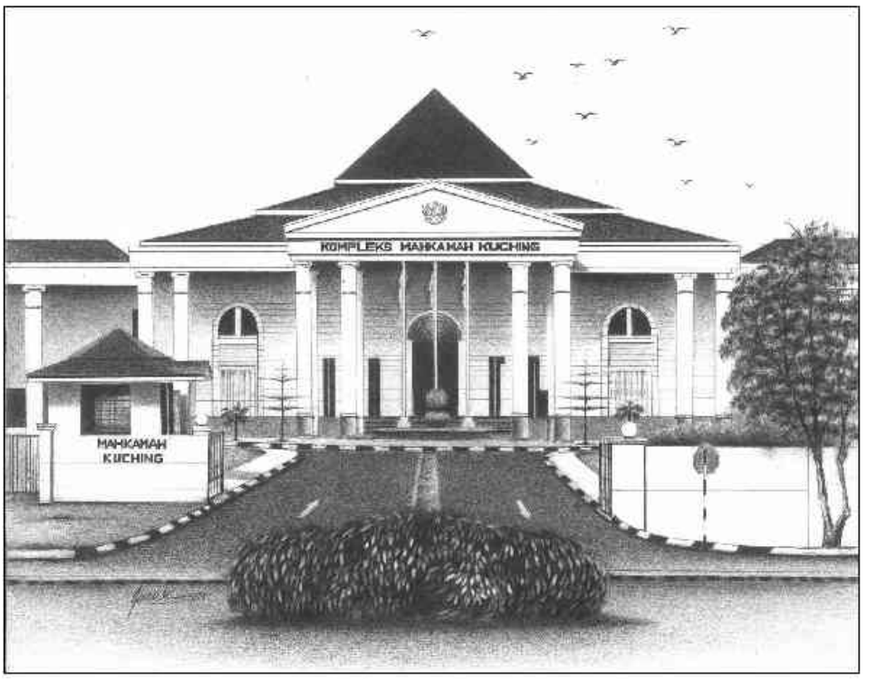
THE MALAYSIAN JUDICIARY

YEARBOOK 2018



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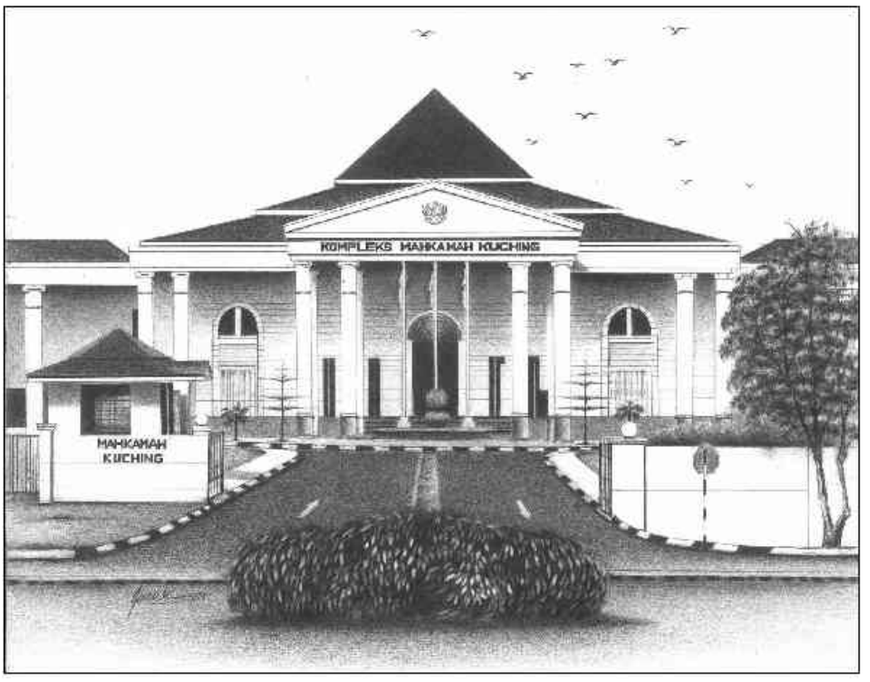
Cover Sketch

"The eye-catching facade of the Kuching Court Complex"

By Justice Abdul Rahman Sebli



THE MALAYSIAN JUDICIARY

YEARBOOK 2018

Contents

The sights of the Palace of Justice from the shades of trees nearby

Foreword

by The Right Honourable Tan Sri Tengku Maimun Tuan Mat
Chief Justice of Malaysia

Praise be to the Almighty for the honour of writing this Foreword and presenting the Malaysian Judiciary Yearbook 2018 at the beginning of my tenure as Chief Justice.

As in the previous years, the yearbook showcases a complete overview of the significant events and activities of the Judiciary for the year: judges' elevations, appointments and retirements, judicial training courses organised by the Judicial Academy, the 52nd Annual Meeting of the Council of Judges and several important civil and criminal cases as well as a comprehensive statistical analysis of the performance of the Malaysian Courts. I am delighted to note that these numbers show that judicial innovations and technological innovations have indeed led to significant improvement to the performance of a judicial system.

This yearbook has several Special Features. There is one on the Former Lord Presidents or Chief Justices of Malaysia from 1963 to the present which includes in this year's edition an inspiring story of Tun Mohamed Suffian Mohamed Hashim, Malaysia's Fourth Lord President of the Federal Court. There is also A Judge's Musings by Tan Sri Dato' Mohamad Ariff Md. Yusof, the retired Court of Appeal judge who is the current Speaker of the Dewan Rakyat of the Malaysian Parliament.

Selected for publication in this yearbook are several legal articles written by sitting Judges and a judicial officer on diversified areas of current interests such as Justice and Integrity, An Overview of the Insurers' Liability to Third Parties, Capital Markets, Technology and the Demands on the Legal System and Rights of Transgender.

2018 saw the retirement of my predecessor, Tun Raus Sharif, followed by my immediate predecessor, Tan Sri Richard Malanjum. I take this opportunity to express my utmost gratitude to them for their dynamic leaderships in continuing the Sixth Chief Justice, Tun Zaki Tun Azmi's transformation of the Malaysian Justice system for the benefit of the public and country.

The Judiciary Calendar of 2018 started with the Opening of the Legal Year in Peninsular Malaysia and in Sabah and Sarawak but with a different approach and format. It was called the 'Opening of the Judicial Year 2018'. The then Chief Justice, Tun Raus Sharif in his opening speech emphasised that the focus of the year was on enhancing access to justice through judicial transformations on seven major areas, inter alia, creating a reliable, fair and efficient justice system, building public confidence and respect through continuing professionalism and making judicial process responsive, effective, faster, better and easier.

In line with the judicial transformation commitments, Malaysian Judgments Portal was set up through the signing of a Memorandum of Understanding between the Malaysian Judiciary and the ASEAN Legal Information Centre represented by the University of Malaya. The release of the portal will not only enhance public accessibility to reported Malaysian Judgments, but it will also improve and raise the quality and standards of Malaysian written judgments which now may be read and referred to by all, from anywhere around the world.

His successor and my immediate predecessor, Tan Sri Richard Malanjum continued to fulfill and perform the judicial transformation commitments for the year by introducing and implementing several technological innovations such as e-review where the preliminary case management of a particular case filed in court will be done online and e-ballot where a system will randomly choose Judges to form panels at the Federal Court. Apart from that, he also implemented the Queue Management System at the Palace of Justice, Putrajaya, video conferencing system in Peninsular Malaysia and the expansion of e-Lelong (e-Auction) System for immovable property to three new locations, namely the High Court of Temerloh (Pahang), the High Court of Ipoh (Perak) and the High Court of Taiping (Perak).

Tan Sri Richard Malanjum also introduced a new management system on the empaneling of Federal Court Judges to hear Federal Court cases in order to avoid any perception of bias particularly in high-profile court cases. Under the new management system, cases of public interest will be heard by a panel of seven or nine Judges; comprising the four Office Bearers i.e. the Chief Justice, the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak and the remaining three or five Judges are to be selected through balloting. Other appeal cases will be heard by a panel of five and chaired by one of the four Office Bearers whilst the remaining four Judges will also be selected through balloting. Applications for Leave to Appeal will be heard by a panel of three Judges, selected through balloting and subject to availability and seniority. Additionally, appeal cases from Sabah and Sarawak to the Court of Appeal and Federal Court will be heard by a panel comprising at least one judge from Sabah and Sarawak.

On the initiative of Tan Sri Richard Malanjum, with the support of United Nations Development Programme (UNDP), an International Framework for Court Excellence (IFCE) Workshop was held in October 2018 to discuss the strategic direction for comprehensive judicial reform in Malaysia. The Workshop identified the areas necessary for reform of the justice sector. Among the key areas to be improved are court leadership and management, court planning and policies, court resources (human material and finance), court proceedings and procedures, client needs and satisfaction, affordable and accessible court services, and public trust and confidence.

2018 has been a challenging but yet a rewarding year. I am pleased to report that the Malaysian Judiciary continues its commitment to improve effective access to justice for all whilst discharging its primary role of upholding the rule of law and dispensing justice. No doubt, the achievements and success would not be possible without the commitment and cooperation from the Attorney-General's Chambers, the Malaysian Bar and all other stakeholders. The late HRH Sultan

Azlan Shah shared the same sentiment in his visionary speech more than 20 years ago, in 1997, where HRH said:

> *'Efforts must constantly be made to speed up the disposition of cases. Litigants have the legitimate expectations to not only a just resolution of their affairs but also an expeditious resolution. It is the responsibility of lawyers, be they members of the Bar, or the legal and judicial service, to help meet this expectation of society'*
>
> HRH Sultan Azlan Shah
> The New Millennium: Challenges and Responsibilities, Universiti Kebangsaan Malaysia Bangi, Selangor,
> 23 August 1997

I would like to take the opportunity to extend my appreciation to all Judges, judicial officers and staff of the courts in Malaysia for all the efforts and hard work done in discharging their respective duties. I appreciate their diligence and dedication to achieve the best possible result towards the excellent performance of the Judiciary. I am grateful to Justice Wong Chee Lin, Judicial Commissioner Ahmad Fairuz Zainol Abidin and Mdm. Arleen Ramly for contributing an article each for this edition. I would also extend my gratitude to Tan Sri Dato' Mohamad Ariff Md. Yusof for his willingness to share his personal insights on both law and life. My thanks also extended to Dato' Sri Latifah Haji Mohd Tahar for an article on the remarkable achievements of the Judiciary in 2018 and to Justice Abdul Rahman Sebli, for his magnificent sketch of the cover.

Finally, I warmly commend the Editorial Committee for their considerable and untiring efforts in producing the yearbook, led by Justice Idrus Harun who took over the responsibility from Tan Sri Zainun Ali upon her retirement, together with his team of Judges, Justice Alizatul Khair Osman Khairuddin, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Abdul Rahman Sebli, Justice Hasnah Dato' Mohammed Hashim, Justice Rhodzariah Bujang, Justice Azizah Haji Nawawi and their supporting officers Mr. Mohd Sabri Othman, Mdm. Ilham Abd Kader, Mdm. Normastura Ayub, Mdm. Arleen Ramly, Mdm. Fatimah Rubi'ah Ali, Mdm. Suzarika Sahak, Mdm. Noor Shahidah Saharom, Mdm. Parvin Hameedah Natchiar, Mdm. Rafiah Yusof, Mdm. Ng Siew Wee, Mr. Muhammad Noor Firdaus Rosli, Mdm. Norkamilah Aziz, Mr. Abdullah Siddiq Mohd Nasir, Dr. Iriane Isabelo, Mdm. Chang Lisia, Mr. Shazali Dato Hidayat Shariff, Mdm. Fazira Azlina Mohd Rofli, Mdm. Aishah Ameerah Che Johan, Mdm. Siti Nabilah Abd Rashid, Mdm. Ainna Sherina Saipolamin, Mr. Ahmad Afiq Hasan and Mr. Saifullah Qamar Qamar Siddique Bhatti.

I wish all of you, a pleasant reading of the Yearbook!

Tan Sri Tengku Maimun Tuan Mat
Chief Justice of Malaysia

The attractive and decorative designed floor tiles at the main lobby entrance towards the grand stairs of Palace of Justice

Preface

by Justice Idrus Harun
Judge of the Federal Court,
Editor, the Malaysian Judiciary Yearbook 2018

It is time to recapitulate on another eventful and absorbing year for the judiciary that saw more significant initiatives undertaken, accomplishments attained and landmark decisions pronounced by the courts. The publication of the Malaysian Judiciary Yearbook 2018 therefore chronicles a continued and sustained coverage as well as important insights on progress achieved and innovations carried out by the courts, reports on significant events, a comprehensive statistical analysis of registered, disposal and pending cases indicating the overall performance at all levels of our judicial hierarchy.

It gives me great pleasure to introduce this annual publication of the Yearbook, although admittedly it comes on at a point when a brand new year inching just around the corner. But, as the old adage says, it is better late than never, for the explicable delay is inevitable due to unavoidable circumstances. The Editorial Committee embarked on the publication work for the Yearbook only in July 2019 when we had our first meeting and through sheer hardwork and effort by members and officers, it is a relief that we manage to accomplish our work with the issue finally seeing the light of day at this point of time.

The year began with an important event of the Opening of the Judicial Year 2018 with Enhancing Access To Justice Through Judicial Transformation as its pivotal theme. On that auspicious occasion, the Chief Justice in his speech emphasised on the need to provide an enhanced access to justice through judicial transformation in certain major areas and courts' achievements. Thereafter, the judiciary wasted no time in continuing to perform its core constitutional function exercising its judicial power to dispense

justice at various levels of the courts which saw several landmark decisions being made. At intervals, the exercise of this function was interspersed with various judicial training programmes aimed at continuing professional development conducted for Judges realising the need that knowledge sharing and capacity building is a cornerstone of the effective and competent judiciary. Needless to say, there is a clear necessity to commonly share our knowledge, experience and expertise as well as cultivate a dynamic information among Judges.

This issue of the Yearbook encapsulates the reports on all the abovementioned activities, performance of functions, programmes, judicial decisions and achievements. In addition to the above, we devote three chapters on articles contributed by Judges and judicial officers, special features focusing on life and times of well-known former judicial figures such as former Lords President and Judges. This time around in this edition, the series provides a feature on our fourth Lord President, Tun Mohamed Suffian Mohamed Hashim and A Judge's Musing which consists of a reflection and thought derived from an interview by our editorial team with the Speaker of the Dewan Rakyat of the Malaysian Parliament, Tan Sri Dato' Mohamad Ariff Md Yusof. There are four insightful articles written by none other than the Chief Justice herself, Justice Wong Chee Lin, Judicial Commissioner Ahmad Fairuz Zainol Abidin and Mdm. Arleen Ramly highlighting very interesting areas of law such as justice and integrity, insurance, capital market in Malaysia and the right of transgender.

Moving on, the Editorial Committee would like to pay tribute to Tan Sri Zainun Ali who retired on 5 October 2018 for her able stewardship of the previous Editorial Committee, brilliant ideas and immense contributions to the previous editions of the Yearbook since its inception. We must emphasise that her excellent service and contributions are greatly appreciated and recognised for its true value. Her contributions will always be remembered.

The stunning cover sketch for this publication depicting the beautiful facade of the court house in Kuching, Sarawak is the product of excellent work of Justice Abdul Rahman Sebli who once again demonstrated his pure talent when he volunteered to draw the cover sketch gratis. We are immensely indebted and would like to record our special thanks to Justice Abdul Rahman Sebli for his meaningful contribution.

Words cannot express our feelings, nor our thanks to the Chief Justice. The primary debt is owed to the Chief Justice, who is unstinting in her support of our efforts. We would say in this regard that such support, as well as her continued faith and trust in the editorial team to work and ultimately publish the Yearbook, despite our immense workload on the bench and having to fit in our commitment to this publication very narrowly amidst very limited time, had indeed spurred us to work tirelessly which in the end became a welcome reality with the publication of this edition.

On a final note, I am extremely grateful and appreciative of the great efforts made by my sister and brother Judges who are the members of the Editorial Committee and the officers who collectively formed the editorial team (and whose names have been singled out for special mention by the Chief Justice in her foreword to this publication). My sincere gratitude goes to the editorial team for their work and the pursuit of excellence both in work and professionalism which had undoubtedly given us an environment in which we could complete such a work despite our heavy workload and time constraint.

We are however conscious of the deficiencies in the efforts and will strive to further improve in the next edition so that the Yearbook will be an indispensable source of information on the judiciary and continue to offer insightful articles in various interesting areas of law.

Thank you.

Justice Idrus Harun
Editor

The centre of attraction and outstanding front view of the Palace of Justice


KOMPLEKS MAHKAMAH KUCHING
MAHKAMAH
KUCHING

CHAPTER 1

THE OPENING OF THE LEGAL YEAR 2018 AND THE 52ND ANNUAL MEETING OF THE COUNCIL OF JUDGES

THE OPENING OF THE LEGAL YEAR 2018 PENINSULAR MALAYSIA

The setting up of the stage resembles that of the proceeding in open court. Seen in this picture – Judges of the Federal Court at the top and a line up of Registrars of the superior courts

The opening of the legal year on 12 January 2018 marked a different approach and format. Called the "Opening of the Judicial Year 2018", the ceremony saw the then Chief Justice Tun Raus Sharif (CJ) as the sole speaker compared to the previous practice of having speeches from the Attorney-General's Chambers (AGC) as well as the Malaysian Bar.

Speaking in the opening ceremony, the CJ emphasised that the focus for the year 2018 was on **"enhancing access to justice through judicial transformation"**. This means providing timely hearings, supported by efficient administration, leading to just and effective results – all at a reasonable cost. It also means changing of judicial culture and attitude through an adoption of an effective and efficient allocation and use of judicial time as well as a proactive approach in case management.

The transformation and the achievement

The CJ highlighted that the Judiciary transformation programme centred and aimed at seven major areas, namely:

(i) creating a reliable, fair and efficient justice system;
(ii) improving accessibility to justice by making the courts user friendly;
(iii) building public confidence and respect through continuing professionalism;
(iv) harnessing ICT;
(v) improving infrastructure and capacity building;
(vi) making the judicial process responsive, effective, faster, better and easier; and
(vii) imparting legal education to the general public.

The backlog reduction programme had been remarkably successful as was reported by the World Bank Report dated August 2011. The courts, right from the subordinate courts up to the superior courts, had achieved commendable success and excellent performance in eliminating backlog cases. In line with the judicial transformation programme, continuous supervision and review of magistrates' and Judges' performance is maintained in order to ensure an efficient and impartial administration of justice.

For the year 2018 and onwards, various initiatives that had been taken previously at the domestic and international level will continue. Domestically, this includes an expansion in phases of a specialised court for sexual crimes against children to other states. Currently, such specialised court was established and based only in Putrajaya and presided by an experienced Sessions Judge. Parallel with such establishment, a Special Operating Procedure for sexual offences against children was formulated and launched.

The second phase of e-Filing within the e-Courts system was launched at 20 court locations across Peninsular Malaysia for both criminal and civil cases. The system was linked to other agencies such as Royal Malaysia Police, Insolvency Department, National Registration Department and the Land Office. An online auction system called "e-Lelong" was also introduced and launched in the Kuantan High Court in ensuring greater transparency in the auctioning of real estate. The system would be expanded to other states as well.

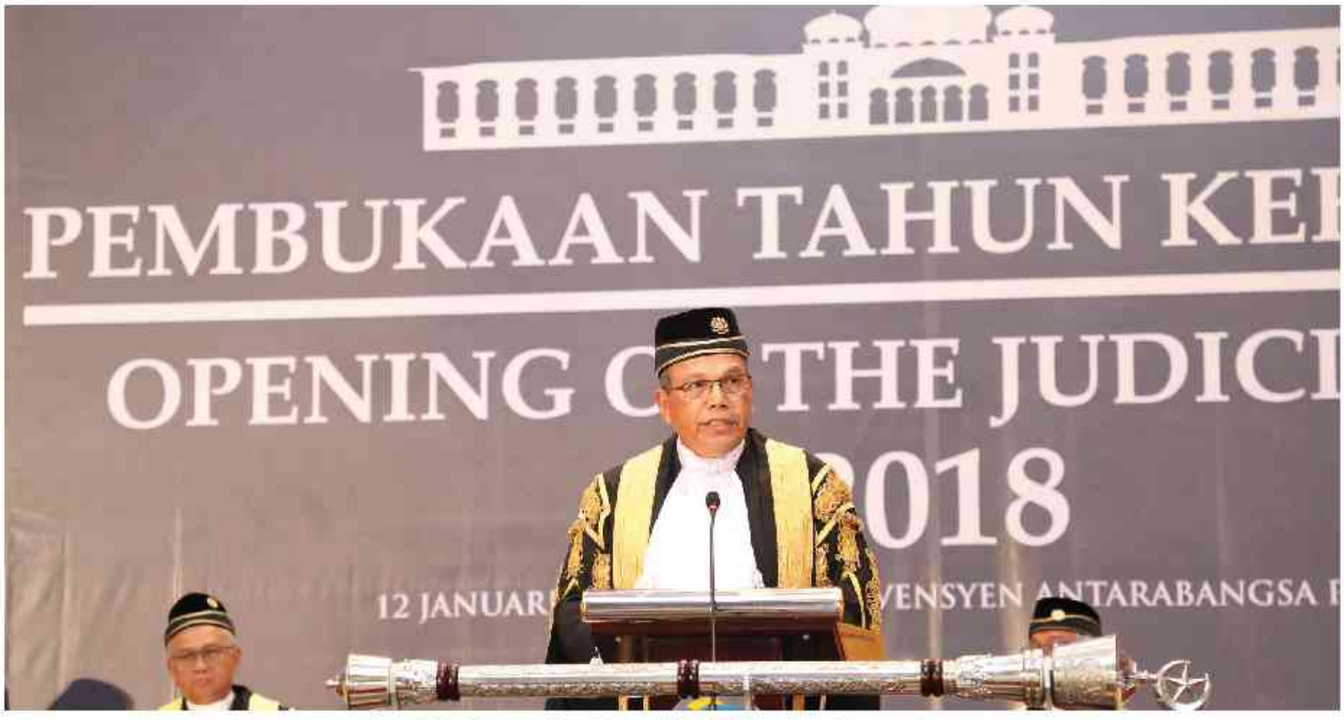
Continuing judicial training and education was also emphasised. A Judicial Academy was established under the aegis of the Judicial Appointments Commission focusing on the training of Judges. This was done through various approaches such as 'Judges training Judges' as well as formal courses on different subjects. Collaboration with other agencies such as the Kuala Lumpur Regional Centre for Arbitration, the US Embassy and the US Department of Justice had also been undertaken. Publication of the Yearbook and the Journal of the Malaysian Judiciary annually was one of the continued advancement.

At the international level, the Judiciary had engaged and participated in the Council of ASEAN Chief Justices (CACJ), in which Malaysian Judiciary was entrusted with spearheading a working group on the 'Service of Civil Processes' within ASEAN and leading the Case Management and Court Technology Working Committee. The Judiciary had also actively participated in ASEAN Intergovernmental Commission of Human Rights (AICHR), Association of Asian Constitutional Courts and Equivalent Institutions (AACC) and World Conference on Constitutional Justice (WCCJ).

The policies and further initiatives

In respect of disposal of cases, the policy taken for the year 2018 was to dispose of pre-2017 cases within the 1st half of the year. Postponement and adjournment of trial to be only in extraordinary circumstances and to be avoided at all costs. The Judges were required to play a proactive role in case management. Use of technology in the administration of justice was to be strengthened with continued collaboration with other key stakeholders.

In regard to structural initiative, the Judiciary planned to increase the number of IT experts in all courts throughout the country. The e-Court Finance Phase 2 for cashless transaction would also be introduced in 2018. This involves online payments through Financing Process Exchange (FPX) and Electronic Fund Transfer (EFT). Further, a special court dealing with human trafficking cases would be established in 2018 as well. Two new court complexes would be ready by March 2018, that is the Kota Kinabalu Court Complex and Tapah Magistrates' Court.



Chief Justice Tun Raus Sharif delivering his speech

In the exercise of its role to dispense justice, the CJ reiterated that the working relationship and good cooperation with all stakeholders particularly the Bar and the Attorney-General's Chambers must be maintained and enhanced.

The hopes

While acknowledging that Judges are not infallible, the CJ emphasised that criticism of court judgment must be responsibly, constructively and respectfully exercised. He hoped that every member of the community and the lawyers especially, to be temperate in their reaction and to exercise restraint, circumspection and plain good manners prior to making unwarranted criticism and remarks against the judiciary in public debates and discussions.

In respect to the standard and quality of judgments, the CJ noted that one cannot expect quality judgments from the Judges when the Judges are saddled with poor standard of advocacy and sub-standard submissions and research. This aspect must be addressed by the Bar as the standard and quality of judgements delivered by the courts is very much dependent on the works and research by the counsel. Likewise, an independent, skillful, well-educated, cooperative and dedicated legal profession is important in their service to the community and in protecting the fundamental values of justice system.

The concluding remark

Finally, the CJ reaffirmed that Judicial Independence is the cardinal rule in the doctrine of separation of powers. Hence, it was to be reminded that it is not the function of the judiciary to meddle in matters which are properly within the responsibility of the Executive or the Legislature. Similarly, it is expected that the Executive and the Legislature not to meddle in matters which are within the realm of the Judiciary. The Judiciary is committed to its mission in maintaining an independent and competent judicial system which upholds the Rule of Law, safeguards the rights and freedom of the individual and commands domestic and international confidence.

Procession of Judges into the hall at Putrajaya International Convention Centre. Seen in this picture – Justice Richard Malanjum, Justice Ahmad Haji Maarop and Justice Zulkefli Ahmad Makinudin

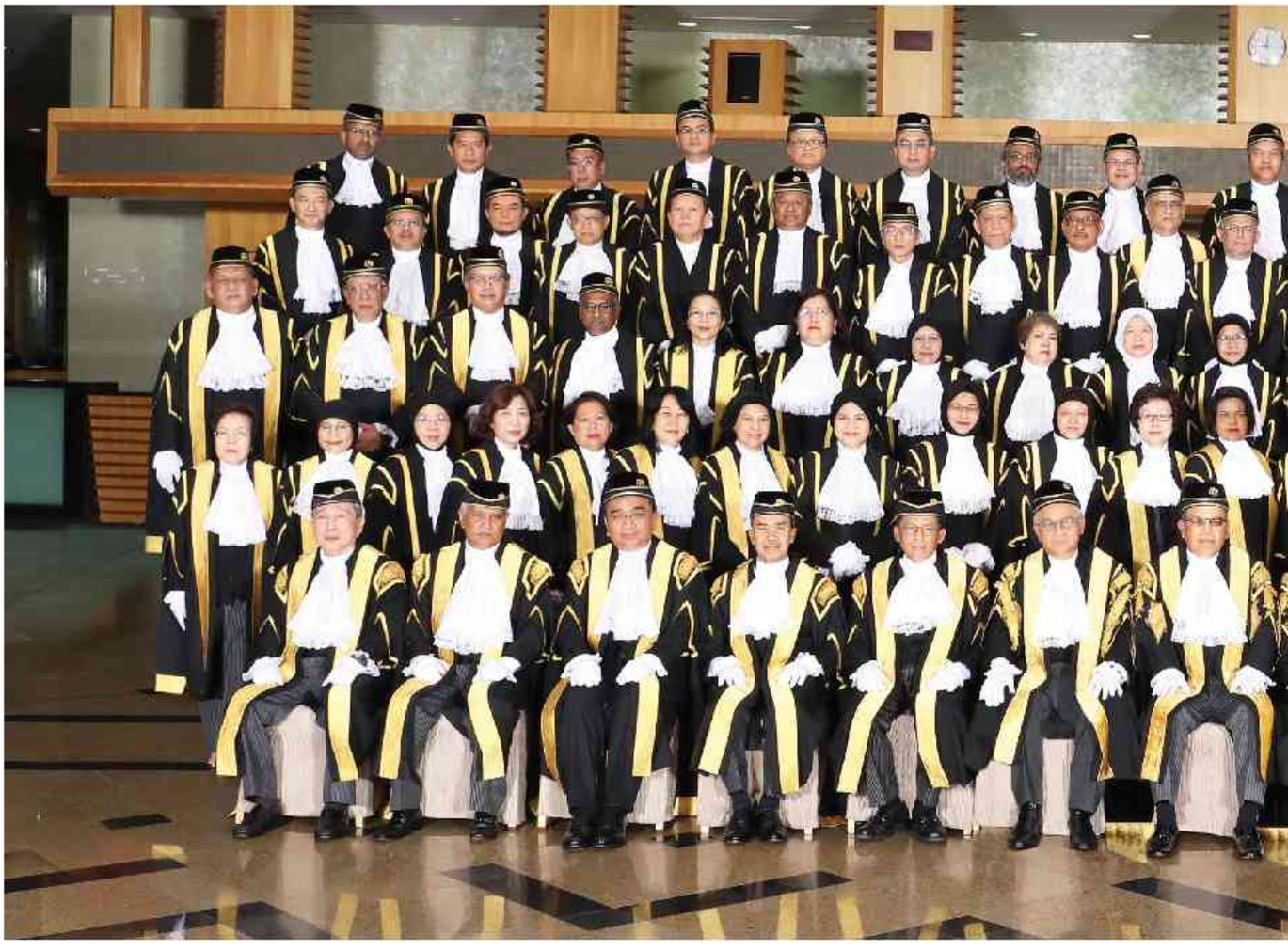
Procession of Judges into the hall at Putrajaya International Convention Centre. Seen in this picture – Justice Rhodzariah Bujang, Justice Yeoh Wee Siam, Justice Suraya Othman and Justice Harmindar Singh Dhaliwal

Procession of Judges into the hall at Putrajaya International Convention Centre. Seen in this picture – Justice Gunalan Muniandy, Justice Abu Bakar Jais, Justice Mohd Zaki Abdul Wahab and Justice Azizah Nawawi

The front-side view of the ceremony inside the hall at Putrajaya International Convention Centre

Justice Ahmad Haji Maarop, Justice Zulkefli Ahmad Makinudin and Justice Richard Malanjum visiting the exhibition

Sitting (L-R) Justice Richard Malanjum (3rd), Chief Justice Tun Raus Sharif (8th), Justice Zulkefli Ahmad Makinudin (11th) and Justice Ahmad Haji Maarop (13th) taking photograph with delegates



JUDGES OF THE SUPERIOR COURT AT

THE OPENING OF THE LEGAL YEAR 2018

THE OPENING OF THE LEGAL YEAR 2018 AT MIRI, SARAWAK

On 19 January 2018, Miri Courts once again hosted the Opening of the Legal Year of Sabah and Sarawak with the theme "Justice in Diversity". Members of the Judiciary and the legal fraternity comprising High Court Judges, Judicial Commissioners, and legal officers as well as lawyers took part in the procession to mark the start of the Legal Year for Sabah and Sarawak.

Leading the congregation in the 1.2km procession from Pullman Hotel, Miri Waterfront to the Miri Court Complex was the then Chief Justice of Malaysia, Tun Raus Sharif. Also present was then Court of Appeal President, Justice Zulkefli Ahmad Makinudin, the then Chief Judge of Malaya, Justice Ahmad Haji Maarop and the then Chief Judge of Sabah and Sarawak, Justice Richard Malanjum. Also participating in the procession were the then Attorney-General Tan Sri Mohamed Apandi Ali, and local dignitaries including Piasau Assemblyman Datuk Sebastian Ting and Miri City's Mayor, Adam Yii.

During the open court ceremony, Justice Richard Malanjum in His Lordship's speech gave a reminder on the need for a speedy disposal of cases and on the clearance of the backlog of cases as follows:

> *"On the policies for the next 12 months may I invite you all to read carefully the speech delivered by The Right Honourable Tun Raus Sharif during the Opening of the Judicial Year 2018 in Putrajaya last week. One important message conveyed by Tun Raus is that any application for adjournment must pass the test of 'the rarest of rare' case. In short, it is only given in two situations, death and near death/ Meanwhile, I just heard, hopefully it is not a fake news, that all Judges and Judicial Officers in Sabah and Sarawak have solemnly pledged to complete their pre 2017 cases by September this year. This would mean by that month all cases in Sabah and Sarawak would be disposed of within the prescribed timelines."*

Mr. Ranbir Singh Sangha, the President of Advocates Association of Sarawak, in his speech also echoed the same sentiment on the need for an expeditious disposal of cases and drew attention to the steps implemented by courts which had benefited the lawyers in both states.He said,

> *"In the past quite a number of steps have been taken to improve the efficiency of the case management system, e-filing, vortex, the use of witness statements in both civil and criminal matters, e-review and video conferencing facilities throughout Sarawak. This was done here under the leadership of His Lordship, the Chief Judge of Sabah and Sarawak. It has resulted in substantial costs savings for the Advocates and their clients in term of reduction of travel costs for mentioning cases and time spent travelling to and from courts."*

Meanwhile, the President of Sabah Law Society, Mr. Brenndon Keith Soh in his speech highlighted a historical event for legal practitioners in Sabah. He said,

> *"The most significant event for the body or practitioners last year was the coming into force of The Advocates Ordinance (Sabah) Amendment Act 2016 on 1st July 2017 after having been passed by Parliament in late 2016. As a result, the advocates in Sabah are now self-regulated by the formation of a statutory body called "The Sabah Law Society" with mandatory membership for all practising advocates in the State of Sabah. This institution has a legislated role in the admission, discipline and the conduct of all legal practitioners."*

Other activities held as part of the three-day celebration was a workshop titled "Legal Practise from the Perspective of a Judicial Mind", an elementary course on Representation of Children in Malaysia as well as a National Symposium on Islamic Banking and Finance.

Chief Judge of Sabah and Sarawak with the Mayor of Miri Adam Yii Siew Sang

Members of the Judiciary and members of the Bar gather for the opening ceremony

PHOTOGRAPHY SESSION AT

PULLMAN HOTEL, MIRI

The Chief Justice led the procession of Judges, Judicial Commissioners, judicial and legal officers and legal practitioners at the Opening of the Legal Year 2018 in Miri, Sarawak

Judges and stakeholders at the Opening of the Legal Year 2018

Participants of the procession which took place from Pullman Hotel to the Miri Court Complex

THE 52ND ANNUAL MEETING OF THE COUNCIL OF JUDGES

The 52nd Annual Meeting of Council of Judges was held from 1-2 May 2018 at the Le Meridien Hotel, Kuala Lumpur. The Annual Meeting of the Council of Judges was convened pursuant to section 17A (1) of the Courts of Judicature Act 1964. The meeting attended by Judges of the Federal Court, the Court of Appeal and the High Courts in Malaysia provided an opportunity for Judges not only to interact but also to share and discuss current legal issues pertaining to the administration of justice.

In the opening address, Chief Justice Tun Raus Sharif emphasised on the importance of access to justice and the importance of having an efficient administration of justice which is just and affordable to everyone. The Chief Justice also reminded the judges of the importance in upholding the rule of law and instilling the public's confidence in the Judiciary.

The meeting continued with a talk on Emerging Issues on International Taxation conducted by the Deputy Chief Executive Officer (Policy) for the Inland Revenue Board, Datuk Noor Azian Abdul Hamid. She explained, among others, on the current landscape of taxation where in the era of digital economy. Tax payers, particularly international and multinational corporations, structure their businesses in such a way that their profits would be moved to countries where they would be taxed at lower rates and expenses would be relieved at a higher rate. She also explained the steps and cooperative measures that are being taken by countries and various agencies in addressing these issues.

On the second day of the meeting two forums were held. The first forum was on the discussion on the Law of Defamation chaired by Justice Azahar Mohamed with Justice Abdul Rahman Sebli and Judicial Commissioner Faizah Jamaludin as the panel members. The panellists discussed the purpose of having a specific area of the law in dealing with defamation to protect a person's reputation. The evolution of the law of defamation from the common law to the application by the Malaysian courts as well as the proper tests and defences that ought to apply were also discussed.

The second forum was on medico legal dispute moderated by Justice Vernon Ong Lam Kiat with Justice Rohana Yusuf and Judicial Commissioner Daryll SC Goon as panel members. The panellists discussed the established principles of law governing medical negligence cases including the test and the principles applicable in awarding damages.

The highlight of the two days conference was the Gala Dinner on the last night of the conference. The Gala Dinner was also the farewell dinner for retiring Judges from the Federal Court, Court of Appeal and High Courts. Among them were Justice Zainun Ali, Justice Hasan Lah, Justice Aziah Ali and Justice Jeffrey Tan Kok Wha.

The final day of the meeting involved a session for discussion on current issues and problems affecting the administration of justice. In his closing remarks the Chief Justice expressed his satisfaction of the active participation of all the Judges.

Chief Justice Tun Raus Sharif delivering his opening speech at the 52nd Annual Meeting of the Council of Judges

The Chief Justice of Malaysia with the President of the Court of Appeal, the Chief Judge of Malaya and the Chief Judge of Sabah and Sarawak

Judges and Judicial Commissioners at the 52nd Annual Meeting of the Council of Judges

Justice Azahar Mohamed moderating the forum with the panellists Justice Abdul Rahman Sebli and Judicial Commissioner Faizah Jamaludin

Medico Legal Forum

Justice Vernon Ong Lam Kiat (middle) as the moderator while Justice Rohana Yusof (left) and Judicial Commissioner Darryl SC Goon (right) as panellists

The Chief Justice, President of the Court of Appeal, Chief Judge of Malaya and Chief Judge of Sabah and Sarawak with fellow Federal Court Judges

L-R: Justice Mohd Zawawi Salleh, Justice Rohana Yusuf, Justice Alizatul Khair Osman Khairuddin, Justice Azahar Mohamed, Justice Ramly Ali, Justice Zainun Ali, Justice Zulkefli Ahmad Makinudin, Chief Justice Tun Raus Sharif, Justice Ahmad Haji Maarop, Justice Richard Malanjum, Justice Abu Samah Nordin, Justice Balia Yusof Wahi, Justice Aziah Ali, Justice Jeffrey Tan Kok Wah and Justice David Wong Dak Wah

Judges and Judicial Commissioners who started their judgeship at the High Court in Sabah and Sarawak

L-R: Judicial Commissioner Ismail Brahim, Justice Ravinthran N. Paramaguru, Judicial Commissioner Bexter Agas Michael, Justice Mairin Idang @ Martin, Justice Yew Jen Kie, Justice Nurchaya Haji Arshad, Justice Rhodzariah Bujang, Justice Supang Lian, Judicial Commissioner Celestina Stuel Galid, Justice Dr. Alwi Haji Abdul Wahab, Judicial Commissioner Dr. Lim Hock Leng and Judicial Commissioner Dean Wayne Daly

L-R: Justice Harmindar Singh Dhaliwal, Justice Wong Khian Keong, Judicial Commissioner Azmi Abdullah, Justice Mohd Azman Husin, Judicial Commissioner Roslan Abu Bakar, Justice Hashim Hamzah and Justice Che Mohd Ruzima Ghazali during the 52nd Annual Meeting of the Council of Judges Gala Dinner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MAHKAMAH
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CHAPTER 2

THE FEDERAL COURT

BRIEF STATEMENT ON THE FEDERAL COURT

Chief Justice Tan Sri Richard Malanjum
(11 July 2018 to 12 April 2019)

Introduction

The year 2018 has been eventful in many respects. While it saw the retirement of Justice Tun Raus Sharif as Chief Justice of the Federal Court of Malaysia, 2018 also marks the year in which Justice Tan Sri Richard Malanjum was elevated to the same position as his successor.

During Justice Tun Raus Sharif's term as Chief Justice in 2017, the Federal Court had further improved its rate of disposal of cases. This was made possible by his introduction of the timeline concept in 2017 which advocated a strict adherence in timely disposal of cases. It has effectively aided in the disposal of pre-2015 registered cases by the end of 2018.

Justice Tan Sri Richard Malanjum, in His Lordship maiden speech as Chief Justice, introduced the collective leadership concept:

> "The concept of collective leadership will be implemented, in which Judges holding up the top four posts are equally empowered to decide on important matters of policy and to participate in the management of the judiciary. As opposed to a hierarchical structure, this approach of collective or shared leadership allows authority and accountability to be more broadly distributed among the top four Judges, and creates an environment that facilitates multi-directional and more transparent communication."

Justice Tan Sri Richard Malanjum also outlined three changes to the Malaysian Judiciary, that have since been implemented, which were aimed to improve the delivery system of the Federal Court. Firstly, the *auto-balloting* system, a computerised method of panel selection, was designed to dispel any suggestion of bias in the assignment of cases in the Federal Court.

The ground rules set up in the system are all panel members are chosen through ballot, except for the Chief Justice, President of the Court of Appeal, Chief Judge of Malaya and Chief Judge of Sabah and Sarawak in constitutional or public interest cases. Constitutional cases will be heard by a panel of 9 Federal Court judges composed of the Chief Justice, President of the Court of Appeal, Chief Judge of Malaya and Chief Judge of Sabah and Sarawak together with 5 other members. Meanwhile, public interest cases will be heard by a panel of 7 members comprising the Chief Justice, President of the Court of Appeal, Chief Judge of Malaya and Chief Judge of Sabah and Sarawak with 3 other members.

Other appeals will generally be heard by a panel of 5 members and leave applications will be heard by a panel of 3 members. The panel will be presided by one of the most senior Judges amongst the 5 (or 3) members

and appeals from cases originating from East Malaysia to the Federal Court will be heard by a panel consisting of at least one East Malaysian judge.

Second, Justice Tan Sri Richard Malanjum had also introduced an online case management system named e-Review system. Since the implementation of e-Review, lawyers are no longer required to physically attend case management sessions at the court premises, and can instead manage their cases online. Thirdly, lawyers are now able to make use of their idle time while waiting for their cases to be heard because of his introduction of the Queue Management System (QMS).

In 2018, the Federal Court also saw the retirement of several other members of the bench namely Justice Zulkefli Ahmad Makinudin, the erstwhile President of the Court of Appeal, Justice Abu Samah Nordin, Justice Hasan Lah, Justice Zainun Ali, Justice Aziah Ali and Justice Dr. Prasad Sandosham Abraham. Justice Jeffrey Tan Kok Wah also completed his term as an additional Federal Court judge in 2018. Together with Justice Tun Raus Sharif, they had served the Federal Court with unstinting dedication for which great appreciation is most deserving.

The year 2018 has also seen the elevation of Justice David Wong Dak Wah, Justice Rohana Yusuf, Justice Mohd Zawawi Salleh, Justice Tengku Maimun Tuan Mat, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun and Justice Nallini Pathmanathan to the apex court bench. In the same year, Justice Ahmad Haji Maarop was elevated as the President of the Court of Appeal. Justice Zaharah Ibrahim was elevated as the Chief Judge of Malaya, thereby making her Ladyship the second woman to occupy that post after Justice Siti Norma Yaakob in 2005.

Conclusion

The success that was achieved in the Federal Court in 2018 in discharging its functions could not have been made possible without the cooperation of the judicial officers, supporting staff and the numerous stakeholders within the judicial system. Such continuous and symbiotic effort can only propel the Federal Court in its quest to achieve success in its delivery system towards realising the desired global standard.

JUDGES OF THE FEDERAL COURT

1. Justice Tun Raus Sharif
2. Justice Zulkefli Ahmad Makinudin
3. Justice Ahmad Haji Maarop
4. Justice Richard Malanjum
5. Justice Hasan Lah
6. Justice Zainun Ali
7. Justice Abu Samah Nordin
8. Justice Ramly Ali
9. Justice Azahar Mohamed
10. Justice Zaharah Ibrahim
11. Justice Balia Yusof Wahi
12. Justice Aziah Ali
13. Justice Jeffrey Tan Kok Wah
14. Justice Prasad Sandosham Abraham
15. Justice Alizatul Khair Osman Khairuddin
16. Justice David Wong Dak Wah
17. Justice Rohana Yusuf
18. Justice Mohd Zawawi Salleh
19. Justice Tengku Maimun Tuan Mat
20. Justice Abang Iskandar Abang Hashim
21. Justice Idrus Harun
22. Justice Nallini Pathmanathan

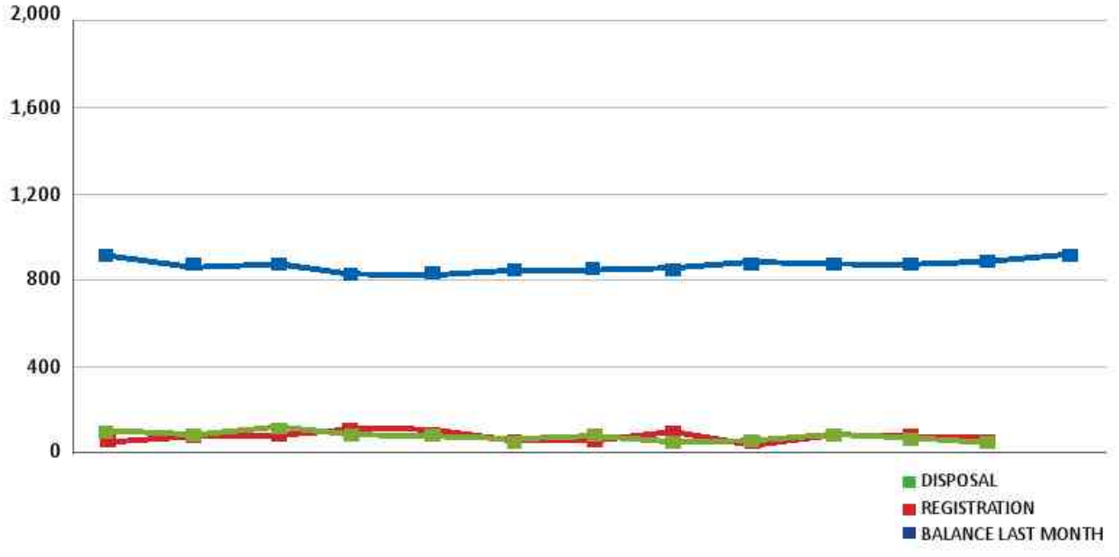
PERFORMANCE OF THE FEDERAL COURT IN THE YEAR 2018

The core business of the Federal Court has always been to dispose of cases at a rate which will supersede the number of registered cases, in the perennial effort to reduce or eliminate the backlog of cases. Below are the graphs exhibiting the registration and disposal of the various types of cases that were dealt with in 2018 by the Federal Court. By way of random illustration, it is noted that the disposal of criminal cases in 2018 by the Federal Court is at 144.08% as per GRAPH D.

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.

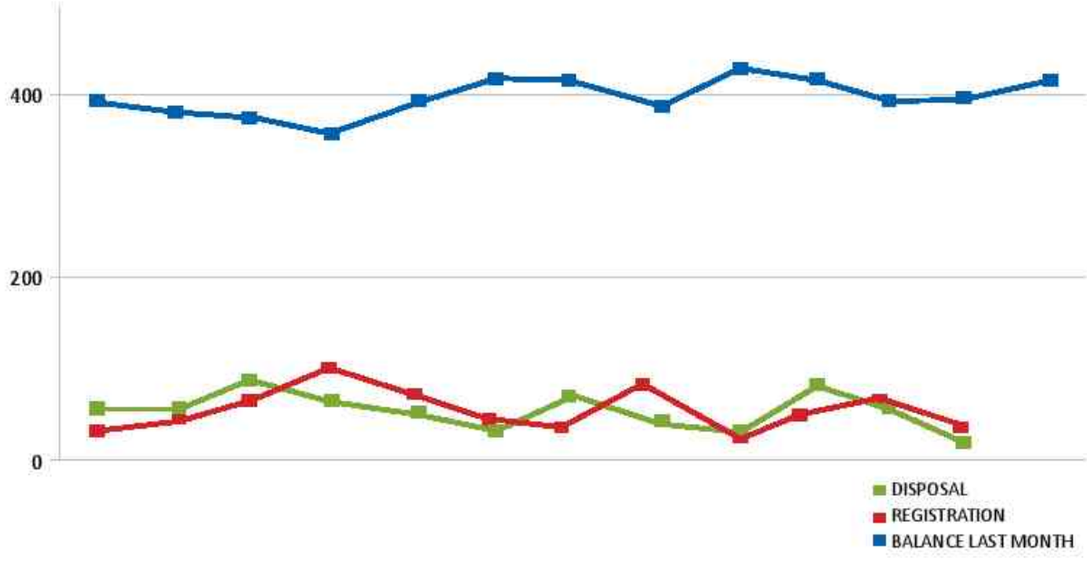
In 2018, a total of 1,209 cases were disposed of against 1,182 cases that were registered. The percentage of disposal against registration is 102%. The overall performance of the Federal Court in 2018 can be seen in Graph A below.

GRAPH A
NUMBER OF CASES REGISTERED AND DISPOSED OF IN 2018



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	961	902	884	828	837	863	867	837	899	897	893	903	933
REGISTRATION	70	92	111	139	121	63	81	135	67	118	110	75	
DISPOSAL	129	110	167	130	95	58	111	73	69	122	100	45	

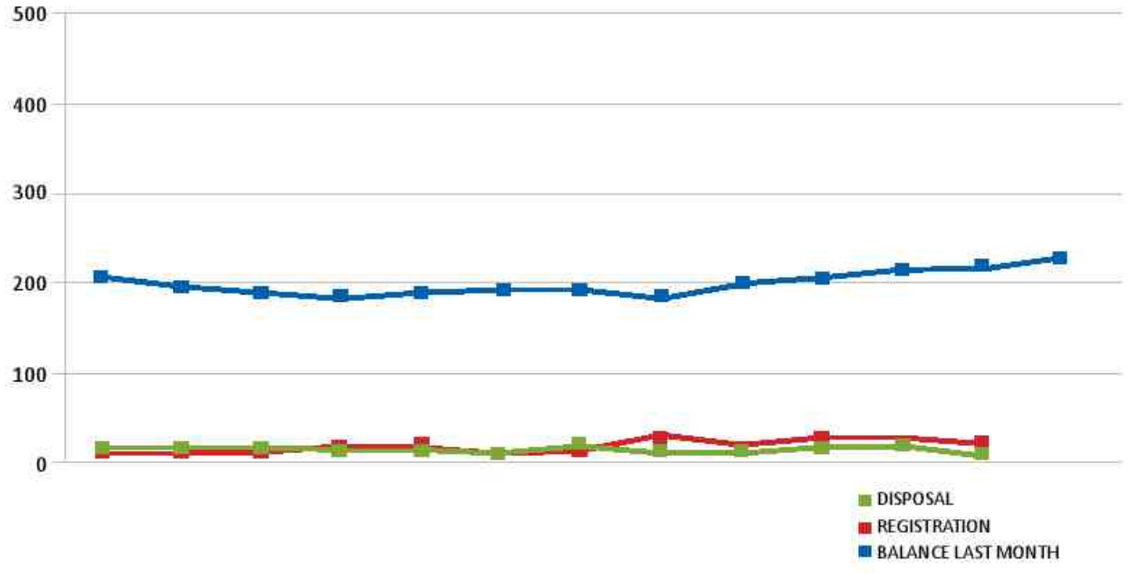
GRAPH B
LEAVE APPLICATIONS IN 2018
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	395	380	377	361	391	411	419	387	428	423	394	397	411
REGISTRATION	35	50	67	98	74	41	35	83	28	48	60	33	
DISPOSAL	50	53	83	68	54	33	67	42	33	77	57	19	

The registration for leave applications showed an increase of 3.2% from 621 in 2017 to 652 in 2018. As shown in Graph B above, the total number of leave applications pending is 411 cases at the end of 2018. The disposal rate of leave applications against the cases registered is 97.5%.

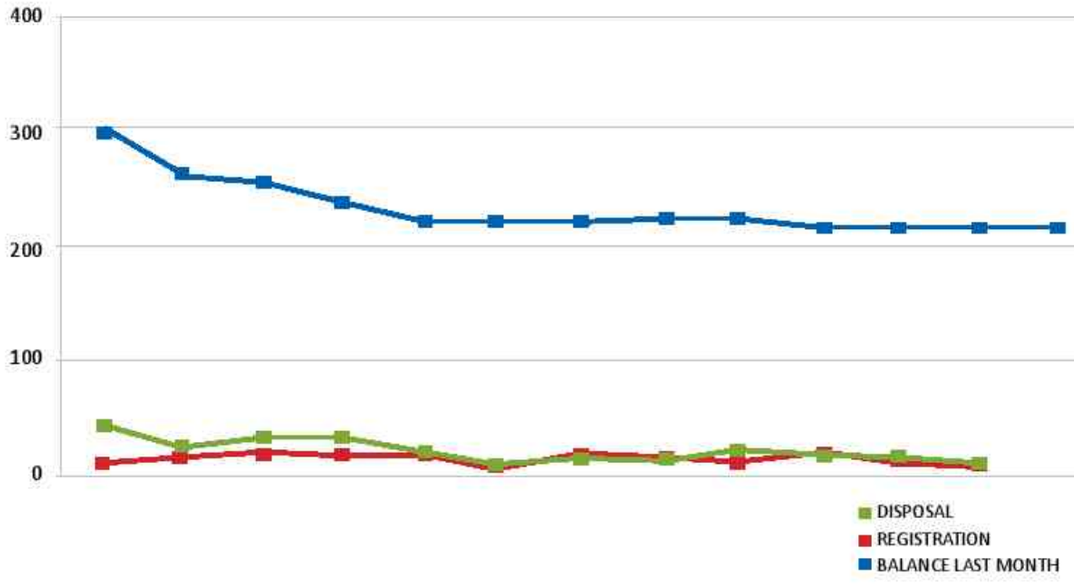
GRAPH C
CIVIL APPEALS IN 2018
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	205	196	190	186	189	192	191	185	200	206	216	218	228
REGISTRATION	6	9	12	16	16	4	12	24	12	26	20	18	
DISPOSAL	15	15	16	13	13	5	18	9	6	16	18	8	

For civil appeals, the registration showed a reduction of 16.6% from 204 in 2017 to 175 in 2018. As shown in Graph C above, the total of civil appeals pending is 228 at the end of 2018. The disposal rate of civil appeals against the cases registered is 86.85%.

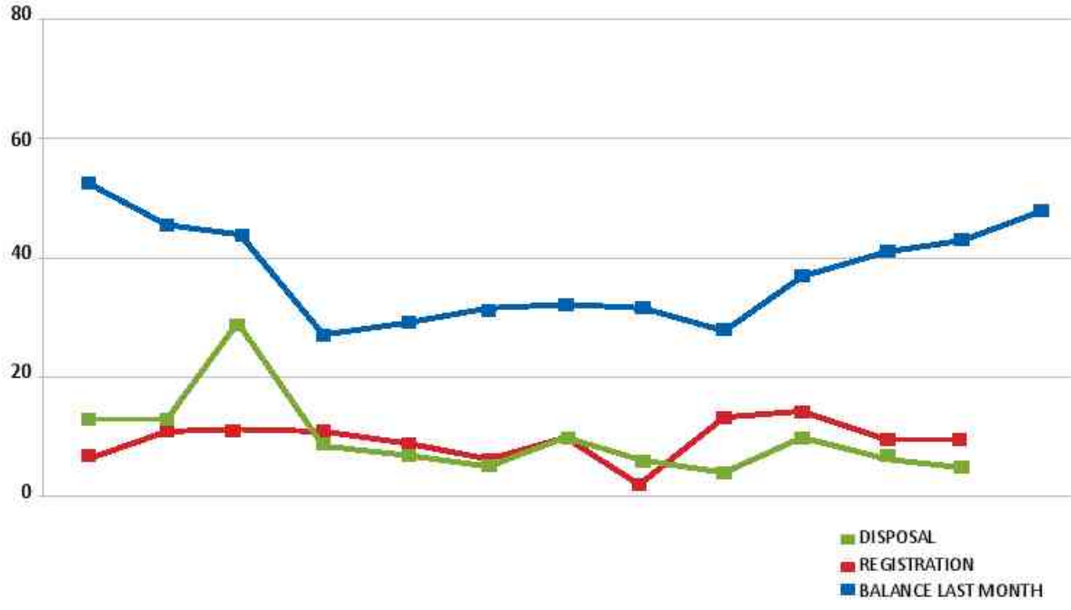
GRAPH D
CRIMINAL APPEALS IN 2018
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	296	262	255	240	221	222	218	222	225	214	216	214	212
REGISTRATION	12	17	20	14	22	7	19	17	12	20	16	10	
DISPOSAL	45	24	35	33	21	12	13	14	23	18	18	12	

For criminal appeals, the registration showed a reduction of 13.4% from 211 in 2017 to 186 in 2018. 268 cases were disposed of, leaving a balance of 212 cases pending at the end of 2018. As shown in Graph D above, the disposal rate of criminal appeals against the cases registered is 144.08%.

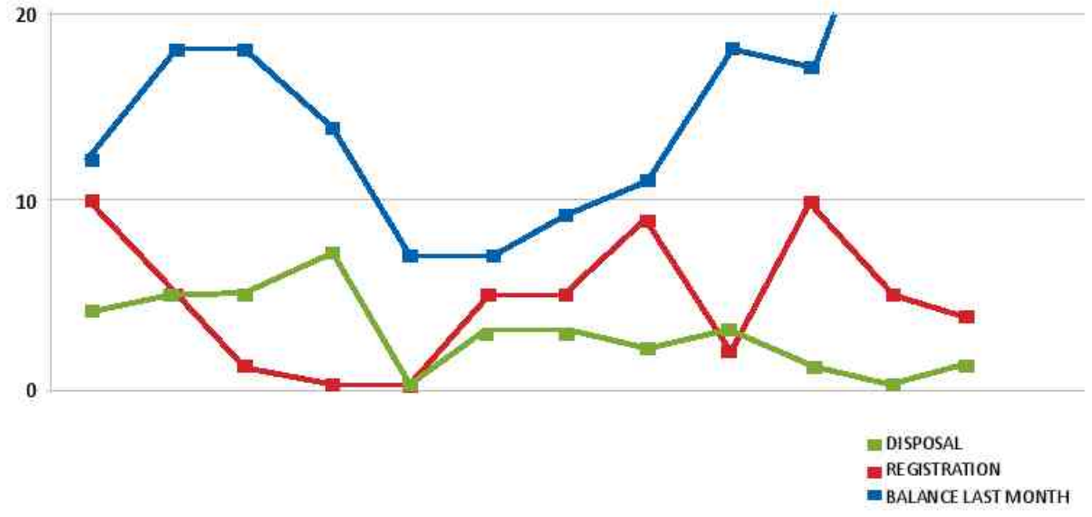
GRAPH E
HABEAS CORPUS APPEALS IN 2018
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	53	46	44	27	29	31	32	32	28	37	41	43	48
REGISTRATION	7	11	11	11	9	6	10	2	13	14	9	10	
DISPOSAL	14	13	28	9	7	5	10	6	4	10	7	5	

For habeas corpus appeals, there were 113 appeals registered in 2018. 118 appeals were disposed of, leaving a balance of 48 appeals at the end of 2018. As shown in Graph E above, the disposal rate of the habeas corpus appeals against the cases registered is 104.4%.

GRAPH F
ORIGINAL JURISDICTION/CIVIL REFERENCE/CRIMINAL REFERENCE/CRIMINAL APPLICATIONS IN 2018
NUMBER OF CASES REGISTERED, DISPOSED OF AND PENDING



MONTHS	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19
BALANCE LAST MONTH	12	18	18	14	7	7	9	11	18	17	26	31	34
REGISTRATION	10	5	1	0	0	5	5	9	2	10	5	4	
DISPOSAL	4	5	5	7	0	3	3	2	3	1	0	1	

For other matters comprising original jurisdiction, civil reference, criminal reference and criminal application, review application (civil and criminal), a total of 56 cases were registered in 2018. 34 cases were disposed of, leaving a balance of 34 cases at the end of 2018.


KOMPLEKS MAHKAMAH KUCHING
MAHKAMAH
KUCHING

CHAPTER 3

THE COURT OF APPEAL

THE COURT OF APPEAL

The Court of Appeal, since its inception in 1994, continues to be a critical component in the administration of justice in Malaysia. The Court of Appeal exercises purely appellate jurisdiction. Being an intermediary between the Federal Court and the High Courts, it filters the appeals that emanate from the High Court and it acts as the final court for the appeals that originate from the subordinate courts, i.e. the Sessions Court and the Magistrates' Court.

The number of appeals filed and registered is increasing annually, yet the statistics show that the Court of Appeal had performed remarkably well in 2018 in terms of disposal. This is but for the hard work and the relentless efforts by the Judges of the Court of Appeal, the Registrar and her team, as well as the support staff, in ensuring the efficient and timely disposal of the cases.

For Civil Appeal, a total of 4203 cases were registered in the Court of Appeal in 2018. This is a significant increase compared to 3839 cases registered in 2017. A total of 3023 cases from 2017 were brought forward. At the end of December 2018, 3900 cases were disposed of leaving a balance of 3326 cases.

As for Criminal Appeals, a total of 1343 cases were registered at the Court of Appeal in 2018. It is an increase compared to the 1232 cases which were registered in 2017. A total of 975 cases from 2017 were brought forward. At the end of December 2018, 996 cases were disposed of, leaving a balance of 1322 cases.

I am also happy to report that for the year 2018, the Court of Appeal had continued its effort in disposing of the cases within the stipulated timeline. 71.4% appeals from the specialized courts, namely the New Commercial Court (NCC), New Civil Court (NCvC), Intellectual Court (IP), Muamalat Court (MUA), Admiralty Court and Construction Court were disposed of within six (6) months of registration.

With regard to the Criminal Appeals involving Government Servants (Codes 06A and 06B), they were disposed of within the nine (9) month timeline.

For the leave applications, I am happy to report that they are all "current" and are being disposed of within three (3) months from the date of registration.

It is also heartening to note that for the year 2018, Judges of the Court of Appeal had written and produced a total of 480 reported grounds of judgment, of which, 294 grounds were in respect of civil appeals and 186 grounds were in respect of criminal appeals.

There were also changes to the composition of the Court of Appeal's Bench due to retirement and elevation. Justice Zakaria Sam retired, while seven Judges of the Court of Appeal were elevated to the Federal Court, namely Justice David Wong Dak Wah, Justice Rohana Yusuf, Justice Mohd Zawawi Salleh, Justice Tengku Maimun Tuan Mat, Justice Abang Iskandar Abang Hashim, Justice Idrus Harun and Justice Nallini

Pathmanathan. My sincere appreciation and gratitude to all of them, for their contributions and support and I wish all of them, the very best.

I welcome Justice Stephen Chung Hian Guan, Justice Hanipah Farikullah, Justice Kamaludin Md Said, Justice Lau Bee Lan, Justice Mohamad Zabidin Mohd Diah, Justice Yew Jen Kie, Justice Nor Bee Ariffin, and Justice Has Zanah Mehat to the Court of Appeal. I congratulate them for their new appellate careers and surely, their diverse background and previous experience on the bench of the High Court will be invaluable to the Court of Appeal.

On 15 October 2018, the Court of Appeal implemented the e-Review System. This 'time and cost-effective' system is an online forum within the e-Court system which enables judicial officers and legal representatives in the cases filed in the Court of Appeal, to conduct case management via exchanging of written messages without having to attend court. This system allows parties to case manage with the Registrars online in a timely fashion without incurring any additional cost. Once the Notice of Appeal is filed via Electronic Filing System (EFS) and accepted by the Court of Appeal's Registry, a notification of the first e-Review together with an e-Review Form will be automatically sent to the filer. Under the system, the first e-Review date is fixed within 45 days of the acceptance of the Notice of Appeal by the Registry.

In 2018, the Rules of the Court of Appeal 1994 were amended. The amendments include the following:

(i) Amendment to Rule 17 of the Rules of the Court of Appeal 1994 (which deals with entry of appeal) doing away with the lodgment of the sum of RM1,000 payment as security for costs of the appeal. Instead, the amendment provides that the Court of Appeal may, on the application by the respondent, in any case where it thinks fit, order for security for costs to be given.

(ii) Amendment to Rule 18 of the Rules of the Court of Appeal 1994 (which deals with Memorandum of Appeal) where new sub-rule 7B was inserted for expeditious hearings. In keeping with the judiciary's stand that justice should be expeditiously dispensed, with the amendment, the Court may now order appeals to proceed in the Court of Appeal even when the notes of the hearing, written judgment, grounds of decision or agreed notes of judgment as prepared by the parties and approved by the Judge, are not available. The amendment should result in a shorter lapse of time between the lodgments and hearing of appeals.

(iii) The insertion of new Rule 28B, which enables parties to file an application to review the decisions refusing leave to appeal. Previously, no such provision was available. The new provisions apply only to appeals where the Court of Appeal is the apex court.

(iv) Amendment to Second Schedule to the Rules of the Court of Appeal 1994 by which court fees for filing are revised and updated.

As a parting note, I congratulate my predecessor Justice Zulkefli Ahmad Makinudin for his contribution in continuing the excellent task helming the Court of Appeal.

As we look back, 2018 had been a productive year for the Court of Appeal. This would not be possible without the support and cooperation from the Honourable Attorney General and the officers of his Chambers, the members of the Malaysian Bar, the Advocates Association of Sarawak and the Sabah Law Society, in maintaining a professional and good relationship with the Court of Appeal. We look forward to maintaining such a relationship in years to come.

I wish everyone the best in 2019.

Thank you.

Justice Ahmad Haji Maarop
President of the Court Appeal

JUDGES OF THE COURT OF APPEAL

1. Justice Mohtarudin Baki
2. Justice Hamid Sultan Abu Backer
3. Justice Zakaria Sam
4. Justice Umi Kalthum Abdul Majid
5. Justice Ahmadi Haji Asnawi
6. Justice Dr. Badariah Sahamid
7. Justice Vernon Ong Lam Kiat
8. Justice Abdul Rahman Sebli
9. Justice Zaleha Yusof
10. Justice Kamardin Hashim
11. Justice Mary Lim Thiam Suan
12. Justice Yaacob Hj Md Sam
13. Justice Zabariah Mohd Yusof
14. Justice Hasnah Dato' Mohammed Hashim
15. Justice Harmindar Singh Dhaliwal
16. Justice Abdul Karim Abdul Jalil
17. Justice Suraya Othman
18. Justice Yeoh Wee Siam
19. Justice Rhodzariah Bujang
20. Justice Stephen Chung Hian Guan
21. Justice Hanipah Farikullah
22. Justice Kamaludin Md Said
23. Justice Lau Bee Lan
24. Justice Mohamad Zabidin Mohd Diah
25. Justice Yew Jen Kie
26. Justice Nor Bee Ariffin
27. Justice Has Zanah Mehat

Courtroom of the Court of Appeal
(There are six Court of Appeal courtrooms located on the first and second floors, Palace of Justice)

PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2018

In the Court of Appeal, the civil appeals are divided into two main categories - the Interlocutory Matters Appeals (IM) and the Full Trial Civil Appeals (FT). The FT Appeals are divided into five sub-categories namely, the New Commercial Court Appeals (NCC), New Civil Court Appeals (NCvC), Intellectual Property Appeals (IPCV), Muamalat Appeals, Admiralty Appeals and Construction Court Appeals.

For criminal appeals, the Court of Appeal deals with appeals in cases which emanate from the High Court in the exercise of its original jurisdiction, before final appeals in the Federal Court. It acts as the final court for cases which originated from the subordinate courts, i.e. the Sessions Court and the Magistrates' Courts.

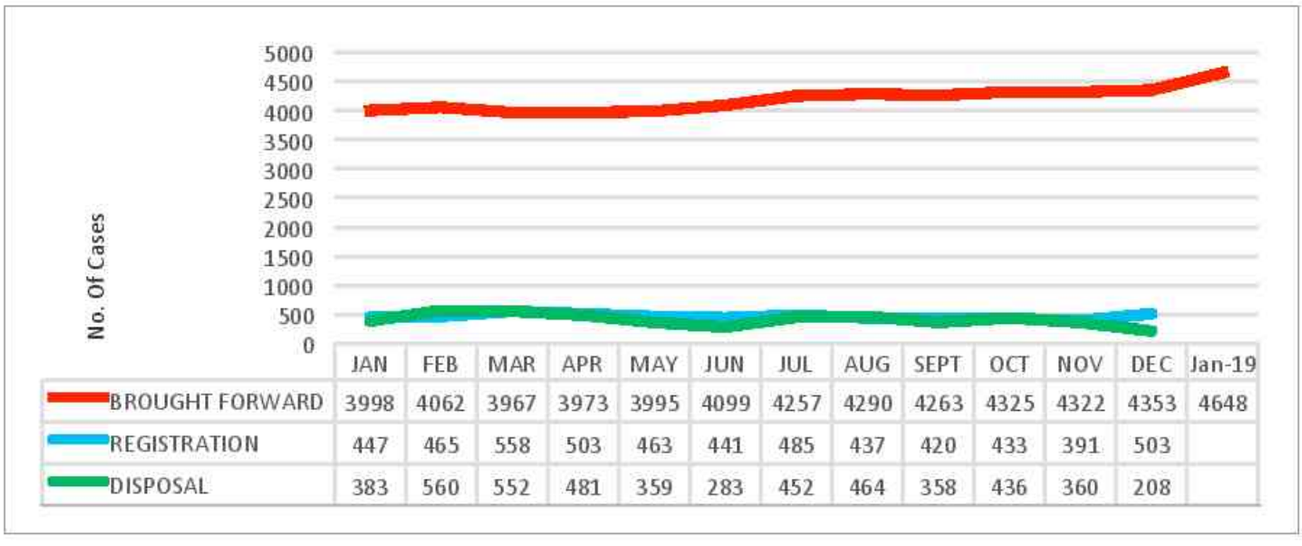
In addition, the Court of Appeal also hears applications for leave to appeal to the Court of Appeal, in civil and criminal cases, which mostly, are cases from the subordinate courts.

