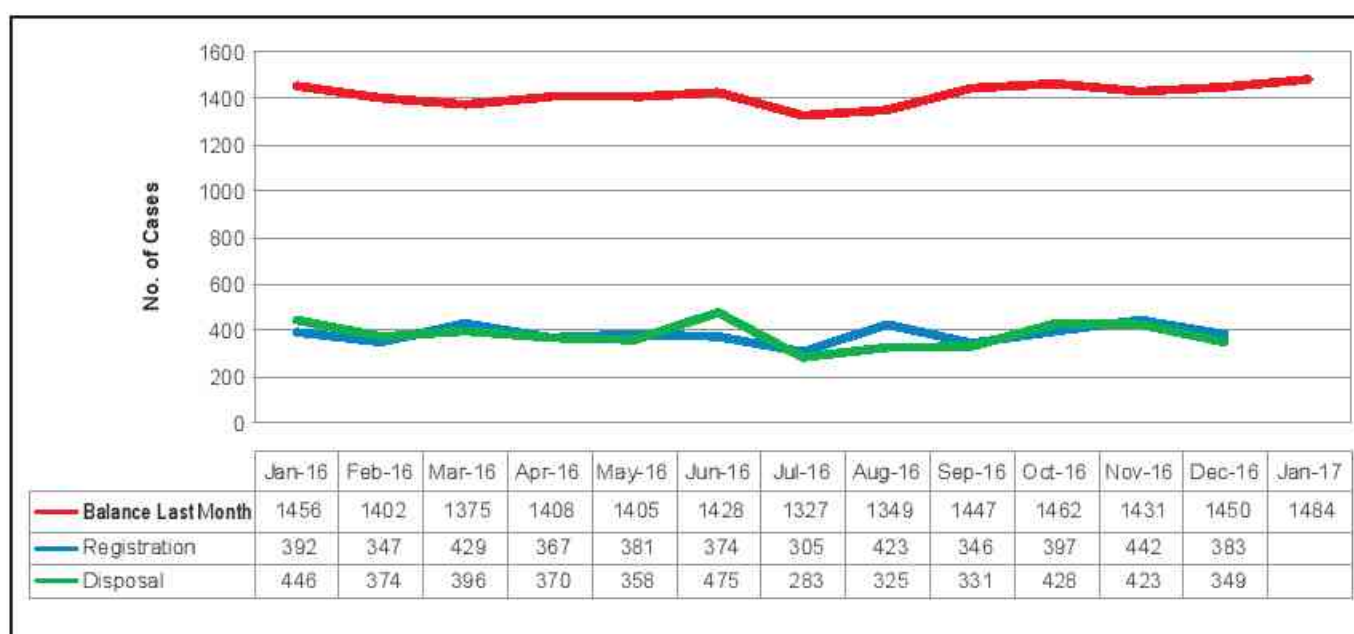
#### 3.1 IN THE HIGH COURT AT GEORGETOWN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Georgetown for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 4,586 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 4,558 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Georgetown is 4,176 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT GEORGETOWN (CIVIL)  
JANUARY-DECEMBER 2016



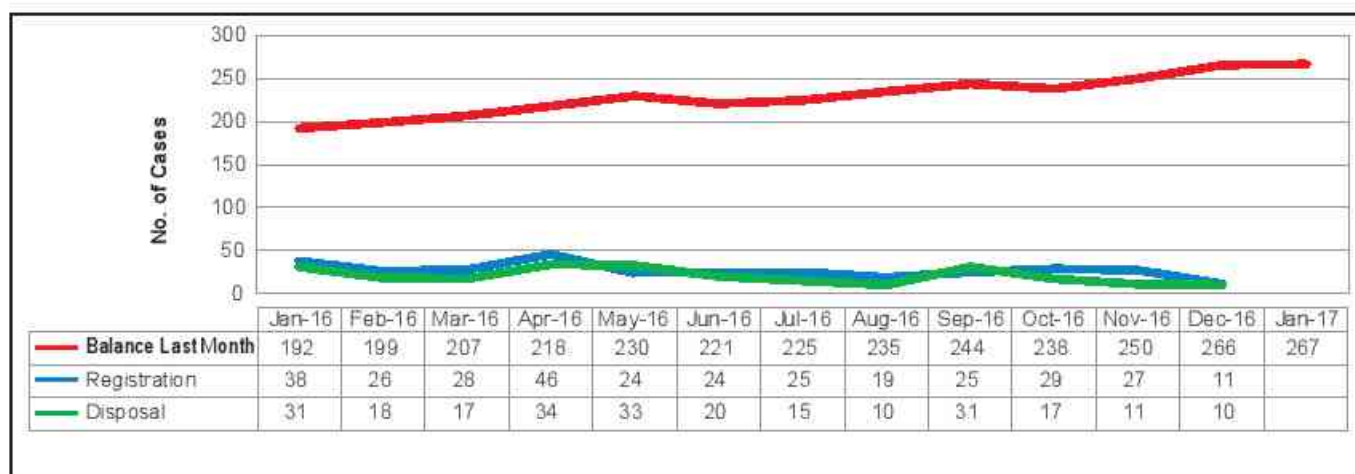
PENDING CASES  
IN THE HIGH COURT AT GEORGETOWN (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2004												1															1
2005																											
2006																											
2007																					1						1
2008												3							1								4
2009												1															1
2010												4									3						7
2011												8															8
2012											1	4															5
2013				1								4		2													7
2014						5					3	14		4	3		2			3	12	2	3	3			54
2015	1	4		8			3				7	48		4	11		7			2	263	15	6	9			388
2016	14	52	46	103		1	54	2	9		16	185		10	458		46	4		46	2155	90	146	263			3700
TOTAL	15	56	46	112		1	62	2	9		27	272		20	472		55	5		55	2430	107	155	275			4176

### 3.2 IN THE HIGH COURT AT GEORGETOWN – CRIMINAL

For criminal cases in the year 2016, a total number of 322 cases including appeals and trials were registered and 247 cases were disposed of, leaving a balance of 267 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2015

YEAR	CODES																										TOTAL			
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46	45	46
2014																										4				4
2015			2					2	14		4	2														15		1		40
2016		11	67		3	5		15	52		1	3		7												58	1			223
TOTAL		11	69		3	5		17	66		5	5		7												77	1	1		267



#### 4. PERAK

##### 4.1 IN THE HIGH COURT AT IPOH – CIVIL

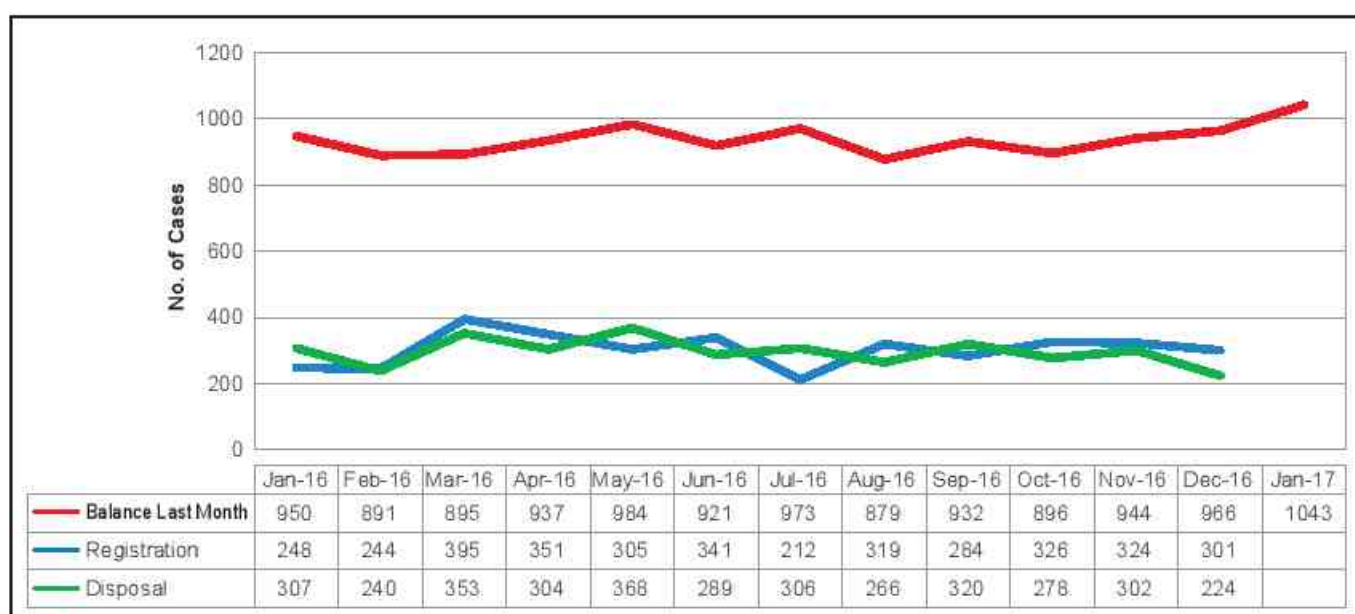
The tracking chart below shows the registration and disposal of cases in the High Court at Ipoh for the year 2016.

For the period from January to December 2016, the total number of civil cases registered was 3,650

(excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 3,557 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in High Court at Ipoh is 2,916 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT IPOH (CIVIL)  
JANUARY-DECEMBER 2016



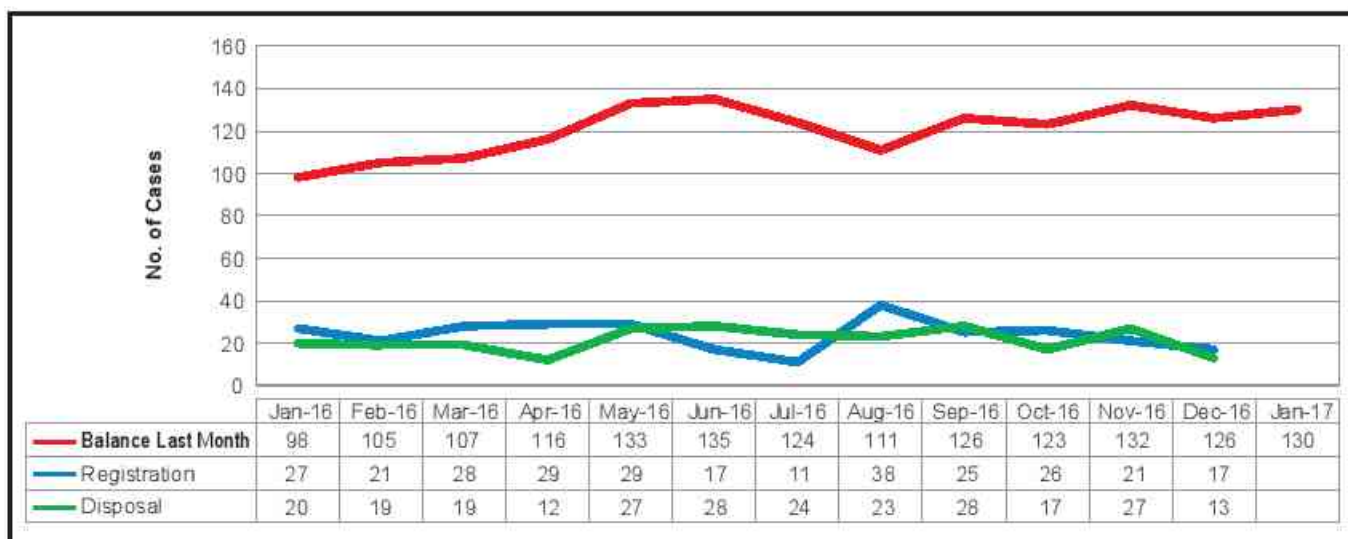
PENDING CASES  
IN THE HIGH COURT AT IPOH (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																											TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34			
	A	B	A	B																								
2012												1															1	
2013																												
2014				1			5					7			5												18	
2015		1		4			5					33			5		5				2	97					152	
2016	5	19	18	22			73	7	10		4	108		3	430		19				28	1675	31	70	223		2745	
TOTAL	5	20	18	27			83	7	10		4	149		3	440		24				30	1772	31	70	223		2916	

## 4.2 IN THE HIGH COURT AT IPOH – CRIMINAL

For criminal cases in the year 2016, a total number of 289 cases including appeals and trials were registered and 257 cases were disposed of, leaving a balance of 130 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT IPOH (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT IPOH (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2012																	1													1
2013																														
2014																										5				5
2015											2															5				7
2016		11	31		2			7	26			1	2		18											17		2		117
TOTAL		11	31		2			7	26		2	1	2		18											27		2		130



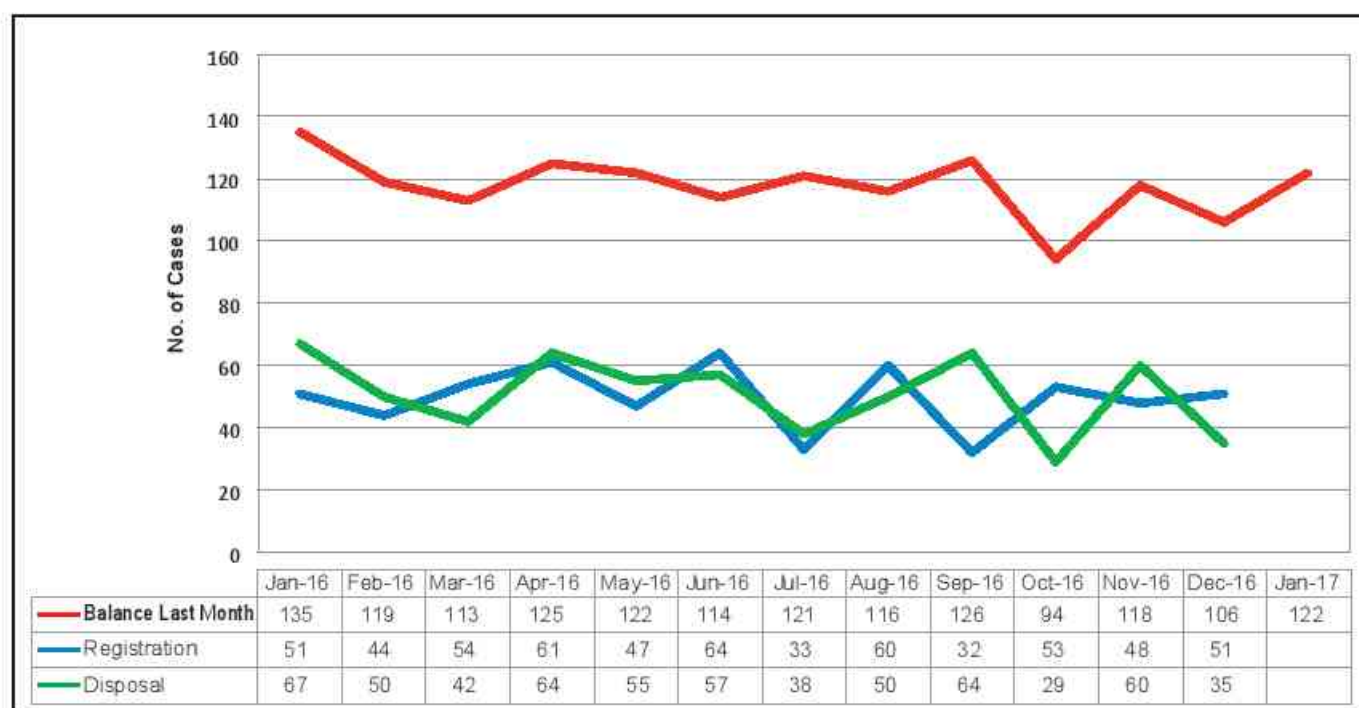
### 4.3 IN THE HIGH COURT AT TAIPING – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Taiping for the year 2016. For the period from January to December 2016, the total number of civil cases registered was

598 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 611 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Taiping is 509 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT TAIPING (CIVIL)  
JANUARY-DECEMBER 2016



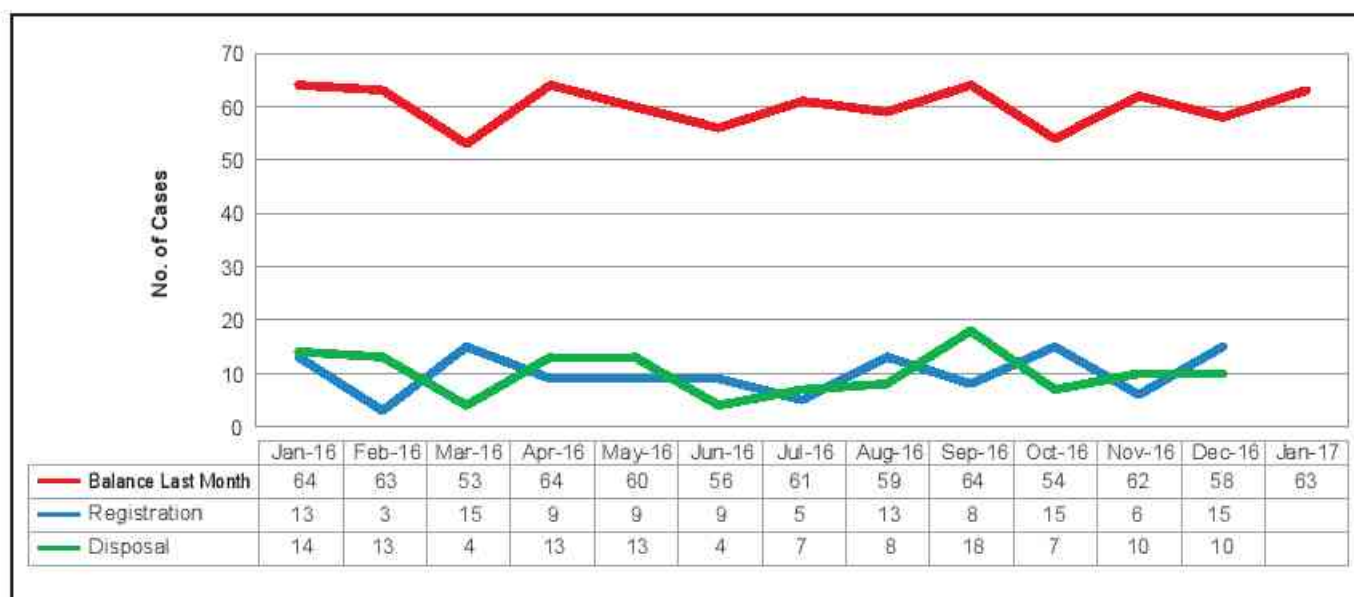
PENDING CASES  
IN THE HIGH COURT AT TAIPING (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2014																													
2015																		2				26					28		
2016	2	6	5	13				1			1	8			50						2	344	8	9	32		481		
TOTAL	2	6	5	13				1			1	8			50		2				2	370	8	9	32		509		

#### 4.4 IN THE HIGH COURT AT TAIPING – CRIMINAL

For criminal cases in the year 2016, a total of number of 120 cases including appeals and trials were registered and 121 cases were disposed of, leaving a balance of 63 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT TAIPING (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT TAIPING (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2012								1																						1
2013																														
2014																											8			8
2015			1																								5			6
2016		7	13		1			6	10		1	1		1												8			48	
TOTAL		7	114		1			7	10		1	1		1												21			63	



