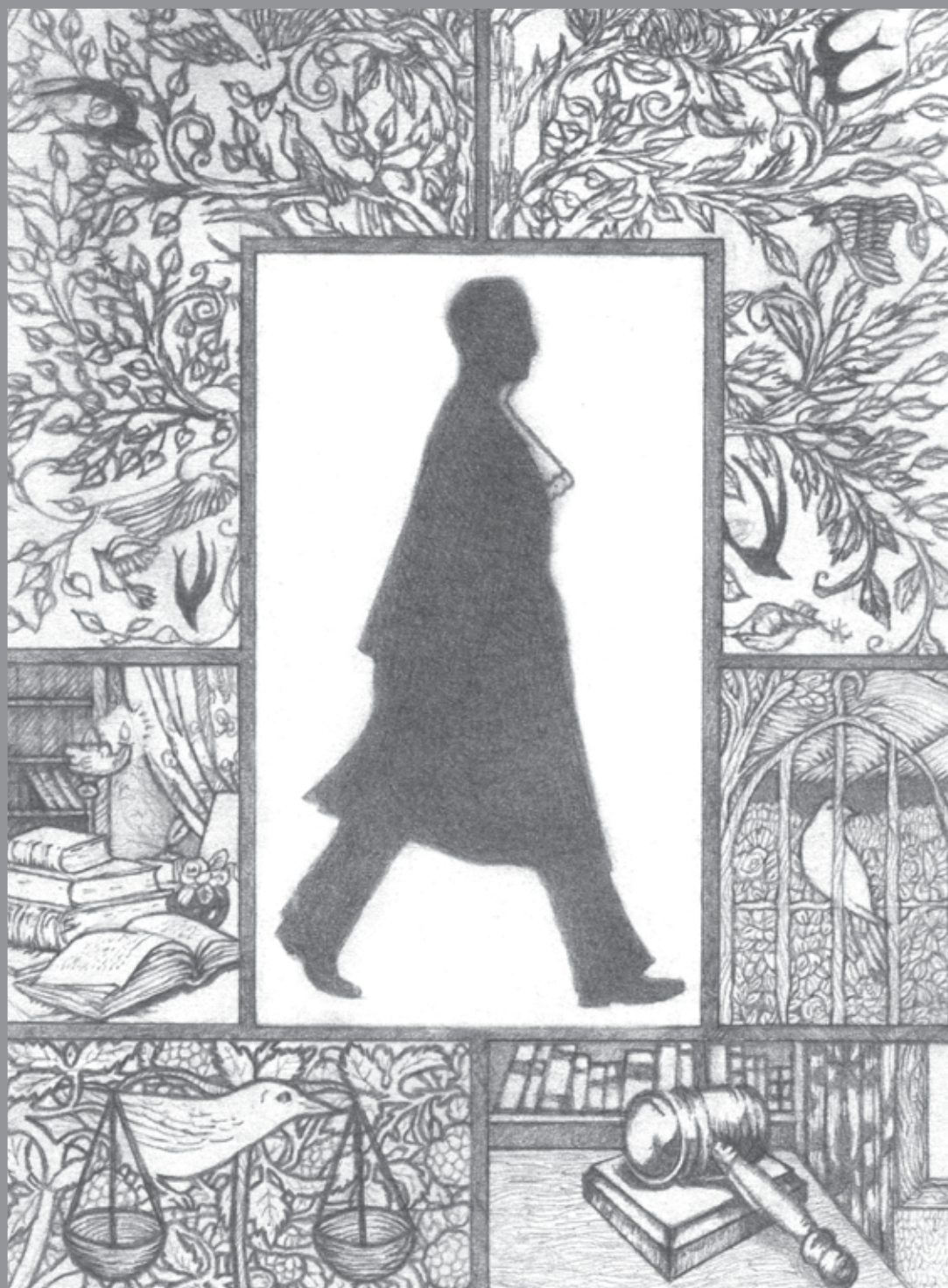
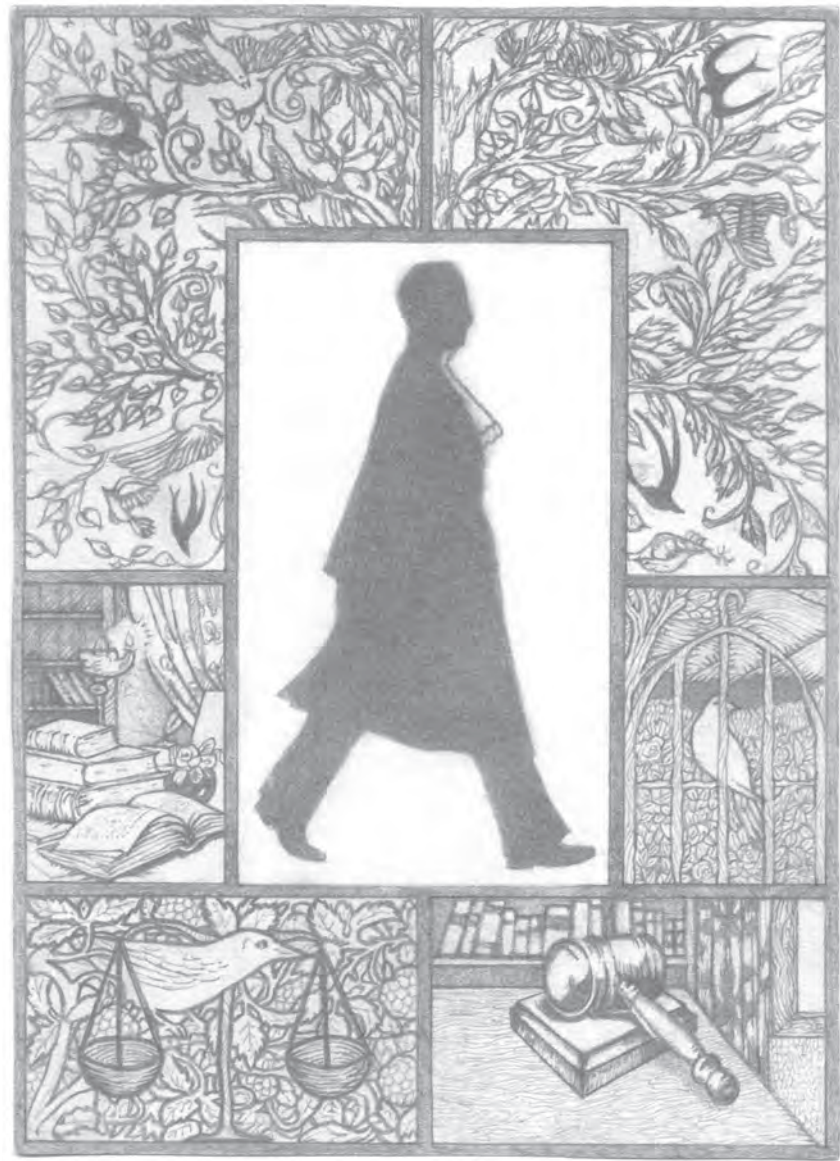




THE MALAYSIAN JUDICIARY



YEARBOOK 2013

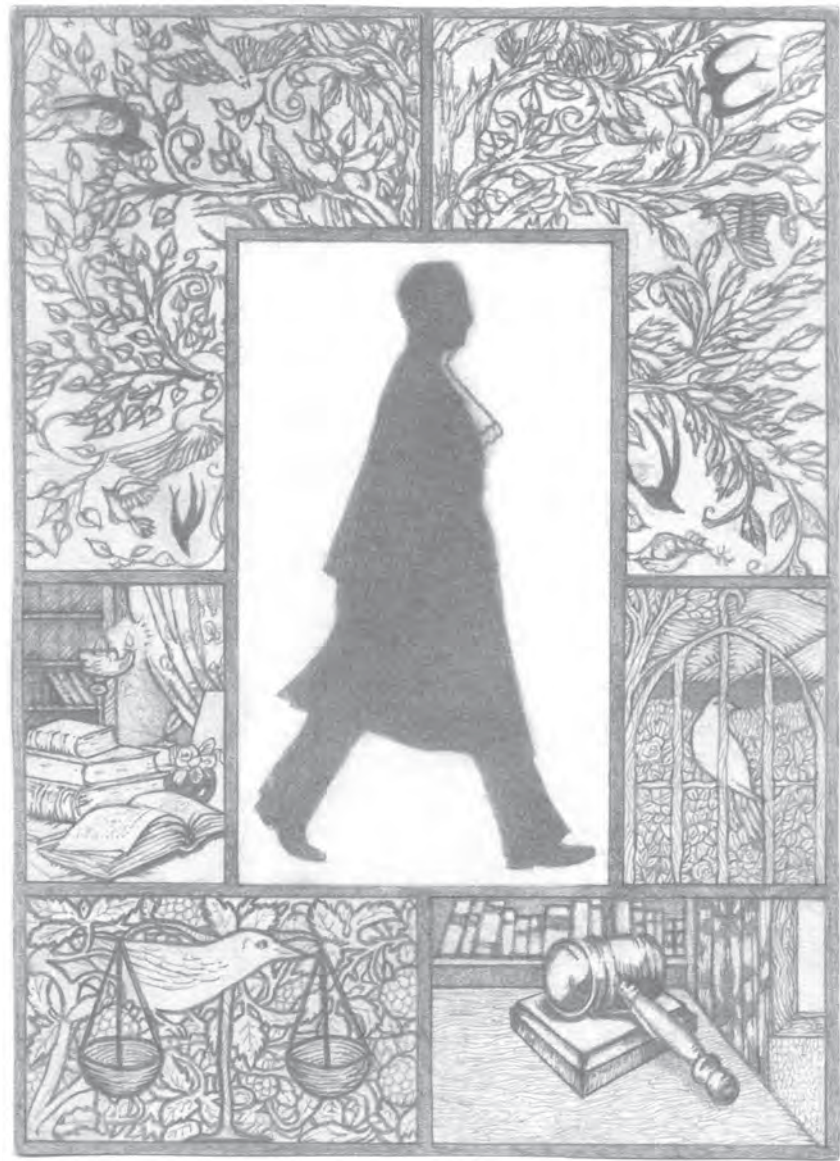


THE MALAYSIAN JUDICIARY

YEARBOOK 2013

Cover Drawing : “Justice in Motion”

by Jimmy Khalil



THE MALAYSIAN JUDICIARY

YEARBOOK 2013

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The Right Honourable Tun Arifin Zakaria
Chief Justice of Malaysia

Foreword

by The Right Honourable Tun Arifin Zakaria

Chief Justice of Malaysia

I note with much pleasure that the Malaysian Judiciary Yearbook series is now entering its third year of publication with this 2013 issue.

It was not too long ago that we ushered the first issue in 2011 which significantly marked the beginning of my tenure as Chief Justice. The past three years since then have passed so quickly. The experience is indeed sobering. Looking back on those early months of my tenure when the Judicial blueprint was freshly minted, a moment of introspection is not out of place now.

It may well be asked: Has the Judiciary come close to the goals and aspirations it had chartered for itself?

From a practical viewpoint, I can safely admit to a measure of satisfaction that we have surpassed all our expectations. As a start, the Malaysian Judiciary have fulfilled much of its judicial engagements, particularly those which impacted the public. This is a considerable high point when one considers how our convulsive court calendar leaves hardly any space for anything but for us to carry on our core business of judging as best we could.

As a starting point, if the past Yearbooks have largely been illustrative of the strategies and initiatives put in place to improve the system, this publication not only carries on that tradition, it also reflects the outcomes we hoped to achieve.

First, the relentless disposal of cases are now routinely dispatched.

As the statistics of cases will bear out, I am pleased that members of the Judiciary and court staff have shown remarkable fortitude in carrying out their tasks. The same is true of all the stakeholders, particularly those from the Attorney General's Chamber, members of the Bar and others. As such I would like to express my gratitude to them all.

This programme to clear cases will continue unabated and will be all-encompassing if we are serious in lending credence to our guiding light that justice delayed is justice denied. As clichéd as it might seem, I might add that in our firm commitment to clear them, we must not lose sight of our guiding philosophy that justice must not be sacrificed.

Our concern to constantly be on top so as to render the best possible service to the public means that there is no respite from hard work. In this, we are conscious that enhanced judicial output would not run counter to the requisites of good, substantive judgments.

This success has enabled me and my team to move on in other directions. To begin with, a year has passed since the passage of the combined Rules of Court, 2012. These Rules have provided a new and modern form to litigation as opposed to the procedural labyrinth they once were. I am happy that the transition was smooth and that an easier access to justice is now a reality. In my view, an unimpeded access to justice cannot be understated, since nothing is more hopeless and desolate than its remoteness.



Mediation

On a different note, it is self-evident that even if dispensing justice in our civil and criminal courts remain the mainstay of our work, the enthusiasm for alternative dispute resolutions has perked up tremendously. This manifests itself in the popularity and effectiveness of the mediation system which our courts have embarked on in settling disputes. The mediation of disputes has gained momentum and happily coincides with recent global development in arbitration, which promotes minimum judicial intervention thus giving way to party autonomy.

The Corruption Court

In an age where specialisation is the norm, our growing number of dedicated courts have shown potential for expansion.

Our Corruption Court for example, has received positive recognition by the International Anti-Corruption Agency, due perhaps, to the fact that cases are completed within a year of filing. This is especially true concerning cases of public interest.

The Environmental Court

Since the establishment of the Environmental Court, specialist training on environmental law (both nationally and internationally) have been provided to members of the Judiciary. However, I would like to see an expansion of the court's jurisdiction in this field which encompasses civil cases as well in the near future.

With some degree of pride I wish to report that the Malaysian Judiciary was recently reposed with the responsibility of co-hosting the 1st Asia and Pacific

International Colloquium on Environmental Rule of Law jointly with the United Nations Environment Programme (UNEP) on 11-12 December 2013.

This event was the highlight of the Environmental Law calendar. This first regional colloquium held on 17-20 June 2012 was attended by a number of Chief Justices, representatives of the Judiciary, government agencies of Asia and the Pacific Region and academicians of various jurisdictions together with representatives of partner organisations of UNEP.

In this colloquium, the role of the Judiciary on sustainable development was made clear and participants came together in defining a new future for the environmental rule of law.

The Construction Court

On another note, I am pleased that on 13 April 2013, our own Construction Court finally materialised. Not out of nowhere, but after much discussion and deliberation.

This is a significant leap in our judicial transformation, since providing specialised adjudication is central to our desire to do justice which is even-handed. It seems apparent that the construction sector may well be Malaysia's next economic model. As it is, modern design and engineering works of buildings have become increasingly complex. In view of the multiplicity of parties such as contractors, professionals (engineers, consultants, architects etc) and suppliers amongst others in any given building contract or construction, one can only imagine the layers of issues that can arise in a construction dispute. Thus the establishment of a court dealing solely with issues relating to the construction industry is markedly significant.

Muamalat Court

Another important specialised court is our Muamalat Court established some years back. It is universally acknowledged that Malaysia is one of the world's leading Islamic financial centres, as the growing dynamics of the Islamic concept of law and finance have been phenomenal. The establishment of a specialised Muamalat Court in Kuala Lumpur was therefore provident.

It is fitting that an exposition of Islamic law and finance is given in this issue. The fact that there is an estimated 1.6 trillion Muslims on the planet and its appeal to non-Muslims alike, has given this subject an added edge.

I do realise that establishing a dedicated Muamalat Court for this purpose is in itself insufficient. We need to further improve the training of our judges in this field, since their input would help achieve greater certainty and confidence in the outcome of any dispute.

In that connection our training programmes provide a refreshing outlook on a number of issues we are concerned with. I am pleased that there is now a growing willingness amongst members of the Judiciary to go beyond the pale; to know more than what is provided and thus have an advantage in adjudicating the issues before them.

This naturally leads me to the prickly issue of public perception. The irony is that it is to the Judiciary that the public turns to, more and more, to resolve its problem. But it is also true that it is the Judiciary that gets the brunt of the public's ire.

We are conscious that our age is characterised by a sceptical public. In acknowledging this however, we are mindful

that ours is an institutional responsibility which would take an informed interest in the way the public sees us. We serve our commitment to our Oath of office in ensuring that cases are heard on time; that reasons are given for their outcomes which are fair and just and that expectations of the public, stakeholders and litigants alike, are fairly met.

I hope too that with the structural adjustments made in the Judiciary, the public's faith in it is restored. I have said this before and I am saying it again. We are committed to the Rule of Law. The Judiciary and stakeholders have reciprocal interests in preserving values which we mutually hold dear, since our destinies are intertwined.

The knowledge that even-handed justice is dispensed daily in courts throughout the nation, has gained considerable ground. To me, it is clear that the responsibility for a value-based and substantive commitment to democracy rests, to a great extent, on the judges themselves.

Finally I wish to say that in the preparation of this Yearbook, I owe my thanks mainly to the Editorial Committee led by Justice Zainun Ali who, together with her team i.e., Justice Azhar Mohamed, Justice Alizatul Khair Osman Khairuddin, Justice Abdul Aziz Abdul Rahim, Justice Lim Yee Lan, Justice Mah Weng Kwai, Justice Varghese a/l George Varughese, Justice Nallini Pathmanathan, Puan Azizah Mahamud, Puan Chan Jit Li, Puan Nurul Husna Awang, Puan Azniza Mohd Ali, Puan Radzilawatee Abdul Rahman, Encik Mohd Sabri Othman, Encik Noorhisham Mohd Jaafar, Puan Husna Dzulkifly, Encik Safarudin Thambi, Encik Shazali Dato' Hidayat Shariff, Encik Syahrul Sazly Md





THE MALAYSIAN JUDICIARY
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Sain and Puan Sabreena Bakar, have pieced together this Yearbook comprehensively, despite their punishing schedules. I also owe much thanks to the list of eminent contributors i.e. Y.A. Bhg. Tun Mohamed Dzaiddin bin Haji Abdullah the former Chief Justice of Malaysia, Y. Bhg. Tan Sri Siti Norma Yaakob former Chief Judge of Malaya, Y. Bhg. Tan Sri James Foong Cheng Yuen former Federal Court Judge and Justice Abdull Hamid Embong Federal Court Judge, who have willingly shared with us their judicial insights on legal issues which are close to their hearts.

I would also like to thank Justice Mohd Zawawi Salleh, Justice Rohana Yusuf and Justice Mary Lim for writing on the topical issues of the day.

I owe my thanks too to Puan Hamidah Abdul Rahman for the captivating photographs, and to Encik Muhammad Nur Hazimi Mohamed Khalil (Jimmy) for his fine sketches of the cover and portraits of writers, which together, have given this Yearbook its winsome appeal. My thanks are also owed to the Islamic Museum Kuala Lumpur and the National Archives for their generosity in lending us their elegant artefacts and photographs respectively. Finally I would like to express my appreciation to the publisher PNMB for their fine work in the publication of this Yearbook.

I wish all of you Happy Reading!

Tun Arifin Zakaria
Chief Justice of Malaysia.

THE MALAYSIAN JUDICIARY
Yearbook 2013



P r e f a c e

There is a strong case to be made, for members of this Committee to undergo a “rejuvenation course” of sorts. There we were, caught in the throes of scrambling for text and texture of this Yearbook, such that a time out would probably bring a bit of perspective to problems which can seem all-absorbing when you are on the inside.

However, as is usually the case, we fell headlong into the maelstrom and got on with the job.

The ten chapters we have in this Yearbook may at first glance, appear loquacious. But in capturing our year’s work and events, we felt unable to confine them too narrowly. We wanted more blue sky.

There is no mistaking the fact that the Committee has paid due regard to the suggestions made by our colleagues in their response to our questions posed at the last Judges’ Council meeting in May 2013 as to what they want in the Yearbook; Much in the way a perplexed Freud had once asked women: “what do you really want?”.

The range of issues they suggested were quite an eye opener. The most sought after was Human Rights and their ancillary issues. Other areas of concern are Judicial Immunity, the Law on Terrorism, Issues of Corporate governance, Sexual Harassment, Criminal Justice System and the like. However these disparate bodies of thought have to be yoked and pulled together through the process of filter; And as much as we looked forward to ventilating them here, our constraints are real enough.

First the judicial outputs are highlighted, since they are the holy grail of this publication. That we were able to cope with the formidable surfeit of cases, is itself an achievement. The disposal rates as manifested in the statistics are featured here, as well they might. We in the Committee have added a special column called a “Judge’s Musings” in the chapter on Judges. For us, the ruminations, even gentle asides from our former colleagues are welcome respite from the mundane mornings we sometimes have to bear. Their short but sublime views on certain issues will surely be illuminating.

Another dimension to the Malaysian Judicial landscape is the recent establishment of the Construction Court.

Even if our Construction Court has no relation to the elegant edifices of Edwardian or Georgian architectural form or even of quaint local timber and beam structures for that matter, it gives a quiet assurance that our construction disputes would be efficiently resolved from now on.

On another note, since judges have the devastating ability to cause lasting misery to some litigants, it is crucial that continuing judicial training and education is provided. It underscores the need for the Judiciary to provide and demonstrate social accountability.

It is heartening too that a Research Unit for the Federal Court has been set up, which would reconcile the dilemmas faced by most judges who have to balance their prodigious workload on their slender time frame.

One other matter which we welcome is the addition in this Yearbook of an article on Islamic Banking and Finance. The expansion of this discipline has been exponential.

We are extremely grateful to the Islamic Museum for allowing us access to their exquisite artefacts which have graced this publication. It is with immense gratitude too that we received the edifying judicial insights on various issues from Y.A. Bhg. Tun Mohamed Dzaiddin Haji Abdullah the former Chief Justice Malaysia, Y. Bhg. Tan Sri Siti Norma Yaakob the former Chief Judge of Malaya, the Honourable Justice Abdull Hamid Embong, Federal Court Judge and an article from Y. Bhg. Tan Sri James Foong Cheng Yuen former Federal Court Judge for his musings. Y. Bhg. Tun Mohamed Dzaiddin's discourse on capital market disputes is timely, given its precocious history. Y. Bhg. Tan Sri Siti Norma's insight into the newly enacted Competition Act is enlightening. An otherwise woolly subject, it is now no longer opaque. We have to wait and see how the complex monopoly of some companies operate against the public interest and how the regulators deal with them. Justice Abdull Hamid's view on e-evidence gives a critical outline as to why we ought not to be in a ferment about the sudden bursting of new technology in the obtaining and gathering of evidence.

Y. Bhg. Tan Sri James' rumination is a sober reminder of the fragility and vulnerability of our profession.

On a final note, I would like to express the Committee's gratitude to the Chief Justice for entrusting us with the preparation of this important judicial publication. It is a trust which we take very seriously.

I am happy that our officer Puan Hamidah Abdul Rahman has once again delighted

us with her flair for vivid shots, whilst our artist Encik Jimmy Khalil's sketches bring an intensity which are breathtaking in themselves.

I have only profound gratitude to both the National Archives and the PNB for giving us their time to make this publication as stimulating as is possible, with their inputs.

Finally there is nothing like having a coterie of Committee members whose cheery approach to this painstaking work allows this to be an enjoyable endeavour. Thus I would like to place on record my gratitude to my sister and brother judges and officers in this Committee, without whose good humour and attention to detail, this publication might not see the light of day.

However our work is never done. Even as we are now in the midst of the welter of material for this publication, our thoughts are straying towards the next!

Perhaps in relation to having a better and strong Judiciary it might be worthwhile remembering the piquant quip made by H W Longfellow who said that:

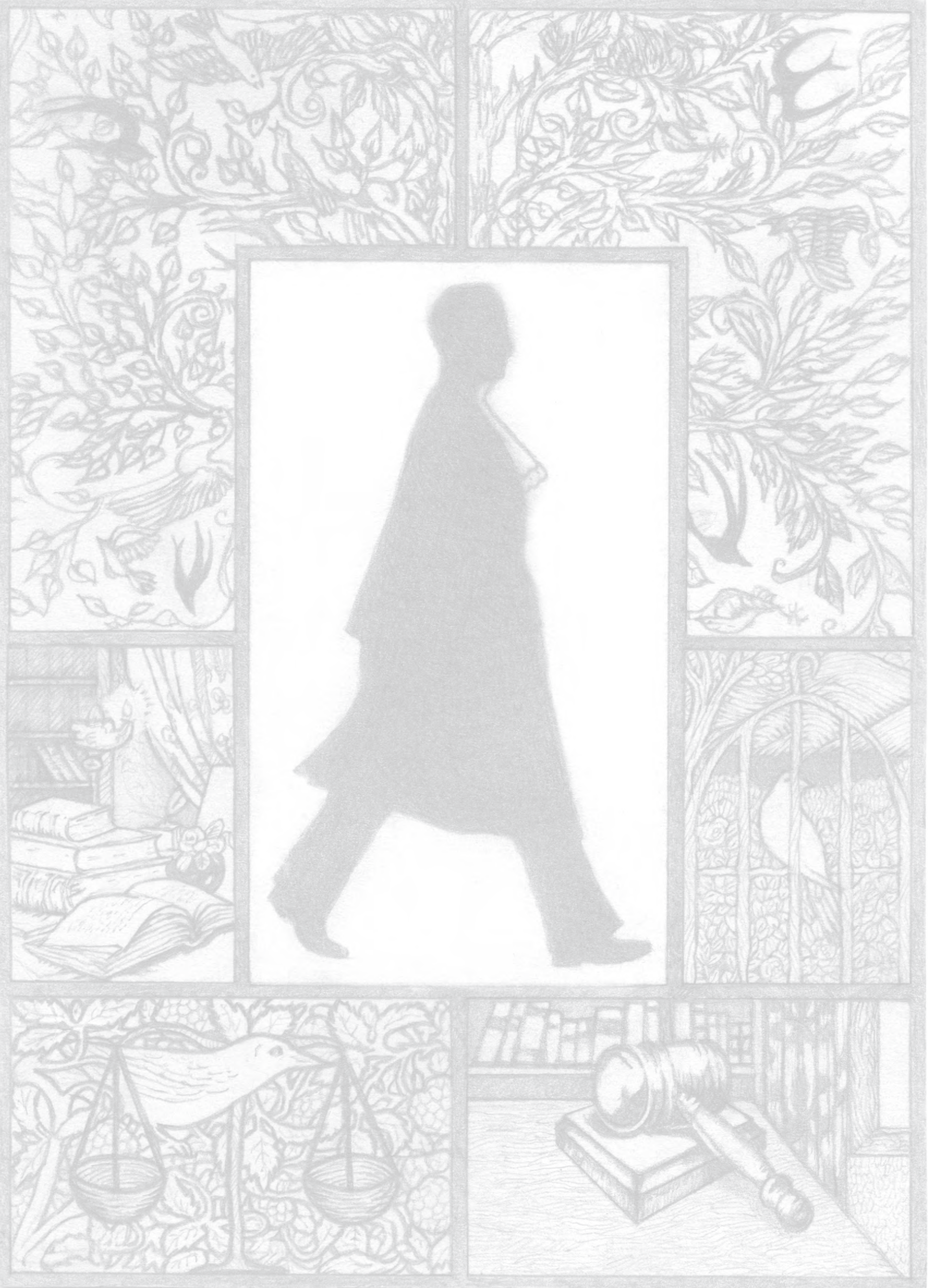
"The heights by which great men reached and kept were not attained by sudden flight, but they, while their companions slept, were toiling upward in the night."

One wonders.

Happy Reading!

Justice Zainun Ali
Editor





Message from the Chief Registrar

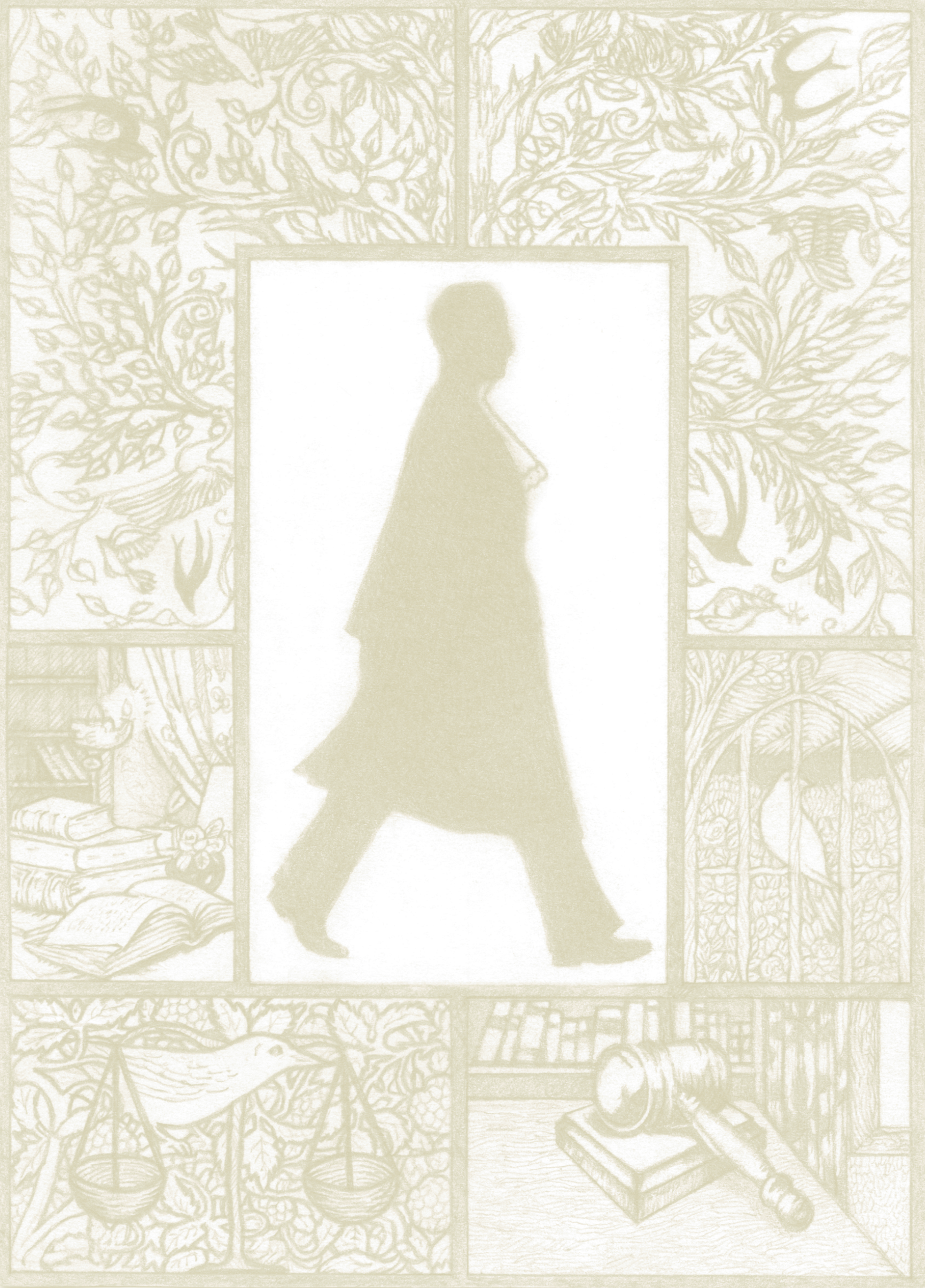


The Malaysian Judiciary Yearbook is a momentous publication which records the continuing progress and accomplishment of the Courts. I must reiterate that this yearly report is a recognition of the commitment and dedication of our Judges and Judicial officers in fulfilling their judicial responsibilities. The impressive performance shown in 2013, will surely bring us closer to the ultimate aim of shaping the Judiciary to be one which is highly regarded.

On behalf of the Chief Registrar's Office, I wish to express my heartfelt gratitude to all members of the editorial committee led by The Hon. Justice Datuk Zainun Binti Ali for their effort in producing this yearbook. I hope readers will take pleasure in perusing its pages and find it insightful and enlightening.

Puan Azimah Binti Omar
Chief Registrar
Federal Court of Malaysia





CHAPTER 1

OPENING OF THE LEGAL YEAR

OPENING OF THE LEGAL YEAR 2013 PENINSULAR MALAYSIA



Procession of Judges during the Opening of the Legal Year 2013 which was held on the 12th January 2013 at Palace of Justice Putrajaya

The Official Opening of the Legal Year 2013 was officiated by the Honourable Chief Justice of Malaysia, YAA Tun Arifin bin Zakaria at the Palace of Justice, Putrajaya on 12th January 2013.

The first event in the legal calendar was well attended by the past and present members of the Judiciary, invited guests, both local and foreign, members of the Diplomatic Corps, legal officers, members of the legal fraternity and others. Representing the Attorney General's Chambers was the Attorney General, Tan Sri Abdul Gani b. Patail and the Malaysian Bar was the President, Mr. Lim Chee Wee.

Given the honour of delivering the first speech, Mr. Lim Chee Wee said that the Bar was greatly encouraged by the recognition accorded to the Bar by both the Prime Minister and the Chief Justice when they respectively equated the Bar as 'an important partner' and an 'equal partner' in the administration of justice. And, it was with obvious pride that he announced the conferment of the "UN Organisation of the Year 2012 Award" on the Malaysian Bar as the

award 'recognises the outstanding contribution of the organisation in the country on issues of human rights, social justice and equality.'

Touching on the past year's activities, Mr. Lim spoke of the Legal Aid Centres funded and managed by the Bar.

The Bar's efforts in creating a better Bar saw the implementation of several programmes which were tailored for three target groups namely its existing members, law students and foreign lawyers. For the first group, the emphasis was on the upholding and enforcement of the code of ethics. The Programme included a mandatory Continuing Professional Development programme for its members. In respect of the second group, the Bar had determined the lack of English proficiency, poor communication skills and poor legal knowledge as problem areas faced by law students. As such the Bar has reached an agreement with the Attorney General to set up a task force with representatives to review and make recommendations for the general improvement of legal education. As regards the third group, the Bar Council as part of the

Selection Committee co-chaired by the Attorney General hoped that it would be able to issue licences to foreign lawyers by 2014 to practise foreign law in Malaysia.

Mr. Lim commended the Judiciary on its committed stand against abuse of powers by the Executive and unreasonable legislation by Parliament and for providing Opposition politicians and minorities with equal access to justice as was reflected in the decisions delivered by the courts. He then called upon the government, in line with the Prime Minister's obligation to uphold judicial independence to rightfully, at the very least, return to the Judiciary the managerial powers of its budget which had been taken over by the Legal Affairs Division of the Prime Minister's Department since 2003.

In closing, Mr. Lim reaffirmed the Bar's commitment to the rule of law, and the independence of the Judiciary, and pledged to work hand in hand with the Chief Justice to fight both corruption and the perception thereof within the Judiciary.

Thanking the Chief Justice for the honour of addressing the assembly, the Honourable Attorney General said 2012 was a year of quantum leaps for the Chambers in respect of legislative reforms. As part of the National



The Rt. Hon. Chief Justice Arifin Zakaria giving his speech during the Opening of the Legal Year 2013 which was held on the 12th January 2013 at Palace of Justice Putrajaya

Transformation Programme, old laws considered draconian were repealed and replaced by new Acts on freedom of expression and national harmony in line with constitutional protections. The repeal of the more significant Acts like the Internal Security Act, 1960, the Restricted Residence Act 1933 and the Banishment Act 1959, the amendment of the Printing Presses and Publications Act, 1984, the Universities and University Colleges Act 1971 and the newly enacted Peaceful Assembly Act 2012 and Security Offences (Special Measures) Act, 2012 ushered in an era of greater freedom for the individual. Entrusted with assisting the government in the



Judges of the Federal Court at the Opening of the Legal Year 2013 (L-R): Justice Sulong Matjaraie, Justice Ahmad Maarop, Justice Suriyadi Halim Omar, Justice Hasan Lah and Justice Jeffrey Tan Kok Wha

creation of this new era, the Chambers faced the difficult task of balancing the interests of the individual and the possible abuse that may flow from the new parameters set.

Apart from this, the Chambers was also tasked with amending the Election laws in line with the recommendations of the Special Select Committee on Electoral Reforms with the chief purpose of ensuring more transparency in the conduct of national elections.

Tan Sri Abdul Gani b. Patail took the view that the contribution of the Chambers towards a more expeditious administration of justice lay in the implementation of the amendments to the Criminal Procedure Code in relation to pre-trial conferences, case management and plea bargaining. He also announced the reprint of an updated Criminal Procedure Code containing all 7 sets of amendments which would facilitate

reference. Tan Sri Abdul Gani also acknowledged the efficacy and effectiveness of the new combined Rules of Court, 2012 in expediting trials.

When delivering his speech, the Honourable Chief Justice highlighted the performance of the Judiciary which he said saw a marked increase in the disposal of cases at all levels of the Judiciary. However, despite this the Federal Court reflected an increase in the cases brought forward. This was due to an increase in the registration of cases brought about by the increased disposal by the Court of Appeal which saw a disposal of 154% against registration. To overcome this backlog, with effect from March 2013, two Benches will be empanelled at the Federal Court each week.

His Lordship attributed the high disposal to the timeline set at each level of the courts. In the Court of Appeal the timelines set for



Judges of the Superior Court at the Opening of the Legal Year 2013

disposal are within 6 months from date of registration for Interlocutory Appeals, within 18 months from the date of registration for criminal appeals and within 9 months for appeals involving government servants. The timeline for disposal of appeals from the New Commercial Courts (NCCs) and the New Civil Courts (NCvCs) are set at within 6 months while the timeline for leave applications within 4 months. Despite this heavy workload, 2012 saw the publication of 217 written judgments from the Court of Appeal.

The High Court and Sessions Court share a common timeline for disposal of civil cases which is within 9 months from the date of registration while for the Magistrate's Court the timeline is 6 months. The High Court achieved 90.1% of the target set while the Sessions Court, 85.8% and the Magistrate's Court, 81.6%. Specialised courts namely the Admiralty Court, Muamalat

Court and the Intellectual Property Court achieved 85% of the target which was set at 9 months. As for the Corruption Court, although the National Key Performance Indicator set a target of 70% disposal within a timeline of 12 months, the Judiciary went on to dispose 81% instead.

September 2012 saw the manifestation of the proposal made by the Honourable Chief Justice in January 2012 with regards to the setting up of the Environment Court. This proposal had helped to increase public awareness in environmental issues. His Lordship was also pleased to announce that the Malaysian Judiciary had been given the honour of hosting the Second Roundtable Conference for Asean Chief Justices on Environmental Law and Enforcement in December 2012 which is an effective platform for Asean Chief Justices to discuss environmental issues.



The Honourable Chief Justice Tun Arifin Zakaria put on record the Judiciary's gratitude to the Chief Secretary to the Government for the latter's contribution in securing new posts pivotal to the implementation of the amended Subordinate Courts Act, 1948, which enhanced the scope and limit of civil jurisdiction of the Sessions Court. His Lordship also thanked the Attorney General's Chambers for assisting in the translation of the new Rules of Court 2012 which saw for the first time, the Malay text being the authoritative text. A creature born out of the co-operation between the Judiciary, the Malaysian Bar and the Attorney General's Chambers, the Rules sought to expedite judicial processes through the principle of simplification in that, amongst others, modes of commencement of action was reduced from four to two, uniform notices of application for all interlocutory applications at both the High and Subordinate Courts, and generally the use of simplified language and forms.

Another aspect of judicial reform relates to the constant upgrading of the Judiciary's workforce. Continuous training programmes were held by the newly formed Judicial Academy under the office of the Judicial Appointments Commission (JAC) for the superior court judges, while the Chief Registrar's Office catered for other judicial officers.

The Judiciary's efforts were given recognition when the Judiciary secured three out of the four awards in the 'Anugerah Inovasi Jabatan Perdana Menteri 2012' namely 1st prize for the Most Promising Category (Mobile Court-Sabah), 3rd prizes for ICT Category (e-Court-Kuala Lumpur) and The Most Innovative Department/Agency. And, on 18th of December 2012 –the JPM's Innovation Day- the judiciary was once again selected to receive the "Anugerah Khas Inovasi JPM 2012" Award.

The Judiciary's implemented innovations also attracted international attention from Ministries of Justice and Judiciaries of other countries seeking to have a study tour of the e-Court system and our backlog reduction programme.

On plans for future innovation, the Judiciary is looking forward to the setting up of the Construction Courts as proposed by the Bar and the Construction Industry Development Board. The construction industry has its own peculiar and technical issues and the establishment of a specialist court meets those needs. The Honourable Chief Justice Tun Arifin Zakaria also urged the Attorney General Chambers and the Bar to explore the electronic presentation of cases through slide presentations in respect of opening statements and submissions, by making use of the enabling facilities presently available in the courts.



Judges and guests during the Opening of the Legal Year 2013 which was held on the 12th January 2013 at Palace of Justice Putrajaya

OPENING OF THE LEGAL YEAR 2013 SABAH AND SARAWAK



The Rt. Hon. Chief Justice, The Rt. Hon. President of the Court of Appeal, The Rt. Hon. Chief Judge of Sabah & Sarawak and other Judges in procession for the Opening of the Legal Year (Sabah & Sarawak)

The fourth joint celebration of opening of the legal year in Sabah and Sarawak was held at the High Court, Tawau Courts' Complex. It was indeed a historic and proud moment for lawyers and the Judiciary in Tawau as it was the first time such an event was held there. With the theme "Green Justice" it reminded us of the plight of our environment and the issue of sustainability of rapid development. This was in line with the directive to establish environmental courts at the Sessions and the Magistrate's courts level to draw public awareness on environmental issues.

The 2013 Opening of Legal Year was graced by the presence of the Chief Justice of Malaysia, The Right Honourable Chief Justice Tun Arifin Zakaria, Attorney General Malaysia YBhg. Tan Sri Datuk Seri Panglima Abdul Gani Patail, Federal Court Judge Justice Abdull Hamid Bin Embong, Court of Appeal President The Right Honourable Justice Md Raus Bin Sharif and the members of the Royal Commission of Inquiry on Illegal Immigrants in Sabah namely YBhg. Tan Sri Steve Shim Lip Kiong together with YBhg. Tan Sri Herman Luping.



Judges, Judicial Officers and Members of the Bar at the Opening of the Legal Year Sabah & Sarawak 2013.





The Attorney General Tan Sri Abdul Gani Patail delivering his speech at the Opening of the Legal Year Sabah & Sarawak 2013

The Chief Judge of Sabah & Sarawak, The Rt. Hon. Justice Richard Malanjum, in his speech at the 2013 Opening of the Legal Year, amongst others, referred to the speech of The Rt. Hon. Chief Justice of Malaysia during the national opening of the 2013 Legal Year where His Lordship stressed that the public expected the Judiciary to hear and handle cases honestly and fairly, without fear or favour and free from any form of influence. The Rt. Hon. Chief Justice had also emphasised the need for all members of the Judiciary to prevent any form of corruption in the Judiciary.

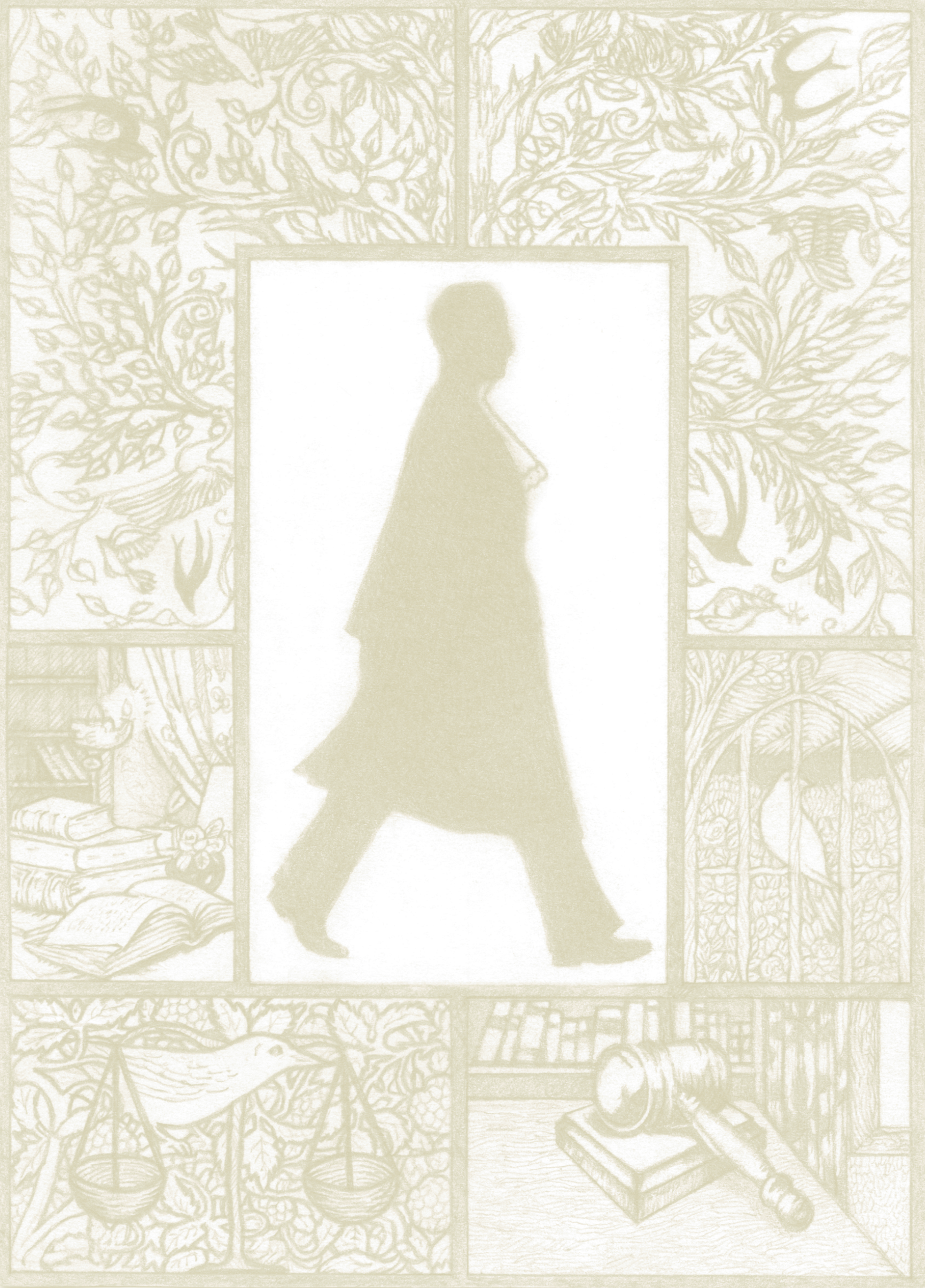
The Chief Judge of Sabah & Sarawak acknowledged that thus far, the relationship between the two local Bars and the Bench in Sabah & Sarawak has been very cordial and was one of co-operation. This was reflected by the successful implementation of the e-filing system which has been subscribed to by all legal firms in Sabah and Sarawak.

In closing, the Chief Judge of Sabah & Sarawak stated:

“Let us always remember that Justice must never be the fruit of abuse, but of the law and good conscience.”

THE MALAYSIAN JUDICIARY
Yearbook 2013





CHAPTER 2

THE FEDERAL COURT

THE FEDERAL COURT



**The Right Honourable
Justice Arifin Zakaria
Chief Justice of Malaysia**

In the year 2013, the Federal Court's schedules and fixtures were just as busy and tight as the previous year. This was due to the significantly higher rate of disposal of cases by the Court of Appeal since 2011.

Leave applications, civil appeals and criminal appeals form the bulk of cases pending in the Federal Court. In 2013 a total of 1334 cases were registered. This is a decrease of 6% compared to the previous year which saw a total of 1422 cases being registered. The disposal in 2013 had increased by 134 cases giving a total of 1165 cases. Despite the increase in the disposal of cases in 2013, the number of pending cases as at 31st December 2013 was higher than that

in 2012. This was due to the exceptionally high registration experienced in 2012. The total cases pending as at 31st December 2013 was 1260.

With regard to leave applications, the number of disposals in 2013 exceeded registration in the same year. The leave applications disposed of were 829 as compared to 827 registered. As at 31st December the balance of leave applications stood at 614.

As for civil appeals (inclusive of election petition appeals), the disposal had increased almost two-fold from 66 in 2012 to 127 in 2013. The number of appeals registered in 2013 had decreased slightly compared to 2012. As at 31st

December 2013 the number of civil appeals pending was 159 cases.

The registration of criminal appeals showed an increase of 11% in 2013. The Federal Court disposed of a total of 185 criminal appeals in 2013. Despite that the court is still left with a balance of 481 cases as at 31st December 2013.

To cope with the increase in pending cases, beginning March 2013, two panels of Federal Court sat on a weekly basis. As a result, more cases were heard and disposed of within a shorter time frame. This practice will be continued in 2014.

In addition new and clearer guidelines will also be formulated in the form of a practice direction so as to streamline the business of the Federal Court right from the filing of documents to the date of hearing. This includes a clear two week cut-off date for filing written submissions by parties before the hearing date to give panel members sufficient time to read the submissions. We are also considering the introduction of allocated time for oral submissions in respect of leave applications, which constitute the bulk of cases before the court. It is hoped that with specific time allocation, more such applications could be disposed of.

Disposing cases in an efficient manner and within a reasonable time frame is the primary objective of all judicial systems. However, I would like to emphasize that the expeditious disposal of cases should never be done at the expense of justice.

Overall, I would say that the court's achievement in 2013 was highly satisfactory. This could not have been possible without the support and hard work put in by my sister and brother judges. I therefore wish to place on record my sincere appreciation to all of them.

The year 2013 witnessed the retirement of two Federal Court Judges: Datuk Seri Panglima Sulong Matjeraie and Dato' Bentara Luar Dato' Hashim bin Dato' Haji Yusoff. I would like to record our sincere appreciation to them for their invaluable contribution to the Judiciary. May Allah bless them both in their retirement.

I welcome the appointments of Dato' Sri Haji Mohamed Apandi bin Haji Ali, Dato' Sri Abu Samah bin Nordin and Datuk Ramly bin Haji Ali to the Federal Court Bench. I congratulate them and wish them many fulfilling years as Federal Court Judges. With their vast experience as trial and appellate judges, I am confident they will contribute immensely to the Judiciary.

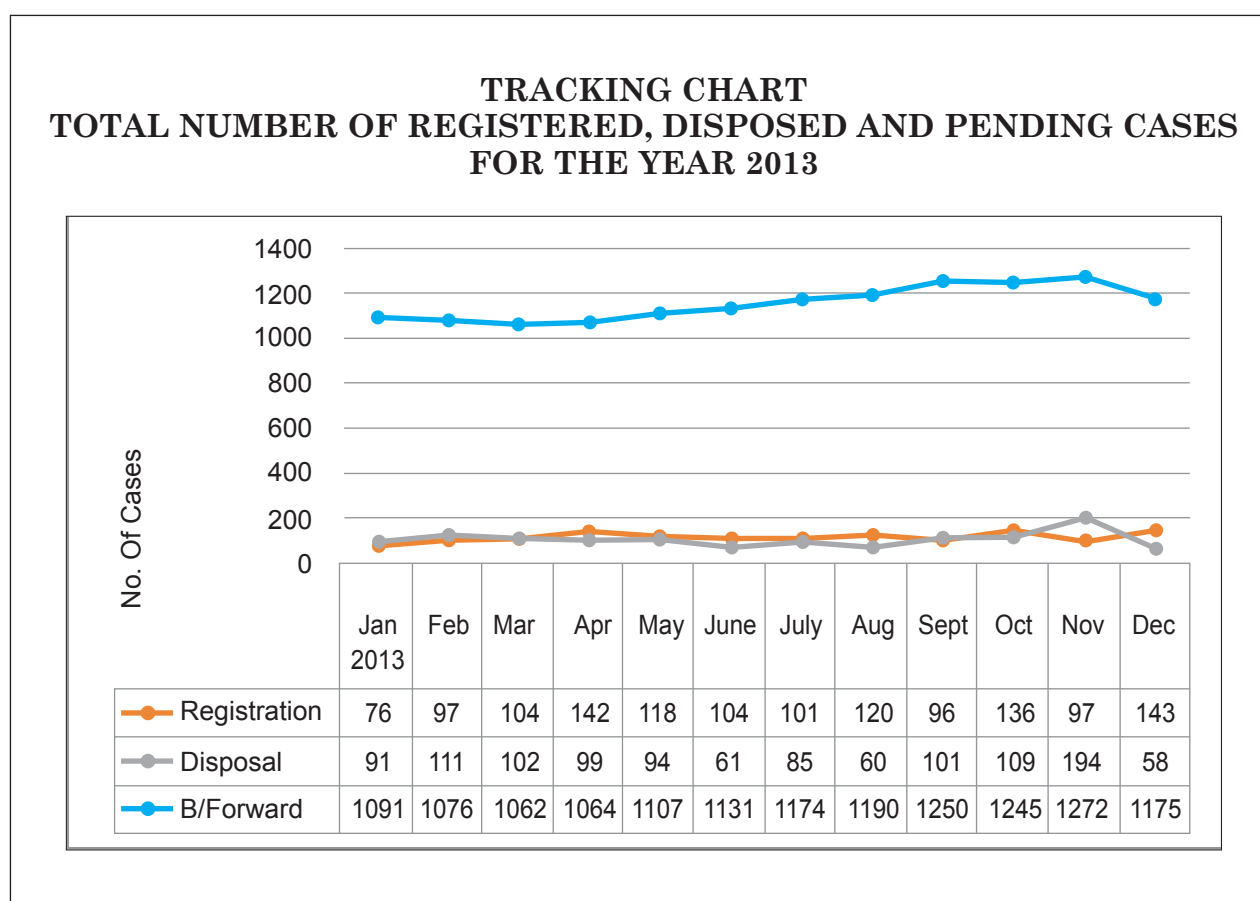
Justice Arifin Zakaria
Chief Justice of Malaysia

Judges of the Federal Court

1. Justice Abdull Hamid bin Embong
2. Justice Suriyadi bin Halim Omar
3. Justice Ahmad bin Haji Maarop
4. Justice Hasan bin Lah
5. Justice Zaleha binti Zahari
6. Justice Zainun binti Ali
7. Justice Jeffrey Tan Kok Wha
8. Justice Mohamed Apandi bin Ali
9. Justice Abu Samah bin Nordin
10. Justice Ramly bin Haji Ali

PROJECTION AND PERFORMANCE OF THE FEDERAL COURT IN 2013

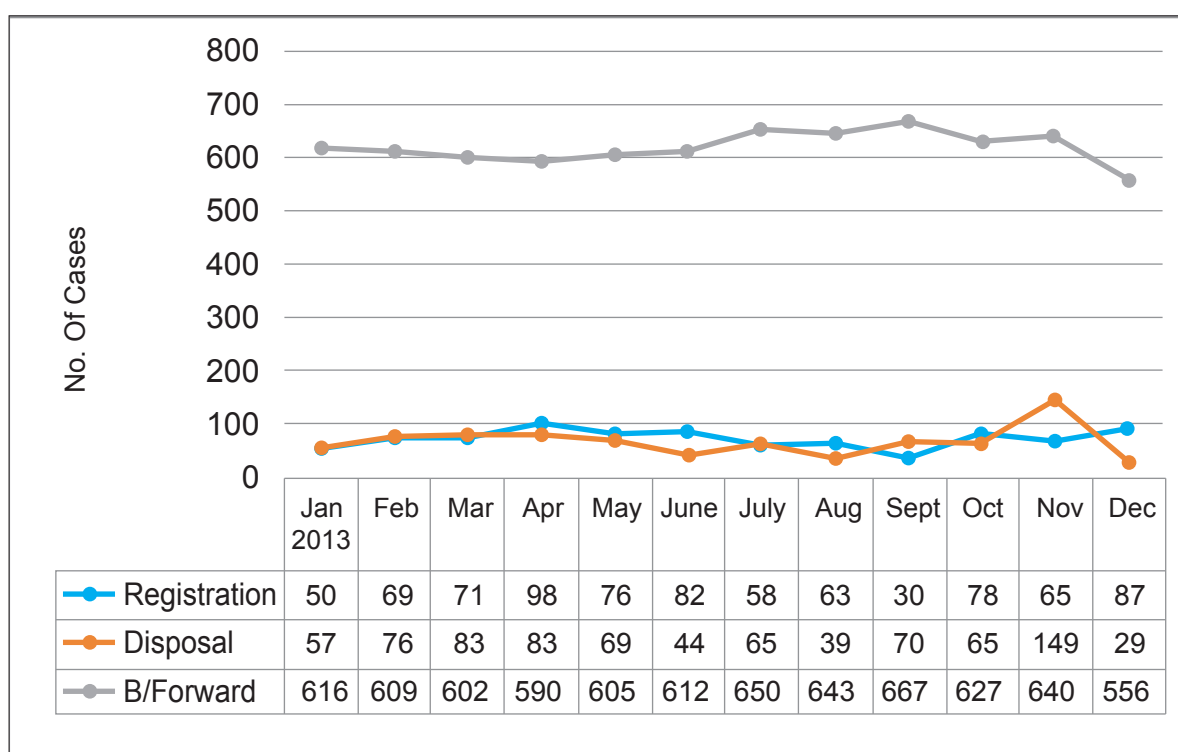
The performance of the Federal Court in 2013 is shown below in graphical form.



1. Cases adjudicated upon in the Federal Court comprise substantially of motions for leave to appeal, civil appeals and criminal appeals. Other matters include civil and criminal references, criminal applications and cases of original jurisdiction.

As at 31st December 2013, there is an increase in the number of pending cases in the Federal Court, amounting to 1260 cases as compared to 1091 cases as at 1st January 2013. In 2013, a total of 1334 cases were registered as compared to 1422 in 2012. Of these cases, 1165 were disposed of, achieving a clearance rate of 87% against the total number of registrations in 2013. Considerable effort was expended by the Federal Court judges to achieve this clearance rate, and at eliminating the backlog of cases.

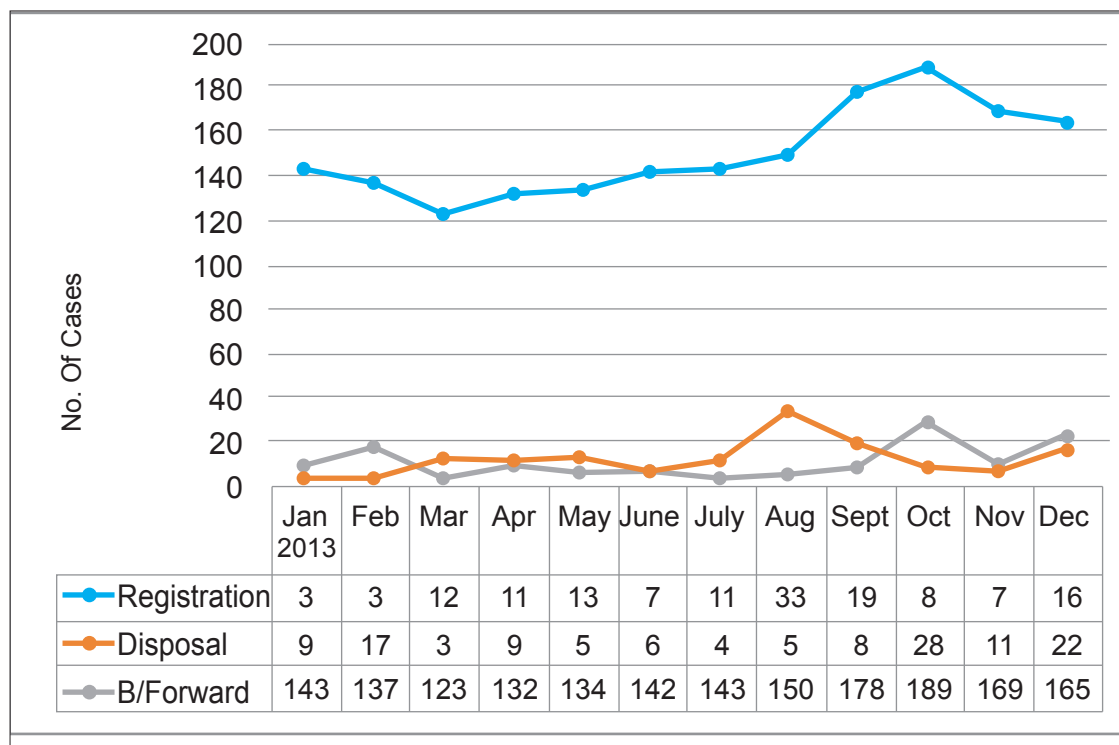
**TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31 DECEMBER 2013
(LEAVE APPLICATIONS)**



2. For leave applications, the registration showed a substantial decrease of 15.6% from 956 in 2012 to 827 in 2013. However, the number disposed of had increased from 759 in 2012 to 829 in 2013.

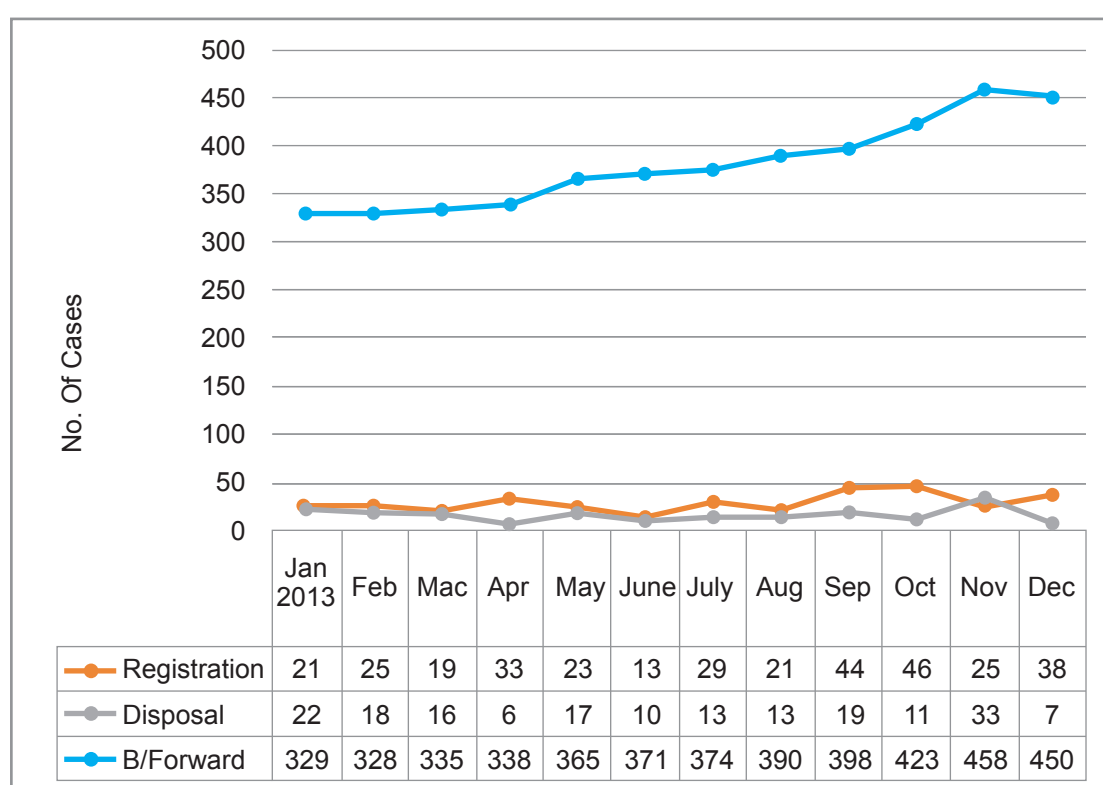
As at 1st January 2014, the number of leave applications pending in the Federal Court is 614. Such applications are targeted to be disposed of within 6 months from the date of registration.

**TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31 DECEMBER 2013
(CIVIL APPEALS)**



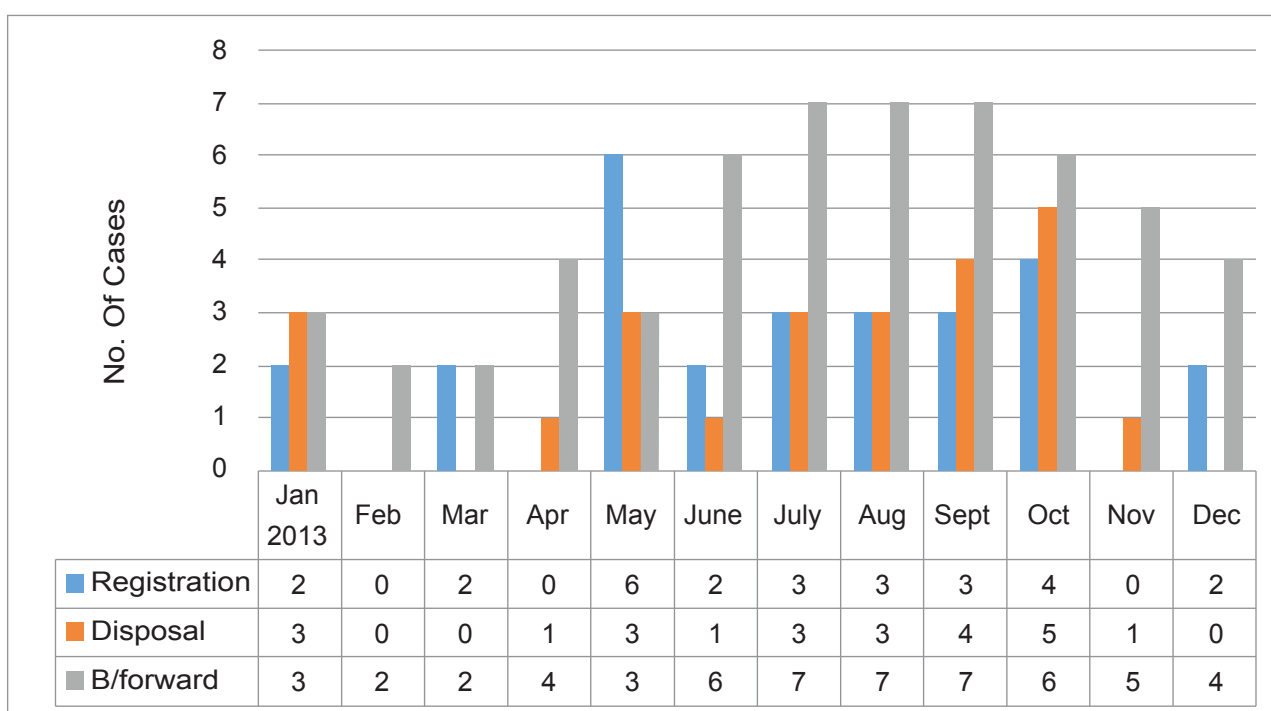
3. The registration for civil appeals decreased by 3.5% from 148 in 2012 to 143 in 2013. However the number of disposals has increased substantially from 66 in 2012 to 127 in 2013. The increase in the disposal rate is 92%. The total number of civil appeals disposed of as against registrations in 2013 is 89% i.e. the number of appeals disposed of is 127 as against a registration of 143. The number of appeals pending as at 1st January 2014 is 159. Civil Appeals are targeted to be disposed of within 6 months from the date of registration.

**TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31 DECEMBER 2013
(CRIMINAL APPEALS)**



4. As for criminal appeals, the registration showed a marked increase of 11% from 304 in 2012 to 337 in 2013. In 2013, the Federal Court managed to dispose of 185 appeals, leaving a balance of 481 cases as at 1st January 2014. Currently, criminal appeals are targeted to be disposed of within 3 months from the date of receipt of a complete record of appeal, whereas appeals on writs of habeas corpus are targeted to be disposed of within 3 months from the date of registration.

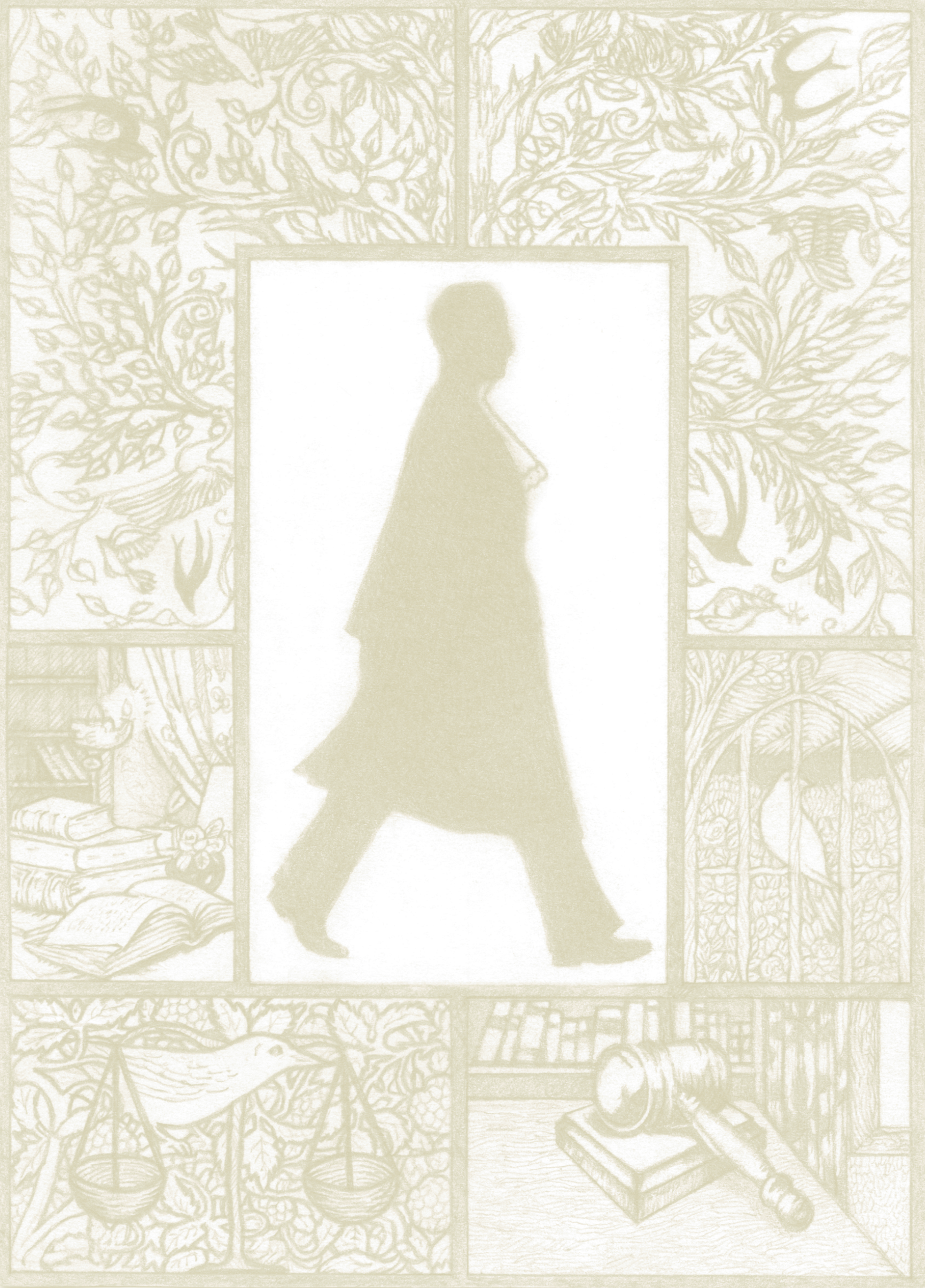
TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
FOR THE YEAR 2013
(ORIGINAL JURISDICTION/ CRIMINAL APPLICATION/CIVIL
REFERENCE/CRIMINAL REFERENCE)



5. For other matters comprising original jurisdiction, criminal application, civil / criminal references, there were 27 cases registered in the Federal Court throughout 2013, of which 24 cases were disposed of. As at 31st December 2013, there were only 6 cases pending (including 3 cases brought forward from 2012).



Judges of the Federal Court during the Opening of the Legal Year 2013



CHAPTER 3

THE COURT OF APPEAL

THE COURT OF APPEAL

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

The year 2013 marks the 3rd consecutive year of the reforms undertaken in the Court of Appeal. It has been a fruitful three years for it has resulted in a substantial clearance of pending appeals from 10,771 appeals as at 1 January 2011 to 4221 appeals as at 31 December 2013. I am confident that the pending appeals will be further reduced in 2014.

For the year 2013 I am glad to place on record that the New Commercial Court (NCC) and New Civil Case (NCVC) appeals as well as Muamalat, Admiralty and Intellectual Property (IP) appeals recorded an outstanding success in terms of disposal as well as a reduced waiting period for the hearing of these appeals. For these appeals the targeted timeline for disposal is within six months from the date of registration. As for

NCC appeals, out of 360 appeals registered in 2013, 200 appeals had been disposed of in 2013 itself leaving a balance of 160 appeals which are still within the six months' time frame. With regard to the 1356 NCVC appeals registered in 2013, 803 appeals were disposed of in the same year, leaving a balance of 551, in which 421 appeals were still within the timeline of six months. As for Muamalat all the appeals registered in 2013 were disposed of within the six month timeline. As for the IP appeals, out of the sixteen appeals registered, twelve cases were disposed of, leaving a balance of four appeals which is still within the six month time frame. In 2014 we are also giving similar treatment to appeals registered in the Construction Court which has recently been established.

