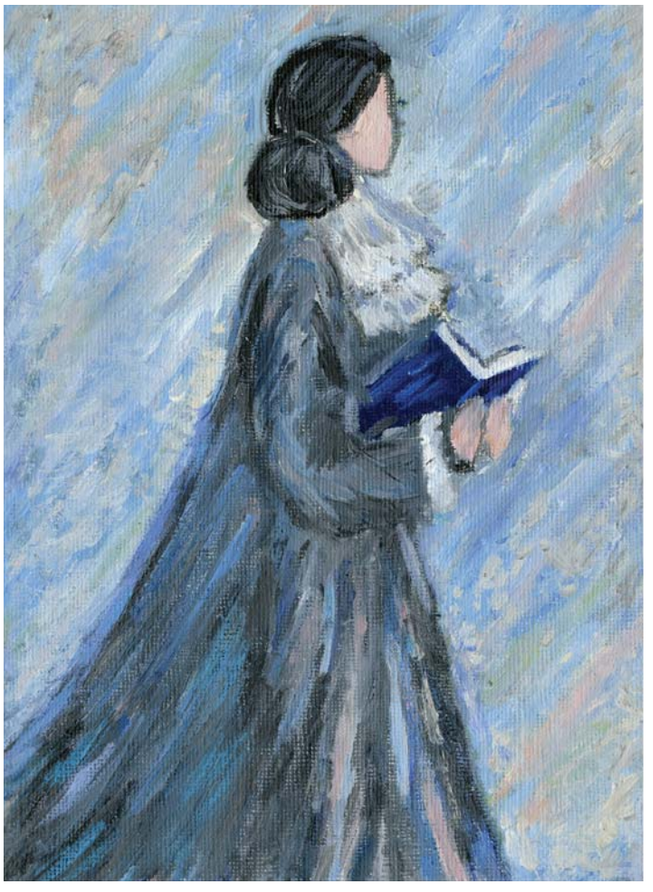
THE MALAYSIAN JUDICIARY

YEARBOOK 2015



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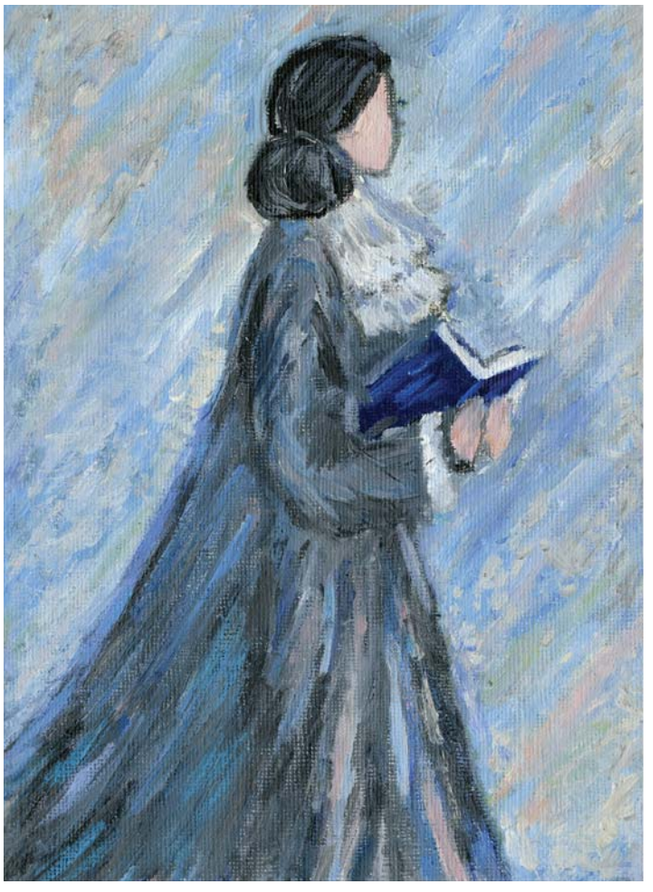
Cover Painting

"DIVINE JUSTICE"

By Azzah Annesya June Abdul Jalil



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The Right Honourable Tun Arifin Zakaria
Chief Justice of Malaysia

Foreword

by The Right Honourable Tun Arifin Zakaria

Chief Justice of Malaysia

It is with considerable pleasure that I welcome the fifth edition of the Malaysian Judiciary Yearbook. In this publication, the annual report documents, as in previous years, the accomplishments of the Judiciary for the year 2015. The book showcases this by detailing judicial and ceremonial events as well as providing a comprehensive statistical analysis of the performance of the Malaysian courts as a whole.

Information empowers and promotes the twin pillars of integrity and accountability. To that end, our annual report comprises an important part of the free flow of information about the workings and achievements of the Judiciary. It enables our citizens, particularly the legal fraternity, to arrive at an informed opinion on the functioning and efficacy of our institution.

The fifth edition unfolds significant features. Of particular interest is an article on the late Tun Sir James Beveridge Thomson, our first Lord President of the Federal Court. There are several articles from eminent sitting judges and retired judges on a variety of legal topics, ranging from life on the bench in the Court of Appeal, High Court and musings post-retirement, to legal areas of current interest such as native customary rights, non-discrimination against women and protection against violence, sentencing policy and the role of the judiciary in promoting the growth of capital markets.

2015 was a challenging and interesting year for the Judiciary. Earlier initiatives to reduce the arrears of pending cases have borne a positive outcome. However, it remains the Judiciary's continuing goal to deliver the highest level of service to the citizenry. To that end, the focus of the Judiciary has been to improve the quality of judgments handed down at the various tiers of the court system. We recognise that it is important that the Judiciary keeps abreast of legal trends and developments globally and particularly in the ASEAN region.

To this end, the Judicial Academy has been conducting seminars and courses for judges throughout the year. The composite series of subjects discussed and judge craft expounded by our senior judges and experts to our judges and judicial officers are customised to develop and strengthen our judges in the carrying out of their judicial functions. The annual report admirably captures an overview of such judicial training.

Of particular interest is the Second National Seminar on Environmental Justice hosted by the Malaysian Judiciary at the Royal Belum Rainforest Resort in Gerik, Perak in October 2015. Representatives from the Judiciary, the Attorney General's Chambers, enforcement agencies, environmental non-governmental agencies and academics convened to share their knowledge and best practices in combatting wildlife trafficking. This historic event gave way to meetings being held to discuss issues of sustainable development, conservation and preservation of our nation's natural resources.

2015 also saw the establishment of several new specialised courts. A fast-track court for street crime offences in the subordinate courts was operational with effect from May 2015. Street crime offences cover cases involving robbery, mugging, snatch theft, hit and run accidents and cheating on taxi fares. With this new court, offences of this nature are tried on an expedited basis whereby the timelines allow for a disposal within three days if the accused pleads guilty and two weeks if the accused claims trial.

An Anti-Profiteering, Goods and Services Tax Court was established to deal with matters arising under the Price Control and Anti-Profiteering Act 2011 and the Goods and Services Tax Act 2014. Such specialist courts have been set up throughout the nation.

Finally, a Counter Terrorism Court was set up in response to the Government's proposal to deal solely with offences relating to terrorism. Five members of the superior judiciary have been assigned to this court. The setting up of such a dedicated court is intended to expedite the trial process and curb the spread of extremism and militancy in this country as well as globally.

Conclusion

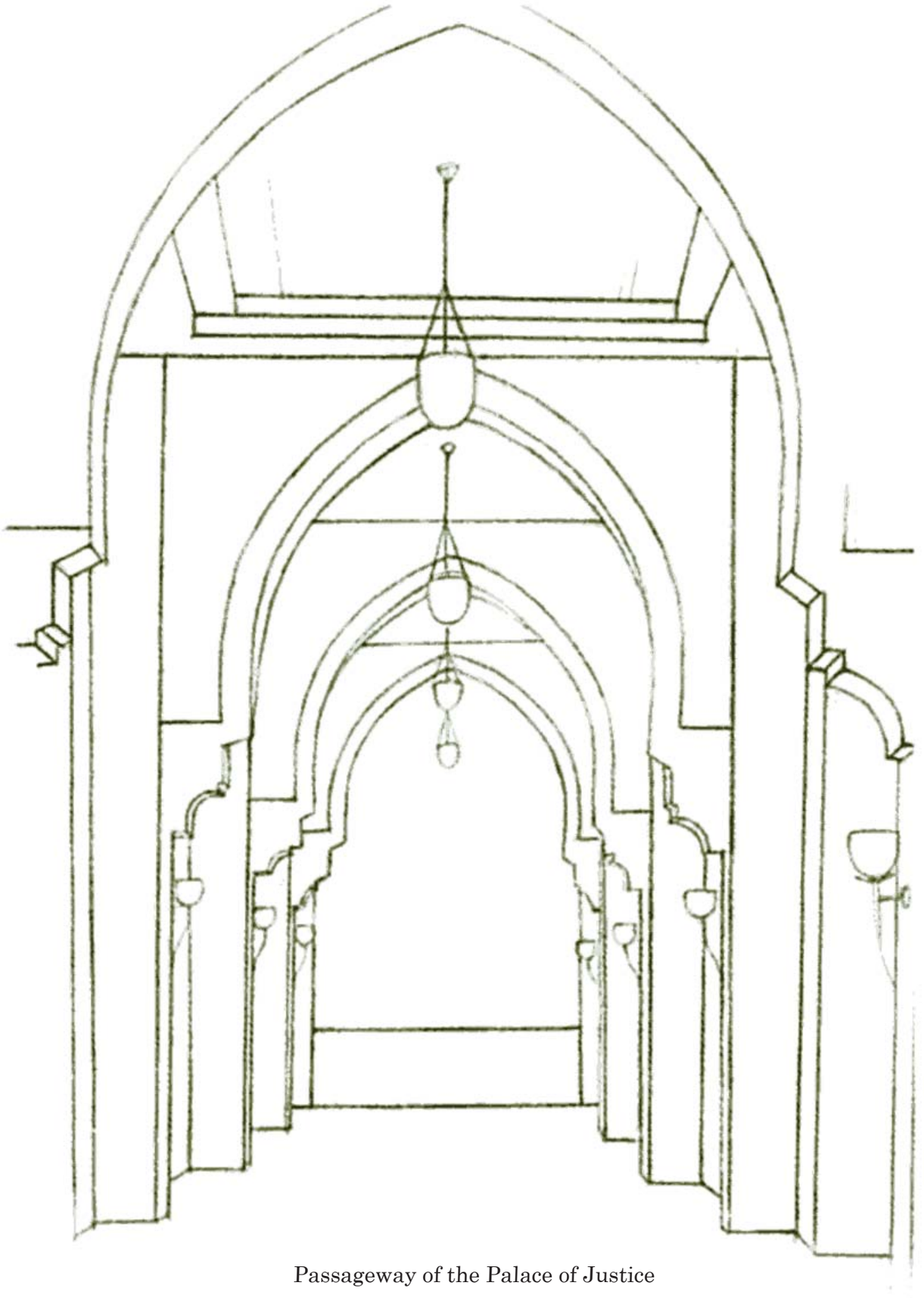
It is timely, perhaps, to recall that the Malaysian Judiciary has protected and upheld the Constitution of Malaysia for no less than 58 years post-Merdeka. We continue to do so, notwithstanding the challenges that we meet on a daily basis.

Considering all we have achieved in 2015, I thank all judges, officers and staff for their hard work and excellent performance. I would also like to thank the Attorney General and his officers, the Bar, the Sabah Law Association and all other stakeholders for their commitment and appreciation.

Finally I would like to express my sincere appreciation to the Yearbook Committee led by Justice Zainun Ali and her team, namely Justice Alizatul Khair Osman Khairuddin, Justice Abdul Aziz Abdul Rahim, Justice Lim Yee Lan, Justice Mohd. Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Varghese George Varughese, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Mdm. Azniza Mohd. Ali, Mdm. Syahrin Jeli Bohari, Mr. Azrol Abdullah, Mr. Mohd Sabri Othman, Mr. Noorhisham Mohd Jaafar, Ms. Firdaus Md Isa, Mdm. Husna Dzulkifly, Ms. Norhafizah Zainal Abidin, Mdm. Sabreena Bakar @ Bahari, Mr. Shazali Hidayat Shariff, Mr. Syahrul Sazly Md Sain, Mdm. Chang Lisia, Mr. Muhammad Iskandar Zainol, Mr. Mohd. Izuddin Mohamad and Ms. Hazmida Harris Lee.

I also take this opportunity to thank Mdm. Hamidah Abdul Rahman for her splendid photography, Mr. Muhammad Nur Hazimi Mohamed Khalil (Jimmy) for his sketches and portraits of the contributors and Ms. Azzah Annesya June Abdul Jalil for her paintings in Chapter 7 and on the cover.

Tun Arifin Zakaria
Chief Justice of Malaysia



Passageway of the Palace of Justice

Justice Zainun Ali
Judge of the Federal Court
Editor, the Malaysian Judiciary Yearbook 2015

Preface

In his elegant quatrain, the Persian poet Rumi said that –

"I honour those who try
to rid themselves of any lying,
who empty the self
And have only clear being,"

How perfectly true that is, for here we are, poised and primed in reporting our year's hard work, as correctly and honestly as we could. The judicial journey thus far has had its moments, but we are trained in putting things together, regardless.

As Lord Bingham said – "the best law reporting is a work of scholarship."

It is a pleasure to once again introduce this annual publication. Now that we in the Committee are in our fifth year, the hard edges of running this work have somewhat softened. Still, each year presents its own challenges and this year is no different, as fresh and provocative issues jostle up for space.

We have faithfully kept to the tried and tested chapters, since they are critical in illustrating our judicial output.

We hope that the brief writings of the Justices from each tier will provide insight to issues faced by the Judiciary. We are grateful to Justices Abdul Rahman Sebli, Vazeer Alam and Rhodzariah Bujang for their cognitive articles.

As our readers will agree, the chapter on a Judge's Musings would invariably plumb down great readership since it would have remembrances of things past and is replete with useful tips for young judges. Thank you Y.Bhg. Datuk Wira Haji Mohd Noor Ahmad and Y.Bhg. Datuk Heliliah Mohd Yusuf, for your generosity in sharing your trough of knowledge and experience.

The past still speaks to us about some of the legal questions that matter to us today. For instance, how could we remain impervious to some of the sanguine observations expressed by our first Lord President, Tun Sir James Beveridge Thomson? They remain as relevant today as they were a hundred years ago. In reiterating our belief that it is critical that we remain in touch with our past as we are with the present, a new chapter will commence in this publication, which will be the forerunner of the life and times of all our former Lords President/Chief Justices, beginning with our first Lord President, Tun Sir James Beveridge Thomson.

The write up on Tun Sir James Beveridge Thomson was indeed a labour of love, considering the long hours spent on searching through volumes of dusty tomes and reels of grainy photographs, so as to catch a glimpse of the man he was.

Admittedly, catching up with the past has been infectious. We managed to pin down the elusive daughter of the late Tan Sri Wan Adnan bin Wan Ismail, the former President of the Court of Appeal, who graciously provided us a heartfelt portrayal of her illustrious father who passed away on 24 December 2001. Thank you, Wan Azliana.

A vivacious account by Justice Badariah Sahamid of the training programme she attended in Canada, The Intensive Study Programme for Judicial Educators prepares us for the shape and slant our future training modules will take, within the structure of the Judicial Academy.

I might mention here that under the stewardship of our Chief Justice, the Judicial training programme seemed to have taken on a life of its own; the lectures and instructive lessons would come fast and furious on the heels of the last. I suppose it is acknowledged that we need to avoid being singed by any adverse comments from the public on judicial competence. We cannot afford a drop in public esteem.

On another note, one of the niggling challenges we routinely face every year is having to identify critical issues which would galvanise the attention of readers.

A poll we conducted not too long ago as to what they would like to read, showed that our pollsters had unanimously opted for the vibrant but often volatile area of the law on human rights.

Thus in this publication, we will commence with our Human Rights series; and if you will pardon the pun, our maiden article would be the issue of violence against women.

The spirited account rendered by Justice Hasan Lah in his article entitled Judicial Decisions Applying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Principles and Incorporating Gender Perspective is reflective of the deep interest the Judiciary takes in this important subject.

Another area which has lately generated a large following is the growth of the Malaysian capital market. The hallmark of the latter is defined by the standard of its governance. Its increasing complexity does provide a challenge when cases come up for deliberation.

As our country ranks among the leading trading nations, the dynamics of the capital market would be critical in establishing standards for fair and ethical business practices, as outcomes of Judicial decisions will indicate.

In this connection, we are fortunate in securing an interview with Tan Sri Munir Majid, one of the trail-blazers of the Malaysian capital market, being the first Chairman of the Securities Commission. Tan Sri Munir's incisive response serves as an important medium in which to better understand the growing sophistication and development of this regime. Thank you, Tan Sri. In that regard you will find that Justice Azizul's articulate piece on this expansive issue has intrinsic value and significance.

Moving on to our Chapter on Judicial Insights, our three offerings on diverse areas of the law would certainly whet your interest. We are fortunate in having access to the deftly crafted piece on Industrial Relations issues as written by the Rt. Hon. Justice Raus Sharif.

We also welcome the informative article on Judicial Management in Insolvency by Tan Sri Jeffrey Tan. The importance of this information cannot be understated now that the amendments to the Companies Act 1965 had undergone a safe passage in Parliament.

Finally the intriguing kaleidoscope of laws and facts that make up issues critical to native customary rights is cleverly bound up in an article by Justice Yew Jen Kie.

On behalf of the Judiciary I would like to extend our gratitude to Justice Raus Sharif, Justice Hasan Lah, Justice Badariah Sahamid, Tan Sri Jeffrey Tan, Justice Yew Jen Kie and Justice Azizul Azmi Adnan for their illuminating collection of articles.

After all has been said and done, I can only say that there is no easy way to navigate the terrain one inhabits as a judge. The path is that much harder when that judge is female. Someone asked us (female judges) once:

How does one evaluate a woman judge's arc, without factoring in gender?

My answer to that question was that you cannot see her accurately, without recognising that she is a woman of her time, with all the attendant obstacles, compromises, sacrifices and tenacity. These inform and illuminates her perspective; and her appointment would carry a powerful and constructive symbolism that cannot and should not be ignored.

Of the total number of 140 judges in the Superior Court, 49 are women. A fitting tribute to female judges for their huge contribution to the Judiciary is reflected on the cover of this publication.

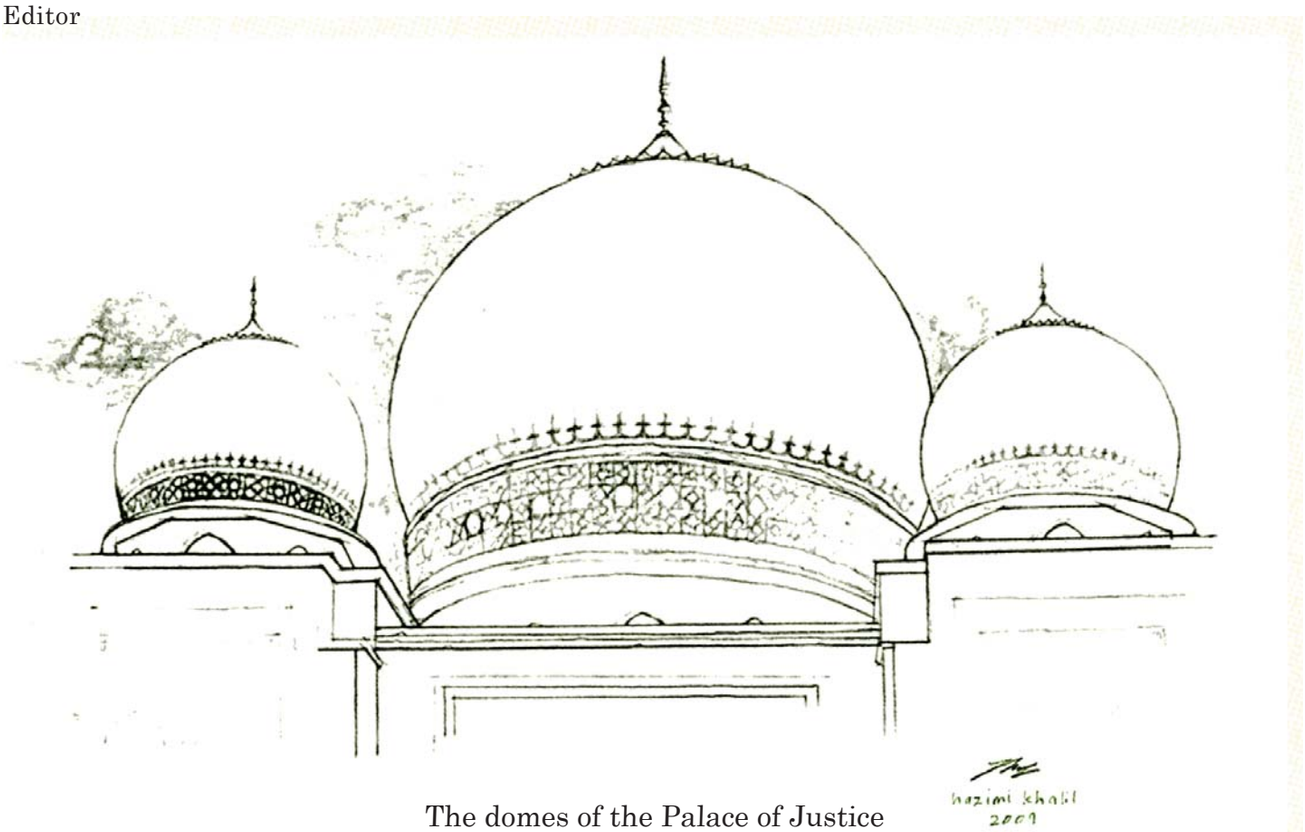
On a final note, on behalf of the Committee I would like to extend the Editorial Committee's immense gratitude to the Rt. Hon. the Chief Justice Tun Arifin Zakaria for reposing in us the trust and privilege in continuing with this exciting project. We would also like to thank the PNMB for putting up this publication; the Central Bank of Malaysia; the National Archives of Malaysia; the Sabah Law Association; the Courts in Kuching;

Mdm. Hamidah Abdul Rahman for her superb photography, Mr. Jimmy Khalil for his exquisite sketches and portraits and Ms. Azzah Annesya June for her paintings in Chapter 7 and on the cover.

As for the Editorial Committee members Justice Alizatul Khair Osman Khairuddin, Justice Abdul Aziz Abdul Rahim, Justice Lim Yee Lan, Justice Mohd Zawawi Salleh, Justice Abang Iskandar Abang Hashim, Justice Varghese George Varughese, Justice Idrus Harun, Justice Nallini Pathmanathan, Justice Rhodzariah Bujang, Justice Azizah Nawawi, Justice Azizul Azmi Adnan, Mdm. Azniza Mohd Ali, Mdm. Syahrin Jeli Bohari, Mr. Azrol Abdullah, Mr. Mohd. Sabri Othman, Mr. Noorhisham Mohd Jaafar, Ms. Firdaus Md Isa, Mdm. Husna Dzulkifly, Ms. Norhafizah Zainal Abidin, Mdm. Sabreena Bakar @ Bahari, Mr. Shazali Dato' Hidayat Shariff, Mr. Syahrul Sazly Md Sain, Mdm. Chang Lisia, Mr. Muhammad Iskandar Zainol, Mr. Mohd Izuddin Mohamad and Ms. Hazmida Harris Lee, you know that you have done justice to the responsibilities entrusted to you. Thank you.

Happy reading!

Justice Zainun Ali
Editor



The domes of the Palace of Justice

THE CHIEF JUSTICE ARIFIN ZAKARIA AND THE PRESIDENT OF THE CO

(L-R): Justice Hasnah Mohammed Hashim, Justice Siti Khadijah S. Hassan Badjenid, Justice Asmabi Mohamad, Justice Li
Chief Justice Arifin Zakaria, Justice Zainun Ali, Justice Alizatul Khair Osman Khairuddin, Justice Nallini Pathmanathan, Ju

OURT OF APPEAL JUSTICE RAUS SHARIF WITH SOME WOMEN JUDGES

im Yee Lan, Justice Dr. Badariah Sahamid, Justice Rohana Yusuf, Justice Umi Kalthum Abdul Majid, Justice Raus Sharif, ustice Zaharah Ibrahim, Justice Aziah Ali, Justice Mary Lim Thiam Suan.

CHAPTER 1

THE OPENING OF THE LEGAL YEAR

THE OPENING OF THE LEGAL YEAR 2015 – PENINSULAR MALAYSIA

The procession led by Chief Justice Arifin Zakaria, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin and Justice Richard Malanjum.

10 January 2015 marked the Opening of the Legal Year 2015 for Peninsular Malaysia. Held at the Main Hall of the Ministry of Finance in Putrajaya, the day began with a procession of Judges of the Federal Court, the Court of Appeal and the High Courts, followed by the judicial officers, officers of the Attorney General's Chambers and members of the Bar. Past and present members of the Malaysian Judiciary attended the ceremonial occasion, as did the Attorney General of Malaysia, the Hon. Tan Sri Abdul Gani Patail and Chairman of the Bar Council, Mr. Christopher Leong. Other attendees included representatives from the Singapore Judiciary, the Law Society of Singapore, the Taiwan Bar Association, the Law Society of Brunei, the Law Council of Australia, the German Federal Bar, the Inter-Pacific Bar Association, the Yangon Bar Association, the Law Society of New South Wales, the Bar Association of India, LAWASIA and members of the foreign diplomatic corps. The Attorney-General of Sabah and Sarawak were also present to witness the ceremony.

Judges marching into the hall. Seen in the picture are the High Court Judges.
(L-R front): Justice John Louis O'Hara, Justice Mohd Zaki Md. Yasin
(L-R behind): Justice Nurchaya Arshad and Justice Mohamad Zabidin Mohd. Diah

As with previous years, the Chairman of the Bar Council was given the honour of delivering the first speech. Mr. Christopher Leong in his speech expressed delight that the professional working relationship between the Bench, the Bar and the Attorney General's Chambers continued to be constructive and productive. Looking back at the events in 2014, the country had to deal with numerous issues including those pertaining to freedom of religion, freedom of expression, rising racial and religious extremism, the Sedition Act, terrorism or support for terrorism, loss of MH370, MH17 and QZ 8501 as well as environmental issues such as the widespread devastation caused by the massive floods in several states of Malaysia. He also touched on the issue of criticism of the judiciary and agreed that criticism for criticism's sake is unwarranted and does not serve to inform or benefit the judiciary and the administration of justice. Towards the end of his speech, Mr. Christopher Leong announced the coming into effect of the amendment of the Legal Profession Act 1976 and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 on 3 June 2014. The coming into force of these amendments mark the commencement of the liberalisation process of the legal services profession in Malaysia.

(L-R): Mr. Christopher Leong, Justice Richard Malanjum, Justice Raus Sharif, Chief Justice Arifin Zakaria, Justice Zulkefli Ahmad Makinudin and Tan Sri Abdul Gani Patail

The Attorney General of Malaysia in his speech noted that the year 2014 had not been without legal challenges. In particular, manifold legal and other issues were thrown up by the loss of Malaysia Airlines flights MH370 and MH17. For the Attorney General's Chambers, the preceding years have been focused on improving the quality of its officers which was done through a stringent recruitment and promotion process, as well as the provision of strategised in-house, on the job training, coupled with continuous monitoring.

In his reply speech, the Rt. Hon. the Chief Justice Arifin Zakaria, reaffirmed the Judiciary's commitment to uphold the rule of law and the independence of the Judiciary, as well as recognising that the justice system is a fundamental pillar of our society and is one of its continuing strengths. On judicial independence, the Rt. Hon. the Chief Justice remarked that it was disheartening to note that a handful of lawyers have repeatedly made use of public media and public fora to make unjustified criticisms against the Judiciary, and more so on the decisions of the court, knowing well that as members of the Malaysian Bar they are obliged to act with candour, courtesy and fairness.

In his speech, the Rt. Hon. the Chief Justice outlined numerous events and developments that the country's legal community had witnessed in 2014 and could look forward to in the new legal year. The previous year saw the establishment of 14 dedicated Coroners' Court and in 2015, two new specialist courts would be established, namely the Anti-Profiteering, Goods and Services Tax Court dealing with cases under the Goods and Services Tax Act 2014 (Act 762) and the Price Control and Anti-Profiteering Act 2011 (Act 723), and a court to hear cases under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670). The Rt. Hon. the Chief Justice also announced the expansion of the current e-Court System. Since 2009, the e-Court system comprising e-Filing, CMS and QMS have been set up in the main court complexes namely Kuala Lumpur, Shah Alam, Ipoh, Georgetown, Johor Bahru and Putrajaya. Having

successfully implemented the e-Court System, the Rt. Hon. the Chief Justice announced plans to expand the system to all the courts throughout Malaysia, which since its implementation have substantially then reduced backlog of cases and trial processes are now two to three times speedier.

Another new initiative announced is the implementation of a Judicial Assistant or Judicial Clerkship programme involving law graduates who have graduated at the top of their class from premier universities worldwide. This will serve the dual purpose of both assisting judges in carrying out legal research, as well as enhancing and diversifying the standards of research and judicial writing amongst the judicial officers. The Rt. Hon. the Chief Justice proposed that the tenure of these clerkships be accounted for towards pupillage for the purpose of qualifying for the Bar. Proposed placements will initially be with senior judges of the appellate courts and will be expanded gradually.

In his closing remarks, the Rt. Hon. the Chief Justice reminded judges and judicial officers to maintain their dignity and integrity at all times. His Lordship observed:

> *"... professionalism is understood to be at the heart of being an ethical judge and an ethical lawyer and the basis upon which we uphold public confidence in the justice system. It also means meeting our commitment in our obligations to serve the public, defending the rule of law and promoting true access to justice."*

The occasion concluded with the Rt. Hon. the Chief Justice inviting all guests to adjourn for lunch.

Judges of the Federal Court after the conclusion of the Opening of the Legal Year 2015.
(L-R): Justice Mohamed Apandi Ali, Justice Zulkefli Ahmad Makinudin, Justice Suriyadi Halim Omar, Justice Ahmad Maarop, Justice Hasan Lah and Justice Jeffrey Tan Kok Wha

THE OPENING OF THE LEGAL YEAR 2015 - SABAH AND SARAWAK

Chief Justice Arifin Zakaria, Justice Raus Sharif, Justice Richard Malanjum, Justice Abdull Hamid Embong, Tan Sri Abdul Gani Patail and Mdm. Nancy Shukri leading the procession.
(Photo courtesy of the Sabah Law Association)

The 2015 Opening of the Legal Year Sabah and Sarawak was held at Kota Kinabalu in Sabah on 23 January 2015. The event was graced by the presence of the Rt. Hon. the Chief Justice Arifin Zakaria. Also present for the occasion were the Rt. Hon. Justice Raus Sharif, the Rt. Hon. Justice Richard Malanjum, the Hon. Tan Sri Abdul Gani Patail, the Hon. Nancy Shukri, Minister in the Prime Minister's Department, State Attorney-General of Sabah and Sarawak, President of the Sabah Law Association and Advocates' Association of Sarawak, together with the members from the Bars of Sabah and Sarawak and officers from the Judicial and Legal Service.

The delegates assembled early at the Kota Kinabalu City Hall to participate in the procession which was led by the Rt. Hon. Chief Justice all the way to the Kota Kinabalu Courthouse.

Participants arriving at the Court building in Kota Kinabalu.
(Photo courtesy of the Sabah Law Association)

The Royal Malaysian Police band marching their way towards the Kota Kinabalu Courthouse.
(Photo courtesy of the Sabah Law Association)

The Rt. Hon. Chief Judge of Sabah and Sarawak, in his speech echoed the reminder by the Rt. Hon. Chief Justice in the Opening of the Legal Year 2015 at Putrajaya on the importance of maintaining the highest standard of professional conduct amongst members of the legal profession as judges are entitled to expect counsel to display courtesy, fairness and candour amongst their peers and towards the court. His Lordship further emphasised that the Judiciary will continue to strive towards moulding our justice system to be more transparent and accessible to the public at large. It is the core mission of the Judiciary to ensure that the public is served in the best possible manner and this is achievable through harmonious collaboration with all the stakeholders.

On the proposal to establish a specialised environmental court for civil cases, His Lordship said that the specialised court may speed up the disposal of environmental related cases at the subordinate and the High Court level. However, further research and studies are to be conducted in gauging the need for a specialised environmental court in the respective High Courts. The Rt. Hon. Chief Judge also expressed his concern on the rising number of cases involving tourists as parties. His Lordship proposed the setting up of a tourist court dealing specially with this issue in order to address the grievances faced by tourists during their stay in Sabah and Sarawak, tourism being one of the sources of revenue in Borneo. His Lordship called upon the legal fraternity in the states of Sabah and Sarawak to work closely on this proposition and to spread awareness amongst the tourists on their right to seek legal redress in the Malaysian courts.

The Hon. Tan Sri Abdul Gani Patail in his speech said that his office will continue with its commitment in ensuring expeditious process in the prosecution cases in Sabah under the security laws. Before concluding his speech, the Attorney General also urged young lawyers to dedicate some effort in being a part of the *Yayasan Bantuan Guaman Kebangsaan* (YBGK) so as to achieve the goal of extending legal services to the rural people living in Sabah and Sarawak. The whole event came to an end with a dinner held at the Grand Ballroom of Magellan Sutera Hotel, Kota Kinabalu.

Judges and participants of the procession which took place from the City Hall to the Court building in Kota Kinabalu.
(Photo courtesy of the Sabah Law Association)

Portico of the Palace of Justice

CHAPTER 2

THE FEDERAL COURT

THE FEDERAL COURT

The Federal Court's schedules and fixtures for the year 2015 has been busy as in previous years. This can be attributed to the significantly higher disposal rate of cases by the Court of Appeal since 2011.

The three main categories of cases that come before the Federal Court are leave applications, civil appeals and criminal appeals.

Leave applications form the bulk of the cases registered in the Federal Court. With a view to disposing leave applications in a more expeditious manner, leave applications are now heard by a quorum of three judges effective from 1 August 2015. However, it must be stressed that the expeditious disposal of cases should never be at the expense of justice. Therefore, where the circumstances require, leave applications may still, at the discretion of the Court, be heard before a quorum of five judges.

In 2015, a total of 605 leave applications were registered. The Court disposed of 667 leave applications out of 1246 cases pending in 2015. The balance of leave applications as at 31 December 2015 stood at 579 cases. For the record, a total of 158 leave applications were allowed in 2015 translating to 23.6% of the total leave applications that were disposed.

As for civil appeals, 158 cases were registered in 2015. The Court succeeded in disposing of a total of 136 appeals out of 342 pending appeals, leaving a balance of 206 appeal cases. The increase in the number of cases registered and disposed is expected as it directly correlates to the increase in the disposal of applications for leave to appeal to the Federal Court as mentioned above. In 2015, a total of 158 leave applications were allowed as compared to only 89 cases in 2014. This means the number of leave applications allowed increased at the rate of 77% compared to 2014.

In 2015, a total of 309 criminal appeals were registered. Priority was given to criminal appeals in 2015 with more sittings to hear criminal appeals as compared to 2014. I am pleased to note that this move yielded positive results as a total of 460 appeals were disposed in 2015 as compared to only 251 cases in 2014, an increased rate of 83%. This leaves a total of 417 criminal appeals pending as at 31 December 2015 as compared to 568 cases in the previous year.

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

In 2016, our main thrust is to clear pre 2016 cases by the end of the year. This will be done by enhancing the case management system, giving special emphasis to ageing cases, interlocutory appeals and the use of technology.

From 2016 onwards, case managements for applications for leave to appeal to the Federal Court will be conducted by a single judge of the Federal Court. This will be done with the objective of having a reasonable number of cases fixed for hearing in a day. We are of the view that a judge, instead of a registrar, will be in a better position to give a proper weightage to the cases. This will be done on a weekly basis. With a proper weightage, more cases can be disposed.

Parties are also expected to prepare a "Power Point" presentation in addition to their oral and written submissions. I am optimistic that this will make the court proceedings more efficient and effective. A practice direction relating to this will be issued.

The year 2015 witnessed the retirement of Justice Jeffrey Tan Kok Wha. I would like to record our sincere appreciation to Justice Jeffrey Tan Kok Wha for his contribution to the Judiciary. I wish him a happy and healthy retirement.

In addition, 2015 also saw the resignation of Justice Mohamed Apandi Ali to take up the post of the Attorney General of Malaysia. I would like to take this opportunity to convey our heartiest congratulations and we wish him all the best in his new office.

Finally, I wish to record my best wishes to Justice Zaharah Ibrahim on her elevation to the Federal Court Bench. I wish her many fulfilling years ahead as a Federal Court Judge. I am sure that her vast experience and knowledge will be an asset to the Federal Court.

Arifin Zakaria
Chief Justice of Malaysia

Judges of the Federal Court

1. Justice Abdull Hamid Embong
2. Justice Suriyadi Halim Omar
3. Justice Ahmad Maarop
4. Justice Hasan Lah
5. Justice Zainun Ali
6. Justice Abu Samah Nordin
7. Justice Ramly Ali
8. Justice Azahar Mohamed
9. Justice Zaharah Ibrahim

The Mace of the Kuching High Court

16TH CONFERENCE OF CHIEF JUSTICES OF ASIA AND THE PACIFIC

Following an invitation from the office of the Hon. Robert Shenton French, AC, the Chief Justice of the High Court of Australia and the Hon. Thomas Frederick Bathurst, AC, the Chief Justice of the Supreme Court of New South Wales, the Rt. Hon. the Chief Justice Arifin Zakaria, accompanied by Mr. Izuddin Mohamad, attended the 16th Conference of Chief Justices of Asia and the Pacific 2015 (Conference) in Sydney, Australia. Held from 6 to 9 November 2015, the Conference brought together Chief Justices, Chief Justices' representatives and delegates from 35 countries within the region including the delegation from the Republic of South Africa which was headed by its Chief Justice, the Hon. Mogoeng Mogoeng.

The four-day Conference was highly rewarding, due to its success in garnering a large amount of empirical information and a rich array of possible approaches towards challenges commonly faced by the global judicial community. This is a result of the extraordinary diversity of the courts represented by each jurisdiction offering different perspectives influenced by their culture, ethnography, history, amount of resources and wealth.

A broad range of topics were explored over nine sessions of discussion. Topics include the perennial issue of the role of Chief Justice in establishing and maintaining judicial independence and protecting the judiciary, judicial human capital development and empowerment through an improved system of judicial education via the use of current technology, the doctrine of comity and its influence in international trade as well as the ongoing problem of gender imbalance which was discussed when addressing the topic of unconscious bias.

Yet the topic which engaged the participants to the greatest extent and on which the participants ran out of time with discussion unfinished was the topic on court administration and the question of court funding, which was addressed by the Hon. Chief Justice Sundaresh Menon from Singapore. The discussion centred on Singapore's experience in administering budgetary expenditure and the role of Chief Executive in assisting the Chief Justice regarding that aspect.

The Hon. Chief Justice Sundaresh Menon explained that the five-year block budget system, a system which allows for direct allocation of budgets in every five years to the Judiciary, independent from any part of the government, has given them the certainty and ability to plan in the medium term. In other words, the Singapore Judiciary is not limited in planning any initiatives on a year-to-year basis. It also provides them with a degree of flexibility in shuffling the budget from one year to another if required. Most importantly, it discourages any sense that the Judiciary is at the mercy of other branches of the government in the area of financial support.

The Rt. Hon. the Chief Justice Arifin Zakaria commented on the paper presented by the Honourable Chief Justice Lebedev from Russia. The discussion focused on the different methods employed by the courts to increase interaction and connection with the public and the media. Methods include the use of websites, audio and video recordings, media liaison officers, social media accounts and various education and engagement schemes with school students. Such measures are critical in building public trust in the Judiciary and court process.

The Rt. Hon. the Chief Justice Arifin Zakaria was particularly impressed by the reform undertaken by the Hong Kong Judiciary with regard to expert evidence. The reform, aimed at maximising the benefits of expert evidence whilst at the same time preventing the unnecessary proliferation of issues, consists of the use of case management, court rules and interlocutory steps. The viability of similar reform in Malaysia will be discussed further during the 50th Annual Meeting of the Council of Judges which will be held in January 2016.

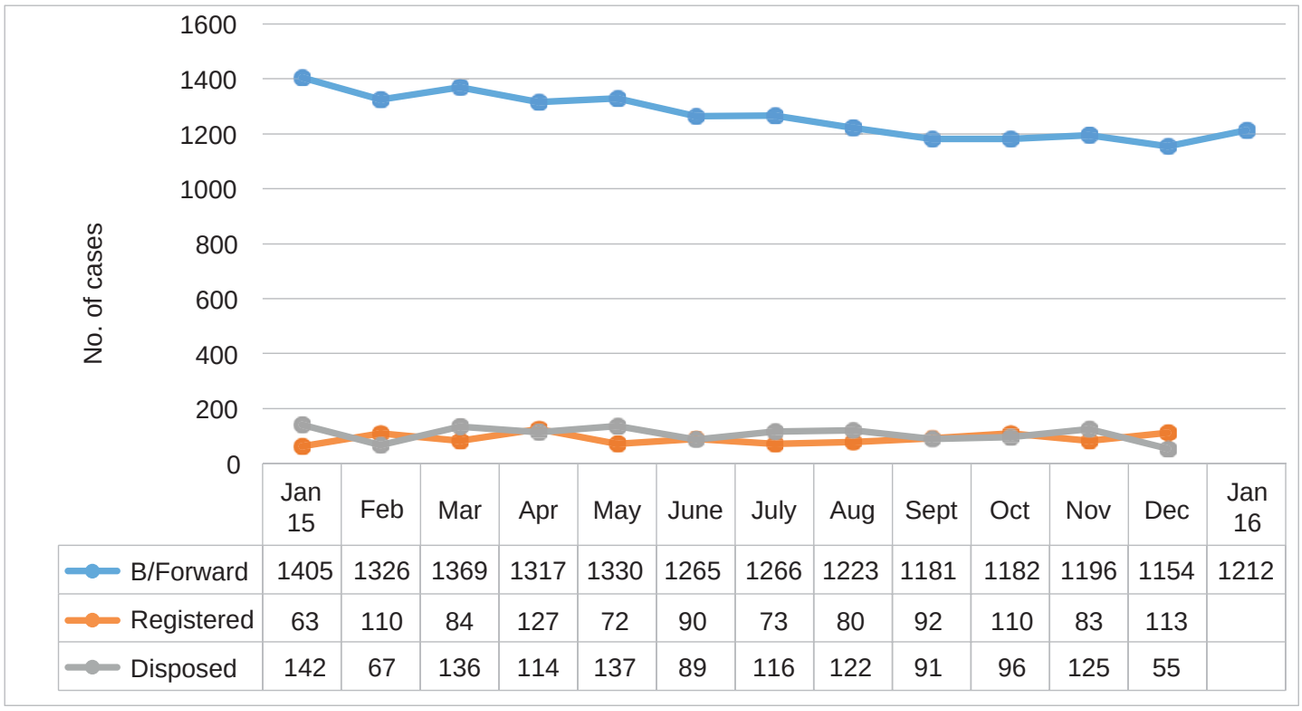
On the last day of the event, it was announced by the Hon. Chief Justice Terada from Japan that they will host the 17th Conference of Chief Justices of Asia and the Pacific 2017 in Tokyo, drawing a big round of applause from the floor.

Chief Justice Arifin Zakaria with Chief Justice Thomas Frederick Bathurst, AC, the Chief Justice of the Supreme Court of New South Wales

PERFORMANCE OF THE FEDERAL COURT IN 2015

The performance of the Federal Court in 2015 is shown below in graphical form:

TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
FOR THE YEAR 2015

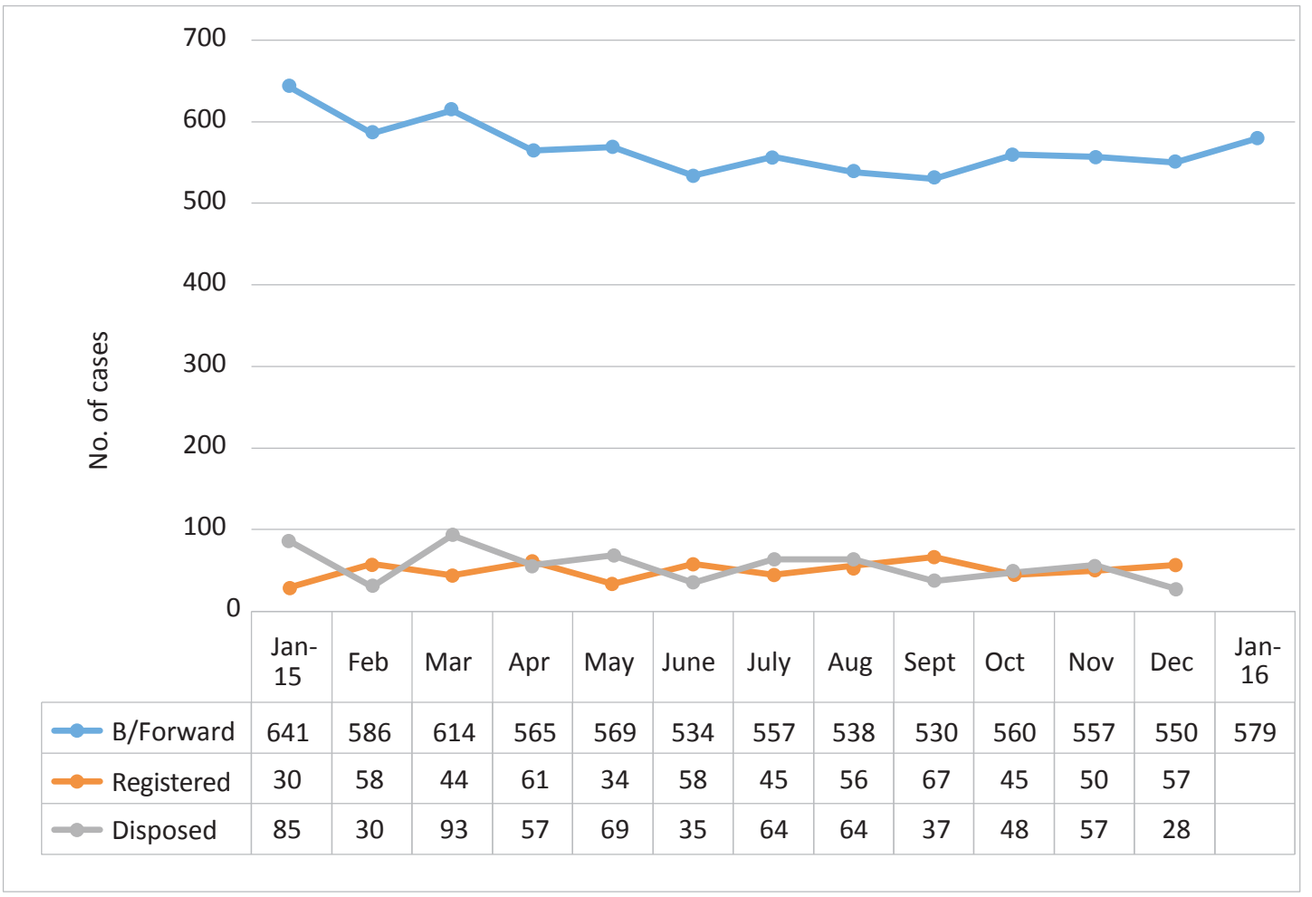


	Jan 15	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan 16
B/Forward	1405	1326	1369	1317	1330	1265	1266	1223	1181	1182	1196	1154	1212
Registered	63	110	84	127	72	90	73	80	92	110	83	113	
Disposed	142	67	136	114	137	89	116	122	91	96	125	55	

The three main categories of cases in the Federal Court are motions for leave to appeal, civil appeals and criminal appeals. Other matters include civil and criminal references, criminal applications and cases where the Federal Court exercises its original jurisdiction pursuant to Article 128 (1) of the Federal Constitution.

There is a decline in the number of pending cases in the Federal Court as at 31 December 2015, which is 1212 cases as compared to 1405 as at 31 December 2014. In 2015, 1097 cases were registered as compared to 1254 cases in 2014. Out of all these cases, 1290 cases were disposed, achieving a disposal rate of 118% against the total number of registered cases in 2015.

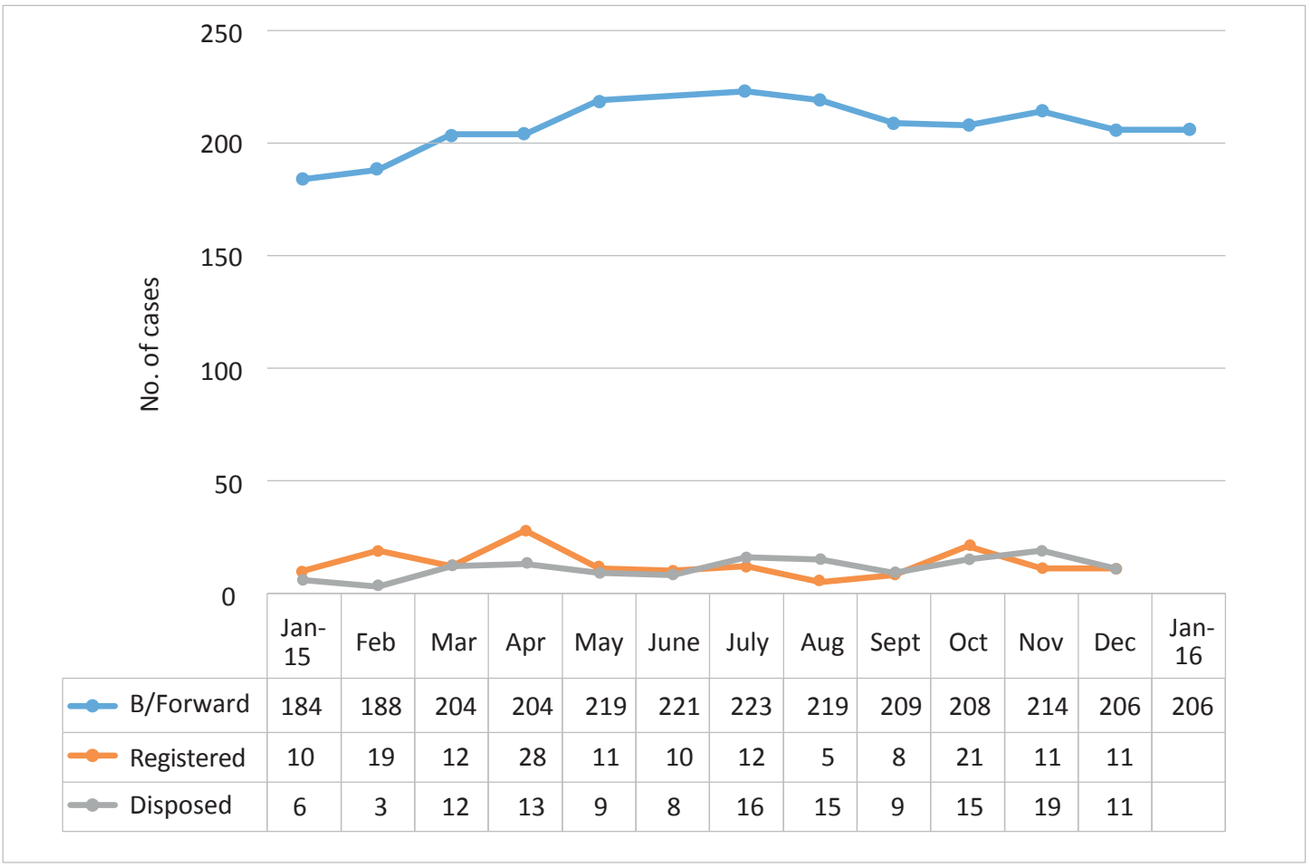
TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31.12.2015
(LEAVE APPLICATIONS)



	Jan-15	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan-16
B/Forward	641	586	614	565	569	534	557	538	530	560	557	550	579
Registered	30	58	44	61	34	58	45	56	67	45	50	57	
Disposed	85	30	93	57	69	35	64	64	37	48	57	28	

Registration for leave applications showed a decrease of 20% from 752 in 2014 to 605 in 2015. The number of cases disposed in 2015 is 667 as compared to 725 cases in 2014. As at 31 December 2015, the total number of leave applications pending before the Federal Court is 579 cases. The disposal rate of leave applications against the cases registered is at 110%.

