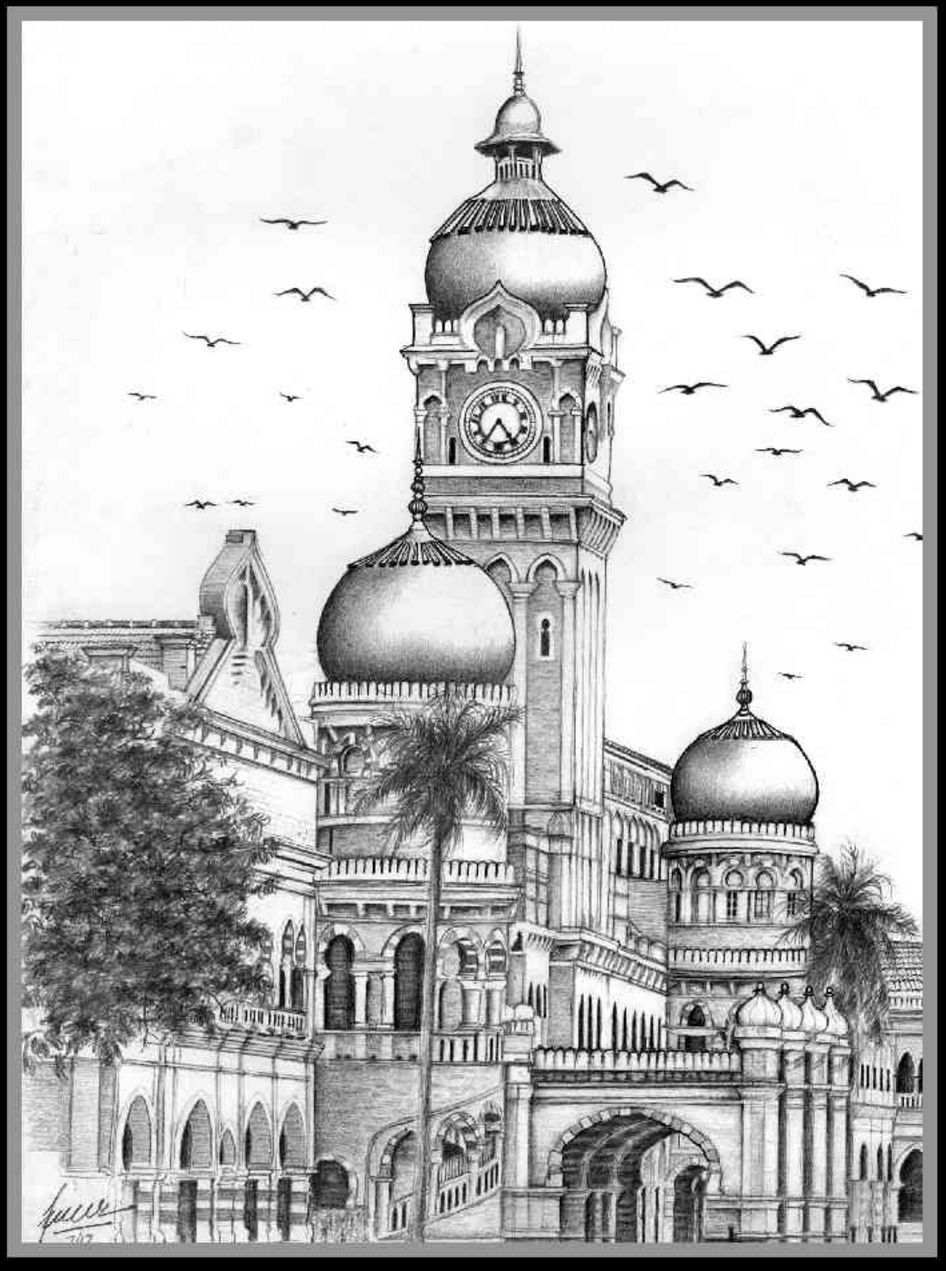
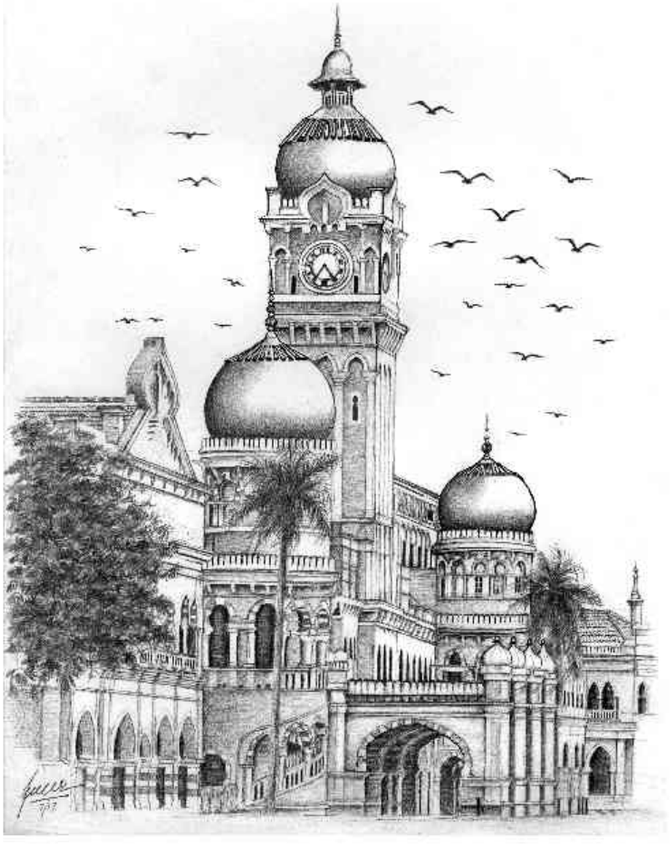
THE MALAYSIAN JUDICIARY



YEARBOOK 2017



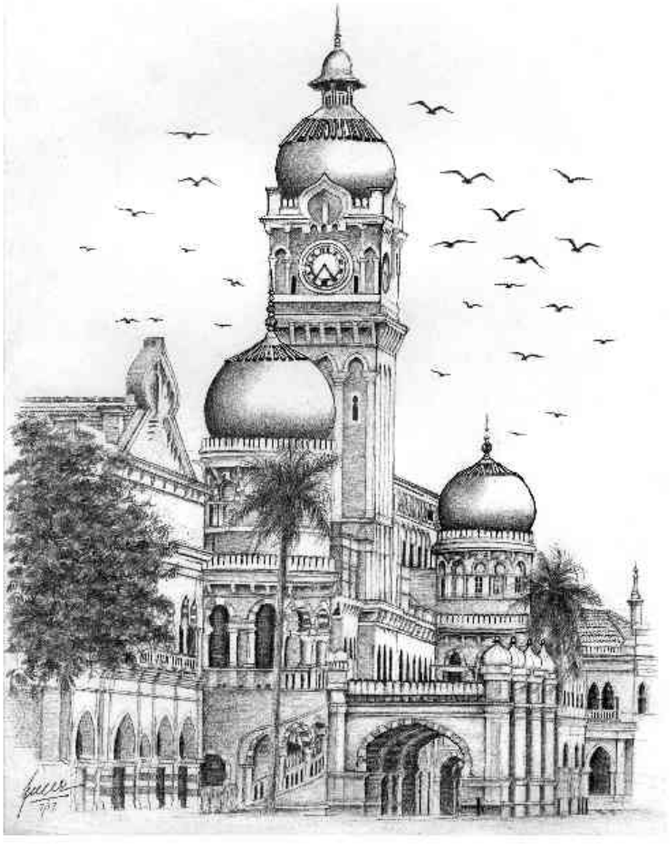
THE MALAYSIAN JUDICIARY

YEARBOOK 2017

Cover Sketch

"Clock Tower at the Old Court House"

By Justice Abdul Rahman Sebli



THE MALAYSIAN JUDICIARY

YEARBOOK 2017

Contents

Foreword

by The Right Honourable Tun Raus Sharif

Chief Justice of Malaysia

It is an honour and a privilege for me to welcome the Malaysian Judiciary Yearbook 2017. The publication of a comprehensive record of the significant events and performance of the courts for the year, and a compilation of valuable insights from past and present members of the bench, is much anticipated annually. For the eighth year running, the able Yearbook Committee has more than stepped up.

As I commence my tenure as the Chief Justice, it is opportune at this juncture to reflect on how far we have come since we started and how we can chart our way forward. The judicial transformation programme initiated by Tun Zaki Azmi has, over the past eight years, delivered no less than stellar results in terms of reducing the backlog of cases despite the steady increase in the number of cases registered. While we may look back upon the fruits of our labour with a measure of pride, we cannot rest on our laurels. In the words of Sir Winston Churchill: "Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning." The legacy of my predecessors has laid a strong foundation for us to build upon, and it is imperative that we carry on their good work on this relentless journey towards excellence.

Faced with new challenges in the ever-changing legal landscape, our time-honoured institution must adapt to meet the needs of the modern era. The introduction of a special court for sexual offences against children, the first of its kind in South East Asia, is in line with the ongoing practice to establish specialised courts to tackle particular issues. Presided over by an experienced Sessions Court Judge, the new court offers a child-friendly witness room and video-link facilities for vulnerable witnesses. A special operating procedure for cases relating to sexual offences against children was formulated in collaboration with various agencies. With these measures, it is hoped that the judiciary is better placed to provide enhanced protection for child victims of sexual offences.

Technology is increasingly incorporated into the judicial process. The e-Lelong system, first launched in Kuantan, revolutionised the process for auctioning real estate property, bringing higher transparency and greater ease of participation to bidders. The e-COURTS system, our digital court infrastructure, also entered its second phase. The manual filing system is swiftly becoming a relic of the past, and the fully integrated system is now available in twenty court locations across the Peninsular. The platform streamlines the case management process and enables e-filing for both criminal and civil cases. The links between the system and external government agencies including the Royal Malaysian Police, the Insolvency Department, the National Registration Department and the Land office allows closer coordination between various parties. The system is also available as a mobile application - the hallmark of twenty-first century technology - for ease of access at any time and place.

While judges preside over proceedings in courts of law, we are not spared from constant scrutiny in the court of public opinion. All too aware of the need for constant learning to maintain the highest standards in dealing with increasingly complex issues, the judiciary places significant emphasis on the training of judges. The Judicial Academy, formed under the aegis of the Judicial Appointments Commission, comprises of a training arm and a publication arm. The former organises courses on a variety of topics and arranges for the training of judges by judges; the latter publishes the Journal of the Malaysian Judiciary, designed to encourage judicial writing by judges, practitioners, and academics both local and foreign. It also publishes the Judiciary's Annual Report which is this Yearbook. These initiatives have been remarkably well-received.

On the international front, the Malaysian judiciary was an active participant in a number of cross-border organisations in 2017. On the Council of ASEAN Chief Justices, we were entrusted to spearhead

two working groups to propose model rules and best practices on the service of civil processes within the region and on case management and court technology. We were privileged to attend the Judicial Colloquium of the ASEAN Intergovernmental Commission of Human Rights, and the World Conference on Constitutional Justice. I am also humbled to serve as the current President of the Association of Asian Constitutional Courts and Equivalent Institutions. Through our involvement in these events and institutions, the judiciary has benefited from sharing ideas and exchanging experiences with our counterparts.

2017 has been a busy and fruitful year. Our achievements would not have been possible without the collective effort of Judges, officers, and staff, to all of whom I express my heartfelt gratitude. My appreciation also extends to the Attorney-General's Chambers, the Bar, and all other stakeholders for their cooperation and commitment in ensuring that the cogs and wheels of our legal system continue to function smoothly in these interesting times.

Special thanks to Justice Abdul Rahman Sebli, Justice Yeoh Wee Siam, Justice Nor Bee Ariffin, Justice Lee Swee Seng, Justice Supang Lian and Justice Wong Kian Kheong for kindly sharing their thoughts in this edition of the Yearbook. Finally, I wish to record my gratitude and heartiest congratulations to the Yearbook Committee led by Justice Zainun Ali, together with Justice Alizatul Khair Osman Khairuddin, Justice Tengku Maimun Tuan Mat, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Justice Faizah Jamaludin, Mr Mohd Sabri Othman, Mdm Arleen Ramly, Mdm Syahrin Jeli Bohari, Mdm Sharifah Norazlita Syed Salim Idid, Mr Ho Kwong Chin, Mdm Ng Siew Wee, Mdm Norkamilah Aziz, Mr Shazali Hidayat Shariff, Mr Syahrul Sazly Md Sain, Mdm Chang Lisia, Ms Hazmida Harris Lee, Mdm Siti Nabilah Abd Rashid, Mr Ahmad Afiq Hasan and Ms Low Wen Zhen for undertaking this laborious task in the midst of their busy schedules; I am also grateful to Justice Abdul Rahman Sebli for his artistic skills as potrayed on the cover of this publication, to our dedicated photographers Mdm. Hamidah Abdul Rahman and Mr Weng Soon Leong; artist Mr Muhammad Nur Hazimi Khalil (Jimmy); and publisher Percetakan Nasional Malaysia Berhad, for their efforts in making this publication a success.

Tun Raus Sharif
Chief Justice of Malaysia

The onion-shaped domes at the Sultan Abdul Samad Building

Justice Zainun Ali
Judge of the Federal Court
Editor, the Malaysian Judiciary Yearbook 2017

Preface

No other event in recent times has been quite as ubiquitous as the appointments of the top three rankings in the Judiciary – that of the Chief Justice, the President of the Court of Appeal and the Chief Judge of Malaya. Their simultaneous appointments, historic in itself, had the added sparkle of all three Judges being alumni of the country's top university.

Their appointments, therefore, marked the beginning of a new and exciting chapter in our continuing judicial narrative. In this, one is reminded of the observation of Marcus Tullius Cicero (106-43 BC), one of Rome's greatest lawyers and orators, who said that:-

> "Nothing contributes more to the delight of the reader than the changes of times and the vicissitudes of fortune."

Cicero should know a thing or two about it – seeing as he was one of those who revived the Renaissance; that our top three judges coming together now is a promising beginning indeed, in that we may look to having our own Renaissance.

We welcome their debut reports in this publication, inasmuch as we are guided by their vision and leadership, as they steer this Institution through the rough winds and choppy waters it sometimes find itself in.

The mandate of these top judges need take into account the massive changes and ceaseless advancement of technology and sophisticated issues that arise every other minute. A tall order indeed, but one in which they have proven themselves to be equal to the task.

This is especially true in the preservation of our basic values – our commitment to upholding the Rule of Law and ensuring that access to justice remains constant and consistent; for surely these issues should never be edged out by less than serious fundamentals.

There is truth then, in the saying of Jean-Baptiste Alphonse Karr (1808-1890), that in terms of the fundamental values, "the more things change, the more they remain the same."

This resilience in the face of change is fittingly represented by the cover, which is the result of the artistic skills of Justice Abdul Rahman Sebli. Yes, surprise is still an important component in the doing of the Yearbook! We in the Committee are extremely blessed with the constant surprises at the roster of talent in our midst. Thank you, Justice Abdul Rahman!

Another creative production by one of us is seen in Justice Azizul Azmi Adnan's depiction of the sheer majesty of court buildings as captured using the infrafred spectrum. As is obvious, our talents seem to sprout at every turn. Thank you Justice Azizul!

The sketch of this iconic national heritage by Justice Abdul Rahman, which once housed the superior courts of this country, overlooking the equally famous Independence Square ("the Padang"), is timely, given that in the face of the fluidity of structural and even substantial changes elsewhere, some things like the Rule of Law and this stoic heritage building, is a sober reminder of the indestructibility of core values, which this building represents, in all its magnificence.

As we pay homage to the giants whose shoulders we are privileged to stand upon, our series on the life and times of former Lords President/ Chief Justices continues, with a feature on our third Lord President, Tun Azmi Mohamed. We are grateful to our former Chief Justice, Tun Zaki Tun Azmi, for kindly providing us with a selection of choice photographs of the towering personality that was his late father, Tun Azmi.

We also remember with respect, the late judge Tan Sri Eusoffe Abdoolcader, whose brilliance manifests itself in his sterling judgments. We are grateful to the late Tan Sri Eusoffe's family and friends who allowed us unlimited access to the collectible assortment of photographs for this publication.

Our chapter on A Judge's Musings this time, is an inspiring tale of one man, who, with characteristic insouciance, defied all odds and came out triumphant. It would be impossible to not be motivated by the former Federal Court judge Tan Sri Sulong Matjeraie's story. His is not the usual rustic narrative, but one in which grit and gumption won the day. I do not suppose that many of us have been exposed to anything remotely cathartic. Thank you Tan Sri Sulong, for your candid interview.

One of the defining features of the Yearbook is that it offers a glimpse into the far reaches of the judicial mind – as captured in the chapter on "Judicial Insights", which records the judges' views, some visceral, others less so; they reflect the judges' passion and intellectual acuity. These writings are most times, tangential to their work as judges.

Justice Yeoh Wee Siam's pithy account on divorce and justice in the family court, with a detailed consideration of the remedies available under the Law Reform (Marriage and Divorce) Act, 1976 is a good read.

Then we have Justice Nor Bee's thoughts on the proper role of the court and the correct approach to be adopted in statutory interpretations. This, against our constitutional framework and the ever pervading concept of the separation of powers, makes compelling reading.

A captivating account of cases involving stateless children and the elusive justice faced by them in their quest for citizenship, was offered by Justice Supang Lian.

In view of the growing body of case laws under the relatively new Construction Industry Payment and Adjudication Act, 2012, Justice Lee Swee Seng's address on the disposal of cases in the Kuala Lumpur Construction Court and his discussion of the issues covering adjudication and arbitration are particularly relevant.

Finally we have Justice Wong Kian Kheong's scholarly discourse on the conditions for the lawful assignment of registered trade marks, which contributes to our understanding of the complex and technical sphere of intellectual property.

As with previous years, this publication continues to speak about human rights issues. In this publication the focus is on the rights accorded to accused persons. As is often the case, the rhetorics of these rights often run from the sublime to the absurd. Thus it is time that the canon of their rights are properly set in place.

In this chapter, the Committee wanted to also fit in the rights of animals – for they too share our ecosystem, and their cognitive issues and welfare are equally deserving of our consideration.

In this, Justice Abdul Rahman Sebli's impassioned writing on animal cruelty and wildlife trade brings into sharp focus the plight of these vulnerable creatures and the critical importance of extending the law's protection to species other than our own. On another note, it would be remiss if this Committee were to overlook the immense contribution of the other arm of the Judicial Academy i.e. the training arm – which has cleaved to ensure that every deserving judge gets his share of on-the-job training and exposure. There has been a recalibration of priorities, with training and educational excellence being treated with the same respect given to excellence in research. The chapter on Judicial Training will attest to this. As the poet Rumi had once professed:

> "God's purpose for man is to acquire a seeing eye and an understanding heart."

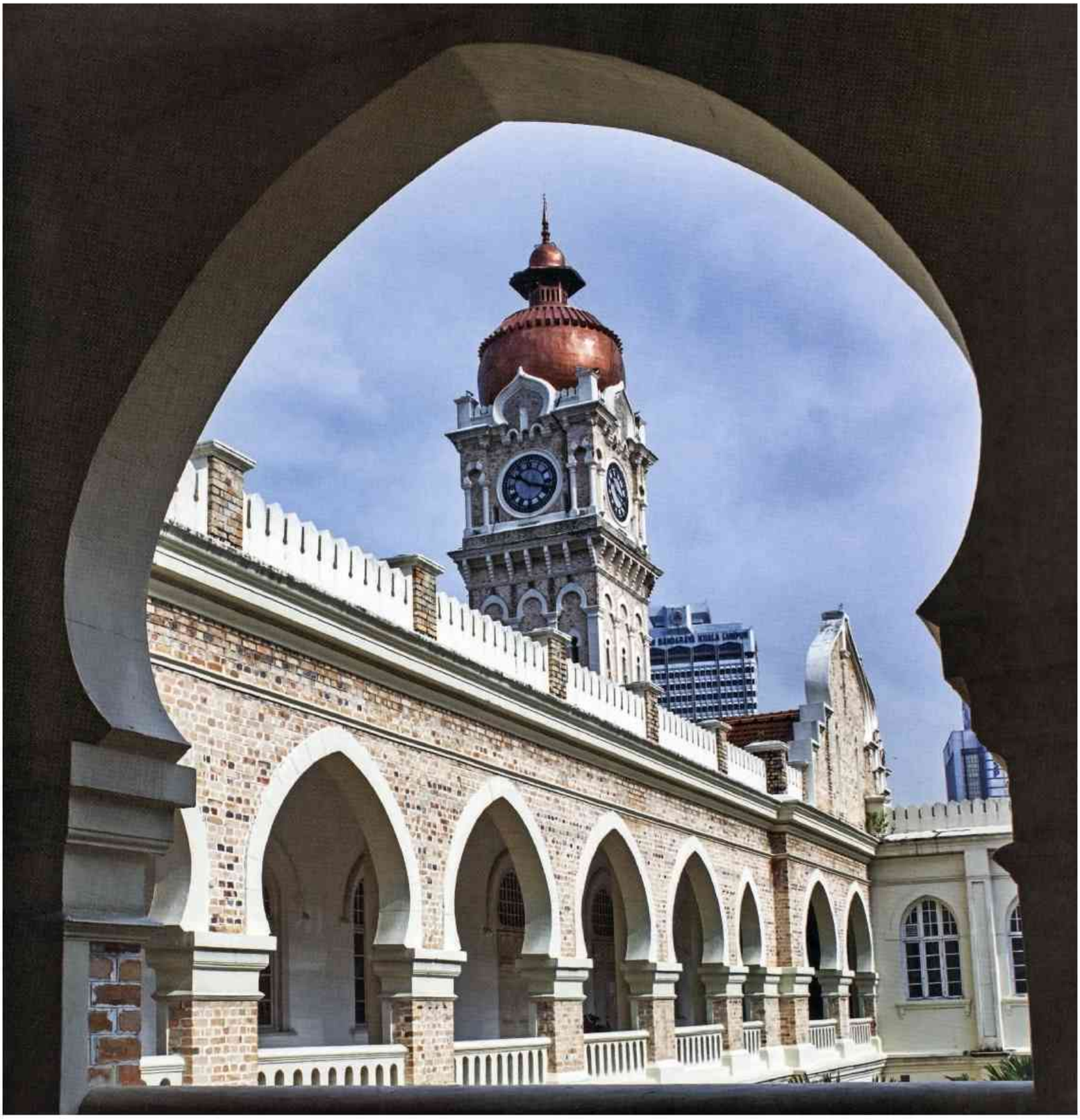
After all has been said and done, it is a relief that this publication is finally complete. I have said this before but one which bears repeating – that in view of our immense workload on the Bench, we had to fit in our commitment to this publication, very narrowly in between our schedule. George Orwell best described producing a book such as this as being akin to coming out of a long bout of some painful illness. Although I will not describe it in such tortuous terms, the task of compiling the articles and the laying out of photographs and editing all of them had put us all in a spin!

Fortunately, the task was lightened with the unfailing good cheer and dedication of each and every member of the Committee. My thanks are owed to Justice Alizatul Khair Osman Khairuddin, Justice Tengku Maimun Tuan Mat, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Justice Faizah Jamaludin; as well as officers Mr Sabri Othman, Mdm Arleen Ramly, Mdm Syahrin Jeli Bohari, Mdm Sharifah Norazlita Syed Salim Idid, Mr Ho Kwong Chin, Mdm Ng Siew Wee, Mr Syahrul Sazly Md Sain, Mdm Norkamilah Aziz, Mr Shazali Hidayat Shariff, Mdm Chang Lisia, Ms Hazmida Harris Lee, Ms Siti Nabilah Abd Rashid, Mr Ahmad Afiq Hasan and Ms Low Wen Zhen.

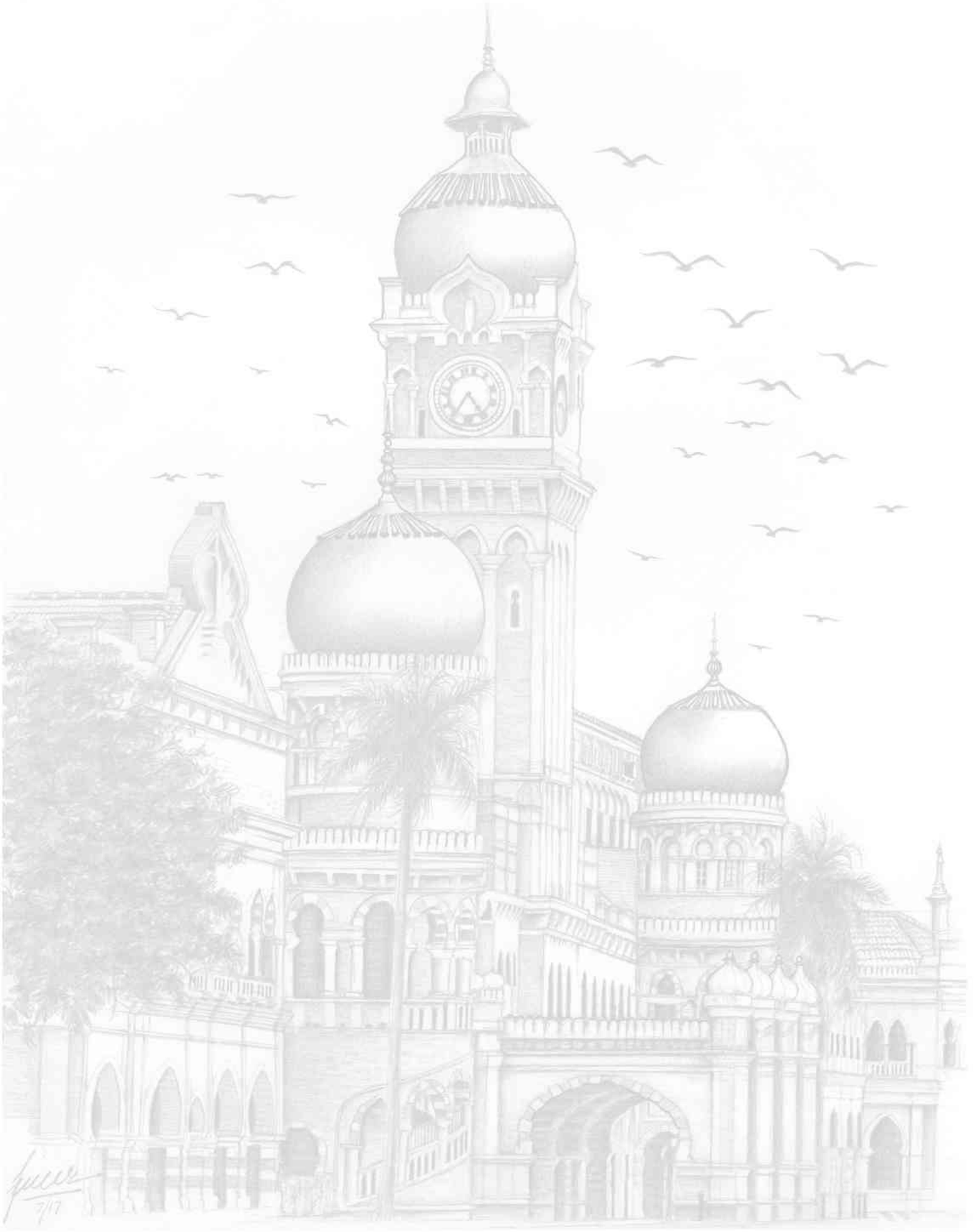
On behalf of the Committee I express my gratitude to Mdm Hamidah Abdul Rahman and Mr Weng Soon Leong for their stellar photography, to Mr Muhammad Nur Hazimi Khalil (Jimmy) for his consistently splendid portraits, and to Percetakan Nasional Malaysia Berhad for their superb work once again. Finally, this publication would not have been possible without the helpful hands of my secretary Mdm Rohani Ismail, and my orderly Mr Mohd Nasir Hussin. Their assistance behind the scenes is much appreciated.

Happy reading!

Justice Zainun Ali
Editor



The balustrade of the Sultan Abdul Samad Building



CHAPTER 1

THE OPENING OF THE LEGAL YEAR 2017

THE OPENING OF THE LEGAL YEAR: ITS ORIGIN

The Opening of the Legal Year originated in the United Kingdom from the Middle Ages. It is held every year in October where Judges march to mark the commencement of the legal year. It was never really called the Opening of the Legal Year; in fact, until 1971 it was actually called "the Opening of the Assize". The purpose of the procession is to dignify the principles of access to justice and the Rule of Law. The judges ask for 'renewed' guidance from the Church. The day begins with a march of the Judges in their robes and wigs from Temple Bar to Westminster Abbey. Then, both the Lord Chancellor and the Lord Chief Justice read out verses from the Bible to remind themselves and others of God's order to do justice. This is then followed by a sermon by the Archbishop. The Supreme Court Judges wear long black gold-embroidered robes and do not don wigs; the High Court Judges wear wigs, scarlet cloth robes, hood and mantle; whereas District Judges wear black robes with lilac-casting.

Position in Malaysia

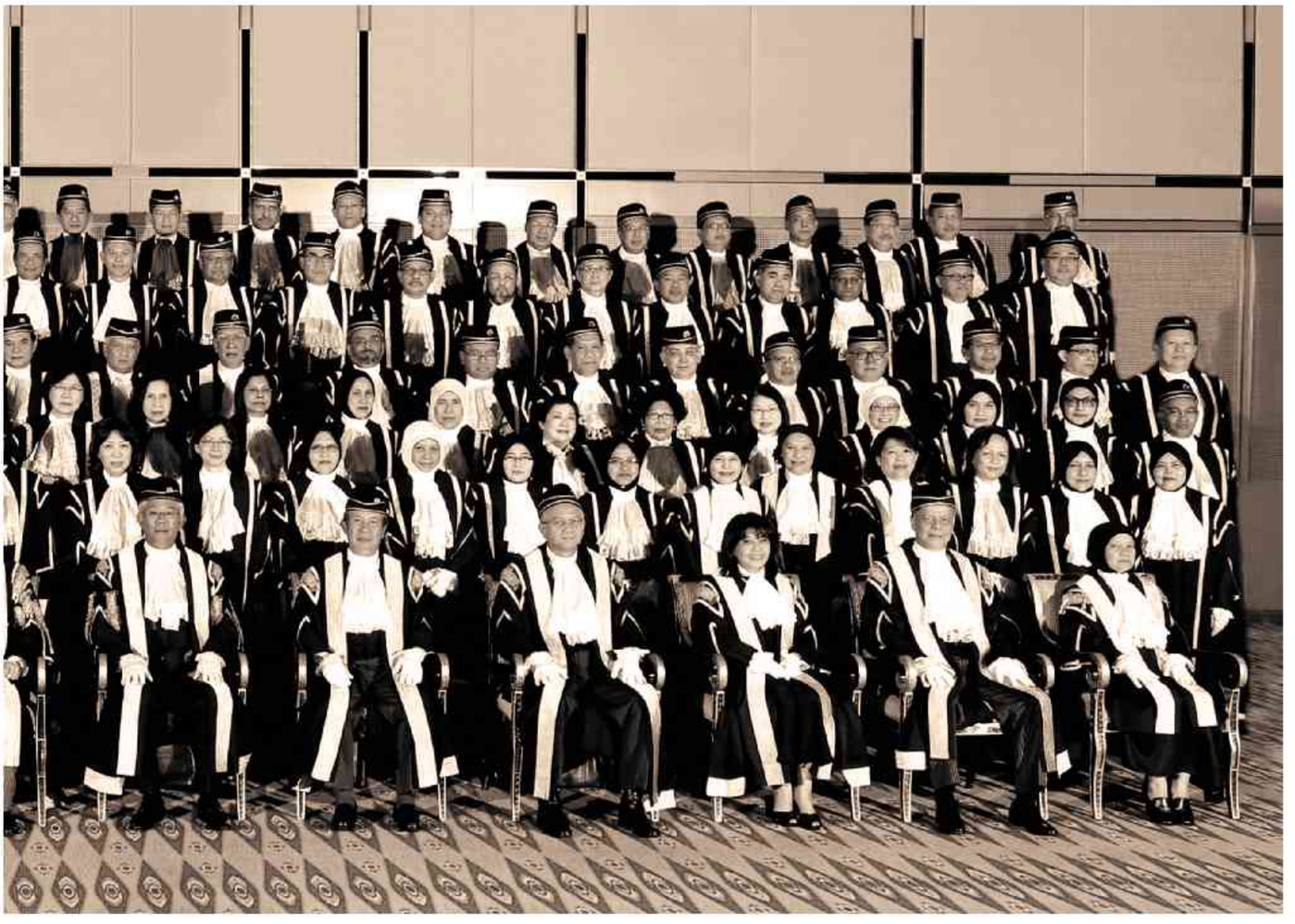
In Malaysia, the earliest record of an "Opening of the assize" was at the Ipoh Supreme Court on 14 January 1958. It was witnessed by a large gathering of guests from the Government, the Bar and the public. It began with Mr Justice Good, the then

Judges of the Superior Court at the

"puisne" judge inspecting the Guard of Honour. This was followed by a rather long gap, with the next ceremony being held in 2001. It was held in Kuala Lumpur and attended by members of the legal fraternity. The ceremony was presided over by the then Chief Justice of the Federal Court, Tun Dato' Seri Mohamed Dzaiddin Haji Abdullah.

Not until 16th January 2010 did we have a permanent revival of the ceremony in Malaysia under the tenure of Tun Zaki Azmi, the then Chief Justice. Since then, the Opening of the Legal Year has become a landmark event in our Judiciary. The annual event is a symbol of our commitment to continue upholding the Rule of Law, and marks the commencement of another year in the administration of justice in this country.

The ceremony is held at convention centres to cater for more people due to the limited space at the Palace of Justice. The ceremony starts with an indoor procession of the practising lawyers, officers from the Attorney General's Chambers, and finally members of the Judiciary. This is a notable difference with the UK where the procession is held outdoors, as the weather here does not permit such long distance walking. The Judges wear long black robes with gold thread lining on the lapel and sleeves and a songkok, the latter being an adaptive head gear suited to our culture. The ceremonial gowns worn by the Chief Justice, the President of the Court of Appeal and the Chief Judges have gold rosettes embroidered on their sleeves.



Opening of the Legal Year 2017

The layout of the hall is akin to a court proceeding, whereby there is a panel for the Chief Justice and His Lordship's bench, and two podiums on opposite sides facing the panel for the Honourable Attorney General and the Bar Council President. Right below the panel are seats for the Registrars. Speeches are delivered in the following order: first, the President of the Malaysian Bar, who also speaks on behalf of the Advocates Association of Sarawak and the Sabah Law Association, followed by a reply by the Attorney General, and finally the Chief Justice. In his speech, the Chief Justice addresses the concerns of both parties and reviews the performance of the courts in the past year. Many distinguished guests from other countries are invited, including the Chief Justice of Singapore, the President of the Constitutional Court of Thailand, and members from other Bar councils such as Germany and Australia. Students from local universities are also invited.

The above is a description of the ceremony in West Malaysia. The ceremony in East Malaysia is a separate event and only for lawyers registered with the Bars in Sabah and Sarawak. Sabah held its first Opening of the Legal Year in 2001, whereas Sarawak started its tradition in 2005. Since 2010, Sabah and Sarawak now have a joint ceremony and take turns hosting the Opening of the Legal Year in East Malaysia.

Other Commonwealth Jurisdictions

In various Commonwealth countries such as Hong Kong, Australia and Singapore, the beginning of the legal year is also marked by a ceremony. However, a religious service is not necessarily part of such ceremony.

Hong Kong

Before the handover of Hong Kong to China in 1997, Hong Kong had two separate Church ceremonies in the morning, one in the Catholic church and another in the Protestant Church. This is followed by a march to the Supreme Court and an inspection of the Guard of Honour, something absent in the UK procession. However, at present,

Standing L-R: Justice Richard Malajum, Justice Raus Sharif, Chief Justice Arifin Zakaria and Justice Zulkefli Ahmad Makinudin at the Opening of the Legal Year 2017 at the Putrajaya International Convention Centre.

every year in January, there is no longer a church ceremony and this event is now conducted entirely in the common City Hall in the hope of getting the public's attention. Another major difference is that the Chief Justice at the head of the procession is only dressed in a suit and an everyday black robe without his wig, whereas other judges will be donned in red, purple and gold trimmed robes depending on seniority. Like the UK, the name was changed from "Opening of the Assize" to Opening of the Legal Year, initiated in 1980 by Sir Denys Roberts, the Chief Justice at the time.

Australia

Australia conducts the opening of its legal year on a state-by-state basis. The ceremony is inspired by the seeking of guidance from the church, as in the UK. However, Australia's ceremony is mostly influenced by Catholicism. Judges wear red vests to signify the willingness to defend the truth inspired by God. The Red Mass is held in Victoria and New South Wales, but in Tasmania, no Red Mass is held while the procession is in Church. A major adaptation is that from 2015, in Victoria, there is now a Multi-Faith Service in the morning held separately from the Red Mass to celebrate the diversity of religion among practitioners. Another difference is that Australia holds their Opening of the Legal Year in January or February, and not in October like in the UK.

Singapore

Singapore's "Opening of the assizes" can be traced back to the 19th century under the management of East India Company. There was however a hiatus until 1923 when Sir Walter Shaw (CJ) revived the ceremony by inspecting the Guard of Honour outside the Supreme Court. 1926 onwards saw a church ceremony in the morning prior to the inspection of the Guard of Honour, but this and the inspection of the Guard of Honour ceased in the 1960s. Today, Singapore's Opening of the Legal Year runs for one week in January and is held annually at the Supreme Court.

Chief Justice Tun Arifin Zakaria and Justice Azahar Mohamed at the Opening of the Legal Year 2017 at the Putrajaya International Convention Centre.

THE OPENING OF THE LEGAL YEAR 2017 – PENINSULAR MALAYSIA

Since the revival of the Opening of the Legal Year in 2010, the event has always involved three parties, namely the judiciary, the Attorney General's Chambers and the Malaysian Bar, as all three are equal partners in the administration of justice. In addition, the proceedings have always included a speech by the Chief Justice, as well as speeches by the Honourable Attorney General (or his representative), and the President of the Malaysian Bar.

Speaking to the audience and reporters during the Ceremonial Opening of the Legal Year 2017 at the Putrajaya International Convention Centre, our Chief Justice Tun Arifin Zakaria called on the Government to increase the number of investigating officers (IOs) and chemists, especially in Selangor, to expedite murder trials. The acute shortage, he said, would only delay the trial process because the same IOs and chemists involved in cases would have to attend the court proceedings as well.

"These IOs and chemists, who investigate cases and analyse samples, will have to appear in three courts in one day. This delays the murder trial process," he said when asked to comment on ways to expedite cases.

Chief Justice Arifin Zakaria also called on the Bar Council to address the acute shortage of criminal lawyers. "The Bar Council needs to find ways to increase the number of lawyers in criminal practice to overcome the limited number."

"We do understand that more and more lawyers are choosing the civil world since (the field of) criminal law is not lucrative," he said.

In his speech, Tun Arifin said that allowing more tasks to be done online – from the filing of criminal matters and appeals to bidding on auctions – would improve accessibility and better serve the public.

"The E-bidding system will make the process more transparent and is expected to do away with syndicates that seeks to interfere and lead to artificial pricing," he said.

The E-Court system introduced in 2009 was originally available in selected courthouses in major cities like Kuala Lumpur and Penang. However, the system is entering its second phase and will be available throughout the peninsula.

Chief Justice Arifin Zakaria said that there were also plans to broaden the scope of the specialised Cyber Courts to hear civil suits. Set up on 1 September 2016, the Cyber Courts specifically handle cyber crime cases including bank fraud, online gambling and pornography.

"2016 was indeed a very challenging year for me personally and the chambers generally ... but as a wise man once said, one cannot control other people but one can control their reactions to them."

"This is exactly how the chambers endure the challenges. As severely hit as we were, the AGC remains unshaken throughout," the Attorney-General Tan Sri Mohamed Apandi Ali said in a speech at the ceremonial opening of the Legal Year 2017. His speech was delivered by Solicitor General II Datin Paduka Zauyah Be T. Loth Khan.

The Attorney-General's Chambers (AGC) has endured a spate of attacks and biased perceptions hurled towards the department in the last 12 months, said Attorney-General Tan Sri Mohamed Apandi Ali.

He said questions were also raised on the commitment of the AGC and its ability to uphold fair and efficient administration of justice in Malaysia.

However, strong teamwork within the AGC had allowed it to get through the challenges with "poise and composure", he added.

The Attorney-General also called upon officers in the chambers to take heed of the principles embedded in the AGC's *"Bertekad menegakkan keadilan"* (steadfast in upholding justice) new slogan while discharging their duties.

He added that the slogan serves as a guidance for the AGC to perform its responsibilities based on two major principles: to do whatever it takes to uphold justice and to uphold it without fear or favour.

"These two principles embedded in our new slogan should serve as a guide to me as the AG of Malaysia and to all my colleague at the AGC in performing our responsibilities and discharging our duties as government legal officers," he said.

Stating that the slogan should not be exclusively for AGC officers, Mohamed Apandi said it should also be practiced by all within the Malaysian legal fraternity.

Malaysia Bar president Steven Thiru, who also spoke at the conference, said that the legal profession had numerous concerns in the coming year, mainly among them being technology's disruption to the legal service.

He highlighted recent trends like Artificial Intelligence and online services like self-lawyering, by way of using contract templates instead of hiring a lawyer.

"These changes should be seen as the next notch of progress, not the last rites of the profession," said Thiru, calling on lawyers to leverage on technology to deliver more effective services.

He said the Bar had submitted a proposal to the Prime Minister's Office through the minister in charge of law, Datuk Seri Azalina Othman that was meant as a road map of the legal profession. This comes on the heels of Singapore's Chief Justice Sundaresh Menon endorsing a five-year technology blueprint for the courts, with plans to set up a Judiciary IT Steering committee to review, revise and update the initiative.

Chief Justice Arifin Zakaria (middle), with Justice Raus Sharif (left) and Justice Zulkefli Ahmad Makinudin (right) at the Opening of the Legal Year 2017 at the Putrajaya International Convention Centre.

THE OPENING OF THE LEGAL YEAR 2017 – SABAH AND SARAWAK

Chief Justice Arifin Zakaria (sitting on a high back chair) delivering his speech at the Opening of the Legal Year 2017 at the Sandakan High Court

The auspicious event, the 2017 Opening of the Legal Year Sabah and Sarawak returned to where it was revived back in 2007. On Friday, 6 January 2017, the city of Sandakan, Sabah saw a vast gathering of members of the Bench and the Bar as they marched on the streets, towards the Sandakan Court Complex. Also present to join the procession were Chief Justice of Malaysia, Chief Justice Arifin Zakaria, Chief Judge of Malaya, Justice Ahmad Haji Maarop, the Attorney General of Malaysia, Tan Sri Mohamed Apandi Haji Ali, Federal Court Judge, Justice Azahar Mohamed and Court of Appeal Judge, Justice David Wong Dak Wah.

In his speech, the Chief Judge of Sabah and Sarawak applauded the Sabah and Sarawak judiciary officers and personnel for their relentless efforts to ensure the smooth running of judicial administration in both states. The commitment and hard work were evident as the statistics showed that all courts in Sabah and Sarawak managed to dispose their cases within the prescribed timelines in 2016. The Chief Judge hoped the good achievement will continue in 2017. While His Lordship commended the Bar's close cooperation in the disposing of cases in Sabah and Sarawak, the Chief Judge also emphasized that "the Rule of Law must not only be said, it must be

Chief Justice Arifin Zakaria and his wife, Toh Puan Robiah Abd. Kadir in a parade to mark the beginning of the Legal Year 2017 in the city of Sandakan, Sabah

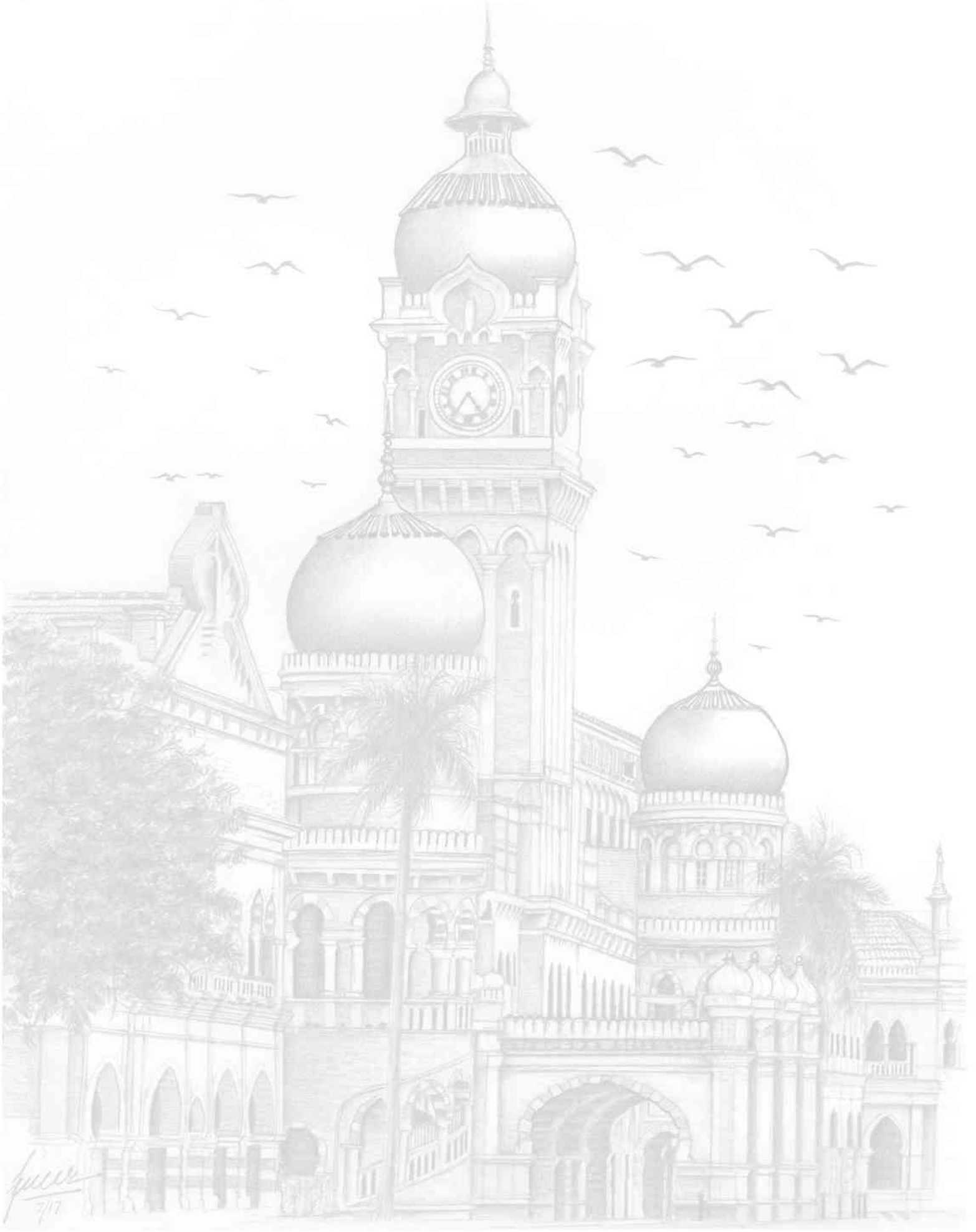
Judges' procession to mark the beginning of the Legal Year 2017
Justice Richard Malanjum (third left, front) is pictured in the said parade

carried out and respected as well. Justice is not the domain of the rich and powerful". The Chief Judge voiced his concern over the rise of unrepresented litigants in both civil and criminal cases in Sabah and Sarawak. His Lordship observed that the hike was not due to scarcity of lawyers, but was caused by the exorbitant legal fees charged on the clients. Some of the unrepresented litigants fought an uphill battle on public interest matters such as environmental issues and their right to life or livelihood. On that note, the Chief Judge expressed his hopes that the legal practitioners in both states put serious thoughts in taking in retainers of those who deserve legal assistance though they were not well to do clients. His Lordship then pointed out that the involvement of the Bar members in the Yayasan Bantuan Guaman Kebangsaan Program (YBGK) will help to cater for thesesituations.

The Chief Judge in his speech promised to continue serving justice to the rural people through the mobile court programme. The mobile court programme had helped to reduce the number of paperless rural people in Sabah. Following the success, Sarawak mobile courtroom was launched by the Chief Justice of Malaysia, Chief Justice Arifin Zakaria, in Sungai Asap and Bakun Dam in Sarawak in November 2016, he recalled.

In addition to the mobile court programme, the Chief Judge pledged to plant one million trees in Sabah, one of the environmental awareness programme in line with establishment of the Green Court in Sabah and Sarawak. To begin with, the tree planting activities will be participated by the Sabah Court and Sabah Law Association (SLA). The Rt. Hon. Chief Justice and his wife, each planted a tree at the Sandakan Court compound after the opening ceremony, to officiate the 1Million Trees Programme. The Chief Judge welcomed the participation of other government departments and non-governmental organization to join the awareness programme and suggested that other courts in Malaysia to initiate the same programme throughout 2017.

Inner corridor leading to the courtrooms and judges' chambers in the Sultan Abdul Samad Building



CHAPTER 2

THE FEDERAL COURT

THE FEDERAL COURT

The Federal Court, being the highest appellate court in the country, is constantly busy. The enormous task requires a heavy sense of responsibility and maturity to ensure that cases are consistently resolved in accordance with the highest of standards and the finest of traditions.

Leave applications, civil appeals and criminal appeals form the bulk of cases filed in the Federal Court. In 2017, a total of 1,143 cases were registered. This is a decrease of 7% compared to 2016, which saw a total of 1,218 cases being registered. The number of disposed cases in 2017 increased significantly from the previous year, with 1,335 cases successfully heard and disposed of, leaving a balance of 961 cases pending at the Federal Court. Thus, as at 31st December 2017, 117% out of the total number of cases registered at the Federal Court were successfully disposed.

In 2017, a number of initiatives were carried out to reduce the number of cases pending. The first initiative was to fix an adequate number of cases for hearing daily. This was done by fixing the hearing date of a case not more than three months from the date of case management. The registry fixes the cause list with due regard to the time likely to be taken over each case and takes into consideration the risk of cases being postponed from time to time.

Proper weightage is given to each case so as to ensure that cases are not adjourned due to time constraints.

Time is the essence in reducing backlog and disposing of new cases. In 2017, a time line for disposal was introduced for each case in the Federal Court. Leave applications are to be heard within six (6) months from the date of registration, whereas for civil and criminal appeals, the time line is six (6) months from the filing of the appeal record. Monthly reports are analysed so as to monitor the caseloads and disposition rates in order to enhance efficiency and dispense justice expeditiously.

Another initiative concerns the e-filing system. Previously, the e-filing system in the Federal Court could only be utilised for leave applications. From May 2017, the availability of the e-filing system expanded to include civil appeals and criminal appeals.

To further optimise judicial time, the Federal Court started to have two Federal Court panels sitting in a day, one to hear leave applications and the other will hear civil and criminal appeals.

For 2018, having been involved in the reform programme right from the start, I am a strong proponent for the certainty of trial dates. It means, once a case is fixed for hearing, there should be no postponement. This is what we want to achieve in 2018. This is where case management is important. One very important aspect of case management is that a date for hearing should be fixed at an early stage in the proceedings and that there should be a realistic estimate of duration of the hearing date. Adjournments should only be granted in extraordinary circumstances. The governing principle in ensuring certainty of hearing dates is, it is for the Court, and not the parties to manage the hearing date of a particular case. The rule is, there shall be no postponement, except in the event of death or near death.

To the Judges, judicial officers and staff of the Federal Court, I would like to take this opportunity to record my sincere appreciation for their continuous commitment and hard work throughout the past year. Further, this sterling performance could not be achieved without the cooperation from the Attorney General's Chambers as well as members of the Bar.

On a different note, the year 2017 witnessed the retirement of Tun Arifin Zakaria, the 13th Chief Justice of Malaysia. Tun Arifin sat on the Bench for over 25 years. On behalf of the Judges, officers and staff, I extend our profound gratitude to Tun Arifin Zakaria for his immeasurable and invaluable contribution to the Judiciary. We wish him, good health and a blissful retirement. Justice Suriyadi Halim Omar also retired from the Federal Court bench in 2017. On behalf of my colleagues in the Federal Court, I would like to record our sincere appreciation to Justice Suriyadi for his immense contribution to the Judiciary. I wish him a happy and prosperous retirement.

Besides my appointment as the Chief Justice, I would also welcome the newly appointed President of the Court of Appeal, Justice Zulkefli Ahmad Makinudin and the newly appointed Chief Judge of Malaya.

Justice Ahmad Maarop. Both bring an impressive breadth and depth of knowledge and skill to their new roles, having served as senior judges. Both have supported me in the discharge of my duties and I look forward to continuing to work closely with them and also Justice Richard Malanjum, the Chief Judge of Sabah and Sarawak, in the coming years.

The year 2017 also witnessed the elevation of Justice Prasad Sandasoham Abraham and Justice Alizatul Khair Osman Khairuddin to the Federal Court. I would like to congratulate them and look forward to working with both of them. I am confident that their years of experience in the courts below will be invaluable to the Federal Court.

For the year 2018, it is my hope that the Federal Court Judges, officers and staff will continuously strive to improve their performance and instill public confidence in the Judiciary. With their dedication and hard work, the Judiciary will surely make its mark in history and rise to greater heights.

Justice Raus Sharif
Chief Justice of Malaysia

JUDGES OF THE FEDERAL COURT

1. Justice Suriyadi Halim Omar
2. Justice Hasan Lah
3. Justice Zainun Ali
4. Justice Abu Samah Nordin
5. Justice Ramly Ali
6. Justice Azahar Mohamed
7. Justice Zaharah Ibrahim
8. Justice Balia Yusof Wahi
9. Justice Aziah Ali
10. Justice Jeffrey Tan Kok Wha
11. Justice Prasad Sandosham Abraham
12. Justice Alizatul Khair Osman Khairuddin

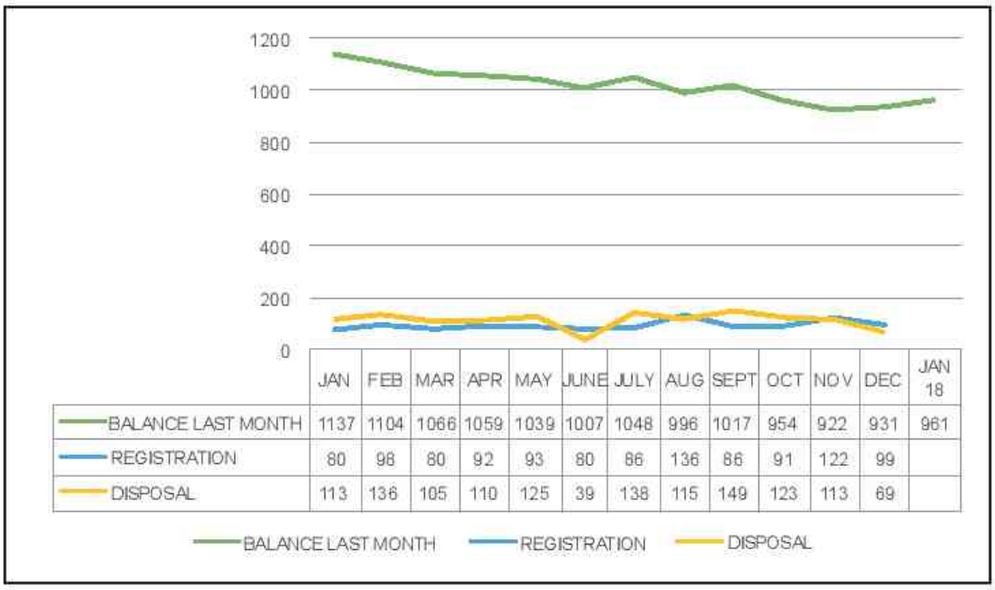
PERFORMANCE OF THE FEDERAL COURT IN THE YEAR 2017

The Federal Court's schedules and fixing of cases in 2017 remained as busy as it was in the preceding year. There are three main categories of cases in the Federal Court, namely civil appeals, criminal appeals and leave applications for civil appeals. Other matters include civil and criminal references, criminal applications and cases where the Federal Court exercises its original jurisdiction pursuant to Article 128(1) of the Federal Constitution.

The number of cases registered in the Federal Court has been steadily increasing in the past few years given the high disposal rate of cases at the High Court and the Court of Appeal. From 460 pending cases in year 2010, the figures increased to 1,137 cases as at 31st December 2016. Thus, in 2017 much of our judicial time was focused in reducing the number of pending cases, especially the old cases. The result is positive. The number of pending cases was reduced to 961. Out of this figure 39 cases are pre 2015 cases, 193 cases are 2016 cases, and 729 cases are 2017 cases. For 2018, the priority will be to dispose all the pre 2017 cases.

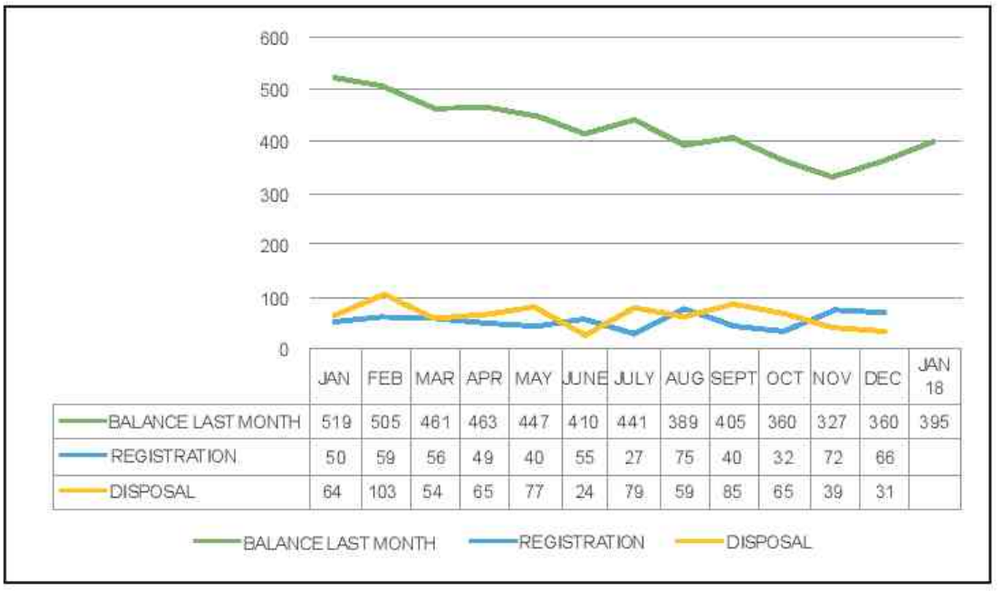
In 2017, a total of 1,335 cases were disposed of as against 1,143 cases registered. The percentage of disposal against registration is 117%. The overall performance of the Federal Court in 2017 can be seen in GRAPH A below:

GRAPH A
NUMBER OF CASES REGISTERED AND DISPOSED OF IN 2017



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	1137	1104	1066	1059	1039	1007	1048	996	1017	954	922	931	961
REGISTRATION	80	98	80	92	93	80	86	136	86	91	122	99	
DISPOSAL	113	136	105	110	125	39	138	115	149	123	113	69	

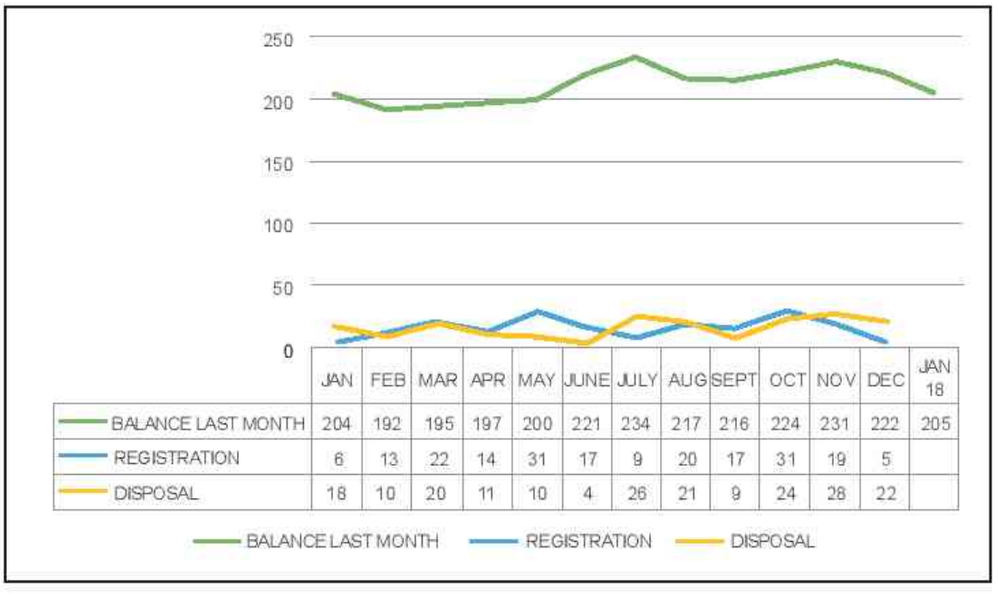
GRAPH B
LEAVE APPLICATIONS IN 2017
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	519	505	461	463	447	410	441	389	405	360	327	360	395
REGISTRATION	50	59	56	49	40	55	27	75	40	32	72	66	
DISPOSAL	64	103	54	65	77	24	79	59	85	65	39	31	

The registration for leave applications showed a reduction of 13% from 702 in 2016 to 621 in 2017. As shown in GRAPH B above, the total number of leave applications is 395 cases as at the end of 2017. The disposal rate of leave applications against the cases registered is 120%.

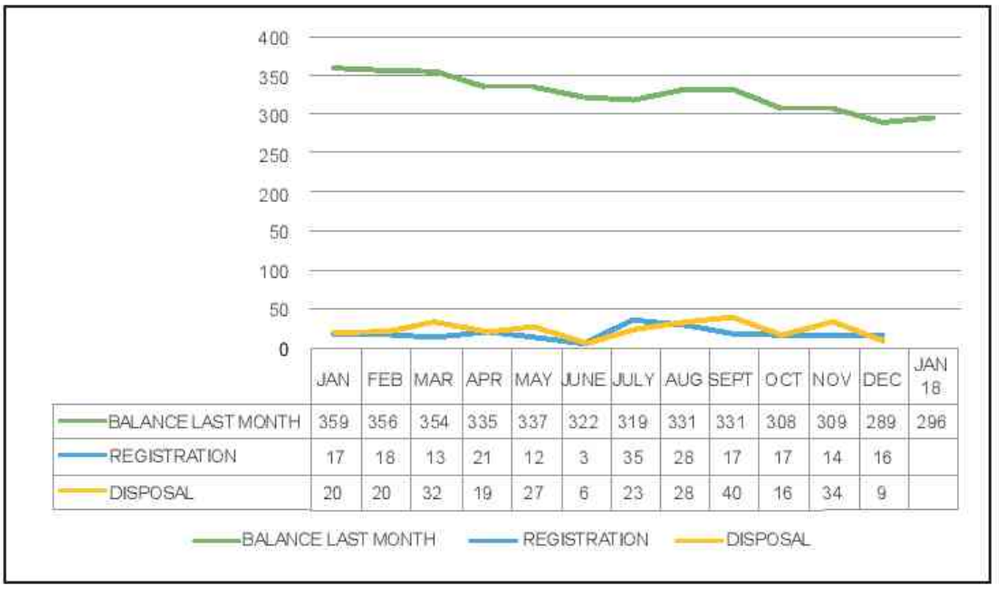
GRAPH C
CIVIL APPEALS IN 2017
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	204	192	195	197	200	221	234	217	216	224	231	222	205
REGISTRATION	6	13	22	14	31	17	9	20	17	31	19	5	
DISPOSAL	18	10	20	11	10	4	26	21	9	24	28	22	

For civil appeals, the registration showed an increase of 24% from 155 in 2016 to 204 in 2017. As shown in the GRAPH C above, a total of 203 civil appeals out of 204 pending appeals. The disposal rate of civil appeals against the cases registered is 99.5%.

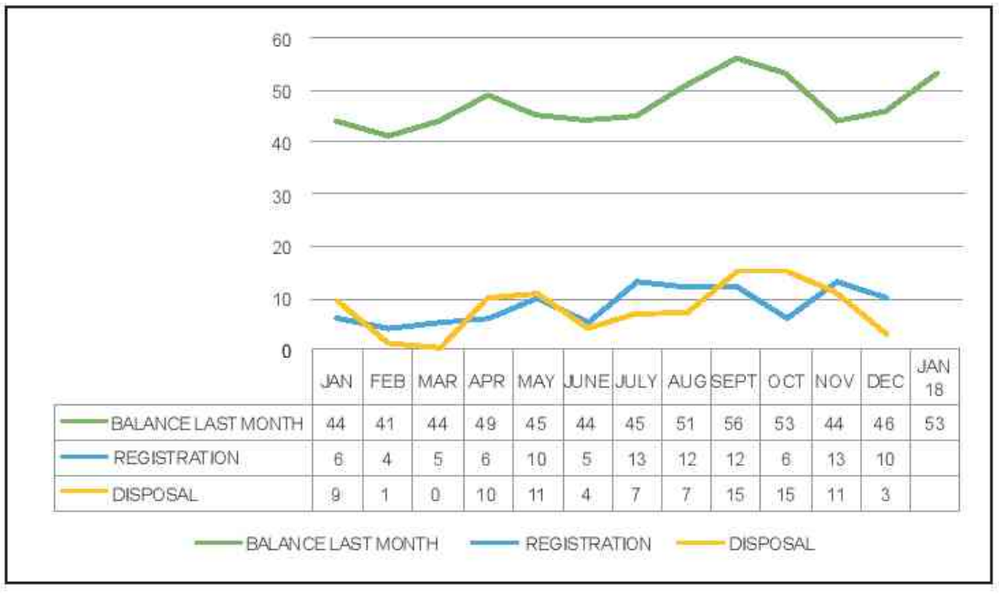
GRAPH D
CRIMINAL APPEALS IN 2017
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	359	356	354	335	337	322	319	331	331	308	309	289	296
REGISTRATION	17	18	13	21	12	3	35	28	17	17	14	16	
DISPOSAL	20	20	32	19	27	6	23	28	40	16	34	9	

For criminal appeals, the number of appeals registered in 2017 is 211 as compared to 339 cases in 2016. 274 appeals were disposed, leaving a balance of 296 as at 31st December 2017. As shown in GRAPH D above, the disposal rate of criminal appeals against the appeals registered is 130%.

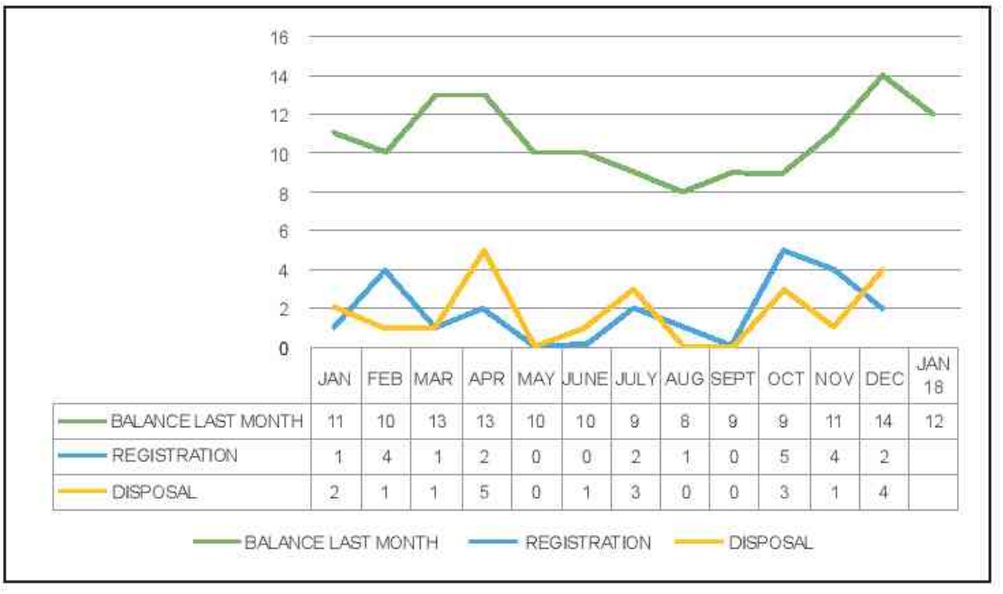
GRAPH E
HABEAS CORPUS APPEALS IN 2017
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	44	41	44	49	45	44	45	51	56	53	44	46	53
REGISTRATION	6	4	5	6	10	5	13	12	12	6	13	10	
DISPOSAL	9	1	0	10	11	4	7	7	15	15	11	3	

For habeas corpus appeals, there were 102 appeals registered in 2017. 93 appeals were disposed. As shown in GRAPH E above, as at December 2017, there were only 53 habeas corpus appeals pending.

GRAPH F
ORIGINAL JURISDICTION/ CIVIL REFERENCE/ CRIMINAL REFERENCE/ CRIMINAL APPLICATION IN 2017
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN 18
BALANCE LAST MONTH	11	10	13	13	10	10	9	8	9	9	11	14	12
REGISTRATION	1	4	1	2	0	0	2	1	0	5	4	2	
DISPOSAL	2	1	1	5	0	1	3	0	0	3	1	4	

For other matters comprising of original jurisdiction, civil reference, criminal reference and criminal application, there were 22 cases registered in 2017, 21 cases were disposed of in 2017. As shown in the GRAPH F above, as at the end of December 2017, there were only 12 cases pending.

Conclusion:

Based on the statistics stated above, the Federal Court has succeeded in maintaining the record of reducing the number of pending cases.

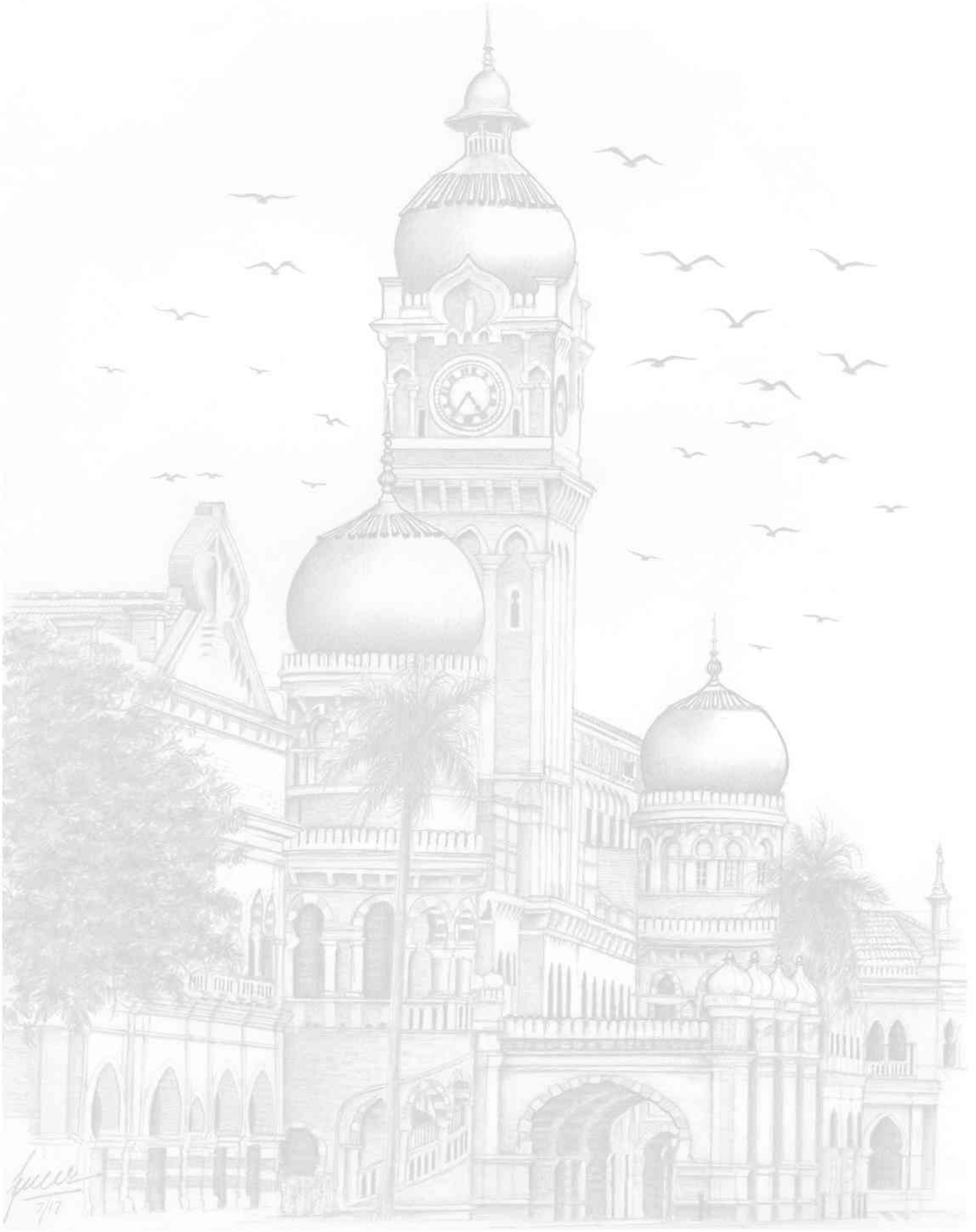
Considering the achievement in 2017, in 2018, our main thrust is to clear pre 2017 cases by the end of June this year. Be that at it may, we will pursue our mission to have waiting period reduced to not more than twelve months for the disposal of every case registered in the Federal Court.

With the continued strong support amongst the Federal Court Judges, officers, supporting staff, officers from the Attorney General's Chambers, members of the Bar and other stakeholders, the Federal Court will continue to improve its delivery system.

A Five Member Panel of the Federal Court Bench

Seated L - R: Justice Zulkefli Ahmad Makinudin, Chief Justice Raus Sharif and Justice Suriyadi Halim Omar

Standing L - R: Justice Jeffrey Tan Kok Wha and Justice Abu Samah Nordin



CHAPTER 3

THE COURT OF APPEAL

THE COURT OF APPEAL

On 1 April 2017, Rt. Hon. Tun Raus Sharif was appointed as the 14th Chief Justice of Malaysia. On the same date, I was appointed to take over from Rt. Hon. Tun Raus as the President of the Court of Appeal. During his tenure as the President of the Court of Appeal, Rt. Hon. Tun Raus introduced many positive changes for the enhancement and effective administration of the Court of Appeal. On behalf of all the Judges and support staff of the Court of Appeal, I would like to record our appreciation and grateful thanks to Rt. Hon. Tun Raus for his guidance and contributions to the Court of Appeal.

The Court of Appeal is the appellate court to all the High Courts and Subordinate Courts in Malaysia. It is also the final forum of appeal for cases originating from the Subordinate Courts. Currently, there are 27 Court of Appeal Judges sitting in panels of three for every appeal and application to the Court of Appeal. The number of cases filed and registered at the Registry of the Court of Appeal is increasing annually. This is reflected in the workload of the Judges of the Court of Appeal, which they have to discharge efficiently and expeditiously.

In 2017, a total of 3,839 civil and interlocutory appeals were registered at the Court of Appeal. Out of the total of civil and interlocutory appeals registered, 3,079 were disposed of. This represents an 80% disposal rate against cases registered.

For criminal appeals, a total of 1,232 appeals were registered in 2017. This is an increase of 21% of criminal appeals as compared with the number of criminal appeals registered in 2016. A total of 1,011 criminal appeals were disposed of, which is 82% of criminal appeals registered.

Currently there are no pre-2017 appeals pending for the Muamalat Appeal cases and Leave to Appeal Applications.

It is worth recording here that for the year 2017, the Judges of the Court of Appeal had written and produced 457 reported grounds of judgments for both civil and criminal appeals. I would like to commend the Judges, the Registrar and the support staff of the Court of Appeal for their hard work and tireless efforts in ensuring the efficient and timely disposal of these cases.

The year 2017 witnessed the retirement of four Judges of the Court of Appeal, namely, Justice Lim Yee Lan, Justice Varghese George, Justice Zamani Abdul Rahim, and Justice Asmabi Mohamed. We also witnessed the elevation of Justice Alizatul Khair Osman Khair from the Court of Appeal to the Federal Court. I would like to thank all of them for the support and contributions which they had given as Judges of the Court of Appeal. I wish them all the very best.

At the same time, I would like to welcome the appointment of new Court of Appeal Judges, namely, Justice Yeoh Wee Siam, Justice Suraya Othman and Justice Rhodzariah Bujang. I look forward to working with all of them. I wish them the very best and hope their previous experience on the bench of the High Court will be invaluable to the Court of Appeal. I would also like to welcome back to the Court of Appeal Justice Yaacob Sam, who had served as Chairman of the Enforcement Agency Integrity Commission until 15 October 2017.

For the year 2018, the Court of Appeal will continue its efforts of disposing the cases before it within the stipulated timeline. In order to achieve this objective, the Court of Appeal will continue with its specialised panels according to the category of cases. It will also strictly monitor applications for postponement of cases before giving any approval. In this regard, I would like to advise counsels appearing before the Court of Appeal to plan their cases carefully so as avoid any clash of hearing dates between the Court of Appeal and other Courts. Counsels must give priority for the hearing of their cases especially if it had been registered for more than a year. Counsels attending the case management session should treat the sessions seriously in the conduct and preparation of the cases and for the hearing date to be fixed.

For grounds of judgment to be made available to the respective parties, I will continue to supervise and ensure that judges produce their written grounds

of judgment within a reasonable time. This also applies to delivery of the decision of the Court that have been reserved to another date after the conclusion of the hearing.

In conclusion, it is my hope that the Court of Appeal will be able to dispose of all pre-2017 cases before the end of the year 2018. The Bench, the Bar and the Attorney General Chambers must work together to ensure that the cases fixed for hearing would proceed for hearing and disposal to avoid any unnecessary delays.

I wish everyone the best in 2018.

Thank you.

Justice Zulkefli Ahmad Makinudin
President of the Court of Appeal

JUDGES OF THE COURT OF APPEAL 2017

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

PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2017

The Court of Appeal adjudicates appeals from the High Court and the Subordinate Court. These appeals are classified into three main categories namely Civil Appeals, Criminal Appeals and Interlocutory Appeals (IM). Civil Appeals are divided into several subcategories i.e. New Commercial Court Appeals (NCC), New Civil Court Appeals (NCvC), Intellectual Property Appeals (IPCV), Muamalat Appeals, Admiralty Appeals and Construction Appeals.

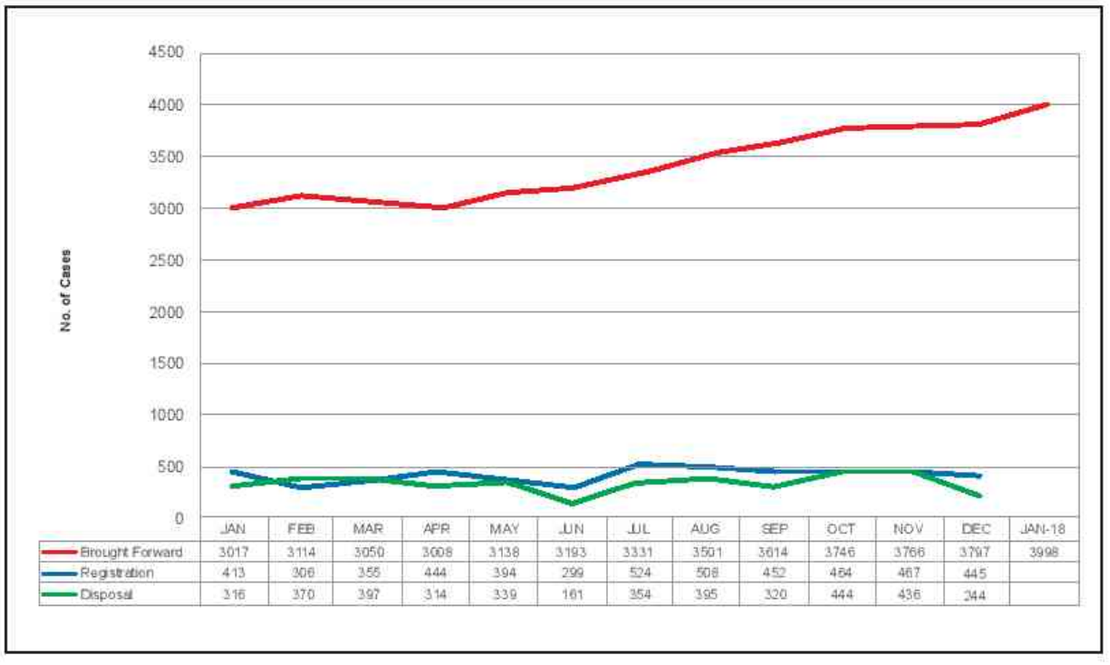
The Court of Appeal also hears leave applications, which are mainly for appeals originating from the Subordinate Courts.

As at 31 December 2017, there were 3998 appeals pending in the Court of Appeal. This figure comprises of civil appeals, criminal appeals and interlocutory appeals. Out of these 3998 appeals pending, 88% of these cases were registered in 2017. Only 12% of these appeals were pre-2017 cases.

For civil and IM appeals, a total of 3839 were registered in 2017. The Court of Appeal successfully disposed of 3079 of these appeals in 2017. This represents an 80% disposal rate of the civil and IM appeals registered in 2017.

The overall performance of the Court of Appeal is shown in Graph A below:

GRAPH A
NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2017



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	3017	3114	3050	3008	3138	3193	3331	3501	3614	3746	3766	3797	3998
Registration	413	306	355	444	394	299	524	508	452	464	467	445	
Disposal	316	370	397	314	339	161	354	395	320	444	436	344	

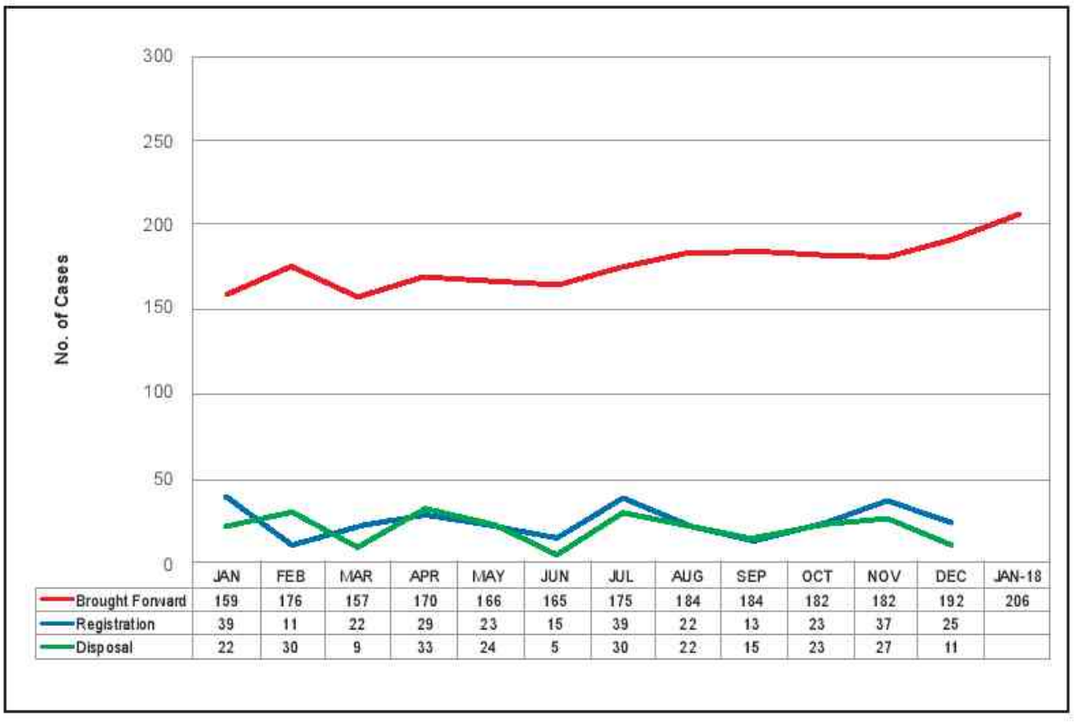
Interlocutory Matters Appeal (IM)

In 2017, a total of 298 IM appeals were registered at the Court of Appeal and 159 IM appeals were brought forward from 2016. The Court of Appeal disposed of 251 IM appeals.