With NCC, NCVC and other specialised court appeals being disposed of within the timeline, what is left to be dealt with are the old civil appeals and criminal appeals. The majority of these appeals date from 2012 and 2013. However we still have a few 2011 and 2010 appeals waiting to be heard. Thus in 2014 our focus will be to dispose of these old appeals and reduce the waiting period of these appeals to not more than eighteen months. But for appeals from subordinate courts, albeit civil or criminal appeals, where the Court of Appeal is the apex court, we are aiming for the waiting period to be not more than one year. Similarly for IM Appeals, our aim is that the 450 IM Appeals currently pending will be cleared by the end of June 2014. Thus from July 2014 onwards we will only have 2014 IM appeals pending in the Court of Appeal.

I am happy to report that all leave applications in civil cases are now current, meaning that they are being heard within 3 months. As of 31 December 2013, all the 811 leave applications filed have all been heard within the same year leaving 110 cases that were registered in October, November and December 2013.

On a different note the year 2013 also witnessed the retirement of Justice Clement Allan Skinner. To many of us he will be missed as a Judge and a colleague. I wish him a happy and fulfilling retirement. The year 2013 also witnessed the elevation of Court of Appeal Judges to the Federal Court, namely, Justice Abu Samah Nordin, Justice Apandi Ali and Justice Ramly

Ali. At the same time I am also pleased to welcome the appointment of the new Court of Appeal Judges, namely, Justice Zakaria Sam, Justice Varghese George, Justice Umi Kalthum and Justice Abang Iskandar. I am confident that their diverse backgrounds will be invaluable to the Court of Appeal.

As a parting note I would like to record my appreciation to all the Judges who have worked hard towards the betterment of the Court of Appeal for the last three years. The Court of Appeal's accomplishments would not have been possible if not for the collegiate spirit and tireless work of my sister and brother Judges. The *esprit de corps* amongst the Court of Appeal Judges is exemplary and I have my fellow sister and brother Judges to thank for their ever willingness to step into the shoes of their colleagues in times of need.

I am also very grateful to the Registrars, the Judicial Officers and supporting staff at the Court of Appeal registry for their commitment and diligence in faithfully doing their utmost to deliver quality service every day. I would also like to record my utmost gratitude to the members of the Bar, and the members of the Attorney General's Chambers for their cooperation and support for the reforms that we have undertaken for the past three years. With their continued support, I am optimistic that we will successfully manage the challenges that lie ahead of us.

Justice Md Raus Sharif
President of the Court Of Appeal

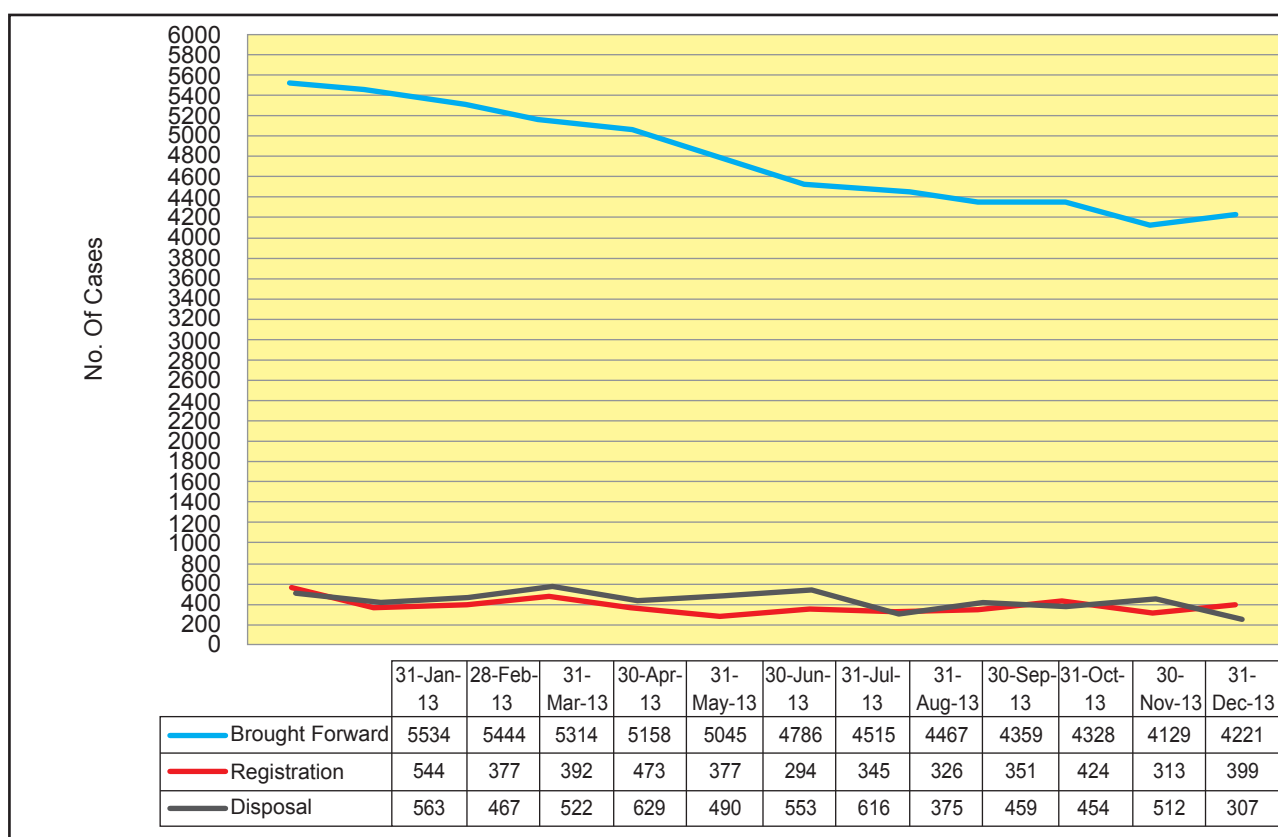
Judges of the Court of Appeal

1. Justice Abdul Malik bin Haji Ishak
2. Justice Mohd. Hishamudin bin Mohd. Yunus
3. Justice Abdul Wahab bin Patail
4. Justice Zaharah binti Ibrahim
5. Justice Azahar bin Mohamed
6. Justice Linton Albert
7. Justice Balia Yusof bin Haji Wahi
8. Justice Alizatul Khair bt. Osman Khairuddin
9. Justice Aziah binti Ali
10. Justice Mohtarudin bin Baki
11. Justice Anantham Kasinather
12. Justice Abdul Aziz bin Abdul Rahim
13. Justice Lim Yee Lan
14. Justice Mohamad Ariff bin Md Yusof
15. Justice Mah Weng Kwai
16. Justice David Wong Dak Wah
17. Justice Rohana binti Yusuf
18. Justice Tengku Maimun binti Tuan Mat
19. Justice Mohd Zawawi bin Salleh
20. Justice Hamid Sultan bin Abu Backer
21. Justice Zakaria bin Sam
22. Justice Abang Iskandar bin Abang Hashim
23. Justice Umi Kalthum binti Abdul Majid
24. Justice Varghese a/l George Varughese

PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2013

- [1] 2013 saw a further reduction of pending appeals in the Court of Appeal. As at 31 December 2013, the number of appeals pending had dropped from 5553 as at 31 December 2012 to 4221. In total, the Court of Appeal in the year 2013 disposed of 5947 appeals against a registration of 4615. Thus the percentage of disposal against registration is at 129%.
- [2] The 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 monitoring purposes, the Full Trial Civil Appeals are further categorised into five sub-categories which are the New Commercial Court Appeals (NCC), New Civil Court Appeals (NCvC), Intellectual Property Appeals (IP Appeals), Muamalat Appeals (MUA Appeals) and Admiralty Appeals.
- [3] The overall performance of the Court of Appeal can be seen from the graph as shown below. From the graph shown it can be concluded that the monthly disposal of the appeals has always been higher than the appeals registered.

NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2013 FROM 1ST JANUARY 2013 – 31ST DECEMBER 2013



[4] As can be seen from the chart below the substantial reduction in the number of pending appeals is attributed to the significant disposal of the Full Trial appeals. The Criminal Appeals also witnessed a

reduction in number due to the increase in Panel sittings and the emphasis laid on disposal of death penalty cases and cases involving government servants.

**COURT OF APPEALS-PERFORMANCE
REGISTRATION, DISPOSED AND PENDING CIVIL AND CRIMINAL
APPEALS 31ST DECEMBER 2012- 31ST DECEMBER 2013**

Subjet Matter	Pending (as at 31.12.2012)	Registration 2013	Disposed 2013	Pending (as at 31.12.2013)	Percentage (Disposed against Registration)
Interlocutory (IM)	496	719	765	450	106%
Full Trial (FT)	3411	1429	2677	2163	187%
Criminal	1039	734	893	880	122%
NCC	144	360	339	165	94%
NCVC	427	1354	1222	559	90%
IPCV	20	16	32	4	200%
MUA	16	3	19	-	633%
ADMIRALTY	-	-	0	-	-
Total	5553	4615	5947	4221	129%

Interlocutory Matters Appeals (IM Appeals)

[5] The continual implementation of the initiatives introduced since 2011 for the expeditious disposal of IM Appeals has resulted in a further reduction of IM Appeals. In 2013, the Court of Appeal successfully disposed of a total of 765 IM Appeals as against registration of 719 appeals. As can be seen from the chart as shown below at 31 December 2013, we

only have 37 pre-2013 appeals yet to be disposed of due to specific reasons.

For the year 2014, we will continue our objective to hear IM Appeals within three (3) months from the date of registration. However, in instances where due to some unavoidable reason the three-month timeline is not achievable, the Court of Appeal will ensure that IM Appeals are not pending for more than one year.

COURT OF APPEAL INTERLOCUTORY MATTERS (IM) APPEALS 2013
PENDING AS AT 31ST DECEMBER 2013

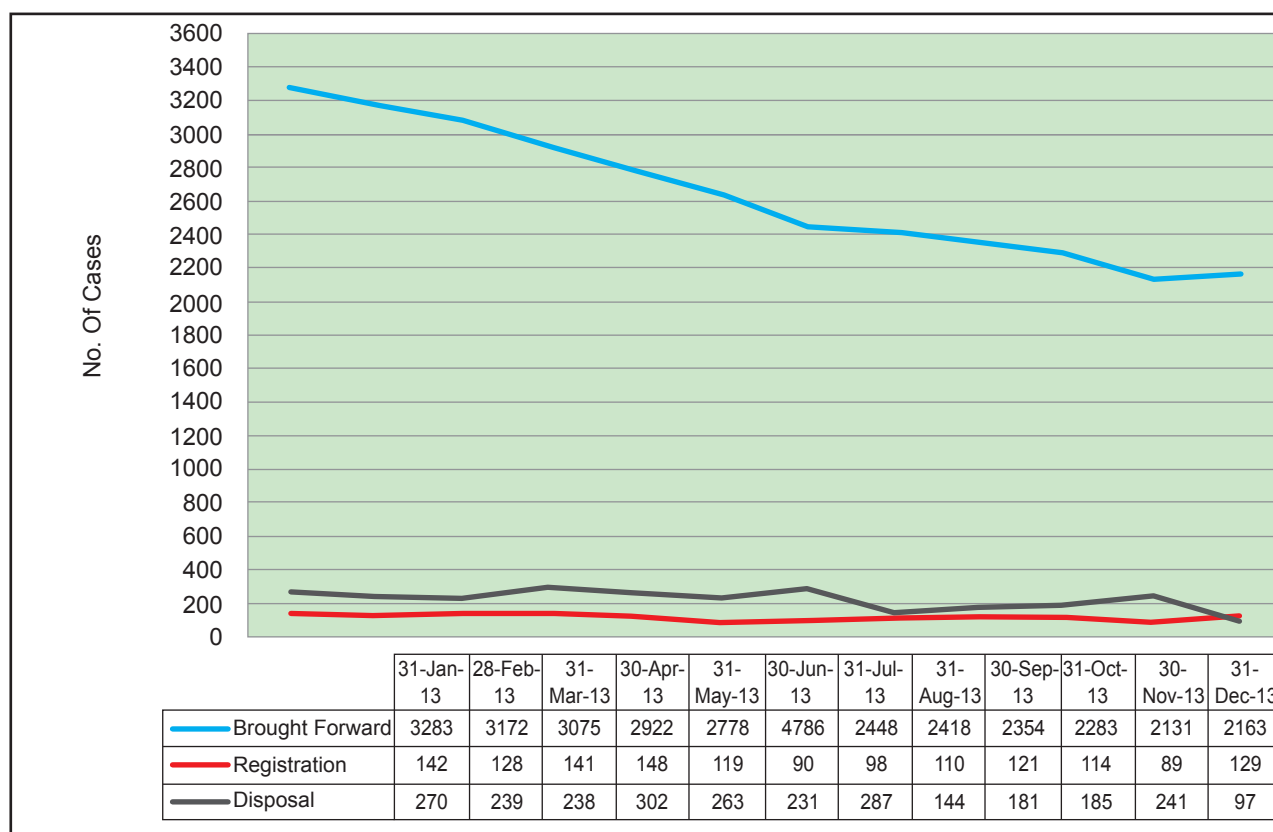
YEAR	WEST MALAYSIA				TOTAL	EAST MALAYSIA									
	Appeals from High Court			Sub Court		SABAH				TOTAL	SARAWAK				TOTAL
	01	02	03			04	01	02	03		04	01	02	03	
2009	-	3	-	-	3	-	-	-	-	-	-	-	-	-	-
2010	1	1	-	-	2	-	-	-	-	-	-	-	-	-	-
2011	-	7	1	1	9	-	1	-	-	1	-	-	-	-	-
2012	1	8	6	-	15	-	-	-	-	-	5	2	-	-	7
2013	24	232	68	11	335	4	41	5	-	50	1	23	3	1	28
TOTAL	26	251	75	12	364	4	42	5	-	51	6	25	3	1	35

Full Trial Civil Appeals

[6] I am pleased to report that in 2013, the Court of Appeal had disposed of 2667 appeals against a registration of 1429. The disposal percentage against the number of appeals registered is 187%. The number of pending appeals was further reduced from 3411 in 2012 to 2163 by the end of 2013. Out of these 2163 appeals, 22 were registered in 2010, 169 in 2011, 730 in

2012 and 1242 in 2013. For 2014, it is our priority to dispose of all 921 pre-2013 appeals. I am also pleased to advise that in respect of full trial appeals from the Subordinate Courts namely Code 04, we are almost current with only eight (8) appeals registered in 2012 while the rest are 2013 appeals. Our aim for 2014 is to dispose of those cases within six months. The performance with regard to Full Trial appeals is shown in the chart below.

**NUMBER OF APPEALS REGISTERED AND DISPOSED OF IN 2013
(FULL TRIAL)
FROM 1ST JANUARY 2013 – 31ST DECEMBER 2013**



[7] From the aging list as can be seen below it is evident that the oldest Full Trial appeal was registered in the year 2010. This is a marked improvement as compared to the year 2012, where the oldest Full Trial appeal was registered in year 2008.

Our aim for year 2014 is to reduce the waiting period for the hearing of Full Trial appeals. This will also eventually contribute to making the Full Trial appeals more current in terms of their registration.

**COURT OF APPEAL FULL TRIAL (FT) APPEALS 2013
PENDING AS AT 31ST DECEMBER 2013**

YEAR	WEST MALAYSIA				TOTAL	EAST MALAYSIA									
	Appeals from High Court			Sub Court		SABAH				TOTAL	SARAWAK				TOTAL
	01	02	03			04	01	02	03		04	01	02	03	
2010	4	18	-	-	22	-	-	-	-	-	-	-	-	-	-
2011	33	126	-	-	159	7	1	-	-	8	1	1	-	-	2
2012	92	535	-	8	635	9	25	-	-	34	19	42	-	-	61
2013	204	714	-	164	1082	12	62	1	3	78	15	57	-	10	82
TOTAL	333	1393	-	172	1898	28	88	1	3	120	35	100	-	10	145

NCC Appeals

- [8] All 319 appeals registered in 2012 had been disposed of except for five (5). Out of 200 appeals registered in 2013, 198 were disposed of, leaving a balance of 160, out of which 105 appeals are still within the

six-month timeline. For appeals exceeding the six-month timeline, we will ensure that the disposal of these appeals will not exceed one year. The overall number of NCC appeals registered, disposed of and pending is reflected in the table shown below.

**COURT OF APPEAL NEW COMMERCIAL COURTS (NCC) APPEALS 2012
PENDING AS AT 31ST DECEMBER 2013**

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	52	41	5	6	52	0	0	0	0
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	22	0	0	0	0
MAY	19	12	2	5	19	0	0	0	0
JUNE	35	19	12	4	35	0	0	0	0
JUL	23	10	8	5	21	2	0	0	2
AUG	21	8	6	7	21	0	0	0	0
SEPT	27	16	9	2	27	0	0	0	0
OCT	30	11	14	5	29	0	0	1	1
NOV	23	10	12	1	23	0	0	0	0
DEC	32	12	11	9	31	0	1	0	1
TOTAL	319	171	95	53	314	2	2	1	5

**COURT OF APPEAL NEW COMMERCIAL COURTS (NCC) APPEALS 2013
PENDING AS AT 31ST DECEMBER 2013**

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	22	10	8	4	20	0	1	1	2
FEB	31	13	8	10	27	1	2	1	4
MAR	32	21	3	8	29	3	0	0	3
APR	42	19	13	10	38	2	2	0	4
MAY	24	17	2	5	23	0	1	0	1
JUNE	33	21	6	6	23	4	3	3	10
JUL	38	30	6	2	19	13	5	1	19
AUG	21	14	3	4	12	7	2	0	9
SEPT	23	12	6	5	2	10	6	5	21
OCT	31	20	9	2	4	17	9	1	27
NOV	31	25	5	1	3	22	5	1	28
DEC	32	18	7	7	0	18	7	7	32
TOTAL	360	220	76	64	200	97	43	20	160

NCvC Appeals

[9] All 955 appeals registered in 2012 were disposed of except for eight (8) of which one is part-heard. With regard to 1354 NCvC appeals registered in 2013, 803 appeals were disposed of leaving a balance of 551 of which 421 are still within the timeline of 6 months. I wish to report that the monthly registration of NCvC appeals

is increasing due to the establishment of NCvC Courts in the High Courts throughout Peninsular Malaysia. To deal with this increased number, another panel has been set up in addition to the existing two panels beginning October 2013 to hear both NCC/NCvC appeals and this exercise will continue in 2014. The registration, disposal and pending NCvC appeals can be seen from the table as shown below.

COURT OF APPEAL NEW CIVIL COURTS (NCVC) APPEALS 2012 PENDING AS AT 31ST DECEMBER 2013

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	72	30	32	10	72	0	0	0	0
FEB	41	12	21	8	41	0	0	0	0
MAR	47	29	14	4	47	0	0	0	0
APR	77	29	40	8	77	0	0	0	0
MAY	90	50	30	10	89	0	1	0	1
JUNE	78	43	26	9	78	0	0	0	0
JUL	99	48	48	3	98	0	1	0	1
AUG	73	41	27	5	72	0	1	0	1
SEPT	74	33	31	10	73	0	1	0	1
OCT	102	39	48	15	101	1	0	0	1
NOV	111	54	41	16	110	0	1	0	1
DEC	91	34	42	15	89	0	2	0	2
TOTAL	955	442	400	113	947	1	7	0	8

COURT OF APPEAL NEW CIVIL COURTS (NCVC) APPEALS 2013 PENDING AS AT 31ST DECEMBER 2013

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	142	56	65	21	135	4	3	0	7
FEB	85	48	25	12	82	1	1	1	3
MAR	117	48	48	21	110	1	5	1	7
APR	146	57	69	20	132	2	9	3	14
MAY	117	54	42	21	106	5	5	1	11
JUNE	92	26	62	4	68	3	20	1	24
JUL	104	46	48	10	69	11	18	6	35
AUG	92	45	40	7	39	9	29	5	53
SEPT	109	64	28	17	50	28	19	12	59
OCT	143	54	69	20	10	46	67	20	133
NOV	97	34	52	11	0	34	52	11	97
DEC	110	34	63	13	22	33	62	13	108
TOTAL	1354	566	611	177	803	187	290	74	551

Muamalat Appeals

[10] I am glad to advise that all the 35 Muamalat appeals registered in 2012 and three (3) registered in 2013 were disposed of.

**COURT OF APPEAL MUAMALAT APPEALS 2013
PENDING AS AT 31ST DECEMBER 2013**

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	2	2	0	0	2	0	0	0	0
FEB	1	1	0	0	1	0	0	0	0
MAR	0	0	0	0	0	0	0	0	0
APR	0	0	0	0	0	0	0	0	0
MAY	0	0	0	0	0	0	0	0	0
JUNE	0	0	0	0	0	0	0	0	0
JUL	0	0	0	0	0	0	0	0	0
AUG	0	0	0	0	0	0	0	0	0
SEPT	0	0	0	0	0	0	0	0	0
OCT	0	0	0	0	0	0	0	0	0
NOV	0	0	0	0	0	0	0	0	0
DEC	0	0	0	0	0	0	0	0	0
TOTAL	3	3	0	0	3	0	0	0	0

Intellectual Property

[11] I am also glad to advise that, all 39 Intellectual Property Appeals registered in 2012 were disposed of. Out of 16 appeals registered in 2013, 12 were disposed of leaving a balance of four (4).

**COURT OF APPEAL INTELLECTUAL PROPERTY (IPCV) APPEALS 2013
PENDING AS AT 31ST DECEMBER 2013**

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEALS
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	4	0	4	0	4	0	0	0	0
FEB	0	0	0	0	0	0	0	0	0
MAR	1	0	1	0	1	0	0	0	0
APR	6	2	3	1	5	0	1	0	1
MAY	3	1	2	0	2	1	0	0	1
JUNE	0	0	0	0	0	0	0	0	0
JUL	0	0	0	0	0	0	0	0	0
AUG	0	0	0	0	0	0	0	0	0
SEPT	0	0	0	0	0	0	0	0	0
OCT	1	0	1	0	0	0	1	0	1
NOV	0	0	0	0	0	0	0	0	0
DEC	1	0	0	1	0	0	0	1	1
TOTAL	16	3	11	2	12	1	2	1	4

Admiralty

[12] No appeals were registered in 2013.

Leave Application

[13] I am happy to report that all Leave Applications filed in the Court of Appeal were disposed of within the three-month

timeline. The 170 leave applications brought forward from 2012 had been successfully disposed of in 2013. A total of 811 leave applications were registered in which 701 were disposed of. The remaining 110 are well within the three-month timeline. The registration, disposal and pending cases for 2013 with regard to leave applications for civil cases can be seen in the table shown below.

CIVIL LEAVE APPLICATION: REGISTERED, DISPOSED, PENDING 31ST DECEMBER 2012 – 31ST DECEMBER 2013

Subject Matter	Pending (as at 31.12.2012)	Registration 2013	Disposed 2013	Pending (as at 31.12.2013)	Percentage (Disposed against Registration)
Leave Application (Civil)	170	811	871	110	107%

Criminal Appeals

[14] As at 31 December 2013, the number of criminal appeals pending was reduced to 880 from 1039 appeals in the previous year. Last year, the Court of Appeal disposed of 892 appeals against a registration of 734 appeals. Special focus in relation to death penalty appeals and criminal appeals involving government servants is continued in 2013. This has resulted

in the successful disposal of 287 appeals involving the death penalty in 2013. The number of death penalty appeals pending is now reduced to 295 compared to 410 in 2012. With regard to appeals involving government servants which are mainly corruption cases, the Court of Appeal had successfully disposed of 86 such cases. As at 31 December 2013, the number of appeals involving government servants pending is 93, out of which 16 were registered in 2012 and 77 were 2013 appeals.

COURT OF APPEAL CRIMINAL APPEALS 2013 PENDING AS AT 31ST DECEMBER 2013

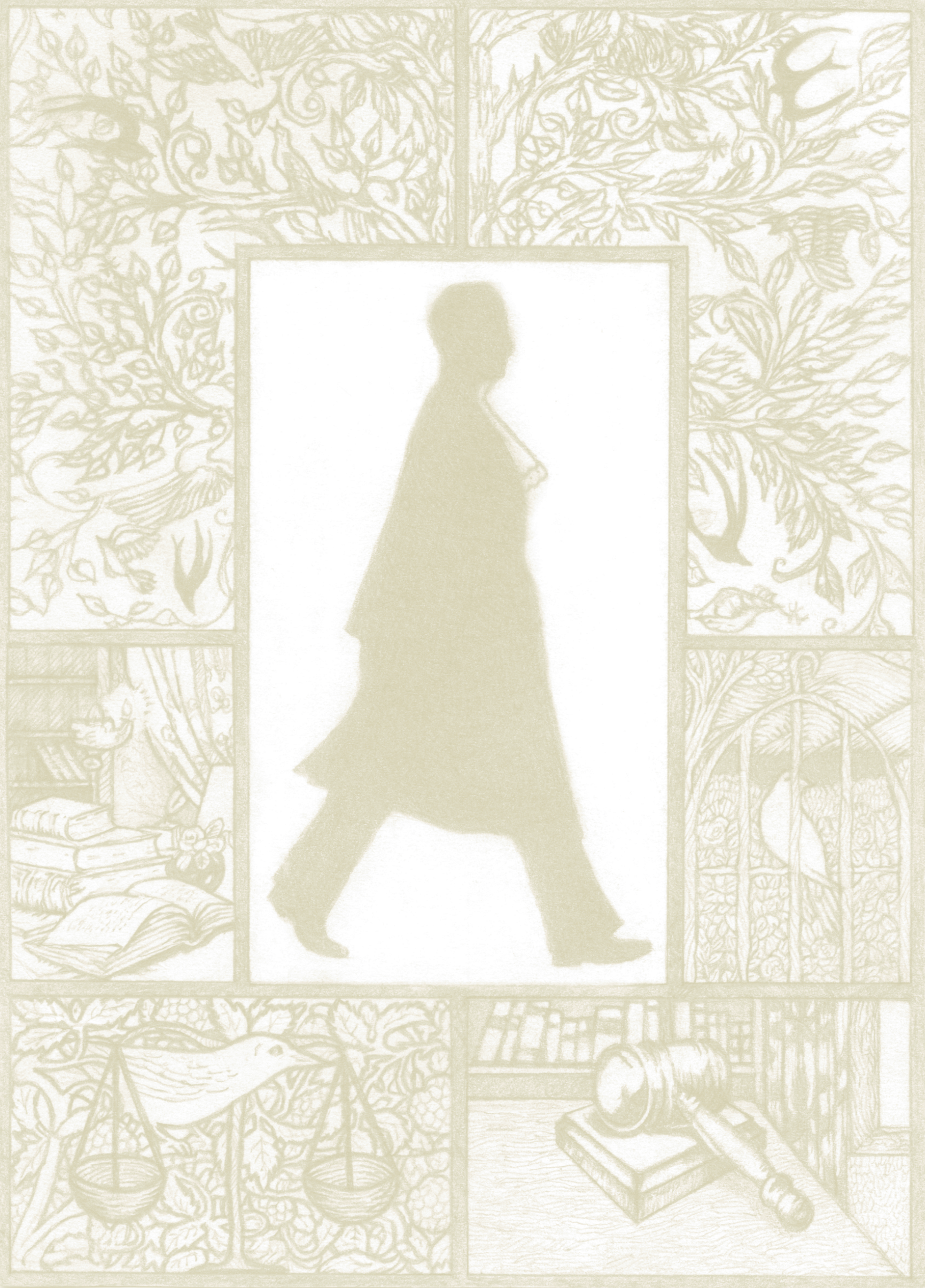
YEAR	WEST MALAYSIA					TOTAL	EAST MALAYSIA									
							SABAH				TOTAL	SARAWAK				TOTAL
	05(XM)	05(M)	06A	06B	09		05(XM)	05(M)	06B	09		05(XM)	05(M)	06B	09	
2010	3	1	-	-	4	8	-	-	-	-	-	-	-	-	-	
2011	4	23	-	-	7	34	3	4	-	7	2	4	-	-	6	
2012	42	97	1	16	61	217	2	5	1	9	10	2	1	1	14	
2013	107	145	1	65	214	532	7	11	6	32	6	3	4	8	21	
TOTAL	156	266	2	81	286	791	12	20	7	48	18	9	5	9	41	

Conclusion

- [15] For 2014, our aim is to reduce the waiting period of death penalty appeals to not more than 18 months and not more than one year for appeals involving government servants. We will continue to give special attention to these two categories of appeals in 2014.
- [16] Three years ago, the number of appeals pending stood at a whopping 10,771 cases. As at 1 January 2014, the number is now reduced to 4221. As we welcome the dawn of a new year we reflect back with much pride on what we have achieved in the last 3 years. Looking forward, we are confident of meeting the New Year and its challenges, and achieving more excellence in the administration of justice in the Court of Appeal with the continuous strong support and cooperation from all the relevant stakeholders.



Judges of the Court of Appeal during the Opening of the Legal Year 2013
L-R: Justice Linton Albert, Justice Balia Yusof Wahi, Justice Alizatul Khair Osman Khairuddin and Justice Aziah Ali



CHAPTER 4

THE HIGH COURTS

THE HIGH COURT OF MALAYA



The Right Honourable Justice Zulkefli Ahmad Makinudin
Chief Judge of Malaya

The last few years witnessed the transformation programme of the Judiciary taking place within our Courts. The Judiciary has significantly enhanced its delivery system to the public. The introduction of the Case Management System ["CMS"], E-Filing System, the setting up of Mediation Centres and the establishment of New Commercial/Civil Courts and other specialized courts have proven to be successful and received positive response from all stakeholders. The year 2013 has been another successful year for the High Courts and the Subordinate Courts. The statistics show that the High Courts and the Subordinate Courts in Peninsular Malaysia have performed well in the disposal of cases and accordingly reduced the backlog of cases.

In the disposal of cases, overall the High Court of Malaya managed to dispose a total of 117,301 civil cases and 4,586 criminal cases in 2013. For the pre-2012 registered cases, the High Court

of Malaya has disposed of most of these cases. As at 31st December 2013 the High Court had disposed of 13,771 pre-2012 civil cases, leaving a balance of 2,754 cases. The High Court of Malaya projects that these remaining civil cases will be disposed of by December 2014. For criminal cases, at the end of 2012, there were 903 pending pre-2012 registered cases and the High Court managed to dispose of 648 criminal cases leaving a balance of 255 cases as at 31st December 2013. The disposal rates of both civil and criminal cases for the Subordinate Courts are equally remarkable and these statistics will be discussed in detail in **Appendix A**.

Also worth mentioning are the Election Petitions that were filed and heard in the High Court of Malaya following the results of the 13th General Election. In June 2013, a total of 58 Election Petitions were filed in the High Court of Malaya and 12 High Court Judges were appointed as

Election Judges to hear and dispose of these cases throughout Peninsular Malaysia. The Election Judges managed to dispose all the Election Petitions within 6 months from the date of filing in compliance with the time line specified under section 35A of the Election Offences Act 1954.

The speedy disposal of cases reflects the effort and hard work of all the Judges and Judicial Officers. This has also been made possible through the supervision of the Managing Judges, the cooperation of the Bar, the Attorney General's Chambers and other related agencies. Regular meetings were held between the Judiciary and Members of the Bar, the Attorney General's Chambers and other Enforcement Agencies discussing and solving matters of common interest for the better administration of our justice system.

One of the factors which contributed to the reduction in the number of cases pending in the High Court is the amendment made to the Subordinate Courts Act 1948 ["SCA"] which came into force on 1st of March 2013. The amendment provides the Sessions Courts and Magistrates Courts with increased jurisdiction including monetary jurisdiction. Under the amendment the Sessions Courts has the jurisdiction to hear cases for claims up to a maximum of RM1,000,000.00. It has also now the jurisdiction to grant injunctions, declarations, specific performance, rescission of contract, cancellation or rectification of instruments. The Magistrates Court now has the jurisdiction to hear claims up to a maximum of RM100,000. As a result of the amendment there has been a substantial reduction (63.2%) in the registration of writ action cases in all the High Courts throughout Peninsular Malaysia. The reduction in the number of cases registered has enabled High Court Judges to concentrate and focus more on complex cases and ultimately producing "quality judgments" i.e. well-drafted and reasoned judgments. It is also noted that with the amendment to the SCA the public is in a position to get easier and quicker access to justice insofar as civil litigation as both the Sessions and Magistrates Courts are located in most of the smaller towns throughout the country.

On access to justice, the Courts take cognizance of the need to have specialized Courts. The Judiciary had in recent years introduced specialized Courts such as the Commercial

Court, the Admiralty Court, the Intellectual Property Court, the Corruption Court and the Environmental Courts. In 2013, the Construction Court was introduced at the High Court which began its operation in Kuala Lumpur and Shah Alam on 1st April 2013. The setting up of the Construction Court was also at the request of the Construction Industry to enable the speedy disposal of construction cases. The Construction Court will have two new dedicated court rooms modelled after the Technology and Construction Court in London. The new construction court is scheduled to be launched this year. It will be suitably equipped with the equipment and technology to suit the needs for hearing of construction cases.

With the setting up of these specialized courts there is a need for Judges and the Judicial Officers to be knowledgeable and competent in the relevant specialized areas of the law. The Judicial Academy under the office of the Judicial Appointments Commission in charged with the task of conducting courses and training for the Judges whilst the Training Department under the Chief Registrar's office provides the necessary courses and training for the Judicial Officers. This is to ensure that the Judges and Judicial Officers will be exposed to the latest development of the law which would be relevant in the discharge of their judicial functions. Apart from in-house training provided by the aforesaid bodies, other agencies, such as the Judicial and Legal Training Institute (ILKAP), Kuala Lumpur Regional Centre for Arbitration (KLRC) and the Training Division of Bank Negara also organized various courses and trainings for the Judges and Judicial Officers. Foreign and local speakers were also 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 also invited to participate in seminar and workshops to share their views and knowledge with the High Court Judges and Judicial Commissioners.

On the use of mediation, the Courts will continue to promote Court Annexed Mediation as an alternative means to settle cases between disputing parties. There are now 3 full time Mediation Centres located at the Kuala Lumpur, Shah Alam and Johor Bahru Courts. The success rate of cases handled by these 3 Mediation Centres have been very encouraging. The Judiciary will further promote settlement of cases through mediation by setting up more

Mediation Centres at other Courts in Peninsular Malaysia. It is hoped that more litigants and lawyers will take the opportunity to fully utilize the Mediation Centres as a mode of settling cases filed in the Courts.

For the year 2014, Judges and Judicial Officers of the High Court and Subordinate Courts will continuously strive to improve their performance and instil public confidence in the Judiciary. I am confident that with the assistance of the Managing Judges and the full cooperation of all Judges, Judicial Commissioners and Judicial

Officers at both the High Courts and the Subordinate Courts we will be able to achieve this goal and bring the Judiciary to greater heights. The commitment and performance of the Judges and Judicial 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 [as shown in **Appendix A**].

Justice Zulkefli Ahmad Makinudin
Chief Judge of Malaya

Judges of the High Court of Malaya

- | | |
|---|---|
| 1. Justice Su Geok Yiam | 20. Justice Nallini Pathmanathan |
| 2. Justice Zainal Adzam bin Abd. Ghani | 21. Justice Mariana binti Hj. Yahya |
| 3. Justice Lau Bee Lan | 22. Justice Badariah binti Sahamid |
| 4. Justice Siti Mariah binti Haji Ahmad | 23. Justice Azman bin Abdullah |
| 5. Justice Wan Afrah binti Dato' Paduka Wan Ibrahim | 24. Justice Hinshawati binti Shariff |
| 6. Justice Mohamad Zabidin bin Mohd. Diah | 25. Justice Mohd Yazid bin Haji Mustafa |
| 7. Justice Abdul Halim bin Aman | 26. Justice Zainal Azman bin Ab. Aziz |
| 8. Justice Nurchaya binti Hj. Arshad | 27. Justice Ahmadi bin Haji Asnawi |
| 9. Justice Zulkifli bin Bakar | 28. Justice Zamani bin A. Rahim |
| 10. Justice Mohd Zaki bin Md. Yasin | 29. Justice Ong Lam Kiat Vernon |
| 11. Justice Mohd Azman bin Husin | 30. Justice Abdul Rahman bin Sebli |
| 12. Justice Mohd. Sofian bin Tan Sri Abd. Razak | 31. Justice Zaleha binti Yusof |
| 13. Justice Abdul Alim bin Abdullah | 32. Justice Halijah binti Abbas |
| 14. Justice Ghazali bin Haji Cha | 33. Justice Mary Lim Thiam Suan |
| 15. Justice John Louis O'Hara | 34. Justice Kamardin bin Hashim |
| 16. Justice Rosnaini binti Saub | 35. Justice Yaacob bin Haji Md. Sam |
| 17. Justice Suraya binti Othman | 36. Justice Zabariah binti Mohd. Yusof |
| 18. Justice Noor Azian binti Shaari | 37. Justice Akhtar bin Tahir |
| 19. Justice Ahmad Zaidi bin Ibrahim | 38. Justice Hue Siew Kheng |
| | 39. Justice Noraini binti Abdul Rahman |
| | 40. Justice Nor Bee binti Ariffin |

- | | |
|--|--|
| 41. Justice Yeoh Wee Siam | 46. Justice Harmindar Singh Dhaliwal |
| 42. Justice Amelia Tee Hong Geok Abdullah | 47. Justice Hadhariah binti Syed Ismail |
| 43. Justice Has Zanah binti Mehat | 48. Justice Nik Hasmah binti Nik Mohamad |
| 44. Justice Prasad Sandosham Abraham | 49. Justice Hanipah binti Farikullah |
| 45. Justice Hasnah binti Dato' Mohammed Hashim | |

Judicial Commissioners of the High Court of Malaya

- | | |
|---|---|
| 1. Judicial Commissioner Hassan bin Ab. Rahman | 16. Judicial Commissioner Vazeer Alam bin Mydin Meera |
| 2. Judicial Commissioner Ahmad Nasfy bin Haji Yasin | 17. Judicial Commissioner Abdul Karim bin Abdul Jalil |
| 3. Judicial Commissioner Zakiah binti Kassim | 18. Judicial Commissioner Hashim bin Hamzah |
| 4. Judicial Commissioner Choong Siew Khim | 19. Judicial Commissioner Kamaludin bin Md. Said |
| 5. Judicial Commissioner Nurmala binti Salim | 20. Judicial Commissioner Azizah binti Nawawi |
| 6. Judicial Commissioner Asmabi binti Mohamad | 21. Judicial Commissioner Wong Teck Meng |
| 7. Judicial Commissioner Siti Khadijah S. Hassan Badjenid | 22. Judicial Commissioner S.M. Komathy a/p Suppiah |
| 8. Judicial Commissioner Teo Say Eng | 23. Judicial Commissioner Rozana binti Ali Yusoff |
| 9. Judicial Commissioner Lee Heng Cheong | 24. Judicial Commissioner Abu Bakar bin Katar |
| 10. Judicial Commissioner Mohd Zaki bin Abdul Wahab | 25. Judicial Commissioner Nantha Balan a/l E.S. Moorthy |
| 11. Judicial Commissioner See Mee Chun | 26. Judicial Commissioner Abu Bakar bin Jais |
| 12. Judicial Commissioner Gunalan A/L Muniandy | 27. Judicial Commissioner Che Mohd. Ruzima bin Ghazali |
| 13. Judicial Commissioner Rosilah binti Yop | 28. Judicial Commissioner Ab Karim bin Haji Ab Rahman |
| 14. Judicial Commissioner Samsudin bin Hassan | |
| 15. Judicial Commissioner Lee Swee Seng | |

THE HIGH COURT OF SABAH AND SARAWAK



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

In tandem with the recent stark reminder by the Chief Justice that the “*primary duty of the judiciary is to dispense justice... to uphold the rule of law and to dispense justice without fear or favour*”... and that “*justice cannot be achieved if it takes too long or too expensive for the people to have resort to it*” the Courts of Sabah and Sarawak are therefore poised to meet the challenge this year. No effort will be spared to comply with the prescribed timelines for the disposal of cases but without sacrificing justice at all costs.

For civil cases it is 12 months from the date of registration while for criminal cases it is 6 months from the date of registration for both the High Court and Sessions Court. The Magistrates Court has a shorter timelines of 6 months from the date of registration for the disposal of civil cases while it is 3 months from the date of registration for criminal cases.

Statistics is as shown in Appendix B.

In view of the present economic downturn in the country costs cutting exercises are being carried out not only for the Courts but also for

the Court users. One approach to save costs to litigants is to maximize the use of technology. With immediate effect lawyers are no longer required to appear in person unless for full hearings. All applications are handled either online or via video/telephone conferencing.

Minimum papers will be utilized internally as well as when dealing with legal firms and other Court users. Emails and online filings will be the order of the day.

Judges, Judicial officers and staff will be kept to the minimum with multi-tasking expected of them. Usage of energy and other utilities will be also kept to the minimum.

Meanwhile knowledge sharing will be encouraged to enhance the knowledge capacity of Judges and judicial officers. With enhanced capability the Rule of Law will be applied with better clarity when dispensing justice bearing in mind at all times that ‘in matters of conscience the law of majority has no place’!

Justice Richard Malanjum
Chief Judge of Sabah & Sarawak

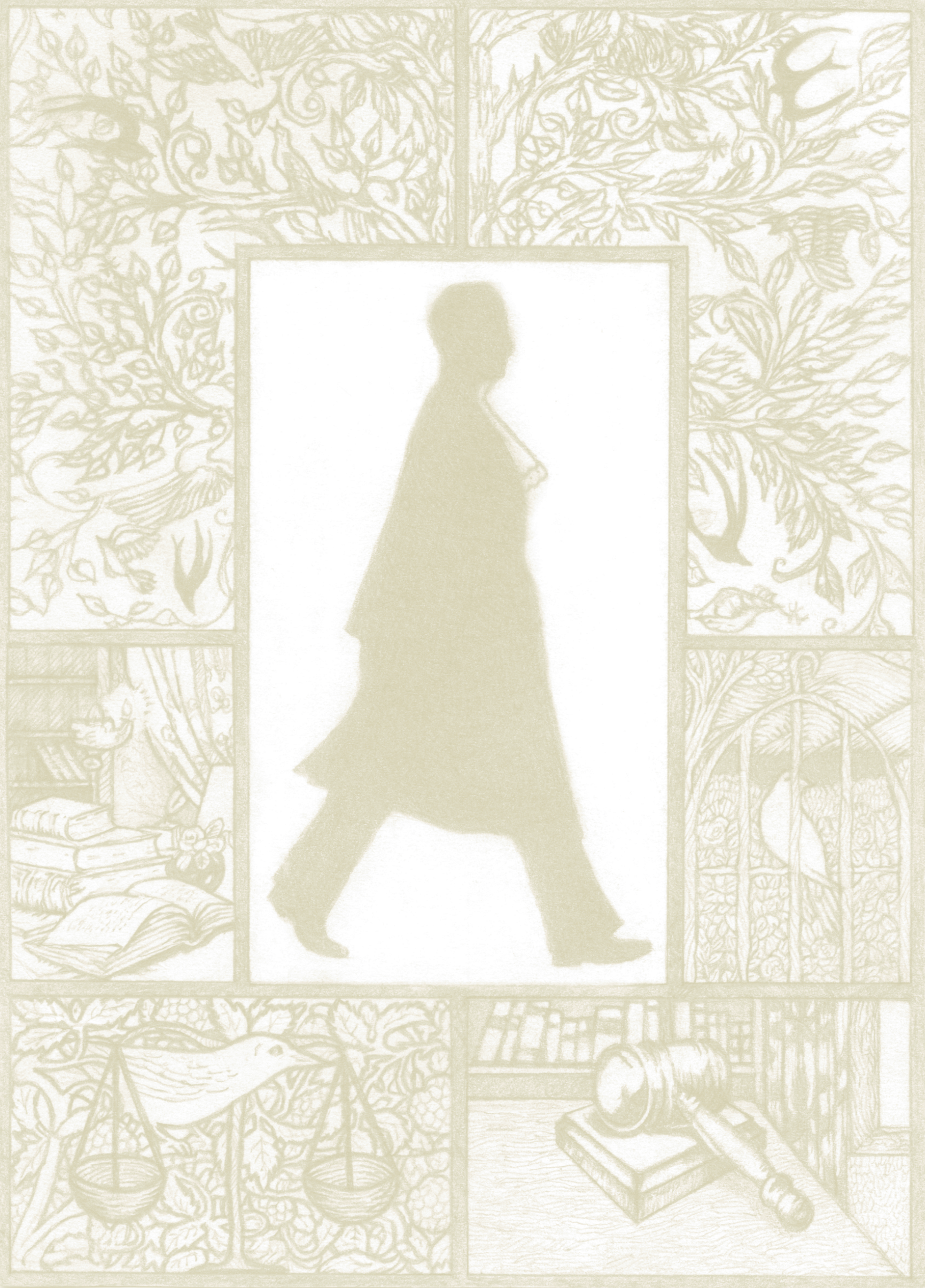
**Judges of the High Court of Sabah
& Sarawak**

1. Justice Sangau Gunting
2. Justice Yew Jen Kie
3. Justice Rhodzariah binti Bujang
4. Justice Supang Lian
5. Justice Stephen Chung Hian Guan
6. Justice Ravinthran a/l N.Paramaguru
7. Justice Chew Soo Ho

**Judicial Commissioners of the High
Court of Sabah & Sarawak**

1. Judicial Commissioner Douglas Cristo
Primus Sikayun
2. Judicial Commissioner Azhahari Kamal
bin Ramli
3. Judicial Commissioner Mairin Idang @
Martin





CHAPTER 5

JUDGES

JUDGES' APPOINTMENTS AND ELEVATIONS

Every year, the Malaysian Judiciary witnesses a number of appointments and elevations of Judges at all levels of the Superior Courts. For the year 2013, there was an increase in the number of judges appointed as Judicial Commissioners compared to the previous year when only five new Judicial Commissioners were appointed. This year, ten new Judicial Commissioners were appointed. Four Judicial Commissioners were elevated to the High Court Bench, and nine High Court Judges to the Court of Appeal. Three Judges of the Court of Appeal were elevated to the Federal Court. The full list of Judges and Judicial Commissioners who were appointed and elevated in 2013 is as follows:

FEDERAL COURT:

1. Justice Abu Samah Nordin
2. Justice Mohamed Apandi Ali
3. Justice Ramly Ali

COURT OF APPEAL:

1. Justice Abang Iskandar Abang Hashim
2. Justice David Wong Dak Wah
3. Justice Hamid Sultan Abu Backer
4. Justice Mohd. Zawawi Salleh
5. Justice Rohana Yusuf
6. Justice Tengku Maimun Tuan Mat
7. Justice Umi Kalthum Abdul Majid
8. Justice Varghese George Varghese
9. Justice Zakaria Sam

HIGH COURT:

1. Justice Hanipah Farikullah
2. Justice Chew Soo Ho
3. Justice Nik Hasmat Nik Mohamad
4. Justice Ravinthran N. Paramaguru

JUDICIAL COMMISSIONERS:

1. Judicial Commissioner Abu Bakar Jais
2. Judicial Commissioner Abu Bakar Katar
3. Judicial Commissioner Ab. Karim Ab. Rahman
4. Judicial Commissioner Azhahari Kamal Ramli
5. Judicial Commissioner Che Mohd. Ruzima Ghazali
6. Judicial Commissioner Mairin Idang @ Martin
7. Judicial Commissioner Nantha Balan E.S. Moorthy
8. Judicial Commissioner Rozana Ali Yusof
9. Judicial Commissioner S.M. Komathy Suppiah
- 10 Judicial Commissioner Wong Teck Meng



Appointment of Judges of the Federal Court and Judges of the Court of Appeal at Istana Negara

(L-R: The Chief Registrar Puan Azimah binti Omar, Justice Umi Kalthum binti Abdul Majid, Justice Zakaria bin Sam, Justice Abu Samah bin Nordin, The Rt. Hon. Justice Richard Malanjum, The Rt. Hon. Justice Md Raus Sharif, The Rt. Hon. Justice Arifin Zakaria, The Yang di-Pertuan Agong Almu'tasimu Billahi Muhibbuddin Tuanku Al-Haj Abdul Halim Mu'adzam Shah ibni Almarhum Sultan Badlishah, Puan Hjh Nancy Shukri, The Rt. Hon. Justice Zulkefli Ahmad Makinudin, Justice Mohamed Apandi bin Haji Ali, Justice Ramly bin Haji Ali, Justice Abang Iskandar bin Abang Hashim, Justice Varghese George Varughese, Datuk Hamidah Khalid)



The Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah presenting the letter of appointment to Justice Abu Samah bin Nordin on the occasion of his elevation as a Judge of the Federal Court at Istana Negara on 30 September 2013



The Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah presenting the letter of appointment to Justice Ramly bin Haji Ali on the occasion of his elevation as a Judge of the Federal Court at Istana Negara on 30 September 2013

JUDGES TAKING OATH OF OFFICE - 2013



Justice Dr. Haji Hamid Sultan bin Abu Backer taking oath of office as a Judge of the Court of Appeal at the Palace of Justice on 8 January 2013



Justice David Wong Dak Wah taking oath of office as a Judge of the Court of Appeal at the Palace of Justice on 8 January 2013



Justice Hanipah binti Farikullah taking oath of office as a Judge of the High Court at the Palace of Justice on 8 January 2013



Justice Ravinthran N. Paramaguru taking oath of office as a Judge of the High Court at the Palace of Justice on 8 January 2013



Justice Abu Bakar bin Katar taking oath of office as a Judicial Commissioner at the Palace of Justice on 8 July 2013



Justice Azhahari Kamal bin Ramli taking oath of office as a Judicial Commissioner at the Palace of Justice on 2 December 2013

JUDGES BEING PRESENTED WITH LETTERS OF APPOINTMENT AND TAKING OATH OF OFFICE IN DAYS GONE BY...



The then Yang di-Pertuan Agong Tuanku Ahmad Shah ibni Abu Bakar presenting the letter of appointment to Justice Eusoffe Abdoolcader as a Judge of the Federal Court at Istana Negara on 4th April 1983
(Picture courtesy of the National Archives)



The then Yang di-Pertuan Agong Tuanku Ahmad Shah ibni Abu Bakar presenting the letter of appointment to Siti Norma Yaakob as a Judge of the High Court at Istana Negara on 4th April 1983
(Picture courtesy of the National Archives)



Justice Wan Sulaiman bin Pawan Teh taking oath as a Judge of the High Court in open court on 4 May 1963
(Picture courtesy of the National Archives)



Justice Hashim Bin Yeop Abdullah Sani taking oath as a Judge of the High Court before The Rt. Hon. Chief Judge Mohd. Suffian
(Picture courtesy of the National Archives)

The taking of the Oath of Office by a judge is a poignant moment for him since it marks the beginning of a life of unflinching dedication to justice. It is obvious that the Oath of Office is sacrosanct to all judges from the Chief Justice down to the Judicial Commissioner since all of them have a common and ultimate aim, that of dispensing justice without fear or favour and bearing no ill-will to anyone, in accordance with the law and the Constitution.

THE 47TH ANNUAL MEETING OF THE COUNCIL OF JUDGES



The Rt. Hon. Chief Justice Arifin Zakaria giving a speech during the The 47th Annual Meeting of the Council of Judges held in Kuantan

(L-R): The Rt. Hon. Justice Arifin Zakaria, The Rt. Hon. Justice Zulkefli Ahmad Makinuddin, The Rt. Hon. Justice Md Raus Sharif and The Rt. Hon. Justice Richard Malanjum

The 47th Annual Meeting of the Council of Judges was held from the 24th to 26th of May 2013 at Hyatt Regency, Kuantan, Pahang. The opening ceremony was officiated by the Rt. Hon. Chief Justice of Malaysia Tun Arifin Zakaria. Also present at the conference were the President of the Court of Appeal, Justice Raus Sharif, Chief Judge of Malaya Justice Zulkefli Ahmad Makinuddin and Chief Judge of Sabah and Sarawak Justice Richard Malanjum. The three-day conference was participated by 105 Judges of the Federal Court and Court of Appeal as well as Judges and Judicial Commissioners of the High Courts nationwide. The conference was organised by the Chief Registrar's Office, Federal Court of Malaysia.

The meeting of the Council of Judges is a statutory requirement under section 17A of the Courts of Judicature Act 1964. It is to be convened by the Chief Justice at least once a year. The purpose of the conference is to discuss current issues in the administration of justice and to explore ways to improve the judicial delivery system. The conference is also a forum for Judges and Judicial Commissioners to discuss matters arising in respect of their work and performance.

In his keynote address, Chief Justice Arifin Zakaria highlighted the key role of the judiciary in ensuring the sanctity of human rights in Malaysia. Judges and Judicial Commissioners must uphold the rule of law and preserve the sanctity and integrity of the Judiciary. The Chief Justice also emphasised that good quality grounds of judgment enhance and increase public confidence in the judiciary.

The three-day conference entailed a range of small-group discussions focused on the improvement of the delivery system in the court process. The topics discussed during the conference included; "Judicial Administration: Challenges and the Way Forward" and "Grounds of Judgment - Quality and Timeline". A presentation session was held after each discussion thus providing opportunity for the participants to present and share valuable ideas and solutions generated during the discussions.

The Conference was followed by the opening of the Kuantan Court Complex on 27th May 2013.

A MEETING OF THE COUNCIL OF JUDGES IN DAYS GONE BY...



A Meeting of the Council of Judges at Bangunan Sultan Abdul Samad on 16 September 1994
(Picture courtesy of the National Archives)

DINNER HOSTED BY THE THEN LORD PRESIDENT OF MALAYSIA



(L-R) Prime Minister Hussien Onn, The Prime Minister of Malaysia, The Rt. Hon. Chief Justice of Malaya Raja Azlan Shah (as His Royal Highness then was) and Federal Court Judge, Justice Datuk Ibrahim Abdul Manan at a Judicial Function

A MEETING OF THE FEDERAL COURT AND THE COURT OF APPEAL JUDGES, 2013



A Meeting of the Federal Court and the Court of Appeal Judges which was held on the 15th to 18th of December 2013

The Rt. Hon. Chief Justice Arifin Zakaria with all the participants in front of the Pulai Springs Resort, Johor Bharu

A meeting of the Federal Court and Appeal Court Judges was held from the 15th to 18th of December 2013 in Johor Bahru, Johor. The meeting was attended by 32 judges of the Federal Court and the Court of Appeal including the Rt. Hon. Chief Justice Tun Arifin Zakaria, the Rt. Hon. Justice Md. Raus bin Sharif, the President of the Court of Appeal and the Rt. Hon. Justice Zulkefli bin Ahmad Makinudin, the Chief Judge of Malaya.

The objective of the meeting was to improve the performance of the appellate courts. The meeting highlighted current issues and problems faced by the appellate judges in hearing cases. Among the topics discussed were judicial conduct, preparation of grounds of judgment and formatted written submissions by counsel. The participants also made recommendations on a wide range of administrative issues relating to the Federal Court and the Court of Appeal.



The Rt. Hon. Chief Justice Arifin Zakaria leading the discussion during the Meeting

(L-R: The Rt. Hon. Justice Md Raus Sharif, The Rt. Hon. Chief Justice Arifin Zakaria and The Rt. Hon. Justice Zulkefli Ahmad Makinudin)



Participants of the Meeting of the Federal Court and the Court of Appeal Judges at Pulai Springs Resort, Johor Bharu
(L-R: Justice Linton Albert, Justice Abdul Wahab Patail, Justice Abu Samah Nordin, Justice Jeffrey Tan Kok Wha, Justice Zainun Ali, Justice Zaleha Zahari, Justice Hasan Lah, Justice Ahmad Maarop, Justice Suriyadi Halim Omar, Justice Abdull Hamid Embong and the Rt. Hon. Justice Md Raus Sharif)

PUBLICATION OF THE CHIEF JUSTICE AS HONORARY BENCHER OF LINCOLN'S INN



Lincoln's Inn



Middle Temple

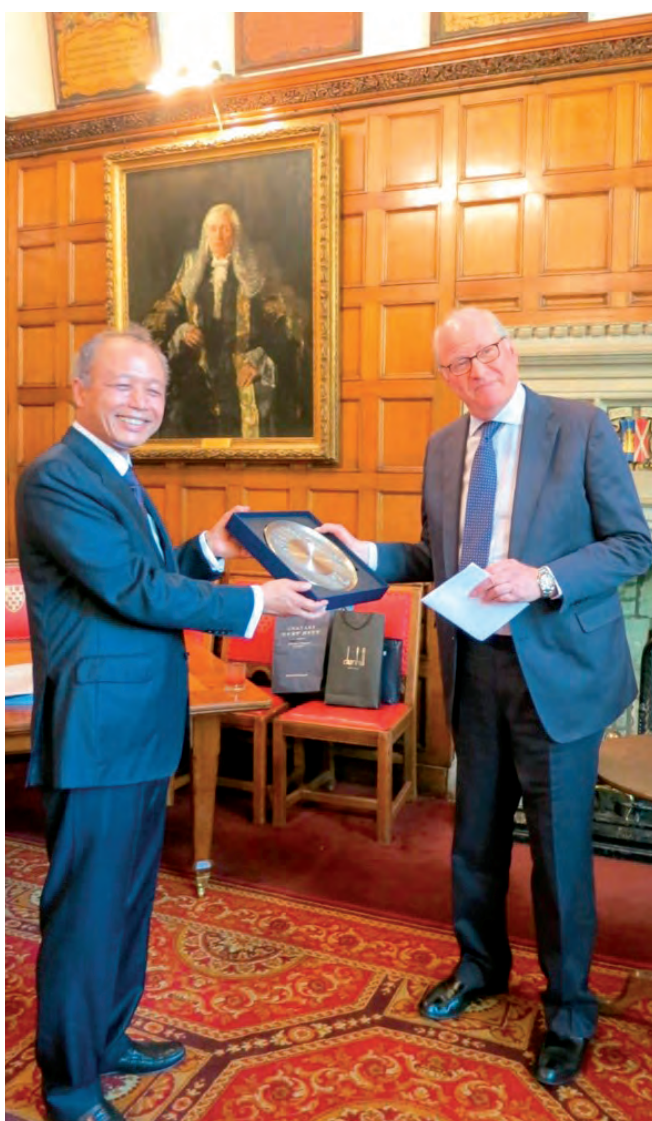


Gray's Inn



Inner Temple

Arms of the four Inns of Court



The Treasurer of Lincoln's Inns Lord Grabiner QC and The Rt. Hon. Justice Arifin Zakaria during the appointment of Justice Arifin as the Honorary Bencher of Lincoln's Inn

2013 saw the Rt. Hon. The Chief Justice Tun Arifin Zakaria return to the roots of his legal education. First, he returned to Lincoln's Inn where he was called in 1971 as an Utter Barrister. This time, on 3 June, he was published as an Honorary Bencher. The publication was read by The Lord Grabiner QC, Hon. Treasurer of Lincoln's Inn who acknowledged the Chief Justice's contributions to the development of law, since his call.

Lincoln's Inn is one of the four Inns of Court in England and Wales. From time to time, it honours, in particular its members who have made meaningful and significant contributions to the law or the development of the law. Masters of the Bench or more commonly known as "Benchers", form the "highest level of membership" in the Inn. The others being students and barristers. Benchers comprised ordinary and honorary benchers.

Ordinary benchers are elected annually from amongst judges and senior barristers as well as from members of the Inn who, though not practising at the Bar, have attained "important positions in other walks of life". Once elected, benchers form the governing body of the Inn and meet as a body in Council to oversee the detailed affairs related to the smooth and efficient running of the Inn currently undertaken by some twenty committees.

While Honorary Benchers enjoy privileges as ordinary Benchers, these do not include voting rights or the right to hold office. The offices are that of Treasurer, Master of the Library, Keeper of the Black Book and Dean of the Chapel; and Master of the Walks.

The Chief Justice is one of four Honorary Benchers from Malaysia; the others are HRH Sultan Azlan Shah, Dato' Seri Gopal Seri Ram, and Tun Zaki Tun Azmi.

Quite a few members of the Lincoln's Inn Alumni of Malaysia took the opportunity to observe this proud moment. Aside from happily partaking in the dining that many had arduously attended during their student days, many of these members enjoyed their own first trips down memory lane.

The second leg of the Chief Justice's journey was a return to his alma mater, the University of Sheffield. In a simple buffet luncheon, the Deputy Dean of the Faculty of Law introduced one of its most distinguished sons to members of the faculty and others present. The Chief Justice also met up with some Malaysian students currently pursuing their LLB course. To mark the occasion, a Book Prize named the "Tun Arifin Zakaria Book Prize in Environment Law" was launched. The Director of International Relations subsequently accompanied the CJ on a conducted tour of the campus.

Finally, the Chief Justice found time to pay a brief courtesy call on the President of the Supreme Court of England and Wales, the Rt. Hon. Lord Neuberger of Abbotsbury.

by Justice Mary Lim Thiam Suan



Treasurer of Lincoln's Inns Lord Grabiner QC (sitting third from left), The Rt. Hon. Justice Arifin Zakaria (sitting fourth from left) and members of the Honorable Society of Lincoln's Inn Alumni who were present at the appointment of Justice Arifin as the Honorary Bencher of Lincoln's Inn which was held during a luncheon at Lincoln's Inn building in London

JUDICIAL OUTREACH PROGRAMME GEMIA ISLAND, TERENGGANU

The Rt. Hon. Chief Justice initiated the Judicial Outreach Programme as a way for judges to interact with one another as oftentimes due to their nature of work, caseload time, spent hearing cases, there was very little interaction between judges.

The objectives of the outreach programmes are:

- (i.) to build esprit de corp;
- (ii.) to emphasise the importance of caring for the environment;
- (iii.) to better understand the laws of specific areas; and
- (iv.) to facilitate the exchange of ideas among participants.

Apart from those judges who were selected, each outreach programme was also attended by the Chief Justice, the President of the Court of Appeal and both the Chief Judges.

In 2013 the Outreach Programme was held in Gemia Island, Marang, Terengganu from 6th to 8th September 2013 and included 30 participants. The activities in the programme this time involved physical endurance, team building and creating awareness towards caring for the environment, flora and fauna as well as the relevant laws applicable. A talk was also given by a representative from the Malaysian Maritime Enforcement Agency (MMEA) on issues and challenges faced in maritime law enforcement in Malaysia.



L-R: Justice Raus Sharif, Chief Justice Arifin Zakaria and Justice Zulkefli Ahmad Makinudin



L-R: Chief Justice Arifin Zakaria, Justice Zulkefli Ahmad Makinudin and Justice Raus Sharif releasing turtles into the sea at Gemia Island, Terengganu

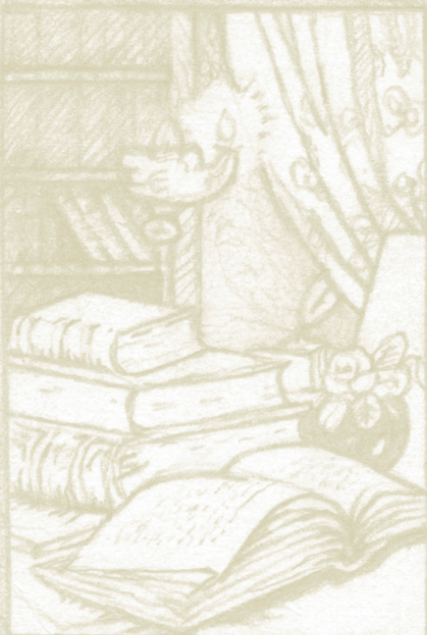




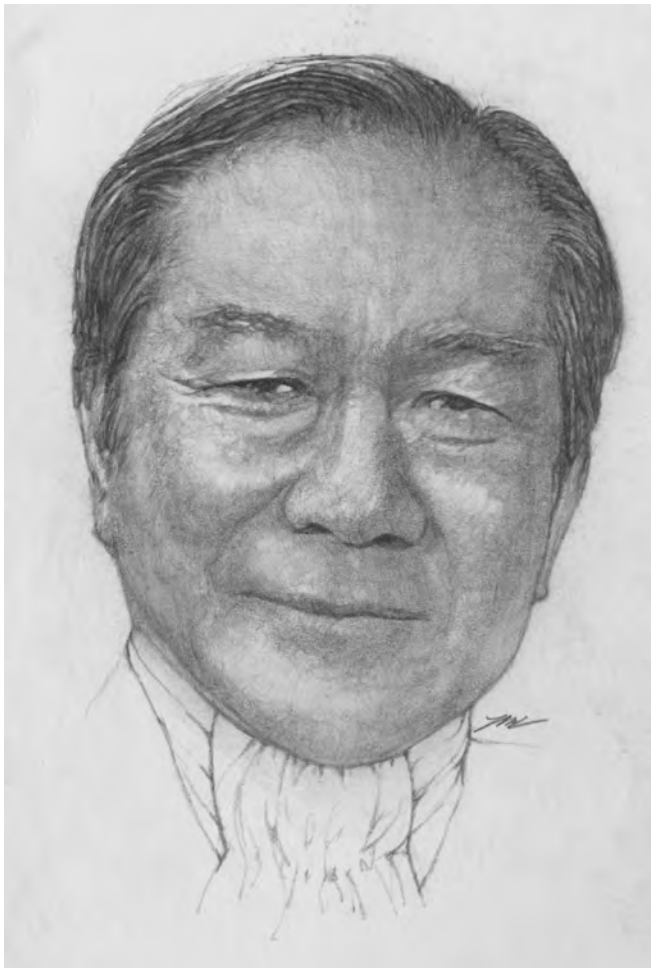
The Rt. Hon. Tun Arifin Zakaria (left),
Chief Justice of Malaysia with Tun Zaki
Tun Azmi (right), former Chief Justice of
Malaysia



JUDGE'S MUSINGS



“THE PERILS OF JUDGESHIP”



By: Tan Sri James Foong Cheng Yuen
(Former Judge of The Federal Court of Malaysia)

Only last night at the wedding reception of a Judge's son, Justice Dato Rohana Yusof asked me whether I missed the Judiciary. I guess she posed this question because it has been almost two years since I retired from the Malaysian Judiciary. My immediate response was an unhesitant 'no'. She expressed surprise with a hint of disappointment. Perhaps she felt that my long career on the Bench of 22 years warranted a more positive and encouraging response. Sensing this, I immediately explained that though I do not miss the Judiciary, I cherished every moment while I was there. As it was difficult to elaborate with food and music constantly interrupting our conversation, I left the matter as it was. Nevertheless, the

subject did not leave my thoughts and I came to a decision to write about my years in the Judiciary in sequence of events for my own recollection (if not for my grandchildren to read if they are ever interested), as well as for others who might have an interest. But since I have promised Justice Datuk Zainun Ali to contribute an article in the forthcoming Malaysian Judiciary Yearbook, 2013, I thought I might as well publish one of these.

To sum up in just a sentence, my career in the Malaysian Judiciary has been colourful. One of the major factors in accepting the offer to join the Malaysian Bench in 1990 was the mystery surrounding the Judiciary. Unlike the majority of my former colleagues who came from the Judicial & Legal Services, I was from the Bar. Those from the Service would have, at one time or other, experienced a role in the Judiciary either as a Magistrate or a Registrar of the courts or perhaps even have heard first-hand from their colleagues in the same service about what goes on behind the Bench. But those from the Bar are completely ignorant of this. Aside from attempting to convince the Bench to accept our side of the argument in court, we had distanced ourselves from the Bench. I guess this is for good measure to avoid any suspicion of undue influence the Bar have over the Bench outside formal proceedings.

So a Judge, to many of us in the Bar, was not only a well respected figure but also one who lived a solitary life. Questions like how he survives under confined conditions; what goes on in his mind when he makes a decision and, if he is sitting in a quorum with three or five, how does he deliberate with others? And what kind of life does he live? To me, all these are intriguing. So when the opportunity came to discover this, it was irresistible. I took the plunge into the unknown and survived with no regrets. There were ups and downs but to me they were all part of one's occupational hazard. Now that this journey is over, I am moving into another arena which I hope will be equally challenging and exciting. It is for this reason that I do not miss the Judiciary although I found it interesting and fulfilling in many aspects.

First, there was the work. The work was stimulating. Each day passed by without a dull moment. Real life scenarios were revealed and

these were acted out before me in a room where I had full command. Very often, the ‘show’ was better than a Hollywood blockbuster. As Justice Dato Mahadev Shanker, one of Malaysia’s most respected Court of Appeal Judges once told me: “James, you have the best seat in the theatre. If you cannot hear too well all you need to say is ‘repeat’ and it will be replayed instantly. If you need a break you just have to announce, ‘stop’ and it would be complied immediately. You can also choose to restart or if the speed was too fast, you demand it to be reduced to your desired level. And at the end of all this, learned counsel will deliver a summary of what transpired and educate you on the law to be applied. After that, all that is required of you is to choose which side is more probable or have proven the matter. And once you have made up your mind, just write this out in a story form giving reasons for your decision. And then if you get all this right, you will be hailed as a great judge”.

How true. But of course, as many in the Judiciary know, the skill is in choosing the correct version, writing this down with reasons to support and then the most demanding of all, to get this done within a limited time. But still, basically, what Justice Dato Shanker said was right. So as far as work is concerned, there was never a dull moment. In fact, this was one of the main factors that kept me in the Judiciary that long.

The other aspect was the comings and goings in the Judiciary. I have served seven Chief Justices. Each had his own blend and style. Since I was part of the Judiciary, their policies and decisions inevitably affected my life. I have compared them on the basis of policy and approach and had come to certain conclusions. Since there is so much to say on this, perhaps, it’s best to leave it for another occasion. But for what I have been through, I have accepted this as an invaluable experience, one which is interesting as well. Taken in any other way would certainly generate bitterness, frustration, disappointment, resentment and perhaps disenchantment.

Then there was the third aspect. This was life outside the work and politics of the Judiciary. Of course, by the nature of the work, a Judge has to be circumspect about who he interacts with, what he says and to whom he speaks. Another

mentor of mine, the former Chief Justice Tan Sri Gunn Chit Tuan had this advice for me when I first joined the Bench:

“James, you are never short of invitations to lunches and dinners. The only problem is whether you dare to eat”.

This shows how vulnerable a judge is. Even though you may be living a life of a hermit, you are still exposed to all kinds of danger. On this I would like to share an experience that happened during my second year in the Judiciary.

In the early years of my judicial career, I was together with three other novices, assigned by the Chief Justice of Malaya to hear and dispose of a large number of outstanding criminal cases pending in the High Court throughout West Malaysia. The system devised was for us to hear and dispose of at least one criminal case a week. We were exempted from hearing other kinds of case including criminal appeals to the High Court from the Subordinate Courts. Since there are approximately four weeks in a month, with four of us, sixteen criminal cases would be disposed each month. Multiply this by eleven months (though there are twelve months in a year, one month was set aside for rest and judgment writing since you can’t flog a horse to death however much a Judicial Commissioner would like to be confirmed as a Judge), in a year there should be a total disposal of one hundred and seventy six (176) cases. We almost achieved this target but in the context of what I am about to say, it had also exposed us (or any Judge for that matter) to all kinds of adversity and danger. Let me also remind readers that a majority of the criminal cases dealt with by the High Court involved capital punishment and in many instances the sentence on an accused when found guilty was mandatory death sentence by hanging.

During this exercise, I was summoned to come up from Johore Bahru, (the southernmost city in West Malaysia neighboring Singapore) where I was one of the resident judges to meet with the then Chief Justice of Malaya, Tan Sri Hashim Yeop Sani. The meeting was scheduled to be in his chamber at the High Court building in Kuala Lumpur in the morning at 10 am. I had taken a flight whilst my chauffeur drove my car

to Kuala Lumpur to facilitate easy movement in the capital without the need to trouble the Registrar of the High Court to arrange a car for me while I was there.

On the morning of the appointment, despite waiting for almost 20 minutes in the Shangri-la Hotel lobby for my car to arrive there was no sign of it. Since the time of the appointment was getting too close for comfort, I decided to catch a cab. The first available taxi driver upon seeing me in suit declined to accept me on the excuse that the air conditioning in his car was not functioning well. When the second came, I got in immediately without giving him a chance to refuse me. Once in the vehicle I gave instructions in English of my destination. The High Court then was in the Sultan Abdul Samad Building.