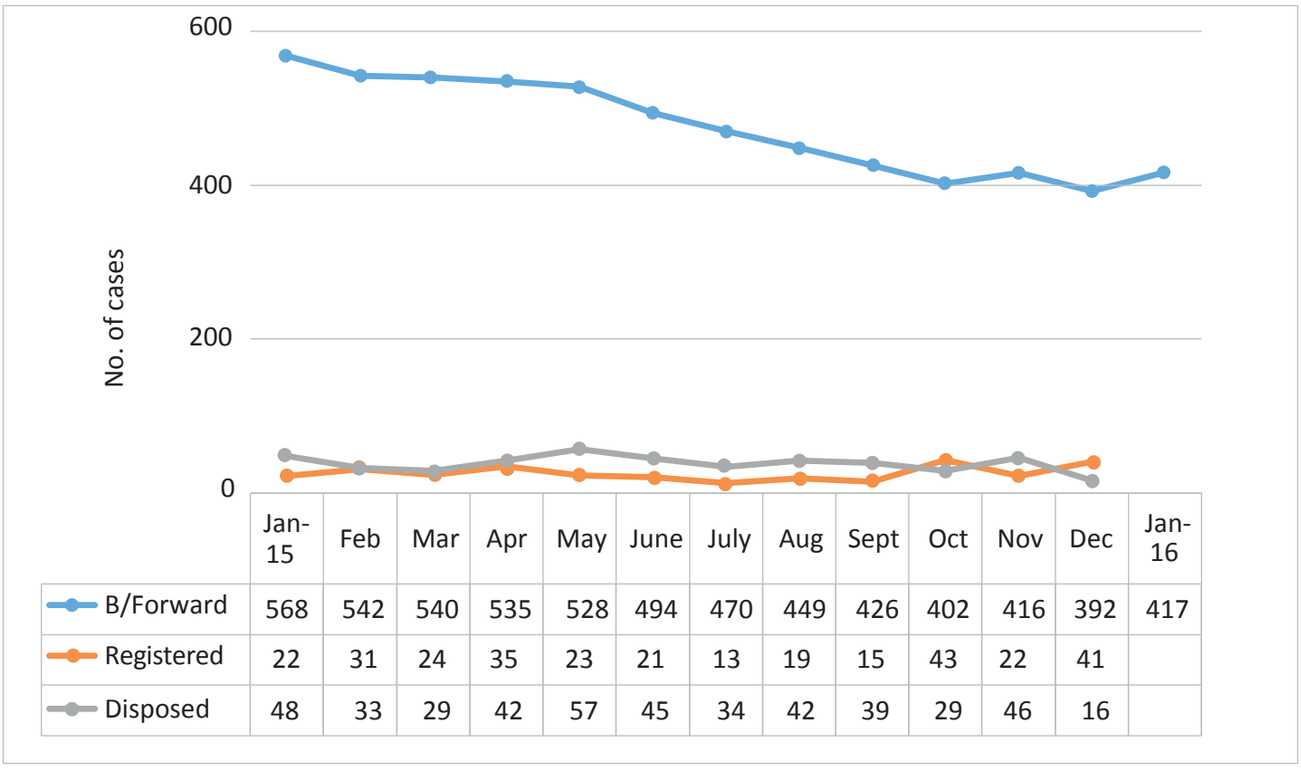
TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31.12.2015
(CIVIL APPEALS)



	Jan-15	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan-16
B/Forward	184	188	204	204	219	221	223	219	209	208	214	206	206
Registered	10	19	12	28	11	10	12	5	8	21	11	11	
Disposed	6	3	12	13	9	8	16	15	9	15	19	11	

For civil appeals, the registration showed an increase of 21% from 131 in 2014 to 158 in 2015. The Federal Court disposed of a total of 136 civil appeals out of 342 pending appeals, leaving a balance of 206 civil appeals as at 31 December 2015. The disposal rate of civil appeals against the cases registered is 86%.

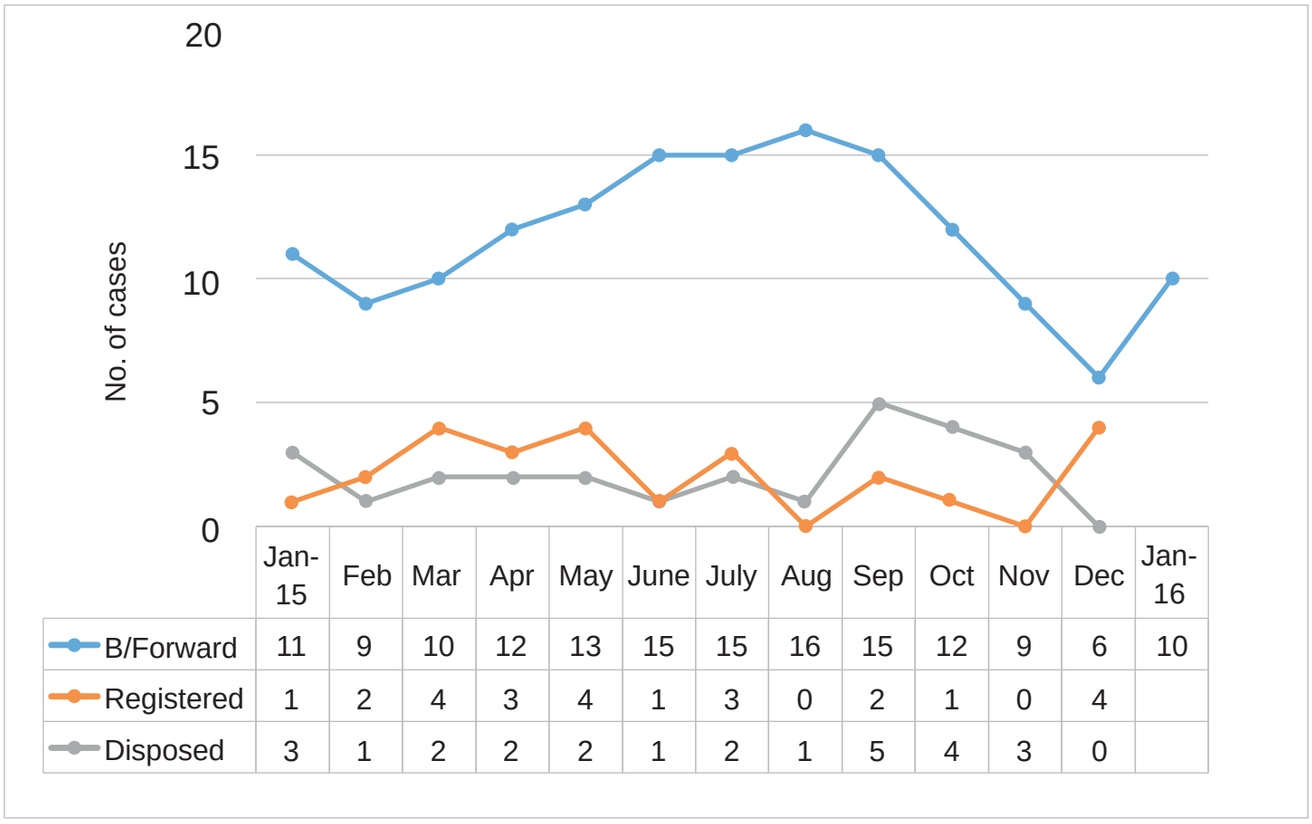
TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31.12.2015
(CRIMINAL APPEALS)



	Jan-15	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan-16
B/Forward	568	542	540	535	528	494	470	449	426	402	416	392	417
Registered	22	31	24	35	23	21	13	19	15	43	22	41	
Disposed	48	33	29	42	57	45	34	42	39	29	46	16	

For criminal appeals, the number of cases registered in 2015 is 309 as compared to 338 cases in 2014. The Federal Court managed to dispose of 460 appeals in 2015 as compared to 251 cases in 2014, leaving a balance of 417 as at 31 December 2015. The disposal rate of criminal appeals against the cases registered is 149%.

TRACKING CHART
TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CASES
AS AT 31.12.2015
(ORIGINAL JURISDICTION/ CRIMINAL APPLICATION/
CIVIL REFERENCE/ CRIMINAL REFERENCE)



	Jan-15	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan-16
B/Forward	11	9	10	12	13	15	15	16	15	12	9	6	10
Registered	1	2	4	3	4	1	3	0	2	1	0	4	
Disposed	3	1	2	2	2	1	2	1	5	4	3	0	

For other matters comprising original jurisdiction, criminal application, civil reference and criminal reference, there were 25 cases registered in the Federal Court throughout 2015, out of which 26 cases were disposed in 2015. As at December 2015, there were only 10 cases pending.

Chief Justice Arifin Zakaria and his Orderly

THE POST OF THE CHIEF JUSTICE OF MALAYSIA: A BRIEF HISTORICAL BACKGROUND

The Malaysian Judiciary is headed by the Chief Justice (formerly known as the Lord President). The Chief Justice sits in the Federal Court which is the apex court of the country. The Chief Justice before exercising the functions of this office shall take and subscribe to the oath of office and allegiance as set out in the Sixth Schedule to the Federal Constitution, before the Yang di-Pertuan Agong. It is the highest judicial rank in the country followed by the President of the Court of Appeal, the Chief Judge of Malaya, and the Chief Judge of Sabah and Sarawak.

Article 122B(1) of the Federal Constitution stipulates that the Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts and (subject to Article 122C of the Federal Constitution) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers. However, Article 122B(2) of the Federal Constitution provides that the Prime Minister shall consult the Chief Justice on the appointment of Judges other than the Chief Justice.

It is noteworthy that the existence of the judicial structure in Malaysia can be traced back to the early 19th century when the First Charter of Justice was introduced in 1807. The judicial structure then was either administered by a state ruler, a governor or members of the British Administration. The chequered history that led to the creation of this premier judicial post can be described from the following distinct periods which took place in the country.

STRAITS SETTLEMENTS

The modern Judicial System in the Malay Peninsula first evolved when the First Charter of Justice of 1807 established the Courts of Judicature in Penang. By virtue of the Second Charter of Justice of 1826, United Courts of Judicature were established for the three settlements of Penang, Malacca and Singapore. Both Charters of Justice were significant for they heralded the reception of English common law and equity into the Malay Peninsula.

A distinct feature of early British administration of justice during this period was the lack of separation between the Judiciary and the Executive. Prior to 1867, the courts consisted not only of professional judges called "Recorders", but also of Lay Judges. The latter comprised the Governor who was the chief executive authority of the state and members of the Executive Council. It was only when the Straits Settlements came under the control of the British Colonial Office that the Judiciary became separate from the Executive. In 1868, when the Supreme Court of the Straits Settlements was established, the "Recorders" of the former Courts of Judicature became the judges.

In 1873, the Supreme Court was recognised under four judges: the Chief Justice, the Judge of Penang, the Senior Puisne Judge and the Junior Puisne Judge. A Criminal Court known as the Court of Quarter Sessions was also established in Singapore and was presided over by the Senior Puisne Judge, whilst in Penang this court was presided over by the Junior Puisne Judge. A Court of Appeal was also established. This was the position in the Straits Settlements until the invasion of British Malaya by Japan.

FEDERATED MALAY STATES

The Federated Malay States was formed in 1895 and comprised four states namely Perak, Selangor, Negeri Sembilan and Pahang. Prior to 1895, each of these states had its own state Judiciary for the administration of justice. The then existing judicial institutions consisted of the Magistrates' Courts, the Court of Senior Magistrate and the final Court of Appeal, the Sultan-in-Council. However, the actual decision-maker in the State Council was the British Resident. There was still no separation of the Judiciary from the Executive during this period. When the federation was formed in 1895, a Common Judiciary was introduced whereby a common form of legislation was passed in each of the four states to establish a Common Court of Appeal called the

Court of Judicial Commissioner. It was the highest court in the Federated Malay States. However in 1905, it was superseded by the Supreme Court of the Federated Malay States. It is noteworthy that the Supreme Court of the Federated Malay States was not a Federal Court and was established in each state by the state legislation. It had jurisdiction only as regards the State concerned. However, in 1918, a Federal Supreme Court was created for the Federated Malay States by Federal legislation.

UNFEDERATED MALAY STATES

The Unfederated Malay States consisted of five states namely Kedah, Perlis, Kelantan, Terengganu and Johor. It came into being in 1909 when Siam transferred to Britain her suzerainty over these territories. A British adviser was appointed to each state under a series of agreements. With respect to the administration of justice in the Unfederated Malay States, each state had its own State Judiciary. Each state also had its own Supreme Court, although the constitution of the Supreme Courts varied from one state to another.

JAPANESE OCCUPATION

The Japanese occupied Malaya from December 1941 until September 1945. During this period, the administration of justice was placed under the Japanese Military Administration. The Courts were divided into two divisions, namely, the Military or Special Court and the Civil Court. The Special Court was presided over by a Japanese Judge to try civilians charged with offences under the Japanese Maintenance of Public Peace and Order Law. Meanwhile, the Civil Court was presided over by local judicial officers and its jurisdiction was merely confined to matters relating to civil and criminal cases. In 1943, pursuant to the Judicial Organization Ordinance, a Supreme Court, High Courts, District and Magistrates' Courts, Penghulu Court and Kathis' Court were established during the Japanese occupation.

BRITISH MILITARY ADMINISTRATION

The surrender of the Japanese forces in 1945 saw, once again, the reinstatement of British Colonial rule in the Malay Peninsula. From September 1945 to April 1946, the Malay Peninsula was placed under the British Military Administration. There were two courts established, known as the Superior Court and the District Court. The administration of justice during this period was placed in the hands of the British Military Officers.

THE MALAYAN UNION

The British Military Administration was a brief interlude in the Malay Peninsula and was replaced by the British Malayan Union in 1946. The establishment of the Malayan Union which comprised the Federated Malay States, the Unfederated Malay States and the Straits Settlements witnessed the unification of the three separate judicial systems mentioned earlier. Under section 85 of the Malayan Union Order in Council 1946, the Malayan Union Ordinance 3/46 was enacted whereby a Supreme Court (a Court of Record) was established, comprising the High Court and the Court of Appeal. The Ordinance also dealt with the establishment, constitution and powers of subordinate civil and criminal courts. However, the authority in the administration of justice was vested in the Governor, who had the authority to constitute by order, the number of courts in every state and settlement as well as to assign local limits of jurisdiction. The Governor also may extend the jurisdiction beyond the boundary of such state or settlement.

FEDERATION OF MALAYA

Pursuant to the Federation of Malaya Agreement 1948, each state and settlement was to retain its own individuality but all were to be united under strong central government. The demise of the Malayan Union saw the restructuring of the courts particularly at the subordinate level. The Courts Ordinance 1948 had established a new structure of inferior courts comprising the Sessions Courts, the Magistrates' Courts and the Penghulu Courts. With regard to the superior courts, the Federation of Malaya Agreement 1948 continued the pre-existing structure, namely, the Malayan Union Supreme Court which consisted of the Court of Appeal and a High Court under a Chief Justice. The Federation of Malaya Agreement 1948 further provided that the Chief Justice and judges of the Supreme Court of the Malayan Union were to be the first Chief Justice and judges of the Supreme Court of the Federation of Malaya. Under the Federation of Malaya Agreement 1948, the appointments of the Chief Justice and Judges of the Supreme Court were made by the High Commissioner for and on behalf of His Majesty the King of England and Their

Highnesses the Rulers, by Letters Patent under the Public Seal. The High Commissioner was regarded as the Head of the new Federal Government who had wide legislative and administrative powers. In some respects, he acted purely as representative of His Majesty the King of England. In other respects, he acted in pursuance of authority jointly delegated to him by His Majesty the King of England and Their Highnesses the Rulers.

INDEPENDENCE – FEDERAL CONSTITUTION 1957

The Federation of Malaya became independent on 31 August 1957. However, the Supreme Court of pre-independence was continued. The Supreme Court therefore still consisted of a High Court and a Court of Appeal. Under the Federal Constitution 1957, the Supreme Court was not only given the original, appellate and revisional jurisdiction as may be provided by federal law but also, to the exclusion of any other court, the jurisdiction to determine any dispute between states or even between the Federation and any state.

Under the Federal Constitution 1957, the Chief Justice and Judges of the Supreme Court were appointed by the Yang di-Pertuan Agong. Therefore, it had abrogated the appointing power which was previously vested with the High Commissioner for and on behalf of His Majesty the King of England and Their Highnesses the Rulers under Part VII, Clause 77(4) of the Federation of Malaya Agreement 1948.

FORMATION OF MALAYSIA

The formation of Malaysia on 16 September 1963 witnessed subsequent developments to the judicial system in Sabah, Sarawak and Singapore as the three new component states of Malaysia. It is worth to mention that North Borneo (Sabah) and Sarawak became British-protected states as early as 1888 by virtue of an agreement made between the local rulers and the British North Borneo (Chartered) Company. Like their counterparts in the Malay Peninsula, the Company was to administer justice with due regard to native customs and laws and not to interfere with the religion of the inhabitants.

With respect to the administration of justice, North Borneo was divided into Sessional and Magisterial Divisions. The former was executively administered by the British Residents, and the latter by District Officers. They were in fact Administrators. The Chief Court consisted of the Governor, the Judicial Commissioner and other Judges temporarily appointed by the Governor. North Borneo only had its first legally qualified Judicial Commissioner in 1912, a post that was later called Chief Justice.

Meanwhile in Sarawak, its momentous legal history began with the proclamation of James Brooke as the first Rajah and Governor of Sarawak. His main task was to establish law and order in the country. In 1870 onwards, he established a number of courts comprising the Debtor's Courts, the Chinese Courts, the Courts of Requests, the Bankruptcy Courts, the Native Courts and the Supreme Courts. The present day High Court in East Malaysia can trace its origin from this early set up.

In 1922, the courts were reorganized by the Courts Order, 1922. In that year, five courts were constituted, namely the Supreme Court which exercised original and appellate jurisdiction, the Resident's Courts, the District Courts, the Magistrates' Courts and the Native Courts. The territory of Sarawak had its first legally qualified judge, Justice T.S. Stirling-Boyd in 1928. He was the Judicial Commissioner of the Supreme Court of Sarawak until 1939. This was the period when a proper and systematic legal system based on legal principles was established. The administration of justice continued to be carried out by these courts until 1946. In 1947, two Circuit Courts were constituted, which for the first time were presided over by legally qualified Judges.

In 1951, a major change took place in the Borneo states after the Second World War. By virtue of the Sarawak, North Borneo and Brunei (Courts) Order in Council 1951, a Combined Judiciary was established for the three states in Borneo. The Combined Judiciary was headed by Chief Justice Sir Ivor Brace. The Order in Council established one Superior Court of Record, styled the Supreme Court of Sarawak, North Borneo and Brunei, consisting of the High Court in Sarawak, North Borneo and Brunei and the Court of Appeal in Sarawak, North Borneo and Brunei. The Combined Judiciary continued until 1963 when North Borneo (Sabah) and Sarawak joined the Federation of Malaya to form Malaysia in 1963.

Pursuant to the formation of Malaysia on 16 September 1963, Part IX of the Federal Constitution was amended by Act No. 26 of 1963

which restructured the courts primarily at the superior level. The amendment made provisions for the judicial power of the Federation to be vested in three High Courts of co-ordinate jurisdiction and status namely the High Court in Malaya, the High Court in Borneo States and the High Court in Singapore. Following the amendment, the Supreme Court was replaced and substituted by the Federal Court which became the apex court in the country. It consisted of a President of the Court to be styled as the Lord President of the Federal Court, the Chief Justices of the High Courts and other judges of the Federal Court. The Right Honourable Tun Sir James Beveridge Thomson was appointed to be the first Lord President of the Federal Court. The Federal Court was vested with original, appellate and advisory jurisdiction. Unlike the Supreme Court, the Federal Court is not a Court of Record and no longer consisted of the Court of Appeal and the High Court. It stood on its own in the structure of courts. Despite the Federal Court's position in the judicial hierarchy, Article 131 of the Federal Constitution permitted the right to appeal to the Privy Council. The Commissioners of the Federation of Malaya Constitutional Commission were of the view that the preservation of right to appeal to the Privy Council was beneficial as it would provide a valuable link between countries of the Commonwealth and the final decision on constitutional questions would lie with a Tribunal which has experience of other federal constitutions.

On 9 August 1965, Singapore broke away from Malaysia leaving therefore the two High Courts, namely the High Court in Malaya and the High Court in Borneo. On 1 January 1985, the subsequent constitutional amendment made under Act A566 marked further changes in the judicial landscape. The amendment repealed Article 131 of the Federal Constitution which saw the abolition of appeals to the Privy Council. The judicial structure was then changed from a three-tiered system of superior courts to a two-tiered system.

On 24 June 1994, a significant change took place in the Judiciary when Parliament amended the Federal Constitution by virtue of section 13 of Act A885. With the amendment, the name of the Supreme Court was changed to that of the Federal Court. The designation of the Lord President of the Supreme Court was amended to the Chief Justice of the Federal Court. The Court of Appeal was also established to become an intermediate to the Federal Court and the High Court and the Chairman is designated as the President of the Court of Appeal. As a consequence, the earlier three-tiered system of the superior courts was restored. Both the High Courts in Malaya and Borneo are retained except that the High Court of Borneo was renamed as the High Court in Sabah and Sarawak. The designation of Chief Justice for each of these High Courts was amended to that of Chief Judge.

CONCLUSION

The Malaysian Judiciary is entirely a federal organisation headed by the Chief Justice. Indeed, the historical background of the Chief Justice came from days of yore where it used to be exclusively held by the British officials. The judicial landscape changed significantly after independence when the power to appoint the Chief Justice and judges of the Superior Court, which was previously the prerogative of the High Commissioner of the Federation, is now vested with the Yang di-Pertuan Agong to maintain the independence of the Judiciary. These changes had witnessed, among others, the appointment of the Rt. Hon. Tun Syed Sheh Syed Hassan Barakbah Al-Haj as the first federal citizen to helm this premier judicial post.

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

THE RT. HON. TUN SIR JAMES BEVERIDGE THOMSON

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

16.9.1963 – 31.5.1966

(THE 1ST LORD PRESIDENT)

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

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

1.6.1966 – 9.9.1968

(THE 2ND LORD PRESIDENT)

THE RT. HON. TUN DATO' MOHAMED AZMI MOHAMED

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

10.9.1968 – 30.4.1974

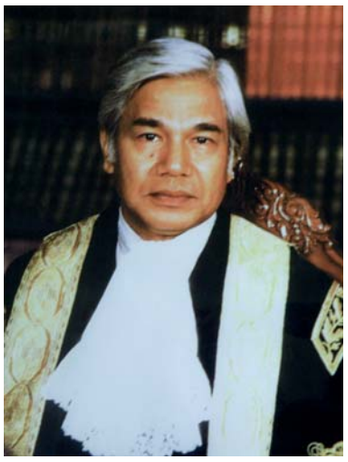
(THE 3RD LORD PRESIDENT)

THE RT. HON. TUN MOHAMED SUFFIAN MOHAMED HASHIM

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

1.5.1974 – 12.11.1982

(THE 4TH LORD PRESIDENT)



THE RT. HON. RAJA AZLAN SHAH IBNI ALMARHUM SULTAN YUSSUF IZZUDDIN SHAH

S.S.M., D.K., P.M.N., P.S.M., S.P.C.M., S.P.T.S., S.P.M.P., S.I.M.P.,D. LITT, LL.D.

12.11.1982 – 2.2.1984

(THE 5TH LORD PRESIDENT)

THE RT. HON. TUN DATO' MOHAMED SALLEH ABAS

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

3.2.1984 – 8.8.1988

(THE 6TH LORD PRESIDENT)

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

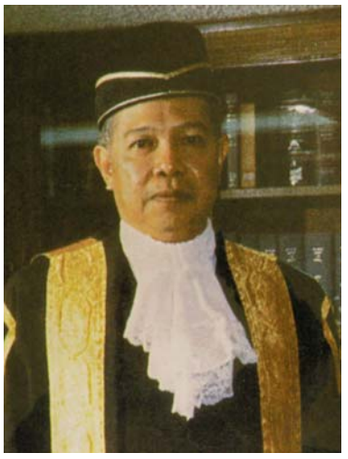
S.S.M., P.M.N., P.S.M., S.S.M.T., S.I.M.T, S.I.M.P. S.P.M.S., D.P.M.P. P.M.P.

9.8.1988 – 9.11.1988

(ACTING LORD PRESIDENT)

10.11.1988 – 24.9.1994

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



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

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

25.9.1994 – 19.12.2000

(THE 2ND CHIEF JUSTICE)

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

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

20.12.2000 – 14.3.2003

(THE 3RD CHIEF JUSTICE)

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

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

16.3.2003 – 1.11.2007

(THE 4TH CHIEF JUSTICE)

THE RT. HON. TUN ABDUL HAMID MOHAMAD

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

2.11.2007 – 17.10.2008

(THE 5TH CHIEF JUSTICE)

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

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

18.10.2008 – 9.9.2011

(THE 6TH CHIEF JUSTICE)

THE RT. HON. TUN ARIFIN ZAKARIA

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

12.09.2011 – PRESENT

(THE 7TH CHIEF JUSTICE)

TUN SIR JAMES BEVERIDGE THOMSON

The late Tun Sir James Beveridge Thomson was born on 24 March 1902 in Clydebank, Scotland. He attended George Watson's Boys' College, Edinburgh and later furthered his studies at the University of Edinburgh where he graduated with First Class Honours in History.

His career under the British Crown began as early as 1926 when he was appointed to serve as a District Officer in Northern Rhodesia (Zambia today). He read law and was called to the English Bar by the Honourable Society of the Middle Temple in 1929. He was subsequently admitted as a Member of the Faculty of Advocates in Scotland. He continued his service for the British Crown in Northern Rhodesia as a Resident Magistrate from 1932 until 1945.

After the Second World War, the late Tun Sir James Beveridge Thomson was entrusted with the responsibility to serve on various Benches in other parts of the British overseas territories. He held posts such as a Puisne Judge in Fiji, Judicial Commissioner of the Western Pacific and the Chief Justice of the Kingdom of Tonga.

He came to Malaya in 1948 at a time when Malaya was plunged in an emergency. He was appointed as a Puisne Judge in Perak. Since then, he was a Judge in Perak until his appointment as Chief Justice of the Federation of Malaya Supreme Court in 1957.

After the formation of Malaysia on 16 September 1963, the Supreme Court was renamed the Federal Court of Malaysia. The late Tun Sir James Beveridge Thomson remained the head of this highest court of the land. The late Tun Sir James Beveridge Thomson was appointed the first Lord President of the Federal Court until his retirement on 31 May 1966.

His appointment as the first Lord President of the Federal Court was both significant and challenging for various reasons. He was the only foreigner and

The Lord President, James Beveridge Thomson, taking the oath before the Yang di-Pertuan Agong at Istana Negara, Kuala Lumpur on 16.9.1963.
(Picture courtesy of the National Archives of Malaysia)

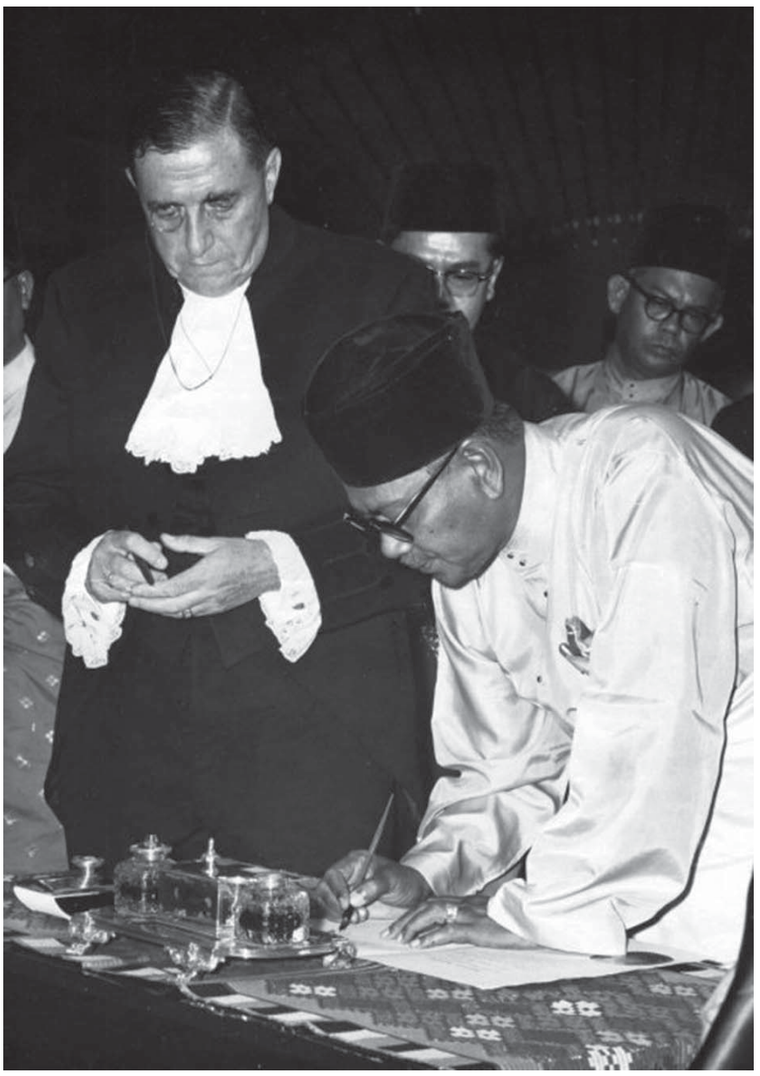
non-citizen to have held this top office. Secondly, he coordinated and reformed the entire legal set up in Malaysia during his tenure, Malaysia went through a transitional period, of having to come to terms with her new found independence and living in harmony amongst the various races.

The late Tun Sir James Beveridge Thomson was able to discharge the duties of his office during those difficult times due to his wisdom and courage. The legal fraternity described him as a kindly and patient judge who showed unfailing courtesy and consideration even under trying circumstances.

He was forthright in his views and was a firm believer in the adage that justice delayed is justice denied. He had the privilege of interpreting the provisions of the Malaysian Constitution, in particular the provisions relating to fundamental rights and the constitutionality of state and federal legislations. Equipped with vast experience, knowledge of local conditions and affairs, he was able to steer the Judiciary towards maintaining the essential liberty and dignity of the human individual.

The late Tun Sir James Beveridge Thomson was responsible for the development of Malaysian law

The procession led by the mace to the Special Sitting of the Federal Court on 1.10.1963. Following behind were Chief Justice Wee Chong Jin of Singapore, Chief Justice Campbell Wylie of Borneo, Chief Justice Syed Sheh Barakbah of Malaya and Lord President James Beveridge Thomson.
(Picture courtesy of the National Archives of Malaysia)



Tunku Abdul Rahman Putra Al-Haj sworn in as
Prime Minister for the second time before the Lord President James Beveridge Thomson at
Istana Negara, Kuala Lumpur on 21.8.1959
(Picture courtesy of the National Archives of Malaysia)

by his scholarly judgments and the coordination of the whole legal set-up in Malaysia. He was regarded as the prime mover in the Malaysianisation of the Judiciary and gave immense encouragement to young and promising officers to take up law. One of his main objectives as the Lord President was to train and produce locals capable of taking over from the expatriates on the Bench in the shortest possible time without compromising on the existing standards. He was assisted by a pool of highly talented Malayans, all qualified and trained with the requisite experience to sit on the Bench. They were soon appointed to the Bench and proved to be just as able, if not better, than their predecessors. Amongst the notable local Malaysians elevated to the High Court Bench during this period were Tan Sri Ong Hock Thye, Tan Sri Ismail Khan, Tun Azmi Mohamed, Dato' Mahmud Hashim, Tun Mohamed Suffian Hashim, Tan Sri SS Gill and Tan Sri Ali Hassan.

His love for the law had kept him in that field even after his retirement from the Malaysian Judiciary. He was appointed as the President of the High Court of South Arabia, but he was the last person to helm that position. In the following year, he was appointed as the Chairman of the Delimitation Commission in Botswana.

Australian High Commissioner Mr. T.K. Critchley, presenting law books from the Australian government to Lord President James Beveridge Thomson, on behalf of the Federation of Malaya, Kuala Lumpur on 7.9.1960
(Picture courtesy of the National Archives of Malaysia)

The late Tun Sir James Beveridge Thomson decided to return to his homeland in 1972 when he received an appointment to sit as the Honorary Sheriff at the Sheriff Court District of Inverness. He was knighted as a Knight Bachelor in 1959 and created a Knight Commander of the British Empire in 1966.

During his lifetime, the late Tun Sir James Beveridge Thomson was conferred the title of "Tan Sri" and subsequently "Tun" by His Majesty the Yang di-Pertuan Agong for his sterling services to the country.

The late Tun Sir James Beveridge Thomson passed away peacefully at the age of 81 years on 31 March 1983 in his homeland, Scotland. A reference was held at the Federal Court, Kuala Lumpur on 25 April 1983 to commemorate the late Tun Sir James Beveridge Thomson's loyal commitment as a true servant of the law. The reference was presided by His Royal Highness Raja Azlan Shah, the then Lord President who said, *inter alia*, that:

> *"There can be no doubt whatsoever that Tun Thomson has been responsible for much of the development of our law by his lucid and scholarly judgments and also for the co-ordination of the whole legal set-up in this country. He was the prime mover in the Malaysianisation of the judiciary and gave immense encouragement to young and promising officers to take up law and assume appointments in the judicial and legal service. There are today many amongst us*

Lord President James Beveridge Thomson receiving a courtesy visit from Federal Court Judges during his farewell ceremony on 28.5.1966
(Picture courtesy of the National Archives of Malaysia)

in the judicial and legal field who owe their present positions to Tun Thomson's tutelage and intellectual stimulus. Though seemingly stern in outward appearance he was at heart a kind and gentle man, a true native of Scotland, who was never too busy to lend his ears to the woes and problems of others or to give advice when sought."

The late Tun Sir James Beveridge Thomson was a renowned Lord President who had delivered numerous outstanding judgments, many of which are cited frequently to this day.

The late Tun Sir James Beveridge Thomson was married to Toh Puan Lady Thomson and the couple was blessed with a son. Toh Puan Lady Thomson was formerly of the Colonial Medical Service. She was well-known in Perak for her medical work, particularly in connection with problems of child nutrition.

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3. The Honorable Mr. Justice J. B. Thomson, Chief Justice, Federation of Malaya, The Malayan Law Journal Vol. XXII No. 11 November 1956.
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5. National Archives of Malaysia.

Lord President James Beveridge Thomson receiving an award from His Majesty Yang di-Pertuan Agong upon His Lordship's retirement on 28.5.1966
(Picture courtesy of the National Archives of Malaysia)

CHAPTER 3

THE COURT OF APPEAL

THE COURT OF APPEAL

2015 is yet another successful year for the Court of Appeal. The year 2015 saw a further reduction of pending cases in the Court of Appeal from 3209 as at 31 December 2014 to 2627 as at 31 December 2015. In 2015, a total of 4,200 appeals were disposed against a registration of 3,597. The percentage of disposal as against registration is thus 117%.

Out of 2627 appeals pending, there are only 334 pre-2015 appeals. The rest are 2015 appeals which constitute 87% of the appeals pending. The said percentage signifies the conclusion of another fruitful year for the Court of Appeal. We will continue to reduce the number of pending appeals to an acceptable level.

We are targeting for the 334 pre-2015 appeals to be disposed within the first six months of 2016. However our ultimate aim for 2016 is to reduce the waiting time for all appeals in the Court of Appeal to not more than 12 months from the date of registration.

As for the civil appeals, the specialised code appeals, namely the New Commercial Civil Appeals (NCC), New Civil Appeals (NCvC), Intellectual Property Appeals (IP), Muamalat Appeals (MU), Admiralty Appeals and Construction Court Appeals, indicate that the time frame for disposal of these appeals remains at six months from the date of registration. For 2015, 69.41% of these appeals were disposed within the six months' time frame.

I wish to place on record that the criminal appeals from the Subordinate Courts (Code 09) as well as appeals involving government servants (Code 06A and 06B) are current except for a few cases. The rest are appeals registered in 2015. With regard to death penalty appeals, our target is to reduce the waiting period to not more than 12 months.

I must acknowledge that the success of the Court of Appeal in disposing the appeals expeditiously could not have been possible without the cooperation and hard work put in by the Judges as well as officers and staff of the Court of Appeal headed by the Registrar of the Court of Appeal Datin Latifah Mohd Tahar. I am happy to note that on 16 December 2015, she was appointed as the Chief Registrar of the Federal Court.

Apart from that, I would like to take this opportunity to acknowledge the efforts of our stakeholders, especially the Attorney General's Chambers and the Bar for their considerable efforts in working cooperatively with us. I hope similar cooperation and support will be extended by them in 2016 and beyond.

Taking into account all that we have done in 2015, our attention for 2016 must be focused on further improving the processes in the Court of Appeal. We want all appeals fixed for hearing to be heard without any adjournment. In other words, we want a certainty in the hearing dates. In this regard, applications for postponements will be seriously monitored and stringently allowed. The Registry of the Court of Appeal will ensure that all the appeal records are properly organised with the help of parties concerned. In 2015, we introduced case management to be conducted by a single Judge to ensure the right number of cases be fixed on a given date. That will be the way to go. This is to ensure that once an appeal is fixed before the panel of Judges, it will be heard. In this way, appeals will be able to be disposed within the set timeline.

On a different note, the year 2015 also witnessed the retirement of five Court of Appeal Judges, namely Justice Mohamad Ariff Md Yusof, Justice Mah Weng Kwai, Justice Linton Albert, Justice Abdul Wahab Patail and Justice Mohd Hishamudin Mohd Yunus. I am deeply grateful to each of them for their immense contributions to the Court of Appeal. I wish them a blissful retirement and every success in their future undertakings.

In 2015, we also witnessed the elevation of Justice Zaharah Ibrahim from the Court of Appeal to the Federal Court. I would like to congratulate her and at the same time thank her for all her contributions rendered as a Judge of the Court of Appeal. With Justice Zaharah's elevation, the strength of the Court of Appeal Bench was reinforced with the appointment of Justice Zamani A. Rahim to the Court of Appeal. I take this opportunity to congratulate him and I look forward to working with him.

I am pleased to inform that at the beginning of 2016, all Construction Court Appeals will be heard in one of the courts that has been installed with

upgraded technology equipment provided by the Construction Industry Development Board (CIDB). I wish to express my appreciation to CIDB for all the efforts and cooperation rendered in materialising the set-up of this Court. With the setting up of this Court, I am confident that the cases in the Construction Court Appeals can be disposed within the time frame of six months from date of registration.

Going forward, I trust that with the continuous commitment of judges, judicial officers, staff and all the stakeholders, I am confident that the Court of Appeal will continue to reduce the number of pending appeals. It is my hope that in fulfilling their responsibilities to ensure that the disposal of appeals is achieved within the timeline, the Judges will continue to dispense justice in the best tradition of the Bench, by reminding ourselves that justice should not be sacrificed at the altar of expediency. Simply put, *"Justice hurried is justice buried"*.

Let me end by wishing all the Judges, the Attorney General's Chambers, members of the Bar, judicial officers and staff as well as all the stakeholders - a happy, healthy and splendid year ahead. Thank you.

Raus Sharif
President of the Court of Appeal, Malaysia

Judges of the Court of Appeal

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

THE INTERNATIONAL CONFERENCE ON THE ROLE OF THE CONSTITUTIONAL COURT IN REALIZATION OF THE PRINCIPLE OF THE SEPARATION OF POWERS AND HUMAN RIGHTS PROTECTION: EXPERIENCE OF UZBEKISTAN AND FOREIGN COUNTRIES, TASHKENT, UZBEKISTAN

From 21 to 22 October 2015, the Rt. Hon. Justice Raus Sharif, the President of the Court of Appeal, attended the International Conference on the Role of the Constitutional Court in Realization of the Principle of the Separation of Powers and Human Rights Protection: Experience of Uzbekistan and Foreign Countries.

Held at Radisson Blu Hotel, Tashkent, Uzbekistan, the two-day conference was organised by the Constitutional Court of Uzbekistan to celebrate the 20th anniversary of its establishment. It brought together Chief Justices and representatives of Constitutional Court and courts of similar jurisdiction from various countries, including, South Korea, Hungary, Belgium, Indonesia, Russia, Thailand, Pakistan, Armenia, Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey and Malaysia.

The Chairman of the Constitutional Court of Uzbekistan, Mr. Bakhtiyar Mirbabaev, commenced the session by emphasising the country's belief on the doctrine of the separation of powers. The doctrine has been the foundation of social reform movement in Uzbekistan since the early days of its independence in 1991 and is well entrenched in Article 11 of the Constitution. He further emphasised on the role of the Constitutional Court of Uzbekistan in protecting the rights and freedom of the citizens guaranteed by the Constitution.

The Rt. Hon. Justice Raus Sharif presented Malaysia's experience. The presentation centred around the role played by the Malaysian Judiciary in upholding the Malaysian Federal Constitution. This includes the power to review Executive decisions and laws passed by the Parliament. The Judiciary is also duty-bound to safeguard the interests of the public in accordance with the Constitution.

Justice Raus Sharif (front row-seventh from left) taking photograph with the delegates

In summary, the participants of the seminar recognised the necessity to systematically maintain the dynamic equilibrium between the three branches of government. This move is critical, in order to arm its citizens with the right to constitutional justice. Furthermore, the participants of the seminar called upon the Constitutional Court of Uzbekistan to work on the modernisation of its legal framework by focusing on the transparency of the judicial process.

Justice Raus Sharif presenting a souvenir to Mr. Bakhtiyar Mirbabaev,
the Chairman of the Constitutional Court of Uzbekistan

PERFORMANCE OF THE COURT OF APPEAL IN THE YEAR 2015

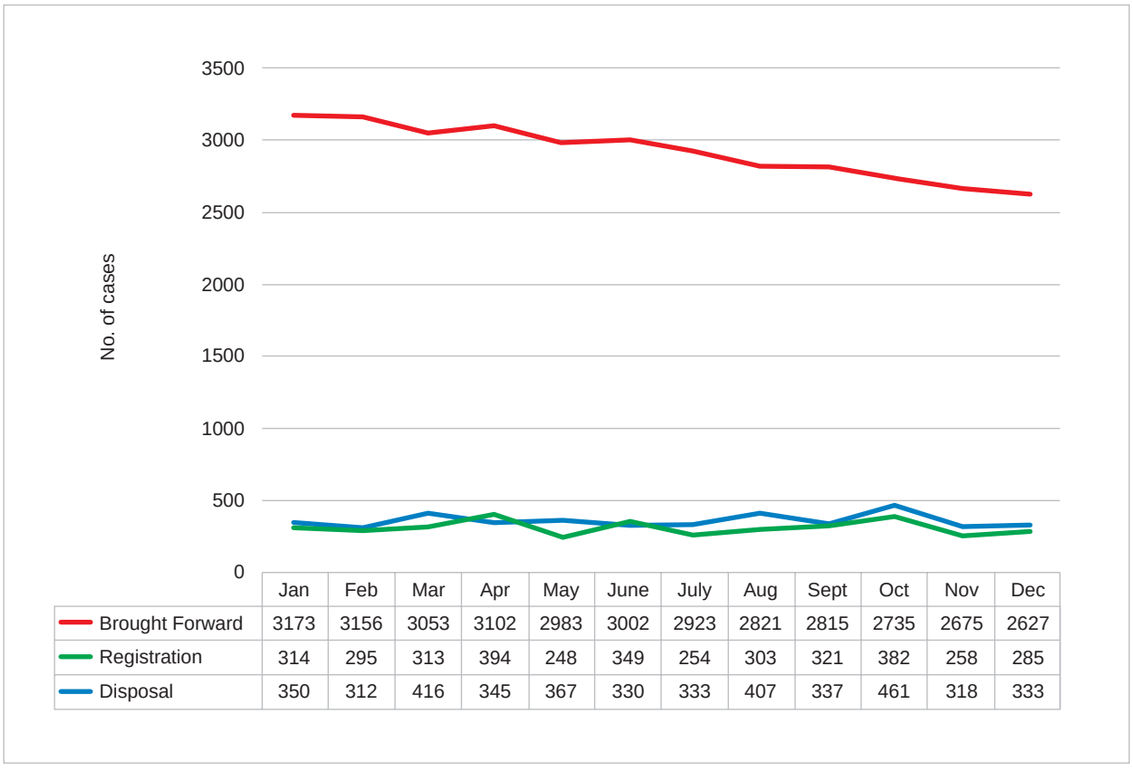
The Court of Appeal has again succeeded in maintaining the record of disposing more appeals compared to the number of appeals registered. From the statistics shown at Table A, it reflects a further reduction of pending appeals in the Court of Appeal. As at 31 December 2015, the number of appeals pending had dropped from 3,209 as at 31 December 2014 to 2,627. In total, the Court of Appeal in the year 2015 had disposed 4,200 appeals against a registration of 3,597. Thus the percentage of disposal against registration is at 117%.

Appeals adjudicated upon in the Court of Appeal are broadly categorised into three, namely, Interlocutory Matters Appeals (IM), Full Trial Civil Appeals (FT) and Criminal Appeals. For monitoring purposes, the FT Appeals are further categorised into six 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. Besides, the Court of Appeal also hears applications for leave to appeal to the Court of Appeal which are mostly appeals that originated from the subordinate courts.

The overall performance of the Court of Appeal can be seen from **Table A**.

Table A

NUMBER OF APPEALS REGISTERED AND DISPOSED IN 2015
FROM 1.1.2015 to 31.12.2015



	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Brought Forward	3173	3156	3053	3102	2983	3002	2923	2821	2815	2735	2675	2627
Registration	314	295	313	394	248	349	254	303	321	382	258	285
Disposal	350	312	416	345	367	330	333	407	337	461	318	333

From Table A, it can be seen that the monthly disposal of the appeals has always been higher than the appeals registered, except for the month of April and June due to the time taken for the 49th Annual Meeting of the Council of Judges 2015 and court vacation respectively.

As can be seen from **Table B**, the substantial reduction in the number of pending appeals is attributed to the significant disposal of the Full Trial Civil Appeals. The specialised code, namely New Commercial Courts (NCC), New Civil Courts (NCvC), Intellectual Property (IPCV), Muamalat,

Admiralty, and Construction Court Appeals showed a disposal rate higher than previous year. In 2014, the Court of Appeal disposed 215 NCC Appeals, 1,189 NCvC Appeals, 11 IPCV Appeals, six Muamalat Appeals, five Admiralty Appeals and 23 Construction Court Appeals.

Table B

TOTAL NUMBER OF REGISTERED, DISPOSED AND PENDING CIVIL AND CRIMINAL APPEALS AS AT 31.12.2015

Type of Appeals	Balance as at 31.12.2014	Total registration 2015	Total disposal 2015	Balance as at 31.12.2015
IM	169	303	332	140
FULL TRIAL	1185	557	1158	584
NCC	215	416	373	258
NCvC	795	1417	1337	875
IPCV	19	27	14	32
MUAMALAT	13	39	27	25
ADMIRALTY	4	12	12	4
CONSTRUCTION	21	67	43	45
CRIMINAL	788	761	885	664
TOTAL	**3209**	**3599**	**4181**	**2627**

Interlocutory Matters Appeals (IM) Appeals

In 2015, the Court of Appeal successfully disposed a total of 332 IM Appeals as against registration of 303 appeals. As can be seen from the aging list as shown in **Table C**, as at 31 December 2015 there are only five pre-2015 appeals yet to be disposed. These appeals are still pending because they are related to Full Trial Appeals.

For the year 2016, the Court of Appeal will continue its quest to hear and dispose IM Appeals within three months from the date of registration. The ultimate objective is for IM Appeals to be disposed within six months from date of registration. Based on our records, in 2015 a total number of 303 IM Appeals were registered, from which 168 of these appeals were disposed leaving a balance of 135 appeals. In term of percentage 55.45% IM Appeals had been disposed within the same year. We are targeting to dispose the balance of IM Appeals within the first half of 2016.

Table C

INTERLOCUTORY MATTERS (IM) APPEALS 2015
PENDING AS AT 31.12.2015

YEAR	WEST MALAYSIA				TOTAL	EAST MALAYSIA									
	Appeals from High Court in Malaya			Sub Court		SABAH				TOTAL	SARAWAK				TOTAL
	01	02	03	04		01	02	03	04		01	02	03	04	
2011							1			1					
2012															
2013															
2014		3		1	4										
2015	16	49	22	12	95	1	18	5		24	2	13		1	16
TOTAL	**16**	**52**	**22**	**13**	**99**	**1**	**19**	**5**		**25**	**2**	**13**		**1**	**16**

Full Trial Civil (FT) Appeals

The Court of Appeal disposed 1,158 appeals against a registration of 557. The disposal percentage against the number of appeals registered is 208%. Thus, the number of pending appeals was further reduced from 1,185 in 2014 to 584 by the end of 2015. In respect of FT Appeals from the Subordinate Courts namely Code 04, we are current with exception of one appeal registered in 2013 and three appeals registered in 2014. Unfortunately, we still have a number of cases on the aging list as shown in the **Table D**. The objective is to reduce this number and it is our priority to dispose all 148 pre-2015 appeals within the first half of 2016.

Table D

FULL TRIAL CIVIL (FT) APPEALS 2015
PENDING AS AT 31.12.2015

YEAR	WEST MALAYSIA				TOTAL	EAST MALAYSIA									
	Appeals from High Court in Malaya			Sub Court		SABAH				TOTAL	SARAWAK				TOTAL
	01	02	03	04		01	02	03	04		01	02	03	04	
2011	1	2			3	1	1			2					
2012	2	8			10		3			3					
2013	4	14		1	19		4			4	2	3			5
2014	7	45		3	55	4	25			29	15	6			21
2015	113	196		35	344	13	37		2	52	10	22		5	37
TOTAL	128	267		39	431	18	70		2	90	27	31		5	63

New Commercial Courts (NCC) Appeals

As at 31 December 2015, all 357 of the NCC appeals registered in 2014 had been disposed except 19 appeals. These 19 appeals have been fixed for hearing till March 2016. The registration, disposal and pending NCC Appeals for 2014 are reflected in **Table E**.

Table E

NEW COMMERCIAL COURTS (NCC) APPEALS 2014
PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	18	12	3	3	18				
FEB	28	15	5	8	28				
MAR	20	11	5	4	19		1		1
APR	20	14	6		20				
MAY	34	23	3	8	34				
JUNE	25	13	8	4	23		2		2
JUL	26	7	10	9	21		4	1	5
AUG	27	17	4	6	26	1			1
SEPT	32	15	7	10	30		1	1	2
OCT	39	23	10	6	38	1			1
NOV	34	21	7	6	31	2	1		3
DEC	54	41	6	7	50	4			4
TOTAL	357	212	74	71	338	8	9	2	19

As for NCC Appeals registered in 2015, 179 appeals were disposed leaving a balance of 236, out of which 201 appeals are still within the timeline of six months. 74% of these appeals were disposed within the six months' time frame. The overall number of NCC Appeals registered, disposed and pending for 2015 is reflected in **Table F**.

Table F

NEW COMMERCIAL COURTS (NCC) APPEALS 2015
PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	23	14	5	4	20		3		3
FEB	39	25	9	5	35	2	1	1	4
MAR	20	11	2	2	14	2	3	1	6
APR	51	33	11	7	37	5	8	1	14
MAY	27	19	1	6	19	4	1	3	8
JUNE	32	21	5	5	21	5	1	5	11
JUL	23	17	4	2	7	10	4	2	16
AUG	39	19	9	11	12	9	8	10	27
SEPT	56	35	7	14	9	30	7	10	47
OCT	46	19	11	16	5	16	11	14	41
NOV	26	15	4	7		15	4	7	26
DEC	33	18	8	7		18	7	7	33
TOTAL	415	246	76	86	179	116	58	61	236

New Civil Courts (NCvC) Appeals

With regard to NCvC Appeals, out of 1,425 appeals registered in 2014, 1,374 were disposed except for 51 appeals. These 51 appeals have been fixed for hearing from January till March 2016. The registration, disposal and pending NCvC Appeals for 2014 can be seen from **Table G**.

