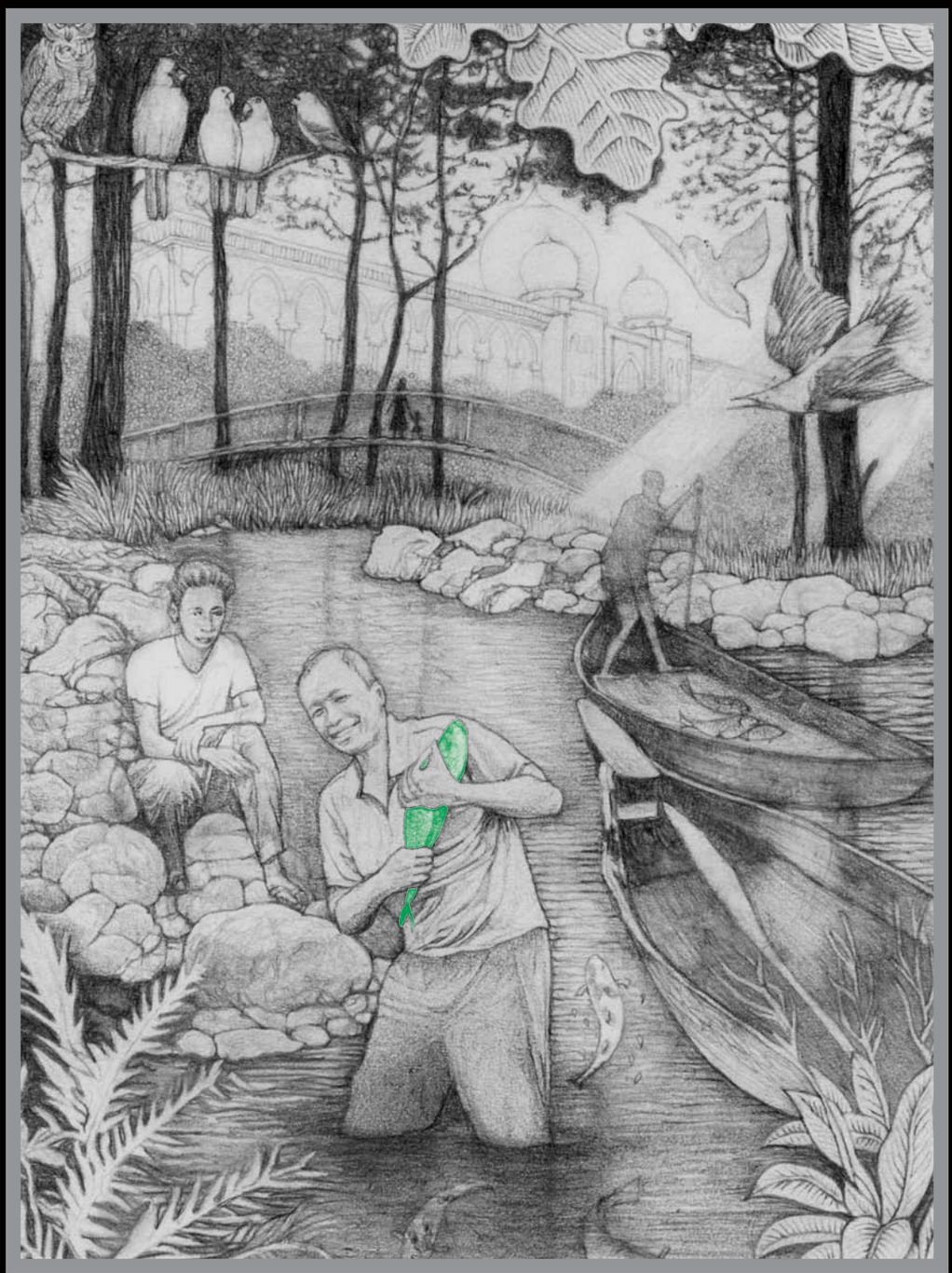
THE MALAYSIAN JUDICIARY



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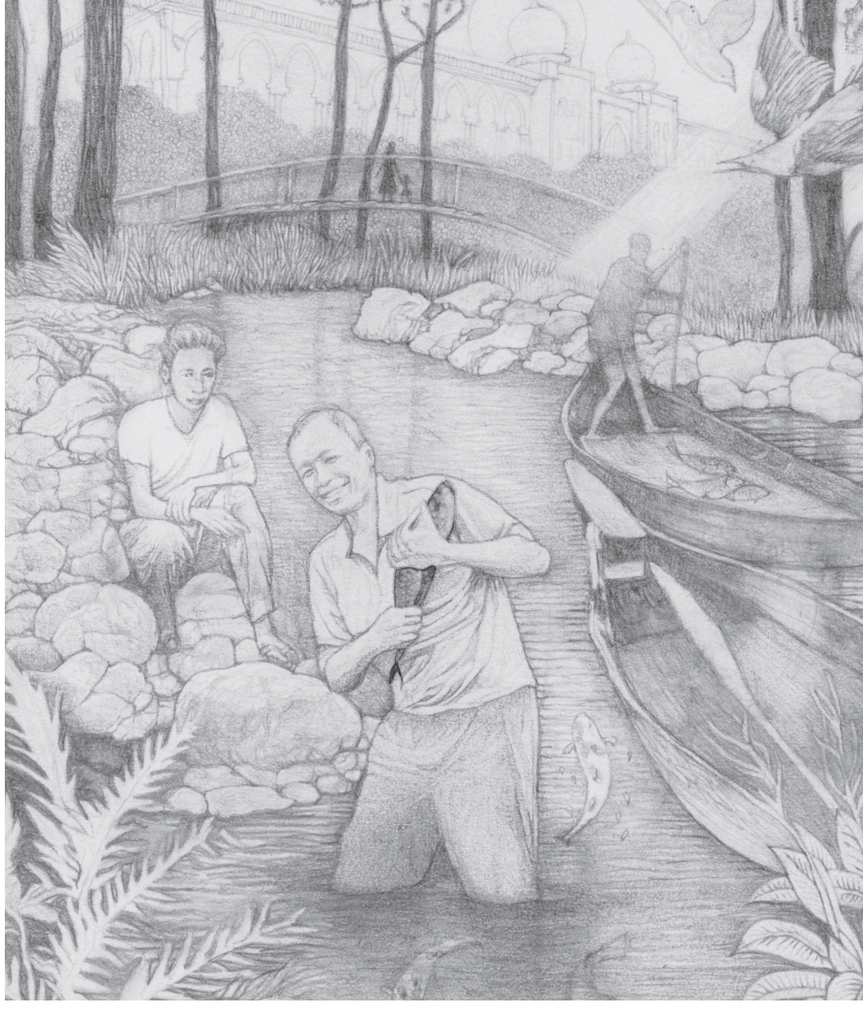

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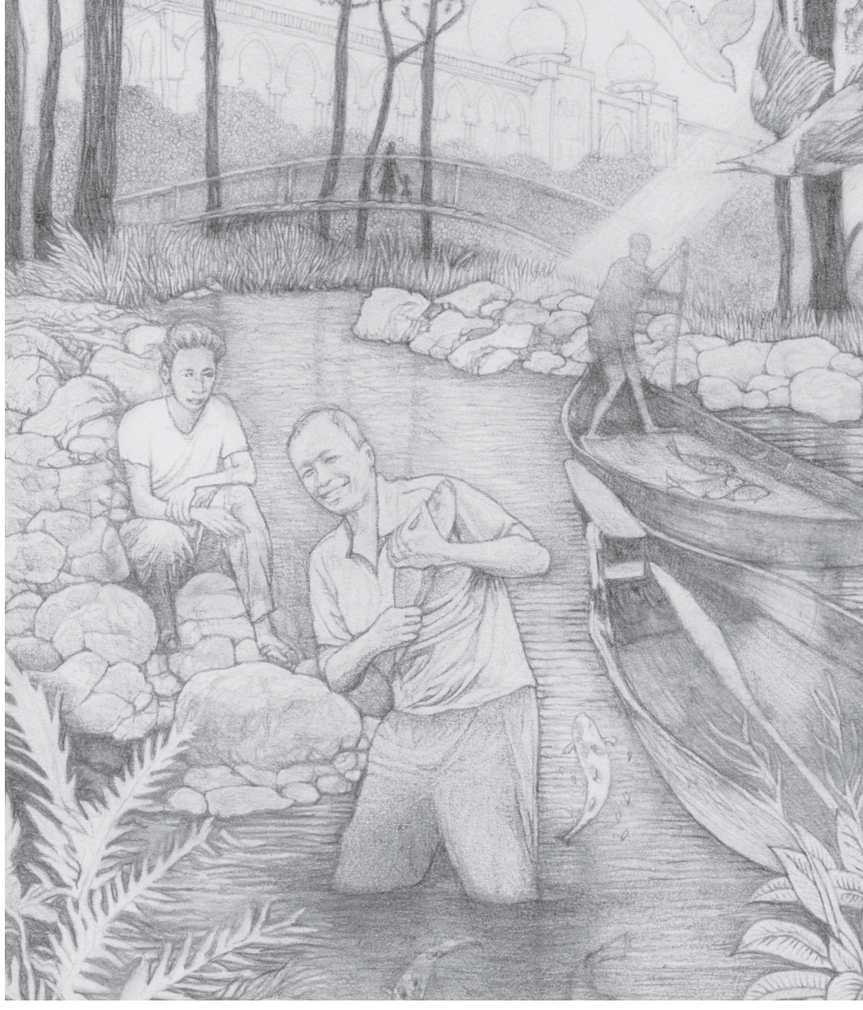
Cover Drawing : “Natural Justice”

by Jimmy Khalil



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The Right Honourable Tun Arifin Zakaria
Chief Justice of Malaysia

Foreword

The Right Honourable Tun Arifin Zakaria
Chief Justice of Malaysia

It is with great pleasure, that once again I welcome the publication of the Malaysian Judiciary Yearbook for 2012. As the various events of 2012 flowed seamlessly from one to the other, I feel that the current mood is just as vibrant as it had been the previous year. On looking back, I must say not without some satisfaction that in 2012 we have participated in a series of important events which require special mention in this publication.

The year 2012 witnessed significant changes in the civil justice system when the combined Rules of Court 2012 was finally gazetted, replacing both the former Rules of the High Court 1980 and the Subordinate Courts Rules 1980. The simplicity of the Court process is now in place which would hopefully make easier access to justice a reality.

Last year, I had indicated our intention of setting up a Judicial Academy for the training of superior court judges. Given the nature of judicial work, it is critical that the pool of judicial talent is provided with necessary training to improve their judicial skills.

In this regard I am happy to state that in 2012, the Judicial Academy was set up under the auspices of the Judicial Appointments Commission (JAC). The Academy launched its very first programme with an in-house training series by judges for judges. Thus far, a good number of judges have attended this programme. Judicial training on specific areas of the law have definitely proven to be instructive. The instructors or trainers include judges from other jurisdictions. Judges are also sent for seminars and colloquiums abroad as part of the training programme. In the same vein, various seminars, courses and programmes have also been held locally to train judicial officers. I take this opportunity to thank **Justice Mohamad Ariff Yusof** for skilfully coordinating the various programmes as the Academy's Director.

In 2012, several delegations from Judiciaries and Ministries of Justice of other jurisdictions visited our courts. The visits are two-fold in that they not only foster a closer relationship between ourselves, they also ensure that we share common experiences and the best practices of our respective countries. Our foreign guests generally showed interest in our e-Court system and our case backlog reduction programme.

Although dispensing justice in civil and criminal litigations remain the core judicial function, we introduced court-annexed mediation as an alternative to litigation in 2011. This alternative mode has since then been integrated into the court process. I am happy to note that there is an increasing awareness by litigants that adversarial courtroom litigation is not the optimal strategy and that there exists a category of dispute resolutions such as arbitration, negotiation, mediation and conciliation which are credible alternatives. Courts will continue to promote and encourage parties to opt for mediation as it saves judicial time and costs. For purposes of giving greater emphasis to mediation,

I propose that a mediation division be established in the Chief Registrar's Office, and a registrar in all States be appointed to manage the programme.

I would also propose that all motor vehicle accident or running down matters be subject to compulsory mediation prior to these cases being set down for trial. The cases would only be fixed for trial should mediation fail.

On environmental law, I have had the privilege of attending the World Congress on "Justice, Governance and Law for Environmental Sustainability" held in Rio de Janeiro, Brazil from 17 – 20 June 2012, held in conjunction with the Rio+20 Conference. The aim of the Congress was to provide input to the United Nations Rio+20 Conference on Sustainable Development. Over 250 of the world's Chief Justices, Attorneys General and Auditors General representing over 60 countries attended the Congress. The meeting underlined the vital role that law has in achieving inclusive sustainable development for all. It also emphasises the value of exchanging experiences at all national levels and the need for enhancing international cooperation. In my opening remarks I emphasized the importance of promoting awareness on our role as judges in environmental protection. Close on the heels of the Congress, I was invited by the United Nations Environmental Programme (UNEP) Secretariat to sit as a member of the International Advisory Council for the Advancement of Justice, Governance and Law for Environmental Sustainability and to chair the first meeting which was held on 7 December 2012 in Washington DC, USA. The nine-member advisory council includes Chief Justices, senior judges, auditors and legal academics from USA, United Kingdom, Argentina, Brazil, Canada and Kenya. This new Council will be tasked with engaging the legal and auditing community worldwide, supporting the development and implementation of environmental law at all levels, and encouraging the further development of environmental jurisprudence.

The Malaysian Judiciary had also been given the honour of hosting the 2nd Roundtable for Asean Chief Justices on Environmental Law and Enforcement in December 2012. The conference provided a common platform for ASEAN Chief Justices to exchange views and experiences on environmental issues.

In our effort to enhance public awareness on the above area of the law, we established the Environmental Court in the Sessions and Magistrates' Courts on 10 September 2012. This demonstrates our continuous commitment towards protecting the environment and related issues.

The year 2011 also saw the establishment of the Corruption Courts. A total of 14 Sessions Courts throughout the country have been designated as Corruption Courts. The establishment of the Corruption Courts has been well received by the public. At the recent International Association of Anti Corruption Authorities (IAACA) Conference, the Corruption Court was given a favourable rating for having successfully disposed corruption cases within 12 months from the date of registration. The disposal of 81% within the timeline of 12 months has surpassed the 70% target set by the National Key Performance Indicator (NKPI).

I am pleased that the other specialised courts namely, the Admiralty Court, the *Muamalat* Court and the Intellectual Property Court have also shown encouraging results where more than 85% of cases were disposed of within their 9 month timeline.

Taking into account all that we have achieved in 2012, I am aware that it is no mean feat to ensure that cases are heard on time, without compromising justice. It is undoubtedly a fine balance. But we persevere in making sure that each case is accorded the requisite judicial attention it needs without undue delay, so that the ends of justice are not defeated.

In this connection I would like to thank all Judges, officers and staff for their excellent performance in 2012, whilst observing the highest standards of work ethics. I would also like to thank the Attorney General and his officers, the Bar and other major stakeholders for their commitment and cooperation.

I would also like to express my appreciation to the contributors of this Yearbook who readily responded to my request to fill the pages of this publication with topical discourses.

At this stage, I believe that it would not be out of place if I were to put on record my gratitude to my colleagues in the Judicial Appointments Commission (JAC) for their largesse in approving much needed funding for the Judiciary's various programmes. Without the JAC's keen support and masterful management by its secretary **Datuk Hamidah Khalid**, our blueprint for judicial improvement may not come to pass.

Finally, I wish to put on record my sincere appreciation to the Yearbook committee led by **Justice Zainun Ali** together with **Justice Alizatul Khair Osman Khairuddin, Justice Azahar Mohamed, Justice Abdul Aziz Abdul Rahim, Justice Lim Yee Lan, Justice Mah Weng Kwai, Justice Nallini Pathmanathan, officers, Dato' Che Mohd Ruzima Ghazali, Azizah Mahamud, Chan Jit Li, Nurul Husna Awang, Azniza Mohd Ali, Radzilawatee Abdul Rahman, Mohd Sabri Othman, Noorhisham Mohd Jaafar, Husna Dzulkifly, Sabreena Bakar @ Bahari, Shazali Dato' Hidayat Shariff, Safarudin Tambi, Syahrul Sazly Md Sain and Fadzilatul Isma Ahmad Refngah, Ms Rachel Jacques of Sweet and Maxwell,** photographers **Hamidah Abdul Rahman, Shaharin Amran, Nurulhuda Zaini** (JAC), artist **Mr Muhammad Nur Hazimi Mohamed Khalil (Jimmy Khalil)** and the **publishers (PNMB)**, who all worked hard in ensuring that this publication reflects the sum total of our judicial engagement in Year 2012.

Preface

The expanded range of issues in this Yearbook reflects the Judiciary's readiness to open itself to new concerns which affect society.

Our Chief Justice led the way with his emphasis that judicial education should not be confined to deliberations of strictly legal issues. It should instead encompass a wider socio-legal perspective.

Our commitment to matters on environmental protection was thus singularly pivotal.

Perhaps the tangle of trees stuck on our forlorn hills – mute reminders of incessant deforestation and evidence of ecological destruction unfolding with frequency elsewhere, are reason enough to spur efforts by agencies including the Judiciary to be more conscious of these concerns.

In any event, as discussions of the law relating to the environment would invariably be peppered with references to liability regimes for injury and damages and the remedial costs involved, it was thought fit that members of the judiciary should take a practical approach by making visits *in situ*.

In this Yearbook, our theme of 'Going Green' is symbolised on the cover where the smudge of colour is not an errant brush, but a deliberate tinge by the artist.

On another note, judicial training and education has now come to be an integral part of judicial life. As had been said, judicial independence requires the Judiciary to be accountable for its competence.

The Judicial Appointments Commission is commended for ensuring that judicial training would take on a more pronounced dimension. In fact the Judicial Academy set up recently had choreographed a tightly woven programme for this purpose.

With regard to discussions of issues of the day, we have some accounts of judicial insights in this publication written by selected contributors.

The range of issues remain provocative. Consequently their value to readers will not be slight. We owe our thanks to Justice Jeffrey Tan, Justice Abdul Malik Ishak, Justice Azahar Mohamed, Justice Mohamad Ariff Yusof, Justice Mah Weng Kwai and Justice Rodzariah Bujang for their eponymous output. They reinforce our belief in the cardinal virtue for judicial prose.

In pulling together the Chapter on Judges, the Chief Justice postulated that for this publication, a tribute be paid to the late wife of one of the doyens of the Federal Court i.e Datuk Wira Wan Yahya Pawan Teh. In this, there is much to be said for the virtue of companionship and conversation in a marriage, as described by Oscar Wilde in De Profundis.

It is clear to us that 2012 had been challenging and productive not least since our objectives in ensuring that the disposal of cases are kept on an even keel and lending value to our judgments, have both been borne out.

Bearing in mind that this publication is not ephemeral but one which will stand the test of time, each one of us in the Editorial Committee took on this responsibility with our usual degree of dedication.

In our view the changing social conditions and interplay of forces have a mercurial element. Thus we, as guardians of the law, have a duty to be vigilant in making sure that we faithfully document this condition of legal and cultural ferment, if you will.

On a final note, I owe my thanks to many. Firstly on behalf of the Committee I would like to place on record our gratitude that the Chief Justice continues to have faith in us in seeing through the publication of this Yearbook.

The Committee is also comforted that our officers Ms Hamidah Abdul Rahman, Mr Shaharin Amran and Ms Nurulhuda Zaini (JAC) have been consistent with their standards of superb photography, as is our resident artist Mr. Muhammad Nur Hazimi Khalil (Jimmy Khalil), whose sublime drawings of the cover and portraits of contributors never fail to delight.

We would also like to thank our backroom boys comprising secretary Ms Rohani Ismail and Court Orderly Mr Mohd Nasir Hussin for their unending supply of draft copies and cups of coffee and cakes, without which, I am sure, we would be seriously malnourished!

I will end with a very special thank to my sister and brother Judges and officers in the Editorial Committee. Their unfailing exuberance is an eloquent reminder that there are as many forms of commitment as there are Judicial arbiters and officers. This has indeed been a fun-filled endeavour!

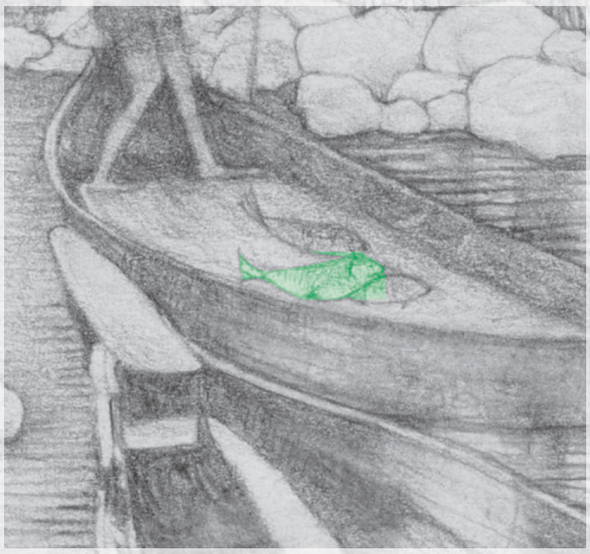
Justice Zainun Ali
Editor

Message from the Chief Registrar

The Judiciary has, in the last few years, produced reports annually which document the progress of the Courts over the course of each year. These annual reports are the product of the rigorous efforts and commitment of both our judges and judicial officers. It is tangible evidence of their dedication.

On behalf of the Chief Registrar's Office, I wish to express our appreciation to all the judges and officers for their hard work, dedication and commitment in producing this yearbook. I am also grateful for the support of the Chief Justice, the President of the Court of Appeal and the Chief Judges, who play an important role in the governance of the Malaysian Judiciary. Going forward, I trust the Judiciary will continue to strive to achieve the highest standards of excellence in fulfilling its responsibilities so as to uphold the trust that has been bestowed upon us.

Dato' Hashim Hamzah
Chief Registrar
Federal Court Of Malaysia



CHAPTER 1

OPENING OF THE LEGAL YEAR

OPENING OF THE LEGAL YEAR 2012 PENINSULAR MALAYSIA

Judges marching into the hall- Opening of the Legal Year 2012, Putrajaya

Held at the Putrajaya International Convention Centre on 14 January, the second Saturday of the month, judicial officers and staff were on hand to receive the invited guests to the Opening of the Legal Year 2012. Among those who had graciously accepted the invitation were former Chief Justice of Malaysia, the Honourable Tun Dato' Seri Zaki Tun Azmi, the Chief Justices of Singapore, Indonesia and Brunei and representatives of the Law Societies of Singapore, Hong Kong and the Law Asia Association.

For the first time, the colour green was taken as the event's theme. This was in accord with the Chief Justice's commitment to bringing awareness to the nation's environmental issues and adopting the Johannesburg principles on the rule of law and sustainable development.

What was an annual calendar event turned out to be momentous as this year's opening of the legal year scored several other firsts.

This year's event saw His Lordship Justice Arifin Zakaria delivering his maiden speech at the Opening of The Legal Year as the Chief Justice, after having taken over the helm of the Judiciary in September 2011.

In keeping with his inclusive approach, His Lordship had directed that invitations be extended to the Attorney General's Chambers and the Malaysian Bar to participate in the procession proper. Thus, while previously the procession had been limited to only members of the Judiciary, this year's procession saw for the first time the combined forces of representatives of the Malaysian Bar, the unit heads of the Attorney General's office and Judges from the four tiers of the Malaysian Judiciary from the Federal Court right down to the Sessions Court which was represented by the respective state Directors. Needless to say, this reflected the Chief Justice's vision for unity and solidarity among all stake holders in the common pursuit of justice.

This occasion was also historic for the fact that it sowed the seeds of our own tradition when the Chief Justice announced that from henceforth, the opening of each legal year will take place on the second Saturday of the first month of each year.

Mr. Lim Chee Wee, the Chairman of the Bar Council, was given the honour of addressing this august assembly. Speaking on behalf of the Malaysian Bar as well as the Advocates' Association of Sarawak and the Sabah Law Association, he opened his speech by extending messages of congratulations and felicitations to the Rt. Hon. Justice Arifin Zakaria, the Rt.

Hon. Justice Md. Raus Sharif and the Rt. Hon. Justice Zulkefli Ahmad Makinudin on their recent appointments as Chief Justice, President of the Court of Appeal and Chief Judge of Malaya respectively.

Mr. Lim Chee Wee spoke of the legal aid services provided by the Bar whereby there was at least one legal aid centre established in each state and reported that there was an increase of 6.3% in representation for the year 2011. In its pursuit for fundamental liberties, the Bar was actively conducting outreach programmes to bring awareness to the public, holding watching briefs, in particular, on issues of concern and ensuring legal representation for all accused. To ensure that the right to representation was made available to all, the Chairman sought the assistance of the Bench to help ascertain that an accused person, even at the remand stage, would be duly notified of the services of Yayasan Bantuan Guaman Kebangsaan (YBGK).

The Chairman also commended the Judiciary for the successful reduction in the backlog of cases as documented by the World Bank report entitled "Malaysia: Court Backlog and Delay Reduction Program-A Progress Report" published in August 2011.

Touching on the issue of the liberalisation of the legal profession, Mr. Lim informed the assembly that laws were being drafted to allow foreign legal practitioners to practice in Malaysia. He then suggested that the Judiciary will also benefit from more appointments to the Bench from the Bar. Before ending his speech, Mr. Lim assured the Judiciary of its further and continuous co-operation and also stated that the Malaysian Bar was looking forward to a closer working relationship with the Bench.

The next speaker Tan Sri Abdul Gani Patail Attorney-General of Malaysia, likewise extended his Chambers' felicitations to the Chief Justice, the President of the Court of Appeal and the Chief Judge of Malaya on their recent appointments. He also took the opportunity to record the Chambers' appreciation of the past Chief Justice the Honourable Tun Dato' Seri Zaki Tun Azmi.

The Attorney-General then spoke of the Chambers' efforts in furthering legal education such as the establishment of the International Centre for Law and Legal Studies (I-Cells), opening of the Chambers to undergraduates for purposes of attachments or visits, AGC Platform for E-Learning (APEL). In maximizing the use of ICT, the Chambers had created the 'Chambers Virtual Office', the 'e-Federal Gazette' portal and the Chambers News Channel. The Chambers was also reaching out to the University undergraduates by holding 'open days' at Chambers, participation in moots and giving seminars so as to attract the best Malaysian law graduates to serve at Chambers. Also in tandem were efforts at improving the career development of serving officers in the form of refresher courses, forums, seminars, workshops and uploading of video recordings of the training to APEL. This database is from the officers' own contributions for the benefit of fellow officers and staff. A selected section of subsidiary legislations and Acts of Parliament was also being made available free of charge through the Chambers' e-Federal Gazette while information on ongoing issues and court cases were provided through the Chambers News Channel.

To increase efficiency at the international level, the Chambers reached out to its counterparts in other jurisdictions through legal activities and participation at key international conferences.

In moving with the times, the Chambers had also legislated 'reformative' laws, where amendments made to the Police Act 1967 and the Peaceful Assembly Act 2011 were the more notable ones. In the pipeline is a review of the Universities and University Colleges Act, 1971 and the Printing Presses and Publications Act, 1984.

To cope with a three-fold increase in the number of criminal appeals heard before the Court of Appeal and Federal Court the Chambers was obliged to form a new unit that is the Appellate and Trial Division. The Honorable Attorney General assured the Chief Justice of the Chambers' continued support and co-operation in the Judiciary's endeavours.

In his reply, the Chief Justice extended a warm welcome to all his guests and thanked them for taking time to be with the Malaysian Judiciary at this event. His Lordship gave a report on the court's performance in 2011 commencing with the Federal Court which saw the registration for leave application in 2011 being increased by 21%. Such applications would be disposed of within 6 months from the date of registration. The Federal Court was also able to increase the disposal from 437 cases in 2010 to 527 cases in 2011.The same timeline for disposal of civil appeals is adhered to even though the registration of the same had increased by more than 100%. The registration of criminal appeals also saw a similar increase by over 100%. However, with the setting up of a specialised panel for criminal appeals, the Federal Court

managed to increase the disposal of appeals. The timeline for disposal in respect of criminal appeals is within 3 months from the date that a complete record of appeal is received.

The Chief Justice announced that in his effort to enhance and ensure that quality judgments are delivered, leave applications as (of now) for both civil and criminal appeals, will be heard by a five member panel instead of three as was the case previously.

In respect of the Court of Appeal, the Chief Justice stated that 12,000 appeals were registered in 2010 and 2011. Whilst 5,935 were disposed of in 2010, 2011 saw an increased disposal amounting to 8,064. This significant increase was on account of various new initiatives implemented such as increasing both the number of panels and sittings and the setting up of a specialised panel for the hearing of Interlocutory Appeals (IM) and the setting up of a special panel chaired by Federal Court Judges for the hearing of appeals originating from the subordinate courts.

With the increased efficiency, the waiting period for appeals originating from the subordinate courts is reduced to 6 months and appeals originating from the High Court is reduced to 18 months. IM appeals from NCC and NCVC courts are disposed of within 3 months while full trial appeals are disposed of within 6 months.

The Chief Justice also stated that there was a drastic reduction in pending cases in both the High Courts and the Subordinate Courts. The disposal in 2011 at the High Court level was more than 100,000 for civil cases and 7,000 for criminal cases. Similar encouraging rates of disposal were also recorded at the Sessions Court where 160,000 civil cases and 34,000 criminal cases were disposed of. The Magistrates' Courts recorded a higher figure in that 300,000 civil cases and 130,000 criminal cases were disposed of in the same year.

The increased rate of disposal was on account of a focused approach adopted by the Judiciary which saw the setting of datelines for the disposal of cases, case management, the establishment of new courts i.e. the NCVC and Admiralty and Corruption Courts, adopting Court annexed mediation and creating joint committees comprising the Judiciary, the Bar, AG's Chambers and the Police. Also implemented were e-filing of documents and the court recording transcription system known as E-Court.

However, the Chief Justice added, the Judiciary will continue to strive to improve itself. Among the projects lined up for the year 2012 would be

Judges of the Superior Court at the Opening of The Legal Year, 2012

the Combined Rules of Courts which would apply to civil cases at all levels of the Judiciary. A second major project would be the implementation of the amendment to the increased jurisdiction of the Subordinate Courts. The Chief Justice was quick to allay the fears of the legal fraternity and assured them that the Sessions Judges will be provided with appropriate training and a Bench Book to deal with the increased jurisdiction. Matters arising from the Companies Act, 1965, the National Land Code, 1965 and any other laws which expressly confer jurisdiction on the High Court however will still remain within the domain of the High Court.

There will be continuous legal and judicial training and learning for both Judges and judicial officers. Seminars and courses which are being conducted will be enhanced with the establishment of the Judicial Academy ('Akademi Kehakiman') which will be led by a senior Judge. Judges and officers will be trained and Environmental Courts will be set up to combat environmental crimes and illegal environmental activities. The Chief Justice ensures that the Judiciary will assume critical role in adjudicating the nation's ecological and environmental issues.

The Chief Justice credits his predecessor, Tun Dato' Seri Zaki Tun Azmi, as being responsible for the Malaysian Judiciary being highly rated by the August 2011 World bank Report. The Judiciary has also received an official request from a US based consultant firm to use our home grown model to assist a particular Judiciary in the delay and reduction of backlog programme.

However the Judiciary does not plan to rest on its laurels. The Chief Justice's vision is to turn the Malaysian Judiciary into one which is highly rated. His Lordship called upon the Attorney General's Chambers, members of the Bar, government departments and agencies to work together towards this end.

In his closing remarks, the Chief Justice reminded Judges and officers to maintain their dignity and integrity at all times. His Lordship observed that:-

> *"As Judges, we are accountable to no one but the law which must be administered without fear or favour, affection or ill will."*

On a final note, the Chief Justice went on to record his appreciation and gratitude to his brother and sister Judges, officers and staff for their efforts and the Attorney General's Chambers, members of the Bar and all government agencies for their support before wishing everyone a Happy New Year and a Happy Chinese New Year.

OPENING OF THE LEGAL YEAR 2012 SABAH AND SARAWAK

This 2012 Opening of the Legal Year for Sabah and Sarawak was held in Bintulu, Sarawak on the 3-4 February 2012. This year marked a special occasion as the Chief Justice of Malaysia, His Lordship Chief Justice Arifin Zakaria himself attended the Opening of the Legal Year together with Federal Court Judge Justice Abdull Hamid Embong. This year's event was also attended by the Honourable the Attorney-General Tan Sri Abdul Gani Patail.

The Opening of the Legal Year 2012 on 3 February 2012 began with lectures delivered by two distinguished speakers namely Justice Mohamad Ariff bin Md. Yusof of the High Court of Kuala Lumpur and prominent corporate lawyer Dato' Loh Siew Cheang. Justice Mohamad Ariff spoke on electronic evidence and its admissibility in court whilst Dato' Loh Siew Cheang's lecture was on recent developments pertaining to minority oppression and section 181 of the Companies Act 1965.

In the evening, the distinguished guests and delegates were treated to a barbeque dinner by the poolside of the Parkcity Everly Hotel.

The next morning, the delegates gathered early at the starting point for the much anticipated procession to the Bintulu Courthouse. The procession started at 9 am and was for a distance of approximately 500 meters. Led by His Lordship Chief Justice Arifin bin Zakaria and the Chief Judge of Sabah and Sarawak, His Lordship Richard Malanjum, the procession took about 8-10 minutes.

The Rt. Hon. Chief Justice, The Rt. Hon. Chief Judge of Sabah & Sarawak and other judges in a procession for the Opening of the Legal Year (for Sabah & Sarawak) from the Bintulu Resident Office to the Bintulu Court Complex

Upon reaching the Bintulu Courthouse, the national anthem and the state anthems of Sarawak and Sabah were played and the respective flags raised. After recital of the prayers and the reading of the civil service oath, the delegates proceeded to be seated in open court. At about 10 am, the proceedings in open court commenced. After the respective speeches were delivered on behalf of the respective State Attorney Generals, the respective law associations of Sabah and Sarawak, and the Attorney General, the Chief Judge of Sabah and Sarawak delivered his address. In his address His Lordship reminded Judges, judicial officers and lawyers to always uphold the rule of law and be sincere in the administration of justice. The entire proceedings ended at noon and were carried out in the presence of the Chief Justice who chaired the proceedings.

As part of the Opening of the Legal Year activity, a friendly football match was held between members of the Sibu-Bintulu-Miri Judiciary. The match was attended by the Chief Justice who launched the match, witnessed by the Chief Judge of Sabah and Sarawak and other cheering members of the Judiciary and their respective supporters.

The entire event of the Opening of the Legal Year in Bintulu, Sarawak ended with a Gala Dinner held at the Parkcity Everly Hotel. It was announced that the 2013 Opening of the Legal Year for Sabah and Sarawak would be held in Tawau, Sabah.

Judges, Judicial Officers and Members of the Bar at the Opening of The Legal Year Sabah & Sarawak 2012, at Bintulu Court Complex, Sarawak

CHAPTER 2

THE FEDERAL COURT

THE FEDERAL COURT

The Right Honourable
Justice Arifin Zakaria
Chief Justice of Malaysia

The Federal Court being the apex court is the final appellate court in both civil and criminal matters. Besides exercising its appellate jurisdiction, it has three other functions as provided for under the Federal Constitution: firstly, the exclusive original jurisdiction under Article 128 (1) – (a) to determine whether a law made by Parliament or by the legislature of a state is invalid on the ground that it makes provision with respect to a matter to which the particular legislature has no power to make laws (b) disputes or any other question between states or between the Federation and any state; secondly, the referral jurisdiction under Article 128 (2) where in any proceeding before another court a question arises as to the effect of any provision of the Constitution, the Federal Court has jurisdiction to determine the question and remit the case to the other court to be disposed of in accordance with the determination; and thirdly, advisory jurisdiction under Article 130 which provides His Majesty the Yang di-Pertuan Agong with power to refer to the Federal Court for its opinion any question as to the effect of any provision of the Constitution which has arisen or appears to him likely to arise.

In recent years, Malaysia has been transformed from a developing country, heavily dependent on agricultural economy into a modern middle-income country with a multi-sector economy based on services and manufacturing. The economic growth and transformation in Malaysia has invariably led to more cases, particularly commercial cases, being brought to court. Similarly, there has been an increase in the number of other cases being filed in court due to a greater awareness among citizens of their legal rights arising from higher levels of education and economic prosperity. These cases will eventually be heard in the Federal Court. To address this situation, steps have been taken to expedite the disposal of cases without compromising on the quality of judgments.

Cases which are pending hearing in the Federal Court include: leave applications, civil appeals and criminal appeals. In 2012 a total of 956 leave applications were filed compared to only 642 cases filed in 2011. The Court succeeded in disposing a total of 759 cases out of 1375 pending in 2012 (956 cases registered in 2012 plus 419 brought forward from the previous year). For the record, the disposal for the previous year was 527 cases out of 946. As at 31 December 2012, there is still a balance of 616 leave applications pending. A total of 148 leave applications were allowed in 2012. It shows an increase of 57 cases compared to 2011.

As for civil appeals, in 2012 the Court disposed of a total of 66 appeals out of 209 pending appeals (i.e. 148 cases registered in 2012 plus 61 brought forward from the previous year) thus leaving a balance of 143 cases as at December last year compared to 75 cases in 2011.

In 2012, criminal appeals (excluding habeas corpus) also showed a marginal increase in registration. A total of 269 cases were registered in 2012 as compared to 259 in 2011. In 2012 the Court disposed of 169 criminal appeals out of a total of 476 criminal appeals pending in 2012 leaving a balance of 307 criminal appeals cases as at December 31, 2012. However, habeas

corpus appeals showed a mark decrease in registration. A total of 38 cases were registered in 2012 as compared to 88 in 2011. In the year 2012 the Court disposed of 26 appeals out of a total of 52 pending, leaving a balance of 26 habeas corpus cases as at 31 December 2012.

I am pleased to note that the overall disposal of cases in the Federal Court for the year 2012 has in fact increased by 175 cases. However the number of cases brought forward to 2013 has increased rather significantly. There are several reasons for this:

Firstly, there has been an increase in the number of leave applications and appeals. This is attributable to the higher disposal of cases by the Court of Appeal; and,

Secondly, the panel members of the Federal Court was increased from three to five, with the number of judges remaining constant, as a result of which the number of sittings in 2012 went down slightly.

To address this issue, the number of Federal Court sittings was increased to at least two panels per week commencing from April, 2013. The first panel was assigned to hear leave applications and criminal appeals while the second panel was designated to hear civil appeals. I hope the Attorney General's Chambers and the Bar will lend their support to this effort.

To further enhance our performance and the quality of our work, the Malaysian Judiciary is embarking on some new initiatives. I am happy to announce that the Federal Court has the necessary facilities to cater for electronic presentation in court. It is proven in other countries such as the United States of America that the use of electronic presentation systems has expedited the disposal of complex cases. Simple bullet-point slides, with charts or pictures that outline the submissions provide very effective means for an audience to stay focused. They can be used to attempt to simplify complex issues, for example, a complex series of financial transactions, so that judges can better understand them. They can also be used to emphasise arguments by way of graphical, interactive or animated presentation. It is also my hope that both the Attorney General's Chambers and the Bar will take full advantage of this facility.

With effect from 16 October 2012, the Federal Court has started issuing press summaries of its judgments. This is to assist the public in understanding the reasons for its judgments. Both the judgments and the summaries are uploaded onto the Judiciary's website soon after delivery of the judgments.

The year 2012 witnessed the retirement of two Federal Court Judges: Tan Sri Mohd Ghazali Mohd Yusoff and Tan Sri James Foong Cheng Yuen. I would like to put on record our sincere appreciation for their considerable contributions to the Judiciary. I wish them a happy retirement.

Last year also witnessed the appointment of four Court of Appeal Judges to the Federal Court: Datin Paduka Zaleha Zahari, Datuk Zainun Ali, Datuk Seri Panglima Sulong Matjeraie and Datuk Jeffrey Tan Kok Wha. I welcome and congratulate them on their appointment.

I would conclude by saying that the Federal Court as the apex court serves a wide public purpose in ensuring confidence in the administration of justice.

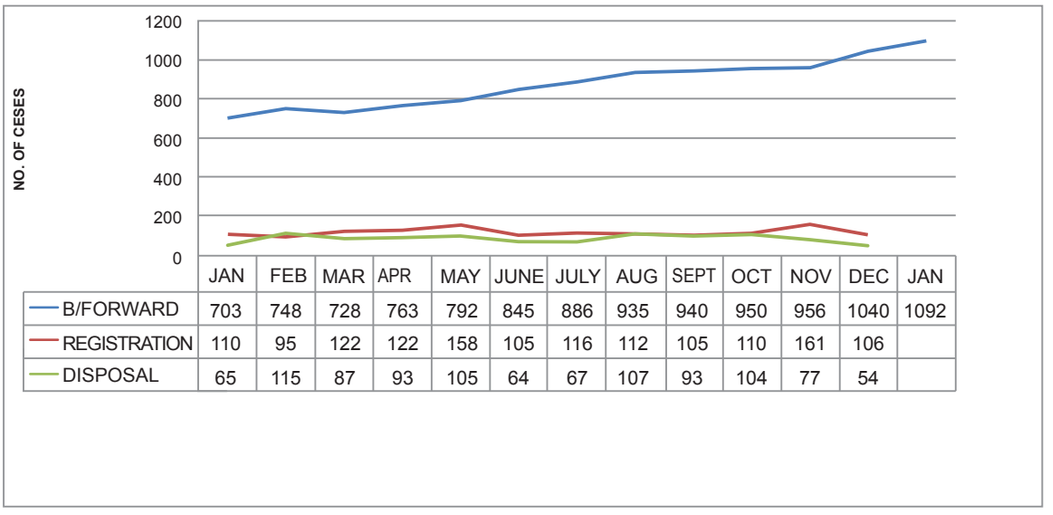
The Federal Court will continue to uphold the highest standards of commitment to the Rule of Law.

Justice Arifin Zakaria
Chief Justice of Malaysia

PROJECTION AND PERFORMANCE OF THE FEDERAL COURT IN 2012

The performance of the Federal Court in 2012 is shown below in graphical form.

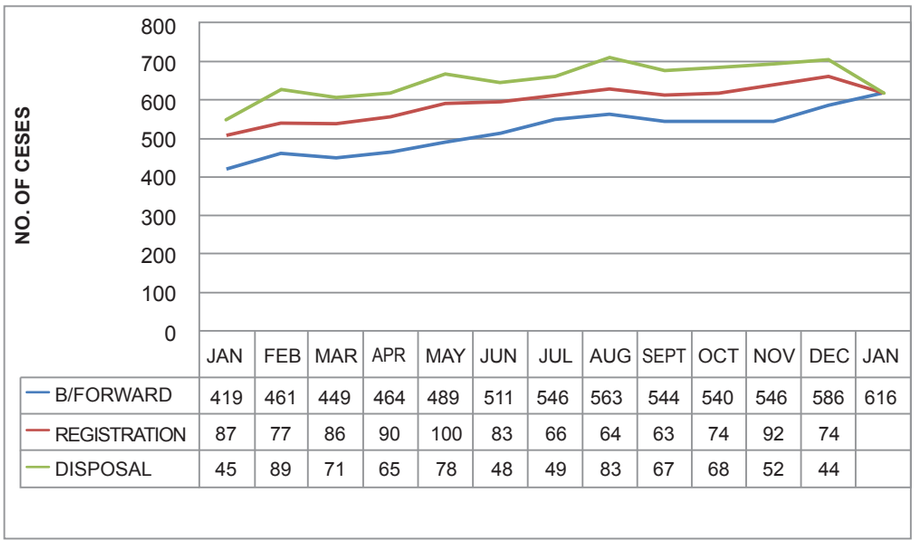
TRACKING CHART
NUMBER OF CASES REGISTERED AND DISPOSED
FOR THE YEAR 2012



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN
B/FORWARD	703	748	728	763	792	845	886	935	940	950	956	1040	1092
REGISTRATION	110	95	122	122	158	105	116	112	105	110	161	106	
DISPOSAL	65	115	87	93	105	64	67	107	93	104	77	54	

1. Cases adjudicated upon in the Federal Court include substantially motions for leave to appeal, civil appeals, criminal appeals and appeals on writs of habeas corpus. Other matters include civil references, criminal applications and cases of original jurisdiction. As at 1 January 2013, there is an increase in the number of pending cases in the Federal Court, amounting to 1092 cases as opposed to 703 cases as at 1 January 2012. This increase is consequential upon an increase in the number of cases registered in the Federal Court. In 2012, a total of 1422 cases were registered as compared to 1088 in 2011. Of these cases, 1031 were disposed of, achieving a clearance rate of 73%. Considerable effort was expended by the Federal Court judges to achieve this clearance rate. Such efforts are directed at eliminating the backlog of cases.

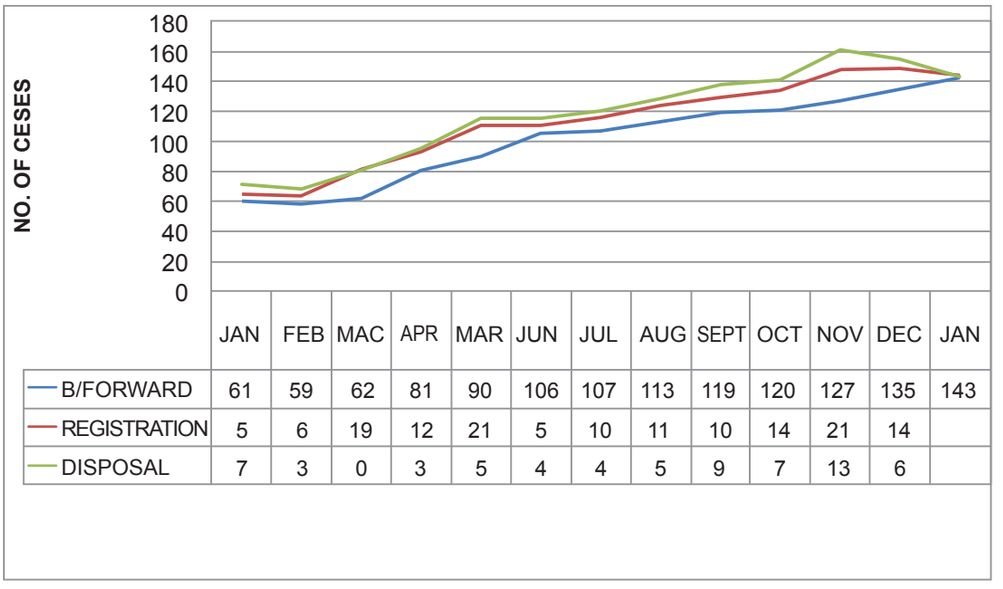
TOTAL NUMBER OF REGISTERED, PENDING AND DISPOSED CASES AS AT 31 DECEMBER 2012 (LEAVE APPLICATIONS)



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN
B/FORWARD	419	461	449	464	489	511	546	563	544	540	546	586	616
REGISTRATION	87	77	86	90	100	83	66	64	63	74	92	74	
DISPOSAL	45	89	71	65	78	48	49	83	67	68	52	44	

2. For leave applications, the registration increased by 48.90% from 642 in 2011 to 956 in 2012. However, the number of disposals has correspondingly increased from 527 in 2011 to 759 in 2012. As at 1 January 2013, there are only 616 leave applications pending in the Federal Court. Such applications are targeted to be disposed of within 6 months from the date of registration.

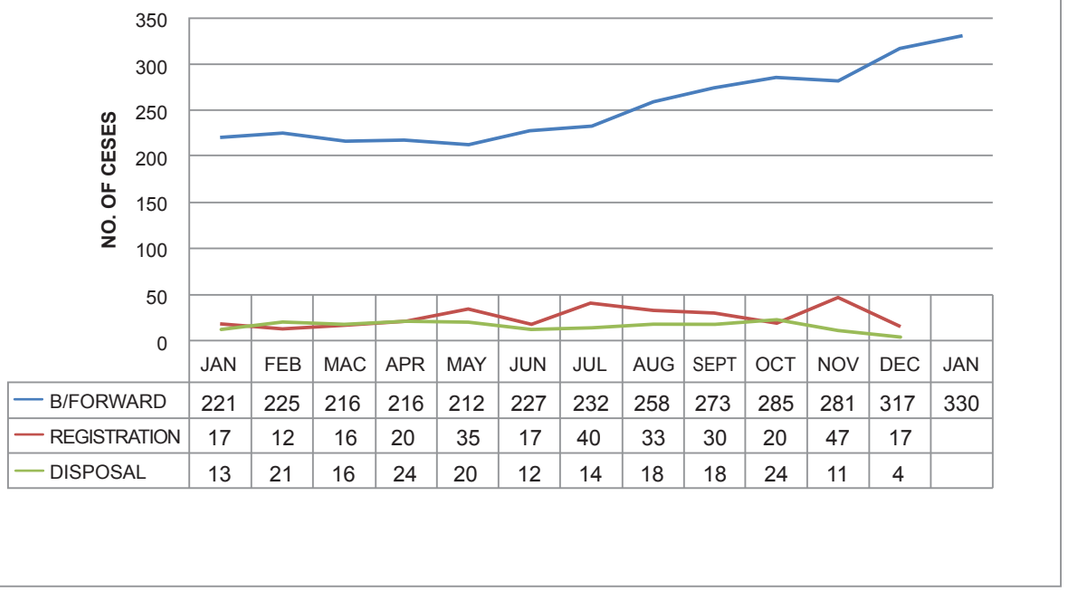
TOTAL NUMBER OF REGISTERED, PENDING AND DISPOSED CASES AS AT 31 DECEMBER 2012 (CRIMINAL APPEALS)



	JAN	FEB	MAC	APR	MAR	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN
B/FORWARD	61	59	62	81	90	106	107	113	119	120	127	135	143
REGISTRATION	5	6	19	12	21	5	10	11	10	14	21	14	
DISPOSAL	7	3	0	3	5	4	4	5	9	7	13	6	

3. The registration for civil appeals also increased by 62.63% from 91 in 2011 to 148 in 2012. Despite that, the Federal Court managed to dispose of 45% i.e 66 appeals out of 148 registered in 2012. Civil appeals are targeted to be disposed of within 6 months from the date of registration.

TOTAL NUMBER OF REGISTERED, PENDING AND DISPOSED CASES AS AT 31 DECEMBER 2012 (CRIMINAL APPEALS)

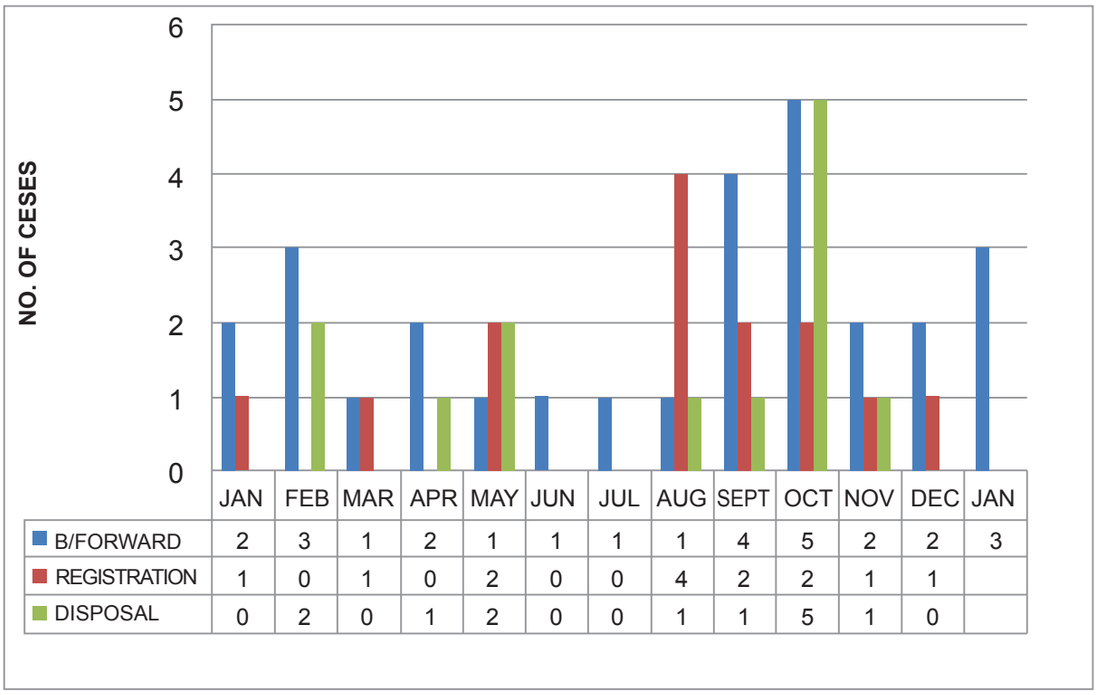


	JAN	FEB	MAC	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN
B/FORWARD	221	225	216	216	212	227	232	258	273	285	281	317	330
REGISTRATION	17	12	16	20	35	17	40	33	30	20	47	17	
DISPOSAL	13	21	16	24	20	12	14	18	18	24	11	4	

4. As for criminal appeals, the registration showed a decrease by 12.4% from 347 in 2011 to 304 in 2012. This is due to the decrease in the registration of writs of habeas corpus appeals. In 2012, the Federal Court managed to dispose of 195 appeals, leaving a balance of 330 cases as at 1 January 2013, out of which 26 cases are appeals on writs of habeas corpus.

Currently, criminal appeals can be disposed of within 3 months from the date of receipt of a complete record of appeal. Appeals on writs of habeas corpus are targeted to be disposed of within 3 months from the date of registration.

TOTAL NUMBER OF REGISTERED, PENDING AND DISPOSED CASES AS AT 31 DECEMBER 2012 (ORIGINAL JURISDICTION/CRIMINAL APPLICATION/CIVIL REFERENCE)



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	JAN
B/FORWARD	2	3	1	2	1	1	1	1	4	5	2	2	3
REGISTRATION	1	0	1	0	2	0	0	4	2	2	1	1	
DISPOSAL	0	2	0	1	2	0	0	1	1	5	1	0	

5. For other matters comprising civil references, criminal applications and cases of original jurisdiction, there were 16 cases pending in the Federal Court throughout 2012, out of which 13 cases were disposed of. As at 1 January 2013, there are only 3 cases pending.