But after travelling a distance of about 50 meters, the taxi slowed down. The driver looked into his rear mirror and asked whether I was a judge. Initially, thinking that he could not understand the direction given, I repeated my destination in Bahasa Malaysia. Yet, after another 50 meters, he slowed down, looked into his rear mirror again and repeated the same question of whether I was a judge. Again, ignoring his question and still thinking that he could not understand me, I repeated it in Chinese. But this time, the response was different. And what came out gave me the fright of my life.

The taxi driver declared that I had hanged his brother. Yes, in Chinese, he uttered that I was responsible for convicting his brother to death.

When I heard this I was utterly shocked. How on earth could he recognize me and why did I have to get into this taxi when there must be hundreds around? Surprisingly, despite my sticky situation, I did not panic. Perhaps this was due to my quick evaluation of the situation which I found myself not totally in danger. I was in the rear passenger seat and he was at the wheel in front. We were also in the heart of the commercial centre, a densely populated place where help could be solicited in an instant. Next, if he had meant to harm me, he would not have declared that I sentenced his brother to death. He would have driven me to a secluded place to take his revenge. Best of all and what gave me the most confidence was

the handgun I was carrying. My semi-automatic was strapped round my leg and it was loaded. To defend myself, all that was required was to pull it out and shoot.

Still looking into the rear mirror when he spoke, my taxi driver continued to explain how he could recognize me despite my different attire on the Bench. During my early years in the Judiciary, donning a wig was optional. Believing this to be a camouflage, I had a wig on every occasion I mounted the Bench. But apparently, this disguise had not worked as my taxi driver explained: "Don't you think I cannot recognize you with your false hair, glasses and gown. Together with my entire family who were in court for full 5 days of hearing our focus was on you. You were the most important person since your decision will determine whether my brother would live or die. We can't see the faces of our lawyers and the Deputy Prosecutor. Their backs were towards us. Even the witnesses, we were only able to look at their profiles as the witness's stand was placed at an angle more towards the Bench. But you, we looked at directly for 5 days. How can we not recognize and remember you".

My feelings of disquiet increased. Speaking for myself, and I am certain many other judges as well, I do not recall three quarters of the people who appeared before me except for some lawyers who frequently attended my court. But, to the litigants, the lawyers and all those with an interest in a matter before me, I was the centre of their attention.

As we proceeded, my taxi driver suddenly said, "but don't worry Judge. My brother deserved to die". This was another bomb shell. But it provided enormous relief. He revealed that his brother had been on drugs since the age of 13. And not a single member of his family had escaped from being swindled by him for money to support his drug addiction. And even then, while waiting for his death sentence to be carried, the brother was able to convince his mother to sell her only farm house for funds to continue this habit in prison.

When we finally arrived at my destination, I asked how much my fare was. The reply was rather unexpected: "For you Judge, it's free". Not bothering to consider whether this was a compliment or otherwise, I dropped RM5 onto

the front passenger seat, opened the car door and jumped out of the taxi. Of course, the two police men guarding the entrance of the court were surprised at my hurried manner not knowing the experience I had over the last half hour.

When I finally met the Chief Justice and related the incident to him, he remarked that there was only one in a million chance of this happening. I accepted this then but subsequently as I continued in the Judiciary I discovered this to be a great understatement. There were more of these kinds of incidents. Though not as dramatic or as life threatening, I realized that encountering people whom I have judged was more frequent than I expected. As I have said, I could hardly remember the faces of those who appeared before me, but to them, I must have made an impression. How can this not be

when I decided their fates? I must have also made some richer others poorer; some happier while disappointing others. But fortunately until now, none have pointed a gun or a knife at me. Perhaps, the reason could be narrowed down to essentially this: that I did my job honestly without malice, applying the law and upholding the rule of law.

Before I forget, let me finish this episode with what happened to my driver. When I subsequently found out why he did not turn up to fetch me on that particular day I dismissed him instantly. He was too drunk to drive. Some years later, I learned that he died in a motor accident while drunk driving.

I entered the Judiciary to give something back to society and i am gratified that i have fulfilled that wish.

RETIRED JUDGES



Dato' Bentara Luar Dato' Haji Hashim Bin Dato' Hj. Yusoff

Dato' Bentara Luar Dato' Haji Hashim Bin Dato' Hj. Yusoff was born on 7 November 1947 in Bachok, Kelantan. He had his early education at Malay College Kuala Kangsar and pursued his studies in Lincoln's Inn, London and was admitted as a Barrister in 1973.

Upon his graduation Dato' Bentara Luar Dato' Haji Hashim Bin Dato' Hj. Yusoff served in the Judicial and Legal Services with effect from 1973 to 1994.

During that time he was appointed to various positions including:-

- Magistrate
- President of the Sessions Court Kuala Kubu Baru, Selangor
- Deputy Public Prosecutor
- Legal Advisor to the Royal Malaysian Customs Department,
- Seconded to several government Agencies
- Chief Registrar, Supreme Court Malaysia.

In 1994, Dato' Hashim was appointed a Judicial Commissioner. In 1995 he was appointed a Judge of the High Court of Malaya. In 2002 he was elevated to the Court of Appeal and subsequently as Federal Court Judge in 2006. He retired in 2013.

Dato' Hashim enjoys a multidimensional personality which many people are unaware of. Notwithstanding his onerous duties as a Judge, he always finds time to nourish and further his talents in sports and singing. As a result his life is both varied and fulfilling.

In recognition of his services, he was conferred the awards of Darjah Kebesaran Seri Paduka Setia Mahkota Kelantan Yang Amat Terbilang (S.P.S.K.) in 2005, Darjah Kebesaran Mahkota Kelantan Yang Amat Mulia (D.P.M.K.) in 1997 and Kesatria Mangku Negara (K.M.N.) in 1991.

Dato' Bentara Luar Dato' Haji Hashim Bin Dato' Hj. Yusoff is married to Datin Nanny Van Berlo and they are blessed with two children.



Datuk Seri Panglima Sulong Bin Matjeraie

Datuk Seri Panglima Sulong Bin Matjeraie was born in 1947. He pursued his studies at the University of Malaya, Kuala Lumpur in 1966 and was conferred a Bachelor of Arts (Honours) Degree in 1969.

In 1971, he read Law at the Inns of Court School of Law, London and in July 1974 he was called to the Bar of England and Wales by the Honourable Society of Inner Temple, London.

In the same year he was also admitted as an Advocate to the High Court of Borneo in Kuching.

In 1975, he left to study at the University of Southampton, England and was conferred a Master of Laws in Mercantile Law in 1977. In 1978, he was awarded a Certificate in Advanced Management by the Banff School of Advanced Management in Canada.

Datuk Seri Panglima Sulong Bin Matjeraie started his career in 1964 as an Administrative Officer in the Sarawak Civil Service. In 1970 he was appointed a Third Class Magistrate, and was also made the Acting District Officer, Binatang (now renamed as Bintangor) before moving on in 1971 to take on several roles, firstly as District Officer, Bintulu and then as the Sarawak State Training Officer and Secretary of the Sarawak Government Examination Board. In 1974, he was appointed a Director of the Civic Development Unit directly under the Chief Minister of Sarawak.

In 1977 he was appointed the Administration & Finance Manager of the Sarawak Timber Industry Development Corporation before assuming the role of General Manager from 1979 to 1980. He became the General Manager of Bintulu Development Authority in 1980 and remained in office until 1983.

He later left the Government Service in 1983 to set up his own legal firm under the name of Messrs Sulong Matjeraie & Co. in Kuching, Sarawak and retired from the firm in 1998.

He was then appointed a Judicial Commissioner of the High Court of Malaya in Johor Bahru. He served briefly in Johor Bahru and thereafter in Kota Kinabalu Sabah from 2000 to 2007. He was elevated to the Court of Appeal in 2007 and remained there until March 2012. He was elevated to the Federal Court in April 2012 and retired in June 2013.

Datuk Seri Panglima Sulong contributed considerably to Malaysian Jurisprudence in the form of well-reasoned judgments. His keen sense of humour endeared him to his colleagues and Judicial Officers alike.

After his retirement he was appointed by the Prime Minister as one of the four (4) eminent persons to serve in the Judicial Appointments Commission for a period of two (2) years commencing from 10th February, 2013.

Datuk Clement Allan Skinner



Datuk Clement Allan Skinner was born on 22 December 1946 in Myanmar. He was admitted a Barrister at Law from Inner Temple, London in 1972.

Upon graduation, Datuk Skinner served in the Judicial and Legal Services as a Deputy Public Prosecutor in the Attorney General's Chambers in Sabah. He then became a Magistrate in Kota Kinabalu from 1972 until 1973. He then left the Judicial and Legal services and practised in the firm of Lind Willy & Wong from 1974 to 1998, where he was a partner.

He was appointed as Judicial Commissioner, Perak on 1 September 1998 in Ipoh and subsequently he was confirmed as a High Court Judge of Sabah & Sarawak in Kota Kinabalu on 16 June 2000. He was elevated to the Court of Appeal on 14 April 2010, after 10 years in the High Court.

Known as a man of few words, he is very highly regarded by his fellow judges. As a Judge, he listened with great patience and gave due consideration to all arguments advanced by counsel before him in court. His judgements are renowned for their comprehensiveness and judicial reasoning. The manner in which he conducted himself brought him accolades.

One of the notable cases presided over by Datuk Skinner which received public attention, is that of DPP v Yim Pek Ha commonly known as a Nirmala Bonat's Case. He has also made significant judicial decisions in relation to Native Customary Rights (NCR).

In recognition of his services, he was conferred the awards of Ahli Darjah Kinabalu (A.D.K) in 1981, Pingat Kebesaran Ahli Setia Darjah Kinabalu (A.S.D.K) in 1984 and Panglima Jasa Negara (P.J.N) in 2000. Datuk Clement Allen Skinner is married to Datin Elizabeth Jane and they are blessed with 2 children.

Dato' Thiripuraisingham A/L Veerasingham



Dato' Thiripuraisingham A/L Veerasingham better known as Dato' V.T Singham by his colleagues and the Bar, was born in Kuantan, Pahang on 28 June 1948. He was a Barrister at Law from Lincoln's Inn London.

He started his career as a part time correspondent with the 'Straits Times' in 1965 and remained there until 1967.

From 1990 until 2000 he was engaged in private legal practice prior to his elevation to the High Court Bench as Judicial Commissioner.

He was then appointed as Judge of the High Court of Malaya on 1 September 2000 and presided over various High Court Benches including Temerloh, Taiping, Georgetown, Ipoh, Kuantan and Kuala Lumpur.

During his tenure on the Bench, his judgments were renowned for being well written with utmost clarity. His judgments are cited with great frequency and have been quoted with approval by the apex court many times as is evident from the law journals. He was the Editor of the Malaysian Current Law Journal from 1981 to 1987 and the Editor of the Industrial Law Reports from 1986 to 1987.

In recognition of his services, he was conferred the awards of Paduka Mahkota Perak (P.M.P) in 2000 and Darjah Indera Mahkota Pahang (D.I.M.P) in 2002.

Dato' Abd Rahim Uda



Dato' Abd Rahim Uda graduated from the University of Malaya with a Degree of Bachelor of Laws (Honours) in 1979.

He then joined the Judicial and Legal Services where he held numerous posts, among others Magistrate, Deputy Public Prosecutor, State Legal Advisor of Perlis and Perak, Deputy Head of Law Reform Division and Deputy 1 Head of Civil Division in the Attorney General's Chambers.

In 2005, he was appointed a Judicial Commissioner of the High Court of Malaya and confirmed as a High Court Judge on 5th September 2007. He served variously in Penang, Kuala Terengganu and Shah Alam.

In the course of his career, he left an indelible mark as a man of impeccable character and a hardworking judge. He opted for early retirement on 1st August 2013.

In recognition of his services, he was conferred the awards of Darjah Dato' Paduka Cura Simanja Kini (D.P.C.M), Darjah Indera Mahkota Pahang (D.I.M.P) and Bintang Setia Mahkota Perlis (S.M.P).

Dato' Ahmad Zaki Bin Husin



Dato' Ahmad Zaki Bin Husin was born on 24 November 1952 and graduated from the University of Malaya with a degree of Bachelor of Laws (Honours) in 1976 and obtained a Masters in International Law (LL.M) from the University of Brussels in 1983.

He expended 26 years in the Judicial and Legal Services where he held various posts. This included the posts of a Magistrate, Deputy Public Prosecutor, State Legal Advisor of Perlis and Penang, Deputy Parliamentary Draftsman. Chairman of the Advisory Board in the Prime Minister's Office and Commissioner of Income Tax and Revenue.

He was appointed as Judicial Commissioner in 2010 and served in Shah Alam. He opted to retire from the Judiciary on 3 May 2013. During his tenure, Dato' Zaki contributed considerably to the Judiciary by assisting the court in clearance of the backlog of cases.

In recognition of his services, he was conferred the awards of Setia Mahkota Perlis (S.M.P), Darjah Johan Negeri (D.J.N) Pulau Pinang, Darjah Setia Pangkuan Negeri (D.S.P.N) Pulau Pinang, and Darjah Paduka Mahkota Selangor (D.P.M.S).



Tuan Amin Firdaus

Tuan Amin Firdaus was born in Pulau Pinang on 1 May 1947 and graduated from the University of Malaya with a degree of Bachelor of Laws (Honours) in 1985.

On graduation, he joined the Judicial and Legal Services where he held numerous posts, among others, as Magistrate, Deputy Public Prosecutor, and Sessions Court Judge.

He retired from the Judicial and Legal Services in May 2003 after which he commenced legal practice at Messrs. Tan Ban Cheng & Associates from August 2003 until January 2004.

He later joined Messrs. Phee & Co from February 2004 until 2005. In March 2005 he was appointed a Chairman of the Industrial Court and remained in that position until 2006.

He was appointed as Judicial Commissioner in the High Court of Malaya in Penang on 14 August 2009.

He opted to retire early on 1 November 2013.



Tuan Wong Chiang Kiat

Tuan Wong Chiang Kiat was born in Johor on 9 May 1957 and graduated from the University of Buckingham with a degree of Bachelor of Law (Honours) in 1987.

He then joined the Judicial and Legal Services where he held numerous posts, among others, as Magistrate, Deputy Public Prosecutor, and Director of Institut Latihan Kehakiman dan Perundangan (ILKAP).

He was then appointed as Judicial Commissioner in the High Court of Malaya in Penang on 1 November 2012. He opted for early retirement on 1 March 2013.

The Nation has benefitted significantly from the selfless dedication of these judges who have since retired. They have steadfastly maintained judicial independence and had been true to their Oath of Office.

JUDGES IN REMEMBRANCE



A wing of the Palace of Justice bathed in evening light...

THE LATE TAN SRI SYED AGIL BARAKBAH

(former Federal Court Judge)

The late Tan Sri Syed Agil Barakbah was born on 4 June 1923 in Alor Setar, Kedah. He attended the Al-Mashoor Islamic School, Penang and later furthered his studies at the Sultan Abdul Hamid College Alor Setar.

He read law and was called to the English Bar by The Honourable Society of the Middle Temple in 1958.

Tan Sri Barakbah joined the Judicial and Legal Services in February 1958 and remained in service until January 1969. He served in various capacities such as Magistrate (Penang), President of the Sessions Court (Alor Setar and Johor Bahru), Deputy Public Prosecutor (Johor), Senior Federal Counsel and Treasury Solicitor.

He was later elevated as Judge of the High Court on 17 January 1969.

He sat as a Judge of the High Court at various places including Kuala Lumpur, Seremban and Alor Star between January 1969 and April 1983. He was then elevated to the Federal Court.

He was one of five members of the Supreme Court panel which decided the landmark case of *Che Omar Che Soh v. PP*[1988] 2 MLJ 55 [SC] in 1988. That case determined the position of Islam as provided by Article 3 of the Federal Constitution.

Tan Sri Barakbah's career with the Judiciary ended on 4 June 1988 upon retirement. In the course of his career he was awarded the Panglima Setia Mahkota (P.S.M.) award which carries the title "Tan Sri" and the Dato' Paduka Mahkota Kedah (D.P.M.K.) which carries the title "Dato".

Tan Sri Barakbah was a renowned judge who delivered numerous outstanding judgments, many of which are cited frequently to this day.

He was appointed as Commissioner by the Yang di-Pertuan Agong to investigate the collapse of the Sultan Abdul Halim Ferry Terminal, Butterworth on 31 July 1988, together with Tan Sri Chang Min Tat.

Tan Sri Barakbah will always be remembered as a learned, compassionate and patient judge.

Post retirement, he ventured into the teaching of the law and joined the International Islamic University Malaysia.

Tan Sri Barakbah was married to Puan Sri Sharifah Maznah Abu Bakar Alkaff and there are nine children of the marriage.

Tan Sri Barakbah passed away on 3 August 2013.



Tan Sri Barakbah receiving an award from the then Yang Di-Pertuan Agong Almarhum Sultan Mahmud Iskandar Alhaj Ibni Al-Marhum Sultan Ismail

'... Direct intention of a prior plan to commit an offence is not necessary in every case because common intention may develop on the spot and without any long interval of time between it and the doing of the act commonly intended. In such a case, common intention may be inferred from the facts and circumstances of the case and the conduct of the accused.'

*- Syed Agil Barakbah SCJ in **Namasiyam Doraisamy v. PP & Other Cases** [1987] 2 MLJ 336*

THE LATE DATUK ZAKARIA YATIM



(former Federal Court Judge)

The late Datuk Zakaria Yatim was born on 26 January 1935 in Pusing, Perak.

He received his LL.B (Hons.) from the University of Malaya (Singapore) in 1963.

He was admitted to the Singapore Bar in 1964.

He pursued his doctoral studies and received his Ph.D from the University of Kent, United Kingdom in 1980.

The late Datuk Dr. Zakaria's career with the Judicial and Legal Services began on 2 March 1964 until 1983. He held various posts such as President of the Sessions Court, Federal Counsel, Senior Federal Counsel, Head of the International Law Division at the Ministry of Justice, Parliamentary Draftsman and Solicitor General.

The late Datuk Dr. Zakaria was elevated as Judge of the High Court on 4 April 1983 and he served the High Courts of Johor Bahru and Kuala Lumpur. His elevation was significant as he was the first University of Malaya (Singapore) alumni to be elevated to the High Court Bench. During his elevation ceremony, Datuk Dr. Zakaria said, "Judges in discharging their functions should not only act with impartiality but also show that they were being impartial. He must be learned in the law, and must also be patient, tolerant, courteous, balanced and detached. He must discharge his functions judiciously and expeditiously".

He was subsequently elevated as Judge of the Court of Appeal on 17 September 1994 and his career with the Judiciary culminated in his appointment as Judge of the Federal Court in 1996 where he remained until his retirement on 26 January 2000.

Apart from his prestigious judicial career, the Late Datuk Dr. Zakaria was appointed as Legal Adviser to Fiji on 1 Jun 1995 to assist in reviewing Fiji's 1990 Constitution. His expertise was required particularly with regard to the preservation and protection of the rights of its indigenous population.

In the course of his tenure as Legal Adviser to Fiji, Datuk Dr. Zakaria has authored a paper entitled "The Bumiputra of Malaysia".

The late Datuk Dr. Zakaria was also the founding director of the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

The judicial and legal fraternity will always remember Datuk Dr. Zakaria as a judge who was learned and who possessed the ideal judicial temperament. Datuk Dr. Zakaria Yatim was a learned and popular judge who presided over many important cases including the well-known and publicised case of Bank Bumiputra Malaysia Berhad & Anor. v. Lorrain Esme Osman (1990) 3 MLJ 481, 493 (HC). His contribution to the field of commercial law is considerable.

Datuk Dr. Zakaria passed away on 1 June 2013 at the age of 78.

The late Datuk Dr. Zakaria leaves a wife and two daughters.

"The offence of rape is rampant in this country. The court will be failing in its duty if it does not impose a deterrent sentence in this case. The punishment must not only deter the appellants from committing a similar offence in the future but it must also deter others from committing such an offence. The punishment inflicted for grave offence including the crime of rape should adequately reflect the revulsion felt by the great majority of society."

- Zakaria Yatim J (as he then was) in **Ong Lai Kim & Ors v. PP [1991] 2 CLJ 1568**

THE LATE TAN SRI GUNN CHIT TUAN

(former Chief Justice of the High Court of Malaya)

The late Tan Sri Gunn read law at Peterhouse, University of Cambridge where his contemporaries included Mr. Lee Kuan Yew, Singapore's premier. Tan Sri Gunn was called to the English Bar by the Honourable Society of Lincoln's Inn in November 1952.

Tan Sri Gunn was admitted to the Malayan Bar in November 1953.

Prior to his joining the Civil Service and the Judicial and Legal Services, he practised law at the firm of SM Yong & Co.

Tan Sri Gunn's career in the civil service commenced with his appointment as Assistant District Officer.

Tan Sri served in the Judicial and Legal Services in various capacities such as President of the Sessions Court (Malacca), Assistant Parliamentary Draftsman, Deputy Public Trustee and Senior Federal Counsel before being elevated to the High Court on 15 Jan 1977.

During his tenure as Judge of the High Court, the late Tan Sri Gunn served in the High Courts of Kuala Lumpur and Penang.

Tan Sri Gunn's elevation to the Supreme Court was on 1 January 1989, and he was later appointed Chief Justice of the High Court of Malaya in 1992. After a distinguished career on the bench, Tan Sri Gunn retired on 21 May 1994.

The Supreme Court case of *Commonwealth of Australia v Miforth (Malaysia) Sdn Bhd* [1990] 1 MLJ 475 is one of the many notable cases decided by the late judge. It acknowledged (in the context of the restrictive theory of State immunity) that the common law would still be applicable post-the statutory cut-off date of 7 April 1956.

In recognition of his services to the country, the late Tan Sri was awarded the Panglima Setia Mahkota (P.S.M) award.

Tan Sri Gunn Chit Tuan passed away on 18 May 2013.

The nation mourned the passing of Tan Sri Gunn Chit Tuan who was learned, capable, just and tireless in upholding the law.

“...a solicitor’s duty is to use reasonable care and skill in giving such advice and taking such action as the facts of a particular case demand.”

- *Gunn Chit Tuan J (as he then was) in Neogh Soo Oh & Ors v. G Rethinasamy*
[1983] 2 CLJ 218

“In this case I think a simple question could have been asked and that was whether one would have any dishonest intention of committing criminal breach of trust if the so-called withdrawals or transfer of funds were properly accounted for and recorded in books accounts of the companies concerned. If the learned president had asked herself that question and considered all the evidence, adduced both oral and documentary, in this case, she would have come to the conclusion that there was no dishonest intention on the part of the appellant to cause either wrongful loss to TDMB or wrongful gain to KJDB and should not have called for the defence.”

- *Gunn Chit Tuan J (as he then was) in Chang Lee Swee v. Public Prosecutor*
[1985] 1 MLJ 75

THE LATE DATO' SRI GEORGE SEAH

(former Federal Court Judge)

The late Dato' Sri George Seah was born on 10 December 1931 in Miri, Sarawak.

He was called to the English Bar by the Honourable Society of Lincoln's Inn in 1955. He was a practising lawyer before his elevation to the Borneo High Court Bench on 7 October 1969.

Dato' Sri Seah was the first member of the Sarawak Bar to be elevated to the Bench. At the age of 38, he was one of the youngest High Court Judges to be appointed.

During his tenure as Judge of the High Court, he presided in Kuching, Sibul and Kota Kinabalu.

Dato' Sri Seah was conferred the Pingat Panglima Negara Bintang Sarawak (PNBS) which carries the title "Dato' Sri" in 1979.

His was a meteoric rise as he was elevated to the Supreme Court on 1 October 1982 at the age of 51.

Among the many cases Dato' Sri Seah adjudicated on as a member of the Supreme Court is *Government of Malaysia v Lim Kit Siang*; *United Engineers (M) Bhd v Lim Kit Siang* [1988] 2 MLJ 12 (SC) which is notable in that it defined judicial power very widely as follows :- "... the High Court must always bear in mind that under the Federal Constitution of Malaysia, the judicial power is vested in the judges. And judicial power includes judicial control or review of government/ executive actions except when the jurisdiction of the High Court is expressly excluded by the Constitution.."

He was a man of integrity entirely befitting his profession as a judge. He was one of the six Supreme Court Judges who was suspended from office in the judicial crisis in 1988.

In the 1988 judicial crisis, Dato' Sri Seah was constrained to resign and did so on 6 October 1988. He was only 56 years old at the time of his retirement.

However in 2008, Dato' Sri Seah, Tun Salleh Abas (former Lord President of the Supreme Court) and the other four Supreme Court Judges received goodwill ex-gratia payment from the Government of Malaysia in relation to the judicial crisis.

The late Dato' Sri Seah passed away on 19 April 2013 at the age of 81 leaving behind four children and three grandchildren.

In almost 20 years of his public life as a judge, posted at various stations, the late Dato' Sri Seah will always be remembered as an adjudicator who was courageous and whose integrity remained unshaken. He was well liked by his peers and those who appeared before him.

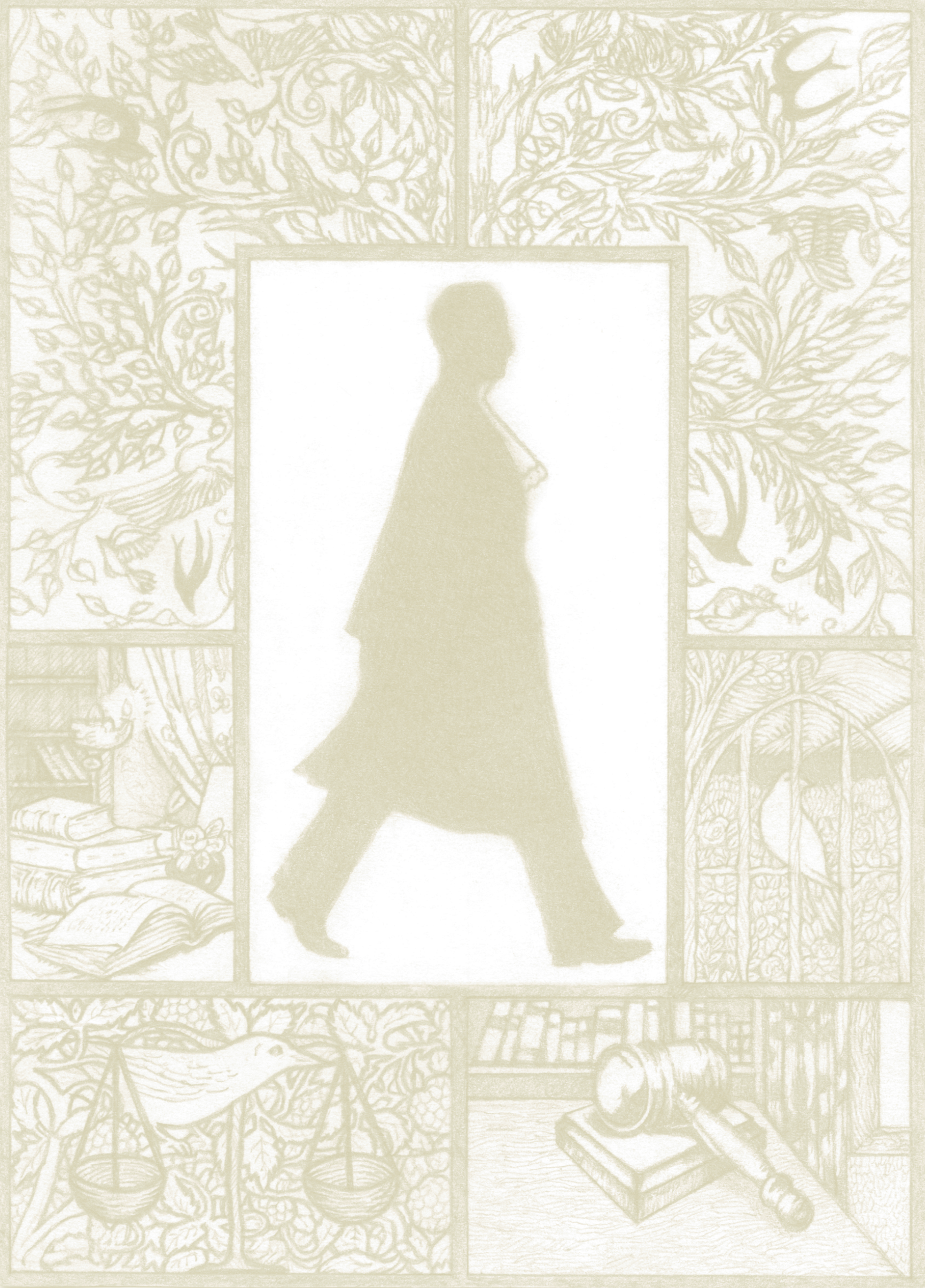
In an article on the 1988 judicial crisis, he wrote:

"...history will be the judge of whether or not I was guilty of misbehaviour as charged for faithfully discharging the functions of a Judge of the Supreme Court of Malaysia conscientiously and with the highest regard for the preservation of an independent Judiciary.

During critical and crucial times in the history of a nation, judges are expected to be the standard-bearers of justice. This is a moral obligation and under the circumstance they are expected to act positively and with a clear conscience.

The five of us who were embroiled in this difficult episode of the 1988 judicial crisis did not rally around the suspended LP but rather responded to the call of duty in the interest of justice.

These eminent judges who have since left us will be forever remembered with high regard and fondness. They have remained resolute defenders of the rule of law and had upheld the principles of justice and equity. They will be much missed for their prudence and wisdom.



CHAPTER 6

ISLAMIC BANKING AND FINANCE

EXCERPTS OF SPEECH

By: His Royal Highness Raja Dr Nazrin Shah ibni Sultan Azlan
Muhibbuddin Shah

“BOOSTING THE ROLE OF ‘WAQF’”

**The
Important Role
of Waqf -**

“The important role of *waqf* in the history of the development of Muslim societies has been well recognised. There appears now to be a concerted effort to revive the institution of *waqf* towards regaining that role in order to unlock the potential value of the vast proof of *waqf* assets today. At the same time, the growing focus on *waqf* is in line with the overall drive to identify new growth segments to broaden and strengthen the development of the Islamic finance industry.”

**Effort
to Revive
the Institution
of Waqf -**

“The various stakeholder groups must share the same aspirations to bring *waqf* development to the next level and collectively commit to put into effect the necessary measures to get there.”



**The
Contribution
of Waqf System to the
Country -**

“A well-structured *waqf* system can have a profound and lasting impact on a country’s economy, social and financial landscape.

The galvanisation of *waqf* assets to drive or support a wide range of activities can contribute towards stronger gross domestic product growth for the country.”

**Waqf
Capital
Issues -**

“In rejuvenating the productivity of *waqf* assets there is an attendant need to mobilise capital, primarily in the form of cash. *Waqf* development could be undertaken in tandem with products and services in the Islamic finance industry such as the issuance of *sukuk*.”

EXCERPTS OF SPEECH

By: The Rt. Honourable Tun Arifin Bin Zakaria, Chief Justice of Malaysia

“A JUDICIAL PERSPECTIVE ON ISLAMIC FINANCE LITIGATION IN MALAYSIA”

The Proper Legal Framework -

“For financiers or bankers, the Federal Constitution, banking laws, and regulation of the Central Bank of Malaysia, all then become applicable to ensure the activities are transparent and are carried out according to the law to protect the customers.”

The Observation -

“Islamic finance and conventional finance are not one and the same. Separate legislative framework or one code for Islamic finance independent of conventional framework may be considered inter alia to minimise disputes and promote confidence in the industry. Finally, where Shariah issues are raised, it may be advisable to have a separate regime independent of the courts’ jurisdiction by providing alternative dispute resolution such as tribunal or arbitration and the order or awards to be made enforceable as court orders.”

Islamic and Conventional Banking -

“It is well established that Islamic and conventional finance systems are not one and the same to share or to be regulated by the same legal framework to achieve the objectives of the banker and the customer. In consequence of the so called sharing of the same legal framework, there is a veritable explosion of case law not only in Malaysia but also in other jurisdictions.”

Why Proper Legal Framework Needed -

“When the trading concepts were first introduced by the Islamic financial institutions, there was hardly any legal framework enacted to support the documents. As more and more challenges were taken to the courts, the regulators have come out with ad hoc measures and/or a productive framework not only to address legal issues but also to ensure greater transparency in all aspects. One such legal framework is the Malaysian Islamic Financial Services Act 2013”



A jug from an Islamic era
(Courtesy of the Malaysian Islamic Museum)



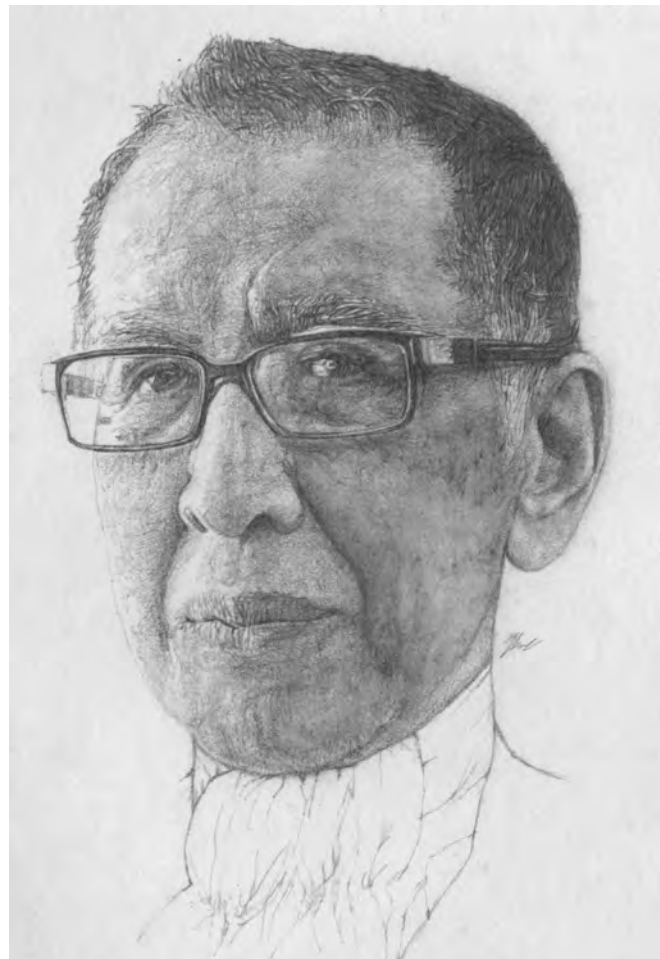
Old coins from an Islamic Dynasty
(Courtesy of the Malaysian Islamic Museum)

AN OVERVIEW OF THE ADJUDICATION OF ISLAMIC BANKING CASES IN MALAYSIA

By: Justice Rohana Yusuf & Justice Mohd. Zawawi Salleh



Justice Rohana Yusuf



Justice Mohd Zawawi Salleh

1. Introduction

[1] The Islamic banking industry in Malaysia has witnessed a tremendous growth in demand, acceptance and development since its establishment in 1983. From a mere alternative form of financial intermediary serving the Islamic community to conduct financial transactions in conformity with the Shariah, today, Islamic banking has become a complete, competitive and integral component of the mainstream financial system that serves both Muslims and non-Muslims.

[2] Undeniably, one of the key factors that contributes to the strong growth of Islamic banking and finance in Malaysia is an effective

adjudicative system. Besides providing a fair and efficient mode of dispute resolution, it is also able to authoritatively enforce the principles of Shariah in the settlement of disputes of Islamic financial transactions.

2. Jurisdiction To Adjudicate

[3] Although Islamic banking and finance is Shariah based, the civil court has competent jurisdiction to adjudicate disputes on these cases. This is because the Shariah Court only has jurisdiction over persons professing the religion of Islam and in matters included in paragraph 1 of List 11 of the ninth Schedule of the Federal Constitution.

[4] In *Mohd Alias Ibrahim v RHB Bank & Anor* [2011] 4 CLJ 654, the court held that the civil courts have the power to adjudicate on Islamic banking because financial matters are within item 7 of the Federal List (List I) of the Ninth Schedule of the Federal Constitution. (See also *Bank Islam Malaysia Berhad (BIMB) v Adnan Omar* [1994] 3 CLJ 735).

[5] Abdul Hamid Mohamad JCA (as he then was) asserted that the Shariah Court is not an adequate forum to decide over Islamic banking cases. He argued:

- i. *Disputes over Islamic banking transactions which have arisen so far do not involve Islamic law only, but involve the application of statutes under the civil law such as the National Land Code 1965, the Companies Act 1965, the Contract Act 1950, etc., of which the Shariah Court has no jurisdiction and the Shariah Court judges are not trained in and not familiar with;*
- ii. *The power of enforcement and remedies available to Shariah Courts are very limited;*
- iii. *Islamic banking customers are not only confined to Muslims but also include non-Muslims. The Shariah Court does not have jurisdiction over non-Muslims and neither can non-Muslims lawyers appear in the Shariah Court; and*
- iv. *The Shariah Court has a limited power of imposing a fine which must not exceed five thousand ringgit in criminal offences.*

(See: Dato' Abdul Hamid Mohamad JCA (as he then was): "*Dispute Resolution For Islamic business And Finance Cases: The Way Forward*" (AIBIM)).

[6] Another important point to be noted is that legal documents are in English and the common law lawyers who draft those documents could not appear in the Shariah courts. The law is in English and the witnesses, local and more so foreigners give evidence in English.

(See Tun Abdul Hamid Mohamad, "Malaysia as an Islamic Financial Hub: Malaysian Law as the Law of Reference & Malaysian Court as the Forum for Settlement of Disputes", 12th Emeritus Prof Ahmad Ibrahim Memorial Lecture, 7th December 2011).

3. Establishment of the Muamalat Court

[7] A designated court, the Muamalat Court in the commercial division of the Kuala Lumpur High Court is assigned to adjudicate Islamic banking cases. The Muamalat Court was established on 1 March 2003 pursuant to Practice Direction No. I of 2003. Muamalat cases are now registered under Code 22M (previously under Code 22A) which is for writ summons cases and Codes 24M and 24MF (previously under Code 24A) which are for originating summons cases.

[8] There is no doubt that the establishment of the Muamalat Court shows a positive result in the disposal of Islamic banking cases. Below are the statistics for cases under Codes 22A, 22M and 24MF from the Muamalat Court, Jalan Duta, Kuala Lumpur:

Cases Registered from 1.3.2003 - 30.10.2013	Disposal Cases from 1.3.2003 - 30.10.2013	Pending Cases from 1.3.2003 - 30.10.2013
7,849 Cases	7,787 Cases	62 Cases

4. Challenges And Issues In the Adjudication Of Islamic Banking Cases

[9] Adjudicating cases based on or relating to Islamic financing transactions can raise intricate issues. In particular, if the defaulting parties invoke Shariah principles to argue that an agreement was contrary to Shariah and void as a consequence. Furthermore, the spread and sophistication of the Islamic finance industry, as well as Islamic financial innovations, some of them based on controversial interpretations of the Shariah, have further complicated the issues before the courts.

[10] More often than not, the defaulting party challenges the validity of the very contract they have entered into and benefited from. As observed in the case of *Bank Kerjasama Rakyat Malaysia Bhd v. PSC Naval Dockyard Sdn Bhd* [2008] 1 CLJ, 784 at para 15:

"[15] If adhering to Islamic principle is an issue of importance to the defendant over this matter then perhaps the defendant ought to be reminded that, fulfilment of a promise in Islam is a religious demand. In Chapter 5 Verse 1 the Quran declares that: O you who believe! Fulfil all your obligations. A covenant is a solemn undertaking or engagement between man and his obligations to God, between man and his soul and between the individual and his fellow men which covers the entire area of a man's moral and social responsibilities. In Chapter 17 Verse 34 again it is stressed the importance of fulfilling of one's promise when the Verse states. And fulfil (every) engagement, for every engagement will be enquired into (on the day of reckoning). These verses show that a contract in Islamic Jurisprudence is not a mere binding legal relation but it is based on certain moral and religious principles. The defendant

had obtained the facility to assist its business with a promise to repay in accordance with the terms stipulated in the agreement. Since the defendant has raised concerns on the various principles of the contract which should be adhered to in a Shariah based agreement, then fulfilling those agreed obligations as per the stipulations in the agreement should be of paramount importance that the defendant should be fulfilling without even a demand having been made."

[11] In the case of **Bank Muamalat Malaysia Berhad v Ahmad Yunus bin Hairi** (Guaman No: 22A-1145-11/2011), the Court had this to say:

"[23] In the Court's opinion, the alleged contravention of section 3 of the Islamic Banking Act 1983 was a lawyer's construct defence to escape liability from paying all the outstanding sums due and owing to the Plaintiff. It was not a genuine defence based on Shariah principles."

[12] It is a truism that Islamic finance is based on Shariah and compliance with Shariah's principle is the *raison d'être* of Islamic financial contracts. However, the applicable law is civil law and not Islamic law. The enforcement of Islamic banking cases are the same as any other commercial dispute. This position is clearly stated by the Court of Appeal in the case of **Bank Kerjasama Rakyat Malaysia v Emcee Corporation** [2003] 2 MLJ 408; 1 CLJ 625 where the court had this to say:

"The Law

As was mentioned at the beginning of this judgment, the facility is an Islamic banking facility but that does not mean that the law applicable in this application is different from the law that is applicable if the facility were given under the conventional banking"

[13] The adjudication of Islamic banking cases is further exacerbated by the non-existence of any substantive law on Islamic financial services and banking practices in Malaysia. The



A Mughal Painting
(Courtesy of the Malaysian Islamic Museum)

CLASSIFICATION OF MUAMALAT CONTRACTS UNDER CODE 22 AND 24

Year	WRITS SUMMONS (CODE 22A AND 22M)											Total
	Bea	mm	inah	murabahah	mudharabah	istisna	aitab	ijarah	tawarruq	mixed	others	
2003	156	1	1	10	2	7		2		1		186
2004	266		7	11	2		5					291
2005	433		5	16	1	1	10	2		8		476
2006	474		6	19	1	2	3	3				508
2007	512	1		13	2	1	7	2		14		552
2008	431	2	5	24	3	1	9	4		12		490
2009	477	4	7	6	3	6	3	8		2		516
2010	742		272	10		1	85	5		7		1122
2011	824		292	12		2	90			14		1234
2012	969	10	383			1	84		4	4		1455
2013	188	1	59	3		1	16		7			275
Total	5472	19	1037	124	14	23	312	26	11	62	0	7105

laws and regulations on Islamic banking and finance are mostly procedural and are not substantive. The Islamic Banking Act 1983, for example, is regulatory in nature and not substantive law.

5. Dispute Between Bank And Customer In BBA Contract

[14] In Malaysia, many Islamic instruments are offered to the customers. The most commonly practised product is the Bai Bithamam Ajil (BBA). BBA refers to a deferred payment contract. In such a contract, the customer first sold the property to the bank under the Property Purchase Agreement (PPA), which was a cash sale. With that purchase, the property belonged to the bank and the customer had to buy it back from the bank at a sale price that included the bank's profit on the sale. In effect, the bank would sell the same property it had purchased from the customer to that customer under a second document known as the Property Sale Agreement (PSA). This financial concept has been broadly used for many purposes, namely, home financing, corporate financing and many more

[15] The following classification of muamalat contracts under Codes 22A and 24M registered in the Muamalat Court, Jalan Duta, Kuala Lumpur demonstrates the fact that BBA is the most preferred kind of Islamic financing in Malaysia:

[16] The dispute in BBA cases centre on the way the bank calculates the outstanding amount to be paid by the customers who defaulted on their BBA contract. The bank claims the loan amount as well as the profit margin thereon for the full tenure of the facility even though the customers may have defaulted only a few months or years during the tenure of the facility. It was argued that this is more oppressive than conventional loans. Under conventional loans, in the event of default, a defaulter has to pay only the loan amount plus accrued interest and other charges. Moreover, the amount that the customers have to pay is limited to the period from the release of the loan until full settlement thereof. Thus, in order to overcome this dichotomy and the perceived oppression, the courts more often than not applied equitable principles to attain a just result and to ensure that excess profit is not made in the name of Islamic principles.



Old coins from an Islamic Dynasty
(Courtesy of the Malaysian Islamic Museum)

[17] In the case of *Arab-Malaysian Finance Berhad v Taman Ihsan Jaya Sdn Bhd & Others* [2008] 5 MLJ 631, Abdul Wahab Patail J (as he then was) created shockwaves when His Lordship ruled that the BBA contract in the case before him was not a *bona fide* sale but a financing transaction. In this case, the learned judge critically examined the concept of BBA which is based on the principle of *Bay' al-Inah*. The learned judge highlighted the fact that the principle of *Bay' al-Inah* is only accepted by the Shafi'i *mazhab* (School of Thought), rendering it to be against the opinion followed by the other recognised Schools of Thought in Islam, namely the Hanbali, Hanafi and Maliki. The court was concerned with the fact that the customers of Islamic banking and finance do not only comprise of followers of the Shafi'i but also followers of the other Schools.

[18] Another concern highlighted in the case is the fact that customers who default in paying loans have to suffer when they have to pay not only the amount of loan defaulted but also the unearned profit, presented by the plaintiff banks as the 'selling price'. With regard to this concern, the learned judge was of the opinion that Islamic banking and finance as practiced in Malaysia is indeed harsh. If compared to conventional banking with interest, the latter is far more reasonable. The court observed:

... But in seeking an amount far higher than the liability in a conventional loan, it raised a question whether the bank's interpretation of 'selling price' involved any element not approved by the religion of Islam.

[19] In conclusion, the learned judge held that Islamic banking and finance as practiced in Malaysia is not 'Islamic' by analysing the true spirit of the *muamalat* (transaction) in Islam. In the words of the learned judge:

"This court holds that where the bank purchased directly from its customer and sold back to the customer with deferred payment at a higher price in total, the sale is not a bona fide sale, but a financing transaction, and the profit portion of such Bay' Bithaman Ajil facility rendered the facility contrary to the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989 as the case may be."

[20] The decision in this case had serious ramifications for the banking industry in Malaysia. Banks were worried that this judgement would set off alarm bells with regard to confidence in the BBA contract. They feared that this judgement could mean that defaulters would only need to pay the facility amount and would escape from paying the profit portion.

[21] However, the decision was overturned by the Court of Appeal in *Bank Islam Malaysia Bhd. v. Lim Kok Hoe & Anor and Other Appeals* [2009] 6 MLJ 839. The Court of Appeal held that the learned judge in the High Court erred in deciding that BBA was

contrary to the religion of Islam. According to the Court of Appeal, the High Court Judge was not competent to decide the matter, i.e., whether BBA is in compliance with Islamic law. The competent persons are those Islamic jurists conversant in Islamic law and in reference to Islamic banking and finance in Malaysia, the Bank Negara Shariah Advisory Committee and Shariah Advisory Board of Islamic Banks. It was further held that the High Court in deciding the 9 cases before him had not observed the doctrine of stare decisis, because before these 9 cases were adjudicated, there were already Supreme Court and Court of Appeal cases (*Adnan bin Omar v Bank Islam Malaysia Berhad* (supra), (Supreme Court) and *Datuk Haji Nik Mahmud Bin Daud v Bank Islam Malaysia Berhad* [1996] 4 MLJ 295 (Court of Appeal) which held that BBA is valid under Islamic law.

[22] The Court of Appeal also held that by replacing the sale price under BBA with an equitable interpretation of the same, and by substituting the obligation of the customer to pay the sale price with a loan and profit computed on a daily basis, the trial judge was in fact rewriting the terms of the contract.

[23] The decision of *Bank Islam Malaysia Bhd v Lim Kok Hoe* (supra) was followed by another case in the Court of Appeal. The Court of Appeal, presided by a panel consisting of Zaleha Binti Zahari, Zainun Binti Ali, Clement Allan Skinner, JJCA, heard three related appeals on 13 October 2012 arising from the High Court decision in *Bank Islam Malaysia Berhad v Azhar Osman & Other Cases* [2010] 5 CLJ 54. The Court of Appeal held, inter alia, that BBA contracts are sale contracts and the court must give effect to the same.



A bowl from the Islamic era
(Courtesy of the Malaysian Islamic Museum)

[24] It is pertinent to note that although BBA financing is permissible according to Shariah, many Muslim scholars have warned us not to use it extensively, due to its similarity to the conventional interest – based transactions. Using BBA “widely and indiscriminately might open a back door to ‘interest’”. (See Qureshi, D.M [1990], *The Role of Shariah – Based Financial Instruments In a Muslim Country*, p. 52).

[25] The Council of the Islamic Fiqh Academy, during its sixth and seventh meeting held in Jeddah, Kingdom of Saudi Arabia, agreed on the permissibility of instalment sale (i.e. *Al-Bay Al-Mu’ajjal*). It says that it is allowed to have different prices for cash and instalment sales. However, once the contract is signed there should be only one price, whether cash or instalment price (See Islamic Fiqh Academy, 2000, p.103 & 135).

[26] It can be concluded that although BBA as a mode of finance is allowed by Shariah scholars, but the modus operandi as practiced by Malaysian financial institution is questionable. Furthermore, the extensive use of BBA contacts and overdependence of Islamic financial institutions on debt-based modes of financing will result in convergence of Islamic financial institutions into conventional interest-based banks. Therefore, its usage as a mode of financing should be minimized as much as possible, if not eliminated from the Islamic financial institutions.

6. Right To Ibra’

[27] In the context of Islamic banking and finance, ibra’ means surrendering one’s right to a claim on debt either partially or in full.

[28] The issue on ibra’ has been the subject of dispute in courts as evidenced by claims made by Islamic financial institutions against defaulting customers. In *Affin Bank Zulkifli Abdullah* [2006] 1 CLJ 438, the Court held that the Bank was not entitled to profit which has not been received (unearned profit) and therefore, ibra’ shall be provided. In the case of *Malayan Banking Berhad v Ya’kup bin Oje & Anor* [2007] 6 MLJ 389, the High Court ordered the Plaintiff (Bank) to provide in their Supporting Affidavits for the ibra’ amount that would be provided by the Plaintiff prior to the Court granting the Order for Sale.

[29] In Islam, the creditor is encouraged to absolve his rights to help the debtor who is having difficulties in repaying the debt. In addition, even if the debtor is not having difficulties in repaying the debt, ibra’ is still recommended as it can develop the relationship of trust and friendship between the creditor and debtor. Allah (s.w.t.) clearly mentions in the holy Quran the following:

“And if the debtor is in difficulty grant him time. Till is easy for him to repay. But if ye remit it by way of charity, that best for you if ye only know.”

(See Application And Development of Ibra’ In Islamic Banking in Malaysia, Abdul Hamid Mohamad and Adnan Trakic, *The Law Review*, p. 28-29).

[30] In the case of *CIMB Islamic Bank Bhd v LCC Corporation Bhd & Anor* [2011] 7 CLJ 594, the Court held that the entitlement to ibra’ on early settlement only referred to a situation where the defaulting party made early payment of the BBA facility before the end of the financing tenure without compulsion. This, according to the learned judge, does not include termination upon default. In such circumstances, the Bank is neither under any obligation nor duty to grant ibra’ to the customers. The decision of this case departs from the earlier High Court’s decisions in *Affin Bank Berhad v Zulkifli Abdullah* (supra) and *Bank Islam Malaysia Berhad v Azhar Osman & Other Cases* [2010] 5 CLJ 54. In the latter case, the Court held that ibra’ should be given not only in early settlement but also in default cases. Although the financing agreements did not incorporate a clause on ibra’, the granting of ibra’ is deemed as an implied term and therefore, the bank is still obliged to grant ibra’. Consequently, ibra’ shall consist of profit that has not been received (unearned profit).

[31] The application of ibra’ is no more an issue in voluntary early settlement by the customer as well as in default cases. On May 2010, the Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) made it compulsory for Islamic financial institutions to incorporate the ibra’ clause into a financing agreement. The wordings of the resolution are as follows:

“In line with the needs to safeguard maslahah (public interest) and to ensure



Islamic artefact
(Courtesy of the Malaysian Islamic Museum)

justice to the financier and customers, Islamic banking institutions are obliged to grant ibra' to customers for early settlement of financing based on buy and sell contracts (such as bay'bithaman ajil or murabahah). In order to eliminate uncertainties pertaining to customers' rights in receiving ibra' from Islamic banking institutions, the granting of ibra' must be included as a clause in legal documentation of the financing. The determination of ibra' formula will be standardised by Bank Negara Malaysia."

(See the Resolution of Shariah Advisory Council of Bank Negara Malaysia passed on its 24 meeting, held on 24 April 2002/11 Safar 1423).

[32] The phrase 'early settlement' is explained by the Guidelines issued by BNM on 31 January 2013 as follows:

"IBS (Islamic Banking Scheme) are required to grant ibra' to all customers who settle their financing before the end of the financing tenure. Settlement prior to the end of the financing tenure by the customers shall include, but is not limited to the following situations:

- (1) *Customers who make an early settlement or early redemption, including those arising from prepayments;*
- (2) *Settlement of the original financing contract due to financing restructuring exercise;*
- (3) *Settlement by customers in case of default; and*
- (4) *Settlement by customer in the event of termination or cancellation of financing before the maturity date."*

7. Gharar

[33] Gharar is an Arabic term which literally means uncertainty, danger, peril, jeopardy, hazard or risk. The classical jurists generally agreed that gharar brings out the suspicion of danger because of the uncertainty of the outcomes of the contract. *Al-Zuhaily*, a famous contemporary Islamic scholar, maintains that gharar is not permitted because its existence, quantity or deliverance is uncertain. This is due to want of knowledge and lack of control over the time and place of delivery. Put simply, gharar refers to uncertainty in a contract that may lead to unknown consequences or results, whereby one or both parties to the contract suffer injustice.

[34] In the case *Kuwait Finance House (Malaysia) Bhd v Vesta Energy Sdn Bhd & Ors* [2012] 9 CLJ 516, learned counsel for the defendants submitted that there was an element of gharar in the transaction because the loan granted by the plaintiff to the first respondent had excessive risk, that is to say, it was subject to pure market demands, a form of speculation. The court rejected the submission and had this to say:

"[65] Obviously there are misunderstandings on the part of learned counsel for the defendants here. First, learned counsel could not appreciate the differences between the purpose of the facility and the nature of the underlying contracts. Second, learned counsel failed to differentiate between the risk (al-gharar) and the risk/loss (al-ghorm).



Old coins from an Islamic Dynasty
(Courtesy of the Malaysian Islamic Museum)

[66] Authorities on issue are legion. For the purpose of this judgment, I would like to refer to the book written by Prof Dr Saiful Azhar Rosly, Critical Issues on Islamic Banking And Financial Markets, where in chapter 15 he made distinctions between gharar and ghorm as follows:

[o]ne can now distinguish gharar from ghorm. Gharar is destructive while ghorm is constructive. Profiting from gharar creates unjustified enrichment as it leads to unfair and unethical dealings. On the contrary, profits created under the pretext of ghorm show the way to justice since these profits are not made by mere manipulation and deceit but via mutual aid and cooperation (ta'awun).

As mentioned earlier, contracts containing gharar are declared null and void. Sales

involving non-existent objects, or the non-stipulation of terms of payments are invalid on grounds of gharar. Sometimes gharar is called khatar, taken from the mukhatara sale.

Ghorm, however, is something that one must accept in business, as it constitutes a tabi' (natural) phenomenon. As mentioned earlier the caravan trade is laden with ghorm. Highway robbery, devastating storms, the severe heat during the day and cold in the night, diseases and uncertain markets are some examples of ghorm in trade. As such, agents taking part in this venture will hold legitimate claims on any profit made, if any. The term "risk" and "uncertainty" are therefore shorthanded to describe the difference between gharar and ghorm. In Islamic banking, this term should be used with care. That is:*

1. *Risk and uncertainties in contractual agreements (ie, ambiguities) are called gharar. Gharar can be controlled in a sense that it can be deliberately introduced into the contract by either one of the parties.*

2. *Risks and uncertainties in business outcomes (ie, systematic risks) are known as ghorm. Ghorm however cannot be eliminated because it is a law in nature (hukum tabi'). No one is free from the vagaries of price volatilities arising from market movement.*

(See Understanding Risk and Uncertainty in Islam: Gharar versus Ghorm, Critical Issues on Islamic Banking And Financial Markets, Dinamas Publishing, 2008 at pp. 73-76)

[67] *Relying on the above, it is clear that the risk as alleged by learned counsel for the defendants in the investment undertaken by themselves and on their choice in Chunghwa Picture Tubes (M) Berhad was not gharar but ghorm. Therefore, the plaintiff should not be dragged into the loss suffered by the defendants as the transaction herein was not on Mudharabah or Musharakah basis but Ijarah and Murabahah based where the underlying assets were not the investment in the said company."*

8. Legal Effect Of SAC's Ruling

[35] As part of the effort to strengthen the dispute resolution cases for Islamic banking and the finance industry, and to allay any possible fear on the lack of knowledge of the civil court judges on Shariah laws, some steps were taken to provide a useful mechanism on determination of Shariah issues by the court in the adjudication of Islamic banking cases. Pursuant to that, the court may now refer issues raised on a Shariah dispute to the Shariah Advisory Council (SAC).

[36] Prior to the repeal of the old Central Bank of Malaysia Act 2009 (CBMA 2009), academics and practitioners had pointed out the complication in the manner the civil courts were tasked to determine disputes between Islamic banks and their clients.

[37] For example, Engku Rabiah Adawiah, in her article, "Constraints and Opportunities in Harmonization of Civil Law and Shariah in Islamic Financial Services Industry", [2008] 4 MLJ; at p. ill, had warned about the possibility of decisions that may not be consistent with Shariah principles. In her words, even if the transactions may be Shariah compliant, "but upon enforcement of the contracts, the court may make orders and decisions that may sideline the Islamic legal principles."

[38] Some practitioners argued that litigation of Islamic finance disputes show that although up-front compliance of a transaction with Islamic law is verified by Shariah boards, and is required as a condition precedent to contract, the role of Islamic law, which is the foundation of Islamic finance contracts, may, depending on the selected forum, be diminished during the dispute resolution process.

[39] With the enactment of the new CBMA 2009 on 25 November 2009, in particular section 56 and section 57, the Court (or arbitrator) had to refer the Shariah matters to SAC and the latter's ruling was binding on the Court.

[40] In the case of **Mohd Alias Ibrahim v. RHB Bank Bhd & Anor** [2011] 4 CLJ 654, some interesting issues were raised by the plaintiff. The issues were:



An Islamic porcelain tray
(Courtesy of the Malaysian Islamic Museum)

- (i) *whether the said sections usurped the judicial powers of the Court to decide the issue raised during the trial;*
- (ii) *whether by imposing a duty on the court to refer any Shariah banking matter to the SAC and making the decision of the SAC binding on the court, the litigants were deprived of any chance to be heard; and*
- (iii) *whether the said sections could not have retrospective effects on the transactions since they were entered into before the CBA 2009 come into force.*

[41] In deciding on the issue of the constitutionality of ss.56 and 57 of CBMA 2009, the learned judge observed that the role of SAC is to ascertain the law and not to determine it. This is what the learned judge had to say:

‘therefore, if the Courts refer any question under s.56(1)(b) of Act 701 to the SAC, the SAC is merely required to make an ascertainment, and not determination, Islamic laws related to the question.’ Furthermore, the learned judge held that:

“Act 701 is a federal law and its contents are consistent to the words employed in the Federal Constitution. In this sense, it can be seen that the SAC is not in a position to issue a new hukm Syara’ but to find out which one of the available hukm is the best applicable in Malaysia for the purpose of ascertaining the relevant Islamic laws concerning the question posed to them. For example, in a matter where there are differences of opinion regarding the validity of a certain Islamic finance facility, SAC can be referred to ascertain which opinion of the jurist is applicable in Malaysia. This ascertainment of Islamic law will be binding upon the courts as per the Impugned Provisions. It will then be up to the courts to apply the ascertained law to the facts of the case. At the end of the matter, the application and final decision of the matter remains with the court. The court still has to decide the ultimate issue which have been pleaded by the parties. After all the issue whether the facility is Shariah compliant or not is only one of the issues to be decided by the court. This is in line with s.52 (2) of Act 701 which provides: (2) For the purposes of this Part, ‘ruling’ means any ruling made by the Shariah Advisory Council for the ascertainment of Islamic law for the purposes of Islamic financial business. Such conclusion may have been different if the word ‘determine’ was used instead as this would create a different function of the SAC which is not provided in the Federal Constitution.”

[42] Furthermore, the learned judge observed that the SAC is not a judicial body but rather a body which functions to ascertain Islamic law on financial matters. The Court held that:

The SAC cannot be said to perform a judicial or quasi-judicial function.

The process of ascertainment by the SAC has no attributes of judicial decision. The necessary attribute of the judicial decision is that it can give a final judgment between two parties which carries legal sanction by its own force. It appears to the court that before a person or persons of a body or bodies can be said to exercise judicial powers, he or it must be held that they derive their powers for the State and are exercising the judicial power of the State...

[43] The SAC’s rulings are regarded as expert opinions as supported by the learned judge in the following words:

Hence, the ruling issued by the SAC is an expert opinion in respect of Islamic finance matters and it derives its binding legal effect from the Impugned Provisions enacted pursuant to the jurisdiction provided under the Federal Constitution. In the context of Islamic banking and takaful, every ruling or resolution made by the SAC, comprising members who are qualified in Shariah, economic, laws and finance and appointed based on standard enunciated in s.53 of Act 701, is regarded as a collective ijtihad.

[44] The learned judge welcomed the role of the SAC in the following words:

There is neither rhyme nor reason for the court to reject the function of the SAC in ascertaining which Islamic law to be applied by the civil courts in deciding a matter. Should this function be ignored, it would open the floodgate for lawyers and cause a tsunami of applications to call any expert at their own interest and benefit, not only from Malaysia but also other countries in the world who might not be familiar to our legal system, administration of Islamic law and local conditions just to challenge the Islamic banking transaction in this country.

[45] In **Tan Sri Khalid bin Ibrahim v Bank Islam Malaysia Bhd** [2012] 7 MLJ 597, the

same argument was advanced by the applicant's counsel. In this case, the applicant challenged the legality of section 56 and section 57 of the CMBA on the grounds that it purportedly contravened the Federal Constitution. The Court relied on an earlier case of *Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor* (supra) and held that the jurisdiction and power of the High Court (civil courts) are derived from

beyond the grasp of the civil court judge. The learned judge put it very aptly when he asked that if the issue is on the validity of a contract under Islamic Law:

- (a) *To what source would a judge refer;*
- (b) *Which madzhab should he adopt if there are differing opinions; and*
- (c) *Would Islamic law or civil law be the applicable law?*

[48] In answer to his own questions, the learned judge opined that it was for a body of eminent jurists, properly qualified in Islamic Jurisprudence, to be the one dealing with questions of validity under Islamic Law and thus in Malaysia, that special body would be the SAC. Drawing an analogy with the dilemma of the English Court in *Shamil Bank of Bahrain EC v Betimco Pharmaceuticals Ltd* [2004] 4 All E R 1072, the learned judge held that judges in the civil courts should not be asked to determine principles of Islamic law.

[49] The Court also clarified that the use of expert evidence would not be helpful to a civil court judge as ultimately, the civil court judge would still have to make a decision and he would end up having to choose which expert opinion to rely upon, and this could be further complicated if each expert based his opinion on different schools of jurisprudence.

[50] The decisions of the above two cases were affirmed by the Court of Appeal in *Tan Sri Abdul Khalid Ibrahim v Bank Islam* [2012] 3 CLJ 3 249. Low Hop Bing JCA had this to say:

"S.56 and S.57 contain clear and unambiguous provisions to the effect that whenever there is any Shariah Questions 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



A set of 7 cuerda seca tiles - Timurid Empire
(Courtesy of the Malaysian Islamic Museum)

Parliament under Federal law and section 56 and section 57 of the CMBA 2009 are valid federal laws. Accordingly, the court had to invoke section 56 when a question arose concerning a Shariah matter.

[46] The Court further reiterated its finding that the SAC's role is to ascertain the relevant Islamic law on the financial matter posed to them and it was not performing a judicial or quasi-judicial function. It was ultimately still the Court that had to decide on the issues pleaded.

[47] The learned judge candidly acknowledged that the rubrics of *Fiqh Al-Muamalat* might be

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.”

[51] There are two main complaints against section 56 and section 57 of CBMA. Firstly, the SAC’s rulings are binding and conclusive. It was argued that this position in effect subordinates the powers of civil courts to an administrative tribunal, the SAC. Secondly, the SAC does not hold open or public hearings and parties in dispute are not heard. Thus, the rules of natural justice are not followed.

[52] The supporters of section 56 and section 57 of CBMA argued that these sections are not new law. Section 40D of the Land Acquisition Act of 1960, for example, provides that the amount of compensation to be awarded shall be the amount decided upon by two assessors and the decision is final and no further appeal lies to a higher court. (See *Koriah binti Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695). Thus, the effect of such sections have become entrenched in Malaysian jurisprudence.

[53] Concerning the right to be heard, it is hoped that SAC would publish guidelines or procedures on how the SAC operates or with regard to its rulings.

9. Alternative Dispute Resolutions (ADR) For Islamic Banking Cases

[54] By Practice Direction N. 5 of 2010 issued by the Chief Justice of Malaysia on 16.8.2010, the civil courts are now given a suitable framework to explore every amicable process of dispute resolution before proceeding for court adjudication, including Islamic banking cases. The advantages of settling the dispute in line with the practice Direction include:

- (i) parties are able to explore all options available;

- (ii) underlying issues and common grounds may be identified;
- (iii) good relations are restored and maintained;
- (iv) terms agreed upon would be acceptable to both parties;
- (v) settlement is expedient;
- (vi) no delays in court hearing; and
- (vii) terms of settlements are final.

10. Islamic Finance Tribunal

[55] The Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia proposed that an Islamic Finance Tribunal be established. According to the Chief Justice, such a tribunal would be better equipped to deal with *Shariah* matters and indirectly, the conflict on constitutional issues within section 56 and section 57 of CMBA can be avoided. The order issued by the tribunal shall be made enforceable by the court, as in the case of arbitration awards. In addition to a tribunal, the Chief Justice also proposed that the industry explore the use of ADR in resolving Islamic financial disputes.

(See Speech by the Right Honourable Tun Arifin bin Zakaria, Chief Justice of Malaysia on “Recent Reforms In The Legal Framework Of Islamic Finance In Malaysia: Court’s Perspective”, 14th Professor Emeritus Ahmad Ibrahim Memorial Lecture, 4th December 2013).

[56] However, it should be noted that there is scepticism towards forms of alternative dispute resolution in Islamic banking cases in Malaysia. At the Asia Pacific Regional Arbitration Group Conference 2011, Halimah Yaakob, of the International Shariah Research Academy for Islamic Finance in Kuala Lumpur, stated that, following a survey that she conducted of 10 Islamic banks and 12 *takaful* operators (Islamic insurance providers) in Malaysia, she found that there was a ‘credit policy’ in many of these institutions not to include alternative dispute resolution clauses in their contracts, but to opt for litigation instead. This was said

by financial institutions to have been done, in many cases, in order to avoid credit risks for legal uncertainty.

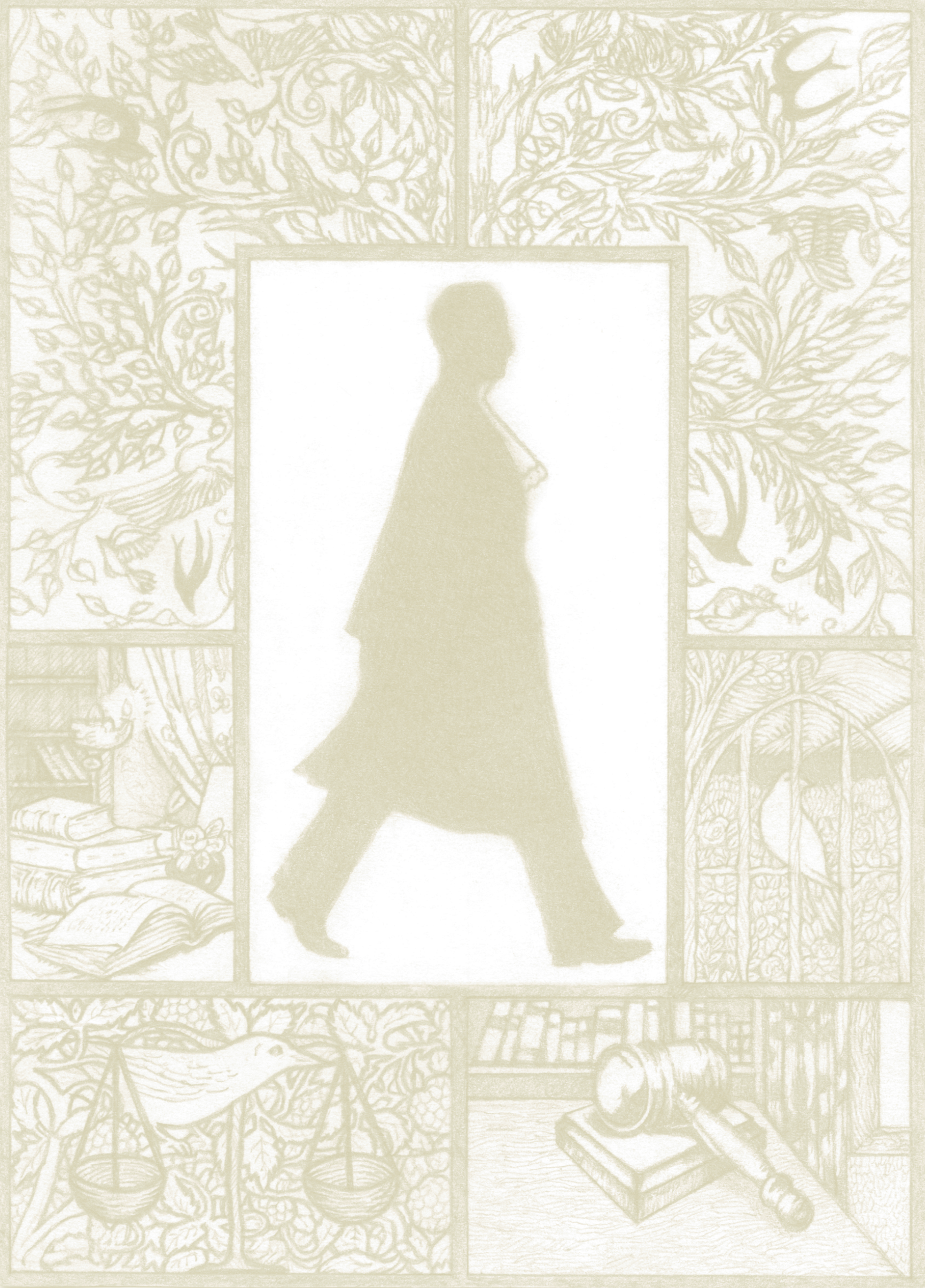
11. Conclusion

[57] The main problem in the implementation of Islamic banking in Malaysia is the perceived uncertainty of substantive Islamic law applicable to the Islamic financial transactions. This is mainly due to the uncodified nature of Islamic Law on financial transactions. In the absence of substantive law, decisions and rulings are dependent very much on individual court based on the judge's understanding of the Islamic legal literature and opinion on the issued raised.

[58] It is hoped that the introduction of the Islamic Financial and Financial Services Act 2013 (IFSA) which came into force on 30 June 2013 would bring certainty to the legal and regulatory treatment of Islamic financial transactions in Malaysia. IFSA provides legal recognition to the contractual requirements in accordance with the Shariah. IFSA also specifically provides for the enforcement of Shariah non-compliance risk and imposes a statutory duty upon Islamic institutions to ensure that their aims, operations, affairs, business and activities are in compliance with Shariah.



A cup from the Islamic era
(Courtesy of the Malaysian Islamic Museum)



CHAPTER 7

COURTS

THE ESTABLISHMENT OF THE CONSTRUCTION COURT

In his address at the Opening of the Legal Year 2013, the Rt. Hon. Chief Justice of Malaysia first indicated that the feasibility of establishing a specialist Court dealing with construction and construction related matters as proposed by the Bar Council of Malaysia and the Construction Industry Development Board [CIDB] was under serious consideration. In his speech, the Chief Justice acknowledged that:

“...the construction industry is one of the major segments that contribute to the growth of the Malaysian economy. There is no doubt that the demand for construction projects will continue to rise. ...construction cases are unique as they involve technical issues, multiple parties and varying terms of payment. Thus a specialized construction court would be beneficial to the industry. By having specialist judges, it will help in the speedy disposal of such cases. With the cooperation of CIDB, we are planning to set up the Construction Courts, one in Kuala Lumpur and one in Shah Alam soon.”