Table G

NEW CIVIL COURTS (NCvC) APPEALS 2014
PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	131	54	68	9	131				
FEB	99	32	54	13	98		1		1
MAR	116	42	55	19	116				
APR	118	57	45	16	118				
MAY	123	40	65	18	123				
JUNE	90	30	51	9	85	1	4		5
JUL	103	52	41	10	99		3		3
AUG	169	64	87	18	157	1	11		12
SEPT	131	47	70	14	128	1	2		3
OCT	107	32	61	14	99	2	5	1	8
NOV	114	44	59	11	101	2	9	2	13
DEC	124	56	55	13	118	2	4		6
TOTAL	1425	550	711	164	1374	9	39	3	51

With regard to 1474 NCvC Appeals registered in 2015, 599 appeals were disposed leaving a balance of 875 of which 709 are still within the timeline of six months. 68.77% of these appeals were disposed within the six months' time frame. The registration, disposal and pending NCvC Appeals for 2015 can be seen from **Table H**.

Table H

NEW CIVIL COURTS (NCvC) APPEALS 2015
PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	154	75	63	16	130	6	14	4	24
FEB	108	54	47	7	91	4	13		17
MAR	128	57	65	6	91	6	26	5	37
APR	128	70	38	20	91	9	15	13	37
MAY	100	44	43	13	50	21	23	6	50
JUNE	128	62	52	14	60	24	33	11	68
JUL	110	57	47	6	36	35	35	4	74
AUG	133	58	65	10	27	39	58	9	106
SEPT	116	54	45	17	13	46	42	15	103
OCT	156	53	84	19	8	48	81	19	148
NOV	87	43	35	9	2	42	35	8	85
DEC	126	58	54	14		58	54	14	126
TOTAL	1474	685	638	151	599	337	429	108	875

To deal with the increasing number of registration of NCC and NCvC Appeals, five panels have been set up in 2016 to hear of these type of appeals.

Muamalat Appeals

Muamalat Appeals are now current. All 19 Muamalat Appeals registered in 2014 had been disposed. As for 2015, 44 appeals were registered, 19 appeals had been disposed leaving a balance of 25 appeals. As can be seen from **Table I**, all of these appeals are still within the timeline of six months.

Table I

MUAMALAT APPEALS 2015
PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN									
FEB	1	1			1				
MAR	5	5			5				
APR	4	4			4				
MAY	2	2			2				
JUNE	10	9		1	4	5		1	6
JUL									
AUG	7	7			2	5			5
SEPT	8	7	1			7	1		8
OCT	2	2			1	1			1
NOV	3	1	2			1	2		3
DEC	2	2				2			2
TOTAL	44	40	3	1	19	21	3	1	25

Intellectual Property Appeals

All 26 Intellectual Property Appeals registered in 2014 were disposed except eight appeals which have been fixed for hearing till February 2016. With regard to 30 appeals registered in 2015, six appeals had been disposed leaving a balance of 24 appeals, out of which 14 are still within the timeline of six months. The registration, disposal and pending of Intellectual Property Appeals for 2015 can be seen in **Table J**.

Table J

INTELLECTUAL PROPERTY APPEALS 2015 PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	1			1				1	1
FEB	4	1	3		2		2		2
MAR	5	1	1	3	1		1	3	4
APR	2		1	1	1		1		1
MAY	2	1	1			1	1		2
JUNE	1	1			1				
JUL	2		2		1		1		1
AUG									
SEPT	2		1	1			1	1	2
OCT	3		2	1			2	1	3
NOV	6	1	1	4		1	1	4	6
DEC	2		2				2		2
TOTAL	30	5	14	11	6	2	12	10	24

Admiralty Appeals

Admiralty Appeals are now current. All four Admiralty Appeals registered in 2014 were disposed. Out of six appeals registered in 2015, two were disposed, leaving four appeals. These four appeals are still within the timeline of six months as shown in **Table K**.

Table K

ADMIRALTY APPEALS 2015 PENDING AS AT 31.12.2015

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

Construction Court Appeals

Beginning January 2016, one of the courts in the Court of Appeal had been installed with an upgraded technology equipment to assist the court to hear the appeals from the High Court that deal with construction related disputes. The equipment was provided by the Construction Industry Development Board (CIDB). With the establishment of the Construction Court in the Court of Appeal, it is hoped that this type of appeal will be able to be disposed within the time frame of six months from date of registration.

All 21 Construction Court Appeals registered in 2014 that were brought forward from the previous year were disposed. In 2015, a total of 68 Construction Court Appeals were registered. Out of this, 23 had been disposed leaving a balance of 45 appeals. The registration, disposal and pending Construction Court Appeals for 2015 can be seen in **Table L**.

Table L

CONSTRUCTION COURT APPEALS 2015 PENDING AS AT 31.12.2015

CASES REGISTERED					DISPOSED	PENDING			PENDING APPEAL
MONTH		IM	FT (WITNESS)	FT (AFFIDAVIT)		IM	FT (WITNESS)	FT (AFFIDAVIT)	
JAN	8	3	4	1	5		2	1	3
FEB	4	1	1	2	3		1		1
MAR	3	2		1	3				
APR	3	2	1		3				
MAY	2		1	1	1		1		1
JUNE	10	4	3	3	2	3	2	3	8
JUL	5		2	3	2			3	3
AUG	4	1	2	1	2		2		2
SEPT	9	3	2	4	2	2	2	3	7
OCT	9	3	5	1		3	5	1	9
NOV	7	6	1			6	1		7
DEC	4		3	1			3	1	4
TOTAL	68	25	25	18	23	13	19	12	45

Leave Applications

All Leave Applications filed in the Court of Appeal were disposed within the three month timeline. The 79 Leave Applications brought forward from 2014 had been successfully disposed in early 2015. A total of 473 Leave Applications were registered in 2015 in which 388 were disposed. The remaining 80 are well within the three month timeline, except five applications due to non-availability of counsels' free dates. The registration, disposal and pending Leave Applications for 2015 can be seen in Table M. It can be seen from **Table M** that, the Leave Applications are being disposed mostly within the time frame of three months.

Table M

LEAVE TO APPEAL 2015 PENDING AS AT 31.12.2015

CASES REGISTERED		DISPOSED	PENDING CASES
MONTH			
JAN	24	24	
FEB	42	42	
MAR	41	41	
APR	39	39	
MAY	39	39	
JUNE	43	41	2
JUL	39	36	3
AUG	34	34	
SEPT	40	37	3
OCT	50	41	9
NOV	41	14	27
DEC	41		41
TOTAL	473	388	85

Criminal Appeals

The year 2015 saw a further reduction in Criminal Appeals pending in the Court of Appeal. By 31 December 2015, the number of Criminal Appeals pending was reduced to 664 from 788 appeals in the previous year. Last year, the Court of Appeal disposed 885 appeals against a registration of 761 appeals. Thus, the clearance rate is 116%.

The special focus was given to Criminal Appeals involving the death penalty and government servants. From Table N below, out of 190 appeals involving the death penalty pending, 57 appeals were pre-2015. Similarly, the number of appeals involving government servants pending is only 41, out of which only three appeals were registered in 2014. The other 38 appeals registered in 2015 have been fixed for hearing until March 2016. The registration, disposal and pending Criminal Appeals for 2015 can be seen in **Table N**.

It is our target that the waiting period for Criminal Appeals in death penalty appeals should not exceed more than one year.

Table N

CRIMINAL APPEALS PENDING AS AT 31.12.2015

YEAR	WEST MALAYSIA					TOTAL	EAST MALAYSIA											
							SABAH					TOTAL	SARAWAK					TOTAL
	05 (XM)	05 (M)	06A	06B	09		05 (XM)	05 (M)	06A	06B	09		05 (XM)	05 (M)	06A	06B	09	
2010					1	1												
2011																		
2012																		
2013					1	1	3	5				8						
2014	25	39			16	80		6	1	2	3	12					2	2
2015	122	122	5	31	205	485	8	11		1	14	34	4	7		1	28	40
TOTAL	147	161	5	31	223	567	11	22	1	3	17	54	4	7		1	30	42

Code –

05(XM) : Non-death penalty appeals
05(M) : Death penalty appeals
06A : Criminal Appeals involving Government Servants originated from the High Court
06B : Criminal Appeals involving Government Servants originated from the Subordinate Courts
09 : Appeals from the Subordinate Courts

Conclusion

Based on the statistics stated above, the Court of Appeal has succeeded in maintaining the record of reducing the number of pending appeals since 2012. Five years ago, as at 31 December 2010, there were 10,771 appeals pending in the Court of Appeal. By the end of December 2015, the number of pending appeals stood at 2,627.

In short, judging from the track record of the Court of Appeal, the drive to its ultimate target, namely to have the waiting period reduced to not more than twelve months for the disposal of every appeal registered in the Court of Appeal will be achieved by the end of 2016. With the continued strong support amongst the Court of Appeal Judges, officers, supporting staff, officers from the Attorney General's Chambers, members of the Bar and the stakeholders, the Court of Appeal will continue to improve its delivery system.

RULES OF ENGAGEMENT ON THE BENCH

By Justice Abdul Rahman Sebli
Judge of the Court of Appeal

A quick look at the history of the establishment of the Court of Appeal. The Constitution (Amendment) Act 1994 came into force on 24 June 1994, heralding the birth of the Court of Appeal as we know it today. It sat for the first time on 18 August 1994 at the iconic Bangunan Sultan Abdul Samad in Kuala Lumpur. It now sits at the equally iconic Palace of Justice in Putrajaya.

I am relatively new to the Court of Appeal, thus my view on how it operates, may be limited. What I can say is that it functions very differently from the High Court. If in the High Court you make all the decisions by yourself, in the Court of Appeal you have two other learned minds to contend with before you know if your opinion matters. But as one wise man once said three heads (or did he say two?) is better than one.

The learned writer of the article titled *"The Court of Appeal: The Rebirth"* in the publication commemorating the 20th Anniversary of the Court of Appeal described the Court of Appeal as the *"workhorse"* of the appellate courts. Now, before anyone gets worked up by the audacity of this claim, let us just say we agree to disagree on this issue, as a compromise. But one thing I can say without fear of contradiction is that workwise, there is a lot more in the Court of Appeal than in the High Court.

As Judges our job is not merely to administer justice but to do justice. There was this caricature I came across some years ago depicting a shaggily dressed accused standing in the dock with one leg chained to what looked like a cannon ball tersely telling the Judge "*Thou shall not judge or thou shall be judged*".

It is not a message that we should all go on early retirement but as a reminder that in passing judgment on others, we must be guided by good conscience and to hold true to our oaths of office. People come to the courts for a host of reasons, some good and some oblique and it is our duty to determine, as best as we can, where the justice of the case lies in the eyes of the law.

Renowned American jurist Oliver Wendell Holmes defined law as "*the prophesies of what the courts will do in fact, and nothing more pretentious*". The emphasis is on predicting how the courts will actually decide cases rather than what they say. In common parlance it means walking the talk.

Predictability in appellate judicial pronouncements is the hallmark of a functioning judiciary. It provides a sense of certainty as to how the law works in a given factual situation. That, of course, is perfection

but I will hazard an opinion that where to allow a bad precedent to prevail and take a grip on society will do more harm than good, then it is our call of duty, within permissible legal parameters, to depart from that precedent. As Lord Denning said, when faced with such situation judges should not *"wring their fingers"* and say in despair *"there is nothing we can do about it"*.

As in other jurisdictions, as Judges, we are not spared from public scrutiny. Mr. Justice Stephen G. Breyer of the Supreme Court of the United States of America in his address to delegates of the 2005 National Conference on Appellate Justice on 5 November 2005 aptly describes in my view the situation that we face, given that both jurisdictions operate in a democratic system of government, where popular support determines who gets to rule:

> *"It is often difficult to be a judge, even in the best of circumstances. Today, I think that judges are in the midst of a particularly trying period, in part because we face increased attacks from elected officials of various political persuasions. I am not talking here about criticisms of judicial opinions. Everyone has a view regarding whether particular cases have been decided correctly, and it is appropriate in our democracy for people to express their viewpoints. But when the overwhelming majority of comments about appellate courts are negative I am put in mind of Chief Justice John Marshall's justly celebrated warning: "The people made the constitution, and the people can unmake it." Persistent attacks pose a problem because although the courts will weather thoughtful criticism of specific judicial opinions, courts cannot survive a constant deluge of negative comments intended to undermine popular support for the entire judiciary."*

The nature of our office does not allow us to engage directly and openly with our critics. The rules of engagement in an open warfare do not apply to us. *"It simply won't do!"* is a term frequently expressed by my learned brothers on and off the bench. So we have to live with the criticisms no matter how vile and unfounded they may be and for us to bite the bullet perhaps where necessary, if to do so would serve the best interests of the Judiciary.

> *"In our deliberation on the contentious legal issues, we have reminded ourselves that interpreting the Federal Constitution requires a different approach from interpreting an ordinary statute, in that no provision of the supreme law bearing on a particular subject should be interpreted in isolation from the other provisions. In Hinds & Ors v The Queen; Director of Public Prosecution v Jackson; Attorney General of Jamaica (Intervener) [1976] 1 All ER 26 353 the Judicial Committee of the Privy Council gave a poignant reminder that to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would be misleading."*

per Abdul Rahman Sebli, JCA in ***Pengerusi Suruhanjaya Pilihanraya Malaysia v. See Chee How & Anor*** *[2015] 8 CLJ 367*

"The criminal law is publicly enforced and the court owes it to the public to ensure that criminals in their midst are properly dealt with. It is wrong for the court to be lenient towards the offender without proper regard for the larger interest of the public. I had occasion to deal with the matter of sentencing in PP v. Shahrul Azwan Adanan and Anor [2013] 2 CLJ 686 where i reiterated as reproduced below what my brother judges past and present have said before:

> *"In passing sentence it is natural for the sentencing judge or magistrate to be sympathetic towards the offender. Invariably the offender cuts a lonely figure as he stands alone and subdued in the dock to face punishment. His demeanour, where he is charged with a crime involving the use of violence will be in total contrast with his conduct at the time he committed the offence. His plea in mitigation can sometimes be loaded with emotion, pleading all the usual problems of life. In such situation it is very easy to be swayed by sympathy but this is where the court must stand firm and not shirk from its responsibility to deal properly with evildoers."*

per Justice Abdul Rahman Sebli, JCA in ***Samdaran a/l Sivasamy, S v. PP*** *[2015] 3 MLJ 391*

CHAPTER 4

THE HIGH COURTS

THE HIGH COURT IN MALAYA

Since the beginning of judicial reform in the year 2009, the High Courts and the Subordinate Courts have successfully addressed the backlog of cases. The introduction of the e-Filing and Case Management System, the appointment of managing judges, the setting up of mediation centres and the establishment of a number of specialised courts have contributed in one way or another to the successful and effective disposal of cases registered before the courts.

On the disposal of cases for the year 2015 the High Courts had disposed 99,148 civil cases and 4,190 criminal cases. The Sessions Courts had disposed 39,325 civil cases and 34,225 criminal cases. The Magistrates' Courts had disposed 267,429 civil cases and 162,386 criminal cases. For the Sessions Courts and Magistrates' Courts, the cases are almost current in the sense that the cases are ready for trial and disposed within a timeline of 9 to 12 months from the date of registration of the cases. For the High Courts at the larger centres of Kuala Lumpur, Shah Alam and Penang there are still a few odd cases here and there which had passed the timeline of disposal of the cases. However, the Judges and Judicial Commissioners stationed at these Courts have given their commitment to clear these backlog of cases. The detailed figures on the registration and disposal of the cases of the High Court in Malaya is illustrated in Appendix A.

To further enhance its delivery system to the public, the Judiciary is in the midst of expanding and extending the e-Court project throughout all states. This project involves the Case Management System (CMS), Court Recording and Transcription System (CRT) and e-Filing System. Initially this project started at the larger centres of Kuala Lumpur, Shah Alam, Johor Bahru and Georgetown (Penang) Court complexes. These three systems will soon be made available throughout all courts in Peninsular Malaysia. With this expansion, all courts will be equipped with the latest technology that can assist the judges and the court officers in the effective discharge of their judicial functions and to provide easy access to justice for the public.

On court management and procedure, the Judiciary has taken steps to speed up the hearing of street crime related cases especially where the victims involved are foreign tourists. Practice Directions have been issued directing all Subordinate Courts hearing all these street crime related cases such as theft, robbery and "road-bullies" cases to dispose these cases within a period of not more than two weeks from the date of registration. The Judiciary has also established a new specialised Anti-Profiteering, Goods and Services Tax Court to hear cases involving Goods and Services Tax (GST). All these Courts are helmed by senior judicial officers with the relevant expertise.

I would also like to mention here that in view of the Government's concern on the rise in acts of terrorism and increase in the number of security cases committed under the relevant laws (the Prevention of Terrorism Act 2015; the Security Offences (Special Measures) Act 2012; the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007; and the Prevention of Crime Act 1959) and the fact that most of these cases are registered in the Criminal Division of the Kuala Lumpur High Court, the Rt. Hon. Chief Justice has agreed that as from 1 January 2016 four experienced Judges and Judicial Commissioners of the Kuala Lumpur High Court will be assigned to give priority in the hearing and disposal of these cases. In this regard, the Deputy Public Prosecutors of the Attorney General's Chambers and defence counsel will be advised to give their full cooperation for the speedy and effective disposal of the cases.

On judicial education and training, the Judiciary will continue with its planned programmes for both the Judges of the Superior Courts and judicial officers of the Subordinate Courts. For the year 2015, several courses, seminars and workshops were conducted for Judges and Judicial Commissioners of the High Court on the subject relating to environmental law, commerce, banking, civil and criminal procedures. Most of these training programmes were conducted by the Judges of the Federal Court and the Court of Appeal through the Judicial Academy set up by the

Judicial Appointments Commission (JAC). For the judicial officers of the Subordinate Courts, courses and seminars were conducted by the Judicial and Legal Training Institute (ILKAP) and the Office of the Chief Registrar of the Federal Court. On this aspect of judicial training and in line with the expectation of the Rt. Hon. Chief Justice, greater emphasis and focus will be on the need to improve the quality of judgments of the Judges and to keep the Judges abreast with the development of the laws and changes that are taking place.

For the year 2016 the Judges and judicial officers of the High Courts and the Subordinate Courts will continue to give their best in the discharge of their judicial functions. For the High Courts a target has been set to achieve the status of being current in the disposal of cases following the achievement of the Subordinate Courts. As for the Managing Judges they will continue to perform their duties in assisting the Chief Judge of Malaya in the management and supervision of disposal of the cases registered before the Courts.

Zulkefli Ahmad Makinudin
Chief Judge of Malaya

Judges of the High Court in Malaya 2015

1. Justice Su Geok Yiam
2. Justice Lau Bee Lan
3. Justice Siti Mariah Ahmad
4. Justice Wan Afrah Wan Ibrahim
5. Justice Mohamad Zabidin Mohd. Diah
6. Justice Abdul Halim Aman
7. Justice Zulkifli Bakar
8. Justice Mohd Zaki Md Yasin
9. Justice Mohd Azman Husin
10. Justice Mohd. Sofian Tan Sri Abd. Razak
11. Justice Abdul Alim Abdullah
12. Justice Ghazali Cha
13. Justice John Louis O'Hara
14. Justice Rosnaini Saub
15. Justice Suraya Othman
16. Justice Ahmad Zaidi Ibrahim
17. Justice Mariana Yahya
18. Justice Azman Abdullah
19. Justice Mohd Yazid Mustafa
20. Justice Zainal Azman Ab. Aziz
21. Justice Zaleha Yusof
22. Justice Halijah Abbas
23. Justice Mary Lim Thiam Suan
24. Justice Kamardin Hashim
25. Justice Zabariah Mohd. Yusof
26. Justice Akhtar Tahir
27. Justice Hue Siew Kheng
28. Justice Noraini Abdul Rahman
29. Justice Nor Bee Ariffin
30. Justice Yeoh Wee Siam
31. Justice Amelia Tee Hong Geok Abdullah

32. Justice Has Zanah Mehat
33. Justice Hasnah Mohammed Hashim
34. Justice Harmindar Singh Dhaliwal
35. Justice Hadhariah Syed Ismail
36. Justice Nik Hasmat Nik Mohamad
37. Justice Hanipah Farikullah
38. Justice Asmabi Mohamad
39. Justice See Mee Chun
40. Justice Samsudin Hassan
41. Justice Lee Swee Seng
42. Justice Abdul Karim Abdul Jalil
43. Justice Kamaludin Md. Said
44. Justice Ahmad Nasfy Yasin
45. Justice Teo Say Eng
46. Justice Rosilah Yop
47. Justice Hashim Hamzah
48. Justice Azizah Nawawi
49. Justice Vazeer Alam Mydin Meera

Judicial Commissioners of the High Court in Malaya 2015

1. Judicial Commissioner Zakiah Kasim
2. Judicial Commissioner Siti Khadijah S. Hassan Badjenid
3. Judicial Commissioner Mohd Zaki Abdul Wahab
4. Judicial Commissioner Gunalan Muniandy
5. Judicial Commissioner Wong Teck Meng
6. Judicial Commissioner S.M. Komathy Suppiah
7. Judicial Commissioner Rozana Ali Yusoff
8. Judicial Commissioner Abu Bakar Katar
9. Judicial Commissioner S.Nantha Balan E.S Moorthy
10. Judicial Commissioner Abu Bakar Jais
11. Judicial Commissioner Che Mohd Ruzima Ghazali
12. Judicial Commissioner Ab Karim Ab Rahman
13. Judicial Commissioner Lim Chong Fong
14. Judicial Commissioner Azimah Omar
15. Judicial Commissioner Nordin Hassan
16. Judicial Commissioner Mat Zara'ai Alias
17. Judicial Commissioner Azmi Ariffin
18. Judicial Commissioner Noorin Badaruddin
19. Judicial Commissioner Collin Lawrence Sequerah
20. Judicial Commissioner Wong Kian Kheong
21. Judicial Commissioner Azizul Azmi Adnan
22. Judicial Commissioner Mohamed Zaini Mazlan
23. Judicial Commissioner Dr. Sabirin Ja'afar
24. Judicial Commissioner Dr. Choo Kah Sing
25. Judicial Commissioner Ahmad Bache
26. Judicial Commissioner Mohd Firuz Jaffril
27. Judicial Commissioner Mohd Nazlan Mohd Ghazali
28. Judicial Commissioner Roslan Abu Bakar
29. Judicial Commissioner Abdul Wahab Mohamed
30. Judicial Commissioner Al-Baishah Abd Manan
31. Judicial Commissioner Siti Mariam Othman
32. Judicial Commissioner Hassan Abdul Ghani
33. Judicial Commissioner Chan Jit Li
34. Judicial Commissioner Muhammad Jamil Hussin
35. Judicial Commissioner Hayatul Akmal Abdul Aziz
36. Judicial Commissioner Wan Ahmad Farid Wan Salleh
37. Judicial Commissioner Mohamad Shariff Abu Samah

THE HIGH COURT IN SABAH AND SARAWAK

'Helping to save the Environment to save Us!'

For the last few years the Courts in Sabah and Sarawak were very much involved in enhancing quality justice, the use of technology in dispensing justice and facilitating access to justice for the rural population. This avowed mission will continue.

However in the course of providing access to justice to the rural folks a question came to mind. How can the Courts assist the rural folks in improving their economic well-being? They have their farm lands to sustain them at subsistence level. They hardly have any other sources to generate a modest monthly cash income.

A question was asked: what do they have around them? No factories to employ them, oil palm plantations prefer to employ foreign workers and in fact there is hardly any economic activities that generate employment. But the rural folks have in abundance the gifts of Nature - the forests, the wild animals, the natural terrains, the rivers, the seas and the serenity of them all! Indeed their environment needs protection from the greed of fellow beings operating from the towers of concrete jungles of the metropolises, near and far.

And so the Courts in Sabah and Sarawak have made it their mission in the next few years to assist and facilitate in the protection of the environment especially for the rural folks.

With confidence, when the wild animals and trees can be heard in Courts for protection, when the fishes are helped to maintain pristine waters of the rivers and seas, when turtles are assured that their eggs will continue their existence in this one and only living Earth instead of ending on dinner tables of some who wish to test their fantasied aphrodisiac element, eco-tourism will boom providing much needed constant cash income for the rural folks. Gone will be the days when they hunted and trapped wild animals and birds to sell for cash.

And the Courts, in the form of tourism court, will be there as well to ensure that tourists, local and foreign, and the tourism industry as a whole have a forum to seek redress for their grievances. The mission statement of the Courts in Sabah and Sarawak may thus be summarised: *'Helping to save the Environment to save Us!'*

For completeness, the statistics of the Sabah and Sarawak Courts for 2015 are as per Appendix B.

Richard Malanjum
Chief Judge of Sabah and Sarawak

Judges of the High Court in Sabah and Sarawak 2015

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

Judicial Commissioners of the High Court in Sabah and Sarawak 2015

1. Judicial Commissioner Azahahari Kamal Ramli
2. Judicial Commissioner Mairin Idang @ Martin
3. Judicial Commissioner Gabriel Gumis Humen
4. Judicial Commissioner Dr. Alwi Abdul Wahab

THE HIGH COURTS IN MALAYSIA

By Justice Rhodzariah Bujang
Judge of the High Court

There are two High Courts, of co-ordinate jurisdiction in Malaysia - that in Peninsular Malaysia and the other in Sabah and Sarawak. The establishment of these separate High Courts is provided in Article 121(1) of the Federal Constitution which reads as follows:

> ***"Judicial power of the Federation***
> *121(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely –*
>
> *(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and*
>
> *(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;*
>
> *(c) (Repealed)*
>
> *and such inferior courts as maybe provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by/or under federal law."*

This article aims to just, very briefly outline the history behind the establishment of these High Courts given the dearth of information available on the subject. Since the two High Courts owe their existence to the formation of Malaysia as a nation by the states in the then Malaya and Sabah and Sarawak, they have their own separate and distinct lineage but what is common at some point in their respective history is that all three were once ruled by Great Britain although in respect of Sarawak it was largely that by the dynastic rule of the Brooke family.

The High Court in Malaya

The High Court in Malaya traces its lineage to the Royal Charter of Justice 1807 which provides for the setting up of a Supreme Court by the British in what was then Pulau Pinang. The jurisdiction of that Court was extended in 1825 to Singapore and Malacca when the British incorporated the three Malayan States into the Straits Settlement. The Supreme Court was headed by a Chief Justice and when the Federated Malay States comprising Selangor, Perak, Negeri Sembilan and Pahang were formed in 1895, they too have their own separate Supreme Court similarly headed by its own Chief Justice. After the Second World War (1942-1945)

and on 31 March 1945, when Malayan Union, comprising the two former States of the Straits Settlements i.e. Penang and Malacca, the Federated Malay States and the Unfederated Malay States of Johore, Terengganu, Kelantan, Kedah and Perlis, was established the two Supreme Courts merged into one. Its first Chief Justice, Harold Curwen Willian appointed in April 1946, in his 1947's new year message to the Editor of the Malayan Law Journal proclaimed, with a subtle hint of exuberance:

> *"Last year witnessed the reopening of the Supreme Court throughout the Malayan Union as a symbol of liberty and justice, and as evidence that the Rule of Law once more exists throughout the area of its jurisdiction." [see (1947) 13 MLJ]*

The Supreme Court of the Malayan Union did not last very long. When the Federation of Malaya comprising all 11 states in Peninsular Malaysia was formed in 1948, the Supreme Court and its Chief Justice assumed the new identity. The Justices of this Court were also reported in the 1954 volume of the Malayan Law Journal as Puisne Judge (instead of High Court Judges) whilst the Chief Justice retained his title even with the formation of Malaysia in 1963.

The High Court in Sabah and Sarawak

Just like their counter-parts in Malaya, the earliest precursor to the High Court in the two States were also known as the Supreme Court. For Sabah or North Borneo as it was then known their first rudimentary judicial system was established by the North Borneo Chartered Company when it took over the governance of the State in 1865 from the Sultan of Brunei and the Sultan of Sulu. The Governor of North Borneo was the Chief of the Supreme Court. The position of a Judicial Commissioner to helm the Supreme Court was created in 1905 but it was only in 1912 that a legally qualified person was appointed to the post which in 1929 underwent a name change, to that of Chief Justice. In the case of Sarawak, the Supreme Court was first set up during the reign of Sir Charles Vyner Brooke who took over from his uncle, Sir James Brooke in 1868. Charles Vyner Brooke presided over the court himself and it was only in 1928 that the first legally qualified person was appointed as Judicial Commissioner.

After the Second World War and in 1951 the British Government established a combined judiciary for North Borneo, Sarawak and Brunei. This they were able to do because by then North Borneo has been colonised by them and the Rajah has ceded control of Sarawak to Great Britain. Under this new judicial structure two tiers of court was established - the highest court being the Court of Appeal and below it is the High Court. The Courts were headed by a Chief Justice, the first of whom was Sir Ivor Brace. This was the system in place even with the formation of Malaysia although the judiciary in Brunei was no longer part of the same system, the Chief Justice of Sabah and Sarawak was still named Chief Justice of Borneo and the rest, as the popular saying goes, is history.

SENTENCING POLICY AND JUDICIAL DISCRETION

By Justice Vazeer Alam Mydin Meera
Judge of the High Court

The recent announcement by the Attorney General that he proposes to advise the Cabinet to abolish mandatory death penalty for drug-related offences was received with approval by various stakeholders. Shortly thereafter, the de facto Law Minister said that she hopes to table legislative amendments in March 2016 for such abolition. This was a major shift in sentencing policy and there seems to be broad public support for it. The Malaysian Bar, the Advocates' Association of Sarawak and the Sabah Law Association – in a joint statement lauded the move. So have members of the academia. As did civil society NGOs and prominent community leaders.

There are many facets to this development. Apart from the fact that some proponents have greeted the announcement with hope that this would be the harbinger to the eventual abolition of capital punishment altogether, there is a more fundamental issue of importance at play, and that is the return of judicial discretion in sentencing drug offenders. In fact, the joint statement by the three law associations has alluded to this essential principle in the following words:

> *"Sentencing is part of the cardinal principle of judicial independence, and should always be left to our Judges. Judges use their experience in hearing cases, take into account the peculiar facts and circumstances of each case, and consider the case comprehensively before meting out punishment. Apart from serious questions relating to the efficacy and effectiveness of mandatory death sentences as a means of deterrence, the resort to mandatory sentences is an unnecessary fetter on judicial discretion, and an unwarranted impediment to the administration of justice."*

The objective of any criminal justice system is to protect society by reducing crime and enforcing the law to ensure public order. The system aims to keep society functioning well by balancing the needs of crime control and prevention, and individualised justice. In this respect, meting out the appropriate sentence for a crime is an important component, and traditionally that had been left entirely to the Judiciary. Sentencing policy has evolved over time and Wan Yahya J in **Hari Ram Seghal v. Public Prosecutor** [1981] 1 MLJ 165 had captured the essence of that policy in Malaysia in the following terms:

> *"Our courts have a long time since progressed from the 'eye for an eye' and 'tooth for a tooth' type of justice. The avowed aims*

of punishments are retribution, justice, deterrence, reformation and protection, but it is never intended to act as a vehicle of vengeance. This court does not sit here to hand out to victims of aggression their 'pound of flesh' but generally to protect society by enforcing justice."

Public interest is the foremost consideration in any sentencing policy. And that interest is best served if the offender is induced to turn from criminal ways to honest living, and keep society safe. Generally, the law does not prescribe the exact sentence for an offence, but instead provides a band within which the courts had discretion. This principle was well summarised by Hilbery J in **R v. Kenneth John Ball** [1951] 35 Cr App R 164 as follows:

"Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe."

Thus, Brown Ag CJ in **Abdul Karim v. Regina** [1954] 1 MLJ 86 had noted that:

"Any tendency to standardize punishment for any type of offence is to be deplored because it means that the individual offender is being punished not upon the facts of his particular case but because he has committed an offence of that type."

Nevertheless, in the past several decades, despite such judicial thinking, that discretion has been diminished, and in some cases taken away altogether by the Parliament. The courts have no judicial discretion in punishing offenders for offences where the statute imposes mandatory death as the sentence. This would include, among others, the offence of drugs trafficking. There are also offences for which the Parliament has imposed a mandatory minimum sentence of imprisonment, such as for drugs possession, statutory rape, theft of motor vehicles, corruption and immigration related offences.

These mandatory minimum sentences diminish the discretion of the Judge in that he cannot impose a sentence below the prescribed minimum even in circumstances where he is of the opinion that a prison term would not be an appropriate sentence for the offender.

The reasons for legislative intervention and restrain in setting minimum or mandatory sentences are:

(a) the belief that heavier sentences or a mandatory minimum sentence would deter potential offenders, and is often a response to combat high incidence of specific crime;

(b) the idea that mandatory or mandatory minimum sentencing reduces disparities between sentences meted out by the courts for similar offences; and

(c) the legislative response to public concern that high levels of crime are partly the result of lenient sentences passed by the courts. This would be the elected representatives' response to the electorate's demands.

This, Mc Hugh J in **Markarian v. The Queen** [2005] 79 ALJR 1048; [2005] HCA 25 had observed that:

"Public responses to sentencing, although not entitled to influence any particular case, have a legitimate impact on the democratic legislative process. Judges are aware that, if they consistently impose sentences that are too lenient or too severe, they risk undermining public confidence in the administration of justice and invite legislative interference in the exercise of judicial discretion. For sake of criminal justice generally, judges attempt to impose sentences that accord with legitimate community expectations."

It is a given fact that in a democratic society policy changes are molded by public opinion and expectation. However, in the present context public expectation is more often than not, premised on the notion that incarceration of offenders reduces crime, leading to greater public safety. This may not necessarily be true. In fact the argument that severe minimum sentences deter crime is not supported by sufficient scientific studies or data.

In the United States, not too long ago, to combat the alarming increase in drug related crimes; Federal laws were enacted with long mandatory minimum sentences. This led to a quadrupling of the prison population with no commensurate reduction in such crimes. The burgeoning of the prisons population brought about whole problems, both operational and fiscal. There is now growing consensus that mandatory minimum sentences may actually make society less safe by wasting finite crime-fighting resources on the wrong people. Too many people have been incarcerated at a very high cost to the taxpayer without any commensurate reduction in the level of these crimes. This realisation has unleashed a movement for sentencing reform in the United States. In **Brown v. Plata**, 131 S. Ct. 1910, 1944–47 (2011), the United States Supreme Court upheld a ruling that the overcrowding of California's prisons were such that they violated inmates' constitutional rights and protections. The Supreme Court ordered the state to reduce its prison population by about 35,000 inmates within two years, a number equivalent to the entire incarcerated populations of Switzerland, Denmark, Norway, Sweden, Ireland, and Belgium combined. In response to this momentum for sentencing reform, the United States Congress has introduced several bills, quite aptly named *"Fair Sentencing Act"* and *"Smarter Sentencing Act"* with wide bi-partisan political support. These bills aim to roll back the mandatory minimum sentence regime for mainly drug related offences. There is an acknowledgment that *"one-size fits all"* laws may not be the answer to bring about a more equitable administration of criminal justice.

There may be lessons for us to learn from the American experience. The role of the Judiciary in framing sentencing policy must remain the core component of our criminal justice system. As Professor Shad Saleem Faruqi wrote in support of the Attorney General's proposal in an Op-Ed in The Star entitled *"Catching flies while the hornets fly free*":

> *"Mandatory sentences are an affront to judicial independence. A judge must have the right to tailor the penalty to suit the crime and to temper justice with mercy in extenuating circumstances. ... ... Even if total abolition is not seen as desirable because of the age of terrorism we are living in, a narrowing down of the offences for which the death penalty is imposed should be considered. The mandatory nature of the penalty should be lifted and judicial discretion restored."*

Thus, from the Judiciary's standpoint, the proposed sentencing reform ought to be embraced, in that it would to some extent restore judicial discretion in sentencing and enhance judicial independence.

THE OFFICE OF THE CHIEF REGISTRAR OF THE FEDERAL COURT

Dato' Roslan Abu Bakar
Chief Registrar of the Federal Court of Malaysia

Introduction

The Office of the Chief Registrar of the Federal Court (the CR's Office) is responsible for the overall management of the courts, with the exception of judicial functions, which are matters exclusive to the Judiciary. The primary function of the CR's Office is to provide all the necessary services and support for the courts to process, hear and decide cases. It also serves as an interface between the public and the courts.

The year 2015 continued to be a busy year for the CR's Office. Under the leadership of the Chief Justice, and together with the support of the members of the Bench, the officers and the staff, the CR's Office maintained its commitment to ensure the highest level of efficiency in the operations and processes of the courts nationwide. A number of key, strategic and operational projects have been implemented. These are illustrated below:

Significant Developments

(a) Leveraging Information and Communication Technologies (ICT) by Enhancing the e-Filing System

The overall objective of the e-Filing System is for the courts to take advantage of the opportunities and advancement in the technologies for the benefit of both the courts and users. Implemented in phases since 2009 with full integration achieved in 2011, the e-Filing System, a digital online system for filing and tracking cases, has successfully transformed the paper-driven information system into a seamless information exchange hub that connects all stakeholders in an integrated environment.

The e-Filing System has proven to be reliable, efficient, convenient and secure, allowing court documents to be filed on line from the law offices into the system. This will reduce physical storage

of the court documents, allow easier retrieval of documents filed in courts and consequently, decrease in costs and expenses. In 2015, the courts in Kota Bharu, Kelantan and the subordinate courts in Ipoh are the latest courts in the country to upgrade the management of the courts with the e-Filing System.

(b) **Introduction of e-Jurubahasa Online System**

In recent years, a number of foreigners have been arrested for drugs offences. The "e-Jurubahasa System" was introduced on 9 December 2015, and its main objective is to ensure an effective delivery system for the appointment of foreign interpreters and to upgrade the work processes.

(c) **Collaboration with various Agencies**

The CR's Office is committed in establishing smart partnerships with both government and non-government agencies in order to achieve a better delivery system. The CR's Office believes that in order to move forward, various agencies must work together. It is only through collaboration that we will succeed. As Henry Ford once said:

> *"Coming together is a beginning; keeping together is progress; working together is a success"*

On a number of projects, the CR's Office has been working in collaboration with those on the front lines of justice such as the Attorney General's Chambers, the Malaysian Bar, the Ministry of Domestic Trade, Co-operatives and Consumerism, the Ministry of Home Affairs, the Prison Department of Malaysia, the Legal Affairs Division, Prime Minister's Department and the National Legal Aid Foundation.

(d) **Portal**

The CR's Office stresses on better communication with the public. The public should have access to legal information and the court processes in order to appreciate how their rights and obligations are determined by the courts. To this end, the CR's Office has created a portal known as *"Kehakiman"*. The Portal provides free access to the latest court's judgments, information with regards to the CR's Office, and the recent legal developments. The Portal also provides for a channel for the public to express their dissatisfaction and/or grievances with our services. Public feedback is crucial towards the improvement of our delivery system.

Our efforts have gained recognition. In December 2015, the CR's Office Portal has been awarded a 5 Star Excellence for *'Malaysia Government Portals & Websites Assessment 2014'* by the Multimedia Development Corporation (MDeC).

(e) **Malaysian Judiciary Open Day Programme**

In 2015, a total number of 2,384 clients attended the Malaysian Judiciary Open Day Programmes which was held on the 27 July 2015 to the 7 August 2015 at the Kuala Lumpur Court Complex and on the 10 to 14 August 2015 at the Penang Court Complex. The Open Day Programmes were held in conjunction with the 800th Anniversary of the Magna Carta and it was held in collaboration with the Commonwealth Magistrates and Judges Association, United Kingdom. It attracted not only local visitors but international visitors from the United Kingdom, Spain, Germany, Italy and many others. It was aimed at fostering public trust and confidence in the justice system and to assist the public in familiarising themselves with the operations of the justice delivery system in Malaysia. The target groups for these Open Day Programmes were school children and students from higher learning institutions.

(f) **Enhancement of Integrity of the Officials**

Integrity is key to an effective justice delivery system. The duties and the responsibilities of the officers are essential in the administration of justice. Any act of impropriety will affect the integrity of the judiciary and erode public confidence in them. The CR's Office, in recognising the importance of integrity amongst the officers, has undertaken various measures to enhance the level of integrity of its officers.

The Orderlies of the Court

Monthly assembly held at the Chief Registrar's Office

Activities Based and Focussed on Enhancement of Integrity of the Officials for the Year of 2015

No.	Activities	Date
1	*"Seminar Etika Pegawai Kehakiman"*	25 March 2015
2	Motivational Course *"Memperkasa Jatidiri & Peningkatan Integriti Diri"*	4 – 6 December 2015
3	Seminar *"Membentuk Integriti Melalui Kecerdasan Rohani"*	18 November 2015
4	Course On Balancing Work And Life With Optimum Productivity	2 – 4 June 2015
5	*"Hari Integriti Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia"*	5 November 2015

(g) **Professional Development**

In the year under review, the officers participated in various conferences and training courses to assist them in improving their skills and knowledge and in meeting operational and management requirements.

The officers have also attended legal conferences on specialised topics, seminars and workshops in order to be updated on topics relevant to their work, as well as management and leadership training to reinforce professional skills.

Listed below are the conferences and training courses conducted by the CR's Office in 2015:

In-Service Training Programmes for the Year 2015

No.	Courses	Date
1	*"Kursus Hakim Mahkamah Sesyen Khas Rasuah Siri 6 Bil. 1/2015"*	13 – 15 March 2015
2	Course On Pre-Trial Procedures	17 – 19 March 2015
3	Practical Approach On Financial Statements And Company's Annual Report For Legal Officers	21 – 23 April 2015
4	Workshop On Enforcement Of Forfeiture Order	26 – 27 May 2015
5	Workshop On Extradition Proceedings	11 – 12 August 2015
6	*"Kursus Permohonan Reman Dan Permohonan Pelbagai Jenayah"*	25 – 26 August 2015
7	Course On Personal Data Protection – Issues And Challenges For Judicial And Legal Officers (Foreign Expert)	10 – 12 August 2015
8	*"Tatacara Kebankrapan Dan Penggulungan Syarikat (Kehakiman)"*	5 – 8 October 2015
9	*"Kursus Majistret"*	10 – 13 May 2015
10	Workshop On Enforcement Of Forfeiture Order	26 – 27 May 2015
11	*"Seminar Perintah Khidmat Masyarakat"*	2 – 3 September 2015
12	*"Kursus Pelaksanaan Penghakiman Mahkamah Tinggi Untuk Timbalan Pendaftar Dan Penolong Kanan Pendaftar"*	28 – 30 September 2015
13	Course On Electronic Evidence No. 2/2015	28 – 30 September 2015
14	Mediation Skills Training I	7 – 11 September 2015
15	Mediation Skills Training II	5 – 9 October 2015
16	Course on "Anti-Trafficking In Persons And Anti-Smuggling Of Migrants (ATIPSOM) 2007"	30 October 2015 – 1 November 2015
17	Workshop On Child And Youth Justice System Within The Malaysian Legal System For Sessions Court Judges	20 – 22 November 2015

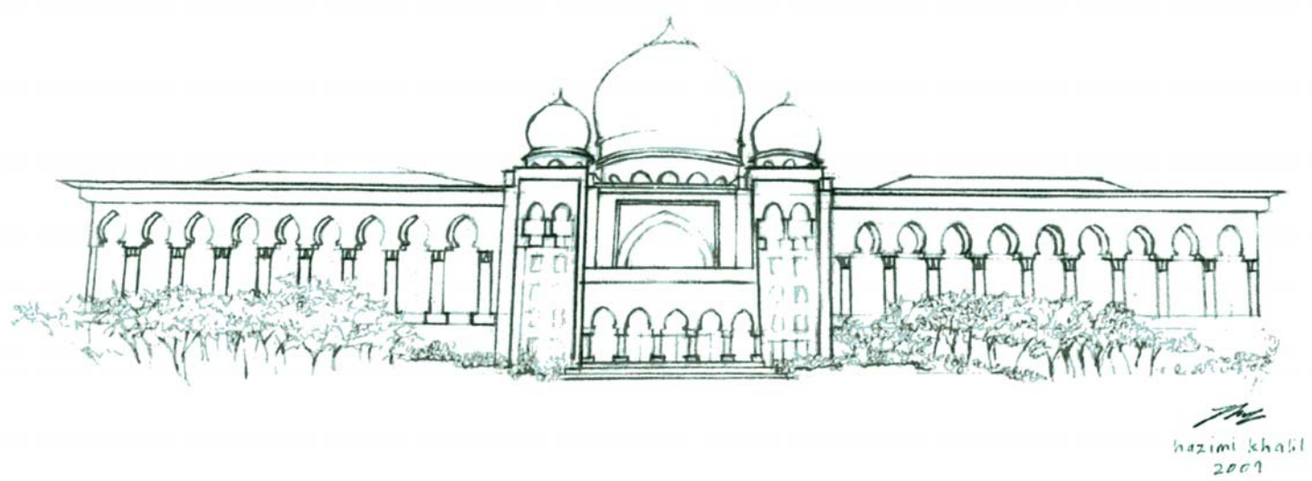
(h) **Recognition**

On 10 May 2015, the CR's Office received the Certification of Information Security Management System based on MS ISO/IEC 27001:2013 from SIRIM QAS International Sdn. Bhd. within the scope of Information Security Management System (ISMS) for Management ICT Service.

Conclusion

I wish to conclude by extending my appreciation to all the officers and the staff of the CR's Office for their continuous hard work and enthusiasm in serving the courts and the public with unfailing professionalism and dedication. This is in line with the core mission of the Malaysian Judiciary, which is to ensure that court processes are expedited, with easier access to the justice delivery system, in order to maintain public confidence in the Judiciary.

Dato' Roslan Abu Bakar
Chief Registrar
Federal Court of Malaysia



The Palace of Justice, Putrajaya

CHAPTER 5

JUDGES

JUDGES' ELEVATIONS AND APPOINTMENTS

For the year 2015, the Superior Courts received 19 elevations and appointments. These include Judges elevated to the Federal Court, the Court of Appeal and the High Courts.

Apart from the elevation of the Judges, 15 Judicial Commissioners were also appointed. The Judicial Commissioners appointed were from the Judicial and Legal Service and the Malaysian Bar.

The list of Judges elevated and Judicial Commissioners appointed in 2015 were as follows:

Judge of the Federal Court

Date of Appointment: 16 February 2015

Justice Zaharah Ibrahim

Judge of the Court of Appeal

Date of Appointment: 16 February 2015

Justice Zamani A. Rahim

Judges of the High Court

Date of Appointment: 16 February 2015

Justice Vazeer Alam Mydin Meera

Justice Douglas Cristo Primus Sikayun

Judicial Commissioners

Date of Appointment: 10 April 2015

1. Judicial Commissioner Dr. Alwi Abdul Wahab
2. Judicial Commissioner Ahmad Bache
3. Judicial Commissioner Mohd Firuz Jaffril
4. Judicial Commissioner Mohd Nazlan Mohd Ghazali
5. Judicial Commissioner Gabriel Gumis Humen

Date of Appointment: 16 December 2015

1. Judicial Commissioner Roslan Abu Bakar
2. Judicial Commissioner Abdul Wahab Mohamed
3. Judicial Commissioner Al-Baishah Abd. Manan
4. Judicial Commissioner Siti Mariam Othman
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

Justice Zaharah Ibrahim receiving the letter of appointment from the Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah

Appointment of Judges of the Federal Court, the Court of Appeal, and the High Court at Istana Negara on 16.2.2015

(L-R): Dato' Roslan Abu Bakar, Justice Vazeer Alam Mydin Meera, Justice Zaharah Ibrahim, Justice Zulkefli Ahmad Makinudin, Chief Justice Arifin Zakaria, the Yang di-Pertuan Agong, Justice Raus Sharif, Justice Richard Malanjum, Justice Zamani A. Rahim, Justice Douglas Cristo Primus Sikayun, Datuk Hamidah Khalid

Justice Zamani A. Rahim receiving the letter of appointment from the Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah

Justice Vazeer Alam Mydin Meera receiving the letter of appointment from the Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah

Justice Douglas Cristo Primus Sikayun receiving the letter of appointment from the Yang di-Pertuan Agong Tuanku Abdul Halim Mu'adzam Shah

Chief Justice Arifin Zakaria, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum with the newly elevated Judges of the Federal Court, the Court of Appeal and the High Courts

Chief Justice Arifin Zakaria, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum with the newly appointed Judicial Commissioners

Chief Justice Arifin Zakaria, Tan Sri Apandi Ali, Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum with the newly appointed Judicial Commissioners

PRESENTATION OF THE ORDER OF THE REFERENCE PROCEEDINGS FOR ALMARHUM SULTAN AZLAN MUHIBBUDDIN SHAH IBNI ALMARHUM SULTAN YUSSUF IZZUDDIN SHAH GHAFARULLAH-LAH

On 19 November 2014, reference proceedings were held for Almarhum Sultan Azlan Muhibbuddin Shah Ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullah-lah. The Order of the Reference proceedings was delivered to His Royal Highness the Sultan of Perak, Sultan Raja Nazrin Muizzuddin Shah on 8 June 2015. For this purpose, the Rt. Hon. the Chief Justice Arifin Zakaria, accompanied by two Federal Court Judges, Justice Abdull Hamid Embong and Justice Zainun Ali, went to Istana Perak, Jalan Changkat Persekutuan, Bukit Persekutuan, Kuala Lumpur to personally present the Order. They also presented His Royal Highness with a black-and-white framed photograph of Almarhum Sultan Azlan Muhibbuddin Shah Ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullah-lah taken during Almarhum's student days in London. This gesture was much appreciated by His Royal Highness.

[His Royal Highness the Sultan of Perak looking at the photograph of Almarhum Sultan Azlan Muhibbuddin Shah Ibni Almarhum Sultan Yussuf Izzuddin Shah Ghafarullah-lah]

[L to R: Justice Abdull Hamid Embong, the Rt. Hon. the Chief Justice Arifin Zakaria, His Royal Highness the Sultan of Perak and Justice Zainun Ali]

DALAM MAHKAMAH PERSEKUTUAN MALAYSIA
IN THE FEDERAL COURT OF MALAYSIA

Dalam perkara prosiding rujukan
In the matter of reference proceedings of

Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-lah

PROSIDING RUJUKAN INI telah didengar di Mahkamah Persekutuan Malaysia pada
THIS REFERENCE PROCEEDINGS was heard in the Federal Court of Malaysia on
19 November 2014 dan adalah diperintahkan bahawa Rekod Prosiding Rujukan
19 November 2014 and it is hereby ordered that the Record of the Reference Proceedings
yang diadakan bagi menghormati
held in honour of

Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-lah

dimasukkan dan disimpan di dalam arkib Mahkamah dan sesalinannya diserahkan
be entered into and preserved in the Court archives and a copy of the same shall be extended
kepada Istana Iskandariah, Perak
to Istana Iskandariah, Perak

Bertarikh pada 19 **haribulan** Nov. **20** 14
Dated on *day of* *20*

ROSLAN BIN HAJI ABU BAKAR
Ketua Pendaftar
Chief Registrar

Order of the Reference proceedings signed by the Chief Registrar

THE 49TH ANNUAL MEETING OF THE COUNCIL OF JUDGES

The 49th Annual Meeting of the Council of Judges was held at the Shangri-La Hotel, Kuala Lumpur from 27 to 30 April 2015. The meeting was convened pursuant to section 17A of the Courts of Judicature Act 1964. This yearly congregation of the Superior Court Judges is important as it serves as a medium for discussion and deliberation on current matters pertaining to the administration of justice in our judicial system.

The theme for the 49th Annual Meeting of the Council was "*Judicial Excellence: The Next Phase*". The activities for the conference included presentation of papers as well as series of discussions which focused on the given topics such as "*Quality Judgments*" and "*Optimizing Judicial Time towards Maximizing Productivity*".