## 5. KUALA LUMPUR

### 5.1 IN THE HIGH COURT AT KUALA LUMPUR – CIVIL DIVISION

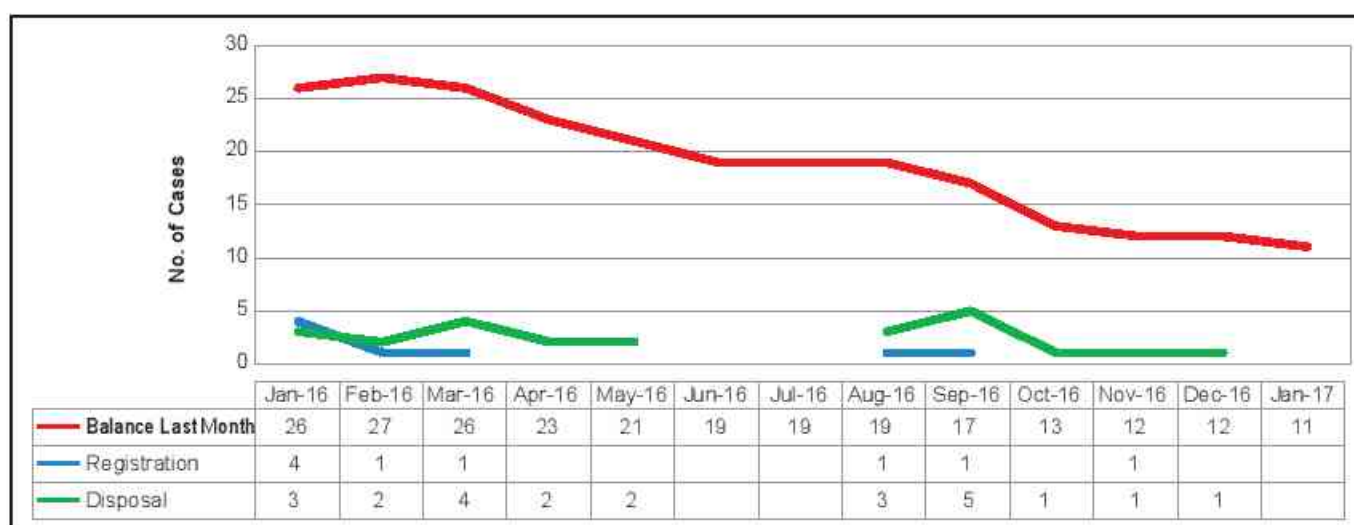
#### Old Civil Court (OCvC)

The tracking chart below shows the registration and disposal of OCvC cases in the Civil Division in the High Court at Kuala Lumpur for the year

2016. For the period from January to December 2016, the total number of civil cases registered was 10 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 24 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of OCvC cases pending in the High Court at Kuala Lumpur is 11 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)  
AS AT 31<sup>ST</sup> DECEMBER 2015

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2005												1														1	
2006												1														1	
2007																											
2008												3		1												4	
2009												3		1												4	
2010												1														1	
TOTAL												9		2												11	

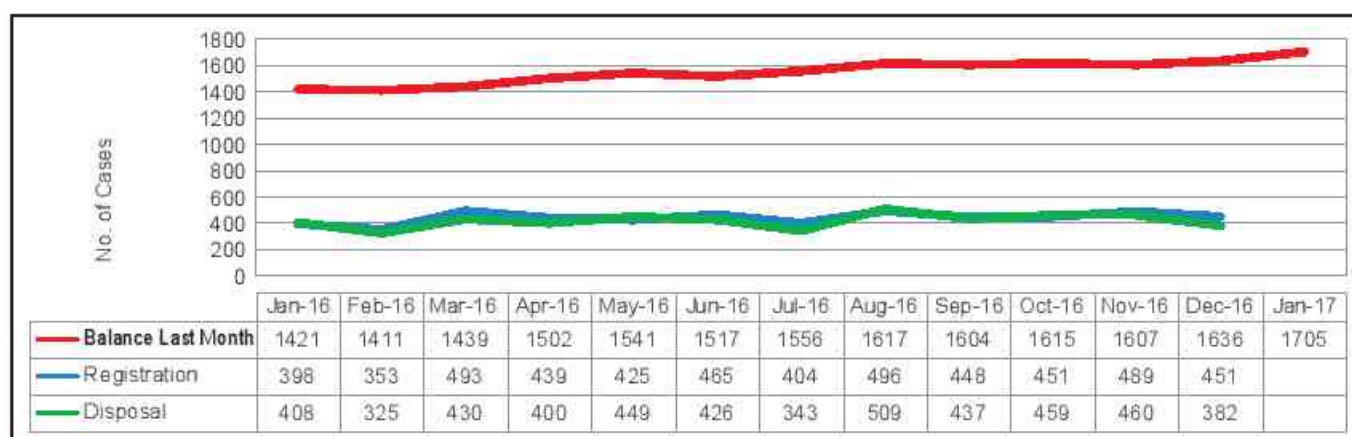
### New Civil Court (NCvC)

The tracking chart below shows the registration and disposal of NCvC cases in the Civil Division in the High Court at Kuala Lumpur for the year 2016. For the period from January to December 2016, the total number of civil cases registered

was 5,312 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 5,028 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of NCvC cases pending in the High Court at Kuala Lumpur is 2,007 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (NCvC)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (NCvC)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2011											1	1		1													3		
2012											4	7		2													13		
2013											5	9		2													16		
2014											6	50		3									1				60		
2015		1	2	6			4				15	147		32	4								2	1			214		
2016	55	49	77	93	1		25				63	526		47	467								165	133			1701		
TOTAL	55	50	79	99	1		29				94	740		87	471								168	134			2007		



## KUALA LUMPUR

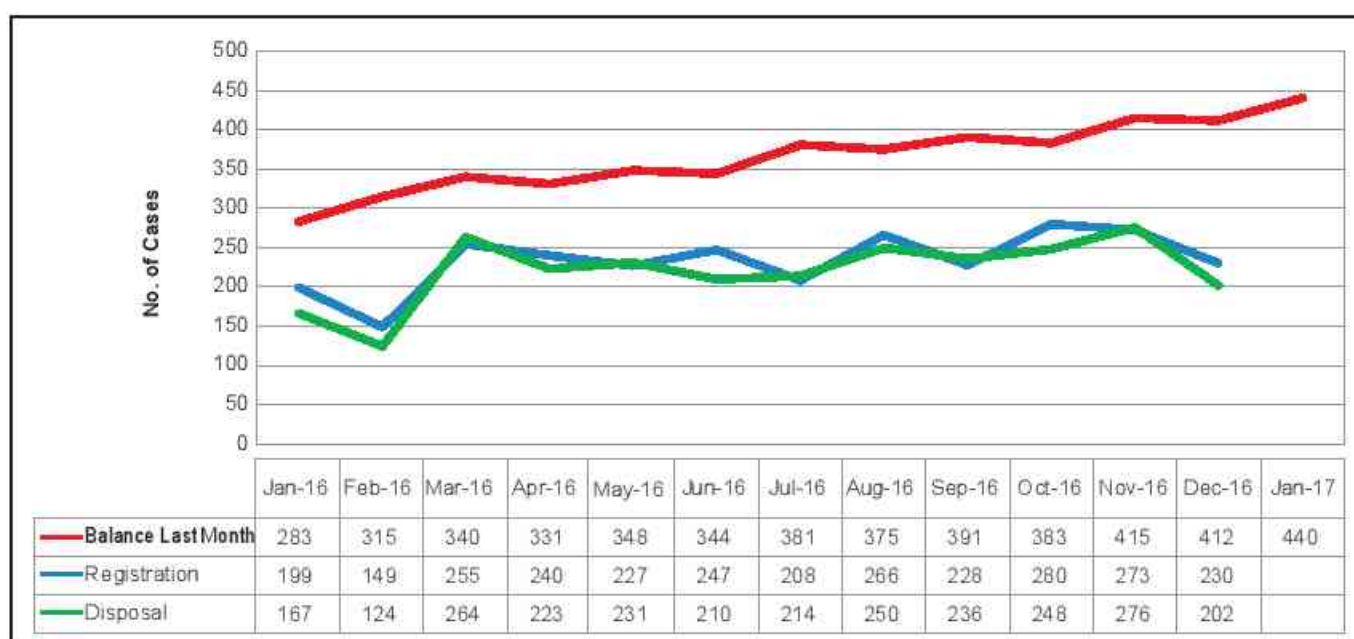
### Family Court

The tracking chart below shows the registration and disposal of Family Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2016. For the period of January to December

2016, the total civil cases registered was 2,802. The High Court has managed to dispose of 2,645 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Family Court cases pending in the Civil Division in the High Court at Kuala Lumpur is 440 cases as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34
	A	B	A	B																						
2013																								1		1
2014															1									3		4
2015															9									25		34
2016															56									341	4	401
TOTAL															66									370	4	440

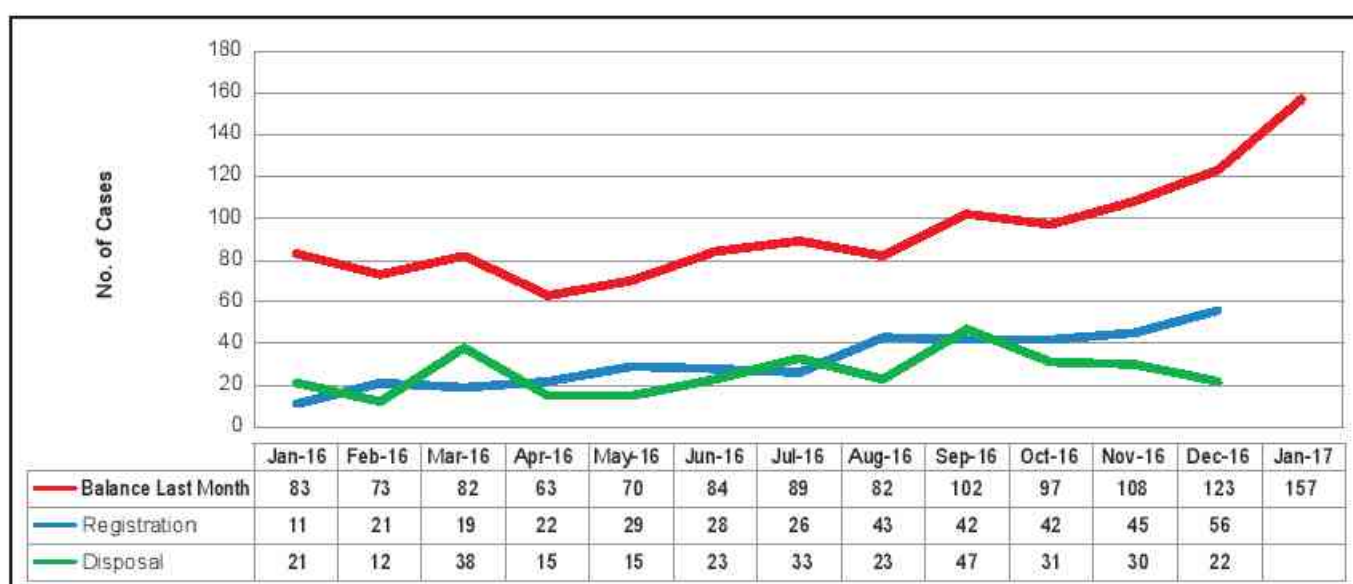
## Construction Court

The tracking chart below shows the registration and disposal of Construction Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2016. For the period of January to December 2016, the total civil cases registered

were 384. The High Court has managed to dispose of 310 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of construction cases pending in the Civil Division in the High Court at Kuala Lumpur is 157 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2014												1															1
2015											1	6															7
2016	3		7	14							7	47			71												149
TOTAL	3		7	14							8	54			71												157



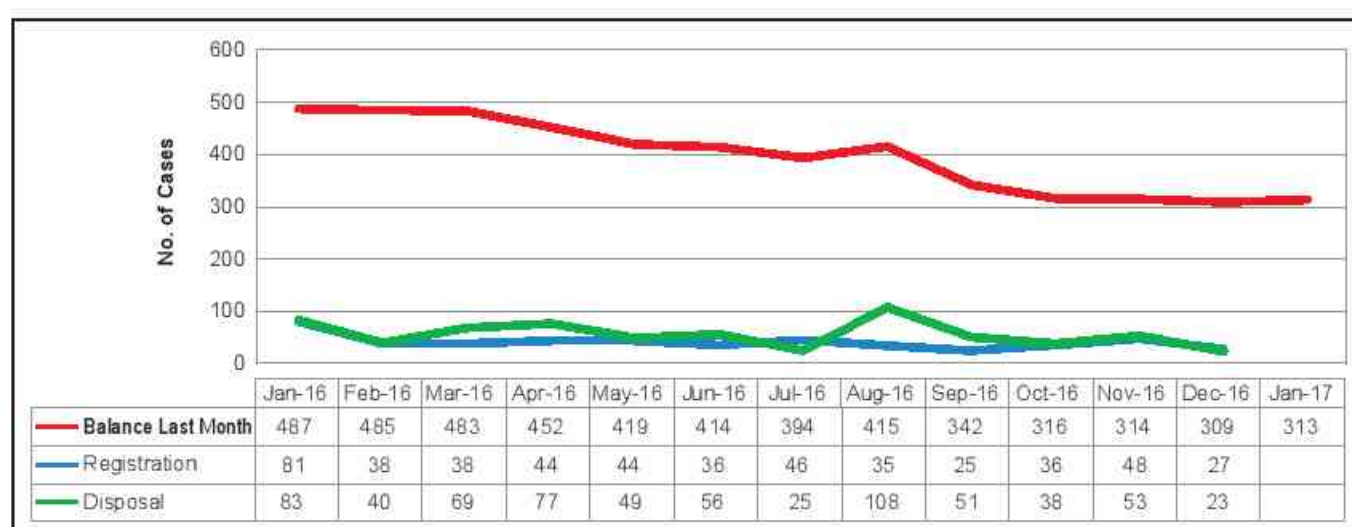
## 5.2 IN THE HIGH COURT AT KUALA LUMPUR – APPELLATE AND SPECIAL POWERS DIVISION

The tracking chart below shows the registration and disposal of cases in the Appellate and Special Powers Division in the High Court at Kuala Lumpur for the year 2016. For the period from January to

December 2016, the total number of cases registered were 498. The High Court has managed to dispose of 672 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of cases pending in the Appellate and Special Powers Division in the High Court at Kuala Lumpur is 313 cases as reflected in the pending cases below.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)**  
**JANUARY-DECEMBER 2016**



**PENDING CASES**  
**IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)**  
**AS AT 31<sup>ST</sup> DECEMBER 2016**

YEAR	CODES																																TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34								
	A	B	A	B																													
2007									1																							1	
2008																		1														1	
2009																																	
2010																																	
2011																																	
2012																		1														1	
2013						1												4														5	
2014									2						2		6															10	
2015						1			2						3		61															67	
2016						56		9	26						27		160															228	
TOTAL						8		9	31						32		233															313	

### 5.3 IN THE HIGH COURT AT KUALA LUMPUR – COMMERCIAL DIVISION

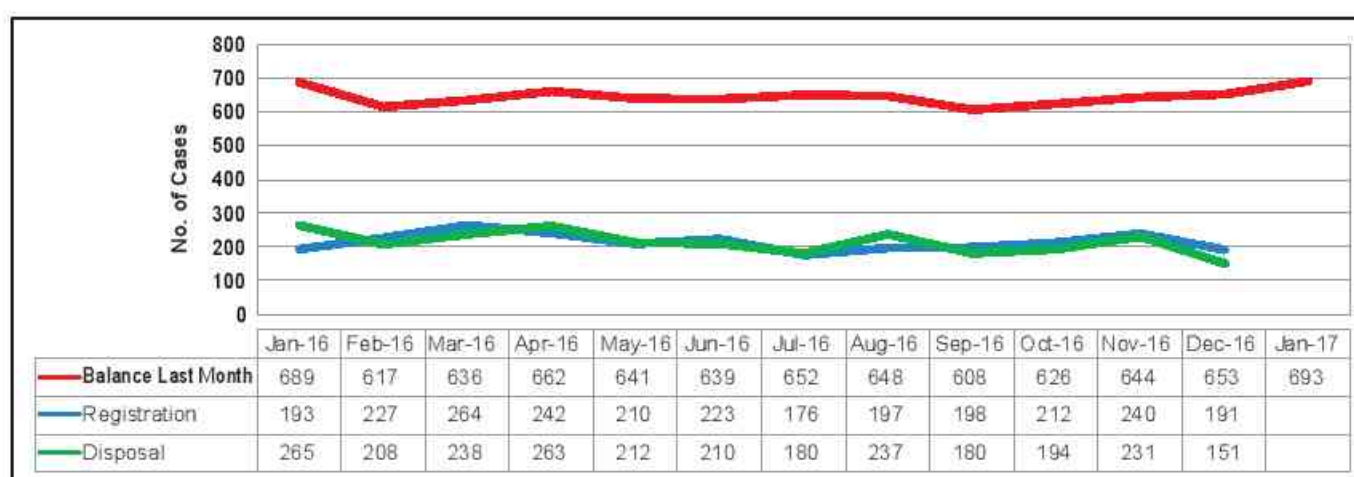
#### New Commercial Court (NCC)

The tracking chart below shows the registration and disposal of NCC cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2016.

For the period from January to December 2016, the total NCC cases registered were 2,573. The High Court has managed to dispose of 2,569 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of NCC cases pending in the High Court at Kuala Lumpur is 693 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (NCC)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (NCC)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2010												1															1
2011																											
2012												6															6
2013												8															8
2014											1	7															8
2015				2								23			4					4							33
2016	17	9	46	19								157			122			13		254							637
TOTAL	17	9	46	21							1	202			126			13		258							693



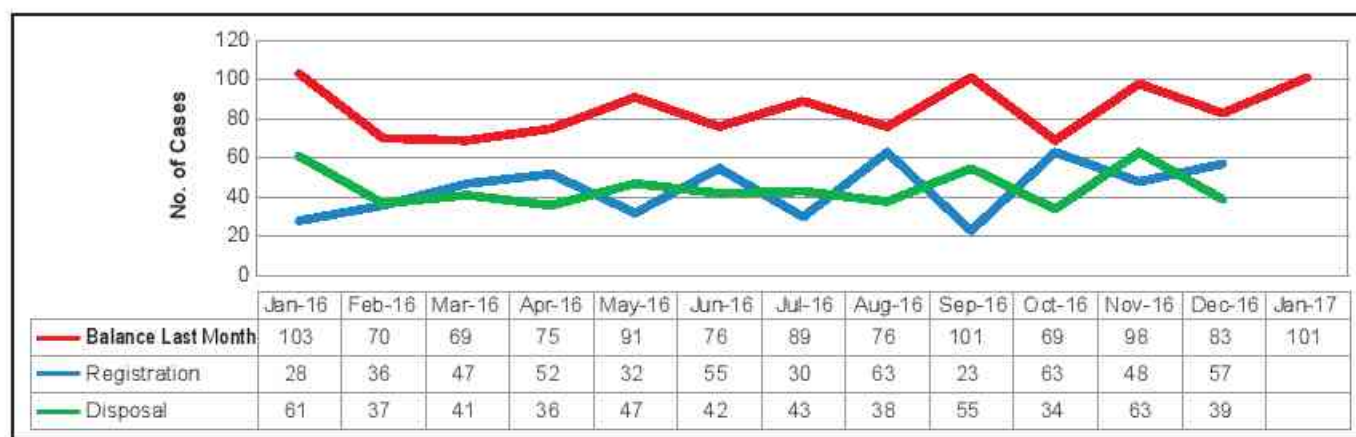
## Muamalat Court

The tracking chart below shows the registration and disposal of Muamalat cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2016. For the period from January to December 2016, the total number of Muamalat cases registered was 534.