As at 31 December 2017, there were 206 IM appeals pending of which 21 appeals were pre-2017 appeals. It is targeted that all of these pre-2017 appeals will be disposed by the middle of 2018.

The number of IM appeals registered, disposed and pending before the Court of Appeal in 2017 are shown in Graph B below.

GRAPH B
INTERLOCUTORY MATTERS APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	159	176	157	170	166	165	175	184	184	182	182	192	206
Registration	39	11	22	29	23	15	39	22	13	23	37	25	
Disposal	22	30	9	33	24	5	30	22	15	23	27	11	

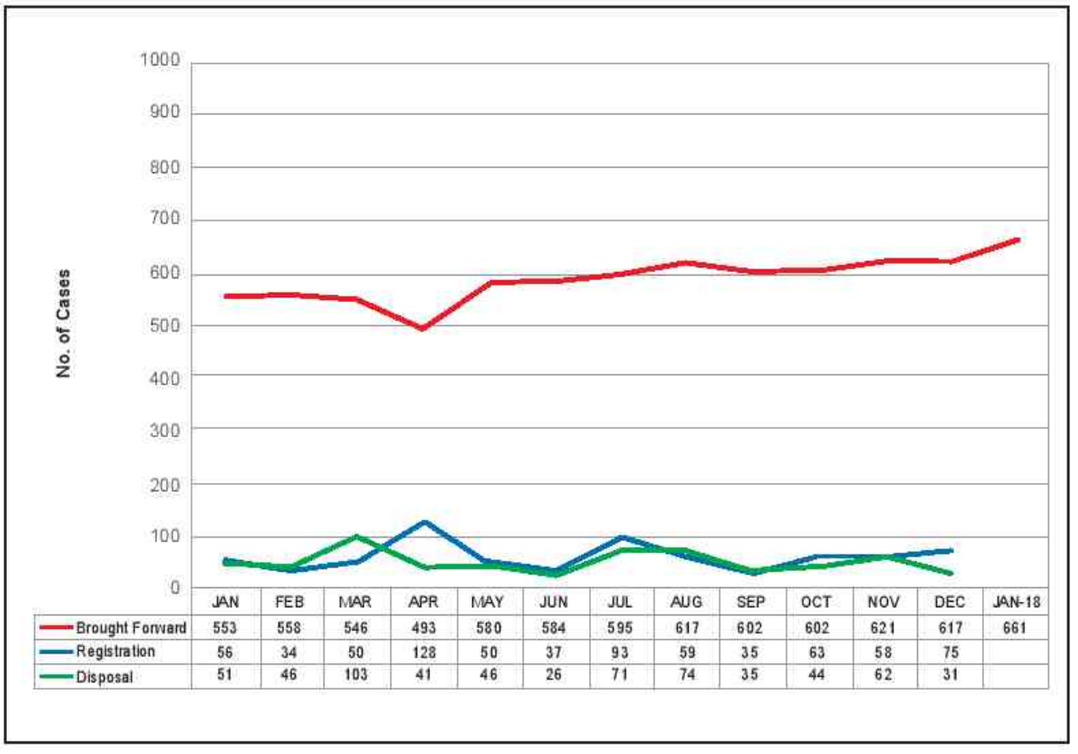
Full Trial Civil Appeals (FT Appeals)

In 2017, a total of 738 FT appeals were registered and 553 FT appeals were brought forward from 2016. The Court of Appeal disposed 630 FT appeals in 2017.

As at 31 December 2017, there were 661 FT appeals pending; of which 118 appeals were pre-2017 appeals. The target is to dispose all these pre-2017 appeals by the end 2018.

Graph C below shows the Court of Appeal's overall performance in relation to FT Appeals.

GRAPH C
FULL TRIAL CIVIL APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



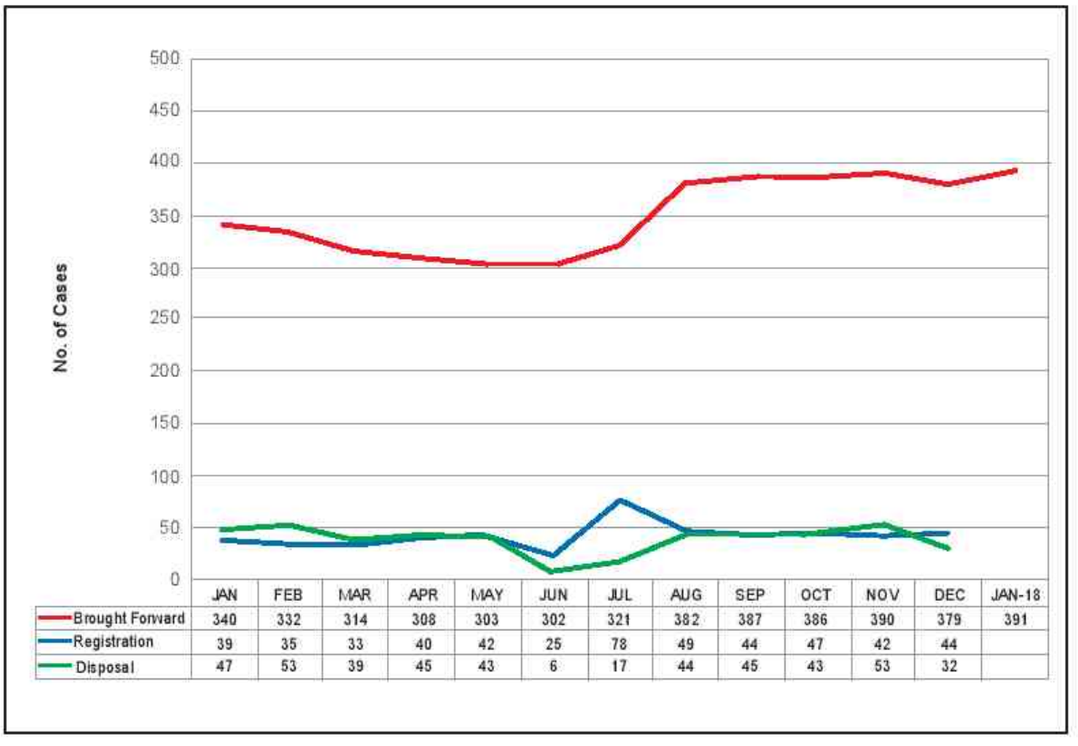
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	553	558	546	493	580	584	595	617	602	602	621	617	661
Registration	56	34	50	128	50	37	93	59	35	63	58	75	
Disposal	51	46	103	41	46	26	71	74	35	44	62	31	

New Commercial Court Appeals (NCC)

In 2017, a total of 518 NCC Appeals were registered and a total of 340 appeals were brought from 2016. The Court of Appeal successfully disposed of 467 NCC Appeals in 2017.

Graph D below shows the Court of Appeal's overall performance for the NCC Appeals.

GRAPH D
NEW COMMERCIAL COURT APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	340	332	314	308	303	302	321	382	387	386	390	379	391
Registration	39	35	33	40	42	25	78	49	44	47	42	44	
Disposal	47	53	39	45	43	6	17	44	45	43	53	32	

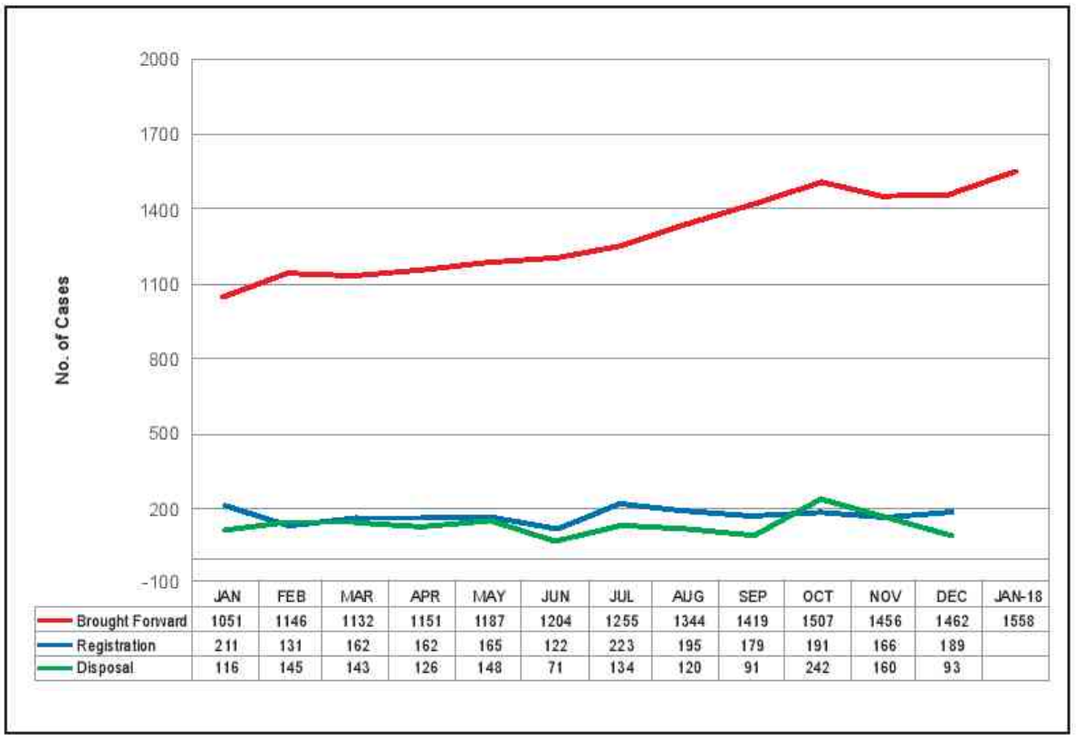
New Civil Court Appeals (NCvC)

2,096 NCvC appeals were registered in 2017 and 1,051 NCvC appeals were brought forward from 2016. Overall, the Court of Appeal disposed 1,589 appeals in 2017 leaving a balance of 1,558 NCvC appeals.

As at 31 December 2017, there were 171 pre-2017 NCvC appeals out of the 1,558 pending. The target is to dispose of all the pre-2017 appeals by the end of 2018.

Graph E below shows the performance of the Court of Appeal for the NCvC appeals.

GRAPH E
NEW CIVIL COURT APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



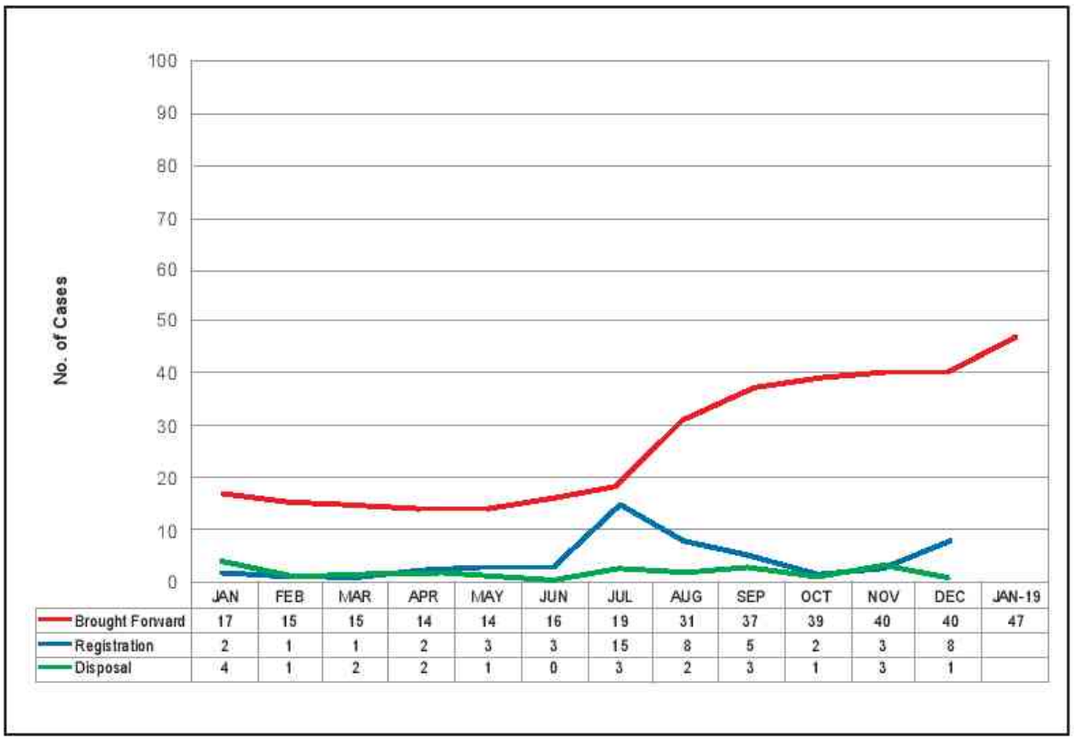
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	1051	1146	1132	1151	1187	1204	1255	1344	1419	1507	1456	1462	1558
Registration	211	131	162	162	165	122	223	195	179	191	166	189	
Disposal	116	145	143	126	148	71	134	120	91	242	160	93	

Muamalat Appeals

In 2017, a total of 53 Muamalat appeals were registered. The Court of Appeal disposed 23 appeals registered in 2017 and all of the pre-2017 cases, making the Muamalat appeals current.

Graph F below shows the statistics for the Muamalat appeals before the Court of Appeal in 2017.

GRAPH F
MUAMALAT APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



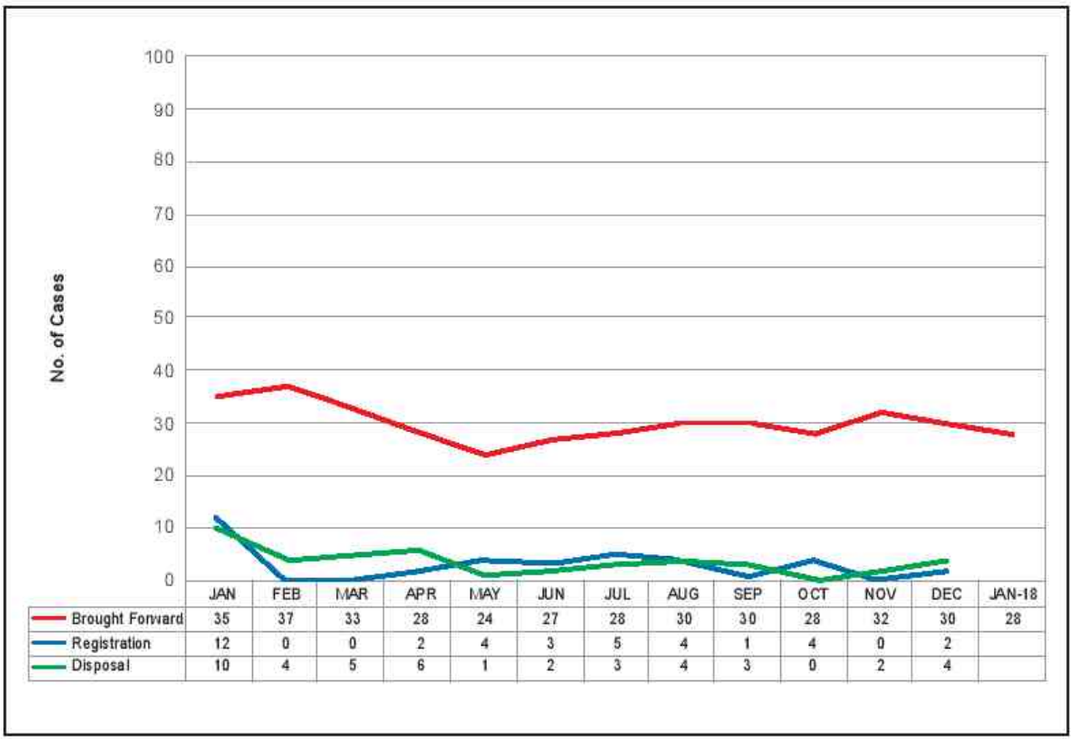
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-19
Brought Forward	17	15	15	14	14	16	19	31	37	39	40	40	47
Registration	2	1	1	2	3	3	15	8	5	2	3	8	
Disposal	4	1	2	2	1	0	3	2	3	1	3	1	

Intellectual Property Appeals (IPCV)

There were 35 IPCV appeals brought forward to 2017 and a total of 37 IPCV Appeals registered in 2017. The Court of Appeal disposed 44 IPCV appeals in 2017. The remaining 28 IPCV Appeals is targeted to be disposed in 2018.

As at 31 December 2017, there were 10 pre-2017 IPCV appeals pending and 18 IPCV appeals registered in 2017 pending before the Court of Appeal. These figures are shown in Graph G below.

GRAPH G
INTELLECTUAL PROPERTY APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



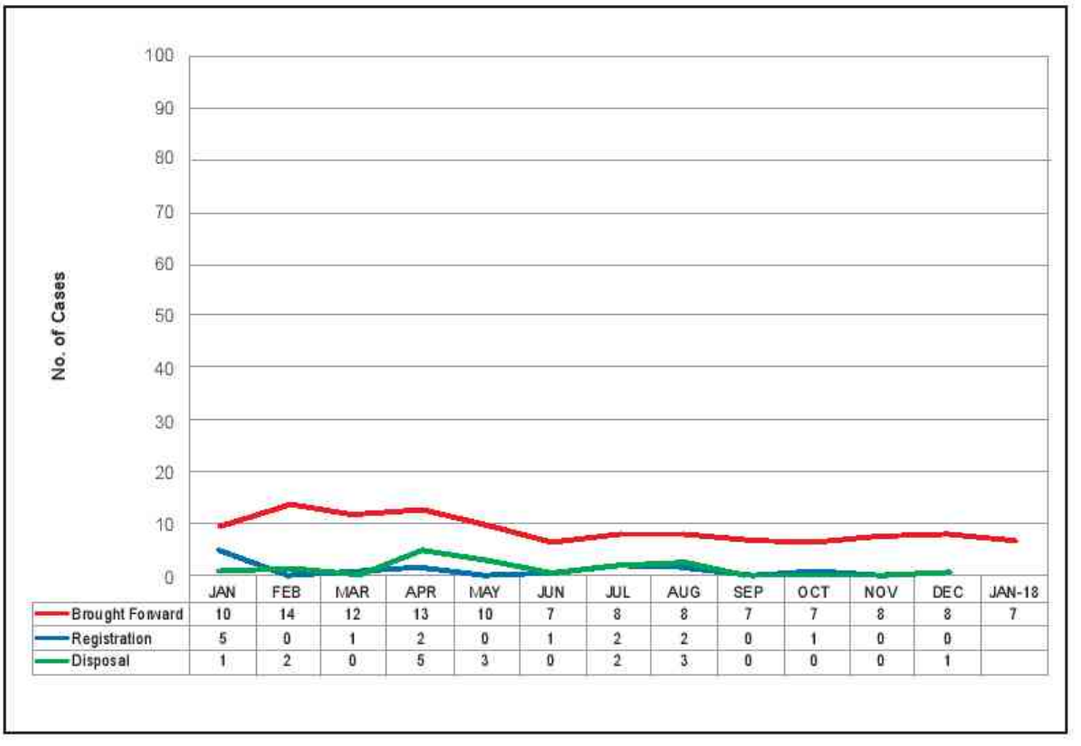
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	35	37	33	28	24	27	28	30	30	28	32	30	28
Registration	12	0	0	2	4	3	5	4	1	4	0	2	
Disposal	10	4	5	6	1	2	3	4	3	0	2	4	

Admiralty Appeals

In 2017, a total of 14 Admiralty appeals were registered at the Court of Appeal. As at 31 December 2017, the Court of Appeal disposed 17 Admiralty appeals in 2017. This leaves a balance of 7 Admiralty appeals to be brought forward to 2018. Out of this 7 appeals, only 1 appeal was registered in 2016.

The performance of the Court of Appeal in relation to Admiralty appeals is shown in Graph H below.

GRAPH H
ADMIRALTY APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	10	14	12	13	10	7	8	8	7	7	8	8	7
Registration	5	0	1	2	0	1	2	2	0	1	0	0	
Disposal	1	2	0	5	3	0	2	3	0	0	0	1	

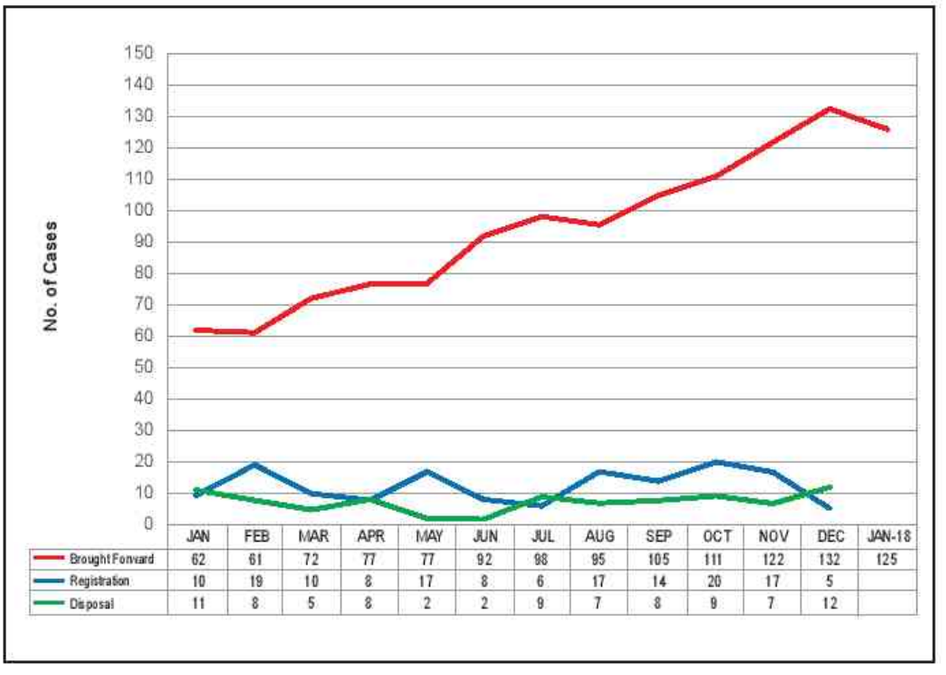
Construction Court Appeals

In 2017, a total of 151 Construction appeals were registered. Out of these 151 appeals, a total of 88 appeals have been disposed.

As at 31 December 2017, there are only 11 pre-2017 Construction appeals pending before the Court of Appeal.

Graph I below shows the number of Construction court appeals in the Court of Appeal in 2017.

GRAPH I
CONSTRUCTION COURT APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	62	61	72	77	77	92	98	95	105	111	122	132	125
Registration	10	19	10	8	17	8	6	17	14	20	17	5	
Disposal	11	8	5	8	2	2	9	7	8	9	7	12	

Leave Applications

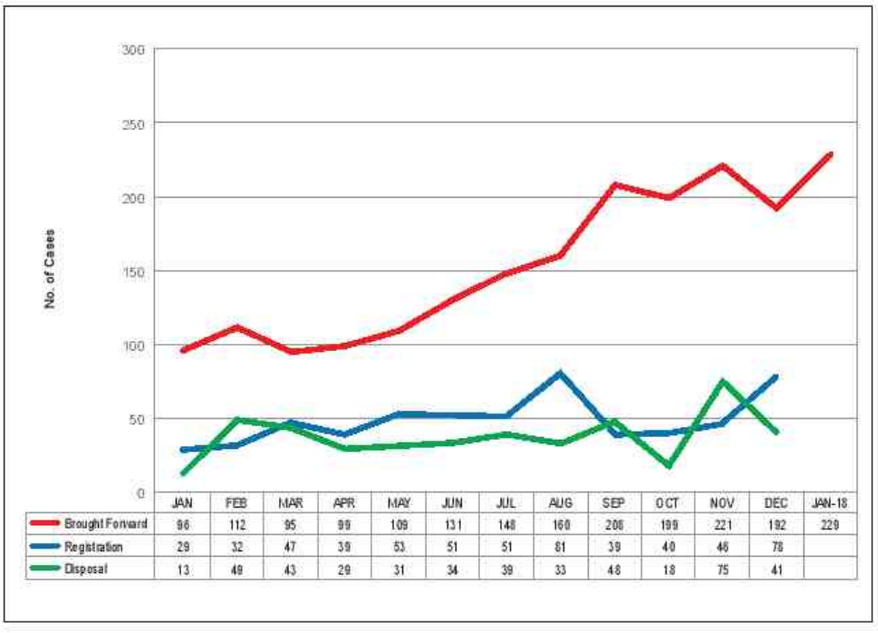
Leave applications are now current at the Court of Appeal. There are no pre-2017 applications outstanding. In 2017, a total of 586 cases were registered. The Court of Appeal has managed to dispose 357 leave applications. A total of 229 applications were brought forward to 2018 and it is expected to be disposed by the first half of 2018.

Graph J below shows the performance of the Court of Appeal in relation to leave applications in 2017.

COURT OF APPEAL
PENDING 2017 LEAVE TO APPEAL APPLICATIONS
AS AT 31 DECEMBER 2017

CASES REGISTERED		DISPOSED	TOTAL OF PENDING CASES
MONTH			
Jan	29	29	
Feb	32	32	
Mar	47	47	
Apr	39	39	
May	53	53	
June	51	49	2
Jul	51	50	1
Aug	81	42	39
Sept	39	14	25
Oct	40	1	39
Nov	46	1	45
Dec	78	0	78
Total	586	357	229

GRAPH J
LEAVE TO APPEAL IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING LEAVE APPLICATIONS



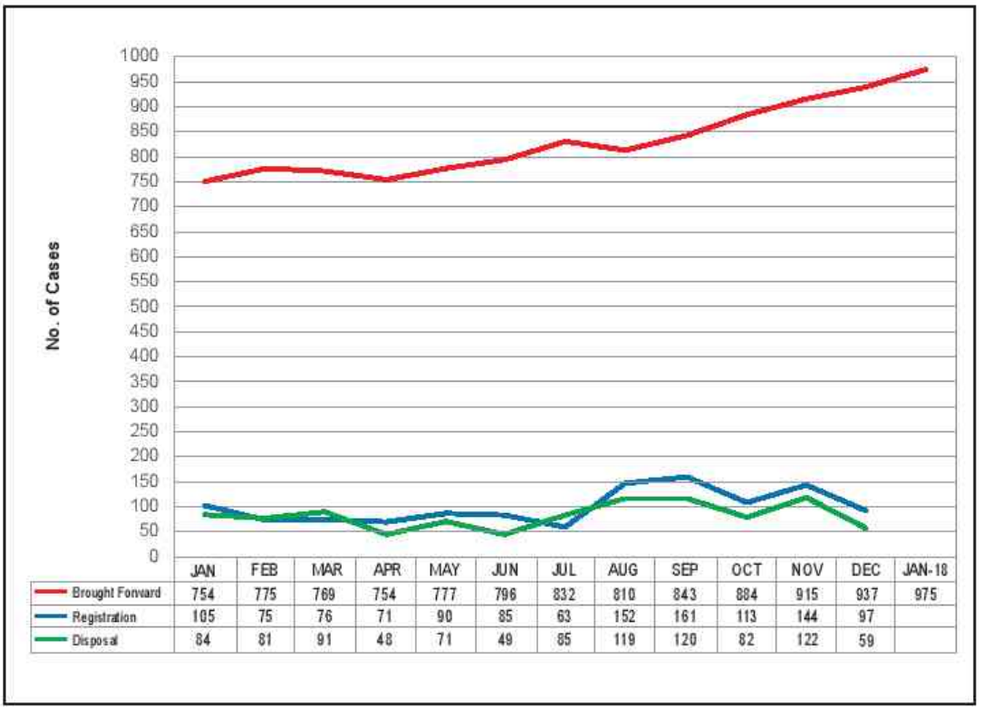
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	86	112	95	99	109	131	148	160	208	199	221	192	229
Registration	29	32	47	39	53	51	51	81	39	40	46	78	
Disposal	13	49	43	29	31	34	39	33	48	18	75	41	

Criminal Appeals

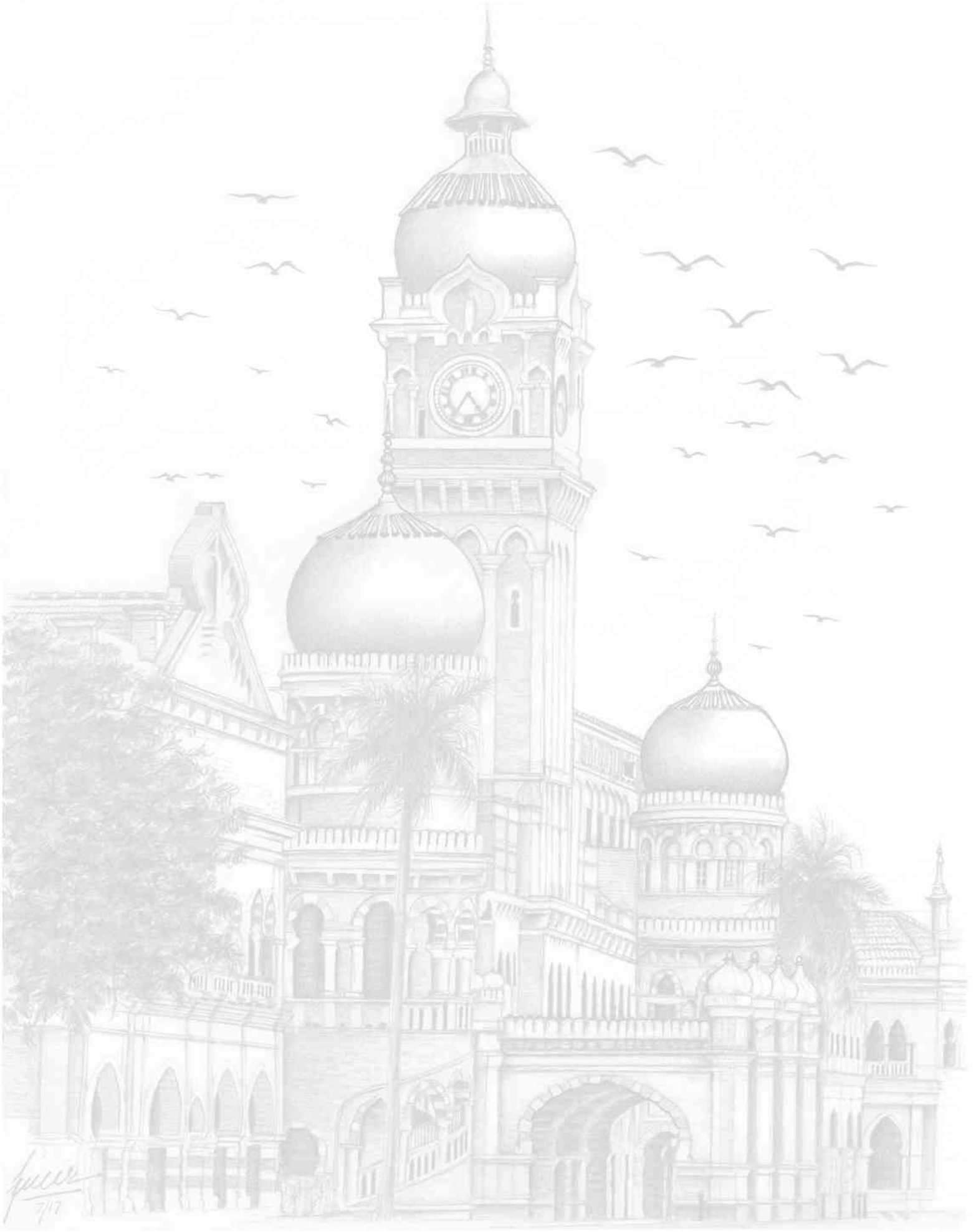
A total of 1,232 criminal appeals were registered in 2017. This is a 21% increase in registration for criminal appeals as compared to 2016. The Court of Appeal has successfully disposed 1,011 criminal appeals. This represents 82% disposal rate.

Graph K below shows the performance of the Court of Appeal in respect of Criminal appeals in 2017.

GRAPH K
CRIMINAL APPEALS IN 2017
NUMBER OF REGISTERED, DISPOSED AND PENDING APPEALS



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN-18
Brought Forward	754	775	769	754	777	796	832	810	843	884	915	937	975
Registration	105	75	76	71	90	85	63	152	161	113	144	97	
Disposal	84	81	91	48	71	49	85	119	120	82	122	59	



CHAPTER 4

THE HIGH COURTS

THE HIGH COURT IN MALAYA

2017 was a year of continuing momentum for the High Court in Malaya and the Subordinate Courts in Peninsular Malaysia, in the course of which, we witnessed continued achievement in disposal of cases. The statistic shows that the High Court and Subordinate Courts in Peninsular Malaysia had performed well in the disposal of cases. The High Court had disposed of 57,017 civil cases and 5895 criminal cases. The Sessions Courts had disposed of 43,209 civil cases and 45,550 criminal cases. The Magistrates' Courts had disposed of 252,303 civil cases and 194,354 criminal cases. The high number of cases disposed of by these courts reflected the hard work and efforts made by Judges and judicial officers in dispensing their judicial duties. The detailed statistics are as per **Appendix A**.

Several practice directions were issued in 2017 in order to streamline matters pertaining to judicial administration of the High Court in Malaya. Amongst them are the practice directions relating to the handling of land acquisition cases pursuant to the Land Acquisition Act 1960 following the decision of the Federal Court in the case of **Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat [2017] 3 MLJ 561** as well as hearings of uncontested divorce petitions, "Short Call" petition, originating summons of foreclosure proceedings/mortgages (Muamalat). Also, as part of our effort towards effectively monitoring performance of the subordinate courts, the Judiciary had issued a Chief Registrar's Circular No. 2 of 2017 which dictates the timeline for disposal of cases for the subordinate courts.

Since the year 2009, the Judiciary had successfully embarked on judicial transformation programmes with the aim at enhancing the efficiency of the judicial delivery system. Of significant mention is the implementation of the e-Court system Phase 1 (from year 2009 to 2010). Phase 1 introduced several components including the Case Management System (CMS), the Queue Management System (QMS), the Court Recording and Transcription System (CRT), and the e-Filing System (EFS). With the Phase 1 in place, the courts managed to dispose of cases in a speedy manner without compromising justice. During the implementation of e-Court Phase 1, the CMS, QMS and EFS were only available at court locations in Kuala Lumpur, Shah Alam, Penang, Ipoh, Putrajaya, Johor Bharu, Kuala Terengganu and Kota Bharu. However, the CRT is available to 418 court rooms in all states throughout Peninsular Malaysia.

Phase 1 was then upgraded and improved during the implementation of the e-Court system Phase 2 (from year 2016 to July 2017). Amongst the key features of the Phase 2 are the expansion of the use of CMS and EFS to all courts in every state in Peninsular Malaysia as well as the integration of the CMS in the administration of criminal cases. With this expansion, all courts in Peninsular Malaysia are now equipped with the most advanced technology that can assist Judges and judicial officers in the effective discharge of their judicial functions.

In addition, Phase 2 also introduced some ground-breaking and revolutionary initiatives aimed at delivering judicial service of the highest quality to the respective stakeholders. To this end, the Phase 2 embarked on a number of specific improvements including the e-BSKW system which deals with effective management and control of electronic submission, transmission and retrieval of Powers of Attorney ("PA") documents. The technology developed through this system also supports automated docket entries for revocation and cancellation of the PA documents as well as search function to instantly retrieve donor or donee's information. Phase 2 also introduced the e-BKM system which serves as virtual platform for electronic management of Probates and Letters of Administration Records.

In June 2017, Phase 2 had further embarked on the development of the e-Lelong (e-Auction) system which is a major breakthrough. It serves as a virtual platform for the electronic bidding in the court auction proceedings. The e-Lelong system, which commenced its pilot project at the Kuantan Court Complex aims at improving the transparency and efficiency of the existing manual bidding process. With the e-Lelong system, those interested in bidding for properties can now do so online. The full implementation and roll-out of the e-Lelong system will be expanded to other states in Peninsular Malaysia once the progression of the pilot project in Kuantan had been comprehensively evaluated.

Another milestone worthy of note in 2017 is the establishment of the Special Court on Sexual Offences against Children which was officiated in June 2017. The setting up of this court is in tandem with the Sexual Offences Against Children Act 2017. As borne out by its name, this court hears cases of sexual offences against children. The Judges and judicial officers manning this special court are well trained in this area.

The facilities provided at this special court include a child witness waiting room as well as vulnerable witness rooms, equipped with video-link facilities. This special court aims at accelerating and ensuring smooth proceedings as well as hearings of sexual crime cases against children. To top it all, an integrated Special Guideline Dealing With Sexual Offences Cases Against Children In Malaysia was launched in December 2017 as a result of a joint collaborative effort by the respective government agencies and non-governmental organizations dealing with sexual crimes against children. As of now, the Special Court on Sexual Offences against Children operates in Putrajaya, handling cases registered in Selangor, Federal Territory of Kuala Lumpur and Putrajaya. It will soon be gradually extended to all states in Malaysia.

Also worth mentioning is that in view of the Government's concern on the increase in the number of trafficking in persons and smuggling of migrants cases, the Judiciary had issued the Chief Registrar's Practice Direction No. 4 of 2017 on the handling of the cases under the Anti-Trafficking In Persons and Anti-Smuggling of Immigrants Act 2007. Looking ahead, planning is underway to establish a special court helmed by a dedicated judge handling specifically human trafficking cases.

Amidst the changing and challenging legal landscape, the Judiciary remains cognizant on the need to emphasize on the professional development and training of Judges and judicial officers. To this end, the Judiciary had continued with its legal education programmes for the Judges and judicial officers aiming at enhancing the development of judicial skill in the Judiciary. A significant number of legal education programmes had been added to the Judicial Academy's training calendar in 2017 which explored a range of topics including company law, defamation law and constitutional law.

On a separate note, the year 2017 witnessed the retirement of the Judges of the High Court, namely Justice Wan Afrah Dato' Paduka Wan Ibrahim, Justice John Louis O'Hara, Justice Noraini Abdul Rahman and Justice Teo Say Eng as well as Judicial Commissioners namely, Judicial Commissioner Zakiah Kassim, Judicial Commissioner Wong Teck Meng, Judicial Commissioner Al-baishah Haji Abdul Manan and Judicial Commissioner Siti Mariam Haji Othman. I am profoundly grateful for their contributions to the High Court in Malaya. I wish them a happy retirement.

The Year 2017 also witnessed the elevation of Justice Suraya Othman and Justice Yeoh Wee Siam from the High Court in Malaya to the Court of Appeal. I congratulate and extend my sincere appreciation for all the contributions rendered during their tenure as Judges of the High Court in Malaya.

I also congratulate Justice Azimah Omar, Justice Gunalan Muniandy, Justice Lim Chong Fong, Justice Nordin Hassan, Justice Azmi Ariffin, Justice Noorin Badaruddin, Justice Collin Lawrence Sequerah, Justice Azizul Azmi Adnan, Justice Mohamed Zaini Mazlan and Justice Mohd Nazlan Mohd Ghazali on their appointments as Judges of the High Court in Malaya.

I am also delighted to welcome the appointment of new Judicial Commissioners to the High Court in Malaya, namely Judicial Commissioner Faizah Jamaludin, Judicial Commissioner Rohani Ismail, Judicial Commissioner Mat Ghani Abdullah, Judicial Commissioner Asmadi Husin, Judicial Commissioner Zalita Dato' Hj. Zaidan, Judicial Commissioner Ahmad Kamal Md. Shahid, Judicial Commissioner Anselm Charles Fernandis, Judicial Commissioner Mohd Ivan Hussein and Judicial Commissioner Ahmad Shahrir Mohd Salleh. I am confident their diverse backgrounds will be invaluable assets to the High Court in Malaya.

As a parting note, I congratulate my predecessor Justice Zulkefli Ahmad Makinudin for His Lordship's immense contribution over the last 6 years. Under his leadership, the High Court in Malaya and the Subordinate Courts in Peninsular Malaysia emerged as high performing and increasingly efficient judicial institutions. His Lordship helmed the office with distinction and excellent leadership.

As I look back on a meaningful year, 2017 had been a productive year and a greater progress is expected of the year 2018. We look ahead to 2018 with renewed commitments to continue delivering the highest standard of quality, efficiency and service in the administration of justice. I am confident that with relentless support of the Managing Judges and unwavering commitment from all the Judges, Judicial Commissioners, judicial officers and staff of the High Court in Malaya and the Subordinate Courts in Peninsular Malaysia, we will be able to achieve this goal.

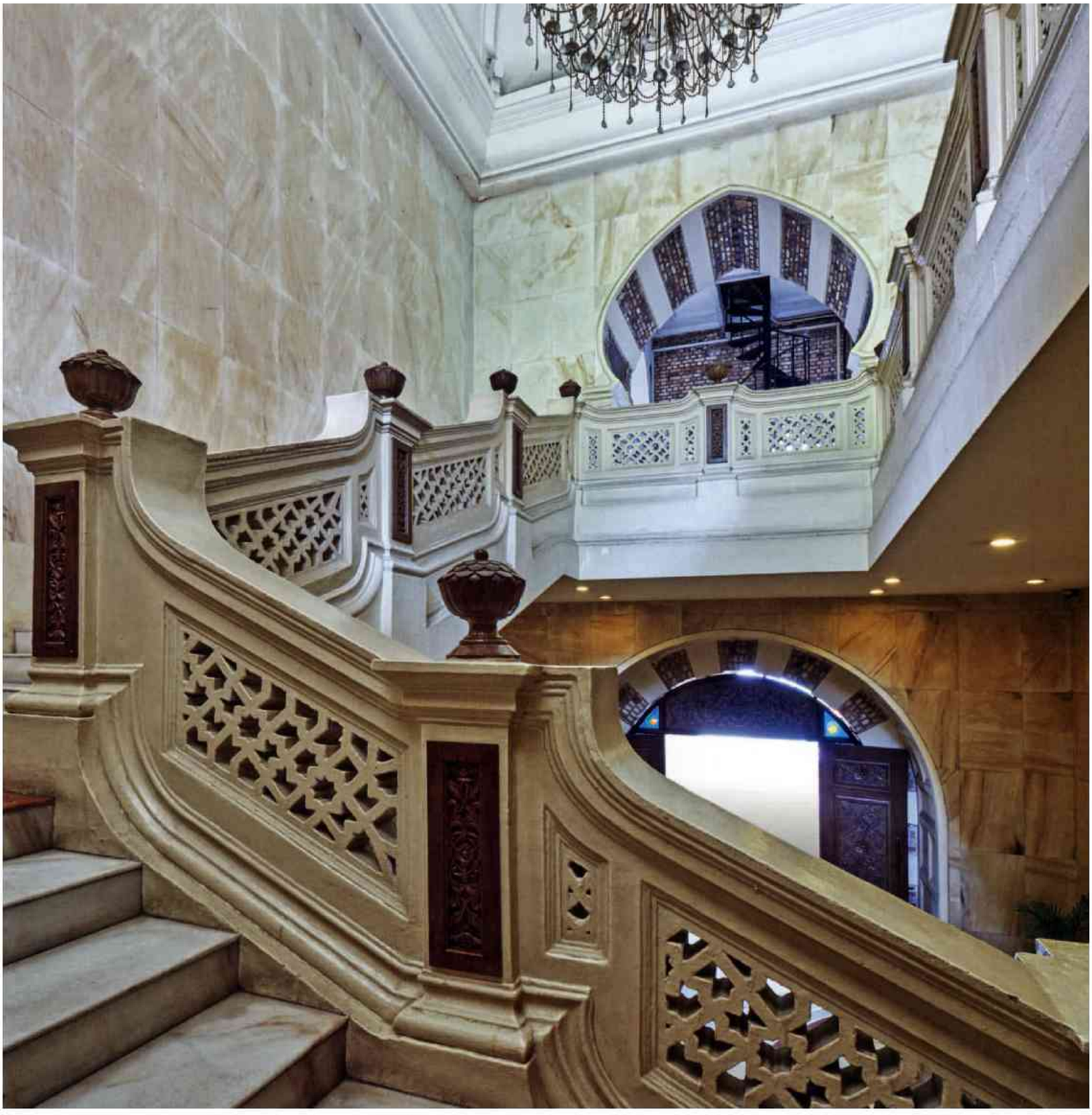
Justice Ahmad Haji Maarop
Chief Judge of Malaya

JUDGES OF THE HIGH COURT IN MALAYA 2017

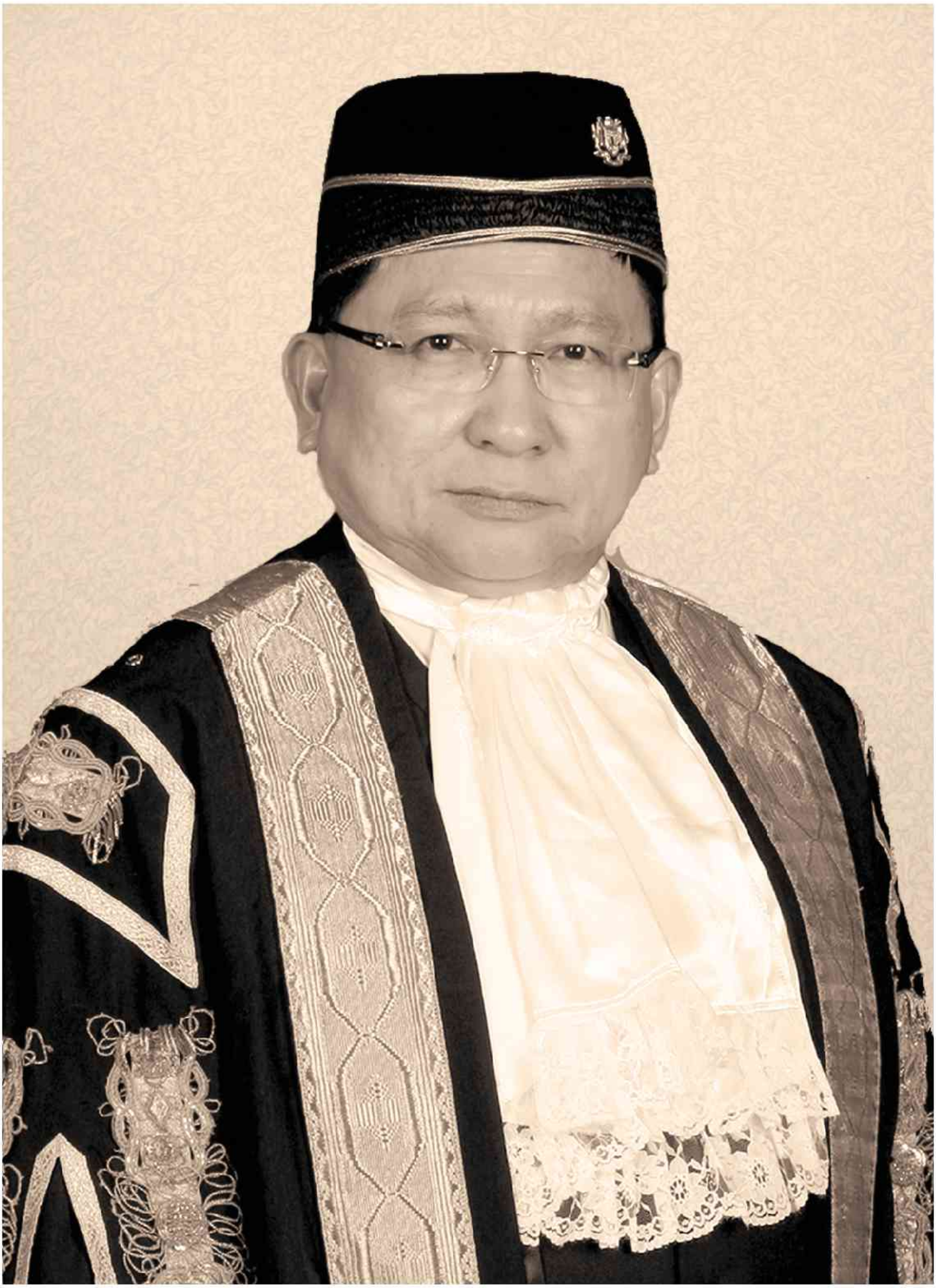
1. Justice Su Geok Yiam
2. Justice Lau Bee Lan
3. Justice Siti Mariah Ahmad
4. Justice Wan Afrah Wan Ibrahim
5. Justice Mohamad Zabidin Mohd Diah
6. Justice Abdul Halim Aman
7. Justice Zulkifli Bakar
8. Justice Mohd Azman Husin
9. Justice Mohd Sofian Abd Razak
10. Justice Ghazali Cha
11. Justice John Louis O'Hara
12. Justice Rosnaini Saub
13. Justice Suraya Othman
14. Justice Ahmad Zaidi Ibrahim
15. Justice Mariana Yahya
16. Justice Azman Abdullah
17. Justice Mohd Yazid Mustafa
18. Justice Zainal Azman Ab Aziz
19. Justice Halijah Abbas
20. Justice Akhtar Tahir
21. Justice Hue Siew Kheng
22. Justice Noraini Abdul Rahman
23. Justice Nor Bee Ariffin
24. Justice Yeoh Wee Siam
25. Justice Amelia Tee Hong Geok Abdullah
26. Justice Has Zanah Mehat
27. Justice Hadhariah Syed Ismail
28. Justice Nik Hasmat Nik Mohamad
39. Justice Hanipah Farikullah
30. Justice See Mee Chun
31. Justice Samsudin Hassan
32. Justice Lee Swee Seng
33. Justice Kamaludin Md Said
34. Justice Ahmad Nasfy Yasin
35. Justice Teo Say Eng
36. Justice Rosilah Yop
37. Justice Hashim Hamzah
38. Justice Azizah Nawawi
39. Justice Vazeer Alam Mydin Meera
40. Justice Siti Khadijah S. Hassan Badjenid
41. Justice Mohd Zaki Abdul Wahab
42. Justice S. Nantha Balan
43. Justice Abu Bakar Jais
44. Justice Che Mohd Ruzima Ghazali
45. Justice Azimah Omar
46. Justice Gunalan Muniandy
47. Justice Lim Chong Fong
48. Justice Nordin Hassan
49. Justice Azmi Ariffin
50. Justice Noorin Badaruddin
51. Justice Collin Lawrence Sequerah
52. Justice Azizul Azmi Adnan
53. Justice Mohamed Zaini Mazlan
54. Justice Mohd Nazlan Mohd Ghazali

JUDICIAL COMMISSIONERS OF THE HIGH COURT IN MALAYA 2017

1. Judicial Commissioner Zakiah Kasim
2. Judicial Commissioner Wong Teck Meng
3. Judicial Commissioner S.M. Komathy Suppiah
4. Judicial Commissioner Rozana Ali Yusoff
5. Judicial Commissioner Abu Bakar Katar
6. Judicial Commissioner Ab Karim Ab Rahman
7. Judicial Commissioner Wong Kian Kheong
8. Judicial Commissioner Choo Kah Sing
9. Judicial Commissioner Ahmad Bache
10. Judicial Commissioner Mohd Firuz Jaffril
11. Judicial Commissioner Roslan Abu Bakar
12. Judicial Commissioner Abdul Wahab Mohamed
13. Judicial Commissioner Al-Baishah Abd. Manan
14. Judicial Commissioner Siti Mariam Othman
15. Judicial Commissioner Hassan Abdul Ghani
16. Judicial Commissioner Chan Jit Li
17. Judicial Commissioner Muhammad Jamil Hussin
18. Judicial Commissioner Hayatul Akmal Abdul Aziz
19. Judicial Commissioner Wan Ahmad Farid Wan Salleh
20. Judicial Commissioner Mohamad Shariff Abu Samah
21. Judicial Commissioner Khadijah Idris
22. Judicial Commissioner Tun Abd Majid Tun Hamzah
23. Judicial Commissioner Azmi Abdullah
24. Judicial Commissioner Faizah Jamaludin
25. Judicial Commissioner Rohani Ismail
26. Judicial Commissioner Mat Ghani Abdullah
27. Judicial Commissioner Asmadi Husin
28. Judicial Commissioner Zalita Zaidan
39. Judicial Commissioner Ahmad Kamal Md. Shahid
30. Judicial Commissioner Anselm Charles Fernandis
31. Judicial Commissioner Mohd Ivan Hussein
32. Judicial Commissioner Ahmad Shahrir Mohd Salleh



The main staircase leading to the courtrooms in the Sultan Abdul Samad Building



THE HIGH COURT IN SABAH AND SARAWAK

In 2017, the Courts in Sabah and Sarawak focused on continuing to improve the Malaysian Judiciary in all spheres including enhancing access to justice for the weak and marginalised.

As such, much efforts were given in organising courses, seminars, workshops and training for the Judges and judicial officers. The main objective was to further expose them in better judge-craft, judgment writing as well as refreshing on the latest development of the laws.

The mobile court program continued to assist the rural folks in the remote areas of Sabah and Sarawak on their legal woes such as birth certificates, identification papers and land ownership.

On the belief that the court should not confine itself only to adjudicating disputes Judges and judicial officers in Sabah and Sarawak also participated in other activities that promoted healthy environment. More than a million trees were planted in various parts of Sabah in conjunction with other Government Departments and agencies as well as Non-Governmental organisations. Talks were also organised for students in several schools on career in law, fundamental rights and liberties under the Federal Constitution and the menace of drugs abuse.

In compliance with the pledge given during Opening of the Legal Year 2017, the Courts in Sabah and Sarawak continued to dispense justice fairly and expeditiously. The performance statistics in **Appendix B** is a testimony to that pledge.

Justice Richard Malanjum
Chief Judge of Sabah and Sarawak

JUDGES OF THE HIGH COURT IN SABAH AND SARAWAK 2017

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

JUDICIAL COMMISSIONERS OF THE HIGH COURT IN SABAH AND SARAWAK 2017

1. Judicial Commissioner Mairin Idang @ Martin
2. Judicial Commissioner Dr. Haji Alwi Haji Abdul Wahab
3. Judicial Commissioner Ismail Brahim
4. Judicial Commissioner Dean Wayne Daly
5. Judicial Commissioner Bexter Agas AK Micheal
6. Judicial Commissioner Celestina Stuel Galid

THE OFFICE OF THE CHIEF REGISTRAR

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

As the body responsible in ensuring the smooth running of the judicial administration in the country, the Chief Registrar's Office of the Federal Court of Malaysia (PKPMP) is as committed as ever to face new challenges and to elevate our judicial administration to greater height. The aim has always been to continue enhancing and empowering the delivery of justice and I would like to take this opportunity to reflect on the achievements of PKPMP in 2017.

Justice delivery system through court digitalization

The indicator to measure the justice delivery system is through the speedy disposal of the cases. One of the important initiatives taken by the PKPMP to ensure the optimum disposal of the cases was by introducing court electronic system as one of the main transformation. This is in parallel with the 2016-2020 PKPMP's strategic plan.

I am pleased to report that the Project of Peninsular Malaysia's e-Court System (e-Court Phase 2) that was initiated back in last quarter of 2016 had been completed in July 2017. The new and improved version of e-Court Phase 2 has successfully been rolled out to 20 locations by July 2017. The new and improved version covers civil and criminal matters at all court levels from the trial courts up to the appellate courts. This system includes an integration feature that allows integration with other government agencies such as the Royal Malaysia Police (RMP), the Road Transport Department (RTD), the Department Director General of Land and Mines (JKPTG), the Malaysia Department of Insolvency (MDI) the National Registration Department (NRD) as well as the Malaysian Bar. This system greatly enhanced the sharing of data with the Court's stakeholders in a better and efficient manner.

Apart from that, e-Court Phase 2 also consists of e-Lelong module. On this note I would like to thank the Chief Justice of Malaysia Tun Raus Sharif for officiating the e-Lelong pilot project on 27 July 2017 at Pusat e-Lelong, Kompleks Mahkamah Kuantan. The e-Lelong is a system intended to govern a real time on-line public auction of immovable property in court, where bidders can bid from anywhere.

without having to be physically present in court. With the objective to promote transparency, and effectiveness of the public property bidding process, the system is designed to ensure the identity and details of the bidder remain confidential. It also has the advantages of being cost and time effective as it is accessible anywhere and anytime vide any electronic medium including smartphone with the access of internet.

New Practice Direction and Circular

In ensuring the smooth running of courts system as well as providing an easy reference for our judicial officers and all the stakeholders, several Practice Directions and Circulars had been issued in 2017. These are as follow:-

- *Arahan Amalan Bil.1 Tahun 2017 berhubung Garis Panduan, Tatacara Dan Tanggungjawab Peguam Lantikan Mahkamah Bagi Kes Kesalahan Hukuman Mati;*
- *Arahan Amalan Bil.2 Tahun 2017 bertarikh 29 Mei 2017 berhubung dengan Kod Pendaftaran Khas Bagi Kes Pascapenggulungan Syarikat dan Kes Pascakebankrapan di Mahkamah Tinggi;*
- *Arahan Amalan Bil.3 Tahun 2017 bertarikh 12 Julai 2017 berhubung dengan Kod Pendaftaran Khas Bagi Kes Kesalahan Seksual Terhadap Kanak-Kanak;*
- *Arahan Amalan Bil.4 Tahun 2017 berhubung dengan Pengendalian Kes-Kes Antipemerdagangan Orang di bawah Akta Antipemerdagangan Orang dan Antipenyeludupan Migran 2007 [Akta 670];*
- *Pekeliling Ketua Pendaftar Bil. 1 Tahun 2017 - Garis Masa (Timeline) Penyelesaian Kes Jenayah Dan Sivil Bagi Mahkamah Rendah;* and
- *Arahan Amalan Pendaftar Mahkamah Tinggi Malaya Bilangan 1 Tahun 2017 mengenai prosiding halang tebus dan lelong awam harta tak alih secara elektronik (e-Lelong) di Mahkamah Tinggi Malaya.*

Capacity Building and Career Development

In term of human resource, PKPMP has always conformed to the initiatives laid down by the Public Service Department (JPA) circulars. For example, two circulars published at the end of 2016 were issued pursuant to the Fast Track incentive and Subject Matter Expert (SME) policies. These policies were crafted to acknowledge capable officers with high potentials in term of effective leadership skills, strong intellectual capacity with certain specialization in specific subject matter. These officers, vide these incentives may get the upper hand to fill in the higher grade posts over their contemporaries due to their extra edge they possess.

In line with that policy, PKPMP has also taken the initiative to send our legal officers to attend several courses and trainings abroad to bring forth the SME such as:-

- Training on Understanding Civil and Political Rights "Special Focus on the CAT" in Geneva;
- Symposium on Law, Policy and Climate Change in Manila the Philippines;
- Regional Blended Learning Course on Human Rights and Environment/ Climate Change in The Framework of Agenda 2030 in Bangkok, Thailand;
- Cybercrime and Digital Evidence Training for Judges and Prosecutors in Bali, Indonesia;
- Interpol Workshop on Acquiring Cybercrime Investigation-Related Information Across Multi-Jurisdiction of Law Enforcement Agencies and Judicial Authorities in Singapore;
- Malaysia Country Delegation UNODC Conference on Effective Response to Online Child Sexual Exploitation in Southeast Asia in Bangkok, Thailand;
- 6th UNCITRAL Asia Pacific ADR Conference Regional Capacity Building Workshop & Regional Roundtable in Manila the Philippines;
- 2nd Southeast Asia Judicial Workshop on Cybercrime in Bangkok, Thailand; and
- ASEAN Workshop: Addressing Barriers to Gender Equality in The Criminal Justice Response to trafficking in Persons in Bangkok, Thailand.

Furthermore, as at December 2017, 131 out of 636 officers in PKPMP are Master Degree holders in various disciplines such as, to name a few:-

- Maritime Law;
- IT and e-Commerce;
- Comparative & International Dispute Resolution;
- International Commercial Law; and
- Criminology.

Apart from that, in an effort to equip the officers with the current legal knowledge, PKPMP had continually organised several courses and workshops. Below are some of the courses organised throughout the year 2017:

Date	Course
25 - 26 January 2017	An Introduction to Negotiation and Mediation Skills
14 - 16 March 2017	Course on Electronic Evidence
1 - 5 April 2017	Mediation Accreditation Course
16 - 17 May 2017	Workshop on Art of Written Judgement
10 - 13 July 2017	Strengthening Capacity for Environmental Law in Malaysia's Judiciary : Train the Judges Program
4 - 5 August 2017	Course on Handling of Sexual Offences Against Children
15 - 17 August 2017	Workshop on Domestic Violence
25 - 26 August 2017	Workshop on Judgment Writing
19 - 20 September 2017	Course on International Response to Climate Change
24 - 25 October 2017	Workshop on Injunctions and Declaratory Relief

Strategic Partnership and Community Engagement

In 2017, PKPMP also strategically signed co-operation agreements with reputable local and international institutions to facilitate cross-border knowledge sharing. Two significant agreements which had been signed were Memorandum of Understanding (MoU) with the State of Qatar and MoU with Universiti Utara Malaysia (UUM).

The MoU with the State of Qatar was signed by PKPMP with Mr. Masoud Mohamed Alameri, President of the Supreme Judiciary Council of the State of Qatar. This MoU signifies the consensus of both parties to cooperate in several terms amongst others:

- sharing experiences and discussions on the effective management of civil cases for the efficient disposal of pending cases;
- sharing experiences and discussions on the effective and proper implementation of technology in the administration of justice and the management of cases and documents; and
- training of judges and judicial officers on the administration of justice and the courts, the management of cases, and the development of civil procedural laws and regulations.

Next, is the MoU signed between PKPMP and UUM. The areas of cooperation under this MoU are the rights of access to publications, implementation of the judicial clerkship programme for UUM law graduates, students and academicians placement as well as internship programmes, mentoring activities and joint courses or conferences. The Vice Chancellor of UUM, Dato' Seri Dr. Mohamed Mustafa Ishak and I were the signatories to this partnership.

Throughout the year, PKPMP had received visits from colleges and universities as well as local and foreign dignitaries within and outside Malaysia. We were delighted to receive these visits and the following are some of the guests we have received in 2017:-

- Visit by MMU International Students Exchange Program on 5 December 2017
- Visit by students from Faculty of Law, Universiti Sains Islam Malaysia on 30 November 2017
- Visit by students from Fakultas Hukum Universitas Islam Sumatera Utara, Indonesia on 29 November 2017
- Visit by students and lecturers from CIC Law Society, Crescendo International College on 24November 2017
- Visit by Korean Bar Representatives on 24 November 2017
- Visit by students from Islamic International University of Malaysia on 29 September 2017
- Visit by students from RMIT University Melbourne, Australia on 12 July 2017

- Visit by delegates from ASEAN Law School Association on 20 March 2017
- Visit by students from Universitas Pancasakti Tegal, Indonesia on 20 January 2017

Awards and Recognitions

In our effort to enhance the creativity and innovative aspect of the officers and staff of PKPMP the e-Jurubahasa system that was introduced and developed internally, had managed to clinch the second place in the New Horizon Innovative and Creative Group Competition 2017 at the Prime Minister's Department level and secure third place in the ICT category of the Prime Minister's Department Innovation Award 2016.

Apart from that, in 2017, the Kuala Lumpur Sessions Court was also awarded as the "Pusat Tanggungjawab Terbaik" in Management, Innovation dan Excellence Prime Minister Department Award 2017.

As a conclusion, PKPMP vows to strive for excellence in exercising its function as the administrator of the delivery of justice in order to maintain public confidence in our office.

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

THE LAUNCHING OF THE SPECIAL COURT FOR SEXUAL OFFENCES AGAINST CHILDREN

The Interior of the Special Court for Sexual Offences Against Children

The establishment of the Special Court for Sexual Offences Against Children was necessitated by the shockingly high number of cases of alleged sexual abuse against children received by the relevant authorities. According to the Social Welfare Department, 5,799 child sexual abuse cases were recorded between 2010 and 2015, with an average of 963 cases a year. Police statistics also showed that between 2015 and 2016 there were 2,759 cases of rape, 412 cases of incest, 1,423 cases of molestation and 422 cases of unnatural sex involving children under the age of 18.

In view of the gravity of the matter, Parliament, in April 2017, passed The Sexual Offences against Children Bill 2017 to combat sexual crimes against children. Two months after that, on 22.6.2017, the then Prime Minister Dato' Sri Mohammad Najib bin Tun Haji Abdul Razak, accompanied by his wife, Datin Paduka Seri Rosmah Mansor, launched a special court to handle sexual crimes against children in Putrajaya. The Rt. Hon. the Chief Justice Tun Raus Sharif and the then Minister in the Prime Minister's Department Datuk Seri Azalina Othman Said were present.

In launching the special court, the then Prime Minister said the court was the first of its kind to be set up in Southeast Asia. He said the existence of the court would expedite and facilitate proceedings and trials of sexual crimes involving children. The special court would focus on cases such as child sexual assault, child pornography and child grooming in accordance with the Sexual Offences against Children Act 2017.

The special court which is located at the annex building of the Palace of Justice is equipped with infrastructure such as court recording transcription; a waiting room for child witnesses; live video link and child witness screens. This court is designed to provide a suitable environment to enable these alleged victims of sexual crimes to remain calm and composed such that they are able to testify more fully about the circumstances of the alleged crimes that had befallen them.

In conjunction with the launching of the special court, a waiting room for child witnesses named the Permata Room was also launched. The waiting room has a mini library of reading materials suitable for children contributed by the Permata Foundation. It also includes a smaller room for vulnerable young witnesses to testify in camera.

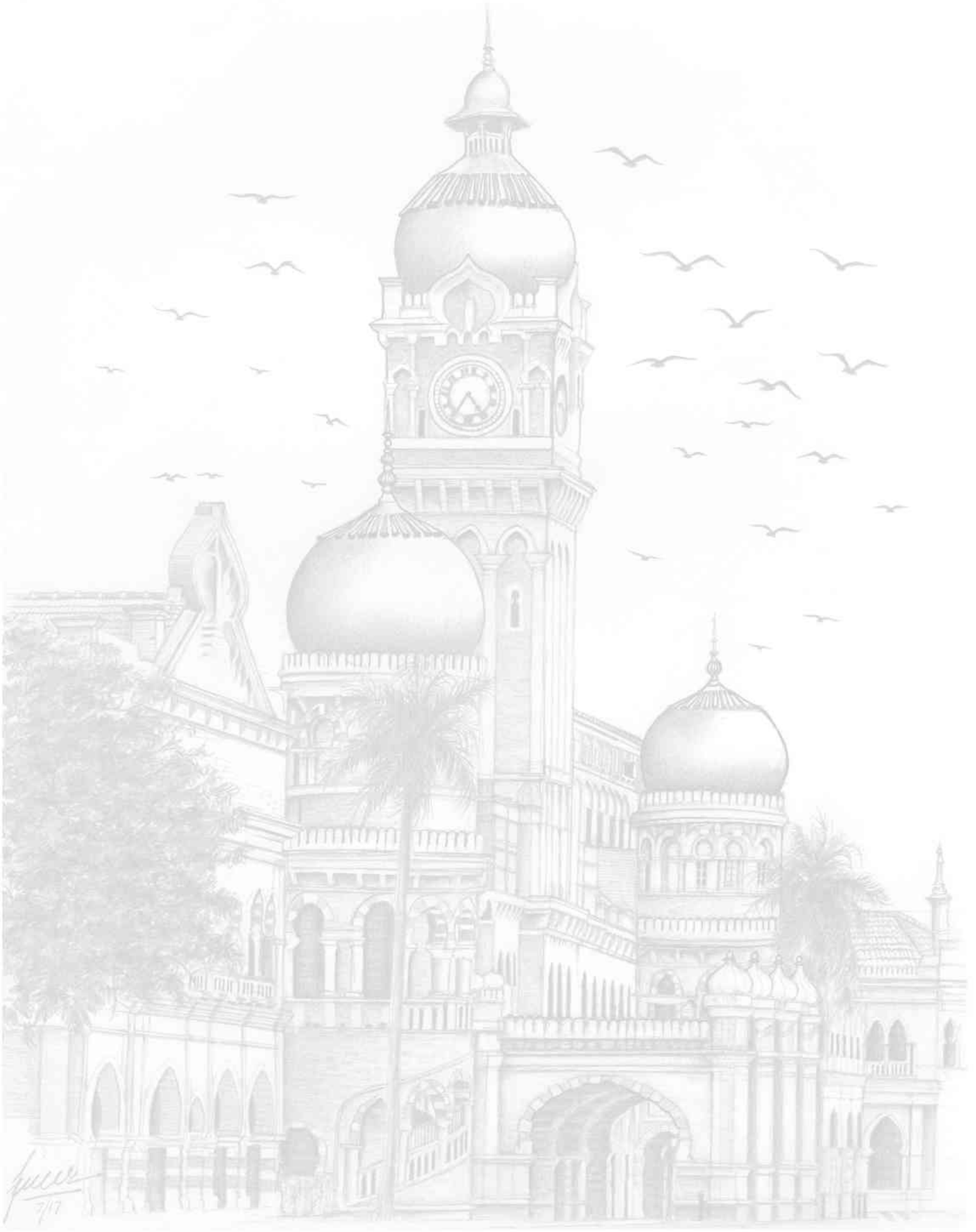
For a start, the special court at the Palace of Justice was to hear cases relating to crimes alleged to be committed in the Selangor, Kuala Lumpur and Putrajaya region.

On 4.7.2017, the special court for child sexual crimes sat for the first time and five cases were heard. After one month in operation, a total of 62 cases were registered. Out of 62 cases, 11 have been disposed of, 25 fixed for mention and 26 fixed for trial.

On 13.12.2017, the then Minister in the Prime Minister's Department Datuk Seri Azalina Othman Said launched a set of standard operating procedures (SOP) for all agencies in handling cases involving crimes against children. The SOP is divided into four main topics namely: (i) the report and investigation which is handled by the Sexual Crimes and Child Abuse Investigations Division; (ii) trial proceedings; (iii) managing the victims and witnesses which is handled by the prosecution division of the Attorney-General's Chambers and (iv) a protection and support service for the victims and witnesses, handled by the Social Welfare Department.

It was emphasised during the launching of the SOP that the guidelines would set out the differences between the procedure in the special court and that of a normal court. These guidelines therefore were aimed at putting child victims at their ease, once explained.

The setting up of the special court brings relief to many quarters who had been calling for effective enforcement against child perpetrators and protection for victims of child sexual crimes.



CHAPTER 5

JUDGES

Chief Justice Tun Raus Sharif receiving the letter of appointment
from Yang di-Pertuan Agong Sultan Muhammad V

NEWLY APPOINTED CHIEF JUSTICE

THE RIGHT HONOURABLE JUSTICE TUN RAUS SHARIF

(SSM, PMN, PSM, SSAP, DUPN, SPDK, SSTM, DA, DMPN, KMN)

The Right Honourable Justice Tun Raus Sharif was born on 4 February 1951 in Rembau, Negeri Sembilan.

His Lordship's formal education began at Sekolah Rendah Kampung Astana Raja, Rembau, Negeri Sembilan before His Lordship went on to attend Sekolah Menengah Tunku Besar Tampin for his secondary education. His Lordship completed his Form Six at Sekolah Tuanku Abdul Rahman (STAR), Ipoh, Perak.

The Right Honourable Justice Tun Raus Sharif graduated with a Bachelor of Laws degree from the University of Malaya in 1976. He was in the pioneer class of law students of the University of Malaya. He obtained his Master of Laws from the London School of Economics in 1987.

His Lordship's distinguished legal career began in 1976 as an attachment officer of the Magistrate Court at Court Hill and later at Jalan Duta, Kuala Lumpur. After several months he was appointed as a Magistrate and posted to Pontian, Johor. His Lordship then served in the Judicial and Legal Service in various capacities such as President of the Sessions Court, Deputy Public Prosecutor for the States of Kelantan and Terengganu, Legal Advisor to the Ministry of International Trade and Industry, Malacca State Legal Advisor, Legal Advisor at the Pensions Division at the Public Services Department, Legal Advisor to the Ministry of Defence, Legal Advisor to the Ministry of Home Affairs, Kelantan State Legal Advisor and Treasury Solicitor to the Ministry of Finance before being appointed Judicial Commissioner on 1 November 1994. As a Judicial Commissioner, he heard criminal matters in the High Court of Malaya at Shah Alam, but sitting at the High Court in Kuala Lumpur.

On 12 January 1996, His Lordship was appointed a Judge of the High Court of Malaya. During His Lordship's tenure as High Court Judge, he served in Shah Alam, Muar, Penang and Kuala Lumpur in the Commercial Division, Civil Division (Family Court) and the Appellate and Special Powers Division. He was elevated to the Court of Appeal on 28 July 2008 and thereafter as Judge of the Federal Court on 14 October 2009.

On 12 September 2011, His Lordship was appointed to the post of President of the Court of Appeal. On 1 April 2017, His Lordship was appointed as the 14th Chief Justice of Malaysia.

In recognition of His Lordship's public service, Justice Tun Raus Sharif has been awarded several honours, including Kesatria Mangku Negara (KMN) in 1994, Darjah Yang Mulia Pangkuan Negeri (DMPN) in 2000, Darjah Seri Setia Tuanku Mukriz Yang Amat Terbilang (SSTM) in 2010, Darjah Panglima Setia Mahkota (PSM) in 2011, Darjah Panglima Mangku Negara (PMN) in 2012 as well as Darjah Kebesaran Seri Panglima Darjah Kinabalu (SPDK), Darjah Kebesaran Peringkat Pertama Sri Sultan Ahmad Shah Pahang (SSAP), and Darjah Kebesaran Datuk Amar Bintang Kenyalang (DA) in 2016. His Lordship was also awarded Darjah Utama Pangkuan Negeri (DUPN) and Darjah Setia Mahkota (SSM) in 2017.

His Lordship is married to Toh Puan Dato' Indera Salwany Mohamed Zamri. His Lordship is blessed with two children.

Justice Zulkefli Ahmad Makinudin receiving the letter of appointment
from Yang di-Pertuan Agong Sultan Muhammad V

NEWLY APPOINTED PRESIDENT OF THE COURT OF APPEAL

THE RIGHT HONOURABLE JUSTICE ZULKEFLI AHMAD MAKINUDIN

(P.M.N., P.S.M., S.P.M.P., S.P.S.K., S.S.A.P., D.P.M.P., S.M.J., P.I.S.)

The Right Honourable Justice Zulkefli Ahmad Makinudin was born on 28 March 1951 in Ipoh, Perak.

His Lordship had his early education at St Michael's Institution in Ipoh, Perak and Royal Military College in Kuala Lumpur. He then proceeded to read law at the University of Malaya in which he graduated with LL.B (Hons) from the University of Malaya in 1976. He was in the first batch of the University Malaya law graduate. He obtained his Master's degree (LLM) from the University College, University of London in 1983.

His Lordship's legal career began in 1976 as a Deputy Public Prosecutor at the Attorney General's Chambers. His Lordship served in the Judicial and Legal Service in various posts such as Deputy Public Prosecutor in the Royal Customs Department, Federal Counsel at the Inland Revenue Department, Legal Advisor to the Ministry of Trade and Industry, Legal Advisor to the Ministry of Housing and Local Government, State Legal Advisor to the State of Johor and Selangor and Chairman of the Advisory Board in the Prime Minister's Department.

His Lordship was appointed to the bench as Judicial Commissioner on 1 November 1994. His Lordship's first posting was at Taiping High Court. His Lordship was then elevated as a High Court Judge on 12 January 1996 where he served at the High Court in Malaya at Taiping, Shah Alam and Kuala Lumpur.

His Lordship was elevated to the Court of Appeal on 17 June 2005 and to the Federal Court on 5 September 2007. His Lordship was later appointed as the Chief Judge of Malaya on 12 September 2011. On 1 April 2017, His Lordship was appointed as the President of the Court of Appeal.

In recognition of His Lordship's public service, Justice Zulkefli Ahmad Makinudin has been awarded several honours, including Pingat Ibrahim Sultan (PIS) in 1990, Darjah Setia Mahkota Johor (SMJ) in 1992, Darjah Dato' Paduka Mahkota Perak (DPMP) in 1996, Darjah Panglima Setia Mahkota (PSM) in 2010, Darjah Seri Paduka Mahkota Perak (SPMP) in 2012, Darjah Seri Paduka Setia Mahkota Kelantan (SPSK) in 2013, Darjah Sri Sultan Ahmad Shah Pahang (SSAP) in 2016, and Darjah Panglima Mangku Negara (PMN) in 2017.

His Lordship is married to Puan Sri Dato' Indera Rohani Mohamed Kassim and they are blessed with five children.

Justice Ahmad Haji Maarop receiving the letter of appointment
from Yang di-Pertuan Agong Sultan Muhammad V

NEWLY APPOINTED CHIEF JUDGE OF MALAYA
THE RIGHT HONOURABLE
JUSTICE AHMAD HAJI MAAROP

(P.S.M., D.C.S.M., D.S.M.Z., D.M.S.M., S.M.P., K.M.N.)

The Right Honourable Justice Ahmad Haji Maarop was born on 25 May 1953 in Kampung Serkam, Melaka. His Lordship received his early education at Sekolah Kebangsaan Jasin, Sekolah Kebangsaan Alor Gajah and Sekolah Kebangsaan Bukit Beruang, Melaka. His Lordship then went to Sekolah Dato' Abdul Razak (SDAR) in Tanjung Malim for his secondary education and completed his Form Five there. Afterwards, His Lordship proceeded to do his Form Six at the same school, which by then has been relocated to Seremban, Negeri Sembilan. After completing his secondary education, His Lordship went to read law at University Malaya, Kuala Lumpur and obtained Bachelor of Laws (LL.B (Hons)) in year 1978.

His Lordship first embarked in his legal journey on 8 May 1978 as a Judicial and Legal Service officer and had since then held various posts, such as a Magistrate in Bentong and Temerloh, Deputy Public Prosecutor for the State of Johor, Deputy Public Prosecutor of Royal Custom and Excise Department of Malaysia, State Legal Advisor of Perlis, Head of Prosecution Unit for the State of Penang, Senior Federal Counsel of Ministry of Home Affairs and State Legal Advisor of Kelantan. In 1994, while serving as State Legal Advisor of Kelantan, His Lordship was admitted as Advocate and Solicitor in the High Court of Malaya at Kota Bharu.

His Lordship's service was then sought in the Attorney General's Chambers headquarters where he served as Deputy Head and later as Head of Division, Advisory and International Division of the Attorney General's Chambers. On 1 October 1998, His Lordship became one of the seven persons who were appointed as Senior Deputy Public Prosecutor by The Honourable Attorney General of Malaysia. His Lordship's last position in Judicial and Legal Service was as a Commissioner of Law Revision and Reform Malaysia, Attorney General's Chambers.

On 1 June 2000, His Lordship was elevated to the High Court bench as a Judicial Commissioner and was assigned to preside over the High Court of Malaya in Melaka. On 1 March 2002, His Lordship was appointed as a High Court Judge and served in the High Court of Malaya in Melaka, Kuala Lumpur and Terengganu.

His Lordship's elevation to the Court of Appeal bench took place on 18 July 2007. On 10 August 2011, His Lordship took his appointment as Judge, Federal Court of Malaysia.

On 1 April 2017, Justice Ahmad Haji Maarop was officially appointed as Chief Judge of Malaya.

In recognition of his service, His Lordship was awarded with the Setia Mahkota Perlis (SMP) in 1990, Kesatria Mangku Negara (KMN) in 1997, Darjah Mulia Sri Melaka (DMSM) in 1998, Darjah Setia Sultan Mizan Zainal Abidin (DSMZ) in 2006, Darjah Panglima Setia Mahkota (PSM) in 2013 and Darjah Cemerlang Seri Melaka (DCSM) in 2015.

Justice Ahmad Haji Maarop is married to Puan Sri Datin Sri Zainon Haji Zainuddin and they are blessed with three children.

JUDGES' ELEVATIONS AND APPOINTMENTS

For the year 2017, the Superior Courts received thirty-one (31) elevations and appointments. These include the appointments of the new Chief Justice, President of the Court of Appeal and the Chief Judge of Malaya.

There were sixteen (16) Judges elevated to the Federal Court, the Court of Appeal and the High Courts.

Apart from the elevations, twelve (12) Judicial Commissioners were also appointed. The Judicial Commissioners appointed were from the Judicial and Legal Service and the Malaysian Bar.

The list of Judges elevated and Judicial Commissioners appointed in 2017 is as follows:

Chief Justice

Appointment: 1 April 2017
Chief Justice Tun Raus Sharif

President of the Court of Appeal

Appointment: 1 April 2017
Justice Zulkefli Ahmad Makinudin

Chief Judge of Malaya

Appointment: 1 April 2017
Justice Ahmad Haji Maarop

Judges of the Federal Court

Appointment: 30 January 2017
Justice Prasad Sandosham Abraham

Appointment: 23 September 2017
Justice Alizatul Khair Osman Khairuddin

Judges of the Court of Appeal

Appointment: 23 September 2017
Justice Suraya Othman
Justice Yeoh Wee Siam
Justice Rhodzariah Bujang

Judges of High Court

Appointment: 30 January 2017
Justice Azimah Omar
Justice Gunalan Muniandy
Justice Lim Chong Fong
Justice Nordin Hassan
Justice Azmi Ariffin
Justice Noorin Badaruddin
Justice Collin Lawrence Sequerah
Justice Azizul Azmi Adnan
Justice Mohamed Zaini Mazlan
Justice Mohd Nazlan Mohd Ghazali
Justice Azhahari Kamal Ramli

Judicial Commissioners

Appointment: 1 March 2017
Judicial Commissioner Faizah Jamaludin

Appointment: 27 March 2017
Judicial Commissioner Rohani Ismail
Judicial Commissioner Dean Wayne Daly
Judicial Commissioner Mat Ghani Abdullah
Judicial Commissioner Asmadi Husin
Judicial Commissioner Zalita Zaidan
Judicial Commissioner Ahmad Kamal Md. Shahid
Judicial Commissioner Anselm Charles Fernandis
Judicial Commissioner Mohd Ivan Hussein
Judicial Commissioner Ahmad Shahrir Mohd Salleh
Judicial Commissioner Bexter Agas Michael
Judicial Commissioner Celestina Stuel Galid

Justice Prasad Sandosham Abraham receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Alizatul Khair Osman Khairuddin receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Yeoh Wee Siam receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Rhodzariah Bujang receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Suraya Othman receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Collin Lawrence Sequerah receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Lim Chong Fong receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Azizul Azmi Adnan receiving the letter of appointment from Yang di-Pertuan Agong Sultan Muhammad V

Justice Celestina Stuel Galid taking the oath of office as Judicial Commissioner at the Palace of Justice in Putrajaya

Justice Dean Wayne Daly taking the oath of office as Judicial Commissioner at the Palace of Justice in Putrajaya

Justice Anselm Charles Fernandis taking the oath of office as Judicial Commissioner at the Palace of Justice in Putrajaya

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

(L-R): Justice Rhodzariah Bujang, Justice Yeoh Wee Siam, the Attorney-General Tan Sri Mohamed Apandi Ali, Chief Justice Tun Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Ahmad Haji Maarop, Justice Alizatul Khair Osman Khairuddin and Justice Suraya Othman

THE HIGHEST COURT OF THE LAND WITHIN SELECTED JURISDICTIONS: A BRIEF COMPARISON WITH EMPHASIS ON MATTERS OF APPOINTMENT OF JUDGES

INTRODUCTION

Judicial institution is a fundamental structure in any organized government in a civilized nation. Some might have perceived that the establishment of the judicial system serves only to preserve law and order by dispensing justice. That perception is not entirely erroneous. In fact, the courts have been assigned by the very nature of its role, as the last bastion that protects and nurtures the rule of law in a democratic society.

The rule of law in Malaysia is enshrined in the Federal Constitution, which is the supreme law of the land. The Judiciary is established by the Federal Constitution and is one of the three essential components of government, the other 2 components being the Executive and the Legislature. All of these three organs of the government are of equal status and they operate quite independently of each other under the doctrine of separation of powers.