The meeting was officiated by the Rt. Hon. Chief Justice Arifin Zakaria on 28 April 2015. In his opening address, the Chief Justice placed a high premium on quality decisions and judgments which require judges to have an in – depth understanding of the law and keep abreast with its development. The Chief Justice believes that this can be achieved through continuous legal education.

The Chief Justice also reminded Judges to observe proper decorum under all circumstances. A proper judicial temperament is also essential in instilling public confidence in the Judiciary. On the issue of delay, the Chief Justice stressed that precious judicial time should not be wasted. Applications for postponements premised on flimsy reasons must not be tolerated as it would affect the overall disposal rate of cases. Maximum and efficient utilization of time on the Bench must be observed by all judges in the course of disposing the cases before them.

The opening address was followed by the launching of The Malaysian Judiciary Yearbook 2014. The Editor Justice Zainun Ali gave a briefing and lauded the immense contribution made by the editorial team.

A proud moment for the Editorial Committee : The Editor of the Malaysian Judiciary Yearbook, Justice Zainun Ali (fourth from left) during the launching of the Malaysian Judiciary Yearbook 2014.

In the afternoon session, Justice Dr. Badariah Sahamid, presented a paper on *"Judges and the Ethical Issues on Social Media"*. The paper encompassed a comparative overview of the Guidelines and Codes in the United Kingdom and selected states in the United States of America which regulate the use of social media by the judicial fraternity. Justice Dr. Badariah spoke on the potential ethical issues that would arise as a result of the engagement of judges in the social media. Justice Dr. Badariah further stated that the Malaysian Judges Code of Ethics 2009 provides broad guidelines which can be interpreted to extend its application on the utilization of social media by the judges but as this interaction increases, there must exist specific guidelines or provisions that would address the proper use of social media so as to preserve judicial independence and dignity of the judicial office.

A forum entitled "*GST: Boon or Bane?*" was held to enlighten the audience on the implementation of the Goods and Services Tax (GST) which takes effect on 1 January 2015, and its impact towards the growth of the economy. The speakers at the forum were Datuk Subramaniam Tholasy, Goods and Services Tax Director from the Royal Malaysian Customs Department and Mr. Saravana Kumar Segaran, a partner from Messrs. Lee Hishamuddin Allen & Gledhill. The forum was moderated by Justice Azizul Azmi Adnan. The forum was engaging, as it addressed not just the issues surrounding the implementation, but also the legal mechanism on the appeal process of GST cases.

The second day of the meeting concluded with an evening talk on "*Courting Good Health: Coronary Heart Disease*" by Professor Dato' Sri Dr. Mohd Ramzisham Abdul Rahman, a Cardiothoracic Specialist from the National University of Malaysia Specialist Centre. This talk was a stark reminder (as the title suggests) to judges on the importance of not courting trouble by leading an unhealthy lifestyle.

On the third day of the meeting, Justice Nallini Pathmanathan gave an interesting presentation on the topic "*Managing and Enhancing Quality in Judicial Performance and the Writing of Judgments*." Justice Nallini stated in her presentation that the quality and performance of a judicial institution is often judged by the final product, which is the written judgment. Therefore, continuous improvement in the quality of judgments is vital as it would garner positive perception from the public towards our judicial performance and productivity. Justice Nallini further emphasised the need for an effective mechanism to measure the quality of our judicial performance.

Chief Justice Arifin Zakaria presenting a token of appreciation to Professor Dato' Sri Dr. Mohd Ramzisham Abdul Rahman during the 49th Annual Meeting of the Council of Judges.

The meeting continued with a group discussion on the topics titled "*Optimizing Judicial Time towards Maximizing Productivity*" and "*Quality Judgments"*. For the purpose of the group discussion, the judges were divided into smaller groups. Each group, under the guidance of a Federal Court Judge, deliberated on the related topics. A representative from each group presented the ideas and solutions arising from the discussions at the plenary session.

On the final day of the meeting, the Chief Justice and the Chief Judge of the High Court of Malaya gave a summary on the outcome of the meeting, which identified various recommendations towards the enhancement of the delivery process of justice in our judicial system.

The 49th Annual Meeting of the Council of Judges concluded with the closing remarks by the Rt. Hon. Chief Justice Arifin Zakaria. The Chief Justice thanked the committee members of the Chief Registrar's Office in ensuring the success of the Conference. The Chief Justice also recorded his appreciation to the Judicial Appointments Commission (JAC) for their effort and unwavering support towards improving judicial excellence.

At the end of his speech, the Chief Justice expressed his deepest gratitude to the Judges who will be retiring from the Bench, for their absence would be missed given the high benchmark that their presence had given the Bench all these years.

A group photo of Judges and Judicial Commissioners at the 49th Annual Meeting of the Council of Judges.

(L-R): Justice Azizah Nawawi, Justice Abdul Aziz Abdul Rahim, Justice Asmabi Mohamad, Justice Kamaludin Md. Said, Justice Umi Kalthum Abdul Majid, Justice Abu Bakar Jais, Justice Azahar Mohamed, Justice John Louis O'Hara, Justice Mary Lim Thiam Suan and Justice See Mee Chun

FROM BENCH TO CHAMBERS

Tan Sri Dato' Sri Mohamed Apandi Ali

On 27 July 2015, Tan Sri Dato' Sri Mohamed Apandi Ali was appointed as the 8th Attorney General of Malaysia, to succeed Tan Sri Abdul Gani Patail who was going on retirement in October, making him the second Judge of the Superior Court in Malaysia to be appointed to such a position.

The first Judge who held the position of the Attorney General of Malaysia was the late Tan Sri Mohtar Abdullah. He served in that position from 1994 to 2000 after a stint as a High Court Judge. Upon his retirement as the Attorney General of Malaysia, Tan Sri Mohtar Abdullah was reappointed to the Judiciary as a Federal Court Judge on 23 January 2002.

With his vast experience both on the Bench and in the legal service, Tan Sri Dato' Sri Mohamed Apandi Ali is eminently qualified to fill the post of the Attorney General of Malaysia. The Judiciary takes this opportunity to congratulate and wish him well as he takes on the challenging role as the 8th Attorney General of Malaysia.

Career in the Judicial and Legal Service

In 1975, Tan Sri Dato' Sri Mohamed Apandi Ali began his career in the Judicial and Legal Service as a Magistrate in Kuala Terengganu. He held the post for two years between 1973 until 1975.

Subsequently, he was posted to the Attorney General's Chambers as a legal officer. Between 1975 until his resignation in 1982, he held various posts in the Attorney General's Chambers. Between 1975 to 1977, he was the Director of the Kota Bharu Legal Aid Bureau. From 1977 until 1980, he served as a Deputy Public Prosecutor covering the states

of Kelantan and Terengganu. Between 1980 until 1982, he was posted to the Ministry of International Trade and Industry as a Legal Advisor.

Practice at the Bar

In 1982, Tan Sri Dato' Sri Mohamed Apandi Ali left the Judicial and Legal Service to practice as an Advocate and Solicitor of the High Court in Malaya. Between 1982 to 2003, he practised in his own law firm at Messrs. Apandi Ali & Co. in Kota Bharu, Kelantan.

Career in the Malaysian Judiciary

On 1 May 2003, Tan Sri Dato' Sri Mohamed Apandi Ali was appointed as a Judicial Commissioner of the High Court in Malaya and was stationed at the Kuantan High Court. On 21 December 2004, he was appointed as a High Court Judge and continued to serve at the Kuantan High Court. On 15 February 2007, he was transferred to the Kuala Lumpur High Court and served there until his elevation to the Court of Appeal on 14 April 2010. His Lordship was elevated to the Federal Court on 30 September 2013.

New Era in Judicial-Legal Relations

It is hoped that the appointment of Tan Sri Dato' Sri Mohamed Apandi Ali will herald a new era in judicial-legal relations. In the past, despite the fact that the Judicial and Legal Service was labelled as a fused service, a huge gap existed between officers of the two branches in terms of career advancement and promotions, largely due to the administrative restriction on the transfer of officers between the two branches. This restriction caused much chagrin and dismay to the officers over the years because it deprived them of the opportunity of acquiring the necessary experience, knowledge and skill for their career advancement and promotion opportunities.

In this regard, Tan Sri Dato' Sri Mohamed Apandi Ali has already begun his efforts to narrow the gap between the Judicial and Legal Service, which may be seen from the voluntary cross-overs between the judicial and legal officers in the recent transfer exercise conducted in October 2015. It is hoped that with the flexibility of transfers between the legal and judicial officers the service as a whole would be strenghtened to better serve the various stakeholders involved in the administration of justice.

JUDGES' MUSINGS

RUMINATIONS ON THE PAST AND PRESENT

By Datuk Heliliah Yusof
Former Judge of the Federal Court

"*The web of our life is of a mingled yarn, good and ill together*"

from 'All's Well That Ends Well'
-Shakespeare

After thirty one years of service in the legal department of the government of Malaysia, and ten years in the Judiciary, I concluded my career in the legal profession. A three year stint with a statutory body after compulsory retirement seemed miniscule. In the event of compulsory retirement some may have charted plans, readymade plans or even instant plans to be gainfully occupied in the same profession or otherwise. I opted to attend educational classes and more classes.

Five years have transpired since my compulsory retirement. There are flashes of memories of the forty one years of service in the Government of Malaysia that began in 1970. With retirement there is more opportunity to ponder over matters occurring in the yesteryears. Reflections may remain submerged. However a statement by a member of the executive arm of the government, a judgment expounded by a judge or incidents that transpire in Parliament evokes memories and trigger reflections. However like a mirror, not all images are perceived. Nevertheless some memories remain poignant to enable one to ponder and reflect.

Having commenced a career for about five months as a Magistrate in 1970 I was transferred to the legal side of the Judicial and Legal Service where I remained until 2001. 1970 is in the 20th century while 2001 is the beginning of the 21st century. Back in the 70's, the Attorney General's Department was sizeably smaller. One could easily recognise a colleague. However in the 70's, officers in the prosecution and civil litigation divisions were more discernible. The advisory division had a more subtle role while the drafting division had a low profile. This may be the perception of an individual and the position may be in tandem with the then situation that thirteen years after Merdeka (1957) the nation was still developing at a cautious pace.

Legislative development took a different cue after the emergence of the "clear and present danger" situation in 1969.

"Never before have we had so little time in which to do so much"

- Franklin D Roosevelt 23.2.1942.

The establishment of the National Operations Council generated more tasks for the advisory and drafting divisions of the Attorney General's Department. The New Economic Policy constitutes, *inter alia*, a notable milestone in the nation's development and history. Those who were in service at that time underwent a period where there was a deluge of legislation and countless numbers of privatisation agreements.

While the sphere of governmental activity may well have begun with defence and internal public order, yet today there are elaborate economic and social schemes as well as services. We have today not merely Ministerial responsibility but also local governments, the Civil service, the police, public corporations, government linked companies, domestic tribunals, internal committees and the list continues to grow at Federal as well as State level. Attendant upon new duties however come new powers. But all these powers are subject to legal control.

A glance into the list of legislation today would disclose a myriad of legislation. There are series of ordinances re-enacted as acts, new Acts of Parliament, repealed legislation and not to mention the upsurge of subsidiary legislation. In the wake of the list of Federal legislation is the list of State legislation. State economic activities have noticeably expanded. The students of the law should indulge in understanding the historical background of some of the legislation. I have in mind specifically, as an example, the Sedition Act 1948. There is a necessity in the light of contemporaneous development for an inspiring human rights advocate to comprehend and appreciate, and not to ignore the law in its historical context. Again the speed at which the law has multiplied would tend to blur the extent to which public law, private law or the commercial law has progressed in Malaysia.

The forty years in the advisory and drafting legislation left some imprints that are difficult to erase. For example, arduous efforts were made to prepare a detailed brief on the topic of *"conflict of interests"*, a comparative paper on the Internal Security Act 1962 and the related Emergency Ordinance, a paper on access to information and the feasibility of freedom of cyberspace. There was then insight of the evolving issues that would be attendant upon the implementation of policies and legislation thereon. How such matters were considered then remain unknown to me. They are mentioned as examples where the economic policy issues prevailed over insight. Recurring issues like the claim for Pulau Batu Puteh was a matter where foreign policy outweighed legal consideration. The Republic of Singapore had been in effective occupation of Pulau Batu Puteh. Lack of coordination and consultation caused certain vital documents to be untraceable. We lost the claim to Pulau Batu Puteh.

The sound but trite observation is that the legislative and executive branches of the government make and implement the law while the judicial branch interprets and applies it. Similarly as it has been all the time it is not the role of the courts to "make law" by redrafting the law if the law is within the constitutional powers of the law. Nevertheless if a Judge is outraged by the impact of the law in a particular case the ethical approach may be to express concern.

This does not deny the many ways in which the judicial branch of the government interacts with the executive and legislative branch. *What is really insisted upon is that the judiciary be independent in discharging the adjudicative function, albeit, the functional independence.*

Individuals may have varying perception with regard to a judge. A friend of mine thought that as a judge I was too serious to be approached

Datuk Heliliah Yusof in full judicial regalia

and a cousin opined that I completely lacked the zest for fun. 'Richard Posner of Chief Justice Marshall said that his style is *"patient systematic, unadorned, unemotional, unpretentious. It is the calm and confidence voice of reason- the quintessential Enlightenment style."* But Posner did express doubt whether this style remains possible in the legal system of today.'

Even at the start of this century it is apparent that the role of a judge is already extremely demanding and is going to be more so. Apart from the members of the Bar, what fraction of society realised that judges had to deal with the back log of cases, combating delay, improving access to justice and managing costs and getting digital in the 20th century. Whenever it is desired to designate a Judge as a class, Judges have been stigmatised as *"living in ivory tower"*.

Back in the days in the Attorney General's Chambers I recall a colleague who mustered support to prepare and distribute a badge inscribed with the words "May day for Justice". The officers of the Judicial and Legal Services Association remained level headed.

The episode encapsulated the issue- *"was there executive interference with the Judiciary"*. The ensuing episodes was no less engrossing. Did the amendment to Article 121(A) of the Federal Constitution lead to the denudation of the judicial power of the civil courts. The judicial power of the civil courts remain steadfast but the amendment has not made less insurmountable matters pertaining to the alleged conflict of jurisdiction between the civil law courts and the Syariah courts, especially after the jurisdiction of the latter grew.

Over the years since 1983 Islamic law spread into economics and finance. Nevertheless it has not in any substantiated sense mitigate the dichotomy of public law and the personal law- Islam.

While the issue of conflict between public law and personal law has hitherto sailed through calmer waters, the crescendo has heightened and traversing into 21st century there are towering waves of issues.

The Executive, the Legislature, at both Federal and State level , as well as members of the legal profession on both sides of the" competing jurisdiction" of Islamic Law and civil law should galvanize endeavours for the harmonisation of the two system.

"Law is experience developed by reason and applied continually to further experience"

Roscoe Pound
Dean Emeritus,Harvard Law School

Judges cannot be emotionally charged in deciding a case. *'Whether we speak of "justice" or "fairness" we imply a standard, perhaps a nebulous popular view of what is "right" as distinct from what is "wrong". Administration of the law normally, as in the judge's oath, denotes "justice according to the law". Although an ordinary person may consider an Act or regulation to operate "unfairly" in a particular situation, a judge must base his decision and actions upon the legislation. The margin available to him to avoid a resulting perceived unfairness is small, sometimes nil.'*

I also recall a situation where sitting as a member of the Court of Appeal an injunction was granted to a Muslim couple in a situation where divorce proceedings were pending in the Syariah Court. Our unanimous decision was overruled by the Federal Court. The judgment of the then Chief Judge included words of castigation!! It appeared we were not doing justice. We are not to try

to steal a march from the Syariah Courts. To do or not to do in view of the dual parallel jurisdictions.

The complexity of the issues in the competing jurisdiction of the civil law courts and the Syariah courts demand that the Government of Malaysia should make specific commitments to clarifying legislation applicable to Muslims. We cannot to languish in differences and amplify the chasm that is termed as the dichotomy of two parallel systems. The late Professor Ahmad Ibrahim initiated probes into possible areas where harmonisation is feasible. Harmonisation is not intended to pose a threat to non-believers of Islam. Nevertheless if there are indeed painfully slow and laborious efforts to harmonize some legislation, the process has not been transparent. If indeed the efforts are minimal, the intermittent attempts by some factions to belittle Article 3 of the Federal Constitution are grossly abhorrent.

I also mull over the responsibility of the Bar. In the good ole days there was harmony in the professional conduct of the *"officers of the Courts*" towards the Judiciary. Professional courtesy and etiquette was and is observed. But even those good ole days are doubtful. Currently certain members of the Bar allege that they are seeking transformation and yet conveniently forget that some lawyers with multiple applications pertaining to a particular case or cases have contributed towards the deluge of dilatory cases and members of the public may fail to perceive this.

As hitherto mentioned power is subject to legal control.

"Law is not self-executing. Unfortunately, at times its execution rests in the hands of those who are faithless to it. And even when its enforcement is committed to those who revere it, law merely deters some human beings from offending, and punishes other human beings for offending. It does not make men good. This task can be performed only by ethics or religion or morality."

Samuel Erwin Jr.

My life's journey in the legal profession began in the executive branch of the government and literally concluded in the same branch with the three years stint with the EAIC. The *rakyat* that we met in the course of explaining the legislation lamented, *inter alia*, of the need to broaden the scope of the legislation to cover the enforcement agencies at the State level. Examples cited were the enforcement agencies of local governments and State departments. There were complaints of poor enforcement of the law or the lack of it, abuse and misuse of the law or the selective enforcement of the law. Allegations of the vice of corruptive practices were frequent.

Another abysmal fact is that the term *"integrity"* is not recognised, has been conveniently forgotten or *"lost somewhere in transition*" in the course of the enforcement of various legislation. However to be equitable in appraising the enforcement officers the following have emerged:

1. The lacuna in the EAIC legislation needed to be addressed.

2. Immigration policies have brought forth thousands of legal and illegal immigrants with their diverse culture and religion. Some of the foreign workers employed in various sectors of the economic sectors have taken advantage of the weakness in the enforcement of legislation to "import" vices such as gambling, prostitution, smuggling of drugs, liquors or fireworks, forgery, and not to forget, some of them commit offences under the Penal Code and other legislation. In short enforcement agencies also have their hands full. Unfortunately the temptation to accept bribes also abound.

3. Are there coordinated and proper implementation of the plethora of legislation? The concept of multitasking of officers is doubted. *Res ipso loquitar*...look at the savage ravage of the beautiful hills in Brinchang and Tringkap, the apparent lack of town and country planning, the displacement of the habitat of wild life, the overcrowded high rise structures, overcrowded roads, abuse and misuse of licences, the real disrespect of the law by road users and the list grows dismally. If we refer to a knowledge based economy, what about knowledge based enforcement? In my brief stint at the EAIC the abstract truth is that the performance of enforcement agencies requires to be improved. But the unanswered million dollar question is "what is the place of integrity in the enforcement of the law?" Enforcement officers have a choice to do the right or the wrong. Why then do some of them become persuaded and, continue to be persuaded, to take the steps in the wrong directions?

Lady Judges at Dinner
(L-R) Datuk Heliliah, Tan Sri Zaleha Zahari, Tan Sri Siti Norma Yaakob, Tan Sri Zainun Ali, Datin Paduka Rahmah Hussein and Dato' Su Geok Yiam

I left the EAIC with an abundance of unanswered questions and disconcerting thoughts. But also utmost in my thoughts is the evident erosion of patriotism. *Rukun Negara* has become a cliché. Perhaps it should be more prudent to truncate my thoughts through the following:

No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it.

Theodore Roosevelt
26th President of the United States

Too many lawyers have forgotten that the main purpose of the law profession is to serve public interest.

Peter Brown
American Lawyer

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

Samuel F. Millar
19th Century American Judge"

I could not be said to have left the legal profession with the mind in peace. And also, in remembering some of my days at work two school mottos came to mind namely, *Simple in Virtue, Strong in Duty and To Strive, to Seek, to Find and Not to Yield.* Hence the journey in life to seek knowledge and truth is unending.

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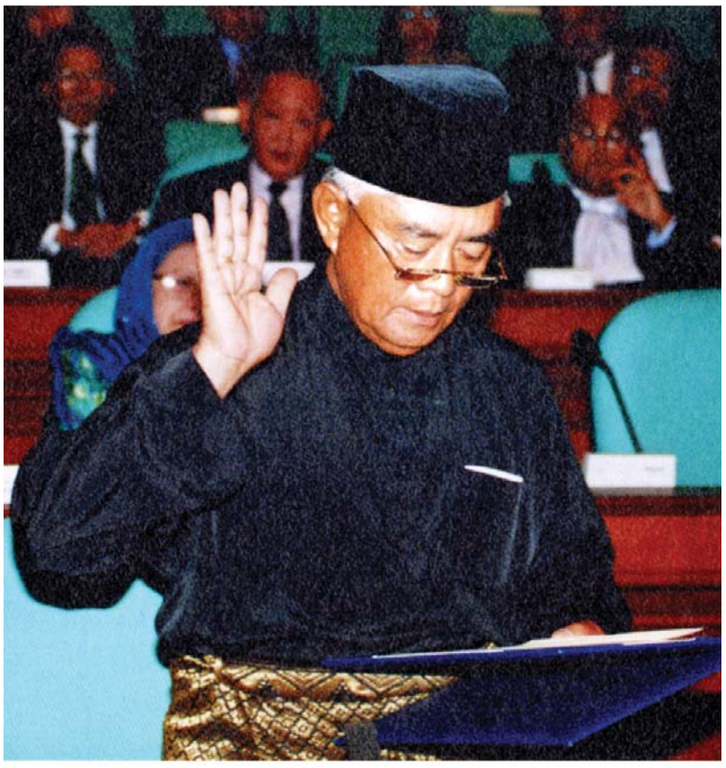
CAREER AND RETIREMENT

By Datuk Wira Mohd Noor Hj. Ahmad
Former Judge of the Federal Court



Datuk Wira Mohd Noor Hj. Ahmad taking his Oath of Office as a Federal Court Judge in 1999 at Bangunan Sultan Abdul Samad

I retired sometime in April 2004 at the age of 65 years old. I had served the Government for about 43 years in various capacities ranging from Land Administrator to Senior Federal Counsel and from Magistrate to Federal Court Judge.

The span of my career stretched along four premierships, that is to say, the late Tengku Abdul Rahman Putra, the late Tun Abdul Razak, the late Tun Hussein Onn and Tun Mahathir. The Judiciary was intact and commanded real and great respect from all quarters, within and outside the country.

I was always happy in pursuing my career. Of course, there were some moments of disappointment in the service when faced supersessions by the juniors. This was unavoidable especially when I always practiced the Islamic principle of "*nahil mungkar*". The principle dictates, *inter alia* that it is the duty of every Muslim to voice out or point to another Muslim when the latter is about to commit or has committed any wrongful or improper act. I always did that during my service irrespective of seniority. That caused certain setbacks in my career. However, I managed to rise up again to overcome the situations by being more determined and focused in the performance in my duties while believing that the truth would always prevail in the end. Although there were ups and downs in my career, I thank Allah that ultimately I was still elevated to the highest court of the land. This accords with the Islamic adage which states that if a person is destined to be up there, no one can pull him down or take that away from him, but if he is fated to be down below, no matter how high he "erects the tripod for the boss" he will never achieve his target. What gladdens me most is that even after retirement I still have lots of friends who reciprocate my warmth and respect.

Honestly, I did not make any plan for my retirement. I just wanted to spend more time with my family, be closer to Allah, do charitable works, lots of golfing and just live on my pension. However, immediately upon retirement I realised that, if health permits, it would be better for one to plan something on what to do relating to a job or work on part-time or relaxed basis after retirement not so much for survival but more for the purpose of keeping the brain ticking so as to avoid one from sinking into senility. This realisation that came during the earlier days of my retirement was triggered when I got up every morning I was at a loss because I did not know what to do and where to go. I could not dress up for office because I have no office to go. A slight depression crept into me when I saw my children dressing up for work every morning. Luckily, my golf buddies, mostly retirees came to my rescue by seeking solace on the greens. Subsequently, several offers of arbitration works came in my way from the Kuala Lumpur Regional Centre for Arbitration (KLRCA) under the capable directorship of Datuk Professor Sundra Rajoo and some lawyer friends. Thus, I became an arbitrator. Thenceforth, my brain started ticking again and at the same time I often experienced the feeling as if I am still sitting on the old Bench. This is so because the function of an arbitrator is akin to that of a Judge, except that a Judge controls the Court's time and whereas an arbitrator is paid by the parties to listen and that an arbitration proceeding is informal and when sitting, an arbitrator always feels more relaxed. Thus, the foregoing facts clearly prove the notion that life after retirement can be likened to that of an expired battery is indeed false.

Now, having retired from the Judiciary for more than 12 years I really cherish this moment which is the sunshine of my life. I am blessed with good health and surrounded by a loving and supporting wife and family members and sincere friends. Thanks to Allah. I often travel the world with my family to discover and admire the beauty of His creations. At the same time, I had the opportunity to see for myself the ruins of once great and powerful nations, such as Petra in Jordan. I do not crave for any Government or corporate prestigious appointments. I am contented with life and thankful to Him for sustenance *(rezeki)* bestowed upon me.

I can now sit back and relax while watching the Judiciary goes by. What I see now is that the Judiciary has been modernised and expanded tremendously in terms of logistics and registered cases. At the same time, cases have been expeditiously disposed and backlog of cases greatly reduced. Judges are now paid better than my time. I like that because my monthly pension too has been proportionately increased. The Judiciary has regained its independence. Public confidence in the Judiciary has returned and its image has improved.

Datuk Wira Mohd Noor Ahmad (seated second from right) at the appointment of Federal Court and Court of Appeal Judges at Istana Negara in 2003.

RETIRED JUDGES

Tan Sri Jeffrey Tan Kok Wha

Tan Sri Jeffrey Tan Kok Wha was born in Shanghai, China on 16 May 1949. He came to Malaya in 1956 and received his early education in Ipoh, Perak. He read law in London and was admitted as Barrister-at-Law, Lincoln's Inn, London in 1974. Upon graduation, he went back to his hometown and continued with his pupilage. He was admitted as an Advocate and Solicitor of the High Court in Malaya in 1975.

Tan Sri Jeffrey Tan Kok Wha was a prominent figure in the legal fraternity in Perak and practiced as an Advocate and Solicitor for almost 19 years. He also acted as Legal Advisor to a number of bodies and was the Chairman of the Perak Bar Committee from 1992 till 1994.

On 1 November 1994, Tan Sri Jeffrey Tan Kok Wha was appointed as a Judicial Commissioner, High Court in Malaya. His appointment was confirmed on 3 July 1996. He served as a High Court Judge in Georgetown, Penang, Muar, Johore and Kuala Lumpur. He was elevated as a Judge of the Court of Appeal, Putrajaya on 15 April 2009. He was elevated as a Judge of the Federal Court, Putrajaya on 4 April 2012.

Tan Sri Jeffrey Tan Kok Wha completed almost 40 years in his legal career when he retired on 13 November 2015. A substantial part of his working life had been devoted to the judiciary, in which he served for 21 years and 15 days.

The ancient Greeks wrote that a good man is one who is wise, brave, moderate and just. Tan Sri Jeffrey Tan Kok Wha is the epitome of all four of these virtues during his tenure on the Bench. Tan Sri Jeffrey Tan Kok Wha exhibited wisdom by repeatedly exercising sound judgments, enjoys the virtue of having common sense and foresight and the ability to weigh competing values and give each of them their due.

Tan Sri Jeffrey Tan Kok Wha describes his profession in the Judiciary as "wonderful" and appreciates the fact that as a judge, he was in a position to contribute to the development of the law.

Dato' Mohd Hishamudin Md Yunus

Dato' Mohd Hishamudin Md Yunus was born on 9 September 1949 in Johol, Negeri Sembilan. He received his early education at Tunku Abdul Rahman School in Gemas and proceeded to his secondary education at the prestigious Malay College Kuala Kangsar. He then continued his study at the London School of Economics and Political Science, University of London where he received his Bachelor of Law (Honours) and was admitted as Barrister-At-Law at Lincoln's Inn, London. He pursued his Master of Law from the same university in 1978.

Dato' Mohd Hishamudin Md Yunus began his legal career as a Magistrate in Kuala Lumpur. Throughout his service, he served as a Magistrate, Deputy Registrar of the High Court, Deputy Public Prosecutor, Federal Counsel, Assistant Parliamentary Draftsman in the Drafting Division, Attorney General's Chambers and Legal Advisor for the state of Selangor. In March 1992, he was appointed as the Chief Registrar of the Supreme Court (then). Dato' Mohd Hishamudin Md Yunus was appointed as a Judicial Commissioner in October 1992 and served as a Judicial Commissioner at the Kuala Lumpur High Court in the Criminal Division, Shah Alam High Court and Alor Setar High Court.

Dato' Mohd Hishamudin Md Yunus was appointed as a High Court Judge in October 1994. While Dato' Mohd Hishamudin Md Yunus was a High Court Judge in Alor Setar, he was also appointed as a Judge of the Syariah Appeal Court in Kedah.

Dato' Mohd Hishamudin Md Yunus served as a High Court Judge in various states from October 1994 until April 2009 such as Alor Setar, Kedah, Kuala Lumpur and Shah Alam, Selangor. While Dato' Mohd Hishamudin Md Yunus was the High Court Judge in the Civil Division, Kuala Lumpur, he was also the High Court Judge (circuit) in Temerloh High Court, Pahang. As a High Court Judge in Kuala Lumpur, Dato' Mohd Hishamudin Md Yunus held several portfolios such as the Head of the Civil and Commercial Division. Dato' Mohd Hishamudin Md Yunus was elevated as a Judge of the Court of Appeal, Putrajaya in April 2009.

Dato' Mohd Hishamudin Md Yunus was also appointed to head the International Bar Association of Human Rights Institute (IBAHRI) to lead in the fact finding delegation to South Africa in relation to its independence of the Judiciary.

Dato' Mohd Hishamudin Md Yunus retired on 8 September 2015. On his retirement, Professor Emeritus Datuk Dr. Shad Saleem Faruqi from Universiti Teknologi Mara commented that Dato' Mohd Hishamudin Md Yunus' years on the bench were marked by integrity, fearless independence and an unwavering commitment to the constitution as the supreme law of the land. A champion of natural justice and the rule of law, Dato' Mohd Hishamudin Md Yunus' years on the Bench will be remembered for his revolutionary and ground-breaking judgments. Dato' Mohd Hishamudin Md Yunus' readiness to criticize injustice and the role he played in developing the jurisprudence of the Malaysian Courts to be in line with human rights and social justice has reaped many rewards for the courts and for the community.

Bidding farewell to colleagues in the Palace of Justice, Putrajaya on his last day as Judge of the Court of Appeal

Datuk Abdul Wahab Patail

Datuk Abdul Wahab Patail was born on 3 July 1949. He was admitted as a Barrister and Solicitor of the Supreme Court of New Zealand (Christchurch Registry) in February 1975. Datuk Abdul Wahab Patail was later admitted as an Advocate and Solicitor of the High Court of Borneo in March 1976.

His illustrious career in service began as a Legal Officer (Cadet) at the Attorney General's Chambers, Sabah in March 1975. As a Cadet Officer, he held several posts such as Deputy Public Prosecutor, Acting State Legal Advisor and State Legal Advisor B, Sabah. Datuk Abdul Wahab Patail also served as State Legal Advisor A, Sabah and Deputy Director of the Legal Aid Bureau, Sabah and Deputy State-Attorney General of Sabah.

Datuk Abdul Wahab Patail was appointed as a Judicial Commissioner on 1 October 1994 and his appointment as a High Court Judge was confirmed shortly on 1 July 1996. He was subsequently elevated as a Judge of the Court of Appeal on 14 April 2010.

Datuk Abdul Wahab Patail had a larger than life career in the service and he wore many hats. This is reflected from numerous appointments throughout his service. Among others, he was a member of the Sabah Islamic Religious Council from 1979 until 1985, a Director of Sabah Credit Corporation from 1979 until 1984, the Committee to the Fatwa (Islamic Law) Council from 1979 to 1985, a Legal Advisor to Sabah Energy Corporation from 1983 until 1985, a Managing Director of Sabah Forest Industries Sdn Bhd from 1983 until 1985, a Deputy Public Prosecutor for Criminal Investigation, Prosecution and Appeal, Chairman of the Appeal Board, Board of Valuers, Appraisers & Estate Agents, Malaysia since January 2004 and many others.

His remarkable journey in the legal arena is indeed an inspiration to all legal practitioners and one that many will try to emulate.

Datuk Linton Albert

Datuk Linton Albert at the Appointment of Judicial Commissioner Ceremony

Datuk Linton Albert was born on 21 June 1949 in Kuala Belait, Brunei Darussalam. He read law in London and was admitted as a Barrister-At-Law from Gray's Inn, London.

Datuk Linton Albert began his career as an academician. He was once a secondary school teacher and had taught at Sekolah Menengah Kebangsaan Melugu, Sekolah Menengah Kebangsaan Augustine and Sekolah Menengah Kebangsaan Three Rivers, Sarawak from 1968 until 1972. In July 1976 Datuk Linton Albert shifted from teaching in secondary schools to Institute of Technology MARA, Kuching, Sarawak.

Datuk Linton Albert then made a transition from the academic field into the corporate sector when he was appointed as an Assistant Secretary at the Sarawak Electricity Supply Corporation in 1976 to 1977. Datuk Linton Albert then was appointed as a Personnel and Administrative Executive Sarawak/Brunei for Tractors Malaysia Berhad in Miri, Sarawak.

Datuk Linton Albert finally joined the legal fraternity as an Advocate and Solicitor in 1981 and Datuk Linton Albert was a practising lawyer until 2003 in Bintulu, Sarawak.

Datuk Linton Albert was appointed as a Judicial Commissioner on 1 May 2003. Datuk Linton Albert was later appointed a Judge of the High Court in Sabah and Sarawak on 21 December 2004. As a Judge of the High Court, he rendered his service in the High Court of Sandakan, Sibu and Kuching. Datuk Linton Albert was subsequently elevated as a Judge of the Court of Appeal in Putrajaya on 11 May 2011.

Datuk Linton Albert retired when he reached the mandatory retirement age of 66 after having served as a Judge of the Court of Appeal for four years. Datuk Linton Albert will always be remembered as a man of a few words. He is always courteous and maintains his composure even under the most pressing and trying circumstances. He was a valuable servant to the profession and throughout his service, he demonstrated tremendous courage and an admirable valour.

Dato' Mohamad Ariff Md Yusof in his chambers in the Palace of Justice, Putrajaya.

Dato' Mohamad Ariff Md Yusof

Dato' Mohamad Ariff Md Yusof was born in Sungai Petani, Kedah on 22 January 1949. He received his early education at the Royal Military College, Sungai Besi. He read law at the prestigious University of London (London School of Economics), where he graduated with LL.B (Hons) and LL.M. He was admitted as a Barrister-at-Law of Lincoln's Inn.

Dato' Mohamad Ariff Md Yusof started his legal career as an academician at the University of Malaya. He was an Associate Professor and also the Deputy Dean of the Law Faculty. He was then called to the Bar and admitted as an Advocate and Solicitor of the High Court in Malaya in 1986. He then practiced law in Messrs. Cheang & Arifff. Dato' Mohamad Ariff Md Yusof's legal career was indeed an illustrious one. In the course of his career, he was the Director of the Market Supervision Division at the Securities Commission Malaysia from 1993 to 1995. He was in charge of overseeing the Kuala Lumpur stock exchange, audit works, investigation and prosecution of securities offences. He was also a Director of the Kuala Lumpur Options and Future Exchange, a member of the Rating Review Committee (RRC), a member of the Malaysian Rating Agency (MARC), a member of the Advisory Board of Companies Commission Malaysia Training Academy, a member of the Kuala Lumpur War Crimes Tribunal and a trustee to the Kuala Lumpur Foundation to Criminalise War. Apart from that, Dato' Mohamad Ariff Md Yusof was also a member of the Judicial Academy of the Malaysian Judiciary. With the recognition that he attained as a legal practitioner, it was only a matter of time before he is appointed to the Bench. He was appointed a Judicial Commissioner of the High Court in Malaya on 15 September 2008. He was then appointed a Judge, High Court in Malaya on 14 October 2009. Dato' Mohamad Ariff Md Yusof was elevated as a Judge of the Court of Appeal on 21 September 2012. Dato' Mohamad Ariff Md Yusof retired in January 2015 when he reached the mandatory retirement age.

If one were to poll the Judiciary and the Judicial and Legal service for its collective opinion of Dato' Mohamad Ariff Md Yusof, the unanimous response would be *"a gentleman and a scholar"*. Dato' Mohamad Ariff Md Yusof has been a role model for many legal practitioners. The diplomacy he practiced, the scholarship of his opinions, his questioning at oral arguments, his participation in discussions during court conferences were nothing short of exemplary. A *bona fide* legal personality, he was always calm and collected. His retirement is indeed a loss to the Bench.

Dato' Mah Weng Kwai

Dato' Mah Weng Kwai was born on 4 February 1949 in Kuala Lumpur. Dato' Mah Weng Kwai is a qualified Barrister-at-Law Lincoln's Inn, London and holds a Masters degree from the University of Sydney, Australia.

Dato' Mah Weng Kwai joined the Judicial and Legal Service and held various posts, *inter alia*, Magistrate, Senior Assistant Registrar of the High Court, President of the Sessions Court, Deputy Public Prosecutor and Senior Federal Counsel in the Attorney General's Chambers. Dato' Mah Weng Kwai left the Judicial and Legal Service in 1985 to commence private practice as an advocate and solicitor as the principal of Messrs. Mah Weng Kwai & Associates.

Dato' Mah Weng Kwai sharing his opinion in one of the sessions during the 48th Annual Malaysian Council of Judges Conference held at the Equatorial Hotel, Penang.

On 4 January 2010, Dato' Mah Weng Kwai was appointed a Judicial Commissioner and was then appointed a Judge of the High Court in Malaya on 9 August 2011. Dato' Mah Weng Kwai was elevated a Judge of the Court of Appeal in Putrajaya on 21 September 2012.

Dato' Mah Weng Kwai is now a Consultant to Messrs. Mah Weng Kwai & Associates after his retirement as a Court of Appeal Judge in February 2015. In addition to that, he is also actively involved in arbitration proceedings and is a certified mediator of the Malaysian Mediation Center.

His long years in the legal arena exposed him to the myriad facets of human behaviour but he never allowed himself to become cynical about humanity or about our system of justice. He was a judge of exceptional ability who made a huge contribution to the Bench. He did so with exemplary fairness, a fact acknowledged not only by practitioners but also by those standing trial before him.

Datuk Abdul Alim Abdullah

Datuk Abdul Alim Abdullah was born in Muar, Johor on 17 April 1949. A Barrister-at-Law of Lincoln's Inn London, he started his legal career in the Attorney General's Chambers in 1978 as a Legal Officer at the Legal Aid Bureau, Melaka. He then served as a Senior Assistant Registrar at the Penang High Court and the Kuala Lumpur High Court from 1981 until 1983. He was appointed the Head of the Translation Bureau of the Supreme Court, Kuala Lumpur. While holding this post, Datuk Abdul Alim Abdullah was also gazetted a Sessions Court Judge and served in Seremban, Klang, Temerloh, Sungai Petani, Kuala Terengganu and Kota Bharu.

Throughout his career, Datuk Abdul Alim Abdullah held many posts and was placed in various government departments and agencies. He was a Deputy Public Prosecutor, Legal Officer at the Royal Malaysian Customs, Head of the Prosecution Unit for the state of Selangor and the Legal Advisor of the Ministry of Home Affairs. Datuk Abdul Alim Abdullah was also the Legal Advisor of the state of Johor and while holding this post, Datuk Abdul Alim Abdullah was appointed, among others as a Board Member of the Johor Corporation, YPJ Holdings Sdn Bhd and Johor Coastal Development Sdn. Bhd. Apart from that, he also served as the Chief Executive Officer of the Companies Commission of Malaysia.

Datuk Abdul Alim Abdullah was appointed a Judicial Commissioner on 1 September 2005 and served at the Kuala Lumpur High Court and Johor Bahru High Court until 4 September 2007. He was appointed a High Court Judge on 5 September 2007 and served in Johor Bahru, Seremban and Shah Alam. Datuk Abdul Alim Abdullah retired on 17 April 2015 when he reached the mandatory retirement age.

Datuk Abdul Alim Abdullah was a tremendously dedicated Judge. His determination and strong work ethic is well known among his peers and subordinates. He had a methodological approach to his work. His intellect and grasp of the law may have seemed intimidating and arguing a case before Datuk Abdul Alim Abdullah was a challenge and an in-depth learning experience. The probing questions he asked went to the heart of the issues and it was excellent training especially for young legal practitioners.

Datuk Abdul Alim Abdullah's retirement is a loss to the Bench. His tremendous knowledge and sense of judicial balance will always be remembered.

Datuk Mohd Zaki Md Yasin

Datuk Mohd Zaki Md Yasin (third from left) with fellow Justices at the Penang High Court.
(L-R): Justice Azmi Ariffin, Justice Rosilah Yeop, Justice Nordin Hassan, Justice Lim Chong Fong and Justice Collin Lawrence Sequerah.

Datuk Mohd Zaki Md Yasin was born on 5 January 1955 in Melaka. He obtained his LL.B (Hons) from the University of Malaya. He joined the Judicial and Legal Service as a Magistrate at Kuala Lumpur in 1979. He was then posted as a Magistrate in Kuala Kubu, Rawang, Tanjung Malim, Slim River and Melaka between 1980 until 1983. Datuk Mohd Zaki Md Yasin was then appointed a Deputy Public Prosecutor and served in Negeri Sembilan, Perak and Kuala Lumpur. Subsequently, Datuk Mohd Zaki Md Yasin was appointed a Senior Federal Counsel in Kuching, Sarawak from 1991 until 1994. In 1994, he was appointed a Sessions Court Judge in Ipoh, Perak.

Datuk Mohd Zaki Md Yasin was the Deputy Head of Prosecution for the state of Kuala Lumpur in 1999 and subsequently, in 2001 he was appointed the Chairman of the Advisory Board of the Prime Minister's Department, Putrajaya.

Datuk Mohd Zaki Md Yasin was appointed a Judicial Commissioner in 2005. He served as a High Court Judge in Shah Alam from 2005 until 2010 and in Penang from 2010 until 2015.

Datuk Mohd Zaki Md Yasin is a friendly man and praised by many for bringing a positive atmosphere to his court and for being a judge who was always approachable. A gentleman with a heart of gold, he is always calm, composed and unruffled despite the busy schedule that he had. Well known for his mediation skills, he was an effective mediator and had successfully mediated quite a number of cases.

His retirement is indeed a loss to the Malaysian Judiciary and his contributions will always be remembered and revered by all of us.

Mr. Chew Soo Ho with the Chief Justice Arifin Zakaria

Mr. Chew Soo Ho

Mr. Chew Soo Ho was born on 21 October 1948 in Malim Nawar, Perak. He read law at the prestigious University of London and graduated with LL.B (Hons) in 1988. Before he embarked on a career in the legal arena, Mr. Chew Soo Ho was a court interpreter for the Chinese Language at the Magistrates' Court in Yan, Kedah from 5 July 1968 until 28 March 1979 and Ipoh Sessions Courts, Perak from 1 March 1979 until 31 May 1981.

Mr. Chew Soo Ho initially joined the Judicial and Legal Service as a paralegal on 1 June 1981 and was posted to the Legal Aid Bureau in Ipoh, Perak from 8 June 1981 until 31 June 1990.

On 3 July 1990, Mr. Chew Soo Ho was appointed a legal officer and was stationed at the State Legal Advisor and Deputy Public Prosecutor's Office, Ipoh, Perak. He rendered his service at the said office until 15 May 2003.

Subsequently, Mr. Chew Soo Ho was appointed the Head of the Prosecution and Litigation Unit, Legal Department of Bank Negara Malaysia before he was appointed the Deputy Director of the same department in 16 May 2004.

Mr. Chew Soo Ho was also the President of the Industrial Court in Penang and Kuala Lumpur from 1 February 2005 until 13 August 2009.

Mr. Chew Soo Ho was appointed a Judicial Commissioner on 14 August 2009 and served at the Civil Division of the High Court in Penang from 14 August 2009 until 14 October 2012 and at the High Court in Kota Kinabalu, Sabah on 15 October 2012.

Mr. Chew Soo Ho was appointed a High Court Judge on 8 January 2013 and served at the High Court in Kota Kinabalu until the completion of the six months extension period of his tenure.

Mr. Chew Soo Ho's career is nothing short of inspiring. From his humble beginnings, through sheer determination and constant dedication, he rose to meet the challenges of life and overcame all obstacles. Mr. Chew Soo Ho's retirement is indeed a loss to the Malaysian Judiciary and undoubtedly, his experiences and achievements will continue to inspire us all.

Mr. Gabriel Gumis Humen

Mr. Gabriel Gumis Humen at the Appointment of Judicial Commissioner Ceremony on 20.4.2015 at the Palace of Justice, Putrajaya.

Mr. Gabriel Gumis Humen was born on 25 October 1956 in Bau, Sarawak. He graduated with LL.B (Hons) from the University of Malaya. Mr. Gabriel Gumis Humen joined the Judicial and Legal Service in 1982 and his first posting was as a Magistrate in Kuching, Sarawak.

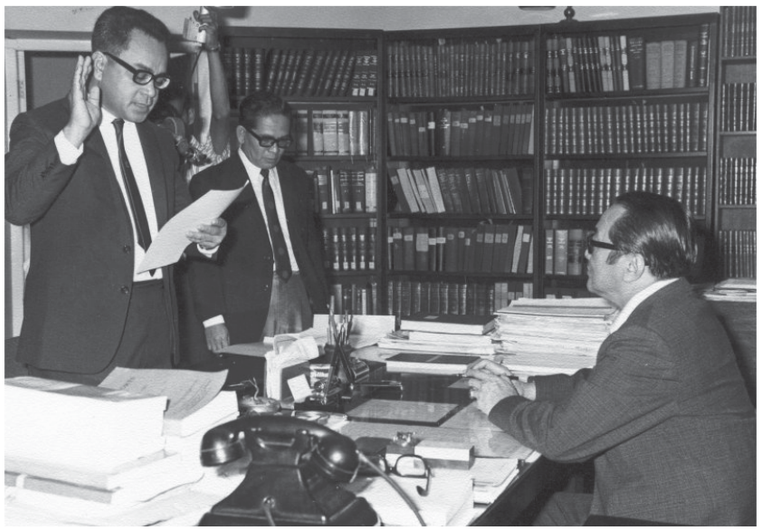
Mr. Gabriel Gumis Humen served as a Magistrate from 1982 until 1984 before he was appointed a Senior Assistant Registrar. He was then transferred to the High Court in Kuching as a Deputy Registrar.

Subsequently, Mr. Gabriel Gumis Humen was appointed a Sessions Court Judge in Kuching and Sibu, Sarawak. He served there untill his appointment as the Registrar of the High Court in Sabah and Sarawak from 1995 until 2008. Then, Mr. Gabriel Gumis Humen was appointed the President of the Industrial Court, Malaysia (Sarawak Branch) in February 2008.

Mr. Gabriel Gumis Humen was appointed a Judicial Commissioner on 20 April 2015 and served until 31 December 2015. His retirement was due to health reasons and this unfortunate twist of fate forced his tenure on the Bench to be rather short-lived. Nevertheless, Mr. Gabriel Gumis Humen's contribution to the Judiciary is indeed meaningful and appreciated.

JUDGES IN REMEMBRANCE

Tan Sri Wan Hamzah Wan Muhammad Salleh



Tan Sri Wan Hamzah Wan Muhammad Salleh taking his oath as a Judicial Commissioner on 18.3.1971 before Justice Ong Hock Thye, Chief Judge of Malaya.

Tan Sri Wan Hamzah Wan Muhammad Salleh was born on 12 December 1923 in Kota Bharu, Kelantan. He received his early education at Sekolah Majlis Ugama Islam, Kota Bharu and the Singapore English School, Singapore.

Tan Sri Wan Hamzah Wan Muhammad Salleh joined the civil service on 1 August 1941 and was appointed a Deputy Assistant District Officer of Kota Bharu, Kelantan. From 1946 until 1951, he served in various districts in Kelantan. At that time, he was also the clerk of the State Legislative Council and the State Executive Council. He was then appointed a District Officer of Bachok, Kelantan in 1952.

Tan Sri Wan Hamzah Wan Muhammad Salleh furthered his studies in England in 1956 where he joined the Honourable Society of Lincoln's Inn. He was admitted as Barrister-at-Law on 10 February 1959. He subsequently came back to Malaysia and joined the Judicial and Legal Service in 1959 as a Magistrate. He was then appointed President of the Sessions Court in Kuala Lumpur.

Throughout his colourful career in service, Tan Sri Wan Hamzah Wan Muhammad Salleh served as Federal Counsel, Deputy Public Prosecutor, Senior Federal Counsel attached to the Inland Revenue Department, Kuala Lumpur and as Chairman of the Special Commissioners of Income Tax.

Tan Sri Wan Hamzah Wan Muhammad Salleh was elevated to the Bench as a High Court Judge on 27 March 1971 and was in charge of the Family and Property Division of the High Court. He was subsequently made the Head of the Appellate and Special Powers Division of the High Court.

On 1 October 1984, Tan Sri Wan Hamzah Wan Muhammad Salleh was elevated to the position of Judge of the Federal Court.

With his passing at the age of 92 on 13 June 2015, the Judiciary lost a highly remarkable figure. Tan Sri Wan Hamzah Wan Muhammad Salleh was a representative of impartiality and fairness. He personified judicial independence and his integrity was beyond question. As important as Tan Sri Wan Hamzah Wan Muhammad Salleh's contributions to the judicial and legal service may be, what is equally important is his humility. He has always been a true gentleman in every sense of the word, whose presence will definitely be missed by his friends and colleagues. The Judiciary is saddened with his passing and will remember the great legacy he left behind.

Tan Sri Lamin Mohd Yunus

(L-R): Tan Sri Lamin Mohd Yunus, Tun Mohamed Dziaddin Abdullah and Tan Sri Ainum Mohamed Saaid

Tan Sri Lamin Mohd Yunus was born on 13 September 1935 in Kampung Terentang, Batu Kikir, Negeri Sembilan. He received his early education at High School Klang, Selangor, High School Bukit Mertajam, Penang and Anglo-Chinese Boys' School, Penang.

He obtained his LL.B (Hons) from the University of Malaya, in Singapore (then). He also held a Diploma in Socio Legal Studies from the University College Cardiff, United Kingdom.

Tan Sri Lamin Mohd Yunus joined the Judicial and Legal Service as a Federal Counsel at the Attorney General's Chambers. He served in various appointments *inter alia*, Legal Advisor of the state of Pahang, Deputy Head of Prosecution at Attorney General's Chambers and Judge Advocate General in the Ministry of Defence. Tan Sri Lamin Mohd Yunus was appointed the Solicitor General of Malaysia in 1983 and held the post until 1988.

Tan Sri Lamin Mohd Yunus was appointed a High Court Judge in Malaya on 9 January 1988 and after 7 years as a High Court Judge, he was elevated to the Supreme Court (then) on 1 July 1994. Tan Sri Lamin Mohd Yunus was subsequently appointed the first President of the Court of Appeal on 25 September 1994. His last day in office was on 12 March 2001.

In Tan Sri Lamin Mohd Yunus' illustrious and distinguished career, he had the rare honour of being elected by the 59th Session of the United Nations General Assembly as an *ad litem* Judge of the International Criminal Tribunal for the former Republic of Yugoslavia, based in The Hague between 2005 until 2009.

Tan Sri Lamin Mohd Yunus will always be remembered for his dedication, perseverance and tenacity in his duties. Tan Sri Lamin Mohd Yunus' attention to details, strict and no-nonsense approach made him a highly formidable and well respected figure in the Judiciary. The legacy that he left in the judicial sphere will surely be felt in the years to come.