Judges of the Federal Court

1. Justice Hashim Dato' Haji Yusoff
2. Justice Mohd Ghazali Mohd Yusoff
3. Justice James Foong Cheng Yuen
4. Justice Abdull Hamid Embong
5. Justice Suriyadi Halim Omar
6. Justice Ahmad Haji Maarop
7. Justice Hasan Lah
8. Justice Zaleha Zahari
9. Justice Zainun Ali
10. Justice Sulong Matjeraie
11. Justice Jeffrey Tan Kok Wha

CHAPTER 3

THE COURT OF APPEAL

THE COURT OF APPEAL

The Right Honourable
Justice Md Raus Sharif
President of the Court of Appeal Malaysia

In 2012, the Court of Appeal saw substantial changes in its judicial makeup. As we bid farewell to six (6) Court of Appeal Judges, namely Justice Sulaiman Daud, Justice Low Hop Bing, Justice KN Segara, Justice Azhar Ma'ah and Justice Syed Ahmad Helmy, I wish to record my heartiest appreciation to all of them for their immeasurable contribution towards the betterment of the Court of Appeal and wish them a blissful retirement. 2012 also witnessed the elevation of four (4) Court of Appeal Judges to the Federal Court bench, namely Justice Zaleha Zahari, Justice Zainun Ali, Justice Sulong Matjeraie and Justice Jeffrey Tan Kok Wha. I would like to congratulate them on their appointment and I am sure that their vast experience will be invaluable to the apex court.

On a different note, 2012 has been momentous for us. We have had a fruitful year to which we can look back with a measure of pride and satisfaction. The proactive reforms that we embarked upon in year 2011 and which were continued in 2012 with certain modifications, resulted in a substantial clearance of pending cases. I am delighted to report that in 2012 the Court of Appeal successfully disposed of 7834 appeals as against the registration of 5086 appeals. The percentage of disposal as against registration is thus 154%. This is an increase of 9% from year 2011 which was 144%. Thus as at 31 December 2012, there are only 5554 appeals pending in the Court of Appeal as compared to 8302 appeals pending as at 31 December 2011.

I am happy that I have a dedicated Appellate Bench comprising judges who are equipped with a diversity of private and public sector experience in different areas of legal practice.

I must admit that these achievements could not have been possible without the cooperation and hard work put in by my sister and brother judges. I wish therefore to place on record my utmost appreciation to all of them for their contribution and commitment in ensuring the success of the initiatives. Similarly, I would like to express my appreciation to Madam Azimah Omar, the Registrar of the Court of Appeal as well as all the Deputy Registrars, Senior Assistant Registrars and the staff in the Court of Appeal. I would also like also to express my sincere appreciation to the officers of the Attorney General's Chambers and members of the Bar for their cooperation and support in making it possible for us to achieve our target.

I hope similar cooperation and support will be extended in 2013. This is very crucial to us as 2013 will mark the end of the three (3) year programme which was started in 2011 in clearing the pending cases in the Court of Appeal. We will continue to reduce the number of pending cases to an acceptable level of 4500 which will then be lower than the average registration of 5500 per year. However, our concentration for this year will be to clear the old cases in particular the full trial civil appeals and death penalty cases.

I am confident that with the full cooperation of my sister and brother judges, the registry staff, the Attorney General's Chambers and the members of the Bar, the nightmare of waiting for dates in the Court of Appeal will be history.

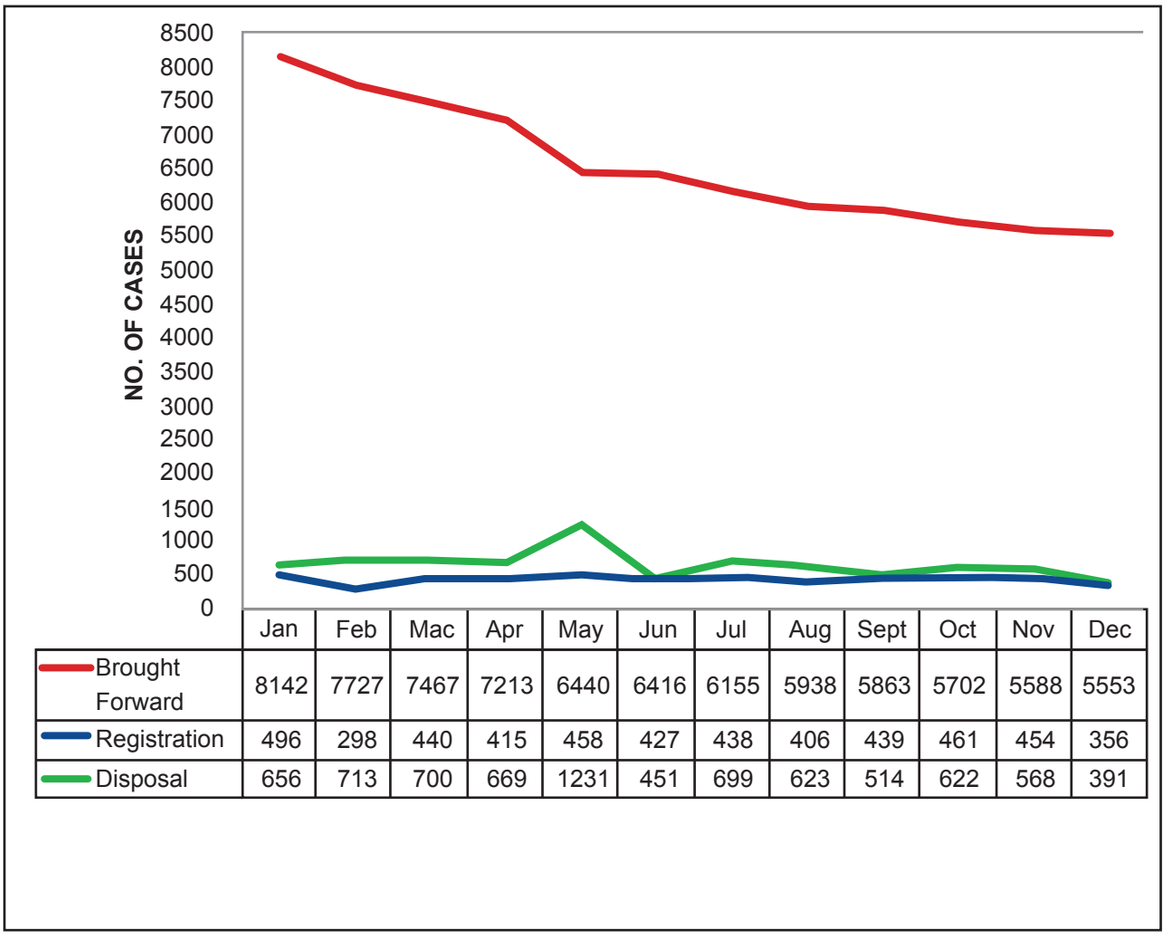
Justice Md Raus Sharif
President
Court of Appeal Malaysia

PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2012

1. 2012 saw a further reduction of pending appeals in the Court of Appeal. As at 21 December 2012, there were only 5553 appeals pending in the Court of Appeal compared to 8302 in 2011 and 10771 in 2010 previously. In 2012 7834 appeals were disposed as against registration of 5086. This percentage of disposal against registration is at 154% compared to 144% in 2011 and 92% in 2010 respectively. This improved performance was mainly attributed to the continued implementation of the initiatives started in 2011.

2. The performance of the Court of Appeal in 2012 is shown in the graph below:

NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2012 FROM 1 JANUARY 2012 – 31 DECEMBER 2012



	Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Brought Forward	8142	7727	7467	7213	6440	6416	6155	5938	5863	5702	5588	5553
Registration	496	298	440	415	458	427	438	406	439	461	454	356
Disposal	656	713	700	669	1231	451	699	623	514	622	568	391

3. From the above chart, it can be seen that the monthly disposal of appeals was always higher than the number of appeals registered. This contributed to the considerable reduction in the number of appeals pending.

4. Appeals registered in the Court of Appeal are broadly categorised into three namely: Interlocutory Appeals (IM Appeals), Full Trial Civil Appeals and Criminal Appeals. For purposes of monitoring, the Full Trial Civil Appeals are further categorised to New Commercial Civil Appeals (NCC), New Civil Appeals (NCVC), Intellectual Property Appeals (IP Appeals) and Muamalat Appeals (MU Appeals)

5. The total number of appeals according to categories pending as at 31 December 2012 compared to appeals pending as at 31 December 2011 is shown below.

6. As shown below, the substantial reduction in pending appeals is attributed to the significant disposal of Full Trial Civil Appeals and IM Appeals.

COURT OF APPEAL
TOTAL NUMBER OF APPEALS PENDING
31 DECEMBER 2011 VS 31 DECEMBER 2012

SUBJECT MATTER	APPEALS PENDING AS AT 31 DECEMBER 2011				APPEALS PENDING AS AT 31 DECEMBER 2012			
	West Malaysia	Sabah	Sarawak	TOTAL	West Malaysia	Sabah	Sarawak	TOTAL
CIVIL INTERLOCUTORY (IM)	1077	70	86	1233	406	40	50	496
CIVIL FULL TRIAL (FT)	4844	382	339	5565	2979	190	242	3411
CRIMINAL	1008	72	68	1148	917	69	53	1039
NCC	133	-	-	133	144	-	-	144
NCVC	223	-	-	223	427	-	-	427
IPCV	-	-	-	-	20	-	-	20
MUA	-	-	-	-	16	-	-	16
TOTAL	7285	524	493	8302	4909	299	345	5553

IM APPEALS

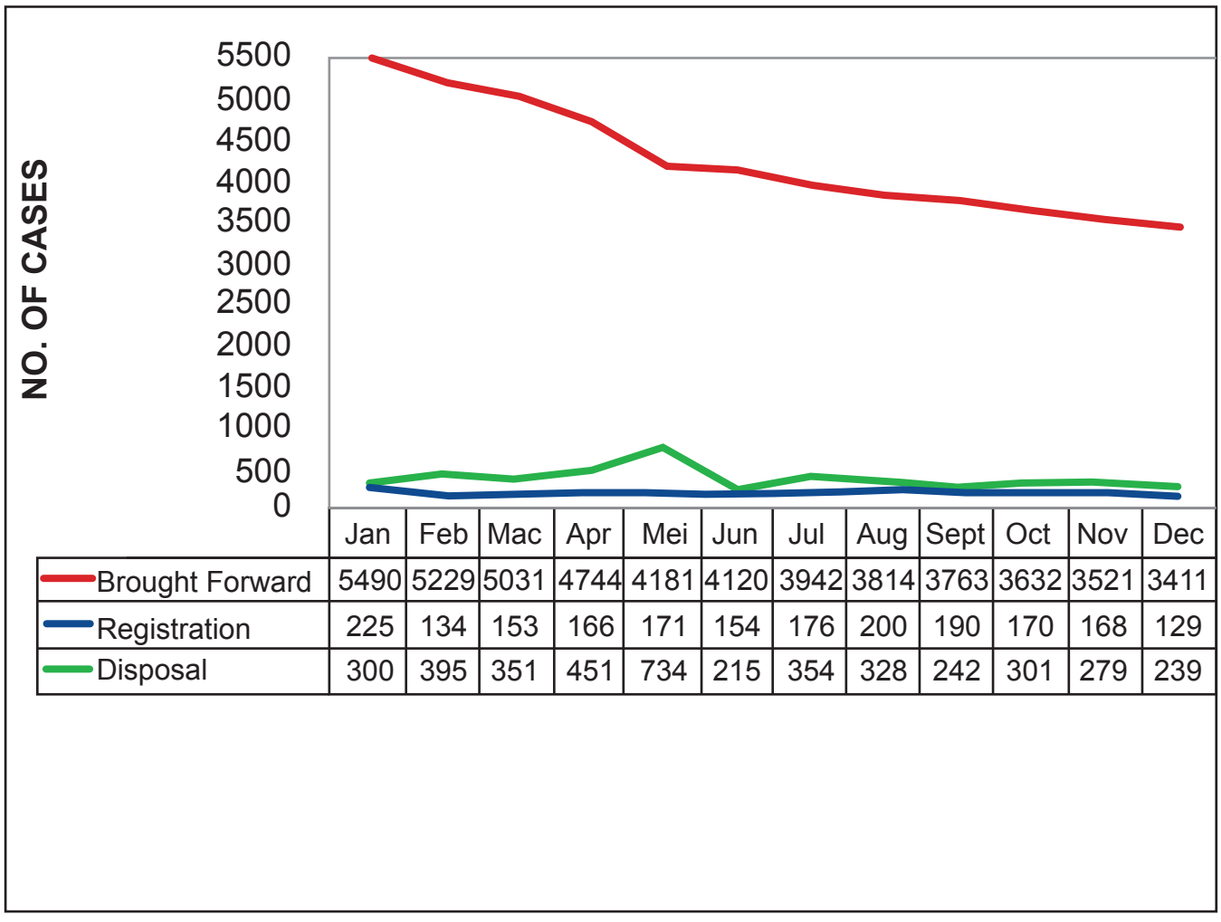
7. The initiatives undertaken in 2011 for a speedier disposal of IM Appeals were further pursued. This has resulted in a further reduction of IM Appeals from 1233 in 31 December 2011 to 496 as at 31 December 2012. In 2012 the Court of Appeal successfully disposed of a total of 1653 IM appeals as against the registration of 916 appeals, leaving a balance of 496 in which 432 of the appeals were IM appeals registered in the later months of 2012.

8. For the year 2013, our objective is to dispose 496 pre 2013 appeals by the first half of 2013. We hope that by the end of 2013, IM Appeals will be current, in that, IM Appeals will be heard within three months of the date of registration.

FULL TRIAL CIVIL APPEALS

9. The performance with regard to Full Trial Civil Appeals is shown in the graph below:

NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2012 (FULL TRIAL)
FROM 1 JANUARY 2012 - 31 DECEMBER 2012



	Jan	Feb	Mac	Apr	Mei	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Brought Forward	5490	5229	5031	4744	4181	4120	3942	3814	3763	3632	3521	3411
Registration	225	134	153	166	171	154	176	200	190	170	168	129
Disposal	300	395	351	451	734	215	354	328	242	301	279	239

10. It can be seen from the graph shown above that the disposal of Civil Appeal (Full Trials) has always been higher than the number of registrations. However there are still old cases pending as in the ageing list shown below.

AGEING LIST
COURT OF APPEAL FULL TRIAL CIVIL APPEALS
PENDING AS AT 31 DECEMBER 2012

YEAR	WEST MALAYSIA				TOTAL	EAST MALAYSIA								TOTAL
	Appeals from High Court			Sub Court		SABAH				SARAWAK				
	01	02	03	04		01	02	03	04	01	02	03	04	
2007	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2008	-	-	-	-	-	-	-	-	-	-	1	-	-	1
2009	1	13	1	-	15	-	1	-	-	-	3	1	-	5
2010	53	177	-	5	235	-	14	-	-	8	22	-	-	44
2011	353	806	-	53	1212	23	34	-	2	24	41	2	1	127
2012	247	1009	-	261	1517	16	95	-	5	46	84	-	9	255
TOTAL	654	2005	1	319	2979	39	144	-	7	78	151	3	10	432

NCC APPEALS

11. As for the NCC Appeals, most of the 408 appeals registered in 2011 have been disposed of, leaving only 9 appeals pending. For 2012, out of 319 NCC Appeals registered, a total of 184 appeals have been disposed, leaving a balance of 135. Out of these 135 appeals, 101 appeals are still within the timeline of 6 months except for 34. The number of appeals registered, disposed and pending according to their respective categories for 2012 can be seen in the table below:

COURT OF APPEAL NCC APPEALS 2012
PENDING AS AT 31 DECEMBER 2012

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	52	41	5	6	50	0	1	1	2
FEB	14	8	5	1	13	0	1	0	1
MAR	21	12	3	6	21	0	0	0	0
APR	22	12	8	2	21	0	1	0	1
MAY	19	12	2	5	19	0	0	0	0
JUNE	35	19	12	4	26	2	5	2	9
JUL	23	10	8	5	10	6	6	1	13
AUG	21	8	6	7	11	2	5	3	10
SEPT	27	16	9	2	7	12	7	1	20
OCT	30	11	14	5	1	10	14	5	29
NOV	23	10	12	1	4	6	12	1	19
DEC	32	12	11	9	1	12	11	8	31
TOTAL	319	171	95	53	184	50	63	22	135

NCVC APPEALS

12. With regard to NCVC Appeals, the Court of Appeal has disposed of all 365 appeals registered in 2011 except for 4. For 2012, out of 955 appeals registered, 532 appeals have been disposed of, leaving a balance of 432. Out of this number 348 appeals are still within the timeline of 6 months.

13. It can be seen that the monthly registration of NCVC Appeals is increasing with each month. This is due to the establishment of NCVC Courts in the High Court of Malaya where all new civil cases are now registered in these courts. In order to keep pace with the increased registration, additional panels of the Court of Appeal will be set up to hear the appeals. The registration, disposal and pending appeals for NCVC Appeals for 2012 can be seen in the table below.

COURT OF APPEAL NCVC APPEALS 2012
PENDING AS AT 31 DECEMBER 2012

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	72	30	32	10	69	1	2	0	3
FEB	41	12	21	8	39	0	1	1	2
MAR	47	29	14	4	45	0	1	1	2
APR	77	29	40	8	69	0	7	1	8
MAY	90	50	30	10	77	6	7	0	13
JUNE	78	43	26	9	59	8	6	5	19
JUL	99	48	48	3	77	4	17	1	22
AUG	73	41	27	5	43	10	19	1	30
SEPT	74	33	31	10	33	14	21	6	41
OCT	102	39	48	15	12	34	42	14	90
NOV	111	54	41	16	9	49	37	16	102
DEC	91	34	42	15	0	34	42	15	91
TOTAL	**955**	**442**	**400**	**113**	**532**	**160**	**202**	**61**	**423**

MUAMALAT / IP APPEALS

14. Muamalat and IP Appeals were monitored from January 2012. In 2012, there were 35 Muamalat Appeals registered and 19 were disposed of. For IP Appeals, there were 39 cases registered and 19 were disposed of. The registration, disposal and pending cases for Muamalat Appeals and IP Appeals for 2012 can be seen in the table below.

15. Our target for the disposal of Muamalat and IP Appeals is the same as that for NCC and NCVC Appeals, i.e 6 months disposal from the date of registration.

REGISTRATION, DISPOSAL AND PENDING
MUAMALAT APPEALS 2012
PENDING AS AT 31 DECEMBER 2012

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN									
FEB	1	0	1	0	0	0	1	0	1
MAR	2	1	1	0	2	0	0	0	0
APR	2	2	0	0	0	2	0	0	2
MAY	5	4	1	0	5	0	0	0	0
JUNE	3	2	1	0	2	0	1	0	1
JUL	5	5	0	0	5	0	0	0	0
AUG	5	4	1	0	5	0	0	0	0
SEPT	2	0	2	0	0	0	2	0	2
OCT	7	5	2	0	0	5	2	0	7
NOV	1	1	0	0	0	1	0	0	1
DEC	2	0	2	0	0	0	2	0	2
TOTAL	**35**	**24**	**11**	**0**	**19**	**8**	**8**	**0**	**16**

REGISTRATION, DISPOSAL AND PENDING

IP APPEALS 2012
PENDING AS AT 31 DECEMBER 2012

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN									
FEB	3	1	2	0	3	0	0	0	0
MAR	2	0	2	0	2	0	0	0	0
APR	3	2	1	0	3	0	0	0	0
MAY	3	0	2	1	3	0	0	0	0
JUNE	2	0	2	0	2	0	0	0	0
JUL	3	1	2	0	1	1	1	0	2
AUG	5	0	4	1	1	0	3	1	4
SEPT	11	5	6	0	3	4	4	0	8
OCT	1	0	1	0	1	0	0	0	0
NOV	2	1	1	0	0	1	1	0	2
DEC	4	0	1	3	0	0	1	3	4
TOTAL	**39**	**10**	**24**	**5**	**19**	**6**	**10**	**4**	**20**

CRIMINAL APPEALS

16. The initiatives implemented in 2011 in respect of Criminal Appeals were continued in 2012. As at 31 December of 2012, the number of criminal appeals pending was reduced to 1039 as compared to 1138 appeals in the previous year. Although the reduction was not significant, nevertheless it is heartening to note that in 2012, the Court of Appeal had disposed of a total of 895 criminal appeals compared to 786 cases registered.

17. As in 2011, special focus was given to criminal appeals involving the death penalty and criminal appeals involving government servants. In 2012 the Court of Appeal had successfully disposed of 273 appeals involving the death penalty compared to only 239 in the year 2011. Out of 410 appeals involving the death penalty which are still pending, 217 appeals were pre 2012 cases.

18. With regard to appeals involving government servants, which are mainly corruption cases, the Court of Appeal successfully disposed of 80 of such cases. The number of pending appeals as at 31 December 2012 is 93, of which 64 are 2012 cases.

19. For 2013 special attention will also be given to code 09 Appeals. These are criminal appeals which originated form the Subordinate Courts. The Court of Appeal being the apex court for these category of appeals there is a need to reduce the waiting period for the hearing of these appeals. As at 31 December 2012, the number of appeals pending is 328. Out of 328 cases, 259 are 2012 cases. Our target is to reduce the waiting period to not more than 9 months.

REGISTRATION, DISPOSAL AND PENDING FOR CRIMINAL APPEALS INVOLVING DEATH PENALTY 31 DECEMBER 2011 – 31 DECEMBER 2012

Pending (as at 31.12.2011)	Registration 2012	Disposal 2012	Pending (as at 31.12.2012)	% Disposal against Registration
485	198	273	410	138%

REGISTRATION, DISPOSAL AND PENDING FOR CRIMINAL APPEALS INVOLVING GOVERNMENT SERVANTS (CODE 06B) 31 DECEMBER 2011 – 31 DECEMBER 2012

Pending (as at 31.12.2011)	Registration 2012	Disposal 2012	Pending (as at 31.12.2012)	% Disposal against Registration
94	80	81	93	101%

REGISTRATION, DISPOSAL AND PENDING FOR CRIMINAL APPEALS (CODE 09) 31 DECEMBER 2011 – 31 DECEMBER 2012

Pending (as at 31.12.2011)	Registration 2012	Disposal 2012	Pending (as at 31.12.2012)	% Disposal against Registration
293	356	321	328	101%

LEAVE APPLICATION

20. Besides hearing appeals, the Court of Appeal also handles leave applications for criminal as well as civil cases which are required in respect of cases that fall under s.50 and 68 of the Court of Judicature Act 1964 respectively.

21. In respect of leave application for civil cases, the Court of Appeal in 2012 disposed of all 409 leave applications registered in 2011. For 2012, out of 908 leave applications registered, a total of 738 leave applications were disposed of leaving a balance of 170 as at 31 December 2012. The remaining 170 leave applications are still within the timeline of 4 months from the date of filing. The registration, disposal and pending cases for 2012 with regard to leave applications for civil cases can be seen in the tables below:

22. As for Leave Applications for criminal cases, the pending cases are current. As at 31 December 2012, there are only 3 cases pending. The registration, disposal and pending cases with regard to Leave Applications for criminal cases can be seen in the table below.

REGISTRATION, DISPOSAL AND PENDING FOR CIVIL LEAVE APPLICATIONS 31 DECEMBER 2011 – 31 DECEMBER 2012

Subject Matter	Pending (as at 31.12.2011)	Registration 2012	Disposal 2012	Pending (as at 31.12.2012)	Percentage (Disposal against Registration)
Leave Application (Civil)	409	908	1147	170	126%

REGISTRATION, DISPOSAL AND PENDING FOR CRIMINAL LEAVE APPLICATIONS 31 DECEMBER 2011 – 31 DECEMBER 2012

Subject Matter	Pending (as at 31.12.2011)	Registration 2012	Disposal 2012	Pending (as at 31.12.2012)	Percentage (Disposal against Registration)
Leave Application (Criminal)	2	60	57	3	95%

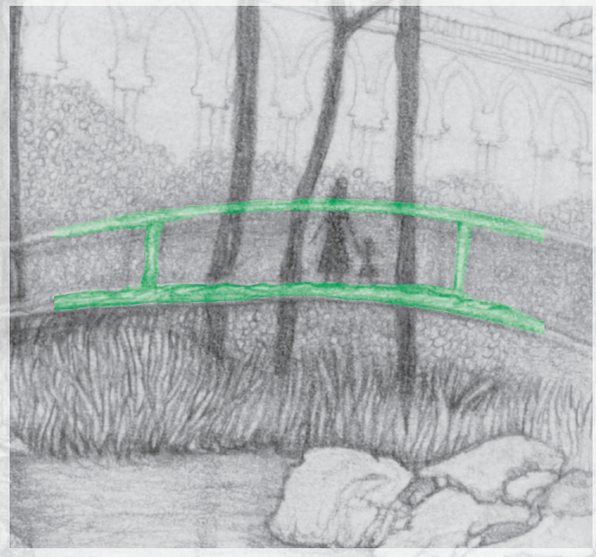
Conclusion

23. The Court of Appeal has succeeded for the second consecutive year in maintaining the record that the number of cases disposed exceeds the number of cases registered. This has contributed to a significant reduction in the number of appeals pending which as at 31 December 2012 stood at only 5553. This exceeded the target set last year which was to reduce the number of pending appeals to the region of 6,000.

24. With the number of pending appeals considerably reduced and the fact that the number of appeals pending in the Court of Appeal are now more or less the same as the number of registrations, the Court of Appeal beginning this year will continue to focus on the quality of judgments.

Judges of the Court of Appeal

1. Justice Low Hop Bing
2. Justice Abdul Malik Haji Ishak
3. Justice Nihrumala Segara
4. Justice Abu Samah Nordin
5. Justice Sulaiman Daud
6. Justice Mohd. Hishamudin Mohd. Yunus
7. Justice Ramly Haji Ali
8. Justice Azhar @ Izhar Ma'ah
9. Justice Syed Ahmad Helmy Syed Ahmad
10. Justice Abdul Wahab Patail
11. Justice Clement Allan Skinner
12. Justice Mohamed Apandi Ali
13. Justice Zaharah Ibrahim
14. Justice Azahar Mohamed
15. Justice Linton Albert
16. Justice Balia Yusof Haji Wahi
17. Justice Alizatul Khair Osman Khairuddin
18. Justice Aziah Ali
19. Justice Mohtarudin Baki
20. Justice Anantham Kasinather
21. Justice Abdul Aziz Abd. Rahim
22. Justice Lim Yee Lan
23. Justice Mohamad Ariff Md. Yusof
24. Justice Mah Weng Kwai



CHAPTER 4

THE HIGH COURTS

THE HIGH COURT OF MALAYA

The Right Honourable
Justice Zulkefli Ahmad Makinudin
Chief Judge of Malaya

The Year 2012 has been another significant year for the High Courts and Subordinate Courts. The statistics show that the High Courts and Subordinate Courts in Peninsular Malaysia have performed well in the disposal of cases and accordingly reduced the backlog of cases. The High Courts have reduced 76% of pre 2012 registered civil cases and 74% of pre 2012 registered criminal cases. The Sessions Courts have disposed of 92% of pre-2012 registered civil cases and 75% of pre-2012 registered criminal cases. The Magistrates Courts have disposed of 99% of pre-2012 registered civil cases and 98% of pre-2012 registered criminal cases. The detailed figures on the registration and disposal of the cases will be shown in this chapter.

Apart from the successful disposal of the backlog of cases, the Malaysian Judiciary has continued to provide better access to justice to all parties appearing before the Court. The most significant initiative in this context is the introduction of the Rules of Court 2012. The new Rules came into force on 1st August 2012. It streamlines and simplifies the High Court and Subordinate Court civil procedure rules. Now, both the High Court and Subordinate Courts will only apply these Rules as opposed to the different rules in applications filed previously.

Another significant achievement is the establishment of Environmental Courts. In the 2012 Opening of the Legal Year event, the Rt Hon Chief Justice of Malaysia in his speech had mooted the idea of the setting up of the environmental courts . The Rt. Hon. Chief Justice had then said "...for the immediate future, we will provide more exposure and training for our judges and officers on environmental law. If need be, specialized courts will be set up to handle environmental cases so as to create awareness among the members of the public on the importance of the environment." Following that event, the Chief Registrar of the Federal Court has issued a Practice Direction No. 3/2012 for the setting up of the Environmental Courts in every state in September 2012. With the establishment of the Environmental Courts, we have now demonstrated to the public that the Judiciary takes heed of the nation's environmental issues. It is also to send out a clear message that the Courts do not treat the commission of environmental offences lightly. The Judges and Judicial Officers have since been equipped with the necessary exposure and awareness on environmental issues through workshops and seminars conducted by the relevant agencies.

The Judiciary has continued with its legal education programme for the Judges and Judicial Officers to enable them to keep up with the development of the law. Towards this end, the Judicial Academy has been set up under the office of the Judicial Appointments Commission to organise regular training for the Superior Court Judges. The trainings were conducted throughout the year 2012 at regular intervals.

The workshops and seminars were conducted over weekends on various subjects of interest that would assist the Judges to perform their judicial functions efficiently. Foreign and local speakers were invited to give talks and conduct seminars on a variety of subjects to the Judges. Judges of the Federal Court and Court of Appeal were invited to participate in the workshops and share their views with the High Court Judges and Judicial Commissioners.

The Judiciary has taken measures to ensure that Judges and Judicial officers do not delay in their delivery of decisions and writing their grounds of judgment. Judges of the High Court are now required to furnish a monthly report on their pending grounds of judgment to the Chief Judge of Malaya. The Chief Registrar of the Federal Court has also taken a similar measure for the Sessions Court Judges and Magistrates. The Judiciary views the delay in the writing of grounds of judgment seriously as such delays would also delay the hearing of cases before the appellate court.

The Chief Judge has also issued practice directions in the form of circulars in order to streamline matters pertaining to judicial administration of the High Courts in Peninsular Malaysia. Amongst them are the Circulars relating to land reference cases, reports under section 281 of the Criminal Procedure Code and hearing of interlocutory application for injunctive orders under certificates of urgency.

On the development of infrastructure, there are now new Court Complexes in Kuantan, Sepang and Kajang. There has also been an extended usage of the E-Filing system to the Courts in Ipoh, Penang and Johor Bahru. The e-Filing system will eventually be introduced to all the courts in Peninsular Malaysia. All of these measures are part of the Malaysian Judiciary's efforts to provide a better infrastructure to the litigants and for the betterment of the public's access to justice.

For the year 2013, the High Courts and Subordinate Courts look forward to greater achievements. Among the initiatives that have been put in place are the introduction of compulsory mediation for road accident cases. Compulsory mediation for road accident cases aims to provide a speedier mode of settlement which would benefit disputing parties. On the use of mediation, the Courts will continue to promote Court Annexed Mediation as an alternative means to settle cases between disputing parties. Mediation Centres have been set up in major stations in Peninsular Malaysia. In December 2012, the Johor Bahru High Court Mediation Centre was officially launched by the Rt. Hon. Chief Justice of Malaysia. It is hoped that more litigants and lawyers will take the opportunity to fully utilise the Mediation Centres as a mode of settling cases filed in the Courts.

The Judiciary will soon implement the increased jurisdiction for the Subordinate Courts under the Subordinate Courts Amendment Act (A1382). Steps have been taken to ensure the effective implementation of the increased jurisdiction of the Subordinate Courts. Continuous training has been conducted for the Sessions Court Judges and Magistrates in order to prepare them for the bigger role they will have to perform under this increased jurisdiction.

The Judicial Officers of the High Court and Subordinate Courts will continuously strive to improve their performance in the discharge of their judicial functions in order to increase public confidence in the Judiciary. The commitment and the performance of the Judges and Officers of the High Court are reflected in the Reports prepared by the respective Managing Judges. This is followed by the achievements of the Subordinate Courts.

Justice Zulkefli Ahmad Makinudin
Chief Judge of Malaya

THE HIGH COURT OF SABAH AND SARAWAK

The Right Honourable
Justice Richard Malanjum
Chief Judge of Sabah & Sarawak

Foremost, I wish to thank the Editorial Committee for inviting me to write a short Foreword in this Malaysian Judiciary Year Book 2012.

Indeed it signifies the conclusion of another exciting and fruitful year for the Malaysian Judiciary.

For the past few years much attention was focused on the disposal of the backlog of cases in the Courts. In short the emphasis had been very much on quantity and productivity. Today backlog is history. Thus, perhaps the new by-words could be 'quality judgments' and 'timeless'.

Quality judgments should entail serious consideration of the evidence, facts and relevant laws applicable in each case. Better and intensive research on the points of law should be preferred. Such steps should produce satisfactory justice to litigants. It will also allow the development of the law in tandem with the needs of society.

Timelines of course are the 'vaccine' against the scourge of backlog. It is therefore essential that all who are assigned to dispense justice must observe the prescribed timelines at all times.

I am glad to say that the Courts in Sabah and Sarawak have already adopted the by-words for the coming year. We should be able to read the impact in the Year Book 2013.

Finally, may I wish all Judges and the Editorial Committee a very Happy New Year 2013 and let the challenge begin!

THE MALAYSIAN JUDICIARY YEARBOOK REMARKS FROM THE CHIEF JUDGE OF THE HIGH COURT IN SABAH & SARAWAK

Policy Statement

For the courts of Sabah and Sarawak, our focus has always been the enhancement of judicial educational innovation in order to uplift the quality of performance of Judges and Judicial officers while harnessing the maximum use of technology for the benefit of the Judiciary and its stakeholders.

Short Report on the Courts for 2012

For the last one year countless efforts and endeavours have been expended in the computerisation of the courts in Sabah and Sarawak. The inception of the computerisation of the courts in Sabah and Sarawak in 2007 now seems like a distant past as the courts here have well and truly gone "paper-less". The backlog of cases has effectively been cleared and the courts of Sabah and Sarawak are now substantially dealing with current cases.

The e-Filing system is fully implemented in the courts of Sabah and Sarawak and response from the lawyers and other users has been tremendous. Most importantly, the e-Filing system is fused with the CMS. Thus, users may access all documents and notes of proceedings through the CMS from any where in the world. It is also pertinent to note that access to documents which are processed through E-filing are accessible to all parties related to the case. This is a step towards dispensing with the requirement to serve cause papers to opponents (which are represented by counsel) as they would be deemed served by virtue of access to E-filed documents. Each document filed is provided with a unique verification code which would allow opponents to verify and authenticate any of such documents served on them. Lawyers can then use that verification code to enter their appearance. Notifications are in place to alert all parties of any updates pertaining to their cases. In similar fashion, notice of hearings are also automatically generated and transmitted to the parties through the CMS.

Another important feature of the e-Filing system is that cases would automatically be assigned a hearing date and an officer. Thus, lawyers would be able to easily identify where and when the case would be heard. This would also effectively increase transparency in the Judiciary as it would remove any doubt of cases being fixed before a particular officer or judge. Court officers and judges are also allocated individual planners where they could block out dates which they would be unavailable.

Over and above all these, perhaps the biggest highlight in the past year is that appeal cases are beginning to be heard in the High Courts of Sabah and Sarawak without a physical Record of Appeal. The Virtual Appeal is now fully implemented whereby once a notice of appeal is filed against the decision of a subordinate court, an appeal case number would be instantaneously generated in the CMS and a mirror High Court Virtual file would be created in the CMS. All documents which are related to the appeal would automatically be copied into the High Court Virtual file and arranged in the order as determined by a template Record of Appeal. Once other documents such as the grounds of judgment, notes of evidence and petition (or memorandum) of appeal are uploaded, a notice of hearing would immediately be issued to all parties with a hearing date and assigned judge. The implementation of the Virtual Appeal has received tremendous and encouraging response from the lawyers who are pleased that the hearing of appeals are ready for fixture within one to two months from when the notice of appeal is filed. This is besides the fact that the laborious task of preparing and filing the Record of Appeal is now displaced and more importantly there is no need for paper to be used to prepare voluminous bundles of the Appeal Record.

Complementing the e-Filing system is the Radio Frequency Identification (RFID) module which has been installed and implemented in all major stations in Sabah and Sarawak. While

the courts here have gone "paper-less", certain important documents such as final orders are still maintained in the hardcopy form for record and safekeeping. These documents are properly filed in individual dockets which are in turn tagged with an RFID tag. Once tagged, these documents are secured and their unauthorized removal would trigger an alarm. Authorized removal of these documents can easily be traced and recovered when necessary.

There is no doubt that quick and accurate notes of proceedings are pivotal to the administration of justice and to this end, the courts of Sabah and Sarawak have continuously strived to ensure that video and audio recordings of court proceedings are recorded and transcribed simultaneously. As a result, lawyers are able to procure copies of the draft notes of evidence at the end of the day and a fair copy within 72 hours. Another welcome feature of the Sabah and Sarawak courts is the Video-Conferencing (VC) facility which has been set up in all major stations here. With the availability of this facility, lawyers no longer need to travel within the states of Sabah or Sarawak respectively to attend mentions or non-contentious hearings. This is extremely essential for Sabah and Sarawak due to its geographical challenges and vast distance between the major cities.

As had been previously emphasised, the courts of Sabah and Sarawak have adopted a strict time-line policy in the disposal of cases. In the Magistrates' Courts, all civil cases and criminal cases are expected to be disposed of within 6 months and 3 months respectively. Civil cases and criminal cases in the Sessions Court and the High Court are expected to be disposed of within 12 months and 6 months respectively. Further, in the High Court, appeal cases must be disposed of within 3 months from the date of registration. While we realise the importance of disposing of cases expeditiously, we are also mindful that this exercise must never under any circumstances be at the expense of justice. In appropriate cases, adjournments would be granted if it is in the interest of justice. All cases beyond the timeline would trigger an alert and these cases would be closely monitored. In line with the relevant circulars and directions, all officers and judges are required to deliver a decision within 4 weeks from the date of conclusion of the trial or hearing, and further to deliver a copy of their written grounds within 8 weeks from the date of decision. This is also monitored by the CMS and any failure to do so would likewise trigger an alert.

On a separate note, it is acknowledged that the number of cases registered in the courts of Sabah and Sarawak do not match some of the major stations in the country. However, it is necessary for me to emphasize that this does not mean that the workload of the officers or judges in Sabah and Sarawak are any less from their counterparts elsewhere. The simple reason behind this is because the courts of Sabah and Sarawak operate with minimal personnel, thereby ensuring that the officers and judges have heavy responsibilities.

Apart from the expeditious disposal of cases, all notices of applications, draft orders and fair orders are processed and will be ready for extraction within 24 hours of filing. Any failure to meet this deadline would trigger an alert to the relevant officers and personnel and would be continuously monitored by key personnel including myself. Although still at the planning stage, it is hoped that all fair orders would be issued by the respective courts almost instantaneously after judgment is pronounced in open court or in chambers. This would reduce the waiting period for draft orders to be prepared and agreed to by the other side and then processed by the court. Furthermore, this would also do away with instances where parties are not agreeable to certain terms of the judgment and then seek for an appointment with the judge or officer for clarification. Effectively, if this is successfully implemented, the fair order would be issued by the court in the presence of lawyers and litigants within minutes after it is pronounced.

Court-annexed mediation is at an all time high in the courts of Sabah and Sarawak and more litigants now seek to take advantage of its availability. The rate of settlements achieved through mediation is encouraging and we shall intensify our efforts to allow parties to reconcile and resolve their disputes in an amicable manner under the watchful guidance of our officers and judges who receive continuous training on how to conduct effective mediation.

The courts of Sabah and Sarawak continue to conduct regular courses and workshops in various legal aspects to enhance the knowledge of our personnel. Both officers and judges are involved in these sessions and are often grouped together to ensure balanced progression where judges are able to share their experience with young minds and at the same time tap into their thoughts to obtain different perspective and approaches. Officers are also encouraged to pursue postgraduate studies and also to attend international conferences which would provide valuable exposure and experience to them.

Over and above all these, the courts of Sabah and Sarawak are primarily concerned with access to justice especially to the natives of Sabah and Sarawak. Needless to say, many natives occupy the interiors of Sabah and Sarawak which are not accessible by road and the only means of connection is by river and by hiking through jungles. Hence, the efforts of the Sabah and Sarawak judiciary in the mobile court initiative have now intensified. Apart from providing judicial services, we now invite other governmental departments such as the National Registration Department and Lands and Surveys Department, as well as doctors, dentists and other Samaritans to provide their services to these members of the public. The mobile courtroom bus initiative on the other hand has proven to be successful whereby hearings are conducted in a bus which has been modified and converted to a make-shift courtroom at designated areas such as districts and villages. This will not only allay the inconvenience of requiring members of the public to attend court which is located miles away, but could also serve as a grim reminder to those watching their relative or friend being charged in the vicinity of their own district.

Lastly, it is only appropriate to commend the officers of the Sabah and Sarawak judiciary for their contribution in the recently published Civil Trials Guidebook which was launched by the Chief Justice in Kota Kinabalu. This effort is the first of its kind where members of the judiciary worked together to produce a comprehensive guide to civil procedure. The publication is attractive as it addresses all important topics in civil procedure in the light of the new Rules of Court 2012. Apart from this publication, the courts of Sabah and Sarawak have been active in publishing an internal bulletin every 3 months, known as the Borneo Courts Bulletin (BCB) since early 2011. The BCB is an excellent initiative as it contains highlights of events in the courts of Sabah and Sarawak. It also contains important announcements and case summaries of important cases by the High Court, Court of Appeal and Federal Court sitting in Sabah and Sarawak.

The year 2012 has been a remarkable year and great progress is expected of the year 2013. Let us all pray and hope that the year 2013 brings about further advancement and development in the administration of justice as we strive to deliver our very best to the public.

Justice Richard Malanjum
Chief Judge of Sabah & Sarawak

REPORTS OF MANAGING JUDGES

To improve and streamline the administration and management of the courts in the country, Managing Judges have been appointed by the Chief Justice for the various states and divisions namely:-

1.	1.1.	Kuala Lumpur	High Court - Commercial, Intellectual Property, Admiralty, Appellate & Special Powers. Subordinate Courts – Civil	- Justice Zaharah Ibrahim JCA
	1.2.	Kuala Lumpur	High Court – Criminal Subordinate Courts – Criminal.	- Justice Hassan Lah FCJ
	1.3.	Kuala Lumpur	High Court – Civil	- Justice Azahar Mohamed JCA
2.	2.1.	Selangor	High Court –Civil	- Justice Ramly Ali, JCA
	2.2.	Selangor	High Court – Criminal	- Justice Abdull Hamid Embong FCJ
	2.3.	Selangor	Subordinate Courts – Civil, Criminal	- Justice Mohtarudin Baki, JCA
3.	3.1.	Penang	High Court – Civil, Criminal.	- Justice Mohamed Apandi Ali, JCA
	3.2.	Penang	Subordinate Courts – Civil, Criminal	
4.	4.1.	Perak	High Court – Civil	- Justice Jeffrey Tan Kok Hwa FCJ
	4.2.	Perak	Subordinate Courts – Civil, Criminal	
5.	5.1.	Johor (South)	High Court – Civil, Criminal	- Justice Ramly Haji Ali JCA
	5.2.	Johor (South)	Subordinate Courts – Civil, Criminal	
6.	6.1.	Johor (North)	High Court – Civil, Criminal	- Justice Ahmad Hj. Maarop FCJ.
	6.2.	Johor (North)	Subordinate Courts – Civil, Criminal	
7.	7.1.	Negeri Sembilan	High Court – Civil, Criminal	- Justice Ahmad Hj. Maarop FCJ
	7.2.	Negeri Sembilan	Subordinate Courts – Civil, Criminal	
8.	8.1.	Malacca	High Court – Civil, Criminal	- Justice Ahmad Hj. Maarop FCJ
	8.2.	Malacca	Subordinate Courts – Civil, Criminal	
9.	9.1.	Kelantan	High Court – Civil, Criminal	- Justice Zulkefli Ahmad Makinudin CJM
	9.2.	Kelantan	Subordinate Courts – Civil, Criminal	
10.	10.1.	Terengganu	High Court – Civil, Criminal	- Justice Zulkefli Ahmad Makinudin CJM
	10.2.	Terengganu	Subordinate Courts – Civil, Criminal	
11.	11.1.	Pahang	High Court – Civil, Criminal	- Justice Zulkefli Ahmad Makinudin CJM
	11.2.	Pahang	Subordinate Courts – Civil, Criminal	

12.	12.1. Kedah	High Court – Civil, Criminal	- Justice Suriyadi Halim Omar FCJ
	12.2. Kedah	Subordinate Courts – Civil, Criminal	
13.	13.1. Perlis	High Court – Civil, Criminal	- Justice Suriyadi Halim Omar FCJ
	13.2. Perlis	Subordinate Courts – Civil, Criminal	
14.	14.1. Sabah	High Court – Civil, Criminal	- Justice Richard Malanjum CJSS
	14.2. Sabah	Subordinate Courts – Civil, Criminal	
15.	15.1. Sarawak	High Court – Civil, Criminal	- Justice Richard Malanjum CJSS
	15.2. Sarawak	Subordinate Courts – Civil, Criminal	

The reports are listed according to the states within the charge of the Managing Judges. Each Report comprises of an account of the performance of the High Court in each state.

With the exception of the Kuala Lumpur High Court, the report of the High Court in each state is divided into two parts namely the Civil and Criminal Divisions. For the Kuala Lumpur High Court, there is an additional report on the Commercial, Intellectual Property, Admiralty and Appellate & Special Powers Divisions.

Apart from the comprehensive explanations on the statistics, the Managing Judges have included Ageing Lists and Stair Charts in their Reports to show the registration and disposal of cases for the respective Divisions in the year 2012.

There is also a report on the performance of the Subordinate Courts. The report is a global report divided into two parts namely the Subordinate Courts in Peninsular Malaysia and the Subordinate Courts in Sabah and Sarawak. In general, this report shows the total number of cases registered and disposed of by the respective Subordinate Courts. Each court has its own tracking chart which gives an overview of the year's trend in case registrations and disposals. This report is also furnished with Ageing Lists which aim to show the state of the backlog of cases in these Courts. The statistics are as at 31 December 2012.

1. KUALA LUMPUR

1.1 KUALA LUMPUR HIGH COURT– COMMERCIAL, INTELLECTUAL PROPERTY, ADMIRALTY, APPELLATE & SPECIAL POWERS

Commercial Division

The Commercial Division consists of 9 courts. 6 courts are known as the New Commercial Courts (NCC). They deal with cases registered on and after 1 September 2009. Of the remaining 3 courts, 1 court is devoted to Intellectual Property cases, 1 court deals with Muamalat (Islamic Banking) cases and the 9th court deals with Admiralty cases.

Previously, the Commercial Courts had 17 judges. However, with the introduction of the Court Management System (CMS), Court Recording Transcription (CRT), e-Filing and Queue Management System (QMS) and after the launching of the specialized courts as well as with close monitoring of cases, the number of judges has been gradually reduced to 12 as at the dawn of 2012. In the course of 2012, the number of judges was reduced further to 8 judges. 4 commercial courts were closed.

Of the 4 courts that were closed, 2 courts were the Old Commercial Courts (OCC) which dealt with cases registered before the establishment of the NCC. The OCC were officially closed on 31 October 2012. 58 old commercial cases remained outstanding and were distributed amongst the judges in the Commercial Division.

The NCC

9463 NCC cases were registered from the establishment of the NCC on 1 September 2009 until 31 December 2011. Of these cases, 9416 cases have been disposed of leaving a balance of 47 cases only.

The other 2 courts which were closed were NCC, as it was found that with the number of cases registered, 6 judges working in 3 pairs were able to deal with the cases.

The measures taken thus far in the Commercial Division are aimed at ensuring that the cases are disposed of efficiently and expeditiously without sacrificing justice.

Disposal of NCC cases for 2012

For the year 2012, there were 3595 cases registered from 1 December 2012 until 31 December 2012. Of these cases, 2767 have been disposed of leaving a balance of 828 cases.

AGEING LIST FOR THE KUALA LUMPUR HIGH COURT (OCC) AS AT 31 DECEMBER 2012

YEAR	CODES								TOTAL
	21	22	Remit/ Reinstate	24	25	26	27	28	
1998		4							**4**
1999		1							**1**
2000		1	1*						**1**
2001									
2002		2							**2**
2003		3	2*						**3**
2004		4	2*	1					**5**
2005		5	2*						**5**
2006		8	1*	1					**9**
2007		4							**4**
2008		10	2*					2	**12**
2009		11	2*	1					**12**
TOTAL		**53**	**(12)**	**3**				**2**	**58**

STAIR CHART FOR THE KUALA LUMPUR HIGH COURT (NCC)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL	
Jan	**228**	35	80	55	21	13	1	4	2	3	3	3	6	226	**2**
Feb	**286**		23	94	71	42	18	8	4	11	3	2	1	277	**9**
Mar	**348**			43	100	112	38	15	8	4	4	3	3	330	**18**
Apr	**322**				40	114	94	28	21	6	3	4	0	310	**12**
May	**353**					51	113	79	44	12	23	10	5	337	**16**
June	**299**						31	93	94	32	15	6	3	274	**25**
July	**396**							22	81	155	75	8	10	351	**45**
Aug	**217**								10	72	63	29	11	185	**32**
Sept	**250**									11	79	91	18	199	**51**
Oct	**298**										22	76	56	154	**144**
Nov	**316**											26	94	120	**196**
Dec	**282**												4	4	**278**
TOTAL	**3595**	**35**	**103**	**192**	**232**	**332**	**295**	**249**	**264**	**306**	**290**	**258**	**211**	**2767**	**828**

Note : Total of 47 cases were brought forward from 2009, 2010 and 2011.

Intellectual Property Court

The former Domestic Trade and Consumer Affairs Minister, Datuk Shafie Apdal launched the Intellectual Property Court in Malaysia on 17 July 2007. This court is specially designated to hear both civil matters and criminal appeals involving intellectual property cases. As a result of its positive establishment and development, it has reduced the backlog of Intellectual Property cases and provided a speedier and more focused means of dealing with and disposing of such cases. It has also contributed towards eradicating intellectual property infringement in Malaysia.

(i) Civil Matters

As at 1 January 2012, the balance of active cases was 51. The number of cases registered in the year 2012 from January until December was 73. Thus the total number of active cases in 2012 was 124. Of this number, 88 cases were disposed of in 2012 leaving a balance of 36 cases only as at 1 January 2013.

AGEING LIST FOR THE KUALA LUMPUR INTELLECTUAL PROPERTY HIGH COURT (CIVIL) AS AT 31 DECEMBER 2012

YEAR	CODES				TOTAL
	21	22	24	25	
2008		1			**1**
2009		1			**1**
2010		2			**2**
2011		4			**4**
2012		23	2	3	**28**
TOTAL		**31**	**2**	**3**	**36**

(ii) Criminal Appeals

The Intellectual Property Court also hears criminal appeals from the subordinate courts. As at 1 January 2012, the number of active cases was 5. The number of criminal appeals registered in the year 2012 from January to December was 18, making a total of 23 active appeals. Of the 23 appeals, 21 appeals were disposed of in 2012 leaving a balance of 2 cases only as at 1 January 2013.

AGEING LIST FOR THE KUALA LUMPUR INTELLECTUAL PROPERTY HIGH COURT (CRIMINAL APPEALS) AS AT 31 DECEMBER 2012

YEAR	CODES				TOTAL
	41	42	43	44	
2012		2			**2**
TOTAL		**2**			**2**

Muamalat Court

A significant development in resolving disputes in Islamic banking matters was the establishment of a dedicated High Court known as the Muamalat Court. It was established on 1 March 2003 pursuant to the Practice Direction of the Chief Judge of Malaya No. 1/2003 (which has been superseded by Practice Direction No. 1/2008) and also upon the Central Bank's recommendation to the Judiciary.

As at 1 January 2012, the balance of active cases was 228. The number of Islamic banking cases registered in the year 2012 from January to December was 1,639. Thus the number of active cases in 2012 was 1,867. Of this number, 1,649 cases were disposed of in 2012 leaving a balance of 218 cases as at 1 January 2013.

AGEING LIST FOR KUALA LUMPUR MUAMALAT HIGH COURT AS AT 31 DECEMBER 2012

YEAR	CODES		TOTAL
	22A	24A	
2003	1		**1**
2004			
2005			
2006	1		**1**
2007	2		**2**
2008			
2009			
2010	3		**3**
2011	3		**3**
2012	180	28	**208**
TOTAL	**190**	**28**	**218**

Admiralty Court

On 6 September 2010, the Malaysian Judiciary announced the setting up of a specialized Admiralty Court. It took effect from 1 October 2010. Among the objectives of the court are to ensure the efficient adjudication of all admiralty and maritime claims and to centralize information on registration of claims and caveats in admiralty cases.

The clearance target date is within 9 months from the date of filing, except for admiralty in rem claims, where the clearance target date is within 9 months from the date of service of the writ of summons. The work of the Admiralty Court is governed by Order 70 of the Rules of Court 2012 and Practice Directions on Admiralty Actions. The Admiralty Court is supported by an Admiralty Registry. It consists of 1 Deputy Registrar, clerks and bailiffs. The Admiralty Registrar acts as Sheriff at all times. A judge of the NCC sits as an Admiralty Judge.

As at 1 January 2012, the balance number of active cases was 31. The number of cases registered in the year 2012 from January to December was 65, making a total of 96 active cases. Of the 96 cases, 65 cases were disposed of in 2012 leaving a balance of 31 cases as at 1 January 2013.

REGISTRATION AND DISPOSAL CHART FOR KUALA LUMPUR ADMIRALTY HIGH COURT AS AT 31 DECEMBER 2012

YEAR	REGISTRATION	DISPOSAL	TOTAL PENDING
2011	46	45	1
2012	65	35	30
TOTAL	-	-	**31**

Appellate and Special Powers Division

The Appellate and Special Powers Division hears appeals in civil matters from the Subordinate Courts in Kuala Lumpur, cases under the Legal Profession Act 1976, judicial review of administrative actions and various civil applications under certain Acts. In Kuala Lumpur, there are currently two courts devoted to hearing these cases.

As at 1 January 2012, the balance number of active cases was 581. The number of cases registered in the year 2012 from January to December was 1,224, making a total of 1,805 active cases. Of the 1,224 cases, 1,183 cases were disposed of in 2012 leaving a balance of 622 cases as at 1 January 2013.

Looking at the number of cases registered, it is apparent that 2 courts are not adequate to enable cases to be disposed of expeditiously. An additional court for the Appellate and Special Powers Division is planned to enable cases to be managed expeditiously and to reduce the backlog in the number of cases.