This article seeks to expound the position of the Federal Court in Malaysia, and matters pertaining to its features and functions, including matters on appointment of judges of the superior courts. A brief comparative overview would also be highlighted to display the similarities and differences between the apex courts in other common law jurisdictions such as the United Kingdom, Australia and Singapore.

MALAYSIA

In Malaysia, the Federal Court is the apex Court. It is established under Article 121(2) of the Federal Constitution. It became the final appellate court in both civil and criminal matters when appeals to the Judicial Committees of the Privy Council were abolished on 1 January 1985. Besides exercising its appellate jurisdiction, the Federal Court also has (i) Exclusive Original Jurisdiction conferred by Article 128(1) of the Federal Constitution on the following matters: (a) to determine any question whether a law made by Parliament or by the legislature of a state is invalid on the ground that it makes provision with respect to matter to which the Parliament or, as the case may be, the legislature of the state, has no power to make laws; and (b) to determine disputes on any other question between states or between the Federation and any state; (ii) Referral Jurisdiction whereby Article 128(2) of the Federal Constitution confers upon the Federal Court the jurisdiction to determine any question which arises before any court as to the effect of any provisions of the Federal Constitution; and (iii) Advisory Jurisdiction whereby Article 130 of the Federal Constitution provides the King with power to refer to the Federal Court for its opinion, any question as to the effect of any provision of the Federal Constitution which has arisen or appears to His Majesty is likely to arise.

The Federal Court is headed by the Chief Justice. Currently, there are 13 Federal Court Judges including the Chief Justice, the President of the Court of Appeal and the two Chief Judges of the two High Courts. Every proceeding in the Federal Court shall be heard and disposed of by a panel of three Judges or such greater uneven number of Judges as the Chief Justice may in any particular case determine. It is also noteworthy that there is no dedicated Constitutional Court in Malaysia. Therefore, the Federal Court, as the apex Court performs this dual responsibility, namely (i) the ultimate interpreter of the Federal Constitution; and (ii) the highest appellate tribunal.

The Federal Court plays an important role in upholding fundamental liberties as contained in Part II of the Federal Constitution. Existing in parallel with the Federal Court is the Special Court. It is established pursuant to Article 182 of the Federal Constitution. It consists of the Chief Justice, who presides as its Chairman, the Chief Judges of the High Courts and two other persons who hold or have held office as judge of the Federal Court or a High Court appointed by the Conference of Rulers. In this regard, the Federal Court is vested with the jurisdiction to hear any actions, civil or criminal, instituted by or against the King or any of the nine Malay Rulers.

Appointment of Judges

Article 122B (1) of the Federal Constitution provides that the Chief Justice, the President of the Court of Appeal, the Chief Judges of the High Courts and Judges of the superior court shall be appointed by His Majesty the Yang di-Pertuan Agong (YDPA), acting on the advice of the Prime Minister, after consulting the Conference of Rulers. Before tendering his advice as to the appointment under clause (1) of a judge other than the Chief Justice, the Prime Minister by virtue of Article 122B (2) shall consult the Chief Justice.

For the dispatch of judicial business of the High Court, the YDPA, acting on the advice of the Prime Minister, after consulting the Chief Justice may appoint Judicial Commissioners by virtue of Article 122AB of the Federal Constitution.

The year 2009 marked a significant improvement in the mode of judicial appointments in Malaysia with the establishment of the Judicial Appointments Commission (JAC) on 2 February 2009. It is a statutory body which was set up under the Judicial Appointments Commission Act 2009. It assists the Prime Minister in advising the YDPA on the appointment of Judges of the Superior Courts and the Judicial Commissioners. The functions of the Commission include among others: (i) to select qualified persons who merit appointment as Judges of the superior court for the Prime Minister's consideration; (ii) to receive applications from qualified persons for the selection of Judges to the superior court; (iii) to formulate and implement mechanisms for the selection and appointment of Judges of the superior court, (iv) to review and recommend programmes to the Prime Minister to improve the administration of justice; (v) to make other recommendations about the judiciary; and (vi) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions under the Act.

When the JAC receives applications for candidates it must ensure that the applicant or the candidate is qualified as provided in Article 123 of the Federal Constitution. Article 123 of the Federal Constitution provides for the qualifications for the appointment of Judges of the superior court. In addition, the Commission in selecting candidates shall also take into consideration several criteria which include; (i) integrity, competency and experience; (ii) objectively, impartially, fair and good moral character; (iii) decisiveness, ability to make timely judgments and good legal writing skills; (iv) industriousness and ability to manage cases well; and (v) physical and mental health.

In addition to its function of selecting and recommending candidates, the JAC also formulates and implements mechanisms for the selection and appointment of judges of the superior court as well as to review and recommend programmes to the Prime Minister to improve the administration of justice in Malaysia.

THE UNITED KINGDOM

The United Kingdom does not have a single unified legal system due to its historical background where it was constituted by several separate jurisdictions. It comprises of one system for England and Wales, another for Scotland, and a third for the Northern Ireland. In October 2009, the Supreme Court replaced the Appellate Committee of the House of Lords as the highest court in the United Kingdom. The Supreme Court was established by virtue of Part 3 of the Constitutional Reform Act 2005 (CRA). It consists of 12 judges appointed by Her Majesty by letters patent.

The Supreme Court is the final Court of Appeal for all civil matters in the United Kingdom. Conversely, the Supreme Court only hears appeals on criminal matters that originate from England, Wales and Northern Ireland. The Supreme Court also decides on devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006. Devolution cases can reach the Supreme Court in three ways: (i) through a reference from someone who can exercise relevant statutory powers such as the Attorney General, whether or not the issue is the subject of litigation; (ii) through an appeal from certain higher courts in England and Wales, Scotland and Northern Ireland; and (iii) through a reference from certain appellate courts.

Appointment of Judges

The legal set up in the United Kingdom is based on a decentralized system which entails variation of procedures on the appointment of Judges. It led to the establishment of three separate bodies for appointment of judges in the United Kingdom, namely, (i) Judicial Appointments Commission

Members of the Judicial Appointments Commission (in 2010) L to R - Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum, Justice Arifin Zakaria, Justice Alauddin Dato' Mohd Sheriff, Chief Justice Zaki Tun Azmi, Tun Dato' Seri Abdul Hamid Haji Mohamad, Dato' Seri Ainum Mohd Saaid, Tan Sri Lal Chand Vohrah, Tan Sri Datuk Amar Steve Shim Lip Keong; and the Secretary, Madam Hamidah Khalid

for England and Wales; (ii) Judicial Appointment Board for Scotland; and (iii) Judicial Appointments Commission for Northern Ireland.

(i) Judicial Appointments Commission for England and Wales

The Judicial Appointments Commission is an independent commission that selects candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction extended to Scotland or Northern Ireland. It was set up on 3 April 2006 in order to maintain and strengthen judicial independence by taking responsibility for selection of candidates for judicial office out of the hands of the Lord Chancellor. It also ensures a transparent and an accountable appointments process. Its creation was one of the major changes brought about by the Constitutional Reform Act 2005 (CRA), which also reformed the office of the Lord Chancellor and established the Lord Chief Justice as head of the judiciary of England and Wales.

Under the CRA, the Judicial Appointments Commission is conferred by the Parliament with specific statutory duties with regards to the selection of judges which include (i) to select candidates solely on merit; (ii) to select only people of good character; and (iii) to have regard to the need to encourage diversity in the range of persons available for judicial selection.

The Commission may be required to select a candidate for immediate appointment under section 87 of the CRA, or to identify candidates for future vacancy requests under section 94. The Commission selects one candidate for each vacancy, provided there are sufficient numbers of selectable candidates available for each vacancy, and recommends that candidate for appointment to the Appropriate Authority. The Appropriate Authority can accept or reject a recommendation, or ask the Commission to reconsider it. If the Appropriate Authority rejects a recommendation or asks for reconsideration he must provide written reasons to the Commission. The Commission is also involved in the selection of the Lord Chief Justice, Heads of Division and the Lords Justices of Appeal. Under the CRA, the Commission's role is to convene a selection panel, which will be a committee of the Commission. The members are specified in the relevant sections of the CRA, as amended by the Judicial Appointments Regulations 2013 and it is for the panel to determine the selection process and make a recommendation.

Members of the Judicial Appointments Commission (in 2017) L to R - The Secretary, Mr. Wan Khairilanwar Wan Muhammad, Prof. Dr. Choong Yeow Choy, Datu Haji Abdul Razak Tready, Dato' Anantham Kasinather, Tun Arifin Zakaria, Chief Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Ahmad Haji Maarop, Justice Richard Malanjum and Justice Azahar Mohamed

The provisions in Part 2 of Schedule 13 to the Crime and Courts Act relating to diversity considerations will also apply to these roles.

(ii) Judicial Appointments Board for Scotland (JABS)

The Judicial Appointments Board for Scotland (JABS) was initially established on an administrative basis by the Scottish Ministers in 2002. Its responsibilities were (i) to provide to the First Minister recommendations for appointment to judicial office based on merit, (ii) to consider ways of recruiting a judiciary representative of the communities served; and (iii) to undertake the recruitment processes in an efficient and effective manner. In February 2006, the Scottish Ministers issued "Strengthening Judicial Independence in a Modern Scotland", a consultation paper containing proposals which included the promulgation of legislation to establish the Board on a statutory basis. Following this consultation, the Judiciary and Courts (Scotland) Act 2008 was then presented to the Scottish Parliament in January 2008 which included provisions to establish the Board on a statutory basis. The Judicial Appointments Board for Scotland (JABS) was established a statutory advisory Non-Departmental Public Body (NDPB) on 1 June 2009. The JABS's responsibilities under the Act include (i) selection of an individual for appointment on merit; (ii) selecting an individual only if it is satisfied that the individual is of good character; and (iii) the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office. This is subject to the provisions (i) and (ii) above.

(iii) The Northern Ireland Judicial Appointments Commission (NIJAC)

The Northern Ireland Judicial Appointments Commission (NIJAC) is an independent public body which was set up on 15 June 2005 by virtue of the Justice (Northern Ireland) Acts 2002 & 2004. It was established under the Justice (Northern Ireland) Acts 2002 & 2004 which implemented the recommendations of the Northern Ireland Criminal Justice Review which in turn flowed from the Belfast Agreement (1998). The Belfast Agreement provided for a wide-ranging review of criminal justice in Northern Ireland.

NIJAC primary roles include, (i) conducting the appointments process; (ii) recommending the appointment solely on the basis of merit; and

(iii) engaging in a programme of action to secure, as far as it is reasonably practicable to do so, that appointments or recommendations for appointment to judicial office are reflective of the community in Northern Ireland.

Appointment of Justice of the Supreme Court of the United Kingdom

The selection process for the appointment of a Justice of the Supreme Court of the United Kingdom is governed by Sections 25 to 31 and Schedule 8 to the CRA. It is the responsibility of the Lord Chancellor to convene a Selection Commission which consists of the President of the Supreme Court, the Deputy President of the Supreme Court and a member of each of the Judicial Appointments Commission for England and Wales, the Judicial Appointments Board for Scotland and the Judicial Appointments Commission for Northern Ireland.

The legislation does not prescribe a process that a selection commission has to follow, although under section 27(9) the Commission must have regard to any guidance given by the Lord Chancellor as to matters to be taken into account (subject to any other provision in the CRA) in making a selection. In practice each Selection Commission determines its own process.

In addition, the Selection Commission has to consult: the Lord Chancellor, the First Minister in Scotland, the First Minister in Wales and the Chairman of the Northern Ireland Judicial Appointments Commission. Section 27 of the CRA sets out a number of requirements, which include, (i) selection must be on merit; (ii) a person may only be selected if he meets the qualifications set out at Section 25; (iii) a person may not be selected if he is a member of the Commission; (iv) any selection must be of one person only; and (v) in making selections the Commission must ensure "that between them the Judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom." In practice, this latter requirement is designed to ensure that there is continued representation from both Scotland and Northern Ireland.

The CRA preserves a role for the Lord Chancellor once a Selection Commission has made its decision. The relevant provisions are sections 28 to 31 of the CRA. Section 28 requires that the Commission must submit a report to the Lord Chancellor which must: (i) state who has been selected; (ii) state who was consulted; and (iii) contain any other information required by the Lord Chancellor. The provision also allows for the Lord Chancellor to ask for any further information not included in the report. Having received the report, the Lord Chancellor is under a statutory duty to consult the senior judges or any other judge who has been consulted, the First Minister in Scotland, the First Minister in Wales and the Chairman of the Northern Ireland Judicial Appointments Commission.

Provisions of the CRA further set out the Lord Chancellor's options. It illustrates circumstances where he can invite a reconsideration or he can reject a candidate. But if he does either of those he must give reasons. If, following the consultations above, the Lord Chancellor is satisfied with the recommendation made by the selection commission, he shall forward the person's name to the Prime Minister who, in turn, sends the recommendation to Her Majesty The Queen who will make the formal appointment.

AUSTRALIA

The High Court is the highest court in the Australian judicial system. It was established in 1901 by Section 71 of the Commonwealth of Australia Constitution Act. The High Court of Australia has both an original and appellate jurisdictions. Cases which involve interpretation of the Australian Constitution, or where the Court may be invited to depart from one of its previous decisions, or where the Court considers the principle of law involved to be one of major public importance, are normally determined by a full bench comprising all seven Justices if they are available to sit.

The other types of cases which come to the High Court for its final determination involve appeals against the decisions of the Supreme Courts of the States and Territories, of the Federal Court of Australia and of the Family Court of Australia and these are dealt with by a full court of not less than two Justices. However, there are certain matters which can be heard and determined by a single Justice. The subject matter of the cases heard by the Court traverses the whole range of Australian law which includes arbitration, contract, company law, copyright, courts-martial, criminal law and procedure, tax law, insurance, personal injury, property law, family law, trade practices.

There is no automatic right to appeal to the High Court and parties who wish to appeal must persuade the High Court, in a preliminary hearing, by furnishing special reasons as to why their appeal ought to be heard.

Appointment of Judges

Chapter III of the Commonwealth of Australia Constitution Act provides that Justices of the High Court and of the other courts created by Parliament shall be appointed by the Governor-General in Council. The Attorney-General, as the nation's first law officer and part of the executive branch of government, is responsible for recommending judicial appointments to the Cabinet and the Governor-General. Before an appointment-process commences, the Attorney-General shall consult the courts and the Attorney-General's Department to consider the need for the appointment.

Once the Cabinet has approved the Attorney-General's recommendation of the nominee, the appointment papers (including the Commission of Appointment) will be forwarded to the Executive Council Secretariat for consideration by the Governor-General. If he is in agreement, the Governor-General will sign the Commission of Appointment and it will then be fixed with the Great Seal by way of authentication. Once an appointment has been approved by the Governor-General in Council, the Attorney-General will publicly announce the appointment.

SINGAPORE

The Supreme Court of Singapore is the highest court of law in Singapore followed by the Court of Appeal and High Court. The Supreme Court was established under Part 8 of the Constitution of Republic of Singapore. The powers and jurisdiction of Court of Appeal and High Court are conferred by the Constitution or any written law.

The Court of Appeal deals with appeals against the decisions of the High Court in both civil and criminal matters. It became the Singapore's final appellate court when appeals to the Judicial Committee of the Privy Council were abolished on 8 April 1994. The Chief Justice sits in the Court of Appeal together with the Judges of Appeal. A Judge, Senior Judge, International Judge and Judicial Commissioner may sit in the Court of Appeal on such occasion as the Chief Justice requires. An International Judge may sit in the Court of Appeal involving an appeal against a judgment or order of the Singapore International Commercial Court, as the Chief Justice requires. The Court of Appeal is usually made up of three judges. However, certain appeals, including those against interlocutory orders, may be heard by only two judges. If necessary, the Court of Appeal may comprise five or any greater uneven number of judges.

The High Court consists of the Chief Justice and the Judges of the High Court. Proceedings in the High Court are heard before a single judge, unless otherwise provided by any written law. The High Court hears both criminal and civil cases as a court of first instance. The High Court also hears appeals from the decisions of District Courts and Magistrates' Courts in civil and criminal cases, and decides points of law reserved in special cases submitted by a District Court or a Magistrates' Court. In addition, the High Court also has general supervisory and revisionary jurisdiction over all state courts in any civil or criminal matter.

Appointment of Judges

Despite noticeable resemblance between the Malaysian and Singapore judicial systems due to historical reasons, unlike Malaysia which has devised a procedure on appointment of judges where it is made on recommendation of an appointment commission, Singapore has not followed such approach. Article 95 of the Constitution of the Republic of Singapore provides that the Chief Justice, the Judges of Appeal and the Judges of the High Court and judicial commissioners shall be appointed by the President if he, acting in his discretion, concurs with the advice of the Prime Minister. Before tendering his advice to the President on such appointment, the Prime Minister must consult the Chief Justice.

Article 22(1)(a) of the Constitution provides that the President may exercise his discretion to refuse to make an appointment of the Chief Justice, Judges of the Supreme Court, and the Judicial Commissioners, Senior Judges and International Judges of the Supreme Court if he does not concur with the advice or recommendation of the respective authority.

Article 98(1) further stipulates that the Supreme Court justices enjoy security of tenure up to the age of 65 years, after which they cease to hold

office. However, Article 95(2) of the Constitution provides that the president may exercise his discretion on the advice of the Prime Minister to appoint a person who is 65 years of age or older and who is either qualified for appointment as a Judge of the Supreme Court or has ceased to be a Judge of the Supreme Court, to be the Chief Justice, a Judge of Court of Appeal or a Judge of the High Court for a specified period. In addition, Article 95(4) provides that in order to facilitate the disposal of judicial business in the Supreme Court, judicial commissioners may be appointed for limited periods.

CONCLUSION

In conclusion, the courts remain as one of the significant institution of a civilized government in any jurisdiction. The courts are arranged in a hierarchy and are distinguished from each other according to their respective jurisdictions with the apex Court occupying the summit as the highest court of the land. Judges of those courts are appointed through a distinct judicial appointment process and as has been illustrated above, that appointment process differs from one jurisdiction to another, but the objective is similar, namely, to appoint a qualified person, within the set parameters, to the important office of a judge of the superior court.

Prepared by

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THE 51st ANNUAL MEETING OF THE COUNCIL OF JUDGES

Chief Justice Arifin Zakaria, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin and Justice Richard Malanjum with the Judges and Judicial Commissioners at the 51st Annual Meeting of the Council of Judges at the Royale Chulan Kuala Lumpur.

The 51st Annual Meeting of the Council of Judges was held on the 17 to the 19 March 2017, at the Royale Chulan Kuala Lumpur. The meeting was convened pursuant to section 17A of the Courts of Judicature Act 1964. This yearly congregation of the Judges aims to facilitate the meeting and discussion among Judges of the Federal Court, the Court of Appeal and the High Court on issues pertaining to the administration of justice. This meeting was the last gathering of the judges before the retirement of the Chief Justice, Arifin Zakaria.

The meeting commenced with the launching ceremony of a book entitled "Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries" on 18 March 2017. The book comprises of a selection of the Chief Justice's written judgments. The judgments were companied by analytical commentaries from eminent contributors including the former Chief Justices of Malaysia and the Chief Justice of Singapore. Other contributors include legal practitioners and academicians, amongst others, Emeritus Professor Datuk Dr Shad Saleem Faruqi, Professor Madya Dr Shamrahayu A Aziz, Professor Dato' Salleh Buang, Datuk Seri Gopal Sri Ram and Datuk Professor Sundra Rajoo.

The book was launched by Duli Yang Maha Mulia Paduka Seri Sultan Perak, Sultan Nazrin Muizzuddin Shah Ibni Al-Marhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah. In his speech, His Royal Highness emphasized that in order to maintain public confidence in the Judiciary, Judges must have the courage to convey their views whenever necessary. Judges are expected to fulfil their duties with integrity and independence in accordance with the rule of law.

The book launching ceremony was followed by the opening address by the Chief Justice to officiate the 51st Annual Meeting of the Council of Judges. Recounting His Lordship's tenure as the Chief Justice, His Lordship expressed his pride of the Malaysian Judiciary for maintaining its independence and high level of integrity. The Chief Justice also reminded the

Judges that being independent in decision-making process does not entitle them to interpret the law arbitrarily without reference to settled laws and rules.

In accord with the speech of His Royal Highness during the book launching ceremony, the Chief Justice reiterated that amongst the important attributes associated with a reliable Judiciary system in a society are the high level of judicial independence and the quality of judges in upholding the rule of law.

On the improvements on the delivery of the justice system, the Chief Justice is happy with the achievements of the courts for the impressive disposal rate and the positive image of the Malaysian Judiciary. The Chief Justice also compliments the effort of the Government in setting up specialized courts which helps to enhance court efficiency and access to justice.

The meeting proceeded with the discussion with the Chief Registrar Office. Among the issues discussed were the level of competency in English amongst the Judges' secretaries and the status of the abolishment of deposits for the filing of appeals. On the issue of preparation of notes of proceedings and appeal records, it was highlighted that the main cause of the delay in preparing the notes of proceedings and appeal records was due to inadequate number of transcribers.

The Chief Registrar enlightened the judges on the initiative to engage fresh graduates from local universities to be apprentices under the Judicial Clerkship Programme. The Programme is to give an opportunity for excellent law graduates to join the courts in order to gain experience of the legal profession. The idea was well received by the Chief Justice as it helps the graduates to explore the working environment, especially in the judicial service.

At the end of the session, Justice Ahmad Maarop informed the audience that the Judicial Appointment Commission has published two issues of 'Journal of the Malaysian Judiciary', which comprises of a collection of speeches by the Chief Justice and articles written by Judges of the Federal Court and the Court of Appeal. Aiming to promote the publication of legal articles by members of the Malaysian Judiciary, Justice Ahmad Maarop invited judges to contribute articles to be published in the Journal.

The second day of the meeting continued with the presentation by Justice Zawawi Salleh on the topic "Court Security Measures: Best Practice". Justice Zawawi Salleh stated in his presentation that the threat against the security of the courts is something that should be taken seriously. There are several court security practices in the United

(L-R) Justice Zulkefli Ahmad Makinudin, Chief Justice Arifin Zakaria, Justice Raus Sharif and Justice Richard Malanjum at the 51st Annual Meeting of the Council of Judges at the Royale Chulan Kuala Lumpur Hotel

Judges at the 51st Annual Meeting of the Council of Judges at the Royale Chulan Kuala Lumpur Hotel

States which can be adopted by the Malaysian Courts, for example, to establish a Court Security Committee for every court buildings and to open only one main entrance for the public to enter the court building.

Justice Zawawi Salleh also suggested that future court buildings should be designed to provide protection against any attack, such as using bullet-resistant materials when constructing the courtroom. He also highlighted the suggestion to equip Judges with mobile emergency alert system features such as "panic button" or "alarm button" in order to expedite an emergency response.

The Malaysian Judiciary Yearbook 2016 was launched on 19 March 2017 by the Chief Justice. The Malaysian Judiciary Yearbook is an annual publication which encompasses articles written by judges and reports of significant events of the year 2016. During the launching, the Chief Editor, Justice Zainun Ali gave a speech and lauded the contributions made by the editorial team.

A Farewell Dinner was held in conjunction with the retirement of the Chief Justice in the evening of the 18 March 2017. His Lordship was pleasantly surprised by the performance based on his real life experience including his career in the Judiciary. The dinner was also entertained by the live performances of members of his family and friends.

The 51st Annual Meeting of the Council of Judges concluded with the closing remarks by Chief Justice Arifin Zakaria thanking the Committee, which was led by the Chief Registrar for organizing such a wonderful event. His Lordship mentioned that the dinner held in this Conference as one of the best that he had attended in the last few years.

The Chief Justice reiterated the importance of listening to lawyers' arguments by judges. In denying the lawyer's right to speak, justice may not be achieved and it can cause the judicial system to collapse. At the end of his speech, His Lordship reminded and encouraged the judges to write more judgments, as it is one of the criteria for their promotions.

Book Launch of "Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries"

18 March, 2017

Salam Sejahtera.

Beta bersyukur ke hadrat ILAHI kerana dengan limpah rahmat daripada Nya juga. Beta dapat berangkat ke Majlis Pelancaran Buku "Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries."

Dengan penentuan dan kehendak ILAHI jua. Tun Arifin Zakaria diperkenankan oleh Seri Paduka Baginda Yang di-Pertuan Agong, mengangkat sumpah jawatan sebagai Ketua Hakim Negara pada 12 September 2011 mengikut Perkara 122B (1) Perlembagaan Persekutuan.

Tun Arifin dilantik sebagai Ketua Hakim Negara ke-13, mengambil alih daripada Tun Zaki Tun Azmi.

Ladies and Gentlemen.

I am particularly pleased to be present at this significant event this morning to celebrate the contributions of YAA Tun Arifin Zakaria on the eve of his retirement from his high judicial office, as the Chief Justice of Malaysia.

This morning's event provides a timely opportunity to speak about what matters most to judges – that is, their judgments, and the importance of upholding and adhering to the principles of the Rule of Law.

Having had the privilege of being born to a judge myself, it would not be an exaggeration for me to say that the office of a judge places upon the holder onerous duties and responsibilities that go beyond those imposed on

occupations in other walks of life. As the well-known jurist David Pannick puts it: "Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid: make decisions" (David Pannick, Judges, 1987).

In making decisions, judges have to give reasons in their written judgments. These written judgments are vital: First, it reflects the transparency and accountability of the decision-making process, an integral component to gaining public confidence; and secondly, it is through these judgments that the law is developed.

As common law lawyers, in making their judgements, judges should be well-armed with a strong narrative, in which the justification for the reasoning in their judgments is given pride of place.

These qualities are clearly evident in any reading of the judgments of great judges of the past and present. Such judges dominate and define their age, even as they are themselves shaped by it. Some are consummate judicial figures, whose legacy of brilliant judgments will be passed on to the generations that follow. In this regard, we will always be indebted to the lucid reasoning we find in the judgments of Tun Suffian, Tun Azmi, His Royal Highness Sultan Azlan Shah, Justices Eusoffee Abdoolcader, HT Ong, SS Gill, and all our other judicial luminaries.

When judges retire, they leave behind a corpus of judgments which will continue to be part of the law – to be applied, analysed and scrutinized. It is these judgments that secure their place in the legal history of the country.

Today in the collection of judgments contained in the book, Justice Above All, we get a glimpse of Chief Justice Tun Arifin's contribution to Malaysian jurisprudence.

Beyond independence, impartiality and integrity, a judge must also possess a good and sharp mind. If ignorance of the law does not absolve an accused person, then it must be even more compellingly the case that the person sitting in judgment must possess fully, not just the requisite knowledge, but also the sharp faculties and intellect necessary to apply that knowledge properly.

Good judgments are the very cornerstone of common law. They provide the foundations and fabric that form and shape it. Judges must thus continually strive to refine their judgments before delivering them. Since their judgments determine not only the outcome of each dispute brought before them, but may also contribute to the development of the future application of the law, there is no room for slack intellectual effort.

Even if some may disagree with the reasoning or views of some judges in some cases, the sheer majesty and brilliance of the judgements they regularly deliver, and the coalescence of human thought and experience that these represent, cannot fail to impress and inspire us.

In this light, one might pose the question of what it is that makes a judgment great. And in what context and by what dimensions can we measure and compare such greatness? I would like to quote something my father said at the 11th Tunku Abdul Rahman Lecture at the Malaysian Institute of Management in November 1984. His Royal Highness said, "... The existence of the courts and judges in every ordered society proves nothing; it is their quality, their independence and their powers which matter ..."

In extending to judges the privilege to serve on the Court, it is taken for granted that among their many qualities is that of wisdom, to ensure that justice and fairness are upheld in all their judgments. But even though as Francis Bacon, the former Lord Chancellor of England, said, "knowledge is power," knowledge and wisdom are not enough. They must always be accompanied by intellectual honesty and above all independence.

Although there is undoubtedly value in unanimous opinions, it is critical that judges speak in dissent where necessary. Some judges may hold strong legal and moral convictions, yet fail to articulate their concerns in their judgments. They may remain silent out of deference to the judgments of others; out of concern that their comments may be dismissed; or out of a misplaced belief that what they might have to say is not that important. But the Bench, and judicial decision-making processes, can easily handle the ramifications of a divergent opinion on any given issue.

Sometimes, the brave dissenting voice is transformed into law. A classic case is that of Brown v Board of Education 347 US 483 (1954) when the US Supreme Court gave weight to the spirit of Justice Harlan 's dissenting voice in Plessy v. Ferguson 163 U.S. 537 (1896). As a result, and in a historic judgement, then Chief Justice Warren held that racial segregation

in public schools constituted a violation of the US constitutional guarantee of equality of rights.

And of course, who can forget Lord Atkin's famous dissent in Liversidge v Anderson [1942] AC 206 and Lord Denning's dissenting judgment in Candler v Crane, Christmas & Co [1951] 2 KB 164, both of which had far-reaching consequences for the landscape of the law thereafter.

As I stated earlier, judges also shoulder a heavy responsibility in discharging their duty to uphold the Rule of Law.

It is by their judgments that judges are made accountable for the decisions they have made. It goes without saying that they should be free to express their reasons as they think fit. In other words, for the Rule of Law to flourish, courts and their participants should be allowed to express a variety of ideas and principles. Every judge should have the opportunity to participate fully, even while the majority decision rules the outcome. This judicial independence in turn helps to ensure that the Rule of Law is fully upheld.

It is this adherence to the Rule of Law that should be the compass and leitmotif of all judges in the adjudication of all the matters before them – no matter what the issues are, and no matter whose interests they are deciding. This ensures that justice will always prevail.

The character, qualities and independence of the judges themselves also serve to sustain public confidence in the court. The judges are not there simply to decide cases but to decide them as they think the cases should be decided in the true spirit of justice and fairness. Doing the right thing is therefore incumbent on all judges. In fact, it is their supreme duty.

We live in challenging times, in which our institutions sometimes seem to be under threat. This makes it all the more crucial that the public's regard for the judiciary should be at its highest and clearest. More than ever, we need courageous and fair-minded judges to instil confidence that the judicial system remains sacrosanct in guarding the rights, interests and liberty of all.

The judiciary must thus strive relentlessly to dispense justice in accordance with the Rule of Law. While this is an essential prerequisite for safeguarding civil and political rights and ensuring good governance, it also provides the foundation for economic growth and progress. By providing fair and prompt judicial decisions on matters concerning the enforcement of commercial rights, a well-functioning judicial system helps to promote a competitive and attractive economic climate in the country. This in turn facilitates value-adding capital formation and investment.

It is of course by no means the express role of the judiciary to encourage economic growth. But ensuring that our judicial system delivers justice remains a sine qua non for maintaining a reputation for fairness and efficiency, and something our judiciary should continually seek to achieve. As our economy and society continue to evolve, the progress being made is thus further strengthened by our maturing judiciary, and by the integrity of the judicial decision-making process.

Thus, I return to the question posed earlier of what makes a judgment great. My own belief is that a great judgement is one in which the decision-maker fully understands that he is the guardian of the Rule of Law, and in which his fidelity to its precepts is absolute.

In this regard, I would like to end with a quote again from my father, His Royal Highness Sultan Azlan Shah, who, like Tun Arifin, was also the Chief Justice. I quote:

> *"The rules concerning the independence of the judiciary... are designed to guarantee that they will be free from extraneous pressures and independent of all authority save that of the law. They are, therefore, essential for the preservation of the Rule of Law."*[1]

Ladies and Gentlemen

YAA Tun Arifin Zakaria has had a long and illustrious career on the Bench. As a judge he wrote some outstanding judgments, some of which are contained in this new book, Justice Above All.

[1] HRH Sultan Azlan Shah in "Supremacy of Law in Malaysia" in Constitutional Monarchy, Rule of Law and Good Governance: Selected Essays and Speeches by HRH Sultan Azlan Shah , 13-33 at pages 14-15.

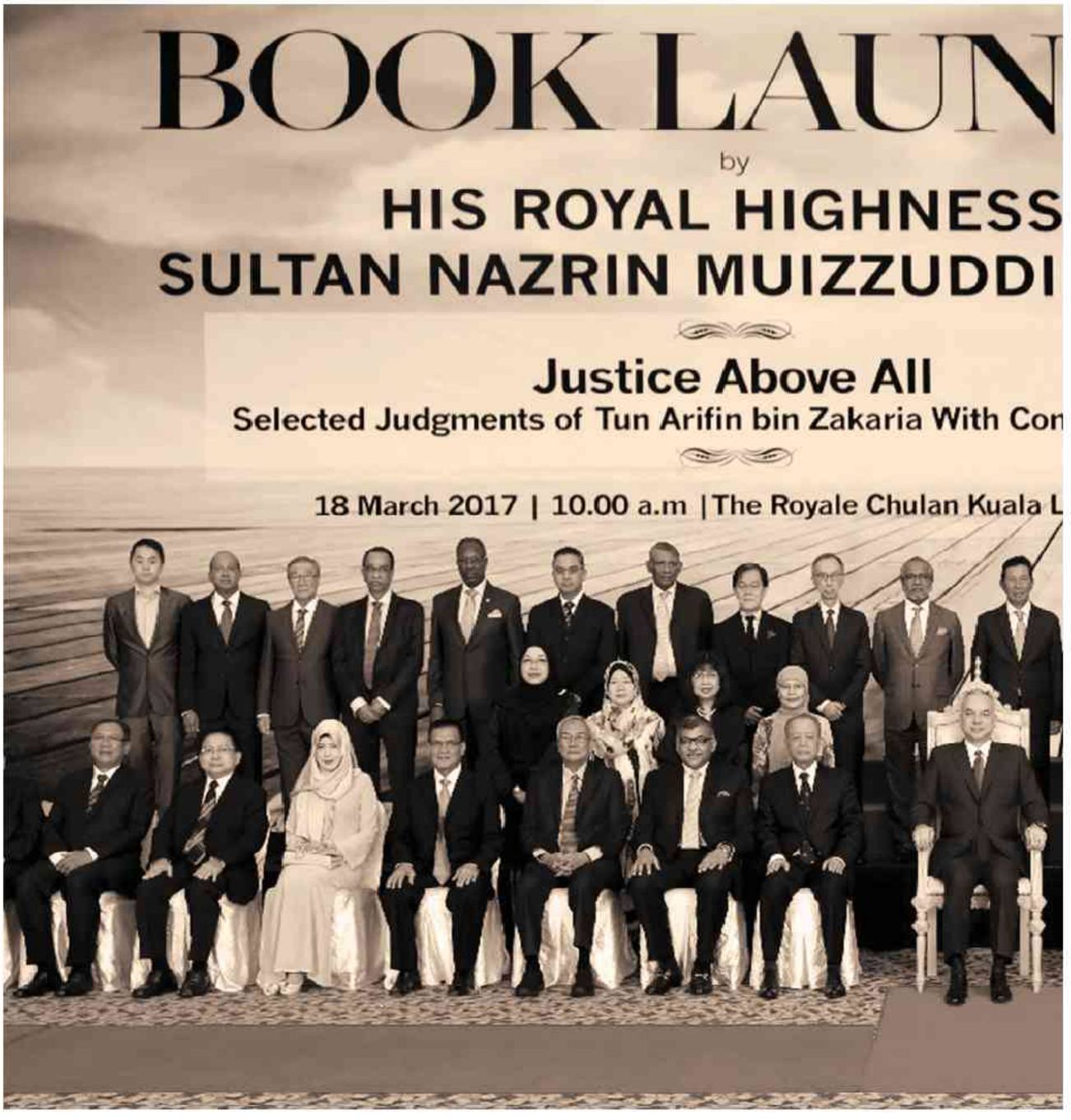
The judgments selected for this collection, each accompanied by one or more commentaries by eminent lawyers, should stimulate readers, and challenge the boundaries of their legal imaginations in the most significant way. Tun Arifin's work encompasses a diverse range of issues. The book will undoubtedly influence thinking on the weighty matters that the judgements address, and contribute in this way towards the further development of Malaysian jurisprudence.

I believe that Tun Arifin's place in history is assured, as it stems from the essential fact that through his lifelong work with the law, Malaysian jurisprudence has grown immensely in size and form. I am certain that this book will have a place of prominence on any bookshelf.

Tun Arifin, I wish you a happy retirement.

Dengan Kalimah Bismillahi Rahmanir Rahim, Beta dengan sukacitanya melancarkan buku "Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries."

Duli Yang Maha Mulia Paduka Seri Sultan Perak, Sultan Nazrin Muizzuddin Shah Ibni Al-Marhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah (left) with Chief Justice Arifin Zakaria and Justice Raus Sharif



"Justice Above All: Selected Judgments of Tun Arifin Zakaria with Commentaries" launched by Duli Yang Muhibbuddin Shah Al-Maghfur-Lah.

Maha Mulia Paduka Seri Sultan Perak, Sultan Nazrin Muizzuddin Shah Ibni Al-Marhum Sultan Azlan

RETIRED JUDGES

Tun Arifin Zakaria

Tun Arifin Zakaria, the former Chief Justice of Malaysia was born in Pasir Mas, Kelantan on 1 October 1950. He received his early education at Sekolah Melayu Tiang Chandi, Repek, Pasir Mas, Sekolah Melayu Gual Periok, Pasir Mas, Sultan Ibrahim Primary School, Pasir Mas, Sultan Ismail College of Kota Bahru and went to read law at the University of Sheffield. He pursued his LL.M from the University College of London and was called to the English Bar in 1979.

Upon graduation, Tun Arifin Zakaria joined the Judicial and Legal Service in 1974. Throughout his career he held various important posts including Legal Officer in the Prime Minister's Department, Magistrate in Petaling Jaya, Senior Assistant Registrar in Kuala Lumpur High Court, Federal Counsel at the Attorney General's Chambers, Legal Officer at Ministry of Primary Industry, Federal Counsel at the Ministry of Law, State Legal Advisor of Malacca and Perak, Legal Advisor to the Public Service Department, Deputy Parliamentary Draftsman, Senior Federal Counsel at the Attorney General's Chambers and the Department of Inland Revenue.

Tun Arifin Zakaria was appointed as a High Court Judge on 25 January 1994. He was elevated to the Court of Appeal in 2002, and subsequently to the Federal Court in 2005. On 18 October 2008, Tun Arifin Zakaria was appointed the Chief Judge of Malaya. He was appointed as the Chief Justice of Malaysia on 12 September 2011.

In his long tenure on the Bench, he presided over a number of high profile cases including Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors[1], PP v Hanif Basree Abdul Rahman[2], Raja Petra Raja Kamarudin v Menteri Dalam Negeri[3], Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C Mogarajah (also known as Muhammad Ridzwan bin Mogarajah) & Anor[4], Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors[5], Dato' Seri Anwar bin Ibrahim v Public Prosecutor and another appeal[6] and Public Prosecutor v Azmi bin Sharom[7].

In Dato' Seri Ir Hj Mohammad Nizar Jamaluddin v Dato' Seri Dr Zambry Abdul Kadir; Attorney General (Intervener) [2010] 2 CLJ 925 Tun Arifin Zakaria observed that:

> *"The appellant cannot continue to govern after having lost the support of the majority. To allow him to do so would be going against the basic principle of democracy. However, we would add that this by no means is the end of the matter, as it is always open to the appellant to bring a vote of no confidence against the respondent in the State Legislative Assembly of Perak or make a representation to His Royal Highness the Sultan of Perak at any time if he thinks that the respondent does not enjoy the support of the majority of the members of the State Legislative Assembly of Perak.".*

On the Bench, Tun Arifin Zakaria was known to be a strict and firm judge. During his tenure, he managed to increase public confidence in the system. Tun Arifin Zakaria completed his tenure on 31 March 2017.

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1 [2005] 4 CLJ 666
2 [2008] 4 CLJ 1
3 [2010] 4 CLJ 25
4 [2011] 2 MLJ 281
5 [2014] 4 MLJ 765
6 [2015] 2 MLJ 293
7 [2015] 6 MLJ 751

Tan Sri Datuk Suriyadi Halim Omar

Tan Sri Datuk Suriyadi was born in Seremban, Negeri Sembilan on 8 May 1951. He obtained his LL.B (Hons.) from Warwick University and was admitted as a Barrister-at-Law of the Lincoln's Inn in 1975. Tan Sri Datuk Suriyadi had a long and illustrious legal career as he had served for 42 years in the Judicial and Legal Service.

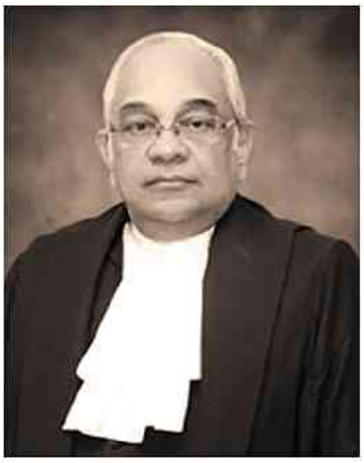
He started his career as a Legal Officer (Cadet) in Kuala Lumpur High Court in 1975. Throughout his service, Tan Sri Datuk Suriyadi had served in various capacities, amongst others, as Magistrate in Malacca, Deputy Public Prosecutor in Negeri Sembilan, Sessions Court Judge, Federal Counsel of the Ministry of Home Affairs as well as in government agencies such as the Inland Revenue Board and the Anti-Corruption Agency (now Malaysian Anti-Corruption Agency). In 1992, he was appointed as the Deputy Head of the Prosecution Division.

Tan Sri Datuk Suriyadi was appointed a Judicial Commissioner on 1 November 1994 and was confirmed as a High Court Judge on 12 January 1996. He served in Malacca, Kelantan, and Shah Alam High Court before being elevated to the Court of Appeal in 2006. After four years, Tan Sri Datuk Suriyadi was appointed a Federal Court Judge. He retired on 7 November 2017.

Tan Sri Datuk Suriyadi is known for his landmark decisions, and in Mohd Ridzwan Abdul Razak v Asmah Hj Mohd Nor [2016] 6 CLJ 346 where he observed that:

> *"After mulling over the matter, we arrived at a decision to undertake some judicial activism exercise and decide that it is timely to import the tort of harassment into our legal and judicial system, with sexual harassment being part of it."*

Dato' Varghese George Varughese



Dato' Varghese George Varughese was born on 28 July 1950 in Klang, Selangor. He graduated with LL.B (Hons) from the University of Singapore in 1974. Upon his graduation, Dato' Varghese was called to the Bar and practiced as a lawyer for 35 years. He was a Senior Partner of Messrs. Zain & Co. before his appointment as a Judicial Commissioner on 28 October 2009. Dato' Varghese is a Fellow of the Chartered Institute of Arbitrators and the Malaysian Institute of Arbitrators.

On 10 August 2011, Dato' Varghese was elevated as a High Court Judge and served in the Kuala Lumpur High Court and Penang High Court specializing in civil and commercial cases. He was elevated to the Court of Appeal on 30 September 2013. He retired as a Court of Appeal judge on 28 January 2017.

Dato' Zamani A. Rahim

Dato' Zamani A. Rahim was born on 7 October 1950. He was admitted as a Barrister-at-Law at Lincoln's Inn in 1984 and was later admitted as an Advocate and Solicitor of the High Court of Malaya on 9 January 1986.

He began his legal career as an advocate and solicitor and became a partner in Messrs Zamani A. Rahim & Partners before being appointed as a Judicial Commissioner on 13 August 2007. He was elevated as a Judge of High Court of Malaya on 14 April 2010 and was subsequently elevated to the Court of Appeal on 16 February 2015. His tenure ended on 6 April 2017.

Dato' Asmabi Mohamad

Dato' Asmabi Mohamad was born in Kedah on 12 November 1951. She first obtained her teaching certificate from the Language Institute of Kuala Lumpur in 1976 and pursued her LL.B at the University of Malaya and graduated in 1984.

She started her career by joining the Judicial and Legal Service in 1984 and during her long career she held various important posts such as Senior Assistant Registrar, Magistrate, Legal Advisor at Ministry of Agricultural, Director General of Judicial and Legal Training Institute, and Deputy Head of the Civil Division at the Attorney General Chamber.

Dato' Asmabi Mohamad was then appointed a Judicial Commissioner of the High Court of Malaya on 14 August 2009. She was elevated as a Judge of the High Court on 19 February 2014 and subsequently on 21 March 2016 to the Court of Appeal. Dato' Asmabi Mohamad retired on 12 November 2017.

Datuk Lim Yee Lan

Datuk Lim Yee Lan was born on 30 December 1951 in Johore Bahru. She obtained a Bachelor Degree in Law from the University of Malaya. She joined the Judicial and Legal Service upon graduation and was first posted as a Legal Officer of the Attorney General's Chambers in 1976. Datuk Lim Yee Lan continued to hold several posts during her career, amongst others, as Legal Officer in the Ministry of Works and Public Utilities, Sessions Court Judge in Kuala Lumpur, Legal Advisor in the Ministry of Finance and was appointed as a Treasury Solicitor of the Treasury of Malaysia from 2001 until August 2005.

Datuk Lim Yee Lan was appointed as a Judicial Commissioner on 1 September 2005 and was elevated to the High Court bench two years after. She served in the High Courts of Kuala Lumpur and Shah Alam during her tenure as a High Court Judge. On 4 April 2012, she took an oath as a Court of Appeal Judge. She retired on 30 December 2017.

Dato' Wan Afrah Dato' Paduka Wan Ibrahim

Dato' Wan Afrah was born in Alor Setar, Kedah on 13 July 1956. She studied in the University of Malaya where she received her LL.B (Hons.). She began her career in the Judicial and Legal Service as a Senior Assistant Registrar in Seremban High Court. In 1984, she assumed the duty of Assistant Director of the Legal Aid Bureau in Seremban.

During her tenure in the Judicial and Legal Service, she also held the posts of Magistrate and Sessions Court Judge in several states. On 1 May 2003, she took her oath of office as a Judicial Commissioner and was later appointed as a High Court Judge of Malaya on 21 December 2004. She then served in the High Courts in Kuala Lumpur, Ipoh and Shah Alam prior to her retirement on 30 June 2017.

Dato' John Louis O'hara

Dato' John Louis O'hara was born on 29 May 1951 in Seremban, Negeri Sembilan. He received his LL.B (Hons.) at King's College University of London. A Barrister-at-Law of Lincoln's Inn, he began his career in the Judicial and Legal Service as a Magistrate in Kuala Lumpur in 1976. During his career in service, Dato' John Louis held various posts, amongst others, as Deputy Public Prosecutor, Federal Counsel, Sessions Court Judge, President of the Industrial Court in Kuala Lumpur and Legal Adviser of the Prime Minister's Department. In 2003, Dato' John Louis held the post of Head of the International Affairs Division in the Attorney General's Chambers.

Dato' John Louis took the oath of office as a Judicial Commissioner on 1 September 2005. He was confirmed as a High Court Judge in Malaya and served in the High Courts of Penang and Kuala Lumpur before his retirement on 29 May 2017.

Dato' Noraini Abdul Rahman

Dato' Noraini Abdul Rahman was born in Mukim Tunjang, Kedah on 29 April 1951. She obtained her LL.B (Hons.) from Queen Mary College, University of London. Dato' Noraini Abdul Rahman joined the Judicial and Legal Service as a Legal Officer in the Kuala Lumpur High Court. Subsequently, she assumed the duty of President of the Sessions Court Judge in Petaling Jaya. In 1978, she served as a Legal Officer in the Department of Public Trustee and Official Administrator.

She further held various and important posts, amongst others, Assistant Parliamentary Draftsman, Head of Judicial and Training Institute (ILKAP), Law Reform Commissioner, Deputy Head of the Advisory and International Affairs Division (I) as well as Director of the Legal Profession Qualifying Board (LPQB).

On 15 September 2008, Dato' Noraini took the oath as a Judicial Commissioner and was confirmed as a High Court Judge in 2011. She served in the High Courts of Shah Alam and Kuala Lumpur until her retirement in April 2017.

Dato' Teo Say Eng

Dato' Teo Say Eng was born on 4 November 1951 in Negeri Sembilan. He obtained his LL.B from University of London and University of Malaya. He then pursued his Master Degree at the National University of Singapore and the University of London.

Dato' Teo Say Eng was appointed a Judicial Commissioner on 14 August 2009 and as a Judge of High Court of Malaya on 12 September 2014. His tenure ended on 4 November 2017.

He had written several books including "Practical Handbook on Criminal Prosecution in the Subordinate Court", "Your Rights and the Law", "Military Legal Proceeding in Malaysia" and the "Malaysian Criminal Litigation Manual."

Datuk Douglas Cristo Primus Sikayun

Datuk Douglas Cristo Primus Sikayun was born on 27 March 1951 in Tawau, Sabah. He obtained his Bachelor of Law from the University of London and was admitted as a Barrister-at-Law of the Honourable Society of the Middle Temple.

He was called to the Sabah Bar on 6 April 1979. He served in various fields in his legal career including as a Lecturer at Mara Institute of Technology and a Magistrate in Sandakan. He is also an Accredited Mediator and Fellow of Chartered Institution of Arbitrator. In 2010, Datuk Douglas Cristo Primus Sikayun was admitted as advocate & solicitor of the Native Court of Appeal.

Datuk Douglas Cristo Primus Sikayun was subsequently appointed as a Judicial Commissioner of the High Court in Sabah and Sarawak on 17 January 2011 and was posted at Tawau High Court. On 16 February 2015, he was elevated as a Judge of the High Court in Sabah and Sarawak. Datuk Douglas Cristo Primus Sikayun's tenure ended on 27 September 2017.

Dato' Zakiah Kassim

Dato' Zakiah Kassim was born in Kubang Pasu, Kedah on 27 May 1959. She obtained her LL.B (Hons.) from the University of Malaya in 1983.

She started her career by joining the Judicial and Legal Service in 1983 and during her career she held various posts including Senior Assistant Registrar, Magistrate and Sessions Court Judge. During her tenure at the Attorney General Chambers, she was posted in various divisions such as advisory and drafting divisions. In 2009, Dato' Zakiah Kassim was appointed a Chairman of the Advisory Board in the Prime Minister Department.

Dato' Zakiah Kassim was appointed as a Judicial Commissioner on 14 August 2009 and her tenure ended on 13 August 2017.

Mr. Wong Teck Meng

Mr. Wong Teck Meng was born in Johor on 9 October 1958. He graduated with LL.B (Hons.) from the University of Malaya in 1982.

He started his career in 1982 and throughout his career in the Judicial and Legal Service he has held various important posts such as Magistrate, Senior Assistant Registrar, Deputy Public Prosecutor and Sessions Court Judge. He was appointed a Chairman of the Parole Board in 2008.

On 8 July 2013, Mr. Wong Teck Meng was appointed a Judicial Commissioner of the High Court in Malaya. He completed his tenure on 7 July 2017.

Dato' Siti Mariam Haji Othman

Dato' Siti Mariam Haji Othman was born in Perlis on 18 October 1961. She obtained her LL.B Degree from the University of Malaya in 1985.

Dato' Siti Mariam Haji Othman had a long career in the Judicial and Legal Services which she joined in 1985, during which she held various posts including as a Legal Officer at the Attorney General Chamber, Registrar of the Supreme Court, Registrar of the Federal Court and Sessions Court Judge.

Dato' Siti Mariam Haji Othman was appointed as a Judicial Commissioner of the High Court in Malaya on 16 December 2015. She completed her tenure on 15 December 2017.

Mdm. Al-Baishah Abd. Manan

Mdm. Al-Baishah Abd. Manan was born in Kuala Kangsar, Perak on 11 September 1959. She graduated with LL.B (Hons.) from University of Malaya in 1985.

She began her legal career when she joined the Judicial and Legal Service in 1985 and held various posts during her tenure including Magistrate, Senior Assistant Registrar, Deputy Registrar, Senior Federal Counsel and Sessions Court Judge.

Mdm. Al-Baishah Abd. Manan was appointed as a Judicial Commissioner on 16 December 2015. She completed her tenure on 15 December 2017.

JUDGES IN REMEMBRANCE

Remembering the late Mr. Abdul Razak Dato' Abu Samah
(Former High Court Judge)

The late Mr. Abdul Razak Dato' Abu Samah was born on 25 February 1926 in Pekan, Pahang and was educated at Cambridge University where he received his LL.B. Upon his graduation, he was called to the English Bar.

Mr. Abdul Razak joined the Judicial and Legal service in 1958 as a Cadet Legal Officer. He had served in the service for 16 years as a Magistrate in Sungai Petani, President of the Sessions Court in Raub, Deputy Public Prosecutor, Senior Federal Counsel, State Legal Adviser of Penang and Selangor. He also held the post of Parliamentary Draftsman shortly before his appointment as a High Court Judge in 1974. He continued to serve in Kota Bharu, Kuantan, Kuala Lumpur and Seremban. Mr. Abdul Razak retired as a High Court Judge on 25 February 1991. He left us on 22 October 2017 at the age of 91.

Remembering the late Dato' Faiza Thamby Chik (Former High Court Judge)

The late Dato' Faiza Thamby Chik (second from right) with Judges at an official event

The Late Dato' Faiza Thamby Chik was born on 6 October 1939 in Rembau, Negeri Sembilan. He received his early education in Negeri Sembilan and became a qualified language teacher. He went to study law and upon graduation he was called to the English Bar in July 1972.

He was called to the Malaysian Bar and set up his own legal practice in 1973. In 1988, he obtained a Diploma in Syariah Law & Practice and thereafter pursued his Masters in Comparative Laws from the International Islamic University Malaysia

Dato' Faiza Thamby Chik was appointed as a Judicial Commissioner on 1 December 1988 and was elevated to the Bench as a Judge of the High Court on 1 August 1990. After serving for 17 years on the Bench, Dato Faiza Thamby Chik retired on 6 October 2005.

After his retirement, he continued to be active in the legal field. He was appointed for various post including Senior Fellow at the Islamic University of Science Malaysia (USIM), Board of Directors of the Institute of Islamic Understanding Malaysia (IKIM), Consultant to the Malaysian Law Journal Sdn Bhd and member of the Sharak – Civil Laws Technical Committee (JAKIM).

During his tenure on the Bench, he presided over several landmark cases, including **Shamala Sathiyaseelan v Dr. Jeyaganesh C Mogarajah & Anor**[1] and **Lebbey Sdn Bhd v Tan Keng Hong & Anor**[2]. In **Lina Joy v Majlis Agama Islam Wilayah & Anor**[3], Dato' Faiza Thamby Chik said:

> *"Applying the principle of harmonious construction is to read Article 11(1) together with arts 3(1), 12(2), 74, 121(1A) and 160 so as to give effect to the intention of the framers of our constitution. When read together art 11(1) must necessarily be qualified by provisions on Islamic law on apostasy enacted pursuant to art 74 List II in respect of the plaintiff's intention to convert out of the Islamic religion. Her purported renunciation of Islam can only be determined by the Syariah Courts and not the Civil Courts pursuant to art 121(1A)."*

Dato' Faiza Thamby Chik passed away on 23 August 2017 at the age of 78. Dato' Faiza Thamby Chik was known as a Judge who always upheld the integrity of the Constitution and Islamic principles in his judgment.

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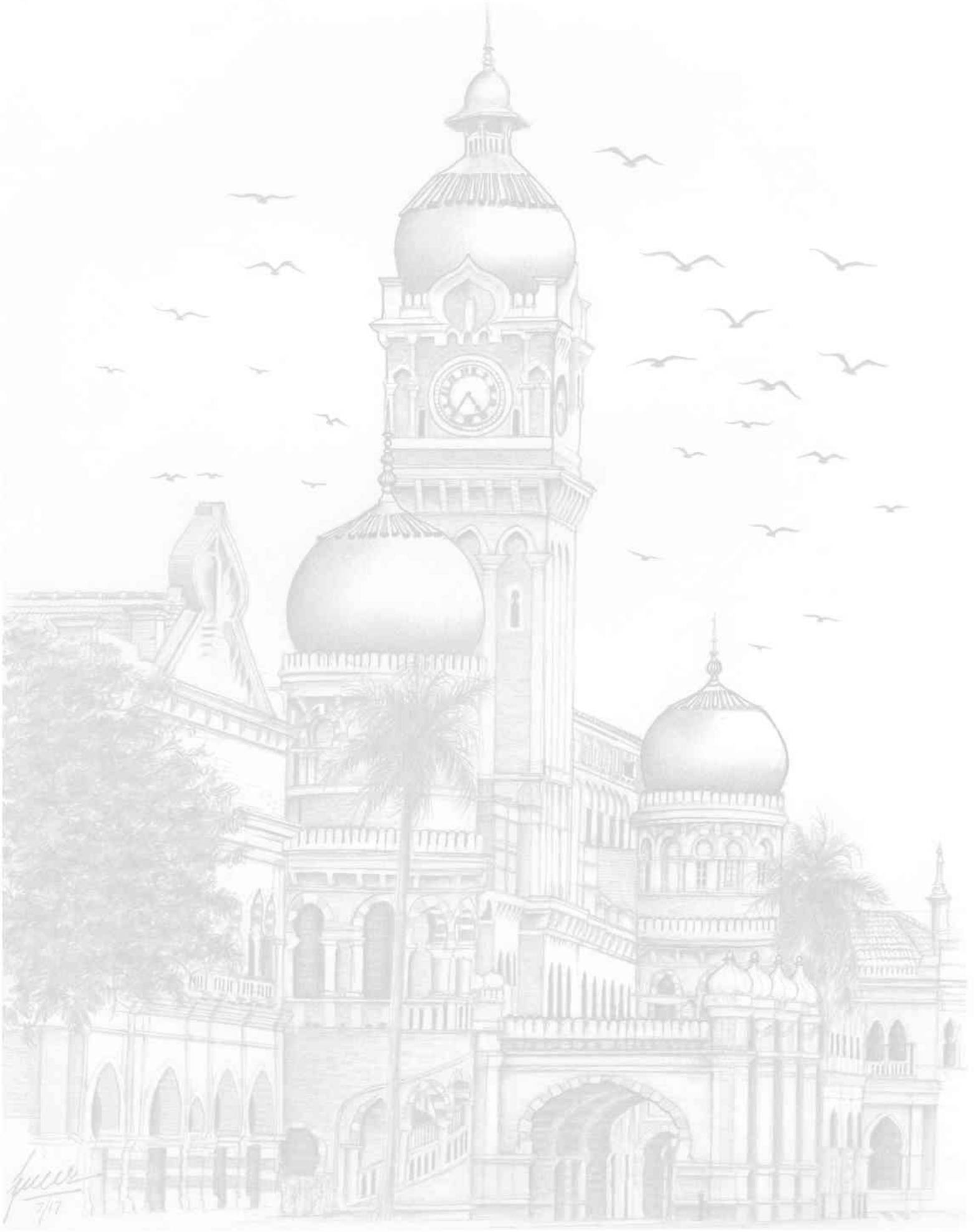
1 [2004] 2 MLJ 648

2 [2000] 7 MLJ 521

3 [2004] 2 MLJ 119



CHAPTER 6

JUDICIAL TRAINING

JUDICIAL ACADEMY

By Justice Azahar Mohamed
Judge of the Federal Court
-cum- Chairman of Training Committee
of The Malaysian Judicial Academy

Judges are conscious that justice cannot be compromised in the quest for greater efficiency and speed in the disposal of cases. This is addressed by emphasising the importance of the quality of judgments handed down at all levels of the judiciary. It is therefore vital that a judge should accept that continuing legal education is part of the job. Observing that most countries with a well-developed legal system and judiciary have judicial training institutes or colleges, we realized that it was important that judges spent time learning their craft. Continuing judicial training is important to enhance the skill and compatibilities of our judges to meet new challenges and further enhance public confidence in the administration of justice.

To this end, the Judicial Academy was set up as a training institute in 2012 with the objective of ensuring that judges acquired and developed the skill and knowledge necessary to perform their role to the highest professional standards. Teaching programmes include the teaching of substantive and procedural law, the teaching of judgment writing, the teaching of "judge craft", the teaching of legal ethics and the teaching of management and interaction skills. Each educational and training programme is designed on a need to learn basis. They are either taught in small groups or to the entire judiciary in a single session in order to cater for the judges' differing levels of judicial knowledge and experience.

The training programmes presently run by the Judicial Academy fall into the following two categories. First, there are in-house training sessions taken by senior appellate judges. In their capacity as facilitators, these appellate judges conduct face-to-face training on substantive and procedural law that is raised

regularly, or might be raised, in court. The module covers the 'nuts and bolts' that every judge would encounter on a daily basis. Besides gaining relevant practical knowledge, it is the aim of this programme that judges will be equipped with useful problems solving skills by learning from experienced judges. The in-house courses are meant to be inter-active and require active participation by judges. We always provide the platform for senior judges to come together and share their experiences with the High Court judges. This will open judges' minds to best practices in judicial skills.

Second is a programme run by the Judicial Academy in collaboration with bodies such as Securities Commission, Central Bank and Kuala Lumpur Regional Centre for Arbitration. Under this category, the Judicial Academy invite eminent local and foreign speakers who are experts in their respective fields to conduct workshop and to give talks to judges in specialised area of law.

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

In 2017, the Judicial Academy conducted courses on various subjects, including:

- The law on Defamation and its recent developments;
- Drug trafficking offences (section 39B of the Dangerous Drugs Act) and Murder (section 302 of the Penal Code);
- Judge Craft;
- Security Laws;
- Assessment of Damages;
- Case Management In Civil Cases;
- The Companies Act 2016;
- Criminal Law: Evidence and Procedure;
- Judgment Writing; and
- Lecture entitled "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence" by Dr. Harshan Kumarasingham;

From the feedback that we have received from participants and the facilitators, generally the training modules have achieved their target. The teaching modules have given the judges the opportunity to practice and develop skills. They provide an avenue for judges to raise common practical problems and exchange their practical personal experiences for the common benefit. The Academy has also received constructive feedback from the participants and the Federal Court and Court of Appeal judges on what areas of law that require emphasis with the objective of enhancing the professional competency of our judges.

To reinforce the Judicial Academy's position as a key organization for the training of our judges, a Training Committee was established in February 2017. Members of the committee are as follows:

Chairman
Justice Tan Sri Azahar Mohamed,
Judge of the Federal Court

Members
Justice Datuk Dr. Prasad Sandosham Abraham,
Judge of the Federal Court
Justice Dato' Tengku Maimun Tuan Mat,
Judge of the Court of Appeal
Justice Dato' Setia Haji Mohd Zawawi Salleh,
Judge of the Court of Appeal
Justice Dato' Abang Iskandar Abang Hashim,
Judge of the Court of Appeal
Justice Datuk Vernon Ong Lam Kiat,
Judge of the Court of Appeal
Justice Datuk Hasnah Dato' Mohammed Hashim,
Judge of the Court of Appeal

The scope of duty of the training committee:

- To develop, plan and prepare training modules for superior court judges.
- To identify the courses to be taught and the approach to be taken on the subject to be taught; and
- To find the right teacher to teach.

The Training Committee will review and amends its existing training modules taking into account the evaluation of the whole programme of the continuing judicial training. For the year 2018, the Training Committee has identified certain areas of immediate relevance. Topics to be covered are wide-ranging, which, among others cover the art of appellate judging, resolving competing claims under section 340 of the National Land Code, adjudicating Habeas Corpus cases, principles of interpretation of contract, criminal law and evidence, and pre-trial case management.

It is the aim of the Judicial Academy to ensure that our judges acquire the widest experience, skill and knowledge in the many areas of the law in keeping with current legal development.

Judicial training and learning is an on-going exercise for every judge throughout his judicial career. Judicial training and education has now come to be an integral part of judicial life.

COURSES ORGANISED BY THE JUDICIAL ACADEMY IN 2017

In the year 2017 the Judicial Academy continued carrying out courses in furtherance of their aim to increase the knowledge and expertise of the judges. These courses were categorised as internal courses, which were in the nature of knowledge-sharing by senior judges and external courses where the Judicial Academy would invite speakers from outside the judiciary to deliver lectures on matters of current legal interest. This year, seven internal and two external courses were held.

INTERNAL COURSES

Induction Programme for Judicial Commissioners

The first course conducted by the Judicial Academy in 2017 was the Induction Programme for Judicial Commissioners, facilitated by senior judges. 14 Judicial Commissioners attended this programme from 20 to 27 March 2017 at the Palace of Justice, Putrajaya. This course covered selected areas of law such as "Adjudicating Trafficking of Drug Cases under Section 39B of the Dangerous Drugs Act 1952" and "Salient Features of the Rules of Court 2012" with the aim of equipping newly appointed Judicial Commissioners with the best practices in those areas, which would be useful to them in their task to adjudicate on matters. The Judicial Commissioners also received training in subjects such as the "Practical Approach to Judgment Writing" which they would apply in the course of producing their judgments.

Induction Programme for Judicial Commissioners
Justice Zulkefli Ahmad Makinudin, President of the Court of Appeal speaking to participants. On his right is the Chief Justice Tun Raus Sharif.

The participants of the Induction Programme for Judicial Commissioners giving their full attention to the speakers.

First row, left to right: Justice Tun Abd Majid Dato' Haji Tun Hamzah and Justice Faizah Jamaludin
Second row, left to right: Justice Mat Ghani Abdullah and Justice Dean Wayne Daly

How to Deal with Cases Under Section 302 of the Penal Code

From 31 March to 1 April 2017, the Judicial Academy conducted a course on "How to Deal with Cases Under Section 302 of the Penal Code" at the Palace of Justice, Putrajaya. 7 Judges of the High Court and 9 Judicial Commissioners attended the course, which was facilitated by Justice Ahmad Haji Maarop, Chief Judge of Malaya; Justice Azahar Mohamed, Judge of the Federal Court and Chairman of the Judicial Academy and Justice Mohd Zawawi Salleh, Judge of the Court of Appeal.

The course was divided into two sessions. In the first session, participants delivered presentations on topics given by the facilitators, followed by a discussion on their presentations. In the second session, participants and the facilitators discussed the judgment writing for a criminal trial of a charge under Section 302 of the Penal Code.

Case Management in Civil Cases

A course on "Case Management in Civil Cases" was held from 12 to 13 May 2017 at the Palace of Justice, Putrajaya. The aim was to develop and improve case management skills of the participants comprising 3 High Court Judges and 17 Judicial Commissioners. This course was facilitated by

Participants of the Course on "How to Deal with Cases Under Section 302 of the Penal Code".

How to Deal with Cases Under Section 302 of the Penal CodeL – R: Justice Azahar Mohamed, Justice Ahmad Haji Maarop, Chief Justice Tun Raus Sharif and Justice Mohd Zawawi Salleh.

Justice Zulkefli Ahmad Makinudin, Justice Azahar Mohamed, Justice Vernon Ong Lam Kiat and Justice Hasnah Dato' Mohammed Hashim.

The course was divided into two sessions. In the first session, participants delivered group presentations on topics determined by the facilitators. The second session was a case study by groups. The results of their discussion of the case law given to them were presented at the end of the session.

A group photo of the participants of the Course on "Case Management in Civil Cases" with the facilitators and Chief Justice Tun Raus Sharif (first row, sixth from left); Justice Zulkefli Ahmad Makinudin, (first row, fifth from right); Justice Ahmad Haji Maarop, (first row, fifth from right) and Justice Azahar Mohamed, (first row, fourth from left).

The participants:

First row, left to right: Justice Komathy Suppiah, Justice Nor Bee Ariffin, Justice Hasnah Dato' Mohammed Hashim (facilitator), Justice Azahar Mohamed (facilitator), Justice Zulkefli Ahmad Makinudin (facilitator), Chief Justice Tun Raus Sharif, Justice Ahmad Haji Maarop, Justice Vernon Ong Lam Kiat (facilitator), Justice Akhtar Tahir, Justice Hadhariah Syed Ismail, Justice Ab. Karim Haji Ab. Rahman.

Second row, left to right: Justice Rohani Ismail, Justice Azmi Abdullah, Justice Asmadi Hussain, Justice Wong Kian Keong, Justice Bexter Agas AK Michael, Justice Ahmad Kamal Md Shahid, Justice Ivan Hussein, Justice Muhammad Jamil Hussin, Justice Ahmad Shahrir Mohd Salleh, Justice Tun Abd Majid Dato' Haji Tun Hamzah, Justice Siti Mariam Othman, Justice Anselm Charles Fernandis, Justice Mat Ghani Abdullah, Justice Faizah Jamaludin, Justice Zalita Dato' Haji Zaidan.

Judgment Writing

The "Judgment Writing" Course was held from 19 – 20 May 2017 with the objective of assisting participants to develop and enhance their skills and techniques in judgment writing. 18 High Court judges and 5 Judicial Commissioners participated in this course. The facilitators were 4 Federal Court judges namely Justice Zaharah Ibrahim, Justice Balia Yusof Haji Wahi, Justice Aziah Ali and Justice Jeffrey Tan Kok Wha. In this course, the facilitators delivered lectures on aspects of judgment writing to the participants who then in a workshop on case studies, discussed and presented their findings.

L – R: Justice Balia Yusof Haji Wahi, Justice Zaharah Ibrahim, Justice Ahmad Haji Maarop, Chief Justice Tun Raus Sharif, Justice Jeffrey Tan Kok Wha; Justice Azahar Mohamed and Justice Aziah Ali.

Participants of the Course on "Judgment Writing".

Defamation Law

A course on "Defamation Law" was held from 18 to 19 August 2017 at the Banquet Hall, Palace of Justice, Putrajaya. The objective of this course was to develop and increase the knowledge and skills of judges in managing and adjudicating defamation cases. 10 Judges and 10 Judicial Commissioners attended this course. The facilitators were Justice Zulkefli Ahmad Makinudin, President of the Court of Appeal; Justice Ahmad Haji Maarop, Chief Judge of Malaya; Justice Azahar Mohamed, Judge of the Federal Court and Chairman of the Judicial Academy and Justice Vernon Ong Lam Kiat, Judge of the Court of Appeal.

The course was divided into 2 sessions. During the first session, participants delivered individual presentations on topics determined by the facilitators. During the second session participants were divided into groups for case study and discussion.

Chief Justice Tun Raus Sharif addressing the participants of the course.

Some of the participants during the second session where they were divided into groups to discuss case studies given to them.

Defamation Law

1. A group photo of the participants of the Course on "Defamation Law" with the facilitators, Justice Zulkefli Ahmad Makinudin, (first row, fifth from left); Justice Ahmad Haji Maarop, Chief Judge of Malaya (first row, fifth from right); Justice Azahar Mohamed, (first row, fourth from left) Justice Vernon Ong Lam Kiat, (first row, fourth from right) and Chief Justice Tun Raus Sharif (first row, sixth from left).

The participants:

First row, left to right: Justice Hashim Hamzah, Justice Ahmad Nasfy Haji Yasin, Justice Mohd Yazid Haji Mustafa, Justice Azahar Mohamed (facilitator), Justice Zulkefli Ahmad Makinudin (facilitator), Chief Justice Tun Raus Sharif, Justice Ahmad Haji Maarop (facilitator), Justice Vernon Ong Lam Kiat (facilitator), Justice Su Geok Yiam, Justice Vazeer Alam Mydin Meera, Justice Halijah Abbas.

Second row, left to right: Justice Rohani Ismail, Justice Choo Kah Sing, Justice Ahmad Kamal Md Shahid, Justice Ivan Hussein, Justice Nantha Balan E S. Moorthy, Justice Collin Lawrence Sequerah, Justice Dato' Wan Ahmad Farid Wan Salleh, Justice Nordin Hassan, Justice Abu Bakar Katar, Justice Hassan Abdul Ghani, Justice Rosilah Yop, Justice Faizah Jamaludin, Justice Zalita Dato' Haji Zaidan, Justice Anselm Charles Fernandis.

Criminal Law: Evidence and Procedure

The "Criminal Law: Evidence and Procedure" Course was held from 22 to 23 September 2017 at the Banquet Hall, Palace of Justice, Putrajaya. The objective was to provide a comprehensive understanding of certain aspects of the law of criminal evidence and procedure. 14 Judges and 9 Judicial Commissioners participated in this course. The facilitators for this course were Justice Ahmad Haji Maarop, Chief Judge of Malaya; Justice Azahar Mohamed, Judge of the Federal Court and Chairman of the Judicial Academy; and Justice Dato' Tengku Maimun Tuan Mat, Judge of the Court of Appeal.

The course was divided into 2 sessions. The first session consisted of individual presentations on various topics followed by a discussion. In the second session, the participants were divided into groups and two case studies each. At the end of the session each group presented their findings followed by a discussion.

Damages

From 7 – 8 April 2017, the Judicial Academy conducted a course on "Damages". Due to encouraging feedback and recognition that this topic required a more in-depth discussion, a follow-up course entitled "Damages Part II - Tort" was held from 6 to

7 October 2017. The objective of this course was to develop the judges' knowledge and skill in assessing damages in tort related cases and judgment writing.

This first part of this course was attended by 19 participants while the second part was attended by 18 participants consisting of High Court Judges and Judicial Commissioners. The facilitators for the first part of this course were Justice Richard Malanjum, Chief Judge of Sabah and Sarawak; Justice Idrus Harun, Judge of the Court of Appeal; Justice Nallini Pathmanathan, Judge of the Court of Appeal; and Justice Vernon Ong Lam Kiat, Judge of the Court of Appeal. In the second part of this course, Justice Abang Iskandar Abang Hashim, Judge of the Court of Appeal replaced Justice Idrus Harun. Both parts of the course had the same format. The first session consisted of group presentations while the second session consisted of a workshop where the participants were given situations prepared by the facilitators for them to consider whether damages could be given and in doing so, to apply the principles of awarding damages.

The three facilitators for the Course on "Criminal Law: Evidence and Procedure" from left to right: Justice Azahar Mohamed, Justice Ahmad Haji Maarop and Justice Tengku Maimun Tuan Mat.

The seating arrangement during the first session was designed to allow all participants an unobstructed view of the presentations.

The participants of the course listening to their fellow participants delivering individual presentations on assigned topics during the first session. From left to right: Justice Azman Abdullah, Justice Chan Jit Li, Justice Hadhariah Syed Ismail.

During the second session, participants broke up into groups at round tables for ease of discussion.

Part 1

L – R: Justice Vernon Ong Lam Kiat, Justice Azahar Mohamed, Justice Zulkefli Ahmad Makinudin, Chief Justice Tun Raus Sharif, Justice Richard Malanjum, Justice Idrus Harun and Justice Nallini Pathmanathan.

Part 2

Justice Azahar Mohamed, Justice Abang Iskandar Abang Hashim, Justice Richard Malanjum, Justice Nallini Pathmanathan and Justice Vernon Ong Lam Kiat.

EXTERNAL COURSES

Companies Act 2016: Changing Corporate Landscape

A one day seminar titled "Companies Act 2016: Changing Corporate Landscape" was held on 22th July 2017 at the Conference Hall, Palace of Justice, Putrajaya. The objective of this course was to provide an overview of the reform of the Companies Act 1965 which governs corporate law in Malaysia. A total of 100 participants consisting of 11 Federal Court Judges, 26 Court of Appeal Judges, 4 High Court Judges and 18 Judicial Commissioners attended this course.

L – R: Mr. Lee Shih from Messrs Skrine, Justice Idrus Harun, Judge of the Court of Appeal and Ms. Nor Azimah Abdul Aziz, Chief Executive Officer (Regulatory & Enforcement), Companies Commission of Malaysia during the second session of the course.

Participants of the Course on the "Companies Act 2016: Changing Corporate Landscape".

In the first session, Ms. Nor Azimah Abdul Aziz, Chief Executive Officer (Regulatory & Enforcement), Companies Commission of Malaysia gave "An Overview of the New Companies Act 2016 [Act 777]". In the second session, she partnered with Mr. Lee Shih from the law firm Skrine to speak on "Strengthening the Corporate Governance: Impact on Directors and Shareholders", moderated by Justice Idrus Harun, Judge of the Court of Appeal. The third session of the course titled "Reforming the Insolvency Law" was presented by Mr. Lee Shih.

Lecture entitled "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence"

On 11 November 2017, the Judicial Academy organised a lecture entitled "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence" as part of the Continuing Judicial Education training programme. The speaker for this half day lecture was Dr. Harshan Kumarasingham, a political historian, lecturer, author and editor. This was a unique lecture as it was not purely legal, as is the norm for courses organised by the Judicial Academy. It spanned history and political science, and delved into public law concepts. Dr. Harshan entitled his lecture "Eastminster" because constitutions of Commonwealth countries such as Malaysia adopted the Westminster system from Britain. He considered the question of whether this was suitable for our country as we are culturally and racially different from Britain. This lecture assisted participants to understand the Federal Constitution better as it enabled them to appreciate the colonial and Westminster context at its foundation. Participants were so absorbed in the lecture and the following question and answer session that the course ran over its allocated time.

Justice Ahmad Haji Maarop, Chief Judge of Malaya delivering the opening speech for the Lecture entitled "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence".

Dr. Harshan Kumarasingham spoke on the topic "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence".

Participants of the Lecture entitled "Eastminster – Constitution-Making in Malaysia and Commonwealth Asia Following Independence".

Kursus Memperkukuh Keselamatan Mahkamah dan Para Hakim (Course on Strengthening the Security of the Courts and Judges)

On 30 September 2017, the Malaysian Courts Security Committee organised a course for judges, judicial officers and court staff. 18 Court of Appeal judges, 18 High Court judges, 6 Judicial Commissioners, 82 judicial officers and 7 court staff were invited to this course.

The opening speech was delivered by Justice Zulkefli Ahmad Makinudin, President of the Court of Appeal. This was followed by Justice Mohd. Zawawi Salleh, Judge of the Court of Appeal and Chairman of the Malaysian Courts Security Committee who spoke on the topic "The Roles and Responsibility of the Security Committee of the Chief Registrar's Office, Federal Court of Malaysia at State and Headquarters Level". In his speech, Justice Mohd. Zawawi Salleh explained the scope and duties of the Malaysian Courts Security Committee and suggested improvements to be made to enhance the security of the courts.

Justice Mohd. Zawawi Salleh, Judge of the Court of Appeal and Chairman of the Malaysian Courts Security Committee speaking on the topic "The Roles and Responsibility of the Security Committee of the Chief Registrar's Office, Federal Court of Malaysia at State and Headquarters Level".

Participants of the Course on Strengthening the Security of the Courts and Judges.

Supt. Avtar Singh Mukhtiar Singh from the Royal Malaysia Police and a team of technical experts then delivered a briefing on the application system "SaveME 999 POLIS" and fielded questions from the judges on the practical use of the system. Mr Mohd Saiful Hisham Md. Salleh from the Chief Government Security Office spoke on "Langkah-langkah Mengukuhkan Keselamatan Bangunan Mahkamah".

Mr Craig Fullstone from the U.S. Embassy delivered a presentation on "Best Practices on Protection and Safety of Judges". This was useful not only to judges but also to the judicial officers and court staff as he demonstrated how easy it was to obtain information on a person's movements through their social media activity. He also circulated a note entitled "101 Personal Safety Tips for Judges and Court Staff" and suggested preventive measures that could be taken to minimise security threats.

Superintendent Avtar Singh Mukhtiar Singh from the Royal Malaysia Police delivering a briefing on the application system "SaveME 999 POLIS".

Senior Assistant Commissioner of Police (SAC) Madam Normah Ishak from the Royal Malaysia Police gave an eye-opening presentation on "Extremist Threats to Court Security", followed by Assistant Commissioner of Police (ACP) Denis Leong Soon Kuai, also from the Royal Malaysia Police who spoke on "Best Practices in Handling Threats to Court Security".

Overall, the course served as a wake-up call to the participants that they should not take the safety of the courts for granted, and reminded them that they must take active measures to ensure their own safety.

Mr Craig Fullstone from the U.S. Embassy delivered a presentation on "Best Practices on Protection and Safety of Judges".

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THE 55TH ANNIVERSARY OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY.

The ceremony in commemoration of the 55th Anniversary of the Constitutional Court of the Republic of Turkey held in Ankara on 25 April 2017 was attended by the Presidents and Judges of the Constitutional Courts and Supreme Courts of thirty different countries.

The prestigious ceremony was inaugurated with the opening speech of Mr. Zühtü Arslan, the President of the Constitutional Court, featuring two recent events which paint the tapestry of Turkish constitutional democracy. The first event was Turkish military coup d'état attempt in July 2016 aimed at ousting the country's democratically-elected President, Mr. Recep Tayyip Erdoğan. However, the attempt was thwarted thanks to strong public support wish mounted a fierce resistance against the perpetrators' treacherous plans. The Turkish democracy has taken a severe blow but it survived the pressures of the crisis. The country and its people turned from the edge of a precipice. The second event was Turkish Constitutional Referendum on several proposed amendments to the constitution. The April 2017 Referendum which drew a high participation rate of over 85% signaled a historical achievement in the country's democratic government and it meant that the result would have greater legitimacy.

The ceremony then proceeded with a captivating introductory film presented to the guests.

An International Symposium organised in conjunction to the 55th Anniversary of the Constitutional Court with the theme "Constitutional Courts as the Guardians of Fundamental Rights" was held from 25-26 April 2017 at the Grand Hall of the Constitutional Court. Chief Justice Raus Sharif shared the Malaysian Judiciary's experience on the protection of fundamental liberties and human rights in the face of the interwoven competing state and individual interests; the culture of respect for the rule of law and constitutional supremacy; the guiding principles of separation of power doctrine; and modern challenges across the societal spectrum.

The Gala Dinner held on 27 April 2017 was honoured by the President of the Republic of Turkey, Mr. Recep Tayyip Erdoğan.

Chief Justice Raus Sharif (third from left) shared the Malaysian Judiciary's experience on the protection of fundamental liberties and human rights

Chief Justice Raus Sharif presenting a souvenir to Mr. Zuhtu Arslan, the President of the Constitutional Court of the Republic of Turkey

L - R: Madam Emine Erdogan, Toh Puan Dato' Indera Salwany Mohamed Zamri, Mr. Recep Tayyip Erdogan and Chief Justice Raus Sharif

BOARD OF MEMBERS MEETING OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS AND INTERNATIONAL SYMPOSIUM - CONSTITUTIONAL COURT AS THE GUARDIANS OF IDEOLOGY AND DEMOCRACY IN A PLURALISTIC SOCIETY, SOLO, CENTRAL JAVA, INDONESIA

On 7 August 2017, Chief Justice of Malaysia, Tun Raus Sharif arrived in Solo, Indonesia for the Board of Members Meeting of the Association of Asian Constitutional Courts and Equivalent Institutions (AACC). At the 3rd Congress of the AACC in 2016, the Chief Justice of the Constitutional Court of the Republic of Indonesia, the incumbent President of the AACC at the time, highlighted the need for progress and continuity of the Association and called for another Country to take up the Presidency. Thus, on 8 August 2017, the Board of Members of the AACC unanimously appointed Malaysia to lead the esteemed Association for the next two (2) years. The Right Honourable, Tun Raus Sharif, graciously accepted the appointment and vowed to ensure the continued success of the AACC and invited all members to Kuala Lumpur for the upcoming Congress.

The two (2) day meeting was followed by an International Symposium, wherein, the Chief Justice presented a paper entitled 'Constitutional Court as The Guardian of Ideology and Democracy in a Pluralistic Society: Malaysia's Experience'. Also present at the Symposium were among others, judges from Afghanistan, Azerbaijan, Turkey, Uzbekistan, and Russia.

The symbolic passing of the AACC flag from the previous president of the AACC, the Hon. Bapak Arief Hidayat, the Chief Justice of the Constitutional Court of the Republic of Indonesia (first row on the right), to the newly appointed President of the AACC, Chief Justice Tun Raus Sharif (first row on the left); witnessed by the Board Members of the AACC (second row)

THE 1ST INTERNATIONAL SYMPOSIUM OF THE AACC SECRETARIAT FOR RESEARCH AND DEVELOPMENT – CONSTITUTIONALISM IN ASIA: PAST, PRESENT, FUTURE, SEOUL, REPUBLIC OF KOREA

The AACC being a regional association is assisted by three (3) permanent secretariats, located in Ankara, Jakarta and Seoul. In Jakarta for Planning and Coordination, in Seoul for Research and Development, and in Ankara for Training and Human Resources Development.