The High Court has managed to dispose of 536 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Muamalat cases pending in the High Court at Lumpur is 101 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2015												7															7
2016	2		2									60			30												94
TOTAL	2		2									67			30												101

## Intellectual Property Court

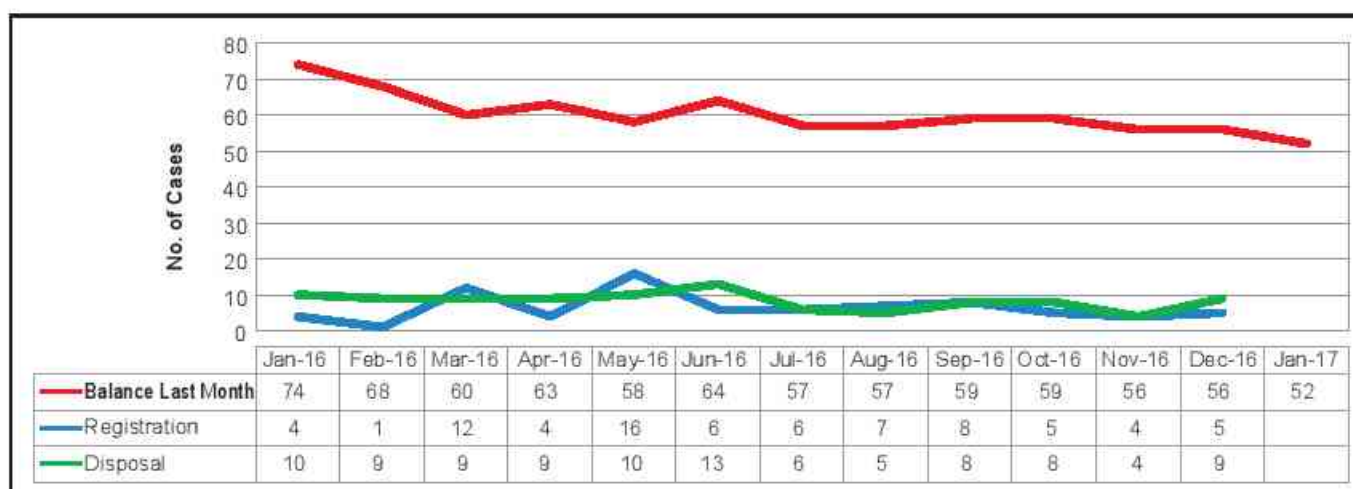
The tracking chart below shows the registration and disposal of Intellectual Property cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2016.

For the period from January to December 2016, the total number of Intellectual Property cases registered was 78.

The High Court has managed to dispose of 100 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Intellectual Property cases pending in the Commercial Division in the High Court at Kuala Lumpur is 52 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2012												1														1	
2013												1														1	
2014												2														2	
2015												12			1											13	
2016												27			8											35	
TOTAL												43			9											52	



## Admiralty Court

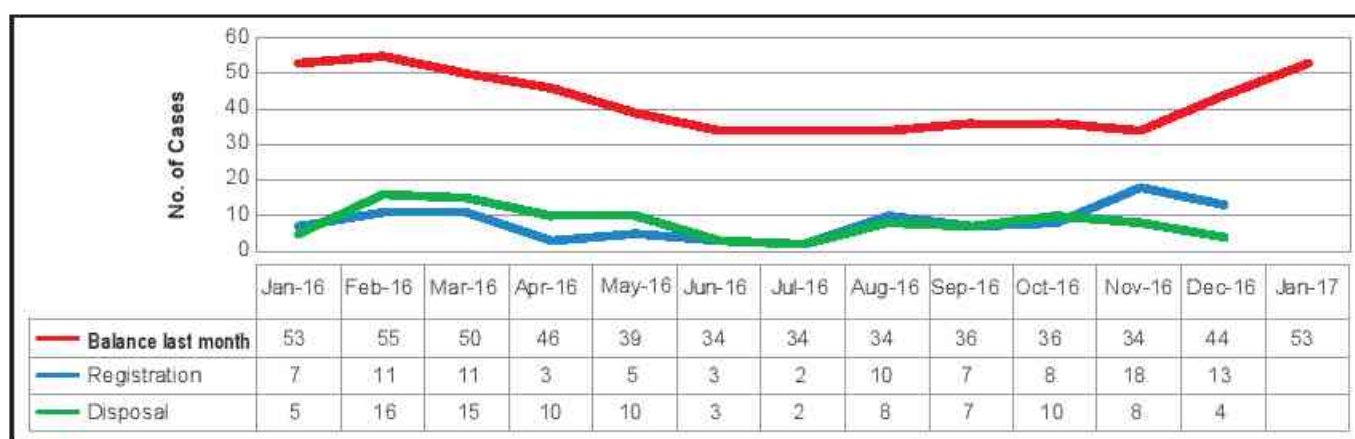
The tracking chart below shows the registration and disposal of Admiralty cases in the High Court at Kuala Lumpur for the year 2016.

For the period from January to December 2016, the total Admiralty cases registered was 98. The High

Court has managed to dispose of 98 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Admiralty cases pending in the High Court at Kuala Lumpur is 53 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)  
AS AT 31<sup>ST</sup> DECEMBER 2016

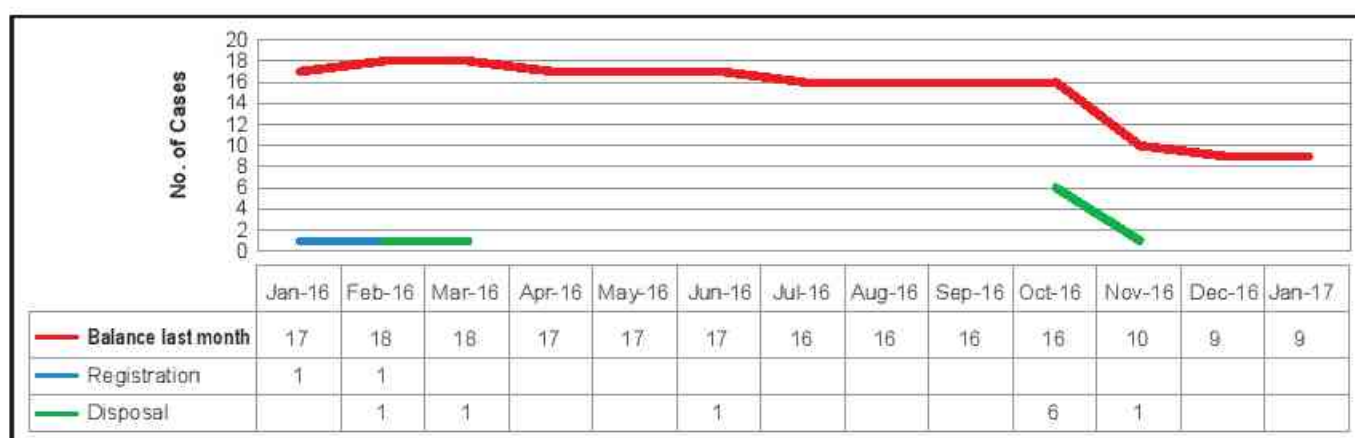
YEAR	CODES																								TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34
	A	B	A	B																						
2013																										
2014																										
2015																										
2016																										
TOTAL																			53							53

### Old Commercial Court (OCC)

The tracking chart below shows the registration and disposal of OCC cases in the High Court at Kuala Lumpur for the year 2016. has managed to dispose of 10 cases throughout 2016.

For the period from January to December 2016, the total OCC cases registered was 2. The High Court As at 31 December 2016, the total of OCC cases pending in the High Court at Kuala Lumpur is 9 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (OCC)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (OCC)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
1998												1															1
2003												1															1
2004												1															1
2005												1															1
2006												1															1
2007												1															1
2008												2															2
2009												2															2
TOTAL												9															9



## BANKRUPTCY DIVISION

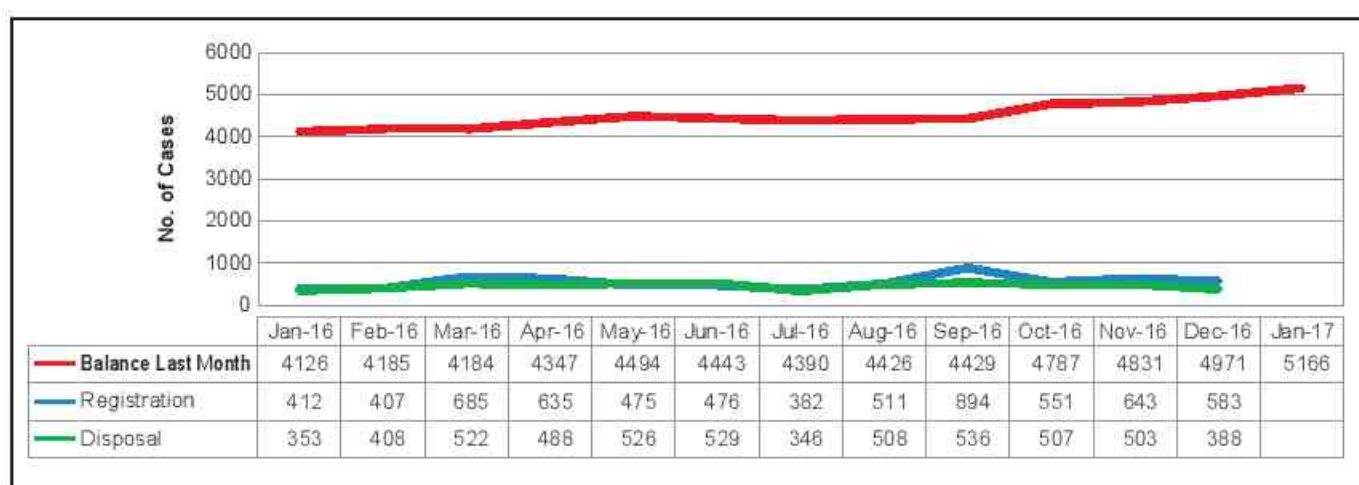
The tracking chart below shows the registration and disposal of Bankruptcy cases in the High Court at Kuala Lumpur for the year 2016.

For the period from January to December 2016, the total Bankruptcy cases registered was 6,654.

The High Court has managed to dispose of 5,614 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Bankruptcy cases pending in the High Court at Kuala Lumpur is 5,166 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL	
	11		12		13	14	15	16	17	18	21	22	22M	23	24	24M	25	26	27	28	29	31	32	33		34
	A	B	A	B																						
2011																					1					1
2012																										
2013																					1					1
2014																					11					11
2015																					704					704
2016																					4449					4449
TOTAL																					5166					5166

#### 5.4 IN THE HIGH COURT AT KUALA LUMPUR – CRIMINAL DIVISION

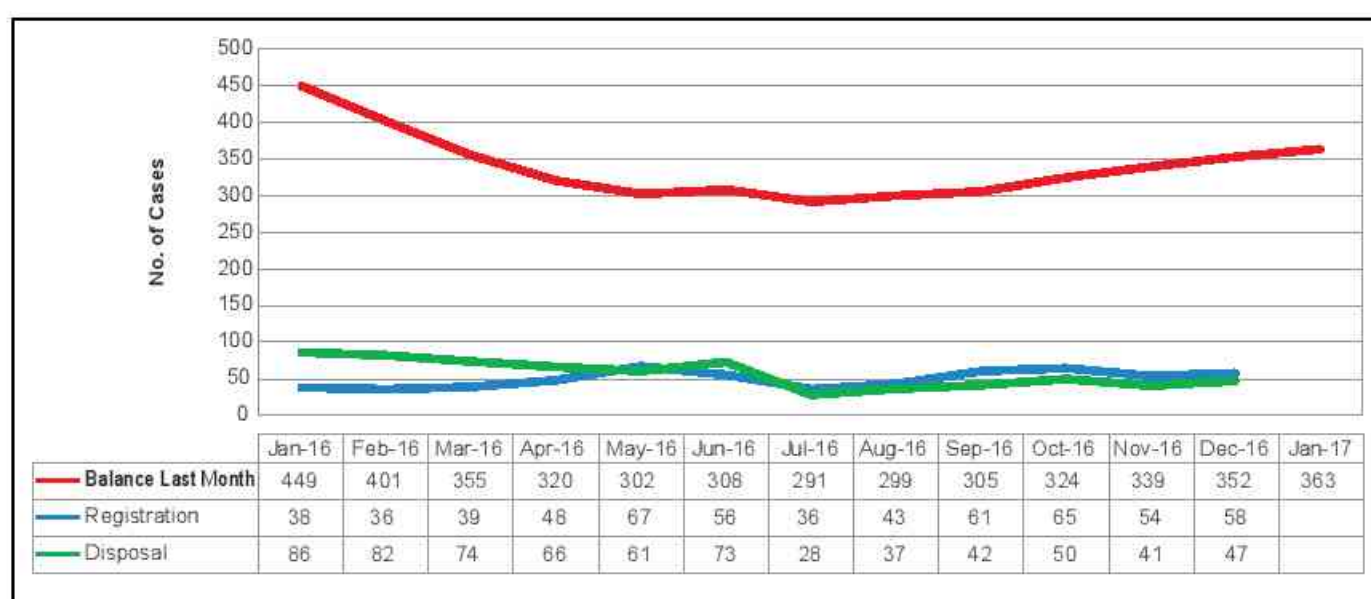
The tracking chart below shows the registration and disposal of Criminal cases in the High Court at Kuala Lumpur for the year 2016.

For the period of January to December 2016, the total number Criminal cases registered was 601.

The High Court has managed to dispose of 687 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of Criminal cases pending in the High Court at Kuala Lumpur is 363 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2011							8	1						1															5	
2012							4								1														5	
2013							1																			2			3	
2014														2												6	1		9	
2015			1					12	7		2			3												5		1	31	
2016		13	36		3	4		36	92		6	2		34												69		15	310	
TOTAL		13	37		3	4	8	49	99		8	2		40	1											82	1	16	363	



## 6. SELANGOR

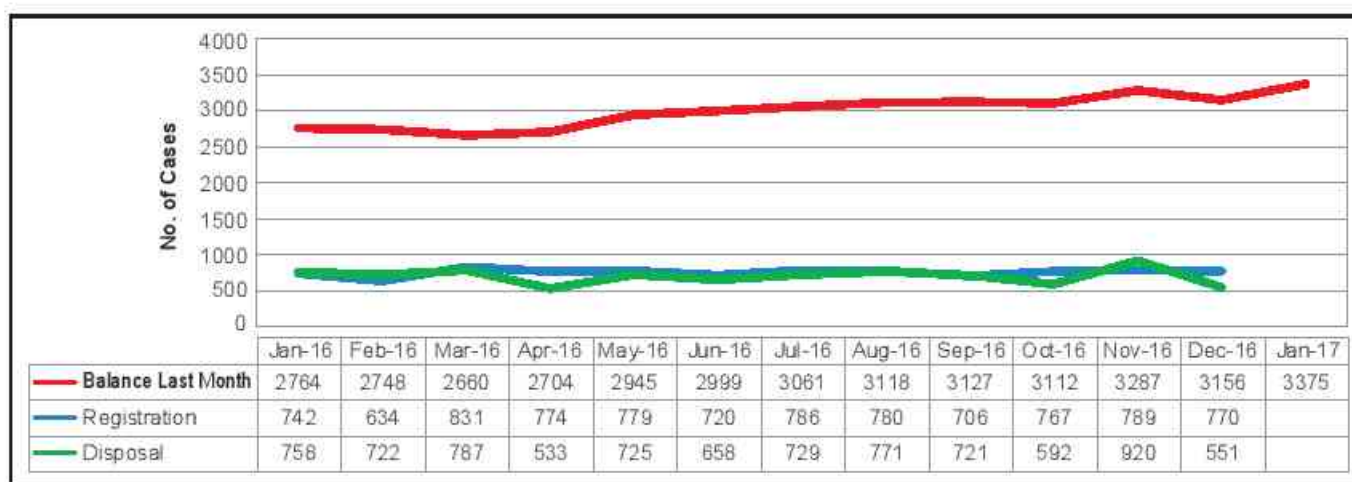
### 6.1 IN THE HIGH COURT AT SHAH ALAM – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Shah Alam for year the 2016. For the period from January

to December 2016, the total number of civil cases registered was 9,078 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 8,467 throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in High Court at Shah Alam is 12,672 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT SHAH ALAM (CIVIL)  
JANUARY-DECEMBER 2016



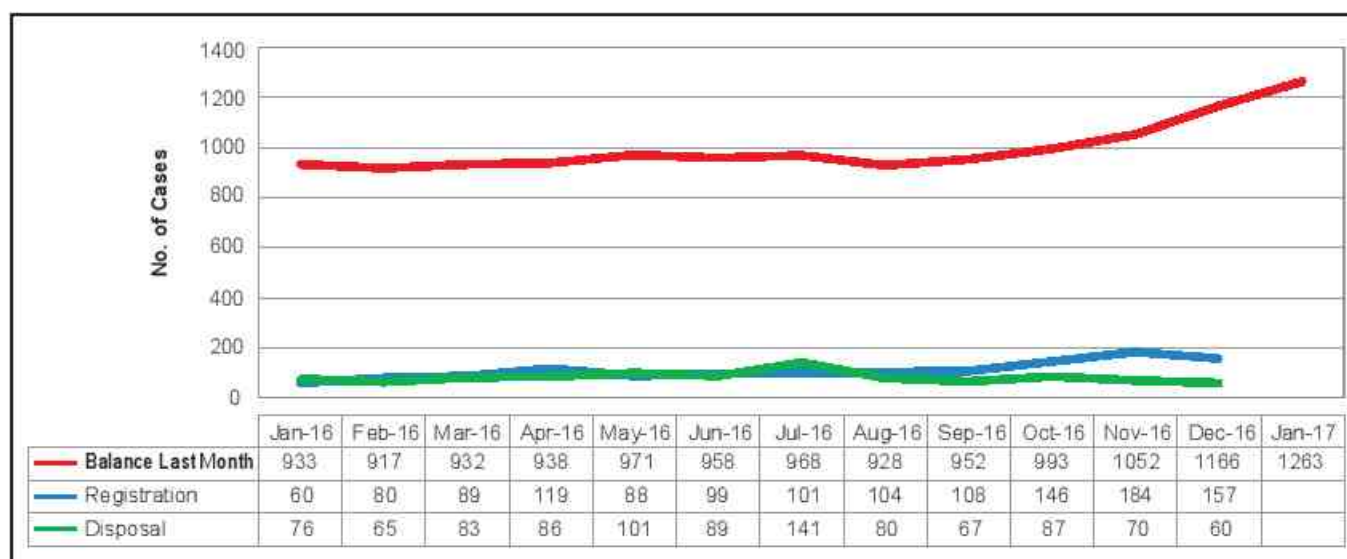
PENDING CASES  
IN THE HIGH COURT AT SHAH ALAM (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2006												1															1		
2007											1	1															2		
2008												1															1		
2009											1	2								1							4		
2010																													
2011												1															1		
2012							5					3															8		
2013				4			2					9			1		1										17		
2014	1		1	10							2	24		1						1				1			41		
2015	9	17	9	44			15	3			12	111		6	22		1			5	7	5	1	17			284		
2016	81	102	211	222			217	29			35	374		24	985		126	5	1	193	9115	99	70	420	4		12313		
TOTAL	91	119	221	280			239	32			51	527		31	1008		128	5	1	200	9122	104	71	438	4		12672		

