

# THE MALAYSIAN JUDICIARY

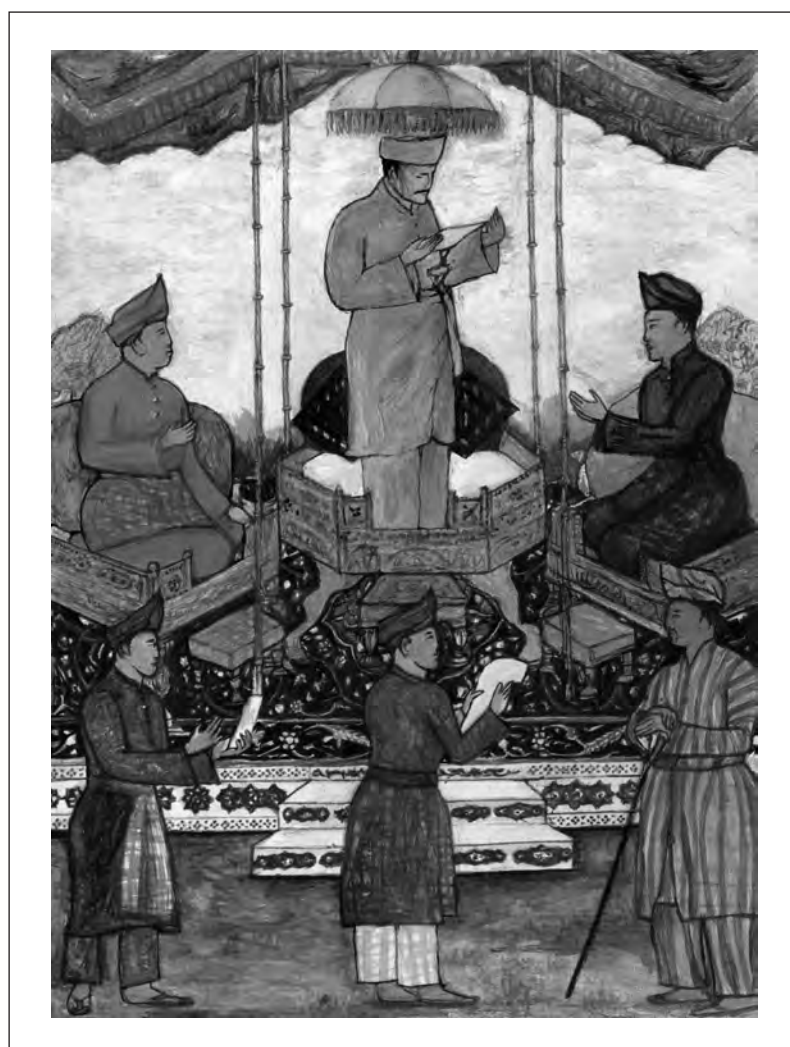


YEARBOOK 2014

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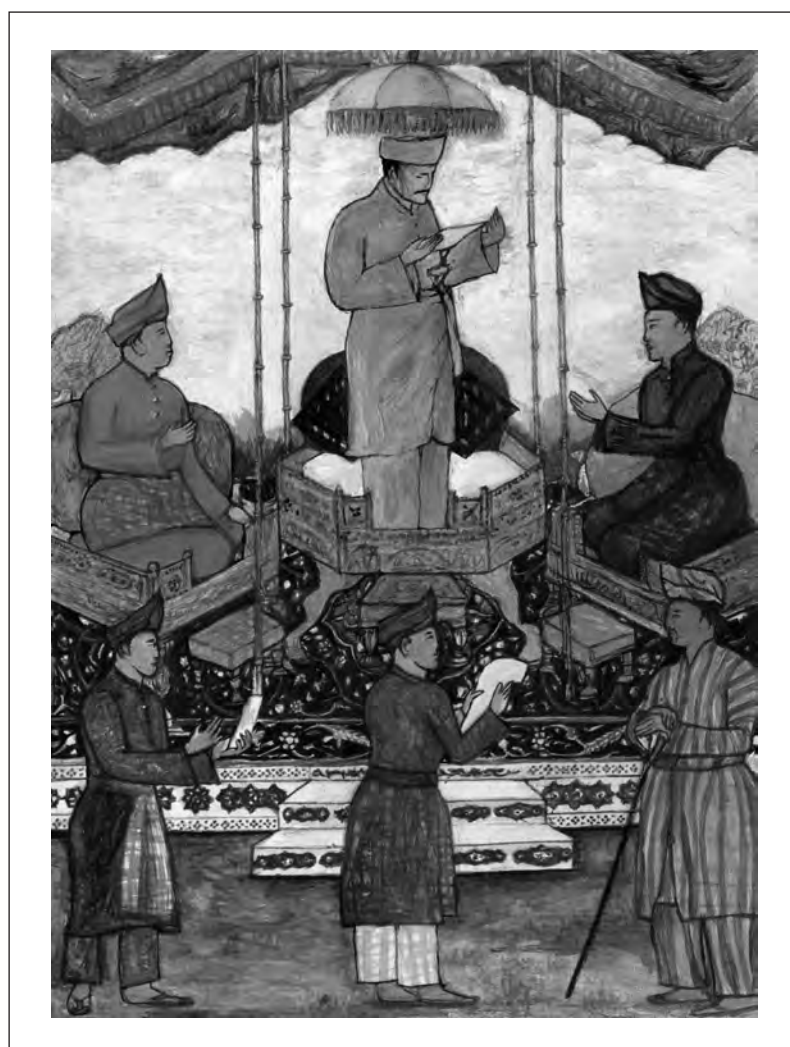
## **YEARBOOK 2014**



Cover Painting

**“Royal Splendour”**

By Jimmy Khalil



# **THE MALAYSIAN JUDICIARY**

## **YEARBOOK 2014**





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The Right Honourable Tun Arifin Zakaria  
Chief Justice of Malaysia

# Foreword

## The Right Honourable Tun Arifin Zakaria

Chief Justice of Malaysia

It gives me great pleasure and privilege to welcome the Malaysian Judiciary Yearbook 2014. This issue marks the fourth year of our publication which started in 2011.

I must say that this would not have been possible if it was not for the devotion and dedication of the editorial team led by Justice Zainun Ali.

We have come a long way since the start of our reform in 2009 in bringing the judiciary to the level it is today. I am happy to report that the Malaysian judiciary is now a national and international leader in the use of ICT in enhancing our delivery system. As a matter of fact our E-Court system has been adopted by other judiciaries in the region.

To accelerate and expedite the disposal of cases, we have established a number of specialist courts. With specialist courts, cases are resolved faster than they were before. With that in place, we then shifted our focus to continuing professional development and training. We will continue to explore new measures and initiatives to deliver quality service to our stakeholders. To this end, we require a high degree of support from everyone concerned particularly the Attorney General's Chambers, members of the Bar and other relevant agencies.

### Capacity Building

To begin with, there is a need to strengthen trust, confidence and integrity in the judiciary as these are the key elements of a system based on the rule of law. In order to attain that objective, we constantly conducted training for our judges and judicial officers alike. Although our Judicial Academy is still in its infancy, I am happy to say that it has done much in terms of training for superior courts judges. In 2014, the Judicial Academy organised a total of 9 training programmes in diverse areas of law.

A Training and Judicial Capacity Development Unit has also been set up under the Chief Registrar's Office. In 2014, a total of 78 training programmes for judicial officers and supporting staff was conducted, with a total allocation of RM788,593.70. With judicial training high on our agenda, we believe that we can enhance the level of competency and efficiency of our judges and officers.

### Coroners Court

The establishment of the Coroners Court in April 2014 has added to the list of specialist Courts. The surge in the number of custodial deaths is a cause for concern. Dedicated coroners courts were established throughout the country to cater for such cases. Senior Sessions Court Judges are assigned to the Coroners Court in view of the complexity and sensitivity of these inquiries. To ensure a speedy disposal of cases, a 9 month timeline is set from the commencement of an inquiry to its conclusion. I am pleased to report that the Coroners Court has disposed of a total of 2,127 death inquiry cases since its inception. This is indeed an astonishing figure.

### Environmental law

The judiciary plays a key role in promoting the environmental rule of law. As part of our capacity building in environmental law, we have sent judges to international meetings and conferences related to environment. In 2014 alone, there were no less than four such meetings/conferences namely: The 3rd South Asia Chief Justice Roundtable on Environmental Justice (Colombo, Sri Lanka, 8-9 August 2014); Annual Meeting of the International Advisory Council for Environmental Justice (Brazil,



12-14 November 2014); Economic and Environment Program for Southeast Asia's (EEPSEA) Regional Training on Economic Values, Compensation and the Environment (Bali, Indonesia, 1-4 December 2014); and the Fourth Asean Chief Justices' Roundtable on Environment (Hanoi, Vietnam, 12-14 December 2014). On the same note, we are contemplating the setting up of specialist environmental courts for civil cases both in the High Court and the Subordinate Courts. With the expansion of specialist environmental Courts to include civil claims, not only will the disposal of such cases will be expedited, but a pool of specialist judges in the field of environmental law will be created.

### **Foreign Delegations**

In 2014 several delegations from foreign judiciaries visited the Palace of Justice. We were honoured to receive these foreign delegates who showed keen interest in our E-Court system and case backlog reduction programme. We also conducted a series of training sessions for some foreign judges. These collaborations not only bode well in fostering closer relationship with judiciaries around the world, but also provides a platform for the sharing and exchanging of common experiences and best practices.

### **36<sup>th</sup> Asean Law Association Meeting and Third Asean Chief Justices' Meeting**

Moving on, I am proud to report that last year we played host to the 36<sup>th</sup> Asean Law Association Governing Council and the 2<sup>nd</sup> Asean Chief Justices' Meeting in Kuala Lumpur. Both events received an overwhelming response from delegates of the Asean member states. With the exception of the Chief Justice of the Supreme People's Court of Laos PDR, the Chief Justices' meeting was attended by 9 Chief Justices from the Asean region.

The meeting brought together the Asean Chief Justices to discuss matters of common interest with the aim of harmonising laws and procedures in the region. For a start it was agreed that further studies are to be carried out with a view to achieving agreement on three common issues namely to: (i) conceptualise the establishment of the Asean Judicial Portal ("AJP") with the broad objectives of making and creating an international presence for the Asean judiciaries; (ii) establish a

working group on judicial education and training amongst Asean judiciaries on cross-border topics of common legal interest; and (iii) create a standard and formatted mechanism as well as sharing best practices to facilitate the service of civil processes within Asean member states. There is no doubt that this judicial cooperation will further strengthen the existing close ties amongst Asean judiciaries. This augurs well in enhancing the greater economic growth and development within the Asean region.

### **20<sup>th</sup> Anniversary of the Court of Appeal**

Last year the judiciary celebrated the 20<sup>th</sup> Anniversary of the Court of Appeal. It is heartening to note the progress and achievement that the Court of Appeal had made in the last 20 years. The reforms embarked upon by the Court of Appeal since 2011 have now borne fruit. The number of appeals pending then stood at 10,771. It has now gone down to 3,209. As at 31 December 2014, there were only 676 pre-2014 appeals pending before the Court of Appeal. The bulk of the appeals are appeals from decisions delivered in 2014, which constitute 79% of the pending appeals. I take this opportunity to congratulate the President of the Court of Appeal (the past and current Presidents), judges of the Court of Appeal, court officers and support staff for their hard work and dedication.

### **Judicial Transparency**

Now I turn to a topic which is close to my heart i.e. judicial transparency. As an institution which is entrusted with the task of administering justice, it is crucial to keep the public informed of the court's role and function. This is to instil public confidence in the judiciary. In our effort to make the judicial system in this country more transparent and accessible to all, we have been providing free access to our website for some time now. The Federal Court and Court of Appeal's judgments are published in the Chief Registrar's website. Some state courts' websites also provide judgments of the High Court and Subordinate Courts.

On the same note, since 2011, we launched what is called the "Court Tour Programme" with a more focused tour, aiming to educate students on trial and appeal processes. In 2014, a total of 6,096 school and university students participated in the

programme, which included visits to our courts in Putrajaya, Kuala Lumpur, Shah Alam, Penang and Johor Bahru. This programme also attracted the interest of international students from Indonesia, United Kingdom and many other countries.

### Pamphlets on Courts Proceedings

Last year, we also launched a series of fact sheets in the form of pamphlets relating to various types of courts proceedings, namely: “Etika ketika hadir di dalam Mahkamah”; “Jaminan Mahkamah”; “Tuntutan Sivil”; “Kesalahan Trafik”; “Reman”; “Pesuruhjaya Sumpah”; “Prosedur mendapatkan semula harta yang disita oleh polis di bawah s 413 KAJ”; “Mahkamah Bagi Kanak-kanak”; “Lelongan Awam”; and “Mahkamah Tuntutan Kecil”. These pamphlets may be obtained free of charge and are available at all registration counters of the courts nationwide. This is yet another step taken by us to keep the public informed of the standard practices and procedures in the judicial system.

### Conclusion

Finally, I would like to express my appreciation to all the contributors **Datuk Mahadev Shankar, Tan Sri Steve Shim Lip Keong, Justice David Wong Dak Wah, Justice Hasnah Dato’ Mohammed Hashim, Justice Harmindar Singh Dhaliwal, Justice Hadhariah Syed Ismail and Ms. Kate Chong Yuh Tyng** who gladly penned their thoughts for the 2014 Yearbook. Once again my sincere appreciation goes to the Yearbook Committee led by Justice Zainun Ali, together with her team, namely: Justice Alizatul Khair Osman Khairuddin,

Justice Abdul Aziz Abdul Rahim, Justice Lim Yee Lan, Justice Mohd. Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Varghese George Varghese, Justice Idrus Harun, Justice Nallini Pathmanathan, Puan Chan Jit Li, Puan Azniza Mohd Ali, Puan Maimoonah Aid, Encik Mohd Sabri Othman, Puan Radzilawatee Abdul Rahman, Encik Noorhisham Mohd Jaafar, Puan Husna Dzulkifly, Puan Norhafizah Zainal Abidin, Puan Sabreena Bakar @ Bahari, Puan Lee Kim Keat, Encik Shazali Dato’ Hidayat Shariff, Encik Muhammad Iskandar Zainol, Encik Syahrul Sazly Md Sain and Puan Hazmida Harris Lee who have worked hard to maintain the high standard of this publication, despite their heavy schedules.

I owe my thanks too to Puan Hamidah Abdul Rahman for the superb and splendid photographs and to Encik Muhammad Nur Hazimi Mohamed Khalil (Jimmy) for his painting of the cover and portraits of the contributors and writers. My thanks and appreciation are also dedicated to the **National Archives Department of Malaysia, The Sultan Azlan Shah Gallery Kuala Kangsar, University of Malaya, Penang State Museum, Director of Penang Courts, Mr. Azman Abu Hassan and the publisher PNMB** for their effort in ensuring the success of the publication of this Yearbook.

I hope this Yearbook will contribute towards showcasing our commitment in transforming our judiciary into a world class judiciary.

Happy Reading!

Tun Arifin Zakaria  
Chief Justice of Malaysia





**JUSTICE ZAINUN ALI**  
Federal Court Judge  
Editor, The Malaysian Judiciary Yearbook 2014

# P r e f a c e

We are by now accustomed to the rhythm of the seasons.  
Thus we are prepared this time around when the “season”  
for sleepless nights is upon us again in getting this  
yearbook ready for publication.

Our year’s work of almost epic proportions was characterised by our frenetic work schedules with their phenomenal edginess and timelines. It makes our achievements and triumphs at the end cathartic indeed.

This year, as happened in the last, we coped admirably with the almost impossible task of deciding and completing the merits of most of the cases in our crowded dockets. This is especially true of those in the High Court and Court of Appeal, such that the Federal Court docket now threatens to burst at the seams.

In this, I am reminded of a remark made half a century ago by Chief Justice Frankfurter of the US Supreme Court, where he observed that “the Court’s schedule crowds the mind: for there is such a thing as an intellectual traffic jam!”.

Fortunately we are not in that position just yet. At least, I hope not.

In any case, what would strike any reader of the Judges’ decision would be this: that the judicial opinions are currency of equal value, for they carry with them accurate reflections of the Justices’ state of mind, concurring or dissenting as the case may be.

However before I speak about the other Chapters of this Yearbook, allow me to say something about the lay-out and aesthetics involved.

Departing from our sedate black and white tradition for the cover of this publication, this time the Committee commissioned our artist Jimmy Khalil to give it a more vibrant visage.

Inspired by the dazzling Timurid and broadly Turkman style of Muslim art I saw in a recent

overseas trip, I believe Jimmy has done justice to the artistic depiction of a Malay Ruler in a Muslim art setting on the cover. Although these pieces of art are usually done on buff paper and ours on normal canvas, our artist stayed faithful to the neat kufic script and textual symbols and motif panelling.

In the midst of outlining the demarcation of Chapters, we were informed by some Justices in the High Court that their perspectives in the Yearbook appeared nominal. Thus to balance this deficit, the Committee invited three Justices of the High Court to share the range of their outlook. We do acknowledge that as trial judges, theirs is a robust role; that in the quest for truth, through the clash of contradictions, it is crucial that they decide where the chips may fall.

We have to thank High Court Judges, Justice Hasnah Dato’ Mohammed Hashim, Justice Harmindar Singh Dhaliwal and Justice Hadhariah Syed Ismail for their readiness in responding to our request to contribute contextually.

A special feature from the High Court of Sabah and Sarawak is the thriving mobile court, which in its unique way is a potent force in relieving the legal issues and congruent pressures felt by inhabitants in the interiors of the region.

Since judges by and large hold a special place in the public’s mind, not least since they are arbiters of our disputes and protectors of our freedoms, we remain intrigued by their views, especially in a setting outside of officialdom. The value of off-the-bench commentaries naturally depends on what they reveal about how judges think and what they think and believe is important in understanding the judicial process.

For this segment the Committee greatly appreciates the effervescent Dato' Mahadev Shankar for his musings. His Lordship's scintillating wit and wisdom never fail to stimulate our minds.

The Committee also wishes to express immense gratitude to our erstwhile Chief Judge of Sabah and Sarawak, Tan Sri Steve Shim Lip Kiong and a sitting Court of Appeal Judge, Justice David Wong Dak Wah for their respective illuminating articles in "Judicial Insights". We are thankful that despite their punishing schedules, they responded graciously to our requests.

We were much cheered when the daughter of the late Tan Sri Chong Siew Fai, Ms Kate Chong Yuh Tyng without demur, agreed to provide us an article about her father. The late Tan Sri Chong was regarded with great respect and affection in his time as the Chief Judge of Sabah and Sarawak. Both Tan Sri and his wife the ebullient Puan Sri Rosalind Chong, had lent an air of old world charm and graciousness to this august institution.

In the meantime, the drumbeat around producing quality judgments has increased its tempo. Thus before we hear its crescendo, we are preparing hard to make it work. The Judicial Academy has stepped up Judicial training and the fact that one of its main focus is "Judgment Writing and Judge Craft" reflects this single-minded pursuit. It is critical that judges spend time in learning their craft, no more than how Anthony Trollope wrote volumes and volumes of Victorian novels; or for that matter how Gustave Flaubert spent hours and hours just to decide whether to use a comma or a semicolon, in his desire to produce his masterpiece. In other words, practice makes perfect.

In the normal run of things, 2014 would have been just like any other Legal Year, banal if not bountiful but for the fact that two events stood out clearly in our consciousness. The first is commemorating the 20th Anniversary of the Court of Appeal; the second is the Reference Proceedings held for one of our most highly regarded and beloved Lord Presidents/Chief Justices of all times, Almarhum His Royal Highness Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah.

That two decades have passed us by since the Court of Appeal's inception in 1994 have had a sobering effect on us all. So much water had flowed under the bridge since those initial first steps, that today, the girth of the Court of Appeal reflects its singular importance in the judicial regime.

The year 2014 also marked the passing of one of our greatest legal luminaries, Almarhum His Royal Highness Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah. The Reference Proceedings for Almarhum Sultan Azlan Shah, our former Lord President/Chief Justice fully attended by the great and the good, was momentous in its sadness. The Judiciary keenly felt the loss of its shining light, since his Lordship's capacious and far-ranging intellect was only matched by his capacity for kindness and wisdom. It was difficult to restrain from quoting Elizabeth Barrett Browning's "How Do I Love Thee"... in describing Almarhum, because the ways in which we do, were countless.

For, how many of us can claim to be infused with the aura of his greatness which is transcendent and absolute?

Thus the sum of all these parts is that we have had an unforgettable year as the Chapters in this publication will reveal.

On behalf of the Editorial Committee, I am deeply honoured that the Rt. Honourable Chief Justice Tun Arifin Zakaria continues to have faith in us in producing this important publication which represents our year's work, each Chapter marking a milestone in our judicial responsibilities. Thank you Tun.

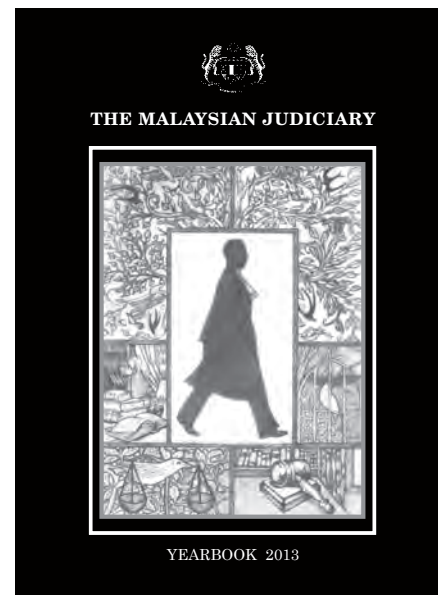
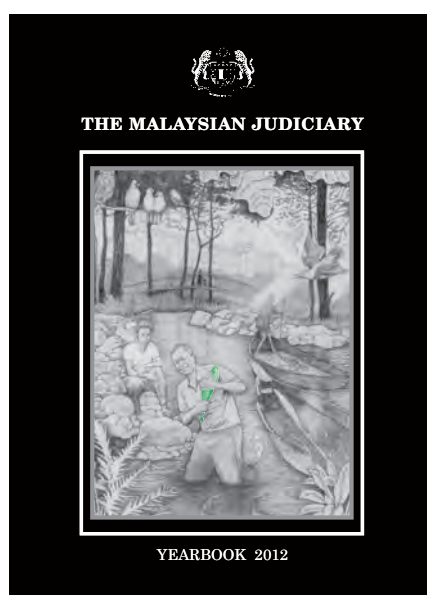
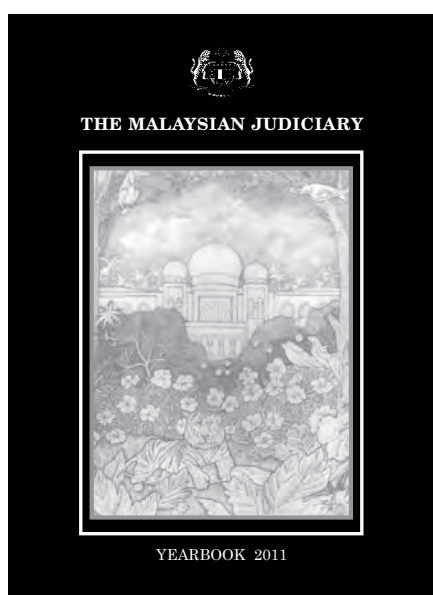
In all of these, I have only gratitude and superlatives for the splendid shots done by our resident photographer Puan Hamidah Abdul Rahman; for the exquisite artwork on the cover and other artworks and sketches by our resident artist Muhammad Nur Hazimi Dato' Seri Khalil (Jimmy), and for the refined work by PNMB; but most of all my thanks are owed to all my sister and brother Judges, Justice Alizatul Khair Osman Khairuddin, Justice Abdul Aziz Abd Rahim, Justice Lim Yee Lan, Justice Mah Weng Kwai, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Varghese

George Varughese, Justice Idrus Harun, Justice Nallini Pathmanathan and officers Puan Chan Jit Li, Puan Azniza Mohd. Ali, Puan Maimoonah Aid, Encik Mohd Sabri Othman, Puan Radzilawatee Abdul Rahman, Encik Noorhisham Mohd Jaafar, Puan Husna Dzulkifly, Puan Norhafizah Zainal Abidin, Puan Sabreena Bakar@ Bahari, Encik Shazali Dato' Hidayat Shariff, Encik Syahrul Sazly Md Sain, Puan Lee Kim Keat, Encik Muhammad Iskandar Zainol and Puan Hazmida Harris Lee without whose collective conviviality and good work ethics, this painstaking job will not be an easy ride.

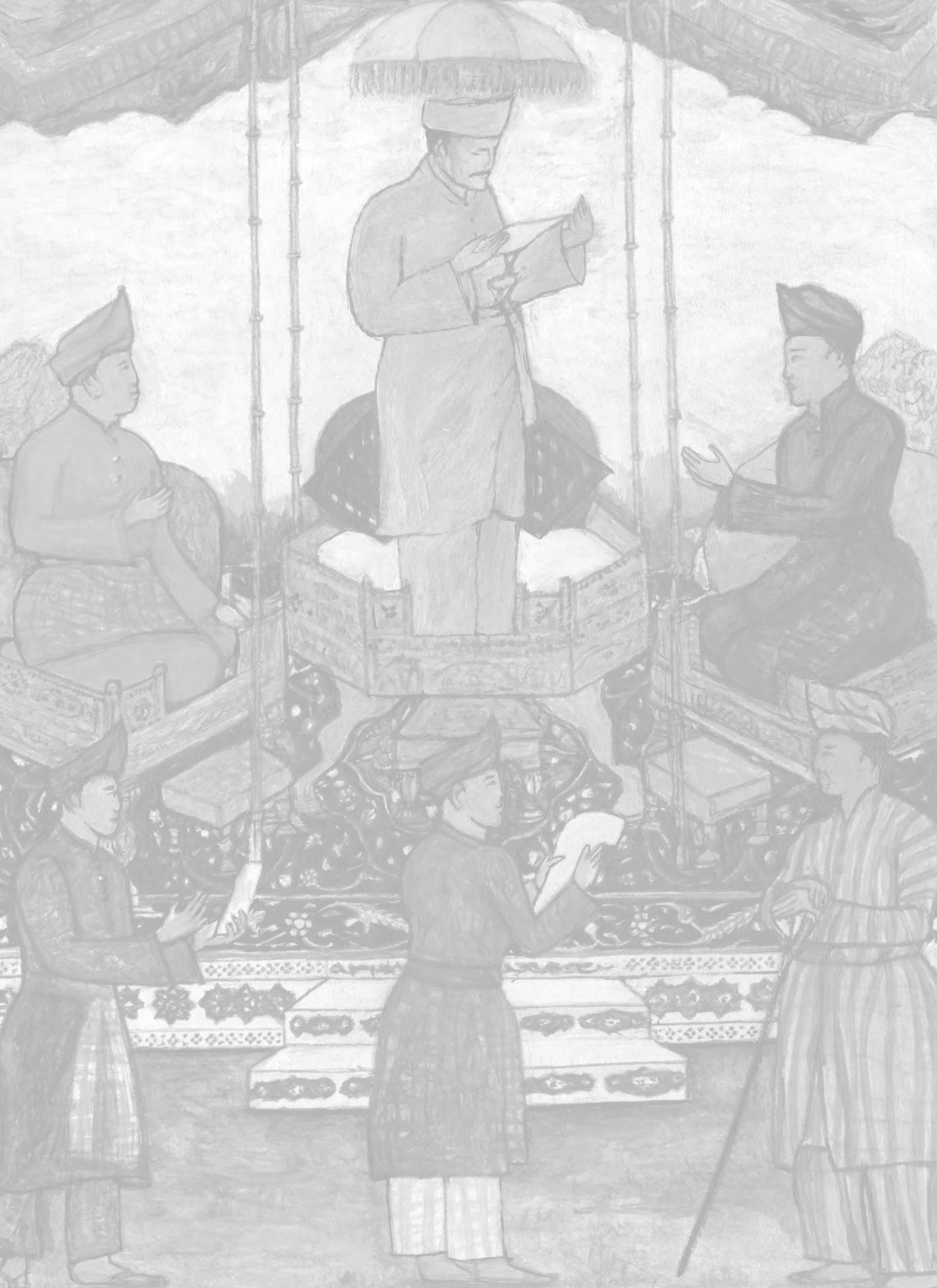
At time of print, we bade farewell to one of the stalwarts of this Committee. Goodbye Justice Mah Weng Kwai, your absence will be very much missed in the coming years!

To our readers, we hope you will enjoy this Yearbook as much as we did in getting it together!

Justice Zainun Ali  
Editor







# **CHAPTER 1**

## **OPENING OF THE LEGAL YEAR**

## THE OPENING OF THE LEGAL YEAR 2014 PENINSULAR MALAYSIA



The procession of Judges at the Opening of the Legal Year 2014

The ceremonial opening of the Courts' Legal Year 2014 was held on Saturday 11 January 2014 at Dewan Seri Siantan Perbadanan Putrajaya located immediately across the Boulevard from the Palace of Justice. The Rt. Honourable Chief Justice Arifin Zakaria led a procession of Judges from the Federal Court, the Court of Appeal and the High Courts, and also Legal Officers attached to the Courts from the Palace of Justice to the venue accompanied by a marching band.

The members of the Judiciary then took their places in the Hall to the strains of the Gamelan in the background. Notable dignitaries joining

this year's event included the Hon. Hajah Nancy Haji Shukri, Minister in the Prime Minister's Department, the Rt. Hon. Dr Hatta Ali, the Chief Justice of Indonesia (and a delegation from the Supreme Court of Indonesia) and the Rt. Hon. Mr Sundaresh Menon, the Chief Justice of Singapore. Also attending the solemn occasion were former Chief Justices of Malaysia, retired Judges, Members of the Judicial Appointment Commission, Representatives of the Malaysian Bar, Officers from the Attorney General's Chambers, the Law Society of Singapore, the Law Society of Hong Kong, the Law Society of Brunei, the Law Society of Australia and LAWASIA.



“**A**S the nation progresses economically, it naturally follows that the demand on the justice system becomes increasingly greater, and this certainly is a challenge to all of us; the Judiciary, the AGC and the Bar. Let us move into this New Year with new resolve to offer our services to the nation and the people in upholding justice and the rule of law with greater, vigour and dedication. It is also important to emphasize that justice should not be the sole preserve of those who could afford it, it must also be accessible to all irrespective of class or status. To this end, I call upon each and every one of you as members of the noble legal profession to assist those in need of your services in whatever way we can.”

Chief Justice Arifin Zakaria

In keeping with tradition the Chairman of the Bar delivered the first speech followed by the Honourable Attorney General. In his reply, the Chief Justice gave a report of the performance of all the tiers of the Judiciary and commended the members on their dedicated efforts in discharging their duties during the course of 2013. The Chief Justice also touched on the innovations aimed at expediting delivery of justice such as continued increased sittings and time allocation for oral submissions for leave applications at the Federal Court. The Court of Appeal has targeted shorter

waiting time for disposal i.e. less than 18 months for capital punishment cases and less than a year for cases involving government servants. Towards time and costs savings, the Court of Appeal had also put into place the use of video conferencing and the setting up of an email address solely for the approval of draft orders and the filing thereof. With the implementation of the NCC and NCvC Code nationwide the High Courts were also all geared to dispose of civil and commercial disputes within 9 months from the date of filing. Worthy of mention were also the performance of the specialised courts including the Construction Courts (modelled after the London Technology and Construction Court), the Environment Courts and the Corruption Courts (criminal).

The Chief Justice also referred to the Forum which was held on the evening preceding this year's Opening of the Legal Year. This was a maiden effort, and was held at Hotel Sri Pacific, Kuala Lumpur. The first panel (drawn from the Judiciary, the Bar, the Attorney General's Chambers) dealt with the issue of “Enhancing Professionalism in the Legal Fraternity – the Way Forward” and the second panel discussed the topic, ‘Role of the Judiciary, the Attorney General's Chambers in upholding the Rule of Law.’ The attendees engaged in a lively banter and the Forum proved to be a platform for friendly and intellectual interaction between members of the Bench, the Attorney General's Chambers and Bar.



Judges proceeding into Dewan Seri Siantan, Perbadanan Putrajaya at the Opening of the Legal Year, 2014



The formal events on 11 January 2014 concluded with a sumptuous lunch which further provided an opportunity to wish each other another great

year of working together to uphold the rule of law and the cause of justice in the country through the courts.



Chief Justice Arifin Zakaria delivering his speech during the forum held in conjunction with the Opening of The Legal Year 2014 at Seri Pacific Hotel Kuala Lumpur



The Forum Panelists discussing the subject the "Role of the Judiciary, the Attorney General's Chambers in upholding the Rule of Law."

(L-R): Mr. Ragunath Kesavan, Justice Mohamad Ariff bin Md Yusof, Mr. Raphael Tay (the moderator), Ms. Melati binti Abdul Hamid and Mr. Nigel.





The Forum Panelists discussing the subject “Enhancing Professionalism in the Legal Fraternity – the Way Forward”  
(L-R): Ms. Norinna binti Bahadun, Justice Richard Malanjum, Justice Md Raus Sharif, Mr. Ranbir Singh.



Justice Ramly Ali posing a question during the forum



JUDGES OF THE SUPERIOR COURT AT



THE OPENING OF THE LEGAL YEAR 2014



## OPENING OF THE LEGAL YEAR 2014 SABAH AND SARAWAK



Together we walk: the start of the annual ceremony was marked with a procession led by Chief Justice Arifin Zakaria, Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum, the Hon. Tan Sri Abdul Gani Patail, the Attorney General and the Hon. Hajah Nancy Shukri the de facto Law Minister which began from the Pullman Hotel up to the Old Court Building in Kuching.

From the year 2001, the commencement of the Legal Year in Sabah and Sarawak has been observed with a formal ceremony where the legal fraternity converge to take part in a procession before attending a special court session convened to receive reports on the achievements of the Courts in the preceding year as well as to hear out concerns or issues faced by the legal and judicial community in general.

In 2014, this significant event was held on 17 January 2014 in Kuching, Sarawak and was graced by the Rt. Hon. Chief Justice of Malaysia

Arifin Zakaria. Also present for the event were the President of the Court of Appeal, the Rt. Hon. Md Raus Sharif and the Chief Judge of Malaya the Rt. Hon. Justice Zulkefli Ahmad Makinudin who joined the procession together with the Chief Judge of Sabah and Sarawak Justice Richard Malanjum. Also at the head of the procession were Federal Court Judge Justice Abdull Hamid Embong, the Attorney General of Malaysia Tan Sri Abd Gani Patail, the Minister in the Prime Minister Department (de facto Law Minister) Hajah Nancy Haji Shukri and Kuching North City Council Mayor, Datuk



Abang Abdul Wahap Abang Julai. They marched from Pullman Hotel to the Old Court Building led by the Royal Malaysian Police Band.

Others joining the procession were the State Attorney of Sabah Datuk Hajah Mariati Robert, State Attorney General of Sarawak Datu Haji Abdul Razak Tready, President of the Sabah Law Association Datuk G.B.B Nandy @ Gaanesh JP and the President of the Advocates Association of Sarawak Mr Khairil Azmi bin Haji Mohd Hasbie. Many legal and judicial officers serving in East Malaysia were also part of the procession.

The special court session at the Old Court Building commenced with a speech by the State Attorney General of Sabah followed by her colleague from Sarawak. This was followed by Presidents of the Sabah Law Association and Advocates' Association of Sarawak respectively.

Thereafter, the Chief Judge of Sabah and Sarawak took the centre stage delivering his speech and simultaneously declaring the official start of the

legal year 2014 for Sabah and Sarawak. In his speech His Lordship praised the unwavering efforts and cooperation of all parties in striving for the betterment in the delivery of the judicial system of Sabah and Sarawak. Indeed it was reported that the High Court in Sabah and Sarawak had managed to dispose of 7,144 cases out of some 9,000 pending civil cases in the year 2013. For criminal cases, a total of 638 were disposed out of 967 that were pending. His Lordship observed that the numbers were impressive. Nonetheless His Lordship maintained that there was a lot more room for improvement.

In conjunction with this memorable occasion, several exhibition booths had been set up by the relevant authorities, including the Road Transport Department, Kuching Court and law book publishers in the compound of the Old Court Building for the benefit of the public. The exhibition was held with the aim of increasing legal awareness and enlightening the public of the core business of various government departments, the role of local authorities and the courts.



The procession, preceded by the Royal Malaysian Police band, begun from Pullman Hotel up to the Old Court Building, Kuching.





It drizzled throughout but the procession soldiered on toward the Old Court Building.



Chief Justice Arifin Zakaria in a lighter moment during the Opening of 2014 Legal Year.

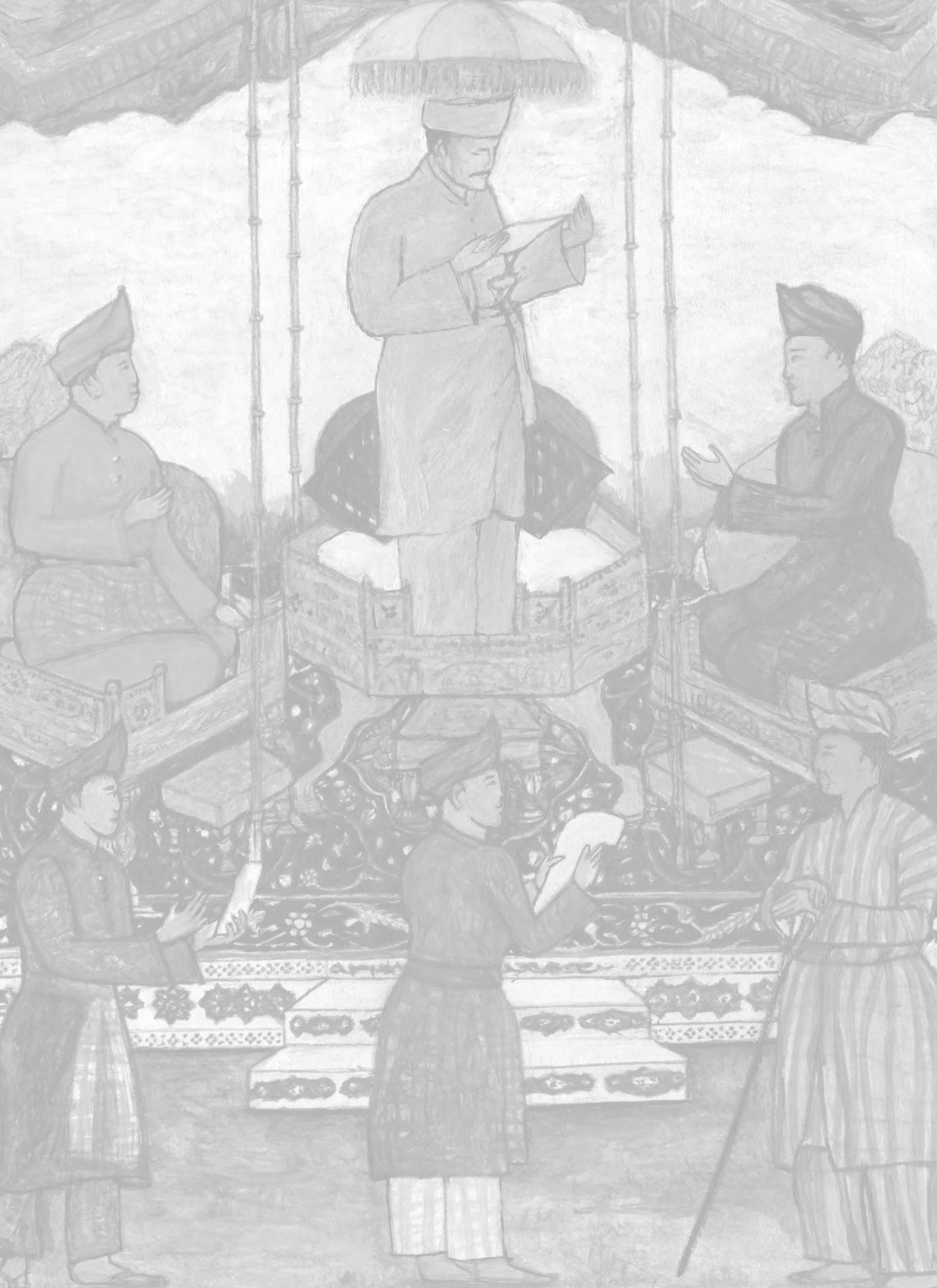




The Court in session at the Opening of 2014 Legal Year Sabah and Sarawak 2014.

L-R: Justice Md Raus Sharif, Chief Justice Arifin Zakaria, Justice Zulkefli Ahmad Makinudin, Justice Abdull Hamid Embong.





# CHAPTER 2

## THE FEDERAL COURT

## THE FEDERAL COURT





As in the previous years the Federal Court's schedules and fixtures for the year 2014 had been tight even though the registration of cases in 2014 had shown a decrease of 6% as compared to the previous year i.e. 1254 cases as compared to 1334 cases in 2013. The court managed to dispose of a total of 1112 cases leaving 1404 pending cases as at 31 December 2014.

The three main categories of cases in Federal Court are namely, leave applications, civil appeals and criminal appeals.

Leave applications form the bulk of cases before the court. In 2014 a total of 752 leave applications were registered. The court disposed of a total of 725 leave applications out of 1366 pending in 2014. The balance of leave applications as at 31 December 2014 stood at 641. For the record, a total of 89 leave applications were allowed in 2014 constituting 12% of the applications.

As for civil appeals, 131 appeals were registered in 2014. The court was able to dispose of a total of 106 appeals out of 290 pending appeals thus leaving a balance of 184 as at 31 December 2014. There was a slight increase in pending civil appeals as compared to the previous year. In view of this more sittings will be allocated for civil appeals in 2015. The problem the Federal Court Registry faces is in getting free dates of counsel as these appeals are mostly handled by senior counsel who very often have a tight calendar.

For the purpose of streamlining the procedure for civil appeals and leave applications, Practice Direction No. 1 of 2014 dated 3 March 2014 was issued in 2014. With this Practice Direction, parties are expected to strictly comply with the two-week timeline for the filing of written submissions in order to give judges adequate reading time.

The Practice Direction also requires a core bundle to be filed at the Registry not later than 14 days from the hearing date. This helps considerably in narrowing down the issues before the court. However, the parties are at liberty to refer to the appeal record should the need arises.

To expedite disposal of leave applications which constitute the bulk of cases before the Federal Court a fixed time for oral submissions was also introduced. The duration for oral submission allotted

to each party is limited to 15 minutes only with a further extension at the discretion of the chairman of the panel.

As for criminal appeals, in 2014 the Federal Court Registry received a total of 221 complete appeal records from the Court of Appeal in respect of appeals registered in 2012 and 2013. In addition, a total of 300 criminal appeals (excluding habeas corpus) were registered in 2014. Out of the total of 300 criminal appeals, 231 criminal appeals were disposed of in 2014 compared to only 145 in 2013. There were still 540 appeals pending as at 31 December 2014 despite the high disposal rate in 2014 compared to 2013.

The increase in the backlog is due to the fact that the Federal Court Registry was not able to fix more criminal appeals for hearing in 2013 and part of 2014 due to the fact that most of the appeal records for cases registered in 2012 and 2013 were not ready to be set down for hearing.

As for habeas corpus appeals, they showed a slight increase in registration, with a total of 38 appeals registered in 2014 as compared to 25 in 2013. The Federal Court disposed of 20 appeals in 2014, leaving a balance of 28 as at 31 December 2014. Out of the 38 habeas corpus appeals registered in 2014, 35 were under the Dangerous Drugs (Special Preventive Measures) Act 1985, 2 under the Extradition Act 1992 and 1 under section 15 of the Prevention of Crime Act 1959.

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

The year 2014 witnessed the retirement of Justice Tan Sri Zaleha Zahari. I would like to convey my heartfelt appreciation to Justice Tan Sri Zaleha for her contribution to the judiciary. I wish her a happy and healthy retirement.

Following the retirement of Justice Tan Sri Zaleha, Justice Dato' Azahar Mohamed was elevated to the Federal Court. I am sure, with his vast experience he will be an asset to the Federal Court.

Justice Arifin Zakaria  
Chief Justice of Malaysia



### **Judges of the Federal Court**

- |                                |                                |
|--------------------------------|--------------------------------|
| 1. Justice Abdull Hamid Embong | 7. Justice Jeffrey Tan Kok Wha |
| 2. Justice Suriyadi Halim Omar | 8. Justice Mohamed Apandi Ali  |
| 3. Justice Ahmad Haji Maarop   | 9. Justice Abu Samah Nordin    |
| 4. Justice Hasan Lah           | 10. Justice Ramly Haji Ali     |
| 5. Justice Zaleha Zahari       | 11. Justice Azahar Mohamed     |
| 6. Justice Zainun Ali          |                                |

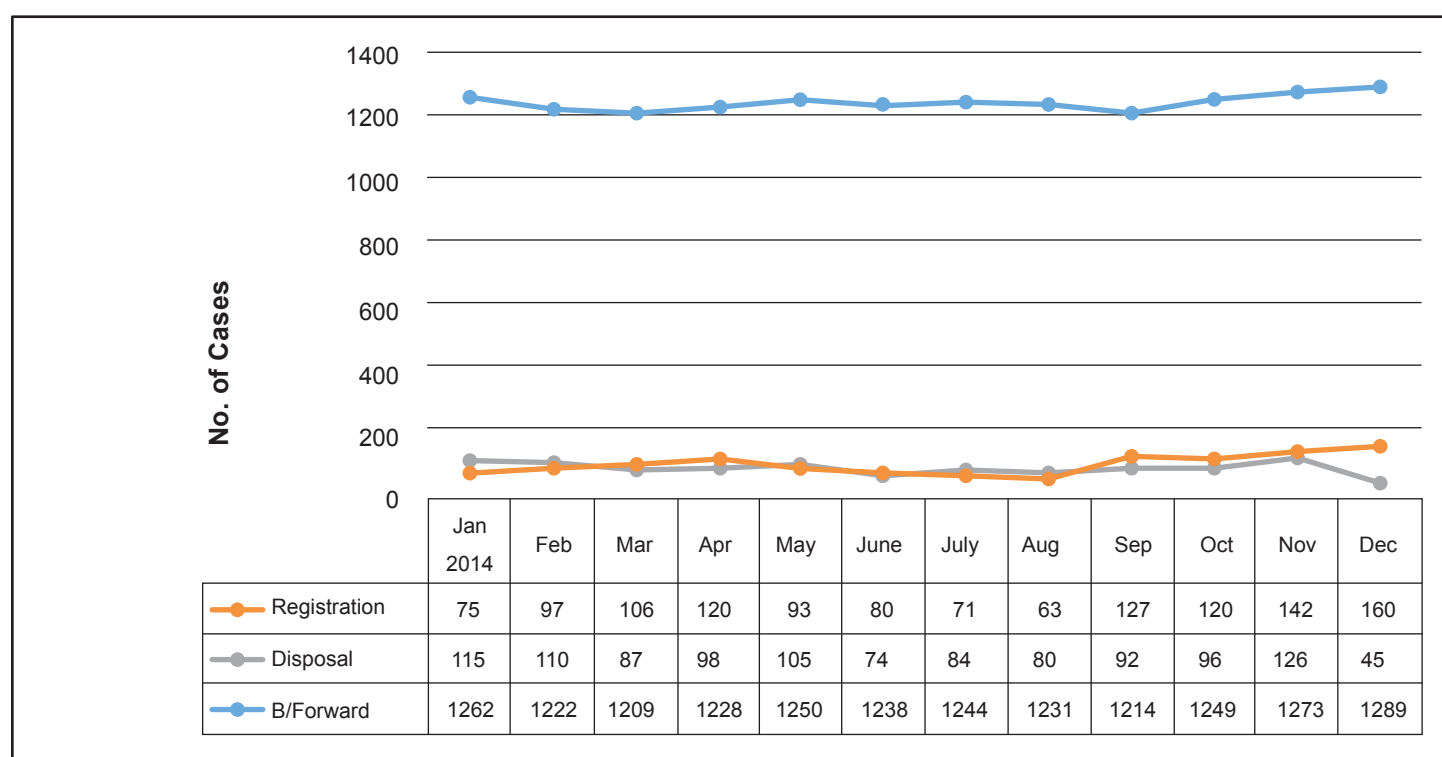


A Gavel - Penang Court

## PROJECTION AND PERFORMANCE OF THE FEDERAL COURT IN 2014

The performance of the Federal Court in 2014 is shown below in graphical form.

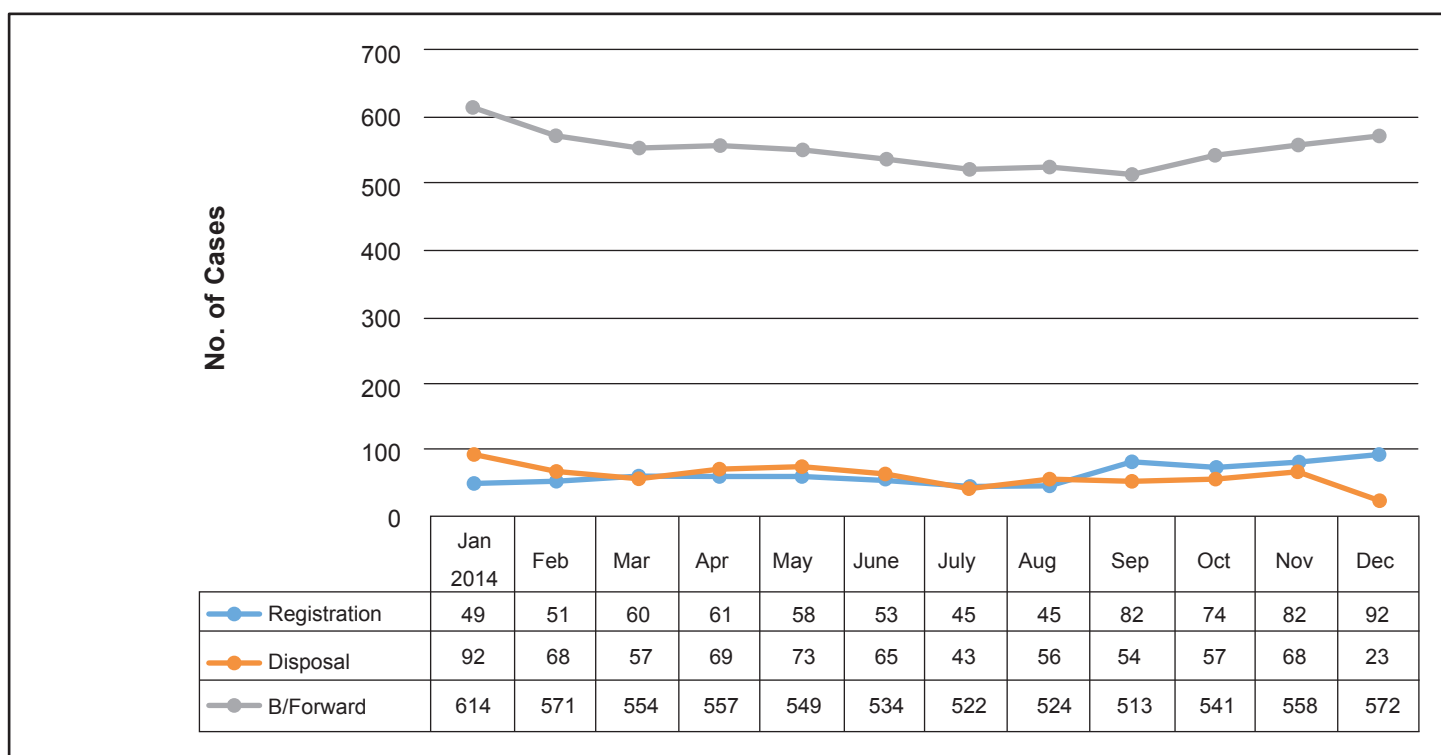
TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
FOR THE YEAR 2014



The three main categories of cases in the Federal Court are motions for leave to appeal, civil appeals and criminal appeals. Other matters include civil and criminal references, criminal applications and cases of original jurisdiction.

There is an increase in the number of pending cases in Federal Court as at 31 December 2014, amounting to 1404 compared to 1262 as at 31 December 2013. In 2014, a total of 1254 cases were registered as compared to 1334 in 2013. Of these cases, 1112 were disposed of, achieving a clearance rate of 89% against the total number of registration in 2014.

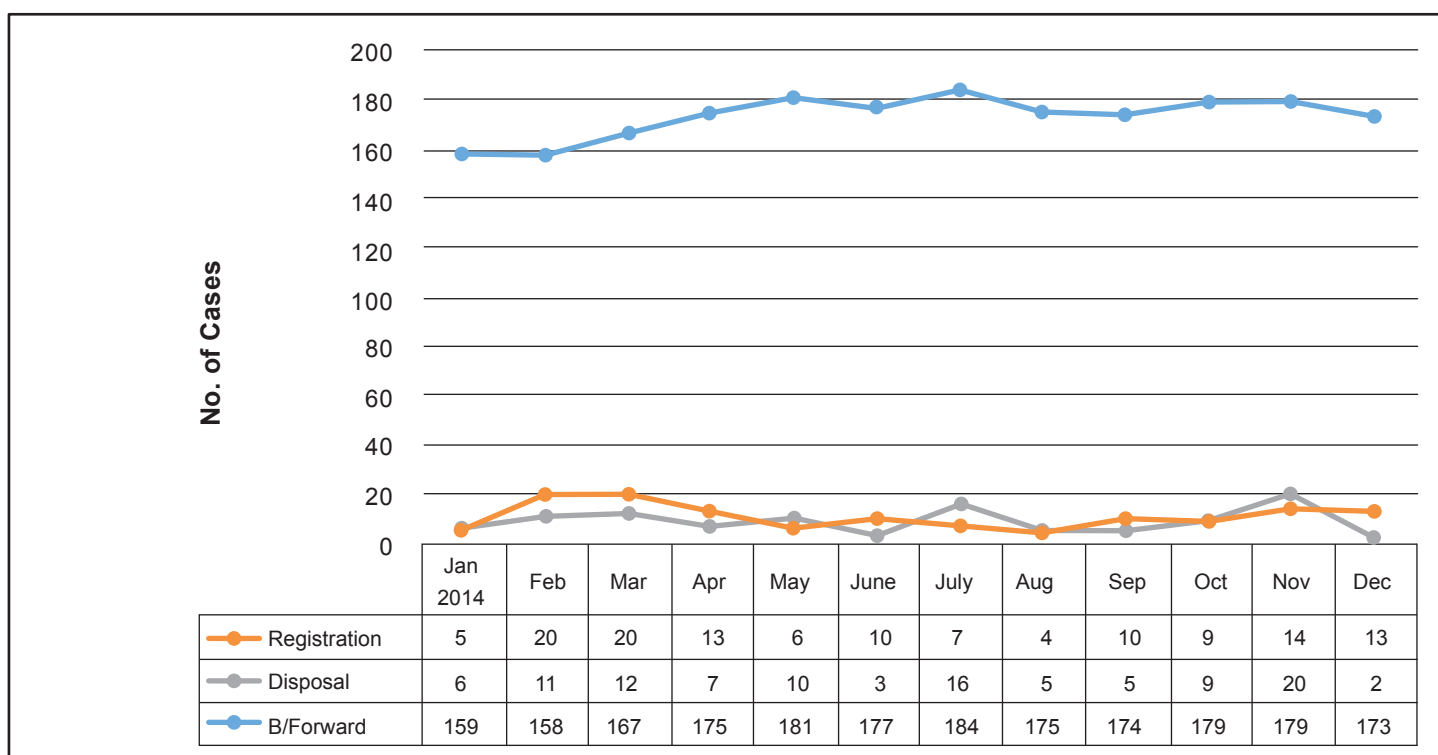
TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31 DECEMBER 2014  
(LEAVE APPLICATIONS)



Registration for leave applications showed a decrease by 9% from 827 in 2013 to 752 in 2014. The number of disposals in 2014 is 725 compared to 829 in 2013. As at 31 December 2014, total number of leave applications pending in Federal Court is 641.

Total number of leave applications disposed of as against registration in 2014 is 96%.

TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31 DECEMBER 2014  
(CIVIL APPEALS)

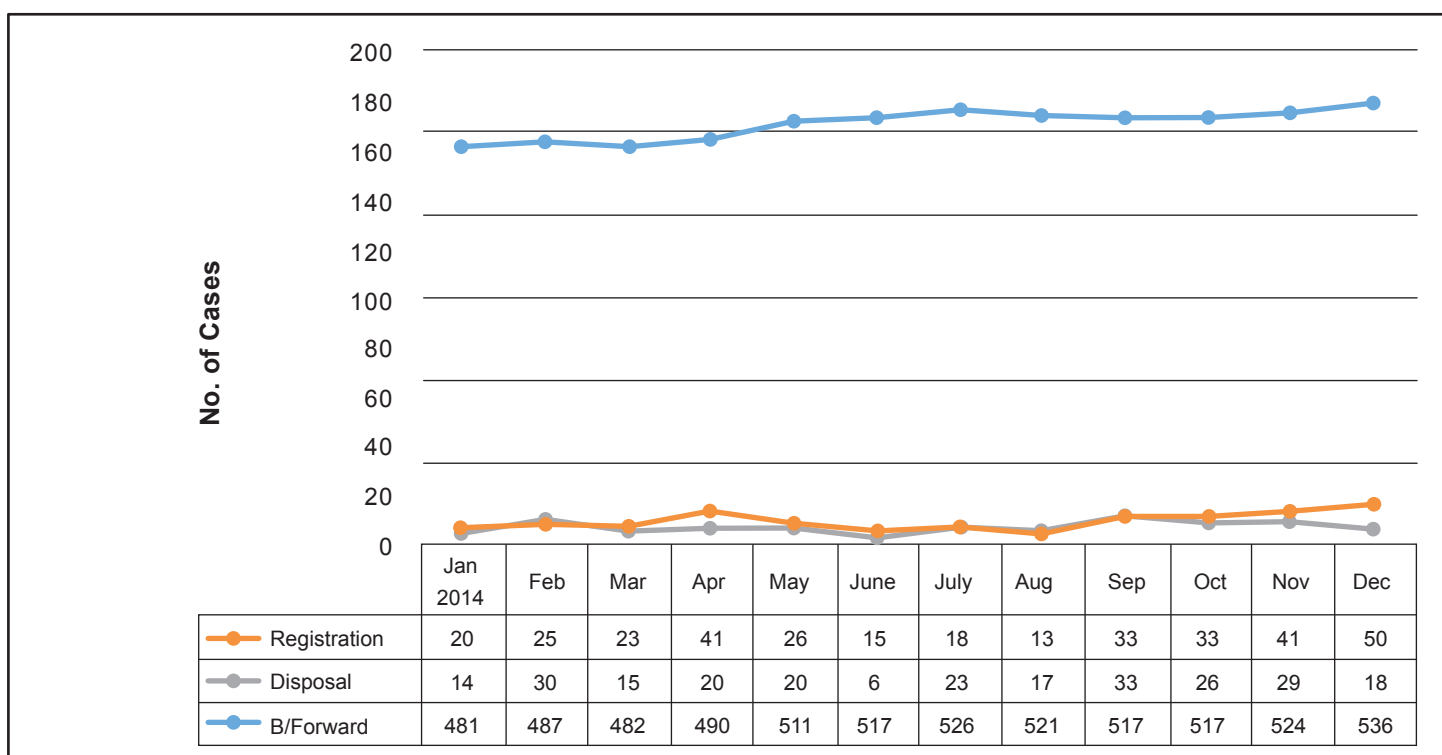


For civil appeals, the registration showed a decrease by 8% from 143 in 2013 to 131 in 2014. The Federal Court disposed of a total of 106 appeals out of 290 pending appeals thus leaving a balance of 184 as at 31 December 2014.

Total number of civil appeals disposed of as against registration in 2014 is 81%.



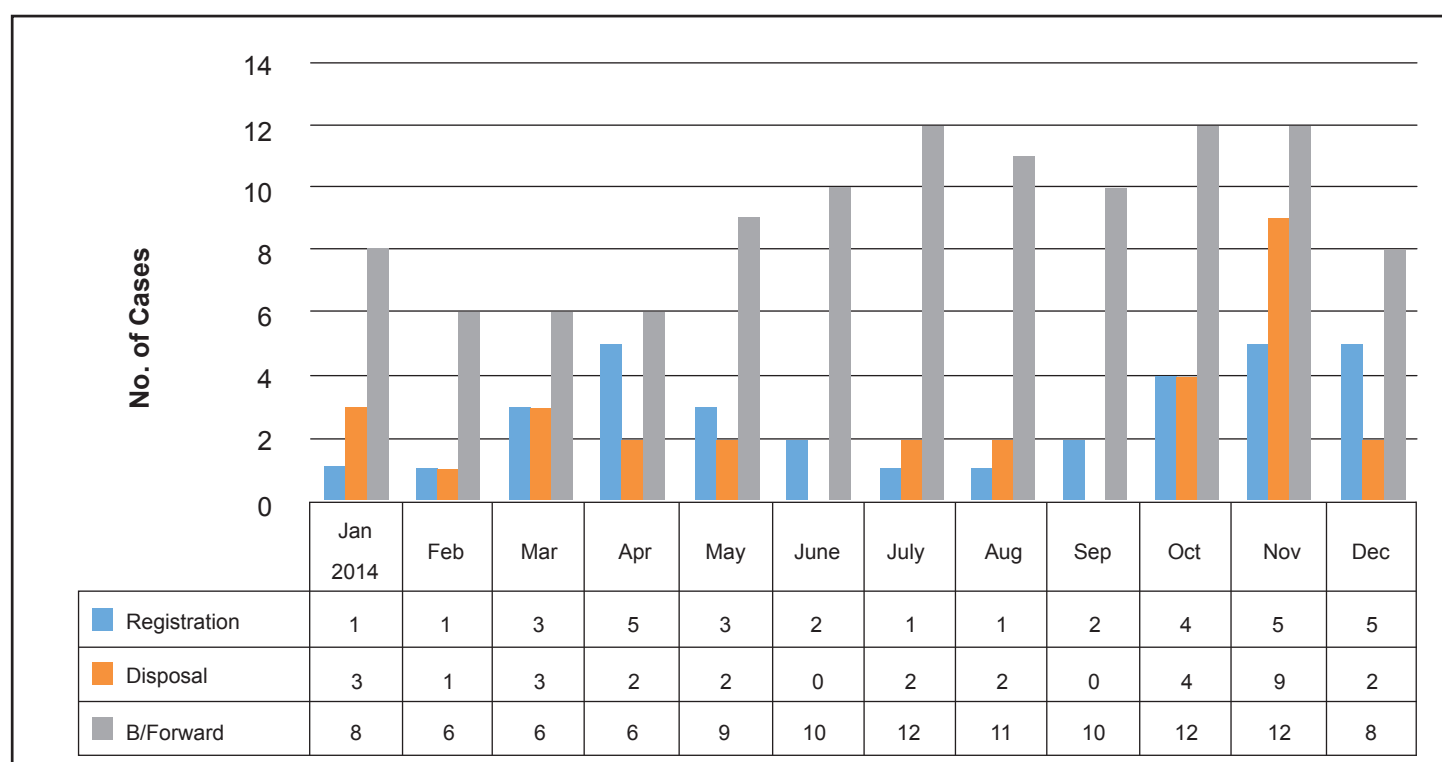
TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
AS AT 31 DECEMBER 2014  
(CRIMINAL APPEALS)



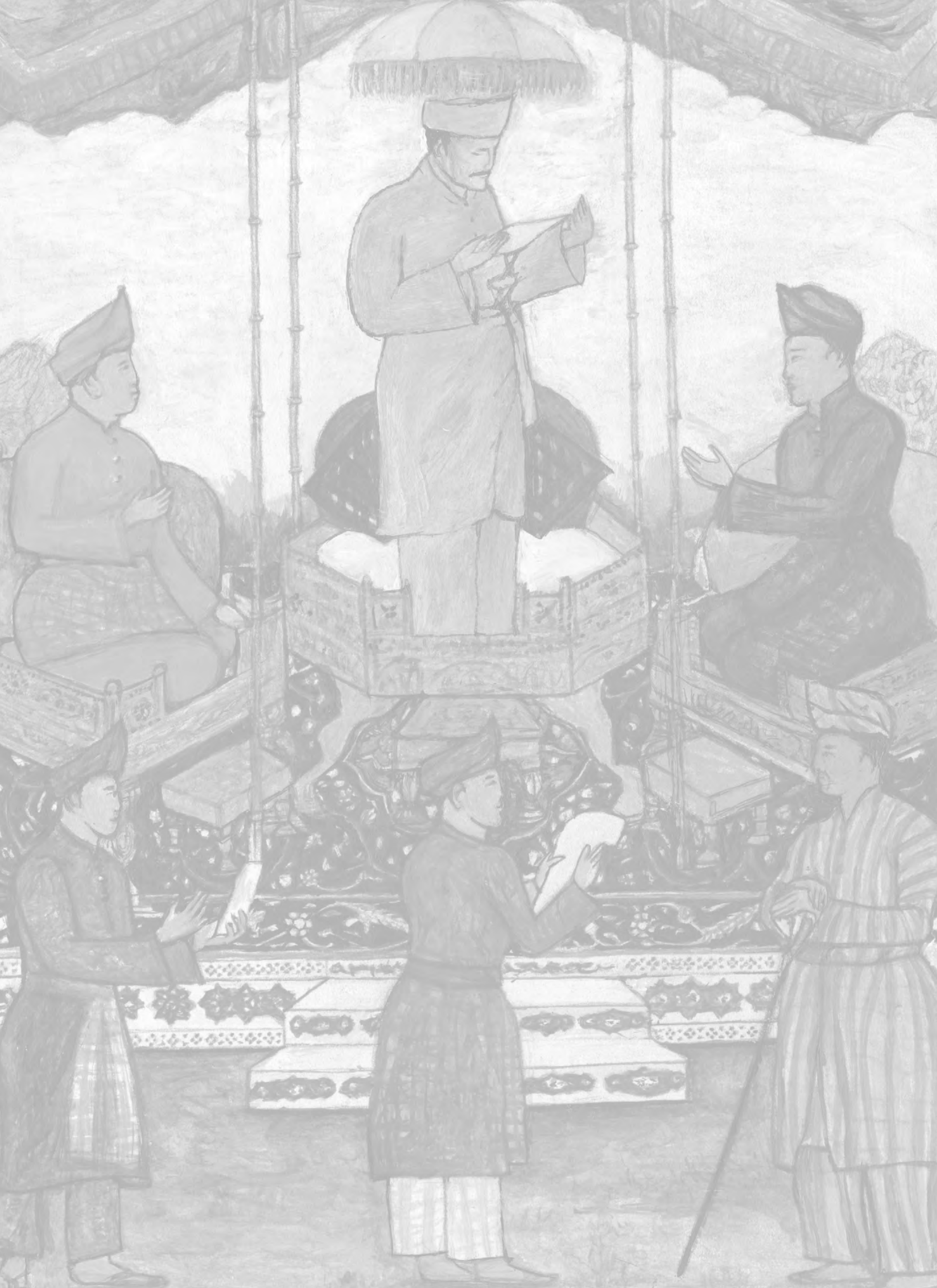
For criminal appeals, the registration in 2014 is 338 compared to 337 in 2013. The Federal Court managed to dispose of 251 appeals in 2014 compared to 185 in 2013, leaving a balance of 568 as at 31 December 2014.

Total number of criminal appeals disposed of as against registration in 2014 is 74%.

TRACKING CHART  
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES  
FOR THE YEAR 2014  
(ORIGINAL JURISDICTION/ CRIMINAL APPLICATION/  
CIVIL REFERENCE/CRIMINAL REFERENCE)



For other matters comprising original jurisdiction, criminal application, civil / criminal references, there were 33 cases registered in the Federal Court throughout 2014, out of which 30 cases were disposed of in 2014. As at 31 December 2014, there are only 11 cases pending.





# CHAPTER 3

## THE COURT OF APPEAL

## THE COURT OF APPEAL



2014 was a significant year for the Court of Appeal. It marked the 20<sup>th</sup> years of its inception. It also marked the fourth consecutive year of the reform programme we have embarked upon ever since year 2011.

The 20<sup>th</sup> Anniversary could not have come too soon as 2014 was the year we recorded the lowest number of pending appeals since the case backlog reform programme was first initiated in year 2011. The year 2014 saw further progress in our efforts in maintaining the critical benchmarks for clearance rates and waiting periods for appeals to be heard. With our backlog reduction programme, we have managed to finally see some light at the end of our long judicial tunnel.

When we ended the year in 2010, there were 10,771 appeals pending in the Court of Appeal. Between then and 31 December 2014, the number of pending appeals had dropped to 3209. In the span of four years we managed to dispose of a total of 7562 appeals. In year 2014 alone the total number of appeals disposed of was 5154 cases against the registration of 4142. In the span of twenty years ever since the inception of the Court of Appeal, this is the first time in history that the number of appeals disposed of in the last four years has surpassed the number of appeals registered.

The monumental accomplishment we recorded is cause for celebration. Our achievements would have not been possible but for the remarkable efforts of those who toiled so prodigiously. I extend my sincere appreciation firstly to my sister and brother judges for their dedication and efforts in disposing cases in a timely way. Without their unstinting effort, we could not have succeeded, as we have, in reducing the backlog of cases to almost manageable level.

At the same time I wish to express my heartfelt appreciation to the Registrar of the Court of Appeal together with her working staff for their contribution to the excellence that the Court of Appeal has achieved. Your professionalism and your efforts continue to be integral to the smooth operation of this Court.

I would like to take this opportunity to acknowledge the efforts of our stakeholders who were instrumental in enabling us to improve the administration of justice. I am heartened by the reception we have received from all of the institutions and organizations we have approached to assist us. In particular, I would like to commend the Attorney General's

Chambers and the Bar for their considerable efforts on working cooperatively with us on a number of initiatives and in assisting us all in addressing the challenges in the administration of justice. I am assured by and grateful for the pledges of support and commitment they have each extended.

2014 witnessed a significant number of changes to the Court of Appeal's judicial makeup. Firstly, we bade a fond farewell to Justice Abdul Malik Ishak and Justice Anantham Kasinather, who retired. I extend my appreciation to them for their immense contributions to the Court of Appeal. I wish them both a blissful retirement and every success in all their future undertakings. Secondly, year 2014 witnessed the elevation of Justice Azahar Mohamed from the Court of Appeal to the Federal Court Bench. I would like to congratulate him and at the same time thank him for all the contributions rendered for the betterment of the Court of Appeal. Finally, the strength of the Court of Appeal Bench was reinforced with the appointment of new Judges, namely, Justice Ahmadi Asnawi, Justice Idrus Harun, Justice Nallini Patmanathan Justice Dr. Badariah Sahamid, Justice Ong Lam Kiat Vernon, Justice Abdul Rahman Sebli and Justice Dr. Prasad Sandosham Abraham. I take this opportunity to congratulate each of them and look forward to working with them in years to come.