On 31 October 2017, the AACC Secretariat for Research and Development, hosted its inaugural International Symposium, in Seoul, Korea, in conjunction with its recent establishment. Chief Justice, Tun Raus Sharif who is also the President of the AACC, together with Federal Court Judge, Justice Zainun Ali attended the two (2) day Symposium.

The Chief Justice presented a paper in the first session of the Symposium on the theme 'Diversity in Constitutional Justice: Differences among AACC Members'. Also present at the Symposium were the Member Countries of the AACC, representatives from the Venice Commission and Academics from across Asia. The Symposium discussed at length on the future on constitutionalism in Asia and the need for an Asian Regional Human Rights Court, the likes of the African Court on Human and People's Rights and the European Court of Human Rights.

The participants at the first session of the conference being delegates from the Constitutional Court of the Republic of Indonesia, the Constitutional Court of the Republic of Korea, the Constitutional Court of the Republic of Turkey and the Constitutional Court of the Republic of Uzbekistan, moderated by Chief Justice Tun Raus Sharif

The group of the delegates to the International Conference at the entrance of the Constitutional Court of the Republic of Korea Building

QATAR LAW FORUM: GLOBAL COMMITMENT TO THE RULE OF LAW

Chief Justice Raus Sharif (second from right) giving a presentation on the topic "Justice Delay is Justice Denied"

Qatar Law Forum: Global Commitment to the Rule of Law was held at Sheraton Hotel Doha, Qatar on 11 and 12 November 2017. The Forum was an exclusive event at which the world's most eminent legal experts including Ministers of Justice, Chief Justices, judges, political and diplomatic leaders, and distinguished lawyers gather to debate the nature and practicalities of the Rule of Law.

At the first plenary session, the high calibre speakers examined how grand corruption can be tackled in practice from the perspective of corporate governance and public officials' integrity including several aspects of anti-corruption measures such as criminalisation of corruption, effective prosecution, enforcement, burden of proof, and recovery of assets obtained by corruption.

During the second plenary session, the speakers discussed the requirements of the rule of law in respect of displaced people. The audience were informed about (i) the inherent bias against displaced people and refugees; (ii) how the influx of refugees to the European Union have tested some member states' commitment to the rules protecting displaced persons; (iii) the challenges of documenting and protecting Afghan refugees in Pakistan and nationals who have been internally displaced by natural disaster; and (iv) the insight on Myanmar and Syrian refugees' realities.

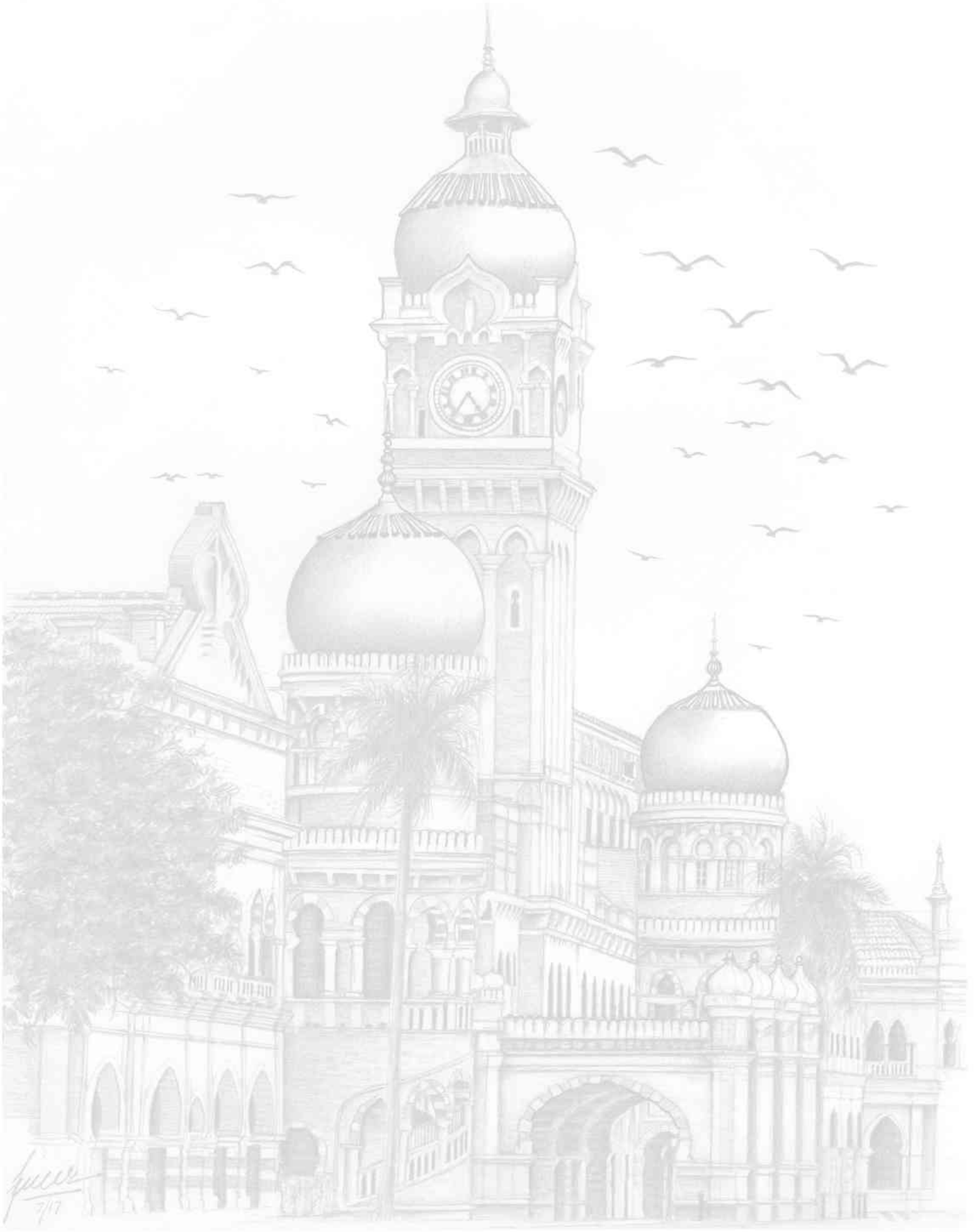
The third plenary session focused on modern day slavery affecting an estimated 45.8 million people including 18 million children. It was identified at the Forum that there were 80 international conventions and treaties in place to combat human trafficking and rights abuses but only a paltry number of criminals were brought to justice partly due to (i) lack of enforcement and prosecutions; (ii) minimal effective cooperation between criminal and family courts, social services and the police; (iii) lack of regional cooperation; low public awareness; and (v) lack of training for the legal profession.

The fourth plenary session was about access to justice focusing on the thematic aspects of information technology revolution and the legal maxim "Justice delayed is justice denied". Amidst the digital transition impacting the legal industry, the Forum was informed that the International Criminal Court at the Hague is now entirely paperless. However, technology alone is not enough. It was suggested at the Forum that sanctions should be imposed on lawyers who intentionally delay proceedings at the expense of the poor or elderly. Chief Justice Raus Sharif shared about the success in Malaysian judicial reform instituted from 2008 to 2011. The initiative which was modelled from best practices in the United Kingdom, the United States, Australia and Singapore was highly commended by the World Bank in 2011.

The fifth plenary session touched on the financial inclusion. The topic is important since the world's financial systems affect everyone, but not everyone is included in or can participate in the system. In the spirit of equality and the rule of law, the Forum proposed for the government to empower and integrate the poor, displaced persons, persons without legal identity and those facing financial exclusion into the legal framework and policy thinking involving economic activities.

Chief Justice Raus Sharif (middle) in conversation with the delegate members of the Qatar Law Forum at the Welcoming Hi-Tea

Chief Justice Raus Sharif (left) exchanging souvenirs with H.E. Masood Muhammad Al-Ameri, the Chief Justice of Qatar (right)



CHAPTER 7

HUMAN RIGHTS

"With respect, I agree that the right of an arrested person to consult his lawyer begins from the moment of arrest, but I am of the opinion that that right cannot be exercised immediately after arrest. A balance has to be struck between the right of the arrested person to consult his lawyer on the one hand and on the other the duty of the police to protect the public from wrongdoers by apprehending them and collecting whatever evidence exists against them. The interest of justice is as important as the interest of arrested persons and it is well-known that criminal elements are deterred most of all by the certainty of detection, arrest and punishment"

per Tun Mohamed Suffian Mohamed Hashim, Lord President in Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis [1975] 2 MLJ 198

THE RIGHTS OF THE ACCUSED PERSON

THE INTERNATIONAL PERSPECTIVE

ACCUSED: A DEFINITION

The accused is defined as a person or group of people who are charged with or on trial for a crime[1]. The accused is conferred certain rights under the law. These rights serve as a safeguard to ensure that a criminal proceeding against the accused would be justly conducted.

CATEGORIES OF THE RIGHTS OF THE ACCUSED PERSON:-

(I) THE RIGHT TO A FAIR TRIAL

An important element to ensure that the accused has a fair trial is by having a competent, independent and impartial tribunal established by law to conduct his case. This is clearly enshrined in Article 10 of Universal Declaration of Human Rights (UDHR) which was adopted by the United Nations General Assembly (UNGA) in December 1948 and Article 14 (1) of International Covenant on Civil and Political Rights (ICCPR) adopted in 1966.

The question that arose then is what is the meaning of an independent and impartial tribunal?

According to Cassese[2], the first President of the International Criminal Tribunal for the former Yugoslavia (ICTY), an independent and impartial tribunal shall consist of only politically independent judges without any interest in the interests and concerns of the parties, and shall include mechanisms allowing biased judges to be removed from a case (or a court).

Based on this definition, according to Karolina Kremens[3], ICTY and International Criminal Tribunal for Rwanda (ICTR) did demonstrate its independence and impartiality by having law that provides mechanisms for appointing judges[4], their disqualification[5], as well as systems of privileges and immunities[6] that should protect their judges from any State influence. However, Karolina observed that these provisions are only a subset of a far more detailed provisions of the Rome Statute of the International Criminal Court (ICC)[7]. For example, the law of ICTY and ICTR does not provide any specific composition of independent judges. However, the Rome Statute in Article 40 not only provides that judges should be independent but also defines the meaning of that word. As provided in paragraph 2 and 3 of Article 40 'judges shall not engage in any activity which is likely to interfere with their judicial function or to affect confidence in their independence' and that permanent judges '...shall not engage in any other occupation of a professional nature'.

(II) PRESUMPTION OF INNOCENCE

The right of the accused person to be presumed innocence until proven guilty is clearly stipulated in Article 11 (1) of the UDHR, Article 6 (2) European Convention on Human Rights and Article 14 (2) of the ICCPR. Article 66 of the Rome Statute entitled 'Presumption of Innocence' provides as follows:

"Article 66 of the Rome Statute

1. *Everyone shall be presumed innocent until proved guilty before the Court in accordance with the applicable law.*

2. *The onus is on the Prosecutor to prove the guilt of the accused.*

3. *In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt".*

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[1] Oxford Dictionary.

[2] Antonio Cassece (2003) *International Criminal Law, page 393.* Oxford University Press.

[3] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 35.* Wroclaw Review of Law, Administration & Economics.

[4] Article 13 of the ICTY Statute and Article 12 of the ICTR Statute.

[5] Rule 15 of the ICTY Rules of Procedure and Evidence (RPE) and Rule 15 of the ICTR RPE.

[6] Article 30 of the ICTY Statute and Article 29 of the ICTR Statute.

[7] Rome Statute is the treaty that established the International Criminal Court. Among other things, the statute establishes the courts functions, jurisdiction and structure. Article 36 regarding qualifications, nomination and election of judges, Article 40 regarding independence of judges and Article 41 referring to disqualification of judges broadened by Rule 34 of the ICC RPE.

There are a number of ways in which the presumption of innocence can be protected[8]. Firstly, according to the United Nations Human Rights Committee[9], the presumption is breached when public officials prejudged the outcome of a trial. Public officials include judges, prosecutors, the police and government officials, all of whom must avoid making public statements of the guilt of an individual prior to a conviction or after an acquittal. It is permissible, however, for the authorities to inform the public of the name of a suspect and that the person has been arrested or has made a confession, as long as the person is not publicly declared guilty[10].

Secondly, in order to protect the presumption of innocence, the burden of proof should be on the prosecution to prove the guilt of the accused rather than on the accused to prove his or her innocence. The burden of proof refers to which party will have the burden of proving a particular fact or set of facts.

Thirdly, it is important that prior convictions of the accused not be disclosed to the court in the course of the trial, a disclosure that might unduly influence the decision of the judge and consequently violate the presumption of innocence. However, prior convictions may be considered, at a hearing on penalties conducted once an accused person has been found guilty of a criminal offence.

However, several writers[11] have discussed the problem of applying the presumption of innocence in the proceedings. Firstly, the international rules of law do not provide the exact time when the protection of the accused should commence. The rules is seen only to set out the ending date which is the conviction of the accused. Thus, it can be argued that a literal interpretation of those articles would lead to the conclusion that the 'accused' is presumed innocent only during the trial stage[12]. Nevertheless, numerous authors[13] agree that the presumption of innocence should be applicable to both the accused and a suspect until the moment the guilt is proven, meaning during the pre-trial investigation and trial proceedings. This opinion is supported by Article 66 (1)[14] that it is not only the accused who needs to be presumed innocent. It state 'everyone' shall be treated in such a way, establishing that this is a right which should be attributed to every person.

Secondly, despite the fact that the court has the obligation to provide the accused with this protection, the role played by the media during international criminal trials can interfere with the presumption of innocence. It is not uncommon that television, radio and press deliver a verdict before the judgment has been deliberated in a court of law. The media tend to present the ongoing cases in an extremely biased way, portraying those accused of crimes against humanity, war crimes and genocide already as guilty criminals and monsters[15]. However, in the landmark case Worm v Austria made on 29 August 1997, the European Court of Human Rights (ECHR) confirmed that journalists must also respect the presumption of innocence, as defined in Article 6 of the European Convention on Human Rights, even for public figures and politicians.

Thirdly, it must also be noted that pre-trial detention can negatively impact on the presumption of innocence and the right to liberty and security of the person[16]. At international level, pre-trial detention is to be used only when strictly necessary and as a last resort as can be seen in Article 9 (3) ICCPR which provides that '... it shall not be the general rule that persons awaiting trial shall be detained in

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[8] Vivienne O' Connor et al (2008) *Chapter 4: Rights of the Suspect and the Accused page 107-108*.United States Institute of Peace Press.

[9] General Comments no. 13 of 1984 on Article 14, paragraph 7.

[10] European Court of Human Rights case Worm v Austria, application no 83/1996/702/894 (August 29, 1997) paragraph 52.

[11] Karolina Kremens, Christoph JM Safferling and Salvatore Zappala.

[12] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 36*, Wroclaw Review of Law, Administration & Economics.

[13] Christoph JM Safferling (2003) *Towards an International Criminal Procedure*, page 67, Oxford University Press, Salvatore Zappala (2003) *Human Rights in International Criminal Proceedings* page 84, Oxford University Press, Antonio Cassece (2003) *International Criminal Law, page 390*, Oxford University Press and Karin N Calvo-Goller (2006) *The trial proceedings of the International Criminal Court, ICTY and ICTR precedents, page 56*, Martinus nijhoff Publishers.

[14] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 37*, Wroclaw Review of Law, Administration & Economics.

[15] Antonio Cassece (2003) *International Criminal Law, page 390*, Oxford University Press.

[16] Lois Leslie et al (March 2013), *Pre-trial release and the right to be presumed innocent - A handbook on international law rights to pre-trial release*, page 5, Lawyers' Right Watch Canada.

custody, but release may be subject to guarantees to appear for trial...'. A further protection sprung from Article 10(2)(a) ICCPR which states 'Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons' when the authority insisted that an accused be kept in detention prior to trial.

(III) RIGHT TO BE INFORMED OF THE CHARGES AGAINST THE ACCUSED

What this right seeks is that a speedy, public trial that is heard by an impartial jury is meaningless if a defendant is left in the dark about exactly the crime with which he or she is charged. Detailed information about the nature and cause of the charge is required if the accused is to prepare himself properly for his or her defence. This is clearly stipulated in Article 14(3)(a) of the ICCPR. This right is given further enhancement in international law by virtue of Article 67(1)(a) of Rome Statute which states that it is the right of the accused 'to be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks'. Furthermore, Article 61(3) of Rome Statute demands an even higher standard of information[17] where within a reasonable time before the hearing, the person shall: (a) be provided with a copy of the document containing the charges on which the prosecutor intends to bring the person to trial; and (b) be informed of the evidence on which the prosecutor intends to rely at the hearing. The pre-trial chamber may also issue orders regarding the disclosure of information for the purpose of the hearing.

However, it must be noted, according to Wayne Jordash and John Coughlan[18], it is evident from the early jurisprudence of the Yugoslavia Tribunal which was established in 1993, that significant latitude was afforded to the prosecutor in designating both the nature of the charges against accused and the factual parameters upon which the charges were based. But based on Wayne Jordash and John Coughlan analysis, through time, there was a shift away from non-specific indictments towards a more comprehensive indictments regime in which the rights of the accused were more robustly taken into consideration. In so doing, it is clear that the bench were acutely aware of the clear standards established by international human rights law. Karolina support this analysis when she states in her article[19] that the regulations provided in the law of the ICC (Rome Statute) 1998 is the result from the experience of trials held before the ICTY.

(IV) RIGHT TO COUNSEL

This right is designed to protect the accused from harm that may be done to him by 'inhumane' legal mechanisms[20]. In most cases, the accused is not a lawyer, nor familiar with criminal proceedings, and is usually unable to cope with the complicated rules or laws governing the trial. Therefore, it is natural for the accused to be intimidated by law governing his rights and obligations. The right to counsel is provided in Article 14 (3) (d) of the ICCPR. Article 6 (3) (c) of European Convention on Human Rights also ensures the protection of this right.

In its General Comment No. 13 on Article 14, the Human Rights Committee emphasised in paragraph 11 that 'the accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary'. The right of access to legal assistance must be effectively available, and, where this has not been the case, the Human Rights Committee has concluded that Article 14(3) has been violated[21]. Where the domestic law has not authorised the accused to defend himself

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[17] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 39*. Wroclaw Review of Law, Administration & Economics.

[18] Wayne Jordash and John Coughlan(2010) *The Right to be Informed of the Nature and Cause of the Charges: A Potentially Formidable Jurisprudential Legacy*, page 286-314, Judicial Creativity at the International Criminal Tribunals, Oxford University Press.

[19] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 39*. Wroclaw Review of Law, Administration & Economics.

[20] Karolina Kremens (2011) *The protection of the accused in international criminal law according to the human rights law standard, page 41*. Wroclaw Review of Law, Administration & Economics.

[21] Communication No R.2/8 B. Weismann Lanza and A. Lanza Perdomo v Uruguay.

in person, the Committee has also found a violation of Article 14(3)(d), which allows the accused to choose whether he or she wishes to defend him or herself-be it through an interpreter –or to have the defence conducted by lawyer[22]. The right to choose under article 14(3)(d) 'does not entitle the accused to choose counsel provided free of charge', but, in spite of this restriction, 'measures must be taken to ensure that counsel, once assigned, provides effective representation in the interest of justice', and this includes 'consulting with, and informing, the accused if he intends to withdraw an appeal or to argue, before the appellate instance, that the appeal has no merit'[23]. Although counsel is entitled to recommend that an appeal should not proceed, he should continue to represent the accused if the latter so wishes. Otherwise, the accused should have the opportunity to retain counsel at his own expense[24]. It is thus essential under Article 14(3)(d) that the domestic court 'should ensure that the conduct of a case by the lawyer is not incompatible with the interest of justice', and the Committee will itself examine whether there are any indications to show that the lawyer 'was not using his best judgment in the interests of his client'[25].

THE MALAYSIAN PERSPECTIVE

(I) THE RIGHT TO A FAIR TRIAL

In Malaysia, Article 8 (1) of the Federal Constitution guarantees 'all persons are equal before the law and entitled to the equal protection of the law'.

Further, in the judgment of Edgar Joseph Jr J in **Public Prosecutor v Choo Chuan Wang** (1992) 2 CLJ 1242:

> *"Article 5(1) of our Constitution does imply in favour of an accused person the right to a fair hearing within a reasonable time, by an impartial Court established by law."*

In Malaysia, in respect of the independence of judiciary, Part IX of the Federal Constitution (Articles 121-131A) provides for the judicial powers of the Judiciary where they are independent from the control and interference of the Executive and the Legislature. Part IX provides among others the court system in Malaysia, the appointment of Judges (its numbers, the qualifications needed for appointment, its tenure, its remuneration and its removal) and the jurisdiction of the superior courts. However, the independence of the Judiciary was called into question after the 'Malaysian Judiciary Crisis' in 1988 when the then Lord President Tun Salleh Abas was removed by the then Yang Di-Pertuan Agong under Article 125(3) of the Federal Constitution.

The federal law governing the appointment of judges of the superior courts is the Judicial Appointment Commission Act 2009 (Act 695) (JAC Act). The JAC Act is essentially to improve and complement the constitutional powers of appointing the judges of the superior courts. Section 23 of the JAC Act listed the following criteria for the appointment:

(1). Integrity, competency and experience;

(2) Objective, impartial , fair and good moral character;

(3). Decisiveness, ability to make timely judgments and good legal writing skills;

(4). Industriousness and ability to manage cases well; and

(5). Physical and mental health.

The Judicial Appointments Commission (Selection of Judges of the Superior Courts) Regulations 2009 (P.U.(A) 209/2009) (JAC Regulations) provides a detailed and transparent procedure to be followed by the Judicial Appointment Commission with regards to the selection of Judges of Superior Courts. One procedure is the vetting and screening by the Secretary of the Commission of the proposed candidate as to whether he or she is qualified under Article 123 of the Federal Constitution. Then the Secretary would send the names to four agencies, namely, the Malaysian Anti-Corruption Commission, the Royal Malaysian Police, Companies Commission Malaysia and Department of Insolvency Malaysia for verification of their educational qualification, financial position, tax payment record and credit history as to arrest and conviction. The Secretary then prepares a deliberation paper on each of the

[22] Communication No 526/1993 M. and B. Hill v Spain.

[23] Communication No 356/1989 T Collins v Jamaica.

[24] Communication No 461/1991 G. Graham and A. Morrison v Jamaica.

[25] Communication No 708/1996 N. Lewis v Jamaica.

Palm trees lining the side walls of the Palace of Justice.

candidates after the relevant agencies have given their satisfactory reports for the consideration by the Commission. The selection of candidates by the Commission shall be made by a "majority decision" (s.24(5) JAC Act) that is on the basis of the majority votes received.

Judges in Malaysia are also governed by the Judges' Code of Ethics 2009 which sets the high standards of personal and judicial conduct of judges. Section 4(1) of the Judges' Code of Ethics 2009 provides that, "A judge shall comply with the provisions prescribed in this Code."

The code of conduct is under Part III, sections 5 to 12 of the Judges' Code of Ethics 2009. Briefly, as provided under the Judges' Code of Ethics, Judges are among others, prohibited from conducting themselves in the following manner,

- Subordinate his judicial duties to his private interests;
- Bring his private interest into conflict with his judicial duties;
- Conduct himself in any manner likely to cause a reasonable suspicion that he has allowed his private interests into conflict with his judicial duties so as to impair his usefulness as a judge or that he has used his judicial position for his personal advantage;
- Conduct himself dishonestly or in such a manner as to bring the judiciary into disrepute or bring discredit thereto;
- Lack efficiency;
- Inordinately and without reasonable explanation delay in the disposal of cases, the delivery of decisions and the writing of grounds of judgment;
- Refuse to obey a proper administrative order or refuse to comply with any statutory directions;
- Absent himself from court during office hours without reasonable excuse or without prior permission of the Chief Justice, the President of the Court of Appeal, or the Chief judge, as the case maybe; or
- Be a member of any political party or participate in any political activity.

In ensuring compliance with the above Code, the Judges' Ethics Committee is set up under the Judges' Ethics Committee Act 2010 (Act 703) (JEC Act) to carry out enquiry into complaints against a judge on breaches of the Judges' Code of Conduct in accordance with PART IV of the Judges' Code of Ethics 2009. The proceedings of the Committee is to be held in camera (meaning behind closed doors) and the decision of the majority of members will be the decision of the Committee. The decision of the Committee shall be final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called into question in any court of law.

To ensure fairness in a criminal proceeding, section 417(1)(a) of Criminal Procedure Code (CPC) also provides for the power of a High Court to transfer (criminal cases) whenever it is made to appear to the High Court that a fair and impartial trial cannot be had in any criminal Court subordinate to it. Section 439 of CPC provides that no Magistrates shall, except with the permission of the High Court to which an appeal lies from his Court, try any case to or in which he is a part or personally interested.

The test for apparent biasness where the trial judge is required to recuse is "having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that it might unfairly (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him..."'.

Although there are these legal provisions on the conduct of judges, Article 127 of the Federal Constitution of Malaysia stipulates that the conduct of judges of the superior courts are not to be discussed in Parliament.

Judicial immunity is an aspect of judicial independence. In the performance of their judicial functions all judges are granted immunity by the following legislation:

a. Section 6(3) of the Government Proceedings Act 1956:

   No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has connection with the execution of judicial process.

b. The Defamation Act 1957 (Revised 1983) in section 11(1) confers absolute privilege on reports of judicial proceedings including pleadings, judgments, sentences or findings.

c. Article 122AB(1) of the Federal Constitution provides immunities for Judicial Commissioners to be the same as that of a Judge.

Thus, in Malaysia, despite Article 8(1) and Article 5(1) of the Federal Constitution which do not expressly provide for right of an accused to be tried before a competent, independent and impartial tribunal established by law as an element to achieve fair trial, the above provisions in the Federal Constitution and domestic laws ensures that such a right is accorded to the accused.

(II) PRESUMPTION OF INNOCENCE

In Malaysia, the presumption of innocence is not explicitly provided for in the legislation or the Federal Constitution but Article 5(1) of the Federal Constitution guarantees that 'no person shall be deprived of his life or personal liberty save in accordance with the law'.

In the case of **Pendakwa Raya v Gan Boon Aun** (2017) 4 CLJ 41, the Federal Court held that:

(1) The presumption of innocence is a cardinal principle of Malaysian criminal law **(Arulpragasan Sandaraju v PP [1997] 1 MLJ 1)**.

(2) The right to personal liberty in Article 5(1) is not absolute and is subject to qualifications.

(3) The phrase "save in accordance with the law" in Article 5(1) requires that there must be a specific and explicit law that actually provides for it.

(4) Article 160(2) of the Federal Constitution read with section 66 of the Interpretation Acts 1948 and 1967 stipulates that "Law includes written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof", with that common law being the common law of England.

(5) Sections 101 and 102 of the Evidence Act 1950 provide that in a criminal case it is for the prosecution to prove the guilt of the accused person. In order to discharge the burden of proof which the prosecution has undertaken, it has to prove every ingredient which goes to make up the offence charged.

On the issue of pre-trial detention and its conflict with this right, in Malaysia, a system is already in place where offences are either bailable, non-bailable or unbailable. Definition of bailable and non-bailable can be found in section 2(1) of the Criminal Procedure Code (CPC). Generally, a bailable offence means bail has to be offered as of right and the court has no choice but to offer bail. This is stated in section 387 of the CPC. Non-bailable means the court has a discretion to grant bail. This is stated in section 388 of the CPC. The proviso to section 388(1) states that "the Court may direct that any person under the age of sixteen years or any women or any sick or infirm person accused of such an offence be released on bail". Unbailable means no bail will be offered. For Penal Code offences, a complete list of bailable and non-bailable offences can be found at column 5 of the First Schedule of the CPC. In Mallal's Criminal Procedure (7th Edition) at page 675, the following factors are listed for consideration in deciding whether bail should be granted or otherwise:

(i) the nature and gravity of the offence charged;

(ii) the nature of the evidence in support of the charge;

(iii) whether there was or was no reasonable ground for believing the accused guilty of the offence;

(iv) the severity and degree of punishment which conviction might entail;

(v) the guarantee that the accused, if released on bail, will not either abscond or obstruct the prosecution in any way;

(vi) the danger of the offence being continued or repeated;

(vii) the danger of the witnesses being tampered with;

(viii) whether the accused, if released on bail, is likely to tamper with the prosecution evidence;

(ix) whether the accused is likely to get up false evidence in support of the defence;

(x) the opportunity of the accused to prepare the defence;

(xi) the character, means and standing of the accused; and

(xii) the long period of detention of the accused and probability of further period of delay.

(III) RIGHT TO BE INFORMED OF THE CHARGES AGAINST THE ACCUSED

In Malaysia, Article 5(3) of the Federal Constitution guarantees that 'where a person is arrested he shall be informed as soon as may be of the grounds of his arrest .....'.

In **Abdul Rahman v Tan Jo Koh [1968] 1 MLJ 205**, Federal Court applied the law as stated in **Christie v Leachinsky [1947] AC 573** and held that, "In Christie v Leachinsky, it was held that a person arrested on suspicion of committing an offence, is entitled to know forthwith the reason for his arrest and that if the reason was withheld, the arrest and detention would amount to false imprisonment, until the time he was told the reason. It would follow therefore from this proposition that a person arrested without being told the reason is entitled to resist the arrest and any force used to overcome the resistance would amount to assault."

However, in the case of **Kam Teck Soon v Timbalan Menteri Dalam Negeri Malaysia & Ors and other appeals (2003) 1 MLJ 321**, The Federal Court in the majority held that any Act or Ordinance made or promulgated in pursuance of Article 150(6) of the Federal Constitution cannot be contended to be invalid just because it is inconsistent with Article 5(3) of the Federal Constitution. In this case, section 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 was made in pursuance of Article 150(6). The Federal Court held at pages 332 to 333:

(i) The purpose of Article 150(6) of the Constitution is that if section 3(1) is inconsistent with article 5(3) then section 3(1) must prevail over article 5(3). This would save the arrest and detention which would have been unlawful because of violation of article 5(3).

(ii) Section 3(1) only requires the arresting officer to have 'reason to believe that there are grounds ...'. It does not require the grounds to be informed to the arrested person. However, in this case, what the arresting officer has informed the appellant was sufficient compliance with article 5(3). The grounds were those that would justify a detention under section 4(1) of the Ordinance.

(iii) Quoting Viscount Simon in **Christie & Anor v Leachinsky [1947] 1 All ER 567 at p 572**, who said:

> *"4 The requirement that he should be so informed does not mean that technical or precise language need be used. The matter is a matter of substance, and turns on the elementary proposition that in this country a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reason why it is claimed that this restraint should be imposed."*

(iv) Article 150(2) and (6) of the Constitution clearly show that the provisions of the Ordinance must prevail over the Constitution. Furthermore section 3(5) of the Ordinance which reads:

> *"Any person detained under the powers conferred by this section shall be deemed to be in lawful custody, and may be detained in any prison, or in any police station, or in any other similar place authorized generally or specially by the Minister."*

states in no uncertain terms that the appellant 'shall be deemed to be in lawful custody'. As such if article 5(3) applies to arrest and detention under the Ordinance, then section 3(5) makes the unlawful detention because of the breach of article 5(3) lawful.

(IV) RIGHT TO COUNSEL

In Malaysia, Article 5(3) of the Federal Constitution guarantees that 'Where a person is arrested he..... shall be allowed to consult and be defended by a legal practitioner of his choice'.

One highlighted discussion on this right in Malaysia is in the case involving toll concessionaire Metramac Corporation Sdn Bhd and construction firm Fawziah Holdings Sdn Bhd. In that case, Queen Counsel Cherie Booth applied for an ad hoc admission under section 18 of the Legal Profession Act (LPA) to the High Court of Malaya[26] to represent Fawziah

[26] Cherie Booth QC v Attorney General, Malaysia & Ors (2006) 4 CLJ 224.

Holdings during the appeal in Federal Court. On 15th June 2006, a five-man bench of the Federal Court rejected her appeal for an ad hoc admission. The Federal Court held that whilst Booth had the special qualifications required under the LPA, her credentials were also available among local lawyers. By deciding that way, several commentators[27] argued that this case has shown that choosing one's counsel is not an absolute right here but Malaysians should take some comfort from the fact that each application will be dealt with and heard on its own merit.

Secondly, in the case of **Shamim Reza bin Abdul Samad v Public Prosecutor (2011) 1 MLJ 471**, the Federal Court provide further meaning to the right to counsel and this can be found at page 475 to 477:

(i) The right to be represented by competent counsel forms part of the right to a fair trial

(ii) The incompetence of counsel in the conduct of a defence in a criminal trial is a ground on which a conviction may be quashed by an appellate court provided that (i) such incompetence must be flagrant in the circumstances of the given case; and (ii) it must have deprived the accused of a fair trial thereby occasioning a miscarriage of justice.

(iii) In considering the question, an appellate court must have regard to the conduct of counsel as a whole and not merely to his or her failure in one or two departments.

Thirdly, with the coming into force of several preventive detention laws in Malaysia, especially the repealed Internal Security Act (ISA), challenges were brought to court that such preventive detention laws had hampered the right to counsel as provided in Article 5(3). The leading case on such a challenge is **Mohamad Ezam bin Mohd Noor v Ketua Polis Negara and Other appeals (2002) 4 MLJ 449**. In that case, Her Ladyship Siti Norma Yaacob FCJ held as follows:

> "On the facts of these appeals before us, I consider that allowing access only after the expiry of their detention is conduct unreasonable and a clear violation of Art 5(3). It also supports the appellants' contention that the denial amounts to mala fide on the part of the police that the ISA was used for a collateral purpose."

However, in the case of **Palautah Sinnappayan & Anor v Timbalan Menteri Dalam Negeri, Malaysia & Ors (2010) 3 MLJ 295**, it was argued that the appellants have been deprived of legal representation as provided under Article 5(3) of the Federal Constitution during the 60 days detention under s 3 of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). The appellant argued that such deprivation would invalidate the detention process issued under s 4(1) of the said Ordinance. It is to be noted from this judgment that firstly, the Federal Court in this case has made a reservation that in Mohamad Ezam's case, denial of access to legal representation was not the only ground relied upon by the appellants to secure their freedom. This is because from the judgments of the other 3 members of the panel, the appellants had succeeded in establishing that their detentions under section 73(1) of the Internal Security Act 1960 were unlawful based on grounds other than denial of access to legal representation. Secondly, the Federal Court in this case agreed with the decision of the Federal Court in the case of **Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors (2006) 1 MLJ 309** with regard to the detention of the appellant in that case under the Dangerous Drugs (Special Prevention Measures) Act 1985 where at p 628 it was held:

> *"The general rule that a writ of habeas corpus must be directed against the current order of detention therefore applies where a detention under section 6(1) has been made subsequent to an arrest and detention under section 3(1) and (2). It follows that where a detention order has been made under section 6(1) the writ of habeas corpus must be directed only against that order even if the earlier arrest and detention are irregular".*

Further in concurring with the decision in Mohd Faizal's case above, the Federal Court in Palautah case held as follows at page 301:

> *"Therefore any irregularity in the arrest and detention of the appellants in the present case made under section 3 of the Ordinance when it has been superceded by one under section 4(1) of the Ordinance is not a relevant matter for consideration. It must be noted in the present case that the appellants have not alleged any irregularity in respect of their*

[27] https://www.thestar.com.my/opinion/letters/2006/06/18/on-the-right-to-choose-counsel/

arrest and detention during the 60 days of detention. However the appellants' complaints were more in relation to the fact that they have been denied the right to legal representation at that stage. Their learned counsel posed the question to us as to how then would they be able to file a writ of habeas corpus against such procedural irregularities which had occurred during their arrest and detention within the 60 days period without them being given access to counsel. Our short answer to the question posed is that we agree with the principle laid down in earlier decided cases that a complaint by a person under lawful detention that he has been refused access to counsel contrary to the second limb of article 5(3) will not have the effect of rendering his detention unlawful and that habeas corpus is not the proper remedy (see the case Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis (1975) 2 MLJ 198 and Lee Mau Seng v Minister for Home Affairs, Singapore & Anor (1971) 2 MLJ 137).

In Malaysia, there are two noteworthy schemes which support the system of providing legal assistance to the accused in Malaysia and they are:

(i) Malaysian Bar Council's Legal Aid Centre – representation available in both civil and criminal law matters, for both citizens and non-citizens, men and women (priority is for public interest issues);

(ii)National Legal Aid Foundation (YBGK) – only criminal law matters, especially for citizens but now has been extended to cover all cases involving children, regardless of citizenship, as well as all death penalty cases and clemency applications regardless of citizenship.

The courts also play a significant role in providing access to justice by assigning a lawyer to represent the accused if he has none in death penalty cases only and irrespective of the said accused persons' gender, ethnicity, religion and nationality. This Court Assigned Counsel scheme has a long standing history dating back to the pre-World War II era when it was first set up by the British in Malaya. At present, this scheme which comes under the purview of the Chief Registrar of Malaysia is in accord with the principle of equal access to justice under Article 8 of the Federal Constitution as well as sections 172B and 255 of the Criminal Procedure Code of Malaysia that grants the accused the right to be defended by a counsel.

Service of an assigned counsel is given free of charge but that does not mean that the lawyers appearing on their behalf do not receive any monetary rewards. The responsibility to pay the appearing counsel is borne by the Judiciary[28].

For that purpose, the Chief Registrar's office has issued and is constantly reviewing the Practice Directions on guidelines, procedures and responsibilities of Court Assigned Counsel[29]. The latest Practice Direction on this matter was issued on 12th May 2017 and it provides a comprehensive outline on the qualification and registration of a Court Assigned Counsel as well as the amount of fees payable to the counsel[30].

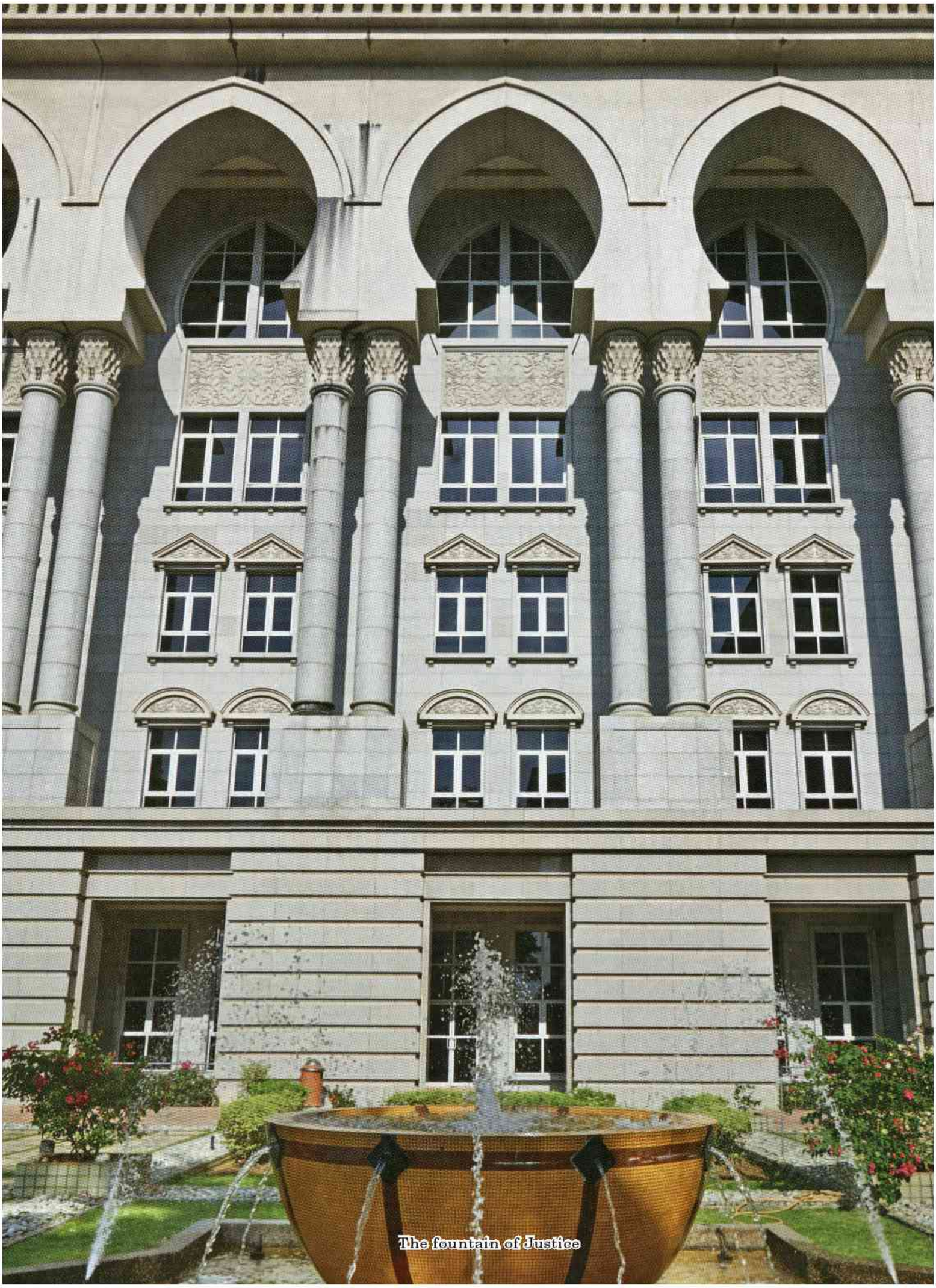
CONCLUSION

From the above discussion, it is clear that Malaysia has a systematic legal mechanism and laws to assist and protect the rights of the accused person and the Judiciary will always endeavour to safeguard and ensure that this right is protected.

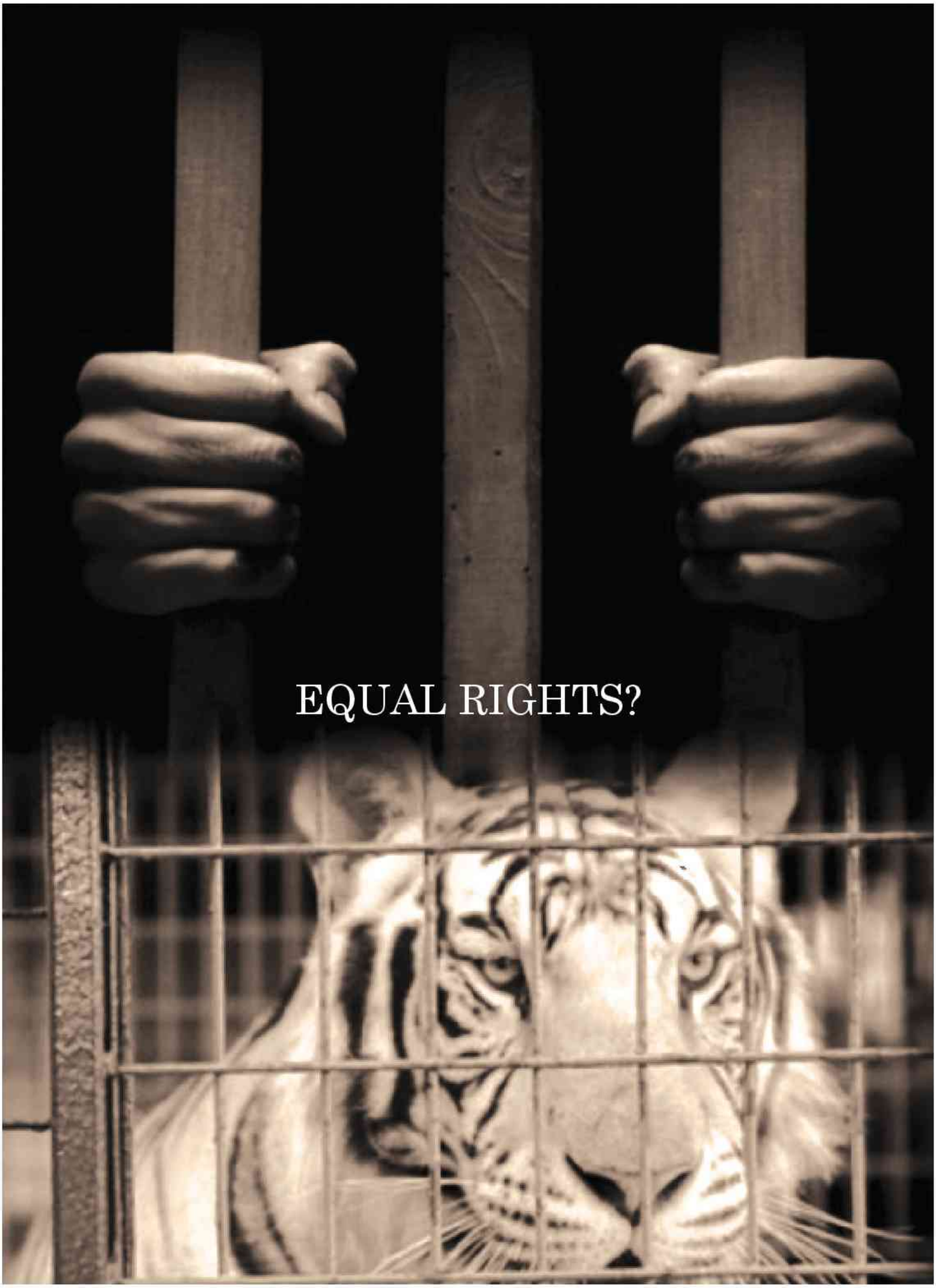
[28] Rule 66 of the Court of Appeal Rules 1994 and Rule 96 of the Federal Court Rules 1995 provide for guidelines to the said 'Court Assigned Counsel' scheme.

[29] Ibid no. 28.

[30] Arahan Amalan Ketua Pendaftar Mahkamah Persekutuan Malaysia Bil 1 Tahun 2017 – Garis Panduan, Tatacara dan Tanggungjawab Peguam Lantikan Mahkamah Bagi Kes Kesalahan Hukuman Mati.



The fountain of Justice


EQUAL RIGHTS?

ANIMAL CRUELTY AND WILDLIFE PROTECTION

By Justice Abdul Rahman Sebli
Judge of the Court of Appeal

Mahatma Ghandi once said that the greatness of a nation and its moral progress can be judged by the way animals are treated. These words of wisdom remind us of our responsibility towards animals, domesticated or in the wild. We must be clear in our minds that a crime against animals is a crime like any other crime. If you are found guilty of the offence, you either go to jail or be fined or be subjected to both imprisonment and fine, the same punishment that you face if you commit a crime against our own kind.

We must not fall into the false sense of belief that a crime against animals is not on the same level of seriousness as crimes affecting the human body or offences against property. This is a fallacy because animals deserve as much justice as do humans. Perhaps they deserve more because they are put at a disadvantage in so many ways. A person who is the victim of a crime can lodge a police report, but for an animal, he has nowhere to go except to run for his life or risk being killed or maimed.

Our claim of being "civilized" will remain a hollow claim if we do not treat animals with the respect and compassion that they deserve. From the moral point of view, cruelty towards animals is as reprehensible as cruelty towards our own kind. Where animals are killed for greed, the reprehensibility of the criminal conduct is multiplied many times over.

Over the years, animal lovers have stood by and watched helplessly as stray animals were handled with unnecessary force, pet owners neglecting or abandoning their pets, zoo animals continuing to live in deplorable conditions, and stray animals maimed or killed by cruel individuals.

It does not help that in the last decade or so, only a handful of prosecutions had been instituted against animal abusers. Who can forget the viral video showing six Batu Pahat municipal workers using brute force on a stray dog, the deplorable conditions in zoos nationwide, individuals who neglect their pets or maim/kill defenceless stray animals and various viral videos on the Internet showing a poodle being hit repeatedly, a cat being set on fire in a cage and a family of kittens being hit, kicked and stomped to death.

Research by the Federal Bureau of Investigation (FBI) of the United States indicates that animal abusers are five times more likely to be violent in society. When they are not punished, they continue

their abuse on children, women and society at large. Consequently, governments all over the world have begun to take animal cruelty seriously by imposing punitive cruelty penalties and have encouraged "Responsible Pet Ownership".

We have serial murderers and serial rapists. Jack the Ripper is perhaps the most well-known of the lot. Believe it or not we now have serial cat killers. In an online news published on 16th December 2017, it was reported that the manhunt for London's serial cat killer has been on since 2015. More than 400 suspected victims, mostly cats, but also some foxes and rabbits had been identified. In the last confirmed case, the head and tail of the cat were missing, having been cut off, and the belly sliced open – trademarks betraying the killer's surgical skill. The possibility that the cats were killed by other animals was quickly ruled out. Scotland Yard police believes that an individual or a group of individuals are responsible for both the deaths and mutilations of the cats.

Vincent Ergan, an associate professor in forensic psychology at the University of Nottingham told the Associated Press: "The person involved has to be able to entice the animal, capture it and kill it without being scratched or bitten ... dissect in the skilled way reported, put the body in a place where it can be seen, and do all of this quietly and surreptitiously".

I had occasion to deal with an animal abuse case while serving as a High Court Judge at Shah Alam in 2013. I thought it is an interesting case that I should highlight in this article. Not as grotesque as the London serial cat killer case of course but grotesque nonetheless. It was the case of **Public Prosecutor v Shahrul Azuwan Adanan & Anor**[1]. The facts were these. The two respondents were carrying on a cat boarding business under the style and name of "Petknode Online Pet Store" located at No. F0001B Level 1, Season Square Plaza, Jalan PJU 10/3 Damansara Damai. The fees for their services were paid online. In an online promotional posting, the respondents proudly proclaimed: *"We are always committed to make sure that your cat gets more with our Good Care services"*.

This catchy punchline turned out to be just that - a catchy punch line and nothing more. The cat owners had left their cats under the care of the respondents when they returned to their *kampongs* for the 2011 Hari Raya celebration. Food for the cats were provided by the owners themselves. When they returned to take back their cats, they were shocked to find their pets either missing or were in deplorable conditions and the cat food remained untouched. Eight of the cats subsequently died.

Police reports were lodged and the respondents were charged in the Magistrates' Court with thirty (30) counts of cruelty to animals under section 44 (1) (d) of the Animals Act 1953 ("the Animals Act"). They pleaded guilty to all the charges and were sentenced to a fine of RM200.00 in default one month imprisonment for each charge. They paid the fine. Dissatisfied with the sentence, the prosecution appealed for a heavier punishment. The prosecution's case was that the sentence of RM200.00 fine, although the maximum, was manifestly inadequate.

In imposing the RM200.00 fine, the learned Magistrate was of the view that she had no power to pass any sentence of imprisonment without first giving the respondents the option of paying a fine. Accordingly, she declined to pass any custodial sentence and instead imposed the fine of RM200.00 in default 1 month imprisonment for each of the charges. The question that called for my consideration was whether the learned Magistrate was right in her interpretation of section 44 (2) of the Animals Act, and if so whether the sentence passed on the respondents constituted adequate punishment for what they had done to the cats.

For the first part of the question, I was of the view that the learned Magistrate did have the power to pass imprisonment sentence as the first option. As for the adequacy of the sentence of RM200.00 fine, it was clear to me that the sentence was grossly inadequate and did not reflect public abhorrence for this type of criminal behaviour. Eight of the cats died miserable deaths at the hands of the respondents. Among the causes of death as determined by the veterinary officer was *"undernourishment, resulting in organs shut-down resulting in death"*. In simple language that means the cats were starved to death.

What the respondents did to the cats was unacceptable. Despite being paid for their services, they did not even bother to feed the cats, let alone

[1] [2013] 2 CLJ 686.

care for them, while allowing them to remain caged throughout the duration of their stay at the cattery. It is an irony that in pleading for leniency when I asked them why the sentence should not be enhanced, the respondents said they were traumatized by the case, as if their act of traumatizing the cats and their owners did not matter at all.

In my view, it is high time that courts take a serious view of the offence of cruelty against animals before apathy sets in, if it has not already set in.

We all are familiar of course with the cardinal principle of sentencing that where the interest of the public and the interest of the offender collide, the interest of the public must take precedence over and above the interest of the offender. Undeniably there were mitigating factors in favour of the respondents in the case before me. They pleaded guilty to the charges although not at the first available opportunity, were first offenders and were remorseful. Due discount must of course be given for these mitigating factors but the court must draw a line between sympathy for the respondents and the need to deter others from becoming copycats especially where, as in this case, there was no mitigation to the crime itself.

In cases involving cruelty to domesticated animals, it must be made clear to the public that such crimes will not be tolerated by the court. My mind was clear that the respondents' act warranted custodial sentence and not just a paltry fine of RM200.00. Their callous disregard for the well being of the cats had left 8 of them dead and 22 others suffering. In the circumstances, I ordered the respondents be sentenced to 3 months imprisonment for each offence in addition to the sentence of fine of RM200 already imposed by the learned Magistrate. It was my view that the additional three months concurrent imprisonment sentence was appropriate and fitting to the circumstances of the crime, considering the fact that the respondents faced not one but 30 animal cruelty charges.

As a postscript, I mentioned in the case that the punishment for animal cruelty under the Animals Act is archaic and out of touch with reality. When the Animals Ordinance (No. 17 of 1953) was enacted 59 years ago in 1953 the penalty for animal cruelty as provided by section 44(1) was as follows:

"a fine of two hundred dollars or to imprisonment for a term of six months or to both".

When the Ordinance was revised 53 years later in 2006 by the present Animals Act (Act 647), the penalty for animal cruelty as provided by section 44(1) was as follows:

"a fine of two hundred ringgit or to imprisonment for a term of six months or to both".

No prize for spotting the difference but I did mention that it would be interesting to see if anything would be done to rectify the situation. Having to pay a fine of two hundred dollars ($200.00) in 1953 would probably hurt the pocket but to pay a two hundred ringgit (RM200.00) fine in 2012 is not even a slap on the wrist for businessmen like the respondents. If the two hundred dollars ($200.00) of 1953 were to be pegged against today's worth of two hundred ringgit, the fine of RM200.00 under the Act which has remained stagnant for the past 59 years will be more of a friendly pat on the back rather than a form of punishment. It cannot be the case that cruelty against animals is viewed less seriously today than it was in 1953. It was my view that the need to increase the penalty for animal cruelty was long overdue. A heavier penalty will at least give some semblance of protection to these poor defenceless creations of God.

That is all for cruelty against domesticated animals. Allow me to now deal with animals in the wild. We must accept the fact that wildlife crime is rampant not only in Malaysia but elsewhere in the world. But very few of the cases end up in court. It is certainly not a crime that the courts in this country are familiar with, unlike theft, murder, drug trafficking, corruption et cetera. Even the law schools, as far as I know, do not include the law on crime against wildlife as part of their syllabus. Malaysia is one of the most diverse places on earth. According to the National Biodiversity Index, it is ranked 12th in the world for country richness in diversity of both animals and plants. Malaysia is known for its breathtaking landscape, strong cultural history and diverse flora and fauna. Malaysia is also home to the Taman Negara, the world's oldest forest, estimated to be more than 130 million years of age, predating the dinosaurs. Sadly, Malaysia also has a history of deforestation, exploitation and species extinction. Because of this, the Wildlife Conservation Act of 2010 was passed.

It may not surprise us that Malaysia has the fastest accelerating rate of deforestation in the world. The tropical forests are being devoured. Add to this, the threats of illegal poaching, air

pollution, water pollution and urban development, and you have a place where nature needs all the protection it can get. The Sumatran rhinoceros is on the brink of extinction (earlier thought to be extinct) in Malaysia due to habitat destruction. The Malayan tiger is critically endangered, as is the Malayan tapir (Tenuk), the Sumatran orangutan, the mousedeer and many more.

Trade in endangered species in South East Asia has devastating impacts on the region's biodiversity, disturbing ecological balances and undermining environmental services. This, in turn, impacts people of South East Asia and their well-being. The multibillion-dollar illegal wildlife trade supplies one of the world's largest black markets, surpassed only by illicit commerce in arms and drugs.

The illicit harvesting of natural resources has been defined as a form of transnational organized environmental crime driving species to extinction by the United Nations Office of Drugs and Crime (UNODC) in their report "The Globalisation of Organised Crime – A Transnational Organised Crime Threat Assessment".

A World Bank report from 2008 states that the South East Asian region functions as a key supplier for global demand for protected wildlife, as well as a consumer and a global transit point. The International Union for Conservation of Nature (IUCN) reported that South East Asian countries rank among the highest in the world for density of endangered species. Nine countries in the world's top 20-list of countries with the most endangered mammal species are in South East Asia – "Wildlife In a Challenging World – An Analysis of the 2008 IUCN Red List of Threatened Species. IUCN Report 2010."

What drives the illegal wildlife trade? This trade involves killing wild animals to satisfy the demand for bones, scales and other ingredients for traditional medicines; capturing wild animals to satisfy the demand for live animals as pets and zoo exhibits; demand for their parts and bodies as collectors' trophies; decorations and luxury items; demand for wild meat and exotic dishes from restaurants, etc. Computer literacy provides easy access to illicit wildlife products from an online marketplace. Poor awareness about the importance of conservation and impacts of over-exploitation has also contributed to the destruction of the region's flora and fauna - What's Driving the Illegal Wildlife Trade? TRAFFIC Report 2008.

Scientists predict that 13-42% of South East Asia's animal and plant species could be wiped out this century. Illegal wildlife trade also threatens sustainable development in rural and coastal communities, as it destroys those natural and biological resources upon which thousands of people around the globe depend for their livelihood. Human health is endangered by unregulated trade in wild animals that can spread and pass on viruses. SARS and Avian Influenza for example, were transferred by wild animals to human beings.

Another consequence is the strengthening of organized crime. Profits from illegal wildlife trade, which ranks among the most lucrative type of black market commerce, can support other forms of criminal activity. Links are now being detected between wildlife crime, drug trafficking and human trafficking - Illegal Wildlife Trade in South East Asia Factsheet, ASEAN Wildlife Enforcement Network, 2009.

With generally weak laws governing wildlife trade, low penalties and limited awareness of the problem among the civilian population, criminals see an opportunity to make money trafficking wildlife with very little risk. A newspaper report published on 31st March 2015 quoted Foreign Minister Dato' Seri Anifah Aman on 30th March 2015 as saying that countries need to work together to combat this illegal activity due to its huge implications to development, peace and security after officiating the three day Asean Regional Forum on combating wildlife trafficking in Kota Kinabalu. He said if we can work together on economic issues and in combating terrorism and extremism, there should be no problem in combating wildlife trafficking.

There is no uniform law on wildlife crime in Malaysia. Presently there are three primary legislations, namely (1) The Wildlife Conservation Act 2010 ("the Wildlife Conservation Act"), which applies to the states of West Malaysia and the Federal Territory of Labuan, (2) The Wildlife Conservation Enactment 1997 which applies to Sabah, and (3) The Wildlife Protection Ordinance 1998 which applies to Sarawak.

The West Malaysian Wildlife Conservation Act seems to be a powerful weapon against wildlife criminals, especially with the available presumptions at the disposal of the prosecutor, as can be seen from the following provisions:

(i) Section 56 - Where any person is found setting, placing, using or is otherwise in possession of any animal or bird, wild or otherwise, in such circumstances that there is reason to suspect that the person is using the animal or bird as decoy or bait for the purpose of attracting any wildlife, it shall be presumed that the person is attempting to hunt any wildlife.

(ii) Section 57 - Where a person is in possession of a snare, it shall be presumed that the snare is being used by the person for the purpose of hunting any wildlife.

(iii) Section 58(1) - Where any wildlife or any part or derivative of any wildlife or snare is found in any premises, it shall be presumed that the occupier of the premises is in possession of the wildlife or part or derivative of the wildlife or snare.

(iv) Section 58(2) - Where there is more than one occupier in the premises, the occupier of the portion in which the wildlife or part or derivative of wildlife or snare is found shall be presumed to be the occupier for the purpose of subsection (1).

(iv) Section 59 - Where the Director General of the Wildlife Department or any person certified in writing by him to have special knowledge or skill in wildlife testifies in court under oath that anything or object, as the case may be, is a wildlife, part or derivative of any wildlife, wildlife's flesh, trophy, sprung gun, sharpened stake, pit, drop spear, snare, bait or poisoned bait, it shall be presumed until the contrary is proven that the thing or object, as the case may be, is a wildlife or part or derivative of any wildlife, wildlife's flesh, trophy, spring gun, sharpened stake, pit, drop spear, snare, bait or poisoned bait.

The penalty for hunting or keeping any totally protected wildlife without any special permit is severe. On conviction the offender is liable to a fine not exceeding RM100,000 or to imprisonment for a term of 3 years or to both. That is for mature animals. If it involves immature animal that is totally protected, the fine is RM200,000 or to 10 years jail or both. If it is a female animal the penalty is higher: a fine of RM300,000 or to 10 years jail or to both.

The penalty is even higher if it involves a female serow, a gaur, a javan rhinoceros, a tiger, a leopard, a clouded leopard and false gharial: a fine of not less than RM200,000.00 and up to RM500,000.00 and with imprisonment for up to 5 years.

Totally protected wildlife are those listed in the second schedule to the Wildlife Conservation Act. I bet some of us have never heard of some of them. These include babi bodoh (bearded pig), Kuching tulap (Asian golden cat), memerang hidung berbulu, musang titik besar, beruk kantoi, tupai terbang pipi kelabu, tupai terbang pipi merah, tupai terbang berjambang, itik muara, itik sudu, enggang gatal birah, (black hornbill), tukang kubur (large-tailed nightjar). It is a long list.

It is not only the killing of the animals that is made an offence under the Wildlife Conservation Act. Cruelty to the animals is also made an offence by section 86(1) of the Act. The offences are:

(i) beats, kicks, infuriates, terrifies, tortures, declaws or defangs any wildlife;

(ii) neglects to supply sufficient food or water to any wildlife which he houses, confines or breeds;

(iii) keeps, houses, confines or breeds any wildlife in such manner so as to cause it unnecessary pain or suffering including the housing, confining or breeding of any wildlife in any premises which is not suitable for or conducive to the comfort or health of the wildlife;

(iv) uses any wild animal for performing or assisting in the performance or assisting in the performance of any work or labour which by reason of any infirmity, wound, disease or any other incapacity it is unfit to perform;

(v) uses, provokes or infuriates any wildlife for the purpose of baiting it or for fighting with any other wildlife or animal, or manages any premises or place for any of these purposes; or

(vi) willfully does nor willfully omits to do anything which causes any unnecessary suffering, pain or discomfort to any wildlife.

The penalty for committing any of these acts is a fine of not less than RM5,000.00 and not more than RM50,000.00 or to a jail term of up to 1 year or to both.

The Sabah Wildlife Enactment 1997 is not as comprehensive as the Wildlife Conservation Act, but through section 41(3) it also places the burden on the accused person to prove lawful possession of any animal species or animal product listed in Part I Schedule 1.

There is also the presumption under section 33(2) – Any person who is found "away from his place of abode" being in possession of:

(i) Any drug, poison, poisoned weapons or poisoned baits;

(ii) Any explosives or missiles containing detonators; Any trap, snare, gin, nets, deadfall, fixed stake or the like, pit or set gun or any contrivance likely to endanger human life or cause bodily harm to any person;

(iii) Any device capable of producing an electric current sufficient to kill a fish or any other animal;

(iv) Any lure, artificial call, electronic device or recording;

(v) Any artificial light;

(vi) Any firearm capable of firing more than one round at each pull of the trigger or other firearm prescribed generally or for the hunting of particular species of animals; or

(vii) shall be presumed to have such thing in his possession for the purpose of hunting an animal. The offence is punishable with a fine of RM50,000 or to 5 years imprisonment or to both.

Section 98(1) of the Enactment further provides that the possession by any person of any animal or the meat or animal product from freshly killed animal shall be prima facie evidence against him that he has hunted such animal. It means that on the face of it, he is guilty of the act unless he can show otherwise.

Unfortunately the Sabah Enactment does not define "wildlife". It merely says that the word "wildlife" includes animals and plants. This is a rather vague definition and may cause problems if the case goes to court. The word "animal" is however given a definite meaning, i.e. any vertebrate or invertebrate and the eggs of such vertebrate or invertebrate, but does not include any domestic animal or its eggs. Under the Sabah Enactment, the list of totally protected species is not as long as the list in the West Malaysian Wildlife Conservation Act. There are only 9 animal species that are listed as totally protected and they are the sumatran rhinoceros, the orang utan, the sun bear, the dugong, the proboscis monkey, the clouded leopard, the gharial (Buaya Julung-Julung), the green turtle, and the hawksbill turtle (Penyu Sisik).

Illegal hunting of totally protected animals carries a severe penalty under the Sabah Enactment. Under section 25(3), the penalty is jail time of not less than 6 months and not exceeding 5 years. This means the court has no choice but to pass the minimum jail time of 6 months and it can be up to 5 years. I now come to the Sarawak Wildlife Protection Ordinance 1998. If the Sabah Enactment has no definition for the word "wildlife", the Sarawak Ordinance has one. It defines "wildlife" as any species of wild animal or wild plant. "Wild animal" is defined to mean any specie of animal which exists or occurs in the wild state in Sarawak or elsewhere in the world. "Wild plant" means any species of plant which exists or occurs in the wild state in Sarawak or elsewhere in the world.

There may be a problem with this definition of "wild animal" as it refers to any animal that exists or occurs in the wild state in Sarawak or elsewhere in the world. How do you determine that the animal exists in a wild state in Sarawak or elsewhere in the world? I trust that they have experts to assist the court. The Ordinance also does not, unfortunately, have presumption provisions as in the West Malaysian Wildlife Conservation Act and in the Sabah Ordinance. Of the three legislations, I venture to think the Sarawak Ordinance is the weakest of them all in terms of wildlife protection. Like the West Malaysia Act, Sarawak also makes it an offence to kick any wildlife and all those other acts that are made offences under section 86(1) of the West Malaysia Act. This is provided in section 44 of the Sarawak Ordinance. There is a difference though. If in West Malaysia a fine of not less RM5,000.00 is the first option in sentencing, in Sarawak imprisonment of up to 6 months is the first option. In that sense Sarawak treats such offence more seriously than its West Malaysian counterpart. So be careful not to kick any wildlife while in Sarawak. You may end up being jailed for 6 months.

The Sabah Enactment has an equivalent provision but less detailed and provides for a less severe punishment. This is housed in section 46 which provides:

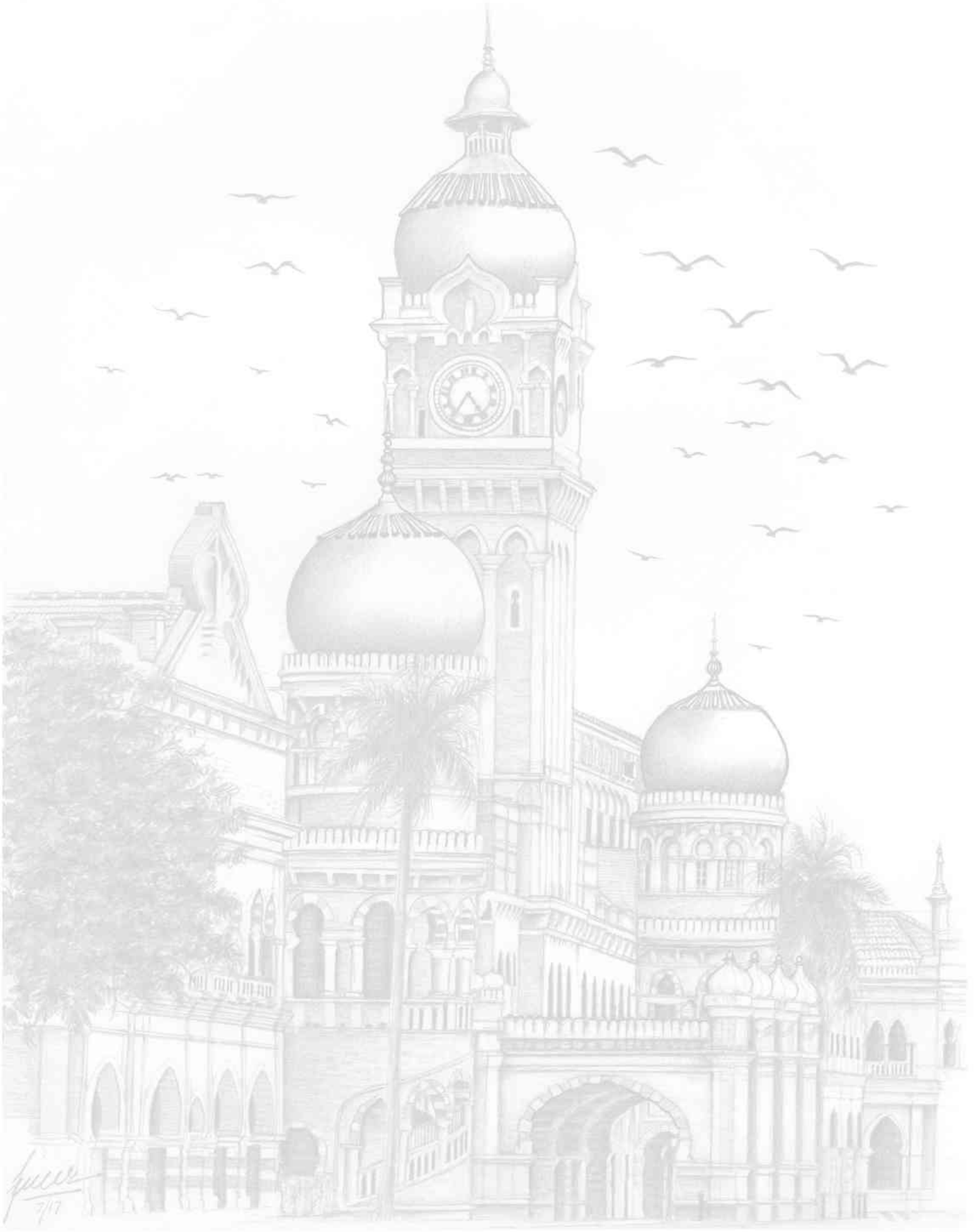
"Any person who causes unnecessary or undue suffering to an animal kept under the authority or permit issued under section 43 commits an offence and shall be liable on conviction to a fine of five thousand ringgit or to imprisonment for six months or to both."

I suppose kicking a wild animal would come under this prohibition too because that act will cause unnecessary suffering to the animal. But strangely in Sabah the offence can only be committed by a person who has a permit to keep the animal, unlike in West Malaysia and Sarawak. There, whether you have a licence or not, it is an offence to be cruel to animals. There is no provision in the wildlife legislations to empower the court to direct the enforcement agencies to enforce the law or to institute criminal prosecution against the offender and it cannot on its own volition initiate criminal proceedings against the offender. This power is vested in the Attorney General in his capacity as the Public Prosecutor. He and he alone decides whether the offender is to be prosecuted for the offence. This is familiar law of course.

In one unfortunate story, a notorious wildlife kingpin was allowed to operate a reptile business – a front for his illegal trading ring, even after being arrested in Mexico and serving 71 months in prison for smuggling, conspiracy, money laundering and wildlife offences. Once he got back to Malaysia, he was allowed to continue business as usual.

In late 2010, after the Wildlife Conservation Act was passed, this individual was making his way through Kuala Lumpur International Airport when his travel pack broke open on the conveyor belt, releasing 95 boa constrictors he was attempting to smuggle into Indonesia. Not only was he detained and arrested, his original 6 months imprisonment sentence was increased to 5 years after a successful appeal by the prosecution.

Make no mistake, wildlife crime is big business. According to the United Nations, it accounts for around a quarter of the US90 billion in transnational organized crime each year in South East Asia alone. If unchecked it will lead to the extinction of certain species of wildlife with all its attendant consequences to life on earth. Mahatma Ghandi's words of wisdom bear repeating: "The greatness of a nation and its moral progress can be judged by the way animals are treated".



CHAPTER 8

SPECIAL FEATURES

FORMER LORDS PRESIDENT/ CHIEF JUSTICES OF MALAYSIA (1963 – PRESENT)

THE RT. HON. TUN SIR JAMES BEVERIDGE THOMSON

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

16.9.1963 – 31.5.1966

(THE 1ST LORD PRESIDENT)

THE RT. HON. TUN SYED SHEH SYED HASSAN BARAKBAH AL-HAJ

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

1.6.1966 – 9.9.1968

(THE 2ND LORD PRESIDENT)

THE RT. HON. TUN DATO' AZMI MOHAMED

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

10.9.1968 – 30.4.1974

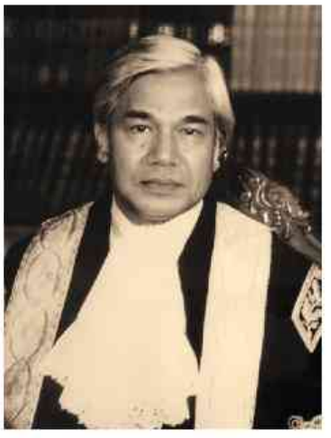
(THE 3RD LORD PRESIDENT)

THE RT. HON. TUN MOHAMED SUFFIAN MOHAMED HASHIM

S.S.M., P.S.M., S.P.C.M., D.I.M.P., J.M.N., S.M.B. (BRUNEI), P.J.K. ,LL.D., D. LITT

1.5.1974 – 12.11.1982

(THE 4TH LORD PRESIDENT)



THE RT. HON. RAJA AZLAN SHAH IBNI ALMARHUM SULTAN YUSSUF IZZUDDIN SHAH
S.S.M., D.K., P.M.N., P.S.M., S.P.C.M., S.P.T.S., S.P.M.P., S.I.M.P.,D. LITT, LL.D.
12.11.1982 – 2.2.1984
(THE 5TH LORD PRESIDENT)

THE RT. HON. TUN DATO' MOHAMED SALLEH ABAS
S.S.M., P.M.N., P.S.M., S.P.M.T. D.P.M.T., J.M.N., S.M.T.
3.2.1984 – 8.8.1988
(THE 6TH LORD PRESIDENT)

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

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

9.8.1988 – 9.11.1988

(ACTING LORD PRESIDENT)

10.11.1988 – 24.9.1994

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

THE RT. HON. TUN DATO' SERI MOHD EUSOFF CHIN

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

25.9.1994 – 19.12.2000

(THE 2ND CHIEF JUSTICE)

THE RT. HON. TUN DATO' SERI MOHAMED DZAIDDIN ABDULLAH

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

20.12.2000 – 14.3.2003

(THE 3RD CHIEF JUSTICE)

THE RT. HON. TUN DATO' SRI AHMAD FAIRUZ DATO' SHEIKH ABDUL HALIM

S.S.M., P.S.M., S.P.M.K., S.J.M.K, S.P.M.S., S.S.A.P., S.S.M.Z.,S.S.D.K., S.P.M.T., D.S.M.T., D.S.D.K., S.M.J., S.M.S., B.C.K., P.I.S.

16.3.2003 – 1.11.2007

(THE 4TH CHIEF JUSTICE)

THE RT. HON. TUN ABDUL HAMID MOHAMAD

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

2.11.2007 – 17.10.2008

(THE 5TH CHIEF JUSTICE)

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

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

18.10.2008 – 9.9.2011

(THE 6TH CHIEF JUSTICE)

THE RT. HON. TUN ARIFIN ZAKARIA

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

12.09.2011 – 31.03.2017

(THE 7TH CHIEF JUSTICE)

THE RT. HON. TUN RAUS SHARIF

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

01.04.2017 – PRESENT

(THE 8TH CHIEF JUSTICE)

MALAYSIA'S THIRD LORD PRESIDENT FROM 1968 TO 1974

TUN AZMI MOHAMED

On 31 May 1966, the Malaysian judiciary bid farewell to its first Lord President of the Federal Court, Tun Sir James Beveridge Thomson, who retired after serving on the Malaysian Bench for almost eighteen years, and was succeeded in 1966 by Tun Syed Sheh Barakbah, the second Lord President of the Federal Court and first Malaysian to hold the highest judicial office. However, Tun Syed Sheh Barakbah only held the office of Lord President for a brief period from 1966 until his retirement in 1968. Tun Syed Sheh Barakbah was then succeeded by Tun Azmi Mohamed who was then the Chief Justice of the High Court of Malaya, a post he held since 1966 until his appointment as the third Lord President of the Federal Court in 1968.

Tun Azmi was born on the 26 of June 1909 in Kedah. He received his early education at the Ibrahim School, Sungai Petani and passed the School Certificate Examination in 1926. He excelled academically and was awarded a Kedah State Government scholarship to read law in the United Kingdom in May 1928. He was later admitted as Barrister-at-Law of the Honorable Society of Inner Temple in November 1932 and then read in Chambers in London.

Upon his return to Malaya in May 1933, Tun Azmi served in various capacities in the judicial and legal service. In 1933, he was posted as Acting Sheriff and Assistant Registrar of the Supreme Court, Kedah. In March 1936, he was appointed as an Assistant to the Legal Advisor, Kedah and then, the Deputy Legal Advisor. In November 1937, he was appointed Chief Magistrate and in 1938 and 1940 Tun Azmi acted temporarily as Malay Judge of the Second Division of the Kedah Supreme Court.

Upon the re-occupation of Malaya, Tun Azmi was appointed the Presiding Officer, District Court, Alor Star and in 1946 he was made President of the Sessions Court, Alor Star. In 1948, he was appointed to the Colonial Legal Service by the British colonial administration, one of three Malays selected to serve as a District Court Judge. The other two were Tun

Tun Azmi Mohamed, Malaysia's third Lord President from 1968 to 1974
(Picture courtesy of Tun Zaki Tun Azmi)

Syed Sheh Barakbah and Abdul Hamid Mustafa. The late Tun Azmi was appointed as a District Court judge in Johor Bahru and later in Seremban.

During this period, a difference of opinion arose between Tun Azmi and his colonial boss over his travel claims. When the colonial office refused to entertain his claims, he resigned and returned to Kedah. In May 1951, Tun Azmi joined the Kedah Civil Service as the Third Assistant State Secretary. An excellent performer, he was appointed State Secretary, Kedah in 1958.

He rose rapidly in the civil service until he was invited to join the judiciary by the then Prime Minister, Tun Abdul Razak. Tun Azmi was elevated to the High Court Bench in Malaya in 1959.

In 1966, Tun Azmi was appointed as the Chief Justice of the High Court of Malaya in 1966. In 1968, he was appointed as the third Lord President in a simple ceremony in Kuala Terengganu, in the palace of the Sultan of Terengganu, Tuanku Ismail Nasiruddin who was then the Yang Di Pertuan Agong of Malaysia.

The late Tun Azmi's contribution to the judiciary has been enormous. When he was the Lord President, he suggested that judicial officers in Malaysia should adopt a set of judicial principles known as "Rukun Keadilan". In his opening speech at the third Magistrates' Conference in Petaling Jaya on 4th October 1971, Tun Azmi said:

> *"We have the Rukunnegara, a set of principle set down by the authority for all of us to remember and to practice. So why not we have our Rukun Keadilan – a set of first principles which we Judicial Officers must always remember and practice in carrying out our work of administering justice. They are especially for those who sit on the Bench and sometimes in chambers, to hear cases.*
>
> *The Rukun Keadilan –*
>
> 1. *A Judge must be independent*
> 2. *A Judge must have no interest in any matter he has to try*
> 3. *Justice must be seen to be done*
> 4. *A Judge must act on evidence*
> 5. *A judge must give reasons for his decision*
> 6. *A judge must conduct himself well whether in the course of his judicial duties or in his private life*

In honour of his contributions and service, Tun Azmi was bestowed several honours and awards namely; Darjah Yang Mulia Pangkuan Negara Seri Setia Mahkota (S.S.M) which carries the title Tun, Darjah Panglima Mangku Negara (PMN) which carries the title Tan Sri, Dato' Paduka Mahkota Kedah (D.P.M.K), Pingat Sultan Badlishah (P.S.B) and Pingat Jaksa Kebaktian (P.J.K.). He retired as the Lord President in 1974.

Tun Azmi was married to the late Zaharah Che Din (who passed away in 1957) and the couple were blessed with six children. The late Tun Azmi then remarried Toh Puan Sharifah Noor Syed Hussein and they were blessed with 2 children. One of his sons, Tun Zaki Tun Azmi was appointed as the 12th Chief Justice of the Federal Court of Malaysia. Tun Azmi was appointed the 3rd Lord President before the Sultan of Terengganu, Tuanku Ismail Nasiruddin who was then the Yang Dipertuan Agong of Malaysia. Coincidentally, forty years later in 2008, his son Tun Zaki Tun Azmi received his letter of appointment from Duli Yang Maha Mulia Tuanku Mizan Zainal Abidin who was then the Yang Dipertuan Agong, the grandson of Tuanku Ismail Nasiruddin.

The late Tun Azmi Mohamed was laid to rest on 16 September 1996 at the age of 87. Tun Azmi will always be remembered not only by scholars of law, judges and lawyers but also by those who knew him as a man for his simple, gentle and humble character.

References

(1) The Malaysian Judiciary – A Perspective

(2) No Nonsense – The authorised biography of Zaki Azmi the 12th Chief Justice of Malaysia

(3) The Malayan Law Journal [1991] 2 MLJ xliii

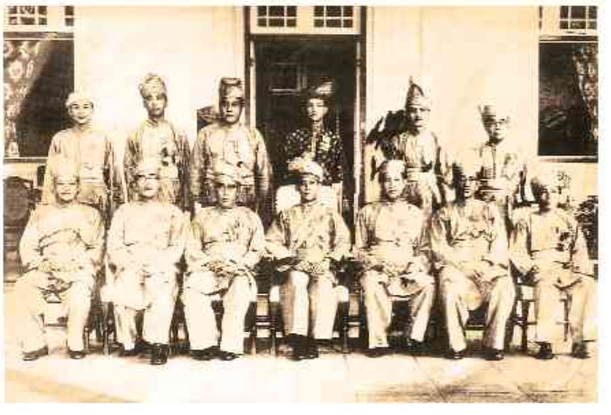
(4) The Malayan Law Journal [1966] 2 MLJ i

(5) The Malayan law Journal [1959] Vol. xxv

(6) The Malayan Law Journal [1948] Vol. xiv

In 1968, Tun Azmi was appointed the 3rd Lord President in a simple ceremony in Kuala Terengganu, in the Palace of The Sultan of Terengganu, Tuanku Ismail Nasiruddin who was then the Yang Dipertuan Agong of Malaysia.
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi being conferred the Datukship by the Sultan of Kedah for his service to the State
(Picture courtesy of Tun Zaki Tun Azmi)



Tun Azmi Mohamed (seated 3rd from right) when he was the State Secretary of Kedah in the late 1950s (Picture courtesy of Tun Zaki Tun Azmi)

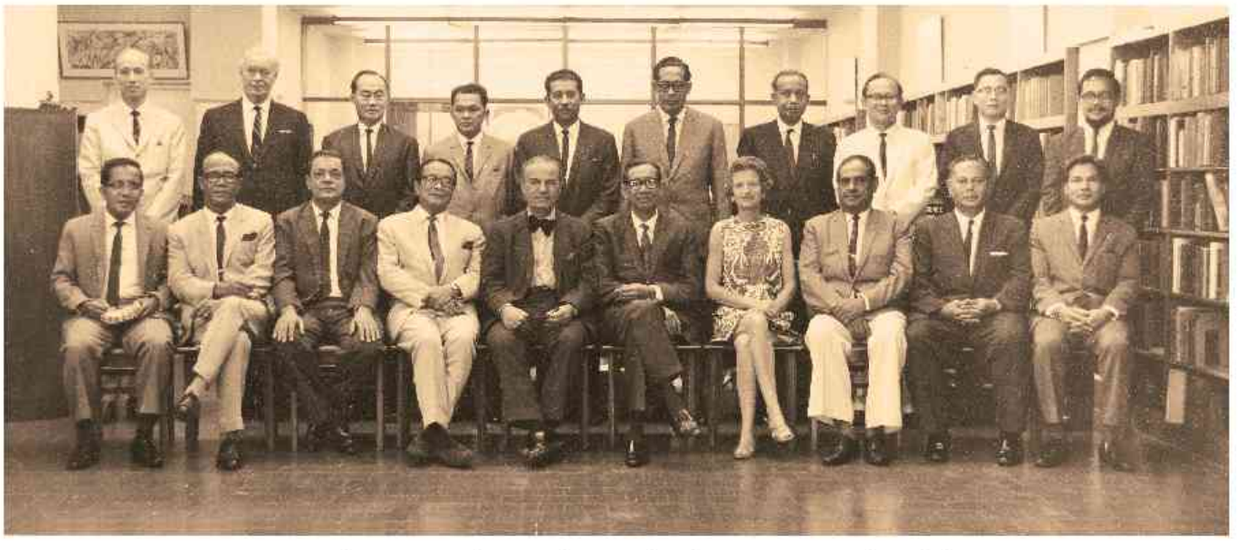
Lord President Azmi Mohamed with his predecessor Syed Sheh Barakbah who became the Governor of Penang after his retirement from the judiciary
(Picture courtesy of Tun Zaki Tun Azmi)

The 1963 farewell to Justice James Beveridge Thomson, Malaysia's first Lord President.