No sooner than said, the Chief Justice visited the Technology and Construction Court, better known as the TCC, in London. He was accompanied by two serving judges and representatives from CIDB. It is undeniable that London is the preferred international and national dispute resolution centre. The TCC is housed in the same premises as the Chancery, Commercial and Admiralty Divisions, and that is in the Rolls Building. The TCC is over 130 years old. With its five specialist judges, it prides itself in being “the largest court of its kind anywhere in the world. There are just three other comparable courts in Europe, America or Africa”.

It was believed that a first-hand visit experience to the TCC and a meeting cum discussion with the judges and staff involved would be highly beneficial and assist in drawing up the blue print for the Construction Court here in Malaysia. The TCC’s long experience in dealing with the voluminous documents, drawings, charts, plans and equipment which are frequently associated with construction and construction related matters was reputable.

The visit proved both timely and apt. Mr. Justice Akenhead, the Judge in charge of the TCC personally briefed the Rt. Hon. CJ and the accompanying members on the role and functions of the TCC, including the jurisdiction of, and the matters dealt by the TCC, distribution of work amongst the TCC Judges and the facilities available. The visiting Judges were invited to sit with Mr. Justice Stuart-Smith in an on-going construction trial. What was observed was the easy and speedy retrieval of documentary evidence prepared under earlier extensive but effective case managements; and the informality of proceedings - counsel were suited and not robed.



The Specialised Construction Court in Kuala Lumpur Court Complex

We brought home lessons and practical ideas which were immediately put into operation. With effect from 1 April 2013, two courts of the High Court of Malaya, in Kuala Lumpur and Shah Alam were dedicated to hearing construction and construction related disputes. This is the Judiciary’s response to the pressing needs of the construction industry, reflecting, too, that the Judiciary is aware and is abreast with the changing times.



The Specialised Construction Court in Kuala Lumpur Court Complex

In its paper recommending the setting up of a specialist Construction Court, CIDB describes-

“Construction justice is best served by the trinity of construction arbitration, statutory adjudication and the specialist construction court”.

The establishment of the Construction Court “completes” that “trinity” after the repositioning and rebranding of the Kuala Lumpur Regional Centre for Arbitration [KLRCA]; and, the enactment of the Construction Industry Payment and Adjudication Act in 2012 [although yet to come into force].

To facilitate the work of the Construction Court, Practice Direction No. 2 of 2013 was issued. This Practice Direction sets out the types of matters that will be heard in these specialist courts. Amongst the matters that fall within the construction list are building and construction disputes; engineering disputes; claims by and against engineers, architects, surveyors, accountants and other specialist advisers; claims relating to the quality of goods sold or hired and work done, materials supplied or services rendered; claims relating to the environment including pollution cases. The Construction Court also handles all challenges to decisions of arbitrators in construction and construction related matters; and appeals from the Subordinate Courts in construction and construction related cases. To assist in tracking cases, the prefix “C” has been assigned to all

construction and construction related cases filed in the Construction Court.

With the assistance of CIDB, the two dedicated Courts will be renovated and upgraded to cater for the particular demands of construction related litigation. Conference rooms for solicitors/clients and other improved facilities such as more practical layout for counsel’s table and witness boxes; and suitable electronic and visual equipment will be provided. Work is due to commence in December with completion expected in February/March 2014.

Since inception, the response has been positive. Some 90 over cases have been filed to date in the Construction Court located in the Kuala Lumpur Court Complex while about 20 have been filed in Shah Alam. These cases concern a wide variety of disputes arising from the construction of private dwellings to townships, airports, highways, public utilities, to all types of infrastructure works. These projects are in every corner of the country, both on and in the land and sea; and beyond.

The Construction Court in Kuala Lumpur is presided over by Justice Mary Lim Thiam Suan.



Justice Mary Lim Thiam Suan

THE COURTHOUSES IN MALAYSIA

In line with current needs, old courthouses were replaced or upgraded. Among factors which contributed to this are registration of cases which is on the rise over time, to facilitate installation of modern facilities and also taking into account other factors such as convenience of child witnesses and requirements relating to specialised courts.



The New Kuantan Court Complex

From its beginning in a modest single storey 1915 building, the Kuantan Court complex today stands majestically on 11.01 acres of land. It was officially opened on 27th of May 2013 by His Royal Highness DYMM Sultan Haji Ahmad Shah Al- Musta'in Billah Ibni Al-Marhum Sultan Abu Bakar Ri'ayatuddin Al-Mu'adzam Shah DKP. Present at the opening were both State and Federal dignitaries which included the Menteri Besar of Pahang, members of the Pahang royalty and the Honourable Minister in the Prime Minister's Department, YB Puan Hajah Nancy bt Hj. Shukri, the Right Honourable Chief Justice of Malaysia, Tun Arifin Zakaria and Judges from the Federal Court, the Court of Appeal and the High Court.

At an earlier visit in 2006, His Royal Highness had voiced his concern about the space constraints faced by judicial officers when serving the public. The then double storey complex built in 1973 was meant to house only the High Court and Sessions Court but had been renovated in 1992 to accommodate another 3 Magistrates' Courts.

Possession of the present site was in October 2005 and building works commenced in July 2009. 20th July 2012 saw the building being officially handed over to the Chief Registrar's office by 'Bahagian Hal Ehwal Undang-Undang (BHEUU)' of the Prime Minister's Department and operations at the complex started on 23rd July 2012.

Occupying a space of 94,000sq.meters this state of the art building houses 3 High Courts, 10 Sessions and 10 Magistrates' Courts. Other functional facilities include a mediation room, a library, separate file rooms for active and inactive files and meeting rooms. It is also equipped with the latest technology facilities providing among others CRT (court recording transcription audio visual) and e-filing services. The Kuantan Court is considered home to the SISPIIM ('Sistem Pendaftaran Integrasi Maklumat Mahkamah') and e - surat systems as both these systems were created here. Thus having a high tech building is most apt. (SISPIIM is a system whereby details of a particular case can be obtained online and is being utilised by all courts which do not have the CMS(Case Management System)service while e-surat which

is implemented throughout the country enables online recording and searches of correspondence data.)

As Head of the Judiciary, the Right Honourable Chief Justice of Malaysia, Tun Arifin Zakaria, who once served here as a High Court Judge, recorded his gratitude and appreciation to His Royal Highness for officially opening the Complex, the Honourable Minister in the Prime Minister's Department, BHEUU for providing the Judiciary with the much needed facilities to function, the state government and all other agencies for assisting in making the Complex a reality. His Lordship concluded his speech by pledging that the Judiciary will continue to give its best in serving the people and dispensing justice speedily.

THE OPENING CEREMONY OF THE KUANTAN COURT COMPLEX 2013



Duli Yang Maha Mulia Sultan Haji Ahmad Shah Al-Musta'in Billah Ibni Al-Marhum Sultan Abu Bakar Ri'ayatuddin Al-Mu'Adzam Shah inspecting a model of a site after the Opening Ceremony of Kuantan Court Complex. Next to His Majesty is The Rt. Hon. Chief Justice Arifin Zakaria

Looking back in time...

The opening ceremony of the Petaling Jaya Court Building in 1970



His Royal Highness the Sultan of Selangor officiated the opening of the Petaling Jaya Court Building on 17 October 1970, with the Lord President Tun Azmi Mohamed and Dato Harun Idris Selangor Chief Minister in attendance.

(L-R): Sultan Salahuddin Abdul Aziz Shah Al-Haj, Tun Azmi Mohamed and Dato Harun Idris

(Picture courtesy of the National Archives)

The Establishment of Malaysia's Court of Appeal, 1994



The then Yang DiPertuan Agong Tuanku Ja'far Ibni Al Marhum Tuanku Abdul Rahman officiating the establishment of the Court of Appeal at Sultan Abdul Samad Building on 17 September 1994

(L-R): (On the Bench) Tun Mohd Eusoff Chin, Tun Abdul Hamid Omar and Yang DiPertuan Agong Tuanku Ja'far Ibni Al Marhum Tuanku Abdul Rahman (Picture courtesy of the National Archives)

Court buildings in the old days...

Old court Buildings or rather, what we have left of them, remain one of the most visible vestiges of early construction activity in our country. Amidst the growth of modern cutting edge court structures, these remnants of by-gone days remain elegantly proportioned, reminiscent of redolent antiquity.

A random selection of court buildings, old and new are shown in these pages.



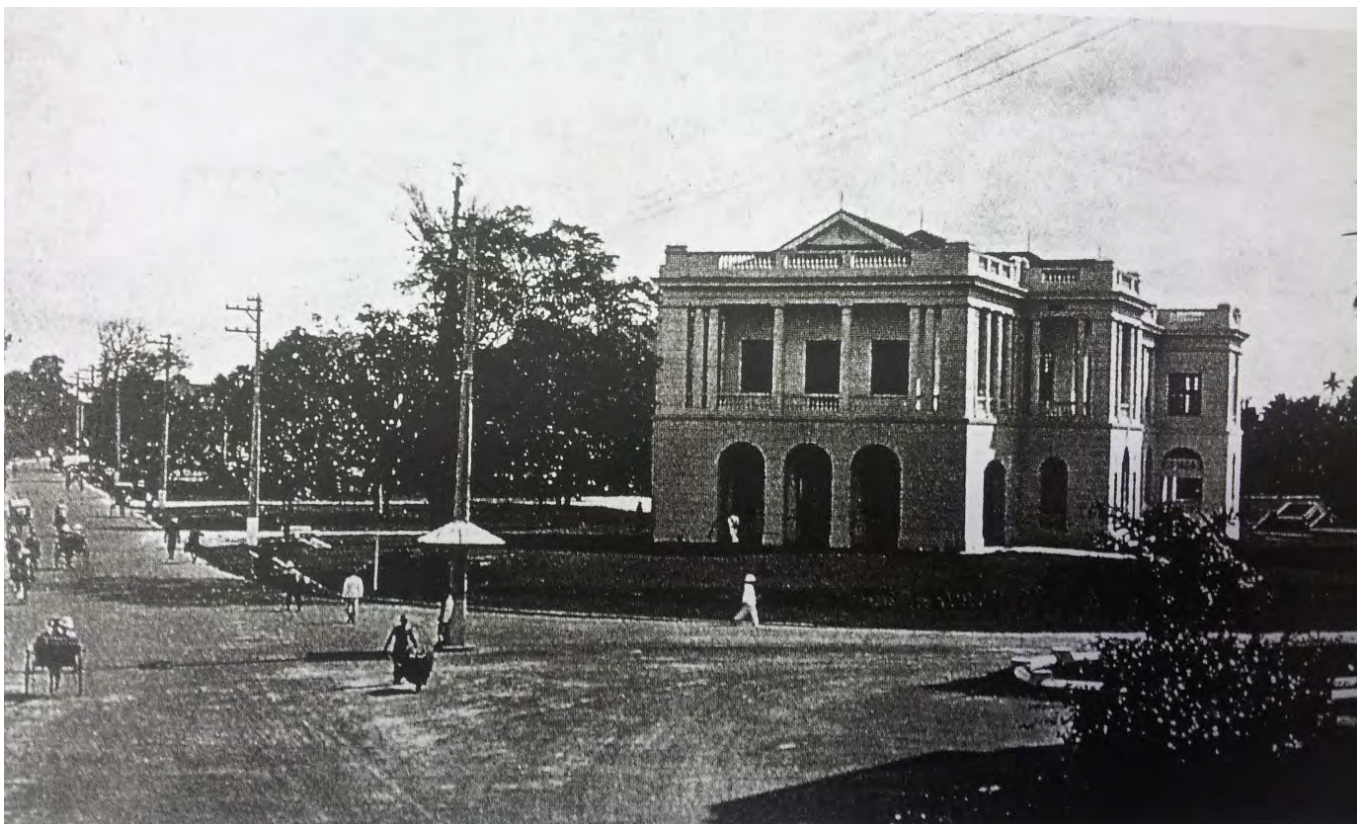
The Penang Court in 1880 (Picture courtesy of the National Archives)



The Supreme Court Penang (Picture courtesy of the National Archives)



The Supreme Court Kuala Lumpur in 1990 (Picture courtesy of the National Archives)



The Ipoh Supreme Court Building in 1929

Court buildings...



The Alor Star Court Complex



The Ipoh High Court



The Kuala Lumpur Court Complex



The Johor Bharu Court Complex



An aerial view of the Palace of Justice (right hand corner) (Picture courtesy of Koperal Muhamad Norli)

COURT BUILDINGS IN SABAH & SARAWAK

The New Kuching Court Complex



The New Kuching Court Complex (Picture courtesy of the Kuching Court)

The New Court Complex houses the High Court, the Sessions Court and the Magistrates' Court of Kuching on the lower level while the chambers are located on the upper level. The design for the New Kuching Court Complex was derived from the idea of the Chief Minister of Sarawak, Pehin Sri Abdul Taib Mahmud who drew inspiration from the figure of a bird spreading its wings. In addition to that design, the New Courts Complex features a central portico that rises above the rest of the building, which symbolizes the Melanau headgear 'Rabong'. It was officiated by the then Tuan Yang Terutama Yang Dipertua Negeri Sarawak Tun Patinggi (Dr.) Ahmad Zaidi Adruce bin Muhammed Noor, on 6th October 2000.

The Round Tower House



The Round Tower House (Picture courtesy of the Kuching Court)

Described by the Gazette as "a pretty building, entirely of brick and forms a useful ornamental addition to our Public Building", The Round Tower is one of the first buildings erected for the replacement of the building burnt down during the fire which swept through Carpenter Street in early 1884. It was completed in 1886. Built as a dispensary, it is of typical colonial architecture adapted to suit the equatorial climate. With the presence of two towers which faced the main road, built entirely of bricks and resembling a fort, it is commonly thought that it was intended to act as a fort in an emergency. It was occupied by the Labour Department until 1980 and thereafter by the Lower Court registry of the Judiciary Department until the Year 2000 when the court moved to the New Court Complex.

The Old Court House



The Old Court House (Picture courtesy of the Kuching Court)

Originally a two-storey wooden building intended for a day school by a German missionary, this colonial type building was officially opened on 3rd June 1874 at 11 a.m. by Captain W.H. Rodway. The courtroom, which measured 64 feet by 42 feet was joined at one end by the Resident's Office, the Surveyor's Office, and the Government Printing Press while the Treasury, Audit, Post Office and Shipping Office were all located at the other end. The court's beautiful ceiling was designed and built by people from Baram and today it is one of the most outstanding features of the court room. The clock tower was added in 1883. Since the completion of the court house, all Council 'Negri' meetings commencing with the fifth meeting in 1876, have been held there. This building witnessed the fate of the Sarawak Nationalist, Rosli Dhobi when the Supreme Court affirmed his death sentence.

The Astana



The Astana (Picture courtesy of the Kuching Court)

Formerly known as the Government House, the Astana has throughout the years served as the venue for many official functions. It was here that the regular hearing cases were conducted and the First Code of Laws enforced by Sir James Brooke with the assistance of local chieftains and dignitaries.

The Beaufort Magistrate's Court

Beaufort Magistrate's Court is located in the Town of Beaufort, approximately 100 km from Kota Kinabalu, the capital of the state of Sabah. This building consists of a hearing court for a Magistrate and was completed in 2008. The Court was fully functional on August 2008.



The Beaufort Magistrate's Court (Picture courtesy of the Kuching Court)

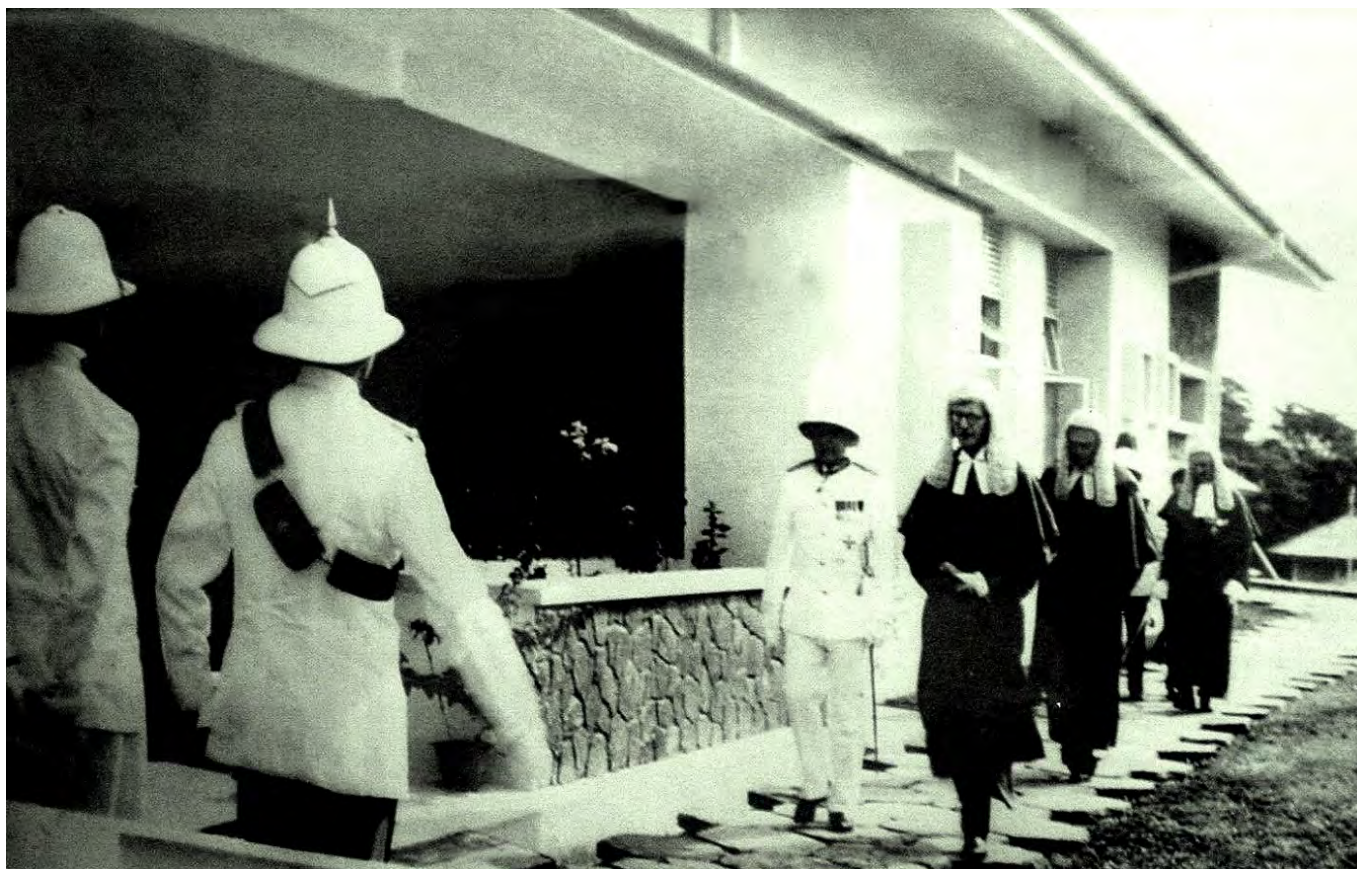
The Lahad Datu Magistrate's Court

Lahad Datu Magistrate's Court is located in the Town of Lahad Datu, a town and district located in Tawau, in the east of Sabah. This building consists of a hearing court for a Magistrate.



The Lahad Datu Magistrate's Court (Picture courtesy of the Kuching Court)

The Sandakan Court



The Sandakan Courthouse in 1957 (Picture courtesy of the Kuching Court)

The history of Sandakan Court may be said to have begun from the time of the British era. The Old Sandakan Court was located on a hill and was used since before 1957. In the year 2001, a new courthouse was built in Sandakan. This new courthouse building was declared open in 2005 by the Yang di-Pertua Negeri Sabah Tun Datuk Seri Panglima Haji Ahmad Shah bin Abdullah.



The Sandakan Court Complex in 2013 (Picture courtesy of the Kuching Court)



CHAPTER 8

JUDICIAL TRAINING

COURSES CONDUCTED BY THE JUDICIAL ACADEMY IN 2013



Seminar on “How To Deal With Cases Under 39B of The Dangerous Drugs Act 1952” at Banglo Transit, Putrajaya

The Judicial Academy (JAC) continues to provide judicial training to Judges to improve productivity, challenge current perceptions of

justice and inspire judges to achieve judicial excellence. In 2013, the JAC conducted the following courses:



Seminar on “How To Deal With Cases Under 39B of The Dangerous Drugs Act 1952” at Banglo Transit, Putrajaya (L – R) The Rt. Hon. Justice Zulkefli Ahmad Makinuddin, Justice Ahmad bin Maarof and Justice Azahar Mohamed



Seminar on “Company Law” at Banglo Transit, Putrajaya (L – R) Justice Mohamad Ariff bin Md Yusof and Justice Hishamudin bin Md Yunus

(1) Courses Facilitated By Senior Judges

No.	Course Title	Date	Number of participants
i	<i>"Company Law"</i>	23 - 24 February 2013	15
ii	<i>"How to Deal with Cases Under Section 39B of the Dangerous Drugs Act 1952"</i>	20 - 21 April 2013	14
iii	<i>"Appellate Intervention and Revision"</i>	6 - 7 July 2013	14
Total			43

(2) Courses Conducted In Collaboration With Other Agencies

- i) The Construction Industry Payment and Adjudication Act 2012: The Role of the Court

This was the first seminar organised by the JAC in collaboration with the Kuala Lumpur Regional Centre for Arbitration (KLRCA). The seminar was

officiated by The Rt. Hon. Tun Arifin bin Zakaria, Chief Justice. A total of 115 participants comprising Judges and legal officers were involved in the seminar.

The seminar featured invited speakers who are experts in the construction industry namely Ir. Harbans Singh from Malaysia, Ms. Rashda Rana from Australia and Mr. Adrian Hughes QC from the United Kingdom.



The Islamic Finance Workshop Series for Judges: Managing Islamic Banking Cases" which was held on 28-29 June 2013 at Lanai Kijang, Bank Negara Malaysia, Kuala Lumpur
From L-R: Justice Zulkefli bin Ahmad Makinudin, Chief Justice Arifin Zakaria, Justice Md Raus Sharif and Tun Abdul Hamid Mohamad (former Chief Justice)

ii) “Islamic Finance Workshop Series for Judges: Managing Islamic Banking Cases”

The two-day workshop was held on 28-29 June 2013 at Lanai Kijang, Bank Negara Malaysia, Kuala Lumpur. It was co-organised by the Judicial Appointments Commission (JAC) and Bank Negara Malaysia (BNM). This workshop was officiated by The Rt. Hon. Tun Arifin bin Zakaria, Chief Justice. Also in attendance were The Rt. Hon. Tan Sri Md. Raus bin Sharif, President of the Court of Appeal, The Rt. Hon. Tan Sri Dato’ Seri Zulkefli bin Ahmad Makinudin, Chief Judge of Malaya and Tan Sri Zeti Akhtar Aziz, Governor of Bank Negara.

A total of 85 participants comprising 56 Judges from the Federal Court, Court of Appeal, High Court and Judicial Commissioners as well as 29 Legal Officers attended this workshop. The objective of this workshop was to expose judges to current legal issues and major challenges faced by Islamic banking institutions.

iii) Construction Law : Issues and Challenges Workshop

The workshop held on 10th and 11th October 2013 was the second collaboration between the JAC and the Kuala Lumpur Centre for Arbitration (KLRC). It was subsequent to the seminar entitled “The Construction Industry Payment and Adjudication Act 2012 : Role of the Court “ held on 15th and 16th March 2013. The objective of this workshop was to enhance the participants’ understanding of the technical aspects relating to the construction industry and laws. The workshop was facilitated by Ir. Harbans Singh, an arbitrator, adjudicator and professional mediator who specialises in construction law and alternative dispute resolution.

A total of 19 participants comprising 3 Appeal Court Judges, 10 High Court Judges and 6 Judicial Commissioners attended this workshop. It was officiated by The Rt. Hon. Arifin b. Zakaria, the Chief Justice. The workshop was divided into 8 modules that emphasised the main issues



The Rt. Hon. Justice Arifin Zakaria and Tan Sri Dato’ Sri Dr. Zeti Akhtar Aziz, the Governor of Bank Negara Malaysia with Judges and other participants at the The Islamic Finance Workshop Series for Judges : Managing Islamic Banking Cases”

commonly encountered in the construction industry e.g project implementation, contract implementation, tender process and financial issues. The closing ceremony was graced by The Rt. Hon. Justice Zulkefli b. Ahmad Makinudin, The Chief Judge of Malaya.



The Rt. Hon. Chief Justice Arifin Zakaria officiating the Construction Law : Issues and Challenges Workshop



The Rt. Hon. Chief Justice Arifin Zakaria and The Rt. Hon. Justice Zulkefli Ahmad Makinuddin during the Construction Law : Issues and Challenges Workshop facilitated by Ir. Harbans Singh

COURSES AND SEMINARS ORGANISED BY THE JUDICIARY

The following seminars were conducted by the Judiciary in 2013:

- (1) **Dialogue Session between the Honourable Society of the Middle Temple and the Malaysian Judiciary**



The Judiciary of England and Wales representatives during the Dialogue Session between the Honourable Society of the Middle Temple and Malaysian Judiciary
(L – R) Sir Paul Jenkins, Lord Sir Igor Judge and Mr. Christopher Clarke

The Honourable Society of the Middle Temple in its quest to facilitate an exchange of ideas and discuss issues concerning the judiciary had with, thirty two of its members graced the Palace of Justice on September 21, 2013. Led by the Master Treasurer, Mr Christopher Symons QC and with honourable representatives from the Judiciary of England and Wales, Lord Sir Igor Judge, the Lord Chief Justice of England and Wales and Lord Justice of the Court of Appeal, Mr Christopher Clarke and a few High Court Judges were more than delighted to meet sixty six of their counterparts from the Malaysian Judiciary for the session.



The Malaysian Judiciary representatives during the Dialogue between the Honourable Society of the Middle Temple and Malaysian Judiciary
(L – R) Justice Mohamad Ariff Md. Yusof and The Rt. Hon. Justice Richard Malanjum

(2) Talk On Mediation By Judge Clifford Wallace (Us Supreme Court, Ninth Circuit)

The Malaysian Judiciary is always honoured to have distinguished speakers for its continuous learning development programme. Speakers like Judge Clifford Wallace, now the third most senior Judge on the Ninth Circuit and the Chief Judge Emeritus of the Court are always full of new insights and ideas that shift paradigms of many attendees. For this session, about 100 people attended comprising apex and appellate court Judges, Kuala Lumpur and Shah Alam High Court Judges and 29 Judges from Sri Lanka. He discussed several aspects of mediation especially on court managerial process emphasizing on a case weightage system to expedite court annexed mediation.

(3) 1st Asia and Pacific International Colloquium on Environmental Rule of Law

On the 11th - 12th December 2013, the Malaysian Judiciary was given the honour to co -host the 1st Asia and Pacific International Colloquium on Environmental Rule of Law jointly with the United Nations Environment Programme (UNEP). With the theme of 'Defining a New Future for Environmental Justice, Governance and Law', the two-day Colloquium encompassed 6 interactive sessions on various issues on environmental law

and related topics such as human rights and sustainable development. Attended by a number of Chief Justices, members of the judiciary and government agencies of the Asia Pacific Region, academicians and other partner representatives of UNEP; the Colloquium was successful in achieving its aims. At the conclusion of the Colloquium, the Putrajaya Statement was issued identifying action plans to gradually advance the development and implementation of Environmental Rule of Law in the region.



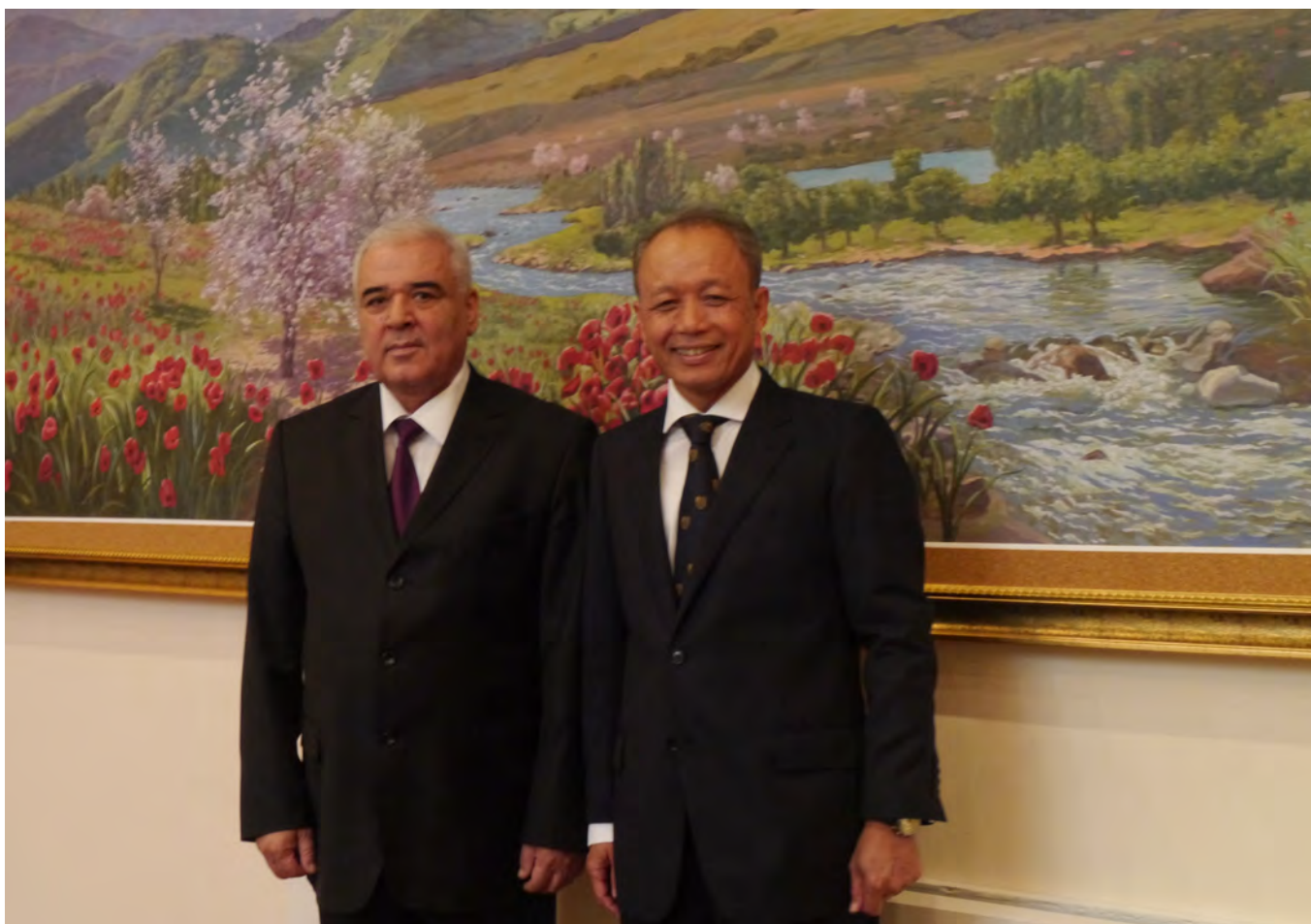
The Rt. Hon. Chief Justice Arifin Zakaria and Mr. Bakary Kante, UNEP's Director of Environmental Law and Conventions (DELIC) during the 1st Asia Pacific International Colloquium On Environmental Rule Of Law which was held at JW Marriot Hotel Putrajaya on 11th-12th December 2013



The Delegates and Participants taking a group photo during the 1st Asia Pacific International Colloquium On Environmental Rule Of Law which was held at JW Marriot Hotel Putrajaya on 11th-12th December 2013

OVERSEAS CONFERENCES

The followings are some of the major conferences attended by senior members of the Judiciary in the year 2013:



The Rt.Hon Chief Justice of Malaysia, Tun Arifin Zakaria (right) with H.E.Buritash Mustafaev (left), Chairman of the Supreme Court of Uzbekistan

(1) International Seminar on Implementation of ICT in Courts - Importance of Increasing Efficiency of Courts: Experience of Foreign Countries, Bukhara, Uzbekistan.

On 18th September 2013, the Right Honourable Chief Justice of Malaysia, Tun Arifin Zakaria attended a seminar on *“Implementation of ICT in Courts - Importance of Increasing Efficiency of Courts: Experience of Foreign Countries”* at

Bukhara, Uzbekistan, organised principally by the Supreme Court of Uzbekistan. At the seminar, the Chief Justice presented a paper entitled *“Review of ICT Implementation Mechanism in the Judiciary of Malaysia”*, and shared insights on the use of ICT in Malaysian courts. Also present at the seminar were representatives from South Korea, USA and Estonia who similarly shared their experience.



The Rt. Hon. Chief Justice Arifin Zakaria (sitting second from left) as one of the presenters during the 2nd International Summit of the High Court. Sitting on the left is Feruza Djamshieva, the representative from the Supreme Court of Kyrgyzstan

(2) The 2nd International Summit of High Courts - Transparency In Judicial Process, Istanbul, Turkey

At the invitation of the President of Court of Cassation, Republic of Turkey and UNDP Turkey, Chief Justice Tun Arifin bin Zakaria participated in the 2nd International Summit of the High Courts which took place in Istanbul, Turkey on 20th to 22nd November 2013. With the theme 'Transparency in the Judicial Process', the conference venue was abuzz with ceaseless activity and discussion by all delegates. The Chief Justice of Malaysia presented a paper on '*National Best Practices on Transparency in the Judicial Process: Malaysia's Experience*' with special focus on three main areas namely; Educating students on the judicial process, Outreach programmes to educate the public on the judicial process, Access and assistance to the media with the establishment of a media office.

(3) The Commonwealth Judicial Education Institute (CJEI) Patron Chief Justices' Meeting 2013 and the 18th Commonwealth Law Conference (CLC) 2013, Cape Town, South Africa

On 14 April 2013, Justice Raus Sharif, the President of the Court of Appeal and Justice Richard Malanjum, Chief Judge of the High Court of Sabah and Sarawak attended the Commonwealth Judicial Education Institute (CJEI) Patron Chief Justices' Meeting 2013 in the Westin Hotel, Cape Town, South Africa. The meeting is a platform for exchanging information on common problems and solutions for the Judiciary within the Commonwealth countries. Justice Raus Sharif and Justice Richard Malanjum also attended the 18th Commonwealth Law Conference (CLC) 2013 which was held from 15th to 18th, April 2013 at the Cape Town International Convention Centre, Cape Town, South Africa. The Conference focused on the on current trends in Corporate and Commercial Law, Legal and Judicial Profession, Constitutionalism, Human Rights and the Rule of Law and Contemporary Legal Topics.



The Rt. Hon Justice Md Raus Shariff (standing, 4th row, 6th from left) and The Rt. Hon. Justice Richard Malanjum (standing, 4th row, 3^d from left) with the delegates attending The Commonwealth Judicial Education Institute (CJEL) Patron Chief Justices' Meeting 2013 in the Westin Hotel, Cape Town, South Africa.



The Rt. Hon. Justice Zulkefli Ahmad Makinuddin with the Honourable Chief Justice Marilyn Warren, the Chief Justice of Victoria

(4) The 26th Annual Conference On International Responses On Social And Justice Challenges And Visit To The Supreme Court Of Victoria

On 15th August 2013, the Right Honourable Chief Judge of Malaya, Tan Sri Dato' Seri Zulkefli Ahmad Makinudin attended the 26th Annual Conference on International Social

Responses on Social Justice organised by the International Society for the Reform of Criminal Law (ISRCL) in Hobart, Tasmania, Australia. At the conference, the Right Honourable Chief Judge of Malaya presented a paper entitled "*Transforming Malaysia: the Fight against Corruption and the Role of the Courts in the Expedition of Corruption Trials*". A visit was also made to the Supreme Court of Victoria.



The Chief Justice of Singapore, Chief Justice Sundaresh Menon (right) presents a token of appreciation to The Rt. Hon. Richard Malanjum (left)

(5) Visit To The Singapore Subordinate Court And The 4th Judicial Seminar On Commercial Litigation

From the 14th to 18th May 2013, the Malaysian Judiciary sent a delegation headed by the Right Honourable Tan Sri Dato' Seri Zulkefli Ahmad Chief Judge of Malaya to attend the 4th Judicial and Commercial Litigation Seminar organised by the Supreme Court of Singapore. The delegation also took the opportunity to visit the Singapore Subordinate Courts with a view to learning new features and technology advances in its court administration.

(6) International Symposium On Code Of Judicial Conduct, Taipei, Taiwan

From 30th September 2013 to 1st October 2013, Justice Jeffrey Tan (FCJ), together with Justice Mohd Hishamudin bin Mohd Yunus (JCA) attended the International Symposium on Code of Judicial Conduct at the Taiwan Academy of Banking and Finance, Taipei, Taiwan. The Symposium was jointly organized by the Judges Academy of Taiwan and Konrad Adenauer Stiftung ('KAS'). Key issues discussed during the conference revolved around various aspects of judicial integrity and code of conduct. Justice Mohd Hishamudin presented a paper titled "*The Adoption of the Bangalore Principles of Judicial Conduct in Malaysia*" at the Symposium.



Participants of the International Symposium On Code Of Judicial Conduct, Taipei, Taiwan
Justice Jeffrey Tan (seated 5th from left) and Justice Hishamudin (seated 4th from left)

VISITS BY FOREIGN DIGNITARIES

Study visits are mutually rewarding, enabling the host and foreign legal delegations to exchange insights about judicial administration and the challenges faced in their legal systems. In 2013, the Malaysian Judiciary hosted foreign judges, lawyers, court officials and justice ministry officials from various countries. The agenda of the visits which was tailored to the needs of the delegates enabled them to acquire in-depth understanding of the Malaysian judicial practice, case management system and courtroom

technology. This included a briefing session on the implementation of the E-court system and its effectiveness. Apart from that, the delegates were also taken to visit the courtrooms and observed the use of the Court Recording and Transcription (CRT) which enables proceedings to be recorded digitally in court.

In 2013, the Malaysian Judiciary played host to foreign delegations as follows:

NO	DELEGATIONS	DATE
1.	The President of the Constitutional Court of Korea Head of Delegation: The Hon Mr LEE Kang-Kook	10/1/2013
2.	Committee on Justice, Human and Good Governance, National Economic and Social Advisory Council of Thailand (NESAC) Head of Delegation: Mr Suttinun Chantara, Chairman of the Committee	22/1/2013
3.	The Chief Registrar, Supreme Court of Brunei Head of Delegation: Pengiran Hajah Rostaina Pengiran Haji Duraman, Chief Registrar of the Supreme Court of Brunei	10/04/2013
4.	President of Supreme Judiciary Council of Qatar Head of Delegation: HE Mr. Masoud Mohammed Al-Ameri	25/5/2013
5.	Members of Korean Bar Association (Courtesy Call on the Chief Justice of Malaysia) Head of Delegation: Mr. Chul-Whan We (President)	4/07/2013
6.	Judges and Judicial Officers from Thailand Head of Delegation: The Hon Mr. Anusorn Thasrimen, Presiding Justice of the Court of Appeal, Region 8	2/09/2013
7.	Chief Justice of the Constitutional Court of South Africa Head of Delegation: The Hon Chief Justice Mogoeng Mogoeng	21/10/2013
8.	Judges of Sri Lanka Head of Delegation: The Hon MR. L.T.B. Dehideniya, High Court Judge of Colombo	30/10/2013
9.	Minister of Justice and Constitutional Affairs, Uganda Head of Delegation: The Hon Kahinda Otafiire	7/11/2013
10.	The Right Hon Lord Sumption, Justice of the Supreme Court of United Kingdom (Meeting with the Appellate Court Judges)	19/11/2013
11.	The President of International Criminal Court (ICC) and member of the International Court of Justice (ICJ) The Hague (Courtesy Call on the Chief Justice of Malaysia) Head of Delegation: The Hon Judge Sang-Hyun Song, President of the International Criminal Court (ICC)	5/12/2013



Visit by Judges and Judicial Officers from Thailand

The Rt. Hon. Chief Justice Arifin bin Zakaria with Mr Justice Mr. Anusorn Srimen, Presiding Justice of the Court of Appeal, Region VIII of Thailand, on his right and Dean of Law Faculty, UM, Assoc. Prof Dr Johan Shamsuddin Haji Sabaruddin



Visit by the President of Constitutional Court of Korea

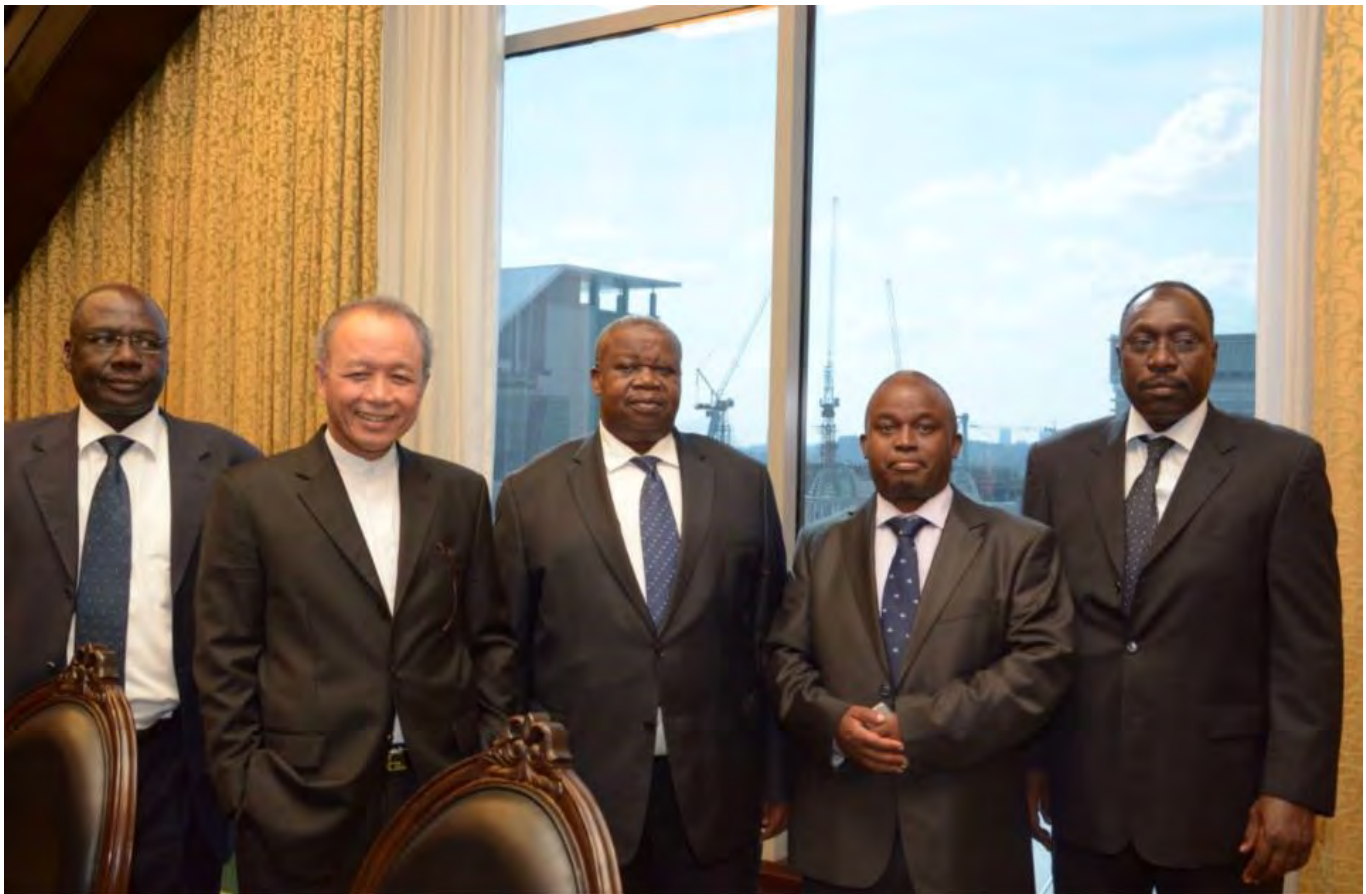
The Rt. Hon. Justice Zulkefli Ahmad Makinudin (2nd from left), The Rt. Hon. Chief Justice Arifin bin Zakaria (4th from left), The Rt. Hon. Justice Md Raus Shariff (6th from left), The Rt. Hon. Justice Richard Malanjum (7th from left) and The Hon President Dr. LEE, Kang-Kook, the President of the Constitutional Court of Korea (5th from left)



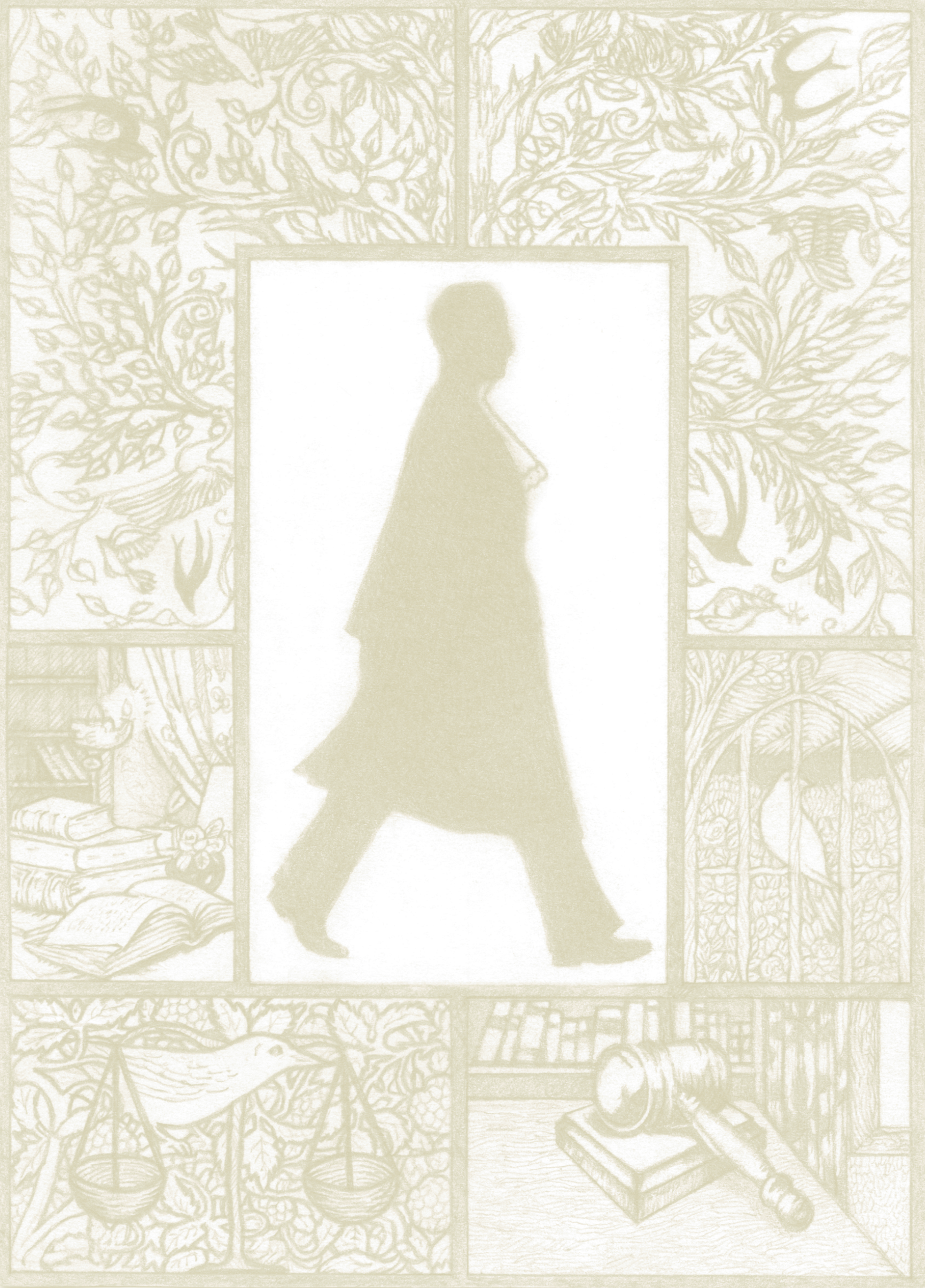
Visit by members of Korean Bar Association to Istana Kehakiman
The Rt. Hon. Chief Justice Arifin bin Zakaria Arifin bin Zakaria with President of Korean Bar Association, Mr Chul-Whan We on his right



Visit by President of Supreme Judiciary Council of Qatar
The Rt. Hon. Chief Justice Arifin bin Zakaria with The Rt. Hon. Mr Masaoud Mohammed Al-Ameri, President of Supreme Judiciary Council of Qatar



Visit by Minister of Justice and Constitutional Affairs of Uganda
The Rt. Hon. Chief Justice Arifin bin Zakaria with The Hon Kahinda Otafiire, Minister of Justice and Constitutional Affairs of Uganda on his right.



CHAPTER 9

CASES OF INTEREST



CASES OF INTEREST FOR 2013

CIVIL CASES

As in previous years, 2013 saw our judges delivering numerous important and landmark decisions which has significant impact on the public and administration of civil justice in Malaysia. The following are only a selection of cases covering a broad spectrum of issues.



Writ of Summons in the Supreme Court of the Straits Settlement of Malacca in the year of 1889

1) Bisi ak Jinggot @ Hilarion Bisi ak Jenggut v. Superintendent of Lands and Surveys Kuching Division & 3 Ors [2013] 4 AMR 701

The appellant had bought eight lots of land by way of sale and purchase agreements from a vendors. The appellant then sought declaratory relief to the effect that he had acquired native customary rights over the lands that are now included in the block of land under the documents of title issued in favour of the fourth respondent. The High Court in dismissing the appellant's claim, held inter alia that native customary

rights cannot be transferred to another person via ordinary sale and purchase transactions. The appellant's appeal against the said decision was unanimously dismissed by the Court of Appeal. On further appeal to the Federal Court, leave was granted on three questions of law. On the day of the appeal the appellant invited the Court to determine only 2 questions of law.

Issues: 1) Whether the alleged *adat* or custom that "individual customary rights are not transferable by sale or otherwise for value" referred to and applied in *Sumbang ak Sekam v Engkarang ak Ajah* [1958] SCR 95 ceased to

exist and became unenforceable upon enactment of the same as law under Section 2 of the Fruit Trees Order 1899 of the Rajah's Order and/or upon the subsequent repeal of the Fruit Trees Order 1899.

2) Whether by virtue of Section 6 of the Land Code, the alleged *adat* or custom applies only to land gazetted as native communal reserve.

Decision: The Federal Court dismissed the appeal and held that the appellant cannot inherit these eight lots as he is not an heir to the vendors. The appellant, though an Iban, will fail to qualify as a legitimate recipient of the *temuda* from the vendors as he is not a native of that community. The ineligibility of the appellant to inherit or acquire through the *tungkus asi* procedure, establishes that individual customary rights are not transferable by sale or otherwise for value thus invalidating the said sale and purchase agreements. The position of the appellant is tenuous.

Native customary land was and is intended for the upkeep and survival of the inhabitants of each longhouse community. There is no element of commercial enterprise involved. NCL land does not stand on the same footing as titled land alienated under the Land Code (Cap 81) (Sarawak). As such, *adat* and customs of the natives including the Ibans are very relevant in the creation and existence of such customary land.

2) Director of Forests, Sarawak & Anor v. Balare Jabu & Ors And Another Appeal [2012] 7 CLJ 685, FC

There are two appeals. They were heard together. The respondents were the plaintiffs. The plaintiffs claimed for numerous declaratory reliefs including a claim of native customary rights ('NCR') over an area of land in Kampung Long Lamai, Miri, Sarawak and described by the respondents as "Tana Pengurip" and that of the issuance of a timber licence, Forest Timber Licence No. T/0390 ("the Licence") by the 1st and 2nd appellants in appeal 1 in favour of the appellant in appeal 2 was null and void in so far as it impaired the respondents' NCR land. The licence was issued on 30.3.1992 and the expiry date was 29.3.2012. At the time the suit was filed, the licence was still valid.

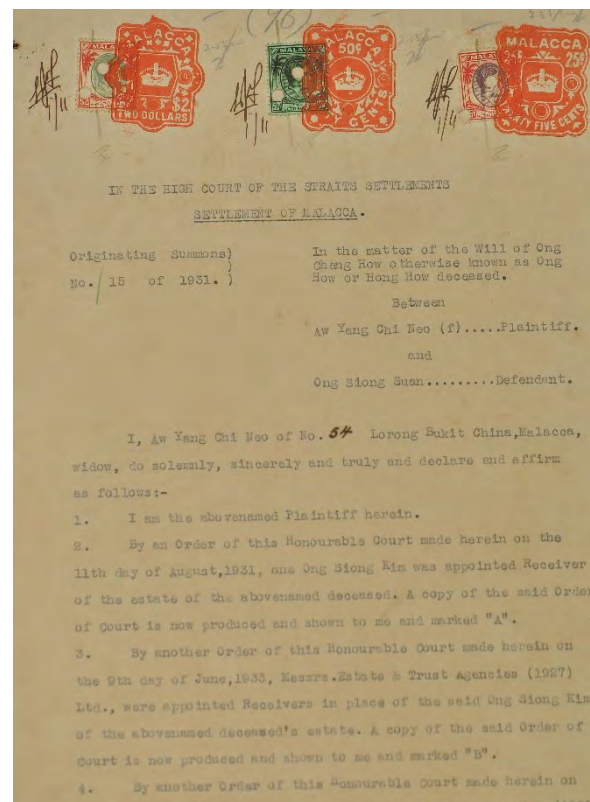
The appellants filed an application under O 18 r 19 of the Rules of the High Court, 1980 ("RHC 1980") to strike out the respondents' case on the ground that limitation had set in; and it was allowed by the High Court which held that the Public Authorities Protection Act 1948 ("PAPA") and the Limitation Ordinance of Sarawak ("LOS") had barred the respondents' claim.

On appeal to the Court of Appeal, the High Court's decision was reversed.

Dissatisfied, the appellants sought leave and was duly granted by the the Federal Court to appeal.

The Question before The Federal Court: The issue is whether in this case the action of the respondents is statute-barred. The question for consideration reads:

"Whether the defence of limitation under section 2 of the Public Authorities Protection Act 1948 and/or Sarawak Limitation Ordinance, is an answer to a suit, action, or proceedings for declaration or declaratory orders."



Originating Summons filed in the High Court of Straits Settlements, Settlement of Malacca in the year of 1931

The Federal Court held that as long as the licence remains valid, it continues to be subject to the respondent's NCR in respect of the land concerned. The Court also held that as long as the licence remains valid, there is always a threat to the respondents' NCR thereby entitling them to a valid cause of action premised on the second limb of section 2(a) of PAPA, because it is a case of a continuance of injury or damage.

Decision: The Federal Court dismissed the appeal and remitted the case to the High Court for full trial.

3) LB (Lian Bee) Confectionery Sdn Bhd v. QAF Ltd [2012] 4 MLJ 20, FC

QAF Limited (QAF), a Singaporean corporation, being the registered proprietor of the trademark "Squiggles" in Malaysia for bread, buns, pastry, bread rolls, confectionery, biscuits and cakes, had sent a cease and desist letter to LB (Lian Bee) Confectionery (Lian Bee) demanding, inter alia, that it cease manufacturing and distributing cream-filled buns which displayed the Squiggle mark as it was an infringement of the registered Squiggles trademark.

In retaliation, Lian Bee filed an application to cancel QAF's registered Squiggles trademark on the basis of non-use. Lian Bee contended that there was no use in good faith of the Squiggles trademark by QAF as registered proprietor. The Squiggles trademark was instead used by Gardenia Bakeries (KL), a subsidiary of QAF, which was properly licensed to use the Squiggles trademark but which had not, at the time of Lian Bee's application, been recorded as a registered user on the Malaysian Trade Mark Register.

The High Court dismissed Lian Bee's application.

The Court of Appeal upheld the decision and findings of the High Court. Lian Bee then sought and was granted leave to appeal to the Federal Court on the following questions:

- (i) Whether for the purpose of section 46(1)(b) of the Trade Marks Act, 1976 (TMA), the Court must first decide the competing rights of the parties involved before it decides whether an applicant is a "person

aggrieved" under section 46 of the same Act?

- (ii) Whether for the purpose of section 46(1)(b) of the TMA, the "registered user" referred to in the said section 46(1)(b) includes a person who has obtained a licence to use the registered trademark but not registered as a registered user pursuant to section 48(1) of the TMA?
- (iii) Whether for the purpose of section 46(1)(b) of the TMA, the effective period of the permitted use of a registered trademark by a user under section 48(1) of the TMA read together with Regulation 81(2) of the Trade Marks Regulations 1997 may predate the application as "registered user" under section 48(1) of the TMA?

The Federal Court dismissed the appeal and answered the first and second questions in the negative and the third question in the affirmative.

4) National Union of Bank Employees v. Director General of Trade Union & Anor [2013] 7 CLJ 957

The appellant is a National Union of Bank Employees representing the non-executive employees employed by Maybank. On 3.1.2011, the 1st respondent who is the Director General of Trade Union registered an in-house union known as 'Mayneu' with similar function as the appellant, representing Maybank's non-executive employees without consulting and seeking the view of the appellant. The appellant then wrote to the Minister to review and cancel the registration of Mayneu pursuant to section 71A of the Trade Union Act 1959. Whilst the appeal to the Minister was still pending, the appellant filed an ex-parte application for judicial review under O53 r.3(2) of the Rules of the High Court, 1980. The High Court granted the leave on 13.5.2011 and pursuant to Order 51 rule 4(1) of the Rules of the High Court, 1980 directed the appellant to file a notice in Form IIIB within 14 days from the date when leave was granted. However, Form IIIB was only filed by the appellant 42 days after leave was granted. The appellant therefore filed an application by way of Summon in Chambers for extension of time to file Form IIIB. The High Court refused the extension of time and

on appeal to the Court of Appeal, the High Court's decision was affirmed. The appellant obtained leave to appeal to the Federal Court against that decision and the question posted for the determination of the Federal Court is whether a delay in filing the notice of hearing of application for judicial review (Form IIIB) pursuant to O.53 r.4 of the Rules of the High Court, 1980 is fatal to hearing an application for judicial review.

Decision: The Federal Court allowed the appeal and answered the question in the negative. Arifin Zakaria CJ held that the grant of an extension of time by the Court is one of discretion. Generally, the Appellate Courts are quite reluctant to interfere with the exercise of discretion by the Courts below. However on the facts of the present appeal, that is, the cause papers had been served on both respondents and the date of hearing of the judicial review application was fixed in the presence of all parties, the filing of Form IIIB is nothing more than a mere formality and the failure of the appellant to file Form IIIB within the time stipulated was no more than a mere technical non-compliance and had not caused any prejudice to the respondent.

5) Pilecon Realty Sdn Bhd v. Public Bank Berhad & 2 Ors (and Another Appeal) [2013] 4 AMR 481

Pilecon Realty Sdn Bhd ("Pilecon") is an unsecured creditor of one company i.e. Transbay Ventures Sdn Bhd ("Transbay") after the latter had been wound up on January 27, 2006 by Public Bank Berhad ("the bank"). Transbay defaulted in its repayment and the bank as the chargee of a property belonging to Transbay obtained a judgment and order for sale of the said property by way of public auction. However the property was not sold by way of public auction, but by way of a tender service. Pilecon and the liquidators then sought the court's direction as to whether the bank is entitled to charge interest at the contractual rates on the amount owed by Transbay, after its winding up to the date of full payment. The High Court found that the interest was claimable further than the six months limit. On appeal, the Court of Appeal set aside the decision of the High Court. The bank then appealed to the Federal Court followed by a cross-appeal by Pilecon.

Issue: Whether section 8(2A) of the Bankruptcy Act 1967 (BA) is limited in its application to secured creditors in a bankruptcy situation, or whether it is also applicable to secured creditors in a winding-up situation.

Decision: The Federal Court allowed the appeal and dismissed the cross-appeal. The Court held that although a secured creditor under section 8(2) of the BA is free to deal with his security, with the insertion of subsection (2A), the chargee must realise its security promptly within six months of the receiving order failing which the chargee cannot claim any interest. Upon a true construction of section 4(1) and (2) of the Civil Law Act 1956 and section 291(1) and (2) of the Companies Act 1965, section 8(2A) of the BA is equally applicable to a secured creditor in a winding up situation.

6) Sharikat Galian Razak Sdn Bhd v. Magical Capital Sdn Bhd [2013] 9 CLJ 141

On 3.12.2012, the Court of Appeal dismissed the applicant's appeal on respondent's preliminary objection that the applicant's appeal records were incomplete for non-compliance with r.18(6) of the Court of Appeal Rules 1994 and the Court of Appeal also refused leave for the appellant to file two supplementary records on 28.11.2013 and 3.12.2012. Not satisfied with the decision of the Court of Appeal, the applicant filed a review application to the Federal Court under r.137 Federal Court Rules 1995 for review of the Court of Appeal's decision dated December 2012.

Decision: The Federal Court dismissed the application with costs and held that the application was inappropriate and an abuse of judicial process. Arifin Zakaria CJ said that r. 137 of the Federal Court Rules 1995 does not confer jurisdiction to the Federal Court to review its own decision. The rule merely declares that the Federal Court being the Apex Court is conferred with inherent power distinguishable from the jurisdiction conferred by the Constitution or Statute and rule 137 could not overwrite or limit the application of s.96(a) of the Court of Judicature Act 1964 which clearly provides for the procedure to appeal to the Federal Court against the decision of the Court of Appeal.



Federal Government Gazettes in the vault, Palace of Justice Library

The Federal Court affirmed and approved the decision in *Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201, FC and ruled that the Federal Court case was decided *per incuriam* and did not set any precedent.

7) Sumatec Engineering and Construction Sdn Bhd v. Malaysian Refining Co Sdn Bhd [2012] 4 MLJ 1, FC

Malaysian Refining Company Sdn Bhd (“MRC”) awarded Sumatec Engineering and Construction Sdn Bhd (“Sumatec”) a contract to design, supply, fabricate and erect certain structural steel for a refinery in Malacca. The contract price was RM47,846,688. Pursuant to the contract, Sumatec

provided an on-demand bank guarantee to MRC for RM4,784,688.80 for the due performance of the contract.

Disputes arose between the parties. MRC then made a demand for payment of the bank guarantee. Sumatec applied for an injunction to restrain MRC from calling on, or receiving monies under, the on-demand performance bond on grounds that MRC’s call on the bank guarantee was unconscionable.

Sumatec succeeded in the High Court but the decision was reversed on appeal to the Court of Appeal. Sumatec appealed to the Federal Court.

The question before the Federal Court was whether “unconscionable conduct” on the part of a beneficiary of an on-demand bank guarantee or a performance bond is a distinct ground, apart from “fraud”, that entitles the Court to restrain the beneficiary from calling on or demanding and receiving monies under the on-demand bank guarantee or performance bond.

The Federal Court answered the question in the affirmative and held that the principle recognizing unconscionability as a separate and distinct ground to restrain a beneficiary from making a call on a performance bond accords with good commercial sense and unconscionability may now be raised as a distinct ground. However, the Federal Court emphasized that a bare assertion will not suffice and that the party alleging unconscionable conduct must provide manifest or strong evidence of some degree in respect of the alleged unconscionable conduct.

Decision: The Federal Court allowed the appeal.

8) Syed Hussain bin Syed Junid & 9 Ors v. Pentadbir Tanah Negeri Perlis (and Another Case) [2013] 6 AMR 470

The appellants were some of the co-owners of three separate lots of land held under one title which were acquired under the Land Acquisition

Act 1960 for a construction of a low cost housing project. Dissatisfied with the additional amount of compensation that was awarded by the High Court, they appealed to the Court of Appeal which subsequently dismissed the appeal. The said decision was appealed against by the appellants to the Federal Court. The appellants was given leave to appeal to the Federal Court on two questions of law.

Issues: Whether under section 49(1) of the LAA, an appeal lies automatically to the Federal Court against any decision of the Court of Appeal.

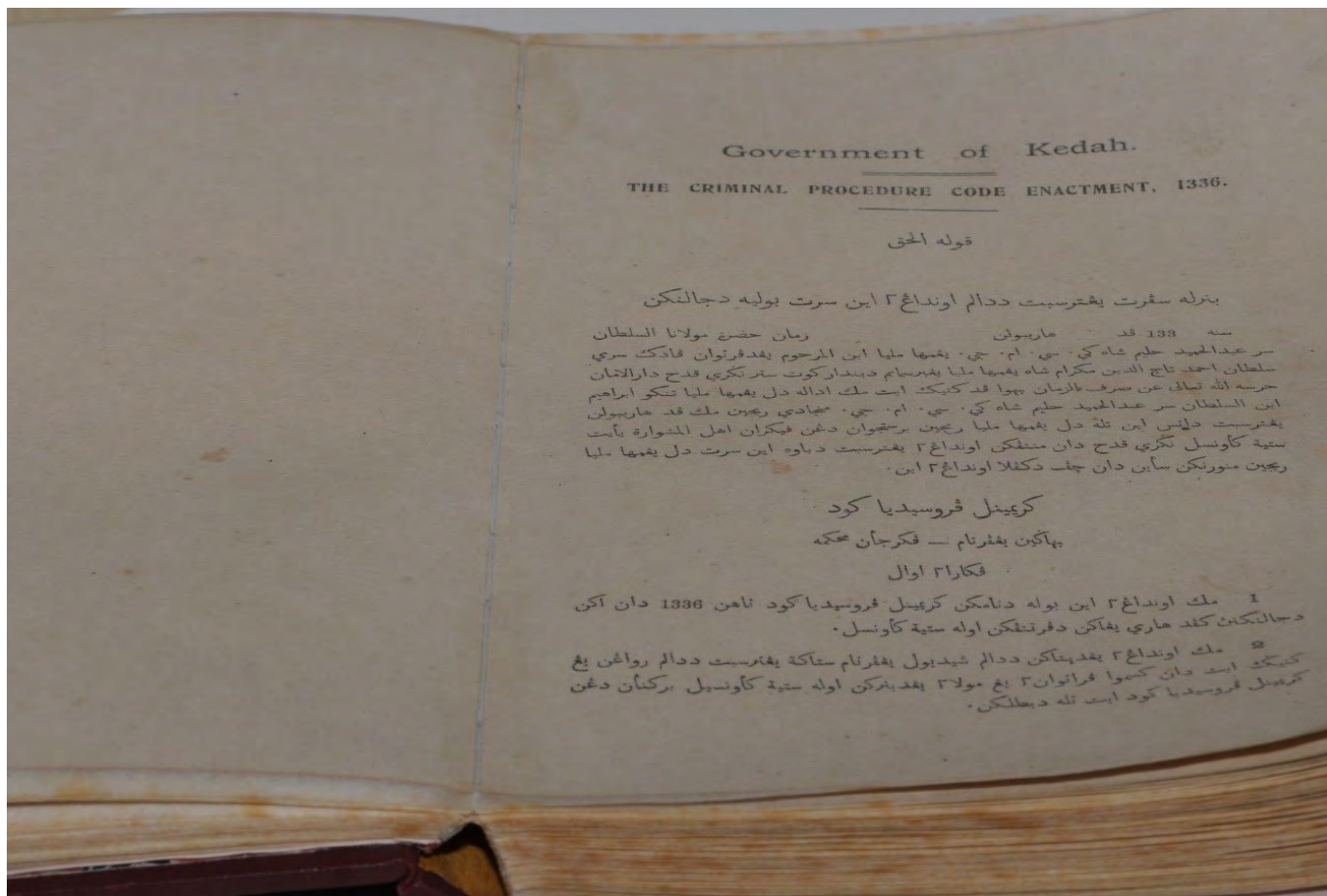
The interpretation of section 40D of the LAA.

Decision: The Federal Court dismissed the appeal and ruled that there is no requirement under section 49(1) of the LAA that leave to appeal must first be obtained before an appeal can be lodged in the Federal Court. Thus, there is no necessity for the appellants to file the application for leave to appeal.

However, while Section 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, section 40D restricts the ambit of such an appeal to the amount of compensation awarded.

CRIMINAL CASES

The year 2013 saw the Courts delivering numerous important decisions, which made a significant impact on the landscape of our criminal law and procedure as well as on the administration of criminal justice. This review focuses on a selection of these decisions which significantly enhance Malaysian law on criminal procedure and evidence. This review also highlights the way our courts cope with complex legal issues and determine criminal cases with justice and fairness. The cases below demonstrate how the courts safeguard the rights of the accused in relation to the burden and standard of proof and guaranteeing due compliance with the right to a fair trial.



The Criminal Procedure Code Enactment 1336 – Government of Kedah

1) **Zaifull Muhammad v. Public Prosecutor** [2013] 2 CLJ 383

Where there is material discrepancy in the weight of the drugs as found by the police and by the chemist, it is incumbent on the prosecution to explain the discrepancy satisfactorily.

A doubt as to the identity of the drugs is a live issue in drug trafficking cases. Even if there is overwhelming evidence against an accused person, the court will not be prepared to convict

if there is doubt as to the identity of the drugs. One of the most significant judicial statements of the year in this area is **Zaifull Muhammad v. Public Prosecutor**. The High Court judge found the appellant guilty of the offence under s. 39B (1) (a) of the Dangerous Drugs Act 1952 of trafficking in 799.4 grammes of cannabis and sentenced him to death. On appeal, the High Court's decision was affirmed by the Court of Appeal. Dissatisfied, the appellant appealed to the Federal Court. The critical issue for determination was on the identity of the drugs.



Datuk Wira Wan Yahya Pawanteh
(Former Federal Court Judge) in ceremonial robe

In this case, the gross weight of the cannabis stated by the police was 880 grammes. However, the chemist stated that the gross weight was 829.49 grammes. Furthermore, there were discrepancies as to the number of “ketulan” of the cannabis seized. There was no explanation given by the prosecution with regard to the above discrepancies. The Federal Court held that it was fatal and acquitted the appellant. Another point that must be mentioned here is that in *Zaifull bin Muhammad v PP*, the prosecution’s case against the appellants was strong as its case was based on the evidence of an agent provocateur. Arifin Zakaria CJ in delivering the judgment of the court *inter alia* observed that:

“In the present case, there are two material discrepancies that is as to the number of “ketulan” and as to the gross weight of the cannabis. Both these discrepancies were never explained by the prosecution, save to say that the charge referred to by the learned counsel was the original charge, and the charge was later amended to read as trafficking in 799.4gm of cannabis. It was further contended by the prosecution that since the amended charge is based on the net weight, therefore, any discrepancy in the gross weight is immaterial.

The prosecution further argued that based on the evidence before the court, there is no break in the chain of the evidence with regard to the drug exhibit. The prosecution submitted that all the relevant witnesses called by the prosecution had positively identified the drug exhibit based on the contemporaneous markings made by the witnesses. On that premise, the prosecution contended that the discrepancies do not create any doubt in the identity of the drug exhibit.

With respect, we could not agree with the prosecution on this issue. We are of the view that, in the circumstance of this case, it is incumbent on the prosecution to offer some explanation for the discrepancies. With the discrepancies left unexplained, this created a reasonable doubt as to the identity of the drug exhibit. In the circumstance, the defence should not have been called at the close of the prosecution case.”

2) Hasbala Mohd Sarong v. Public Prosecutor [2013] 6 CLJ 945

Court is entitled to take judicial notice in considering the difference in weight of the impugned drugs.

Hasbala Mohd Sarong v. Public Prosecutor is also a case of an unexplained difference in weight of drugs between that recovered by police and later received by the chemist. The Federal Court held that on the factual matrix of this case there was no doubt the drugs seized from the appellant and as examined by the chemist were the same drug exhibits the appellant was charged with. On the issue of the discrepancy in weight Raus Sharif PCA in delivering the judgment of the Federal Court made this important pronouncement:

“The difference in the gross-weight which is 171.45 grammes less could be due to the fact that the drug exhibits were weighed by PW3 nearly three months after the drug exhibits were weighed by PW6. We take judicial notice that environmental factors such as climate condition and humidity can attribute to the difference in weight of the impugned

drug exhibits. Given that there was an interval of nearly three months before the drug exhibits were sent to PW3, we are driven to the conclusion that the drug exhibits being cannabis could have dried up a little and this could be the reason for the lesser weight. At this juncture, we might hasten to also add that the weighing process by the police is not the determining factor in the weight of the drugs, rather it is the weighing done by the chemist which determines the actual weight of the drugs and forms the basis of the charge. It is common knowledge that the weighing process undertaken by the police after the seizure of the drugs is only for classification purposes in the determination of the charge that will be most likely to be preferred against the accused and/or arrested person. More often than not the disparity in weight of the drugs recorded is inevitable due to different weighing methods preferred and the different weighing apparatus used by the police force and the chemist department.”