As at January 2018, there were 3998 civil and criminal appeals which were brought forward from 2017. The year ended with 4648 appeals, out of which 767 were pre-2018 appeals while the remaining 3881 were appeals registered in 2018.

The overall performance of the Court of Appeal in 2018 as can be seen in **Graph A:**

GRAPH A

NUMBER OF APPEAL REGISTERED AND DISPOSED OF IN 2018



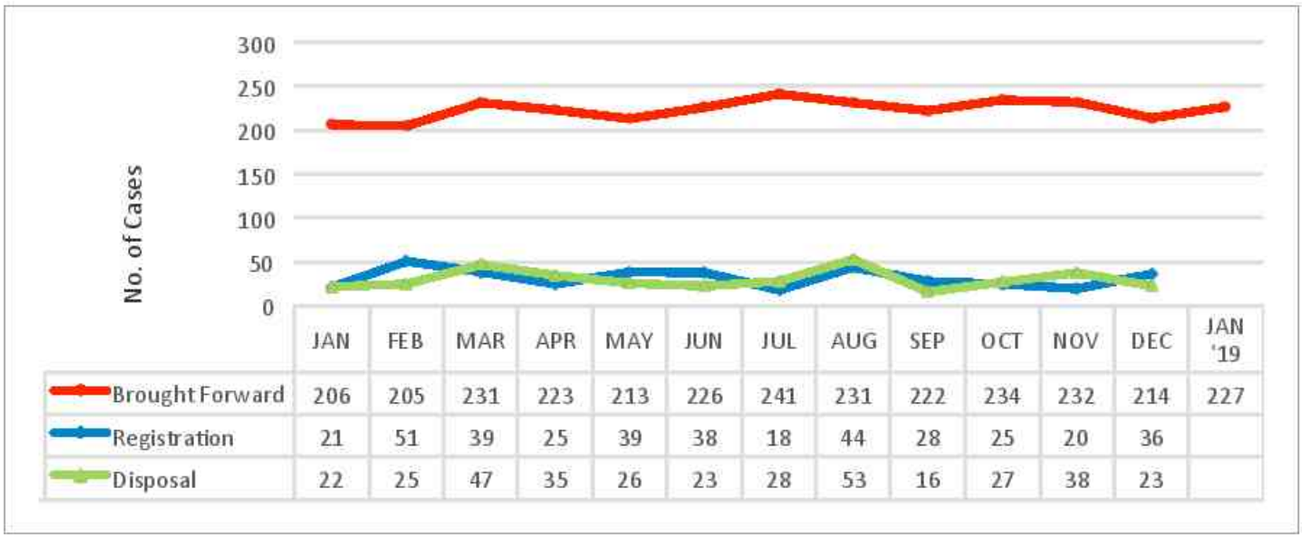
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC	Jan-19
BROUGHT FORWARD	3998	4062	3967	3973	3995	4099	4257	4290	4263	4325	4322	4353	4648
REGISTRATION	447	465	558	503	463	441	485	437	420	433	391	503	
DISPOSAL	383	560	552	481	359	283	452	464	358	436	360	208	

Interlocutory Matters Appeals

A total of 384 Interlocutory Matters Appeals were registered in 2018 in addition to 206 appeals which were brought forward from the previous year. By the end of 2018, 363 appeals were disposed of, leaving 227 appeals on the pending list. Out of this figure, only 17 were pre-2018 appeals which are expected to be disposed of by the first quarter of 2019. The figure of the Interlocutory Matters Appeals registered, disposed of and pending for the year 2018 is as shown in **Graph B**.

GRAPH B

INTERLOCUTORY MATTERS APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



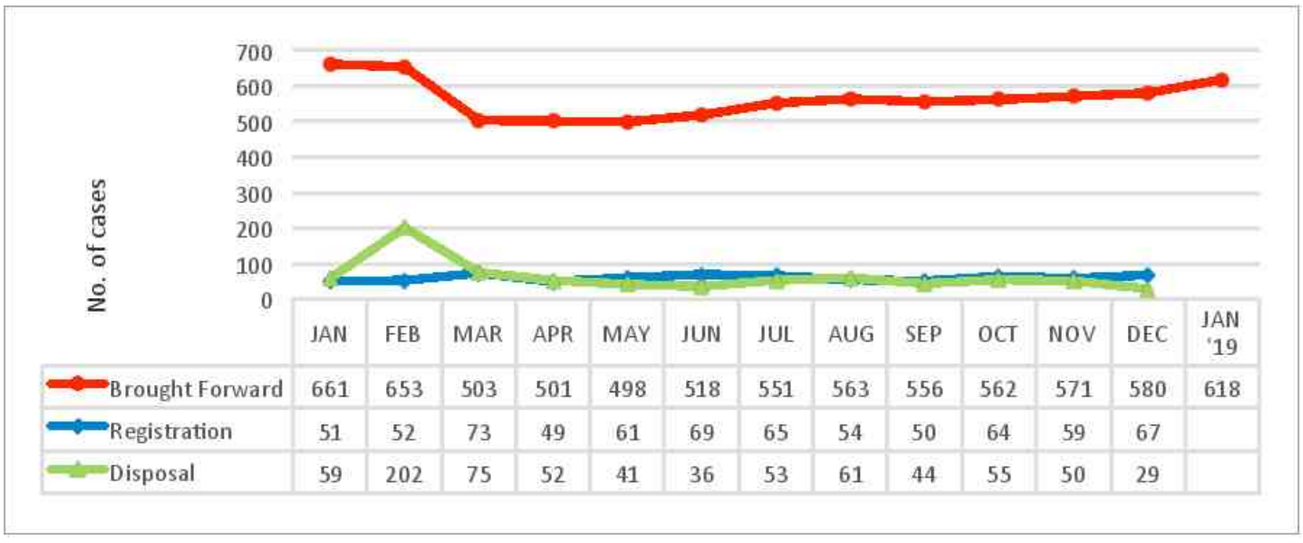
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	206	205	231	223	213	226	241	231	222	234	232	214	227
Registration	21	51	39	25	39	38	18	44	28	25	20	36	
Disposal	22	25	47	35	26	23	28	53	16	27	38	23	

Full Trial Civil Appeals

In 2018, a total of 714 Full Trial Appeals were registered, in addition to the existing 661 cases brought forward from the previous year. By 31 December 2018, 757 cases were disposed of, leaving 618 cases on the list. Out of these, 95 cases were pre-2018 appeals. The performance in relation to Full Trial Appeals is as shown in **Graph C.**

GRAPH C

FULL TRIAL CIVIL APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	661	653	503	501	498	518	551	563	556	562	571	580	618
Registration	51	52	73	49	61	69	65	54	50	64	59	67	
Disposal	59	202	75	52	41	36	53	61	44	55	50	29	

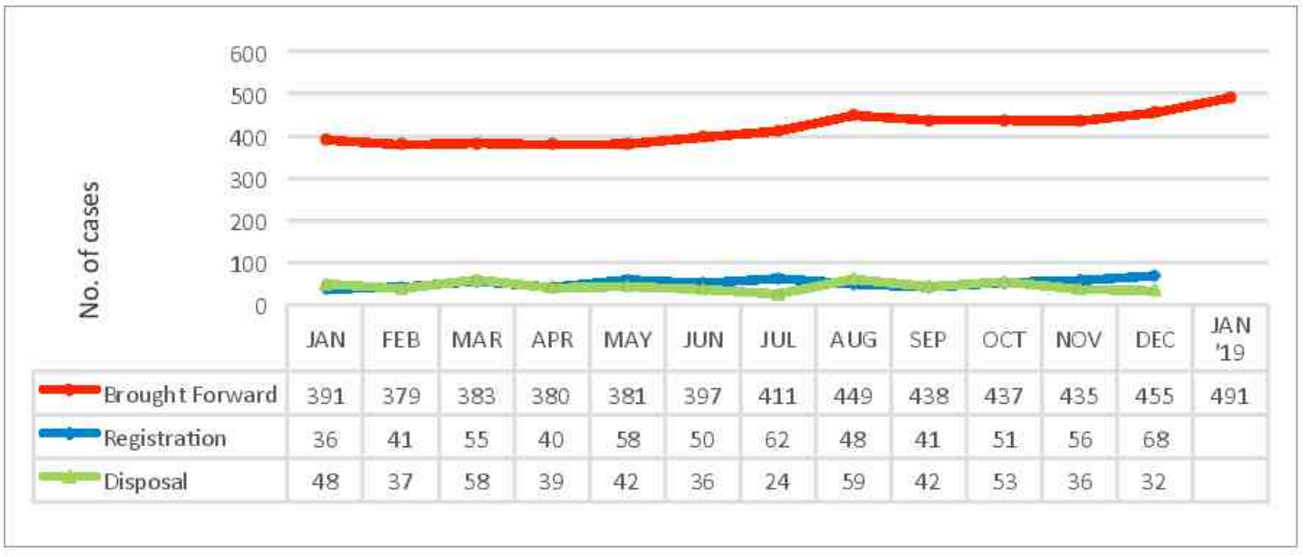
New Commercial Court Appeals

1. The year 2018 started with 391 appeals brought forward from the previous year. A total of 606 appeals were registered in 2018. 506 appeals were disposed of by the end of the year, leaving behind 491 appeals on the pending list. Out of this figure, 73 cases are pre-2018 cases.

2. The number of NCC Appeals registered, disposed of and pending in 2018 is shown in **GRAPH D** below:

GRAPH D

NEW COMMERCIAL COURTS APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	391	379	383	380	381	397	411	449	438	437	435	455	491
Registration	36	41	55	40	58	50	62	48	41	51	56	68	
Disposal	48	37	58	39	42	36	24	59	42	53	36	32	

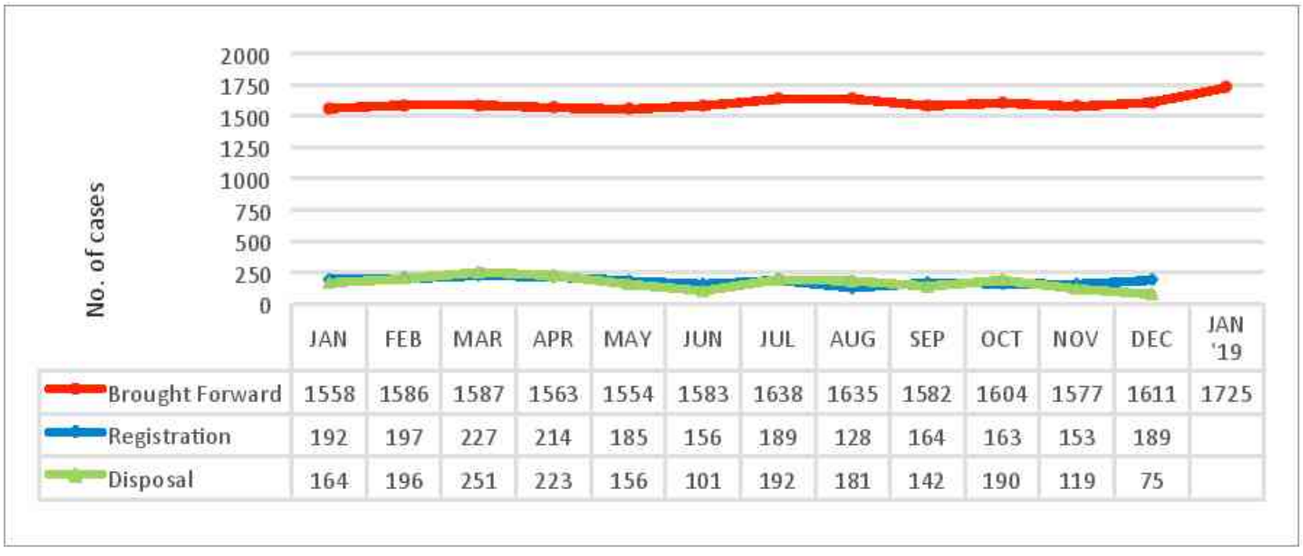
New Civil Court Appeals

2157 New Civil Court Appeals (NCvC Appeals) were registered in 2018. 1558 appeals were brought forward from 2017. Out of these, 1990 were disposed of by the end of the year, leaving a balance of 1725 cases, out of which, 273 appeals were pre-2018 appeals.

The number of registered, disposed of and pending NCvC appeals in 2018 can be seen in **GRAPH E**.

GRAPH E

NEW CIVIL COURTS APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



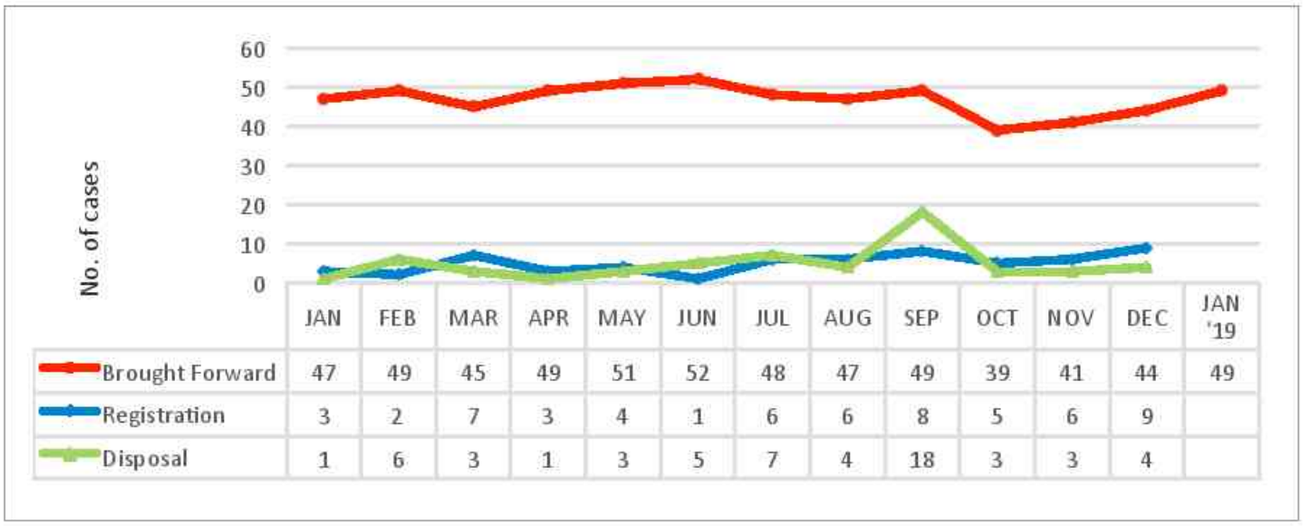
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	1558	1586	1587	1563	1554	1583	1638	1635	1582	1604	1577	1611	1725
Registration	192	197	227	214	185	156	189	128	164	163	153	189	
Disposal	164	196	251	223	156	101	192	181	142	190	119	75	

Muamalat Appeals

60 Muamalat Appeals were registered in 2018 in addition to 47 appeals brought forward from the previous year. A total of 58 appeals were disposed of, leaving a balance of 49 appeals pending before the Court of Appeal. Only 8 out of these 49 appeals are pre-2018 appeals. The number of registered, disposed of and pending Muamalat Appeals in 2018 can be seen in GRAPH F.

GRAPH F

MUAMALAT APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



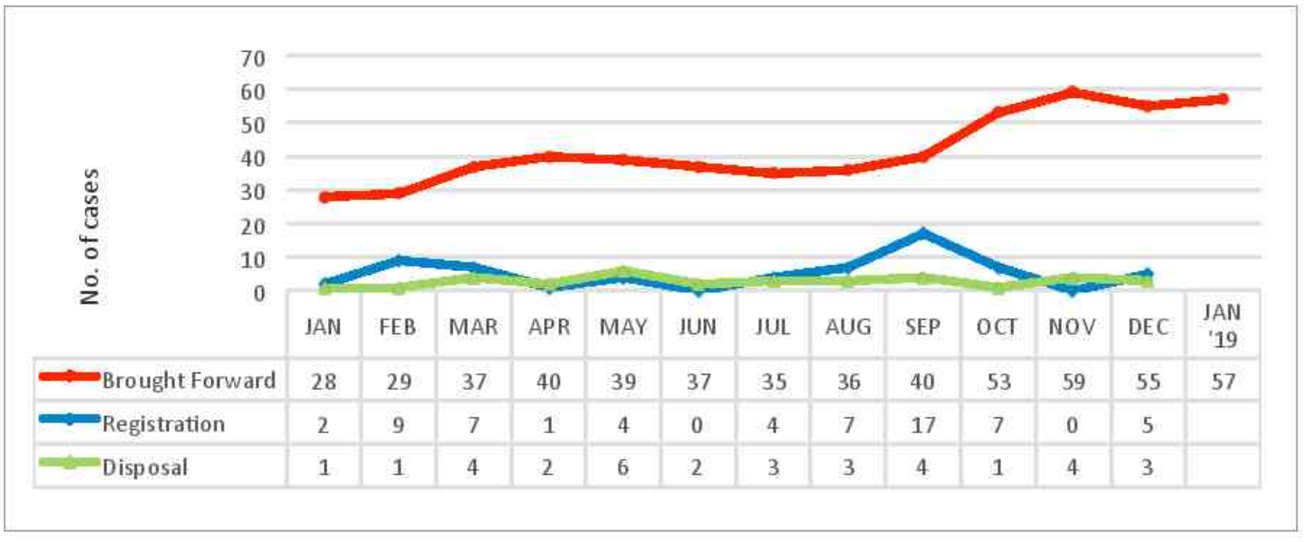
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	47	49	45	49	51	52	48	47	49	39	41	44	49
Registration	3	2	7	3	4	1	6	6	8	5	6	9	
Disposal	1	6	3	1	3	5	7	4	18	3	3	4	

Intellectual Property Appeals

There were 28 Intellectual Property Appeals (IP Appeals) brought forward to 2018. 63 appeals were registered in 2018. Out of these appeals, 34 appeals were disposed of. Out of 57 appeals which remained on the list, only 7 were pre-2018 appeals. These figures are as shown in **Graph G**, below:

GRAPH G:

INTELLECTUAL PROPERTY APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



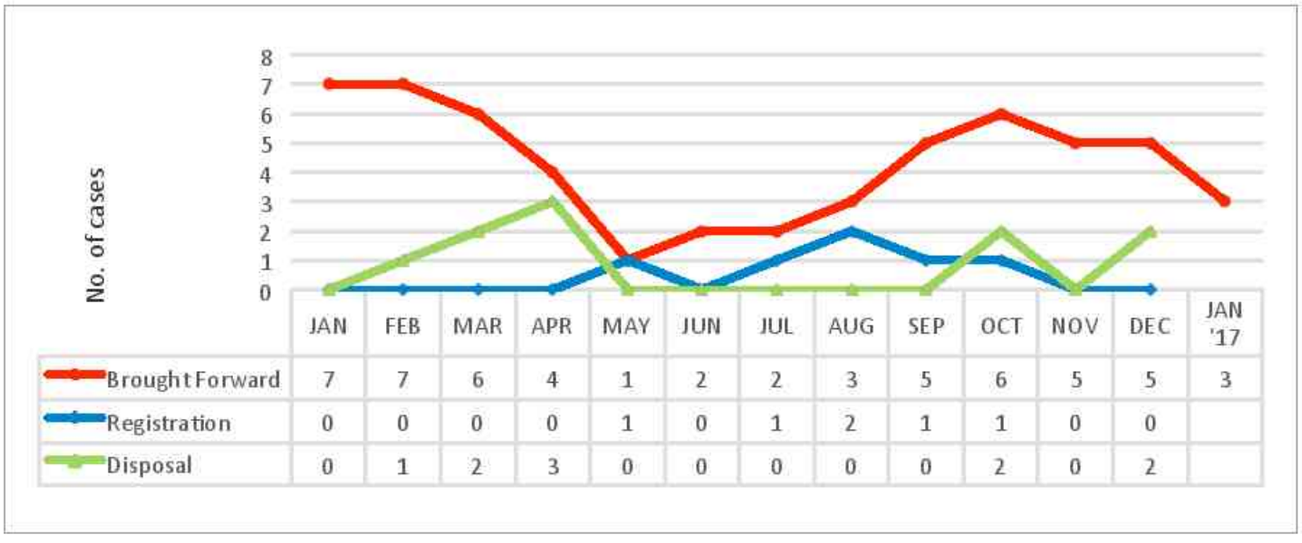
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	28	29	37	40	39	37	35	36	40	53	59	55	57
Registration	2	9	7	1	4	0	4	7	17	7	0	5	
Disposal	1	1	4	2	6	2	3	3	4	1	4	3	

Admiralty Appeals

In 2018, 6 Admiralty Appeals were registered, in addition to the existing 7 appeals brought forward from 2017. 10 appeals were disposed of, leaving a balance of 3 appeals all of which were registered in 2018. The performance is as illustrated in **Graph H** at the next page:

GRAPH H

ADMIRALTY APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '17
Brought Forward	7	7	6	4	1	2	2	3	5	6	5	5	3
Registration	0	0	0	0	1	0	1	2	1	1	0	0	
Disposal	0	1	2	3	0	0	0	0	0	2	0	2	

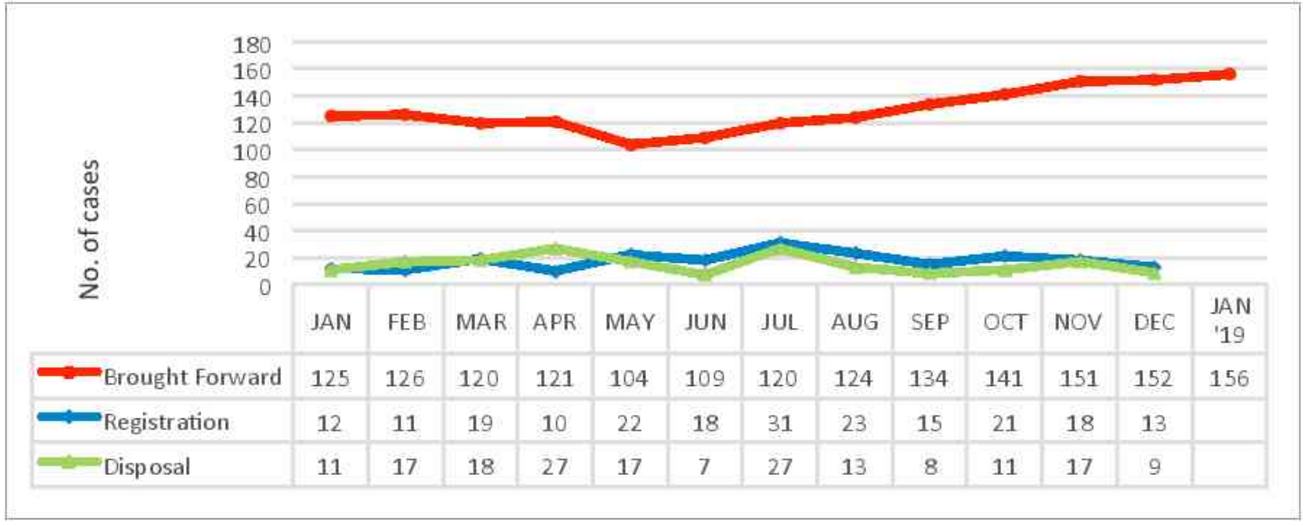
Construction Court Appeals

213 Construction Court Appeals were registered in 2018 and 124 appeals were brought forward from 2017. 182 appeals were disposed of leaving a balance of 156 appeals. All pre-2018 appeals were disposed of except for 1 appeal.

The Construction Court Appeals are adjudicated in a special courtroom, equipped with the latest technology and this had been made a reality with the assistance from the Construction Industry Development Board (CIDB). The performance of the Construction Court Appeals are as shown in GRAPH I below:

GRAPH I

CONSTRUCTION COURTS APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	125	126	120	121	104	109	120	124	134	141	151	152	156
Registration	12	11	19	10	22	18	31	23	15	21	18	13	
Disposal	11	17	18	27	17	7	27	13	8	11	17	9	

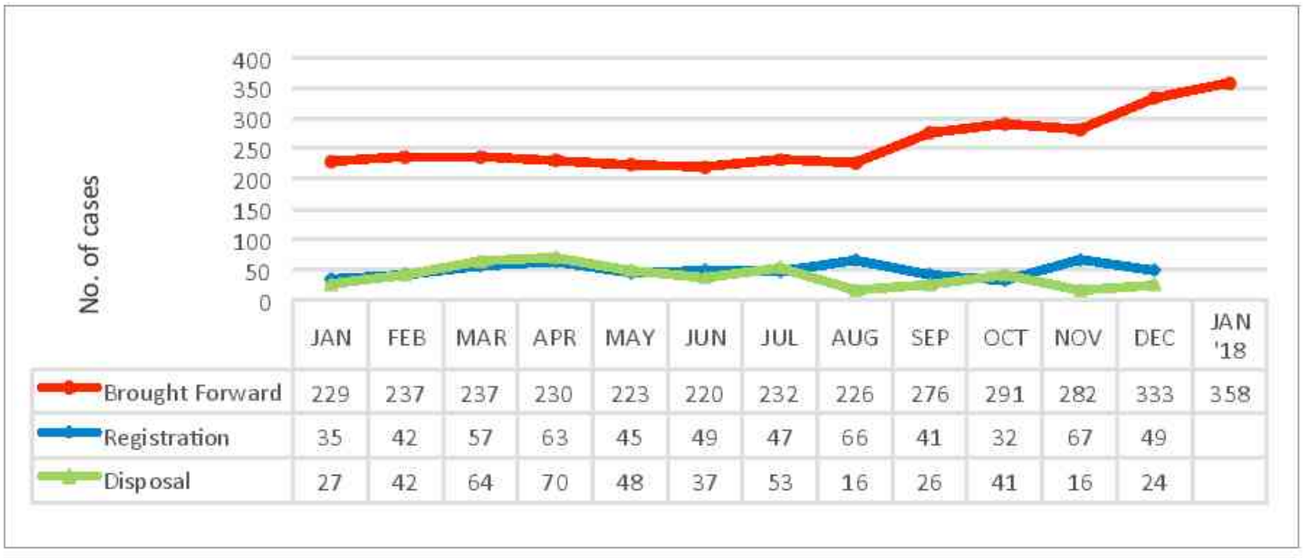
Leave Application

In 2018, there were 593 Leave Applications registered, in addition to 229 leave applications which were brought forward from the previous year. A total of 235 Leave Applications were disposed of, leaving a balance of 358 applications.

The number of registered, disposed of and pending Leave Applications in 2018 can be seen in **GRAPH J.**

GRAPH J

LEAVE TO APPEAL IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



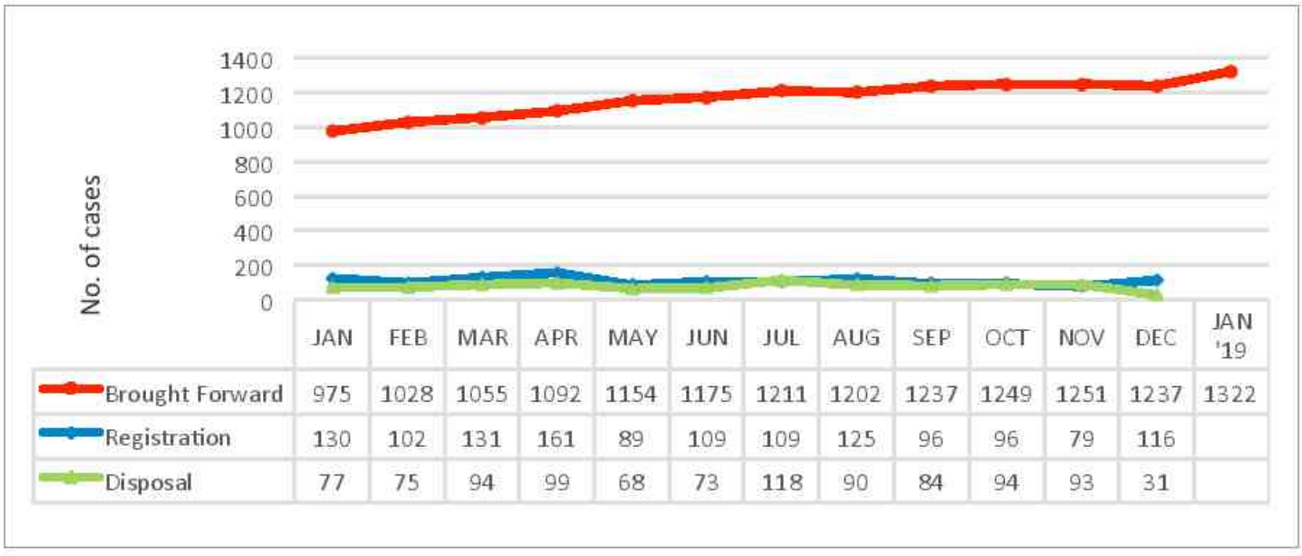
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '18
Brought Forward	229	237	237	230	223	220	232	226	276	291	282	333	358
Registration	35	42	57	63	45	49	47	66	41	32	67	49	
Disposal	27	42	64	70	48	37	53	16	26	41	16	24	

Criminal Appeals

A total of 1343 criminal appeals were registered in 2018, compared to 1232 appeals registered in the year 2017. There were 975 appeals brought forward from 2017. 996 appeals were disposed of, leaving 1322 appeals pending as illustrated in **GRAPH K.**

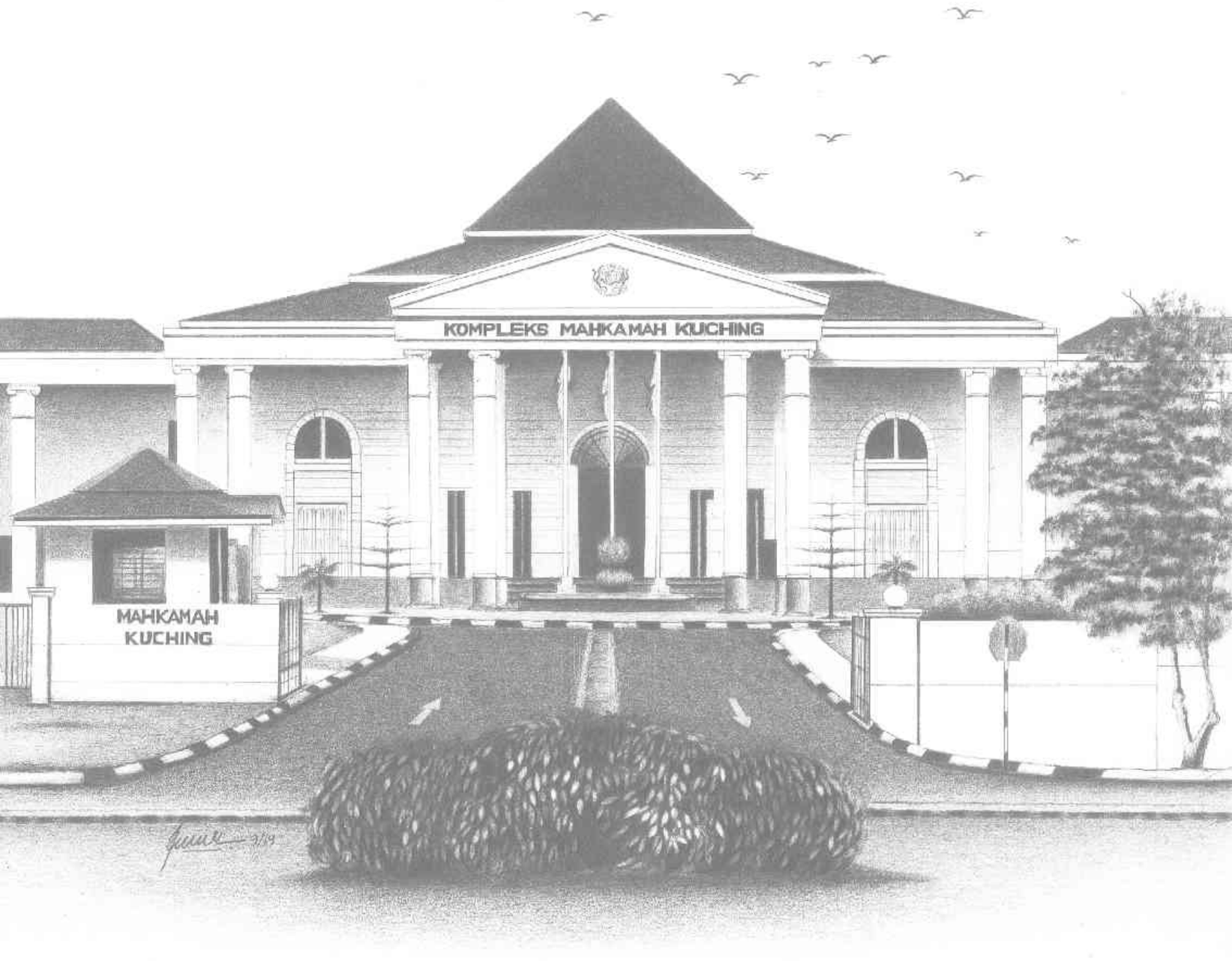
GRAPH K

CRIMINAL APPEALS IN 2018
NUMBER OF REGISTERED, DISPOSED OF AND PENDING



	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN '19
Brought Forward	975	1028	1055	1092	1154	1175	1211	1202	1237	1249	1251	1237	1322
Registration	130	102	131	161	89	109	109	125	96	96	79	116	
Disposal	77	75	94	99	68	73	118	90	84	94	93	31	

A sweeping view of the inner sanctum in the Palace of Justice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CHAPTER 4

THE HIGH COURTS

THE HIGH COURT IN MALAYA

The High Court in Malaya performs its functions through 79 courts throughout Peninsular Malaysia, presided over by 76 Judges and Judicial Commissioners. In 2018, a total of 5,903 criminal cases were registered in the various courts of the High Court in Malaya and 5,691 cases were disposed of. For civil cases, a total of 48,546 cases were registered and 42,008 cases were disposed of.

As for the Subordinate Courts, there are 145 Sessions Courts and 173 Magistrates' Courts in Peninsular Malaysia, presided over by 136 Sessions Court Judges and 143 Magistrates respectively.

A total of 47,727 criminal cases were registered in all the Sessions Courts in Peninsular Malaysia and 47,950 cases were disposed of. As for civil cases, a total of 43,597 cases were registered and 43,007 cases were disposed of.

Apart from those cases, 4,579 criminal applications and applications for execution in civil cases were registered in the Sessions Courts throughout Peninsular Malaysia and 4,656 of such cases were disposed of in 2018.

A total of 191,592 criminal cases were registered in the Magistrates' Courts throughout Peninsular Malaysia. 190,111 cases were disposed of in 2018.

218,044 civil cases were registered in the Magistrates' Courts and 227,901 cases were disposed of in 2018.

In addition, 1,619,802 departmental and traffic summonses as well as applications for execution in civil cases were registered in the Magistrates' Courts throughout Peninsular Malaysia in 2018, and 1,655,088 of such cases were disposed of last year.

I need to make it clear that some of the cases disposed of in 2018 were cases registered in 2017 and earlier. The detailed statistics are as per Appendix A.

I wish to put on record my personal appreciation to the Judges, Judicial Commissioners and judicial officers for their hard work in 2018 and hope for a better output for 2019.

The year 2018 witnessed the retirement of several Judges of the High Court in Malaya and Judicial Officers of the Subordinate Courts in Peninsular Malaysia. Last year, we bid farewell to High Court Judges, Justice Siti Mariah Haji Ahmad, Justice Samsudin Hassan, Justice Hue Siew Kheng, Justice Amelia Tee Hong Geok Abdullah and Justice Mohd Azman Husin. We also bid farewell to Sessions Court Judges; Mdm. Tan Hooi Leng, Mr. Zainal L. Salleh, Mr. Allaudeen Ismail, Mr. Amernudin Ahmad, Mdm. Vijayalakshmi Muthusamy and Mr. Mohd Yusoff Yunus. I take this opportunity to thank them for the services they rendered to the Judiciary and the country, and wish them a happy and healthy retirement.

On a happier note, 2018 also witnessed the elevation of six Judges of the High Court in Malaya to the

Court of Appeal, namely Justice Hanipah Farikullah, Justice Kamaludin Md Said, Justice Lau Bee Lan, Justice Mohamad Zabidin Mohd Diah, Justice Nor Bee Arifin and Justice Has Zanah Mehat. I would like to congratulate them on their appointment and I am certain that their vast experience will be invaluable to the Court of Appeal.

In light of the retirements and elevations, we have had to deal with a number of vacancies in various Courts in the High Court in Malaya and the Sessions Court. We hope to have several of the vacancies filled soon.

Meanwhile, we have tried our level best to redeploy Judges, Judicial Commissioners and judicial officers to fill in several of the vacancies to ensure that judicial performance is not adversely affected. During this exercise, we took the opportunity to move Judges and Judicial Commissioners who have been in one location for several years to another location. Judges who had been dealing for substantial period of time with criminal cases were moved to courts dealing with civil cases, and Judges who had been dealing with mostly civil cases were moved to the courts dealing with criminal cases. This move hopefully will give Judges and Judicial Commissioners experience in dealing with more areas of law.

Another challenge that we had to deal with was the registration of high profile cases in the Criminal Division in Kuala Lumpur, which necessitated the establishment of two additional criminal courts. These two courts are now presided over by Judges relocated from other locations.

In respect of the Subordinate Courts, we have been assessing the manpower needs of the various Sessions and Magistrates' Courts in Peninsular Malaysia with the objective of determining whether, in a particular location, instead of having a Magistrate and a Sessions Court Judge, it is more cost effective that that location is served by a single Sessions Court Judge to deal with both Sessions Court as well as Magistrates' Court cases. This has already been done in Kuala Kubu Baru, Selangor.

When we talk about the performance of the Judiciary, court infrastructure cannot be overlooked. Last year, one court building was completed and handed over to us, namely, the Tapah Magistrates' Court, which began operating from 27 July 2018.

In order to facilitate case management we embarked on the e-Review System. The e-Review System is the initiative of the Right Honourable Chief Justice. In this system, the preliminary case management of a particular case filed in court will be done online. This will reduce the necessity of lawyers coming to court in person to attend case management. For a start, the e-Review System has been implemented in the Commercial Division of the High Court in Kuala Lumpur on a trial basis and has been in operation. I am pleased to report that we have received a very positive feedback. Hence, we are planning to expand the e-Review System to other locations.

We are also hoping to implement video-conferencing for case management and the hearing of some types of applications. Facilities have already been set up in the Kuala Lumpur, Shah Alam and Penang Court Complexes.

In view of the number of courts in Peninsular Malaysia, the Managing Judge system was introduced some nine years ago to assist the Chief Judge of Malaya in the administration and management of courts in several locations. This system is continuing. In addition, again on the initiative of the Right Honourable Chief Justice, one Judge in each High Court location was appointed last year as Supervising Judge to act as a resource person for officers and staff in that location. They are encouraged to conduct in-house training on a regular basis for the officers and staff on legal and administrative matters.

The review and improvement of systems and policies in the High Court in Malaya and the Subordinate Courts in Peninsular Malaysia are ongoing and we are constantly learning, including from other jurisdictions, with the objective of providing an efficient and effective delivery system for the administration of justice.

Let us all pray and hope that the year 2019 brings about further advancement in the administration of justice as we strive to deliver our very best in discharging our judicial functions.

Justice Zaharah Ibrahim
Chief Judge of Malaya

JUDGES OF THE HIGH COURT IN MALAYA

1. Justice Su Geok Yiam
2. Justice Siti Mariah Ahmad
3. Justice Abdul Halim Aman
4. Justice Zulkifli Bakar
5. Justice Mohd Azman Husin
6. Justice Mohd Sofian Abd Razak
7. Justice Ghazali Cha
8. Justice Rosnaini Saub
9. Justice Ahmad Zaidi Ibrahim
10. Justice Mariana Yahya
11. Justice Azman Abdullah
12. Justice Mohd Yazid Mustafa
13. Justice Zainal Azman Ab Aziz
14. Justice Halijah Abbas
15. Justice Akhtar Tahir
16. Justice Hue Siew Kheng
17. Justice Amelia Tee Hong Geok Abdullah
18. Justice Hadhariah Syed Ismail
19. Justice Nik Hasmat Nik Mohamad
20. Justice See Mee Chun
21. Justice Samsudin Hassan
22. Justice Lee Swee Seng
23. Justice Ahmad Nasfy Yasin
24. Justice Rosilah Yop
25. Justice Hashim Hamzah
26. Justice Azizah Nawawi
27. Justice Vazeer Alam Mydin Meera
28. Justice Siti Khadijah S.Hassan Badjenid
29. Justice Mohd Zaki Abdul Wahab
30. Justice S. Nantha Balan E.S. Moorthy
31. Justice Abu Bakar Jais
32. Justice Che Mohd Ruzima Ghazali
33. Justice Azimah Omar
34. Justice Gunalan Muniandy
35. Justice Lim Chong Fong
36. Justice Nordin Hassan
37. Justice Azmi Ariffin
38. Justice Noorin Badaruddin
39. Justin Collin Lawrence Sequerah
40. Justice Azizul Azmi Adnan
41. Justice Mohamed Zaini Mazlan
42. Justice Mohd Nazlan Mohd Ghazali
43. Justice S.M. Komathy Suppiah
44. Justice Ab Karim Ab Rahman
45. Justice Wong Kian Kheong
46. Justice Ahmad Bache
47. Justice Dr. Choo Kah Sing
48. Justice Mohd Firuz Jaffril

JUDICIAL COMMISSIONERS OF THE HIGH COURT IN MALAYA

1. Judicial Commissioner Rozana Ali Yusoff
2. Judicial Commissioner Abu Bakar Katar
3. Judicial Commissioner Roslan Abu Bakar
4. Judicial Commissioner Abdul Wahab Mohamed
5. Judicial Commissioner Hassan Abdul Ghani
6. Judicial Commissioner Chan Jit Li
7. Judicial Commissioner Muhammad Jamil Hussin
8. Judicial Commissioner Hayatul Akmal Abdul Aziz
9. Judicial Commissioner Wan Ahmad Farid Wan Salleh
10. Judicial Commissioner Mohamad Shariff Abu Samah
11. Judicial Commissioner Khadijah Idris
12. Judicial Commissioner Tun Abdul Majid Tun Hamzah
13. Judicial Commissioner Azmi Abdullah
14. Judicial Commissioner Faizah Jamaludin
15. Judicial Commissioner Rohani Ismail
16. Judicial Commissioner Mat Ghani Abdullah
17. Judicial Commissioner Asmadi Husin
18. Judicial Commissioner Zalita Dato' Zaidan
19. Judicial Commissioner Ahmad Kamal Md Shahid
20. Judicial Commissioner Anselm Charles Fernandis
21. Judicial Commissioner Mohd Ivan Hussein
22. Judicial Commissioner Ahmad Shahrir Mohd Salleh
23. Judicial Commissioner Ahmad Fairuz Zainol Abidin
24. Judicial Commissioner Mohd Radzi Harun
25. Judicial Commissioner Aliza Sulaiman
26. Judicial Commissioner Meor Hashimi Abdul Hamid
27. Judicial Commissioner Wong Chee Lin
28. Judicial Commissioner Darryl Goon Siew Chye

THE HIGH COURT IN SABAH AND SARAWAK

I assume my post of Chief Judge of Sabah and Sarawak (CJSS) on 12 July 2018, taking over from Tan Sri Richard Malanjum who also became the Chief Justice of the Federal Court on the same day. Tan Sri over his 12 years as the CJSS has brought many changes to the judicial landscape to Sabah and Sarawak and we all have profited from his many innovations.

The year 2018 was a momentous year for the Sabah Judiciary as we took possession of a brand new building in Kota Kinabalu which houses a complex costing some RM150 million and consists of 1 Federal Court, 4 High Courts, 4 Sessions Courts, 1 Corruption Court, 1 Sexual Offence Court, 5 Magistrates' Courts, 1 Technology Court, 2 Child Witness Rooms and a spacious work place for the administrative staff of the High Courts and Subordinate Courts. The Kota Kinabalu High Court now stands as an iconic building in the city of Kota Kinabalu.

In terms of technology, we continue to be at the forefront of innovation. Three new applications have been launched, namely, e-Review, e-Appeal and Mobile Apps of the High Court of Sabah and Sarawak.

In the e-Review system, case management can now be done through an interactive communication channel where lawyers and judicial officers are able to communicate with each other within the virtual files in the form of intranet emails. Once direction is given by the Court, the aforesaid communications will generate into notes of proceedings for that case management day and the same will be accessible by lawyers through the virtual file.

For the e-Appeal module (which concerns appeals from the subordinate Courts to the High Courts), it allows lawyers to compile the appeal record through electronic means within the virtual file. This is done by merely choosing the relevant documents and once chosen the system will virtually compile the appeal record and the same will be migrated to the High Court from the Subordinate Court. This module goes a long way in helping the lawyers in compiling the appeal record in civil matters. It also has done away with designated Court staff in compiling hard copies of appeal record for criminal matters.

Finally, the High Court of Sabah and Sarawak have a Mobile Apps whereby lawyers can file their documents via their mobile phones, communicate with Courts and also will be able to receive notifications from the Court for their hearing dates of trial or interlocutory matters.

To enhance the advocacy skill of the legal fraternity, I have issued a practise direction to require counsel to make oral submissions before the Courts irrespective of the availability of written submissions by counsel. Further, exercising the power given to me by the Advocates Ordinance, I have also made it a prerequisite

of having attended an advocacy course before a lawyer can be called to the Sabah and Sarawak Bars. Feedback from the two Bars have been encouraging.

Efforts are continuing to provide Judges and legal officers with continued legal education. Strategic litigation seminar was organised so as to expose Judges and legal officers to public litigation which are getting more prevalent in our Courts. Sexual offence workshop was organised to appraise Judges how to handle child sexual offences trial including how to handle child witnesses and control the manner how DPP and defence counsel conduct their cross examination of the same.

Mobile Court project has continued to bring justice to the people living in the interior of both States. This program has brought many benefits to the Judges and legal officers in that we are exposed to the living conditions of these people and no doubt give us a better understanding when cases for native customary rights claims are brought before the Courts.

Access to justice remains the main focus of the Courts in terms of ensuring expeditious disposal of cases without sacrifice to delivering complete justice in terms of ensuring well-reasoned decisions are delivered within a reasonable period.

Finally, I thank all the Judges, legal officers and staff of the Sabah and Sarawak courts for their hard work in discharging their duties and their support to me.

Justice David Wong Dak Wah
Chief Judge of Sabah and Sarawak

JUDGES OF THE HIGH COURT IN SABAH AND SARAWAK

1. Justice Nurchaya Haji Arshad
2. Justice Yew Jen Kie
3. Justice Supang Lian
4. Justice Ravinthran N. Paramaguru
5. Justice Lee Heng Cheong
6. Justice Mairin Idang @ Martin
7. Justice Azhahari Kamal Ramli
8. Justice Dr. Alwi Haji Abdul Wahab

JUDICIAL COMMISSIONERS OF THE HIGH COURT IN SABAH AND SARAWAK

1. Judicial Commissioner Ismail Brahim
2. Judicial Commissioner Dean Wayne Daly
3. Judicial Commissioner Celestina Stuel Galid
4. Judicial Commissioner Bexter Agas Michael
5. Judicial Commissioner Dr. Lim Hock Leng

THE OFFICE OF THE CHIEF REGISTRAR

INTRODUCTION

In the delivery of services to the public, there are two important prerequisites which must be fulfilled by those who serve the institution in order to ensure delivery of an excellent service to the public, namely—

(a) Teamwork; and
(b) Ethics and integrity.

Teamwork and strong cooperation amongst members of an organisation are crucial for any organisation to become a successful one. This is also true for the Judiciary. Our achievement in the disposal of court cases did not rely solely on the hard work of the Judges or judicial officers but with the whole judicial machinery manned by our supporting staff such court interpreters, administrative assistants (*pembantu tadbir*), operational assistants (*pembantu operasi*) and the rest of our court's personels.

For the whole Judiciary to function effectively, the human resources in the system must work as a team for each one is like a cog in a wheel. Any breakdown in one would affect the smooth running of the machinery.

In addition, since the public delivery service is close to the heart of the society, it needs to function as a system free from corruption and at the same time incorporates integrity into each and every individual working in that system.

A working culture which incorporates integrity as an integral part of its system will ensure that members of the organisation would be disciplined and responsible and this is especially so for those in the public services.

THE ACHIEVEMENT OF THE CHIEF REGISTRAR'S OFFICE FOR THE YEAR 2018

In the year 2018, the Office of the Chief Registrar of the Federal Court of Malaysia, under the guidance of The Right Honourable Chief Justice of Malaysia, Tan Sri Datuk Seri Panglima Richard Malanjum, assisted by The Right Honourable President of the Court of Appeal, The Right Honourable Chief Judge of Malaya, and The Right Honourable Chief Judge of Sabah and Sarawak and with the strong support and commitment by all members of the Judiciary had achieved a number of remarkable milestones. The achievements are as follows:

(i) An increase in the disposal of cases in the Sessions and Magistrates' Courts throughout Malaysia compared to 2017. The percentage for disposal of cases in these Courts for 2018 was 84.25% against 83% in 2017, that is 2,318,874 cases, which comprised of 324,771 civil cases and 1,994,103 criminal cases.

(ii) The extension of the e-Auction (e-Lelong) System for Immovable Property at the High Court in Malaya to three new locations, namely the High Court of Temerloh (Pahang), the High Court of Ipoh (Perak) and the High Court of Taiping (Perak). As at 30 March 2019, as many as 134 properties were successfully auctioned through this electronic system.

(iii) In tandem with the government's vision in inculcating a cashless society, the Office of the Chief Registrar had in 2018 successfully extended the e-Court Finance (e-CF) System application to thirteen new locations. In total, the accredited e-transaction through e-CF was increased by 17% and it recorded 1.8 million cashless transactions compared to the year 2017.

(iv) Improvement in Malaysia's position in the World Bank's Ease of Doing Business Report. The Chief Registrar's Office has been entrusted to lead the Focus Group on Enforcing Contract and this initiative had raised our nation's ranking in the ease of executing contract from 44 in year 2017 to 33 according to the said Report.

(v) In respect of the Prime Minister's Department's Award for Innovation and Excellence, the Office of the Chief Registrar won third place for the e-Traffic Solution in the Future Product Innovation Awards. The e-Traffic Solution is an innovation which offers 5 steps (from originally 13 steps) for the settlement of cases in respect of the traffic offences. e-Traffic Solution is a project done in collaboration with the Royal Malaysia Police through MyCOPs System. The award was delivered by YBhg. Datuk Seri Dr. Ismail Haji Bakar, the Chief Secretary of the Government on 8 November, 2018.

These achievements are evidence of the strong commitment and hard work of all the personnel in the Chief Registrar's Office which facilitated and enabled the Judiciary to stay in the right track and to earn the respect as well as given the due acknowledgement by others in line with the vision and mission of our Right Honourable Justices.

On behalf of the Office of the Chief Registrar, I would like to express my gratitude to all its officers and staffs who have contributed tremendously throughout year 2018 in ensuring that the said vision and mission are successfully realised.

Wabillahi taufik walhidayah, wassalamualaikum warahmatullahi wabarakatuh.

With best regards,

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


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CHAPTER 5

JUDGES

JUDGES ELEVATIONS AND APPOINTMENTS

For the year 2018, the Superior Courts received thirty-four (34) elevations and appointments. These include the appointments of the new Chief Justice, President of the Court of Appeal, the Chief Judge of Malaya and the Chief Judge of Sabah and Sarawak.

There were twenty-three (23) Judges elevated to the Federal Court, the Court of Appeal and the High Courts. Apart from the elevations, seven (7) 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 the Judicial Commissioners appointed in 2018 is as follows:

Position	Date of Appointment	Name
Chief Justice	11 July 2018	Chief Justice Richard Malanjum
President of the Court of Appeal	11 July 2018	Justice Ahmad Haji Maarop
Chief Judge of Malaya	11 July 2018	Justice Zaharah Ibrahim
Chief Judge of Sabah and Sarawak	11 July 2018	Justice David Wong Dak Wah
Federal Court Judge	27 April 2018	Justice David Wong Dak Wah
		Justice Rohana Yusuf
		Justice Mohd Zawawi Salleh
	26 November 2018	Justice Tengku Maimun Tuan Mat
		Justice Abang Iskandar Abang Hashim
		Justice Idrus Harun
		Justice Nallini Pathmanathan
Court of Appeal Judge	27 April 2018	Justice Stephen Chung Hian Guan
		Justice Hanipah Farikullah
		Justice Kamaludin Md. Said
	26 November 2018	Justice Lau Bee Lan
		Justice Mohamad Zabidin Mohd Diah
		Justice Yew Jen Kie
		Justice Nor Bee Ariffin
		Justice Has Zanah Mehat
High Court Judge	27 April 2018	Justice S.M. Komathy Suppiah
		Justice Ab Karim Ab Rahman
		Justice Wong Kian Kheong
		Justice Dr. Choo Kah Sing
		Justice Ahmad Bache
		Justice Mohd Firuz Jaffril
		Justice Mairin Idang @ Martin
		Justice Dr. Alwi Haji Abdul Wahab

Position	Date of Appointment	Name
Judicial Commissioner	30 March 2018	Judicial Commissioner Ahmad Fairuz Zainol Abidin
		Judicial Commissioner Mohd Radzi Harun
		Judicial Commissioner Aliza Sulaiman
		Judicial Commissioner Meor Hashimi Abdul Hamid
		Judicial Commissioner Wong Chee Lin
		Judicial Commissioner Darryl Goon Siew Chye
		Judicial Commissioner Dr. Lim Hock Leng

Chief Justice Richard Malanjum receiving the letter of appointment from the Yang di-Pertuan Agong XV, Sultan Muhammad V

Chief Justice Richard Malanjum taking the oath of office as Chief Justice of Malaysia before the Yang di-Pertuan Agong XV, Sultan Muhammad V

Chief Justice Richard Malanjum signing the letter of appointment

Justice Ahmad Haji Maarop taking the oath of office as President of the Court of Appeal at the Palace of Justice

Justice Zaharah Ibrahim taking the oath of office as Chief Judge of Malaya at the Palace of Justice

Justice David Wong Dak Wah taking the oath of office as Chief Judge of Sabah and Sarawak at the Palace of Justice

Justice Rohana Yusuf taking the oath of office as a Federal Court Judge at the Palace of Justice

Justice Mohd. Zawawi Salleh taking the oath of office as a Federal Court Judge at the Palace of Justice

Justice Tengku Maimun Tuan Mat taking the oath of office as a Federal Court Judge at the Palace of Justice

Justice Abang Iskandar Abang Hashim at the Appointment of Federal Court Judge Ceremony at the Palace of Justice

Justice Idrus Harun taking the oath of office as a Federal Court Judge at the Palace of Justice

Justice Nallini Pathmanathan taking the oath of office as a Federal Court Judge at the Palace of Justice

Justice Stephen Chung Hian Guan taking the oath of office as a Court of Appeal Judge at the Palace of Justice

Justice Hanipah Farikullah taking the oath of office as a Court of Appeal Judge at the Palace of Justice

Justice Kamaludin Md. Said taking the oath of office as a Court of Appeal Judge at the Palace of Justice

Justice Lau Bee Lan taking
the oath of office as a Court of Appeal Judge at the
Palace of Justice

Justice Mohamad Zabidin Mohd Diah taking
the oath of office as a Court of Appeal Judge at the
Palace of Justice

Justice Yew Jen Kie taking
the oath of office as a Court of Appeal Judge at the
Palace of Justice

Justice Nor Bee Ariffin taking
the oath of office as a Court of Appeal Judge at the
Palace of Justice

Justice Has Zanah Mehat taking the oath of office as a Court of Appeal Judge at the Palace of Justice

Justice S.M. Komathy Suppiah taking the oath of office as a High Court Judge at the Palace of Justice

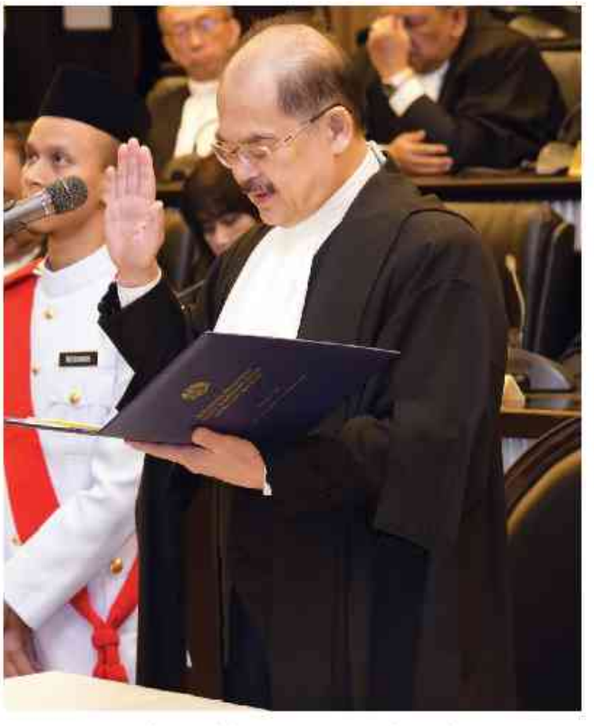
Justice Ab. Karim Ab. Rahman taking the oath of office as a High Court Judge at the Palace of Justice

Justice Wong Kian Kheong taking the oath of office as a High Court Judge at the Palace of Justice

Justice Dr. Choo Kah Sing taking the oath of office as a High Court Judge at the Palace of Justice

Justice Ahmad Bache taking the oath of office as a High Court Judge at the Palace of Justice

Justice Mohd Firuz Jaffril taking the oath of office as a High Court Judge at the Palace of Justice



Justice Mairin Idang @ Martin taking the oath of office as a High Court Judge at the Palace of Justice

Justice Dr. Alwi Haji Abdul Wahab taking the oath of office as a High Court Judge at the Palace of Justice

Dato' Ahmad Fairuz Zainol Abidin taking the oath of office as a Judicial Commissioner at the Palace of Justice

Dato' Mohd Radzi Harun taking the oath of office as a Judicial Commissioner at the Palace of Justice

Dato' Hajah Aliza Sulaiman taking the oath of office as a Judicial Commissioner at the Palace of Justice

Datuk Mecr Hashimi Abdul Hamid taking
the oath of office as a Judicial Commissioner at the
Palace of Justice

Mdm. Wong Chee Lin taking
the oath of office as a Judicial Commissioner at the
Palace of Justice

Mr. Darryl Goon Siew Chye taking
the oath of office as a Judicial Commissioner at the
Palace of Justice

Dr. Lim Hock Leng taking
the oath of office as a Judicial Commissioner at the
Palace of Justice

Judges – Tenure of Office, Remuneration and Other Benefits

The primary legislation governing the remuneration of judges in Malaysia is the Judges' Remuneration Act 1971 (JRA 1971). This article does not intend to elaborate on the JRA 1971 in too much detail. Instead, this article highlights the critical importance of remuneration of judges vis-à-vis the independence of the Judiciary. Accordingly, we firstly explore what salaries have to do with justice and judges. And secondly, we then make mention of the salient provisions of the Federal Constitution and the JRA 1971 observing that they do indeed contain the necessary ingredients to safeguard the independence of judges in Malaysia.

Effective Judicial Compensation and Judicial Independence

It is said that as early as the time of the reign of 'Umar Al-Khattab of the Islamic Caliphate, it was recognised that judges ought to be paid high salaries. This is eloquently encapsulated in the works of two learned authors writing on the subject who note as follows (note *Qadi* refers to a judge):[1]

> *"In the time of 'Umar, he prepared a reasonable salary scheme and it was relatively high compared to usual need at that time. It is said that he gave married workers higher salary compared to that of unmarried workers.* ***'Umar paid his officers high salaries to prevent them from committing bribery and corruption. For example, Qādīs were given 500 dirhams every month and governors 1000 dirhams.***"
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> [Emphasis added]

More recently, Lord Mance, a judge of the Supreme Court of the United Kingdom had this to say in a lecture delivered on 24 February 2017 on 'The Role of Judges in a Representative Democracy':[2]

> *"**Separation of powers means security of tenure, normally until a defined retirement age. Unlike the current English position, Westminster model constitutions still distinguish in this respect between a senior judiciary, who enjoy such security, and lower levels, such as magistrates, who do not, since they may enjoy only short-term engagements.** Security also means freedom from significant disciplinary sanctions save after a judicial process for good cause, appropriate facilities, adequate guaranteed remuneration, and control over core judicial activities, such as listing and deployment. In some systems, judges also have their own budget and greater control over courts and their management, despite the administrative burden. Promotion at least should also be on objective, non-political grounds. Some countries operate politically based systems for initial, and some even for appellate, appointments, though I myself do not see that as a model to follow. Inevitably, some of these pre-conditions can only be fulfilled with the cooperation of the legislature and/or executive: where else, for example, is a budget to come from?"*
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> [Emphasis added]

1 Abdul, I., & Hamzah, N. (2015). Human Resource Management Practices in the Era Of Khulafā' Aal-Rāshidīn (11-40 AH / 632-661 AD). *Journal of Usuluddin*, 42, 147-174. doi:10.22452/usuluddin.vol42no1.7 at page 169.

2 Lord Mance, 'The Role of Judges in a Representative Democracy' (24 February 2017) a lecture given during the Judicial Committee of the Privy Council's Fourth Sitting in the Bahamas, available at <https://www.supremecourt.uk/docs/speech-170224.pdf>, at paragraph 9.

To digress for a moment, our immediate past Chief Justice Richard Malanjum ensured that our Chief Registrar be made the judiciary's own financial controller.[3] This is no doubt one major benefit for the judiciary and to judges as a whole. As Lord Mance significantly noted, it is of utmost importance that we have a financially independent judiciary. The keeper of the purse is of course the keeper of power. A strong judiciary is often the bane of an overzealous legislature or executive. A severe budget cut on the judiciary could theoretically and sometimes even practically work as an effective leash on the judiciary. But that of course is largely a relic of the past because the control of the money now lies with the Chief Registrar. Be that as it may, the judiciary is still dependent on the Government for its funds. What has changed, quite significantly however, is that the method of expenditure rests in the Judiciary's own hands by virtue of the Chief Registrar.

Back to the narrative, years down the road from the time of the Caliphate and perhaps other celebrated systems of governance, the international community – both in international documents and in their own respective domestic constitutions recognise remuneration as one of the key hallmarks of judicial independence. One of the best collation of these principles is encapsulated in the European Charter on the Statute for Judges. That document states:

> *"6.1 The Charter provides that the level of the remuneration to which judges are entitled for performing their professional judicial duties must be set* ***so as to shield them from pressures intended to influence their decisions or judicial conduct in general, impairing their independence and impartiality****. It seemed preferable to state that the level of the remuneration paid had to be such as to shield judges from pressures, rather than to provide for this level to be set by reference to the remuneration paid to holders of senior posts in the legislature or the executive, as the holders of such posts are far from being treated on a comparable basis in the different national systems.*
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> *6.2 The level of remuneration of one judge as compared to another may be subject to variations depending on length of service, the nature of the duties which they are assigned to discharge and the importance of the tasks which are imposed on them, such as weekend duties. However, such tasks justifying higher remuneration must be assessed on the basis of transparent criteria, so as to avoid differences in treatment unconnected with considerations relating to the work done or the availability required.*
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> *6.3 The Charter provides for judges to benefit from social security, ie protection against the usual social risks, namely illness, maternity, invalidity, old age and death."*
>
> [Emphasis added]

It is critical to note here that a handsome remuneration for judges is not intended to lure those seeking to join the judiciary to anticipate such perks. The duty of a judge is indeed onerous and perhaps a profession which would leave those in it hoping for more than twenty-four hours in a day. Benefits are not just limited to adequate remuneration. Internationally accepted principles recognise that judges, given the arduous work pressure they face coupled by the need to maintain their independence ought to be entitled to other significant benefits like housing. In this regard, it is worth quoting *in extenso* the recommendations of the Venice Commission:[4]

> *"The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from*

3 See– Tan Sri Datuk Seri Panglima Richard Malanjum, 'Speech – Opening of the Legal Year' (11 January 2019), at [22]] <http://www.kehakiman.gov.my/sites/default/files/OLY%202019%20CJ%27s%20Speech%20-%20Final_0.pdf>, at paragraph 27.

4 Venice Commission, 'Report on the Independence of the Judicial System Part 1: The Independence of Judges' adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), at paragraphs 46-48.

undue outside interference. The example of the Polish Constitution, which guarantees to judges remuneration consistent with the dignity of their office and the scope of their duties is a commendable approach. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses which include an element of discretion should be excluded.

In a number of mainly post-socialist countries judges receive also non-financial benefits such as apartments, cars, etc. Such non-monetary remuneration of judges has two main origins: the first lies in the previous socialist system of distribution of goods, which depended on central planning. Some groups, including judges, were privileged in obtaining specific goods, including dwellings. This was a considerable advantage of being a judge.

The second origin of this practice lies in the post-socialist period of transition to a market economy. The prices for real property increased exponentially and this made it impossible for State officials, including judges, to purchase adequate housing. Again, one of the advantages of being a judge was the attribution of apartments. Young judges in particular may not easily be able to purchase real estate and, consequently, the system of allocation of housing persists."

The same recommendations were also forwarded by the Council of Europe in its report entitled: 'Judges: Independence, Efficiency and Responsibilities.'[5] The other equally important benefit enjoyed by judges is security of tenure. Simply put, once appointed, judges cannot be removed except by an intricate constitutional process. And in most countries, as noted by Lord Mance, judges serve until a mandatory retirement age or in the case of the United States of America – for life. In short, these international documents require the guarantee of financial independence and security of tenure. The rationale for the latter should be apparent to any person. No judge can be removed from office simply because of the decision he or she made. This ought to be a prime feature of independence in any institution what more the Judiciary.

The notion behind the hefty remuneration and other benefits aims not just to pull a judge away from the ills of social life shielding them from the vices ordinary people face on a daily basis. It has more to do with most things related to judicial independence: the notion of public confidence. The recent remarks of the Federal Court (though in relation to the rationale for contempt), astutely encapsulate the eternal interplay between public confidence and judicial independence. In the words of Ramly Ali FCJ in *PCP Construction Sdn Bhd v Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener)*:[6]

> *"The courts of justice are the bulwark of a nation. Alexander Hamilton famously recognised, in the doctrine of the separation of powers, that the Legislature controls money, the executive controls force and the Judiciary controls nothing.* ***It is on public confidence that the Judiciary depends, for the general acceptance of its judicial decisions, by both citizens and the***

5 Council of Europe, 'Judges: Independence, Efficiency and Responsibilities', (17 November 2010) Recommendation CM/Rec(2010)12 and explanatory memorandum.

6 [2019] 6 CLJ 1 at paragraphs 41-42.

> ***Government. The public conforms to the decisions of the Judiciary, because they respect the concept of judicial power and the judges who exercise such power. Therefore, the trust and confidence of the people in the judicial system to deliver impartial justice comprises the very foundation of the Judiciary.***"
>
> [Emphasis added]

Premised on the same line of reasoning, the United Nations adopted the Basic Principles on the Independence of the Judiciary – item 11 of which affirmatively urges all member States to ensure the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and that the age of retirement shall be adequately secured by law.[7]

Incursions by either the executive and legislature into any part of this domain is most certainly taken as constituting a grave trespass on judicial independence. A recent example of this in the case of the former is what happened in Ghana. The Government of Ghana attempted to build a national cathedral. In so doing, it proposed to relocate judges from their official dwellings which were built just five years before. The Government of Ghana naturally compensated the judges but this was challenged as being inadequate. Further, the Government offered to 'rent out' exclusive bungalows to the judges. The terms proposed were seen as unfavourable to the judges affected and in the result, were viewed as being an attack against the judiciary of Ghana.[8]

Lord Mance observed how security of tenure and adequate financial measures regarding the judiciary are usually essential to the superior courts and not so much their lower counterparts. But, in Canada, its Judiciary came down hard on the Provincial Government of Prince Edward Island in its attempt to cut the salary of provincial judges (equivalent to our subordinate Court judges). The Supreme Court of Canada noted that the salaries of provincial judges cannot be altered unless by an independent commission. This was so in *Ref re Remuneration of Judges of the Provincial Court of Prince Edward Island*.[9] In respect of provincial court judges, Lamer CJ opined as follows:[10]

> "*[A]s a general constitutional principle, the salaries of provincial court judges can be reduced, increased, or frozen, either as part of an overall economic measure which affects the salaries of all or some persons who are remunerated from public funds, or as part of a measure which is directed at provincial court judges as a class.* ***However, any changes to or freezes in judicial remuneration require prior recourse to a special process, which is independent, effective, and objective, for determining judicial remuneration, to avoid the possibility of, or the appearance of, political interference through economic manipulation. What judicial independence requires is an independent body, along the lines of the bodies that exist in many provinces and at the federal level to set or recommend the levels of judicial remuneration***..."
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> [Emphasis added]

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7 Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

8 See generally: MyJoyOnline, 'Gov't Under 'Fire' Over Planned Demolition Of Judges Home For Cathedral' *Modern Ghana* at <https://www.modernghana.com/news/878118/govt-under-fire-over-planned-demolition-of-judges-home-fo.html>.

9 [1997] CanLII 317 (SCC).