Seated L to R: Justice Suffian, Justice Syed Sheh Barakbah, Justice Thomson, Justice Azmi Mohamed, Justice Ismail Khan

Standing L to R: Justice Raja Azlan, Justice Ali Hassan, Justice HS Ong, Justice McIntyre, Justice Aziz, Justice SS Gill, Justice SM Yong, Justice Chang Min Tat, Justice Wan Sulaiman
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (standing extreme right) and his family
(Picture courtesy of Tun Zaki Tun Azmi)



Tun Azmi (seated 5th from right) with judges and foreign visitors
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (seated centre) with officer and court staffs at the High Court of Ipoh
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (2nd left). Tun Syed Sheh Barakbah (3rd left). Seri Paduka Baginda Yang Di-pertuan Agong. Tuanku Ismail Nasiruddin Shah Ibni Al-Marhum Zainal Abidin and Seri Paduka Baginda Raja Permaisuri Agong (centre) at Istana Maziah. Terengganu.
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (extreme left) with Tun Dr. Lim Chong Eu, the 2nd Chief Minister of Penang (2nd left) and friends at an occasion.
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (2nd left) at the High Court of Johor
(Picture courtesy of Tun Zaki Tun Azmi)

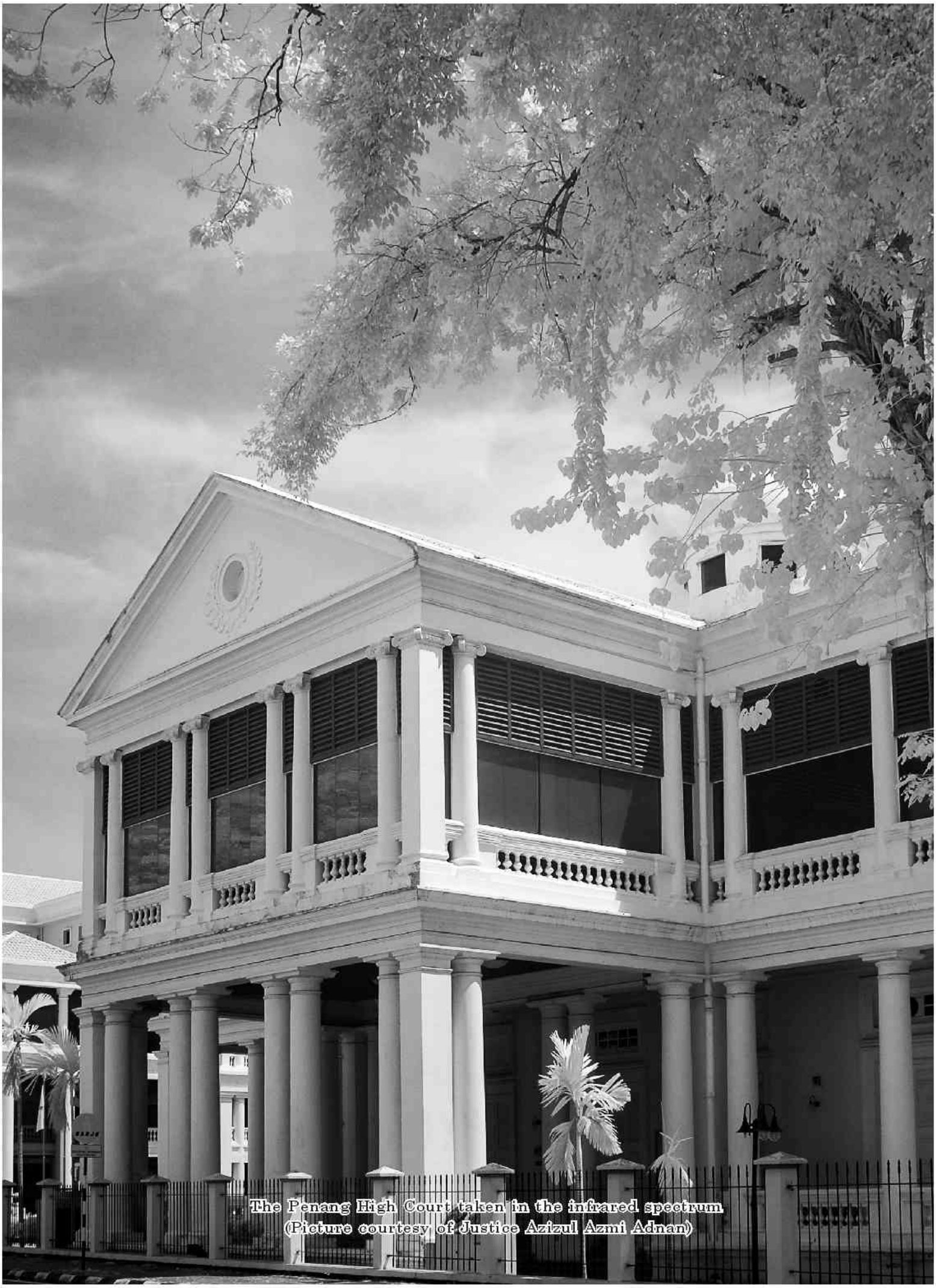
Justice SS Gill (left), Tun Azmi (centre) and Justice Ali Hassan (right)
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (centre) with friends
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (3rd from right) at the Grand Old Lady,
Miri Sarawak (the first oil well in Malaysia)
(Picture courtesy of Tun Zaki Tun Azmi)

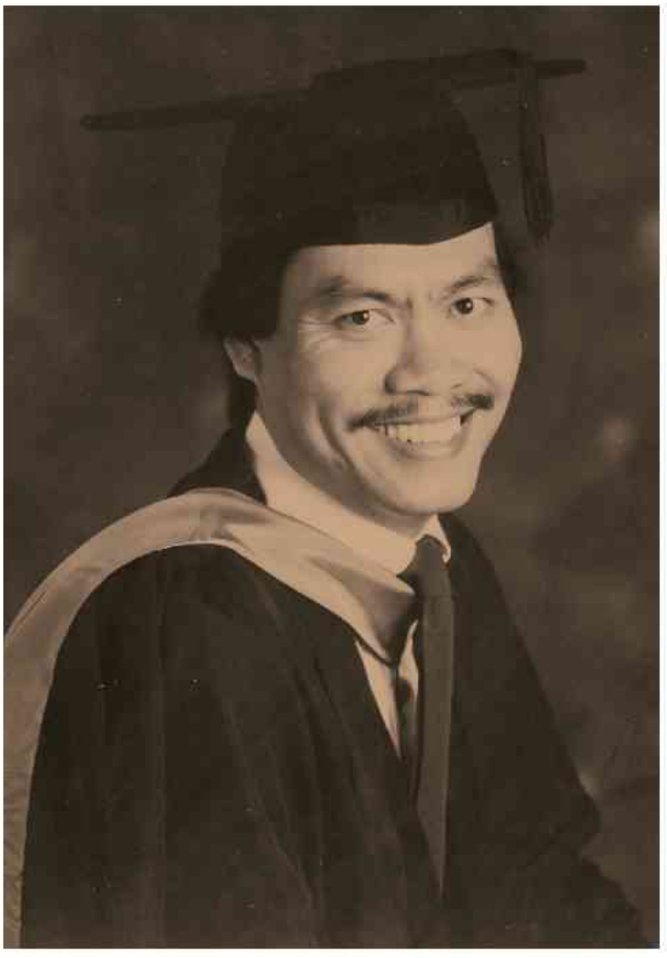
Tun Azmi (centre) chairing one of the
Kedah State Secretary meetings
(Picture courtesy of Tun Zaki Tun Azmi)

Tun Azmi (left) with Tun Muhammad Fuad
Stephen, the 1st Chief Minister of Sabah (right)
(Picture courtesy of Tun Zaki Tun Azmi)



The Penang High Court taken in the infrared spectrum
(Picture courtesy of Justice Azizul Azmi Adnan)

A JUDGE'S MUSINGS
(OF COURTROOMS AND CROCODILES)



Tan Sri Sulong Matjeraie
Retired Federal Court Judge

His hearty laughter reverberated through the room, as he recounted the many escapades of his childhood. Retired Federal Court Judge, Tan Sri Sulong Matjeraie was in fine fettle for this interview.

After having left public service five years ago after an illustrations career of forty-nine years, Tan Sri Sulong says that he now soaks up his leisure time with great pleasure.

The fourth child in a family of nine, Tan Sri Sulong was born in 1947 in Saratok, Sarawak. It is a tiny hamlet, tucked in rural Sarawak, about three hundred kilometres from Kuching. As he recalls, "Life was tough. Things which we take for granted now, like a bar of soap for instance, was a luxury then. My siblings and I would often bathe without that slippery bar. Our family's bathroom is the river which flows at the back of the house. With nary a thought for the dangers that lie beneath, we would jump into the water with such abandon, bobbing up and down to bathe and sometimes catching fish, which would supplement our family's meagre food supply. The river is of course crocodile-infested.

I could tell that crocodiles were around, because of their smell. It is a distinctive muddy-musky kind of odour, which my parents taught me to distinguish."

"My parents also taught me and my siblings 'crocodile survival' tips: one of which is, never ignore our parents' instruction to have a meal and instead of eating, going straight to the river. The folk lore and belief is that, the crocodiles have an instinct about this. If you disobey your parents in this regard, chances are that the crocodile will have you for its next meal!

Crocodiles are actually quite reticent creatures and would slink away in water as soon as they see you. I am told that you have to avoid them in the 'kill zone' – i.e. the area from the surface to two feet beneath. If a crocodile sees anything splashing about in that zone, it will attack. It is what you have to remember, so that you won't be a prey! In any case, I must have been so assimilated in its habitat that my mother used to say that I smell like a crocodile!" Tan Sri Sulong laughingly recalled.

Much of Tan Sri Sulong's growing up years were spent helping his family eke out a living, during various jobs such as rubber tapping, as young early as when he was seven years old. He would get up at 4 am in the morning and only after tapping rubber, would he walk to school, most of the time, bare-footed.

"Imagine walking through the rubber estates bare-footed at the crack of dawn - where leeches latch on to you and in the distance, you can hear a tiger's roar! Being stoic and steely is a necessity to survive. Then there is the rubber latex itself. How many times have I had latex clumped together in my hair and putrid acid soaking up my toes!"

According to Tan Sri in those days, he looked forward to rainy days – for it would mean that he need not go rubber tapping but could instead, enjoy a lazy morning and fish in the river or collect fruits from the trees.

As rough as the days then had been, the hopelessness of his situation did not get through to Tan Sri Sulong. On the contrary, he finds resolve, determination and even hope. Tan Sri Sulong said: "In the mornings, the first glimmer of sunlight would spread out and light up the rubber trees. That light was like a ray of hope for me. My arduous existence have in fact, toughened me for the gruelling life ahead! Difficult as it was, I would not change it for anything else. My past is what makes me who I am today. The tough childhood certainly taught me to persevere and to strive for better," he reminisced.

Tan Sri Sulong, warming up to his subject, said that his father wanted him to hone his skills at tapping rubber, so that eventually his son would be an agricultural assistant, so that he could get a free uniform!

"We had simple wants, then, you see. At that time, being a lawyer or a judge was furthest from my mind.

Mr. Sulong Matjeraie
(As a young lawyer)

Well, I guess it really makes no difference now. I am not doing too badly as it were, since as a judge I do get 'free' judges robes and their accompanying accoutrements!" he laughed.

Tan Sri Sulong started his career at the tender age of seventeen as an Administrative Officer in the Sarawak Civil Service in 1964. In 1970, he was appointed a Third Class Magistrate, and was also made the Acting District Officer, Binatang (now renamed as Bintangor). In 1971, he was appointed as District Officer of Bintulu - now an oil and gas town. The appointment gave him the distinction of being the youngest District Officer in Malaysia. He held several managerial post in the Sarawak Civil Service, firstly as the Sarawak State Training Officer and Secretary of the Sarawak Government Examination Board. When Tan Sri Sulong was serving as an Administrative Officer, one of the requirements for being considered for promotion was to pass the law exam. In 1971, he left for Inns of Court School of Law, London, on a Sarawak government scholarship. In July 1974, he was called to the Bar of England and Wales by the Honourable Society of Inner Temple, London.

"I guess I was lucky enough to receive full tuition scholarship. It was an important impetus for me to embark on my dream of studying law. Simply put, without this scholarship, I doubt I would be attending law school or becoming a judge. Therefore, I am always grateful to the Sarawak State Government. But then again, all you need to do is work hard and you can achieve any dreams you have," he said.

In 1974, he was appointed a Director of the Civic Development Unit directly under the Chief Minister of Sarawak. Tan Sri Sulong then left to study at the University of Southampton, England and was conferred a degree of Masters of Law in 1977. In 1978, he was awarded a Certificate in Advanced Management by the Banff School of Advanced Management in Canada.

In 1977, he was appointed the Administration & Finance Manager of the Sarawak Timber Industry Development Corporation before assuming the role of General Manager from 1979 to 1980. He became the General Manager of Bintulu Development Authority in 1980 and remained in office until 1983. He later left the civil service in 1983 to set up his own legal firm under the name of Messrs. Sulong Matjeraie & Co. in Kuching, Sarawak and retired from the firm in 1998.

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

"My journey would not have been possible without my wife, who supported me emotionally and financially. She was working full time while I was studying for my Master's programme. The money was tight but we were happy. It was a short-term penury in exchange for a long-term emotional and financial satisfaction for both of us," he added.

How does Tan Sri Sulong describe himself as a husband and father? "The most difficult task is being asked to judge yourself!" was his reply.

Describing his life as a judge as very hectic with heavy loads of work and a challenging experience. "We have been working hard, with long days and late nights. The judges would have about ten cases to hear each day (sometimes more). The reading up time takes about five hours before hand and that involves reading the grounds of judgment, memorandum of appeal, and submissions. All of us work our guts out and the judiciary has reduced the backlogs tremendously. We have to sacrifice our personal time to clear these case and ensure that justice is done expediently," he explained.

It is a common refrain in the local and foreign media that there is political interference in Malaysia's judiciary system. To this, Tan Sri Sulong said, "I have been a judge for fifteen years and I never had anyone directing me how I should rule in a case. The cases were decided based on facts and law. As a judge, you must make sure you serve justice and ensure justice is achieved. To be able to administer justice according to the law is something we hold dear and I think we have done that. "

Justice Sulong Matjeraie
as a Judge of the Federal Court

"In the Federal Court, there are five judges and one of us will write the judgment and then circulate it to the Panel. If one of us disagrees, we will write a dissenting judgment. There is transparency, accountability and independence in the system," he added.

With regard to the Malaysian judicial system, Tan Sri Sulong does not find any major problems because "no system is faultless." "Two judges can hear cases of a similar nature but come to different conclusions. That is why we have the appellate tier, which provides a second chance. We are not machines, where you enter the data and get an answer, like in mathematics where two plus two always equals four. The reality is that, at times, two plus two could be equivalent to five," he said with a laugh.

Below are some of Tan Sulong's candid views on various matters relating to the law.

Do you think modifications to the mandatory death penalty in drug trafficking cases is a positive development?

(The new section 39B(2A) of the Dangerous Drugs Act states that only those who received a certificate from the Public Prosecutor verifying that there were only couriers and had assisted in disrupting drug trafficking activities would be spared the death penalty.)

"Sending someone to the gallows is like playing God, it is a serious matter and a difficult task. There will be cases where the judge may feel that the sentence is harsh on the facts, but the sentence has to be imposed as it is mandatory. Personally, yes, I think the removal of the mandatory death penalty in some circumstances is a positive development. However, to a certain extent, the Public Prosecutor holds the power to decide whether an accused person faces the hangman's noose or not."

What are in your view, qualities to be a good judge?

"Every judge needs calmness, a sense of fairness and an awareness of the responsibility and power that they have. As a judge, you are doing the most difficult work of all and that requires both a high quality intellect and a discernment and understanding of your fellow human beings. In some areas of work quality of intellect is almost everything whereas in family matters, discernment and understanding of fellow human beings would be requisite."

What words of wisdom do you want to impart to young lawyers?

"Enjoy your study! Some law students nowadays can be so intent on getting good grades that they do not take the time to engage in other enriching social and extra-curricular activities when they have the time and opportunity to do that. You are only here for four years – you might as well make good use of your time in law school!"

What do you think is the most rewarding part of your long career in the legal profession?

"Having a role in the development of the content and practice of the law – to be able help to refine the law and make it clearer and to improve standards in the courts, and when matters go wrong, to set them right."

Tan Sri Sulong is married to Puan Sri Myra and the couple have four children.

"After all is said and done, I am grateful that the Almighty has given me this tremendous privilege to serve my country as a judge. Alhamdulilah," said Tan Sri Sulong.

REMEMBERING THE LATE TAN SRI DATO' DR. EUSOFFE ABDOOLCADER

Tan Sri Dato' Dr. Eusoffe Abdoolcader was a renowned Malaysian jurist and a highly respected Supreme Court Judge of the Malaysian Judiciary. His judgments were well researched and written elegantly. Tan Sri Eusoffe's reputation preceded him at all times and his legacy in the form of the written judgment is viewed until today with awe bordering on reverence.

The late Tan Sri Eusoffe Abdoolcader was born on 18 September 1924 in Penang. He was the third son of Dr. Sir Husein Abdoolcader, a prominent lawyer and statesman in the early 20th century in Penang. Dr. Sir Hussein Abdoolcader was also one of the first Malayans to be knighted by King George VI.

Tan Sri Eusoffe Abdoolcader attended Penang Free School and Raffles College for his primary and secondary education. His Lordship went on to pursue his studies at the Kyoto Imperial Univeristy (Faculty of Law), in Japan. He then read law at the University College, University of London and took a first. His Lordship was called to the English Bar by the Honourable Society of Gray's Inn on 26 January 1950. He was then admitted to the Malayan Bar and the Singapore Bar as an advocate and solicitor on 30 March 1951 and 12 November 1969, respectively.

Tan Sri Eusoffe practised law as an advocate and solicitor for some 24 years and was a partner at

Presgrave & Mathews. Even during his years of practice, he committed himself to the Bar and other legal related activities. He held various posts in the Bar including Chairman of the Penang Bar Committee from 1968 to 1969. He also served as a member of the Bar Council of the States of Malaya from 1963 until he was elevated to the High Court Bench.

On 1 December 1974, His Lordship was appointed as Judge of the High Court of Malaya. The appointment of Tan Sri Eusoffe Abdoolcader on the Bench was in itself a landmark occacion and the legal fraternity rejoiced in his appointment. A welcoming ceremony was held at the High Court in Kuala Lumpur on 2 December 1974, to mark Tan Sri Eusoffe's elevation to the Bench. The ceremony was attended by members of the Bar and members of the Judicial and Legal Service as well. Even the late Tunku Abdul Rahman Al-Haj attended the ceremony. In his welcoming speech, Tun Salleh Abas (he then was the Solicitor-General) spoke eloquently of Tan Sri Eusoffe's prowess. He said:

"May it please My Lord, I have known you for many years and I have and will always have the greatest respect for you because of your kindness, humiliation, scholastic achievements and, above all, your brilliant mind. I have no doubt that you will be a very good Judge which the country cannot afford not to have and to lose."

The Bar too was generous with its praise towards the appointment of Tan Sri Eusoffe Abdoolcader. In the same ceremony, Mr V.C. George, who was the then Chairman of the Bar Council, highlighted Tan Sri Eusoffe's devotion and commitment to the law. In his speech, Mr. V.C. George said:

"My Lord the vacuum created in the ranks of the Bar by your elevation cannot be filled. At the Bar Council your clarity of thought, learnedness in the law, command of the English Language and your dry sense of humour will be missed by all the members and particularly by myself who as you know leaned heavily on you.

But that same clarity of thought and the great learning acquired by years of disciplined industry will be available to all those who approach the Bench on which you will now sit."

The late Tan Sri Dr. Eusoffe Abdoolcader receiving the letter of appointment from the Yang Di Pertuan Agong Tuanku Sultan Haji Ahmad Shah Al-Musta'in Billah ibni Al-Marhum Sultan Abu Bakar Ri'ayatuddin Al-Mu'adzam Shah

From the excerpt above, it can be seen that the Judiciary appoints the best legal minds in the country to man the Bench irrespective whether the appointment is from the Judicial and Legal Service or the Bar. Tan Sri Eusoffe's appointment was testament to this. Nevertheless, Tan Sri Eusoffe did not view his appointment to the Bench as a reward for his hard work during his days in practice. Instead he understood and undertook his role as a judge with a great sense of responsibility, recognising the public trust reposed in him and the immeasurable significance and dignity of the office. He said in his reply during the welcoming speech:

"On assuming office as a Judge I am conscious of the very great responsibilities that devolve on me and am proud to say that I have joined a judiciary which has the very highest and noblest traditions of independence, impartiality and integrity. I shall by the grace of God and with His blessing discharge my judicial duties in a manner befitting the high tradition set by and which I receive from my predecessors and colleagues, which I shall strive to maintain and contribute to in my own humble way and which I shall transmit to my successors pure and unsullied as I receive it, and indeed enhance if that is possible. If I cannot strengthen our Bench, strong as it is, I shall certainly do nothing to weaken it."

Be that as it may, Tan Sri Eusoffe was also well aware that the public's confidence in the Judiciary did not depend solely on the quality of the decisions made in Court but also the quality of the administration of justice. In his speech during the welcoming ceremony held in his honour at the High Court in Ipoh, he reminded the Bar that the cooperation between the Bench and the Bar was important for the smooth delivery of justice. He said:

"It is the joint responsibility of both the Bench and the Bar to see that cases are disposed of speedily so that the public confidence in the machinery and the administration of justice will continue to remain unshaken. For that purpose there are so many aspects to be considered. There is a matter of adjournments – last minute adjournments – and various other factors that affect the position, and also last minute settlements which result in wastage of valuable days which could otherwise be utilised for hearing other cases."

On the Bench, Tan Sri Eusoffe was as formidable as he was during his days at the Bar. Upholding the rule of law without fear or favour was always a priority to him and he would not bow to any form of interference. In the case of **Merdeka University Bhd v Government of Malaysia** [1981] 2 MLJ 356 which he presided, he said:

"Let me immediately reiterate what I said in court at the outset of these proceedings: I am not concerned with the political undertones or overtones or whatever that may affect the questions raised in this action, and in this trial I am moved by no considerations other than that of determining the issues involved purely and strictly within the confines of the Federal Constitution and the law, abjuring any concomitant political or emotional offshoots springing like Athena from the head of Zeus in its wake."

Apart from his wit on the Bench and extraordinary command of the English language, Tan Sri Eusoffe Abdoolcader was well known as a Judge who did his own research. The late NH Chan, a former Judge of the Court of Appeal in his book entitled "How to Judge the Judges", specifically mentioned his prowess:

"He (Eusoffe Abdoolcader) once told JR Devadas who had a matter before him, "Well Mr Devadas, I have done all the work for you. I think I should be the one who should be paid your fee by your client." To which Devadas replied unabashed, "My Lord, that could be arranged".

On several occasions, Tan Sri Eusoffe would not hesitate to highlight the insufficient amount of research made by counsel. In the case of **Yeap Hock Seng @ Ah Seng v Minister of Home Affairs, Malaysia & Ors** [1975] 2 MLJ 279, he expressed, though in a polite manner, his dissatisfaction with the lack of authorities put forward by counsel to assist the court. He said in his judgment:

"I am constrained to observe at this point that, to my sorrow and surprise, counsel on both sides

The late Tan Sri Dr. Eusoffe Abdoolcader
in his scarlet robe

frankly admit they are unable to find or cite any authority whatsoever, persuasive or otherwise, for their respective cases on the two issues arising this matter... It therefore devolves upon me, in the fashion of the ancient Greek philosophers who had to delve into the unknown, to discover and deal with such relevant precedents as there are to unravel and resolve the questions posed. I regret therefore that counsel who argued this case would probably not recognise substantial parts of this judgment as having any relation to the submissions they addressed to me."

Tan Sri Eusoffe's devotion and dedication to his work did not go unnoticed. In less than 10 years on the High Court Bench, Tan Sri Eusoffe was elevated to the Federal Court on 1 October 1982. Upon the creation of the Supreme Court in 1985, Tan Sri Eusoffe was appointed to the Bench of the then Supreme Court on 1 January 1985.

As an illustrious judge it cannot be denied that His Lordship had made several ground breaking judgments that have shaped our laws until today. One of the most celebrated cases decided by the Supreme Court where Tan Sri Eusoffe was one of the coram members is the case of **Public Prosecutor v Dato' Yap Peng** [1987] 2 MLJ 311. The issue that was brought before the Supreme Court was the constitutionality of the then s. 418A of the Criminal Procedure Code. S. 418A empowers the Public Prosecutor to issue a certificate to transfer a case from the Subordinate Court to the High Court. The section also provides that this power is to be exercised personally by the Public Prosecutor and the Subordinate Courts must transfer the case upon the issuance of the certificate. The Supreme Court, by way of majority, held that s. 418A was unconstitutional as it violated the judicial power provided under Art 121(1) of the Federal Constitution. One of the majority judgments was written by Tan Sri Eusoffe. In it, he held:

" ... that the power of the Attorney General under article 145(3) cannot and does not connote or extend to the regulation of criminal procedure or of the jurisdiction of the courts or the power or discretion to do so. The power to transfer a case is a judicial power exclusively exercisable by a court in the manner provided for in sections 138, 177 and 417 of the Code."

Tan Sri Eusoffe even took pains to discuss the doctrine of prospective overruling where the Supreme

Justice Eusoffe Abdoolcader (First row standing, second from left) in a group photo with the Judges of the superior courts Tun Mohammaed Suffian was the then Lord President and Raja Azlan Shah was the then Chief Justice of the High Court in Malaya.

Court's decision would not give retrospective effect to the declaration made. The result was that all proceedings of convictions and acquittals which had taken place under s. 418A prior to the date of judgment remain undisturbed and unaffected. It has been said that this case had been one of the reasons why Article 121(1) of the Federal Constitution was amended.

Tan Sri Eusoffe retired on 1 December 1989 after serving 15 years on the Bench. Even after his retirement, he continued dedicating his life towards public service. He became a consultant for various legal firms and was also the Pro Chancellor of Universiti Sains Malaysia.

Tan Sri Eusoffe was married to Puan Sri Datin Haseenah bte Abdullah. He was often described as a caring and loving husband. Puan Sri Haseenah's demise on 8 May 1993 left Tan Sri Eusoffe grief-stricken. His devotion to his wife continued even after her death. This is exemplified by his poems published in the newspapers yearly in remembrance of her demise. These poems were lyrically written in sonnet form either in Latin or English, expressing his deep love for her. The ultimate expression of his love for his wife is evident in one of the obituaries he dedicated to his wife as reproduced below:

My dearest Darling - Half of my soul,
O light of my life! O Jewel of a wife!
I think of thee, of thee and yet of thee,
Like thee there never yet can ever be:
O that my tantalising agony would cease,
And reunited with thee I be at peace;
Thine two intoxicating eyes I miss
And thy cheeks and lips I used to kiss.
If Helen of Troy were clad
In the beauty of a thousand stars,
Then thou, gentle as the evening air, art in mine eyes
As shines the moon among the lesser fires.
Of all the queens that ever lived I'd choose thee,
To rule me,
Mine very own Haseenah, my one and only.
To the very marrow thou will see I love ye -
O how in the world am I to live without thee?

Tan Sri Eusoffe passed away tragically on 11January 1996. His death sent shockwaves through the legal fraternity. Until today, he is remembered for his brilliant mind and his elucidatory judgments, the composition of which has met no match to date. His judgments are often quoted for the beauty of the language and it is even said that he was ahead of his time. Judges from Commonwealth countries such as New Zealand and Australia have quoted several of his judgments. Tan Sri V.C. George, now a retired Judge of the Court of Appeal, was once quoted saying "He's a jurist of as high a calibre as can be found anywhere in the Commonwealth". Dubbed the 'Legal Lion of the Commonwealth', his death did indeed leave a vacuum at the Bar and the Judiciary which we can only hope will be filled in the future.

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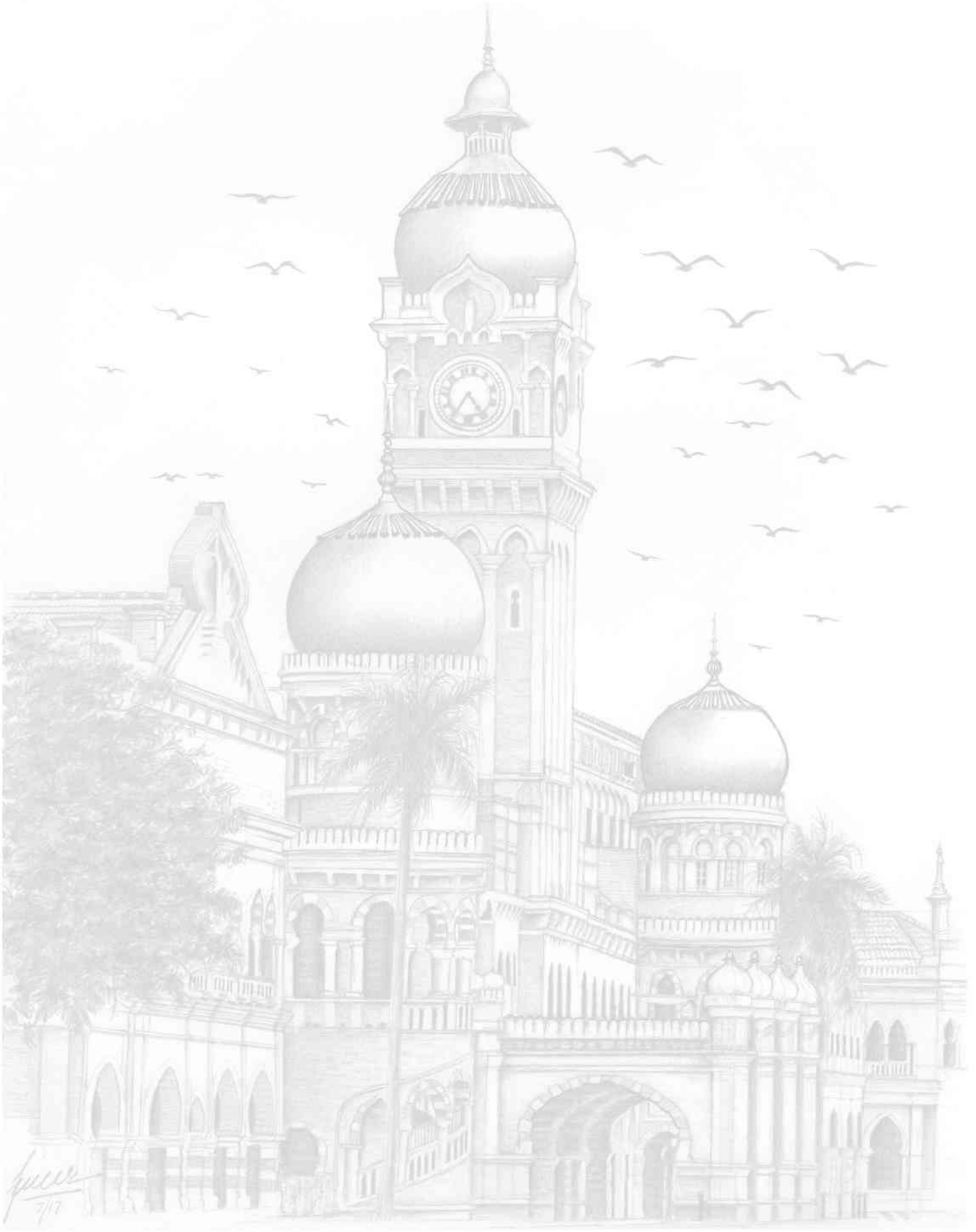
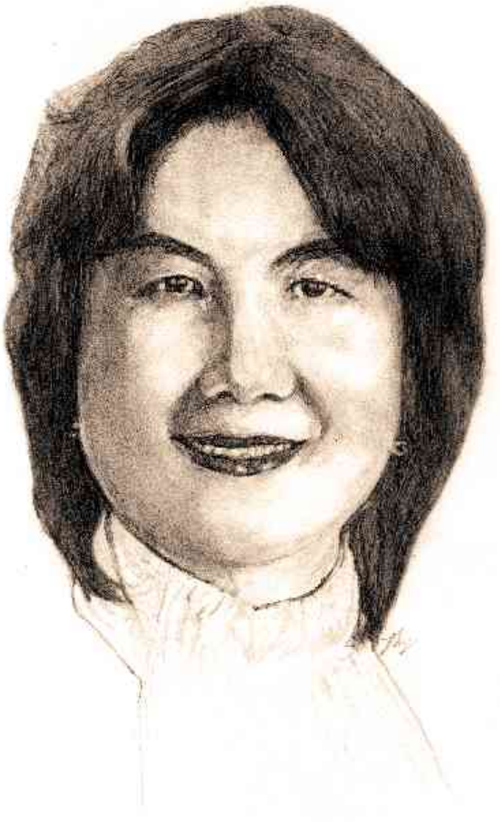


CHAPTER 9

JUDICIAL INSIGHTS

DIVORCE AND JUSTICE IN THE FAMILY COURT : A MERE HYPERBOLE?



By Justice Yeoh Wee Siam
Judge of the Court of Appeal

Introduction

When the joy and shine of marriage for a couple is lost forever, and when there is no way out except through a divorce, the Family Court is the only place to go to.

The Family Court ("Court") is actually a court which exists within the civil division of the High Court in Malaya, and the High Court in Sabah and Sarawak. It has civil jurisdiction over all matters governed by the Law Reform (Marriage and Divorce) Act 1976 ("LRA"), and other legislation regarding married women, children, legitimacy, and adoption matters, etc.

The focus of this article would be on divorce and its remedies under the LRA.

The LRA applies only to non-Muslims (section 3(2) of the LRA). However, there are provisions to cover situations where a party has converted to Islam.

Amendments to the LRA

The Law Reform (Marriage and Divorce) (Amendment) Act 2017 (Act A1546) ("Amendment Act") was enacted to introduce certain amendments to make more adequate and better provisions for specific matters covered by the LRA. The Amendment Act was published in the Gazette on 17.10.2017. It would come into operation on a date to be appointed by the Minister by notification in the Gazette.

Conciliation Proceedings

It is in the public interest that the sanctity of marriage ought to be preserved and upheld. Thus Parliament, in its wisdom, has deemed it fit to require the following conditions to be complied with first before a party can file for divorce at the Court:

(1) a minimum of 2 years of marriage, unless otherwise allowed by the Court based on exceptional circumstances or hardship (section 50 of the LRA); and

(2) the parties have undergone proceedings before a conciliatory body to resolve their matrimonial difficulty, but were unsuccessful in being reconciled, unless the court is satisfied that there are exceptional circumstances which makes reference to a conciliatory body impracticable (section 106 of the LRA).

Dissolving a marriage

A marriage can be dissolved, through a divorce, under the LRA on any of the following grounds:

(1) dissolution on ground of conversion to Islam by the other party (section 51 of the LRA);

(2) dissolution by mutual consent i.e by way of a joint petition for divorce (section 52 of the LRA);

(3) dissolution due to irretrievable breakdown of a marriage (sections 53 and 54 of the LRA).

Remedies upon dissolution of a marriage

Where parties mutually consent to the dissolution of a marriage by presenting a joint petition, the Court would generally grant the divorce according to the terms freely consented to or agreed by both parties regarding proper provision for the wife, and for the support, care and custody of the child, if any (section 52 of the LRA), and even on the division of matrimonial assets.

However, when it is a single petition filed by one spouse, it is basically a contested divorce case where the Court has to decide on whether there are legal grounds to dissolve the marriage. If so, the Court would grant the divorce by way of a *decree nisi*, to be made absolute after a certain period, usually 3 months, or forthwith, or such shorter period as the Court deems fit, according to the circumstances of the case. The Court is also tasked with the responsibility to give orders regarding custody, care and control of the child, maintenance of the child and spouse, and the division of matrimonial assets.

The requirement to be domiciled in Malaysia

Section 48(1)(c) of the LRA requires both parties to be domiciled in Malaysia at the time when the divorce petition is filed in Court. The current legal position is that the wife's domicile is dependent on her husband's domicile upon marriage, and she has no legal right to choose her own domicile independent from her husbands' domicile (see **Khoo Kay Peng v. Pauline Chai Siew Phin** [2014] 10 CLJ 403 which High Court decision was affirmed by the Court of Appeal on 19.6.2015 when dismissing the wife's appeal; the wife's motion for leave to appeal to the Federal Court was dismissed on 24.2.2016).

Following the decision in the **Khoo Kay Peng** case, several interest groups have expressed their concern that the LRA is archaic and ought to be amended to enable a wife, in keeping with modern times and the trend in other advanced jurisdictions, to be given the freedom to have her domicile of choice which is not Malaysia. This would enable the wife to file a petition for divorce in a foreign jurisdiction and not be compelled to be made a party to a divorce petition filed by the husband in Malaysia to dissolve their marriage in the Malaysian Court.

Custody, care and control of the child, and child's maintenance

The LRA gives protection to a child under the age of 18 years when the marriage of the parents is dissolved (sections 2 and 87 of the LRA). Thus, when granting the divorce, the Court also makes an order for the custody, care and control of the child, and for the child's maintenance.

Maintenance for the child would include the provision of accommodation, clothing and education by the parent (section 92 of the LRA). Under the existing provisions of the LRA, once the child has attained the age of 18, the parent no longer has a legal duty to maintain the child including providing financial support for the child's education beyond that age.

To resolve this issue, the Amendment Act has introduced an amendment to section 95 of the LRA to empower the Court to make an order for the maintenance of the child who is pursuing further or higher education or training until the completion thereof.

Where a parent is granted custody, care and control of a child, it must now be noted that such parent does not have the right to change the religion of the child, who is below the age of 18, to another religion, without the consent of the other parent. This has been decided once and for all by the Federal Court in its recent landmark decision given on 29th January 2018 in the case of **Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam** in Civil Appeal No. 01(F)-17/06/2016(A) (Appeal no. 17), and in Civil Appeal No. 01(F)-18-06(A) (Appeal no. 18), and Civil Appeal No. 01(F)-19-06/2016(A) (Appeal no. 19).

In the above decision, in respect of Article 12 Clause (4) of the Federal Constitution which provides that the religion of a person under the age of 18 shall be decided by his "parent" or guardian, the Federal Court held that the word "parent" should be construed to mean that the consent of both parents is required for the conversion of a child. This would be for the welfare of, and in the best interests of the child. Henceforth, a unilateral conversion of a child by any one parent can no longer be legally accepted or upheld.

Division of matrimonial assets

Upon granting the decree of divorce, the Court orders the division between the parties of any assets acquired by them during the marriage. The Court would consider the contributions made by each party in money, property or work towards acquiring the assets, and the extent of contribution made by the other party to the welfare of the family by looking after the home or caring for the family. The Court shall incline towards equality of division (section 76 of the LRA).

Unlike other jurisdictions such as the English courts where a party would, in most cases, be given equal value of the matrimonial assets (see House of Lords decision in **White** [2002] 2 FLR 981), a party in Malaysia, especially a housewife or a wife earning less than the husband's income, faces the challenge of proving to the Court that she is entitled to half share of the matrimonial assets. This is because the LRA does not expressly provide that each party gets an equal share in the matrimonial assets. Thus, it is a perennial battle here for the party, who is in a weaker financial position, to fight for half of the matrimonial assets.

It is timely for the legislature to consider whether the LRA should be amended to provide specifically that the "yardstick of equality" should be applied in all divorce cases, and each party gets an equal share in the matrimonial assets, unless justice or fairness requires a departure from it.

Under the Amendment Act, a new section 51A has been introduced to provide for the property of the person or spouse after conversion to Islam, and who dies before the non-Muslim marriage has been dissolved. In such a case, the Court shall distribute the person's matrimonial assets among "interested persons" upon application by any interested person, having regard, inter alia, to the extent of contribution by the interested parties towards the acquisition of the matrimonial assets or payment of expenses for the benefit of the family, the duration of the marriage, the needs of the children, if any, and the right of the interested party under the Distribution Act 1958 if the deceased had not converted.

Mediation

The majority of contested divorce petitions are amicably settled through mediation by the judge responsible for the disposal of divorce cases. It is not feasible for the trial judge to undertake mediation of the marriage dispute, even if both parties agree not to apply for recusal of the trial judge from hearing the case should mediation fail.

In view of the effectiveness of mediation in resolving divorce cases, it is necessary to create a specialised pool of mediators who, apart from having good mediation skills, are well versed in family law matters. This should be implemented not only at the High Court level, but also at the Court of Appeal. Apart from disposing of the cases expeditiously, mediation by a family law expert facilitates and enables the parties to generate options and satisfactory outcomes which they are happy to walk away with, after the *decree nisi* has been granted by the Court.

The Kuala Lumpur Court Complex taken in the infrared spectrum
(Picture courtesy of Justice Azizul Azmi Adnan)

THE INTERPRETATION OF LAWS : WHOSE GOLDEN RULE?

By Justice Nor Bee Ariffin
Judge of the High Court

Introduction

The Judiciary plays a key role in the implementation of legislation passed by the Legislature. The role of the courts is to uphold the Constitution and the rule of law, to administer justice and to interpret the law passed by the Parliament as it stands and no other. The making or unmaking of the law is a matter within the exclusive domain of Parliament, while the courts are entrusted with the responsibility for interpretation of the law - per Low Hop Bing in **Muhammad Hilman bin Idham & Ors v Kerajaan Malaysia & Ors.**[1] This is consistent with the basic concept of the doctrine of separation

[1] [2011] 6 MLJ 507 at page 520.

of powers. The concept of judicial independence is the foundation of the principles of the separation of powers. the important concepts of judicial power, judicial independence and the separation of powers are as critical as they are sacrosanct in our constitutional framework – per Zainun Ali FCJ in **Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another** case.[2] It is of utmost importance for judges to adhere to the doctrine of separation of powers because only then the public will be assured of the courts' impartiality and independence, and thus strengthen their confidence in the administration of justice by the Judiciary. Former Chief Justice Tun Arifin Zakaria in presenting his paper "The Rule of Law and Judicial System" at the Syarahan Perdana Integriti 2012 on 27 December 2012 explained this vital point—

> *"An independent judiciary will only be illusory if not a mockery, if there is no clear separation of powers between the tree main organs of Government, namely the executive, the legislature and the judiciary. Simply put, each must be separated and independent from one another. They should act as checks and balances to one another."* [3]

That an independent Judiciary will not be illusory essentially requires the courts, in exercising its role as judicial interpreters, to ensure that they stay away from the parameter of the legislators. This is so even if they are placed in a most awkward dilemma. A simple example will be whether to correct or not a most obvious drafting error?

The judicial attitude in this country has long been not to enter into the realm of the Legislature but to confine the province of the courts only to expounding the law. HRH Raja Azlan Shah (as His Majesty then was) in **Loh Kooi Choon v Government of Malaysia**[4] wrote—

> *"The question whether the impugned Act is "harsh and unjust" is a question of policy to be debated and decided by Parliament, and therefore not meet for judicial determination. To sustain it would cut deeply into the very being of Parliament. Our courts ought not to enter this political thicket, even in such a worthwhile cause as the fundamental rights guaranteed by the Constitution, as was said by Lord Macnaghten in Vacher & Sons Ltd. v. London Society of Compositors:*
>
> > *"Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature."*
>
> *It is the province of the courts to expound the law and "the law must be taken to be as laid down by the courts, however much their decisions may be criticised by writers of such great distinction"- per Roskill L.J. in* **Henry v Geopresco International Ltd**. *Those who find fault with the wisdom or expediency of the impugned Act, and with vexatious interference of fundamental rights, normally must address themselves to the legislature, and not the courts; they have their remedy at the ballot box."*

In **Manokaram Subramaniam v Ranjid Kaur Nata Singh**,[5] the question before the Federal Court turns on the proper construction of section 76(1) and (3) of the Law Reform (Marriage and Divorce) Act 1976 (Act 167), namely whether leave of the Court could be granted to a party in a petition to proceed with a claim for property division under the said section after the decree nisi has been made absolute. Arifin Zakaria FCJ (as he then was) ruled that under s. 76(1) and (3) of Act 167, the court's jurisdiction to order division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. As the present application was made subsequent

[2] [2017] 5 CLJ 526.
[3] A Matter of Justice, Selected Articles And Speeches, Tun Arifin Zakaria, Chief Justice of Malaysia at page 256.
[4] [1977] 2 MLJ 187 at page 188.
[5] [2008] 6 CLJ 209.

to the decree being made absolute, the court has no jurisdiction to grant such an order. The Court's reluctance to interfere with the legislative power is shown in the excerpt below—

> *"[39] Finally, I must say that this case clearly demonstrates the harsh result arising from the current provisions of s. 76(1) and (3) of the Act. But, as I find the words in s. 76(1) and (3) are clear and explicit, it is our duty to give effect to it; for in that case the words of the statute speaks the intention of the legislature. (See Warburton v Loveland (1832) 2 D. & Cl. 480 per Tindal CJ at p. 489). If the result is unfortunate, it is entirely within the power of the legislature to take the necessary action to remedy the defects of the law as enacted, and it is not for the courts to usurp the function of the legislature by straining the meaning of the clear terms of the law seeking to evade the consequences which may ensue. That was precisely what was done by Singapore by enacting the new s. 112 of the Women's Charter."*

It is unfortunate that there has been no amendment made to section 76 thus far.

In **Muhammad Hilman bin Idham**,[6] the Court of Appeal deliberated on the true construction of section 15 (5) (a) of the Universities and University Colleges Act 1971 (UUCA), whether the provision contravene Article 10(1)(a) of the Federal Constitution and therefore unconstitutional and accordingly null and void. The majority decision of the Court of Appeal found that the impugned provisions imposed unreasonable restriction on the freedom of speech of students and the restriction was therefore unconstitutional. Low Hop Bing JCA, though dissenting, remarked by way of obiter that the Parliament may wish to consider amending section 15(5). Following the finding of the Court of Appeal, section 15 of UUCA was amended by the Universities and University Colleges (Amendment) Act 2012 (Act A1433). The new section 15 removed the restrictions imposed by section 15(5)(a). By the new section 15(1), the students' right of association is extended to include the right to become members of any political party from 1.8.2012 (P.U.(B) 257 dated 31.7.2012).

In **Semenyih Jaya Sdn Bhd**,[7] the Federal Court ruled that when the impugned section 40D of the Land Acquisition Act 1960 [Act 164] empowers the assessors to decide on the amount of compensation to be awarded arising out of the acquisition and the decision made is final and non-appealable, the judicial power which rightly should be exercised by a judge, is being exercised by a non-judicial personage who has no right to exercise that judicial power. The Federal Court declared section 40D as *ultra vires* the Federal Constitution and should be struck down.

The Federal Court have revealed an error in Act 164. That error must be corrected. By way of obiter, Zainun Ali FCJ dealt with the consequences of section 40D being struck down. A new section 40D and what the new provision would have to take into account when taken through the legislative process in due course, was proposed to be put in place.[8] The proposed new provision will be the provision applicable in the interim.

The cases cited above manifestly confirm the judicial policy of this country that judges must not usurp the legislative role of the Parliament.

Undertaking interpretative task

Interpretation of law is by and large a common feature in the routine exercise of judicial functions by judges. Judges interpret the laws every other day. However, the judge's wisdom in applying correct rule of interpretation of the law occasionally may come under adverse scrutiny when the court is called upon to interpret critical or controversial interpretative issues on constitutionality or fundamental rights or liberties of the subjects and the like. As judicial interpretation and pronouncement is the ultimate authoritative answer to a particular question of interpretation, the importance of knowing interpretation of law is thus explicit.

Judges are undoubtedly familiar with the rules or cannon of construction applicable in the interpretation of laws. It is nonetheless worthwhile to recollect them and at the same time to also be familiar with other considerations which certainly are not without importance, in interpreting the laws.

[6] supra.
[7] supra.
[8] supra see para 116 to 125.

The presumptions of statutory interpretations about how legislation is drafted and presumptions of legislative intent, the components in a legislation, its arrangement and structure are amongst others. This paper attempts to outline some of those considerations and briefly look into some aspect of the rules of interpretation. Excluded is matters pertaining to the interpretation of the Constitution.

There are many presumptions of interpretation. To state a few, there is the presumption of knowledge and competence where the legislature is presumed to know whatever facts are relevant to the conception and operation of its legislation. Presumption of linguistic competence is where the courts presume that the Legislature is a competent and careful user of language and a skillful crafter of legislative provisions and schemes, that every word and provision found in a statute is supposed to have a meaning and a function, that the Legislature does not waste its words and that every clause in the statute has been inserted by the legislature for some useful purpose.[9]

The drafter observed conventional practices in the preparation of legislation. This is to ensure consistency in the design of a legislation text and facilitate the use of the law by the regular users. The main components of an Act is the substantive provisions that sets out the law. An Act also contain a number of descriptive components that serve a variety of functions such as the long titles, preambles, purpose statement, headings, internal titles and shoulder notes, punctuations and schedule. These components serve as internal aids to interpretation.[10]

Judges as judicial interpreters are presumed not only to have good understanding of the substantive provisions but the descriptive components and the arrangement of the Act into Parts and paragraphing. The Interpretation Acts 1948 And 1967 (Act 388) must be taken as indispensable. Act 388 contains general and specific interpretation provisions which can apply to all statutes and states the principles and rules for the interpretation of a legislation. Section 15 of Act 388 provides that the long title, preamble and every schedules (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation. Driedger said descriptive components are a conspicuous feature of context and they often provide assistance that might shed light on the purpose or meaning of a provision.[11] The need to be familiar with the legislative structure of a particular law and to appreciate the functions of its components is crucial.

It is also imperative for judges to appreciate the use of external or extrinsic aids. External aids refer to all materials other than the text of legislation that could prove useful in interpreting the legislation.[12] These materials are Hansards, commission reports, law reform reports, scholarly publications, foreign case law, international conventions, dictionary, history of legislation, amongst others.

A judge is free to read whatever policy documents in order to understand the legal effect of a statutory provision. But, the question is whether it is permissible for him to refer to such documents when giving judgment. The Federal Court in **Chor Phaik Har v Farlim Properties Sdn Bhd**[13] said that in construing a statute, reference to Parliamentary reports of a proceedings or Hansard as an aid to statutory interpretation should be permitted where the enactment is ambiguous or obscure, or which if literally construed might lead to an absurdity, provided that the statement reported in the Hansard was made by a minister or other promoter of a Bill. Hansard was only an aid to interpretation and could not be determinative of the issue for that would amount to substituting the words of the Minister or promoter of the Bills for the words of the statute.

It is of interest to note that Driedger rejected the arguments that the courts should not look to extrinsic materials unless the legislation to be interpreted is ambiguous or unclear. Driedger argued–

[9] See Driedger on the Construction of Statutes, 3rd Edn. At pages 155-192; see also N.S Bindra's Interpretation of Statutes 10th Edn. at pages 164 to 259.
[10] Driedger at page 250.
[11] supra at page 253.
[12] supra at page 427.
[13] [1994] 3 MLJ 345.

The Ipoh High Court taken in the infrared spectrum

(Picture courtesy of Justice Azizul Azmi Adnan)

> *".. to say that a provision is not ambiguous, that its meaning is clear or 'plain', is a conclusion reached at the end of interpretation, not a thresh-old test. It is a judgment that can appropriately be made only in light of all the available evidence of legislative meaning.*[14] *Driedger recommended approach is that the court examined these materials for their relevance and reliability. If they appear to be helpful and credible, they are taken into account. However, the weight they carry depends on various factors, including the source of the material, its purpose, the clarity of the legislative text and the import of other indicators of meaning. If the extrinsic materials are not relevant or credible, they are ignored."*[15]

One other matter judges should take note of when interpreting an Act is the application of other related laws and international treaties that Malaysia has entered into with other countries **(Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim Sdn Bhd.**[16]

An Act must be read as a whole and in the context

The starting point, when interpreting an interpretative issue, is to read the whole Act. In order to reach a decision on the interpretation of the law, it is elementary that one must read and construed the law as a whole and in the context. Bennion on Statutory Interpretation, Sixth Edn, quoted Viscount Simonds in the case of **A.G. v HRH Prince Ernest Augustus of Hanover** to stress this basic need for the interpreter to read and absorb the whole Act[17] —

> *"... it must often be difficult to say that any terms are clear and unambiguous until they have been read in their context.... the elementary rule must be observed that no one should profess to understand any part of a statute ..... before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous."*

On the importance to read both in its immediate context and in the context of the Act, NS Bindra's on Interpretation of Statutes, Tenth Edn, quoted the following:[18]

> *"the first thing one has to do in construing words in a section of an Act of Parliament', observed Lord Green MR, in Bidie v General Accident, Fire and Life Insurance Corporations:*
>
> > *...is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural and ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the questions: in this state, in this context, relating to this subject-matter what is the true meaning of that word."*

Judges must read each provision or part of a provision both in its immediate context and in the context of the Act as a whole.[19] Construed as a whole means the whole and every part of the statute must be taken into consideration in determining the meaning of any of its part. Different sections and provisions relating to the same subject must be construed together and read in the light of each other. The court must not confine its attention only to the particular provision which requires its consideration.[20] In **Lembaga Minyak Sawit Malaysia v Arunamari Plantation Sdn Bhd and Ors**[21] Raus Sharif PCA (as he then was) held that section 35 of the Malaysian Palm Oil Board 1998 must be read cannot be read in isolation from the rest of the provisions of the Act to understand the purpose behind the imposition of cess on oil palm product to stabilise the price of cooking oil.

[14] supra at page 430.
[15] supra at page 430-431.
[16] [2012] 5 MLJ 749.
[17] [1957] A.C. 436 at page 463.
[18] At page 687.
[19] Driedger at page 245.
[20] NS Bindra's at page 689.
[21] [2015] 7 CLJ 149.

From the well - reasoned judgment by Arifin Zakaria CJ in the Federal Court of **Tan Ying Hong v Tan Sian San & 2 Ors**,[22] it is apparent that the decision in **Boonsom Boonyanit @ Sun Yok Eng v Adorna Properties Sdn Bhd**[23] was arrived at by not reading the proviso to subsection 340 (3) of the National Land Code (NCL) in its proper context. The following excerpts explained why:

> *"[44] We agree with the court that the issue before the court, and likewise before us, is one of proper interpretation to be accorded to s 340(1), (2) and (3) of the NLC. The court then went on to say that s 340(1) of the NLC confers an immediate indefeasible title or interest in land upon registration, subject to the exceptions set out in s 340(2) and (3). Thus far, we think the court was right. The difficulties arose in the interpretation of subsection (2) and subsection (3). This is what it said at pp 672-673 (AMR); p 245 (MLJ):*
>
> > *Subsection (2) states that the title of any such person, i.e. any registered proprietor or co-proprietor for the time being is defeasible if one of the three circumstances in subsection (2)(a), (b) or (c) occurs. We are concerned here with subsection (2)(b) where registration had been obtained by forgery.*
> >
> > *Subsection (3) says that where that title is defeasible under any of the three circumstances enumerated under subsection (2), the title of the registered proprietor to whom the land was subsequently transferred under the forged document, is liable to be set aside. Similarly, subsection (3)(b) says, any interest under any lease, charge or easement subsequently "granted thereout", i.e. out of the forged document may be set aside.*
> >
> > *At p 673 (AMR); p 246 (MLJ) it said:*
> >
> > *The proviso to subsection (3) of s 340 of the NLC deals with only one class or category of registered proprietors for the time being. It excludes from the main provision of subsection (3) this category of registered proprietors so that these proprietors are not caught by the main provision of this subsection. Who are those proprietors? The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of proprietors, they obtained immediate indefeasibility notwithstanding that they acquired their titles under a forged document.*
>
> *[48] Having said that the appellant in Adorna Properties had acquired its title to the land through or under a forged instrument and it therefore came under the category of title in subsection (2)(b), the court then went on to hold that such a title is insulated from impeachment by the proviso to subsection (3).*
>
> *[51] We are of view that the proviso is directed towards the provision of subsection (3) alone and not to the earlier subsection. This in our view is supported by the use of the words "in this subsection" in the proviso, therefore, its application could not be projected into the sphere or ambit of any other provision of s 340.*
>
> *[52] Furthermore, even though subsection (3)(a) and (b) refer to the circumstances specified in subsection (2) they are restricted to subsequent transfer or to interest in the land subsequently granted thereout. So it could not apply to the immediate transferee of any title or interest in any land. Therefore, a person or body in the position of Adorna Properties could not take advantage of the proviso to the subsection (3) to avoid its title or interest from being impeached. It is our view that the proviso which expressly stated to be applicable solely to subsection (3) ought not be extended as was done by the court in Adorna Properties, to apply to subsection (2)(b). By so doing the court had clearly gone against the clear intention of Parliament. This error needs to be remedied forthwith in the interest of all registered proprietors. It is, therefore, highly regrettable that it had taken some time, before this contentious issue is put to rest.*

[22] [2010] 1 AMR 557, [2010] 2 MLJ 1 and [2010] 2 CLJ 269.
[23] [2001] 1 MLJ 241.

[53] For the above reasons, with respect, we hold that the Federal Court in Adorna Properties had misconstrued s 340(1), (2) and (3) of the NLC and came to the erroneous conclusion that the proviso appearing in subsection (3) equally applies to subsection (2). By so doing the Federal Court gave recognition to the concept of immediate indefeasibility under the NLC which we think is contrary to the provision of s 340 of the NLC.".

Rules of interpretation

To interpret the law, the court can always call in aid the rules of interpretations or sometimes referred to as cannons of construction. The English common law provides a number of guides to interpretation or canons of construction if the courts find that the law has ambiguities. They are the literal rule, the golden rule, the mischief rule and the purposive rule. Driedger has advocated the modern interpretation rule.[24]

The application of the rules of construction was summed up by Gopal Sri Ram JCA (as he then was) in **Citibank Berhad v Mohamad Khalid Bin Farzalur Rahaman & Ors**[25] in these words—

"The literal rule pays attention to nothing more and nothing less than the actual words used by the statute. The golden rule permits the judicial interpreter in very limited circumstances to supply an omission in a statutory provision where the literal approach leads to absurdity or injustice. The mischief rule looks to the state of the law at the time an Act was passed to see the mischief or defect that Parliament seeks to remedy. Finally there is the purposive approach which is a refinement of the mischief rule. This requires a court to look to the purpose of an Act. What is significant is that all these differing approaches are used to ascertain what the Parliament intended to communicate when it used particular words in a statute. Despite the several available approaches, it is noteworthy that it is the purposive approach that has emerged to hold the field.".

The introduction of section 17A into Act 388 with effect from 25th July 1997 is a manifestation of primacy to be given to the purposive approach. It is statutorily provided that regard must be had to the purpose of the Act that will promote the general legislative purpose. Section 17A reads—

"17A. 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 promote that purpose or object."

The purposive approach is the approach to be taken by the court even in the context of taxing Act **(Lembaga Hasil Dalam Negeri Malaysia v Alam Maritim Sdn Bhd)**[26].

It is crucial however to be borne in mind that all these differing rules of construction are guides to aid the judges to discover legislative intent of the Parliament. Therefore, whenever called upon to construe a doubtful provision of a legislation, perhaps the court should begin by using the ordinary meaning rule or the plain meaning rule.

The ordinary or plain meaning rule or the literal interpretation approach

The ordinary meaning rule or the plain meaning rule is commonly referred to as the literal interpretation. Literal interpretation gives primacy to the statute text. When the legislation is unambiguous and when the words are unequivocal, any other construction have no application. Thus, there is no reason for importing or deploying any rule for interpretation. The rules of interpretation would come into play only if there is any doubt with regard to the express language used. NS Bindra's had this said more explicitly[27]—

"In constructing a statutory provision, the first and foremost rule of construction is the literary construction. All that we have to see at the very outset is what that provision says. If the provision is unambiguous, and if from that provision the intent is clear, we need not call into aid the

[24] At page 131.
[25] [2000] 3 CLJ 739.
[26] [2014] 3 CLJ 421.
[27] At page 438 - 439.

other rules of the construction of statutes. The other rules of construction of statute are called into aid only when the legislative intention is not clear. When the language of a statute is plain and unambiguous, that is to say, admits but of one meaning, there is no occasion for construction.

The task of interpretation can hardly be said to arise in such a case. The most common rule of statutory interpretation is the rule that a statute, clear and unambiguous on its face, need not and cannot be interpreted by a court, and only those statutes which are ambiguous and of doubtful meaning, are subject to the process of statutory interpretation. It is not allowable to interpret what has no need of interpretation. Absoluta sentantia expositore non indigent – plain words need no exposition. Such language best declares, without more, the intention of the law-giver, and is decisive of it. Moreover, no question of main interpretation arises when the court does not interpret the words used by the legislative.

Where the words of the statute are clear enough, it is not for the courts to 'travel beyond the permissible limit' under the doctrine of implementing legislative intention.".

Despite the emphasis given to the purposive approach, Judges however must not ignore the application of the golden rule approach and the mischief rule whenever they best fit. Cases cited below show that the two rules of interpretation are still relevant.

The golden rule approach

In interpreting legislation, the court is interested to know what the consequences will be and whether the consequences are acceptable. Driedger explained[28] that "Consequences judged to be good generally are presumed to be intended and are regarded as part of the legislative purpose. Consequences judged to be unjust or unreasonable are regarded as absurd and are presumed to have been unintended. Where it appears that the consequences of adopting an interpretation would be absurd, the courts are entitled to reject it in favour of a plausible alternative that avoids the absurdity."

This judicial concern for consequences took the form of the golden rule[29] The classic example of the court guessing the wisdom of the Legislature is the case of **River Wear Commissioners v Adamson *(1877)***, 2 App. Cas.743, at 764-65 (H.L)[30] where Lord Blackburn said—

"..I believe that it is not disputed that what Lord Wensleydale used to call the golden rule is right, viz, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, and to justify the Court in putting on them some other signification, which though less proper, is one which the Court thinks the words will bear.".

(See **Tan Weng Chiang v Public Prosecutor**,[31] **Suruhanjaya Sekuriti v Datuk Ishak Bin Ismail**[32] and **Generation Products Sdn Bhd v Majlis Perbandaran Klang**[33] and ***Tetuan Kumar Jaspal Quah & Aishah v Far Legion Sdn Bhd & Ors.)***.[34]

The mischief rule approach

This rule is most useful in the interpretation of statutes when the language of the statutes is capable of more than one meaning.[35] NS Bindra's explained the scope of this rule as follows:[36]

"For an application of the mischief rule "firstly" it must be possible to determine from a consideration of the provision of the Act read as a whole what the mischief was that was the purpose of the Act to remedy; secondly, it

[28] At page 79.
[29] Driedger at page 80.
[30] Driedger at page 82.
[31] [1992] 2 MLJ 625.
[32] [2016] 1 MLJ 733.
[33] [2008] 6 MLJ 325.
[34] [2007] 3 MLJ 305.
[35] Driedger at page 36.
[36] At page 670.

must be apparent that the draftsman and the Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act were to be achieved; and thirdly, it must be possible to state with certainty what were the additional word that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless these three conditions are fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercised of its jurisdiction to determine what is the meaning of a written law, which Parliament has passed. Such an attempt crosses the boundary between interpretation and legislation. It becomes a usurpation of the function, which under the Constitution of this country is vested in the legislature to the exclusion of the courts.".

(See **DYMM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor**[37], **Public Prosecutor v Alcontara,**[38] **Citibank Berhad v Mohamad Khalid Bin Farzalur Rahaman & Ors.)**[39]

The modern rule interpretation

Driedger introduced this modern principle of interpretation. There is no particular rule of construction preferred. The above rules of construction are applicable when necessary and in the circumstances of each particular case. Driedger explained the concept[40]—

"There is only one rule in modern interpretation, namely courts are obliged to determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretation, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its compliance with the legislative text; and (c) its acceptability, that is, the outcome is reasonable and just."

Conclusion

In the context of interpretation of laws, the application of the principle of doctrine of stare decisis is well defined. Strict adherence is insisted on. In *Asia General Equipment and Supplies Sdn Bhd & Ors v Mohd Sari bin Datuk OKK Hj Nuar & Ors*,[41] James Foong FCJ said that unless the factual matrix is fundamentally different, established principle laid down by a superior court must be followed for failure to do so amounts to a wrong application of the law. Even if the decision of the superior courts was levelled with strong criticism as being plainly wrong as was the case of *Adorna* Properties, Raus Sharif JCA (as he then was) in *AGS Harta Sdn Bhd v Liew Yok Yin*,[42] ruled that despite the criticism, the Federal Court decision being the decision of the apex court, remains a binding authority. In *Kerajaan Negeri Pahang Darul Makmur & Anor v Seruan Gemilang Makmur Sdn Bhd*,[43] Abdul Malik Ishak JCA said that like cases will be treated alike.

The principle of stare decisis dispenses judges from the task of interpreting similar interpretative issues. But for the most part of their tenure in office, judges will always have to take up the pivotal role of judicial interpreters. Interpretative issues the court may be called upon to determine, invariably knows no boundary. Interpretation of laws is not an uphill task if judges are well acquainted with the interpretation principles and concepts.

[37] [2003] 2 MLJ 1.
[38] [1993] 3 MLJ 568.
[39] supra.
[40] At page 131.
[41] [2012] 3 MLJ 49 at page 60.
[42] [2010] 7 CLJ 142.
[43] [2008] 6 CLJ 611 at page 623.

A COUNTRY FOR ME

By Justice Supang Lian
Judge of the High Court

He walked into my chambers wearing an impish smile and let out a chuckle. The next thing we knew there was a grunt and then a loud yell. One of the two men that came in with him put his finger to his lips and whispered to him, *"Shush... don't make too much noise!"* The Court Interpreter earlier in the morning had with an air of confidentiality and in a low voice told me, *"Yang Arif, I must warn you that today's child is Tootic...Tootic..."* And I had said, *"Oh! You mean autistic?"*

Chao En, for that was his name, was brought before me that day for a guardian to be appointed for him under the provisions of section 5 (2) and section 21 (1) of the Guardianship of Infants Ordinance (Sarawak Cap. 93). It was not as if he had no

parent or that he was without a carer. Chao En to put it simply, is a child without identification documents, a stateless individual. He is one of many children that have walked in and out of my Chambers since I became the resident High Court Judge in Sibu, Sarawak in October 2012. Five years down the road, 54 of such cases had been registered and dealt with in the High Court in Sibu which is an indication of the number of such children out there in the same predicament. There are also cases of this nature heard in the Magistrates' Courts as the jurisdiction conferred by the Ordinance is exercisable by the High Court and the court of a First Class Magistrate.

Ms Belinda Hii, the advocate that had brought Chao En's case, explained to me the nature of the problem and the cause of it. Typically, it would be a barren couple desperate to adopt a child or it might even be a family where all the children are of one gender and it is thought desirable to adopt to make up for the lack. Thereafter, the word goes out to the middleman to scout for an expecting mother or parent who is considering giving away her child for adoption. Apparently, there is no dearth of parents willing to give up their children for adoption. It may be a family where all the children are of one gender, a teenage pregnancy, a child born out of wedlock and in one or two cases, a child born to an unmarried foreign domestic worker.

The adoption procedure which is normally done at the District Office is fairly straight forward. However, matters may get complicated when one of the following situations occur:

(a) first, the childless couple not wanting the child ever to know that he or she had been adopted, enter their names as the biological parents of the child in the birth certificate; and

(b) second, the pregnant teenager and the unmarried mother, for obvious reasons, does not wish for her identity to be revealed or disclosed and refuses to enter her name as the biological parent.

In both situations, the newly born will be registered as the natural child of the adopting couple. The birth certificate is issued with the adopting couple stated therein as the biological parents of the child. This practice of entering the names of the adoptive parents as the biological parents in the birth certificate was widely prevalent in the past. In the years past, all was well and the practice allowed to continue until the year 2008 when the National Registration Department ("JPN") started to cancel and recall such birth certificates. Apparently, the JPN decided to clamp down on the practice and had embarked on a policy of carrying out checks of the records of births at hospitals, maternity clinics, and the Klinik Desa in the rural areas. Other than carrying out checks at these places, the JPN it seems was also active on the internet and the social media and had been fairly successful in detecting these cases. The birth certificates issued to non-biological parents were all earmarked for cancellation. Thereafter, when such parents attend at the office of the JPN upon the child reaching the age of twelve for the purpose of applying for the child's identity card, they are told that the birth certificate is suspect. They are then served with a written notification that the birth certificate of the child has been recalled or cancelled on the ground that the adoptive parents are not the biological parents of the child. The JPN will then commence an inquiry to determine the natural parents of the child. There will be interviews and interrogation of the adoptive parents and all related persons including the middleman if he or she can be found.

As far as the JPN is concerned, it is obligated under law to issue the birth certificate to the biological parents. However, if at the conclusion of the inquiry it has been proved to the satisfaction of the JPN that the natural parents of the child cannot be found or traced, the child will be issued with a replacement birth certificate. This is a temporary birth certificate and it will be without the names of the parents of the child. At the columns where the name of the father or mother ought to appear, it is simply stated, "Maklumat tidak Diperolehi". From that moment, the child is parentless and has literally become a stateless person. In the past, after the temporary birth certificate was issued, the practice of the JPN was to issue the child with a red identity card. That practice has been stopped altogether.

The child at this time most probably would be in school or in an educational institution where identification documents are required. Besides, being a stateless person, it is necessary to make an application under Article 15A of the Federal Constitution for Malaysian citizenship for the child.

The first step towards applying for citizenship for the child is to make an application either to the High Court or the Magistrates' Court of the First Class for a guardian to be appointed under the provisions of section 5 (2) of the Guardianship of Infants Ordinance. The section reads as follows:

> "(2) Where an infant has no parent, no guardian of the person and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the infant."

Once the Court order is obtained, the legal guardian will then give up the child for adoption by the same adoptive parents under the provisions of section 4(3) of the Adoption Ordinance (Cap. 91). In this way the adoptive parents get back the child. This time round, the legal guardian, the child and the adopting parents will have to attend at the District Office for the adoption procedure. Once successful, the adopting parents will be issued an Adoption Certificate. Of course, all this while, the child would still have been living with the same adoptive parents that have brought him up.

With the Adoption Certificate in hand, the adoptive parents can now go back to the JPN and register the birth of the child. A birth certificate will then be issued under the Second Schedule of the National Registration Act 1959. It is a simple document, quite unlike the normal birth certificate. It contains only the name of the child; the gender, the date of birth and the place of birth.

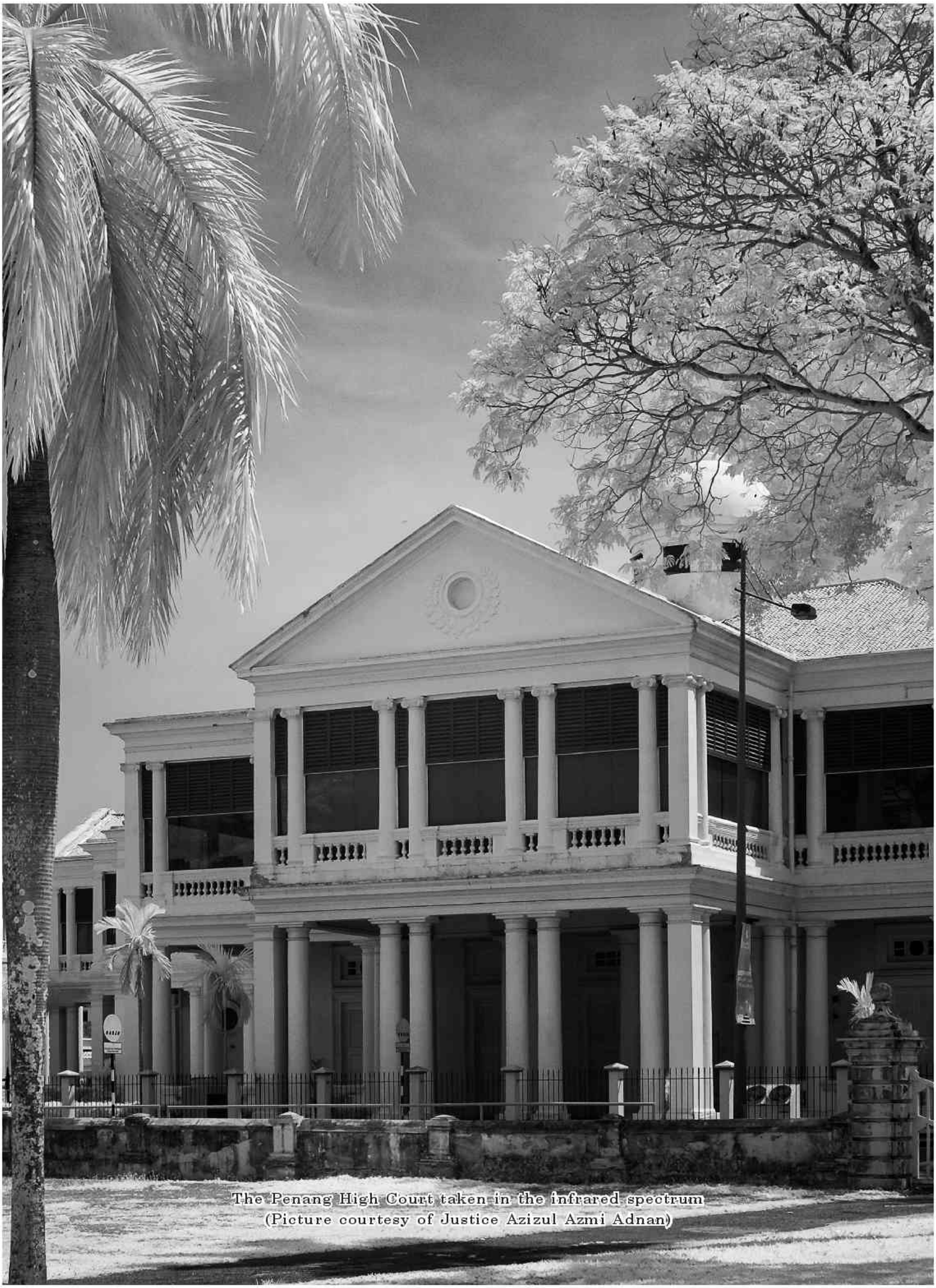
It is only after the birth certificate has been issued that the parents can submit their application for citizenship under Article 15A. The application is made to the Ministry of Home Affairs and it is a tedious process. After that will be the long and anxious wait which can take three to four years, I am told.

In the meantime the child is without an identity card. This creates hardship for the child as in this country it is difficult to live a normal life without an identity card. For instance, in 2007 a student by the name of Louis Ming Yew was barred from sitting for the Sixth Form public examination because he was considered a stateless child as he did not have an identity card. His application for citizenship was pending then. His father approached the local Member of Parliament. With his assistance, the then Minister of Education intervened and put Louis on the name list of the candidates sitting for the examination. Louis was able to sit for the examination and went on to university. He was also granted his citizenship, had graduated and is now gainfully employed.

It is a happy ending for Louis and this is cause for gladness and thankfulness. But there are many out there who are still waiting. As for Chao En, he has obtained a Court Order from me on 21st November 2017 for a guardian to be appointed for him. He is only twelve years old and it will be a long wait for the grant of citizenship.

If it is of any comfort, the plight of the stateless children of Sarawak has received wide coverage in the local newspapers. It has caught the attention of the powers that be. As far back as the year 2016, the *Borneo Post Online* in its 26th November 2016 edition reported that the State Minister for Welfare, Women and Community Wellbeing had disclosed in the Dewan Undangan Negeri that the matter of stateless children was discussed with the Minister of Home Affairs. The parents of stateless children across the state were advised to submit their official applications for Malaysian citizenship directly to the Deputy Prime Minister who is also the Home Minister. In recent days the *Borneo Today* in its 10th January 2018 edition reported that a new Sarawak-based taskforce comprising a group of NGOs namely, SADIA (Sarawak Dayak Iban Association), S4S (Sarawak for Sarawakians) and SAS (Saya anak Sarawak) are working with the JPN as well as the Ministry of Welfare, Community Wellbeing, Women, Family and Childhood Development in an effort to resolve the long-standing issue of statelessness among a large number of the state's indigenous community.

For Chao En and those like him, the light at the end of the tunnel is burning a little brighter. Ours is a big country. There surely is a place for these unfortunate ones here. One can only wish them success in their quest for citizenship.



The Penang High Court taken in the infrared spectrum
(Picture courtesy of Justice Azizul Azmi Adnan)

THE CONSTRUCTION COURT : THE VITALITY OF ADJUDICATION AND ARBITRATION*.

By Justice Lee Swee Seng
Judge of the High Court

Trends in Adjudication and Arbitration cases filed.

Statutory adjudication was introduced into Malaysia with the coming into force of the Construction Industry Payment and Adjudication Act 2012 ("CIPAA") on 15 April 2014.

There was a five-fold increase in the number of adjudication cases filed in the KL Construction Court in 2016 compared to 2015. There were 32 cases filed with the KL Construction Court in 2015 compared with 165 cases in 2016. The trend continued in 2017 with 70 cases already filed as at 30 April 2017[1].

* This article is an adaptation from a paper presented at the 'Avoiding and Resolving Construction Disputes' Joint Conference organised by KLRCA, MIArb & CIDB on 23.5.2017 at the KLRCA (now known as AIAC).

[1] As at 31.12.2017, the total cases have ballooned up to 237.

In 2016, out of the 101 cases filed for the enforcement of the adjudication decision, 4 were dismissed which number corresponds more or less with the 5 cases that were allowed for the applications to set aside the adjudication decision. These 5 cases are out of a total of 54 cases filed in 2016 for setting aside the adjudication decision. 38 of such applications were dismissed with 9 withdrawn.

Some would say that the Court is claimant-friendly judging from the 95% of the cases where the KL Construction Court has allowed for enforcement and the 90% where the cases for setting aside have been dismissed. It would be fair to say that the Court is CIPAA-friendly in that we interpret the Act in accordance with its clear purpose and within the narrow confines for setting aside under section 15 CIPAA where only 4 grounds are allowed.

Not only was there a five-fold increase in Adjudication cases filed in 2016, there was also an overall increase in the total number of cases filed in the KL Construction Court including writs, originating summonses and appeals from the subordinate courts. In terms of overall filing of cases there were 185 for 2015, 385 for 2016 and 471 for 2017.

The number of arbitration cases filed in 2015 and 2016 have been more or less in tandem with the number of adjudication cases filed, thus allaying the fear that with the advent of adjudication, there might be a reduction in the cases going for arbitration. As the decision in Adjudication is only of temporary finality, there is no reason why parties would not be proceeding to arbitration and if a decision of temporary finality has the effect of providing the momentum towards a full resolution of the dispute that has arisen, then one can say adjudication is working well.

Some recent issues on adjudication

In Adjudication cases there is a restrain from disturbing the Adjudication Decision of Adjudicators. This has nothing to do with any default gravitation towards favoring the unpaid party but because of the way section 15 CIPAA is crafted. The Courts have stated in numerous occasions that an application to set aside an Adjudication Decision is not an appeal and so the Courts would generally refrain on going into the merits of the case. Section 15 CIPAA provides as follows:

"15. Improperly Procured Adjudication Decision
An aggrieved party may apply to the High Court to set aside an adjudication decision on one or more of the following grounds:

(a) The adjudication decision was improperly procured through fraud or bribery;

(b) There has been a denial of natural justice;

(c) The adjudicator has not acted independently or impartially; or

(d) The adjudicator has acted in excess of his jurisdiction."

In **Syarikat Bina Darul Aman Bhd & Anor v Government of Malaysia** [2017] MLJU 673[2], the Court had to decide on whether an unsuccessful Claimant is an "aggrieved party" under section 15 CIPAA that has the locus to apply to set aside the Adjudication Decision. The Adjudicator had decided to dismiss the Claimant's Payment Claim for work done with respect to a highway project.

What we have is peculiarly the Claimant's application to set aside the whole of the Decision which it said it is an "aggrieved party" within the meaning of section 15 CIPAA even though it was not required to pay any sum to the Respondent.

The Court agreed with the Claimant that an "aggrieved party" within the context of CIPAA must be given its plain and ordinary meaning, that is to say a party is aggrieved so long as the party has been adversely affected or wrongfully deprived of its right to have its entitlement validly and justly decided pursuant to CIPAA.

The Court also had to wrestle with the issue of whether a claim for "loss and expense" when provided for in the construction contract is a payment claim.

In the same case of **Syarikat Bina Darul Aman Bhd & Anor v Government of Malaysia** I stated that whilst a "Loss and Expense Claim" may in some instances be a claim for special damages arising out of breach by the principal, there are cases where contractually such a claim is allowed to be "added

[2] The case has since been reported in [2017] 1 LNS 559.

to the Contract Sum" or as in some cases like the present PWD 203A Standard Form of Contract it is to be claimed under a Final Account and hence payable as part of the amount claimable for the additional costs incurred for work done.

To me our position is more like the New Zealand position. The New Zealand Court of Appeal in **George Developments Ltd v Canam Construction Ltd** [2006] 1 NZLR 177 held that so long as such an entitlement is provided for under the written contract between the parties, such a claim can be mounted.

What then is the position where an Adjudicator unduly restricts his understanding of his jurisdiction and as in the above case, held that the Payment Claim for "Loss and Expense" is not a valid Payment Claim and further that it would be too tedious to assess such a claim within the limited time provided for under CIPAA to deliver his Decision?

In a case where the Adjudicator had erroneously held that he had no jurisdiction under CIPAA to hear the Payment Claim, the Court is at liberty to interfere with the decision made as it is a decision that goes towards jurisdiction. Not to hear a dispute submitted for his Adjudication is equally a breach of natural justice for the Adjudicator did not hear the parties at all.

In the case of **Pilon Ltd v Breyer Group Plc** [2010] EWHC 837 (TCC) where the court held at paragraph 17 of the judgment as follows:

"An Adjudicator can make an inadvertent mistake when answering the question put to him, and that mistake will not ordinarily affect the enforcement of his Decision: see *Bouygues (UK) Ltd v Dahl-Jensen (UK) Ltd* [2000] BLR 49. If, on the other hand, he considers and purports to decide an issue which is outside his jurisdiction, then his decision will not be enforced: see the discussion in *Sindall Ltd v Solland* [2001] 3 TCLR 712. But there is a third category, which is where the adjudicator takes an erroneously restrictive view of his own jurisdiction, with the result that he decides not to consider an important element of the dispute that has been referred to him. This failure is usually categorised as a breach of natural justice."

What then should an Adjudicator do if the circumstances, such as the voluminous documents involved, render it impossible for the Adjudicator to fairly and properly arrive at a conclusion within the permitted time period for making the Decision? He may exercise his powers under section 25(p) CIPAA to extend the time period as reasonably required and under section 12(2)(c) extract from the parties such further time as necessary for the Adjudication Decision to be delivered by use of Form 13 of the KLRCA Adjudication Rules and Procedure.

What if as an Adjudicator one cannot extract from the parties an extension of time? There is yet another course open to him and that is to resign as an Adjudicator as alluded to in section 17(4) CIPAA.