On a different note, I would like to report here that for 2015 our concentration would be to clear the ageing appeals. We are targeting that by end of 2015, all cases in the Court of Appeal will not exceed more than one year. To this end, the sitting arrangements for the judges has been revised. There will be three (3) specialised panel for the New Commercial Court (NCC) and New Civil Court (NCvC) appeals, three (3) specialised panel for the Full Trial appeals, two (2) specialised panel for the Criminal appeals and a special panel to hear the application for leave to appeal. The case management will be conducted by the Judges of respective panel to ensure that the cases are ready for hearing and can be disposed of in an efficient manner within a reasonable time frame.

The number of sitting days are now fixed between ten to twelve days in a month. This is to allow the Judges to take a breather from hearing cases and at the same this would give them more time to read the records as well as to write their grounds. I am also pleased to place on record that all leave applications in civil and criminal cases are being heard in three months. Interlocutory appeals are



now already current, as they are being heard within the target of six months from the date of registration.

For the year 2015, we will continue to monitor such cases to ensure the said timeline is always observed. It is our target that appeals which originate from the Subordinate Courts, be it criminal or civil will be current by the end of the year 2014. This means that in 2015, we will have only 2014 cases. Appeals from the New Commercial Court (NCC), New Civil Courts (NCvC), Muamalat, Admiralty, Intellectual Property (IP) and Construction Courts have a target disposal deadline of six (6) months from the date of registration. Most of these cases have been disposed of within the time frame. Some did take longer than six (6) months, but mostly did not exceed a year. For the death penalty appeals, we are targeting to reduce the waiting period to one year from the earlier target of eighteen (18) months by the end of 2015. With regard to the appeal involving government servants which are mainly corruption cases, we will continue to give special attention to ensure all are being heard within the time frame of six months to one year.

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 2013. Thus in 2015, our focus will be to dispose of these old appeals by the end of 2015.

As a parting note, I would like to state here that albeit we have made continued progress in administering justice, we cannot rest on our laurels. Whilst timely and efficient justice is important, equally important is that the quality of justice must never be compromised in the quest for quantitative improvement. As we all know the world is rapidly changing, the Court of Appeal therefore needs to focus and fine-tune its collective judicial mind to keep in step with such changes, with the aim of enhancing its delivery system. At this juncture with the knowledge of our solid underpinnings, I am driven to look ahead.

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

### **Judges of the Court of Appeal**

1. Justice Mohd Hishamudin Haji Mohd Yunus
2. Justice Abdul Wahab Patail
3. Justice Zaharah Ibrahim
4. Justice Linton Albert
5. Justice Balia Yusof Haji Wahi
6. Justice Alizatul Khair Osman Khairuddin
7. Justice Aziah Ali
8. Justice Mohtarudin Baki
9. Justice Abdul Aziz Abd. Rahim
10. Justice Lim Yee Lan
11. Justice Mohamad Ariff Md. Yusof
12. Justice Mah Weng Kwai
13. Justice David Wong Dak Wah
14. Justice Rohana Yusuf
15. Justice Tengku Maimun Tuan Mat
16. Justice Mohd Zawawi Salleh
17. Justice Dr. Hamid Sultan Abu Backer
18. Justice Zakaria Sam
19. Justice Abang Iskandar Abang Hashim
20. Justice Umi Kalthum Abdul Majid
21. Justice Varghese George Varughese
22. Justice Ahmadi Haji Asnawi
23. Justice Idrus Harun
24. Justice Nallini Pathmanathan
25. Justice Dr. Badariah Sahamid
26. Justice Ong Lam Kiat Vernon
27. Justice Abdul Rahman Sebli
28. Justice Dr. Prasad Sandosham Abraham

## PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2014

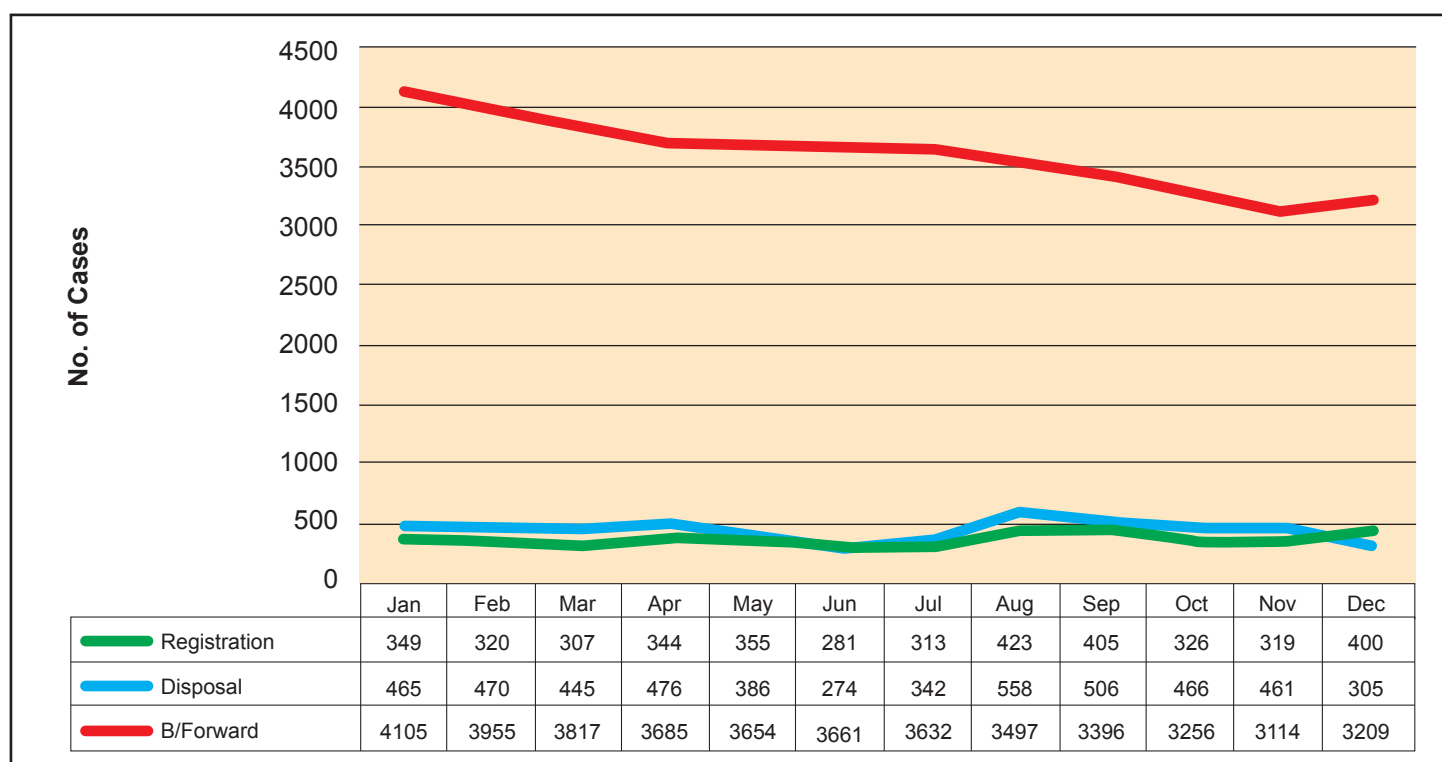
[1] The year 2014 has shown a further reduction of pending appeals in the Court of Appeal. As at 31 December 2014, the number of appeals pending had dropped from 4221 as at 31 December 2013 to 3209. In total, the Court of Appeal in the year 2014 had disposed 5154 appeals against a registration of 4142. Thus making the percentage of disposal against registration is 124%.

[2] As in the last four years, the appeals 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 six 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. In 2014, Construction Appeals was added as another category.

[3] The performance of the Court of Appeal in 2014 is shown in the graph below. From the graph shown it can be seen that the monthly disposal of appeals except, for the month of June and December has always been higher than the appeals registered.

NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2014  
FROM 1 JANUARY 2014 – 31 DECEMBER 2014



- [4] The total number of registered, disposed and pending appeals according to the categories as at 31 December 2014 can be seen from the chart below.

**TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CIVIL AND CRIMINAL APPEALS AS AT 31 DECEMBER 2014**

Subject Matter	Pending (as at 31.12.2013)	Registration 2014	Disposed 2014	Pending (as at 31.12.2014)	Percentage (Disposed against Registration)
Interlocutory (IM)	450	473	754	169	160%
Full Trial (FT)	2163	945	1923	1185	203%
Criminal	880	844	936	788	111%
NCC	165	357	307	215	86%
NCVC	559	1425	1189	795	83%
IPCV	4	26	11	19	42%
MUA		19	6	13	32%
ADMIRALTY		9	5	4	56%
CONSTRUCTION		44	23	21	52%
<b>TOTAL</b>	<b>4221</b>	<b>4142</b>	<b>5154</b>	<b>3209</b>	<b>124%</b>

- [5] As can be seen from the chart above, the substantial reduction in the number of pending appeals is attributed to the significant disposal of the Full Trial appeals. It also showed of a higher disposal of appeals against registration for IM and Criminal appeals.

**Interlocutory Matters Appeals (IM Appeals)**

- [6] In 2014, the Court of Appeal had successfully disposed a total of 754 IM Appeals as against registration of 473 appeals. As at 31 December 2014, there are only nine (9) pre-2014 appeals yet to be disposed since those appeals are related to the Full Trial appeals. However, all have been fixed for hearing till April 2015.

**INTERLOCUTORY MATTERS (IM) APPEALS 2014  
PENDING AS AT 31 DECEMBER 2014**

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	
2011							1			1					
2012															
2013	1	7	1		9										
2014	22	62	33	11	128	2	12		2	16	1	11	2	1	15
TOTAL	23	69	34	11	137	2	13		2	17	1	11	2	1	15



## Full Trial Civil Appeal

- [7] In 2014, the Court of Appeal had disposed 1923 Full Trial Civil appeals against registration of 945. The percentage of disposal against the number of appeals registered is 203%. The number of pending appeals was further reduced from 2163 as at 31 December 2013 to 1185 by the end of 2014. Out of 1185 appeals, two (2) were registered in 2010, 25 appeals registered in 2011, 81 appeals registered in 2012, 374 appeals registered in 2013 and 706 appeals registered 2014. In 2015, priority will be given in disposing these appeals.

In respect of Full Trial Civil appeals from the Subordinate Courts namely Code 04, they are almost current with only eight (8) appeals registered in 2013 while the rest are 2014 appeals. The target for 2015 is to dispose those cases within six (6) months.

### FULL TRIAL (FT) APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

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		2			2										
2011	4	19			23	1	1			2					
2012	9	68			77		3			3		1			1
2013	53	219		8	280	5	28			33	14	47			61
2014	169	290		103	562	9	59			68	26	48		2	76
TOTAL	235	598		111	944	15	91			106	40	96		2	138

## NCC Appeals

- [8] All 360 appeals registered in 2013 had been disposed, except 11 appeals which have been fixed for hearing till March 2015. With regard to 357 appeals registered in 2014, 153 had been disposed leaving a balance of 204, out of which 181 appeals are still within six-month timeline. For appeals exceeding the six-month timeline, the disposal of these appeals will be monitored to ensure its will not exceed more than a year.

### NEW COMMERCIAL COURTS (NCC) APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	18	12	3	3	18				
FEB	28	15	5	8	27		1		1
MAR	20	11	5	4	15	2	2	1	5
APR	20	14	6		18	1	1		2
MAY	34	23	3	8	31	1	2		3
JUNE	25	13	8	4	13	4	6	2	12
JUL	26	7	10	9	11	4	9	2	15
AUG	27	17	4	6	10	9	3	5	17
SEPT	32	15	7	10	6	13	4	9	26
OCT	39	23	10	6	4	22	8	5	35
NOV	34	21	7	6		21	7	6	34
DEC	54	41	6	7		41	6	7	54
TOTAL	357	212	74	71	153	118	49	37	204

## NCvC Appeals

- [9] All 1354 appeals registered in 2013 had been disposed except 17 appeals which have been fixed for hearing till March 2015. With regard to 1425 appeals registered in 2014, 647 appeals had been disposed leaving a balance of 778, out of which 669 appeals are still within the timeline of six (6) months.

### NEW CIVIL COURTS (NCvC) APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
<i>JAN</i>	131	54	68	9	114	5	10	2	17
<i>FEB</i>	99	32	54	13	87		9	3	12
<i>MAR</i>	116	42	55	19	100	3	9	4	16
<i>APR</i>	118	57	45	16	95	4	15	4	23
<i>MAY</i>	123	40	65	18	82	10	26	5	41
<i>JUNE</i>	90	30	51	9	52	4	31	3	38
<i>JUL</i>	103	52	41	10	50	14	33	6	53
<i>AUG</i>	169	64	87	18	43	34	76	16	126
<i>SEPT</i>	131	47	70	14	19	38	63	11	112
<i>OCT</i>	107	32	61	14	2	32	60	13	105
<i>NOV</i>	114	44	59	11	3	42	58	11	111
<i>DEC</i>	124	56	55	13		56	55	13	124
<b>TOTAL</b>	<b>1425</b>	<b>550</b>	<b>711</b>	<b>164</b>	<b>647</b>	<b>242</b>	<b>445</b>	<b>91</b>	<b>778</b>

## Muamalat Appeals

- [10] The Muamalat appeals are now current. Out of nineteen (19) appeals registered in 2014, six (6) had been disposed leaving a balance of (thirteen) 13 appeals.

### MUAMALAT APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
<i>JAN</i>	1		1		1				
<i>FEB</i>	1		1				1		1
<i>MAR</i>									
<i>APR</i>	2	1	1		2				
<i>MAY</i>	1		1				1		1
<i>JUNE</i>	2	2			2				
<i>JUL</i>	1	1			1				
<i>AUG</i>	1		1				1		1
<i>SEPT</i>	5	2	1	2		2	1	2	5
<i>OCT</i>	1	1				1			1
<i>NOV</i>	2	2				2			2
<i>DEC</i>	2	1		1		1		1	2
<b>TOTAL</b>	<b>19</b>	<b>10</b>	<b>5</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>4</b>	<b>3</b>	<b>13</b>

## Intellectual Property

[11] Similarly, Intellectual Property appeals are also current. All sixteen (16) Intellectual Property appeals registered in 2013 had been disposed. Out of 26 appeals registered in 2014, seven (7) had also been disposed of leaving a balance of nineteen (19) appeals.

### INTELLECTUAL PROPERTY (IPCV) APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN									
FEB	2		2		2				
MAR									
APR	3	1	2		3				
MAY	1	1					1		1
JUNE	1		1		1				
JUL									
AUG	1	1				1			1
SEPT									
OCT	7	2	5		1	1		5	6
NOV	5	3	1	1		3	1	1	5
DEC	6	1	1	4		1	1	4	6
TOTAL	26	8	3	15	7	6	3	10	19

## Admiralty

[12] There were nine (9) Admiralty Appeals registered in 2014. Out of this, five (5) had been disposed leaving a balance of four (4) appeals.

### ADMIRALTY APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN									
FEB									
MAR									
APR	3	3			1	2			2
MAY	2	2			2				
JUNE	1	1			1				
JUL									
AUG									
SEPT	1		1		1				
OCT									
NOV									
DEC	2	2				2			2
TOTAL	9	8	1		5	4			4



## Construction Appeals

- [13] This category of appeals was introduced in line of the setting up of the Construction Court in High Court Kuala Lumpur and Shah Alam. A total of 44 Construction appeals were registered in 2014. Out of this, 23 had been disposed leaving a balance of 21 appeals. Like other specialised appeals, the target timeline of disposing of these appeals is six (6) months from the date of registration.

### CONSTRUCTION APPEALS 2014 PENDING AS AT 31 DECEMBER 2014

CASES REGISTERED					DISPOSED	PENDING			TOTAL PENDING APPEAL
MONTH	IM	FT (WITNESS)	FT (AFFIDAVIT)			IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	2		1	1	2				
FEB									
MAR	2	1		1	2				
APR									
MAY	5	1	2	2	5				
JUNE	2	1		1	1	1			1
JUL	5	1		4	4			1	1
AUG	6	3	2	1	5		1		1
SEPT	3	2		1	2			1	1
OCT	5	2	2	1		2	2	1	5
NOV	11	5	4	2	2	4	3	2	9
DEC	3	1	1	1		1	1	1	3
TOTAL	44	17	12	15	23	8	7	6	21

## Leave Application

- [14] All Leave Applications filed in the Court of Appeal are disposed within the three-month timeline. In 2014, a total of 621 leave applications were registered in which 552 had been disposed. The remaining 79 are well within the three-month timeline.

Subject matter	Pending as at 31.12.2013	Registration 2014	Disposed 2014	Pending (as at 31.12.2014)	Percentage (Disposed against Registration)
Leave Application	110	621	652	79	105%

## Criminal Appeals

- [15] As at 31 December 2014, the number of Criminal appeals pending was reduced to 788 from 880 appeals in the previous year. Last year, the Court of Appeal had disposed 936 appeals against registration of 844 appeals. In 2014, like previous years the focus was in disposing death penalty appeals (Code 05(M)) and criminal appeals involving government

servant (Code 06B). This has resulted in successful disposal of 304 and 105 Code 05(M) and Code 06B respectively.

- [16] For 2015, the target is still to reduce the waiting period of Code 05(M) to not more than one (1) year and not more than six (6) months for Code 06B. The chart below showed the aging list of Criminal appeals as at 31 December 2014.

CRIMINAL APPEALS 2014  
PENDING AS AT 31 DECEMBER 2014

YEAR	WEST MALAYSIA					TOTAL	EAST MALAYSIA											
							SABAH					TOTAL	SARAWAK					TOTAL
	05 (XM)	05 (M)	06A	06B	09		05 (XM)	05 (M)	06A	06B	09		05 (XM)	05 (M)	06A	06B	09	
2010					3	3												
2011							1					1						
2012	4	8			6	18		1				1						
2013	19	61		5	34	119	4	10				14	1	1				2
2014	144	151		38	224	557	3	8	1	3	23	38	8	1		6	20	35
TOTAL	167	220		41	267	697	8	19	1	3	23	54	9	2		6	20	37

[17] In 2014, new initiatives and measures were undertaken by the Court of Appeal, namely:

- Beginning 5 August 2014, two new categories of Code were introduced in the Court of Appeal, namely Code 06 and 08(Review), are review application for criminal and civil appeals respectively. In 2014, twelve (12) applications were filed for Code 06 and one (1) was filed for Code 08(Review) which all had been disposed;
- In 2014 the Court of Appeal also has fully implemented the e-Filing system for Code 08 (application for leave to appeal) effective from 24 September 2014 whereby all documentations that are submitted and processed online. This contributed for speedy hearing of Code 08 application;
- In 2014 regular meetings and discussions were held with the Attorney General's Chambers, the Bar Council, the Prison Department and the Royal Malaysian

Police Force to discuss and resolve matters of common interest for the better administration of our justice system;

- Regular meetings were held with the Deputy Registrars of the High Court handling criminal appeals for the purpose of expediting the preparation of records of appeal; and
- Meetings were also held with the Sabah Law Association (SLA) and Advocates Association of Sarawak (AAS) to discuss matters in common regarding filing and preparation of appeal records to ensure all the records are in order.

## CONCLUSION

- [18] For 2015, the Court of Appeal's main aim is to reduce the waiting period of all appeals to be not more than one (1) year. With the strong support and cooperation from the stakeholders, it is well within our reach.

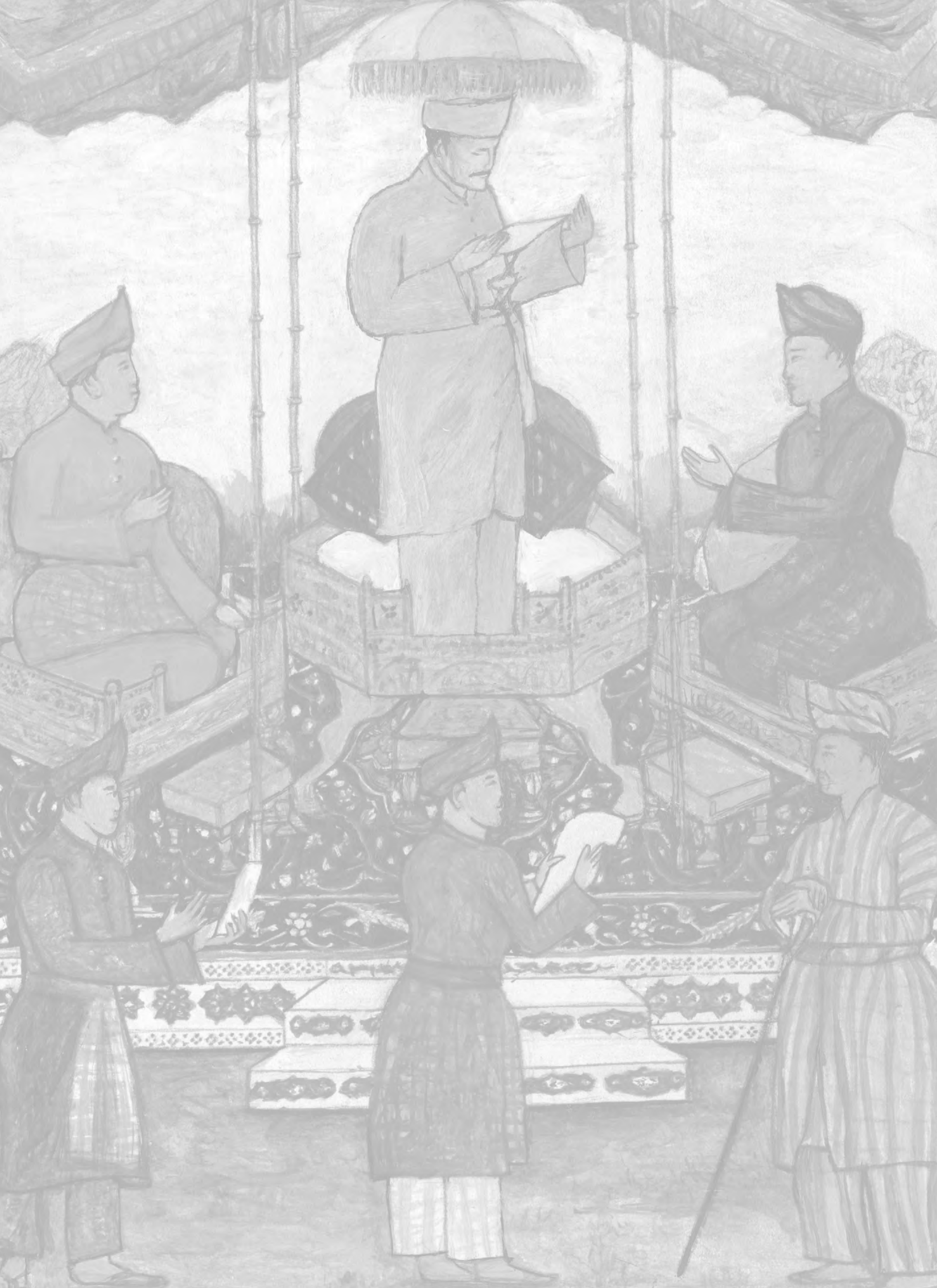


A panel of the Court of Appeal comprising Justices who were from the Bar.  
[L-R: Justice Mah Weng Kwai, Justice Mohamad Ariff Md Yusof and Justice Dr. Prasad Sandosham Abraham]





A mace - Penang High Court



# **CHAPTER 4**

## **HIGH COURTS**



## THE HIGH COURT OF MALAYA



The year 2014 has been another successful year for the High Court of Malaya. Overall, the High Court has maintained its respectable rate of disposal of cases. The backlog of cases before the High Court have gradually been cleared. Parties in civil litigation dispute can now look forward for the High Court's target in the next few years to dispose of civil cases within a year from the date of registration. Most of the cases in fact have been disposed of within that time frame. The statistics on the disposal and registration of cases are discussed in Appendix A of this Yearbook.

For the subordinate courts, we have already successfully achieved our target of disposing all cases within a time frame of one year from the date of registration.

For the High Court and the Subordinate Court, there has been a continuing effort taken to enhance its delivery system and court procedures. One of the significant steps taken is the standardisation of the case management procedure for all the High Courts in Malaya. In July 2014, the Chief Judge of Malaya's Practice Direction No. 2 of 2014 was issued for the purpose of streamlining the pre-trial case management procedures for the Judges and Registrars at the High Court of Malaya. Through this Practice Direction, there would be uniformity in the conduct of the pre-trial case management by the Judges and Registrars. It has also benefitted the lawyers and litigants to better prepare and manage their cases well in advance before the trial process.

In order to address the delay in the preparation of the records of criminal appeal before the superior courts because of delay in transcribing the notes of proceedings recorded by CRT recording of the trial Courts, transcribers from private companies were engaged and paid by the Courts to assist in the transcription of the notes of proceedings. With this action taken, criminal appeal before the Appellate Court can be fixed and heard within six (6) months from the date of the disposal of cases by the trial Court.

The High Court of Malaya is also looking forward to introduce a system of E-Bidding process of its public auction. The system aims to facilitate and improve the Court's current procedure of public auction which for some time had received complaints from the public of its inefficiency and lack of transparency. A working committee has been set up under the Chief Registrar's Office to supervise the development of this system. It is hoped that with the system in place the public auction conducted by the Court will be more accessible to the public and be more transparent.

For the subordinate courts, a revised version of the compendium of personal injury awards for running down cases was issued in 2014. Due credit must be given to the Malaysian Bar for their assistance in coming up with this compendium which serves as a guideline for Judges and Judicial Officers in providing a standard amount of personal injury awards. Nevertheless, this compendium only serves as a guideline and does not bind the Court in arriving at its decision. Disputing parties are now encouraged to take advantage of this compendium in settling their disputes without going for trial to arrive at an early settlement of the cases.

To further enhance the knowledge and competency of the Judges and Judicial Officers, the Judicial Academy and the Chief Registrar's Office have continued to organise courses and seminars on various subjects of interest in law. Most of the courses and seminars are conducted in-house wherein our own Judges of the Appellate Courts were the lecturers and moderators to impart their knowledge and experiences to the Judges and Judicial Commissioners of the High Courts. It is also noted that a revised and updated version of the Judiciary's Bench Book on civil and criminal procedure have been finalised and distributed to all courts in Malaysia. The Bench Book is a quick guide for Judges and Judicial Officers on various subjects of the law that they can make reference to in discharging their judicial duties. Several Judges and Judicial Officers have contributed significantly in the revising and the preparation of new topics included in the Bench Book that are relevant in the civil and criminal proceedings in court.

For the year 2014, the Judges and Judicial Officers have given their best in discharging their judicial duties to dispose of the cases fairly and expeditiously. I have to put on record here that the Managing Judges comprising our members of the Appellate Court have greatly assisted me in the effective management of the disposal of cases in both the High Courts and Subordinate Courts. With the assistance of the Managing Judges, and the full cooperation of the Judges and Judicial Officers, I am confident that the High Courts and the Subordinate Courts will further improve on their performance and instill public confidence in the Judiciary.

The statistics on disposal of cases for 2014 are as per Appendix A.

**Justice Zulkefli Ahmad Makinudin**  
Chief Judge of Malaya

## JUDGES OF THE HIGH COURT OF MALAYA

- |   |   |
|---|---|
| 1. Justice Su Geok Yiam                       | 28. Justice Mary Lim Thiam Suan           |
| 2. Justice Zainal Adzam Abd. Ghani            | 29. Justice Kamardin Hashim               |
| 3. Justice Lau Bee Lan                        | 30. Justice Yaacob Haji Md. Sam           |
| 4. Justice Siti Mariah Haji Ahmad             | 31. Justice Zabariah Mohd. Yusof          |
| 5. Justice Wan Afrah Dato' Paduka Wan Ibrahim | 32. Justice Akhtar Tahir                  |
| 6. Justice Mohamad Zabidin Mohd. Diah         | 33. Justice Hue Siew Kheng                |
| 7. Justice Abdul Halim Aman                   | 34. Justice Noraini Abdul Rahman          |
| 8. Justice Nurchaya Haji Arshad               | 35. Justice Nor Bee Ariffin               |
| 9. Justice Zulkifli Bakar                     | 36. Justice Yeoh Wee Siam                 |
| 10. Justice Mohd Zaki Md. Yasin               | 37. Justice Amelia Tee Hong Geok Abdullah |
| 11. Justice Mohd Azman Husin                  | 38. Justice Has Zanah Mehat               |
| 12. Justice Mohd. Sofian Tan Sri Abd. Razak   | 39. Justice Hasnah Dato' Mohammed Hashim  |
| 13. Justice Abdul Alim Abdullah               | 40. Justice Harmindar Singh Dhaliwal      |
| 14. Justice Ghazali Haji Cha                  | 41. Justice Hadhariah Syed Ismail         |
| 15. Justice John Louis O'Hara                 | 42. Justice Nik Hasmat Nik Mohamad        |
| 16. Justice Rosnaini Saub                     | 43. Justice Hanipah Farikullah            |
| 17. Justice Suraya Othman                     | 44. Justice Asmabi Mohamad                |
| 18. Justice Noor Azian Shaari                 | 45. Justice See Mee Chun                  |
| 19. Justice Ahmad Zaidi Ibrahim               | 46. Justice Samsudin Hassan               |
| 20. Justice Mariana Haji Yahya                | 47. Justice Lee Swee Seng                 |
| 21. Justice Azman Abdullah                    | 48. Justice Abdul Karim Abdul Jalil       |
| 22. Justice Hinshawati Shariff                | 49. Justice Kamaludin Md. Said            |
| 23. Justice Mohd Yazid Haji Mustafa           | 50. Justice Ahmad Nasfy Haji Yasin        |
| 24. Justice Zainal Azman Ab. Aziz             | 51. Justice Teo Say Eng                   |
| 25. Justice Zamani A. Rahim                   | 52. Justice Rosilah Yop                   |
| 26. Justice Zaleha Yusof                      | 53. Justice Hashim Hamzah                 |
| 27. Justice Halijah Abbas                     | 54. Justice Azizah Nawawi                 |



## JUDICIAL COMMISSIONERS OF THE HIGH COURT OF MALAYA

1. Judicial Commissioner Dr. Hassan Ab. Rahman
2. Judicial Commissioner Zakiah Kassim
3. Judicial Commissioner Choong Siew Khim
4. Judicial Commissioner Nurmala Salim
5. Judicial Commissioner Siti Khadijah S. Hassan Badjenid
6. Judicial Commissioner Mohd Zaki Abdul Wahab
7. Judicial Commissioner Gunalan Muniandy
8. Judicial Commissioner Vazeer Alam Mydin Meera
9. Judicial Commissioner Wong Teck Meng
10. Judicial Commissioner S.M. Komathy Suppiah
11. Judicial Commissioner Rozana Ali Yusoff
12. Judicial Commissioner Abu Bakar Katar
13. Judicial Commissioner S.Nantha Balan E.S. Moorthy
14. Judicial Commissioner Abu Bakar Jais
15. Judicial Commissioner Che Mohd Ruzima Ghazali
16. Judicial Commissioner Ab Karim Haji Ab Rahman
17. Judicial Commissioner Lim Chong Fong
18. Judicial Commissioner Azimah Omar
19. Judicial Commissioner Nordin Hassan
20. Judicial Commissioner Mat Zara'ai Alias
21. Judicial Commissioner Azmi Ariffin
22. Judicial Commissioner Noorin Badaruddin
23. Judicial Commissioner Collin Lawrence Sequerah
24. Judicial Commissioner Wong Kian Kheong
25. Judicial Commissioner Azizul Azmi Adnan
26. Judicial Commissioner Mohamed Zaini Mazlan
27. Judicial Commissioner Dr. Sabirin Ja'afar
28. Judicial Commissioner Dr. Choo Kah Sing

## THE HIGH COURT OF SABAH AND SARAWAK



As in the past years the Courts in Sabah and Sarawak in 2014 continues, as a matter of policy, to focus on two primary objectives, firstly, for the expeditious disposal of cases without sacrificing justice and secondly, facilitating access to justice for the rural folks under the Mobile Court and Mobile Courtroom program.

In order to attain this twin objectives, reliance on modern technology became the standard working culture not only for the convenience of Judges and Judicial Officers but also for the lawyers and other Court users.

For the first objective, features in the Integrated Computerisation System (ICS) such as e-filing, e-payment, e-appeal and e-case management review are now very much in use. This is additional to the monitoring features utilised as the management tools. Delays in fixtures of hearings, decisions and grounds of judgments as well as the return of cause papers are no longer an issue.

Recent addition to the ICS is the auto monitoring on the use of judicial times by Judges and Judicial Officers via the auto time sheets daily and weekly reports. This feature helps to reduce wastage of judicial times by the relevant persons.

And soon to be added will be the everyday auto monitoring of punishments. This feature will directly alert High Court Judges on the punishments imposed by the Subordinate Courts. Reliance on daily news reports will be history. Thus, where a Judge thinks that the punishment imposed by the Subordinate Court on a particular case is inadequate or excessive based on the facts and circumstances given, he may revise the case in the exercise of his revisionary power if there is no appeal filed by the Prosecution or the Defence.

For the second objective, Judicial Officers in Sabah continues to do overtimes on weekdays and sacrificed their weekends in order to hold inquiries on pending applications for endorsements of late registration birth certificates. Twice a month, for the same purpose they also organised visits to rural villages including overnight stays under the Mobile Court programme.

The Mobile Courtrooms in customised buses is time and costs savers for both the Courts and users from the outlying areas where there are no courthouses and where transportation to the nearest courthouses is non-existence.

For 2015, the Courts of Sabah and Sarawak will give added emphasis to criminal and civil cases related to environmental protections. Expeditious disposal of tourist-related cases will also be given priority.

Workshops on environmental issues will be organised for Judges and judicial officers in order to sensitise them to the importance of environmental protections including the protection of wild life and marine life.

And in order to assist foreign tourists and those involved in tourism-related industry, pamphlets in various languages will be made available at hotels, tour operators and tourist information centres on the procedure to make claims in Small Claims court. In addition, names of contact persons from the Courts will also be given to facilitate quick communication.

For completeness the statistics on disposal of cases in the Courts of Sabah and Sarawak for 2014 are as per Appendix B.

**Justice Richard Malanjum**  
**Chief Judge of Sabah and Sarawak**

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

1. Justice Sangau Gunting
2. Justice Nurchaya Haji Arshad
3. Justice Yew Jen Kie
4. Justice Rhodzariah Bujang
5. Justice Supang Lian
6. Justice Stephen Chung Hian Guan
7. Justice Ravinthiran Paramaguru
8. Justice Chew Soo Ho
9. Justice Lee Heng Chong

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

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



## PERSPECTIVES OF JUDGES OF THE HIGH COURT

### LIFE AS A TRIAL JUDGE

By: Justice Hasnah Dato' Mohammed Hashim

If one were to take a snapshot of a typical High Court judge, say about fifteen years ago, that person would be a male, most likely over the age of 50 and is either of Malay or Indian ethnic origin. He would most likely be from a middle class background, went to a good school and proceeded to one of the main universities where his brilliant academic achievements takes him to further legal studies or one where he goes straight into one of the Inns of Courts in the United Kingdom.

Today however, the demographical structure in the Judiciary is somewhat different. It is not unusual for the snapshot of a Malaysian High Court judge today, to reveal a woman of about 50 from more or less the same ethnic and educational background as the aforementioned male judge.

With our existing melting pot of cultures and races in Malaysia, the diversity of judges on the Malaysian bench is even greater. The ratio of female as opposed to male judges is still impressive and the Malaysian Judiciary stands tall amongst the ranks of other Judiciaries around the world, since women judges make up more than half of the judges in the Superior Courts where there are now 45 women as opposed to 81 male.

Many a time the same question has been asked: What is it really like being a judge, especially if one is a woman?

My answer to the above question is that it is no mean feat.

A woman judge's judicial duties would constantly compete with her domestic ones and each would have equal dominance in her life. The trick of course is to find that perfect balance, whereby she can do both, judiciously and competently.

Thus this conundrum begs the next question : "What qualities then are necessary in a judge? Man or woman?"

In speaking about what a model judge should be, I have this to say:

Speaking for myself, it will begin with the oath taken by me upon my appointment which is to decide fairly and to do the right thing to all manner of people and to protect the Constitution.

Not many people really know what life on the bench really entails. I would say that it is certainly not meant for the lily-livered. Unlike that of a lawyer, whose working life may involve long hours and pressures, a judge's 'legal' life is almost 'in perpetuity' with a constant workload. It has been argued that the hours a judge put in may not be quite as long as those of a lawyer in a difficult trial – I disagree because our long hours are continuous; at the end of a long day in court when the case is over, when the lawyers leave for drinks with friends, the judge trudges home and that is when her real work begins – where she has the critical job both of writing a judgment and at the same time, minding the hearth.

The pressure of keeping within the time frame of judgment writing is indeed difficult especially after a long day on the bench. The judge has to find a path through the thicket of issues presented by parties. Clearly the objective and impartial search for truth is not an easy one. However the strong sense of achievement after reaching a solution to a problem is infinitely satisfying.

One of the most important qualities necessary in judgeship is that of integrity. This calls for a firm insistence on values and principles and upholding the rule of law.

The second most important quality in a judge is that knowledge of the law is a prerequisite.

Lord Radcliffe who was himself regarded as an excellent judge, had said that a good judge is one who is "wise, learned and objective."<sup>1</sup>

<sup>1</sup> Radcliffe "The Lawyer and his Times : Some Collected Papers [1968] 265 at 276."

To this is added, knowledge about the social, cultural and political influences and the relationships of the law to society both in the present context and in the past. Thus a keen understanding of human affairs and a heavy dose of common sense is helpful.

In this context, I shall speak a little about objectivity. The term implies judicial neutrality and impartiality.

Along with this comes the necessity of the judge possessing a disciplined work ethics, one where the judge delivers her judgments on time. There is no more fear nowadays of any long delays in giving judgment and there would certainly be no 'untoward' incidents happening (such as Hamlet's suicide due to the law's delay!) to be sure; However it is good to be reminded time and again that there can be no quicker way to lose the public's confidence than to have a lethargic bench or an indifferent judge hearing a case or writing a judgment, especially if that judge is a judge of first instance.

In this, may I say a word or two about the need for having a good temperament. Undoubtedly our work load in the High Court is relentless. But we should always be mindful of why we are there in the first place.

In other words, the trial judge must not be combative but should be calm and stay above the fray. The judge's courtesy to lawyers should also be extended to litigants.

The above traits are common enough. But in reality, does the public really know what a trial judge really do?

I shall speak about the trial judge, who presides over hearings alone. In the High Court, a trial judge presides over civil or criminal trials, or both.

This involves the hearing of witnesses, followed by submissions and a judgment. The role of a judge in a criminal trial is much the same as that in a civil trial. Fortunately we have done away with the jury system in criminal trials, simply because I am told by very senior judges that the summing up on the facts and directions on the law for the jury was really challenging. Undoubtedly the judge in a criminal trial, with or without a jury, has to be extremely circumspect when dealing with criminal law concepts, since the decisions are a matter of life and death.

It must be stressed that the trial judge's task is to be alert as to the evidence adduced and the rules applicable.

One of the most critical aspects of a trial judge's judicial function is to assess whether a witness is telling the truth. Although sometimes a person's demeanour can be gauged or discerned, it is not always a reliable guide to an important question as to his credibility. Thus, trial judges must be circumspect in making conclusions about a person's credibility based upon impressions, because making adverse findings about a person's credibility would have far-reaching consequences; all the more when the appellate courts are slow in interfering with such findings, based as it were, on the trial judge having seen and heard the witness first hand.

Thus my view is that it is necessary that a trial judge explains how he or she formed his or her opinion. A good pointer would be to look for more objective and solid indications when resolving contradictory versions of events. A precise reconstruction of the story may point the way, as would inconsistencies.

In the case of a civil trial, the trial judge has a colossal amount of reading materials to go through including submission of counsel, affidavits and oral presentations of evidence and arguments.

The importance of the work of a trial judge (whether criminal or civil) is sometimes underestimated. One can speak lordly about the importance of legal issues on appeal; however if the facts are not correctly found, the appeal stands on a flimsy footing.

As Sir Harry Gibbs said :-

"More injustices are created by erroneous findings of fact than by errors of law."<sup>2</sup>

Thus by and large, the role of a trial judge whether a man or woman is much the same : the only difference being that as wives and mothers, we have to multi-task and with quiet confidence, take things in our stride.

As UK's Supreme Court Judge Baroness Brenda Hale had said in a speech, to female members of the Judiciary :-

" I, too, used to be sceptical about the argument that women judges were bound to make a difference, because women are as different from one another as men, and we should not be expected to look at things from a particularly female point of view, whatever that might be. But I have come to agree with those great women judges who think that sometimes, on occasions, we may make a difference..."

<sup>2</sup> Gibbs "Judgement Writing" (1993) 67 Australia Law Journal 494

## THE DETERRENCE HYPOTHESIS FOR CAPITAL PUNISHMENT – FACT OR MYTH?

~ by Justice Harmindar Singh Dhaliwal

The death penalty or capital punishment is the judicially ordered execution of a prisoner as punishment for a serious crime, often referred to as a capital offence. As a method of punishment, the death penalty is as old as civilization itself. The Babylonian's Code of *Law of Hammurabi*, developed by the king of one of the world's first empires, dated back from the third or second millennium before Christ. This Code provides one of the earliest written statements on capital punishment, that is, "an eye for an eye" or retributive justice. Both the Greeks and the Romans invoked the death penalty for a wide variety of offences. Socrates and Jesus were perhaps the most famous people ever condemned for a capital crime in the ancient period.

In medieval Europe, a wide variety of offences could be punished by death, including robbery and theft, even if no one was physically harmed. Specific crimes would warrant specific methods of execution. Suspected witchcraft, religious heresy, atheism or homosexuality would be punished by burning at the stake. The methods of execution would also depend upon the social class of the condemned. In England, by 1700, Parliament had enacted many new capital offences which resulted in hundreds of persons being put to death each year.

By the 1750s, reform of the death penalty began in Europe. It was championed by the likes of the Italian political theorist Cesare Beccaria, the French philosopher Voltaire, and the English law reformers Jeremy Bentham and Samuel Romilly. They argued that the death penalty was unjust, needlessly cruel and unnecessary as a deterrent. They defended life imprisonment as a more rational alternative.

Fast forward to the 21<sup>st</sup> century, serious crimes still persist. Alarming, crimes now involve more violence with a clear disregard and disdain for

human compassion. How should a just society, with reasonable laws fairly enforced, respond to those who have broken the law? Most people would agree that society must respond with punishment.<sup>1</sup> Punishment, itself, has at its core the intentional infliction of pain or harm.<sup>2</sup> Since punishment involves inflicting a pain or deprivation similar to that which the perpetrator of a crime inflicts on his or her victim, there must be some moral, legal, political or even ethical justification.

According to punishment theorists, the justification for punishment, generally, has been fashioned on three broad fronts. Some justifications appeal to the demands of justice and considerations of desert – to the criminal deserving punishment or to the victims or other members of society deserving state sanctioned retribution. Some justifications appeal instead to the utility and especially to the prospect of deterrence – to the thought that the threat of punishment, or punishment itself, will work to prevent crime. Finally, some appeal to punishment's role in establishing, expressing, or affirming society's commitment to the judgments embodied in the law. Sometimes these are combined to fashion a theory that appeals to considerations of justice and desert as well as to the importance of deterrence and the role punishment can play in expressing moral disapproval.

Strong passions often arise in a discussion on whether the penalty of death holds up to all these theories of punishment. Such passions can often colour our judgments. However, we do need to explore the issue of capital punishment by asking some fundamental questions about punishment. Broadly, we need to ask why punishment is necessary. What are the goals and limits of punishment? And, is one goal of punishment more in keeping with the death penalty than another? For example, if our only purpose in punishing a criminal was to deter him

<sup>1</sup> Other responses could be restitution, reparations and reconciliation.

<sup>2</sup> Stanley Benn, "Punishment" *The Encyclopedia of Philosophy*, 1967, Macmillan at p 29; Richard Wasserstrom, "Capital Punishment as Punishment: Some Theoretical Issues and Objections", *Midwest Studies in Philosophy*, 1982, p 476.



or her from committing the crime again, would not life imprisonment serve just as well as execution?

The assumption of deterrence forms the most important foundation for support of capital punishment. It is frequently asserted that the death penalty is justified as it prevents the criminal from repeating his crime and deters crime by discouraging would-be offenders. Obviously, inflicting the death penalty would guarantee the condemned person will commit no further crimes. This is more of an incapacitative effect rather than a deterrent one. However, would the death penalty deter would-be offenders? The tenet that harsher penalties could substantially reduce crime rates rests on the assumption that criminals weigh the costs and benefits of their contemplated acts. Many crime strategies exhibit this belief. Even large segments of crime literature and many court judgments on sentencing regularly appear to employ this thinking.

In the early nineteenth century, picking pockets was among the 220 capital crimes in England. Thousands were executed before the attending masses. Undeterred by the fate of their colleagues, pickpockets routinely worked the crowds at public hangings.<sup>3</sup> The irony of this state of affairs begs fundamental questions: in what way does increased punishment address crime problems? Do criminals really make informed or rational decisions?

It now appears to be accepted view that most violent criminals perceive no risk of apprehension or have no thought about the likely punishments for their crimes. If a crime is premeditated, the criminal would have gone to great lengths to escape detection, arrest and conviction. The severest punishment would not act as a deterrent. Even if it is not premeditated, the question of deterrence of any death penalty becomes less relevant. In most capital crime cases, the desired response to such prevention strategies is inhibited because of drugs, alcohol, psychosis, ego or revenge. In such moments of stress or weakness, the criminal is

hardly likely to undertake a cost-benefit analysis. If crimes are indeed committed by rational and informed persons, then long-term imprisonment would be severe enough to deter crime.

It is therefore not surprising that most scientific studies have failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. A survey conducted by the United Nations in 2002 concluded: "...it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment."<sup>4</sup> In USA, studies by Thorsten Sellin showed no demonstrable deterrent effect of capital punishment even during its heyday.<sup>5</sup> Many years later a study carried out by David Anderson in the USA showed that at the time of their offences, 76% of the criminals in the sample study and 89% of the most violent offenders were not cognizant of either the possibility of apprehension or the likely punishments associated with their crimes.<sup>6</sup>

Another significant study carried out in 1995 by Professors Michael Radelet and Ronald Akers polled top criminologists in the US which research revealed the criminologists believed the death penalty does, or can do, little to reduce rates of criminal violence.<sup>7</sup> The study was repeated in the late 2000's and those polled were asked to base their conclusion on existing empirical research. The percentage of expert criminologists who believe that the death penalty is not a deterrent rose to 88.2%; those who felt that it does act as a deterrent fell to 5.3% when compared to the 1995 study.<sup>8</sup>

It has been argued, on the other hand, that the death penalty can be justified as the criminal had voluntarily assumed the risk of a legal punishment that he could have avoided by not committing the crime. Nevertheless, there remain the moral objections, as amply demonstrated in the cases of drug mules prosecuted for drug trafficking, that

<sup>3</sup> David Anderson, "The Deterrence Hypothesis and Picking Pockets at the Pickpocket's Hanging", 2000, <http://ssm.com/abstract=214831>.

<sup>4</sup> Roger Hood, *The Death Penalty: A World-wide Perspective*, Clarendon Press, 3rd Ed, 2002, p 230

<sup>5</sup> Kelin, Frost & Filatove, "The Deterrent Effect of Capital Punishment: An Assessment of the Evidence" in Bedau, *The Death Penalty in America*, 3rd Ed, 1982 at pp 138-140.

<sup>6</sup> David Anderson, "The Deterrence Hypothesis and Picking Pockets at the Pickpocket's Hanging", 2000, <http://ssm.com/abstract=214831>

<sup>7</sup> Michael Radelet, Ronald Akers, "Deterrence and the Death Penalty: The View of Experts", 87, *J. Crim. L. & Criminology*, (1996-1997)

<sup>8</sup> Michael L. Radelet, Traci L. Lacock, "Do Executions Lower Homicide Rates? The Views of Leading Criminologists", 99 *J. Crim. L. & Criminology*, (2009)

the death penalty can be excessive as retribution and by most accounts a failure as a deterrent. It would appear that these people are executed not as retribution but rather for a fleeting moment of immaturity, stupidity and greed. In short, the punishment does not quite fit the crime.

The death penalty, in this way, also obscures the true causes of crime and distracts attention from social measures that are needed for its control. Politicians and governments who advocate executions, instead of dealing with the underlying or root causes of crime such as poverty or injustice, deceive the public and mask their own failure in coming up with the right anti-crime measures.

Perhaps the time is overdue for a thoughtful discussion on whether the death penalty should be retained or whether life in prison without release for the most heinous of crimes is a viable alternative penalty. Empirical research has revealed the deterrence hypothesis for a myth. If this is accepted by society then perhaps there will be less public and political endorsement of the death penalty. Many now believe that what may really act as a deterrent to criminal violence is not the threat of extreme punishment but the strict enforcement of just laws and certainty of punishment. Maybe it is time to shift our focus elsewhere rather than merely on extreme or mandatory punishment every time crime rates go up.

## WRITING QUALITY JUDGMENT: A CHALLENGING TASK QUANTITY WITHOUT COMPROMISING QUALITY

By Justice Hadhariah Syed Ismail

### Introduction

The writing of a judgment is one of the most important and time consuming tasks performed by a Judge. A well written judgment will promote the administration of justice. Conversely, a badly written judgment will reflect badly on the judiciary.

A judgment is written not only for the benefit of the parties to the judgment but also for the benefit of the legal profession, the judges and the appellate courts. The losing party is the primary focus in any judgment. The losing party is entitled to have a candid explanation of the reasons why it lost its case. A judgment is written not only to enable the parties to exercise their appellate rights but also to uphold the intellectual integrity of the system of law and the logical reasoning in arriving at a particular decision. Lawyers also examine written judgments to understand the reasons for the decision and to confirm the impartiality of the judiciary.

### Reasoned Judgment

Under the present practice directions, a Judge is given eight weeks to write a judgment. The more cases a judge disposed, the more judgment he has to write. Some cases are complex; therefore the time taken to write a judgment for such a complex case could be more than eight weeks. Invariably, delay in writing one judgment leads to accumulated unwritten judgments. Writing judgments can therefore be very stressful for a Judge. This is even more so when the performance of a Judge is assessed on how many judgments he had written and published. More importantly, it is not the number of judgments that have been written but it is the quality of the judgments that should not be compromised.

It is globally accepted that judgments should be brief, simple, clear, comprehensive, concise and

comprehensible. The length of a judgment is not important. The length depends on the requirement of each particular case which a Judge had decided. However, as a general rule, a long judgment is not appreciated; particularly so when such a judgment is unclear in its reasoning and difficult to comprehend. What is required is a reasoned judgment rather than the reason for the judgment.

### A Speaking Judgment

It is appreciated that each Judge has his or her own style of writing and usage of language. Some Judges are better than others. However, one important requirement of any written judgment is that it must be a speaking judgment. What this mean is that firstly, the judgment must explain the decision to the parties concerned and it must be clear in the reasoning for the decision for the appellate court to consider the correctness or otherwise of the decision. It is said that the soul of a judgment is the reason for arriving at the findings. To achieve this, a judgment must be well organized.

A well organised judgment serves to achieve two objectives. Firstly, it will help the readers to find their way through the judgment easily and quickly. Secondly, it will make interesting reading from beginning to end. A well written judgment should demonstrate the cohesion and linkage of the preceding part of the judgment with the succeeding one in such a way that the reader is able to know effortlessly how and why the Judge has reached the given conclusion.

### Basic Structure of a Judgment

A well organised judgment will have a basic structure as follows: (a) it will have an introduction or opening statement which explain what kind of case it is about and what is the cause of action. The opening statement also will state the roles of



the plaintiff and the defendant in the trial and the issues raised before the court; (b) the judgment must also state the relevant facts to the issues that are to be determined. If it is possible the narration of the facts must be brief and arranged in chronological order; (c) then, the judgment must identify and state the issues that require determination by the judge; (d) this will be followed by a brief statement of the arguments by the parties. Normally the primary focus is on the losing parties' position. Therefore, the arguments or contentions by the losing parties must be stated first. The judgment should identify the flaws in the losing parties' position and this must be supported with sufficient reasons to show that they are not arbitrary or capricious; and (e) finally, the judgment must contain the judge's finding and conclusion. This decision of the judge must be stated in the clearest terms leaving no scope for ambiguity.

In writing a judgment a judge should avoid quoting extensively from the pleadings of the parties or their evidence. Reference to case law in the judgments must be carefully done. Only case laws which are relevant to the issues should be referred to and any quotation from the case law should be kept to the bare minimum. It is very important that in citing a case law or quoting from it, the judge must make sure that the citation as to the year, volume, name of the report and page of the quoted passage is correct.

A judge should avoid making criticism of the parties or their witnesses or person not a party to the litigation in his written judgment, unless it becomes necessary for justifiable reasons. Even so, the language should be of utmost restraint, sober and dignified.

The use of headings and subheadings is always helpful for the purpose of arranging the judgment in a cohesive manner and for the convenient of its readers. The headings and subheadings will help to break the monotonous reading of the continuous text and enable the readers to reach that part of the judgment which interest them most.

To assist judges in writing well organised and readable judgments, the Judiciary had conducted training courses for the judges. One of the recent courses was "Judge Craft and Judgment Writing". The objective is to enhance the judges' judgment writing ability and to educate the judges on some of the common errors committed during judgment writing, such as failure to identify issues, failure to provide reason or basis for finding or failure to properly evaluate the evidence.

## Conclusion

The above are some of the challenges faced by a judge in writing a good and quality judgment. There is no hard and fast rule and also there is no exhaustive guidelines for writing of a quality judgment. The only way is to continue to improve one's skill of judgment writing by accepting constructive criticism and hard work.



The Penang High Court



## MOBILE COURT IN SABAH

~ Kg. Inarad, Tongod, Sandakan

Access to justice has not always been easy to the people living in the rural areas of East Malaysia. In order to provide equal access to justice, the Chief Judge of Sabah & Sarawak Justice Richard Malanjum initiated the idea of the 'mobile court'. The programme was launched on 22.3.2007.

The mobile court would usually comprise Session Court Judges, Magistrates and staff. Government departments such as the National Registration Department, the hospital and the Information Department are also invited to join mobile courts operations.

The journey back and forth especially in remote areas of Sabah and Sarawak is undoubtedly tough and tiring. Nonetheless, it has never hindered judges and judicial officers in giving their best to serve the rural folks.

### **Kg. Inarad, Tongod, Sandakan**

The Mobile Court team visited Kg. Inarad on 8.11.2014.

This village is located in the Tongod District, Sandakan. The nearest High Court to Kg Inarad is in Sandakan which is about 230 km away. The journey from Sandakan to Kg Inarad by road takes

eight hours. There is, however, a circuit court in Pekan Beluran approximately 120 km away but it takes almost five hours of travel by road. The road from Pekan Tongod to Kg Inarad is a combination of gravel, red soil and port holes.

When the team reached Kg Inarad, inquiries were held on pending applications for endorsement of late registration of birth. This is to enable villagers to authenticate birth certificates. Civil and criminal matters are notably rare.

The involvement of the Chief Judge of Sabah and Sarawak and High Court Judges/Judicial Commissioners during this trip had eased the hearings of applications as unhappy applicants could file revisions and those could be disposed of at once.

The mobile court which visited Kg. Inarad saw the participation of officers from the National Registration Department and the Duchess of Kent Hospital, Sandakan.

Apart from disposing Birth Extract applications, members of the mobile court also took part in preparing meals for the villagers and providing other social services such as haircut. These are part of the courts' social responsibility to the society.



Justice Richard Malanjum during a visit to one of the village houses during the programme.



The mobile court spent about eight to nine hours at the village. The session started around 9 am and ended by 2 pm. On the way back to their respective stations, members of the team had to go through muddy and slippery roads due to the monsoon rain.

The mobile court team is recipient of the villagers' warmth and hospitality. That in itself is rewarding.

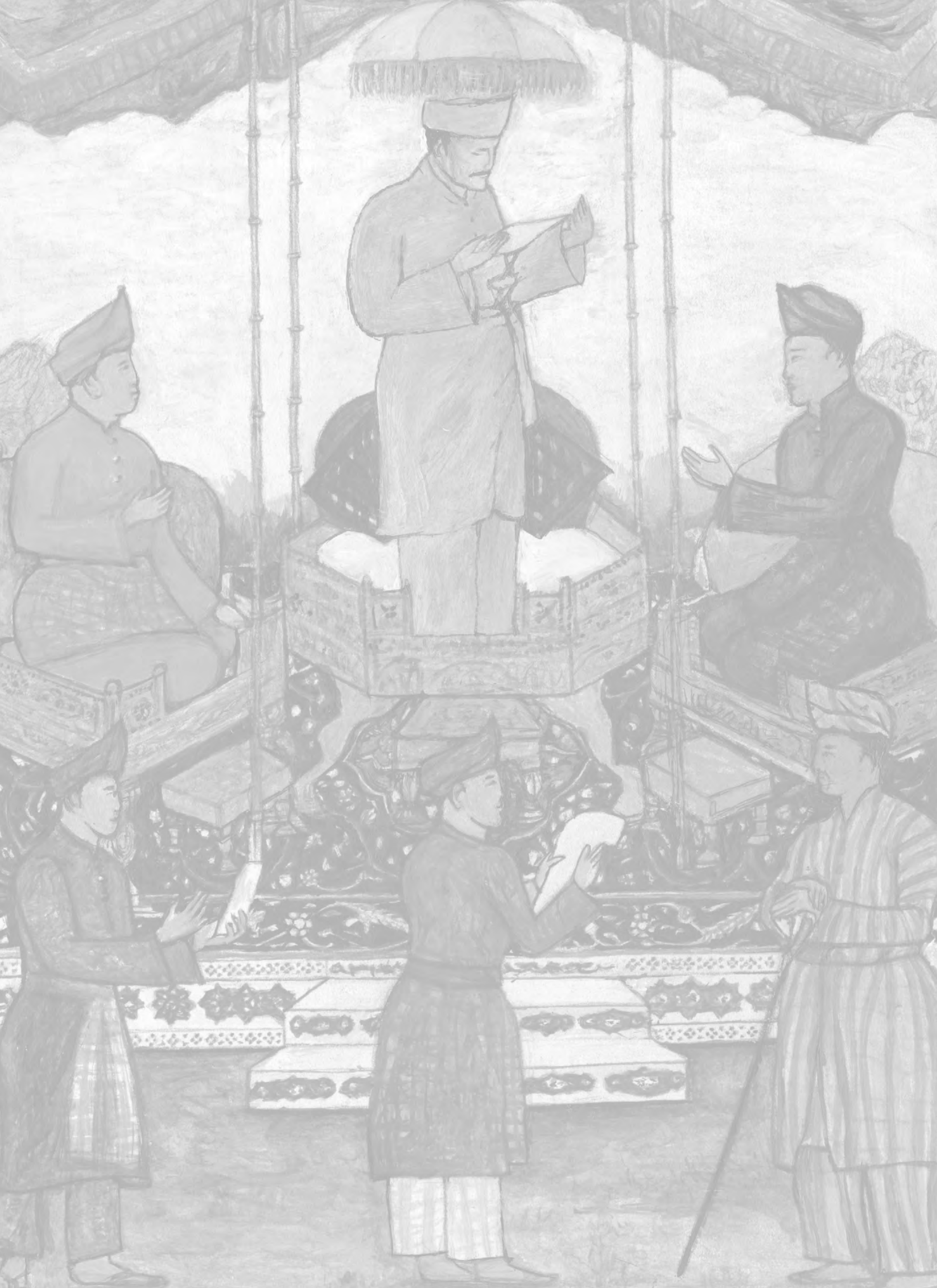
The mobile court programme reflects a caring society and its members will endeavour to dispense justice to the people tenaciously.



Judicial Commissioner Douglas C. Primus Sikayun with an applicant for Birth Extract under Section 23 of Sabah Birth & Death Registration Ordinance (Cap 123).



The Mobile Court team having lunch after the applications were heard and disposed of (L-R): Judicial Commissioner Azhahari Kamal bin Ramli, Justice Ravinthran a/l Paramaguru, Tuan Duncan Sikodol, Tuan Ismail Ibrahim, Judicial Commissioner Mairin bin Idang @ Martin, Judicial Commissioner Douglas C. Primus Sikayun.



## **CHAPTER 5**

**OFFICE OF THE CHIEF REGISTRAR OF  
THE FEDERAL COURT**



## OFFICE OF THE CHIEF REGISTRAR OF THE FEDERAL COURT



**Mr. Roslan Haji Abu Bakar**  
**The Chief Registrar of the Federal Court of Malaysia**

The Office of the Chief Registrar of the Federal Court is a branch which executes the administrative functions of the judicial body. The year 2014 was indeed a fruitful one for Chief Registrar's Office as numerous initiatives were put forward to enhance the smooth running of the Court's delivery system to the public at large.

### **Judicial Officers Training Road Map**

The Office of the Chief Registrar believes in consistently improving the competency of judicial

officers and supporting staff. In May 2014, the Office had launched the Judicial Officers Training Road Map as an initiative to ensure that our judicial officers are equipped with necessary skills and knowledge in improving their judicial competency.

### **Long Distance Education**

The Office of the Chief Registrar also had organized two long distance education courses with other counterparts. The courses were conducted in 2014 via video conferencing involving the judicial officers



Chief Justice Arifin Zakaria (left) launching the Judicial Officers Training Road Map & Court Brochure witnessed by the then Chief Registrar Datuk Azimah Omar (middle) and the then Registrar of the High Court of Malaya Mr. Roslan Haji Abu Bakar (right).

in Putrajaya with judges and law clerks at the Court of Appeal of the Ninth Circuit in San Francisco, United States. The courses conducted focused on case management in the appellate court, case weightage and identification of issues.

#### **Establishment of the Coroner's Court**

Due to public concern over the increase of custodial deaths, the Judiciary established fourteen Coroners' Courts in April 2014 with the task of independently inquiring into the cause and circumstances of certain deaths. Fourteen senior Sessions Court Judges were appointed throughout Malaysia as Coroners.

#### **e-Court Finance System**

On 15 August 2014, e-Court Finance System (E-CFS) was implemented at the Melaka Court Complex. The e-Court Finance system is a computerized accounting system introduced to replace the manual accounting system. Under this system, a new mode of channelling payments for filing of court documents

was introduced which enables payments to be made online via the Financial Process Exchange (FPX) or through the Kiosk or e-POS system located at the courts. Payment of fines for traffic summons ordered by the courts can also be made through this system. On the whole, the system makes it easier for lawyers and the public to make payments to court.

In recognition of the service that the system provides, the Federal Court received the 'FPX Top Merchant Award of the Federal Courts of Malaysia Sabah and Sarawak' by the Electronic Clearing Corporation Sdn Bhd (MyClear) in October 2014.

#### **e-Judgment System**

The e-judgment system was introduced in 2014 to provide a database for all Grounds of Judgment written by judges and judicial officers. The judgments uploaded in this system can be viewed by Judges and judicial officers. Selected judgments will be sent to law journals for publication.

### **Guide Book on Civil Cases for Subordinate Court**

This guidebook is an initiative under the Work Plan for 2013/2014 Focus Group on Enforcing Contract (FGEC) PEMUDAH in ensuring the smooth running of courts system as well as providing an easy reference for the public to obtain information on procedures of civil cases in the Subordinate Courts. On 16 October 2014, the guidebook was launched by the Chief Secretary, The Hon. Tan Sri Dr. Ali Hamsa. The information in this guidebook among others includes matters relating to jurisdiction of the Subordinate Courts, Civil Claims, Small Claims Court, Judgment Debtor Summons and Adoption Proceedings.

### **Publication of Court Brochures**

The Office of the Chief Registrar had taken steps in improving the delivery system to the public by publishing ten court brochures, which is placed at all courts throughout the country. The court brochures consist information amongst others on Court Ethics, Child Court, Court Bail, and Commissioner for Oaths, Auctions by the Court.

### **New Court Complex for the Klang Sessions and Magistrates Court**

A new court complex was built to house the Sessions and Magistrates Court situated in Klang. Previously, the Klang Sessions and Magistrates Court occupied the British Resident House since 1965 as a court complex. The court building was officially handed over by the Legal Affairs Division (BHEUU) of the

Prime Minister's Department to the Office of the Chief Registrar on 5 November 2014.

The new court complex which houses 2 High Courts, 1 Civil Sessions Court, 2 Criminal Sessions Courts and 3 Criminal Magistrates Courts was fully operational on 1 December 2014.

### **Completion of Data Entering Process for the E-Probate and Administration Management System**

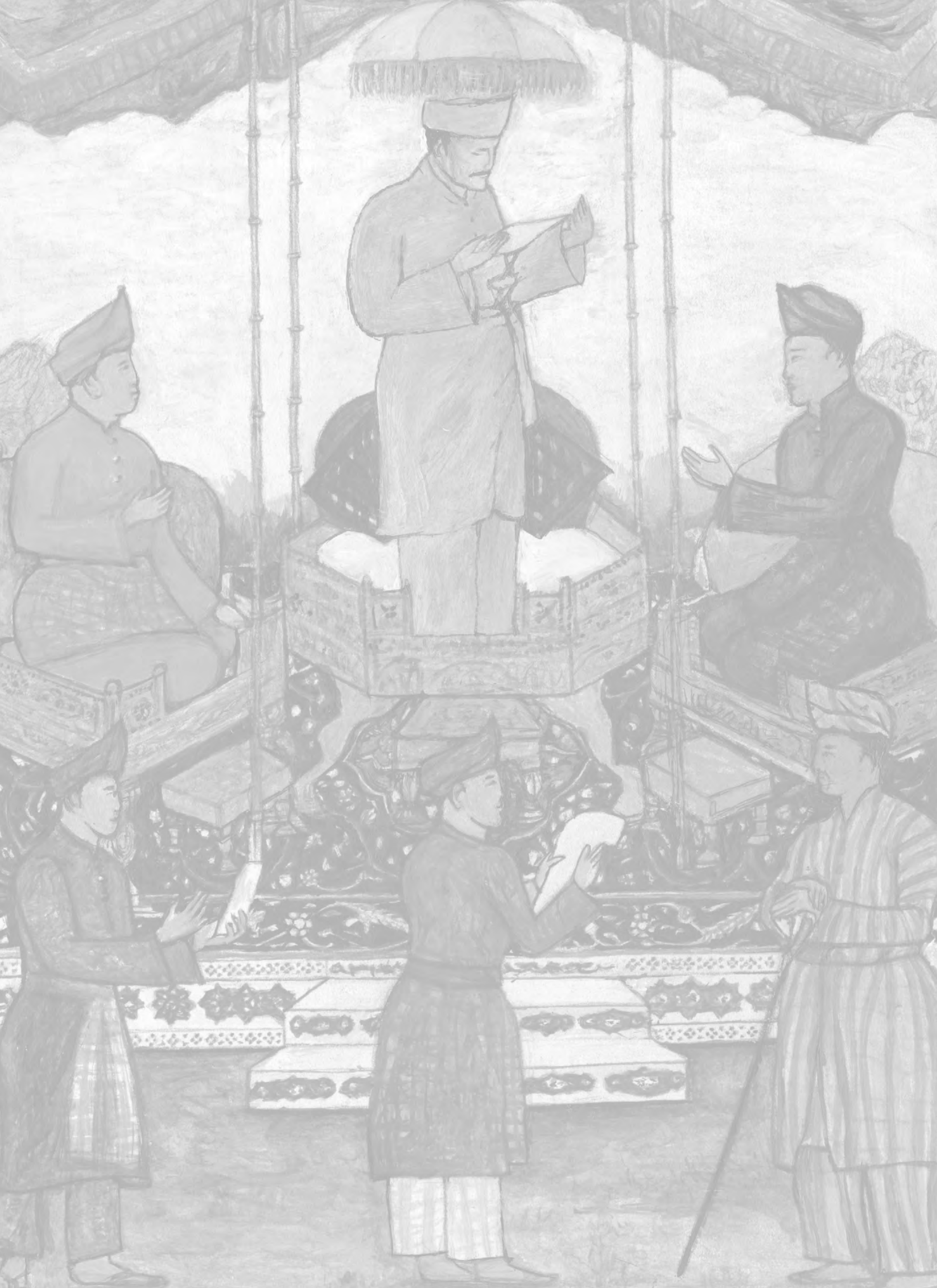
The e-Probate and Administration Management System was introduced to shorten the time taken in processing application for Letters of Administration. In obtaining a Letter of Administration, it is the duty of the Principal Registry in Kuala Lumpur to ensure that only one Letter of Administration is issued for an estate. Previously, the difficulties encountered by the Principal Registry in Kuala Lumpur was that it had to make manual searches for records that had been kept since 1949. This caused delay in the process of obtaining the Letter of Administration. For that reason, the e-Probate and Administration Management System was introduced.

With this system, the courts will be able to search for any caveat entered or any application for Letters of Administration previously made for any particular estate of the deceased in a short period of time. The data entering process which started in 2011 was completed in November 2014 with all 1.04 million data being entered into the system and the system is now fully operational.





The waiting area on the first floor of the Penang High Court Building



# CHAPTER 6

## JUDGES





AN ARTISTIC IMPRESSION OF A MALAY RULER



## JUDGES' APPOINTMENTS AND ELEVATIONS

The year 2014 witnessed the elevation and appointment of a number of Judges at every level of the Superior Courts.

These include the elevations of Justice Azahar Mohamed from the Court of Appeal to the Federal Court, seven Judges of the High Court to the Court

of Appeal and twelve Judicial Commissioners as High Court Judges. This year, twelve new Judicial Commissioners were appointed.