3) Cheong Kam Kuen v. Public Prosecutor [2013] 1 MLJ

Duty of trial court to address itself on the distinction between s 299 and s 300 of the Penal Code.

In **Cheong Kam Kuen v. Public Prosecutor**, the appellant was convicted by the High Court for the offence of murder under s. 302 of the Penal Code. The appellant appealed to the Court of Appeal, which agreed with the findings of the trial judge and affirmed the appellant’s conviction under s 302 of the Code. The appellant then appealed to the Federal Court. The main issue for the court’s determination was regarding the question of whether or not the evidence adduced by the prosecution had established that the appellant had the intention to kill the deceased. The Federal Court set aside the conviction of the appellant for the offence of murder, and substituted it with the lesser offence of culpable homicide not amounting to murder under the first part of s. 304 of the Penal Code and was sentenced a term of imprisonment of 20 years. Zulkefli Makinuddin CJ (Malaya) in delivering the judgment of the court explained the distinction between the



The Criminal Procedure Code 1900 of The Straits Settlements

provisions of s. 299 and s. 300 of the Penal Code to determine whether the offence committed by the appellant falls within the offence of murder under s. 302 of the Penal Code or within the offence of culpable homicide not amounting to murder under s. 304 of the Penal Code:

“Section 299 of the Penal Code enacts that a person commits culpable homicide, if the act by which the death is caused is done: (a) with the intention to cause death; (b) with the intention of causing such bodily injury as is likely to cause death; (c) with the knowledge that he is likely by such act to cause death.

Section 300 of the Penal Code defines murder as follows: Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done: (1) with the intention of causing death; (2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is

caused; (3) with the intention of causing such bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; (4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death.

In the present case it is our view based on the nature of the injuries sustained by the deceased there was evidence of an intention on the part of the appellant to cause bodily injury to the deceased. However, we do not agree with the finding of the learned trial judge that based on the nature and number of injuries, the appellant had the intention to cause death to the deceased. We noted that both the learned trial judge and the Court of Appeal in their decision did not address themselves on the fine distinction between ss 299 and 300 of the Penal Code before coming to a correct conclusion.”

**4) Duis Akim & Ors v. Public Prosecutor
[2013] 9 CLJ 692**

Once a trial court has made a positive finding at the end of the prosecution's case that the accused has been positively identified as the perpetrator of the crime that finding can only be reversed by the trial court at the end of the whole case if the defence has adduced evidence to rebut the initial finding

In **Duis Akim & Ors v. Public Prosecutor**, the High Court had acquitted the appellants on a charge of murder punishable under s. 302 of the Penal Code read together with s. 34 of the same Code. The Court of Appeal set aside their acquittals, convicting them as charged and sentenced them to death. The appellants appealed to the Federal Court. One of the main issues that arose for determination was whether the appellants had been rightfully identified as perpetrators of the crime in the absence of forensic evidence linking either of the appellants to the crime. In this case, in affirming the decision of the Court of Appeal, the Federal Court held that after having actually found, at the end of the prosecution's that PW1 had positively identified the appellants, the High Court erred in reversing that initial finding at end of the case. With regard to the failure by the High Court to make reference to the Turnbull guidelines, Richard Malanjum CJ (Sabah & Sarawak) in delivering the judgment of the Federal Court had this to say:

"No doubt the learned trial judge did not make reference to the Turnbull guidelines in coming to his initial finding. But we find that based on the notes of proceedings it is clear that in effect the elements of the guidelines were taken into account. As such his failure to make an express reference to the guidelines has not prejudiced the defence.

It should be noted that at the end of the case for the prosecution the learned trial judge ruled that the appellants had been positively identified by PW1. He must have been satisfied with the accuracy and good quality of the identification. He relied on the fact that PW1 had a good five minutes look at the faces of the appellants that early morning.

PW1 also testified that he saw the first appellant chasing the deceased into the store room and after coming out from the store room the first appellant went on to attack him."

**5) Siew Yoke Keong v. Public Prosecutor
[2013] 4 CLJ 149**

The information admissible under section 27 of the Evidence Act 1950 includes the accused's statement or his act or conduct, such as pointing out, which led distinctly to the discovery of a fact.

In the case of **Siew Yoke Keong v. Public Prosecutor**, the appellant was convicted by the High Court of trafficking in 1,452.1 grammes heroin and 131.3 grammes monoacetylmorphines, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952. The Court of Appeal affirmed the decision of the High Court. Aggrieved by that decision, the appellant appealed to the Federal Court. The prosecution's case revealed that when a police party acting on information received arrested the appellant, they found on him, inter alia, three keys, one of which opened the lock to an unoccupied house to which, subsequently the appellant had taken he police officers to after being questioned. There, the police found two of the rooms were locked. When one of the police officers asked the appellant where the keys to the rooms were, the appellant pointed to a bunch of eight keys on the long fluorescent tube fixed above the door to the bathroom. In one of the locked rooms, the police officer found a safe that had a combination lock and key. The combination lock was not activated and only the key was required to open the safe. The police officer asked the appellant for the key and the latter pointed to a crook on one of the legs of a dining table where the key was hidden. Inside the safe, the police found, among others, four blocks of heroin. One of the main issues before the Federal Court was whether the courts below were wrong to have held the appellant's act of pointing out the keys admissible as 'information' leading to the discovery of a fact under s. 27 of the Evidence Act. Ahmad Maarop FCJ in delivering the judgment of the Federal Court said:

"In the light of the authorities referred to, we hold that information admissible under

s. 27 of the Evidence Act includes accused's statement, or his act or conduct such as pointing out which leads distinctly to the discovery of a fact. For such information to be admissible in evidence, there is no duty on the prosecution to prove the voluntariness of the information. Hence it is not necessary to conduct a trial within a trial to determine the voluntariness of the information."

The Federal Court held that the appellant's act of pointing to the place where the bunch of keys was found, or where the key to the safe was found, amounted to information and that information related distinctly to the discovery of two facts, ie, the bunch of eight keys and the key to the safe and was admissible under s. 27 of the Evidence Act. The facts thereby discovered embraced the place where the keys were found (i.e., on top of the fluorescent tube above the bathroom door and the crook of one of the legs of the dining table) as well as the appellant's knowledge as to those facts. The evidence of the appellant leading the police officers to the house and pointing out the place where the keys were found was also relevant and admissible as conduct under s. 8 of the Evidence Act.

6) Public Prosecutor v. Bird Dominic Jude [2013] 6 MLJ 785

Section 56A of the Courts of Judicature Act 1964 is a specific law that authorises the deprivation of the personal liberty of an accused person who had been acquitted by the High Court and this provision does not violate Articles 5(1) and 8(1) of the Federal Constitution.

In **Public Prosecutor v. Bird Dominic Jude**, the respondent, an Australian national, was charged and tried for trafficking in dangerous drugs, an offence in contravention of s. 39B(1) (a) of the Dangerous Drugs Act 1952. He was acquitted and discharged of the offence in the High Court. The prosecution appealed to the Court of Appeal against the acquittal. The prosecution filed a notice of appeal and at the same time applied to the Court of Appeal under s. 56A of the Courts of Judicature Act for an order directing the respondent to be arrested and held in remand pending the disposal of the appeal. The respondent resisted the application and contended, inter alia, that s. 56A of the

Courts of Judicature Act defeated the purpose of an acquittal and discharge and amounted to a violation of his personal liberty as guaranteed by Art 5(1) of the Federal Constitution and his rights of equality and equal protection as guaranteed by Art 8(1) of the Federal Constitution. The Court of Appeal held that it was empowered under s. 56A to cause an accused person, who had been acquitted, to be arrested and committed to prison, or admit him to bail, pending the disposal of the appeal against the order of acquittal and that s 56A is valid and binding law. The court further held that the discretion of the court in making use of the power under s. 56A, even though wide, was to be exercised judicially by taking the following considerations:

- a) The order made must be objectively fair and proportionate.
- b) The discretion should never be exercised arbitrarily.
- c) The discretionary power should be sparingly invoked.
- d) The nature and seriousness of the offence.
- e) The accused person has been proven not guilty and has been acquitted; there is a presumption of innocence in favour of the accused person.
- f) It is in the interest of the public and the State to preserve the integrity of the prosecution's appeal.
- g) The absence or non-attendance of the accused person at the hearing of the prosecution's appeal will render the appeal nugatory.
- h) The length of time which is likely to take for the appeal to be heard.
- i) If bail is admitted, whether the security and conditions imposed will ensure the attendance of the accused person. The probability of the accused person absconding, if released on bail.
- j) A balance has to be struck between the right to individual liberty and the interest of the public and state.

- k) Where the issue relates to the safety and security of the State much weight will be given to the application of the public prosecutor.

Upon balancing all the relevant factors, the Court of Appeal held that the balance of justice lies in favour of admitting the respondent to bail at RM50,000 in two local sureties, and in default, a warrant be issued committing the respondent to prison until the disposal of the prosecution's appeal against the acquittal decision of the learned High Court Judge. As conditions of the bail, (i) the respondent has to surrender his travel documents (ii) the respondent must provide the address of his fixed place of residence, and (iii) the respondent must report to the nearest police station every Monday at 5 pm. The Court of Appeal also ordered that the record of appeal be made ready as soon as possible and that an early date be fixed for the hearing of the appeal.

7) Public Prosecutor v. Pathmanabhan Nalliannen & Ors [2013] 5 CLJ 1025

The finding of the body of the victim is not a prerequisite to sustain a charge of murder

Public Prosecutor v. Pathmanabhan Nalliannen & Ors was a high profile case, which captured public imagination. The four accused in this case were charged, in furtherance of their common intention, with the murder of a woman (Sosilawati), her driver, a lawyer (Kamil) and a banker (Noorhisham) on a farm in Banting, Selangor, between 8.30 pm and 9.45 pm on 30 August 2010. The High Court found all four accused guilty of all the four charges and sentenced them to death by hanging for each of the four charges. The court held that through a combination of surrounding evidence in the form of testimony of family members, telecommunication records, testimony of credible witnesses and inferences made from the conduct of the accused in the discovery of exhibits as well as forensic and medical evidence, the prosecution had successfully proven all the

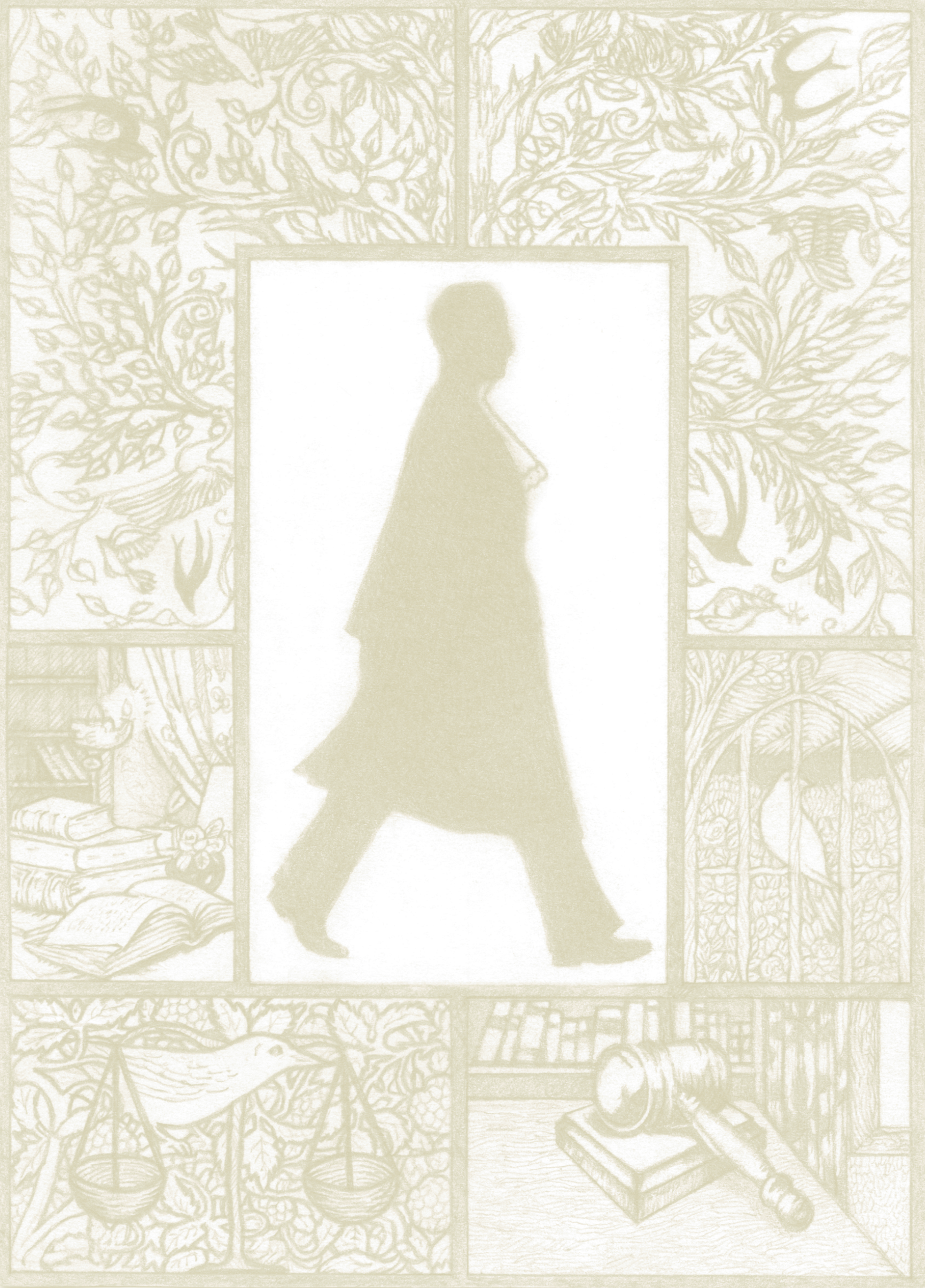
ingredients of the charge of murder under s. 302 of the Penal Code to a standard which, if unexplained by the accused, would have led to their convictions. The court further held that the defence in this case failed to raise even a fanciful possibility let alone a reasonable doubt to counter the evidence led by the prosecution. In the words of Akhtar Tahir J:

“All the evidence in this case recouped together shows that the prosecution has clearly surpassed the burden placed upon them and puts to shade the saying that dead men tell no tales.

The three dead men and one woman through the evidence led by the prosecution have told a stark tale of debauchery committed by an unscrupulous professional in the guise of the first accused. These rouge professionals are rare and few and their victims are not only the poor and desolate but also the rich and mighty. This case was also a tale of a gruesome plot executed by the first accused and his cohorts with extreme brutality.

The evidence led by the prosecution was sufficient to sustain a charge of murder as defined under s. 300(a) of the Penal Code. The only difference is this case was a case like no other as the bodies of the victims were not recovered. The finding of the bodies is not a prerequisite to sustain a charge of murder.

There is precedence in the form of the Singapore case of *Sunny Ang v. Public Prosecutor* [1965] 1 LNS 171 where no body was recovered yet the accused was convicted. This case can be distinguished from that of Sunny Ang's where there was not even a trace of the victim. The victims in this case left a trail of evidence in the form of their personal items and blood.”



CHAPTER 10

JUDICIAL INSIGHTS



Fountain in the Palace of Justice Garden

SOME THOUGHTS ON RECENT DEVELOPMENTS IN JUDICIAL APPROACH TO CAPITAL MARKET DISPUTES

**By: Tun Mohamed Dzaiddin Bin Haji Abdullah
(Former Chief Justice Of Malaysia)
Chairman, Bursa Malaysia**



Tun Mohamed Dzaiddin Bin Haji Abdullah

INTRODUCTION

There was a time when the thin notion of going into a state of calm and tranquillity was central to my understanding of retirement from the Bench. But Fate had other plans for me. Several job offers reached me, as diversified and scintillating as they are. It must have been the routine of punctilious judicial work which tempted me to take on the offers. Whatever it was, I felt equal to the tasks at hand and took them in my stride. One such position offered to me was the Chairmanship of Bursa (the Kuala Lumpur Stock Exchange). Although the world of capital markets and securities may seem far removed from that of dispensing justice, I believe that the instinctive need to do the right

thing would be the same in a court of law, as it would have been anywhere else, including Bursa.

As you very well know, law by its very nature and in its grandest sense, deals with the enduring themes of our relations with our fellow human beings – how we are governed or how we are to govern ourselves; how risk is allocated when loss occurs; how rules are formed and interpreted and how conflicts are resolved.

In other words, the sphere of capital markets and securities has a rich synergy with that of the law and is definitely conjunctive with one another.

I shall begin by saying that Malaysia's financial system is driven by two main forces: the capital market and the banking system. The players in the financial services industry in Malaysia consists of banks, auditors, stockbrokers, the stock exchange and others. The main institutions that regulate the financial services industry in Malaysia are the Securities Commission of Malaysia ("SC"), Bursa Malaysia Securities Berhad ("Bursa Malaysia") and Bank Negara Malaysia ("BNM") (collectively "the Regulators").

The SC has a broad range of functions under the Securities Commission Act 1993, including the regulation of all matters relating to securities and derivatives and to ensure that the provisions of the securities laws are complied with. Bursa Malaysia plays a quasi-regulatory role in inter alia, setting the Listing Requirements for its participating organisations who use its facilities for trading and for issuers who list on it.¹ The enforcement and investigatory powers of BNM stem from the Financial Services Act 2013 ("FSA 2013").

This article will address some of the challenges to decisions of the Regulators of the financial services industry in the courts, the liabilities of the various players in the financial market and whether one can claim a remedy in private law where there has been breach of a statutory duty by a financial player.

Challenges to Decisions of Regulators – Judicial Review

Enforcement of the various statutory provisions and rules entails the making of decisions by the Regulators on whether breaches of such provisions have occurred and whether penalties should be imposed or other action taken. The challenge of the decisions of the Regulators is almost always done by way of

judicial review. Any person who is adversely affected by the decision, action or omission in relation to the exercise of public duty or function shall be entitled to make an application for judicial review.

Challenges to Decisions of the Securities Commission

The SC is vested with powers of enforcement under Part V of the Securities Commission Act 1993 and is statutorily empowered to take action against persons who breach provisions of the CMSA 2007 (other than the provisions of Part V and Division 2 of Part VI) or any securities laws.² Action may also be taken by the SC against persons who fail to comply with the Listing Requirements of Bursa Malaysia, written notices or guidelines issued by the SC.³ Challenges to the decisions of SC by way of judicial review have so far not been successful in the courts, failing either at the leave stage or at the substantive hearing. Challenges so far, based on the reported decisions, have concerned the alleged absence of a right to be heard,⁴ the refusal of an extension of time for compliance with the Take-over Code,⁵ the refusal to appoint an independent auditor,⁶ the issuance of a notice to attend before the SC for an oral investigation,⁷ and a decision of the Audit Oversight Board to register an accounting firm.⁸

It can be seen that the courts will not usually interfere with the decision of SC where there has not been any illegality, irrationality, or procedural impropriety in the decision-making process of SC, and where SC has not acted mala fide or in any way abused its discretionary powers.⁹ The courts have refused leave due to lack of sufficient personal interest in the litigation and due to the fact that the litigation was not litigation in the public interest.¹⁰ Further, leave for judicial review to quash SC's decision to call an individual for oral examination was

¹ See Shanti Geoffrey, 'Capital Market Laws of Malaysia' (LexisNexis 2010), page 61.

² Section 354(1)(a), CMSA 2007.

³ Section 354(1)(b), CMSA 2007.

⁴ Nasioncom Holdings Berhad v Suruhanjaya Sekuriti (Civil Appeal No. W-02-1350-2008), 28 November 2012

⁵ QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164.

⁶ See Choo @ See Guat Kiok v Suruhanjaya Sekuriti [2006] 1 MLJ 649.

⁷ Datuk Ishak Ismail v Securities Commission [2011] 8 CLJ 208.

⁸ Securities Commission Press Release, 'Federal Court Makes Final Decision in SC's Favour', Kuala Lumpur, 8 May 2012, http://www.sc.com.my/post_archive/federal-court-makes-final-decision-in-the-scs-favour/ last accessed 8 April 2014.

⁹ See Choo @ See Guat Kiok v Suruhanjaya Sekuriti [2006] 1 MLJ 649, para 63; see also Nasioncom Holdings Berhad v Suruhanjaya Sekuriti (Civil Appeal No. W-02-1350-2008), 28 November 2012, paras 37-38.

¹⁰ QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164; Securities Commission Press Release, 'Federal Court Makes Final Decision in SC's Favour', Kuala Lumpur, 8 May 2012 http://www.sc.com.my/post_archive/federal-court-makes-final-decision-in-the-scs-favour/ last accessed 8 April 2014.

also refused.¹¹ Underpinning this decision was the court's recognition that this examination formed part of SC's investigative process and it was to enable the SC to perform its regulatory functions and to provide adequate protection to the securities market.

Consistent with this approach, the courts have also recognised the statutory and regulatory role played by Bursa Malaysia when assessing challenges to Bursa Malaysia's decisions in judicial review.

Challenges to Decisions of Bursa Malaysia

Bursa Malaysia exercises a public duty or function in the discharge of its prescribed statutory duties to maintain an efficient, well-informed and internationally competitive market for the trading of securities and to secure the investor public's confidence.¹² It is in exercise of this duty that Bursa Malaysia issues, monitors and enforces various rules and requirements, such as the Main Market Listing Requirements and Business Rules ("Bursa's Requirements and Rules") pertaining to the conduct of listed companies and registered individuals and to take swift and deterrent enforcement actions against listed companies and/or registered individuals who commit a breach of Bursa's Requirements and Rules.¹³

It is for this purpose that Bursa Malaysia has its own internal procedure commencing with show cause notices, then deliberations and decision-making by an independent tribunal (Listing Committee and Appeals Committee) who will deliberate on matters before it in accordance with Bursa Malaysia's primary duty. It has been recognised by our Apex Court that administrative bodies, of which Bursa Malaysia is one, are masters of their own procedure when conducting hearings so long as the method of proceedings they adopt is not in breach of any provision of their governing Acts (or rules) and

does not result in a denial of natural justice to the respondent. The process of natural justice in an administrative proceeding under a domestic tribunal is not as rigid as that which is observed by a court of law.¹⁴

Our Apex Court recognised that the Kuala Lumpur Stock Exchange (the predecessor to Bursa) was a hybrid corporation [a company with an element of public flavour superimposed on the contractual elements in relation to its members].¹⁵ Further, our Appellate Court decided that all matters that involve solely or predominantly public law, regardless of whether the respondent could be considered a public authority, had to proceed by way of judicial review¹⁶ and that the phrase "public authority" does not limit judicial review to a public authority.¹⁷ In any event, the current Rules of Court 2012 provide that "a decision, action or omissions made in the exercise of a public duty or function" can only be challenged by way of judicial review. Thus, challenges to decisions made by Bursa Malaysia ought to be made by way of judicial review. For an applicant to succeed in a judicial review application against Bursa, the applicant must show that the decision taken was made either illegally, irrationally and/or through procedural impropriety. The courts are not concerned with the merits of a decision¹⁸ of Bursa.

Recent judicial decisions show that our courts have recognised the principle that the courts should be slow to interfere in decisions made by Bursa Malaysia and that Bursa Malaysia has to act in the public interest singularly for the protection of investors in the financial sectors.¹⁹ It is in line with this principle that our courts have taken the position that Bursa Malaysia, having been vested with the power to decide freely, fearlessly and without the prospect of the correctness of its decision being investigated in protecting the public interest, has an unfettered discretion in the exercise of its powers which would only warrant interference by the court if such discretion was not exercised in good

¹¹ Datuk Ishak Ismail v Securities Commission [2011] 8 CLJ 208.

¹² Sections 9 and 11 of the Capital Markets and Services Act 2006.

¹³ Khiudin bin Mohd & Anor v Bursa Malaysia Securities Berhad and another application [2012] 6 MLJ 131.

¹⁴ Lembaga Jurutera Malaysia v Leong Pui Kun [2008] 6 CLJ 93 (FC)

¹⁵ OSK & Partners Sdn v Tengku Noone Aziz & Anor [1983] 1 MLJ 179 (FC)

¹⁶ Ahmad Jeffri bin Mohd Jahri v Pengarah Kebudayaan & Kesenian Johor [2010] 3 MLJ 145 (FC)

¹⁷ Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 1 CLJ 927 (CA)

¹⁸ Minister of Home Affairs, Malaysia v Persatuan Aliran Kesedaran Negara [1990] 1 MLJ 351 (SC)

¹⁹ Bursa Malaysia Securities Berhad v Gan Boon Aun [2009] 4 MLJ 695 (CA)

faith.²⁰ The courts will not second guess the informed judgment of responsible regulators steeped in knowledge of their particular market as market stability would suffer if the courts were to unreasonably intervene in decisions of Bursa as this would lead to uncertainty in the market.²¹

Our Apex Court has also clearly set out that “where policy considerations are involved in administrative decisions and courts do not possess knowledge of the policy considerations which underlie such decisions, courts ought not to review the reasoning of the administrative body with a view to substituting their own opinion on the basis of what they consider to be fair and reasonable on the merits, for to do so would amount to a usurpation of power on the part of the courts.”²²

The upholding of this principle by the Malaysian courts is most clearly shown by the fact that no judicial review application against a decision of Bursa has succeeded thus far, save for one judicial review application which was partly allowed with regard to whether Bursa Malaysia is competent to impose an Order of restitution when such penalty is not provided for in Bursa’s Requirements and Rules.²³

Bursa Malaysia can also seek the court’s assistance to grant Orders under section 360 of the CMSA 2007 to inter alia compel errant parties to comply with Bursa Malaysia’s directions or sanctions.

While the courts have decided in favour of Bursa Malaysia in granting such Orders,²⁴ there is only one reported case, which is the Court of Appeal decision in *Tengku Dato’ Kamal Ibni Sultan Sir Abu Bakar & Ors v Bursa (M) Securities Bhd* and another appeal [2013] 1 MLJ 158. The Court of Appeal interpreted section

360(1)(c) of the CMSA 2007 and held that the phrase “it appears to the court” instead of “proved” indicated a lower standard of proof. Thus, there was no need for Bursa Malaysia to first commence an action in a court of law against the errant parties and the procedure set out under section 360 of the CMSA 2007 allows Bursa Malaysia to enforce any breaches of Bursa’s Requirements and Rules.

Liabilities of Players in the Financial Services Industry

The next issue is how the courts determine the liabilities of the various players in the financial services industry which include financial advisors, fund managers, lead arrangers, facility agents and their directors and other officers. The recent Federal Court decision in *CIMB Bank Bhd v Maybank Trustees Bhd*²⁵ (“the Pesaka Astana Case”) is a decision that has indeed ‘rattled the bond market’.²⁶ Briefly, the facts in the Pesaka Astana Case are as follows.

Pesaka Astana (M) Sdn Bhd (“Pesaka”) was the issuer of bonds to part-finance the execution of government contracts that had been awarded to them. KAF Investment Bank Berhad (“KAF”) was appointed as the lead arranger, facility agent and issue agent in respect of the bonds. Pesaka issued an Information Memorandum (“IM”) in relation to a ‘ring-fencing’ arrangement for the bonds issue. The IM contained an Important Notice which stated, inter alia, that KAF had neither independently verified the contents nor verified that all information material for an evaluation of the financing facilities or about Pesaka had been included in the IM. The arrangement here was that the revenue from the contracts would be deposited into various bank accounts (“designated accounts”) under the control of Maybank Trustees Berhad (“MTB”) as the sole signatory. It turned out that Pesaka’s

²⁰ *Tengku Dato’ Kamal Ibni Sultan Sir Abu Bakar & Ors v Bursa Malaysia Berhad* [2013] 1 MLJ 158 (CA)

²¹ *Syarikat Kayu Wangi Berhad v Bursa Malaysia Securities Berhad & Securities Commission* (Civil Appeal No. B-01-319-2007)

²² *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145

²³ *Seek Keng Leong v Bursa Malaysia Securities Bhd & Another Case* [2012] 6 CLJ 191 (HC)[this decision is under appeal]

²⁴ The Court of Appeal case of *Azimudin bin Ab Ghani v Bursa Malaysia Securities Berhad* (Civil Appeal No. W-02-2229-2009), which on 19.3.2012 affirmed the decision of the High Court in *Bursa Malaysia Securities Berhad v Azimudin bin Ab Ghani* (Originating Summons No. D1-24-94-2009); The Session Court case of *Bursa Malaysia Securities Berhad v Ooi Boon Leong* (Originating Application No. 54-190-11/2011) on 22.2.2012; The Sessions Court case of *Bursa Malaysia Securities Berhad v Mohamad Nassir bin Mohd Kassim* (Originating Application No. 54-188-11/2011) on 6.1.2012; The Sessions Court case of *Bursa Malaysia Securities Berhad v Lee Beng Huat* (Originating Application No. 54-173-11/2011) on 29.12.2011.

²⁵ [2014] MLJU 117

²⁶ Risen Jayaseelan, ‘Court Decision Rattles Bond Market’, 8 March 2014, *The Star*, <<http://www.thestar.com.my/Business/Business-News/2014/03/08/Court-decision-rattles-bond-market-Lead-arranger-found-not-responsible-for-veracity-of/>> last accessed 8 April 2014.

existing conventional accounts were used for this purpose and MTB was never made the sole signatory to these accounts as required. The Pesaka Astana litigation stemmed from the action of Pesaka in utilising the monies in the designated accounts for its own purposes and its failure to redeem the bonds and repay the bondholders upon the maturity of the bonds. The bondholders commenced proceedings against, inter alia, Pesaka, KAF and MTB.

The Federal Court held that KAF was entitled to an exclusion of liability under the IM through the Important Notice, which shifted the burden of verifying the content of the IM onto the potential investors rather than on KAF.²⁷ It was also held that KAF was not negligent or in breach of contract to the bondholders as KAF did not have the duty to independently verify that the designated accounts had been opened with MTB in sole control prior to the issue of the bonds, and was only required to obtain the confirmation and the mandates from Pesaka that the designated accounts had been opened.²⁸ The Federal Court held that MTB was wholly to blame for the loss to the bondholders due to its failure to ring-fence the designated accounts or alternatively to stop Pesaka from operating the Designated Accounts despite having the power to do so pursuant to the Trust Deed and Power of Attorney granted to it by Pesaka.²⁹

It can be seen from the judgment that much emphasis is placed on the sanctity of contract, in particular the terms of the agreements entered into between the various players, i.e. the subscription and facilities agreement (“the SFA”) and the trust deed. This is generally sound and lends more commercial certainty to the relationships between the various financial players.

Further, the judgment of the Federal Court regarding the exclusion of liability through the Important Notice is supported by decisions in other jurisdictions, as canvassed in the judgment itself. However, as the question posed to the Federal Court focused specifically on ‘experienced and sophisticated investors’, it remains to be seen whether the same exclusion of liability

would apply in a situation with investors who are less savvy.

With respect, the Federal Court in deciding that KAF did not have a duty to independently verify that the designated accounts had been ring-fenced may have been too cautious in its strict adherence to the terms of the SFA. The Federal Court held that KAF did not owe a duty over and above getting confirmation from Pesaka and the transactional solicitor that the designated accounts had been opened and MTB made the sole signatory to these accounts. However, a more purposive interpretation of the terms of the SFA could lead to the conclusion that KAF did in fact owe such a duty to the bondholders, as was held in the Court of Appeal. It must be borne in mind that the entire premise of the bonds scheme was that the designated accounts would be ring-fenced, as expressly stated in the IM issued to the bondholders. Also, KAF’s duty under the SFA was to monitor the compliance of the conditions precedent (which included the requirement of confirmation that ring-fencing was in place) prior to issuance. KAF had to obtain confirmation from Pesaka that the accounts had been ring-fenced “in form and content acceptable to the Lead Arranger” (emphasis mine). Anyhow since there is a pending application for a review under Rule 137 of the Federal Court Rules 1995, no further comment shall be made on this issue.

In relation to financial advisors, it is clear that a fiduciary relationship exists between a financial advisor and his client. In Malaysia, the principle of fiduciary relationship between an investment advisor and a client is codified in section 40A of the Securities Industry Act 1982 (“SIA 1982”). Justice Zainun Ali speaking for the Court of Appeal in the case of *Wong Lai Yoke & 2 ors v Mayban Securities Sdn Bhd* (unreported) upon construing the provision of section 40A(2) of the SIA 1982, held that the provision makes it incumbent on the investment advisor to make his professional judgment and tender his advice on the shares or stocks he represents to his clients. It calls for a proper involvement of the advisor to investigate the risk factors. The test is what a prudent investor

²⁷ CIMB Bank Bhd v Maybank Trustees Bhd [2014] MLJU 117, paras 44-52.

²⁸ Ibid, paras 74-81.

²⁹ Ibid, paras 84-87.

would want to know or perceive of the risk of the proposed investment. The facts of *Wong Lai Yoke* involved a suit brought by the plaintiffs against the 1st and 2nd defendants who were the financial investment advisors and stockbrokers, respectively for breach under section 40A of the SIA 1982. The plaintiffs operated investment accounts with the 1st defendant mainly to invest in Initial Public Offerings (“IPO”) and Reverse Takeovers (“RTO”) shares. Based on the advice and representation made by one Amin of the 1st defendant, the plaintiffs invested in Idaman Unggul Bhd Securities (“IUB”) a company which was undergoing a restructuring exercise for a reverse takeover which resulted in the plaintiffs’ loss. The Court of Appeal upheld the finding of the trial Judge that the 1st defendant had failed to consider and advise on the various risk factors relating to the sustainability of IUB as a going concern and that Amin had made specific representations that were misleading in relation to the reference price, conversion of the Irredeemable Convertible Unsecured Loan Stock, dividends and profit forecasts.

Also, courts in other jurisdictions have held that the incorporation of disclaimers do not apply to exclude liability where the relationship is one between a financial advisor and a client. In Australia, section 12DA of the Australian Securities and Investments Commission Act 2001 (“ASIC Act”) states that “a person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.” Section 12DA was the subject of the case of *Delmenico v Branelly & Anor*³⁰ where a financial planner argued that the client’s misunderstanding of the terms of the investment (thus causing his loss) was something that he was solely responsible for. It was held that this was not the case, even where there had been a disclaimer in the relevant letter, which contained the false statements at the heart of the case. Further, it was stated in the District Court that the fact that the plaintiff had been careless or could have discovered the misrepresentation had he made proper inquiries of the first defendant did

not allow the latter to avoid liability for such misrepresentations.³¹

The principle that a fiduciary obligation exists between a stockbroker or other person who holds himself out as having expertise in advising on investments and a client has been long established in Australian case law.³² Even where a stockbroker had incorporated disclaimers into the information provided to a client, it has been held by the Federal Court of Australia in a recent case³³ that the disclaimers did not apply to advice and recommendations given by the stockbroker in its capacity of financial advisor.³⁴

In the United Kingdom, the Court of Appeal in *Rubenstein v HSBC Bank plc*³⁵ upheld the decision of the court below that HSBC (through the financial advisor employed by it) had breached its statutory duties under the Financial Services Authority’s Conduct of Business Rules and was negligent in the provision of advice to a customer concerning investment options. However, the Court of Appeal also found that HSBC was liable for the loss incurred by the customer because the financial advisor employed by HSBC had placed the customer’s money into a fund which was subject to market losses when the customer had stressed that he could not afford to take the risk of any loss of capital, and had misled the customer as to the nature of the investment.³⁶ This was even though the loss in question was unexpected (the loss happened as a result of the collapse of Lehman Brothers in the global financial crisis).

Does a Breach of Statutory Duty Give Rise to Private Rights and Remedies?

The final issue in this paper is whether a breach of statutory duty by a player in the financial market gives rise to a right to claim a remedy in private law. At present, Malaysian jurisprudence is fairly clear on the matter, at the very least regarding the Securities Commission Act 1993 (“SCA 1993”) and the Take-over Code,

³⁰ [2008] QCA 74.

³¹ *Delmenico v Branelly & Anor* [2008] QCA 74 at para 34.

³² See *Daly v Sydney Stock Exchange Ltd* [1986] HCA 25, applied in the recent Federal Court of Australia case *Wingecarribee Shire Council And Others v Lehman Brothers Australia Ltd* (2012) 301 ALR 1.

³³ *Wingecarribee Shire Council And Others v Lehman Brothers Australia Ltd* (2012) 301 ALR 1.

³⁴ *Ibid*, paras 585, 725-727, 787-788.

³⁵ [2012] EWCA Civ 1184.

³⁶ *Rubenstein v HSBC Bank plc* [2012] EWCA Civ 1184, paras 86 and 115.

³⁷ *Tuan Hj Zulkifli bin Hj Hussain & Ors v IOI Corp Bhd & Ors* [2012] 7 MLJ 215 (HC).

in that there is no such right to claim a remedy in private law arising from such a breach. Justice Nallini Pathmanathan³⁷ in considering the consequence of a breach of the Take-over Code through the failure of the defendants to undertake a Mandatory General Offer held that the history and wording of the relevant sections of the SCA 1993 did not lend themselves to the interpretation that Parliament intended to confer a private law remedy in tort.³⁸

Justice Nallini Pathmanathan summarised the relevant principles as follows:³⁹

- (a) As a general rule, where an Act creates an obligation and enforces the obligation in a specified manner, that performance cannot be enforced in any other manner.
- (b) Two exceptions were recognised in the English case of *Lornho v Shell Petroleum Co*;⁴⁰ namely where the obligation was imposed for the benefit or protection of a particular class of individuals and where the statute creates a public right.
- (c) The fact that a statute was unquestionably passed for the protection of a specific class of individuals is not conclusive.
- (d) Where the statute imposes a duty and provides an adequate remedy for its breach or some other means of enforcement, this militates against the existence of an action for breach of statutory duty.

Justice Hamid Sultan held in *Shahidan bin Shafie v Atlan Holdings Bhd & Anor*⁴¹ that the court should not entertain any application where the complaint has not been placed with the appropriate authority as that would amount to an abuse of process of court where a complaint and relief mechanism has been specifically provided for in the Act.⁴² Justice Hamid Sultan also held that the previous position in *Petaling Tin Bhd v Lee Kian Chan*⁴³ (followed in *Aun Huat & Brothers Sdn Bhd v Sime Darby*)⁴⁴ where the Supreme Court implied that a private law obligation arose as a result of a breach of statutory duty, did not apply in the present case as a comprehensive relief had not been provided for in the law examined by the case.

Conclusion

The courts play an important role in the regulation of the financial services industry. The courts have to walk a fine line between protecting the rights of financial institutions, listed issuers and other players while according due deference to the discretion of the Regulators when faced with applications for judicial review. The liabilities of the various players in the financial market remain to be further defined and fine-tuned through the case law. Finally, it is commendable that the courts have begun to move the law in the direction of the jurisprudence that there cannot be a claim for private law remedies where there has been a breach of statutory duty and where provision has been made for relief through the Regulators. This development complements the current direction towards greater protection for financial services consumers as can be seen in the recent legislative reforms.⁴⁵

³⁸ Ibid, para 69.

³⁹ Ibid, para 42.

⁴⁰ *Lornho v Shell Petroleum Co Ltd & Anor* (No. 2)[1982] AC 173 (HL)

⁴¹ [2013] 7 MLJ 215 (HC)

⁴² *Shahidan bin Shafie v Atlan Holdings Bhd & Anor* [2013] 7 MLJ 215 (HC), para 13(f).

⁴³ [1994] 1 MLJ 657.

⁴⁴ [2003] 6 MLJ 49.

⁴⁵ i.e. the CMSA 2007 and the FSA 2013.

MALAYSIA'S COMPETITION LAW

**By: Tan Sri Dato' Seri Siti Norma Yaakob
(Former Chief Judge Of Malaya)
Chairman Malaysia Competition Commission**



Tan Sri Dato' Seri Siti Norma Yaakob

1 January 2012 marked a significant milestone for the business community in Malaysia. It was on that date the Competition Act 2010 (the Act) came to be enforced after an 18 months embargo following its enactment on 10 June 2010. This was to enable the business community to take stock that their business activities do not fall foul of the Act and to encourage a compliance culture in all their business dealings.

The Act also provided for the setting up of the regulatory body to implement the provisions and carry out the purpose of the Act. Thus the Malaysia Competition Commission (MyCC) was established on 1 April 2011, headed by a Chairman and nine other Commissioners, four of whom are government nominees whilst the

remaining five are made up of individuals who have experience and knowledge in matters relating to business, industry, commerce, law, economics, public administration, and other skills which are considered to add prestige and value to the composition of the MyCC. Whilst the MyCC functions as an independent body in its decision making process, it comes under the purview of the Ministry of Domestic Trade, Cooperatives and Consumerism. The MyCC is empowered to carry out various roles which include advocacy, investigation and enforcement, market review, exemption, compliance and leniency.

With the Act in place, Malaysia joins 140 other jurisdictions worldwide with their own competition policies and laws. In the Asean

region, Malaysia ranks fifth after Indonesia, Singapore, Thailand and Vietnam and it is a prerequisite for the other Asean member states to have their respective competition policy and law in place by 2015 to fulfill the goals of the Asean Economic Blueprint.

The competition law is a unique piece of legislation. It contains a combination of legal and economic principles. Developing a greater understanding of the economics behind the competition law is important. The law is designed to support the economic perspectives of competition while economic reasoning supports enforcement of the law.

The benefits of competition are to provide lower prices, better products, wider choice by stimulating a broader range of products and services as well as greater efficiency. Competition also ensures value-for-money by ensuring that firms compete on price and quality. In any form of business, competition motivates firms to create new products and reduce costs in order to win customers by way of innovation. Along with other benefits, competition is seen to support economic growth by promoting choice, value, innovation and productivity.

In general, the sole purpose of the Act is to achieve a balance between economic goals whilst preserving the competitiveness of the market. The preamble to the Act highlights this:

‘To promote economic development by promoting and protecting the process of competition, thereby protecting the interest of consumer and to provide for matters connected therewith’.

‘The process of competition encourages efficiency, innovation and entrepreneurship, which promotes competitive prices, improvement in the quality of the products and services and wider choices for consumers’.

The Act is not concerned about the status or ownership of companies, private or government linked companies or competitors. What it sets out to do is to promote and protect the process of competition and this applies to all commercial activities, both within and outside Malaysia, which has an effect on competition in any market in Malaysia. However it excludes any activity, directly or indirectly in the exercise of governmental authority such as the provision

of medical services in hospitals; any activity conducted based on the principle of solidarity i.e. EPF and SOCSO as well as any purchase of goods or services which are not for the purposes of offering goods and services as part of an economic activity, for example government procurement activities. Other commercial activities that are expressly excluded from the Act include commercial activities regulated under the Communication and Multimedia Act 1998 [Act 588] and the Energy Commission Act 2001 [Act 610] as stated in Schedule 1 of the Act. In the recent amendment of the said Schedule 1 which was gazetted on 30 December 2013, paragraph 2 was inserted which states that the commercial activities regulated under the Petroleum Development Act 1974 [Act 144] and the Petroleum Regulation 1974 [P.U. (A) 432/1974] are also excluded from the Act. In addition, the Act also excludes an agreement or conduct that complies with any legislative requirement, collective bargaining for employment and services of general economic interest or having the character of a revenue-producing monopoly as stated in Schedule II of the Act.

On the substantive provisions of the Act, Part II prohibits enterprises from engaging in two forms of conduct which are (i) as found in anti-competitive agreements; and (ii) abuse of dominant position. Merger and acquisitions do not come within the Act.

Section 4(1) expressly prohibits a horizontal or vertical agreement between enterprises insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

Significantly preventing, restricting or distorting competition means that the agreement must have more than a trivial impact in relation to a market.

Certain agreements are considered to be more serious infringements of the competition law known as ‘hard-core cartels’ and these include price fixing, limiting or controlling (production, market outlet or market access, technical or technological development, investment), share market or sources of supply and bid rigging.

A price fixing agreement under section 4(2)(a) of the Act may well be in the form of a

direct or indirect agreement. As it is often the case, the price fixing agreement is accompanied by other provisions which strengthen the operation of the cartel such as market sharing and information sharing. Other agreements which directly or indirectly facilitate the level of pricing may include agreements to fix discount, rebates¹, agreements to consult on price list², restrict advertising, exchange of information and discussion to ensure there is no price war³, collaborate pricing strategy with the intention to make the price higher, exchange price information⁴, limit imports⁵ and many other practices.

Market sharing under section 4(2)(b) of the Act also has restrictive effects on competition similar to other 'hard-core' anti-competitive agreements. Exclusivity in a particular geographical area or a particular customer may allow a monopoly within the area or a particular group of customers. It could be a price or even a non-price agreement between parties.

In *SAS/Maersk*⁶, the European Competition (EC) Commission imposed fines of approximately €52.5 million for market sharing in the air transport sector. In this case, the parties had notified a co-operation agreement to the EC Commission. However, the EC Commission discovered that the agreement was more-far-reaching than the notified agreement made. Following investigations at the parties' premises (dawn raid), the EC Commission discovered that the parties had omitted to provide information related to a broad market sharing agreement under which essentially the parties would withdraw from each other's routes and would share the domestic routes.

Market sharing could also take the form of customer switching where in the case of *Methyglucamine*⁷, the competitors were trying to prevent switching their respective customers from one to the other supplier and agreed not to compete for each other's customers.

Another example of an anti-competitive conduct identified by section 4(2)(c) of the Act relates to limiting or controlling production, market outlets or market access, technical or technological development; or investment.

Restricting production for instance may be a form of beneficial collaboration between competitors. A restriction in output automatically creates an imbalance between supply and demand thus causing an increase in market prices. The *Quinine Cartel*⁸ was the first case in which the EC Commission fined undertakings (enterprises) for raising prices by means of restricting output. In all these cases, there must be an element of collusion⁹ between the competitors. It is this collusive conduct that is anti-competitive.

Bid rigging is yet another example of an anti-competitive conduct which is prohibited under section 4(2)(d) of the Act. Bidding is a way to buy or sell goods or services through a tender or auction. Therefore the bid is usually awarded to the lowest bidder. Bid rigging is a term used to describe any agreement (written or oral) between bidders that limits or reduces competition in a tender. The agreement may be between a bidder and a potential bidder that does not actually submit a bid. In most countries, all bid rigging agreements are illegal, and in some countries it is a criminal offence

1 Case 311/85, *VZW Vereniging van Vlaamse Reisbureaus v. VZM Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten* [1987] ECR 3801, [1988] 4 CMLR 755.

2 *Re Cast Iron Steel Rolls* [1983] OJ L 317/1

3 *Plasterboard* [2005] OJ L166/8

4 219/00 P, *Aalborg Portland A/S v. Commission* [2004] ECR I-123, [2005] 4 CMLR 251.

5 *French Beef* [2003] OJ L209/12, [2005] 5 CLMR 891

6 [2001] OJ L 265/15, [2001] 5 CMLR 1119, *aff'd* Case T-241/01, *Scandinavian Airlines System AB v. Commission* [2005] ECR-2917, [2005] 5 CMLR 18

7 *Methyglucamine* [2004] OJ L38/18

8 *Quinine Cartel* [1969] OL J 192/5, [1969] CMLR D41

9 Collusion happens when some or all firms in a market coordinate to suppress competition. This coordination is typically done with the intent of raising price and earning higher profit. There are two types of collusion namely explicit and tacit collusion. Explicit collusion is defined as coordination through direct or express communication. It occurs when firms directly communicate about price, market allocation, sales quotas and other information pertinent to coordinating prices and quantity. It is always illegal. Tacit collusion is coordination without direct or express communication. It takes place when a less competitive outcome is achieved through mutual understanding among firms, price leadership, signaling using market instruments such as price, and any other method not involving direct communication.

Agreements between competitors could be an agreement on who will win the bid, an agreement on prices (either to raise, lower, maintain prices or not to negotiate on price), an agreement to limit discounts or rebates or even agreements on price formulas or guidelines.

The anti-competitive practice in bidding process which limits competition in the market is explained in the European Sugar Cartel as follows:-

'In a system of tendering, competition is of the essence. If the tenders submitted by those taking parts are not the result of individual economic calculation, but of knowledge of the tenders by other participants or of concertation with them competition is prevented, or at least distorted or restricted'.¹⁰

Other forms of prohibited agreements include resale price maintenance, suppliers' obligation to sell only to one buyer, requirement of buyer to buy all supplies from one supplier, information sharing and many others that may raise competition concern.

Abuse of dominant position under section 10 is the other conduct that is prohibited by the Act. There is nothing wrong with being a monopoly but what is objectionable is when there is abuse of that dominant position by the monopoly.

Examples of some abusive behaviour include setting unfair purchase or selling prices or unfair trading conditions, predatory behaviour, applying different conditions with other trading partners, refusing to supply or limiting or controlling production without reasonable commercial justification. Unless there are reasonable commercial justifications or responses, such conduct are defined as being abusive.

As the MyCC has the power to investigate and make findings of infringement under the Act, it also has the power to (i) require the

infringement to cease immediately; (ii) impose any financial penalty that shall not exceed the statutory maximum established by section 40(4) which provides:

'A financial penalty shall not exceed ten percent of the worldwide turnover of an enterprise over the period during which an infringement occurred.'

The financial penalty imposed must be reflective of the seriousness of the infringement to ensure deterrence for both the infringing and other enterprises to consider or restraint engagement in anti-competitive activities.

Any person who is aggrieved or whose interest is affected by any decision of the MyCC may appeal to the Competition Appeal Tribunal (CAT) under section 51 of the Act. CAT may (a) remit the matter to the MyCC; (b) impose or revoke, or vary the amount of, a financial penalty; (c) give such direction, or take such other step as the MyCC could itself have given or taken; or (d) make any other decision which the MyCC could itself have made.

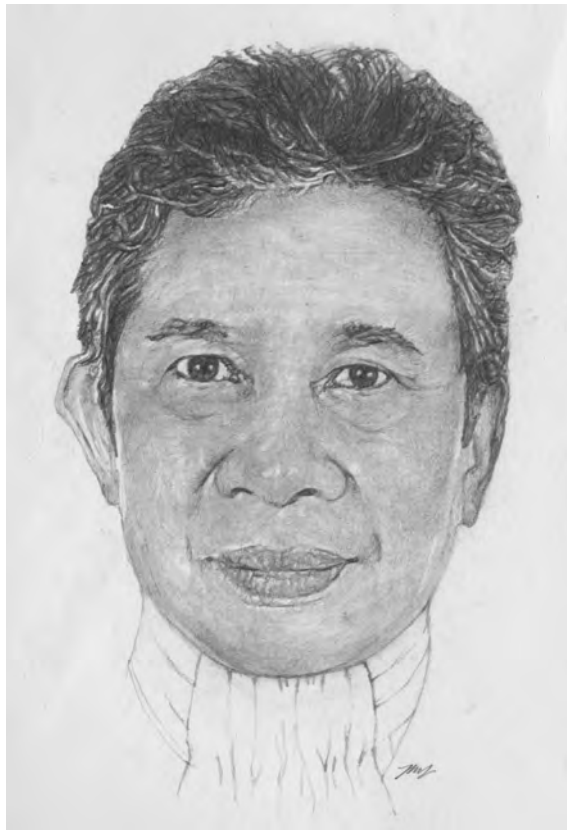
Since its establishment, the MyCC has been conducting advocacy programmes to educate our local businesses on the implication of the Act. Surveys done in 2011 and 2012 still show that the level of awareness among our local businesses as regards the Act is still very low, despite the MyCC's focus on trade associations to reach out to local businesses.

Our Malaysian businesses must be aware that the development of competition law is not unique in this region as it is practiced worldwide. As the business landscape is going borderless, our domestic players must prepare to move away from their comfort zones and gear themselves up to a more dynamic and competitive environment. As such, local businesses which intend to go regional and trade with other member countries must start equipping themselves with knowledge on competition law.

¹⁰ *Re The European Sugar Cartel* [1973] OJ L140/17, [1973] CMLR D65, para 42.

CREDIBILITY OF WITNESSES – APPELLATE INTERFERENCE WITH THE AID OF TECHNOLOGY?

By: Justice Abdull Hamid Embong
Judge of the Federal Court



Justice Abdull Hamid Embong

INTRODUCTION

Evidence plays a fundamental role in every legal proceeding in both civil litigation and criminal trials. Evidence can be established either by way of oral or documentary evidence. Under normal court environment evidence adduced by witnesses will be recorded by way of manual transcription. This article will explore the rudimentary principles relating to the credibility of witness and discuss whether appellate courts are allowed by law to interfere with the witness's credibility with a special look at cases involving audio and visual recording transcription.

The Computer Judge?

With the advent of technology, evidence is now capable of being recorded through audio and visual recordings. Court technology is able to dispense with the requirement on the presiding judge from hand writing down all of the witnesses' testimony. Instead, the presiding judge would be able to concentrate on observing the demeanour of witnesses without having to sway his attention to pen their testimony. Court technology would enable the saving of judicial time in adjudicating any dispute and avoid protracted proceedings in court.

Certainly it is an insightful vision that a speedy and transparent justice system could be delivered to the public at large via the utilisation of information technology.

The idea of preserving the trial record on a recording device is not new. As early as 1930, a judge proposed that trials be filmed and preserved by the movie technology process¹. Legal researchers David W. Louisell and Maynard E. Pirsig expanded that idea in a 1953 paper, proposing that film could capture a more accurate trial record than that rendered by a court reporter's written notes².

Despite acknowledging the advantages, there were some dissenting views ventilated by judges through decided cases expressing their worries over the use of technology as it substantially sacrificed the appellate judges' time in reviewing the audio visual recording. Perhaps the decision in *Shillington v. K-MART Corp*³ best describes such instance. In this case, the court expressed its preference for a written record and deemed it to be the most appropriate record for appellate review. The court further emphasized that:

"The use of videotapes ... for appellate review greatly frustrates effective review of the trial proceedings, especially in cases such as this where questions of sufficiency of the evidence are determinative. The time needed to adequately review the evidence is greatly enlarged. This presents problems for an appellate court which must deal with a high volume of cases."

A similar sentiment also arose in the case of *Foster v. Kassulke*⁴, when there was a refusal to prepare a written transcript of the court proceeding because the 132-hour videotape record of a six-week murder trial was so long as to make proper brief preparation impossible. This reluctance may be because lawyers and judges were so used to written words. It may also have stemmed from the fact that text can be browsed quickly and the transcript opened to any necessary point while audio and videotapes must be viewed in real time⁵.

Ultimately, the reception towards court technology remains subjective among judicial officers. This article does not intend to evaluate the judges' perception towards the effectiveness of court's technology, but to fathom the appellate court's power in interfering with the finding of facts by the trial courts especially in assessing the credibility of the witnesses. To that effect, I have formulated some legal posers which led to the writing of this article. Occasional references to other foreign case laws are made throughout this article for the purpose of reference and benchmarking. I shall attempt to answer these legal predicaments under the sub-topics as set out below.

- i) How crucial is a witness's credibility in both civil and criminal trials?
- ii) How much of a witness's evidence is to be considered if he is found to be lying; and the effect of the main issue in trial in cases where witnesses found to be lying but only in certain part of the evidence?
- iii) Should the appellate courts interfere in the findings of credibility of witnesses?
- iv) How and when can the appellate courts interfere?
- v) The effect of finding on credibility of one witness – how it affect the total presentation of a case?
- vi) Audio visual observation of trial courts on witnesses' performance?

LEGAL QUESTIONS

(i) How crucial is a witness's credibility?

Section 59 Evidence Act 1950 (Act 56) stipulates that all facts may be proved by way of oral evidence by the witness. Section 119 of Act 56 has extended the operation of section 59 Act 56 to include evidence given in an intangible manner such as writings or signs to be deemed to be oral evidence. However, the weight and value of such oral evidence depends on its credibility as found by the trial court in each case. Credibility is defined as worthiness of belief; that quality in a witness which renders his evidence worthy of belief⁶. A credible

¹ W. Hewitt, *Videotaped Trial Records: Evaluation and Guide*, 58- 59 (1990) at xxi.

² *Ibid*, at p. xxi-xxii.

³ 102 N.C. App. 187, 402 S.E.2d 155 (1991).

⁴ 898 F.2d 1144 (6th Cir. 1990)

⁵ Rorie Sherman, *Virtual Venues*, reporting on the federal rejection of videotape records, *Natl. L.J.* 1,30. (Jan. 10, 1994).

⁶ <http://thelawdictionary.org/credibility/>

witness is one whose testimony is more likely to be true based on his or her experience, knowledge, training and appearance of honesty and forthrightness, as well as common human experience.⁷ Lord Justice General in the case of **Mason v Macleod**⁸ defined ‘credible witness’ as a witness whose credibility commends itself to the presiding magistrate, whose duty it is to hear the evidence adduced before the court; and the court should not be influenced by the bad character of the witness in accepting the probative value of the evidence. This is subjective considering the fact that the judge may be influenced by the demeanour of the witness or other factors.⁹

The importance of a witness’s credibility in any legal proceeding is further illustrated in the case of **Chandrakandan s/o Munusamy Pemborong Pentex Sdn Bhd v. Sasidharan a/l Weelamegam**¹⁰. This case involved a dismissal of a worker where one of the contentions was the exact wages paid to the claimant. The employer initially informed the court that he had a wages register to prove the exact payment made to the claimant. However he stated otherwise when he was asked to produce the wages register. The fact that he did not have the wages register nor other document to prove the actual wages paid, detracted his credibility. The court ruled that:

“Findings of fact are to a large extent determined by the credibility of witness...”

The credibility of a witness actually place much reliance on the witness knowledge of the facts, his intelligence, his disinterestedness, his integrity, his veracity. Proportionate to these is the degree of credit his testimony deserves from the court¹¹. The more obvious matters affecting the weight of a witness’s evidence may be classed as the means of knowledge, opportunities of observation, reasons for recollection or belief, experience, powers of memory and perception and any special circumstances affecting his competency to speak of the particular case; all of which may be inquired into earlier in direct examination to enhance, or in cross-examination to impeach the testimonial value¹². In **Balasingham v.**

Public Prosecutor¹³, the court reminded that it must always provide its reasons for its finding on matters relating to credibility of witnesses and in the absence of reasons, indicates the possibility that such vital consideration as the weight of evidence may not have influenced the mental process of the trial Judge in arriving at the ultimate finding. A reference to a witness’s demeanour should condescend to particulars and to give reasons for coming to an opinion on the witness’s credibility. The “grounds of decision” requirement under section 307(3) of the Criminal Procedure Code has been held to be those reasons for making its findings must be given by the trial judge¹⁴.

In finding of facts, a judge needs to necessarily evaluate the evidence given by a witness before making a decision. In **Onasis v Verqottis**¹⁵, Lord Pearce in the House of Lords emphasised the importance of assessing the credibility of a witness as it is an integral and inseparable part of the judicial process, stating:

“Credibility involves wider problems than mere “demeanour” which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or, though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the

⁷ www.legal-dictionary.thefreedictionary.com, 27/11/2013.

⁸ [1918] S.C. (J.) 66

⁹ Ibid.

¹⁰ [1991] 2 ILR 730

¹¹ M.N. Howard, Peter Crane & Daniel A. Hochberg, Phipson on Evidence, The Common Law Library, No.10, London, Sweet and Maxwell 1990, at p.12-20.

¹² Ibid. at p.12-21.

¹³ [1959] 1 MLJ 193.

imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness, and motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process and in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

The said notion can also be observed from the decision of Edgar Joseph Jr. delivered in the case of **Tan Cheng Hock v Chan Thean Soo**¹⁶. According to the learned judge, in assessing the credibility of the witness, it must not be confined to demeanour alone. Evaluation must be made on the evidence and probabilities before the court. This is because weighing credibility only on the witness demeanour sometimes can be very deceiving. Lord Wright in **Powell and Wife v Streathen Manor Nursing Home**¹⁷ also expressed concern on the possibility of judges being deceived by "adroit or plausible knaves or by apparent innocence of the witnesses". In fact, empirical research also reveals that this theory is relatively tenable. According to Hezel Genn, a Professor of Socio-Legal Studies at University College London, assessing credibility on the basis of demeanour alone may expose two potential types of error¹⁸, namely,

- a) Mistakenly believing someone who is lying.
- b) Mistakenly disbelieving someone who is telling the truth.

Some principles or guidelines which may not be exhaustive but more of common reference can be derived by looking at the quality of the testimony and not the quantity of testifying witnesses; for instance¹⁹:

- a) If one finds that any witness had intentionally testified falsely as to any material fact, one must scrutinise the credibility of the witness's testimony;
- b) In evaluating the testimony, one may consider whether the witness had the ability to recall the events accurately to which he is testifying;
- c) Was the testimony of the witness consistent or inconsistent with other testimony or evidence in the case;
- d) Did the manner in which the witness testified reflect upon the truthfulness of that witness's testimony;
- e) To consider whether the witness was bias, hostile or some other attitude that might affect the truthfulness of his testimony;
- f) To consider whether a witness had or did not possess a motive to lie;
- g) Whether the witness had any interest in the outcome of the case or otherwise;
- h) To consider whether a witness's criminal conviction or conduct had affected the truthfulness of his testimony.

In civil cases where contemporary documentary evidence is involved, a judge has to consider both the oral evidence and documentary evidence. The following guidance in **Armagas Ltd v Mundogas S.A. (The Ocean Frost)**²⁰ is found to be helpful in considering the witness's credibility:

"...when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether

¹⁴ Murugiah v. PP [1941] 10 MLJ 17

¹⁵ [1968] 2 Lloyds Rep 402

¹⁶ [1987] 2MLJ 479.

¹⁷ [1935] AC 243

¹⁸ Hazel Genn- Professor, Assessing Credibility, Socio-Legal Studies, University College London, Principles in Practice, at p.2-4, retrieved from <http://www.judiciary.gov.uk/>, accessed on 26.11.2013.

¹⁹ Credibility of Witness, retrieved from www.nycourts.gov/judges, accessed in 27.11.2013.

²⁰ [1985] 1 Lloyd's Rep 1

a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

Unlike in civil litigation, a typical criminal trial does not involve voluminous documentary evidence. A witness's credibility in a criminal trial is more crucial as it would affect the outcome of the case. In finding of facts, a judge can only rely on the evidence given by witnesses during the trial and it is the judge's prerogative to believe whose version of the story is more inherently probable and carries more probative value. The House of Lords of **R v Brown**²¹, illustrated this principle holding that evidence which were not before the court must not be considered no matter how significant it would be to the case. In this case a woman was stabbed in the leg by a man with a knife or machete. She sustained a deep penetrating wound from which she nearly died and which has left her with a permanent disability. The issue at the trial was whether the person who stabbed her was the accused. The charge against the accused was based on the evidence of two witnesses. They said that they both knew the accused and the accused had stabbed the victim inside the club. There was a background of friction between the accused and victim where the victim had been wounded in an earlier shooting incident. It was put to these two witnesses in cross-examination that they were lying and that they were inspired by motives of hostility towards the accused arising from the previous shooting incident.

The House of Lords ruled that a witness who has previous convictions, especially for crimes which imply dishonesty or disrespect for the law, may be of great significance in regard to issues of credibility. But it has nothing to do with the question whether the offence with which the defendant is charged was committed or whether it was the defendant who committed the offence. If the witness is not called on to give evidence, evidence of his previous convictions will be irrelevant and inadmissible. It will have no bearing whatever on the facts of the case.

However, credibility sometimes is so intimately bound up with the facts that the two cannot reasonably be separated. A good example of this is where an account is given by the witness of his recollection of events which contains within it contradictions or inconsistencies which cast doubt on his reliability. Another is where his account is contradicted by other witnesses, so that the issues of credibility and reliability have to be decided by assessing the weight of the evidence. So it is not possible to say that material relating to the credibility of defence witnesses will always be distinguishable from the issues of fact relating to the accused's guilt or innocence.

(ii) How much of a witness's evidence to be considered if he is found to be lying; and the effect of the main issue in trial in cases where witnesses found to be lying but only in certain part of the evidence?

There are two primary ways to lie²²:

- a) To conceal – withholding information without actually saying anything that is untrue;
- b) To falsify – presenting false information as if it were true.

Often it is necessary to combine concealing information with falsifying information, but sometimes it is possible simply to conceal information. When there is a choice about how to lie, psychological research suggests that liars generally prefer to conceal information rather than to falsify information, principally because concealing is generally easier than falsifying information²³. If you don't have to make anything up you don't have to remember your story. It is also possible that witnesses consider concealing information to be less reprehensible than falsifying information and are therefore less likely to reveal signs of discomfort about concealment and less fear of detection²⁴.

In reality it is very difficult to tell if a witness was lying in court. The characteristic and temperament of a person may affect the demeanour and emotion when giving evidence in court. The difficulty in assessing the witness's credibility was elucidated by our court in the

²¹ [1997] UKHL 33, [1998] AC 367, [1997] 3 All ER 769, [1998] AC 367.

²² Hazel Genn- Professor, Assessing Credibility, Socio-Legal Studies, University College London, Principles in practice, at p.2-4, retrieved from <http://www.judiciary.gov.uk/>, accessed on 26.11.2013.

²³ Ibid.

case of **Chandrakandan s/o Munusamy Pemborong Pentex Sdn Bhd v. Sasidharan a/l Weelamegam**²⁵ when the judge acknowledged that it is sometimes difficult to determine who was speaking the truth. But once a witness's credibility is suspect, the court will be unlikely to believe his evidence on the central issues of fact to be decided by the court.

However, if a witness is found to be lying on a certain point, his evidence must not be totally discarded by the court. Instead, his testimony must be scrutinized by the court with great care. In the case of **Khoon Chye Hin v Public Prosecutor**²⁶, the Court of Appeal ruled that:

"If a witness demonstrably tell lies on one or two points then it is clear that he is not a reliable witness and as a matter of prudence the rest of his evidence must be scrutinized with great care and indeed with suspicion. To say however, that because a witness has been proved a liar on one or two points then the whole of his evidence 'must in law be rejected' is to go too far and is wrong."

Meanwhile, in the case of **Tua Kin Ling v Public Prosecutor**²⁷ the court outlined that it is the court's duty to sieve the evidence and to ascertain the parts of the evidence tending to incriminate the accused whenever it encountered an unreliable witness.

There are many occasions where the courts are challenged with the task of assessing the credibility of a witness and whether the witness is telling truth or otherwise. Indeed, discrepancies and contradictions will surface if the witness is not telling the truth. In **Ugar v State of Bihar**²⁸, the Indian Supreme Court pointed out that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishment. In considering them, what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy.

Raja Azlan Shah FJ (as His Royal Highness then was) in **PP v Datuk Haji Harun bin Haji Idris**²⁹, neatly summed up this situation in this manner –

"In my opinion discrepancies there will always be, because in the circumstances in which the events happened, every witness does not remember the same thing and he does not remember accurately every single thing that happened...The question is whether the existence of certain discrepancies is sufficient to destroy their credibility. There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other."

Both of the above decisions were again cited with approval in the case of **PP v Dato' Seri Anwar Ibrahim**³⁰. In this case, the learned judge held that the real test that needs to be observed for either accepting or rejecting the evidence of a witness is how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case. However being unshaken in cross-examination is not per se an all-sufficient acid test of credibility. The inherent probability or improbability of a fact in issue must be the prime consideration.

(iii) Should the appellate courts interfere in the findings of credibility of witnesses?

The credibility of a witness is primarily a matter for the trial judge. In **Coghlan v Cumberland**³¹, Lindley M.R. ruled that:

"The Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not

²⁴ Ibid.

²⁵ [1991] 2 ILR 730

²⁶ [1961] MLJ 105

²⁷ [1970] 2MLJ 61.

²⁸ 1965 AIR SC 277.

²⁹ (No. 2) [1977] 1 MLJ 15.

³⁰ (No.3) [1999] 2 CLJ 215.

³¹ [1898] 1 Ch 704

disregarding the judgment appealed from, but carefully weighing and considering it; and not shirking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the Court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen.”

Lord Reid in the case of **Benmax v Austin Motor Co. Ltd.**³² observed that it is only in rare cases that an appeal court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness.

It is pertinent to highlight the case of **Watt or Thomas v Thomas**³³ which “may be the most frequently cited of all judicial dicta in Scottish courts”, in the words of Lord Thankerton, who said –

“Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could only be sufficient to explain or justify the trial judge’s conclusion....”

Another case is **Thomson v Kvaerner Govan Ltd**³⁴ where Lord Hope of Craighead stated that:

“It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion.”

Meanwhile, here, in the case of **Dato’ Mokhtar Hashim & Anor v. Public Prosecutor**³⁵. Abdoolcader FJ, delivering the judgment of the Federal Court remarked as follows:

“There is a homogeneous concatenation of authorities on this principle and we refer to the locus classicus on this aspect in the passage in the judgment of Lord Thankerton in Watt or Thomas v. Thomas [1947] AC 484, 487. The Privy Council said in Caldeira v Gray [1934] 1 LNS 5; [1936] MLJ 137, 138 that the functions of an appellate court, when dealing with a question of fact, and a question of fact in which questions of credibility are involved, are limited in their character and scope, and that in an appeal from a decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, an appellate court must in order to reverse, not merely entertain doubts whether the decision below is right but be convinced that it is wrong.”

The legal foundation placed in **Watt or Thomas v Thomas** was again reinforced by Supreme Court of England in the recent case of **McGraddie v McGraddie & Another**.³⁶ In this case Lord Reed ruled that it is settled law that an appellate court should only intervene if it is satisfied that the trial judge was plainly wrong.

In **Sarju Pershad v. Jwaleshwari**³⁷, it was held that the appellate court should not interfere with the finding of the trial Judge on a question of fact. The appellate court is not competent to reverse a finding of fact arrived at by the trial Judge unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge’s notice or there is a

³² [1955] AC 370.

³³ (1947) SC (HL) 45

³⁴ (2003) UKHL 45

³⁵ [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC

³⁶ [2013] UKSC 58.

³⁷ AIR 1951 SC 120.

sufficient balance of improbability to displace his opinion as to where the credibility lies. The appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court.

The same principle also echoed in the case of **Lee Ah Seng & Anor. v. PP**³⁸ when the learned judge held that an appellate court should always be slow in disturbing such finding of fact arrived at by the Judge who had audio-visual advantage of the witness, unless there are substantial and compelling reasons for disagreeing with the finding. Discrepancies will always be found in the evidence of a witness but what a judge has to determine is whether they are minor or material discrepancies. It would be wrong to totally reject a witness evidence merely because there was contradiction in evidence. The final analysis is for the trial judge to determine which part of the evidence of a witness he is to accept and which to reject and not the function of an appellate court to make primary finding of facts.

The recent development from decided cases have also proved that the appellate court should always abstain itself from interfering on any finding of facts properly made by the lower courts. This can be perceived through some of the decisions delivered by the Malaysian Federal Court. In **Tan Kim Ho & Anor v PP**³⁹ Zaki Tun Azmi CJ reiterated as follows:

“It is an established principle of law that when dealing with finding of facts, the trial Judge is more often than not, in a better position to decide. The appellate court must be reluctant to interfere with such findings, unless the facts obviously disclose the courts below had clearly and wrongly evaluated the facts.”

In **Asia General Equipment and Supplies Sdn Bhd & Ors v Mohd Sari bin Datuk OKK Hj Nuar & Ors**⁴⁰, the trial judge came to a conclusion that the plaintiffs have successfully established estoppel. However the Court of Appeal disturbed this finding of fact which led to an appeal to the apex court. The Federal

Court disagreed with the course taken by the Court of Appeal in meddling with the finding of facts made by the High Court and ruled that the law had clearly circumvented interference by the appellate courts especially on the proper finding of facts made by the lower courts.

A similar standpoint was also taken in the recent decision delivered through the case of **Isidro Leonardo Quito Cruz v PP**⁴¹ where the Federal Court ruled that the finding of facts and assessing credibility is within the volition and good judgment of the trial judge who has the audio-visual advantage of a witness in action. The Federal Court went on further by stating that there must be a compelling reason for the appellate court to interfere in the finding of facts made by the trial court. It was said in that case:

“The Federal Court too does not make its own findings of fact. (see PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457). The function of this court, at this final stage of appeal in dealing with the findings of fact by the courts below is now limited in its scope, confined to the advice of the Privy Council in this passage from Antonio Dias Caldeira v. Frederick Augustus Gray [1934] 1 LNS 5; [1936] MLJ 137, 138 which says:

... that the functions of an appellate court, when dealing with a question of fact, and a question of fact in which questions of credibility are involved, are limited in their character and scope, and that in an appeal from a decision of a trial judge based on his opinion of the trust-worthiness of witnesses whom he has seen, an appellate court must in order to reverse, not merely entertain doubts whether the decision below is right but must be convinced that it is wrong.