The dicta of Coulson J in the case of **Enterprise Managed Services Ltd** v Tony McFadden Utilities Ltd [2010] BLR 89, at paragraph 93 of the judgment is instructive to all Adjudicators faced with a seemingly tedious task:

"In such circumstances, where the sheer volume/size of a claim may make it unmanageable in an adjudication, the course to be adopted by the adjudicator is clear. As the same judge explained in *CIB Properties Limited v. Birse Construction Limited* [2004] EWHC 2365 (TCC), the adjudicator has to decide at the outset whether or not he can discharge his duty to reach a decision impartially and fairly within the time limit prescribed by the Act. If he cannot, he ought to resign."

However it is not in every case that resignation is the best way out of the dilemma. I would reckon that in the majority of cases where an Adjudicator is convinced that the Act itself does not confer jurisdiction on him to decide by way of adjudication as in a matter that affects his core jurisdiction, he would be able to decline jurisdiction for otherwise his Decision would be set aside for being made in excess of jurisdiction. Section 27(3) CIPAA states as follows:

"Notwithstanding a jurisdictional challenge, the adjudicator may in his discretion proceed and complete the adjudication proceedings without prejudice to the rights of any party to apply to set aside the adjudication decision under section 15 or to oppose the application to enforce the adjudication decision under subsection 28(1)."

An Adjudicator may thus decide not to proceed because it is perhaps against his conscience to adjudicate on a matter that is not adjudicatable under CIPAA. I would suppose that since the word used is "may in his discretion proceed...," it is equally permissible for him to strike out instead of dismissing the Payment Claim on ground that it is a matter affecting his core jurisdiction and that he should not be adjudicating a matter over which the Act does not confer jurisdiction on him as in subject matter jurisdiction.

I appreciate that the word "jurisdiction" used on 3 occasions under the Act may be quite problematic. In **Terminal Perintis Sdn Bhd v Tan Ngee Hong Construction Sdn Bhd and another case** [2017] MLJU 242[3]. I have sought to clarify the 3 different senses in which the word "jurisdiction" may be used:

There are many senses in which the word "jurisdiction" may be understood. We need only to differentiate between core jurisdiction, competence jurisdiction and contingent jurisdiction.

Core jurisdiction would be the question of whether the subject matter of the dispute is one which the Act has conferred on the Adjudicator.

If it is a question of the competence of the Adjudicator as in he has not been properly appointed in that what purported to be a Payment Claim, is not on the face of it a Payment Claim or that the Payment Claim was not served or that it was not expressly stated as a claim made under CIPAA, then this Court would be at liberty to set aside the Adjudication Decision on ground of excess of jurisdiction.

In a case of contingent jurisdiction, it would be a case where for there to be jurisdiction, there must be further compliance with the requirements of the Act as in that the dispute must be one falling within the matters raised in the Payment Claim and the Payment Response as provided for under section 27(1) CIPAA.

In **MIR Valve Sdn Bhd v TH Heavy Engineering Sdn Bhd** [2017] MLJU 674[4] the Court had to grapple with the issue of whether work done on a ship to convert it to a Floating Production Storage & Offloading Structure ('FPSO') is a construction contract such that valves supplied for such a work is adjudicatable under CIPAA. I opined as follows:

Under our CIPAA, unlike that of other jurisdictions, "construction work" under (d) cover any gas, oil and petrochemical work. As can be seen, it is the nature of the work rather than what is being constructed that is more determinative when it comes to gas, oil and petrochemical. It is the purpose served by the structure built that is important rather than the structure built. Implicit in such a definition is that if the structure is more of a ship or vessel, if it nevertheless is work done for the gas, oil and petrochemical industry, then it would still qualify to be construction work being any gas, oil and petrochemical work.

Once it is established that the conversion work from a ship to a FPSO vessel is construction work then the contract for the procurement of an equipment such as valves for the FPSO vessel would qualify to be a "construction contract."

Architects might be happy to note that architectural fees for architectural services rendered pursuant to a construction contract is claimable in adjudication. The Court decided this in **Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd & Another Case** [2017] 1 CLJ 101[5].

It falls under the broad definition of a "construction consultancy contract" under section 4 of CIPAA. By the same token an engineer, QS and even Interior Designer fees would also be claimable under CIPAA. Not so legal fees, or fees for accounting of financial services rendered with respect to construction contracts as these are ancillary to and not integral to construction contracts.

Some recent Issues in Arbitration

Most standard form construction contracts would have a mandatory reference to a dispute resolution board or committee before one may proceed to arbitration. What if such a procedure is not followed and one commences arbitration?

[3] The case has since been reported in [2017] 7 AMR 887; [2017] AMEJ 0250; [2017] 1 LNS 177.
[4] The case has since been reported in [2017] 8 CLJ 208; [2017] 1 LNS 600; [2017] AMEJ 0538.
[5] The case has since been reported in [2016] 6 AMR 834; [2016] AMEJ 2113; [2016] MLJU 1051.

In **SPNB-LTAT Sdn Bhd v ABI Construction Sdn Bhd** [2016] 7 CLJ 275[6] I had to deal with: Whether a reference to the S.O. under Clause 54(a) and (b) of the Contract is a precondition or a condition precedent to Arbitration under Clause 54(c) of the Contract. I observed as follows:

"A precondition or a condition precedent is a condition that has to be fulfilled before a right accrues. Once it is contractually agreed upon, the parties should be held to the bargain unless such an agreement is prohibited by law or that it is too vague for enforcement. Here it has not been suggested that there is a statutory prohibition against it.

Both parties have agreed contractually to a pre-condition to be fulfilled before there can be a valid reference to Arbitration. An Arbitrator's jurisdiction is contractually agreed by both parties to an Arbitration Agreement. In a very real sense, until and unless the contractually agreed conditions are fulfilled for the reference to Arbitration, the Arbitrator concerned cannot assume jurisdiction."

There is also the perennial problem of section 75 of the Contracts Act 1950 and whether parties could contract out of it with the LAD agreed sum in the clause being stated as deemed proved for all loss and damage suffered. The matter came before the Court in **Kejuruteraan Bintai Kindenko Sdn Bhd v Serdang Baru Properties Sdn Bhd** [2017] MLJU 528[7].

The Arbitrator had assessed damages to the Defendant to be RM6,233,659.55 and also calculated damages according to the LAD clause to be RM32,235,000.00 and awarded damages according to the LAD clause calculation. It came before me under a section 42 AA application. I analysed as follows:

The decision of the Federal Court in ***Selva Kumar A/L Murugiah v Thiagarajah A/L Retnasamy*** [1995] 1 MLJ 817 makes it clear that there is no distinction between liquidated damages and penalties and further provides that the Defendant would have to prove actual damages.

In **Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd** [2009] 4 MLJ 445, the Federal Court was of the view that pursuant to section 75 of the Contracts Act 1950, a party claiming liquidated damages is legally obliged to prove its damages in accordance with the principles set out in ***Hadley v Baxendale*** (1854) 9 Exch 341.

The learned Arbitrator in this case simply relied on the rates stipulated as liquidated damages and therefore when he ruled that the Defendant was entitled to damages amounting to RM32 million this was not done in accordance with the principles set out in **Hadley v Baxendale** (supra). In fact the assessment of damages was done in complete disregard of the principle set out in **Selva Kumar** which requires the proof of actual loss.

I had thus varied the award and substituted it with the sum as assessed by the learned Arbitrator based on actual loss.

Conclusion

The KL Construction Court is conscious of its role in developing the law especially with respect to adjudication seeing that CIPAA is a new piece of legislation. Like all new statutes there will be creases to be ironed out and I am grateful to all construction law practitioners who have appeared before me. Your submissions have contributed to the development of the law here.

In fact the court's judgment are only as good as the submissions of counsel but any mistake remains that of the judge who writes the judgment.

Like I often tell counsel appearing before me, if you are appealing, I would do everything to facilitate your appeal so that if I am wrong I may be corrected and if I had been right, I may be affirmed.

[6] The case has since been reported in [2016] MLJU 1596.
[7] The case has since been reported in [2017] 4 AMR 216; [2017] AMEJ 0477; [2017] 1 LNS 693. This case has since been affirmed on appeal at the Court of Appeal.

ASSIGNMENTS OF REGISTERED TRADE MARKS

By Justice Wong Kian Kheong
Judicial Commissioner of the High Court

A. Introduction

The majority of Intellectual Property (IP) cases filed in the IP High Court at Kuala Lumpur concerns trade marks[1]. This article discusses what are the conditions for a lawful assignment of a registered trade mark[2].

B. Whether assignments of registered trade marks are required to be in writing

I am of the view that an assignment of a registered trade mark need not be in writing. My view is premised on the following reasons:

[1] From 1.1.2014 to 31.12.2017, a total of 369 cases have been filed in the IP High Court. From this total, 251 cases (about 68%) concern trade marks.

[2] This article does not discuss about assignments of unregistered trade marks. Unregistered trade marks may be assigned with or without goodwill – s 55(1) and (1A) TMA.

(1) there is no provision in the Trade Marks Act 1976 (**TMA**) and the Trade Marks Regulations 1997 (**TMR**), either expressly or by necessary implication, which requires an assignment of a registered trade mark to be in writing. What is not prohibited by law, is generally allowed[3]. If Parliament had intended for assignments of registered trade marks to be in writing, Parliament would have expressly provided as such. It is to be noted that Parliament has expressly required assignments of copyright[4], registered industrial designs[5] and protected layout-designs[6] to be in writing;

(2) an assignment of a registered trade mark can be registered in the Register of Trade Marks (**Register**) pursuant to s 47(1) TMA and reg. 63(1) TMR. Regulation 64(5) TMR[7] recognises an oral assignment of registered trade mark; and

(3) the trade mark legislation from the following countries have expressly required assignments of registered trade marks to be in writing—

(a) s 24(3) of United Kingdom's (**UK**) Trade Marks Act 1994 [**TMA 1994 (UK)**][8]; and

(b) s 38(3) of Singapore's Trade Marks Act [**TMA (Singapore)**][9].

Parliament has amended TMA thrice[10] and yet, our legislature has not inserted a provision in the TMA along the lines of s 24(3) TMA 1994 (UK) or s 38(3) TMA (Singapore).

Although oral assignments of registered trade marks is recognised under our trade marks law, it may be prudent to have written assignments of registered trade marks for the following reasons:

(1) generally, courts prefer documentary evidence, especially contemporaneous documents, to self-serving oral evidence[11]. A person who relies on an oral assignment of a registered trade mark may face an evidential difficulty in proving the oral assignment on a balance of probabilities;

(2) a written assignment has the benefit under ss 91 and 92 Evidence Act 1950 (**EA**) that generally, extrinsic evidence cannot be adduced to contradict, vary, add to or subtract from the written assignment[12]; and

(3) if a written assignment of a registered trade mark is registered in the Register[13], in all legal proceedings regarding the assignment—

(a) there is a rebuttable presumption under s 36 TMA that the assignment is *prima facie* valid[14]. In such a case,

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[3] Mahadev Shankar JCA's judgment in the Court of Appeal in *YK Fung Securities Sdn Bhd v James Capel (Far East) Ltd* [1997] 2 MLJ 621, at 667.

[4] Section 27(3) Copyright Act 1987 [*No assignment of copyright ... shall have effect unless it is in writing*].

[5] Section 29(1) and (3) Industrial Designs Act 1996 [*An assignment of a registered industrial design ... shall not be effective unless it is in writing and signed by or on behalf of the assignor and the assignee ...*].

[6] Section 19(3)(a) Layout-Designs of Integrated Circuits Act 2000 [*An assignment ... shall not be effective against a third party unless - the assignment ... is in writing and signed by or on behalf of the assignor*].

[7] Regulation 64(5) TMR [*Where an applicant does not claim under any instrument which is capable in itself of furnishing documentary proof of his title he shall file with the application a statement of case setting forth the full particulars of the facts upon which his claim to be the proprietor of the mark in question is based and showing that it has been assigned ... to him, and if the Registrar so requires the case shall be verified by statutory declaration*].

[8] Section 24(3) TMA 1994 (UK) [*An assignment of a registered trade mark ... is not effective unless it is in writing signed by or on behalf of the assignor ...*].

[9] Section 38(3) TMA (Singapore) [*An assignment of a registered trade mark ... is not effective unless it is in writing signed by or on behalf of the assignor ...*].

[10] Trade Marks (Amendment) Act 1994 (Act A881), Trade Marks (Amendment) Act 2000 (Act A1078) and Trade Marks (Amendment) Act 2002 (Act A1138).

[11] Please see, eg. Chang Min Tat FJ's judgment in Federal Court case of *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229, at 234.

[12] Extrinsic evidence may be admitted to invalidate, contradict, vary, add to or subtract from a written assignment of a registered trade mark in limited circumstances – please see proviso (a) to (f) to s 92 EA.

[13] Section 47(1) TMA and reg. 63(1) TMR.

[14] Please see, eg. *Doretti Resources Sdn Bhd v Fitters Marketing Sdn Bhd & Ors* [2017] 5 MLRH 1, at paragraph 35.

any person disputing the assignment has the burden to prove the invalidity of the assignment: and

(b) s 47(3) TMA provides that no evidence can be adduced to prove an assignment of a registered trade mark except in the following three circumstances—

(i) when there is an appeal to the High Court against a decision of the Registrar of Trade Marks (**Registrar**) regarding an application to register the assignment[15];

(ii) when there is an application to the High Court to rectify the Register[16]; or

(iii) when there is a Court order for the admissibility of the assignment[17].

C. Should assignments of registered trade marks be registered?

Section 47(1) TMA[18] and reg. 63(1) TMR[19] (which provide for registration of assignments of registered trade marks) employ the word "*shall*". Despite the use of the word "*shall*" in s 47(1) TMA and reg. 63(1) TMR, I am of the opinion that an assignment of a registered trade mark need not be registered in the Register. My opinion is based on the following reasons:

(1) there is nothing in TMA and TMR which provides that an assignment of a registered trade mark cannot be enforced solely because of its lack of registration. Section 39(4) Patents Act 1983 (**PA**) has expressly stated, among others, that an assignment of a patent shall have no effect against third parties unless the assignment is recorded in the Register of Patents. If Parliament had intended that assignments of registered trade marks cannot be enforced unless those assignments are registered, Parliament could have easily inserted a provision in TMA along the lines of s 39(4) PA. Parliament however did not do so;

(2) an "*unregistered*" assignment of a registered trade mark may be recognised in Equity. In Sanmaru Overseas Marketing Sdn Bhd & Anor v PT Indofood Interna Corp & Ors[20], the Court of Appeal in 2 judgments by Zaleha Zahari JCA (as she then was)[21] and Abdul Malik Ishak JCA[22] applied the equitable doctrine of bare trust to hold an assignor of a registered trade mark to be a constructive trustee of the registered trade mark for the benefit of the assignee.

The application of Equity to assignments of registered trade marks can be supported by s 34(b) TMA which has provided that "*any equities in respect of a trade mark may be enforced in like manner as in respect of any personal property*": and

(3) if an assignment of a registered trade mark is not enforceable solely because of its non-registration pursuant to s 47(1) TMA and reg. 63(1) TMR, this may lead to fraud being perpetrated against *bona fide* assignees who have provided valuable consideration for the assignments of registered trade marks. There is a maxim that Equity will not permit a statute, including s 47(1) TMA and reg. 63(1) TMR, to be used as an engine of fraud[23].

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[15] Section 47(1), (2) and (3) TMA.

[16] Sections 45(1)(a) and 47(3) TMA.

[17] Section 47(3) TMA.

[18] Section 47(1) TMA [*Where a person becomes entitled by assignment ... to a registered trade mark he shall make application to the Registrar to register his title ...*].

[19] Regulation 63(1) TMR [*Where a person becomes entitled by assignment ... to a registered trade mark he shall make application to register his title by filing Form TM 15 ...*].

[20] [2009] 2 MLJ 765.

[21] *Ibid.*, at paragraphs 50-53.

[22] *Supra*, note 20, at paragraphs 156-167. Abu Samah bin Nordin JCA (as he then was) concurred with Abdul Malik Ishak JCA's judgment, at paragraph 176.

[23] Please see, eg. Gopal Sri Ram JCA's (as he then was) judgment in the Federal Court case of *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 4 CLJ 716, at 743. In *Sri Paandi Restraurant Sdn Bhd & Anor v Saraswathy a/p Kesavan & Ors* [2017] 4 AMR 593, at sub-paragraph 10(4), reg. 64(4) TMR is interpreted in a manner wherein that provision cannot be abused to facilitate fraud.

In a recent Federal Court case of Low Chi Yong (Berniaga sebagai Reynox Fertichem Industries) v Low Chi Hong & Anor[24], Suriyadi Halim Omar FCJ held as follows:

> *"[13] Dissatisfied with the decision of the Court of Appeal, the appellant successfully applied for leave before us on 6th February 2017, on the following question of law:*
>
> > ***"Whether by giving his consent to the use of his registered trade mark to a company or a firm he is still a shareholder/director of the company or a partner of the partnership firm, can he be considered as having abandoned his exclusive right to the trade mark in perpetuity even if he does not derive any benefit therefrom (and has withdrawn from the company) and also be said to be guilty of estoppel, acquiescence or laches."***
>
> *[44] The evidence reveals that despite the receipt of the said notices, the respondents produced, sold and supplied products which were similar to the appellant's products under the trade mark. The respondents argued that the consent continued on and still existed despite the withdrawal of the consent by the appellant vide the abovementioned notices of 20.12.2012. That consent to use the trade mark was by way of an assignment or license given to the 2nd respondent when the appellant was still with it.*
>
> *[45] There is no doubt that consent was given by the appellant when he still was the shareholder and director of the 2nd respondent. The next relevant question is whether the consent was still valid after his resignation from the 2nd respondent, particularly after the withdrawal of the consent through the notices dated 20.12.2012. As stated above the respondents argued that the consent persists due to an assignment granted by the appellant to the respondents.*
>
> *[46] Black's Law Dictionary (Edited by Bryana A. Garner, Deluxe Ninth Edition) states that "consent" means "Agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person; legally effective assent". "Express consent" means "Consent that is clearly and unmistakably stated" whereas "Implied consent" means "Consent inferred from one's conduct rather than from one's direct expression". Without the need of an exhaustive and laborious research, consent entails permission given by a competent person. In this case, as given by the appellant who has a valid trade mark.*
>
> ***[47] Going by Black's definitions, once that consent is withdrawn the legally effective assent ends. Therefore the question posed in paragraph 44 must be answered in the negative i.e. after withdrawing from the 2nd respondent, and after the notices were issued.***
>
> ***[50] Section 47 [TMA] which establishes proprietorship over the trade mark to the assignee pursuant to an assignment by the original registered owner, has an evidential value. For purposes of this appeal, unless an entry has been made by the Registrar, no document or instrument to prove title of the assigned trade mark shall be admissible in Court (unless the Court otherwise directs). That valid assignment will entitle the assignee to exercise the trade mark rights, being the recorded owner within the meaning of section 47 [TMA], and binds third parties to his assigned rights. In this case, there is no evidence of the alleged assignment being registered. Without any evidence to prove that the consent given by the appellant was indeed an assignment, and with there being want of proof of such assignment, we hold the view that the appellant never assigned the trade mark to the respondents. In short the argument of consent having been given by the appellant must fail*** *(see also the conclusion in paragraph 46)."*[25]
>
> (emphasis added).

I am of the following respectful view regarding *Low Chi Yong*:

(1) the Federal Court only granted leave to appeal regarding the giving of consent by the proprietor of a registered trade mark to the use of the registered trade mark in question. The Federal Court did

[24] [2017] MLRA 412.

[25] *Ibid.*, at paragraphs 13, 44-47 and 50.

not grant leave to appeal regarding the issue of the validity of an assignment of a registered trade mark which has not been registered under s 47(1) TMA and reg. 63(1) TMR; and

(2) the material facts of *Low Chi Yong* concerned the withdrawal of consent to use a registered trade mark by its proprietor. *Low Chi Yong* did not concern an assignment of a registered trade mark, let alone its validity due to its non-registration under s 47(1) TMA and reg. 63(1) TMR.

In respect of s 47(3) TMA -

(1) an assignee of a registered trade mark who is recognised in Equity as its beneficiary by way of the doctrine of bare trust (**Assignee**), may apply to Court for a perpetual mandatory injunction to compel the assignor (proprietor of the registered trade mark) (**Assignor**) to take all necessary steps to register the assignment in the Register[26]. In such a suit, the Assignee may apply for a Court order under s 47(3) TMA to admit evidence regarding the assignment in question; or

(2) the Assignee may apply to Court under s 45(1)(a) TMA to rectify the Register by "*varying*" the entry in the Register to substitute the Assignor with the Assignee (as the proprietor of the registered trade mark) (**Rectification Application**). The Rectification Application is made because there is a "*non-insertion*" in the Register or an "*omission*" in the Register regarding the registration of the assignment within the meaning of s 45(1)(a) TMA. Section 47(3) TMA has expressly recognised a Rectification Application as one of three avenues to adduce evidence regarding an assignment of a registered trade mark which has not been registered in the Register.

D. What constitutes "*consideration*" for assignments of registered trade marks?

Section 34(a) TMA provides that an owner of a registered trade mark "*shall ... have power to assign*" the registered trade mark and "*give good discharge for any consideration for the assignment*". It is clear that for an assignment of a registered trade mark to be enforceable, there must be "*consideration*" as required by s 34(a) TMA.

The term "*consideration*" in s 34(a) TMA, in my view, should be construed with reference to s 2(d) Contracts Act 1950 (**CA**)[27] which reads as follows:

> "s 2(d) ***when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise***;"
>
> (emphasis added).

I am of the following view regarding the requirement of consideration for assignments of registered trade marks:

(1) consideration need not be valuable or be in monetary form. According to s 2(d) CA, consideration may be in the following form—

  (a) any "*act*" at the "*desire*" of the Assignor;

  (b) an "*abstinence*" from doing something at the Assignor's desire; or

  (c) a "*promise*"[28] to do or abstain from doing something at the desire of the Assignor;

[26] *Sanmaru Overseas Marketing*, *supra*, note 20, at paragraph 3, and s 53 of the Specific Relief Act 1950.

[27] Privy Council's decision delivered by Lord Wilberforce in an appeal from Malaysia, *Kepong Prospecting Ltd & Ors v Schmidt* [1968] 1 MLJ 170, at 173.

[28] Please see definition of "*promise*" in s 2(b) CA.

(2) parties to the assignment may agree to a nominal consideration[29];

(3) consideration may be provided by—

(a) the Assignee; or

(b) a third party[30];

(4) "*past consideration*" is valid so long as the act or abstinence in question is done at the Assignor's desire or request[31]; and

(5) paragraphs (a) to (c) of s 26 CA provide three exceptions wherein an assignment of registered trade marks may be enforceable despite the lack of consideration[32].

E. Different types of assignments

A registered trade mark may be lawfully assigned in the following circumstances:

(1) an assignment of a registered trade mark with the goodwill of the business regarding the goods or services of which the trade mark is registered[33];

(2) an assignment of a registered trade mark **without** the goodwill of the business regarding the goods or services of which the trade mark is registered[34]; and

(3) an assignment of a registered trade mark in respect of **part** of the goods or services of which the trade mark is registered[35].

Our TMA and TMR do not expressly provide for the following assignments of registered trade marks:

(1) assignments in relation to the **use** of registered trade marks in a particular manner;

(2) assignments in relation to the **use** of registered trade marks in a particular locality; and

(3) assignments of registered trade marks by way of security.

It is to be noted that s 24(2)(b) TMA 1994 (UK) provides for assignments in relation to the use of registered trade marks in a particular manner or a particular locality. Section 24(4) TMA 1994 (UK) and s 38(5) TMA (Singapore) concern assignments of registered trade marks by way of security. I am of the view that there is nothing in TMA and TMR which prohibits "*partial*" assignments as stated in the above sub-paragraphs 12(1) to (3) so long as the partial assignments do not cause a likelihood of deception or confusion (please see Part F below).

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[29] *Sanmaru Overseas Marketing*, *supra*, note 20, at paragraph 8.

[30] Section 2(d) CA allows "*any other person*" (other than the Assignee) to provide consideration for the assignment - *Kepong Prospecting*, *supra*, note 27, at p. 173.

[31] Supreme Court's judgment delivered by Gunn Chit Tuan SCJ (as he then was) in *South East Asia Insurance Bhd v Nasir Ibrahim* [1992] 1 CLJ (Rep) 295, at 300-302, and *Universal Trustee (M) Bhd v Lambang Pertama Sdn Bhd & Anor* [2014] 5 AMR 57, at paragraph 51.

[32] Hasan Lah FCJ's judgment in Federal Court case of *Solid Investments Ltd v Alcatel-Lucent (M) Sdn Bhd* [2014] 3 MLJ 785, at paragraph 71.

[33] Section 55(1) TMA.

[34] Section 55(1), (2), (5) TMA, reg. 66(1), (2) TMR and *Tokai Corporation v DKSH Malaysia Sdn Bhd* [2016] AMEJ 1837, at paragraph 47.

[35] *Supra*, note 33.

F. Assignments should not cause likelihood of deception or confusion

Section 55(3) TMA provides that, among others, a registered trade mark "*shall be deemed not to be assignable*" if "*as a result of the assignment*", more than one person in question would have exclusive rights to the use of an identical trade mark or to the use of trade marks so nearly resembling each other as to are likely to deceive or cause confusion (**Likelihood of Deception/Confusion**).

Section 55(3) TMA is similar (not identical) to s 22(4) of UK's Trade Marks Act 1938 [**TMA 1938 (UK)**]. In *Phantom Trade Mark*[36], the English Court of Appeal construed, among others, s 22(4) TMA 1938 (UK). Goff LJ (as he then was) decided in *Phantom Trade Mark* that if an assignment had contravened s 22(4) TMA 1938 (UK), the assignment would be *prima facie* void[37]. On the facts of *Phantom Trade Mark*, the Court of Appeal reversed the High Court's removal of the registered trade mark in question because, among others, the assignor (proprietor of the registered trade mark) had made a renunciation of certain rights to the registered trade mark in respect of similar goods which would avert a Likelihood of Deception/ Confusion and a breach of s 22(4) TMA 1938 (UK).

I am of the view *Phantom Trade Mark* applies in the interpretation of our s 55(3) TMA. If an assignment of a registered trade mark causes a Likelihood of Deception/Confusion, the registration of the registered trade mark may be removed in a Rectification Application under s 45(1)(a) TMA as an entry which is "*wrongfully remaining in the Register*". I am of the further view that in deciding whether there is a Likelihood of Deception/Confusion under s 55(3) TMA, the Court may consider matters which have been laid down by previous Malaysian cases regarding registrability of a trade mark[38] and infringement of a registered trade mark[39].

G. Conclusion

In *Scandecor Development AB v Scandecor Marketing AB & Ors*[40] Lord Nicholls in the House of Lords has held that UK law regarding licensing of registered trade marks has responded to the changes in the conduct of trade and business[41]. Similarly, Malaysian Courts should not only protect IP rights but should also respond accordingly to the rapid development in the commercial world. To this end, lawful assignments of registered trade marks should be upheld and not be hindered by technical niceties.

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[36] [1978] RPC 245.

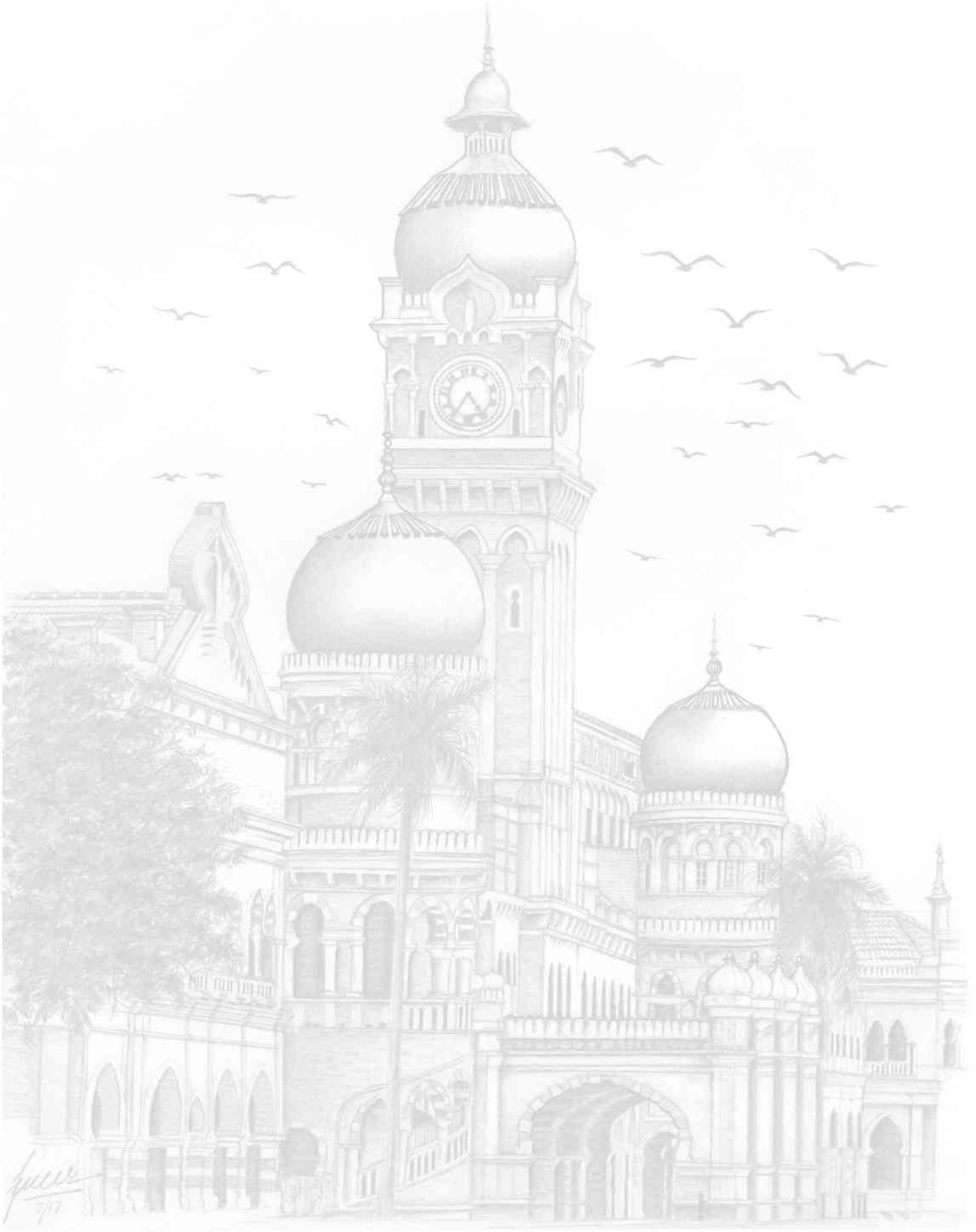
[37] *Ibid.*, at p. 250.

[38] Sections 14(1)(a) (a trade mark shall not be registered if its use is likely to deceive or cause confusion to the public) and 37(b) TMA. Please see, eg. *GS Yuasa Corporation v GBI Marketing Malaysia Sdn Bhd* [2017] 8 MLJ 166, at paragraph 38.

[39] Section 38(1)(a) TMA [*A registered trade mark is infringed by a person who, not being the registered proprietor of the trade mark or registered user of the trade mark using by way of permitted use, uses a mark which is identical with it or so nearly resembling it as is likely to deceive or cause confusion in the course of trade in relation to goods or services in respect of which the trade mark is registered in such a manner as to render the use of the mark likely to be taken ... - (a) as being use as a trade mark*]. Please see, eg. *Philip Morris Brands SARL v Goodness for Import and Export & Ors* [2017] 10 CLJ 226, at paragraph 31.

[40] [2001] FSR 122.

[41] *Ibid.*, at paragraphs 12 and 13.



CHAPTER 10

CASES OF INTEREST

The cloistered bridge adjoining the Sultan Abdul Samad Building

CASES OF INTEREST: CIVIL

Teng Chang Khim (appealing as Speaker of the Selangor State Legislative Assembly) v Badrul Hisham bin Abdullah & Anor [2017] 5 MLJ 567

The respondent, Badrul Hisham bin Abdullah was a state assemblyman for the N46 Pelabuhan Klang Constituency and a member of the Selangor Legislative Assembly ('SLA'). He failed to attend any of the six days sittings of the SLA in November 2010. It was only on 10 December 2010 that the appellant, the Speaker of the SLA, received an application from Badrul seeking leave of absence, citing "traditional medical treatment in Pahang" as the reason for his absence. By a letter dated 21 December 2010, the Speaker rejected Badrul's application owing to his failure to provide any cogent reasons as to the delay in his application for leave. Consequently, the Speaker declared the seat for the N46 Pelabuhan Klang Constituency vacant pursuant to Article 69 of the Constitution of the State of Selangor 1959. The Speaker's act of declaring the seat vacant was made at a press conference. The issue before the Federal Court was whether such decision of the Speaker was within the realm of the internal arrangement of the SLA and therefore, not amendable to judicial proceedings.

> *"51. In conclusion, we are of the view that in the present case, the speaker was acting within the limits of the power given to him under Article 69 of the Selangor Constitution when he declared the N46 Pelabuhan Klang Constituency seat vacant. Even though the declaration was made outside the SLA proceedings, it was inevitably connected with the essential business of the SLA, made within the parameters set out by Article 69 of the Selangor Constitution, and was made to regulate the internal affairs of the SLA. Consequently, we rule that the speaker's act is non-justiciable and the speaker is entitled to the protection of parliamentary privilege enjoyed by the SLA as provided for under Article 72(1) of the Federal Constitution and paragraphs 2 and 3 of the Schedule to Article 77 of the Selangor Constitution".*
>
> *per Justice Raus Sharif, Chief Justice*

Dr Kok Choong Seng & Anor v Soo Cheng Lin and another appeal [2017] 6 AMR 609

The respondent, Soo Cheng Lin, brought an action in medical negligence against the appellants, Dr Kok Choong Seng, a consultant orthopaedic surgeon, and Sunway Medical Centre Bhd, the owner and operator of the private hospital Sunway Medical Centre. The respondent initially consulted the surgeon at the latter's clinic, where the surgeon advised the respondent to undergo an operation at the hospital. Subsequently, the surgeon performed the operation on the respondent at the hospital. The operation was performed negligently and as a result, the respondent suffered pain and numbness. The Federal Court held that the doctrine of non-delegable duty of care applies in Malaysia. Given the onerous nature of these duties, they may only be imposed where it would be fair just and reasonable to do so, based on the particular circumstances of the case. However, on the facts, the Federal Court found that the hospital was not liable for the surgeon's negligence, as the hospital had not assumed a positive duty in respect of the conduct of the operation. Nor was the hospital vicariously liable, as Dr Kok was an independent contractor.

> *"38. Non-delegable duties have been erroneously considered as a 'kind of vicarious liability', and adopted as part of the test to determine vicarious liability in some cases. This is a misconception. The two doctrines are similar in effect, in that they both result in liability being imposed on a party (the defendant) for the injury caused to a victim (the plaintiff) as a result of the negligence of another party (the tortfeasor). However, it bears emphasis that non-delegable duties and vicarious liability are distinct in nature and basis. The former imposes personal liability on the defendant for the breach of his own duty towards the plaintiff, based on the relationship between the defendant and the plaintiff, regardless of whom the defendant has engaged to perform the task. The latter imposes vicarious liability on the defendant for the tortfeasor's breach of duty towards the plaintiff, based on the relationship of employment between the defendant and the tortfeasor.*

39. The doctrine of non-delegable duties has an independent scope of application apart from the realm of vicarious liability. A number of scenarios illuminate the distinction. Non-delegable duties, or positive duties to ensure that reasonable care is taken, may exist in situations where there is no vicarious liability; for instance where harm is caused as a result of a system failure and no individual tortfeasor can be identified, or where harm is caused by a third party to a plaintiff under the defendant's custody. Conversely, vicarious liability can operate in the absence of a non-delegable duty, in cases where the elements of a special hazard or a relationship of vulnerability or dependence are absent (e.g. an employee who negligently hits a pedestrian, while driving a vehicle in the course of employment). The two doctrines are conceptually and practically distinct."

per Justice Raus Sharif, Chief Justice

U Television Sdn Bhd & Anor v Comintel Sdn Bhd [2017] 5 MLJ 292

The respondent, Comintel Sdn Bhd, was a company involved in the business of providing software and hardware solutions in the broadcast and telecommunication industries. The first appellant, U Television Sdn. Bhd., was granted a broadcasting licence under the Communications and Multimedia Act 1998 to provide digital broadcasting services as a subscription TV operator which broadcasts local and overseas TV channels. Following technical problems in transmission to viewers, the first appellant engaged the respondent to provide technical consultancy services to resolve the problems. Discussion between the parties resulted in the issuance of a letter of award ('LOA') whereby the respondent undertook works in the re-design and transmission enhancement ('the project') for the first appellant on a full turnkey basis. All monies due to the respondent under the LOA was payable on demand by the second respondent through a guarantee and indemnity. Pursuant to the terms of the LOA, it was incumbent on the respondent to pass a "proof of concept site acceptance test" ('POC SAT') aimed at determining whether the respondent's proposal solutions would resolve the first appellant's technical problems. The respondent proposed 12 different draft versions of the test protocol culminating in the POC SAT version 3.8(a) the format of which the first appellant found to be unsuitable for the intended purpose of the POC SAT as it would not allow proper recording of the test presentation and results. The first respondent then requested for changes in format to be made. The respondent then came up with a re-formatted version ("version 3.8(b)") which the appellants contended was similar in substance to version 3.8(a). The respondent contended otherwise.

Subsequently, the respondent terminated the LOA by reason of the first appellant's breach and repudiation of the same through its failure to make payments when due and through its acts or omissions in preventing and/or interfering with the respondent's performance and obligations under the LOA. The respondent commenced proceedings in the High Court against the appellants for, *inter alia*, damages for breach of contract. The appellant in turn counterclaimed, *inter alia*, for monies already paid to the respondent and damages for breach of contract. There were two issues for determination before the High Court. The first issue was whether the POC SAT versions 3.8(a) and 3.8(b) were the same or different. The second issue was whether respondent had passed the POC SAT either based on version 3.8(a) or 3.8(b). The learned High Court judge, who was convinced by the testimony and evidence led by the respondent, allowed the respondent claims and dismissed the appellants' counterclaims. The issue before the Court of Appeal was, between version 3.8(a) or version 3.8(b), what was the correct test protocol to be used. The Court of Appeal took note of the learned High Court judge's finding that the respondent's witnesses demonstrated that they had the technical expertise and know-how of the workings of the project and affirmed the decision of the High Court. The Federal Court was tasked to determine the question whether it was open to the court to hold that the plaintiff had discharged its onus of proof in circumstances where the onus is upon the plaintiff to establish facts which by their nature call for or demand expert evidence under section 45 of the Evidence Act 1950. The Federal Court held:

"50. The High Court found that there was a need for technical evidence but, however, it preferred the evidence of the plaintiff on the basis of its so-called technical witnesses. It is our judgment, when it was determined that there was a need for technical evidence, it was incumbent on the plaintiff to lead evidence through

experts. It did not do so and by reason of that failure had failed to discharge its 'burden of proof' under ss 101 and 102 of the Act. Consequently the 'onus of proof' did not shift to the defendants to dislodge the assertions made by the plaintiff as the claimant."

per Justice Zulkefli Ahmad Makinudin, President of the Court of Appeal

Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor [2017] 6 MLJ 133

Both the appellant and the first respondent are former Chief Ministers of Sabah. The second respondent is a political party, Sabah Progressive Party (SAPP), with which the first respondent was affiliated. The appellant filed a claim for libel against the first respondent and

Lush greens and blooms skirting the west wing of the Palace of Justice

claimed damages in the sum of not less than RM50 million for character assassination. The action was predicated by Tengku Razaleigh Hamzah's speech describing the 6 June 1976 tragedy which claimed the life of the then newly appointed Chief Minister, the late Tun Fuad Stephens and all others on board a crashed Nomad aircraft near Sembulan, Kota Kinabalu and how his life was spared when he was invited off the plane by the appellant minutes before the plane was due to take off from Labuan Airport. After the passing of Tun Fuad Stephens, the appellant, who was then the Deputy Chief Minister of Sabah, took over as the Chief Minister, the post of which he held on until his Berjaya Party was defeated in the Sabah State Election in 1985.

Based on Tengku Razaleigh Hamzah's speech, the first respondent issued a statement with the caption 'SAPP WANTS FILE ON TRIPLE SIX TRAGEDY PROBE REOPENED' ('the first statement') published in the Daily Express on 5 April 2010. Subsequently, on 7 April 2010, the appellant issued a press statement disputing the accuracy of Tengku Razaleigh's account of the tragedy and challenged the respondents to repeat the remarks and accusations made in their statement, more specifically and openly. In response, the first respondent accepted the challenge by causing to be published in the same newspaper on 9 April 2010 a second statement with the caption 'BASIS TO REOPEN DUE TO NEW INFO: YONG' ('the second statement'). The appellant contended he was embarrassed and distressed by the second statement. It was further contended that the first statement and the second statement could be understood to mean that the appellant must be investigated because he had conspired with others to, *inter alia*, (i) assassinate the late Tun Fuad Stephens and other State Ministers and officials who were traveling with him; (ii) to grab power and become Chief Minister of Sabah himself after the demise of the late Tun Fuad Stephens; (iii) to replace the then Chief Minister by way of assassination of Tun Fuad Stephens; (iv) to facilitate the signing of a Petroleum Agreement between the Sabah State Government and the Federal Government; and (v) to hand over the petroleum wealth of the State of Sabah to Petronas and/or the Federal Government.

On the merit of the appeal, the Federal Court found that the impugned statements concerned a matter of public interest but even after giving maximum latitude to editorial judgment, it was not necessary to embellish and spice up what Tengku Razaleigh had revealed in his speech with insinuation of the appellant's possible complicity in the criminal act of multiple murders. Having applied the 10 points test propounded in the case of *Reynolds v. Times Newspapers Ltd.* [1999] 4 All ER 609, HL for the determination of the element of responsible journalism to the facts of the case, the Federal Court was of the view that the inclusion of the defamatory statements had not made any contribution to the public interest element in the publication. Therefore, the respondents had failed the responsible journalism test and failed to establish the Reynolds privilege defence. According to the Federal Court, the decision made was sufficient to dispose of the appeal on liability and therefore there was no necessity to answer the question in respect of which the leave to appeal was granted. Taking into account the circumstances of the case, the Federal Court allowed the appellant's appeal on damages and was of the considered view that a total award of RM600,000.00 would be reasonable.

> *"48. ... So, the first element which must be established is whether the article as a whole concerned a matter of public interest. If it is, then comes the second question – whether the inclusion of the defamatory statement is justified? However, the fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. The more serious the allegation, the more important is that it should make real contribution to the public interest element in the article. The question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. In considering this question, the court must give allowance for editorial judgment ... ".*
>
> *per Justice Ahmad Maarop,*
> *Chief Judge of Malaya*

Malayan Banking Berhad v Neway Development Sdn. Bhd. & 3 Ors
[2017] 5 MLJ 180

The appellant, Malayan Banking Berhad, had granted a term loan to the fourth respondent to part finance the purchase of a native land in Sabah from the original registered native owner, Tan Haw Bin. Since the fourth respondent was not a native by definition in Sabah Land Ordinance (Cap 64)('the Ordinance') and thus prohibited to buy directly any native land, a native nominee by the name of Chin Nyuk Fong, who

was a staff of the fourth respondent, was used to enter into the sale and purchase agreement and to hold the native land in trust for and on its behalf. The native nominee also executed a power of attorney giving absolute power to the fourth respondent to sell, dispose of, charge or in any way deal with the native land. The second and third respondents were the directors of the first respondent. By way of a deed of assignment, the fourth respondent absolutely assigned the term loan to the first respondent whereas the fourth respondent together with the second and third respondents stood as guarantors for the term loan with the full knowledge and consent of the appellant. Following the first respondent's failure to settle the term loan, steps were taken by the appellant to dispose of the native land in order to recover the balance outstanding.

The High Court dismissed the claim on the ground that the term loan was for an illegal purpose in that it was given for the purchase of the native land in contravention of sections 17(1) and 64(1) of the Ordinance which prohibit any dealing between a native and a non-native in respect of a native land. Therefore, since the transaction was tainted with illegality, the whole sale and purchase agreement was void by virtue of sections 24(a) and (b) of the Contracts Act 1950. Accordingly, all the other instruments connected with the sale and purchase agreement such as the deed of assignment and the letters of guarantee were also tainted with illegality. The Court of Appeal agreed with the findings of the High Court. In dismissing the appeal by the appellant, the Court of Appeal ruled that section 17(1) of the Ordinance prohibits any kind of dealings involving a non-native and a native and the term 'dealing' as defined in the Ordinance includes any trust deed created to circumvent the Ordinance.

Before the Federal Court, the appellant argued that sections 17(1) and 64(1) of the Ordinance were never infringed since there was never a transfer of the native land from a native owner to a non-native. It was further argued that while there was a trust deed capable of creating interest in the native land, it was incapable of registration under the Ordinance. It follows that the trust deed was not 'dealing' as defined in the Ordinance and thus, it was outside the ambit of any provision of the Ordinance. The appellant relied on the case of *Borneo Housing Mortgage Finance Bhd v. Bank Bumiputra Malaysia Bhd* [1991] 2 MLJ 261, HC. In that case it was held that a trust deed could not be considered as dealing as defined under the Ordinance. Based on the case, the appellant submitted that there was no prohibition for a beneficiary of such trust deed to acquire an equitable interest in native land and that the interest in such native land created by the trust deed would be between the trustee and the beneficiary. However, the Federal Court disagreed with these submissions and upheld the decisions of the courts below.

> *"22. At the outset we would think that the leave question is academic and misconceived in relation to this appeal. Our reason is this. It simply ignored the first stage of the transaction, namely, the purchase of the native land itself through the native nominee. It was obviously done in order to circumvent a clear statutory prohibition. As such the purchase was clearly illegal as correctly found by the courts below. It was not disputed that it was the fourth respondent who was the actual purchaser of the native land through the native nominee. Such fact was confirmed by the execution of successive power of attorney, an instrument prohibited by s 64(2) of the SLO. In the power of attorney dated July 8, 2002, the native nominee purportedly gave absolute powers to the fourth respondent to deal with the native land. Obviously the fourth respondent must have been very well aware of the statutory prohibition. As such the purchase the native land itself was illegal ab initio. Section 24(a) and (b) of the Contracts Act 1950 is clear. In our view no amount of gymnastic argument could remedy the default. Thus, any subsequent instrument and documentation that linked to or arose out of the purchase would have been tainted with such illegality. Hence, even the third party first legal charge security for the term loan given by the appellant was also tainted with illegality.*
>
> *23. There was also a deception practiced on the relevant Land Office, a part and parcel of the public administration in this country, in registering the native land under the name of the native nominee when in truth the real owner/buyer was the fourth respondent and thereafter registering the charge in favour of the appellant. And the appellant could not be heard to say that it was a bona fide lender without any knowledge on the purpose of the term loan. It knew the purpose of the term loan and knew well*

that it was the fourth respondent who was the actual owner/purchaser of the native land using the native nominee in order to circumvent the prohibition of s 17(1) of the SLO. Indeed, the appellant came to court with unclean hands. In our view therefore such a deception is contrary to public policy. The registration is therefore illegal and invalid. (See s 24(e) of the Contracts Act 1950.)

...

32. *In respect of the contention that the law affecting native land in Sabah should be as propounded in the case of Borneo Housing Mortgage Finance Bhd (supra), we wholly disagree. We are of the view that that case was wrongly decided and we hereby overrule it."*

per Justice Richard Malanjum, Chief Judge of Sabah & Sarawak

Thai-Lao Co. Ltd. & Anor v Government of the Lao People's Democratic Republic [2017] 6 AMR 219

A joint venture agreement consisting of two mining contracts was entered between the first appellant, Thai-Lao Co. Ltd., and the respondent, the Government of the Lao People's Democratic Republic, under which the first appellant undertook to survey and mine lignite in North West Laos and to construct a lignite power plant in Hongsa, Laos. The second appellant, Hongsa Lignite Co. Ltd., was incorporated by the first appellant and the Agricultural Forestry and Import-Export Development Co Ltd of Laos with the aim to perform the target and objectives of the joint venture agreement. Thereafter, through a project development agreement (PDA), the respondent granted and the first appellant accepted, the exclusive right to develop and implement a Lignite-fired Power Complex to produce electricity in Hongsa, Laos. Pursuant to the terms of the PDA, a company by the name of Thai-Lao Power Co. Ltd. (TLP) was incorporated to implement

JUSTICE ABOVE ALL

(L - R): Tun Zaki Tun Azmi, Tun Arifin Zakaria, Chief Justice Tun Raus Sharif, Justice Zulkefli Ahmad Makinudin and Tun Abdul Hamid Mohamad

the project. South East Asian Power Co (SEAP) was incorporated to arrange for bank financing. However, the second appellant, TLP and SEAP were not parties to the PDA. After several years, neither mining nor production of electricity materialised. Subsequently, the respondent terminated the mining contracts and the PDA.

The arbitration agreement of the PDA made Malaysia its judicial seat under the UNCITRAL Rules but parties did not designate the law applicable to the arbitration. The Appellants invoked the arbitration clause in the PDA claiming that they were entitled under the New York Law to damages for the wrongful termination of the PDA. The Respondent objected to the claim by arguing that since the mining contracts were governed by Laotian Law, the arbitrators would lack the jurisdiction to apply New York Law to any matter relating to the mining contracts. The question of law before the Federal Court was that, where the governing law of the contract is a foreign law and the seat of arbitration is Malaysia, does the parties' stipulation of Malaysia as the seat constitute an express agreement that the law governing the arbitration agreement is Malaysian law? The Court observed, in very strong terms, the role of the courts in reviewing arbitral awards:

> *"239. We leave it to others to comment on the bearing and tone of that latter submission and the legitimacy of it. But we need to say this much. 'Support for arbitration' is not 'no disturbance'. There are always two sides to the same coin. The loser will call for 'disturbance'. If an arbitral award is a sacred cow and cannot be disturbed, that will not engender confidence in arbitration. 'No disturbance' may appear, at least superficially, to support arbitrators. But in truth, 'no disturbance' is anathema to arbitration. 'Do not disturb' will kill confidence in arbitration. Once confidence is lost, both arbitration and arbitrators will be the worst for it. For arbitration to continue to be relevant, it must be accepted that arbitral awards are not sacrosanct. Arbitral awards will be reviewed by the supervisory court of the seat. Arbitration will be dead, in Malaysia and elsewhere, if a supervisory court will only to rubber stamp arbitral awards."*

The Federal Court answered the leave questions in the following terms:

> *"244. We need not answer leave questions 2 - 6, as we do not agree that there was a counter-claim and or that a challenge to standing is not a challenge to jurisdiction. But we will answer leave question 1, in the following terms:*
>
> *...*
>
> *The seat of the arbitration establishes the lex arbitrii and the curial law of the arbitration.*
>
> *Where the seat is Malaysia, AA 2005 is the lex arbitrii. Section 30(4) of AA 2005 provides that where parties failed to designate the law applicable to the substance of the dispute, the arbitral tribunal shall apply the law determined by the conflict of laws rules. It follows, that where parties failed to designate the law applicable to the arbitration agreement, the arbitral tribunal shall apply the law as determined, also, by the conflict of laws rules.*
>
> *Under the conflict of laws rules, the law with the closest and most real connection to the arbitration agreement is the law applicable to the arbitration agreement. More often than not, the law of the seat has the closest and most real connection to the arbitration agreement.*
>
> *The stipulation of Malaysia as the seat is not an express agreement that the law applicable to the arbitration agreement is the law of Malaysia.*
>
> *But under the conflict of laws rules, the stipulation of the seat is usually decisive in the determination of the law applicable to the arbitration agreement. Unless it is shown to be the contrary, the stipulation of Malaysia as the seat is a tacit agreement that the law applicable to the arbitration agreement is the law of Malaysia."*
>
> *per Justice Jeffrey Tan Kok Wha,*
> *Judge of the Federal Court*

Semenyih Jaya v Pentadbir Daerah Hulu Langat [2017] 3 MLJ 561

The Federal Court was tasked to scrutinise the constitutionality of sections 40D of the Land Acquisition Act 1960 (LAA) in the context of Articles 13 and 121(1B) of the Federal Constitution. The crux of the matter lay in the conflict between section 40D(1) of the LAA, which allowed two lay assessors rather than the judge with whom they sat to conclusively determine the amount of compensation in a land reference proceedings, and Article 121(1B) of the Federal Constitution, which provides that the judicial power to decide a dispute in the superior courts resided with the courts and was exercisable only by judges appointed under Article 122B of the Federal Constitution. Under section 40D(2) of the LAA, where the assessors disagreed on the amount of compensation, the judge could only concur with either one of them and the decision of the assessor with whom the judge had concurred would prevail. Section 40D(3) further provides that any decision made under sections 40D(1) and (2) to be final and non-appealable.

The cumulative effect of section 40D(1) and (2) rendered the constitutional guarantee of adequate compensation, as enshrined under Article 13(2) of the Federal Constitution, illusory since the provisions transferred the power of determining the adequacy of compensation to two assessors and reduced the role of the High Court judge to a purely mechanical one. The Federal Court held that the power to award compensation in land reference proceedings is a judicial power that should rightly be exercised only by a judge. Further, business loss at the time of the compulsory acquisition must be taken into account in determining the market value of the property for the purposes of compensation. The Federal Court declared that section 40D of the LAA was *ultra vires* Article 121 of the Federal Constitution. Through its ruling, the Federal Court propounded that the principles of judicial power, judicial independence and separation of powers are integral to and form part of the basic structure of the Federal Constitution which cannot be modified even by Parliament.

> *"88. The Judiciary is thus entrusted with keeping every organ and institution of the state within its legal boundary. Concomitantly the concept of the independence of the Judiciary is the foundation of the principles of the separation of powers.*
>
> *89. This is essentially the basis upon which rests the edifice of judicial power.*
>
> *90. The important concepts of judicial power, judicial independence and the separation of powers are as critical as they are sacrosanct in our constitutional framework.*
>
> *91. The concepts above have been juxtaposed time and again in our judicial determination of issues in judicial reviews. Thus an effective check and balance mechanism is in place to ensure that the Executive and the Legislature act within their constitutional limits and that they uphold the rule of law. The Malaysian apex court had prescribed that the powers of the Executive and the Legislature are limited by the Constitution and that the Judiciary acts as a bulwark of the Constitution in ensuring that the powers of the Executive and the Legislature are to be kept within their intended limit (see Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135)."*
>
> *per Justice Zainun Ali,*
> *Judge of the Federal Court*

CTI Group Inc v International Bulk Carriers SPA [2017] 5 MLJ 314

This case involved the registration and enforcement of a foreign arbitral award. The award debtor sought to challenge the enforcement of the award on the basis that it was not a party to the share transfer agreement (the "STA") containing the arbitration clause. The award debtor was however a party to two other agreements that were annexed to the STA. Although the STA was exhibited before the High Court, the annexes were not. The High Court had nonetheless granted the order under section 38 of the Arbitration Act 2005 for the recognition and enforcement of the foreign arbitral award, on the basis that the annexes were an integral part of the STA, and thus the non-production of the annexes were irrelevant as the arbitration agreement was found in the STA. The Court of Appeal however reversed the decision of the High Court. The Federal Court allowed the award creditor's appeal and restored

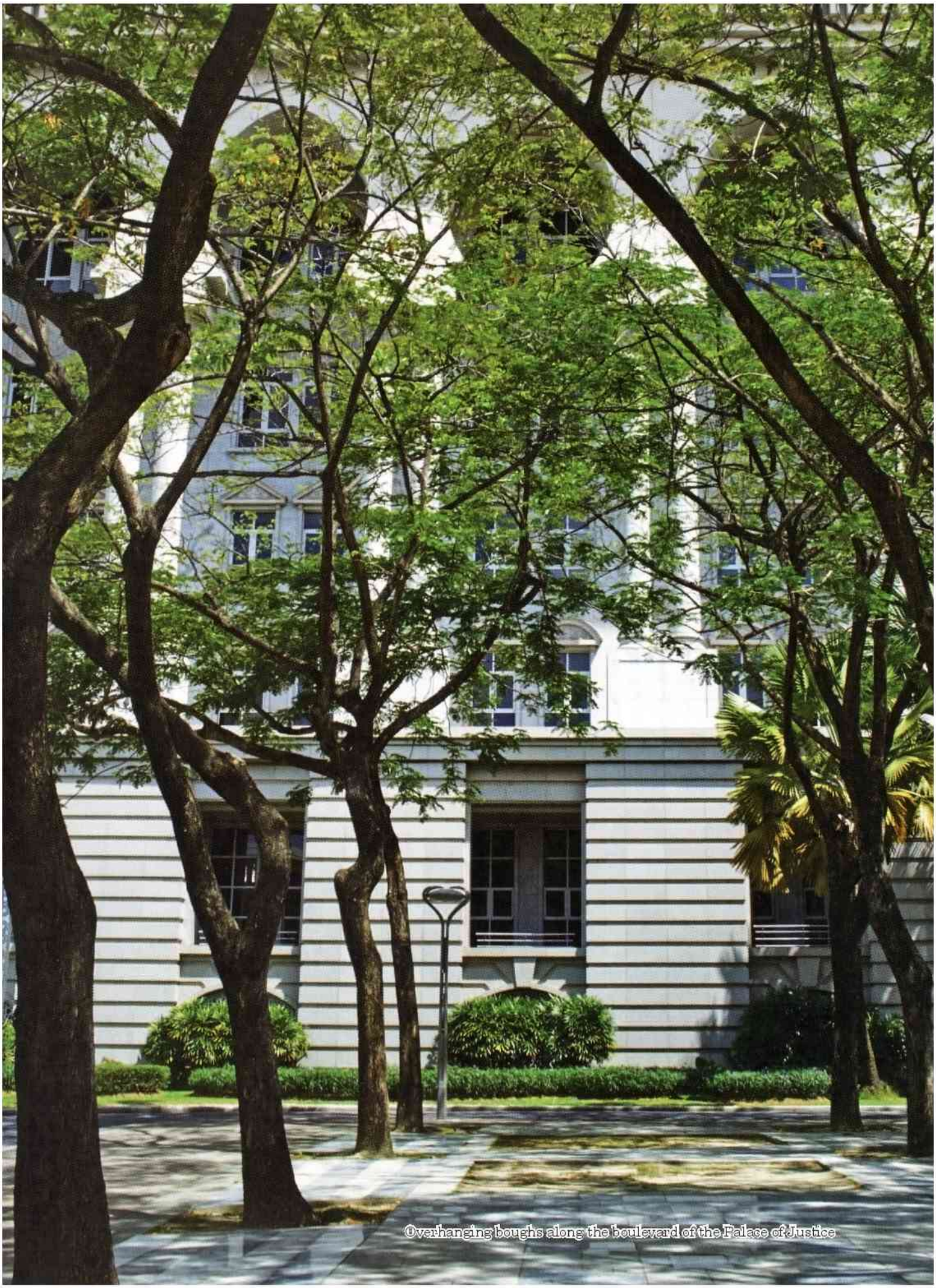
the decision of the High Court, holding that it was not open to the award debtor to challenge the recognition and enforcement of an award under section 39 on grounds that there was non-compliance with the requirements of section 38.

> *"105. In our view, the two-stage process for the enforcement of arbitral awards as contained in ss 38 and 39 of our Arbitration Act (read with O 69 r 8 of the Rules of Court 2012) does not permit a party seeking to set aside an order made under s 38 to apply to set it aside under that very section on the ground that there was no arbitration agreement in existence between the parties. That party must apply to set that order aside under s 39.*
>
> *106. When the matter moves to the second stage under s 39, the defendant can only apply to set aside the order made under s 38 upon any one or more of the grounds set out in s 39 and no other."*
>
> *per Justice Zaharah Ibrahim,*
> *Judge of the Federal Court*

Ketua Polis Negara & Ors v Nurasmira Maulat bt Jaffar & Ors [2017] 8 AMR 829

This case concerned three appeals in relation to dependency claims following death in police custody. Among the issues that were raised before the Federal Court were whether exemplary damages can be awarded in claims founded under section 7 of the Civil Law Act 1956 (CLA); and whether general damages for pain and suffering can be awarded to a plaintiff in a dependency claim brought under section 7 of the CLA. On the first question, the Federal Court held that section 7(3) of the CLA clearly stipulates that the nature of compensation is restricted to any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the tortfeasor. An award of exemplary damages under section 7 of the CLA is clearly contrary to the legislature's intention in enacting that section. On the second question, the Court observed that section 7 of the CLA does not provide for general damages for pain and suffering. For loss other than pecuniary loss, the only damages claimable under section 7 of the CLA are damages for bereavement.

> *"92. Subsection 7(3) of the CLA clearly specifies that damages which the person against whom the action is brought is liable to pay "shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default." The critical words are "compensate".*
>
> ...
>
> *94. An award of exemplary damages under section 7 is clearly contrary to the legislature's intention in enacting that section. The legislature obviously did not anticipate that such an award would be made. Hence, an express provision disallowing such an award is not required in section 7.*
>
> ...
>
> *96. As section 7 of the CLA is a provision enabling the specified dependants of a deceased person who came by his death due to the wrongful act, neglect or default of another to claim for damages in their own right to compensate them for loss of support due to such death, a claim for the pain and suffering of the specified dependants (or even of the deceased person himself) is certainly beyond the purview of the section.*
>
> ...
>
> *101. For loss other than pecuniary loss, the only damages that section 7 of the CLA allows to be claimed are damages for bereavement. However, such damages can only be awarded to the spouse of a deceased person or, if he was a minor and never married, his parents. The sum that can be awarded as damages for bereavement is RM10,000.00, subject to the power of the Yang di-Pertuan Agong to vary such sum."*
>
> *per Justice Zaharah Ibrahim,*
> *Judge of the Federal Court*



Overhanging boughs along the boulevard of the Palace of Justice

CASES OF INTEREST: CRIMINAL

Pendakwa Raya v Gan Boon Aun [2017] 3 AMR 164

The Federal Court was tasked to determine the constitutionality of section 122(1) of the Securities Industry Act 1983 (SIA). The respondent, Gan Boon Aun, was a director of Transmile Group Berhad and was charged for abetting Transmile in making a misleading statement relating to Transmile's revenue in the company's unaudited consolidated results for the financial year ended December 2006 under section 86(b) read with section 122C(c) of the SIA. He was also charged with an alternative charge for furnishing the same misleading statement to Bursa Malaysia under section 122B(a)(bb) read together with section 122(1) of the SIA. The defence contended that section 122(1) of the SIA violated the presumption of innocence, as embedded under Articles 5(1) and 8(1) of the Federal Constitution. Further, it was contended that section 122(1) of the SIA offended the doctrine of separation of powers as it was not open to Parliament to usurp judicial power by placing the liability of a body corporate upon a director.

It was also contended that the continued prosecution of the accused on the alternative charge after being acquitted of the principal charge breached Article 7(2) of the Federal Constitution. In declaring that section 122(1) of the SIA is constitutional, the Federal Court emphasised that the provision does not violate the presumption of innocence as the prosecution bears the burden to prove the charge against the accused beyond reasonable doubt. On the question of whether section 122(1) of the SIA offended the doctrine of separation of powers, Federal Court ruled that the section was merely an offence-creating provision, and the power to adjudicate the guilt or innocence is left to the courts to decide. On the issue of double jeopardy under Article 7(2) of the Constitution, the Federal Court held that the ingredients of the offence for the principal and alternative charges were different, hence the protection against double jeopardy does not apply.

> *"60. The ingredients of the principal and alternative charge were different in fact and in law. A plea of autrefois acquit would not succeed. Unfortunately, that fourth 'constitutional issue' was not recognised by the courts below for what it was. In substance, the fourth 'constitutional issue' was just a plea of autrefois acquit. It should not have been accepted by the courts below as a 'constitutional issue' when it was not. The fourth 'constitutional issue' should also not have been referred to this court for determination."*
>
> *per Justice Jeffrey Tan Kok Wha, Judge of the Federal Court*

Hamzah bin Osman v Public Prosecutor [2017] 5 MLJ 16

The appellant, Hamzah bin Osman, was charged for murder in the High Court under section 302 of the Penal Code and after trial, was convicted and sentenced to death. The Court of Appeal upheld the conviction and sentence of the High Court. Before the Federal Court, the appellant argued that there was non-compliance with the relevant provisions of sections 342 and 343 of the Criminal Procedure Code (CPC) when the High Court accepted that the accused was fit to stand trial without the supporting Certificate of Medical Director tendered and marked as an exhibit. According to the appellant, the non-compliance with the aforesaid sections rendered the proceedings a nullity and a retrial of the same. On the other hand, the respondent argued that the said provisions were merely directory in effect and no prejudice had been occasioned to the appellant. The Federal Court allowed the appeal and remitted the matter to the High Court to be retried.

> *"8. It must be emphasised, that ss 342 and 343 of the CPC is concerned with the mental state of mind of the appellant at the time of the plea. These aforesaid sections afford protection to an accused who is suspected of being of unsound mind and would be incapable of understanding the nature of the charges against him and the meaning and import of evidence adduced against him. The 'raison d'etre' of these sections is that the mental state of the accused renders him in capable of making his defence thereby reducing his presence at the proceedings to a nullity. These sections do not apply to a situation where the accused is going to rely on*

a plea of insanity as a defence at the time of the commission of the offence. In our instant case a plea of insanity was never raised by the appellant. To encapsulate, we are dealing with the concept of fitness to plead, or fitness to stand trial, fitness to be tried and fitness to make defence which is the phraseology in ss 342 and/or 343 of the CPC, but which terms are used interchangeably (see Kesavarajah v The Queen (1994) 181 CLR 230 at p 232, NB p 234).

9. *On the evidence, it is clear the High Court, after having investigated the fact of unsoundness of the appellant, exercised its powers under 342(3) and remanded the appellant for observation at Hospital Bahagia Tanjong Rambutan. We note from the notes that no certificate of the Medical Director was forth coming nor was the same produced and or tendered in court. Apart for an oral assertion by the respondent which tantamounted to a statement from the BAR table at the highest, there was clearly non-compliance with s 324(1) of the CPC. In our view, the soundness or otherwise of the appellant to plead remained unresolved as the basis for the finding must be the certificate to state whether the appellant was fit to stand trial, although the Medical Director needed not be present in court to tender the same his certificate would be admissible. Since there was non-compliance of s 343(1) of the CPC after a reference was made by the High Court under s 342(1) of the CPC, in our view proceeding with the trial as was done in this case by the High Court rendered the trial a nullity.*

10. *The Court of Appeal in its grounds of judgment dealt with the issue at paras*

The terrestrial yellow canna lilies at the main entrance of the Palace of Justice, Putrajaya.

27-29 of their grounds appearing at pp 30, 34 and 40 of the same. The essence of the approach of the Court of Appeal was as the trial had proceeded in earnest, the issue of fitness to plead had been overtaken by circumstances and at any rate no prejudice had befallen the appellant. This was echoed by the respondents in their submissions before this court. We would hold that the statutory injunctions in s 342(1) and 343 of the CPC are sacrosanct to the fundamental right of the appellant in our Criminal Justice System to avail himself of the right to ensure that he is in law fit to plead and understand the consequence of proceedings against the appellant. These are mandatory provisions and non-compliance with the same would in our view render a trial a nullity as in our instant case and under those circumstances the Court of Appeal misdirected itself in considering prejudice in this instant appeal where there had be non-compliance of the said section."

per Justice Prasad Sandosham Abraham,
Judge of the Federal Court

Menteri Dalam Negeri, Malaysia & Anor v Seyed Ramin Paknejad [2017] 4 MLJ 303

A warrant of arrest was issued by the Bangkok Criminal Court against the respondent, Seyed Ramin Paknejad, after he had failed to turn up in court to stand trial on a charge for illegal possession of heroin and nine charges of document forgery. Pursuant to the Extradition Treaty recognised by both governments, an extradition request was made by the Government of Thailand to Government of Malaysia whereby a provisional warrant of arrest was issued by the Kuala Lumpur Magistrates' Court against the respondent. Subsequent to his arrest, the respondent was remanded until he was brought before the sessions court. On application made by the public prosecutor, a warrant of committal was then issued by the sessions court by which the respondent was committed to prison pending extradition.

The respondent filed an application for a writ of *habeas corpus* at the Kuala Lumpur High Court but the application was dismissed. On appeal, the Federal Court allowed the appeal and ordered a rehearing of the respondent's case before another High Court judge as the decision dismissing the application was made without the benefit of the grounds of judgment of the Sessions Court judge who issued the warrant of committal. On rehearing before the High Court, the grounds raised by the respondent, *inter alia*, were issues on dual criminality and rule of speciality. The learned High Court judge found that the affidavits in support of the extradition request indicated that the respondent would be prosecuted for additional offences other than those in the charges for which extradition was requested and there was no undertaking by the Government of Thailand that the respondent would face only those charges. In addition, the learned High Court judge was of view that based on the Extradition Treaty, the nature and consequences of the charges that the respondent would face must be certain and proved at the *prima facie* stage before a committal order could be made. The learned High Court judge therefore allowed the application for a writ of *habeas corpus* and ordered that the respondent be released from detention. The appellants appealed.

The issue before the Federal Court was whether the committal order by the Sessions Court pending the extradition order by the minister offends the rule of speciality and the rule of dual criminality. In allowing the appeal, the Federal Court first examined whether there was compelling evidence suggesting that Thailand will act in breach of the rule of speciality so that the respondent's extradition should be refused and therefore the order for his committal pending the order for his extradition should not have been made. On the authorities adduced before it, the Court noted the established presumption that the requesting states would act in accordance with their international obligations in respect of the rule of speciality. Therefore, compelling evidence was required to displace that presumption.

The Court observed that Malaysia has had an extradition arrangement with Thailand from as early as in 1911, initially through Great Britain. Upon the enactment of the Extradition Ordinance 1958, the relationship forged by the Treaty between Great Britain and Thailand was reaffirmed by way of an exchange of notes in October 1959 and given legislative effect by the Extradition (Thailand) Order 1960. The Court further noted that there was no evidence at all before the courts below that Thailand had in the past acted in breach of the rule of speciality. Having perused the affidavits in support of the extradition request, the Court was of the view that the affidavits of the three Thai officers cannot be said to be 'compelling evidence' that the Thai authorities would act in breach

of the rule of speciality. Therefore, the issue of the Thai Government providing an undertaking did not arise.

On the rule of dual criminality, the Court inquired whether the offences in the charges upon which the extradition request was made were offences which corresponded to offences in Malaysia. In relation to the nine charges for the counterfeiting of documents, the Federal Court compared sections 91 and 264 of the Thailand Penal Code with the equivalent provision in Malaysia provided under section 468 of the Malaysian Penal Code. The Court also noted that the offence of forgery is clearly listed as item 6 in the list of offences in article II of the Treaty embodied in the Extradition (Thailand) Order 1960. Therefore, the Court held that the rule of dual criminality as provided under section 6 of the Malaysian Extradition Act had not been breached. Similarly, in relation to the charge for possession of narcotics, the Federal Court compared sections 7, 15 and 67 of Thailand Narcotics Act 1979 with sections 11(1), 12(2) and (3) of the Malaysian Dangerous Drug Act 1952. However, the Court noted the specific absence of offences relating to possession of narcotics in the list of extradition offences in the Treaty embodied in the Thailand Order. On this issue, the Court made reference to the final paragraph in article II of the Treaty in the Thailand Order which states that extradition may also be granted at the discretion of the State applied to in respect of any other crime for which, according to the law of both the Contracting Parties for the time being in force, the grant can be made. The Court went further to state:

> *"73. As can be seen from the above discussion, the narcotic offence with which the appellant is charged is an extradition offence under s 6 of our Extradition Act. The only question is whether the offence is also an extraditable offence under the Thai law.*
>
> *74. In our view, as the discretion lies with state to which the extradition request is made as to whether to grant extradition for an offence not listed in article II, it is that state which is in the best position to determine if the grant can be made.*
>
> *75. In the case before us, the request had been made to Malaysia but the Minister had yet to make his order for extradition at the point in time that the application for habeas corpus was made by the respondent.*
>
> *76. However, the fact that the request was being processed by the Malaysian Government in accordance with the Thailand Order and the Extradition Act is prima facie evidence of the government's satisfaction that the grant could be made.*
>
> *77. What remains certain is that an extradition order can certainly be made based on the nine forgery charges."*
>
> *per Justice Zaharah Ibrahim,*
> *Judge of the Federal Court*

Public Prosecutor v Surbir Gole
[2017] 1 MLJ 549

The respondent, Surbir Gole, was charged under section 302 of the Penal Code for murdering one Tai Ai Ping ('the deceased'). The respondent stabbed the deceased who was then bleeding profusely, became unconscious and was taken to the hospital. The cause of the death was 'stab wound to the chest'. Before the High Court, the respondent invoked the defence of grave and sudden provocation. According to him, he was subjected to verbal abuse, ill-treatment and mental torture by the deceased for a significant period of time. Based on the evidence adduced and the circumstances of the incident, the learned trial judge found that the respondent had lost control of himself as a result of the cumulative provocation by the deceased; that the incident happened in a short span of time; and that the deceased did not die immediately. For these reasons, the learned trial judge concluded that the element of intention to kill did not exist. Having found that grave and sudden provocation had been proven, the learned trial judge held that Exception 1 to section 300 of the Penal Code applied. The accused was consequently convicted under paragraph 304(b) of the Penal Code and sentenced to imprisonment for a period of ten years.

On appeal, the Court of Appeal dismissed the prosecution's appeal. Before the Federal Court, the public prosecutor's sole ground of appeal was that the Court of Appeal had erred in finding that the accused's act in stabbing the deceased and thus causing her death was an act committed as a result of cumulative provocation which qualifies as grave and sudden provocation under Exception 1 to s 300 of the Penal Code. The Federal Court affirmed the decision of the courts below. Whether provocation is grave and sudden is a question of fact. Grave and sudden provocation can be precipitated by the accumulated effects of the acts of the deceased over a significant period of time.

(L - R): Justice Zainun Ali, Chief Justice Raus Sharif, Justice Richard Malanjum and Juctice Jeffrey Tan Kok Wha during the opening ceremony of Parliament

"33. In the case of Lorensus Tukan v Public Prosecutor [1988] 1 MLJ 251; [1988] 1 CLJ 143; [1988] 1 CLJ Rep 162, referred to by the Federal Court in Che Omar's case, Seah SCJ, in delivering the judgment of the Supreme Court said: The test of 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control (see Nanavati v State of Maharashtra AIR [1962] SC 605, 530).

34. It appears to us that the term 'cumulative provocation' used or referred to in the High Court and the Court of Appeal in this case, and the cases referred to or cited in both courts, was used in relation to a series of provocations each of which is not by itself grave. It is only when all the provocations in the series are accumulated that the sum total of them becomes grave provocation.

35. We believe that Che Omar's case has made the legal position clear with regard to cumulative provocation of the nature described in para 34 above. We ought to be reminded that the defence of 'cumulative provocation' does not exist in our criminal law, and therefore we are not persuaded that it is a permissible defence to s 300 of the Penal Code. Only the defence of grave and sudden provocation is specifically provided for in Exception 1 to s 300 in the Penal Code. We are not inclined to agree to any departure from the established law.

36. We wish to reiterate, however, that provocation to an accused person that is ordinarily and by itself not grave may be grave enough to fall within Exception 1 to s 300 when, after all the circumstances of the case before and during that provocation are taken into consideration, it can be concluded that 'a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be so provoked as to lose his self-control'.

37. To be able to come within Exception 1, the provocation that an accused person is relying on must not only be grave, but must also be so sudden as to cause the accused person to 'lose his self-control', and act in spontaneous reaction to the grave provocation.

38. It is the kind of suddenness that, to use the words in the illustrations to Exception 1 to s 300 in the Penal Code, 'excited' the accused person to 'sudden and violent passion' or to 'violent rage'.

39. Ultimately, however, whether the provocation is grave and sudden is a question of fact."

per Justice Zaharah Ibrahim,
Judge of the Federal Court

Pendakwa Raya v Awalluddin bin Sham Bokhari [2017] 8 AMR 533

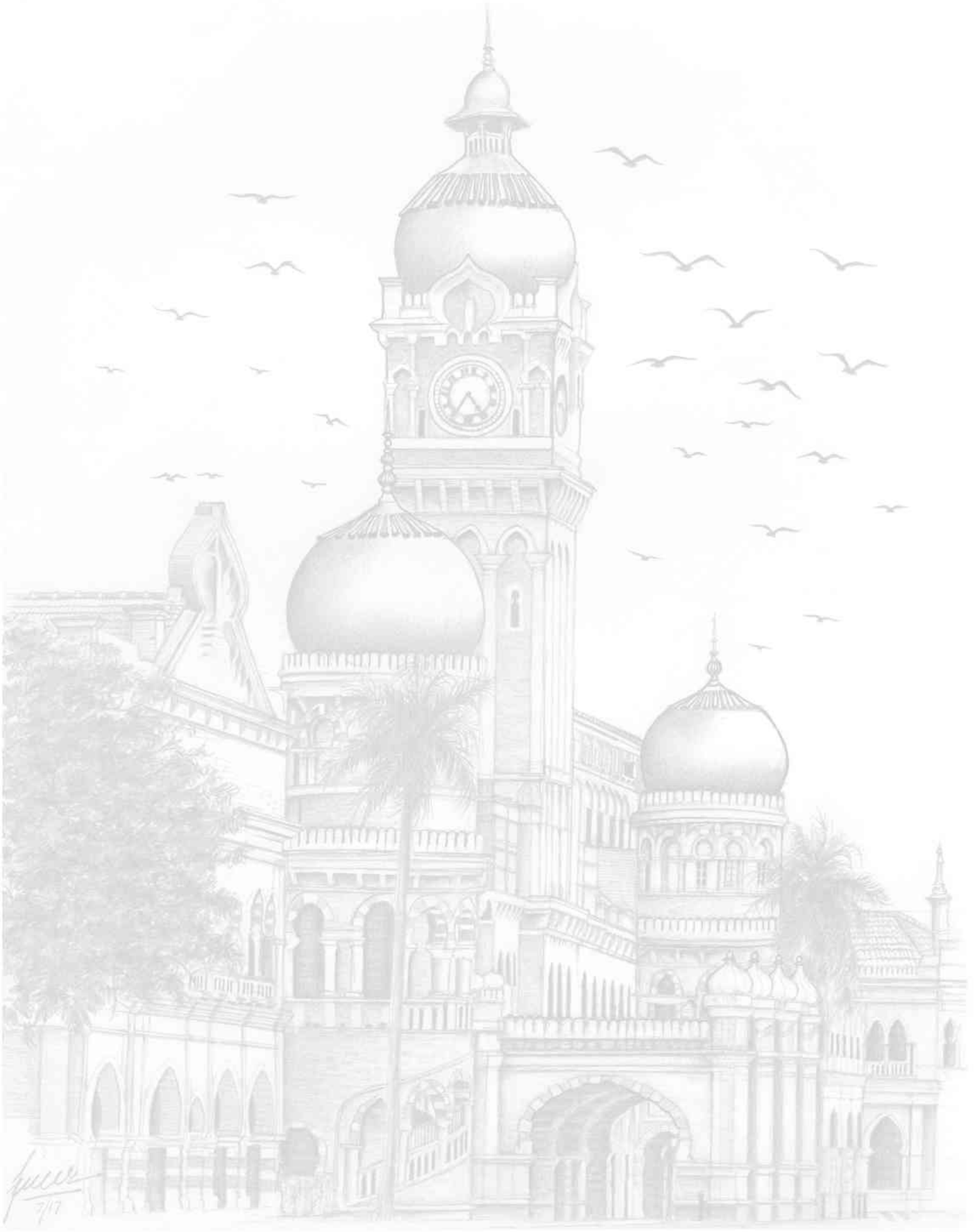
The appellant, the Public Prosecutor, had applied pursuant to section 56 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('the Act') for an order of forfeiture of the properties and money in investment account of the respondent, Awalluddin bin Sham Bokhari. The crux of the appellant's case was that the properties and the money in the investment account had been obtained out of the proceeds of an unlawful activity made possible with the assistance of one Simathari a/l Somenaidu (originally the first respondent) and Sharafaizan bin Abd Samad (originally the second respondent) as conspirators. The first and second respondent did not appear at the hearing to contest the appellant's application and the High Court thereupon ordered their properties to be forfeited accordingly to the government. The respondent was an employee of Malaysia Airline Berhad ('MAS') who handled bookings by and sales of airline tickets to passenger. He was also the sole proprietor of a firm, known as Ashha Leisure Resources, which carried on business as ticketing and commission agent. Simathari a/l Somenaidu was attached to the Administrative Section of Markas Tentera Laut ('MTL'), Ministry of Defence, Jalan Padang Tembak, Kuala Lumpur whose duty was to prepare and issue air travel warrants to MAS strictly on behalf of MTL's personnel through various travel agents. On the other hand, Sharafaizan bin Abd Samad was a ticketing clerk at YHA Travel and Tours (M) Sdn. Bhd. who had frequently dealings with the respondent relating to sales of airline tickets. The respondent's *modus operandi* was that having received confirmed bookings of online tickets from passengers, he then sent the name of the passengers to Sharafaizan who, in turn, contacted Simathari for approval. Simathari then issued the air travel warrants to MAS via YHA Travel and Tours (M) Sdn. Bhd. By procedure, MAS would have to present the warrants to MTL for payment. Each air travel warrant consisted of four copies where the first copy (original) bearing the name of the MTL's personnel would be kept by MTL and the remaining three were given to the relevant travel agent. The names of the approved passengers, who were members of the public were then entered in the copies of the air travel warrants together with the names of MTL's personnel. The names of members of the public would not appear in the original warrant. Tickets purchased by the use of the warrants were sold at lower prices. The tickets purchased by members of the public through the travel agents were sold at market price. Members of the public would not know what transpired between the respondent, Simathari and Sharafaizan. Sharafaizan then presented the warrants to MAS for payments and MAS in turn claimed reimbursement from MTL. Consequently, MTL ended up paying MAS not only for the costs of travel by MTL's personnel but also the travelling costs of members of the public, whose names appeared in the warrants. The proceeds derived by the respondent through this *modus operandi* were used by him to purchase the said properties or for investment. This *modus operandi* was explained in the affidavit of DSP Ku Ismail bin Ku Awang and in the rebuttal of the investigation officer, DSP Amran bin Yaacob.

The High Court was satisfied that the appellant had, on balance of probabilities, shown that the respondent acquired the properties out of proceeds of an unlawful activity. The respondent, on the other hand, had failed to discharge the burden to show that the properties had been acquired through his legitimate sources of income. The High Court found that his income from known legitimate sources were insufficient to support the purchases of the properties. The High Court allowed the appellant's application and ordered the respondent's properties to be forfeited to the government. On appeal, there were two issues for determination. The first issue was whether the trial High Court judge had satisfied the first threshold of section 56(4) of the Act which required the appellant to prove, on the balance of probabilities, that the seized properties were the subject matter of or used in the commission of an offence under section 4 of the Act. The second issue was whether the trial High Court judge had evaluated the appellant's evidence, on the balance of probabilities, before he granted the order of forfeiture in respect of

the seized properties. The Court of Appeal allowed the respondent's appeal on two grounds. The first ground was that the prosecution relied heavily on paragraph 32 of the affidavit of the investigation officer which "in substance was purely hearsay" and that the contents of the affidavit also did not satisfy the criteria set out under Order 41 rule 5(1) of the Rules of Court 2012. The second ground was that the order of forfeiture is against the law and the Federal Constitution. The Court of Appeal ordered for the High Court's order to be set aside and the property seized to be returned.