## 6.2 IN THE HIGH COURT AT SHAH ALAM – CRIMINAL

For criminal cases in the year 2016, a total number of 1,335 cases including appeals and trials were registered and 1,005 cases were disposed of, leaving a balance of 1,263 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL		
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46	
2012							1			5					6		1													13	
2013							6	3							9		3										13				34
2014							8	5		2	4															73					92
2015		3	6		2		45	24		2	2															156	1	16			257
2016		39	225		3	7	35	188		10	7	5		67												222	2	57			867
TOTAL		42	231		5	7	95	220		19	13	5		67	15		4									464	3	73			1263



## 7. NEGERI SEMBILAN

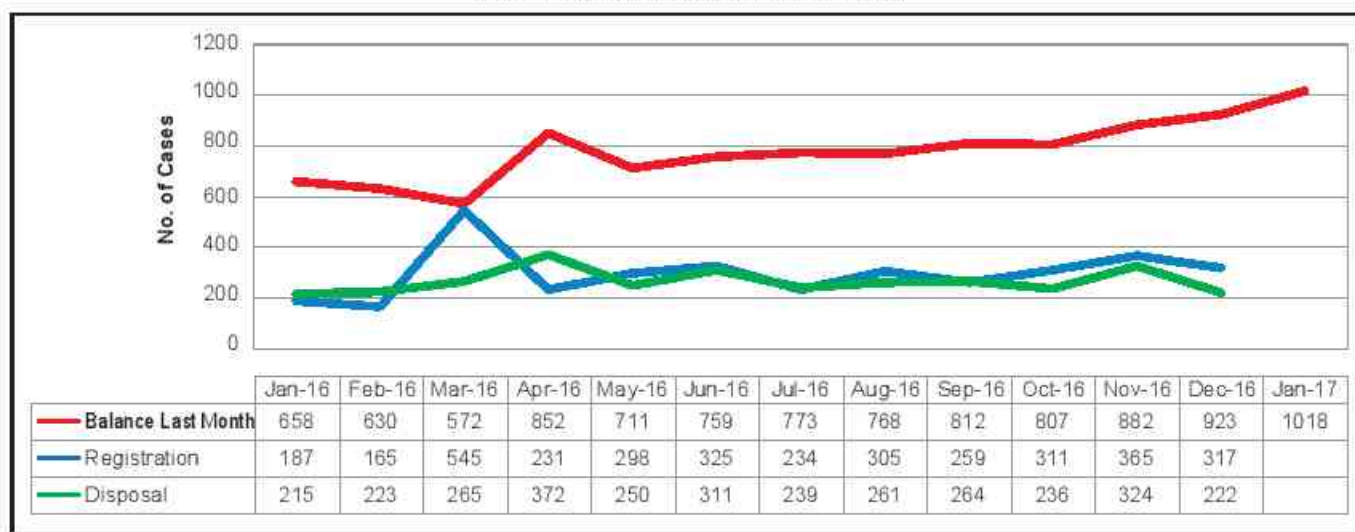
### 7.1 IN THE HIGH COURT AT SEREMBAN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Seremban for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 3,542 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 3,182 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Seremban is 2,980 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT SEREMBAN (CIVIL)  
JANUARY-DECEMBER 2016



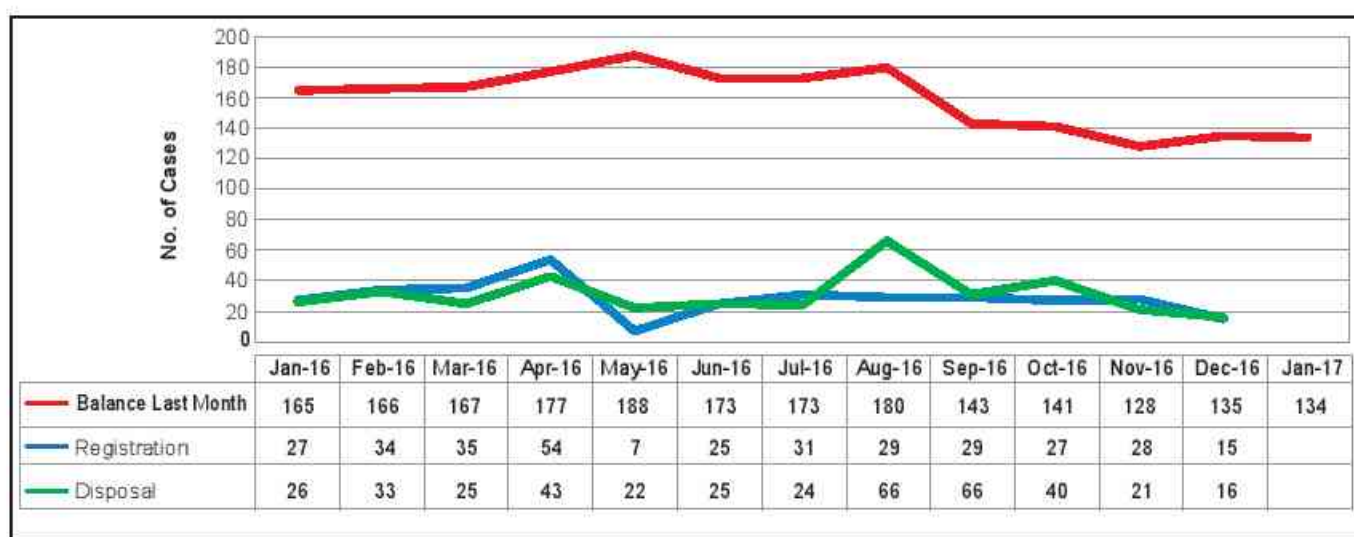
PENDING CASES  
IN THE HIGH COURT AT SEREMBAN (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																																TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	37	38						
	A	B	A	B																													
2007												1																			1		
2008																																	
2009																																	
2010												1																			1		
2011																																	
2012												1																			1		
2013																																	
2014												4													1						5		
2015			1	3		7						16		2	1		1								1						32		
2016	1	11	2	59		4	10		4		9	57		4	421		6			11	1889	38	35	173					206		2940		
TOTAL	1	11	3	62		11	10		4		9	80		6	422		7			11	1889	38	35	175					206		2980		

## 7.2 IN THE HIGH COURT AT SEREMBAN - CRIMINAL

For criminal cases in the year 2016, a total number of 341 cases including appeals and trials were registered and 372 cases were disposed of, leaving a balance of 134 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2013																										2				2
2014								2																						2
2015			1																							4				5
2016		6	26					6	44				2		20											21				125
TOTAL		6	27					8	44				2		20											27				134



## 8. MALACCA

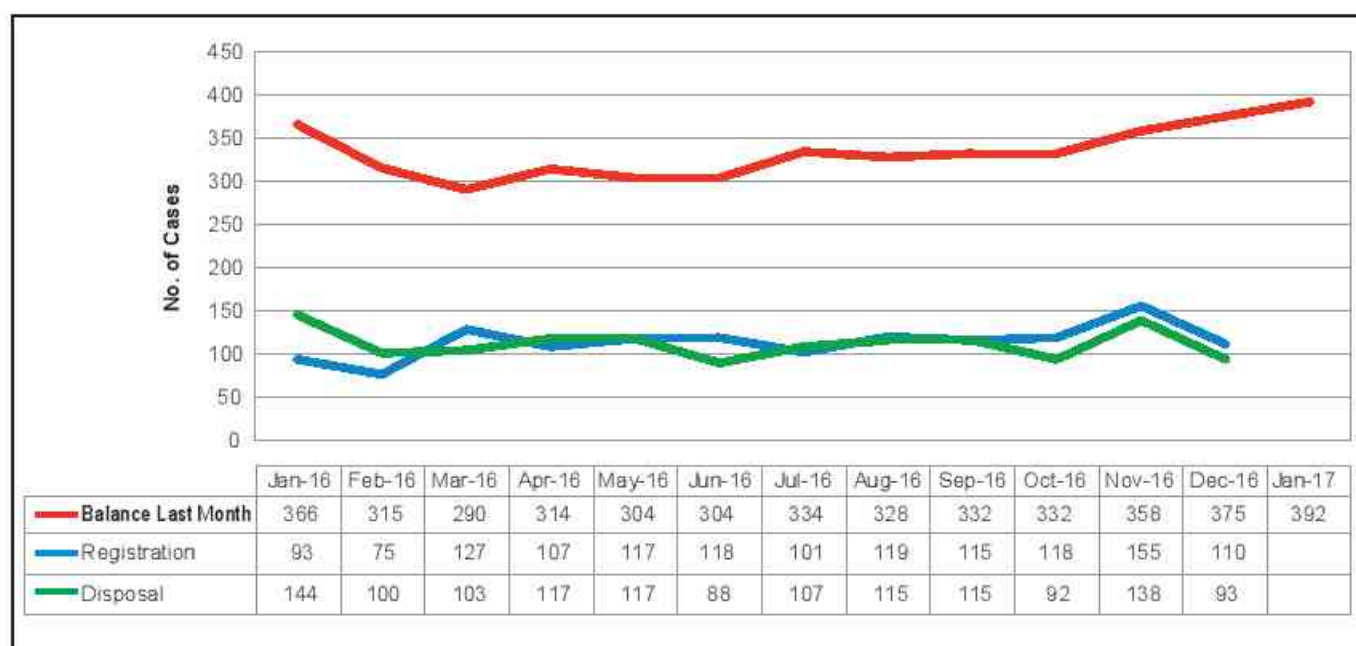
### 8.1 IN THE HIGH COURT AT MALACCA - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Malacca for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 1,355 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 1,329 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Malacca is 1,264 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT MALACCA (CIVIL)  
JANUARY-DECEMBER 2016



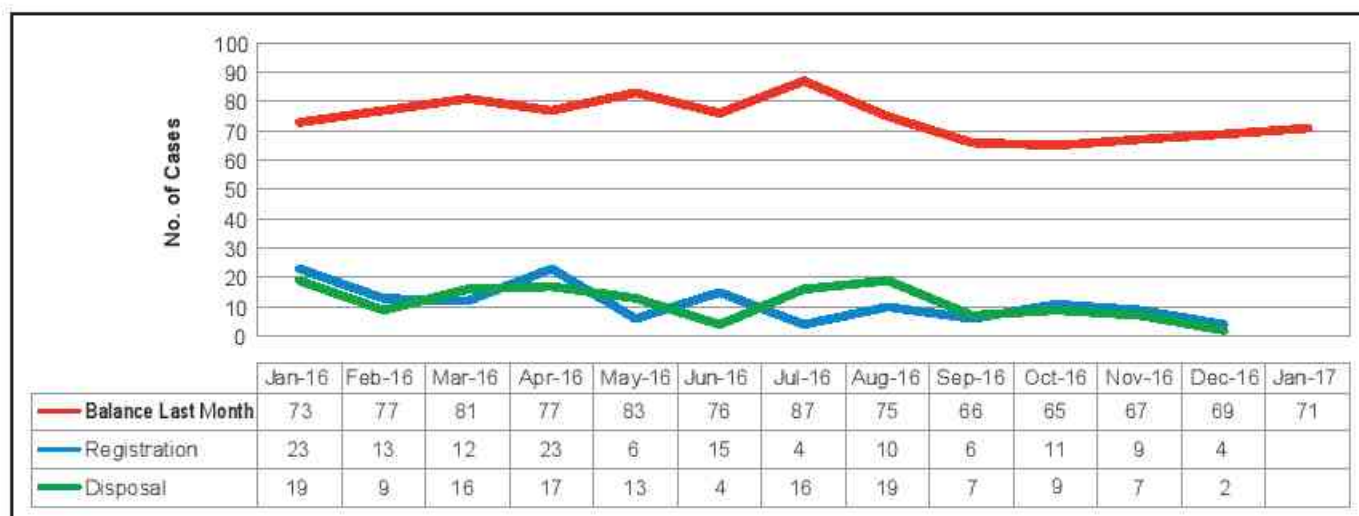
PENDING CASES  
IN THE HIGH COURT AT MALACCA (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2010												2															2
2011																											
2012																											
2013												1															1
2014							9				1	2															12
2015				3								16			2		1			1	29			2			54
2016	7	6	16	18			44	3		6	3	45			124		24			14	802	22	19	42			1195
TOTAL	7	6	16	21			53	3		6	4	66			126		25			15	831	22	19	44			1264

## 8.2 IN THE HIGH COURT AT MALACCA – CRIMINAL

For criminal cases in the year 2016, a total number of 136 cases including appeals and trials were registered and 138 cases were disposed of, leaving a balance of 71 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT MALACCA (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT MALACCA (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2013														2													1			3
2014																											1			1
2015															1												5			6
2016			9	1				8	14						1												28			61
TOTAL			9	1				8	14						2	2											34	1		71



## 9. JOHOR

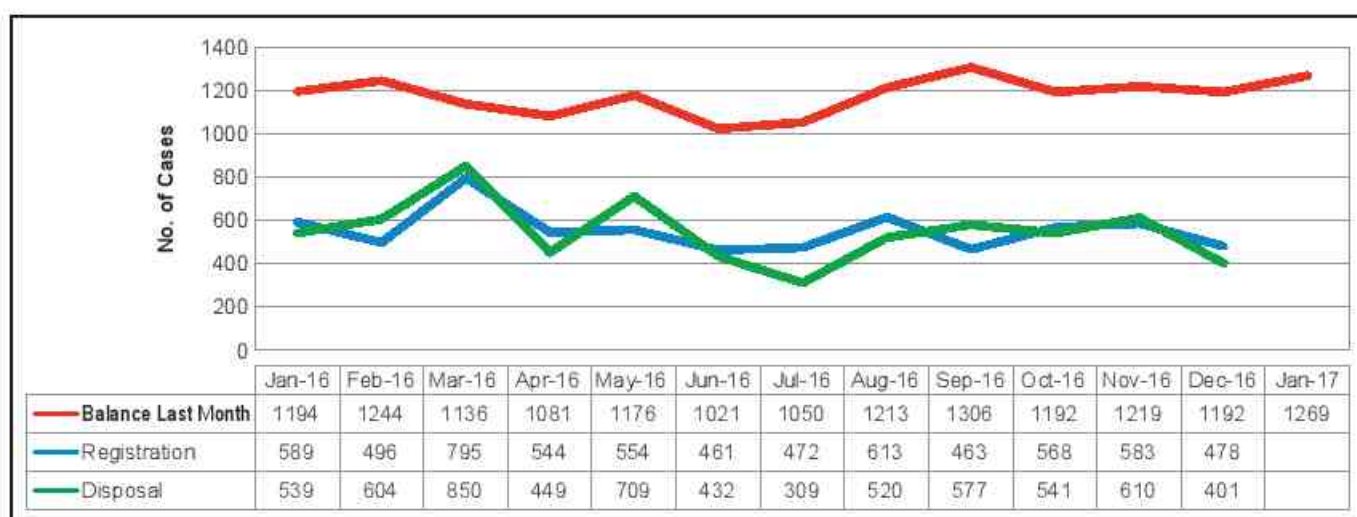
### 9.1 IN THE HIGH COURT AT JOHOR BAHRU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Johor Bahru for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 6,616 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 6,541 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Johor Bahru is 4,748 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)  
JANUARY-DECEMBER 2016



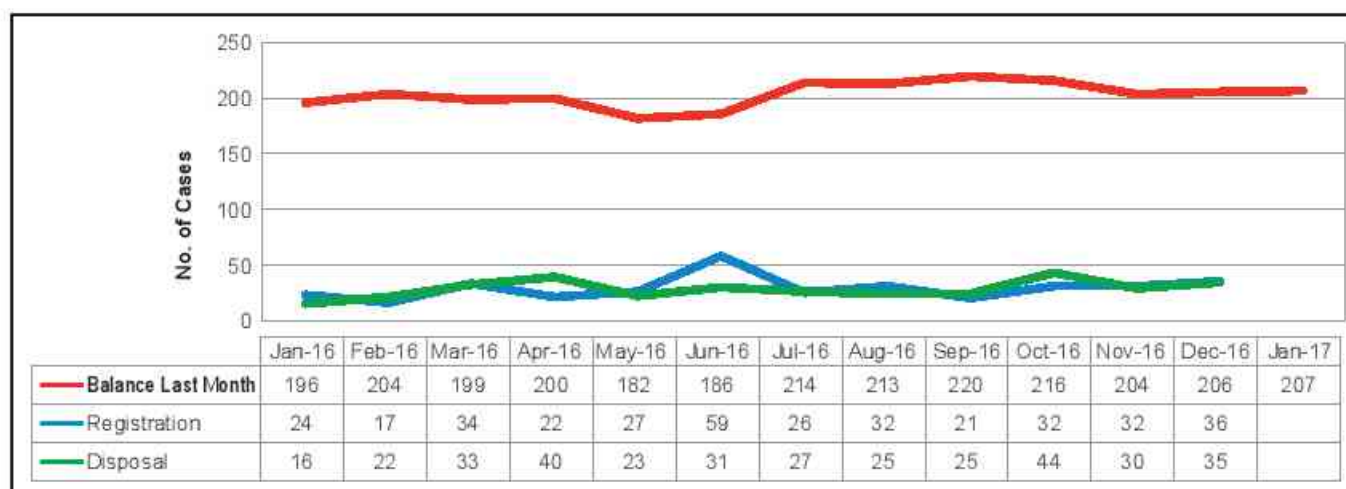
PENDING CASES  
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2010												1															1
2011																											
2012																											
2013							7					4		1													12
2014							1				3	14		3	3										1		25
2015							4				2	36		8	3		1	1		2	62			2			121
2016	3	17	18	63			42	1	5	5	5	144		31	527		37	2	4	63	3317	48	52	205			4589
TOTAL	3	17	18	63			54	1	5	5	10	199		43	533		38	3	4	65	3379	48	52	208			4748

## 9.2 IN THE HIGH COURT AT JOHOR BAHRU – CRIMINAL

For criminal cases in the year 2016, a total number of 362 cases including appeals and trials were registered and 351 cases were disposed of, leaving the balance of 207 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL		
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46	
2014																										7				7	
2015		1									2	1															20				24
2016		8	31		3			15	31			3	2		3												67		13		176
TOTAL		9	31		3			15	31		2	4	2		3												94		13		207