> *"The very nature that an interim injunction being ex-parte we are of the view that in order to prevent injustice or to prevent an abuse of the process of the court that its life span must be limited. Before the insertion of r.1 (2B) in October 1993 (P.U.(A) 364/1993), an ex-parte interim injunction obtained r. 1(2) remained effective until set aside. Without putting a limit to its life span, the word interim can have no concrete meaning and it may even be open to abuse. It was further found necessary to tighten up the screws so as the application of r. 1(SBA) had to be brought in. This new rule does not tolerate delay so that it spells out the time limit within which the interim injunction must be served. Also, on the day the ex-parte interim injunction is granted, the court granting it must "forthwith" fix a date of hearing inter-partes and that it must be held "before the expiry of the 21 days". It is beyond doubt that r.1 (2BA) stresses the urgency and speedy disposal of the matter".* **per Lamin Mohd Yunus PCA in Cheng Lan v. Heng Yea Lee & Ors** [2001] 1 CLJ 727

Datuk Muhammad Kamil Awang

Datuk Muhammad Kamil Awang was born on 25 June 1936 in Kuala Pilah, Negeri Sembilan. He graduated with LL.B (Hons.) from the University of London. He was a Barrister-at-Law from the Honourable Society of the Inner Temple, London. Datuk Muhammad Kamil Awang then continued his post graduate course in Masters of Philosophy in Constitutional Law from the University of Kent, Canterbury.

Datuk Muhammad Kamil Awang was appointed a Judicial Commissioner on 1 January 1993 and served at the Sibu High Court, Sarawak. Subsequently, on 16 April 1994, Justice Muhammad Kamil Awang was appointed a High Court Judge in Sibu untill 1 April 1996. He was then transferred to Kuching. After serving at the High Court in Sabah and Sarawak for almost seven years, Datuk Muhammad Kamil Awang was transferred to Kota Bharu, Kelantan on 1 July 2000. Before his retirement on 25 June 2001, he served as a High Court Judge in the Civil Division at the High Court in Kuala Lumpur.

The Judiciary mourns the passing of Datuk Muhammad Kamil Awang on 9 July 2015. He will fondly be remembered as a brave judge who was not afraid to buck the conventional wisdom and practice. A brave judge as well as wise, his judicial courageousness was an affirmation of independence and sincere intention. Datuk Muhammad Kamil Awang said it best himself in **Harris Mohd Salleh v. The Returning Officer, Ismail Majin & Ors (And Another Petition)** [2001] 3 CLJ 161 where he wrote the following at the end of his decision on the validity of two elections in the 1999 elections in Sabah:

> *"The only guide to a man is his conscience, the only shield to his memory is the rectitude and the sincerity of his action".*

REMEMBERING THE LATE TAN SRI WAN ADNAN ISMAIL [FORMER PRESIDENT OF THE COURT OF APPEAL]

Tan Sri Wan Adnan Wan Ismail

When I was asked to write a tribute to my father, I was both worried and fearful. I was worried that I would not be able to sum up his life in so many words. Nor would I be able to tell his journey through different eyes.

He was born on 2 July 1937 in Chukai, Kemaman, Terengganu. In 1956, at the age of 19, he joined the Terengganu Civil Service as a Deputy Assistant District Officer. Thereafter, he was given a scholarship to pursue his law degree in London. My grandfather, Wan Ismail Musa, at that time was a Chief Clerk in the Public Works Department in Kemaman.

His journey as a 'law-man' began in 1958, when he was among the few who were admitted to the Society of the Middle Temple in London. In 1962, he joined the Legal Service and served as a Magistrate in Batu Gajah, Perak. He was later appointed as President of the Sessions Court, Federal Counsel and Deputy Public Prosecutor. He was called to the Malayan Bar on 8 January 1966. He was quite ambitious and dreamt of having his own law firm. In 1968, he did just that. Together with his childhood friend, Dato' Wee Cheng Huat, he started legal practice under the name of Messrs. Adnan & Wee in Kuala Terengganu.

From a legal practitioner, he became a legislator in 1974. That year, he contested in the general elections and won the Kemasik state constituency, earning him a seat in the Terengganu State Legislative Assembly. He served as a State Legislative Assembly and State EXCO member until 1986, when he resigned due to health problems.

He went back to practising law before being appointed as a High Court Judge on 9 January 1988. He was appointed as a judge on the same day as Tan Sri Lamin Mohd Yunus, whom he would succeed later as President of the Court of Appeal. After serving in the Penang High Court for a couple of years, he was transferred to Kuala Lumpur. During this time in Kuala Lumpur, he was re-united professionally with his long-time friend, Dato' Abu Mansor Ali. At one time, their chambers were next to each other in the Sultan Abdul Samad Building. On 1 October 1994, he was elevated to the Federal Court. Four years later, he was appointed as the Chief Judge of Malaya. And finally, in 2001, he was installed as the President of the Court of Appeal.

One of the many things I have observed throughout my life was that, my father valued friendship. My father once said that the life of a judge can be quite lonely. Being among friends was when he

Tan Sri Wan Adnan (third from left) with his friends in London

Tan Sri Wan Adnan at the Waterloo Station (20.12.1958)

Tan Sri Wan Adnan (left) and Dato' Abu Mansor Ali, his colleague and long-time friend

could just be Adnan - neither a Tan Sri, nor a judge. My father and Dato' Abu Mansor were not only brother judges but were like blood brothers. It must have been fate that they had studied together in London, and later served on the same Bench as Judges. My father and Dato' Abu Mansor spent a lot of time together on and off the Bench - regularly having meals and going to the mosque for Friday prayers. When my father passed away, Abu Mansor was among the first to arrive at the hospital. Dato' Abu Mansor passed away in 2008. I was told that he visited my father's grave every week till his death.

In 2005, when I got married, my father's friends came from near and far to my wedding reception in his honour. I was deeply touched and forever grateful. Such acts of friendship are testimony to a bond built on mutual respect over many years. He was blessed to have those friends. We would be equally blessed to have such friends.

Throughout his life, my father taught me that no obstacle is too big to overcome if I put my mind to it. When I failed my law exam, he came all the way to London, just to give me support and his love. At that time, he was not well and on dialysis for kidney failure. He said to me which I have not forgotten until today:

"On the road of life there are often many ups and downs, but they are part of the journey and experiencing them makes us who we are. No matter how fast or slow you are, everyone will reach the same destination".

I have shared this story with my family and friends to inspire them just like my father inspired me to be a better person.

In July this year, I was honoured to join Messrs. Adnan & Wee. Moving back to Terengganu brought back good memories. Many people came by and shared stories about my father. In short, he earned the respect of the people for his integrity and humility. The real tribute to my father would be how I continue his legacy.

Tan Sri Wan Adnan spent his life and career serving the nation. He had served in all three branches of the government – as a legislator in the Terengganu State Legislative Assembly, as an EXCO member in the Terengganu State Government and as a Judge in the Judiciary. He started out with very humble beginnings to eventually rise to the pinnacle of his career. He would want to be remembered as a servant to the nation.

May Allah SWT grant him Jannah.

Wan Azliana Wan Adnan
9 November 2015

Tan Sri Wan Adnan while receiving the Panglima Setia Mahkota (P.S.M) award from the then Yang di-Pertuan Agong Almarhum Sultan Salahuddin Abdul Aziz Shah

CHAPTER 6

ISSUES IN THE MALAYSIAN CAPITAL MARKET

AN INTERVIEW WITH TAN SRI MUNIR MAJID THE FIRST CHAIRMAN OF THE SECURITIES COMMISSION OF MALAYSIA ON THE CAPITAL MARKET

Justice Zainun Ali: Tan Sri, you were the first Chairman of the Securities Commission when it was established in 1993, how has the Malaysian capital market evolved since then?

Tan Sri Munir Majid: The most important change made during the time I was the first Chairman of the Securities Commission was the move to disclosure-based from merit-based regulation. There were three strategic consequences. First, Malaysian capital market development was facilitated by being market-driven rather than moving at the pace and understanding of below-the-curve regulatory authorities. Second, an onus, *caveat emptor*, was placed on the investor to beware and be responsible for his investment decisions. Third, the regulator was entrusted with the clear duty to ensure, on the one hand, full and timely disclosure and, on the other, to enforce laws, regulations and guidelines for any breach of capital market requirements, without fear or favour. The Malaysian capital market has developed since then to become diversified and sophisticated, with new products and their supporting rules and guidelines, as well as with further improvement of the underlying capital market and companies laws, especially in terms of enforcement powers.

Justice Zainun Ali: On the global front, with capital markets getting more integrated; for example within the region we have read about various Asean cross-border initiatives for capital raising and investments – could you share your views on what this means for Malaysia. What can we expect?

Tan Sri Munir Majid: Malaysia is an open economy with a liberal capital account. It benefits from, as well as is exposed to, the huge capital flows that characterise global markets today. The national currency can be overvalued, or undervalued, as a result of the direction of these flows determined by international

managers and investors of financial assets. To narrow this exposure, Malaysia can of course not have a liberal capital account and currency regime, and rely exclusively on domestic savings to finance the economy. The outcome however will be slower economic growth and less developed and liquid capital markets. There is a big debate among economists on the utility of a liberal capital account regime - many contend ensuing volatility actually slows economic growth in the long run - and on the attractiveness of "patient capital", largely domestic and of the type often associated with "boring Belgian dentists". Whatever, given the regime Malaysia has chosen, we have to manage our economy and currency in line with disciplines largely objective although sometimes not - notice how the ringgit took a battering in 1998 every time the then Prime Minister Tun Dr. Mahathir said nasty things about currency speculators. So markets are powerful. As always, there are costs and benefits, and the Malaysian calculation is that the latter outweigh the former. As for Asean, all 10 member states subscribe to open and liberal economies, although with different levels of enthusiasm and actual practice. Laos and Vietnam, for instance, still are single-party communist regimes, while now wedded to a capitalist economy - but not yet having freely convertible currencies. Myanmar is just coming out of a political and economic dark age. Even Indonesia - the region's largest economy - is far behind Singapore, Malaysia and Thailand in economic development and sophistication of capital markets. But they all want to have a stock market each, an often misconstrued virility symbol. The upshot is the dissipation of capital accumulation and the absence of an Asean asset class to attract the huge global capital flows that we have noted. The only real capital market integration that has taken place is the Asean Trading Link which brings together the stock exchanges of Singapore, Malaysia and Thailand, and that too only in terms of a common platform for trading each other's stock, and not in respect of clearing and settlement - which exposes investors to currency and withholding tax risks. Unfortunately, capital market integration in Asean is well behind that at the global level of its member countries subscribing to open economies and liberal currency regimes. Most of the savings in Asean are actually accumulated elsewhere - the metropolitan financial centres - to come back as non-Asean, foreign capital at much higher cost!

Justice Zainun Ali: When there is a dispute arising out of these cross-borders offerings of products, how would that be addressed? Is there any dispute resolution mechanism put in place between the member states?

Tan Sri Munir Majid: As we noted, Asean capital market integration is limited. Nevertheless, there are Asean companies listed on other member state exchanges, particularly the SGX which is by far the largest, most liquid and sophisticated. By doing so, they accept the rules, regulations and laws of the relevant national jurisdiction, which can be stringent and demanding but is compensated by market liquidity and ease of capital raising, good valuations and a status symbol: high profile of the company that can measure up to the requirements of a leading global financial centre. In the wider financial markets however there are many outstanding issues in Asean over recognition of cross-border collateral, settlement of disputes, accounting standards, free data flow, mobility of skilled labour and so on. There are various agreements and frameworks to work at these issues. The pace of progress is not something that excites the private sector. The Asean finance ministers and central bank governors meeting in Vientiane in early April 2016 agreed "to make efforts towards realising financial integration in the region by 2025." They apparently agreed on the new timeline to integrate bond market disclosures and to increase government fund-raising within the region. They also decided to more broadly implement the trial of having "Qualified Asean Banks" (QABs) under the Asean Banking Integration Framework to two QABs qualified to do business in all member states within the next three years. Finally, they noted the Asean Trading Link hoped to expand the number of countries involved to at least one other nation by 2025 - something that has been outstanding for some years now with the Philippines and Vietnam being the nearly nations. There was nothing stated on clearing and settlement which would make for a more closely integrated Asean capital market.

Justice Zainun Ali: Where are we in achieving full ASEAN integration? Can it ever be achieved (is it a dream or reality)? What are some of the hurdles that must be overcome if full ASEAN integration is to be achieved?

Tan Sri Munir Majid: To paraphrase Jean Paul Satre, the Asean community exists because its member states say it does. It is a work in progress, with many of the targets, including those in the 2015 Blueprint, still to be achieved when the community was pronounced at the end of last year. The academic purist will most likely not accept attachment of the term "community" to Asean. The "Asean Way" would freak out the EU legalist. Still, it is better to have something than nothing, to have Asean states working together even if they do not achieve what they say they have or if they push back target dates without batting an eyelid. There is a commitment to cooperation. But how to make things happen faster and better? First, acknowledge what has been achieved: largely a single market and production base in goods under the Asean Trade in Goods Agreement (ATIGA). Second, there should be concentrated public-private sector focus on some of the stubborn issues like non-tariff barriers that remain. Third, work through the Asean-X principle. Let me elaborate on the last point. It is a way by which those who can work together on something just get on with it. The demonstration effect of the benefit of that cooperation will entice those not involved to want to get involved and, in the process, measure up to whatever are the requirements for that involvement. For example, it is less arduous to persuade a country to come up to required regulatory standards to achieve a specific benefit - say infrastructure project listing - than to lecture them in the abstract on the need to measure up in respect of accounting standards, disclosure requirements, good governance and so on. Indeed, in the latter instance, regulatory-deficient countries often feel spoken down to, which does not aid in the process of positive response to uplift standards. Actually, I am pushing for cross-border infrastructure project listing among two or three countries on this basis, Asean-X. Similarly, as chairman of Asean Business Advisory Council last year, I championed the setting up of the Growth Accelerator Exchange (GAX) to provide Peer-to-Peer financing across borders especially for Micro, Small and Medium Enterprises (MSMEs) of the less developed Asean economies; countries that want to be involved would however have to accede to arrangements that recognise cross-border collateral and dispute settlement mechanisms based on the practice in accepted legal systems.

Justice Zainun Ali: Recent development like financial technology (FinTech) has also reshaped the capital markets and redefined traditional role of market intermediaries. How will FinTech drive the next phase of growth in the Malaysian capital markets?

Tan Sri Munir Majid: GAX, as described above, is a FinTech electronic platform, primarily focused on providing finance to MSMEs. Most of the research done on FinTechs conclude the business model will command up to 30 per cent of banking revenues. It is thus not surprising that many banks are developing fast their technology arm to reach their customers as a necessary defensive measure of market share. But many FinTechs have sprouted independently in the U.S., Europe and China, with Ali Baba expanding aggressively in our part of the world. The main reason why FinTechs started was because interest rates have been generally low for some years now and those with excess funds were looking to enjoy a better rate than banks could offer even if at greater risk. The facilitation that technology offered was a godsend to both the supply and demand side, the latter suffering from the disinclination of banks to lend as they repaired their balance sheets after the 2008 financial crisis and looked to protect their capital adequacy. Those in need of funds can now seek them by using just the smartphone to reach the electronic platform which processes the application against an electronic back-office with an eco-system containing relevant industry data. No more brick-and-mortar bank branches, copious credit papers and long waits for a decision on the application. If everything is in order an application can be approved in a day. There are risks of course.

1 Dollar
Straits Settlements 1904

The coin with denomination of 1 Dollar features the portrait of King Edward VII. On the obverse can be found the wording '*satu ringgit*' in Jawi script.

[Photographs courtesy of the Central Bank of Malaysia]

But remember, those seeking higher returns for their excess funds are fully aware of this. And, FinTechs do not take deposits from the public which conventional banks do. The Peer-to-Peer financing that they do can take the form of Equity Crowd Funding (ECF), Loan Crowd Funding (LCF), even investment funds like private equity and venture capital. The Securities Commission of Malaysia was the first in the region to come up with rules and regulations on ECF and now, it has been reported, on LCF. It is important to be on top of these developments rather than be the stick-in-mud trying to stop them - because you can't. The force of technology is too strong. The main thing is to ensure the systemic risk is managed by approving the involvement only of credible entities with strong and capable shareholders, as well as to ensure the risks to the investor putting his money down are transparent, accurate and well-understood.

Justice Zainun Ali: What else must regulators and the industry do to strengthen the competitive positioning of the capital market, including the Islamic Capital Market?

Tan Sri Munir Majid: Financial and capital markets are developing very fast through greater use of technology which disrupts well-trodden ways. One is reminded of how derivative products developed from the first - and useful - plain vanilla interest rate swap contract to financial products that bear no relationship to an underlying value and serve no more than pure speculative purpose. That however is not to say we should stop the developments that technology drives, but rather to underline that laws and regulations, the courts, financial and capital markets regulators and customer protection institutions stay on top of them. Such institutions have all been on so many learning curves, sometimes baptism of fire, as in the 1997-98 Asian financial crisis and the 2008 Western financial crisis. In Europe they are still being rocked by the euro crisis, a breath-taking experiment of having a single currency without common fiscal discipline. But the courts and regulators have also recorded great success - as in, first, the accommodation, and then, the outstanding development of Islamic finance in Malaysia in the past over three decades. There were first, new concepts that had to be absorbed, then new practices to be perfected and understood, followed by new products that even now must be introduced. But let us not be sentimental. We must move from "holier-than-thou" mode to "better-than-thou" excellence. The big challenge now is to break into non-Muslim markets and users. Those that recognise a good thing when they see one - like London fund managers - move fast and offer Islamic fund management such that London is the largest such market in the world. But Americans remain Islamophobic on many levels, not least acceptance of Islamic finance. However, it is interesting that there is a crack in respect of the halal industry. With the huge world Muslim population of 1.6 billion alone, there is a big and growing demand for halal food which major global food manufacturers, Americans included, are rushing to meet. Perhaps in the American view finance and capital markets are too strategic to become Islamic, but not food, cosmetics and so on. Nevertheless there can be no stopping the growth of Islamic finance, which should receive its next boost by supporting the world halal industry - through more aggressive trade finance and new Islamic venture capital and fund management products.

Justice Zainun Ali: What role can the courts play in the development of the capital market?

Tan Sri Munir Majid: I am loathe to tell the courts what to do! What I would say in terms of the capital market is not to stand in the way of its development, and to always protect the investor, not from his own folly, but from the machination and manipulation of others, which cause him loss and grief. Please ensure there is justice. If developments take place over which laws and regulations are not precise, even non-existent, there are principles of natural justice that can apply, as indeed has been caused to apply in so many cases apart from those arising in capital markets. Personally, I subscribe to the Hersch Lauterpacht doctrine that there is no such thing as non-justiciability.

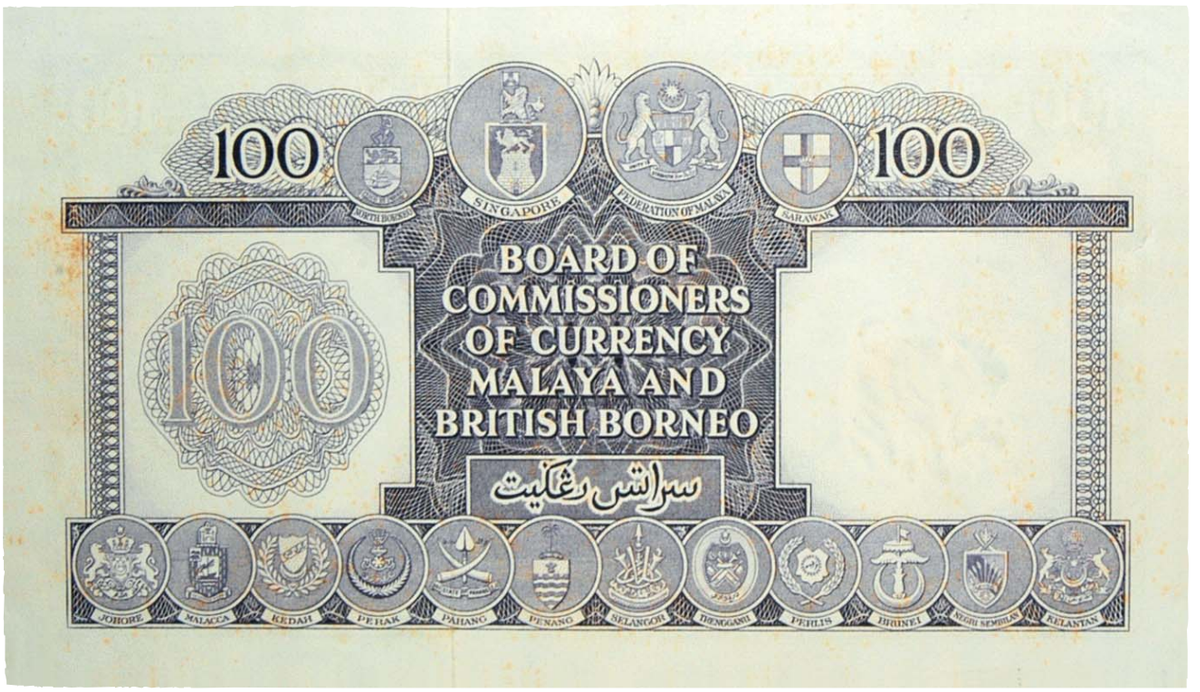
Justice Zainun Ali: What do you see as major developments or capital market trends which the court should be aware of when presiding over commercial matters?

Tan Sri Munir Majid: We have discussed developments in capital markets which the courts are, or should be, aware of. Primarily those driven by technology. In the context of technology, a new matter which should arouse the concern of the courts, is to ensure cyber security for governments, corporations and individuals. Hacking and cyber crimes are growing. The law and the courts must be prepared to address this phenomenon. On a happier note, we have observed how the courts and regulators have been such important supporters in the development of Islamic finance. The growth of the *sukuk* market has been outstanding. There is more to come that should be inculcated. In the development of the Asean community, while Malaysian lawyers in search of commercial gain are now to be found in many capitals, I am not sure how engaged the community of Asean judges are with one another. The use and development of regional arbitration bodies is one area through which Asean capital market integration could be enhanced which perhaps the bench in Malaysia might want to pursue. As we look to the new, the courts in our country might also want to reflect on how old concepts might come to haunt, if not framed in tight legislation, such as how trust laws embedded in English common law could become a vehicle for abuse.

1 Cent
Malaya And British Borneo 1958

The coin with denomination of 1 cent was traditionally produced in square-shape from the start of 1919.
The obverse of the coin features the portrait of Queen Elizabeth the Second.

[Photographs courtesy of the Central Bank of Malaysia]



100 Dollars
Board of Commissioners of Currency Malaya and British Borneo
The banknote features the portrait of Queen Elizabeth II.

On the obverse are the state emblems.

[Photographs courtesy of the Central Bank of Malaysia]

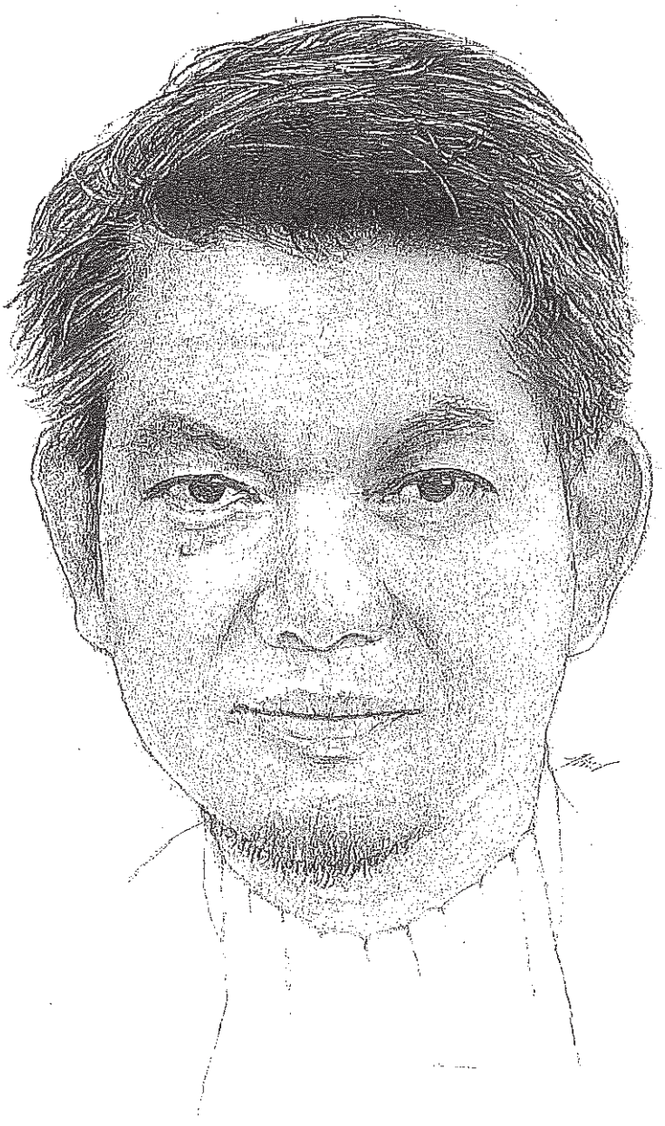
"Malaysia today is one of the jurisdictions that is able to assure litigants an expeditious outcome to dispute resolution, given the nine month target time fixed for each case. Coupled with an efficient appellate system that seeks to dispose of appeals, particularly from the specialist courts, within six months of delivery of decision from the court of first instance, a litigant is well able to anticipate and plan his resources to complete dispute resolution within a relatively fixed time frame. The certainty that this affords the public should go a considerable way towards increasing confidence in the efficiency of the court system."

Tun Arifin Zakaria
Chief Justice of Malaysia
at The International Malaysia Law Conference,
Royal Chulan, Kuala Lumpur, September 2014

"The role of the court in maintaining investor's confidence and integrity of the capital market is through its pronouncement of judgments to sanction reprehensible conduct."

Tun Arifin Zakaria
Chief Justice of Malaysia
at The Seminar on the Development and Regulation of the Capital Market: Changing Dynamics and Challenges,
Mandarin Oriental Hotel, Kuala Lumpur, June 2014

THE ROLE OF THE JUDICIARY IN PROMOTING GROWTH OF THE CAPITAL MARKETS



By Justice Azizul Azmi Adnan
High Court of Malaya

Effective and efficient capital markets are essential for the mobilisation of capital for the economic growth of a nation. In the context of Malaysia, the two and a half decades since the advent of the Securities Commission of Malaysia in 1993 has seen a complete transformation of our capital markets, such that we can rightly claim to be one of the leading jurisdictions among emerging markets in terms of the relative sophistication of our capital markets infrastructure.

One of the keys to our success has been the ability of our laws to respond quickly to changes in the markets. By their nature, capital markets are hotbeds of innovation, where participants conjure up new ways to raise financing and capital, which in turn places pressure on regulators to ensure that the laws and policies are adequate to achieve the twin aims of investor protection and systemic stability. Most recently, we have seen the Securities Commission

introduce new rules governing crowdfunding, becoming the first ASEAN country to do so.

The legal infrastructure underpinning the authority of the Commission must therefore be adequately flexible to cater for rapid changes in the marketplace. To this end, the scheme of legislation provides for an extensive ability of the Commission to propose changes to laws by way of subsidiary legislation. The main Act governing the capital markets – the Capital Markets and Services Act 2007 (CMSA – provides for the broad principles of general application, and specific details are often left to be prescribed in schedules or regulations, which permits changes to those details without the necessity of parliamentary approval. Changes to subsidiary legislation are effected by way of executive fiat, with the approval of the Minister of Finance.

This is not to say that the Securities Commission has been slow to effect amendments to the principal Acts where it has been necessary to do so. The predecessor legislation to the CMSA was amended four times since the establishment of the Securities Commission in 1993 before it was repealed in 2007 and replaced by the CMSA. This Act in turn has been amended four times since.

However, it is not enough for the laws to be up to date. It is the nature of the capital markets that they require certainty in the interpretation and application of laws and policies. Legal certainty and consistency are aspects of the rule of law that are believed to improve the economic performance of nations.

The nature of capital markets is also such that a premium is often placed on ensuring that where a

10 cents
Straits Settlements 1901

The obverse of the coin features the portrait of Queen Victoria of England.
This coin series was produced from 1871 to 1901.

[Photographs courtesy of the Central Bank of Malaysia]

disputed point of law affecting the markets is in litigation, such issue is disposed of in an expeditious manner to minimise the uncertainty that may be engendered in the minds of market participants. For example, uncertainty may result in investors withholding or postponing investment decisions, or even the withdrawal of capital into more traditionally secure asset classes, or to jurisdictions that may be perceived to provide greater certainty and security.

The third source of pressure on the justice delivery system is the fact that financial products can often be complex. Risk transfer mechanisms such as derivatives demand specialised legal skills, often only found in major financial centres. Islamic financing transactions can also be no less complex, though here Malaysia can claim to be at the forefront in developing and structuring Syariah-compliant financial products.

The failure to adequately provide any one of the critical facets of a sound legal and regulatory infrastructure for the capital markets can have far-reaching consequences not just for the financial services industry, but also for the real economy, as local companies will find it harder to raise financing and capital. Investments will fall, with the attendant loss of opportunity to create jobs and to bring other benefits to the economy. Foreign counterparties will require dispute resolution to be undertaken in jurisdictions that provide greater certainty and will specify foreign laws as the governing laws in contracts, which in turn will adversely affect the advancement of the legal profession.

The administration of justice must be able to adequately respond to the pressures of a fast-developing area of law where the subject matter can be complex and where there is high demand for legal certainty. To this end, specific measures have been undertaken to ensure the expeditious disposal of cases, including the identification of certain Sessions Courts that will hear criminal cases involving securities and banking offences.

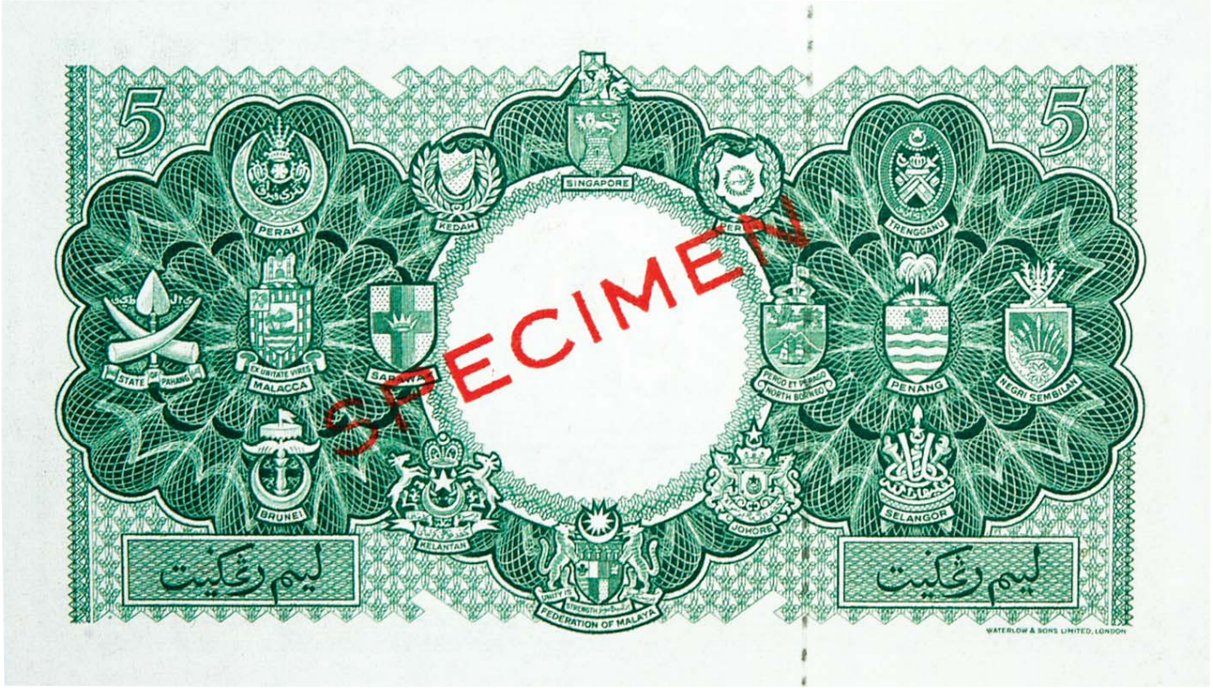
However, because the original jurisdiction for securities and banking offences lie with the Sessions Court, these cases will never come before the Federal Court, as final appeal will lie with the Court of Appeal. Given the far reaching ramifications of the interpretation of securities and banking laws, the argument is well made that the law should develop with the benefit of collective wisdom of the most senior judges in the land. For example, cases involving insider dealing have a high profile and decisions delivered on such cases will have a significant impact in modifying public behaviour and in upholding the integrity of the capital markets. Such cases are often also complex, requiring the analysis of reams of documentary evidence.

Of course, this does not mean that original jurisdiction should lie with the High Court in all cases, as to do so will significantly increase the number of cases to be heard by the High Court. Rather, the Sessions Court should be given the discretion to transfer cases to the High Court on application of the parties where the issues are such that the availability of an appeal to the Federal Court would be to the public advantage.

The issue of timeliness of the disposal of criminal cases involving capital markets offences have been addressed with new directions to judges to proceed to trial even though an accused has sought to challenge the constitutionality of the relevant laws. It is important to preclude the possibility of the use of such challenges as a delaying tactic, not just for the pursuit of disposal statistics but more importantly for the fact that there is a cost to the market for as long as any issue in dispute creates uncertainty for participants.

The particular nature of capital markets offences may also mean that judges familiar with commercial cases may be more appropriately suited to hear criminal cases involving such offences.

The rapidly changing nature of the industry demands that judges continually update themselves on developments in the regulatory landscape, in the same way that, for example, directors of publicly listed companies are required to be subjected to a programme of continuing education. In the past, seminars have been co-organised by the Judicial Appointments Commission with the Bank Negara Malaysia and Securities Commission, to provide judges with an understanding of banking products, the capital markets and their enforcement framework. The Judicial Academy established under the aegis of the Judicial Appointments Commission is considering taking this further, in establishing a comprehensive syllabus on the financial markets for the systematic and periodical training of judges.



5 Dollars

Board of Commissioners of Currency Malaya and British Borneo

This banknote features the portrait of Queen Elizabeth II.
On the obverse, are the state emblems.

[Photographs courtesy of the Central Bank of Malaysia]

It is a peculiar occupational hazard for judges to be viewed as being apart from society and, quite unfairly at times, as being out of touch with the commercial realities of the business world. Such views should galvanise us to redouble our efforts to ensure that the courts are able to meet the challenge of delivering justice in an expeditious manner in cases involving the financial services industry. While the Judiciary does not drive economic development, it will be harder for the nation to sustain consistent economic growth without an effective system of justice.

Boxed article:

Pesaka Astana No. 1 and Pesaka Astana No. 2

The case of **CIMB Bank v Maybank Trustee & Other Appeals**[1] (referred to here as **Pesaka Astana No. 1**) was a cause célèbre affecting the development of the capital markets laws in Malaysia. In this case, the Federal Court ruled that the disclaimer clause in an information memorandum was effective to exclude liability on the part of a lead arranger for any loss occasioned to bondholders as a result of reliance on information contained in the information memorandum. This decision, delivered in February 2014, prompted the Securities Commission to effect changes to the securities laws, to render void any exclusions or limitations of liability contained in disclosure documents (and not just contractual documents).

It is important to appreciate that an arranger or lead advisor would have still borne the statutory liability for non-disclosure and misstatements, which would allow the Securities Commission to prosecute breaches of such duty. With the change to section 256 of the Capital Markets and Services Act 2007 (CMSA) (which came into force on 15 September 2015), a lead arranger would also be liable for damages to a bondholder who had relied upon the contents of an information memorandum and had suffered loss as a consequence, notwithstanding the existence of any exclusion or limitation clause.

For an issuance that is exempt from the requirement for the approval of the Securities Commission, the issuer must deposit the information memorandum with the Commission within seven days of its issuance. There was no suggestion that the disclaimer or exclusion clause in Pesaka Astana No. 1 was any different in substance from the clauses in use by the industry at the material time. As such, the regulator would have known of the use of such clauses and it would have been open to it to limit the effect of such exclusion clauses, or to require their removal entirely, if as a matter of policy the view was taken that exclusion clauses ought not be permitted in capital market issuances. On the other hand, if the view was taken that such clauses would have been rendered void by section 65 of the Securities Commission Act 1993 (the predecessor provision to section 256 of the CMSA), then the notice ought to also have been removed or amended, as no useful purpose would have been served by the inclusion of a void disclaimer or exclusion of liability.

The Federal Court in that case affirmed the liability of the trustee on the basis that it had failed to ring fence the designated accounts and to prevent the issuer from operating such accounts.

Subsequently, the related case of **MIDF Amanah Investment Bank Berhad v Pesaka Astana (M) Sdn Bhd & Ors**[2] **(Pesaka Astana No. 2)** came to be heard by the High Court. Here, the holders of commercial papers (CPs) issued by the same issuer under a CP/MTN programme sought to claim against *inter alia* the trustee and the shareholders of the issuer.

The CPs were secured by assignments of the proceeds of two contracts that the issuer had with MINDEF. Although notice of the assignments had been given to MINDEF (thereby converting them from equitable to legal assignments), the details of the designated proceeds account had not been given to MINDEF (or

1 [2014] 3 CLJ 1
2 [2015] 1 LNS 966

had not been given in a timely manner), such that some of the proceeds of the contracts were instead paid into an operating account of the issuer and dissipated by the fourth and fifth defendants, the husband and wife who were the 90% majority shareholders in the issuer.

The plaintiff's case failed against the trustee on points of pleadings. In addition, it was also held that there was no duty on the trustee to account for the proceeds paid into any account other than the designated accounts, nor was there any obligation on the trustee to ensure that proceeds were paid by MINDEF as the obligor under the assigned contracts into the proper designated account.

It is easy to feel more than a tinge of sympathy for the trustee in Pesaka Astana No. 1, as the responsibilities of a trustee does not appear to be commensurate with the obligations placed on it. The commercial reality is that the bulk of the transactions fees are gobbled up by the lead arranger (who frequently further profit from underwriting the issuance), leaving the trustee to battle for scraps with the reporting accountant before finally the lawyers are given whatever is left over. At the same time, risks undertaken by the trustee continues throughout the life of an issuance or programme (or even beyond that, in the event of a default). The role of the arrangers and underwriters, on the other hand, would be substantially complete at the point of issuance of the debt securities.

It is therefore clear that there needs to be a realignment of the fees as the risks are not being accurately priced by the market participants. Trustees play an enormously important role in an issuance, because they are the repository within which the rights of the bondholders reside. At the time the transaction documents are drafted, the bondholders do not yet exist, and therefore the trustee, even at the inception of the transaction, has to play a policing role to ensure that the future rights of the bondholders are not compromised. Yet, as a matter of practice, trustees are not involved in structuring a transaction or commenting on its terms. The reality is that the lead arranger wields the most influence in ensuring investors' interest are adequately protected. An arranger has an interest in ensuring that the deals that it originates are well-subscribed, and to this end will ensure that the terms of a transaction accord sufficient protection to the holders of the securities. Nonetheless, the arranger is in a position of inherent conflict, as the duty it owes to the issuer, its own interest as an underwriter of the issuance, and the interest it has in ensuring the deal is fully subscribed are not necessarily in congruence with one another.

The applicable guidelines have been amended some time back (but after the events that gave rise to Pesaka Astana No. 1 and Pesaka Astana No. 2) to require that trustees be separately represented by counsel, but the question is whether this alone is enough to ensure that bondholder rights are taken care of at the inception of a transaction. The problem can be exacerbated by the fact that trustees are often not consulted (or even appointed) at the point in time the issuance is being structured, and are only brought in at the drafting stage. This is particularly true in complex structured financing deals, project financing and Islamic financing transactions.

Since 2007 the Securities Commission has also introduced further safeguards in requiring trustees for bond issuances to be registered with the Commission and in making their directors subject to the fit and proper criteria.

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A trustee for an issuance of securities is indisputably a fiduciary and therefore owes a duty of care and skill in the discharge of its obligations. This duty is owed to the holders of the debt securities to which the trust relates. It is critically important that the law defines with clarity the scope and extent of this fiduciary duty, in order to provide certainty to market participants, and for the risks to be borne by the party that is best placed to bear such risks, and for such risks to be suitably priced.

It is here that the judiciary can and must play its role in advancing the law in the capital markets.

CHAPTER 7

HUMAN RIGHTS

VIOLENCE AGAINST WOMEN


STOP VIOLENCE AGAINST WOMEN!

VIOLENCE AGAINST WOMEN

"To deny people their human rights is to challenge their very humanity"
-Nelson Mandela

The principle of universality of human rights is the cornerstone of international human rights law. Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Speaking of rights allow us to express the idea that all individuals are part of the scope of morality and justice.

To protect human rights is to ensure that people receive some degree of decent, humane treatment. To violate the most basic human rights, on the other hand, is to deny individuals their fundamental moral entitlements. It is, in a sense, to treat them as if they are less than human and undeserving of respect and dignity. Examples are acts typically deemed *"crimes against humanity*," including violence against women, child trafficking, slavery and sexual harassment.

For the purpose of this article, we will discuss one of the more serious violation of human rights; that is violence against women. It is one of the most pervasive violations of human rights in the world, one of the least prosecuted crimes, and one of the greatest threats to lasting peace and development. Violence against women is an extreme manifestation of gender inequality and systemic gender-based discrimination. Women of all ages and backgrounds are at risk of many different types of violence. The right of women to live free of violence depends on the protection of their human rights and a strong chain of justice.

The roots of violence against women lie in persistent discrimination against women. It takes many forms – physical, sexual, psychological and economic. Around the world at least one woman in every three has been beaten, coerced into sex, or otherwise abused in her lifetime. Every year, violence in the home and the community devastates the lives of millions of women. Women's rights are violated daily in specific ways, be it through rape, sexual harassment or domestic violence. Women's right can also be violated through denial of employment, educational or other kind of opportunities necessary to reach one's fullest potential.

The United Nations has defined violence against women *as "any act of gender based violence that results in, or is likely to result in, or is likely to result in physical, sexual or psychological harm or suffering to a woman, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life"*. It affects women everywhere. It impacts women's health, hamper their ability to participate fully in society, affects their enjoyment of sexual and reproductive health and rights, and is a source of tremendous physical and psychological suffering for both women and their families.

The impact of violence ranges from immediate to long term physical, sexual and mental health consequences for women and girls, including death. It negatively affects women's general well-being and prevents women from fully participating in society. Violence not only has long lasting consequences for women but also their families, the community and the country at large.

Violence against women has been recognized internationally. This can be seen as follows:

i. **The Universal Declaration of Human Rights** states that *"everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"* (Article 2)

ii. **The Declaration on the Elimination of Violence Against Women** states that *"violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"* (Article 1) It further asserts that states have obligation to *"exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against*

women, whether those acts are perpetrated by the State or by private persons" (Article 4-c)

iii. **The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)** defines discrimination against women as *any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality between men and women of human rights or fundamental freedoms in the political, economic, social, cultural, civil or any other field"* (Article 1).

Violence against women remains a problem in Malaysia. Every year, too many women in Malaysia experience violence from people they live with; whether husband, partner, family member, or employer. It occurs across the social strata, in cities and in rural areas. Although many dramatic cases have been reported in the media, the issue is still viewed with little interest by the general public. Malaysia is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Federal Constitution of Malaysia also guarantees fundamental liberties and equality on the basis of gender (Article 8(2) of the Federal Constitution). The state has an international and constitutional obligation to eliminate violence against women.

Domestic violence is clearly underlined as a violation of women's human rights, a criminal act, which is not merely a private matter. It is a serious but often hidden problem in Malaysia. Various factors contribute to the reason why domestic violence is an under-reported crime in Malaysia. This includes the reluctance of battered women to make their problem public and seek assistance due to shame, fear of retaliation from the husbands, lack of family support, unawareness that physical abuse is a crime and belief that the police and legal system cannot help them.

Domestic violence is an abuse of power in an intimate relationship when one partner (usually male) attempts to control and dominate the other. It is not only physical but sexual, economic and almost always psychological leaving the women disempowered and leaving in fear.

One of the most important milestones in the work to eliminate violence against women in Malaysia is the enactment of the Domestic Violence Act in 1994. Malaysia passed the Domestic Violence Act (the DVA) in 1994, the first country in the region to pass a specific law on domestic abuse. It was implemented two years later, and it has been amended several times to further strengthen the law.

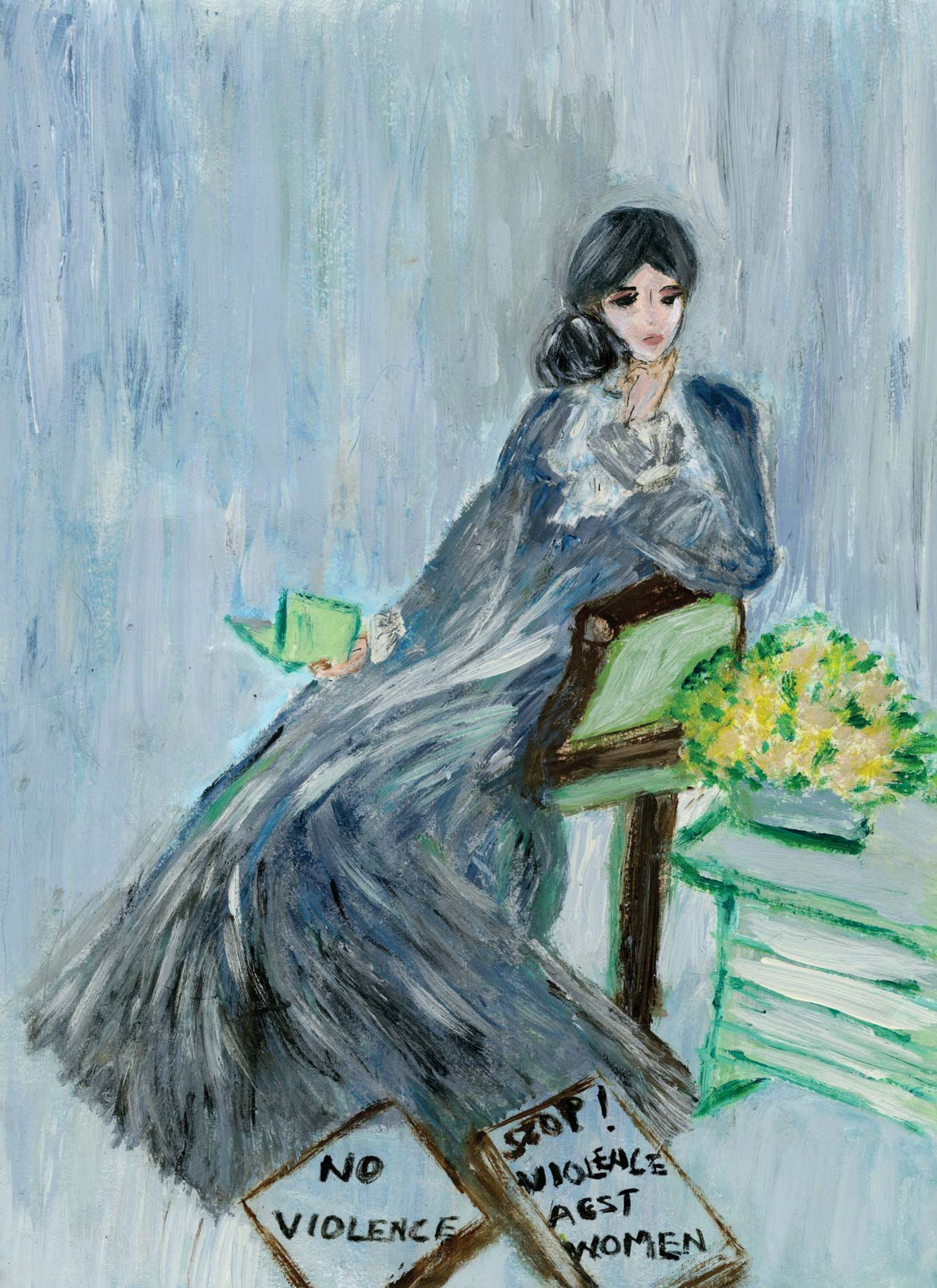
The recent amendment in 2012 of the DVA 1994 has expanded the definition of 'domestic violence' to include not only physical injuries but also psychological and emotional injuries as well. The DVA recognizes all forms of domestic violence as seizable offences (crimes for which the perpetrator can be arrested without a warrant). It guarantees protection for all victims of domestic violence and provides support such as the Interim Protection Order (IPO), which is supposed to safeguard the victims during the ongoing investigations. According to the law, if a protection order is breached, the abuser can be charged and punished with a fine or imprisonment, or both.

The DVA recognizes that violence at home is not a family matter but one of public concern. The DVA also aims to provide greater legal protection to domestic violence victims. It is an important instrument in the struggle to end domestic violence in Malaysia.

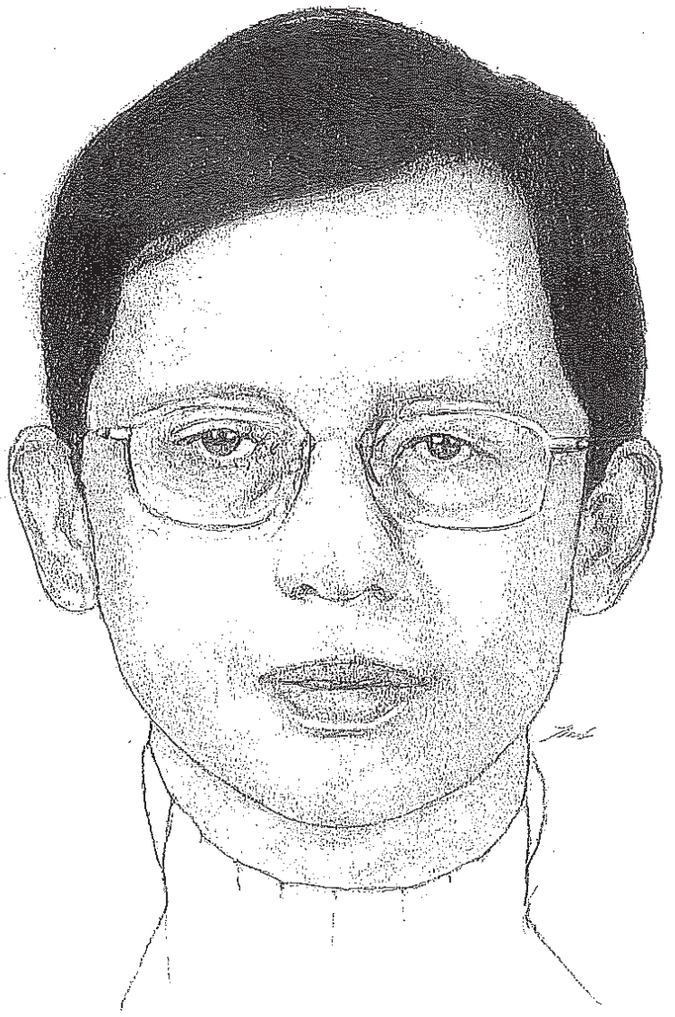
In order for the DVA to make a real difference to the lives of victims of domestic violence cases, the provisions in the Act should be carried out effectively by the relevant authorities, specifically the police and the legal system. Police procedures should be specified and streamlined and such procedures should be accessible to public knowledge to help various women or interested organizations speed up their efforts in attending to such cases. Monitoring of the implementation of the DVA should also be carried out by both the governmental and non-governmental agencies involved.

In conclusion, violence against women can be prevented. Every case that is handled well has the potential to save a life. For a start, violence against women must be viewed as a serious violation of human rights.

Efforts to respond to violence against women must be monitored regularly to ensure that women have protection under the law and in reality. A positive development today is that it's not just women's group that are looking into issues regarding women's rights and safety issues. Now, practically everyone is picking up social issues, from women's magazines to companies and the media, it's not just the NGOs and that helps to contribute to a better awareness among the public. It is thus our collective responsibility.