AGEING LIST FOR KUALA LUMPUR HIGH COURT (APPELLATE AND SPECIAL POWERS) AS AT 31 DECEMBER 2012

YEAR	CODES												TOTAL
	11		12		13	14	16	17	18	22	24	25	
	A	B	A	B									
2004										1			**1**
2007				1								1	**2**
2008												1	**1**
2009				1									**1**
2010		1		3								6	**10**
2011			1	20		4	1	4			1	24	**55**
2012	23	25	156	151	1	5	12	26			10	143	**552**
TOTAL	**23**	**26**	**157**	**176**	**1**	**9**	**13**	**30**		**1**	**11**	**175**	**622**

1.2 KUALA LUMPUR HIGH COURT-CIVIL

Civil Division

The Civil Division is organized into 7 Old Civil Courts (OCvC), 6 New Civil Courts (NCvC) and 1 Family Court. The subject jurisdiction of the Division is land, contract, inheritance, trust, administrative actions and family.

OCvC

The 7 OCvC judges deal with cases registered before the establishment of the NCvCs (in October 2010). With old cases being systematically reduced and due to the substantial drop in pending interlocutory applications, beginning 1 January 2012 the workload of the judges in the OCvC is no longer streamlined into A-Track and T-Track. All pending pre October 2010 cases have been assigned and distributed equally to each of the 7 OCvC judges in order to streamline the expeditious disposal of these cases. The judges themselves now manage the cases before proceeding with the trial. The respective judges also have to hear and dispose of all the applications pending in the files. As at 1 January 2012 there were 1460 cases pending and as at 31 December 2012 the number of these pending cases was reduced significantly to 696.

The average disposal of OCvC is 77 cases per month. With the exception of cases remitted from the Court of Appeal and the Federal Court and with no new cases being registered, it is targeted that all pre-2010 cases will be disposed of by the end of December 2013.

AGEING LIST FOR THE KUALA LUMPUR HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

YEAR	CODES								TOTAL
	15	21	22	23	24	25	31	32	
2001			1						**1**
2002			3						**3**
2003			1						**1**
2004			3	1	1				**5**
2005			2						**2**
2006			2						**2**
2007		4	18	4					**26**
2008		9	74	14					**97**
2009		31	176	46	3				**256**
2010	1	16	246	36	2	1		1	**303**
TOTAL	**1**	**60**	**526**	**101**	**6**	**1**	**0**	**1**	**696**

NCvC

There were 17044 NCvC cases registered from its establishment on 1 October 2010 until 31 December 2012. Of these cases, 16191 cases have been disposed of leaving a balance of 853 cases only.

The NCvCs were set up on 24 September 2010 to deal with all civil actions filed after 30 September 2010. 6 Judges are assigned to NCvC. They work in pairs with case registration at intervals of 3 months. Their task is to hear and dispose of cases within 9 months from the date of registration. The NCvCs have diligently disposed of cases within the stipulated period of 9 months in 2012. In the year of 2012 only NCvC 5 and NCvC 6 have completed the period of 9 months in which they have received cases registered from January to March 2012 and these cases should be disposed of by the end of the year as tabulated in the chart below.

Indeed, NCvC 5 & NCvC 6 have successfully disposed of about 94.9% (1829 cases) of the total number of cases registered within the period of 9 months leaving only 5.1% (110 cases) still pending.

Disposal of NCvC cases in 2012

The table below also shows the overall monthly achievement of all NCvCs from January 2012 to December 2012. In 2012, there were 7903 cases registered from 1 January 2012 to 31 December 2012. Out of these cases, 6433 were disposed of leaving a balance of 1470.

As of 31 December 2012, the 6 NCvCs had a 95% clearance rate within the 9 months from the date of filing. With the increase of workload in the NCvC, two more NCvCs (NCvC 7 and NCvC 8) will be set up on 1 January 2013 to enhance the expeditious disposal of cases within 9 months after filing.

STAIR CHART FOR THE KUALA LUMPUR HIGH COURT (NCvC)
JANUARY - DECEMBER 2012

COURT	MONTH	REGISTRATION	DISPOSAL													BALANCE
			Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	
NCvC 5 & NCvC 6	**Jan**	**577**	134	236	90	24	27	11	11	4	2	9	5	4	**557**	**20**
	Feb	**638**		93	278	103	62	17	16	13	5	12	2	8	**609**	**29**
	Mar	**724**			126	273	152	50	28	14	5	17	7	8	**680**	**44**
NCvC 1 & NCvC 2	**Apr**	**639**				105	263	114	45	20	19	14	6	8	**594**	**45**
	May	**718**					66	285	190	65	22	13	14	4	**659**	**59**
	June	**723**						73	269	170	76	52	23	7	**670**	**53**
NCvC 3 & NCvC 4	**July**	**929**							184	349	180	62	39	17	**831**	**98**
	Aug	**417**								12	199	80	29	18	**338**	**79**
	Sept	**619**									51	347	78	27	**503**	**116**
NCvC 5 & NCvC 6	**Oct**	**749**										175	298	84	**557**	**192**
	Nov	**563**											93	257	**350**	**213**
	Dec	**607**												85	**85**	**522**
TOTAL		**7903**	**134**	**329**	**494**	**505**	**570**	**550**	**743**	**647**	**559**	**781**	**594**	**527**	**6433**	**1470**

Note: total of 761 cases were brought forward from of 2010 & 2011

Family Court

A judge is assigned to deal with family related-matters. With proactive case management and close monitoring, the Family Court has successfully cleared the backlog and reduced the waiting period for the cases to be heard.

There were 2650 cases registered from 1 January 2012 to 31 December 2012. Out of these cases, 2167 were disposed of leaving a balance of 483 cases.

STAIR CHART FOR THE KUALA LUMPUR HIGH COURT (FAMILY COURT) AS AT 31 DECEMBER 2012

MONTHLY	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	
Jan	**170**	80	45	7	8	9	6	1	3	4	1	2	2	168	**2**
Feb	**232**		102	61	13	17	6	3	7	6	4	2	0	221	**11**
Mar	**282**			102	29	96	11	4	10	10	7	4	2	275	**7**
Apr	**226**				110	55	11	8	18	6	5	3	1	217	**9**
May	**245**					124	49	7	16	11	11	4	2	224	**21**
June	**235**						53	118	19	13	9	7	0	219	**16**
July	**261**							77	99	35	16	10	3	240	**21**
Aug	**176**								71	50	13	16	4	154	**22**
Sept	**177**									75	61	15	7	158	**19**
Oct	**242**										108	64	13	185	**57**
Nov	**191**											63	39	102	**89**
Dec	**213**												4	4	**209**
TOTAL	**2650**	**80**	**147**	**170**	**160**	**301**	**136**	**218**	**243**	**210**	**235**	**190**	**77**	**2167**	**483**

NOTE: Total Of 384 cases were brought forward from 2010 & 2011

1.3 KUALA LUMPUR HIGH COURT-CRIMINAL

Criminal Division

At present, there are 3 Judges hearing criminal matters. The Judges are assisted by 3 Registrars. They hear criminal trials, criminal appeals, revisions and applications.

2012 witnessed a consistent reduction of all cases registered. The total registration for all cases from January to December 2012 was 620 cases. The 451 pending cases in January 2013 comprised of 95 criminal trials, 303 criminal appeals and 53 criminal applications. Of the total figure, only 8 were pre-2010 cases while 16 were cases registered in 2010 and 113 registered in 2011. The rest were registered in 2012.

From 37 pre-2010 criminal trial cases pending as at the end of May 2012, the High Court managed to dispose of 26 cases; with an average of 3 cases disposed of by each judge per month.

Out of a total of 565 cases pending in January 2012, 114 cases were disposed of by the 3 High Courts by the end of 2012. Although it was only a reduction of 20%, the significant drop can be seen in the pre-2010 cases as there were only 8 cases pending as at 1 January 2013.

The pre-2012 cases will be disposed of by the 2nd quarter of 2013. The short term plan is to dispose of pre-2011 cases by March 2013. While the number of new cases is increasing, the priority is still to clear the backlog and to reduce the waiting period for the cases to be heard.

AGEING LIST FOR KUALA LUMPUR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2006																											1	**1**
2007																1												**1**
2008																												
2009							2											3								1		**6**
2010	1							4		1	1					5		3								1		**16**
2011	6			4			45	14	3	7	1				3	23		5						1		1		**113**
2012	43	39	1	4	5		87	13	7	12	3		4	13	33	36		9				2				3		**314**
TOTAL	**50**	**39**	**1**	**8**	**5**		**134**	**31**	**10**	**20**	**5**		**4**	**13**	**36**	**65**		**20**				**2**		**1**		**6**	**1**	**451**

2. SELANGOR

2.1 SHAH ALAM HIGH COURT - CIVIL

Disposal of OCvC Cases in 2012

The Old Civil Court (OCvC) comprises 7 Courts. At present 5 courts hear OCvC matters, 1 court specializes in A-Track (trial by affidavit) hearings and 1 court is assigned to hear Family, Land, Judicial Review and Company matters.

Based on the overall disposal of the cases from January to December 2012, an average of 558 cases were disposed of monthly by OCvC Judges and officers (MJU) which led to a total disposal of 4414 cases throughout year 2012. Of the total disposal, 1478 cases were writ actions. This is to be compared with last year's performance where the average rate of disposal was only 356 cases leading to a total number of disposals of 1789 in 2011.

In order to streamline the rate of disposal consistently, the Shah Alam High Court Civil Division has extended the implementation of the NCvC court system for other codes (besides writ action cases) beginning October 2012.

As at January 2013, pending cases in OCvC were reduced significantly to 1468 as compared to the balance of 4679 cases carried forward at the beginning of the year 2012.

AGEING LIST FOR SHAH ALAM HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

YEAR	CODES																							TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	24F	24AF	25	26	27	28	33	34	
	A	B	A	B																					
1996											1														**1**
1999												1													**1**
2000												1													**1**
2001												5													**5**
2002											1														**1**
2003												2													**2**
2004							1				2	1													**4**
2005												1											1		**2**
2006											1	11				1					1				**14**
2007											7	62				1								2	**72**
2008							1				9	111				1				1				2	**125**
2009							1				15	190				6						1	3	4	**220**
2010							9				49	314				57				23		6		6	**464**
2011							55									27			19	41	2	1	14	25	**184**
2012							41									68	14	78	26	26	3	1	8	107	**372**
Total							**108**				**85**	**699**				**161**	**14**	**78**	**45**	**91**	**6**	**9**	**26**	**146**	**1468**

Disposal of NCvC Cases in 2012

The NCvC was set up with only one court on 1 January 2011. Later, 6 NCvCs were set up with 1 court assigned to hear civil appeals and the remaining courts to hear writ action cases.

The overall monthly performance of the NCvCs (Writ Action) from January to December 2012 can be seen in the chart below.

In the year 2012, 1866 cases were registered from 1 January 2012 to 31 December 2012. Out of these cases, 1206 were disposed of leaving a balance of 660 cases.

STAIR CHART FOR SHAH ALAM HIGH COURT (NCvC)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	TOTAL	
Jan	**141**	22	47	21	11	8	4	1	1	3	1	-	-	**119**	**22**
Feb	**188**		25	62	22	17	12	10	5	4	6	3	6	**172**	**16**
Mar	**184**			29	54	20	13	13	2	3	9	7	5	**155**	**29**
Apr	**175**				3	58	18	29	15	5	9	6	2	**145**	**30**
May	**154**					17	33	29	11	11	9	14	3	**127**	**27**
June	**169**						21	52	28	16	13	2	1	**133**	**36**
July	**213**							15	47	32	19	13	10	**136**	**77**
Aug	**108**								2	31	17	7	8	**65**	**43**
Sept	**124**									8	28	9	13	**58**	**66**
Oct	**150**										9	32	17	**58**	**92**
Nov	**146**											13	25	**38**	**108**
Dec	**114**												-	**0**	**114**
TOTAL	**1866**	**22**	**72**	**112**	**90**	**120**	**101**	**149**	**111**	**113**	**120**	**106**	**90**	**1206**	**660**

2.2 SHAH ALAM HIGH COURT-CRIMINAL

There are 8 Criminal High Courts in Shah Alam. As of 1 January 2012, there was a total of 1131 criminal cases pending in the Criminal High Court. By the end of December 2012, the number of criminal cases was 1245 cases.

The number of criminal cases registered in 2011 and in the first half of 2012 showed a slight increase every month. This is mainly due to the speedy disposal of cases by the Subordinate Courts resulting in more appeal cases being filed in the High Court and also the significant rise in drug trafficking cases involving foreigners.

The total registration for all cases from January to December 2012 was 1282 cases that is not inclusive of a balance carried forward of 1131 from previous years. The 1244 pending cases in January 2013 comprised of 491 criminal trials, 720 criminal appeals and 33 criminal applications. Of the total figure, only 12 were pre-2010.

AGEING LIST FOR SHAH ALAM HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2008																3		1										**4**
2009							2									1		5										**8**
2010	2						25			3						48		9										**87**
2011	30	6		3	1		118	18		31	1					125		19				7				17		**376**
2012	86	130		12	5		183	42		22			3	6	24	201		35	1			3	1			15		**769**
TOTAL	**118**	**136**		**15**	**6**		**328**	**60**		**56**	**1**		**3**	**6**	**24**	**378**		**69**	**1**			**10**	**1**			**32**		**1244**

3. PENANG

3.1 GEORGETOWN HIGH COURT – CIVIL & CRIMINAL

There are 7 High Court Judges and Judicial Commissioners, 8 Sessions Court Judges and 13 Magistrates in Penang.

The Civil Division of the Penang High Court comprises the Old Civil Courts (OCvCs) and the New Civil Courts (NCvCs).

Two NCvCs were established in January 2011 to expedite disposal of NCvC cases, namely cases under codes 21, 22, 23 and 25. Under the NCvC, judges are assigned to hear and dispose of cases within 9 months from the date of registration. In January 2013, an additional 2 judges have been assigned to hear NCvC cases registered from January 2013.

For the Criminal Division, there are 2 High Court Judges hearing all criminal cases including trials, appeals, revisions and applications.

Apart from being assigned to either civil or criminal courts, all 7 High Court judges also hear full trial civil appeals. Each judge will hear 4 to 6 cases per month, whereas interlocutory appeals are only fixed before the 2 Criminal Court judges.

The total registration for all cases from January to December 2012 was 8977 cases that is not inclusive of a balance carried forward of 4545 from previous years. As at 31 December 2012, the total number of pending cases was 4182.

Disposal for OCvC Cases in 2012

As at 1 January 2012 there were 430 cases pending in the OCvCs and 44 cases were added between July and December 2012 (cases remitted from the appellate court). The OCvCs achieved a target of 56.3 % (disposal of 218 cases) from 430 pending cases and the 44 cases remitted from the appellate courts. If the remitted cases are not taken into consideration, the OCvCs' achievement would be 66.5 %. As at 31 December 2012, there were still 188 cases pending in OCvCs.

Disposal for NCvC Cases in 2012

For NCvCs, 676 cases have been disposed from the total of 1028 cases registered in 2012. As at 1 January 2013, there are 449 cases pending in the NCvCs.

Disposal of Criminal Cases in 2012

Criminal courts achieved the target of disposing pre-2010 cases in 2012. As at 31 December 2012, there were only 3 cases for year 2011 and 35 cases for 2012.

Disposal of Appeals in 2012

Penang High Court also achieved the target set for disposing of both civil and criminal appeals in 2012. As at 1 January 2012, pending civil appeals were 169 cases, whilst the registration reached 371 cases by 31 December 2012. Disposal of civil appeal cases in year 2012 reached 431 cases (116.2 % disposal as against registration). As at 1 January 2012, pending criminal appeals were recorded at 173 cases, whilst the registration reached 198 cases by 31 December 2012. The criminal appeals were reduced to 104 cases by 31 December 2012. Disposal of criminal appeal cases in 2012 reached 267 cases.

AGEING LIST FOR GEORGETOWN HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

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																	AF	JIC					
1998												*1															**1**
2000												*2															**2**
2003												*9															**9**
2004												*1															**1**
2006												*3															**3**
2007												*8															**8**
2008												23						1									**24**
2009												34								3	2						**39**
2010												107						1		3	2						**113**
2011				5											5		1			1	445		4	2	1		**464**
2012	2	11	18	73			15	3	8	6					254	28	54			53	2444	229	74	84	162		**3518**
TOTAL	**2**	**11**	**18**	**78**			**15**	**3**	**8**	**6**	**0**	**188**	**0**	**0**	**259**	**28**	**55**	**2**	**0**	**60**	**2893**	**229**	**78**	**86**	**163**	**0**	**4182**

STAIR CHART FOR GEORGETOWN HIGH COURT (NCvC)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	**111**	7	13	23	10	5	3	24	1	7	3	2	1	99	**12**
Feb	**91**		23	16	9	3	5	6	2	1		2	1	68	**23**
Mac	**82**			7	14	12	11	4	3	2	3	4	5	65	**17**
Apr	**86**				7	18	13	6	5	2	5	4	1	61	**25**
May	**93**					9	21	11	7	1	7	2	1	59	**34**
Jun	**97**						7	20	107	7	7	5	1	154	**40**
Jul	**87**							9	18	15	4	3	5	54	**33**
Aug	**86**								4	20	7	4	2	37	**49**
Sep	**59**									1	16	9	2	28	**31**
Oct	**71**										6	11	6	23	**48**
Nov	**89**											8	18	26	**63**
Dec	**76**												2	2	**74**
TOTAL	**1028**	**7**	**36**	**46**	**40**	**47**	**60**	**80**	**147**	**56**	**58**	**54**	**45**	**676**	**449**

AGEING LIST FOR GEORGETOWN HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2011							24	2								2		1										**29**
2012	24	14		2			30	5		3			1			20		12						3				**114**
TOTAL	**24**	**14**		**2**			**54**	**7**		**3**			**1**			**22**		**13**						**3**				**143**

4. PERAK

4.1 PERAK HIGH COURT - CIVIL

It is all so true that the disposal of cases has to be higher than the cases filed, or the so called "backlog of cases" will build up. A long docket is never in the interest of justice. With that never out of mind, both the High Court at Ipoh and at Taiping set about to dispose the older civil cases and the civil cases filed in 2012 with renewed urgency. The immediate aim was to avert cases filed in 2012 spilling onto the docket in 2013. And in relation to that, the High Courts in Perak in 2012 had not only succeeded but had also turned the tide, for the outstanding cases carried forward to 2013 are significantly lower than before.

In large part, that was achieved by the unqualified success of the Ipoh New Civil Court (NCvC) which was re-launched on 1 January 2012.

In the year 2012, 2366 cases were registered from 1 January 2012 to 31 December 2012. Out of these cases, 1812 were disposed of leaving a balance of 554 cases.

All cases filed in January to April 2012 were disposed within the year. It is therefore projected that all cases filed in Ipoh in 2012 will be heard and disposed within 9 to 12 months from the date of filing. With the NCvC to hold the frontline, so to speak, new cases will not add to the "backlog of cases" in Ipoh.

STAIR CHART FOR IPOH HIGH COURT (NCvC)
JANUARY – DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	**208**	6	20	59	40	41	23	15	3	1				**208**	**0**
Feb	**201**		2	28	76	36	21	19	10	4	5			**201**	**0**
Mar	**197**			5	46	61	27	29	12	12	3	2		**197**	**0**
Apr	**158**				6	30	59	30	11	7	5	3	7	**158**	**0**
May	**244**					17	36	90	39	32	15	4	1	**234**	**10**
Jun	**208**						11	56	55	38	23	5	2	**190**	**18**
Jul	**204**							10	31	80	38	14	5	**178**	**26**
Aug	**169**								5	34	59	24	10	**132**	**37**
Sep	**190**									7	38	78	18	**141**	**49**
Oct	**224**										2	64	73	**139**	**85**
Nov	**191**											6	20	**26**	**165**
Dec	**172**												8	**8**	**164**
TOTAL	**2366**	**6**	**22**	**92**	**168**	**185**	**177**	**249**	**166**	**215**	**188**	**200**	**144**	**1812**	**554**

In no lesser part, that was also achieved by the conscientious disposal of the older cases in Ipoh and in Taiping. At the end of 2012, there were only 109 cases (excluding code 29) that were filed in 2010 or in other words that were more than 24 months old.

Suffice to say that there will be no let up in all efforts to dispose the OCvC cases within the shortest possible time.

AGEING LIST FOR PERAK HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

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																	AF	JIC					
2003												2															**2**
2006												1															**1**
2007							2					6															**8**
2008												7					1										**8**
2009												17			4						2						**23**
2010	1	2		9							3	49	1		1						1				2		**69**
2011	1	8	3	38			3	2			6	104			18	2	15			2	213				8		**423**
2012	36	13	26	147			15	10	5		6	142	10	3	406	71	24	3		38	2135		12	27	199		**3328**
TOTAL	**38**	**23**	**29**	**194**			**20**	**12**	**5**		**15**	**328**	**11**	**3**	**429**	**73**	**40**	**3**		**40**	**2351**		**12**	**27**	**209**		**3862**

4.2 PERAK HIGH COURT - CRIMINAL

As for the criminal cases, the oldest case was registered in 2005. Presently, only 5 out of the outstanding 50 criminal trials are more than 2 years old. Hence, in the year ahead, it is expected that the period between registration of a case and trial will be further narrowed. Also, should the need be, to reduce the period of incarceration before trial, all Courts will help dispose of criminal trials.

There is still much to be done. But Perak has definitely turned the corner.

AGEING LIST FOR PERAK HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																											TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2005																		1										**1**
2009																		1										**1**
2010							3			3								2	1									**9**
2011	17			2			23	4		11			2		1	15		6										**81**
2012	48	27		19	5		32	17		10			1	2	4	16		7				1						**189**
TOTAL	**65**	**27**		**21**	**5**		**58**	**21**		**24**			**3**	**2**	**5**	**31**		**17**	**1**			**1**						**281**

5. JOHOR

The High Court in the state of Johor comprises 2 High Courts which sit at Johor Bahru and Muar.

There are 5 High Court Judges stationed in Johor Bahru. 3 judges deal with civil cases and the other 2 judges deal with criminal cases.

As for the High Court of Malaya sitting in Muar, it comprises 2 High Court judges with 1 resident judge and another judge who sits 2 weeks in a month.

5.1 JOHOR BAHRU HIGH COURT - CIVIL

At the beginning of 2012, the balance carried forward was 1634. Together with the registrations for the year 2012 (January - December) the number of cases increased to 6472. Of that number, 5431 cases have been disposed of, leaving only 1041 cases pending. The 1634 cases that were carried forward to 1 December 2012 were disposed of by 31 December 2012, save for 24 cases, bringing about the closure of the OCvC. The Mediation Centre in Johor Bahru assisted by mediating 100 cases.

Disposal for NCvC cases in 2012

Since its establishment, out of 2114 writ actions filed, the NCvC in Johor Bahru has disposed of 1817 writ actions. As for the other codes, these courts have disposed of 5418 out of the 6434 cases registered.

From January to December 2012, the total number of writ actions registered was 840 cases, and the courts have managed to dispose of 561 of these cases leaving 279 cases. As for the other codes, the total cases registered are 6434 cases, and the courts have managed to dispose of 5418 of these cases leaving the balance of 1016.

AGEING LIST FOR THE JOHOR BAHRU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES																							TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	24AF	25	26	27	28	33	34	
	A	B	A	B																				
2004												1												**1**
2007												1												**1**
2009												10												**10**
2010							1							1										**2**
2011				3											1			2		1	1	2		**10**
2012	2	4	27	75			60	6	2	6					460		70	67		2	59	177		**1017**
TOTAL	**2**	**4**	**27**	**78**			**61**	**6**	**2**	**6**		**12**		**1**	**461**		**70**	**69**		**3**	**60**	**179**		**1041**

STAIR CHART FOR THE JOHOR BAHRU HIGH COURT (NCvC-WRIT ACTION) JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	**56**	0	20	13	9	7	0	0	0	0	1	1	2	53	**3**
Feb	**60**		1	24	10	5	6	2	3	2	2	1	1	57	**3**
Mar	**86**			8	33	9	10	5	1	1	2	3	1	73	**13**
Apr	**87**				1	37	15	6	4	3	2	1	5	74	**13**
May	**77**					2	33	6	8	3	1	7	1	61	**16**
Jun	**80**							40	5	7	9	2	1	64	**16**
Jul	**80**							1	18	29	7	4	2	61	**19**
Aug	**37**								1	15	4	5	1	26	**11**
Sep	**62**									2	25	14	3	44	**18**
Oct	**72**											24	10	34	**38**
Nov	**68**												14	14	**54**
Dec	**75**												0	0	**75**
TOTAL	**840**	**0**	**21**	**45**	**53**	**60**	**64**	**60**	**40**	**62**	**53**	**62**	**41**	**561**	**279**

STAIR CHART FOR THE JOHOR BAHRU HIGH COURT (NCvC-OTHER CODES) JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	**435**	35	103	151	91	21	6	7	6	2	5	7	0	434	**1**
Feb	**510**		35	152	224	52	19	11	4	3	7	1	0	508	**2**
Mar	**718**			90	170	292	89	38	12	9	6	9	1	716	**2**
Apr	**564**				37	171	233	79	13	12	15	2	0	562	**2**
May	**637**					89	134	248	86	24	16	9	12	618	**19**
Jun	**525**						66	143	205	76	16	10	5	521	**4**
Jul	**566**							52	141	204	131	17	6	551	**15**
Aug	**333**								55	95	123	28	11	312	**21**
Sep	**531**									56	240	163	26	485	**46**
Oct	**555**										42	299	129	470	**85**
Nov	**500**											34	161	195	**305**
Dec	**560**												46	46	**514**
TOTAL	**6434**	**35**	**138**	**393**	**522**	**625**	**547**	**578**	**522**	**481**	**601**	**579**	**397**	**5418**	**1016**

5.2 JOHOR BAHRU HIGH COURT - CRIMINAL

In Year 2012, 2 High Court judges were assigned to the High Court Criminal Division. Due to the reduction in the number of cases in the Criminal Court, there is only 1 Judge hearing criminal matters currently. 2012 witnessed a tremendous reduction in all pending and newly registered cases. With the balance carried forward of 198 for pre 2012 cases and a total registration of 493 cases from January to December 2012, only 143 cases were left pending as at January 2013. A total of 548 cases (80% clearance) were disposed of in 2012.

The biggest achievement for the Criminal Court in 2012 was the closure of one Criminal High Court in Johor Bahru. At present Criminal Court cases are handled by a single Judge.

AGEING LIST FOR THE JOHOR BAHRU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		Ors		
	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	
2011																4		4										**8**
2012	14	20		2			21	11		8				18	1	19		18				2		1				**135**
TOTAL	**14**	**20**		**2**			**21**	**11**		**8**				**18**	**1**	**23**		**22**				**2**		**1**				**143**

5.3 MUAR HIGH COURT - CIVIL

The term OCvC cases in relation to the Muar High Court refers to cases registered prior to September 2011. At the beginning of the year 2012, there were 201 cases pending. Most of these cases have been disposed of throughout the year 2012 leaving a balance of 22 cases at the end of year. The old cases which remain in the register are cases which have been revived upon order of remittance by the Court of Appeal, reinstated after being struck out or are stayed pending disposal by the Federal Court.

In line with the national target of disposing civil cases within 9 months, the NCvC system was implemented in September 2011. The disposal rate is encouraging with an average percentage of 90% of the cases being disposed of within the 9 month period.

For the period of January to December 2012, the total number of cases registered were 1698 cases and the Muar High Court has managed to dispose of 1299 of these cases.

AGEING LIST FOR MUAR HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

YEAR	CODES																							TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	24AF	25	26	27	28	33	34	
	A	B	A	B																				
2000												1												**1**
2008												1												**1**
2009												1		1								1		**3**
2010												2												**2**
2011				4								5		6										**15**
TOTAL				**4**								**10**		**7**								**1**		**22**

STAIR CHART FOR MUAR HIGH COURT (NCvC)
JANUARY – DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	**108**	14	37	26	6	12	2	5	1	0	1	0	0	**104**	**4**
Feb	**148**		12	56	33	17	8	8	5	1	3	1	1	**145**	**3**
Mac	**182**			13	54	41	21	18	10	2	4	1	0	**164**	**18**
Apr	**164**				15	54	33	16	12	3	8	3	1	**145**	**19**
May	**156**					12	62	35	18	5	6	6	0	**144**	**12**
Jun	**162**						3	56	45	9	17	8	7	**145**	**17**
Jul	**145**							5	36	38	28	20	4	**131**	**14**
Aug	**98**								2	16	42	14	13	**87**	**11**
Sept	**110**									2	51	27	9	**89**	**21**
Oct	**157**										11	53	37	**101**	**56**
Nov	**131**											5	39	**44**	**87**
Dec	**137**												0	**0**	**137**
TOTAL	**1698**	**14**	**49**	**95**	**108**	**136**	**129**	**143**	**129**	**76**	**171**	**138**	**111**	**1299**	**399**

5.4 MUAR HIGH COURT - CRIMINAL

As at December 2012, there were 111 cases still pending, with only 19 pre-2012 cases as in the ageing list below.

AGEING LIST FOR MUAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B			302		KIDNAP		F/ARMS		OTHERS		
	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	
																39B	Ors										
2011	2	1					3	1								10			1						1		**19**
2012	21	12					19	4								11	15		5		2				3		**92**
TOTAL	**23**	**13**					**22**	**5**								**21**	**15**		**6**		**2**				**4**		**111**

6. NEGERI SEMBILAN

The High Court of Malaya sitting at Seremban comprises 2 judges and 4 registrars.

6.1 SEREMBAN HIGH COURT - CIVIL

The year 2012 started with 583 cases pending in January. The number was reduced to 149 cases at the end of the year. The target to dispose of pre 2007 cases was met, except for 5 cases which were reinstated upon the setting aside of default judgment and by order of remittance made by the Court of Appeal.

Disposal of NCvC cases in 2012

The New Civil Court (NCvC) system was implemented in the Seremban High Court in September 2011. In Seremban, the two High Court judges take turns in hearing NCvC cases. One judge will be assigned to handle NCvC cases registered within 4 months and the other judge will handle cases registered in the following 4 months. Apart from hearing NCvC cases, the judges also manage OCvC cases. One of the 2 judges also hears criminal cases.

For the period of January to December 2012, the total number of cases registered was 2834 cases and the Seremban High Court disposed of 2029 cases leaving 805 cases pending.

AGEING LIST FOR SEREMBAN HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

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																	AF	JIC					
2000												1															**1**
2001																											
2002												1															**1**
2003												1															**1**
2004																											
2005												1															**1**
2006																											
2007												3															**3**
2008												9															**9**
2009												23													1		**24**
2010											2	44			1	1									1		**49**
2011				5	2		2					47		1		1									2		**60**
TOTAL				**5**	**2**		**2**				**2**	**130**		**1**	**1**	**2**									**4**		**149**

STAIR CHART FOR SEREMBAN HIGH COURT (NCvC)
JANUARY – DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	
Jan	219	17	37	26	33	38	15	14	5	13	2	1	5	**206**	**13**
Feb	209		3	35	50	16	35	21	5	14	5	4	5	**193**	**16**
Mac	295			10	47	29	90	42	18	15	12	7	3	**273**	**22**
April	260				31	20	45	70	19	32	14	10	5	**246**	**14**
May	247					6	36	36	54	41	28	9	8	**218**	**29**
June	243						37	29	21	81	30	15	10	**223**	**20**
July	305							66	32	77	35	39	12	**261**	**44**
Aug	166								10	29	42	43	6	**130**	**36**
Sept	216									11	35	76	13	**135**	**81**
Oct	241										24	35	32	**91**	**150**
Nov	221											23	22	**45**	**176**
Dec	212												8	**8**	**204**
TOTAL	**2834**	**17**	**40**	**71**	**161**	**109**	**258**	**278**	**164**	**313**	**227**	**262**	**129**	**2029**	**805**

6.2 SEREMBAN HIGH COURT - CRIMINAL

There were 80 criminal cases pending as at January 2012. Out of 269 cases registered throughout the year, 228 cases were disposed of. There are only 14 pre-2012 cases remaining as shown in the ageing list below.

AGEING LIST FOR SEREMBAN HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2011	4						2			3						4										1		**14**
2012	17	5		7	2		40	7		7			6	1		5		5		2						2		**106**
TOTAL	**21**	**5**		**7**	**2**		**42**	**7**		**10**			**6**	**1**		**9**		**5**		**2**						**3**		**120**

7. MALACCA

7.1 MALACCA HIGH COURT – CIVIL

There are 2 High Court Judges sitting at Malacca, 1 being resident and the other sitting two weeks in a month. There are also 4 registrars.

The year 2012 started with 353 OCvC cases, and despite changes and transfers of judges and registrars, the number of cases was reduced to 114 cases by the end of the year. Only 4 pre 2007 cases remained on the register, as a result of cases being reinstated, being set aside, or remitted by the Federal Court. In addition, 1 case was stayed pending disposal of appeal at the Federal Court.

Disposal of NCvC Cases in 2012

The New Civil Court system was introduced in Malacca High Court in September 2011. Apart from hearing NCvC cases, the judge also hears OCvC cases.

For the period from January to December 2012, the total number of cases registered was 1776 cases and the Malacca High Court disposed of 1658 of these cases, leaving 506 cases pending.

AGEING LIST FOR MALACCA HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

YEAR	CODES																					TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
1996												1										**1**
2003												1										**1**
2005												1										**1**
2006												1										**1**
2007												2										**2**
2008											2	2										**4**
2009												16										**16**
2010				1				1			2	23		1	1					2			**31**
2011				1	1		16				1	34		1	1			1			1		**57**
TOTAL				**2**	**1**		**16**	**1**			**5**	**80**		**2**	**2**			**1**		**2**	**1**		**114**

STAIR CHART FOR MALACCA HIGH COURT (NCvC)
JANUARY – DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL												BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Jan	**104**	12	31	18	20	10	4	6	3	0	0	1	2	**10**
Feb	**152**		6	41	24	39	10	14	2	0	0	6	0	**15**
Mac	**173**			13	36	45	18	19	4	2	0	20	3	**15**
Apr	**164**				9	34	15	48	31	8	1	4	2	**12**
May	**159**					9	37	36	23	23	4	0	4	**23**
Jun	**126**						3	49	28	15	8	2	7	**14**
Jul	**153**							12	18	29	45	0	6	**43**
Aug	**160**								3	31	42	9	6	**69**
Sep	**159**									6	37	46	11	**59**
Oct	**148**										2	74	22	**50**
Nov	**120**											15	48	**57**
Dec	**158**												19	**139**
TOTAL	**1776**	**12**	**37**	**32**	**89**	**137**	**87**	**184**	**112**	**114**	**139**	**177**	**130**	**506**

7.2 MALACCA HIGH COURT - CRIMINAL

There were 148 criminal cases pending as at January 2012. As at December 2012, there are 106 cases pending, with only 23 pre-2012 cases as shown in the ageing list below.

AGEING LIST FOR MALACCA HIGH COURT (CRIMINAL CASES)
AS AT 31 DECEMBER 2012

YEAR	CODES																									TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		ORS		
	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	
2010							2													2						**4**
2011	8	2			1		1									4		1		1	1					**19**
2012	24	12		1			25	10		2			2			4		3								**83**
TOTAL	**32**	**14**		**1**	**1**		**28**	**10**		**2**			**2**			**8**		**4**		**3**	**1**					**106**

8. KELANTAN

The High Court of Malaya sitting at Kota Bharu comprises 2 High Court Judges.

8.1 KOTA BHARU HIGH COURT –CIVIL

Kelantan High Court has managed to dispose of all pre 2007 cases. As at 31 December 2012, the total number of civil cases pending was 694.

Disposal of NCvC Cases for 2012

For the period from January to December 2012, the total number of cases registered was 1015 cases and the Kelantan High Court disposed of 648 cases, leaving 367 cases pending.

**AGEING LIST FOR KOTA BHARU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012**

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																	AF	JIC					
2007							1					1															**2**
2008														1													**1**
2009		1		4			2				1	4					1										**13**
2010		1		5			35				3	26			2		1								1		**74**
2011				3			135				3	37	2	11	2	8									2		**203**
2012	1	1	5	37			32	2		10	6	77	19	13	121	12	3			7		7	29	2	17		**401**
TOTAL	**1**	**3**	**5**	**49**			**205**	**2**		**10**	**13**	**145**	**21**	**25**	**125**	**20**	**5**			**7**		**7**	**29**	**2**	**20**		**694**

**STAIR CHART FOR KOTA BHARU HIGH COURT (NCvC)
JANUARY-DECEMBER 2012**

MONTHS	REGISTRATION	DISPOSAL													BALANCE
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	
JAN	**85**	8	21	9	7	6	1	3		9	13	2	2	81	**4**
FEB	**79**		1	23	7	5	3	2	2	7	6	4	3	63	**17**
MAR	**93**				34	18	4	6	5	6	2	4	5	84	**9**
APR	**95**				2	25	12	4	9	7	4	4	3	70	**25**
MAY	**104**					1	27	19	18	8	6	8	7	94	**10**
JUN	**73**						2	17	11	7	9	1	6	53	**20**
JUL	**122**							1	15	34	19	10	5	84	**35**
AUG	**49**									7	12	3	14	36	**13**
SEP	**74**									1	13	5	8	27	**45**
OCT	**99**										2	11	27	40	**60**
NOV	**61**												12	12	**49**
DEC	**81**												1	1	**80**
TOTAL	**1015**	**8**	**22**	**32**	**50**	**55**	**49**	**52**	**60**	**86**	**86**	**52**	**93**	**645**	**370**

8.2 KOTA BHARU HIGH COURT - CRIMINAL

Kelantan High Court has managed to maintain a consistent performance in its disposal of criminal cases. For the year 2012, a total of 231 criminal cases including appeals and trials were registered. 239 criminal cases were disposed of, leaving a balance of 164 cases pending.

The ageing list below shows that the Kelantan High Court has managed to clear all pre 2008 registered cases.

AGEING LIST FOR KOTA BHARU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																								TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		OTHERS		
	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	
2009							5																			**5**
2010	3			1			7			1																**12**
2011	12	6		2			8	2		5	1					1										**37**
2012	33	29		3	1		22	8		2	2		3		3	3								1		**110**
TOTAL	**48**	**35**		**6**	**1**		**42**	**10**		**8**	**3**		**3**		**3**	**4**								**1**		**164**

9. TERENGGANU

The High Court of Malaya sitting at Kuala Terengganu comprises of a High Court Judge. The Judge handles both civil and criminal cases including trials and appeals.

9.1 KUALA TERENGGANU HIGH COURT - CIVIL

For the year 2012, the Terengganu High Court recorded a total registration of 833 civil cases. By the end of 2012, it disposed of 949 cases leaving a balance of 294 cases.

From the statistics below, there is 1 case registered in 2002. This case was remitted by the Court of Appeal and it is expected to be disposed of by this year. Apart from that, the High Court has 7 pre 2011 cases and it is expected that these cases will be disposed of by 2013.

AGEING LIST FOR KUALA TERENGGANU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES																						TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
2002												1											**1**
2003																							
2004																							
2005																							
2006																							
2007																							
2008											1	2											**3**
2009																							
2010		2										1											**3**
2011			1	15	1		2				5	12											**36**
2012		2		10	5		90	1		1	5	39	17		42	6		1		26	6		**251**
TOTAL	**0**	**4**	**1**	**25**	**6**	**0**	**92**	**1**	**0**	**1**	**11**	**55**	**17**	**0**	**42**	**6**	**0**	**1**	**0**	**26**	**6**	**0**	**294**

Disposal of NCvC Cases in 2012

In 2012, the total number of cases registered was 825, and the High Court has managed to dispose of 574 cases leaving a balance of 251 cases.

STAIR CHART FOR KUALA TERENGGANU HIGH COURT (NCvC)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	
Jan	**50**	3	9	8	6	5	6		3	4			1	45	**5**
Feb	**61**		2	6	8	13	7	8	2	2	3	5	1	57	**4**
Mac	**90**			5	11	38	7	3	5	0	6	2	0	77	**13**
Apr	**122**				11	49	8	12	1	24	2	1	2	110	**12**
May	**107**					23	13	8	17	16	8	2	4	91	**16**
Jun	**45**						1	8	6	6	5	5	6	37	**8**
Jul	**65**							3	5	11	20	6	4	49	**16**
Aug	**77**								2	10	4	10	15	41	**36**
Sept	**44**									2	6	6	5	19	**25**
Oct	**41**										3	10	14	27	**14**
Nov	**73**											10	8	18	**55**
Dec	**50**												3	3	**47**
TOTAL	**825**	**3**	**11**	**19**	**36**	**128**	**42**	**42**	**41**	**75**	**57**	**57**	**63**	**574**	**251**

9.2 KUALA TERENGGANU HIGH COURT - CRIMINAL

The Kuala Terengganu High Court maintained its consistent performance in the disposal of its criminal cases. For the year 2012, a total of 122 criminal cases including appeals and trials were registered and 184 criminal cases were disposed of, leaving a balance of 120 cases.

From the ageing list below, it can be seen that the court has only 2010 to 2012 criminal cases pending, with the majority being cases registered in 2012.

AGEING LIST FOR KUALA TERENGGANU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																									TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		OTHERS		
	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	
2010	1						1	1																		**3**
2011	6	1					9			2						5						2				**25**
2012	31	40		2	1		10	4			1							1				2				**92**
TOTAL	**38**	**41**		**2**	**1**		**20**	**5**		**2**	**1**					**5**		**1**				**4**				**120**

10. PAHANG

The High Court in the state Pahang comprises of 2 High Courts which sit at Kuantan and Temerloh. The High Court sitting at Kuantan comprises a High Court judge, whilst in Temerloh, a visiting High Court Judge attends on a monthly basis. The High Court Judge, who is currently sitting in Shah Alam Criminal High Court, attends to Temerloh High Court at least 1 week in a month. This arrangement was made due to the low registration of both civil and criminal cases in Temerloh High Court.

10.1 KUANTAN HIGH COURT - CIVIL

In September 2011, the Kuantan High Court implemented the NCvC Court model.

For the year 2012, the Kuantan High Court was left with 243 pre 2012 registered civil cases. By the end of the year, it disposed of 207 pre-2012 registered civil cases leaving 36 cases. It has cleared all pre 2008 cases as is evident from the ageing list below. Its rate of disposal for pre-2012 cases is 85%.

Disposal of NCvC Cases in 2012

For the period from January to December 2012, the total number of cases registered was 999, and the High Court of Kuantan has managed to dispose of 671 of these cases, leaving a balance of 328 cases. This amounts to a clearance rate of 86%.

AGEING LIST FOR KUANTAN HIGH COURT (OCvC)
AS AT 31 DECEMBER 2012

YEAR	CODES																					TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
2008											1	1											**2**
2009												5					1						**6**
2010											1	14					1						**16**
2011												11			1								**12**
TOTAL											**2**	**31**			**1**		**2**						**36**

STAIR CHART FOR KUANTAN HIGH COURT (NCvC)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL												TOTAL	BALANCE
		Jan	Feb	Mac	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Jan	**56**	2	14	20	6	5	4	2		2	1			56	0
Feb	**87**		13	15	23	12	4	1	2	5	1	2	5	83	4
Mac	**104**			11	26	16	24	3	10	2	2	3	1	98	6
Apr	**91**				8	15	15	23	7	4	3	4	1	80	11
May	**102**					7	22	16	12	8	4	8	2	79	23
June	**93**						4	12	7	28	13	6	3	73	20
Jul	**109**								19	12	15	18	5	69	40
Aug	**51**								3	7	5	16	2	33	18
Sept	**77**									5	18	11	14	48	29
Oct	**83**										3	20	11	34	49
Nov	**92**											4	11	15	77
Dec	**54**												3	3	51
TOTAL	**999**	**2**	**27**	**46**	**63**	**55**	**73**	**57**	**60**	**73**	**65**	**92**	**58**	**671**	**328**

10.2 KUANTAN HIGH COURT - CRIMINAL

The Kuantan High Court has managed to maintain a consistent performance in relation to the disposal of criminal cases. For the year 2012, a total of 111 criminal cases including appeals and trials have were registered and 107 criminal cases were disposed of, leaving a balance of 63 cases.

From the ageing list below, it is evident that the pending criminal cases in the Kuantan High Court are only for the years 2011 and 2012. There are no pre-2011 cases.

AGEING LIST FOR KUANTAN HIGH COURT (CRIMINAL) AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		ORS		
	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	
2011																1		3										**4**
2012	12	21		2	1		12	1		1	1					6		2										**59**
TOTAL	**12**	**21**		**2**	**1**		**12**	**1**		**1**	**1**					**7**		**5**										**63**

10.4 TEMERLOH HIGH COURT - CIVIL

Disposal of OCvC cases in 2012

For the year 2012, the Temerloh High Court was left with 174 pre 2012 civil cases. By the end of the year, it disposed of 139 pre 2012 registered cases, leaving only 35 cases. This is a disposal rate of 84%.

Disposal of Ncvc Cases In 2012

In September 2011, the NCvC model was implemented.

For the period from January to December 2012, the total number of cases registered was 588,and the Temerloh High Court disposed of 392 cases, leaving a balance of 196 cases.

AGEING LIST FOR TEMERLOH HIGH COURT (OCvC) AS AT 31 DECEMBER 2012

YEAR	CODES																						TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
2008												1											**1**
2009																							
2010												2			2								**4**
2011							2	1				22			3						2		**30**
2012	1	3	5	25			1	1	1			26			81					3	51		**198**
TOTAL	**1**	**3**	**5**	**25**			**3**	**2**	**1**			**51**			**86**					**3**	**53**		**233**

**STAIR CHART FOR TEMERLOH HIGH COURT (NCvC)
JANUARY - DECEMBER 2012**

MONTH	REGISTRATION	DISPOSAL													BALANCE
		Jan	Feb	Mac	Apr	Mei	Jun	Jul	Aug	Sep	Okt	Nov	Dec	TOTAL	
Jan	**35**		2	2	3	1	4	3	2	2	3			**22**	**13**
Feb	**67**			6	11	2	2	4	2	4	4	1	3	**39**	**28**
Mac	**49**			2	2	5	2	7	2	6	5	2	7	**40**	**9**
Apr	**39**				1	3	2	2	0	5	6	4	2	**25**	**14**
Mei	**54**						6	0	4	3	5	7	4	**29**	**25**
Jun	**47**							7	10	10	8	4	3	**42**	**5**
Jul	**54**							2	13	12	7	7	6	**47**	**7**
Aug	**36**									4	6	4	6	**20**	**16**
Sept	**52**									9	10	12	17	**48**	**4**
Okt	**58**										20	13	15	**48**	**10**
Nov	**49**											22	10	**32**	**17**
Dec	**48**													**0**	**48**
TOTAL	**588**		**2**	**10**	**17**	**11**	**16**	**25**	**33**	**55**	**74**	**76**	**73**	**392**	**196**

10.5 TEMERLOH HIGH COURT - CRIMINAL

The Temerloh High Court maintained its consistent performance in its disposal of criminal cases. For the year 2012, a total of 112 criminal cases including appeals and trials were registered and 107 criminal cases were disposed of, leaving a balance of 69 cases.

From the ageing list below it is evident that the Temerloh High Court has only criminal cases registered in 2011 and 2012 pending. There are no pre-2011 cases.

**AGEING LIST FOR TEMERLOH HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012**

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		ORS		
	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	
2011	1							1								3		3								8
2012	12	8		1			8	10		1						17		4								61
TOTAL	**13**	**8**		**1**			**8**	**11**		**1**						**20**		**7**								**69**

11. KEDAH

The High Court of Malaya sitting in Alor Setar comprises 3 judges who hear criminal cases and civil appeals, and 1 judge who hears all the civil cases.

As at June 2012, the number of High Court Judges was reduced to 3. The High Court is supported by 2 Deputy Registrars and 4 senior assistant registrars.

11.1 ALOR SETAR HIGH COURT – CIVIL & CRIMINAL

For the year 2012, a total of 3275 civil and criminal cases were registered in the year 2012. The total number of pending cases in Alor Setar High Court as at 31 December 2012 is 902 civil cases, and 143 criminal cases. There are only 10 pre-2012 criminal cases pending.

AGEING LIST FOR ALOR SETAR HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES																					TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	
	A	B	A	B																		
2003												1										**1**
2008												2										**2**
2009							3				1	7										**11**
2010				4			3				4	14			1							**26**
2011				24			3				5	17			2						3	**54**
2012	3	27	8	55			25	6	3	5	25	116	26	8	337	64	4		1	16	79	**808**
TOTAL	**3**	**27**	**8**	**83**			**34**	**6**	**3**	**5**	**35**	**157**	**26**	**8**	**340**	**64**	**4**		**1**	**16**	**82**	**902**

AGEING LIST FOR ALOR SETAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		ORS		
	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	
2011	3			1			5									1											**10**
2012	27	4		3			27	2		3			1	1		48	1	13	1	1		1					**133**
TOTAL	**30**	**4**		**4**			**32**	**2**		**3**			**1**	**1**		**49**	**1**	**13**	**1**	**1**		**1**					**143**

12. PERLIS

The High Court sitting in Kangar comprises one judge. The judge is assisted by a Senior Assistant Registrar-cum-Magistrate.

12.1 KANGAR HIGH COURT- CIVIL & CRIMINAL

The total number of civil cases pending as at 1 January 2012 was 98 cases. Most of these cases have been disposed of throughout the year 2012 leaving a balance of 25 pre-2012 cases at the end of year.

As at 1 January 2012 there were 59 criminal cases pending. At the end of 2012, these cases were disposed of, leaving a balance of only 1 pre-2012 case.

AGEING LIST FOR KANGAR HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

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																	AF	JIC					
2009											1																1
2010																											
2011				1			2					4									17						24
2012			1	3			3	1			4	15	1		11	1				1	163		1	1	4		210
TOTAL			**1**	**4**			**5**	**1**			**5**	**19**	**1**		**11**	**1**				**1**	**180**		**1**	**1**	**4**		**235**

AGEING LIST FOR KANGAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2012

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		ORS		
	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	
2010																											
2011										1																	**1**
2012	2	2		1			4						4			1											**14**
TOTAL	**2**	**2**		**1**			**4**			**1**			**4**			**1**											**15**

13. SABAH

The High Court in the State of Sabah comprises of 4 High Courts which cover 4 areas namely Kota Kinabalu, Tawau, Sandakan and Labuan. Labuan is a circuit court. In 2012 the Sandakan High Court was also made a circuit court.

Initially the Sabah High Court comprised 4 High Court Judges but the number has now been reduced to 3. The introduction of timelines by the Chief Judge of Sabah and Sarawak has ensured the disposal of cases within the time period stipulated, and a reduction in the backlog of cases.

13.1 SABAH HIGH COURT- CIVIL

The total registration for all cases from January to December 2012 was 2112 cases. The number of cases carried forward from previous years was 737.

As at 31 December 2012, the High Court disposed of 2433 cases leaving a balance of 416 cases. As for the cases registered in 2012, 1830 cases have been disposed of, leaving a balance of only 282 cases.

AGEING LIST FOR SABAH HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES																					TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
2001												1										**1**
2002											1			1	1								**3**
2003												2											**2**
2004												2			1								**3**
2005												6											**6**
2006												8			2								**10**
2007												2											**2**
2008												6			2								**8**
2009												10											**10**
2010											5	14			3								**22**
2011											2	53	1		5		1	1		2	1	1	**67**
2012	1	2		7	87			2			7	106	4	1	28		4		1	10	18	4	**282**
TOTAL	**1**	**2**		**7**	**87**			**2**			**15**	**210**	**5**	**2**	**42**		**5**	**1**	**1**	**12**	**19**	**5**	**416**

STAIR CHART FOR SABAH HIGH COURT SABAH (CIVIL) JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	
JAN	**145**	51	17	8	11	6	3	4	21	16	2	3	1	143	**2**
FEB	**140**		34	25	18	12	19	8	4	2	5	7	4	138	**2**
MAR	**201**			15	46	22	39	8	34	22	3	4	4	197	**4**
APR	**254**				9	32	70	3	57	41	28	7	4	251	**3**
MAY	**140**					12	23	26	20	32	15	4	2	134	**6**
JUN	**180**						9	48	13	18	67	6	9	170	**10**
JUL	**158**							44	21	11	42	29	5	152	**6**
AUG	**171**								26	50	31	36	18	161	**10**
SEP	**90**									20	51	5	11	87	**3**
OCT	**365**										47	92	128	267	**98**
NOV	**173**											19	84	103	**70**
DEC	**95**												27	27	**68**
TOTAL	**2112**	**51**	**51**	**48**	**84**	**84**	**163**	**141**	**196**	**212**	**291**	**212**	**297**	**1830**	**282**

13.2 SABAH HIGH COURT – CRIMINAL

The total registration for Criminal cases from January to December 2012 was 423 cases. 282 cases were carried forward from previous years.

As at 31 December 2012, the court disposed of 651 cases, leaving a balance of 54 cases. As for the cases registered in 2012, 374 cases have been disposed of, leaving a balance of 49 cases.

AGEING LIST FOR SABAH HIGH COURT (CRIMINAL) AS AT 31 DECEMBER 2012

YEAR	CODES																								TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		OTHERS		
	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	
2010																		1								**1**
2011							1									1		2								**4**
2012	7	10	1				9	9			2				1	2		8								**49**
TOTAL	**7**	**10**	**1**				**10**	**9**			**2**				**1**	**3**		**11**								**54**

STAIR CHART FOR SABAH HIGH COURT (CRIMINAL)
JANUARY - DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													BALANCE
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	
JAN	**49**	1	1	15	1	4	1	5	1	8	4	4	3	48	**1**
FEB	**25**			2	8	1	3	1	1	1	1	2	3	23	**2**
MAR	**64**			2	4	3	15	1	17	6	7	2	5	62	**2**
APR	**70**					2	14	1	16	13	18	1	3	68	**2**
MAY	**19**					2		1	4	5	2	3	1	18	**1**
JUN	**35**						2	1	1	4	14	8	3	33	**2**
JUL	**36**							2	1	12	13	5	2	35	**1**
AUG	**28**								3	2	14	4	4	27	**1**
SEP	**6**										2	3	1	6	**0**
OCT	**45**										3	26	4	33	**12**
NOV	**38**											13	4	17	**21**
DEC	**8**												4	4	**4**
TOTAL	**423**	**1**	**1**	**19**	**13**	**12**	**35**	**12**	**44**	**51**	**78**	**71**	**37**	**374**	**49**

14. SARAWAK

The High Court in the state of Sarawak comprises 6 High Courts which cover 6 areas namely Kuching, Sri Aman, Sibu, Bintulu, Miri and Limbang. The High Court in Sri Aman and Limbang sits as a circuit court covered by Kuching and Miri respectively . In 2012 Bintulu High Court was also made a circuit court.