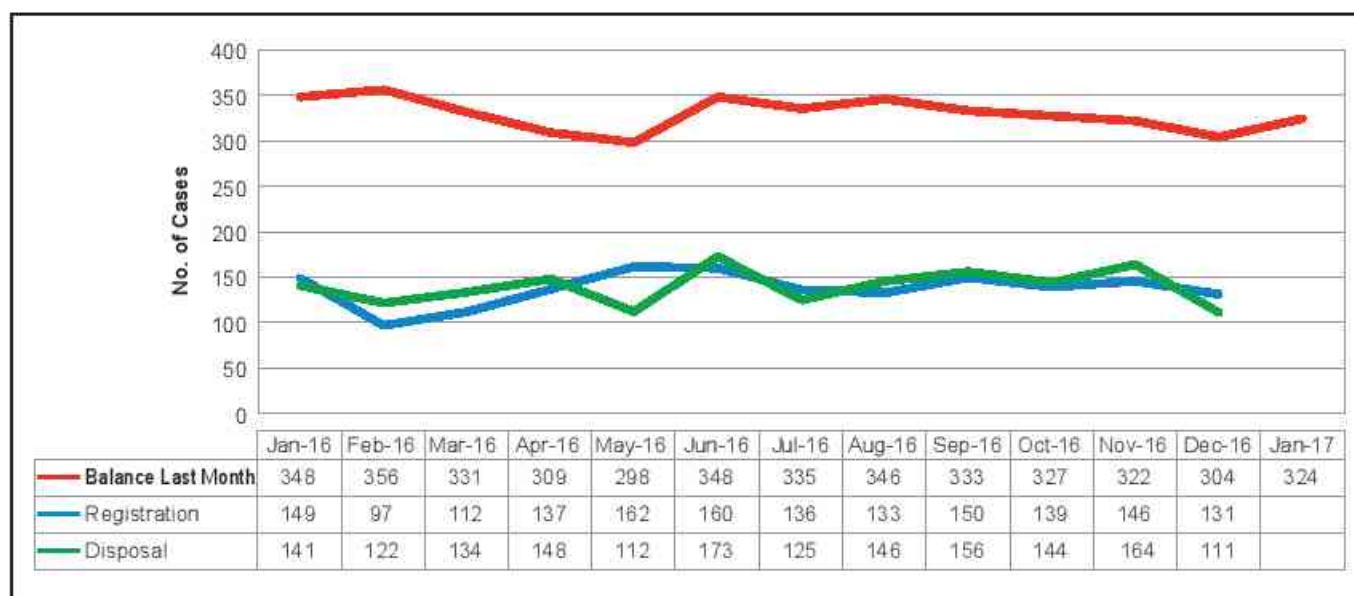
### 9.3 IN THE HIGH COURT AT MUAR- CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Muar for the year 2016. For the period from January to December 2016, the total number of civil cases registered was 1,652 (excluding cases for code

29, 31 and 32). The High Court has managed to dispose of 1,676 civil cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Muar is 972 cases as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT MUAR (CIVIL)  
JANUARY-DECEMBER 2016



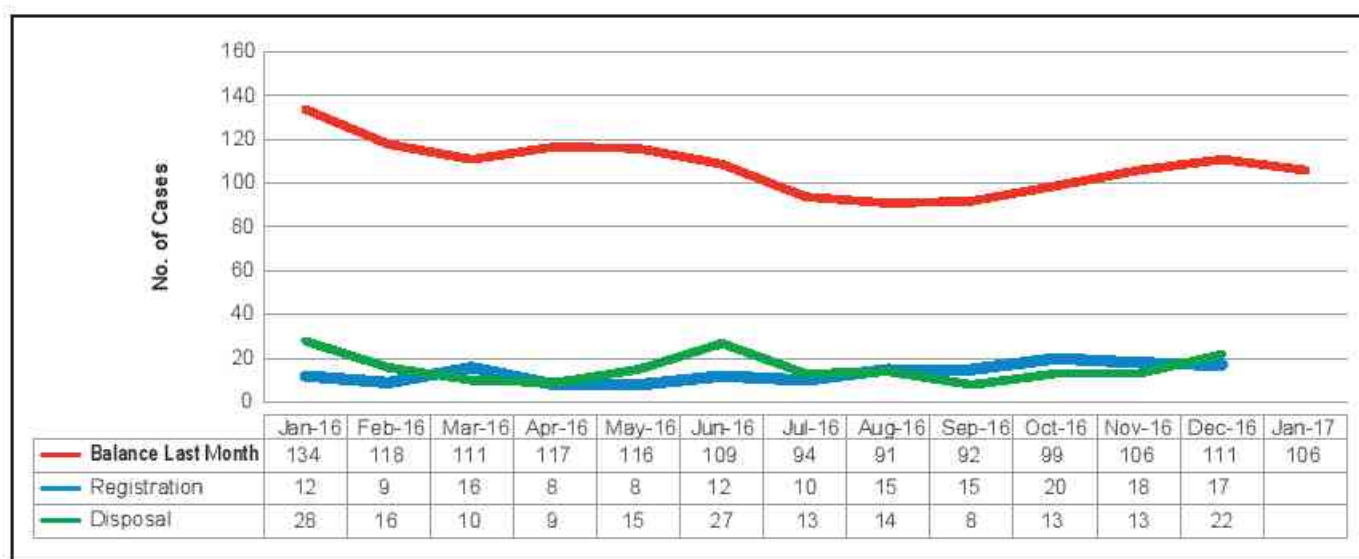
PENDING CASES  
IN THE HIGH COURT AT MUAR (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2012												2															2		
2013												5															5		
2014												6										2		1	1		10		
2015	1	2					7				2	33			2							102			1		160		
2016	2	10	3	15			4	5	3	4	6	47		3	97		1				11	509	17	17	51		805		
TOTAL	3	12	3	15			11	5	3	4	8	93		3	99		1				11	613	17	18	53		972		

#### 9.4 IN THE HIGH COURT AT MUAR – CRIMINAL

For criminal cases in the year 2016, a total number registered and 188 cases were disposed of, leaving of 160 cases including appeals and trials were the balance of 106 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT MUAR (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT MUAR (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2013																		4								2				6
2014																														
2015														1												2				3
2016		18	27		1	5		7	20					1												19	1			97
TOTAL		18	27		1	5		7	20					2			4									23	1			106



## 10. PAHANG

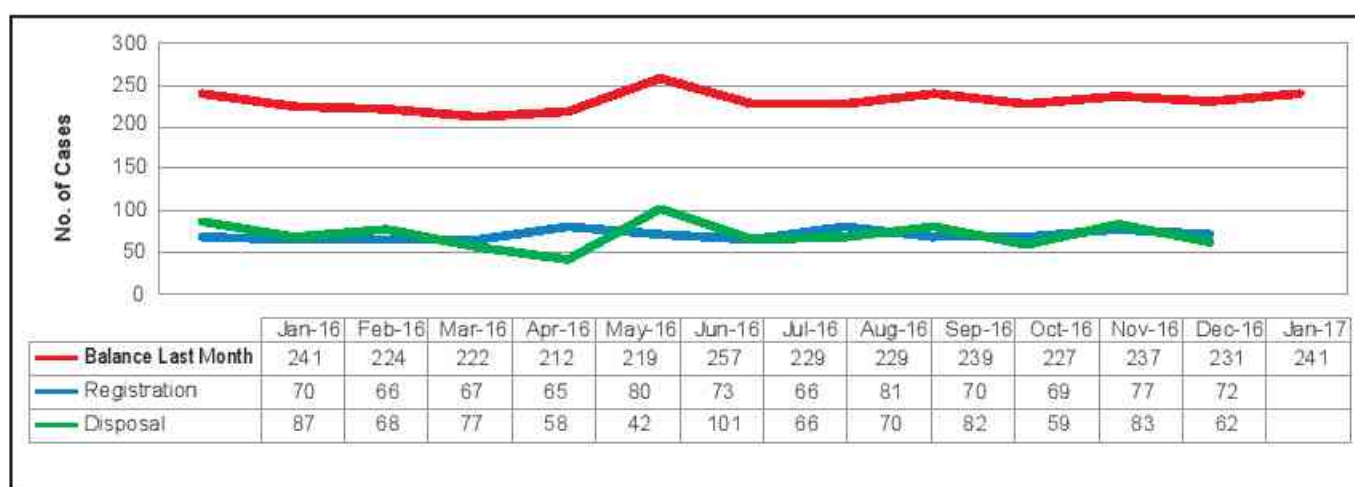
### 10.1 IN THE HIGH COURT AT KUANTAN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuantan for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 856 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 855 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Kuantan is 1,424 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUANTAN (CIVIL)  
JANUARY-DECEMBER 2016



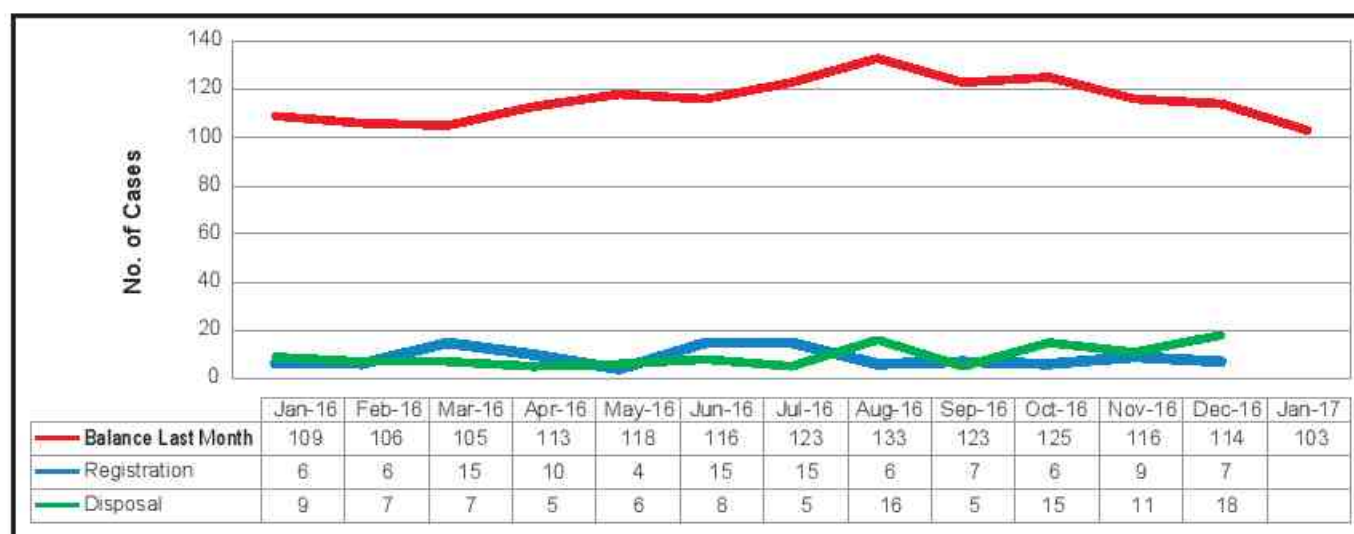
PENDING CASES  
IN THE HIGH COURT AT KUANTAN (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2008											1																1
2012												2															2
2013																											
2014												7										2					9
2015												15										74					89
2016	1	16	6	6				2		1	4	39			80		32			11	1091	7	9	18		1323	
TOTAL	1	16	6	6				2		1	5	61			80		32			11	1167	7	9	18		1424	

## 10.2 IN THE HIGH COURT AT KUANTAN – CRIMINAL

For criminal cases in the year 2016, a total number of 106 cases including appeals and trials were registered and 112 cases were disposed of, leaving a balance of 103 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT KUANTAN (CRIMINAL)  
AS AT JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUANTAN (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL			
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46	45	46
2014							67																							67
2015																										2				2
2016		1	11			1	2	8						2												8	1			34
TOTAL		1	11			1	69	8						2												10	1			103



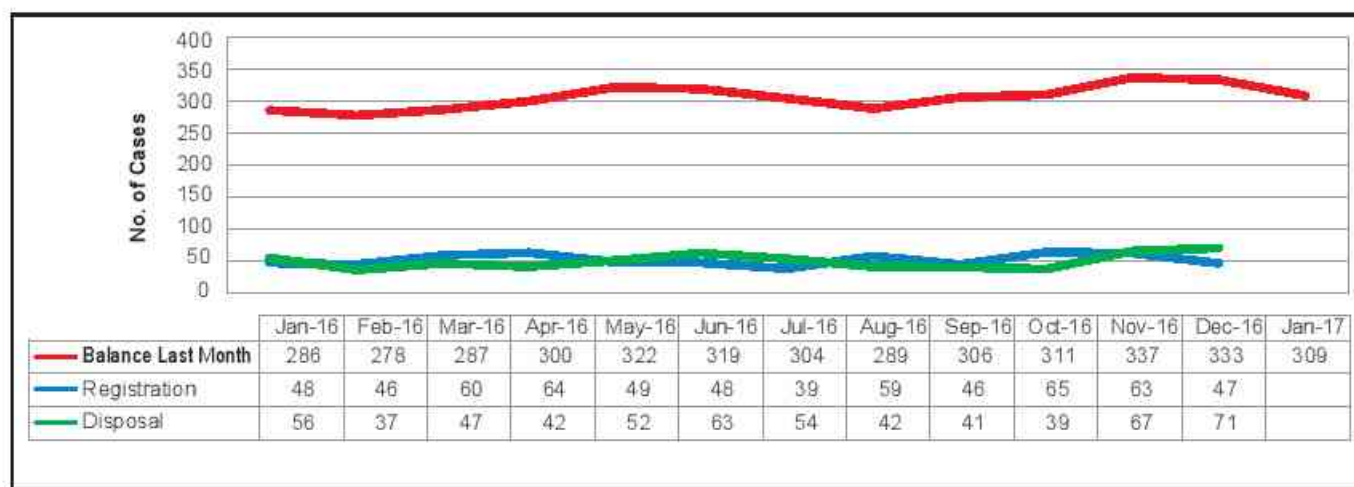
### 10.3 IN THE HIGH COURT AT TEMERLOH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Temerloh for the year 2016. For the period from January to December 2016, the total number of civil cases

registered was 634 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 611 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Temerloh is 1,101 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT TEMERLOH (CIVIL)  
AS AT JANUARY-DECEMBER 2016



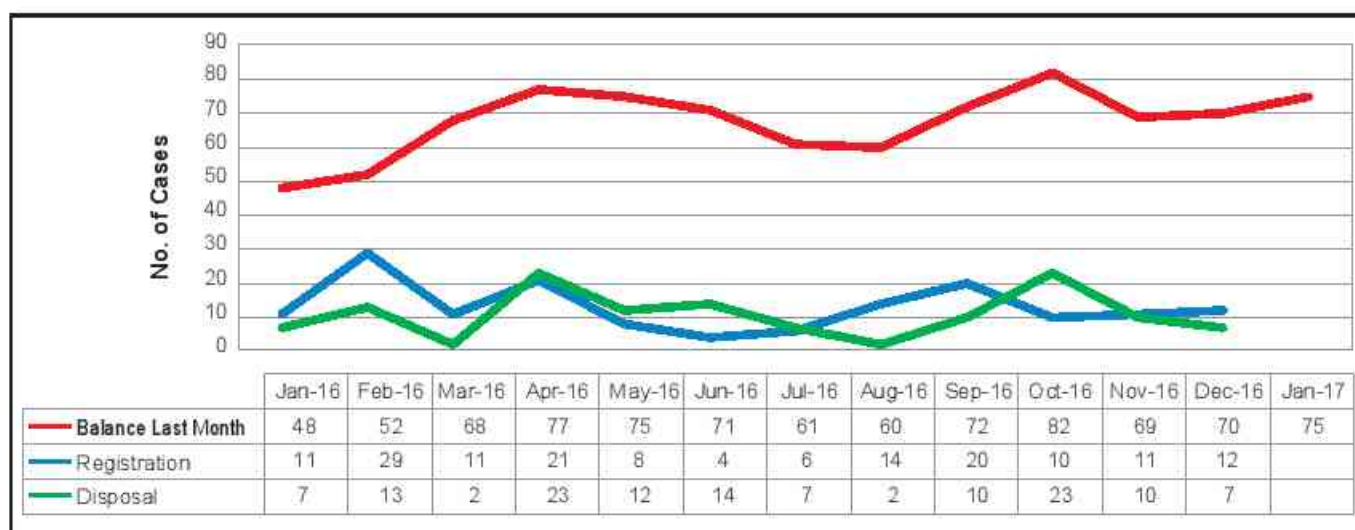
PENDING CASES  
IN THE HIGH COURT AT TEMERLOH (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																							TOTAL		
	11		12		13	14	15	16	17	18	21	22	23	24	25	26	27	28	29	31	32	33	37		38	
	A	B	A	B																						
2011												2														2
2012												2														2
2013																								7	7	
2014												1							14					20	35	
2015				2			1					3	1	2					181			1		34	225	
2016		4	10	34			4		2		1	15	1	56	5			2	552	9	36	42	5	52	830	
TOTAL		4	10	36			5		2		1	23	2	58	5			2	747	9	36	43	5	113	1101	

#### 10.4 IN THE HIGH COURT AT TEMERLOH – CRIMINAL

For criminal cases in the year 2016, a total number registered and 130 cases had been disposed of. of 157 cases including appeals and trials were leaving a balance of 75 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)  
AS AT JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2011															1														1	
2012																														
2013																														
2014																									1				1	
2015																									3				3	
2016		3	22			3		1	17				1	1										22				70		
TOTAL		3	22			3		1	17				1	1	1										26				75	



## 11. TERENGGANU

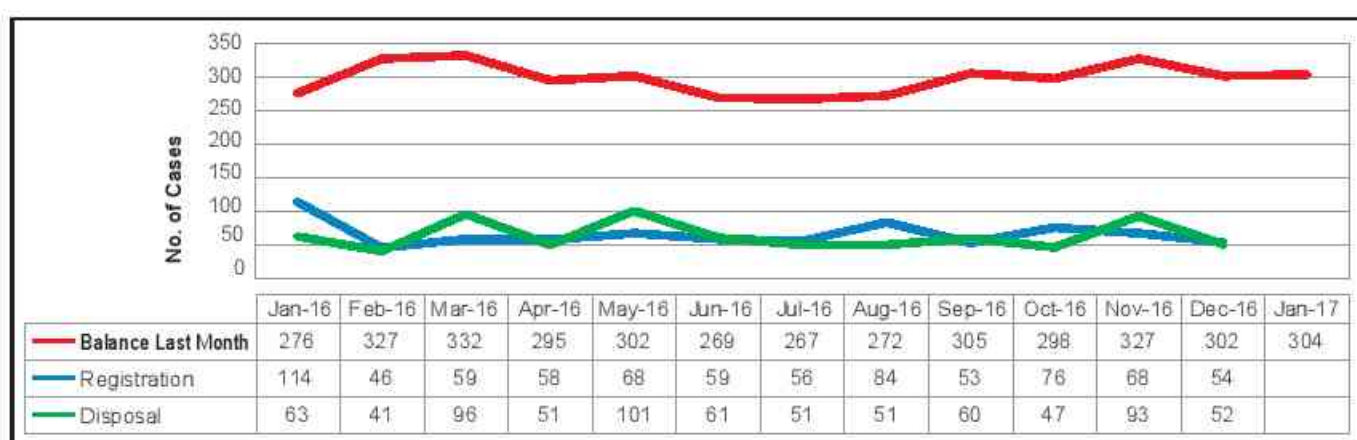
### 11.1 IN THE HIGH COURT AT KUALA TERENGGANU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuala Terengganu for the year 2016. For the period from