NO
VIOLENCE
STOP!
VIOLENCE
AGST
WOMEN

JUDICIAL DECISIONS APPLYING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) PRINCIPLES AND INCORPORATING GENDER PERSPECTIVE



By Justice Hasan Lah
Judge of the Federal Court

Introduction

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly. It entered into force as an International Treaty on 3 September 1981 after the twentieth country had ratified it.

It seeks equality for women and it places legal obligation on the State Parties to eliminate direct and indirect discrimination. It contains 30 Articles and its preamble explicitly acknowledges that "*extensive discrimination against women continues to exist*", and emphasises that such discrimination

"violates the principles of equality of rights and respect for human dignity". As defined in Article 1, the term '*discrimination against women'*, means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

CEDAW outlines the obligations of the State Parties and the measures to be taken by the State Parties to eliminate discrimination. Malaysia ratified CEDAW in 1995 with reservations made to Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g) and 16(2). In July 2010, Malaysia removed its reservations to Articles 5(a), 7(b) and 16(2). Article 9(2) provides that State Parties shall grant women equal rights with men with respect to the nationality of their children. Article 16(1) provides that State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

Before we discuss the relevant judicial decisions applying the principles set forth in CEDAW, it would be useful to highlight briefly the actions taken by Malaysia administratively and legislatively to comply with her obligations under CEDAW to eliminate gender based discrimination.

The Administrative Actions

In 1989, the National Policy on Women was formulated by the National Advisory Council on the Integration of Women in Development. Its objectives are to ensure equitable sharing in the acquisition of resources and information as well as access to opportunities and benefits of development, and to integrate women in all sectors of national development in line with their abilities and needs in order to improve quality of life, eradicate poverty, abolish ignorance and illiteracy and ensure a peaceful and prosperous nation.

For the purpose of protecting women in the workplace, the Ministry of Human Resources launched a Code of Practice on the Prevention and Eradication of Sexual Harassment in the workplace. However, the adoption and implementation of the Code is entirely voluntary and as a result, many employers have failed to adopt it.

The Legislative Actions

Malaysia has not passed a specific law to make CEDAW as a domestic law and applicable in Malaysia. Instead, some of the CEDAW principles are incorporated into the existing laws in a piecemeal fashion. The most important action taken by Malaysia to facilitate the implementation of CEDAW principles in Malaysia was to amend Article 8(2) of the Federal Constitution in 2001. Article 8 of the Federal Constitution guarantees equality before the law. Article 8(2) was amended by inserting the word *"gender"* therein to provide that except as expressly authorised by the Constitution, there shall be no discrimination against citizens on the ground of gender also. This is in line with Article 15(1) of CEDAW which provides that State Parties shall accord to women equality with men before the law.

Article 11(1) of CEDAW provides that State Parties shall take appropriate measures to eliminate discrimination against women in the field of employment. One form of gender discrimination in employment is sexual harassment at workplace. The Employment (Amendment) Act 2012 introduces several new provisions to the Employment Act 1955. This includes a new Part XVA which prohibits sexual harassment in the workplace. The term *"sexual harassment"* is defined as any unwanted conduct of sexual nature, whether verbal, non-verbal, visual, and gestured or physical, directed at a person which is offensive or humiliating or is a threat to the person's well-being, arising out of and in the course of the person's employment.

Section 81B of the Employment Act 1955 provides that upon receipt of a complaint of sexual harassment, any employer shall inquire into the complaint in a manner prescribed by the Minister. Meanwhile, section 81C provides that where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(1) and the employer is satisfied that sexual harassment is proven, the employer shall, in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include dismissing the employee. Under section 81F, any employer who fails to inquire into complaints of sexual harassment under section 81B(1) commits an offence and shall be liable to a fine not exceeding ten thousand ringgit.

Victims of sexual harassment can also resort to the Penal Code, sue in tort for assault and battery or claim for unfair dismissal in the event they are dismissed. The Domestic Violence Act 1994 provides legal protection in situations of domestic violence. The Act defines the term *"domestic violence"* and the word *"spouse"* is defined as to include a de facto spouse, that is to say, a person who has gone through a form of ceremony which is recognised as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnisation and registration of marriages. Under section 5(1), the court may, in proceedings involving a complaint of domestic violence, make a protection order restraining the person against whom the order is made from committing domestic violence against the complainant.

The Judicial Decisions

On 4 September 2013 and 5 September 2013, the United Nations Entity for Gender Equality and the Empowerment of Women, in collaboration with the International Commission of Jurists and the Thailand Office of Judiciary convened a judicial colloquium with the following objectives:

(a) to discuss developments in gender equality jurisprudence in relation to State obligations under the CEDAW, including challenges and successful cases;

(b) to discuss the role of the judiciary in promoting women's access to justice; and

(c) to strengthen the understanding of CEDAW and its application in the context of culture and customary and traditional practices or religion among the judiciary in South East Asia.

One of the recommendations made by the meeting was that South East Asian judges should apply CEDAW and its principles to domestic judicial decision making, to combat and redress gender discrimination. It was agreed that CEDAW and its principles may be used in the following ways:

(a) as an interpretative guide;

(b) to resolve ambiguity;

(c) to fill gaps in domestic law; and

(d) as a source of definition in particular concepts of equality and discrimination.

In **Airasia Bhd v. Rafizah Shima Mohamed Aris** [2014] MLJU 606; [2015] 2 CLJ 510 the Court of Appeal clearly stated that CEDAW does not have the force of law in Malaysia because there was no legislation passed by Parliament to provide for the application of the CEDAW principles domestically. In Malaysia, the practice is that of dualism which means a treaty or convention which had been ratified by Malaysia can only be applied domestically if and when a law is enacted for that purpose. In paragraphs 47 to 50 of its judgment, the Court of Appeal said:-

> *"[47] The learned author, Tunku Sofiah Jewa, in her book "Public International Law – A Malaysian Perspective", Vol. I Pacific Publication, 1996 stated at page 35–*
>
> > *"Treaties to which Malaysia is a party may either require subsequent legislation, in which case they become the law of the land as soon as the necessary laws are enacted or, they may not in which case they remain within a special category of Malaysia's international law, binding only herself vis-à-vis the other parties to the treaties but having no effect as such on Malaysian subjects." (emphasis added).*
>
> *[48] Further, Kevil YL Tan and Thio Li-Ann in Constitutional Law in Malaysia and Singapore wrote –*
>
> > *"Although CEDAW contemplates taking appropriate measure, including legal measure, against private parties which commit gender discrimination, the treaty is not self-executing and needs to be given effect by a domestic statute which confers a horizontal reach upon treaty norms."*
>
> *[49] In our considered opinion, in Malaysia, unless a treaty is domesticated, it cannot be enforced. In other words, without express incorporation into domestic law by an act of Parliament following ratification of CEDAW, the provisions of the international obligations in the said Convention do not have any binding effect.*

> *[50] In sum, insofar as Malaysia is concerned, treaties only domestically enforceable where they have been incorporated by statute. Ratification alone does not make the provisions of treaties applicable for municipal law."*

However, the decision of the Court of Appeal must now be read with a rider that some CEDAW principles have been incorporated into our domestic laws on a piecemeal basis as mentioned in the foregoing paragraphs of this article. The doctrine of transformation or dualism has been applied by the Malaysian courts consistently. For example, in **Bato Bagi & Ors v. Kerajaan Negeri Sarawak & Another Appeal**, [2011] 8 CLJ 766 at page 828, Raus Sharif FCJ (as he then was) opined:

> *"[180] On the issue whether this court should use 'international norms' embodied in the UNDRIP to interpret arts. 5 and 13 of the Federal Constitution I have only this to say. International treaties do not form part of our law, unless those provisions have been incorporated into our law. We should not use international norms as a guide to interpret our Federal Constitution. Regarding the issue of determining the constitutionality of a statute, Abdul Hamid Mohamad PCA (as he then was) in PP v. Kok Wah Kuan [2007] 6 CLJ 341 at p. 355 had this to say:*
>
> > *So, in determining the constitutionally or otherwise of a statute under our constitution by the court of law, it is the provision of our Constitution that matters, not a political theory by some thinkers. As Raja Azlan Shah FJ (as his Royal Highness then was) quoting Frankfurter J said in Loh Kooi Choon v. Government of Malaysia [1975] 1 LNS 90; [1977] 2 MLJ 187 (FC) said: "The ultimate touchstone of constitutionality is the Constitution itself and not any general principle outside it."*

There are views that the Malaysian courts should depart from the conservative approach in applying international laws and instruments in the country. It was argued that in other jurisdictions, the principles or norms of international instruments may be incorporated through the process of common law which involves the exercise of the interpretative jurisdiction of the courts. Courts may, through the interpretation of municipal laws, introduce and adopt principles of international human rights law into the domestic system.

It has also been proposed that the court should adopt a broad and liberal approach when interpreting a written constitution in recognising it as a '*living and organic*' instrument capable of adapting to changing circumstances. Judges should be free to interpret the articles on fundamental liberties in Part II of the Federal Constitution using international human rights instruments as external aids of interpretation. The courts can favour a construction of their domestic laws in accordance with the government's international obligations, having ratified international treaties and conventions. It was also argued that the courts could rely on section 4(4) of the Human Rights Commission of Malaysia Act 1999 which provides that '*regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution*.'

We will now revert back to the case of Airasia Berhad. The relevant facts are these. The respondent, who was an employee of the appellant was chosen to undergo an Engineering Training Programme on 19 October 2006. For that purpose the respondent was required to execute an agreement known as "*Training Agreement and Bond*". The training period was approximately 4 years from the day she first attended the course. Clause 5.1 of the agreement listed out the fundamental terms and conditions of the agreement and provided that the occurrence of any of the events and circumstances therein would constitute a repudiation of the agreement. Clause 5.1 (4) which was only applicable to female Engineering Trainees prohibited a female trainee from getting pregnant during the course.

In June 2010, the respondent informed an officer from the appellant's People Department that she was pregnant. She was then instructed to obtain a doctor's letter confirming her pregnancy which she did. By a letter dated 1 July 2010, the appellant terminated the agreement and the respondent's employment.

The respondent then filed an Originating Summons in the High Court at Shah Alam on 17 April 2012, seeking several orders including:

a) a declaration that clause 5.1 (4) of the agreement was null and void;

b) a declaration that clause 5.1 (4) of the agreement is contrary to the principle of public policy or section 24(e) of the Contracts Act 1950 and section 43 of the Employment Act 1955, and Articles 3,5,8 and 11 of the Federal Constitution, and discriminated the respondent's right as a woman and wife and the United Nations Universal Declaration of Human Rights and CEDAW; and

c) a declaration that the termination of the respondent's employment by the appellant based on clause 5.1 (4) of the Agreement is void and illegal based on the same grounds mentioned in paragraph (b) above.

At the hearing of the Originating Summons, the respondent had elected to rely only on Articles 8 and 11 of the Federal Constitution and CEDAW. It is pertinent to note that Article 11(2)(a) of CEDAW states that in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures to prohibit dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status.

The respondent's application was allowed by the High Court. However, on appeal, the Court of Appeal reversed the decision of the High Court. The Court of Appeal ruled that CEDAW principles are not applicable within the country as those principles had not been transformed into domestic laws. As such, the principle of *"equality"* and *"gender discrimination"* as understood in CEDAW had to be disregarded in deciding the issue. The Court of Appeal further held that clause 5.1 (4) of the agreement did not discriminate against the rights of women and did not restrain marriage or prohibit pregnancy if the respondent had completed the said course in the manner as stipulated in the agreement. In other words, the issue was decided based on the law of contract.

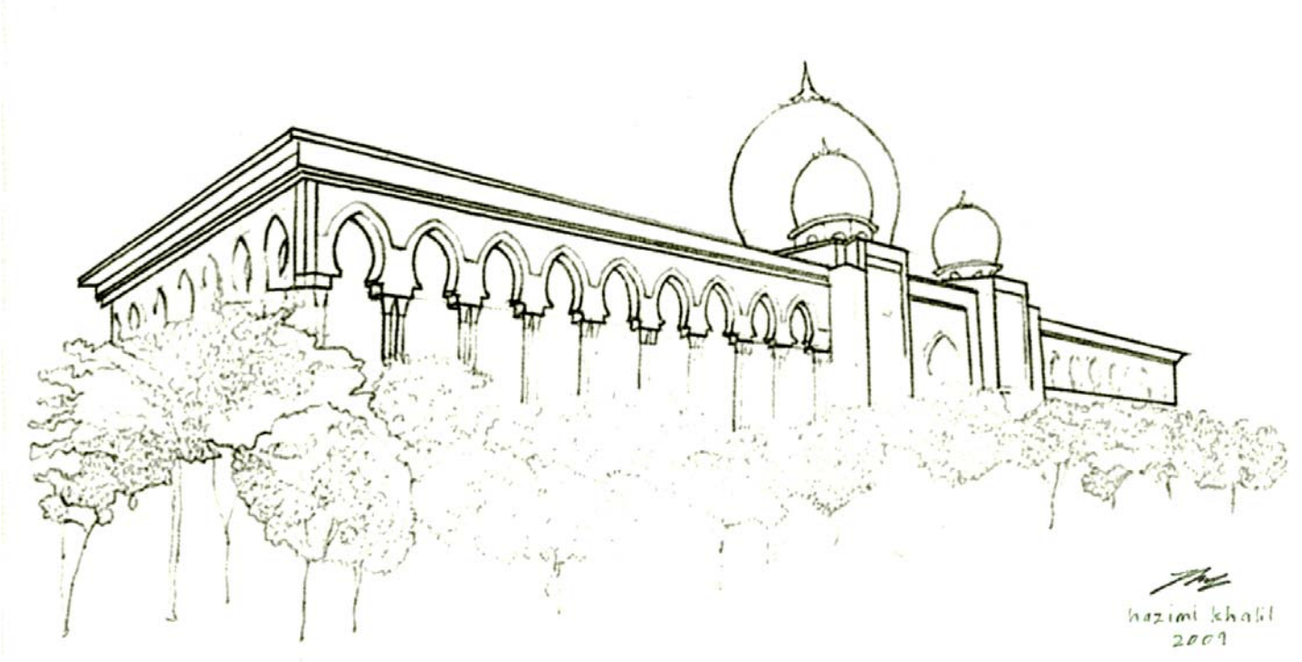
In its judgment the Court of Appeal discussed two other local cases, namely **Beatrice AT Fernandez v. Sistem Penerbangan Malaysia & Anor** [2005] 2 CLJ 713 and **Noorfadilla Ahmad Saikin v. Chayed Basirun & Ors** [2012] 1 CLJ 769. In Beatrice's case, she joined the Sistem Penerbangan Malaysia ("the Airline") as a Grade B Flight Stewardess and she was bound by the terms and conditions of the relevant collective agreement which, *inter alia*, required all stewardess in Beatrice's category to resign on becoming pregnant and in the event she fails to resign the Airline shall have the right to terminate her services. Beatrice became pregnant but she refused to resign. The Airline terminated her service.

Beatrice challenged the Airline's decision to terminate her employment by filing a suit against the Airline at the High Court seeking a declaration that several clauses in the collective agreement contravened Article 8 of the Federal Constitution rendering the collective agreement void. Beatrice also prayed for a declaration that her termination from service was void for contravening the Industrial Relations Act 1967 and the Employment Act 1955.

It must be noted that at the time she filed the suit at the High Court, Article 8(2) of the Federal Constitution had not been amended yet. The High Court dismissed her action and on appeal, the Court of Appeal came to the same conclusion and dismissed her appeal. Beatrice applied for leave to appeal to the Federal Court against the decision of the Court of Appeal. The Federal Court dismissed her application for leave and held that it was not a proper case where leave to appeal should be granted. In its written judgment the Federal Court has given several grounds for dismissing Beatrice's application. Among the grounds given are as follows:

a) Constitutional law only deals with the contravention of individual rights by the Legislature or the Executive or its agencies and does not extend to infringement of an individual's legal right by another individual. Further, reference to "law" in Article 8 of the Federal Constitution does not include a collective agreement;

b) there was no definite special clause in the collective agreement that discriminated against Beatrice for any reason which would justify judicial intervention. The Airline, as the employer was entitled to impose special conditions applicable peculiarly to the job of a flight stewardess; and



An angled facade of the Palace of Justice

c) there was no contravention of Article 8(1) of the Federal Constitution as equal protection therein extend only to person in the same class. Beatrice chose to join the Airlines as a flight stewardess and agreed to be bound by the collective agreement.

In Noorfadilla's case, the High Court seems to have departed from the conservative approach of the Malaysian courts in the application of the international laws and instruments as domestic laws. In that case, Noorfadilla applied for and obtained employment as *"Guru Sandaran Tidak Terlatih"* (GSTT). After receiving her placement memo informing her of her posting, she was asked to attend a briefing on the terms of her service of employment by the education officers of the Education Office of the Hulu Langat District. At this briefing she was asked as to whether she was pregnant. When she admitted that she was three months pregnant, her placement memo was withdrawn. There was a circular issued by the Ministry to say that a pregnant woman cannot be employed to the GSTT.

Noorfadilla demanded that her employment as GSTT be restored but received no written reply. She then filed an Originating Summons against the defendants seeking various reliefs including a declaration that the defendants' act of withdrawing her appointment as a GSTT was unconstitutional, unlawful and void and damages. She argued that the defendants' act was tantamount to gender discrimination and thus against Article 8(2) of the Federal Constitution.

Her application was allowed by the High Court. The High Court held that the defendants' act of revoking and withdrawing the placement memo because she was pregnant constituted a violation of Article 8(2) of the Federal Constitution. The High Court held that in interpreting Article 8(2) of the Federal Constitution there was no impediment for the court to refer to CEDAW. The High Court then applied the principles stated in Articles 1 and 2 of CEDAW and concluded that pregnancy in this case was a form of gender discrimination.

The High Court made the following observations in paragraphs 26 and 28 of its judgment:

> *"[26] In 1988, there was a high level judicial colloquium on the Domestic Application of International Human Rights Norms (the Colloquium) in Bangalore, India. The Chief Justice of Malaysia at that time was one of the participants of the Colloquium. One of the outcomes of the Colloquium was the Bangalore Principles. It set out values and principles that judges should adhere to in carrying out their duties. Of particular relevance here is:*
>
> *Value 5: Equality*
>
> *Principle: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.*
>
> *Application:*
>
> *5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").*
>
> *5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.*
>
> *5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.*
>
> *...*
>
> *[28] Hence, it has become the obligation of this court to have regard to Malaysia's obligation under CEDAW in defining equality and gender discrimination under art. 8(2) of the Federal Constitution."*

The decision of the High Court in Noorfadilla's case was discussed by the Court of Appeal in its judgment in Airasia Berhad's case. As mentioned

earlier the Court of Appeal held that CEDAW does not have the force of law in Malaysia because the principles therein were not transformed into domestic law.

The other aspect of the High Court's decision in Noorfadilla's case is that the court found that the principle of reasonable classification was only applicable to Article 8(1) and did not apply to Article 8(2) of the Federal Constitution. In contrast the Court of Appeal in Airasia Berhad's case held that clause 5.1 (4) of the agreement does not discriminate against the rights of women.

It is however pertinent to note that in some instances, the Malaysian courts have treated the sexual harassment cases independently from gender discrimination. A case in point is the decision of the Court of Appeal in **Mohd Ridzwan Abdul Razak v Asmah Hj. Mohd Nor** [2015] 4 CLJ 295. The appellant was a General Manager at Lembaga Tabung Haji (LTH), while the respondent was a member of the staff who was under his supervision as a Senior Manager. The respondent had lodged a complaint with the Chief Executive Officer of LTH claiming that the appellant had among others, sexually harassed the respondent through vulgar remarks, dirty jokes that were sexually oriented, rude and uncouth words in emails and repeated offers to make the respondent his second wife.

An enquiry committee was then set up to look into the complaint but it was found by the committee that there was insufficient evidence to warrant a disciplinary action to be taken against the appellant. However, the Human Resource Department of LTH decided to issue a strong administrative reprimand to the appellant and transferred the respondent to the Legal Division of LTH.

Aggrieved by the complaint, the appellant lodged an official complaint to LTH seeking disciplinary action be taken against the respondent for lodging the complaint without any proof and defaming him, which led to his contract of LTH not being renewed. However, LTH did not take any disciplinary action against the respondent. The appellant then filed his action against the respondent in the High Court claiming for, inter alia, a declaration that he was not guilty of causing sexual harassment to the respondent. In her defence, the respondent set out in great detail the words and acts of the appellant that led her to make the complaint. The respondent also filed a counterclaim that the sexual harassment by the appellant had caused her to suffer serious emotional and mental stress and trauma and that she became ill as a result.

The High Court found that the appellant failed to prove his claim for defamation against the respondent. On the other hand, the High Court found that there was ample evidence to show that the appellant had uttered vulgar and sexually explicit and rude statements either addressed directly to the respondent or in her presence. The appellant's claim was accordingly dismissed and the respondent's counterclaim was allowed.

The appellant appealed against the decision to the Court of Appeal. The appeal was dismissed by the Court of Appeal. What is important about the judgment of the Court of Appeal in this case is that the court recognised the intentional infliction of nervous shock as a cause of action in tort. The Court of Appeal held that the acts of the appellant in uttering the remarks which amounted to sexual harassment of the respondent and with the knowledge of her vulnerability fell within the ambit of the tort of intentionally causing nervous shock. In arriving at its decision, the Court of Appeal made reference to the Code of Practice on the Prevention and Eradication of Sexual Harassment in the workplace formulated by the government especially the meaning of sexual harassment.

It is pertinent to note that the High Court had awarded the respondent a sum of RM100,000.00 as general damages and a sum of RM20,000 as aggravated and exemplary damages with interest and costs. That decision was affirmed by the Court of Appeal.

Conclusion

For the last 20 years only some of the CEDAW principles have been incorporated into the domestic legislations in a piecemeal fashion. The slowness in the implementation of the CEDAW principles in Malaysia is due to the fact that the government was very cautious in its implementation because of the cultural, religious and social practices of the Malaysian society. International human rights norms may not necessarily suit local circumstances.

The Malaysian courts are of the firm view that for the principles of CEDAW to be applicable in Malaysia those principles must be incorporated into the domestic laws. The rationale for the approach has been clearly stated by the Court of Appeal in paragraph 52 of its judgment in Airasia Berhad's case which is as follows:

> *"[52] We may venture to say that looking from a dualist perspective, the act of incorporating a treaty into municipal law by way of transforming it into statutory law serves as a democratic check and can in part make up for the lack of direct participation of parliament in treaty making. Further, legislators may regard it necessary to tailor the treaty, through an act of transformation, to match domestic circumstances. The legal language used in a treaty may not be compatible with the language used in the legal system of implementing State. The provisions of the treaty may further require elaboration or other adjustment to make treaty provisions enforceable within the legal system of an implementing State. Legislators may also wish to limit direct application to certain provisions of a treaty. The reason may be that the State does not intend to comply with its international obligation to implement the treaty as a whole, or that it wishes to delay the implementation of certain parts of the treaty."*

The amendment to Article 8(2) of the Federal Constitution, as shown by decided cases, does not provide protection against gender discrimination to the employees in the private sector as the constitutional safeguard such as the right to equality fell within the domain of public law and as such applies only to the contravention of individual rights by the public authority. As such, it is necessary that a similar provision which prohibits gender discrimination in employment contracts be incorporated into other written laws such as the Employment Act 1955 and the Contracts Act 1950.

References:

1. Convention On The Elimination Of All Forms Of Discrimination Against Women.
2. Article 8(2) of the Federal Constitution 31.8.1957
3. Domestic Violence Act 1994 (Act 521)
4. Employment (Amendment) Act 2012 (Act A1419)
5. Amer Hamzah Arshad, 'The Protection of Refugee Children in Malaysia: Wishful Thinking or Reality?' [2004] xxxiii No 4 INSAF.
6. Ashgar Ali Ali Mohamed, 'Sexual Harassment and Gender Discrimination' [2015] 3 MLJ i.
7. Honey Tan Lay Ean, 'Measuring Up to CEDAW: How Far Short Are Malaysian Laws and Policies?
8. Izawati binti Wook, 'The Role of the International Human Rights Norms in Malaysian Courts' [2011] 5 MLJ cxlviii.
9. Jashpal Kaur Bhatt, 'Gender Discrimination in EMPLOYMENT - How far does Article 8 of the Federal Constitution guarantee gender equality?' [2006] 6 MLJ xliv.
10. Airasia Bhd v. Rafizah Shima Mohamed Aris 2015 2 [2015] 2 CLJ 510.
11. Bato Bagi & Ors V. Kerajaan Negeri Sarawak & Another Appeal [2011] 8 CLJ 766.
12. Noorfadilla Ahmad Saikin V. Chayed Basirun & Ors [2012] 1 CLJ 769
13. Women's Centre for Change (WCC), Penang.

"On the issue of human rights, it is important to note that western norms and values are not necessarily in accord with the values and culture of our society and therefore those standards cannot be the ultimate yardstick. In Malaysia, human rights are defined under the Human Rights Commission of Malaysia Act 1999 as fundamental liberties as enshrined under Part 2 of the Federal 28 Constitution. The Malaysian value system is further underscored by our Rukun Negara. Therefore, the standards for measuring our adherence to human rights ought to be measured against these benchmarks."

Tun Arifin Zakaria
Chief Justice of Malaysia

"In a multiracial country like Malaysia, the Government has to strike a balance between the freedom of its citizens and the need to ensure that racial harmony is preserved at all times. It is indeed a challenging task. The laws and reliefs are adequate, the only challenge faced by the judiciary in developing societies is the need to harmonize and balance the difference between social control and social justice. On the one hand, it is to protect the fundamental rights of citizen and on the other, as the guardian of the Federal Constitution."

Tun Arifin Zakaria
Chief Justice of Malaysia
at The International Symposium, Jakarta,
Indonesia - 15 August 2015

CHAPTER 8

JUDICIAL TRAINING

COURSES CONDUCTED BY THE JUDICIAL ACADEMY IN 2015

Since its creation in 2012, the Judicial Academy has seen great progress with its training programmes. It continues to provide a channel for judges to convene and search for common ground on various issues of law relevant to their diurnal affairs.

For the year 2015, the Academy's training programmes encompassed two key issues:

a. Judge craft and judgment writing; and

b. How to deal with cases under section 39B of the Dangerous Drugs Act 1952.

In line with the Academy's belief in peer learning exercise, these programmes promote information-sharing and inspire lively discussion among High Court judges on good practices and innovative solutions to issues at hand. The discussion is then enriched with views from a line of facilitators featuring judges from both Federal Court and the Court of Appeal.

Judge Craft and Judgment Writing

Broadly, the aim for this course is twofold:

a. to nurture judge craft among judges, the course stimulates a healthy discussion on the ideal qualities of a good judge as well as deliberation on best practices prior to and during hearing; and

b. recognising the significance of a speaking judgment, the course advances a forum on good judgment writing.

A total of five appellate judges were handpicked to act as facilitators for the programme. They were the Rt. Hon. Justice Raus Sharif, Justice Azahar Mohamed, Justice Zaharah Ibrahim, Justice Balia Yusof Wahi and Justice Aziah Ali.

Justice Balia Yusof Wahi (first from left) offering some pointers to the judges during the group discussion

To ensure the quality of the discussion, the course was conducted in three series with a limited number of participants. The series are as follows:

Series	Venue	Date	Number of Participants
1/2015	Putrajaya	16 to 18 January 2015	8 High Court Judges 8 Judicial Commissioners
2/2015	Johor Bahru	20 to 22 March 2015	10 High Court Judges 6 Judicial Commissioners
3/2015	Penang	2 to 4 June 2015	6 High Court Judges 10 Judicial Commissioners

Facilitators and participants of the seminar entitled *'Judge Craft and Judgment Writing Series 2/2015'* held in Johor Bahru from 20 to 22.3.2015

(L-R first row): Justice Zabariah Mohd. Yusof, Justice Kamardin Hashim, Justice Aziah Ali, Justice Azahar Mohamed, Justice Raus Sharif, Justice Zaharah Ibrahim, Justice Balia Yusof Wahi, Justice Mohd. Sofian Abd Razak and Justice John Louis O'Hara

(L-R second row): Justice Che Mohd Ruzima Ghazali, Justice Mat Zara'ai Alias, Justice Ab. Karim Ab. Rahman, Justice Kamaludin Md. Said, Justice Hanipah Farikullah, Justice Abdul Karim Abdul Jalil, Justice Gunalan a/l Muniandy, Justice Supang Lian, Justice Hasnah Mohammed Hashim, Justice See Mee Chun and Justice Noorin Badaruddin

Facilitators and participants of the seminar entitled '*Judge Craft and Judgment Writing Series 3/2015*' held in Penang from 2 to 4.6.2015

(L-R first row): Justice Suraya Othman, Justice Lau Bee Lan, Justice Balia Yusof Wahi, Justice Azahar Mohamed, Justice Raus Sharif, Justice Zaharah Ibrahim, Justice Aziah Ali, Justice Amelia Tee Hong Geok Abdullah and Justice Hue Siew Kheng

(L-R second row): Justice Ahmad Bache, Justice Gabriel Gumis Humen, Justice Wong Teck Meng, Justice Collin Lawrence Sequerah, Justice Firuz Jaffril, Justice Hashim Hamzah, Justice Abu Bakar Katar, Justice Nordin Hassan, Justice Samsudin Hassan, Justice Dr. Alwi Abd Wahab, Justice Mohd Nazlan Mohd Ghazali and Justice Azmi Ariffin

How to Deal with Cases under Section 39B of the Dangerous Drugs Act 1952 [Act 234] – 5th Series

As the above is very much a key component in the criminal justice proceedings, the Academy continued the training with its fifth instalment of the programme. The details of the programme are as follows:

Venue	Date	No. of Participants
Putrajaya	3 to 4 September 2015	13 High Court Judges 2 Judicial Commissioners

The course featured the Rt. Hon. Justice Raus Sharif, President of the Court of Appeal, and two Federal Court Judges, namely, Justice Ahmad Maarop and Justice Azahar Mohamed as facilitators to the programme.

The course employed a two-pronged approach which can be summarised as follows:

a. a 20-minute presentation by a number of participants followed by a 10-minute discussion on various issues determined by the facilitators. Topics include discussion on provisions related to the prosecution under section 39B of the Dangerous Drugs Act 1952 [Act 234], *viz.*, sections 8, 27 and 90A of the Evidence Act 1950 [Act 56] as well as section 34 of the Penal Code [Act 574]; and

b. a group discussion on the reasoning of a judgment whereby the participants were expected to search for the strengths and weaknesses of the grounds of judgment of a given case. The participants were then required to advance a proposed grounds of judgment prepared by the group for the given case.

Facilitators and participants of the seminar entitled *'How to Deal with Cases under Section 39B of the Dangerous Drugs Act 1952'* held in Putrajaya from 3 to 4.9.2015

(L-R first row): Justice Siti Mariah Ahmad, Justice Zulkifli Bakar, Justice Azahar Mohamed, Justice Raus Sharif, Justice Ahmad Maarop, Justice Mohd Azman Husin and Justice Ghazali Cha

(L-R second row): Justice Mohd Sofian Abd Razak, Justice Ab. Karim Ab. Rahman, Justice Mohd Yazid Mustafa, Justice Akhtar Tahir, Justice Ahmad Nasfy Yasin, Justice Azman Abdullah, Justice Ahmad Zaidi Ibrahim, Justice Zainal Azman Ab. Aziz, Justice Halijah Abbas, Justice Sabirin Ja'afar and Justice Abdul Halim Aman

KOOI FALL, ROYAL BELUM RAINFOREST, PERAK -
THE NATIONAL HERITAGE WE MUST PRESERVE

THE 2ND NATIONAL SEMINAR ON ENVIRONMENTAL JUSTICE, ROYAL BELUM RAINFOREST GERIK, PERAK

From 15 to 18 October 2015, over 50 Malaysian Judges from both superior and subordinate courts, ministry officials, enforcement officers, Non-Governmental Organisation (NGO) representatives and academics gathered at Royal Belum Rainforest Resort, Gerik, for a four-day seminar to examine issues of common interest relating to the affairs of environmental justice in Malaysia. A follow up from the first seminar held in 2012, the event recorded more participation from various environmental enforcement agencies and NGOs, indicating its success in attracting major key stakeholders in the sector.

With the theme *"Environmental Justice in Malaysia: Issues and Challenges"*, the event was a joint effort between the Malaysian Judiciary, the US Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT), the US Embassy, and supported by the Judicial Appointments Commission, the Office of the Chief Registrar of the Federal Court and LexisNexis Malaysia. This collaboration had in turn allured the presence of distinguished guests from the US Government including the Ambassador of the US to Malaysia, His Excellency Joseph Y. Yun and his spouse, the Regional Director for Asia and the

Chief Justice Arifin Zakaria officiating the seminar witnessed by His Excellency Joseph Y. Yun, Justice Raus Sharif and Ms. Amy Chang Lee, Regional Director for Asia and the Pacific, US Department of Justice-OPDAT

Pacific, US Department of Justice-OPDAT, Ms. Amy Chang Lee and the Hon. Justice David O. Carter, US District Court Judge.

The seminar provided judges with an opportunity to explore perceptions of the environmental policy from various viewpoints, put forward by all key stakeholders present during the event. This is imperative, particularly with the establishment of the Environmental Court, launched by the Chief Justice, back in 2012.

A wide range of topics were discussed over ten main sessions, drawing an active and enthusiastic participation from the audience, signifying their concerns over the shortcomings in the environmental justice system.

Issues and Challenges

Among the sessions was a forum entitled *"Environmental Justice in Malaysia: Issues and Challenges"*, chaired by the Rt. Hon. Justice Richard Malanjum, Chief Judge of Sabah and Sarawak with two panellists; Justice Abdull Hamid Embong, a Federal Court Judge, and Professor Dr. Ainul Jaria Maidin, a Law Professor from the Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia.

Justice Abdull Hamid Embong in his presentation recognised the procedural impediment that lies before a litigant in carrying out a public class action in environmental cases, citing the case of **Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors** [1997] 3 MLJ 23.

He then shared the different approach taken by the Philippines, where the courts are ready to welcome public interest litigation, recognising not only the persons whose constitutional right to a healthy ecology has been violated, but also the unborn future generation.

Sharing the same sentiment, Professor Dr. Ainul Jaria Maidin highlighted two relevant international conventions. Firstly, Principle 10 of the Rio Declaration on Environment and Development which emphasises on the public's right to have access, redress and remedy to judicial proceedings. Secondly, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, commonly known as Aarhus Convention, which allows public participation in governmental decision-making process on matters regarding environmental laws.

Professor Dr. Ainul Jaria Maidin expressed her hope that the Malaysian Judiciary can move forward by applying a liberal rule of *locus standi*, thus allowing public interest litigation to take place in Malaysia.

A Perspective from the US Federal Bench

In another session, Justice David O. Carter shed some light on his experience in adjudicating wildlife trafficking offences under the US Lacey Act 1900, particularly cases perpetrated by the organised syndicates. Acknowledging the complexity in prosecuting the leaders of the syndicates, Justice David O. Carter underlined the need to secure the cooperation of the mules by offering them a lesser charge.

Justice David O. Carter summed up three factors which require weigh-ins. Firstly, whilst the widespread of the media coverage on the trial might send the right signal to possible offenders, the Judge ought to consider the prejudice it may cause to the accused. Secondly, the complexity of the trial demands great training programmes for the Judges and enforcement officers. Thirdly, which is paramount, to accord a proper and adequate security to the public officials against any possible advancement of threat, including bribery.

In addition to that, Justice David O. Carter encouraged mutual international cooperation between neighbouring countries, leveraging on the information sharing process to obtain evidence which otherwise might not be available for the purpose of investigation and prosecution.

Technological Revolution in Policing Environmental Laws

At the age of technological revolution, one must expect reform in policing the environmental laws. In her presentation, Ms. Gaythri Raman, Head of the Rule of Law and Emerging Markets for LexisNexis Asia Pacific, shared the story of how the Surui tribe of the Brazilian Amazon use the Google-funded Open Data Kit application as a form of recording instances of illegal logging, thus unmasking the perpetrators to the enforcement authorities.

Similarly, whilst working on Myanmar's civil law reform project, Ms. Gaythri Raman became aware that the absence of proper delineation of land between landowners had resulted in a lack of proper control on deforestation. The blurred lines, due to want of formal title process, have crippled the Myanmar authorities' ability to draw a distinction between reserved land and agricultural land.

A subsequent partnership established with Google Inc. saw a development of a user-friendly tool which can be used to measure and map land boundaries in Myanmar. Bundled together with the tool is the necessary training scheme on data collection, offered to various groups including the farmers, community leaders, aid agencies and NGOs. In order to widen the data horizon, a crowdsourcing method was employed by the government to solicit information from the general public.

Exploring the Royal Belum Rainforest

Session IX was the highlight of the seminar, whereby the participants had the opportunity to experience some of the Royal Belum's great features. This included a visit to one of the Jahai tribe's settlements. Jahai tribe is a sub-group of the Negrito, one of the three main aboriginal groups in Malaysia. They have tightly-curled hair, and are generally shorter and dark-skinned. They live in simple basic structures of palm-thatched shelters.

At the start of the visit, the participants were entertained with Jahai's traditional dance performance, involving singing and dancing in a circle to the music produced by bamboos and small tree logs. The participants then learned about the tribe's hunting methods, to wit, through the use of the bamboo blow pipe, as well as the setting up of

The participants taking a group photo during the visit to one of the Jahai tribe's settlements

animal traps, using rattan and small twigs. Besides hunting, the tribe also survives on forest produce.

The visit to the Jahai settlement was followed by a hike along the Sungai Kooi trail. The tree species found along the trail represent the characteristic of the tropical rainforest such as *Shorea* spp. (Meranti) and *Dipterocarpus* spp. (Keruing). The stunning view of the unspoiled Kooi Waterfall at the end of the hike compensated the enormous effort ascending the trail.

The participants then proceeded to the Sungai Ruok fish sanctuary through the Sungai Ruok trail after a 15-minute boat ride from the Sungai Tiang post, where lunch was served. The fish sanctuary offers a safe haven for various endangered fish including Kelah and Temoleh, where any fishing activities are prohibited. Session IX ended on a high note with the participants enjoying a dip at the Ruok Falls, experiencing nature in its most pristine condition.

Undeniably, exploring the Royal Belum Rainforest infused the participants with invaluable perspectives on the correlation between nature and human lives. It highlighted the necessity for the participants to be more proactive in playing their roles in administering environmental justice in Malaysia.

A Way Forward

The seminar gave birth to the first draft of Belum Statement of Action Plan on Environmental Justice. It is a non-binding document recognising the need to address the issues and challenges as well as means to refine the environmental justice system in Malaysia. Reviewable every two years, it incorporates actions which could be observed and initiated by the three different bodies, namely, the Judiciary, the enforcement agencies and the NGOs.

Conclusion

In his closing remarks, the Rt. Hon. Justice Richard Malanjum called upon the Judiciary and enforcement agencies to comprehend with the new scientific approach in collecting evidence. He stressed on the need for the Judiciary to reconsider the amount of punishment imposed upon conviction in environmental cases, acknowledging the high expectation of the public on the matter.

The Rt. Hon. Justice Richard Malanjum also urged the Judiciary to listen to the knockings on the courts' doors so that public spirited members of the society may be allowed to plead before the courts. He then ended the closing remarks with a reminder:

> *"We are mere trustees of our Mother Earth for our children and that the survival of this planet is our survival."*

THE PRISTINE BEAUTY OF KOOI FALL,
ROYAL BELUM RAINFOREST, PERAK

INTENSIVE STUDY PROGRAMME FOR JUDICIAL EDUCATORS FROM 7 TO 19 JUNE 2015, HALIFAX, NOVA SCOTIA, CANADA

By Justice Dr. Badariah Sahamid
Judge of the Court of Appeal

The Judicial Appointments Commission had nominated me in my capacity of Director of the Judicial Academy, to attend a two week intensive programme for judicial educators from 7 to 19 June 2015 in Halifax, Canada. The programme was conducted by the Commonwealth Judicial Education Institute, (CJEI) which is based in Halifax, in the province of Nova Scotia, Canada.

The CJEI was established to provide support for the creation and strengthening of national judicial education bodies; to encourage regional and Commonwealth networking and exchange of expertise and resources; to train core judicial education faculty and to develop programme modules for use in Commonwealth countries.

The primary objective of the programme is to provide a framework for the establishment and conduct of a national judicial education body. The key areas are curricula development and the utilisation of appropriate teaching methodologies. It also provided the opportunity for the evaluation of existing national judicial education programmes and the forum to raise issues and challenges faced by judicial education institutes of the participants' countries.

It was a pleasant though blustery morning when I first set foot in Halifax, Canada. Although Halifax seemed remote, it was surprisingly only a six-hour flight from London.

I arrived at our appointed accommodation, Cambridge Suites, on the morning of Sunday 7 June 2015. After lunch, the "orientation" session commenced. We were introduced to retired Judge Sandra Oxner, Chairperson of CJEI, as well as Course Director, Justice Adrian Saunders, former Chief Justice of OECS and Judge of the Caribbean Court of Justice.

We were also acquainted with the other 12 participants, who comprise Magistrates, Judges of High Courts, Appellate and Supreme Courts- all of whom were involved in the development of judicial education in their respective countries. The participants were from Bangladesh, Lesotho, Belize, Botswana, Nigeria, India, Papua New Guinea, Jamaica and Zambia.

The two week intensive programme was conducted at the Schulich School of Law, Dalhousie University, Halifax. Every morning for two weeks all the participants would walk (yes, walk) from Cambridge Suites to the law school. The distance was a good 20 minutes of brisk walking to and a further 20 minutes' walk back to Cambridge Suites. Only the Vice President of the Supreme Court of Zambia had an orderly to carry his briefcase. The rest of us learnt to manage on our own. I discovered that Canadians were fitness enthusiasts and think nothing of the daily walks to class. (I did not tell them that in Malaysia, we would have the services of a driver and an orderly to carry our bags!).

There was a wide spectrum of subject matters covered in the programme which included, Judicial Education, Curricula Development, Psychology and Methodology in Adult Education, Judgement Writing, Judicial Ethics and Social Media, Cyber bullying and Sentencing. The course directors were senior academicians, serving as well as retired Judges, as well as Senior Counsels from various Commonwealth jurisdictions.

One of the more interesting features of the programme was the utilisation of a variety of methodologies of instruction during the duration of the programme. While there were the usual interactive lectures and group discussions, there were also video conferencing sessions e.g. with the Federal Judicial Centre in the U.S.

On another occasion, we were shown a video of the film, *"12 Angry Men"* to demonstrate the working of the jury system (which is still practised in some Commonwealth jurisdictions). The lights in the classroom were switched off to duplicate a movie experience. We were pleasantly surprised when a trolley was wheeled in and bags of popcorn were handed out to participants!

Throughout the two weeks we were also kept on our toes with individual written assignments on subjects such as *national judicial education needs, the design of a three-day orientation programme* as well as the *design of a judicial education calendar*.

We were also required to conduct an individual demonstration of a teaching tool. This demonstration was a follow up to discussions on teaching pedagogy for adult learners by an adult educationist.

Group projects included the production of instructional videos. Each group of four to five participants was tasked with writing the script and acting out the roles in a judicial education video. The shooting of the videos was carried out in a courtroom by professionals. It was entertaining to see participants taking on the roles of belligerent witness, cantankerous judge and arrogant counsel, among others. Our group produced a video on the role of a Judge in managing tensions in the courtroom.

In addition to the academic sessions, social events included a reception hosted by the Lieutenant Governor of Nova Scotia, the Hon. J.J. Grant at Government House, and a reception hosted by the Hon. Lena Metlege Diab, Minister of Justice of Nova Scotia at Province House. We were informed that the Hon. Lena Metlage Diab, of Lebanese descent was the first female to be appointed Attorney General and Minister of Justice in Nova Scotia! She is petite in size but certainly a *'towering figure'*. Hurray for the ladies!!!

The two week programme which seemed long at the outset whizzed by quickly. Over the two weeks we had learned about the judicial education needs of one another's jurisdiction, we had worked together on projects and spent many an evening poring over various assignments at the student union coffee bar. After the initial hesitant introductions, we enjoyed an easy camaraderie, united by a common commitment to judicial education.

We also enjoyed social outings like having a lobster dinner (a Halifax specialty) at Peggy's Cove, lunch at Sandra Oxner's city home and celebrating a fellow participant's birthday at the Dalhousie law school.

The programme we attended was in its 22nd year. At the end of the programme we were enrolled as CJEI fellows, representing a common bond not just between participants but judicial education bodies in the Commonwealth.

VISIT BY THE RT. HON. LORD DYSON MASTER OF THE ROLLS OF ENGLAND AND WALES

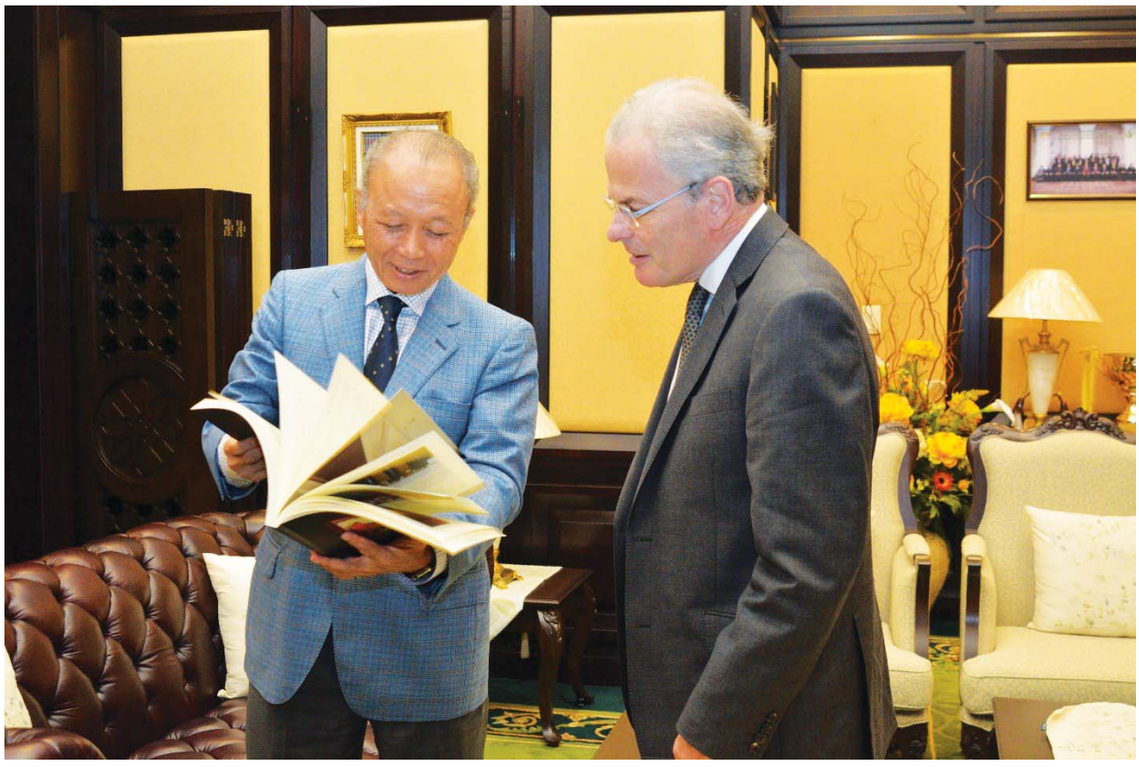
The Rt. Hon. Lord Dyson, Master of the Rolls of England and Wales visited the Federal Court on 23 November 2015. Lord Dyson was appointed as the Master of the Rolls with effect from 1 October 2012. The Master of the Rolls is the Head of Civil Justice, and holds the second most senior judicial position in England and Wales, after the Lord Chief Justice.

During the visit, the Rt. Hon. Lord Dyson called on the Rt. Hon. Chief Justice Arifin Zakaria, and met with Judges of the Federal Court and the Court of Appeal. He was given a tour of the Palace of Justice, including the courtrooms and the Judicial Museum.

The Rt. Hon. Lord Dyson was in Malaysia as a guest speaker at the 29th Sultan Azlan Shah Law Lecture held on 24 November 2015, which was co-organised by the Sultan Azlan Shah Foundation and the University of Malaya.

Justice Raus Sharif, Justice Zulkefli Ahmad Makinudin, Justice Richard Malanjum and Justice Abdull Hamid Embong welcoming Lord Dyson

Lord Dyson meeting with the Judges of the Federal Court and the Court of Appeal



Chief Justice Arifin Zakaria showing the Malaysian Judiciary Yearbook 2014 to Lord Dyson

Lord Dyson admiring the tributes to Almarhum Raja Azlan Muhibbudin Shah Al-Maghfur-lah

CHAPTER 9

JUDICIAL INSIGHTS

RECENT DEVELOPMENTS IN EMPLOYMENT AND INDUSTRIAL RELATIONS LAW IN MALAYSIA

By Justice Raus Sharif
President of the Court of Appeal, Malaysia

Introduction

Industrial relations and employment law comprise key components in the protection and advancement of a citizen's right to livelihood or a workman's right to earn a living. This is a constitutional right protected by Article 5 and Article 8 of the Federal Constitution.

In Industrial Court award number 20/1997 the learned Industrial Court Chairman Siti Saleha Sheikh Abu Bakar reiterated the principle (as reproduced by D'Cruz in 2007) thus:

> *"The right to livelihood is a right protected by Part II of the Federal Constitution. In consonance with the concept of social justice which is firmly entrenched in industrial jurisprudence is the principle that the security of tenure of an employee is akin to a right of property and is not to be treated lightly by a dismissing authority".*

In Malaysia today, according to the Department of Statistics, the number of employed persons as of January 2016 stands at 14,150,000. This translates to a labour force participation rate of 67.7% which is not inconsiderable. These figures are likely to increase in the coming years. It is therefore of fundamental importance that sound institutions of labour market governance and social protection are implemented and practiced domestically, so as to ensure long term stability, upgrading of the economy and shared prosperity of workers and enterprises.

An essential component or feature of successful industrial relations evolution is the law governing employment and industrial relations. It remains a vitally important branch of the law as a majority of the population depends on this legal system for their social and economic security. Industrial relations is the means by which the various interests involved in the labour market are accommodated, primarily for the purpose of regulating employment relationships.

Concept of Dismissal

Dismissal is one of the important aspects when discussing Employment and Industrial Relations Law. Dismissal is considered the last choice of punishment by the employer.

In Malaysia, employer and employee dismissal issues are governed by the Employment Act 1955 (EA 1955) and the Industrial Relations Act 1967 (IRA 1967). Both these Acts provide the machinery for regulating the rights of the employer and employees. Generally, the requirements for a lawful dismissal are a valid substantive justification followed by a fair procedure.[1] It is when a fair procedure is not adhered to that the employee has a cause of action for unlawful dismissal. Section 20 of the IRA 1967[2] prescribes the procedure which every complaint of unfair dismissal has to go through before it finally arrives at the Industrial Court for hearing.

The IRA 1967 has laid down a coherent framework pertaining to industrial disputes. In this regard, section 20(1) of the IRA 1967 is instructive wherein it provides that:

> "*Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.*"

Section 20(3) of the IRA 1967 elucidates the role of the Minister upon receiving the notification of the Director General under subsection (2) where it is stated that the Minister may, if he thinks fit, refer the representations to the Industrial Court for an award. Where representations are made and are referred to the Industrial Court for enquiry, it is the duty of that court to determine whether the termination or dismissal is with or without just cause or excuse. If the employer choses to give a reason for the action by him, the duty of the Industrial Court will be to enquire whether that excuse or reason has or has not been made out. If it finds as a fact that it has not been proved, then the inevitable conclusion must be that the termination or dismissal was without just cause or excuse.[3] The Industrial Court in arriving at its decision must be guided by equity and good conscience. This is encapsulated in the clear words of section 30(5) of the IRA. This is where the concept of proportionality of punishment

[1] Guru Dhilon, *Employment Dismissal Procedures And Laws In The United Kingdom And Malaysia - A Legal Analysis,* 6 MLJ xxi at ii

[2] 20. (1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer, he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed.
(1A) The Director General shall not entertain any representations under subsection (1) unless such representations are filed within sixty days of the dismissal:
Provided that where a workman is dismissed with notice he may file a representation at any time during the period of such notice but not later than sixty days from the expiry thereof.
(2) Upon receipt of the representations the Director General shall take such steps as he may consider necessary or expedient so that an expeditious settlement thereof is arrived at; where the Director General is satisfied that there is no likelihood of the representations being settled, he shall notify the Minister accordingly.
(3) Upon receiving the notification of the Director General under subsection (2), the Minister may, if he thinks fit, refer the representations to the Court for an award.