Initially the Sarawak High Court comprised of 6 High Court judges but the number has now been reduced to 5. The introduction of timelines by the Chief Judge of Sabah and Sarawak ensured the disposal of cases within the time period stipulated and a reduction in the backlog of cases.

14.1 SARAWAK HIGH COURT – CIVIL

The total registration for all cases from January to December 2012 was 2527 cases. 850 cases were carried forward from previous years.

As at 31 December 2012, the court disposed of 2455 cases, leaving a balance of 922 cases. As for cases registered in 2012, 1760 cases have been disposed of, leaving a balance of 767 cases.

AGEING LIST FOR SARAWAK HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES																						TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	33	34	
	A	B	A	B																			
2000												1											
2003												1											**1**
2004												1											**1**
2005												4											**4**
2007											1	4											**5**
2008											1	7											**8**
2009											5	7											**12**
2010							1				6	14	1		1	1							**24**
2011							6				11	62	8	1	2				1		8		**99**
2012	3	7	3	26	5	2	21				51	183	50	2	112	32	3	1	3	25	237	1	**767**
TOTAL	**3**	**7**	**3**	**26**	**5**	**2**	**28**				**75**	**284**	**59**	**3**	**115**	**33**	**3**	**1**	**4**	**25**	**245**	**1**	**922**

STAIR CHART FOR SARAWAK HIGH COURT (CIVIL)
JANUARY – DECEMBER 2012

MONTH	REGISTRATION	DISPOSAL													
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	BALANCE
JAN	168	16	44	23	21	16	6	15	6	2	4	1	2	156	**12**
FEB	218		23	73	24	23	8	12	5	7	8	3	4	190	**28**
MAR	277			38	78	34	27	28	14	10	10	4	7	250	**27**
APR	199				17	70	15	24	13	15	13	3	3	173	**26**
MAY	216					24	59	32	33	18	16	6	3	191	**25**
JUN	168						26	53	27	17	10	8	5	146	**22**
JUL	276							27	68	53	25	28	8	209	**67**
AUG	158								17	34	44	24	5	124	**34**
SEP	170									17	62	21	6	106	**64**
OCT	232										15	106	13	134	**98**
NOV	248											27	30	57	**191**
DEC	197												24	24	**173**
TOTAL	**2527**	**16**	**67**	**134**	**140**	**167**	**141**	**191**	**183**	**173**	**207**	**231**	**110**	**1760**	**767**

14.2 SARAWAK HIGH COURT- CRIMINAL

The total registration for criminal cases from January to December 2012 was 318. A total of 79 cases were carried forward from previous years.

As at 31 December 2012, the court managed to dispose of 263 cases, leaving a balance of 134 cases. As for cases registered in 2012, 197 cases were disposed of, leaving a balance of 123 cases.

AGEING LIST FOR SARAWAK HIGH COURT (CRIMINAL) AS AT 31 DECEMBER 2012

YEAR	CODES																								TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		OTHERS		
	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	
2010	1								1																	2
2011	4	2			1		1											1								9
2012	33	17	5	11			18	8		4			4	1		5		13						4		123
TOTAL	39	19	5	11	1		19	8		4			4	1		5		14						4		134

STAIR CHART FOR SARAWAK HIGH COURT (CRIMINAL) JANUARY - DECEMBER 2012

MONTHS	REGISTRATION	DISPOSAL													
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	BALANCE
JAN	13	0	1	2	2	4	0	0	1	1	0	0	0	11	2
FEB	26		2	10	4	2	2	2	1	1	0	1	1	26	0
MAR	26			3	7	2	4	4	3	0	0	1	0	24	2
APR	33				1	3	7	10	2	0	2	1	2	28	5
MAY	19					1	1	4	3	1	2	1	4	17	2
JUN	15						0	3	4	1	3	0	0	11	4
JUL	26							0	2	6	3	1	1	13	13
AUG	25								3	8	0	1	0	12	13
SEP	24									0	0	5	6	11	13
OCT	45										4	7	1	12	33
NOV	43											24	2	26	17
DEC	25												6	6	19
TOTAL	318	0	3	15	14	12	14	23	19	18	14	42	23	197	123

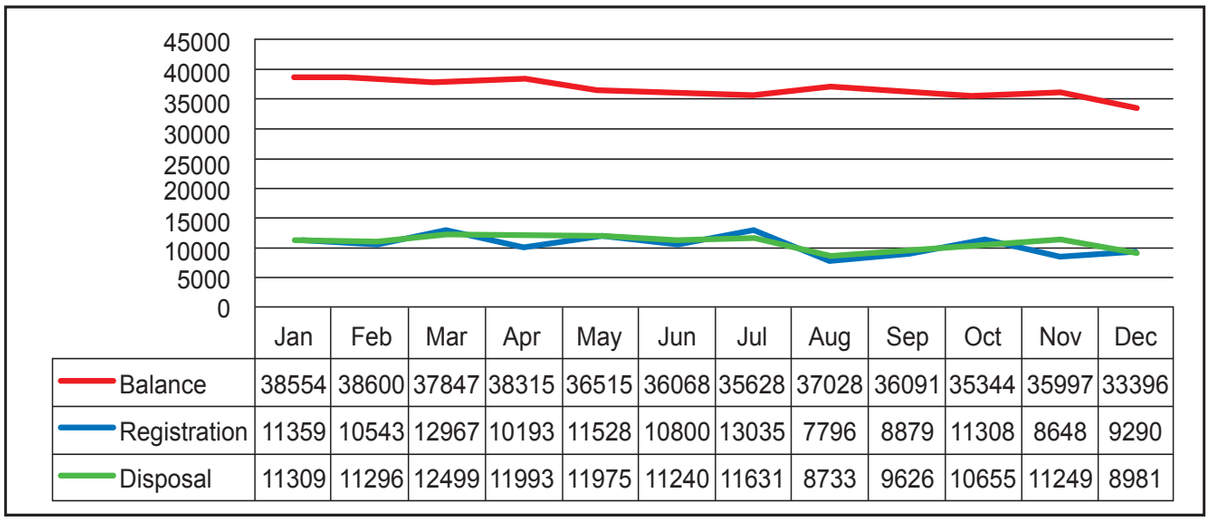
15. SESSIONS COURTS IN PENINSULAR MALAYSIA

15.1 SESSIONS COURTS - CIVIL

For the year 2012, the Sessions Courts in Peninsular Malaysia have worked continuously to maintain their performance in the disposal of cases. In 2012, a total of 126,346 cases were registered and a total of 131,187 cases were disposed of. The rate of disposal by the Sessions Courts exceed the rate of registration. This is a clear indication that the Sessions Courts are on the right track in ensuring a minimal backlog of cases.

As seen in the ageing list below, there are 31 pre-2010 cases pending. These are mainly cases that were reinstated by the Appellate Courts.

TRACKING CHART FOR THE SESSIONS COURTS IN PENINSULAR MALAYSIA (CIVIL) JANUARY-DECEMBER 2012



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	38554	38600	37847	38315	36515	36068	35628	37028	36091	35344	35997	33396
Registration	11359	10543	12967	10193	11528	10800	13035	7796	8879	11308	8648	9290
Disposal	11309	11296	12499	11993	11975	11240	11631	8733	9626	10655	11249	8981

AGEING LIST FOR THE SESSIONS COURTS IN PENINSULAR MALAYSIA (CIVIL) AS AT 31 DECEMBER 2012

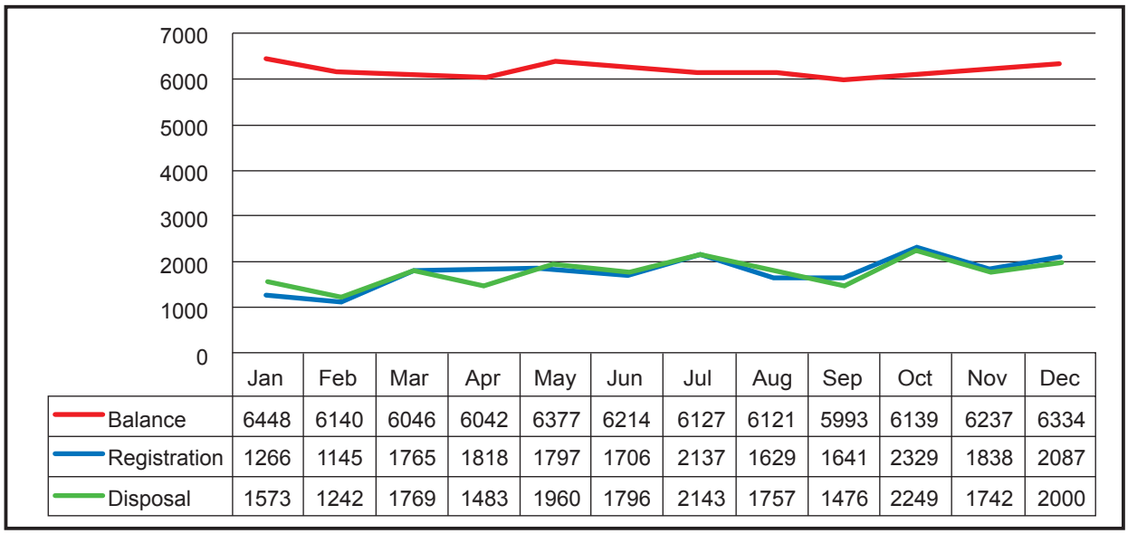
YEAR	CODES								TOTAL
	51	52	52A	53	54	56	57	58	
1996		1							**1**
1997									
1998									
1999		1							**1**
2000									
2001									
2002									
2003									
2004			1						**1**
2005		1							**1**
2006		3							**3**
2007									
2008		19							**19**
2009		5							**5**
2010	3	52	2	75					**132**
2011	34	278	11	2439	2	83		1	**2848**
2012	1007	7923	4818	16175	79	441		251	**30694**
TOTAL	**1044**	**8283**	**4832**	**18689**	**81**	**524**		**252**	**33705**

15.2 SESSIONS COURT - CRIMINAL

For criminal cases, the Sessions Courts in Peninsular Malaysia have continued their efforts to ensure a high disposal rate. In 2012, a total of 21,158 cases were registered and a total of 21,190 cases were disposed of. This achievement is highlighted in the tracking chart below.

From the statistics below, there are 140 pre-2010 criminal cases pending. These are mainly cases that were reinstated by the Appellate Courts.

TRACKING CHART FOR THE SESSIONS COURTS IN PENINSULAR MALAYSIA (CRIMINAL) JANUARY - DECEMBER 2012



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	6448	6140	6046	6042	6377	6214	6127	6121	5993	6139	6237	6334
Registration	1266	1145	1765	1818	1797	1706	2137	1629	1641	2329	1838	2087
Disposal	1573	1242	1769	1483	1960	1796	2143	1757	1476	2249	1742	2000

AGEING LIST FOR THE SESSIONS COURTS IN PENINSULAR MALAYSIA (CRIMINAL) AS AT 31 DECEMBER 2012

YEAR	CODES															TOTAL
	61					62					63		64		65	
	VC	J	Corrupt	Comm	Ors	VC	J	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2004									2							**2**
2005										4						**4**
2006						1			1							**2**
2007						2			13	1						**16**
2008			2			1		1	79	10						**93**
2009	2		1		1	2		4	8	5						**23**
2010	8	1	1		1	46	9	1	500	112	9	1	6			**695**
2011	9		25	7	16	218	34	29	364	113	29	7	14	1		**866**
2012	53	1	73	19	14	1599	198	110	700	1374	228	189	156	1	5	**4720**
TOTAL	**72**	**2**	**102**	**26**	**32**	**1869**	**241**	**145**	**1667**	**1619**	**266**	**197**	**176**	**2**	**5**	**6421**

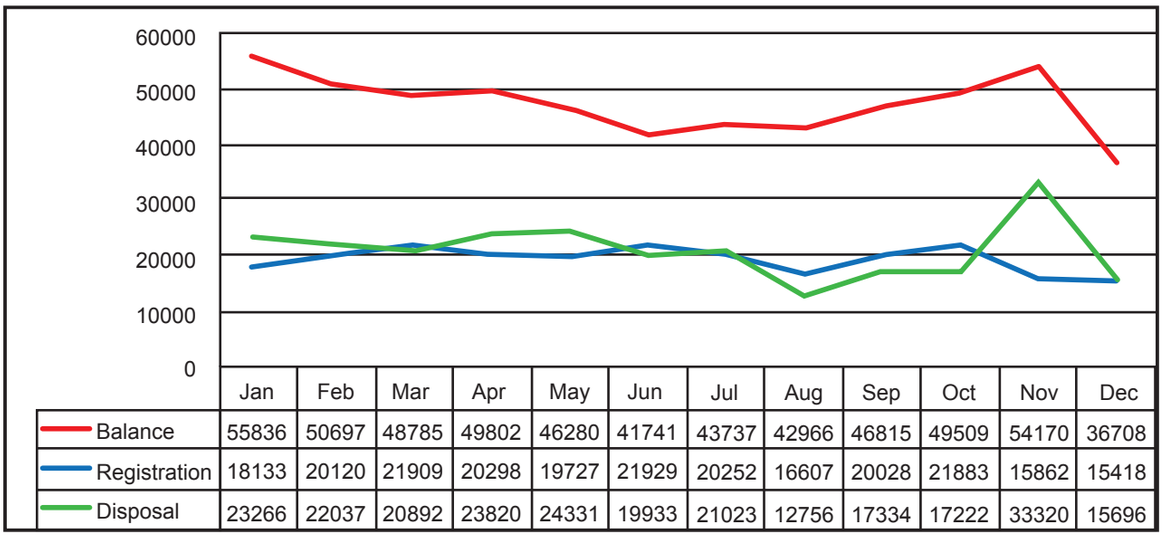
16. MAGISTRATES' COURTS IN PENINSULAR MALAYSIA

16.1 MAGISTRATES' COURTS - CIVIL

The Magistrates' Courts have also managed to maintain a consistent performance in the disposal of their civil cases. For the year 2012, a total of 232,166 cases were registered and a total of 251,630 cases were disposed of. The rate of disposal was higher than the rate of registration. This is highlighted in the tracking chart below.

As for the ageing list, the Magistrates' Courts have managed to minimise the backlog of civil cases. As at the end of 2012, there are only 8 pre-2011 cases pending.

**TRACKING CHART FOR THE MAGISTRATES' COURTS IN PENINSULAR MALAYSIA (CIVIL)
JANUARY - DECEMBER 2012**



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	55836	50697	48785	49802	46280	41741	43737	42966	46815	49509	54170	36708
Registration	18133	20120	21909	20298	19727	21929	20252	16607	20028	21883	15862	15418
Disposal	23266	22037	20892	23820	24331	19933	21023	12756	17334	17222	33320	15696

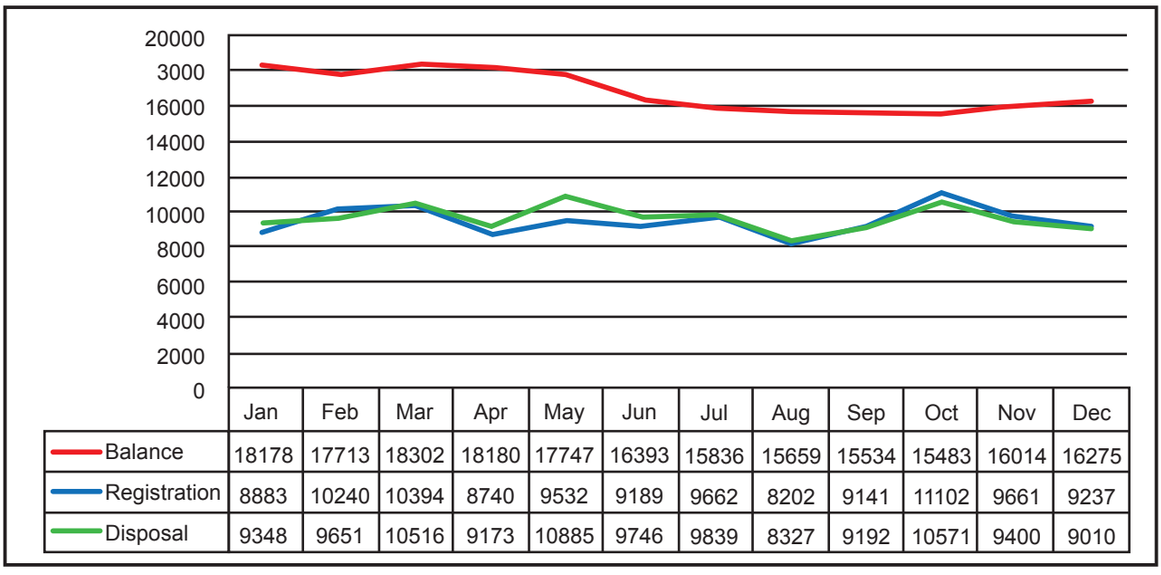
**AGEING LIST FOR THE MAGISTRATES' COURTS IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2012**

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2007										
2008										
2009		2								2
2010		4		1			1			6
2011	4	76	5	134			473	5		697
2012	4109	17281	5467	5013	456		3131	264	4	35725
TOTAL	**4113**	**17363**	**5472**	**5148**	**456**		**3605**	**269**	**4**	**36430**

16.2 MAGISTRATES' COURTS - CRIMINAL

The Magistrates' Courts have maintained a consistent performance in the disposal of criminal cases. For the year 2012, a total of 113,983 cases were registered and a total of 115,658 cases were disposed of. Again the rate of disposal exceeded the rate of registration.

**TRACKING CHART FOR THE MAGISTRATES' COURTS IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY - DECEMBER 2012**



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	18178	17713	18302	18180	17747	16393	15836	15659	15534	15483	16014	16275
Registration	8883	10240	10394	8740	9532	9189	9662	8202	9141	11102	9661	9237
Disposal	9348	9651	10516	9173	10885	9746	9839	8327	9192	10571	9400	9010

**AGEING LIST FOR THE MAGISTRATES' COURTS IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2012**

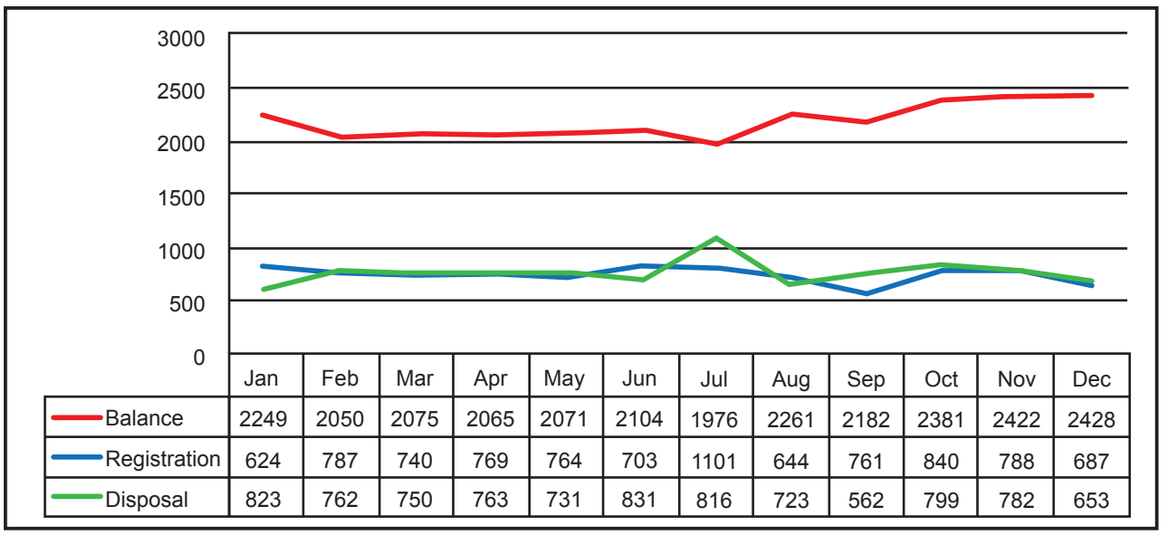
YEAR	CODES											TOTAL
	81	82			83			84			85	
		VC	J	Ors	VC	J	Ors	VC	J	Ors		
2007							1					**1**
2008							1					**1**
2009							2					**2**
2010				6	2	1	29			3		**41**
2011	3	1		58	42	4	523	2	1	33	13	**680**
2012	592	9	5	369	708	32	12581	50	12	885	534	**15777**
TOTAL	**595**	**10**	**5**	**433**	**752**	**37**	**13137**	**52**	**13**	**921**	**547**	**16502**

17. SESSIONS COURTS IN SABAH AND SARAWAK

17.1 SESSIONS COURTS - CIVIL

The Sessions Courts in Sabah and Sarawak have received a total registration of 9208 cases and managed to dispose of 8995 cases. As of the end of 2012, there are only 12 pre-2010 civil cases pending in the Sessions Courts.

TRACKING CHART FOR THE SESSIONS COURTS IN SABAH AND SARAWAK (CIVIL) JANUARY - DECEMBER 2012



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	2249	2050	2075	2065	2071	2104	1976	2261	2182	2381	2422	2428
Registration	624	787	740	769	764	703	1101	644	761	840	788	687
Disposal	823	762	750	763	731	831	816	723	562	799	782	653

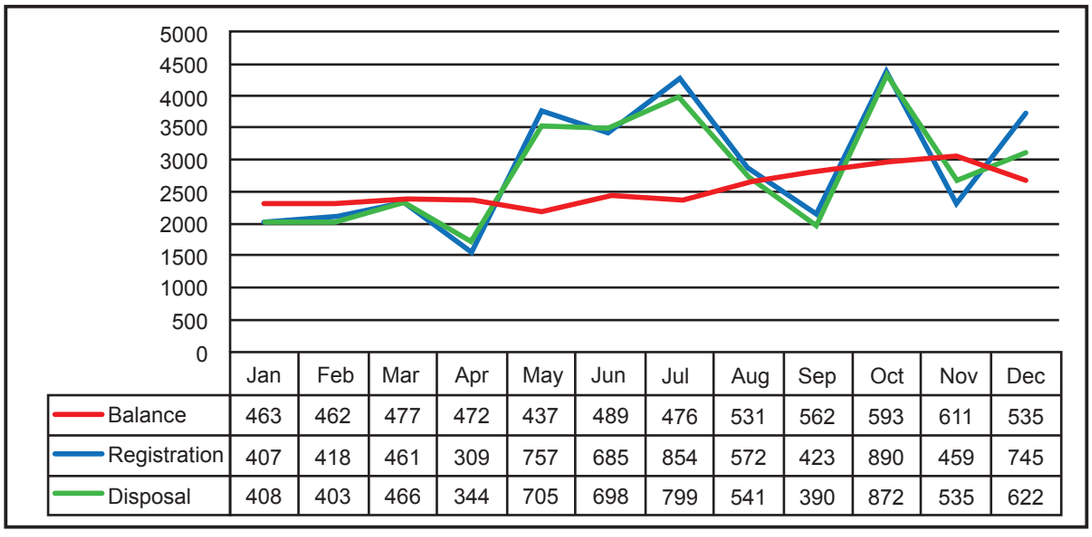
AGEING LIST FOR THE SESSIONS COURTS IN SABAH AND SARAWAK (CIVIL) AS AT 31 DECEMBER 2012

YEAR	CODES								TOTAL
	51	52	52A	53	54	56	57	58	
2004									
2005									
2006									
2007		2							**2**
2008		1		1					**2**
2009		3		5					**8**
2010		6		2					**8**
2011		25		17		3			**45**
2012	141	1120	556	517	13	50			**2397**
TOTAL	**141**	**1157**	**556**	**542**	**13**	**53**			**2462**

17.2 SESSIONS COURTS - CRIMINAL

The Sessions Courts in Sabah and Sarawak have received a total registration of 6980 cases and managed to dispose of 6783 cases. As of the end of 2012, there are only 6 pre-2011 civil cases pending in the Sessions Courts.

**TRACKING CHART FOR THE SESSIONS COURTS IN SABAH AND SARAWAK (CRIMINAL)
JANUARY - DECEMBER 2012**



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	463	462	477	472	437	489	476	531	562	593	611	535
Registration	407	418	461	309	757	685	854	572	423	890	459	745
Disposal	408	403	466	344	705	698	799	541	390	872	535	622

**AGEING LIST FOR THE SESSIONS COURTS IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2012**

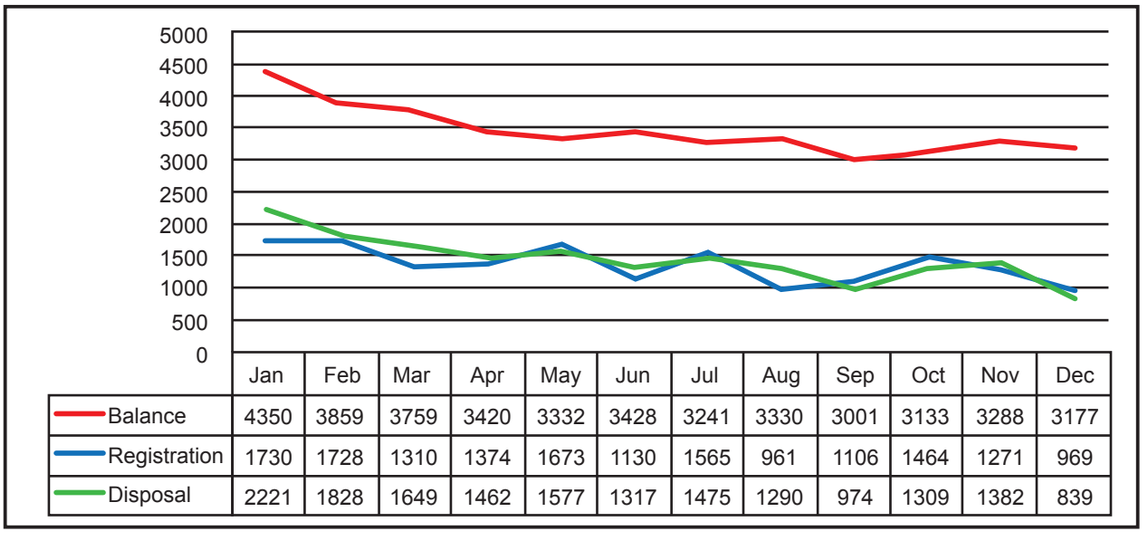
YEAR	CODES															TOTAL
	61					62					63		64		65	
	VC	J	Corrupt	Comm	Ors	VC	J	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2004																
2005																
2006																
2007																
2008										1						**1**
2009																
2010			1			1	1			2						**5**
2011	7		3			8	4	1	6	9	4		1			**43**
2012	1		30	11	4	82	13	6	11	119	301	22	9			**609**
TOTAL	**8**		**34**	**11**	**4**	**91**	**18**	**7**	**17**	**131**	**305**	**22**	**10**			**658**

18. MAGISTRATES' COURTS IN SABAH AND SARAWAK

18.1 MAGISTRATES' COURTS - CIVIL

The Magistrates' Courts in Sabah and Sarawak received a total registration of 16,281 cases and disposed of 17,323 cases. This is showcased in the tracking chart below. The Magistrates' Courts have disposed of all their pre- 2010 cases.

TRACKING CHART FOR THE MAGISTRATES' COURTS IN SABAH AND SARAWAK (CIVIL)
JANUARY - DECEMBER 2012



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	4350	3859	3759	3420	3332	3428	3241	3330	3001	3133	3288	3177
Registration	1730	1728	1310	1374	1673	1130	1565	961	1106	1464	1271	969
Disposal	2221	1828	1649	1462	1577	1317	1475	1290	974	1309	1382	839

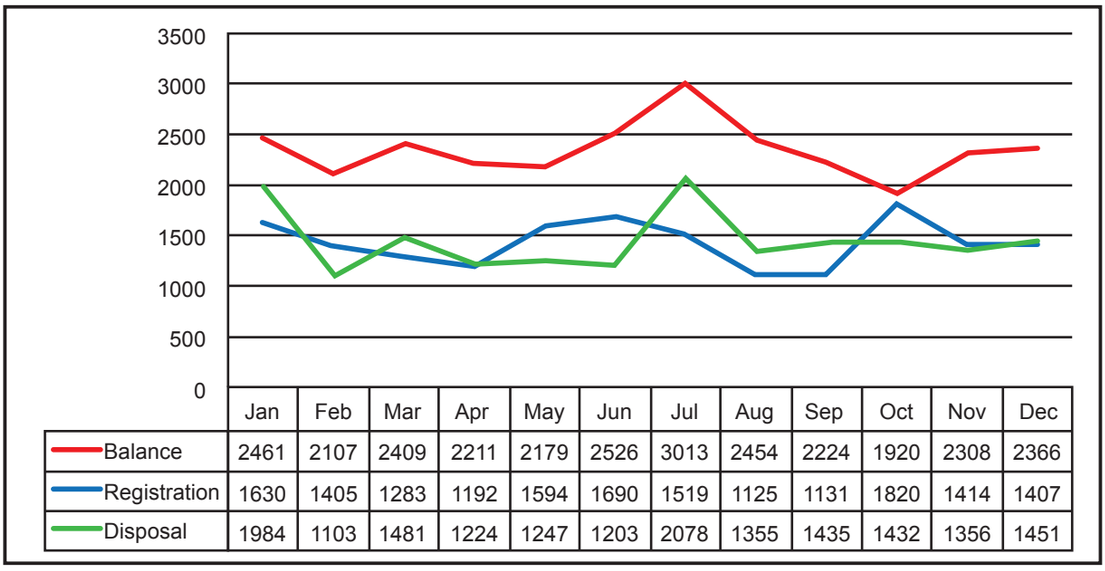
AGEING LIST FOR THE MAGISTRATES' COURTS IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2012

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2007										
2008										
2009										
2010		1								**1**
2011		10					16			**26**
2012	423	1904	327	3	126		445	45	7	**3280**
TOTAL	**423**	**1915**	**327**	**3**	**126**		**461**	**45**	**7**	**3307**

18.2 MAGISTRATES' COURTS - CRIMINAL

For criminal cases in the Magistrates' Courts in Sabah and Sarawak, there was a total registration of 17210 cases for the year 2012. The Magistrates' Courts have disposed of 17349 cases. The rate of disposal exceeds the rate of registration. The Magistrates' Courts have only 1 pre-2010 case pending.

**TRACKING CHART FOR THE MAGISTRATES COURTS IN SABAH AND SARAWAK (CRIMINAL)
JANUARY - DECEMBER 2012**



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Balance	2461	2107	2409	2211	2179	2526	3013	2454	2224	1920	2308	2366
Registration	1630	1405	1283	1192	1594	1690	1519	1125	1131	1820	1414	1407
Disposal	1984	1103	1481	1224	1247	1203	2078	1355	1435	1432	1356	1451

**AGEING LIST FOR THE MAGISTRATES' COURTS IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2012**

YEAR	CODES											TOTAL
	81	82			83			84			85	
		VC	J	Ors	VC	J	Ors	VC	J	Ors		
2007												
2008												
2009							1					**1**
2010												
2011	4	1		4		2	19			3		**33**
2012	34	3	2	33	30	119	1856	11	2	146	52	**2288**
TOTAL	**38**	**4**	**2**	**37**	**30**	**121**	**1876**	**11**	**2**	**149**	**52**	**2322**

Judges of the High Court of Malaya

1. Justice Thiripurasingam a/l Veerasingam
2. Justice Zakaria Sam
3. Justice Su Geok Yiam
4. Justice Zainal Adzam Abd. Ghani
5. Justice Lau Bee Lan
6. Justice Siti Mariah Haji Ahmad
7. Justice Wan Afrah Dato' Paduka Wan Ibrahim
8. Justice Mohamad Zabidin Mohd Diah
9. Justice Abdul Halim Aman
10. Justice Rohana Yusuf
11. Justice Nurchaya Haji Arshad
12. Justice Zulkifli Bakar
13. Justice Mohd Zaki Md. Yasin
14. Justice Mohd. Azman Husin
15. Justice Mohd. Sofian Tan Sri Abd. Razak
16. Justice Tengku Maimun Tuan Mat
17. Justice Abdul Alim Abdullah
18. Justice Ghazali Haji Cha
19. Justice John Louis O'Hara
20. Justice Rosnaini Saub
21. Justice Suraya Othman
22. Justice Abd. Rahim Uda
23. Justice Noor Azian Shaari
24. Justice Mohd. Zawawi Salleh
25. Justice Ahmad Zaidi Ibrahim
26. Justice Hamid Sultan Abu Backer
27. Justice Tuan Abang Iskandar Abang Hashim
28. Justice Nallini Pathmanathan
29. Justice Mariana Haji Yahya
30. Justice Badariah Sahamid
31. Justice Azman Abdullah
32. Justice Hinshawati Shariff
33. Justice Mohd Yazid Haji Mustafa
34. Justice Zainal Azman Ab. Aziz
35. Justice Ahmadi Haji Asnawi
36. Justice Zamani A.Rahim
37. Justice Ong Lam Kiat Vernon
38. Justice Abdul Rahman Sebli
39. Justice Zaleha Yusof
40. Justice Halijah Abbas
41. Justice Mary Lim Thiam Suan
42. Justice Kamardin Hashim
43. Justice Yaacob Haji Md Sam
44. Justice Zabariah Mohd. Yusof
45. Justice Umi Kalthum Abdul Majid
46. Justice Akhtar Tahir
47. Justice Hue Siew Kheng
48. Justice Noraini Abdul Rahman
49. Justice Nor Bee Ariffin
50. Justice Yeoh Wee Siam
51. Justice Amelia Tee Hong Geok Abdullah
52. Justice Has Zanah Mehat
53. Justice Prasad Sandosham Abraham
54. Justice Varghese George Varughese
55. Justice Hasnah Dato' Mohammed Hashim
56. Justice Harmindar Singh Dhaliwal
57. Justice Hadhariah Syed Ismail

Judges of the High Court of Sabah & Sarawak

1. Justice Sangau Gunting
2. Justice David Wong Dak Wah
3. Justice Yew Jen Kie
4. Justice Rhodzariah Bujang
5. Justice Supang Lian
6. Justice Stephen Chung Hian Guan

Judicial Commissioners of the High Court of Malaya

1. Judicial Commissioner Ridwan Ibrahim
2. Judicial Commissioner Hassan Ab. Rahman
3. Judicial Commissioner Tarmizi Abd. Rahman
4. Judicial Commissioner Ahmad Nasfy Haji Yasin
5. Judicial Commissioner Zakiah Kassim
6. Judicial Commissioner Nik Hasmat Nik Mohamad
7. Judicial Commissioner Choong Siew Khim
8. Judicial Commissioner Nurmala Salim
9. Judicial Commissioner Asmabi Mohamad
10. Judicial Commissioner Siti Khadijah S. Hassan Badjenid
11. Judicial Commissioner Mohd. Amin Firdaus Abdullah
12. Judicial Commissioner Teo Say Eng
13. Judicial Commissioner Lee Heng Cheong
14. Judicial Commissioner Ahmad Zaki Haji Husin
15. Judicial Commissioner Hanipah Farikullah
16. Judicial Commissioner Mohd Zaki Abdul Wahab
17. Judicial Commissioner See Mee Chun
18. Judicial Commissioner Gunalan Muniandy
19. Judicial Commissioner Rosilah Yop
20. Judicial Commissioner Abdul Rahman Abdol
21. Judicial Commissioner Samsudin Hassan
22. Judicial Commissioner Lee Swee Seng
23. Judicial Commissioner Vazeer Alam Mydin Meera
24. Judicial Commissioner Abdul Karim Abdul Jalil
25. Judicial Commissioner Hashim Hamzah
26. Judicial Commissioner Kamaludin Md. Said
27. Judicial Commissioner Azizah Nawawi
28. Judicial Commissioner Wong Chiang Kiat

Judicial Commissioners of the High Court of Sabah & Sarawak

1. Judicial Commissioner Ravinthran Paramaguru
2. Judicial Commissioner John Ko Wai Seng
3. Judicial Commissioner Chew Soo Ho
4. Judicial Commissioner Douglas Cristo Primus Sikayun

CHAPTER 5

JUDGES

JUDGES' APPOINTMENTS AND ELEVATIONS

The Year 2012 saw a number of appointments and elevations in the Malaysian Judiciary at all levels of the Superior Courts. These include appointment of five new Judicial Commissioners, elevation of five Judicial Commissioners to the High Court bench and elevation of four High Court Judges to the Court of Appeal and four Court of Appeal Judges to the Federal Court. The full list of Judges and Judicial Commissioners appointed and elevated are as follows:

FEDERAL COURT

1. Justice Zaleha Zahari
2. Justice Zainun Ali
3. Justice Sulong Matjeraie
4. Justice Jeffrey Tan Kok Wha

HIGH COURT

1. Justice Hasnah Dato' Mohammed Hashim
2. Justice Harmindar Singh Dhaliwal
3. Justice Hadhariah Syed Ismail
4. Justice Supang Lian
5. Justice Stephen Chung Hian Guan

COURT OF APPEAL

1. Justice Abdul Aziz Abdul Rahim
2. Justice Lim Yee Lan
3. Justice Mohamad Ariff Md Yusof
4. Justice Mah Weng Kwai

JUDICIAL COMMISSIONERS

1. Judicial Commissioner Abdul Karim Abdul Jalil
2. Judicial Commissioner Hashim Hamzah
3. Judicial Commissioner Kamaludin Md. Said
4. Judicial Commissioner Azizah Hj Nawawi
5. Judicial Commissioner Wong Chiang Kiat

Appointment of Federal Court Judges at Istana Negara
(L-R: Justice Jeffrey Tan Kok Wha, Justice Paduka Zaleha Zahari, Justice Zainun Ali, Justice Sulong Matjeraie)

Appointment of Federal Court Judges, Court of Appeal Judge and High Court Judges at Istana Negara (L-R: Justice Abdul Aziz Abd. Rahim, Justice Harmindar Singh Dhaliwal, Justice Sulong Matjeraie, Justice Jeffrey Tan Kok Wha, Justice Stephen Chung Hian Guan)

Appointment of Justice Abdul Aziz Abd. Rahim as a Court of Appeal Judge at Istana Negara

Appointment of Justice Lim Yee Lan as a Court of Appeal Judge at the Palace of Justice

Appointment of Justice Mohamad Ariff Md Yusof as a Court of Appeal Judge at the Palace of Justice

Appointment of Justice Mah Weng Kwai as a Court of Appeal Judge at the Palace of Justice

Judges, Judicial and Legal Officers, Members of the Bar and guests at the elevation ceremony, Palace of Justice

Appointment of Justice Hasnah Dato' Mohammed Hashim as a High Court Judge at the Palace of Justice

Appointment of Justice Hadhariah Syed Ismail as a High Court Judge at the Palace of Justice

Appointment of Justice Supang Lian as a High Court Judge at the Palace of Justice

Appointment of Datuk Wira Kamaludin Md. Said as a Judicial Commissioner at the Palace of Justice

Appointment of Datin Azizah Hj. Nawawi as a Judicial Commissioner at the Palace of Justice

CONFERMENT OF FEDERAL / STATE AWARDS TO JUDGES IN 2012

2012 witnessed another significant achievement for the Malaysian Judiciary when a number of His Majesty's judges were conferred Federal/State awards by their Royal Highnesses the Yang di-Pertuan Agong and State Rulers in recognition of their contribution to the nation and this will surely serve to further enhance the position of the Judiciary.

The judges who received Federal and State awards in 2012 are as follows:

i. ***Darjah Seri Setia Mahkota Malaysia awarded by the Yang di-Pertuan Agong***
The Right Honourable Tun Arifin Zakaria

ii. ***Darjah Kebesaran Sultan Ahmad Shah Pahang Yang Amat Di Mulia Sri Sultan Ahmad Shah Pahang awarded by the Sultan of Pahang***
The Right Honourable Tun Arifin Zakaria

iii. ***Darjah Seri Paduka Cura Si Manja Kini awarded by the Sultan of Perak***
The Right Honourable Tun Arifin Zakaria

iv. ***Darjah Seri Paduka Mahkota Selangor awarded by the Sultan of Selangor***
The Right Honourable Tun Arifin Zakaria

v. ***Darjah Utama Pangkuan Negeri awarded by the Governor of Penang***
The Right Honourable Tun Arifin Zakaria

vi. ***Darjah Panglima Mangku Negara awarded by the Yang di-Pertuan Agong***
The Right Honourable Tan Sri Dato' Seri Md. Raus Sharif

vii. ***Tokoh Maal Hijrah Award awarded by the Yang DiPertuan Besar Negeri Sembilan***
The Right Honourable Tan Sri Dato' Seri Md. Raus Sharif

viii. ***Darjah Seri Paduka Mahkota Perak awarded by the Sultan of Perak***
The Right Honourable Tan Sri Dato' Seri Zulkefli Ahmad Makinudin

ix. ***Darjah Panglima Setia Mahkota awarded by the Yang di-Pertuan Agong***
The Honourable Tan Sri Datuk Suriyadi Halim Omar

x. ***Darjah Setia Pangkuan Negeri awarded by the Governor of Penang***
The Honourable Dato' Anantham K.S. Kasinather

The Rt. Hon. Justice Arifin Zakaria receiving the nation's highest award. His Lordship was conferred the title "Tun" by His Royal Highness Yang Di-Pertuan Agong Almu'tasimu Billahi Muhibbudin Tuanku Alhaj Abdul Halim Mu'adzam Shah Ibni Almarhum Sultan Badlishah (the King of Malaysia).

xi. ***Darjah Seri Setia Diraja Kedah awarded by the Sultan of Kedah***
The Honourable Dato' Mohamad Ariff Md. Yusof

xii. ***Darjah Dato' Paduka Mahkota Selangor awarded by the Sultan of Selangor***
The Honourable Dato' Mah Weng Kwai

xiii. ***Darjah Gemilang Pangkuan Negeri awarded by the Governor of Penang***
The Honourable Dato' Seri Zakaria Sam

xiv. ***Darjah Sri Indera Mahkota Pahang awarded by the Sultan of Pahang***
The Honourable Dato' Mohd Sofian Tan Sri Abdul Razak

xv. ***Darjah Dato' Paduka Mahkota Kelantan awarded by the Sultan of Kelantan***
The Honourable Dato' Paduka Haji Azman Abdullah

xvi. ***Darjah Setia Pangkuan Negeri awarded by the Governor of Penang***
The Honourable Dato' Varghese George Varughese

xvii. ***Darjah Panglima Jasa Negara awarded by the Yang di-Pertuan Agong***
The Honourable Datuk Yew Jen Kie

The Malaysian Judiciary would like to thank their Royal Highnesses the Yang di-Pertuan Agong and the State Rulers for these awards.

FIVE MEMBER PANEL OF THE FEDERAL COURT BENCH

As the apex court, the Federal Court serves as an instrument of professional accountability i.e. peer reviews for the Judges in the courts below. As a court of final appeal, it provides important rules of precedent. It is here that the standards of judicial performance are maintained and where the law and rules of practice and procedure are clarified.

Matters in the Federal Court invariably involve complex legal issues which require assiduous judicial attention. Although in quantitative terms, the Judges in the Federal Court constitute a very thin upper crust of the Judiciary, their decisions nevertheless reflect the priorities and values that have underpinned the legal system. Thus to maintain the requisite standards and enhance the judicial benchmark in its judgments, as of March 2012, the Chief Justice the Rt. Hon. Justice Arifin Zakaria enlarged the composition of the Federal Court Bench, from a three member panel to a five member for all proceedings.

L-R: Justice Zaleha Zahari, Justice Ahmad Maarop, Justice Suriyadi Halim Omar (Chairman of the Panel), Justice Hasan Lah and Justice Zainun Ali

FEMALE JUDGES IN THE FEDERAL COURT

Since the establishment of the Courts of Judicature of Prince of Wales Island vide the Second Charter of Justice in 1826, the Judiciary has always been a male domain. However the Malaysian Judiciary opened its doors to the first lady Justice on 4 April 1983 with the elevation of Her Ladyship Siti Norma Yaakob to the High Court Bench. History was created when Her Ladyship presided on the highest Court in the land, the Federal Court Bench on 1 January 2001.

However it is lonely at the top. Her Ladyship remained the one and only female Judge in the Federal Court until August 2003, when Justice Rahmah Hussain joined her.

Although the female Judicial presence in the Federal Court was taken up by Justice Rahmah Hussain in August 2003 and subsequently Justice Heliliah Yusoff in October 2009, the Federal Court remained very much an all male preserve for the next few years.

However in April 2012, the Judiciary took the hitherto unprecedented step of appointing **two lady Justices** (the Hon. Justice Zaleha Zahari and the Hon. Justice Zainun Ali) simultaneously to the Federal Court Bench.

This is a great stride in the sphere of gender diversification in the Judiciary, as more competent female judges would eventually be elevated up the ranks. Their presence would serve to enrich the decision-making process and instil greater public confidence in the Judiciary. In the words of the former Chief Justice Tun Zaki Tun Azmi :-

"... it is desirable that a variety and disparate level of voices be heard in the halls of Justice, Judges are trained in articulating comprehensive notions of objectivity. Having Judges with different views (whether men or women) ensures that the Malaysian Judiciary is open and sensitive to other points of view."

DIVERSITY IN THE JUDICIARY – THE COURT OF APPEAL

The central values of our judicial system comprise the meting out of justice with fairness and equality. These values are reflected to a considerable degree in the composition of the judiciary itself. It has been recognised in Malaysia as elsewhere that a more diverse judiciary can bring different perspectives to bear on the development of the law and justice.

Why does diversity matter? Put simply, if an institution does not have a broad representative cross-section of society, it leaves room for the perception that there is discrimination in the process of adjudication. Judges adjudicate on issues in the context of the society to which they belong. In order for the public to have confidence in judges who determine the course of their day to day lives, it is important that they trust these judges to make decisions based on fairness. Levels of trust are likely to be greater if the judiciary reflects a cross-section of society.

The Judiciary in Malaysia has recognised this need from the days of Independence in 1957, such that its composition has always sought to reflect the needs of our multi-racial, complex and diverse society. As stated by the previous Chief Justice, Tun Zaki Tun Azmi in a speech delivered at the Commonwealth Magistrates & Judges Conference at Turks & Caicos Islands on 16 September 2009:-

"It is clear that the issue of diversity in many parts of the world including Malaysia continues to engage us particularly when demographic changes compel us to seriously consider options and initiatives to meet demands of justice and fairness. I would consider it desirable that a variety and disparate level of voices should be heard in the halls of justice. Judges are trained in articulating comprehensive notions of objectivity. Having judges with different views (whether men or women) ensures that the Malaysian Judiciary is open and sensitive to other points of view."

The Court of Appeal in Malaysia is a microcosm of the Judiciary as a whole and reflects, in its composition, the diversity that represents a cross-section of our society. Such diversity encompasses race, gender as well as merit in terms of both intellectual rigour and experience. The Court of Appeal comprises twenty four Judges of the Court of Appeal. They are responsible for the disposal of appeals originating from the High Courts sitting in twenty-four different locations throughout the country. The variety and scope of such appeals cover all aspects of the law thereby requiring these appellate judges to exercise a wide-ranging knowledge of the law with intellectual integrity.

There are 20 males and 4 female judges in the Court of Appeal, giving rise to a 16.6% composition of females, which is high in comparison to most judiciaries in the world today. The racial composition of the Judiciary also broadly reflects the cross-section of Malaysian society, as there are judges of Malay, Chinese, Indian, Eurasian and native descent. Their multidisciplinary beliefs and religious affiliations ensure that the Judiciary remains cognisant of its heritage.

In terms of experience, a considerable number of the appellate Judges of the Court of Appeal are career judges who trace their training, legal experience and expertise to the Judicial and Legal Services where they commenced their careers and rose through the ranks. In the course of doing so, they were exposed to different aspects of government as well as adjudication in the Court system. The diverse nature of their experience gained from their various postings through the hierarchy of the Court system, as well as government, is reflected in the strength of their decisions and judgments on wide-ranging areas. Judging is a complex activity and requires judges to comprehend the wide array of concerns and experiences of those appearing before them.

A significant number of the twenty-four Judges of the Court of Appeal also come from the Bar, a profession which cultivates qualified persons from a wide array of backgrounds. Their role in the appellate courts is of significance because these judges represent some of the brightest and best lawyers from a variety of backgrounds, who bring with them a wealth of knowledge, particularly in relation to commercial law. The inclusion of members of the Bar into the Judiciary has been an important and significant step in increasing both the diversity and merit of the Court of Appeal.

Another significant change that has been brought about by the range of diversity in the composition of the Court of Appeal, is the creation of specialist panel sittings. In the High Court, the Judiciary has, in the past few years undergone major changes whereby specialist courts such as the Intellectual Property Court, Admiralty Court, the New Commercial Courts and the new Civil Courts have been set up to encourage excellence in the quality of judgments as well as an expeditious disposal of cases. Appeals from such specialist courts necessarily require an equivalent if not greater level of expertise in these various fields of law. The broad range of merit and appeal available in the Court of Appeal has allowed the Chief Justice to further enhance the system of disposal of appeals in the Court of Appeal by the creation of specialist panel sittings. In other words, this allows for the pool of appellate judges to have specialist panel sittings such as commercial, admiralty, criminal and civil panel sittings. This greatly expedites the hearing and disposal of such appeals and significantly, ensures that the quality of judgments is improved.

It cannot be sufficiently emphasised that the Judiciary's understanding of the need for diversity has contributed to its overall effectiveness as an institution. Baroness Hale of the Supreme Court of the United Kingdom argued as follows in relation to the need for diversity:-

"...in disputed points you need a variety of perspectives and life experiences to get the best possible results You will not get the best possible results if everybody comes at the same problem from exactly the same point of view. You need a variety of dimensions of diversity. I am talking not only about gender and ethnicity but about professional background, areas of expertise and every dimension that adds to the richer collective mix and makes it easier to have genuine debates."

The Judiciary in Malaysia has long recognised and assimilated judges from various parts of society in terms of gender, race, educational background and expertise. Diversity will continue to remain a significant criterion in the selection and appointment of candidates to the Court of Appeal, and indeed the Judiciary as a whole.

The lobby of the Palace of Justice

THE ROLE OF MANAGING JUDGES

Prior to 2009, the role of managing and supervising the courts in West Malaysia (particularly the High Courts, Sessions Courts and Magistrates Courts) lay exclusively in the hands of the Chief Judge of Malaya. The job is singularly exacting in view of the hundreds of courts scattered all over Peninsular Malaysia. It was a herculean task for a single person to handle.

Thus to ease the governance of these courts, several initiatives such as case management and tracking systems were put in place. Under these initiatives, courts took control of the cases filed. Time lines are now imposed on all civil and criminal cases whereby those cases are to be disposed of within 9 – 12 months from the date of registration. In other words, the backlog of cases were swiftly dealt with.

To assist the Chief Judge in facilitating the implementation of these initiatives, Managing Judges were appointed by the Chief Judge to manage courts in various stations such as Kuala Lumpur, Shah Alam, Ipoh, Johor Bahru, Penang, Alor Setar, Seremban, Melaka and Muar. The Managing Judges comprised judges of the Federal Court and the Court of Appeal and their duties are solely administrative in nature. This is to preserve judicial independence and integrity.

The Managing Judge ensures that cases are properly and timeously managed and finally disposed of by judges in their respective courts. There is also a benchmark for measuring judicial performance which would have to be observed by all courts, so that access to justice is assured. Timelines have been implemented to measure the time taken for the disposal of cases from the date of filing in court to their completion. Managing Judges are to ensure that these time lines are adhered to.

To assist Managing Judges in their respective stations, the court registry in each station is organised and structured in such a way that all the registrars are placed under a single unit known as the Managing Judge Unit (or MJ Unit) and they are fully answerable to the Managing Judge in-charge. Pre-trial case management is done by the Registrars under close guidance and supervision of the respective Managing Judge. They are given specific time frames to manage the cases and to get them ready for trial. The judges' role under this new system is confined only to hearing and disposal of cases in open court as well as in chambers. Under this system, judges have more time to hear and disposing of cases in their respective courts.

The role of Managing Judges in this context is to continuously monitor, supervise and ensure that time is not wasted at this stage of the proceedings. In more difficult or complex cases where specified time frames cannot be adhered to, Managing Judges may need to manage the case themselves or to refer it to a specified judge appointed in the same station for that purpose. In short, cases must be ready for trial and trial dates must be given by the 6th month after filing. This is to ensure that trials can be completed and cases can be disposed of within the stipulated 9 – 12 months period after registration.

It is also the role of Managing Judges to ensure that once the cases are fixed for trial, they will not be postponed or adjourned unnecessarily. In this context, Registrars and Judges are advised to strictly adhere to the guidelines. Managing Judges are also tasked with ensuring that the monthly reports and statistics of cases in each respective court is accurately reported. This is to enable the Managing Judges to closely and continuously monitor the performance of each court under their supervision. The reports will show the individual performance of each judge in terms of the disposal of cases and the manner in which judicial time is utilised.

Lately, the judiciary has encouraged parties to opt for mediation of cases by way of a court-annexed mediation process without having to go for trial. This method of alternative dispute resolution is handled by the Registrars and Judges in the same station. The Managing Judges would then ensure that the mediation centers and relevant mechanisms are established in their respective stations. Special officers are appointed to handle the mediation process where they assist by identifying 'mediation-friendly' cases and encourage parties to go for mediation before the cases are set down for trial.

On average more than 97% of cases in the High Court throughout West Malaysia have been disposed of within the stipulated time frame of 9 – 12 months after registration. The problem of the backlog of cases which had been our bane for the last half century is now practically non-existent.

Since 2011, the Managing Judges' duties were expanded to also include the Sessions and Magistrates Courts in their respective stations. The rate of success in the management of cases in these lower courts are equally heartening.

The Managing Judges have worked tirelessly in meeting the Judiciary's aspirations in ensuring the timely disposal of cases and in meeting the need for easier access to justice. Their hard work is matched by the equally heavy workload they carry as judges sitting in their respective courts. The Judges and Registrars have been equally diligent. The continuation of the present trend of management bodes well for the future management of the courts.

Managing Judges in discussion
(L-R: Justice Ahmad Maarop, Justice Mohamed Apandi Ali and Justice Zaharah Ibrahim)

JUDICIAL OUTREACH PROGRAMME – IN THE CONTEXT OF CORPORATE SOCIAL RESPONSIBILITY

Although the Judiciary takes an objective view of broad societal goals, there are elements of the concept of corporate social responsibility (CSR) which lend their weight to the system.