The full list of the Judges elevated and Judicial Commissioners appointed in 2014 is as shown below:

Position	Date of Appointment	Name
Federal Court Judge	12 September 2014	1. Justice Azahar Mohamed
Court of Appeal Judge	12 September 2014	1. Justice Ahmadi Haji Asnawi 2. Justice Idrus Harun 3. Justice Nallini Pathmanathan 4. Justice Dr. Badariah Sahamid 5. Justice Ong Lam Kiat Vernon 6. Justice Abdul Rahman Sebli 7. Justice Dr. Prasad Sandosham Abraham
High Court Judge	19 February 2014	1. Justice Asmabi Mohamad 2. Justice Lee Heng Cheong 3. Justice See Mee Chun 4. Justice Samsudin Hassan 5. Justice Lee Swee Seng
	12 September 2014	6. Justice Abdul Karim Abdul Jalil 7. Justice Kamaludin Md. Said 8. Justice Ahmad Nasfy Haji Yasin 9. Justice Teo Say Eng 10. Justice Rosilah Yop 11. Justice Hashim Hamzah 12. Justice Azizah Haji Nawawi
Judicial Commissioner	13 January 2014	1. Judicial Commissioner Lim Chong Fong
	20 June 2014	2. Judicial Commissioner Azimah Omar 3. Judicial Commissioner Nordin Hassan 4. Judicial Commissioner Mat Zara' ai Alias 5. Judicial Commissioner Azmi Ariffin 6. Judicial Commissioner Noorin Badaruddin 7. Judicial Commissioner Collin Lawrence Sequerah 8. Judicial Commissioner Wong Kian Kheong
	2 July 2014	9. Judicial Commissioner Azizul Azmi Adnan
	6 August 2014	10. Judicial Commissioner Mohamed Zaini Mazlan
	13 October 2014	11. Judicial Commissioner Dr. Sabirin Ja'afar 12. Judicial Commissioner Dr. Choo Kah Sing



The Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah presenting the letter of appointment to Justice Azahar Mohamed on the occasion of his elevation as a Judge of the Federal Court at Istana Negara on 12 September 2014



Appointment of Judges of the Court of Appeal at Istana Negara on 12 September 2014

(L-R: Justice Dr. Prasad Sandosham Abraham, Justice Ong Lam Kiat Vernon, Justice Ahmadi Haji Asnawi, Justice Idrus Harun, Justice Dr. Badariah Sahamid, Justice Nallini Pathmanathan, Justice Abdul Rahman Sebli)



## THE 48<sup>TH</sup> ANNUAL MEETING OF THE COUNCIL OF JUDGES



Chief Justice Arifin Zakaria delivering his speech during the 48<sup>th</sup> Annual Meeting of the Council of Judges held in Pulau Pinang

The Council of Judges of the superior courts, which consisted of the Federal Court, the Court of Appeal and the two High Courts, is a collegiate of Judges constituted under section 17A (1) of the Courts of Judicature Act, 1964. The section provides that the Chief Justice may convene the Council as and when he deems it necessary but so that there shall be at least one meeting in each year.

The annual meeting of the Council, commonly referred to as the Annual Conference of Judges, serves as a platform for superior courts Judges in Malaysia to gather in a congenial and relaxed atmosphere to discuss current issues/problems affecting the administration of the superior courts and to find common solutions for their betterment and improvement. This is normally achieved through presentation of papers, panel discussions and even talks by eminent jurists/legal practitioners at the meeting.

The meeting of the Council is also a time of appraisal of performance of the Federal Court, Court of Appeal and High Courts by the Registrars of the respective Court, in terms of case disposals for the previous year. The 48<sup>th</sup> Annual Meeting of the Council was held from 12 – 15 March 2014 at Hotel Equatorial, Penang.

The theme for the 48<sup>th</sup> meeting of the Council was “Strengthening the Judiciary”. In conjunction with the theme, three major topics titled “Grounds of Judgments: Quality and Speed”, “Case Management Protocol (Civil Cases) For the Purpose of Issuance of Practice Direction” and “Judiciary: Meeting Public Expectation” were set down for discussion and deliberation during the meeting.

The first day of the meeting kicked off with an opening address by the Rt. Hon. Chief Justice Arifin Zakaria. In his address the Chief Justice reminded the Judges

that as the Courts are entrusted by the Federal Constitution to be the final arbiters of any legal dispute among citizens and between citizens and the State, it is important that the Judiciary remains an independent institution that is free from any outside influence. In this regard, the Chief Justice called upon all Judges of the superior courts to maintain a high level of integrity both in their personal and judicial conduct at

all times and a high standard of professionalism in the carrying out of their judicial functions. In particular, he reminded Judges to be patient and maintain an even judicial temperament while on the bench, to be impartial and give a fair hearing to all parties who appear before them and more importantly to deliver their decisions and judgments without delay within the prescribed eight weeks at the conclusion of a trial.



Judges during the 48<sup>th</sup> Annual Meeting of the Council of Judges held in Penang.

The opening address of the Chief Justice was followed by a presentation of the minutes of the 47<sup>th</sup> meeting for confirmation and a report and feedback on the progress of implementation of the decisions taken at the said meeting by the Chief Registrar of the Federal Court.

Among the feedback given by the Chief Registrar included the recent amendment to the Judges Remuneration Act to provide an exit clause for superior court Judges below 60 years of age to opt to retire/resign from their respective post without having to lose their pension and gratuity entitlements (as was the case now) and the amendment is scheduled for implementation by the middle of 2014; on the review by the Prime Minister's Department of the protocol list on precedence of Judges attending Federal official functions; and a briefing by Datuk Hamidah Khalid,

Secretary to the JAC, on behalf of Justice Datuk Zainun Ali, FCJ, Chairperson of the Judges' Salary Review Committee (who could not attend the meeting) on the Committee's proposals regarding the review of Judges' salary and pension. The Chief Justice advised the Committee to emphasize in their proposal paper that superior court Judges in Malaysia are not members of the public service and their salary and pension entitlements should not be tied up with those of senior public servants. Members of the superior court Judges must be paid a decent level of salary during their tenure of service and pension upon their retirement in order for the judiciary to be able to attract senior and experienced practicing lawyers to join the service and to ensure that Judges' independence is not compromised by their worry over their lifestyle and standard of living after their retirement.



The afternoon session of the first day's meeting was devoted to presentation on the performance of the superior courts for the previous year by the Registrar of the respective Court. The reports took the form of statistics of case disposals, in the case of the High Courts both of individual Judges and the Courts on a State by State basis. On the whole the Chief Justice of Malaysia, President of the Court of Appeal and the Chief Judges of the respective High Courts expressed

their satisfaction with the performance of the superior courts for the preceding year.

This was followed by a separate session of the Federal and Court of Appeal Judges with the Chief Justice and the President of the Court of Appeal to revisit or review decisions made or matters discussed at the first meeting of the appellate courts at Pulau Spring Johore Bahru Johor in December 2013.



Judges of the Federal Court and Judges of the Court of Appeal participating in a discussion on "Pulai Springs Resort – Revisit" during the 48<sup>th</sup> Annual Meeting of the Council of Judges held in Pulau Pinang.

The first day of the meeting ended with a night session on the topic titled "Grounds of Judgments: Quality and Speed" chaired by the Rt. Hon. Justice Md. Raus Sharif, President of the Court of Appeal, in which a panel of 3 Judges consisting of Justice Jeffrey Tan Kok Wha, FCJ, Justice Mohamad Ariff Md Yusof, JCA and Justice Hasnah Dato' Mohammed Hashim, J, offered guidance to newly appointed High Court Judges and Judicial Commissioners on judgment writing skills.

There was a lively discourse and discussion among the Judges after the presentation of the 3 Judges. The consensus among majority of the Judges was that judgment writing style is very much a personal preference and Judges of the superior courts should

not be constricted to a formatted judgment. In regard to 'quality judgment' and 'speed in writing judgment', Judges were of the view that these two ideas cannot go hand in hand and often times they found themselves sacrificing one for the other. This is especially true of High Court Judges in the NCvC and NCC divisions, who are given a tight schedule of nine months to dispose their cases. It was suggested that in order to alleviate the pressure faced by these Judges, a system of article-ship should be implemented in these divisions where high-flyer final year law students from local universities with a good command of the English language (identified by the Deans of the law schools) are attached to specific Judges as part of their practical training course to do research on any point of law and to prepare draft grounds of judgment for the Judges.





The panelists discussing on “Grounds of Judgement: Quality and Speed”  
(L-R): Justice Mohamad Ariff Md Yusof, Justice Md Raus Shariff, Justice Jeffrey Tan Kok Wha and Justice Hasnah Dato’ Mohammed Hashim.

The second day of the meeting involved a discussion and deliberation by Judges on the other two topics titled “Case Management Protocol (Civil Cases) for the Purpose of Issuance of Practice Direction” and “Judiciary: Meeting Public Expectation”.

In both sessions of discussions, Judges were divided into small groups with every group having a mix of Judges from every level of the superior courts and chaired by a Federal Court Judge.

Judges were required to deliberate on the matters covered under the topics and to come up with suggestions and measures for their implementation.

The two topics selected for discussion at this meeting fit in very well with the theme of the meeting which was “enhancing the judiciary”. The objective of having a new practice direction on case management protocol in civil cases is part of the continuing efforts taken by the Malaysian Judiciary to further strengthen and improve the administration of justice in this country; while the idea of coming up with measures to meet public expectation in the Judiciary is also part of the

efforts taken by the judiciary to improve and/or further enhance public confidence in the independence of the Courts in this country.

Proposals and ideas of each discussion group were then compiled and collated for presentation at the plenary session of the meeting which took the whole of the second day’s meeting.

The third and final day of the meeting involved a summation and round-up by the Chief Justice, the President of the Court of Appeal, the Chief Judge of the High Court of Malaya and High Court of Sabah and Sarawak on the outcome of the meeting. In particular, the Office of the Chief Registrar was requested to look into and study the various recommendations and measures made by Judges in the meeting with a view to their implementation in the coming year.

The 48<sup>th</sup> meeting of the Council of Judges was formally closed by the Chief Justice of Malaysia. In his closing remark, while acknowledging the achievements of the superior court Judges in the past year in terms of disposal of cases and clearing of backlogs, the



Justice Zulkefli Ahmad Makinudin with the Judges of the High Court during group discussion on  
“Case Management Protocol (Civil Cases) – For the Purpose of Issuance of Practice Direction”

Chief Justice reminded them that high demand and expectation of the public in the courts means that Judges cannot afford to rest on their laurels but must continue to strive for excellence, especially by enhancing their knowledge on new areas of law and acquiring new management skill such as in court administration so as to better manage their courts.

On that note, the Chief Justice brought the 48<sup>th</sup> meeting to a close, and thanked Judges for their active participation in the meeting. His Lordship also thanked the Chief Registrar and his organizing committee for having organized a successful meeting.



## SECOND MEETING OF THE FEDERAL COURT AND THE COURT OF APPEAL JUDGES - 2014



Chief Justice Arifin Zakaria leading a discussion during the Meeting.

Justice Zulkefli Ahmad Makinudin, Chief Justice Arifin Zakaria, Justice Md Raus Sharif, Justice Richard Malanjum

The second meeting of the Federal Court and the Court of Appeal Judges (“the Council of Appellate Judges”) organised by the Judicial Appointments Commission (JAC), was held on 6-8 December 2014 at Hotel Seri Malaysia, Kangar Perlis.

This meeting was a follow-up to the first meeting of the Council held on 15-18 December 2013 in Pulau Springs, Johor Bahru.

The 2013 Annual Report of the JAC stated that the “aim of the meeting was to discuss measures needed to improve the management and administrative systems of the Federal Court and Court of Appeal”.

The second meeting was chaired by the Rt. Hon. Chief Justice Arifin Zakaria, Chief Justice of Malaysia, and was attended by the Rt. Hon. Justice Md. Raus Sharif, President of the Court of Appeal, the Rt. Hon. Justice Zulkefli Ahmad Makinudin, Chief Judge of Malaya, the Rt. Hon. Justice Richard Malanjum, Chief Judge of Sabah and Sarawak and 33 other Judges comprising

10 Judges of the Federal Court and 23 Judges of the Court of Appeal.

The meeting was preceded by a dinner for the Judges on 6 December hosted by his Royal Highness Tuanku Syed Sirajuddin Ibni Almarhum Tuanku Syed Putra Jamalullail, the Raja of Perlis and his Consort, Tuanku Tengku Fauziah Tengku Abdul Rashid, the Raja Perempuan of Perlis at the Istana Arau, Perlis. Their Royal Highnesses were gracious hosts and the Judges had a very pleasant evening at the dinner.

In his opening address to the Judges at the commencement of the meeting on 7 December morning, the Chief Justice explained that the objective of this meeting was to consider the progress made in the implementation of decisions taken at the first meeting and to discuss any current issue or problem affecting the administration of the Appellate Courts in the year 2014 and where necessary to find solutions to alleviate these issues.





Participants of the Meeting of the Federal Court and the Court of Appeal Judges at Seri Malaysia Hotel, Kangar, Perlis  
(L-R): Justice Abu Samah Nordin, Justice Azahar Mohamed, Justice Linton Albert and Justice Alizatul Khair Osman Khairuddin

The meeting began with a feedback and report by Datuk Hamidah Khalid, Secretary to the JAC, on the progress in the implementation of decisions taken and matters discussed at the first meeting at Pulau Springs, Johor Bahru.

This was followed by a short discussion of a paper presented by Justice Zaharah Ibrahim, JCA, titled “Consent of the President of the Court of Appeal for Dissenting Judgment in Criminal Appeal or Matter Required?”

Justice Zaharah Ibrahim explained that the brief paper is to invite discussion on the interpretation of section 62(2) of the Courts of Judicature Act 1964, whether before a decision which is not unanimous in a criminal appeal or matter is to be delivered, the consent of the President of the Court of Appeal must be obtained or should the President first be notified.

After some discussion, the meeting concluded that subsection 62(2) of the Courts of Judicature Act as presently worded requires the consent of the President of the Court of Appeal be obtained before a split decision in a criminal matter is to be delivered.

The meeting then proceeded with a short briefing by the Rt. Hon. Justice Md. Raus Sharif, President of the Court of Appeal, on the performance of the Court of Appeal for 2014. The statistics presented by His Lordship indicated that almost 98% of the appeals and other miscellaneous applications registered at the Court of Appeal from January-December 2014 have been disposed of. The Chief Justice congratulated the Judges of the Court of Appeal for their sterling performance and advised them to keep up the good work.

The meeting continued with a presentation by Justice Nallini Pathmanathan, JCA, sharing the words of wisdom in a book entitled “The Appellate Craft” written by J.E. Cote, a Justice of the Courts of Appeal of Alberta, the Northwest Territories and Nunavut, which is available on the internet. The book is intended to serve as a manual or guide for new appellate Judges in Alberta, in what Justice J.E. Cote described as “court crafts” in every aspect of appellate judging. Justice Nallini informed the meeting that while not all the “court crafts” recommended in the book are suitable or practicable for implementation in the appellate courts in this country, she personally

finds that some of the “court crafts” to be insightful and helpful for our Judges.

The Chief Justice thanked Justice Nallini and requested the JAC to make available a copy of the book as reading materials for each Appellate Court Judge.

The final business of the day was a discussion on the new revised Federal Order of Precedence published on 13 November 2014 (P.U.(B) 506) on seating arrangement of superior court Judges during Federal official functions. The Council of Judges took the position that while the new Order was an improvement over the 1998 Order, it still nevertheless does not truly reflect the position of superior court Judges as members of the third branch of the Federal Government when attending these functions.

The meeting agreed that the only solution to the precedence issue is for superior court Judges to sit together at all Federal and State official functions. The Chief Registrar’s Office was requested to discuss this matter with the Protocol Division of the Prime Minister’s Department and to report back at the next meeting.

In closing the meeting on the morning of 8 December 2014, the Rt. Hon. Chief Justice Arifin Zakaria, thanked all the Judges present for their active participation in the meeting. He also announced that meetings of the Federal Court and Court of Appeal Judges will from now on be held on an annual basis, with at least one meeting a year.



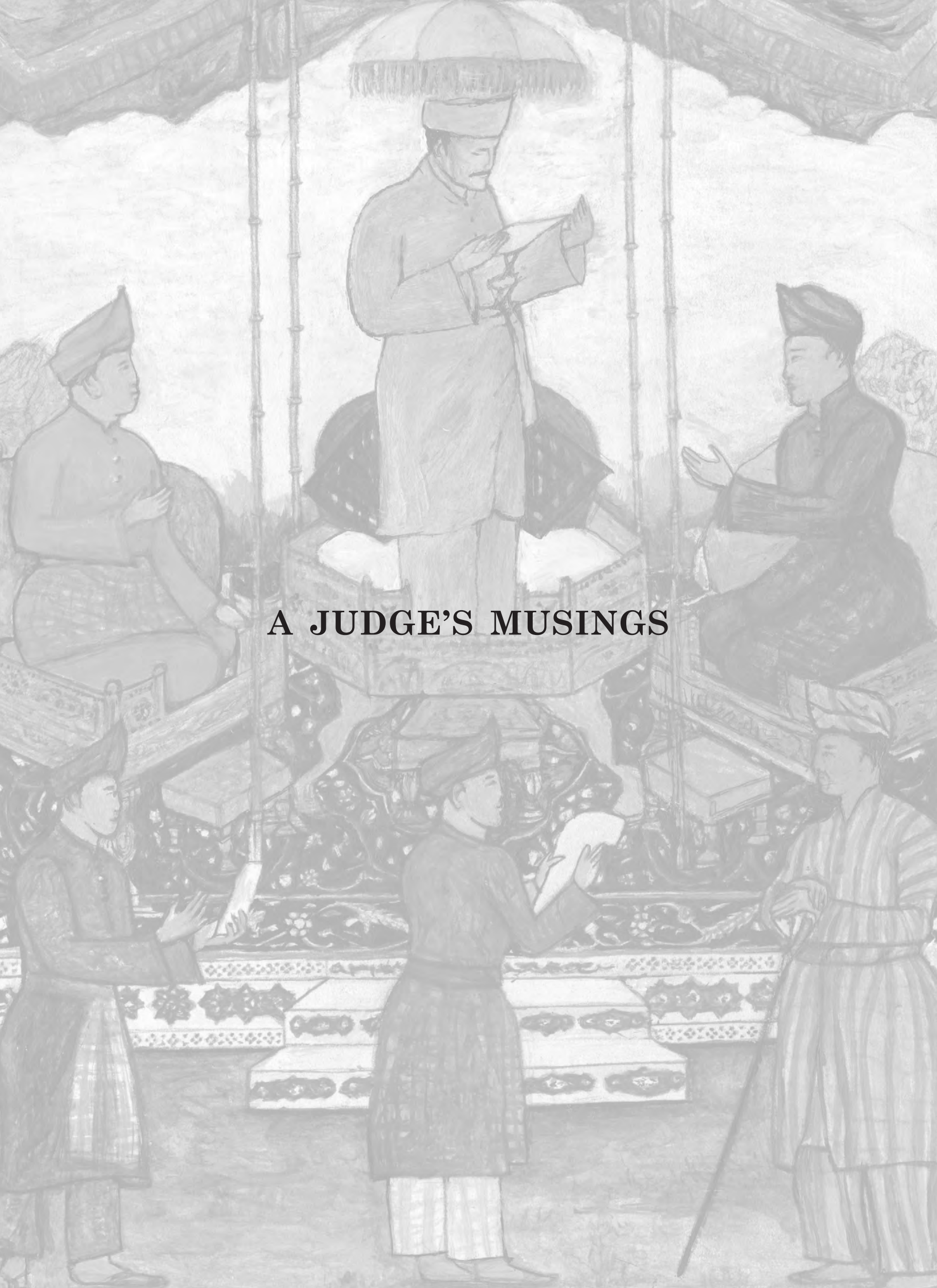
Participants of the Second Meeting of the Federal Court and the Court of Appeal Judges at Seri Malaysia Hotel, Kangar, Perlis  
(L-R): Justice Dr Prasad Sandosham Abraham, Justice Vernon Ong Lam Kiat, Justice Idrus Harun and  
Justice Varghese George Varughese





Sunlight filtering in through the corridor at the Penang High Court





## A JUDGE'S MUSINGS

## His Majesty's Tigers Under the Throne

Vale!

Iudices Malasiani-

Moritus Te Saluto!



By Dato' Mahadev Shankar  
(Former Judge of the Court of Appeal)

*Dato' Mahadev Shankar is a former Judge of the Malaysian Court of Appeal. He was born in Kuala Lumpur and an alumnus of Jalan Pasar School and Victoria Institution. Dato' Shankar is a barrister of the Inner Temple and was admitted and enrolled as an Advocate and Solicitor of the High Court of Malaya in 1956. He was in legal practice with Shearn Delamore & Company until 1983. He was then elevated to the High Court Bench. While on the High Court Bench, he served the states of Johor, Selangor and Kuala Lumpur. Dato' Shankar was elevated to the Court of Appeal in 1994. After retirement, Dato' Shankar was appointed a legal consultant with Zaid Ibrahim & Co.*

Since this is the valediction of a long retired judge, the salute of the Roman Gladiators is given before engaging with the challenges which now confront us. They have arisen in the aftermath of some decisions and impinge on all the participants involved since our present problems have their genesis in our past acts and omissions.

Verily the law of cause and effect can be inexorable. Retired judges too suffer the pain because our reputations do not merely expire with our mortal coils but will survive in the institution which we served.

Its character is invariably judged by the misdemeanours of its miscreants rather than the good deeds of its peers.

Could this situation have been avoided or at least so vastly minimised, that any shortfall in standards would have been regarded by society as a minor aberration, which did not affect public confidence in the system?

The Gold Standard of what lawyers and Judges should be, was laid down in 1957 by the Lord Chancellor Viscount Kilmuir when he joined us as the Queen's representative to celebrate Merdeka. His speeches to the Bar, the Bench and the fledgling graduands of the Law faculty of the University of Malaya, have been recorded for posterity in the [1957] M.L.J.pp liv-lxii.

We subsequently matured to International dimensions in the three decades that followed.

Viscount Kilmuir not only emphasized the paramountcy of the Rule of Law but also what we should do to achieve it.

Repeatedly he hammered home the double duty and loyalty of the lawyer not only to his client but also to the Court. And most significantly he demonstrated how democracy would surely perish if the State and the Bar lost confidence in each other. Lawyers had to be courageous in advancing the interests of their clients, and judges had to give a fair and impartial hearing followed promptly with a reasoned judgement based strictly on the evidence adduced.

As prosecutors and defence counsel are also officers of the court, they too share a collective responsibility to provide meaningful assistance to ensure that justice is not only done but *seen* to be done.

My elevation to the Bench is recorded in the [1983] 2 M.L.J.pp cix-cxvi.

That ceremony coincided with the abolition of all appeals to the Privy Council. Thus did we come of age.

The requirements of conduct and etiquette at the Bench and Bar were again adumbrated by the then Attorney General Tan Sri Abu Talib [as he now is] and the late Mr. Sivasubramaniam the Chairman of the Bar Council.

Looking forward that day into the future, I quoted J.F.Kennedy:

***“... And when at some future date the High Court of History sits in judgment on each of us, recording whether in our brief span of service, we fulfilled our responsibilities to the State, our success or failure in whatever office we held will be measured by the answers to four questions:***

***First were we truly men of courage;  
Second were we truly men of judgment;  
Thirdly were we truly men of integrity?  
Finally were we truly men of dedication?”***

Since then I thought I had fulfilled my judicial duties by dealing with every relevant point made by the losing party because I wanted him to know why I decided against him.

My greatest challenge was to satisfy the losing party that he has had a fair and impartial hearing and to convince him that he deserved to lose but at the same time had allowed him to leave the Court with his dignity intact.

I did not always succeed but it was very gratifying to have a litigant come up to me years later to thank me for pointing out where he had fumbled. Hence my 1983 prescription, that throughout the trial, all Judges should have a placard, “LISTEN” placed in front of them.

The imbroglios which now bedevil us have forced upon me a realization that much more is required to sustain public confidence than a mere formal adherence to the rules of natural justice, an impartial hearing, and a prompt reasoned judgment.

A proper understanding of the Constitution and the Rule of Law must come with an unwavering commitment to the judicial oath and a full comprehension of its implications.

It requires each of us Judges that we ***“will faithfully discharge the judicial duties of that office to the best of our ability, that we will bear true faith and allegiance to Malaysia, and will preserve, protect and defend its Constitution.”***<sup>19</sup>

The writ issued by the Chief Justice summoning the subject to the court is in the name and on behalf of our Sovereign. We receive our Watakah or Letters Patent not from the Prime Minister, but our Sovereign.

JUDGES are therefore His Majesty’s Tigers under the Throne.

It falls upon us to preserve the security of the Rulers and the integrity of the Nation by ensuring that the three components of Democracy i.e. the State, the Rule of Law and Accountability are in dynamic equilibrium.

The State can only command the loyalty of its subjects if it provides the resources for the due administration of justice and makes itself visibly compliant with the laws of the land. The Rule of Law can only be so respected if it applies *equally to all* including the State’s functionaries.





Justice Mahadev Shankar in a scarlet robe

Accountability means that any exercise of power to be legitimate must be transparently exercised within the ambits which govern its exercise.

For an in-depth understanding of the subject see **“Rule of Law Unlocked” by Sir John Laws** September 2010: Reproduced in Pegasus, the journal of the Inner Temple Alumni. And Lord Bingham’s address to the Royal Society is available on youtube at the website

<https://www.youtube.com/watch?v=XlMCCGD2TeM> or the valedictory address of Mr. Paul Shieh the outgoing Chairman of the Hong Kong Bar in the link:

<https://www.youtube.com/watch?v=ZDpHqEZvvI>  
However eloquent our laws and however erudite our judgments, they will be lifeless unless they are imbued with Integrity, Justice and Fairness. Which is why my prescription today is that all judges should have a brass plate in front of them engraved not just with their name but also with their judicial oath.

Kilmuir’s dire warning that, “Democracy will perish” is predicated on the death of the Rule of Law and the consequent loss of faith of the community in access to justice and equality before the law.

So let us once again remind ourselves that the Federal Constitution is the Supreme Law of the land and any law which is inconsistent with it shall to the extent of such inconsistency, be void and should therefore be struck down.

Article 8(1) and (2) alone should suffice to keep in the forefront of our minds the underpinnings of the Rule of Law we have to breathe life into when we do justice. Lest we forget they read:

## Article 8

### Equality

*(1) All persons are equal before the law and entitled to the equal protection of the law.*

*(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.*  
Should there be any situation where a Judge, by

reason of some personal or religious scruples, feels unable to apply the law as it stands, he must recuse himself.

This dilemma is not new to conscientious judges the world over. The invidious situation in which Lord Hoffman found himself in the Pinochet extradition appeal is one very recent example where the House of Lords had to re-constitute itself to rehear a decision which had to be invalidated by reason of a mere perception of possible bias.

More to the point is **Schneiderman v United States** [1943] where Chief Justice Felix Frankfurter wrote his most agonized opinions ever, wrestling with the edicts of his Jewish faith and his obligations to the Constitutional oath he had taken: see **Scorpions by Noah Feldman** [2-1-] pp226 et seq and esp. at 229].<sup>1</sup>

Such a dilemma may have caused one learned Judge to decline jurisdiction because he thought that the matter was wholly in the purview of the Syariah Courts notwithstanding that his Court was the only one with could grant her relief because as a non- Muslim she had no right of audience in the Syariah Court.

*Ubi jus ibi remedium*-Where there is a right there must be a remedy. **Sarwari a/p Ainuddin v. Abdul Aziz a/l Ainudddin** [2000] 5 MJL 391 and **Sarwari a/p Ainuddin v. Abdul Aziz a/l Ainuddin** (No. 2) [2001] 6 MLJ 737 specifically dealt with the Jurisdiction of the High Court with regards to issues of Islamic law. I was the presiding judge. On appeal it was urged that notwithstanding the preliminary written submission of both parties to my jurisdiction, my decision was void because the dispute involved an issue of Islamic law. I was the presiding judge.

I held that the Court had jurisdiction unless the entire case only concerned issues of Islamic law but that in cases where both civil and Islamic issues had to be decided, the Court could proceed but must obtain expert evidence on what Islamic law required and decide accordingly.

The decision does not appear to have received the attention it deserves.

The bifurcation of the original jurisdiction of the High Court which has resulted from some judges declining jurisdiction even when only a subsidiary issue of Islamic law was involved, has had a negative effect on our aspirations for national integration and also diluted respect for the Sanctity and Supremacy of the Constitution in all spheres of our public and private lives.

I write this for the earnest consideration of my brother judges who walked with me and those who have come after me, in the hope that we may do better in the task we have taken upon ourselves. I had become a judge when the Malaysian judiciary was about to enter its most turbulent years. It was after the decision in **Berthelsen**<sup>2</sup> by Justice Eusoffe Abdoolcader that we saw the removal of Judicial power from the Constitution and the Executive attempts to limit the role of the Courts to doing only what was legislated in Parliament.

This is the purported effect of the amendment to Article 121 which left at large what the Court should do in cases where the statute was silent, imprecise or ambiguous. This is where the 'common law' comes into its own and binding precedent gives certainty to legitimacy in public affairs.

Once again the point is whether we should re-visit the wisdom of these amendments and restore the *status quo ante*.

Whether a law should be perpetuated or repealed depends on how it has worked out in practice and whether circumstances have so changed that the law is outdated.

It is arguable that Article 121 as it is now stands has eroded the public perception of the independence of the Judiciary.

In its defence I refer to Section 114 (e) of the Evidence Act that there is a presumption that all Official acts are regularly performed.

A disgruntled public should at least give the benefit of the doubt that the judges have performed their tasks conscientiously, in good faith and to the best of their ability.

<sup>1</sup> [2010] [published by 12 Hatchett Book Group New York ISBN 978-0-446-58057-1

<sup>2</sup> [1987] 1 MLJ 134

A very telling story is what happened to Tun Suffian and his very first judgments as a High Court Judge. An appeal was lodged and the appellate court which sat in Penang reversed Suffian's judgment.

The latter was very chagrined and waited in the Chief Justice's Chambers on the following Monday morning, to complain.

Sir Charles Matthew pre-empted Suffian as soon as he saw him and said, "That was a very fine judgement you wrote Suff."

Suffian heatedly retorted, "BUT YOU SAID I WAS WRONG!!:

"We did not say you were wrong Suff. We only said we did not agree with you, that is all."

In between these lines is hidden the mystique of the law.

Judges are only human and what they are obliged to do as far as their faculties extend, is to look at the evidence, decide what facts have been proved, and whether those facts point conclusively establish the right to the relief sought.

"Proof" as the Evidence Act stipulates, is such evidence of a fact as would lead a reasonable man to act on the supposition that it exists.

This is not a process of divination. God alone sees all and He needs no proof because he also knows all. Judges like other human beings only have a partial view and their perception of what has been proved is derived by a process of ratiocination. So he must tell the world what facts he found proved and how he deduced from those facts his conclusion as to the guilt [or otherwise] of the Accused or his finding of liability in a civil dispute.

That finding is only his judicial OPINION which is only as good as the reasoning which impelled it. Thus two reasonable men may arrive at different conclusions on the same evidence.

Our legal system gives precedence to the judges in the Appellate Courts because they have the benefit of detachment from the rough and tumble of the trial court and a second look at the same evidence. In the case of the Apex court the process is repeated for the third time.

That is not to say the Federal Court is infallible. No judge worthy of his salt will have the temerity to make such a claim and in defence of the Federal Court judges and the Chief Justice who have to preserve a dignified silence, let me say that for them.

As a judge I was always relieved when I was reversed on Appeal in Criminal cases and even more so in capital cases.

With all the sedition summons flying around nowadays at the cheep of a tweet, let me also echo Lord Denning when he responded to some harsh public criticism that, "justice is not a cloistered virtue."

To impute malice or dishonesty to a Judge would certainly be an actionable contempt, but bona fide criticism of a judgment is the right of any concerned citizen.

In cases where I had convicted but still felt a lingering doubt about the correctness of what I had done because of some fresh material, I have immediately sought the intervention of my superiors.

In capital cases there is a specific section in the Criminal Procedure Code requiring me to certify whether the sentence should be carried out.

Judges in the lower courts have this escape route. The Apex Judges have to suffer all the angst of second thoughts and hope for remedial action in other aspects of the social process.

Only a very myopic judge will believe that judicial immunity will protect him from things done unconscionably.

Walls have ears, handphone has eyes and phone calls and emails are no longer insulated from hackers. The private lives of public figures are especially vulnerable.

## CONCLUSION.

Today we have 121 judges in the Superior Courts and 293 judges in the Lower Courts.

Our Staff overall numbers 4,952.



Year upon year the Judiciary disposed of thousands of cases including those in the lower courts.

We are a thriving institution which fills an essential social need in preserving the fabric of our society as a democracy.

A few high profile cases have admittedly resulted in a barrage of negative criticisms but I am optimistic that under the current stewardship of the Chief Justice, and his judges we can weather the storm. There are priceless compensations for the work we have done in line with and beyond the call of duty. The respect that a good judge will earn from the community is enduring and eternal. And only for him at the end of the road awaits the peace that passeth all understanding.

There is another story which Suffian told me about. An Indonesian Chief Justice who had retired with an impeccable track record came to Suffian as a house guest after his retirement.

When Suffian asked him how is retirement, the ex Chief Justice replied

“Tidor Bagus!”

Those of us who would turn philosophical, could also ponder what the poet T.S.Eliot said about those who in their dotage reflected that they could have done better if they were given a second chance.

*“Since our concern was speech, and speech impelled us  
To purify the dialect of the tribe  
And urge the mind to aftersight and foresight,  
Let me disclose the gifts reserved for age  
To set a crown upon your lifetime’s effort.  
First, the cold friction of expiring sense  
Without enchantment, offering no promise  
But bitter tastelessness of shadow fruit  
As body and soul begin to fall asunder.  
Second, the conscious impotence of rage  
At human folly, and the laceration  
Of laughter at what ceases to amuse.  
And last, the rending pain of re-enactment  
Of all that you have done, and been; the shame  
Of motives late revealed, and the awareness  
Of things ill done and done to others’ harm  
Which once you took for exercise of virtue.  
Then fools’ approval stings, and honour stains.  
From wrong to wrong the exasperated spirit  
Proceeds, unless restored by that refining fire  
Where you must move in measure, like a dancer.’  
The day was breaking. In the disfigured street  
He left me, with a kind of valediction,  
And faded on the blowing of the horn.”<sup>3</sup>*

Mahadev Shankar

<sup>3</sup>T.S.ELIOT- FOUR QUARTETS-  
FROM LITTLE GIDDING ii.4

## RETIRED JUDGES

### Tan Sri Zaleha Zahari



Tan Sri Zaleha Zahari was born on 30.11.1948 in Kajang, Selangor. She read law at the Middle Temple, Inns of Court, London and obtained her Degree of the Utter Bar in 1971. She also holds a certificate of legal drafting from the University of London.

Tan Sri Zaleha Zahari spent 22 years in the Judicial and Legal Services where she held various posts, such as Magistrate, Senior Assistant Registrar of the High Court of Malaya, Federal Counsel, Deputy Public Prosecutor, Legal Advisor of the Ministry of Education and the Economic Planning Unit, Prime Minister's Department, Legal Advisor of the Ministry of Home Affairs and Head of the Civil Division, Attorney General's Chambers.

On 1.1.1994, Tan Sri Zaleha Zahari was appointed as a Judicial Commissioner of the High Court of Malaya. She was elevated as a Judge of the High Court of Malaya on 01.12.1995 and served in Kuala Lumpur, Pulau Pinang and Selangor. On 17.6.2005, she was elevated as a Judge of the Court of Appeal and subsequently as a Judge of the Federal Court on 4.4.2012. She retired on 30.11.2014.

Tan Sri Zaleha Zahari was also appointed as a member of the "Suruhanjaya Khas Penambahbaikkan Pengurusan Polis Di Raja Malaysia" in 2001.

Known as a woman of few words, she nevertheless commanded the respect of those who appeared before her. Firm and fair in her decisions, Tan Sri Zaleha Zahari has written numerous judgments in diverse areas of the law.

### Datuk Abdul Malik Ishak



Datuk Abdul Malik Ishak was born on 16.6.1948 in Skudai, Johor Bahru. He read law at the University of Singapore and obtained his degree of Bachelor of law (Honours) in 1974. He was also awarded a certificate of attendance from the University of Illinois, Chicago, USA in 1978. He was then admitted as an Advocate and Solicitor of the High Court of Borneo at Sabah in 1983 and as an Advocate and Solicitor of the High Court of Malaya in 1984.

Upon graduation, Datuk Abdul Malik Ishak joined the judicial and legal service where he served in various capacities, inter alia, as Magistrate, Deputy Director, Legal Aid Bureau in Melaka, Muar, Segamat and Seremban, Senior Federal Counsel cum Senior Deputy Public Prosecutor in Kota Kinabalu Sabah, State Legal Adviser of Kedah and Perlis and Chairman of the Advisory Board, Prime Minister's Department, Kuala Lumpur.

On 1.10.1992, Datuk Abdul Malik Ishak was appointed as a Judicial Commissioner and subsequently elevated as a Judge of the High Court of Malaya on 17.8.1994. On 18.7.2007, he was elevated as a Judge of the Court of Appeal. He retired on 16.6.2014.

One of the longest serving judges in the judiciary, Datuk Malik Ishak was renowned for his industry and passion for the law. The law reports are replete with his judgments and it would be fair to say that Datuk Malik has contributed significantly to the development of the law in the country.



#### **Dato' Anantham Kasinather**

Dato' Anantham Kasinather was born in Penang on 30.5.1948. He pursued his early education in Bukit Mertajam. He then completed his Secondary Education in English College Johor Bharu (Maktab Sultan Abu Bakar) and Victoria Institution in Kuala Lumpur before proceeding to Singapore.

In 1968, Dato' Anantham Kasinather commenced his law studies at the University of Singapore (now known as the National University of Singapore) and obtained his degree of Bachelor of Laws in 1972. He practiced law for some 38 years with Messrs. Skrine & Co. after being admitted to the Malaysian Bar in November 1972. He was also admitted to the Singapore Bar in 2002.

Dato' Anantham Kasinather was a prominent member of the local commercial Bar during his years of practice. He was cited as a leading shipping practitioner in Malaysia in several editions of the Asia Pacific Legal 500. He was also cited as one of the three leading Commercial Litigators in Malaysia in the International Who's Who of Business Lawyers in its 2002 and 2003 Edition. He had delivered papers internationally on various aspects of commercial law.

On 14.8.2009, Dato' Anantham Kasinather was appointed as a Judicial Commissioner and subsequently elevated as a Judge of the High Court of Malaya on 9.8.2010. On 11.8.2011, he was elevated as a Judge of the Court of Appeal. He retired on 30.5.2014.

With his vast experience in commercial law, Dato' Anantham Kasinather was able to adjudicate and dispose of complex commercial cases expeditiously and proficiently, thus contributing significantly to the success of the new commercial courts.

Dato' Anantham Kasinather has also written several illuminating judgments in this area of the law in the course of his tenure on the Bench.



#### **Dato' Zainal Adzam Abd. Ghani**

Dato' Zainal Adzam Abd. Ghani was born on 20.10.1948 in Batu Gajah, Perak. He holds a Bachelor of Laws (Honours) from the University of Malaya.

Upon graduation, Dato' Zainal Adzam Abd. Ghani joined the Judicial and Legal Service and was appointed to various positions, such as Magistrate, Legal Advisor of the Ministry of Housing and Local Government, Head of the Commercial Crime Division, Attorney General's Chambers, and State Legal Adviser of Johor. He was seconded as the Company Secretary of Putrajaya Holdings before being appointed as a Judicial Commissioner of the High Court of Malaya on 1.5.2003. He was subsequently elevated as a Judge of the High Court of Malaya on 21.12.2004 and served in Kedah and Perak. He retired on 26.10.2014.

Dato' Zainal Adzam was well liked by the legal fraternity as they found him to be pleasant and courteous on the Bench.

Never one to raise his voice, Dato' Zainal Adzam nevertheless expects counsel to observe the proper etiquette and conduct themselves professionally whenever they appear before him.





**Tuan Sangau Gunting**

Tuan Sangau Gunting was born on 24.12.1950 in Ranau, Sabah. He graduated from the University of Malaya with a degree of Bachelor of Laws (Honours) in 1978.

In 1982, Tuan Sangau Gunting joined the Judicial and Legal Services and served in various capacities, such as Magistrate, Deputy Registrar of the High Court, Sessions Court Judge, Deputy Public Trustee and President of the Industrial Court.

On 1.5.2003, Tuan Sangau Gunting was appointed as a Judicial Commissioner of the High Court of Sabah and Sarawak. He was subsequently elevated as a Judge of the High Court of Sabah and Sarawak on 21.12.2004. He retired on 20.5.2014.

One of the first East Malaysian graduates of the University of Malaya, Law Faculty to be appointed as a Judge, Tuan Sangau Gunting went about dispensing justice in his own quiet and unassuming style in the High Court of Sabah and Sarawak where he spent the greater part of his judicial career.



**Datuk Noor Azian Shaari**

Datuk Noor Azian Shaari was born on 8.7.1948 in Kuala Kangsar, Perak. She graduated as a Barister at Law from the Lincoln's Inn, London in 1971.

Upon graduation, Datuk Noor Azian Shaari joined the Judicial and Legal Services and served in various positions, including as Magistrate, Senior Assistant Registrar in the High Court of Malaya, President of the Sessions Court, Federal Counsel, Public Trustee Department, Deputy Director General of the Legal Aid Bureau, Treasury Solicitor, Ministry of Finance Deputy Head of the Civil Division, Attorney General's Chambers, Director General of the Judicial and Legal Training Institute (ILKAP), Chairman of the Special Commissioners of Income Tax and Chairman of the Tribunal for Consumer Claims at the Ministry of Domestic Trade and Consumer Affairs.

On 1.9.2005, Datuk Noor Azian Shaari was appointed as a Judicial Commissioner of the High Court of Malaya in Kuala Lumpur. On 5.9.2007, she was elevated as a Judge of the High Court of Malaya and served in Kuala Lumpur and Selangor. She retired on 8.7.2014.

With her no nonsense and uncompromising style, Datuk Noor Azian Shaari was a formidable figure on the Bench. In the course of adjudicating however Datuk Noor Azian Shaari always strives to temper justice with mercy so that litigants will leave her court knowing that they have received a fair hearing.



**Dato' Dr. Hassan Ab. Rahman**

Dato' Dr. Hassan Ab. Rahman was born on 16.6.1954 in Kota Bharu, Kelantan. He graduated from the University of Malaya with a degree of Bachelor of Laws (Honours) in 1980 and a Master in Comparative laws from the International Islamic University Malaysia in 1990. He also obtained Diploma in Qur'anic Studies (Honours) from the *Institut Pengajian Ilmu-Ilmu Islam* (IPI) in 1995 and Certificate in Syariah Studies from the University of Malaya in 1996. In 2005, he obtained his PHD in Comparative Laws from the University of Malaya.

Dato' Dr. Hassan Ab. Rahman served in the Judicial and Legal Services in various capacities, including as Magistrate, Senior Federal Counsel at the Attorney General's Chambers, Sessions Court Judge, Senior Federal Counsel in the Advisory Division (Syariah), Attorney General's Chambers, Deputy Head of the Advisory Division (Syariah Section), Attorney General's Chambers and Director General of the Legal Aid Bureau.

On 5.1.2009, Dato' Dr. Hassan Ab. Rahman was appointed as a Judicial Commissioner of the High Court of Malaya. He retired on 5.1.2014.

A gentle and soft spoken man, Dato' Dr. Hassan brought a spiritual dimension to his role as a Judge. A deeply religious man, Dato' Dr. Hassan would always ensure that in dispensing justice, he did so in accordance with deeply entrenched principles of law and equity.

### **Puan Choong Siew Khim**



Puan Choong Siew Khim was born on 25.11.1955 in Batu Gajah, Perak. She graduated from the University of Malaya with a degree of Bachelor of Laws (Honours) in 1980.

In 1980, Puan Choong Siew Khim joined the Judicial and Legal Services and served as Magistrate, Senior Assistant Registrar of the High Court of Malaya, Sessions Court Judge, President of the Industrial Court and Chairman of the Legal Professional Qualifying Board, Malaysia.

On 14.8.2009, Puan Choong Siew Khim was appointed as a Judicial Commissioner of the High Court of Malaya. She opted for an early retirement in 2014.

Although Puan Choong Siew Khim's tenure as Judicial Commissioner was brief, she was nevertheless highly regarded and well-liked by her peers and members of the legal profession. She carried out her duties efficiently and professionally and wrote numerous judgments in various areas of the law.

### **Puan Nurmala Salim**



Puan Nurmala Salim was born on 20.9.1958 in Parit, Perak. She holds a degree of Bachelor of Laws (Honours) from the University of Malaya.

In 1982, Puan Nurmala Salim joined the Judicial and Legal Services and served in various posts, including, Legal Officer in the Attorney General's Chambers, Federal Counsel at the Ministry of Public Enterprises, Sessions Court Judge and Legal Officer of the Parole Board, Ministry of Home Affairs.

On 14.8.2009, Puan Nurmala Salim was appointed as a Judicial Commissioner of the High Court of Malaya. She opted for an early retirement in 2014.

Puan Nurmala Salim carried out her judicial duties quietly and competently, earning the respect of the Bar and other members of the legal profession. Although her tenure as Judicial Commissioner was fairly brief, Puan Nurmala Salim managed to write several insightful judgments on various aspects of the law.

## JUDGES IN REMEMBRANCE

### THE LATE TENGKU DATO' BAHARUDIN SHAH TENGKU MAHMUD

The Late Tengku Dato' Baharudin was born in the district of Pekan, Pahang on 30 May 1945. His Lordship was a Barrister-at-Law from the Middle Temple. After graduating in September 1969, his Lordship joined the Judicial and Legal Service.

The late Tengku Dato' Baharudin began his judicial journey as a Magistrate and subsequently went on to hold a number of posts during his career, amongst others, Senior Assistant Registrar of the High Court of Malaya, Deputy Director of the Legal Aid Bureau (now Legal Aid Department), Deputy Registrar of Companies, Official Assignee and Legal Advisor to the state of Pahang.

His Lordship was appointed as a Judicial Commissioner in 1994 and elevated to the High Court bench in January 1996. The late Tengku Dato' Baharudin

served in the High Courts of Kelantan and Pahang during his tenure as a High Court Judge.

In 2003, his Lordship was elevated to the Court of Appeal. His Lordship retired at the age of 66 in May 2011.

Tengku Dato' Baharudin passed away on 24 December 2014. Tengku Dato' Baharudin was married to Datin Rukiah binti Hassan and there are five children of the marriage.

His Lordship will always be remembered for his calm disposition and patience while on the Bench. His Lordship's passing was greatly felt by his sister and brother judges and members of the Bar who truly appreciated his Lordship's gentleness and warmth. His Lordship is one of the few colleagues every judge will remember with fondness and affection.



Appointment of the late Tengku Dato' Baharudin Shah Tengku Mahmud as a Court of Appeal Judge.





The Late Tengku Dato' Baharudin Shah Tengku Mahmud at the appointment of Federal Court and Court of Appeal Judges at Istana Negara in 2003.

(L-R: The late Datuk Seri S. Augustine Paul, Dato' Bentara Istana Dato' Nik Hashim Nik Abdul Rahman, the late Tengku Dato' Baharudin Shah Tengku Mahmud and the late Datuk Arifin Jaka)



Duli Yang Maha Mulia Tuanku Syed Sirajuddin Ibni Al-Marhum Tuanku Syed Putra Jamalullail with newly appointed Judges of the Federal Court and Court of Appeal at Istana Negara in 2003.  
(3rd from left is the late Tengku Dato' Baharudin Shah Tengku Mahmud)



## THE LATE DATO' HINSHAWATI SHARIFF

The late Dato' Hinshawati Shariff was born on 8 March 1955 in Penang. She read law at the University of Malaya and graduated with an honours Degree in Bachelor of Laws. In 1994, her Ladyship earned her Master of Laws from University College London.

The late Dato' Hinshawati joined the Judicial and Legal Service in 1979 and held various posts such as Magistrate in Kuala Lumpur, Senior Assistant Registrar in the Penang High Court, Deputy Public Prosecutor in Johor as well as Senior Federal Counsel of the Inland Revenue Board of Malaysia. Prior to her appointment as a Judicial Commissioner in August 2007, her Ladyship served

as the State Legal Advisor of Negeri Sembilan and Penang.

Her Ladyship was appointed as a Judicial Commissioner in 2007. She was elevated as a High Court Judge on 14 April 2010 and served in the High Court of Malaya in Shah Alam. Dato' Hinshawati passed away on 22 October 2014 at the age of 59. She is survived by two children.

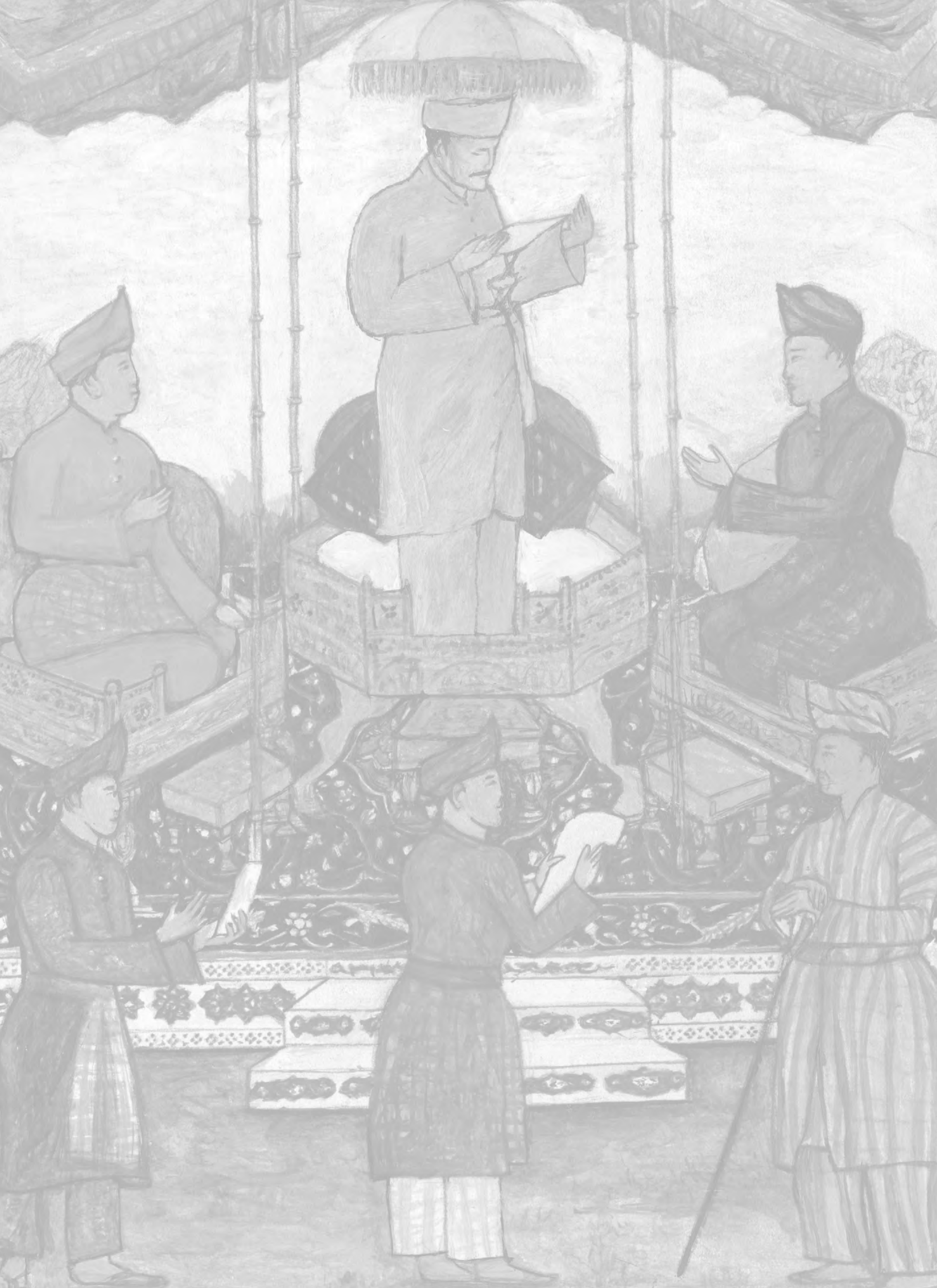
The late Dato' Hinshawati was fondly remembered by her colleagues and friends as one with a pleasant personality and quirky sense of humour. Her demise was greatly felt by her colleagues and friends alike.



The late Dato' Hinshawati Shariff sharing a light moment with Tan Sri Dr. Koh Tsu Koon (former Chief Minister of Penang) and Tun Dato' Seri Utama (Dr.) Haji Abdul Rahman Haji Abbas (the Penang State Governor).



The late Dato' Hinshawati Shariff.  
(1955-2014)





## REMEMBERING THE LATE TAN SRI DATUK AMAR CHONG SIEW FAI (FORMER CHIEF JUDGE OF SABAH AND SARAWAK)



The late Tan Sri Datuk Amar Chong Siew Fai  
in a scarlet robe

Tan Sri Datuk Amar Chong Siew Fai (1935-2006) served as the Chief Judge of Sabah & Sarawak from 1995 to 2000. Professionally, he was revered for his integrity, fairness and his commitment to justice without fear or favour. His knowledge of the law, and his meticulous and thorough preparation was legendary. As an advocate, it was said that by the time his pleadings were filed, his case would have been prepared to the extent that it was ready for trial. Personally, he was well-loved for his kindness, empathy and humility. He made time for everyone he crossed paths with, regardless of who they were.

### Early years

Tan Sri Chong was born in 1935 in Sarikei, a little town along the great Rajang River. His grandparents worked in a pepper plantation and his parents owned a simple Chinese medicine shop. Being the oldest of 7 siblings of a typical Chinese family, it was expected that he would one day take over the family business.

Tan Sri Chong was a diligent and keen student. However, due to his father's ill health, Chong left school after finishing Form 3 to help out in the family business. There was a shortage of teachers competent in English at the time. Not willing to resign entirely to a life tending a shop, Tan Sri Chong seized the opportunity to take up a teaching post at St. Anthony's School in Sarikei. It was during this time that Tan Sri Chong developed an interest in law. Before long, the interest became so intense that it became the career that he wanted to pursue. As his parents earned a modest living, it was a pursuit that he would have to fund himself.

For the next 11 years, he would teach in the mornings, mind the shop in the afternoons and spend any spare moment chasing his ambition. During this time, he enrolled in a UK study program, and by self-studying, completed his high school education. Tan Sri Chong then applied to and was accepted into Lincoln's Inn. He had just enough money for one attempt at passing

his law examinations. It was September 1962. Tan Sri Chong was 27 years old.

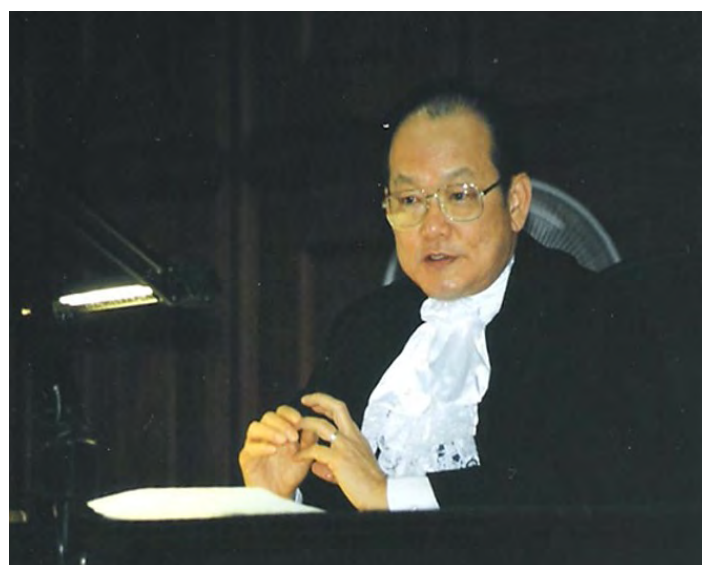
In London, he worked tirelessly and completed his law studies in 18 months while others took 3 years to do so. He was called to the English Bar on 9 February 1965, and soon after, returned home.

### Legal career

Tan Sri Chong was called to the Sarawak Bar on 19 May 1965 and commenced legal practice at Yong & Co. On 1 January 1968, he founded Tan Sri Chong Brothers Advocates with his brother Siew Chiang. Tan Sri Chong thrived in legal practice, earned the respect and trust of his clients and fellow lawyers alike, and made a name for himself. He was one of the founding members of the Advocates' Association of Sarawak and served 5 terms as its President from 1975 to 1979. On 1 February 1980, he was elevated to the Bench. He was 45 years old.

From 1980 to June 1994, Tan Sri Chong served as a High Court Judge in Kuching, Kota Kinabalu, and Sibul. On 1 July 1994, he was promoted to the then Supreme Court (later renamed the Federal Court). 11 months later, on 16 June 1995, he was appointed the Chief Judge of Borneo (later renamed the Chief Judge of Sabah & Sarawak). Tan Sri Chong was the first legal practitioner to be appointed as the Chief Judge of Sabah & Sarawak.

He was involved in a number of landmark decisions. One such case was the case of *Mohammed bin Hassan v Public Prosecutor* [1998] 2 CLJ 170. The case involved the question of whether the presumption of trafficking under section 37(da) of the Dangerous Drugs Act 1952 can arise out of a presumption of possession under section 37(d) of the Act. Tan Sri Chong who wrote the main judgment answered the question in the negative and held that in order to give rise to the presumption of trafficking, there must be an express affirmative finding (as opposed to legal presumption) of possession, thereby establishing what was described as "the rule against double presumption". With this decision, "found in possession" is not given a wider meaning that it ordinarily bears. It is consistent with the established principles of the construction of penal statutes and prevents an unduly harsh and oppressive finding against the accused. This landmark case continues to be followed today.



The late Tan Sri Datuk Amar Chong Siew Fai

Tan Sri Chong retired in July 2000 and continued his career in law as an arbitrator. Reputed for his fairness, patience and integrity, he was a very much sought after arbitrator until his demise in 2006.

### Tan Sri Chong Siew Fai and Puan Sri Rosalind

Tan Sri Chong was always a very focused and determined man. During his years in London, his one goal was to complete his studies in the shortest time possible and become a lawyer. He rejected his friends' invitations to parties and other social events except for a party during the Christmas of 1963. He made a token appearance and left promptly after dinner. Years later, he would discover that had he stayed on at the party that night, he would have met the woman he would spend the rest of his life with.

As fate would have it, although they did not meet on that not-so-fateful night in London, in the year of 1965 in Kuching, Tan Sri Chong finally met Rosalind, daughter of a member of Sarawak's Council Negeri. Tan Sri Chong and Rosalind were married on 2 October 1968 and went on to have 4 children – son Chieng Yih, and 3 daughters, Shyan, Tyng and Ling.

### A respected man

As a legal practitioner, Tan Sri Chong was well-respected by his peers, and by judges and judicial officers before whom he appeared. As an opponent, he was always a gentleman, courteous but firm. As a judge, he was always fair, patient and helpful. His even



The late Tan Sri Datuk Amar Chong Siew Fai  
(1935-2006)

temperament, ability and integrity earned him the respect of all. He had a profound knowledge of the law, and articulated his points and addressed all legal issues with courage, remarkable clarity, and without fear.

Tan Sri Chong believed in the close co-operation between the Bench and the Bar. In his elevation speech, Tan Sri Chong stressed the importance of close

co-operation between the Bench and the Bar, and the Legal Service in the administration of justice. He also said, "To members of the Bar, let me say this: I shall always remember that I had been one of you and that I had come from your ranks." He lived up to his words. Many a time, at the end of a hearing, he would invite the opposing advocates to a nearby kopitiam for a cup of coffee or a bowl of laksa. There, he would share his experiences, get to know the lawyers, and helped ease the passage of young lawyers into the legal fraternity.

#### **A keen sportsman**

Tan Sri Chong was an avid sportsman and a natural leader. As a young man, he was captain of his basketball team. His was one of the teams that represented Sarawak in a basketball tournament held in Singapore in the mid-1950s. As a legal practitioner, Tan Sri Chong initiated many measures and activities to strengthen the relationship between the Bench and the Bar. The Bench-Bar Games between Sabah and Sarawak started during his tenure as President.

#### **A man remembered**

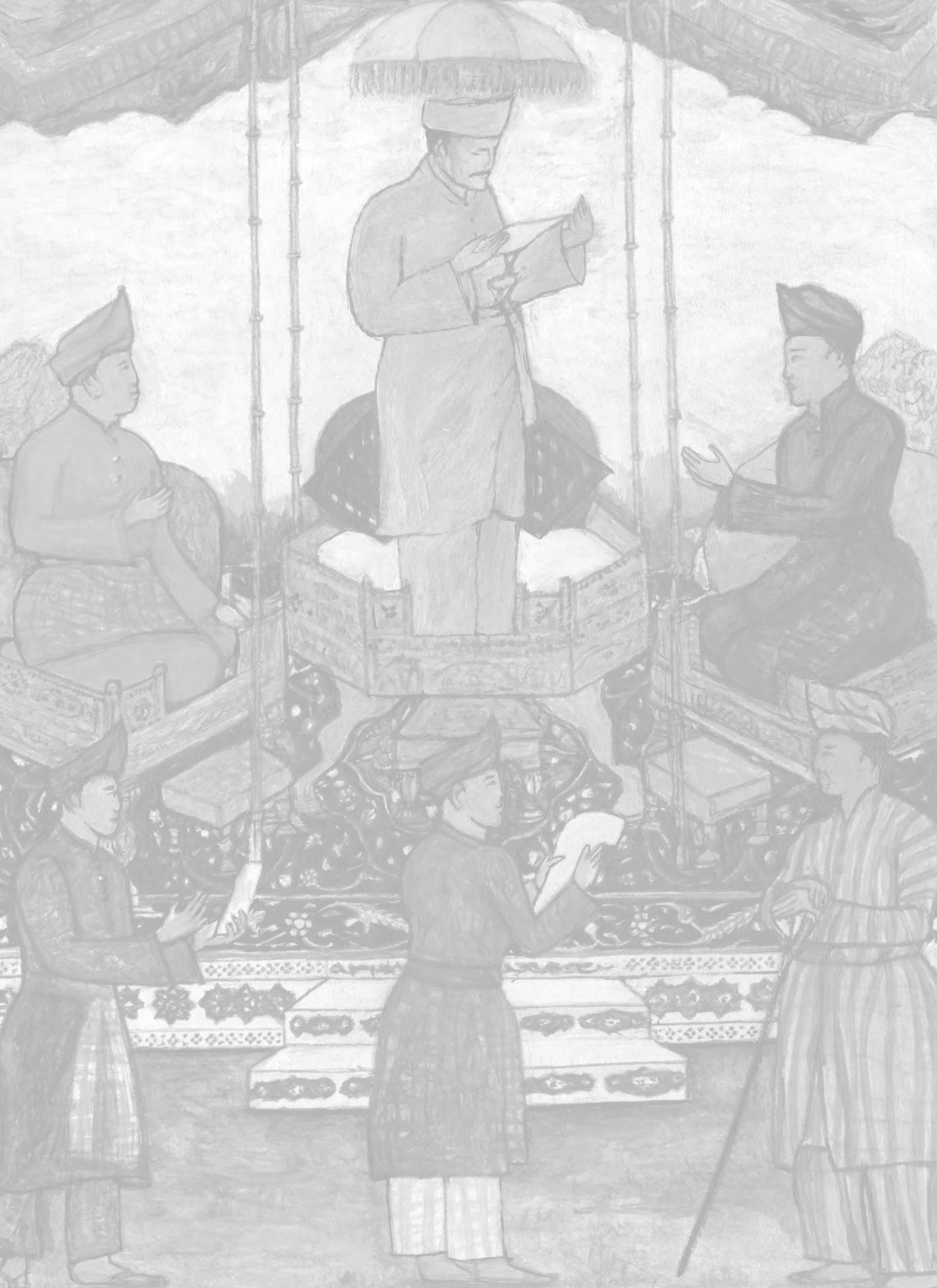
Tan Sri Chong lived his personal life the same way he held his public office. His principles and philosophy in life helped many find justice and fairness. He influenced and touched the lives of many more, and in the process, earned him much love, admiration and respect.

By: Ms Kate Chong Yuh Tyng  
(Daughter of the late Tan Sri Datuk Amar Chong Siew Fai)



The late Tan Sri Datuk Amar Chong Siew Fai with his family.  
Puan Sri Rosalind Chong in the foreground





## **CHAPTER 7**

IN REMEMBRANCE OF  
ALMARHUM HIS ROYAL HIGHNESS  
SULTAN AZLAN MUHIBBUDDIN SHAH  
AL-MAGHFUR-LAH  
(19 APRIL 1928 – 28 MAY 2014)

## ALMARHUM HIS ROYAL HIGHNESS SULTAN AZLAN MUHIBBUDDIN SHAH AL-MAGHFUR-LAH – A MONARCH AND JURIST OF RARE DISTINCTION



A sketch of the then Yang di-Pertuan  
Agong Sultan Azlan Muhibbuddin  
Shah by artist Jimmy Khalil

### Introduction

This tribute serves to give due recognition to the achievements and character of a jurist of rare distinction who headed the Judiciary, and was equally renowned for being a beloved monarch to the people of Perak, and later, of the nation. Of no other man can it be written with

truth that he contributed so immeasurably to the development of the law in the country, the reputation of the Judiciary worldwide, and who, as a great monarch, performed the onerous duty of ruling his State and this country, with great wisdom and sensitivity. His views and interpretation of the law in the extensive body of case-law he authored, comprise the basis for the fundamental principles we adhere to until today, as enshrined in our Federal Constitution.

### Early Years

Almarhum Sultan Azlan Muhibbuddin Shah Al Maghfur-Lah ('Almarhum') was born in Batu Gajah, Perak on 19 April 1928. He was the fourth and youngest son of Almarhum Sultan Yusoff Izzuddin Shah Ibni Al Marhum Sultan Abdul Jalil Karamatullah Nasiruddin Mukhtaram Shah

Radziallah who reigned over the State of Perak from 1948 to 1963. His mother was Toh Puan Hatijah binti Dato' Seri Wangsa Ahmad. Almarhum was brought up by his mother, outside of royal circles.

He received his early education at the Government English School in Batu Gajah. Like other young Royals of the time, Almarhum received his secondary education at the Malay College, Kuala Kangsar. He proved to be an excellent student and a keen sportsman, particularly in the field of hockey. He represented his schools and subsequently the State of Perak in hockey. In 1951, he left for the United Kingdom to read law at the University of Nottingham, where he earned a Bachelor of Laws degree in 1953. He was reputed to be a bright and



Almarhum Sultan Azlan Shah Al-Maghfur-Lah at age  
12 - 1940



hard-working student during his university days. At university too, his talents were not confined to the law. He continued to pursue his passion for hockey and represented the university. He also met and courted his future wife, Tuanku Bainun, who was completing her tertiary education there, during this time. After his degree, he was admitted to the English Bar by the Honourable Society of Lincoln's Inn on 23 November 1954.

Upon his return to Malaysia in 1954, Almarhum became the Assistant State Secretary of Perak. However this was short-lived as he chose to pursue a career in law by joining the Judicial and Legal Service of the then Federation of Malaya. He started his career as a First Class Magistrate and quickly rose along the ranks to the positions of President of the Sessions Court, Federal Counsel and Deputy Public Prosecutor. This was followed by a stint as the State Legal Advisor of Pahang and Johore. He then went on to become the Registrar of the High Court of Malaya, and subsequently the Chief Registrar of the Federal Court of Malaysia.

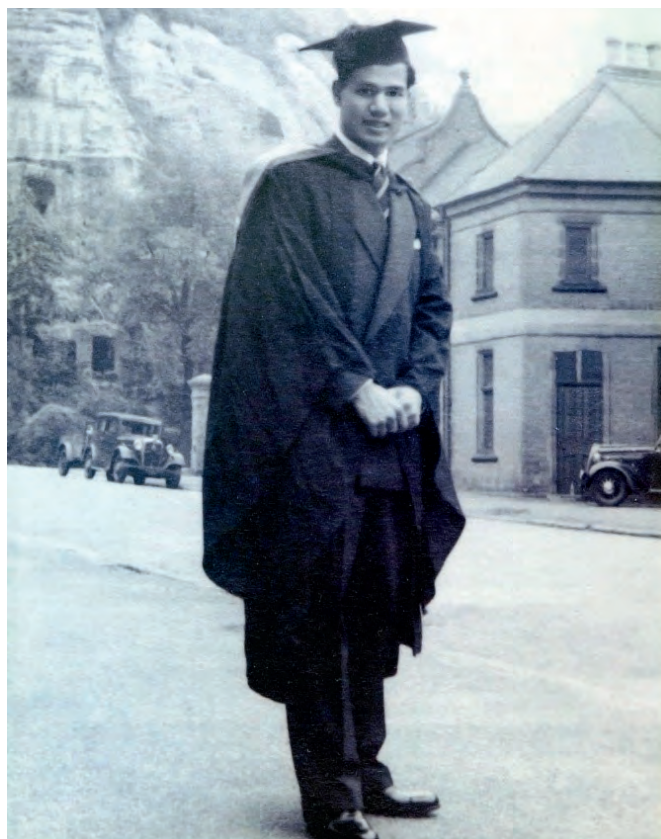


Almarhum Sultan Azlan Shah Al-Maghfur-Lah with his mother Toh Puan Hatijah binti Dato' Seri Wangsa Ahmad on board SS Canton before sailing to the United Kingdom - 31 December 1949



Almarhum Sultan Azlan Shah (front row, third from left) with the Perak Hockey Team 1949





Almarhum Sultan Azlan Shah Al-Maghfur-Lah after  
receiving the Bachelor of Law degree  
University of Nottingham – 1953



Almarhum Sultan Azlan Shah (seated, first from left) with his Nottingham University First XI Hockey Team  
1951 - 1952. Almarhum won Gold Colours for hockey.



Almarhum was appointed a Judge of the High Court of Malaya in 1965 at the age of thirty-seven. He enjoyed the distinction of being the youngest judge to be appointed in the Commonwealth.

Eight years later Sultan Azlan Shah was elevated to the Federal Court where he was appointed Chief Justice of the High Court in 1979 followed by his meteoric rise in 1982, to the position of the Lord President of the Federal Court (the position is now known as the Chief Justice of Malaysia).

The argument about what makes a good judge remains a subject of heated debate. History dictates that those who are to be candidates for a judicial hall of fame are individuals who alter the legal landscape for the betterment of society, who oblige us to rethink the purpose and nature of law itself.



Almarhum Sultan Azlan Shah Al-Maghfur-Lah taking the oath as a High Court Judge



Almarhum Sultan Azlan Shah Al-Maghfur-Lah served as the Chief Registrar of the Federal Court of Malaysia in 1963.





Almarhum Sultan Azlan receiving the instrument of installation as Lord President from the King (Almarhum Tuanku Jaafar Ibni Almarhum Tuanku Abdul Rahman – 1982)

What, one might ask, made Almarhum such a great judge? While there is no one-dimensional answer, two important components in the arsenal of qualities that contributed to his success as a judge, were wisdom and the ability to communicate such wisdom in a manner that people understood it. His Royal Highness possessed a combination of intelligence, experience and compassion, coupled with the quintessential judicial demeanour, patience and passion for the law, all of which comprise the essential elements of an excellent judge.