10 Ibid at paragraph 133.

What is more interesting to note is what Lamer CJ said in more general terms. His Honour made no compromises when he said as follows:[11]

> *"[U]nder no circumstances is it permissible for the judiciary — not only collectively through representative organizations, but also as individuals — to engage in negotiations over remuneration with the executive or representatives of the legislature. Any such negotiations would be fundamentally at odds with judicial independence.* ***As I explain below, salary negotiations are indelibly political, because remuneration from the public purse is an inherently political issue. Moreover, negotiations would undermine the appearance of judicial independence, because the Crown is almost always a party to criminal prosecutions before provincial courts, and because salary negotiations engender a set of expectations about the behaviour of parties to those negotiations which are inimical to judicial independence.*** *When I refer to negotiations, I utilize that term as it is traditionally understood in the labour relations context. Negotiations over remuneration and benefits, in colloquial terms, are a form of "horse-trading". The prohibition on negotiations therefore does not preclude expressions of concern or representations by chief justices and chief judges, and organizations that represent judges, to governments regarding the adequacy of judicial remuneration. Third, and finally, any reductions to judicial remuneration, including de facto reductions through the erosion of judicial salaries by inflation, cannot take those salaries below a basic minimum level of remuneration which is required for the office of a judge.* ***Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be perceived as susceptible to political pressure through economic manipulation, as is witnessed in many countries.*** *I note at the outset that these appeals raise the issue of judges' salaries.* ***However, the same principles are equally applicable to judges' pensions and other benefits.***"
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> [Emphasis added]

With that backdrop, it would be appropriate to consider the Malaysian position.

The Remuneration of Judges in Malaysia

In the Malaysian context, the relation between the provisions of the Federal Constitution on security of tenure and judicial independence was indirectly highlighted by the Federal Court in its celebrated judgment in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals.*[12] In highlighting how Malaysian Syariah Courts are not judicial tribunals, unlike our superior courts, Zainun Ali FCJ held as follows:[13]

> *"Syariah Court judges are appointed by the Rulers of the respective state after consultation with the relevant state religious council. Notably, Syariah Courts are not constituted in accordance with the provisions of Part IX of the Federal Constitutions entitled 'The Judiciary'.* ***The constitutional safeguards for judicial independence, including the mechanism for the qualifications, appointment, removal, security of tenure and remuneration of judges, do not apply in respect of Syariah Courts.***"
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> [Emphasis added]

11 Ibid at paragraph 134-136.
12 [2018] 1 MLJ 545.
13 Ibid at paragraph 69.

The Federal Constitution indubitably guarantees both the security of tenure of remuneration of judges. For convenience, clauses (6), (6A) and (7) of Article 125 of the Federal Constitution are reproduced as follows:

> *"(6) Parliament shall by law provide for the remuneration of the judges of the Federal Court, and the remuneration so provided shall be charged on the Consolidated Fund.*
>
> *(6A) Subject to the provisions of this Article, Parliament may by law provide for the terms of office of the judges of the Federal Court other than their remuneration.*
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> *(7) The remuneration and other terms of office (including pension rights) of a judge of the Federal Court shall not be altered to his disadvantage after his appointment."*

Clause (6) underpins the crucial point that the salary of judges shall be charged on the Consolidated Fund. This is significant because the Government is not ordinarily allowed to tap into such Fund until and unless there is prior Parliamentary sanction. By ensuring that judges' remuneration is drawn from the Consolidated Fund, it expressly guarantees that the payment of such remuneration is always prioritised. In other words, the legislative and executive branches of government need not budget the salary of judges and by consequence, there is absolutely no need for the payment of such salaries to be approved at each and every Parliamentary sitting. That this is the case is countenanced by what the drafters of our Federal Constitution themselves said:[14]

> *"The proceeds of taxes and all other revenues (with minor exceptions) are paid into a national fund called the 'Consolidated Fund' out of which moneys cannot be paid except under the authority of law. The law gives that authority in two ways, by charging on the Consolidated Fund and by votes passed by Parliament.* ***Moneys are charged on the Consolidated Fund when it is of constitutional importance that they ought not to be made the subject of an annual vote.***"
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> [Emphasis added]

In addition to ensuring that judges are remunerated without fail per Clause (6), Clause (7) ensures that the remuneration of judges is not altered to their disadvantage. These clauses seemingly operate in tandem by ensuring that not only are salaries paid timeously but that they cannot be reduced or altered in such a way so as to put judges at a disadvantage.

The other benefit enjoyed by judges in Malaysia is the security of tenure. As already noted earlier, this simply means that judges cannot be threatened with removal simply by virtue of their decisions. This guarantees judges are free to make decisions without fear or favour. That being said, judges do not serve for life. They mandatorily retire at the age of sixty-six subject to an extension of up to six months as the Yang Di-Pertuan Agong may approve. All this is expressly enumerated in Article 125(1) of the Federal Constitution.

The Federal Constitution aside, the federal law pertinent in this context is the JRA 1971. Of significance are also the Pensions Act 1980 and the Pensions Adjustment Act 1980. However, for the purposes of this article, it is sufficient to consider mainly the provisions of the JRA 1971 as they deal with every aspect of the financial domain – including pensions. The JRA 1971 deals only with the Superior Courts *i.e.* (in ascending order) the two High Courts, the Court of Appeal and the Federal Court.

Now, the JRA 1971 is necessarily a complex piece of legislation because unlike most other legislation, it is rife with arithmetic. Those wishing only to learn the structure of the said Act are free to gloss over the First and Second Schedules thereof. Those Schedules invariably fix not only the salaries of judges, but a host of other allowances due and payable to judges in consonance with their judicial functions. The JRA 1971 also has other notable features. For one, Part III

14 Report of the Federation of Malaya Constitutional Commission 1957, at paragraph 125.

thereof determines the formula for computing a judge's pension. It takes into account among other things the judge's years in service. The pensions formula also takes into account the gratuity payable to a judge upon retirement. Upon retirement, a judge is also entitled to a one-off gratuity in addition to his or her pension. The value of the gratuity is calculated in accordance with section 7 of the JRA 1971:

> *"A Judge who is entitled to a pension under this Act shall also be entitled to a gratuity of an amount computed at the rate of seven and a half per centum of the amount arrived at by multiplying his total completed months of service as a Judge by his last drawn salary."*

Secondly, the JRA 1971 takes into account not only the welfare of the judge, but in certain limited circumstances that of his spouse or children (including any illegitimate children) and even parents.[15] This benefit to dependents is not limited to pensions. It covers situations where the judge becomes disabled in performance of his judicial functions, or in cases of accidents.

Further, the JRA 1971 ensures that, in a case where a judge dies before any payment under the Act is made to him, such payment may be claimed by his dependents notwithstanding the absence of any probate or letters of administration. Further, the payments are statutorily not considered as being part of the judge's estate and thus, seemingly exempt from estate duty. This is apparent from the provisions of section 11E of the JRA 1971.

A cursory juxtaposition of the JRA 1971 with the aforementioned international jurisprudence reveals that it along with the Federal Constitution adequately safeguards the financial benefits enjoyed by judges and by extension their independence. The various allocations made in the JRA 1971 are extensive and cover every possible financial aspect of a judge's career. It should be plain that having such wide financial coverage is sufficient to guard the judges from external temptations or distractions and thus keeping them in strict focus of their judicial duty.

Further, as was stated earlier, judges enjoy these benefits not as incentive to perform their judicial obligations expecting a reward. Far from it. In this context, the Venice Commission observed as follows:[16]

> *"While the allocation of property is a source of concern, it is not easy to resolve the problem of providing the judiciary with an appropriate living standard, including housing. An argument advanced in favour of such non-financial allocations is that they can be attributed according to individual need whereas salaries are set at the same level for all judges in a given category without the possibility of supporting those in special need.* ***However, this assessment of social need and the differentiation between judges could too easily permit abuse and the application of subjective criteria.***"
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> [Emphasis added]

Also worth noting is what Lord Denning said in his book Road to Justice:[17]

> *"**While speaking of the independence of the judges, there is another factor which must not be overlooked. We have no system of promotion of judges in England. Once a man becomes a judge, he has nothing to gain from further promotion and does not seek it.** The judges of the Supreme Court are all paid the same, no matter whether they sit to try cases at first instance or whether they sit in the Court of Appeal. The Court of Appeal is made up mostly of men who have been judges of first instance. Some judges when invited to go to the Court of Appeal, refuse the invitation and no one thinks it strange. It is only a different kind of work. Those who*

15 Section 1A of the JRA 1971 defines "child" to include an illegimate child.
16 Supra note 4 at paragraph 49.
17 Denning, A. (1955). *The road to justice* (first ed.): Stevens & Sons., at pages 17-18.

like dry points of law accept the invitation: whereas those who like the human side of life refuse it. ***A man who accepts the office of a judge in England must reckon that he will stay in that position always. He has taken it on as his life work and must stand by it. This is the same whether be is a High Court judge or a County Court judge or a stipendiary magistrate. Each normally stays where he is throughout his judicial career. The reason is that we think that the decisions of a judge should not be influenced by the hope of promotion.***"

[Emphasis added]

The above is not true of Malaysia. The remuneration judges receive here differs vastly beginning from the level of Judicial Commissioner right up to the level of the Chief Justice. Each legal system is of course governed by its own peculiar nuances. We are in this sense different from the English Judiciary.

Regardless, on a theoretical analysis of the law, it appears that the level of safeguards in pensions, pecuniary and other benefits do appropriately insulate our judges from external pressures and influence. But of course, there is, like most things in life, always room for improvement.

RETIRED JUDGES

Tun Raus Sharif

Tun Raus Sharif, the 14th Chief Justice of Malaysia was born in Rembau, Negeri Sembilan on 4 February 1951. He received his early education at Sekolah Rendah Kampung Astana Raja Rembau and pursued his secondary education at Tengku Besar School, Tampin. Tun Raus Sharif later completed his sixth form at Sekolah Tuanku Abdul Rahman (STAR) Ipoh, Perak. In 1976, he went to read law at the University of Malaya. He pursued his LL.M at the London School of Economics in 1987.

He began his legal career in the Judicial and Legal Service in 1976 as an attachment officer at the Magistrate's Court at Court Hill. Throughout his career he held various posts, including a Magistrate, 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, Pensions Division, Ministry of Defense, Ministry of Home Affairs, State Legal Advisor for Malacca and Kelantan, and Treasury Solicitor to the Ministry of Finance from 1991 to 1994.

Tun Raus Sharif was appointed a Judicial Commissioner on 1 November 1994. He was then appointed as a High Court Judge on 12 January 1996 and was elevated to the Court of Appeal in 2008. Subsequently, he was appointed as a Federal Court judge in 2009. On 12 September 2011, Tun Raus Sharif was appointed the President of the Court of Appeal. He was appointed the Chief Justice of Malaysia on 1 April 2017. On the International level, Tun Raus Sharif was given the honour to serve as the President of the Association of Asian Constitutional Courts and Equivalent Institutions.

In his long tenure on the Bench, he presided over a number of landmark cases including *Nor Afizal bin Azizan v Public Prosecutor*,[1] *Dato' Seri Anwar bin Ibrahim v Public Prosecutor*,[2] and *Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin & Another Appeal*.[3] In the case of *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals*,[4] Tun Raus Sharif observed—

> *"It is clear that art 121 (1A) was introduced not for the purpose of ousting the jurisdiction of the civil courts. It was introduced in order to avoid any conflict between the decision of the Syariah Courts and the civil courts which had occurred in a number of cases before."*

As the Chief Justice, Tun Raus Sharif was known to be a strict in maintaining the disposal of cases and he managed to tackle the backlog of cases and ensure the speedy disposal of the new cases. Tun Raus Sharif completed his tenure on 10 July 2018.

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1 [2012] 6 MLJ 171
2 [2014] 1 MLJ 317
3 [2016] 2 MLJ 309
4 [2016] 1 MLJ 585

Tan Sri Dato' Seri Zulkefli Ahmad Makinudin

Tan Sri Dato' Seri Zulkefli Ahmad Makinudin was born in Ipoh, Perak on 28 March 1951. He received his early education at St. Michael's Institution, Ipoh, Perak and Maktab Tentera Di-Raja, Sungai Besi, Kuala Lumpur. He obtained his LL.B (Hons.) from the University of Malaya. Tan Sri Dato' Seri Zulkefli Ahmad Makinudin then obtained his LL.M from the University College, University of London in 1983.

He started his career in the Judicial and Legal Service as a Deputy Public Prosecutor in 1976. Throughout his service, Tan Sri Dato' Seri Zulkefli Ahmad Makinudin had served in various capacities, amongst others, as the Senior Federal Counsel of the Inland Revenue Department, Legal Advisor to the Ministry of Trade and Industry and the Ministry of Housing and Local Government, and the Deputy Public Prosecutor for the State of Sarawak. Between 1988 to 1992, he was appointed the Legal Advisor to the States of Johor and Selangor. Tan Sri Dato' Seri Zulkefli Ahmad Makinudin was also appointed as the Chairman of the Advisory Board of the Prime Minister's Department in 1992.

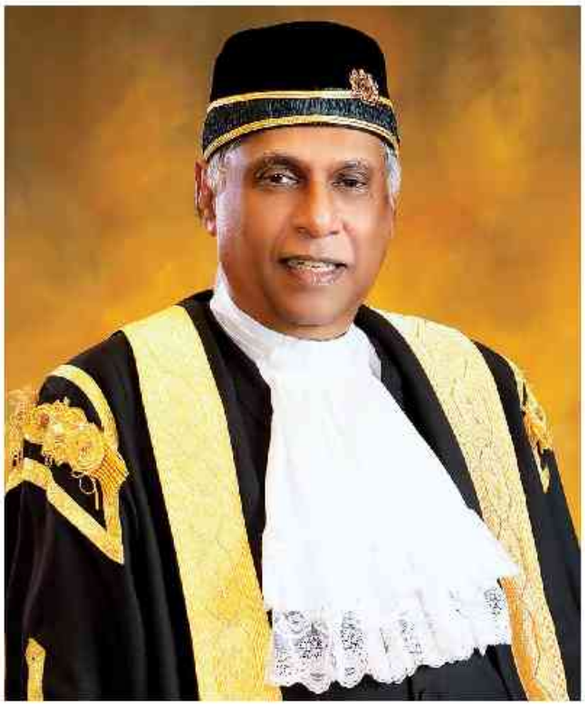
Tan Sri Dato' Seri Zulkefli Ahmad Makinudin was appointed a Judicial Commissioner on 1 November 1994 and was confirmed as a High Court Judge on 12 January 1996. He continued to serve in the Kuala Lumpur and Shah Alam High Courts before being elevated as a Court of Appeal Judge in 2005. After two years, he was elevated as a Federal Court Judge on 5 September 2007. On 12 September 2011, Tan Sri Dato' Seri Zulkefli Ahmad Makinudin was appointed the Chief Judge of Malaya. He was appointed as the President of the Court of Appeal Malaysia on 1 April 2017.

During his tenure as a Judge, he was appointed to various positions, including as the Chairman of the Appeal Board, Board of Engineers Malaysia, Judge of the Special Court, Member of the Board of Advisory, Law Faculty, University of Malaya, Member of the Judicial Appointments Commission and Member of the Judicial and Legal Service Commission.

Tan Sri Dato' Seri Zulkefli Ahmad Makinudin had presided over several high profile cases, including *Viran a/l Nagapan v Deepa a/p Subramaniam and other appeals*,[5] *Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors*[6] and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals*.[7] He retired on 10 July 2018.

5 [2016] 1 MLJ 585
6 [2017] 4 MLJ 11
7 [2018] 1 MLJ 545

Datuk Dr. Prasad Sandosham Abraham



Datuk Dr. Prasad Sandosham Abraham was born on 11 July 1951 in Singapore. He graduated with LL.B (Hons) from the University of Nottingham in 1974 and proceeded to complete the Barrister-at-Law examinations at College of Law, London. He was called to the English Bar in 1975 and was admitted to the Honorable Society of Middle Temple on 23 September 1975. Before returning to Malaysia, he completed the Post Bar Practical Course conducted by the Council of Legal Education from July to October 1975.

He was called to the Malaysian Bar on the 30 June 1976 and set up his own practice under the name of Messrs. Abraham & Partners, and subsequently under the name of Messrs. Prasad Abraham & Associates. In his 32 years of practice, Datuk Dr. Prasad Sandosham Abraham was a part time lecturer at the School of Law, University Technology of MARA (UiTM). He was also involved in the Certificate of Legal Practice (CLP) examinations and was appointed the Special Professor at the Department of Law, University of Nottingham. In 2008, he was conferred Honorary Degree of Doctor of Laws, *honoris causa* by the University of Nottingham, in recognition of his contributions to the University.

Datuk Dr. Prasad Sandosham Abraham was appointed a Judicial Commissioner of the High Court on 28 October 2009. On 10 August 2011, Datuk Dr. Prasad Sandosham Abraham was elevated as a High Court Judge. He had served at the Kuala Lumpur and Shah Alam High Courts before he was elevated to the Court of Appeal on 12 September 2014. On 31 January 2017, he was appointed a Federal Court Judge. Datuk Dr. Prasad Sandosham Abraham retired on 11 January 2018.

Tan Sri Dato' Sri Abu Samah Nordin

Tan Sri Dato' Sri Abu Samah Nordin was born on 11 August 1951 in Kampong Sentang, Kertau, Chenor, Pahang. He graduated with a LL.B (Hons) from the University of Malaya and pursued his LL.M at the University College of London in 1983.

He began his legal career as a Deputy Public Prosecutor at the National Bureau of Investigations (NBI) and continued to hold several posts during his career, amongst others, as a Senior Assistant Registrar of the High Court in Kuantan Pahang, Senior Federal Counsel at the Advisory and International Division of the Attorney General's Chamber and State Legal Advisor of Negeri Sembilan. He also served as a Federal Counsel in various Ministries and agencies such as the Ministry of Housing and Local Government, Ministry of Trade and Industry, Ministry of Home Affairs, Anti-Corruption Agency and the Inland Revenue Department of Malaysia.

Tan Sri Dato' Sri Abu Samah Nordin was appointed a Judicial Commissioner of the High Court of Malaya on 11 November 1994 and was appointed as a High Court Judge on 5 July 1996. On 16 July 2007, Tan Sri Dato' Sri Abu Samah Nordin was elevated to the Court of Appeal. He was appointed as a Federal Court Judge on 30 September 2013. Tan Sri Dato' Sri Abu Samah Nordin retired on 11 February 2018.

Tan Sri Jeffrey Tan Kok Wha

Tan Sri Jeffrey Tan Kok Wha was born in Shanghai, China on 16 May 1949. He was admitted as a Barrister-at-Law at Lincoln's Inn and began his legal career as an advocate and solicitor from 1975 to 1994.

During his 19 years in practice, Tan Sri Jeffrey Tan Kok Wha was appointed to various post including as Chairman of the Perak State Bar in March 1992 for 2 years. In 1997, he was appointed the Chairman of the Penang Appeal Board established under the Town and Country Planning Act 1976.

Tan Sri Jeffrey Tan Kok Wha was appointed a Judicial Commissioner of the High Court of Malaya on 11 November 1994. He was appointed as a High Court Judge on the 3 July 1996. On 15 April 2009, he was appointed as a Court of Appeal Judge. He was elevated to the Federal Court on 4 April 2012 and retired as a Federal Court Judge on 15 November 2015.

On 1 July 2016, Tan Sri Jeffrey Tan Kok Wha returned to the bench when he was appointed as an Additional Judge to the Federal Court for 2 years. He was the second person to be appointed as an Additional Judge to the Federal Court, after the appointment of Federal Court Judge S Chelvasingam MacIntyre in the late 1960s. His tenure as an Additional Judge to the Federal Court ended on 30 June 2018.

Tan Sri Hasan Lah

Tan Sri Hasan Lah was born on 27 March 1952 in Behor Mali, Kayang, Perlis. He obtained his LL.B from the University of Malaya. He then pursued his LL.M at the University College, London.

He embarked his career in the Judicial and Legal Service in 1977, and was first posted as a Magistrate at Sungai Petani, Kedah. Tan Sri Hasan Lah continued to hold several posts during his career, amongst others, as a Senior Assistant Registrar, Senior Assistant Parliamentary Draftsman, Registrar of the High Court of Malaya, Kedah State Legal Advisor and as a Sessions Court Judge.

Tan Sri Hasan Lah was appointed as a Judicial Commissioner on the 1 September 1998 and was elevated to the High Court on 16 June 2000. He served at the High Courts of Pulau Pinang and Perlis during his tenure as a High Court Judge. On 28 July 2006, he took an oath of office as a Judge of the Court of Appeal. He was appointed as a Federal Court Judge on 10 August 2011 before he retired on 27 September 2018.

Tan Sri Datuk Zainun Ali

Tan Sri Datuk Zainun Ali was born in Johor Bahru, Johor on the 5 April 1952. She received her early education at Yahya Awal Primary Girls' School and further her secondary education at Sultan Ibrahim Secondary Girls' School in Johor Bahru. She went to read law at the University of Malaya and obtained a LL.B (Hons). She pursued her LL.M (Cantab) from the University of Cambridge, United Kingdom.

Tan Sri Datuk Zainun Ali had a long and illustrious legal career, spanning over 20 years in the Judicial and Legal Service. During her tenure in the service, she held the posts of Legal Officer at the Ministry of Labour, as a Magistrate, Solicitor for the Public Trustee Department, President of the Sessions Court in Johor Bahru, Senior Assistant Parliamentary Draftsman, Senior Federal Counsel to various Ministries and Departments, such as the Ministry of Defense, Ministry of Trade and Industry and the Prime Minister Department. She was also appointed as the Registrar of Companies, Ministry of Domestic Trade and Consumer Affairs for four years before her appointment as the Chief Registrar, Federal Court of Malaysia in 1994.

On the 1 August 1996, Tan Sri Datuk Zainun Ali took her oath as a Judicial Commissioner, High Court of Malaya and was elevated as a High Court Judge in 1998. During her tenure as a High Court Judge, she had served in several states including Shah Alam, Johor and Kuala Lumpur. On 28 July 2006, she was appointed as a Court of Appeal Judge and was subsequently elevated to the Federal Court on 4 April 2012.

Tan Sri Datuk Zainun Ali is well known for her landmark decision in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 where she observed that:

> *"[75] With the removal of judicial power from the inherent jurisdiction of the Judiciary, that institution was effectively suborned to Parliament, with the implication that Parliament became sovereign. This result was manifestly inconsistent with the supremacy of the Federal Constitution enshrined in art 4(1).*
>
> > *Article 4(1) of the Federal Constitution provides:*
> > *This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.*
>
> *[76] It is worthwhile reiterating that Parliament does not have power to amend the Federal Constitution to the effect of undermining the features as stated in (i) and (ii) above for the following reasons:*
>
> *The effect of sub-s 8(a) of the amending Act A704 appeared to establish Parliamentary supremacy; this consequentially suborned the Judiciary to Parliament, where by virtue of the amendment, Parliament has the power to circumscribe the jurisdiction of the High Court.*
>
> *[77] Consequentially this has the unfortunate effect of allowing the Executive a fair amount of influence over the matter of the jurisdiction of the High Court.".*

During her tenure as a Judge, she has held numerous positions, including as a Member of the Board of Advisory, Law Faculty, University of Malaya, Member of the Board of Studies, Ahmad Ibrahim Kuliyyah of Law, International Islamic University, Malaysia and Member of the Judicial and Legal Services Association (JALSOA).

Tan Sri Datuk Zainun Ali's deep love for theatre, resulted in her composing and producing a musical in 2011, called TUN ZAKI: 'The Musical', as a tribute to the outgoing Chief Justice then, i.e. Tun Zaki Tun Azmi. The tongue-in-cheek dialogue, slick choreography and songs reminiscent of the Cabaret proved a hit with the audience. It was doubly special, since the cast comprised entirely of officers from the Palace of Justice.

Tan Sri Datuk Zainun Ali produced another musical to commemorate the 20th Anniversary of the Malaysian Court of Appeal in 2014. Hers was a life fulfilled, both on and off the bench as she served the Judiciary also in the capacity of Editor of this Yearbook from 2010 until her retirement on October 2018. She also served as Editor of the Journal of the Malaysia Judiciary since 2016 until her retirement.

On the international level, Tan Sri Datuk Zainun Ali has been appointed as one of ten members of United Nations Office on Drug and Crime Advisory Board of the Global Judiciary Integrity Network, which was established to promote judicial integrity amongst judges and stakeholders on the 10 April 2018. Tan Sri Datuk Zainun Ali retired on 5 October 2018.

Tan Sri Dato' Wira Aziah Ali

Tan Sri Dato' Wira Aziah Ali was born on the 23 May 1952 in Alor Star, Kedah. She studied at University of Malaya, where she received her LL.B (Hons.) in 1976. Tan Sri Dato' Wira Aziah Ali was admitted as an Advocate and Solicitor of the High Court of Malaya on 30 November 1984.

She began her career in the Judicial and Legal Service as a Federal Counsel with the Ministry of Defense on 15 July 1976. During her career in the service, she had served in various capacities, amongst others, as Federal Counsel with the Drafting Division, Attorney General Chambers, Senior Assistant Registrar of the Johor Bahru High Court and Sessions Court Judge in Taiping, Negeri Sembilan and Shah Alam. She was also the Deputy Director of Legal Aid Bureau, Senior Federal Counsel with the Public Service Department, Registrar of the High Court of Malaya, Director of Judicial and Training Institute (ILKAP), as well as the State Legal Advisor for Negeri Sembilan and Kedah.

Tan Sri Dato' Wira Aziah Ali took the oath of office as a Judicial Commissioner on the 1 September 2005. She was elevated as a High Court Judge on 11 April 2007. On 11 May 2011, she was elevated to the Court of Appeal and was appointed as a Federal Court Judge on 21 March 2016. Tan Sri Dato' Wira Aziah Ali retired on 23 November 2018.

Dato' Seri Zakaria Sam

Dato' Seri Zakaria Sam was born at Port Swettenham (currently known as Port Klang), Selangor on 9 March 1952. He received his early education at Sekolah Rendah Kebangsaan Port Swettenham. He then continued his Secondary education at Sekolah Menengah Kebangsaan Jalan Lapangan Terbang Lama, Pelabuhan Kelang and Sekolah Menengah Tengku Ampuan Rahimah, Kelang. He completed his sixth form at Sekolah Menengah Alam Shah, Cheras, Kuala Lumpur. Dato' Seri Zakaria Sam graduated with a LL.B (Hons) from the University of Malaya in 1976.

Upon graduation, he began his legal career as an Assistant Director at the Legal Aid Bureau. Subsequently, he was appointed as a Magistrate at Melaka Tengah. He has held various positions in the judicial and legal services, such as a Senior Assistant Parliamentary Draftsman, Senior Federal Counsel with the International Affairs Division of the Attorney General's Chambers, Assistant Treasury Solicitor

and Sessions Court Judge in various states including Kedah, Johor and Kuala Terengganu.

He was appointed as the Head of the Prosecution Unit, Kuala Lumpur before being appointed as the Deputy Head of the Prosecution Division on 16 January 1994. He held the post as Chairman for the Advisory Board for 4 years between 1996 to 2000.

Dato' Seri Zakaria Sam was appointed a Judicial Commissioner of the High Court of Malaya on 1 June 2000. He was elevated as a Judge of the High Court on 12 July 2004. During his tenure as a Judicial Commissioner and a High Court Judge, he had served in several states, including Sarawak, Perak, Pulau Pinang and Kuala Lumpur. On 30 September 2013, he was elevated to the Court of Appeal. Dato' Seri Zakaria Sam retired on the 9 March 2018.

Datuk Siti Mariah Ahmad

Datuk Siti Mariah Ahmad was born on 14 April 1956 in Kepala Batas, Pulau Pinang. She obtained her LL.B from the University of Malaya in 1980.

She started her career as a Magistrate at Alor Setar, Kedah in 1980. Throughout her service, Datuk Siti Mariah Ahmad had served in several states, such as a Magistrate in Kedah and Kuala Lumpur. On the 1 January 1984, she was appointed as a Senior Assistant Registrar at the Kuala Lumpur High Court. She was appointed as a Sessions Court Judge in 1989 before her appointment as a Judicial Commissioner.

On 1 May 2003, she was appointed as a Judicial Commissioner in the Commercial Division, High Court at Kuala Lumpur. She was appointed as a Judge of High Court of Malaya on the 21 December 2004. During her tenure as a High Court Judge, Datuk Siti Mariah Ahmad had served in Kuala Lumpur, Shah Alam and Seremban specialising in commercial, family, civil and criminal cases. She retired on 1 January 2018.

Datuk Samsudin Hassan

Datuk Samsudin Hassan was born on 22 February 1952 in Perak. He received his early education at Clifford School, Kuala Kangsar Perak and Anderson School, Ipoh Perak. He graduated with a LL.B (Hons) from Ealing College, London and obtained his Certificate in Legal Practice (CLP) (Hons) in 1985. He then pursued his Masters (Arts) in Criminology at the University of Leicester England.

He had served in the Ministry of Foreign Affairs before joining the legal service in 1986. Throughout his career in the legal service, he held various positions, including Deputy Public Prosecutor, Legal Advisor to the Royal Malaysian Customs and Excise Department, Senior Federal Counsel, Deputy Registrar of Companies, Ministry of Domestic Trade and Consumer Affairs, Special Officer to the Attorney General, and Chairman of the Industrial Court.

Datuk Samsudin Hassan was appointed as a Judicial Commissioner of the High Court of Malaya on 31 May 2010. On 19 February 2014, he was elevated as a Judge of the High Court of Malaya. Datuk Samsudin Hassan retired on 22 February 2018.

Dato' Hue Siew Kheng

Dato' Hue Siew Kheng was born on the 7 November 1952 in Raub, Pahang. She obtained her LL.B (Hons.) from the University of Malaya in 1976.

She started her career by joining the Judicial and Legal Service upon graduation. Throughout her career, she has held various positions, including the Assistant Director at the Legal Aid Bureau at Kuala Lumpur and Negeri Sembilan, Sessions Court Judge in various states including Kuala Lumpur, Selangor, Pahang and Negeri Sembilan, Deputy Commissioner of Law Revision and Law Reform at the Attorney Generals' Chamber and Treasury Solicitor to the Ministry of Finance. She was appointed as the Chairman of the Custom Appeal Tribunal on the 1 June 2007.

Dato' Hue Siew Kheng was appointed as a Judicial Commissioner on the 15 September 2008. She was elevated as a High Court Judge on 11 May 2011. She retired on 7 November 2018.

Mdm. Amelia Tee Hong Geok Abdullah

Mdm. Amelia Tee Hong Geok Abdullah was born in Batu Pahat, Johor on 22 November 1952. She graduated with a LL.B (Hons.) from the University of Malaya in 1976.

She began her legal career when she joined the Judicial and Legal Service in 1976. Throughout her career, she has held various positions, including as a Magistrate, Senior Assistant Registrar, Senior Federal Counsel, Deputy Public Prosecutor, Head of Research Division and Deputy Parliamentary Drafter with the Attorney General's Chambers, and as a Sessions Court Judge. In 2002, she was appointed as a Chairman of the Industrial Court.

Mdm. Amelia Tee Hong Geok Abdullah was appointed as a Judicial Commissioner on the 14 August 2009 and was elevated to the High Court in 2011. She had served in the High Courts of Kuala Lumpur and Shah Alam during her tenure as a High Court Judge. She retired on 22 November 2018.

Old Law Reports are never out of date (in the library at the Palace of Justice)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CHAPTER 6

JUDICIAL TRAINING

Courses Organised by the Judicial Academy

Introduction

In 2018, the Judicial Academy continued to provide training to enhance the expertise of judges. These training programmes focused on practical training based on the concept of peer teaching and peer learning. Appellate court judges are nominated by the Chief Justice to conduct the courses whereby the participants comprised High Court Judges and Judicial Commissioners. The High Court Judges and Judicial Commissioners are assigned topics or case studies, and are required to prepare a presentation for discussion with other participants. Throughout this exercise, the appellate court judges facilitating the course will be present throughout the duration of the course to guide as well give views and comments.

The following training programmes were held in 2018:

Insolvency Act 1967: Understanding the New Bankruptcy Law

This programme was held on 10 February 2018 (Saturday) at the Conference Hall, Palace of Justice, Putrajaya with the objective of providing an overview of the 2017 amendments to the Bankruptcy Act 1967, now renamed the Insolvency Act 1967.

Due to the importance of the recent amendments which came into force on 6 October 2017, JAC invited a total of 111 participants comprising 7 Federal Court Judges, 18 Court of Appeal Judges, 33 High Court Judges, 20 Judicial Commissioners, 30 judicial officers. Representatives from the Counselling and Credit Management Agency (AKPK) were also invited to give an insight in respect of the role of the AKPK under the new Insolvency Act 1967.

Datuk Meor Hashimi Abdul Hamid, Deputy Director General of Insolvency, Malaysia Department of Insolvency (MdI) gave the participants a general overview of the new Insolvency Act 1967.

This was followed by presentations by Justice Abdul Karim Abdul Jalil, Judge of the Court of Appeal entitled "New Rescue Mechanism: Voluntary Arrangement and Interim Order" and Justice Hasnah Dato' Mohammed Hashim, Judge of the Court of Appeal on the "Specific Features of the New Insolvency Regime."

The programme concluded with a question-and-answer session between the three speakers mentioned above and the participants, moderated by Justice Vernon Ong Lam Kiat, Judge of the Court of Appeal.

Datuk Meor Hashimi Abdul Hamid, Deputy Director General of Insolvency, Malaysia Department of Insolvency (MdI) giving an overview of the new bankruptcy law during the seminar "The Insolvency Act 1967: Understanding the New Bankruptcy Law"

Q&A Session during the seminar "The Insolvency Act 1967: Understanding the New Bankruptcy Law". The session was moderated by Justice Vernon Ong Lam Kiat, Judge of the Court of Appeal. The panel members comprised Justice Hasnah Dato' Mohammed Hashim and Justice Abdul Karim Abdul Jalil, both Judges of the Court of Appeal, as well as Datuk Meor Hashimi Abdul Hamid, Deputy Director General of Insolvency, Malaysia Department of Insolvency (MdI)

The Chief Justice's Programme with High Court Judges and Judicial Commissioners

On 23 February 2018 (Friday), The Rt. Hon. the Chief Justice Tun Raus Sharif had a session with 20 High Court Judges and 6 Judicial Commissioners from the Kuala Lumpur High Court to discuss the achievement of the disposal pre-2016 cases and the target for disposing of pre-2017 cases in 2018.The session was held at the Banquet Hall, Palace of Justice, Putrajaya. Justice Azahar Mohamed, Judge of the Federal Court who is also the Chairman of the Training Committee of the Malaysian Judicial Academy presented the Civil and Criminal Division statistics and achievement while Justice Zaharah Ibrahim, Judge of the Federal Court presented the achievements of the Commercial Division.

Some of the participants of "The Chief Justice's Programme with High Court Judges and Judicial Commissioners"

(L-R) Justice Faizah Jamaludin, Justice Wan Ahmad Farid Wan Salleh, Justice Wong Kian Kheong, Justice Mohamed Zaini Mazlan, Justice Noorin Badaruddin, Justice S. Nantha Balan E.S. Moorthy, Justice Azizah Haji Nawawi, Justice Lee Swee Seng, Justice Nik Hasmat Nik Mohamad and Justice Nor Bee Ariffin

Appellate Judging and Appellate Intervention

This programme was specially tailored for Court of Appeal Judges. 22 Court of Appeal Judges attended the programme which was held on 24 February 2018 (Saturday) at the Banquet Hall, Palace of Justice, Putrajaya. The Rt. Hon. the Chief Justice Tun Raus Sharif spoke on "Appellate Judging" followed by Justice Zulkefli Ahmad Makinudin, President of the Court of Appeal on "Appellate Intervention".

The participants engaged in a very interactive discussion with the Chief Justice and President of the Court of Appeal as well as Justice Ahmad Haji Maarop, Chief Judge of Malaya and Justice Azahar Mohamed, Judge of the Federal Court.

Group photo of the Judges of the Court of Appeal who attended the course "Appellate Judging and Appellate Intervention" with the course facilitators

First row (L – R): Justice Harmindar Singh Dhaliwal, Justice Azahar Mohamed, Justice Zulkefli Ahmad Makinudin, Chief Justice Tun Raus Sharif, Justice Ahmad Haji Maarop, Justice Mohtarudin Baki and Justice Vernon Ong Lam Kiat.

Second row (L – R): Justice Zaleha Yusof, Justice Rohana Yusuf, Justice Suraya Othman, Justice Dr. Badariah Haji Sahamid (hidden), Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Ahmadi Haji Asnawi, Justice Mary Lim Thiam Suan, Justice Umi Kalthum Abdul Majid and Justice Rhodzariah Bujang.

Third row (L – R): Justice Idrus Harun, Justice Yeoh Wee Siam, Justice Zabariah Mohd. Yusof, Justice Abdul Karim Abdul Jalil, Justice Hasnah Dato' Mohammed Hashim, Justice Yaacob Haji Md. Sam, Justice Tengku Maimun Tuan Mat, Justice Abdul Rahman Sebli and Justice Kamardin Hashim

The facilitators of the course "Appellate Judging and Appellate Intervention"

(L-R) Justice Ahmad Haji Maarop, Chief Justice Tun Raus Sharif, Justice Zulkefli Ahmad Makinudin and Justice Azahar Mohamed

Seminar on Land Law: Resolving Competing Claims under Section 340 of the National Land Code

This programme held on 3 March 2018 (Saturday) at the Conference Hall, Palace of Justice, Putrajaya was to provide the participants with an opportunity to identify current issues relating to land matters in courts. A total of 119 participants attended this seminar, comprising the President of the Court of Appeal and the Chief Judge of Malaya, 5 Federal Court Judges, 21 Judges of the Court of Appeal, 36 High Court Judges, 25 Judicial Commissioners and 30 judicial officers.

Datuk Dr. Khaw Lake Tee who was the Dean of the Faculty of Law from 2004 to 2007 gave a very invigorating talk on 'Resolving Competing Claims under Section 340 of the National Land Code'. During the second half of the programme, a question-and-answer session was held moderated by Justice Azahar Mohamed, Judge of the Federal Court.

Justice Azahar Mohamed moderating the Q&A Session during the "Seminar on Land Law: Resolving Competing Claims under Section 340 of the National Land Code"

Datuk Dr. Khaw Lake Tee speaking at the "Seminar on Land Law: Resolving Competing Claims under Section 340 of the National Land Code"

Induction Course for Judicial Commissioners

This course was held between 26 to 30 March 2018 (Monday to Friday) at the Secretary's Office, Judicial Appointments Commission, Palace of Justice, Putrajaya. This programme is conducted when new Judicial Commissioners are appointed in order to provide them with an introduction to their new job scope and field of work.

The five days intensive course covered various topics and areas of law such as "Judge Craft", "Adjudicating Cases under the Security Offences (Special Measures) Act 2012", "Case Management", and "Salient Features of the Rules of Court 2012".

(L – R): Justice Balia Yusof Haji Wahi, Justice Zulkefli Ahmad Makinudin, Chief Justice Tun Raus Sharif, Justice Ahmad Haji Maarop and Justice Azahar Mohamed

Justice Vernon Ong Lam Kiat speaking to the Judicial Commissioner candidates

(L – R): Justice Abang Iskandar Abang Hashim and Justice Hasnah Dato' Mohammed Hashim speaking to the Judicial Commissioner candidates

Adjudication of Habeas Corpus Cases and Amendment to the Dangerous Drugs Act 1952

This programme was held on 18 August 2018 (Saturday) at the Conference Hall, Palace of Justice, Putrajaya.

The first half of the programme consisted of talks by appellate court judges to share their many years of experience. The participants comprised 17 High Court Judges and 16 Judicial Commissioners. Justice Ahmad Haji Maarop, President of the Court of Appeal spoke on the "Amendment to the Dangerous Drugs Act 1952" followed by Justice Mohd Zawawi Salleh, Judge of the Federal Court who spoke on "Adjudicating Habeas Corpus Cases". In the second half of the programme the participants were divided into groups to discuss case studies.

Justice Ahmad Haji Maarop, President of the Court of Appeal, delivering his talk on the "Amendment to the Dangerous Drugs Act 1952" in the course "Adjudication of Habeas Corpus Cases and Amendment to the Dangerous Drugs Act 1952"

Justice Mohd Zawawi Salleh, Judge of the Federal Court, delivering his talk in the course "Adjudicating Habeas Corpus Cases" in the course "Adjudication of Habeas Corpus Cases and Amendment to the Dangerous Drugs Act 1952"

Criminal Law: Evidence and Procedure

This programme was held from 21 to 22 September 2018 (Friday to Saturday) at the Conference Hall, Palace of Justice, Putrajaya. The facilitators for this programme were Justice Ahmad Haji Maarop, President of the Court of Appeal; Justice Zaharah Ibrahim, Chief Judge of the High Court in Malaya; Justice Azahar Mohamed, Judge of the Federal Court cum Chairman of the Training Committee of the Malaysian Judicial Academy; and Justice Tengku Maimun Tuan Mat, Judge of the Court of Appeal (as Her Ladyship then was).

This programme was geared towards enabling knowledge-sharing among the participants on evidence and procedure selected from criminal cases. The first session consisted of presentations by participants on pre-assigned topics, whilst in the second session participants were assigned into groups and given case studies to be discussed and presented.

Group photo of the participants of the course "Criminal Law: Evidence and Procedure"

Sitting (L-R) Justice Has Zanah Mehat, Justice Mariana Haji Yahya, Justice Halijah Abbas, Justice Tengku Maimun Tuan Mat, Justice Zaharah Ibrahim, Justice Ahmad Haji Maarop, Justice Azahar Mohamed, Justice Abd. Halim Aman, Justice Mohd Yazid Haji Mustafa, Justice Ghazali Haji Cha and Justice Ab. Karim Haji Ab. Rahman

Standing (L-R) Judicial Commissioner Meor Hashimi Abdul Hamid, Judicial Commissioner Darryl Goon Siew Chye, Judicial Commissioner Mohd Radzi Harun, Justice Noorin Badaruddin, Judicial Commissioner Rozana Ali Yusoff, Justice Azhahari Kamal Ramli, Justice Lee Heng Cheong, Judicial Commissioner Ivan Hussein, Justice Abu Bakar Jais, Justice Zulkifli Bakar, Judicial Commissioner Zalita Dato' Zaidan, Judicial Commissioner Ahmad Fairuz Zainol Abidin, Justice Ahmad Bache, Justice Wong Kian Kheong and Justice Mohd Zaki Abdul Wahab

Damages

In 2018, the Judicial Academy repeated the course on damages held in 2017 on assessment of damages. Two sessions were held, the first entitled "Damages: Tort" and the second session entitled "Damages: Contract".

The course on "Damages: Tort" was held from 19 to 21 October 2018 (Friday to Sunday) at The Everly Hotel, Putrajaya. 14 High Court Judges and 7 Judicial Commissioners participated. The Rt. Hon. Chief Justice Richard Malanjum conducted the course together with Justice Zaharah Ibrahim, Chief Judge of Malaya; Justice Azahar Mohamed, Judge of the Federal Court; Justice Abang Iskandar Abang Hashim, 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.

The course on "Damages: Contract" was held from 30 November to 1 December 2018 (Friday to Saturday). The facilitators were the same as the earlier course, but the participants comprised 12 High Court Judges and 12 Judicial Commissioners.

Chief Justice Richard Malanjum delivering the opening remarks in the course "Damages: Tort"

The facilitators of the course "Damages: Tort"

(L-R) Justice Nallini Pathmanathan, Justice Azahar Mohamed, Chief Justice Richard Malanjum, Justice Zaharah Ibrahim, Justice Abang Iskandar Abang Hashim and Justice Vernon Ong Lam Kiat

Justice Vazeer Alam Mydin Meera delivering his presentation in the course "Damages: Tort"


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CHAPTER 7

HUMAN RIGHTS

".....Many countries force transgender people to undergo medical treatment, sterilization or meet other onerous preconditions before they can obtain legal recognition of their gender identity..... In many cases, a lack of adequate legal protections combined with hostile public attitudes leads to widespread discrimination against ..... transgender ..... – including workers being fired from jobs, students bullied and expelled from schools, and patients denied essential healthcare."

UN Free & Equal Campaign

THE RIGHTS OF TRANSGENDER

By Mdm Arleen Ramly*

DEFINITION

Transgender means denoting or relating to a person whose sense of personal identity and gender does not correspond with their birth sex.[1] The opposite of transgender is *cisgender* which means of or relating to a person whose gender identity corresponds to the assumed gender assigned to them at birth.[2]

Transgender identities expression

Transgender people express their gender identities in many different ways:[3]

(i) some people use their dress, behaviour, and mannerisms to live as the gender that feels right for them;
(ii) some people take hormones and may have surgery to change their body so it matches their gender identity; and
(iii) some transgender people reject the traditional understanding of gender as divided between just "male" and "female", so they identify just as transgender, or genderqueer, genderfluid, or something else.

Transgender people are diverse in their gender identities (the way you feel on the inside), gender expressions (the way you dress and act), and sexual orientations (the people you're attracted to).

Transgender versus Transsexual[4]

Transsexuals are people who transition from one sex to another. A person born as a male can become recognizably female through the use of hormones and/or surgical procedures and a person born as a female can become recognizably male. That said, transsexuals are unable to change their genetics and cannot acquire the reproductive abilities of the sex to which they transitioned. Sex is assigned at birth and refers to a person's biological status as male or female. In other words, sex refers exclusively to biological features: chromosomes, the balance of hormones, and internal and external anatomy. Each of us is born as either male or female, with rare exceptions of those born intersex who may display characteristics of both sexes at birth.

Transgender, unlike transsexual, is a term for people whose identity, expression, behaviour or the general sense of self does not conform to what is usually associated with the sex they were born in the place they were born. It is often said sex is a matter of the body, while gender occurs in the mind. Gender is an internal sense of being male, female, or other. People often use binary terms, for instance, masculine or feminine, to describe gender just as they do when referring to sex. But gender is more complex and encompasses more than just two possibilities. Gender is also influenced by culture, class, and race because behaviour, activities, and attributes seen as appropriate in one society or group may be viewed otherwise in another.

Transgender, then, unlike transsexual is a multifaceted term. One example of a transgendered person might be a man who is attracted to women but is also identified as a cross-dresser. Other examples include people who consider themselves gender nonconforming, multigendered, androgynous, third gender, and two-spirit people. All of these definitions are inexact and vary from person to person, yet each of them includes a sense of blending or alternating the binary concepts

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* Deputy Director, International Affairs Division, the Chief Registrar's Office of the Federal Court.

1 Oxford Dictionary.
2 Collins Dictionary.
3 Planned Parenthood. Retrieved from https://www.plannedparenthood.org/learn/sexual-orientation-gender/trans-and-gender-nonconforming-identities.
4 Susan Scutti (2014) *'What is the difference between transsexual and transgender? Facebook's new version of 'It's Complicated'.* Medical Daily. Retrieved from https://www.medicaldaily.com/what-difference-between-transsexual-and-transgender-facebooks-new-version-its-complicated.

of masculinity and femininity. Some people using these terms simply see the traditional concepts as restrictive. Less than one percent of all adults identify as transgender.

Transgender versus Lesbian, Gay and Bisexual[5]

People often confuse gender identity with sexual orientation. But being transgender isn't the same thing as being lesbian, gay, or bisexual. Gender identity, whether transgender or cisgender, is about who you are inside as male, female, both, or none of these. Being lesbian, gay, bisexual, or straight describes whom you're attracted to and whom you feel drawn to romantically, emotionally, and sexually. A transgender person can be gay, lesbian, straight, or bisexual, just like someone who's cisgender. A simple way to think about it is: Sexual orientation is about whom you want to be with. Gender identity is about who you are.

NOTABLE DEVELOPMENTS ON TRANSGENDER RECOGNITION AND RIGHTS

In 2004, the Gender Recognition Act 2004 was passed in the UK. This Act provides for transgender men and women to apply for their gender recognition certificate[6] which will then legally recognised their acquired gender including the right to be issued a new birth certificate and the right to marry.[7] This Act does not require any form of gender reassignment surgery as a precursor to the application.[8] This Act was drafted in response to European Court of Human Rights rulings on 11 July 2002 in *Goodwin & I v United Kingdom* [2002] 2 FCR 577, that by not allowing the legal recognition of someone's gender reassignment was in breach of Article 8[9] and Article 12[10] of the European Convention on Human Rights.

In 2012, the European Commission's Network of Legal Experts in the Non-discrimination Field authored a landmark report[11] on discrimination motivated by sex, gender identity and gender expression. The report drawing upon expert knowledge in 30 European jurisdictions, highlighted the significant levels of inequality which confronted transgender and intersex people across the European Union (EU) and the European Free Trade Association (EFTA) despite promising developments in individual countries. The report also critically analysed existing EU protections for transgender people, in particular, the case law of the Court of Justice of the European Union and revealed the comparative absence, both de jure and de facto, of domestic protections against transphobic and intersex-motivated discrimination. In its second report published in 2018,[12] it stated that due to the 2012 report, in the years since 2012, the attention paid to the human rights of transgender and intersex people and to discrimination on the grounds of gender identity and sex characteristics has increased significantly. Across the various Member States, and at the regional, especially the European and inter-American level, there is a growing awareness of the lived experience of transgender and intersex individuals and greater understanding of the social, legal and economic challenges that they face.

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5 Supra note 3.

6 To apply, transgender men and women must supply evidence of a medical diagnosis of gender dysphoria and of having lived in their "acquired gender" for two years. According to the "Guide to UK Legal Gender Recognition" produced by UK Trans Info, a national organisation that works to improve the lives of trans and non-binary people in the UK through advocacy, campaigning, information and support, applying for gender recognition is completely optional, many people cannot apply for it, and many others choose not to apply. From the statistics produced by the UK Ministry of Justice, about 300 to 370 application for gender recognition certificate was received yearly.

7 Section 1(1) and (2), 10 and 11 of Gender Recognition Act 2004.

8 Dr. Nicola Williams. Retrieved from https://fairplayforwomen.com/gender-recognition-act-2004-explained/> and <https://www.theguardian.com/commentisfree/2018/oct/17/the-guardian-view-on-the-gender-recognition-act-where-rights-collide.

9 The right to respect for private and family life.

10 The right to marry and to establish a family.

11 Agius, S. and Tobler, C. (2012), "Trans and intersex people. Discrimination on the grounds of sex, gender identity and gender expression", European Commission. doi: 10.2838/56269.

12 Brink, M. v. d., & Dunne, P. (2018). *Trans and intersex equality rights in Europe – a comparative analysis*.European Union. doi: 10.2838/75428.

In July 2013, the Office of the United Nations High Commissioner for Human Rights (OHCHR) launched UN Free & Equal, an unprecedented global UN public information campaign aimed at promoting equal rights and fair treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The UN Free & Equal campaign is an initiative of the United Nations Human Rights Office and implemented with support from UN and non-UN partners at the country level. A number of celebrities have been named as campaign "Equality Champions" –include U.S. singer Ricky Martin, South African musician Yvonne Chaka Chaka, Bollywood actress Celina Jaitly, Brazilian pop star Daniela Mercury and her wife Malu Verçosa Mercury, U.S. hip-hop duo Macklemore and Ryan Lewis, and the band fun. Other prominent supporters–many of whom have taken part in campaign events–include South African Archbishop Emeritus Desmond Tutu, tennis legend Martina Navratilova, U.S. basketball champion Jason Collins, Indian actor Imran Khan, U.S. actor Zachary Quinto, and musicians Melissa Etheridge, Sara Bareilles and Rachel Platten.[13]

In February 2014, US Facebook created a stir when it added 50 gender options for its billions of users. Collectively, the terms reveal the company's recognition of a diversity of possible gender identities and gender presentations.[14] In the same year, UK Facebook users were given the option to choose from one of 71 gender options, including asexual, polygender and two-spirit person, following the feature's successful integration in the US. Users can choose a different gender option from the previous male and female choices by selecting 'custom' in the gender tab of their profiles. In addition, people who select a custom gender will now have the ability to choose the pronoun they'd like to be referred to publicly—male (he/his), female (she/her) or neutral (they/their).[15]

Other websites have already implemented similar policies as transgender issues became more widely considered. Google+, for instance, allows users to choose from "male", "female" or "other". The company says that around one percent of people identify as "other".[16]

In November 2015, the UK Government Equalities Office published a guide entitled *"Providing services for transgender customers-A guide"*. This guide laid out 8 good practices that can be implemented by service providers. However, several criticisms[17] have been levelled out against this guide: firstly, **service providers will be pressured to follow these guidelines** as in many cases of litigation, they may be used as part of a case for discrimination. Secondly, the guide specifically defines what it takes to be treated in law as the opposite sex:

> *"If someone adopts a new gender rule by changing their name, title and pronoun and/ or by wearing different clothing, altering their body language, speech and hairstyle, they have reassigned their gender. As part of their gender reassignment, some people may choose to take hormones and/ or have surgery, but medical intervention is not an essential part of gender reassignment."*

This definition of the sexes as a set of behavioural and appearance-based stereotypes, in place of biological fact, is of great concern. It takes away the protection of children from adult ideas and judgments imposed upon them and gives free reign and validation to those adults who believe in 'gender stereotypes'. Thirdly, the good practice guide clearly encourages service staff and security guards to assume a man is a woman if he walks into a women's toilet or changing room. **Staffs are discouraged from challenging a man who walks into a women's toilet or changing room for fear of being accused of harassment** which, in this guide, specifies the following as harassment: making

13 The United Nations' Global Campaign Against Homophobia and Transphobia. Retrieved from https://www.unfe.org/about/.
14 Supra note 4.
15 Rhiannon Williams (2014) *'Facebook's 71 gender options come to UK users'*. The Telegraph. Retrieved from https://www.telegraph.co.uk/technology/facebook/10930654/Facebooks-71-gender-options-come-to-UK-users.html.
16 Ibid.
17 Transgender Trend. Retrieved from https://www.transgendertrend.com/uk-transgender-rights-legislation/.

transphobic comments and isolation, exclusion and making a person feel emotionally or physically unsafe. However, the meaning of 'transphobic' is not defined, nor the actions or words which would make someone feel 'emotionally or physically unsafe'. Furthermore, no such consideration of feelings of safety is extended to women and girls in the guide.

CASE LAW

Transgender recognition and rights in United Kingdom (UK) and United States of America (USA)

Corbett v Corbett (1970) 2 All ER 33

This case set the legal precedent regarding the status of transsexuals in the United Kingdom in the years prior to the Gender Recognition Act 2004.

In September 1963 the parties went through a ceremony of marriage. At that time the petitioner knew that the respondent had been registered at birth as of the male sex and had in 1960 undergone a sex change operation consisting in removal of the testicles and most of the scrotum and the formation of an artificial vagina in front of the anus, and had since then lived as a woman.

In December 1963 (the parties have been together for no more than 14 days since the ceremony of marriage), the petitioner filed a petition for a declaration that the marriage was null and void because the respondent was a person of the male sex, or alternatively for a decree of nullity on the ground of non-consummation. The respondent, by her answer, asked for a decree of nullity on the ground of either the petitioner's incapacity or his wilful refusal to consummate the marriage; and, by an amendment made during the trial, pleaded that the petitioner was estopped from alleging that the marriage was void and of no effect or, alternatively, that in the exercise of its discretionary jurisdiction to make declaratory orders under RSC Ord 15, the court, in all the circumstances of the case, ought to refuse to grant to the petitioner the declaration prayed for in the prayer to the petition.

On the medical criteria for assessing the sexual condition of an individual, the trial judge found that the respondent had been shown to be of male chromosomal sex, of male gonadal sex, of male genital sex and psychologically to be a transsexual. The Court held as follows:

> *"An unusually large number of doctors gave evidence in the case, amounting to no less than nine in all, including two medical inspectors to the court. Each side called three leading medical experts to deal with various aspects of anatomical and psychological sexual abnormality... ....*
>
> *It was agreed by counsel on both sides that reports, articles in learned journals, and books written by any of the witnesses could be used in evidence without formal proof. It was also agreed that publications by other writers, either in the form of articles or books, should be treated as part of the evidence in the case. This sensible course enabled the relevant material to be put before the court in a convenient and sensible way...*
>
> *...Anomalies of sex may be divided into two broad divisions, those cases which are primarily psychological in character, and those in which there are developmental abnormalities in the anatomy of the reproductive system (including the external genitalia). Two kinds of psychological abnormality are recognised, the transvestite and the transsexual.* **The transvestite is an individual (nearly, if not always a man) who has an intense desire to dress up in the clothes of the opposite sex.** *This is intermittent in character and is not accompanied by a corresponding urge to live as or pass as a member of the opposite sex at all times. Transvestite males are usually heterosexual, often married, and have no wish to cease to play the male role in sexual activity.* **The transsexual, on the other hand, has an extremely powerful urge**

The main staircase leading to the Palace of Justice

to become a member of the opposite sex to the fullest extent which is possible. *They give a history, dating back to early childhood, of seeing themselves as members of the opposite sex which persists in spite of their being brought up normally in their own sex. This goes on until they come to think of themselves as females imprisoned in male bodies, or vice versa, and leads to intense resentment of, and dislike for, their own sexual organs which constantly remind them of their biological sex. They are said to be 'selective historians', tending to stress events which fit in with their ideas and to suppress those which do not. Some transsexual men live, dress and work regularly as females and pass more or less unnoticed. They become adept at make-up and knowledgeable about using oestrogen, the female sex hormone, to promote the development of female-like breasts, and at dealing with such masculine attributes as facial and pubic hair. As a result of the publicity which has been given from time to time to so-called 'sex-change operations', many of them go to extreme lengths to importune doctors to perform such operations on them. The difficulties under which these people inevitably live result in various psychological conditions such as extreme anxiety and obsessional states. They do not appear to respond favourably to any known form of psychological treatment and, consequently, some serious-minded and responsible doctors are inclining to the view that such operations may provide the only way of relieving the psychological distress.*

.....All the medical witnesses accept that there are, at least, four criteria for assessing the sexual condition of an individual. These are-

(i) Chromosomal factors.

(ii) Gonadal factors (ie presence or absence of testes or ovaries).

(iii) Genital factors (including internal sex organs).

(iv) Psychological factors.

Some of the witnesses would add-

(v) Hormonal factors or secondary sexual characteristics (such as distribution of hair, breast development, physique etc which are thought to reflect the balance between the male and female sex hormones in the body).

It is important to note that these criteria have been evolved by doctors for the purpose of systematising medical knowledge, and assisting in the difficult task of deciding the best way of managing the unfortunate patients who suffer, either physically or psychologically, from sexual abnormalities. As Professor Dewhurst observed 'We do not determine sex-in medicine we determine the sex in which it is best for the individual to live'. These criteria are, of course, relevant to, but do not necessarily decide, the legal basis of sex determination.

.....The normal individual has 23 pairs of chromosomes in his ordinary body cells, one of each pair being derived from each parent. One pair is known to determine the sex of normal individuals. The normal female has a pair which is described as XX; the normal male a pair which is described as XY. The Y chromosomes can be distinguished quite clearly from the X. In the male, the X chromosome is derived from the mother and the Y from the father. In the female one X chromosome is derived from the father and one from the mother. All the ova of a female carry an X chromosome but the male produces two populations of spermatozoa, one of which carries the Y, and the other the X chromosome. Fusion of a Y spermatozoon with an ovum produces an embryo with XY chromosomes which, under normal conditions, develops into a male child; fusion of an ovum with an X spermatozoon produces an XX embryo, which becomes a female child. Various errors can occur at this stage which led to the production of individuals with abnormal chromosome constitutions, such as XXY and XO (meaning a single X only).

In these two cases, the individuals will show marked abnormalities in the development of their reproductive organs. The XXY' patient will become an undermasculinised male with small, under-developed testes and some breast enlargement. The abnormality will become apparent at puberty when the male secondary sex characteristics, such as facial hair and male physique, will not develop in the normal way. The XO individual has the external appearance of a female, a vagina and uterus but no active ovarian tissue. Without treatment the vagina and uterus remain infantile in type and none of the normal changes of puberty occur. Administration of oestrogen, however, produces many of these changes. The individual of course remains sterile.

The Y chromosome is, therefore, normally associated with the development of testicular tissue in the embryo, the second X chromosome with the development of ovarian tissue.....

My conclusions of fact on this part of the case can be summarised, therefore, as follows. The respondent has been shown to have XY chromosomes and, therefore, to be of male chromosomal sex; to have had testicles prior to the operation and, therefore, to be of male gonadal sex; to have had male external genitalia without any evidence of internal or external female sex organs and, therefore, to be of male genital sex; and psychologically to be a transsexual. The evidence does not establish that she is a case of Klinefelter's syndrome (a disorder in which a degree of feminisation takes place about the time of puberty in hitherto, apparently, normal males) or some similar condition of partial testicular failure, although the possibility of some abnormality in androgenisation at puberty cannot be excluded. Socially, by which I mean the manner in which the respondent is living in the community, she is living as, and passing as, a woman more or less successfully. Her outward appearance, at first sight, was convincingly feminine, but on closer and longer examination in the witness box it was much less so. The voice, manner, gestures and attitude became increasingly reminiscent of the accomplished female impersonator. The evidence of the medical inspectors, and of the other doctors who had an opportunity during the trial of examining the respondent clinically, is that the body, in its post-operative condition, looks more like a female than a male as a result of very skilful surgery. Professor Dewhurst, after this examination, put his opinion in these words-'the pastiche of feminity was convincing'. That, in my judgment, is an accurate description of the respondent. **It is common ground between all the medical witnesses that the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The respondent's operation, therefore, cannot affect her true sex. The only cases where the term 'change of sex' is appropriate are those in which a mistake as to sex is made at birth and subsequently revealed by further medical investigation.**

....The question then becomes what is meant by the word 'woman' in the context of a marriage, for I am not concerned to determine the 'legal sex' of the respondent at large. Having regard to the essentially heterosexual character of the relationship which is called marriage, the criteria must, in my judgment, be biological, for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which can exist in a person with male chromosomes, male gonads and male genitalia cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage. In other words, **the law should adopt, in the first place, the first three of the doctors' criteria, ie the chromosomal, gonadal and genital tests, and, if all three are congruent, determine the sex for the**

purpose of marriage accordingly, and ignore any operative intervention. *The real difficulties, of course, will occur* **if these three criteria are not congruent**. *This question does not arise in the present case and I must not anticipate, but it would seem to me to follow from what I have said that* **greater weight would probably be given to the genital criteria than to the other two.** *This problem and, in particular, the question of the effect of surgical operations in such cases of physical inter-sex, must be left until it comes for decision. My conclusion, therefore, is that the respondent is not a woman for the purposes of marriage but is a biological male and has been so since birth. It follows that the so-called marriage of 10 September 1963 is void.....*

*.....If the law were to recognise the 'assignment' of the respondent to the female sex, the question which would have to be answered is, what was the respondent's sex immediately before the operation? If the answer is that it depends on 'assignment' then, if the decision at that time was female, the respondent would be a female with male sex organs and no female ones. If the assignment to the female sex is made after the operation, then the operation has changed the sex. From this it would follow that if a 50 year old male transsexual, married and the father of children, underwent the operation, he would then have to be regarded in law as a female, and capable of 'marrying' a man/ The results would be nothing if not bizarre.....***Marriage is a relationship which depends on sex and not on gender.**

M.T. v J.T. 140 N.J.77, 355 A. 2d 204 (1976)

M.T. (plaintiff) was born a male with male sexual organs but had always identified as a female. M.T. had a sex-change operation that replaced her male anatomy with female anatomy. J.T. (defendant) paid for the operation. M.T. then applied to the State of New York to have her birth certificate changed. One year after the operation, M.T. married J.T., who was a male. The couple later separated, and J.T. stopped supporting M.T. financially. M.T. filed a complaint in the Juvenile and Domestic Relations Court, seeking support and maintenance. J.T. argued that M.T. was a male and that their marriage was thus void because marriage had to be between a man and a woman. At the trial at the Juvenile and Domestic Relations Court, M.T.'s doctor testified that, after the operation, M.T. was a female. M.T. was able to have vaginal intercourse with a man and could not function as a male either sexually or for purposes of procreation. The doctor stated that M.T.'s vagina was the same as a typical female vagina after a hysterectomy. J.T.'s adoptive father, Dr. T, was a doctor and testified as an expert. Dr. T testified that a person's sex was determined by sexual anatomy at birth and in his opinion, M.T. was still a male. The trial court found that M.T. was a woman for marital purposes. J.T. appealed.

The notable part in the Superior Court judgment, in this case, are as follows:

"We accept -- and it is not disputed -- as the fundamental premise in this case that a **lawful marriage requires the performance of a ceremonial marriage of two persons of the opposite sex, a male and a female**. *Despite winds of change, this understanding of a valid marriage is almost universal. .....In the matrimonial field the heterosexual union is usually regarded as the only one entitled to legal recognition and public sanction. ....*

There is not the slightest doubt that New Jersey follows the overwhelming authority....

The issue must then be confronted whether the marriage between a male and a postoperative transsexual, who has surgically changed her external sexual anatomy from male to female, is to be regarded as a lawful marriage between a man and a woman.

An English case, Corbett v. Corbett, 2 W.L.R. 1306, 2 All E.R. 33 (P.D.A. 1970) *appears to be the only reported decision involving the validity of marriage of a true postoperative transsexual and a male person. The judge*

there held that the transsexual had failed to prove that she had changed her sex from male to female. The court subscribed to the opinion of the medical witnesses that "the biological sexual constitution of an individual is fixed at birth (at the latest), and cannot be changed, either by the natural development of organs of the opposite sex, or by medical or surgical means. The respondent's operation, therefore, cannot affect her true sex." 2 W.L.R. at 1323. It felt that three tests for sex should be used, the chromosomal, gonadal and genital, and when these were congruent sex for purposes of marriage should be determined accordingly. Id. at 1325. And, in view of the "essentially hetero-sexual character" of marriage, the test to determine sex must be biological, "for even the most extreme degree of transsexualism in a male or the most severe hormonal imbalance which could exist in a person with male chromosomes, male gonads, and male genitalia, cannot reproduce a person who is naturally capable of performing the essential role of a woman in marriage." Id. at 1324- 1325. Based upon an assumed distinction between "sex" and "gender," the court held that "marriage is a relationship which depends on sex and not on gender." Id. at 1325. In addition, the judge was mindful that the marriage was unstable, brief and the sexual exchange between the parties -- the husband was a transvestite -- was ambivalent. He concluded on alternative grounds that the marriage had not been, and indeed could not be, consummated.

We cannot join the reasoning of the Corbett case. The evidence before this court teaches that there are several criteria or standards which may be relevant in determining the sex of an individual. **It is true that the anatomical test, the genitalia of an individual, is unquestionably significant and probably in most instances indispensable**. *For example, sex classification of an individual at birth may as a practical matter rely upon this test. For other purposes, however, where sex differentiation is required or accepted, such as for public records, service in the branches of the armed forces, participation in certain regulated sports activities, eligibility for types of employment and the like, other tests in addition to genitalia may also be important....*

Against the backdrop of the evidence in the present record we must disagree with the conclusion reached in Corbett that for purposes of marriage sex is somehow irrevocably cast at the moment of birth, and that for adjudging the capacity to enter marriage, sex in its biological sense should be the exclusive standard. On this score the case has not escaped critical review. ....

Our departure from the Corbett thesis is not a matter of semantics. It stems from a fundamentally different understanding of what is meant by "sex" for marital purposes. The English court apparently felt that sex and gender were disparate phenomena. In a given case there may, of course, be such a difference. A preoperative transsexual is an example of that kind of disharmony, and most experts would be satisfied that the individual should be classified according to biological criteria. The evidence and authority which we have examined, however, show that a person's sex or sexuality embraces an individual's gender, that is, one's self-image, the deep psychological or emotional sense of sexual identity and character. Indeed, it has been observed that the "psychological sex of an individual," while not serviceable for all purposes, is "practical, realistic and humane." ...

The English court believed, we feel incorrectly, that an anatomical change of genitalia in the case of a transsexual cannot "affect her true sex." Its conclusion was rooted in the premise that "true sex" was required to be ascertained even for marital purposes by biological criteria. In the case of a transsexual following surgery, however, according to the expert testimony presented here, the dual tests of anatomy and gender

are more significant. On this evidential demonstration, therefore, we are impelled to the conclusion that for marital purposes if the anatomical or genital features of a genuine transsexual are made to conform to the person's gender, psyche or psychological sex, then identity by sex must be governed by the congruence of these standards.