For example, Malaysia had ratified the UN Human Rights Conventions No. 8 and 11, which deal with the Elimination of Discrimination against Women and Children's Rights, respectively. However, there appear to be other related issues such as the rights of indigenous people and the less fortunate which also warrant our attention.

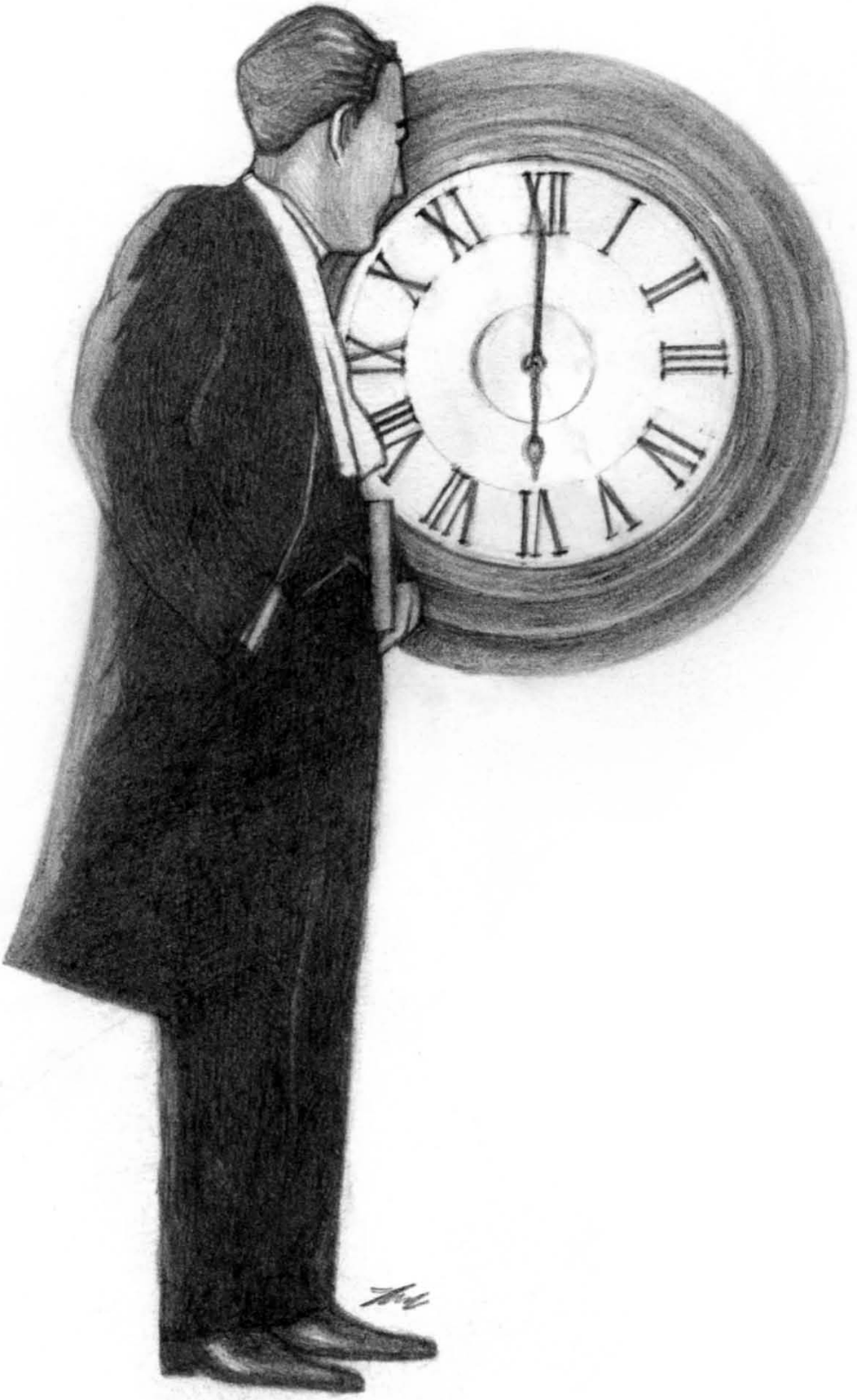
The CSR concept in this context would go beyond the usual need for compliance with applicable laws, leading into the realm of philanthropy. Although the latter is the low end dimension to the concept, it is nevertheless a critical component.

Thus whilst keeping in mind its imperatives of impartiality and objectivity, the Judiciary plays its part by engaging in charitable causes for the poor and the indigenous people who would greatly benefit from donations made by Judges led by the Chief Justice, as was done in the Judicial Outreach Programme. This programme serves as a sombre reminder of the economic and even cultural differences of the various strata of people who appear before the courts.

The Rt. Hon. Justice Arifin Zakaria handing out donations to the Orang Asli (indigenous people) during the Outreach Programme at the National Park (Taman Negara) Pahang

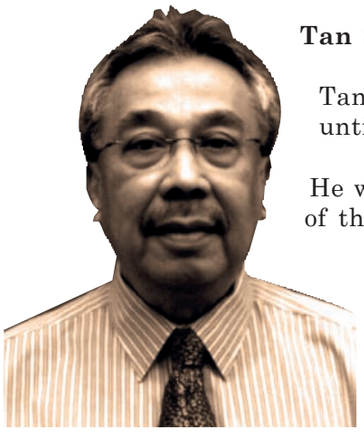
The Rt. Hon. Justice Zulkefli Ahmad Makinudin receiving a souvenir (a blowpipe) from the Orang Asli (indigenous people) during the Outreach Programme at the National Park (Taman Negara) Pahang

Dusun ladies dance in welcome in the Kundasang Outreach Programme
(L-R: The Rt. Hon. Justice Arifin Zakaria, The Rt. Hon. Justice Richard Malanjum, Justice Abdull Hamid Embong, The Rt. Hon. Justice Md Raus Sharif, Puan Sri Noorkim Lim Abdullah, Puan Sri Rohani Mohamed Kassim, The Rt. Hon. Justice Zulkefli Ahmad Makinudin, Puan Sri Salwany Mohamed Zamri and Puan Sri Charlene Siim C. Jintoni)



Looking back in time...

RETIRED JUDGES



Tan Sri Mohd Ghazali Mohd Yusoff

Tan Sri Mohd Ghazali served as a Federal Court Judge from April 2009 until his retirement in January 2012.

He was born in January 1946, in Melaka. His Lordship obtained his Degree of the Utter Bar from Middle Temple, Inns of-Court, London, in 1974.

Tan Sri Mohd Ghazali served in the Judicial and Legal Services in various capacities ie. Magistrate in Kuantan; Assistant Director, Legal Aid Bureau, Pahang; Assistant Director, Legal Aid Bureau, Johor; Deputy Registrar of Companies; Ministry of Trade & Industry State Legal Advisor, Negeri Sembilan and Pahang; Registrar of Companies, Ministry of Trade & Industry; Chief Registrar, Federal Court and Solicitor-General, Attorney General's Chambers.

He was appointed Judicial Commissioner in January 1994 and Judge of the High Court of Malaya in May 1995 and served in the High Court at Johor Bahru and Kuala Lumpur. He was elevated to the Court of Appeal in August, 2002 and to the Federal Court in April 2009 until his retirement.

Tan Sri Mohd Ghazali is married to Puan Sri Siti Kurshiah Abdul Karim and they are blessed with four children.

As a judge he was renowned for his integrity and discipline. This was reflected in his numerous notable judgments which are frequently cited and relied upon as authority.

Tan Sri James Foong Cheng Yuen

Tan Sri James Foong Cheng Yuen was born in Kuala Lumpur on 25 February 1946. Tan Sri James Foong is married to Puan Sri Lim Chooi Hoon, and they are blessed with four children.

He had his early education in the Methodist Boys School, Kuala Lumpur and graduated from the University of London with LL.B. (Honours) in 1969.

He became a Barrister-at-Law from the Inner Temple in 1970 and was called to the Malaysian Bar as an advocate and solicitor in 1971.

He was engaged in private legal practice from 1971 to 1990 (19 years) prior to his elevation to the High Court Bench as a Judicial Commissioner.

He was then elevated as a High Court Judge on 1 March 1993, Judge of the Court of Appeal on 17 June 2005 and subsequently Judge of the Federal Court in 2009.

He has written and published many legal articles in journals and magazines. He is also the author of a book – 'The Malaysian Judiciary' in 1993 which is now in its 2nd edition.

He is the representative from the Malaysian Judiciary to the Malaysian ASEAN Law Association and was President of the Malaysia Inner Temple Alumni Association. He is a Bencher of the

Inner Temple, London and was an external examiner of the University of Malaya. He received his honorary doctorate of laws from the University of the West of England in 2011.

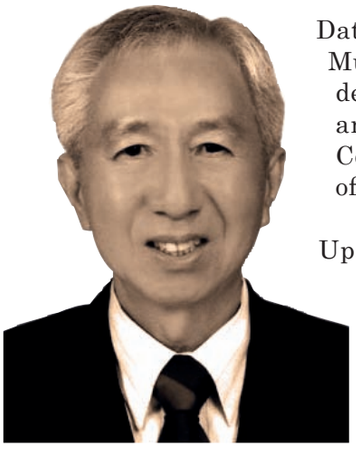
Tan Sri James Foong believed strongly in improving judicial governance in this country. This led him to help establish the family court in the Judiciary in the 1990's. In 2002, he then proposed the case management system which became the blueprint for the transformation of the Judiciary's case management tracking system in 2009 led by the then Chief Justice, Tun Zaki Tun Azmi. He was appointed Managing Judge of the Civil Division of the High Court at Kuala Lumpur where he had managed all cases filed in the Civil Division of this High Court.

In 2011, he was appointed Chairman of the five member panel of the Royal Commission of Inquiry of the death of Teoh Beng Hock. He successfully chaired the Commission and the findings of the Commission were made within 4 months.

Among the many notable cases presided by Tan Sri James Foong which received wide national and international interest, the Highland Towers (reported in 2000 4 CLJ 508) and the Bakun Dam case (reported in 1996 2 MLJ 388) are best remenbered.

Tan Sri James was selfless in sharing his ideas for the betterment of the system and his unfailing courtesy endear him to both members of the Bar and Bench.

Datuk Wira Low Hop Bing



Datuk Wira Low Hop Bing was born on 10 August 1946 in Bukit Gambir, Muar, Johore. He read law at Lincoln's Inn, London and obtained his degree of Utter Barrister in 1970. He also holds a Bachelor of Laws and Master of Laws Degree from the University of London, and a Certificate in Legislative Drafting from the Legislative Drafting Institute of Canberra ACT, Australia.

Upon graduation Datuk Wira Low Hop Bing served in the Judicial and Legal Service with effect from 1 August 1970 to 31 December 1983. During that time he was appointed to various positions including:-

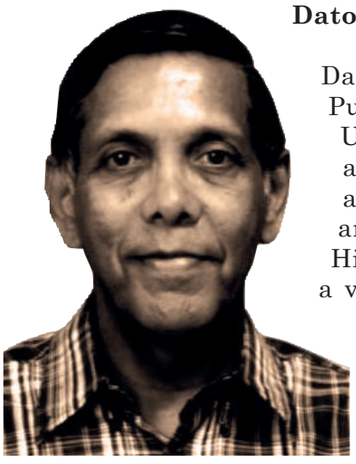
- Magistrate, Magistrates Court, Sitiawan and Tapah, Perak;
- President, Sessions Court, Ipoh and Taiping, Perak; and Kuantan, Pahang;
- Senior Assistant Registrar, High Court Kuantan, Pahang;
- Federal Counsel, Senior Federal Counsel and Senior Assistant Parliamentary Draftsman, Attorney General's Chambers;
- Legal Advisor, Ministry of Housing and Local Government
- Legal Advisor, Ministry of Defence; and
- Deputy Registrar of Companies, Malaysia

In 1984, Datuk Wira Low Hop Bing was admitted as an advocate and solicitor of the High Court of Malaya. He remained in active legal practice until 31 May 1994.

On 1 June 1994, he was appointed Judicial Commissioner and was elevated as a Judge of the High Court of Malaya on 16 June 1995. As a High Court Judge he served in Kuala Lumpur, Shah Alam, Temerloh, Muar and Malacca. He was elevated to the Court of Appeal on 28 July 2006 until his retirement in August 2012.

The Malaysian law journals are replete with scores of judgments by Datuk Wira Low Hop Bing, numbering in the region of one thousand. He is particularly renowned for his erudite judgments and his agreeable disposition. He has contributed considerably to Malaysian jurisprudence and was particularly effective in introducing and perpetrating the practice of mediation in the Courts, even at the appellate level. He leaves behind a strong foundation and basis for the continued practice of mediation in the Courts.

Datuk Wira Low Hop Bing describes the ability to administer justice according to the law as his most memorable moments in the Judiciary. His retirement marked a service of some forty two years in the Judiciary.



Dato' Nihrumala Segara M.K. Pillay

Dato' Nihrumala Segara M.K. Pillay was born on 30 September 1946 in Pulau Pinang. He was called to the Bar at Lincoln's Inn, London in 1970. Upon graduation, was called to the Malaysian Bar and practised as an advocate and solicitor in Messrs. P.R. Chelliah Bros. Kuala Lumpur and Messrs. Aziz & Mazlan, Kuala Lumpur before joining the Judicial and Legal Services in 1970. He was appointed a legal officer in the High Court of Kuala Lumpur on 23 May 1970 and thereafter assumed a variety of positions including:-

- Magistrate in Segamat, Johor in January 1972;
- President of the Sessions Court, Kuala Kubu Bahru, Selangor in November 1972;
- Senior Assistant Registrar in the High Court of Malaya at Johor Bahru from December 1973;
- Assistant Senior Director, Estate Duty Division, Inland Revenue Department, Kuala Lumpur from 1 August 1978;
- Legal Advisor to the Ministry of Defence in Kuala Lumpur from 1 January 1980;
- President of the Sessions Court, Kuantan, Pahang from 1 August 1980;
- Deputy Chief of Legal Department, from 1 December 1984;
- Attorney General's Chambers, Ministry of Defence, Kuala Lumpur from 1 June 1990;
- Judges Advocate General Head of the Civil Division, Attorney General's Chambers from 16 January 1994;

He was appointed as a Judicial Commissioner of the High Court of Malaya in Alor Setar, Kedah on 1 November 1994 and elevated as a Judge of the High Court of Malaya in Alor Setar, Kedah on 12 January 1996. He served as a High Court Judge in Malacca and Shah Alam prior to being elevated to the Court of Appeal of Malaysia on 1 July 2009. He retired as a Judge of the Court of Appeal in September 2012.

He earned the distinction of a judge who combined administrative and substantive legal ability with sound, practical judgment. His numerous notable judgments particularly in the field of criminal law underscore his considerable contributions to Malaysian jurisprudence.

Dato' Sulaiman Daud

Dato' Sulaiman Daud was born on December 3, 1945 in Rembau, Negeri Sembilan. Dato' Sulaiman read law at the University of Malaya and obtained his LL.B (Hons.) in 1979.

Dato' Sulaiman's illustrious career with the Judicial and Legal Services had seen him holding notable posts such as Assistant Parliamentary Draftsman, Legal Advisor of the State of Pahang, Senior Federal Counsel (Islamic Affairs Division) Prime Minister's Department and Legal Advisor of the State of Kelantan.

He was appointed Judicial Commissioner of the High Court of Sabah & Sarawak in June 2000. He was subsequently elevated to be the High Court Judge Bench as Judge in May 2002 and presided over various High Court Benches including Miri, Kota Bharu and Seremban.

He was elevated as a Judge of the Court of Appeal on July 17, 2007.

In recognition of his services, he was conferred the awards of Ahli Mangku Negara (AMN) in 1983, Darjah Seri Melaka (DSM) in 1993, and Darjah Dato' Paduka Setia Mahkota Kelantan (DPSK) in 1999.

Known as a man of few words, Dato' Sulaiman is however keenly knowledgeable and is well liked by his peers and much respected by those who have appeared before him in court. It is also well known that his prowess on the golf course is not to be sniffed at.

He has also authored numerous insightful judgments on various areas of the law.

Dato' Sulaiman is married to Datin Jeriah Johan and they are blessed with four children, Hilmy, Helina, Suhaila and Shaharin.

Dato' Azhar @ Izhar Hj. Ma'ah

Dato' Azhar @Izhar Hj. Ma'ah was on 28 September 1946 in Rembau Negeri Sembilan. He graduated as a Barrister at Law from Lincoln's Inn London. He began his career with the Judicial and Legal Services in 1974 as a Magistrate in Kuala Lumpur. Thereafter he was appointed to a series of positions including:-

- Senior Assistant Registrar at Kuala Lumpur High Court in May 1975;
- Assistant Director at the Legal Aid Bureau in Negeri Sembilan in July 1975;
- President of the Sessions Court in Klang, Kuala Lumpur and then Kuala Trengganu from 1976 until 1985;
- Senior Federal Counsel at the Attorney General's Chambers in 1985;
- Solicitor for the Housing Loan Division in the Finance Department from September 1985;
- Deputy Public Prosecutor/Senior Federal Counsel in Sabah from 1986 to 1988;
- Deputy Trustee for Amanah Raya, Malaysia from 1988 to 1992;
- Sessions Court Judge in Seremban, Negeri Sembilan from 1992 to 1996

He was appointed as a Judicial Commissioner in August 1996, and served in the High Court of Malaya at Temerloh. He was confirmed as a Judge of the High Court of Malaya in 1998 and also served in Temerloh, Kota Kinabalu, Johor Bahru and Seremban. Dato' Azhar was elevated to the Court of Appeal in 2009. He retired as Judge of the Court of Appeal in September 2012.

Dato' Azhar is reputed for his patient and pleasant disposition, as much as his impartiality, integrity and conscientiousness.

Datuk Syed Ahmad Helmy Syed Ahmad

Datuk Syed Ahmad Helmy Syed Ahmad was born on 12 December 1946 in Singapore. He obtained his Bachelor of Laws from the University of Singapore in 1971. He was admitted as an advocate and solicitor of the Singapore High Court in 1972 and as an advocate and solicitor of the High Court of Malaya in 1979.

Datuk Syed Ahmad Helmy ran his own firm from the year 1972 until May 2000. On 1 June 2000, he was appointed to the Bench as a Judicial Commissioner and subsequently elevated as a Judge of the High Court of Malaya. As a High Court Judge, he presided in Johore Bahru and Shah Alam. He was elevated to the Court of Appeal on 14 October 2009.

Datuk Syed Ahmad Helmy has been awarded numerous awards by the Federal Government, the Sultan of Johor and Sultan of Selangor in recognition of his contribution to the law. He is recognised as a judge of intellect as well as for being fair and consistently upholding human rights and the rule of law. His judgments are measured yet imbued with the message of recognising the immense importance of values protected by the Constitution such as liberty. By nature kind and modest, his sense of humour makes him popular with the collegiate of judges.

IN REMEMBRANCE

Datuk Arifin Jaka

Celebrate the Life of Datuk Arifin Jaka

Datuk Arifin Jaka, a retired Judge of the Court of Appeal, passed away on 29 December 2011 at the age of 78.

He enjoyed an illustrious career on the Bench. He began his career in the judiciary as President of the Sessions Court in 1970 and was elevated in stages to become first a High Court Judge an 17 August 1994 and subsequently a Judge of the Court of Appeal in 2003. He retired a year later in 2004.

As a High Court judge he had occasion to hear numerous significant commercial and criminal cases, and to that end contributed substantially to Malaysian jurisprudence in those fields. He was rigorous on the Bench and brooked no nonsense from the lawyers appearing before him.

Datuk Arifin Jaka's death has been described as a great loss to the nation particularly in the legal field. His contributions to the judiciary and nation will always be appreciated and remembered.

Clocking out on his last day at the Johor Bahru High Court

JUDGE'S SPOUSE IN REMEMBRANCE

Datuk Wira Wan Yahya Pawan Teh and Datin Wira Ainon Hj. Abdullah

Although judges hold down arduous and exacting duties as arbiters, very often it is their spouses' unobtrusive support (both emotional and spiritual) which help carry them through the day, and provide them the wherewithal to go on.

The Malaysian Judiciary in this publication pays tribute to a recently departed Judge's spouse i.e the late Datin Wira Ainon Hj. Abdullah the wife of Datuk Wira Wan Yahya Pawan Teh.

Datin Wira Ainon Hj. Abdullah

By:
Datuk Wira Wan Yahya Pawan Teh
Former Judge of the Federal Court
Malaysia

It has often been said that behind every great man, there is a woman. I am not great but I was just lucky. Standing behind me, until recently was a great woman endowed with matchless faithfulness, loyalty, devotion, morality, compassion and courage.

Much the same as any other wife of a legal and judicial officer, my late wife, Datin Wira Ainon Hj. Abdullah, or Ainon as I called her, had helped me in my career in many ways, but, by far her most outstanding and magnanimous role was in resolving the dilemma in my unexpected and unsolicited career.

Ainon was a diffident thirteen year old student from Methodist Girls School, and I was a nineteen year old boy from the Victoria Institution when we first met. Due to my involvement with such a young girl, my close friends nicknamed me "the cradle snatcher". My brother, the late Wan Suleiman, did not think much of it – dismissing the affair as mere calf love.

As both our parents belonged to the strict medieval age, we were precluded from any romantic rendezvous sub-rosa. Our limited meetings only took place during student activities and on rare occasions when I had the opportunity to visit her home in the company of her friends. Whatever feelings we had for each other could only be in the form of letters, hand delivered by mutual friends. Any letter delivered by post would probably fall under parental censorship.

My unostentatious aspiration at the end of schooling was to be a chief clerk in the government service and in that capacity I felt I should have the status to ask for my true love's hand in marriage.

However, my father had his own inspiration. He was bent upon his youngest son following his footsteps towards the bench, as a magistrate, a post he had once held in mid 1930's.

I was to be on the next boat to Tilbury Docks, London or else . . .

There was to be no accommodative or negotiable stipulations of any sort on our attachment, no promise, word of honour, agreement or commitment between both families regarding our relationship.

This praetors edict was an explicit order on me to obtain my qualification before I can claim my bride. It seemed as if a harsh sentence had been pronounced against both of us!

Do I face the devil or jump into the deep blue sea?

As things turned out to be, I did not have to do either. Despite her awareness of the uncertain outcome to our attachment by the long period of separation, Ainon persuaded

and consoled me into being a filial son. She assured me that her love was only for me and forever. Reflecting in retrospect, such wisdom, unselfishness and courage coming from a fifteen year old girl must have been obtained through divine inspiration.

The dreadful and deleterious smog of London in the late 1950's was far from being helpful to my health and studies. A year after my arrival, I started to have various health problems and was treated as an outpatient at the Brompton Hospital near Sloane Square, and it took almost another year before I could get a bed in Paddington General Hospital. Thereafter, I was sent to the Pinewood Sanatorium, Wokingham, where I remained as an in-patient for nine months.

Upon discharge I lost all motivation and the will to study – I gave up both my law and my love. To my mind, no right thinking parents would accept and no girl deserved an unqualified, unemployed and unhealthy man.

Meanwhile, both Ainon's parents passed away and Ainon who had never taken a job before, was cared for by her elder sisters. In an old time Malay family the marriageable age of their daughters rarely exceeded eighteen years. By then Ainon was twenty, and to the consternation of her guardians, had turned away all eminent and eligible suitors.

A relative who was visiting London revealed this information to me. The tidings of such loyalty and faithfulness appeared to have an immediate metamorphosis on me. Suddenly, I wanted to return home and be the man answerable to her sacrifice.

I returned to my dusty table and as I was out of pace with the lectures and out of touch with the law, I labored on borrowed books and copied notes from kind friends. I studied as earnestly as I had never done before, burning every drop of midnight oil.

Allah was indeed beneficent and merciful on me. I was called to the English Bar and after obtaining my post final training I returned to Kuala Lumpur in 1962 to assume the post of the Circuit Magistrate, Negeri Sembilan.

During one of my weekend visits to my family home in Treacher Road (now Jalan Sultan Ismail), I was asked by my father to take down a wall calendar. As I stood beside him, the old man took a pen and drew a circle round a printed date and said "You can get married to your girl on this date". Finally the praetors edict had been precisely complied with and I claimed my loyal and beautiful bride on the 2nd of December 1962.

My career as a legal and judicial officer in the sixties necessitated much traveling and at times lodging at disagreeable places but my dear wife was always around to console me. The frequent transfer of accommodation and office was no less burdensome and proved to be a disconcerting experience for the entire family. These events were obviously unmanageable without my wife's assistance.

The multifarious duties of a housewife are often taken for granted and forgotten. Besides her responsibility for the maintenance of a comfortable home Ainon had to tend to the wellbeing and comfort of her family and her husband. In this respect she taught us to live a simple and harmonious life without having to mingle with socialites, the affluent and those tainted with mercenary motives. She always kept a discreet and discerning distance from those who could have blemished her husband's integrity and dignity and she was vigilant and wary of those who tried to interfere with her husband's principles of justice.

The touchstone of a wife's contribution to her husband's career could be best implied from the assistance she rendered and sacrifices she made when he is confronted with challenges and predicaments. Such trying situations did come about during the various tours of my duty, notably, when we were in Selangor, Wilayah Persekutuan and Melaka.

We could have stepped into Melaka on the wrong foot because listed on my list of cases for hearing was the corruption case against its former acting Chief Minister. The case ended with a guilty verdict and custodial sentence. That was not really a good testimony to our congenial personality. Further lists included cases involving the officiating Chief Minister of Melaka and the Menteri Besar of Johor. My wife had to share my unpopularity with a myriad of disgruntled people.

A wife's contribution to her husband's career usually comes in an indirect and circumstantial mode. Although she does not directly partake in

his official business, her role in housekeeping and upbringing of children and her companionship are supportive conduct which could provide a vital relief to his pressing obligations.

During the political upheaval involving the Menteri Besar of Selangor in the midst of 1970 we were caught in a precarious situation between the two feuding political factions. As the wife of the State Legal Adviser, she had to share the turbulent time facing my office. Despite our judicious care, tactfulness and impartially we were not spared from the insidious reproachment, imputation, insinuation and rumors, not to mention the threat on my life. Exacerbating this critical state of affairs, I was implicated in a conflicting legal opinion, on an important state matter between my Federal boss and my office. My offer to resign my office was disregarded and on the advice of my dear wife the matter was forgotten. A somewhat similar proposal to retire on option, after my ten months sitting in the Supreme Court was likewise interceded by her and forsaken.

Ainon had stood courageously behind me throughout the stormiest span of my career and together we weathered the storm.

Now and then, in the solitary confines of our bedroom, I would sublimely reflect on my wife's love, faithfulness and courage as she stood behind me during the turbulence of my career. It all comes back to me that I would not probably venture into, sustain and manage my career without the prodigious support and sacrifice from my dearest wife.

Perhaps it can be compendiously concluded that Datin Wira Ainon was an unmatchlessly faithful and loyal wife, a devoted mother and caring grandmother. Viewed as a housewife, she was a perfect homemaker, home economist, family manager, chief cook and my better half. As a professional's wife, she was my excellent supporter, advocate, adviser, sympathiser and my champion.

During her lifetime and throughout the span of my career, I have been the most beholden beneficiary of my wife's loving companionship, her loyalty, wisdom and sacrifice.

What more can I ask!

Al-Fatihah

(L-R) Datin Wira Ainon Hj. Abdullah, Datuk Wira Wan Yahya Pawan Teh and Her Majesty Queen Elizabeth II during Her Majesty's visit to Malaysia.

CHAPTER 6

GOING GREEN

SHIFTING THE JUDGES PARADIGM ON ENVIRONMENTAL JUSTICE

By
Justice Azahar Mohamed
Judge, Court of Appeal,
Malaysia

"I believe that each and every one of us can contribute towards the betterment of our environment. As judges and administrators we certainly have a role to play in the conservation of the environment."

Opening Remarks
By the Rt. Hon. Justice Arifin Zakaria
at the Opening Ceremony of the
World Congress on Justice, Governance and Lawful Environmental Sustainability
Supreme Court of Rio De Jeneiro, Brazil
17 June 2012.

"... This environment is the very essence of our existence. Its survival is our survival."

Adjunct Professorial Lecture
"Environmental Law: An Overview"
By the Rt. Hon. Justice Arifin Zakaria
at the Universiti Teknologi Mara (UiTM)
19 December 2012.

At the opening of the Malaysian Legal Year 2012 on 14 January 2012, the Rt. Hon. Chief Justice Tun Ariffin Zakaria, Chief Justice of Malaysia had, amongst others, underlined the heightened awareness of Malaysian judges on issues concerning the environment. The Chief Justice had this to say about the important role of the Malaysian Judiciary in the protection and safeguarding the environment:

> "*In Malaysia, more than half of our lands are forested area. This is equivalent to about 60% or 19.52 million hectares of forested land. Thus, I believe we have an important role to play.*
>
> *Environmental crime is a threat to our very existence. We must be serious in protecting our mother earth. For that we should not let any lack of sensitivity in the past continue into the future. The lack of such sensitivity is clearly demonstrated by the following two cases. In 2005, a man in Tumpat, Kelantan, was found guilty by the magistrate' court for illegal possession of a dead tiger, a protected animal, and walked out as a free man of after he paid the fine of RM7,000. In contrast, in another case, a man who was convicted for theft of 11 cans of 'Tiger beer' and 'Guinness Stout' worth RM70 in 2010 was sentenced to five years imprisonment. Clearly our values were misplaced. Surely our tigers are worth more than the 11 cans of beer.*
>
> *On the part of the Malaysian Judiciary, for the immediate future, we will provide more exposures and trainings for our judges and officers on environmental law. If need be, specialised court will be set up to handle environmental cases so as to create awareness among the members of the public of the importance of the environment."*

The speech by the Chief Justice marked a significant paradigm shift of the Judiciary on environmental justice and sustainability in Malaysia. The speech provides a long-term strategic framework and vision for the way forward in dispensing environmental justice in our country. In identifying the environment as one of the areas of concern, the Chief Justice recognises that judges need to have the requisite knowledge skills and expertise in adjudicating issues concerning the environment.

This change in judicial attitude was again emphasised by the Chief Justice in his opening remarks in conjunction with the national seminar on "Green Court" which was held from 9 to 11 November 2012 in Kuala Lumpur:

> *"Therefore, there is an urgent need for everyone concerned to take a serious measure in preserving and protecting our natural environment at all costs for the sake of the future generation. As for the Judiciary, I pledge to give our full cooperation and commitment to all the enforcement agencies, and that environmental issues will be our top priority."*

In a similar vein, the Rt. Hon. President of the Court of Appeal, Justice Raus Sharif in a paper entitled 'Malaysian Federal Court's Innovations In Environmental Justice, Green Courts, and a Greener, Fairer ASEAN', which was delivered at the Global Forum on Law, Justice and Development, Washington DC, held from 10 to 14 December 2012, said:

> *"Sound environmental law and policies, as part of a national and regional management system are critical for sustainable development. Having comprehensive sets of law is pointless without proper enforcement and adjudication. The Courts are the most prevalent formal institution for sanctioning the violation of environmental laws and regulations and ensuring their compliance. Chief Justices and the senior judiciary play a key role in improving environmental enforcement not only by their direct actions in making environmental decisions or developing environmental jurisprudence, or establishing environmental courts, but also by championing and leading the rest of the legal profession towards credible rule of law systems that have integrity and promote environmental sustainability."*

The public's right to a healthy environment is clearly manifested by the Malaysian Court of Appeal in the case of **Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261** which observed that:-

"... The expression 'life' appearing in Article 5 does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life itself. Of these are the rights to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in reasonably healthy and pollution free environment."

MALAYSIA: A LAND BLESSED WITH PLENTIFUL NATURAL RESOURCES

With a land area of 328,847 square kilometers, Malaysia is a megadiverse country with a high number of species and a high level of endemism. About two thirds of Malaysia is covered in forest, with some forests believed to be 130 million years old. Malaysia is renowed for its natural resources and high biodiversity consisting of renewable and non-renewable resources that include petroleum, mineral resources and fisheries. Malaysia is among the world's biggest producers of palm oil, rubber and timber. Concerns have been raised that the drive towards further industrialisation, modernisation and high income economy could pose a serious threat to environment. The Malaysian government aims to balance economic growth with environment protection. Malaysia is ranked 25 out of 132 countries in the Environment Performance Index 2012.

ENVIRONMENTAL PROBLEMS

As a result of rapid economic growth and development, Malaysia, like the rest of the world, is facing environmental problems. Some of the significant problems are deforestation and illegal logging; illegal land clearings; biodiversity loss; natural resource exploitation; air and water pollution; illegal wildlife trade; flooding; uncontrolled development planning and illegal toxic dumping. All these have a major impact on our daily life. As a result of public awareness and the concern for the environment, an effective environmental enforcement is important in creating a balanced framework to ensure public and private sector infrastructure investments and promote environmental sustainability.

THE VITAL ROLE OF THE JUDICIARY ON ENVIRONMENTAL JUSTICE

Although various environment-related legislations have been introduced, the problem lies in the enforcement of these laws: the enforcement agencies do not have enough facilities and officers who are adequately trained; many cases are not brought before the court; courts fail to give deterrent punishment; environmental education and consciousness among the people are very low.

Judicial process is a crucial mechanism for ensuring legal effectiveness of environmental law. Judges, who are sufficiently well-informed about environmental laws and related issues play a vital role in their implementation and enforcement. They have a responsibility to do so. In 1992, the first United Nations Conference on Environment and Development (UNCED) or now known as Rio Conference or Earth Summit 1992 was held in Rio De Jeneiro, Brazil. It succeeded in raising public awareness of the urgent need for environmental protection. The crucial role of the judiciary on environmental justice has led the United Nations Environment Programme (UNEP) to convene in August 2002 more than 100 senior judges from around the world, including many from the Asia and Pacific region, at the Global Judges Symposium on the Rule of Law and Sustainable Development in Johannesburg, South Africa.

THE JOHANNESBURG PRINCIPLES

At the symposium, judges made a commitment to the principle known as the Johannesburg Principles on the Role of Law and Sustainable Development in which the judges have agreed as follows:

(i) Use the judicial mandate for sustainable development and uphold the rule of law and democratic processes;

(ii) Recognise an urgent need for regional and sub-regional initiatives to educate and train judges on environmental law; and

(iii) And collaborate within and across regions to improve environmental enforcement, compliance and implementation.

The Johannesburg principles affirmed that an independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law. The judiciary and all its stakeholders are crucial partners for promoting the compliance with, and the enforcement of environmental law.

NETWORKING OF THE JUDICIAL FRATERNITY

Following the Global Judges Symposium, UNEP held several judges meetings in different regions around the world including a meeting for Judges from the Southeast Asian countries.

In July 2010, the Asian Development Bank (ADB) and UNEP convened the Asian Judges Symposium on Environmental Decision Making, the Rule of Law, and Environmental Justice, which was held in Manila, Philippines. It was the largest gathering of Asian judges and other legal stakeholders in Asia since the Johannesburg Global Judges Symposium, with about 50 Judges, and 110 participants including Malaysia. At the Symposium, attending members of the Senior Judiciary recognized that they had much to gain by sharing experience that would lead to improvements in the quality of environmental adjudication on environment and natural resource cases, and for improving access to environmental justice. The Symposium proposed to establish a Pan-Asia Network – the Asian Judges Network on Environment (AJNE). In December 2010, ADB approved a technical assistance to support the AJNE, and the Association of Southeast Asian Nations (ASEAN) Chief Justices' Roundtable. The ASEAN Chief Justices' Roundtable on Environment presents the opportunity for the Chief Justices and designates of the Supreme Courts of Southeast Asia to develop a common vision for ASEAN Judicial Cooperation on the Environment.

THE 1ST ROUNDTABLE FOR ASEAN CHIEF JUSTICES ON ENVIRONTMENT

The 1st ASEAN Chief Justices Roundtable on Environment, which was held in Jakarta, Indonesia from 5 to 7 December 2011 brought together Chief Justices and their designees from the highest courts of Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, supported by the Indonesian Supreme Court, the ADB and the UNEP. The Jakarta Common Vision on Environment for ASEAN Judiciaries (the "Jakarta Vision") which was agreed at the 1st ASEAN Chief Justices Roundtable has outlined three objectives of the Roundtable: First, to share information among ASEAN Chief Justices and the Senior Judiciary on ASEAN's common environmental challenges. Second, to highlight the critical role of ASEAN Chief Justices and the Senior Judiciary as leaders in national legal communities and champions of the rule of law and environmental justice, with the ability to develop environmental jurisprudence, generate knowledge and action on ASEAN's environmental challenges among the judiciary, the legal profession and law students. Third, to develop a process for continuing the cooperation and engagement of ASEAN's senior judiciary on environmental issues.

WORLD CONGRESS ON JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY

The United Nations Conference on Sustainable Development 2012 or also known as Rio+20 was held in June 2012. Rio+20 affirmed the necessity for cooperation in the development of international law that allows for independent judicial remedies where actions within national boundaries can cause environmental impacts beyond national boundaries. In conjunction with Rio+20, the 1st World Congress on Justice, Governance and Law for Environmental Sustainability was held in Rio de Janeiro Brazil from 17 to 20 June 2012. Supreme Court justices from all over the world, met to make clear that environmental rights were part and parcel of the law, to be enforced alongside basic human rights. Chief Justice Arifin Zakaria was appointed the Co-President of the World Congress. Malaysia was given the honour to be part of the high-level committee and became the only Asian country which sat in the presidential council together with Brazil and Argentina. As Co-President of the Congress, Chief Justice Arifin Zakaria was given the privilege to deliver the opening remarks during the Opening Ceremony.

The Rt. Hon. Justice Arifin Zakaria delivering the opening remarks at the "World Congress on Justice, Governance and Law for Environmental Sustainability"
(L-R: The Hon Mr. Kwon Jae Jin, Minister of Justice of the Republic of Korea, The Rt. Hon. Justice Arifin Zakaria, Chief Justice of Malaysia and Roberto Monteiro Gurgel Santos, Prosecutor General of Brazil)

In his speech, Chief Justice Arifin Zakaria emphasised the importance of strengthening the awareness of judges' roles in environmental protection. Noting that the Congress will facilitate awareness and networking, he stressed the need for environmental courts, strong enforcement of environmental laws, and strong governance at the national, regional and international levels.

Participants at the Congress agreed to include their views in a declaration to be presented to the Rio+20 Summit. The "Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability" sets out three main sections: messages to Heads of state and government and the world community; procedural and substantive principles to advance the rule of law on environmental matters; and on an Institutional framework for the advancement of justice, governance and law for environmental sustainability. The Declaration reflects the participants' demand for a follow-up process suggesting that UNEP lead the establishment of an international institutional network to continue engaging high-level legal officers, and promote information exchange, education and capacity building of members of the judicial, auditing and prosecuting agencies.

THE 1ST MEETING OF THE INTERNATIONAL ADVISORY COUNCIL FOR THE ADVANCEMENT OF JUSTICE, GOVERNANCE AND LAW FOR ENVIRONMENTAL SUSTAINABILITY

The 1st World Congress on Justice, Governance and Law for Environmental Sustainability agreed that the success of any diplomatic outcome on the environment and sustainable development, including from Rio+20 is only viable upon fair and dependable legal orders and adherence to the rule of law. An international institutional network was also suggested to be set up among the World Congress's partners and other organizations to be led by UNEP. Towards that end, UNEP set up a nine-member advisory council among senior legal figures to advance the rule of law justice and good governance in achieving sustainable development. The council will provide strategic guidance to the international community in improving the legal foundations to achieve international environmental goals and sustainable development. As Co-President of the World Congress, the UNEP Secretariat has extended a formal invitation to Chief Justice Tun Arifin Zakaria to chair the First Meeting which was held in Washington D.C. on 7 December 2012. This was an honour accorded by the international community to the Malaysian Judiciary.

Chief Justice Arifin Zakaria in his opening remarks expressed his pleasure that the World Congress had already sparked a follow-up action all over the globe. The Chief Justice also reported that the Malaysian Judiciary had been given the honour of hosting the 2nd Roundtable for ASEAN Chief Justices on Enforcement which was held in Melaka from 7 to 9 December 2012. This Conference provided a common platform to the ASEAN Chief Justices to exchange views and experiences on environmental issues. The Chief Justice also announced that the Malaysian Judiciary had, on 10 September 2012, established the Environmental Court at the Sessions and Magistrates' Courts throughout Malaysia.

First Meeting of the International Advisory Council for the Advancement of Justice, Governance and Law for Environmental Sustainability, Washington, United States of America
(The Rt. Hon. Justice Arifin Zakaria (front row – 2nd from left))

THE 2nd ROUNDTABLE FOR ASEAN CHIEF JUSTICES ON ENVIRONMENTAL LAW AND ENFORCEMENT

In line with the paradigm shift of the Judiciary on environmental justice and in developing a road map to strengthen the capacity of judges in environmental adjudication, the Malaysian Judiciary, with strong support from ADB, successfully convened the 2nd Roundtable for Asean Chief Justices on Environment from 7 to 9 December 2012 at Philea Resort and Spa, Malacca. In his opening remarks, as host, the Rt. Hon. President of the Court of Appeal, Justice Md. Raus Sharif said:

> *"This year, the 2nd Roundtable Meeting has a common goal in tackling regional environmental challenges which includes series of discussion on different themes relating to environmental justice and the development of ASEAN environmental law towards environmental sustainability.*
>
> *This 2" Roundtable Meeting will also discuss the common challenges for the ASEAN Justices which will focus on environmental jurisprudence including issues of locus standi, remedy and principles of sentencing, delay and backlog of cases, Alternative Dispute Resolution and scientific evidence in environmental cases.*
>
> *May we remind ourselves that this year's meet is one small part our endearing commitment to the ASEAN Region's environmental cause. It is an important time for all of us to look at what we had done and what we had not done and exchange our views on how to move forward in areas which are of utmost importance and relevance for our mutual benefits."*

The objectives of the 2nd Roundtable were to share information on common environmental challenges, highlighting the Judiciary's critical role as leaders in national legal communities

The 2nd Roundtable for ASEAN Chief Justices on Environmental Law and Enforcement
(L-R: Ms. Marie-Anne Birken, Deputy Counsel of Asian Development Bank, The Hon. Justice Myint Aung, Judge of the Supreme Court of the Union, Myanmar, The Rt. Hon. Justice Zulkefli Ahmad Makinudin, Chief Judge of Malaya, The Hon. Maria Lourdes P.A. Sereno, Chief Justice of the Republic of Philippines, The Hon. Mr. Kasem Comsatadham, Vice President of Supreme Administrative Court of Thailand, The Rt. Hon. Justice Md Raus Sharif, President of Court of Appeal Malaysia, The Rt. Hon. Dato Seri Paduka Haji Kifrawi Dato Paduka Haji Kifli, Chief Judge of Brunei, The Rt. Hon. Chief Justice Sundaresh Menon, Chief Justice of Singapore, The Rt. Hon. Justice Richard Malanjum, Chief Judge of Sabah & Sarawak, Dr Kala Mulqueeny, Principal Counsel of Asian Development Bank, The Hon. Justice Khamphane Sitthidampha, President of the People's Supreme Court of Laos PDR, The Hon. Justice Dang Quang Phoung, Permanent Deputy Chief Justice of the Supreme People's Court of Vietnam and The Hon. Justice Teerawat Phatranawat, Justice of Supreme Court of Thailand)

The Rt. Hon. Justice Md Raus Sharif, the President of the Court of Appeal Malaysia, delivering his opening remarks at the 2nd Roundtable for ASEAN Chief Justice on Environmental Law and Enforcement held in Malacca 7 to 9 December 2012.

and facilitating the rule of law in environmental justice. It also operates to develop environmental jurisprudence and a regime for continuing cooperation and engagement on environmental issues among members.

The 2nd Roundtable brought together more than 30 Chief Justices and their designees including senior judges of Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore and Thailand. The ASEAN Chief Justices and senior members of the Judiciary shared information on environmental challenges and rules of procedure in environmental arbitration, acknowledging the differences within their respective legal systems.

The meeting reinforced the joint commitment of the members of the judicial fraternity to strengthen cooperation and exchange views on environmental issues. From the discussions held, the organiser firmly believed that the networking of the ASEAN Region's judicial fraternity has grown from strength to strength.

The 2nd Roundtable for ASEAN Chief Justices on Environmental Law and Enforcement

The discussions concluded that as a key institution in all systems of governance, the judiciary has a significant impact on the effectiveness of jurisprudence which is fundamental in upholding justice and environmental sustainability.

ESTABLISHMENT OF THE MALAYSIAN ENVIRONMENTAL COURT

The Malaysian judiciary has stepped up its endeavour in the field of environmental justice with the issuance of the Chief Registrar's Practice Direction No. 3 of 2012 dated 27 August 2012, entitled "The Establishment of the Environmental Court", following which environmental cases are now assigned to the designated court as identified in the Practice Direction. By this Practice Direction, the Chief Justice has directed the establishment of environmental courts that will be operational from 3 September 2012. The establishment of the environmental courts is to improve the administration of criminal justice of cases relating to environmental issues in both the Sessions and Magistrates' Courts. With these specialised courts, environmental cases can be monitored and resolved in a more efficient manner. For purposes of coordination, the Chief Justice further directs that:-

(1) All Sessions and Magistrates' Courts shall give priority to environmental cases by fixing a regular schedule to hear these cases, and this includes the circuit courts sitting as a Magistrates' environmental court.

(2) The registration and hearing of the environmental cases are determined as follows:

   (a) For districts with one Sessions Court and one or more Magistrates' Courts, environmental cases under the jurisdiction of the said Sessions and Magistrates' Courts shall be filed and heard in an identified Sessions Court.

   (b) For districts with one Sessions Court and one or more Magistrates' Courts, environmental cases under the jurisdiction of the said Session and Magistrates' Courts shall be filed and heard by that particular Sessions Court.

   (c) For district where there are no Sessions Courts, environmental cases under the jurisdiction of Sessions Court shall be filed and heard at a Sessions Court that has local jurisdiction to hear the matter.

   (d) For districts with more than one Magistrates' Court, environmental cases under the jurisdiction of the Magistrates' Court shall be filed and heard at an identified Magistrates' Courts.

   (e) For a district with one Magistrates' Court or a circuit Magistrates' Court, environmental cases under its jurisdiction shall be filed at and be heard by a Magistrate of that district. Where appropriate, a specific day is set to hear and manage environmental cases.

   (f) 38 Acts of Parliament and 17 Regulations relating to environmental offences have been identified. This list is not exhaustive.

   (g) Provisions relating to offences in respect of each Act or Regulation are categorized into two (2) types i.e Specific offences and General offences. They are to be registered under a different registration code. The provisions of Acts and Regulations that are not in this list, falls under category of General offences.

   (h) Environmental cases shall be heard and disposed within 6 months from the date the accused person is charged in court. For environmental courts in Sabah and Sarawak, the environmental cases shall be heard and disposed within 3 months and 6 months respectively, for cases registered both in the Sessions and Magistrates' Courts.

(i) Any appeals of environmental cases from the Lower Court to the High Court shall be registered under a special code.

There are 6 main objectives for the establishment of environmental courts of Malaysia:

(1) To expand and improve access to environmental justice;

(2) To provide an expeditious disposal of environmental related cases;

(3) To harness expertise relevant to the specialised field;

(4) To monitor environmental cases closely and to ensure that environmental cases are not taken lightly;

(5) To ensure uniformity of decision-making in environmental cases; and

(6) To increase public participation and confidence.

The establishment of specialised environmental courts is a significant step in the pursuit of environmental justice in Malaysia. It is an acknowledgment that environmental laws are taken seriously such that effective adjudication on related issues would be assured. This is indeed a step in the right direction in enhancing and improving our environment and maintaining its sustainability.

JUDICIAL TRAINING ON ENVIRONMENTAL LAW

The need for training of judges on environmental law and related subjects is critical to effective adjudication. In this regard, the Malaysian Judiciary has already put in place a continuing judicial training program with the establishment of our own Judicial Academy to cater for judges. The Academy has formulated teaching programmes with the objective of ensuring that judges acquire and develop the skill and knowledge to perform their role to the highest professional standard. Most of our judges are "generalist" judges. Environmental law is a rapidly expanding legal field. It is an overwhelming task for judges to keep up with the development of environmental law as well as scientific and technical advances in this area. Thus, there is a need to train judges in the myriad areas of environmental law and dispute resolution. For this, a national seminar on "The Green Court" for Malaysian Judges and Magistrates was held from 9 to 11 of November 2012 in Kuala Lumpur, in the following areas: the Green Bench, Asean experience; prosecution and enforcement in environmental cases; national laws and international conventions relating to environment; and principle of sentencing in environment cases. In his closing remarks at the seminar, The Rt. Hon. Chief Judge of the High Court of Malaya, Justice Zulkefli Ahmad Makinudin spoke about the Malaysian Judiciary's support of the nation's green initiative:

> *"As a developing nation, Malaysia must protect its environment in order to ensure the sustainability of the ecosystem so that our future generations will not suffer the consequences of our failure to look after our green environment. Most developing nations have recognized the important role of the Judiciary in supporting the environmental sustainability. Each of these nations has made their own initiatives and Malaysia must not be left behind.*
>
> *The Malaysian Judiciary has now propelled itself to show its support to the nation's green initiatives. The Chief Registrar of the Federal Court has issued Practice Direction No. 3/2012 establishing the Environmental Courts in every state. We have now demonstrated to the public that the Judiciary takes heed to the environmental issues in the nation and it is also to send out a clear message that the Courts do not take environmental offences lightly. By having a dedicated court to deal with the environmental cases, these cases will no longer be treated as another departmental summons."*

OUTREACH PROGRAMMES: TO INSTILL GREATER AWARENESS OF ENVIRONMENTAL ISSUES AMONG JUDGES

To instill better awareness of environmental issues amongst the superior court Judges, the Judicial Appointments Commission organised the 1st Outreach Programme from 6 to 8 June 2012 at the National Park, Jerantut, Pahang. It is among the last remaining frontiers of pristine rainforest which have been meticulously conserved: a perfect setting for judges to appreciate the need to protect and safeguard the environment.

A similar follow-up event (the 2nd Outreach Programme) was held from 19 to 21 October 2012 in Cameron Highlands, Pahang. Its cool highland climate with scenic mountain views would mesmerize any nature lover: another ideal location to bring judges closer to Mother Nature, while at the same time appraising them of the ill-effects of development on the environment such as deforestation, soil erosion and landslides.

The latest follow-up event was held from 30 November to 2 December 2012 at Kinabalu National Park, Kundasang, Sabah, a wonderland of ecological treasures covering some 754 sq km.

OUR COMMITMENT

The Malaysian Judiciary is committed to strengthening the judicial capability and capacity of judges to decide environmental disputes and developing environmental jurisprudence in order to promote environmental sustainability. To address this, various approaches and methodologies have been designed and undertaken by the Malaysian Judiciary to resolve environmental disputes, justly and effectively and to reconcile opposing interests required for attaining sustainable development.

The Rt. Hon. Justice Arifin Zakaria (in red jacket) with Judges and other participants at the 1st Outreach Programme at the National Park (Taman Negara), Pahang

Some members of the Judiciary on a boat ride to Kelah Sanctuary during the 1st Outreach Programme at the National Park (Taman Negara), Pahang

The Rt. Hon. Justice Arifin Zakaria initiated the Environmental Sustainability Programme by planting a sapling at the National Park (Taman Negara), Pahang

The Rt. Hon. Justice Arifin Zakaria and his team at the Kelah Sanctuary, National Park (Taman Negara), Pahang in a programme which aims at addressing the ecological balance of the environment

Participants of the 2nd Outreach Programme at Cameron Highlands, Pahang
(Toh Puan Robiah Abd. Kadir – 2nd from right)

Outreach Programme – Environmental Sustainability Programme
(L-R Justice Balia Wahi, Justice Ahmad Maarop, Justice Zainun Ali and The Rt. Hon. Justice Arifin Zakaria)

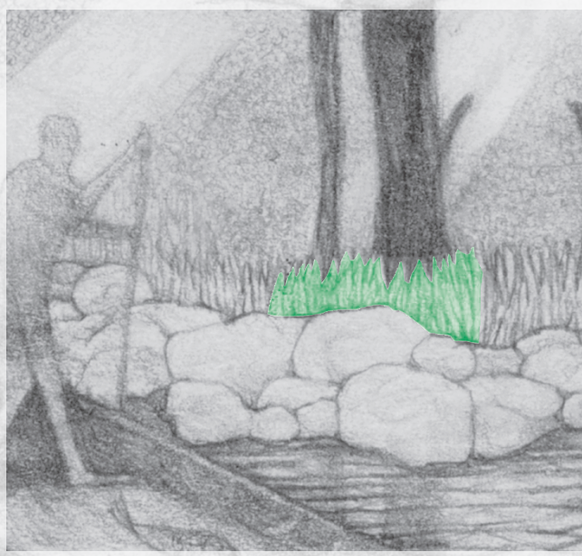
The Chief Justice and Judges who participated in the Environmental Sustainability Programme at Cameron Highlands, Pahang
(L-R: Justice Azahar Mohamed, Justice Abdull Hamid Embong, The Rt. Hon. Justice Arifin Zakaria, Justice Mohtarudin Baki, Justice Alizatul Khair Osman Khairuddin and Justice Mah Weng Kwai)

Participants of the 2nd Outreach Programme in Cameron Highlands, Pahang

Judges at the 3rd Outreach Programme, Kundasang, Sabah (Wildlife Protection and Endangered Species Protection Programme)
(L-R: Justice Rhodzariah Bujang, Justice David Wong Dak Wah, Justice Stephen Chung Hian Guan and The Rt. Hon. Justice Arifin Zakaria)

Participants of the 3rd Outreach Programme, Kundasang, Sabah
(L-R Puan Sri Rohani Mohamed Kassim, The Rt. Hon. Justice Zulkefli A. Makinuddin, Justice Douglas Cristo Primus Sikayun, Justice Abdull Hamid Embong and Puan Sri Noorkim Lim Abdullah)

Participants of the 3rd Outreach Programme in Kundasang, Sabah
(L-R: Justice Douglas Cristo Primus Sikayun, Justice Chew Soo Ho, Justice Ravinthran Paramaguru, Justice Rhodzariah Bujang, The Rt. Hon. Justice Richard Malanjum, The Rt. Hon. Justice Zulkefli Ahmad Makinudin, The Rt. Hon. Justice Arifin Zakaria, The Rt. Hon. Justice Md Raus Sharif, Justice Abdull Hamid Embong, Justice David Wong Dak Wah, Justice Yew Jen Kie, Justice Supang Lian and Justice Stephen Chung Hian Guan)



CHAPTER 7

JUDICIAL TRAININGS

JUDICIAL ACADEMY

The Judicial Academy was set up as a training institute in 2012 to, inter alia, plan, organise and conduct training programmes and courses for judges of the superior courts.