As a sitting judge Sultan Azlan Shah was well-known for his judicial courtesy, exhibiting the utmost patience and civility to counsel who appeared before him, by rarely interrupting a submission, yet

demonstrating his mastery of the subject of dispute before him in the concise but thorough reasoned judgment delivered at the close of a case. He did not however tolerate conduct unbecoming of the profession and dealt with any such transgressions severely. He was also exacting in the standards he imposed on lawyers, albeit in the context of their dress code, or the substantive content of their submissions in relation to the law. This was in keeping with his adherence to the strict traditions of English law.

His Royal Highness loved the law and found fulfillment in his role as a dispenser of justice. To him being a member of the Bench was more than a job – it was a responsibility he took to heart and performed with great skill, excellence and integrity.

His innate sense of justice is reflected in his judgments, which continue to be relevant to this day. His judgments span a wide range of subjects from administrative and constitutional law to contract, commercial, criminal and even environmental law. Notwithstanding his prolific output, the underlying theme that resonates throughout these judgments is his emphasis on the twin pillars of the Rule of Law and the independence of the Judiciary.

This is exemplified in **Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187** where he said of the Constitution:-

*“It is the supreme law of the land embodying three basic concepts: one of them is that the individual has certain fundamental rights upon which not even the power of the State may encroach. The second is the distribution of sovereign power between the states and the Federal.... The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among, the executive, legislative and judicial branches of government, compendiously expressed in modern terms that we are a government of laws not of men....”*

His passion for the Rule of Law and the independence of the judiciary was apparent from the inception of his career on the Bench. In his speech on the occasion of his elevation as a Judge of the High Court of Malaya in 1965 he said:-

*"I shall endeavour to do justice, not only to the accused but also to the state. Lest we forget, justice not only means the interests of the accused but also the interests of the state. I would give the assurance that in the exercise of my judicial function I would uphold the absolute independence of judgment. The independence of the judiciary remains a cornerstone in the structure of our system of government today. It not only guarantees that justice will be done and judgments firmly based on truth; it is also an indispensable condition of the rule of law....."*

In the course of his tenure on the Bench, Sultan Azlan Shah presided over several controversial cases, notably **Public Prosecutor v Datuk Haji Harun bin Haji Idris (No. 2)** [1977] 1 MLJ 15 where a sitting Menteri Besar was charged with corruption for the first time in Malaysian history. And in **Public Prosecutor v Tengku Mahmood**

**Iskandar & Anor** [1973] 1 MLJ 128, where the accused was a prince of the Royal House of Johore, Almarhum Sultan Azlan Shah in meting out sentence, held famously that:-

*"....there is only one kind of law in this country to which all citizens are amenable. With us, every citizen irrespective of his official or social status is under the same responsibility for every act done without legal justification. This equality of all in the eyes of the law minimizes tyranny."*

Almarhum is perhaps most often quoted in relation to his judgement in **Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd.** [1979] 1 MLJ 147:

"Unfettered discretion is a contradiction in terms... Every legal power must have legal limits, otherwise there is dictatorship."



Almarhum Sultan Azlan Shah Al-Maghfur-Lah at the official opening of the Teluk Intan Courthouse on 15 April 1986



As Chief Justice of the High Court and later, Lord President, Almarhum ensured that the Judiciary remained progressive by taking a proactive approach on many fronts. This included efforts to enhance the reputation of the superior judiciary by appointing senior and competent practitioners to take up appointments as Judicial Commissioners on a short term basis as well as persuading eminent practitioners to accept permanent appointment as Judges. This also had the desired effect of reducing the accumulated backlog of cases at the time.

Almarhum's other notable contribution to the Judiciary during that period was his procurement of the iconic Sultan Abdul Samad Building for the Supreme Court. He envisioned a building of quiet dignity, with sufficient space for the courts, while maintaining a beautiful and graceful exterior, culminating in the golden dome. This truly reflected the ethos of the judiciary.

Almarhum's commitment to the rule of law and the judiciary continued well after his retirement. This is reflected in the various lectures and speeches that he was called upon to deliver by various bodies and institutions. Most significantly the lecture



Almarhum Sultan Azlan Shah Al-Maghfur-Lah with Yang Maha Mulia Tuanku Bainun at Istana Negara– Hari Raya 1990



Almarhum Sultan Azlan Shah Al – Maghur-Lah, with members of the Royal Family  
Istana Iskandariah, Kuala Kangsar  
19 April 2006



series named after him, i.e. the Sultan Azlan Shah Lecture Series has achieved international recognition and attracted renowned jurists as speakers. It remains an important event in the Malaysian legal calendar.

This tribute would be incomplete without a reference to Almarhum's remarkable family. Almarhum was fortunate in having a gracious wife, Tuanku Bainun, who complemented his qualities to perfection. They are blessed with five children each of whom is notable in his or her own right. Their eldest child, Duli Yang Maha Mulia Sultan Nazrin Muizzudin Shah, is the present ruler of Perak. Tragically, their third child, Almarhum Dato' Seri Sheikh Raja Ashman Shah, Raja Kecil Sulong of Perak, passed away on 30th March 2012. This took a tremendous toll on Almarhum and his family. The depth of affection he felt for his children is borne out by this endearing statement:-

"The only assets I have are my children."

Another lesser known aspect of the late Sultan Azlan was his generosity of spirit and his kindness to those around him. Throughout his career he took considerable pains to ensure that the needs of those serving under him were met. Every morning a motley crowd of interpreters, office boys, drivers, orderlies and Registrars would routinely wait outside Almarhum's chambers, queuing up to seek his help and guidance, which would be duly given. In this, Almarhum truly personified Rudyard Kipling's famous prose in that he could, with ease, walk with Kings and yet not lose the common touch.

#### Conclusion

Almarhum was a man whose stature in the law was beyond comparison. The loss of Sultan Azlan Shah hangs over us all and will continue to do so for some considerable time. Although His Royal Highness is renowned as a great monarch and a keen sportsman it is Almarhum's passion for the law and his standing as a jurist that will endure. Finally, Almarhum will be remembered with great affection.



The Official Launch of the book entitled Constitutional Monarchy, Rule of Law and Good Governance and The Sultan Azlan Shah Law Lectures 1986 to 2003 : Judges on the Common Law - 13 April 2004, Mandarin Oriental Kuala Lumpur

Left to Right : Lord Woolf (Lord Chief Justice of England & Wales), Almarhum Sultan Azlan Shah Al – Maghfur-Lah, His Royal Highness Sultan Nazrin Muizzuddin Shah



Left to Right : Lord Woolf (Lord  
Chief Justice of England & Wales)  
with Almarhum Sultan Azlan Shah  
Al – Maghfur-Lah



The 20<sup>th</sup> Sultan Azlan Shah Law Lecture on 10 August 2006 at Shangri – La Kuala Lumpur  
Left to Right : Almarhum Sultan Azlan Shah Al – Maghfur-Lah with US Supreme Court  
Associate Justice Anthony M Kennedy

Note: Photographs courtesy of the Sultan Azlan Shah Gallery, University of Malaya and the Palace of Justice Library





A JUDGE NON PAREIL







THE THEN LORD PRESIDENT  
RAJA AZLAN SHAH

## **REFERENCE PROCEEDINGS**



## REFERENCE PROCEEDINGS FOR ALMARHUM SULTAN AZLAN MUHIBBUDDIN SHAH IBNI ALMARHUM SULTAN YUSSUF IZZUDDIN SHAH GHAFARULLAH-LAH

Reference proceedings were held for Almarhum Sultan Azlan Muhibbuddin Shah Ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullah-Lah on 19 November 2014 at the Palace of Justice, Putrajaya.

The proceedings were chaired by the Right Honourable the Chief Justice of Malaysia, Tun Arifin Zakaria in the presence of the Sultan of Perak, Sultan Raja Nazrin Muizzuddin Shah and his consort, Raja Permaisuri Perak, Tuanku Zara Salim. The other presiding judges were the President of the Court

of Appeal Justice Raus Sharif, the Chief Judge of Malaya, Justice Zulkefli Ahmad Makinudin and the Chief Judge of Sabah and Sarawak, Justice Richard Malanjum.

Members from various segments of society were invited to attend the reference proceedings. This included members of the royal family, representatives from the legislative and executive arms of the government, former and sitting judges, senior members of the Bar and officers of the judicial and legal service.



Chief Justice Arifin Zakaria welcoming Their Royal Highnesses The Sultan of Perak Sultan Nazrin Muizzuddin Shah ibni Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah and Raja Permaisuri Perak, Tuanku Zara Salim  
(On left - Federal Court Chief Registrar Mr. Roslan Haji Abu Bakar)





The arrival of His Royal Highness Sultan Nazrin Muizzuddin Shah  
L to R : Puan Sri Noorkim Lim Abdullah, Puan Sri Rohani Mohamed Kassim,  
Puan Sri Salwani Mohamad Zamri and Toh Puan Robiah Abdul Kadir



The arrival of His Royal Highness Sultan Nazrin Muizzuddin Shah and Her Royal Highness  
Tuanku Zara Salim





His Royal Highness Sultan Nazrin Muizzuddin Shah and Her Royal Highness Tuanku Zara Salim  
at the entrance of the Palace of Justice



Members of the Royal Family and other guests in the courtroom

Front row L-R Dato' Seri Mohd. Salleh bin Dato' Ismail, YAM Raja Dato' Seri Azureen Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah, Yang Amat Berbahagia Datin Seri Noraini Jane Tan Sri Kamarul Ariffin, Dato' Seri Ismail Farouk Abdullah, YAM Raja Dato' Seri Eleena Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah, Y.M. Tunku Dato' Seri Kamil Tunku Rijaludin, YAM Raja Dato' Seri Yong Sofia Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah



The proceedings commenced with an address by the Attorney General of Malaysia, the Right Honourable Tan Sri Abdul Gani Patail. In his speech the Attorney General, inter alia, described Almarhum Sultan Azlan as a 'true guardian of the Constitution' as illustrated in a series of cases he had presided over, including **Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187**.

His speech was followed by that of the President of the Malaysian Bar, Mr. Christopher Leong, who delivered an eloquent eulogy commencing from Almarhum Sultan Azlan's early days and culminating in his ascension to the throne. He highlighted Almarhum's warm and respectful regard for the Bar, quoting Almarhum's speech to law students in the United Kingdom in 1986 on the duty of members of the Malaysian Bar:

*"It is therefore your duty, having been trained as lawyers to ensure that at all times the supremacy of the Malaysian Constitution is maintained. No matter how*

*expedient it may be to anyone in power to follow a certain course of action, at no time should any action be taken which is inconsistent with the provisions of the Constitution, or I may add, against the spirit of the Constitution.*

*It is your duty, as expressly provided for in the Legal Profession Act to uphold the cause of justice without regard to your own interests, uninfluenced by fear or favour."*

The Right Honourable the Chief Justice of Malaysia, Arifin Zakaria then delivered his address on behalf of the judiciary. His address reflected the rich legacy left behind by Almarhum Sultan Azlan and his immense contribution to Malaysian jurisprudence. In the course of his address he captured the essence of Almarhum in the following words:

*"...Almarhum's greatness came not merely from an impeccable lineage; it also came from a man blessed with a brilliant mind,*



The Attorney General Tan Sri Abdul Gani Patail and the President of the Malaysian Bar Mr. Christopher Leong delivering their speeches

*outstanding intellect, keen sportsmanship, great dignity, deep compassion and good humour, in equal measure.....*

*His views and interpretation of the law in the extensive body of case law he wrote, comprise the basis for the fundamental principles we adhere to, until this day, as enshrined in our Federal Constitution.....”*

The proceedings culminated with a special address by His Royal Highness Sultan Nazrin Muizzuddin Shah in a rare departure from tradition. His Royal Highness expressed his appreciation for according him such an honour. In a poignant speech, Sultan Nazrin spoke of his father with great affection and respect. He described Almarhum’s passion for the law and his deep moral and ethical convictions in the following terms:-

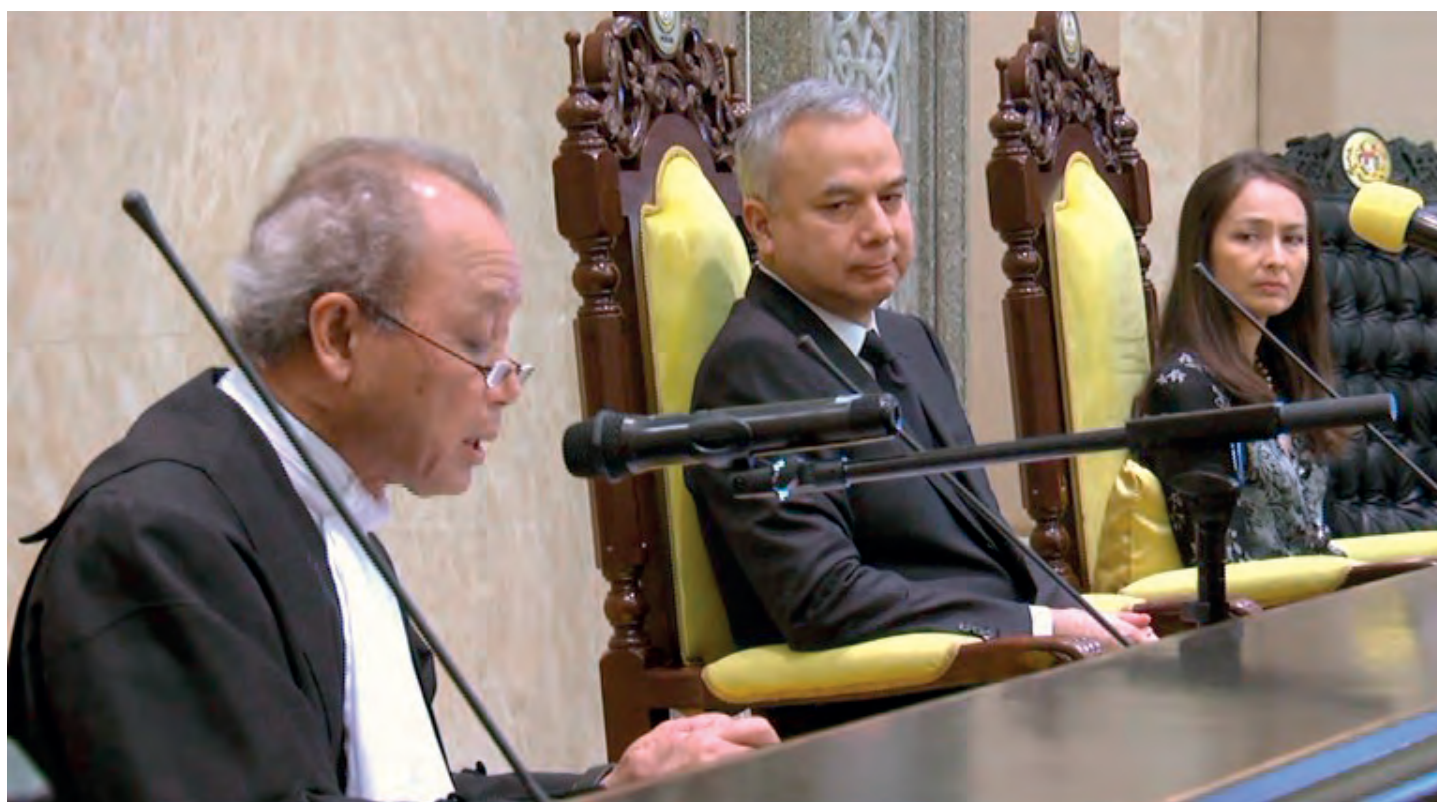
*“My father’s love for the law, and his quest for justice was ever encompassing. Whilst serving in the judiciary, he strived to uphold*

*the rule of law and the independence of the judiciary, and to dispense justice without fear or favour.*

*On moral and ethical values he remains uncompromising. To him the line between what is right and what is wrong is always clearly defined. It was these very traits that both he and my mother inculcated in all their children. And it is these values that we the children, now appreciate even more in our adult life. For this, we are truly grateful to them.”*

His Royal Highness concluded his address by expressing his confidence that his father’s aspirations for an independent judiciary would continue to be upheld by the judiciary.

The Chief Justice then concluded the proceedings with an order that the record of the reference proceedings be kept in the archives of the judiciary and a copy extended to the Royal family.



Their Royal Highnesses the Sultan of Perak and Raja Permaisuri Perak listening to the speech by Chief Justice Arifin Zakaria





His Royal Highness Sultan Nazrin Muizzuddin Shah delivering his special address



His Royal Highness Sultan Nazrin Muizzuddin Shah signing the guestbook at the Judicial Museum, Palace of Justice





Members of the Perak Royal Family who attended the Reference proceedings walking out of the court room to attend the Royal Lunch



The Royal Entourage visiting the Palace of Justice Library  
(His Royal Highness The Sultan of Perak seen here with Chief Justice Arifin Zakaria,  
President of the Court of Appeal Justice Raus Sharif and Head Librarian Edy Irwan Zulkafli)





His Royal Highness Sultan Nazrin Muizzuddin Shah beaming with pride posing next to an oil painting of his late father, Almarhum Sultan Azlan Shah Al-Maghfur-Lah with Chief Justice Arifin Zakaria

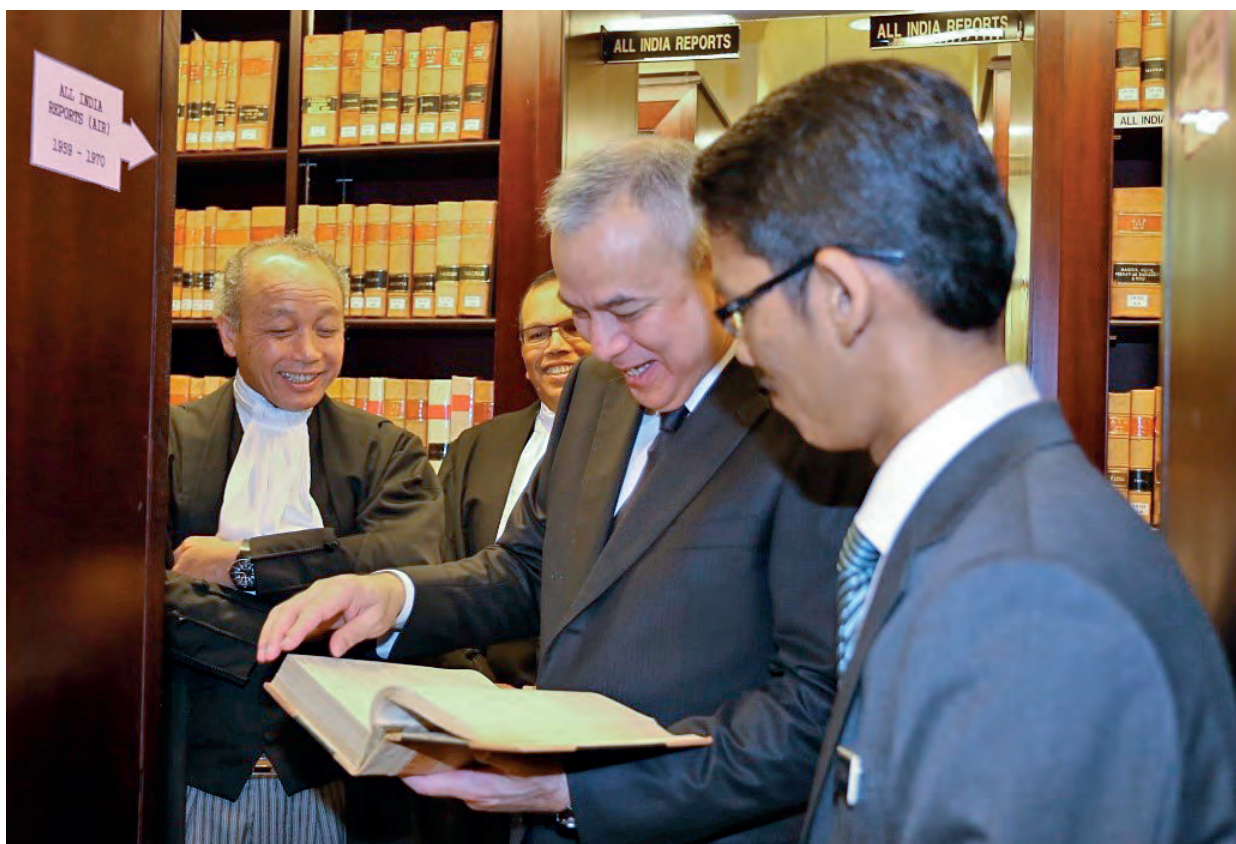


His Royal Highness Sultan Nazrin Shah seemed intrigued by the Register Cause Book for the year 1929, one of the collections on display at the Judicial Museum, Palace of Justice. Together with His Royal Highness are Chief Justice Arifin Zakaria and Judicial Officer Mohd Aizuddin Zolkeply





Chief Justice Arifin Zakaria explaining the layout of the Kuala Lumpur Court Complex in Jalan Duta, Wilayah Persekutuan.



His Royal Highness Sultan Nazrin Muizzuddin Shah browsing through some ancient legal tomes. Chief Justice Arifin Zakaria and The President of the Court of Appeal Justice Raus Sharif looking on with amusement.





Looking back at a life well lived. His Royal Highness Sultan Nazrin Shah appreciating a tribute to the memory of his late father Almarhum Sultan Azlan Muhibbuddin Shah Al- Maghfur-Lah



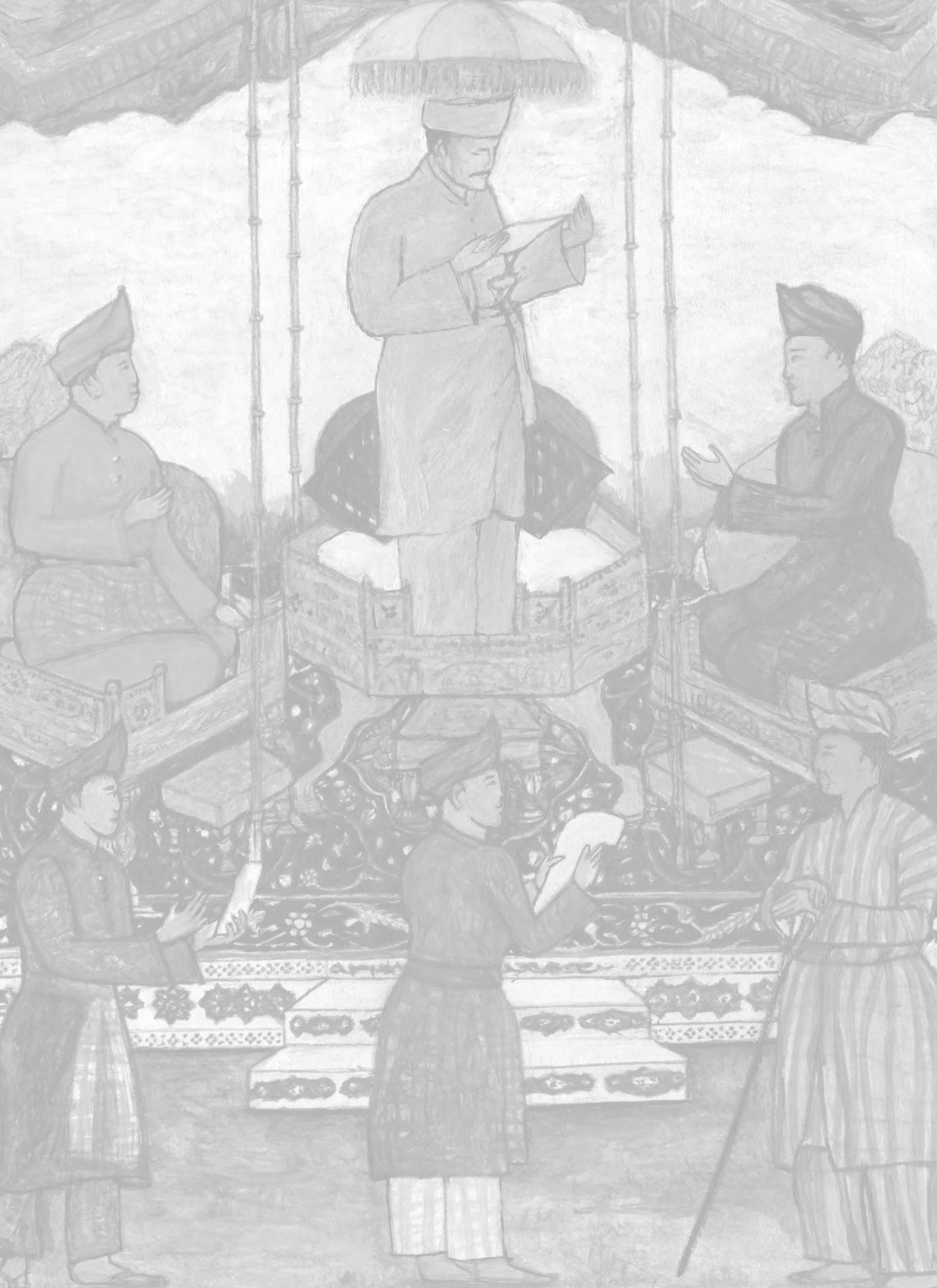
The Service Book of the then Justice Raja Azlan Shah – one of the materials on display at the Judicial Museum, Palace of Justice





Their Royal Highnesses The Sultan of Perak Sultan Nazrin Muizzuddin Shah and Raja Permaisuri Perak Tuanku Zara Salim bid farewell to the Judges, Judicial Officers and staff.







# **CHAPTER 8**

**CELEBRATING THE 20<sup>TH</sup> ANNIVERSARY OF  
THE COURT OF APPEAL**

## CELEBRATING THE 20<sup>TH</sup> ANNIVERSARY OF THE COURT OF APPEAL

*"The whole past is the procession of the present"*

*-Thomas Carlyle*

On 1<sup>st</sup> January 1985, upon the coming into force of subsection 16(1) of the Constitution (Amendment) Act 1983, the Federal Court was renamed the Supreme Court. Section 17 of the Act also came into force on that date, repealing Article 131 of the Federal Constitution. With that repeal, the appellate recourse to the Privy Council ceased to be available. Some five years after the closure of the appellate door to the Privy Council, the absence of a three tier superior court became sorely felt.

The establishment of the Court of Appeal in 1994 is an important milestone in the evolution of the Malaysian Judiciary. The rebirth was a result of proposals made by various agencies since it was felt that the Judiciary was in dire need of an intermediate appellate tier between the High Court and the Federal Court. With the coming into force of the Constitution (Amendment) Act on 24<sup>th</sup> June 1994, the Court of Appeal now stands as the stalwart of the appellate courts.



Where it all began (the iconic Sultan Abdul Samad Building which housed the newly established Court of Appeal)

The Court of Appeal sat for the first time on 18 August 1994 at Bangunan Sultan Abdul Samad in Kuala Lumpur. The official opening ceremony of the Court of Appeal was held at the Sultan Abdul Samad Building, Kuala Lumpur on 17 September 1994. The ceremony was officiated by the then Yang Di-Pertuan Agong Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman. Present at the ceremony were the Chief

Justice, Tun Abdul Hamid Omar, Tan Sri Dato' Mohd Eusoff Chin, the Chief Judge of Malaya who was also acting as the President of the Court of Appeal, Tan Sri Datuk Amar Mohd Jemuri Serjan, Chief Judge of Sabah and Sarawak and Judges of the superior courts. The Law Minister (which post had been created by then), Dato' Seri Syed Hamid Albar Tan Sri Syed Jaafar Albar was also present.



The Yang di-Pertuan Agong, Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman accompanied by Tun Abdul Hamid Omar and Dato' Sri Syed Hamid Albar walking to the Court of Appeal courtroom in the historical Sultan Abdul Samad Building. (Photograph courtesy of the National Archives of Malaysia)



The interior of the Court of Appeal then situated at the Sultan Abdul Samad Building

The “founder members” of the Court of Appeal Judges consisted of 8 Judges namely Justice Zakaria Yatim, Justice Shaik Daud Haji Mohd Ismail, Justice Gopal Sri Ram, Justice Chan Nyarn Hoi, Justice Siti Norma Yaakob, Justice Mahadev Shanker, Justice VC George and Justice Abu Mansor Ali. They were sworn in on 24<sup>th</sup> September 1994 and

Tan Sri Dato' Seri Lamin Mohd Yunus became the first President of the Court of Appeal. The number of Judges was then increased to 15 in 2001 and further increased to 22 in 2006. In the year 2009, the number of Judges was further increased to 32. Presently there are 28 Judges in the Court of Appeal.





The Yang di-Pertuan Agong, Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman (centre) signing the Court's guestbook. Looking on was the then Chief Justice Tun Abdul Hamid Omar (right).  
(Photograph courtesy of the National Archives of Malaysia)



(L-R: first row)- On the bench, Tan Sri Mohd Eusoff Chin, Tun Abdul Hamid Omar, the Yang di-Pertuan Agong, Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman, Dato' Seri Syed Hamid Albar, Tan Sri Syed Jaafar Albar and Tan Sri Jemuri Serjan. Also seen in the picture (second row, centre) was the then Acting Chief Registrar of the Federal Court, Tuan Ramly Ali (as he then was). (Photograph courtesy of the National Archives of Malaysia)





The Yang di-Pertuan Agong, Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman (centre) in a Judge's chambers in the historical Sultan Abdul Samad Building. (Photograph courtesy of the National Archives of Malaysia)



The pioneer group of Court of Appeal Judges on their appointment day, photographed with the then Yang di-Pertuan Agong Al-Marhum Tuanku Ja'afar Ibni Al-Marhum Tuanku Abdul Rahman. (Photograph courtesy of Dato' Seri Gopal Sri Ram)



When the Court of Appeal was first established, the principal registry was housed in the historical Sultan Abdul Samad Building in Kuala Lumpur. The principal registry moved to the Palace of Justice in the year 2003.

During the first decade of its existence, the Court of Appeal rendered several important judgments creating its jurisprudence which has added substantially to the corpus of laws. Some decisions of the Court of Appeal have been referred to by the Courts of Singapore and Brunei. The first appeal that was heard after the constitution of the bench on 24<sup>th</sup> September 1994 was the case of *Keet Gerald Francis Noel John v Mod Noor bin Abdullah & Ors* [1995] 1 MLJ 193. The subject matter of the appeal concerned an interlocutory injunction. The panel that sat to hear that case consisted of Justices Gopal Sri Ram, Siti Norma Yaakob, and VC George.

Starting with 883 cases registered in the first year of its establishment, the number has grown exponentially. Several measures and initiatives were taken. In the early years there was no timeline imposed for the disposal of cases. The Court of Appeal Judges during the period of 2011 to 2013 had worked tirelessly in reducing the backlog of cases when timelines were introduced. Their Lordships had more sitting days in a month with a view to dispose more cases since registration of cases had increased. In view of the aforesaid, the number of pending cases had come down to a reasonable level. In 2014, the sitting arrangement for the judges was accordingly, revised to allow the Justices to take a breather from hearing cases and at the same time allowing them more time to write their grounds of judgment. Despite the reduction in the number of sitting days, the rate of disposal is still higher than the rate of registration. This further reduced the number of pending cases.



Swearing in ceremony of the newly elevated Judges of the Court of Appeal on 1<sup>st</sup> April 2001.

(L-R) Justice Mohd Noor Ahmad, Justice K.C. Vohrah, Chief Justice Tun Dzaiddin Abdullah, Acting President of the Court of Appeal Justice Wan Adnan Ismail, Chief Judge of Sabah & Sarawak Justice Steve Shim Lip Kiong and Justice Alauddin Dato' Mohd Sheriff.





Former Judges of the Court of Appeal.

(L-R) Justices Gopal Sri Ram, Siti Norma Yaakob and Haidar Mohd Noor  
(Photograph taken during a visit by Yang di-Pertuan Agong, Al-Marhum Sultan Salahuddin Abdul Aziz Shah Al-Haj ibni Al-Marhum Sultan Hisamuddin Alam Shah Al-Haj to Sultan Abdul Samad Building on 29th July 1999)



Former Judges of the Court of Appeal.

(L-R) Justices Dennis Ong Jiew Fook, Mokhtar Sidin, Chan Nyarn Hoi and Shaik Daud Md Ismail.  
(Photograph taken during a visit by Yang di-Pertuan Agong, Al-Marhum Sultan Salahuddin Abdul Aziz Shah Al-Haj ibni Al-Marhum Sultan Hisamuddin Alam Shah Al-Haj to Sultan Abdul Samad Building on 29th July 1999)

## Events Commemorating the 20<sup>th</sup> Anniversary of The Court of Appeal

On 24 June 2014, the Court of Appeal celebrated its 20<sup>th</sup> Anniversary with a weeklong series of events hosted to commemorate its historic establishment and achievement. It was a day for Judges, officers and staff of the Court of Appeal to revel in their success. The events began with a gathering on 3 November 2014 at the Palace of Justice Putrajaya attended by the directors of state courts, officers and supporting staff of the Palace of Justice. On this occasion, Mr. Roslan Hj Abu Bakar the Chief Registrar of the Federal Court in his speech, highlighted the achievement of the Court of Appeal and its fascinating journey.



Themed “Court of Appeal, Malaysia: A journey of 20 years”, the Court of Appeal Open Day was an event to remember. The event was organised by the Registry of the Court of Appeal and the Corporate Communications and International Relations Division of the Chief Registrar’s Office for the public to have an insight into the role and functions of the Court of Appeal. The activities held during this occasion included the 20<sup>th</sup> anniversary commemorative exhibition and multimedia presentation. There were also two slots of an “Exclusive Session with a Court of Appeal Judge” which brought Justice Mohamad Ariff Md Yusof on 4 November 2014 and Justice David Wong Dak Wah on the following day.

Welcome panel for the Court of Appeal Open Day



Justice Md Raus Sharif touring the exhibition on the performance of the Court of Appeal.





Justice Mohamad Ariff Md Yusof (Front-6th from left) with participants of the talk "The Pathways to the Bench".

On 4 November 2014, a Luncheon Meeting was hosted by the Chief Justice of Malaysia the Rt. Hon. Arifin Zakaria for the Chief Secretary to the Government of Malaysia the Hon. Tan Sri Dr. Ali Hamsa and Heads of Government Departments at the Banquet Hall, Palace of Justice, Putrajaya. Also in attendance were the President of the Court of Appeal the Rt. Hon. Justice Md. Raus Sharif, the Chief Judge of Malaya the Rt. Hon. Justice Zulkefli Ahmad Makinudin, the Chief Judge of Sabah and Sarawak The Rt. Hon. Justice Richard Malanjum, the Hon. Attorney General Tan Sri Gani Patail,

Judges of the Federal Court and Court of Appeal and Director General of Public Service Tan Sri Mohamad Zabidi Zainal. The guests were then, enlightened on the workings of the Malaysian Judiciary by a briefing entitled "The Judiciary: It's Role, Independence and Reform" given by Justice Abdull Hamid Embong, Federal Court Judge.

On 5 November 2014, a Town Hall Session was held with the President of the Court of Appeal at the Banquet Hall of the Palace of Justice, Putrajaya. It was a successful meeting since it provided a



Justice Abdull Hamid Embong Federal Court Judge delivering a talk on "The Judiciary: It's Role, Independence and Reform"



Tan Sri Dr. Ali Hamsa, Chief Secretary to the Government of Malaysia signing the Court's guestbook. Looking on is Justice Mohamed Apandi Ali, Judge of the Federal Court



platform to engage in a constructive dialogue to discuss, deliberate and iron out the teething problems faced by many of the stakeholders dealing with the Court of Appeal.

A dinner to commemorate this historic 20<sup>th</sup> year celebration was held on 6 November 2014 at the Royal Ballroom, Palace of the Golden Horses, Seri Kembangan, Kuala Lumpur. It was truly a



Justice Md Raus Sharif responding to issues raised on the administration of the Court of Appeal during the Town Hall Meeting.  
(L-R: Mr. Christopher Leong (Chairman of the Malaysian Bar), Justice Md Raus Sharif and Justice Zulkefli Ahmad Makinudin)



Former President of the Malaysian Bar, Mr. Lim Chee Wee (4th from left) posing a question during the Town Hall Session



momentous occasion as it was held to pay tribute to all former Justices, officers and staff of the Court of Appeal as well as gesture of gratitude to the current Judges, officers and staff. It was a night to sit back, celebrate and at the same time reminisce the good old days.

Present to grace the ceremony were the guests of honour, the Chief Justice of Malaysia Tun Arifin Zakaria and YBhg. Toh Puan Robiah Abd. Kadir. Also present were former Chief Justices of Malaysia Tun Mohamed Dzaiddin Abdullah and YM Tengku Toh Puan Noriah Tengku Ismail, Tun Dato Sri Abdul Hamid Mohamad and Toh Puan Hamidah Choong Abdullah and Tun Dato' Seri Zaki bin Tun Azmi, the Hon. Senate President Tan Sri Abu Zahar Ujang, the Hon. Hajah Nancy Shukry, Minister in the Prime Minister's Department, the Hon. Dato' Seri Mohamed Nazri Tan Sri Abdul Aziz, Minister of Tourism Malaysia and the Hon. Tan Sri Dr. Ali Hamsa, Chief Secretary to the Government of Malaysia, the President of the Court of Appeal Justice Md Raus Sharif and Puan Sri Salwany

Mohamed Zamri, the Chief Judge of Malaya, Justice Zulkefli Ahmad Makinudin and Puan Sri Rohani Mohamed Kassim, the Chief Judge of Sabah and Sarawak, Justice Richard Malanjum and Puan Sri Charlene Siim C Jintoni, and Deputy High Commissioner at the British High Commission Malaysia, His Excellency Paul Rennie and wife. Also in attendance were Judges of the superior courts, representatives from the Attorney General's Chambers, senior lawyers, Registrars and Judicial officers of the Court of Appeal. The presence of former Judges of the Federal Court and Court of Appeal including former Registrars of the Court of Appeal made the event even more meaningful and significant. Amongst former Judges who attended the dinner were Tan Sri Dato' Haji Lamin Haji Mohd Yunus, Tan Sri Siti Norma Yaakob, Datuk Heliliah Mohd Yusof, Tan Sri James Foong Cheng Yuen, Datuk Seri Panglima Sulong Matjeraie, Dato' Mahadev Shankar, Tan Sri VC George, Dato' Haji Shaik Daud Haji Mohd Ismail, Dato' Wan Adnan Addin Muhammad, Datuk Syed Ahmad Helmy Syed Ahmad, Dato' Selventhiranathan Thiagarajah and



The VIPS too were in disbelief – “Are you sure two decades have gone by since its inception?” asked Tun Zaki Tun Azmi.

(L-R: YBhg. Tan Sri Dr. Ali Hamsa, Chief Secretary to the Government of Malaysia, YB Dato' Seri Mohamed Nazri Tan Sri Abdul Aziz, Minister in the Prime Minister's Department, Justice Tun Arifin Zakaria, Chief Justice of Malaysia and YABhg. Tun Zaki Tun Azmi, Former Chief Justice of Malaysia)



Dato' Tee Ah Sing @ Tee Boon Hooi. Amongst senior lawyers at the dinner were Tan Sri Cecil Abraham, Tn Hj. Sulaiman Abdullah, Ragunath Kesavan and wife, Steven Thiru and wife, Christopher Leong and Dato' Mohd Hafarizam Harun.

In celebrating the success of the Malaysian Court of Appeal, the Chief Justice officially launched a Commemorative Book entitled "*The Court of Appeal Malaysia 20<sup>th</sup> Anniversary (1994-2014)*". The Book

showcases the Court of Appeal's 20 year journey and traces the history and events of the court, profiles its past Presidents and highlights the great strides the Court of Appeal have made since 1994.

The evening continued with an entertaining musical performance entitled "*Up The Court of Appeal Street – A Musical*" where the cast was made up entirely of Judicial Officers. Produced and directed by Justice



Life is a cabaret in the Court of Appeal.



Who can deny that judgments are a judge's best friend?





The happy cast – Their superb performance said it all

(L-R): Pretty dancers in pink, Safarudin Thambi (4th from left) easily gave the Chief Justice a run for his money – It was indeed a night to remember

Zainun Ali and choreographed by judicial officers, Norul Fitri Hamdan and Muhammad Iskandar Zainol, the musical was a thumping success.

the Malaysian International Chambers of Commerce and Industry and the Judicial Appointments Commission.

A subsequent event to commemorate the 20<sup>th</sup> Anniversary was a talk on “Intellectual Property Law” by Sir Colin Birss, a High Court Judge from the United Kingdom. This event was a joint effort of

Despite a drizzle on Saturday morning, 8 November 2014, the Fun Run organised in conjunction with the 20<sup>th</sup> Anniversary of the Court of Appeal, saw nearly 600 participants, including Judges of the



(L-R): Sir Colin Ian Birss a High Court Judge of England and Wales (Chancery) United Kingdom, Justice Zulkefli Ahmad Makinudin and Justice Dr. Badariah Sahamid during the talk on “Adjudicating Intellectual Property Cases and Judicial Case Management”.



Federal Court and Court of Appeal, Judges and Judicial Commissioners of High Court of Kuala Lumpur and Selangor as well as judicial officers and supporting staff of the Palace of Justice, Putrajaya, Kuala Lumpur, Selangor and Negeri Sembilan. A few members of the Bar, Attorney General's Chambers, Prison Department and Royal Malaysia

Police also took part in this event. The run started and ended at the Palace of Justice, Putrajaya. Thus, twenty years on, the Court of Appeal continues to be a critical component of the Justice Delivery System. Given its sterling performance, it is hoped that it will surge forward and might even surpass its own high water mark.



Runners at the starting line.

(Justice Aziah Ali and Justice Lim Yee Lan said it was a breeze leading the way while Justices Wahab Patail, Justice Idrus, Justice Md Raus Sharif and Justice Suriyadi did their best to catch up)



Justice Abang Iskandar Abang Hashim trying to outpace Justice Azahar Mohamed.





No need to run – We are home!  
(Justice Alizatul Khair Osman Khairuddin and Justice Rohana Yusuf)



Hats off to the leaders of the pack!  
(Justice Md Raus Sharif and Justice Abdull Hamid Embong)





Justice Md Raus Sharif  
The 8<sup>th</sup> and current President of the Court of Appeal Malaysia

### Former Presidents of the Court of Appeal



Tan Sri Dato' Seri  
Lamin Mohd Yunus



Tan Sri Dato' Wan  
Adnan Ismail



Tun Dato' Sri Ahmad  
Fairuz Dato' Sheikh  
Abdul Halim



Tan Sri Abdul Malek  
Ahmad



Tun Abdul Hamid  
Mohamad



Tun Dato' Seri Zaki  
Tun Azmi



Tan Sri Dato' Seri  
Alauddin Dato' Mohd.  
Sheriff



The President with Judges of the Court of Appeal

Front Row:[L-R: Justice Abdul Aziz Abd. Rahim, Justice Aziah Ali, Justice Balia Yusof Haji Wahi, Justice Zaharah Ibrahim, Justice Hishamudin Mohd Yunus, Justice Md Raus Sharif (President), Justice Abdul Wahab Patail, Justice Alizatul Khair Osman Khairuddin, Justice Mohtarudin Baki, Justice Lim Yee Lan, Justice Mohamad Ariff Md Yusof]

Second Row [L-R: Justice Umi Kalthum Abdul Majid, Justice Mah Weng Kwai, Justice Varghese Varughese, Justice Rohana Yusuf, Justice Zakaria Sam, Justice Nallini Pathmanathan, Justice Idrus Harun, Justice Tengku Maimun Tuan Mat, Justice Dr. Badariah Sahamid, Justice Linton Albert]

Third Row: [L-R: Justice Ong Lam Kiat Vernon, Justice Dr. Prasad Sandosham Abraham, Justice Abdul Rahman Sebli, Justice Mohd Zawawi Haji Salleh, Justice Ahmadi Haji Asnawi, Justice David Wong Dak Wah, Justice Abang Iskandar Abang Hashim, Justice Dr.Hamid Sultan Abu Backer]



## FORMER JUDGES OF THE COURT OF APPEAL



JUSTICE DR. ZAKARIA  
MOHAMED YATIM



JUSTICE SHAIK DAUD  
MD ISMAIL



JUSTICE GOPAL  
SRI RAM



JUSTICE CHAN NYARN HOI



JUSTICE SITI NORMA  
YAAKOB



JUSTICE MAHADEV  
SHANKAR



JUSTICE VC GEORGE



JUSTICE ABU MANSOR ALI



JUSTICE ABDUL MALEK  
AHMAD



JUSTICE AHMAD FAIRUZ  
DATO' SHEIKH ABDUL  
HALIM



JUSTICE MOKHTAR SIDIN



JUSTICE DENIS ONG JIEW  
FOOK



JUSTICE HAIDAR MOHD  
NOOR



JUSTICE ABDUL HAMID  
MOHAMAD



JUSTICE MOHD SAARI  
YUSOFF



JUSTICE ABDUL KADIR  
SULAIMAN



JUSTICE K. C. VOHRAH



JUSTICE MOHD NOOR  
AHMAD



JUSTICE ALAUDDIN DATO'  
MOHD SHERIFF



JUSTICE ABDUL AZIZ  
MOHAMAD



JUSTICE PAJAN SINGH  
GILL



JUSTICE RICHARD  
MALANJUM



JUSTICE ARIFIN ZAKARIA



JUSTICE MOHD GHAZALI  
MOHD YUSOFF



JUSTICE RAHMAH  
HUSSAIN



JUSTICE HASHIM DATO'  
YUSOFF



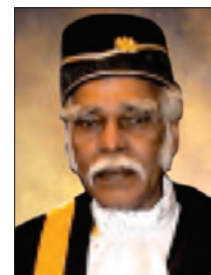
JUSTICE ARIFIN JAKA



JUSTICE TENGKU  
BAHARUDIN SHAH  
TENGKU MAHMUD



JUSTICE NIK HASHIM NIK  
AB RAHMAN



JUSTICE AUGUSTINE PAUL  
SINNAPPEN



JUSTICE JAMES FOONG  
CHENG YUEN



JUSTICE AZMEL MAAMOR



JUSTICE MOHD NOOR  
ABDULLAH





JUSTICE ZALEHA ZAHARI



JUSTICE ZULKEFLI AHMAD  
MAKINUDIN



JUSTICE LOW HOP BING



JUSTICE SURIYADI HALIM  
OMAR



JUSTICE MD RAUS SHARIF



JUSTICE ABDULL HAMID  
EMBONG



JUSTICE ZAINUN ALI



JUSTICE HASAN LAH



JUSTICE HELILIAH MOHD  
YUSOF



JUSTICE VINCENT NG KIM  
KHOAY



JUSTICE ABDUL MALIK  
ISHAK



JUSTICE NIHRUMALA  
SEGARA MK PILLAY



JUSTICE ABU SAMAH  
NORDIN



JUSTICE WAN ADNAN @  
ADDINAN MUHAMAD



JUSTICE SULONG  
MATJERIAIE



JUSTICE AHMAD MAAROP



JUSTICE SULAIMAN DAUD



JUSTICE RAMLY ALI



JUSTICE KANG HWEE GEE



JUSTICE AZHAR @ IZHAR  
MA'AH



JUSTICE JEFFREY TAN  
KOK WHA



JUSTICE T  
SELVENTHIRANATHAN



JUSTICE TEE AH SING @  
TEE BOON HOOI



JUSTICE SYED AHMAD  
HELMY SYED AHMAD



JUSTICE CLEMENT ALLAN  
SKINNER



JUSTICE MOHAMED  
APANDI ALI



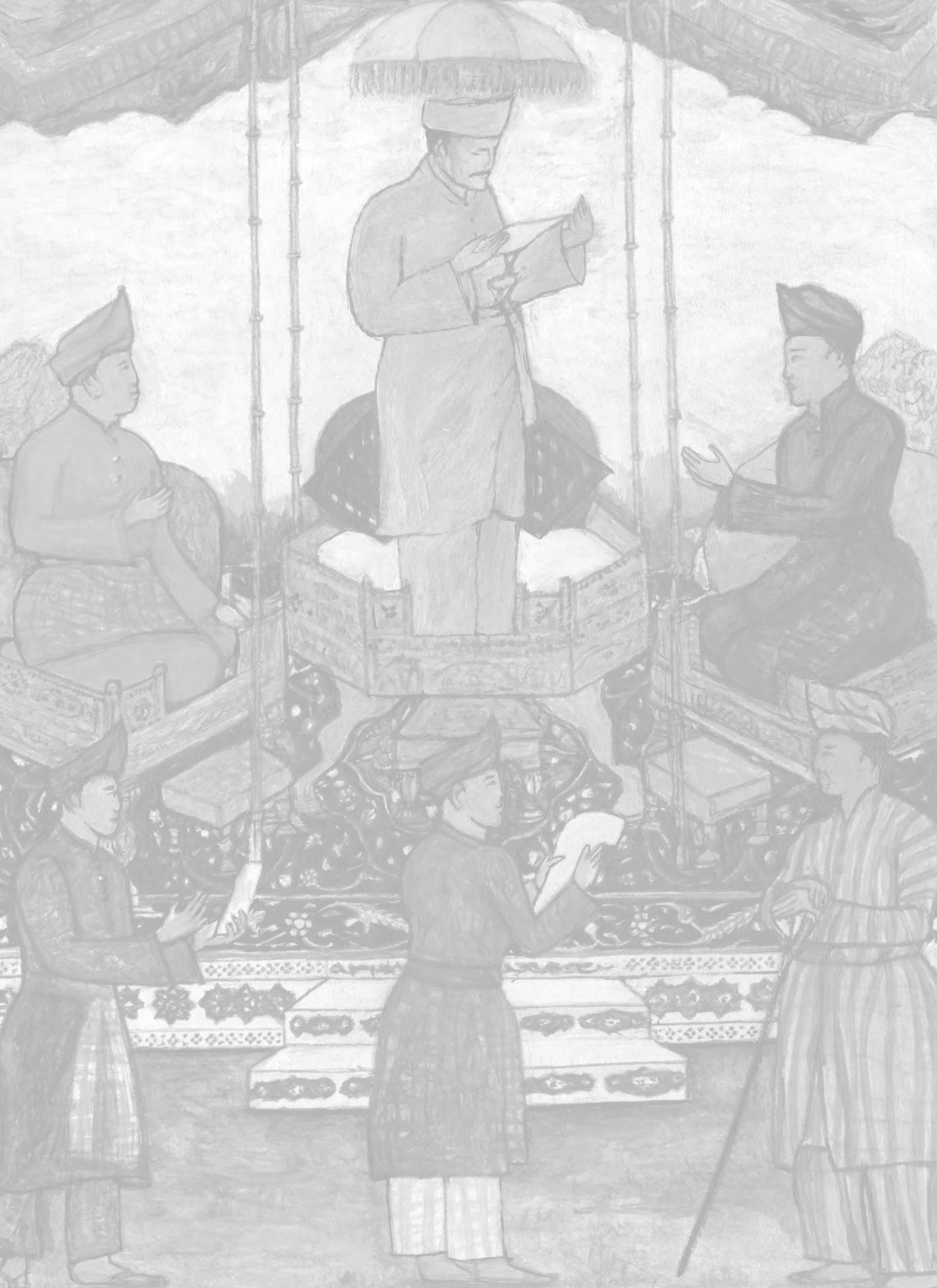
JUSTICE AZAHAR  
MOHAMED



JUSTICE ANANTHAM  
KASINATHER

THANK YOU-FOR TWO DECADES OF LOYAL SERVICE





# **CHAPTER 9**

## **JUDICIAL TRAINING**



## JUDICIAL ACADEMY-A VIEWPOINT

**An Interview with Justice Mohamad Ariff Md Yusof  
(Judge of the Court of Appeal and a Member of the Judicial  
Academy).**



Justice Mohamad Ariff Md Yusof

1. **Can you share with us the reason and objective for the setting up of the Judicial Academy?**

I believe the Judicial Appointments Commission felt it was necessary and timely to set up a dedicated body to oversee the training of judges of the superior courts with a view to enhancing their expertise and experience.

2. **How did the idea of conducting classes for the Judicial Commissioners and Judges come into being?**

Tan Sri James Foong of the Federal Court was instrumental in conducting a study of judicial training in several mature jurisdictions overseas. Tan Sri James produced a report which then became the blueprint for the establishment of

the Judicial Academy as a dedicated Committee within the JAC. That blueprint was grounded on the method of in-house peer training drawing on the vast pool of ready experience available among judges.

3. **Can you share with us the kind of training that the Judges have to undergo under the courses organized by the Judicial Academy?**

The focus has been on very practical training right from the very start. Certain areas of immediate relevance and need are identified on the basis that judicial expertise has to be enhanced in these areas. Judges of the High Court are then selected and organized in small groups of about 15 persons. Between 3 to 4 conveners drawn from judges of the Court

of Appeal and the Federal Court, will then conduct these courses on the basis of a “mutual learning” methodology. For instance, each High Court Judge will present a short paper on a specific topic related to his experience, followed by an in-depth discussion of practical problems faced by judges in that area as part of their day-to-day experience in court.

The conveners on their part will highlight common problems and mistakes encountered by the appellate courts when dissecting the judgments of the High Court when they come up on appeal. This exercise is to ensure that these common errors are not repeated in future appeals.

In addition to this type of practical training by peer teaching and peer learning, the Judicial Committee and the JAC also organise general lectures on new or emerging areas of law to acquaint our judges in these areas of expertise. This corresponds to the “straight lecture” method, followed by question and answer sessions. For this type of training, the courses invariably are delivered by outside lecturers.

4. **What are the courses available in the Judicial Academy? Can Dato’ elaborate on the course structure and the workings of the Judicial Academy (if any).**

Over the last few years, the Judicial Academy has conducted modules on reception of evidence in civil cases, issues in commercial cases, election petitions law, practical issues in injunction cases, appellate jurisdiction, the law on murder and drug trafficking laws, judicial craft and the art of judgment writing.

Seminars have also been held on construction law and practice, arbitration law, Islamic banking and securities industry rules and regulations.

I believe the Judicial Academy continues to identify over time what areas of law require emphasis with the objective of enhancing the professional competency of our judges.

5. **What were the challenges faced by Dato’ in your efforts to get this Judicial Academy up and running?**

The greatest challenge was to juggle precious time between everyday judicial work and judicial training. Fortunately, we have a very competent secretariat and much of the administrative work is handled by its members. My colleagues and I who sit on the committee oversee the conduct of the modules and seminars, decide on the content of the modules (sometimes working together with the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts), and where appropriate act as conveners as well.

6. **You started off your career in the legal field as an academician. You have spent quite a number of years teaching law in one of the most prestigious law schools in Malaysia. Do you think that is one of the reasons why you had been tasked with this responsibility?**

It could well be so, but I must hasten to add, the training of judges is not quite the same as teaching law to law students.

7. **What was in your mind when you were first approached to head this Judicial Academy?**

The setting up of a training unit was timely, but to do a decent job of it, the Judicial Academy has to be professionally organized.

8. **You have also been asked to conduct some classes for the Judicial Academy and from that experience, how would you measure the effectiveness of this Academy in helping the Judges to be better at their job?**

From the feedback that we have received from the Judges themselves, the training modules in particular have achieved their target. They provide an avenue for Judges to raise common practical problems and exchange their practical personal experiences for the common benefit.

9. **Being a Judge must have taken all of your time and to slot in additional responsibility i.e. at the Judicial Academy, would have been a great challenge?**

Obviously, a sitting judge cannot devote the time needed to properly organise the Judicial Academy unless there is a commensurate reduction in his sitting time.



**10. What are the change(s) or improvement(s) that you would like to see in the Judicial Academy?**

The best option is to have a full-time Director backed with a small secretariat with the necessary funding. Over and above the organising of modules and seminars, a full-fledged Judicial Academy must also set its sight on publishing training and educational materials. There is an abundance of judicial expertise that can be harnessed into publication. To take two examples, we have had some excellent papers written by our judges on commercial laws and drugs laws. These should be edited and published as monographs.

**11. Looking back and if you were given the chance, is there anything that you would have done differently in respect of the Judicial Academy?**

No, in its early years what was done was the best in the circumstances.

**12. Instead of something of an ad-hoc basis, do you think that there should be a proper organization or institute established to properly manage and administer the training for the Judges? If that ever materialise, would you like to be part of it?**

As I have said earlier, we should be thinking of a fully-fledged professional organization with a full-time Director. The Director can be a retired Judge with the necessary experience in training and publication. If a serving Judge is appointed, it could be done on a secondment basis for a suitable duration.

Appropriate funding is also a necessity for any Judicial Academy to perform to a satisfactory level.

As to whether I would like to be part of it, I think I have contributed whatever little expertise I have in the initial stages. I am pretty sure there are better candidates to enhance the Academy's performance and standing.

**13. Were there any particular problem you faced when you commenced your tenure as a Judicial Commissioner?**

Coming from the Bar with a broad-based litigation and civil and commercial practice, I must say I had no major problems. The immediate difficulty was the much too heavy workload and the legacy problem of case backlog.

**14. Do you think that had you been given some kind of training before, the transition would have been smoother?**

Sure, any form of initial training would have been helpful. I am happy to note that this has been done recently for the new Judicial Commissioners. One important aspect is to immediately impart judicial ethics and temperament.

**15. What are your hopes and aspirations for the future of the Judicial Academy?**

I look forward to the day when I can have in my hands the first professional monograph published by the Judicial Academy on some practical aspect of the law.

I am hopeful the Judicial Academy will continue to progress to a much higher level of professionalism.

## COURSES CONDUCTED BY THE JUDICIAL ACADEMY IN 2014

### Judicial Training

The Judicial Academy was established on 16 December 2011. The committee consists of 11 Judges including the Chief Justice of Malaysia as Chairman of the Committee, the President of the Court of Appeal, the Chief Judge of Malaya and the Chief Judge of Sabah and Sarawak. The Judicial Academy is set up under the auspices of the Judicial Appointments Commission.

Throughout 2014, some of the courses conducted under the Judicial Academy and/or with other organisation were as follows:-

- (i) How To Deal With Cases Under Section 39B of the Dangerous Drugs Act 1952
- (ii) How To Deal With Cases Under Section 302 of the Penal Code
- (iii) Judge Craft and Judgment Writing
- (iv) Development and Regulation of the Capital Market.

The facilitators for these courses were Judges of the Federal Court and Court of Appeal.

**(i) How To Deal With Cases Under Section 39B of the Dangerous Drugs Act 1952.**

A total of 14 Judges and Judicial Commissioners attended this course. The course focused on topics pertaining to the elements of crime under section 39B of the Dangerous Drugs Act 1952 as well as the procedural law issues relative to this crime. Furthermore, discussions were held on the expectations on the grounds of judgment of such cases.

**(ii) How To Deal With Cases Under Section 302 of the Penal Code.**

A total of 16 Judges and Judicial Commissioners attended this course. The Course focused on the element of crime under section 302 of the Penal Code as well as the quality of grounds of judgment for section 302 cases.



Seminar on “How to Deal with Cases Under Section 39B of the Dangerous Drugs Act 1952” which was held on 28 February-1 March 2014 at Banglo Transit, Putrajaya.

(L-R) Justice Mohamed Apandi Ali, Justice Ahmad Maarop and Justice Azahar Mohamed.





Seminar on “How to Deal with Cases Under Section 302 of the Penal Code” which was held on 18 – 19 September 2014 at Putrajaya.  
(L-R) Justice Che Mohd Ruzima Ghazali, Justice Mohd Zaki Abdul Wahab, Justice Azizul Azmi Adnan and Justice Mat Zara’ai Alias



Sitting (L-R) Justice Mohd Sofian Abd Razak, Justice Wan Afrah Dato’ Paduka Wan Ibrahim, Justice Mohamed Apandi Ali, Justice Ahmad Maarop, Justice Azahar Mohamed, Justice Mohd Yazid Mustafa and Justice Ghazali Haji Cha.

Standing (L-R) Justice Mohd Zaki Abdul Wahab, Justice Azizul Azmi Adnan, Justice Azman Abdullah, Justice Ab Karim Ab Rahman, Justice Abu Bakar Katar, Justice Che Mohd Ruzima Ghazali, Justice Samsudin Hassan, Justice Mat Zara’ai Alias, Justice Collin Lawrence Sequerah, Justice Mairin Idang @ Martin, Justice Kamardin Hashim and Justice Douglas C. Primus Sikayun.



**(iii) Judge Craft and Judgment Writing**

This course was mainly on the required skills in conducting a fair trial and how the quality of written judgments can be improved. A total of 16 Judges attended this course.



Seminar on “Judge Craft and Judgment Writing” which was held on 28-29 November 2014 at Banglo Transit, Putrajaya.  
(L-R) Justice Azhahari Kamal Ramli, Judicial Commissioner Zakiah Kassim and Justice Zainal Azman Ab.Aziz



Justice Md Raus Sharif explaining to the participants during the Seminar on “Judge Craft and Judgment Writing” which was held on 28-29 November 2014 at Banglo Transit, Putrajaya.  
(L-R) Justice Zaharah Ibrahim, Justice Zulkefli Ahmad Makinudin and Justice Md Raus Sharif.



(iv) **Seminar on the Development and Regulation of the Capital Market: Changing Dynamics and Challenges**

Recognising that the capital market has played an increasingly important role in the mobilisation of funds to facilitate economic development and are increasingly becoming integrated, a special two day seminar was conducted for the Judges on the Development and Regulation of the Capital Market on 5 and 6 June 2014 at the Mandarin Oriental Hotel, Kuala Lumpur.

This seminar was initiated by Justice Zainun Ali in collaboration with the top management and executives of the Malaysia Securities Commission in particular its Chairman Datuk Ranjit Ajit Singh, Deputy Chief Executive Dato' Dr. Nik Ramlah Mahmood, Executive Director, Corporate Resources Datin Teh Ija Mohd Jalil and Executive Director and General Counsel Ms. Foo Lee Mei. This programme was jointly organised by the Securities Commission and the Judicial Appointments Commission.



Dato' Seri Johan Raslan, a member of the Securities Commission of Malaysia's Corporate Governance Consultative Committee facilitating the seminar.



Datuk Ranjit Ajit Singh, Executive Chairman of the Securities Commission Malaysia giving the welcoming address.



A group photo with the Chief Justice Arifin Zakaria and the Executive Chairman of the Securities Commission of Malaysia, Datuk Ranjit Ajit Singh.

(L-R) Datuk Seri Panglima Sulong Matjaraie, Justice Zainun Ali, Justice Abdull Hamid Embong, Chief Justice Arifin Zakaria, Datuk Ranjit Ajit Singh, Dato' Dr. Nik Ramlah Mahmood and Ms. Foo Lee Mei.

## Seminar on the Development and Regulation of the Capital Market : Changing Dynamics and Challenges

Programme on the 5 <sup>th</sup> June 2014
Opening Remarks by The Rt. Hon. Tun Arifin Zakaria Chief Justice of Malaysia
<b>Capital Markets: Overview and Recent Developments</b> Speaker: <i>Mr. Goh Ching Yin</i> <i>Executive Director, Market Development,</i> <i>Securities Commission Malaysia</i>
<b>Regulating the Capital Market: Swing of the Regulatory Pendulum</b> Speaker: <i>Ms. Belinda Gibson</i> <i>Business Consultant &amp; Solicitor and Adjunct Professor,</i> <i>University of New South Wales (UNSW), School of Business</i>
<b>Facilitating Capital Formation</b> Speakers: 1. <i>Mr. Mohamed Rafe Haneef</i> <i>Chief Executive Officer,</i> <i>HSBC Amanah Malaysia Berhad</i> 2. <i>Mr. Patrick Tan Boon Peng</i> <i>Regional Head, Equity Capital Markets,</i> <i>CIMB Investment Bank</i>
<b>Ensuring Trust and Confidence through Enforcement of Securities Laws – Part 1</b> Speakers: <i>Ms. Swapna Chandra</i> <i>Senior Litigation Counsel,</i> <i>Ontario Securities Commission</i>
Programme on the 6 <sup>th</sup> June 2014
<b>Ensuring Trust and Confidence through Enforcement of Securities Laws – Part 2</b> Speakers: <i>Ms. Selvarany Rasiah</i> <i>Chief Regulatory Officer, Bursa Malaysia</i>
<b>Investing in the Capital Market: Lessons Learnt</b> Speakers: <i>Ms. Angelina Kwan</i> <i>Head of Equities Compliance, CLSA Limited</i>
<b>Investor Protection: Whither Caveat Emptor?</b> Speakers: <i>Dato Dr. Nik Ramlah Mahmood</i> <i>Deputy Chief Executive,</i> <i>Securities Commission Malaysia</i>
<b>Stewardship of Companies: Board Effectiveness</b> Moderators: 1. <i>Mr. Goh Ching Yin</i> <i>Executive Director, Market Development</i> <i>Securities Commission Malaysia</i> 2. <i>Ms. Foo Lee Mei</i> <i>Executive Director &amp; General Counsel</i> <i>General Counsel, Securities Commission Malaysia</i> Panellists: 1. <i>Ms. Belinda Gibson</i> <i>Business Consultant &amp; Solicitor and Adjunct Professor, UNSW School of Business</i> 2. <i>Dato' Seri Johan Raslan</i> <i>Former Executive Chairman</i> <i>PricewaterhouseCoopers Malaysia</i> 3. <i>Ms. Swapna Chandra</i> <i>Senior Litigation Counsel</i> <i>Ontario Securities Commission</i>





Chief Justice Arifin Zakaria posing a question to the panellists. Seated on his right is the Executive Chairman of the Securities Commission of Malaysia, Datuk Ranjit Ajit Singh.



Chief Justice Arifin Zakaria (sitting 8<sup>th</sup> from left) and the Chairman of the Securities Commission of Malaysia, Datuk Ranjit Ajit Singh (sitting 9<sup>th</sup> from left), taking a group photo with the participants during the Seminar on “Regulating the Capital Market: Changing Dynamics & Challenges”.



(v) Induction Programme for the New Judicial Commissioners

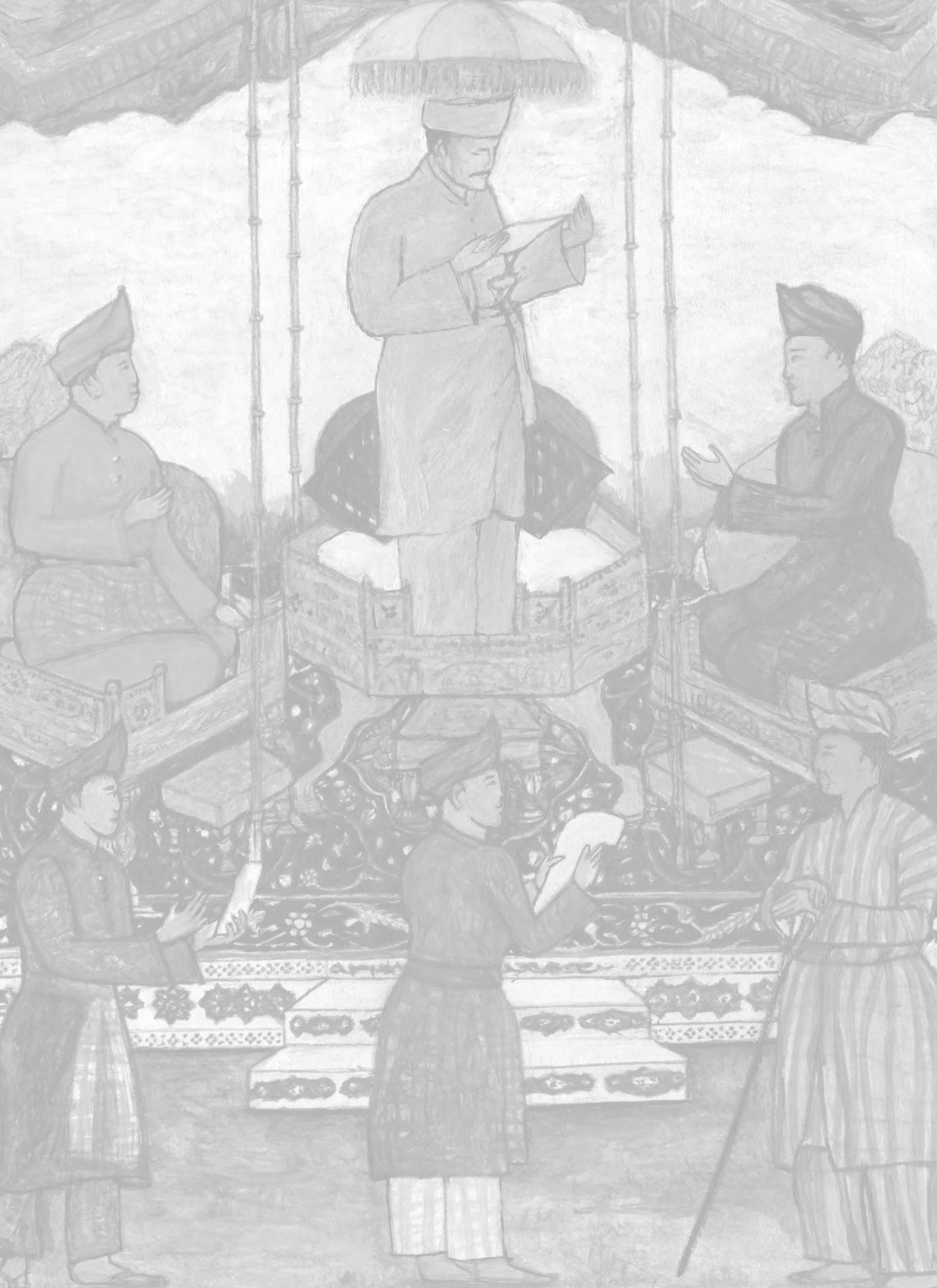


Justice Mohd Hishamudin Mohd Yunus briefing the newly appointed Judicial Commissioners on Company Law.



Justice Md Raus Sharif briefing the new Judicial Commissioners on Judicial Temperament.





# **CHAPTER 10**

## **CASES OF INTEREST**





TEMPERANCE

Statue of justice- The Logan Memorial in front of the High Court of Penang Georgetown, Penang.



## CIVIL CASES

As in previous years, 2014 witnessed our Judges delivering numerous landmark decisions which have significant impact on Malaysia's legal and judicial landscape. The following are a selection of cases covering a broad spectrum of issues.

**1) Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & 8 Ors [2014] 6 CLJ 541**

**CORAM**

**Majority – Arifin Zakaria CJ, Raus Sharif PCA, Zulkefli Ahmad Makinudin CJM and Suriyadi Halim Omar FCJ**

**Minority – Richard Malanjum CJSS, Zainun Ali and Jeffrey Tan Kok Wha FCJJ**

This case involves an application by the applicant for leave to appeal to the Federal Court against the decision of the Court of Appeal in allowing the respondents' appeal against the decision of the High Court. The applicant was granted a publication permit by the Minister vide letter dated 30.12.2008 to publish the Herald in four languages, namely Bahasa Melayu, English, Tamil and Chinese. Aggrieved with the conditions imposed by the Minister, the applicant then wrote to the Minister vide letter dated 2.1.2009 requesting the Minister to reconsider the decision and revoke the aforesaid conditions. In reply, the Minister vide letter dated 7.1.2009 to the applicant, after reconsidering his decision, approved the permit for publication subject to the condition that the applicant is prohibited from using the word "Allah".