The issue before the Federal Court was whether the Court of Appeal had erred in holding that the affidavit of the investigation officer in particular, paragraph 32 thereof, was "in substance purely hearsay". It was contended by the appellant that the case was not based on the affidavit of DSP Amran bin Yaacob alone but was also based on the affidavit of DSP Ku Ismail bin Ku Awang and the oral evidence of two other rebuttal witnesses who were called to rebut the respondent's testimony that he acquired the properties from income derived from his salary and earnings from his businesses and that his income was sufficient to purchase the properties. It was contended by the appellant that the contents of the affidavits affirmed by both police officers and the documents exhibited therein were based on their personal knowledge which were directly obtained from witnesses in the course of their investigations under the Act. In allowing the appeal and setting aside the decision of the Court of Appeal, the Federal Court held that:

> *"22. Section 32 of the Act confers wide powers on the investigation officer in investigating an offence of money laundering or terrorism financing offence. He may order any person whom he believes to be acquainted with the facts and circumstances of the case to:*
>
> *(a) attend before him for examination;*
>
> *(b) to produce before him any property, record, report or document; or*
>
> *(c) to furnish to him a statement in writing made on oath or affirmation.*
>
> *Any person who disobeys the order of the investigation officer commits an offence.*
>
> *23. The investigation officer is empowered to administer an oath or affirmation to the person being examined. The person being examined shall be legally bound to answer all the questions and to state the truth save that he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.*
>
> *24. The admissibility of the record of examination of any person or any property, record, report or document obtained by the investigation officer is governed by s 40 of the Act. The section overrides any written law or rule of law to the contrary.*
>
> ...
>
> *32. We have read the affidavits of DSP Amran bin Yaacob and DSP Ku Ismail bin Ku Awang in their entirety. What was deposed in paragraph 32 of DSP Amran bin Yaacob's affidavit should not be read in isolation and out of context. The affidavit must be viewed in its entirety. Paragraph 32 of the said affidavit was not evidence per se. It was basically conclusion based on information extracted from witnesses whose statements had been recorded by the investigation officer and from the numerous records and documents which were exhibited in the affidavit.*
>
> *33. Any property, record, report or document obtained by the investigation officer pursuant to s 32(2) of the Act are, by virtue of s 40 of the Act, admissible as evidence in any proceedings in any court for or in relation to an offence or any other matter under the Act or any offence under any other written law. The Court of Appeal was clearly in error in holding that paragraph 32 of the investigation officer's affidavit was "purely hearsay". It also erred in ruling that the learned trial judge committed an error in relying "on an affidavit which is not worth the paper it is written on". What had been deposed by these two senior police officers in their affidavits, which were based on their personal knowledge acquired in the course of investigation under s 32 of the Act, could not be said as purely hearsay."*
>
> *per Justice Abu Samah Nordin,*
> *Judge of the Federal Court*



APPENDIX A

(MALAYA)

STATISTICS 2017

IN THE HIGH COURT OF MALAYA AND HIGH COURT OF SABAH AND SARAWAK

A) INTRODUCTION

In the year 2017, the High Courts throughout the country have continued to maintain their high performance. The overall performance for Criminal Cases and Civil Cases in the High Court Of Malaya and High Court of Sabah and Sarawak are as follows:

- for Civil Cases, the High Courts have managed to dispose of 64,729 cases against registration of 64,715 cases. The percentage of disposal as against registration for Civil Cases is 100%; and
- for Criminal Cases, the High Courts disposed of a total of 7,005 cases against registration of 7,847 cases. The percentage of disposal as against registration is 89%.

The particulars of the performance for each High Court in Malaysia can be seen in the illustrated tracking charts and the tables of pending cases item one (1) until item fourteen (14) below.

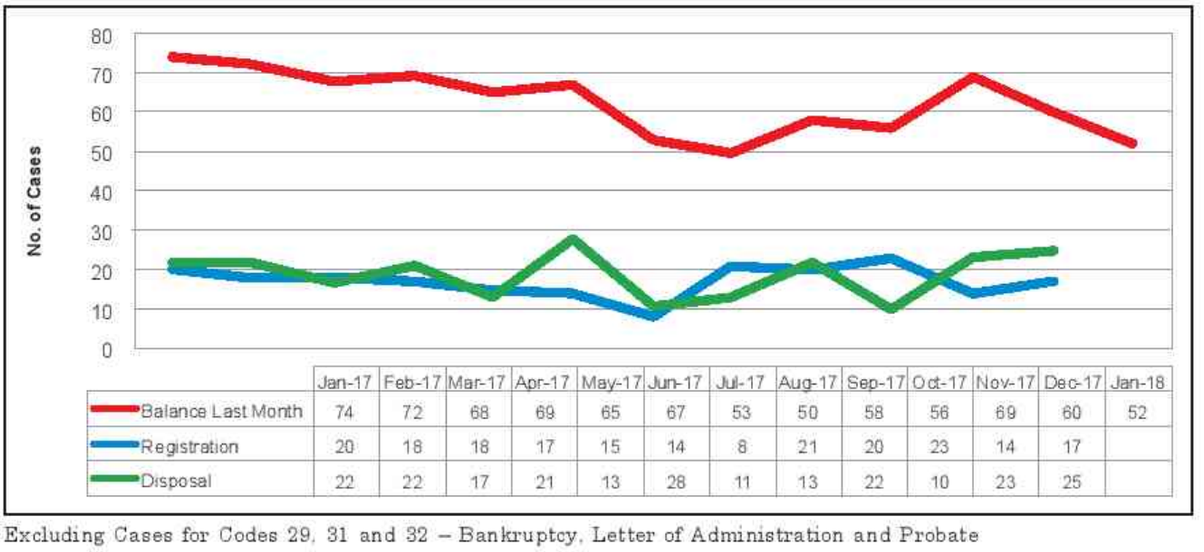
B) STATISTICS

1. PERLIS

1.1 IN THE HIGH COURT AT KANGAR– CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Kangar for the year 2017. The total number of Civil Cases registered was 205. The High Court has managed to dispose of 227 cases throughout the year 2017, leaving a total of 210 cases still pending as reflected in pending cases below. The rate of disposal against registration for Civil Cases in the High Court at Kangar for the year 2017 is 111%.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	74	72	68	69	65	67	53	50	58	56	69	60	52
Registration	20	18	18	17	15	14	8	21	20	23	14	17	
Disposal	22	22	17	21	13	28	11	13	22	10	23	25	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

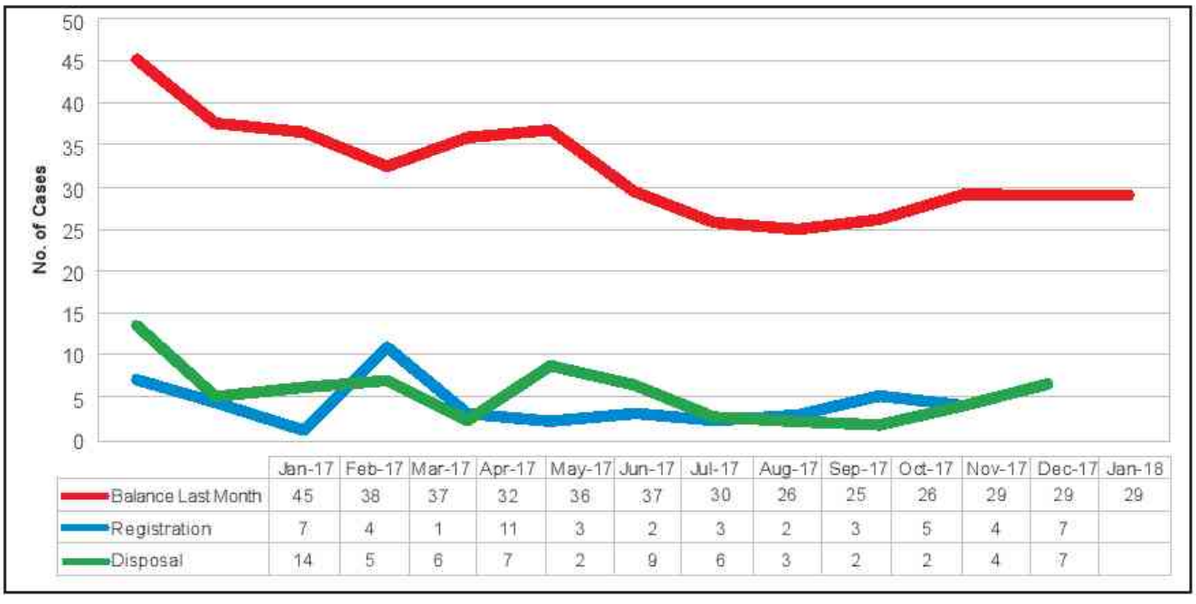
PENDING CASES
IN THE HIGH COURT AT KANGAR (CIVIL)
AS AT 31 DECEMBER 2017

YEAR	CODES																								Total
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2015											1	1													2
2016											2	1									35				38
2017	2	2	1	4			6	1				6			11		2			8	122	1		4	170
TOTAL	2	2	1	4			6	1			3	8			11		2			8	157	1		4	210

1.2 IN THE HIGH COURT AT KANGAR- CRIMINAL

For Criminal Cases in the High Court at Kangar, a total number of 52 cases including appeals and trials were registered and 67 cases were disposed of, leaving a balance of 29 cases as reflected in the pending cases below. The rate of disposal against registration for Criminal Cases in the High Court at Kangar for the year 2017 is 129%.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	45	38	37	32	36	37	30	26	25	26	29	29	29
Registration	7	4	1	11	3	2	3	2	3	5	4	7	
Disposal	14	5	6	7	2	9	6	3	2	2	4	7	

PENDING CASES
IN THE HIGH COURT AT KANGAR (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2013									1			2																		3
2016											2	1				2														5
2017			7		2	3		1			1	1				3		3												21
TOTAL			7		2	3		1	1		3	4				5		3												29

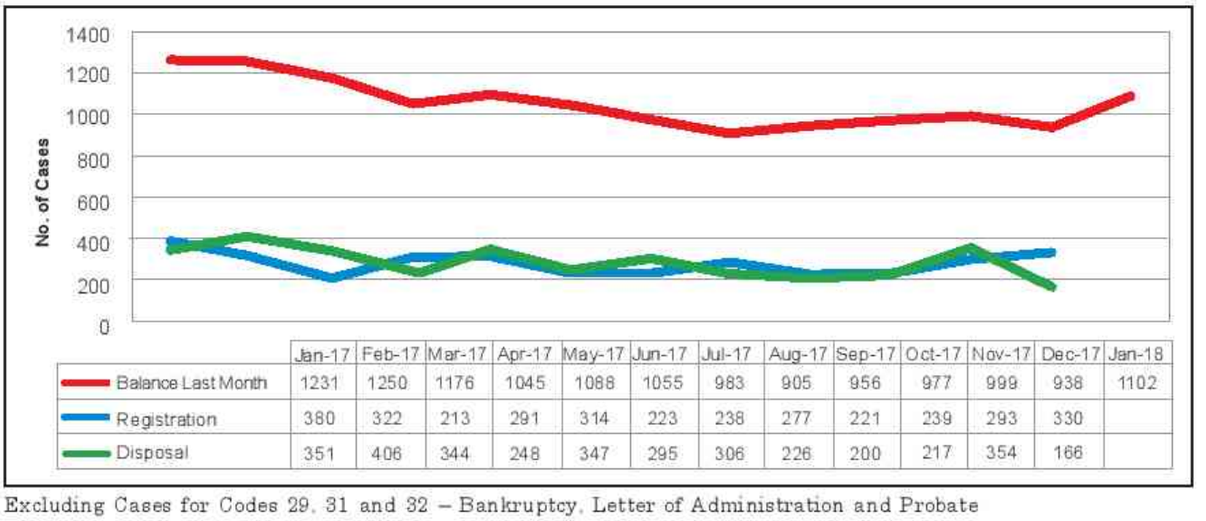
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

2. KEDAH

2.1 IN THE HIGH COURT AT ALOR SETAR - CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Alor Setar for the year 2017. Alor Setar High Court has managed to dispose of more than registration. The total number of disposal for Civil Cases was 3,460 cases as against registration of 3,331 cases in year 2017 leaving a balance of 2,958 cases pending, as reflected in the pending cases below. From January to December 2017, the High Court has managed to dispose of 104% Civil Cases.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1231	1250	1176	1045	1088	1055	983	905	956	977	999	938	1102
Registration	380	322	213	291	314	223	238	277	221	239	293	330	
Disposal	351	406	344	248	347	295	306	226	200	217	354	166	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
AS AT 31 DECEMBER 2017

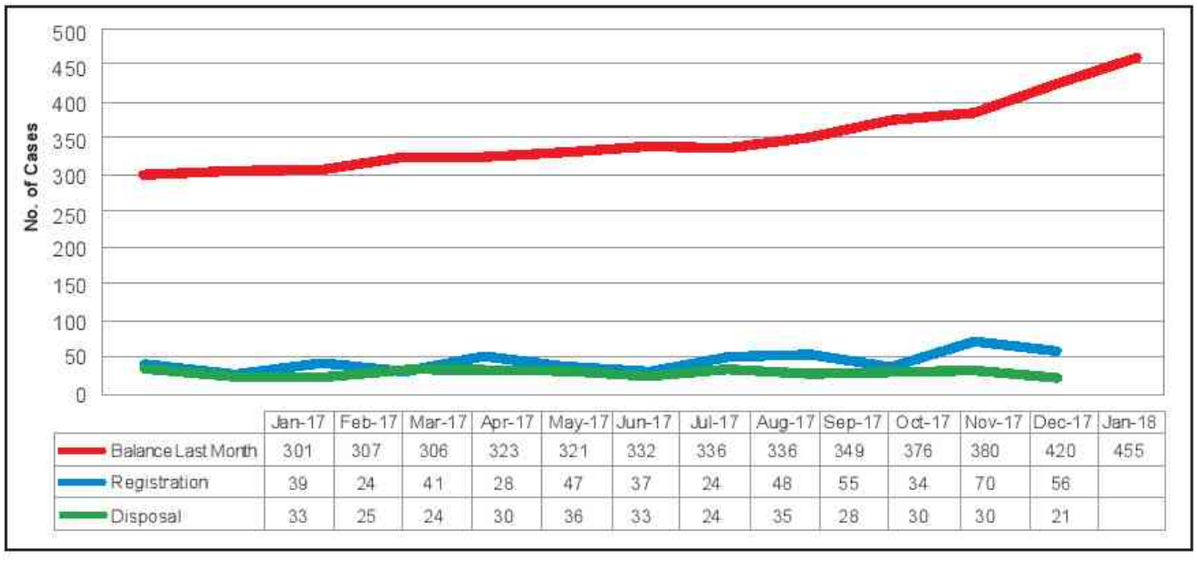
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009							3																			3
2013												2														2
2014							4				1	1														6
2015			1				26				2	11									9					49
2016		2		8			12				5	36		2	3		5				419		1	3		496
2017	26	56	30	102			43	12	3	3	27	76		1	443		17			31	1399	18	10	105		2402
TOTAL	26	58	31	110			88	12	3	3	35	126		3	446		22			31	1827	18	11	108		2958

A : Interlocutory B : Full Trial

2.2 IN THE HIGH COURT AT ALOR SETAR – CRIMINAL

For the year 2017, the rate of disposal against registration for Criminal Cases in High Court at Alor Setar is 69%. The High Court has managed to dispose of 349 cases out of 503 cases registered, leaving a balance of 455 cases still pending as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	301	307	306	323	321	332	336	336	349	376	380	420	455
Registration	39	24	41	28	47	37	24	48	55	34	70	56	
Disposal	33	25	24	30	36	33	24	35	28	30	30	21	

PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44			39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors		45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2014																1														1
2015																12		5								1				18
2016		1	4					5	6		2	1				39		8								3	1			70
2017		15	109		1	1		33	62		3	4	3		10	55		13								54		3		366
TOTAL		16	113		1	1		38	68		5	5	3		10	107		26								58	1	3		455

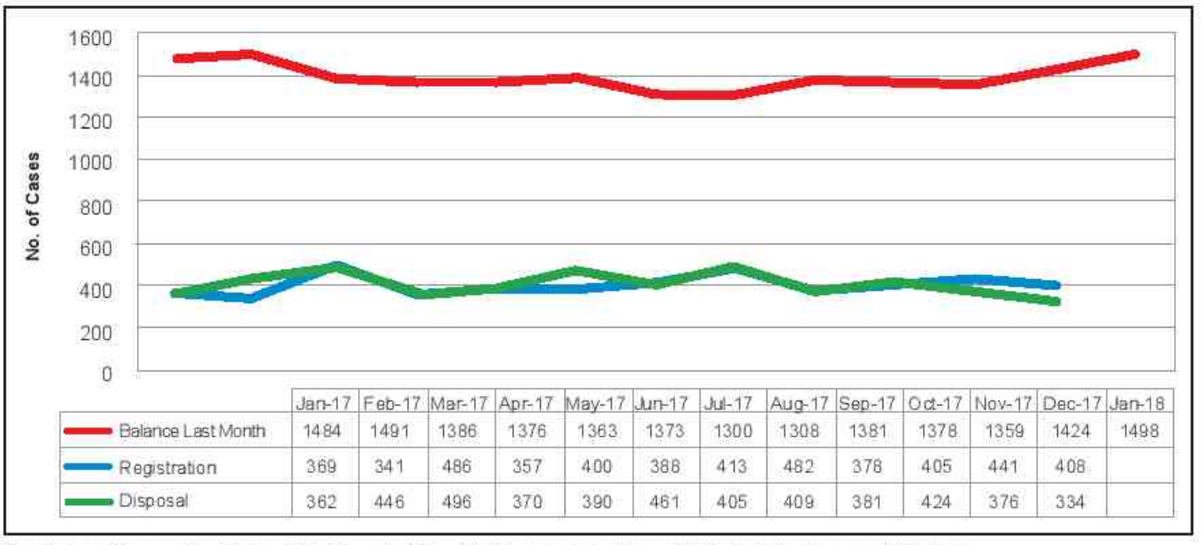
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

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 2017. For the period from January to December 2017, the total number of Civil Cases registered was 4,868. The High Court has succesfully disposed of 4,854 cases throughout the year 2017. The percentage of clearance for the year 2017 is 99.7%. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Georgetown is 3,795 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1484	1491	1386	1376	1363	1373	1300	1308	1381	1378	1359	1424	1498
Registration	369	341	486	357	400	388	413	482	378	405	441	408	
Disposal	362	446	496	370	390	461	405	409	381	424	376	334	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
AS AT 31 DECEMBER 2017

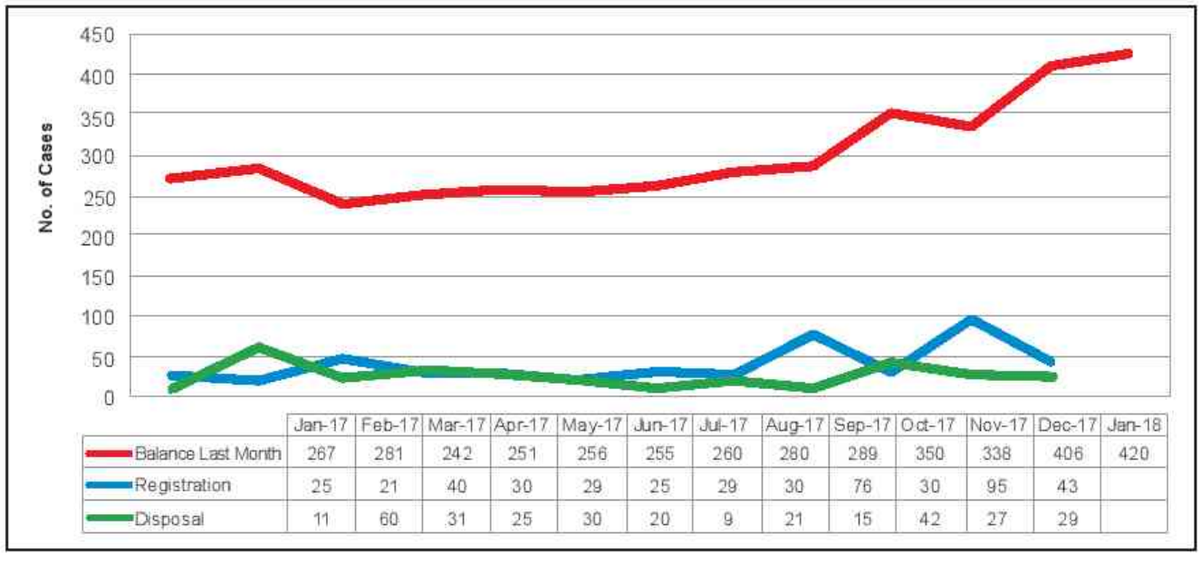
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2010												3														3
2011												2														2
2012											1	3														4
2013												3														3
2014							6				1	5		2			1			2	2	2	3			24
2015							3				2	13		2	1						1	15	5	3		45
2016				7			16		1		6	48		3	7		1			2	324	17		9		441
2017	24	59	70	71			67	5	14		15	215		23	408		50			44	1697	90	141	280		3273
TOTAL	24	59	70	78			92	5	15		25	292		30	416		52			48	2024	124	149	292		3795

A : Interlocutory B : Full Trial

3.2 IN THE HIGH COURT AT GEORGETOWN – CRIMINAL

For the period from January to December 2017, a total number of 473 cases including appeals and trials were registered in the High Court at Georgetown and 320 cases were disposed of, leaving a balance of 420 pending cases. The High Court has managed to dispose of 68% of Criminal Cases throughout the year 2017.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	267	281	242	251	256	255	260	280	289	350	338	406	420
Registration	25	21	40	30	29	25	29	30	76	30	95	43	
Disposal	11	60	31	25	30	20	9	21	15	42	27	29	

PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2015									1							4		2												7
2016		2	9					1	5			2				31		8								2	1			61
2017		17	51		1	3		11	42			4	3		9	81		16								98		1	15	352
TOTAL		19	60		1	3		12	48			6	3		9	116		26								100	1	1	15	420

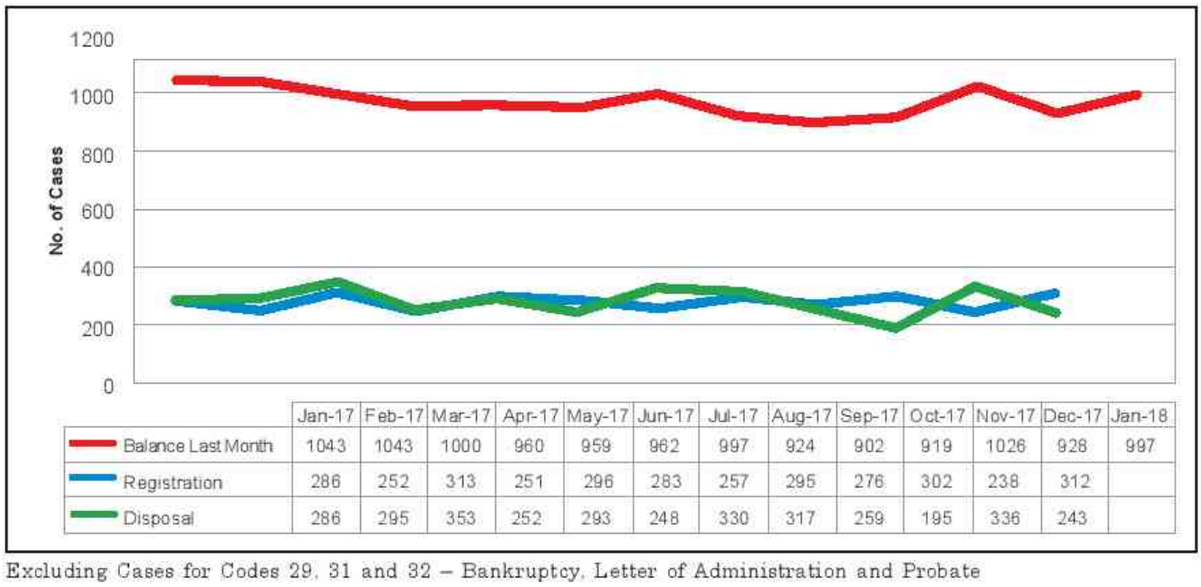
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

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 2017. A total number of 3,361 Civil Cases was registered in year 2017. The High Court has managed to dispose of 3,407 cases throughout the year 2017. The rate of disposal against registration for the year 2017 is 101%. This shows that the High Court has successfully disposed of the cases more than registration for the year 2017, however, the High Court has 2,452 cases including ageing cases pre 2016 which are still pending. It is observed that the High Court has to put more effort to dispose of all the pre 2016 cases by the year 2018.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1043	1043	1000	960	959	962	997	924	902	919	1026	928	997
Registration	286	252	313	251	296	283	257	295	276	302	238	312	
Disposal	286	295	353	252	293	248	330	317	259	195	336	243	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT IPOH (CIVIL)
AS AT 31 DECEMBER 2017

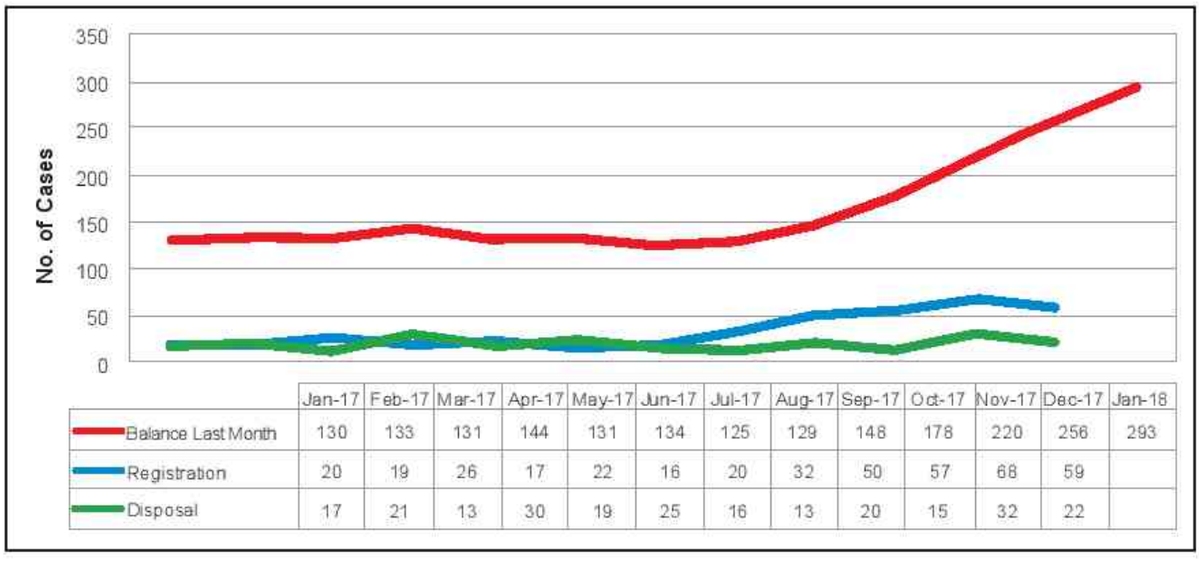
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2012												1													1
2013												1													1
2014							5					2													7
2015				2								8			1										11
2016		1	1	2			1					32			5					1	98			4		145
2017	19	42	25	68			71	13			8	82		4	346		14			30	1267	15	75	207	1	2287
TOTAL	19	43	26	72			77	13			8	126		4	352		14			31	1365	15	75	211	1	2452

A : Interlocutory B : Full Trial

4.2 IN THE HIGH COURT AT IPOH- CRIMINAL

For Criminal Cases in the High Court at Ipoh, a total number of 406 cases including appeals and trials were registered and 243 cases were disposed of, leaving a balance of 293 Criminal Cases pending as reflected in the pending cases below. The percentage of disposal against registration for the year 2017 is 60%.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	130	133	131	144	131	134	125	129	148	178	220	256	293
Registration	20	19	26	17	22	16	20	32	50	57	68	59	
Disposal	17	21	13	30	19	25	16	13	20	15	32	22	

PENDING CASES
IN THE HIGH COURT AT IPOH (CRIMINAL)
AS AT 31 DECEMBER 2017

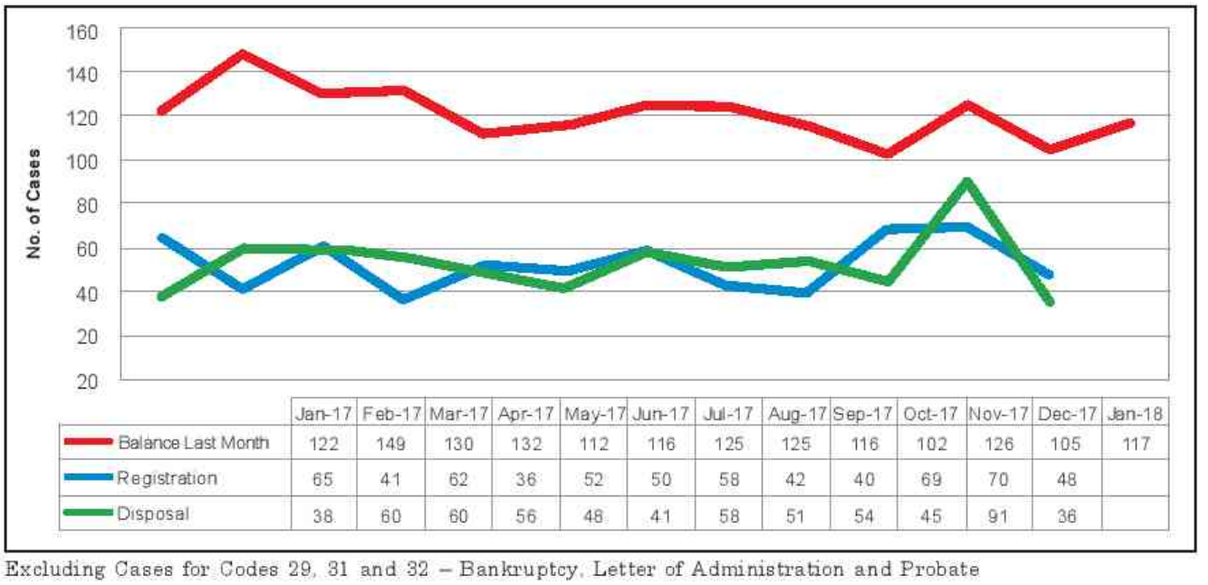
YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2009																		1												1
2014																		1												1
2015											2					1		1												4
2016		1						1	2							2		4												10
2017		17	91		2	16		22	42		1	1	10		56	13		5										1		277
TOTAL		18	91		2	16		23	44		3	1	10		56	16		11										1		293

A/C : Appeal against Conviction S : Appeal against Sentence Hbc: Habeas Corpus Ors : Others

4.3 IN THE HIGH COURT AT TAIPING – CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Taiping for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 633. The High Court has managed to dispose of 638 cases. The rate of disposal against registration is 101%. As at 31 December 2017, the total number of Civil Cases pending in High Court at Taiping is 401 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	122	149	130	132	112	116	125	125	116	102	126	105	117
Registration	65	41	62	36	52	50	58	42	40	69	70	48	
Disposal	38	60	60	56	48	41	58	51	54	45	91	36	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT TAIPING (CIVIL)
AS AT 31 DECEMBER 2017

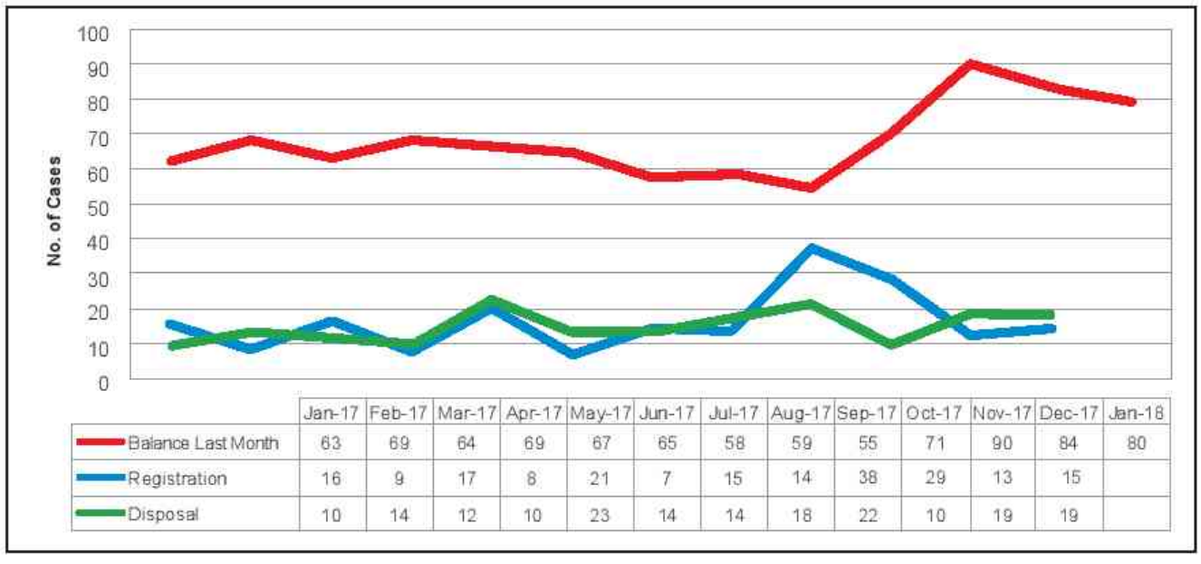
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2016												1									17					18
2017	1	3	1	15					1		6	8			47					2	242	14	11	32		383
TOTAL	1	3	1	15					1		6	9			47					2	259	14	11	32		401

A : Interlocutory B : Full Trial

4.4 IN THE HIGH COURT AT TAIPING – CRIMINAL

For Criminal Cases in the High Court at Taiping for the year 2017, the rate of disposal against registration is 92%. As at 31 December 2017, the High Court has successfully disposed of 185 cases out of 202 registered cases, leaving a balance of 80 cases pending as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	63	69	64	69	67	65	58	59	55	71	90	84	80
Registration	16	9	17	8	21	7	15	14	38	29	13	15	
Disposal	10	14	12	10	23	14	14	18	22	10	19	19	

PENDING CASES
IN THE HIGH COURT AT TAIPING (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2014																1														1
2015																1														1
2016																										1				1
2017		5	17		1	4		15	12			1	1		2	6		1								9	3			77
TOTAL		5	17		1	4		15	12			1	1		2	8		1								10	3			80

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

5. IN THE HIGH COURT AT KUALA LUMPUR

DIVISIONS AND SPECIALISED COURTS

Kuala Lumpur High Court has been divided into Divisions and Specialised Courts. There are four (4) Specialised Courts and five (5) Divisions in the High Court at Kuala Lumpur as can be seen in the table below.[1]

HIGH COURT AT KUALA LUMPUR

NO	DIVISIONS	SPECIALISED COURTS
1	COMMERCIAL	MUAMALAT
		INTELLECTUAL PROPERTY
		ADMIRALTY
2	BANKRUPTCY **(placed in Commercial Division)**	-
3	CIVIL	CONSTRUCTION
4	CRIMINAL	-
5	APPELLATE AND SPECIAL POWERS	-

These Specialised Courts are placed in the Divisions of the Kuala Lumpur High Court, namely:-

5.1 Commercial Division which comprises:-

- Muamalat (Specialised Court);
- Admiralty (Specialised Court);
- Intellectual Property (Specialised Court);
- Old Commercial (OCC);
- New Commercial (NCC); and
- Bankruptcy;

5.2 Civil Division which comprises:-

- Construction (Specialised Court)
- New Civil (NCvC);
- Old Civil (OCvC); and
- Family;

5.3 Criminal Division; and

5.4 Appellate and Special Powers Division (RKKK).

The respective statistics of the Specialised Courts and Divisions in the High Court of Kuala Lumpur are shown below.

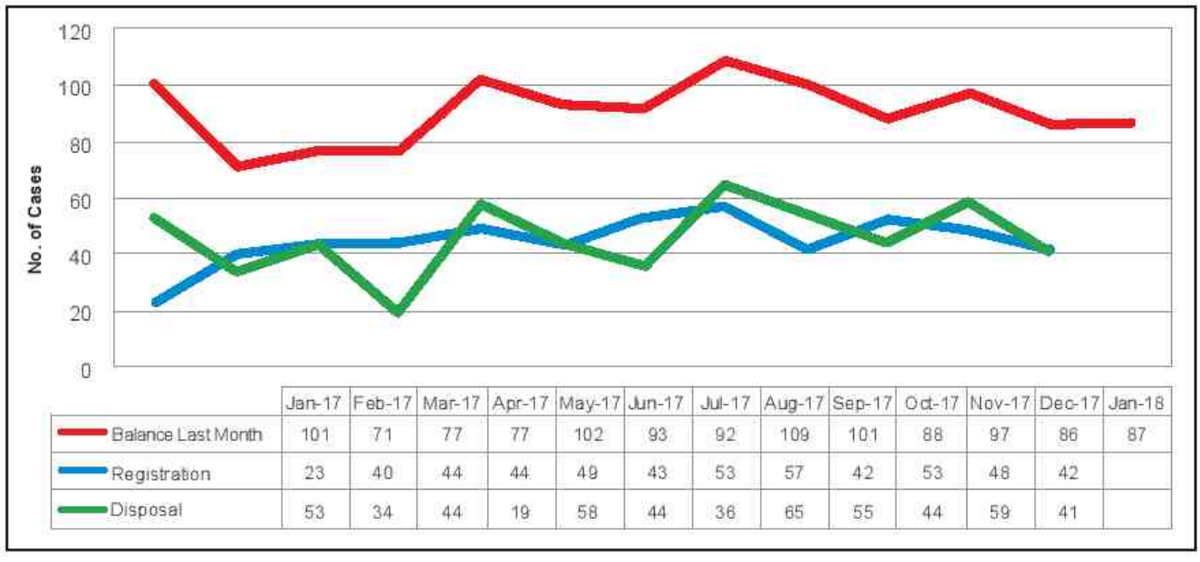
[1] Source – The Registrar Of High Court Of Malaya Office

5.1 IN THE HIGH COURT AT KUALA LUMPUR – COMMERCIAL DIVISION

Muamalat Court

The Specialised Muamalat Court was set up under the Commercial Division to handle cases relating to islamic banking and finance. The tracking chart below shows the registration and disposal of Muamalat Cases in the High Court at Kuala Lumpur for the year 2017. For the period from January to December 2017, the total number of Muamalat Cases registered was 538. The High Court has successfully disposed of 552 cases leaving a balance of 87 cases. However the Court still has four (4) ageing cases registered in year 2015 and two (2) cases registered in year 2016 still pending as reflected in pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	101	71	77	77	102	93	92	109	101	88	97	86	87
Registration	23	40	44	44	49	43	53	57	42	53	48	42	
Disposal	53	34	44	19	58	44	36	65	55	44	59	41	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
AS AT 31 DECEMBER 2017

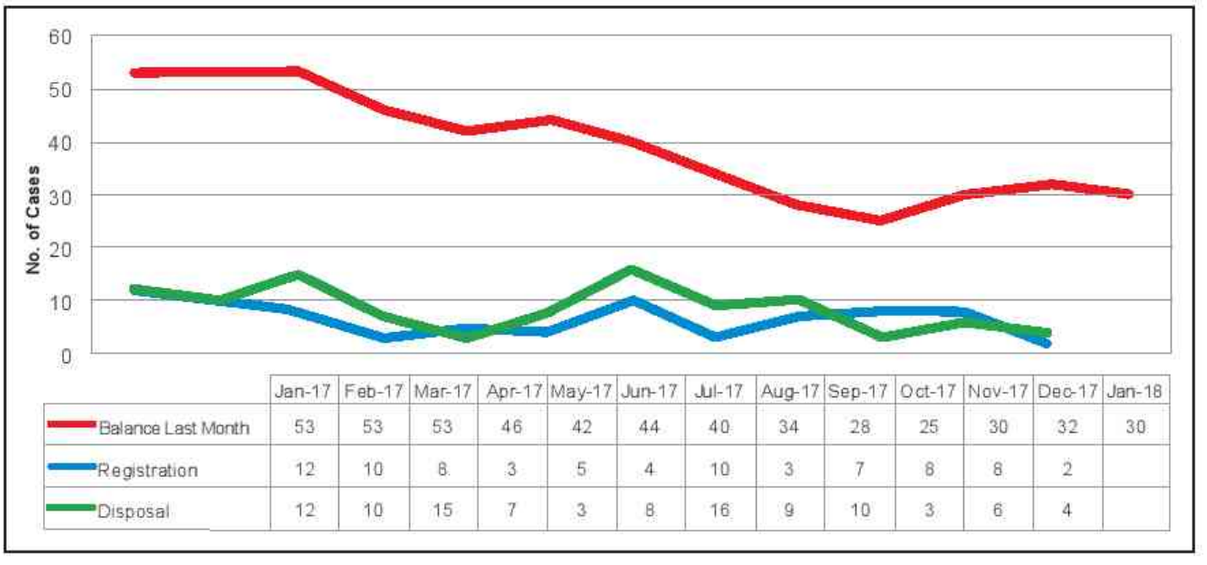
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2015												4													4
2016												1			1										2
2017	1		1	1								48			30										81
TOTAL	1		1	1								53			31										87

A : Interlocutory B : Full Trial

Admiralty Court

The setting up of the Admiralty Court has speeded up the disposal of maritime cases in Malaysia as can be seen in the tracking chart below. For the period from January to December 2017, the total Admiralty Cases registered was 80. The Admiralty Court has disposed of 103 cases throughout the year 2017 leaving a balance of 30 cases pending as reflected in pending cases below. Looking at the pending cases table below, unfortunately the Court still has four (4) pending ageing cases registered in year 2016. The goal of this Court for year 2018 is to dispose of all the four (4) cases within the first half of 2018.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	53	53	53	46	42	44	40	34	28	25	30	32	30
Registration	12	10	8	3	5	4	10	3	7	8	8	2	
Disposal	12	10	15	7	3	8	16	9	10	3	6	4	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)
AS AT 31 DECEMBER 2017

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																						
2016																			4							4
2017																			26							26
TOTAL																			30							30

A : Interlocutory B : Full Trial

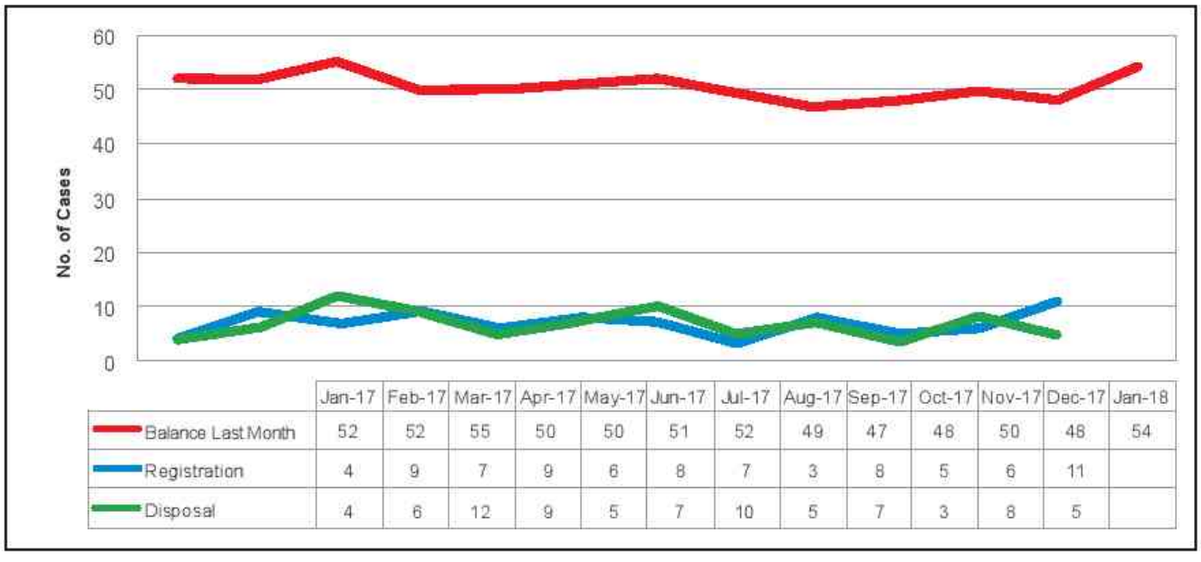
Intellectual Property Court

The Intellectual Property Specialised Court was set up to handle Intellectual Property suits. The tracking chart below shows the rate of registration and disposal of Intellectual Property Cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2017.

For the period from January to December 2017, the total number of Intellectual Property Cases registered was 83. The High Court has managed to dispose of 81 cases throughout the year 2017. As at 31 December 2017, the total number of Intellectual Property cases pending in the High Court at Kuala Lumpur is 54 as reflected in the pending cases table below. The Intellectual Property Court has wide jurisdiction. It can hear both civil and criminal offences.

As for Criminal Intellectual Property Cases, there were two (2) cases registered in year 2016. Zero (0) case was registered in year 2017. The Court has managed to dispose of two (2) 2016 cases leaving no case pending. The scenario shows that the setting up of the Special Intellectual Property Court is a strong move to strictly enforce Intellectual Property rights justly and efficiently.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	52	52	55	50	50	51	52	49	47	48	50	48	54
Registration	4	9	7	9	6	8	7	3	8	5	6	11	
Disposal	4	6	12	9	5	7	10	5	7	3	8	5	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
AS AT 31 DECEMBER 2017

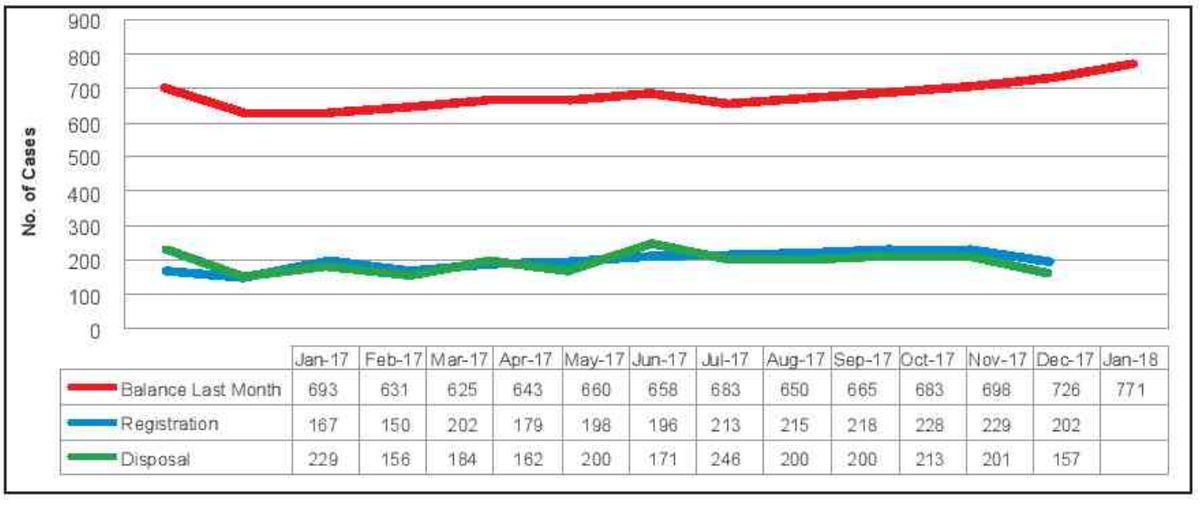
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2013												1													1
2014												2													2
2015												5													5
2016												4													4
2017												32			10										42
TOTAL												44			10										54

A : Interlocutory B : Full Trial

New Commercial Court (NCC)

The tracking chart below shows the registration and disposal of New Commercial Cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2017. For the period from January to December 2017, the total New Commercial Cases registered was 2,397. The High Court has managed to dispose of 2,319 cases throughout the year 2017. The rate of disposal against registration for the year 2017 is 97%. As at 31 December 2017, the total number of New Commercial Cases still pending in the High Court at Kuala Lumpur is 771 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	693	631	625	643	660	658	683	650	665	683	698	726	771
Registration	167	150	202	179	198	196	213	215	218	228	229	202	
Disposal	229	156	184	162	200	171	246	200	200	213	201	157	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
AS AT 31 DECEMBER 2017

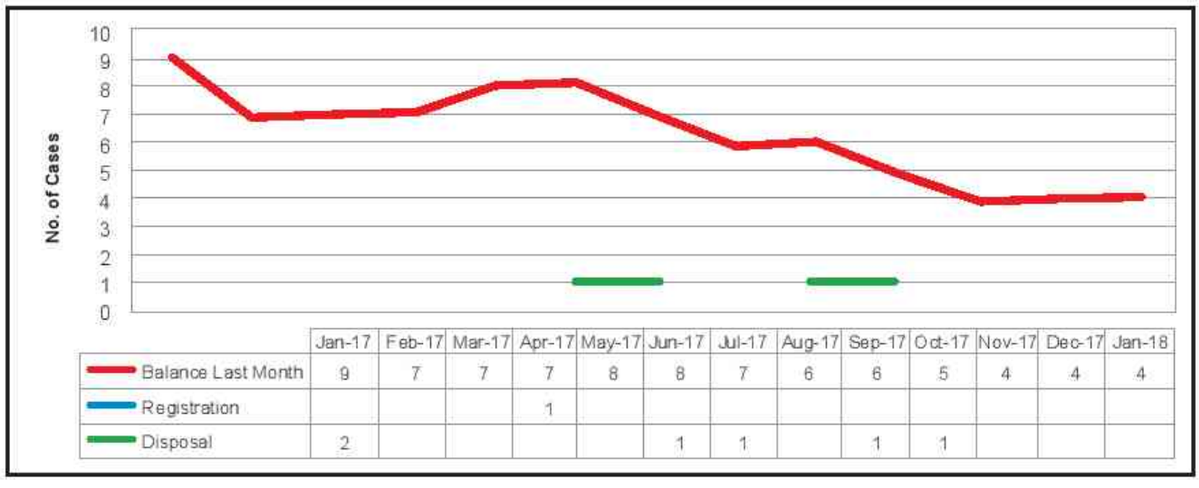
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2010												1													1
2012												4													4
2013												2			1										3
2014												3													3
2015												7			1					2					10
2016			2									43			3					12					60
2017	22	3	54	22								209			155			1		224					690
TOTAL	22	3	56	22								269			160			1		238					771

A : Interlocutory B : Full Trial

OCC (Old Commercial Court)

The tracking chart below shows the registration and disposal of Old Commercial Cases in the High Court at Kuala Lumpur for the year 2017. For the period from January to December 2017, the total Old Commercial Cases registered was one (1). The High Court has managed to dispose of six (6) cases throughout year 2017. Looking at the pending cases below, the total number of cases still pending in the Old Commercial Cases Court is four (4) and the Court still has one (1) case registered in year 2016, two (2) cases registered in year 2008 and one (1) case registered in year 2009 still pending, as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (OCC)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	9	7	7	7	8	8	7	6	6	5	4	4	4
Registration				1									
Disposal	2					1	1		1	1			

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (OCC)
AS AT 31 DECEMBER 2017

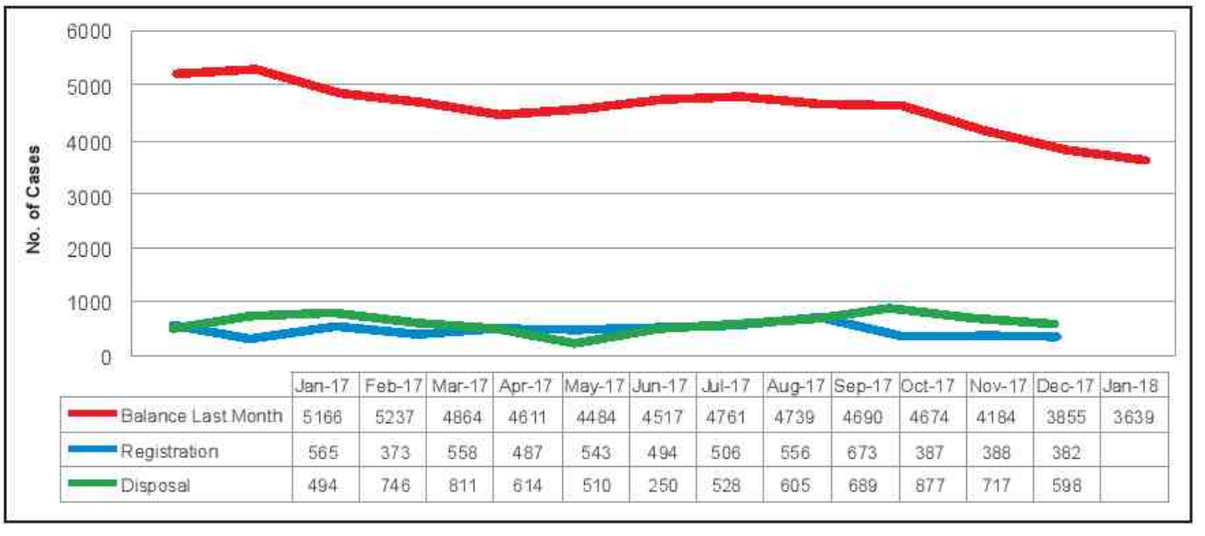
YEAR	CODES																									TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2006												1														1
2008												2														2
2009												1														1
TOTAL												4														4

A : Interlocutory B : Full Trial

Bankruptcy Division

The tracking chart below shows the registration and disposal of Bankruptcy Cases in the Commercial Division of the Kuala Lumpur High Court for the year 2017. For the period from January to December 2017, the total Bankruptcy Cases registered was 5,912. The High Court has managed to dispose of 7,439 cases throughout the year 2017. The rate of disposal against registration for the year 2017 is 126%. As at 31 December 2017, the total number of Bankruptcy Cases pending in the High Court at Kuala Lumpur is 3,639 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	5166	5237	4864	4611	4484	4517	4761	4739	4690	4674	4184	3855	3639
Registration	565	373	558	487	543	494	506	556	673	387	388	382	
Disposal	494	746	811	614	510	250	528	605	689	877	717	598	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
AS AT 31 DECEMBER 2017

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2011																					1					1
2012																										
2013																										
2014																										
2015																					14					14
2016																					206					206
2017																					3418					3418
TOTAL																					3639					3639

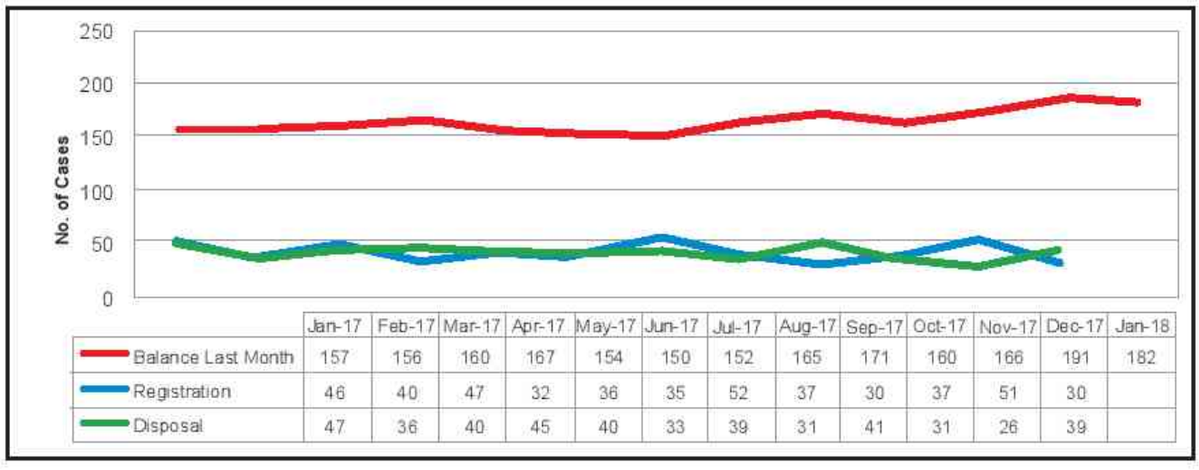
A : Interlocutory B : Full Trial

5.2 IN THE HIGH COURT AT KUALA LUMPUR –CIVIL DIVISION

Construction Court

The Specialised Construction Court in the High Court of Kuala Lumpur has been installed with upgraded technology equipment to assist the court in handling Construction Cases in a more efficient way. The tracking chart below illustrates the registration and disposal of Construction Cases in the High Court at Kuala Lumpur for the year 2017. From January 2017 to December 2017, the Construction Court has managed to dispose of 448 cases out of 473 registered cases, leaving a balance of 182 cases. Most of the cases pending are current cases, except for only one (1) case registered in year 2015 and sixteen (16) cases registered in year 2016. The rate of disposal against registration for the year 2017 is 95%. Based on the percentage of disposal for the year 2017, it is proven that the Construction Court has contributed enormously in expediting the hearing of the Construction Cases in Malaysia.

IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
JANUARY-DECEMBER 2017
TRACKING CHART



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	157	156	160	167	154	150	152	165	171	160	166	191	182
Registration	46	40	47	32	36	35	52	37	30	37	51	30	
Disposal	47	36	40	45	40	33	39	31	41	31	26	39	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
AS AT 31 DECEMBER 2017

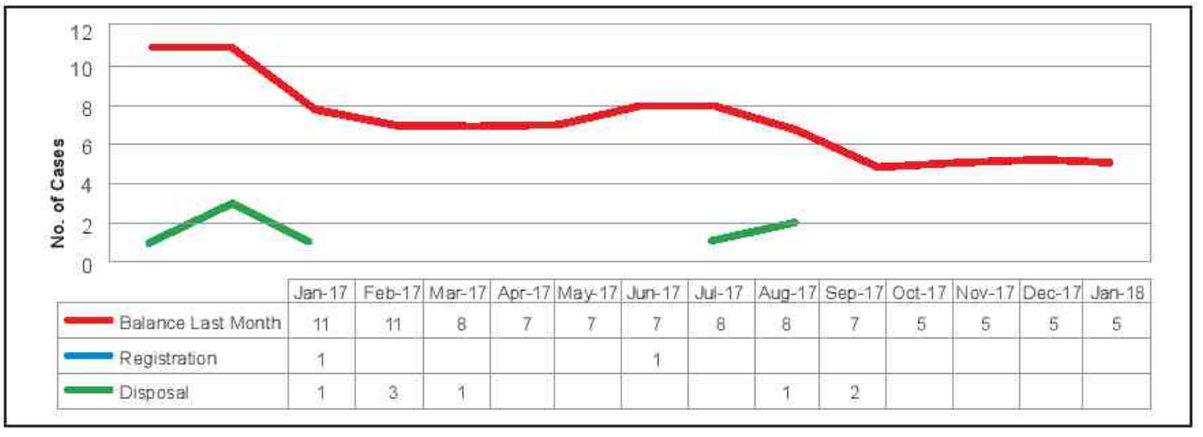
YEAR	CODES																									TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2015												1														1
2016				2								11			3											16
2017	2	4	13	11							6	61			68											165
TOTAL	2	4	13	13							6	73			71											182

A : Interlocutory B : Full Trial

Old Civil Court (OCvC)

The tracking chart below shows the registration and disposal of Old Civil Cases in the Civil Division in the High Court at Kuala Lumpur for the year 2017. For the period from January to December 2017, the total number of Old Civil Cases registered was two (2). The High Court has managed to dispose of eight (8) cases throughout the year 2017. As at 31 December 2017, there are still five (5) cases pending as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	11	11	8	7	7	7	8	8	7	5	5	5	5
Registration	1					1							
Disposal	1	3	1					1	2				

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)
AS AT 31 DECEMBER 2017

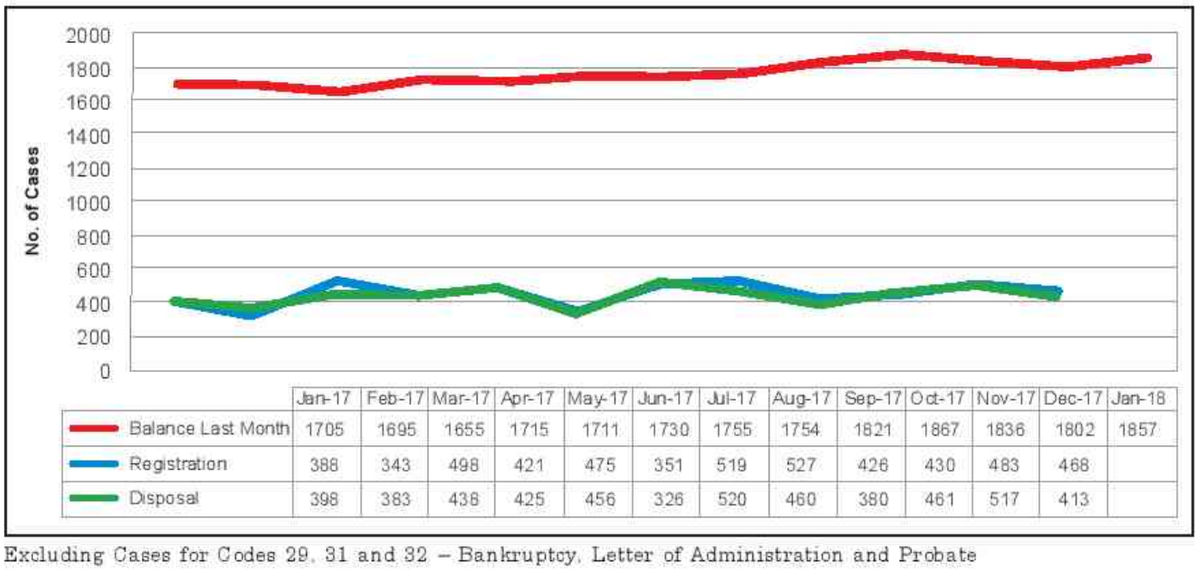
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009												3													3
2010												2													2
TOTAL												5													5

A : Interlocutory B : Full Trial

New Civil Court (NCvC)

The tracking chart below shows the registration and disposal of New Civil Cases in the Civil Division in the High Court at Kuala Lumpur for the year 2017. For the period from January to December 2017, the total number of New Civil Cases registered was 5,329 . The High Court has managed to dispose of 5,177 cases throughout the year 2017. The rate of disposal against registration for the year 2017 is 97%. As at 31 December 2017, the total number of New Civil Cases pending in the High Court at Kuala Lumpur is 2,231 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCvC)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1705	1695	1655	1715	1711	1730	1755	1754	1821	1867	1836	1802	1857
Registration	388	343	498	421	475	351	519	527	426	430	483	468	
Disposal	398	383	438	425	456	326	520	460	380	461	517	413	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCvC)
AS AT 31 DECEMBER 2017

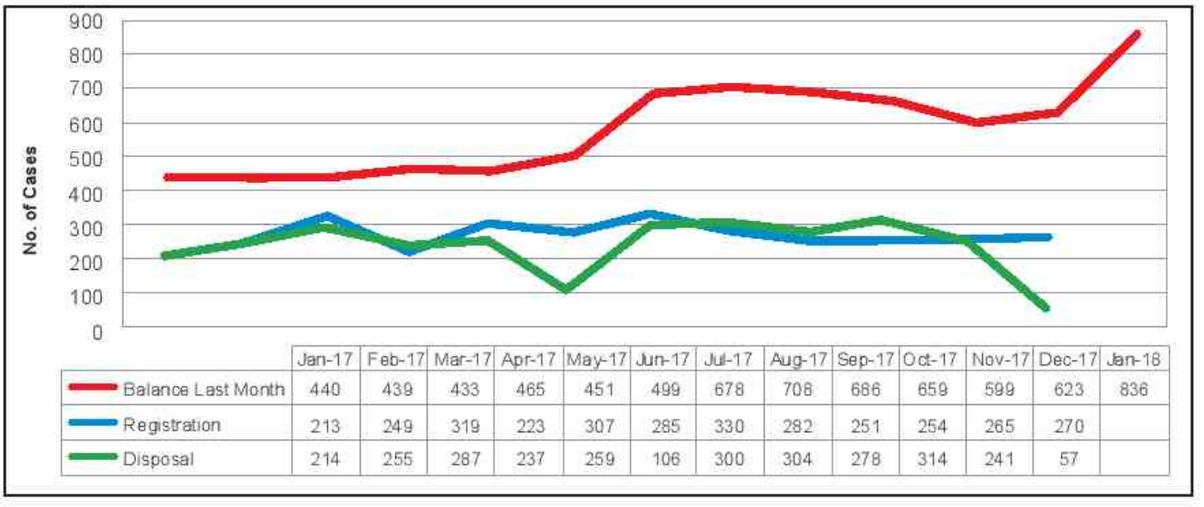
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2011											1															1
2012							1				2	6		1												10
2013											1	1		2												4
2014											6	18		1	1											26
2015							1				5	64		17	1											88
2016				2			4				23	242		14	6								1			292
2017	60	46	101	84			41				74	423		79	529							208	165			1810
TOTAL	60	46	101	86			47				112	754		114	537							208	166			2231

A : Interlocutory B : Full Trial

Family Court

The tracking chart below shows the registration and disposal of Family Cases in the Civil Division in the High Court at Kuala Lumpur for the year 2017. For the period of January to December 2017, the total number of Family Cases registered was 3,248. The High Court has managed to dispose of 2,852 cases throughout the year 2017. The disposal rate as against registration for the year 2017 is 88%. As at 31 December 2017, the total number of Family Cases pending in the High Court at Kuala Lumpur is 836 cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
JANUARY-DECEMBER 2017
PENDING CASES



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	440	439	433	465	451	499	678	708	686	659	599	623	836
Registration	213	249	319	223	307	285	330	282	251	254	265	270	
Disposal	214	255	287	237	259	106	300	304	278	314	241	57	

IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
AS AT 31 DECEMBER 2017

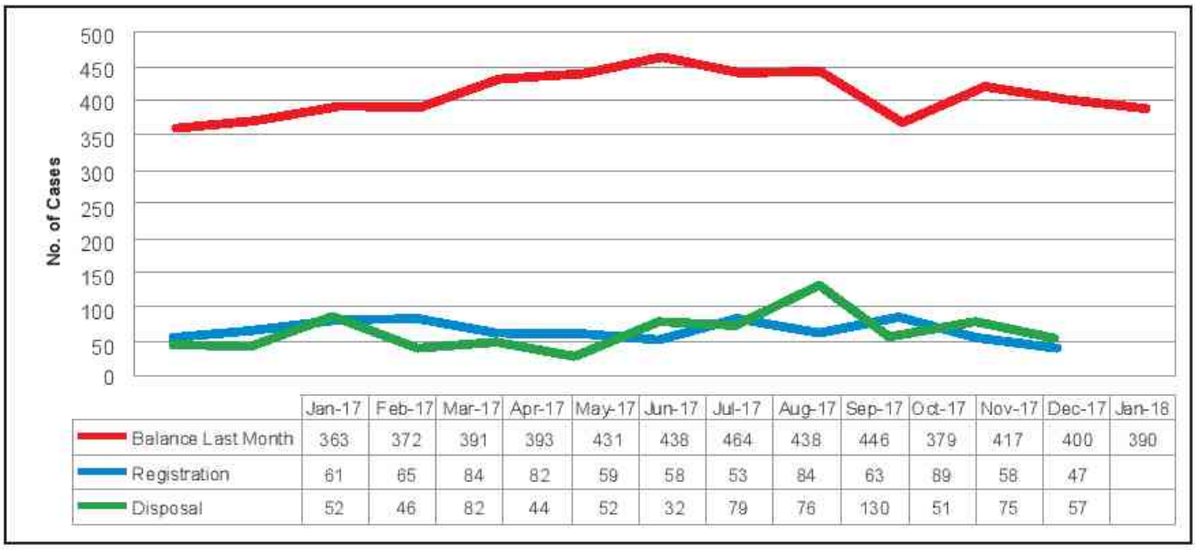
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2013																								1		1
2014																										
2015																								5		5
2016															9									47		56
2017												1			110									655	8	774
TOTAL												1			119									708	8	836

A : Interlocutory B : Full Trial

5.3 IN THE HIGH COURT AT KUALA LUMPUR – CRIMINAL DIVISION

The tracking chart below shows the registration and disposal of Criminal Cases of the High Court at Kuala Lumpur for the year 2017. For the period of January to December 2017, the total number of Criminal Cases registered was 803. The High Court has managed to dispose of 776 cases throughout the year 2017. As at 31 December 2017, the total number of Criminal Cases pending in the High Court at Kuala Lumpur is 390 as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Kuala Lumpur is 97%.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	363	372	391	393	431	438	464	438	446	379	417	400	390
Registration	61	65	84	82	59	58	53	84	63	89	58	47	
Disposal	52	46	82	44	52	32	79	76	130	51	75	57	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2011								1																						1
2014																1														1
2015								1							1	1														3
2016								10	10		1	3			2	9		3												38
2017		20	51			6		36	93		3	4	3		5	57		17								19	11	21	1	347
TOTAL		20	51			6		48	103		4	7	3		8	68		20								107	11	21	1	390

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

6. SELANGOR

The High Court at Shah Alam has only one (1) Specialised Court, that is, Construction Court. The court is also well equipped with the technology similar to the High Court of Kuala Lumpur Construction Court to cater for the hearing of Construction Cases efficiently. The High Court at Shah Alam has two (2) divisions and one (1) unit, namely:[1]

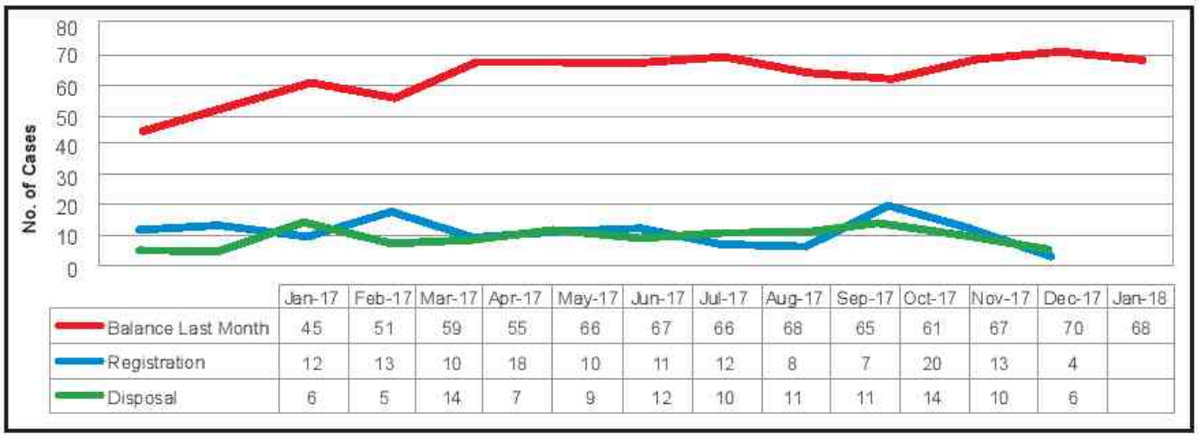
1. Civil Division which comprises :-
   - Construction Court;
   - New Civil Court (NCvC);
   - Land, Judicial Review and Commercial (LJC) Court;
   - Originating Summons Court; and
   - Family Court;
2. Criminal Division ; and
3. Appeal Unit.

6.1 IN THE HIGH COURT AT SHAH ALAM-CIVIL

Construction Court

In the year 2017, the Construction Court has managed to dispose of 115 cases out of 138 registered cases, leaving a balance of 68 cases. Most of the cases, are current cases, except for the ten (10) ageing cases registered in year 2014, 2015 and 2016. The percentage of disposal as against registration for Construction Cases in the High Court at Shah Alam is 83%.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CONSTRUCTION)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	45	51	59	55	66	67	66	68	65	61	67	70	68
Registration	12	13	10	18	10	11	12	8	7	20	13	4	
Disposal	6	5	14	7	9	12	10	11	11	14	10	6	

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CONSTRUCTION)
JANUARY –DECEMBER 2017

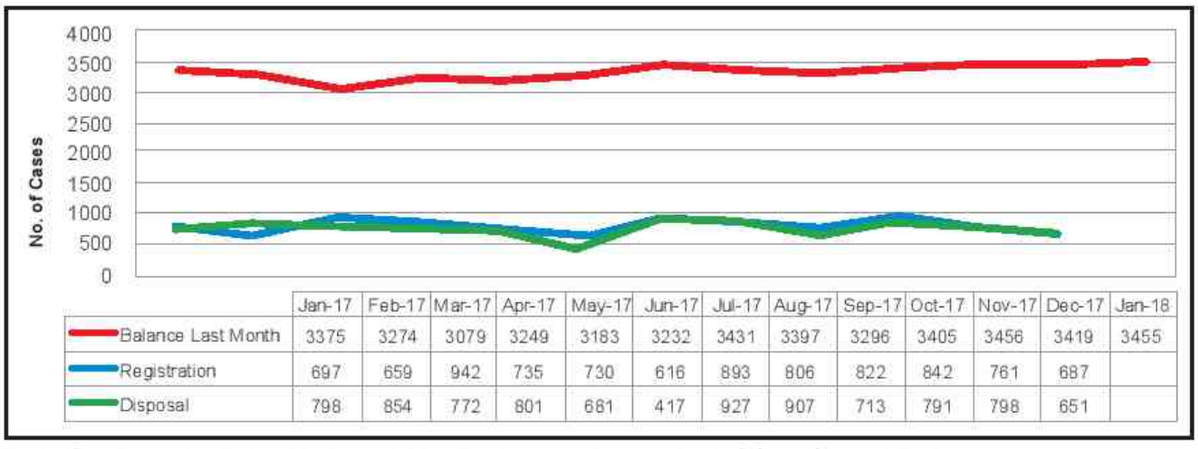
YEAR	CODES																									TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2014												1														1
2015												2														2
2016											1	6														7
2017												40			18											58
TOTAL											1	49			18											68

[1] Source – The Registrar Of High Court Of Malaya Office

New Civil Cases (NCvC)/ Land, Judicial Review and Commercial (LJC)/Originating Summons (OS)/Family Cases/Appeal Cases

The tracking chart below shows the registration and disposal of New Civil Cases (NCvC), Land, Judicial Review and Commercial (LJC) Cases, Originating Summons (OS) Cases, Family Cases and Appeal Cases in Civil Division of the Shah Alam High Court for the year 2017. The High Court has managed to dispose of 9,110 cases out of 9,190 cases registered in year 2017, leaving 11,581 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for New Civil Cases (NCvC), Land, Judicial Review and Commercial (LJC) Cases, Originating Summons(OS) Cases, Family Cases and Appeal Cases in the Civil Divison of High Court at Shah Alam is 99%.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CIVIL - NCvC/LJC/OS/FAMILY/APPEAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	3375	3274	3079	3249	3183	3232	3431	3397	3296	3405	3456	3419	3455
Registration	697	659	942	735	730	616	893	806	822	842	761	687	
Disposal	798	854	772	801	681	417	927	907	713	791	798	651	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CIVIL - NCvC/LJC/OS/FAMILY/APPEAL)
AS AT 31 DECEMBER 2017

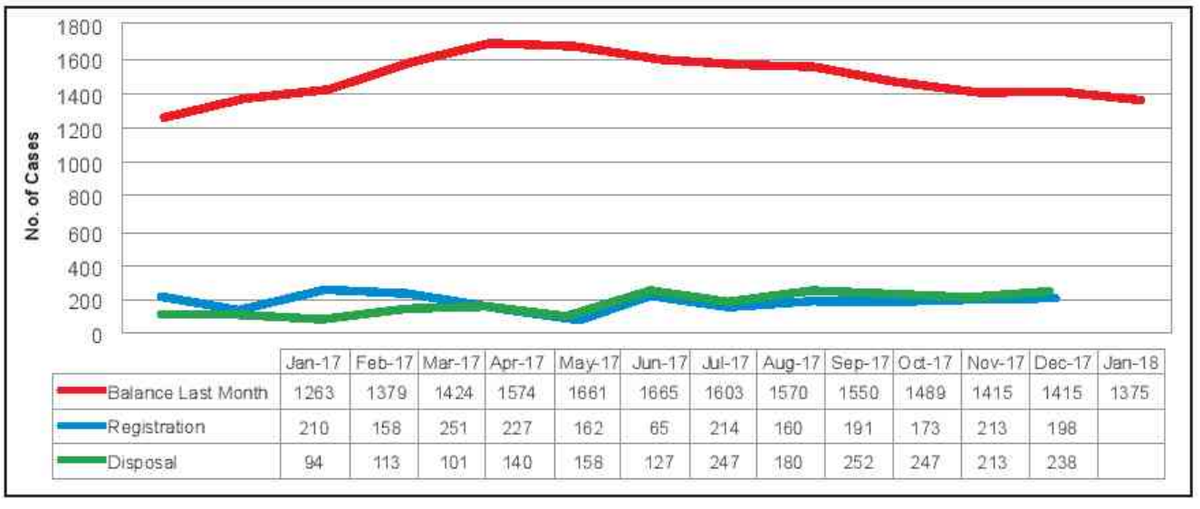
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
1995							1																			1
1999							1																			1
2002							2																			2
2004							1																			1
2006												1														1
2007											1															1
2008							1																			1
2009												1								1						2
2010												3														3
2011							2					1														3
2012							3					2														5
2013							2					1														3
2014											1	10														11
2015				2			4				4	36		3			1			1				2		53
2016	3	19	9	51			77	9			13	102		12	10		7			12	684	1	1	20		1030
2017	76	98	191	234	1		200	19	2		43	414		28	977		40			322	7246	119	75	372	6	10463
TOTAL	79	117	200	287	1		294	28	2		62	571		43	987		48			336	7930	120	76	394	6	11581

A : Interlocutory B : Full Trial

6.2 IN THE HIGH COURT AT SHAH ALAM – CRIMINAL

For Criminal Cases in the year 2017, in the High Court at Shah Alam, a total of 2,222 cases including appeals and trials were registered and 2,110 cases were disposed of, leaving a balance of 1,375 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Shah Alam is 95%.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1263	1379	1424	1574	1661	1665	1603	1570	1550	1489	1415	1415	1375
Registration	210	158	251	227	162	65	214	160	191	173	213	198	
Disposal	94	113	101	140	158	127	247	180	252	247	213	238	

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
31 DECEMBER 2017

YEAR	CODES																														TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2013																1														1
2014								1				3				4		6								2				16
2015									1		1					39		19								5		3		68
2016		1	6		1			11	19		6	3				108		34								37	2	12		240
2017		70	241		4	17		56	189		7	7	12		116	109		58								159	1	4		1050
TOTAL		71	247		5	17		68	209		14	13	12		116	261		117								203	3	19		1375

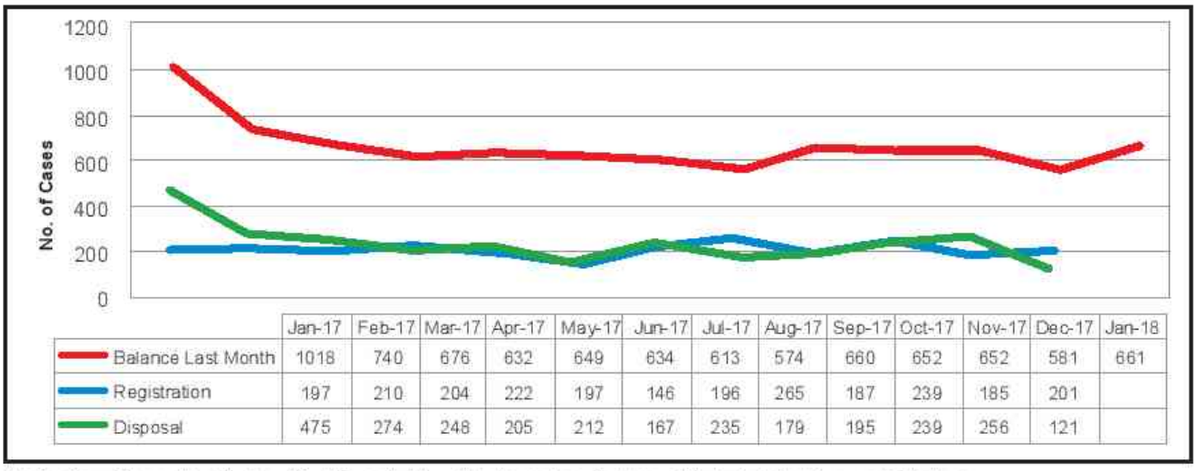
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

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 2017. For the period from January to December 2017, the total number of civil cases registered was 2,449. The High Court has managed to dispose of 2,806 cases throughout the year 2017. As at 31 December 2017, the total number of civil cases pending in the High Court at Seremban is 3,334 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Seremban is 115%.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1018	740	676	632	649	634	613	574	660	652	652	581	661
Registration	197	210	204	222	197	146	196	265	187	239	185	201	
Disposal	475	274	248	205	212	167	235	179	195	239	256	121	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CIVIL)
AS AT 31 DECEMBER 2017

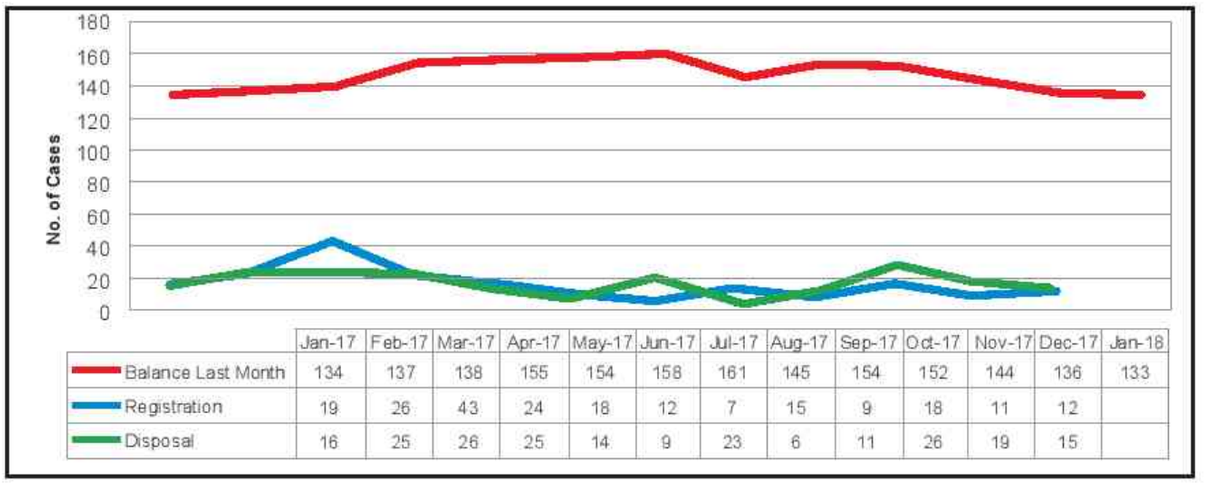
YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	36	37	
	A	B	A	B																								
2013												1															1
2014																								1				1
2015							6					3		1			1											11
2016		1		5				5			6	19		4	2		1				753	1		3				800
2017	4	13	20	42			1	3	4		7	53		4	341		4			7	1836	41	42	93	1	1	4	2521
TOTAL	4	14	20	47			7	8	4		13	76		9	343		6			7	2589	42	42	97	1	1	4	3334

A : Interlocutory B : Full Trial

7.2 IN THE HIGH COURT AT SEREMBAN – CRIMINAL

For Criminal Cases in the year 2017, a total of 214 cases including appeals and trials were registered and 215 cases were disposed of, leaving a balance of 133 cases pending as reflected in the pending cases below. The Seremban High Court has successfully disposed of the cases more than the registration for the year 2017. The percentage of disposal as against registration for Criminal Cases in the High Court at Seremban is 100%.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	134	137	138	155	154	158	161	145	154	152	144	136	133
Registration	19	26	43	24	18	12	7	15	9	18	11	12	
Disposal	16	25	26	25	14	9	23	6	11	26	19	15	

PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
AS AT 31 DECEMBER 2017

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	
2016		1	2						9							3		4								3				22
2017		13	21					11	34				1		9	12		7								3				111
TOTAL		14	23					11	43				1		9	15		11								6				133