January to December 2016, the total number of civil cases registered was 795 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 767 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Kuala Terengganu is 939 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)  
JANUARY-DECEMBER 2016



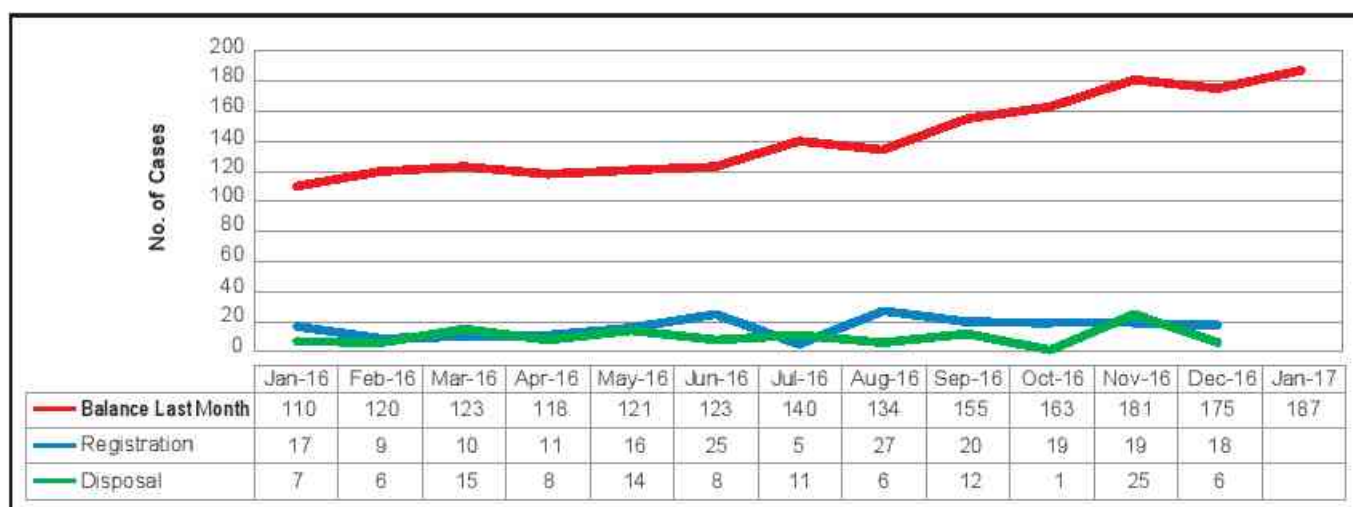
PENDING CASES  
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	37	38		
	A	B	A	B																									
2011																		1											1
2012																													
2013																													
2014											1	5																2	8
2015				1							4	16			1						2	2						12	38
2016	5	10	3	36			34				6	31		2	38		13			10	624	7	2	1				70	892
TOTAL	5	10	3	37			34				11	52		2	39		14			12	626	7	2	1				84	939

## 11.2 IN THE HIGH COURT AT KUALA TERENGGANU – CRIMINAL

For criminal cases in the year 2016, a total number registered and 119 cases were disposed of, leaving of 196 cases including appeals and trials were the balance of 187 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		FIARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2014																										3				3
2015		3	3		1	2		4				1														11				25
2016		22	48		1	9		10	49			1		6												13				159
TOTAL		25	51		2	11		14	49			2		6												27				187



## 12. KELANTAN

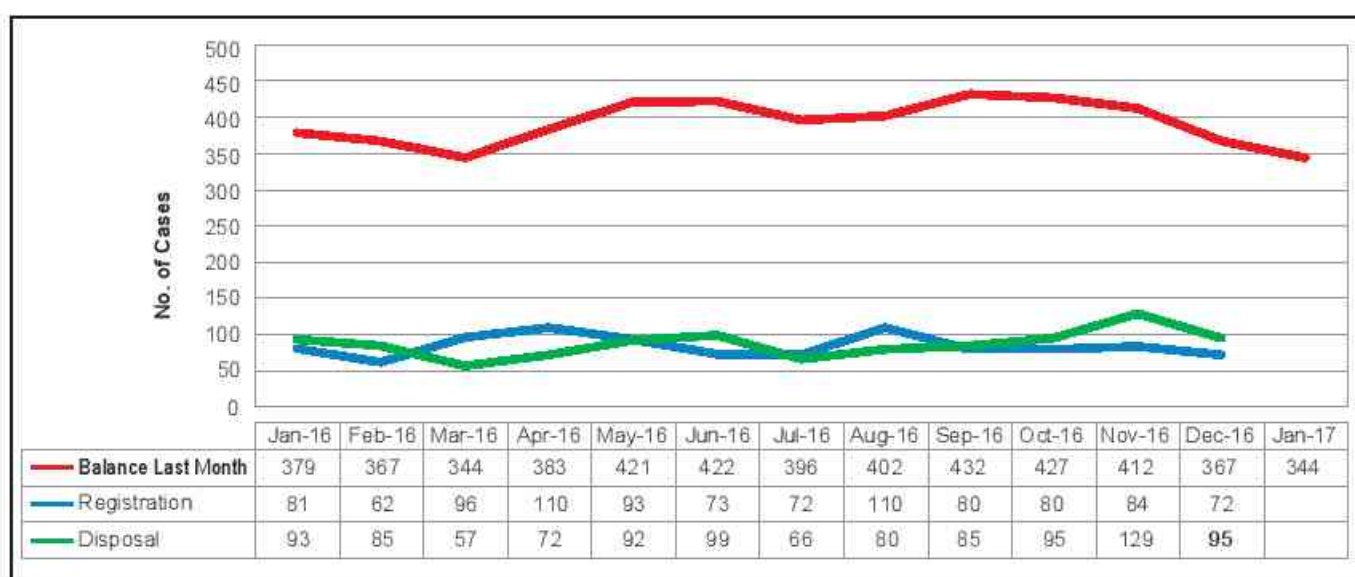
### 12.1 IN THE HIGH COURT AT KOTA BHARU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kota Bharu for the year 2016.

For the period from January to December 2016, the total number of civil cases registered was 1,013 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 1,048 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Kota Bharu is 1,514 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT KOTA BHARU (CIVIL)  
JANUARY-DECEMBER 2016



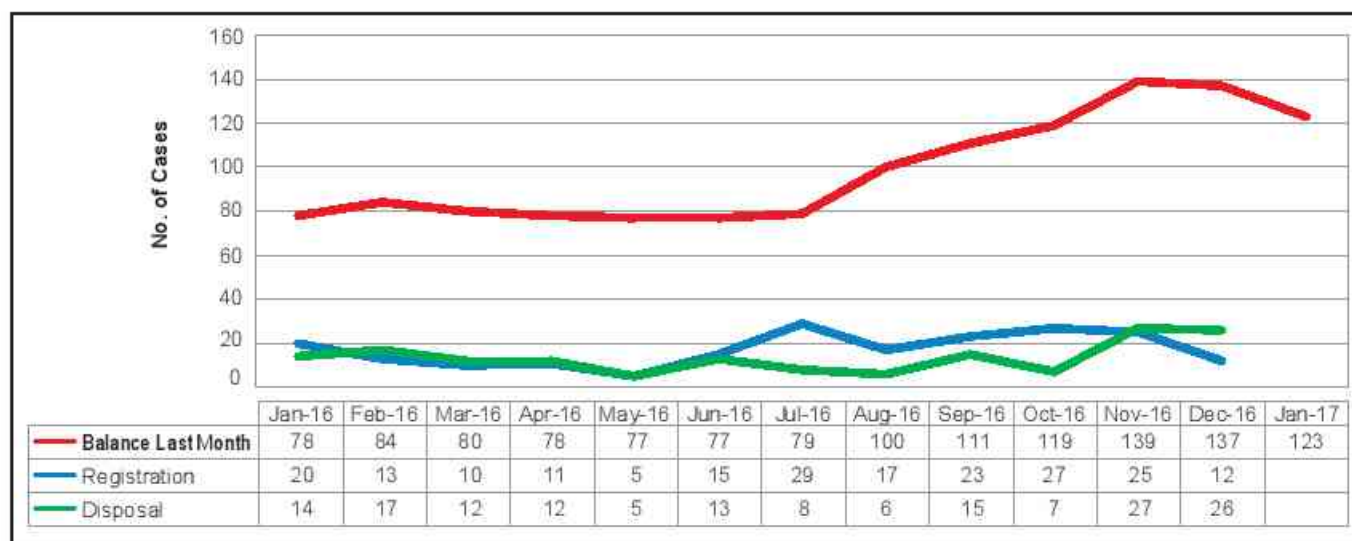
PENDING CASES  
IN THE HIGH COURT AT KOTA BHARU (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2011												1					1									2	
2012																											
2013												1														1	
2014												3			1							5				9	
2015							30				2	8									57	1				98	
2016	4	20	6	31			35				7	56		1	112		6			9	1089	17	1	10		1404	
TOTAL	4	20	6	31			65				9	69		1	113		7			9	1151	18	1	10		1514	

## 12.2 IN THE HIGH COURT AT KOTA BHARU – CRIMINAL

For criminal cases in the year 2016, a total number of 207 cases including appeals and trials were registered and 162 cases were disposed of, leaving a balance of 123 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2015		1																								1				2
2016		18	26		2	4		24	16		3	2	3		4											16		3		121
TOTAL		19	26		2	4		24	16		3	2	3		4											17		3		123



### 13. THE SESSIONS COURT IN PENINSULAR MALAYSIA

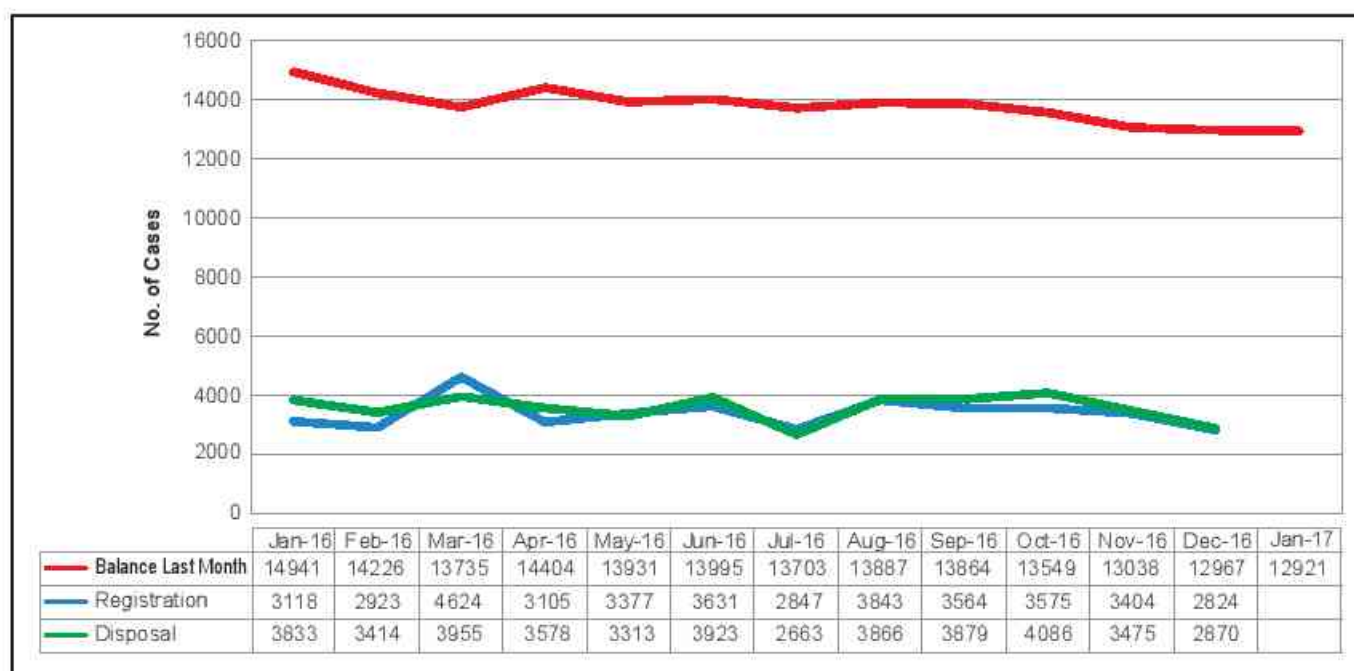
#### 13.1 SESSIONS COURT-CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2016. For the period from

January to December 2016, the total number of civil cases registered was 40,835 (excluding cases for code 56). The Sessions Court has managed to dispose of 42,855 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the Sessions Court in Peninsular Malaysia is 13,264 cases as reflected in the pending cases below.

**TRACKING CHART  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)  
JANUARY-DECEMBER 2016**



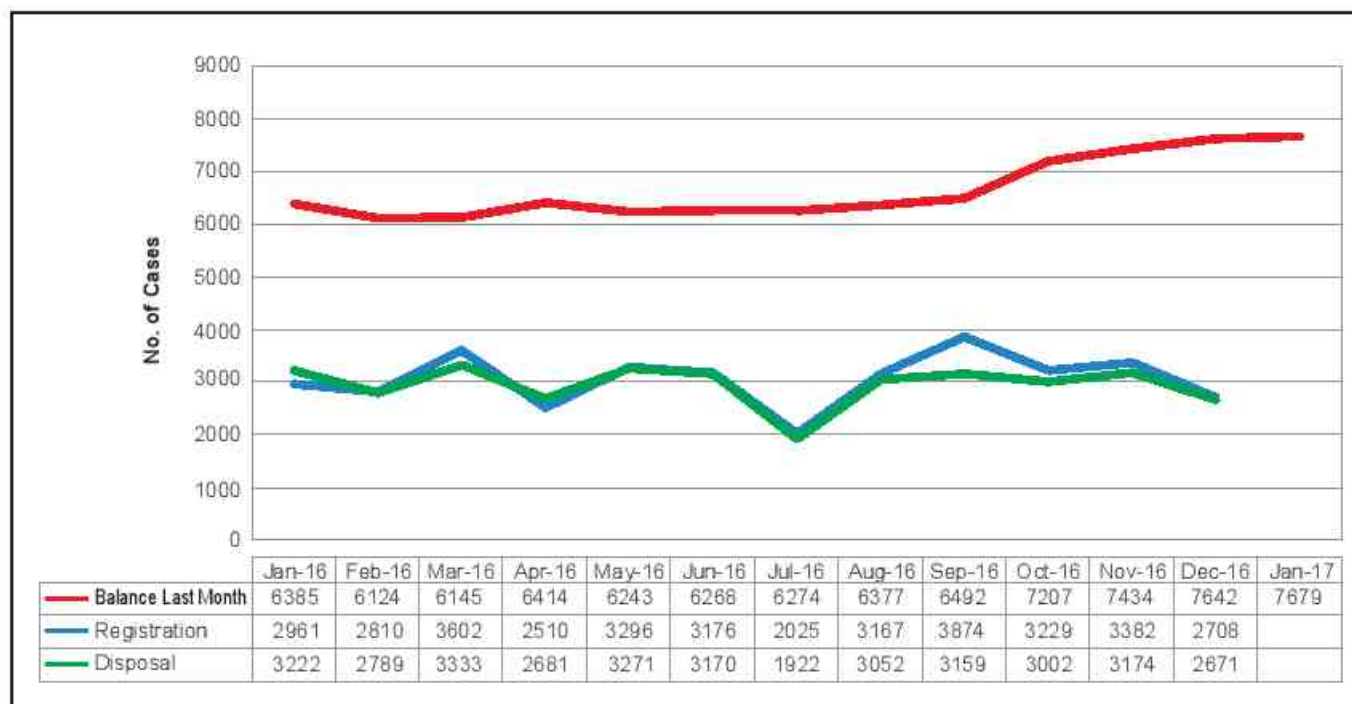
**PENDING CASES  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016**

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2007		1							1
2008		1							1
2009									
2010									
2011		2							2
2012		2							2
2013		9	3	5					17
2014		52	27			1			80
2015	32	305	603	8	1	41		1	991
2016	284	4129	7044	109	6	301		297	12170
<b>TOTAL</b>	<b>316</b>	<b>4501</b>	<b>7677</b>	<b>122</b>	<b>7</b>	<b>343</b>		<b>298</b>	<b>13264</b>

## 13.2 SESSIONS COURT – CRIMINAL

For criminal cases in the year 2016, a total of 36,740 criminal cases were registered (excluding cases for Code 64 and 65) and 35,446 criminal cases were disposed of, leaving a balance of 8,598 cases pending.

TRACKING CHART  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2006										3						3
2007									2							2
2008																
2009																
2010									3	2						5
2011			1		1				140	1	1	1				145
2012						1			8	2						11
2013			6		1	2		1	12	74	5		2			103
2014			3		3		1	38		171	4		4		3	227
2015			21		17		6	13		640	56		25		32	810
2016		1	84		107		177	110		6078	882		186		667	7292
TOTAL		1	115		129	3	184	162	165	5971	948	1	217		702	8598



## 14. MAGISTRATES' COURT IN PENINSULAR MALAYSIA

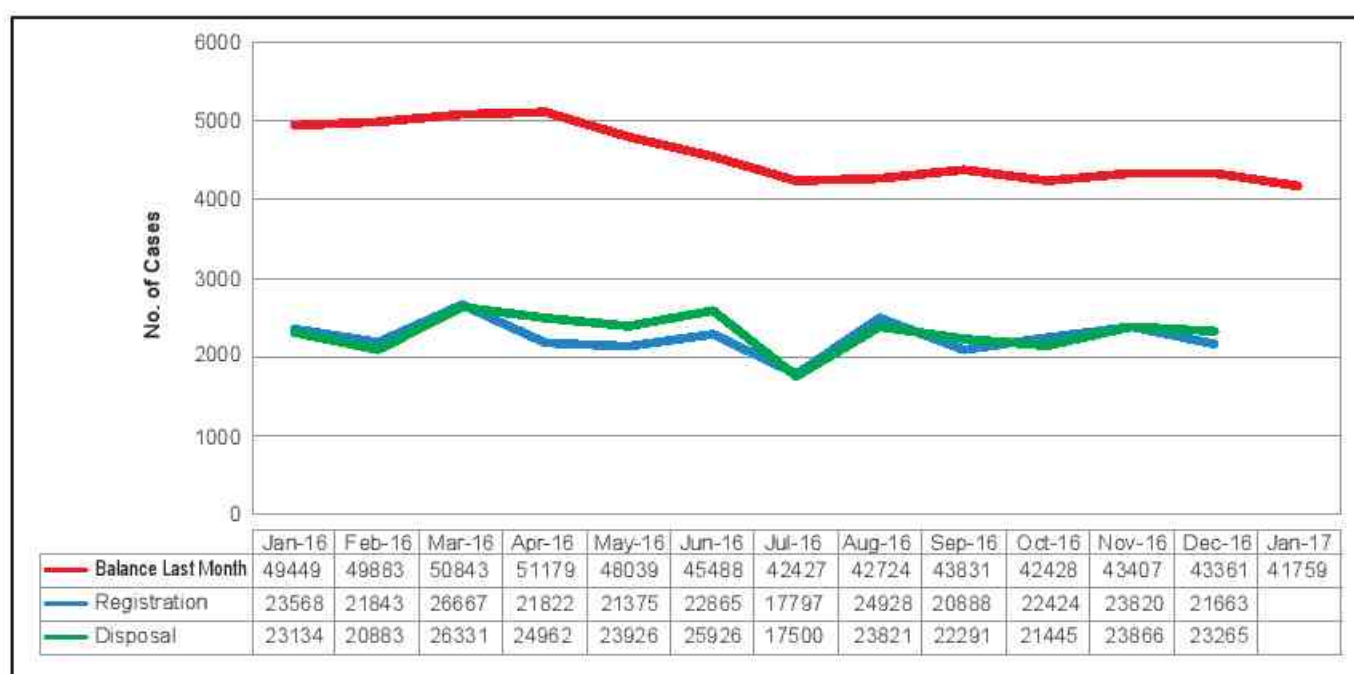
### 14.1 MAGISTRATES' COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates' Court in Peninsular Malaysia for the year 2016. For the period from January to December 2016 the

total number of civil cases registered was 269,660 (excluding cases for code 76). The Magistrates' Court has managed to dispose of 277,350 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the Magistrates' Court in Peninsular Malaysia is 44,205 as reflected in the pending cases below.