Dissatisfied with the decision of the Minister, the applicant then filed an application for judicial review under O.53 r.3 (1) of the Rules of the High Court 1980 (the RHC), challenging the decision of the Minister. The High Court allowed the applicant's application for judicial review. The respondents then appealed to the Court of Appeal. The Court of Appeal allowed the respondents' appeal and the orders of the High Court were accordingly set aside. The applicant thereafter sought leave to appeal to the Federal Court. The questions before the Federal Court were divided into matters relating to Administrative Law (Part A), Constitutional Law (Part B) and General Issues (Part C)

### Decision – Majority Judgment

The Federal Court in majority dismissed the leave application. In delivering the majority judgment, **Arifin Zakaria CJ** stated that the law on judicial review has advanced from the subjective test to that of the objective test. In considering whether the Court of Appeal had applied the correct test, it is pertinent to consider the judgment of the Court of Appeal as a whole and not by merely looking at the terms used in the judgments. His Lordship found that the Court of Appeal had applied the objective test in arriving at its decision. Had it applied the subjective test, it would not be necessary for it to consider the substance of the Minister's decision. Since the Court of Appeal had applied the correct test, it is not open for the court to interfere with its decision. The majority further held that even if the Federal Court does not agree with the findings of the Court of Appeal, it would not be a sufficient reason for the Federal Court to interfere. That being so, the questions of law posed in Part A failed to satisfy the threshold prescribed by s. 96(a) of the Courts of Judicature Act 1964 (CJA).

Arifin Zakaria CJ further observed that clause (3) of art. 4 of the Constitution provides that the validity of any law made by Parliament or a State legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant legislature has no power to make law, except in three types of proceedings, one of which is "in proceedings for a declaration that the law is invalid on that ground", in which case the Federation or the State is entitled to be a party to such proceedings. Conversely, Clause (4) of art. 4 provides that such proceedings may not be commenced by an individual without leave of a judge of the Federal Court. Consequently, the party seeking to challenge the validity or the constitutionality of the impugned provision must specifically ask for a declaration that the law is invalid, and such a proceeding may only be commenced with leave of a judge of the Federal Court. Further, the respective State must be made as a party so as to give the State an opportunity to defend on the validity or constitutionality of the impugned provision.



Arifin Zakaria CJ also observed that the validity or constitutionality of the laws could not be questioned by way of collateral attack as was done in the present case. It follows that the High Court Judge, for reasons of procedural non-compliance and want of jurisdiction, ought not to have entertained the challenge on the validity or constitutionality of the impugned provision. Accordingly, the findings of the High Court Judge that the impugned provision was arbitrary and unconstitutional was rightly set aside by the Court of Appeal.

As for the constitutional questions in Part B which concentrated on the usage of the word “Allah” in the Herald and constitutional right guaranteed by arts. 3, 8, 10, 11 and 12 of the Constitution, Arifin Zakaria stated that these questions could not be considered in isolation without taking into consideration the impugned provision. The Federal Court however ruled that that as a challenge on the validity and unconstitutionality of the impugned provision could not be made for the reasons stated, it is therefore it was not open for the Federal Court to consider the questions posed in Part B.

As for the questions in Part C which related to the theological issues arising from the judgments of the learned judges of the Court of Appeal, Arifin Zakaria CJ held that it is clear that the Minister’s decision was never premised on theological consideration and therefore found that the views expressed by the judges of the Court of Appeal on those issues were mere obiter.

### **Decision – Minority Judgment**

The Minority Judgment of the Federal Court allowed the leave application.

**Richard Malanjum CJSS** in his dissenting judgment held that the applicant had satisfied the requirements of s. 96(a) and (b) of the CJA and hence leave to appeal should be granted on all the proposed questions in Part A, B and C.

Richard Malanjum CJSS also held that taking into consideration the undisputed fact that the Herald had been in circulation for the past 14 years before the imposition of the Minister’s decision and that there was no evidence shown of prejudice to public order during that period, and further that

the use of the word “Allah” was not prohibited in other publications such as Al-Kitab and the Sikh Holy Book, there is a serious issue in the exercise of the discretion by the Minister. His Lordship further observed that public order and national security are not synonymous and yet the Court of Appeal appeared to have used the two terms interchangeably. His Lordship concluded that there was a need for the Federal Court to distinguish them or link them together.

Richard Malanjum CJSS further observed that there were merits in the applicant’s submission that the Minister’s decision, as upheld by the Court of Appeal contravened arts. 11(1) and (3) of the Constitution and curtailed the rights of the Bahasa Malaysia speaking Christians from Sabah and Sarawak. His Lordship stated that on the test of “essential and integral part of religion” so adopted by the Court of Appeal, there is no reason why the rights under art. 11 of the Constitution should be confined to those essential and integral part or core of the religion. Unless further determined by the Federal Court, such interpretations of the relevant Articles by the Court of Appeal would have to be accepted as correct, the law and binding upon the courts below and the citizenry of the Federation.

**Zainun Ali FCJ** in her dissenting judgment held that there seems to be some uncertainty with regard to the source of the Minister’s power. The Minister himself was reticent as to its source while the Court of Appeal was divergent in its view as to the scope and nature of the Minister’s power under the Act which requires the Federal Court to clear the confusion as to the correct test applicable in the exercise of the power by the Minister. Her Ladyship further observed that in judicial review cases, the Malaysian courts have long moved on from permitting review only on the process to reviewing both the process and substance in determining the reasonableness of a decision of a public authority and hence stated that the different approaches made by the Court of Appeal on this issue ought to be addressed by the Federal Court.

**Jeffrey Tan FCJ** in his dissenting judgment held that the task of the Court, in relation to the instant application or indeed any application for leave to appeal, is only to find if the prerequisites of sub-section (a) or (b) of section 96 of the CJA

have been met. Jeffrey Tan Kok Wha FCJ found that there were questions and/ or issues on the constitutionality of condition (i) *“that the Applicant was prohibited from using the word “Allah” in the Herald - The Catholic Weekly”* and held that the constitutional questions should be answered by the Federal Court.

**2) Superintendent of Lands and Surveys, Samarahan Division & Anor v Abas Naun & Ors (Federal Court decision delivered on 18<sup>th</sup> November 2014) and reported as [2015] 1 CLJ 18**

**(CORAM: Zulkefli Ahmad Makinudin CJM, Suriyadi Halim Omar, Hasan Lah, Zaleha Zahari, Jeffrey Tan Kok Wha FCJJ)**

The respondents filed two separate writs of summons actions against the appellants, claiming for various declaratory reliefs. The respondents pleaded that their native customary rights (‘NCR’) over tracts of land (‘NCR land’) had been infringed. The respondents claimed that the appellants’ action in alienating their NCR land through three provisional leases or forests timber licence to companies without due compensation was null and void as it violated their rights under the Federal Constitution. The appellants applied to strike out the writ actions under O. 14A of the Rules of High Court 1980 (‘RHC’) on the grounds that the respondents ought to have proceeded by way of judicial review under O. 53 of the RHC. The appellants’ applications were dismissed by the High Court and the appellants’ appeal against the High Court’s decision was dismissed by the Court of Appeal. The appellants were then granted leave to appeal to the Federal Court on the following question of law: whether a suit filed by a person claiming NCR to challenge the decision of a public authority which supposedly infringes the claimant’s alleged rights is an exception to the general rule enunciated by the Federal Court in *Ahmad Jefri bin Mohd Jahri @ Md Johari v. Pengarah Kebudayaan & Kesenian Johor & Ors*.

**Decision:**

The Federal Court answered the question of law posed before it in the negative and accordingly dismissed the appeal with costs. **Suriyadi Halim Omar (FCJ)** held that NCR claims are disputes between private individuals claiming a private law right on one hand and with the public authority



Stamps in Arabic characters used by merchants in their daily trading during the English occupation days in Penang. (Picture courtesy of the Penang State Museum)

refusing to recognise their NCR at the other end. But by no figment of the imagination were the respondents seeking to nullify the public law on native rights but rather about them establishing the facts upon which their NCR claims were based. Obviously, the present appeals related essentially to questions of fact relating to private law of the respondents though enmeshed with public law. His Lordship further observed that in light of their want of sophistication let alone the respondents live deep in the hinterland, to expect the respondents to file judicial review applications within the legislated statutory time limit after the appellants’ public acts and adhere to protocol finesse as fashioned out in O. 53 may lead to real injustice to them. Such strict expectation from the natives would result in “irreparable injustice” to them. Clearly the mode of O. 53 was unsuitable for cases of this genus.



His Lordship also stated that the NCR land is fundamental to their social, cultural and spiritual survival as natives of Sarawak. The NCR land not only is a source of livelihood but constitute life itself. With the respondents having pleaded that their NCR and constitutional rights having been violated, procedural efficacy must surely give way to the supreme law of Malaysia. Having considered the bigger picture, in light of constitutional, statutory and common law recognition of NCR, compounded by the injustice that may befall the respondents, on account of their disadvantaged predicament, the respondents' writ actions qualified as an exception to the norm.

**3) Datuk Seri Khalid Abu Bakar & Ors v N. Indra P. Nallathamby & Another Appeal [2014] 9 CLJ 15**

**(CORAM: Mohamad Ariff Md Yusof, Mah Weng Kwai and David Wong Dak Wah JJCA)**

This case involves an arrest of one Kugan a/l Ananthan ('the deceased') in respect of a theft offence. The deceased subsequently remanded for a period of seven days at the Petaling Jaya Police Station lock-up. However, the deceased was detained at the Taipan Police Station and not at Petaling Jaya Police Station lock-up as stated in the remand order. On 20.1.2009, the deceased was found dead while he was under custody of Taipan Police Station. Prior to his death, the family was not aware of his detention as they were not informed by the police. The family became aware only after they were informed about the deceased's death on 20 January 2009.

There were extensive injuries on the deceased's body inflicted by beatings during detention. The first appellant who was then the Deputy Commissioner of Police and the Chief Police Officer of Selangor, on 21.1.2009 issued a press statement that the deceased had collapsed and died after drinking a cup of water. The respondent disputed the truth of the first appellant's press statement and alleged that there has been a cover up to the real cause of the deceased's death.

One Prof Dr Abdul Karim conducted an autopsy (the first autopsy) and the report stated that there

were '22 categories of external wounds' and the cause of death was stated as 'pulmonary edema'. With the first autopsy report, the first appellant issued a press statement that the deceased had died from 'water in the lungs'.

A second autopsy report commissioned by the family of the deceased stated that there were '45 categories of external injuries' on the body of the deceased and a wide range of internal injuries. The cause of death was found to be acute renal failure due to direct or indirect muscle injury. Those muscle injuries were found to have been committed by the second defendant with his assault on the deceased. The second defendant was later convicted and sentenced to three years' imprisonment for causing grievous hurt to the deceased.

The respondent, mother of the deceased then instituted an action against the defendants claiming for damages. The appellants, however, denied the respondent's claim despite the conviction of the second defendant. The High Court allowed the respondent's claim and awarded exemplary damages, damages for public misfeasance and false imprisonment. The appellants then appealed to the Court of Appeal.

**Decision:**

The Court of Appeal allowed the appeal in part with costs. **David Wong Dak Wah JCA** observed that the deceased's remand was a consequence of a judicial act, being an order given by a Magistrate. Unless and until the remand was set aside by way of a criminal appeal or revision by the High Court, that remand remained lawful. No such application to the High Court had been made by the plaintiff to declare that the remand was unlawful. The abuses which the deceased endured could not give rise to a cause of action for false imprisonment. The cause of action for a tort of false imprisonment arises when a person has been imprisoned without lawful justification and that action is against the person who caused the imprisonment. Here, the person who caused the detention was a Magistrate exercising his judicial power and that judicial act had not been set aside or declared unlawful. The award of RM100,000 for false imprisonment was thus set aside.

His Lordship further held that the claim of public misfeasance is a tortious claim. It is a public law tort in that it can only be committed by public officers exercising their powers wrongly resulting in injury to the claimant. As the deceased was the victim of the alleged wrongdoings of the first, second and third defendants who were public officers, any tortious claim by the estate came under s. 8 of the Civil Law Act 1956 ('CLA'). He stated that section 8 of the CLA only applies to private torts in so far as the prohibition of awarding exemplary damages. Where there is a breach of a constitutional right by a public authority, s. 8(2) of the CLA does not apply and the courts cannot be barred from awarding exemplary damages. Hence, this was an appropriate case to award exemplary damages. As for the quantum of the exemplary damages, there was no reason to disturb the award granted by the learned judge as it commensurated the actions of the defendants.

**4) Jabatan Agama Islam Wilayah Persekutuan & 2 Ors v Berjaya Books Sdn Bhd & 2 Ors (Civil Appeal No. W-01-143-04/ 2013) Decision was delivered on 30th December 2014.**

**(CORAM: Mah Weng Kwai, Mohd Zawawi Salleh and Umi Kalthum Abdul Majid JJCA)**

On 23/5/2012, the 1st Appellant conducted a search at the Bookstore at the Gardens, Mid Valley Mall, Jalan Syed Putra, Kuala Lumpur. Officers of the 1st Appellant were accompanied by a group of reporters and photographers. The 1st Appellant seized several books under two titles by an internationally known author, Irsyad Manji, entitled "Allah, Kebebasan dan Cinta" and "Allah, Liberty and Love" (the Books) after checking them at the Bookstore.

The 1st Appellant then examined the 2nd and the 3rd Respondents at the premises and issued orders compelling them to be present at the 1st Appellant's office for further examination and investigation.

On 29/5/2012, a Prohibition Order against the publication and sale of the Books was issued by the 2nd Appellant. The Prohibition Order was published vide Gazette Notification P.U.(A) 162

on 14/6/2012, known as the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2012 under the Printing Presses and Publications Act 1984 (the PPP Act), banning the publication and sale of the Books.

The 2nd and 3rd Respondents and another employee, Farihna binti Mohamed Fadhlullah attended the office of the 1st Appellant on 30/5/2012 for the purpose of being examined and investigated further by the 1st Appellant under the provisions of section 58 of the Syariah Criminal Procedure (Federal Territories) Act 1997.

The 3rd Respondent was arrested by the 1st Appellant on 30/5/2012 and was charged under section 13 of the Syariah Criminal Offences (Federal Territories) Act 1997 (the SCO Act) for the offence of "disseminating and distributing by way



A common seal stamp. (Picture courtesy of the Penang State Museum)



of selling the Books deemed contrary to Hukum Syarak (Islamic Law)". At the time of the search and seizure, the Books were not subject to any Prohibition Order issued by the 2nd Appellant. The 3rd Respondent was not in any way responsible for the selection of titles of books to be sold at the Bookstore.

As at 23/5/2012, there was no fatwa, declaration, announcement or circular issued by the 1st Appellant or by any other religious authority banning the publication and sale of the Books on the ground that it is in breach of Hukum Syarak. No prior notice of any objections was given by the 1st Appellant and no search warrant was issued to the 1st Appellant to conduct the search and seizure of the Books.

**Decision:**

The Court of Appeal dismissed the appeal with no order as to costs. **Mah Weng Kwai JCA** held that the correct test to determine whether the matter falls between the jurisdiction of either the civil court or the Syariah court is to follow the pith and substance approach. By employing that approach, the court will not be confined only to Syariah issues and to the sections of the law but importantly to consider the breach of the constitutional rights of the Respondents occasioned by the search and seizure of the Books.

His Lordship further observed that the civil court has the jurisdiction and power to judicially review the improper institution of criminal proceedings when the impugned conduct is in fact not criminal in nature. The civil court also has the jurisdiction to adjudicate on the legal status of the 3<sup>rd</sup> Respondent as it is a matter within the province of administrative law. The case does not cease to be within the jurisdiction of the civil court just because it has an Islamic law element. The 2<sup>nd</sup> Respondent who is a non-Muslim cannot be subjected to and/or be the subject of enforcement actions by the 1<sup>st</sup> Appellant. Non-Muslims cannot be compelled to appear before the Syariah Court. Even if it is consented to, the Syariah Court has no jurisdiction over the non-Muslims. The Court of Appeal also held that no action can be taken against the 1<sup>st</sup> Respondent as it is a corporate entity and incapable of professing a religion. Therefore the action taken against the 1<sup>st</sup> Respondent was unlawful.

- 5) **Muhamad Juzaili Bin Mohd Khamis & 2 Ors v State Government of Negeri Sembilan & 4 Ors (Civil Appeal No. N-01-498-11/2012)**  
(CORAM: Mohd Hishamudin Yunus, Aziah Ali and Lim Yee Lan JJCA)

The appellants were Muslim men who expressed themselves as women by wearing feminine clothes and applying makeup. They had been diagnosed with a medical condition known as Gender Identity Disorder ('GID'). Although the medical condition suffered by the appellants was confirmed by a psychiatrist and a psychologist, s. 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992 ('the Enactment') does not recognise GID and prescribes that it as an offence for any male Muslim person to wear a woman's attire or to pose as a woman. The appellants applied for a judicial review in the High Court for a declaration that s. 66 of the Enactment is void as it is inconsistent with the Federal Constitution ('the Constitution'). The application was dismissed by the High Court. The appellants then appealed to the Court of Appeal.

**Decision:**

The Court of Appeal allowed the appeal. **Hishamudin Mohd Yunus JCA** held that Section 66 of the Enactment is inconsistent with art. 5(1) of the Constitution as it deprives the appellants of their right to live with dignity. Section 66 of the Enactment is irreconcilable with the existence of the appellants and all other GID sufferers. A law that punishes the gender expression of transsexuals degrades and devalues persons with GID in our society. He also held that 'life' in art. 5(1) means more than mere animal existence; it also includes such rights as livelihood and the quality of life. The effect of s. 66 is that it prohibits the appellants and other GID sufferers who cross-dress from moving in public places to reach their respective workplaces.

His Lordship further observed that the State and s. 66 of the Enactment simply ignored GID sufferers such as the appellants and unfairly subjected them to the enforcement of law. The appellants should not be treated similarly as normal Muslims yet s. 66 of the Enactment provides for equal treatment and does

not provide for any exception for sufferers of GID. The inclusion of persons suffering from GID under s. 66 discriminates against them and is therefore inconsistent with art. 8(1) of the Constitution. Section 66 of the Enactment is discriminatory on the ground of gender and therefore, violates art. 8(2) of the Constitution as it subjects male Muslim persons like the appellants to an unfavourable bias vis-à-vis female Muslim persons. He also observed Article 4(1) of the Constitution declares that the Constitution is the supreme law of the

Federation and any law passed which is inconsistent with the Constitution shall, to the extent of the inconsistency, be void. Reading arts. 74(3) and 4(1) together, it is clear that all State laws, including Islamic laws passed by State Legislatures, must be consistent with Part II of the Constitution which guarantees the fundamental liberties of all Malaysians. Therefore, s. 66 of the Enactment is invalid as being unconstitutional. It is inconsistent with arts. 5(1), 8(1) and (2), 9(2) and 10(1) (a) of the Constitution.



A Courtroom in the Penang High Court





A corridor at the Penang High Court



## CRIMINAL CASES

**Mat Shuhaimi bin Shafiei v Public Prosecutor**  
[2014] 2 MLJ 145

**(Coram: Abdul Malik Ishak, Azahar Mohamed**  
**(now FCJ) and Mohd Zawawi Salleh JJCA)**

The appellant had published in a blog an article containing his views in relation to the Laws of the Constitution of Selangor, 1959 which were said to be seditious. He was charged under s.4 (1)(c) of the Sedition Act 1948 (“the Act”). By notice of motion, the appellant sought for an order that s.4 of the Act was inconsistent with art 10 read together with arts 5 and 9 of the Federal Constitution and was therefore void; pursuant to that, the court should acquit and discharge the appellant from the charge.

The Court of Appeal held that s.4 (1)(c) of the Act does not offend the reasonable test. It was reasonable because the Government has a right to preserve public peace and order, therefore, has a good right to prohibit the propagation of opinions which have a seditious tendency. Therefore, the said section is constitutionally enacted by Parliament and remain a valid and enforceable law until today.

“We venture to say that criticism of any Ruler in any manner or form, be it in writing or otherwise, be it disseminated and communicated through the social media via the internet or handphone is seditious if it is for the purpose of belittling any Ruler or if it is for the purpose of removing any Ruler or destroying the fabric of the monarchy altogether. The internet and the handphone are powerful mechanisms for expression and if they carry seditious materials, they will be caught under the Sedition Act.”.

**(Per Abdul Malik Ishak, JCA)**  
**P.P v Dato’ Seri Anwar Ibrahim**  
[2014] 4 CLJ 162

**(Coram: Balia Yusof Wahi, Aziah Ali, Mohd**  
**Zawawi Salleh JJCA)**

Dato’ Seri Anwar bin Ibrahim (“the respondent”) was charged under s.377B of the Penal Code for committing canal intercourse against the order of nature to one Mohd Saiful Bukhari bin Azlan

(“the victim”). The respondent was acquitted and discharged at the end of the trial. The learned High Court Judge accepted the opinion of the two defence’s experts, namely Professor David Lawrence Wells (DW2) and Dr. Brian Leslie McDonald (D4), who criticised the conclusions made in the report prepared by the three doctors at HKL as well as the analysis done by the Government Chemists, PW5 and PW6. According to DW2 and DW4, the way in which the samples were stored (i.e., in a steel cabinet and not in a freezer), the amount of time that eloped between the alleged sodomy and the DNA testing and the length of time the sperm cells were in the victim’s rectum before they were refried – all these would have had the cumulative effect of degrading the samples to such an extent that the respondent’s DNA could be planted. Therefore, the appellant had succeeded in casting a reasonable doubt on the prosecution’s case.

The Court of Appeal held that the comments and criticisms by DW2 and DW4 pertaining to the evidence of PW5 and PW6 on their analysis and so as to the conclusions reached by the three HKL doctors in their report had no probative value as to cast a reasonable doubt on the prosecution’s case. The trial Judge failed to consider that PW5’s evidence was more credible in the sense that she herself carried out the tests and analysis of the samples as opposed to DW2 and DW4 who were mere “armchair experts” and did not have the benefit of doing analysis themselves.

“It is in the public interest that criminal appeals be dealt with by the courts as soon as possible. Dilatory practices bring the administration of justice into disrepute. As is often pointed out, “delay is a known defence tactic”. It is not proper for a counsel to routinely fail to expedite hearing an appeal solely for the convenience of his client. Nor will a failure to expedite be reasonable, if done for the purpose of frustrating an opposing party to obtain rightful redress. Counsel should not intentionally use procedural devices to delay proceedings without any legal basis.”.

**(Per Balia Yusof Wahi, Aziah Ali and**  
**Mohd Zawawi Salleh, JJCA)**





A one-seater cart used by the late Tuan Syed Mohd Idid, Chief Malay Judge of Kedah circa 1920.  
(Picture courtesy of the Penang State Museum)

**Nik Nazmi bin Nik Ahmad v Public Prosecutor**  
[2014] 4 MLJ 157

**(Coram: Mohamad Ariff Md Yusof, Mah Weng Kwai and Hamid Sultan Abu Backer JJCA)**

The appellant, an opposition party State Assembly, was charged under s. 9(1) of the Peaceful Assembly Act 2012 (“the PAA”) which is punishable under s.9 (5) of the said Act. The appellant was alleged to have violated s.9 (1) of the PAA by failing to provide a ten (10) days’ notice of an assembly which he had organised at the stadium in Petaling Jaya in the wake of the 2013 General Elections. The appellant applied to the High court for orders to declare s.9 (1) and s.9 (5) of the PAA as unconstitutional and, further, that charges against him be set aside and

that he be acquitted and discharged accordingly. The High Court dismissed the application and upheld the constitutionality of s.9 (1) and s.9 (5) of the PAA.

The Court of Appeal unanimously allowed the appeal and set aside the charge against the appellant and acquitted and discharged him of the same. The Court held that s.9 (1) of the PAA to be constitutionally valid as the ten (10) days’ notice requirement represented a reasonable restriction to the right to free assembly. However, the Court further held that s.9 (5) of the PAA to be unconstitutional as it created a “conceptual difficulty” in purporting to criminalise an act which was *prima facie* lawful under the PAA. Therefore, the Court held that the dichotomy between s.9 (1) and s.9 (5) of the PAA

rendered s.9 (5) unconstitutional and ordered that the said provisions to be struck down.

“The court’s function is merely to test the legality of an action against principles and standards established by the constitution. Its domain is the testing of legality, not the wisdom or unwisdom of legislative action.”.

*(Per Mohamad Ariff Md. Yusof, JCA)*

“Should there be any traffic violations or dislocation to business activities which is unlawful or breaches of public safety and security, they can be adequately dealt with under existing laws such as the Road Transport Act 1987, the Penal Code and other relevant laws by the police and other law enforcement agencies efficiently as they are already trained personnel to deal with any exigencies.”.

*(Per Mah Weng Kwai, JCA)*

“The organisers should follow the restrictions stated in the Act and/or any reasonable restrictions stated by the police to maintain law and order and provide not only security but proper facilities to ensure citizen to assemble without fear and in that process does not become victim of unexpected incidents. This is a social responsibility for the organisers and should not be compromised for any reason whatsoever. If the organisers do not comply with reasonable restriction there is no prohibition for the law enforcement agencies to take action as provided by the penal laws or other provisions of the CPC to maintain law and order if reasonably necessary taking into consideration the right to assemble peacefully and without arms is an enshrined right.”.

*(Per Hamid Sultan Abu Backer, JCA)*

**Teoh Meng Kee v Public Prosecutor**  
[2014] 5 MLJ 741

**(Coram: Mohamad Ariff Md Yusof, Mah Weng Kwai and Hamid Sultan Abu Backer JJCA)**

This case concerns the inquiry into the cause of death of one Teoh Beng Hock under s.337 of the Criminal Procedure Codes (“the CPC”). Applying the standard of proof of beyond reasonable doubt, the learned magistrate had arrived at an open verdict.

Upon revision, the finding was affirmed by the learned High Court Judge. However, the Court of Appeal was of the view that the High Court and the Magistrate had misdirected themselves on the law by applying the standard of proof of “beyond reasonable doubt” when considering the allegations of death by suicide and death as a result of homicide. The scheme and structure interlocking provisions under Chapter XXXII of the CPC mandated a lower standard of proof. The applicable standard should be the civil standard of proof of “on a balance of probabilities”.

The Court of Appeal concluded that the Teoh’s death was caused by multiple injuries from a fall from the 14<sup>th</sup> Floor of Plaza Masalam as a result of, or which was accelerated by, an unlawful act or acts of persons unknown, inclusive of MACC officers who were involved in the arrest and investigation of the deceased.

“It needs to be emphasised that in coming to our conclusion, the verdict is part of the investigation process. No criminal or civil liability of any specific person or persons is established. These issues will depend on the further investigation that should be undertaken.”

*(Per Mohamad Ariff Md. Yusof, JCA)*

“Every effort must be made to track down the perpetrator or perpetrators in a thorough police investigation. No one should be spared in the investigations so that there will be no allegations of a cover up. And with that hopefully, there will be some closure of the case for the family of Teoh Beng Hock. It is paramount that the interest of the family of Teoh Beng Hock and public interest is served.”

*(Per Mah Weng Kwai, JCA)*

“What is essential to note in the above chapter is that there is no provision under the CPC or any other provision in Malaya for the magistrate to act as a coroner to deliver an open verdict; or a verdict of misadventure or death by person or persons unknown. In addition, the CPC does not require the magistrate to place a high threshold standard of proof to arrive at a finding.”

*(Per Hamid Sultan Abu Backer, JCA)*





One of the cannons mounted along the ramparts of Fort Cornwallis in Penang. The Fort was built by Sir Francis Light, the founding father of Penang in 1786 to repel attacks from foreign military forces.

**Jason Chan Huan Sen & Ors v Pendakwa Raya**  
[2014] MLJU 1128 & 1129

**(Coram: Zaharah Ibrahim, Azahar Mohamed (now FCJ), Abdul Aziz Abdul Rahim, Abang Iskandar Abang Hashim and Umi Kalthum Abdul Majid JJCA)**

In this case, a forfeiture order was made by the Sessions Court Judge under s.32 (3) of the Dangerous Drugs (Forfeiture of Properties) Act 1988 (“the FOP Act”) in respect of a claim made by four persons over certain properties that were seized by the police under the said Act. The order was affirmed by the High Court.

Upon hearing the parties, the majority (Zaharah Ibrahim JCA (as she then was), Abdul Aziz Abd Rahim, Abang Iskandar Abang Hashim, JJCA) was of the opinion that the presumption of illegality under s.35 of the FOP Act does not apply in a claim

proceeding under s. 32 of the said Act. The burden of proof on the claimant under s. 35 is on the balance of probabilities to fulfil the requirements under s. 32(3) of the Act itself. That burden is shouldered by the claimant under s. 32(3) not because the presumption under s. 35 applies to the proceeding under the said section but because he has to prove his case in order that the Court is satisfied and gives judgment in his favour.

According to the minority, Azahar bin Mohamed JCA (as he then was) the Court should presume that the claimed properties to be illegal properties under s. 35 of the FOP Act on the ground that the claim proceeding is caught by the phrase “any proceeding” under s. 32 of the Act. Hence, the burden of proof had shifted to the appellants (the claimants) to rebut the statutory presumption on a balance of probabilities that the said properties were not illegal properties.

In the manner of interpreting the FOP Act the Court had said as follows:

“The integrity of the legislative framework with its various regimes has to be maintained. In that sense the provisions have to be interpreted in such a manner as to create and maintain harmony in the inter-play between its various provisions, *inter se*.”

**(Per Abang Iskandar Abang Hashim)**

“The point to make here is this: in the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object (see section 17A of the Interpretation Acts 1948 and 1967).

**(Per Azahar Mohamed (as he then was))**

**Public Prosecutor v Yazid bin Sufaat & Ors**  
[2015] 1 MLJ 571

**(Coram: Abu Samah Nordin (now FCJ), Azahar Mohamed (now FCJ) and Mohd Zawawi Salleh, JJCA)**

The respondents were arrested under s.4 of the Security Offences (Special Measures) Act 2012 (“SOSMA”). They were separately charged for security offences under s.130G (a) of the Penal Code (“PC”). The first respondent was charged for promoting a terrorist act with the intention of advancing an ideological cause with such an act being regarded as a threat to the members of public in Syria. The second and third respondents, on the other hand, were charged for abetting the first respondent. The appeal before the Court of Appeal was filed by the prosecution against the High Court’s decision in acquitting and discharging the respondents from the charges brought against them. The High Court ruled that the charges against the respondents were related to acts of terrorism committed outside Malaysia and since SOSMA was enacted pursuant to art.149 of the Federal Constitution to deal with action or threat committed within Malaysia, it is clearly did not apply to the respondents’ trial for

the offences relating to acts of terrorism committed outside Malaysia.

The Court of Appeal held that the High Court had clearly erred and misconceived the charges against the respondents. The intention for SOSMA was, *inter alia*, to prevent Malaysia from being used as a terrorist haven. Further, s.2 of the SOSMA made it clear that the procedure laid down in SOSMA applied to the trial of any person charged with committing any security offence under the code. The High Court Judge therefore erred in holding that it would be an abuse of the process of court to invoke the provision of SOSMA for the purpose of trial of the respondents for security offences under s.130G (a) of the PC.

“An act of terrorism is a transnational phenomenon. It has no territorial limits. It transcends national borders. For instance, an act of terrorism may be planned or hatched within Malaysia with an intention to execute it outside Malaysia. The intention of SOSMA is, among others, to prevent Malaysia from being used as a terrorist haven.”

**(Per Abu Samah Nordin, (as he then was))**

**Bird Dominic Jude v Public Prosecutor**  
[2014] 3 MLJ 745

**(Coram: Zulkefli CJ (Malaya), Ahmad Maarop, Zainun Ali, Jeffrey Tan and Ramly Ali FCJJ)**

In this case, the appellant was acquitted and discharged for the offence of drug trafficking under s. 39B(1) (a) of the Dangerous Drugs Act, 1952 by the High Court. Dissatisfied, the prosecution (“the respondent”) filed a notice of appeal against the said decision. At the same time a notice of motion was filed under s. 56A of the Courts of Judicature Act, 1964 (“CJA”) to the Court of Appeal seeking a warrant of arrest directing the appellant be arrested and remanded in prison pending the disposal of the appeal. The Court of Appeal upon balancing the relevant factors held that the balance of justice laid in favour of admitting the appellant to bail at RM50,000-00 with two local sureties, and in default, a warrant be issued committing the appellant to prison until the disposal of the prosecution’s appeal. Dissatisfied, the appellant appealed to the



Federal Court. The main issue before the Federal Court was: Whether the warrant of arrest obtained against him was valid and constitutional. Affirming the Court of Appeal's decision, the Federal Court held that s. 56A of the CJA is designed to serve the specific purpose of ensuring that the right of the prosecution to appeal is not rendered academic or nugatory as a result of the absence or non-attendance of an accused who had been acquitted by the High Court. As long as an accused person is acquitted at the high Court, the public prosecutor can apply for a warrant under s 56A of the CJA.

“We agree with the views expressed by the Court of Appeal that at the first stage of the ex parte application, the respondent has fulfilled the threshold requirement to justify the granting of the warrant of arrest directing the appellant to be brought before the court. The said warrant of arrest was issued pursuant to a valid legal power of the court. It had been executed and the appellant was brought before the court

on 10 September 2013. The warrant itself made reference to the provision of s. 56A of the CJA and the order of the court given on 10 September 2013. It is our judgment that there has not been a substantial miscarriage of justice as a result of the flawed terms of the warrant as contended by the appellant. This is because the court therein was required at the second stage of the inter parte hearing of the respondent's application either to remand the appellant to prison or to admit him to bail. It is out considered view that any irregularity of the initial arrest arising from the flawed terms of the warrant of arrest had been overtaken by the subsequent event when the appellant was brought before the court on 10 September 2013.”

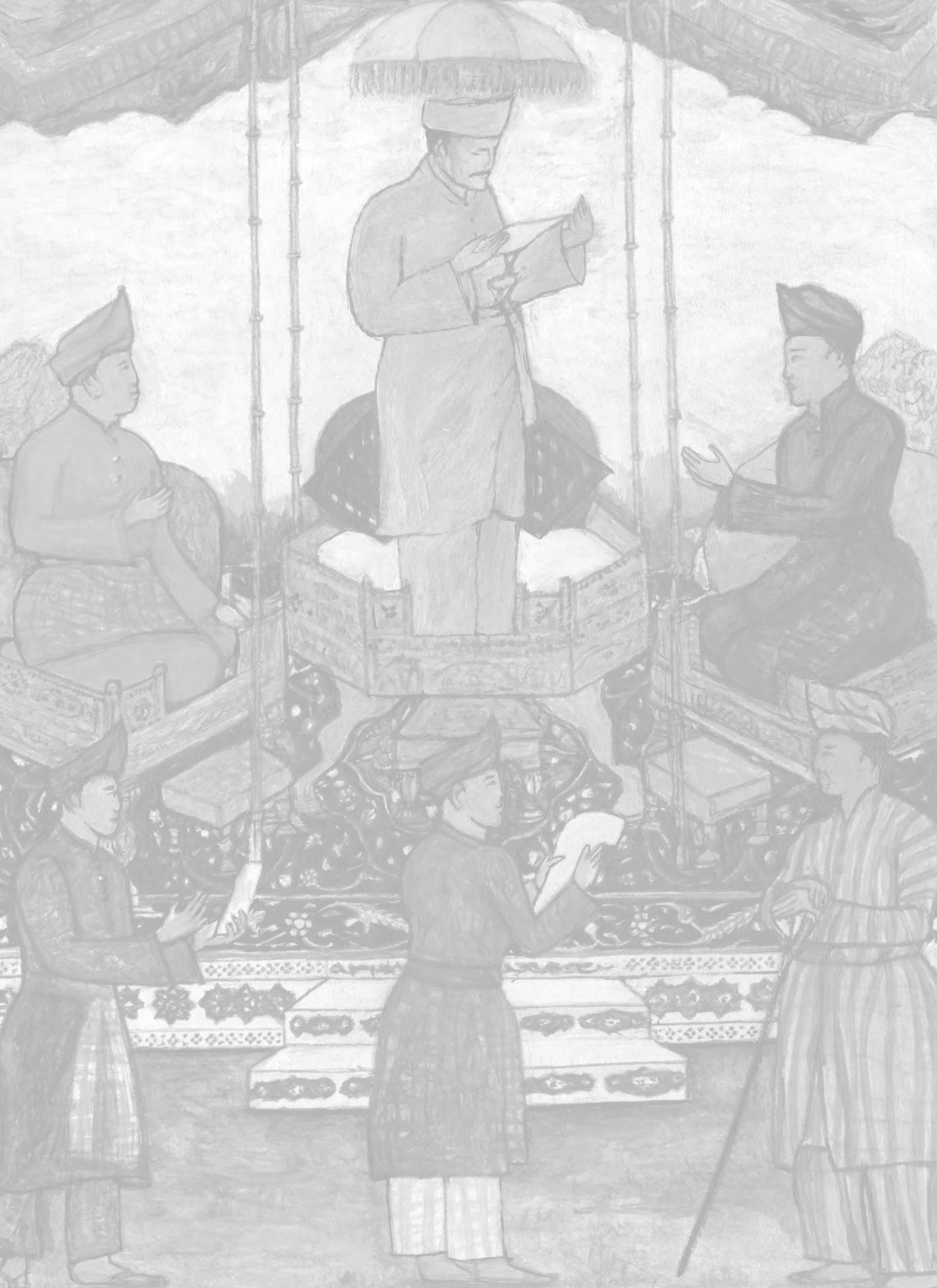
*(Per Zulkefli CJ (Malaya))*





A Staircase – Penang High Court





# **CHAPTER 11**

## **JUDICIAL INSIGHTS**



## THE ADVANTAGES OF ARBITRATION (A MALAYSIAN PERSPECTIVE)

By Tan Sri Datuk Amar Steve L. K. Shim  
(former Chief Judge of Sabah and Sarawak)



### Introduction

Recently, it was reported in the Papers that in India, the Courts in Bombay alone would take more than 400 years to clear all their cases. This is mind-boggling indeed. The problems relating to the backlog of cases are not peculiar to India. They transcend all countries worldwide. It is a matter of degree. In the Malaysian context, it is common knowledge that our courts are over-burdened with cases. The backlog of cases has increased exponentially over the years despite the increase in the number of judges. The situation is likely to worsen with the current economic downturn. When I was still in service, it was the policy of the Judiciary to encourage litigants to take advantage of extraneous mechanisms of resolution such as Alternative Dispute Resolutions or ADRs including arbitration. We had taken pains to encourage

solicitors to include arbitration clauses when drafting contracts for clients - particularly in construction, engineering, maritime, insurance contracts etc. I believe this is still the policy of the Judiciary.

### The Arbitration Act 2005

In Malaysia, arbitration is regulated by statute i.e. the Arbitration Act 2005 (the Act). The Act repeals and replaces the archaic Arbitration Act 1952. It came into force on 16 March 2006 and applies to both domestic and international arbitrations in Malaysia. The Act is seen as a welcome change to the law and practice of arbitration in Malaysia. It is long overdue. The Act is based essentially on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration - commonly known as the

UNCITRAL Rules which hitherto lay exclusively within the domain of the Kuala Lumpur Regional Centre for Arbitration (KLRCA).

#### Definition of Arbitration

In order to assess the advantages of arbitration, it is important to understand what arbitration is all about. In **Collins v Collins** (1858) 53 ER 916, Sir John Roomily MR, explained that arbitration is a reference to the decision of one or more persons, with or without an umpire, of some matter or matters of difference between parties. This definition was cited with approval by Sharma J in **Chow Yoke Pui v Tan Tuan Boon** (1971) 1 MLJ 190. Arbitration has also been defined as the process by which a dispute or difference between two or more parties, as to their mutual rights and obligations, is referred to and determined judicially and with binding effect, by the application of law, by an arbitral tribunal consisting of one or more persons, instead of by a court of law. In short, it is a mechanism for the resolution of commercial disputes, usually in private, pursuant to an agreement between two or more persons under which they agree to be bound by the decision of the arbitral tribunal. Any dispute which the parties have agreed to submit to arbitration under an arbitration agreement may be determined by arbitration unless the arbitration is contrary to public policy. The primary object of arbitration is to obtain the fair resolution of disputes of a commercial nature by an impartial tribunal without unnecessary delay or expense.

Under the Act, one of the key components therein is the element of consensus on the part of the parties involved. Hence, the principle of party autonomy. This principle forms the cornerstone of arbitrations held under the Act - indeed of all arbitrations. Given that the object of arbitration is the attainment of a fair and speedy resolution of disputes by an impartial tribunal, there ought to be a genuine desire on the part of all parties concerned to effect that purpose. It is, I think reasonable to assume that time is an essential factor to people in the business community. It has often been said that time is money. Businessmen naturally desire to spend more time on their businesses than spending endless hours attending to litigation proceedings. That has been their common complaint whenever they attend proceedings before the courts. By invoking the option to go for arbitration, the parties must have manifested a common desire to seek a fair and speedy resolution of their disputes. In the circumstances, it would obviously be to the benefit

and advantage of the parties concerned to take all necessary steps to effect that purpose. Undoubtedly, this would require their cooperation at every stage of the arbitration proceedings. This cooperation is essential if the principle of party autonomy is to have any relevance in effectively resolving the disputes between the parties. The Act is replete with provisions requiring the application of the principle. They relate more specifically to the composition of the arbitral tribunal and the conduct of arbitral proceedings.

#### Composition of Arbitrators

The composition of an arbitral tribunal is a significant part of any arbitration proceedings. There are specific provisions for this in the Act. Part II of the Act provides flexibility to the parties concerning the procedures for the appointment of arbitrators. Section 12(1) states that the parties are free to determine the number of arbitrators. Where the parties fail or refuse to determine the number of arbitrators then the arbitral tribunal shall consist of 3 arbitrators in the case of an international arbitration and a single arbitrator in the case of a domestic arbitration. Section 13(2) states that the parties are free to agree on a procedure for appointing the arbitrator or the presiding arbitrator. The following subsections deal with the various situations where the parties fail or do not agree on the procedures for appointing arbitrators. In such situations, the arbitrators can be appointed either by the Director of KLRCA or the High Court, as the case may be.

In most cases, parties are able to reach an agreement on the person or persons to be appointed as arbitrator or arbitrators. This freedom to choose members of the tribunal is an important advantage that arbitration has over litigation. In so doing, the parties can take into account, the personality, professional qualification, experience, availability and cost before committing themselves. It is not uncommon that in litigation, long delays are common, if not inevitable, if the Judge has no experience in matters involving complex commercial disputes.

In arbitration held under the auspices of the KLRCA, the application of the UNCITRAL Rules prevail but subject to modifications. Such arbitrations are essentially international arbitrations. Under the UNCITRAL Rules, the principle of party autonomy is exemplified both in the composition of the arbitral tribunal and in the arbitral proceeding. This is



reflected in Sections II and III of the said Rules. More specifically, Article 6 states :

“If a sole arbitrator is to be appointed, either party may propose to the other:

(a) The name of one or more persons, one of whom would serve as the sole arbitrator; and

(b) If no appointing authority has been agreed upon by the parties, the name or names of one or more institutions or persons, one of whom would serve as appointing authority.”

On the conduct of arbitral proceedings, particular attention can be drawn to Article 15 paragraph 2 which states:

“If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses including expert witnesses or for oral argument. In the absence of such request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.”

The substance of the above provisions is also reflected in our Arbitration Act 2005 (see Chapter 3 and 5 therein). The parties can also agree on the seat of arbitration and the language to be used in the proceedings. The parties can thus define which place of arbitration is most convenient for them. On international arbitrations, negotiations typically result in agreements pursuant to which the law of one party’s country is to govern the contract while the place of arbitration is to be in the other party’s country. The parties also have the freedom to choose the language in which they would like the proceedings to be conducted, unlike the situation in litigation proceedings.

Given the onerous duties bestowed upon an arbitrator, it is obviously important that the parties should exercise care in appointing the right arbitrator or arbitrators. A wrong choice can be problematic and costly. It is said that an arbitrator is bound by the rules of law like every other Judge and if it appears on the face of the record that he has acted contrary to the law, his award may be set aside (see *Aubert v Maze* (1801) 2 Bos & Pul 371). An arbitrator has to decide disputes referred to him according to the prevailing principles of law. Indeed, *Ludlow JA (Canada) in Faubert & Watts*

*v Temagami Mining Co. Ltd.* (1959) 17 DLR (2nd) 246 has observed thus:

“It is the duty of an arbitrator, in the absence of express provision in the submission to the contrary, to decide the question submitted to him according to the legal rights of the parties and not according to what he may consider fair and reasonable under the circumstances”.

In the process of determining disputes, the arbitrator has to comply with or conform to prescribed or agreed rules of procedure. These are laid down in Chapter 5 of Part II of the Act. Section 20 is significant. It states that parties shall be treated with equality and shall be given a fair and reasonable opportunity of presenting their case. This requirement is also reflected in Article 15 paragraph 1 of the UNCITRAL Rules.

#### The Conduct of Arbitration

In the conduct of proceedings, the parties are free to dictate the procedures involved. This is provided in Section 21(1) which stipulates that, subject to the provisions of the Act, the parties are free to agree on the procedures to be followed by the arbitral tribunal in conducting the proceedings. And where the parties fail to agree, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. Here, I find the following comments by Ms. Grace Xavier in her article “Comparative Study of Arbitrations in Malaysia (2002) 4MLJ 1xxxix” to be pertinent.

“What must not be forgotten is that arbitration is a dispute resolution mechanism that has gained popularity due to the informality of the procedure employed in the conduct of arbitration proceedings. The austerity of a court room is avoided and very often, the Judge is a person chosen by the parties themselves. In Malaysia, to further complement the non-judicious element of arbitration, the law of evidence is excluded from being applied to arbitration proceedings: (see S.2 of the Evidence Act 1950). But this does not mean that arbitration proceedings can be conducted in a haphazard manner. Therefore there must be safeguards to ensure that justice and fairness are not overlooked. One of the fundamental principles to be observed by the arbitrator or the arbitral tribunal is to ensure that all parties are given a right to present their case and a right to reply.”

I mentioned earlier that it has been the consistent policy of the judiciary (as I understand it) to encourage parties to take advantage of arbitration as an alternative means of resolving disputes. This could be a reason why there is evidently a limited but controlled court intervention in arbitration proceedings as reflected in the Act. Perhaps the word “intervention” may be somewhat misplaced. It is more appropriate to state that the court’s involvement is both complementary and supervisory. This is evident in Section 11(1) which states:

“A party may, before or during arbitral proceedings, apply to the High Court for any interim measure and the High Court may make the following orders for:

- (a) security for costs;
- (b) discovery of documents and interrogatories;
- (c) giving of evidence by affidavit;
- (d) appointment of a receiver;
- (e) the preservation, interim custody or sale of any property which is the subject-matter of the dispute;
- (f) ensuring that any award which may be made in the arbitral proceedings is not rendered ineffectual by the dissipation of assets by a party; and
- (g) an interim injunction or any other interim measure.”

Quite clearly, the above section empowers parties to arbitration proceedings to seek the assistance of the High Court for interim reliefs in appropriate cases. As such, the High Court can be said to play a complementary role in arbitration proceedings. Another area relates to the recognition and enforcement of awards. This is reflected in Section 38 of the Act which stipulates:

“On an application in writing to the High Court, an award made in respect of a domestic arbitration or an award from a foreign state shall, subject to this Section and Section 39 be recognised as binding and be enforced by entry as a judgment in terms of the award or by action.”

This is a significant provision because it gives teeth to arbitration awards. They have the effect

of binding the parties to the disputes. They have the force of law. There is finality and certainty in the awards.

The High Court, as I have stated, also plays an effective supervisory role in arbitration proceedings. This is manifested in Section 41 of the Act which stipulates that any party may apply to the High Court to determine any question of law arising in the course of the arbitration but this has to be with the consent of every other party. Furthermore, the applicant has to satisfy the High Court that the determination (a) is likely to produce substantial savings in costs and (b) substantially affects the rights of one or more parties. It is perhaps significant to note here that subsection (4) thereof allows the arbitration proceedings to proceed or continue, notwithstanding the said application before the High Court.

#### The Element of Confidentiality

Embedded within the principle of party autonomy is the element of privacy or confidentiality in arbitration proceedings. Arbitration hearings are generally not open to the public. In the Asian context, confidentiality in business dealings is important. Businessmen do not like to air the commercial disputes in public. They are concerned about “loosing face”. Since arbitration proceedings are normally held in private, the parties are more inclined to reach a compromise. They may be less antagonistic towards each other and this may well lead to the continuation of the commercial relationship, even after the termination of proceedings. The situation is unlikely to occur where the disputes are litigated in the courts because of the publicity involved. Any likelihood of an on-going commercial relationship between the parties would certainly dissipate after a much publicised litigation.

Be that as it may, the parties need to bear in mind that unless they have specifically agreed to confidentiality, the parties to an arbitration are not obligated to maintain the proceedings confidential and may well decide to divulge the existence and details of the proceedings. Disclosure may be inevitable in the context of enforcement proceedings. These could be the reasons why the Act is silent on this score. However, the KLRCA Rules have a specific provision for this in Rule 9 which states:

“Unless the parties agree otherwise, the arbitrator and the parties must keep confidential all matters relating to the arbitration



proceedings. Confidentiality extends also to the award, except where its disclosure is necessary for purposes of implementation and enforcement.”

#### Conclusion

The Act of 2005 applies to both domestic arbitrations and international arbitrations. These are defined in the Act. It is interesting to note the provisions in Section 3 of the Act. Sub sections (2) & (3) thereof are pertinent. They state as follows:

“(2) In respect of a domestic arbitration, where the seat of arbitration is in Malaysia -

(a) Parts I, II & IV of this Act shall apply; and

(b) Part III of this Act shall apply unless the parties agree otherwise in writing.

(3) In respect of an international arbitration where the seat is in Malaysia -

(a) Parts I, II & IV of this Act shall apply; and

(b) Part III of this Act shall not apply unless the parties agree otherwise in writing.”

This “opt-in”, “opt-out” provision is another clear manifestation of the concept of party autonomy in arbitrations. In this respect, the Act has resurrected the original purpose of arbitration which is a dispute resolution mechanism centred on party consensus. At the same time, the Act has also captured the modern trends that have transcended into arbitral proceedings. It has, to a great extent, liberalised Malaysian arbitration jurisprudence in consonant with the concepts and ideals embodied in the UNCITRAL Model Law. In moving with the times, the Act has restated the primary objective of ensuring that parties to arbitrations are able to resolve their disputes fairly, speedily and economically. In my view, that is the single most important advantage of arbitration.







## NATIVE CUSTOMARY RIGHTS IN SABAH: WHO HAS ORIGINAL JURISDICTION?

By Justice David Wong Dak Wah



### (A) Introduction

1. Native customary rights over lands in Sabah have always been a contentious area of law as those rights are recognized and protected under the Sabah Land Ordinance. Until recently, all disputes arising from claims for native customary rights over lands were resolved at the Land Collector's level which is part of the Lands and Survey Department of Sabah of which the Director of the same is the head. However, of late the scenario is different in that these disputes have found their place in our High Court and this is to be expected as the concept of native customary rights in this country is now recognised as a substantive common law right which cannot be extinguished by the State without payment of compensation. (see **Superintendent of Land & Surveys Miri Division & Anor v Madeli Salleh** [2007] 6 CLJ 509).

### (B) Nature of jurisdiction

2. In the context of Sabah, one of the contentious issues is the nature of jurisdiction of the High Court in respect of claims on native customary rights over lands i.e whether the High Court may exercise its original jurisdiction in hearing such claims? This issue is of utmost importance because if the High Court was only exercising its appellate jurisdiction, then the final appellate court is the Court of Appeal since our Federal Court only has jurisdiction to hear an appeal in respect of a judgment or order handed down by the Court of Appeal which emanated from a decision of the High Court in exercise of its original jurisdiction as found in the landmark case of **Tio Chee Hing v United Overseas Bank (M) Bhd** [2013] 2 CLJ 910. The Federal Court there found that the High Court in hearing appeals from the Director of Lands and Survey of Sabah

was only exercising its appellate jurisdiction as can be seen from this passage of the judgment:

“To fortify our view, Section 41 of the Sabah Land Ordinance clearly legislates that (similar to Income Tax Act) an appeal shall lie from any order or decision of the Director, whether original or an appeal to the Court. Section 4 of this Ordinance provides “Court” means “High Court”.

It is succinctly legislated in Section 41 that no Court shall exercise jurisdiction as to any claim or question in respect of which jurisdiction is given by the Sabah Land Ordinance to the director. Certainly it bars the High Court from exercising an original jurisdiction thus leaving it only an Appellate Jurisdiction”.

3. It is pertinent to note that the jurisdictional point considered by the Federal Court was only confined to the context of an appeal arising from any order or decision of the Director under s. 41 of the Sabah Land Ordinance and the jurisdiction issue on whether the High Court has the original jurisdiction to hear a claim on native customary rights over lands in Sabah has not been adjudicated by the apex Court of the country. This has given some space and judicial freedom to the High Court to develop this area of law. Hence it is the intent of this paper to provide some ‘food for thought’ as succinctly put by the learned Judicial Commissioner (as he then was) in **Grace Mark Sdn Bhd & Ors v The Persons in Occupation of Lands Held Under Title No CL105545533 & 6 other CL, District of Tawau** [2012] 10 CLJ 406.

4. As a starting point, let us look at sections 14 and 41 of Sabah Land Ordinance which provide as follows:

14. Claims to native customary rights shall be taken down in writing by the headman or by the Collector, and shall be decided by the Collector.

Appeal:

41. (1) An appeal shall lie from any order or decision of a Collector, Surveyor or Registrar given under this Ordinance to the Director, and again from any order or

decision of the Director, whether original or an appeal, to the Court

Provided that no appeal shall be admitted –

- (a) after the expiration of thirty days from the date of the order or decision appealed against;
- (b) until the prescribed fees shall have been paid;
- (c) if it is expressly provided that the order or decision shall be final or if any other form of appeal is prescribed;
- (d) from any decision of the Director under section 9 of the Ordinance.

Jurisdiction of Courts barred

- (2) Except as herein provided, no Court shall exercise jurisdiction as to any claim or question in respect of which jurisdiction is given by this Ordinance to a Collector or the Director.

(C) Darinsok 1 and Darinsok 2

5. The above provisions were considered by the Court of Appeal in **Darinsok Pangiran Apan & Ors v. Hap Seng Consolidated Bhd & Ors** [2011] 6 CLJ 733 (Darinsok 1). The facts there were these. The Plaintiff brought a representative action on behalf of the native communities vested with native title and customary rights at the Tongod Region seeking declaration and injunctive reliefs against the 4th Defendant (the Director of Lands and Survey, Sabah) who had approved an application from the 1st Defendant of a piece of land and alienated a country lease land to the 1st Defendant. The substance of the Plaintiff’s claim was that they have native customary rights to the land alienated to the 1st Defendant and the aforesaid alienation by the 4th Defendant was wrongful and unconstitutional. The Defendants then took out an application to strike out the writ and statement of claim on the ground that the High Court has no jurisdiction to determine claims for native customary rights by the Plaintiffs. The learned Judicial Commissioner sustained the argument and struck out the case. On appeal to the Court of Appeal, the learned Judicial Commissioner’s decision was upheld.



6. The Court of Appeal (Darinsok 1) gave the following construction to the provisions of the Sabah Land Ordinance:

[12] In our view, the question for determination in the instant appeal may be stated as follows:

Upon a true construction of ss. 13, 14, 15, 16, 41 and 69, does the High Court have any original jurisdiction to hear and determine the plaintiffs' NCR claim?

[13] We would first outline below the procedure contained in the Ordinance regulating applications for land in Sabah and NCR claims, as follows:

(1) Section 9 gives the Director of Lands and Surveys ("the Director") the power to alienate state land, subject to any general or special direction of the Minister.

(2) Section 12 provides that an application for state land is to be made to the Director or the Collector and shall be substantially in the form of Schedule III.

(3) Section 13 provides for the publication of a notice to ascertain NCR. Upon receiving any application for unalienated country land, it shall be the duty of the collector to publish a notice calling upon any NCR claimant who is not yet in possession of a registered documentary title to make or send in a statement of his claim within a date to be specified in the notice. If no claim is made, the land shall be dealt with as if no such rights existed.

(4) Section 14 requires that claims to NCR shall be taken down in writing by eg, the ACLR who shall decide thereon.

(5) Section 15 sets out the circumstances that NCR shall be held. Upon the NCR having been established, s. 16 provides for the NCR to be dealt with either by way of monetary compensation or a grant of the land to the claimant, in which case a title shall be issued under Part IV.

(6) Under s. 41(1), an appeal shall lie from any order or decision of the ACLR to the Director, and again from any order or decision of the Director, whether original or on appeal, to the High Court. The proviso to s. 41(1) sets out the circumstances which preclude an appeal, but those circumstances are irrelevant to the instant appeal.

(7) Section 41(2) provides for the ACLR's original jurisdiction to hear and determine NCR claims, so that no court shall exercise any jurisdiction as to any claim or question in respect of which the original jurisdiction is given to the ACLR.

(8) Section 69 requires all claims to land based upon customary tenure to be decided by the ACLR acting under s. 82, subject to the appeal created in ss. 41 and 84.

(9) Section 84 provides that all land which has not been claimed or the claim which had been rejected shall become absolutely the property of the State Government.

[14] It is abundantly clear to us that the High Court does not have any original jurisdiction to hear the plaintiffs' NCR claim. Specifically, under s. 14, the plaintiffs' NCR claim has to be decided in the first instance by the ACLR. Thereafter, if the plaintiffs are dissatisfied with the ACLR's decision, the plaintiffs may invoke the first limb of s. 41(1) to appeal to the Director. The plaintiffs may thereafter bring their appeal (relating to their NCR claim) to the High Court under the second limb of s. 41(1). The plaintiffs do not have the right to commence their NCR claim in the High Court in order to urge the High Court to exercise its original jurisdiction. In other words, they may only proceed by way of appeal to the High Court and seek the court's assistance via appellate jurisdiction. The plaintiffs should have waited for the ACLR's decision on their pending application before the ACLR. If they are dissatisfied with the ACLR's decision, they may appeal to the Director

and if they are still dissatisfied with the Director's decision, they may further appeal to the High Court.

7. On appeal to the Federal Court under appeal No 08-449-07-2013 and 08-436-06-2013, the aforesaid decision of the Court of Appeal (Darinsok 1) was set aside as during the hearing of the appeal the Federal Court became aware that there were two pending appeals to the High Court Judge relating to a decision of the Deputy Registrar who had dismissed an application to strike out the suit under Order 18 rule 19. The Federal Court instead of hearing the appeal against the decision of Court of Appeal (Darinsok 1) remitted the matter to the High Court before another Judge to hear the appeals from the Deputy Registrar which the High Court did and dismissed the same.
8. On appeal to the Court of Appeal (Darinsok 2) as reported in [2014] 1 MLJ 335, the appeal was dismissed on the ground that the suit was not one which ought to have been struck out summarily as there are issues which ought to be tried in a full trial. In the words of the Court of Appeal, they read as follows:  
  
*"The issues raised in this appeal and the relief sought thereof did not relate to jurisdiction of the Court but concerned matters relating to the Plaintiffs' constitutional rights and common law rights. Whether the Plaintiffs succeed or not is a matter to be tried by the trial Judge who has to take into consideration the decision of the Court of Appeal as well as the Federal Court"*
9. Hence it is quite clear that the construction of the relevant provisions of the Sabah Land Ordinance given by the Court of Appeal (Darinsok 1) was not deliberated on by the Federal Court or the subsequent Court of Appeal (Darinsok 2). The construction by Court of Appeal (Darinsok 1) is similar to the one adopted by numerous High Court decisions in **Ismail Hj Yunus & 2 Ors (For themselves and on behalf of 300 Ors) v Syarikat Kerjasama Perkembangan Tanah Pagagau Berhad & Ors** [1994] 4 CLJ 701, **Burhan Ating & Ors v Directors of Lands and Surveys & Ors** [1992] 2 CLJ 211 and **Hiew Kat Kee v Sading Aring, The State Government of Sabah & Ors (Third Party)** [2011] 1 LNS 768.
- (D) Different approach taken by the High Court recently
10. However in two recent cases, the High Court of Sandakan has taken a different approach to the construction of the relevant provisions in the Sabah Land Ordinance as to the nature of the jurisdiction of the High Court. The two cases are **Grace Mark Sdn Bhd & Ors v The Persons in Occupation of Lands Held Under Title No CL105545533 & 6 other CL, District of Tawau** [2012] 10 CLJ 406 and **Borneo Samudera Sdn Bhd v Uttoh Bin Ajak & 28 Others** (Sdk – 24-78/10-2011).
11. The learned Judicial Commissioner in the two cases did not see it fit to follow the construction given in Darinsok 1. In **Grace Mark**, the learned Judicial Commissioner decided to follow the judgment in **Haji Abdillah Bin Haji Abdul Hamid v Assistant Collector of Land Revenue, Semporna, The State Government of Sabah** [T21-58 of 2006] where the learned Judge relied on the Federal Court Judgment in **Madeli** case and found that native customary right over land is a common law right and litigants are entitled to enforce that right in the Courts as opposed to making the claims before the Collector. This is what the learned Judge said:  
  
"According to the Defendants the Plaintiffs' claims ought to fail not least because the Court has no jurisdiction to determine native customary rights by virtue of section 41(2) of the Land Ordinance which expressly provides that no Court shall exercise jurisdiction as to any claim or question in respect of which jurisdiction claim is given in the Ordinance to a Collector or Director (see **Burhan Bin Ating & 418 Ors v Director of Land and Surveys & 2 Others** (1992) 2 CLJ 1203)"  
  
I need only refer to the Federal Court case of **Superintendent of Land and Surveys, Miri Division & Anor v Madeli Salleh** [2007] 6 CLJ 509 to demolish the foregoing propositions advanced on behalf of the Defendants which were based on statutes enacted after the rights had been acquired and exercised by the Plaintiffs' respective ancestors. The relevant parts of the headnote reads:



(1) The proposition of law as enunciated in the two cases *Adong Kuwau* (supra) and *Nor Anak Nyawai* (supra) reflected the common law position with regard to native titles throughout the Commonwealth. And it was held by Brennan J, Mason CJ and McHugh J, concurring, in the Australian case of **Mabo (No.2)** that by the common law, the Crown may acquire a radical title or ultimate title to the land but the Crown did not thereby acquire beneficial ownership of the land. The Crown's right or interest is subject to any native rights over such land. They adopted the view of the Privy Council in **Amodu Tijani v Secretary, Southern Nigeria**, where the Privy Council in appeal from the Supreme Court of Nigeria held that radical title to land held by the White Cap Chiefs of Lagos is in the Crown, but a full usufructuary title vests in a chief on behalf of the community of which he is head. That usufructuary title was not affected by the cession to the British Crown in 1861; the system of Crown grants must be regarded as having been introduced mainly, if not exclusively, for conveyancing purposes. Although the instant case dealt with individual rights and not communal rights, the principle applicable was the same. **Adong Kuwau & Ors v Kerajaan Negeri Johor & Anor** (foll); **Mabo (No. 2)** (foll); **Amodu Tijani v Secretary, southern Nigeria** (foll), (paras 22 & 23);

(2) Native holdings are not only recognized by the 1920 Regulations, but where possible, such holdings may even be registered. Registration, however, is not a necessary prerequisite for such holdings to be recognized. In the light of this, it was erroneous to hold, as was held by the learned Judicial Commissioner in the present case, that native customary rights in Sarawak were only created by s 66 of the Ordinance. What s 66 purported to do was to stipulate new conditions before native customary rights could be recognized after the coming into force of the Ordinance. It does not purport to nullify native customary rights that had been acquired or recognized prior to the coming into force of the Ordinance.

In other words, it has no retrospective force. The respondent's claim in this case arose from circumstances which occurred prior to the Ordinance, since his father and his forefather had been in occupation of the said land prior to 1922. It was not in dispute that the respondent was born on the said land in 1922.

(7).... this court wholly agreed with the view expressed in *Adong Kuwau* (supra) and *Nor Anak Nyawai* (supra) that common law respects the pre-existence or rights under native laws or customs”.

The arguments advanced on behalf of the Defendants are patently unsustainable in the light of the foregoing judicial pronouncements of our Apex Court.”

12. In *Borneo Samudera*, a case decided after *Grace Mark*, the same Judicial Commissioner made a distinction between pre and post 1930 native customary rights claims. Any claim to a customary right pre- the Sabah Land Ordinance, being a common law claim, can be made in the Courts while any claim to any such customary right post- the Sabah Land Ordinance must be made before the Collector. This is what the Judicial Commissioner says:

The claim for Native Customary Rights litigated whether in the High Court or before the Assistant Collector of Land Revenue largely depends on the manner how the pleadings are drafted. This is essential because litigants such as the 30th defendant Hj Ahdah and the orang Kampong of Kg. Batu Putih should know of their legal position. They must know the NCR to the land they are now claiming are pre or post the 1930 Land Ordinance. This will enable them to prosecute their claim at the proper forum and for them to collect and assemble their evidence to prove their claim. Not all claims to NCR can be litigated in Court. Provisions in our Land Ordinance have clearly spelt out that where the land ordinance had given the Director of Lands and Surveys Department jurisdiction to hear matters, that matter should be heard as per the Land Ordinance.

If the NCR claims arose after 1930 then that claim must go to the collector or his designated officer such as the Assistant Collector of Land Revenue.

If the NCR claim arose prior to 1930, then common law prevail, litigants are free to seek declarations from the Court.

13. From my reading of the two aforesaid judgments, the learned Judicial Commissioner appears to make a finding that native customary rights pre- Sabah Land Ordinance are common law rights while native customary rights post-Sabah Land Ordinance are statutory in nature. With respect, the learned Judicial Commissioner does not appear to state his rationale for that conclusion except to rely on the judgment of Madeli.
14. Madeli is a native customary rights case emanating from Sarawak and the central issue there was simply whether Malaysian common law recognizes native customary rights over land. It was the argument of the then learned Attorney General of Sarawak that reliance on *Nor Anak Nyawai* which adopts the principle that common law recognises native customary rights over land is misguided as it is premised upon common law of another jurisdiction, namely Australia in the *Mabo (No 2)*(1992) HCA 23. Collateral to that contention, it was contended that native customary rights can only be created by legislation and in the context it was first recognised in s.66 of the Land Settlement Ordinance Cap 27. That argument was rejected by the Federal Court which in the clearest language states that native customary right over land is a common law right in this country, further equating it to “substantive law which has the force and effect as written law”.
15. Thus in Madeli case, the Federal Court was confronted with the contention that native customary rights are not common law rights and can only be created by statute. When that contention was rejected, the effect is simply if a native can establish his claim for native customary rights prior to 1958, those rights continue to subsist even after the 1958 Land Code.
- (E) The existence of native customary rights in Sabah

16. In Sabah, there is no dispute that native customary rights existed prior to the 1930 Sabah Land Ordinance. In fact, prior to 1930, the British Administration had acknowledged the existence of native customary rights and had set out a procedural regime for natives to make their claims. This can be seen in Article 9 of the Charter to the East India Company signed on 1.11.1881 which reads as follows:

“In the administration of justice by the Company to the people of Borneo, or to any of the people of Borneo, or to any of the inhabitants thereof, careful regard shall be always be had to the customs and law of the class or tribe or nation to which the parties respectively belong, especially with regard to the holding possession, transfer and disposition of lands and goods, and testate or intestate succession thereto, and marriage, divorce and legitimacy, and other rights of property and personal rights.”

17. Further, in a legislation under Proclamation 9 of 1902, Land Rules were made to regulate native tenure. The intention of the Land Rules was to set out the procedures in which claims for native customary rights could be made by the natives. Sections 1 and 5 in effect made registrations of native customary rights claims a prerequisite condition for such claims to be valid. Section 25 which bears resemblance to section 14 of the Sabah Land Ordinance requires native customary rights claims to be acknowledged by either the headman or collector and the determination of the validity of such claims rests with the collector. That being the case, can it be said that there is a distinction between claims pre- and post- the Sabah Land Ordinance as proposed by the learned Judicial Commissioner? The Sabah Land Ordinance like the 1920 Proclamation 9 is nothing but a piece of legislation setting out a clear procedure as to how claims to native customary rights are to be dealt with by the relevant authority.
18. There is no express extinguishment of native customary rights in the 1930 Sabah Land Ordinance. In fact it continues to acknowledge the existence of native customary rights. What the aforesaid provisions intend to do are simply to put in place a procedural regime in which native customary rights over lands can be established even after the coming into force of the aforesaid Ordinance, which claim should



be before the Collector. It should be noted that there is no such procedural regime in the Sarawak Land Code, hence there is no dispute that in Sarawak native customary rights over lands can be made in the High Court as have been done all along.

- (F) Claims for native customary rights should be decided in the first instance by the Collector

19. It appears quite clear from the foregoing discussion that claims to native customary rights over lands in Sabah should be made before the Collector. Then why is it, of late, lawyers are trying their luck in the High Courts which now appear to be sympathetic to such claims. One of the reasons may be that lawyers feel more comfortable when they prosecute their cases in Court especially when the issues are constitutional in nature involving complex legal arguments. The Court's view of native customary rights as a constitutional right probably has also given the impetus to lawyers to come straight to the Court for adjudication of such right.

20. Further, there appears to be real fear of bias and conflict when the Collector is determining a claim for a native customary right over a piece of land which had been alienated to the registered owner when such alienation is granted by the Director of Lands and Survey Sabah pursuant to section 9 of the Sabah Land Ordinance who in fact is the superior of the Collector. The enquiry of that native customary right would no doubt require the Collector to look into the decision of his superior in alienating the land. This raises the question whether such a provision is an affront to the basic rule of 'fair play' and hence invalid?