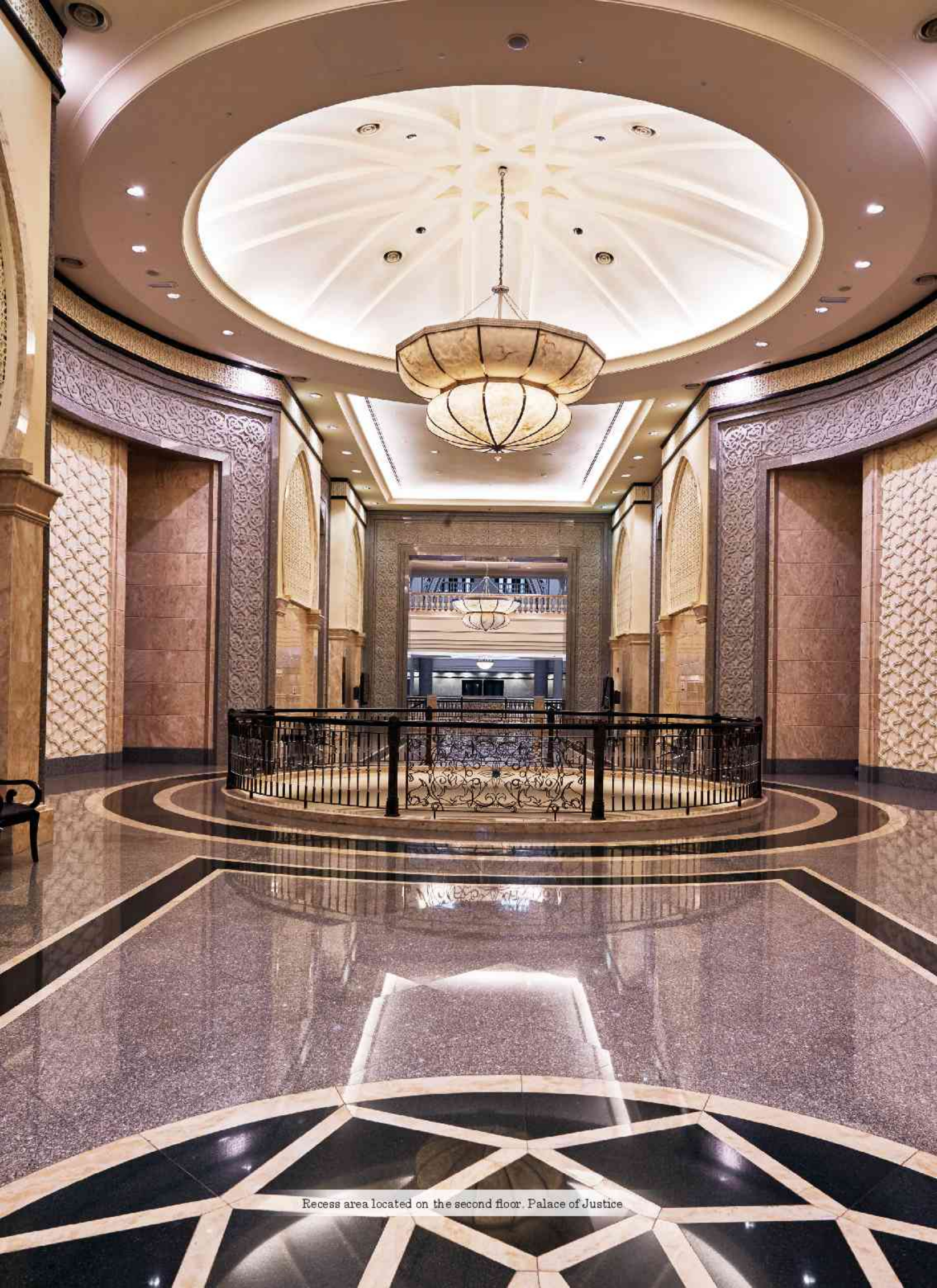
Implicit in the reasoning underpinning our determination is the tacit but valid assumption of the lower court and the experts upon whom reliance was placed that **for purposes of marriage under the circumstances of this case, it is the sexual capacity of the individual which must be scrutinized. Sexual capacity or sexuality in this frame of reference requires the coalescence of both the physical ability and the psychological and emotional orientation to engage in sexual intercourse as either a male or a female.....**

It has been suggested that there is some middle ground between the sexes, a "no-man's land" for those individuals who are neither truly "male" nor truly "female." Yet the standard is much too fixed for such far-out theories. Rather the application of a simple formula could and should be the test of gender, and that formula is as follows: Where there is disharmony between the psychological sex and the anatomical sex, the social sex or gender of the individual will be determined by the anatomical sex. Where, however, with or without medical intervention, the psychological sex and the anatomical sex are harmonized, then the social sex or gender of the individual should be made to conform to the harmonized status of the individual and, if such conformity requires changes of a statistical nature, then such changes should be made. Of course, such changes should be made only in those cases where physiological orientation is complete. ....

In sum, it has been established that an individual suffering from the condition of transsexualism is one with a disparity between his or her genitalia or anatomical sex and his or her gender, that is, the individual's strong and consistent emotional and psychological sense of sexual being. A transsexual in a proper case can be treated medically by certain supportive measures and through surgery to remove and replace existing genitalia with sex organs which will coincide with the person's gender. **If such sex reassignment surgery is successful and the postoperative transsexual is, by virtue of medical treatment, thereby possessed of the full capacity to function sexually as a male or female, as the case may be, we perceive no legal barrier, cognizable social taboo, or reason grounded in public policy to prevent that person's identification at least for purposes of marriage to the sex finally indicated.**

In this case the transsexual's gender and genitalia are no longer discordant; they have been harmonized through medical treatment. **Plaintiff has become physically and psychologically unified and fully capable of sexual activity consistent with her reconciled sexual attributes of gender and anatomy. Consequently, plaintiff should be considered a member of the female sex for marital purposes.** *It follows that such an individual would have the capacity to enter into a valid marriage relationship with a person of the opposite sex and did do so here. In so ruling we do no more than give legal effect to a fait accompli, based upon medical judgment and action which are irreversible. Such recognition will promote the individual's quest for inner peace and personal happiness, while in no way disserving any societal interest, principle of public order or precept of morality.*

Accordingly, the court below correctly determined that plaintiff at the time of her marriage was a female and that defendant, a man, became her lawful husband, obligated to support her as his wife. The judgment of the court is therefore affirmed."



Recess area located on the second floor. Palace of Justice

Transgender recognition and rights in Malaysia

Wong Chiou Yong v Pendaftar Besar / Ketua Pengarah Jabatan Pendaftaran Negara (2005) 1 CLJ 622

The applicant (alleged to be born intersex but recorded born as a female in birth certificate) filed an originating summons seeking an order that he be declared as a man and that the Malaysian National Registration Department be directed to alter the birth register and the national registration identity card from female to male so as to indicate the applicant's post reassignment gender. The High Court judge followed the English case of *Corbett v Corbett* (1970) 2 All ER 33 in the determination of the status of applicant's transsexuality and in dismissing the originating summons said this:

> *"In the instant case, the medical evidence produced by the applicant did not support that the applicant was born with two sex organs or is an intersexual as raised in the affidavit (encl. 2) of the applicant....*
>
> *.....***Biological sexual constitution of an individual is fixed at birth. Therefore, the decisive significance in the determination of this application on the identity of the applicant is not the physiological test but the biological test when she was born** *which is in conformity with the evidence produced by the applicant.....*
>
> *(c)* **the person who has undergone a sex change operation cannot be regarded as belonging to the sex for which reassignment surgery was undertaken for the purpose of correcting the registration of sex of the applicant on the Register of Births or the National Registration Identity Card which was already issued;**
>
> *...this court is of the view that there is no express legislation to re-register the gender of a transsexual person or under the disguise of any error or fact or substance in the register pursuant to s. 27(3) of the Births and Deaths Registration Act 1957 and s. 6(2)(o) of the National Registration Act 1959 (Revised-1972) as it would be contrary to the object and whole spirit of statutory interpretation and legal principle on which the judicial system is built....*
>
> *This court is of the view that if the application is decided in favour of the applicant, this court would usurp the function of Parliament and it is trite that that is something that the courts must not do as it is not the function of the court to substitute its own views to fill gaps in the statute but merely to interpret each phrase in the statute in its statutory context.*
>
> *.....An entry in the register of births is regarded as a record of the fact at the time of birth. Accordingly, the Birth Certificate constitute a document revealing not current identity but historical facts. A Birth Certificate which was issued to the applicant is a document which revealed not the current identity of the applicant but historical facts when she was born and where she was accordingly registered....*
>
> *..... On the facts in the instant case, there is no evidence that the applicant had acquired all the biological characteristic of the assigned sex after the reassignment surgery. Biological characteristic must include (i) chromosomal (ii) gonadal (presence of testes or ovaries and (iii) genital (which includes internal sex organ).....*
>
> *Generally, negative attitudes towards transsexuals are based fundamentally on religious and moral views and those assumptions appear to be slowly changing in modern society in other jurisdiction but whether that modern perception could be accepted in this jurisdiction is left open although judicial opinions in this area of the law is expected to be liberal and the consideration should be what is in the best interests of society at large and the transsexuals...*

.....Although the applicant and transsexuals cannot be left to live in legal limbo but however the remedy for registration as to their current gender is with Parliament and not the courts as any fact changed in the registration of transsexual must be introduced by Act of Parliament and cannot probably be made by judicial pronouncement.....

Transsexuals should be given an opportunity to lead normal lives and change their gender status after they have undergone reassignment surgery and the necessary legislation be introduced in order to enable them to change their gender from female to male or vice versa in their personal documents so as to enable their 'individual quest for inner peace and personal happiness' so long as it is not detrimental or a disservice to the societal interest at large or breaching the social interest of public order or percept of morality...."

J-G v Pengarah Jabatan Pendaftaran Negara (2005) 4 CLJ 710

The High Court judge, in this case, allowed the application to alter the national registration identity card to reflect the applicant's gender post reassignment from male to female. The Judge reiterated that when medical evidence are available, the Courts should play its part and grant relief where justice is due in these words:

"Of course there are fears of uncertainty and the lack of 'a clear coherent policy' as well as criteria or pre-conditions to be satisfied before legal recognition can be given to alter the sex of a person. These are comprehensively set out by Lord Nicholls in the judgment of the House of Lords in Bellinger v Bellinger (supra) when confirming the continuing adherence to the test as set out in Corbett v Corbett (supra) to determine the sex of a person. And in the end, like in most of these cases favouring the Corbett v Corbett (supra) test, the garnet is thrown back at the legislative body to make the necessary laws for the court to follow if Parliament so wishes. But then again, the legislative body would depend on the medical opinions. And here, in this instant case, **the medical men have spoken: the plaintiff is female. They have considered the sex change of the plaintiff as well as her psychological aspect. She feels like a woman, lives like one, behaves as one, has her physical body attuned to one, and most important of all, her psychological thinking is that of a woman.**

In practically all authorities cited and considered, those courts that followed the principles enunciated in Corbett v Corbett (supra) (including Corbett v Corbett) had expressed sympathy with the victim trapped in such predicament and regretted that they could not assist. But surely for reasons as discussed, **when it is based on medical evidence then the courts should play its part and grant relief where justice is due**.

In this case, the first **prayer is for a declaration which this court has power under the Specific Relief Act to grant**. *As for the second prayer, it concerns only an administrative exercise and the defendant is empowered by law under s. 6(2)(o) of the National Registration Act 1959 to make a correction and alteration in the register and identity card. All these would give full effect to art. 5(1) of the Federal Constitution which states that "no person shall be deprived of his life or personal liberty save in accordance with law.""*

Kristie Chan v Ketua Pengarah Jabatan Pendaftaran Negara (2013) 4 CLJ 627

The Court of Appeal rejected the application by the appellant to change the gender information on her identity card from 'Male' to 'Female' following her gender reassignment surgery. The Court of Appeal in the course of its judgment referred to both *Corbett v Corbett* (1970) 2 All ER 33 and *Wong Chiou Yong*

(P) v Pendaftar Besar /Ketua Pengarah Jabatan Pendaftaran Negara (2005) 1 CLJ 622.

> *"The application does not involve amendment of the birth certificate under the Registration of Births and Deaths Act 1957. A birth certificate reflects the gender apparent physically at the time of birth. See Wong Chiou Yong v. Pendaftar Besar /Ketua Pengarah Jabatan Pendaftaran Negara [2005] 1 CLJ 622. That a birth certificate cannot be amended is irrelevant in this case as the application does not seek such amendment.*
>
> *Section 6(1) of the National Registration Act 1959 gives wide powers to the Minister to make regulations for the purpose of the Act, and includes the matters set out in s. 6(2). The Act empowers the Minister to decide upon the policy and make regulation pertaining to gender recognition. It does not in itself deal with amendments. Nor is it for the court to be so concerned about administrative ramifications as to refuse consideration because of such ramifications, when such issues for the executive to deal with and resolve in implementing a national registration system……*
>
> *A declaration that a person is currently of a gender other than that such person was born as is not a simple issue. As Lord Nicholls of Birkenhead said in Bellinger v. Bellinger [2003] UKHL 21, whether a person can change the sex with which he or she is born is a statement in over-simplified and question-begging form….*
>
> *These cases serve to show* **gender is a multi-faceted question, and not involving the desire of the applicant alone, but involve consideration of chromosomal, gonadal, genital and psychological factors**……
>
> *We note that para. 5.7.2(a) of the Arahan Jabatan Pendaftaran Negara Bil 9/2007, requires as part of the application for a change of registration of gender a "Perintah Mahkamah yang mengandungi butir-butir pengisytiharan Jantina baru pemohon". It means that the Jabatan Pendaftaran Negara would rely upon the judicial process to determine the question of the current gender of the appellant……*
>
> *These lead us to the observation that* **there is no evidence, medical and psychiatric, from experts in Malaysia:**
> **(a) what is gender;**
> **(b) what makes a person a male or female;**
> **(c) whether sex reassignment surgery changes a person's gender to warrant a change of the gender description in that person's identity card**……
>
> *We conclude that upon the evidence advanced in the affidavit in support of the originating summons, the appellant had failed to discharge the burden of proof to warrant the grant of the declaration and order sought."*

(IV) CONCLUSION

When discussing on transgender recognition and rights, one must bear in mind these two related issues. Firstly, there has been court cases and campaign[18] supporting for de-gendering or gender-neutral law which means to free from any association with or dependence on gender. This development is important to non-binary transgender/genderqueer.[19] However, several objections on de-gendering law have been laid out:[20]

18 Owen Bowcott (2017) *'Ministers to face court challenge over gender-neutral passports'*. The Guardian. Retrieved from https://www.theguardian.com/uk-news/2017/oct/11/ministers-face-court-challenge-gender-neutral-passports-christie-elan-cane.

19 Individual that describe themselves as neither male nor female.

20 Peter Dunne (2017) *'Transgender rights in the United Kingdom and Ireland: Reviewing Gender Recognition Rules'*. Retrieved from https://legalresearch.blogs.bris.ac.uk/2017/11/transgender-rights-in-the-united-kingdom-and-ireland-reviewing-gender-recognition-rules/.

(i) legal gender plays an important role in responding to discrimination. While law may facilitate certain prejudices, it is a primary instrument for remedying gender-based inequality;

(ii) gender unfairness is not solely a product of law. It is also a social phenomenon. De-gendering the law will not fully eradicate gender inequities. It simply reduces law's capacity to intervene;

(iii) de-gendering diminishes the experiences of female-identified persons. For many women, the legal category 'female' acknowledges the unique biases that they face "as women". It is a symbolic strategizing tool around which all female-identified individuals (including transgender women) can organise for collective rights; and

(iv) many transgender persons reject abolishing legal gender. While scholars have described transgender experiences as inherently challenging gender. Prosser in his book (Second Skins: The Body Narratives of Transsexuality) criticises failures to acknowledge the numerous transgender persons for whom gender, and the ability to reproduce standard gender norms, is a core desire. Many transgender people struggle for a significant proportion of their lives to be accepted and validated in their lived-identity. Legal gender recognition is a key step towards self-actualisation.

Secondly, it is important to appreciate that during the 2018 period of consultation[21] to reform the Gender Recognition Act 2004 by the UK Government, several women and feminist groups have aired their commentaries on the proposed reform where one of the proposals included gender self-identification without the need of medical and psychological reports. One of the commentaries is as follows:

> *"The effect of this proposal becoming law would be to erode the very concept of woman. It will erase women's lived experiences, and undermine women's rights. Being a woman is about sex and biology, in that our bodies determine so much of our experience, and also about the way we are constructed socially, which also helps determine our lived experiences. It is not about how a person feels or what they claim to feel.*
>
> *Self-identification will allow anyone to access women's spaces at any time, having self-proclaimed that they are a woman. This is problematic for women accessing women's spaces and services whose lived experiences (such as surviving sexual violence) or protected characteristics (such as religion that requires sex-segregation for certain activities) make it essential that women's spaces remain sex-segregated.*
>
> *Self-identification is also open to abuse by men seeking to access women's spaces and women's bodies. We are already seeing people who were born and still live and present as men claiming that they are trans-women in order to gain access to women's spaces, including convicted sex offenders demanding to be housed in women's prisons; individuals videoing women and girls naked in women's changing rooms; and individuals seeking to join all-women candidate lists in local or national elections. Allowing self-identification of transgender people will enable and embolden these types of activities."*[22]

It is clear, based on the above commentaries, transgender recognition and rights do not necessarily bore well with several women and feminist groups in the UK.

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21 The consultation started from 3 July 2018 and concluded on 22 October 2018.

22 Rosa Freedman & Rosemary Auchmuty, 'Women's Rights and the Proposed Reforms to the Gender Recognition Act' (OxHRH Blog, 17 August 2018). Retrieved from http://ohrh.law.ox.ac.uk/womens-rights-and-the-proposed-changes-to-the-gender-recognition-act/.


KOMPLEKS MAHKAMAH KUCHING
MAHKAMAH
KUCHING

CHAPTER 8

SPECIAL FEATURES

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

THE RT. HON. TUN SIR JAMES BEVERIDGE THOMSON

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

16 September 1963 – 31 May 1966

(THE 1ST LORD PRESIDENT)

THE RT. HON. TUN SYED SHEH HASSAN BARAKBAH

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

1 June 1966 – 9 September 1968

(THE 2ND LORD PRESIDENT)

THE RT. HON. TUN DATO' MOHAMED AZMI MOHAMED

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

10 September 1968 – 30 April 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., L.L.D., D. LITT

1 May 1974 – 12 November 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 November 1982 – 2 February 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 February 1984 – 8 August 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 August 1988 – 9 November 1988
(ACTING LORD PRESIDENT)

10 November 1988 – 24 September 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 September 1994 – 19 December 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 December 2000 – 14 March 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 March 2003 – 1 November 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 November 2007 – 17 October 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 October 2008 – 9 September 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 September 2011 – 31 March 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.

1 April 2017 - 10 July 2018

(THE 8TH CHIEF JUSTICE)

THE RT. HON. TAN SRI DATUK SERI
PANGLIMA RICHARD MALANJUM

P.S.M., S.P.S.K., S.S.A.P., S.P.D.K., S.I.M.P., P.G.D.K.

11 July 2018 - 12 April 2019

(THE 9TH CHIEF JUSTICE)

THE RT. HON. TAN SRI TENGKU MAIMUN TUAN MAT

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

2 May 2019 - Present

(THE 10TH CHIEF JUSTICE)

MALAYSIA'S FOURTH LORD PRESIDENT: TUN MOHAMED SUFFIAN MOHAMED HASHIM

Born to an ordinary life on 12 November 1917, in a small village on the banks of the Perak River, Tun Suffian rose to greatness. His father, Haji Mohamed Hashim, a *kathi* (Muslim official) and his mother, Zaharah Ibrahim, a fulltime housewife imbued their son with discipline that lasted a lifetime.

Tun Suffian became one of the few in Malaysia to achieve many firsts in his lifetime.

At an early stage of his life, Tun Suffian's academic and intellectual prowess was already apparent. Despite having a religious background, his father had a different vision for him. Tun Suffian was sent to an English school in Kuala Kangsar, the Clifford School after spending 4 years in a Malay school. Extremely bright and always ahead of his class, his intelligence thrice earned him double promotions at school.

Tun Mohamed Suffian

On his scholastic achievement, his English school headmaster remarked, "*Suffian has by his success brought credit not only to the school, but also to the whole Malay race. He has provided a striking example of what a Malay boy can accomplish – without money and without influence – if he possesses ability and determination*".

Upon graduating from Clifford School, Tun Suffian was awarded the Queen's scholarship to pursue his studies at Cambridge University where he graduated with a Bachelor of Arts Degree with Honours in 1939 and a Bachelor of Laws in the following year. With two degrees in hand, Tun Suffian continued to read law at the Inns of Court. In January 1941, he was called to the Bar at the Middle Temple, London.

At a relatively young age of 24, Tun Suffian became an English Barrister. With high expectations, he set sail home.

On his trip home to (then) Malaya, the young barrister found himself stranded in Colombo, Ceylon (now Sri Lanka). Malaya was at war. Due to the intervention and Japanese occupation he found himself in India and not by choice, worked for the All India Radio in Delhi where he did broadcasting in Malay. Later, he proceeded to England and became sub-editor and language supervisor of the British Broadcasting Corporation's (BBC) Malay section.

Tun Suffian made full use of his short career as a journalist to improve his speaking and writing skills. It bore tremendous results in later years which saw an illustrious career.

In 1946, Tun Suffian was offered a position in the Malayan Civil Service while still working in England. Anticipating his career with the service, he returned to Cambridge University to continue his studies in public administration. He attended classes and training sessions designed to prepare him for service as a District Officer ranging from surveying, field engineering, accounting and social anthropology.

Tun Suffian also studied at the School of Oriental and African Studies and the London School of Economics where he excelled not only in his studies, but actively participated in the call for the country's independence by joining the students' United Malays National Organisation (UMNO) movement.

Tun Mohamed Suffian in younger days

Ironically, some two years later, in 1948, when Tun Suffian arrived home in Malaya, the post that was waiting for him was not that of a District Officer but a Circuit Magistrate in Malacca. On this unexpected employment, Tun Suffian later wrote, *"I returned to Malaya after a lapse of twelve years. I passed my law examinations in 1940... I had not done any legal work and... had not touched the law for 7 years, but thanks to the kind and tactful advice of my clerks and interpreters I soon acquired a rudimentary knowledge of the art of dispensing justice."*

At the end of his first month as a Magistrate, the young judicial officer found that no provision had been made for his salary. This oversight was however quickly solved by appointing him to hold concurrently the post of Harbour Master for the port of Malacca.

On 1 January 1949, Tun Suffian was officially transferred from the Civil Service to the Legal Service. The first few years was spent as a Deputy Public Prosecutor in Kuala Lumpur and then Johor Bahru. Soon thereafter, he became the first local to hold the post of State Legal Adviser, and later State Secretary of Pahang.

It was whilst serving as Pahang's State Secretary that Tun Suffian became directly involved in the Special Commission on Salaries for the Civil Service when he was appointed its Chairman. The report furnished by the Commission to the government was simply known as the *"Suffian Report"* – detailing recommendations regarding salaries and conditions of service affecting some 200,000 government servants at that point of time. His name had since then become a household word; the housewives referred the pay packet of their husbands as the *Suffian Salary*.

In 1956, on the eve of independence, Tun Suffian was sent to Johor as its State Legal Adviser. It was then that the Conference of Rulers decided to give him another major task. He was asked to advise them in drawing up the Constitution – the most important document for a nation about to achieve independence. Tun Suffian then was only 39 years of age and had only been in the Legal Service for 9 years.

In 1958, Tun Suffian was promoted as Senior Federal Counsel in the Attorney General's Chambers, Kuala Lumpur. He was the youngest yet the most senior legal officer in the Legal Service. A year later, he became the first local to hold the post of Solicitor-General during the colonial regime. It was during that time the then Sultan Brunei had requested him to draft a Constitution for Brunei.

In 1961, at the age of 44, Tun Suffian was elevated to the Bench. On his elevation, he remarked *"I yield to no one in recognition of the difficulty and importance of the office which I now have the honour of occupying. In evenly balancing the scales of justice, I will help to maintain the Rule of Law and two essentials of that Rule are the Independence of the Bar and the Independence of the Judiciary"*. He served a year as a High Court Judge in Kuala Lumpur after which he was transferred to Kedah.

Tun Mohamed Suffian on his elevation as a High Court Judge on 30 October 1961

Tun Mohamed Suffian, the 4th Lord President (5th from left) with members of the Judiciary

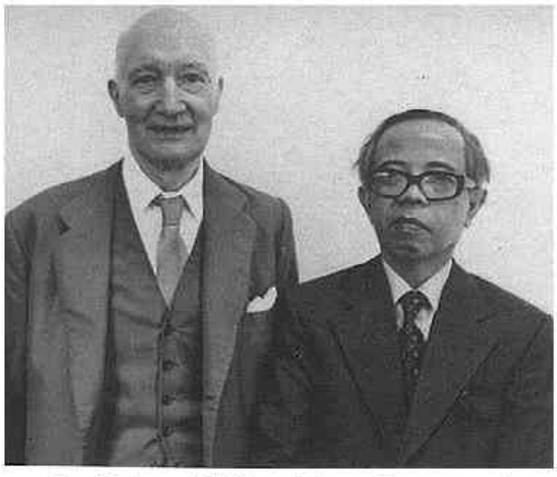
Tun Mohamed Suffian (centre) with former Chief Justice Tun Dzaiddin Haji Abdullah (first from right) at a dinner in 1984

His high academic qualifications and his profound knowledge of the law saw him being appointed as the Pro-Chancellor of the University of Malaya in 1964, a post he held until 1986. In 1973, he was appointed as the Chief Justice of Malaya, the second highest rung in the ladder of the local judiciary at that time. Just two months later in 1974, he was made the Lord President of the Malaysian Supreme Court.

Malaysia's first Lord President Tun Sir James Beveridge Thomson commenting on Tun Suffian' meteoric rise had this to say: *"Sufficient to say that in the end Suffian has attained the highest post in the judiciary of his country and that is his country's gain."*

His contribution to the development of the law is immense; his judgments constituting a major contribution to the Malaysian jurisprudence. Law students and legal practitioners alike remember too well his short, succinct and crystal-clear judgment particularly in the landmark decision of *Public Prosecutor v Mat* [1963] MLJ 253 where Tun Suffian outlined in simple language the burden of proof in criminal cases.

All of his judgments were thoroughly researched and written with the highest of quality and a unique style that was easy to comprehend. He is believed to have delivered more than a hundred judgments; all of which revealed a rich depth of intellectual analysis, legal clarity, common sense, compassion and fierce independence.



Tun Mohamed Suffian with equally renowned jurist, Lord Denning

Tun Mohamed Suffian (standing-clad in robe) on the occasion of the conferment of the honorary degree of Doctor of Letters upon him by the then Chancellor of the University of Malaya, Her Majesty Raja Permaisuri Agong Sultanah Bahiyah

This is where his greatness lies – the simplicity of his enunciation and exposition of the intricacies of the law, apart from his significant contribution to the development of Malaysian constitutional law. Tun Suffian had the rare gift of making a difficult subject simple and interesting. He was also a visionary; most of his judgments that were written more than 30 years ago are still applicable, if not foundational to the development of the law.

Tun Suffian's career as a jurist is not confined only to the Bench. He also became the sole delegate for the country at the first and second United Nations Conference on the Law of the Sea in 1958 and 1960. He also represented the country in other UN Conferences including on Human Rights in Tokyo and on Diplomatic Immunity in Vienna. He was also the Commissioner of the International Commission of Jurists.

For his many accomplishments, several honorary doctorates by foreign and local universities were conferred on Tun Suffian – a Doctorate in Law by the University of Singapore and a Doctorate in Letters from the University of Malaya. In 1975, he received the Magsaysay Foundation Award for distinguished public service. In 1984, after his retirement he became the first Malaysian to be made an honorary Master of the Bench of the Middle Temple in England. He was also a judge of the Administrative Tribunal of the International Labour Organisation and the Administrative Tribunal of the World Bank.

Suff & Bunny - the two inseparables

A photograph taken during his final days in 2000

L-R: Tunku Sofiah, Tun Mohamed Suffian, Tun Salleh Abas and Toh Puan Azimah Mohamad Ali

These appointments and conferment are testimony to Tun Suffian's reputation internationally as a distinguished jurist.

He was also a prolific legal scholar and writer of books and articles on law. In 1963, some two years after he became a judge, he translated the Federal Constitution from English to Malay. His acclaimed book, modestly entitled '*An Introduction to the Malaysian Constitution*' remains one of his lasting legacies to the nation.

Tun Suffian was also known to be always ready and willing to extend a helping hand and many personages and ordinary folks from all walks of life, at home or abroad, invariably turned to him. To him, "*Life is service. All of us have a high calling, to be of service to our neighbours and the community. I don't want to and I will not harm anybody. As I expect to pass through this world once, I try to do good and show kindness to those who deserve it.*"

Although Tun Suffian retired as the country's fourth Lord President in 1982, he continued to articulate his views in his forthright manner on matters affecting the judiciary. As noted by former Chief Justice Tun Mohamed Dzaiddin Abdullah, "In articulating his views, he chose to be unpopular but truthful to himself." Thus, Tun Dzaiddin was reminded of Robert Frost's lines about taking the road less travelled, a choice "that has made all the difference".

Tun Suffian was succeeded by Raja Azlan Shah, as His Highness then was. The latter was in turn succeeded by Tun Salleh Abas who was dismissed for "misconduct" in 1988. The following are the excerpts of Tun Suffian's views on the dismissal:

> "*...Judges are at sixes and sevens. Some daren't speak to each other. While there are judges whose integrity and impartiality have never wavered, the public perception is that the judiciary as a whole can no longer be trusted to honour their oath of office... What happened to Tun Salleh and our Supreme Court Judges has shown that what took generations to build up can be destroyed in one day and will take many years to build... And when foreign friends in Europe, America and elsewhere questioned me about it, for the first time in my life I was ashamed of being Malaysian*".

Tun Suffian married his beloved friend for life Dora Evalina Grange, affectionately known as Toh Puan "Bunny" in 1946 whom he met in England. Asked once for a brief description of Tun Suffian, his wife chose "fun, easy-going, serene and unruffled". Toh Puan Bunny died in 1997. They had no children.

Thereafter, Tun Suffian spent his final days at home under the care of Tunku Datuk Dr. Sofiah Mohammad Jewa and her husband Dato' Dr. Yaacob Hussain Merican.

He was fighting a personal battle; a debilitating throat cancer that saw him being hospitalized twice. Nonetheless, Tun Suffian's spirits remained unbroken. When he slipped away on the night of 26 September 2000, Malaysians from all walks of life gathered including protagonists from both sides of the political divide, as if in deference to Tun Suffian's unity call. He had occasion to write to a friend in the following words, *"Let not there be disunity, instead let there be tolerance, understanding, peace..."*.

Tun Suffian was given a burial befitting a royalty at the Royal Mausoleum, Kuala Kangsar, Perak Darul Ridzuan as decreed by D.Y.M.M. Sultan of Perak, Raja Azlan Shah who himself was a former Lord President, equally distinguished in the field of law and justice.

Upon two years after his demise, a foundation was established in his name. 'Tun Suffian Foundation' was founded by Tunku Sofiah who became his close friend and confidante, to perpetuate his good name and to honour the memory of a "great son of the nation". The Foundation is heralded by the community at large as a way to remember and honour a person described by former Court of Appeal Justice Tan Sri Datuk Mahadev Shankar as *"the finest flower of human race"*. It is one of the most meaningful legacies for future generations as it is a charitable trust dedicated to fund tertiary and advance studies.

The innately courteous, witty, charming and humorous legal luminary once said, *"I hope that I shall be remembered as a man who was fair and just both within and without the court room and as a man who has given back to the community something in return for the great deal he has received from them"*.

Indeed, Tun Suffian had left a prodigious legacy. He will always be remembered as a man of principle and humility - a man who never lost sight of the core principles of justice despite the privileges of high office.

Sources:

1. In Service of the Law – Simplicity and Greatness: Tun Suffian's Legacy, Salleh Buang
2. A Man of His Time: Lord President Tan Sri M. Suffian, J. Victor Morais
3. Tun Suffian: A Man for All Seasons, Tun Mohamed Dzaiddin Abdullah
4. Introduction of Lord President Tun Mohamed Suffian, Emma Q. Fernandio
5. Reference in Honour of the Late Tun Dr Mohamed Suffian bin Hashim, Tan Sri Mohamed Dzaiddin Abdullah
6. Tun Suffian Foundation Fact Book (2nd Edition), Tunku Sofiah Jewa

Tunku Sofiah (left) took a photo with the member of the editorial committee during an interview. Ainna Sherina

JUDGE'S MUSINGS – FROM COURTHOUSE TO PARLIAMENT HOUSE

An Interview with Tan Sri Dato' Mohamad Ariff Md Yusof, The Honourable The Speaker of the Dewan Rakyat

Tan Sri Dato' Mohamad Ariff Md Yusof taking his oath as the Speaker of the Dewan Rakyat

Malaysia has of late produced many firsts. But we can safely say that this is not the first time that a former judge of the Superior Courts has been appointed Speaker of the Dewan Rakyat, as it is known in the Federal Constitution. Tun Dr Mohamed Zahir Ismail, a former judge of the High Court served as Speaker for an unprecedented term of 24 years (1982-2004). That said, the swearing-in ceremony of retired Court of Appeal Judge, Tan Sri Dato' Mohamad Ariff Md Yusof, as the ninth Speaker of the Dewan Rakyat was as dramatic as it was historic. After all, this was the first time in over 60 years of its birth that Malaysia witnessed the two main parties in Parliament switch sides.

The unanimous vote to reduce the voting age from 21 years to 18, the proposal to abolish the mandatory death sentence, and the incremental reforms to both Houses of Parliament will all now be under the watchful eye of Tan Sri Ariff – respected lecturer, renowned lawyer, eminent judge, and now the Speaker of the Lower House.

As someone whose reputation precedes him, it was with some trepidation that we approach the task entrusted to us. We thought it best, therefore, to meet Tan Sri Ariff in person. Research conducted in preparation for the interview from the legal fraternity disclosed a deep admiration for Tan Sri Ariff. Tan Sri Ariff is, by all accounts, an articulate, charming (if slightly shy) man with a deep knowledge of the Federal Constitution and other areas of the law. True to his description, as we walked into his office, we were met with a warm smile. The Speaker exuded an air of intellectual finesse whilst retaining a casual and warm disposition. Such a combination is hard to come by.

It is not every day that one is privileged to be in the presence of such a figure. And so, we took the opportunity to pepper Tan Sri Ariff with off-the-cuff questions. In this exclusive interview, Tan Sri Ariff treated us to his personal insights on both law and life.

The following is an abridged version of our interview with him:

What to you is 'judicial independence'?

Judicial independence is very simply grounded on judicial neutrality. That is the very essence of judicial independence. The neutrality of the judicial function. The corollary of it is judicial fairness where cases are decided on the basis of the law without any element of fear or favour to any party. But, I must add it is not enough to say to be neutral. You have to be neutral in a certain constitutional setting so that the impartial judge, will have to be mindful of the relevant underlying principles and the purposes of the law.

You are not fully independent in the judicial sense unless you decide a case neutrally but within that constitutional setting.

For instance, a constitutional law case that comes before a judge can be decided very formalistically and you can say "I am independent – I have decided the case without fear or favour and I have applied the law strictly". Sometimes that is wrong. You have applied the law strictly, but you have not taken into account the underlying principles which lead to the position where you are more executive minded and have no regard to the underlying principles of human rights for instance. So, it has a certain context. But the essence of it is neutrality and wisdom.

Is there anything we can do to strengthen judicial independence in Malaysia?

A lot of people have said have a correct mix of judges appointed from the legal judicial service and the Bar. Even if you have this correct mix, you must ensure that the principle of judicial independence is fully accepted and respected by the Executive. If you don't have that then it's difficult to strengthen judicial independence. This is something which I have also tried to do here in Parliament over the last five months. In at least two of the rulings I issued, I said that courts must be respected. Parliamentarians shouldn't be discussing the very same issues pending before the Courts or in which the Courts have made a decision. On that basis, Courts must be respected and every branch of government will have to perform their duties within the constitutional setting.

It has been proposed that the power to nominate judges for appointment be stripped from the Prime Minister and be placed instead in the hands of Parliament. What is your take on that?

Personally, I don't believe this will work. It is better to place the effective decision making with the Judicial Appointments Commission [JAC]. But, Parliament should be given the oversight role in the nomination or appointment process of members of the JAC. We have to take it at that level. I don't think Parliament can really nominate and appoint judges. It's not right. Constitutionally too, Parliament would not have the expertise. But to have an oversight function to make sure that proposed nominations to the JAC should consist of persons who are fit and proper can be a subject matter of very good scrutiny by Parliament. That's how it should work.

What do you think of the US system where the US Supreme Court nominees, after being nominated by the President must be approved by a simple majority votes of the Senate.

No. Here in Parliament we have been looking at this issue over the last few months. We have studied the systems in numerous countries and we have even looked at the Indonesian Committee – Sistem Komisi as they call it. It's between the very hard control system and the softer oversight function. The better view for us would be to adopt the softer oversight function. It is better as it fits within a concept Parliamentary democracy. It recognises the limitations of Parliament as a body because Parliament cannot be seen as a body which obstructs. It is a body with an oversight function to make sure that people are accountable to the legislative body as a representative body. This way, things will function in a more transparent, comfortable and democratic manner.

We need to ensure that the JAC consists of members who are fit and proper. There should be no issue of patronage or that people are not qualified or appointed to sit over the fit and proper criteria of

others nominated to be judges of the Court of Appeal or the Federal Court. The JAC nominations will then come before the Parliamentary Committee. And the Parliamentary Committee will vet, perhaps conduct an inquiry into the fit and proper criteria of the appointment and will offer its opinion on it and will produce a report to the Chamber of the House (the main Chamber). The Executive will have to take heed of the recommendations.

The inquiry can be conducted in a confidential setting. If the report is published, then it is public. That is the system we have at the moment. All inquiries and proceedings before Committees are private until a report is published because, all the reports are published in Parliament. That is to say, it becomes public. That's how it should be moving ahead so there is a balance. The issue of separation of powers must be looked at in a practical context.

Some countries look at separation of powers as a division of powers which is a friendlier concept. We are more accustomed to looking at it as a balance of powers. The relevant constitutional body should not be seen as separate and antagonistic. It is a cooperative system. You have your division of powers. It has to be functional division. Of course you have overlaps and when you have the overlaps, you will ensure there are checks and balances. And, it will work because much of it will depend on convention, and doing what is possible and best in a transparent way.

In the US they seem to think it works. You know how intensely the debate rages on for months and eventually even the President will have his own pick. So, we work on the softer approach to make sure that the people chose to decide are fit and proper. Of course, if something goes wrong, then people can be called up before the Committee to answer. In the case of a judge who is senior enough and has got a brilliant career path, and not being promoted for instance, there is nothing to stop the Committee for bringing this matter up within the relevant select Committee to ask why it is that this person has not been properly considered. But, it does not mean that Parliament has the power to appoint.

You must be familiar with the saying that judges do not make law. They merely interpret it. Considering your role now, on which side of the debate do you stand?

On judges do not make law, that's a very old debate [laughs]. Of course, judges make the law but only in a tangential way and in an interpretive sense. Again, when I look at it in a realistic sense, most of the laws that are passed by Parliament tend to be broadly phrased. That is in a practical sense and in the sociological school of jurisprudence, broadly phrased. We need judges to broadly interpret the laws according to the disputed facts. So, judges do not make the law in the normal sense, they just clarify the law. It means no more to say that they make the law. It may be in the narrow area of the law maybe the common law like the law of torts.

But, even in the law of torts, they don't make the law. The principles are all settled nowadays. So they clarify bit by bit. In the area of statutory law, they clarify. Which is why nowadays there is no longer a philosophical hindrance to looking at the Hansard or at Explanatory Notes of Bills. In the past they said, no, we cannot look at it because judges decide according to the law as passed.

People look at it realistically and in Parliament you see how laws are passed. You cannot expect Parliamentarians to look at the minute details of the law right down to the commas and the exact terms and phrases used. Laws are passed in a general way. And sometimes when problems arise against certain disputed facts in court, judges have to interpret, but that doesn't mean that they make the law. They clarify the law. And that is how the system works.

That sounds like it fits perfectly with your ideas of separation of powers. That it is not necessarily a division but it is how you work together. So, if we make something, the judges basically craft it further. And based on that, the Executive will act. If there is any error on that part, the Courts

and the legislature will respectively step in to correct them.

Yes. Once judges have decided on a point and have interpreted in a particular way, it cannot be brought up in Parliament. It can be brought in by way of an amendment but that needs justification. No one should criticise judgments in Parliament. It's in the standing orders. And you can criticise the conduct of judges, but even then, there must be a substantive motion. So the balance is inherent in the system. We have to respect that.

Their interpretive roles aside, do you think judges ought to also play a part in the making of legislation? For example, should they be made members of parliamentary select committees?

This is an interesting question. My answer is very simply, no. There is a process involved in the legislative function. It's very different. It's more open; more broadly based. That doesn't fit within the judicial function or the judicial method. I don't think there is going to be any value added when judges are brought in as members or experts. Perhaps retired judges could have a role as experts to assist in that particular area but not as members. Members of committee must be limited to members of Parliament. That's how the system works.

For instance, you may have a law to abolish the law on the death penalty. It would be good for the matter to be discussed in a select committee. There is nothing to stop the select committee from inviting opinions from a retired judge. It makes for a more mature legislative deliberation. But, it will not be along the lines of using a judicial method as a technique to arrive at a decision. In Parliament you're looking at policies on the public. It is more broad ranging and I don't think judges are trained to do that perfectly.

You spent much of your earlier days in the various areas of law including academia. That left you with relatively very little time on the bench without even a 6 months' extension. Is 66 too young to retire?

Yes, 66 is too young. By the way I never applied for 6 months' extension. I thought it would be better to get back to practice. But 66 is too early for any judge to retire. 70 is good. You can still work at 70. I'm 70 now and I'm still working.

What about the US system where they work for life?

No, it's not a good system. There was one judge at the Supreme Court who was a judge until his death. So they had some issues towards the end. For instance, there is a judge, an old judge, and he has a case – they fall very ill and are about to die, do you know the amount of problem we can get into?

Judges usually keep away from politics. Why did you decide to join politics after retiring from the bench?

This is an interesting one. As you know I was in politics before the Bench. And I've decided to involve myself in politics after retirement. That's a natural progression. Because I believe no matter what, real change can only come about through the political process. And, I thought I could contribute, play the part, however small. So that's why I joined politics. I wanted to see change. No pointless raving and ranting over social media. Join politics and have your say. Ironically I am here at the centre of politics.

I think it's a good thing to do. People have the strange idea that if you're a judge, then you should keep away from politics after retirement. You're no longer in the position to influence anything. When you are on the bench, yes, stay away from politics. You resign from all of your political affiliations and parties – which I did. I made it a point never to attend any political functions or be seen in the company of politicians except friends – like when I'm invited to a wedding.

Tan Sri Dato' Mohamad Ariff Md Yusof (centre) took a group photo with the members of the editorial committee during the interview. Left: Saif Bhatti; Right: Ng Siew Wee

Once you retire, you are not in the position to influence anything. Like me, I think I can contribute to something – the change that was happening. That was an exciting time. So, why not? People invited me to seminars and workshops to ask for my views as a former judge on the judiciary and law reform. I felt like I could contribute through the political process.

How do you reconcile your role between being a former judge and now the Speaker of the House of Representatives?

Being a Speaker in Parliament is like being a judge on a very difficult day. When you have a room full of lawyers arguing. It's even worse. That happens to you in Court, isn't it?

Being a Speaker is much more demanding. But that said, my judicial experience has been very helpful in my present role. Because, being a speaker and being a judge, all require the same discipline of strict neutrality and the appreciation of the law and the rules. And of course proper behaviour and decorum. More difficult to do in court as well as at Parliament. We always try to maintain the best of proper behaviour and decorum. It's easier to do that in Court. More difficult to do in the main Chamber of Parliament. But the ideas are the same.

We know that you are working tirelessly on Parliamentary perform. What do you think are the areas that need the most attention?

There is a need to ensure the role is properly understood and appreciated by all stakeholders. Parliament is a body which is paramount in a context of Parliamentary democracy. That has to be fully appreciated not only by Parliamentarians but also the public and the Executive too. Alongside this, the current procedures and processes have to be reformed and improved to strengthen Parliament's functions. And I say not only to strengthen but also to ensure that the functions can be performed in an efficient and effective way.

Everyone speaks about judicial independence and how to strengthen it. How do you think we can strengthen the independence of Parliament (especially considering our Legislature is fused with our Executive branch)?

Fusion is part and parcel of the system of Parliamentary democracy. Perhaps I should add here. The fusion doesn't really weaken the independence of Parliament. Because, Parliament, whatever it is, is still a paramount institution in the context of the Constitution. We have to strengthen the processes here in Parliament. Reform them and strengthen them accordingly. One important step that has to be taken is to restore the Parliamentary service as a separate service. Unfortunately, in 1996 I think, the Parliamentary service was abolished through a constitutional amendment. That has to be brought back so that Parliament becomes independent and assumes its proper role.

All this talk about fusion and that it dilutes the function of Parliament or the Executive is actually not properly seen in the constitutional context. When the Executive is said to be accountable to Parliament it is not meant, as I said earlier, to obstruct. It is to answer the needs of Parliamentary democracy. In fact, it is good for the Executive to be accountable to Parliament because in this entire process, you validate Executive action because it goes through this process of responsibility and accountability. So the end result actually validates what the Executive proposes to do in any particular instance.

This is why we have Parliament. You go through this process of legislative debate. Points are raised. People have a say in it. You can vote. Once we have that vote, it validates government action. Same thing in terms of accountability through questions in Parliament whether oral or written. They are held to be accountable. They answer and support whatever they have done. It is reported and the public gets to know of it. Generally, the function is to validate Executive action through accountability.

What is your take on the state of legal education in Malaysia? What can be improved and do you have any advice for future lawyers?

There are simply too many law schools and too little centralised control on quality. Some need to do the CLP and very few pass the CLP. Some need not take the CLP. So you must have a centralised system. It is high time we have the Common Bar Exam which should be run professionally.

My advice for future lawyers? Maybe I should say upskill your knowledge and expertise always. And, aim for multidisciplinary skills because the law as it has developed today, tends to be multidisciplinary particularly in the area of commercial law. It helps a lot if you're doing commercial law to have some knowledge on accounting, evaluation – things like that. In fact, in all areas of the law.

Let's take medical negligence for instance. You need to have some medical knowledge. There has to be some upscaling. Some law schools should offer multidisciplinary courses. But then again, once you have a multidisciplinary approach to the law, it tends to water down a bit the content of the core law.

But the Australians are doing it very well so that they can have a basic degree in economics and then you do SJD after that. There's no reason why we cannot plan ahead along the same line. Maybe not all, but some law faculties can say that we will only admit students to do law once they have a basic degree. Those guys will be in great demand when they come out. You can combine architecture and law for instance. Building management and law. I had been doing a lot of arbitration before being appointed so you can see the need to have some practical knowledge and experience in certain branches of the law.

When you have a case involving, let's say energy, you must have some knowledge [on that subject]. Or, you do building contracts. If you're an engineer and a

lawyer, you have a distinct advantage. Because you will understand the drawings and plans and schedules. You will make for a better arbitrator.

Same thing, if you're not an arbitrator, you are a construction court judge let's say, if you have this combined discipline, you're going to make for a terrific judge respected by not just the litigants, the opposing lawyers, but even by clients. If you're a corporate lawyer and you have knowledge of evaluation of accounting, during discussions of any particular issue, let's say maybe a listing exercise, you will not be there sitting pretty and quiet. You will be able to contribute and understand what the merchant bankers are saying. And to prevent problems from arising, and they are also soft skills to be mastered by lawyers. So you have a degree in management and you have an MBA for instance, it adds on to your expertise. So, if you have an LLB, there's no reason why you cannot be encouraged to do an MBA. Eventually you will be a better lawyer. I don't have the chance because of age and the way things were progressing earlier but I learned it through experience. When I was in the Securities Commission, I learned a lot about the mechanics of securities legislation. How people operate and how they do the evaluations and what really matters when you have to solve a particular securities related problem. So that's why I like to encourage lawyers to expand their horizons.

We thank the Honourable Speaker, Tan Sri Dato' Mohamad Ariff Md Yusof for honouring The Malaysian Judiciary Yearbook 2018 with this interview.

Portico of the Palace of Justice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CHAPTER 9

JUDICIAL INSIGHTS

JUSTICE AND INTEGRITY

By Justice Tengku Maimun Tuan Mat*

Since the judicial crisis in 1988 which saw the dismissal of the then Lord President and two Supreme Court (now Federal Court) judges, critics have referred the Malaysian Judiciary as a kangaroo court, claiming that it has been compromised by vested political interest and public perception has been that Malaysian judges can be bought. Of late, much more adverse comments have been made about the Malaysian Judiciary.

This article serves as a golden opportunity for me to pen some of my thoughts; to dispel to a certain extent, the negative perception that the public has on the integrity of Malaysian judges.

In Malaysia, the process of appointment requires candidates to go through a vigorous vetting by the Police, Malaysian Anti-Corruption Commission, Companies Commission of Malaysia and the Insolvency Department, before they could be appointed to the Judiciary. If their integrity is suspect, they ought not to have been appointed in the first place. Once appointed to the office, the integrity of judges should not be called into question. But should evidence surface that a particular judge is corrupt, necessary action must be taken against the particular judge according to the law so that the whole judiciary will not be tainted.

There is no doubt that people look up to judges to dispense justice. But judges are not omniscient. Judges are human being who are not infallible. Judges dispense justice according to the law, as what we understand the law to be. We decide on the dispute according to the facts and the evidence before us as led by witnesses. And witnesses are also human being. Despite taking the oath to tell the truth, the whole truth and nothing but the truth, witnesses may not be telling the truth after all, or may conceal some facts, which will affect our determination of the dispute.

If a litigant comes to court as a plaintiff pursuing a particular claim or as a defendant raising a particular defence, only the plaintiff would know whether whatever he is claiming for is genuinely his. Similarly only the defendant would know whether the defence that he is putting up is a bona fide or a sham defence. In the context of a criminal case, barring the evidence of a truthful eye witness, only the accused person would know whether he is indeed guilty of the offence charged.

From the Islamic perspective, Allah commands that judges judge a dispute between men with justice. For example in Surah An-Nisa': verse 58:

> "Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer, All-Seer."

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* Judge of the Court of Appeal.

However, insofar as the integrity of judges is concerned, it is accepted that judges are honest and upright people. Hence, (whilst there are sayings of the Prophet Muhammad, peace be upon him) we do not find any verse in the Quran on punishment or sanction against judges for accepting bribes. But there are verses on integrity of litigants and witnesses, for example in Surah Al-Baqarah: verse 188:

> "And eat up not one another's property unjustly (in any illegal way, e.g. stealing, robbing, deceiving), nor give bribery to the rulers (judges before presenting your cases) that you may eat up a part of the property of others sinfully."

Al-Baqarah: verse 282:

> "O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you. Let not the scribe refuse to write as Allah has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is of poor understanding, or weak, or is unable to dictate for himself, then let his guardian dictate in justice. And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such that you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called (for evidence). You should not become weary to write it (your contract) whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, except when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract. Let neither scribe nor witness suffer any harm, but if you do (such harm), it would be wickedness in you. So be afraid of Allah; and Allah teaches you and Allah is All-Knower of everything."

Al-Baqarah: verse 283:

> "And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging), then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully), and let him be afraid of Allah, his Lord. And conceal not the evidence, for he who hides it, surely, his heart is sinful. And Allah is All-Knower of what you do."

Al Maidah: verse 8:

> "O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice: Be just: that is nearer to piety; and fear Allah. Verily, Allah is Well-Acquainted with what you do."

An-Nisa': verse 135:

> "O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents or your kin, be he rich or poor, Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is ever Well-Acquainted with what you do."

Al-An'am: verse 152:

> "And come not near to the orphan's property, except to improve it, until he (or she) attains the age of full strength; and give full measure and full weight with justice. We burden not any person, but that which he can bear. And whenever you give your word, say the truth even if a near relative is concerned, and fulfill the Covenant of Allah. This He commands you, that you may remember."

What about lawyers? The conduct of lawyers who deceived the court and in doing so had broken the trust and confidence which the court placed on them as lawyers, had found its way into the law journal. In *Jaginder Singh & Ors v The Attorney-General*

[1983] 1 CLJ 69, three appellants who are lawyers and defendants in the High Court appealed to the Federal Court against their convictions and sentences for contempt of Court for misleading the trial judge. Although the Federal Court set aside the order of contempt of Court due to among others, the learned judge's failure to make plain to the appellants the specific nature of the charges and the opportunity to give them a fair hearing, I find the following reproduction by Raja Azlan Shah Acting LP of the judgment of the High Court worth noting:

> "The defendants' misdeeds are acts of contempt of the worst kind that the Court can possibly think of; because in seeking to achieve their evil end and insatiable greed they made the Court the subject of their deception and mischief. ... The Court can dispense with justice only if Counsel will not mislead, otherwise justice will suffer from the infirmity of the Court itself being devoid of justice. People seldom pause to ask sometimes what safety the ordinary individual has in the hands of the lawyers if the Court itself, in which he seeks redress is no longer safe to be in the same hands."

In *Cheah Cheng Hoc v Public Prosecutor* [1986] 1 MLJ 299, Lee Hun Hoe C.J. (Borneo) said:

> "It is very important for counsel to remember that whatever may be his duty to his client his duty to the court remains paramount in the administration of justice."

On 22 January 2013, The Star Online reported "Lawyers behind corrupt judges?" where Shaila Koshy wrote:

> KUALA LUMPUR: Behind a corrupt judge, there is usually a lawyer. "I agree, it is likely; not always, but likely," said Malaysian Bar President Lim Chee Wee. He said this when asked whether it would be true to say there were lawyers behind corrupt judges. He said the Bar Council was going to take action against a lawyer allegedly involved in bribing a Court of Appeal judge who has since retired. He added that they would also be able to take disciplinary action against such a judge, if he or she was now practising as a lawyer.
>
> At the Opening of the Legal Year on Jan 12, Chief Justice Tun Arifin Zakaria had asked lawyers and the public "to restrain from corrupting" the judiciary, stressing that both the giver and the taker were equally guilty.
>
> In the last two weeks, the Bar has referred cases of alleged corruption to the Malaysian Anti-Corruption Commission involving the said retired judge, non-court proceedings, and two sitting High Court judges.
>
> "We are aware of serious hints of corruption involving lawyers as givers or facilitators," said Lim.
>
> Regardless of whether it constitutes a crime, he gave an assurance that if there was prima facie evidence of professional misconduct, the council would act against them.
>
> On whether the council had ever taken action since allegations of lawyers offering bribes are not new, Lim replied there was a pending complaint at the Disciplinary Board.
>
> "It involves a bribe to court staff as an inducement to expedite extraction of a draft order, which is an offence under s.11(b) of the 1997 Anti-Corruption Act."
>
> Lim urged the public who hear lawyers boasting of their "extraordinary influence" with judges to report them to MACC or e-mail the council at president@malaysianbar.org.my or call 03-20502013.
>
> He added there were also non-lawyers and some business people who seemed to suggest the judiciary could be bought.
>
> However, Lim was confident that Arifin, MACC commissioner, Attorney-General and council can ensure "Malaysian justice is not for sale ... but it dispensed with

integrity, intelligence and without influence or interference".

More than five (5) years have passed since the above was reported in The Star Online and since the Bar was reported to have referred cases of alleged corruption in the Judiciary to the Malaysian Anti-Corruption Commission. We have yet to hear any retired or sitting judge being charged for the alleged corruption.

Are Malaysian judges corrupt at all? Have lawyers given assurances to clients that they can win their cases in court by bribing the judges? Have clients paid the lawyers or some other third parties for that purpose with judges having no clue that their names have been used? Is corruption in the Malaysian Judiciary real and prevalent or is it more a matter of perception?

I pause to make a distinction between the Judiciary which comprises judges in the superior courts i.e. the Federal Court, the Court of Appeal and the High Court, and the magistrates and sessions court judges who are in the subordinate courts. While there had been cases of magistrates being charged and convicted of corruption (see for example *PP v Thavananthan* [1994] 2 MLJ 436), there is not a single reported case of a superior court judge being arraigned for corruption.

As of now, in the absence of any charge against a sitting or retired judge, we do not have evidence of corruption and it remains mere allegation that judges are corrupt. What we do have as of now though, is a reported murder case which will shed some light on whether corruption is real or otherwise.

Four men acting in concert, had taken the life of Heng Pang Kiat ("Heng") and had almost caused Chong Chiew Nam ("Chong") to lose his life too. Chong, who was a former government servant attached to the High Court, was slashed at the front and rear of the neck. He survived to tell the following tale.

Foo Sam Ming ("Foo") was a lawyer. He was also a businessman and a former police officer. Foo was personally sued by a firm of architectural and development consultants. Foo lost the civil suit in the High Court. Dissatisfied with the High Court's decision, Foo filed an appeal to the Court of Appeal. And Foo wanted a favourable outcome in the Court of Appeal.

Foo approached Chong to arrange for the fixing of a suitable coram in the Court of Appeal who would decide in his favour. Foo agreed to pay Chong RM10,000.00. After the appeal was heard and while the decision was pending, Foo again approached Chong and asked whether Chong could arrange for a favourable decision. As consideration for a favourable decision, Foo offered to pay an up-front payment of RM200,000.00 and a deposit of RM300,000.00 in Oriental Bank, Johor Bahru.

Chong collected the up-front payment of RM200,000.00 from Foo at Ampang Condominium, Kuala Lumpur. The amount of RM300,000.00 was placed by Foo in a safe deposit box in Oriental Bank, Johor Bahru in the joint name of Chong and Jagjeet Singh a/l Mewa Singh. Jagjeet Singh was an employee of Foo.

While the decision of the Court of Appeal was still pending, Heng, a good friend of Chong, managed to persuade Chong to withdraw the deposit. With the help of a Sikh imposter, Chong and Heng deceived the Oriental Bank's officer who allowed them to open the safe deposit box and to take out the RM300,000.00. RM107,000.00 was taken by Heng and the balance by Chong who thereafter gambled it away.

The above facts were reported in *Manikumar a/l Sinnapan & Ors v Public Prosecutor* [2016] 12 MLJ 1 where four accused persons were charged with Foo for the murder of Heng and for the attempted murder of Chong. The four were convicted and sentenced to death by the High Court. The convictions and sentences were affirmed by the Court of Appeal and the Federal Court. Foo did not stand trial. He died a month after the murder. It was said that Foo fled to Australia and committed suicide.

To me, the facts revealed in the above case is a clear example that in reality, judges do not have a clue that monies have been paid purportedly for them to decide in a certain way. As demonstrated in Foo's case, it was not the judges who asked for money to decide in Foo's favour. It was Foo who offered to pay, and it was not even paid to the judges. One must be reminded that there will be no takers without the givers. Only God knows, in how many other cases had monies passed hands, not because the judges asked for the bribe but because the givers had been hoodwinked by some

dishonest people using judges' names. Whoever the givers are, they are utterly under the wrong impression that money could determine the outcome of their cases, as evident by Foo's case where his appeal was unanimously dismissed by the Court of Appeal, the coram consisting of Gopal Sri Ram JCA, Siti Norma Yaacob JCA and Mokhtar Sidin JCA. (see *Foo Sam Ming v Archi Environ Partnership* [2004] 1 CLJ 759)

Having judges with high integrity alone is not sufficient to dispense justice if witnesses are 'corrupt'. Of course judges are guided by principles of law on how to assess the oral evidence of a witness, namely whether a witness contradicts himself on material points; whether he contradicts himself with undisputed fact or contemporaneous document or independent witness or whether his evidence is inherently improbable in itself. Judges are also guided by the principle that the safer approach is always to test the oral evidence of a witness against the contemporaneous document because contemporaneous document would have greater evidential value than the oral testimony of a witness (see *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229; *Yeo Liong Ho v Loh Choon Hooi* [2010] 2 CLJ 580). But the courts certainly need honest and truthful witnesses not witnesses who come to court concocting stories, or deliberately evading questions by falsely swearing that he has no recollection, or witnesses who come to court giving false evidence.

Many would remember the murder of beauty queen Jean Perera in 1979 where her brother in law, Karthigesu was charged with the offence. The prosecution's case against Karthigesu rested mainly on circumstantial evidence and the statements of Bhandulananda Jayatilake, where Bhandulananda's testimony provided the main link which implicated Karthigesu in the murder. The High Court found Karthigesu guilty and sentenced him to death.

When Karthigesu's appeal came up before the Federal Court, he successfully obtained leave to adduce fresh evidence. The fresh evidence was to come from Bhandulananda. Whilst giving fresh evidence, Bhandulananda confessed that he had told lies when implicating Karthigesu in the High Court trial. He said that he was asked by Jean Pereira's mother and brother and by a police officer and said that he agreed to lie in court because he was then under mental stress. The Federal Court allowed Karthigesu's appeal and set aside the sentence of death.

Bhandulananda Jayatilake was later charged for giving false evidence with intent to procure Karthigesu's conviction. He pleaded guilty to the charge (see *Public Prosecutor v Bhandulananda Jayatilake* [1981] 2 MLJ 354). In imposing a sentence of 10 years imprisonment, the learned judge considered the seriousness of the offence. His Lordship Ajaib Singh J said:

> "Witnesses giving evidence in court must never underrate the importance of speaking the truth. A court of justice is the sanctuary of truth where serious issues of law and fact are heard and determined. The law prescribes that witnesses on oath must tell the truth, the whole truth and nothing but the truth. True testimony alone will assist the court in arriving at a true verdict. It is most important therefore that people who appear as witnesses in court should never deviate from the truth for otherwise they would be polluting the administration of justice and thus committing a serious wrong to the court and to society. The obligation imposed on a witness to speak the truth under oath has the sanction of law. And very likely of religion as well. An oath which a witness takes in court is a solemn declaration by which the witness may well be invoking the wrath and vengeance of God in addition to any punishment which may be inflicted on him under the laws of the land if he does not speak the truth.
>
> ... The accused was bound under oath to speak the truth. But he obviously had no intention whatsoever of respecting the sanctity of oath. Instead he deliberately perverted the cause of justice by deceiving and misleading the judge and jury with his false evidence."

Bhandulananda was not happy with the sentence. He appealed to the Federal Court (see [1982] 1 MLJ 83). In dismissing Bhandulananda's appeal, Raja Azlan Shah Ag. LP said:

The marble plaque resting on a stone pedestal is placed at a corner adjoining the grand lobby. Palace of Justice

Engraved on this elegant white marble plaque is the Quranic reminder: "Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice" An-Nisa: verse 58

> "It cannot be gainsaid that the appellant had shown a wanton disregard for truth. The sanctity of an oath meant nothing to him. We therefore conclude that he had acted with malice and with the direct object of bringing the administration of justice into disrepute.
>
> ... It is a serious offence to give false testimony, for it is in the public interest that the search for truth should, in general and always, be unfettered."

In *Bok Chek Thou & Anor v Low Swee Boon & Anor* [1998] 4 MLJ 342, both the plaintiffs were found guilty and fined RM300 each for contempt in the face of the court. Both had admitted to having lied when giving evidence in court, in utter disregard for the truth, calculated to interfere with the due administration of justice.

Having had reported cases on dishonest lawyers, litigants and witnesses, why is it that the focus has always been solely on judges?

To my mind, this is because there is only one winner after judges passed judgment. The losing party will invariably be unhappy and some may be a very sore loser. When a losing party cannot take defeat, instead of resigning to the fact that they lost because the evidence was probably insufficient or because the law was not on their side, they hurled criticisms and allegations against judges.

By tradition, judges do not respond to criticism and allegation. Tun Hamid Mohamad, Chief Justice as he then was, remarked (see speech of the Chief Justice at the Malaysian Judges' Conference 2008 at Marriot Putrajaya 8-11 April 2008):

> "Sometime, I wonder whether Judges, who are expected to ensure that everyone who appears before them be treated fairly and be given the right to be heard should not themselves have the same rights. Are they not "members of the public" too? Of course, I am not advocating a departure from the established tradition."

We judges are however not perturbed by allegations and criticisms. Except for the concerns that any attack on the Judiciary undermines the confidence of the public in this Institution (see speech of the then Chief Justice Tun Arifin Zakaria at the Opening of the Legal Year 2015 on 10 January 2015), it matters not what others say or think of us, so long as our conscience remains clear.

On a personal note, in 2007, I dismissed summarily a defamation suit filed by Dato' Seri Anwar Ibrahim against Tun Dr Mahathir Mohamad (see [2007] 5 MLJ 406). Aggrieved, Dato' Seri Anwar filed an appeal to the Court of Appeal. In 2009, after the Court of Appeal dismissed Dato' Seri Anwar's appeal (see [2010] 2 MLJ 41), a sister judge forwarded me an article in Malaysiakini News, entitled "Anwar vs Dr M Libel Suit: Was the Outcome Fixed?" where I was alleged to decide the case in a way that the then Chief Justice directed me to. The article also stated that the lawyer implicated in the infamous video-tape judge fixing scandal had written the judgment on my behalf and that a prominent lawyer had written to the Anti-Corruption Agency (now Malaysian Anti-Corruption Commission) to lodge a complaint on the possibility of improper practices on my part. In his letter to the Anti-Corruption Agency, the prominent lawyer had questioned my elevation as a High Court judge. The irony is that, a few years later, when I decided a case against the Government of the day, the same prominent lawyer who had suspected my integrity and had lodged a report against me, wanted to speak to me, to congratulate me on the decision.

The work of a judge is daunting. Instead of brooding over what the public think and say of me, I would rather channel my time and energy to strive and work hard: to dispose cases and write grounds of judgment on time. I am forever guided by what Tun Dzaiddin (then Chief Justice) said at Singapore Law Review Lecture 2002 of his expectation of a judge:

> "What we need are judges who ... have wide knowledge of law and are competent. They need not necessarily be brilliant losing their way with the innumerable issues they themselves bring up in a case all through

trial. I have seen this happen when a judge gets hopelessly bogged down in a tangle of issues his brilliant mind sees and is unable to resolve and to give a judgment on time ...

I must stress that there is a high premium I would place on the common sense of judges especially in respect of them dealing with trials which means of course they must have a vast experience of human nature. I would also be hesitant to place much hope on a person who talks too much. He will probably be talking too much on the bench interrupting counsel and witnesses and generally disrupting the smooth flow of the trial. Nor would I think of a person for appointment of judges who cannot wait to display his knowledge of the law every moment and has not the gift of wise silence. Indeed one of the qualities of a good judge is to be patient to hear out the case before him.

I would look for a hardworking man or woman as the volume of work in any court is heavy and a judge who cannot cope no matter what system for clearing cases is introduced, is a burden to his colleagues and to the judicial system.

... I need a person who is honest, impartial and who is able to discount his prejudices whatever they are and whether they relate to race, religion or politics."

No one can deny that judges have a very heavy workload. Post 14th General Election on 9 May 2018, GK Ganesan Kasinathan, a lawyer, wrote on "Time to Rebuild the Malaysian Judiciary" which was published by Malaysiakini News on 19 May 2018. Among others, he said:

"On a daily basis, the judge has to read some 20 main submissions and 10 replies. Each would be about 20 pages long. Every single day, a judge has to read not only the cause papers but also 200 pages of arguments. He or she has to analyse case law. These run into tens of pages. That is at least about 600 pages. Additionally, at the end of an exhausting day, he or she has to write a judgement from 10 to 30 pages long. It cannot be done. No one can do it. I defy any member of the Bar to try it.

So judges don't usually read. ..."

Whilst GK Ganesan is correct on the volume of work, he is not quite correct to say that 'judges don't usually read'. Contrary to what he said, and I can vouch for many of my sister and brother judges, we do read the cause papers and the submissions. It seemed impossible but we managed. It is just not right for us to decide without understanding the matter before us and understanding must surely begin by reading.

The public tend to equate justice with judgment in favour of the poor over the rich, the weak over the strong, the *rakyat* or the Opposition over the Government. That certainly is not the yardstick for justice. A wrong is a wrong regardless of whether it is committed by the rich or the poor, the weak or the strong, the *rakyat* or the Opposition, or the Government. But perhaps the public could be forgiven for not understanding the reasoning and the certain set of principles that we judges need to undertake and adhere to in arriving at our judgments.

It is high time that the public be jolted and realize that ultimately if one talks about justice, it is not about the integrity of judges alone. It has to be about the integrity of the lawyers, the litigants and the witnesses as well, because to decide justly, judges need the truth from them. Justice can only be dispensed if the integrity of everyone involved is beyond reproach. Likewise, should the administration of justice be polluted or be brought into disrepute, the fault lies not on the Judiciary alone, but on all other stakeholders of the administration of justice.

For the sake of not only the Judiciary but the Nation, it is also time that we judges be accorded some justice too, such that should there be a slightest hint of corruption in the Judiciary, investigations must be done; and done professionally and fairly and action taken to eradicate it. Flying letters and poison-pen letters won't do. We ought not to be maligned with impunity without due process.

AN OVERVIEW OF THE INSURERS' LIABILITY TO THIRD PARTIES

By Justice Wong Chee Lin*

The Road Transport Act 1987 [*Act 333*] ("RTA") is a piece of legislation aimed for regulation of motor vehicles, traffic, roads, control and coordination of facilities of transport and most importantly, protection of third parties against risks stemming from usage of motor vehicles.[1] Part IV of the RTA governs the provisions for motor vehicle users to mandatorily have a valid and in force policy of insurance against the risks of bodily injury and death to third parties. Section 90(1) of the Act makes it a criminal offence for motor vehicle users not to be insured against third party risks.

With a valid and enforceable policy insurance by the motor vehicle users, it shall then be the responsibility of the insurance companies or better known as the insurers to satisfy judgments against persons insured in respect of third party risks. The statutory duty is embodied in section 96 of the RTA. For better understanding of the section, it is reproduced *in extenso* as follows:

"96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks

(1) *If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.*

(2) *No sum shall be payable by an insurer under subsection (1) –*

(a) *In respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the proceedings.*

...

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* Judge of the High Court in Malaya.

1 The Road Transport Act 1987 commenced on 1 January 1988 via P.U. (B) 694/1987.

(3) *No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable:*

Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the grounds on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto."

Despite at the outset, section 96 seems to provide a wholesome protection to third parties for monetary compensation by the insurer against death or bodily injury sustained, the insurer under subsection (3) has the right to avoid such statutory liability through a court declaration on the grounds that the insurance policy is either void or unenforceable.