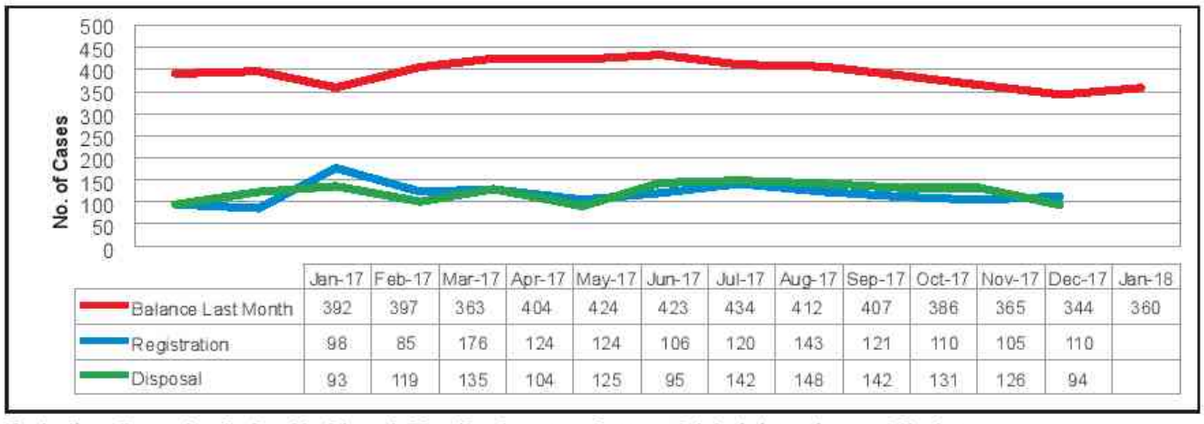
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

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 2017. For the period from January to December 2017, the total number of civil cases registered was 1,422. The High Court has managed to dispose of 1,454 cases throughout the year 2017. The rate of disposal against registration for Civil Cases in the High Court at Malacca for the year 2017 is 102%. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Malacca is 906 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	392	397	363	404	424	423	434	412	407	386	365	344	360
Registration	98	85	176	124	124	106	120	143	121	110	105	110	
Disposal	93	119	135	104	125	95	142	148	142	131	126	94	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

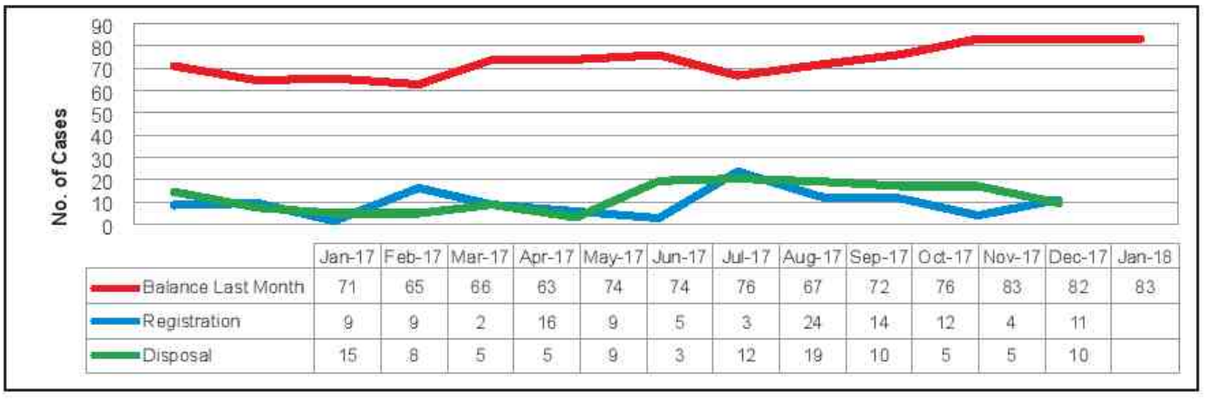
PENDING CASES
IN THE HIGH COURT AT MALACCA (CIVIL)
AS AT 31 DECEMBER 2017

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
2014											1														1
2015							1					1												1	3
2016				5			5				2	12			1						15			3	43
2017	7	4	8	12			53	3	4	2	1	48			96		6			17	486	20	25	65	857
TOTAL	7	4	8	17			59	3	4	2	4	63			97		6			17	501	20	25	69	906

8.2 IN THE HIGH COURT AT MALACCA- CRIMINAL

For Criminal Cases in the year 2017, a total of 118 cases including appeals and trials were registered and 106 cases were disposed of, leaving a balance of 83 cases pending. The rate of disposal against registration for Criminal Cases in the High Court at Malacca for the year 2017 is 90%.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	71	65	66	63	74	74	76	67	72	76	83	82	83
Registration	9	9	2	16	9	5	3	24	14	12	4	11	
Disposal	15	8	5	5	9	3	12	19	10	5	5	10	

PENDING CASES
IN THE HIGH COURT AT MALACCA (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2014																		1												1
2015															1			1												2
2016			2													16		2								1				21
2017		7	3					4	26						6	9		4												59
TOTAL		7	5					4	26						7	25		8								34				83

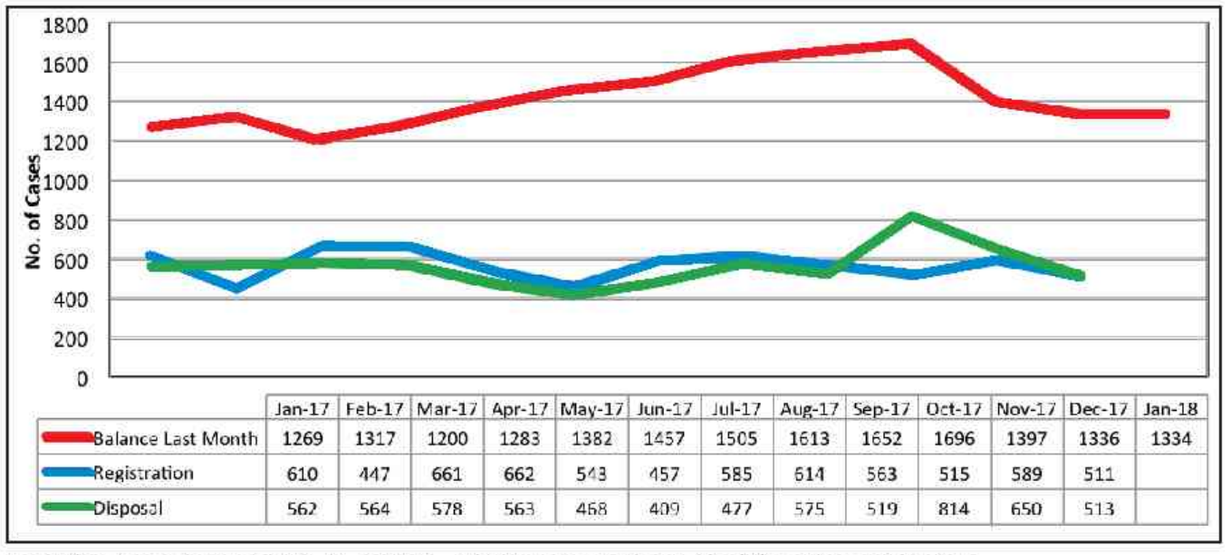
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

9. JOHOR

9.1 IN THE HIGH COURT AT JOHOR BAHRU – CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Johor Bahru for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 6,757. The High Court has managed to dispose of 6,692 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Johor Bahru is 4,327 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Johor Bahru is 99%.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1269	1317	1200	1283	1382	1457	1505	1613	1652	1696	1397	1336	1334
Registration	610	447	661	662	543	457	585	614	563	515	589	511	
Disposal	562	564	578	563	468	409	477	575	519	814	650	513	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
AS AT 31 DECEMBER 2017

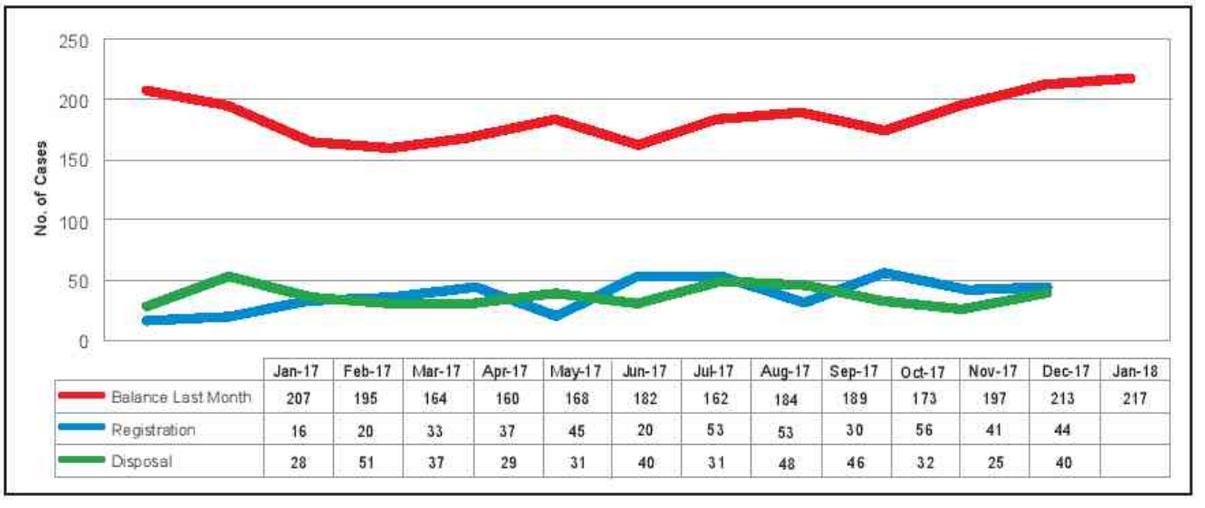
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2014							1					3			1											5
2015												9		1							1					11
2016				4							1	58		19	7		1		1		358					449
2017	7	25	27	83			49	4	6	8	12	164		15	436		112		1	69	2512	45	77	210		3862
TOTAL	7	25	27	87			50	4	6	8	13	234		35	444		113		2	69	2871	45	77	210		4327

A : Interlocutory B : Full Trial

9.2 IN THE HIGH COURT AT JOHOR BAHRU - CRIMINAL

For Criminal Cases in the year 2017, a total of 448 cases including appeals and trials were registered and 438 cases were disposed of, leaving a balance of 217 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Johor Bahru is 98%.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	207	195	164	160	168	182	162	184	189	173	197	213	217
Registration	16	20	33	37	45	20	53	53	30	56	41	44	
Disposal	28	51	37	29	31	40	31	48	46	32	25	40	

PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
AS AT 31 DECEMBER 2017

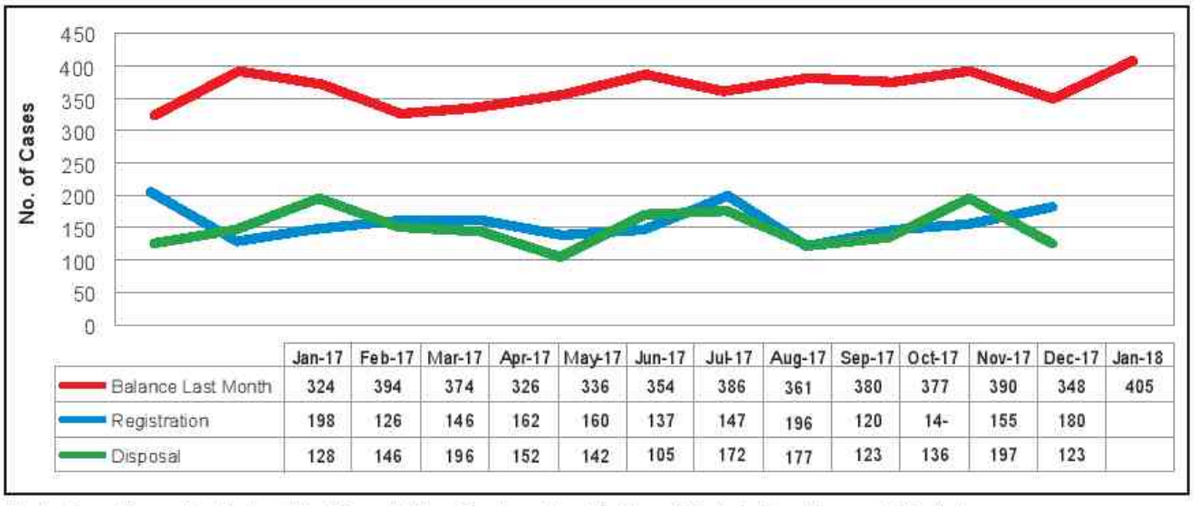
YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2011															1															1
2015		2													1	3														6
2016																12		10								2				24
2017	15	20						3	30			2	3		13	49		30								17		4		186
TOTAL	15	22						3	30			2	3		15	64		40								19		4		217

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

9.3 IN THE HIGH COURT AT MUAR– CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Muar for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 1,876. The High Court has managed to dispose of 1,797 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Muar is 1,001 cases as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Muar is 96%.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	324	394	374	326	336	354	386	361	380	377	390	348	405
Registration	198	126	146	162	160	137	147	196	120	14-	155	180	
Disposal	128	146	196	152	142	105	172	177	123	136	197	123	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT MUAR (CIVIL)
AS AT 31 DECEMBER 2017

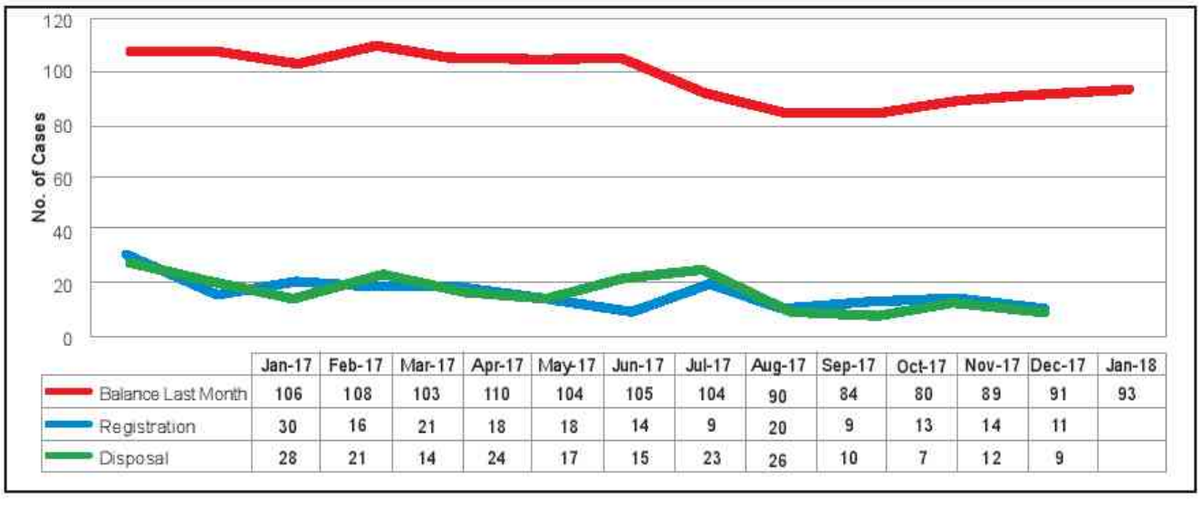
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2012												2													2
2013												1													1
2014												4										1	1		6
2015												9										1			10
2016												11		3	4		1				38	2	1	1		61
2017	3	8	5	24			16	1	8		9	53		2	134		1	2		9	496	8	49	93		921
TOTAL	3	8	5	24			16	1	8		9	80		5	138		2	2		9	534	10	52	95		1001

A : Interlocutory B : Full Trial

9.4 IN THE HIGH COURT AT MUAR – CRIMINAL

For Criminal Cases in the year 2017, a total of 193 cases including appeals and trials were registered and 206 cases were disposed of, leaving a balance of 93 cases pending as reflected in the pending cases below. The Court has successfully disposed of the cases more than the registration for the year 2017. The percentage of disposal as against registration for Criminal Cases in the High Court at Muar is 107%.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	106	108	103	110	104	105	104	90	84	80	89	91	93
Registration	30	16	21	18	18	14	9	20	9	13	14	11	
Disposal	28	21	14	24	17	15	23	26	10	7	12	9	

PENDING CASES
IN THE HIGH COURT AT MUAR (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2015														1																1
2016								1										2	1							1				5
2017	13	19						2	29			1	1	4		4		8								6				87
TOTAL	13	19						3	29			1	1	5		4		10	1							7				93

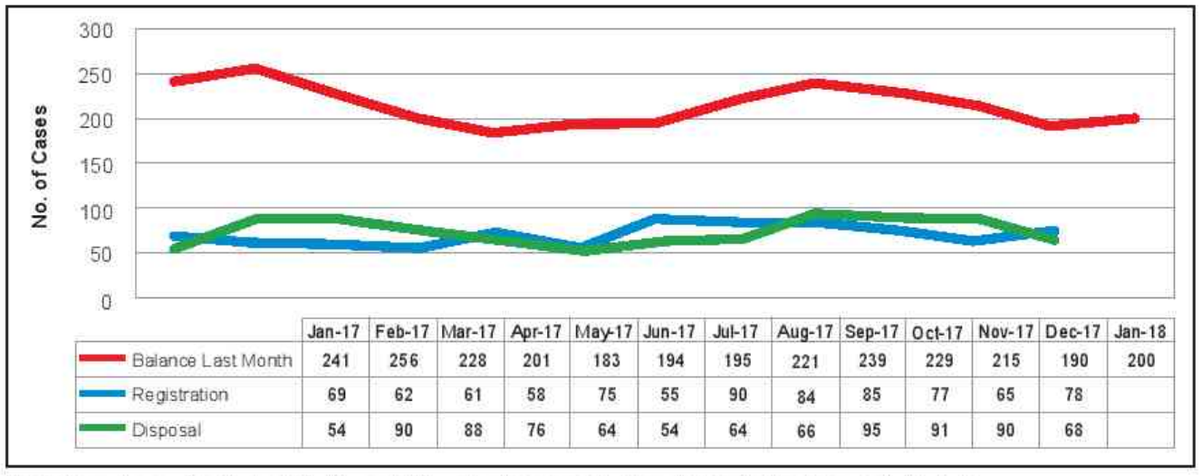
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

10. PAHANG

10.1 IN THE HIGH COURT AT KUANTAN – CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Kuantan for the year 2017. For the period of January to December 2017, the total number of Civil Cases registered was 859. The High Court has managed to dispose of 900 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Kuantan is 1,019 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Kuantan is 105%.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	241	256	228	201	183	194	195	221	239	229	215	190	200
Registration	69	62	61	58	75	55	90	84	85	77	65	78	
Disposal	54	90	88	76	64	54	64	66	95	91	90	68	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT KUANTAN (CIVIL)
AS AT 31 DECEMBER 2017

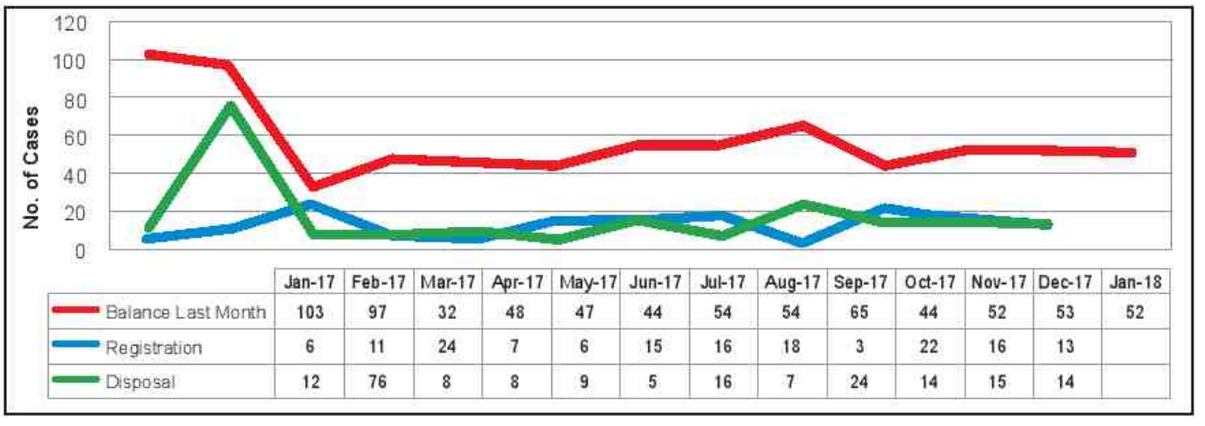
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2008											1															1
2014												4														4
2015												5									9					14
2016											2	18			1					2	79					102
2017	4	4	8	24			9	1			5	39			40		1			18	710	11	10	14		898
TOTAL	4	4	8	24			9	1			8	66			41		1			20	798	11	10	14		1019

A : Interlocutory B : Full Trial

10.2 IN THE HIGH COURT AT KUANTAN – CRIMINAL

For Criminal Cases in the year 2017, a total of 157 cases including appeals and trials were registered and 208 cases were disposed of leaving a balance of 52 cases pending, as reflected in pending cases below. The Court has successfully disposed the cases more than the registration for the year 2017. The percentage of disposal as against registration for Criminal Cases in the High Court at Kuantan is 132%.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
AS AT JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	103	97	32	48	47	44	54	54	65	44	52	53	52
Registration	6	11	24	7	6	15	16	18	3	22	16	13	
Disposal	12	76	8	8	9	5	16	7	24	14	15	14	

PENDING CASES
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
AS AT 31 DECEMBER 2017

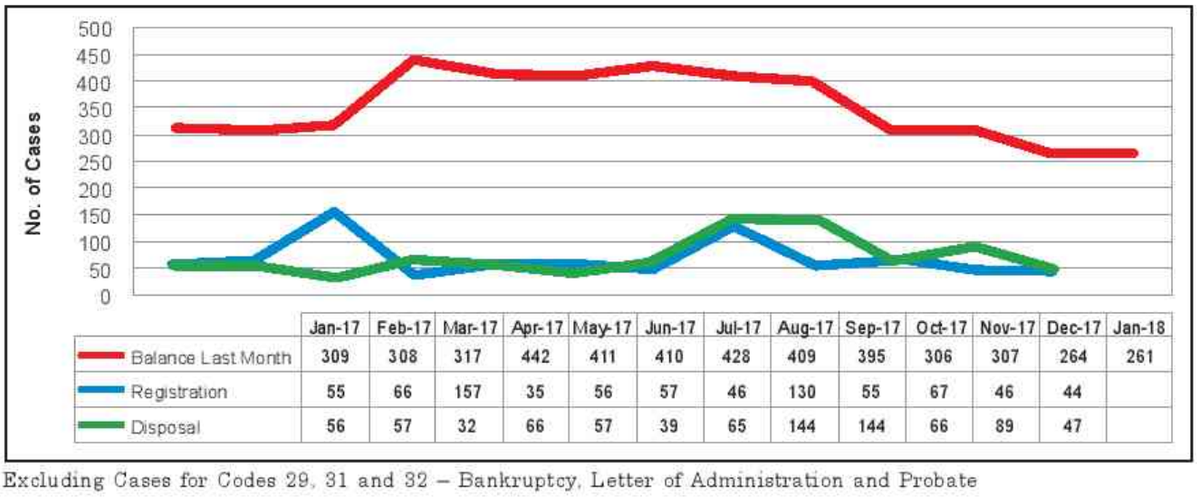
YEAR	CODES																														TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2016																2	1	1													4
2017		7	7		1	1		2	8			6			3	7		2								4					48
TOTAL		7	7		1	1		2	8			6			3	9	1	3								4					52

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

10.3 IN THE HIGH COURT AT TEMERLOH – CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Temerloh for the year 2017. For the period of January to December 2017, the total number of Civil Cases registered was 814. The High Court has managed to dispose of 862 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in High Court at Temerloh is 775 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Temerloh is 106%.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CIVIL)
AS AT JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	309	308	317	442	411	410	428	409	395	306	307	264	261
Registration	55	66	157	35	56	57	46	130	55	67	46	44	
Disposal	56	57	32	66	57	39	65	144	144	66	89	47	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT TEMERLOH (CIVIL)
AS AT 31 DECEMBER 2017

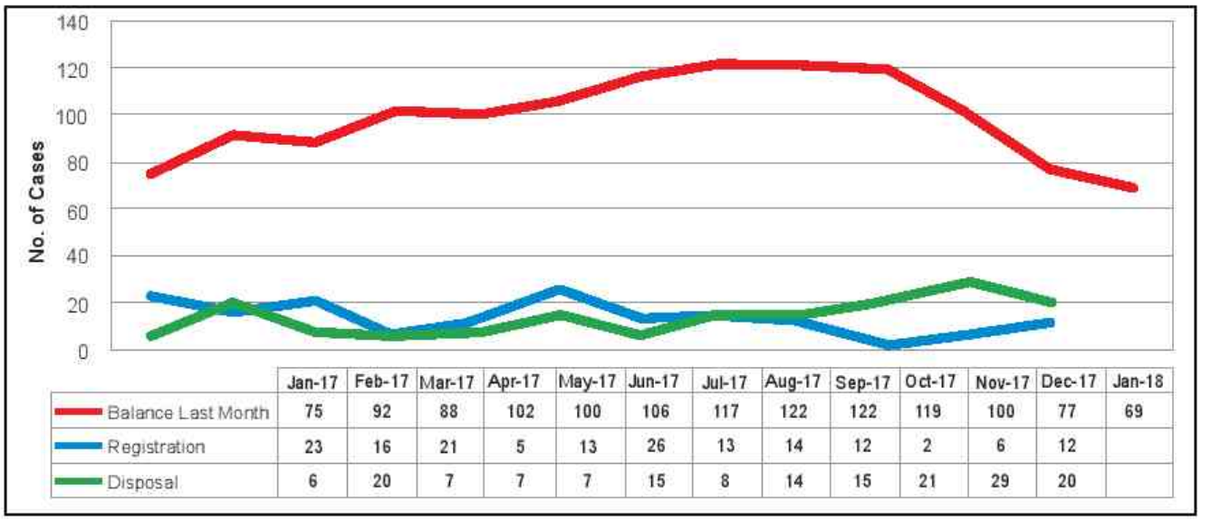
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	23	24	25	26	27	28	29	31	32	33	34	37	38	
	A	B	A	B																						
2013																								6	6
2014												1												15	16
2015																			81					26	107
2016				4							1	2							40					26	73
2017		5	5	23			9	1	1		5	19		27	3			2	365	13	15	22	1	2	55	573
TOTAL		5	5	27			9	1	1		6	22		27	3			2	486	13	15	22	1	2	128	775

A : Interlocutory B : Full Trial

10.4 IN THE HIGH COURT AT TEMERLOH – CRIMINAL

For Criminal Cases in the year 2017, a total of 163 cases including appeals and trials were registered and 169 cases had been disposed of, leaving a balance of 69 cases pending as reflected in pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Temerloh is 104%.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	75	92	88	102	100	106	117	122	122	119	100	77	69
Registration	23	16	21	5	13	26	13	14	12	2	6	12	
Disposal	6	20	7	7	7	15	8	14	15	21	29	20	

PENDING CASES
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2015																		3												3
2016																1		4								1				6
2017		1	12		1	9		5	16						3	4		5								4				60
TOTAL		1	12		1	9		5	16						3	5		12								5				69

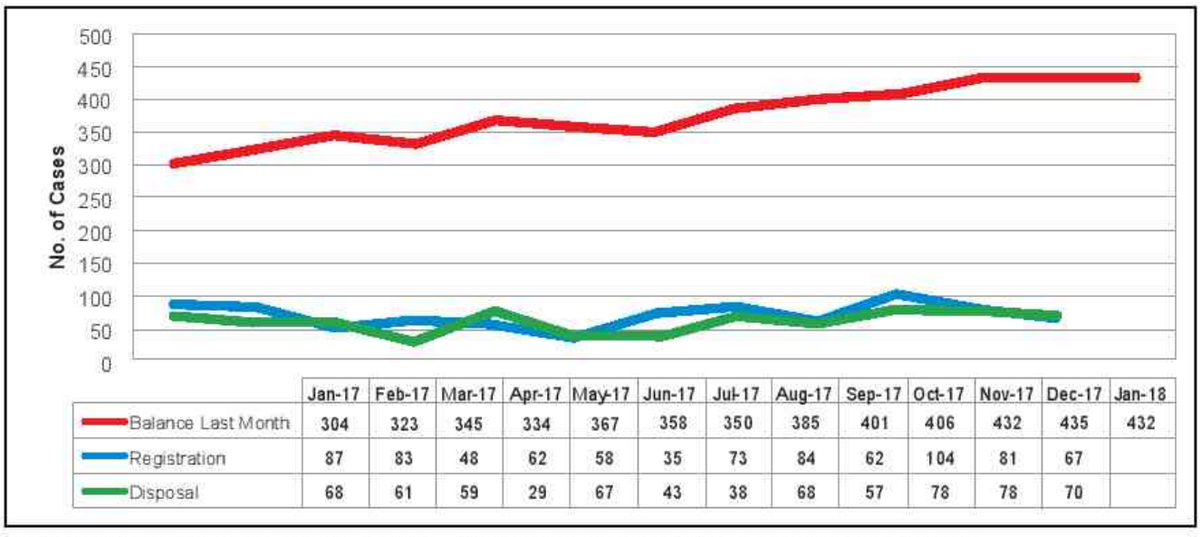
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

11. TERENGGANU

11.1 IN THE HIGH COURT AT KUALA TERENGGANU - CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Kuala Terengganu for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 844. The High Court has managed to dispose of 716 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Kuala Terengganu is 940 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Terengganu is 85%.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	304	323	345	334	367	358	350	385	401	406	432	435	432
Registration	87	83	48	62	58	35	73	84	62	104	81	67	
Disposal	68	61	59	29	67	43	38	68	57	78	78	70	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
AS AT 31 DECEMBER 2017

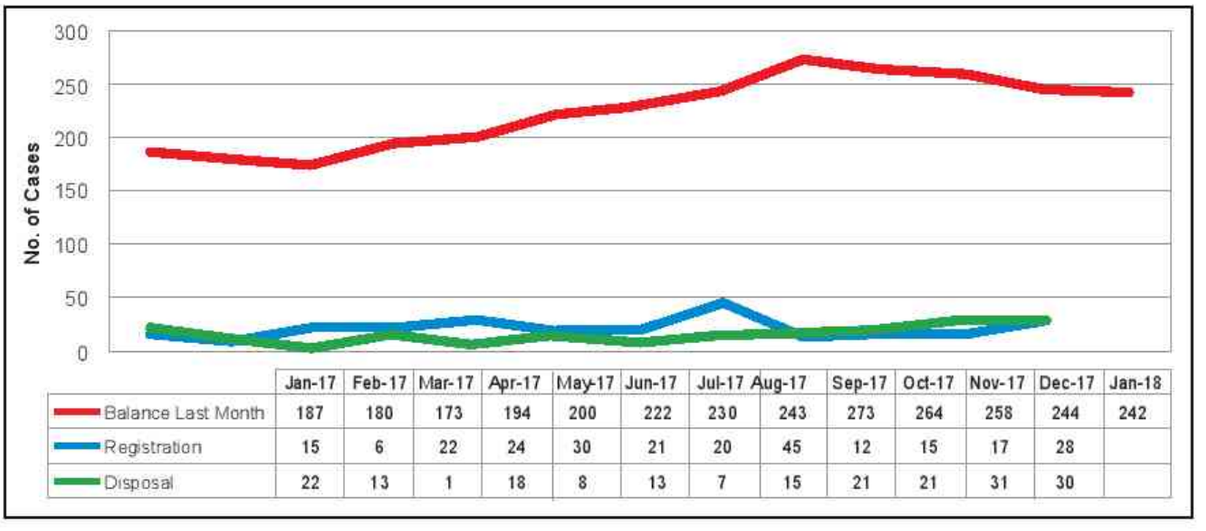
YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	37	38	
	A	B	A	B																								
2005												1														1		2
2014												1															2	3
2015												6								1							7	14
2016		4		13			4				1	10								1	2						22	57
2017	8	9	20	34			83	5			5	37			45		3			10	494	10	1	2			98	864
TOTAL	8	13	20	47			87	5			6	55			45		3			12	496	10	1	2		1	129	940

A : Interlocutory B : Full Trial

11.2 IN THE HIGH COURT AT KUALA TERENGGANU - CRIMINAL

For Criminal Cases in the year 2017, a total of 255 cases including appeals and trials were registered and 200 cases were disposed of, leaving a balance of 242 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Kuala Terengganu is 78%.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	187	180	173	194	200	222	230	243	273	264	258	244	242
Registration	15	6	22	24	30	21	20	45	12	15	17	28	
Disposal	22	13	1	18	8	13	7	15	21	21	31	30	

PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2015																		2												2
2016		13	12			2		4	3							2		6								1				43
2017		26	50		5	6		16	74						2	13		3								2				197
TOTAL		39	62		5	8		20	77						2	15		11								3				242

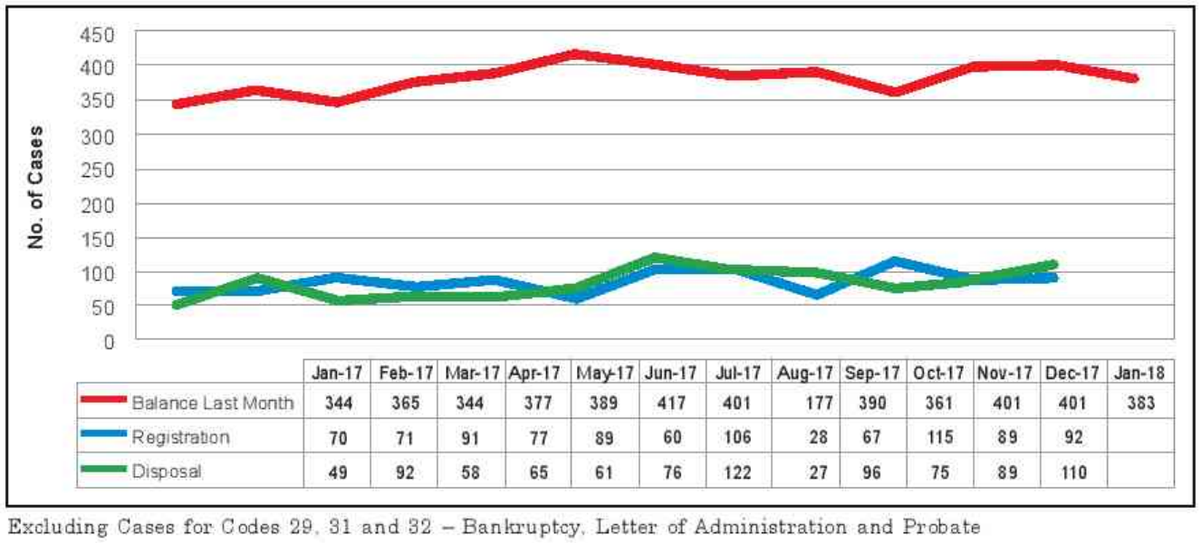
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

12. KELANTAN

12.1 IN THE HIGH COURT AT KOTA BHARU – CIVIL

The tracking chart below shows the registration and disposal of Civil Cases in the High Court at Kota Bharu for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 1,033. The High Court has managed to dispose of 994 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending in the High Court at Kota Bharu is 1,301 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Kota Bahru is 96%.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	344	365	344	377	389	417	401	177	390	361	401	401	383
Registration	70	71	91	77	89	60	106	28	67	115	89	92	
Disposal	49	92	58	65	61	76	122	27	96	75	89	110	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
AS AT 31 DECEMBER 2017

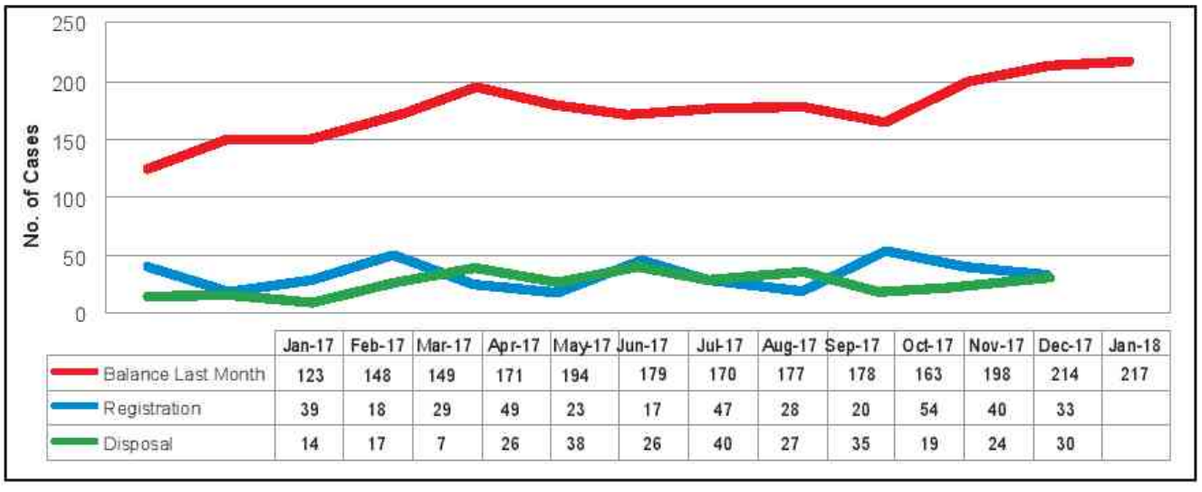
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2016		1	1								2	13		1	3		2				21					44
2017	2	7	12	44			20	1	2		9	43		8	178		11			15	883	12	2	8		1257
TOTAL	2	8	13	44			20	1	2		11	56		9	181		13			15	904	12	2	8		1301

A : Interlocutory B : Full Trial

12.2 IN THE HIGH COURT AT KOTA BHARU – CRIMINAL

For Criminal Cases in the year 2017, a total of 397 cases including appeals and trials were registered and 303 cases were disposed of, leaving a balance of 217 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Kota Bahru is 76%.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	123	148	149	171	194	179	170	177	178	163	198	214	217
Registration	39	18	29	49	23	17	47	28	20	54	40	33	
Disposal	14	17	7	26	38	26	40	27	35	19	24	30	

PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
AS AT 31 DECEMBER 2017

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	
2016		1									1	1				1		2												6
2017		36	50		1	15		53	25		4		1		6	6		8								5		1		211
TOTAL		37	50		1	15		53	25		5	1	1		6	7		10								5		1		217

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

15. SESSIONS COURT IN PENINSULAR MALAYSIA

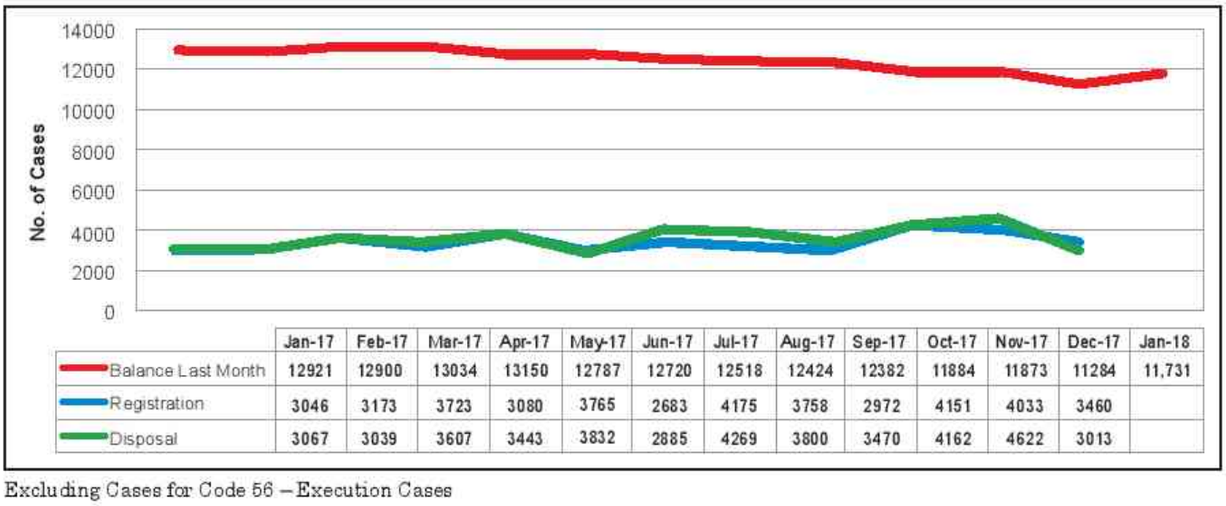
15.1 SESSIONS COURT-CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2017.

For the period from January to December 2017, the total number of Civil Cases registered was 42,019. The Sessions Court has managed to dispose of 43,209 cases throughout the year 2017. The rate of disposal against registration is 103%.

As at 31 December 2017, the total number of Civil Cases pending in the Sessions Court in Peninsular Malaysia is 12,069 cases as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	12921	12900	13034	13150	12787	12720	12518	12424	12382	11884	11873	11284	11,731
Registration	3046	3173	3723	3080	3765	2683	4175	3758	2972	4151	4033	3460	
Disposal	3067	3039	3607	3443	3832	2885	4269	3800	3470	4162	4622	3013	

Excluding Cases for Code 56 – Execution Cases

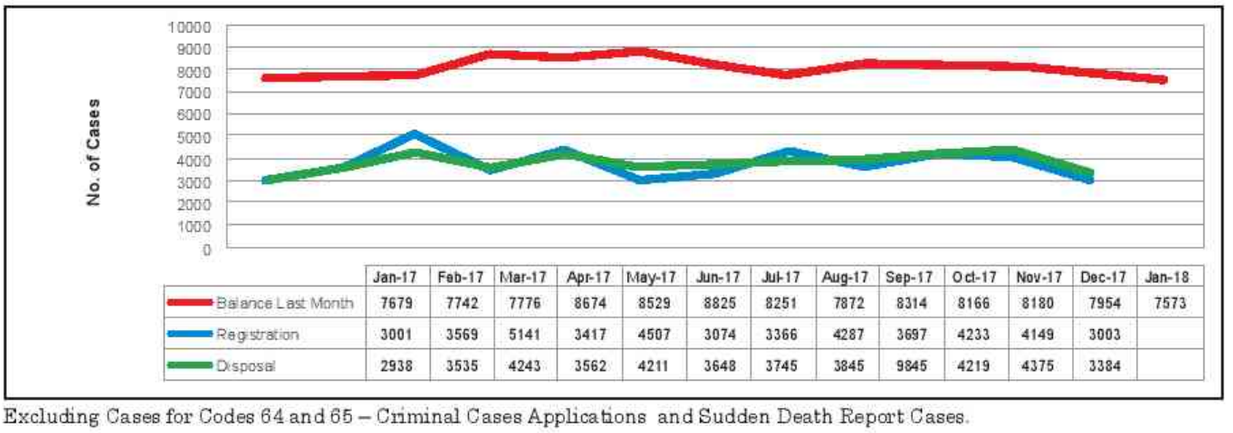
PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2017

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2008		1							1
2012		2							2
2013		2							2
2014		11	2						13
2015	2	37	18			14			71
2016	9	335	338	4		12			698
2017	411	4234	5923	86		312		316	11282
TOTAL	422	4622	6281	90		338		316	12069

15.2 SESSIONS COURT - CRIMINAL

For Criminal Cases in the year 2017, a total of 45,444 Criminal Cases were registered and 45,550 Criminal Cases were disposed of, leaving a balance of 8265 cases pending. The rate of disposal against registration is 100%.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	7679	7742	7776	8674	8529	8825	8251	7872	8314	8166	8180	7954	7573
Registration	3001	3569	5141	3417	4507	3074	3366	4287	3697	4233	4149	3003	
Disposal	2938	3535	4243	3562	4211	3648	3745	3845	9845	4219	4375	3384	

Excluding Cases for Codes 64 and 65 – Criminal Cases Applications and Sudden Death Report Cases.

PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2017

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		
2004										4						4
2007									5							5
2010									3	2						5
2011					1				2	1						4
2012									8							8
2013			1						5	14						20
2014					4			3		31			1			39
2015			5		7			4		135	5		7		3	166
2016			61		30		11	63		413	36		27		3	644
2017		2	149		113		148	69		5281	956		215		437	7370
TOTAL		2	216		155		159	139	23	5881	997		250		443	8265

Comm: Commercial Crimes Corrupt: Corruption Cases Ors: Others

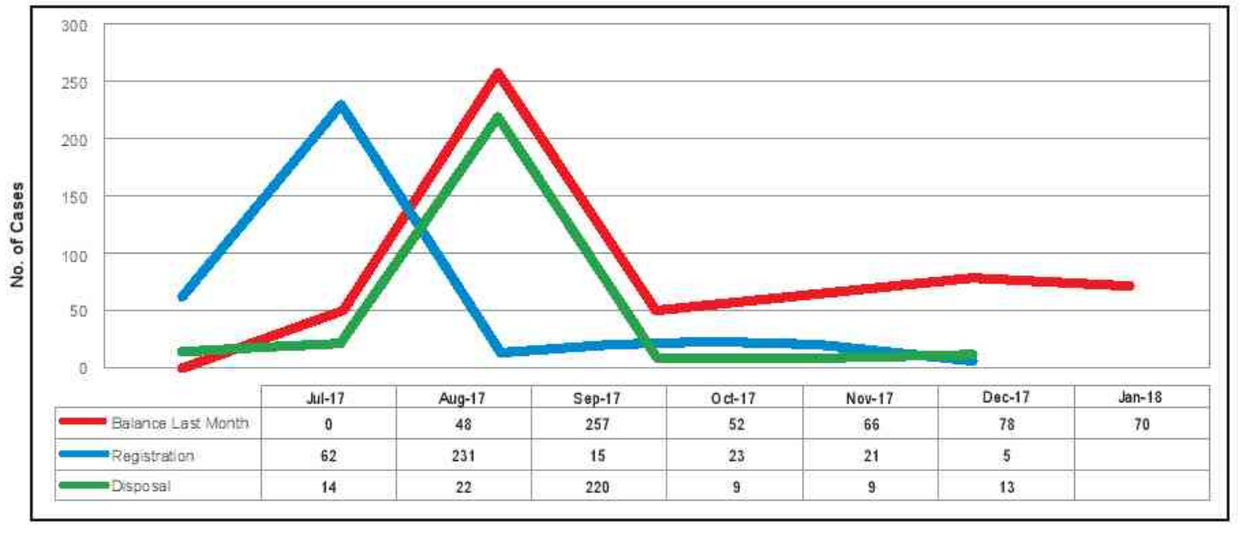
15.3 SPECIAL COURT FOR SEXUAL CRIMES AGAINST CHILDREN

IN THE SESSIONS COURT AT PUTRAJAYA

The first Specialised Court for Sexual Crimes Against Children Cases at Putrajaya was launched on *22nd Jun 2017 at Istana Kehakiman, Putrajaya*. The Special Court was set up under the Sexual Offences Against Children Act 2017 (Act 792) which came into force on 10th of July 2017 to smoothen and speed up proceeding of cases on sexual crimes involving children. The intention of the law is to protect children aged 18 and below from sexual crimes as stipulated in the Child Act 2001.

For the year 2017, the total number of registration for Sexual Crimes Against Children Cases was 357 cases and the Sessions Court at Putrajaya has managed to dispose of 287 cases, leaving a balance of 70 cases as can be seen in the pending cases below. The rate of disposal as against registration for Sexual Crimes Against Children Cases is 80% and the Court will continue to deliver its best to ensure that justice is given to the children.

TRACKING CHART
IN THE SESSIONS COURT AT PUTRAJAYA
SEXUAL CRIMES AGAINST CHILDREN CASES COURT
(JULY-DECEMBER 2017)



	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	0	48	257	52	66	78	70
Registration	62	231	15	23	21	5	
Disposal	14	22	220	9	9	13	

PENDING CASES
IN THE SESSIONS COURT AT PUTRAJAYA
SEXUAL CRIMES AGAINST CHILDREN CASES COURT
AS AT 31 DECEMBER 2017

YEAR	CODES		TOTAL
	61 JSK	62 JSK	
2017	7	63	70

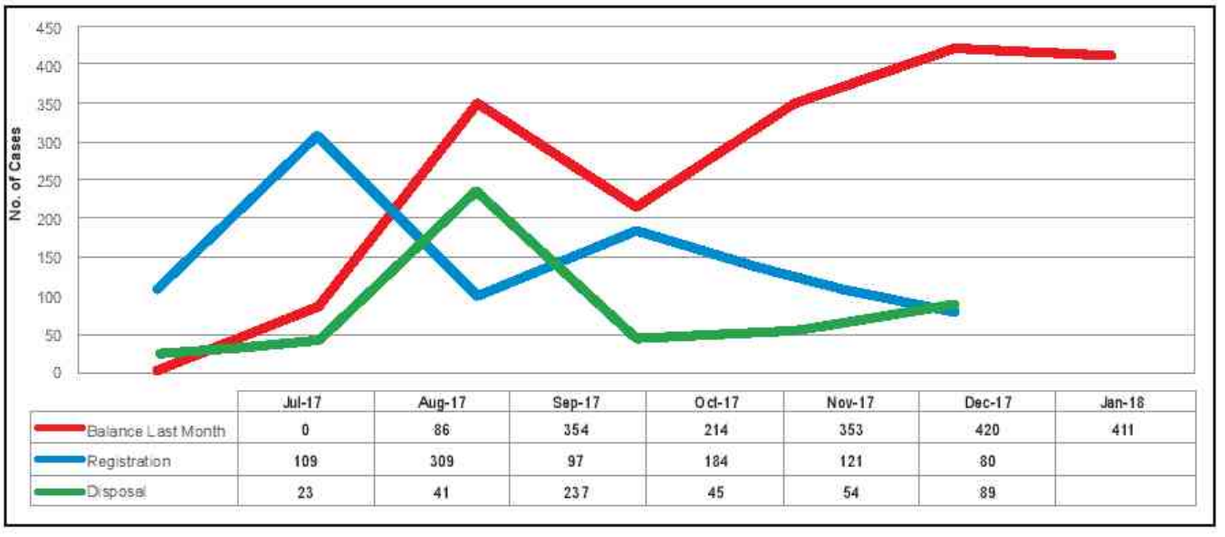
Codes	Description
Code 61JSK	Sexual Crimes Against Children Offences (Civil Servants)
Code 62 JSK	Sexual Crimes Against Children Offences

15.4 SESSIONS COURT - SEXUAL CRIMES AGAINST CHILDREN CASES

The tracking chart below shows the Overall Performance of Sexual Crimes Against Children Cases in the Sessions Court in Malaysia for the year 2017.

The total number of Sexual Crimes Against Children Cases registered in the Sessions Court in Malaysia was 900 cases. The Sessions Court in Malaysia has managed to dispose of 489 cases leaving a balance of 411 cases pending. The rate of disposal as against registration throughout the year 2017 for Sexual Crimes Against Children Cases was 54.3%.

TRACKING CHART
IN THE SESSIONS COURT IN MALAYSIA
SEXUAL CRIMES AGAINST CHILDREN CASES
JULY-DECEMBER 2017



	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	0	86	354	214	353	420	411
Registration	109	309	97	184	121	80	
Disposal	23	41	237	45	54	89	

COMPARISON OF SEXUAL CRIMES AGAINST CHILDREN CASES AND SEXUAL CRIMES CASES IN THE SESSIONS COURT IN MALAYSIA

The comparison of pending cases for Sexual Crimes Against Children Cases and Sexual Crimes Cases in the Sessions Court in Malaysia from the date of the establishment of the Specialised Court until December 2017 can be seen in the tables below. As at December 2017, the total number of Sexual Crimes Against Children Cases pending in the Sessions Court in Malaysia is 411 cases and the total number of pending cases for the Sexual Crimes Cases in Malaysia is 931 cases. Looking at the number of pending cases on Sexual Crimes Against Children Cases in comparison to the Sexual Crimes Cases as highlighted in the tables below, it is hoped that every state in Malaysia will have a special court to hear such crimes against children by the end of next year. Training will also be given to judges on how to handle child sex crimes cases efficiently.[2]

PENDING CASES
IN THE SESSIONS COURT IN MALAYSIA
SEXUAL CRIMES AGAINST CHILDREN CASES AND SEXUAL CRIMES CASES
AS AT 31 DECEMBER 2017

TABLE A
Sexual Crimes Against Children Cases

MONTH/YEAR	CODES		TOTAL
	61JSK	62JSK	
July-Dec 2017	40	371	411

Codes	Description
Code 61JS	Sexual Crimes Offences (Civil Servants)
Code 62 JS	Sexual Crimes Offences

TABLE B
Sexual Crimes Cases

MONTH/YEAR	CODES		TOTAL
	61 JS	62 JS	
July-Dec 2017	60	871	931

[2] The Star Online : Special court to hear child sex abuse cases to be set up in every state
Read more at https://www.thestar.com.my/news/nation/2017/12/11/more-muscle-against-predators-special-court-to-hear-child-sex-abuse-cases-to-be-set-up-in-every-stat/Monday, 11 Dec 2017

17. MAGISTRATES COURT IN PENINSULAR MALAYSIA

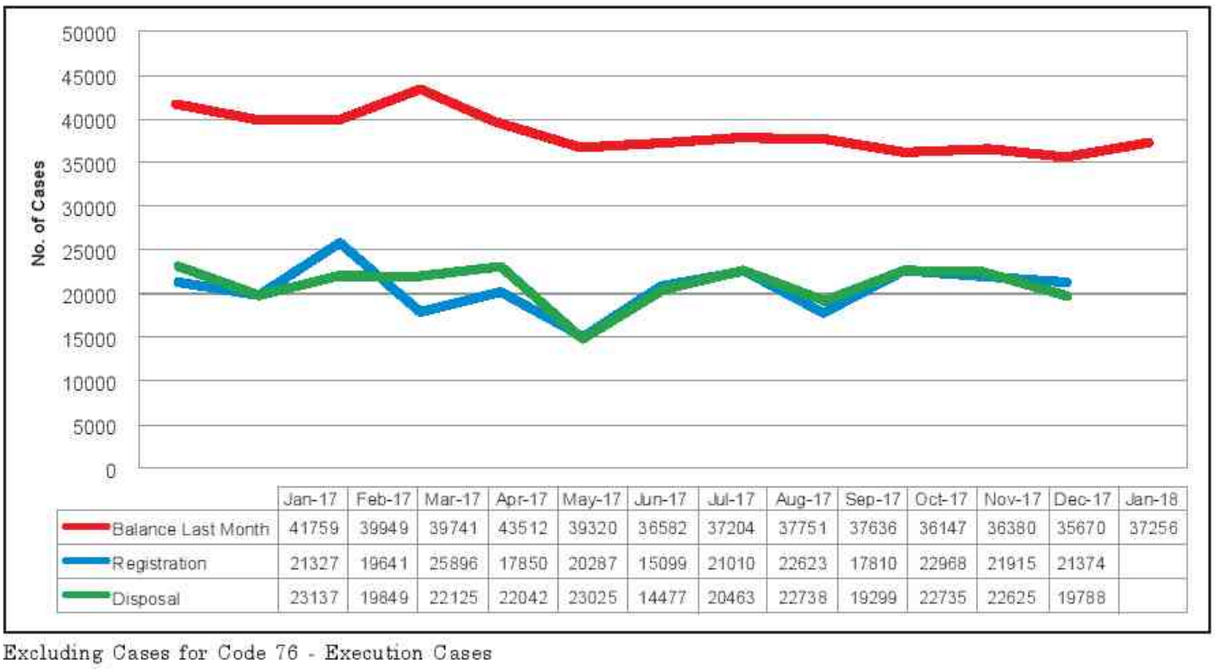
17.1 MAGISTRATES COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Peninsular Malaysia for the year 2017.

For the period from January to December 2017 the total number of Civil Cases registered was 247,800 The Magistrates Court has managed to dispose of 252,303 cases throughout the year 2017, that is 102% disposal against registration.

As at 31 December 2017, the total number of Civil Cases pending in the Magistrates Court in Peninsular Malaysia is 40,382 as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	41759	39949	39741	43512	39320	36582	37204	37751	37636	36147	36380	35670	37256
Registration	21327	19641	25896	17850	20287	15099	21010	22623	17810	22968	21915	21374	
Disposal	23137	19849	22125	22042	23025	14477	20463	22738	19299	22735	22625	19788	

Excluding Cases for Code 76 - Execution Cases

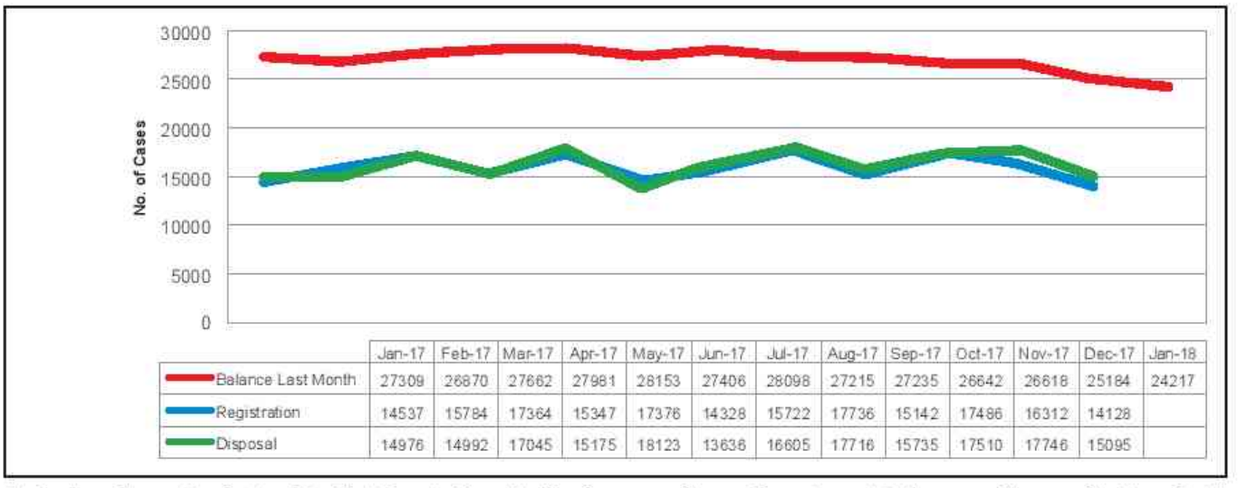
PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2017

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2010										
2014		1								1
2015		5								5
2016		78		98	1		1			178
2017	4516	20962		10340	1030		3125	225		40198
TOTAL	4516	21046		10438	1031		3126	225		40382

17.2 MAGISTRATES COURT - CRIMINAL

For Criminal Cases in the year 2017, a total of 191,262 cases were registered and 194,354 cases were disposed of, leaving a balance of 382,092 pending cases.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	27309	26870	27662	27981	28153	27406	28098	27215	27235	26642	26618	25184	24217
Registration	14537	15784	17364	15347	17376	14328	15722	17736	15142	17486	16312	14128	
Disposal	14976	14992	17045	15175	18123	13636	16605	17716	15735	17510	17746	15095	

Excluding Cases for Codes 86, 87, 88 and 89 – Traffic Summon Cases, Departmental Summon Cases, Sudden Death Report Cases and Criminal Applications.

PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2013															1	1
2014													1			1
2015				2			7			1	4		2			16
2016	2			26			495			23	5	2176	611		3	3341
2017	1054		3	623		19	20720		17	915	301	326866	27917		298	378733
TOTAL	**1056**		**3**	**651**		**19**	**21222**		**17**	**939**	**310**	**329042**	**28531**		**302**	**382092**

VC: Violent Crimes J: Street Crimes Ors: Others

APPENDIX B

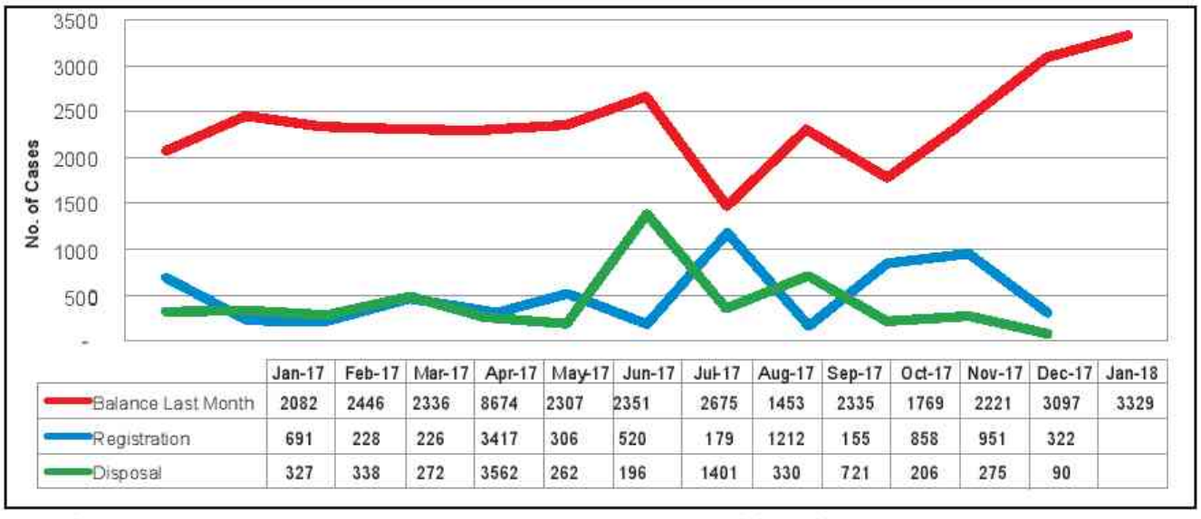
(SABAH & SARAWAK)

13. SABAH

13.1 IN THE HIGH COURT AT SABAH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Sabah for the year 2017. For the period from January to December 2017, the total number of Civil Cases registered was 6,114. The High Court has managed to dispose 4,867 cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending is 5,197 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Sabah is 80%.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CIVIL)
JANUARY-DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	2082	2446	2336	8674	2307	2351	2675	1453	2335	1769	2221	3097	3329
Registration	691	228	226	3417	306	520	179	1212	155	858	951	322	
Disposal	327	338	272	3562	262	196	1401	330	721	206	275	90	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT SABAH (CIVIL)
AS AT 31 DECEMBER 2017

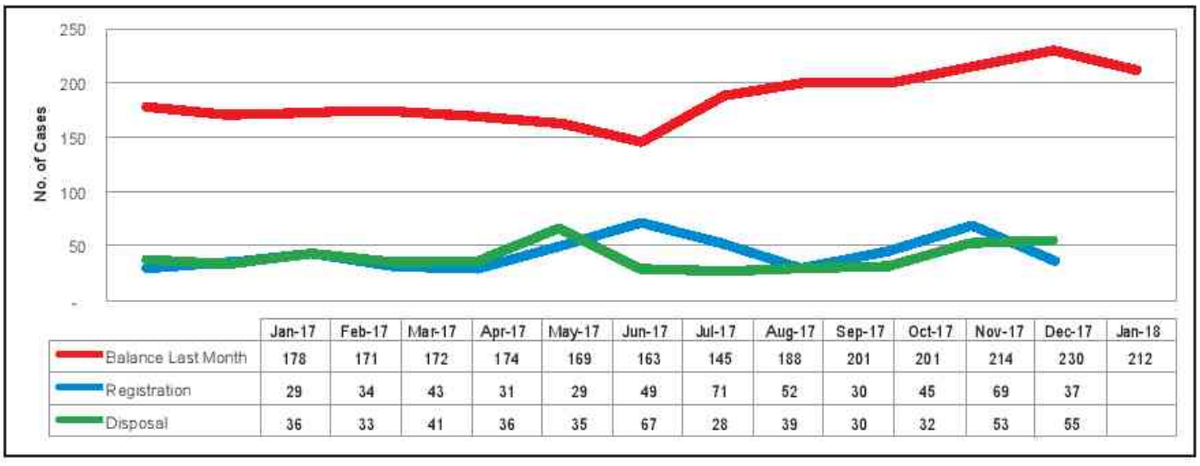
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2010												1													1
2011												3													3
2012												2			1										3
2013												1													1
2014												4			1						1				6
2015					404							29			1						3				437
2016		2			278						1	81		2	4					3	40			3		414
2017	10	6	13	23	2049			11	16	4	11	144		1	101		2			48	1791	18	16	58	10	4332
TOTAL	10	8	13	23	2731			11	16	4	12	265		3	108		2			51	1835	18	16	61	10	5197

A : Interlocutory B : Full Trial

13.2 IN THE HIGH COURT AT SABAH- CRIMINAL

In year 2017, for Criminal Cases including appeals and trials, a total of 519 cases were registered. The Court has managed to dispose 485 cases for the year 2017, leaving a balance of 212 cases pending as reflected in the pending cases below. The percentage of disposal as against registration for Criminal Cases in the High Court at Sabah is 93%.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	178	171	172	174	169	163	145	188	201	201	214	230	212
Registration	29	34	43	31	29	49	71	52	30	45	69	37	
Disposal	36	33	41	36	35	67	28	39	30	32	53	55	

PENDING CASES
IN THE HIGH COURT AT SABAH (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2015																1														1
2016								2	2							2		2												8
2017		22	51		3			21	49		1	5	2		8	18		14								2		7		203
TOTAL		22	51		3			23	51		1	5	2		8	21		16								2		7		212

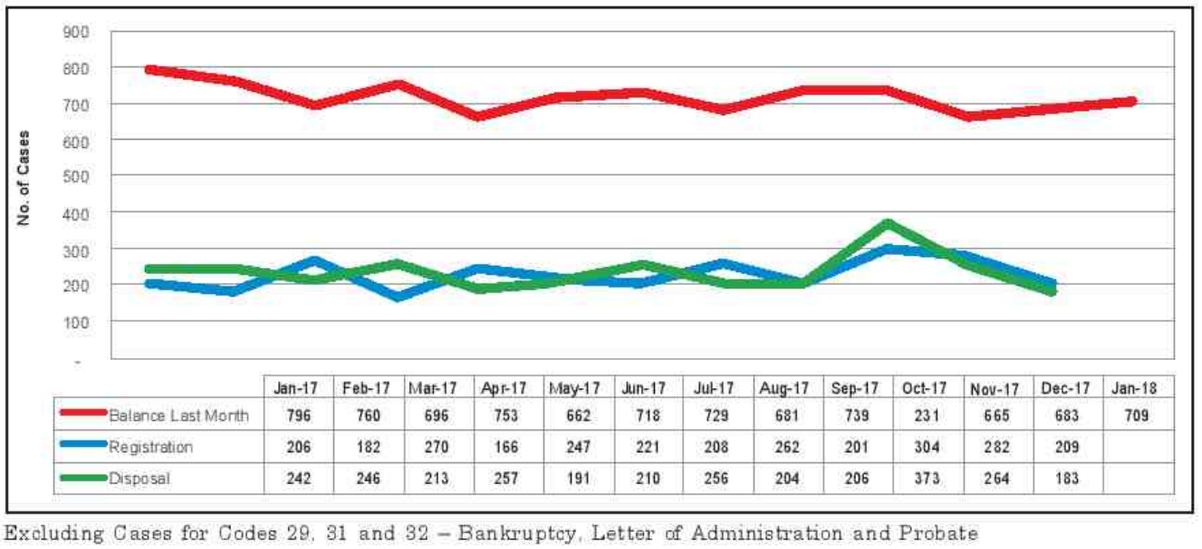
A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

14. SARAWAK

14.1 IN THE HIGH COURT AT SARAWAK – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Sarawak for the year 2017. The Court has managed to dispose of 2,758 cases out of 2,845 registered cases throughout the year 2017. As at 31 December 2017, the total number of Civil Cases pending is 1,545 as reflected in the pending cases below. The percentage of disposal as against registration for Civil Cases in the High Court at Sarawak is 97%.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CIVIL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	796	760	696	753	662	718	729	681	739	231	665	683	709
Registration	206	182	270	166	247	221	208	262	201	304	282	209	
Disposal	242	246	213	257	191	210	256	204	206	373	264	183	

Excluding Cases for Codes 29, 31 and 32 – Bankruptcy, Letter of Administration and Probate

PENDING CASES
IN THE HIGH COURT AT SARAWAK (CIVIL)
AS AT 31 DECEMBER 2017

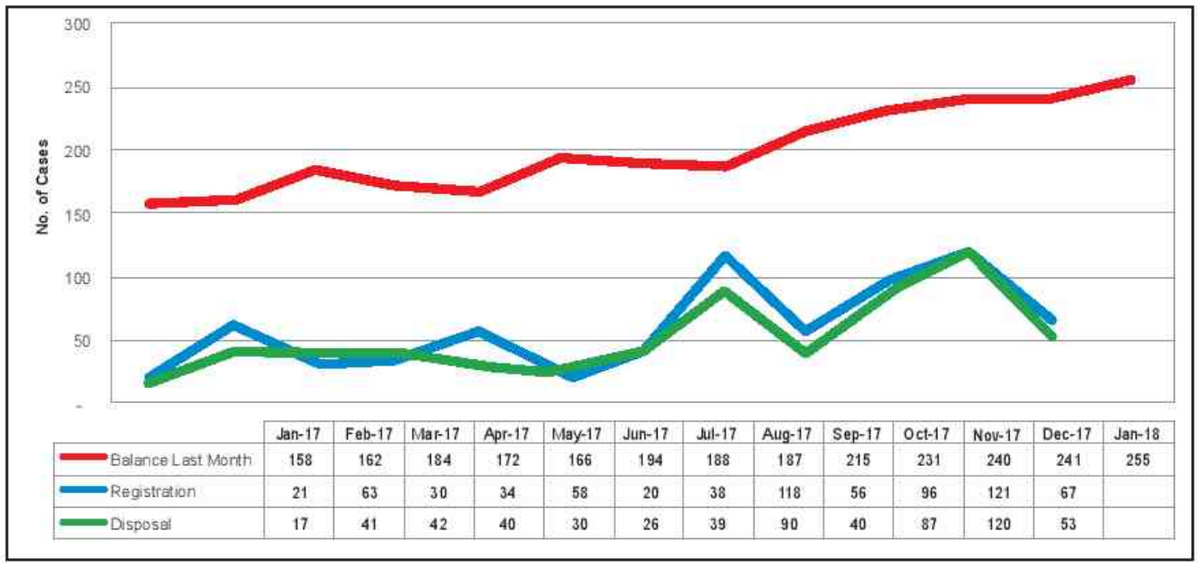
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009												1														1
2012												1														1
2013												8			5											13
2014							1				1	8			6						1					17
2015					1	1					10	12		1	1						2					28
2016				1	2						6	20		2	4						9			3		47
2017	7	6	10	19	11	2	11				31	75		1	156			1	1	46	823		1	234	3	1438
TOTAL	7	6	10	20	14	3	12				48	125		4	172			1	1	46	835		1	237	3	1545

A : Interlocutory B : Full Trial

14.2 IN THE HIGH COURT AT SARAWAK - CRIMINAL

For Criminal Cases in the year 2017, a total of 722 cases including appeals and trials were registered and 625 cases were disposed of, leaving a balance of 255 cases pending. The percentage of disposal as against registration for Criminal Cases in the High Court at Sarawak is 87%.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	158	162	184	172	166	194	188	187	215	231	240	241	255
Registration	21	63	30	34	58	20	38	118	56	96	121	67	
Disposal	17	41	42	40	30	26	39	90	40	87	120	53	

PENDING CASES
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2013	18			1			12			1																				32
2015																		2												2
2016																6		3								2	1	1		13
2017		43	17		4	2		58	22		2		11		1	26		16								6				208
TOTAL	18	43	17	1	4	2	12	58	22	1	2		11		1	32		21								8	1	1		255

A/C : Appeal against Conviction S : Appeal against Sentence Hbc : Habeas Corpus Ors : Others

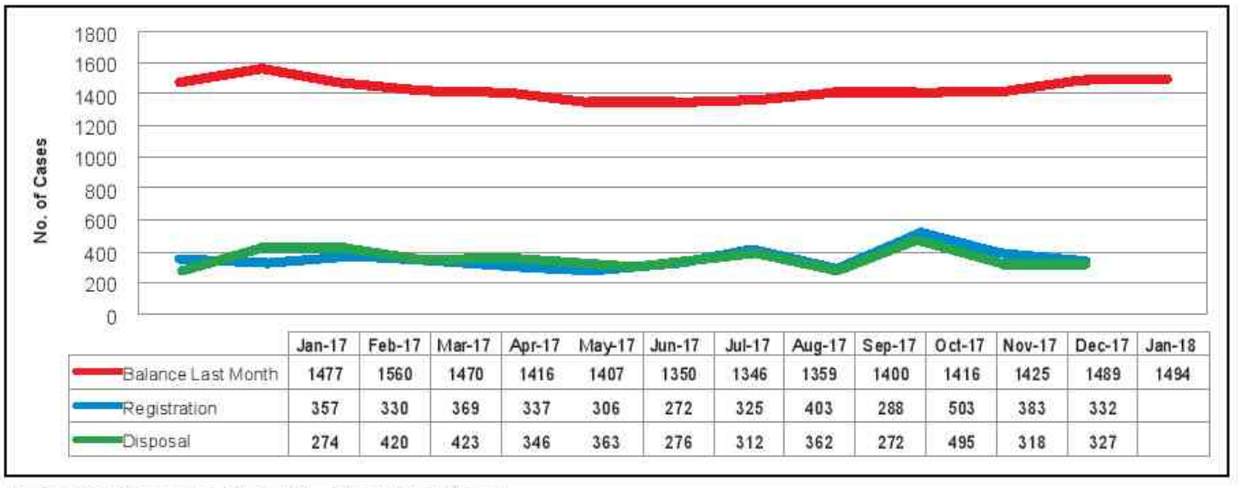
16. THE SESSIONS COURT IN SABAH AND SARAWAK

16.1 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 2017.

For the period from January to December 2017, the total number of Civil Cases registered was 4,205. The Sessions Court has managed to dispose of 4,188 cases throughout the year 2017 leaving 1,533 cases pending as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	1477	1560	1470	1416	1407	1350	1346	1359	1400	1416	1425	1489	1494
Registration	357	330	369	337	306	272	325	403	288	503	383	332	
Disposal	274	420	423	346	363	276	312	362	272	495	318	327	

Excluding Cases for Code 56 – Execution Cases

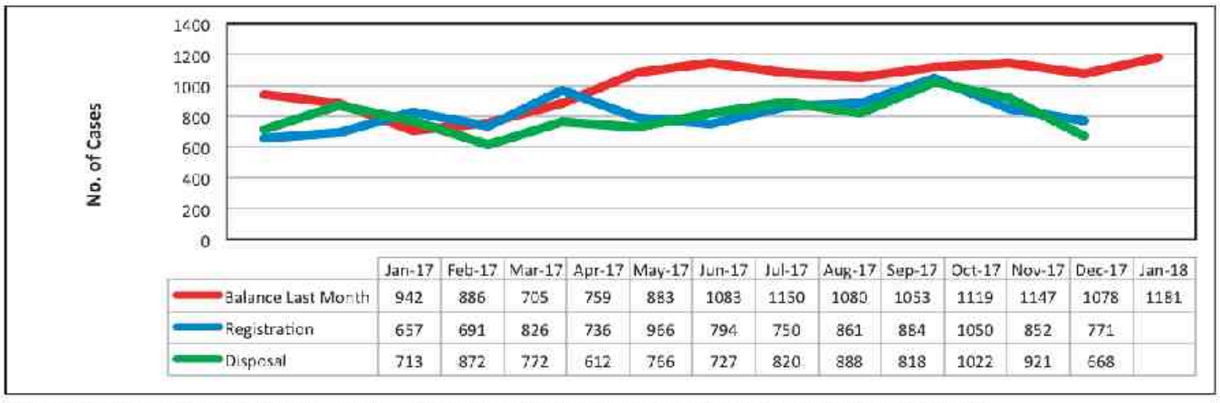
PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2017

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	59	
2011			1						1
2013	2								2
2014		9	2						11
2015	1	9	5	1					16
2016	3	54	48	1		2			108
2017	166	629	556	7		37			1395
TOTAL	172	701	612	9		39			1533

16.2 SESSIONS COURT - CRIMINAL

For Criminal Cases in the year 2017, a total number of 9,838 Criminal Cases were registered and 9,599 cases were disposed of, leaving a balance of 1,414 pending cases.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	942	886	705	759	883	1083	1150	1080	1053	1119	1147	1078	1181
Registration	657	691	826	736	966	794	750	861	884	1050	852	771	
Disposal	713	872	772	612	756	727	820	888	818	1022	921	668	

Excluding Cases for Codes 64 and 65 – Criminal Applications and Sudden Death Report Cases.

PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2017

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		
2015										6						6
2016			6		3			16		70	8		5		1	109
2017			100		40		5	19		785	123		44		183	1299
TOTAL			106		43		5	35		861	131		49		184	1414

Comm: Commercial Crimes Corrupt: Corruption Cases Ors: Others

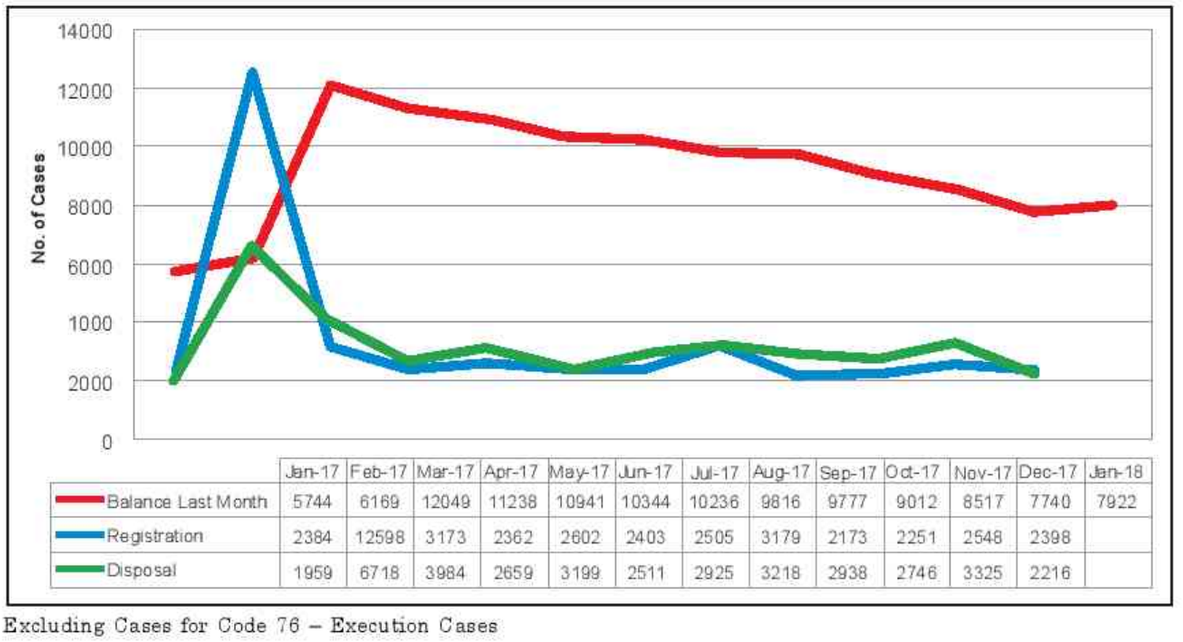
18. MAGISTRATES COURT IN SABAH AND SARAWAK.

18.1 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 2017. For the period from January to December 2017 the total number of Civil Cases registered was 40,576. The Magistrates Court has managed to dispose of 38,398 Civil Cases throughout the year 2017.

As at 31 December 2017, the total number of Civil Cases pending in the Magistrates Court is 8,440 as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	5744	6169	12049	11238	10941	10344	10236	9816	9777	9012	8517	7740	7922
Registration	2384	12598	3173	2362	2602	2403	2505	3179	2173	2251	2548	2398	
Disposal	1959	6718	3984	2659	3199	2511	2925	3218	2938	2746	3325	2216	

Excluding Cases for Code 76 – Execution Cases

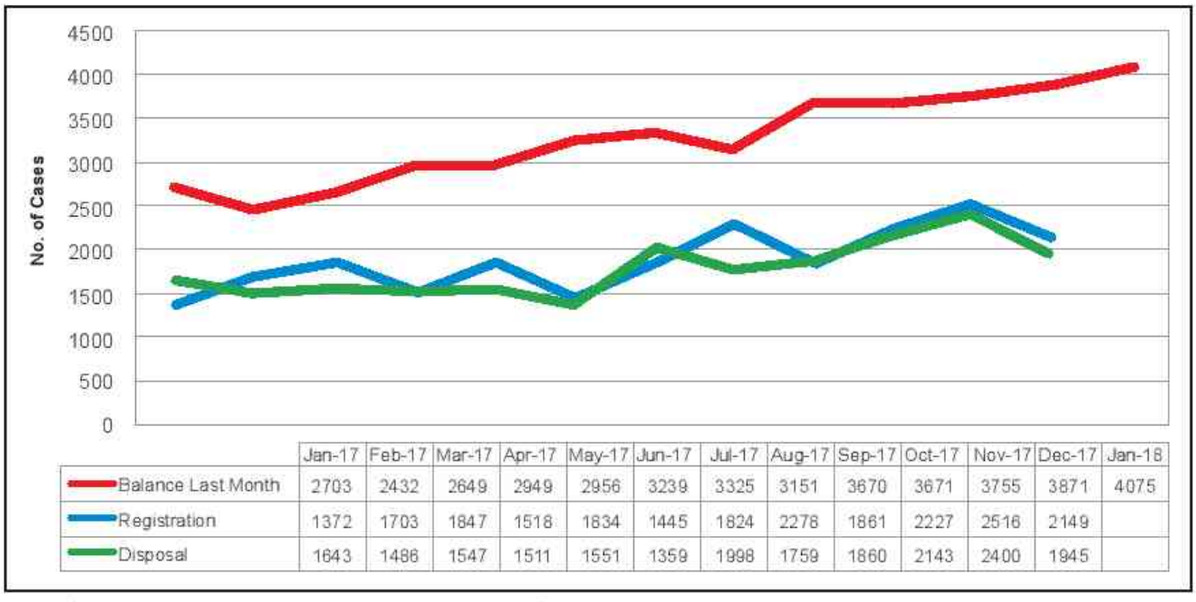
PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2017

YEAR	CODES									TOTAL
	71	72	72A	73	74	76	77	78	79	
2010		1								1
2015		1								1
2016		29		8		9	2		71	119
2017	1129	2884		175	281	509	24	5	3312	8319
TOTAL	1129	2915		183	281	518	26	5	3383	8440

18.2 MAGISTRATES COURTS - CRIMINAL

For Criminal Cases in the year 2017, a total of 22,574 cases were registered and 21,202 cases were disposed of, leaving a balance of 16,431 pending cases.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY- DECEMBER 2017



	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Balance Last Month	2703	2432	2649	2949	2956	3239	3325	3151	3670	3671	3755	3871	4075
Registration	1372	1703	1847	1518	1834	1445	1824	2278	1861	2227	2516	2149	
Disposal	1643	1486	1547	1511	1551	1359	1998	1759	1860	2143	2400	1945	

Excluding Cases for Codes 86, 87,88 and 89 – Traffic Summon Cases, Departmental Summon Cases, Sudden Death Report Cases and Criminal Applications.

PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2017

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2011														1		1
2015				2			4						2			8
2016				4			50					1	1		1	57
2017	81			65			3666		1	190	12	8938	3219		193	16365
TOTAL	81			71			3720		1	190	12	8939	3222	1	194	16431

VC: Violent Crimes J: Street Crimes Ors: Others

THE EDITORIAL COMMITTEE

Front row L-R: Justice Idrus Harun, Justice Abang Iskandar Abang Hashim, Justice Alizatul Khair Osman Khairuddin, Justice Faizah Jamaludin and Justice Azizah Nawawi.

2nd row L-R: Ms Low Wen Zhen, Mr Shazali Hidayat Shariff, Mdm Norkamilah Aziz, Mdm Syahnn Jeli Bohari, Mdm Siti Nabilah Abd Rashid, Mdm Sharifah Norazlita Syed Salim Idid, Mdm Ng Siew Wee.

Justice Nallini Pathmanathan, Justice Tengku Maimun Tuan Mat, Justice Zainun Ali, Justice Rhodzariah Bujang,

Mdm Arleen Ramly, Mr Ho Kwong Chin, Mr Mohd Sabri Othman, Justice Azizul Azmi Adnan, Justice Mohd Zawawi Salleh, Ms Hazmida Harris Lee, Mdm Chang Lisia, Mr Ahmad Afiq Hasan and Mr Syahrul Sazly Md Sain.

Printed by:

Percetakan Nasional Malaysia Berhad,
Jalan Chan Sow Lin,
50554 Kuala Lumpur, Malaysia