Now, it settled law that it is no part of the function of an appellate court in a criminal case or indeed any case to make its own findings of fact. That is a function exclusively

³⁸ [2007] 5 CLJ 1

³⁹ [2009] 3 CLJ 236 at 252

⁴⁰ [2012] 3 MLJ 49

⁴¹ [2013] 3 MLRA 263

reserved by the law to the trial court. The reason is obvious. An appellate court is necessarily fettered because it lacks the audio-visual advantage enjoyed by the trial court."

Thus, it is compelling to state that the appellate courts must not interfere with the finding of facts made by the trial judge except in special circumstances which demands and legally warrants the appellate courts to do so.

An important but seldom utilised provision on the court's observation on the demeanour of witnesses can be found in section 271 of the Criminal Procedure Code under the heading of "Remarks as to demeanour of witness" which states –

"A presiding magistrate recording the evidence of a witness may, at the conclusion of the evidence and at the foot of the notes of it, record such remarks, if any, as he thinks material respecting the demeanour of the witness while under examination."

Such remarks if available to an appellate court will no doubt be useful and act as a necessary aid to the appellate court in deciding on matters respecting the finding on the credibility of a witness based on his demeanour while giving evidence in the trial court. This provision is also an invaluable reference to the trial judge who prepares his grounds of judgment later when the crucial demeanour of a witness is no longer fresh in his mind.

(iv) How and when can the appellate courts interfere?

In answering this question, a reference to the decision made in *Radha Prasad v. Gajadhar Singh*⁴² is found to be helpful. The learned judge in this case held that:

"The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the Appeal Court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has

not the opportunity of seeing the witnesses and that it should not lightly reject the Trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanour of the witness in Court. But, this does not mean that merely because an appeal Court has not heard or seen the witness it will in no case reverse the findings of a Trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the trial judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the Trial Judge is wrong, the Appeal Court should have no hesitation in reversing the findings of the Trial Judge on such questions. Where the question is not of credibility based entirely on the demeanour of witnesses observed in Court but a question of inference of one fact from proved primary facts the Court of Appeal is in as good a position as the Trial Judge and is free to reverse the findings if it thinks that the inference made by the Trial Judge is not justified."

In *Madhusudan Das v. Narayanibai*⁴³, the Court ruled that:

"At this stage, it would be right to refer to the general principle that, in an appeal against a trial Court decree, when the appellate Court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial Court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by

⁴² AIR 1960 SC 115

⁴³ AIR 1983 SC 114

the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. . . The principle is one of practice and governs the weight to be given to a finding of fact by the trial Court. There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate Court is entitled to interfere with the finding of fact."

The Malaysian Federal Court's recent decision had placed a clear demarcation in limiting the appellate court's interference on facts found by the court of first instance. In **Azman bin Mahmood & Anor v SJ Securities Sdn Bhd**⁴⁴, the Federal Court concluded that:

"The law on appellate intervention on findings of fact by a trial Judge is trite. In this context it may be useful to refer to the case of Multar Masngud v Lim Kim Chet and Another (1982) CLJ 107 FC; (1982) 1 MLJ 184 FC, wherein it was held that an Appellate Court will interfere and disturb the finding of fact by the trial Judge if crucial evidence had been misconstrued resulting in the uncertainty on one party's evidence and the consistency of the other party's evidence being disregarded. In the Privy Council case of Choo Kok Beng v Choo Kok Hoe and Ors (1984) 2 MLJ 165 it was held that when a trial Judge had so manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial, and in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him, it is the plain duty of the appellate court to intervene and correct the error lest otherwise the error results in serious injustice."

A similar view is also notable in the recent decision delivered by the Singapore Court of Appeal in the case of **Thorben Langvad Linneberg v Leong Mei Kuan**⁴⁵ where it was reiterated that the appellate court's power of review with respect to finding of facts is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned. However, the court may intervene if it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding.

The Court of Appeal in the case of **Kyros International Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri**⁴⁶ referred to the distinction between physical and psychological fact. The court explained that the Evidence Act 1950 categorises facts into two types. They are physical fact and psychological fact. Physical facts under the Act refer to anything, state of thing, or relations of thing capable of being perceived by the senses. Psychological facts refer to any mental condition of which any person is conscious of. Finding of facts is rarely disturbed by appellate courts more so when it relates to physical facts. As long as the trier of facts has directed his mind to the relevant issues, and had acted in accordance with the law and the decision passes the test of reasonableness, the finding of facts relating to physical facts will not be ordinarily disturbed notwithstanding the judgment is brief and direct to the point. However, when it relates to psychological facts the trier of facts is expected to give more cogent reasons to ensure that every aspect of the relevant evidence has been considered in the right perspective to pass the test of reasonableness. Failure to give sufficient reasons in the grounds of judgment may result in appellate interference.

In the end the appellate court in rehearing the case on appeal (see sections 29 and 69 of the Courts of Judicature Act 1964), is tasked with the duty of deciding whether the trial court had come to a decision without a full judicial appreciation of the evidence, in which case appellate interference is permissible.

⁴⁴ [2012] MLJU 660

⁴⁵ (2012) SGCA 61

⁴⁶ [2013] MLJU 5

(v) **The effect of finding on credibility of one witness – how it affects the total presentation of a case?**

Section 134 Act 56 (which is identical to Section 134 of the Indian Evidence Act 1872) states that –

“No particular number of witnesses shall in any case be required for the proof of any fact.”

This statutory provision clearly signifies that what really matters is the value of the evidence adduced before the court and not the quantity. The Supreme Court of India in the case of **Vadivelu Thevar v State of Madras**⁴⁷ ruled that:

“The section enshrines the well-recognised maxim that evidence has to be weighed and not counted. Our Legislature has given statutory recognition to the fact that the administration of justice may be hampered if a particular number of witnesses were to be insisted upon.”

Goswami J in **Badri v State of Rajasthan**⁴⁸ made these pertinent observations:

“Since under the Evidence Act no particular number of witnesses are required for the proof of any fact, it is a sound and well-established rule of law that quality and not quantity of evidence matters. In each case the court has to consider whether it can be reasonably satisfied to act even upon the testimony of a single witness for the purpose of convicting a person.”

Therefore, a single testimony if believed, from a single witness can be a sufficient to ground a conviction against the accused unless the law specifically requires that evidence to be corroborated. This principle has been long established by the Federal Court through the case of **Long bin Samat & Ors v. Public Prosecutor**⁴⁹. This case involves the testimony of a single witness (PW2), the victim of an attack, who was on his way to a fishing ground

in the paddy fields at night. When he switched on his torch light he saw the three appellants whom he had known before. It was then raining with occasional flashes of lightning. The three appellants were armed and charged at him. He was slashed several times by the first appellant and subsequently lost consciousness. PW3 came and saw him lying down. PW2 told PW3 that some persons were responsible for his injuries but he did not name them. All three appellants were convicted by the learned Magistrate under section 324 of the Penal Code. The Federal Court held that under section 134 of the Evidence Act 1950, no particular number of witnesses shall in any case be required for the proof of any fact and as there was no eye-witness present when the attack on PW2 took place except for the only evidence of PW2, and since the learned Magistrate has accepted his evidence that would be sufficient.

This will be so even if the sole witness is an interested party as he is as much a witness as any other persons called to testify on his behalf. In the case of **Mohd Najib bin Hj Ahmad v. Lembaga Padi dan Beras Negara**⁵⁰, the Court of Appeal observed the fact that the oral evidence came from the appellant and not from any other third party called to testify on his behalf, it does not entitle the learned judge to conclude that the appellant called no witness. The appellant is as much a witness as any other person called to testify on the appellant's behalf.

Even though the law permits such conviction, the court is shouldered with the responsibility to ensure that the testimony adduced by that witness is credible. In **Md Zainudin bin Raujan v Pendakwa Raya**⁵¹ the Federal Court ruled that it is trite that the inherent probability or improbability of a fact in issue must be the prime consideration in deciding whether a witness is credible or not. The decision in **De Silva v Public Prosecutor**⁵² outlines the court's responsibility to decide whether to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy. Therefore, it would be reasonable to suggest that if the court finds that the evidence adduced by a single

⁴⁷ AIR 1957 SC 614

⁴⁸ [1976] 1 SCC 442, 447,

⁴⁹ [1974] 2 MLJ 152, FC

⁵⁰ [1998] 4 MLJ 425, 430

⁵¹ [2013] MLJU 314

⁵² [1964] 1 MLJ 81

witness is worthless and untrustworthy, the presentation of the case could be affected. It is for the judge to decide and only the presiding judge would know from the facts, the witnesses' statement even the body language.

(vi) Audio visual observation of trial court on witnesses' performance

In deciding appeals, judges weigh the record, the briefs, and the arguments of counsel, mixed well with an independent view of law and policy. Currently, the information presented to the court are written and oral. Lawyers have long tried to paint verbal pictures for judges, even in appellate proceedings. In the new evolving age of technology augmented appeals, those pictures will no longer be figurative, but actual. During oral arguments, lawyers make their arguments in person to the judges, all of whom are present in the same courtroom. Tradition notwithstanding, our appellate courts will in the near future experience the effects of the technological age i.e. the age of visual information. In one sense the most sweeping change facing the appellate courts is the likely change in the record of proceedings from text to multi-media, a change that presents at least the possibility of affecting the standard of appellate review.

The traditional court record consists of paper text transcripts with the necessary supporting exhibits and ancillary papers. Prepared either by a stenographer or interpreter, the traditional text transcript has met with comfortable acceptance by judges and lawyers alike. Text transcripts plays only a small part of what actually happened during a trial. Neither voice nor image is present, and their absence can be extraordinarily misleading. Even when described in the record, witness gestures, expressions and demeanour often are inadequately set forth in text. Voice intonations are absent, and except for word choice, all witnesses "sound" alike in the text transcript. Judge Denson, a District Judge for the Eastern District of North Carolina, made a remarkable observation in the case of **Riley v Murdock**⁵³ where the learned judge explained the impact of having court recording system in every case. According to the learned judge:

"When accused of a homicide, a character incredulously questioned 'I killed (the victim)?' The typed transcript of this remark became a confession: 'I killed (the victim).'" *Although the transcript was completely accurate in reporting the words said, it was totally inaccurate in conveying the message of the speaker because it did not report the intonation... video deposition would make more apparent than would a typed transcript because it would show, for example, delays in responses, which the transcript would not. Further, a video deposition is more likely than a transcript to expose any coaching by counsel, such as by notes, gestures, or whispered instructions inaudible to a court reporter. The video deposition is allowed because it is a superior method of conveying to the fact finder the full message of the witness in a manner that assists the fact finder in assessing credibility."*

The question now remains as to how should the court consider information which was not detected at trial but noted for the first time by a judge when reviewing the complete trial court recording during appeal. Electronic court recording transcription is relatively new in Malaysia. So far there is no local case reported to resolve this legal enigma. Consider the poser faced by the Supreme Court of Kentucky in the case of **Deemer v. Finger**⁵⁴ (Deemer I). The Supreme Court of Kentucky initially refused to consider new information revealed in the videotaped record that suggested a juror had learned information related to the trial outside of the courtroom. Nearly a year later, in **Deemer v. Finger**⁵⁵ (Deemer II), an equally divided Kentucky Supreme Court took a different course from the decision in Deemer I. The court noted that the purpose of implementing videotaped trials was to compile the most accurate court record possible. Therefore, to not consider the new information would preclude the appellant from receiving the fairest hearing.

In this case, the Supreme Court of Kentucky twice heard **Deemer v. Finger**, a medical malpractice case. While the appellant's attorney was reviewing the videotaped trial record, he saw

⁵³ 156 F.R.D. 130, 131 n. 3 (E.D.N.C. 1994).

⁵⁴ 817 S.W.2d 435 (1991).

⁵⁵ 817 S.W.2d 435 (Ky. 1991).

and heard a conference between the presiding judge and a juror. The juror, who had learned of outside information about the case from her husband, was worried about the implications of her knowledge. To alleviate her concern, she spoke with the judge. Neither attorney had been aware of the judge-juror conversation during trial. When the appellant's attorney attempted to amend the appeal, the Supreme Court of Kentucky upheld the intermediate court's denial because the appellant's attorney had not objected to the alleged infraction at trial and it had not been considered by the lower court. A dissenting opinion supported by three justices condemned the decision. The Supreme Court reversed its ruling the following year after considering the special attributes of videotaped trial records.

The **Deemer** cases are an example of the push and pull courts struggle with to determine how to remain faithful to their appellate role while still affording the appellant the fairest review possible. Because the video camera produces a filmed record (allowing the observation of everything in the courtroom whether or not the parties or their counsel are present) errors at the trial level may not be discovered until long after the trial has ended and the appeal has been filed. The Supreme Court judges presiding this appeal suggested that appellants should be allowed to amend their appeals in such circumstances "in the interest of justice to accommodate a new technology". At whatever stage, including the appellate stage, if a substantial, prejudicial error recorded on videotape first surfaces, the court where the action is then pending should review it.

A multimedia trial record generated by properly installed audio and video systems is likely to accurately reflect for the appellate court what the trial judge heard and saw. However reviewing the whole court recording would be unnecessary waste of resources and a threat to an expeditious court process⁵⁶. The 'pure search of truth' may suggest that appellate courts should always review the video record of a trial where one is available in an appealed case. However, to do so would probably create

a huge workload for appellate courts, both in increased time required to review the record and in the possible increase in numbers of appeals. The increased workload would result either in more overburdened judges, and correspondingly slower decisions or in an increased number of judges to accommodate this workload, at taxpayers' expense⁵⁷. This would be contrary and detrimental to the Malaysian judiciary's vision towards a more speedy and inexpensive judicial process. Viewing small portions of the video in the trial court below would be, it is submitted, suffice to resolve the matter brought before the appellate courts. At this point it is probable to adopt the principles laid down by the Kentucky Supreme Court in **Deemer v Finger** that the court should consider the new information revealed in the court recording in order to avail fair hearing and availing natural justice to parties.

A LEGAL DILEMMA: Harmonizing Chapter XXV and Chapter XXVA of the Criminal Procedure Code in Writing Notes of Evidence

Chapter XXV of the Criminal Procedure Code comprising eleven sections (section 264 to section 272B) regulates the mode of taking and recording evidence in inquiries and trials. Among the important procedures set out by this Chapter is the requirement on recording evidence in writing. Section 267 requires that any trials before a Magistrate's Court must be taken down in legible handwriting by the presiding Magistrate. A similar requirement is also seen in section 272 which requires that the High Court Judge shall take down in writing notes of the evidence adduced in all criminal cases. The most probable rationale behind this requirement is to facilitate the court in preserving trial records and for easy reference by the appellate courts. It is also pertinent to note that our Criminal Procedure Code was enacted in the 1930's⁵⁸. Hence, perceiving audio visual recording in court proceedings in the future was certainly beyond the legislature's appreciation over 80 years ago. Moreover, the computer technology only came into Malaysia in the 1980's⁵⁹.

⁵⁶ Fredric I. Lederer, *The Effect of Courtroom Technologies on and in Appellate Proceedings and Courtrooms*, 2000, William & Mary Law School, at p. 260.

⁵⁷ Mary E. Adkins, Prof., *The Unblinking Eye Turns To Appellate Law: Cameras In Trial Courtrooms And Their Effect On Appellate Law*, *Journal of Technology Law And Policy*, June 2010, 15J. Tech.L. & Poly 65, at p.10.

⁵⁸ Tun Zaki Bin Tun Azmi, *Using Technology To Improve Court Performance : Malaysia's Experience*, Asia Pacific Judicial Reform Forum, 26 October 2010, Beijing, China, at p. 9.

⁵⁹ Duryana bt Mohamed, *Electronic Court System (E-Court): Development and Implementation in the Malaysian Courts and Other Jurisdictions*, *The Law Review* (2011), Sweet and Maxwell Asia, Thomson Reuters, at p 481.

The idea of steering Malaysian courts into technology friendly courts finally materialised in May 2002⁶⁰. The system of recording evidence was first introduced through a pilot project in September 2004 in two selected courts of the High Court (Civil 1) at Wisma Denmark and the High Court (Commercial 1) at the Sultan Abdul Samad Building⁶¹.

The advantages of using court technology have encouraged courts in many foreign jurisdictions to amend their laws in order to accommodate the use of technology in recording court's proceeding. In fact, some of the legal dictionaries have redefined the word 'writing' in order to streamline with the current technological development. According to Black's Law Dictionary, 'writing' means:

"Any intentional recording of words that may be viewed or heard with or without mechanical aids. This includes hard-copy documents, electronic documents on computer media, audio and videotapes, e-mails, and any other media on which words can be recorded⁶²."

Malaysia is slightly behind in amending its law (especially the Criminal Procedure Code) to accommodate such technological developments. Such delay had indeed resulted in some startling consequence especially in the Court of Appeal's decision in **Tan Sri Eric Chia Eng Hock v Pendakwa Raya**⁶³. In fact, the decision in that case may be one of the turning points that led the Malaysian Parliament to introduce new legal provisions in the Criminal Procedure Code. In that case, the appellant was charged and tried in the Sessions Court in Kuala Lumpur with criminal breach of trust by an agent of an aggregate sum of RM76.4 million, an offence punishable under section 409 of the Penal Code. The trial was in Kuala Lumpur but was adjourned on 16.8.2004 to make way for the examination of six prosecution witnesses by the Magistrate's Court in Hong Kong. The

examination of these witnesses took place on 25th and 26th August 2004 in the Magistrate's Court, Hong Kong through mechanical recording. The prosecution sought under section 8(3) of the Mutual Assistance In Criminal Matters Act 2002 from the Sessions Court to have the certified transcripts of audio recording of the proceedings of the witnesses examined in Hong Kong admitted as evidence. The Sessions Court refused to accept the audio recording taken in Hong Kong stating inter alia that it was in breach of section 272A of the Criminal Procedure Code. Section 272A of the said Code requires the presiding judge to record evidence by handwriting. The dissenting judgment in the Court of Appeal agreed that the audio recording was rightfully excluded by the Sessions Court. (The majority decision of the Court of Appeal disagreed with the judge in rejecting that evidence, but on different grounds).

Parliament then introduced a Bill to enable the courts to record proceedings using any digital or magnetic form other than by handwriting⁶⁴. The Bill obtained its Royal Assent on 18th April 2009 and was gazetted on 30th April 2009⁶⁵. An additional Chapter was inserted into the Criminal Procedure Code known as Chapter XXVA consisting of nine new sections (section 272C to section 272K). This new Chapter allows the court to record proceedings through mechanical means and also requires that electronic records in any proceedings to be transcribed. The certified copy of the transcribed record also forms part of the trial record or notes of proceeding or evidence⁶⁶. Electronic filing was also introduced. Section 272K further allows the Chief Justice of the Federal Court to issue Practice Direction relating to the use of mechanical means and any matter related to it. However, to date the Chief Justice has not issued any Practice Direction under that section.

⁶⁰ Ibid.

⁶¹ Kamal Halili Hassan, Maizatul Farisah Mokhtar, (2011), The E-Court System In Malaysia, 2nd International Conference on Education and Management Technology, IPEDR vol.13, IACSIT Press, Singapore, at p. 243.

⁶² Bryan A. Garner, Black's Law Dictionary, Ninth Edition, (2011), WEST Thomson Reuters Business, at p. 1748.

⁶³ [2006] MLJU 140.

⁶⁴ Rang Undang-Undang, PN (U) 2631, D.R. 28/2008, at p.5, at para 2: "Bab baru XXVa bertujuan untuk membolehkan Mahkamah untuk merekodkan prosiding dengan menggunakan apa-apa kelengkapan, peranti, alat atau perantaraan yang dikendalikan secara digital, elektronik, magnetic atau mekanikal selain melalui nota tulisan dengan tangan sebagaimana yang diperuntukkan dalam Bab XXV."

⁶⁵ Criminal Procedure Code (Amendment) Act 2009, at p.2.

⁶⁶ Rang Undang-Undang, PN (U) 2631, D.R. 28/2008, at p.5, at para 3: "seksyen baru daripada seksyen 272C hingga seksyen 272k. Bab baru XXVA antara lain bertujuan untuk memperuntukkan bahawa rekod elektronik apa-apa prosiding hendaklah ditranskripsikan dan salinan sah transkrip hendaklah menjadi sebahagian daripada rekod atau nota prosiding atau keterangan."

It is ironic to note that sections 267 and 272A of the Criminal Procedure Code compelling evidence to be recorded in writing remain operative even though section 272C allows judges to use mechanical means to record court proceedings. The legal quandary now remains as to how could these two legal provisions be reconciled? Some have proposed that section 267 of the Criminal Procedure Code be amended so as to avoid dispute and confusion in its application⁶⁷. The answer to this question perhaps lies in the words of Dato' Seri Mohamed Nazri bin Abdul Aziz, then Minister in the Prime Minister's Department during the third reading of the Criminal Procedure Code Amendment Bill 2009 in the Parliament. An extract from the Hansard is reproduced in its original language to explain the Government's view. It states:

"Seksyen 267 KTJ tidak perlu dipinda kerana perekod dan mekanikal yang diperkenalkan melalui rang undang-undang ini adalah sebagai tambahan kepada sistem yang sedia ada iaitu secara tulis tangan. Maka majistret atau hakim mempunyai pilihan sama ada untuk menulis dengan tangan atau merekodkan keterangan secara mekanikal⁶⁸."

The above statement clearly reflects the true intention of the Legislature to introduce an additional procedure in recording court proceedings while retaining the existing mode. Thereby, allowing judges to choose whether to record the evidence by handwriting or with the assistance of mechanical means. This may be the reason why amending section 267 of the Code is found to be unnecessary.

The responsibility now remains with the court to interpret laws according to the true intention of the legislation. This fundamental principle had been canvassed through many cases decided by our apex court. In **Public Prosecutor v. Chew Siew Luan**⁶⁹, Raja Azlan Shah CJ (now His Royal Highness) while delivering the Federal Court judgment articulated that:

"It is a sound, and, indeed, a well-known principle of construction of a statute that

the purport of words and expressions used in a legislative measure must take their colour from the context in which they appear."

The true intention of the legislation must thus be read objectively that so as not to impede the operation of sections 267 and 272A. The introduction of Chapter XXVA in the Criminal Procedure Code provides an additional system to the existing procedure; thus, allowing the presiding judge to choose whether to manually write or record the proceeding mechanically or in a combination of the two. Mechanical recording would help the courts to dispose of cases expeditiously since judges or magistrates do not have to write the details of the trial and it saves time and court processes⁷⁰.

After the amendment to the Criminal Procedure Code in 2009, technology has been widely used by courts across Malaysia. Court Recording Transcript (CRT) was introduced to assist judges and magistrates in recording court proceedings. The CRT system started in courts all over Malaysia on March 2011 and was launched by Zaki Tun Azmi, the Chief Justice then, and costing up to RM100 million⁷¹. The Chief Justice also observed that the Court recording transcription is able to help judges to evaluate the credibility of the relevant witnesses. He said:

"Apart from those benefits, because the judge was concentrating on these testimonies of the witnesses he was able to follow the case better... the appellate court or anybody else viewing the recording to even see the demeanour of the witnesses as well as the conduct of the lawyers in the proceedings, not forgetting the judge himself⁷²."

Perhaps a Practice Direction by the Chief Justice issued under Section 272K will be able to dispel any misconceptions on the operation of Chapters XXV and XXVA of the Code. It may also be able to provide detailed instructions on the usage of mechanical recordings in every court proceeding.

⁶⁷ Penyata Rasmi Parlimen Dewan Rakyat, Parlimen kedua belas, Penggal Kedua, Mesyuarat Pertama, Bacaan Ketiga Pindaan Kanun Tatacara Jenayah, 24 Mac 2009, Bil 21, at p.23

⁶⁸ Ibid. at p.37.

⁶⁹ [1982] CLJ 354; [1982] CLJ (Rep) 285

⁷⁰ Tun Zaki Bin Tun Azmi, Using Technology To Improve Court Performance : Malaysia's Experience, Asia Pacific Judicial Reform Forum, 26 October 2010, Beijing, China, at p.8-19.

⁷¹ Ibid.

⁷² Ibid.

CONCLUSION

A time will come, in not too distant future from now I submit, that appellate courts may need to rely on the new Court Recording and Transcription technology now emplaced in our trial courts and view the audio-visual recordings of the trials to determine, when necessary, the demeanour of witnesses and their credibility at the appellate stage, if and when it is felt that their credibility can determine the outcome of a case. As the former Chief Justice, Zaki Tun Azmi said this in his speech entitled “Using Technology to Improve Court Performance : Malaysia’s Experience” delivered in 2010 at the Asia Pacific Judicial Forum in Beijing –

“The system allows the appellate court or anybody else viewing the recording to even see the demeanour of the witnesses as well as the conduct of the lawyers in the proceedings, not forgetting the judge himself. A true and detailed record of what was said could be reviewed at any time.”

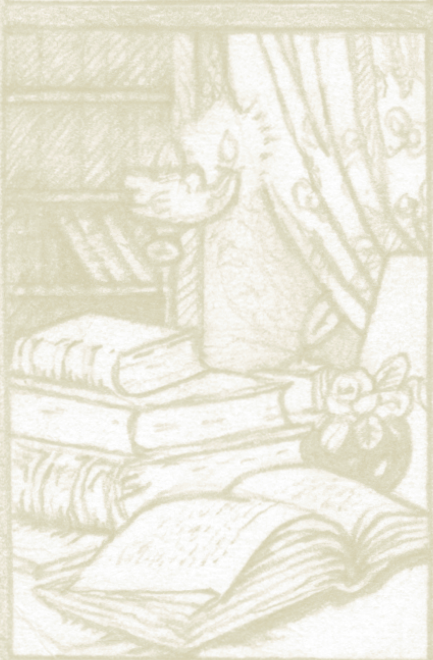
A direct viewing by the appellate court of a witness’s performance at the trial may in particular cases be needed, even crucial, to the determination of an appeal.



The Editorial Committee -

(First row L-R: Noorhisham Mohd Jaafar, Safarudin Tambi, Lee Kim Kiat and Syahrul Sazly Md Sain)
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1. PERLIS

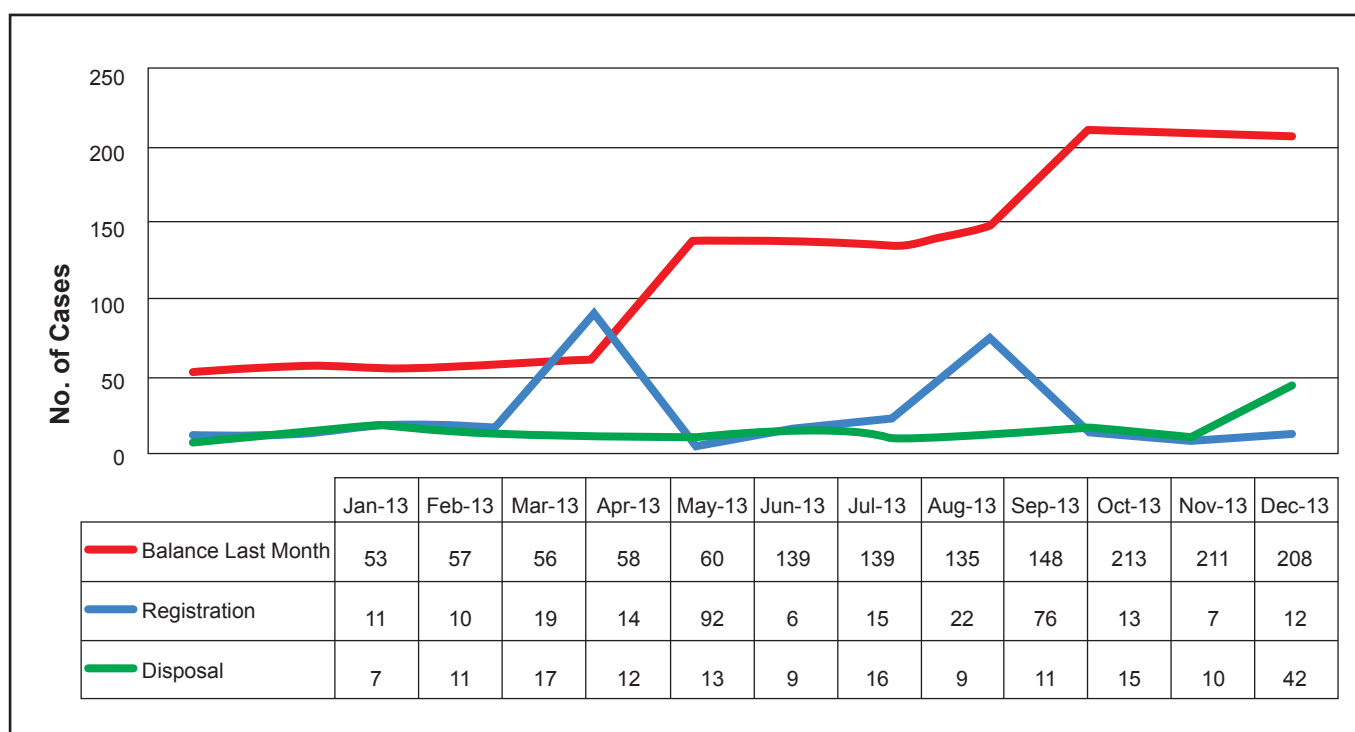
1.1 KANGAR HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Kangar High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 297 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 172 cases throughout the year 2013.

As at 31 December 2013, the number of civil cases pending in the Kangar High Court is 433 as reflected in the Ageing list below.

TRACKING CHART FOR KANGAR HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



AGEING LIST FOR KANGAR HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														1	1
	11AM															
	11AC															
	11B														4	4
	11BM															
	11BC															
12	12A														2	2
	12AM															
	12AC															
	12B														12	12
	12BM															
	12BC															
13	13															
	13C															
14																
15															109	109
16															1	1
17																
18																
21	21													2	3	5
	21C															
22	22													1	7	8
	22M														1	1
	22C															
23																
24	24														22	22
	24M														1	1
	24C															
	24C (Arb)															
25															1	1
26																
27																
28															3	3
29														34	217	251
31															1	1
32															1	1
33															10	10
34																
TOTAL														37	396	433

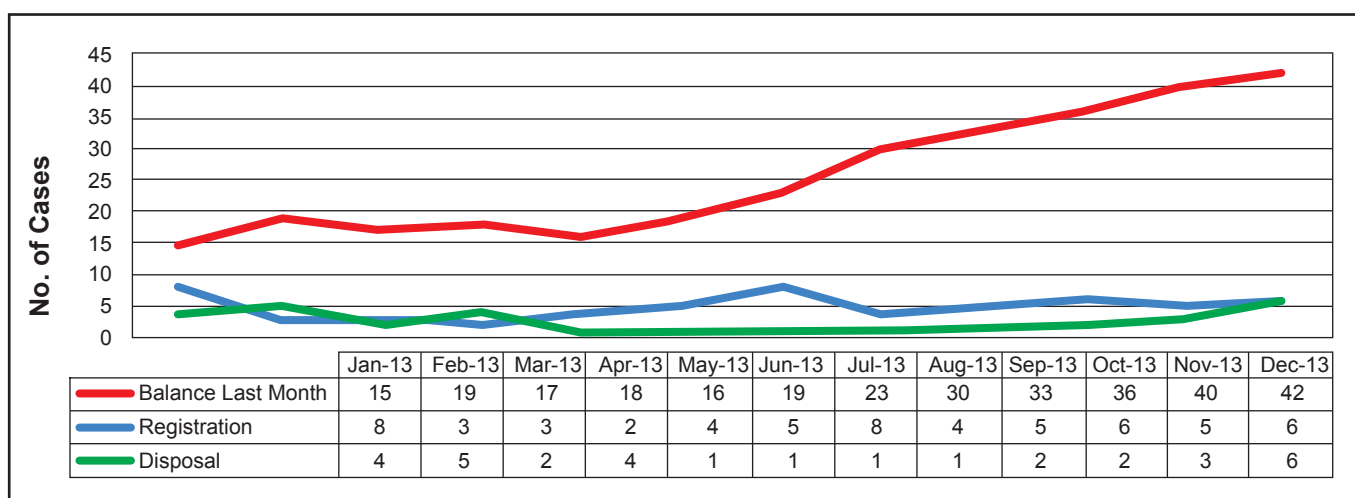
**1.2 KANGAR HIGH COURT -
CRIMINAL**

For Criminal Cases, the Kangar High Court has managed to maintain its consistency in the disposal of cases. For the year 2013, a total number of 59 cases including appeals and trials

were registered and 32 cases were disposed of leaving a balance of 42 cases pending.

From the ageing list below, it is apparent that the Kangar High Court has managed to clear all pre-2012 registered cases.

**TRACKING CHART FOR KANGAR HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013**



**AGEING LIST FOR KANGAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013**

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									1	1
	S									1	1
	Ors										
41A	A/C									2	2
	S									1	1
	Ors										
42	A/C								1	15	16
	S									8	8
	Ors										
42A	A/C									7	7
	S										
	Ors										
43											
44	Hbc										
	Ors										
SO	45										
39B	45								1	3	4
	46										
302	45										
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45									2	2
	46										
TOTAL									2	40	42

2. KEDAH

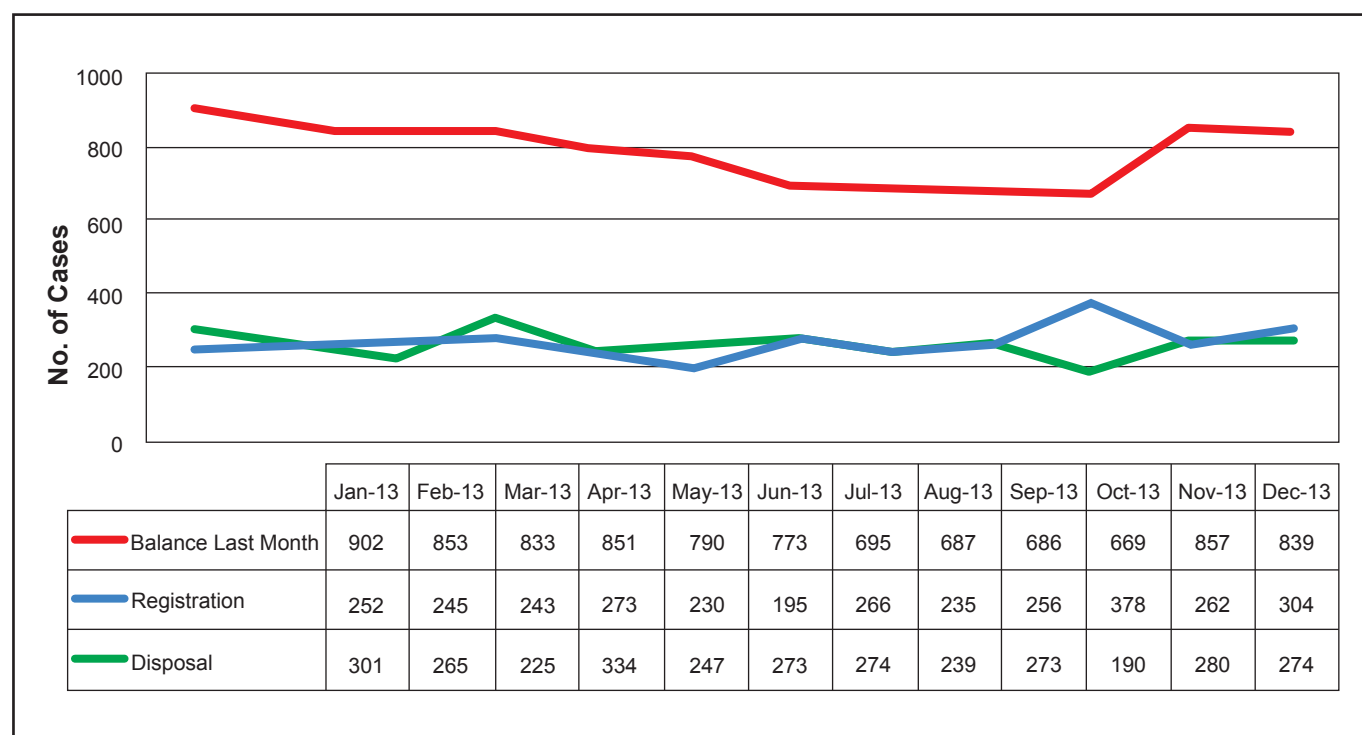
2.1 ALOR SETAR HIGH COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Alor Setar High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 3139 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 3175 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Alor Setar High Court is 3731 as reflected in the Ageing list below.

TRACKING CHART FOR ALOR SETAR HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



AGEING LIST FOR ALOR SETAR HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

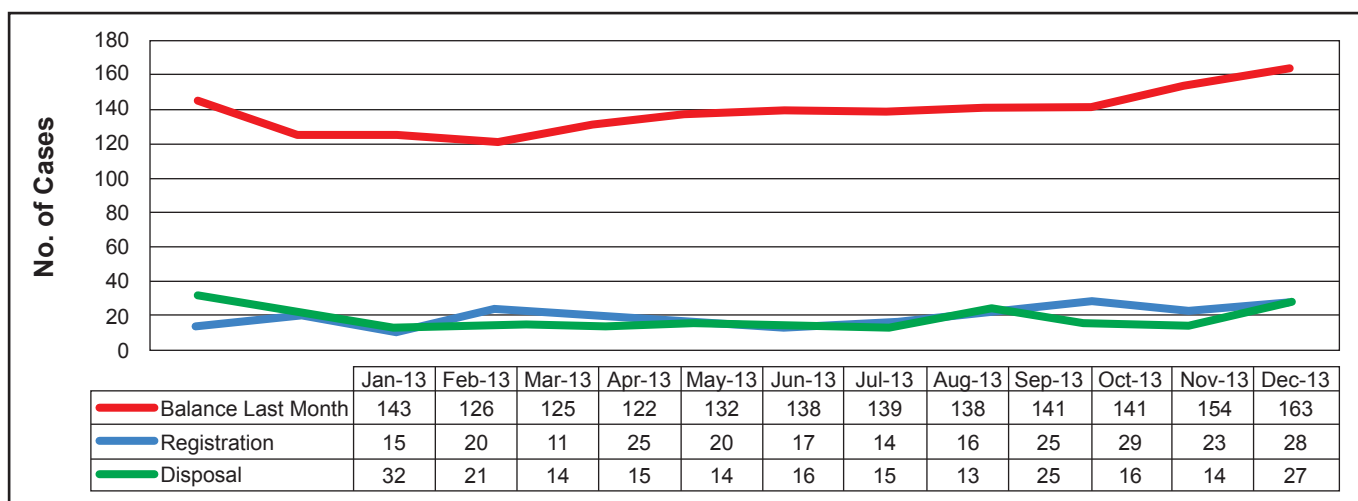
CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														5	5
	11AM															
	11AC															
	11B														35	35
	11BM															
	11BC															
12	12A														11	11
	12AM															
	12AC															
	12B													3	108	111
	12BM															
	12BC															
13	13															
	13C															
14															1	1
15														4	37	41
16															2	2
17															1	1
18																
21	21											1	2	6	10	19
	21C															
22	22								1	3	1	2	14	56		77
	22M															
	22C															
23														2	11	13
24	24													5	426	431
	24M															
	24C															
	24C (Arb)															
25											1				35	36
26																
27																
28															15	15
29														643	2211	2854
31															5	5
32															6	6
33															68	68
34																
TOTAL										1	3	2	4	677	3043	3731

2.2 ALOR SETAR HIGH COURT – CRIMINAL

For Criminal Cases in the year 2013, a total number of 243 cases including appeals and trials were registered and 222 cases were disposed of leaving a balance of 164 cases pending.

From the ageing list below, it is apparent that the Alor Setar High Court has managed to clear all pre-2012 registered cases.

TRACKING CHART FOR ALOR SETAR HIGH COURT (CRIMINAL)
AS AT JANUARY-DECEMBER 2013



AGEING LIST FOR ALOR SETAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								1	35	36
	S									7	7
	Ors										
41A	A/C									4	4
	S										
	Ors										
42	A/C								1	42	43
	S									1	1
	Ors									1	1
42A	A/C									4	4
	S										
	Ors										
43											
44	Hbc									2	2
	Ors										
SO	45										
39B	45								17	33	50
	46										
302	45								4	10	14
	46										
396	45										
	46										
KIDNAP	45									1	1
	46										
F/ARMS	45										
	46										
Ors	45									1	1
	46										
TOTAL									23	141	164

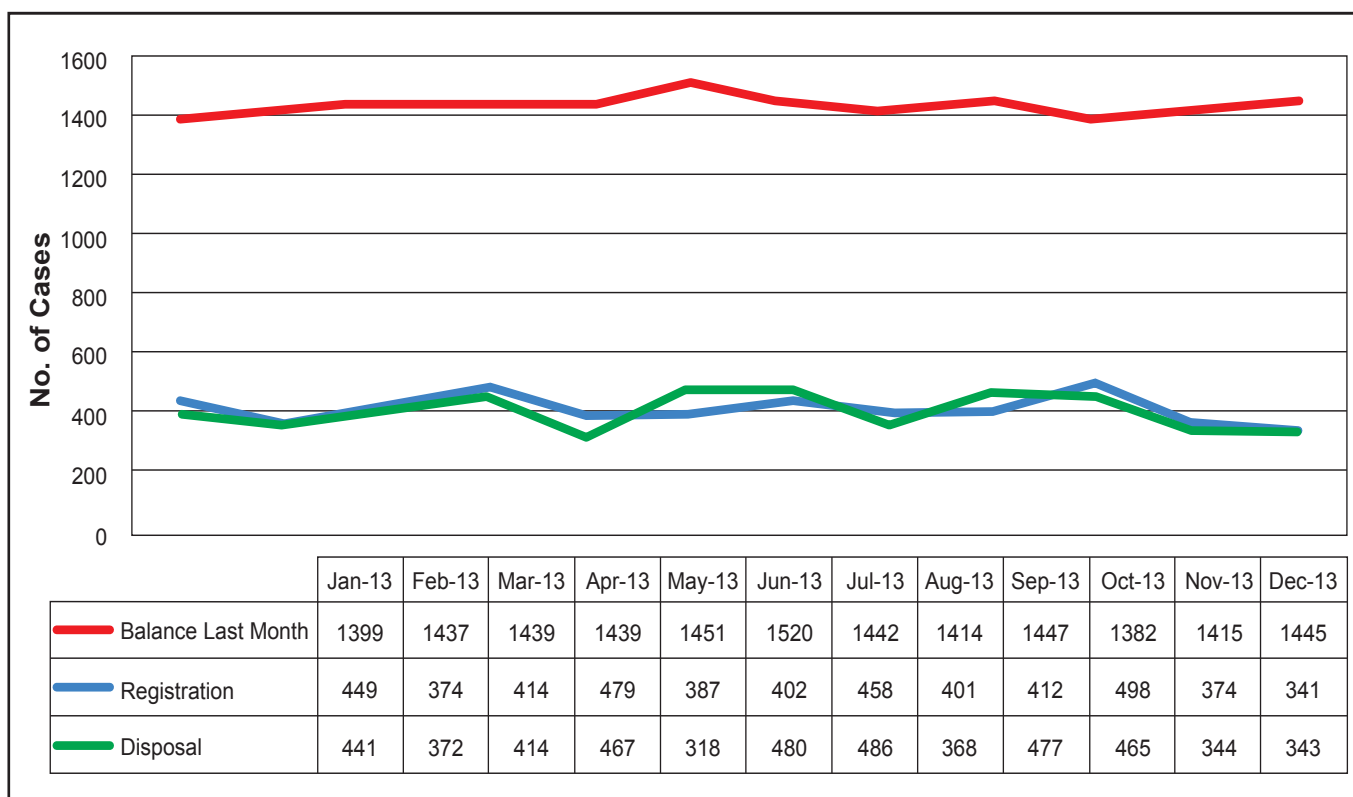
3. PULAU PINANG**3.1 GEORGETOWN HIGH COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Georgetown High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 4989 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 4945 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Georgetown High Court is 4736 as reflected in the Ageing list below.

**TRACKING CHART FOR GEORGETOWN HIGH COURT (CIVIL)
AS AT JANUARY-DECEMBER 2013**



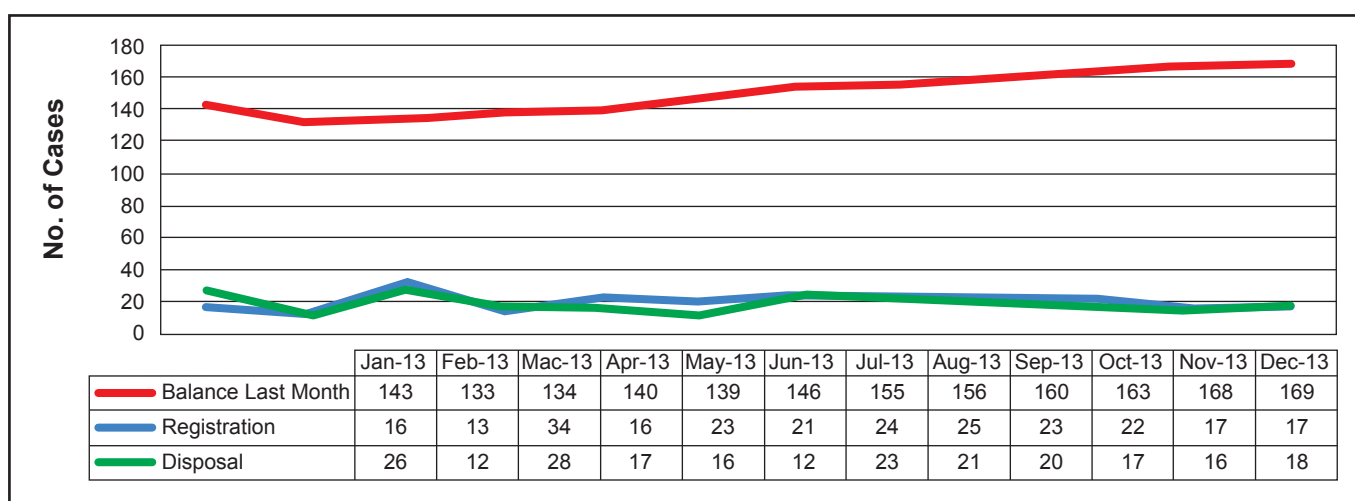
AGEING LIST FOR GEORGETOWN HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														15	15
	11AM															
	11AC															
	11B														18	18
	11BM															
	11BC															
12	12A														40	40
	12AM															
	12AC															
	12B												3	6	132	141
	12BM															
	12BC															
13	13															
	13C															
14															3	3
15														2	42	44
16															3	3
17															1	1
18																
21	21													12	8	20
	21C															
22	22	1							2	11	18	55	30	173	157	447
	22M														5	5
	22C														6	6
23															14	14
24	24													7	329	336
	24M													1	1	2
	24C															
	24C (Arb)															
25													1	3	62	66
26										1		1			4	6
27															1	1
28											3	3		1	41	48
29											1		81	430	2593	3105
31													1	2	82	85
32															103	103
33													1	8	218	227
34																
TOTAL		1							2	12	22	59	117	645	3878	4736

3.2 GEORGETOWN HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 251 cases including appeals and trials were registered and 226 cases were disposed of leaving a balance of 168 cases pending.

TRACKING CHART FOR GEORGETOWN HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR GEORGETOWN HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									28	28
	S									14	14
	Ors									4	4
41A	A/C										
	S										
	Ors										
42	A/C								6	26	32
	S								1	4	5
	Ors									4	4
42A	A/C								1	15	16
	S									1	1
	Ors									1	1
43											
44	Hbc									6	6
	Ors									1	1
SO	45										
39B	45								8	28	36
	46										
302	45							1	7	9	17
	46										
396	45										
	46										
KIDNAP	45									1	1
	46										
F/ARMS	45								2		2
	46										
Ors	45										
	46										
TOTAL								1	25	142	168

4. PERAK

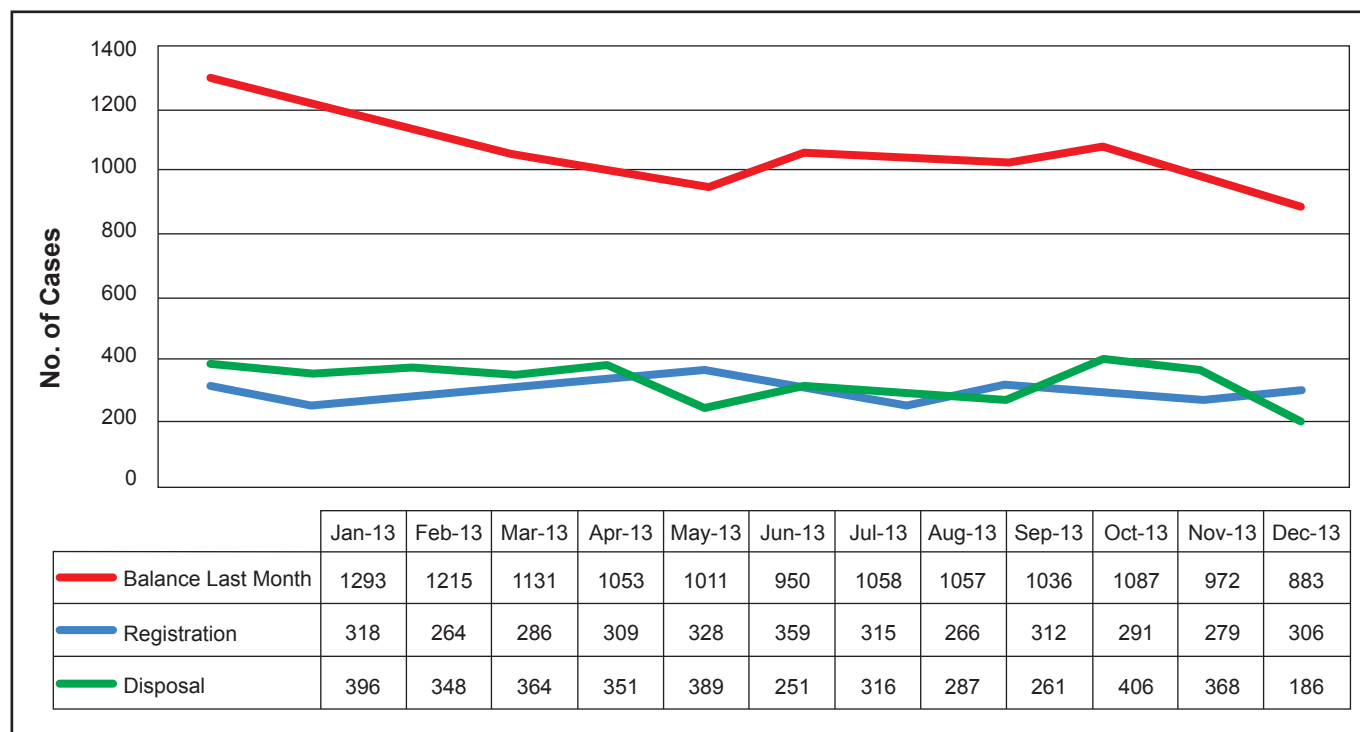
4.1 IPOH HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court of Ipoh for the year 2013. For the period from January to December 2013, the total number of civil

cases registered was 3633 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 3925 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Ipoh High Court is 3078 as reflected in the Ageing list below.

TRACKING CHART FOR IPOH HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



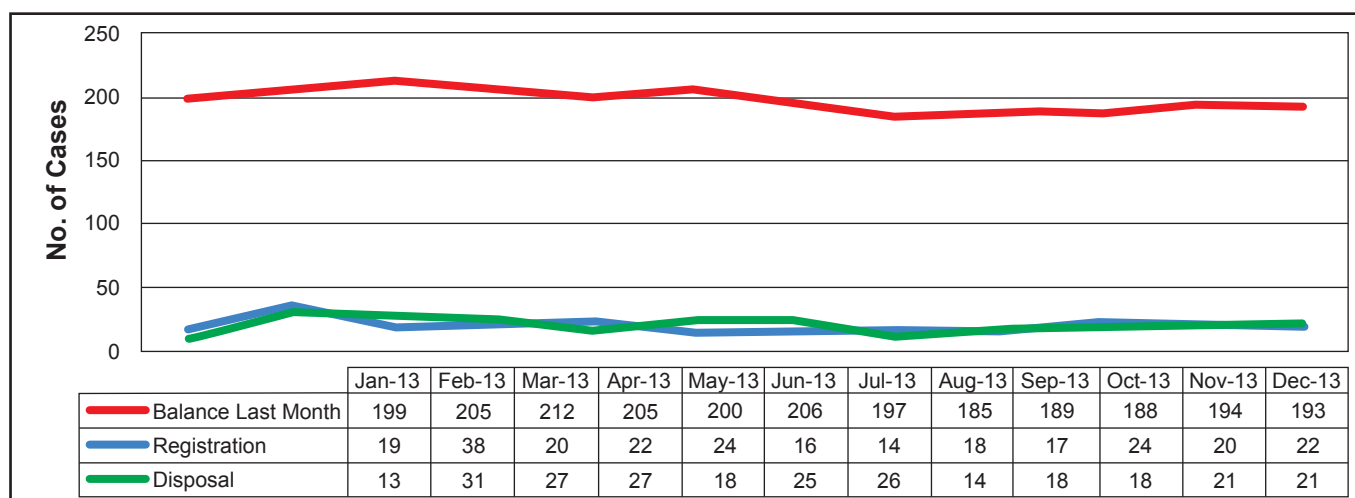
AGEING LIST FOR IPOH HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																		Total		
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013	
11	11A																1			8	9	
	11AM																					
	11AC																					
	11B																			25	25	
	11BM																					
	11BC																					
12	12A																			5	5	
	12AM																					
	12AC																					
	12B																	2	4	55	61	
	12BM																					
	12BC																					
13	13																					
	13C																					
14																						
15														1					3	52	56	
16																				6	6	
17																				3	3	
18																						
21	21																			4	4	
	21C																					
22	22									1				1	1	4	13	21	3	65	109	
	22M																					
	22C																					
23																						
24	24																	1	1	449	451	
	24M																					
	24C																					
	24C (Arb)																					
25																				9	9	
26																			2		2	
27																						
28																			1	21	22	
29																			40	1968	2008	
31																				18	18	
32																				49	49	
33																		1	6	234	241	
34																						
TOTAL										1				2	1	4	14	25	60	2971	3078	

4.2 IPOH HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 254 cases including appeals and trials were registered and 259 cases were disposed of leaving a balance of 194 cases pending.

TRACKING CHART FOR IPOH HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR IPOH HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C							3	6	28	37
	S								3	27	30
	Ors										
41A	A/C							1		1	2
	S									2	2
	Ors										
42	A/C							6	3	36	45
	S							1	2	13	16
	Ors										
42A	A/C							8	3	8	19
	S									1	1
	Ors										
43								1		1	2
44	Hbc									2	2
	Ors										
SO	45										
39B	45							1	8	9	18
	46										
302	45					2	1	2	6	8	19
	46						1				1
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45										
	46										
TOTAL						2	2	23	31	136	194

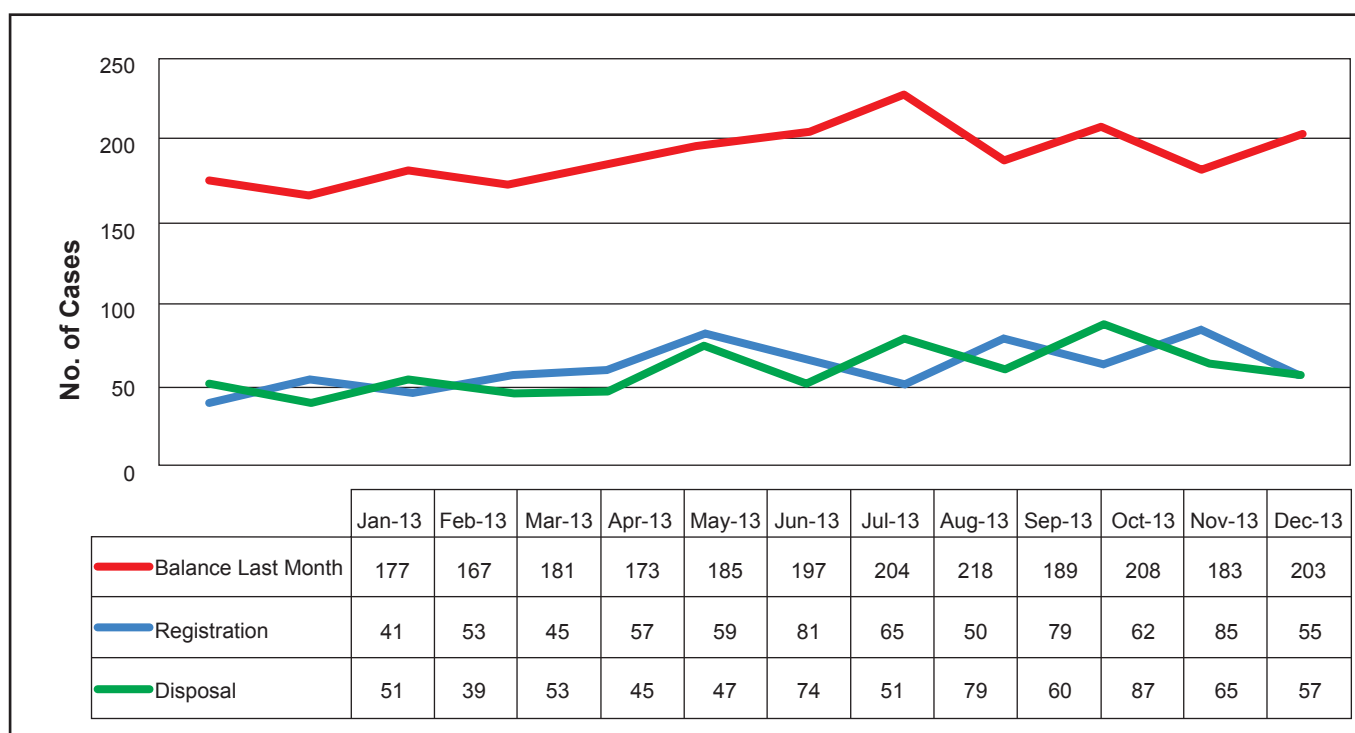
4.3 TAIPING HIGH COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Taiping High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 732 (excluding cases

for Code 29, 31 and 32). The High Court has managed to dispose of 708 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Taiping High Court is 599 as reflected in the Ageing list below.

**TRACKING CHART FOR TAIPING HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013**



AGEING LIST FOR TAIPING HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

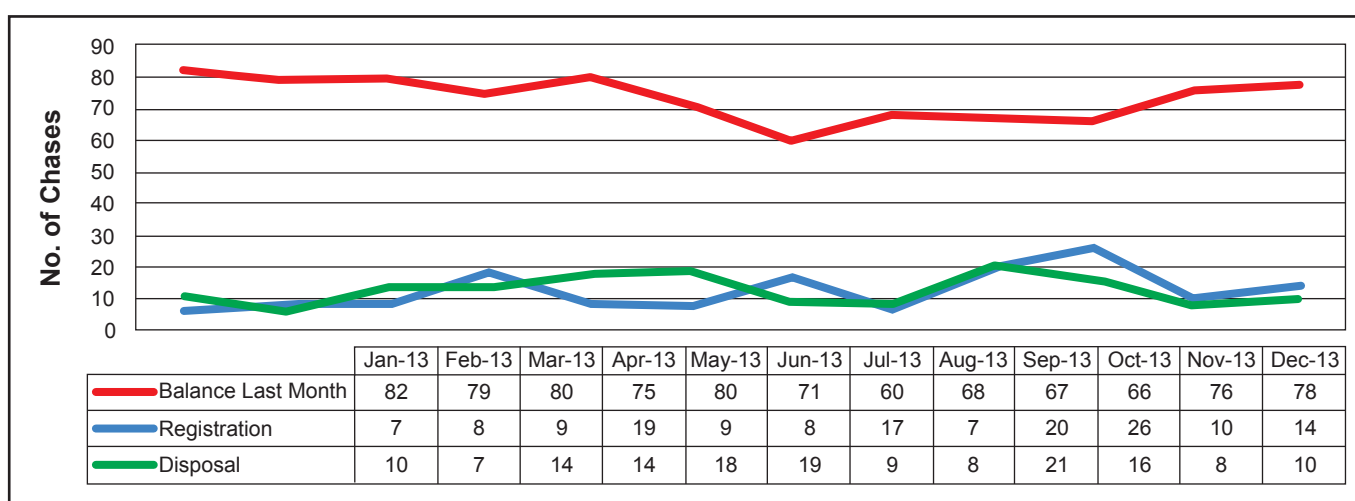
CODE		YEAR																			Total
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																				
	11AM																				
	11AC																				
	11B																		5		5
	11BM																				
	11BC																				
12	12A																				
	12AM																				
	12AC																				
	12B																		1	27	28
	12BM																				
	12BC																				
13	13																				
	13C																				
14																					
15																					
16																			2		2
17																			1		1
18																			1		1
21	21																2	1	3	3	9
	21C																				
22	22														1		5	5	17	17	45
	22M																		1		1
	22C																				
23																					
24	24																	1	2	67	70
	24M																				
	24C																				
	24C (Arb)																				
25																					
26																					
27																					
28																			2		2
29																			22	361	383
31																			1		1
32																			14		14
33																			1	36	37
34																					
TOTAL															1		7	7	46	538	599

4.4 TAIPING HIGH COURT - CRIMINAL

were registered and 154 cases were disposed of leaving a balance of 82 cases pending.

For Criminal Cases in the year 2013, a total number of 154 cases including appeals and trials

**TRACKING CHART FOR TAIPING COURT (CRIMINAL)
JANUARY-DECEMBER 2013**



**AGEING LIST FOR TAIPING HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013**

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									13	13
	S									12	12
	Ors										
41A	A/C									2	2
	S									1	1
	Ors										
42	A/C									21	21
	S									2	2
	Ors									3	3
42A	A/C								2	1	3
	S										
	Ors										
43										1	1
44	Hbc										
	Ors										
SO	45										
39B	45							5	3	5	13
	46									2	2
302	45							1	3	4	8
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45									1	1
	46										
Ors	45										
	46				1						1
TOTAL					1			6	8	68	82

5. KUALA LUMPUR

5.1 KUALA LUMPUR HIGH COURT – CIVIL DIVISION

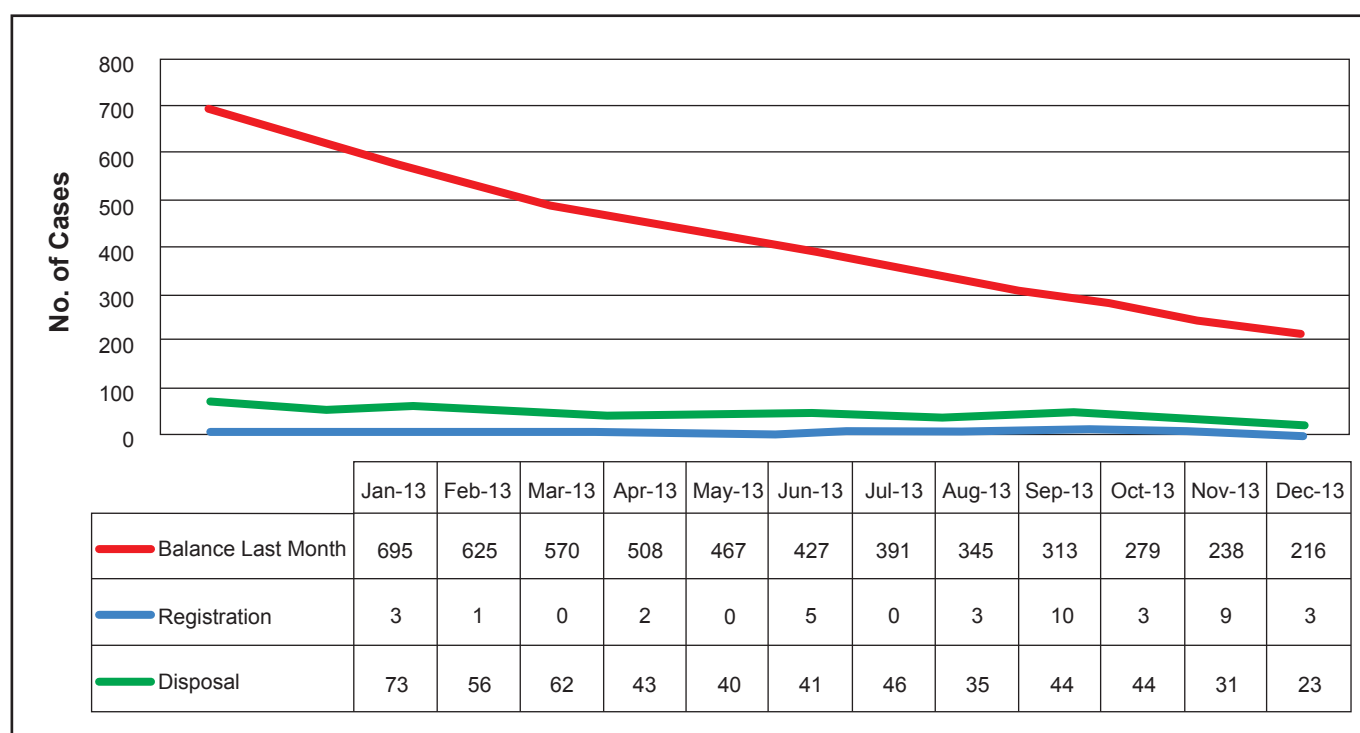
Old Civil Court (OCvC) Cases

The tracking chart below shows the disposal of OCvC cases in the Civil Division in the Kuala Lumpur High Court for the year 2013. For the

period from January to December 2013, the total number of OCvC cases disposed of was 538 (excluding cases for Code 29, 31 and 32) throughout the year 2013.

As at 31 December 2013, the total number of OCvC cases pending in the Civil Division in the Kuala Lumpur High Court is 196 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (OCVC)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (OCVC)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A															
	11AM															
	11AC															
	11B															
	11BM															
	11BC															
12	12A															
	12AM															
	12AC															
	12B															
	12BM															
	12BC															
13	13															
	13C															
14																
15																
16																
17																
18																
21	21								1	1	12	6				20
	21C															
22	22			3	2		3		6	14	43	75				146
	22M															
	22C															
23									2	7	9	8				26
24	24				1						1	1				3
	24M															
	24C															
	24C (Arb)															
25												1				1
26																
27																
28																
29																
31																
32																
33																
34																
TOTAL				3	3		3		9	22	65	91				196

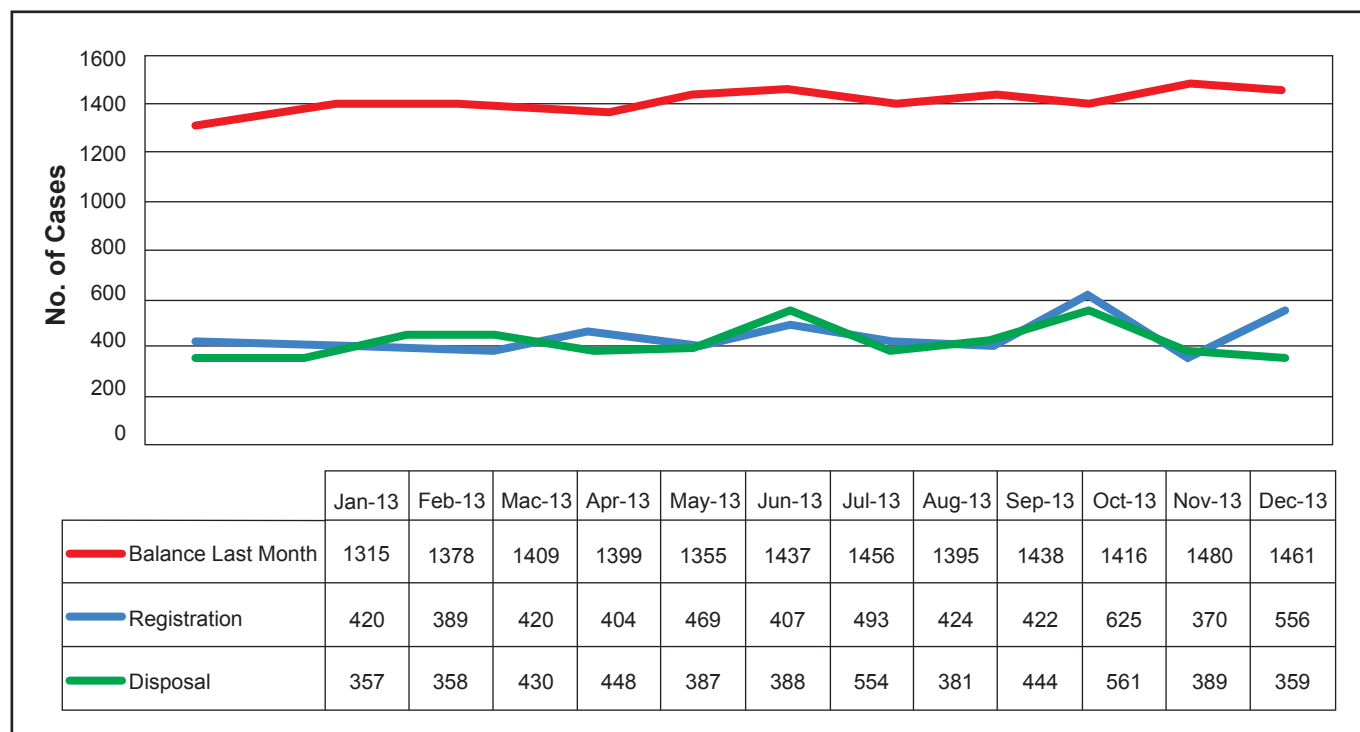
New Civil Court (NCvC) Cases

The tracking chart below shows the registration and disposal of NCvC cases in the Civil Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total civil cases registered was 5399 (excluding cases for Code 29, 31 and 32). The

High Court has managed to dispose of 5056 cases throughout the year 2013.

As at 31 December 2013, the total number of NCvC cases pending in the Kuala Lumpur High Court is 1847 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (NCVC)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (NCVC)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														5	5
	11AM															
	11AC															
	11B														1	1
	11BM															
	11BC															
12	12A														10	10
	12AM															
	12AC															
	12B														1	1
	12BM															
	12BC															
13	13															
	13C															
14																
15														4	4	8
16																
17																
18																
21	21											1	5	27	48	81
	21C															
22	22												21	202	312	535
	22M															
	22C															
23													3	34	61	98
24	24												2	3	913	918
	24M															
	24C															
	24C (Arb)															
25															1	1
26																
27																
28																
29																
31														2	96	98
32															91	91
33																
34																
TOTAL												1	31	272	1543	1847

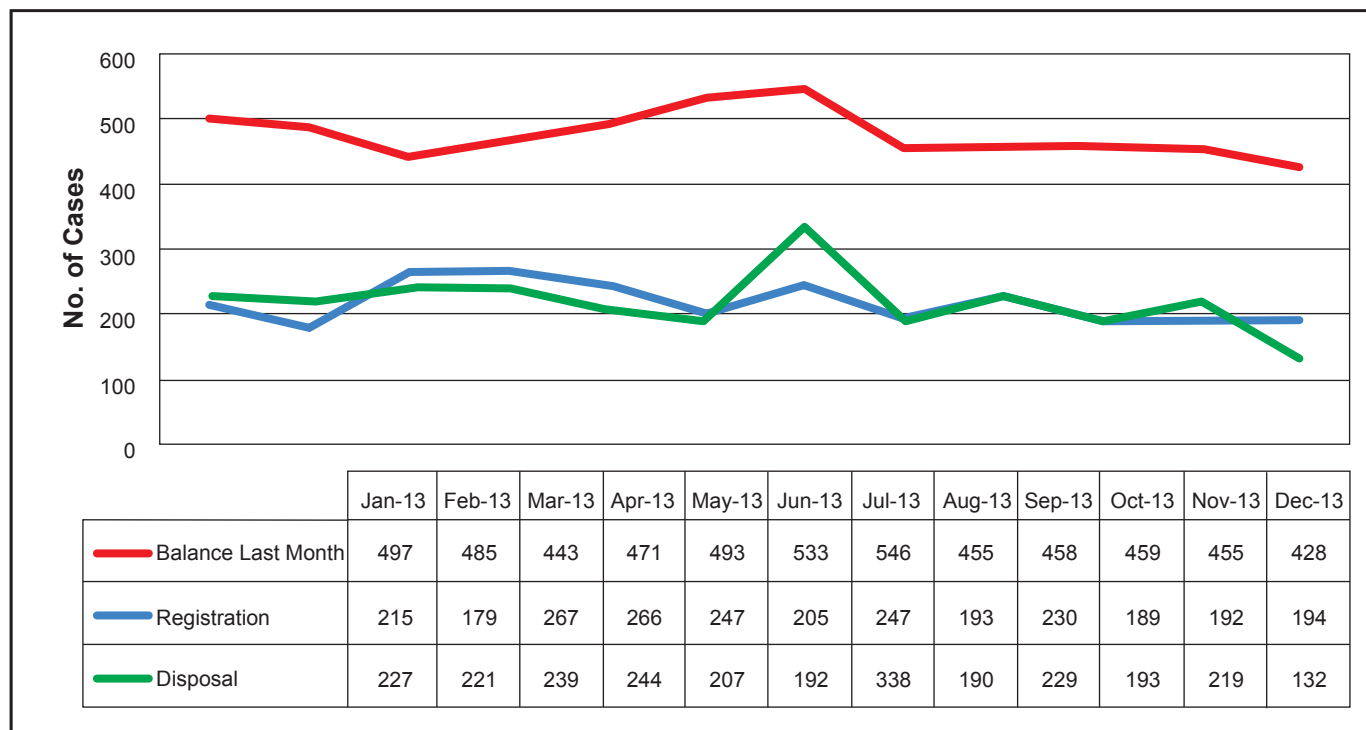
Family Court Cases

The tracking chart below shows the registration and disposal of Family Court cases in the Civil Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 2624. The High Court has

managed to dispose of 2631 cases throughout the year 2013.