Insurance policy is stipulated under section 91 of the RTA, which reads as follows:

"91. Requirements in respect of policies

In order to comply with the requirements of this Part, a policy of insurance must be a policy which –

(a) *is issued by a person who is an authorised insurer within the meaning of this Part; and*

(b) *insures such person, or class of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road;*

Provided that such policy shall not be required to cover -

(aa) liability in respect of the death arising out of and in the course of his employment of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment; or

(bb) except in the case of a motor vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, liability in respect of the death of or bodily injury to persons being carried in or upon or entering or getting onto or alighting from the motor vehicle at the time of the occurrence of the event out of which the claims arise..."

The term void or unenforceable is very wide in law and covers plethora of factual circumstances from case to case basis. This modest article is an endeavour to set out some of those case examples which were decided by the courts in relation to section 96(3) of the RTA and some relating to section 96(1) of the RTA also.

Situation of negligence coupled with a declaration by the insurer under section 96(3) came before the court in the case of *Tirumeniyar a/l Singara Veloo v Malaysian Motor Insurance Pool*.[2] This is a case where the victim of the accident was a lorry attendant in the lorry being driven by an authorised driver of the insured. Both the actors in this case were the employees of the insured. The insurer under the insurance policy had agreed to indemnify both the insured as well as the authorised driver handling the motor vehicle but excluded liability for death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

2 [2017] 6 MLJ 776.

The High Court granted the declaration sought by the insurer, making the insurance policy to be void and unenforceable but later the decision was reversed by the Court of Appeal. The Court of Appeal stated that it was important to note in that case, the tortfeasor was the authorised driver of the insured who will be liable to the victim if found liable under the general law of negligence. The policy terms specifically state that it will indemnify the authorised driver. That is to say, not only the policy covered the relationship between the insured and the insurer but over and above that, it extends the coverage also to an authorised driver. The Court of Appeal held that:

> *"...if the insurer wants to give extended cover such as to cover the negligence of the (authorised driver) there is no prohibition under the RTA. This distinction must be kept in mind. Support for the proposition is found in books and case laws. To name a few are as follows:*
>
> *Learned author S Santhana Dass in his book 'The Law of Motor Insurance' (2010) Marsden Law Book, Kuala Lumpur, at page 107 observes:*
>
> *"If a person is travelling in a motor vehicle driven by the insured, arising out of and in the course of his employment with the insured, the policy does not cover him if he is so injured or in case of his death.*
>
> *However, if the motor vehicle was at all material times driven by the authorised driver and not the insured and the authorised driver is a party to the suit, then the insurer, by virtue of the authorised driver's clause in the policy will be liable as they have agreed under the policy to indemnify the authorised driver as though he was the insured and was separately covered under the terms of the policy. As the passenger is not an employee of the authorised driver, the above "employee" exception will not apply."*
>
> *In Halsbury's Laws of England 3rd edn Vol 22 pg 361 observes:*
>
> *"Even if a policy has an exclusion of liability for injuries sustained in the course of his employment by an employee of the insured, this exclusion is, so far as a permitted driver is concerned quite ineffective; if a driver and his passenger are fellow employees of the insured, the passenger is not the employee of the driver. The passenger can, therefore, obtain compensation from the insurance company if he is injured by the driver's negligence, notwithstanding the exclusion of injuries sustained by the employee of the assured, if there is a permitted driver clause and he sues the driver rather than his employer."*

It was held that the terms of the insurance contract has at least two contracts of insurance, one contract with the policy holder and another with such person driving on the policy holder's order or with his permission.[3] Accordingly, since the victim was not an employee of the authorised driver and he is also insured under the policy, he is entitled to recover against the insurer and the insurer should accordingly be denied the declaration sought.

An insured's liability in respect of the death of or bodily injury to his passenger is excluded from coverage by the compulsory motor insurance policy unless the passenger is "carried for hire or reward or by reason of or in pursuance of a contract of employment.". The insured's passenger has no right to recover from the insurer any judgment sum awarded in his favour in an action instituted against the negligent insured driver. An insurer's statutory liability to satisfy a judgment obtained by a third party against the insured or his driver arises only if the risk which has taken place if one which is required by law to be covered by a policy of insurance. If the law allows the insurer to exclude liability for a particular risk, the insurer cannot then be held statutorily liable to a third party if the insurer had expressly excluded coverage of such a risk in the policy of insurance.

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3 *Manap bin Mat v General Accident Fire & Life Assurance Corpn Ltd* [1971] 1 MLJ 134.

This issue was addressed by the Federal Court in the case of *Sinnadorai v New Zealand Insurance Co Ltd.*[4] Here, the plaintiff was injured in an accident while he was travelling as a passenger in a car driven by the insured. The insured died. The insured's motor insurance policy covered passenger liability. Having obtained judgment against the insured, the plaintiff sought to enforce it against the insurer. The court held that section 80(1) of the Road Traffic Ordinance 1958[5] which imposes a duty on the insurers to satisfy judgments against person insured in respect of third party risks had no application to a claim by a passenger. A passenger in a private vehicle was disentitled from relying on the provision which only confers statutory benefits in cases where third party cover is made compulsory under the Act. Hence it is not mandatory for a driver of a private motor vehicle to procure insurance coverage for passenger liability. It is also crucial to note that the present section 96(3) of the RTA contains a wider scope than its predecessor section 80(3) of the Road Traffic Ordinance 1958 wherein section 80(3)'s usage was only limited to circumstances of procuring an insurance policy with non-disclosure of a material fact or false representation of a material fact.

In contrast to the position in Malaysia, the law in Singapore makes it mandatory that the compulsory third party motor policy must cover the insured's liability to his passengers. A policy which excludes liability in respect of passengers shall be void and have no effect. This is no doubt of a wider and holistic approach for the protection of motor vehicle passengers.

Passengers who obtain free lifts will not be covered by the insurance policy unless there was a term in their contract of employment that requires them to travel in the insured's motor vehicle.[6] The contract of employment need not be restricted to the insured but can be with another employer.[7]

The position of the law relating to a passenger who was self-employed or an independent contractor travelling in the insured's vehicle was considered by the Federal Court in the case of *Mary Colete John v South East Asia Insurance Bhd.*[8] The issue raised was whether the plaintiff at the material time was carried in the insured's vehicle as a passenger by reason of a contract of employment or in pursuance of a contract of employment.

In dismissing the plaintiff's claim, the court found on the facts that the plaintiff was plainly an independent contractor. She was self-employed and the contract between her and the insured was a contract for service as opposed to a contract of service. The court concluded that the plaintiff was not carried in the vehicle by reason of or in pursuance of a contract of employment. Neither she was an employee of anyone and thus she could not have been carried by reason of or in pursuance of a contract of employment.

An issue which always arises in applications under section 96(3) and which in the view of the author does not appear to have been settled conclusively by the courts relates to the quality of the evidence invariably adduced by the insurer claimant. Invariably, the deponent of the insurer will rely on the findings of its loss adjuster who in turns interviews those involved in the accident, usually the insured and the driver. Usually the police report lodged by the driver will be exhibited and sometimes a Statutory Declaration signed by the insured. For instance, it is common for an insurer to file a section 96(3) application on the basis that in fact the insured vehicle was not involved in the accident at all. What normally happens is that the insured, either in collusion with the victim or out of sympathy, would lodge a police report saying that his vehicle was involved in an accident. Later on, the insured would file another police report to retract his earlier police report and sign a Statutory Declaration to say that he was asked to lodge a police report saying that his vehicle was involved in the accident by someone acting on behalf of an unknown person but that actually his vehicle was not involved in any accident at all.

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4 [1969] 1 LNS 119.
5 Section 91 of the RTA.
6 *Tan Keng Hong & Anor v New India Assurance Co Ltd* [1977] 1 LNS 130.
7 *Union Insurance (Malaysia) Sdn Bhd v Chan You Young* [1999] 2 CLJ 517; *The People's Insurance Company (Malaysia) Bhd v Ting Tiew Kiong* [2007] 5 CLJ 225.
8 [2010] 8 CLJ 129.

Based on these documents and information, the insurer will file a section 96(3) application to avoid the policy based on fraud on the part of the insured and breach of his duty of utmost good faith.

What cannot be denied is that the evidence adduced by the insurer is necessarily hearsay evidence and affidavit evidence containing hearsay matters is inadmissible with the exception of interlocutory matters where it is admissible provided that the sources and grounds are disclosed.[9] However, the courts have not uniformly dismissed such applications on the basis that the evidence relied upon by the claimant is inadmissible hearsay. In *Allianz General Insurance Company (M) Bhd v Rajah a/l Batumalai & Anor*[10] the High Court in dealing with an argument of hearsay evidence said:

"[14] I do not think the absence of what the Second Defendant refers to as direct evidence impairs the substance of the Plaintiff's application. It cannot be disputed that the First Defendant had signed the Claim Discharge Voucher and furnished all documents of title of the Vehicle to the former insurer. He had made a police report denying any involvement of road collision with the Second Defendant, and even affirmed a statutory declaration to that effect. There is no suggestion by the Second Defendant that any of these documents is not genuine or authentic. The refusal by the First Defendant to affirm an affidavit to further confirm these documents cannot form a basis to deny the Plaintiff's right to the declaration under section 96(3) of the RTA."

In cases where the insured's vehicle was not actually involved in the accident, the courts have been ready to grant declarations under section 96(3) of the RTA that the policy is unenforceable and void. The disclosure made was tainted with mala fide for the purposes of unjust enrichment against the insurer. In the case of *Pacific & Orient Insurance Co Bhd v Vigneswaran a/l Rajarethinam & 2 Ors*[11] where the insured's vehicle was not in fact involved in the collision but the insured had filed a police report stating that it was involved in the collision and thereafter retracted his police report, the High Court held as follows:

"(c) Fraud/breach of duty of good faith

[23] A contract of insurance is a contract which is uberrimae fidei. In plain English this means that it is a contract where the parties are under a duty to exercise the utmost good faith.

[24] This duty exists throughout the tenure of the contract and must be complied with by both the insurer and the insured (excerpt from Principles of Insurance Law by Poh Choo Chai, 5th edn. P 159).

3) Duty of Good Faith

[25] Aside from the duty to disclose material facts to the insurer, there is also a duty on the insured to act in good faith when dealing with the insurer.

[26] Thus in the present case, where the first defendant (insured) has allowed or facilitated the falsification of a claim to be made against the plaintiff (insurers) he (first defendant) is clearly acting in bad faith/dishonestly and has breached his duty under the policy.

[27] Such conduct on the part of the first defendant (insured) entitles the plaintiff (insurers) to not only repudiate liability under the policy but also to avoid the policy."

Transfer of interest upon sale of car

Another issue which does not seem to have been dealt with by the courts is the distinction between a case wherein a particular claim in respect of a

9 *Wong Hong Toy & Anor v Public Prosecutor* [1988] 2 MLJ 553.
10 [2017] 8 AMR 647.
11 [2013] 2 AMCR 736.

particular accident is not covered by the policy due to whatsoever reason and a case where the policy itself is unenforceable and *void ab initio*. For instance, in a case where the vehicle was driven by an unauthorised person, it seems to strain the use of the English language to say that the policy itself is void or unenforceable as opposed to saying that the claim is not one that is properly covered by the policy. However, the wording of section 96(3) is to the effect that the policy is to be declared unenforceable and void. So one will have cases where what is in fact intended to be claimed by the insurer is a declaration that the policy is void only insofar as it pertains to the accident in question and not a case where the policy itself is void or unenforceable and such orders are granted by the Court.

A number of cases which come before the courts involve vehicles which the owner/insured had already sold to a third party but there is no change of ownership effected in the registration card with the Jabatan Pengangkutan Jalan ("JPJ") and the third party owners continues to effect the insurance in the name of the original owner/insured. This is a prevalent situation nowadays. In a number of cases the courts have allowed the insurer to obtain a declaration that the insurance policy is unenforceable and void in those circumstances as it was held that the owner no longer has any insurable interest in the vehicle the moment he had sold it to a third party and so the policy is void.

However, in the Court of Appeal case of *Muhamad Haqimie Hasim and Another v Pacific & Orient Insurance Co Berhad (Haqimie's case)*,[12] the facts were that one Normala, the insured, had purchased the vehicle and allowed an Indian national one Latif to utilise the vehicle. Latif apparently later sold the vehicle to one Lalmiya in or around 2010. The insurance policy was taken out by Normala on 4.9.2010 until 4.9.2011 and the accident happened on 23.6.2011 when the vehicle was driven by Lalmiya. The High Court Judge had affirmed the decision of the Sessions Court Judge in holding that the insurer was not liable to the plaintiff by reason of the insured having contravened a term of the policy of insurance. Essentially the Sessions Court Judge found that the driver of the vehicle at the time of the accident, Lalmiya, was not authorised by the insured Normala, to drive the vehicle.

The Plaintiff's complaint was that the insurance company was liable and not absolved by the alleged sale of the vehicle because the transfer of ownership pursuant to the alleged sale of the vehicle was not registered as required under section 13 of the RTA.

The Plaintiff also relied on section 109 of the RTA which provided:

> *"For the purpose of any prosecution or proceedings under this Act, the registered owner of a motor vehicle shall be deemed to be the owner of that motor vehicle.*
>
> *Except where otherwise required by this Act, any act or omission by whoever was the driver of a motor vehicle at the material time, shall for the purpose of any prosecution or proceedings under this Act be deemed to be the act or omission of the registered owner unless he satisfies the court that he took all reasonable steps and precautions to prevent such act or omission.*
>
> *Provided that this sub-section shall not apply to an act or omission of a person in driving a motor vehicle in contravention of sections 41 to 49."*

As against this, counsel for the insurance company maintained that there was clear evidence of a sale of the vehicle, which resulted in an effective transfer of interest rendering the insurance policy ineffective for having lapsed. Further, there could not be an assignment of the policy to a third party because an insurance policy is a contract of personal indemnity and the insurers cannot be compelled to accept liability in respect of a third party who is unknown to them. It was further contended that Lalmiya was not an authorised driver because Normala did not know that he was driving the vehicle. Neither was he a servant or agent of Normala. The policy of insurance only covered the insured and the authorised driver.

12 [2018] 1 LNS 627.

The Court of Appeal allowed the appeal and held the insurer liable for the following reasons:

(i) The central issue for consideration was whether the alleged transfer of interest from Normala to Lalmiya had the effect of rendering the policy ineffective or causing it to lapse;

(ii) Section 13 of the RTA sets out the procedure to be adopted upon change of possession upon transfer pursuant to a sale. It required the new possessor or new owner to register himself within seven days of such change of possession. This was not done in the instant case.

(iii) Section 109(1) deems the registered owner to be the owner of that vehicle for the purpose of any *inter alia* proceedings under the RTA. The current proceedings fall within the RTA.

(iv) Accordingly, Normala was deemed to be the registered owner of the vehicle, not Lalmiya. There was therefore no transfer of interest from Normala to Lalmiya by operation of law.

(v) Therefore Normala remained the insured for the purposes of the accident. As such it would follow that the insurer remained liable to compensate the Plaintiffs for any injuries suffered as a consequence of the accident. That was the primary function of this part of the RTA.

(vi) Sections 94 and 95 of the RTA provide that conditions in a policy of insurance are deemed to be of no effect, again by operation of law, in relation to liability of the insurers to third parties.

(vii) Section 94 provided that any condition in a policy issued providing that no liability shall arise under that policy or that any liability so arising shall cease in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy shall be of no effect in connection with claims under section 91(1)(b).

A similar position was followed in a recent case of *Aqmal Dakhirrudin v Azhar Ahmad and Malaysia Motor Insurance Pool.*[13] This case is an appeal from the High Court of Shah Alam whereby the learned Judge allowed the insurer's application to seek declaration that the insurance certificate policy is void and unenforceable due to the motorcar being sold from the 1st Defendant who is the registered car owner to two other buyers respectively. However, the motorcar was only registered in the name of the second buyer 4 months after the date of the accident upon full payment. The appeal was then allowed by the Court of Appeal and in setting aside the decision of the High Court, the appellate court followed the case of *Haqimie's case* and is of the view that the person whose name is registered in the records of the registering authority shall be deemed to be the owner.

In the book, *The Law of Motor Insurance by Santana Dass*[14] the learned author has taken a similar view stating that the insurer of a motor vehicle will be liable even if the vehicle has been sold before the accident and there was a transfer of interest in the vehicle which the insurance purports to cover unless subsequent insurance has been effected or the insurance was cancelled prior to the accident.

The Court of Appeal is the apex court in the *Haqimie's case* because the case emanated from the Sessions Court but the author understands that a similar issue is pending before the Federal Court. It will be interesting to see if the Federal Court upholds the decision in *Haqimie's case*.

In relation to the unauthorised driver issue, the Court of Appeal relied on section 94 but, with respect, that provision states that any condition in a policy providing that no liability shall arise under that policy or that any liablity so arising shall cease in the event of some specified thing being done or omitted to be done "after

13 [2019] 1 LNS 492.
14 Dass, S. S. (2010). *The law of motor insurance*: Marsden Law Book, at page 395 to 396.

the happening of the event giving rise to a claim" shall be of no effect in connection with claims under section 91(1)(b). A condition on authorised drivers does not relate to some specified thing being done or omitted to be done "after the happening of the event giving rise to a claim" and so strictly speaking, the view is that the authorised driver provision should not be of no effect pursuant to section 94.

It can be noted that certain High Court decisions had not followed the decision in *Haqimie's case*. One of the arguments is that the short title which is the precursor to section 109 which reads as follows:

"PART V
OFFENCES AND MISCELLANEOUS PROVISIONS"

The argument is that the whole of Part V including section 109 deals with some form of offence under the Act. As such the meaning ascribed to the word "proceeding" must be read subject to the word "prosecution" as the Act has penal and quasi penal consequences for summons cases. Therefore, using the aid of the ejusdem generis principle, the word "proceeding" must be read together with prosecution or species of prosecution, i.e for summons cases and not for civil proceedings.

Case law support for this argument can be found in the case of *Zulkuflee Bin Mohamad v Mahmudin Bin Arshad*[15] where Wahab Patail J in considering section 109 opined:

> *"Section 109(2) of the Road Transport Act 1987 was cited for the proposition that the act or omission of the driver of a motor car is deemed to be the act or omission of the registered owner of the motor car, unless he satisfies the court that he took all reasonable steps and precautions to prevent such act or omission. The section, however, upon a proper reading, does not support the proposition advanced since the section had specifically provided that the presumption is "shall for the purpose of any prosecution or proceedings under this Act". Clearly it is not intended by Parliament that the presumption be applied to civil proceedings."*

Another argument is that the presumption is rebuttable and in a case where the evidence clearly shows that the car had been sold to another party prior to the date of the accident, there is no insurable interest to begin with.

A vehicle can be sold without a need to have the same registered as the sale and purchase is governed by the Sale of Goods Act 1957 which provides, *inter alia*, that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

A sale of a vehicle is completed once it is transferred to the possession of the new owner; there is no requirement that the sale is only completed once the name of the new owner is imprinted on the registration card as the registration card is not an instrument of title. The Federal Court in the case of *Mohamed Mydin v Ramiah*[16] opined as follows:

> *"As to the question whether the property in the lorry had passed to the plaintiff it is necessary to refer to sections 20 and 21 of the Sale of Goods (Malay States) Ordinance 1957 which read as follows:-*
>
> *"20. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price of the time of delivery of the goods, or both, is postponed.*

15 [1998] MLJU 180.
16 [1965] 1 MLJ 33.

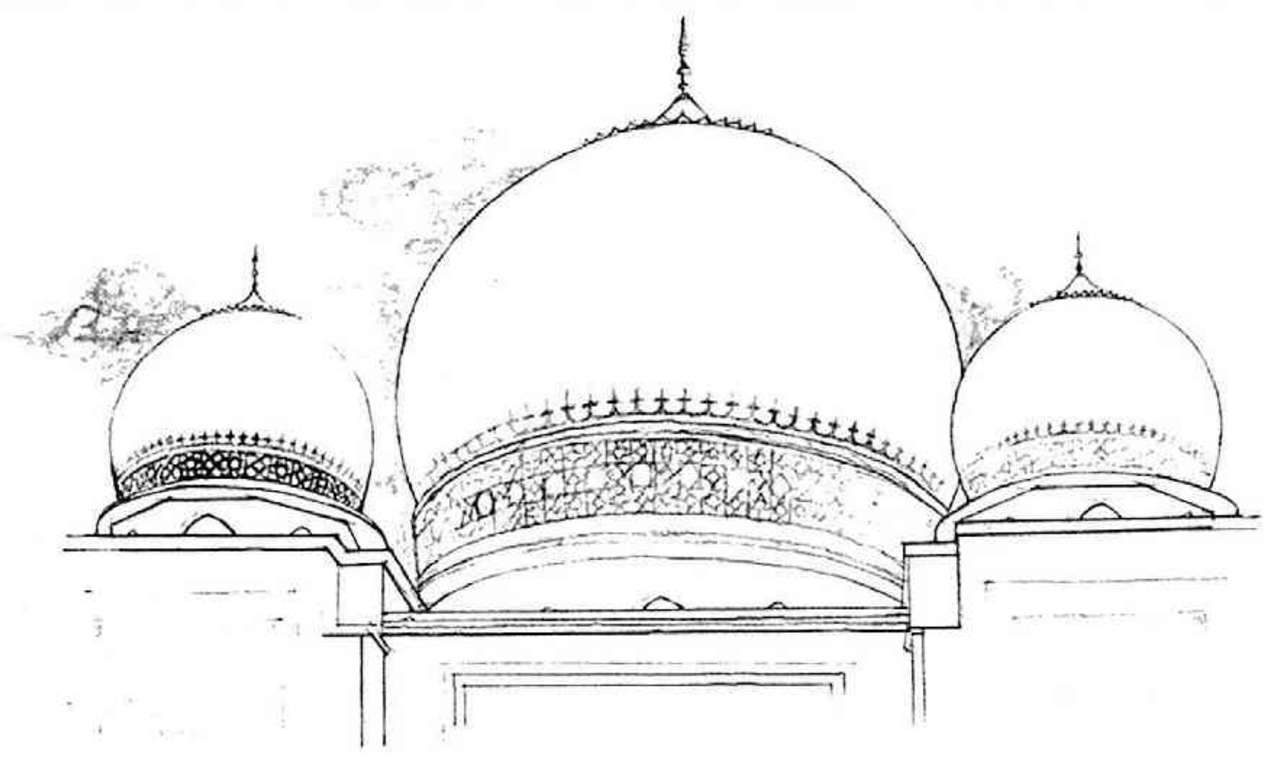
21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them in a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof."

The learned trial judge expressed the view, with which I agree, that the indenture dated the 25th February 1957 was clearly in the nature of an unconditional contract for the sale of specific goods. However, he went on to say that the lorry was not in a deliverable state and gave as a reason for that view the fact that the defendant had not taken the necessary steps to cause the lorry to be registered in the plaintiff's name.

In my opinion, the learned trial judge was unduly concerned with the fact that the registration book was not made available to the plaintiff. There is no doubt that he took this fact into account when he decided that the lorry had not been delivered to the plaintiff and that the property in the lorry had not passed to the plaintiff.

The legal position of the registration book has been considered in several cases. One of these is the case of Sajan Singh v Sardara Ali [1960] MLJ 52 PC where Lord Denning, who delivered the judgment of the Privy Council said (at p. 54):-

"Their Lordships do not overlook the fact that the defendant remained registered as the owner of the lorry and that no permission was given for the sale; but this did not prevent the property in it passing to the plaintiff. The registration book is not in Malaya, any more than it is in England, a document of title. The title passed by the sale and delivery of the lorry to the plaintiff. The absence of registration would no doubt put



The domes of the Palace of Justice

the plaintiff in difficulty if he had to prove his title, but it would not invalidate it, see Bishopsgate Motor Finance Corporation Ltd v Transport Brakes Ltd."

In the case of *New India Assurance Co v Simirah*[17] evidence adduced at the second trial showed that the car was registered in the name of Chua as owner until April 14, 1960 when another name, Lira Ah Kan, took its place, pursuant to a notice of transfer of ownership in the prescribed RIMV form No 5 bearing the date of March 23, 1960. Chua, however, stated that on or about the eve of Chinese new year – which fell that year on January 28 - he had sold and transferred the car for $550 to his neighbour Chong. The latter confirmed that the sale did take place about that date and that shortly after the accident he had resold the vehicle to a third person Lira Ah Kan, in whose name it was subsequently registered as a direct transfer from Chua. It must be noted that before the direct transfer from Chua to Lira Ah Kan which took place on April 14, 1980 the car was sold to Chong who did not register the vehicle in his own name but subsequently on sold it to Lira Ah Kan. The accident took place when the car was in the possession of the "new owner' Chong albeit it was not so registered. The Federal Court held, as per Thompson LP:

"The insurers resisted the claim against them on the ground that prior to the date of the accident Chua Hock Lee had sold the car and delivered it to Chong Swee Peow and that although Chua had handed the insurance documents to Chong this did not amount to an assignment of the benefit of the policy of insurance issued to Chua in respect of the car. Accordingly they were not liable under the policy. If Chua had indeed ceased to be the owner of the car then that was a good defence (see Peters General Accident, Fire & Life Assurance Corporation Ltd [1937] 54 TLR 202 and accordingly the only issue at the trial was whether at the material date, that is 4th February 1960, Chua had ceased to be the owner.

In the event the trial judge decided that the property in the car had not passed from Chua as averred and judgment was accordingly entered for the plaintiff. Against that decision the insurers have now appealed.

I have had the benefit of reading the judgment that has just been delivered by Ong FJ. I agree with his course of reasoning and I agree with the results to which that course of reasoning has compelled him, that is to say that ownership of the car SC 7-44 had at the time of the accident passed to Chong and accordingly that the present appeal must be allowed. In the circumstances it would be otiose to repeat in my own words what has been said by him."

In another Federal Court case of *Roslan Bin Abdullah v New Zealand Insurance Company Co Ltd*,[18] the Court held that the truck was sold, the insurance policy had lapsed unless there was novation of the policy. As the policy was not novated, there was no insurance policy at the time of the accident. Accordingly it was held that the driver of the truck was not covered by the insurance policy.

It is extremely crucial to note that, all the above mentioned Federal Court cases were not referred to in the *Haqimie's case*.

In the *Haqimie's case*, the accident occurred during the currency of the insurance policy taken out by the original owner. The same position as in the Aqmal Dakhirrudin's case.[19]

17 [1966] 2 MLJ 1.
18 [1981] 1 MLRA 445.
19 Supra note 13.

Renewal of insurance policy

What about the scenario where the subsequent albeit unregistered owner took out a renewal of the insurance policy in the name of the original owner without his knowledge or consent and the accident occurred during the currency of the renewed insurance policy? In the case of *Malaysia Motor Insurance Pool v Eastern Moon Enterprise and another*,[20] this point was discussed wherein the original owner was already dead at the time of renewal of the policy and when the accident occurred. The court considered paragraph 5 of Schedule 9 of the Financial Services Act 2013 which states as follows:

> *"Pre-contractual duty of disclosure for consumer insurance contracts*
>
> *Before a consumer insurance contract is entered into or varied, a licensed insurer may request a proposer who is a consumer to answer any specific questions that are relevant to the decision of the insurer whether to accept the risk or not and the rates and terms to be applied.*
>
> *It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed insurer when answering any question under subparagraph (1).*
>
> *Before a consumer insurance contract is renewed, a licensed insurer may either -*
>
> *(a) Request a consumer to answer one or more specific questions in accordance with subparagraph (1); or*
>
> *(b) Give the consumer a copy of any matter previously disclosed by the consumer in relation to the contract and request the consumer to confirm or amend any change to that matter.*
>
> *It is the duty of the consumer to take reasonable care not to make a misrepresentation to the licensed insurer when answering any questions under subsubparagraph (3)(a), or confirming or amending any matter under subsubparagraph (3)(b).*
>
> *If the licensed insurer does not make a request in accordance with subparagraph (1) or (3) as the case may be, compliance with the consumer's duty of disclosure in respect of those subparagraphs, shall be deemed to have been waived by the insurer.*
>
> *Where the consumer fails to answer or gives an incomplete or irrelevant answer to any request by the licensed insurer under subparagraph (1) or subsubparagraph (3)(a) or fails to confirm or amend any matter under subsubparagraph (3)(b), or does so incompletely or provides irrelevant information, as the case may be, and the answer or matter was not pursued further by the insurer, compliance with the consumer's duty of disclosure in respect of the answer or matter shall be deemed to have been waived by the insurer.*
>
> *A licensed insurer shall, before a consumer insurance contact is entered into, varied or renewed, clearly inform the consumer in writing of the consumer's pre-contractual duty of disclosure under this paragraph, and that this duty of disclosure shall continue until the time the contract is entered into, varied or renewed.*
>
> *Subject to subparagraphs (1) and (3), a consumer shall take reasonable care to disclose to the licensed insurer any matter, other than that in relation to subparagraph (1) or (3) , that he knows to be relevant to the decision of the insurer on whether to accept the risk or not and the rates and terms to be applied.*
>
> *Nothing in this Schedule shall affect the duty of utmost good faith to be exercised*

20 [2018] 1 LNS 810.

by a consumer and licensed insurer in their dealings with each other, including the making and paying of a claim, after a contract of insurance has been entered into, varied or renewed."

Notwithstanding the argument put forward that the insurer had waived the insured's duty of disclosure to inform the insurer that the original insured was deceased by not seeking to find out whether the insured was deceased already or not, the Court was of the view that as the original insured was already dead at the material time of the renewal of the policy, the insurer could not validly have renewed the same. Accordingly, the policy was *void ab initio*.

The question then arises what would be the position if the person who renewed the policy in the name of the original owner is not the original owner/insured but the subsequent, albeit unregistered owner. In other words, where there appears to be elements of fraud and concealment of truth involved in the renewal of the insurance policy. Surely it would be a breach of the insured's duty of utmost good faith and uberrimae fidei not to inform the insurer at the time of renewal of the insurance policy that the insured had actually sold the vehicle and was not the one actually insuring the vehicle but the vehicle was being renewed by the subsequent albeit unregistered owner? Should the insurance policy be void on this ground alone? Do the insurers have to ask the purported insured on this issue specifically otherwise there would be a waiver on their part?

The policy in the case of *Allianz General Insurance Company (M) Bhd v Sutakar a/l Supramaniam & Ors*[21] was held to be void and unenforceable where the insurance was renewed when the registered owner was serving a prison term and had no knowledge of the sale of his vehicle nor authorised anyone to apply for the renewal of the insurance policy. The learned Judge found that there is sufficient evidence on the sale of the vehicle prior to the accident, which had the critical effect of divesting the registered owner of any insurable interest in the vehicle.

Therefore, it is the humble opinion of the author that the principles in *Haqimie's case* are inapplicable to the facts of such cases and that the policy should be void or unenforceable on the basis that the subsequent (albeit unregistered) owner has breached its duty of utmost good faith in obtaining the renewal of the policy in the name of the original owner without his knowledge or consent.

Procedure in Obtaining the Declaration

It is important to note that before or within seven days (7) of the commencement of any proceedings under section 96(3) to declare the insurance policy to be void and unenforceable, the insurer must give notice of the proceedings, as well as the grounds that would be relied by the insurer in such an application, on the plaintiffs in the suit for liability for negligence. That is a mandatory requirement, and if the insurer obtained a declaration under section 96(3) without giving notice (and specifying the grounds thereof) to the plaintiffs, the declaration is null and void and can be nullified by the filing of another originating summons to annul it *(see Pacific & Orient Insurance Co Bhd v Rasip Hamsudi & Ors)*.[22]

The notice must be given to the plaintiffs personally and it is not sufficient that it is only being served on their solicitors (*see Gobi a/l Loganathan v Allianz General Insurance Company (M) Berhad*).[23]

The section 96(3) declaration must also be obtained by the insurer before the date that "liability is incurred". That has been held to be the date when judgment is obtained by the plaintiffs in the claim for damages for negligence against the defendant and not the date of the accident. Liability is only pronounced by the court upon the judgment being obtained in favour of the plaintiff.[24] After judgment in the liability action had

21 [2018] MLJU 897.
22 [2017] 4 CLJ.
23 [2017] 1 LNS 1250.
24 *Ahmad Nadzrin Abd Halim & Anor v Allianz General Insurance Company (M) Bhd* [2015] 9 CLJ 821; *Jayakumar Rajoo Mohamad v CIMB Aviva Takaful Bhd* [2015] 9 CLJ 552.

been entered against the insured, it is too late for the insurer to apply for a section 96(3) declaration.

Sections 94 and 95 of the RTA prohibit an insurer from relying on certain terms in an insurance policy for the purposes of excluding liability. On the other hand, a term or condition which does not come within the purview of sections 94 and 95 may be legitimately relied upon by the insurer for the purposes of excluding liability under the policy when a claim is brought by a third party. The Court of Appeal considered the scope of section 95(k) of the RTA in *Pacific & Orient Insurance Co Bhd v Kamacheh Karuppen*.[25] This reads:

> *"(k) the motor vehicle being used for a purpose other than the purpose stated in the policy, shall, as respects such liabilities as are required to be covered by a policy under paragraph 91(1)(b) , be of no effect..."*

The Court of Appeal in that case held that the insurer was liable to pay the third party who had suffered injuries as a result of the use of the motor vehicle regardless of whether it was at the time used for a criminal purpose. It cited the learned author, Santana Dass in his book *"The Law of Motor Insurance"*[26] as follows:

> *"Under section 95(k), any condition in the policy that excludes the liability of the insurer, if the vehicle is used for any purposes than for social, domestic, pleasure purposes, e.g. racing, motor sports etc, will be ineffective and cannot be used by the insurer to exclude liability insofar as bodily injury or death claims are concerned. This should include use of the motor vehicle for unlawful purposes or acts as well. In any event, the law is that 'criminal acts' of the insured in the use of the motor vehicle are insured under section 91 and the insurers cannot have the liberty to exclude this statutory requirement against unlawful or criminal acts or purposes of their insured to escape their statutory obligation to satisfy the judgments of third parties."*

Many plaintiffs who have obtained judgment against defendants in a claim in negligence arising out of a road accident would then commence recovery actions against the insurer for indemnity. However, it has been held by the Court of Appeal that it is not necessary to commence such recovery proceedings; the plaintiffs can straightaway commence execution proceedings against the insurer which could also include the filing of winding up petitions against the insurer.

This was decided in the case of *Pacific & Orient Insurance Co Bhd v Muniammah Muniandy*.[27] In that case, the appellant was the insurer of the motorcycle ridden by the insured which was involved in a road accident with the respondent. The respondent filed an action against the insured and obtained judgment against him. The appellant obtained leave to appeal to the Court of Appeal against the said judgment. The appellant's application for stay of execution was dismissed by the High Court and its application for stay of execution at the Court of Appeal was still pending. The appellant did not make payment to the respondent on the said judgment and the respondent's solicitors served a notice under section 218(1)(e) of the Companies Act 1965. The appellant then obtained an ex parte injunction to restrain the respondent from proceeding with the presentation of a winding up petition against the appellant. However, on inter partes hearing of the injunction application; the learned judge dismissed the appellant's application. The appellant's appeal was dismissed by the Court of Appeal which held as follows:

> *"Section 96(1) imposes upon the insurer the obligation of paying to the person who had obtained judgment against the insured, after a certificate of insurance had been duly delivered to the person by whom the policy is effected in respect of any third party risk*

25 [2015] 4 CLJ 54.
26 Supra note 14 at page 233.
27 [2011] 1 CLJ 947.

covered under the policy. Thus, the appellant was obliged statutorily to pay the respondent who had obtained the said judgment. The insurer would only be able to avoid the payment obligation under the circumstances and conditions mentioned in section 96(2) and (3) RTA which did not apply in the case.

Nowhere does section 96(1) say that the respondent must first obtain another judgment against the appellant before she could proceed to enforce the said judgment against the insured. Therefore the question of the respondent having to file recovery proceedings under section 96(1) against the appellant did not arise at all. The respondent, who had obtained a monetary judgment against the insured which had not been stayed, had the right under section 96(1) to enforce the said judgment against the insurer without first having to file recovery proceedings against the insurer."

Pacific & Orient Insurance Co Bhd v Muniammah Muniandy[28] was later approved and applied by the Court of Appeal in *Pacific & Orient Insurance CO Bhd v Rasip Hamsudi & Ors.*[29]

However, it should be noted that insofar as the winding up of insurance companies is concerned, section 195 of the Financial Services Act 2013 states as follows:

"(1) No application for the winding up of an institution or approved person may be presented to the High Court by any person without the prior written approval of the Bank.

(2) Subject to subsection (1), where the application for the winding up of an institution or approved person is presented to the High Court by a person other than the Bank:

(a) that person shall deliver a copy of the application to the Bank at the same time as it is presented; and

(b) the Bank shall be party to the winding up proceedings and shall be entitled to appear and be heard in all proceedings relating to the application and to call, examine and cross-examine any witness.

(3) Any person who contravenes subsection (1) or paragraph 2(a) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million ringgit or both."

As such the effect of the decision in *Pacific & Orient v Muniammah Muniandy*[30] will be of no more relevance and been diluted as it has become very difficult to wind up an insurer especially for failure to pay the judgment sum under section 96 RTA.

The Bank in the above mentioned section 195 refers to Bank Negara Malaysia.

The other issue that arises is whether the rule in *Pacific & Orient v Muniammah Muniandy*[31] that the third party need not take out recovery proceedings be considered a universal ruling applicable to all execution modes or should it be confined to winding up cases only. It must be remembered that winding up is per se not a mode of execution in strict legal context.[32] The judgment debt is not that of the insurer nor can the insurer be the judgment debtor for the purposes of execution. What the RTA has done is to make the insurer statutorily obliged to pay the judgment sum entered against their insured. If the insured does not pay, the insurer has to pay on his behalf subject to

28 Ibid.
29 [2017] 4 CLJ 572.
30 Supra note 27.
31 Ibid.
32 *NFC Labuan Shipleasing Ltd v Semua Chemical Shipping Sdn Bhd* [2017] MLJU 900.

section 96. The obligation of the insurer to pay the judgment sum is akin to a situation of a guarantee. If the judgment is against the principal debtor (the insured) and not against the surety (insurer), the judgment cannot be enforced by way of execution against the surety (insurer) directly. There ought to be a judgment against the insurer to enforce the judgment against the insurer by way of execution and hence there ought to be a separate recovery proceeding against the insurer wherein defences under section 96(1) and (2) could be raised.

It seems to be more equitable to require the third party to initiate recovery proceedings against the insurer once judgment has been obtained against the insured. This will allow the insurer to raise any defence which they may rely on. The right of the insurers to raise the defences in the recovery proceedings was recognised by the Court of Appeal in *Letchumanan a/l Gopal (representative for the estate of Rajammah a/p Muthusamy, deceased) v Pacific Orient & Co Sdn Bhd*[33] where Abdull Hamid Embong JCA said as follows:

> *"It is our view that the liability and recovery actions are distinct from each other. The former is a claim founded on tort whereas the latter is based on a statutory right provided under the provisions of the RTA. For this reason alone it would be unjust to bar the insurers from raising afresh the issue of its liablity even to the extent of adducing evidence on the same issues at the recovery action stage.*
>
> *In the liability action, the issue before the court would be to determine negligence whereas in the recovery action the issues include the construction of the terms in the insurance policy and the application of ss 91 and 96 of the RTA. It is upon this construction of the insurance policy that the insurers raised for the first time in the recovery action. In this appeal, P&O, as the insurers is thus seeking to declare that the policy as against the deceased is unenforceable due to the exception in its terms. This issue remains alive and was brought upon on appeal to the High Court and now before us.*
>
> *It needs to be mentioned that P&O was not a party in the liability action. Thus, a final determination of this issue cannot be said to have been made by the trial judge in the liability action. A dogmatic approach applying the res judicata principle as a bar would be most unjust to P&O who does not have a full and fair opportunity to litigate the issue. This factor must be met before res judicata can be binding on the parties. It is founded on justice and common sense."*

However, we await a decision of the apex court as to whether it is compulsory for the third party to file a recovery action against the insured before commencing execution proceedings against it. Santhana Dass in his article *"Recovery By Third Party Against The Insurer In Motor Accident Cases – By Recovery Proceedings Or Execution?"*[34] said:

> *"Much of what was said in Pacific & Orient v Muniammah Muniandy is obiter and the Appellate Courts should weigh those issues again in the light of all authorities as well as the present legislation to bring it in line with the requirements of section 96 so as to ensure that it is fair and equitable to both the third party and the insurer, whereby the legal process does not confer an unfair advantage to either party when dealing with the enforcement of judgments in motor insurance cases."*

The case of *Pacific & Orient Insurance Co Bhd v Munimmah Muniandy*[35] was distinguished in the case

33 [2011] 4 MLJ 541.
34 [2019] 1 LNS(A) iii.
35 Supra note 27.

of *Tokio Marine Insurans (M) Bhd (which obtained all rights and liabilities of Amanah General Insurance Bhd vide vesting order dated 22 October 2002 wherein Amanah General Insurance Bhd was formerly known as Trust International Insurnace (M) Bhd prior to a change of name vide Form 13 dated 29 December 1997) v Mohd Taxzi bin Zainuddin & Anor*[36] where the plaintiff insurer applied for an interim injunction to restrain the presentation of a winding up petition against them by the defendant third party. The recovery proceedings by the defendant against the plaintiff was pending in the Sessions Court at Teluk Intan. The plaintiff's contention was that they were not the insurers and that the certificate of insurance was not served on their insured which was a pre-requisite under section 96(1). Nallini Pathmanathan JC (as she then was) said this:

> *"The case is distinguishable from the present case as in that case it was not in dispute that the insurer concerned had in fact issued the certificate of insurance as required under s 96(1). In other words, it was not in dispute that the insurer there was the one who had insured the respondent's vehicles. This is evident from the decision of Ramly Ali JCA where his Lordship held, as I have reproduced above:*
>
> *... s 96(1) imposes upon the insurer the obligation of paying to the person who had obtained a judgment against the insured, after a certificate of insurance had been duly delivered to the person by whom the policy is effected in respect of any third party risk covered under the policy.*
>
> *It is evident from the foregoing that in keeping with all the cases cited above in relation to the construction of section 96(1), his Lordship held that the obligation to pay the person who had obtained judgment against the insured arose after a certificate of insurance had been duly delivered to the person by whom the policy is effected. The foregoing case is not authority for the proposition that an insurer who has not issued a certificate of insurance to the person claiming to be insured is obliged to pay under a judgment obtained against the person claiming to be insured. The Pacific & Orient case is therefore distinguishable in the present context where the insurer has held from the outset that he is not liable. The insurer is entitled to be heard in his defence on this issue which is currently being heard by the Ipoh High Court.*
>
> *The final issue for consideration is the legal contention put forward by learned counsel for the defendants to the effect that the only option that was available to the plaintiff from the outset, when they were served with notification of the proceedings in Teluk Intan was to have obtained a declaration under section 96(3) to the effect that the insurance was void or unenforceable. As the plaintiff did not do so, it is contended that they are not precluded from doing so.*
>
> *Learned counsel for the plaintiff maintains that such an interpretation is incorrect, and that the provision applies to a situation where the insurer having delivered a certificate of insurance to the insured, intends to avoid liability under the policy whereupon it is incumbent upon such an insurer to have the policy declared void.*
>
> *I am inclined to agree with such an interpretation. Section 96(3) follows upon s 96(1) and appears to my mind to be dealing with a policy of insurance that is operative, there having been compliance with s 96(1). It cannot be read in vacuo as applying to an instance where the insurer denies having issues*

36 [2012] 8 MLJ 814.

the policy of insurance and where no certificate of insurance has been produced, merely an RIMV search, to evidence the existence of such a policy. If the plaintiff had indeed been the insurer at the outset and then sought to avoid the policy or cancel the same, then s 96(3) would have come into play. Furthermore, it would be untenable for an insurer who had not issued an insurance policy to be held liable simply because he had failed to procure a declaration to that effect. This too, when the insurer seeks to put forward his case in the recovery proceedings to explain why he claims not to have issued the policy of insurance. If indeed the injunction is not allowed, then the insurer would be constrained to pay out the judgment sum notwithstanding that he claims he never issued any policy of insurance to the persons claiming to be the insured here. That would lead to an absurd result."

The onus is on the plaintiff/third party to prove that the insurer had delivered the certificate of insurance to their insured. Section 91(4) of the RTA provides that a motor policy is effective for the purpose of Part IV only upon the delivery of the policy's certificate of insurance by the insurer to the policy owner. A letter from the Registrar and Inspector of Motor Vehicles ("RIMV") does not fulfil the requirements of section 96(1).[37]

This requirement places a burden of proof on the third party which would be very difficult for them to fulfil and this would be against the intent and spirit of the legislation. There are many reasons why such a heavy burden should not be placed on the third party. The failure by the insurer to issue and deliver the certificate of insurance to their insured does not carry any sanction under the RTA. The issuance of the certificate of insurance and the delivery of the same to the insured is especially within the knowledge of the insured and not that of the third party. If insurers take advantage of this to place the burden of proof on the third party, it would be a difficult burden for them to discharge.

Chan Wai Meng in her book entitled *"Third Party Rights in Insurance Law in Malaysia"* expressed the view that proving the delivery of the certificate of insurance is unnecessary and cumbersome and further suggested that the RTA be amended accordingly:

"Legal writers have opined that the requirement for the certificate of insurance should be removed. The certificate has no value and serves no purpose apart from that given by Part IV of the RTA 1987. The contract between the insurer and the policy owner covering the compulsory motor policy is evidenced by the policy of insurance and not the certificate. Since the insurer's risks under the insurance contract and Part IV commence upon the issuance of the cover note, there is no reason why the delivery of the certificate of insurance to the policy owner is made a condition precedent for the injured third party's cause of action against the insurer.

In conclusion, the requirement for the certificate weakens the protection given to an injured third party by Part IV. An insurer's duty and obligations under Part IV should commence upon its issuance of the cover note or policy rather than upon the delivery of the certificate of insurance to the policy owner. The Act must be amended to make this clear."

This right of the plaintiff to seek recovery against the insurer is an exception to the doctrine of privity of contract. The RTA exception contained in section 96 was explained by Md Raus Sharif JCA (as he then was) in *Pacific & Orient Insurance Co Bhd v Kamacheh Karuppen*[38] as follows:

"The right of the respondent as a third party to approach the court for redress against the appellant, who itself is not a tortfeasor and with whom the respondent

37 *Capital Insurance Bhd v Kasim bin Mohd Ali* [1996] 2 MLJ 425.
38 Supra note 25.

had no contractual relationship arises from statutory empowerment under section 96 of the RTA 1987. The mechanism of s 96 of the RTA 1987 operates thus: there is a statutory obligation created by s 96 of the RTA 1987 on the part of the insurer (appellant) on being so notified on the failure of the insured to pay up the judgment sum that the insured had failed to be satisfied in favour of the third party. This duty to pay up is statutory in origin and as said earlier is an exception to the concept founded upon privity of contract.

Perhaps it would be opportune for us to also highlight here that it is the insurer's mandatory duty to satisfy the judgment. The statutory provisions of s. 96(1) of the RTA 1987 is very clear. It imposes upon the insurer (the appellant, in this appeal) the obligation of paying to the person who had obtained a judgment against the insured, after a certificate of insurance had been duly delivered to the person by whom the policy is effected in respect of any third party risk covered under the policy. In short, the appellant in the present appeal is obliged statutorily to pay the respondent who had obtained the judgment dated 15 March 2011 against the insured.

The appellant as the insurer would only be able to avoid the payment obligation under the circumstances and conditions mentioned in sub-ss 2 and 3 of s. 96 of the RTA 1987, that is to say, where the requisite notice of the proceedings was not given to the insurer before the commencement of the proceedings; where there is a stay of the judgment pending appeal; where the policy of insurance respecting the liability had been cancelled; and where the insurer had obtained a declaration from the court that the insurance was void or unenforceable.

Based on the facts, none of these conditions were fulfilled by the appellant (insurer) in the present case to exonerate its statutory obligations under the policy. That being the case, the judgment debt of the insured becomes the judgment debt of the appellant (insurer) by virtue of s. 96(1) of the Road Transport Act 1987 (see case of Pacific & Orient Insurance Co Bhd v Muniammah Muniandy [2011] 1 CLJ 947)."

The conditions giving rise to an insurer's statutory obligation to satisfy a judgment obtained under section 96 of the RTA had been summarised by the High Court in *Pacific & Orient Insurance Co Bhd v Mazlan Ahmad & 2 Ors*[39] after having scrutinised the judgments set down in three Court of Appeal cases, namely: (a) *Pacific & Orient Insurance Co Bhd v Muniammah Muniandy*[40] (b) *Letchumanan Gopal v Pacific Orient & CO Sdn Bhd*[41] and (c) *Pacific & Orient Insurance Co Bhd v Kamacheh Karuppen.*[42] The following conditions to be fulfilled:

(i) The insurer has issued an insurance policy to the insured;

(ii) A certificate of insurance has been delivered by the insurer to the insured;

(iii) The insured is a "person, or class of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or land implement drawn thereby on a road";

39 [2015] AMEJ 1489.
40 Supra note 27.
41 [2011] 4 MLJ 541.
42 Supra note 25.

(iv) The insured has caused death or bodily injury to the third party by or arising out of the use of the motor vehicle;

(v) The third party victim has filed a liability suit against the insured in respect of liability covered by the insurance policy;

(vi) Before or within seven days after the commencement of the liability suit, the insurer has been given notice of the liability suit;

(vii) The third party has obtained a judgment against the insured in the liability suit. If the third party has obtained a judgment against the insured, the third party need not file a recovery suit and obtain judgment against the insurer in the recovery suit; and

(viii) Non-existence of any of the circumstances stated in section 96(2)(b), (c) and (3) of the RTA.

A rather interesting issue arose in the recent case of *Pacific & Orient Insurance Co Bhd v Hameed Jagubar Syed Ahmad*[43] on cover notes. On 27.10.2011 at 1.30 am, an accident occurred between the defendant/insured and the respondent involving the defendant's motorcycle. The defendant then on the same day applied for insurance cover for the motorcycle. The appellant/insurer issued a policy number and the cover note showed that it was issued on 27/10/2011 at 2.16 pm. The certificate of insurance showed that the effective date of commencement of insurance was 27/10/2011. When it came to the knowledge of the appellant that the defendant had bought the insurance policy from the appellant approximately 12 hours after the accident had occurred, the appellant filed an application pursuant to section 96(3) of the RTA for a declaration that the insurance policy was void and unenforceable as the defendant had no coverage at the time of the accident. The High Court agreed with the appellant and found that the appellant could not be held liable for an accident which had occurred prior to the issuance of the insurance policy. The Court of Appeal reversed the decision of the High Court and held that the policy became effective retrospectively by the terms of its own contract and coverage began at midnight on 27/10/2011. The appellant was thus held liable under the policy.

The Federal Court granted leave on the following two questions of law: (i) when a motor policy holder obtained insurance cover from an insurer in respect of an accident that had already occurred, did the insurance policy take effect from the date of cover or from the time of issuance of cover; and (ii) whether the Court of Appeal was correct in law to give a retrospective cover to the policy in breach of section 141 of the Insurance Act 1996 which states that here shall be payment before cover.

The Federal Court answered the first question that an insurance policy would take effect from the time of issuance of cover note and answered the second question in the negative.

It was also held that the cover note is, in itself, a contract of insurance, governing the rights and liabilities of the parties in the event of a loss taking place during its currency. The Court of Appeal ought to have considered the cover note and also section 141 and regulations 63 and 64 of the Insurance Regulations 1996. Section 141 and regulation 63 are statutory prohibitions against an insurance company assuming any risk until the premium is paid. Thus, under the Insurance Act, assumption of risk commences from the time of payment of premium.

Where the time of issue of the cover note was mentioned, commencement of risk was to be calculated from the time mentioned in the cover note. Accordingly, in that case, the commencement of risk was after the

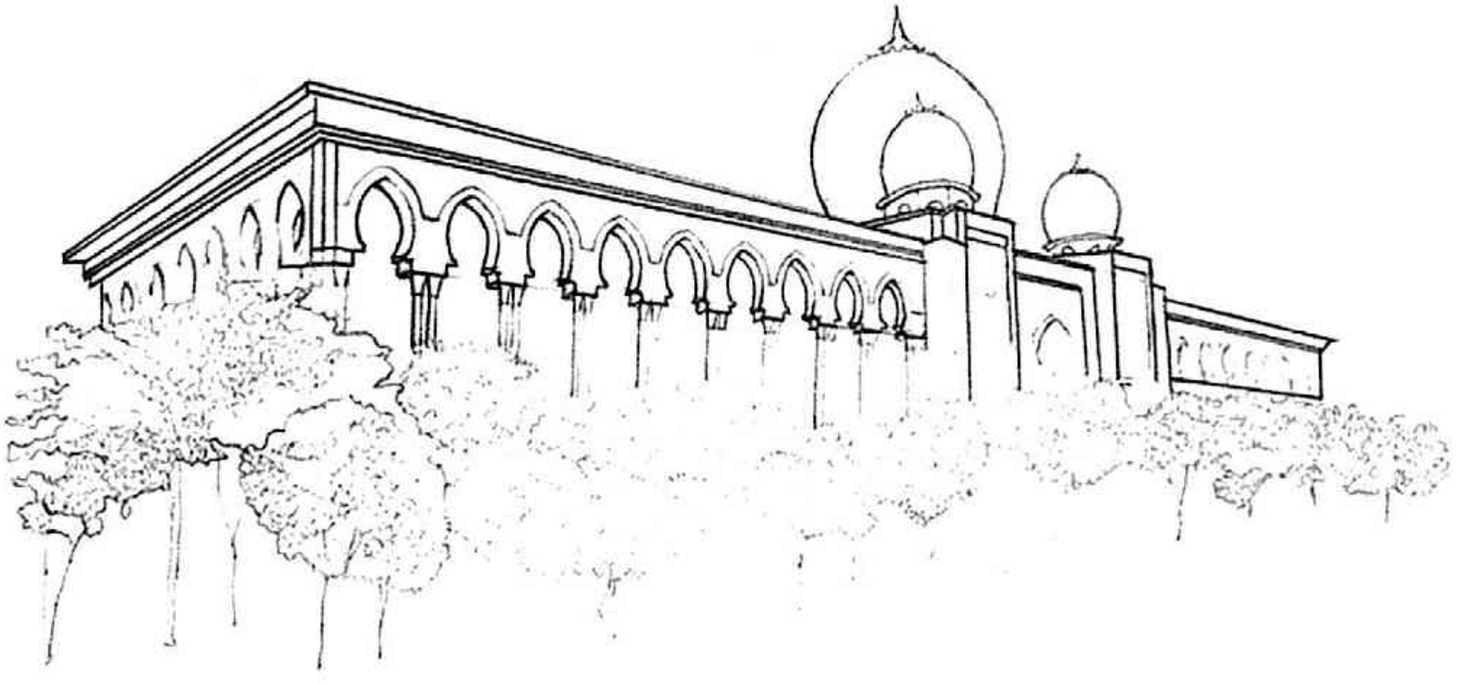
43 [2018] 9 CLJ 691.

time when the accident occurred and the insurer was not liable. Thus, the decision of the Court of Appeal was set aside.

Interesting as this case may be, it may be unlikely to occur in future because currently, all cover notes will state the time of commencement of the cover so there should be no uncertainty and vagueness as to when cover would commence.

Conclusion

It would be prudent to recognise that section 96 not only provides a statutory safeguard towards insurers but it also protects the rights of road accident victims by providing an avenue for them to claim against the insured where at common law, they would have no direct cause of action as a non-contracting party to the insurance contract entered into between the insured and the insurer. As discussed, the necessary steps must be taken before initiating proceedings and the courts have laid down a few principles in deciding whether the insurer will be liable in insuring the third party victims.



An angled facade of the Palace of Justice

CAPITAL MARKETS, TECHNOLOGY AND THE DEMANDS ON THE LEGAL SYSTEM

By Judicial Commissioner Ahmad Fairuz Zainol Abidin*

Capital markets plays a critical role in the contribution to the overall economic growth for a country. The development of a country's capital markets allows for an alternative source of raising capital, alongside the development of the banking sector. Hence, it operates within the overall financial sector, which consists of banks and non-banking financial intermediaries. A well-developed capital market not only facilitates better allocation of capital and risk sharing between investors and other market participants but it also improves the availability of long-term financing, beyond bank financing, provided through the stock and bond markets.

However, in order for capital markets to operate efficiently to promote economic development, it needs the underpinning of solid legal, regulatory and supervisory frameworks. The maturity of capital market development of a country has often been equated to the efficiency of its legal systems in supporting individual as well as institutional contractual arrangements. One of the pillars that stands out to ensure confidence in a country's capital markets is a solid legal and regulatory framework that is supported by a judicial infrastructure which is cognisant of the needs of businesses and investors.

Fundamentally, a legal system that ensures that contractual and property rights are sufficiently clear, protected and predictable will provide confidence to the participants of the overall financial or capital market system. The parties' privy to the contract will rely on the independent role of the courts and the enforceability of each outcome. At this point, it is clear that an efficient legal system is a key ingredient of competitiveness necessary for overall economic and financial development.

Developments in financial sector: role of bank-based vs capital-market based financing

The financial sector includes both the banking and the non-banking financial intermediaries. The role of banks in has long been recognised in the financial system. Parallel in the system are the non-bank financial intermediaries, which are non-deposit taking institutions. These include insurance companies, securities firms (brokers, investment banks, asset management companies, hedge funds) pension funds and others.

In the earlier stages of financial sector development of a country, the banking sector usually plays a predominant role in providing financial services to the economy. However, with the expansion in economic activities

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and growing sophistication in the financial sector, the non-banking financial intermediaries will increasingly grow in importance to provide an alternative source of financial services. The development of non-bank financial intermediaries is of great importance for the overall development of the capital market, in particular to provide for the long-term financing needs of the real economy, which cannot be met purely from banks, e.g. loans.

Different types of market participants (companies, governments or individuals) make decisions on how to raise capital based on their own financing needs. For instance, companies and businesses have the options between going to banks for loans (bank-based financing) and going to the capital market (market-based financing). In the early stages of their development, a high-growth company will not have a track record of profits, despite having a good business idea or prototype for their product. These companies need to raise external financing due to their high investments in technological capabilities to allow them to leapfrog developmental stages. The options of financing the business will include financing through angel investors, venture capital and private equity fund managers who not only provide capital but also provide advice to grow their business and access to networks, in return for some privately held stock of the company. However, this form of capital raising remains within the realm of private markets with lower regulatory burden.

Another option in fundraising activities are those that are being intermediated through the capital markets; more predominantly financing raised through either the stock or bond markets. Capital market financing is generally viewed as being able to provide for more flexible funding solutions based on the company's needs. For instance, as a company matures and needs to expand further, they have the option to raise capital through the stock market – by selling their shares to the public through an Initial Public Offering (IPO) of their shares. This allows them to raise higher amounts of capital, which they can use to repay the early-stage investors, like the venture capital firms as well as for further expansion of their operations. When a firm has a record of revenues and profits and the firm can make a credible promise to pay interest, they then have the option to borrow money via the two conventional methods of borrowing; i.e. bank-financing or raising a bond, the latter being another type of capital market-based financing.

There have been long-standing debates between economists on the role of bank-based and capital-market based financing in fostering economic growth, in that the two types of financing are perceived as trade-offs to each other. However, a well-developed financial sector should incorporate elements of both; i.e. capital market-based financing as a form of direct financing as well as bank-based or institution-based financing, seen as a form of indirect financing. In the former, borrowers sell securities directly to lenders in capital markets and with the latter, an institution, such as the bank or finance company stands between lender and borrower.

The alternative, a more legal-based view of financial structure however rejects the bank-based versus capital market-based debate as it argues that finance is fundamentally a set of contracts.[1] These contracts are defined – and made more or less effective – by legal rights and enforcement mechanisms. From this perspective, a well- functioning legal system facilitates the operation of both markets and intermediaries.

It is the overall level and quality of financial services – through the financial arrangements in the contracts, markets and intermediaries and as determined by the legal system – that improves the efficient allocation of resources and economic growth. This perspective has profound implications for a greater role for institutions as the legal-based view of financial structure and growth would highlight the importance of a country's legal institutional framework in strengthening the rights of investors, improving the efficiency of contract enforcement and in creating an environment in which both banks and markets can provide sound and stable financial services.[2]

1 Porta, L., Rafael, Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1997). Legal Determinants of External Finance. *Journal of Finance*, 52(3), 1131-1150; Porta, L., Rafael, Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1998). Law and Finance. *Journal of Political Economy*, 106(6), 1113-1155; Porta, L., Rafael, Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. W. (1999). The Quality of Government. *Journal of Law, Economics, and Organization*, 15(1), 222-279.

2 Levine, R. (2002). Bank-based or Market-based Financial Systems: Which Is Better? *Journal of Financial Intermediation*, 11, 398-428.

If a well-functioning legal system represents a fundamental determinant of economic growth, especially in connection to the level of financial development then it is imperative that legal and judicial institutions keep pace with evolving and rapid developments in global and local financial markets.

The advancements in technology and impact on the financial sector

The advent of financial technology or more recognisable as "fintech" promises a dimension which will rapidly reshape how financial products are structured, provisioned and consumed. Within the overall financial sector, technology is rapidly redrawing the boundaries all traditional paradigms from borrowing, lending, payment and investing. There is growing believe that traditional financial institutions no longer control the entire value chain. These disruptions are only set to proliferate the financial sector at an unprecedented rate.

Technology-enabled innovation however, has a number of positive impacts on the financial sector and broader society. A democratization of the financial services sector is underway backed by the design principles under Industry 4.0 such as interoperability/ interconnectedness and information transparency.[3] The reduction of information asymmetries will lead to greater demands for transparency and governance through information sharing and at reduced costs.

On the other side of the coin, as businesses increase their reliance on technology with a trend toward broadening access of markets to retail investors, safeguarding and ensuring sufficient investor protection requires proper oversight mechanisms by regulators and those entrusted with maintaining public trust.

The emergence of Digital Assets

The emergence of digital assets have taken fund raising to a different level. The common most tradeable digital assets are digital currencies. A digital currency is a form of currency that is available only in digital or electronic form, and not in physical form. It is also called digital money, electronic money, electronic currency, or cyber cash. Digital currencies are intangible and can only be owned and transacted in by using computers or electronic wallets which are connected to the Internet or the designated networks. In contrast, the physical currencies, like bank notes and minted coins, are tangible and transactions are possible only by their holders who have their physical ownership.[4]

Crypto currency falls under this category of digital assets. It uses cryptography to secure and verify transactions and to manage and control the creation of new currency units. In Malaysia today, Bitcoin and Ethereum are some of the more known types of crypto currencies. The features of a crypto currency which has very similar features as fiat money, has gained acceptance around the world and has been accepted as medium of payment. The transactions, have been seen to provide the ability for transactions to be made directly between transacting parties, removing the need of intermediaries such as banks. This has led to lower cost of transactions and can be executed more efficiently without the need of any approval. It has increased the speed of business transactions and is gaining popularity.

Of late, the raising of funds have also seen Initial Coin Offerings (ICO) being offered by private operators. ICO scheme operators typically raise funds through the issuance and sale of digital tokens, in exchange for investors paying for these tokens through virtual currencies, such as Bitcoin or Ethereum. While all ICO scheme operators seek to raise funds from investors, these schemes can be structured in many forms, which may include:[5]

- Direct investments in projects with an aim to enable token holders to participate in a share of the returns from the projects
- Seeking funding through Foundations where investors are not entitled to seek any returns on their investments
- Issuance of tokens which entitle the investors to enjoy rights to a future product or service generated by the project managed by the operator

3 Industrial Revolutions and a Future View. Retrieved from https://softtech.com/resources/industry-4-0/.
4 Digital Currency. Retrieved from https://www.investopedia.com/terms/d/digital-currency.asp.
5 Media Statement on Initial Coin Offerings. Retrieved from https://www.sc.com.my/resources/media-releases-and-announcements/media-statement-on-initial-coin-offerings.

The proliferation of issuers have resulted in the competition to attract participants to the scheme. Couched as an investment, many forms of ICO have sprouted of late. Regulators are keeping a close watch on the promoters and issuers, as it may present an opportunity for un scrupulous individuals preying on unsuspecting participants and investors who are attracted to the promise of returns and the business model being promoted.

The technology behind crypto currencies is driven by the concept of blockchain. Blockchain (or distributed ledgers) offers a new approach to data management and sharing that is being proposed as a solution to many of the inefficiencies afflicting the industry be it in the capital markets or the banking sector where often the use of intermediaries such as banks are still required when dealing with payments. Blockchain technology offers an attractive opportunity to get rid of this "extra link". It is designed to take on all three most important roles of the traditional financial services namely registration of transactions, identity verification and contracting.

Use of technology such as blockchain in the legal documentation and dispute resolution

In developed markets, there is already growing interest from the legal fraternity to explore the use of blockchain technology as a common infrastructure to allow for more efficient legal systems. It will enable legal practitioners to take advantage of digital innovation to streamline and simplify their work. These practitioners can use technology to draft their contracts and to streamline the cumbersome process of contract negotiation and execution.

The provision of legal services has seen has seen the adoption of technology in to the contracting process. One such example of can be seen in the services provided by *OpenLaw*,[6] an online service repository. The company offers innovation in the way contracts are being designed that uses blockchain protocol for the creation and execution of legal documentation. It has revolutionised the way contracts are entered into and enforced. The platform provides a legal agreement repository and templates for practitioners to generate legal documents through modelling all or parts of legal agreements using codes, thereby calling them "smart contracts".

It is envisioned that the "smart contracts" will result in greater standardisation to create more efficiency between contracting parties resulting in less room for disputes and ambiguity.

OpenLaw has also introduced an online dispute resolution process which is called the *OpenCourt*.[7] It introduces a decentralised arbitration system that allows disputes to be channeled to an arbitrator minus a physical requirement for parties to engage with each other. In its posting on the *OpenCourt* system, it mentions *"That is why the era of decentralized dispute resolution procedures is beginning. In the long run, blockchains hold out hope to power global universally available judicial systems that deliver low cost and high-quality dispute resolution services online. If implemented, the end result would be game-changing—a globally accessible "online court" where people have an equal opportunity to receive low cost, sophisticated, and transparent justice regardless of their location or creed."*[8]

In July 2018, the Dubai International Financial Center (DIFC) Court in partnership with "Smart Dubai" announced an ambitious vision to allow the first ever blockchain powered judiciary in the world.[9] This ground-breaking move will allow courts around the world to access judgements in real time creating more well-organised legal systems. It is also aimed at refining existing dispute resolution services and verifying court judgements for cross-border enforcement in an efficient manner by utilising technology as an enabler. Clearly, technology has entered a new phase where even courts and dispute resolution mechanisms have today been impacted.

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6 Retrieved from https://openlaw.io.

7 OpenCour: Legally Enforceable Blockchain-Based Arbitration. Retrieved from https://media.consensys.net/opencourt-legally-enforceable-blockchain-based-arbitration-3d7147dbb56f.

8 Ibid.

9 DIFC Courts and Smart Dubai launch joint taskforce for world's first Court of the Blockchain. Retrieved from https://www.difccourts.ae/2018/07/30/difc-courts-and-smart-dubai-launch-joint-taskforce-for-worlds-first-court-of-the-blockchain/.

Role of regulators

The Securities Commission of Malaysia (SC) has taken considerable initiatives to champion the transformative changes to the financial services and to facilitate full adoption of digital technology and innovation across the entire capital markets. These initiatives are underpinned by three-pronged regulatory principles of managing risks, engaging markets and educating investors. Malaysia was also the first ASEAN country to introduce a legal framework on Equity Crowdfunding (ECF) in 2015 and peer-to-peer debt financing (P2P) in 2016. Both these regulatory frameworks were introduced to encourage and enhance access to capital market financing by smaller enterprises, particularly micro, small and medium enterprises (MSMEs).

In addition, these new platforms for financing provide both retail as well as sophisticated investors with an alternative channel for investment. In 2017, the SC launched the Digital Investment Management (DIM) framework to give retail investors access to specialist services of investment management industry, which were only traditionally available for high net worth (HNW) investors. This demonstrates again further democratisation of financial services by providing automated portfolio management services at lower costs to all Malaysians, regardless of their net-worth or income levels.[10]

Bank Negara on the other hand has been monitoring the crypto currency space very closely. In a press release entitled *Notice to Persons Operating a Business Relating to Digital Currencies*,[11] it categorised persons operating a business relating to digital currencies as falling under paragraph 25 of the First Schedule of the *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001* (AMLA), which makes them subjected to obligations as a reporting institution under the AMLA.

Bank Negara also issued a policy document *Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) - Digital Currencies (Sector 6)*[12] policy document which specifies the detailed requirements imposed on the reporting institutions. Reporting institutions are required to comply with all requirements of the policy which includes an obligation to submit a declaration about the institutions' business to Bank Negara.

The steps taken by both regulators reflects the serious stand each of them take in ensuring that technological disruptions as discussed above are monitored closely.

The demands on the legal system

The rapid evolution of financial development and the ensuing broader, deeper and more innovative financial system demands a rigorous legal and regulatory supportive framework vital for the soundness, stability and resilience of the financial system. The legal system- from legislation to market regulators to the infrastructure of the courts also represents a fundamental determinant of economic growth. In sum, the legal system will need to grow and develop alongside the financial system.

The complex network of the financial system and the difference between capital market-based and bank-based growth together with the technological advancements leading to growth in non-traditional financial services such as "fintech", has demanded the legal ecosystem to be ever more ready to face the legal issues that would naturally accompany the advancement in these areas.