- (G) The Constitutional Right Point

21. The change in attitude of the Courts could well be that native customary rights are not merely common law rights, they are now equated to constitutional rights. Justice Ian Chin in **Nor Anak Nyawai v Borneo Pulp Plantations Sdn Bhd** [2001] 6 MLJ 241 first stated that native customary rights are protected by Article 5(1) of the Federal Constitution which provides that no person shall be deprived of his life or personal liberty save in accordance with law. Relying on the case of **Tan Tek Seng @ Tan Chee Meng v Suruhanjaya Perkhidmatan Pendidikan & Anor** [1996] 1 MLJ 261, the

learned Judge opined that native customary rights can be considered as 'right to livelihood'. The Court of Appeal in **Darisok (No 2)** talks of constitutional rights when refusing to strike out the suit summarily. The same sentiments are expressed by the Right Honourable Chief Judge of Sabah and Sarawak in the Sarawak case of **Bato Bagi & Ors v Kerajaan Negeri Sarawak & Another Appeal** [2011] 6 MLJ 297 where he said this:

"I would like to make another note on the use of Order 53 of the Rules of the High Court 1980 in cases involving native customary rights. This point was touched upon in **Jalang's** case by the Courts below. With respect, I find that it is highly unfair and prejudicial to insist upon natives to proceed by way of Order 53 when they seek to enforce a constitutional right by way of declaration to that effect.

Although it does, to a certain extent, fall within the realm of public law, I am of the view that it tilts more towards the vindication of a private right which is recognized both under statute and at common law (which pre-existed statute). Another way of looking at it is to consider it as an exception to **O'Reilly v Mackman** (1982) 3 All ER 1124"

If one of course looks at native customary rights from the perspective of a right to livelihood and the superior Courts as guardian of the Federal Constitution, few would dispute the rights of natives to enforce their claims to right to livelihood in the superior Courts. I have no doubt that the Courts in their judicial wisdom and appropriate activism will find ways to reconcile with the express provision of making claims for native customary rights before the Collector. A case in point is **R Rama Chandran v. Industrial Court of Malaysia & Anor** [1997] 1 CLJ 147, where the Federal Court in its majority decision observed that there is no bar in opting for judicial review despite the existence of section 33A of the Industrial Relations Act. His Lordship Edgar Joseph Jr. FCJ stated that:

"With regard to assumption (b): It is impossible to say that had the Employee proceeded by way of a Reference under s. 33A to the High Court, he was bound to have succeeded. It is axiomatic, that the

prospects of success or failure in litigation can seldom, if ever, be predicted, with certainty. He may, as likely as not, have failed, and had he failed, his case would have ended in the High Court for there is no provision enabling him to take the matter further to a higher Court. But having - as it turned out, wisely - elected to proceed by way of Judicial Review under O. 53, and failed in the High Court he was able to successfully take his case up to this Court.

In these circumstances, it is difficult to see, how the employee could be criticised for having elected to proceed by way of judicial review under O. 53 instead of a reference on a question of law under s. 33A. Indeed, from his point of view, it is fortunate that he did so."

22. The aforesaid case has been followed by the Court of Appeal in **Telekom Malaysia Kawasan Utara v. Krishnan Kutty Sanguni Nair & Anor** [2002] 3 CLJ 314 and **Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener)** [2003] 3 CLJ 404. In the latter case, Abdul Hamid Mohamad JCA (as His Lordship then was) justified the Court's intervention premised on the development of the law in the country. This is what he said:

To the argument that s. 18C should be given similar interpretation as s. 33B of the Industrial Relations Act 1967 we would like to point out that prior to 30 May 1980, there were no provisions similar to ss. 33A and 33B. With the "development" of administrative law taking place in this country during that period, Parliament thought it fit to insert ss. 33A and 33B in the Act. There is no doubt that the intention was to curtail if not to prevent the courts in the exercise of its power of

judicial review in such cases. But, the current was too strong to be stopped, or even slowed down. That provision became a dead letter. The courts continued and even expanded the grounds for their interference. Whether we like it or not, that is now the law and we accept it.

- (H) Legislative amendments are required

23. If I may conclude by saying that the State Legislature should review the Sabah Land Ordinance, a piece of legislation enacted some 85 years ago and update it to reflect its relevancy to the world we find ourselves in today. One glaring flaw of the Sabah Land Ordinance is the absence of an express provision relating to the indefeasibility of title of an alienated land, which is the basic foundation of a Torrens System of land registration, found in the National Land Code and the Sarawak Land Code. Another area in the Sabah Land Ordinance which needs to be looked into is the foreclosure proceedings in respect of charged properties. Presently, such proceedings are being heard by the Collectors as opposed to under the National Land Code and the Sarawak Land Code where they are heard by the Courts. Needless to say the Courts are better equipped than Collectors to decide on foreclosure proceeding especially when they are highly contested by the chargor/borrower. Finally, the s.13 notice provision in the Ordinance calling for claims for native customary rights should also be looked into as the weakness of the aforesaid section has been clearly set out by the learned Judicial Commissioner in Borneo Samudera.
24. Meanwhile the legal profession awaits an opportune time when the Federal Court has the occasion to decide the nature of the jurisdiction of the High Court of Sabah on matters relating to claims for native customary rights.





Mace on the Bench of one of the High Court rooms, Penang.

# APPENDIX A

## MALAYA



## 1. PERLIS

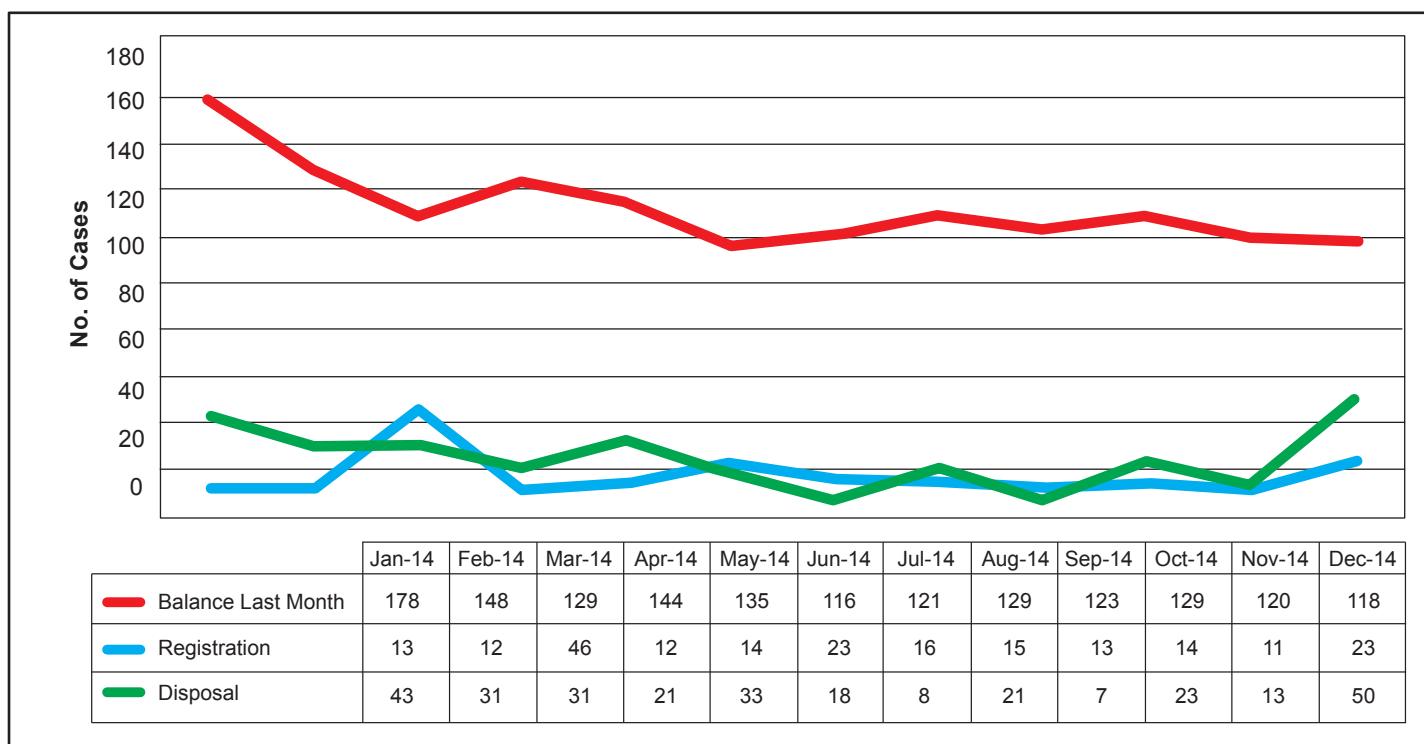
### 1.1 IN THE HIGH COURT AT KANGAR – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kangar for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 212 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 299 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Kangar is 384 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KANGAR (CIVIL)  
JANUARY-DECEMBER 2014**



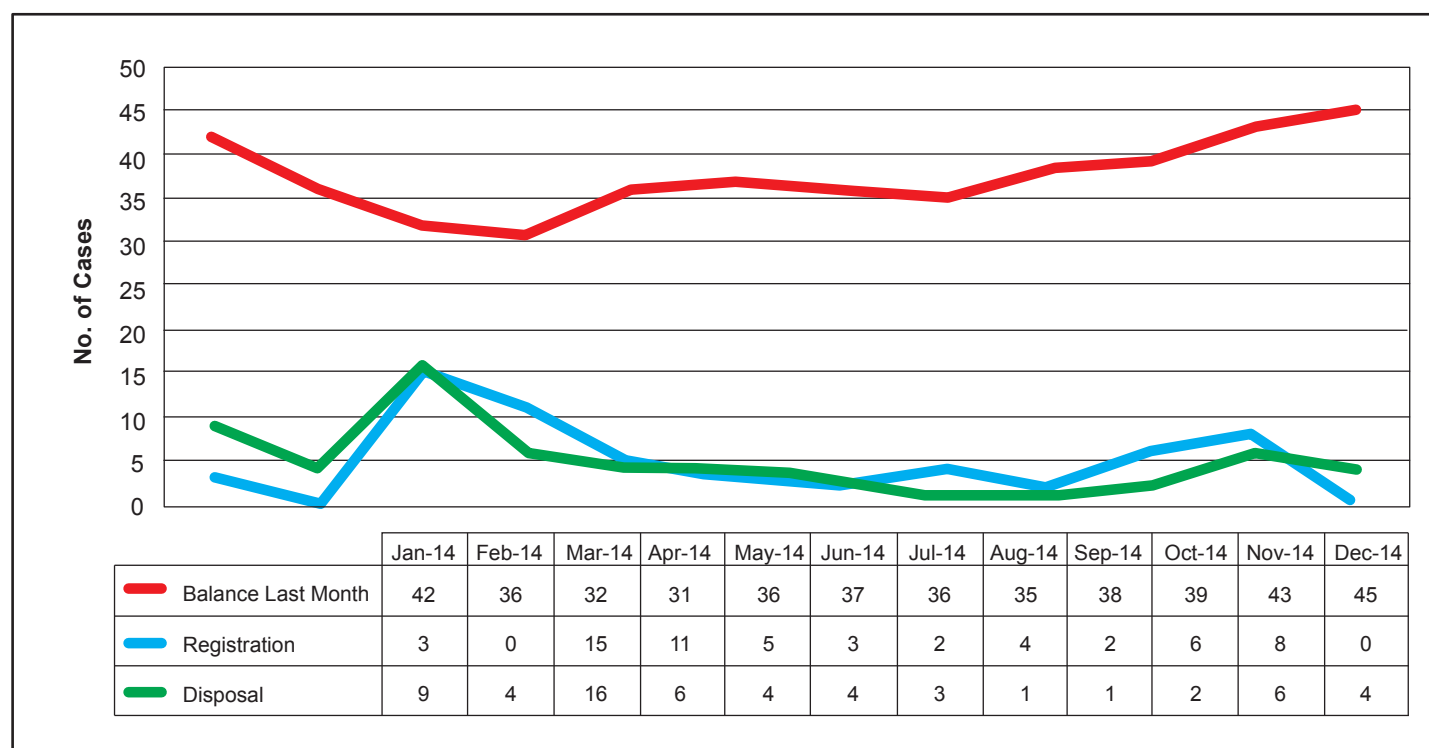
**AGEING LIST  
IN THE HIGH COURT AT KANGAR (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011																													
2012											1											5					6		
2013				5							1	2					1					131					140		
2014	1	2	1	3			25	2			5	4			25	3	4					156	1		6		238		
TOTAL	1	2	1	8			25	2			7	6			25	3	5					292	1		6		384		

## 1.2 IN THE HIGH COURT AT KANGAR- CRIMINAL

For Criminal Cases in the year 2014, a total number of 59 cases including appeals and trials were registered and 60 cases were disposed of, leaving a balance of 41 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT KANGAR (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KANGAR (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL		
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46	45
2010																													
2011																		1											1
2012								1																					1
2013							5	6		3	4																		18
2014	6	3		1			7	1			1		1						1										21
TOTAL	6	3		1			12	8		3	5		1						1	1									41



## 2. KEDAH

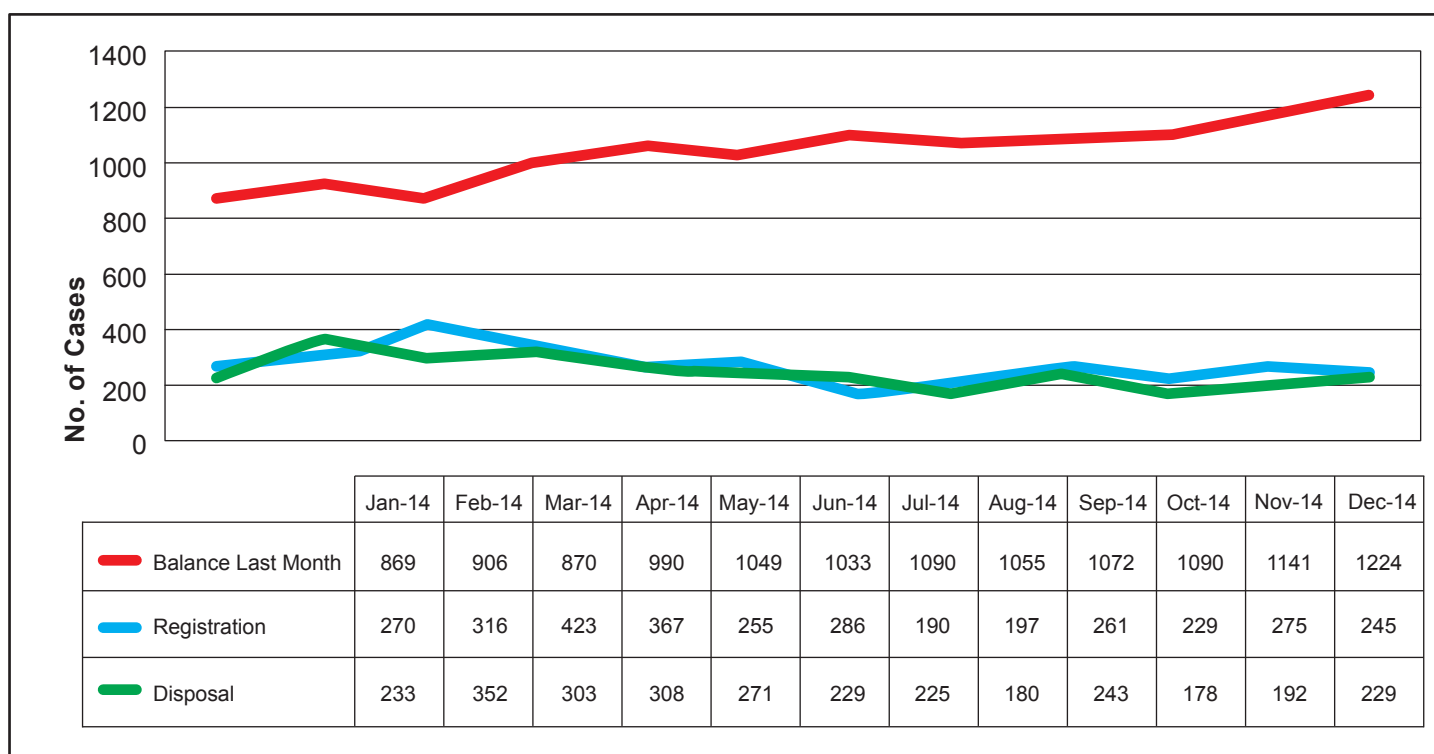
### 2.1 IN THE HIGH COURT AT ALOR SETAR - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Alor Setar for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 3314 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2943 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Alor Setar is 3605 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT ALOR SETAR (CIVIL)  
JANUARY-DECEMBER 2014**



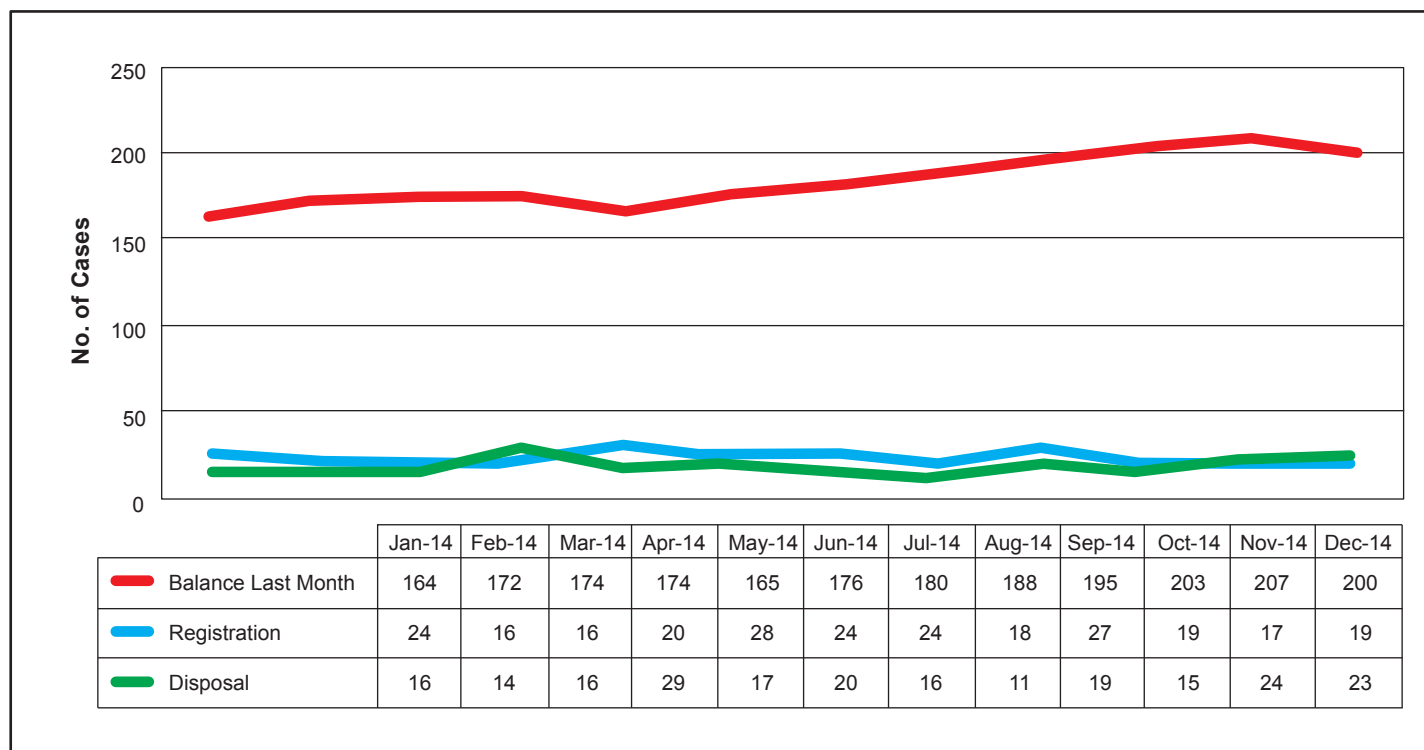
**AGEING LIST  
IN THE HIGH COURT AT ALOR SETAR (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2008												1															1
2009												1															1
2010							1						1														2
2011											1	1															2
2012							4				2	5		2							91						104
2013		1		2			36				2	20		3	6					1	568				3		642
2014	14	73	18	47			401	3	5	3	17	67	1	1	276		124			16	1698	4	4	81			2853
TOTAL	14	74	18	49			442	3	5	3	22	95	2	6	282		124			17	2357	4	4	84			3605

## 2.2 IN THE HIGH COURT AT ALOR SETAR – CRIMINAL

For Criminal Cases in the year 2014, a total number of 252 cases including appeals and trials were registered and 220 cases were disposed of, leaving a balance of 196 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																											TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46		45
2010																													
2011																													
2012																3		3											6
2013	6	6		1	1			1			1					14		9				1					1		41
2014	32	18		2	1		37	20			1	1		1		30	1	2	1					2				149	
TOTAL	38	24		3	2		37	21			2	1		1		47	1	14	1			1		2		1		196	



### 3. PULAU PINANG

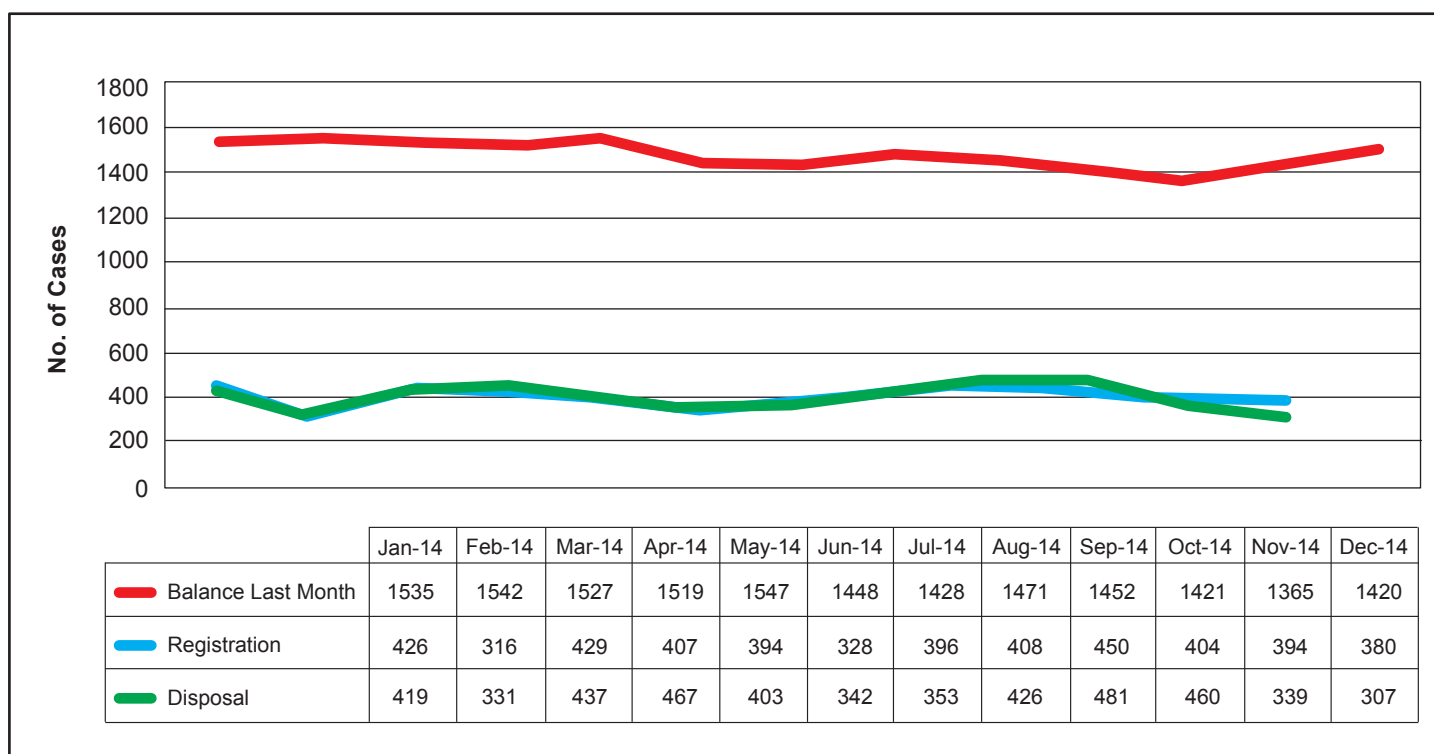
#### 3.1 IN THE HIGH COURT AT GEORGETOWN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Georgetown for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 4732 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 4765 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Georgetown is 4397 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT GEORGETOWN (CIVIL)  
JANUARY-DECEMBER 2014**



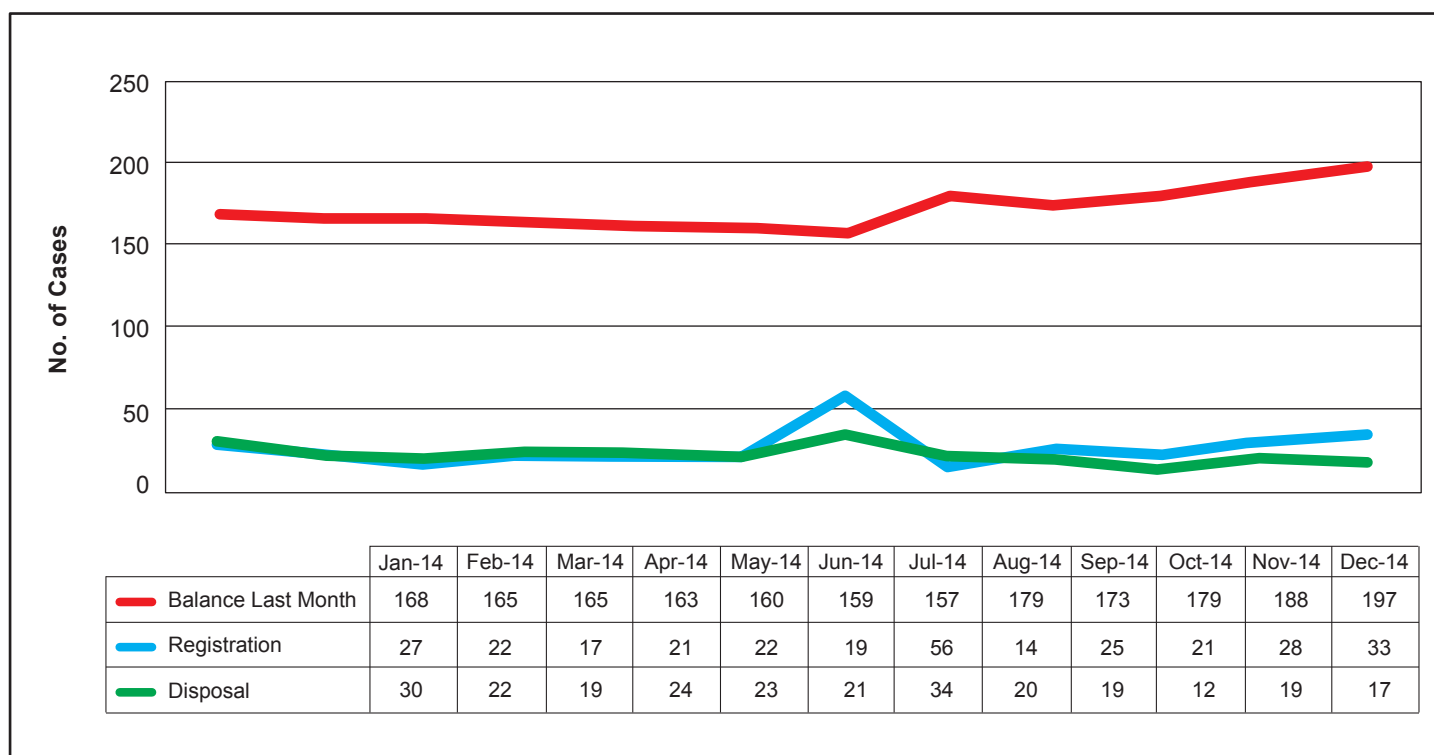
**AGEING LIST  
IN THE HIGH COURT AT GEORGETOWN (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
1996												1															1
2003												1															1
2008												4						1									5
2009												11								3							14
2010												31								3							34
2011											1	19					1				2						23
2012				4							4	62			2	1					12	2		2			89
2013		1		29			28				1	79		9	10		8			3	218	2	2	20			410
2014	22	44	15	63		1	99	4	7		24	165		21	345	35	43	4		48	2908	66	77	214			4205
TOTAL	22	45	15	96		1	127	4	7		27	373		30	357	36	52	5		57	3140	70	79	236			4782

### 3.2 IN THE HIGH COURT AT GEORGETOWN - CRIMINAL

For Criminal Cases in the year 2014, a total number of 305 cases including appeals and trials were registered and 260 cases were disposed of, leaving a balance of 213 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																											TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46		45
2006																4													4
2007																													
2008																1													1
2009																													
2010																													
2011																													
2012								1								2		5						2					10
2013	2	1					6	2		6	2					8		3											30
2014	34	8			1		52	11	1	11	3		2	5		34		5				1							168
TOTAL	36	9			1		58	14	1	17	5		2	5		49		13				1		2					213



#### 4. PERAK

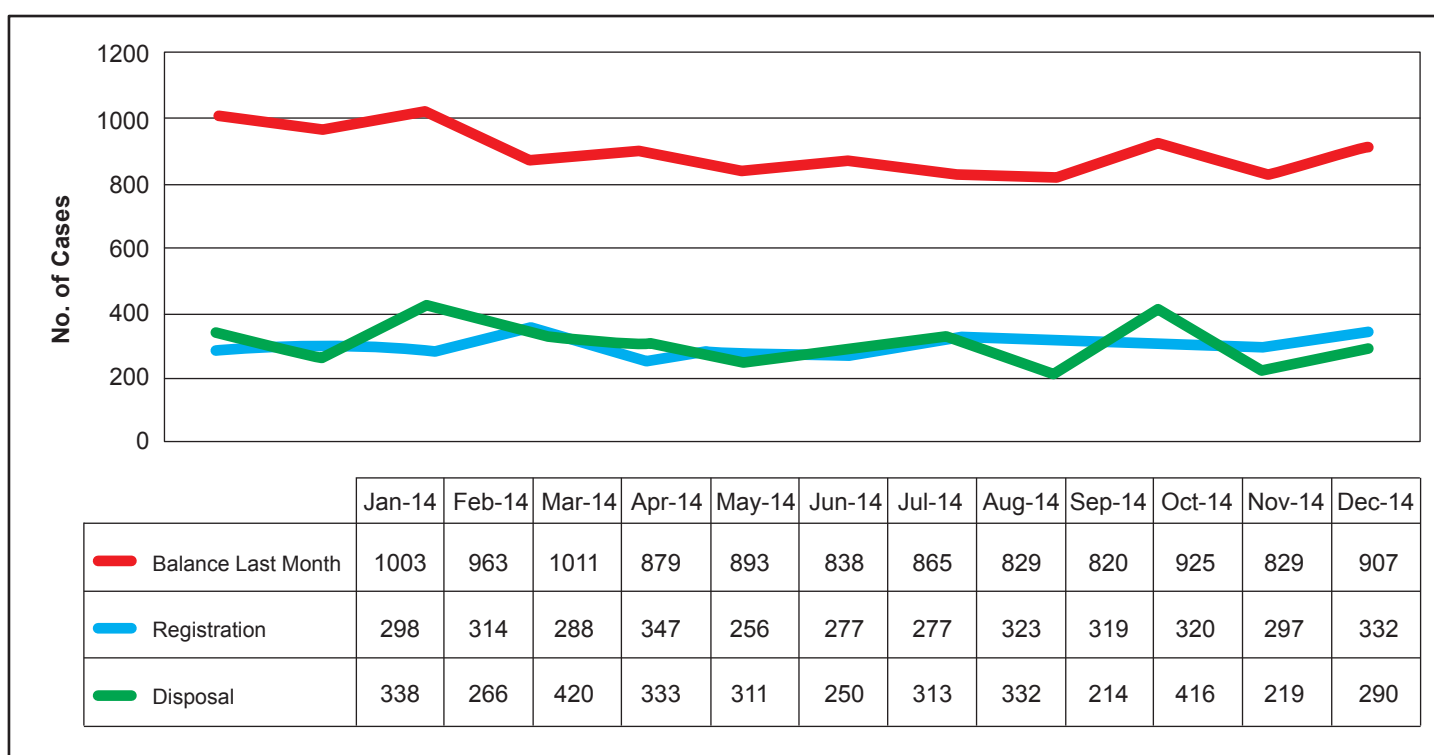
##### 4.1 IN THE HIGH COURT AT IPOH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Ipoh for the year 2014.

For the period from January to December 2014, the total number of civil cases registered was 3648 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 3702 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in High Court at Ipoh is 2952 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT IPOH (CIVIL)  
JANUARY-DECEMBER 2014**



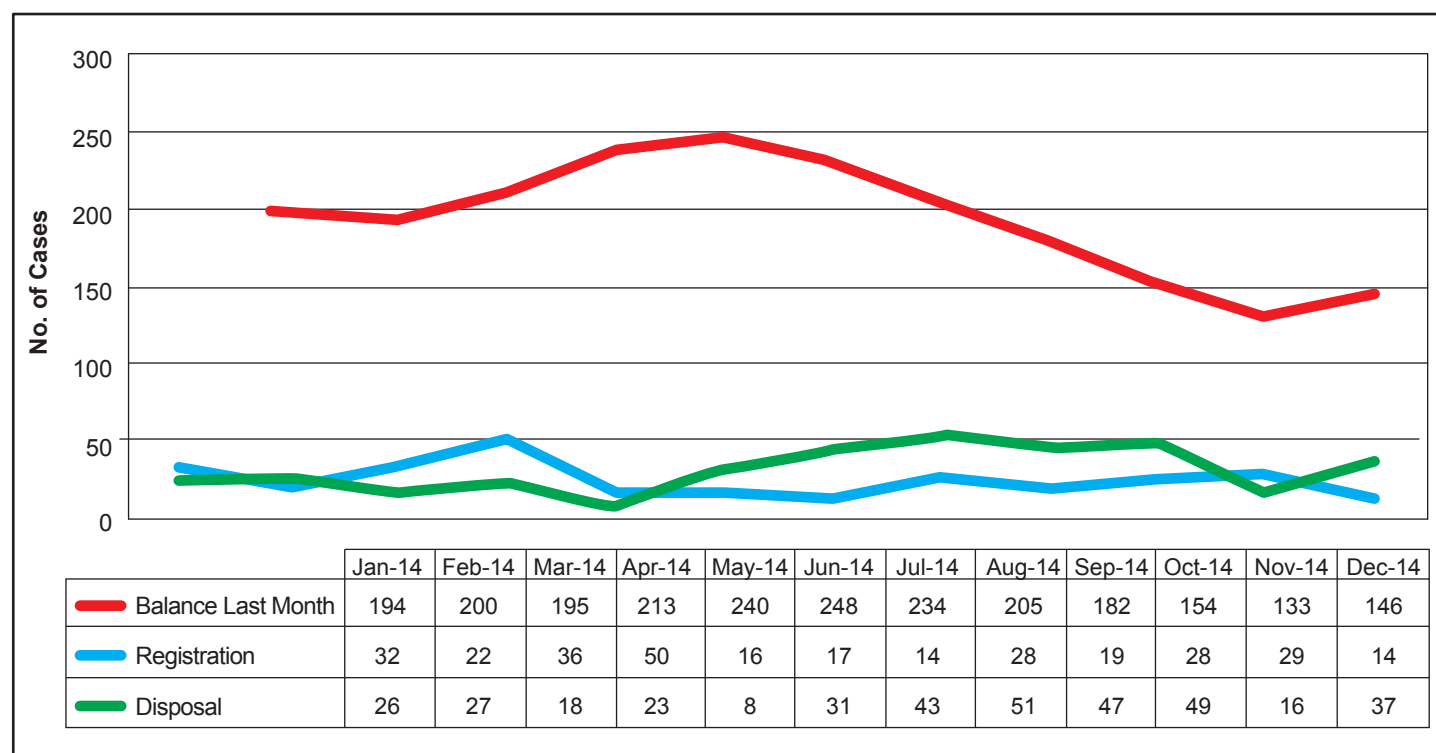
**AGEING LIST  
IN THE HIGH COURT AT IPOH (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34
	A	B	A	B																						
2007												1														1
2010												1														1
2011												4														4
2012																								1		1
2013			1	3			3					5			1						61		1			75
2014		35	2	59			5	8	6		2	86			452		3	1		31	1822	28	91	239		2870
TOTAL		35	3	62			8	8	6		2	97			453		3	1		31	1883	28	92	240		2952

## 4.2 IN THE HIGH COURT AT IPOH- CRIMINAL

For Criminal Cases in the year 2014, a total number of 305 cases including appeals and trials were registered and 376 cases were disposed of, leaving a balance of 123 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT IPOH (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT IPOH (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46
2010																		1										1
2011										1							1											2
2012										1						2		4										7
2013	1						6			1					1	5		6										20
2014	16	30		1	1		6	12		4				3	2	6		8	1						1	2		93
TOTAL	17	30		1	1		12	12		7				3	3	13		19	2						1	2		123



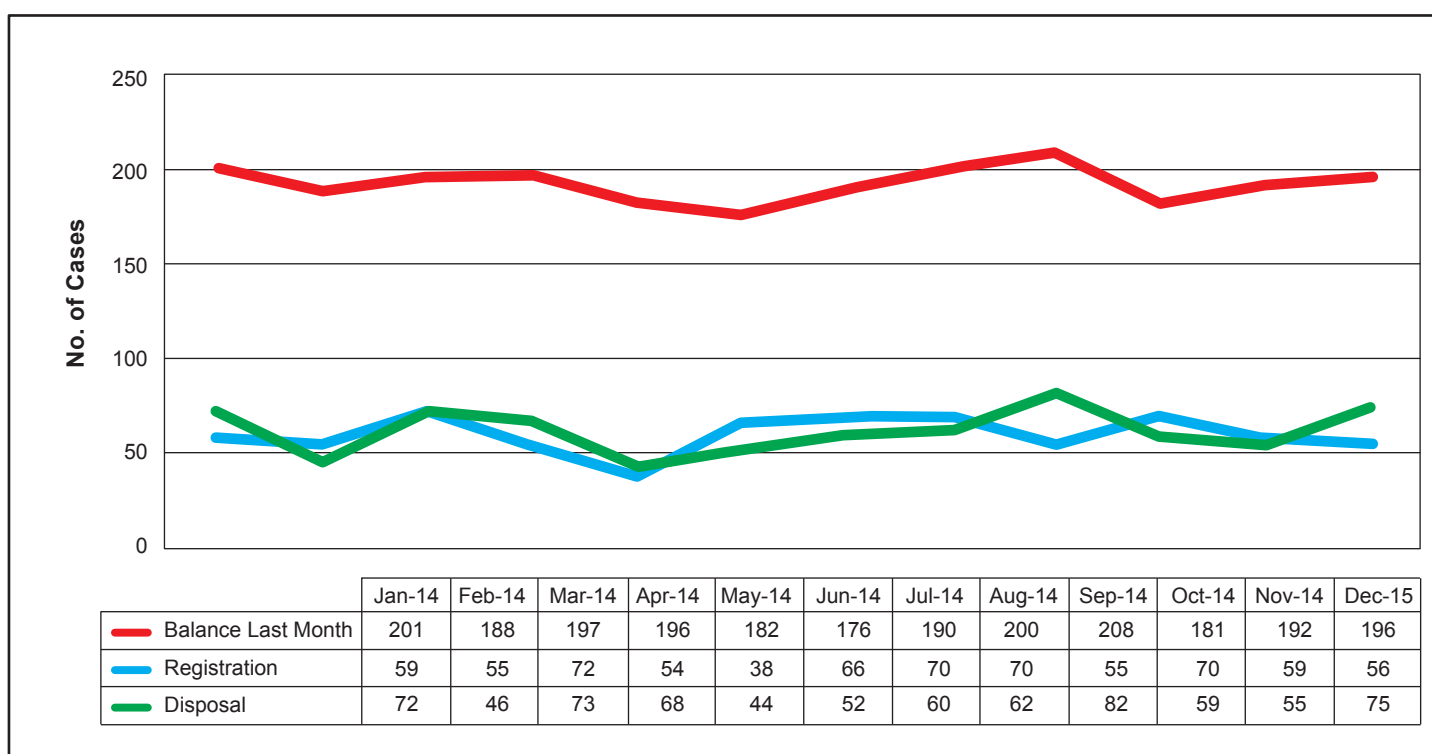
#### 4.3 IN THE HIGH COURT AT TAIPING - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Taiping for the year 2014. For the period from January to December 2014, the total number of civil cases

registered was 724 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 748 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in High Court at Taiping is 575 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT TAIPING (CIVIL)  
JANUARY-DECEMBER 2014**



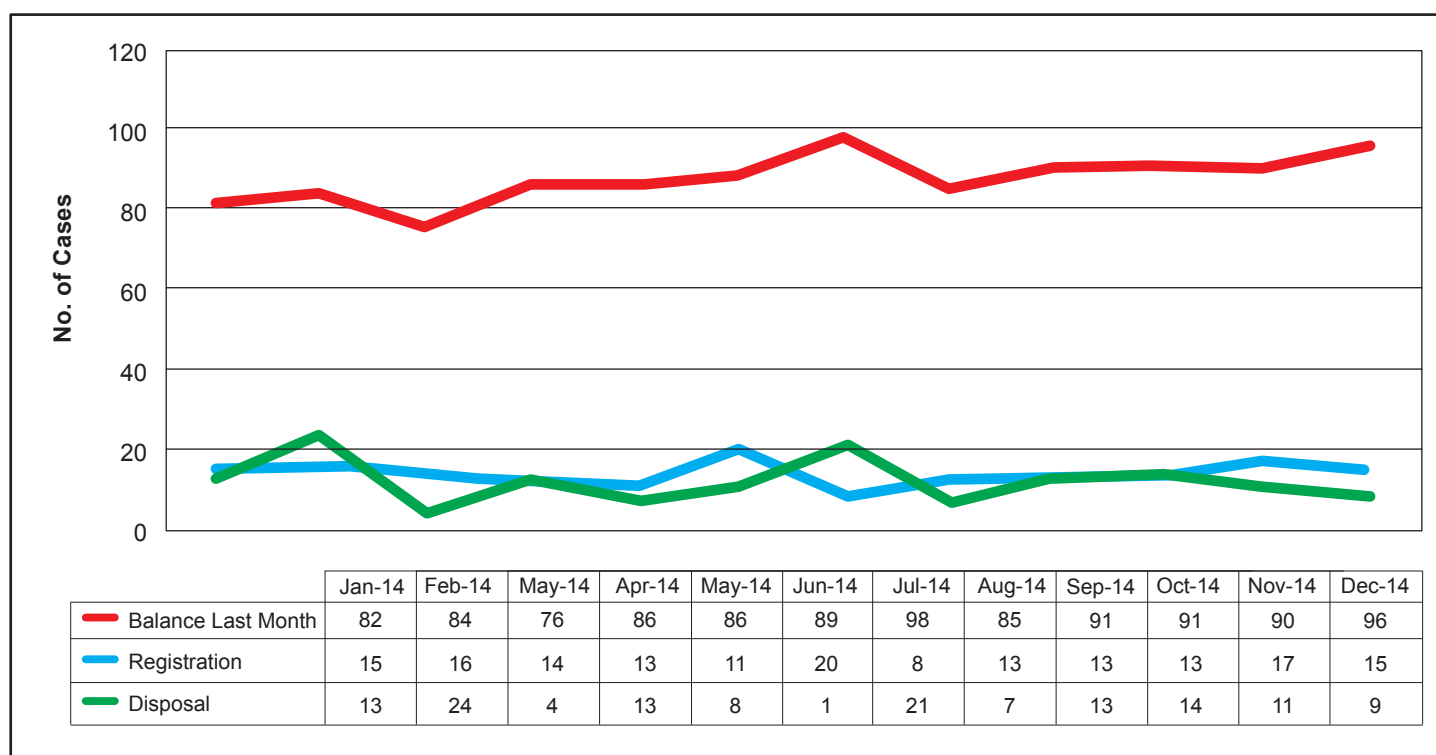
**AGEING LIST  
IN THE HIGH COURT AT TAIPING (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2010											2	3															5
2011												5			1												6
2012											2	8										1					11
2013											2	5										29			1		37
2014		11		17				2		1	8	11			36	9	2			9	332	23	13	42		516	
TOTAL		11		17				2		1	14	32			37	9	2			9	362	23	13	43		575	

#### 4.4 IN THE HIGH COURT AT TAIPING - CRIMINAL

For Criminal Cases in the year 2014, a total of number of 168 cases including appeals and trials were registered and 148 cases were disposed of, leaving a balance of 102 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT TAIPING (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT TAIPING (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46
2010																												
2011																4		1										5
2012																2		2										4
2013																5	2	4						1				12
2014	34	5			1		8	7					1	5		13		6				1						81
TOTAL	34	5			1		8	7					1	5		24	2	13				1		1				102



## 5. KUALA LUMPUR

### 5.1 IN THE HIGH COURT AT KUALA LUMPUR – CIVIL DIVISION

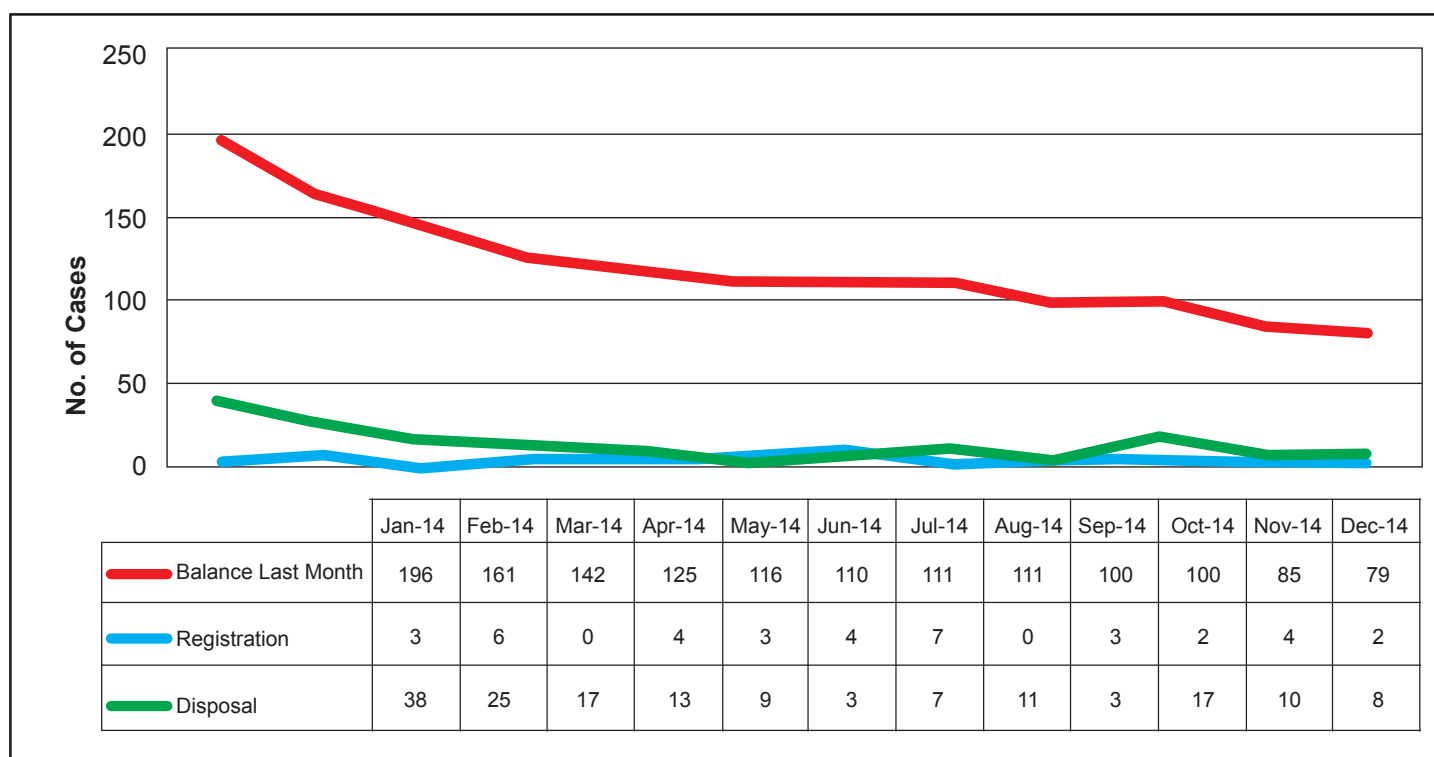
#### Old Civil Court (OCvC) Cases

The tracking chart below shows the disposal of OCvC cases in the Civil Division in the High Court

at Kuala Lumpur for the year 2014. For the period from January to December 2014, the total number of OCvC cases disposed of was 161 (excluding cases for Code 29, 31 and 32) throughout the year 2014.

As at 31 December 2014, the total number of OCvC cases pending in the Civil Division in the High Court at Kuala Lumpur is 73 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2002												2															2		
2005												1															1		
2006												1															1		
2007											1	5															6		
2008											1	6		2													9		
2009											6	20		4	1												31		
2010											1	20		1			1										23		
TOTAL											9	55		7	1		1										73		

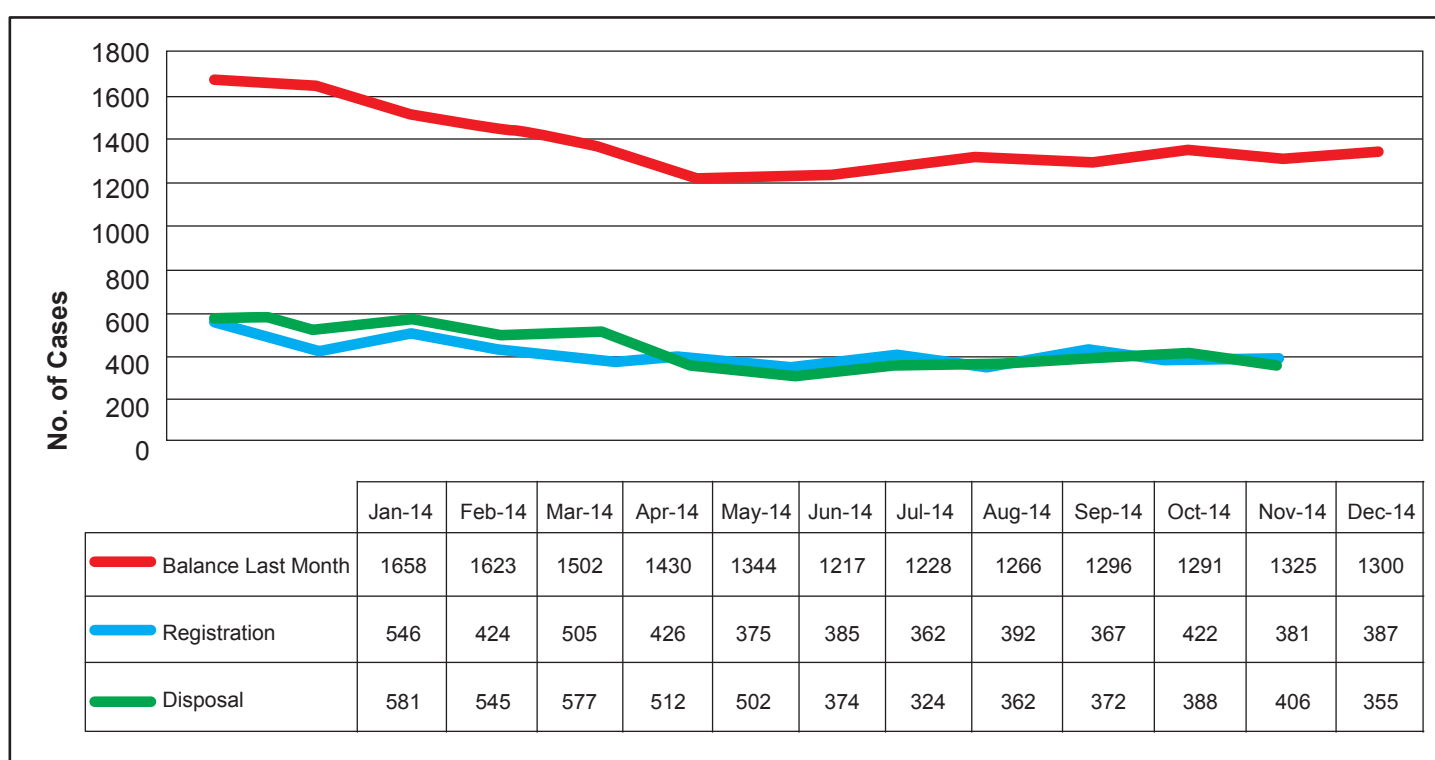
## New Civil Court (NCvC) Cases

The tracking chart below shows the registration and disposal of NCvC cases in the Civil Division in the High Court at Kuala Lumpur for the year 2014. For the period from January to December 2014, the total number of civil cases registered was

4972 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 5298 cases throughout the year 2014.

As at 31 December 2014, the total number of NCvC cases pending in the High Court at Kuala Lumpur is 1618 as reflected in the ageing list below.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA LUMPUR (NCvC)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT KUALA LUMPUR (NCvC)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2011											2	6		3													11
2012											12	61		14													87
2013							1				17	98		18	4												138
2014	44	29	64	79			2				39	356		47	436								146	140			1382
TOTAL	44	29	64	79			3				70	521		82	440								146	140			1618



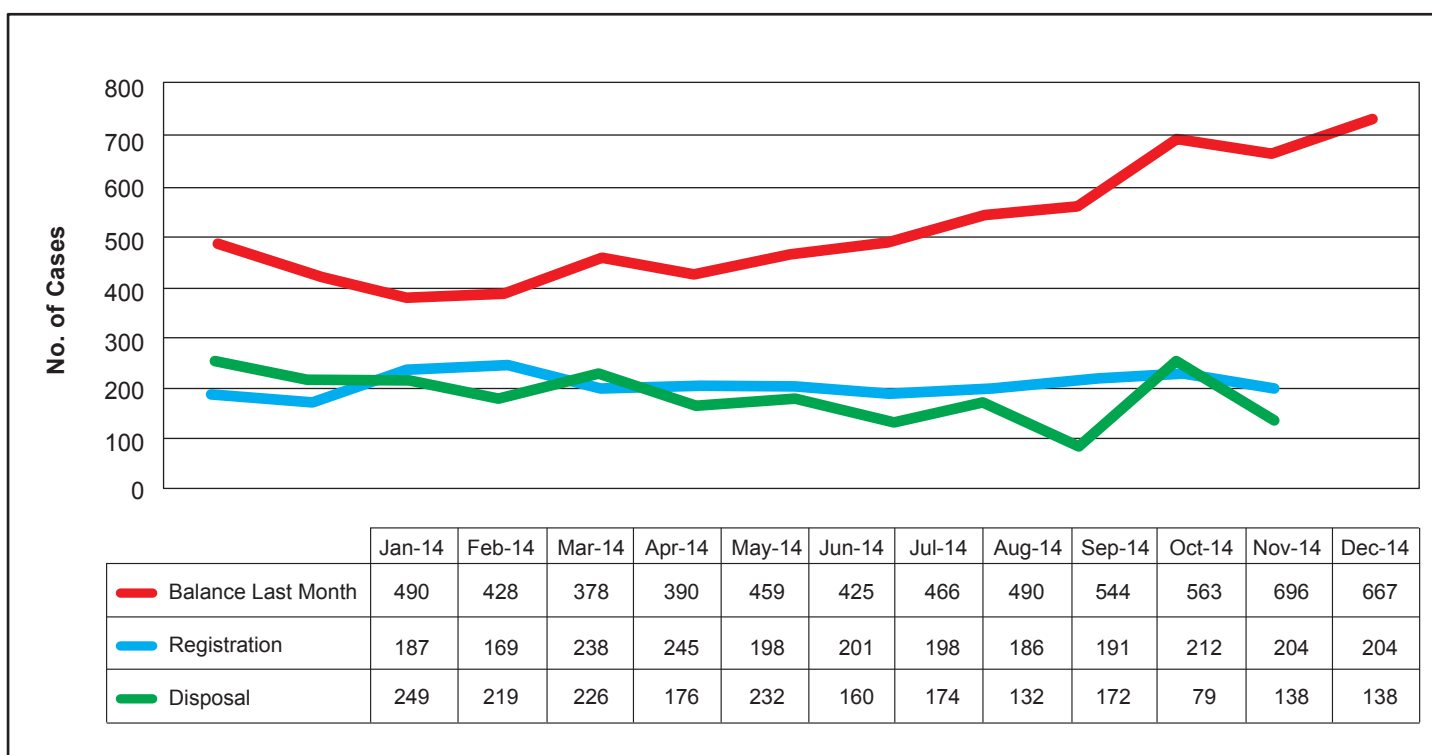
## Family Court Cases

The tracking chart below shows the registration and disposal of Family Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2014. For the period of January to December 2014, the total civil cases registered was 2458. The

High Court has managed to dispose of 2215 cases throughout the year 2014.

As at 31 December 2014, the total number of Family Court cases pending in the Civil Division in the High Court at Kuala Lumpur is 733 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011																									1		1		
2012																									6		6		
2013															7											46		53	
2014															66											606	1	673	
TOTAL															73											659	1	733	

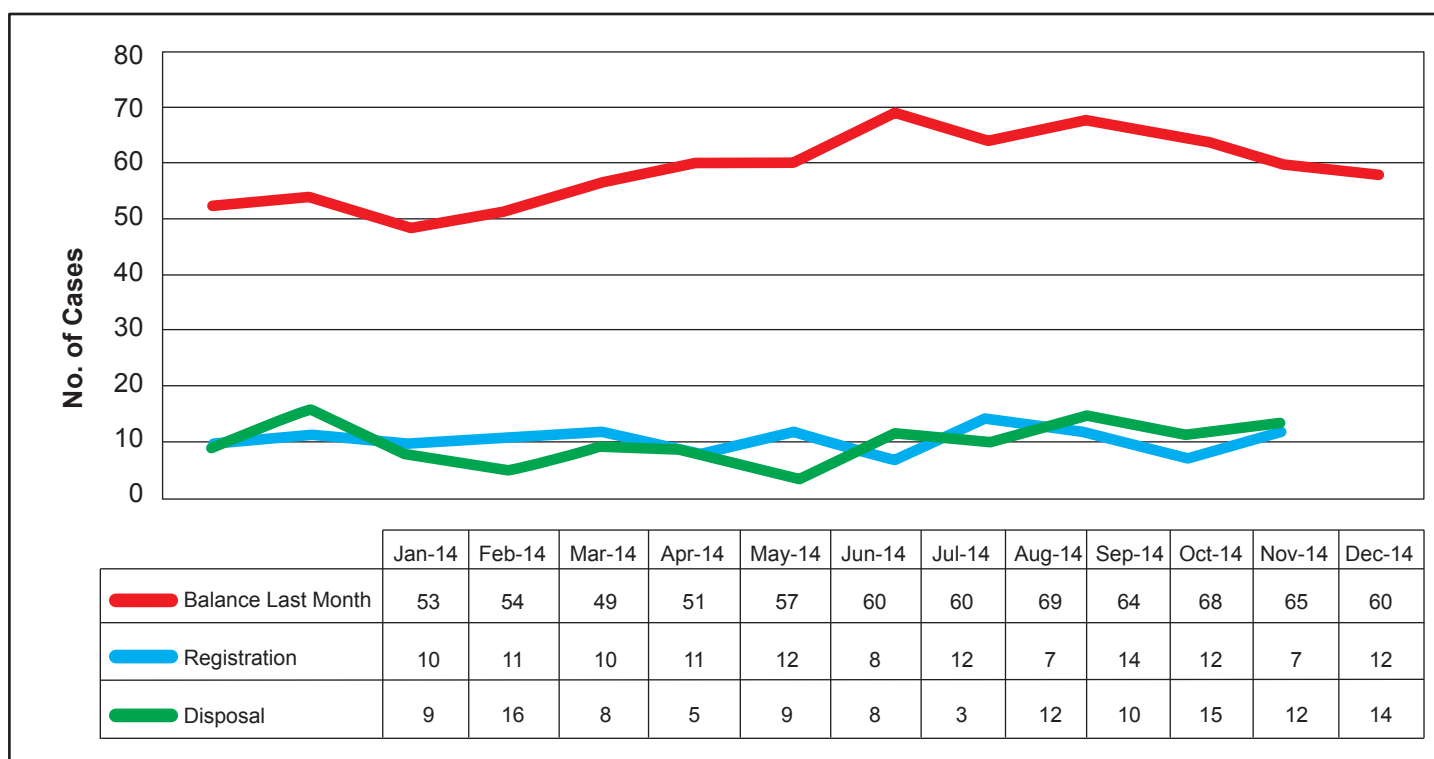
## Construction Court

The tracking chart below shows the registration and disposal of Construction Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2014. For the period of January to December 2014, the total civil cases registered

were 126. The High Court has managed to dispose of 121 cases throughout the year 2014.

As at 31 December 2014, the total number of construction cases pending in the Civil Division in the High Court at Kuala Lumpur is 58 as reflected in the ageing list below.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011																													
2012																													
2013											1	6			1													8	
2014		1	3	2							2	36			6													50	
TOTAL		1	3	2							3	42			7													58	



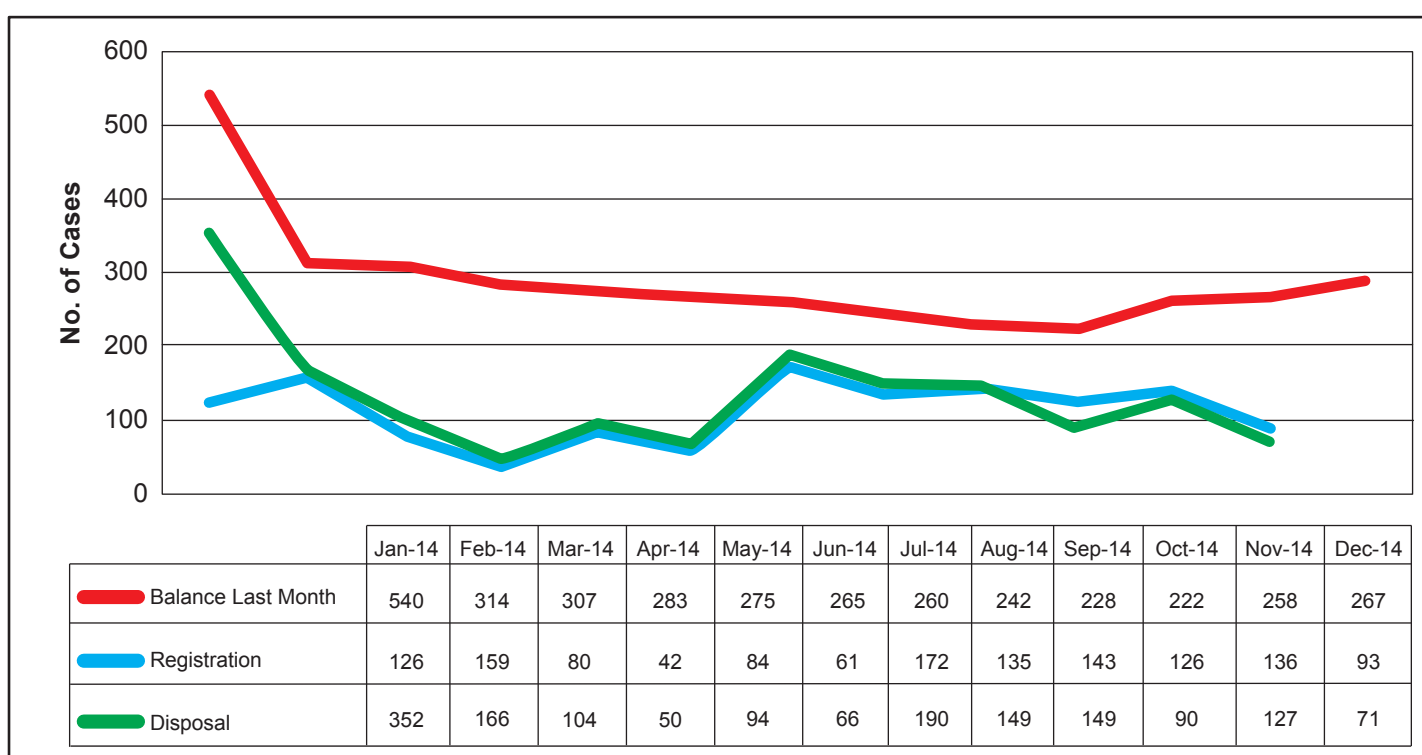
## 5.2 IN THE HIGH COURT AT KUALA LUMPUR – APPELLATE AND SPECIAL POWERS DIVISION

The tracking chart below shows the registration and disposal of cases in the Appellate and Special Powers Division in the High Court at Kuala Lumpur for the year 2014. For the period from January to

December 2014, the total number of cases registered was 1357. The High Court has managed to dispose of 1608 cases throughout the year 2014.

As at 31 December 2014, the total number of cases pending in the Appellate and Special Powers Division in the High Court at Kuala Lumpur is 289 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)  
JANUARY-DECEMBER 2014**



AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)  
AS AT 31 DECEMBER 2014

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2004												1															1		
2007									1									1									2		
2008			1																								1		
2010																	1										1		
2011																													
2012																	5										5		
2013						4			1						4		43										52		
2014						16		8	21						22		160										227		
TOTAL			1			20		8	23			1			26		210										289		



### 5.3 IN THE HIGH COURT AT KUALA LUMPUR – COMMERCIAL DIVISION

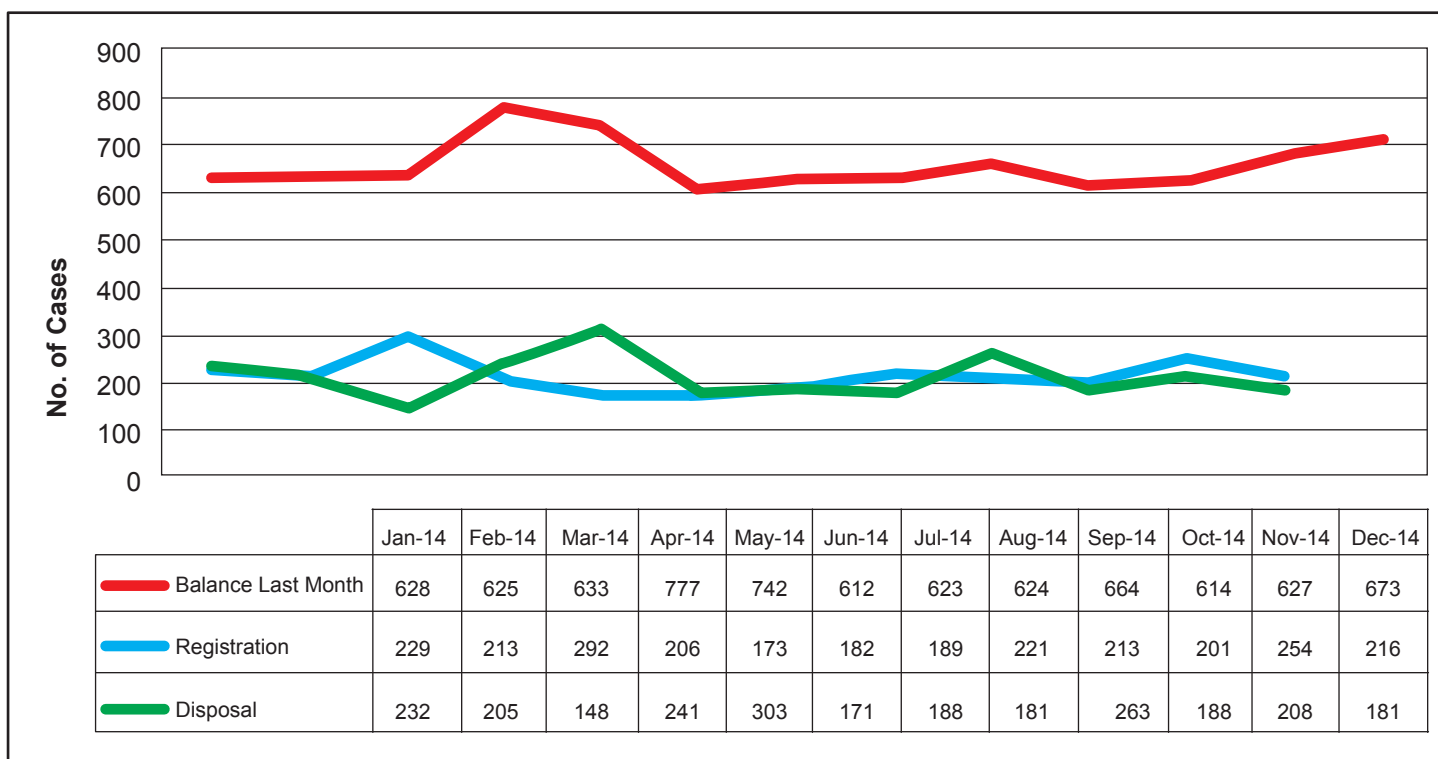
#### NCC Cases

The tracking chart below shows the registration and disposal of NCC cases in the Commercial Division in the High Court at Kuala Lumpur for the year

2014. For the period from January to December 2014, the total NCC cases registered were 2589. The High Court has managed to dispose of 2509 cases throughout the year 2014.