As at 31 December 2013, the total number of Family Court cases pending in the Civil Division in the Kuala Lumpur High Court is 490 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (FAMILY COURT)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (FAMILY)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A															
	11AM															
	11AC															
	11B															
	11BM															
	11BC															
12	12A															
	12AM															
	12AC															
	12B															
	12BM															
	12BC															
13	13															
	13C															
14																
15																
16																
17																
18																
21	21															
	21C															
22	22															
	22M															
	22C															
23																
24	24													7	54	61
	24M															
	24C															
	24C (Arb)															
25															2	2
26																
27																
28																
29																
31																
32																
33													3	23	401	427
34																
TOTAL													3	30	457	490

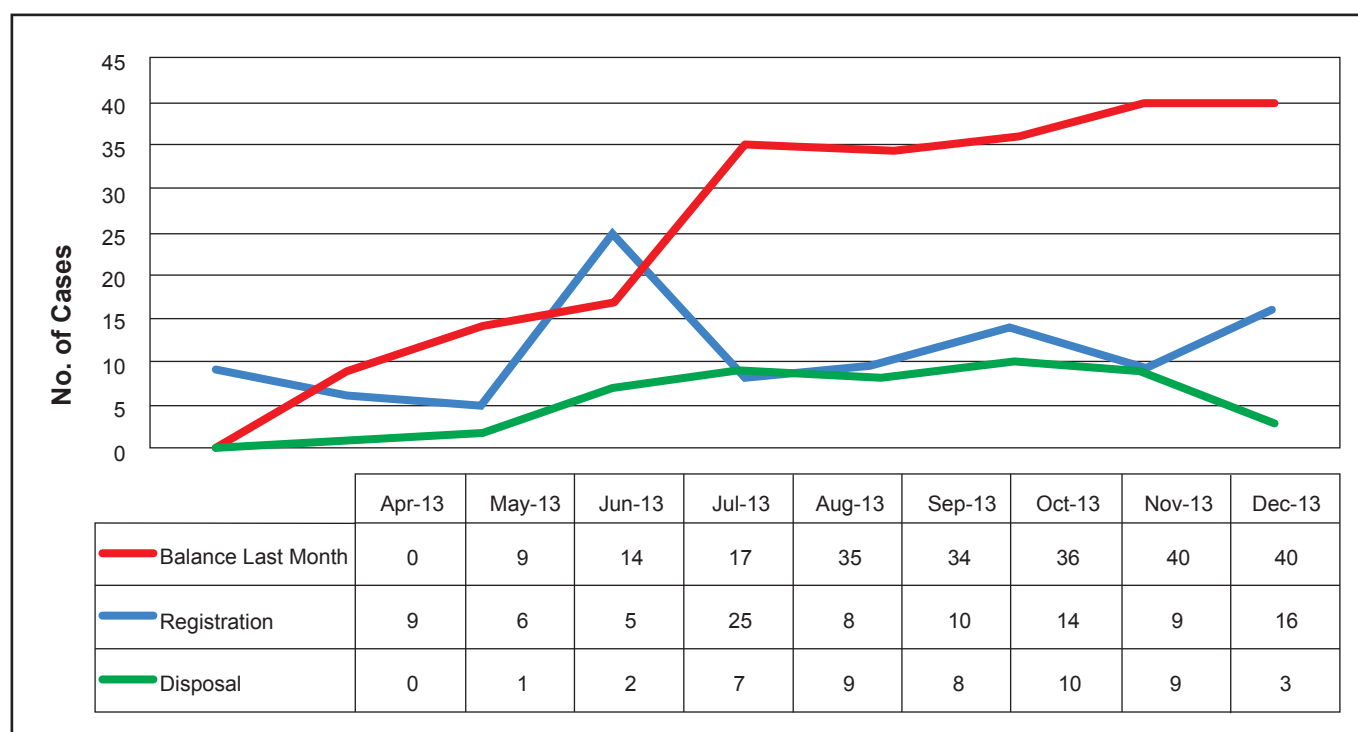
Construction Court

The Construction Court in Kuala Lumpur was established on 1st April 2013. The tracking chart below shows the registration and disposal of Construction Court cases in the Civil Division in the Kuala Lumpur High Court for the year 2013. For the period from April to December

2013, the total number of civil cases registered was 102. The High Court has managed to dispose of 49 cases throughout the year 2013.

As at 31 December 2013, the total number of construction cases pending in the Civil Division in the Kuala Lumpur High Court is 53 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (CONSTRUCTION)
APRIL-DECEMBER 2013



**AGEING LIST FOR KUALA LUMPUR HIGH COURT (CONSTRUCTION)
AS AT 31 DECEMBER 2013**

[illegible]

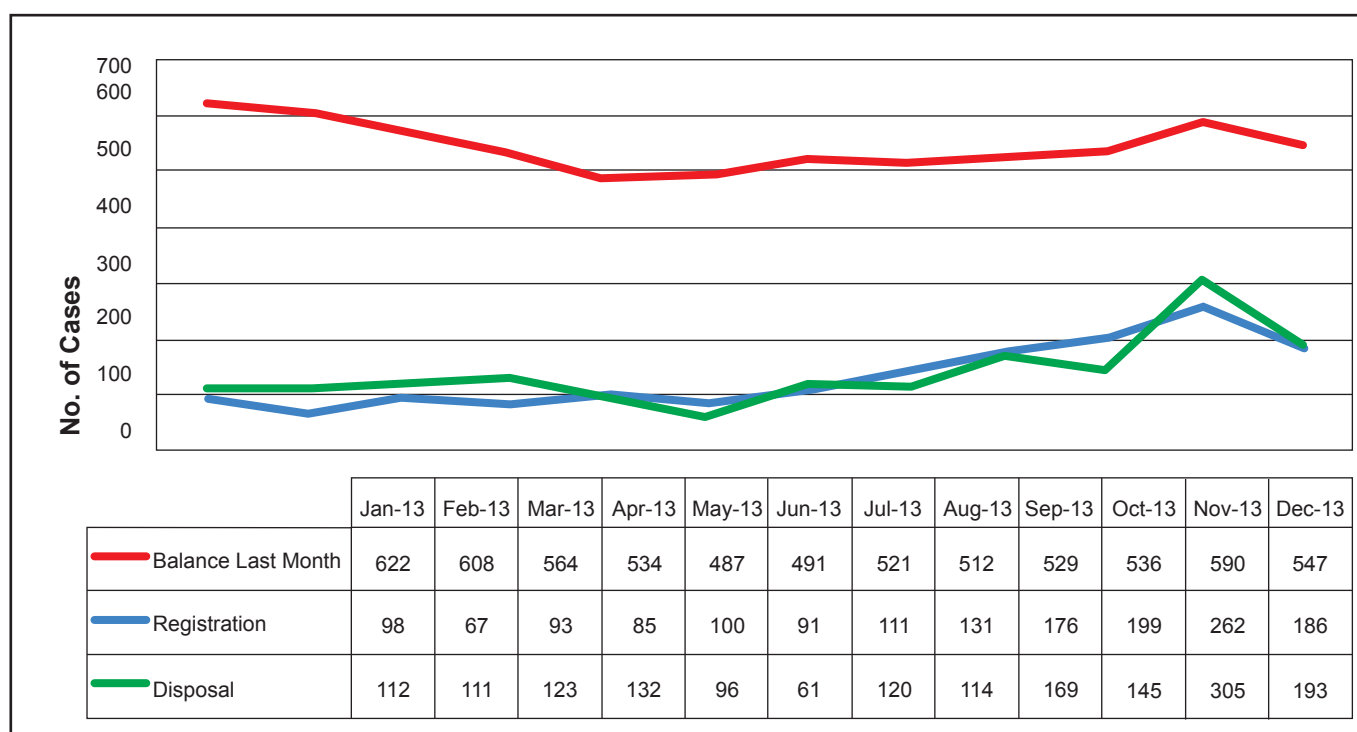
5.2 KUALA LUMPUR HIGH COURT – APPELLATE AND SPECIAL POWERS DIVISION

The tracking chart below shows the registration and disposal of cases in the Appellate and Special Powers Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of

cases registered was 1599. The High Court has managed to dispose of 1681 cases throughout the year 2013.

As at 31 December 2013, the total number of cases pending in the Appellate and Special Powers Division in the Kuala Lumpur High Court is 540 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT
(APPELLATE & SPECIAL POWERS)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT
(APPELLATE & SPECIAL POWERS)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A													1	40	41
	11AM															
	11AC															
	11B													5	24	29
	11BM															
	11BC															
12	12A													1	86	87
	12AM														2	2
	12AC															
	12B												5	22	118	145
	12BM															
	12BC															
13	13															
	13C															
14													1		9	10
15																
16														1	14	15
17														1	22	23
18																
21	21															
	21C															
22	22					1										1
	22M															
	22C															
23																
24	24													2	14	16
	24M															
	24C															
	24C (Arb)															
25									1	1		2	1	7	159	171
26																
27																
28																
29																
31																
32																
33																
34																
TOTAL						1			1	1		2	7	40	488	540

5.3 KUALA LUMPUR HIGH COURT – COMMERCIAL DIVISION

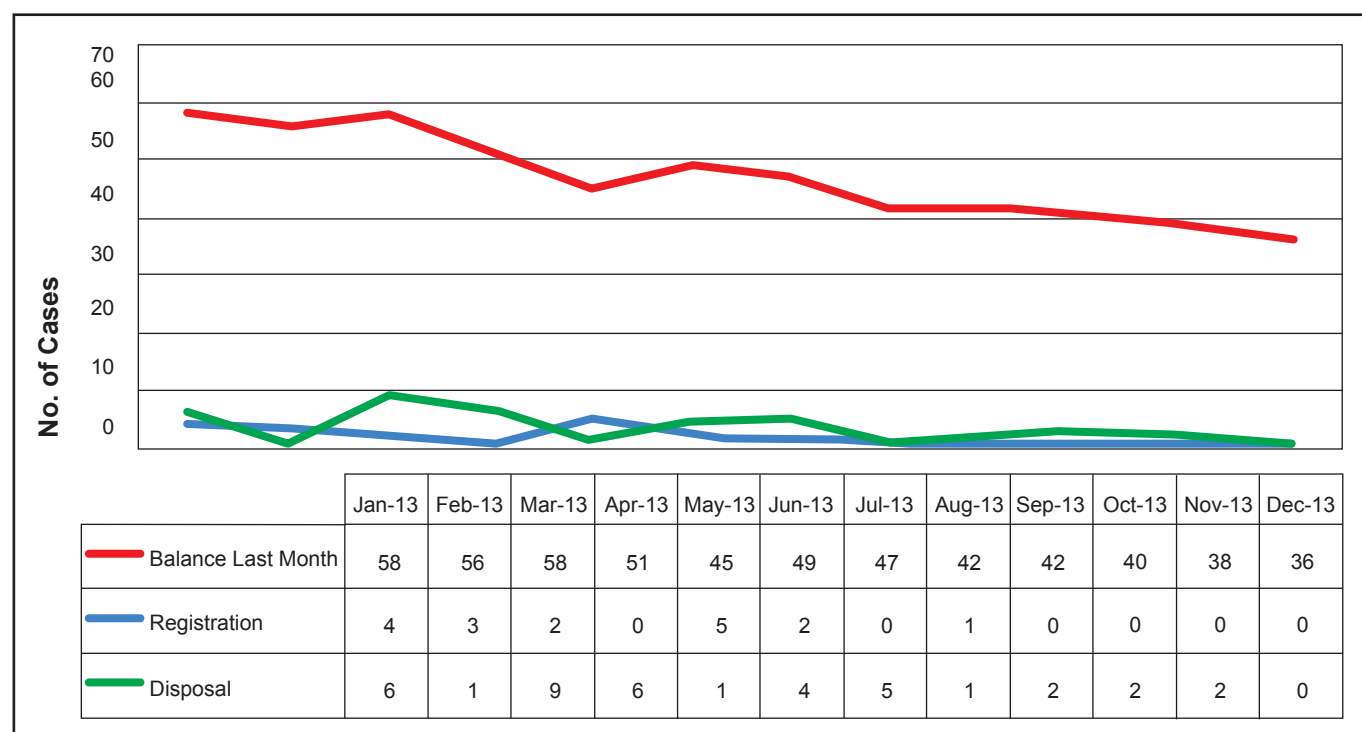
Old Civil Court (OCC) Cases

The tracking chart below shows the disposal of OCC cases in the Commercial Division in the Kuala Lumpur High Court for the year 2013.

For the period from January to December 2013, the total number of OCC cases disposed of was 39 throughout the year 2013.

As at 31 December 2013, the total number of OCC cases pending in the Commercial Division in the Kuala Lumpur High Court is 36 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (OCC)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (OCC)
AS AT 31 DECEMBER 2013

CODE		YEAR																Total
		1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																	
	11AM																	
	11AC																	
	11B																	
	11BM																	
	11BC																	
12	12A																	
	12AM																	
	12AC																	
	12B																	
	12BM																	
	12BC																	
13	13																	
	13C																	
14																		
15																		
16																		
17																		
18																		
21	21																	
	21C																	
22	22	3	1				1	2	2	6	2	6	8					31
	22M																	
	22C																	
23																		
24	24							1		1			1					3
	24M																	
	24C																	
	24C (Arb)																	
25																		
26																		
27																		
28												2						2
29																		
31																		
32																		
33																		
34																		
TOTAL		3	1				1	3	2	7	2	8	9					36

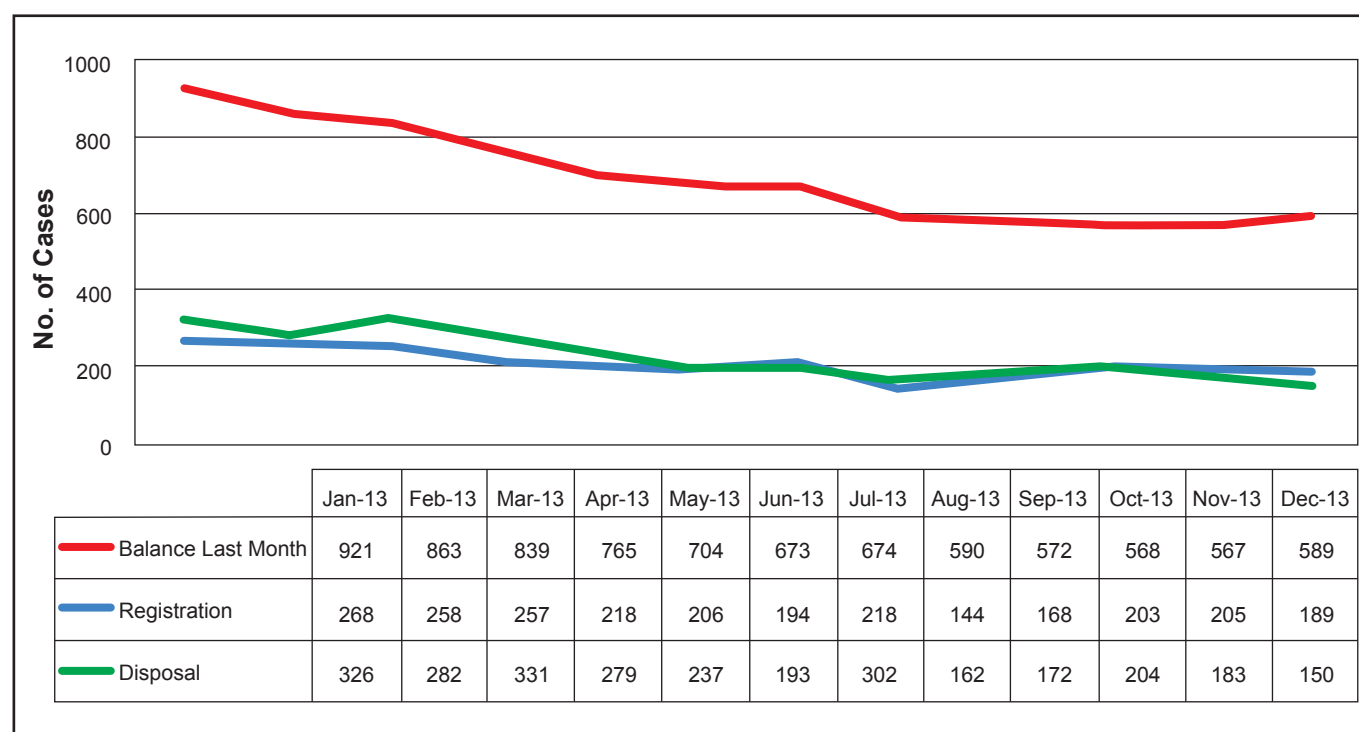
NCC Cases

The tracking chart below shows the registration and disposal of NCC cases in the Commercial Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of NCC cases registered was 2528 (excluding cases for Code

29, 31 and 32). The High Court has managed to dispose of 2712 cases (excluding cases for Code 29, 31 and 32) throughout the year 2013.

As at 31 December 2013, the total number of NCC cases pending in the Kuala Lumpur High Court is 628 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (NCC)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (NCC)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														1	1
	11AM															
	11AC															
	11B															
	11BM															
	11BC															
12	12A														12	12
	12AM															
	12AC															
	12B														1	1
	12BM															
	12BC															
13	13														1	1
	13C															
14																
15																
16																
17																
18																
21	21													1		1
	21C															
22	22											4	15	49	183	251
	22M															
	22C															
23																
24	24													1	68	69
	24M															
	24C															
	24C (Arb)														1	1
25																
26														2	31	33
27																
28															258	258
29																
31																
32																
33																
34																
TOTAL												4	15	53	556	628

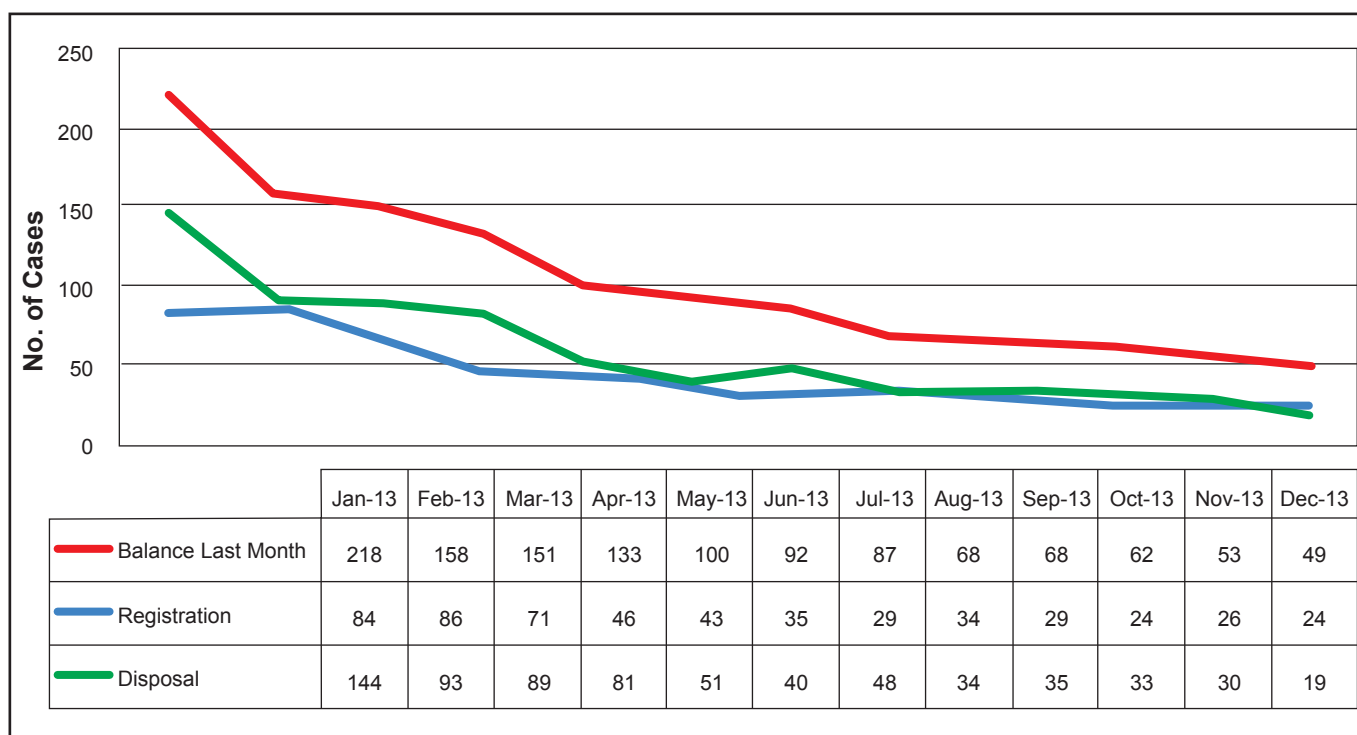
Muamalat Cases

The tracking chart below shows the registration and disposal of Muamalat cases in the Commercial Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of Muamalat cases registered was 531. The High Court has

managed to dispose of 697 cases throughout the year 2013.

As at 31 December 2013, the total number of Muamalat cases pending in the Kuala Lumpur High Court is 54 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (MUAMALAT)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (MUAMALAT)
AS AT 31 DECEMBER 2013

CODE		YEAR													Total	
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013
11	11A															
	11AM															
	11AC															
	11B															
	11BM															
	11BC															
12	12A															
	12AM															
	12AC															
	12B															
	12BM															
	12BC															
13	13															
	13C															
14																
15																
16																
17																
18																
21	21															
	21C															
22	22															
	22M							2			1	1	2	27	33	
	22C															
23																
24	24													21	21	
	24M															
	24C															
	24C (Arb)															
25																
26																
27																
28																
29																
31																
32																
33																
34																
TOTAL									2			1	1	2	48	54

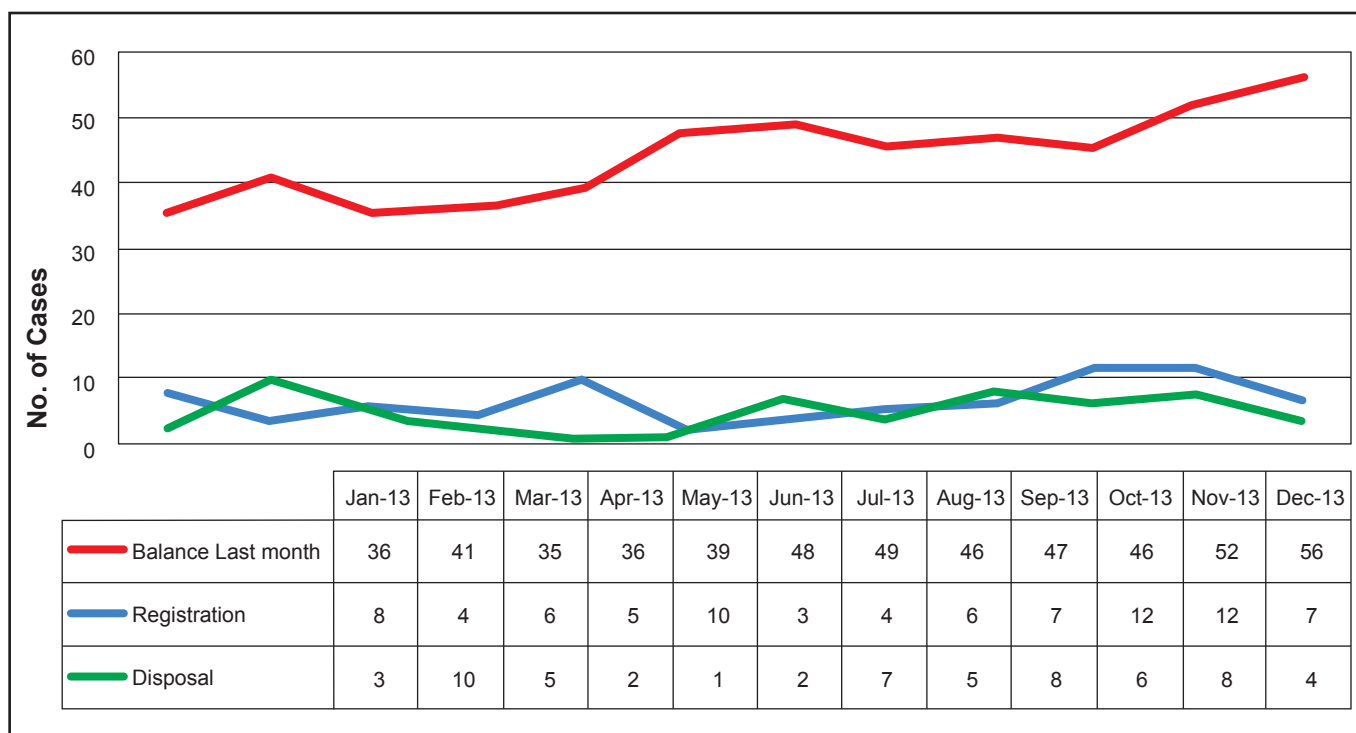
Intellectual Property Cases – Civil

The tracking chart below shows the registration and disposal of Intellectual Property cases in the Commercial Division in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 84. The

High Court has managed to dispose of 61 cases throughout the year 2013.

As at 31 December 2013, the total number of Intellectual Property cases pending in the Commercial Division in the Kuala Lumpur High Court is 59 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (INTELLECTUAL PROPERTY)
JANUARY-DECEMBER 2013



AGEING LIST KUALA LUMPUR HIGH COURT (INTELLECTUAL PROPERTY)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A															
	11AM															
	11AC															
	11B															
	11BM															
	11BC															
12	12A															
	12AM															
	12AC															
	12B															
	12BM															
	12BC															
13	13															
	13C															
14																
15																
16																
17																
18																
21	21															
	21C															
22	22											2	6	25	33	
	22M															
	22C															
23																
24	24												1	23	24	
	24M															
	24C															
	24C (Arb)															
25													1	1	2	
26																
27																
28																
29																
31																
32																
33																
34																
TOTAL												2	8	49	59	

[illegible]

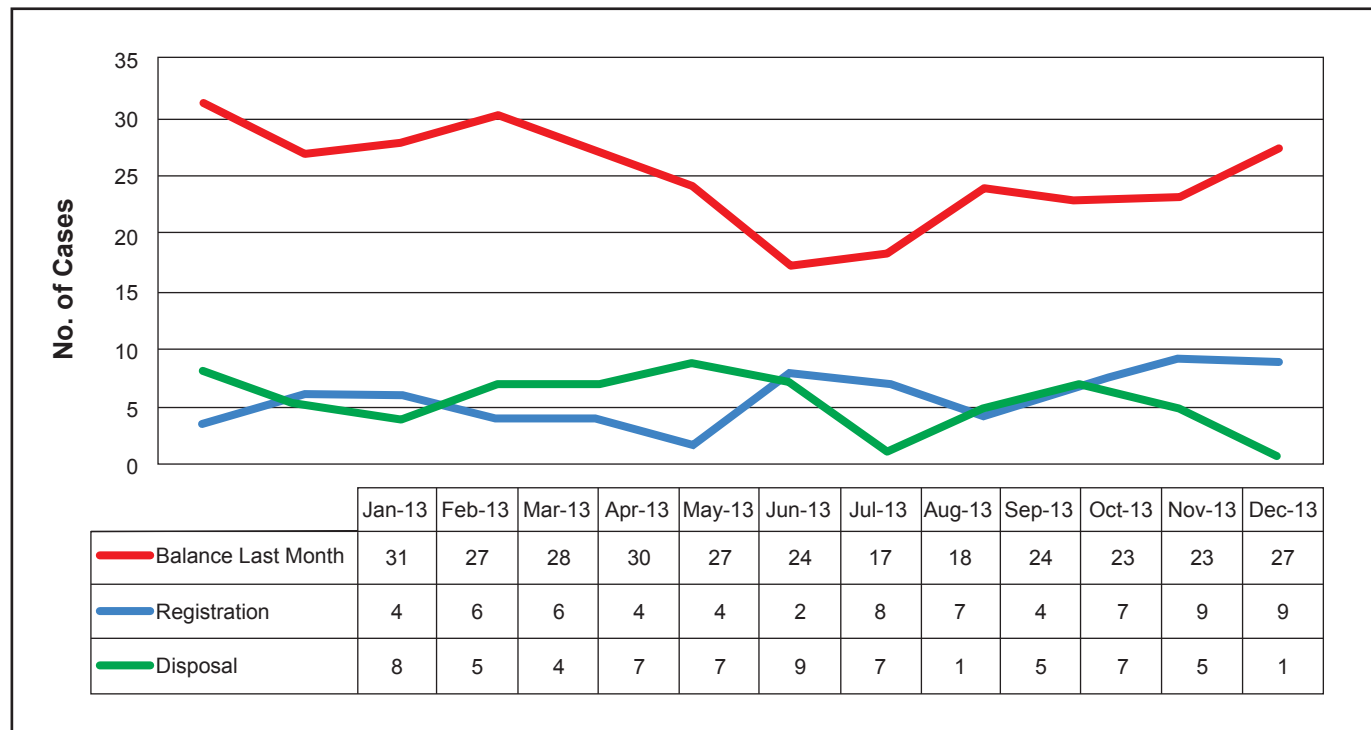
Admiralty Court

The tracking chart below shows the registration and disposal of Admiralty cases in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of Admiralty cases registered was 70.

The High Court has managed to dispose of 66 cases throughout the year 2013.

As at 31 December 2013, the total number of admiralty cases pending in the Kuala Lumpur High Court is 35 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (ADMIRALTY)
JANUARY-DECEMBER 2013



[illegible]

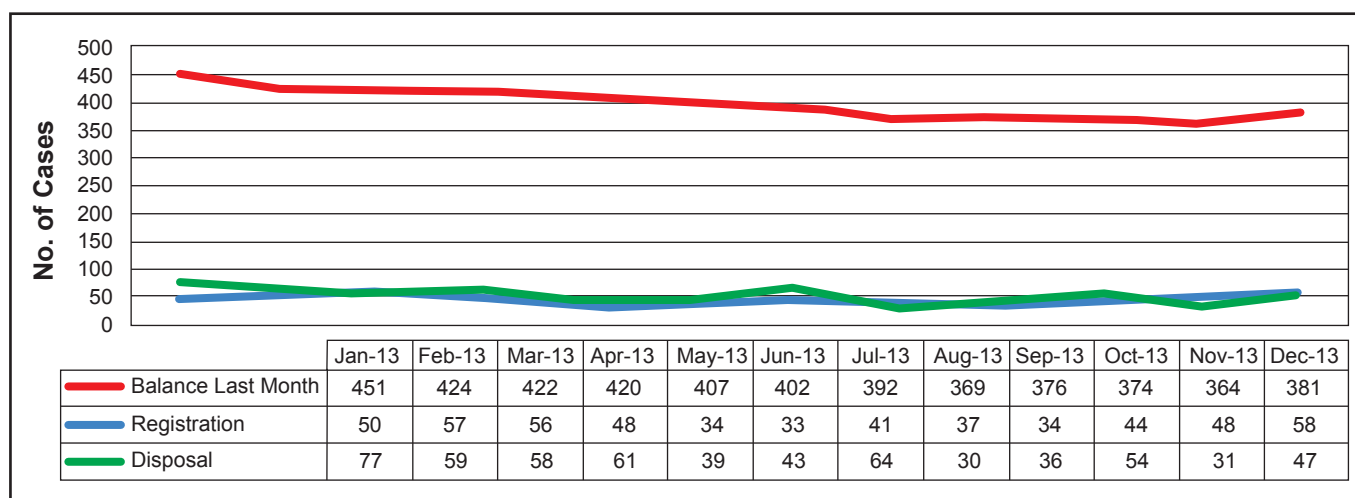
5.4 KL HIGH COURT – CRIMINAL DIVISION

The tracking chart below shows the registration and disposal of Criminal cases in the Kuala Lumpur High Court for the year 2013. For the period from January to December 2013, the total number of criminal cases registered was

540. The High Court has managed to dispose of 599 cases throughout the year 2013.

As at 31 December 2013, the total number of criminal cases pending in the Kuala Lumpur High Court is 392 as reflected in the Ageing list below.

TRACKING CHART FOR KUALA LUMPUR HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR KUALA LUMPUR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								4	26	30
	S									26	26
	Ors									1	1
41A	A/C								1	3	4
	S										
	Ors										
42	A/C							21	34	76	131
	S						2	3	3	43	51
	Ors							2		9	11
42A	A/C						1	3	8	11	23
	S									1	1
	Ors										
43											
44	Hbc									21	21
	Ors							2	3	2	7
SO	45									4	4
39B	45						1	1	1	8	11
	46									2	2
302	45										
	46										
396	45										
	46										
KIDNAP	45								2	4	6
	46										
F/ARMS	45									2	2
	46										
Ors	45					1		1	1	6	9
	46		1								1
TOTAL			1			1	4	42	65	279	392

6. SELANGOR

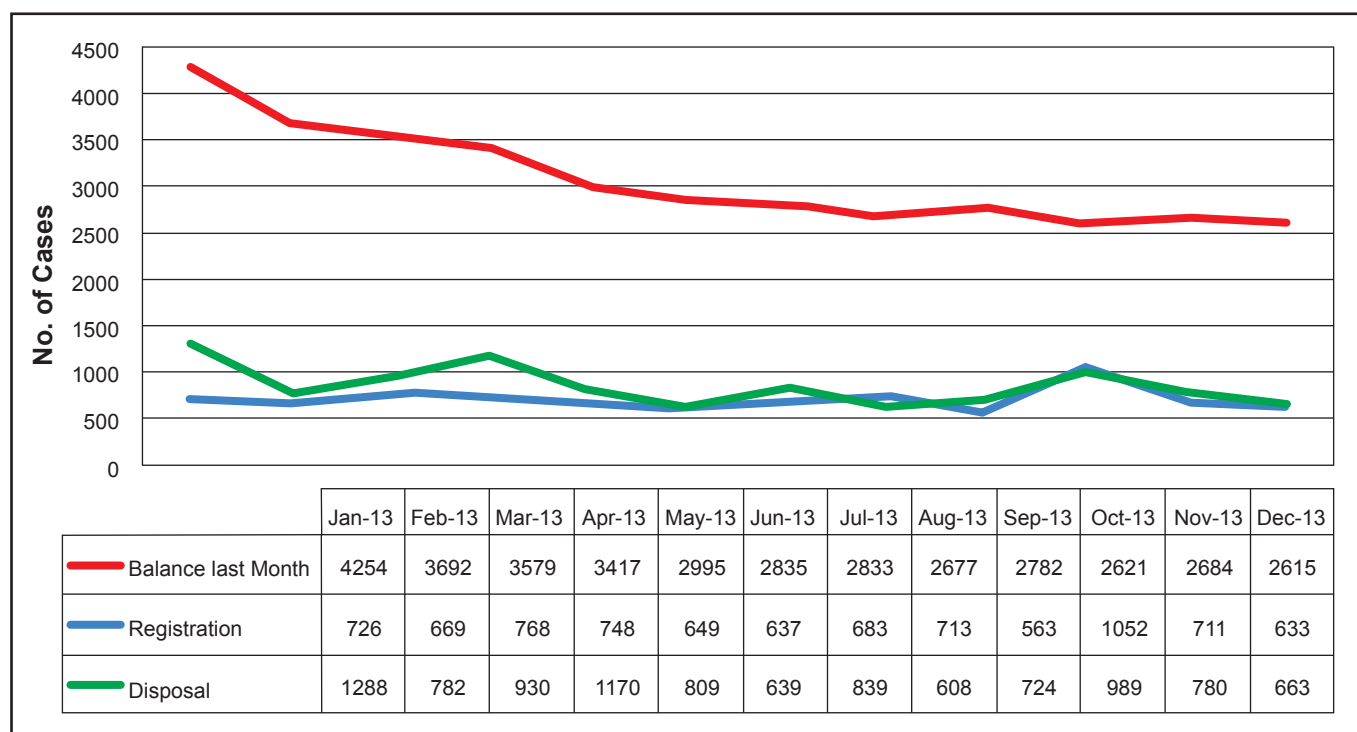
6.1 SHAH ALAM HIGH COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Shah Alam High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 8552 (excluding cases

for Code 29, 31 and 32). The High Court has managed to dispose of 10221 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Shah Alam High Court is 11684 as reflected in the Ageing list below.

TRACKING CHART FOR SHAH ALAM HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



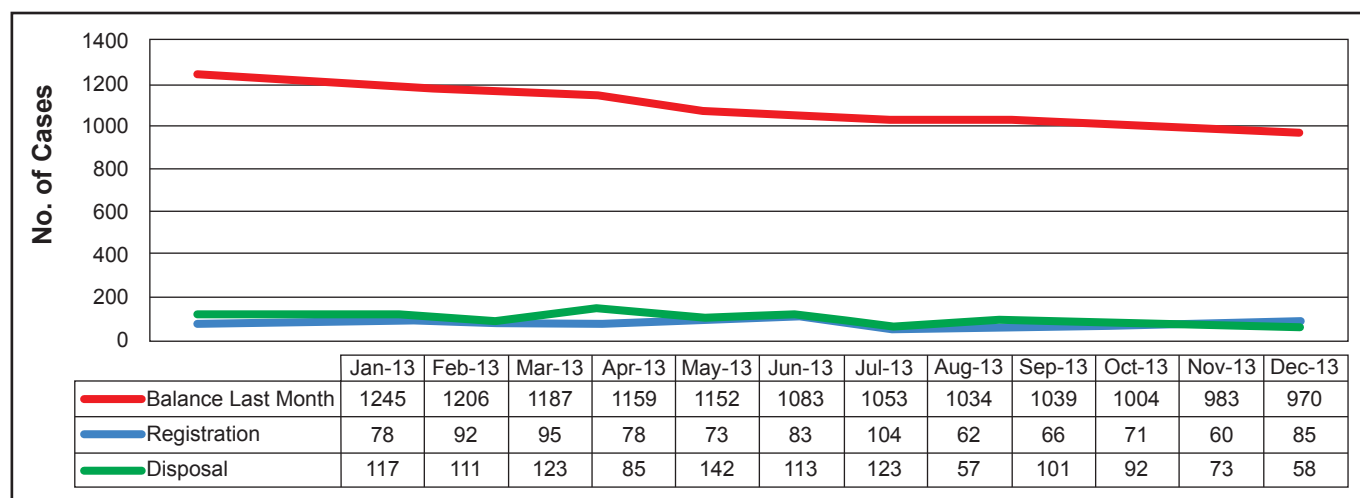
AGEING LIST FOR SHAH ALAM HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																		Total		
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013	
11	11A																			13	13	
	11AM																					
	11AC																					
	11B																		1	26	27	
	11BM																					
	11BC																					
12	12A																		2	65	67	
	12AM																					
	12AC																					
	12B																		15	295	310	
	12BM																					
	12BC																					
13	13																					
	13C																					
14																						
15													1	3	2				31	101	138	
16																			1	19	20	
17																						
18																						
21	21		1									1	1	12	3	10	15	7	21	37	108	
	21C																					
22	22						1	2	2	2		1	4	20	52	62	91	35	167	348	787	
	22M																	1	3	5	9	
	22C																			3	3	
23																		2	6	32	40	
24	24														1				4	550	555	
	24M																			1	1	
	24C																					
	24C (Arb)																			3	3	
25																		1	3	36	40	
26																				3	3	
27																			1	2	3	
28															1				1	148	150	
29																1	158	700	7992	8851		
31																			4	165	169	
32																				80	80	
33													1						4	303	308	
34																						
36																						
37																						
38																						
TOTAL			1				1	2	2	2		2	5	34	58	76	107	204	964	10226	11684	

6.2 SHAH ALAM HIGH COURT – CRIMINAL

For Criminal Cases in the year 2013, a total number of 947 cases including appeals and trials were registered and 1145 cases were disposed of leaving a balance of 997 cases pending.

TRACKING CHART FOR SHAH ALAM HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR SHAH ALAM HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C							9	15	76	100
	S							1	5	74	80
	Ors										
41A	A/C									9	9
	S									2	2
	Ors										
42	A/C					1	12	38	61	135	247
	S							4	10	44	58
	Ors									2	2
42A	A/C						2	13	16	15	46
	S									2	2
	Ors										
43											
44	Hbc									8	8
	Ors										
SO	45										
39B	45						13	40	123	138	314
	46										
302	45				2		5	9	24	39	79
	46									1	1
396	45										
	46										
KIDNAP	45							3	3	7	13
	46								1		1
F/ARMS	45									3	3
	46										
Ors	45							6	5	21	32
	46										
TOTAL					2	1	32	123	263	576	997

7. NEGERI SEMBILAN

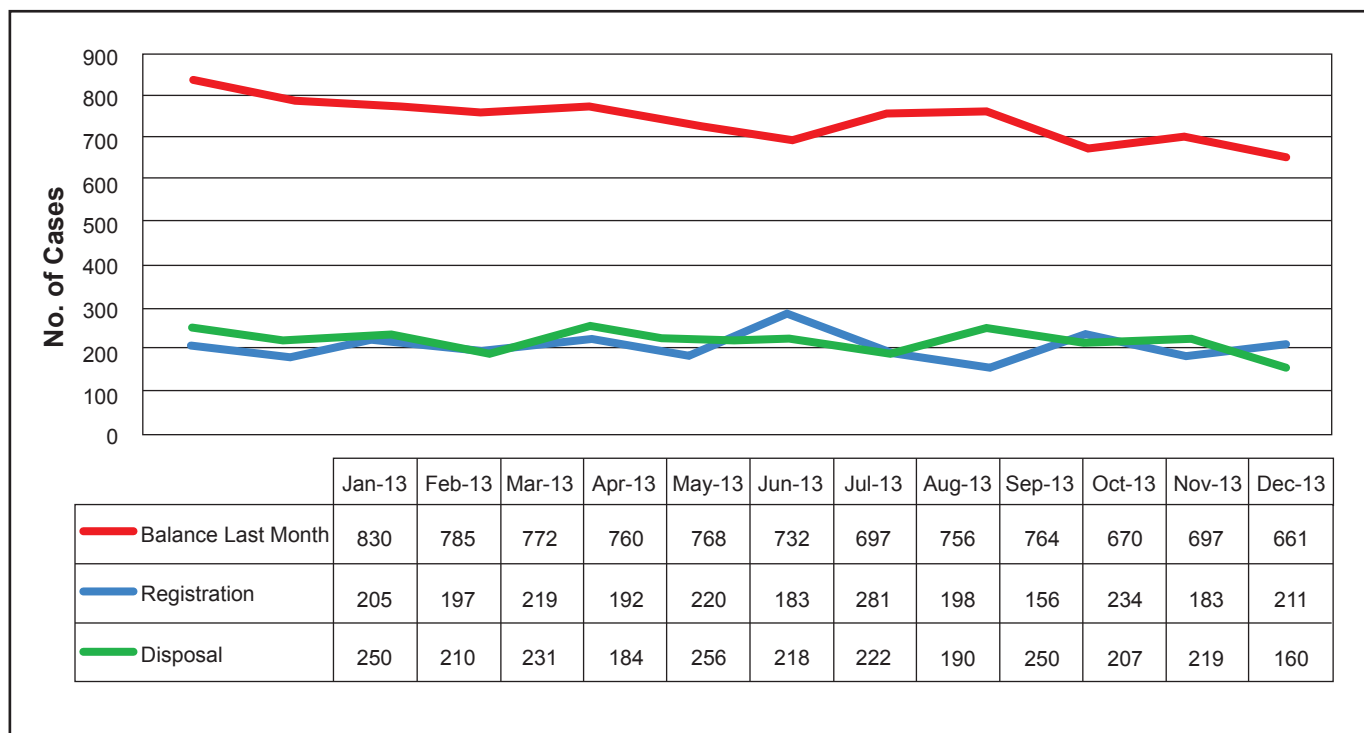
7.1 SEREMBAN HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Seremban High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 2479 (excluding cases

for Code 29, 31 and 32). The High Court has managed to dispose of 2597 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Seremban High Court is 4412 cases as reflected in the Ageing list below.

TRACKING CHART FOR SEREMBAN HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



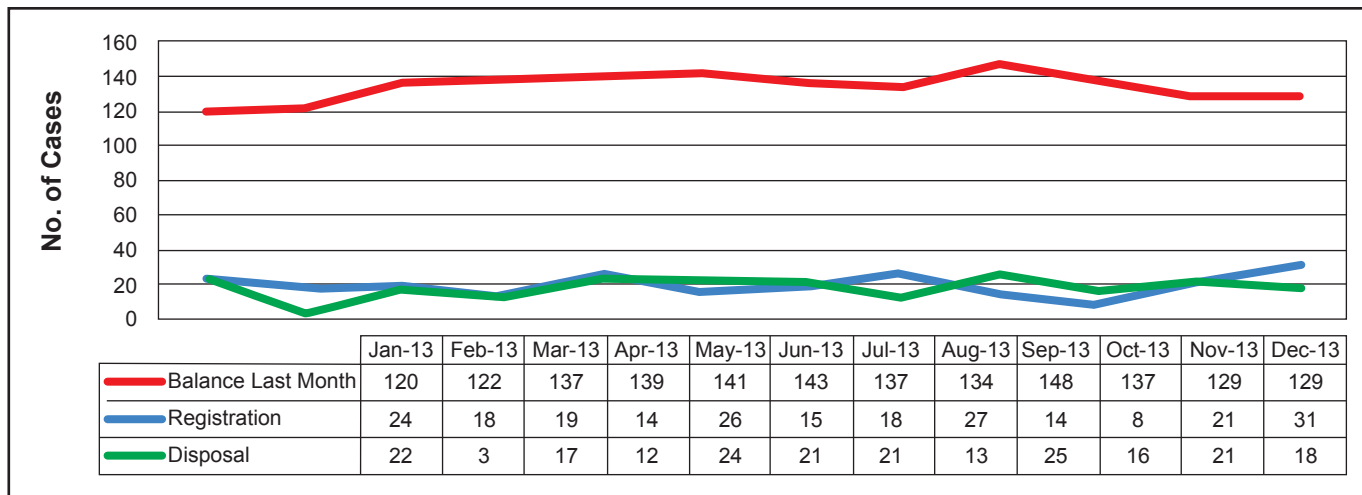
AGEING LIST FOR SEREMBAN HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																			Total
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																			2	2
	11AM																				
	11AC																				
	11B																		5	5	
	11BM																				
	11BC																				
12	12A																			6	6
	12AM																				
	12AC																				
	12B																	1	88	89	
	12BM																				
	12BC																				
13	13																				
	13C																				
14																					
15																		1	13	23	37
16																				12	12
17																				1	1
18																				2	2
21	21																				
	21C																				
22	22																	1	38	62	101
	22M																				
	22C																				
23																					
24	24																		3	318	321
	24M																		1	4	5
	24C																				
	24C (Arb)																				
25																				7	7
26																					
27																					
28																				15	15
29																		792	868	1501	3161
31																				59	59
32																				52	52
33																			3	110	113
34																					
36																					
37																				3	3
38																				422	422
39																					
40																					
TOTAL													1	2	1	3	6	803	927	2691	4412

7.2 SEREMBAN HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 235 cases including appeals and trials were registered and 213 cases were disposed of leaving a balance of 142 cases pending.

TRACKING CHART FOR SEREMBAN HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR SEREMBAN HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									17	17
	S									11	11
	Ors										
41A	A/C								1	3	4
	S								1	1	2
	Ors										
42	A/C								13	28	41
	S									29	29
	Ors										
42A	A/C								1	2	3
	S										
	Ors										
43										3	3
44	Hbc									4	4
	Ors									1	1
SO	45										
39B	45							2	3	6	11
	46										
302	45								2	7	9
	46										
396	45									1	1
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45									6	6
	46										
TOTAL								2	21	119	142

8. MALACCA

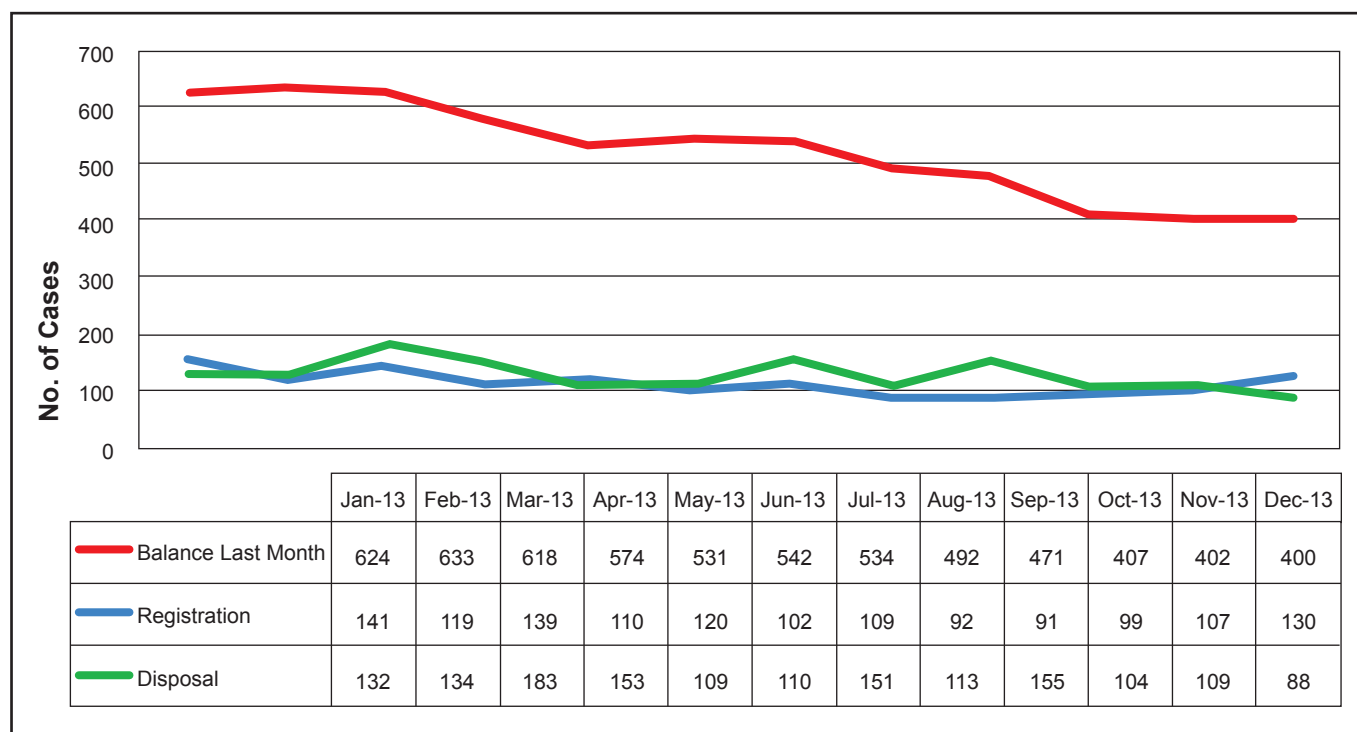
8.1 MALACCA HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Malacca High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 1359 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1541 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Malacca High Court is 1560 as reflected in the Ageing list below.

TRACKING CHART FOR MALACCA HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



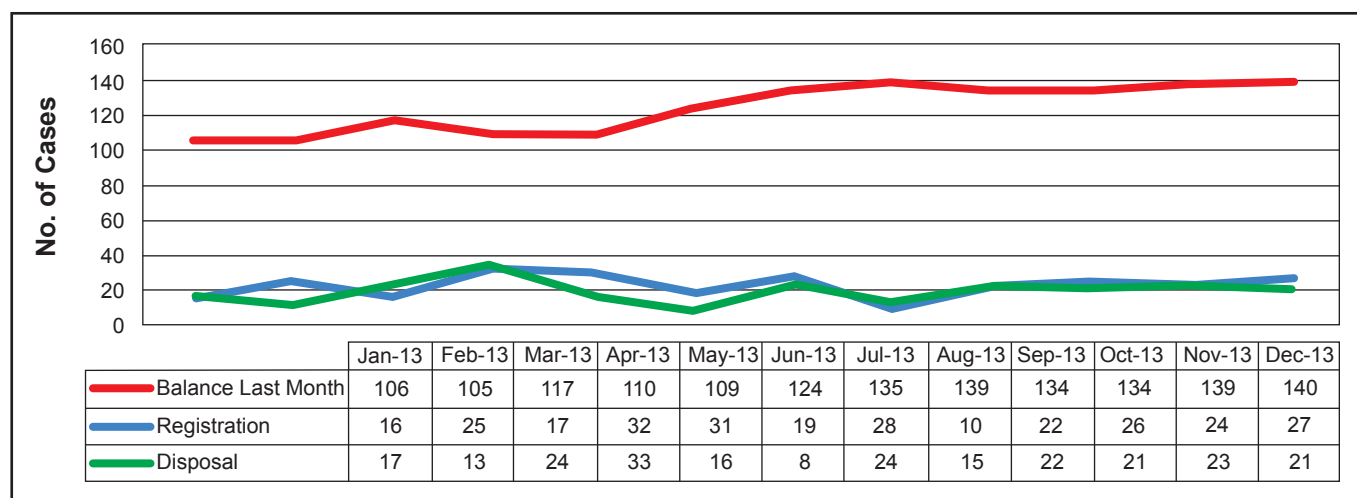
AGEING LIST FOR MALACCA HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																		Total		
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012		2013	
11	11A																			1	1	
	11AM																					
	11AC																					
	11B																			4	4	
	11BM																					
	11BC																					
12	12A																			12	12	
	12AM																					
	12AC																					
	12B																1			9	10	
	12BM																					
	12BC																					
13	13																					
	13C																					
14																						
15																		3	1	49	53	
16																			2	7	9	
17																				2	2	
18																						
21	21														1			1	1		1	4
	21C																					
22	22														1	1	6	8	10	34	58	118
	22M																			1		1
	22C																					
23																				5	8	13
24	24																	1			135	136
	24M																				7	7
	24C																					
	24C (Arb)																					
25																						
26																					1	1
27																						
28																					14	14
29																1		10	157	887	1055	
31																					17	17
32																					17	17
33																				2	55	57
34																						
36																						
37																						
38																					29	29
39																						
40																						
TOTAL														1	2	7	11	24	202	1313	1560	

8.2 MALACCA HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 277 cases including appeals and trials were registered and 237 cases were disposed of leaving a balance of 146 cases pending.

TRACKING CHART FOR MALACCA HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR MALACCA HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									42	42
	S									24	24
	Ors										
41A	A/C									3	3
	S									1	1
	Ors										
42	A/C								10	33	43
	S									5	5
	Ors									1	1
42A	A/C									6	6
	S									1	1
	Ors										
43											
44	Hbc										
	Ors										
SO	45										
39B	45							1	3	7	11
	46										
302	45								3		3
	46									1	1
396	45										
	46									1	1
KIDNAP	45						2	1			3
	46							1			1
F/ARMS	45										
	46										
Ors	45									6	6
	46										
TOTAL							2	3	16	125	146

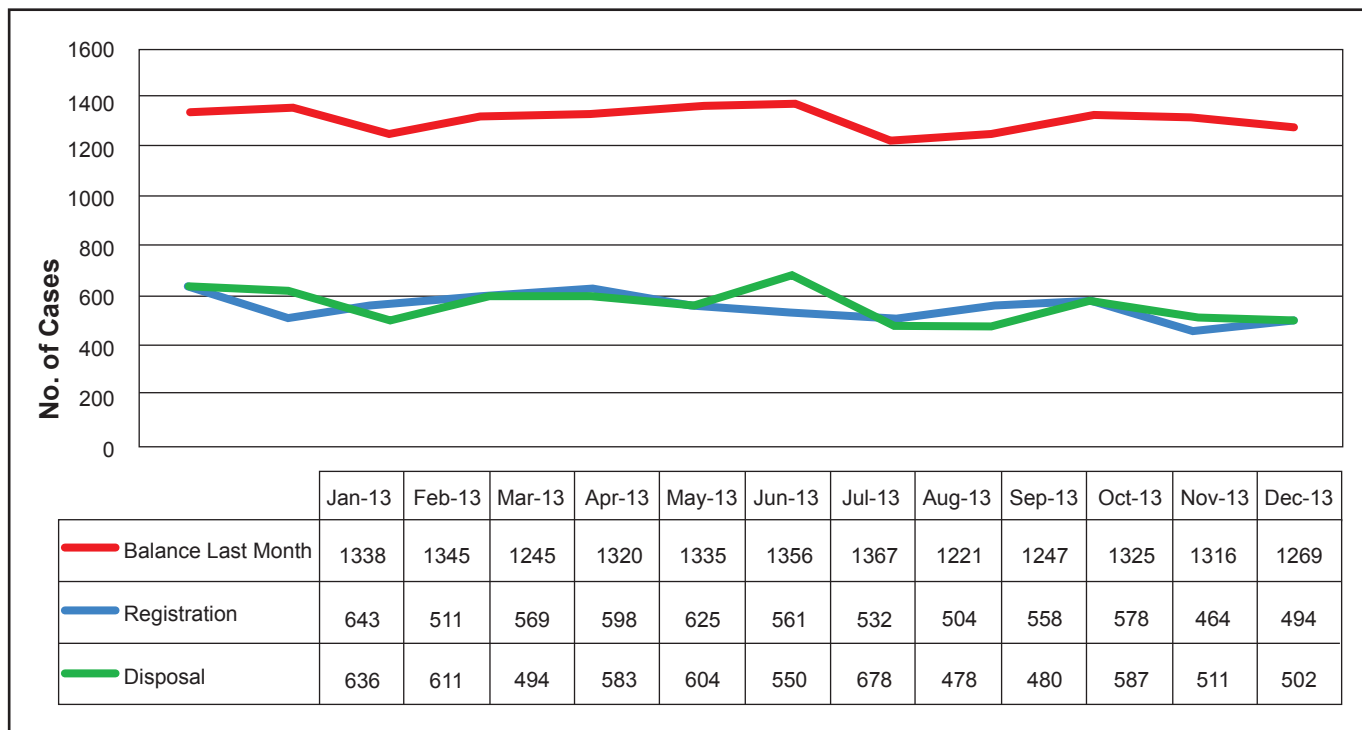
9. JOHOR**9.1 JOHOR BAHRU HIGH COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Johor Bahru High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 6637 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 6714 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Johor Bahru High Court is 4560 cases as reflected in the Ageing list below.

**TRACKING CHART FOR JOHOR BAHRU HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013**



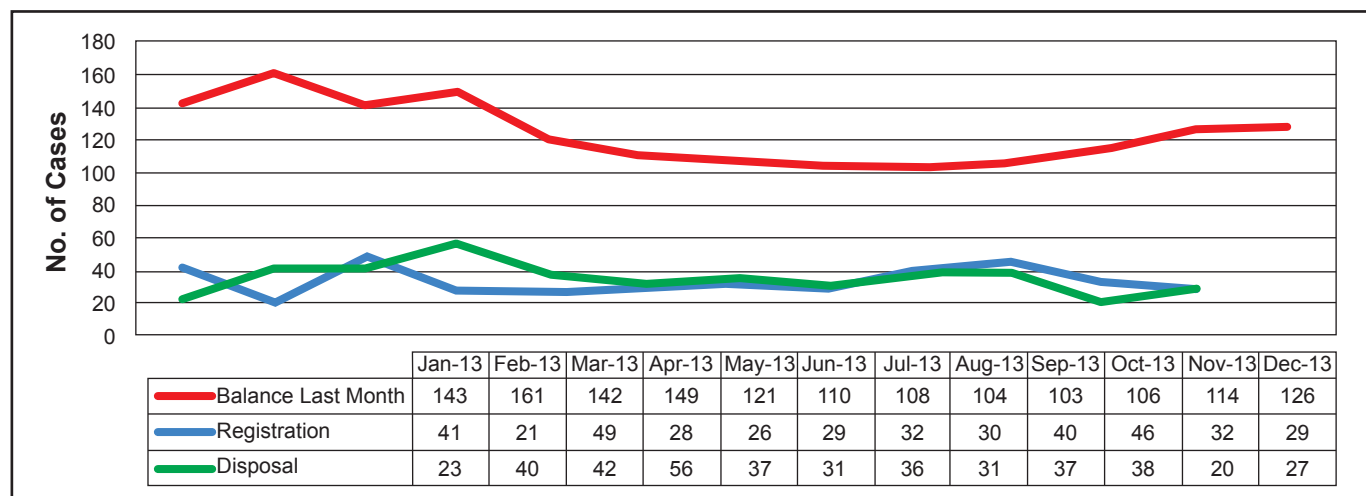
AGEING LIST FOR JOHOR BAHRU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																			Total
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																			11	11
	11AM																				
	11AC																				
	11B																			3	3
	11BM																				
	11BC																				
12	12A																		1	22	23
	12AM																				
	12AC																				
	12B																		3	53	56
	12BM																				
	12BC																			1	1
13	13																				
	13C																				
14																					
15																			27	301	328
16																				3	3
17																				6	6
18																				10	10
21	21																		1	7	8
	21C																				
22	22	1												1		1			7	63	73
	22M																			3	3
	22C																				
23																		3	5	31	39
24	24																			493	493
	24M																				
	24C																				
	24C (Arb)																				
25																			4	18	22
26																				2	2
27																		1			1
28																				73	73
29																			67	3188	3255
31																				24	24
32																				20	20
33																				106	106
34																					
TOTAL		1												1		1		4	115	4438	4560

9.2 JOHOR BAHRU HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 403 cases including appeals and trials were registered and 418 cases were disposed of leaving a balance of 128 cases pending.

TRACKING CHART FOR JOHOR BAHRU HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR JOHOR BAHRU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									18	18
	S									10	10
	Ors									1	1
41A	A/C										
	S										
	Ors										
42	A/C									36	36
	S									5	5
	Ors									1	1
42A	A/C								1	10	11
	S									2	2
	Ors										
43											
44	Hbc									11	11
	Ors										
SO	45										
39B	45								1	17	18
	46										
302	45								4	6	10
	46										
396	45										
	46										
KIDNAP	45								1		1
	46										
F/ARMS	45								1	3	4
	46										
Ors	45										
	46										
TOTAL									8	120	128

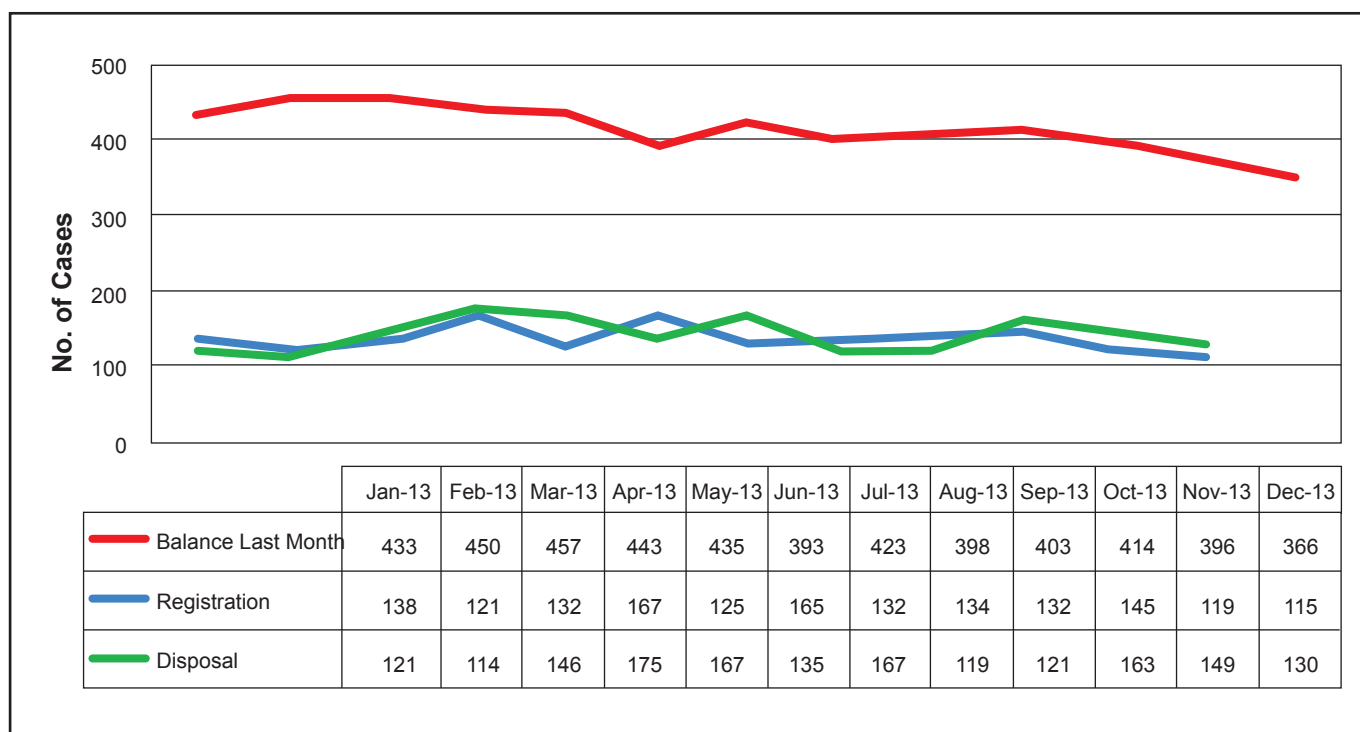
9.3 MUAR HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Muar High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 1625 (excluding cases

for Code 29, 31 and 32). The High Court has managed to dispose of 1707 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Muar High Court is 883 as reflected in the Ageing list below.

TRACKING CHART FOR MUAR HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



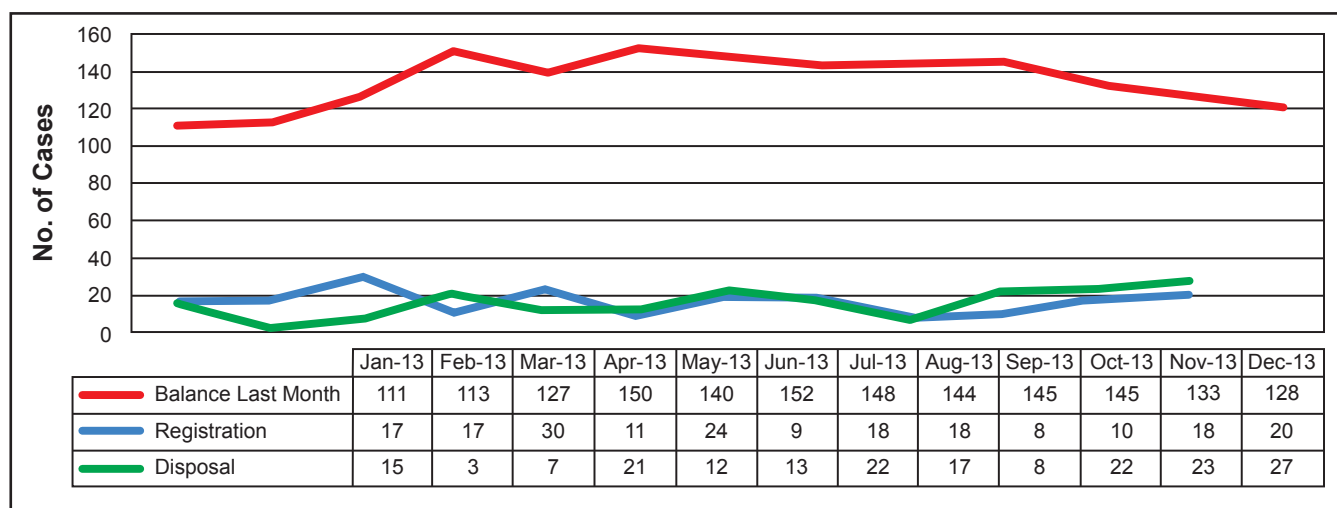
AGEING LIST FOR MUAR HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR																			Total
		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																			3	3
	11AM																				
	11AC																				
	11B																			3	3
	11BM																				
	11BC																				
12	12A																			2	2
	12AM																			1	1
	12AC																				
	12B																			35	35
	12BM																				
	12BC																			1	1
13	13																				
	13C																				
14																					
15																			1	7	8
16																				1	1
17																					
18																				4	4
21	21																		2	3	5
	21C																				
22	22																	1	25	46	72
	22M																		1		1
	22C																				
23																		1	3	2	6
24	24																			120	120
	24M																				
	24C																				
	24C (Arb)																				
25																				3	3
26																					
27																					
28																				7	7
29																				488	488
31																				24	24
32																			1	25	26
33																				73	73
34																					
TOTAL																		2	33	848	883

9.4 MUAR HIGH COURT – CRIMINAL

For Criminal Cases in the year 2013, a total number of 200 cases including appeals and trials were registered and 190 cases were disposed of leaving a balance of 121 cases pending.

TRACKING CHART FOR MUAR HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR MUAR HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								3	17	20
	S									14	14
	Ors										
41A	A/C									1	1
	S										
	Ors										
42	A/C								1	17	18
	S									5	5
	Ors									3	3
42A	A/C									1	1
	S										
	Ors										
43										1	1
44	Hbc										
	Ors										
SO	45										
39B	45							4	7	15	26
	46										
302	45							1	1	9	11
	46										
396	45										
	46										
KIDNAP	45									3	3
	46										
F/ARMS	45										
	46										
Ors	45							1	10	7	18
	46										
TOTAL								6	22	93	121

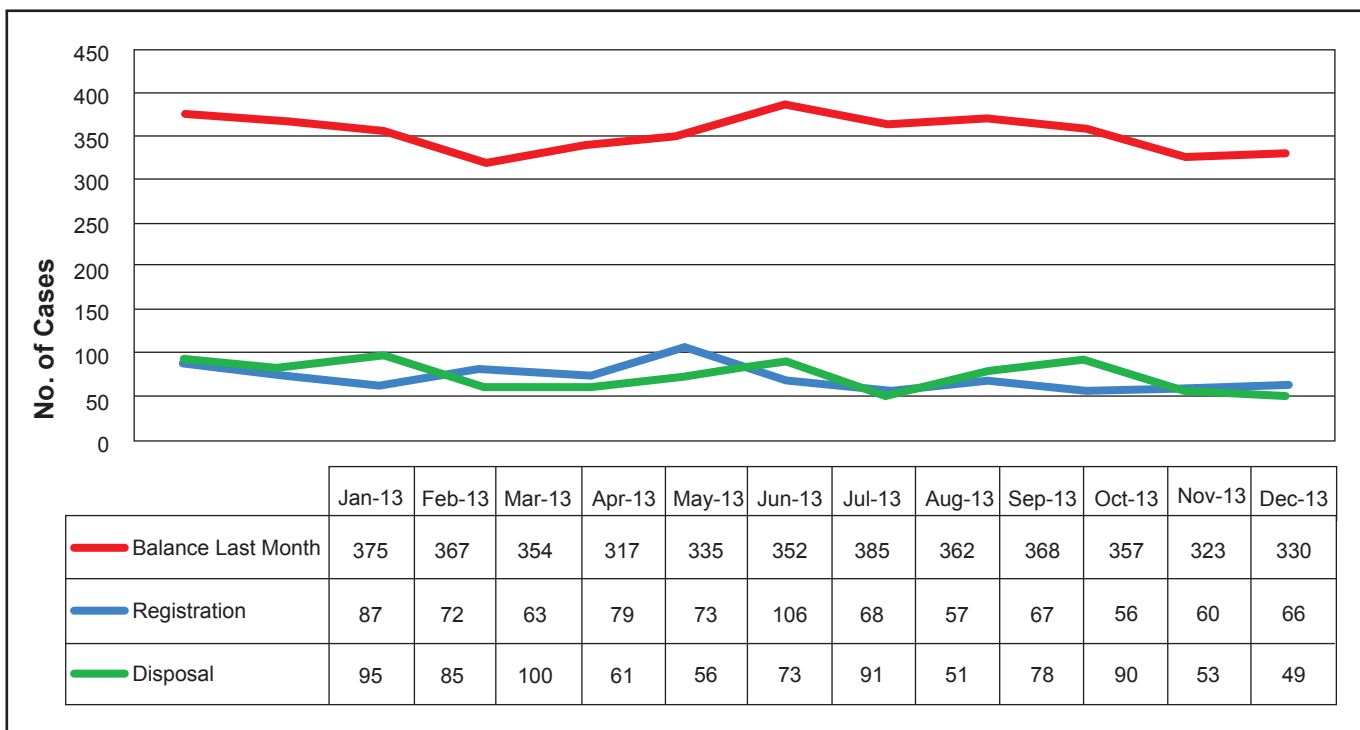
10. PAHANG**10.1 KUANTAN HIGH COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Kuantan High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 855 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 882 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Kuantan High Court is 1323 as reflected in the Ageing list below.