The role of judiciary will always be essential to a developing financial sector. Financial sector development cannot be achieved without the fundamental respect for the rule of law and effective protection of rights, both of which require a well-functioning court system and a judiciary that resolves cases in a reasonable time and is accessible to the public.

It was recently reported that Malaysia has advanced nine places to number 15 among 190 economies worldwide in the World Bank's *Doing Business*

10 "The Reporter", January-June 2018, Volume 9, No. 1. Retrieved from https://www.sc.com.my/resources/publications-and-research.
11 Retrieved from http://www.bnm.gov.my/index.php?ch=en_digital_currency&lang=en.
12 Retrieved from http://www.bnm.gov.my/index.php?ch=57&pg=538&ac=680&bb=file.

2019 Report,[13] which based its rankings on business regulations and ease of doing business. The trust and confidence in the business ecosystem which relies on a solid and stable legal system can never be understated.

Moving forward

Thus, it is worth remembering that the role that is played by the courts will still need to be underpinned by the basic and elementary relationships, no matter how modern they are. Ultimately, an effective judicial system will still seek to further these fundamental responsibilities for the financial system:

- To provide basic protection of rights of litigants in the markets
- To provide the assurance to litigants that disputes in the area mentioned above continues to be adjudged efficiently
- To provide legal certainties, which goes hand in hand with enhanced transparency, and alignment with market standards.

However, the responsibility to ensure that the legal redress achieved in the manner that is expected will still be based on the traditional laws and legislation notwithstanding the sophisticated financial instruments, products and technological advancement that accompanies it.

13 Retrieved from http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf.


KOMPLEKS MAHKAMAH KUCHING
MAHKAMAH
KUCHING

CHAPTER 10

CASES OF INTEREST

CASES OF INTEREST: CIVIL

Perak Integrated Networks Services Sdn Bhd v Urban Domain Sdn Bhd & Anor [2018] 4 MLJ 1

This case concerns derivative action. The plaintiff (the Respondent) is a shareholder of the first defendant and owns a 50% of its shares. The second defendant (the appellant) owns the other half of the first Respondent's shareholdings. The plaintiff had initiated a derivative action against the first defendant and the second Respondent on the basis that there had been a breach of the shareholders agreement. The second defendant made an application to strike out the plaintiff's claim on the basis that the plaintiff's claim was not properly constituted as the plaintiff was not a minority shareholder. Secondly, the appropriate remedy should be a petition to wound up the company. Thirdly, the Plaintiff is barred from bringing a derivative action as there exist an alternative remedy.

The Federal Court held that the Court of Appeal was correct in deciding that the derivative action was properly constituted. However, the Federal Court disagreed with the findings of fact made by the Court of Appeal on the issues of wrongdoing and control. Hence, although the appeal was dismissed, the Federal Court set aside the findings of facts made by the Court of Appeal in determining the preliminary issue and remit the case to be heard on its merits before another panel of the Court of Appeal. The Federal Court reasoned:

> *"104. ... In these circumstances, it would not have been possible for the plaintiff to set the first defendant in motion to bring an action against the second and third defendants; by virtue of the second and third defendants' equal shareholding and position in the board of directors, the first defendant was practically incapable of bringing an action for its own benefit. We consider that these facts are sufficient to establish, on a prima facie level, the element of control for the purposes of a derivative action.*
>
> *"105. With regard to the second and third points, as canvassed above, a derivative action and winding up petition on the just and equitable ground are both remedies potentially available to a shareholder in a company which is a going concern, in which the board of directors and body of members are deadlocked. The existence of winding up as an alternative remedy does not preclude the plaintiff from bringing a derivative action on the first defendant's behalf."*
>
> *per Justice Raus Sharif, Chief Justice*

Gin Poh Holdings Sdn Bhd (in voluntary liquidation) v The Government of the State of Penang & Ors [2018] 3 MLJ 417

This case concerns the proper procedure in challenging the validity of a legislation. The petitioner was the registered owner of lands which were acquired by the Penang State Government and alienated to the Chief Minister of Penang Incorporated, a body corporate established under the Chief Minister of Penang (Incorporation) Enactment 2009 ("the Enactment"). The petitioner challenged the constitutionality of the Incorporation (State Legislatures Competency) Act 1962 ("the Act"), which authorises state legislatures to make laws relating to the incorporation of certain persons and bodies, and the Enactment. The petitioner applied for leave to commence the petition and invoke the original jurisdiction of the Federal Court, pursuant to Articles 4(4) and 128(1)(a) of the Federal Constitution ("FC").

The Federal Court emphasised that its exclusive original jurisdiction does not extend to all constitutional matters. Articles 4(3), 4(4) and 128(1)(a) of FC only apply to proceedings where the validity of a legislation is challenged on the ground that it deals with a matter with respect to which the relevant legislative body has no power to make law. The central question is whether the subject matter of the impugned law comes within the matters enumerated in the enabling constitutional provision.

Challenges to the validity of legislation on any other ground are available to all litigants in all proceedings. These other grounds include challenges on the basis that the law is inconsistent with certain provisions in the Federal or State Constitution. While the High Court may refer questions regarding the effect of any constitutional provision to the Federal Court, the High Court is not obliged to do so and has the jurisdiction to determine the questions itself.

The Federal Court also laid down principles of interpretation of the legislative lists in the Ninth Schedule of FC. The entries in the lists must be interpreted liberally with the widest amplitude, extending to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended therein. The rule of *ejusdem generis* does not apply to the entries. Apparently conflicting entries should as far as possible be reconciled by a harmonious construction. In interpreting a particular entry, courts should be mindful to confine its decision to the concrete question in the case, without pronouncing a more exhaustive definition than is necessary.

Applying the pith and substance test, the Federal Court found that the Act relates to a matter enumerated in the Federal List, whereas the Enactment relates to a matter in the Federal List, on which legislative power was validly delegated by Parliament to the State Legislature. Thus, it was held that the Act and the Enactment fell within the legislative competence of Parliament and the State Legislature respectively.

> *"36. It bears emphasis and repetition that not all matters of constitutionality come under the exclusive jurisdiction of the Federal Court. The Federal Court is not a constitutional court, but the final arbiter on the meaning of constitutional provisions (A Harding, Law, Government and the Constitution in Malaysia (Kuala Lumpur, Malayan Law Journal: 1996) at p 138). All courts, not just the Federal Court, have the power to interpret the Constitution (per Tun M Suffian, "The Judiciary — During the First Twenty Years of Independence" in Tun M Suffian, HP Lee, FA Trinidade (eds), The Constitution of Malaysia, Its Development: 1957-1977 (Kuala Lumpur, Oxford University Press: 1978) at p 237). Only challenges as to the competence of the legislative body to enact a law fall within the original jurisdiction of the Federal Court; all other grounds of challenge to the constitutional validity of a law are within the jurisdiction of the High Court."*
>
> *per Justice Raus Sharif,*
> *Chief Justice*

Cubic Electronics Sdn Bhd v Mars Telecommunications Sdn Bhd [2018] AMEJ 1763

This case concerns the interpretation of section 75 of the Contracts Act 1950. The plaintiff and the defendant had entered into a Sale and Purchase ("SPA") for the sale of the defendant's properties for the price of RM 90 million. The plaintiff paid the sum of RM 1 million as the earnest deposit. The acceptance of the plaintiff's offer was subject to the terms contained in the Information Memorandum dated 15 September 2011 which provided that the SPA must be executed within 30 days from 7 October 2011 failing which, the earnest deposit of RM 1 million paid by the plaintiff would be forfeited as agreed Liquidated Damages and not by way of penalty.

The plaintiff requested and was granted an extension. In return, the plaintiff had to pay a further earnest deposit sum of RM 500,000. Subsequently, the plaintiff requested a second extension which was granted on the condition that a further earnest deposit sum of RM 500,000. Thereafter, the plaintiff wrote for a third extension. The defendant agreed to grant the plaintiff a third extension of time but subject to payment of a further earnest deposit sum of RM 1 million plus interest of RM 40,000.00 due to delay in making the earlier payment. Later, the plaintiff, through its solicitors requested for another extension and sent a cheque worth of RM 600,000 to the defendant's solicitors stating, "towards account of the balance deposit payable". This request was, however, refused and the defendant terminated the SPA and forfeited the deposits paid by the plaintiff. The plaintiff initiated a civil action for a declaration that the termination was invalid and sought for the return of its deposit money and interests of RM 3,040,000.00.

The High Court dismissed the plaintiff's claim for refund of the earnest deposits forfeited and allowed the defendant's counterclaim for rentals and utility charges. On appeal, the Court of Appeal ruled that the forfeiture of the entire RM 3 million and RM 40,000.00 interest was impermissible but allowed the defendant to forfeit RM 1 million since there was no evidence to show that the impugned amount represented the damage suffered by the defendant as a result of the plaintiff's breach and neither was it a genuine pre-estimate of loss as required under section 75 of the Contracts Act 1950.

The Federal Court reversed the Court of Appeal decision and held that an innocent party relying on section 75 of the Contracts Act 1950 does not necessarily need to prove actual damage or loss. It is sufficient for the innocent party to show that the amount constitute a reasonable compensation. In deciding what amounts to reasonable compensation, the Federal Court relied on common law cases such as *Cavendish Square Holding BV v Talal El Makdessi* [2015] UKSC 67 and *Parking Eye v Beavis* [2015] UKSC 67 where the court considers the concept of "legitimate interest" and "proportionality".

"86. In our view, the defendant's deprivation of a chance to enter into negotiations with a third party in addition to its goal of securing the execution of the SPA and avoiding delay in completion, are all legitimate interests which the forfeited payments were intended to guard against. In short, the defendant had a legitimate interest in ensuring that the bargain between itself and the plaintiff came into fruition in a timely manner."

"87. Having established that the defendant had legitimate interests to safeguard, we now move on to consider whether the additional RM 2 million was disproportionate. In our view, the additional RM 2 million paid is not too large a figure when compared against the total purchase price of the properties, that is RM 90 million."

per Justice Richard Malanjum,
Chief Justice

Mesmerising video projection mapping on the facade of the grand Palace of Justice

Chong Chieng Jen v Government of State of Sarawak [2018] 8 AMR 317

This case concerns the application of the common law principle enunciated in *Derbyshire County Council v Times Newspaper Ltd* [1993] AC 534 in Malaysia. The first plaintiff is the State Government of Sarawak whereas the second plaintiff is the State Financial Authority of the first plaintiff. The defendant was the Vice-Chairman of Democratic Action Party (DAP) of Sarawak and also a Member of Parliament and a member of Sarawak State Assembly for Kota Sentosa. The plaintiffs alleged that the defendant had made a defamatory statements concerning a mismanagement of financial affairs.

The defendant contended that the Government and its officials should be open to criticism and cannot sue for defamation based on the common law principle enunciated in *Derbyshire County Council v Times Newspaper Ltd* [1993] AC 534. The Federal Court held that relying on the case of *Public Services Commission & Anor v Vickeswary RM Santhivelu* [2008] 6 CLJ 573, our court should not import common law from other countries when legislation in Malaysia has clearly provided for the relevant principle of law. As section 3 of Government Proceedings Act 1956 specifically provides for the rights of government to sue, such rights do not preclude the Government from taking civil action. Hence the common law principle in *Derbyshire* is not applicable in Malaysia.

> *"39. Under section 3 of Act 359, if an individual makes an allegation critical of a Government which allegation if made against another individual would afford ground for that other individual to sue, then the Government may sue in defamation."*
>
> *per Justice Ahmad Haji Maarop, President of the Court of Appeal*

Kerajaan Malaysia v Semantan Estates (1952) Sdn Bhd [2018] AMEJ 1620

This case concerns the interpretation of rule 137 of the Rules of Federal Court 1995. The defendant (appellant) filed a motion pursuant to rule 137 of the Rules of the Federal Court 1995 ("rule 137") to review and set aside the decision of the Federal Court dated 21 November 2012, dismissing the defendant's application for leave to appeal to the Federal Court. The plaintiff and the defendant had a long history of lawsuits. It started in the year of 1956 when the plaintiff acquired the defendant's land. In 2012, the Court of Appeal found that the plaintiff had not acquired the land from the plaintiff lawfully. Thus, the defendant had committed trespass.

Aggrieved, the defendant applied for leave to appeal to the Federal Court which was refused. The defendant then made an application under rule 137. The Federal Court held that it can only exercise its inherent power under rule 137 to review its own decision only for cases that falls within limited grounds as provided for in the case of *Asean Security Paper Mills Bhd v Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1. The defendant argued that they were seeking justice as the basis of his application for review. The Federal Court is of the opinion that this does not fall within the special circumstances of rule 137 and the need for finality must therefore prevail.

> *"85. That was a decision dismissing the application under section 96 of the Court of Judicature Act 1964 for leave to appeal to the Federal Court. The leave panel of the Federal Court must have decided that the judgment or order of the Court of Appeal made in Semantan 3 did not involve a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage. In other words, the defendant failed to fulfil the threshold requirement under section 96(a) of the Federal Court would be to public advantage. In other words, the defendants failed to fulfil the threshold requirement under section 96(a) of the Courts of Judicature Act 1964. R. 137 cannot be used as a further avenue of appeal. We cannot consider the order of the leave panel as though we are sitting in judgment of an appeal of that decision. It is not for us to consider whether the leave panel had applied or interpreted the law correctly or not. This is a matter of opinion [see Asean Security Paper Mills Sdn Bhd (supra)]. No leave should be given where the leave panel's*

decision is challenged on its merits, whether on facts or in law. Even if we do not agree with the interpretation or application of certain provision of law, there is no sufficient reason for us to set aside the decision of the leave panel. Just because we may disagree with the leave panel (we do not say whether we agree or disagree with its decision), that is not a ground to warrant us to review the decision. Otherwise, there would be no end to a proceeding [see Chan Yock Cher (supra)]. Furthermore, in this case there is nothing shown by the defendant that it has a prima facie chance of success."

per Justice Ahmad Haji Maarop,
President of the Court of Appeal.

Tenaga Nasional Malaysia v Batu Kemas Industri Sdn Bhd [2018] 5 MLJ 561

This case concerns claim of pure economic loss consequent to the physical damage and economic loss independent of physical damage. The plaintiff, Batu Kemas Industri Sdn Bhd, sued the Malaysian Government, the 1st defendant and Tenaga Nasional Bhd., the 2nd defendant in the High Court for negligently causing power disruption which had affected the plaintiff's production. The second defendant supplied electricity to the plaintiff's factory. The second defendant was requested to remove and relocate the electrical lines and cable in the nearby area as there would be construction work done by the Public Works Department ("PWD") by Markas Sdn Bhd ("Markas"), representative of the first defendant. Despite the request, the second defendant failed to remove the power lines. During the construction work, a guard rail column struck and ruptured the first defendant's 11 Kv cable. Power to the factory was disrupted which then halted the plaintiff's production.

The plaintiff claimed, among others: (i) loss consequent to failure to supply, (ii) loss consequent to the termination of orders and (iii)the alleged penalty for failure to supply, (iv) alleged loss of profits on account of loss of the machinery, (v) the alleged loss incurred on account of the loss of production and the profits, (vi) the alleged actions by banking institutions to recover loans, and (vii) the alleged actions by suppliers to recover payments or debts and (viii) goodwill. These losses are pure economic loss in nature and are independent of the physical damage.

The Federal Court overturned the decision of the Court of Appeal which allowed for both the claims of pure economic loss consequent to damage and pure economic loss independent of physical damage. The Court is of the view that in a claim for loss or damage caused by power failure or disruption, the plaintiff is only entitled to claim for pure economic loss consequent to the physical damage and not pure economic loss independent of physical damage.

"103. ...To put it mildly, the alleged losses were grossly over-stated. In any event, being not economic loss consequent to physical damage, all alleged losses enumerated in this paragraph could not be recovered. Wheat should be separated from the chaff. Since not all could be recovered, the Court of Appeal should not have ordered the assessment of only the alleged losses set out in para 85 of this judgment."

per Justice Jeffrey Tan,
Judge of the Federal Court

T Sivam a/l Tharamalingam (as representative/ administrator for the estate of Nagamuthu a/l Periasamy, deceased) v Public Bank Bhd [2018] 5 MLJ 711

This case concerns interpretation of section 340(3) of the National Land Code. A son ("Nagarajan") of an owner of a piece of land ("the deceased") had fraudulently transferred the deceased's land into his name. The deceased notified his solicitor to set aside the said transfer of the land. In the meantime, Nagarajan charged the land to the respondent bank ("PBB"). Nagarajan's solicitor acted for all of the parties in the loan transaction and did not notify PBB about the impending dispute. When the deceased found out about the charge, he initiated a second suit to declare the charge invalid and be set it aside.

PBB argued that its charge was indefeasible under proviso of section 340(3) of the National Land Code ("Code") because it was a bona fide subsequent purchaser for value and had no knowledge of the fraud. The proviso to section 340(3) of the Code provided for deferred indefeasibility which is for a subsequent holder of interest who acquired the interest in good faith. The plaintiff (the appellant), on the other hand, contended that PBB was not a purchaser in good faith protected under the proviso to section 340(3) of the Code. Therefore, the charge is defeasible and liable to be set aside. In response, PBB countered by stating that PBB had no knowledge of the fraud hence the knowledge cannot be imputed to them.

The High Court decided in favour of the plaintiff and held that PBB was an immediate acquirer of an interest of land. Consequently, the defendant could not avail itself of the protection under the proviso of section 340(3) as it applies only to subsequent purchaser. On appeal, the Court reversed the High's Court's decision and held that as Nagarajan was already the registered proprietor of the land during the granting of the loan, PBB is a subsequent purchaser. Thus, the defence of a bona fide purchaser under section 340(3) of the Code is available for PBB. The Federal Court overturned the Court of Appeal's decision and affirmed the decision of the High Court. Although the Federal Court agreed with the Court of Appeal's finding that PBB was a subsequent purchaser, however, the Federal Court opined that PBB lacked good faith thereby defeating the statutory defence under section 340(3) Code. This is based on the general principle of law that the knowledge of an agent is imputed towards its principal. As Nagarajan's solicitor (who is also acting for the bank) is aware of the dispute regarding the land, the defendant is also deemed to have knowledge regarding the allegation of fraud. The Federal Court relied on the case of *Datuk Jagindar Singh & Ors v Tara Rajaratnam* [1983] 2 MLJ 196 which held that a mere knowledge of the fraud would suffice to negate good faith.

> *"88. Thus in the present case, the knowledge of the solicitor is regarded and treated by the law as the knowledge of the defendant. The defendant was therefore infected with the knowledge that there was a serious dispute as to the ownership of the land. What is more, the defendant knew of the allegation that Nagarajan obtained title to the land by fraud. This type of knowledge would affect the good faith of the defendant. In our opinion the status of the holder of interest in good faith is lost by reason of the material knowledge."*
>
> *per Justice Azahar Mohamed,*
> *Judge of the Federal Court*

Palace of Justice bathed in bright cascading lights. 'Colours of Putrajaya' was selected as the theme for the Festival of Light and Motion Putrajaya 2018 (LAMPU)

Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop [2018] 5 MLJ 141

This case concerns the awarding of damages for false imprisonment following an order of a Magistrate under section 117 of the Criminal Procedure Code ("the CPC"). The respondent was assaulted when he was in police custody before he was brought before a Magistrate for a remand order under section 117 of the CPC. The Magistrate granted a remand order for period of seven days, from 22-29 November 2008. The respondent was later hospitalized due to his injuries. While he was still in the hospital, on 28 November 2008, the respondent's remand order was extended for another seven days until 5 December 2008. He was not produced before a Magistrate for the extension of remand. The result of the investigation showed that the respondent was not involved in the alleged fight. The respondent then commenced an action against the appellants at the High Court for damages due to the injuries suffered by him and a declaration that his arrest was unlawful.

The High Court allowed the claim for damages. However, the High Court refused to grant the declaration sought by the respondent on the ground that as the remand order was properly issued by the Magistrate, the detention of the respondent was legal. The Court of Appeal agreed with the decision of the High Court on the quantum of damages but allowed the respondent's appeal and granted the declaration sought that his detention was unlawful. The issue before the Federal Court was whether or not damages for false imprisonment can be awarded for a detention following an order of a Magistrate pursuant to section 117 of CPC.

The appellant contended that as the remand orders issued by the Magistrate constitutes a judicial act, no claim for damages is available based on the case of *Choong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 50. It was also contended that the appellant is also protected by section 32 of the Police Act 1967 which safeguards the police in carrying out their duties pursuant to a warrant issued by a competent authority. The Federal Court disagreed with the appellant's contention and granted the damages claimed, distinguishing this case from the Federal Court case of *Shaaban* (supra). The respondent's detention was also declared unlawful.

However, Jefferey Tan FCJ was of the opinion that this was a case of malicious prosecution rather than false imprisonment. According to his Lordship, a judicial order provides the defence of lawful authority for the detention or imprisonment. In the instant case, the respondent was remanded under the judicial order of a Magistrate. Given the interposition of a judicial order for the remand of the respondent, the tort of false imprisonment was not available. Since the respondent was remanded without reasonable cause, it was malicious prosecution.

> *"102. In affirming the decision of the Court of Appeal, we are of the view that the facts as found by the Court of Appeal are peculiar and clearly distinguishable from the other cases which we have discussed, including the Shaaban's case. The Court of Appeal had found that the strict requirements of the provisions of ss 117 and 119 of the CPC had not been complied with and further there was a failure on the part of the police to be forthright in applying for the extension of the remand order to enable the magistrate to make an informed decision on the application. Thus, making the detention of the respondent unlawful."*
>
> *per Justice Balia Yusof,*
> *Judge of the Federal Court*

Liputan Simfoni Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd [2018] MLJU 2112

This case concerns the interpretation of section 340(3) of the National Land Code. The plaintiff, Pembangunan Orkid Desa Sdn Bhd, was the registered proprietor of a piece of land held under Grant No. 5309, Lot 2788 Mukim Petaling, Wilayah Persekutuan ("subject land"). An imposter company claiming to be the plaintiff had applied to the third defendant, Pendaftar Tanah dan Galian, Wilayah Persekutuan Kuala Lumpur, for a replacement issue document title alleging that it had lost the original document of title of the subject land. The application was granted and the imposter company entered into a sale and purchase agreement ("first SPA") to sell the subject land to the second defendant.

Subsequently, the second defendant entered into a sale and purchase agreement ("second SPA") with the first defendant. The imposter company on the other hand, entered a private caveat, alleging that the second defendant had yet to settle the balance of the purchase price.

Concurrently, the director of the plaintiff discovered that the land was registered in the name of the second defendant and lodged a police report stating that it has never sold the land and its original issue document of title was still in its possession. The plaintiff also notified the third defendant. The third defendant then held a meeting with the plaintiff, the second and third defendants together with the police to investigate the transfer of the subject land. Pending investigation, the second defendant applied to the court to have the Registrar's caveat removed. The High Court allowed the second defendant's application to remove the Registrar's caveat and the second defendant was then registered as the proprietor of the subject land. Consequently, the plaintiff filed the suit against all the three defendants seeking for a declaration that the transfers of the land to the second and first defendant is void *ab initio* and orders that the subject land to be restored to the plaintiff and that the third defendant to rectify the entries in the document title of the land.

The High Court allowed the plaintiff's claim and concluded that the second's defendant's title was defeasible under section 340(2)(b) of the National Land Code ("Code") as it was effected pursuant to a forged instrument. The relevant time at which knowledge for the purpose of determining whether a purchaser is a bona fide purchaser for the purpose of proviso to section 340(3) of the Code is at the time the purchaser was registered as a proprietor of the land and not the time of the entry into the transaction. The fact that the second defendant proceeded to register the subject land under his name, despite the information of the alleged fraud showed that the second defendant was not acting in good faith. It is not sufficient to only prove the absence of fraud to establish good faith. Good faith also requires the party to exercise reasonable diligence. The Court of Appeal affirmed the decision of the High Court.

The Federal Court also agreed with the High Court and the Court of Appeal that the relevant time for determination of good faith of a subsequent purchaser for the purposes of section 340(3) of the Code is the circumstances prior and at the time of the registration and that in order to show good faith, due diligence is required.

> *"82. Under, the circumstances, we are of the view that both the High Court and the Court of Appeal are right in preferring the broader concept of good faith as laid down in Au Meng Nam, that is to say, in order to discharge the burden of showing that it is a purchaser in good faith and for valuable consideration, the purchaser must not only show the absence of fraud, deceit or dishonesty but also that it had taken the ordinary precautions that a reasonably prudent purchaser would have taken in the circumstances."*
>
> *per Justice Hassan Lah,*
> *Judge of the Federal Court*

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & 2 Ors [2018] 1 MLJ 545

This case concerns the judicial powers of the civil courts. The appellant, Indira Gandhi a/p Mutho, has three children with her husband from a civil marriage. The husband converted to Islam and obtained an ex parte custody order for all three children from the Syariah Court. The Pengarah Jabatan Agama Islam Perak issued certificates of conversion in respect of the children and the Registrar of Muallafs registered the children as Muslims. The appellant filed an application for judicial review, seeking to quash the certificates of conversion to Islam on the basis that their issuance was ultra vires and illegal. The Director of the Islamic Religious Affairs Department of Perak, the Registrar of Muallafs, the Perak Government, the Ministry of Education and the Government of Malaysia were named as respondents.

The Federal Court reaffirmed the constitutional role of the judiciary as the ultimate arbiter of the lawfulness of state action. Judicial power, in particular the power of judicial review, is vested exclusively in the civil courts. This power forms part of the basic structure of the constitution and cannot be abrogated

by a constitutional amendment. Judicial power cannot be removed from the civil courts nor conferred on any other body which do not enjoy the same level of constitutional protection to ensure its independence.

Since Syariah Courts are not subject to the same constitutional safeguards of judicial independence, Article 121(1A) of FC cannot have the effect of removing judicial power from the civil courts and conferring such power upon Syariah Courts. Article 121(1A) of FC does not operate as a blanket exclusion of the jurisdiction of the civil courts whenever a matter relating to Islamic law arises; the jurisdiction of Syariah Courts is confined to the private aspect of Islamic law. The subject matter of the appellant's application is the legality of administrative action taken by a public authority in the exercise of statutory powers, and is not concerned with questions of Islamic personal law. Thus, the civil courts were seised with jurisdiction, to the exclusion of the Syariah Court, to determine the application.

The jurisdiction of the civil courts to determine the legality of administrative action cannot be excluded even by an express ouster clause. On the facts, the Federal Court found that the certificates of conversion were issued despite the non-fulfilment of the mandatory statutory requirements. The Registrar of Muallafs had no power to issue the certificates in the circumstances.

Where a child's religious upbringing is in issue, the paramount consideration is to safeguard the welfare of the child. On a purposive reading of Article 12(4) of FC, the conversion of a minor child requires the consent of both parents. Further, where one party to a civil marriage converts to Islam, the converting spouse remains bound by their legal obligations under the Guardianship of Infants Act 1961, which embodies the equality of parental rights in respect of infants. Accordingly, the certificates of conversion were held to be void and set aside.

> *"104. ... It is worth reiterating that the effect of art 121(1A) is not to oust the jurisdiction of the civil courts as soon as a subject matter relates to the Islamic religion. The powers of judicial review and of constitutional or statutory interpretation are pivotal constituents of the civil courts' judicial power under art 121(1). Such power is fundamentally inherent in their constitutional role as the bulwark against unlawful legislation and executive action. As part of the basic structure of the constitution, it cannot be abrogated from the civil courts or conferred upon the Syariah Courts, whether by constitutional amendment, Act of Parliament or state legislation."*
>
> *per Justice Zainun Ali,*
> *Judge of the Federal Court*

Federal Court courtroom located on the second floor, Palace of Justice

CASES OF INTEREST: CRIMINAL

Ghasem Hozouri Hassan v Pendakwa Raya [2018] 4 AMR 857

In this case, the Federal Court clarifies the application of Radhi's direction as propounded by the Supreme Court in *Mohamad Radhi Yaacob v PP* [1991] 3 CLJ 207. In this case, one of the central issues for determination was whether the appellant's appeal ought to be allowed on the ground that the Court of Appeal had failed to direct their minds to the Radhi's direction. According to Radhi's direction, when an accused raised in his defence that another person is "the real trafficker" and that the accused is a mere possessor, the trial court must carry out two separate exercises. The Court must first determine as a fact whether that other person mentioned is a real person or a mere fragment of the accused person's imagination invented for the purpose of the trial. Next, if the Court finds the other person to be real, the Court must then determine whether that other person is the real trafficker.

The Federal Court observed that it shall ordinarily set aside a conviction and allow an appeal where an accused has been deprived of a rule of law operating in his favour. However, in such a case, the court is not invariably bound to decide in favour of the appellant but retains a discretion to dismiss the appeal if, despite the deprivation, it is of the opinion that no substantial miscarriage of justice has occurred. On the facts of the case, the Federal Court held that even if the Court of Appeal had administered the Radhi direction correctly, the evidence available fails to rebut the trafficking presumption under section 37(da) of the Dangerous Drugs Act 1952 ("DDA") on a balance of probabilities. Therefore, the Federal Court is satisfied that the conviction of the appellant was safe. The appellant's appeal against conviction and sentence was dismissed.

> *"62. Guided by the dicta of the then Supreme Court in Mohamed Radhi, it is clear to us that unless the evidence in a particular case does not obviously so warrant, it is incumbent for the court to consider whether on a balance of probability on the evidence the defence has rebutted the statutory presumption of trafficking under s 37(da) of the DDA as a separate exercise even though the court is satisfied on a balance that the presumption of possession under s 37(d) of the DDA has not been rebutted. This is basically the gist of what the then Supreme Court had meant when it was referring to a separate exercise. In the final analysis, the Supreme Court held that the failure to do so on the part of the trial judge was a material misdirection and was fatal to the conviction. The dicta, postulated in Mohamed Radhi, which is now known as the Radhi direction is sort of a direction the trial judge administers unto himself when the accused person invokes the defence which demonstrates the presence of another person at the scene of the crime who is the trafficker as opposed to the accused person who is entirely innocent. Based on the said direction it is incumbent on the learned trial judge at the end of the defence case, to examine whether even though the court is not satisfied with the defence story, to ask whether in spite of this, whether the defence story casts a reasonable doubt on the prosecution's case. This principle is concomitant to the principle laid down in Mat v PP [1963] MLJ 263.*
>
> *63. At a glance, it appears that the Radhi direction is not entirely difficult to comprehend and poses no problem of interpretation. In practice, however, we find, with respect, it has been misinterpreted and misapplied by our courts. Judicial opinion emanating from the two Court of Appeal cases on Radhi direction seem to suggest that the separate exercise postulated in Mohamad Radhi means first to determine as a fact whether that the other person is a real person or a mere figment of the accused's imagination invented for the purpose of the trial. If, the trial judge finds that that other person to be real the judge must then determine whether that other person is the real trafficker.*
>
> ...

65. Both the above cases are instances where the Court of Appeal had with respect, in our view misconstrued what the then Supreme Court meant by separate exercise. We are of the view that the separate exercise is surely not an exercise to determine the real trafficker, but as stated in Mohamad Radhi, the separate exercise is an exercise by the court to consider whether on a balance of probability on the evidence the defence has rebutted the statutory presumption of trafficking under s 37(da) of the DDA as a separate exercise even though the court is satisfied on a balance that the presumption of possession under s 37(d) of the DDA has not been rebutted. This certainly has nothing to do with the court having to determine the real trafficker. We observed that the earlier cases above mentioned have, with respect, misapplied the Radhi direction. The interpretation circumscribed by the earlier two cases has no juridical foundation and is not altogether reconcilable with the position as postulated in Mohamed Radhi."

per Justice Raus Sharif,
Chief Justice

Chew Wai Keong v Public Prosecutor and another appeal [2018] 3 MLJ 549

This case concerns common intention. The first appellant, Chew Wai Keong, and the second appellant, Yan Wai Seng, were jointly charged in furtherance of a common intention, for two offences namely, kidnapping under section 3 of the Kidnaping Act 1962 and the murder under section 302 of the Penal Code of one Teh Wai Toong. At the conclusion of the trial, the learned High Court Judge found that the prosecution had proved its case beyond reasonable doubt against both appellants in respect of both charges. They were found guilty, convicted, and sentenced to death. Their appeals to the Court of Appeal were dismissed. On appeal to the Federal Court, the appeal against the first appellant was struck out as the first appellant had passed away before the commencement of the appeal. The Federal Court relying on its interpretation in *Farose bin Tamure Mohamad Khan v Public Prosecutor and other appeals* [2016] 6 MLJ 277 ruled that presence at the scene of the crime is not necessary for section 34 to apply but presence on the spot for the purpose of facilitating or promoting the offence is itself tantamount to actual participation in the criminal act.

"146. We agree with the DPP that presence at the scene of the crime is not necessary for s 34 to apply but presence on the spot for the purpose of facilitating or promoting the offence is itself tantamount to actual participation in the criminal act ... Thus, it is essential that there should be evidence of common intention, or evidence from which such common intention to commit the offence actually committed can properly be inferred."

per Justice Aziah Ali
Judge of the Federal Court

PP v Rosman bin Saprey dan satu lagi rayuan [2018] 4 MLJ 139

This case concerns the statutory procedural requirement of collecting urine sample from suspects arrested for administering drugs into themselves, an offence under section 15(1)(a) of DDA. Previously, the Court of Appeal in *Noor Shariful Rizal bin Noor Zawawi v PP* [2017] 3 MLJ 460 had decided that the appellant in that case was deprived of the procedural law which gives him the right of a second test when only one urine sample was taken from the appellant for the purpose of carrying out drugs screening test and subsequent laboratory tests under subsection 31A(1A) of DDA. The procedure infringed the two-bottles urine samples requirement as provided under the Standing Order of the Inspector General of Police F103 ("IGSO F103") and the Guidelines of the Ministry of Health Malaysia No 6/2002 ("GP"), both of which, according to the Court, had the force of law. Therefore, the appellant did not have a fair trial and that Articles 5(1) and 8(1) of FC were violated.

In this instant case, the issue to be determined was whether one or two urine samples should be taken from the respondents pursuant to section 31A(1A) of DDA.

The Court of Appeal in this instant case departed from its previous decision in *Noor Shariful Rizal bin Noor Zawawi v PP* [2017] 3 MLJ 460. The Court held that both IGSO F103 and GP were not legal documents and do not have any force of law. The Court reversed the decision of the High Court and affirmed the decision of the Magistrate's Court in convicting and sentencing the respondent under section 15(1) of DDA.

PP v Kadir Uyung & Anor and Other Cases (Federal Court Criminal Appeals No. 05-139, 142, 143, 144, 145, 160, 161, 162, 163-07/2017(S))(decided by the Federal Court in January 2018)

This case concerns the armed incursion in Lahad Datu, Sabah. 22 accused persons were charged under section 121 of the Penal Code ("PC") for waging war against the Yang di-Pertuan Agong and under section 130KA of the same Code for being members of a terrorist group. One of those 22 accused persons faced two additional charges under section 130E of PC for recruiting members of a terrorist group and under section 130K of PC for harbouring persons knowing they were members of a terrorist group. Five other accused persons were charged under section 130KA of PC for being members of a terrorist group. One accused was charged under section 130K of PC. The remaining two accused persons were charged under section 130K of PC read together with section 511 of PC for attempting to harbour persons knowing they were members of a terrorist group.

The learned High Court Judge acquitted the 7th, 8th, 9th, 11th, 12th, 15th, 17th, 21st, 22nd, 23rd, 24th, 25th, 29th and 30th accused persons ("the 14 accused persons"). The 1st, 4th, 10th, 13th, 15th, 16th, 18th, 19th, and 20th accused persons ("the nine appellants") were found guilty and convicted of the offence of waging war against the Yang di-Pertuan Agong under section 121 of PC and sentenced to life imprisonment. The 15th, 16th, 18th, 19th and 20th accused persons were also convicted of a second charge of being members of a terrorist group and were sentenced to 18 years' imprisonment. The 1st, 4th, 10th and 13th accused persons, who pleaded guilty to the same offence, each received 13 years' imprisonment. They were ordered to serve the jail sentence concurrently from the date of their arrest.

At the Court of Appeal, there were appeals and cross-appeal against the decision of the learned High Court Judge. The prosecution appealed against the acquittals of the 14 accused persons and the sentence of life imprisonment imposed on the nine appellants. The nine appellants appealed against conviction under section 121 of PC. The nine appellants submitted, among others, that the intercepted communications under section 6 of the Security Offences (Special Measures) Act 2012 should not have been admitted in evidence as there was failure to comply with the requirements of the 1st Schedule to the Security Offences (Special Measures) (Interception of Communications) Regulations 2012.

According to the Court of Appeal, the learned High Court Judge was right in holding that no *prima facie* case has been established against the 13 accused persons and in finding that the explanation proffered by the 14th respondent in his defence had raised a reasonable doubt in the prosecution case. Having satisfied with the assessment and evaluation of the evidence, the Court of Appeal affirmed the order of acquittal made by the learned High Court Judge. As for the authenticity of the intercepted communications, the Court of Appeal observed that the learned High Court Judge had scrutinised and critically examined all the relevant evidence before relying on the intercepted communications in finding the appellants guilty of the charge under section 121 of PC. As for the adequacy of the sentence of life imprisonment, the Court of Appeal observed that the sentence imposed by the learned High Court Judge was inadequate considering the severity of the offence committed and the threat posed to the national security. The Court of Appeal allowed the prosecution's appeal and set aside the sentence of life imprisonment passed by the learned High Court Judge and substituted it with the death penalty. The Federal Court affirmed the decision of the Court of Appeal.

> *"226. The case presents the element of pre-planning and preparation like no other case. The intrusion was meticulously planned and executed. The route from the Philippines*

to Sabah, the landing site at Kg Tanduo, the different targets at Sabah were all pre-determined. A channel of communication between the attacking terrorists and the appellants was put in place before and during the intrusion.

227. The case was of a magnitude like no other and has shocked the collective conscience of Malaysians. Nine Malaysian security personnel were killed and many seriously injured. The bodies of six Malaysian policeman were mutilated, with one beheaded. The local kampong folks were forced to leave their homes because of the intrusion. Heavy lethal weapons such as M-16 rifles, 9mm pistols and grenades were used during the intrusion.

228. In short, this was an attack by a foreign enemy which is unprecedented in Malaysian history. The conspiracy behind the attack was as deep and large as it was vicious and the execution was ruthless. Negotiations were held between the Malaysian security forces and the armed group at Kg Tanduo but the negotiations failed. The intruders chose not to leave Sabah, but instead chose bloodshed and war. In terms of loss of life and property, not to mention its traumatising effect, this case stands apart from any other case, and is the rarest of the rare since the birth of the nation. It should therefore attract the ultimate penalty of death.

...

230. Criminal cases do not fall into set-behaviouristic pattern. Even within the same category of offence, there are infinite variations based upon its configuration of facts. The aggression by a foreign terrorist organisation against the sovereignty of our nation was not a factor that called for consideration in Mohd Amin. To launch an attack on a sovereign democratic State is a terrorist act of the gravest severity and it presents to us in crystal clear terms a spectacle of the rarest of rare cases.

231. The sentence imposed must reflect the abhorrence and condemnation of the Malaysian community against such crime. We were firmly of the view that this was a fit and proper case to impose the death penalty against the nine accused persons ..."

per Justice Mohd Zawawi Salleh
Judge of the Court of Appeal


KOMPLEKS MAHKAMAH KUCHING
MAHKAMAH
KUCHING

APPENDIX A

(MALAYA)

STATISTICS 2018

A) INTRODUCTION

In the year 2018, the High Courts throughout the country have continued to maintain their high performance. The overall performance for Criminal and Civil Cases in the High Court of Malaya and High Court of Sabah and Sarawak are as follows:

- For Civil Cases (excluding code 29-32, 34-38) the High Courts disposed a total of **61,185** cases against registration of **62,339** cases.
- For Criminal Cases, the High Courts disposed a total of **8,090** cases against registration of **7,737** cases.

The particulars of the performance for each High Court and Subordinate Courts in Malaysia can be seen in the illustrated tracking charts and the tables of pending cases item one (1) until item (14) below.

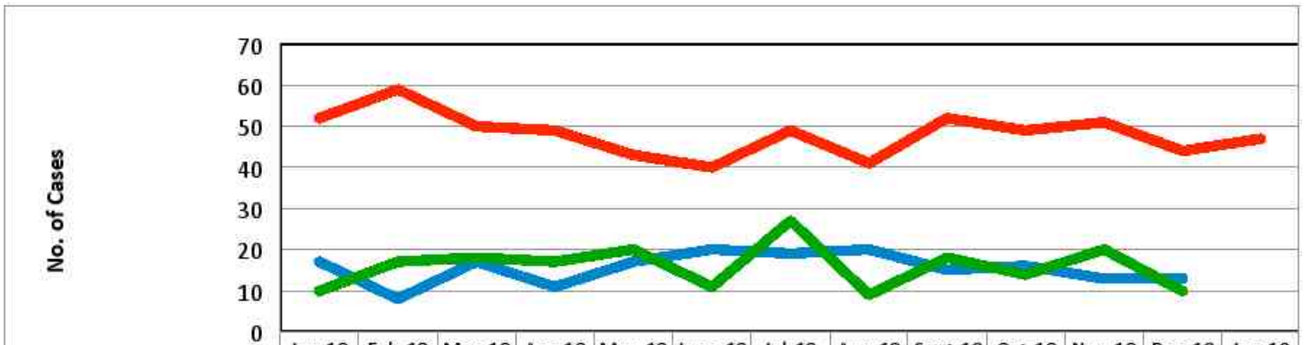
1. PERLIS

1.1 IN THE HIGH COURT AT KANGAR– CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kangar for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **186** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **191** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Kangar is **47** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mac-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	52	59	50	49	43	40	49	41	52	49	51	44	47
Registration	17	8	17	11	17	20	19	20	15	16	13	13	
Disposal	10	17	18	17	20	11	27	9	18	14	20	10	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KANGAR (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES											TOTAL
	11	12	21	22	24	25	28	*29	*31	*32	33	
2016			2	2								4
2017		1		4				15				20
2018	2	3	1	5	17	1	3	134	1	2	5	174
TOTAL	2	4	3	11	17	1	3	149	1	2	5	198

*Total Pending Cases + **1** Pending Case – Excluding Code (*) = Pending Cases (Jan 19)*

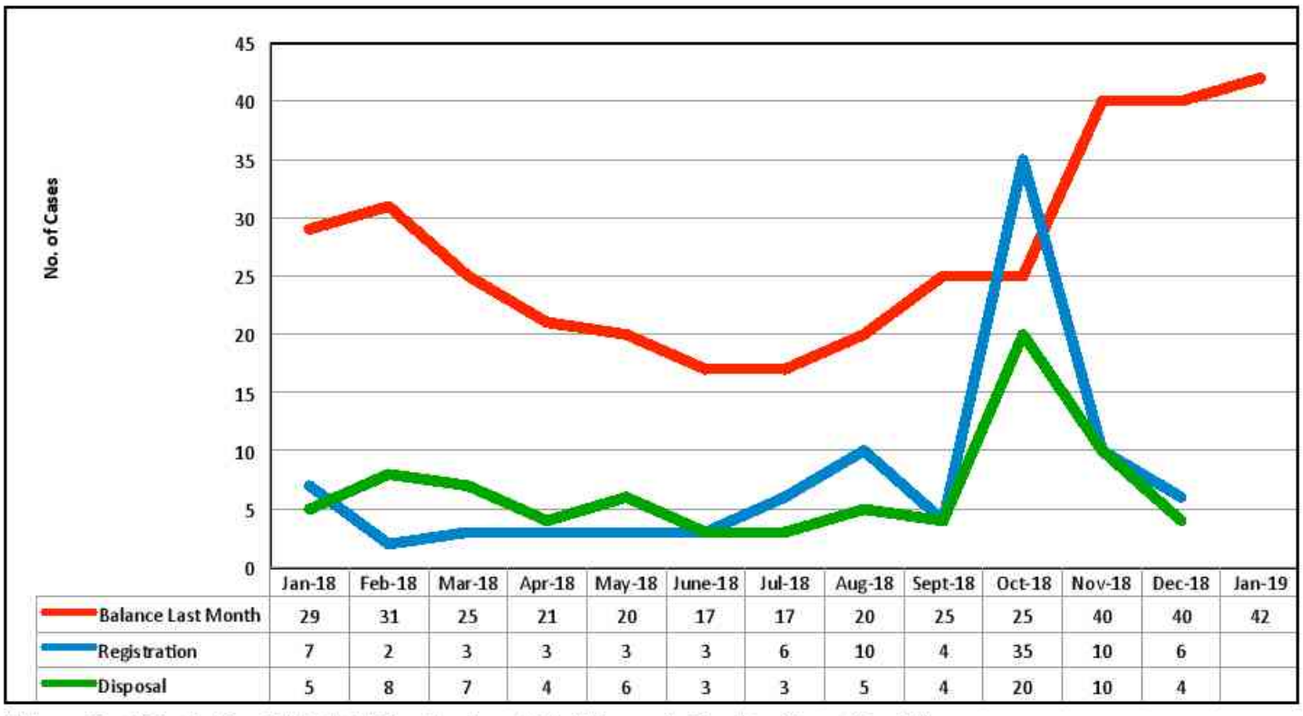
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 11,12,13,14,15,16,17,18,21,22,23,24,25, 26,27,28,*29,*31,*32, 33, 34, 36, 37, 38, 39 and 40.*
- *No pending cases for code 13, 14, 15, 16, 17, 18, 23, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40 in 2015, 2016, 2017 and 2018 and no pending cases for code 11, 13, 14, 15, 16, 17, 18, *31, *32, 33, 34, 36, 37, 38, 39 and 40 in 2016 and 2017.*
- *For code 22 there is **1** pending case in 2015.*
- *No pending cases for code 13, 14, 15, 16, 17, 18, 23, 26, 27, 34, 36, 37, 38, 39 and 40 in 2018.*

1.2 IN THE HIGH COURT AT KANGAR- CRIMINAL

For Criminal Cases in the year 2018, a total number of **92** cases including appeals and trials were registered and **79** cases were disposed of, leaving a balance of **42** cases pending.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	29	31	25	21	20	17	17	20	25	25	40	40	42
Registration	7	2	3	3	3	3	6	10	4	35	10	6	
Disposal	5	8	7	4	6	3	3	5	4	20	10	4	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KANGAR (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES			TOTAL
	41	42	45	
2017			3	3
2018	4	22	12	38
TOTAL	4	22	15	41

*All Pending Cases + **1** Pending Case = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Case column. 2012, 2013 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- ***1** pending case for code 42(A) in 2018.*
- *No pending cases for code 41(A), 43, 44, 46 and 47 in 2018.*

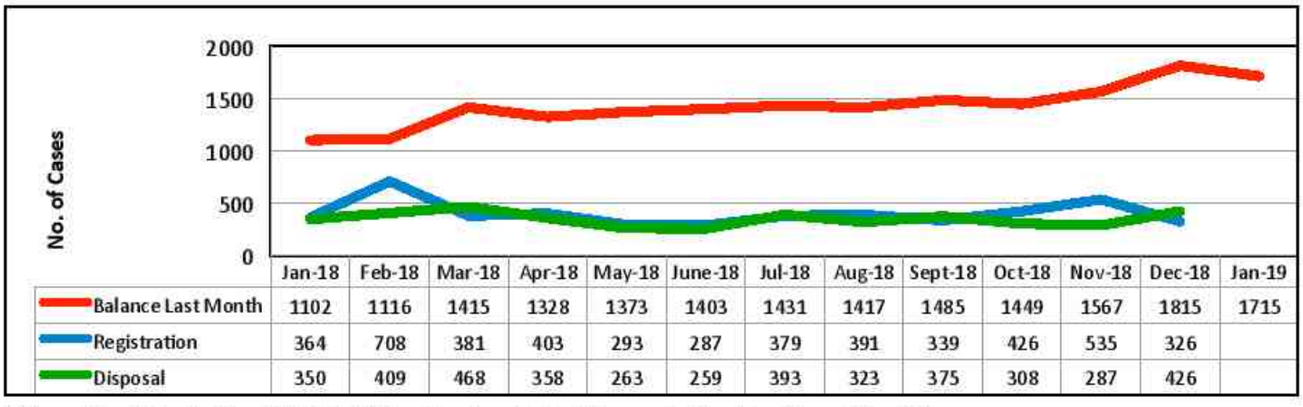
2. KEDAH

2.1 IN THE HIGH COURT AT ALOR SETAR – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Alor Setar for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **4832** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose **4219** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Alor Setar is **1715** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1102	1116	1415	1328	1373	1403	1431	1417	1485	1449	1567	1815	1715
Registration	364	708	381	403	293	287	379	391	339	426	535	326	
Disposal	350	409	468	358	263	259	393	323	375	308	287	426	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES															TOTAL
	11	12	15	16	21	22	24	25	28	*29	*31	*32	33	37	38	
2014			1		1	1										3
2015		1	10		1	2										14
2016		1	1		3	16		1		1		1	1			25
2017	16	29	4	6	12	35	99	9		131			4	9	5	359
2018	32	70	72	10	9	93	530	12	47	926	31	23	92	26	435	2,408
TOTAL	48	101	88	16	26	147	629	22	47	1,058	31	24	97	35	440	2,809

*Total Pending Cases + **19** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

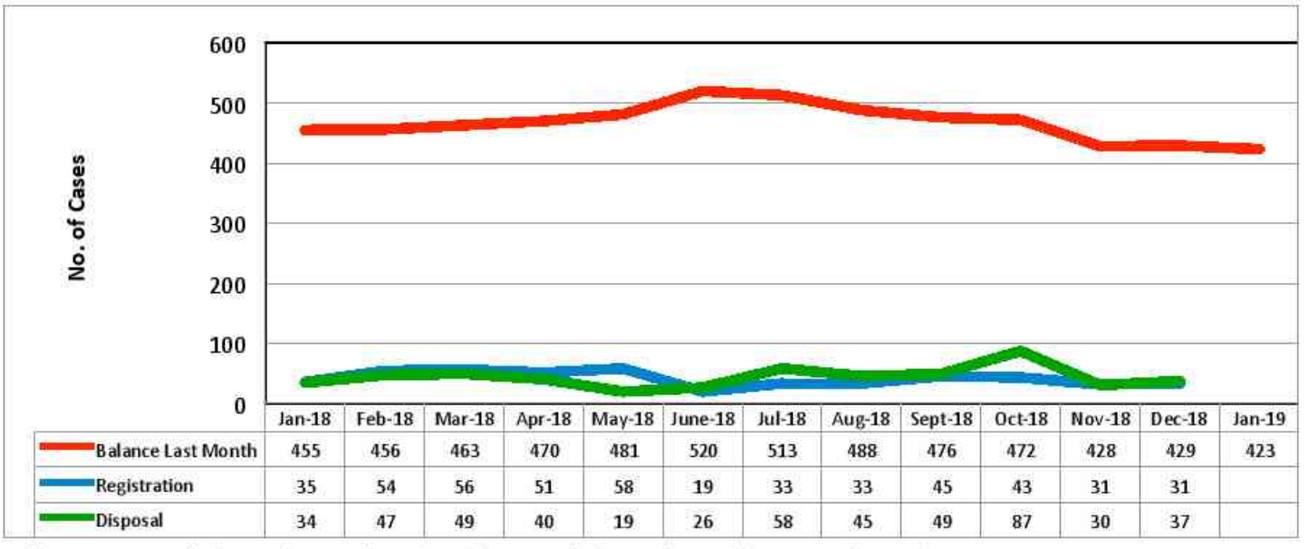
Notes:

- *There are no pending cases in 2013 for code 11, 12, 13,14,15,16, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *For code 15 there are **5** pending cases in the Previous Cases column and 2012.*
- *In 2018, there are **6** pending cases for code 17, 18 and **3** pending cases for code 23 and **5** pending cases for code 36.*

2.2 IN THE HIGH COURT AT ALOR SETAR – CRIMINAL

For Criminal Cases in the year 2018, a total number of **489** cases including appeals and trials were registered and **521** cases were disposed of, leaving a balance of **423** cases pending.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	455	456	463	470	481	520	513	488	476	472	428	429	423
Registration	35	54	56	51	58	19	33	33	45	43	31	31	
Disposal	34	47	49	40	19	26	58	45	49	87	30	37	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	42	44	45	
2016				22	22
2017	21	32		51	104
2018	89	79	8	111	287
TOTAL	110	111	8	184	413

*All Pending Cases + **10** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41, 41(A), 42, 42(A, 44, 46 and 47 in 2016.*
- *In 2015 and 2016, there are **2** pending cases for code 45 and 46. Meanwhile for code 42(A), there are **4** pending cases in 2017 and 2018.*
- ***4** pending cases in 2018 for code 41(A) and 43.*

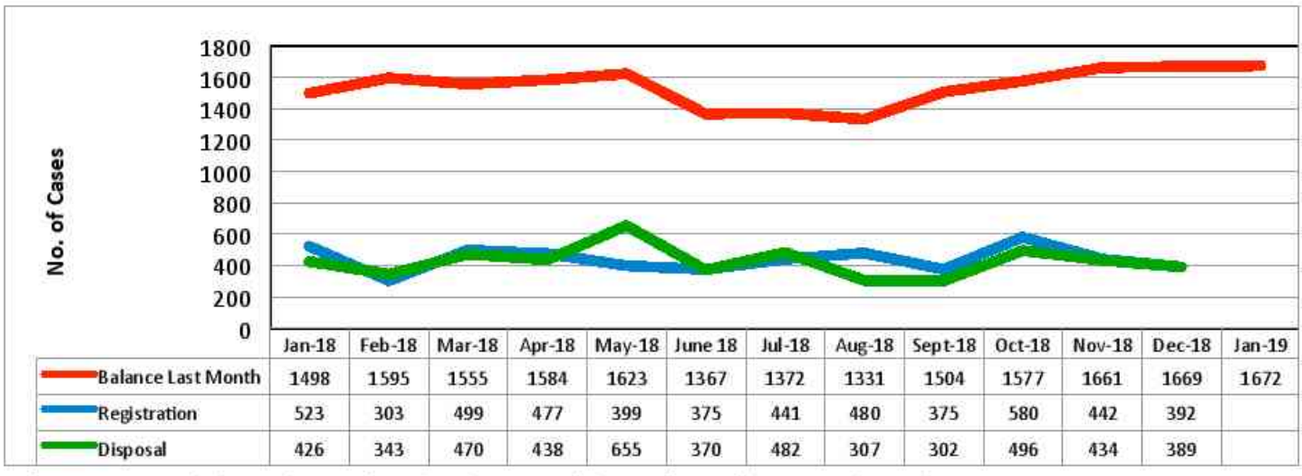
3. PULAU PINANG

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 2018. For the period from January to December 2018, the total number of civil cases registered was **5286** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **5112** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Georgetown is **1672** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June 18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1498	1595	1555	1584	1623	1367	1372	1331	1504	1577	1661	1669	1672
Registration	523	303	499	477	399	375	441	480	375	580	442	392	
Disposal	426	343	470	438	655	370	482	307	302	496	434	389	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES															TOTAL
	11	12	15	16	17	21	22	23	24	25	28	*29	*31	*32	33	
2014			5			1	3			1						10
2015						2	3	1	1		1		2		2	12
2016			3			1	13	1	1	1		2			2	24
2017	3	1	23			7	69	10	4	19	2	115	1		11	265
2018	84	197	86	11	20	12	164	19	497	95	50	855	73	130	239	2,532
TOTAL	87	198	117	11	20	23	252	31	503	116	53	972	76	130	254	2,843

*Total Pending Cases + **7** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

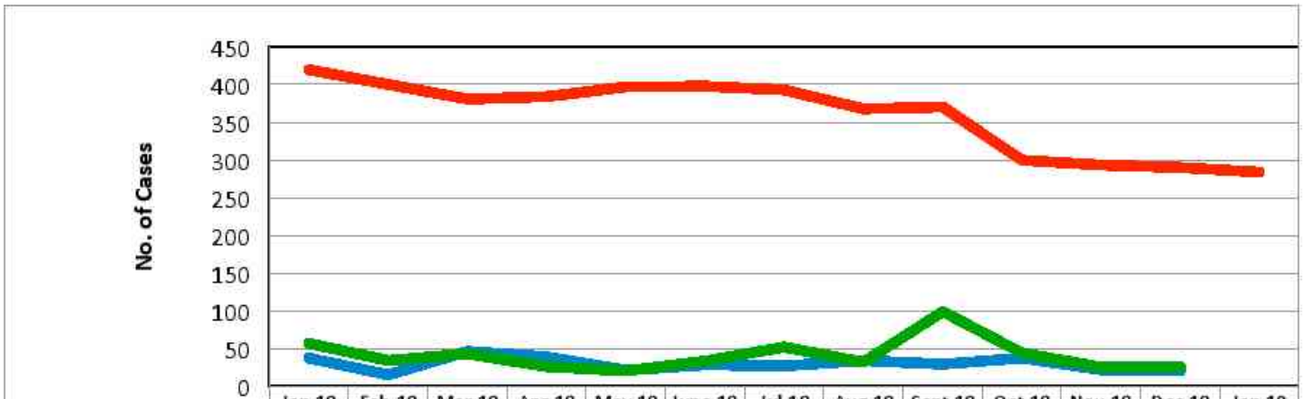
Notes:

- *There are no pending cases in the Previous Cases column for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *For codes 21 and 22 there are **6** pending cases in 2012 and 2013.*
- ***1** pending case in 2018 for code 26.*
- *No pending cases for code 13, 14, 27, 34, 36, 37, 38, 39 and 40 in 2018.*

3.2 IN THE HIGH COURT AT GEORGETOWN – CRIMINAL

For Criminal Cases in the year 2018, a total number of **355** cases including appeals and trials were registered and **491** cases were disposed of, leaving a balance of **284** cases pending.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	420	400	381	384	397	398	393	368	370	300	293	290	284
Registration	37	15	46	39	21	28	27	34	29	37	22	20	
Disposal	57	34	43	26	20	33	52	32	99	44	25	26	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	42	44	45	
2016				11	11
2017	6	2		58	66
2018	56	46	9	88	199
TOTAL	62	48	9	157	276

*All Pending Cases + **8** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column. 2012, 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41, 41(A), 42, 42(A, 44, 46 and 47 in 2016.*
- *In 2017, there are no pending cases for code 41(A), 42(A), 43, 44, 46 and 47.*
- *There are **8** pending cases for code 41(A) and 42(A) in 2018.*

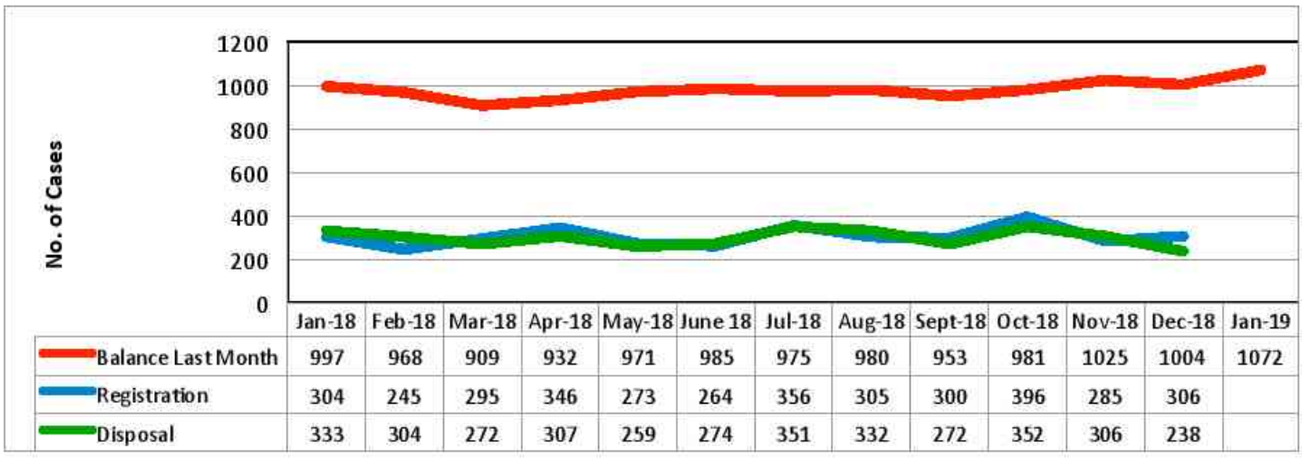
4. PERAK

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 2018. For the period from January to December 2018, the total number of civil cases registered was **3675** excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **3600** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in High Court at Ipoh is **1072** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June 18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	997	968	909	932	971	985	975	980	953	981	1025	1004	1072
Registration	304	245	295	346	273	264	356	305	300	396	285	306	
Disposal	333	304	272	307	259	274	351	332	272	352	306	238	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT IPOH (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES													TOTAL
	11	12	15	21	22	23	24	25	28	*29	*31	*32	33	
2016			2		16		1							19
2017		1	2	2	31	2	6		4	15			4	67
2018	32	51	44	7	126	4	429	19	41	742	41	69	227	1832
TOTAL	32	52	48	9	173	6	436	19	45	757	41	69	231	1918

*Total Pending Cases + **21** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

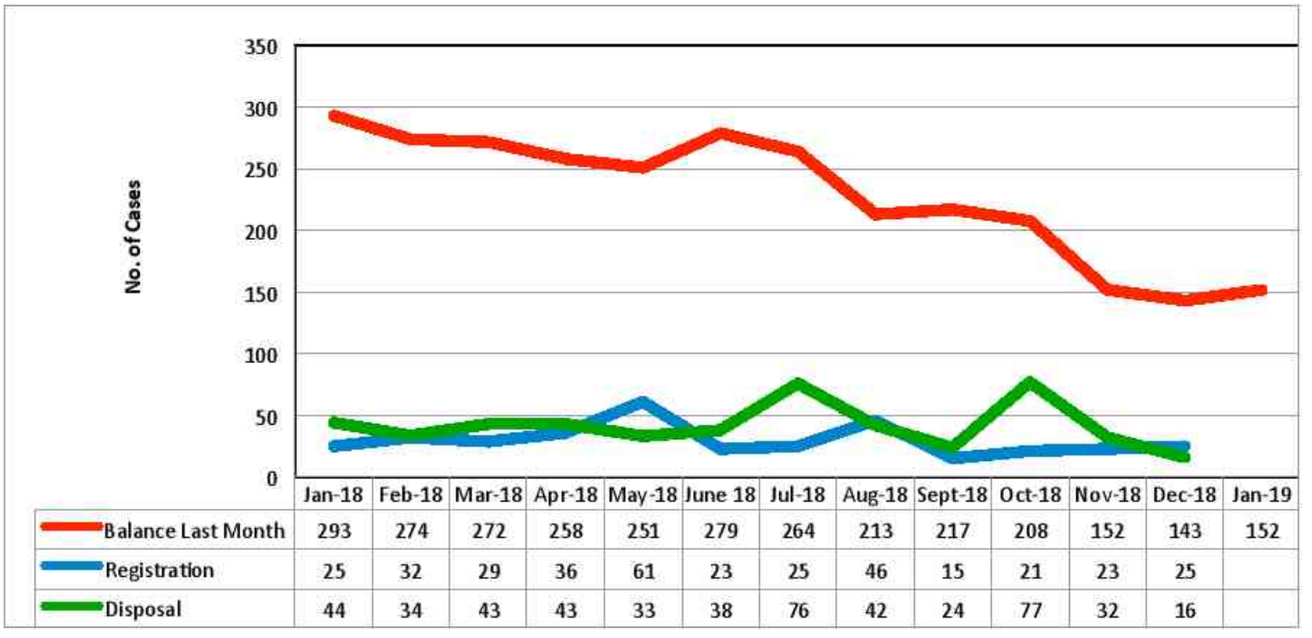
Notes:

- *There are no pending cases in the Previous Cases column and 2013 for code 11, 12, 13,14,15,16, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *For code 22 there are **11** pending cases in 2012, 2014 and 2015.*
- *In 2018, there are **10** pending cases for code 16 and 17.*
- *No pending cases for code 13, 14, 18, 26, 27, 34, 36, 37, 38, 39 and 40 in 2018.*

4.2 IN THE HIGH COURT AT IPOH- CRIMINAL

For Criminal Cases in the year 2018, a total number of **361** cases including appeals and trials were registered and **502** cases were disposed of, leaving a balance of **152** cases pending.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June 18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	293	274	272	258	251	279	264	213	217	208	152	143	152
Registration	25	32	29	36	61	23	25	46	15	21	23	25	
Disposal	44	34	43	43	33	38	76	42	24	77	32	16	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT IPOH (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	42	44	45	
2017	3	8		11	22
2018	49	28	12	24	113
TOTAL	52	36	12	35	135

*All Pending Cases + **17** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

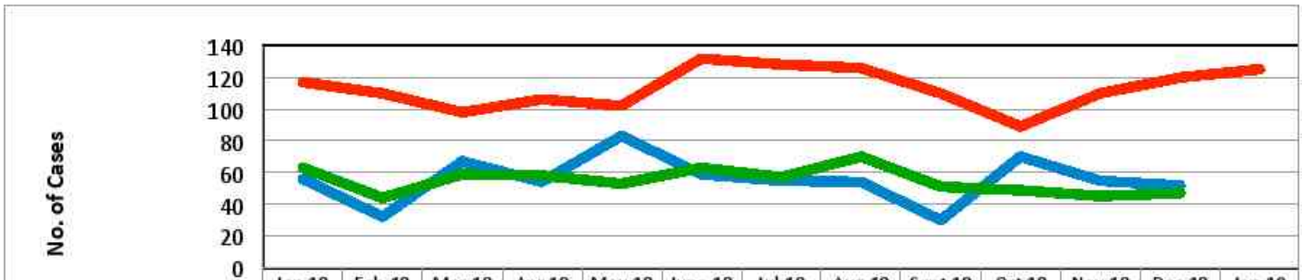
- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **3** pending cases for code 42 and 45 in 2015 and 2016.*
- ***14** pending cases for code 41(A), 42(A) 43 and 46 in 2018.*
- *No pending cases for code 41(A), 42(A), 43, 46 and 47 in 2017.*
- *In 2018, there are no pending cases for code 41(A), 42(A), 43, 46 and 47.*

4.3 IN THE HIGH COURT AT TAIPING - CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Taiping for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **667** (excluding cases for Code 29, 31 and 32). High Court has managed to dispose of **659** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in High Court at Taiping is **125** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct 18	Nov-18	Dec-18	Jan-19
Balance Last Month	117	110	98	106	102	132	128	126	110	89	110	120	125
Registration	56	32	67	54	83	59	55	54	30	70	55	52	
Disposal	63	44	59	58	53	63	57	70	51	49	45	47	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT TAIPING (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES									TOTAL
	11	12	22	24	*29	*31	*32	33	37	
2018	3	14	8	38	153	9	8	42	6	281
TOTAL	3	14	8	38	153	9	8	42	6	281

*Total Pending Cases + **14** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

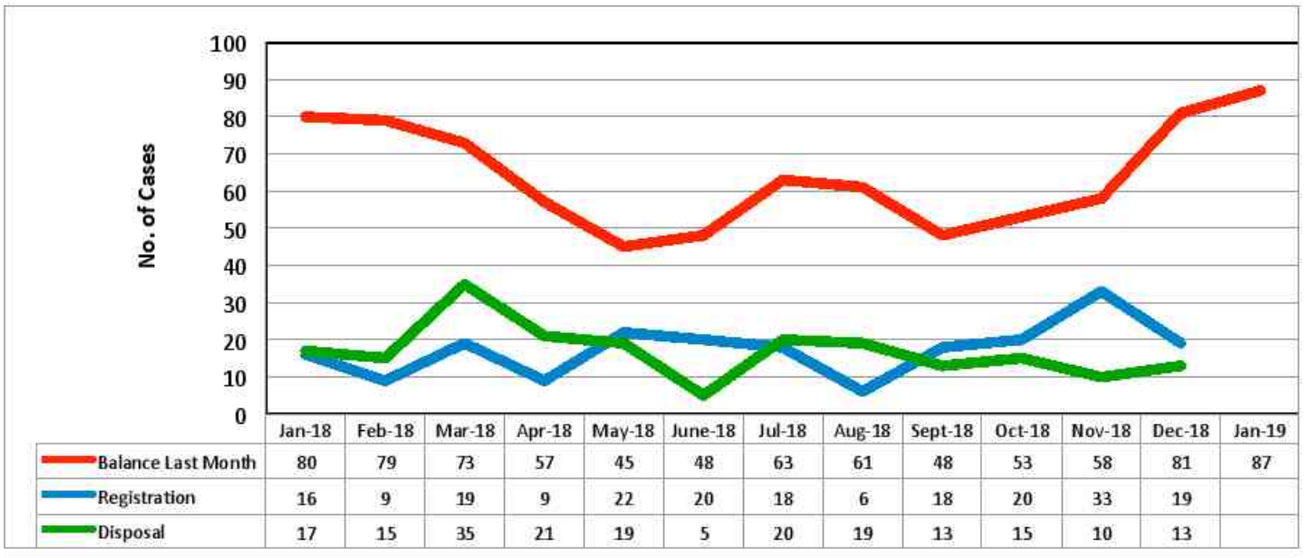
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014 and 2015 for codes 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **6** pending cases for code 21, 22 and 24 in 2016 and 2017.*
- ***8** pending cases in 2018 for code 16, 17, 21, 25 and 28.*
- *No pending cases for code 13, 14, 15, 18, 23, 26, 27, 34, 36, 38, 39 and 40 in 2018.*

4.4 IN THE HIGH COURT AT TAIPING - CRIMINAL

For Criminal Cases in the year 2018, a total number of **209** cases including appeals and trials were registered and **202** cases were disposed of, leaving a balance of **87** cases pending.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	80	79	73	57	45	48	63	61	48	53	58	81	87
Registration	16	9	19	9	22	20	18	6	18	20	33	19	
Disposal	17	15	35	21	19	5	20	19	13	15	10	13	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT TAIPING (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES			TOTAL
	41	42	45	
2018	19	49	11	79
TOTAL	19	49	11	79

*All Pending Cases + **8** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2013, 2014, 2015 and 2016 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **2** pending cases for code 45 in 2017 and **6** pending cases for code 41(A), 42(A) and 44 in 2018.*
- *No pending cases for code 41, 41(A), 42(A), 44, 44, 46 and 47 in 2017.*
- *In 2018, there are no pending cases for code 43, 46 and 47.*

5. IN THE HIGH COURT AT KUALA LUMPUR DIVISIONS AND SPECIALISED COURTS

Kuala Lumpur High Court is divided into Divisions and Specialised Courts. There are four (4) Specialised Courts and four (4) Divisions in the High Court at Kuala Lumpur as can be seen in the table below.