[3] Goon Kwee Phoy v J & P Coats (M) Bhd [1981] 2 MLJ 129

comes into play. Developments in this area of the law are discussed below.

With the introduction of section 20 of the IRA 1967, a dismissed workman is no longer confined to seeking damages at common law for breach of contract. The workman can now seek the statutorily recognised remedy of *"reinstatement"*. Reinstatement is an official order of the Industrial Court to compel the employer to re-engage the employee in employment as well as placing him back to his position prior to dismissal without any loss in privileges, benefits and salary.[4] Reinstatement is a statutorily recognized form of 'specific performance'. The Industrial Court, in making an order for reinstatement, if for any reason finds it impracticable to do so, may make an order for compensation in lieu of reinstatement which is to compensate the workman for the loss of employment.[5] The conflicting decisions from the Courts below in the computation of the award for compensation in lieu of reinstatement has been put to rest by a recent ruling of the Federal Court. This aspect is also discussed below.

When we discuss dismissal, we always picture it in a conventional way. In changing times, one must bear in mind that dismissal may also present itself in other ways. The parting of ways between an employer and employee can be effected by other methods which include restructuring and downsizing exercises such as the retrenchment and Voluntary Separation Schemes (VSS). This is prevalent in troubled times, especially now, given the meltdown in the current global economy.

Within the compass that I have set myself, I shall endeavour to discuss the abovementioned issues which form the crux of this article. This includes issues on (a) compensation in lieu of reinstatement, (b) the doctrine of proportionality of punishment in industrial relations practice, and (c) voluntary separation schemes (VSS).

a. Compensation In Lieu Of Reinstatement

When the Industrial Court does not reinstate the unjustly dismissed workman for various reasons, it will award compensation in lieu of reinstatement. This compensation is intended to compensate the workman for the loss of his employment following his unjust dismissal. It is a principle of industrial jurisprudence that for compensation in lieu of reinstatement to be awarded, the workman, must firstly *"want his job back"*. Secondly, although the workman wants his job back the court after considering the circumstances should conclude that reinstatement is not a suitable remedy.[6]

In the assessment of compensation in lieu of reinstatement, many factors ought to be taken into consideration, including, *inter alia*, the loss of security of tenure, loss of seniority gained from the years of service, the fact that the workman would have to secure a new career path all over again in his new employment, the fact that he may have to start from a low rung with reduced wages, the circumstances of dismissal, the nature of the charge levelled against the workman, and the effect of the dismissal on his reputation.

The assessment of the amount to be awarded for compensation in lieu of reinstatement is provided in the practice note of the Industrial Court, namely, at the rate of one month's salary for each completed year of service.[7] The quantum of such compensation will depend firstly, on the number of years in respect of which the workman has been continuously employed and secondly, based on his last drawn monthly salary. The practice of assessing compensation in lieu of reinstatement is similar to the retrenchment benefits payable under the Employment (Termination and Lay-Off Benefits) Regulation 1980 made pursuant to the EA 1955 (section 60J).

[4] Thilagavathy Alagan Mutiah v Meng Sing Glass Sdn Bhd [1997] 4 CLJ Supp 368 HC

[5] Section 30(6A) of the IRA provides that the court in making an award in relation to a reference under subsection 20(3), shall take into consideration the factors specified in the Second Schedule. The factors specified in the second Schedule are as follows:
- In the event that backwages are to be given, such backwages shall not exceed twenty-four months' backwages from the date of dismissal based on the last-drawn salary of the person who has been dismissed without just cause or excuse.
- In the case of a probationer who has been dismissed without just cause or excuse, any backwages given shall not exceed twelve months' backwages from the date of dismissal based on his last-drawn salary;
- Where there is post-dismissal earnings, a percentage of such earnings, to be decided by the court, shall be deducted from the backwages given;
- Any relief given shall not include any compensation for loss of future earnings; and
- Any relief given shall take into account.

[6] Dr. A. Dutt v Assunta Hospital [1980] 1 MLJ 304

[7] Practice Note No. 1 of 1987 is still used when determining the monetary award payable to a claimant in a successful unfair dismissal claim under s. 20 of the IRA.

The facade of the Palace of Justice, Putrajaya

As stated earlier, there are a plethora of authorities on how courts have exercised their discretion in awarding compensation in lieu of compensation. However, the recent case of Sabah **Forest Industries Sdn Bhd v. Industrial Court Malaysia & Anor**[8] posed a very interesting legal quandary with regard to compensation in lieu of reinstatement. The legal issue was presented to the Court of Appeal in this manner:

> *Whether compensation in lieu of reinstatement can be awarded to a person who cannot be reinstated when he had already attained the age of retirement at the time of the filing of his claim (under section 20 of the Industrial Relations Act 1967).*

In that case, the Appellant (Sabah Forest Industries Sdn Bhd) was appealing against part of the decision of the High Court that upheld the Industrial Court's award of compensation in lieu of reinstatement in the sum of RM159,940 to the second respondent (Richard). Briefly, as a result of being dismissed from the services of Sabah Forest, Richard filed a representation to the Minister under section 20(1) IRA 1967 for reinstatement of his position. The Minister referred Richard's representation to the Industrial Court for an award. The Chairman of the Industrial Court found that Richard was dismissed without just cause or excuse. There was no dispute that when the award was handed down, Richard had passed the retirement age. Sabah Forest's complaint was that there was no legal basis for the Industrial Court award to award compensation in lieu of reinstatement to Richard as the issue of reinstatement did not arise, because Richard had already attained the age of retirement. The decision of the Industrial Court was upheld by the High Court. Sabah Forest then appealed to the Court of Appeal.

In allowing the appeal by Sabah Forest, the Court of Appeal held the view that there was no legal basis for Richard to be awarded compensation in lieu of reinstatement. The award of compensation in lieu of reinstatement assumed that Richard who had been dismissed had to be reinstated in his employment as at the date of the award. Obviously, in this case Richard could not be reinstated or be in a position to be reinstated when he had already, as at the date of the award, reached or passed the retirement age. Thus, the issue of paying Richard compensation in lieu of reinstatement did not arise. The Court of Appeal was of the considered view that such compensation could only be ordered if at the date of the award he (Richard) had not reached his age of retirement. In arriving at this conclusion, the Court of Appeal adopted the view expressed by KC Vohrah J (as he then was) in the case of **Haji Md Ison Baba v. Swedish Motor Assemblies Sdn Bhd**[9] wherein His Lordship held that compensation in lieu of re-instatement does not arise in cases where the employee has reached his retirement age.

The Court of Appeal's view was duly considered by the Federal Court in **Unilever (M) Holdings Sdn Bhd v. So Lai & Anor**. The Federal Court affirmed the Court of Appeal's decision in **Sabah Forest Industries Sdn Bhd**.[10] In Unilever, at the time of his dismissal, the first respondent (So Lai) was 14 months away from his mandatory retirement age of 55. He had been in the employment of the appellant company (Unilever) for 17 years before he was dismissed. The Industrial Court held *inter alia*, that So Lai's dismissal from employment was without just cause or excuse. In assessing the monetary compensation, the Court awarded So Lai a sum of RM81,566 as compensation in lieu of reinstatement (RM4,798 x 17 months). Aggrieved with the said monetary award, Unilever applied to the High Court for an order of certiorari to quash the award. The appeal was allowed in part. The High Court upheld the award for compensation in lieu of reinstatement but reduced the award in respect of back wages from 24 months to 14 months, namely, the remaining time period before So Lai reached his age of retirement of 55 years. Unilever appealed to the Court of Appeal against the decision of the High Court. The Court of Appeal dismissed Unilever's appeal. The Court of Appeal held that the learned Judicial Commissioner had correctly affirmed the award of compensation in lieu of reinstatement for 17 months because such award was limited to the remaining period of So Lai's employment, until his retirement. The Court of Appeal held that the learned Judicial Commissioner was right in holding that there were valid grounds to warrant interference and consequently reduced the award for back wages from 24 months to 14 months.

[8] [2014] 8 CLJ 876
[9] [2001] 8 CLJ 180
[10] [2015] 3 CLJ 900

Unilever sought leave of the Federal Court pursuant to section. 96 of the Courts of Judicature Act 1964. Leave was granted on a single question of law, which reads:

> *Whether compensation in lieu of reinstatement can be awarded to a person who cannot be reinstated when he had already attained the age of retirement at the time of the filing of his claim (under section 20 of the Industrial Relations Act 1967).*

The Federal Court answered the question in the negative and allowed Unilever's appeal. The decision of the Federal Court was anchored on the decision of the Court of Appeal in **Sabah Forest Industries Sdn Bhd v. Industrial Court Malaysia & Anor**.

The Federal Court vide the judgment delivered by Mohamed Apandi Ali FCJ (as he then was), stated *inter alia*, that the words *'in lieu of'* signifies *'instead of'* and *'in place of'*. The words *'compensation in lieu of reinstatement'* in its ordinary sense means that *'such compensation was meant to be a replacement or a substitute or an alternative to reinstatement.'* It was further stated that the condition precedent for such compensation is that the employee must be in a position or situation to be reinstated. This according to the Federal Court is fortified by the clear provision of section 20(1) of the IRA 1967 namely, *'to be reinstated in his former employment'*.

To reiterate the above conclusion, the Federal Court noted that the primary remedy for a representation to the Director General of Industrial Relations under section 20(1) of the IRA 1967, is for the workman '*to be reinstated in his former employment*'. Therefore, if a workman cannot be reinstated because of his age, the issue of compensation cannot arise. In particular, the Federal Court noted:

> *"If a workman cannot be reinstated because his age has exceeded his retirement age, the issue of compensation cannot arise. Corollary to that logic, it cannot be in lieu of his reinstatement. After all, reinstatement is a statutorily recognised form of specific performance. On that premise, such specific performance can only be ordered in a situation where the legal basis for such performance does exist. One cannot substitute when the one to be substituted does not or cannot exist. This can be seen in the legal maxim: "lex non cogit ad impossibilia", i.e. the law does not compel the impossible."*

The Federal Court further noted that although section 30(5) of the IRA 1967 requires the Industrial Court to act according to equity, good conscience and the substantial merits of a case without regard to technicalities and legal form, there must be a legal basis for such as action. Reference was made to the case of **Hotel Jaya Puri Bhd v. National Union of Hotel, Bar & Restaurant Workers & Anor**[11], where Salleh Abas FJ (as he then was) while deliberating on the issue of whether the President of the Industrial Court was correct in awarding compensation of two months' salary and fixed allowances to the claimant, stated:

> *"If there is a legal basis for paying the compensation, the question of amount of course is very much a matter of the discretion which the Industrial Court is fully empowered under section 30 of the Industrial Relations Act to fix, but where there is no legal basis for the payment of compensation, I do not think that the President can create legal right and obligation for it and, in my view, the award will be clearly an error in law for which I am prepared to allow this application".*

There is no doubt that the Federal Court's decision in Unilever has a significant legal implication. The decision in Unilever has now put an end to the uncertainty as to when the Industrial Court can make an award for compensation in lieu of reinstatement.[12] What is apparent from the Federal Court's decision in Unilever is that compensation in lieu of reinstatement is not available to a claimant, who has reached or passed his compulsory retirement age, when the award is handed down by the Industrial Court. This is primarily because he cannot be reinstated beyond his retirement age. After all, reinstatement is a statutorily recognised form of specific performance. On that premise,

[11] [1979] 1 LNS 32
[12] Arun Kumar, *Compensation In Lieu of Reinstatement: A Case of Fortuitous Event?*, [2015] 5 CLJ(A) v.

such specific performance can only be ordered in a situation where the legal basis for such performance does exist. To borrow the words of Apandi Ali FCJ in Unilever *"one cannot substitute when the one to be substituted does not or cannot exists"*. This can be seen in the legal maxim: *"lex non cogit ad impossibilia"* i.e. the law does not compel the impossible.[13]

b. Doctrine of Proportionality of Punishment in Industrial Relations Practice

The principle of proportionality of punishment implies that the punishment must be proportionate to the severity of the wrong committed. In cases where misconduct has been established, the disciplinary authority has the discretion to determine the severity of the disciplinary measure justified by the employee's misconduct. The principle of proportionality of punishment, with reference to cases involving dismissal from employment in particular was duly considered by the Federal Court's in **Norizan Bakar v. Panzana Enterprise Sdn Bhd.**[14] The Federal Court in Norizan Bakar had put to rest the issue of proportionality and harshness of punishment *vis-vis* the powers of the Industrial Court pursuant to section 30 (5) of the IRA 1967.[15]

In Norizan Bakar the Federal Court stated that the Industrial Court could substitute its own view, in place of the employer's view, as to what should be the appropriate penalty for an employee's misconduct. The Federal Court was of the view that the Industrial Court is empowered to replace the penalty of dismissal by the employer with a lesser penalty, not amounting to dismissal, even though the employer has specified dismissal as penalty for the particular misconduct in its disciplinary rules and regulations.

What happened in Norizan's case is this. Norizan Bakar ("the Claimant") was employed by Panzana Enterprise Sdn Bhd ("the Company") as the Special Assistant to the Chairman of the Company. The Company had dismissed Norizan from its employment after the Company's domestic inquiry panel found him guilty of four charges of misconduct.

Norizan filed a claim for reinstatement with the Industrial Relations Department. Pursuant to section 20(3) of the IRA 1967, the Minister referred the matter to the Industrial Court for adjudication. The Industrial Court found that of the four charges that were preferred against Norizan, he was only guilty of one i.e., breaching the Company's Code of Conduct in that he failed to declare that he was, at all material times, a director of another company whilst he was in the Company's employment. The Industrial Court decided that the particular misconduct (which had been proven) was not serious enough to justify dismissal. Reinstatement was not a suitable remedy in the circumstances. The Industrial Court awarded Norizan back wages and compensation in lieu of reinstatement. The Company applied to the High Court to quash the Industrial Court Award. The High Court dismissed the application, thus agreeing with the Industrial Court that the punishment of dismissal was too harsh and therefore was without just cause or excuse considering, *inter alia*, that:

(i) the Company was not adversely affected by the fact of Norizan's directorship in another company;

(ii) the company in question was not a competitor to the Company and was, in fact, dormant; and

(iii) the Company's Code of Conduct was merely a guideline.

[13] Ashgar Ali Mohamed, *Compensation In Lieu of Reinstatement: A Review of Unilever (M) Holdings Sdn Bhd v So Lai & Anor*, [2015] 2 ILR(A) ix.

[14] [2013] 9 CLJ 409

[15] 30. (1) The Court shall have power in relation to a trade dispute referred to it or in relation to a reference to it under subsection 20(3), to make an award (including an interim award) relating to all or any of the issues.
(2) Where the Court is not unanimous on any question or matter to be determined, a decision shall be taken by a majority of members and, if there is no majority decision, by the President or Chairman.
(3) The Court shall make its award without delay and where practicable within thirty days from the date of reference to it of the trade dispute or of a reference to it under subsection 20(3).
(4) In making its award in respect of a trade dispute, the Court shall have regard to the public interest, the financial implications and the effect of the award on the economy of the country, and on the industry concerned, and also to the probable effect in related or similar industries.
(5) The Court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form.

The Company appealed against the decision of the High Court to the Court of Appeal. The Court of Appeal set aside the High Court's decision and quashed the Industrial Court award. The Court of Appeal held that both the Industrial Court and the High Court were wrong in substituting their views on the appropriate penalty to be imposed on Norizan. The Court of Appeal held that in considering the reasonableness of what a reasonable employer would have done, no court should substitute its own views, in place of the employer's views, on what should be the appropriate penalty for an employee's misconduct.[16]

Norizan obtained leave to appeal to the Federal Court on the following questions of law:

a. Whether the Industrial Court has the jurisdiction to decide that the dismissal of the Appellant was without just cause or excuse by using the doctrine of proportionality of punishment and/or that the punishment of dismissal was too harsh in the circumstances, when handing down an Award under section 20(3) of the Industrial Relations Act 1967.

b. Further and/or in the alternative, whether the Industrial Court in exercising its functions as stated in the paragraph above can rely to its powers under section 30(5) of the Industrial Relations Act 1967 specifically based on the principle of equity, good conscience and substantial merits of the case.

In answering the first question of law posed in the affirmative, the Federal Court held that the Industrial Court has the jurisdiction to decide that the dismissal of Norizan was without just cause or excuse and/or that the punishment of dismissal was too harsh in the circumstances by using the doctrine of proportionality of punishment, when handing down an award under section 20(3) of the IRA1967. The Federal Court held that the doctrine of proportionality of punishment is inbuilt into the IRA 1967 through section 30(6) and Item 5 of the second schedule of the IRA 1967. By virtue of the doctrine of proportionality of punishment, the Industrial Court in considering the appropriate relief to be granted in cases involving unlawful dismissal of a private sector employee is at liberty to take into account the contributory misconduct of the employee and accordingly can substitute its own views as to what is the appropriate penalty for the employee's misconduct for the view of the employer concerned.

In answering the second question of law posed in the affirmative, the Federal Court highlighted that the Industrial Court in exercising the aforesaid functions as stated above can rely to its powers under section 30(5) of the IRA specifically based on the principle of equity, good conscience and substantial merits of the case. As to what is the exact test to be used in deciding whether the proven misconduct constitutes a just cause or excuse for dismissal is a non-issue as it is trite law that the decision of the Industrial Court is susceptible to judicial review on the grounds of "illegality", "irrationality", "procedural impropriety" and possibly "proportionality" under which the courts are clothed with powers to scrutinize the decision not only for process but also for substance.

The Federal Court emphasised that although the Industrial Court has the jurisdiction to consider and evaluate the harshness of an employer's decision to dismiss an employee by applying the doctrine of proportionality of punishment, on the particular facts and circumstances of this instant case, the Federal Court was unanimous in its view that the Industrial Court had failed to direct its mind to all the matters it should have taken into account and, had the Industrial Court done so, it would have concluded that the dismissal of Norizan by the Company was reasonable and fair.

The Federal Court was convinced that the Industrial Court had disregarded the very important consideration that Norizan was holding the position of Special Assistant to the Chairman of the Company and that Norizan's misconduct had destroyed the trust and confidence which the Company had placed on him. Norizan was dishonest when he declared in writing that he was not serving on the board of directors of any company when he was, in fact, at all material times, serving on the board of directors of another company. Norizan had knowingly made a false declaration. Norizan had signed and accepted the Code of Conduct. In the circumstances and on the facts, this was not a minor misconduct.

[16] Cheah Choo Kheng, *Doctrine of Proportionality of Punishment In Industrial Practice,* [2014] 1 LNS(A) vi

In summary, the Federal Court in Norizan's had laid down the following important principles:[17]

(a) In deciding whether the proven misconduct would constitute just cause or excuse, the Industrial Court is fully endowed with the power to consider whether the misconduct proved warrants the punishment of dismissal.

(b) The Industrial Court has the jurisdiction to decide that the dismissal of the employee was without just cause or excuse by using the doctrine of proportionality of punishment and also decide whether the punishment of dismissal was too harsh in the circumstances when handing down an Award under section 20(3) of the IRA 1967.

(c) The Industrial Court in exercising the aforesaid functions can rely on its powers under section 30(5) of the IRA 1967 based on the principles of equity, good conscience and the substantial merits of the case.

(f) The doctrine of proportionality of punishment is in-built in the IRA 1967 and the Industrial Court was duty-bound to decide, using that doctrine, whether a proven misconduct constituted just cause or excuse for dismissal. This is consistent with what is required of the Industrial Court under section 30(6) of the IRA 1967.

(g) The Industrial Court in making its award is not restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute or in the matter of the reference to it under section 20(3) of the IRA 1967 but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute or the reference to it under section 20(3).

To recapitulate, the Federal Court's decision in Norizan's has an important bearing in the industrial relations and employment Law jurisprudence in that the Industrial Court can substitute its own view as to the appropriate penalty for the employee's misconduct, for the view of the employer concerned.

c. Voluntary Separation Scheme (VSS)

It is settled law that a company has the right to organise and reorganise its business in the manner it considers best for better business management and efficacy. In this respect, the company may reorganise or restructure, by inter alia, retrenching surplus labour. However, in doing so, the company must act bona fide and not capriciously or with motives of victimisation or unfair labour practices, as held in **William Jacks & Co (M) Sdn Bhd v. S.Balasingam**.[18]

With the current melt down in the global economy, dismissal can come in the form of retrenchment. This is so as the term 'dismissal' is sometimes used loosely to refer to a termination which does not involve misconduct; for example, a retrenchment. Retrenchment has been used interchangeably with terms such as lay-off, redundancy, voluntary separation scheme, downsizing, and resizing, among others.

VSS is an acronym for the term Voluntary Separation Scheme. The scheme operates on the premise that employees are invited to participate in a plan on a voluntary basis. In consideration for opting out, the employee will be given an attractive severance package. This is a special form of resignation that is to an extent induced or invited by the employer who agrees to consider the employee's offer to leave on a voluntary basis, by compensating him with some form of monetary benefits.

VSS has become increasingly prevalent in recent times and various organisations have resorted to such schemes particularly in tough economic climates, to reduce their workforce and increase productivity and efficiency.[19] The Federal Court had the opportunity to deliberate and express its views on the legal implications of the VSS in **Zainon bt Ahmad & 690 others v. Padiberas Nasional Berhad**[20]. The question of law posed to the Federal Court for consideration was:

> "*Can an employee who on his own will, accepts the benefits of VSS, resigns, signs a full and final settlement and walks away with benefits under the VSS, turns around and ask for other benefits?'*

[17] *Ibid* (14)
[18] [2000] 7 MLJ 1
[19] Ashgar Ali Ali Mohamed, *Voluntary Retrenchment: Voluntary Or Mutual Separation Scheme,* 1 ILR iii
[20] [2012] 8 CLJ 29

What happened in Padiberas was this: In 2003, Bernas invited applications from its employees to leave their employment under a VSS pursuant to a circular dated 12 September 2003("the Circular"). This VSS exercise was undertaken by Bernas as part of a restructuring exercise to improve operations and increase efficiency.

The Circular emphasised that the VSS was a voluntary exercise and employees were at liberty to decide whether to apply for the VSS and Bernas had the discretion to accept or reject any VSS applications made by its employees. Under the VSS, successful applicants would be entitled to a package which included basic compensation, salary in lieu of notice and unutilised leave and medical benefits for a period of one year post-termination.

The Appellants applied for the VSS and were successful in their applications. They were duly paid their benefits in accordance with the Circular by the end of 2003. Approximately two years after they had ceased employment with Bernas and received the benefits under the VSS, the Appellants wrote to Bernas requesting for payment of retirement/ termination benefits as contained in the Handbook.

Bernas did not accede to the Appellants' request, which resulted in the latter commencing a claim in the High Court seeking, amongst others, a declaration that the Appellants were entitled to the retirement/termination benefits under the Handbook. The learned Judge of the High Court allowed the Appellants' claim and concluded that their right under their original employment contract still subsisted as the contract was not rescinded by Bernas or the Appellants.

On appeal, this decision was unanimously overturned by the Court of Appeal. The Federal Court granted the Appellants' leave to appeal on the question of law stated earlier.

In answering the question of law in the affirmative, thus dismissing the Appellants' appeal, the Federal Court held that a VSS is a separate and independent contract intended to mutually override and terminate an existing contract of employment. The Federal Court emphasised that the two cannot co-exist. Otherwise, the very objective of a VSS would be frustrated.

The Federal Court applied the leading Indian decision on VSS schemes, **AK Bindal v. Union of India**[21], where the Supreme Court of India stated as follows:

> *"The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency ... The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights ... If the employee is still permitted to raise a grievance ... even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the scheme would be frustrated."*

The Federal Court agreed with the reasoning of the Court of Appeal on section 63 of the Contracts Act 1950 and held that the rescission of a contract by mutual agreement would result in an extinguishment of all rights and obligations under the terminated contract, even in the absence of an express provision to that effect.

The Federal Court was of the considered view that a contract which is rescinded by agreement is discharged and cannot be revived and it is not intended that after an employee leaves employment under a VSS, they can return and seek benefits contained in their terms and conditions of employment. The Federal Court disagreed with the Appellants' contention that retirement/termination benefits survived rescission of the employment contract pursuant to a VSS, thus entitling the Appellants to receive the retirement/termination benefits over and above the benefits under the VSS. The Federal Court was satisfied that the Appellants were well aware of the fact that benefits provided to them under the VSS did not include the retirement/ termination benefits.

[21] [2003] 2 LRI 837

Zainon Ahmad's case has also an important bearing on the employment law jurisprudence. This decision of the Federal Court is the first of its kind in Malaysia to discuss the effect of a mutual termination of employment under a VSS and brings much needed clarity to the law pertaining to VSS schemes. It is also one of the few reported decisions on the effect of section 63 of the Contracts Act 1950 which deals with the effect of novation, rescission and alteration of contracts. The commercial practicality of this decision is helpful as it ensures that organisations are not disinclined to implement these schemes for fear of ex-employees re-agitating their rights even after accepting generous compensation packages under such separation schemes. This decision is also in line with long established principles of contract law which prevent parties who enter into legal arrangements, with free consent, and make a promise in consideration for certain benefits, from reneging on their promises after enjoying the benefits pursuant to a contract.[22] The Apex Court's views aforesaid was clearly summed up in the following statement, "... *an employee who on his own will, accepts the benefits of the VSS, resigns, signs a full and final settlement and walks away cannot then turn around and ask for any other benefits.*"

Conclusion

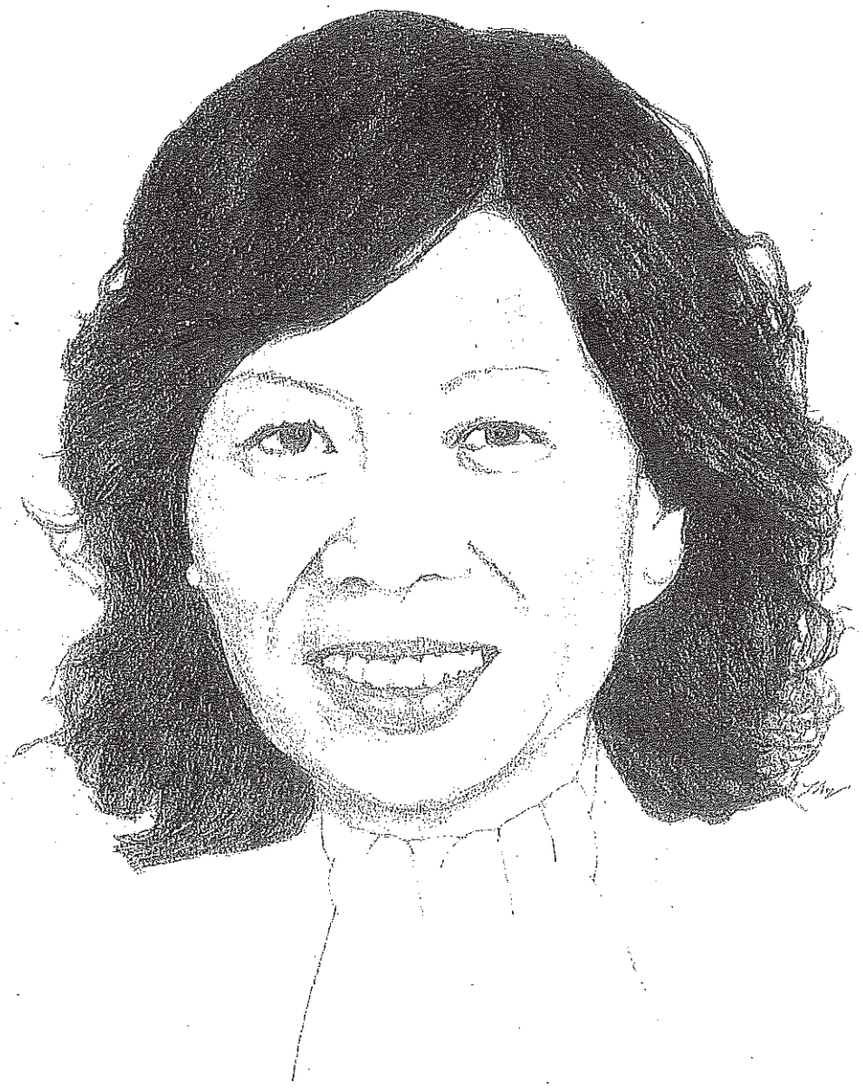
The power to dismiss workers from employment is an extremely powerful economic sanction possessed by the employer. This deprives a worker of his livelihood resulting in financial loss and if unemployment is prolonged, it may involve the worker and his or her family in being deprived of the necessities of life. Therefore, any impending dismissal must be substantively justified and procedurally fair.

Industrial adjudication cannot and should not ignore the claims of social justice. This is a concept based on socio-economic equality. The Industrial Court in its wisdom has to resolve the conflicting claims of employers and employees by finding a fair and just solution.[23]

What I have discussed above is an illustration of judicial opinion in interpreting and applying the statutory provisions of the Industrial and employment law jurisprudence to varying fact-situations. The determination in each dispute forms a precedent for determination of other disputes. It is hoped that the key developments discussed above pave the way for a much more established industrial relations and employment law framework in time to come.

[22] Trishelea Sandosam, *Going Separate Ways*, SKRINE Legal Insights Newsletter
[23] See Oxygen Ltd v Their Workman [1969] 1 LLJ 242, SC

OVERVIEW OF NATIVE CUSTOMARY RIGHTS CASES IN SARAWAK



By Justice Yew Jen Kie
Judge of the High Court

Native customary rights (NCR) claims for land based on the native customs are *sui generis* and peculiar to Sarawak. Since 2000, litigations involving NCR claims have increased, and it stands at 187 cases in Sarawak Courts as at 7.10.2015. One of the reasons for this phenomenon is due to the State Government granting large tracks of land to private companies for logging activities and plantation development without first carrying out a survey, and the natives are claiming that their NCR land have been alienated. Due to the conflicting views on NCR as conceived by the natives and the interpretation of NCR by the Government with reference to the Sarawak Land Code 1958 (Cap 81) (the Land Code), parties have turned to Court for resolution of their disputes.

The Land Code is the primary statute in respect of the native land title in Sarawak. It recognizes NCR. Under section 5(1) of the Land Code, NCR can be created with effect from 1.1.1958 in Interior Area Land (IAL) *via* the following methods:

a. The felling of virgin jungle and the occupation of the land thereby cleared.

b. The planting of land with fruit trees.

c. The occupation or cultivation of land.

d. The use of land for burial ground or shrine.

e. The use of land of any class for rights of way.

f. By any lawful method (deleted in 2000). See section 2 of the Land Code.

However, after 1.1.1958, the creation of any NCR requires permit from the Superintendent[1]. Natives in lawful occupation of State land are deemed licensees until the Government issues them a title[2].

The Land Code recognizes NCR created prior to 1.1.1958. Pursuant to s. 5(2)(ii) of the Land Code, the question whether NCR has been acquired or lost shall be determined by the law in force immediately prior to 1 January 1958.

The Land Code does not define NCR. Section 2 of the Land Code define Native Customary Land (NCL) to mean:

a. a land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1st day of January, 1958, and still subsist as such;

b. land from time to time comprised in a reserve to which section 6 applies; and

c. interior Area Land upon which native customary rights have been lawfully created pursuant to a permit under section 10.

In most, if not all, NCR cases before the Courts are claims based on section 2(a) of the Land Code on the creation of NCL.

The native plaintiffs in NCR claims, seeking declaratory relief in respect of the validity and legality of the titles issued by the Government to the plantation companies, were successfully struck out on the ground that it is an abuse of the process of the Court; the plaintiffs' action challenged the decision of a public authority and the plaintiffs should have proceeded by way of judicial review under Order 53 of the Rules of Court 2012 and not by writ[3].

Normally the natives would not know that their land had been alienated until bull-dozers appear on their land. By then the 3 months period for filing application for judicial review has lapsed. Adherence to O'Reilly's principle effectively shut out the natives from seeking redress in Court.

The Federal Court in **Superintendent of Lands and Surveys, Samarahan Division & Anor v Abas Ak Naun & 5 Others and other appeal**[4] recognises the irreparable injustice caused by invoking O'Reilly's principle and held that NCR claims qualify as an exception to O'Reilly's principle as NCL is fundamental to the social, cultural and spiritual survival of the natives in Sarawak, Article 13(1) of the Federal Constitution enshrined the right to compensation when dispossessed of property and section 5(3) of the Land Code provides for mandatory compensation upon extinguishment of NCR.

In NCR claims which involve constitution of NCL before 1.1.1958, the natives would contend that their claims over the disputed land is recognized both under the common law and the relevant provisions of the Land Code. The (Iban) claimants would contend that based on the *adat* or custom of *"pemakai menoa"*, the NCL in which NCR had been created before 1.1.1958 include not only *"temuda"* which have been cultivated or farmed, but also their communal lands or territorial domain known as *"pemakai menoa"* and the reserved virgin forest referred to as *"pulau"* within their *"pemakai menoa"*.

[1] See section 10 of the Land Code
[2] See section 5(2)(i) of the Land Code
[3] See O'Reilly v Mackman [1983] 2 AC 237. See Shaharuddin Ali & Anor v Superintendent of Lands and Surveys, Kuching Division & Anor [2004] 4 CLJ 775
[4] Civil Appeal No. 01(f)-14-07/2012(Q)

While the Government recognizes the existence of the adat of *"temuda"* as NCL, it does not agree with *"pemakai menoa"* and "*pulau galau*". Their argument is that there is a distinction between native customs and native customary law which carries the sanction of the law. The various Orders or Proclamations of the First Rajah recognized only the custom of *"temuda"* and not any part of the *"pemakai menoa"*. Further, the term "*pemakai menoa"* or *"pulau"* is not listed in the Adat Iban 1993 codification of Iban customs and practice or in any of the statutes and hence not recognized by statute, and the Court should not use it to confer NCR on the land. Under section 2(a) of the Land Code, the natives must establish that their NCR over the lands are recognized by the Land Code and not under common law.

To fortify their argument that NCL was confined to *"temuda"*, the Government relied on **Bisi Jinggot v Superintendant of Lands and Surveys Kuching Division & Ors**[5], which, they argued, is the only NCR case at Federal Court level relating to "*pemakai menoa*" and "*pulau galau*", and it decided that according to the Iban customary concept of "*Tusun Tunggu*", NCR could be acquired *via* two modes, i.e. (i) clearing untitled virgin jungle to create *"temuda"*; and (ii) by receiving the *"temuda"* as a gift or inheritance.

It is noted that the Federal Court in Bisi Ak Jinggot case did not discuss the issue whether "*pemakai menoa"* is part of Iban custom or whether its creation has the force of law. The main issue discussed in that case is the untitled land known as '*temuda*" cleared by natives (Dayak) in Sarawak for padi farming and whether such land can be inherited or transferred *via* sale outside the community under the adat or native customs. At the Court of Appeal, it was recognised that under the Iban system of "*Tusun Tunggu*" there are only two modes of acquiring customary rights over land – one is by felling a virgin jungle and planting crops thereof to create the "*temuda"* and the other is by gift or inheritance. Both modes were approved by the Federal Court.

In **Nor Anak Nyawai & Ors v. Superintendent of Lands and Surveys & Ors**[6] Justice Ian Chin (as he then was) in his landmark decision held that the Iban customs relating to "*temuda*", "*pulau*" and "*pemakai menoa"* existed even before the arrival of the First Rajah, that the common law respects the pre-existence of rights under native laws/customs and that these rights do not owe their existence to statutes. The Land Code does not abrogate the pre-existing NCR but prohibits the natives from claiming new territory without a permit from the Superintendent (under section 10 of the Land Code), that the rights held under a licence can only be extinguished in accordance with laws subject to payment of compensation.

The Court of Appeal overturned the High Court's decision in **Superintendent of Lands and Surveys & Ors v Nor Anak Nyawai & Ors and another appeal**[7], on the ground that there was insufficient proof of occupation by the respondents in the disputed area. It did not disturb the High Court's finding that the concept of "*pemakai menoa*" existed and it endorsed the legal discourse as mentioned above.

In my view, NCR claims founded on common law principles is established. The Federal Court in **Superintendent of Lands and Surveys Miri Division & Anor v Madeli Salleh**[8] accepted the proposition of the law enunciated in **Adong Bin Kuwau & Ors v Kerajaan Negeri Johor & Anor**[9] and Nor anak Nyawai & Ors, *supra,* that the common law respects the pre-existing rights under native laws or customs though such rights may be taken away by clear and unambiguous words in a legislation. The Federal Court also followed **Mabo & Others v Queensland (No. 2)**[10] and **New Zealand Maori Council v Attorney-General**[11], which held that under the common law, the Crown may acquire a radical title or ultimate title to the land but not absolute beneficial ownership of the land. The Crown's right or interest is subject to any native rights over such land.

[5] [2013] 5 MLJ 149
[6] [2001] 2 CLJ 769
[7] [2005] 3 CLJ 555
[8] [2007] 6 CLJ 509
[9] [1997] 3 CLJ 885
[10] [1992] 175 CLR 1 HCA 23
[11] [1987] 1 NZLR 641 CA

Sarawak Old Court Building

In the recent case of **Director of Forest Sarawak & Anor v TR Sandah ak Tabau & Ors**[12], the Court of Appeal echoed the views as expressed in Nor Anak Nyawai and Madeli Salleh cases that the common law recognizes the pre-existing native customs. Justice Abdul Wahab Patail (as he then was) went on to say that the definition of law under the Federal Constitution (Article 160(2)) includes *"written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof".*

The Federal Court has heard the appeal on TR Sandah ak Tabau, *supra,* on 9.9.2015 but its decision is still reserved as at today.

In **Mohamad Rambli Kawi v Superintendent of Lands Kuching & Anor**[13], the High Court recognised the Malay customary practice that the first person that occupy an area for dwelling, farming or generally for "*cari makan*" (foraging the land for food or general use of the land for livelihood) would have NCR over the land and those rights can be inherited by his or her children or relatives and can be transferred to another native *via* the custom of "*serah*".

The burden is on the natives to prove they have NCR over the area claimed. Section 2 of the Land Code (which purported to establish the Torrens System of Land Registration) provides that persons claiming ownership of land must show that they have a title document, if no document is available, the law deems that the land belongs to the State. This poses a challenge to NCR claimants because the lands they are claiming are untitled land. In recognition of this inherent evidentiary difficulty in NCR cases and the unrealistic insistence on strict evidentiary standard, Justice David Wong in **Agi ak Bungkong & Ors v Ladang Sawit Bintulu Sdn. Bhd. & Others**[14] referred to Mason v Tritlon[15] where the New South Wales Supreme Court observed that:

> *"In the nature of Aboriginal society, their many deprivation and disadvantages following European Settlement of Australia and the limited record keeping of the earliest days, it is next to impossible to expect that Aboriginal Australians will ever be able to prove, by record details, their presence genealogy back to the time before 1788. In these circumstances, it would be unreasonable and unrealistic for the common law of Australia to demand such proof for the establishment of a claim to native title. The common law, being the creation of reason, typically rejects unrealistic and unreasonable principles."*

The general rule is that proof of existence of the custom (as far back as living witnesses can remember, in the absence of any sufficient rebutting evidence) is treated as proof of the existence of the custom from time immemorial[16]. The contrary can be easily established by looking at the age of the trees in the area but invariably they have all been felled, thus the destruction of a most valuable piece of evidence. The rebuttal evidence usually comes in the form of aerial photographs.

There must be a limit to the extent of "*pemakai menoa*". Richards on the Land Law and Adat, p 24, wrote, "a *menoa* also means *pemakai menoa*.... *it includes besides farms and gardens, the water that runs through it and the forest around it to the extent of half a day's journey."* In the light of this, the High Court in Nor Anak Nyawai, held that one obvious limitation is the physical ability of the longhouse folks to traverse considerable distance carrying the forest produce or the kills back to the longhouse. Also, "*pemakai menoa*" is delimited by the presence of another longhouse in the vicinity, mountain or rivers. The area of NCL over which NCR has been created including "*pemakai menoa*" is vast and though daunting it may be, upon proof of the existence of NCR, the Court cannot deny the natives their pre-existing rights.

Delineating the boundary of NCL is another hurdle for the natives. Usually an unqualified surveyor is engaged to draw the locality maps to delineate their NCL comprising *"pemakai menoa"*, *"temuda"* and *"pulau"*. Section 104 of the Land Surveyor Ordinance is often relied on to support the Government's argument that no weight should be attached to such maps. This issue has been addressed in the Court of Appeal case, **Tamit Anak Anjat & 2 Ors v Fung Tai Sdn Bhd & 3 Ors**[17] where it was decided that the purpose of the

[12] [2014] 2 CLJ 175
[13] [2010] 1 LNS 115
[14] [2010] 4 MLJ 204
[15] [1994] 34 NSWLR 572 at 588
[16] Halsbury's Laws, Vol. 12, 4th Edn, para 422
[17] Q-01-574-09/2011

locality map was not to seek the land and building authorities' recognition, it is *"merely a narrative of the plaintiff's claim to help convey the facts to and for consideration by the Court and it bears no finality as to boundaries or its accuracy."*

One of the legal methods of creating NCR before 1958 is by continuous occupation. The question arose as to whether the natives have abandoned their NCL because they have ceased agricultural activities on the land and moved to towns. The word "occupation" was defined by Lord Denning in **Newcastle City Council v Royal Newcastle Hospital,** referred to in Madeli's, *supra,* thus:

> *"Occupation" is a matter of fact and only exists when there is sufficient control to prevent strangers from interfering."*

It is thus clear that mere physical absence from NCL does not amount to abandonment of NCR. It is a question of fact which must be determined *via* trial.

In the wake of the Federal Court's decision in Bisi ak Jinggot's case where it was held that NCL cannot be transferred to another party *via* sale, the Land Code was amended in 2014 whereby a new provision is added to para (i)(b) of the proviso to section 5(2) of the Land Code, namely, NCR *"be inherited, acquired or purchased by or transferred or sold or disposed of to or dealt with another native*".[18] Consequent to this amendment, NCL can be transferred or sold to another person outside the community of a village or longhouse.

The rationale underpinning the above amendment is to enhance the economic value of NCL to reflect the market value selling price, thus stimulating the development of NCL in the interior region. Bearing in mind the importance of land to the natives in terms of their communal and spiritual life and economic input, what is there left to sustain the natives who have sold/transferred their NCL and used up the sale proceeds? The infusion of other natives will also change the demography and disturb the social cohesion of that community.

The Land Code gives broad power to the Government to extinguish NCR (acquired pre and post 1958) for public purpose and declaration of such acquisition shall be published in the Gazette and posted on the notice board of the offices of the Superintendent of Lands and Surveys and District Officer for the area where the land is located, and, in the case of NCL, published in at least one newspaper circulating in the State.[19]

The above provision regarding publication of notice is often ineffective because *"natives residing on IAL do not regularly visit the offices of the Superintendent or District Officer. In most circumstances, by the time actual notice is received, the process of termination is complete. Furthermore, the natives are illiterate. Thus, even assuming written notices are posted in areas they regularly access, without additional assistance, there is no guarantee that they will receive actual notice of the termination*."[20] NCR is a complex legal wrangle involving the natives on one hand and the Government and oil palm plantation developers on the other hand. Hearing of NCR claims easily span into weeks/months. The increasing number of NCR cases is placing constraints on the limited judicial time. To reduce NCR litigations:

(1) The Government must not turn a deaf ear to the cry of the natives for recognition of their traditional forms of occupation and; pre-existing rights recognized under the common law and the Federal Constitution. Both sides must engage meaningfully to reach a fair and acceptable solution.

(2) As the Land Code imposed on natives an onerous burden of establishing ownership of NCL, future claims for NCL should be resolved *via* an inquiry first before the evidences are destroyed i.e. bull-dozing of the land through licensing or alienation. This means making sure the notice calling for claims reach the natives concerned before any land is alienated.

(3) In view of the broad power of the Government in extinguishing NCR and to avoid alienation of NCL at the whims of the Government, the power of extinguishment must be exercised subject to proper audience with the affected community.

In conclusion I would suggest that NCR Tribunals, presided over by legally qualified people, be set up.

[18] See CAP.A166/2014
[19] See section 48 Land Code
[20] See Bulan, Natives Customary Land, page 5

AMENDMENTS TO THE COMPANIES ACT: JUDICIAL MANAGEMENT IN INSOLVENCY

By Tan Sri Jeffrey Tan Kok Wha

Introduction

The Companies Bill 2015 was recently passed by the Dewan Rakyat to replace the Companies Act 1965. The Bill was passed with amendments (not germane to the present discussion) on 4.4.2015, and awaits Senate approval as at the time of publication. The drafting of the Bill was completed by the Companies Commission of Malaysia (CCM) in July 2013. In the "Consultation Document on the proposed companies bill", the CCM related that the proposed provisions were drafted primarily based on policies approved by the Cabinet on 18.6.2010. The provisions were also derived from a comprehensive four-year corporate law review conducted by the CCM's Corporate Law Reform Committee headed

by Dato' KC Vohrah, a retired judge of the Court of Appeal, and the recommendations by the Accounting Issues Consultative Committee.

The Bill provides for judicial management, or judicial administration as it is called in other jurisdictions, in sections 403-430. Judicial management under the Bill is neither restructuring under some corporate voluntary arrangement in section 366, nor reorganization under Chapter 11 of the US Bankruptcy Code. The concept of judicial management was not established overnight; it follows a long history of development in corporate insolvency law.

Background

Prior to the [UK] Insolvency Act 1986, English insolvency law viewed liquidation as the centre piece of corporate insolvency law and concerned itself primarily with the disposal of the business, where it could be sold as a going concern, or with individual assets on break-up basis. The only form of external management available was receivership which is an enforcement weapon for the unpaid debenture holder and not a proceeding for the benefit of unsecured creditors. All that could be done for unsecured creditors outside winding up, apart from a contractual arrangement outside the statutory framework, was to seek to conclude a formal scheme of arrangement.(Roy Goode, *Principle of Corporate Insolvency Law*, paragraph 11-02)

It had been so since the UK Companies Act 1862, which provided that a company might be wound up in certain circumstances, such as where the company was unable to pay its debts, and which provided for the appointment of an official liquidator to administer the proceedings. The UK Companies (Winding-up) Act 1890 provided that in the case of a winding by the court, the Official Receiver automatically became the provisional liquidator who was responsible for investigating the affairs of the company and acting as liquidator for getting in the assets and distributing the proceeds. The Companies Act 1929 then gave creditors the right to appoint the liquidator. Further reforms were introduced by the Companies Act 1947 and 1948 and the Insolvency Act 1976 (*Pettet's Company Law*, Third Edition, paragraph 21.1).

Liquidation remained untouched as the cornerstone of corporate insolvency law, and would continue to lie at its heart. But in the early 1980's, there was a sea change in attitudes to liquidation as the only viable option in corporate insolvency law. Yet the alternative of a formal scheme of arrangement was not only complex, costly, and slow, but also did not impose any moratorium on actions against the company pending approval of the scheme of arrangement. A fire sale of the assets of a company in liquidation, as opposed to a controlled sale by the company as a going concern, might not be in the interests of creditors. Secured creditors were protected; unsecured creditors, however, were left to pursue a formal scheme of arrangement, which did not prevent individual creditors from pursuing their claim without regard to the wishes of those supporting the arrangement. The insolvent company itself was not given time to rescue itself, even if it could rescue itself if only given time.

To address these issues, in 1982, the UK Insolvency Law Review Committee proposed a procedure by which the court could appoint an administrator to manage the company, with the same powers as a receiver and manager. The grant of an administration order would, so long as the administration continued, have the effect of freezing the enforcement of rights against the company, whether by secured or unsecured creditors. These proposals were implemented in the UK Insolvency Act 1985 and re-enacted in the UK Insolvency Act 1986, which set out to rescue companies to a profitable position to avoid liquidation, or to realise an efficient sale of the company's assets, which in theory might work out better, especially for unsecured creditors.

Corporate insolvency law was sought to be raised from the basic disposal of the business, to the rehabilitation of the business. To achieve that objective, the UK Insolvency Act 1986 provided an *"administration procedure*" and the *"company voluntary arrangement"*, to operate in conjunction with the long-established scheme of compromise and arrangement.

But the administration procedure proved less than efficacious. Administration could be blocked by the appointment of an administrative receiver. The requirement to obtain a court order, the making of which was usually dependent on a detailed report, caused significant delay and substantial expense.

No time limit was laid down for the completion of an administration. The administrator generally had no powers to make distribution even to preferential creditors without a court order.

Changes were then introduced to the UK Insolvency Act 1986 by the UK Enterprise Act 2002. Those changes were not factored in the Singapore Companies (Amendment) Act 1987 which came into effect on 15.5.1987. Part VIIIA of the Singapore Companies (Amendment) Act 1987, which provides for the appointment of a judicial manager of the company by the court, is substantially based on Part II of the UK Insolvency Act 1986 which came into force on 29.12.1986 (*Walter Woon on Company Law, Revised Third Edition,* paragraph 16.24 note 68). 27 years later, our draft Companies Bill was completed.

Corporate Rescue Mechanism

Briefly, in connection with the corporate rescue mechanism, the CCM related that sections 394-430 of the Companies Bill were drafted to accord with the following policy statement and guiding principle:-

a. modernising the insolvency law by introducing alternative corporate rescue mechanisms for companies whose business are still viable through;

b. introduction of the concept of judicial management scheme; and

c. introduction of the concept of corporate voluntary arrangement.

However, the corporate rescue mechanism does not apply to certain companies. Section 395 provides that all provisions on Corporate Voluntary Arrangement (CVA) shall not apply to:-

a. a public company;

b. a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia;

c. a company which is subject to the Capital Markets and Services Act 2007; and

d. a company which creates a charge over its property or any of its undertaking.

Additionally, section 403 provides that the provisions on judicial management shall not apply to:-

a. a company which is a licensed institution or an operator of a designated payment system regulated under the laws enforced by the Central Bank of Malaysia; and

b. a company which is subject to the Capital Markets and Services Act 2007.

The corporate rescue mechanism under the Bill is substantially based on Part VIIIA of the Singapore Companies (Amendment) Act 1987. Hence, decisions in Singapore should be a valuable guide.

Purpose of Judicial Management

The purpose of judicial management is set out in section 405(1), which reads:-

(1) Where a company or its directors, under a resolution of its members or the board of directors, or a creditor, including any contingent or prospective creditor or all or any of those parties, together or separately, makes an application under section 404, the Court may make a judicial management order in relation to the company if:-

(a) the Court is satisfied that the company is or will be unable to pay its debts; and

(b) the Court considers that the making of the order would be likely to achieve one or more of the following purposes:

(i) the survival of the company, or the whole or part of its undertaking as a going concern;

(ii) the approval under section 366 of a compromise or arrangement between the company and any such persons as are mentioned in that section;

(iii) a more advantageous realization of the company's assets would be effected than on a winding up.

Judicial management is therefore intended (i) to rescue an insolvent company, or the whole or part of its undertaking as a going concern; (ii) to shore up the mechanism under the scheme of compromise or arrangement; and/or (iii) to achieve a more advantageous realisation of the company's assets. As stated in the case of **Hitachi Plant Engineering & Construction Co. Ltd and anor v. Eltraco International Pte Ltd and Anor** [2003] 4 SLR 384: *"Judicial management seeks to rehabilitate a company and achieve a better realisation of assets than possible on liquidation".*

Duties of the Judicial Manager

In the scheme of things, the Court makes a judicial management order (JMO) for the company to be placed under judicial management and for a judicial manager, who is an insolvency practitioner and defined as an approved liquidator, and who is not the auditor of the company, to be appointed. The judicial manager is armed with the wide powers specified in the Ninth Schedule of the Bill.