As at 31 December 2014, the total number of NCC cases pending in the High Court at Kuala Lumpur is 708 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (NCC)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (NCC)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2010												2														2	
2011												7														7	
2012												20						1								21	
2013												27			2					2						31	
2014	22	4	34	18							1	200			101			20		247						647	
TOTAL	22	4	34	18							1	256			103			21		249						708	

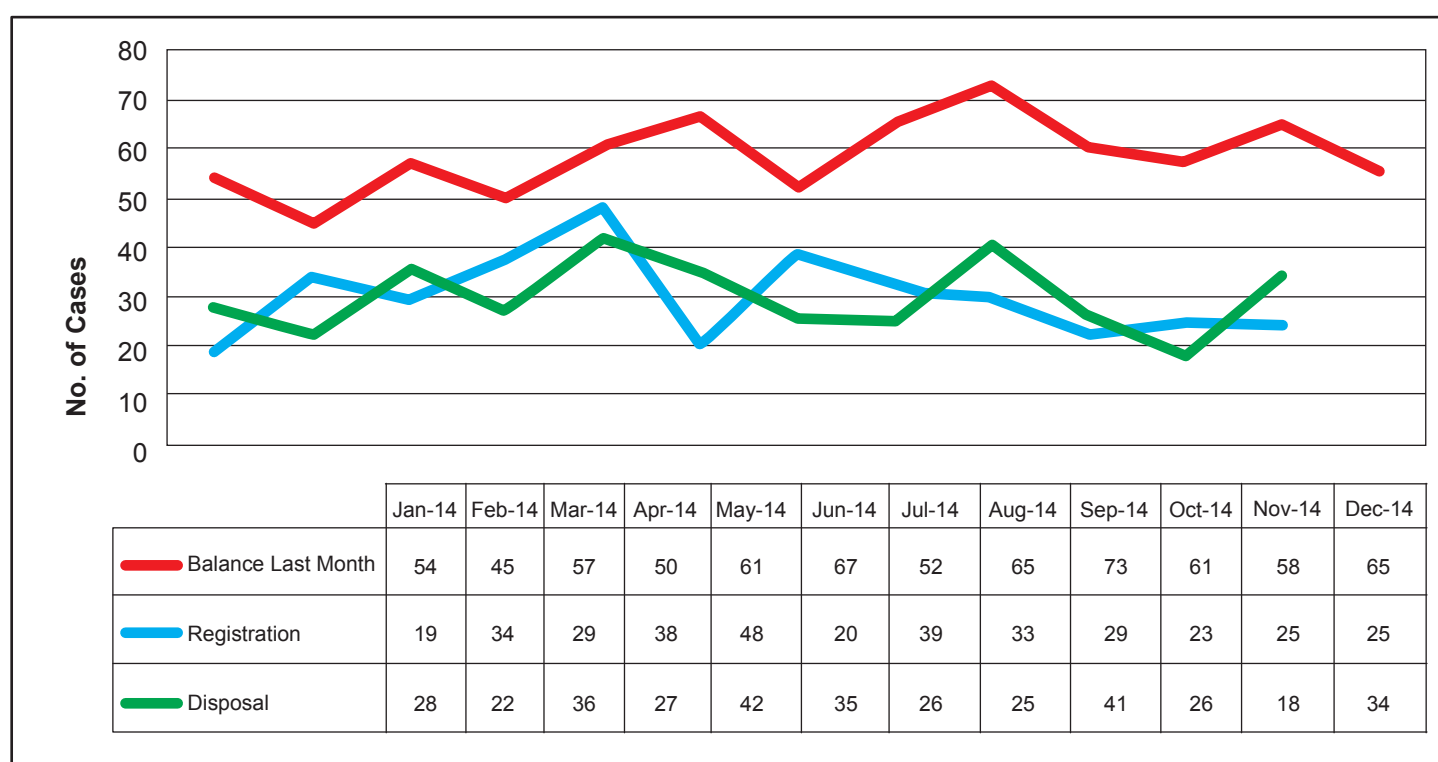
## Muamalat Cases

The tracking chart below shows the registration and disposal of Muamalat cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2014. For the period from January to December 2014, the total number of Muamalat cases

registered was 362. The High Court has managed to dispose of 360 cases throughout the year 2014.

As at 31 December 2014, the total number of Muamalat cases pending in the High Court at Kuala Lumpur is 56 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011													1															1	
2012													1															1	
2013													1															1	
2014			2										27			24												53	
TOTAL			2										30			24												56	

## Intellectual Property Cases

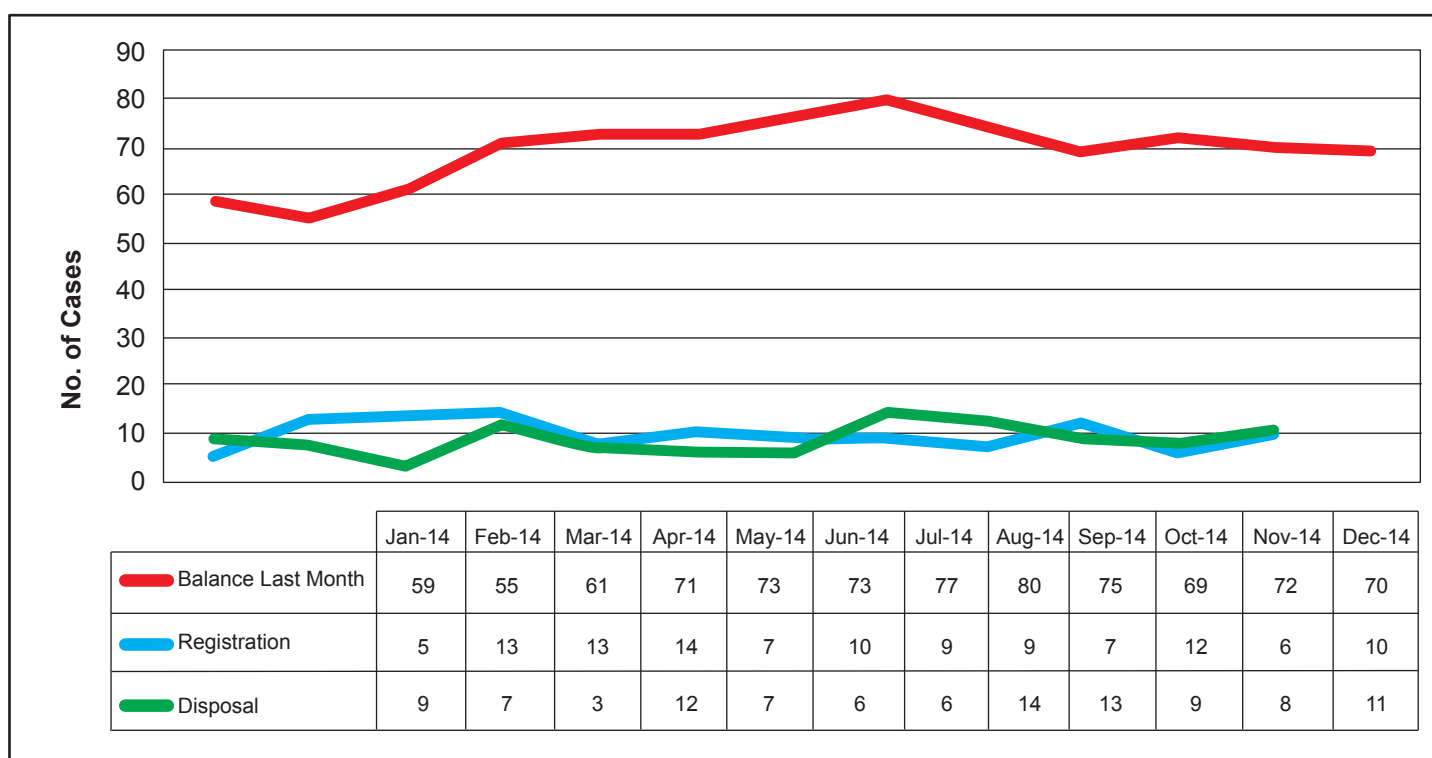
The tracking chart below shows the registration and disposal of intellectual property cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2014.

For the period from January to December 2014, the total number of civil cases registered was 115. The High Court has managed to dispose of 105 cases throughout the year 2014.

As at 31 December 2013, the total number of Intellectual Property cases pending in the Commercial Division in the High Court at Kuala Lumpur is 69 as reflected in the ageing list below.

As for criminal intellectual property cases, there was only one case that was registered in 2014 and this case has been disposed of. As at 31 December 2014, there are no criminal intellectual property cases pending.

### TRACKING CHART IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY) JANUARY-DECEMBER 2014



### AGEING LIST IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY) AS AT 31 DECEMBER 2014

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011												2															2		
2012												1															1		
2013												6			1												7		
2014												45			14												59		
TOTAL												54			15												69		



## Admiralty Court

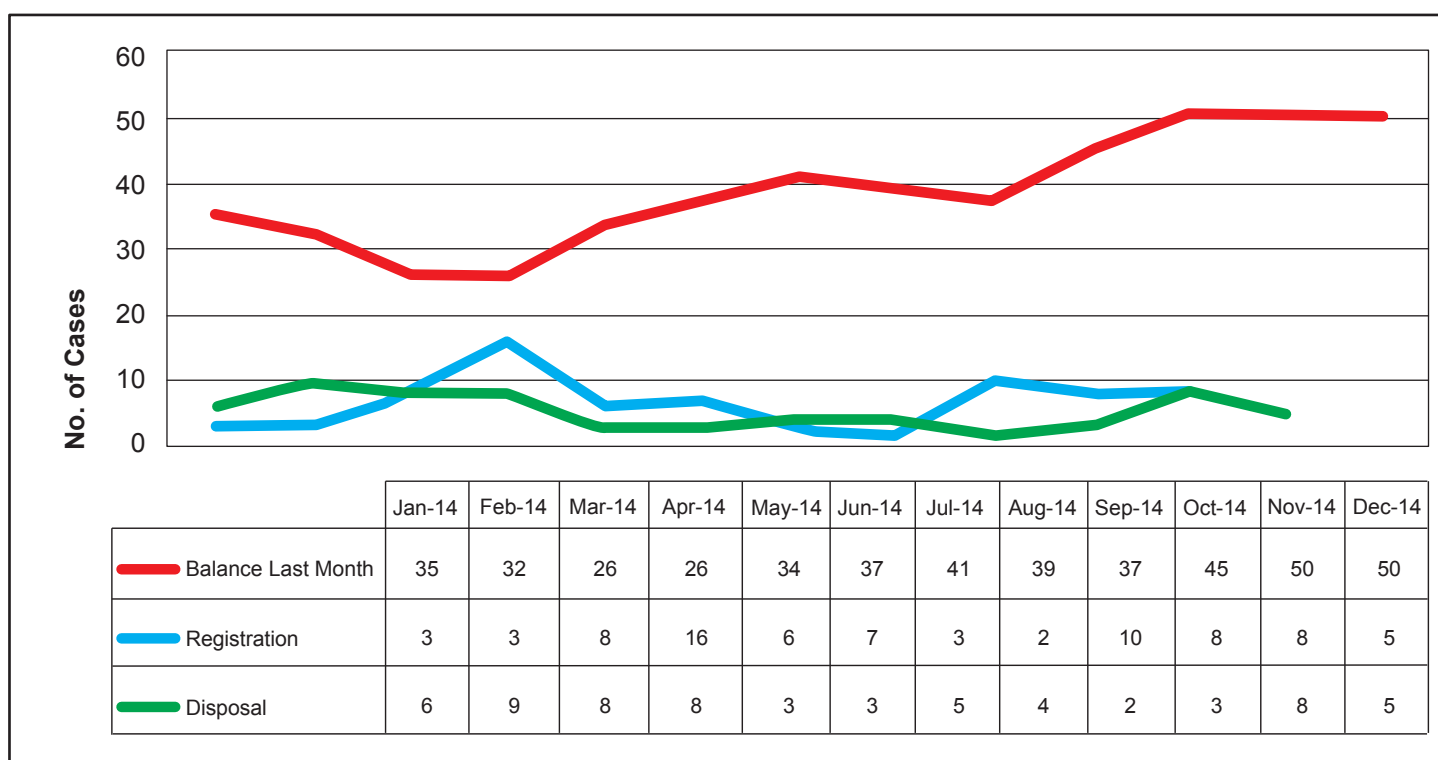
The tracking chart below shows the registration and disposal of admiralty cases in the High Court at Kuala Lumpur for the year 2014.

For the period from January to December 2014, the total admiralty cases registered was 79. The

High Court has managed to dispose of 64 cases throughout the year 2014.

As at 31 December 2014, the total number of admiralty cases pending in the High Court at Kuala Lumpur is 50 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2010																													
2011																													
2012																													
2013																			5								5		
2014																			45								45		
TOTAL																			50								50		

## Bankruptcy Division

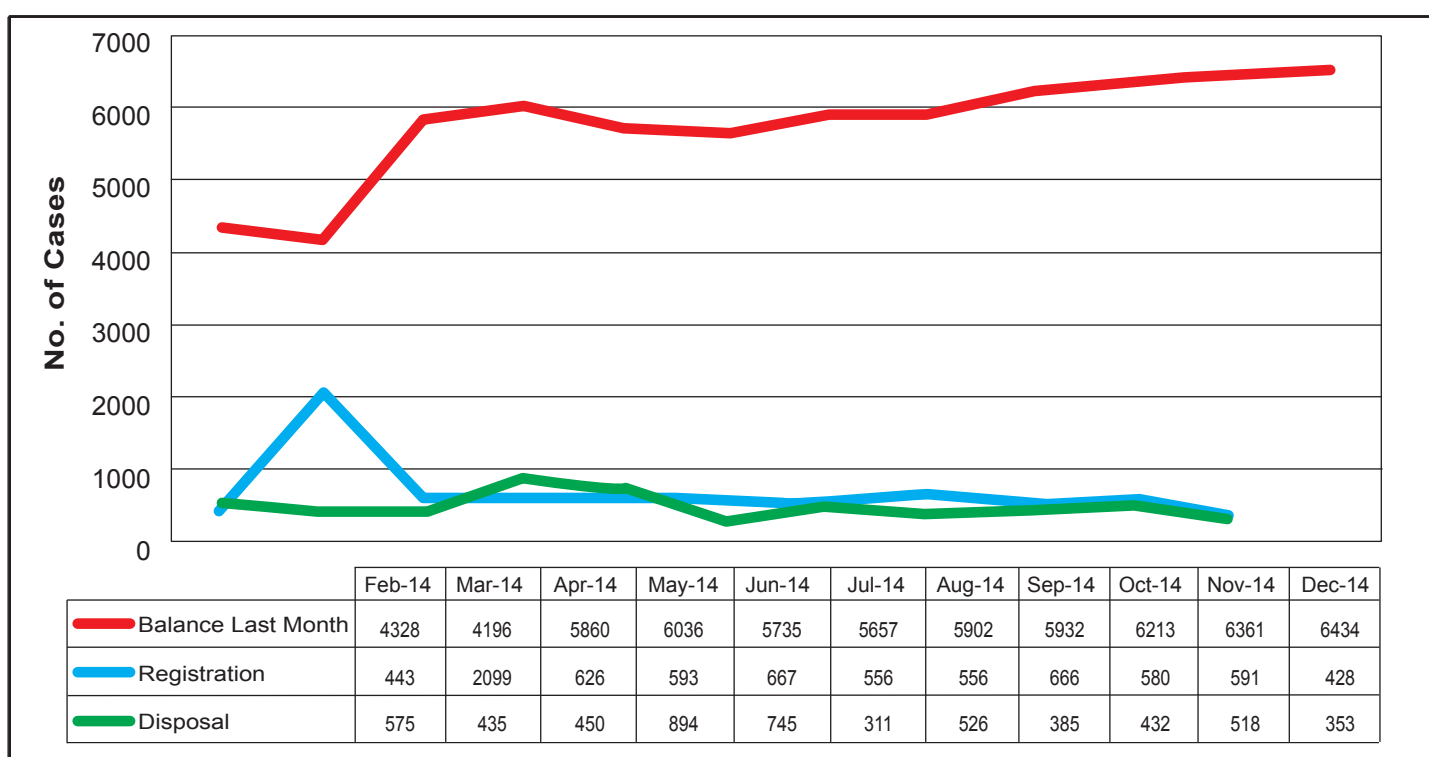
The tracking chart below shows the registration and disposal of bankruptcy cases in the High Court at Kuala Lumpur for the year 2014.

For the period from January to December 2014, the total bankruptcy cases registered was 8283.

The High Court has managed to dispose of 6519 cases throughout the year 2014.

As at 31 December 2014, the total number of bankruptcy cases pending in the High Court at Kuala Lumpur is 6509 as reflected in the ageing list below.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2010																											
2011																						3					3
2012																						15					15
2013																						1362					1362
2014																						5129					5129
TOTAL																						6509					6509

#### 5.4 IN THE HIGH COURT AT KUALA LUMPUR – CRIMINAL DIVISION

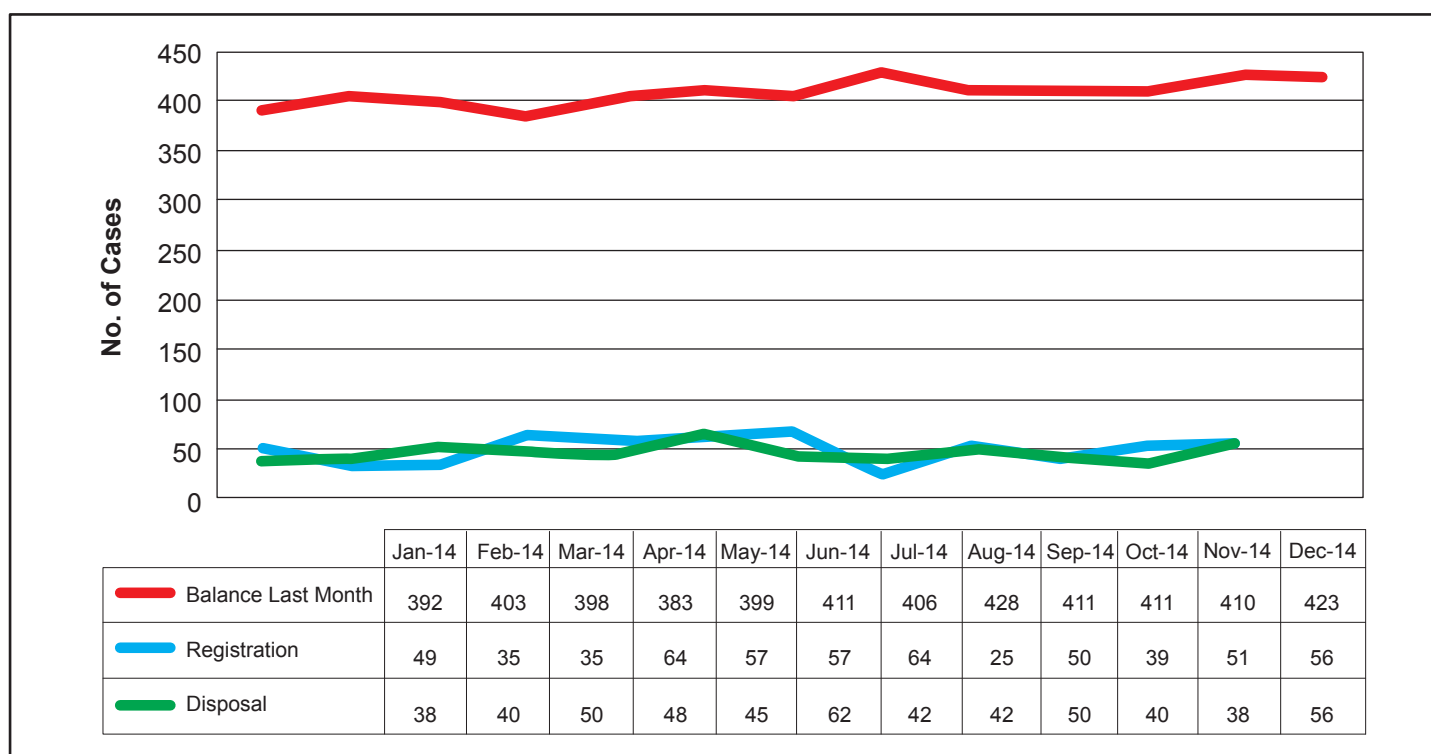
The tracking chart below shows the registration and disposal of criminal cases in the High Court at Kuala Lumpur for the year 2014.

For the period of January to December 2014, the total number criminal cases registered was 582.

The High Court has managed to dispose of 551 cases throughout the year 2014.

As at 31 December 2014, the total number of criminal cases pending in the High Court at Kuala Lumpur is 423 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																													TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46		46
2006																											1			1	
2010								2																						2	
2011							16	1						1	2															20	
2012	1						20	2		4				1	1	2					2									33	
2013	3	2	1				39	6	1	7	1				4	9		3	1			2		2		1		4		86	
2014	23	32	1	4	1		47	23	5	10	1		2		47	51		8			8		2		3	1	12		281		
TOTAL	27	34	2	4	1		122	34	6	21	2		2	1	53	64		11	1			12		4		4	2	16		423	



## 6. SELANGOR

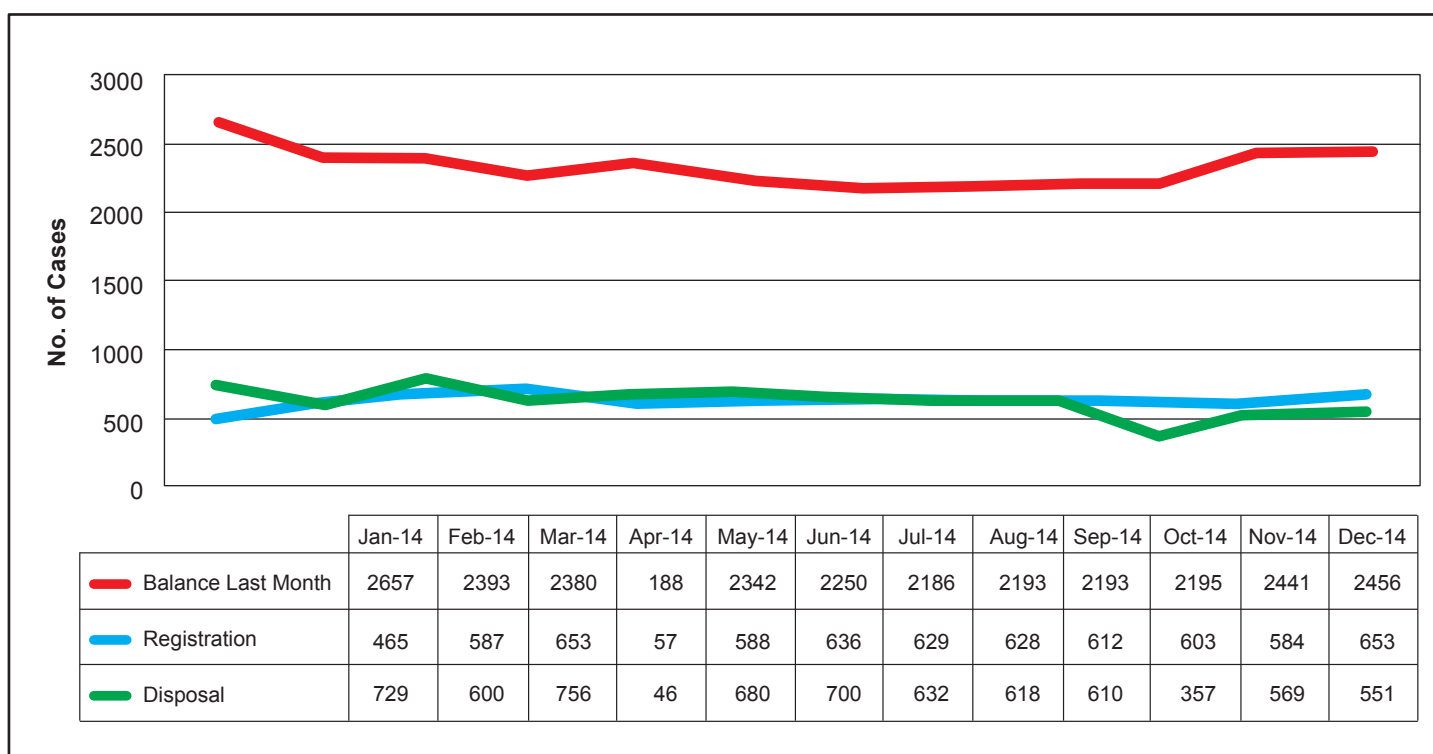
### 6.1 IN THE HIGH COURT AT SHAH ALAM – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Shah Alam for year the 2014. For the period from January

to December 2014, the total number of civil cases registered was 7335 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 7434 throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in High Court at Shah Alam is 8529 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT SHAH ALAM (CIVIL)  
JANUARY-DECEMBER 2014**



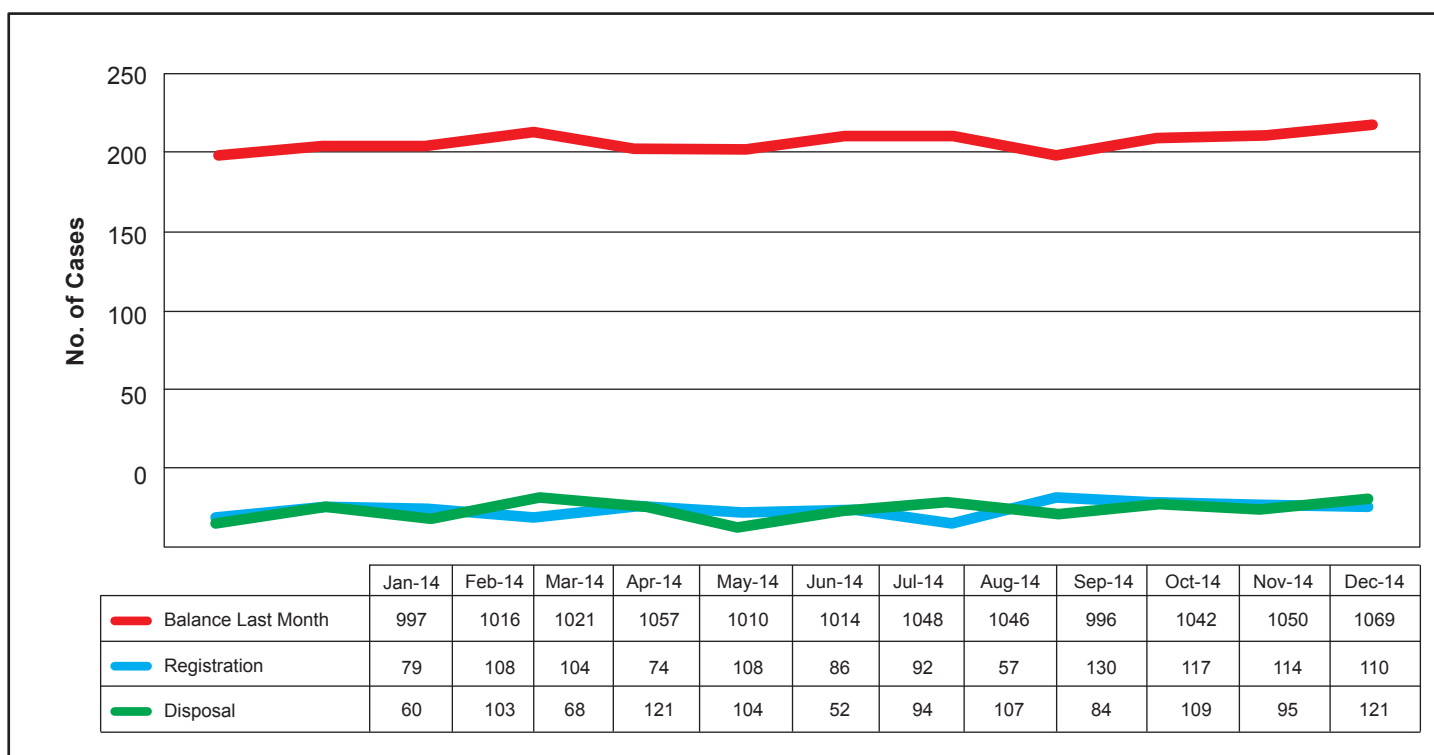
AGEING LIST  
IN THE HIGH COURT AT SHAH ALAM (CIVIL)  
AS AT 31 DECEMBER 2014

YEAR	CODES																								TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34
	A	B	A	B																						
1992												1														1
2002												1														1
2003																										
2004							1																			1
2005												1														1
2006												2														2
2007							1				3	3														7
2008												9														9
2009			1				1				5	13								1						21
2010											4	12														16
2011											2	3	1				1									7
2012			1				20				6	26	1	3	1		3									61
2013			1	34			4				16	106	1	9	12		9	1	1	2	8		2	8		214
2014	28	30	117	154			17	12			25	417	8	16	785	41	33	1		173	5843	76	42	370		8188
TOTAL	28	30	120	188			44	12			61	594	11	28	798	41	46	2	1	176	5851	76	44	378		8529

## 6.2 IN THE HIGH COURT AT SHAH ALAM- CRIMINAL

For Criminal Cases in the year 2014, a total number of 1179 cases including appeals and trials were registered and 1118 cases were disposed of, leaving a balance of 1058 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL			
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45		46	45	46
2008																	1											1
2009							1																					1
2010							10			2						1												13
2011	1						19	2		5					6		4									1		38
2012	1	1					19	5		10					45		14				1				2			98
2013	20	6		1			43	25	1	11	2				97		26			6		1		13				252
2014	153	32	1	7			133	65		10	5		4	25		131		58			12		2		17			655
TOTAL	175	39	1	8			225	97	1	38	7		4	25		280		103			18	1	3		33			1058



## 7. NEGERI SEMBILAN

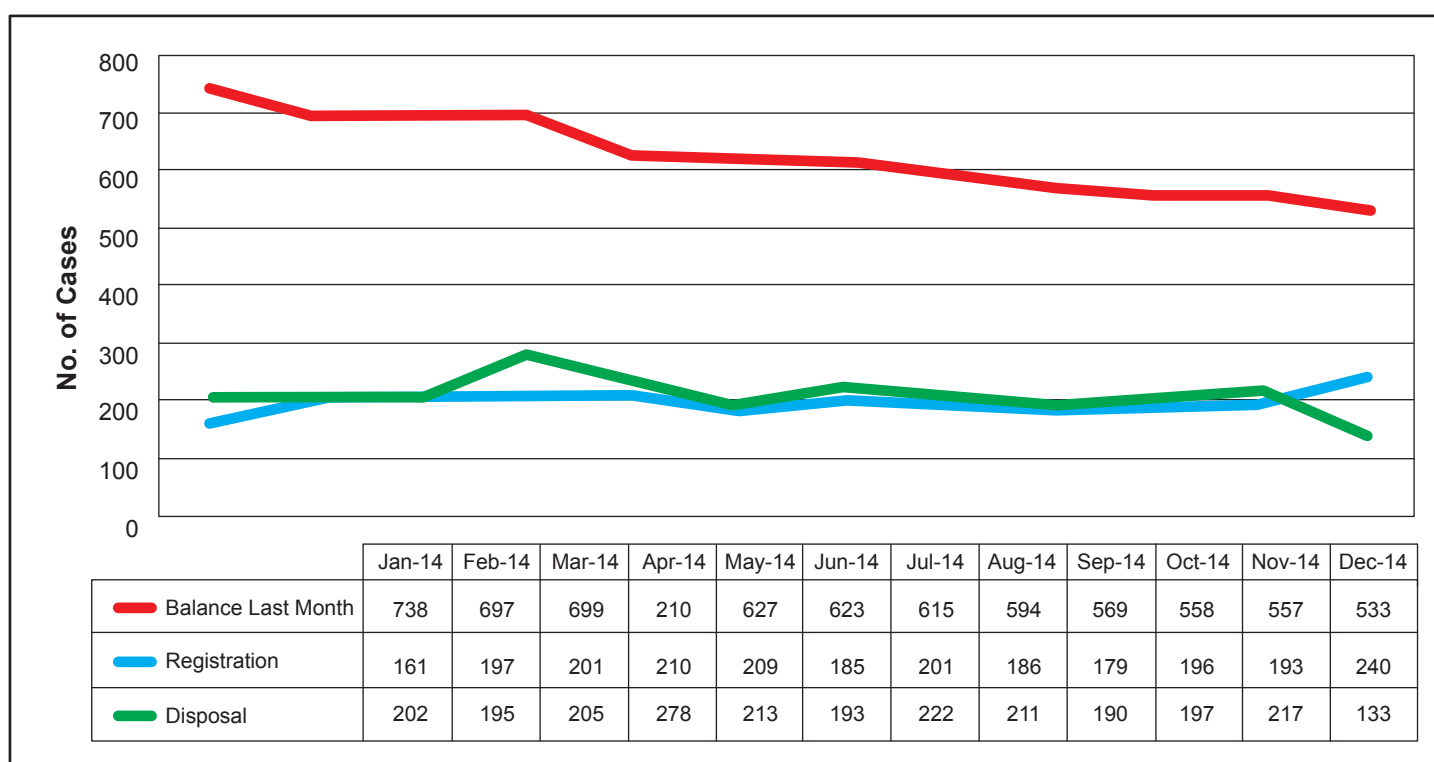
### 7.1 IN THE HIGH COURT AT SEREMBAN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Seremban for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 2358 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2456 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Seremban is 3334 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT SEREMBAN (CIVIL)  
JANUARY-DECEMBER 2014**



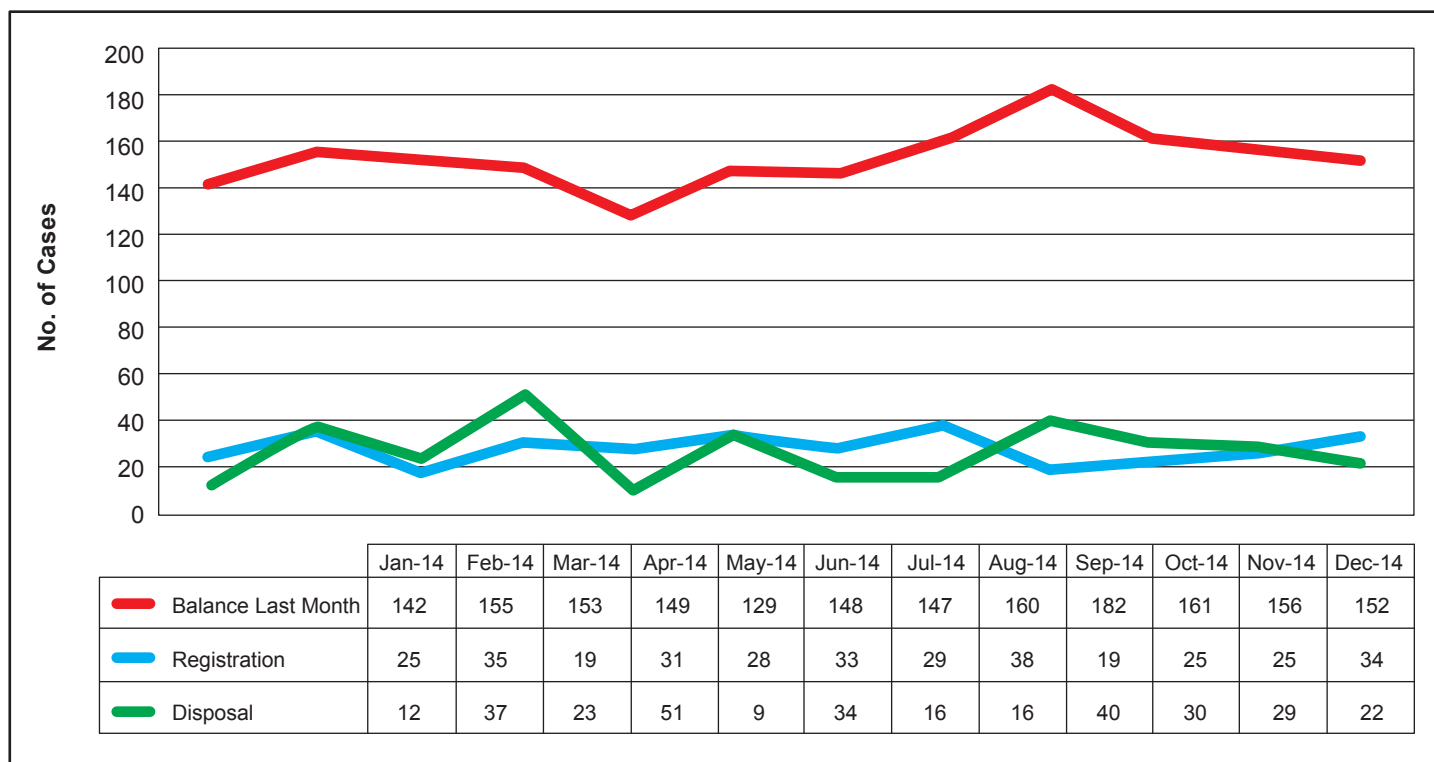
**AGEING LIST  
IN THE HIGH COURT AT SEREMBAN (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																							TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32		33
	A	B	A	B																					
2007												1													1
2010												3													3
2011												2													2
2012												16													16
2013				2			4					20			3					2	1252			1	1284
2014	10	4	5	33			10	7				54			335	10	6			5	1300	51	91	107	2028
TOTAL	10	4	5	35			14	7				96			338	10	6			7	2552	51	91	108	3334

## 7.2 IN THE HIGH COURT AT SEREMBAN - CRIMINAL

For Criminal Cases in the year 2014, a total number of 341 cases including appeals and trials were registered and 319 cases were disposed of, leaving a balance of 164 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT SEREMBAN (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT SEREMBAN (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																											TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46		45
2010																													
2011																2													2
2012	1	1														2													4
2013	1						7	1										3											12
2014	43	5			1		57	9		3	4		1	3		6		7				1			1		5		146
TOTAL	45	6			1		64	10		3	4		1	3		10		10				1			1		5		164

## 8. MALACCA

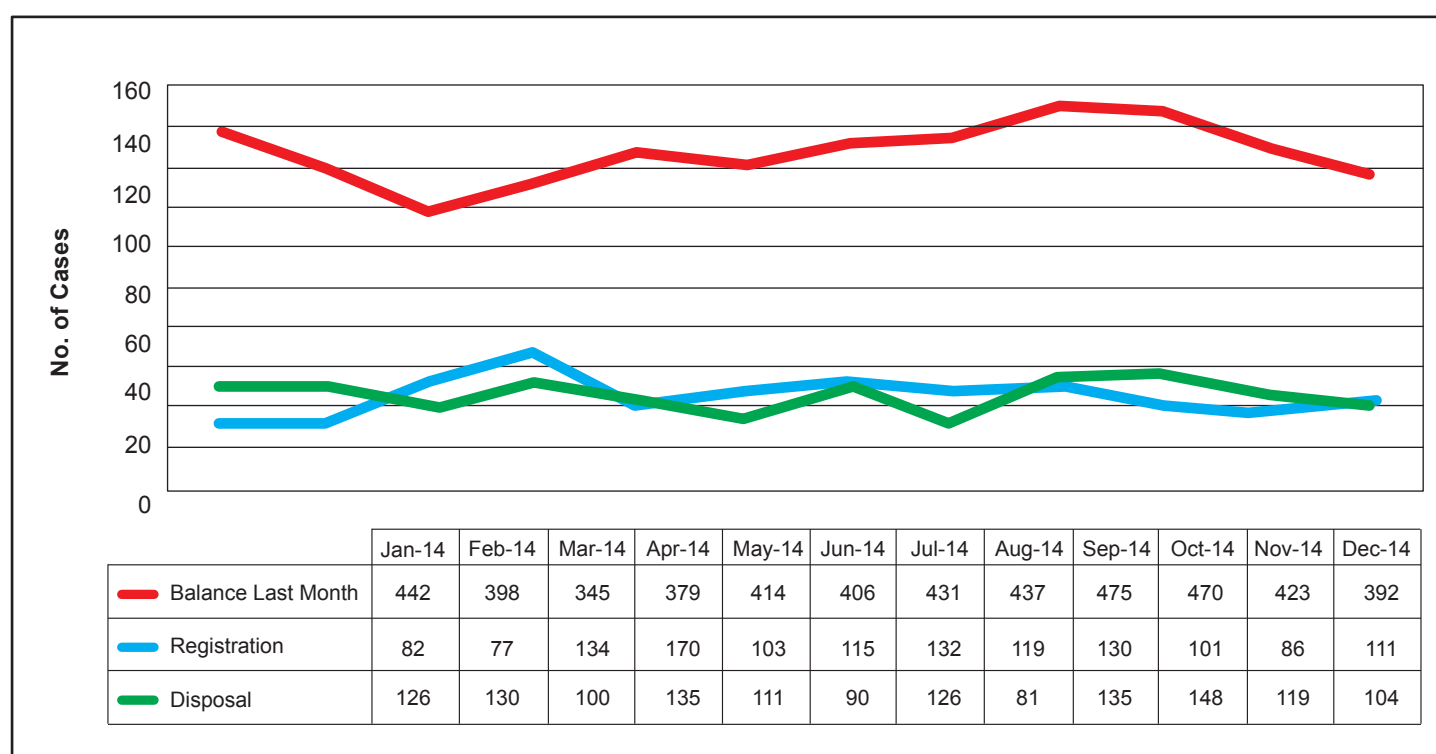
### 8.1 IN THE HIGH COURT AT MALACCA – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Malacca for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 1362 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1405 cases throughout the year 2014.

As at 31 December 2013, the total number of civil cases pending in the High Court at Malacca is 1458 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT MALACCA (CIVIL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT MALACCA (CIVIL)  
AS AT 31 DECEMBER 2014**

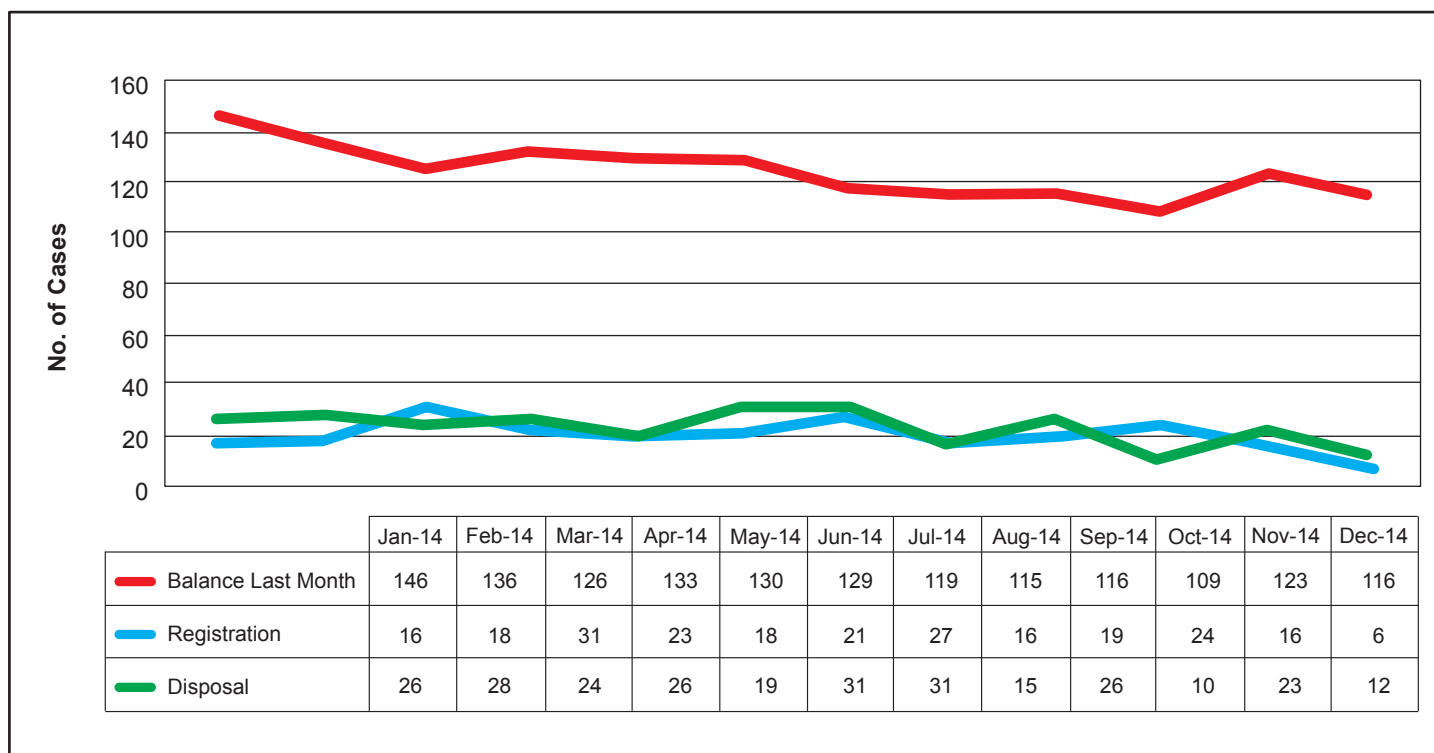
YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2009												2															2
2010												5										5					10
2011												5										10					15
2012												7										16					23
2013												12										147			1		160
2014	2	4	10	8			125	3	2	2	7	37		2	86	20	2	1		11	843	19	19	45		1248	
TOTAL	2	4	10	8			125	3	2	2	7	68		2	86	20	2	1		11	1021	19	19	46		1458	



## 8.2 IN THE HIGH COURT AT MALACCA- CRIMINAL

For Criminal Cases in the year 2014, a total number of 235 cases including appeals and trials were registered and 271 cases were disposed of, leaving a balance of 110 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT MALACCA (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT MALACCA (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL			
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS				
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46	45	46
2010																														
2011																1						1								2
2012				2												1		3												6
2013							3	2		2	1					3			1											12
2014	28	6					32	7		1	2			1		7		5	1											90
TOTAL	28	6		2			35	9		3	3			1		12		8	2			1								110

## 9. JOHOR

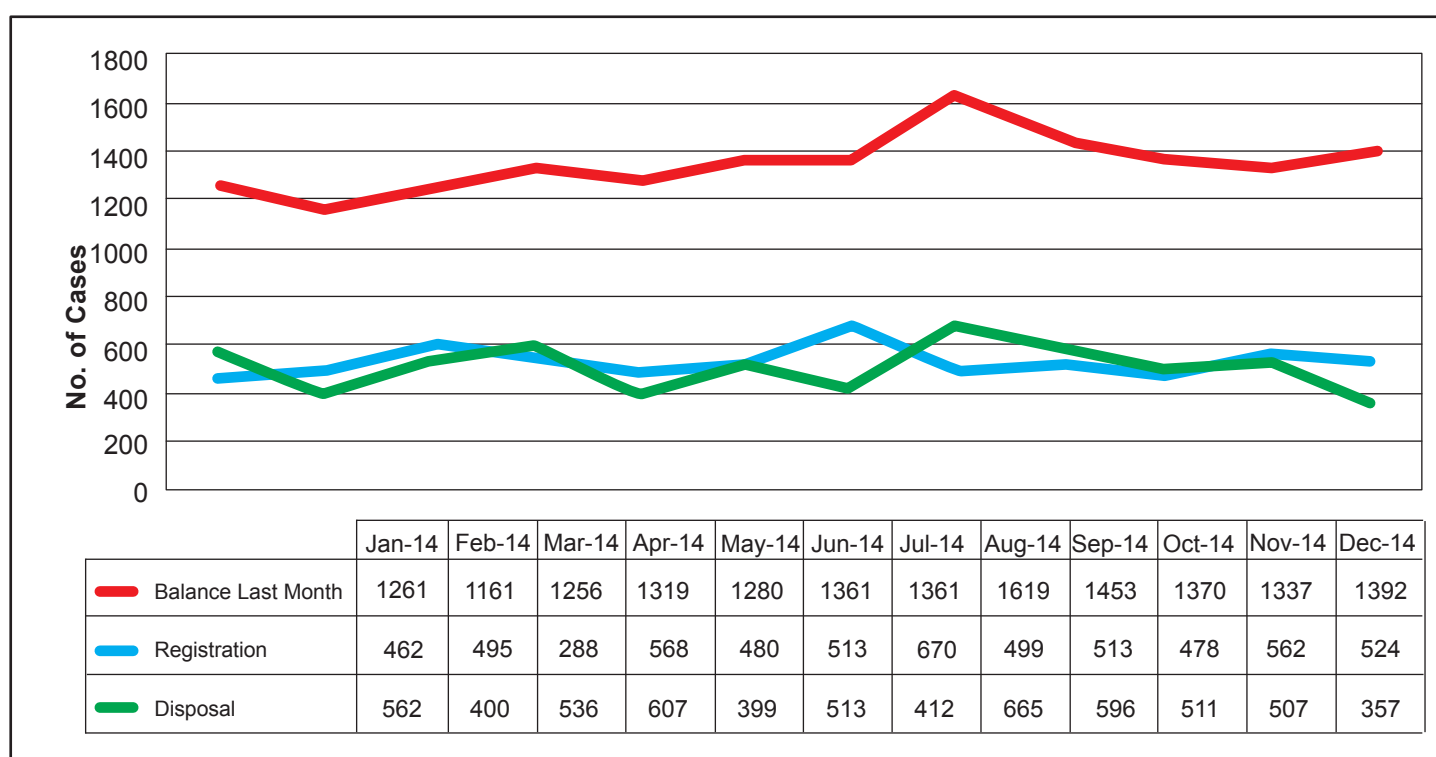
### 9.1 IN THE HIGH COURT AT JOHOR BAHRU – CIVIL

January to December 2014, the total number of civil cases registered was 6363 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 6065 cases throughout the year 2014.

The tracking chart below shows the registration and disposal of cases in the High Court at Johor Bahru for the year 2014. For the period from

As at 31 December 2014, the total number of civil cases pending in the High Court at Johor Bahru is 4907 as reflected in the Ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)  
JANUARY-DECEMBER 2014**



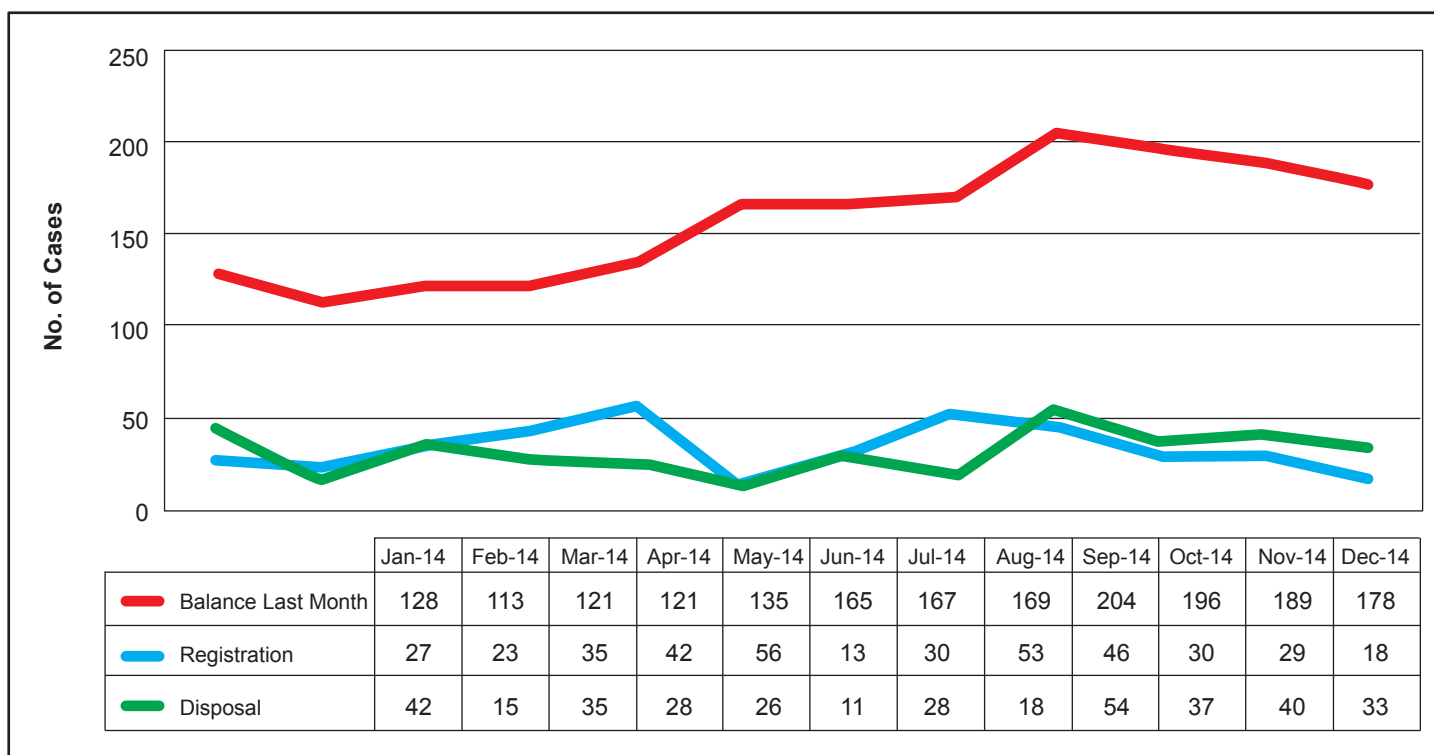
**AGEING LIST  
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
1995												1														1	
2002												1														1	
2009												2														2	
2010												1														1	
2011														3												3	
2012												2		1							1					4	
2013							98					11		6	1		1				100					217	
2014	6	13	15	33		1	390	3	12	3	20	96	3	15	532	52	21		1	45	3179	39	29	170		4678	
TOTAL	6	13	15	33		1	488	3	12	3	20	114	3	25	533	52	22		1	45	3280	39	29	170		4907	

## 9.2 IN THE HIGH COURT AT JOHOR BAHRU - CRIMINAL

For Criminal Cases in the year 2014, a total number of 402 cases including appeals and trials were registered and 367 cases were disposed of, leaving the balance of 163 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL				
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45		46	45	46	45
2010																													
2011																													
2012																1													1
2013	1	1						1	2	3						11		4						2		1 (SO)		26	
2014	30	6					24	10	2	2	4		2	13		30		11	1								1	136	
TOTAL	31	7					24	11	4	5	4		2	13		42		15	1					2		1	1	163	



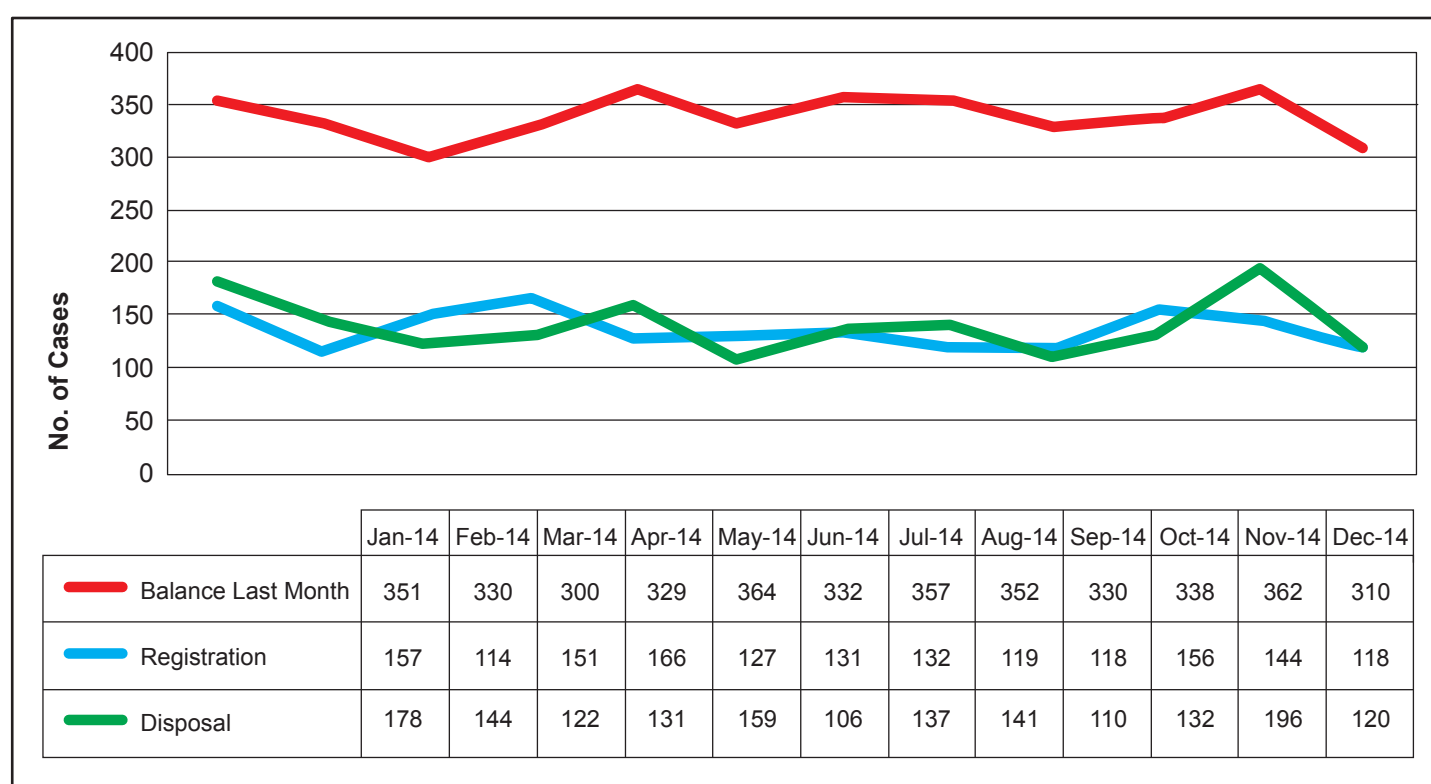
### 9.3 IN THE HIGH COURT AT MUAR- CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Muar for the year 2014. For the period from January to December 2014, the total number of civil cases registered was 1633 (excluding cases for Code 29,

31 and 32). The High Court has managed to dispose of 1676 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Muar is 1376 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT MUAR (CIVIL)  
JANUARY-DECEMBER 2014**



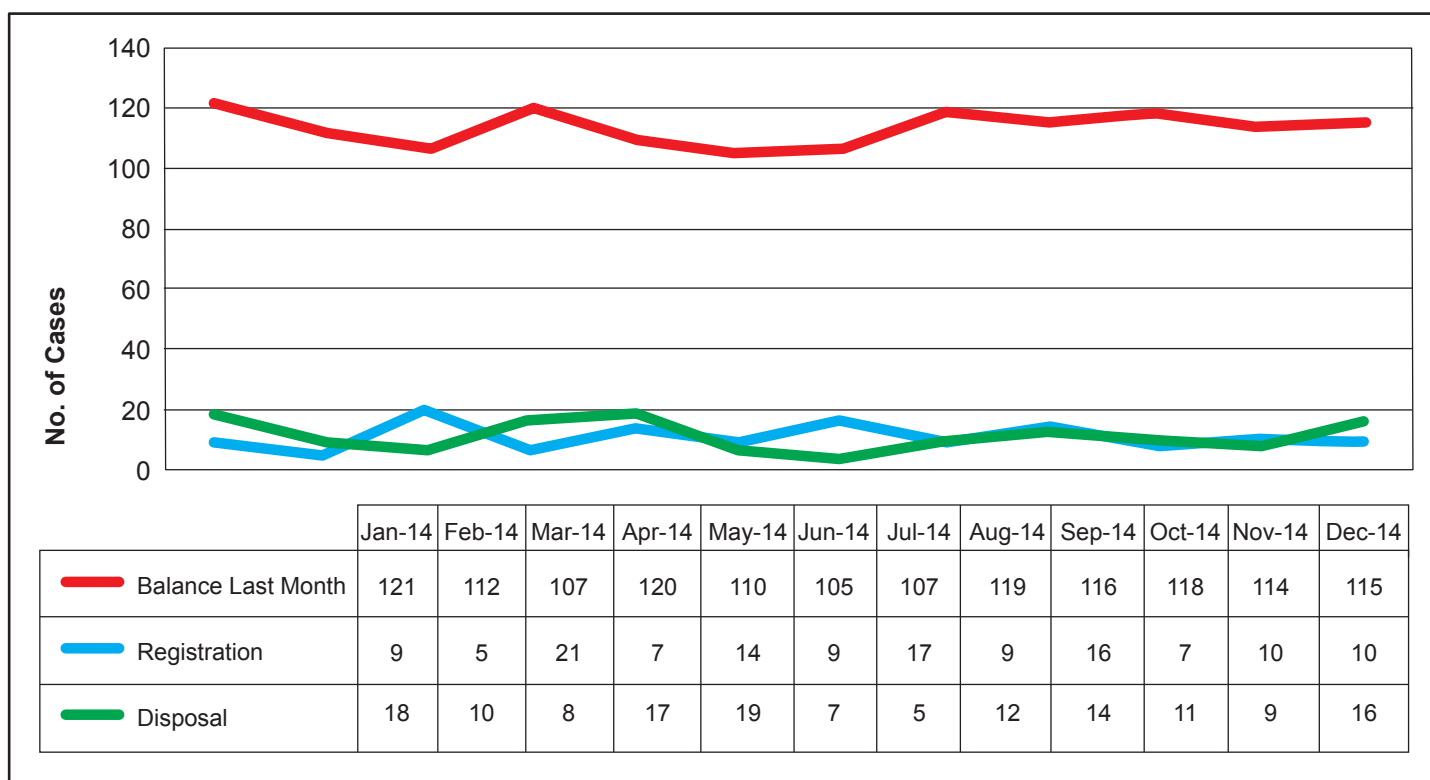
**AGEING LIST  
IN THE HIGH COURT AT MUAR (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2010																											
2011												2		1													3
2012							1				1	5															7
2013											2	21		1			1					113		1			139
2014	1	6	8	22			48	1		1	42		1	64	8					7	874	37	43	63			1227
TOTAL	1	6	8	22			49	1		1	4	70		3	64	8	1			7	987	37	44	63			1376

#### 9.4 IN THE HIGH COURT AT MUAR – CRIMINAL

For Criminal Cases in the year 2014, a total number of 134 cases including appeals and trials were registered and 146 cases were disposed of, leaving the balance of 109 cases pending.