HIGH COURT AT KUALA LUMPUR

NO	DIVISIONS	*SPECIALISED COURTS
1.	COMMERCIAL	*MUAMALAT
		*INTELLECTUAL PROPERTY
		*ADMIRALTY
		NEW COMMERCIAL (NCC)
		BANKRUPTCY
		INSOLVENCY
2	CIVIL	*CONSTRUCTION
		NEW CIVIL (NCvC)
		FAMILY
4.	APPELLATE AND SPECIAL POWERS	
5.	CRIMINAL	

These Specialised Courts are placed in the Divisions of the Kuala Lumpur High Court. namely:-

5.1 Civil Division which comprises:-

- Construction (Specialised Court);
- New Civil (NCvC); and
- Family.

5.2 Commercial Division which comprises:-

- *Muamalat* (Specialised Court);
- Intellectual Property (Specialised Court);
- Admiralty (Specialised Court); and
- New Commercial (NCC);
- Bankruptcy;
- Insolvency

5.3 Appellate and Special Powers Division:

5.4 Criminal Division.

The respective statistics of the Specialised Courts and Divisions in the High Court of Kuala Lumpur are futher elaborated on the next pages.

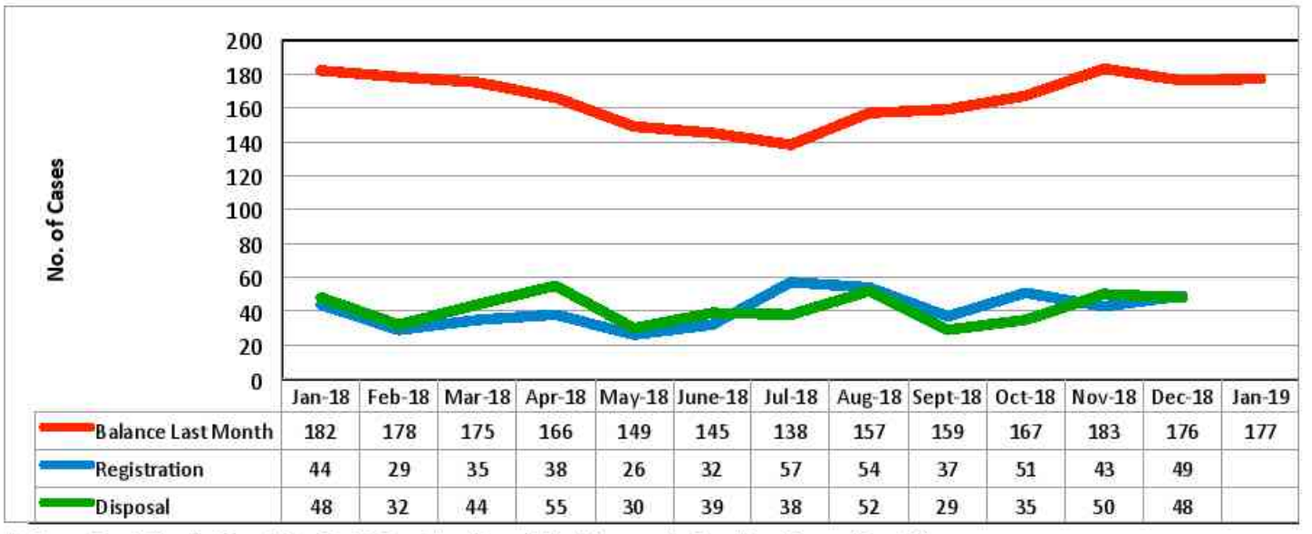
5. IN THE HIGH COURT OF KUALA LUMPUR- CIVIL DIVISION

5.1 Construction Court

The Construction Court is equipped with high technology equipment to assist the court in handling Construction Cases efficiently. The tracking chart below shows the registration and disposal of Construction Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2018. For the period of January to December 2018, the total civil cases registered were **495**.The High Court has managed to dispose of **500** cases throughout the year 2018.

As at 31 December 2018, the total number of construction cases pending in the Civil Division in the High Court at Kuala Lumpur is **177** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	182	178	175	166	149	145	138	157	159	167	183	176	177
Registration	44	29	35	38	26	32	57	54	37	51	43	49	
Disposal	48	32	44	55	30	39	38	52	29	35	50	48	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	*12	21C	22C	*24	
2017		2	23	1	26
2018	8	5	62	76	151
TOTAL	8	7	85	77	177

Total Pending Cases = Pending Cases (Jan 19)

Notes:

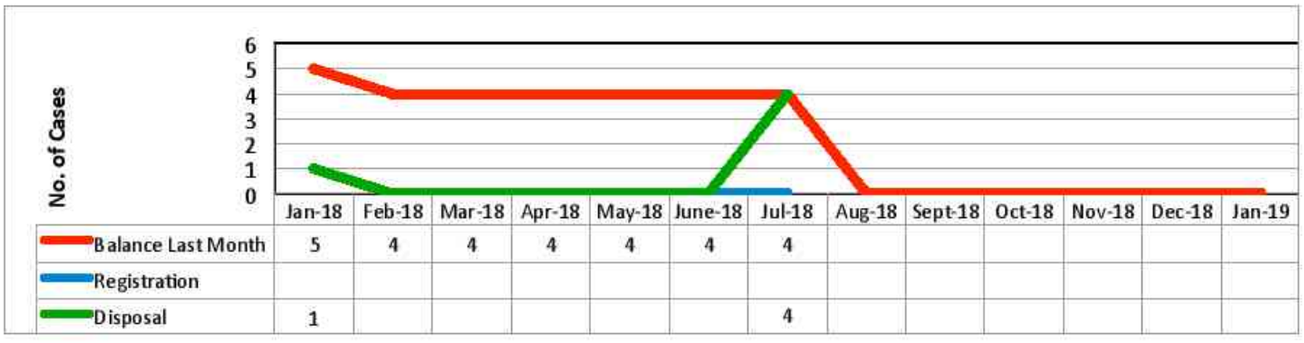
- *Codes:*
  *i. *12-(12A and 12BC)*
  *ii. *24-(24C and 24 ARB)*
- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014, 2015 and 2016 for code 11AC, 11BC, 12AC, 12BC, 21C, 22C, 24C and 24C (ARB).*
- *No pending cases for code 11AC and 11BC in 2017 and no pending cases for code 11AC and 11BC in 2018.*

5.2 Pre 2018 Cases

The tracking chart below shows the registration and disposal of pre 2018 cases in the Civil Division in the High Court at Kuala Lumpur for the year 2018. For the period of January to December 2018, the total civil cases registered was **0**. The High Court has managed to dispose of **5** cases throughout the year 2018.

As at 31 July 2018, the total number of Pre 2018 cases pending in the Civil Division in the High Court at Kuala Lumpur is **0** cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (PRE 2018 CASES)
JANUARY-JULY 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	5	4	4	4	4	4	4						
Registration													
Disposal	1						4						

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (PRE 2018 CASES)
AS AT 31 JULY 2018

YEAR	CODES																				TOTAL
	11	12	13	14	15	16	17	18	21	22	23	24	25	26	27	28	*29	*31	*32	33	34	
PREVIOUS CASES																						
2012																						
2013																						
2014																						
2015																						
2016																						
2017																						
2018																						
TOTAL										0												0

Notes:

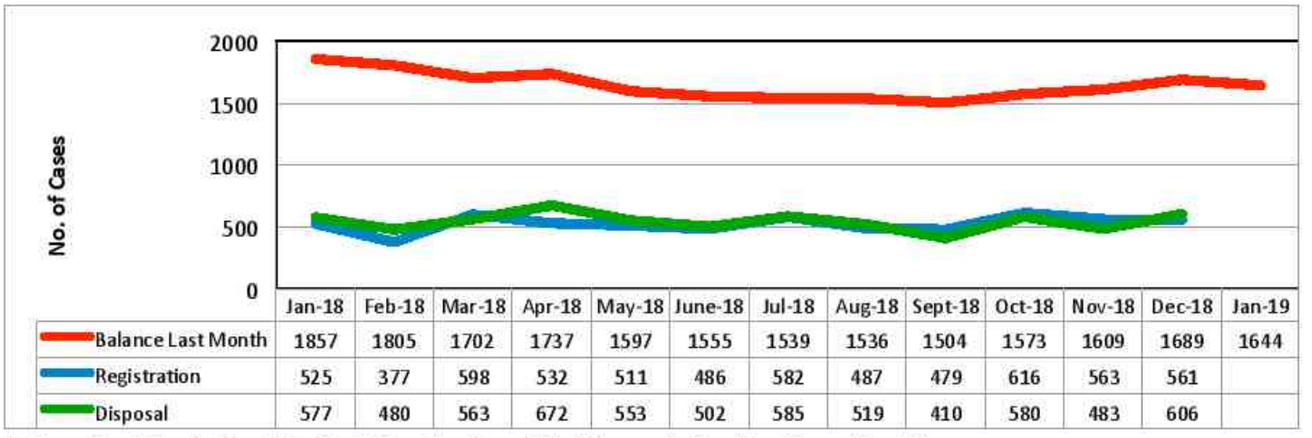
- *There are no pending cases for Pre 2018 cases.*

5.3 New Civil Court (NCVC) Cases

The tracking chart below shows the registration and disposal of NCvC cases in the Civil Division in the High Court at Kuala Lumpur for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **6,317** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **6,530** cases throughout the year 2018.

As at 31 December 2018, the total number of NCvC cases pending in the High Court at Kuala Lumpur is **1,644** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCVC)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1857	1805	1702	1737	1597	1555	1539	1536	1504	1573	1609	1689	1644
Registration	525	377	598	532	511	486	582	487	479	616	563	561	
Disposal	577	480	563	672	553	502	585	519	410	580	483	606	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCVC)
AS AT 31 DECEMBER 2018

YEAR	CODES										TOTAL
	*11	*12	15	21NCVC	*22	*23	24FC	*29	*31NCVC	*32NCVC	
2015				2	19	3				1	25
2016		1		13	41	2	3				60
2017		4	6	28	152	30	10			3	233
2018	101	204	24	51	418	64	446		104	94	1,506
TOTAL	101	209	30	94	630	99	459		104	98	1,824

*Total Pending Cases + **22** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

Notes:

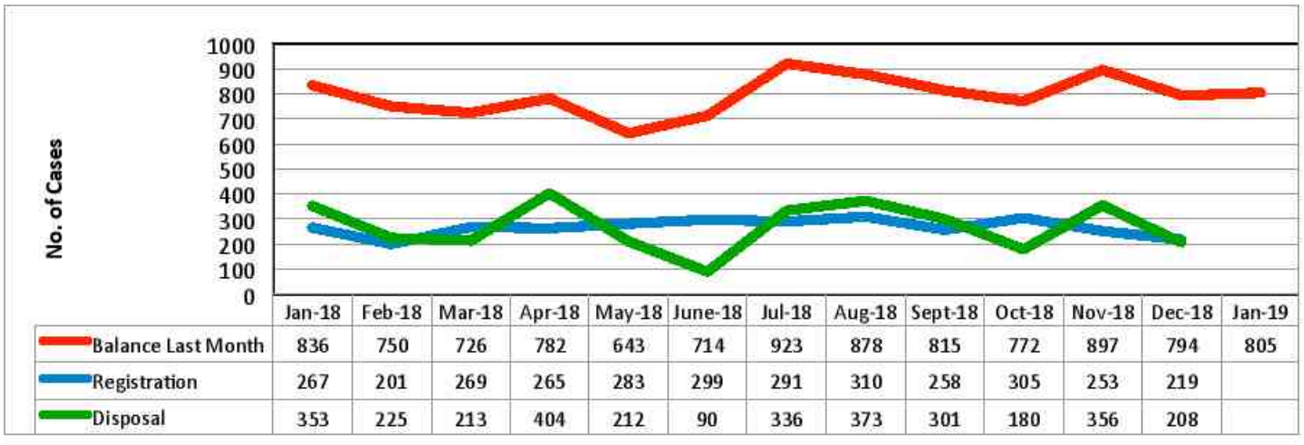
- *Codes:*
  - *i. *11-(11ANCVC and 11BNCVC)*
  - *ii. *12-(12ANCVC and 12BNCVC)*
  - *iii. *22- (22, 22CY and 22NCVC)*
  - *iv. *23-(23, 23CY and 23NCVC)*
- *There are **22** pending cases for code 21NCVC, 22, 22CY, 22NCVC, 23, 23CY and 23NCVC in the Previous Cases column, 2012, 2013 and 2014.*

5.4 Family Court Cases

The tracking chart below shows the registration and disposal of Family Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2018. For the period of January to December 2018, the total civil cases registered was **3,220**. The High Court has managed to dispose of **3,251** cases throughout the year 2018.

As at 31 December 2018, the total number of Family Court cases pending in the Civil Division in the High Court at Kuala Lumpur is **805** cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	836	750	726	782	643	714	923	878	815	772	897	794	805
Registration	267	201	269	265	283	299	291	310	258	305	253	219	
Disposal	353	225	213	404	212	90	336	373	301	180	356	208	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	22F	24F	*33	34	
2016		1	9		10
2017	1	6	28		35
2018	1	87	663	6	757
TOTAL	2	94	700	6	802

Total Pending Cases + 3 Pending Cases = Pending Cases (Jan 19)

Notes:

- *Code:*
  *i. *33-(33 and 33JP)*
- *There are no pending cases in the Previous Cases column, 2012 and 2014 for code 22F, 24F, *33, *33JP and 34.*
- *3 pending cases for code *33 and *33JP in 2013 and 2015.*

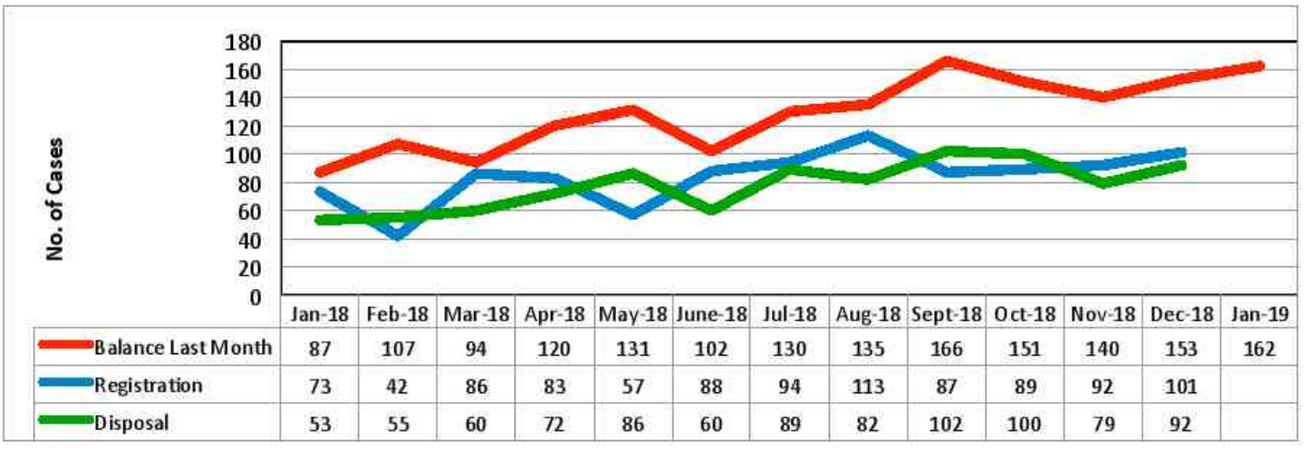
5.5 IN THE HIGH COURT AT KUALA LUMPUR – COMMERCIAL DIVISION

5.5.1 Muamalat Cases

The specialised Muamalat Court handle cases relating the islamic finance and banking. The tracking chart below shows the registration and disposal of Muamalat cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2018. For the period from January to December 2018, the total number of Muamalat cases registered was **1,005.** The High Court has managed to dispose of **930** cases throughout the year 2018.

As at 31 December 2018, the total number of Muamalat cases pending in the High Court at Lumpur is **162** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	87	107	94	120	131	102	130	135	166	151	140	153	162
Registration	73	42	86	83	57	88	94	113	87	89	92	101	
Disposal	53	55	60	72	86	60	89	82	102	100	79	92	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	*11	*12	22M	24	
2015			2		2
2016				1	1
2017			1		1
2018	2	7	86	63	158
TOTAL	2	7	89	64	162

Total Pending Cases = Pending Cases (Jan 19)

Notes:

- *Codes:*
  *i. *11-(11AM and 11BM)*
  *ii. *12-(12AM and 12BM)*
- *No pending cases for code *11AM, *11BM, *12AM, *12BM, 13M, 22M, 24M and 24MFC in the Previous Cases column, 2012, 2013 and 2014.*

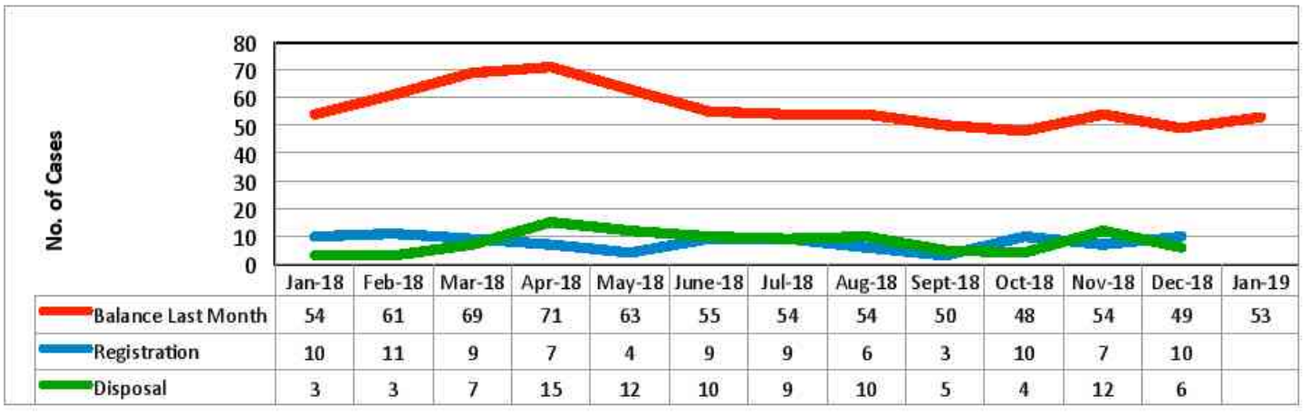
5.5.2 Intellectual Property Cases

The Intellectual Property Specialised Court was set up to handle Intellectual Property suits. The tracking chart below shows the registration and disposal of intellectual property for the year 2018.

For the period from January to December 2018, the total number of civil cases registered was **95**. The High Court has managed to dispose of **96** cases throughout the year 2018.

As at 31 December 2018, the total number of Intellectual Property cases pending in the Commercial Division in the High Court at Kuala Lumpur is **53** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	54	61	69	71	63	55	54	54	50	48	54	49	53
Registration	10	11	9	7	4	9	9	6	3	10	7	10	
Disposal	3	3	7	15	12	10	9	10	5	4	12	6	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
AS AT 31 DECEMBER 2018

YEAR	CODES		TOTAL
	22IP	24IP	
2017	6	1	7
2018	29	17	46
TOTAL	35	18	53

Total Pending Cases = Pending Cases (Jan 19)

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014, 2015 and 2016 for code 22IP and 24IP.*

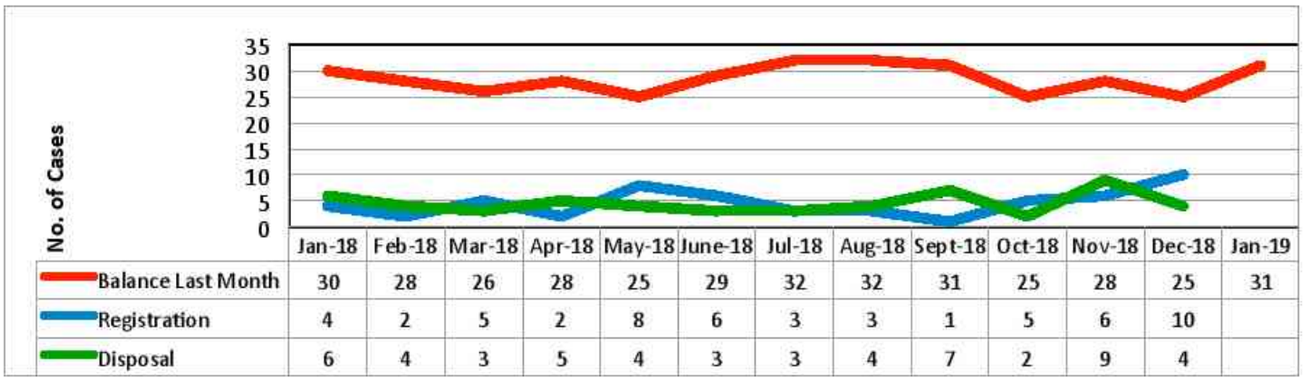
5.5.3 Admiralty Court

The setting up of the Admiralty Court has expediated the disposal of maritime cases in Malaysia as can be seen in the tracking chart below. The tracking chart below shows the registration and disposal of admiralty cases in the High Court at Kuala Lumpur for the year 2018.

For the period from January to December 2018, the total admiralty cases registered was **55.** The High Court has managed to dispose of **54** cases throughout the year 2018.

As at 31 December 2018, the total number of admiralty cases pending in the High Court at Kuala Lumpur is **31** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	30	28	26	28	25	29	32	32	31	25	28	25	31
Registration	4	2	5	2	8	6	3	3	1	5	6	10	
Disposal	6	4	3	5	4	3	3	4	7	2	9	4	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)
AS AT 31 DECEMBER 2018

YEAR	CODE	TOTAL
	27NCC	
2016	1	1
2017	8	8
2018	22	22
TOTAL	31	31

Total Pending Cases = Pending Cases (Jan 19)

Notes:

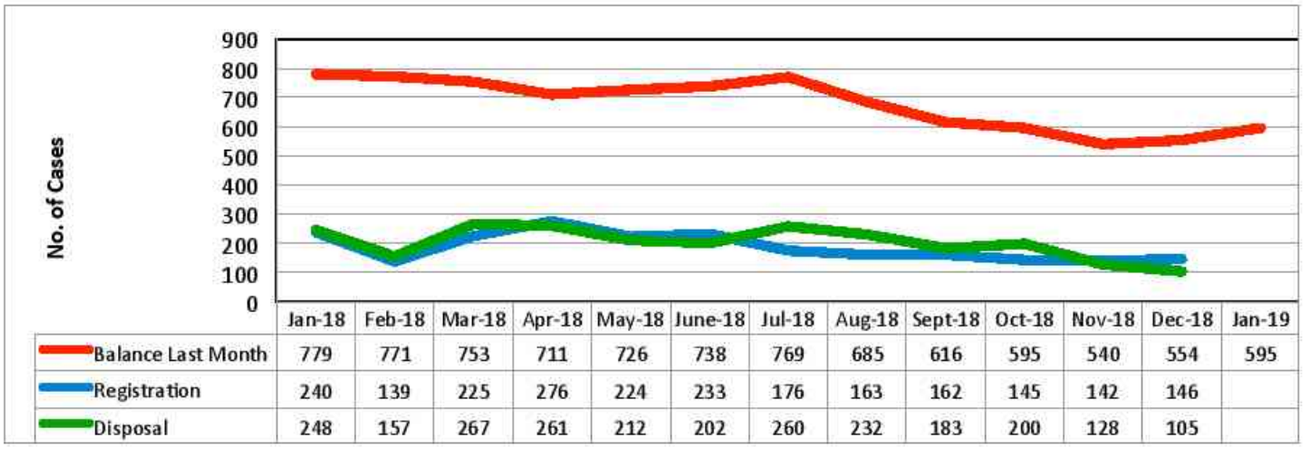
- *There are no pending cases in the Previous Cases column. 2012, 2013, 2014, 2015 and 2016 for the Admiralty Court.*

5.5.4 NCC Cases

The tracking chart below shows the registration and disposal of NCC cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2018. For the period from January to December 2018, the total NCC cases registered were **2,271.** The High Court has managed to dispose of **2,455** cases throughout the year 2018.

As at 31 December 2018, the total number of NCC cases pending in the High Court at Kuala Lumpur is **595** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	779	771	753	711	726	738	769	685	616	595	540	554	595
Registration	240	139	225	276	224	233	176	163	162	145	142	146	
Disposal	248	157	267	261	212	202	260	232	183	200	128	105	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
AS AT 31 DECEMBER 2018

YEAR	CODES						TOTAL
	*11	*12	*22	*24	26NCC	28NCC	
2013			2				2
2014			4				4
2015			8	2		2	12
2016			26	1		2	29
2017			31	20		2	53
2018	15	57	232	170	8	7	489
TOTAL	15	57	303	193	8	13	589

*Total Pending Cases + **6** Pending Cases = Pending Cases (Jan 19)*

Notes:

- *Codes:*
  - *i. *11-(11ANCC and 11BNCC)*
  - *ii. *12-(12ANCC and 12BNCC)*
  - *iii. *22-(22 and 22NCC)*
  - *iv. *24-(24NCC and 24NCC ARB)*
- *There are **4** pending cases in the Previous Cases Column and 2012 for code *22 and **1** case in 2013 for code *24.*
- *In 2018, there is **1** pending case for code 21NCC.*
- *No pending cases for code *11ANCC, *11BNCC, *12ANCC, *12BNCC and 26NCC in 2015, 2016 and 2017.*

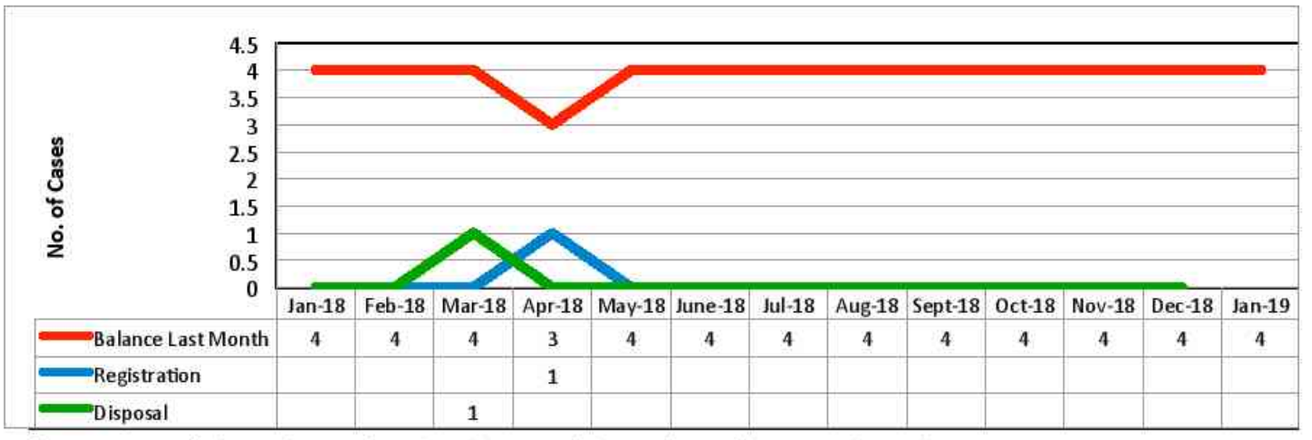
5.5.5 Pre 2018 Cases

The tracking chart below shows the registration and disposal of Pre 2018 cases in the High Court at Kuala Lumpur for the year 2018.

For the period from January to December 2018, the total Pre 2018 cases registered was 1. The High Court has managed to dispose of 1 cases throughout 2018.

As at 31 December 2018, the total of Pre 2018 cases pending in the High Court at Kuala Lumpur is 4 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (PRE 2018 CASES)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	4	4	4	3	4	4	4	4	4	4	4	4	4
Registration				1									
Disposal			1										

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (PRE 2018 CASES)
AS AT 31 DECEMBER 2018

YEAR	CODE	TOTAL
	22	
PREVIOUS CASES	4	4
TOTAL	4	4

Total Pending Cases = Pending Cases (Jan 19)

Notes:

- *There are no pending cases in 2012, 2013, 2014, 2015, 2016, 2017 and 2018 for the Pre 2018 cases.*

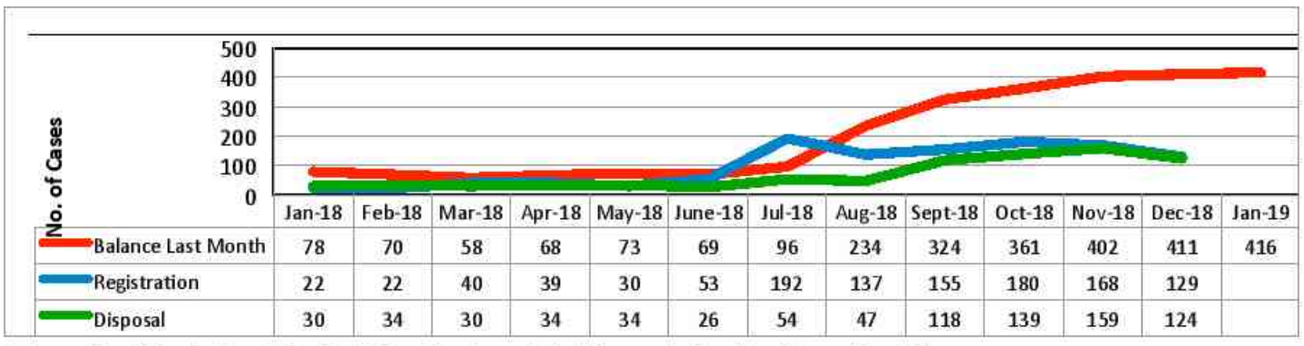
5.6 Insolvency Cases

The tracking chart below shows the registration and disposal of insolvency cases in the High Court at Kuala Lumpur for the year 2018.

For the period from January to December 2018, the total insolvency cases registered was **1,167.** The High Court has managed to dispose of **829** cases throughout the year 2018.

As at 31 December 2018, the total number of Insolvency cases pending in the High Court at Kuala Lumpur is **416** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (INSOLVENCY)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	78	70	58	68	73	69	96	234	324	361	402	411	416
Registration	22	22	40	39	30	53	192	137	155	180	168	129	
Disposal	30	34	30	34	34	26	54	47	118	139	159	124	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (INSOLVENCY)
AS AT 31 DECEMBER 2018

YEAR	CODES	TOTAL
	28	
2017	4	4
2018	412	412
TOTAL	416	416

Total Pending Cases = Pending Cases (Jan 19)

Notes:

- *Codes:*
  i. 28-(28NCC,28JM AND 28PW)
- *There are no pending cases in the Previous Cases column. 2012, 2013, 2014, 2015 and 2016.*

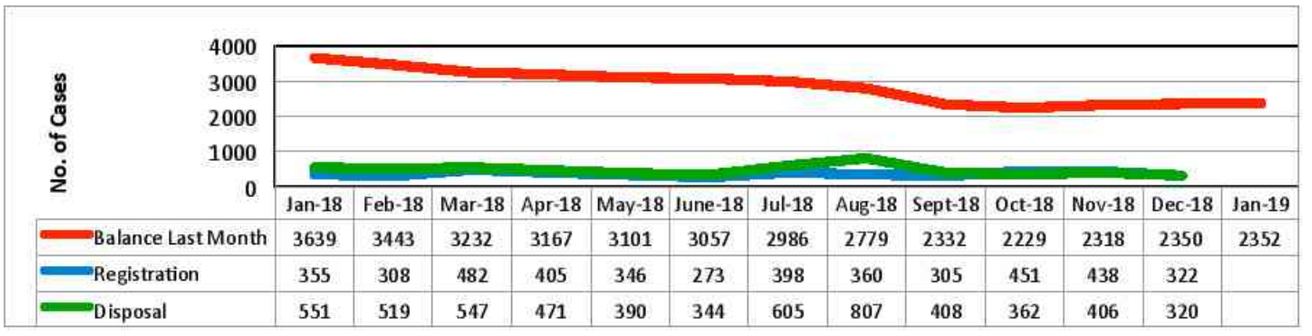
5.7 Bankruptcy Cases

The tracking chart below shows the registration and disposal of bankruptcy cases in the High Court at Kuala Lumpur for the year 2018.

For the period from January to December 2018, the total bankruptcy cases registered was **4,443**. The High Court has managed to dispose of **5,730** cases throughout the year 2018.

As at 31 December 2018, the total number of bankruptcy cases pending in the High Court at Kuala Lumpur is **2,352** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	3639	3443	3232	3167	3101	3057	2986	2779	2332	2229	2318	2350	2352
Registration	355	308	482	405	346	273	398	360	305	451	438	322	
Disposal	551	519	547	471	390	344	605	807	408	362	406	320	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
AS AT 31 DECEMBER 2018

YEAR	CODE	TOTAL
	29	
PREVIOUS CASES	1	1
2016	4	4
2017	141	141
2018	2,206	2,206
TOTAL	2,352	2,352

Total Pending Cases = Pending Cases (Jan 19)

Notes:

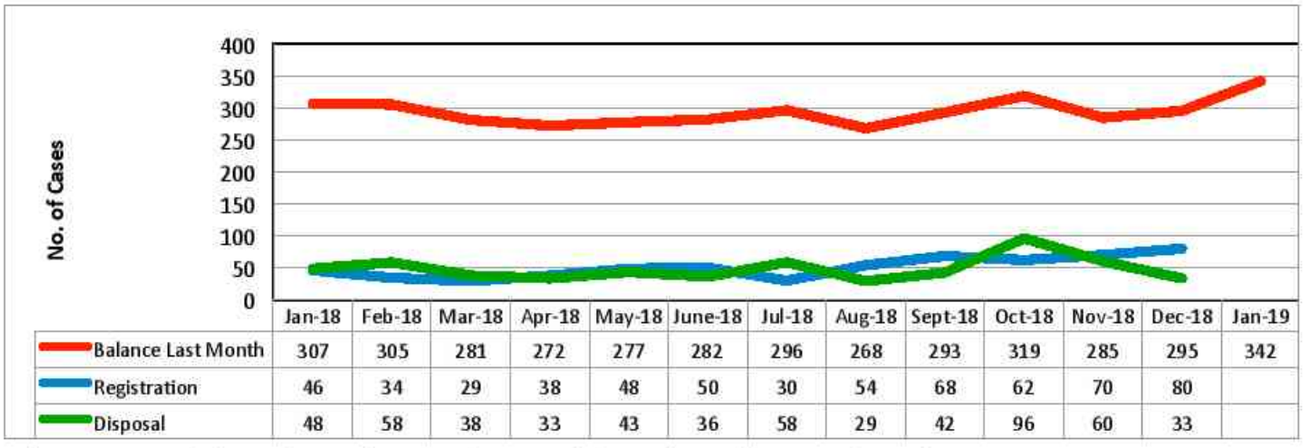
- *Code:*
  i. 29-(29, 29NCC, 29PB)
- *There are no pending cases in 2012, 2013, 2014 and 2015 for the Bankruptcy cases.*

5.8 APPELLATE AND SPECIAL POWERS DIVISION

The tracking chart below shows the registration and disposal of cases in the Appellate and Special Powers Division in the High Court at Kuala Lumpur for the year 2018. For the period from January to December 2018, the total number of cases registered was **609**. The High Court has managed to dispose of **574** cases throughout the year 2018.

As at 31 December 2018, the total number of cases pending in the Appellate and Special Powers Division in the High Court at Kuala Lumpur is **342** cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE AND SPECIAL POWERS)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	307	305	281	272	277	282	296	268	293	319	285	295	342
Registration	46	34	29	38	48	50	30	54	68	62	70	80	
Disposal	48	58	38	33	43	36	58	29	42	96	60	33	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE AND SPECIAL POWERS)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	14	16	17D	24	25	
2016				3	12	15
2017			5	2	18	25
2018	10	10	15	28	234	297
TOTAL	10	10	20	33	264	337

*Total Pending Cases + **5** Pending Cases = Pending Cases (Jan 19)*

Notes:

- *There are **5** pending cases in the Previous Cases Column, 2012, 2013 and 2014 for code 14 and 25.*
- *No pending cases for code 14 and 16 in 2016 and 2017.*

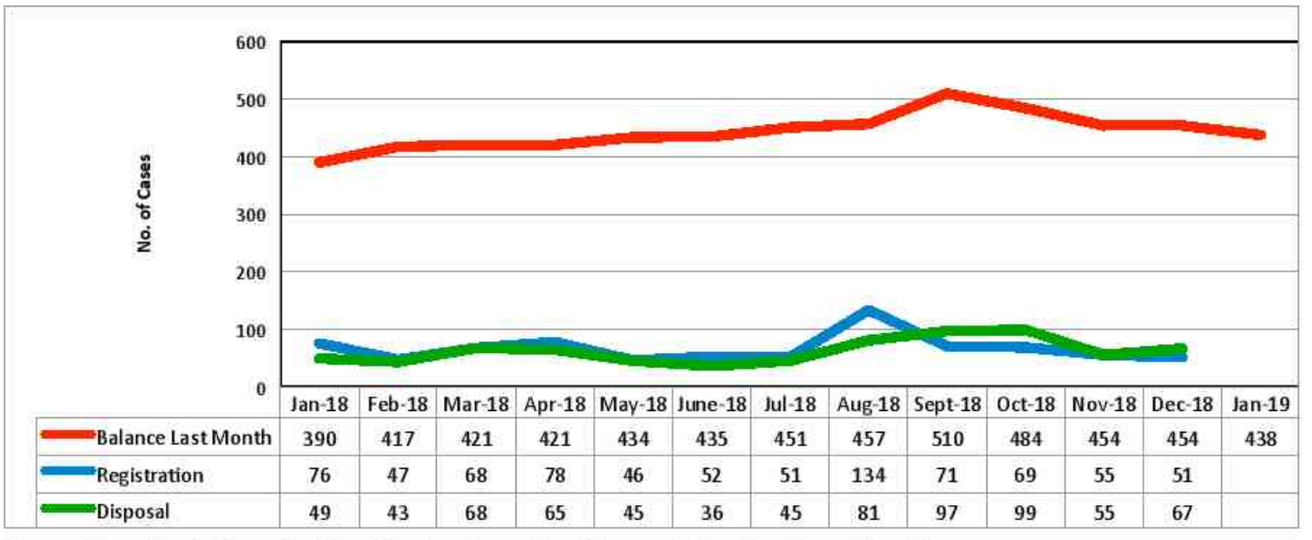
5.9 CRIMINAL DIVISION

The tracking chart below shows the registration and disposal of criminal cases in the High Court at Kuala Lumpur for the year 2018.

For the period of January to December 2018, the total number criminal cases registered was **798.** The High Court has managed to dispose of **750** cases throughout the year 2018.

As at 31 December 2018, the total number of criminal cases pending in the High Court at Kuala Lumpur is **438** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	390	417	421	421	434	435	451	457	510	484	454	454	438
Registration	76	47	68	78	46	52	51	134	71	69	55	51	
Disposal	49	43	68	65	45	36	45	81	97	99	55	67	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

YEAR	CODES						TOTAL
	41	41(A)	42	42(A)	44	45	
2016			3			5	8
2017	7		22	3	4	50	86
2018	47	4	144	8	31	104	338
TOTAL	54	4	169	11	35	159	432

*All Pending Cases + **6** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in 2012 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *In the Previous Cases column, 2013 and 2015 there are **4** cases for code 42. Meanwhile for code 44 and 46, there are **2** pending cases in 2015 and 2018.*
- *No pending cases for code 43 and 47 in 2018.*

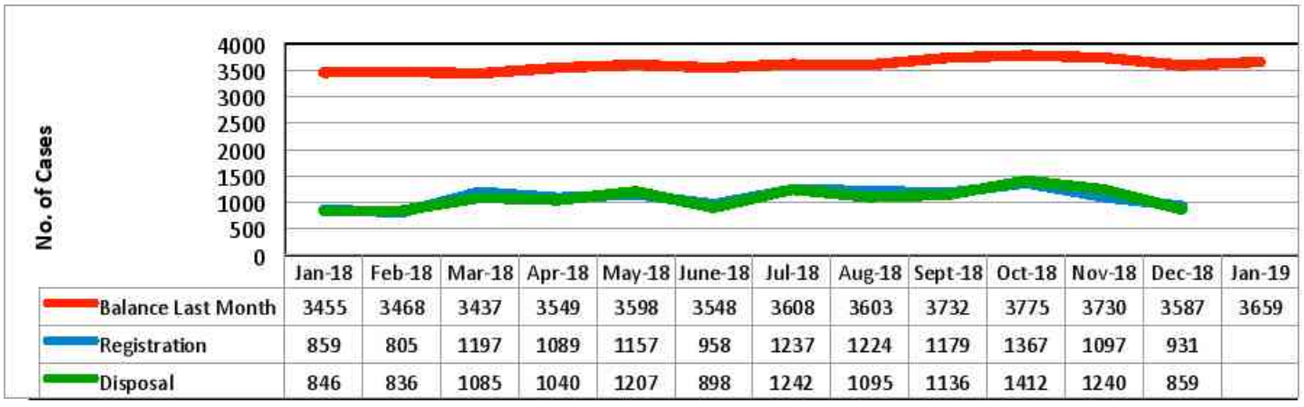
6. SELANGOR

6.1 IN THE HIGH COURT AT SHAH ALAM – CIVIL

The High Court at Shah Alam has two (2) divisions, namely Civil and Criminal Division. Civil Division comprises the Construction Court and other civil matters. The tracking chart below shows the registration and disposal of cases in the High Court at Shah Alam for year the 2018. For the period from January to December 2018, the total number of civil cases registered was **13,100** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **12,896** throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in High Court at Shah Alam is **3,659** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	3455	3468	3437	3549	3598	3548	3608	3603	3732	3775	3730	3587	3659
Registration	859	805	1197	1089	1157	958	1237	1224	1179	1367	1097	931	
Disposal	846	836	1085	1040	1207	898	1242	1095	1136	1412	1240	859	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES																TOTAL
	11	12	15	16	21	22	23	24	25	28	*29	*31	*32	33	37	38	
2013			4			1											5
2014			4			4											8
2015					1	6											7
2016		1	8		3	34	6		2	2				1		2	59
2017	17	69	5	1	12	122	7	16	8	1	126	3		10	5	6	408
2018	147	425	281	33	59	548	24	920	61	292	4,406	161	118	452	32	15	7,974
TOTAL	164	495	302	34	75	715	37	936	71	295	4,532	164	118	463	37	23	8,461

*Total Pending Cases + **12** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

Notes:

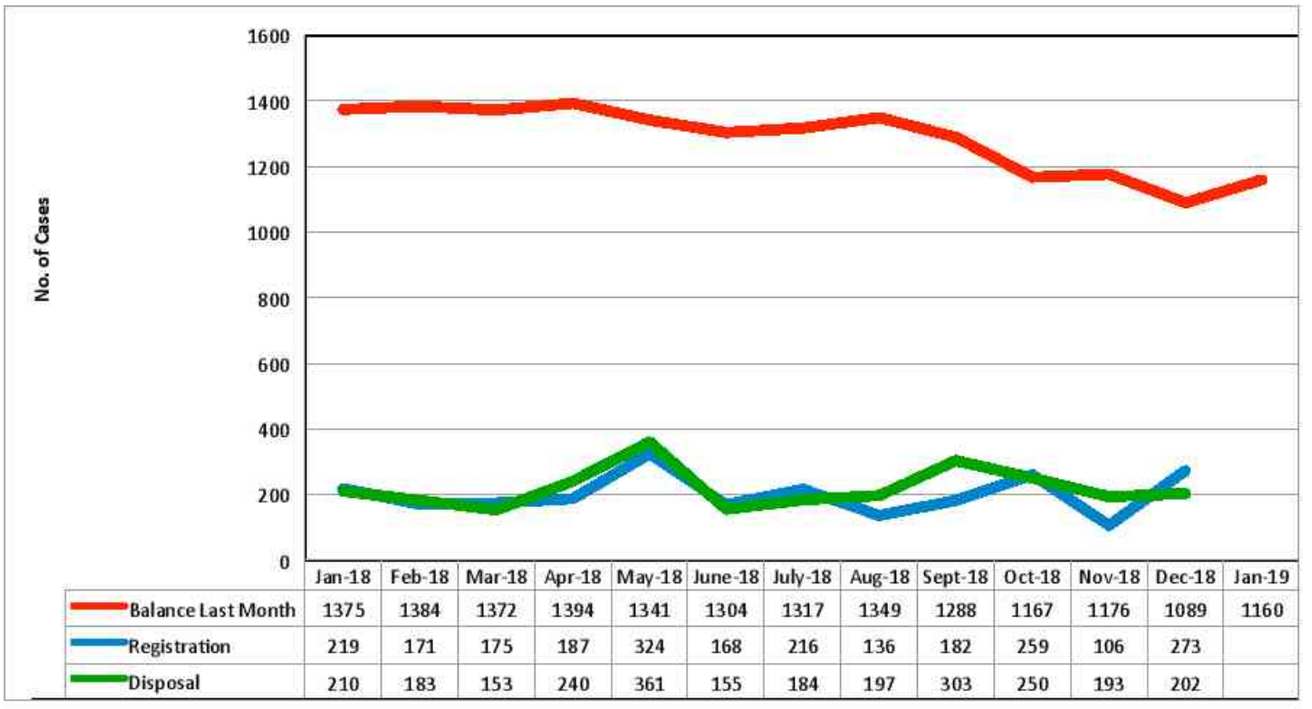
- *For code 15, 21 and 22 there are **3** pending cases in the Previous Cases column and 2012.*
- ***9** pending cases in 2018 for code 17, 26, 27, 34 and 36.*
- *No pending cases for code 13, 14, 15, 16, 18, 34, 36, 37, 38, 39 and 40 in 2018.*

6.2 IN THE HIGH COURT AT SHAH ALAM – CRIMINAL

The tracking chart below shows the registration and disposal of cases in the High Court at Shah Alam for year the 2018. For the period from January to December 2018, the total number of criminal cases registered was **2,416**. The High Court has managed to dispose of **2,631** cases throughout the year 2018.

As at 31 December 2018, the total number of criminal cases pending in High Court at Shah Alam is **1,160** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1375	1384	1372	1394	1341	1304	1317	1349	1288	1167	1176	1089	1160
Registration	219	171	175	187	324	168	216	136	182	259	106	273	
Disposal	210	183	153	240	361	155	184	197	303	250	193	202	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES							TOTAL
	41	41(A)	42	42(A)	44	45	46	
2016	1		2			49		52
2017	10	2	23	4		200	1	240
2018	143	18	303	36	91	260	15	866
TOTAL	154	20	328	40	91	509	16	1158

*All Pending Cases + **2** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012 and 2013 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41(A), 42(A), 43, 44, 46 and 47 in 2016.*
- *In 2017, there are no pending cases for code 43, 44 and 47.*
- *There is **1** pending case for code 43 in 2014 and **1** pending case for code 43 in 2018.*

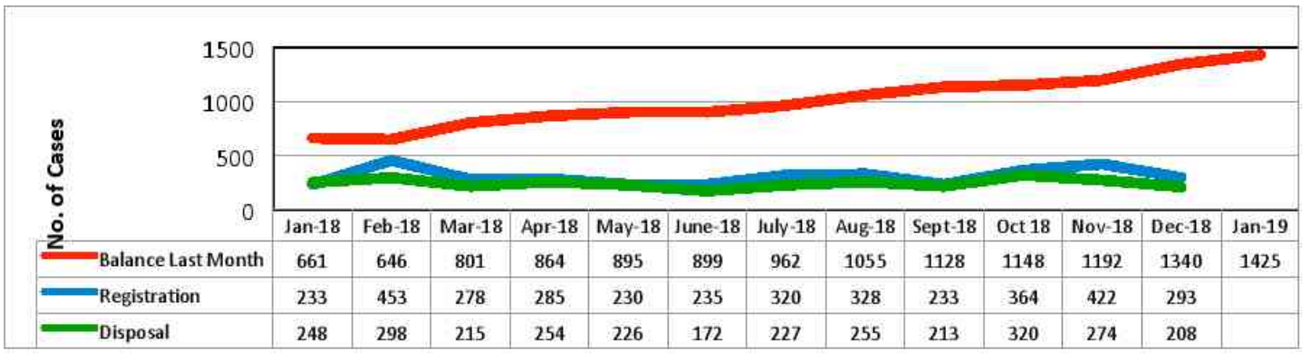
7. NEGERI SEMBILAN

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 2018. For the period from January to December 2018, the total number of civil cases registered was **3,674** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **2,910** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Seremban is **1,425** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct 18	Nov-18	Dec-18	Jan-19
Balance Last Month	661	646	801	864	895	899	962	1055	1128	1148	1192	1340	1425
Registration	233	453	278	285	230	235	320	328	233	364	422	293	
Disposal	248	298	215	254	226	172	227	255	213	320	274	208	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES																	TOTAL
	11	12	15	16	17	21	22	23	24	25	28	*29	*31	*32	33	37	38	
2016							7			1		333					1	342
2017		4				1	16	2	4	2		699			8		29	765
2018	13	62	12	10	4	7	68	2	362	5	22	766	35	28	138	4	641	2,179
TOTAL	13	66	12	10	4	8	91	4	366	8	22	1,798	35	28	146	4	671	3,286

Total Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

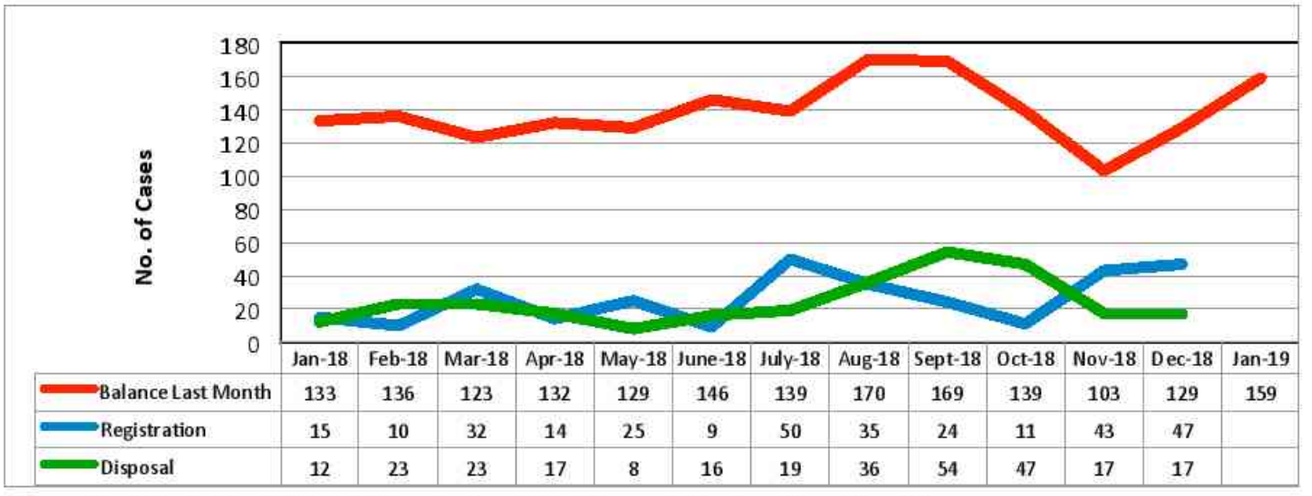
Notes:

- *There are no pending cases in the Previous Cases column. 2012, 2013, 2014 and 2015 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *No pending cases for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 26, 27, 28, *31, *32, 33, 34, 36, 37, 39 and 40 in 2016.*
- *In 2017, there are no pending cases for code 11, 13, 14, 15, 16, 17, 18, 26, 27, 28, *31, *32, 34, 36, 37, 39 and 40.*
- *No pending cases for code 13, 14, 18, 26, 27, 34, 36, 37, 39 and 40 in 2018.*

7.2 IN THE HIGH COURT AT SEREMBAN – CRIMINAL

For Criminal Cases in the year 2018, a total number of **315** cases including appeals and trials were registered and **289** cases were disposed of, leaving a balance of **159** cases pending.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	133	136	123	132	129	146	139	170	169	139	103	129	159
Registration	15	10	32	14	25	9	50	35	24	11	43	47	
Disposal	12	23	23	17	8	16	19	36	54	47	17	17	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	42	44	45	
2016				6	6
2017	1	3		7	11
2018	61	43	6	29	139
TOTAL	62	46	6	42	156

All Pending Cases + 3 Pending Cases = Total Pending Cases (Jan 19)

Notes:

- *There are no pending cases in the Previous Cases column. 2012, 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41, 41(A), 42, 42(A), 43, 44, 46 and 47 in 2016.*
- *In 2017, there are no pending cases for code 41(A), 42(A), 43, 44, 46 and 47.*
- *There are 3 pending cases for code 42(A) and 46 in 2018.*

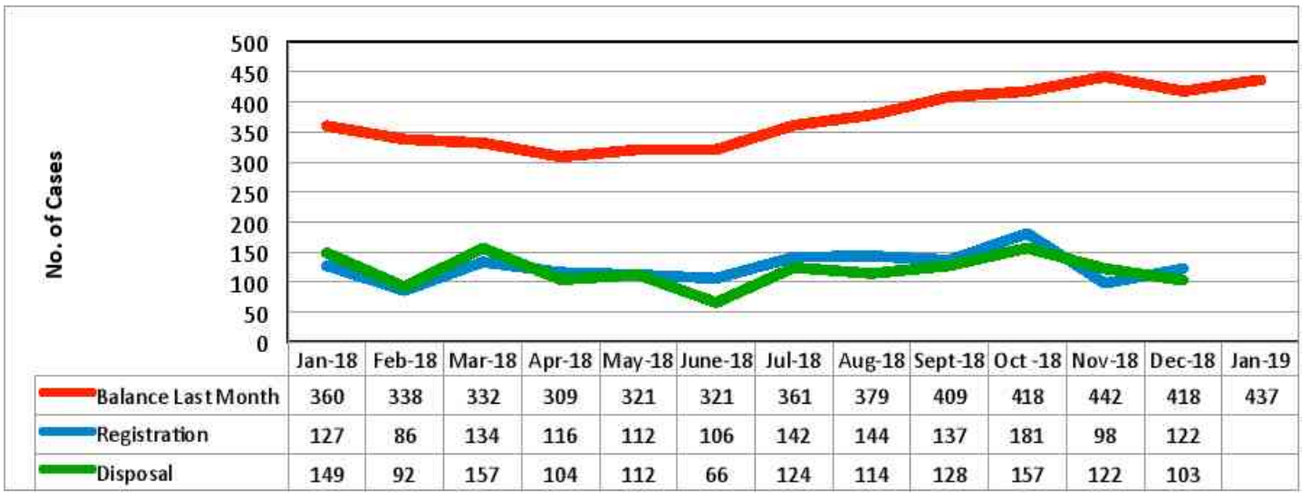
8. MALACCA

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 2018. For the period from January to December 2018, the total number of civil cases registered was **1,505** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **1,428** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Malacca is **437** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct -18	Nov-18	Dec-18	Jan-19
Balance Last Month	360	338	332	309	321	321	361	379	409	418	442	418	437
Registration	127	86	134	116	112	106	142	144	137	181	98	122	
Disposal	149	92	157	104	112	66	124	114	128	157	122	103	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT MALACCA (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES															TOTAL
	11	12	15	16	17	18	21	22	24	25	28	*29	*31	*32	33	
2016							1	4							1	6
2017	1	4	6					25	5	2		12			4	59
2018	14	46	57	9	4	3	5	52	116	4	17	353	18	22	53	773
TOTAL	15	50	63	9	4	3	6	81	121	6	17	365	18	22	58	838

*Total Pending Cases – **4** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

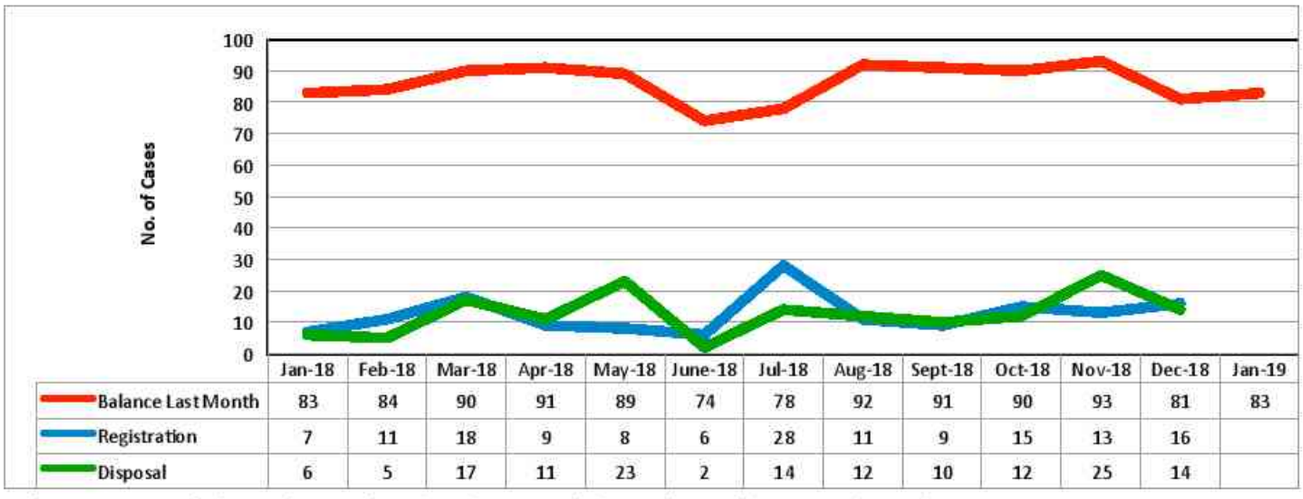
Notes:

- *There are no pending cases in the Previous Cases column. 2012, 2013 and 2014 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **2** pending cases for code 22 in 2015 and **2** pending cases for code 23 in 2018.*
- *No pending cases for code 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25,26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40 in 2016.*
- *In 2017, there are no pending cases for code 13, 14, 16, 17, 18, 21, 23, 26, 27, 28, *31, *32, 34, 36, 37, 38, 39 and 40.*

8.2 IN THE HIGH COURT AT MALACCA- CRIMINAL

For Criminal Cases in the year 2018, a total number of **151** cases including appeals and trials were registered and **151** cases were disposed of, leaving a balance of **83** cases pending.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	83	84	90	91	89	74	78	92	91	90	93	81	83
Registration	7	11	18	9	8	6	28	11	9	15	13	16	
Disposal	6	5	17	11	23	2	14	12	10	12	25	14	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT MALACCA (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	41	42	42(A)	44	45	
2016					5	5
2017	1	3			12	16
2018	10	23	10	7	7	57
TOTAL	11	26	10	7	24	78

*All Pending Cases + **5** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012 and 2013 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41, 41(A), 42, 42(A), 43, 44, 46 and 47 in 2016.*
- *In 2017, there are no pending cases for code 41(A), 42(A), 43, 44, 46 and 47.*
- *There is **1** pending case for code 45 in 2014 and **4** pending cases for code 41(A) and 46 in 2018.*

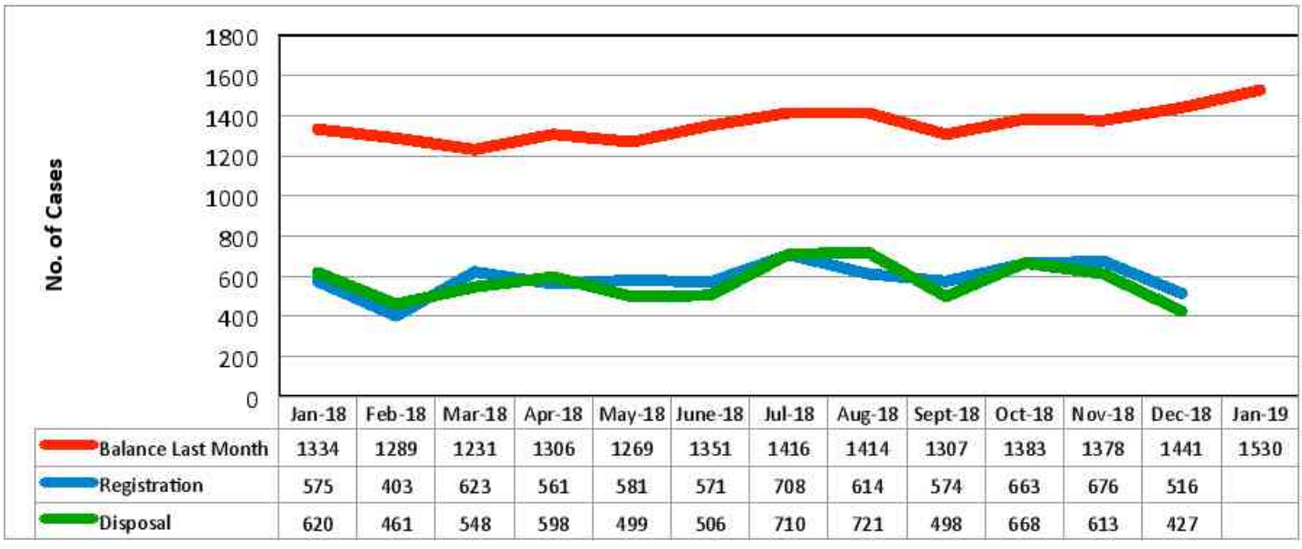
9. JOHOR

9.1 IN THE HIGH COURT AT JOHOR BAHRU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Johor Bahru for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **7,065** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **6,869** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Johor Bahru is **1,530** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1334	1289	1231	1306	1269	1351	1416	1414	1307	1383	1378	1441	1530
Registration	575	403	623	561	581	571	708	614	574	663	676	516	
Disposal	620	461	548	598	499	506	710	721	498	668	613	427	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES																TOTAL
	11	12	15	16	17	18	21	22	23	24	25	28	*29	*31	*32	33	
2016							1	9	2	1							13
2017			12				4	41	3	3	14	1	18			1	97
2018	29	96	31	4	11	14	8	204	8	604	52	68	1533	63	61	305	3091
TOTAL	29	96	43	4	11	14	13	254	13	608	66	69	1551	63	61	306	3201

Total Pending Cases + 4 Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)

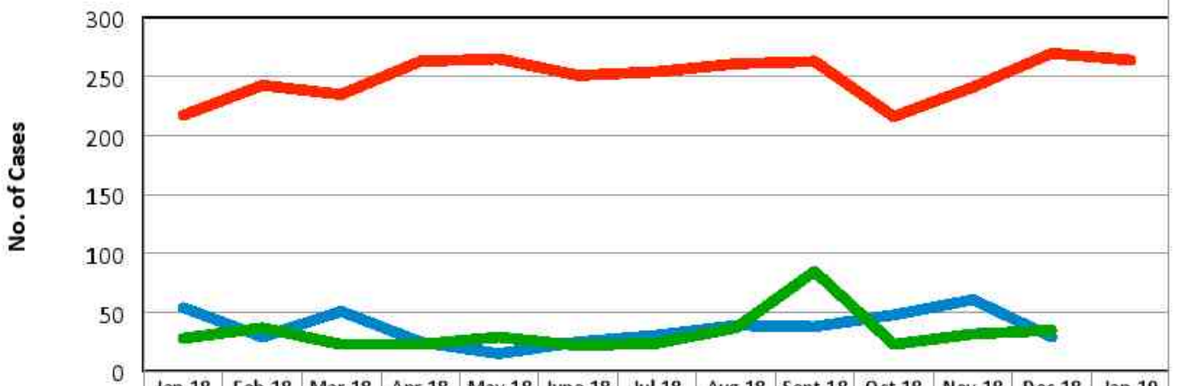
Notes:

- *There are no pending cases in the Previous Cases column, 2012 and 2015 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **2** pending cases for code 22 and 23 in 2013 and 2014.*
- ***2** pending cases in 2018 for code 27.*
- *No pending cases for code 13, 14, 26, 34, 36, 38, 39 and 40 in 2018.*

9.2 IN THE HIGH COURT AT JOHOR BAHRU- CRIMINAL

For Criminal Cases in the year 2018, a total number of **445** cases including appeals and trials were registered and **398** cases were disposed of, leaving the balance of **264** cases pending.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	217	243	235	263	265	251	254	261	263	216	241	270	264
Registration	54	29	51	25	15	25	31	39	38	48	61	29	
Disposal	28	37	23	23	29	22	24	37	85	23	32	35	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES						TOTAL
	41	42	42(A)	43	44	45	
2017	3	1	1			41	46
2018	28	74	5	9	15	81	212
TOTAL	31	75	6	9	15	122	258

*All Pending Cases + **6** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

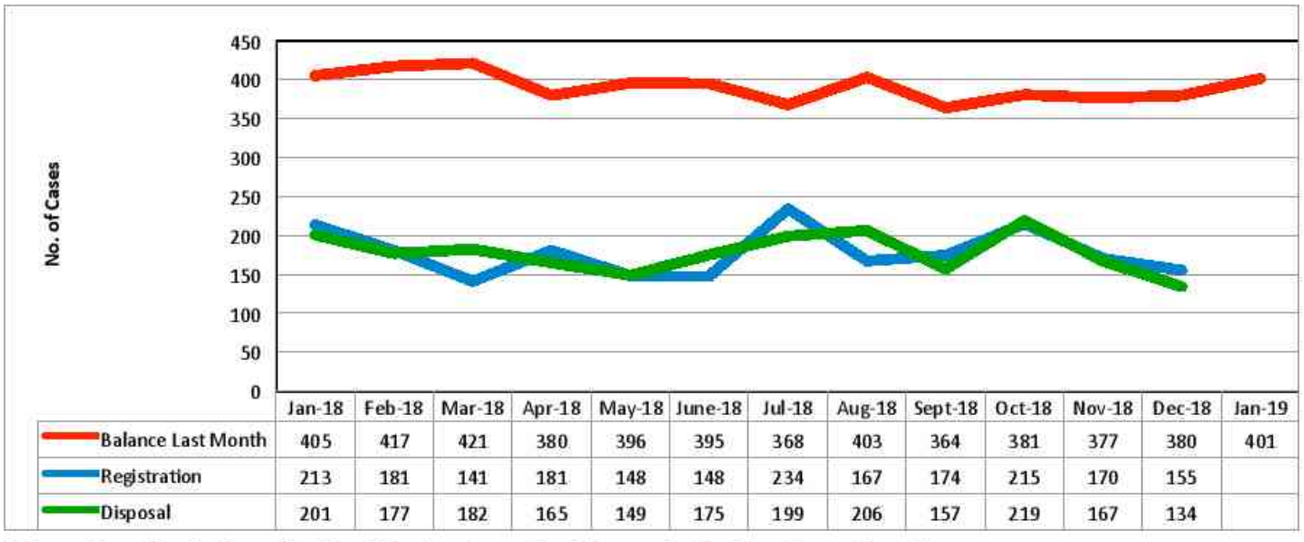
- *There are no pending cases in the Previous Cases column. 2012, 2013 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **6** pending cases for code 44 and 45 in 2015 and 2016.*
- *No pending cases for code 41(A), 43, 44, 46 and 47 in 2017.*
- *In 2018, there are no pending cases for code 41(A), 42(A), 46 and 47.*

9.3 IN THE HIGH COURT AT MUAR– CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Muar for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **2,127** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **2,131** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Muar is **401** cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	405	417	421	380	396	395	368	403	364	381	377	380	401
Registration	213	181	141	181	148	148	234	167	174	215	170	155	
Disposal	201	177	182	165	149	175	199	206	157	219	167	134	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT MUAR (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES														TOTAL
	11	12	15	16	17	21	22	24	25	28	*29	*31	*32	33	
2016							3					2	1	1	7
2017		1				3	24		1		33			1	63
2018	11	23	9	2	4	6	54	139	7	13	376	37	46	90	817
TOTAL	11	24	9	2	4	9	81	139	8	13	409	39	47	92	887

*Total Pending Cases + **9** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