**TRACKING CHART FOR KUANTAN HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013**



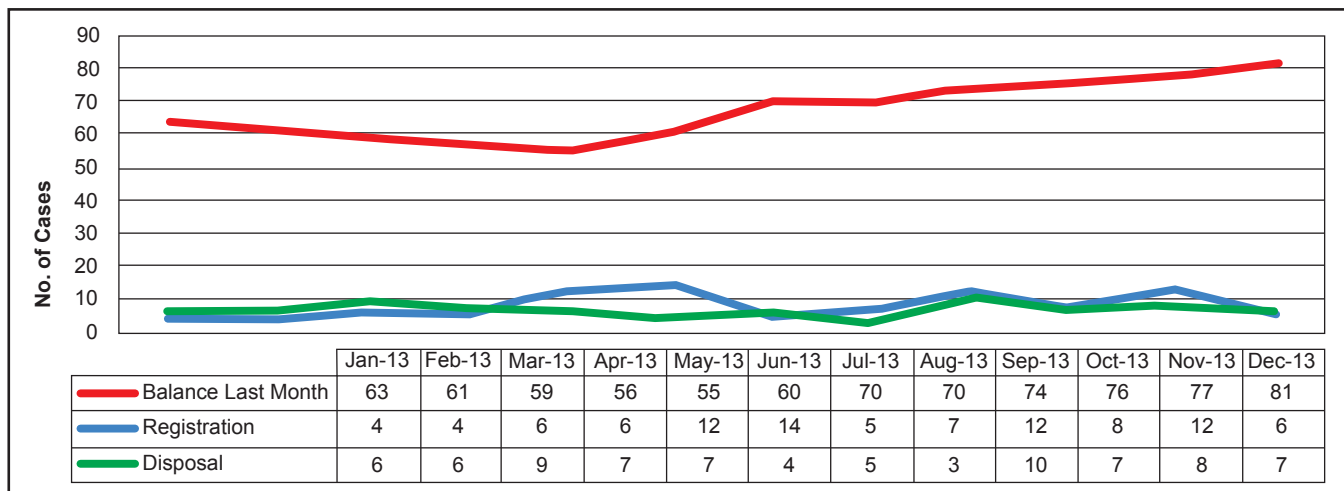
AGEING LIST FOR KUANTAN HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														3	3
	11AM															
	11AC															
	11B														5	5
	11BM															
	11BC															
12	12A													1	4	5
	12AM															
	12AC															
	12B														47	47
	12BM															
	12BC															
13	13															
	13C															
14																
15															25	25
16															3	3
17															2	2
18															3	3
21	21									1		1				2
	21C															
22	22									1		6	10	76	43	136
	22M															
	22C															
23															1	1
24	24												1	3	67	71
	24M															
	24C															
	24C (Arb)															
25														3	7	10
26																
27																
28															10	10
29													13	174	774	961
31															7	7
32															8	8
33														1	23	24
34																
TOTAL										2		7	24	258	1032	1323

10.2 Kuantan High Court - Criminal

For Criminal Cases in the year 2013, a total number of 96 cases including appeals and trials were registered and 79 cases were disposed of leaving a balance of 80 cases pending.

**TRACKING CHART FOR Kuantan High Court (CRIMINAL)
JANUARY-DECEMBER 2013**



**AGEING LIST FOR Kuantan High Court (CRIMINAL)
AS AT 31 DECEMBER 2013**

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								3	20	23
	S									18	18
	Ors										
41A	A/C									4	4
	S									3	3
	Ors										
42	A/C								1	7	8
	S									4	4
	Ors										
42A	A/C									1	1
	S										
	Ors										
43											
44	Hbc										
	Ors										
SO	45										
39B	45								3	7	10
	46										
302	45							1	2	6	9
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45										
	46										
TOTAL								1	9	70	80

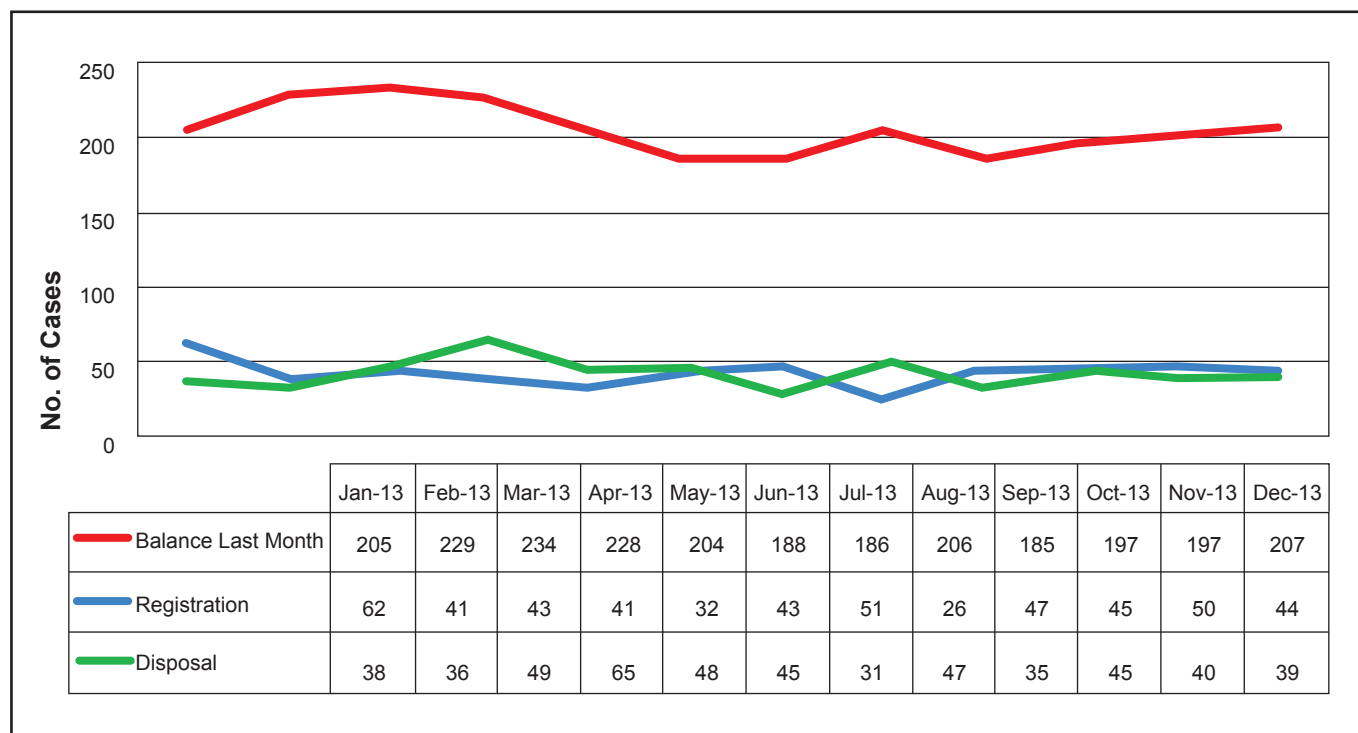
10.3 TEMERLOH HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Temerloh High Court for the year 2013. For the period from January to December 2013, the total number of civil cases registered was 525 (excluding cases

for Code 29, 31 and 32). The High Court has managed to dispose of 518 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Temerloh High Court is 961 as reflected in the Ageing list below.

TRACKING CHART FOR TEMERLOH HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



AGEING LIST FOR TEMERLOH HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														1	1
	11AM															
	11AC															
	11B														4	4
	11BM															
	11BC															
12	12A														3	3
	12AM															
	12AC															
	12B														33	33
	12BM															
	12BC															
13	13															
	13C															
14																
15															1	1
16																
17															1	1
18															3	3
21	21															
	21C															
22	22									1		1	5	11	31	49
	22M															
	22C															
23																
24	24													1	45	46
	24M														6	6
	24C															
	24C (Arb)															
25																
26																
27																
28															3	3
29													44	256	384	684
31															7	7
32															23	23
33														2	65	67
34																
36															1	1
38															29	29
TOTAL										1		1	49	270	640	961

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									7	7
	S									10	10
	Ors										
41A	A/C										
	S										
	Ors										
42	A/C									9	9
	S									1	1
	Ors										
42A	A/C										
	S										
	Ors										
43											
44	Hbc										
	Ors										
SO	45										
39B	45								2	3	5
	46										
302	45								2	8	10
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45										
	46										
TOTAL									4	38	42

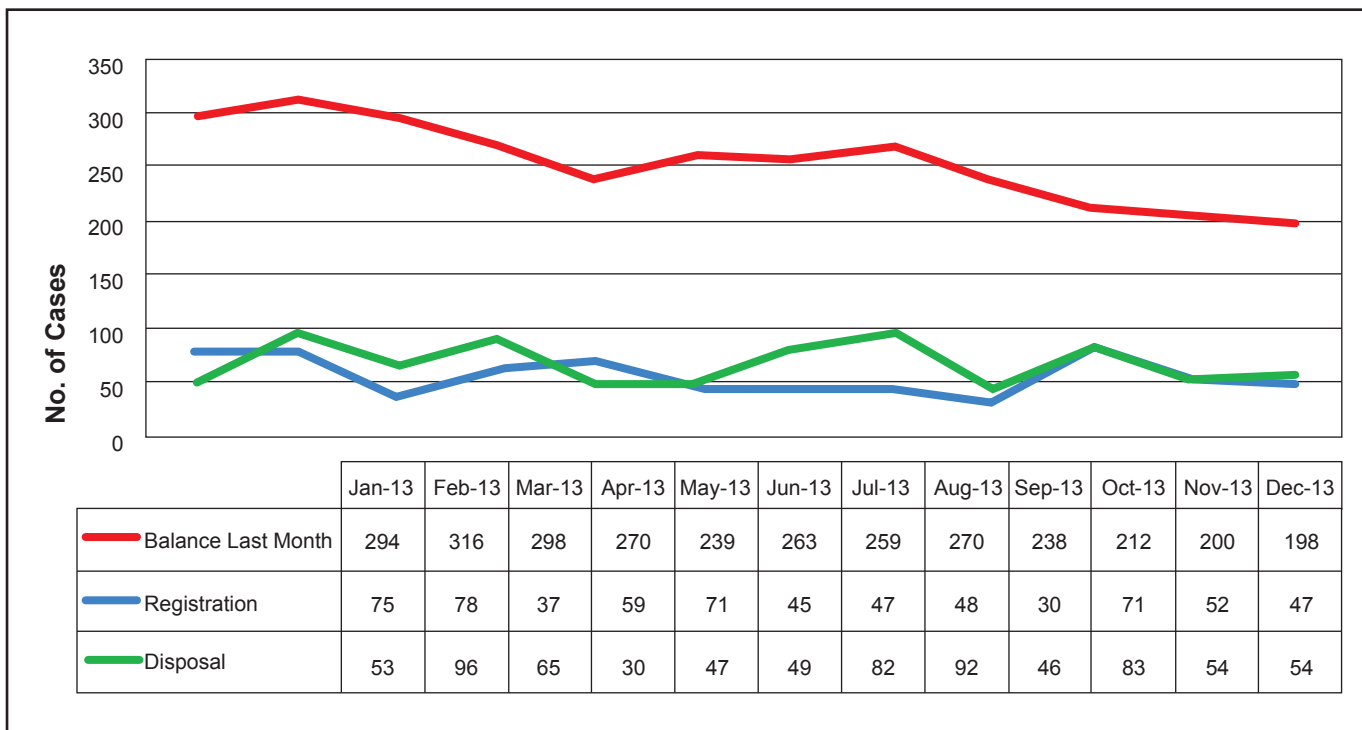
11. TERENGGANU**11.1 KUALA TERENGGANU HIGH COURT
-CIVIL**

The tracking chart below shows the registration and disposal of cases in the Kuala Terengganu High Court for the year 2013. For the period from January to December 2013, the total num-

ber of civil cases registered was 660 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 811 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Kuala Terengganu High Court is 684 as reflected in the Ageing list below.

**TRACKING CHART FOR KUALA TERENGGANU HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013**

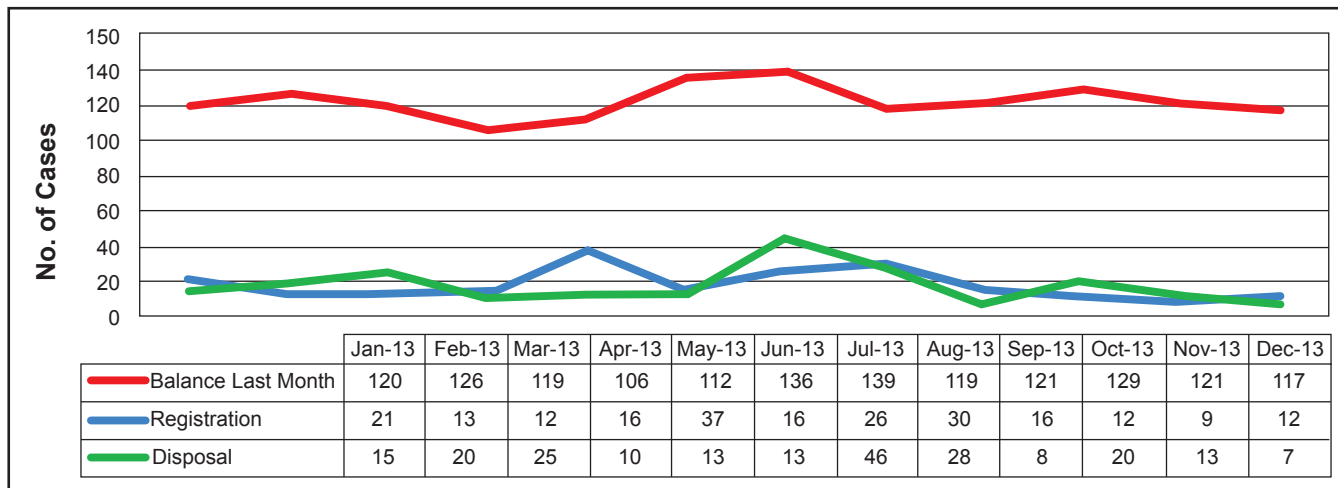


AGEING LIST FOR KUALA TERENGGANU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A															
	11AM															
	11AC															
	11B													6		6
	11BM															
	11BC															
12	12A													3		3
	12AM															
	12AC															
	12B												1	1	27	29
	12BM															
	12BC															
13	13												1		3	4
	13C															
14																
15													1	7	48	56
16															1	1
17																
18															4	4
21	21												2		4	6
	21C															
22	22									2		1	2	3	20	28
	22M														1	1
	22C															
23																
24	24													2	42	44
	24M														2	2
	24C															
	24C (Arb)															
25															1	1
26															1	1
27																
28															5	5
29														19	427	446
31														1	11	12
32															1	1
33																
34																
36																
38															34	34
TOTAL										2		1	7	33	641	684

11.2 KUALA TERANGGANU HIGH COURT - CRIMINAL

For Criminal Cases in the year 2013, a total number of 220 cases including appeals and trials were registered and 218 cases were disposed of leaving a balance of 124 cases pending.

**TRACKING CHART FOR KUALA TERENGGANU HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013****AGEING LIST FOR KUALA TERENGGANU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013**

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								1	54	55
	S								1	33	34
	Ors										
41A	A/C									5	5
	S									2	2
	Ors										
42	A/C								2	7	9
	S									3	3
	Ors										
42A	A/C									1	1
	S										
	Ors										
43											
44	Hbc									8	8
	Ors										
SO	45										
39B	45									7	7
	46										
302	45										
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45										
	46										
TOTAL									4	120	124

12. KELANTAN

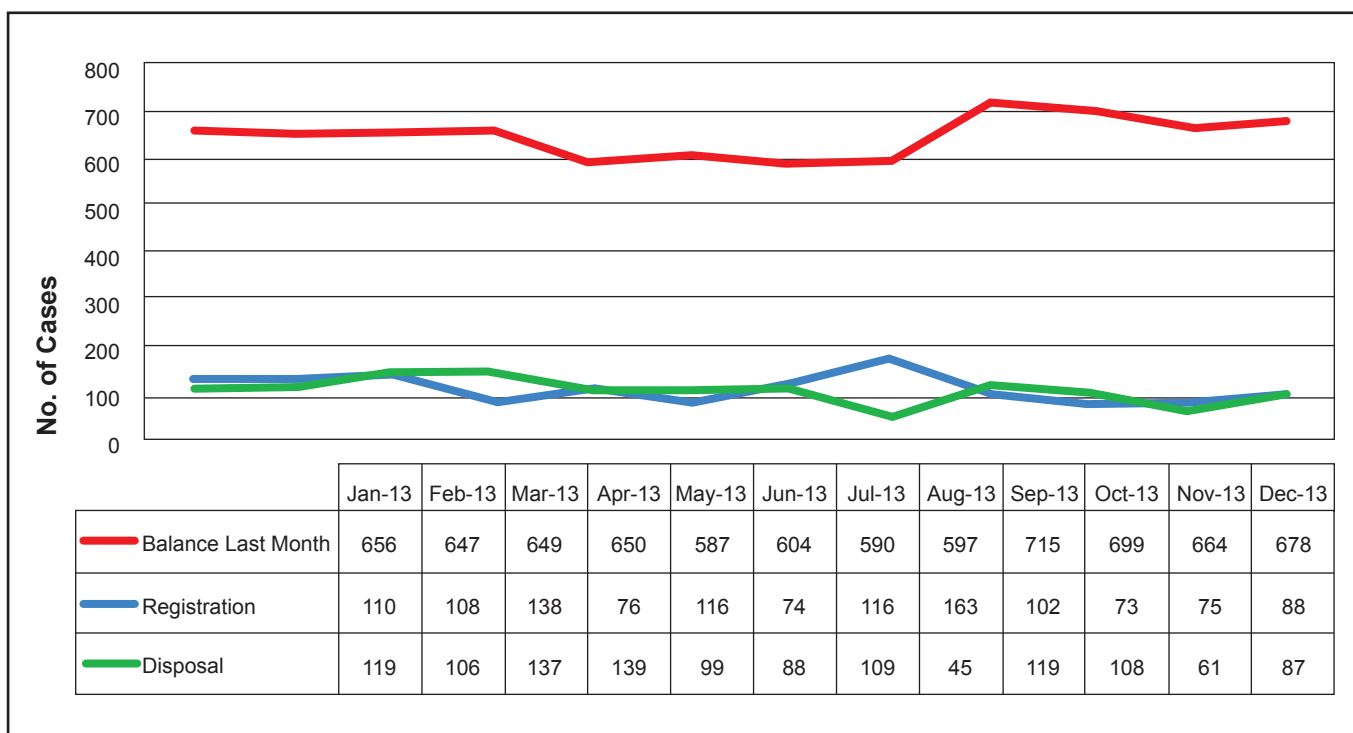
12.1 KOTA BAHRU HIGH COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Kota Bharu High Court for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 1239 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1217 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Kota Bharu High Court is 1087 as reflected in the Ageing list below.

TRACKING CHART FOR KOTA BAHRU HIGH COURT (CIVIL)
JANUARY-DECEMBER 2013



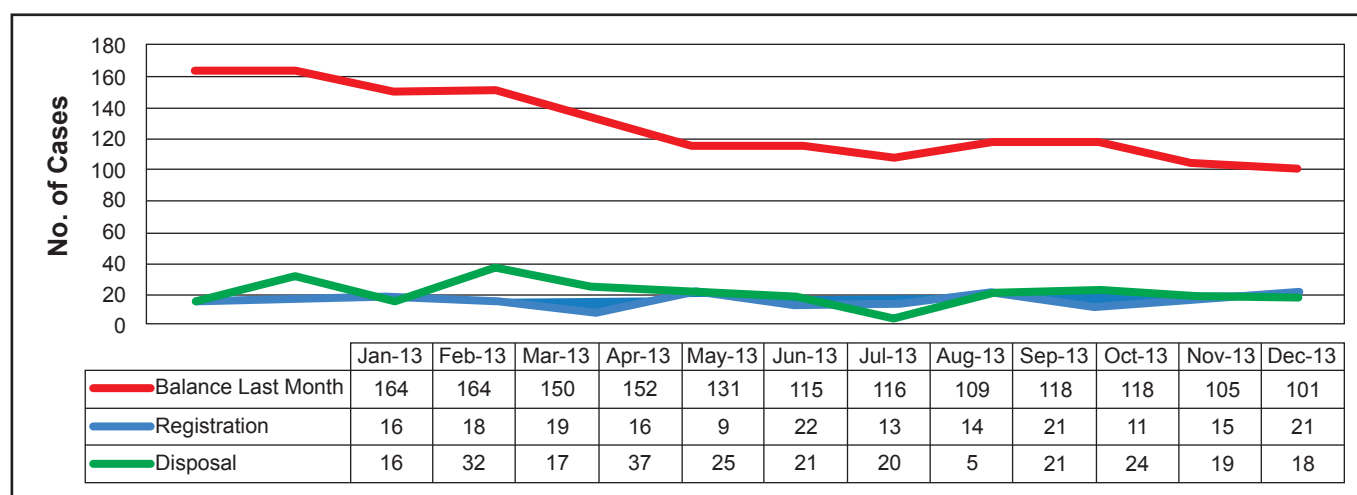
AGEING LIST FOR KOTA BAHRU HIGH COURT (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														3	3
	11AM															
	11AC															
	11B														5	5
	11BM															
	11BC															
12	12A															
	12AM															
	12AC															
	12B														44	44
	12BM															
	12BC															
13	13															
	13C															
14																
15									1			10	77	4	104	196
16															2	2
17																
18															7	7
21	21										1	2	3	1	1	8
	21C															
22	22							1				6	15	13	48	83
	22M														5	5
	22C															
23										1			3	4	8	16
24	24													2	158	160
	24M														2	2
	24C															
	24C (Arb)															
25														1	3	4
26																
27																
28															12	12
29												10	55	268	189	522
31																
32																
33														1	17	18
34																
TOTAL								1	1	1	1	28	153	294	608	1087

12.2 KOTA BAHRU HIGH COURT – CRIMINAL

For Criminal Cases in the year 2013, a total number of 195 cases including appeals and trials were registered and 255 cases were disposed of leaving a balance of 104 cases pending.

TRACKING CHART FOR KOTA BAHRU HIGH COURT (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR KOTA BAHRU HIGH COURT (CRIMINAL)
AS AT 31 DECEMBER 2013

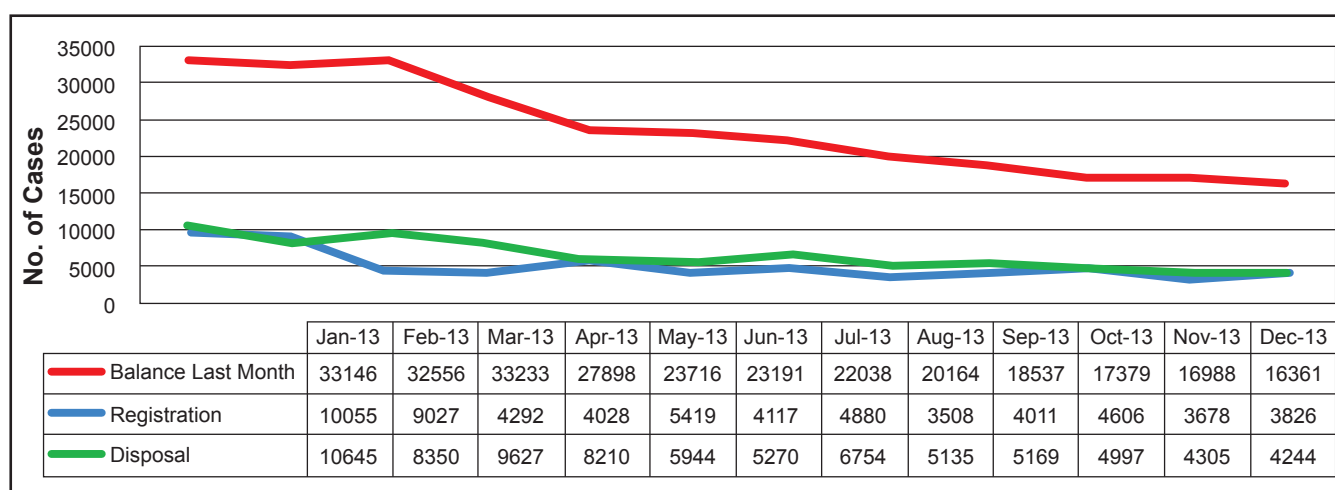
CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								6	25	31
	S								6	8	14
	Ors										
41A	A/C									1	1
	S									1	1
	Ors										
42	A/C								2	23	25
	S								1	9	10
	Ors										
42A	A/C									3	3
	S										
	Ors										
43										2	2
44	Hbc									6	6
	Ors										
SO	45										
39B	45								1	4	5
	46										
302	45							1		4	5
	46										
396	45										
	46										
KIDNAP	45										
	46										
F/ARMS	45								1		1
	46										
Ors	45										
	46										
TOTAL								1	17	86	104

13. THE SESSIONS COURT IN PENINSULAR MALAYSIA**13.1 SESSIONS COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2013. For the period from January to December 2013, the

total number civil cases registered was 61447 (excluding cases for Code 56). The Sessions Court has managed to dispose of 78650 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Sessions Court is 16259 cases as reflected in the Ageing list below.

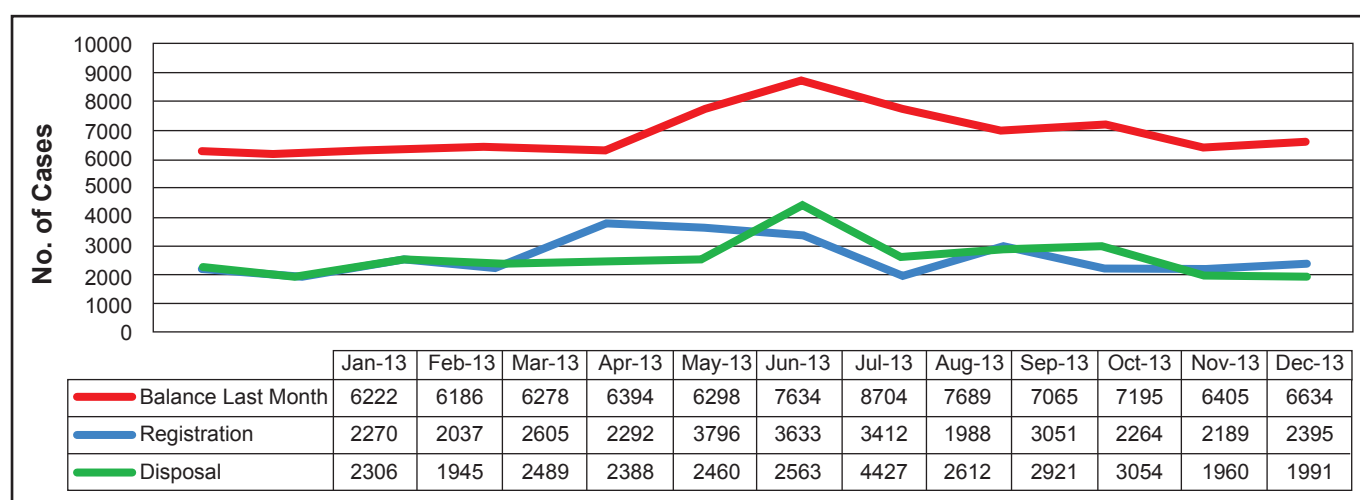
**TRACKING CHART FOR THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2013****AGEING LIST FOR THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2013**

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
51	51									1			2	13	42	58
	A51														154	154
	A51C														5	5
	B51														48	48
	B51C														3	3
52	52				3			1			4	13	41	245	2627	2934
	52A												1	35	81	117
	A52													2	707	709
	A52M														1179	1179
	A52C														34	34
	B52														352	352
	B52M														276	276
B52C														46	46	
53	53								1		2	35	906	5869	6813	
	A53														2795	2795
	A53C														6	6
	B53														42	42
	B53C														3	3
54	54														8	8
	A54														51	51
	B54														24	24
56													5	307	312	
57															1	1
58															289	289
TOTAL					3			1		2	4	15	79	1206	14949	16259

13.2 SESSIONS COURT- CRIMINAL

For Criminal Cases, the Sessions Court in Peninsular Malaysia has managed to maintain its consistency in the disposal of cases. For the year 2013, a total number of 31932 cases were registered and 31116 cases were disposed of leaving a balance of 7327 cases pending.

TRACKING CHART FOR THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL) JANUARY-DECEMBER 2013



AGEING LIST FOR THE SESSION COURT IN PENINSULAR MALAYSIA (CRIMINAL) AS AT 31 DECEMBER 2013

CODE		YEAR															Total
		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
61	VC												1	3	18	12	34
	J														1	2	3
	R													7	27	90	124
	ATP														1		2
	COMM													4	15	43	62
	ORS													3	1	75	79
62	VC										1	2	1	37	226	475	742
	J													1	13	195	209
	R										1			13	65	57	136
	ATP												102		8	143	253
	EG															31	31
	ES														4	32	36
	COMM	1					1			3	69	12	229	224	183	430	1152
63	ORS							4		1	10	1		9	93	3526	3644
	EG															25	25
	ES													2		32	34
	COMM											1	1	3	2	18	25
64	ORS													5	12	431	448
	COMM															1	1
	SO											3					3
65	ORS													8	25	252	285
	65																
TOTAL		1					1	4		4	81	19	334	319	694	5870	7327

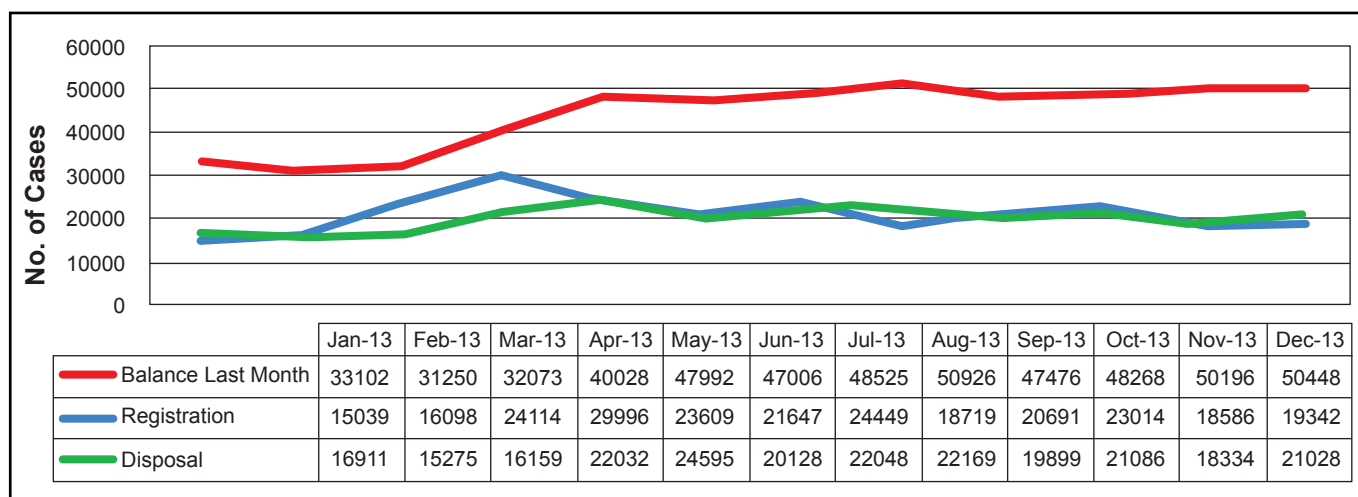
14. THE MAGISTRATES COURT IN PENINSULAR MALAYSIA**14.1 MAGISTRATES COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Peninsular Malaysia for the year 2013. For the period from January to December 2013, the

total number of civil cases registered was 255304 (excluding cases for Code 76). The Magistrates Court has managed to dispose of 239664 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Magistrates Court is 52207 as reflected in the Ageing list below.

**TRACKING CHART FOR THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2013**



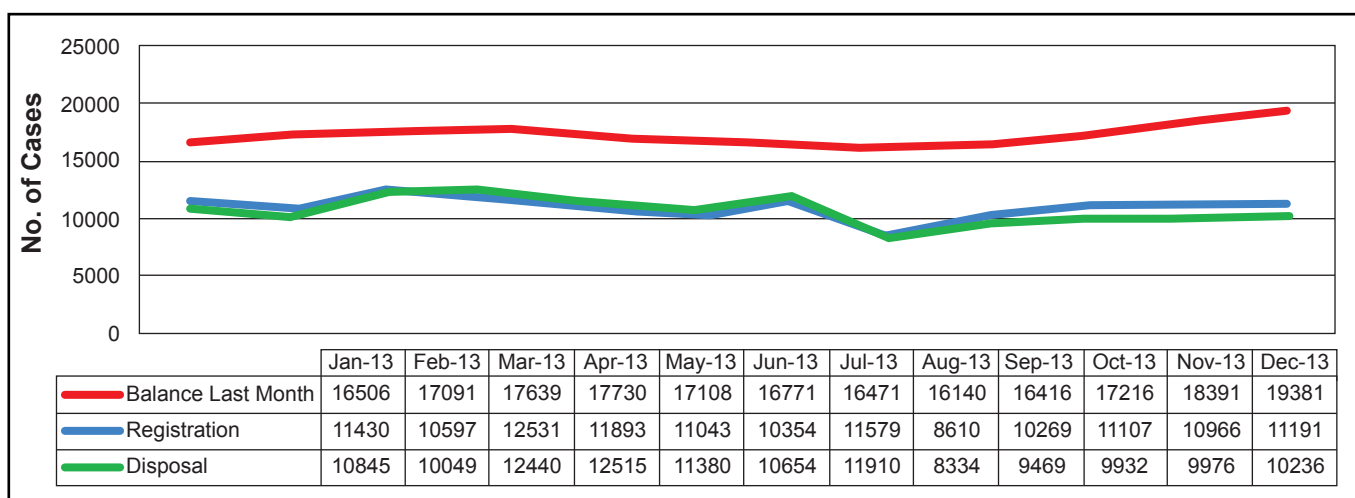
**AGEING LIST FOR THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2013**

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
71	71									677	677
	A71									4542	4542
	A71C									9	9
72	72								23	17080	17103
	72A								1	115	116
	A72									7429	7429
	A72M									6564	6564
	A72C									65	65
73	73							1	72	7402	7475
	A73									3992	3992
	A73C									10	10
74	74									2	2
	A74									452	452
75											
76									9	3436	3445
77	77										
	A77									319	319
78									1	6	7
TOTAL								1	106	52100	52207

14.2 MAGISTRATES COURT- CRIMINAL

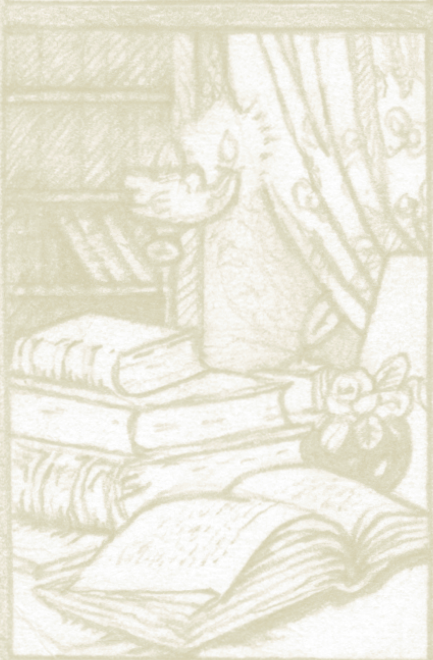
For Criminal Cases, the Magistrates Court in Peninsular Malaysia has managed to maintain its consistency in the disposal of cases. For the year 2013, a total number of 131570 cases were registered and 127740 cases were disposed of leaving a balance of 509348 cases pending.

TRACKING CHART FOR THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR								Total	
		2005	2006	2007	2008	2009	2010	2011	2012		2013
81									1	897	898
82	VC								4	3	7
	J									3	3
	ORS						1	2	25	222	250
83	VC								14	114	128
	J									29	29
	EG										
	ES										
	ORS							9	305	17122	17436
84	VC								1	6	7
	J									4	4
	ORS							4	16	904	924
85									11	639	650
86									3647	459503	463150
87	EG									10	10
	ES									3	3
	ORS						3		45	24838	24886
88									5	39	44
89										919	919
TOTAL							4	15	4074	505255	509348



APPENDIX B

(SABAH & SARAWAK)

1. SABAH

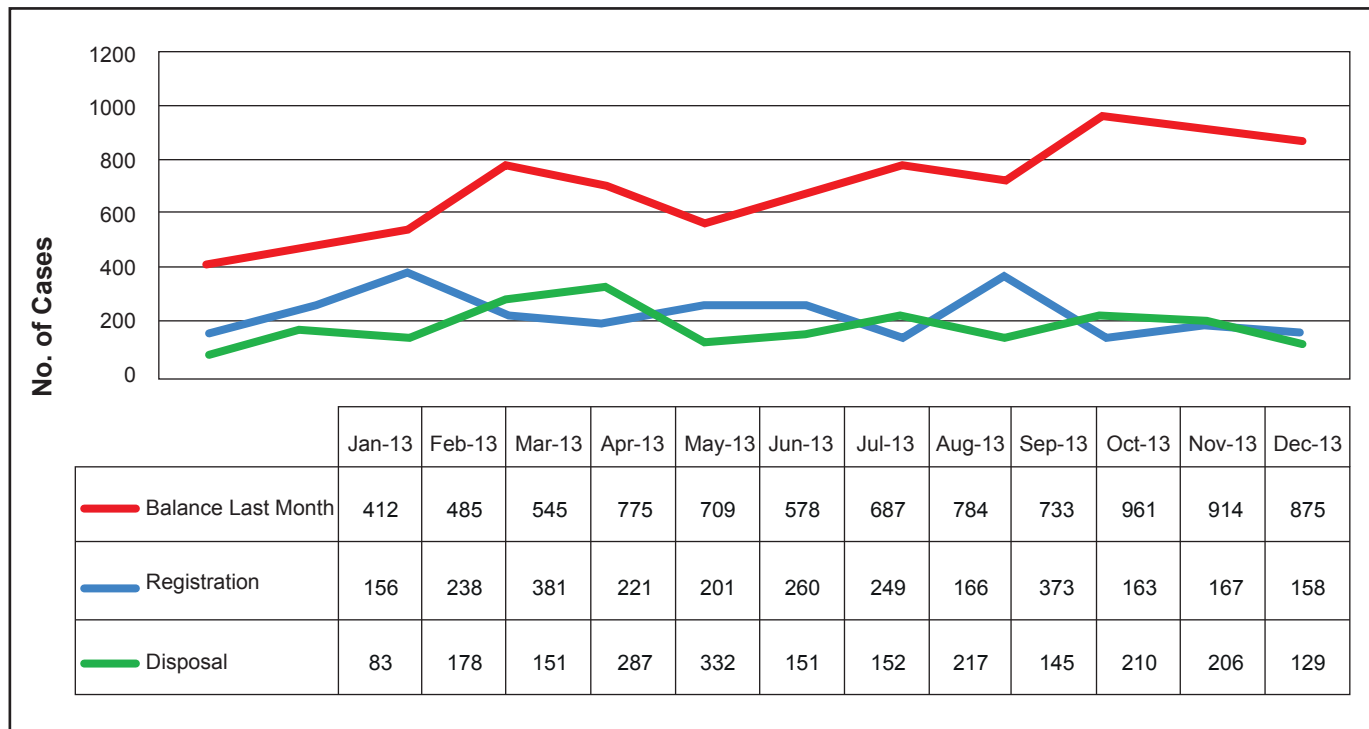
1.1 HIGH COURT IN SABAH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court in Sabah for the year 2013. For the period from January to December 2013, the total number of

civil cases registered was 2733 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2241 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the High Court in Sabah is 2336 as reflected in the Ageing list below.

TRACKING CHART FOR THE HIGH COURT IN SABAH (CIVIL)
JANUARY-DECEMBER 2013



AGEING LIST FOR THE HIGH COURT IN SABAH (CIVIL)
AS AT 31 DECEMBER 2013

CODE		YEAR														Total
		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A														5	5
	11AM															
	11AC															
	11B														2	2
	11BM															
	11BC															
12	12A														14	14
	12AM															
	12AC															
	12B														20	20
	12BM															
	12BC															
13	13													57	277	334
	13C															
14																
15															1	1
16															4	4
17															5	5
18															2	2
21	21												4	7	13	24
	21C															
22	22			1				1	1	1	3	7	23	108	130	275
	22M															
	22C															
23															1	1
24	24					1						1	3	2	85	92
	24M														1	1
	24C															
	24C (Arb)															
25													1			1
26															3	3
27														1	8	9
28														1	20	21
29												1	5	135	1241	1382
31															33	33
32															18	18
33														1	74	75
34															8	8
36															3	3
37															2	2
38															1	1
TOTAL				1		1		1	1	1	3	9	36	312	1971	2336

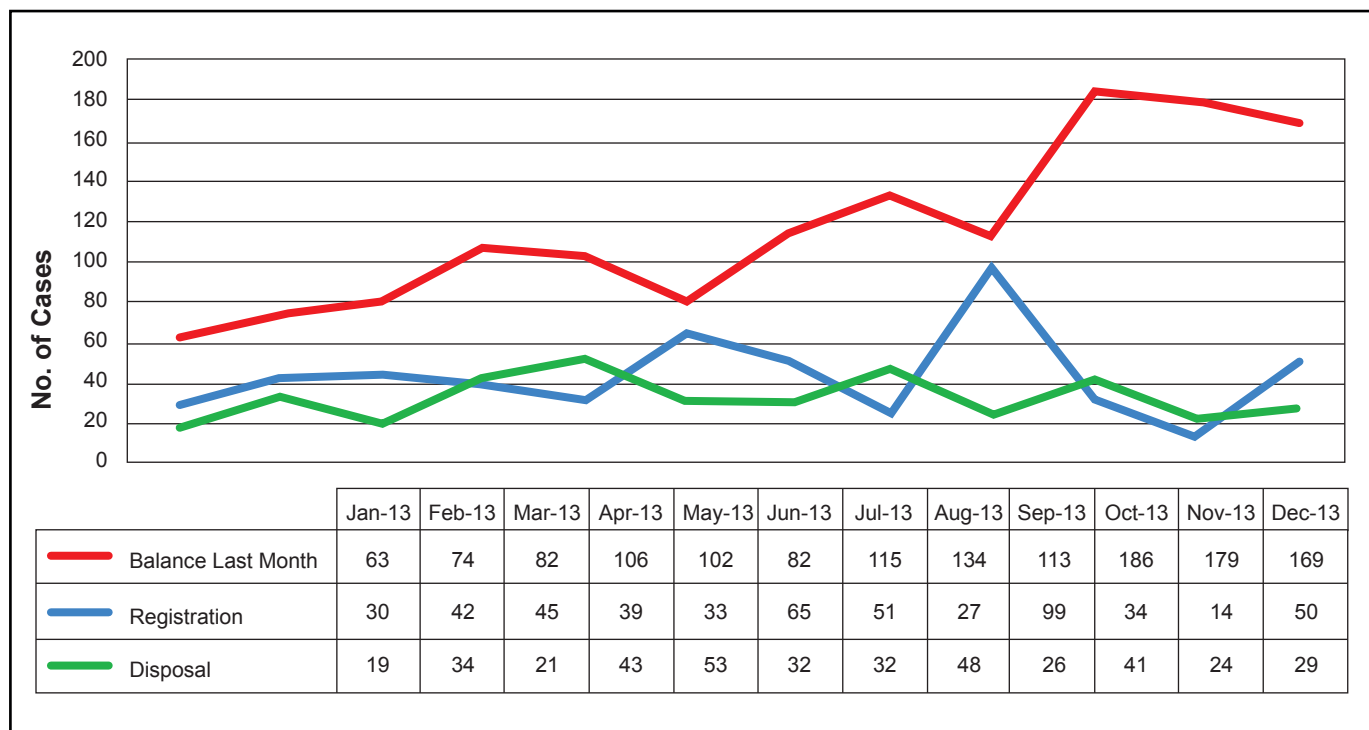
1.2 HIGH COURT IN SABAH - CRIMINAL

For Criminal Cases, the High Court in Sabah has managed to maintain its consistency in the disposal of cases. For the year 2013, a total number of 529 cases including appeals and trials were registered

and 402 cases were disposed of leaving a balance of 190 cases pending.

From the ageing list below, it is apparent that the High Court in Sabah has managed to clear all pre-2011 registered cases.

TRACKING CHART FOR THE HIGH COURT IN SABAH (CRIMINAL)
JANUARY-DECEMBER 2013



AGEING LIST FOR THE HIGH COURT IN SABAH (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C									11	11
	S									25	25
	Ors									9	9
41A	A/C									5	5
	S										
	Ors										
42	A/C									29	29
	S									9	9
	Ors								1	2	2
42A	A/C								1	2	3
	S								1		1
	Ors										
43										3	3
44	Hbc										
	Ors									5	5
SO	45									57	57
39B	45								1	5	6
	46										
302	45							1	3	10	14
	46								1		1
396	45								1		1
	46										
KIDNAP	45										
	46										
F/ ARMS	45									1	1
	46										
Ors	45									7	7
	46										
TOTAL								1	9	180	190

2. SARAWAK

2.1 HIGH COURT IN SARAWAK - CIVIL

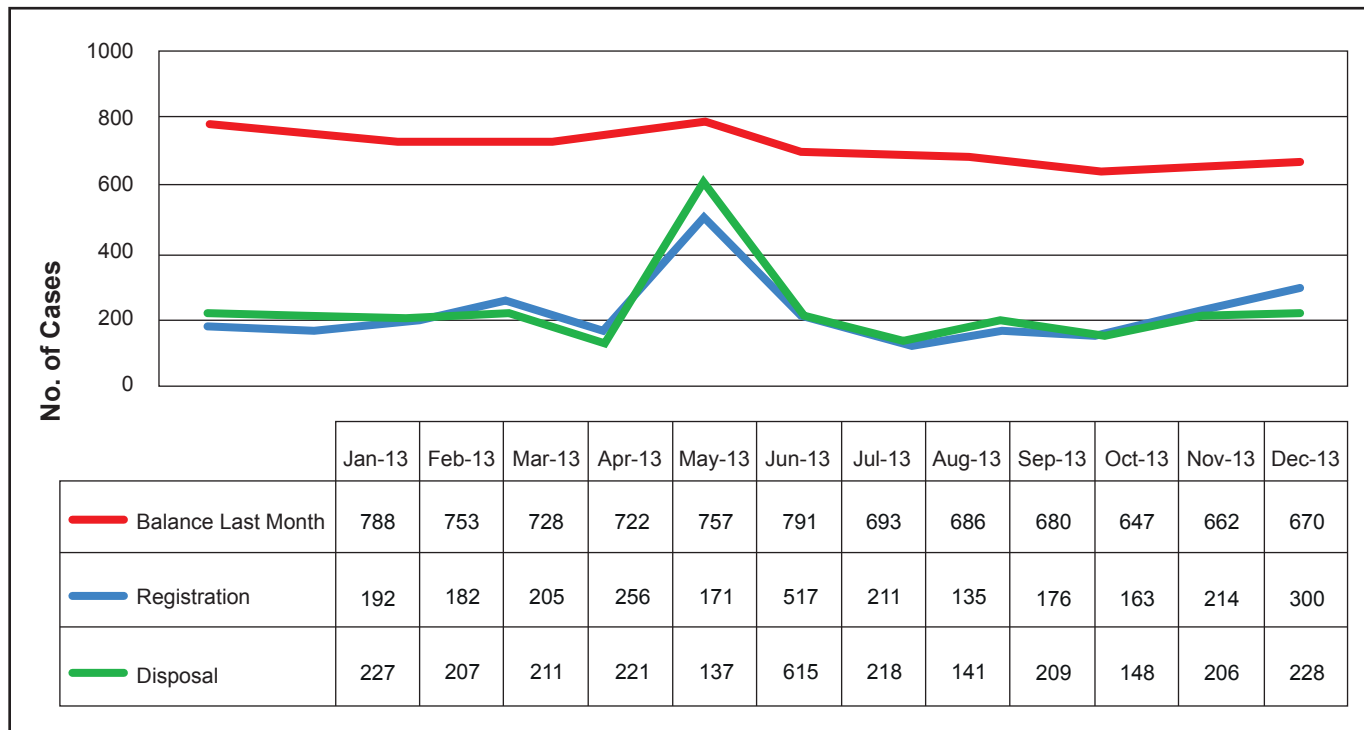
The tracking chart below shows the registration and disposal of cases in the High Court in Sarawak for the year 2013. For the period from January to December 2013, the total civil

cases registered was 2722 (excluding cases for Code 29, 31 and 32).

The High Court has managed to dispose of 2768 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the High Court in Sarawak is 786 as reflected in the Ageing list below.

TRACKING CHART FOR THE HIGH COURT IN SARAWAK (CIVIL)
JANUARY-DECEMBER 2013



AGEING LIST FOR THE HIGH COURT IN SARAWAK (CIVIL)
AS AT 31 DECEMBER 2013

CODE	YEAR																			Total
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
11	11A																		4	4
	11AM																			
	11AC																			
	11B																			
	11BM																			
	11BC																			
12	12A																		-19	19
	12AM																			
	12AC																			
	12B																		18	18
	12BM																			
	12BC																			
13	13																		8	8
	13C																			
14																			3	3
15																	1	5	25	31
16																			1	1
17																				
18																				
21	21												1	1	8	3	6	10	7	36
	21C																			
22	22								1	1	1		3	3	2	3	21	85	103	223
	22M																		1	1
	22C																		2	2
23																	1		4	5
24	24															1	3	10	146	160
	24M																		36	36
	24C																		1	1
	24C (Arb)																			
25																				
26																			1	1
27																		1	1	2
28																		1	23	24
29																				
31																				
32																				
33																		7	201	208
34																				
36																			1	1
37																			1	1
38																			1	1
TOTAL									1	1	1		4	4	10	7	32	119	607	786

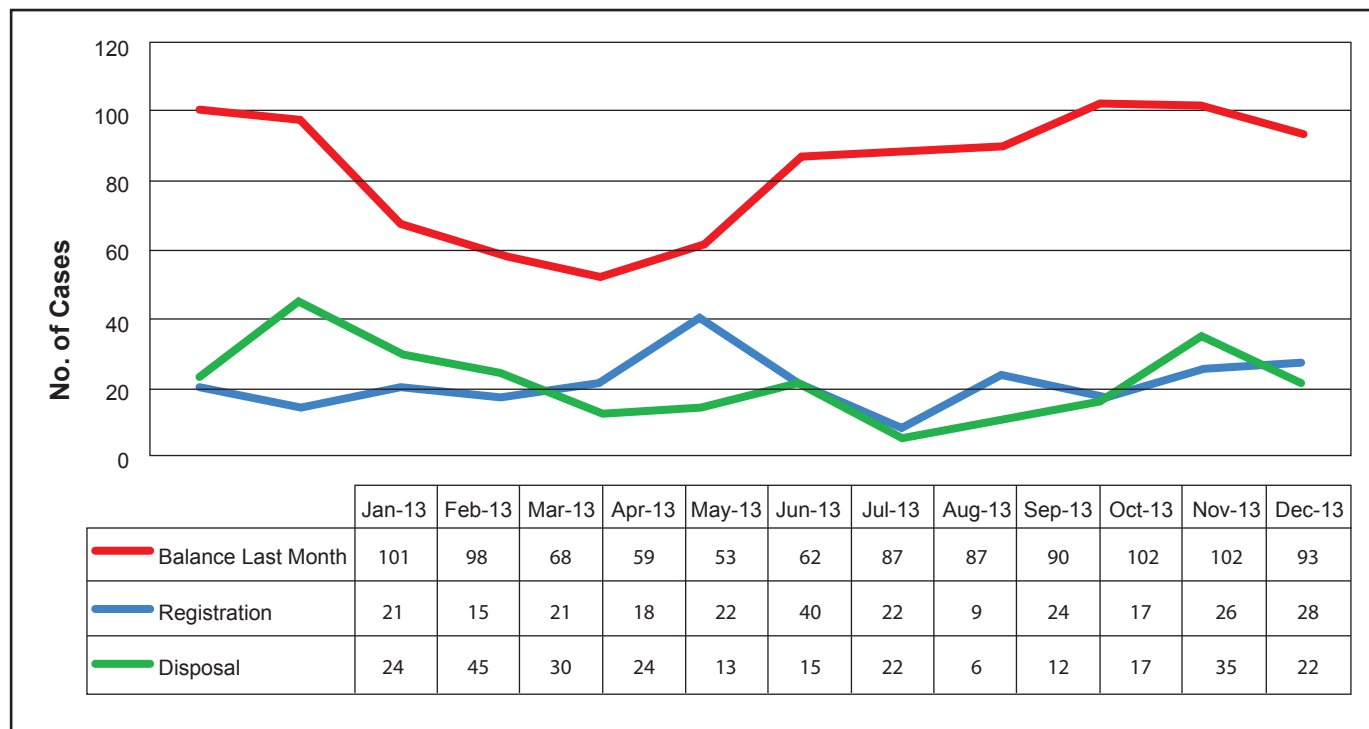
2.2 HIGH COURT IN SARAWAK-CRIMINAL

For Criminal Cases, the High Court in Sarawak has managed to maintain its consistency in the disposal of cases. For the year 2013, a total number of 263 cases including appeals and trials

were registered and 265 cases were disposed of leaving a balance of 139 cases pending.

From the ageing list below, it is apparent that the High Court in Sarawak has managed to clear all pre-2011 registered cases.

**TRACKING CHART FOR THE HIGH COURT IN SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2013**



AGEING LIST FOR THE HIGH COURT IN SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
41	A/C								1	72	73
	S									3	3
	Ors									1	1
41A	A/C									2	2
	S										
	Ors										
42	A/C							1		11	12
	S									8	8
	Ors									1	1
42A	A/C									4	4
	S										
	Ors									3	3
43											
44	Hbc										
	Ors									2	2
SO	45										
39B	45								1	5	6
	46										
302	45								4	12	16
	46										
396	45									2	2
	46										
KIDNAP	45										
	46										
F/ARMS	45										
	46										
Ors	45								3	3	6
	46										
TOTAL								1	9	129	139

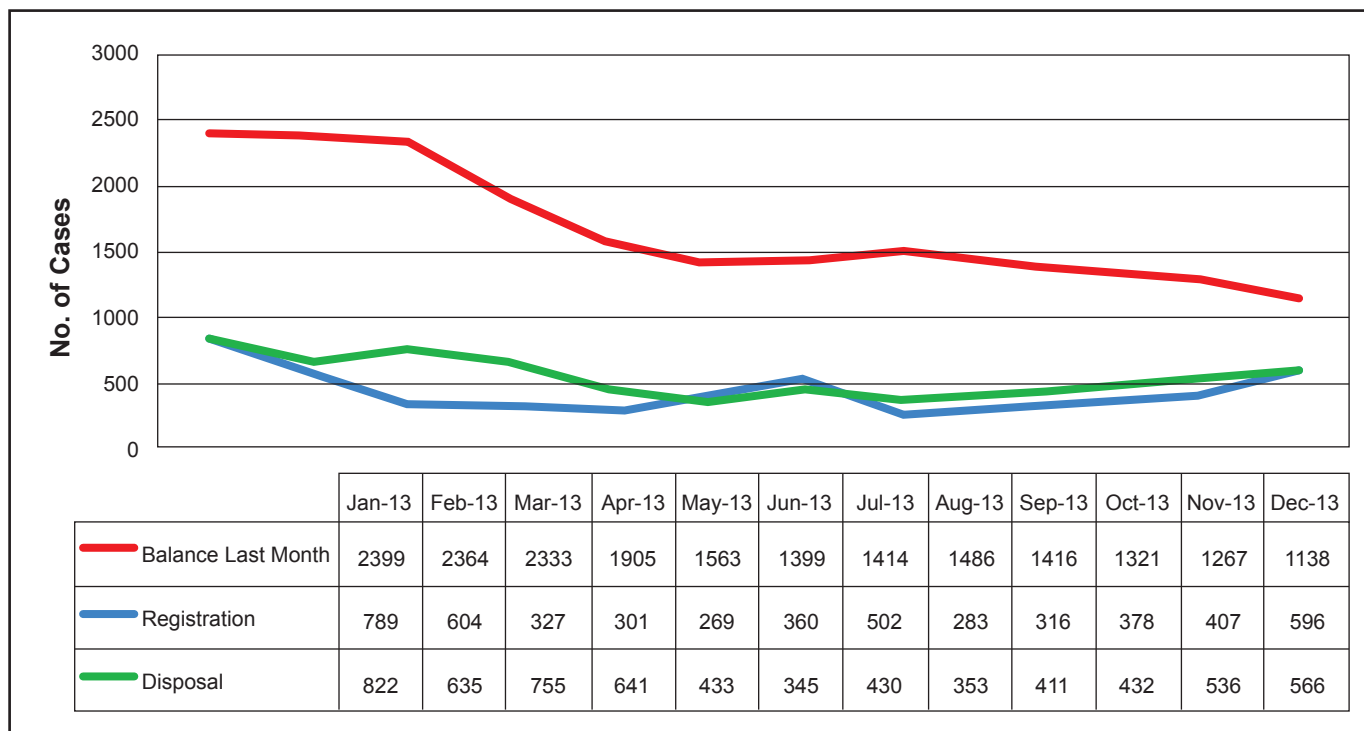
3. THE SESSIONS COURT IN SABAH AND SARAWAK**3.1 SESSIONS COURT – CIVIL**

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Sabah and Sarawak for the year 2013. For the period from January to December 2013, the

total number of civil cases registered was 5132 (excluding cases for Code 56). The Sessions Court has managed to dispose of 6359 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Sessions Court is 1224 as reflected in the Ageing list below.

**TRACKING CHART FOR THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY-DECEMBER 2013**



AGEING LIST FOR THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2013

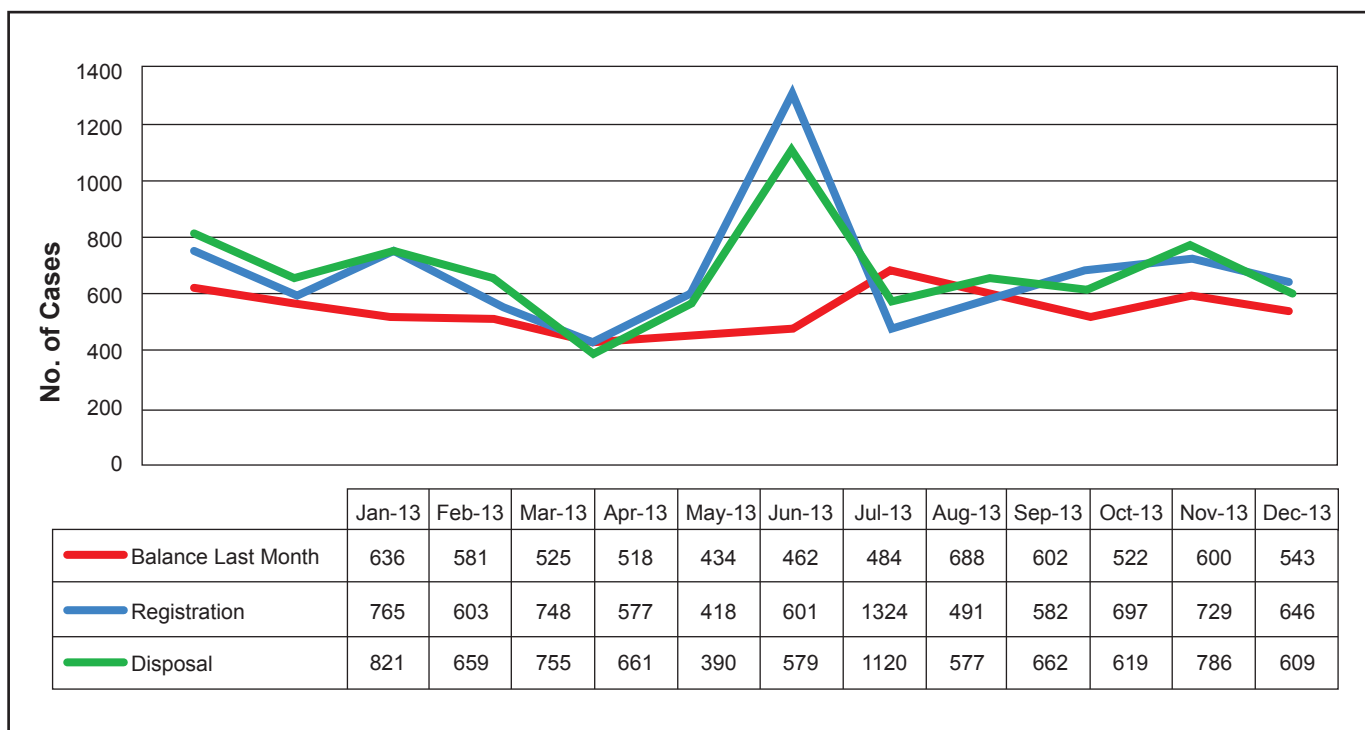
CODE		YEAR														Total
		1987	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
51	51													1		1
	A51														37	37
	A51C															
	B51														17	17
	B51C															
52	52	1								2	1			30	13	47
	52A															
	A52														425	425
	A52M														28	28
	A52C														1	1
	B52														101	101
	B52M														7	7
	B52C														1	1
53	53													16	34	50
	A53														359	359
	A53C															
	B53														87	87
	B53C															
54	54															
	A54														4	4
	B54														1	1
56															58	58
57																
58																
TOTAL		1								2	1			47	1173	1224

3.2 SESSIONS COURT – CRIMINAL

For Criminal Cases, the Sessions Court in Sabah and Sarawak has managed to maintain its consistency in the disposal of cases. For the

year 2013, a total number of 8181 cases were registered and 8238 cases were disposed of leaving a balance of 588 cases pending.

**TRACKING CHART FOR THE SESSIONS COURT IN SABAH AND SARAWAK
(CRIMINAL)
JANUARY-DECEMBER 2013**



AGEING LIST FOR THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2013

CODE		YEAR									Total
		2005	2006	2007	2008	2009	2010	2011	2012	2013	
61	VC								4	1	5
	J									5	5
	R								4	4	8
	ATP									4	4
	COMM								1		1
	ORS									8	8
62	VC						1	1	2	38	42
	J									9	9
	R								1	23	24
	ATP									5	5
	EG										
	ES										
	COMM								1	7	8
	ORS							2	3	366	371
63	EG										
	ES									5	5
	COMM										
	ORS					1			4	82	87
64	COMM										
	SO										
	ORS							1	1	4	6
65											
TOTAL						1	1	4	21	561	588

4. THE MAGISTRATES COURT IN SABAH AND SARAWAK

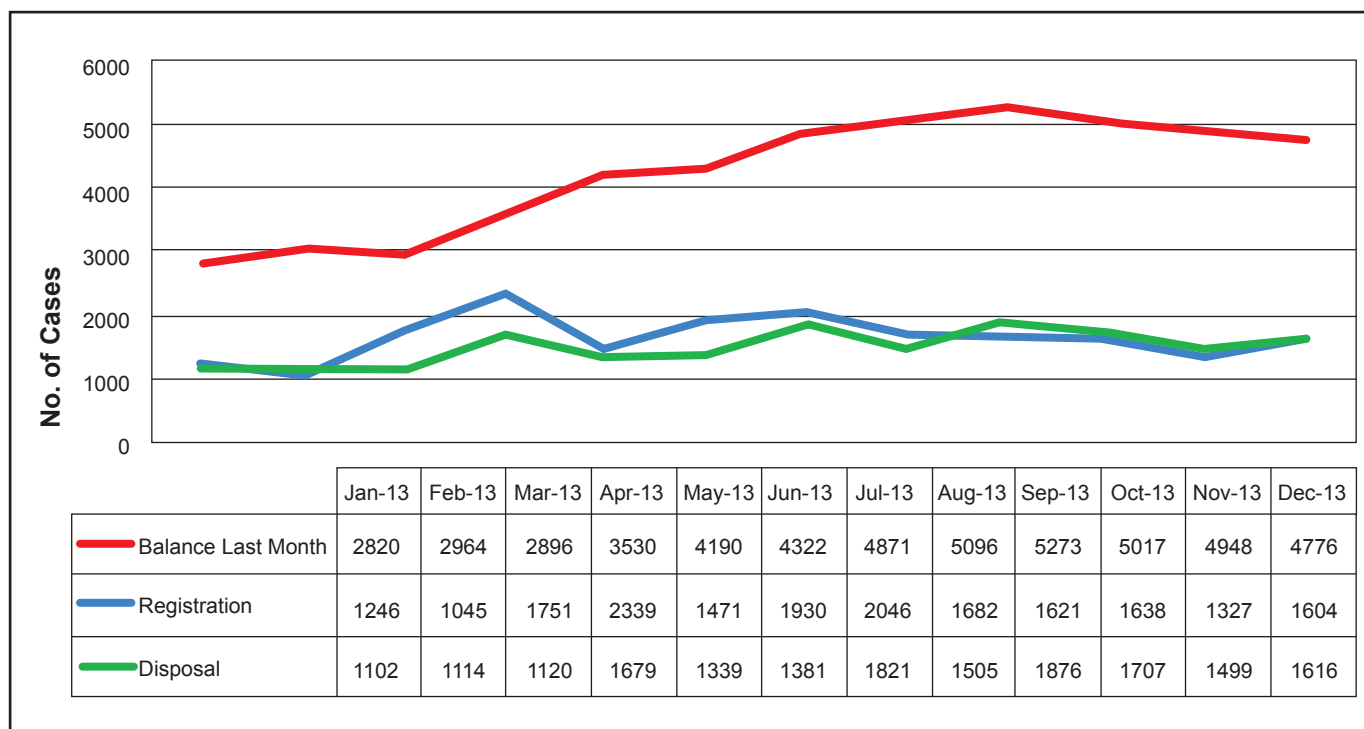
4.1 MAGISTRATES COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Sabah and Sarawak for the year 2013. For the period from January to December 2013, the

total number civil cases registered was 19700 (excluding cases for Code 76). The Magistrates Court has managed to dispose of 17759 cases throughout the year 2013.

As at 31 December 2013, the total number of civil cases pending in the Magistrates Court is 5284 as reflected in the Ageing list below.

TRACKING CHART FOR THE MAGISTRATES COURT IN SABAH AND SARAWAK
(CIVIL) JANUARY-DECEMBER 2013



AGEING LIST FOR THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2013

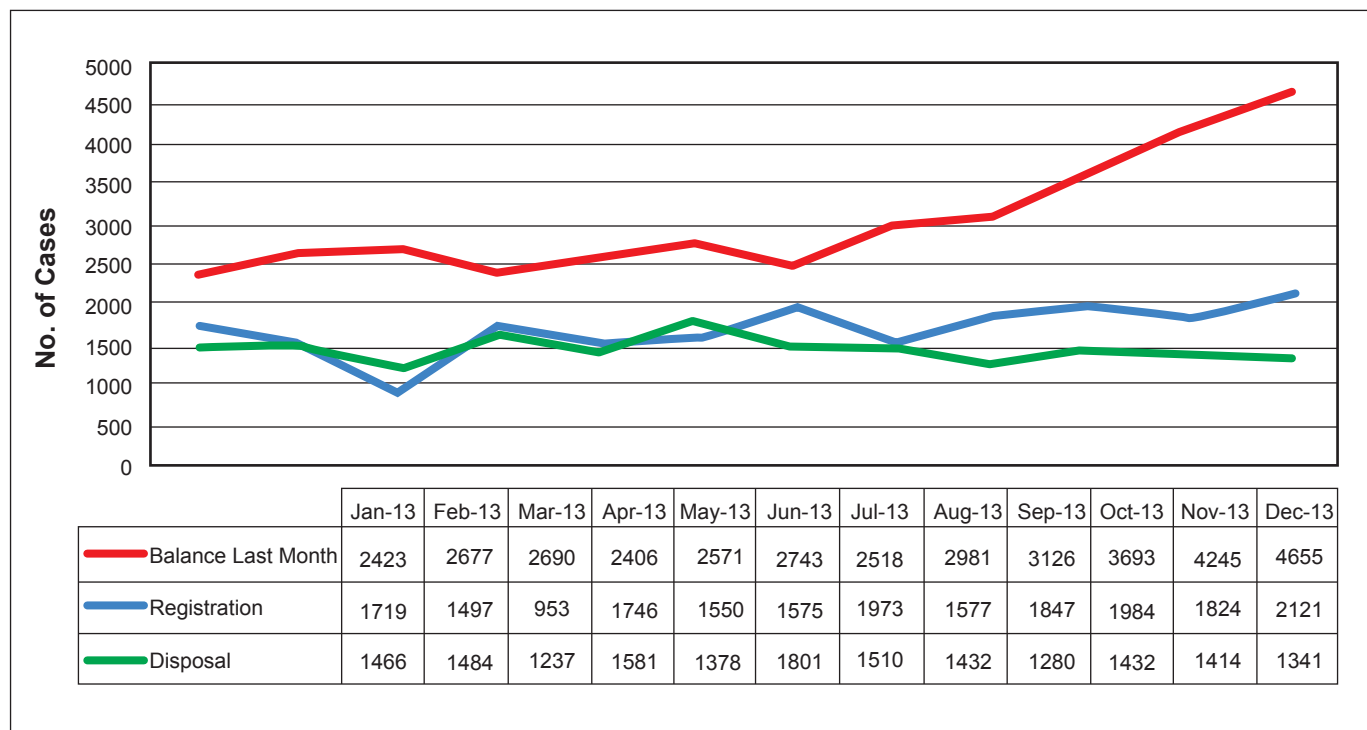
CODE		YEAR													Total
		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
71	71												10	41	51
	A71													722	722
	A71C														
72	72										1		24	98	123
	72A													6	6
	A72													3090	3090
	A72M													272	272
	A72C													8	8
73	73													30	30
	A73													3	3
	A73C														
74	74													1	1
	A74													178	178
75															
76													2	638	640
77	77													4	4
	A77													37	37
78															
79														105	105
TOTAL											1		36	5247	5284

4.2 MAGISTRATES COURT – CRIMINAL

For Criminal Cases, the Magistrates Court in Sabah and Sarawak has managed to maintain its consistency in the disposal of cases. For

the year 2013, a total number of 20366 cases were registered and 17356 cases were disposed of leaving a balance of 27174 cases pending.

**TRACKING CHART FOR THE MAGISTRATES COURT IN SABAH AND SARAWAK
(CRIMINAL)
JANUARY-DECEMBER 2013**



AGEING LIST FOR THE MAGISTRATES COURT IN SABAH AND SARAWAK
(CRIMINAL) AS AT 31 DECEMBER 2013

CODE	YEAR									Total
	2005	2006	2007	2008	2009	2010	2011	2012	2013	
81								5	43	48
82	VC									
	J									
	ORS							3	32	35
83	VC								2	2
	J								12	12
	EG								2	2
	ES									
	ORS						2	14	4599	4615
84	VC									
	J								8	8
	ORS								243	243
85									28	28
86							156	130	19783	20069
87	EG									
	ES									
	ORS							1	1957	1958
88						1		2	24	27
89									123	123
TOTAL						1	158	155	26860	27170



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