The objective of the Academy is to enhance judges' judicial skills in various dimensions of judge-craft.

The Academy is headed by the Chief Justice of Malaysia as the Chairman and comprises the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak together with six judges of the Federal Court and High Court.

The course content of the training programmes are planned and coordinated by the Academy Director, an administrative post, currently held by a serving Court of Appeal judge, Justice Mohamad Ariff Md. Yusof.

The Academy receives its funding from the Judicial Appointments Commission (JAC). The JAC also acts as the Secretariat for the Academy.

In 2012, a total of RM200,000.00 was allocated by the JAC for the setting up of the Academy and for the conduct of training courses and programmes for judges of the superior courts.

For the moment the Academy does not have its own premises. Hence, courses and programmes in 2012 had been conducted in a Government building located in Putrajaya. It is envisaged that funding will have to be sought from the government to build the Academy's own building and for it to have its own staff and training facilities.

The programmes and courses presently run by the Academy fall into the following categories:

(i) Courses Conducted By Appellate Judge As Facilitators.

These are courses, usually held on weekends, conducted by judges from the Court of Appeal and Federal Court, in their capacity as facilitators, to train judges in areas of the law mostly heard at the High Courts, and to address issues commonly raised in this forum. These courses are meant to be interactive where course participants are required to participate in the discussions and make oral and written presentations.

In the year 2012, a total of 84 judges attended 6 programmes conducted by the appellate judges under this category. The courses covered issues such as drug trafficking cases under section 39B of the Dangerous Drugs Act 1952, Injunctions, Election Petitions, Judicial Reviews and Appellate Interventions.

The various programmes are as follows:-

a. Dealing With Cases Under Section 39B of the Dangerous Drugs Act 1952 (1)

Facilitators:
- ☐ Justice Ahmad Maarop
- ☐ Justice Azahar Mohamed
- ☐ Justice Mohtarudin Baki

Date : 7-8 April 2012
Number of Participants : 12

b. Injunctions

Facilitators:
- ☐ Justice Anantham Kasinather
- ☐ Justice Mah Weng Kwai
- ☐ Justice Badariah Sahamid

Date : 14-15 April 2012
Number of Participants : 13

c. Admissibility of Evidence in Civil Trials

Facilitators :
- ☐ Justice Jeffrey Tan Kok Wha
- ☐ Justice Ramly Ali
- ☐ Justice Nallini Pathmanathan
- ☐ Justice Mohamad Ariff Md. Yusof
- ☐ Justice Mah Weng Kwai

Date : 21-22 April 2012
Number of Participants : 10

d. Election Petition: Challenging Election Result

Facilitators :
- ☐ The Rt. Hon. Justice Zulkefli Ahmad Makinudin
- ☐ Justice Abdul Aziz Abdul Rahim

Date : 23-24 June 2012
Number of Participants : 18

Seminar on "Dealing With Cases Under Section 39B of the Dangerous Drugs Act 1952–1st Series" at Banglo Transit, Putrajaya
(L-R Justice Mohamad Ariff Yusof, Justice Ahmad Maarop and The Rt. Hon. Justice Zulkefli Ahmad Makinuddin)

Seminar on "Injunctions" at Banglo Transit, Putrajaya
(L-R Justice Mohamad Ariff Yusof, Justice Mah Weng Kwai, Justice Badariah Haji Sahamid and Justice Anantham Kasinather)

e. Dealing with Cases Under Section 39B of the Dangerous Drugs Act 1952 (2)

Facilitators:-

- ☐ Justice Ahmad Maarop
- ☐ Justice Mohamed Apandi Ali
- ☐ Justice Azahar Mohamed
- ☐ Justice Mohtarudin Baki

Date : 14-15 July 2012
Number of Participants : 14

f. Judicial Review and Appellate Intervention

Facilitators:-

- ☐ The Rt. Hon. Justice Md. Raus Sharif
- ☐ Justice Mohamad Ariff Md. Yusof
- ☐ Justice Varghese a/l George Varughese

Date : 10-11 Nov 2012
Number of Participants : 17

Seminar on "Admissibility of Evidence in Civil Trials" at Banglo Transit, Putrajaya
(L-R Justice Mah Weng Kwai, Justice Mohamad Ariff Md Yusof, Justice Ramly Ali,
Justice Jeffrey Tan Kok Wha and Justice Nallini Pathmanathan)

Seminar on "Admissibility of Evidence in Civil Trials" at Banglo Transit, Putrajaya
(L-R Justice Hue Siew Kheng, Justice Yeoh Wee Siam, Justice Yaacob Md Sam, The Rt. Hon. Justice Md Raus Sharif,
Justice Mah Weng Kwai, Justice Mohamad Ariff Md Yusof and Justice Ramly Ali)

Judges at the Seminar on "Dealing With Cases Under Section 39B of the Dangerous Drugs Act 1952–2nd Series" at Putrajaya Marriott Hotel & Spa, Putrajaya

(ii) Seminars By Foreign Speakers

Under this category, the Academy invites eminent foreign judges and speakers who are experts in their respective fields to conduct seminars/workshops and give talks in their specialised areas of the law.

In 2012, three such seminars were organised by the Academy, namely, "Workshop on Implementing the International Framework for Court Excellence", "Court Annexed Mediation: Shortcomings and Future Developments" and "Competition Law in Malaysia"; the latter was jointly organised by the Academy and the Malaysian Competition Commission.

A total of 164 judges from all levels of the superior courts attended these lectures.

The seminars are as follows :

a. Workshop on Implementing the International Framework for Court Excellence

Date : 6-8 Sep 2012
Facilitators : Justice Robert J. Torres
Mr. Daniel J. Hall
Number of Participants : 56

b. Court Annexed Mediation: Shortcomings and Future Developments

Date : 13-14 Dec 2012
Facilitator : Justice John Clifford Wallace
Number of Participants : 19

c. Competition Law in Malaysia

Date : 13 Oct 2012
Number of Participants : Prof. Dr. Robert Ian Mc Ewin,
Mr. Toh Han Li and
Mr. Jose Rivas
Number of Participants : 89

Workshop on "Implementing the International Framework for Court Excellence"
at Putrajaya Marriott Hotel & Spa, Putrajaya
(L-R The Rt. Hon. Justice Zulkefli Ahmad Makinuddin, The Rt. Hon. Justice Md Raus Sharif,
Justice Robert J. Torres Jr. and Justice Daniel J. Hall)

Judges at the "Workshop on Implementing the International Framework for Court Excellence"
at Putrajaya Marriott Hotel & Spa, Putrajaya

Seminar on "Court Annexed Mediation: Shortcomings And Future Developments"
at Kuala Lumpur Court Complex
(L-R Justice Vernon Ong Lam Kiat, Judge John Clifford Wallace and Justice Mah Weng Kwai)

(iii) Outreach Programmes

In view of the escalating number of ecological and environmental issues in the system, the Chief Justice conceived a programme which allowed judges to witness for themselves the harrowing destruction which had been caused to the environment. This Outreach Programme was also slanted towards engaging judges in some aspects of corporate social responsibility and strengthening their collegial harmony.

a. Outreach Programme (1/2012) Taman Negara Kuala Tahan, Pahang

Date : 6-8 June 2012
Participants : Judges of Federal Court, Court of Appeal and High Court
Number of Participants : 14

b. Outreach Programme (2/2012) Cameron Highlands, Pahang

Date : 19-21 Oct 2012
Participants : Judges of Federal Court and Court of Appeal
Number of Participants : 23

c. Outreach Programme (3/2012) Kundasang

Date : 30 Nov - 2 Dec 2012
Participants : Judges of the High Court and Judicial Commissioners of Sabah and Sarawak
Number of Participants : 15

(iv) Sponsoring Judges To Seminars Organised By Other Bodies/Institutions

Under this category the Academy sponsors judges of the superior courts to attend courses organised by other local and international bodies or organisations. This is aimed at exposing judges to recent developments in the law and matters concerning the legal and judicial profesion. One such programme was the "International Malaysian Law Conference" held from 26 to 28 September 2012 in Kuala Lumpur which was attended by 23 judges of the High Court.

The Chief Justice of Malaysia, the President of the Court of Appeal and both the Chief Judges regularly attend these programmes. Their very presence continue to motivate members of the Judiciary to better equip themselves in dispensing justice.

OVERSEAS CONFERENCES

The following are some of the major conferences attended by senior members of the Judiciary in the year 2012:

The 6th Australasian Institute of Judicial Administration (AIJA) Appellate Judges Conference, Brisbane Australia

Following an invitation from the office of Professor Greg Reinhardt, the Executive Director of The Australasian Institute of Judicial Administration Incorporated (AIJA), The Rt. Hon. Justice Md. Raus Sharif Raus Sharif, President of the Court of Appeal accompanied by his Special Officer Mr. Edwin Paramjothy, attended the 6th Appellate Judge's Conference 2012 in Brisbane Australia. The conference was held from 13 to 14 September 2012.

The AIJA is a research and educational institute associated with Monash University. It is funded by the Standing Council on Law and Justice (SCLJ) and the subscriptions of its membership. The principal objectives of the Institute include research into judicial administration and the development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.

The Conference brought together appellate judges from countries throughout the Australasian continent including Australia, New Zealand, England, Brunei, Malaysia, Singapore, Canada, Papua New Guinea and Hong Kong. In hosting this conference, AIJA's primary objective is to promote an exchange of ideas of the practices and challenges faced by the respective Courts of Appeal in other jurisdictions.

The Inaugural Congress of the Association of Asian Constitutional Court and Equivalent Institutions (AACC), Seoul, Korea

The Rt. Hon. Justice Zulkefli Ahmad Makinudin and Justice Abu Samah Mansor represented the Judiciary at the Inaugural Congress of the Association of Asian Constitutional Court and Equivalent Institutions (AACC) held in Seoul, South Korea on the 20 to 24 May 2012.

This is the first ever congress held by AACC. The Malaysian Judiciary is one of the ten (10) founding members of this AACC. The other founding members are the Constitutional Courts and Equivalent Institutions of South Korea, Indonesia, Uzbekistan, Tajikistan, Philippine, Thailand, Turkey, Russia, Mongolia and Pakistan. This association was officially launched on 12 July 2010 after the Jakarta Declaration signed jointly by the heads of the Constitutional Courts and the Judiciary of the member states.

The AACC is an association of several Constitutional Courts and the Judiciary of the founding members. It is a non-political body organised for the purpose of protecting human rights, guaranteeing democracy, implementing the rule of law and engaging in cooperation and exchanges of information and experiences between members.

The Rt. Hon. Justice Zulkefli Ahmad Makinudin presented a paper entitled *"Disciplinary Proceedings against Public Officers and the Right to be Heard under the Federal Constitution of Malaysia."*

E-court Conference 2012 and Visits to Selected Courts United States of America

As part of the judicial administration programme, a delegation from the Malaysian Courts attended the E- Courts 2012: An NCSC Signature Conference from 10-12 December 2012 in Las Vegas, Nevada, United States. The delegation included The Rt. Hon. Justice Zulkefli Ahmad Makinudin, Chief Judge of Malaya, Justice Abdull Hamid Embong, Judge of the Federal Court and accompanying officer Mr. Che Wan Zaidi Che Wan Ibrahim.

E-court 2012 is a court technology event organised by the National Center for State Courts (NCSC). The 3-day conference is a highly focused event addressing the current information and various technology services available for courts proceedings, including the

Visit to the Supreme Court of Nevada, United States of America
(L-R: Justice Mark Gibbons, Justice Abdull Hamid Embong, Justice Michael A. Cherry, Justice Ron D. Parraguirre, The Rt. Hon. Justice Zulkefli Ahmad Makinudin, Justice Robert J. Torres Jr. and Justice Michael Douglas)

use of Power Point Presentation by lawyers in complex cases. Visits were also made to courts in Nevada, Las Vegas and Los Angeles

Participation in the Conference Organised by the International Association for Court Administration (IACA) in The Hague Netherland.

From 13 to 15 June 2012, The Rt. Hon. Justice Richard Malanjum, Chief Judge Sabah and Sarawak, Dato' Hashim Hamzah, Chief Registrar of the Federal Court of Malaysia and Mr. Muhammad Zaki Abdul Kudos, judicial officer from the Chief Registrar's office attending the annual conference of the International Association for Court Administration (IACA) 2012. IACA is a global association of professionals who share a common interest in promoting improved administration and management in justice systems throughout the world.

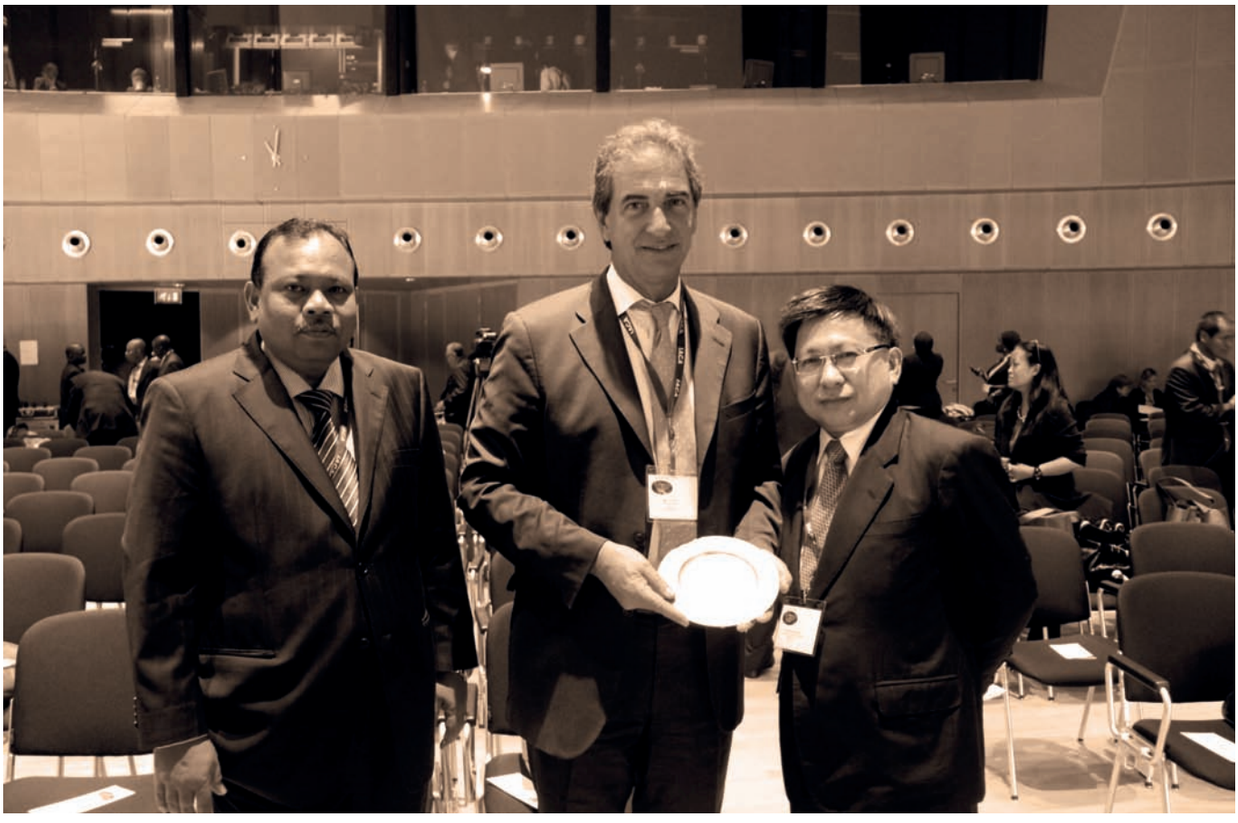
The three-day event, carrying the theme "The Challenge of Developing and Maintaining Strong and Just Courts in an Era of Uncertainty'" was held at the Peace Palace, The Hague Netherland. Over 300 participants representing more than 42 countries took part in the Conference, among them were Chief Justices, Ministers of Justice, judges, practicing lawyers, academics and representatives of non-governmental organisations.

The agenda featured a series of morning plenary panel discussions by senior-level judicial system leaders on international issues and challenges followed by concurrent afternoon workshops on specialty topics relating to improved court system governance, management and administration in a diverse and challenging global environment.

The conference enabled the Malaysian delegation to gain insight into current best practices relating to:

- Building and sustaining confidence in courts and tribunals
- International framework for court excellence
- Building and sustaining a framework for court services
- Protection of high-profile witnesses
- Automated court information systems

- The role of social media in interactions between courts and the public
- The relevance of lay judges and juries in promoting public confidence in the courts
- The challenges of maintaining strong and just courts in states affected by civil strife
- The development of effective internal control strategies to address the problem of corruption among judges and court staff
- Innovative use of social networking services in the judicial system
- Transnational co-operation of judges in Europe: trends and achievements in building mutual trust
- The role of council of judges in maintaining and supporting the institutional independence of the judiciary and government



International Association for Court Administration (IACA) Conference, Netherlands, where The Rt. Hon. Justice Richard Malanjum presented a souvenir to the President of the IACA, Mr. Jeffrey A. Apperson
(L-R: The Chief Registrar Dato' Hashim Hamzah, Mr. Jeffrey A. Apperson and The Rt. Hon. Justice Richard Malanjum)

ADVOCACY TRAINING COURSE – THE HAMPEL METHOD

BY
JUSTICE MAH WENG KWAI
JUDGE, COURT OF APPEAL, MALAYSIA

1. Introduction

High standards of advocacy in Court contribute essentially to a fair and effective judicial system. This is especially so in our adversarial system which pits one party against the other and in practice, tests the advocacy skills of an advocate.

Judges play a vital role in the judicial process. They hear both sides of the story and they hear it impartially. The skill of an advocate conducting his or her case will inevitably impact upon the Court's orders and decisions – sometimes crucially and fundamentally. Justice is best served when parties are represented by able counsel who can put forward their best case with the art of advocacy.

I am sure that this was in the mind of our former Chief Justice, Tun Zaki Tun Azmi when he met with Mr. Charles Heddon Cave (now Justice Cave), Chairman of the Advocacy Training

Council of England in London in 2010. As a result of the meeting, Mr. Charles Cave and his colleagues kindly agreed to train some of our Malaysian advocates and judges to be trainers in the Hampel Method – a well-developed and enhanced method of teaching advocacy.

2. Origins Of The Hampel Method

Professor George Hampel QC first developed a method to train advocates in the art of advocacy at the National Institute of Trial Advocacy in America. He then introduced the method of training to the Inns of Court in London, where it has been further developed and enhanced. The 4 Inns of Court have been using this standard structured method of teaching advocacy in the Bar Vocational Course for the past 20 years to impart advocacy skills to young practitioners. The method is now commonly known as the Hampel Method (the Method). The Advocacy Training Council which is responsible for maintaining the standards of advocacy at the Bar in England and Wales follows this method of training. The Council not only trains advocates at the Bar in England and Wales but also promotes this method of training to other parts of the world.

George Hampel is currently the Chairman of the Australian Advocacy Institute, Director of the Melbourne University Advocacy Programme, President of the International Institute of Forensic Studies and Justice of the Supreme Court of Victoria.

3. Purpose Of The Hampel Method

The primary objective of the Hampel Method is to provide training to advocates to achieve a high standard of competency in advocacy. It is to benefit the advocates themselves as well as the judiciary as the end consumers of advocacy in Court. The Advocacy Training Course (ATC) is a formal advocacy training programme to train advocates in the art of oral and written advocacy. This method requires participants to perform as advocates or role play in a simulated courtroom environment under the guidance of highly experienced trained practitioners of the Method who will observe the performance and offer useful comments on how to correct the mistakes and to improve the performance generally. The Method has been successfully used in the advocacy training programmes in a highly effective way as a basic advocacy training method by the Judiciary and the Bar in the United Kingdom, Australia, Hong Kong, Pakistan and India.

4. Relevance To Judges

It is in the interest of the public, the litigants, the legal profession and the judiciary that all advocates present their cases to the highest professional standards.

To ensure that justice is done it is thus in the interest of the judiciary to see to it that a high level of advocacy is maintained. It is a dark day when a good case is lost through poor advocacy.

In the United Kingdom the judiciary is in the forefront of advocacy training. And in Malaysia too, judges should be involved in advocacy training. The judiciary cannot leave it to the Bar alone to raise and maintain the standards of good advocacy. As judges and lawyers are officers of the Court, we must work together in ensuring that justice is served and preserved through good advocacy.

5. Better Advocacy Through Training And Practice

For a long time it was thought that advocacy was not a skill that could be formally taught. It was believed that one was either born with the "gift of the gab" or that one had to observe the performance of experienced and senior advocates and learn "on the job". The truth is that advocacy skills can be learned and developed through training and practice.

The underlying principle in the Hampel Method is the recognition that advocacy is a "performance skill" which can be improved through deliberate practice and effective feedback. The basic technique in the teaching of advocacy is to repeatedly practice using the Method. Trainers will have to be made to understand that they need to subscribe to the Method when training junior lawyers in order that the training is done in an orderly and structured manner. This is important as there is a need to streamline a uniformed teaching method when there are different advocates with multiple styles and standards of advocacy practice in the room. The Method ensures focus on one point at a time and

encourages incremental teaching and learning. Trainers will identify a particular issue calling it a "Headline" which will have to be addressed. The trainers will demonstrate how to remedy or tackle the problem before requiring the advocate to repeat the performance, focusing on how to improve the "Headline" issue.

The Advocacy Training Council has published a Training Manual as well as a "Training the Trainers" CD which illustrates the key aspects of the Method.

The Manual covers the following topics:-

i) Teaching Witness Handling

ii) Teaching Argument / Narrative Advocacy

iii) Conduct of the CD Review

iv) Teaching Advanced Advocacy

The Method is a tested way to teach a skills-based subject and is a way to explain and convey the skills to be taught. The Method provides a firm basis for training by the trainers.

The Method requires advocates to role play during the training. Advocates will conduct their examination-in-chief or cross- examination based on "Cases", the facts of which have been prepared and provided to the advocate as part of the course material. As the Cases have been given to the advocates in advance, they are expected to be familiar with the facts. The Cases are simple and straightforward so as to enable the advocates to focus on advocacy rather than on legal knowledge.

The advocates in employing the Method are requested to conduct witness handling and oral submissions after which the trainers would be required to give their feedback.

Advocates will also be called upon to act as witnesses and sometimes as judges. The whole "performance" will be recorded using video cameras, usually 2 cameras for each group.

6. Handling The Witness

The first topic of the Training Manual is on "Handling the Witness". This section covers the advocacy skills involved in examination-in-chief and cross-examination.

Based on the role playing performance, the trainer is required to:-

(a) observe and assess the degree of skill and competence displayed by the advocate;

(b) identify what or which area can be improved after the display;

(c) give examples of what needs improving;

(d) explain why it needs improving and how it can be done;

(e) demonstrate how it can be improved; and

(f) request the advocate to repeat a short part of the exercise with the suggested improvements to ensure that the point has been noted.

6.1. Training Stages

The Method identifies various stages and requires each to be addressed in the training process. The feedback of the trainers is one which is structured wherein the following stages must be present:

Headline:	This is the main issue to be addressed. It should be a short, memorable phrase to capture one point of improvement, eg. "No leading questions" or "Do not lead in Chief";
Playback:	This is an illustration of the Headline. The trainer should record the questions, verbatim and be able to quote exactly what the advocate asked;
Reason/ Rationale :	This is why the issue in the Headline is being discussed and why it needs improvement;
Remedy:	This is to show how to improve the advocacy performance and how to fix the problem in a practical way, eg. the remedy to the nervous

advocate is to organise his papers, make head notes of important points and use high lighting;

Demonstration: This is when the trainer gives a short demonstration on how to apply the Remedy that is, to demonstrate how the witness handling or oral submission should be done; and

Replay: The advocate has another chance to perform after getting the feedback to confirm that he has understood the review.

6.2. Review of performance

The trainer's review of the advocate's performance must be thoroughly thought out and the trainer must not make just off-the-cuff comments or superficial feedback. The trainer is to write down the questions asked by the advocate and not the answers of the witness. Ideally, the trainer should choose just one point for review and give convincing reasons for it. Mr. Wong Fook Meng, a participant in one of the Advocacy Teacher Training Courses, in an article published in the "Praxis October/December 2012" issue, had this to say:

> *"The brilliance of the Method is that it gives the participants an orderly and structured mental grid to give effective and meaningful feedback on the junior lawyers' performance. This reduces the off-the-cuff comments and superficial feedback. By using the Method, the participants are forced to give thoughtful suggestions on how an advocacy performance can be meaningfully improved upon."*

7. Advocacy In Submissions

The second topic covers the advocate's performance in speeches, applications, submissions at trial and appellate advocacy. This topic is no less important. It is equally crucial for the trainer to keep an accurate note of the performance by the advocate.

The basic structure of the first 4 elements of the Review remain essential, namely:-

i) the Headline;

ii) the Playback;

iii) the Reason / Rationale; and

iv) the Remedy.

8. The Malaysian Scenario

The practice in Malaysia today is to require parties to prepare witness statements for examination-in-chief. While the preparation of concise yet comprehensive and accurate written statements no doubt requires skill, it is a different skill from that of oral examination-in-chief.

Witness statements may save judicial time but this will invariably cause a decline in the level of advocacy for oral examination-in-chief as the practice ceases. As we know, the questions and answers in witness statements are prepared by the advocate. Often judges have come across cases where the witness is barely able to read his answers as they have been drafted by his advocate in verbose language or without the witness understanding the meaning of certain words used in his statement.

On the other hand, well prepared witness statements, has made cross-examination of the witnesses in our Courts more challenging. This will in effect demand a higher level of advocacy in cross-examination. It is always a pleasure to listen to an advocate in cross-examination who is able to ask short, sharp questions to "fence" a witness without repetition and is who able to extract the evidence in a chronological and structured manner. Repeatedly asking long and compounded questions is the bane of good advocacy.

These days counsel are highly dependent on written submissions which are often prepared by their juniors and there is hardly any advocacy in submissions before the Court. While written submissions have their advantages they must be used skillfully and in conjunction with oral clarification to highlight and emphasize key points to the Court. Personally, I am in favour of always giving the advocate the opportunity to clarify or highlight on his written submissions. After all it has often been said that a good judgment depends on good submissions.

9. Conclusion

With respect, I would like to encourage judges to participate in the Advocacy Teacher Training Courses conducted from time to time and then to volunteer as trainers to teach the advocates. The courses are unique and they are a good example of the close collaboration between the Malaysian Judiciary and the Malaysian Bar in coming together on a common platform to improve the art of advocacy in our Courts. I can assure you that the experience is both educational and rewarding. We learn best when we teach others!

To conclude, I wish to quote what Tun Zaki Tun Azmi said in his Opening Speech for the 3rd Advocacy Teacher Training Course in 2011. He said:

> *"Amongst the participants are also Judges of the High Court. From the outset, I have always been convinced that the education and inculcation of the right advocacy skills is not the sole responsibility of any person, be it the Law School, the Bar Council, the Courts or even the lawyers himself. It is the joint responsibility of all. Judges are the end consumers of advocacy and we are in a peerless position to observe and assess advocacy performances. Precious judicial time will definitely be saved when there is excellence in advocacy. Of course, the qualities essential to the successful practice of the art of advocacy cannot be acquired like pieces of furniture. It requires years of experience and practice. But, the right DNA has to be implanted."*

CHAPTER 8

COURT ADMINISTRATION

The Palace of Justice in bloom

THE ADMINISTRATIVE ROLE OF THE OFFICE OF THE CHIEF REGISTRAR OF THE FEDERAL COURT OF MALAYSIA

The Office of the Chief Registrar of the Federal Court is regarded as the administrative arm of the Malaysian Judiciary. As of 31 December 2012 the number of personnel comprising the Judiciary stood at about 5000. This includes Judges, Judicial Commissioners, judicial officers, administrative officers as well as the staff of the superior and subordinate courts. The Chief Registrar, as the chief administrator of the Judiciary, therefore undertakes the arduous task of assuming responsibility for the administration of these personnel comprising the Judiciary. Additionally, the Chief Registrar also carries the significant responsibility of procuring the finances required for the administration of the Judiciary.

The functions, duties and powers of the Chief Registrar may therefore be summarised as follows:-

(i) Undertaking the responsibility for the overall administration and management of the Judiciary;

(ii) Administration of Human Resources in the Judiciary which includes the recruitment of officers and other court support staff such as interpreters, judges' secretaries, bailiffs and clerical staff. In this context the Chief Registrar assumes direct responsibility for matters relating to transfers, promotions and discipline together with the Service Commission and the Public Service Department. The planning, development and organisation of judicial staff comprises a core function of this office;

(iii) Monitors and enhances administration and office procedures to maximise on efficiency and quality of service;

(iv) Plans, prepares, implements and monitors the budget for the Judiciary as well as collects, receives and accounts for revenue. All budgetary matters and estimates relating to the Courts therefore fall within the purview of the Chief Registrar's scope of responsibility. Additionally, the Chief Registrar prepares financial reports for the Prime Minister's Department and the Federal Treasury;

(v) Preparing reports and proposals on administration issues;

(vi) Has charge of the procurement of all stores, and is responsible for the maintenance of physical facilities;

(vii) Develops and maintains co-operation with key members of the public service and other institutions and agencies;

(viii) Performs Judicial functions vested in the Chief Registrar by law; and

(ix) Give effect to and perform such duties as may be assigned by the Chief Justice from time to time.

The wide ranging nature of duties and functions that fall within the purview of this office require that they be categorised into discrete divisions to facilitate and enhance administration. As such, the Office of the Chief Registrar encompasses several divisions and units namely:-

(i) The Registries of the Superior Courts namely:-

  (a) The Registry of the Federal Court;

  (b) The Registry of the Court of Appeal;

  (c) The office of the Registrar of the High Court of Malaya; and

  (d) The office of the Registrar of the High Court of Sabah and Sarawak;

(ii) Judicial Administration Division;

(iii) Judicial Audit Division and General Investigation Division;

(iv) Commissioner for Oaths Division;

(v) Management Division;

(vi) Strategic Planning and Training Judicial Division; and

(vii) Information Technology Division.

These various divisions will be considered briefly in turn.

The Registries of the Superior Courts

The Federal Court Registry

The Federal Court Registry, dating from 24 June 1994, was established specifically to cater for the filing and compilation of court documents in relation to cases falling within the purview of the Federal Court, so as to facilitate and ensure an expeditious disposal of this Court's case-load. It comprises 6 judicial officers and twenty-four support staff.

This Registry also undertakes case management and the fixing of hearing dates within a fixed time frame. For civil matters, the timeline is six months from the date of receipt of a complete appeal record, while for criminal matters it is 3 months from receipt of a complete appeal record. Habeas corpus applications are dealt with within a further truncated period of 3 months from the date of registration.

The Office of the Chief Registrar therefore undertakes responsibility through the judicial officers and support staff in this Registry for the efficient disposal of matters in the Federal Court.

The Court of Appeal Registry

In like manner the Registry of the Court of Appeal was similarly established to cater for the filing and compilation of appeal records in respect of appeals falling within the purview of the Court of Appeal. It comprises 38 judicial officers and 124 support staff to assist and facilitate the adjudicatory duties of the Judges of the Court of Appeal.

This Registry also undertakes, as does the Federal Court Registry, the fixing of hearing dates and case management so as to ensure the disposal of civil and criminal appeals within stipulated time frames. For civil matters, the time frame is 6 to 9 months while for criminal matters it extends from 9 months for criminal appeal particularly involving government servants to 18 months for death penalty cases.

Here again the Office of the Chief Registrar undertakes the responsibility of ensuring an efficacious disposal of appellate matters within the time frames stipulated and set by the President of the Court of Appeal.

The Office of the Registrar of the High Court of Malaya

The Office of the Registry of the High Court of Malaya is another division of the Chief Registrar's Office which has responsibility for the administration and management of the High Court and the Subordinate Courts. The scope of this Division's duties is considerably wider than that of the aforesaid Registries, simply by reason of the sizeable number of courts falling within the purview of this office.

The duties of this division include the collection and reporting of information on judicial workload in relation to trials conducted in both the Subordinate Courts as well as the High Court of Malaya. It is also responsible for the receipt of revenue and expenditure of funds by all courts and their related offices. It routinely examines and recommends improvements in the methods, procedures and administrative systems used by the Subordinate and High Courts. It also makes such recommendations in respect of the workload undertaken by clerical and support staff.

In summary the primary function of this division of the Chief Registrar's office is to provide assistance to the Chief Judge of Malaya to manage and regulate judicial workload, and to promulgate and implement rules and procedures to ensure a smooth administration and expeditious disposal of cases falling within the purview of the High Court and Subordinate Courts. These Courts are also expected to adhere to strict time frames in relation to the disposal of cases. The monitoring of such time frames is a core function of this division.

Practising Certificate Unit

The Practising Certificate Unit falls directly under the supervision of the office of the Registry

of the High Court of Malaya. It is headed by a Deputy Registrar with five supporting staff. Its main function is to facilitate the issuance of practicing certificates for lawyers as submitted by the Bar Council of Malaysia in accordance with requirements under the Legal Profession Act 1976. As such this division houses a systematic record of all lawyers together with an update on each advocate's individual status.

Provision of Interpreters for Foreign Accused Persons

This division also undertakes to provide interpreters for foreign accused in criminal cases. It does so through the appointment of freelance interpreters or private interpreter service providers.

Service of Process out of Jurisdiction

This division also works together with the Foreign Ministry to facilitate any request for service of process outside the jurisdiction. It facilitates the delivery of court documents outside the jurisdiction in accordance with the Rules of Court 2012, and facilitates the registration of orders from other countries in local courts as provided by law, and assists the Attorney-General's Chambers in any request for legal assistance from other countries.

The Office of the Registrar of the High Court of Sabah and Sarawak

Interestingly the existence of a formal registry for the courts in Sabah and Sarawak can be traced back to the early 1920s when the Supreme Court existed in North Borneo, Brunei and Sarawak. It continued after the Japanese Occupation.

However the establishment of the present Office of the Registrar of the High Court of Sabah and Sarawak can be traced to the setting up of a unified judicial system on 1 January 1951, when a Supreme Court was set up specifically for the territories of North Borneo, Brunei and Sarawak. The title of 'Chief Registrar of the Supreme Court' then came into being.

With the formation of Malaysia in 1957 however the Supreme Court was renamed the High Court of Borneo and the title of 'Chief Registrar of the Supreme Court' was altered to 'Registrar'. The current holder of the post is the fourteenth Registrar of the High Court of Sabah and Sarawak.

In like manner to the office of the Registrar of the High Court of Malaya, the office of the Registrar of the High Court of Sabah and Sarawak has four units under it, namely the High Court Registry, the Subordinate Courts registry the Advocates Admission/Practising Certificate Unit and the Administrative and Finance Unit.

The Registrar's duties are to assist and facilitate the Chief Judge of Sabah and Sarawak in the efficient and timely disposal of cases as well as to undertake the management and budgetary requirements of the courts in that region. He is answerable therefore directly to the Chief Judge of Sabah and Sarawak as well as the Chief Registrar of the Federal Court.

An interesting aspect of the duties of this office encompass the Outreach Programme which coordinates visits to small towns in the interior of Sabah, conducting hearings of various types of applications. This problem is peculiar to Sabah and Sarawak where thousands of members of the population do not have ready access to the physical courts which are situated in more populated regions. Since 2007, the concept of the mobile court was introduced whereby the court sits at a community centre within a community such as the village headman's house or the school in that region, hearing and adjudicating on applications. Such has been the success of this programme that the mobile court and mobile court room concept won the Innovation Award organised by the Prime Minister's Department.

The Judicial Administration Division

As identified by its name, this Division assists the Office of the Chief Registrar in overseeing certain aspects of the administration of the courts as well as Government to Government relations. This division is distinguishable from the Administration Division which carries out purely administrative work such as the management of assets, staffing and finance, in that its scope of work encompasses the judicial aspects of administration. As such this division takes responsibility for conceptualising and formulating policies, compiling, recording, tabulating and analysing statistics from all the Courts, research initiatives and communications.

Accordingly this division is in turn sub-divided into the Policy Unit, National Key Result Areas (NKRA) Unit, Research Unit, Statistics Unit and the Corporate Communications & International Relations Unit. The nature of the work undertaken in this division requires the skill and training of legal officers. As such the division comprises 18 officers and 21 clerks.

The Judicial Audit and General Investigation Division

This unit monitors court compliance with instructions issued by the Office of the Chief Registrar from time to time. It is also responsible for conducting investigations in respect of complaints that are lodged. On the human resources front, this division reviews the performance of judicial officers and court staff throughout Malaysia on the direction of the Chief Registrar.

The division also undertakes responsibility for the important task of auditing. It leads auditing teams together with officers from the Administration Division.

The Commissioner for Oaths Division

This division acts as a channel or vehicle of communication and contact between the Chief Justice of Malaysia and Commissioners of Oaths throughout Malaysia. At present there are some 1,441 Commissioners throughout the country. Essentially the function of this division is to assist the Chief Justice of Malaysia and the Chief Registrar of the Federal Court in respect of all legal and administrative work in matters relation to Commissioners for Oaths. This includes the administrative tasks relating to the appointment, re-appointment, revocation of appointment and changes of address for Commissioners. It also carries out the inspection of registers kept by Commissioners of Oaths pursuant to Rule 17 of the Commissioners for Oaths Rules 1993. To facilitate this function the office of the Chief Registrar recently established a One Stop Centre at the Palace of Justice. This Centre coordinates and facilitates the functions of other Units including the services provided by Commissioners for Oaths to meet the demands and requirements of the public. As of October 2012 this division is manned by 2 judicial officers and 7 support staff.

The passage towards the One-Stop Centre

The Management Division

This division of the Office of the Chief Registrar deals with the administration of support services for the Judiciary. As such, it encompasses administration, human resource, organisational development and finance. It is divided into 2 branches – the Administrative Branch and the Finance Branch.

The Administrative Branch is responsible for the monitoring in turn of 7 sections, namely:-

(i) Human Resource Section;

(ii) Administrative Section;

(iii) Organizational Development Section;

(iv) Record Management Section;

(v) Development Section;

(vi) Asset Management Section; and

(vii) Procurement Section.

The Finance Branch is responsible for two main sections, namely:-

(i) Budgeting Section; and

(ii) Inspectorate Section.

This division comprises 11 officers of management professional level and one hundred and forty supporting staff. It fulfils 9 main functions namely administration, procurement, asset management, record-keeping, service, organizational development, human capital, training, discipline enforcement, development, budgeting and inspectorate services for all 14 states in Malaysia, 114 cost centres and 5,596 posts throughout the Judiciary, a not inconsiderable task.

The Strategic Planning and Training Judicial Division

This Division was established in October 2010 to provide training to all judicial officers as well as support staff under the Chief Registrar's Office. The 2 main functions of this division are to regulate mandatory continuing legal education by conducting training to judicial officers and to ensure that Strategic Planning documents are executed and completed as scheduled.

The role of the judicial training unit is to increase the knowledge, expertise and quality of judicial officers and support staff by providing suitably tailored training programmes, seminars and workshops. This division also works with the Judicial Appointments commission to facilitate training programs for Judges of the superior Courts as well as judicial officers.

The Information Technology Division

The Information Technology Division is a significant division as it takes responsibility for information technology for no less than 5000 personnel nationwide. As Information Technology plays a pivotal role in the development of an efficient judiciary, the importance of this division cannot be overemphasised. It is generally accepted that the optimum utilisation of information technology in the administration of justice contributes to the integrity of the Judiciary by inter alia, making the legal system more transparent and accessible.

This division comprises 30 personnel. Notwithstanding its inordinately low staffing, given that 5000 personnel utilise such services, the division managed to achieve significant goals in the course of the last year, in accordance with targets stipulated in the ICT Strategic Plan to be achieved by 2015.

Amongst the initiatives launched are the following:-

(i) The e-Kehakiman Semenanjung project which was fully completed in June 2011;

(ii) The Court Recording and Transcription System (CRT) now installed in all 418 courtrooms throughout West Malaysia;

(iii) The Case Management System (CMS), Queue management System (QMS) and e-filing which has been implemented in 6 locations namely Kuala Lumpur, Shah Alam, Georgetown, Johor Bahru, Ipoh and the Palace of Justice, Putrajaya;

A corner of the Judicial Museum, Palace of Justice

(iv) The e-Kehakiman Sabah and Sarawak project was fully completed in December 2011;

(v) CMS, QMS, e-filing and CRT was installed and implemented in 88 courtrooms in 31 locations throughout Sabah and Sarawak;

(vi) Video-link was installed in 40 courtrooms in Kuching, Sibu, Bintulu, Miri, Kota Kinabalu, Sandakan and Tawau; and

(vii) A stenography system was implemented in Kuching, Sibu, Bintulu, Kota Kinablau and Sandakan.

It is proposed to set up an Exhibit Presentation System in 45 courtrooms in Sabah and Sarawak.

The Division has also set up Local Area Networks (LAN) throughout all courts within West Malaysia. This was followed by the setting up of the Wide Area Network so as to connect all the courts to one another and to the world at large. In July 2011 the 1 Gov Net initiative was implemented such that as of 31 December 2012, all 108 sites have been connected with 1Gov Net. Similar local area networks are scheduled to be set up in Sabah and Sarawak in 2013 and 2014.

In June 2012, to enhance the provision of services of the Federal Court and the Court of Appeal a One Stop Centre was introduced. The centre is equipped with a queue management system which allocates a number to each individual user. This one ticket number can then be utilised by the user for multiple transactions. Previously users had to wait in line separately for case registration, payment and document verification. By allowing multiple matters to be dealt with by each user, the time taken for the filing and processing of cause papers has been drastically reduced.

The Information Technology Division continues to work on projects aimed at facilitating the expeditious disposal of the case-load of the various courts throughout the nation.

Conclusion

It is evident from the foregoing that the Office of the Chief Registrar, as the administrative arm of the Malaysian Judiciary, plays a pivotal role in assisting the Chief Justice in the due administration of the various courts throughout the country. Its role in procuring and managing the entire budget of the Judiciary further underscores the importance of this Office. Ultimately the Office of the Chief Registrar, by ensuring an efficient and competent administration of the Judiciary through its various divisions, contributes significantly to the levels of efficacy, transparency, integrity and ultimately, the excellence of the quality of justice dispensed by the Judiciary.

In 2012 the Chief Registrar's Office has won four awards in the Prime Minister's Department Excellence Awards 2011, namely (i) the "Most Promising" category (ii) third place in the ICT category: e-Filing (iii) Achievement in implementation of *e-Perolehan* system and (iv) the "Most Innovative Department/Agency.

The Chief Registrar's Office is one of the finalists for the Commonwealth Association for Public Administration Management (CAPAM) Award 2012 held in New Delhi, India.

Court staff attending to the public at the One-Stop Centre, Palace of Justice

THE RULES OF COURT 2012

Rules Committee
L-R: Mr. Khairil Azmi Mohd Hasbie, (Advocate, Sarawak), David Wong Dak Wah, (Judge of the High Court in Sabah and Sarawak), Justice Ahmad Hj. Maarop, (Judge of the Federal Court), The Rt. Hon. Justice Zulkefli Ahmad Makinudin, (Chief Judge of the High Court in Malaya), The Rt. Hon. Justice Arifin Zakaria, (Chief Justice of Malaysia), Mr. Lim Chee Wee, (Advocate, Peninsular Malaysia), Justice Zaharah Ibrahim, (Judge of the Court of Appeal), Justice Hamid Sultan Abu Backer, (Judge of the High Court in Malaya), Mr. G.B.B. Nandy @ Gaanesh, (Advocate, Sabah) and Mdm. Al-Baishah Hj. Abd. Manan, (Senior Sessions Court Judge, Kuala Lumpur).

The combination of the Rules of the High Court 1980 (RHC 1980) and the Subordinate Courts Rules 1980 (SCR 1980) is perhaps one of the best features in judicial administration in recent times, in effectuating a simplified court procedure.

The Rules of Court 2012 will be a boon to litigants and legal practitioners alike, where the new Rules standardise the rules of procedure relating to civil cases where only one set of rules apply to both the High Courts and the Subordinate Courts alike.

The Rules Committee formed in 2009 amalgamated the RHC 1980 and SCR 1980, as amended in the last three decades. The collective effort by the Rules Committee came to fruition after three years when the Rules of Court 2012 were finalised and came into effect on 1 August 2012.

The Rules of Court 2012 will provide the public an expeditious and simple mechanism to litigation. The key changes include provisions on mode of commencement of proceedings, offer to settle and case management.

"Under the Rules of Court 2012, the process is more streamlined ..., I would like to emphasize that the Rules of Court 2012 is to facilitate the administration of Justice and not to hinder or frustrate it. This spirit has been clearly incorporated in Order 1A ..."

per Justice Arifin Zakaria
Chief Justice.

"With the extensive powers given to the Court in case management and the willingness of the justice system to involve mediation as part of dispute resolution under the 2012 Rules, the Judiciary continues to take steps to change the mindset and culture of dispensing justice and to reflect the prevailing environment of transparency, accountability and efficiency."

per Justice Wong Dak Wah
(a member of the Rules Committee)

"As is often said, procedural law is the handmaid of Justice and this publication (Malaysian Rules of Court 2012) ... will ensure that the new Rules would not lead to unnecessary litigation, waste of money, time and energy of client, judges and lawyers ..."

per Mr. Lim Chee Wee
President of the Malaysian Bar 2012.

CHAPTER 9

CASES OF INTEREST

The Court MACE at the Ipoh High Court

CASES OF INTEREST FOR 2012

As in previous years, 2012 saw our judges delivering numerous important and landmark decisions which have significant impact on the public and administration of civil and criminal justice in Malaysia. The following are only a selection of cases covering a broad spectrum of issues.

Civil Cases

i) In **Tan Sri Abdul Khalid Ibrahim v Bank Islam Malaysia Berhad [2012] 5 MLRA 402**, the Court of Appeal had the opportunity to examine the status of the Syariah Advisory Council (SAC) established under the Act and the constitutionality and validity of sections 56 and 57 of the Act pursuant to which the SAC derives its authority to give advice or to rule on any matter or question pertaining to Islamic financial business referred to it by a court or an arbitrator in a proceeding of such matter before the court or the arbitrator.

Issue:- Whether sections 56 and 57 of the Act are unconstitutional, in that those sections are in contravention of Part IX and Articles 8 and 74 of the Federal Constitution, in that the SAC "usurps" the functions of the Courts in ascertaining Islamic law.

The Court of Appeal held that the constitutionality of sections 56 and 57 is to be tested by reference to the legislative powers of Parliament to enact the two provisions, in particular Article 74(1) which empowers Parliament to make laws with respect to any of the matters numerated in the Federal List or concurrent list of the Ninth Schedule to the Federal Constitution.

In deciding the aforesaid issue, the Court of Appeal reasoned as follows:

"Section 56 and s 57 contain clear and unambiguous provisions to the effect that whenever there is any Shariah question arising in any proceedings relating to Islamic financial business before e.g. any court, it is mandatory for the court to invoke s 56 and refer it to the SAC, a statutory expert, for a ruling. The duty of the SAC is confined exclusively to the ascertainment of the Islamic Law on financial matters or business. The judicial function is within the domain of the court i.e. to decide on the issues which the parties have pleaded. The fact that the court is bound by the ruling of the SAC under s 57 does not detract from the judicial functions and duties of the court in providing a resolution to the dispute(s) which the parties have submitted to the jurisdiction of the court. In applying the SAC ruling to the particular facts of the case before the court, the judicial functions of the court to hear and determine a dispute remain inviolate. The SAC, like any other expert, does not perform any judicial function in the determination of the ultimate outcome of the litigation before the court, and so cannot be said to usurp the judicial functions of the court. Hence, s 56 and s 57 are valid and constitutional."

Decision:- The Court of Appeal ruled that sections 56 and 57 of the Act are within Parliament's power to enact.

ii) In **Fathul Bari Mat Jahya & Anor v Majlis Agama Islam Negeri Sembilan & Ors [2012] 4 AMR 297; [2012] 4 CLJ 717**, the 1st petitioner was charged before the Syariah Subordinate Court Negeri Sembilan for conducting a religious talk without a *tauliah* in the District of Kuala Pilah, Negeri Sembilan. The 2nd petitioner was charged with abetting the offence. The petitioners obtained leave to petition the Federal Court and challenge the constitutionality and validity of section 53 of the Enactment under Article 4(4) of the Federal Constitution.

Issue :- The constitutionality and validity of section 53 of the Enactment under Article 4(4) of the Federal Constitution.

The petitioners anchored their challenge on two grounds. Firstly, section 53 of the Enactment was invalid for breaching Article 74(2) and Item 1, State List, Ninth Schedule of the Federal Constitution. Secondly, section 53 did not fall within the realm

of Item 1; therefore the Syariah Court of Negeri Sembilan had no jurisdiction to try an offence under that section. The petitioners contended that the teaching of Islam without a *tauliah* is not an offence against the pillars or precepts of Islam, and that the State Legislature therefore had exceeded its legislative authority when it enacted section 53 and made it such an offence.

Decision :- Arifin Zakaria CJ, who delivered the judgment of the Court, accepted the view expressed by Abdul Hamid Mohammed CJ in **Sulaiman Takrib v Kerajaan Negeri Terengganu** (**Kerajaan Malaysia – Intervener) (and 2 Other Appeals) [2009] 1 AMR 644; [2009] 2 CLJ 54** that precepts of Islam cover three main domains i.e. creed or belief (*aqidah*), law (*shari'ah*) and ethics or morality (*akhlak*) and these are derived from the Qur'an and Sunnah.

The Federal Court concluded that *the tauliah* is part and parcel of the precepts of Islam. To justify this conclusion, Arifin Zakaria CJ said that "*the term 'precepts of Islam' must be accorded a wide and liberal interpretation"* and that the purpose of section 53 of the Enactment "*is to protect the integrity of the aqidah (belief), syari'ah (law) and akhlak (morality) which constitutes the precepts of Islam*."

The petition was therefore dismissed.

iii) In **Dr Koay Cheng Boon v Majlis Perubatan Malaysia [2012] 4 CLJ 445**, the appellant, following an enquiry, was found guilty of professional misconduct under section 29(2)(b) of the Medical Act 1971 (the Act) by the respondent and was suspended for two years under section 30(ii) of the same Act. The appellant's appeal to the High Court was dismissed. The appellant appealed to the Court of Appeal which held that it did not have the jurisdiction to hear the appeal because section 31(2) of the Act provides that the decision of the High Court shall be final. The appellant was given leave to appeal to the Federal Court on two questions of law.

Issue :– (1) Whether sections 31(2) of the Act and 68(1)(d) of the Courts of Judicature Act 1964 (CJA) are inconsistent with Article 121(1B) of the Federal Constitution; and

(2) If so, whether the Court of Appeal has unlimited jurisdiction to hear an appeal from a decision of the High Court pursuant to section 32(1) of the Act.

Article 121(1B) of the Federal Constitution provides for the establishment of a Court of Appeal whose jurisdiction is to determine appeals from decisions of a High Court or a judge thereof and such jurisdiction as may be conferred by federal law.

Decision :- Zulkefli Ahmad Makinudin CJ (Malaya) in delivering one of the three separate judgments of the Federal Court held as follows :-

"*the word 'jurisdiction' in Article 121(1B) of the Federal Constitution should be given a narrow and strict meaning, namely that the said article merely confers on the Court of Appeal the authority and power to hear and determine appeals. Article 121(1B) of the Federal Constitution does not provide for the Court of Appeal to hear 'all' or 'any' appeals from the High Court."*

His Lordship also held that reading section 4 of the CJA, the legal status accorded to the CJA is much higher than any other Act of Parliament in that where there is any inconsistency or conflict between the CJA and any other written law other than the FC, the provisions of the CJA shall prevail.

Section 68(1)(d) of the CJA cannot be unconstitutional as it was enacted by virtue of powers conferred on the legislature.

The appeal was dismissed by the Federal Court.

iv) In **Lee Yoke Yam v Chin Keat Seng [2013] 1 AMR 189; [2012] 9 CLJ 833**, a derivative action was filed by the defendant against the plaintiff in the Shah Alam High Court. In the course of proceedings for the injunction, several affidavits were filed by both the defendant and the plaintiff and other shareholders and directors. In one of the affidavits the plaintiff stated that he had informed the defendant about a certain

amount of company money being deposited into certain accounts belonging to certain individuals.

The defendant then lodged a police report against the plaintiff. In the report the defendant stated that that plaintiff had admitted to the taking of company monies in the sum of RM200,000.00. The plaintiff then filed a defamation suit against the defendant on the ground that the police report was libellous and injurious to the plaintiff.

The plaintiff's case was dismissed by the High Court and the appeal to the Court of Appeal was also dismissed. On further appeal to the Federal Court, leave was granted on two questions of law.

Issue:- (1)Whether statements in a police report are protected by the defence of absolute privilege; and

(2) If so, no party can file a defamation suit against the maker of a police report in the Malaysian context.

Decision:- Arifin Zakaria CJ held that the legal position in India and England are the same, in that the defence of absolute privilege is extended to statements made in the first information report to the police that sets in motion a criminal investigation into the matter that is reported. His Lordship reasoned that this principle is grounded on public policy and public interest considerations.

The Federal Court answered the question in the positive and dismissed the plaintiff's appeal.

The significance of this case is that it entrenches once and for all the legal principle set down by a long line of cases in the High Court and Court of Appeal that no defamation suit could lie against the maker of a police report made under section 107 of the Criminal Procedure Code.

v) In **Malaysian Assurance Alliance Bhd v. Anthony Kulanthai Marie Joseph [2012] 6 MLRA 1**, the appellant which is an insurance company, appealed against the decision of Court of Appeal which held that in the absence of the handing over of the policy sum to a trustee pursuant to section 23 of the Civil Law Act 1956 (CLA), the policy sum remained in the insurance company's hand as a bare trustee from the date of the death of the deceased.

Issue :- Whether the insurance company is a bare trustee in respect of undisbursed monies held by it under a policy of insurance from the date of death of the insured, where the monies have not been handed over to a trustee pursuant to section 23 of the CLA.