TRACKING CHART  
IN THE MAGISTRATES' COURT IN PENINSULAR MALAYSIA (CIVIL)  
JANUARY-DECEMBER 2016



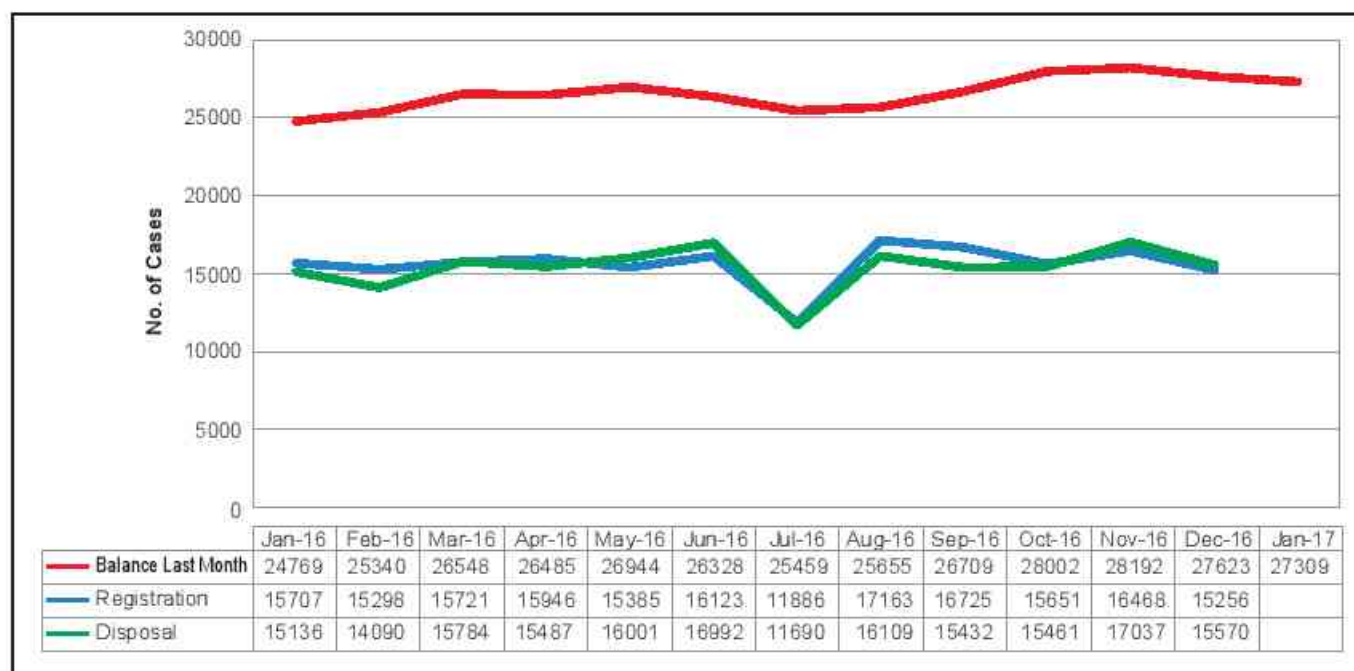
PENDING CASES  
IN THE MAGISTRATES' COURT IN PENINSULAR MALAYSIA (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2013		1								1
2014	2	12		1						15
2015	3	143		438			56			640
2016	4578	22186		13574	597		2390	220	4	43549
TOTAL	4583	23342		14013	597		2446	220	4	44205

## 14.2 MAGISTRATES' COURT – CRIMINAL

For criminal cases in the year 2016, a total of 187,329 criminal cases were registered (excluding cases for code 86, 87, 88 and 89) and 184,789 cases were disposed of, leaving a balance of 393,580 cases pending.

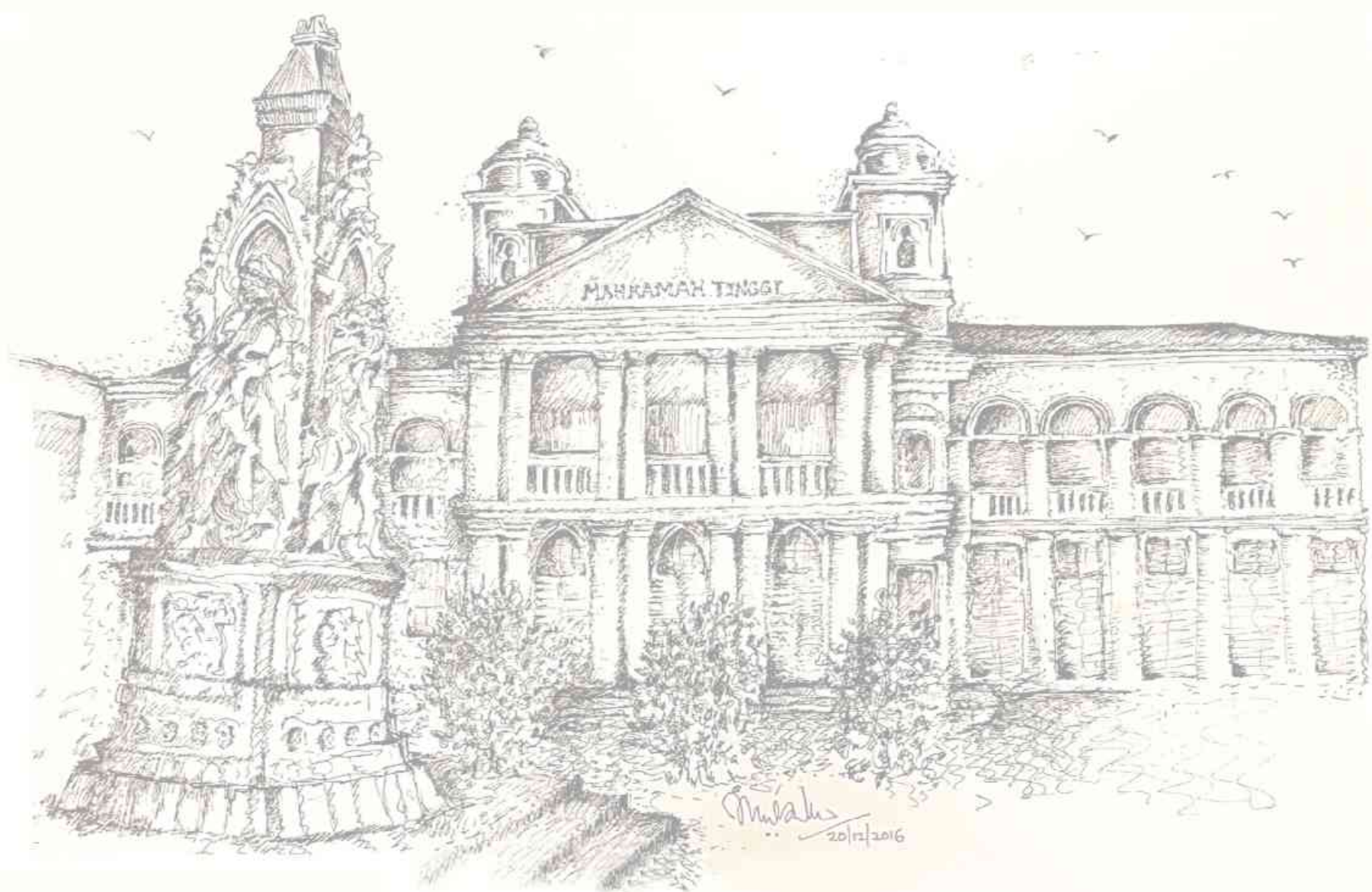
TRACKING CHART  
IN THE MAGISTRATES' COURT IN PENINSULAR MALAYSIA (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE MAGISTRATES' COURT IN PENINSULAR MALAYSIA (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2013				1			3									4
2014				6			20			2			2			30
2015	15			68			599			30	17	4955	243		5	5932
2016	1143			486		8	23551		8	985	367	326157	34406		503	387614
TOTAL	1158			561		8	24173		8	1017	384	331112	34651		508	393580





# **APPENDIX B**

## **(SABAH & SARAWAK)**



## 1. SABAH

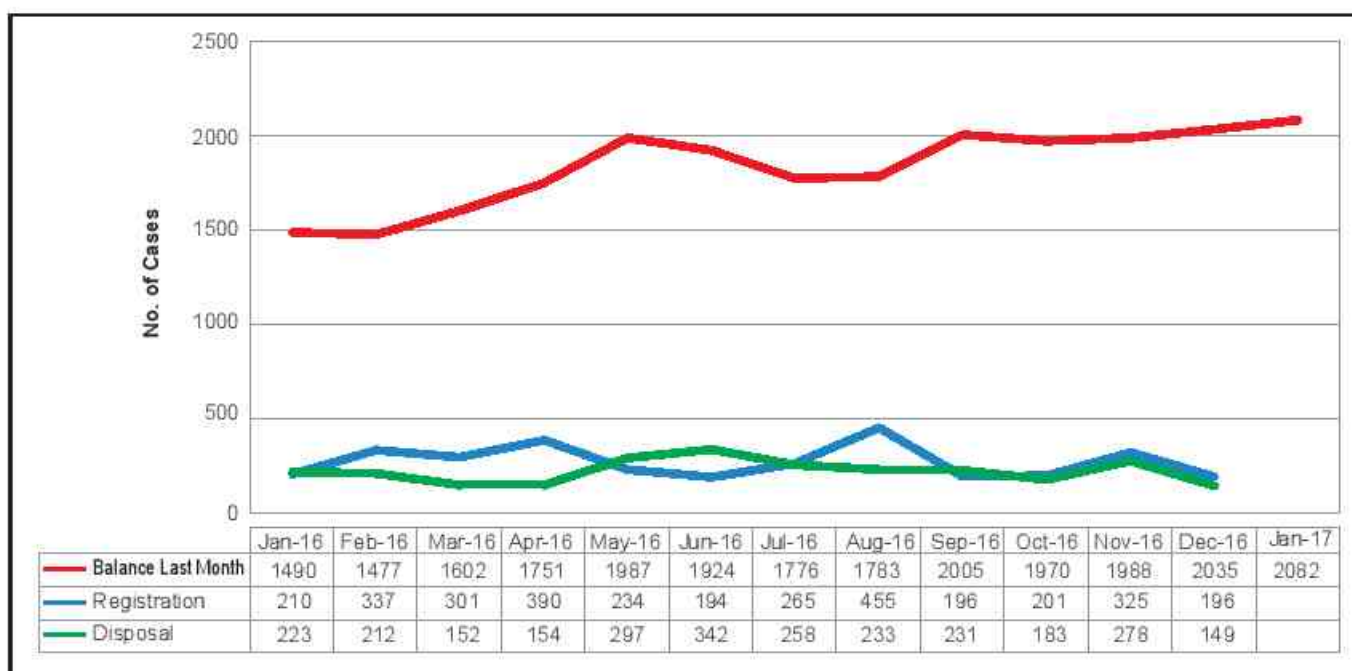
### 1.1 IN THE HIGH COURT AT SABAH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Sabah for the year 2016. For the period from January to December 2016, the total number of civil cases

registered was 3,304 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 2,712 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Sabah is 3,483 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT SABAH (CIVIL)  
JANUARY-DECEMBER 2016



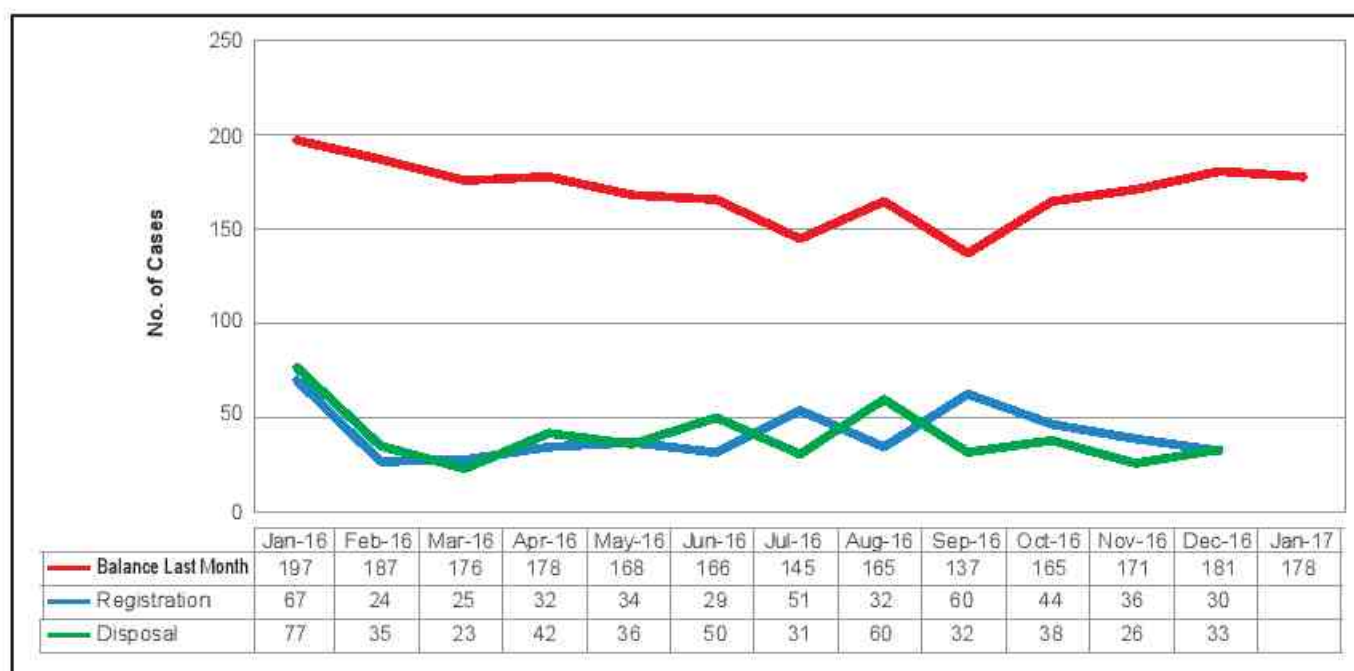
PENDING CASES  
IN THE HIGH COURT AT SABAH (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2008												1															1		
2009																													
2010																													
2011												2									1						3		
2012												2			1												3		
2013												4															4		
2014					1						1	14			1					1	5						23		
2015	1			4	583						3	71			5						34			3			704		
2016	9	7	28	25	930			5		6	12	162		2	97		5		3	38	1347	10	4	44	11		2745		
TOTAL	10	7	28	29	1514			5		6	16	256		2	104		5		3	39	1387	10	4	47	11		3483		

## 1.2 IN THE HIGH COURT AT SABAH CRIMINAL

For criminal cases in the year 2016, a total number 464 registered and 483 cases were disposed of. of criminal cases including appeals and trials were leaving a balance of 178 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT SABAH (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT SABAH (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2014																										3				3
2015		1			1			3		2	1			3												8				19
2016		6	40		1	1		17	61			2		6												21		1		156
TOTAL		7	40		2	1		17	64			2	3		9											32		1		178



## 2. SARAWAK

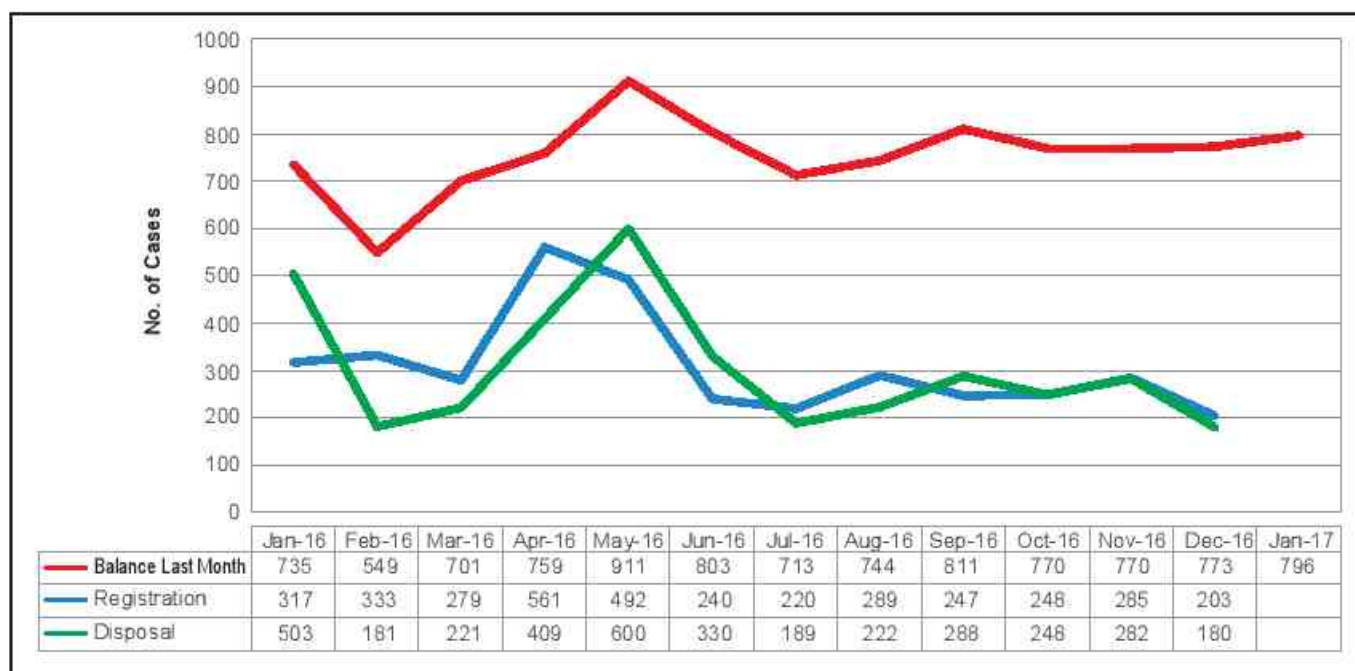
### 2.1 IN THE HIGH COURT AT SARAWAK - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Sarawak for the year 2016. For the period from January

to December 2016, the total number of civil cases registered was 3,714 (excluding cases for code 29, 31 and 32). The High Court has managed to dispose of 3,653 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the High Court at Sarawak is 1,714 as reflected in the pending cases below.