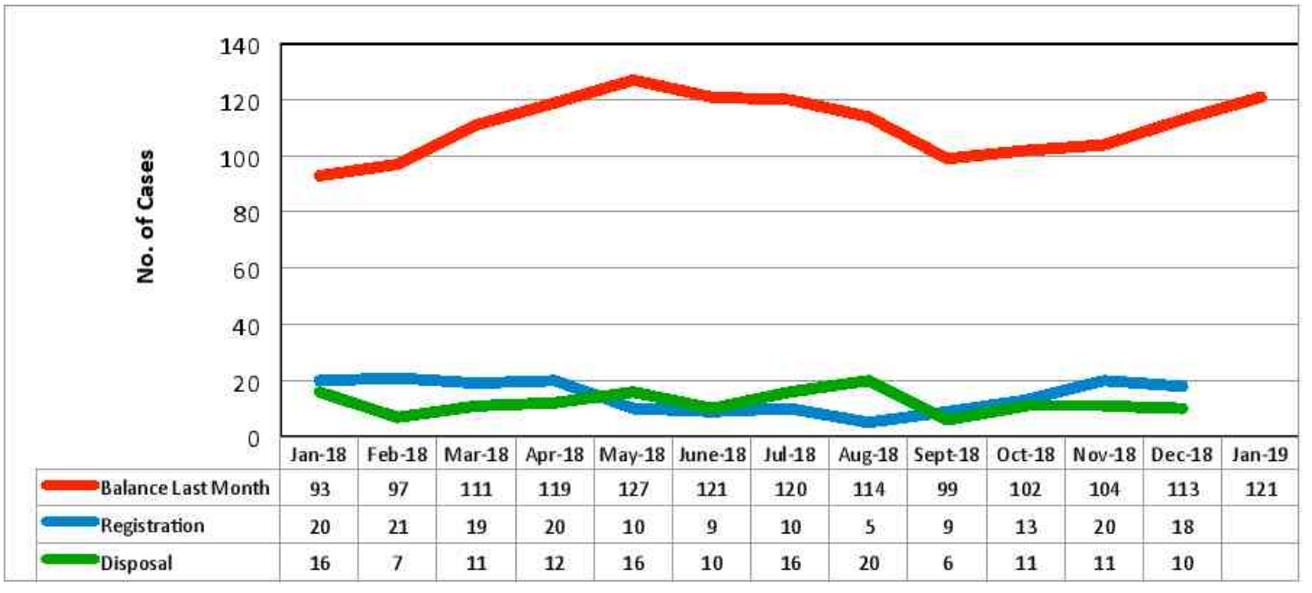
Notes:

- *There are no pending cases in the Previous Cases column and 2012 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **9** pending cases for code 22, 23, 33 and 34 in 2013, 2014, 2015, 2016 and 2018.*
- *No pending cases for code 13, 14, 18, 23, 26, 27, 34, 36, 37, 38, 39 and 40 in 2018.*

9.4 IN THE HIGH COURT AT MUAR – CRIMINAL

For Criminal Cases in the year 2018, a total number of **174** cases including appeals and trials were registered and **146** cases were disposed of, leaving the balance of **121** cases pending.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	93	97	111	119	127	121	120	114	99	102	104	113	121
Registration	20	21	19	20	10	9	10	5	9	13	20	18	
Disposal	16	7	11	12	16	10	16	20	6	11	11	10	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT MUAR (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	42	44	45	
2017	2	3		5	10
2018	15	53	3	36	107
TOTAL	17	56	3	41	117

*All Pending Cases + **4** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **3** pending cases for code 45 in 2016 and **1** pending case for code 41(A) in 2018.*
- *In 2018, there are no pending cases for code 42(A), 43, 46 and 47.*

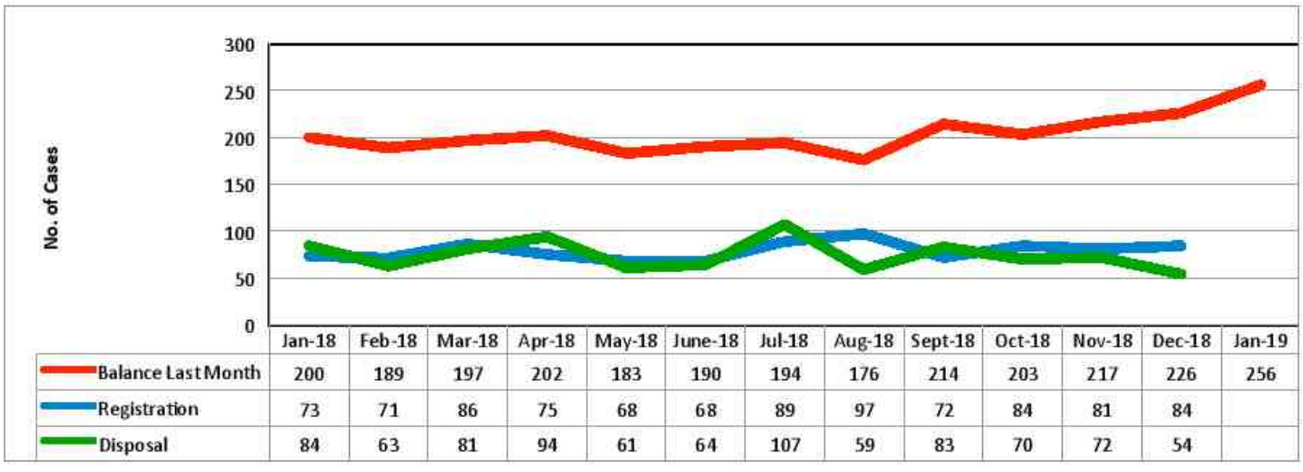
10. PAHANG

10.1 IN THE HIGH COURT AT KUANTAN – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuantan for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **948** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **892** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Kuantan is **256** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	200	189	197	202	183	190	194	176	214	203	217	226	256
Registration	73	71	86	75	68	68	89	97	72	84	81	84	
Disposal	84	63	81	94	61	64	107	59	83	70	72	54	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUANTAN (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES													TOTAL
	11	12	16	17	21	22	24	25	28	*29	*31	*32	33	
2015										2				2
2016										2				2
2017					3	11				10				24
2018	7	19	8	1	1	53	76	2	19	373	12	7	44	622
TOTAL	7	19	8	1	4	64	76	2	19	387	12	7	44	650

*Total Pending Cases + **12** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

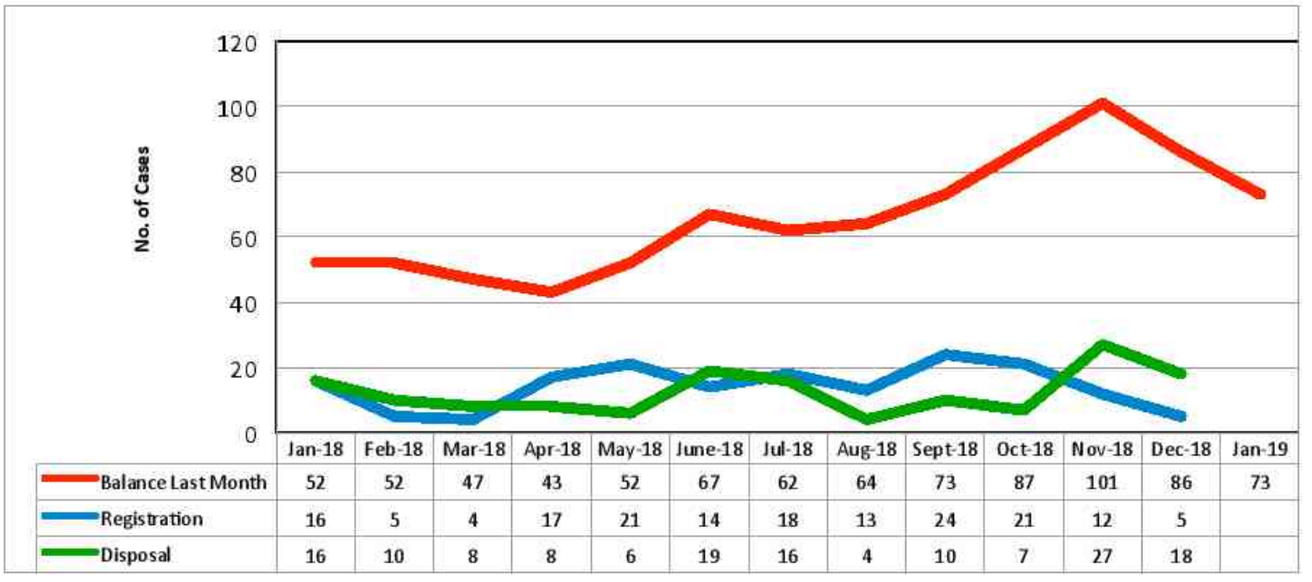
Notes:

- *There are no pending cases in the Previous Cases column. 2012 and 2013 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **12** pending cases for code 22 in 2014, 2015 and 2016.*
- *No pending cases for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *31, *32, 33, 34, 36, 37, 38, 39 and 40 in 2015 and 2016.*
- *No pending cases for code 13, 14, 15, 18, 23, 26, 27, 34, 36, 38, 39 and 40 in 2018.*

10.2 IN THE HIGH COURT AT KUANTAN- CRIMINAL

For Criminal Cases in the year 2018, a total number of **170** cases including appeals and trials were registered and **149** cases were disposed of, leaving a balance of **73** cases pending.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
AS AT JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	52	52	47	43	52	67	62	64	73	87	101	86	73
Registration	16	5	4	17	21	14	18	13	24	21	12	5	
Disposal	16	10	8	8	6	19	16	4	10	7	27	18	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES			TOTAL
	41	42	45	
2017			9	9
2018	18	17	19	54
TOTAL	18	17	28	63

*All Pending Cases +**10** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

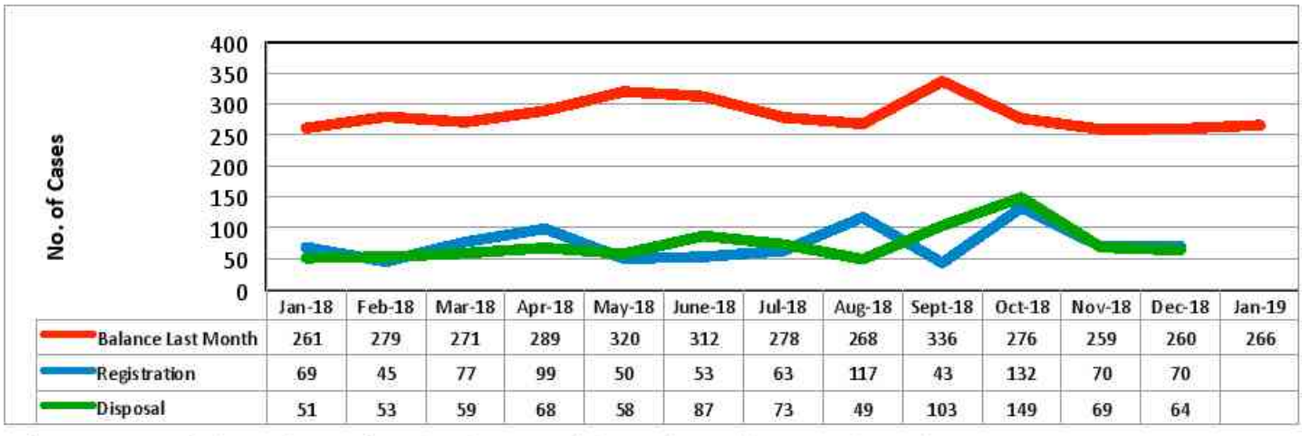
- *There are no pending cases in the Previous Cases column, 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There is **1** pending case for code 45 in 2016 and **9** pending cases for codes 42(A), 44 and 46 in 2018.*
- *No pending cases for code 41, 41(A), 42, 42(A), 43, 44, 46 and 47 in 2017.*
- *In 2018, there are no pending cases for code 41(A), 43, 44, 46 and 47.*

10.3 IN THE HIGH COURT AT TEMERLOH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Temerloh for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **888** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **883** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in High Court at Temerloh is **266** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CIVIL)
AS AT JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	261	279	271	289	320	312	278	268	336	276	259	260	266
Registration	69	45	77	99	50	53	63	117	43	132	70	70	
Disposal	51	53	59	68	58	87	73	49	103	149	69	64	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT TEMERLOH (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES								TOTAL
	22	24	28	*29	*31	*32	33	38	
2016				6				19	25
2017	6			52				27	85
2018	15	52	7	219	7	6	24	57	387
TOTAL	21	52	7	277	7	6	24	103	497

*Total Pending Cases + **59** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

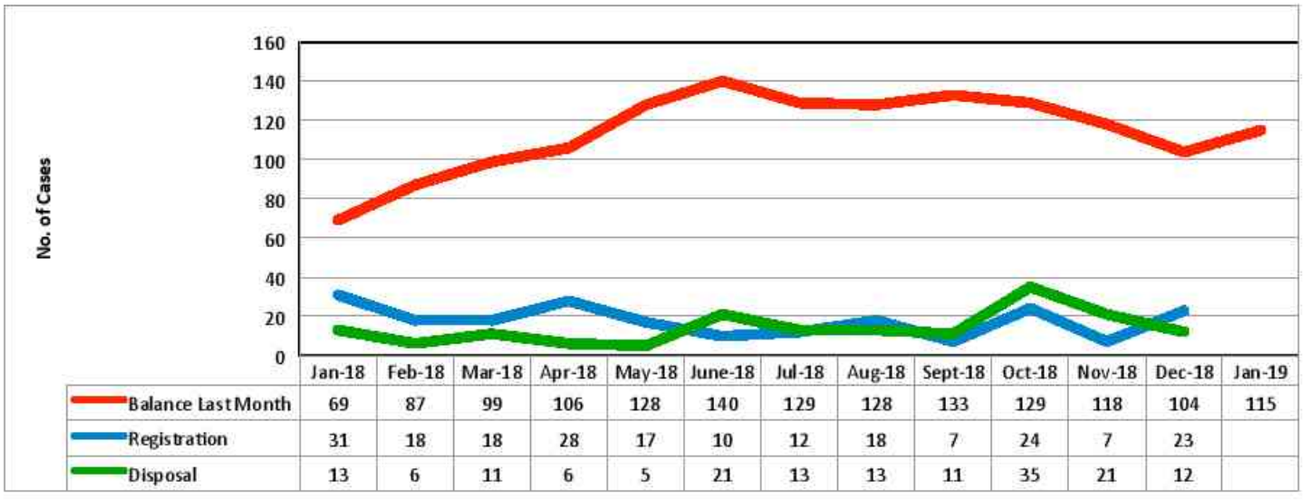
Notes:

- *There are no pending cases in the Previous Cases column and 2012 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **35** pending cases for code 38 in 2013, 2014 and 2015.*
- ***3** pending cases for code 12 in 2017 and **21** pending cases for code 11, 12, 15, 16, 17, 21, 23, 25, 36 and 37 in 2018.*
- *No pending cases for code 13, 14, 18, 26, 27, 34, 36, 39 and 40 in 2018.*

10.4 IN THE HIGH COURT AT TEMERLOH – CRIMINAL

For Criminal Cases in the year 2018, a total number of **213** cases including appeals and trials were registered and **167** cases had been disposed of, leaving a balance of **115** cases pending.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	69	87	99	106	128	140	129	128	133	129	118	104	115
Registration	31	18	18	28	17	10	12	18	7	24	7	23	
Disposal	13	6	11	6	5	21	13	13	11	35	21	12	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	41(A)	42	45	
2017			7	3	10
2018	41	8	23	26	98
TOTAL	41	8	30	29	108

*All Pending Cases +**7** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014 and 2016 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **3** pending cases for code 45 in 2015 and **4** pending cases for code 42(A), 43 and 44 in 2018.*
- *No pending cases for code 41, 41(A), 42(A), 43, 44, 46 and 47 in 2017.*
- *In 2018, there are no pending cases for code 42(A), 43, 44, 46 and 47.*

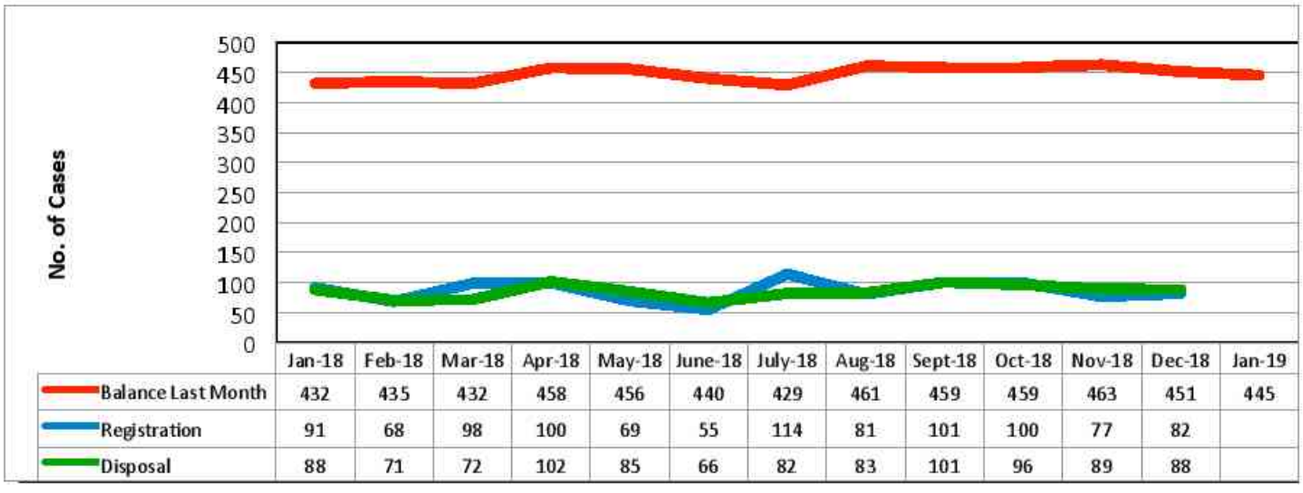
11. TERENGGANU

11.1 IN THE HIGH COURT AT KUALA TERENGGANU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kuala Terengganu for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **1,036** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **1,023** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Kuala Terengganu is **445** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	432	435	432	458	456	440	429	461	459	459	463	451	445
Registration	91	68	98	100	69	55	114	81	101	100	77	82	
Disposal	88	71	72	102	85	66	82	83	101	96	89	88	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES												TOTAL
	11	12	15	21	22	24	28	*29	*31	*32	33	38	
2016					4							8	12
2017	3	10	14	4	3							44	78
2018	13	29	15	7	39	55	31	358	12	1	4	143	707
TOTAL	16	39	29	11	46	55	31	358	12	1	4	195	797

*Total Pending Cases – **19** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

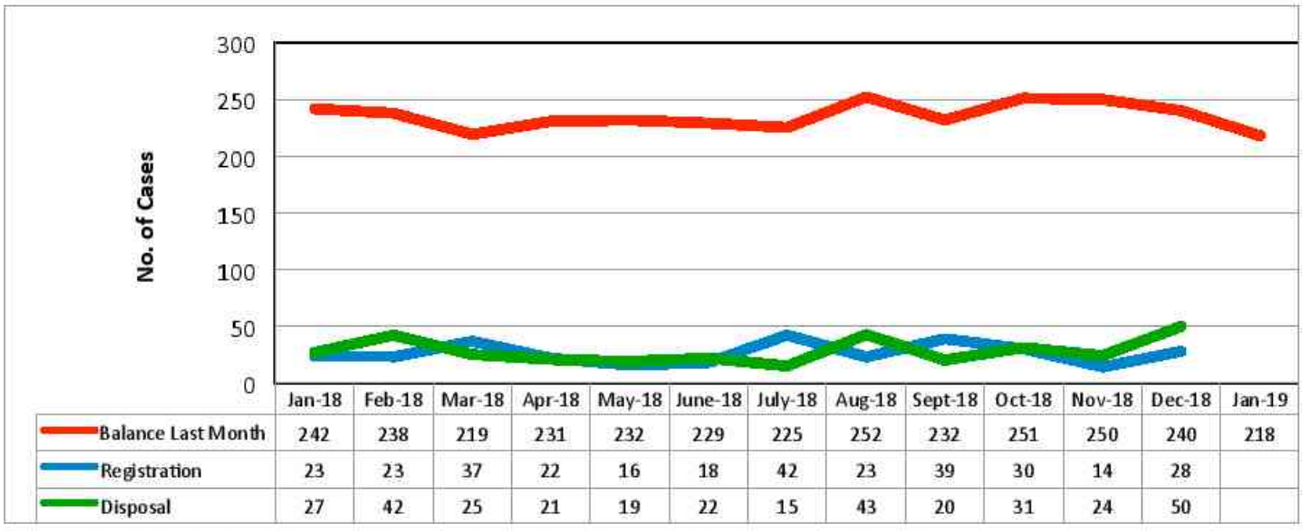
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **3** pending cases for code 22 and 38 in 2015.*
- ***16** pending cases for code 16, 17, 23, 25 and 37 in 2018.*
- *No pending cases for code 13, 14, 18, 26, 27, 34, 36, 37, 39 and 40 in 2018.*

11.2 IN THE HIGH COURT AT KUALA TERENGGANU - CRIMINAL

For Criminal Cases in the year 2018, a total number of **315** cases including appeals and trials were registered and **339** cases were disposed of, leaving the balance of **218** cases pending.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	242	238	219	231	232	229	225	252	232	251	250	240	218
Registration	23	23	37	22	16	18	42	23	39	30	14	28	
Disposal	27	42	25	21	19	22	15	43	20	31	24	50	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES				TOTAL
	41	41(A)	42	45	
2016				3	3
2017	10	3	30	8	51
2018	63	1	76	17	157
TOTAL	73	4	106	28	211

*All Pending Cases + **7** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41, 41(A), 42, 42(A), 43, 44, 46 and 47 in 2016.*
- *There are **2** pending cases for code 45 in 2015 and **5** pending cases for code 42(A) and 44 in 2018.*

12. KELANTAN

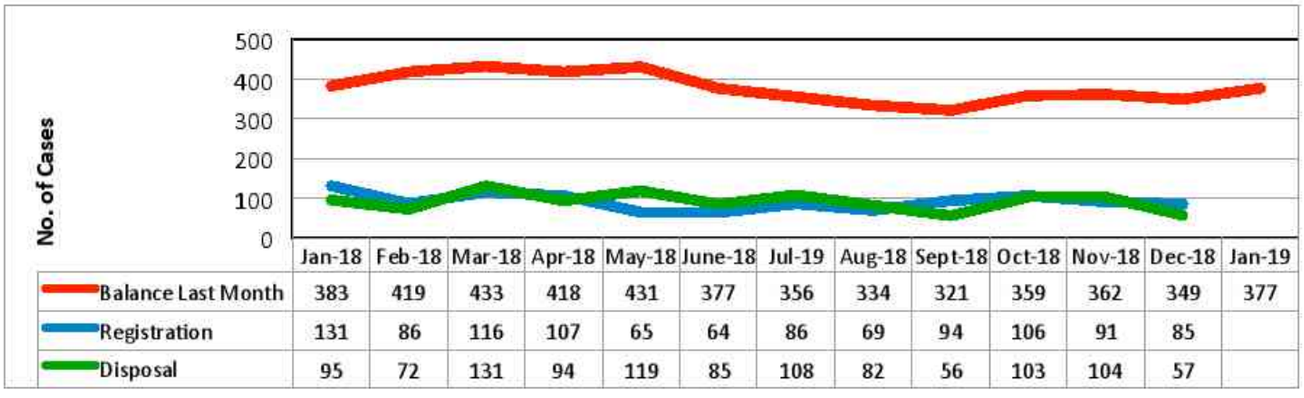
12.1 IN THE HIGH COURT AT KOTA BAHRU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kota Bharu for the year 2018.

For the period from January to December 2018, the total number of civil cases registered was **1,100** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **1,106** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Kota Bharu is **377** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	Jul-19	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	383	419	433	418	431	377	356	334	321	359	362	349	377
Registration	131	86	116	107	65	64	86	69	94	106	91	85	
Disposal	95	72	131	94	119	85	108	82	56	103	104	57	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES													TOTAL
	11	12	15	21	22	23	24	25	28	*29	*31	*32	33	
2017		6		2	8	3	1	1		22		1		44
2018	21	38	13	16	62	6	158	3	25	598	23	3	10	976
TOTAL	21	44	13	18	70	9	159	4	25	620	23	4	10	1,020

*Total Pending Cases – **4** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

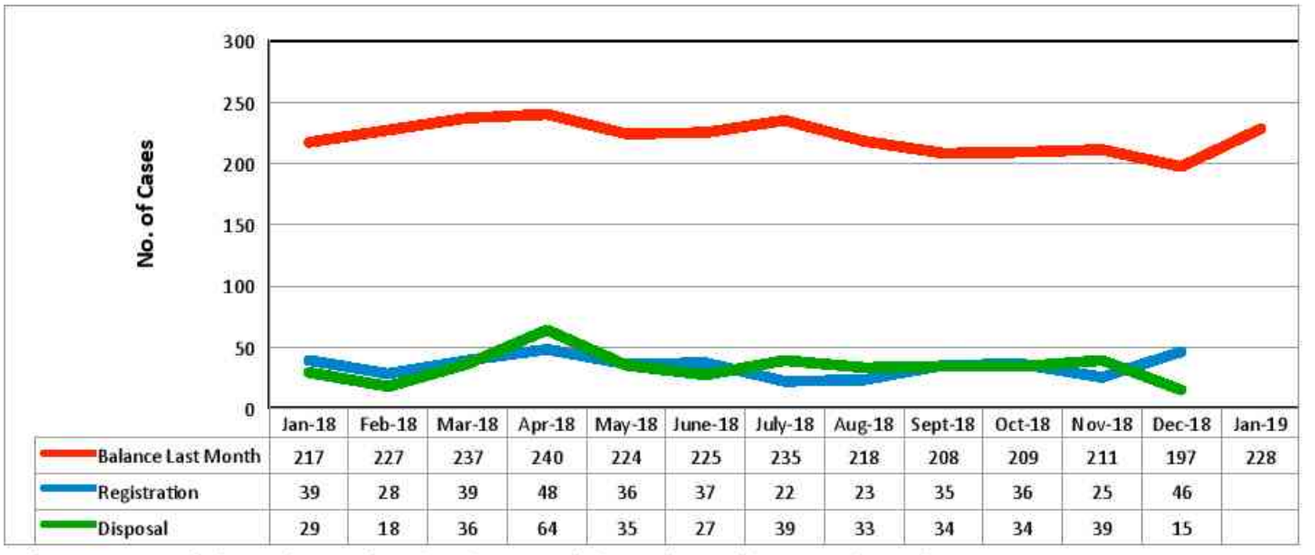
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014, 2015 and 2016 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **4** pending cases for code 16 and 17 in 2018.*
- *No pending cases for code 11, 13, 14, 15, 16, 17, 18, 26, 27, 28, *31, 33, 34, 36, 37, 38, 39 and 40 in 2017.*

12.2 IN THE HIGH COURT AT KOTA BAHRU–CRIMINAL

For Criminal Cases in the year 2018, a total number of **414** cases including appeals and trials were registered and **403** cases were disposed of, leaving a balance of **228** cases pending.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	217	227	237	240	224	225	235	218	208	209	211	197	228
Registration	39	28	39	48	36	37	22	23	35	36	25	46	
Disposal	29	18	36	64	35	27	39	33	34	34	39	15	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	41	42	42(A)	44	45	
2017	4	5	2		5	16
2018	96	70	6	9	29	210
TOTAL	100	75	8	9	34	226

All Pending Cases + 2 Pending Cases = Total Pending Cases (Jan 19)

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014, 2015 and 2016 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *No pending cases for code 41(A), 43, 44, 46 and 47 in 2017.*
- *There are 2 pending cases for code 41(A) and 43 in 2018.*

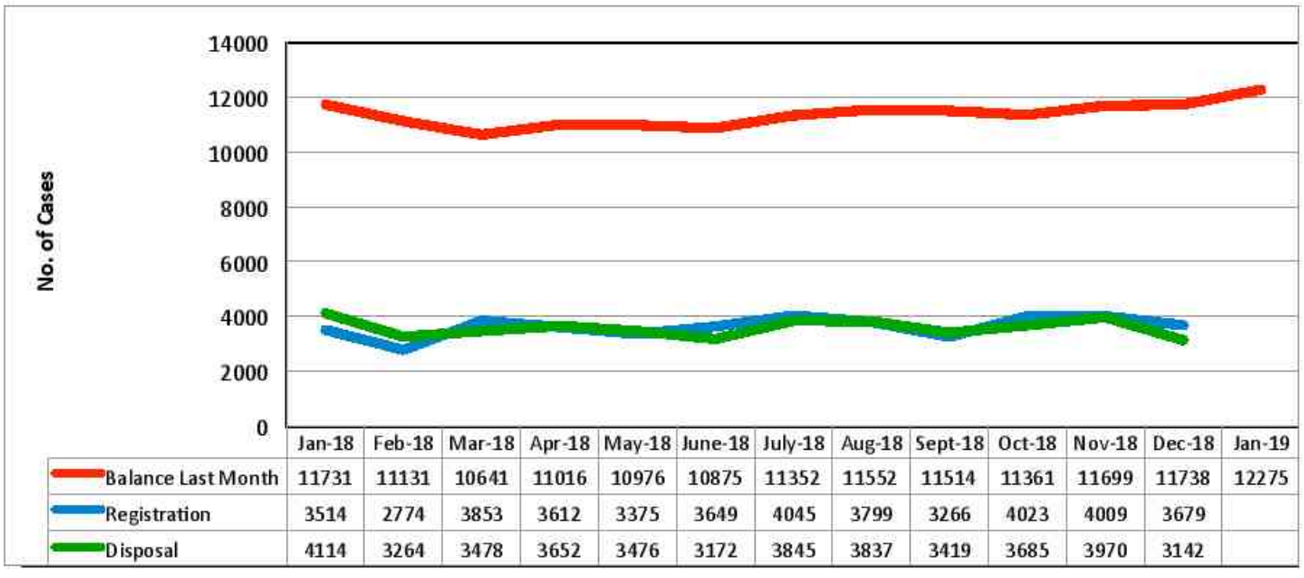
THE SESSIONS COURT IN PENINSULAR MALAYSIA

SESSIONS COURT-CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2018. For the period from January to December 2018, the total number of civil cases registered was **43,598** (excluding cases for Code 56). The Sessions Court has managed to dispose of **43,054** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in Sessions Court in Peninsular Malaysia is **12,275** cases as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	11731	11131	10641	11016	10976	10875	11352	11552	11514	11361	11699	11738	12275
Registration	3514	2774	3853	3612	3375	3649	4045	3799	3266	4023	4009	3679	
Disposal	4114	3264	3478	3652	3476	3172	3845	3837	3419	3685	3970	3142	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES						TOTAL
	51	52	53	54	*56	58	
2016	1	17	13				31
2017	6	265	211		27		509
2018	457	4,373	6,558	66	342	298	12,094
TOTAL	464	4,655	6,782	66	369	298	12,634

Total Pending Cases ***+10*** *Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

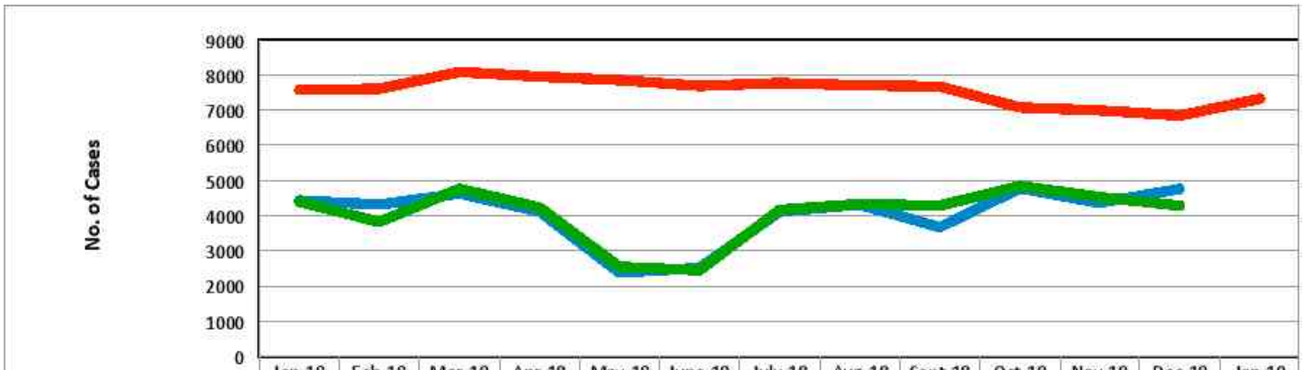
Notes:

- *There are no pending cases in 2013 for code 51, 52, 53, 54, 55, *56, 57, 58 and 59.*
- *There are **9** pending cases for code 52 in the Previous Cases column. 2012, 2014, 2015 and **1** pending case for code 59 in 2018.*
- *No pending cases for code 54, 58 and 59 in 2016 and 2017.*
- *In 2018, there are no pending cases for code 59.*

SESSIONS COURT - CRIMINAL

For Criminal Cases in the year 2018, a total of **48,413** criminal cases were registered (excluding cases for Code 64 and 65) and **48,665** criminal cases were disposed of, leaving a balance of **7,321** cases pending.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	7573	7607	8097	7961	7850	7690	7772	7710	7684	7083	7005	6846	7321
Registration	4442	4310	4635	4117	2381	2523	4113	4313	3677	4777	4368	4757	
Disposal	4408	3820	4771	4228	2541	2441	4175	4339	4278	4855	4527	4282	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	61	62	63	*64	*65	
PREVIOUS YEAR		18				18
2012		6				6
2013		10				10
2014		4				4
2015		83				83
2016	45	33	2	1		81
2017	70	572	18	11	12	683
2018	178	5,127	1,155	190	366	7,016
TOTAL	293	5,853	1,175	202	378	7,901

Total Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014 and 2015 for code 61, 62, 63, *64 and *65.*
- *No pending cases for code *65 in 2016 as well.*

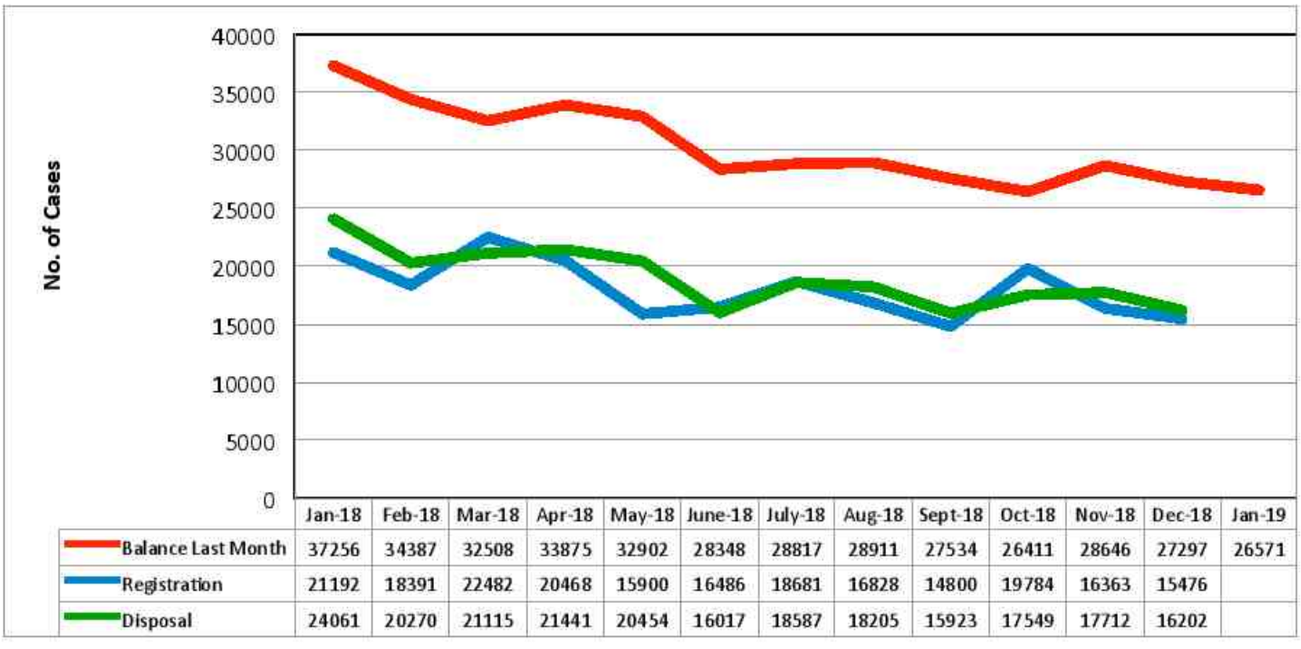
MAGISTRATES COURT IN PENINSULAR MALAYSIA

MAGISTRATES COURT - CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Peninsular Malaysia for the year 2018. For the period from January to December 2018 the total number of civil cases registered was **216,851** (excluding cases for Code 76). The Magistrates Court has managed to dispose of **227,536** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the Magistrates Court in Peninsular Malaysia is **26,571** as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	37256	34387	32508	33875	32902	28348	28817	28911	27534	26411	28646	27297	26571
Registration	21192	18391	22482	20468	15900	16486	18681	16828	14800	19784	16363	15476	
Disposal	24061	20270	21115	21441	20454	16017	18587	18205	15923	17549	17712	16202	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES						TOTAL
	71	72	73	74	*76	77	
2016	2	5	1				8
2017		34	29		4		67
2018	2,104	14,250	9,289	594	3,687	260	30,184
TOTAL	2,106	14,289	9,319	594	3,691	260	30,259

Total Pending Cases + 3 Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

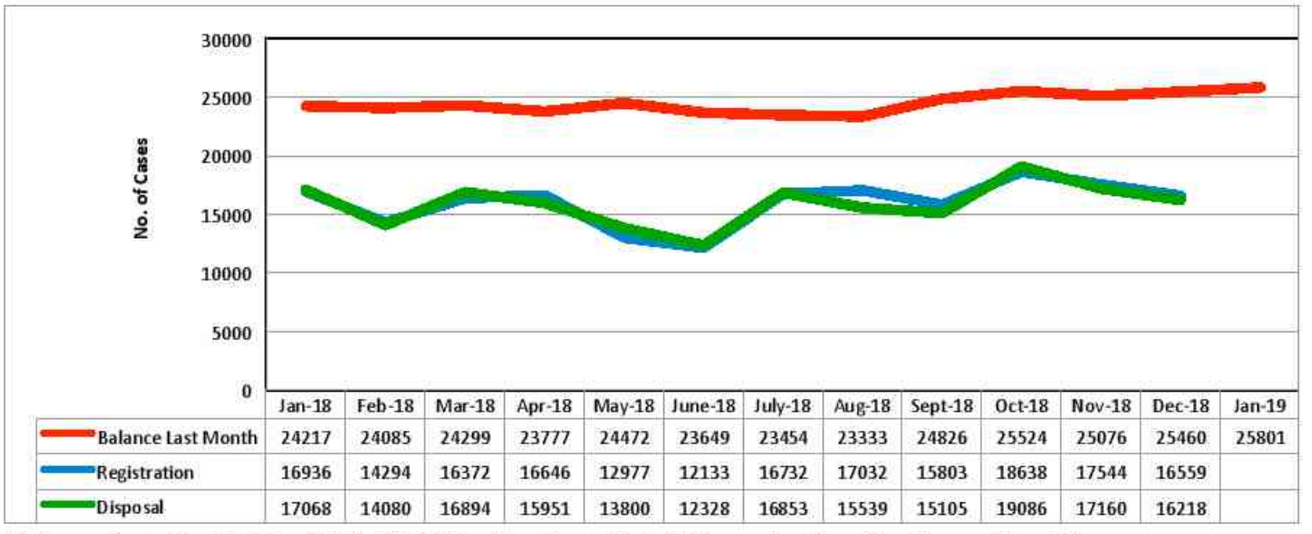
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013 and 2014 for code 71, 72, 73, 74, *76, 77, 78 and 79.*
- *For code 72 there is **1** pending case in 2015 and **2** pending cases for code 78 in 2018.*
- *No pending cases for code 74, *76, 77, 78 and 79 in 2016.*
- *For code 71, 74, 77, 78 and 78 there are no pending cases in 2017 as well.*
- *In 2018 there are no pending cases for code 78 and 79.*

MAGISTRATES COURT - CRIMINAL

For Criminal Cases in the year 2018, a total of **191,666** criminal cases were registered (excluding cases for Code 86, 87, 88 and 89) and **190,082** cases were disposed of, leaving a balance of **25,801** cases pending.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	24217	24085	24299	23777	24472	23649	23454	23333	24826	25524	25076	25460	25801
Registration	16936	14294	16372	16646	12977	12133	16732	17032	15803	18638	17544	16559	
Disposal	17068	14080	16894	15951	13800	12328	16853	15539	15105	19086	17160	16218	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES								TOTAL
	81	82	83	84	85	*86	*87	*89	
2014							1		1
2015			1				1		2
2016		2	17						19
2017	7	275	309	4	14	4	120	3	736
2018	1,010	443	22,584	873	262	292,853	28,537	322	346,884
TOTAL	1,017	720	22,911	877	276	292,857	28,659	325	347,642

Total Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

Notes:

- *There are no pending cases in the Previous Cases column, 2012 and 2013 for code 81, 82, 83, 84, 85, *86, *87, *88 and *89.*
- *In 2014, there are no pending cases for code 81, 82, 83, 84, 85, *86, *88 and *89.*
- *No pending cases for code 81, 84, 85, *88 and *89 in 2015 and 2016.*
- *In 2018, there are no pending cases for code *88.*

APPENDIX B

(SABAH & SARAWAK)

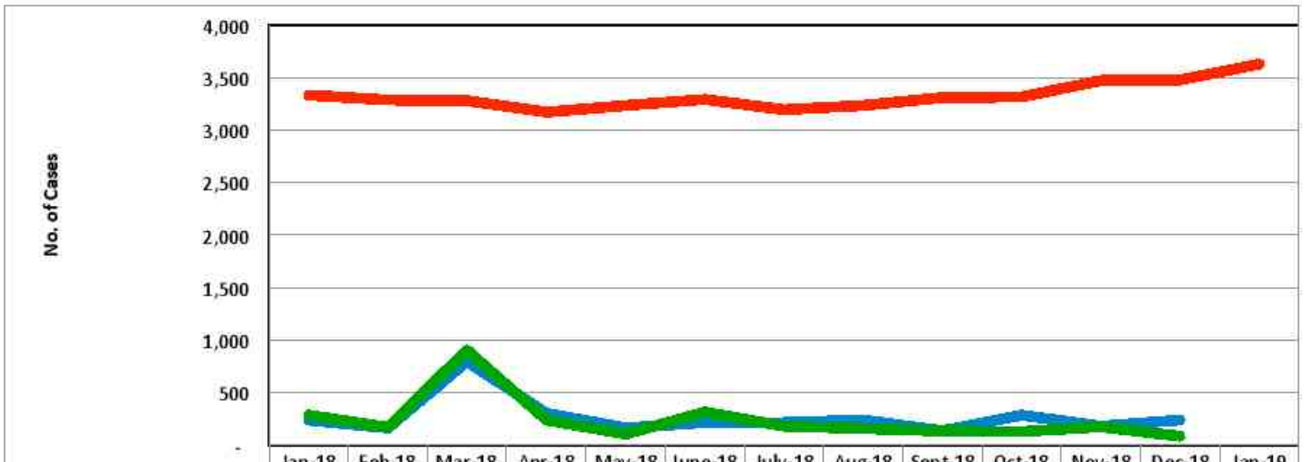
13. SABAH

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 2018. For the period from January to December 2018, the total number of civil cases registered was **3,195** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **2,895** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Sabah is **3,633** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	3,333	3,288	3,283	3,172	3,235	3,295	3,198	3,234	3,314	3,318	3,474	3,479	3,633
Registration	242	164	797	304	167	217	218	239	139	286	182	240	
Disposal	287	169	908	241	107	314	182	159	135	130	177	86	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SABAH (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES												TOTAL
	11	12	13	21	22	24	28	*29	*31	*32	33	34	
2015			201		9	1							211
2016			146	1	27	1	1						176
2017	1	3	1,275	2	61	7	5	343			2		1,699
2018	6	41	1,369	23	145	123	60	1,109	14	29	84	16	3,019
TOTAL	7	44	2,991	26	242	132	66	1,452	14	29	86	16	5,105

*Total Pending Cases – **23** Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)*

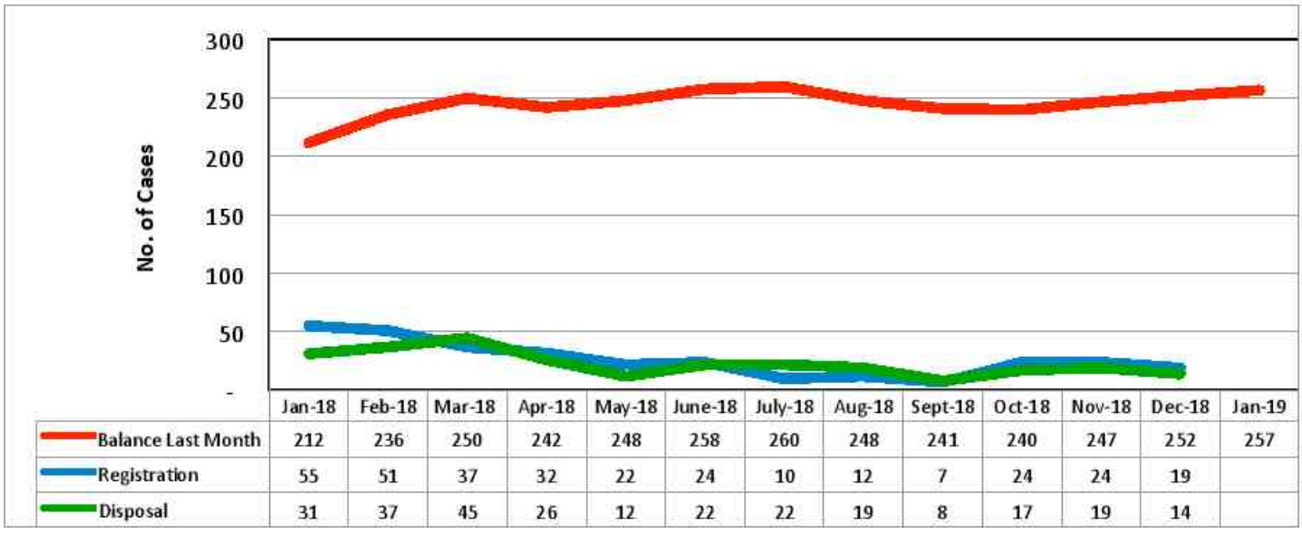
Notes:

- *There are no pending cases in 2013 for code 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *There are **23** pending cases for code 15, 16, 22, 23, 24, 25, 27, 28, 37 and 38 in the Previous Cases column, 2012, 2014, 2016, 2017 and 2018.*
- *No pending cases for code 14, 17, 18, 26, 36, 37, 39 and 40 in 2018.*

13.2 IN THE HIGH COURT AT SABAH – CRIMINAL

For Criminal Cases in the year 2018, a total number of criminal cases including appeals and trials were **317** registered and **272** cases were disposed of, leaving a balance of **257** cases pending.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	212	236	250	242	248	258	260	248	241	240	247	252	257
Registration	55	51	37	32	22	24	10	12	7	24	24	19	
Disposal	31	37	45	26	12	22	22	19	8	17	19	14	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SABAH (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	41	42	42(A)	44	45	
2016		1		1	3	5
2017	35	23	4	1	19	82
2018	79	56	7	4	16	162
TOTAL	114	80	11	6	38	249

*All Pending Cases + **8** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column. 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **8** pending cases for code 41(A), 43 and 46 in 2012, 2017 and 2018.*
- *No pending cases for code 41, 41(A), 42(A), 43, 46 and 47 in 2016.*
- *In 2017 and 2018, there are no pending cases for code 41(A), 43, 46 and 47.*

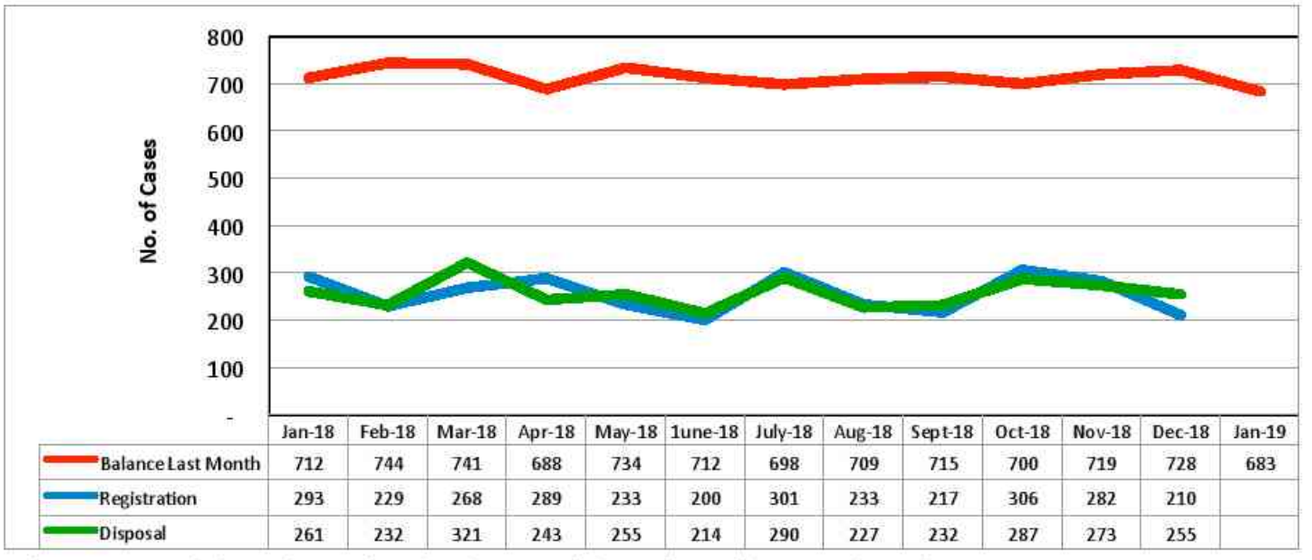
14. SARAWAK

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 2018. For the period from January to December 2018, the total number of civil cases registered was **3,061** (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of **3,090** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the High Court at Sarawak is **683** as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	1une-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	712	744	741	688	734	712	698	709	715	700	719	728	683
Registration	293	229	268	289	233	200	301	233	217	306	282	210	
Disposal	261	232	321	243	255	214	290	227	232	287	273	255	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SARAWAK (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES											TOTAL
	11	12	13	15	21	22	23	24	28	*29	33	
2014					1	5		6		1		13
2015					3	6	1	1		2		13
2016						7		1				8
2017			1	1	7	22	1	4		8	5	49
2018	6	31	12	6	22	68	6	170	31	613	230	1,195
TOTAL	6	31	13	7	33	108	8	182	31	624	235	1,278

*Total Pending Cases + **29** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

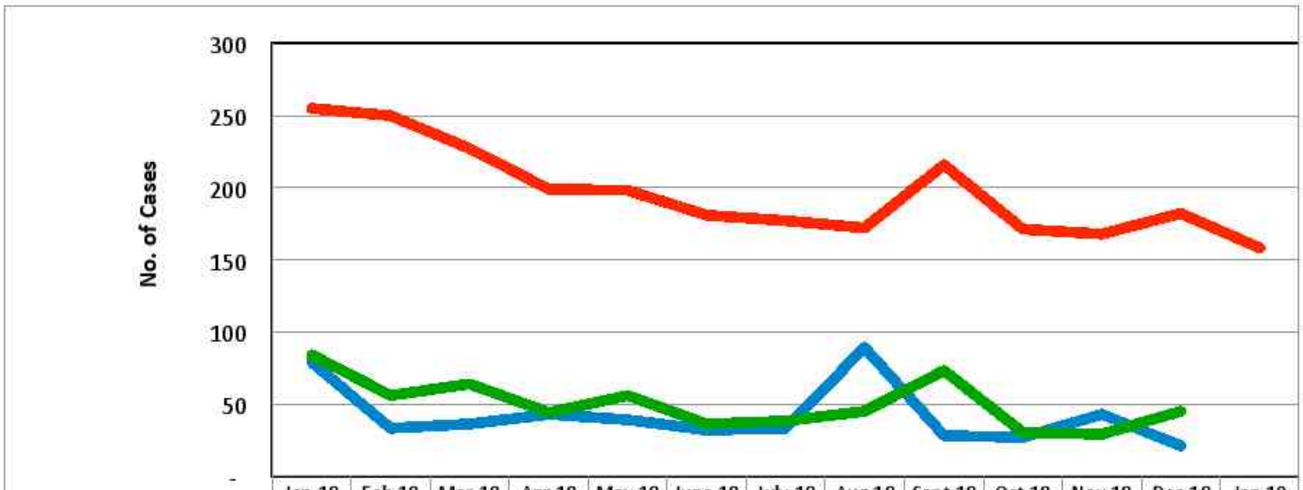
Notes:

- *There are no pending cases in the Previous Cases column for code 11, 12, 13,14,15,16, 26, 27, 28, *29, *31, *32, 33, 34, 36, 37, 38, 39 and 40.*
- *In 2012 and 2013, there are **15** pending cases for code 22 and 24. Meanwhile, in 2018 there are **14** pending cases for code 14, 18, 27, 34, 37 and 38.*
- *No pending cases for exclude code (*31 and *32).*

14.2 IN THE HIGH COURT AT SARAWAK - CRIMINAL

For Criminal Cases in the year 2018, a total number of **503** cases including appeals and trials were registered and **600** cases were disposed of, leaving a balance of **158** cases pending.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	255	250	227	199	198	181	177	172	216	171	168	182	158
Registration	79	33	36	43	39	32	33	89	28	27	43	21	
Disposal	84	56	64	44	56	36	38	45	73	30	29	45	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES			TOTAL
	41	42	45	
2017	2	1	23	26
2018	29	50	43	122
TOTAL	31	51	66	148

*All Pending Cases + **10** Pending Cases = Total Pending Cases (Jan 19)*

Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014 and 2015 for code 41, 41(A), 42, 42(A), 43, 44, 45, 46 and 47.*
- *There are **10** pending cases for code 41(A), 42(A), 43, 44 and 45 in 2016 and 2018.*
- *No pending cases for code 46 and 47 in 2017 and 2018.*

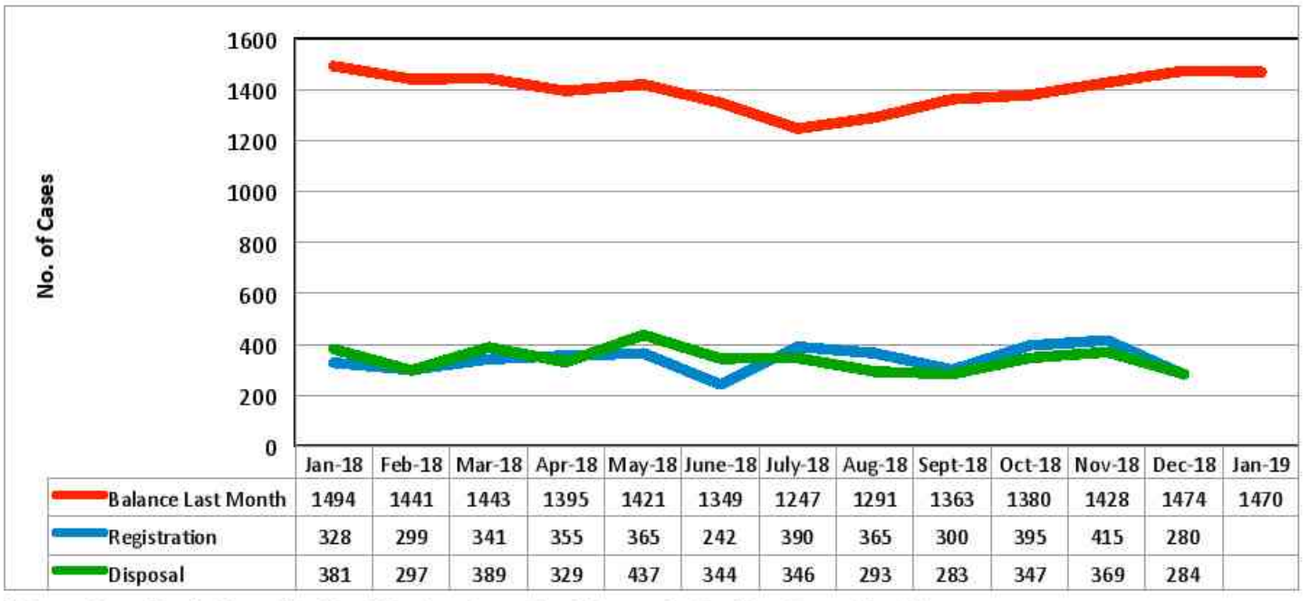
THE SESSIONS COURT IN SABAH AND SARAWAK

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 2018. For the period from January to December 2018, the total number of civil cases registered was **4,075** (excluding cases for Code 56). The Sessions Court has managed to dispose of **4,099** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in Sessions Court in Sabah and Sarawak is **1,470** cases as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1494	1441	1443	1395	1421	1349	1247	1291	1363	1380	1428	1474	1470
Registration	328	299	341	355	365	242	390	365	300	395	415	280	
Disposal	381	297	389	329	437	344	346	293	283	347	369	284	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	51	52	53	54	*56	
2016		5	8		2	15
2017	1	60	72		2	135
2018	134	646	532	7	39	1,358
TOTAL	135	711	612	7	43	1,508

*Total Pending Cases + **5** Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)*

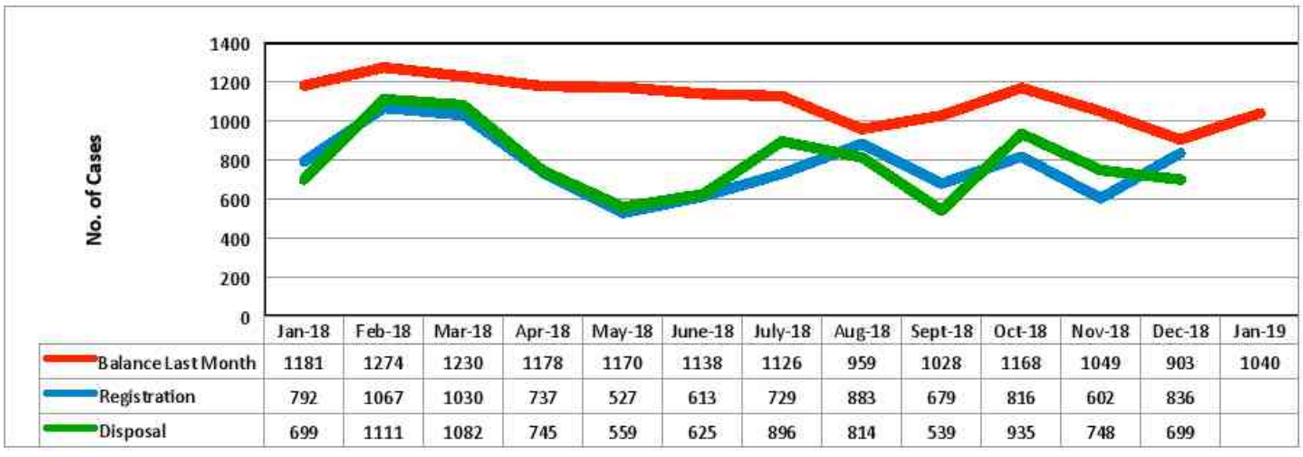
Notes:

- *There are no pending cases in the Previous Cases column, 2012, and 2013 for code 51, 53, 54, 55, *56, 57, 58 and 59.*
- *For code 52, there are **5** pending cases in 2014 and 2015.*
- *In 2016 and 2017, there are no pending cases for code 54, 57, 55, 57, 58 and 59.*
- *No pending cases for code 55, 57, 58 and 59 in 2018.*

SESSIONS COURT – CRIMINAL

For Criminal Cases in the year 2018, a total of **9,311** criminal cases were registered (excluding cases for Code 64 and 65) and **9,452** criminal cases were disposed of, leaving a balance of **1,040** cases pending.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	1181	1274	1230	1178	1170	1138	1126	959	1028	1168	1049	903	1040
Registration	792	1067	1030	737	527	613	729	883	679	816	602	836	
Disposal	699	1111	1082	745	559	625	896	814	539	935	748	699	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES					TOTAL
	61	62	63	*64	*65	
PREVIOUS CASES					1	1
2016	5	12	1	1		19
2017	83	97	2	4	2	188
2018	80	684	76	30	437	1,307
TOTAL	168	793	79	35	440	1,515

Total Pending Cases - Excluding Code (*) = Pending Cases (Jan 19)

Notes:

- *No pending cases in the Previous Cases column for code 61, 62, 63 and *64.*
- *There are no pending cases in 2012, 2013, 2014 and 2015 for code 61, 62, 63, *64 and *65.*
- *In 2016, there are no pending cases for code *65.*

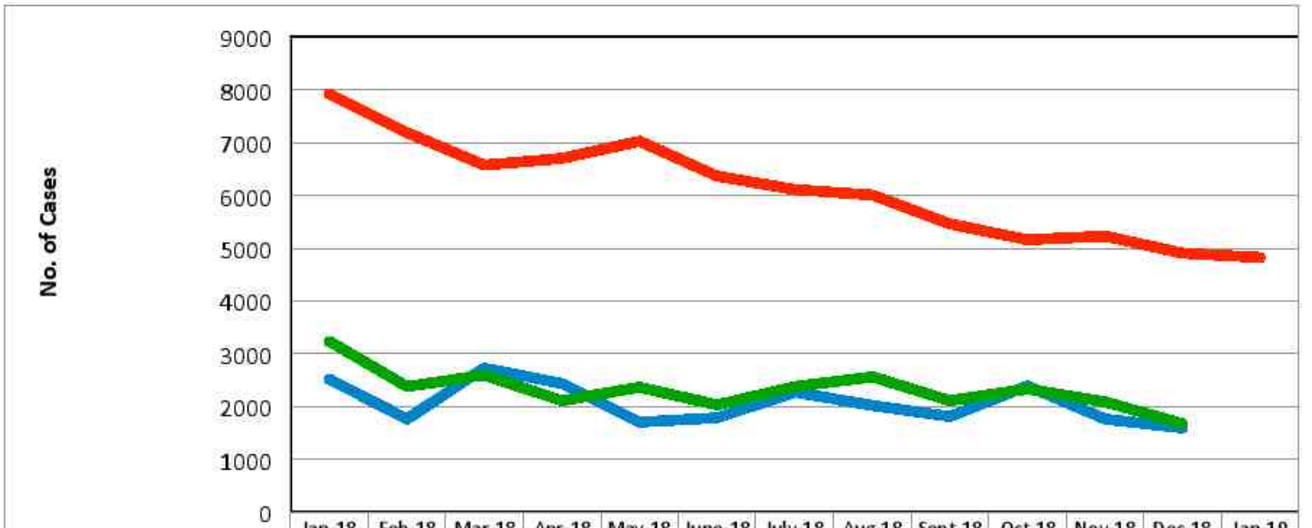
MAGISTRATES COURT IN SABAH AND SARAWAK

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 2018. For the period from January to December 2018 the total number of civil cases registered was **24,764** (excluding cases for Code 76). The Magistrates Court has managed to dispose of **27,863** cases throughout the year 2018.

As at 31 December 2018, the total number of civil cases pending in the Magistrates Court in Sabah and Sarawak is **4,823** as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	7922	7194	6577	6704	7028	6363	6111	6006	5461	5161	5228	4903	4823
Registration	2512	1765	2723	2435	1700	1782	2268	2017	1809	2393	1767	1593	
Disposal	3240	2382	2596	2111	2365	2034	2373	2562	2109	2326	2092	1673	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2018

YEAR	CODES								TOTAL
	71	72	73	74	*76	77	78	79	
2016		1	5						6
2017	2	16	18		5			66	107
2018	823	2,079	170	116	652	41	7	1,479	5,367
TOTAL	825	2,096	193	116	657	41	7	1,545	5,480

Total Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

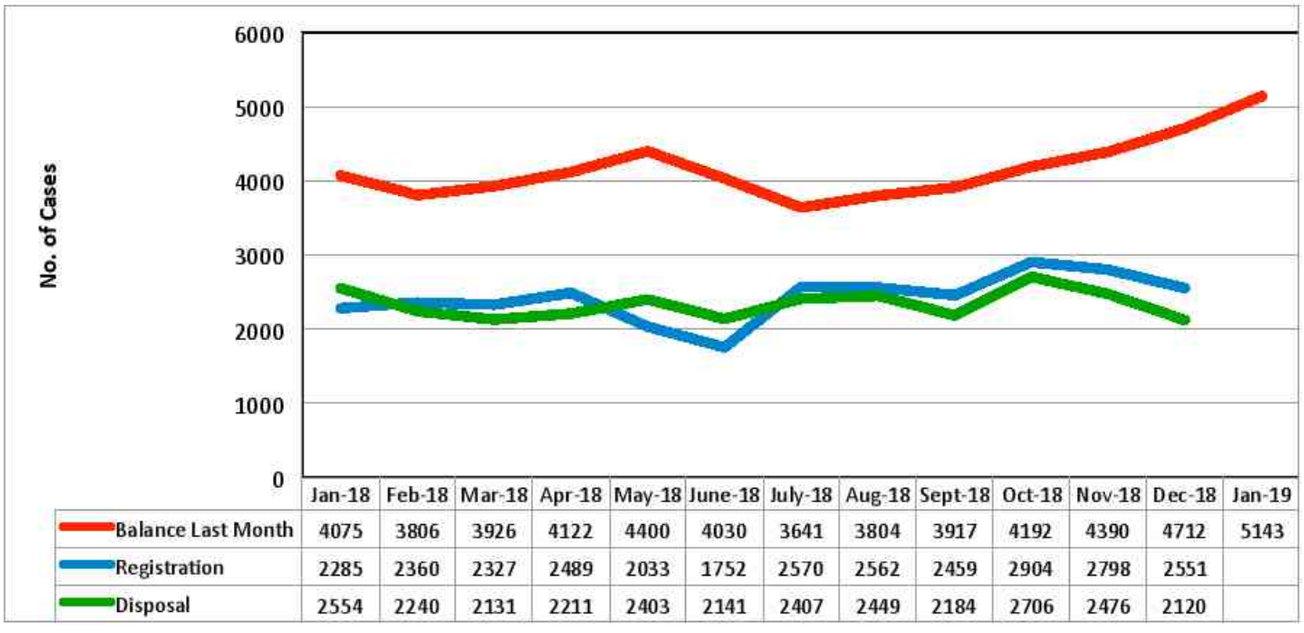
Notes:

- *There are no pending cases in the Previous Cases column, 2012, 2013, 2014 and 2015 for code 71, 72, 73, 74, *76, 77, 78 and 79.*
- *There are no pending cases for code 71, 74, *76, 77, 78 and 79 in 2016.*
- *In 2017, there are no pending cases for code 74, 77 and 78.*

MAGISTRATES COURT - CRIMINAL

For Criminal Cases in the year 2018, a total of **29,090** criminal cases were registered (excluding cases for Code 86, 87, 88 and 89) and **28,022** cases were disposed of, leaving a balance of **5,143** cases pending.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	June-18	July-18	Aug-18	Sept-18	Oct-18	Nov-18	Dec-18	Jan-19
Balance Last Month	4075	3806	3926	4122	4400	4030	3641	3804	3917	4192	4390	4712	5143
Registration	2285	2360	2327	2489	2033	1752	2570	2562	2459	2904	2798	2551	
Disposal	2554	2240	2131	2211	2403	2141	2407	2449	2184	2706	2476	2120	

Balance Last Month (Jan 18) + Total Registration - Total Disposal = Pending Cases (Jan 19)

PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2018

YEAR	CODES									TOTAL
	81	82	83	84	85	86*	87*	*88	89*	
PREVIOUS CASES								1		1
2015							2			2
2016			5				1		1	7
2017		14	42	4		5	2			67
2018	55	66	4,778	174	5	6,948	5,705		436	18,167
TOTAL	55	80	4,825	178	5	6,953	5,710	1	437	18,244

Total Pending Cases – Excluding Code (*) = Pending Cases (Jan 19)

Notes:

- *There are no pending cases in 2012, 2013 and 2014 for code 81,82,83,84,85,*86,*87, *88 and *89.*
- *In the Previous Cases column, there are no pending cases for code 81, 82, 83, 84, 85, *86, *87, *88 and *89.*
- *In 2016 and 2017 there no pending cases for code 81 and 85 and in 2018 there are no pending cases for code *88.*

THE EDITORIAL COMMITTEE

Front row L-R: Justice Abdul Rahman Sebli, Justice Abang Iskandar Abang Hashim, Justice Mohd Zawawi Salleh, Justice Idrus Harun, Justice Alizatul Khair Osman Khairuddin, Justice Hasnah Dato' Mohammed Hashim, Justice Azizah Haji Nawawi and Justice Rhodzariah Bujang

2nd row L-R: Mr. Abdullah Siddiq Mohd Nasir, Mr. Saifullah Qamar Qamar Siddique Bhatti, Mdm. Suzarika Sahak, Mdm. Ng Siew Wee, Mdm. Aishah Ameerah Che Johan, Mdm. Normastura Ayub, Mdm. Ilham Abd Kader, Mdm. Norkamilah Aziz, Mdm. Arleen Ramly, Dr. Iriane Isabelo, Mr. Mohd Sabri Othman, Mr. Muhammad Noor Firdaus Rosli, Mdm. Noor Shahidah Saharom, Mdm. Parvin Hameedah Natchiar, Mdm. Rafiah Yusof, Mdm. Ainna Sherina Saipolamin, Mdm. Fazira Azlina Mohd Rofli, Mdm. Siti Nabilah Abd Rashid, Mdm. Chang Lisia, Mr. Ahmad Afiq Hasan and Mr. Shazali Dato Hidayat Shariff

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