Decision:-By a majority, the Federal Court allowed the appeal. Arifin Zakaria CJ said that there is nothing in section 23 of the CLA purporting to appoint the appellant as trustee for the policy and that subsection (4) of section 23 merely provides that in default of any appointment of a trustee or trustees by the insured then the insured or his or her legal personal representative will be trustee of the policy. His Lordship further said that this view is supported by the reading of section 166(1) and (3) of the Insurance Act 1996 (Act 553). His Lordship said: *"In fact, Act 553 provides that in default of a trustee being appointed, the nominee or a public trustee shall be appointed as trustee of the policy moneys."*

It was further held that failure on the part of the appellant to pay the policy moneys over to the appointed trustee amounts to a breach of contractual obligation to the deceased or the deceased's nominee. And in such a case it is for the personal representative of the deceased (or the trustee) to take the necessary legal action against the insurer (i.e. the appellant). The Court also said that any money due or payable under the policy is subject always to the terms and conditions of the policy. This is because the relationship between the insurer and the insured is purely a contractual one.

The minority of the Court (i.e. Mohd Ghazali Yusoff FCJ) however agreed with the finding of the Court of Appeal and said that upon the death of the insured the moneys in the hand of the insurer became impressed with a trust, and that trust was a statutory trust as between the personal representative of the deceased's estate and the ultimate beneficiary. The minority held that by virtue of section 23(1) of the CLA,

Old volumes of Law Reports at the library, Palace of Justice

the appellant is a constructive trustee of the moneys payable under the policy because the appellant had declared in the policy that it will pay "the face amount" (i.e. the money) to the beneficiary upon the death of the insured prior to the maturity date.

Criminal Cases

i) In **Hari Bhadur Ghale v. Public Prosecutor** [2012] 7 CLJ 789, as a result of a "sting operation" conducted by the Malaysian Police and the United States Drugs Enforcement Agency (DEA), the appellant was arrested and subsequently charged under section 39B of the Dangerous Drugs Act 1952 (DDA) for the offence of trafficking in 875.2 grams of heroin. Mensah Marlon Carl (PW4), who worked for DEA and was based in Bangkok, acted as an agent provocateur. The appellant was convicted and sentenced to death by the High Court. The Court of Appeal affirmed the decision of the High Court. On appeal to the Federal Court, the appellant sought an interpretation of s. 40A (2) of the DDA.

Issue :-Whether s.40A(2) of the DDA limits the categories of agent provocateur to only a police or customs officer.

Decision :- Richard Malanjum CJ (Sabah & Sarawak) in delivering the judgment of the Court explained the scope of the provisions:

"Now, on plain reading of subsection (2) we find that it consists of two limbs.

The first limb of the subsection is the overriding clause that deals with two situations and it is to be read in this way:

Regardless of ('Notwithstanding'):

i. 'any rule of law of the provisions of this Act or any written law to the contrary' (first situation); 'and'

ii. even when '(that) the agent provocateur is a police officer whatever his rank or any officer of customs' (second situation), the second limb of the subsection must be complied with.

There is nothing in this first limb to suggest that it has reversed or limited the common law principle that any person can be an agent provocateur and that henceforth only a police or a customs officer can be an agent provocateur under the DDA. All it does is to highlight a situation (second situation) that even when an agent provocateur is a police or customs officer any statement, made to him by any person shall be admissible as evidence. The court has no discretion to refuse admitting (as opposed to weight) such evidence.

If Parliament had intended to limit the category of an agent provocateur under the DDA as argued it would have made it in plain simple term and such provision would have preceded subsection (1) of the section. In fact we find the words in the first limb of subsection (2) of the section to be plain, clear and unambiguous and do not entertain any doubt for the benefit of the appellant."

The Federal Court dismissed the appeal.

ii) In **Karpal Singh a/l Ram Singh v Public Prosecutor** [2012] 5 MLJ 293, the appellant was charged with having contravened section 4(1) of the Sedition Act 1948. At the close of the prosecution case, the High Court judge acquitted the appellant without his defence being called. The prosecution appealed to the Court of Appeal, which decided that a prima facie case had successfully been established at the close of the prosecution case. The Court of Appeal set aside the acquittal, directed the case be transmitted to the High Court and ordered the defence to be called. Dissatisfied with the decision, the appellant appealed to the Federal Court. The prosecution then filed a notice of motion for an order that the appellant's appeal be struck out in limine on the grounds that the decision of the Court of Appeal was not appealable.

Issue :-Is the decision of the Court of Appeal deciding that a prima facie case has been successfully established at the close of the prosecution case, appealable?

Decision :- Such a decision did not finally dispose of the rights of the parties and only after hearing the defence of the appellant could the High Court make a final decision. Without the finality element in the decision

A Judge and his books are never apart

of the Court of Appeal the appeal was incompetent and hence non-appealable.

Suriyadi FCJ in delivering the judgment of the Federal Court said:

"*In order for a decision to be final, the defence must first be heard, and after a maximum evaluation of the total evidence a decision eventually be made. It is at that conclusive stage, when the fate of the appellant is known, the right of appeal is triggered.*"

iii) In **Ahmadi bin Yahya v Public Prosecutor** [2012] 6 AMR 193; [2012] 6 MLJ 37 the Federal Court had occasion to examine the issue of whether the Court of Appeal has the inherent jurisdiction to review its own previous decision in the same case.

There were conflicting decisions of the Court of Appeal on this question of whether the Court of Appeal has the inherent power to review its own previous decision in the same case. In **Ramanathan a/l Chelliah v Public Prosecutor** [2009] 6 MLJ 215 and **Public Prosecutor v Abdullah bin Idris** [2009] 4 AMR 198; [2009] 5 MLJ 192, the court ruled to the effect that it has such a power. These two decisions were however not followed by the Court of Appeal in **Public Prosecutor v Ishak bin Hj Shaari** [2011] 5 AMR 36; [2011] 3 MLJ 595. By a majority, the Court of Appeal held that no such jurisdiction has been granted by the Federal Constitution or by or under any federal law. In 2012, the opportunity presented itself again for the Court of Appeal to re-examine this issue.

Decision:- The Federal Court decided that the Court of Appeal has the inherent jurisdiction to review its own decision in the same case.

Raus Sharif PCA made this significant pronouncement:

"It is my view that when the Court of Appeal is the final court (apex court), it has the inherent jurisdiction or powers to review its own previous decision. No doubt that the Court of Appeal is not statutorily conferred with such jurisdiction or powers but as rightly pointed out by Mohd Hishamudin JCA in his dissenting judgment in ***Public Prosecutor v Ishak bin Hj Shaari*** *[2011] 5 AMR 36; [2011] 3 MLJ 595 that "... the source of the inherent powers is the judicial power that is vested on the judiciary by the Federal Constitution, in particular Article 121". An apex court must be armed with such inherent powers in order to correct obvious mistakes and to do justice. However, in exercising such powers, it should not position itself as if it were hearing an appeal. A good guide of such exercise of powers of an apex court has been laid down by the Federal Court in the case of* ***Asean Security Paper Mills Sdn Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd*** *[2008] 5 AMR 377 at 382; [2008] 6 CLJ 1 at 7. The case clearly demonstrates that the power by an apex court to review its own previous decision may only be done in very exceptional circumstances. In* ***Gurbachan Singh s/o Bagwan Singh & Anor v Vellasamy s/o Pennusamy & 3 Ors*** *[2012] 2 AMR 403; [2012] 2 CLJ 663, I have, speaking for the Federal Court indicated that one instance where the power to review may be exercised is when there is a corum failure. Another instance that I can think of is where the Court of Appeal has by mistake imposed a wrong sentence as provided by law. Example, if the law imposes a maximum sentence of 20 years' imprisonment, but by mistake the Sessions Court imposes 25 years' imprisonment; and, this is subsequently affirmed by the High Court and Court of Appeal. In such a situation, another panel of the Court of Appeal, being the apex court can use its inherent powers to set aside the illegal sentence and impose the sentence that is appropriate as provided by the law. Of course there may be other instances but the exercise of such power depends on the facts and circumstances of each case (see* ***Ramanathan s/o Chelliah v Public Prosecutor*** *[2009] 6 MLJ 215). However, as said earlier, the power to review must not be treated as an appeal; otherwise, there will be no end to litigation."*

A Judge's Desk - His books and headgear

CHAPTER 10

JUDICIAL INSIGHTS

LIMITS OF APPELLATE CRITICISM

By
Justice Jeffrey Tan Kok Wha

It is important that the appellate court disagree when required, for it is not there simply to agree. When the result of appellate review is a reversal, a criticism of the judgment under review cannot be avoided. To support its own decision, an appellate court will highlight the errors of the trial court. The nub of an appeal is criticism of the judgment under review. Hence, trial judges must "tolerate criticism which takes the form of disagreement with an opinion or a particular course of action" (Criticism of Judges by Politicians: Reflections from New Zealand by Noel Cox).

"Judges [should] train themselves not to feel personal resentment when they are reversed by a court of appeal, but it can be difficult to avoid if the appeal court does not act with the necessary moderation, or unnecessarily berates the judgment under appeal" (Judicial Ethics in Australia by the Honourable James Thomas, 3rd edition at paragraph 4.35).

The Honourable James Thomas cited the following two instances where personal resentment simply boiled over. In Place v Searle [1932] 2 KB 497, Justice McCardie was the trial judge who ruled on the evidence that the jury could not find in favour of the plaintiff-husband, in his action rule for damages for enticement. In the course of the appeal against McCardie J's

ruling, Lord Justice Scrutton was reported to have been critical of McCardie J and to have expressed his surprise that a "gentleman who has never been married should, as he has done in another case, proceed to explain the proper underclothing that ladies should wear". It was a personal attack based on something that McCardie J had said in another case. McCardie J reacted by making the following statement in open court before commencing a case.

> *"If there is to be an appeal, I shall not supply any copy of my notes until I am satisfied that Lord Justice Scrutton will not be a member of the court which tries the appeal ... I regret that it has become my duty to administer this public rebuke to Lord Justice Scrutton."*

A motion was tabled in the House of Commons describing McCardie J's conduct as "regrettable" and as "calculated to lower the prestige of the judiciary". Lord Hanworth MR issued a statement that it was the duty of the judges of first instance to conform to the tradition and practice of supplying notes to the Court of Appeal. McCardie J then acknowledged his duty to supply the notes and did not carry out his threat. But by then, both talented judges were shown out to have acted unjudicially, "and if they had further carried on their dispute in public, it would have become a matter of increasing scandal with corresponding loss of confidence in administration of the law" (*Judicial Ethics in Australia* supra at paragraph 4.31).

In Liversidge v Anderson [1942] AC 206, Lord Atkin included in his judgment the following comments which were critical of the other members of the court.

> *"I view with apprehension the attitude of judges who, on a mere question of construction, when face to face with claims involving the liberty of the subject, show themselves more executive-minded than the executive ...*
>
> *I know of only one authority which might justify the suggested method of construction. "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean, neither more nor less." "The question is," said Alice, "whether you can make words mean different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." (Alice Through the Looking Glass, c vi). After all this long discussion, the question is whether the words "If a man has" can mean "If a man thinks he has." I am of opinion that they cannot, and that the case should be decided accordingly."*

Lord Salmon tried but failed to persuade Lord Atkin to delete the 'Humpty Dumpty' reference from his proposed judgment. Lord Salmon wrote Lord Atkin a letter expressing the fear that "it may be wounding to your colleagues", but Lord Atkin published it as it stood. Lord Maugham, the presiding judge, wrote a letter to the Times rebuking Lord Atkin for his statement that he had listened to "arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I" and alleging that Lord Atkin had thereby attacked counsel. Lord Atkin refused to enter into any public debate. In his letter to his daughter, Lord Atkin wrote:

> *"It is of course quite unprecedented and quite unpardonable for one judge to attack another's judgment in the press, and nothing will induce me to reply."*

The press was not impressed with Lord Maugham's action's describing it as a judge's lapse (*Judicial Ethics in Australia* supra at paragraph 4.33):

> *"The rebuke to Lord Atkin was in fact superfluous; but even if the complaint had been never so well justified that could not have excused the method chosen by Lord Maugham to ventilate it."*

Lord Atkin was right not to enter into public debate, for a judicial decision is a self-contained entity that must speak for itself. Extrajudicial speech will only impugn public confidence in the legitimacy of a decision and in the judicial system (for further reading, see *Judicial Speech: Off-the-Bench Criticism*

of Supreme Court Decisions by Judges Fosters Disrespect for the Rule of Law and Politicizes our System of Justice, 28 Loy. L.A. L. Rev. 795 (1995), where Arthur L. Alarcon, Senior Judge of the United States Court of Appeals (9th Circuit), opined that public and off-the-bench criticism of the decisions of the Supreme Court by lower federal courts is prohibited by existing ethical rules and "if it is not, then rules should be adopted to make it clear that such conduct will not be tolerated because of the threat it would pose to the rule of law if other lower court judges were to publicly attack decisions of the United States Supreme Court").

The National Post of Canada dated 26.2.1999 reported another case of judicial war of words. The Alberta Court of Appeal had upheld the sexual assault acquittal of Steve Ewanchuk. The Supreme Court convicted Ewanchuk, instead of sending his case back to Alberta. Justice L'Heureus-Dube of the Supreme Court wrote a separate opinion sharply criticising Justice McClung for promoting "archaic myths and stereotypes" about sexual assaults. In his letter dated 26.2.1999 to the National Post, Justice McClung responded:

> *"Madam Justice Claire L'Heureux-Dube's graceless slide into personal invective in Thursday's judgment in the Ewanchuk case allows some response."*
>
> *"Whether the Ewanchuk case will promote the fundamental right of every accused Canadian to a fair trial will have to be left to the academics. Yet there may be one immediate benefit. The personal convictions of the judge, delivered again from her judicial chair, could provide a plausible explanation for the disparate (and growing) number of male suicides being reported in the Province of Quebec."*

In his 1998 ruling, Justice McClung concluded that the advances of Ewanchuk, who had just met the 17-year-old woman, were "less criminal than hormonal" and perhaps would have been better dealt with by "a well-chosen expletive, a slap in the face, or, if necessary, a well-directed knee." He said the woman, who was wearing shorts and a T-shirt, "did not present herself to Ewanchuk . . . in a bonnet or crinolines." That ruling enraged women's groups. Justice L'Heureux-Dube said it was the role of the court "to denounce this kind of language, unfortunately still used today, which not only perpetuates archaic myths and stereotypes about the nature of sexual assaults but also ignores the law." Justice Claire L'Heureux-Dube issued the following point-by-point rebuke to Justice McClung, for comments he made when he acquitted Ewanchuk:

> *McClung: "It must be pointed out the complainant did not present herself [to the accused] in a bonnet and crinolines."*
>
> *L'Heureux-Dube: "These comments made by an appellate judge help reinforce the myth that under such circumstances, either the complainant is less worthy of belief, she invited the assault, or her sexual experience signals probable consent to further sexual activity."*
>
> *McClung: "She told Ewanchuk that she was the mother of a six-month-old baby and that, along with her boyfriend, she shared an apartment with another couple."*
>
> *L'Heureux-Dube: "One must wonder why he felt necessary to point out these aspects of the trial record. Could it be to express that the complainant is not a virgin?"*
>
> *McClung: "There was no room to suggest that Ewanchuk knew, yet disregarded, her underlying state of mind as he furthered his romantic intentions."*
>
> *L'Heureux-Dube: "These were two strangers, a young 17-year-old woman attracted by a job offer trapped in a trailer with a man approximately twice her age and size. This is hardly a scenario that one would characterize as reflective of romantic 'intentions.' It was nothing more than an effort by Ewanchuk to engage the complainant sexually, not romantically."*

McClung: "During each of three clumsy passes by Ewanchuk, when she said no, he promptly backed off."

L'Heureux-Dube: "The expressions used by McClung to describe the accused's sexual assault, such as 'clumsy passes,' are plainly inappropriate in that context as they minimize the importance of the accused's conduct and the reality of sexual aggression against women."

McClung: "The sum of the evidence indicates that Ewanchuk's advances to the complainant were far less criminal than hormonal."

L'Heureux-Dube: "According to this analysis, a man would be free from criminal responsibility for having non-consensual sexual activity whenever he cannot control his hormonal urges."

McClung: "In a less litigious age, going too far in the boyfriend's car was better dealt with on site, a well-chosen expletive, a slap in the face, or, if necessary, a well-directed knee."

L'Heureux-Dube: "According to this stereotype, women should use physical force, not resort to the courts to 'deal with' sexual assaults and it is not the perpetrator's responsibility to ascertain consent . . . but the woman's not only to express an unequivocal 'no' but also to fight her way out of such a situation."

Justice McClung claimed he was unaware that Justice L'Heureux-Dube's husband committed suicide. Canadian legal experts said that Justice McClung's missive was inappropriate whether he knew of the suicide or not (for further reading, see *The Globe and Mail* dated 27.2.1999). *The National Post* of 27.2.1999 recorded the following comments from the legal fraternity:

"It is a shocking and outrageous statement to be making. You don't need to be a lawyer to see that it is discourteous, it is hurtful, it is uncalled for, it is ungentlemanly and it is certainly injudicious," "You don't have to agree with Madame Justice L'Heureux-Dube in that case. You can disagree strongly with her judgment. But not getting your way is hardly a reason for making personal, vindictive and ungentlemanly remarks in a public forum in writing" (Joseph Magnet, a former Crown prosecutor and a professor of the University of Ottawa's law school for 20 years).

"It is extremely rare to hear this sort of thing away from the bench. Judges are not politicians, you know?" "Judges are often critical in private discussion and sometimes when they visit law schools students will engage them and you can hear criticism. But it is always politely phrased and there is a civility to it. They are certainly not the sort of appalling comments we are reading today from Justice McClung" (Prof. Peter Russell, an expert on the Canadian judiciary and former University of Toronto professor).

A few days later, Justice McClung admitted his error and acknowledged there was no justification for his action:

" … To be clear, I recognize the overriding authority of the Supreme Court of Canada and any suggestion to the contrary is incorrect. The Canadian system of justice could not function in the absence of a hierarchy of Courts.

I deeply regret that what has happened has ignited a debate which could place the administration of justice in an unfortunate light. If so, that was unintentional as I have the highest regard for the justice system in which I serve. "

Another well known instance of judicial spat was United States v Webb, 134 F.3d 403, 408-09 (D.C. 1998), where the United Court of Appeals for the District of Columbia accused US District Judge Sporkin, a highly respected jurist, of having "wreaked havoc in the administration of justice" by "knowingly" abusing his discretion

in sentencing a defendant in a drug case to forty-one months in prison rather than the seventy to eighty-seven months recommended by the sentencing guidelines. The trial judge responded to this blistering criticism with an acerbic opinion of his own. Decrying the appellate panel's "unwarranted and inappropriate personal attack on this Court," Judge Sporkin recused himself from further participation in the case and wrote a detailed defence of his original decision. As Judge Sporkin observed,

> *"One Article III judge's right to engage in a negative attack on a second Article III judge arising out of a good faith official action is nowhere to be found in Article III of the Constitution. What is more, simple fairness and due process . . . require that a co-equal judge be given notice and an opportunity to respond to such a vicious attack. It goes without saying that reviewing courts are supposed to sit in judgment of cases, not fellow judges."*

Judge Sporkin also argued on the need for heightened civility amongst judges:

> *"There is much talk about the need for heightened civility among the members of the bar. Civility starts at home. How can courts expect lawyers appearing before them to be more civil when Article III judges themselves are not civil to one another? The panel's strident language encourages disrespect for this Court ...*
>
> *We who try to discharge our judicial responsibilities in a conscientious and just manner should not be the victim of vicious personal attacks from other judges. Such attacks have no role to play in the administration of justice. Under the federal system, district courts and appellate courts receive powers from the same part of the Constitution. They are equals and must be treated as such."*

Prof William G. Ross was of the view that Judge Sporkin's criticisms of the appellate court was apt but was itself of the kind of incivility that judges should avoid:

> *"Judge Sporkin's criticisms of the appellate court were fair. Even though the appellate court clearly disapproved of the trial judge's departure from the sentencing guidelines, the appellate court's remand of the case would have been enough of a rebuke to the judge. To the extent that the appellate court needed to explain its remand, it should have criticized Judge Sporkin's decision in a less histrionic fashion than to allege that it "wreaked havoc in the administration of justice." For example, it could properly have characterized his decision as "inappropriate" or even as "extreme." But while the trial judge's criticisms of the appellate court were quite apt, the trial judge's lecture to the appellate court on the need for judicial civility may itself have been an exercise in the type of incivility that judges should avoid. Although the judge properly recused himself from further proceedings if he felt that he could not in good faith abide by the appellate court's decision, he ought to have suffered the insult in silence, leaving his defence to scholars or commentators, or addressing the issue of civility in a forum other than a judicial opinion."*

Opinions may differ as to who was more wronged than wrong in those exchanges. But there was no divergence of opinion that respect for the judiciary was not enhanced. The dignity of the judiciary was impacted. Be it within the court or off-the-bench, or by outsiders, "The attacking of judges is not good for the system" (Lord Neuberger, quoted by the Express of 5.3.2013). Prof William G. Ross, in his article *"Civility among Judges: Charting the Bounds of Proper Criticism by Judges of other Judges"* (Florida Law Review of December 1999) opined that "Issues involving the civility of judges toward one another usually arise out of critical comments that judges make about other judges. Such criticism takes many forms, including 1) comments in written opinions of judges who serve on multi-judge panels about the majority, concurring, or dissenting opinions; 2) comments in written opinions of higher courts about the decisions or opinions of lower courts; 3) public comments about other individual judges or their decisions; 4) public comments about the courts and the judiciary that are not directed against specific judges; and 5) private comments made about other judges or their decisions, collectively or individually."

The perception is that inter-judicial incivility arose when written decisions contained unnecessarily harsh criticism of trial judges or stinging bashes of lower court decisions and those who make the decision.

Prof. William G. Ross claimed that "the most dangerous aspect of sarcastic opinions, peevish concurrences, and stinging dissents is not so much that they erode the legitimacy of appellate courts, as that they confuse the law by interjecting a high level of contentiousness and verbosity into judicial opinions which should be designed to provide guidance variously to lower courts, law enforcement agencies, legislators, and citizens", that "Rhetorical gamesmanship obfuscates rather than clarifies the law, that "incivility in written opinions might decrease a judge's influence among his or her colleagues", and that "Judges should remain mindful that they are writing judicial opinions rather than law review articles, and they therefore should write with simplicity and succinctness, limiting their cleverness to an occasional epigram." To appellate judges incensed by the incompetence of trial judges, Prof William G Ross advised:

> *"Likewise, judges should display respect for the lower court judges whose decisions they review. The reversal of a lower court decision is a conclusive rebuke to a lower court and any demeaning language is superfluous. If the appellate judge believes that the lower judge was incompetent, he or she can quietly work through established channels to remove, reform, or discipline the lower court judge. Written attacks concerning the lower court judge's error can only detract from the dignity of the judicial process."*

Dipak Misra J, in Amar Pal Singh v State of U.P & anor (Supreme Court of India Criminal Appeal 651 of 2009 dated 17.5.2012) also emphasized the duty to employ language to convey the message to the trial court rather than a rebuke:

> *"A distinction has been lucidly stated between a message and a rebuke. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint ... the entire system is dependent on use of dignified language and sustained restraint, moderation and sobriety ... unwanted comments on the judicial officer ... affects the conception of rule of law ... A judge of a superior court however strongly he may feel about the unmerited and fallacious order passed by an officer is require to maintain sobriety, calmness, dispassionate reasoning and poised restraint."*

Moderation in criticism of inferior courts is therefore to protect the moral authority of the judicial process. In State v Mamabolo (ETV, Business Day and the Freedom of Expression Institute Intervening) [2002] 1 LRC 32, which concerned an act of contempt of court, the Constitutional Court of South Africa explained that moderation is not to protect the judicial officer:

> *" ... it is important to keep in mind that it is not the self-esteem, feelings or dignity of any judicial officer, or even the reputation, status or standing of a particular court that is sought to be protected, but the moral authority of the judicial process as such ... "*
>
> *More recently Corbett CJ, as he then was, quoting these famous remarks of Lord Atkin, expressed the modern balance as follows:*
>
> > *'... Judges, because of their position in society and because of the work which they do, inevitably on occasion attract public criticism and that it is right and proper that they should be publicly accountable ... There seems little doubt that in the nearly 60 years which have passed since Lord Atkin made these remarks attitudes towards the judiciary and towards the legitimate bounds of criticism of the judiciary have changed somewhat. Comment in this sphere is today far less inhibited. Criticism of judgments, particularly by academic commentators, is at times acerbic, personally oriented*

> *and hurtful. I doubt whether some of this criticism would have been regarded as falling within the limits of what was regarded as "respectful even though outspoken" in Lord Atkin's day ... To some extent what in former times may have been regarded as intolerable must today be tolerated ... This, too, will help to maintain a balance between the need for public accountability and the need to protect the judiciary and to shield it from wanton attack.' (See Argus Printing and Publishing Co Ltd v Esselen's Estate 1994 (2) SA 1 (A) at 25–26.)"*

" .. criticism is [therefore] moderated by the dictates of policy. Too much criticism – which might undermine the standing of the courts in general – is avoided" (Noel Cox supra). The language of defamation will not be sanctioned (see Argus Printing and Publishing Company Ltd. and Others v Esselen Estate (447/92) [1993] ZASCA 205). As said, criticism of judgments that are acerbic personally oriented and hurtful fall outside the limits of what was regarded as "respectful even though outspoken". Bilious criticism, unnecessarily harsh criticism of trial judges, offensive remarks, and or a display of intellect by stinging bashes of lower court decisions and those who make the decisions also fall outside proper criticism (see Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 F.R.D. 371, 431 (1992)).

Criticism must be free of intemperate remarks and personal attacks. In short, criticism must be civil. Otherwise, it would seem that there is no limit to proper criticism of judgments (see Attorney General v Times Newspapers Ltd [1973] 3 All ER 54). It is fair criticism if spoken of plainly as of that character (see R v Wilkinson [1876] O.J. No. 9). That was illustrated in Ernesto Adolfo Recinos de Leon v Alberto Gonzales, Attorney General 400 F.3d 1185 (9th Cir. 2005), which concerned a review of an order of the Board of Immigration, where Judge Berzon tersely commented that the case "was a review of a totally incomprehensible opinion by an immigration judge", that "it was impossible to decipher what legal and factual reasons support the IJ's decision", that "the IJ did not follow decisional structure outlined by the regulation or, for that matter, any intelligible structure" that "the IJ's opinion jumbles together discussions on credibility, past persecution, future persecution, changed country circumstances and relocation" that "the problem here is that we do not know which analysis to undertake, because we cannot know what the IJ decided", that "the IJ opinion is extreme in its lack of a coherent explanation" and that "the two-line affirmance does nothing additional to satisfy the basic requirement that the 'grounds upon which the administrative agency acted be clearly disclosed and adequately sustained' ".

The comments were hurting. But they remained within the bounds of objectivity.

Criticism is therefore also moderated by civility which is one of the basic values that judicial conduct must uphold (for further reading, see Judicial Conduct and Accountability by Marshall at page 67). Things could be simpler if there is a single definition of civility. But apparently, a single definition of civility may not exist (Abigail Zigman: The Role of Civility in the Legal Profession). There are model codes on the standard of civility and decorum expected of judges. The "Civility Standards of Judges' Duties to Lawyers, Parties and Witnesses" of the New York Unified Court System states that "Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses". SCR Chapter 62 of the Standards of Courtesy and Decorum for the Courts of Wisconsin, states, inter alia, that Judges shall "Maintain a cordial and respectful demeanor", "Be civil in their dealings with one another and ... conduct all court and court-related proceedings, with civility ... ", and "Conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process". The Bangalore Principles of Judicial Conduct 2002 says that "A Judge shall exhibit and promote high standards of judicial conduct ... ". There are several other

model codes. There is more than enough on what is civil.

The same limits constrict a dissenting judgment. "A dissent that strikes a strident or preachy note may contribute to divisiveness and ill feelings, on the court, may undermine the authority of the opinion and of the court as an institution. Dissents generally should not be written when the principle at issue is settled and the decision has little significance outside the specific case ... A dissenting opinion should not simply slash at the majority opinion or its author. Personal attacks, offensive language, and condescending tone should not be used, although some judges believe that moral outrage and restrained indignation may sometime be appropriate" (Judicial Writing Manual by the Federal Judicial Center at page 29).

Perhaps, it just boils down to self-restraint.

SENTENCING COUNCIL IN MALAYSIA: A NECESSITY OR OTHERWISE?

By
Justice Abdul Malik Bin Ishak

Introduction

Although sentencing is within judicial discretion, it has been a contentious topic brought to public attention in Malaysia in recent times. This article considers the necessity of establishing a Sentencing Council in Malaysia from a legal and policy perspective. The discussion begins with the sentencing practices in Malaysia and the difficulties and impediments we face from the common law based sentencing system. This is followed by a brief comparative analysis with the sentencing regimes in England and Wales, Australia and New Zealand. The final section of this article then examines the option of establishing a Sentencing Council in Malaysia – the pros and cons, mitigating factors and potential safeguards, as well as other methods that may be adopted to address the issues plaguing the current regime, in order to determine whether a Sentencing Council is needed.

Sentencing in Malaysia

The common law model adopted in the Malaysian sentencing system contains the following salient features:

(1) it is the legislature that determines the penalties and the range of sentences to be meted out by the Judges;

(2) discretionary powers are vested in the Judges to determine the appropriate sentence in any given case; and

(3) judicial discretion is guided by precedents set by the Superior Courts[1].

The pith and core of the Malaysian sentencing system is thus the exercise of judicial discretion in the selection of penal measures to be applied to an offender[2]. In a summary trial, the Magistrate **"shall pass sentence according to law"**[3] and this phrase has been explained by Mohamed Azmi J (later SCJ) to mean[4]:

> *"that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles."*

Similarly, the High Court **"may pass any sentence allowed by law"**[5]. The Court of Appeal may quash the sentence passed, confirmed or varied by the High Court and substitute it with such other sentence as it thinks fit[6]. The same powers are vested in the Federal Court with regard to a sentencing decision made by the Court of Appeal[7].

The sentencers – be they Judges or Magistrates, must not only refer to the relevant penal provisions before imposing the punishments but must also be guided by the established judicial principles. It is acknowledged that sentencing is a discretionary power given to the sentencers. It is an unfettered power that must be judicially exercised. The term **"judicial discretion"** has been lucidly explained by Raja Azlan Shah, Acting LP (as His Royal Highness then was) in this way[8]:

> *"I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions (see Jamieson v Jamieson [1952] AC 525, 549)."*

I had also the opportunity to lay down as follows[9]:

> *"A judicial discretion can never be exercised at gun point, so to speak, but it must be exercised according to the tenets of reasonableness by a Judge with the correct judicial temperament."*

It is only where there has been a conviction for offences which carry the mandatory death penalty, such as drug trafficking[10] and murder[11], that the sentencers' hands are tied. In all other cases, the sentencers are left to their own devices in terms of determining the applicable purposes and principles of sentencing and the appropriate sentence within the range prescribed by legislation, which differ on a case-by-case basis. Judges and Magistrates must undertake the balancing act of considering a gamut of factors including the offender's plea in mitigation, and subsequently strike a balance between the interests of the offender, the victim, and the public in order to arrive at a just and appropriate sentence. This subjective process inevitably results in different sentencing outcomes depending on the facts and circumstances of the case. Ultimately, sentencing is an honest act by Judges and Magistrates endowed with the correct mental aptitude and a sound legal mind. **Dr. Molly Cheang** aptly said that[12]:

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1 This is similar to the traditional common law sentencing system that was adopted in New Zealand. See Warren Young and Andrea King (2010), 'Sentencing Practice and Guidance in New Zealand', *Federal Sentencing Reporter Vol. 22, No. 4.*
2 Ho Mooi Ching (2007) 'Sentencing Practice in Malaysia', *Sweet & Maxwell Asia.*
3 Section 173(m)(ii) of the Criminal Procedure Code.
4 Public Prosecutor v Jafa Bin Daud [1981] 1 MLJ 315, at page 316.
5 Section 22(2) of the Courts of Judicature Act 1964.
6 Section 60(2) of the Courts of Judicature Act 1964.
7 Section 92(2) of the Courts of Judicature Act 1964.
8 Bhandulananda Jayatilake v Public Prosecutor [1982] 1 MLJ 83, at page 84.
9 PP v Ahmad Hussin Zamir Hussin [1999] 3 CLJ 656, at page 666 following Noor Mohd v Imtiaz Ahmad AIR [1942] Qudh 130, at page 132.
10 Section 39B(2) of the Dangerous Drugs Act 1952 (Act 234).
11 Section 302 of the Penal Code (Act 574).
12 'Disparity in Sentencing' [1977] 1 MLJ xxxi, xxxii.

> *"Judges and magistrates are given enormous power over the lives of individuals. 'Nowhere else in our society is one man invests with so awful a power over the life and freedom of another man'. The proper exercise of that power is a matter of concern to offenders, to the agencies and individuals responsible for law enforcement and the treatment of offenders, and to the public at large."*

As a result of the element of subjectivity in the exercise of judicial discretion to a certain extent and the fact that the sentencers come from varied backgrounds, disparity in sentencing exists between Courts as well as Magistrates. And this disparity becomes more pronounced in the Subordinate Courts[13]. **Dr. Molly Cheang** referred to a passage by F. Gaudet[14] which reads as follows:

> *"The criteria for sentencing are unevenly and capriciously applied and the primary influence upon sentences is the personality of the judges; his personality in terms of his social background, education, religion, expressive temperament, and social attitudes."*

According to **Dr. Mimi Kamariah Majid and her associates** in the preface of their **"Report"**[15]:

> *"Disparity in sentencing is not a new phenomenon. It has been present all along simply because sentencing is a discretionary power given to the courts. Renewed interest in this area arose recently because cases involving rich businessmen, well-known politicians and influential public personalities found guilty of offences such as criminal breach of trust, cheating and corruption were prominently highlighted in the media. The outrage was aggravated by similar publicity given to punishments imposed on petty criminals and thieves. The disparities in the punishments, apparent or real, sparked off debates and criticisms against the judiciary. To the layman and general public, there is gross injustice where a man found guilty of stealing some goods in a supermarket is imposed many months of imprisonment but a prominent public personality gets away with a few thousand ringgit fine, which he can pay immediately anyway, for an offence of criminal breach of trust involving millions of ringgit."*

A prisoner who compares the sentence which he receives from the Magistrate with another prisoner who receives a lighter jail term for the same kind of offence will be unhappy and be deemed as a **"hostile inmate"** in prison[16]. In order to reduce the disparities in sentencing, the Report had suggested that courses be conducted for all sentencers in the Subordinate Courts before they assume duties on the bench. In-service courses in the form of conferences, meetings and workshops were recommended and that age and experience are important pre-requisites for appointments to the bench especially in the Magistrates' Courts. It was also suggested that the Superior Courts, through appeals and revisions, should constantly check and safeguard the interests of the offender and the community. Finally, a manual on sentencing containing the principles of sentencing and judicial guidelines was recommended as being useful.

Consistency in sentencing between Courts as well as Magistrates is desirable but it is difficult to achieve, for it is not easy to find a just and appropriate sentence to fit the offence, let alone ensuring consistency. And this is a perennial problem that needs to be resolved.

Another problem in sentencing is pertaining to the proportionality of the sentence to the offence. A sentence imposed by the Court must not be out of proportion to the gravity of the offence for which the offender has been convicted[17]. I had occasion to say that[18]:

> *"The sentence meted out must be proportionate to the offence. It is often said that the business of the court is to do justice and this can be achieved if the sentence is proportionate between one offender to that of another."*

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[13] The bulk of sentencing is undertaken by Magistrates and Sessions Court Judges.
[14] 'The Sentencing Behaviour of the Judge', in V. Brandom and S. Katash (eds.), Encyclopaedia of Criminology (New York, 1949) at pages 449-461.
[15] Dr. Mimi Kamariah Majid, Dr. Abd Hadi Zakaria, Talat Mahmood Abdul Rashid and Johan Shamsuddin Sabaruddin (31 August 1994), 'A Report on A Study on Disparity in Sentencing'.
[16] *Ibid.*, 12.
[17] Pendakwa Raya v Muhari bin Mohd Jani & Anor [1996] 2 AMR 2029; [1996] 3 MLJ 116, at 134; [1999] 8 CLJ 430.
[18] Muhammad Isa bin Aris & Ors v Public Prosecutor [2011] 5 MLJ 342, CA, at page 351.

The proportionality principle was also emphasised by Raja Azlan Shah J (as His Royal Highness then was) in these salient words[19]:

> *"It is not in doubt that the right measure of punishment for an offence is a matter in which no hard and fast rules can be laid down and it is to be determined by a consideration of a variety of circumstances. In assessing sentence, the primary consideration is the character and magnitude of the offence, but the court cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist in the case."*

It was recently reported that the Alor Star Sessions Court sentenced a wildlife trader for only two years' imprisonment with no fine imposed for having committed two offences under the **Wildlife Conservation Act 2010**[20]. This is yet another case brought to the attention of the public, whereby the sentence was not proportionate to the gravity of the offence and as a result, public confidence in our criminal justice system is deteriorating.

Other commonly perceived problems with a sentencing regime based on the common law model include non-transparency, cost ineffectiveness, and the adverse consequences on the penal resources of the Government[21]. For instance, a report conducted by SUHAKAM[22] revealed that the prisons in Malaysia are overpopulated based on the higher number of detainees at the prisons compared to the gazetted capacities. The rising numbers have been caused by, in part, the severity of the custodial sentences meted out by the Courts. With each prisoner costing the Government RM35 a day[23], the overcrowded prisons sap the penal resources of the Government.

We need to promote public confidence in our criminal justice system and address the shortcomings of the common law based sentencing system. What should we do to overcome our problems?

The English experience

It is appropriate to refer to England where our common law is derived from[24]. The sentencing practice in England and Wales has been through many developments, irrespective of which, the need to exercise judgment and discretion remains imperative. The Courts must take into account five purposes of sentencing, namely: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offences[25]. In addition, the Courts need to take into consideration the crime itself and its level of seriousness in terms of the offender's culpability and the harm caused, the victim and the impact of the crime on the victim, the offender and the circumstances of the case, as well as public perception and the demands of the criminal justice system in practical terms, such as overcrowding of prisons[26].

Sentencing guidelines were initially created in England and Wales by the Court of Appeal via judgments, but the drawback was that the material on which reliance could be placed was restrictive[27]. To resolve this problem, the **Crime and Disorder Act 1998** established the Sentencing Advisory Panel which was responsible for proposing the creation or revision of guidelines on sentencing, after having consulted relevant persons[28]. The recommendation by the Sentencing Advisory Panel would be forwarded to the Court of Appeal for its consideration to issue or revise a guideline judgment.

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[19] Liow Siow Long v Public Prosecutor [1970] 1 MLJ 40, at page 42.
[20] 'Uproar over Light Sentence' (9 February 2013), *The Star newspaper*. The wildlife trader had in his possession eight tiger skins, 22 bags of tiger bones and nine African elephant tusks.
[21] *Ibid.*, 1.
[22] 'The State of Prisons and Immigration Detention Centres in Malaysia 2007-2008'.
[23] As elucidated by Datuk Mohd Nashir Ibrahim Fikri in the Dewan Rakyat and captured in 'Fine-tuning Law to Curb Overcrowding in Prisons' (1 December 2010), *New Straits Times newspaper*.
[24] The Charters of Justice of 1807, 1826 and 1855 introduced English law into our country. See Ahmad Ibrahim, 'Towards A History of Law In Malaysia And Singapore', at page 1; Sharifah Suhanah Syed Ahmad, 'Malaysian Legal System', 2nd Ed., Chapter 2; Yeap Cheah Neo & Ors v Ong Cheng Neo [1875] LR 6 PC 381; In the Goods of Abdullah [1835] 2 Ky Ec 8; Choa Choon Neoh v Spottiswoode [1869] 1 Ky Cc 216; and section 3 of the Civil Law Act 1956 (Revised 1972).
[25] Section 142 of the Criminal Justice Act 2003.
[26] See Lord Justice Leveson 'Sentencing in the 21st Century' [2012] 1 LNS(A) xiii.
[27] *Ibid.*, 26.
[28] Section 81 of the Crime and Disorder Act 1998.

Following the **Halliday Report**[29], the **Criminal Justice Act 2003** was subsequently enacted and by this Act, the Sentencing Guidelines Council was formed. The Sentencing Advisory Panel continued to exist but instead of submitting proposals to the Court of Appeal, it submitted them to the Sentencing Guidelines Council. The latter would then issue or revise sentencing guidelines and allocation guidelines for all criminal Courts. The drawback was that the Sentencing Guidelines Council presented another layer between the Sentencing Advisory Panel and the Courts. And to compound the matter further, the Courts were not bound to follow the guidelines. The Courts **"must have regard to"** the guidelines – a low threshold of duty on the part of the Courts.

Now both the Sentencing Advisory Panel and the Sentencing Guidelines Council have been replaced by the Sentencing Council[30]. The Sentencing Council consists of eight judicial members[31] and six non-judicial members with expertise in relevant fields, appointed by the Lord Chief Justice and Lord Chancellor respectively[32]. The chairperson of the Sentencing Council must be a judicial member and the President of the Sentencing Council, who is a non-member, is the Lord Chief Justice.

The Sentencing Council is empowered to issue sentencing guidelines pertaining to the discharge of the court's duty, application of any rule of law regarding sentences and any other matter[33]. When issuing sentencing guidelines, the Sentencing Council must have regard to the sentences imposed by the Courts, the need for ensuring consistency and promoting public confidence in the criminal justice system, the impact on the victims, the costs and effectiveness in preventing re-offending, and the results of its monitoring of operation and the effect of its sentencing guidelines[34]. The purpose of the sentencing guidelines may be stated as follows:

(1) to provide a structured approach to sentencing process;

(2) to promote consistency of approach;

(3) to promote proportionality across offences; and

(4) to increase transparency.

The sentencing guidelines should also include sentencing ranges, the starting point of such ranges, aggravating and mitigating factors that the Court must take into account and other relevant considerations, as well as the criteria and guidance on the weightage to be given to such factors and the previous convictions of the offender[35].

The definitive guidelines on sentencing are issued by the Sentencing Council only after having consulted the Lord Chancellor, the Justice Select Committee of the House of Commons, and the public at large. This would ensure transparency and clarity of the sentencing regime. The Sentencing Council may also review and revise its guidelines from time to time. Currently, there are 22 definitive guidelines issued by the Sentencing Council which include assault, attempted murder, burglary offences and causing death by driving.

The Courts are duty-bound to follow the sentencing guidelines issued unless they are satisfied that it would be contrary to the interests of justice to do so[36]. This represents a higher threshold compared to merely to **"have regard to"** the guidelines which was previously under the **Criminal Justice Act 2003**. The duty would not apply if none of the categories of cases sufficiently resembles the case of the offender. Magistrates are also required to state reasons for the sentence passed in every case, including any ancillary orders imposed[37]. This ensures consistency and transparency in sentencing.

The Sentencing Council must also monitor the operation and effect of its sentencing guidelines and draw conclusions regarding the frequency that the Courts depart from the guidelines, the aggravating or mitigating factors used by the

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[29] Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales' (July 2001) by a small team of officials in the Home Office led by John Halliday.
[30] Section 118(1) of the Coroners and Justice Act 2009.
[31] The judicial members of the Sentencing Council must include at least one Circuit Judge, one District Judge (Magistrates' Courts), one lay justice, and one person who is responsible for the training of judicial office-bearers.
[32] Schedule 15 of the Coroners and Justice Act 2009
[33] Section 120 of the Coroners and Justice Act 2009.
[34] Section 120(11) of the Coroners and Justice Act 2009.
[35] Section 121 of the Coroners and Justice Act 2009.
[36] Section 125 of the Coroners and Justice Act 2009.
[37] Magistrates' Courts Sentencing Guidelines.

Courts, and the effect of the guidelines on the promotion of consistency and public confidence in the criminal justice system[38].

And in order to promote awareness, the Sentencing Council must publish information on sentencing practices of the Courts, the cost of different sentences and their relative effectiveness in preventing re-offending, and the operation and effect of its guidelines[39].

In a situation where the Lord Chancellor refers to the Sentencing Council any Government policy proposal, or Government proposal for legislation which may affect the resources needed, the Sentencing Council must prepare a report on the likely impact and submit to the Lord Chancellor, who will then lay it before the Houses of Parliament[40].

There is also in existence a Crown Court Sentencing Survey required to be completed by all Judges (or other sentencers) sitting in the Crown Court every time a sentence is passed[41]. The data obtained from the survey is useful. It enables effective monitoring of how sentencing guidelines are used and applied in practice, and the production of new sentencing guidelines based on current practice. In addition, there are the Magistrates' Courts Sentencing Guidelines as general guidance to ensure that all cases are tried at the appropriate level.

Academic articles on Sentencing Council have sprouted. **Glenna Robson**[42] surmised that although the Sentencing Council has a much wider remit and stronger powers, the impact of the new approach to sentencing is not far from what was previously seen before:

> *"Plainly, despite the more directive nature of the new guidelines, the heart of the Sentencing Council beats to a traditional drum."*

John Cooper[43] expressed his hope that the sentencing guidelines should not dampen the Courts' discretion, even though they are binding, in order to prevent **"unjust disposals"**. He sounded a warning when he said:

> *"As one barrister put it to me this week in the roving room, "The problem is these guidelines are so strictly interpreted that in the end future, there will be no need for advocacy"."*

Again, **Glenna Robson**[44] wrote that the evolution of the sentencing regime has a political dimension, as the Labour Government wanted among others, to drive down prison numbers and maintain public confidence in the criminal justice system. She also emphasised that the establishment of the Sentencing Council was influenced by the sentencing framework created in the United States and the desire to convert sentencing to a science rather than an art. Rounding up her article, she lamented:

> *"Sadly the Sentencing Council has pushed ahead too fast and shows signs of wanting to take on everything immediately. Surely rather than start on new guidelines might it not have been more sensible to see how far the old ones were being used? Why not start on the task deemed so urgent by the Gage Working Group that of gathering better data about courts and sentencing? Why not some investigation as to what type of guideline suits each layer of the judiciary?*
>
> *Hopefully the Coalition Government in its sentencing review is going to tackle the basic problem of too much confused legislation. Sentencers can only hope."*

The **Gage Report** referred to in her article had studied the feasibility and desirability of a structured sentencing framework, similar to the one in the United States of America, and a sentencing commission in England and Wales[45]. The American sentencing model is a mandatory sentencing framework based on the use of sentencing grids to pass down a sentence. Although it would rapidly yield greater predictability and uniformity in the sentencing system, the **Gage Report** rejected the American sentencing model, finding it to be **"unsuitable and unacceptable in England and Wales"**. This conclusion was based on the

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38 Section 128 of the Coroners and Justice Act 2009.
39 Section 129 of the Coroners and Justice Act 2009.
40 Section 132 of the Coroners and Justice Act 2009.
41 The survey commenced on 1 October 2010 and was designed to assist the Sentencing Council in fulfilling its duties under section 128 of the Coroners and Justice Act 2009.
42 'Sentencing in Limbo' [2012] 176 JPN 300.
43 'Guiding Sentencing' [2011] 175 JPN 218.
44 'Sympathy for Sentencers' [2010] 174 JPN 710.
45 'Sentencing Guidelines in England and Wales: An Evolutionary Approach' (July 2008) by a Working Group led by Lord Justice Gage.

many disadvantages to a highly structured and mandatory guidelines system: most offender-related factors would be excluded from sentencing decisions; it would lead to unwarranted uniformity even if it reduced unwarranted disparity; it would be likely to stimulate plea-bargaining; and it would also prove unpalatable to sentencers and other criminal justice professionals in the jurisdiction of England and Wales[46].

Vicki Helyar-Cardwell[47], a director of the Criminal Justice Alliance[48], commended the efforts of the Sentencing Council for providing consistency in sentencing approach and judicial confidence, and also opined that several of the changes represent improvements on current sentencing practice, namely:

(1) sentencers may distinguish between those who are being exploited and those doing the exploiting;

(2) sentencers can choose to impose a community sentence with drug treatment requirements where there is sufficient prospect of success instead of short or medium length custodial sentences; and

(3) seriousness for an offence of possession is categorised according to the class of drug in question, rather than the amount that is involved.

However, **Vicki Helyar-Cardwell** noted that the **"mental disorder or learning disability"** as well as **"age and/or lack of maturity"** should have been accorded greater weight in the sentencing guidelines as factors reflecting personal mitigation.

It must be emphasised that the **Criminal Justice Act 2003** is still valid and subsisting. In fact, the Sentencing Council established under the **Coroners and Justice Act 2009** issued definitive guidelines in regard to sentences under the **Criminal Justice Act 2003.** Only **sections 167 to 173 of the Criminal Justice Act 2003** which set up the Sentencing Guidelines Council were repealed by the **Coroners and Justice Act 2009.**

The English statutes are thought-provoking and they can certainly assist us in solving our problems. Afterall, the Malaysian sentencing system is modelled after the English sentencing system. Time and again, Hilbery J's[49] statement of the law on sentencing is applied dutifully by our Courts.

The Australian experience

For the purposes of comparison, I shall briefly analyse the **Federal tier** and **the states of New South Wales and Victoria** with regard to sentencing.

At the Federal level, there is the **Crimes Act 1914** which contains, inter alia, general sentencing principles and matters to be taken into account when passing sentences on federal offenders[50]. This is to ensure consistency in sentencing federal offenders when they are tried in the states' or territories' Courts. It is to be noted that there is no Sentencing Council established at the Federal level.

In New South Wales, there is the **Crimes (Sentencing Procedure) Act 1999. Howie J** writing for the Court of Criminal Appeal[51] aptly remarked about the efficacy of the Crimes (Sentencing Procedure) Act 1999 – in this way:

> *"The Sentencing Act provides the framework upon which a court determines the sentence to be imposed upon a particular offender for any offence. The Act provides the sentencing practice, principles and penalty options that operate in all courts exercising State jurisdiction. There are also the sentencing principles and practices derived from the common law and that have been preserved by the provisions of the Act."*

The **Crimes (Sentencing Procedure) Act 1999** also established the New South Wales Sentencing Council in 2003. The Sentencing Council consists of 16 members, with diverse

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46 Mike Hough and Jessica Jacobson (2008) 'Creating a Sentencing Commission for England and Wales: An Opportunity to Address the Prisons Crisis'.

47 'Is Sentencing a Deterrent?' [2012] 176 JPN 50.

48 The Criminal Justice Alliance is a coalition of 67 organisations committed to improving the criminal justice system.

49 Kenneth John Ball [1951] 35 Cr App R 164, at page 166. The case of Muhammad Isa bin Aris & Ors v Public Prosecutor (supra), at pages 351 to 352, is no exception.

50 Section 16A of the Crimes Act 1914.

51 Application by the Attorney General Under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning The Offence Of High Range Prescribed Concentration of Alcohol Under Section 9(4) Of The Road Transport (Safety And Traffic Management) Act 1999 (No: 3 of 2002), [2004] 61 NSWLR 305, at page 318.

backgrounds and relevant experiences in their respective fields, appointed by the Minister[52]. The functions of the Sentencing Council are varied, inter alia, it is to advise and consult the Attorney General on standard non-parole periods and guideline judgments, monitor and annually report to the Attorney General on sentencing trends and practices, prepare research papers and reports on sentencing matters at the behest of the Attorney General, and educate the public on sentencing matters[53]. The Sentencing Council, with the approval of the Attorney General, is empowered to set up committees for the purpose of assisting the Sentencing Council[54].

Unlike the Sentencing Council in England and Wales, the Sentencing Council in New South Wales does not have the capacity to initiate advice to the Attorney General or generate its own research or reports. The Attorney General has the discretion to decide whether to adopt or implement the advice furnished by the Sentencing Council. The role it plays is thus narrow and restrictive.

In addition to the Sentencing Council, there is also the New South Wales Judicial Commission established by the **Judicial Officers Act 1986**, with the membership of six judicial members and four non-judicial members[55]. The functions of the Judicial Commission are, inter alia, to assist the Courts in achieving consistency in imposing sentences, organise and supervise an appropriate scheme of continuing education and training for judicial officers, examine complaints against judicial officers and provide advice to the Attorney General on such matters as the Judicial Commission thinks appropriate[56]. The Judicial Commission achieves consistency in sentencing by monitoring or assisting in monitoring sentences imposed by the Courts and disseminating information and reports on sentences[57].

In Victoria, there is the **Sentencing Act 1991** which sets out the principles and considerations for sentencing offenders in Victoria. The purposes of the said Act are similar to the **Crimes (Sentencing Procedure) Act 1999**[58]. The **Sentencing Act 1991** also established the Sentencing Advisory Council of Victoria[59], which consists of entirely non-judicial members. The functions, among others, are to relay its views to the Court of Appeal in relation to the making or review of a guideline judgment, provide statistical information on sentencing, conduct research, and disseminate information to the judiciary and interested persons[60]. The Sentencing Advisory Council of Victoria, via public consultations on sentencing matters, allows **"properly ascertained and informed public opinion to be taken into account in the criminal justice system"** and hence provides **"greater transparency and accountability"** in the criminal justice system and also **"stimulates balanced public debate on sentencing issues"**[61].

The role of the Sentencing Advisory Council is also limited, when compared to the Sentencing Council in England and Wales. Due to the opposition of the judiciary and the legal profession, the Sentencing Advisory Council has no remit to produce guidelines but instead, it is notified by the Court of Appeal when preparing to make a guideline judgment in order for the Sentencing Advisory Council to provide advice in relation to the matter[62]. However, this function appears to be unutilised in practice by the Court of Appeal[63]. The Sentencing Advisory Council nevertheless has been found to be **"highly effective and successful"** in conducting its public education programs and churning out publications and research material. It was recommended, among others, that the Sentencing Advisory Council be made available to all Victorian Ministers, not just the Attorney General, in the consideration of sentencing reforms[64].

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52 Section 100I of the Crimes (Sentencing Procedure Act) 1999.
53 Section 100J of the Crimes (Sentencing Procedure Act) 1999.
54 Section 100K of the Crimes (Sentencing Procedure Act) 1999.
55 Section 5 of the Judicial Officers Act 1986.
56 Sections 8 to 12 of the Judicial Officers Act 1986.
57 Section 8 of the Judicial Officers Act 1986.
58 The purposes under section 1 of the Sentencing Act 1991 are promoting consistency in sentencing, providing fair procedures, preventing crime and promoting respect for the law, ensuring that victims of crime receive adequate compensation and restitution, etc.
59 The Council was established following a report by Professor Arie Freiberg (2002), 'Pathways to Justice'.
60 Sections 108A to 108P of the Sentencing Act 1991 are entirely concerned about the Sentencing Advisory Council's establishment, functions, powers, delegation, etc.
61 The Hon. Robert Hulls (20 March 2003) Hansard, Victorian Legislative Assembly referred by J. Abadee (2006), 'The Role of Sentencing Advisory Councils', page 4.
62 UK Department of Justice (October 2010), 'Consultation on a Sentencing Guidelines Mechanism'.
63 Department of Justice of Victoria (August 2008), 'Evaluation of Sentencing Advisory Council'.
64 *Ibid.,* 63.