TRACKING CHART  
IN THE HIGH COURT AT SARAWAK (CIVIL)  
JANUARY-DECEMBER 2016



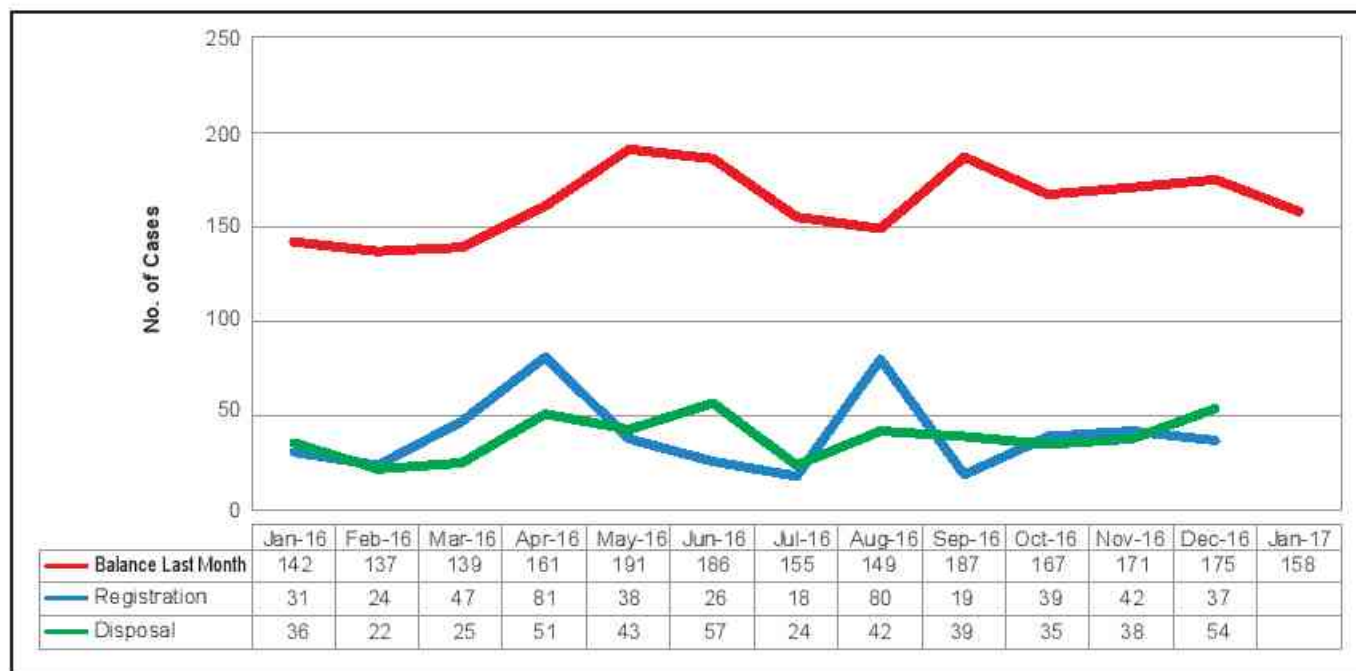
PENDING CASES  
IN THE HIGH COURT AT SARAWAK (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2009												1															1
2010																											
2011											1																1
2012											1	2															3
2013											1	15			7												23
2014											1	16			6							1					24
2015	1			1	1	1	6				24	33		5	13						11			1			97
2016	1	3	13	17	24		9				20	85		2	134		1		3	22	906			325			1565
TOTAL	2	3	13	18	25	1	15				48	152		7	160		1		3	22	918			326			1714

## 2.2 IN THE HIGH COURT AT SARAWAK - CRIMINAL

For criminal cases in the year 2016, a total number registered and 466 cases were disposed of, leaving of 482 cases including appeals and trials were a balance of 158 cases pending.

TRACKING CHART  
IN THE HIGH COURT AT SARAWAK (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE HIGH COURT AT SARAWAK (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES																												TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45		46
2013	12						8										1									1				22
2014																														
2015		1												1												8				10
2016		28	16		3		21	13		1				2											33	1	3	5		126
TOTAL	12	29	16		3		8	21	13		1			3			1								42	1	3	5		158



### 3. THE SESSIONS COURT IN SABAH AND SARAWAK

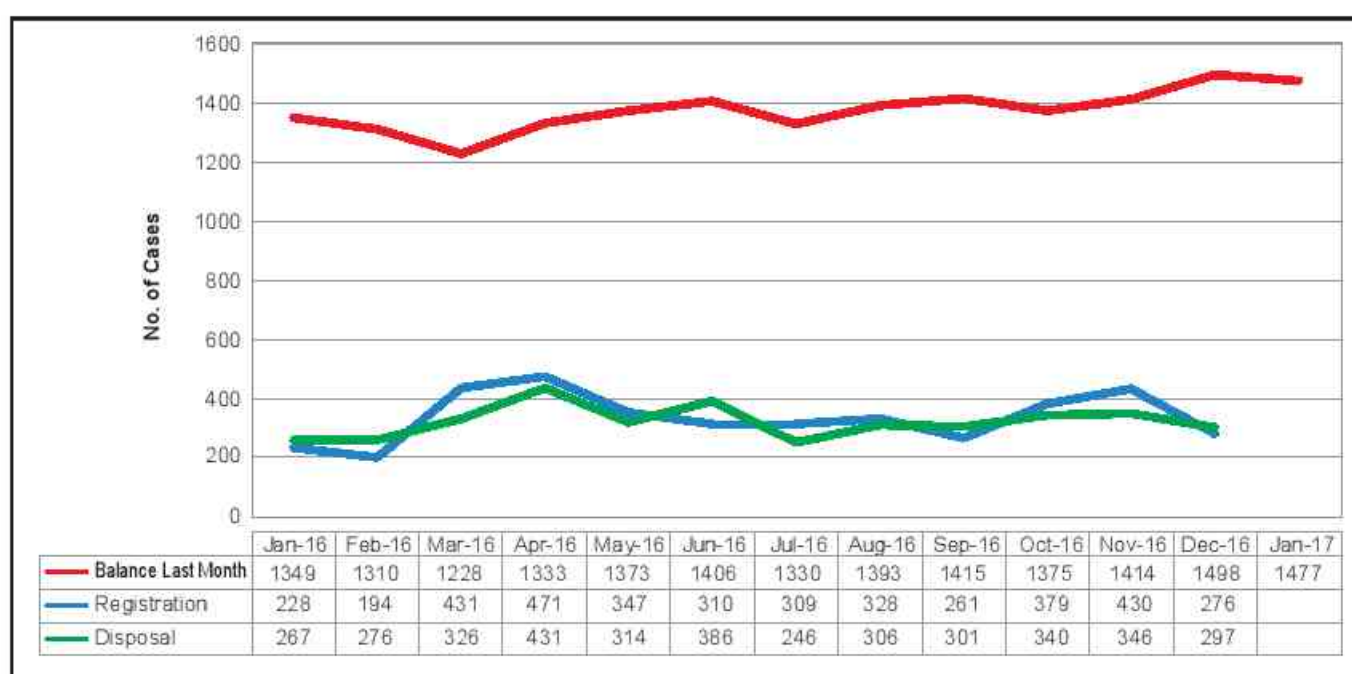
#### 3.1 SESSIONS COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Sabah and Sarawak for the year 2016. For the period

from January to December 2016, the total number of civil cases registered was 3,964 (excluding cases for code 56). The Sessions Court has managed to dispose of 3,836 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in Sessions Court in Sabah and Sarawak is 1,505 cases as reflected in the pending cases below.

TRACKING CHART  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

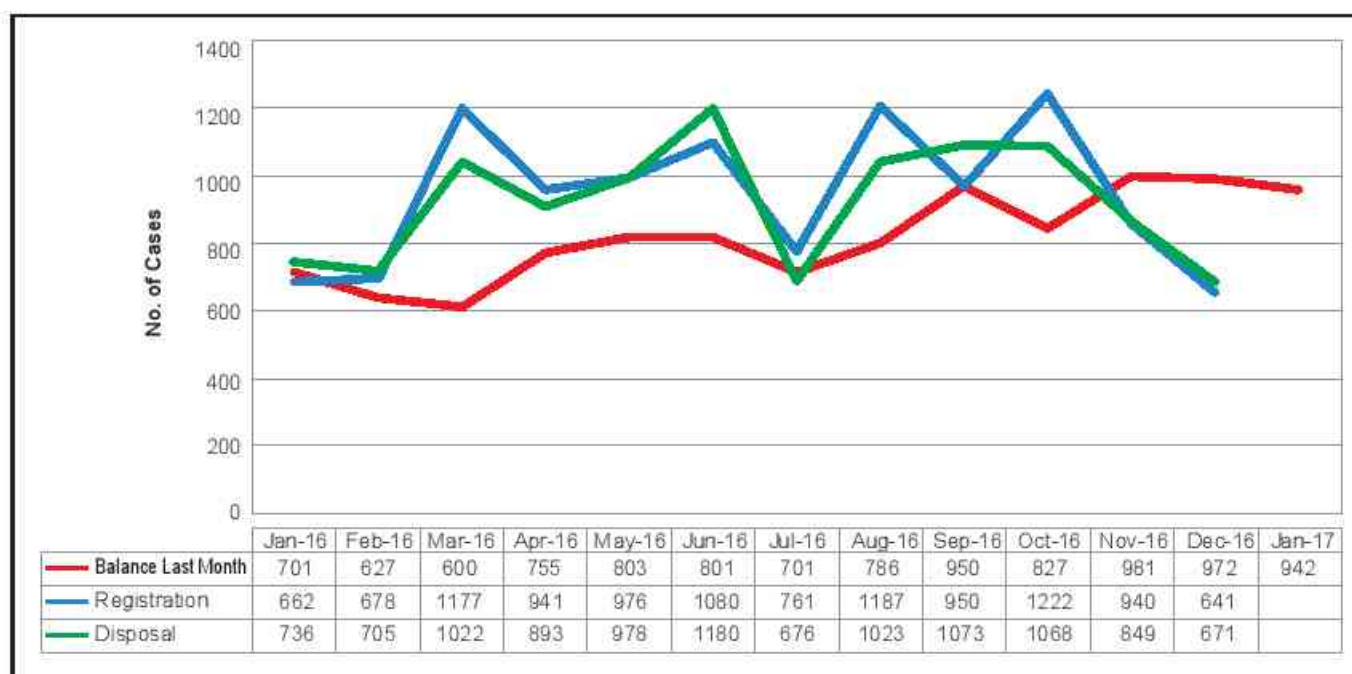
YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	59	
2011			1						1
2012									
2013		5	1						6
2014		10	7	1					18
2015	4	44	69			5			122
2016	106	788	433	8		23			1358
TOTAL	110	847	511	9		28			1505

### 3.2 SESSIONS COURT – CRIMINAL

For criminal cases in the year 2016, a total of 11,115 criminal cases were registered (excluding

cases for code 64 and 65) and 10,874 criminal cases were disposed of, leaving a balance of 1,052 cases pending.

TRACKING CHART  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2013													1			1
2014					1					66	1					68
2015			7		100		1	5		56	3		1		1	174
2016			19		18		2	22		498	143		29		78	809
TOTAL			26		119		3	27		620	147		31		79	1052



#### 4. MAGISTRATES' COURT IN SABAH AND SARAWAK

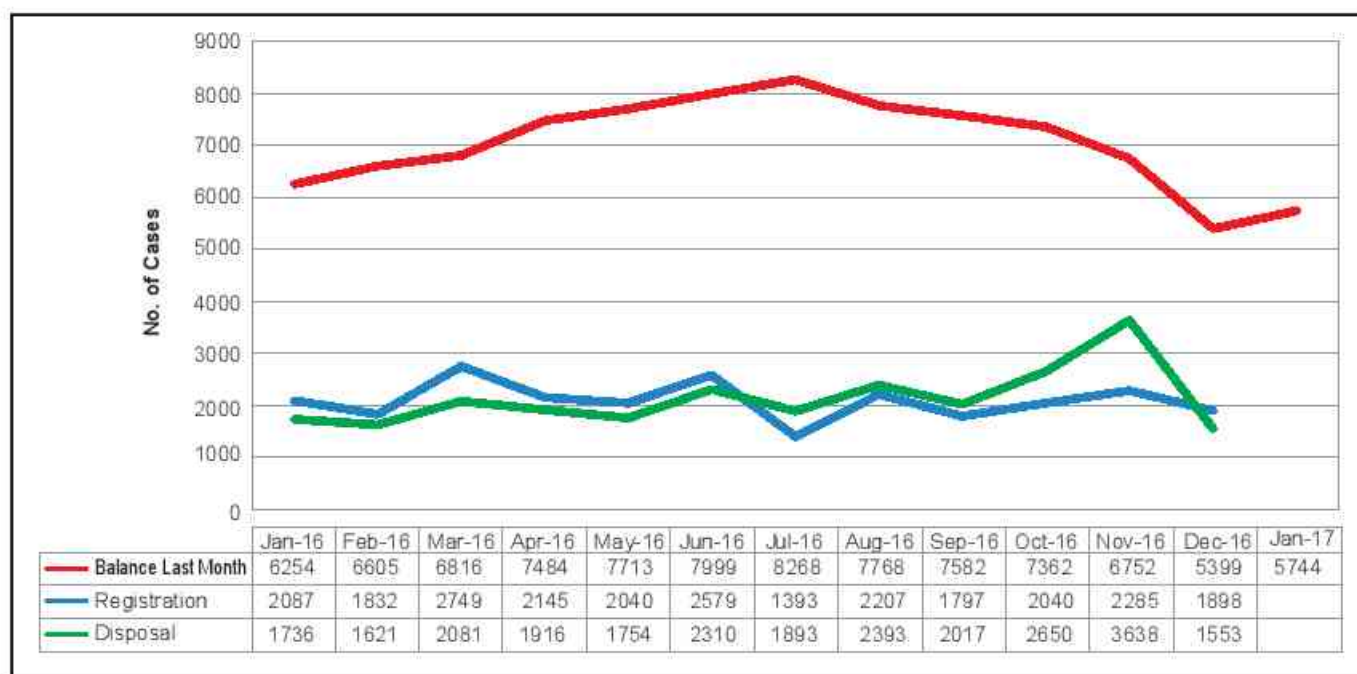
##### 4.1 MAGISTRATES' COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates' Court in Sabah and Sarawak for the year 2016. For the period from January to December 2016 the total number of civil

cases registered was 25,052 (excluding cases for code 76). The Magistrates' Court has managed to dispose of 25,562 cases throughout the year 2016.

As at 31<sup>st</sup> December 2016, the total number of civil cases pending in the Magistrates' Court in Sabah and Sarawak is 6,458 as reflected in the pending cases below.

TRACKING CHART  
IN THE MAGISTRATES' COURT IN SABAH AND SARAWAK (CIVIL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE MAGISTRATES' COURT IN SABAH AND SARAWAK (CIVIL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

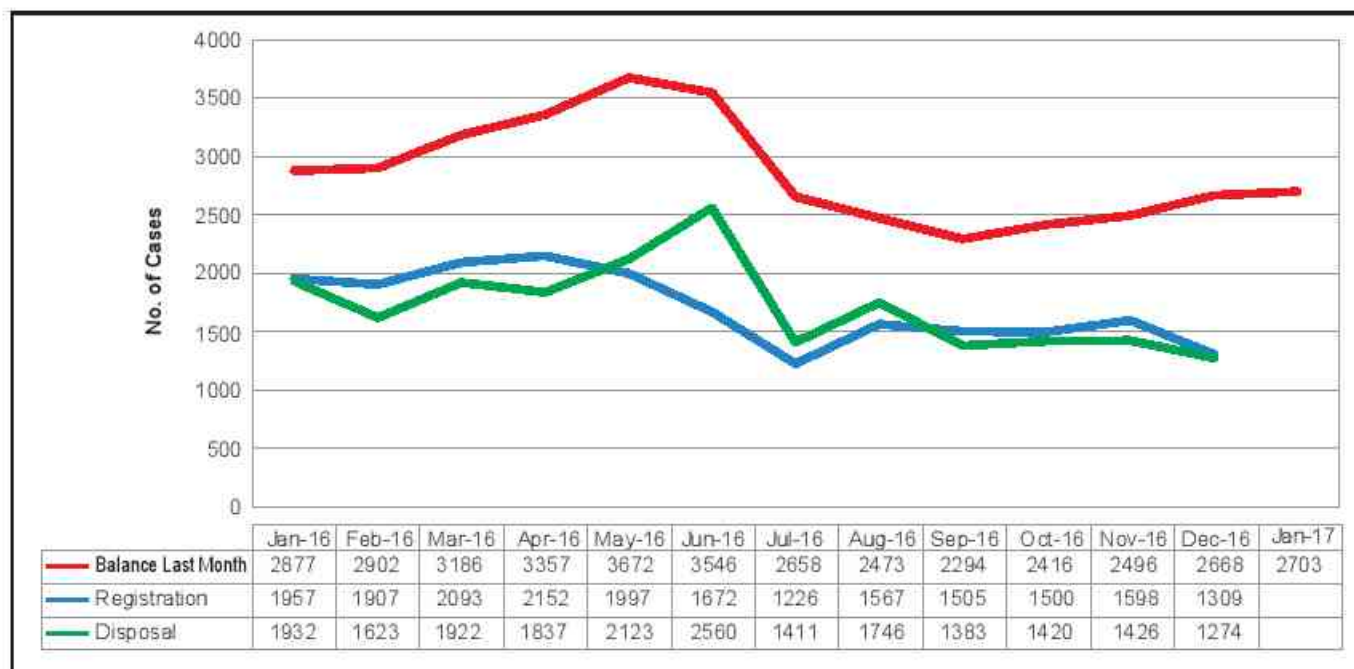
YEAR	CODES									TOTAL
	71	72	72A	73	74	76	77	78	79	
2010		1								1
2011										
2012										
2013										
2014		2								2
2015		13		8		1				22
2016	1344	4063		104	112	713	55	29	13	6433
TOTAL	1344	4079		112	112	714	55	29	13	6458

#### 4.2 MAGISTRATES' COURT – CRIMINAL

For criminal cases in the year 2016, a total of 20,483 criminal cases were registered (excluding

cases for code 86, 87, 88 and 89) and 20,657 cases were disposed of, leaving a balance of 17,213 cases pending.

TRACKING CHART  
IN THE MAGISTRATES' COURT IN SABAH AND SARAWAK (CRIMINAL)  
JANUARY-DECEMBER 2016



PENDING CASES  
IN THE MAGISTRATES' COURT IN SABAH AND SARAWAK (CRIMINAL)  
AS AT 31<sup>ST</sup> DECEMBER 2016

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2011														1		1
2012																
2013										3						3
2014				1												1
2015				2			12						3			17
2016	74		4	75			2353		1	161	17	10619	3724		163	17191
TOTAL	74		4	78			2365		1	164	17	10619	3727	1	163	17213





#### THE EDITORIAL COMMITTEE-

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2nd row L-R: Mr. Noorhisham Mohd Jaafar, Mr. Shazali Hidayat Shariff, Mr. Muhammad Iskandar Zainol, Mr. Mohd Sabri Othman, Mdm. Sharifah Norazlita Syed Salim Idid, Mdm. Maimoonah Aid, Ms. Hazmida Harris Lee, Mdm. Syahrin Jeli Bohari





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