**TRACKING CHART  
IN THE HIGH COURT AT MUAR (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT MUAR (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL				
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45		46	45	46	45
2010																													
2011																4		1									1		6
2012																3											4		7
2013	1						1	1								10		7				3					5		28
2014	9	3					17	7						1		12		10									9		68
TOTAL	10	3					18	8						1		29		18				3					19		109

## 10. PAHANG

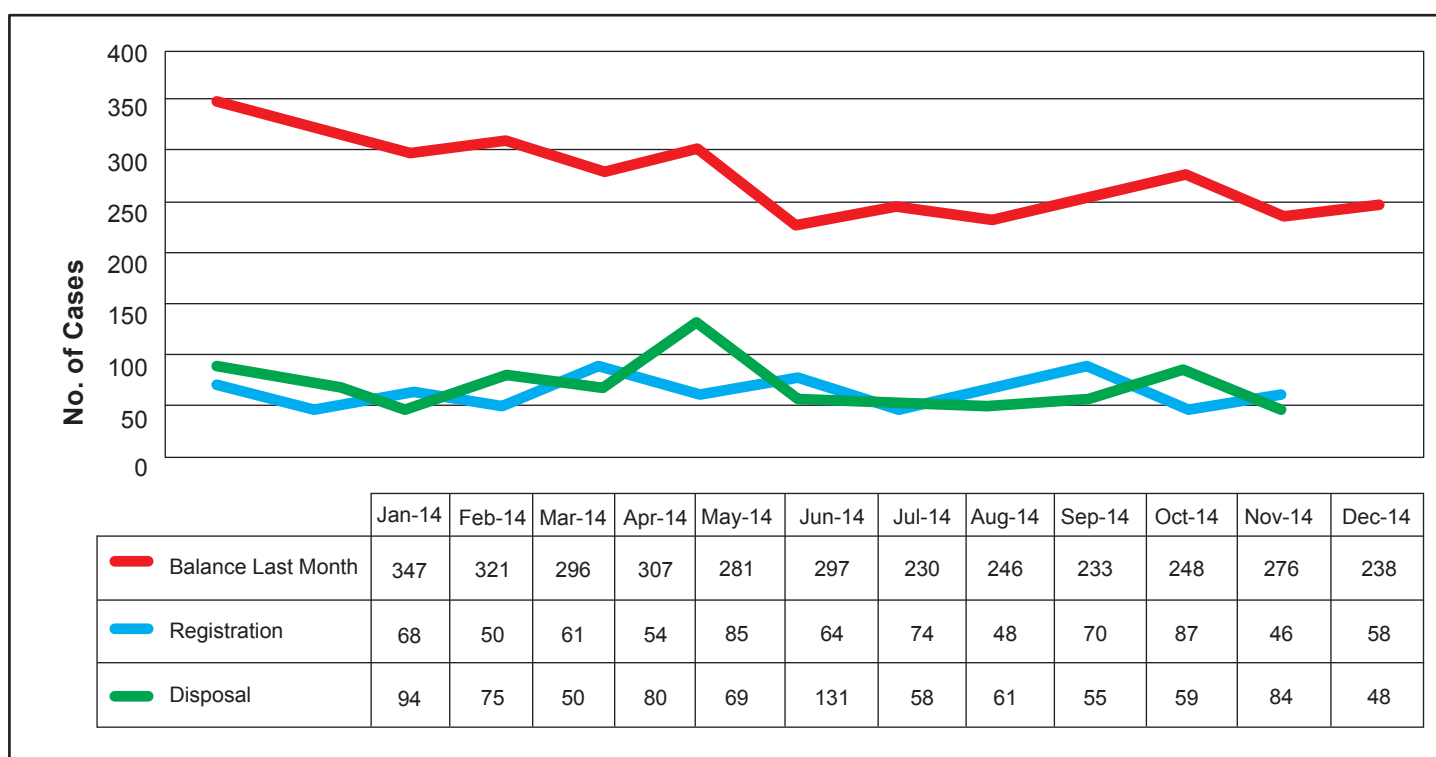
### 10.1 IN THE HIGH COURT AT KUANTAN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuantan for the year 2014. For the period from January

to December 2014, the total number of civil cases registered was 765 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 864 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Kuantan is 1001 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KUANTAN (CIVIL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KUANTAN (CIVIL)  
AS AT 31 DECEMBER 2014**

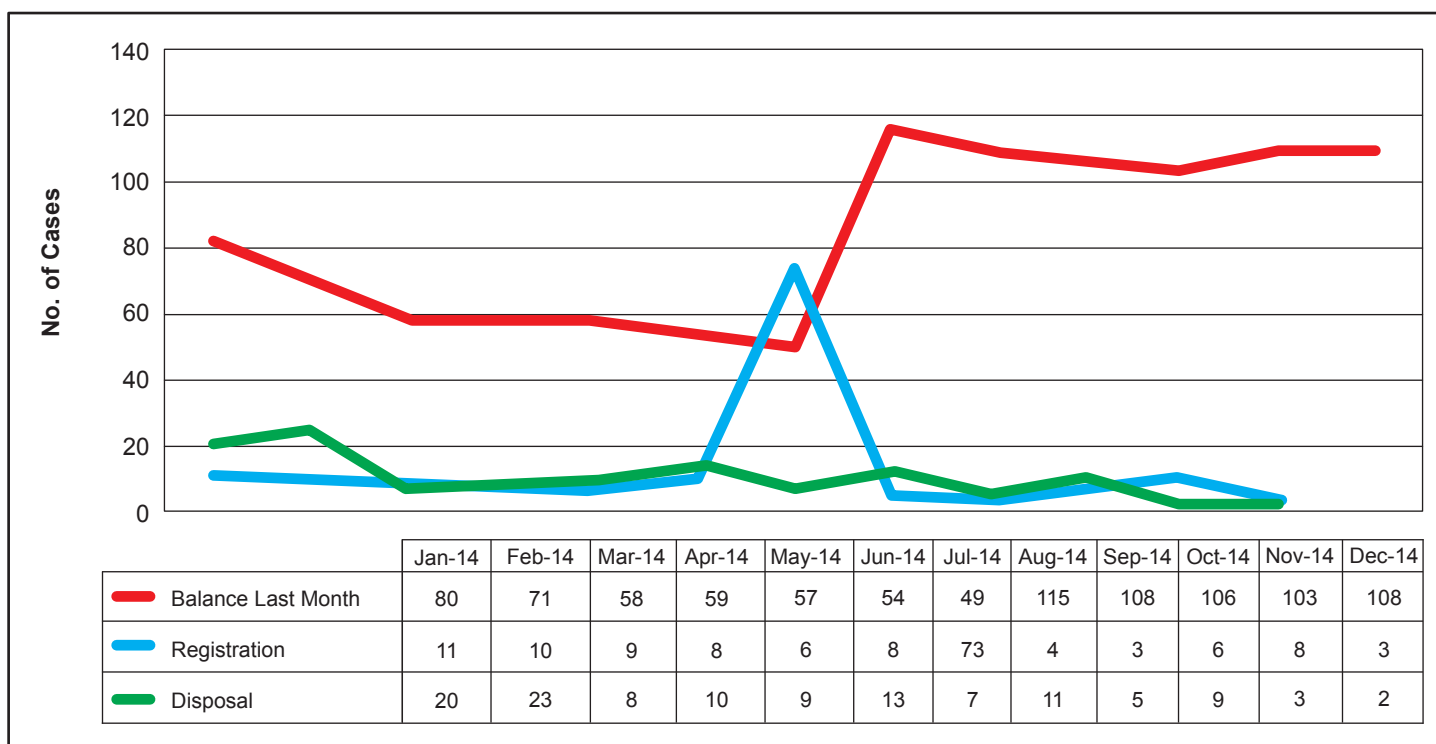
YEAR	CODES																								TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33		34	
	A	B	A	B																							
2008											1																1
2009																											
2010												1															1
2011												2															2
2012			1									8				1	2				1						13
2013				1								15									35		1				52
2014		6	3	43			18	3				47			54		2			18	690	9	17	22			932
TOTAL		6	4	44			18	3			1	73			54	1	4			18	726	9	18	22			1001



## 10.2 IN THE HIGH COURT AT Kuantan - CRIMINAL

For Criminal Cases in the year 2014, a total number of 149 cases including appeals and trials were registered and 120 cases were disposed of leaving a balance of 109 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT Kuantan (CRIMINAL)**  
**AS AT JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT Kuantan (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46
2010																												
2011																												
2012																												
2013																1		5										6
2014	3	2					11	68		4	3					9		3										103
TOTAL	3	2					11	68		4	3					10		8										109

### 10.3 IN THE HIGH COURT AT TEMERLOH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Temerloh for the year 2014. For the period from January to December 2014, the total number of civil cases

registered was 504 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 557 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in High Court at Temerloh is 915 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT TEMERLOH (CIVIL)  
AS AT JANUARY-DECEMBER 2014**



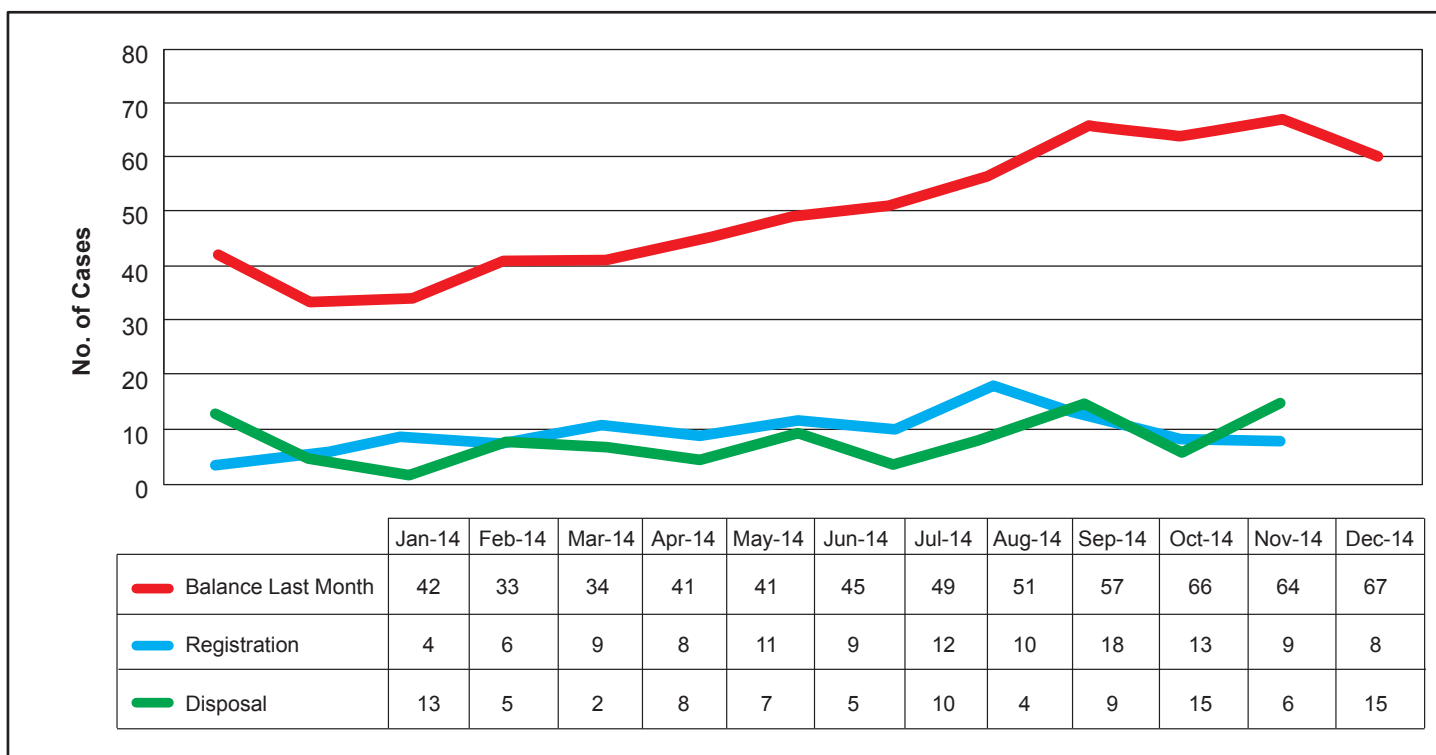
**AGEING LIST  
IN THE HIGH COURT AT TEMERLOH (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES																							TOTAL	
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32		33
	A	B	A	B																					
2010																									
2011											2														2
2012						1					2										156				159
2013				1							9										136				146
2014	1	3	4	24					1	1		18			38	6	2			1	420	16	28	45	608
TOTAL	1	3	4	25			1		1	1		31			38	6	2			1	712	16	28	45	915

#### 10.4 IN THE HIGH COURT AT TEMERLOH – CRIMINAL

For Criminal Cases in the year 2014, a total number of 117 cases including appeals and trials were registered and 99 cases had been disposed of, leaving a balance of 60 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT TEMERLOH (CRIMINAL)**  
**AS AT JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT TEMERLOH (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46
2010																												
2011																	1											1
2012																												
2013								1								1		3										5
2014	21	8					6	2						1		5	7									4		54
TOTAL	21	8					6	3						1		6	11									4		60



## 11. TERENGGANU

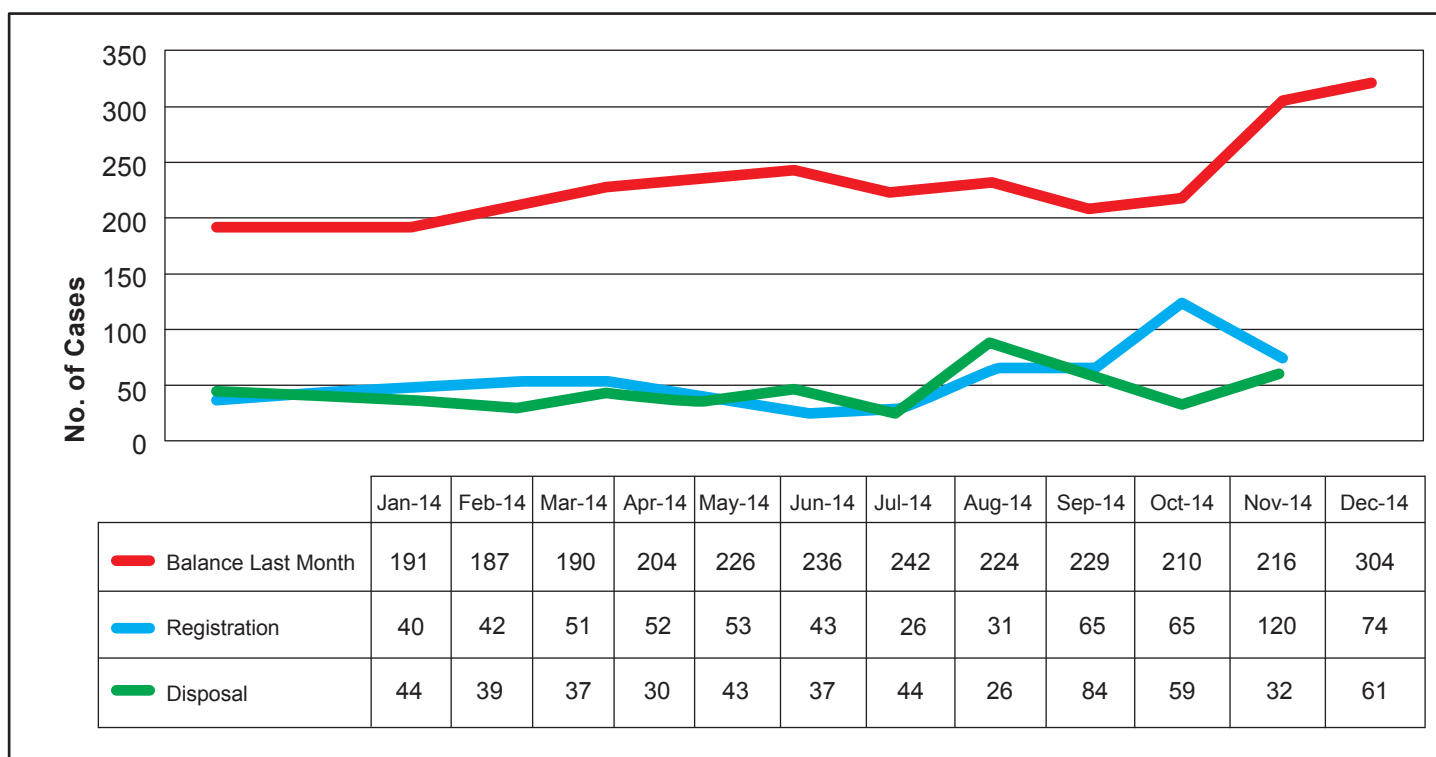
### 11.1 IN THE HIGH COURT AT KUALA TERENGGANU - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuala Terengganu for the year 2014. For the period from

January to December 2014, the total number of civil cases registered was 662 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 536 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Kuala Terengganu is 736 as reflected in the ageing list below.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)**  
**JANUARY-DECEMBER 2014**



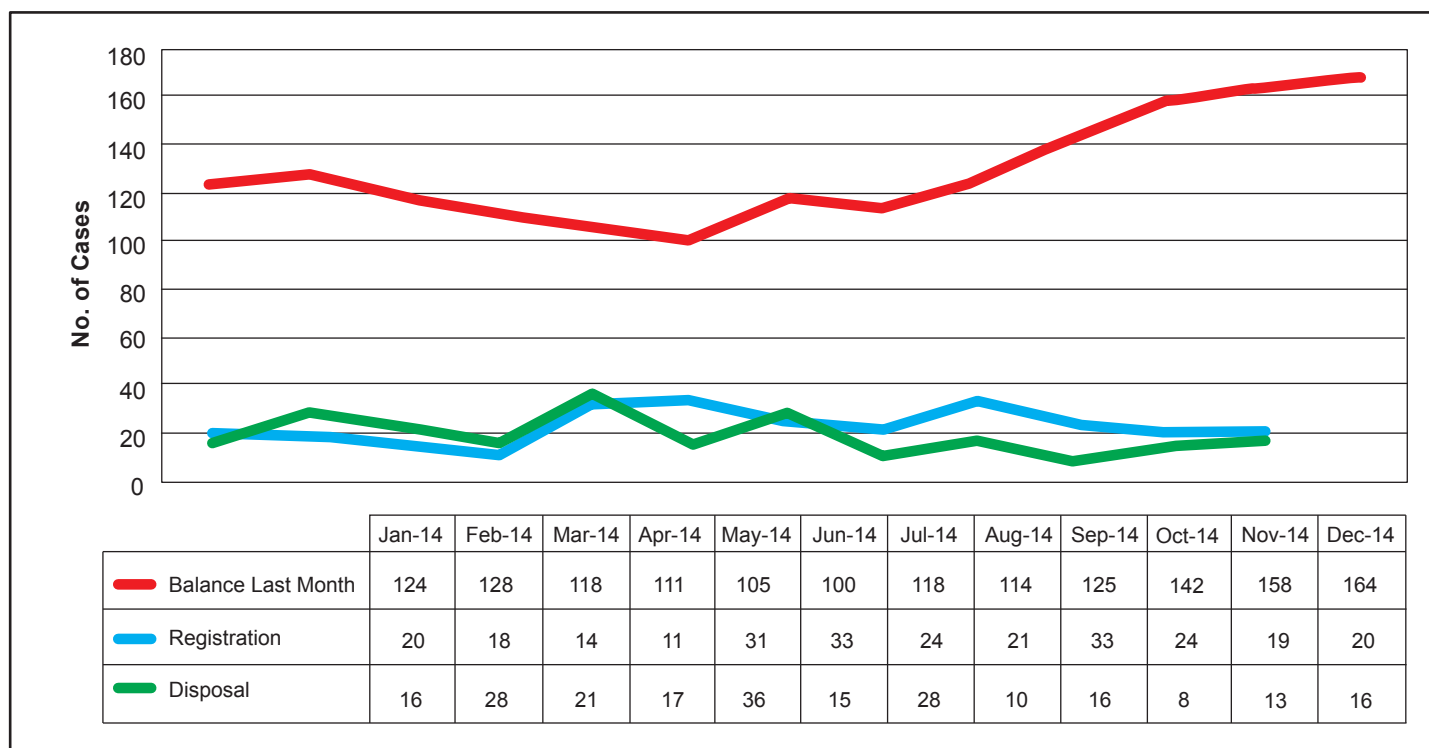
**AGEING LIST**  
**IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	37	38		
	A	B	A	B																									
2010												1																	1
2011												2					1												3
2012				1											1														2
2013				1			5				1	2									9								18
2014	2	9	1	11			115	1	2	5	10	23			56		4				8	405	5		5		2	48	712
TOTAL	2	9	1	13			120	1	2	5	11	28			57		5			8	414	5		5		2	48	736	

## 11.2 IN THE HIGH COURT AT KUALA TERENGGANU - CRIMINAL

For Criminal Cases in the year 2014, a total number of 268 cases including appeals and trials were registered and 224 cases were disposed of, leaving the balance of 168 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																											TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	
2010																												
2011																												
2012																												
2013	3																											3
2014	74	21		6	1		23	6		1	2			19		10		2										165
TOTAL	77	21		6	1		23	6		1	2			19		10		2										168

## 12. KELANTAN

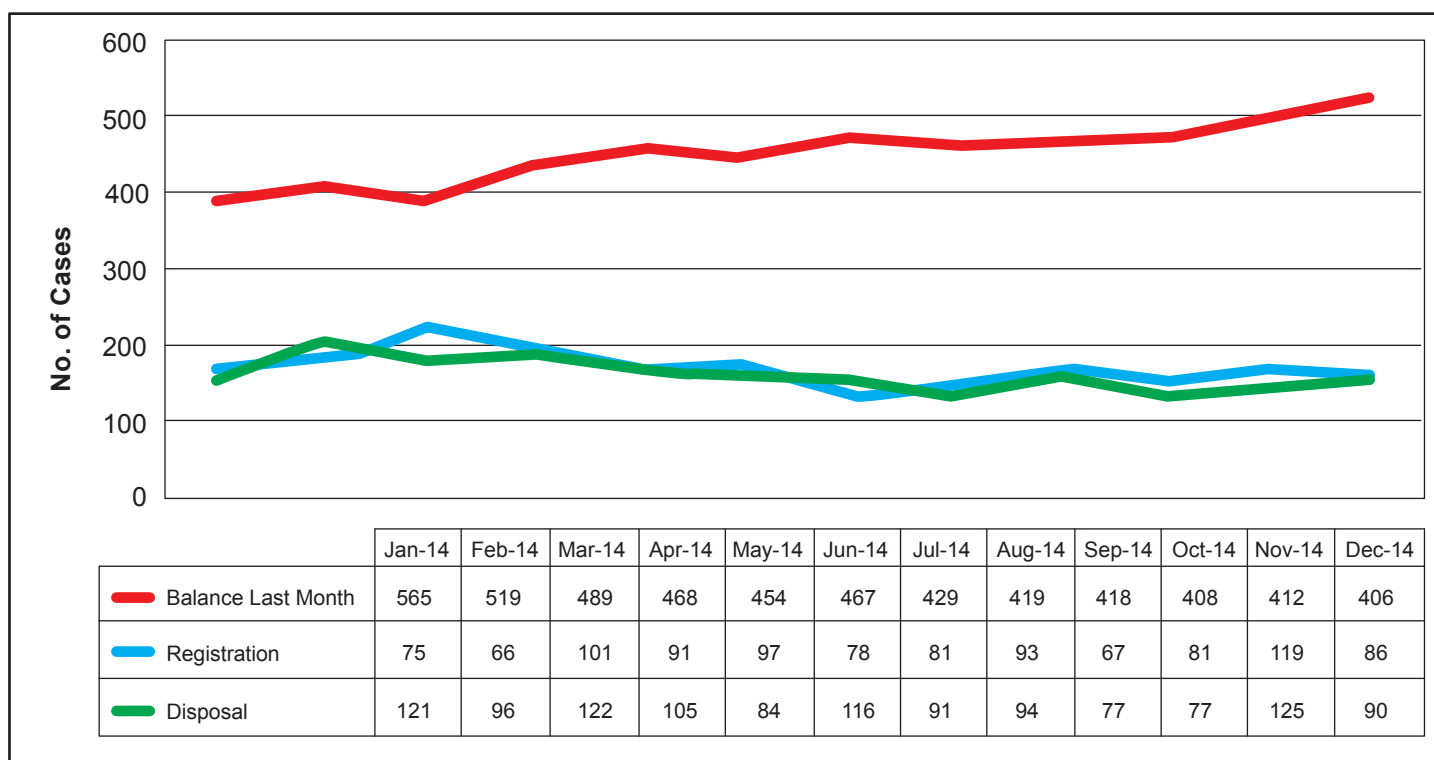
### 12.1 IN THE HIGH COURT AT KOTA BAHRU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kota Bharu for the year 2014.

For the period from January to December 2014, the total number of civil cases registered was 1035 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1198 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court at Kota Bharu is 782 as reflected in the ageing list below.

**TRACKING CHART  
IN THE HIGH COURT AT KOTA BHARU (CIVIL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE HIGH COURT AT KOTA BHARU (CIVIL)  
AS AT 31 DECEMBER 2014**

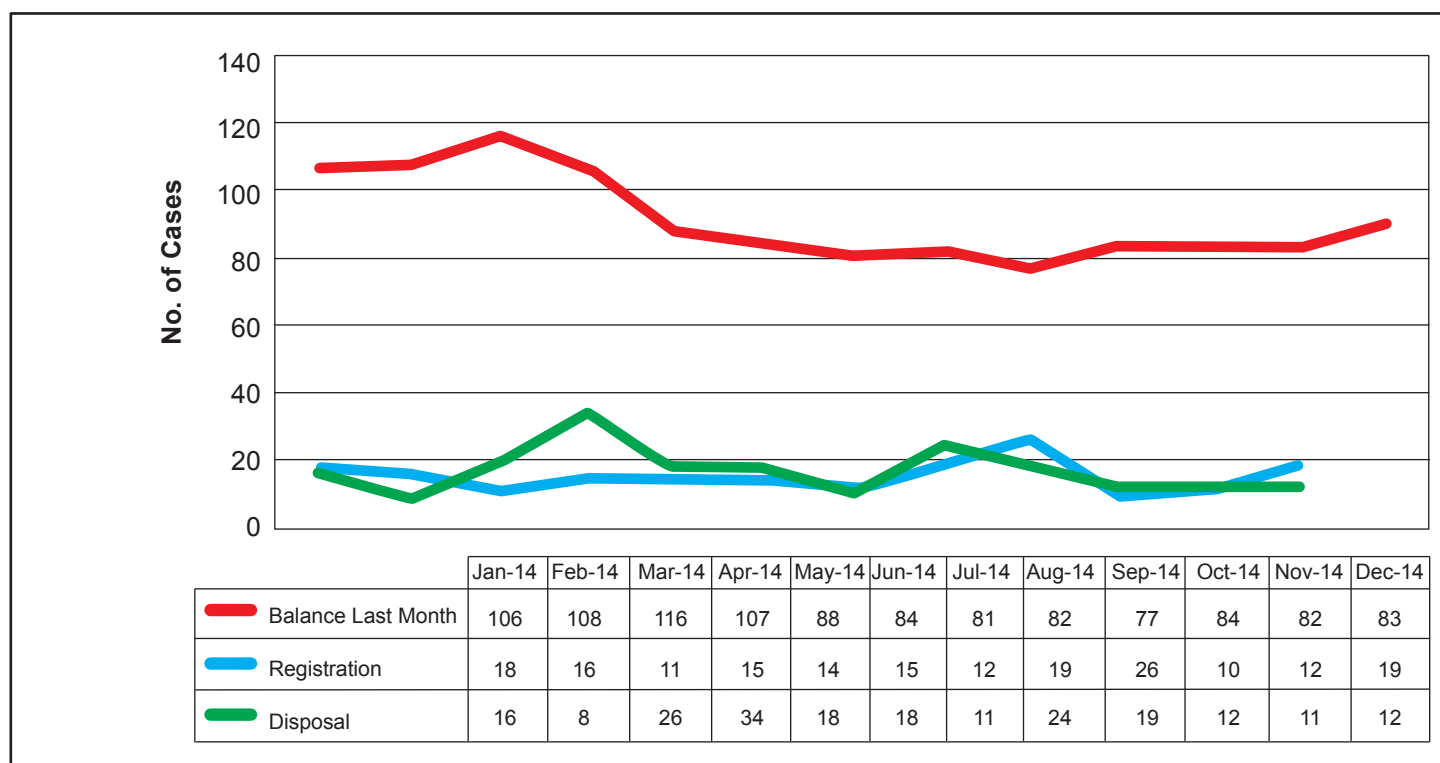
YEAR	CODES																												TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34				
	A	B	A	B																									
2006												1																1	
2007							1																					1	
2008							4																					4	
2009																													
2010												1																1	
2011												1	1		1													3	
2012												1			1													2	
2013				1	59		18					8		2	2													90	
2014	5	9	5	38	26			2	3		2	55	3	3	100	14	2		1	7	380				25			680	
TOTAL	5	9	5	39	85		23	2	3		4	66	3	6	103	14	2		1	7	380				25			782	



## 12.2 IN THE HIGH COURT AT KOTA BAHRU – CRIMINAL

For Criminal Cases in the year 2014, a total number of 187 cases including appeals and trials were registered and 203 cases were disposed of, leaving a balance of 90 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL	
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46
2011																												
2012																												
2013	1	2			1		3	6																				13
2014	13	1		1			20	11		3	6		4	7		8		2	1									77
TOTAL	14	3		1	1		23	17		3	6		4	7		8		2	1									90

### 13. THE SESSIONS COURT IN PENINSULAR MALAYSIA

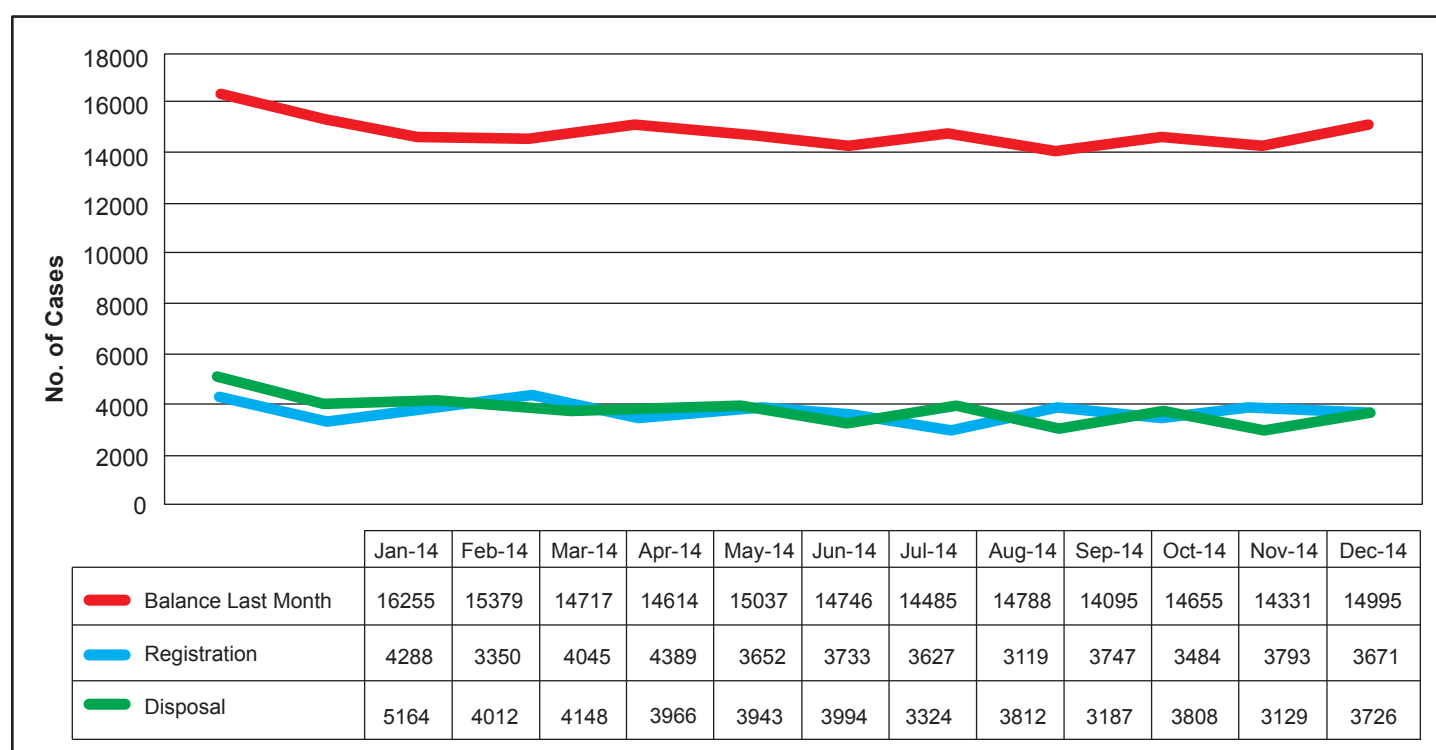
#### 13.1 SESSIONS COURT-CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2014. For the period from January to December 2014, the total number of

civil cases registered was 44898 (excluding cases for Code 56). The Sessions Court has managed to dispose of 46213 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in Sessions Court in Peninsular Malaysia is 14940 cases as reflected in the Ageing list below.

**TRACKING CHART  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)  
JANUARY-DECEMBER 2014**



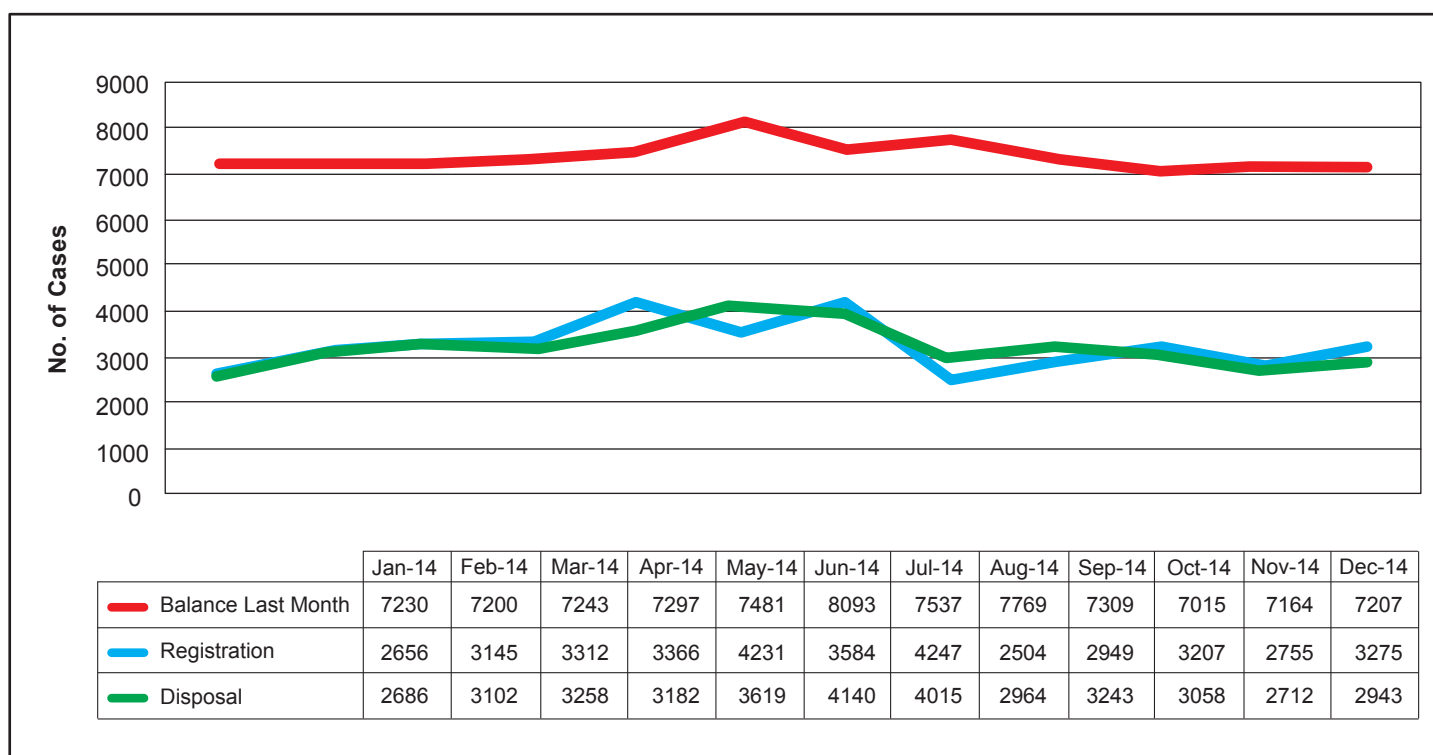
**AGEING LIST  
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2000		1							1
2005		3							3
2007		1							1
2008	1	1							2
2009									
2010		1	2						3
2011		8	2						10
2012	2	22	17						41
2013	19	235	501	3		4			762
2014	267	4753	8349	108		343		297	14117
<b>TOTAL</b>	<b>289</b>	<b>5025</b>	<b>8871</b>	<b>111</b>		<b>347</b>		<b>297</b>	<b>14940</b>

## 13.2 SESSIONS COURT - CRIMINAL

For Criminal Cases in the year 2014, a total of 39231 criminal cases were registered and 38922 criminal cases were disposed of, leaving a balance of 8439 cases pending.

**TRACKING CHART**  
**IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
1999									1							1
2002						1										1
2004									1							1
2005										1						1
2007						1			3							4
2008								1	1							2
2009									9							9
2010						1	2		3	111						117
2011	2		1	3	1	8		2	196	6	1	1	5			226
2012	7		8	1		62	1	50	89	14			16	1		249
2013	27		48	41	5	452	8	29	129	233	3	24	17	3		1019
2014	60	2	106	3	76	2612	167	89	644	2124	83	322	161	13	347	6809
TOTAL	96	2	163	48	82	3137	178	171	1076	2489	87	347	199	17	347	8439



## 14. MAGISTRATES COURT IN PENINSULAR MALAYSIA

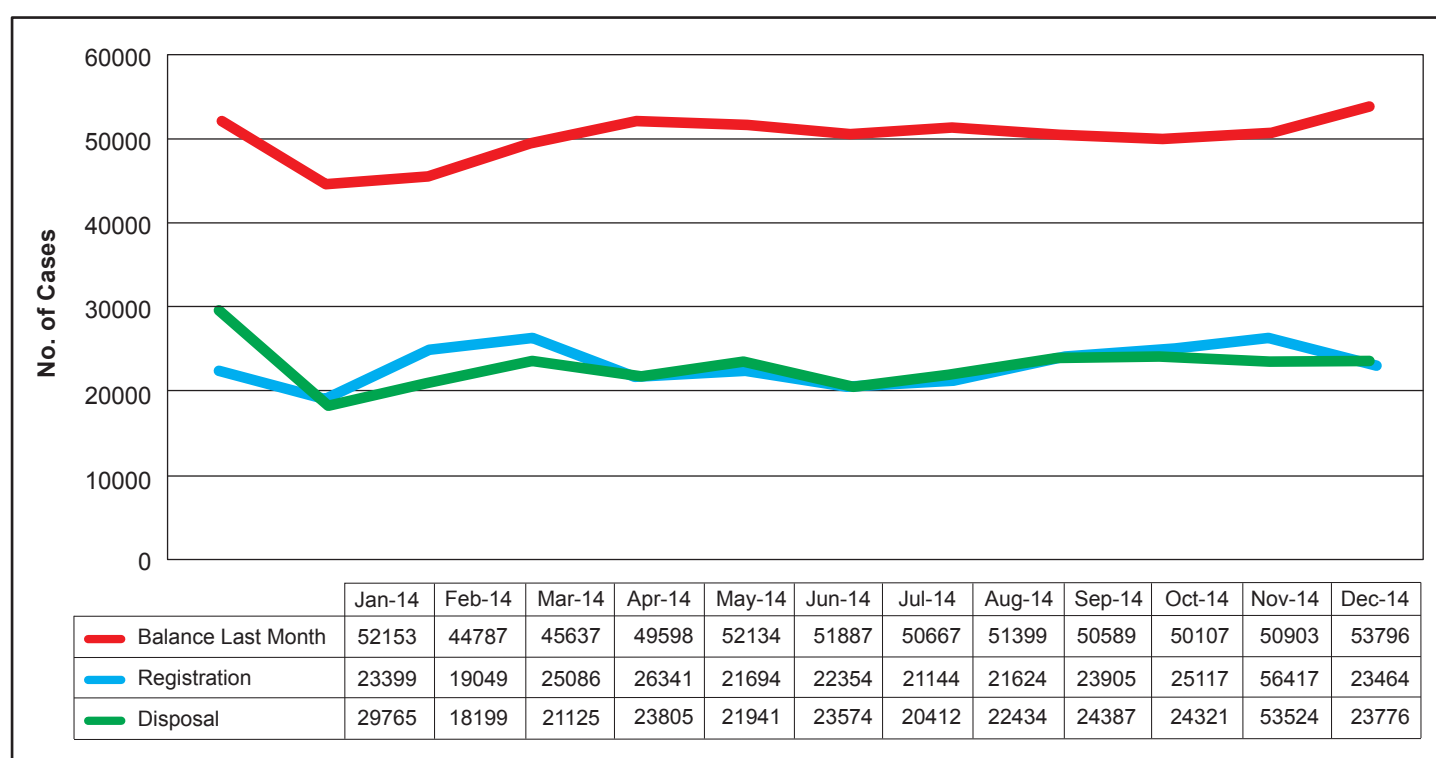
### 14.1 MAGISTRATES COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Peninsular Malaysia for the year 2014. For the period from January to December 2014, the

total number of civil cases registered was 278594 (excluding cases for Code 76). The Magistrates Court has managed to dispose of 277263 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the Magistrates Court in Peninsular Malaysia is 53484 as reflected in the ageing list below.

**TRACKING CHART  
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)  
JANUARY-DECEMBER 2014**



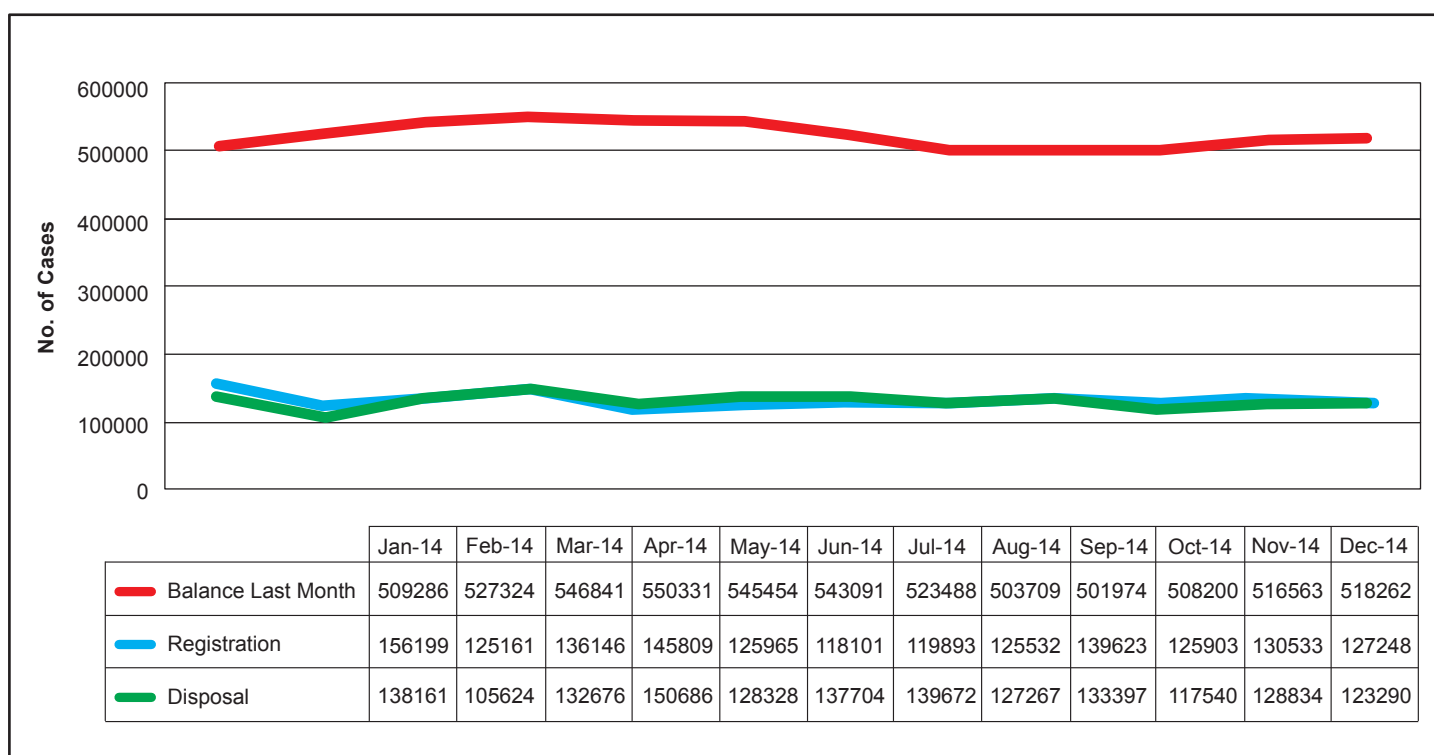
**AGEING LIST  
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2011										
2012				2						2
2013	10	115	25	300			558			1008
2014	7113	19398	6445	13735	680		4800	298	5	52474
TOTAL	7123	19513	6470	14037	680		5358	298	5	53484

## 14.2 MAGISTRATES COURT - CRIMINAL

For Criminal Cases in the year 2014, a total of 1576113 criminal cases were registered (excluding cases for Code 86, 87, 88 and 89) and 1563179 cases were disposed of, leaving a balance of 522220 cases pending.

### TRACKING CHART IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL) JANUARY-DECEMBER 2014



### AGEING LIST IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL) AS AT 31 DECEMBER 2014

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2010							1									1
2011							1									1
2012				5	2		19				1	3639	1	1		3668
2013	12	26		9	424	3	121	27		4	10	9072	439		2	10149
2014	846	425		1	18632	19	43	888	5		435	457813	28837		457	508401
TOTAL	858	451		15	19058	22	185	915	5	4	446	470524	29277	1	459	522220

# APPENDIX B

SABAH & SARAWAK



## 1. SABAH

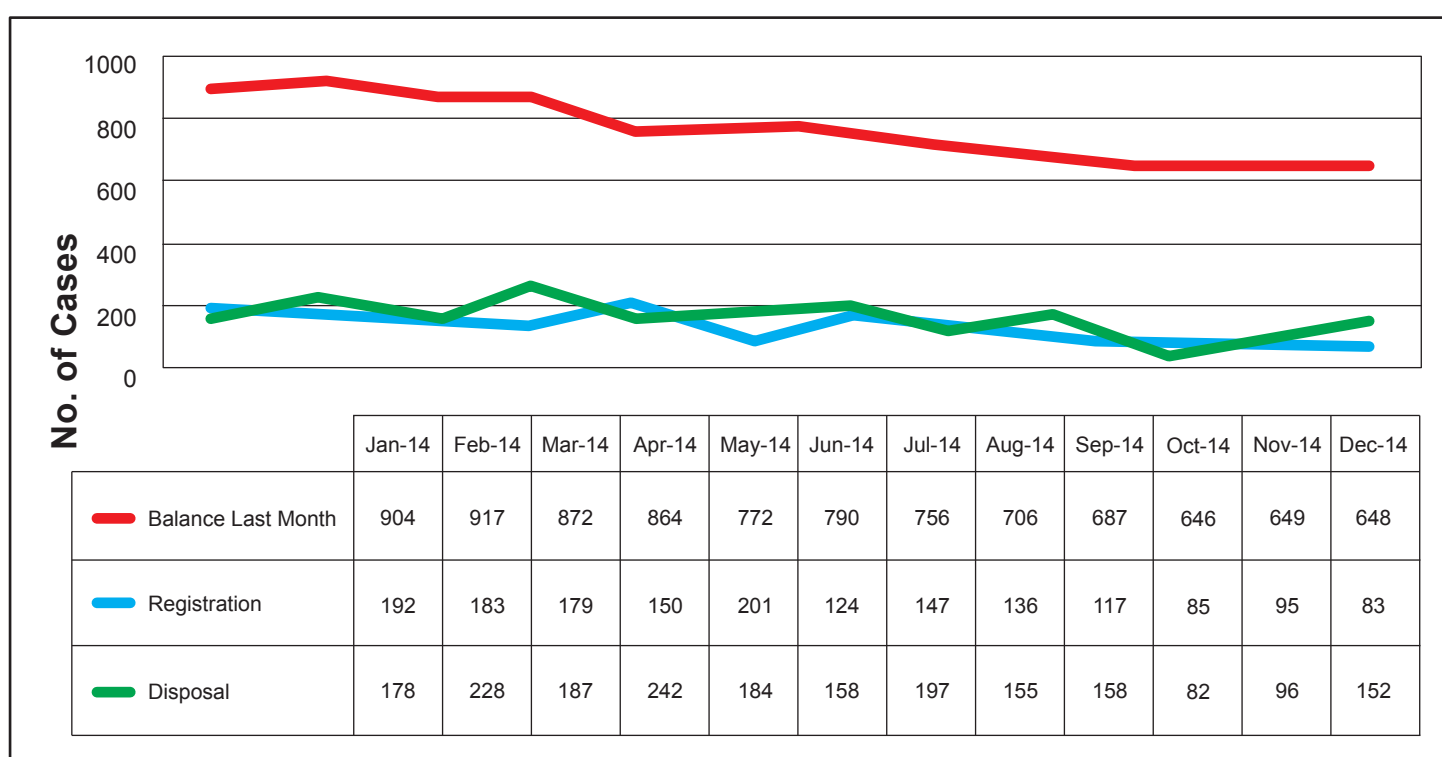
### 1.1 IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH) – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court of Sabah and Sarawak (Sabah) for the year 2014.

For the period from January to December 2014, the total number of civil cases registered was 1818 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2253 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in the High Court of Sabah and Sarawak (Sabah) is 1922 as reflected in the ageing list.

**TRACKING CHART**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH-CIVIL)**  
**JANUARY-DECEMBER 2014**



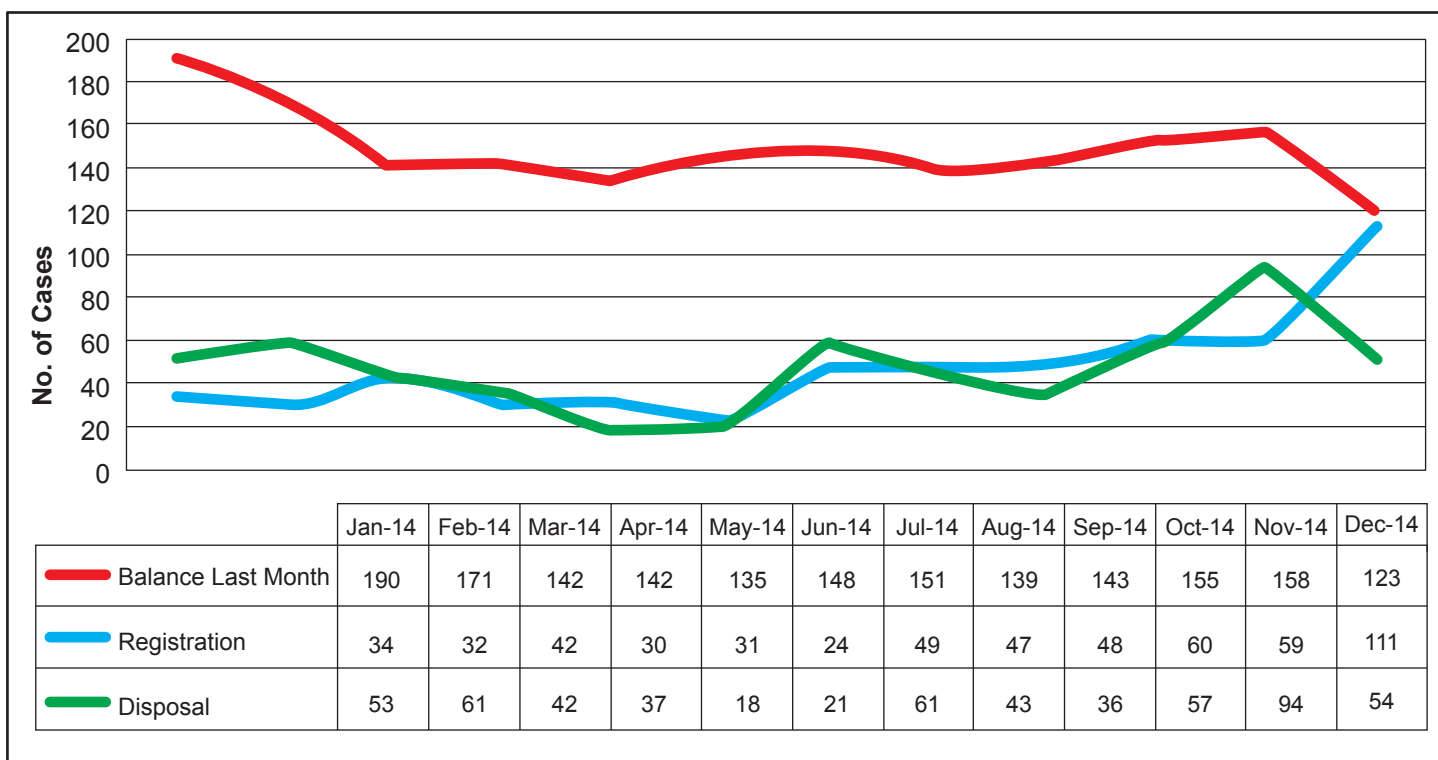
**AGEING LIST**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH-CIVIL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																							TOTAL		
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32		33	
	A	B	A	B																						
2002												1														1
2008												1														1
2009																										
2010												3														3
2011											3	3														6
2012					7						3	23									3					36
2013			3		70						5	60	6		5					1	346					496
2014	11	4	20	20	36			2	2		10	81	9	3	50		4	4	5	20	1014	15		72	1379	
TOTAL	11	4	23	20	113			2	2		21	172	15	3	55		4	4	5	21	1363	15		72	1922	

## 1.2 IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH) – CRIMINAL

For Criminal Cases in the year 2014, a total number of 567 criminal cases including appeals and trials were registered and 577 criminal cases were disposed of, leaving a balance of 190 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH-CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SABAH-CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																										TOTAL		
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS			
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45		46	45
2010																													
2011																													
2012														1															1
2013							1	3							2		13									61		80	
2014	17	10	8		3		6	4	26		5			4	16		10											109	
TOTAL	17	10	8		3		7	7	26		5			5	18		23									61		190	

## 2. SARAWAK

### 2.1 IN THE HIGH COURT OF SABAH AND SARAWAK (SARAWAK) - CIVIL

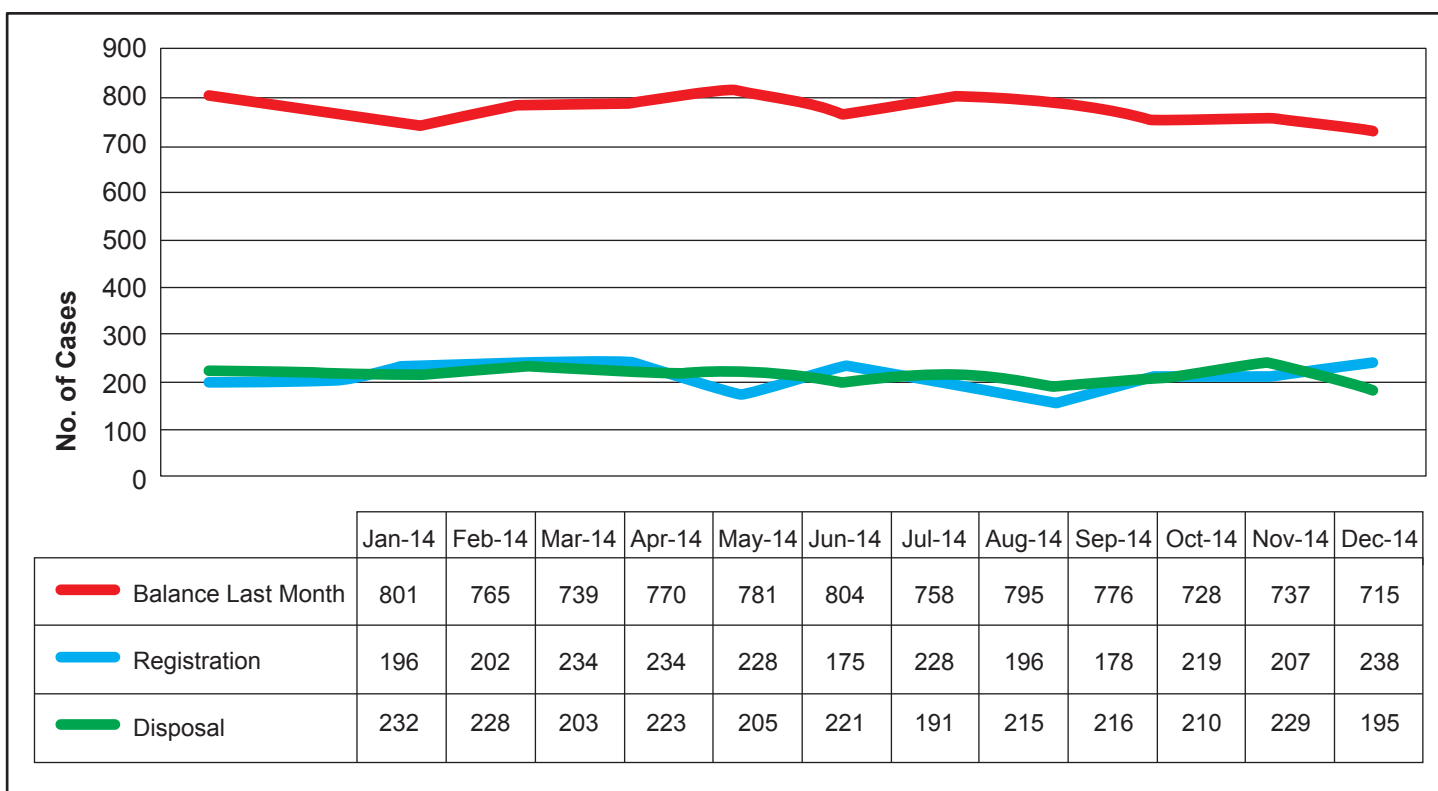
The tracking chart below shows the registration and disposal of cases in the High Court of Sabah and Sarawak (Sarawak) for the year 2014. For the period from January to December 2014, the total

number of civil cases registered was 2502 (excluding cases for Code 29, 31 and 32).

The High Court has managed to dispose of 2531 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending is 1320 cases as reflected in the ageing list below.

**TRACKING CHART**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SARAWAK-CIVIL)**  
**JANUARY - DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SARAWAK-CIVIL)**  
**AS AT 31 DECEMBER 2014**

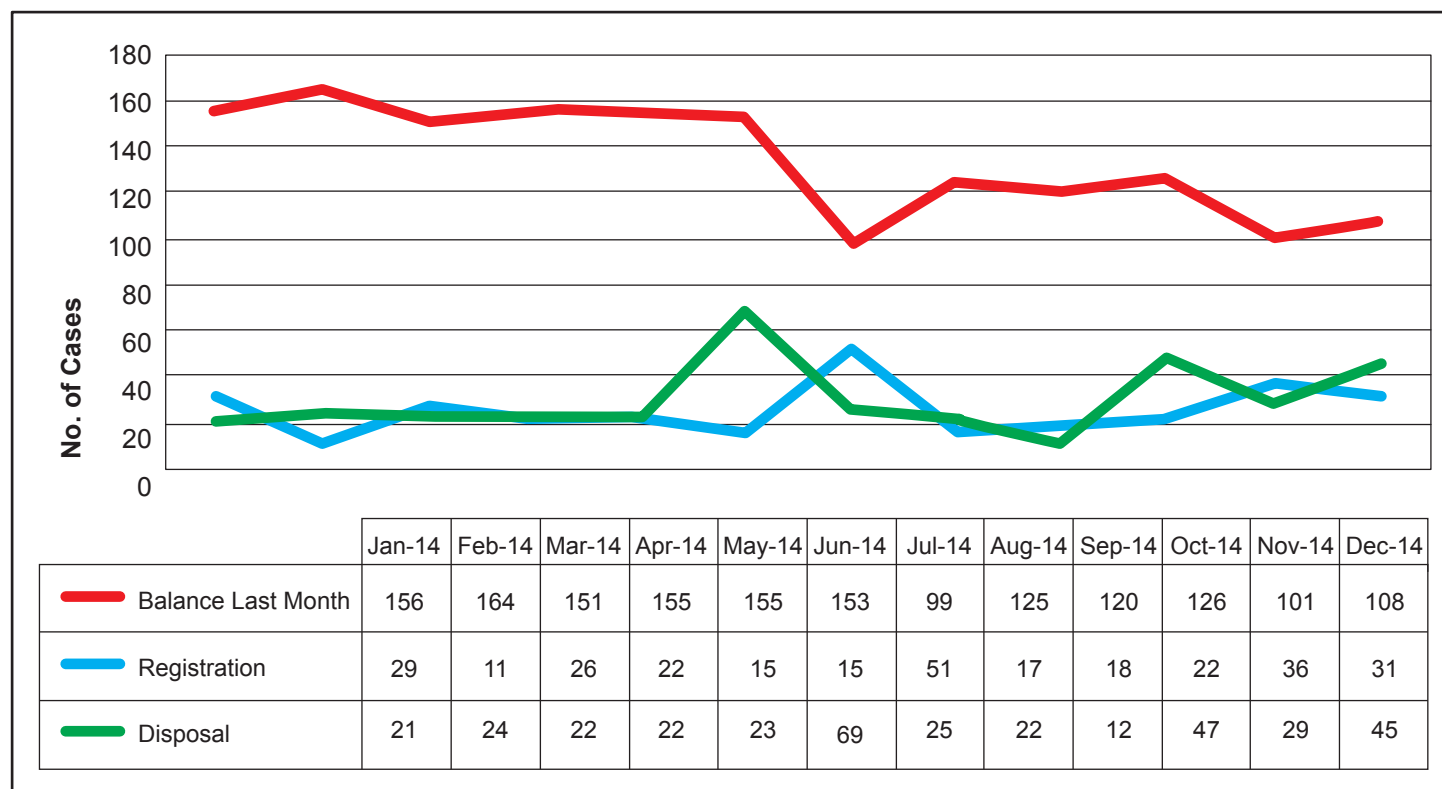
YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34		
	A	B	A	B																							
2005												1															1
2006			1																								1
2007											1																1
2008											1	1															2
2009											2	2															4
2010																											
2011											3	2															5
2012							3				3	29			1												36
2013							5				3	56			9	1					5				3		82
2014	6	8	9	17	5		26	1			18	111	1	6	149	14	5	4	4	15	545		1	237	6	1188	
TOTAL	6	8	10	17	5		34	1			31	202	1	6	159	15	5	4	4	15	550		1	240	6	1320	



## 2.2 IN THE HIGH COURT OF SABAH AND SARAWAK (SARAWAK – CRIMINAL)

For criminal cases for the year 2014, a total number of 299 cases including appeals and trials were registered and 361 cases were disposed of, leaving the balance of 147 cases pending.

**TRACKING CHART**  
**IN THE HIGH COURT IN SABAH AND SARAWAK (SARAWAK-CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**IN THE HIGH COURT OF SABAH AND SARAWAK (SARAWAK-CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES																								TOTAL			
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45		46	45	46
2011																												
2012																										3		3
2013							2									1		5								2	2	12
2014	37	11	4		4		7	27	4		1		1		9	6		15						1		5		132
TOTAL	37	11	4		4		9	27	4		1		1		9	7		20						1		10	2	147

### 3. SESSIONS COURT IN SABAH AND SARAWAK

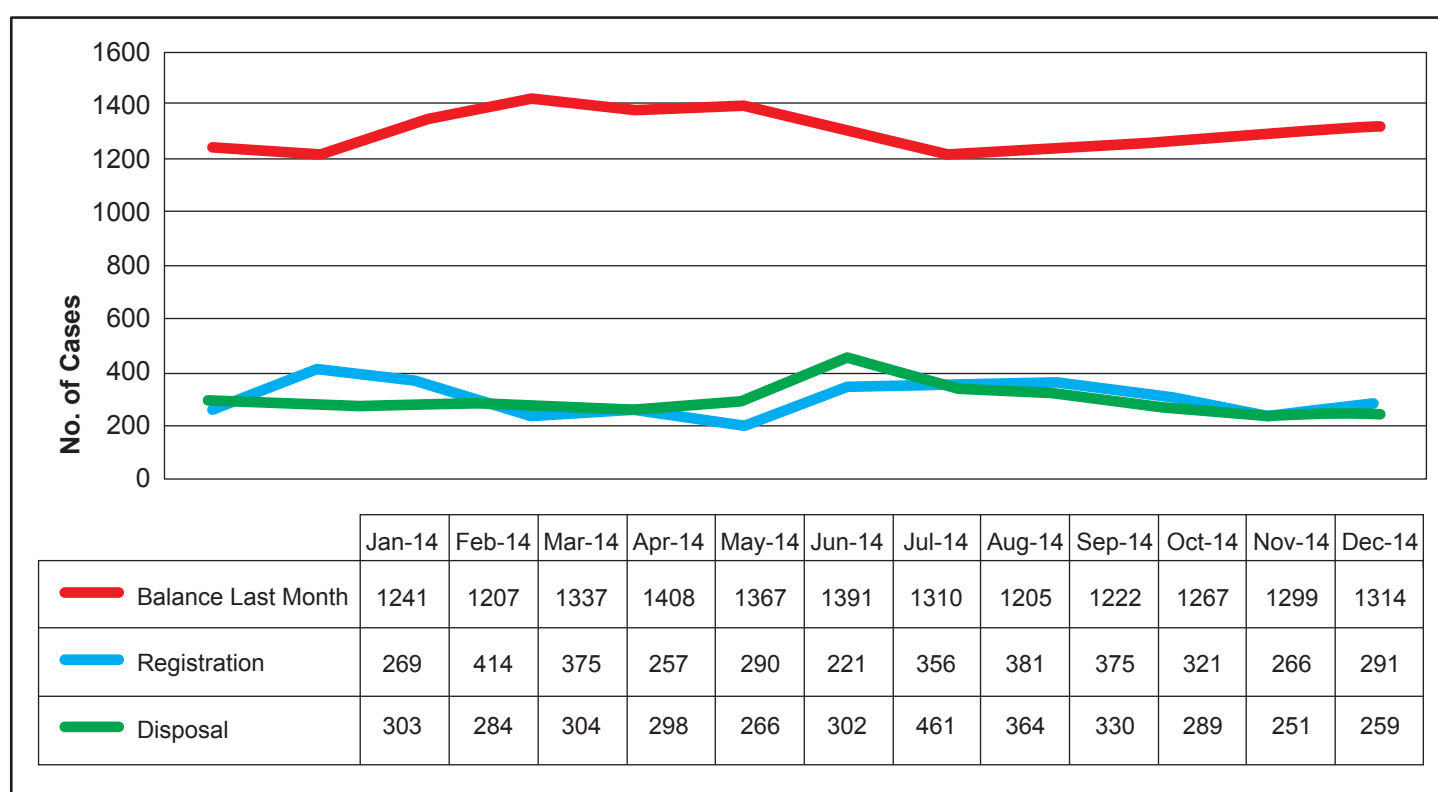
#### 3.1 SESSIONS COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Sabah and Sarawak for the year 2014. For the period from January to December 2014, the total number

of civil cases registered was 3816 (excluding cases for Code 56). The Sessions Court has managed to dispose of 3711 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in Sessions Court in Sabah and Sarawak is 1346 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)  
JANUARY-DECEMBER 2014**



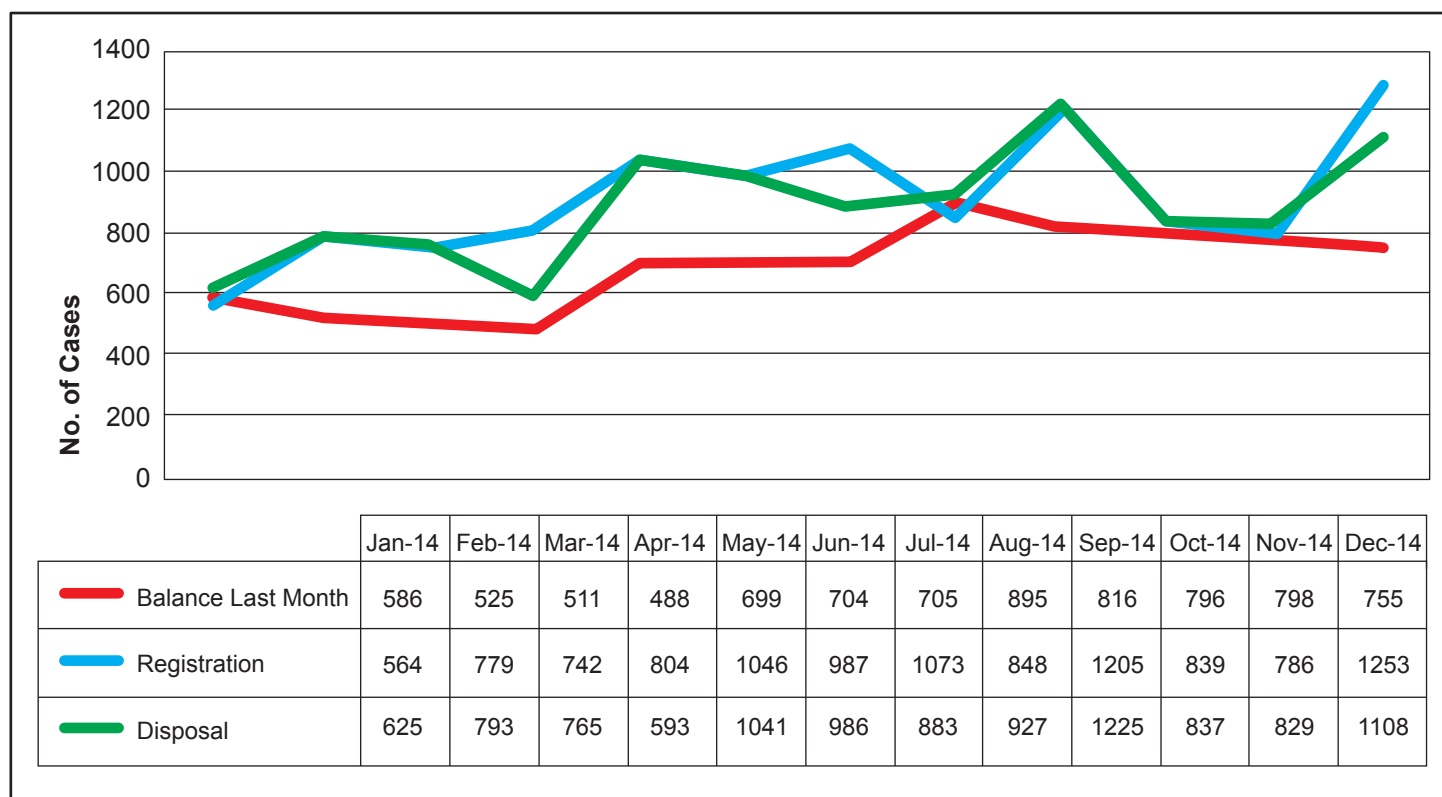
**AGEING LIST  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2011			1						1
2012	1	7	2						10
2013		40	15			1			56
2014	43	596	577	9		54			1279
TOTAL	44	643	595	9		55			1346

### 3.2 SESSIONS COURT - CRIMINAL

For Criminal Cases in the year 2014, a total number of 10926 cases were registered and 10612 cases were disposed of, leaving a balance of 900 cases pending.

**TRACKING CHART  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)  
JANUARY-DECEMBER 2014**



**AGEING LIST  
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2012			2	1						1						4
2013	2		2		4	10	2	8	3	22	1		2			56
2014	10		15	1	61	150	19	3	30	470	14	37	10	2	18	840
TOTAL	12		19	2	65	160	21	11	33	493	15	37	12	2	18	900



#### 4. MAGISTRATES COURT IN SABAH AND SARAWAK

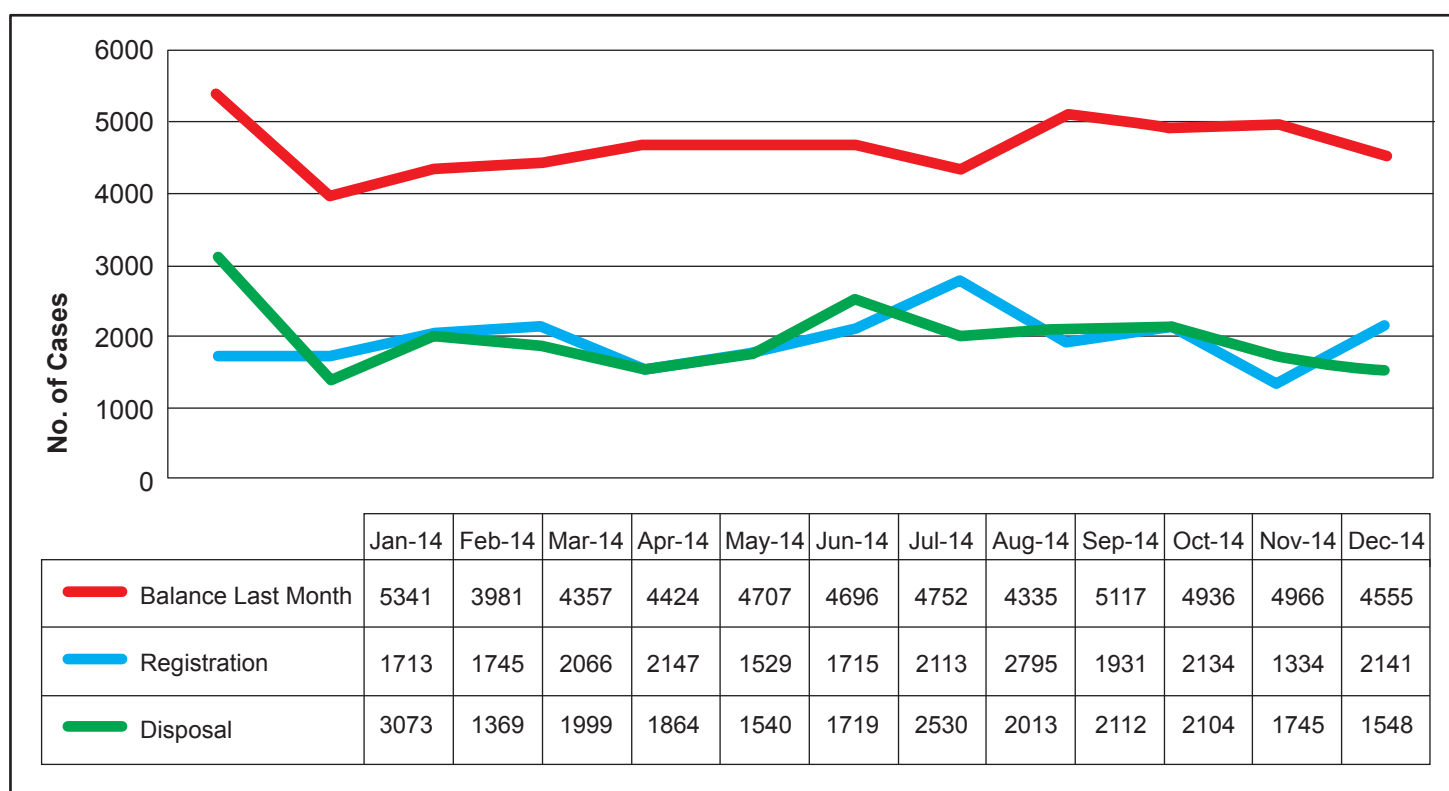
##### 4.1 MAGISTRATES COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Sabah and Sarawak for the year 2014. For the period from January to December 2014, the total number

of civil cases registered was 278594 (excluding code 76). The Magistrates Court has managed to dispose of 277263 cases throughout the year 2014.

As at 31 December 2014, the total number of civil cases pending in Magistrates Court in Sabah and Sarawak is 5148 cases as reflected in the ageing list below.

**TRACKING CHART  
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)  
JANUARY-DECEMBER 2014**



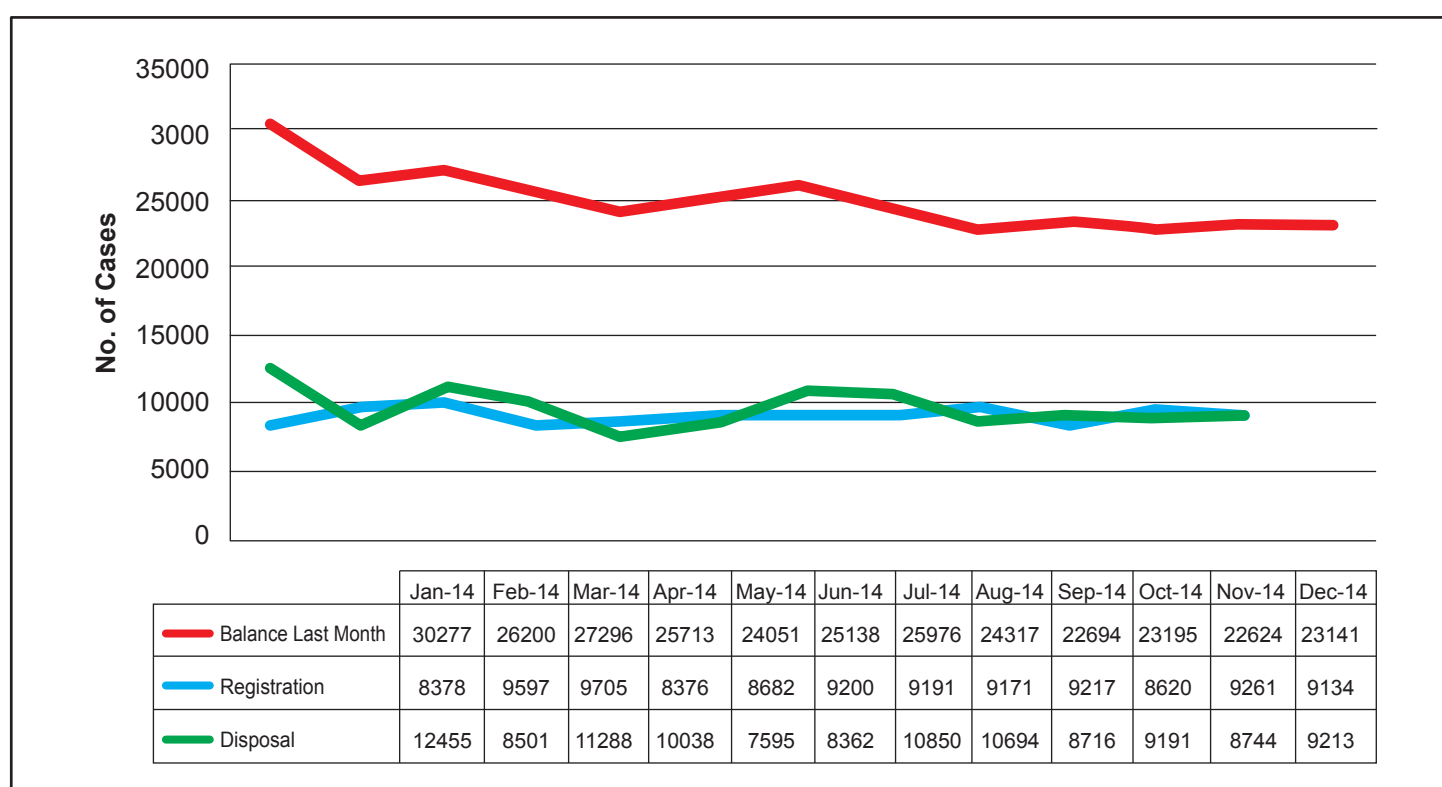
**AGEING LIST  
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)  
AS AT 31 DECEMBER 2014**

YEAR	CODES										TOTAL
	71	72	72A	73	74	75	76	77	78	79	
2010	1										1
2011											
2012							1				1
2013		9		1			5			105	120
2014	921	2857	457	58	217		447	41	9	19	5026
TOTAL	922	2866	457	59	217		453	41	9	124	5148

## 4.2 MAGISTRATES COURT - CRIMINAL

For Criminal Cases in the year 2014, a total number of 1576113 cases were registered (excluding cases for Code 86, 87, 88 and 89) and 1563179 cases were disposed of, leaving a balance of 23062 cases pending.

**TRACKING CHART**  
**IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)**  
**JANUARY-DECEMBER 2014**



**AGEING LIST**  
**FOR THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)**  
**AS AT 31 DECEMBER 2014**

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2010																
2011							1									1
2012				1												1
2013	1				16	1						2	1	1		22
2014	40	53			1921	6	3	130	5		15	17654	1820	3	1388	23038
TOTAL	41	53		1	1937	7	4	130	5		15	17656	1821	4	1388	23062





**The Editorial Committee -**

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