The New Zealand system

There are two key legislations – the **Sentencing Act 2002** which governs the entire sentencing system and the **Sentencing Council Act 2007** which established the Sentencing Council.

The **Sentencing Act 2002** provides detailed legislative guidance by incorporating, among others, the purposes of sentencing[65], the sentencing principles[66], and the non-exhaustive list of aggravating and mitigating factors[67]. These have made the sentencing regime relatively clear, consistent and transparent. The hierarchy of sentences is also listed in the **Sentencing Act 2002.** It encompasses incarceration, home detention, electronic monitoring of the curfew imposed with an intensive supervision, community work with or without supervision, fines, and discharge with or without a conviction.

However, the basic structure of the common law based sentencing system remains an integral part and is still embedded as it was[68]. The persistent inadequacies of the common law based sentencing system gave rise to the Law Commission Report in 2006 and resulted in the proposal to establish a Sentencing Council, via the New Zealand **Sentencing Council Act 2007.**

The Sentencing Council is empowered to produce sentencing and parole guidelines which are consistent with the **Sentencing Act 2002.** The guidelines are meant to increase consistency and transparency in sentencing and in granting parole as well as to effectively manage the penal resources provided by the Government. The membership of the Sentencing Council is to consist of Judges, the chairperson of the Parole Board and five non-judicial members[69]. The guidelines issued by the Sentencing Council are to be approved by Parliament, via negative resolution[70], unlike its counterpart in England and Wales which only gave Parliament a scrutiny role[71].

Russell Johnson[72] expressed his dismay that the **Sentencing Act 2002** brought **"an increase in the length of sentences across the board".** He also noted that under the **Sentencing Council Act 2007,** the **"sentencing Judges"** are **"required to adhere to the guidelines"** set by the Sentencing Council **"unless satisfied that to do so would be contrary to the interests of justice"**[73].

Although a Sentencing Council in New Zealand has been legislated for, the Sentencing Council has not been set up in practice. The new Government elected in 2008 did not support the concept of a non-judicial body fixing sentencing guidelines and hence did not proceed with the Sentencing Council[74]. According to media reports, the National Party which won the 2008 elections, axed the plans to establish a Sentencing Council as it would add an **"extra layer of bureaucracy that is not needed"**[75], a move that was heavily criticized by the then-incumbent Justice Minister as being **"out of step with international trends", "arrogant and smacked of a know-it-all approach"**[76]. **Linda Richardson** explained that in the absence of a Sentencing Council, the Court of Appeal had to step in and select a suitable case for a guideline judgment on discounts for guilty pleas[77]. Therefore, it appears that New Zealand has reverted to its common law based sentencing system to a certain extent, despite having legislated for a Sentencing Council.

Analysis: a necessity?

Benefits

It must be borne in mind that the extent of advantages offered by a Sentencing Council hinges on the functions and powers accorded to the Sentencing Council. **Freiberg and Gelb**

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65 Section 7 of the Sentencing Act 2002.
66 Section 8 of the Sentencing Act 2002.
67 Section 9 of the Sentencing Act 2002.
68 *Ibid.* 1.
69 Section 10 of the Sentencing Council Act 2007.
70 Refer to sections 17 to 22 of the New Zealand Sentencing Council Act 2007 which stipulate, inter alia, that draft guidelines are laid on the table of the House of Representatives and may be disapplied within 30 sitting days (inaugural guidelines) or 15 sitting days (not inaugural) via resolution of the House of Representatives. If not disapplied, they will come into force 20 working days after the period for disapplication ends.
71 *Ibid.*, 62.
72 Russell Johnson (2008), 'A Looking Glass on Summary Sentencing in New Zealand'.
73 Section 21A of the Sentencing Act 2002.
74 Linda Richardson, 'Reduction in Sentence for a Guilty Plea: The New Zealand Supreme Court Rejects a Sliding-Scale Approach' [2011] Journal of Commonwealth Criminal Law 161.
75 'National to Scrap Sentencing Council' (2 August 2008), *The National Business Review.*
76 'Government attacks National's plans to ditch Sentencing Council' (3 August 2008), *The National Business Review.*
77 *Ibid.,* 73.

opined that Sentencing Councils were created with a long-term function of defusing political crises and of attempting to balance the various interests of the judiciary, the public, politicians and the media[78]. A Sentencing Council may thus be formed based on the purpose to which the Sentencing Council is meant to serve or the issues that it is intended to address and this would reflect on the breadth of a Sentencing Council's sphere of operations. As elaborated above, the Sentencing Council in England and Wales plays a substantial role in shaping the sentencing regime by issuing guidelines which the Courts are duty-bound to follow, whereas the functions of the sentencing bodies in New South Wales and Victoria are relatively restrictive as they gravitate towards the aspect of enhancing transparency in sentencing by providing advice, public education and research. At the other end of the spectrum lies the Sentencing Council in New Zealand which has yet to be established due to the reluctance of the Government. Needless to say, the wider the scope of powers and functions mandated to a Sentencing Council, the greater impact it would have on the sentencing regime. I agree with the qualitative assessment carried out by the Law Commission of New Zealand[79] which concluded that a Sentencing Council mandated to draft guidelines, akin to the one in England and Wales, is better in addressing the inadequacies of a common law based sentencing regime and sentencing issues when compared to a Sentencing Council which is restricted to dispensing advice and information on sentencing.

The establishment of a Sentencing Council would introduce a structured approach in sentencing, enhance transparency and clarity, ensure consistency and proportionality, and boost public confidence in the criminal justice system by bridging the gap between the Courts, the Government and the public at large. In addition, the use of guidelines issued by a Sentencing Council may be seen as the right approach to uphold the rule of law in terms of legal certainty and predictability, as those working in the legal field and the public would be able to determine, to a certain extent, how the sentencing provisions will be interpreted and applied by the judiciary. Moreover, a Sentencing Council will be able to meet the policy demands of a criminal justice system, whereby the issues of overcrowding of prisons and crime reduction, for example, may be addressed.

However, the degree to which such issues may be adequately addressed would depend on the range of sentences made available to Judges. Statutorily speaking, the penalties or punishments for offences tend to be punitive in nature. It would be best, when considering whether to introduce a Sentencing Council in Malaysia and the range of functions to be bestowed, for the legislature, together with the judiciary, to also assess the need to introduce alternative forms of sentences, such as anti-social behaviour[80], compensation and parenting orders[81].

Disadvantages

The concern of imposing a duty on the Courts to obey the guidelines issued by a Sentencing Council is regarding the impact on judicial discretion. Sentencing is often viewed as an art, rather than a science and as explained earlier, it is a complex task as there are many considerations which need to be taken into account when meting out a sentence. The fettering of judicial discretion could potentially result in injustice and unfairness.

There are also qualms that the work of a Sentencing Council could be influenced by the whims of policy-makers and the public, due to the membership of the Council which would not be restricted to the judiciary and the role of public consultations and directions by the Government. Such undue influence would bring threat to the separation of powers and the independence of the judiciary. It was observed by **Glenna Robson**[82] that the implementation and application of non-custodial sentences in England and Wales appeared to be left to the whim of the Treasury. However, one should note that one of the reasons for establishing a Sentencing Council is to bridge the gap between the people, the judiciary and the Government. Therefore, the Sentencing Council should serve

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[78] Freiberg and Gelb (2008), 'Penal Populism, Sentencing Councils and Sentencing Policy', *Hawkins Press, Sydney*.
[79] 'Sentencing Guidelines and Parole Reform' (August 2008), Journal of South Pacific Law (2008) 12(1), at page 90.
[80] An anti-social behaviour order is an order made under the Crime and Disorder Act 1998 (England and Wales) to limit or correct the offender's behaviour such as begging, vandalising, urinating or defecating in public and drunken behaviour.
[81] A parenting order is an order made under the Crime and Disorder Act 1998 (England and Wales) which requires the parents of a juvenile offender to attend counselling or guidance sessions where the parents will receive help on establishing boundaries, understanding the juvenile and his/her adolescent needs and improving familial ties.
[82] 'Criminal Justice Act 2003: A Possible Prognosis' [2004] 168 JPN 11.

to meet the needs of these three stakeholders and being a separate and independent entity from the judiciary and the Government, the Council should be given the power to decide on these matters, after having diligently conducted its analysis and research.

Mitigating factors

These concerns can nevertheless be mitigated. The duty of the Courts to comply with the guidelines issued by a Sentencing Council, even if legislated upon, the statutory language of which is still subject to interpretation by the Superior Courts[83]. A safeguard that would be useful to implement is akin to the one in England and Wales, whereby Courts are required to follow the sentencing guidelines **"unless the courts are satisfied that it would be contrary to the interests of justice to do so"**[84]. The sentencing guidelines would be used to structure, rather than fetter, judicial discretion. Also, it is important to bear in mind that only when the Courts are duty-bound to adhere to the sentencing guidelines can there be effective results and consistency in sentencing. Furthermore, as the establishment of a Sentencing Council and subsequently, the issuance of guidelines are conducted under the watchful eye of the judiciary, be it during the consultation process or via the judicial members or Chairman of the Council itself, space for judicial discretion can thus be retained.

As practised in England and Wales, the sentencing guidelines issued may be reviewed and revised from time to time. This is to ensure that the guidelines are up-to-date in terms of striking a balance between the different and at times, conflicting interests and to reflect current practice. Therefore, any issues or concerns regarding the finalised guidelines may still be communicated to the Sentencing Council as the Council is empowered to review or revise the guidelines.

Moreover, should there be any undue negative influence on the work of the Sentencing Council, the likelihood of which is small considering the safeguards that can be implemented, the work of the Sentencing Council may be subject to judicial review[85].

Other methods

As illustrated above, the criminal justice systems of England and Wales, Australia and New Zealand have enacted laws on both sentencing and a sentencing body. Apart from this legislative method, the sentencing issues faced in Malaysia may be addressed by, as per the suggestion made by **Dr. Mimi Kamariah Majid and her associates** in the Report, the requirement for Magistrates to attend a course on sentencing, prior to being allowed to sit on the bench. However, this proposal will not adequately address the issues faced and the positive results of which may only be achieved in the long run and in any case, be small in measure. This proposal is nevertheless desirable as it would be useful to train the Magistrates and Sessions Court Judges on how to carry out their responsibilities in sentencing.

Another method worth perusing is a manual or guidelines on sentencing containing the principles of sentencing and judicial guidelines to be issued by the judiciary itself, as recommended by **Dr. Mimi Kamariah Majid and her associates.** The manual or guidelines may include the considerations to be taken into account when meting out a sentence and the appropriate ranges of sentences according to the nature and gravity of the offence. These would assist the Subordinate Courts in their decision-making in relation to sentencing and promote both uniformity and proportionality to a certain extent, especially when coupled with training and in-service courses. A Bench Book (Criminal Law) was published by the Judiciary in 2009 to be used as guidance for the judicial officers, especially the newly appointed ones, in discharging their judicial duties. One chapter was in relation to sentencing, written by Harminder Singh Dhaliwal JC which explained, inter alia, general guidance on judicial principles in sentencing as well as mitigating and aggravating factors. Although undoubtedly

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[83] Referring to the High Court, the Court of Appeal and the Federal Court.

[84] Section 125(1) of the Coroners and Justice Act 2009.

[85] Paragraph 1 of the First Schedule to the Courts of Judicature Act 1964 (Act 91) read with section 25(2) of the same Act vest the High Court with the "power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by Part II of the Constitution or any of them, or for any purpose". And this power is to be exercised by the Court "in accordance with any written law or rules of court relating to the same". For the scope of judicial review – see Hotel Equatorial (M) Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers & Anor [1984] 1 MLJ 363, 371, FC; Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417, 419, SC; and Hong Leong Equipment Sdn Bhd v Liew Fook Chuan [1996] 1 MLJ 481, 542, CA. See also Order 53 of the Rules of Court 2012 governing the application for judicial review.

useful, the guidance provided was broad, general and incomprehensive. Notably, the purposes of sentencing, the weight to be accorded to the mitigating and aggravating factors, and the extent that the guidance should be applied were not adumbrated. This was perhaps so because the Bench Book contained a wide range of topics concerning criminal law and practice, of which **"sentencing"** was merely one out of 23, thus sentencing did not receive the attention and explanation it so clearly deserves. Sentencing guidance was also provided by the Judiciary in 2012 in the form of a practice direction[86] but it was restricted to sentencing recommendations in relation to an offender who pleaded guilty before the commencement of his or her trial. The Bench Book and the practice direction nevertheless present a first step in the right direction.

A step further along the same direction would be to enact the guidance in the form of legislation, similar to the **Criminal Justice Act 2003** in England and Wales and the **Sentencing Act 2002** in New Zealand. The legislation would contain the purposes of sentencing, the principles of sentencing, hierarchy of sentences and orders to be meted out, the aggravating and mitigating factors and other considerations to be taken into account by the Judges. Although the legislation would provide relatively greater clarity, consistency, proportionality and transparency compared to the current status quo, the drawback is the inability of legislation to provide detailed and nuanced guidance that can be modified systematically and rationally in a timely way[87]. The jurisdictions illustrated have shown that legislation on sentencing alone is inadequate in satisfactorily addressing the problems and concerns with regard to a common law based system of sentencing. Instead of following their footsteps and implementing a method which they have deemed to be not fully effective a decade ago, it would be best for us to draw lessons from their experience, bypass the sole method of legislating on sentencing itself and proceed with the establishment of a Sentencing Council. It is germane to mention that the purposes of sentencing, the principles and other general matters in relation to sentencing may be expounded in guidelines to be issued by the Sentencing Council, in lieu of being encapsulated in legislation or guidelines issued by the Judiciary. And the Sentencing Council will also be tasked with assessing, analysing and monitoring the operation and effect of their sentencing guidelines to ensure conformity and consistency, as well as promoting public awareness – features which are not available with legislation on sentencing alone.

Conclusion

There is no sentencing framework suitable for all places and at all times and for all people. But we must strive for the better and improve for the good of the judiciary. We need political will, money, staff and precious time to put in motion a Sentencing Council akin to that of England and Wales, in Malaysia. It is noted that in the case of England and Wales, as Chairman of the Sentencing Council, Lord Justice Leveson aptly put it, it was an **"evolution not revolution"** as the Sentencing Council is merely building on what has already been achieved, whereas in Malaysia, we have never had a similar Council put in place and have placed reliance and trust on judicial will when it comes to sentencing. Thus, it is imperative for there to be judicial will and support in the formation of a Sentencing Council and the implementation of the guidelines.

This article is guided by one single clear issue – to ascertain whether a Sentencing Council is required in Malaysia. It may not necessarily be a **"necessity"** per se, but the gravity of the problems faced and the growing public debate, judging from the increasing number of newspaper reports, dictate that swift action needs to be taken. Based on the cost-benefit analysis undertaken, the establishment of a Sentencing Council is the best method to address the issues regarding sentencing in Malaysia. And as a member of the judiciary, I honestly believe that the establishment of a Sentencing Council will be highly beneficial to not only the judiciary, but also the criminal legal system and the general public and, accordingly, I am a proponent of a Sentencing Council in Malaysia.

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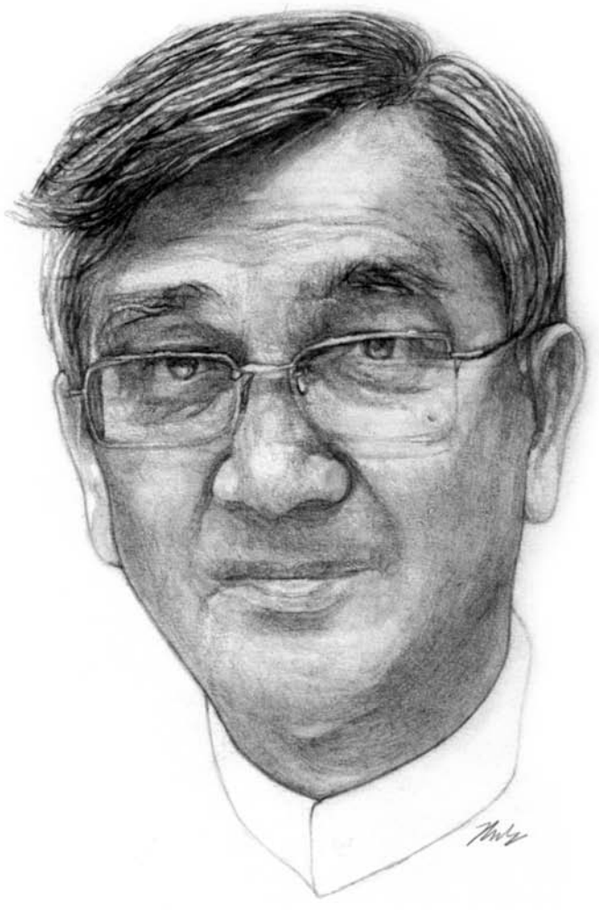
[86] *Arahan Amalan Bil. 2 Tahun 2012 (Kanun Tatacara Jenayah (Pindaan) 2010 & Kanun Tatacara Jenayah (Pindaan) 2010 (Pindaan) 2012* issued in August 2012.

[87] *Ibid.,* 79.



RESTRICTING DISCUSSION OF JUDICIAL CONDUCT AND ARTICLE 127 OF THE FEDERAL CONSTITUTION OF MALAYSIA: SOME PERSEPCTIVES FROM THE RAJA SEGARAN v BAR COUNCIL CASES

By
Justice Mohamad Ariff Md. Yusof

The permissible limits on public discussion of judicial conduct, or the conduct of a judge, concern an area of public law which has seen some fairly robust analyses in our case law. Central to this discussion is article 127 of the Federal Constitution which provides:

> "**127. Restriction on Parliamentary discussion of conduct of judge**
>
> The conduct of a judge of the Federal court, the Court of Appeal or a High Court shall not be discussed In either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter of the total number of members of that House, and shall not be discussed In the Legislative Assembly of any State."

What exactly is the constitutional meaning of this all-important provision, and does it really prohibit public discussion of any conduct of a judge outside the august Halls of Parliament? Must public discussion of the conduct of a judge be done *only* in either of the two Houses of Parliament and *only upon a substantive motion*? And, is it correct law to conclude that absolutely no comment on judicial conduct can be made in any State Legislative Assembly?

A spate of cases involving the Bar Council Malaysia and a fellow member of the Bar at the time of the litigation, Mr Raja Segaran a/l S Krishnan, has highlighted some of the difficult legal issues, which remain contentious and invite a more thorough and comprehensive determination by our courts.

This is how the story began. The plaintiff who was a member of the Malaysian Bar at the material time received a notice of an EGM of the Bar scheduled to be held on 20 November 1999 containing a proposed resolution that the Bar Council would call for the appointment of a Royal Commission of Inquiry to make inquiries and recommendations as might be appropriate to ensure that confidence in the Malaysian judiciary was fully restored. There had been allegation made against the judiciary in an affidavit filed in a civil suit, now often referred to as "the Raphael Pura" suit. There were allegations of improprieties related to the relationship between the then Chief Justice and a senior member of the Bar. It was against such background that the Bar Council called for the EGM of the Malaysian Bar by issuing the following notice:

Notice

Extraordinary General Meeting Of The Malaysian Bar

Notice is hereby given that an Extraordinary General Meeting of the Malaysian Bar will be held on Saturday, 20 November 1999 at 10am at the Grand Ballroom, Renaissance Hotel, Kuala Lumpur to consider and, if approved, to adopt the Motion proposed by the Bar Council as follows:

Whereas:

(1) The Malaysian Bar recognizes:

(a) that freedom in any democratic state is not only economic well-being and the absence of aggression but also the presence of justice and the rule of law;

(b) and is committed, to the principle that the Judiciary is a vital and fundamental organ of a democratic state and the final arbiter of justice according to the rule of law; and

(c) that vitally important and inherent to the role of the Judiciary is the ability to command confidence in its independence, integrity and competence.

(2) The Malaysian Bar:

(a) understands that serious allegations of impropriety have been made against certain members of the Judiciary; and

(b) is gravely concerned with judicial developments and pronouncements in certain important branches of law such as the law of contempt and the law of defamation, and with the administration of justice generally.

(c) It is the grave concern of the Malaysian Bar that by reason of these allegations, developments and pronouncements confidence in the independence, integrity and competence in the Judiciary has been undermined to the detriment of the rule of law in Malaysia.

It is hereby resolved:

That the Bar Council is to forthwith bring to the attention of the appropriate authorities all relevant instances of controversy that have undermined confidence in the Malaysian Judiciary and to do all that is necessary to pursue the appointment of a Royal Commission of Inquiry to make such inquiries and recommendations as may be appropriate to ensure that confidence in the Malaysian Judiciary is fully restored.

Dated : 12 October 1999

After being rebuffed by the Bar Council when he wrote to the Bar Council to call off the EGM, Mr Raja Segaran then issued a writ seeking for an injunction to restrain the defendants from holding the EGM wherein he argued that if the EGM was held and/or the resolutions adopted, the Bar Council and its members as well as all members of the Malaysian Bar would be guilty of contempt of court, aside from the EGM, if allowed to proceed would be discussing matters which were sub-judice. There were further arguments advanced by Mr Raja Segaran that the Bar Council was acting mala fide, in abuse of its powers and *ultra vires* the provisions and scope of the Legal Profession Act 1976 . It was even pleaded that the calling of the EGM would constitute an offence under the Sedition Act 1948. The Bar Council responded to the arguments by forcefully arguing that any grant of an injunction by the Court would impinge upon the right to freedom of speech and gagging the Bar.

The initial episode and the subsequent unfolding events threw into high relief the emotive responses that can be generated by the penultimate question on the limits of public discussion of judicial conduct. There were many legal arguments taken by the opposing parties and the courts, and one of these related to Article 125 of the Federal Constitution. It did not hold centre stage in the proceedings, but it was important enough to be considered at least four times and in connection with Article 127 in the entire episode. Article 125 of course relates to safeguards accorded to judges in the form of tenure and remuneration, and includes provisions allowing the Prime Minister, or the Chief Justice after consulting the Prime Minister, to represent to the Yang di-Pertuan Agong that a judge ought to be removed on the ground ,*inter alia*, of any breach of any provision of the code of ethics prescribed for the office, whereby "the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office" (Article 125(3).

The High Court agreed with Mr. Raja Segaran's argument that the Bar Council was essentially side-stepping this constitutional avenue. Kamalanathan J in the High Court stated in trenchant terms, as reported in [2000] 1 MLJ 1:

> *"It is clear that there is no legal provision for the defendants to call for the setting up of a Royal Commission of Inquiry. The way to remove a judge whether of the Federal Court, Court of Appeal or the High Court is set out in art 125 of the Federal Constitution. In his book An Introduction to the Constitution of Malaysia, Tun Mohamed Suffian, the former Lord President of the judiciary said at p 97:*
>
> *To ensure that the courts can without fear or favour do their duty, there are several provisions in the constitution designed to secure their independence so that they are not subject to control either by the legislature or the executive."*

His Lordship continued:

> *"The procedure for removing a judge is given in art 125(3), (4) and (5).*
>
> *It is not that a judge is not subject to the scrutiny of the public and his peers. The provisions of the constitution affecting his appointment and removal form the bastion for the protection of the independence of the judiciary. A proper and systematic procedure to scrutinise and act upon a recalcitrant judge is provided for. Any other procedure suggested, moved or adopted would be tantamount to infringing upon and impinging on the independence of the judiciary. All the more is it surprising that the very body that seeks to protect the independence of the judiciary is attempting to insidiously erode that very independence the judges so fervently cherish.*
>
> *This call for a Royal Commission of Inquiry is an attempt to by-pass a constitutional safeguard because under this constitutional procedure pursuant to art 125 of the Federal Constitution there are no provisions for making such vague and opaque general allegations against the entire judiciary."*

The cases involving Mr Raja Segaran and his erstwhile juridical skirmishes with the Bar Council involve underlying facts which have been overtaken by events, such that their factual outcomes are no longer of great moment. In the course of the numerous proceedings this case generated, the Chief Justice retired. The Court of Appeal in a moment of literary finesse observed in one of the appeals heard in this case that "the hands at the helm of the judicial vessel had changed." A Royal Commission of Inquiry was subsequently held in response to a controversy generated by a "video clip" episode which showed the very same senior member of the Bar engaging in a telephone conversation with a serving member of the Judiciary. This Royal Commission of Inquiry investigated among other things, the alleged improprieties which had earlier prompted the Bar Council to call for the EGM to propose the resolutions to call for the setting up of a Royal Commission of Inquiry to ensure restoration of confidence in the Judiciary.

Mr Raja Segaran won the majority of cases he brought against the Bar Council, but lost before the Court of Appeal in one, and partly because this litigant chose not to attend his own trial nor to provide evidence on his behalf in the last of the line of cases instituted against the Bar Council, the High Court dismissed his suit resoundingly by reason of failure to prove *locus standi*. In point of fact there were two separate suits involving two requisitions for an EGM of the Malaysian Bar, but the issues were similar.

As for Article 127, there are five pronouncements bearing on it spanning the two suits, two by the High Court and three by the Court of Appeal which have sought to place this area of the law in its proper constitutional perspective. One Court of Appeal pronouncement appears in the judgment delivered by Gopal Sri Ram JCA (as his lordship then was) in Civil Appeal No. W-02-430-2001 (reported in [2002] 3 MLJ 195), where the Court quoted with approval the Opinion of the Judicial Committee of the Privy Council in *Ambard v A.G. for Trinidad & Tobago* [1936] AC 322 and the oft-quoted words of the great common law judge, Lord Atkin, that "Justice is not a cloistered virtue", adding "we are certainly not prepared to say to say that the conduct of judges should never be discussed at a general meeting of the Bar. Woe beget the day that such a rule is handed down by this court." Nevertheless, the Court of Appeal sidestepped answering whether Article 127 ought to be read restrictively or be read as subservient to Article 10 of the constitutional right of freedom of speech. This is evident from the judgment:

> *"First, the defendants in exercising their undoubted constitutional right of freedom of speech initiated the holding of a general meeting to discuss the affairs of the judiciary. Here we need not go into the question whether article 10 of the Federal Constitution prevails over article 127 or whether article 127 ought to be read in the restrictive fashion as suggested…"*

The above passage was said in relation to an appeal against the learned judge's decision in an application by Mr Raja Segaran to discontinue the first suit which was vigorously opposed by the Bar Council. Another Court of Appeal pronouncement was made thereafter by a differently constituted Court of Appeal. Richard Malanjum JCA (as his lordship then was) delivered the judgment of the Court, and as reported in [2005] 1 MLJ 15, held:

> *"Having given our serious consideration to the opposing arguments submitted on the issue of ultra vires we are of the opinion that there is much force in the contention that being creatures of statute the Bar Council and the Malaysian Bar must act and conduct their affairs within the framework of the LPA. Acts or conducts beyond its parameters would be ultra vires. Hence in convening the proposed EGM and the proposed general meeting the Bar Council and the Malaysian Bar must be able to satisfy the court that they were acting within the ambit of the LPA. From the judgment of the learned judge it is obvious that they failed to do so. Thus, we have no reason to disagree with such conclusion...*
>
> *In particular we accept the argument that the act or conduct in convening the proposed EGM and the proposed general meeting would be contrary to or undermine the purposes of arts 125 and 127 of the Constitution. If such act*

or conduct of the Bar Council and the Malaysian Bar were unconstitutional to begin with the inevitable conclusion is that they are ultra vires the LPA. It cannot be said or even imagined that the LPA permits an unconstitutional act or conduct of its creatures.
...
In our opinion it is inconceivable to say that the proposed EGM and the proposed general meeting would be upholding the cause of justice or to protect the public in matters touching or incidental to the law when the net effect is to 'censure' the Judiciary while permitting discussion on the conduct of His Majesty's Judges in flagrant disregard to arts 125 and 127 of the Constitution. There is much to say in support of the wisdom of Art 127.

Allowing an open discussion on conduct of His Majesty's Judges could amount to questioning the wisdom of the King in his selection. Further the Judiciary thrives on the public confidence in the system. Openly criticizing the Judiciary could bring about public misunderstanding of the system and would then produce unwarranted public misgivings. If that is not undermining the system we do not know what is. And we are inclined to agree with the learned judge that the acts of the Bar Council and the Malaysian Bar could not be described otherwise than being unconstitutional. Surely it must not have been the intention of Parliament when it promulgated the LPA from which the Bar Council and the Malaysian Bar evolved that the same bodies would act contrary to the intent of the legislation and the Constitution.
..."

Thus, from this later Court of Appeal pronouncement it would appear that any discussion of the conduct of a judge in a forum other that the Houses of Parliament will be unconstitutional. It is reasonably obvious that the two pronouncements do not sit easily one with the other. The third Court of Appeal pronouncement can be found in the earlier judgment of Fairuz JCA (as his lordship then was) when hearing the first appeal from the decision of the High Court which granted the interlocutory injunction and dismissed the striking out application of the Bar Council. Fairuz JCA held:

"What is obvious from these provisions is the fact that both in Malaysia and in India, it is only the Parliament that has been authorized to discuss the conduct of judges."

The last pronouncement in this protracted episode is by Hishamuddin J (as his lordship then was) in the High Court when his lordship heard the main trial in the suit several years later. This decision is reported in [2008] 4 MLJ 941. By then, the earlier dramatic twists and turns of the dispute between Mr. Raja Segaran and the Bar Council had greatly diminished. Mr. Raja Segaran failed to appear at trial and did not even offer evidence to support his case. The Bar Council challenged his *locus standi* to institute the suit, as it turned out successfully. In addressing Article 127 of the Federal Constitution, Hishamuddin J grappled the bull by the horns, so to say, and provided a more fundamental constitutional analysis of this provision within the context of the Federal Constitution. His lordship, in a bold judgment which deserves quotation *in extenso*, held:

"In conclusion, I hold that the plaintiff has no locus standi to institute this action. Accordingly, the present action must be dismissed with costs, the interlocutory injunction to be discharged and, pursuant to this discharge, damages (if any) to the defendant, to be assessed.

There are other legal issues raised by the plaintiff in the present case. However, in view of my decision on the issue of locus standi, there is no necessity for me to deal with them.

Be that as it may, there is one issue that I strongly feel compelled to touch upon and that I would be failing my duty as a judge if I do not say what I feel needs to be said in the interest of justice. What I am now going to touch upon is a matter of constitutional importance. It is this. The Court of Appeal in both Raja Segaran (No 1) and Raja Segaran (No 2) had ruled that the intended EGM

of the Malaysian Bar would be contrary to arts 125 and 127 of the Federal Constitution, and that only Parliament can discuss the conduct of a judge...

In Raja Segaran (No 1), Ahmad Fairuz JCA after alluding to the above provisions and to arts 121and 124 of the Constitution of India, held:

What is obvious from these provisions is the fact that both in Malaysia and in India, it is only the Parliament that has been authorized to discuss the conduct of judges.

The learned judge then alluded to certain passages in the judgment of K Ramaswamy J in the Indian Supreme Court case of Ravichandaran Iyer v Justice AM Bhattacherjee & Ors [1995] 5 SCC 457. In particular, there is this passage that reads:

Our Constitution permits removal of the judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under art 124(4) by Parliament. In Sub-Committee on Judicial Accountability v Union of India this court at p 54 held that the removal of a judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to Parliament alone and no initiation of any investigation is possible without the initiative being taken by the House themselves. At p 71 it was further held that the constitutional scheme envisages removal of a judge on proved misbehaviour or incapacity and the conduct of the judge was prohibited to be discussed in Parliament by art 121. Resultantly, discussion of the conduct of a judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

Having referred to the passages, our Court of Appeal then came to the following conclusion:

We associate ourselves with the above mentioned excerpt from K Ramaswamy J's judgment. The excerpt is clearly in line with logic. What is the point of providing arts 121 and 124 (4) [of the Indian Constitution] [125(2) and (3) and 127 of the Federal Constitution] if the discussions of the judge's conduct can still be held by other forum/fora? To us, it is repugnant to common sense to say that despite the two articles, other people other than the Parliament can still discuss conduct of judges.

The Court of Appeal does not, however, explain what it meant by 'other people other than Parliament'. ...

With the greatest respect, I am unable to agree with such an interpretation of art 125, cll (2) and (3) and art 127 as adopted by the Court of Appeal. Article 127 merely provides that Parliament cannot discuss the conduct of a judge except on a substantive motion and subject to certain procedural requirement as to the giving of notice; and that the conduct of a judge cannot be discussed by any State Legislative Assembly. This article imposes a restriction on Parliament and a prohibition on State Legislatures with regard to the power to discuss the conduct of judges. It is the Federal and the State Legislatures that the article is concerned with. The restriction or the prohibition is not imposed on the general public.
...
Both provisions (ie arts 125 and 127) are meant to protect and preserve the fundamental constitutional principle of the independence of the judiciary and the doctrine of separation of powers to which our Constitution subscribes. With the foregoing understanding of the constitutional provisions, I am unable to agree with the Court of Appeal's interpretation of these two articles to the effect that only Parliament can discuss the conduct of judges. I simply cannot

fathom how such a conclusion (with its startling consequences) can be arrived at by the Court of Appeal. With respect, the Court of Appeal's reasoning is far-fetched.

...

Lest that I be misunderstood, let me reiterate that since I have in the present case held that the plaintiff has no locus standi, the question as to whether I am bound or not by the Court of Appeal decisions on the issue regarding arts 125 and 127, for the purpose of my decision in the present case, does not arise at all.

Nevertheless, it is my earnest hope that the day will come soon in the very near future when our Court of Appeal or the Federal Court will have the opportunity to revisit the issue and to overrule the decision of the Court of Appeal in Raja Segaran (No 1) and Raja Segaran (No 2) on the interpretation of arts 125 and 127 of our Constitution in the context of the issue on discussion on the conduct of judges."

In short, Justice Hishamuddin's conclusion is founded on the premise that Article 125 and Article 127 have a more immediate reference to the doctrine of separation of powers within the context of the Federal Constitution of Malaysia, which in this regard is differently worded as compared with Articles 121 and 124 of the Indian Constitution where the Indian Parliament is constitutionally brought in as a necessary component in the process of removal of a judge. The constitutional reasoning is markedly different. Our Article 127 is not intended to prohibit all debate and discussion altogether in a forum other than the Houses of Parliament. Indeed, even one looks closely at Article 127 it prohibits discussion even in the Houses of Parliament unless upon a substantive motion being passed by not less than one quarter of the total number of members of the House. Further to that, there is a blanket prohibition on any discussion of judicial conduct in any State Legislative Assembly.

In hindsight, the issues which arose in the suits instituted by Mr. Raja Segaran against the Bar Council were more concerned with issues of *vires* under the Legal Profession Act, and less with the larger question of constitutionality of the proposed General Meetings of the Bar. It is perhaps necessary to steer Article 127 to its proper constitutional moorings in a suitable case before our higher courts, as seems to be the hope voiced by Justice Hishamuddin. Control of unwarranted discussion of the conduct of judges does not really depend on Article 127. The laws of contempt, *sub judice* and the existing statutory provisions providing immunity for statements made by a judge in the course of judicial proceedings will provide adequate safeguards and prevent ill-intended discussion of judicial conduct. Even the law on sedition can afford an avenue as shown in the Raja Segaran cases. Perhaps the last word should be left with the framers of our Federal Constitution. The Reid Commission addressed Article 127 in its original form in passing; nowhere did it say the intention was to bar all discussion of judicial conduct outside the Houses of Parliament. It is noteworthy however the original proposals were along the lines of the Indian provisions, which were not adopted in the final draft Constitution.

The following passages in the Reid Commission Report are worth pondering even though penned almost 57 years since:

"Para 125....it has been necessary to insert the provisions, usual in democratic Constitutions, for the maintenance of the independence of the Supreme Court. Under our proposals a judge cannot be removed except by an order of the Yang di-Pertuan Agong in pursuance of an address passed by a majority of two-thirds of each House of Parliament; and before any such motion is moved there must be proved misconduct or infirmity of mind or body...

The question of motions discussing the conduct of a judge, but not going so far as a motion for his removal, is a little more difficult. On the one hand, judges should not be immune from criticism; on the other hand they ought to be able to sit "fairly and freely, without favour and without fear", and in particular should not exercise their functions with an eye upon the activities of party politics. The provisions seem to us to steer a reasonable middle course..." (emphasis added)

The references to "a little more difficult" and to "steer a reasonable middle course" have proven to be prophetic, as the protracted litigation in the Raja Segaran cases against the Bar Council clearly demonstrate. The process of constitutional interpretation of Article 127 and the balancing process between the right of freedom of speech and restraint on discussion of judicial conduct will most probably continue to require further elucidation, but judging from the chequered history of the Raja Segaran cases it will not be so easy to arrive at a universally acceptable legal outcome.

THE NATIVE COURTS SYSTEM IN SABAH AND SARAWAK

By
Justice Rhodzariah Bujang

The Law.

Article 160 of the Federal Constitution interprets *"law"* as including *"written law, the common law in so far as it is in operation in the Federation or any part thereof, and any* ***custom or usage having the force of law in the Federation or any part thereof****"*. When Sabah (or North Borneo, as it was then known) came to be governed by the British North Borneo Company by a Charter signed on 1.11.1881, Article 9 thereof specifically acknowledged and preserved the rights of the natives of Sabah to practice their customary law when it provides as follows:

> *"In the administration of justice by the Company to the people of Borneo, or to any of the inhabitants thereof, careful regard shall always be had to the customs and laws of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriage, divorce and legitimacy, and other rights of property and personal rights".*

Towards honouring that obligation several written laws were enacted by the Company such as the Natives Rights to Land Proclamation of 1889, the Village Administration Proclamation of 1891 and the Abolition of Poll-Tax Proclamation of 1902. Even when Sabah became a British Protectorate in 1888 and the Civil Law Ordinance was enacted to bring in the common law of England and the doctrines of equity into the State, these were still under section 3 thereof, subject to local customs and circumstances. This trend of preservation continued with the Application of Laws Ordinance of 1951.

The formalization of native law administration came in 1937 with the Native Administration Ordinance of the same year where for the first time legal provisions were enacted for the setting up of a Native Court, a precursor to the present law governing the same but not before it underwent a revamp in 1953 and further amendments in 1958, 1959 and 1961.

In Sarawak, when Brunei transferred the State to Rajah James Brooke in 1841, that first White Rajah's and his subsequent successors', acknowledgment and respect for the customary law were similarly given. The Rajah ruled by promulgations and regulations which came to be known as Court Orders. The Rajah's Court's Order (1870) which remained in force until 1922, in Section III thereof separated the Supreme Court's jurisdiction by distinguishing ***"the Native Probate and Divorce section"*** within its jurisdiction. Another example of recognition of native custom is with regards to adoption by natives – unlike those for non-natives where registration of the adoption was compulsory, those children adopted by natives in accordance with custom were exempted from a compulsory registration vide Order VIII of 1902. As for the Native Court, it was established by Court Orders as early as 1870 but rather interestingly it was to cater for the Muslims whilst native law were largely administered by the Magistrates and Residents Courts with however a right of appeal to the Supreme Court.

In 1928, when the Law of Sarawak Order was enacted to allow for the reception of the laws of England into Sarawak, it too provided that such laws were applicable having regard to native custom and insofar as it was not modified by the Orders of the H. R. The Rajah. It was only in 1940 that a formal legal set up of the Native Courts were enacted, which was the Native Courts Order providing for the establishment of a three tier court system and the jurisdiction of each court. This was subsequently formalised further in 1955 with the passing of the Native Courts Ordinance 1958. The same year also saw another milestone when the Native Customary Laws Ordinance was promulgated.

When, in 1949, the Application of Laws Ordinance was enacted, section 2 thereof similarly preserved the sanctity of the customs of the natives in the following words:

> *Subject to the provision of the Ordinance and save in so far as other provision has been or may hereafter be made by any written law in force in Sarawak, the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Ordinance, shall be in force in Sarawak:*
>
> ***Provided that the said common law, doctrines of equity and statutes of general application shall be in force in Sarawak so far only as the circumstances of Sarawak and of its inhabitants permit and subject to such qualification as local circumstances and native customs render necessary*** (emphasis added).

Who are natives?

Who is considered a native in Sabah follows the definition given to the word by the Interpretation (Definition of Native) Ordinance 1952 and they are:

(a) *Any person both of whose parents are or were members of a people indigenous to Sabah; or*

(b) *any person ordinarily resident in Sabah and being and living as a member of a native community, one at least of whose parents or ancestors is or was a native within the meaning of paragraph (a) hereof; or*

(c) *any person who is ordinarily resident in Sabah, is a member of the Suluk, Kagayan, Simonol, Sibutu or Ubian people or of a people indigenous to the State of Sarawak*

or the State of Brunei, has lived as and been a member of a native community for a continuous period of three years preceding the date of his claim to be a native, has borne a good character throughout that period and whose stay in Sabah is not limited under any of the provisions of the Immigration Act, 1959/63;

Provided that if one of such person's parents is or was a member of any such people and either lives or if deceased is buried or reputed to be buried in Sabah, then the qualifying period shall be reduced to two years; or

(d) *any person who is ordinarily resident in Sabah, is a member of a people indigenous to the Republic of Indonesia or the Sulu group of islands in the Philippines Archipelago or the States of Malaya or the Republic of Singapore, has lived as and been a member of a native community for a continuous period of five years immediately preceding the date of his claim to be a native, has borne a good character throughout that period and whose stay in Sabah is not limited under any of the provisions of the Immigration Act, 1959/63.*

In Sarawak, the definition of a native is given under the Interpretation Ordinance of 1948, revised in 1958 which rather ambiguously described him as ***"a race declared to be indigenous to Sarawak"***. Fortunately, the First Schedule of the said Ordinance particularised persons considered natives in Sarawak under the heading ***"Races which are now considered indigenous to Sarawak***" and they are:

Bidayuhs or Land Dayaks; Bukitans; Bisayahs; Dusuns; Ibans or Sea Dayaks; Kadayans; Kelabits; Kayans; Kenyahs (including Sabups and Sipengs); Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and kanowits); Lugats; Lisums; Malays; Melanaus; Muruts or Lun Bawangs; Penans; Sians; Tagals; Tabuns; Ukits and any admixture of these races with each other.

With that bit of history and background derived from M.B. Hooker's Native Law in Sabah and Sarawak, I will move now to the modern establishment of the Native Courts in the two States, starting with Sabah first.

(A) <u>Hierarchy of the Courts</u>

(1) **<u>Sabah</u>**

Sabah's Native Courts Enactment of 1992, which repealed the Natives Courts Ordinance (Cap. 86), and came into force on 1.4.1993 creates a three tier court system, the Native Courts, District Native Courts and the Native Court of Appeal. The Native Court is presided by a District Chief who is assisted by two other members, the Native Chiefs or Headmen who are resident within the territorial jurisdiction of the said court (section 3 of the Enactment).

A District Officer presides over the District Native Court whilst the other two members are the District Chiefs or Native Chiefs residence within the district in which the court is constituted (section 4). The Native Court of Appeal on the other hand is presided by ***"a Judge of the High Court"*** or ***"a person appointed to perform the functions of one"***, (and in my view, that means a Judicial Commissioner) and he is similarly assisted by two District Chiefs or Native Chiefs. This is provided by section 5 read with section 2 where the word ***'Judge'*** is defined as is quoted above.

Alongside the Enactment, three other important subsidiary legislations have been enacted and they are the Natives Courts (Native Customary Laws) Rules 1995, the Native Courts (Practice and Procedure) Rules 1995 and the Native Courts (Registration of Native Court of Appeal Advocates) Rules 1995.

The Rules, governing the practice and procedure in the Native Courts are quite extensive in that they cover the pleadings, the parties, the evidence, the hearing, the judgment and its enforcement, the appeal therefrom and costs. There is even a provision (Rule 36) on the allowance to be paid to expert witnesses and a Schedule of Court Fees is also included in the said Rules.

The Native Customary Laws Rules provides extensively the acts and/or omissions which constitute offences under customary laws with the prescribed penalties. What is interesting to note is that the provisions are drafted in such a way that for all of the offences, compensation to the victim is the first choice of restitution and only in default thereof would the usual penalty of fine and/or imprisonment be given.

Some of the offences mirror those provided in the Penal Code such as assault, battery, incest and bigamy and also include offences relating to relationships such as marriage and betrothal. For example, the termination of a betrothal without any reasonable excuse attracts a compensation of two heads of livestock or anything of their equivalent value and another one head of livestock as compensation for the embarrassment. In default thereof, the maximum penalty provided is a fine of RM1500 or 1 month imprisonment or both (Rule 13). The offences even includes the offence of slander (Rule 36) and given the importance of water sources to the natives, even an offence against adulteration of water sources (Rule 40).

The last Rules, on Registration of Native Court of Appeal Advocates, seek to regulate the qualification and practice of those who could appear in the Native Court of Appeal and one of the primary requirements is that he must be an advocate in the High Court in Sabah and Sarawak [Rule 7(a)]. A committee oversees the implementation of these Rules and it consists of the Permanent Secretary of the Ministry in charge of the administration of native affairs, the State Attorney-General or his representative, the Director of Pejabat Hal Ehwal Anak Negeri Sabah as the Secretary and two District Chiefs.

Jurisdiction and powers of the 3 Native Courts

The Native Courts' jurisdiction is to try all cases of breach of native law or custom when either all parties are natives or, when one party is a native if the District Officer with the advice of two Native Chiefs has given his written sanction for the institution of the case (Rule 6 of the Enactment), but it has no jurisdiction if the cause or matter falls within the jurisdiction of the Syariah or the Civil Courts (Rule 9).

The District Native Courts hears appeal from the decision of the Native Court as of right if it involves a question of native law or custom alone or with leave from it if it involves a question of fact alone or mixed law and fact or if it is against a sentence of imprisonment [Section 17(2)(a)(b)]. The same provision is replicated in section 19(2)(a) and (b) for an appeal to the Native Court of Appeal.

All levels of Courts has the power under section 25(1) to punish any contempt of itself.

(2) **Sarawak**

In the case of Sarawak the governing legislation for the constitution of the Native Courts is the Native Courts Ordinance 1992 which repealed the Native Courts Ordinance Cap. 43. It came into force on 1.6.1993 and unlike Sabah, it has 4 courts of original jurisdiction, to wit, the District Native Court, the Chief's Superior Courts, the Chief's Court and the Headman's Court (section 3). The District Native Court consists of a Magistrate with two assessors. The Chief's Superior Courts is presided by a Temenggong or Pemanca and the Headman's Court by a Headman. Both are also assisted by assessors. Under Rule 34 of the Native Court Rules 1993, it is the District Officer, with the approval of his Resident and in consultation with the Chief and Headmen of his district who is tasked with the appointment of these assessors and he maintains a list of the persons who are qualified to serve as assessors in his district.

The Native Court's jurisdiction is stated in section 5(1)(a) and (b) of the Ordinance to be over cases involving native law or custom of the personal laws of the parties and includes cases relating to any religious, matrimonial or sexual matter where one party is a native but not those under the Ordinan Undang-Undang Keluarga Islam 2001 (section 5). Their civil jurisdiction is stated in section 5(1)(c) as involving a subject matter which does not exceed RM2000 and again excludes that which falls under the Ordinan Mahkamah Syariah, 1991. The criminal jurisdiction is confined to cases of a minor nature emunerated in the Adat Iban or any other customary law and which can be adequately punished by a fine stipulated under section 11. This section 11 restricts the District Native Court to imposing a maximum of two years imprisonment and RM5000 fine, the Chief Superior Court to 1 year imprisonment and a RM3000 fine, the Chief's Court to 6 months imprisonment and a fine of RM2000 and the Headman's Court to only a maximum fine of RM300.

Disputes involving land or rights of inheritance over land held under native customary rights or which is within a native communal reserve and claim for compensation for termination of native customary rights shall be heard by the

District Native Court in the first instance with an appeal to the Residents Court [section 5(3)(a)] and for all other disputes involving untitled land other than what is just described above, they are heard in the Chief Court [section 5(3)(c)].

All these Native Courts of original jurisdiction are subject to the supervisory power of a Resident of the District in which it is constituted who has the wide discretion to order, inter alia, if he is satisfied on the grounds stated in 9(2)(a) – (g) that the case be heard de novo by the same or other Native Courts.

Appeals

In section 13(1) the appellate court for the Headman's Court is the Chief's Court, with a progression thereon to the Chief Superior Court, the District Native Court, the Resident's Native Court and finally, the Native Court of Appeal. Thus, the first three mentioned courts have both their original as well as appellate jurisdictions. In section 12, it is provided that an appeal shall be as of right on a question of native law or custom or if it involves a question of fact alone or mixed law and fact or against a sentence of imprisonment.

However by an amendment which took effect on 1.1.2001 (Chapter A 87) it provides that there shall be no appeal to the District Native Court of the decisions of the Native Court made in section 5(1) and (2) which had been mentioned earlier.

The Native Court of Appeal, similarly as in Sabah, is presided by a Judge of the High Court but with a difference in that it also allows one who has held or is qualified under the Federal Constitution to be appointed as a High Court Judge to be its President. He is assisted by the President of the Majlis Islam or the Ketua Majlis Adat Istiadat Sarawak and a Temenggong. Under section 14 (2), it is further provided that the Native Court of Appeal shall have the same powers as may from time to time be vested in the High Court in respect of matters concerning contempt of court and powers to issue warrants and summonses, Outside of what is specifically provided in section 23 and 24 of the Ordinance regarding the same matters. Section 16(1) also vests the said appellate court with the same revisionary powers of the High Court over the courts subordinate to it.

The power of a Native Court to impose a default sentence in lieu of a fine, to award compensation, imposed a penalty in cash or in kind to the aggrieved party, order restitution of any property and order specific performance of any contract is provided under section 18 and 19 of the Ordinance.

Under section 10 of the Ordinance, an advocate of the High Court enrolled under the Advocates Ordinance (Cap. 110) may represent the parties in the proceedings before any of the courts at all levels up to the Native Court of Appeal.

The Regulation.

I have briefly mentioned earlier the Native Court Rules. It similarly regulates the administration of the laws by the Native Courts and the Native Court of Appeal in respect of pleadings, enforcement of the judgment and appeals, contempt of court as well as a Schedule each, for court fees and allowances for the presiding officers/judge. Unlike Sabah, however, there are no specific offences legislated in the Rules as falling under the jurisdiction of the Native Courts although on the plus side the customs of the main native groups such as the Iban, Bidayuh, Kayan/ Kenyah, Lun Bawang and Bisaya are codified. I must acknowledge, after perusing both these State laws that Sabah's three subsidiary legislations in the form of the 1995 Regulations are more systematic and provide clarity of legislative provisions governing the Native Court.

(B) Judicial Review

As can be seen from the above brief outline of the set up and powers of the Native Courts in the two States, particularly that of their Native Court of Appeal, it can be summarised that the modern day Native Courts operate under as sophisticated, though not as extensively covered, a system of rules and procedure as that of the Civil Courts. The right of appearance of an advocate practising in the Civil Courts of both States ensures a quality of representation which indirectly impacts that of the decisions and judgments of the Native Courts. What, however is more assuring, in terms of that quality is the constitution of the highest appellate courts in both States which must be presided by a High Court Judge or an ex-High Court Judge or one

who qualifies or exercises the power of one. The Appellate Native Court therefore is one, which in the Sarawak's Ordinance is expressly intended to be a court of co-ordinate jurisdiction with that of the High Court.

As for the other reasoning of the Supreme Court justifying the issue of certiorari, which is that even though there is an appeal provision in the statute, the court can still act where the fact shows a lack of jurisdiction or a blatant failure to perform some statutory duty or there is a breach of natural justice, the Supreme Court in ***Government of Malaysia and Anor v. Jagdish Singh*** (1987) 2 MLJ 185 has also examined this legal issue in depth. After considering all the case authorities, both in Malaysia and in England, Hashim Yeop Sani S.C.J. held as follows:

> *"Judicial review is always at the discretion of the court but where there is another avenue or remedy open to the applicant it will only be exercised in exceptional circumstances."*

It must also be noted that Jagdish Singh's case is in relation to an appeal on tax assessment to a Special Commissioner of Income Tax and my view is, given the elaborate and well regulated appeal provisions in the two State laws I could not imagine what that "exceptional circumstances" are which would permit the issue of any prerogative writs against the decision of the Native Court either in the exercise of its original or appellate jurisdictions.

My reason for saying so is, although the Supreme Court in ***Haji Laugan's case*** (supra) did say that Native Courts being creatures of statute are subject to control by the High Court, **with the utmost of respect**, that reasoning fails to take into account the fact that unlike other courts or tribunals, such as the Industrial Court and the Labour Court, the establishment of the Native Courts, just like the Syariah Courts, are provided for in Item 13 of List IIA, of the Supplementary to the State List for States of Sabah and Sarawak, of the Ninth Schedule to the Federal Constitution. (That of the Syariah Courts is under Item 1 of List II of the State List.). Thus, although both the Syariah and Native Courts are creatures of statutes, their express creations are constitutionally provided for. I am also compelled to add another argument in support of the point I am making, which is the entrenched decisions of our courts, such as, and a Sabah case would be an appropriate example, ***Yong Teck Lee v Harris Mohd Salleh & Ors*** (2002) 3 MLJ 230 that a decision of a High Court Judge hearing an election petition is not amendable to judicial review, it being a decision of a court of co-ordinate jurisdiction and not an inferior one. (The leave to appeal to the Federal Court against the decision of the Court of Appeal in this case was refused). The very same reasoning, in my view applies with equal force to a decision of a Native Court of Appeal given its constitution as stated earlier.

Another argument of mine, thought not emanating from any court decision is this. Whilst it is now impossible for the Civil Courts to exercise supervisionary jurisdiction over the Syariah Court in view of Article 121(1A) of the Federal Constitution (which only came into effect on 10th June, 1988) and despite no such clear and similar prohibition for the Native Courts, I would still respectfully say it must be equally so for the Native Courts given the special significance of native customs accorded by the Federal Constitution as stated earlier. To say otherwise would be an affront to the dignity of this other court system, for, in my opinion all these three court systems operate exclusively within their own spheres of influence and occupy their own high places in the judicial landscape of our country.

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