The role of the judicial manager is to take charge of the property, *"do all such things as may be necessary for the management of the affairs, business and property of the company", to perform all powers and duties of the directors, and "do such things as the Court may order"* (section 414(1)). While judicial management is in force, a moratorium is put in place to give the company a respite from the pressure of creditors and liabilities, and to give time to the judicial manager to put the company in a more advantageous position.

With the utmost of respect, the duties of a judicial manager should have been better defined. The Bill could have adopted paragraph 3 of Schedule B1 of the UK Insolvency Act 1986, which provides that the administrator must perform his functions in line with the purpose of administration:-

(1) The administrator of a company must perform his functions with the objective of–

(a) rescuing the company as a going concern, or

(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either–

(a) that it is not reasonably practicable to achieve that objective, or

(b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if–

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole."

On this paragraph 3, John W. Wood, in *"The Objectives of Administration"* Comp. Law. 2015, 36(1), 1-7 commented as follows:-

> *"The purpose of administration should therefore be viewed as a mechanism aimed at rescuing the corporate entity. Only when this objective cannot be achieved (as not reasonably practicable) is the administrator permitted to consider the second objective and seek to achieve a better result than would be likely in a winding up, albeit also considering the company's creditors as a whole. The final objective, which is an extension but a diluted version of the second objective, is only open to the administrator if none of the other objectives is reasonably practicable."*

As it stands, there is no safeguard that a judicial manager would not merely function as a receiver and manager, which would defeat the purpose of the management, unless the Court exercises its powers under section 414(3)(b). Under this section, the Court may specifically order the judicial manager to perform his duties in line with the purpose of the management, be it (i) the survival of the company, or the whole or part of its undertaking as a going concern; (ii) approval under section 366 of a compromise or arrangement; or (iii) a more advantageous realisation of the company's assets. It would be good practice, therefore, when making an application for a JMO, to seek an order/s in line with paragraph 3 of Schedule B1 of the UK Insolvency Act 1986 above.

Procedure

This brings us to the following question: who can apply for a company to be placed under judicial management, and for the appointment of a judicial manager? Apparently, all parties with interest in the financial affairs of a company, namely the company itself or its board of directors, a creditor – including any contingent or prospective creditor – or all or any of those parties, together or separately, may do so (section 405(1)). It seems that an application may be made even whilst there is a pending petition for the winding up of the company (**Re Dayang Construction and Engineering Pte Ltd** [2002] 3 SLR 379).

The applicant nominates the judicial manager (section 407(1)), but the Court may refuse the applicant's nomination and appoint another insolvency practitioner as the judicial manager (section 407(2)). Where a nomination is made by the company, a majority in value of the creditors (the Singapore provision requires a majority in value and number), including contingent or prospective creditors, may be heard in opposition to the nomination. The Court may, if satisfied as to the value of the creditors' claims and as to the grounds of opposition, (i) invite the creditors to nominate a person who is an insolvency practitioner to act as the judicial manager; and (ii) adopt the nomination if the Court thinks fit (section 407(3)). Curiously, there is no provision for the minority in value of the creditors to be heard.

Conditions

Section 405 of the Bill provides that the Court may only make a JMO if:-

a. the Court is satisfied that the company is or will be unable to pay its debts; and

b. the Court considers that the making of the order would be likely to achieve one or more of the following purposes:-

   (i) the survival of the company, or the whole or part of its undertaking as a going concern;

   (ii) the approval under section 366 of a compromise or arrangement between the company and any such persons as are mentioned in that section;

   (iii) a more advantageous realisation of the company's assets would be effected than on a winding up.

The Court must first be satisfied that the company is or will be unable to pay its debt. The definition of inability is the same as that for winding up, and is determined on a balance of probabilities (**Re Colt Telecom Group Plc** [2003] BPIR 324, High Court of England). In addition, the Court must also be satisfied that a JMO would be likely to achieve one or more of the following purposes: (i) survival of the company; (ii) approval of a compromise or scheme of arrangement under section 366; and/or (iii) advantageous realisation of the company's assets (see **Re SCL Building Services Ltd** (1989) 5 BCC 746, High Court of England).

Any decision on the making of a JMO should begin with a consideration of sections 405(1) and (2) (see **Deutsche Bank Ag and anor v. Asia Pulp & Paper Co. Ltd** [2003] 2 SLR 320). The mere fact that the company is or will be unable to pay its debt would not suffice for the making of such an order.

Powers of the Court

The next provisions are also seemingly straightforward. *"Upon hearing the application for a judicial management order, the Court may dismiss the*

application or adjourn the hearing conditionally or unconditionally or make an interim order or any other order that the Court thinks fit" (section 405(2)). *"Any judicial management order made under subsection (1) shall direct that during the period in which the order is in force, the affairs, business and property of the company shall be managed by a judicial manager appointed by the Court"* (section 405(3)).

Subsection 405(5) is a little more intricate:-

(5) Nothing in this section shall preclude a Court

(a) from making a judicial management order and appointing a judicial manager if the Court considers the public interest so requires; or

(b) from appointing, after the making of an application for a judicial management order and on the application of the person applying for the judicial management order, an interim judicial manager, pending the making of a judicial management order, and such interim judicial manager may be the person nominated in the application and may exercise such functions, powers and duties as the Court may specify in the interim order.

The Court is empowered to make a JMO if it considers that the public interest so requires, that is, even if the prerequisites of section 405(1) for the making of a JMO are not met (section 405(5)(a)), and pending the making of a JMO to appoint an interim judicial manager (section 405(5)(b)).

Section 409 provides that subject to the public interest consideration in subsection 405(5), the Court shall dismiss an application for a JMO if it is satisfied that:-

a. a receiver or receiver and manager referred to in subparagraph 408(1)(b)(ii) (namely any person who has appointed or is or may be entitled to appoint a receiver or receiver and manager of the whole, or substantially the whole, of a company's property under the terms of any debentures of a company) has been or will be appointed; and

b. the making of the order is opposed by a secured creditor.

The operation of section 409 is subject to section 405(5). Hence, the Court is not precluded from making a JMO if the Court considers the public interest so requires. This is the case even though the Court may also be satisfied that a receiver or receiver and manager of the whole, or substantially the whole, of a company's property under the terms of any debentures of a company has been or will be appointed, and that the making of the order is opposed by a secured creditor.

Appointment, even impending appointment, of a receiver or receiver and manager, plus the opposition of a secured creditor, could see off an application for judicial management. But a secured creditor might not be able to resist the making of a JMO if the Court considers that public interest, which transcends any of the statutory purposes (**Re Cosmotron Electronics (Singapore) Pte. Ltd.** [1989] 1 SLR 251), requires the making of that order. What is only certain is this: *"[a] judicial management order shall not be made in relation to a company after the company has gone into liquidation"* (section 405(6)).

Unless discharged, a JMO shall remain on force for 6 months, and upon application for another 6 months. There is no provision for a second extension. The period of judicial management shall not be taken as part of any limitation period as specified under any written law (section 406(2)). For purposes of limitation, time is suspended during the period of judicial management.

Moratorium on Actions

As alluded to above, one major drawback in the scheme of compromise or arrangement, as a rescue mechanism, is that it does not impose an immediate moratorium on actions against the company pending approval of the scheme. Under section 176(10) of the Companies Act 1965, an order of court is required to restrain proceedings against the company pending approval of the compromise or arrangement.

That drawback has been remedied. Section 410 reads:-

During the period beginning with the making of an application for a judicial management order and

ending with the making of such an order or the dismissal of the application –

(a) no resolution shall be passed or order made for the winding up of the company;

(b) no steps shall be taken to enforce any charge on or security over the company's property or to repossess any goods in the company's possession under any hire purchase agreement, chattels leasing agreement or retention of title agreement, except with leave of the Court and subject to such terms as the Court may impose; and

(c) no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with leave of the Court and subject to such terms as the Court may impose.

Under the Bill, upon the making of an application for a JMO, there is an immediate moratorium of the following: (i) proceedings against the company **(Korea Asset Management Corp v. Daewoo Singapore Pte Ltd (in liquidation)** [2004] 1 SLR 671), and (ii) steps to enforce any charge over the company's properties or to repossess any goods in the company's possession under any hire purchase agreement, chattels leasing agreement, or retention of title agreement, except with leave of the Court. An interim judicial manager might be appointed (**Pan Asia Services Pte Ltd v. European Asian Bank AG** [1989] 3 MLJ 385) to safeguard the assets of the company.

One statutory purpose of judicial management is to aid the approval process under section 366 (which will replace section 176 of the Companies Act 1965) of a compromise or arrangement between the company and any such persons as are mentioned in that section. An application for judicial management could be made and granted on the back of that singular purpose. Where an application is made for a JMO to aid the obtaining of approval under section 366, there is an immediate moratorium which only ends with dismissal of the application. A secured creditor may successfully oppose the making of a JMO. But until dismissal of the application, even a secured creditor would have to sit out the period of moratorium.

Upon dismissal of the application, the moratorium is lifted. But if a JMO is made, it has the following effects:-

(a) "any receiver or receiver and manager shall vacate office" (section 411(1)(a));

That can come about only if the secured creditor has not opposed the making of a JMO. It is recalled that a JMO cannot be made if the making of the order is opposed by a secured creditor, unless the Court is satisfied that some public interest necessitates the making of a JMO.

(b) "any application for the winding up of the company shall be dismissed" (section 411(1)(b));

That can only be so if the application for the winding up of the company is a pending application, as a JMO cannot be made after the company has gone into liquidation (section 405(6)). Given the language of section 411(1)(b), "gone into liquidation" must necessarily mean the date of the winding up order.

(c) "no resolution shall be passed or order made for the winding up of the company" (section 411(4)(a));

(d) "no receiver or receiver and manager of the kind referred to in section 374 shall be appointed" (section 411(4)(b));

Section 374 permits the appointment of a receiver, or receiver and manager, by the debenture or charge holder or chargee of the property and undertaking of the company, where the instrument confers that power. Where a receiver or receiver and manager has been or will be appointed, and the making of a judicial management order is opposed by a secured creditor, there cannot be a JMO.

(e) "no other proceedings and no execution or other legal process shall be commenced or continued and no distress may be levied against the company or its property except with the consent of the judicial manager or with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose" (section 411(4)(c))

"The word proceeding connotes a process initiated, whether in court or by way of arbitration or a step in such process" (**Electro Magnetic (S) Ltd (under judicial management) v. Development Bank of Singapore** [1994] 1 SLR 734). The company has immunity from legal proceedings, unless the leave of the judicial manager or the court is obtained.

In the Atlantic Computer [**Systems Plc (No. 1)** [1991] BCLC 606] case, the English Court of Appeal, in laying down the general guidelines for leave applications under s 11(3) of the UK Insolvency Act 1986 (which the material sections of the Act are in pari materia with), held: (a) the purpose of the power to give leave is to enable the court to relax the prohibition against the commencement of proceedings where it would be inequitable for the prohibition to apply; (b) administration is for the benefit of unsecured creditors and should not be conducted at the expense of those who have proprietary rights which they are seeking to exercise; (c) in a proprietary claim, if the grant of leave will not impede the purpose of judicial management, then leave should normally be granted; (d) it will normally be a sufficient ground for a grant of leave if significant loss would be suffered by the applicant by a refusal; and (e) the court need not adjudicate on the merits of the case - it should only be satisfied that the applicant has a seriously arguable case" (**Re Sogo Department Stores (S) Pte Ltd** (under judicial management) [2001] 2 SLR 556 per Judith Prakash J).

The moratorium on the commencement of legal proceedings is to provide breathing space to the judicial manager to formulate proposals, lay them before the creditors, and implement them (**Hinckley Singapore Trading Pte Ltd v. Sogo Department Stores (S) Pte Ltd (under judicial management)** [2001] 4 SLR 154).

Unless executed, an unsecured creditor cannot reap the benefits of a writ of seizure and sale (**Re Wan Soon Construction Pte Ltd** [2005] 3 SLR 375).

But self-help remedies, such as contractual set-off, or non-judicial actions, such as the service of contractual notice to terminate rights or crystallize liabilities, are not proceedings within the meaning of this section (**Re Olympia & York Canary Wharf Ltd** [1993] BCLC 453, High Court of England). An application for an extension of time under the Companies 1985 for the registration of a charge is not a proceeding against the company or its property (**Re Barrow Borough Transport Ltd** [1990] Ch 227).

(f) "no steps shall be taken to enforce security over the company's property or to repossess any goods in the company's possession under any hire-purchase agreement, chattels leasing agreement or retention of title agreement, except with consent of the judicial manager or leave of the Court and subject to such terms as the Court may impose" (section 411(4)(d));

There is a moratorium on the enforcement of the creditors' rights, but not the destruction of those rights (**Electro Magnetic (S) Ltd v. Development Bank of Singapore** [1994] 1 SLR 734, 745). This was illustrated in **Re Boonann Construction Pte Ltd** [2002] 3 SLR 338, where it was held that a secured creditor is entitled to the contractual interest during the period of judicial management.

(g) "no steps shall be taken to transfer any share of the company or to alter the status of any member of the company except with the leave of the Court and, if the Court grants leave, subject to such terms as the Court may impose" (section 411(4)(e));

There is no equivalent provision in Singapore.

(h) The board of directors becomes functus officio. All functions, powers and duties of the board of directors shall be exercised and performed by the judicial manager (section 414(2));

(i) There is no authority for any payment towards the discharge of any debt on the making of the JMO, unless the payment is sanctioned by the court or made under a compromise or arrangement so sanctioned, or unless the

payment is made towards the discharge of sums secured by a security or payable under a hire purchase agreement or retention of title agreement (section 414(6)(a) & (b));

(j) "Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company which is unable to pay its debts as the debts become due, from the company's own money in favour of any creditor or any person in trust of any creditor with the intention to give such creditor a preference over other creditors shall be void in the event of the company being placed under judicial management on an application for a judicial management order presented within six months from the date of making, taking, paying or suffering the transfer, mortgage, delivery of goods, payment, execution and every such act" (section 426(1));

Such transactions are void if the intention thereof is to give a creditor a preference over other creditors, in the event of the company being placed under judicial management within 6 months from the date of the act done.

It would be deemed an unfair preference if the debtor company "positively wished to improve the creditor's position in the event of its own insolvent liquidation", as held in **Re MC Bacon Ltd** [1990] BCLC 324 (paraphrased from **Tam Chee Chong and another v. DBS Bank Ltd** [2010] SGHC 331).

The Singapore provision renders such transactions void only against the judicial manager. In **Neo Corp Pte Ltd (in liquidation) v. Neocorp Innovations Pte Ltd** [2006] SGCA 15, it was held that only a judicial manager could pursue an action to set aside a transaction tainted with unfair preference.

(k) "Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void" (section 426(2));

(l) "This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the company placed under the judicial management" (section 426(3)).

Challenges

The changes introduced by the Enterprise Act 2002 were alluded to above, one of which was the said paragraph 3 of Schedule B1 to the UK Insolvency Act 1986.

Other changes include section 72A(1), read together with subsection (4)(a) of the Enterprise Act 2002, which now provides that *"the holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company… in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name)"*. Schedule 16 to the Enterprise Act 2002, which forms Schedule B1 to the Insolvency Act 1986, now facilitates the appointment of an administrator without a court order.

The Bill has not made similar provisions. Consequently, judicial management could be blocked by a secured creditor. Given that few companies would be without a secured creditor, it is feared that history would repeat itself and the management procedure under the Bill, no matter how salutary its purpose, would prove to be wholly ineffective.

(Adapted from a speech given at the Company Law Seminar on 27.1. 2016, at the Concorde Hotel Ballroom in Kuala Lumpur)

CHAPTER 10

CASES OF INTEREST

"GUILTY AS CHARGED!"

CASES OF INTEREST

In the course of 2015, the courts continued to expound and clarify the law through its various decisions. The following are summaries of some of the significant judgments of the Federal Court and of the Court of Appeal which, amongst diverse issues decided, merit special mention.

CIVIL CASES

CONSTITUTIONAL LAW

(1) **STATE GOVERNMENT OF NEGERI SEMBILAN & ORS v. MUHAMMAD JUZAILI MOHD KHAMIS & ORS [2015] 8 CLJ 975**

[Coram: Raus Sharif PCA, Ahmad Maarop, Hasan Lah, Azahar Mohamed and Zaharah Ibrahim FCJJ]

At the High Court, the respondents had in judicial review proceedings challenged the validity and constitutionality of section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992. Their application to strike down that provision was dismissed by the High Court. The Court of Appeal having noted that the respondents were Muslim males suffering from Gender Identity Disorder, and that section 66 had indeed criminalised any male Muslim who sported a woman's attire or posed as a woman in a public place, went on to hold that the respondents' fundamental liberties as guaranteed by Articles 5(1), 8(2), 9(2), 10(1)(a) and 10(2) of the Federal Constitution had been infringed and therefore section 66 was unconstitutional, and in any event, was unreasonable in nature. The appellants then appealed to the Federal Court.

Decision:

The Federal Court unanimously allowed the appeal. In delivering the judgment of the Court, **Raus Sharif PCA** held that the issue here was not whether the appellants were prejudiced by the mode of action undertaken by the respondents but the jurisdiction of the courts. The fundamental question was whether the constitutionality of section 66 could be challenged in the High Court by way of a collateral attack in a judicial review proceeding. Bearing in mind the majority decision in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors,* and a host of other decisions of the apex court, such challenge could only be made by way of the specific procedure as provided in clauses (3) and (4) of Article 4 of the Federal Constitution.

Raus Sharif PCA also observed that the application for declarations sought by the respondents before the High Court by way of judicial review was in fact a challenge to the legislative powers of the State Legislature of Negeri Sembilan. What the respondents wanted to do was to limit the legislative powers of the State Legislature, by saying that despite the powers to legislate on matters on Islamic law having been given to the State Legislature by Article 74 of the Federal Constitution read with List II in the Ninth Schedule thereof, that legislation must still comply with the provisions on fundamental liberties in Articles 5(1), 8(2), 9(2) and 10(1) of the Federal Constitution. The application for the declarations sought by the respondents was incompetent by reason of substantive procedural non-compliance with clauses (3) and (4) of Article 4 of the Federal Constitution. His Lordship further stated that since the respondents had failed to follow the specific procedures as laid down in clauses (3) and (4) of Article 4 of the Federal Constitution, Judges of the court below were in grave error in entertaining the respondents' application. Both the courts below were not seized with jurisdiction to do so, and the proceedings heard by them were null and *void ab initio*.

TORT / LOCAL GOVERMENT

(2) **AU KEAN HOE v. PERSATUAN PENDUDUK D'VILLA EQUESTRIAN [2015] 3 CLJ 277**

[Coram: Zulkefli Ahmad Makinudin CJM, Abdull Hamid Embong, Ahmad Maarop, Zainun Ali and Ramly Ali FCJJ]

The appellant and his wife were purchasers and co-owners of a house within a gated housing estate which had only one entrance and exit. The developer had constructed a guard house and two boom gates at that entrance/exit. The respondent was the Residents' Association of the housing estate and

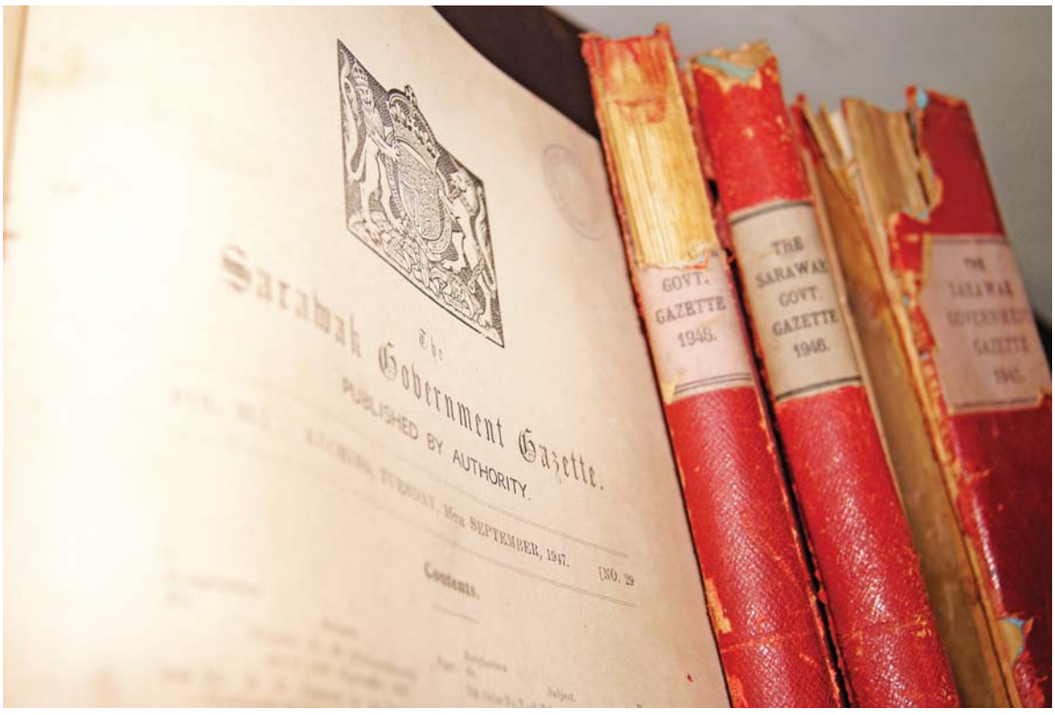
it had been agreed amongst the residents that the security and maintenance charges would be payable by them. It was also agreed that those residents who did not pay the security and maintenance charges would have to open the boom gates by themselves, without the assistance from the security guard on duty. The appellant refused to pay the charges and commenced an action against the respondent on the ground of, *inter alia*, nuisance and that the alleged obstructions were illegal, citing section 46(1)(a) of the Street, Drainage and Building Act 1974 (SDBA). The High Court dismissed the appellant's action. On appeal, the Court of Appeal affirmed the High Court's decision. The appellant then appealed to the Federal Court.

Decision:

The Federal Court unanimously dismissed the appeal with costs. **Zulkefli Ahmad Makinudin CJM** held that section 46(1) (a) of the SDBA had no application where the local authority had given approval for the so-called obstruction complained of. The layout plan for development is a requirement under the Town and Country Planning Act 1976 (TCPA). On the facts, the developer, as the predecessor to the respondent, had obtained the approval from MBPJ in 2002 for the construction of the guard house where the layout plan submitted to MBPJ included the provision for the building of a guard house. Further, in 2012, there was a second approval from MBPJ, after the gated and guarded community concept became popular. The approval was specific with regard to a guard house and accompanying boom gates. His Lordship also stated that pursuant to section 70(3) of the SDBA, the local authority is the approving authority for the erection of any building. The term '*building*' is defined under the SDBA to include '*any house, hut, shed … gate'*. MBPJ, thus, was the rightful authority for the approval of the guard house and the boom gates as *'buildings'* under the SDBA. Further, the Local Government Act 1976 (LGA) contains provision empowering the local authority to do all that is necessary for or conducive to the public safety, health and convenience. On the facts, the guard house and the boom gates were duly authorised structures under the relevant statutes, i.e. the TCPA, the SDBA and the LGA and could not therefore in law be an obstruction under section 46(1)(a) of the SDBA. The first question posed in this appeal was answered in the negative.

Big Cannon, Sarawak Museum

Zulkefli Ahmad Makinudin CJM further observed that the guarded communities were schemes implemented to improve public safety and security in defined residential areas. A regulated access to a defined area was not an obstruction in law especially if it was for security purposes. On the facts, the MBPJ guidelines in relation to a guarded community dealt with the rights of those residents who opted not to participate in the security scheme. The appellant did not complain that he or his family was prohibited from access at all or that the boom gates were a barricade against him or his family. The appellant's complaint was a complaint of inconvenience and not of obstruction.



The Sarawak Government Gazette

LAND LAW

(3) DAMAI FREIGHT (M) SDN BHD v. AFFIN BANK BHD [2015] 4 CLJ 1

[Coram: Raus Sharif PCA, Abdull Hamid Embong, Ahmad Maarop, Mohamed Apandi Ali and Abu Samah Nordin FCJJ]

The subject matter of the present appeal concerned with a piece of land which was to be alienated by the State of Selangor to PKNS. Pending the issuance of the document of title, PKNS entered into a 30 year lease agreement with the appellant. The appellant obtained a loan and as security for the repayments of the loans, a Loan Cum Assignment (LACA) was executed which assigned all the appellant's rights, title and interest absolutely under the lease agreement in favour of Bank Buruh Malaysia Berhad (the bank). Unknown to the Bank, title to the land was issued and registered in the name of PKNS. The appellant defaulted in its payment obligations under the said loans and became indebted to the bank. The appellant contended that once the individual title had been issued, the bank could not have proceeded under the LACA but had to first execute legal charge over the land and only effect a sale pursuant to the provisions of the National Land Code. The High Court found favour with the appellant's position. On appeal, the Court of Appeal set aside the High Court's decision. The appellant then appealed to the Federal Court.

Decision:

The Federal Court unanimously dismissed the appeal. **Abdull Hamid Embong FCJ** held that clause 7(1) of the LACA stated that the appellant as the borrower absolutely assigns to the bank the lease of the said land and the full and entire benefit of the principal agreement together with the rights, title and interest of the borrower. The use of the words '*absolutely assigns*' in the provision of the LACA clearly demonstrated that the instrument was intended by the parties to be an absolute assignment and not one by way of charge only. His Lordship also stated that the individual title of the land was registered in the name of PKNS as its registered proprietor. The principal agreement mentioned in the assignment is the agreement between PKNS and the appellant for a lease over the land for a period of 30 years. In this regard, the appellant had only a right *in personam*, that was the contractual right or benefit accruing to it under the said principal agreement. That right was a chose in action which was enforceable by action if it was unlawfully withheld by PKNS. It was this right to a lease to the land that became the

subject matter of the absolute assignment between the appellant and the bank under the LACA. The absolute assignment, therefore, was in relation to a transfer of the legal right of the chose in action from the appellant to the bank as assigned therein within the meaning of section 4(3) of the Civil Law Act 1956.

Abdull Hamid Embong FCJ then observed that when the bank exercised its power of sale under the LACA to dispose of its rights by way of a further assignment, it only involved a transfer of a legal right to the chose in action to the purchaser. In the absence of any statutes or express provisions in the assignment restricting the disposal of such rights, the bank was entitled to exercise its powers of sale and to have its right to the chose in action transferred. Such powers and rights were not extinguished by reason of the issuance of documents of title to the land. The bank was not obliged to ensure the execution of the charge and thereafter to obtain an order for judicial sale before it could proceed to exercise its rights under the LACA upon the appellant's default under the loan. His Lordship further stated that the creation of a charge was not a pre-requisite for the bank before it could proceed with the recovery action against the appellant under the LACA despite its issuance of the document of title. There was also no requirement under the NLC for the title to vest in the appellant and then for a charge to be executed before the security created in relation to the land could be realised by the bank. The bank did not lose its power of sale over its rights to the land merely by reason that the issue document of title to the land had been issued.

CONTRACT

(4) MERONG MAHAWANGSA SDN BHD & ANOR v. DATO' SHAZRYL ESKAY ABDULLAH [2015] 8 CLJ 212

[Coram: Richard Malanjum CJSS, Ahmad Maarop, Jeffrey Tan Kok Wha, Mohamed Apandi Ali and Abu Samah Nordin FCJJ]

At the High Court, the respondent claimed from the appellants a sum of RM20 million pursuant to a letter of undertaking for services rendered by the respondent in obtaining and securing the tender of the Johor-Singapore bridge project. The respondent had particularised his dealings with Federal Ministers who he had close relationships with and how he had exerted his influence and convinced those Federal Ministers. In the defence, it was contended that the procurement of the bridge project by reason of the respondent's close relationship with the Federal Government and Ministers was against public policy and accordingly the letter of undertaking was illegal and void. The High Court held that the services rendered by the respondent were not opposed to public policy and the letter of understanding was therefore enforceable against both of the appellants. Nevertheless, the respondent's claim was dismissed by the High Court on the

Hopkinson and Cope Improved Albion Iron Press Finsbury, London-Press Machine created in 1848

ground that the bridge project was withdrawn or terminated and '*did not materialised*'. On appeal by the respondent, the Court of Appeal ruled that it was the project that was withdrawn and not the award itself and accordingly the appellants were ordered to pay the said RM20 million to the respondent. The appellants then appealed to the Federal Court.

Decision:

The Federal Court unanimously allowed the appeal. **Jeffrey Tan Kok Wha FCJ** held that the award and the bridge project were intrinsically linked. There could not be one without the other. When the bridge project was withdrawn, the award on the bridge project was automatically retracted. It was so self-evident that the RM20 million was the consideration for the '*service*' rendered to procure the bridge project and not just a document. When the bridge project was withdrawn, the RM20 million was not payable but if paid, the letter of undertaking provided that it should not be returned. His Lordship also stated that section 24 of the Contracts Act 1950 stipulated five circumstances in which the consideration or object is unlawful, namely, where (a) it is forbidden by law; (b) it is of such nature that, if permitted, it would defeat any law; (c) it is fraudulent; (d) it involves or implies injury to the person or property of another; or (e) the court regards it as immoral or opposed to public policy. The considerations or objects referred to in paras (a), (b) and (e) of section 24 shall be unlawful and the agreement which ensues shall be unlawful and void.

Jeffrey Tan Kok Wha FCJ further observed that it was plain and obvious that the consideration was unlawful and the letter of undertaking was void. On that ground, the claim should have been dismissed. An agreement, the object of which is to use the influence with the Ministers of Government to obtain a favourable decision, is destructive of sound and good administration. It showed a tendency to corrupt or influence public servants to give favourable decisions otherwise than on their own merits. Such an agreement is contrary to public policy. It is immaterial if the persons intended to be influenced are not amenable to such recommendations.

CIVIL PROCEDURE / EVIDENCE

(5) SINNAIYAH & SONS SDN BHD v. DAMAI SETIA SDN BHD [2015] 7 CLJ 584

[Coram: Richard Malanjum CJSS, Abdull Hamid Embong, Hasan Lah, Abu Samah Nordin and Ramly Ali FCJJ]

The appellant was appointed by the respondent as the project manager of a road upgrading contract and entrusted with duties to manage the accounts and make payment to the sub-contractors. To this end the respondent had pre-signed cheques and authorised the appellant to issue the same when required. It was also agreed between the respondent and the appellant that the appellant would be paid management fees for the services rendered for the duration of the project period. When the arrangement did not go as planned, the appellant sued the respondent for unpaid management fees and financial advances given. The respondent had in turn brought a counterclaim against the appellant for a larger amount which allegedly the appellant had fraudulently paid itself rather than to one of the sub-contractors. The High Court dismissed both of the claim and counterclaim. On appeal, the Court of Appeal dismissed the appellant's appeal but allowed the respondent's appeal on the counterclaim premised on the allegation of fraud. The appellant then appealed to the Federal Court. The primary issue before the Federal Court was to determine the burden of proof in civil fraud.

Decision:

The Federal Court unanimously dismissed the appeal with costs. **Richard Malanjum CJSS** held that there is no specific provision in the Evidence Act 1950 or any legislation in Malaysia that stipulates the relevant standard of proof required in both criminal and civil proceedings. As such, the principles of law in relation to burden of proof and standard of proof are therefore common law principles. The present standard of proof for fraud in civil claim in Malaysia is not in line with the principles as applied in other common law jurisdictions and should therefore be reviewed. His Lordship also observed that sections 17 and 18 of the Contracts Act 1950 define certain acts as

'*fraud*' and '*misrepresentation*' if they have induced the entering of or deceived someone into entering a contract. Unfortunately, even with such illustration, the demarcation between civil and criminal fraud remained ambiguous.

Richard Malanjum CJSS further observed that the correct principle to apply is as explained in *In re B (Children)* where it was stipulated that at law, there are only two standard of proof, namely beyond reasonable doubt for criminal cases and on the balance of probabilities for civil cases. As such, even if fraud is the subject in a civil claim, the standard of proof is on the balance of probabilities. There is no third standard. Therefore, it is up to the presiding judge, after hearing and considering the evidence adduced as being done in any other civil claim, to find whether the standard of proof has been attained. The criminal aspect of the allegation of fraud and the standard of proof required is irrelevant in the deliberation. This judgment only applied to this appeal and to future cases and should not be utilised to set aside or review past decisions involving fraud in civil claims.

TORT / CONTRACT

(6) LOK KOK BENG & ORS v. LOH CHIAK EONG & ANOR [2015] 7 CLJ 1008

[Coram : Arifin Zakaria CJ, Richard Malanjum CJSS, Suriyadi Halim Omar, Ahmad Maarop And Zainun Ali FCJJ]

This appeal stemmed from a dispute relating to an industrial building project (the project) in Seberang Perai Tengah, Pulau Pinang. The appellants were the purchasers of units of industrial buildings in the project and had signed their respective sale and purchase agreements (the SPAs) with the developer. The respondents were the project architect appointed by the developer. The original layout plan was approved by the Local Authority, who in granting approval for the project, imposed a condition that the requirements of the Department of Environment (DOE) must be complied with. Following an application by the developer, the DOE *vide* its approval letter made it mandatory that a Central Effluent Industrial Treatment System (CEITS) be

The interior of the Construction Court at the Kuala Lumpur High Court

designed by a specialist licensed by the DOE and built according to certain specifications. It was the appellants' case that vacant possession of the industrial building was to be delivered within 24 months from the date of the approval of the building plan. However there was a delay of eight years in the completion of the industrial building due to the amendment of the original layout plan and delay in obtaining the certificates of fitness for occupation (CFO). Accordingly, the appellants' claims against the respondents were pecuniary in nature and fell under the heading of pure economic loss. The trial Judge found the respondents liable for the delay in the completion of the project and apportioned liability at 50% against them. On appeal, the Court of Appeal reversed the findings of the High Court, and the appellants' claims were dismissed largely on grounds of policy. The appellants then appealed to the Federal Court.

Decision:

The Federal Court unanimously dismissed the appeal with costs. In delivering judgment of the Court, **Zainun Ali FCJ** held that it cannot be disputed that the construction of the CEITS was not the responsibility of the respondents. Clause 14.02 and the Sixth Schedule of the SPAs specifically imposed on the developer a duty to build the CEITS according to specifications required by the DOE and the relevant statutory provisions. That being the case, the CEITS was designed by a specialist license by the DOE and subsequently constructed by the developer. Therefore, the respondents need not assume responsibility for the delay involved in obtaining the approval for CFO when the CEITS was not functioning in accordance with the requirements set out by the DOE, since this was not within the scope of the respondents' professional work. **Zainun Ali FCJ** further ruled that the requirement of reasonable foreseeability had not been satisfied. As the architect for the project, the layout plan was prepared and submitted in accordance with the instructions received by the respondents from the developer. The respondents were mainly responsible for the design and safety of the industrial buildings and compliance of the relevant laws. In the circumstances, it would not be reasonable to impose a duty on the respondents to go into a detailed inquiry of the developer's obligations as those were matters which were exclusively within the developer's scope of duty. This argument was further strengthened by s. 2.01 of the SPAs which provided that reasonable amendments to the building plan may from time to time be made by the developer or the respondents with the approval of the appropriate authorities. Here, the issue of consent of the neighbouring landowners which triggered the delay was well within the scope of the developer's duty.

Zainun Ali FCJ also observed that applying the standards of the reasonable man, the respondents could not have foreseen any liability for consequential financial loss to the appellants arising from their action in submitting the original layout plan and amending the same leading to the undue delay in completing the building and the issuance of the CFO. In addition, the appellants' claims did not fall within the scope of work of the respondents. The appellants also failed to establish proximity of relationship between the parties to give rise to a duty of care. In view of the terms of the SPAs between the appellants and the developer and the specific remedy provided therein, the appellants' claims failed. **Zainun Ali FCJ** ruled that the court must give consideration to the presence of a contractual matrix between the developer and purchasers which clearly defined the rights and liabilities of the parties and their relative bargaining positions. There could be no action against the architect if the remedy asked for was specifically provided for in the contract. Otherwise, it had the effect of rewriting the contractual terms. Such claims must be dismissed on grounds of policy. Nevertheless, it must be reiterated that a claim for negligence must be brought within the scope of duty of care. Therefore, the recoverability of claims for pure economic loss in negligence cases was dependent on the facts of individual cases and some measure of public policy must be considered though it should not be the sole determinant of liability.

Zainun Ali FCJ further held that it would not be fair, just and reasonable to impose on the respondents a duty of care for a responsibility which they had not assumed or one which was not within their professional scope of duty. In this instance, the appellants' claims did not fall within the scope of work of the respondents' and therefore, the appellants' claims for pure economic loss on grounds of late delivery of vacant possession of their building units failed.

An image captured within the walls of Fort Margherita,
Kuching, Sarawak

CRIMINAL CASES

CRIMINAL LAW / CRIMINAL PROCEDURE / EVIDENCE

(1) DATO' SERI ANWAR BIN IBRAHIM v. PUBLIC PROSECUTOR AND ANOTHER APPEAL [2015] 2 CLJ 145

[Coram: Arifin Zakaria CJ, Raus Sharif PCA, Abdull Hamid Embong, Suriyadi Halim Omar and Ramly Ali FCJJ]

The appellant was charged in the High Court with an offence under section 377B of the Penal Code. Upon the evidence adduced, the trial judge ruled that *prima facie* case had been made out and had called the appellant to enter his defence. The appellant in an unsworn statement from the dock, denied the charge and in the main alleged that he was a victim of political conspiracy to end his political career. Upon appraisal of the defence, in particular the testimony of two medical experts called by the appellant (DW2 and DW4), the High Court held that a reasonable doubt had been raised and the appellant was accordingly acquitted and discharged. On appeal, the Court of Appeal allowed the prosecution's appeal and reversed the decision of the High Court. The appellant was convicted and sentenced to five years imprisonment. Both the appellant and the prosecution then appealed to the Federal Court.

Decision:

The Federal Court unanimously dismissed both the appellant's main appeal and prosecution's cross-appeal on sentence. The Federal Court held that PW1 was a credible witness and there was nothing inherently improbable about his story. It was also held that a judge is entitled in law to convict even without corroboration if convinced of the truth of the complainant's evidence. Be that as it may, the trial judge in this case had considered other independent evidence before concluding that they were corroborative of PW1's testimony of having been sodomised by the appellant.

The police lock-up was solely occupied by the appellant, was clear and empty prior to his occupation and was thereafter locked pending the arrival of the forensic team. The evidence of PW15, the head of the forensic team, further showed that he had picked up exhibits. P58A, P59A and P61A from the lock-up, carefully placed them in separate envelopes, and sealed and signed the envelopes before handing them to PW25. There was thus direct and strong circumstantial evidence pointing to the appellant using the exhibits.

The Federal Court also ruled that PW5's evidence that sperm was found in PW1's rectum showed that there was penile penetration, thereby corroborating PW1's allegation that he was sodomised by the appellant. Whether the anus was torn or bruised is not an issue which could refute the fact that PW1 had been sodomised. The absence of such injury could be due to several factors, such as lapse of time, absence of undue force, use of lubricant et cetera. The Federal Court further observed that while the biological samples that PW5 had analysed might have undergone a slight degradation, the damage was not so substantial as to destroy the DNA entirely or affect her reading of the samples.

The existence of allele 18 on B9 (low rectal swab) and P59A (Good Morning towel) did not affect the finding by PW6 that the DNA found on P58A, P59A and P61A matched the DNA found by PW5 on swabs B5, B7 and B8. The DNA profile had matched each other indicating that the DNA originated from the same source, namely Male Y. From the evidence, it was established that Male Y was the appellant. It was evident that both PW5 and PW6 had interpreted their data based on the entire 16 loci. It is also clear, in this respect, that the mathematical approach relied by the appellant in raising the possibilities of having some other contributors by referring to one or two loci was not the correct approach to interpretation. Even if the erroneous mathematical approach were used, the possibility of other contributors from the unaccounted alleles at some of the STR loci, did not disprove the existence and presence of Male Y, whose profile was obtained from the interpretation of the entire 16 loci. It was further stated that upon PW5's testimony, it was clear that the probability of the DNA profiles having a coincidental match from a randomly selected unrelated individual, based on the population database of Malaysian Malays, is 1 in 570 quadrillion. This was a very high figure, indicative of a very high certainty that the DNA profiles thus developed originated from the same individual (the appellant). It is thus indisputable that the profile of Male Y developed and analysed by both chemists belonged to none other than the appellant.

There was no break in the chain of custody of the evidence and exhibits. PW25 was extremely careful in handling the exhibits and PW5 had also confirmed that she did not detect any tampering of the seals of the exhibits. The Court of Appeal was right in concluding that the integrity of the samples was not compromised. It follows that the fanciful suggestion of the appellant that the DNA evidence had been planted is unsustainable.

The Federal Court ruled that while it is within the appellant's right to give a statement from the dock that statement must amount to a credible defence. A mere denial does not amount to a credible defence. The defence of political conspiracy here is but a mere bare allegation. It follows that the courts below were right for not explicitly considering the defence of conspiracy raised by the appellant. The Court of Appeal had adopted the right principle in assessing the appellant's statement from the dock, and there was no merit in the complaint that the said court had misdirected itself in making adverse comments on the appellant's decision to give his statement from the dock.

The Federal Court also held that the trial judge had erred in accepting the evidence of DW2 and DW4 that the samples taken from PW1 had been compromised and were unsafe to be relied upon, resulting in an absence of corroborative evidence on the factum of penetration. The evidence of DW2 and DW4 ought to be rejected, as both did not do any test but merely interpreted the findings of PW5 and PW6. The Federal Court found that DW1 was an unreliable and an untruthful person, which explained why the prosecution had chosen not to call him as its witness.

The Federal Court observed that the defence that the appellant was labouring under intense back pain and could not have performed the alleged act of sodomy was an afterthought. The appellant had never put this to PW1. Further, DW7 did not examine the appellant in 2008 but only in 2011, about a month before the trial. As opposed to this, a rebuttal witness called by the prosecution, who examined the appellant just three weeks after the incident, testified that the appellant had told him that he had coitus with his wife one week after the incident. The Federal Court concluded that bearing in mind *inter alia* the medical and DNA evidence, and the unsworn statement of the appellant which carries little weight, there was overwhelming evidence to support PW1's allegation that he had been sodomised by the appellant. The Court of Appeal was right in concluding that the appellant has not created any reasonable doubt on the prosecution's case and that the prosecution has established its case against him beyond reasonable doubt.

On sentence, the Federal Court ruled that considering the seriousness of the offence and the fact that the appellant had taken advantage of his position as the employer of a young victim, the sentence of five years' jail was not grossly excessive. The sentence was also not grossly inadequate as to warrant intervention by this court.

CRIMINAL LAW / CRIMINAL PROCEDURE / EVIDENCE

(2) MOHD KHIR TOYO v. PP [2015] 8 CLJ 769

[Coram: Zulkefli Ahmad Makinudin CJM, Ahmad Maarop, Hasan Lah, Jeffrey Tan and Ramly Ali FCJJ]

This was the appellant's appeal against his conviction and sentence of a charge under section 165 of the Penal Code (the Code) for obtaining for himself and his wife two lots of land and a bungalow at a much lower market price through SP2 who had dealings with him in the appellant's capacity as the Chief Minister of the State of Selangor. The learned trial judge found the appellant guilty and sentenced him to 12 months imprisonment and pursuant to section 36 (1) of the Anti-Corruption Act 1997, ordered the property to be forfeited. The appellant's appeal against the conviction and sentence to the Court of Appeal was unsuccessful. The appellant then appealed to the Federal Court.

Decision:

The Federal Court unanimously dismissed the appeal. **Jeffrey Tan Kok Wha FCJ** stated that the charge in this case read (i) that the appellant as a public servant, *to wit*, Chief Minister; (ii) accepted a valuable thing for himself and his wife; (iii) for a consideration which he knew to be inadequate; (iv) from SP2 whom he knew had connections with his official work. It was not an error in the particulars of the offence to state that the appellant knew that SP2 had connections with his official work as Chief Minister, when the evidence alleged that the

The Courtyard of the Old Courthouse building in Kuching, Sarawak

appellant knew that SP2 had connections with his official work as Chairman of PKNS. Section 4(1) of the Selangor State Development Corporation Enactment 1964 ('PKNS Enactment') provides that the Chief Minister shall be the Chairman of PKNS. Therefore, the official work of the appellant as Chairman of PKNS was an integral part of the official work of the appellant as Chief Minister.

Jeffrey Tan Kok Wha FCJ further ruled that there is no definition of '*officer*' in the Code. However, section 21(i) of the Code provides that the words '*public servant*' denote *'...every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty'*. As Chief Minister, the appellant was paid by the Government and entrusted with the performance of a public duty, which meant that he was an '*officer*' under section 21(i) of the Code. Hence, the appellant, whether as Chief Minister or '*officer*' or as one in the pay or service of the Government, was a '*public servant*' within the meaning of the Code. His Lordship also held that the appellant remained a '*public servant*' even while he wore the hat of Chairman of PKNS, for the appellant ceased not to be a *'public servant'* just because he wore a different hat or hats. The first ingredient of the charge, i.e., *'public servant'* was therefore proved. The second ingredient of the charge, *'accepted a valuable thing for himself and his wife'*, had also been proven, beyond all doubt, by the registration of the transfer of the land, which was a most valuable thing, from SP2 to the appellant and wife. His Lordship further held that the third ingredient *'for a consideration which he knew to be inadequate'* required proof (i) that the consideration was inadequate; and (ii) that the appellant knew that the consideration was inadequate. The sale to the appellant was based on a valuation that matched the exact sum offered by the appellant to SP2 which SP2 had not accepted. The land was sold to the appellant at RM3.5 million in 2007 when it was in the knowledge of the appellant that SP1 had asked for RM7 million in 2004. Hence, the appellant should know that his consideration in 2007 was half the asking price in 2004. The inadequacy of the consideration was also supported by direct evidence. *Prima facie*, on the evidence, the third ingredient was proved.

Jeffrey Tan Kok Wha FCJ held that by all accounts, the value of land and house in 2007 should at least be RM5 million. The value of the property would not fall from at least RM5 million in 2004 to RM3.5 million in 2007. Any diminution in the value of land and house was caused by the appellant. The appellant accepted the land and house of the value of at least RM5 million and could not get away by saying that it was an incomplete house. He must pay full value for the land and house. RM3.5 million was clearly inadequate consideration. The imprisonment imposed was right and proper in the circumstances.

In addressing on the sentence to be imposed, **Zulkefli Ahmad Makinudin CJM** ruled that corruption in all manner and form cannot be condoned. A fine would not send that message. Neither would community service. The instant offence, which was destructive of public confidence in the government, was not trivial in nature. Imprisonment was the right and proper punishment and a year's imprisonment was hardly excessive. **Zulkefli Ahmad Makinudin CJM** further held that the forfeiture was ordered in accordance with the law which mandated forfeiture upon conviction of the appellant. The land was not arbitrarily forfeited. It was a lawful deprivation. There was no breach of Article 13(1) of the Federal Constitution (the Constitution). The appellant and wife were the registered proprietors and were, therefore, the owners. Any enquiry on the ownership of the said land would only be an idle exercise. Whenever a competent legislature enacts a law in the exercise of any of its legislative powers, destroying or otherwise depriving a man of his property, the latter is precluded from questioning reasonableness of the law by invoking Article 13(1) of the Constitution, however arbitrary the law might palpably be. With the conviction, the appellant could not resist forfeiture of the subject matter of the offence. In the present case there was a chargee bank with rights of a chargee, not owner. There was an encumbrance on the said land. Therefore the order of forfeiture of the said land was upheld but subject to the charge if any.

CRIMINAL PROCEDURE

(3) AMIN RAVAN v. MENTERI DALAM NEGERI & ORS [2015] 8 CLJ 165

[Coram: Raus Sharif PCA, Richard Malanjum CJSS, Hasan Lah, Zainun Ali and Jeffrey Tan Kok Wha FCJJ]

The appellant was detained under the Extradition Act 1992 pursuant to an application made under the Extradition Treaty between Malaysia and the United States of America. The basis of the application was that the appellant was wanted to stand trial at the US District Court for the District of Columbian Washington DC on certain specified charges. Pending issuance of the extraction order by the Minister, a committal order had been issued by the Sessions Court on the application of the Public Prosecutor who had cited several charges to demonstrate the existence of corresponding offences which included allegations that the appellant had intention to export certain prescribed items in violation of the Strategic Trade Act 2010. Of particular significance in this case was the fact that the appellant here was never physically present in the US at the material time the offences were allegedly committed. The appellant applied to the High Court for a writ of habeas corpus for his release. The High Court held that there were *'corresponding offences'* to satisfy the requirements of the Extradition Act 1992. In coming to that conclusion, the High Court (relying on the *'effect approach'*) was satisfied that the effect of the alleged offences was intentionally felt in the US, notwithstanding that the appellant had not set foot there. The appellant then appealed to the Federal Court.

Decision:

The Federal Court unanimously allowed the appeal and the writ of habeas corpus was granted. **Raus Sharif PCA** held that the Sessions Court Judge was of the view that the offence under the Strategic Trade Act 2010 was not applicable as the alleged offences occurred prior to its enforcement. The Strategic Trade Act 2010 only came into force on 1 January 2011. The transaction which the appellant was alleged to have committed on the first to the third corresponding charges had actually occurred around 2006 to 2007, which was before the Strategic Trade Act 2010 (the corresponding Malaysian law) came into force. Thus, the dual criminality rule had not been satisfied for offences committed under the Strategic Trade Act 2010. His Lordship further observed that the Extra-Territorial Offences Act 1976 deals with *'certain offences under written laws committed in any place without and beyond the limits of Malaysia and on the high seas on board any ship or on any aircraft registered in Malaysia or otherwise as if they were committed in Malaysia.'* Hence, our domestic law provides for the operation of our law beyond our territorial limits only to offences under the Official Secrets Act 1972, the Sedition Act 1948 and to offences under Chapters VI, VIA, and VIB of the Penal Code. Our law does not extend to other offences committed beyond our territorial limits, even if it was an offence committed in Malaysia. The law of a requesting state may provide for its jurisdiction differently. But in relation to the

The Straits Settlements' Code of Criminal Procedure No. XXI of 1900

corresponding offence in Malaysia, we need to look at our law. If there was no corresponding offence in Malaysia, then requisition must be refused, regardless of whether the requesting state had local or extraterritorial jurisdiction. Thus, the key to unravel a requisition for the return of a criminal fugitive is the corresponding offence in Malaysia which must have extraterritorial effect.

Raus Sharif PCA also observed that by virtue of an amendment to the Penal Code, the list of extra-territorial offences was extended to Chapters VI, VIA and VIB of the Penal Code (chapters on offences against the state, offences relating to terrorism and organised crime), if such act is done or such offence was committed in similar circumstances as stated in section 2 of the Extradition Act. However, the list of extra-territorial offences was not extended to Chapter V on criminal conspiracy. Thus, the dual criminality requirement had not been satisfied here as the preferred offences had no extraterritorial effect under the Penal Code. Counts 1 – 3, which were committed outside the US, concerned the offences of conspiracy to defraud, smuggling and illegal export, which were punishable under the Code and/or the Customs Act. Our laws do not provide for punishment of counts 1 – 3 committed outside our territory. They were extraterritorial offences in the US, but not in Malaysia. His Lordship also stated that the *'effect approach'* and *'continuing approach'* only rationalises the jurisdiction of the requesting state (*United States of America v. Frank Santo Cotroni,* refd). *The 'effect approach'* and *'continuing approach'* will not change an extraterritorial offence to a territorial offence. Given that counts 1 – 3 of the indictment were extraterritorial offences, then the corresponding offences in Malaysia had to be extraterritorial offences. Here, the corresponding offences under the Penal Code had no extraterritorial effect as it did not fall under Chapter 4, thus the dual criminality rule had not been satisfied. The *'effect approach'* and *'continuing approach'* advanced by the DPP herein had no application. Based on the conduct approach, the appellant herein could

not be extradited as the preferred charges brought against him concerned offences committed abroad that does not have extra-territorial application in Malaysia. The appellant had never set foot on US soil. In order for the US courts to have jurisdiction to try the appellant for those alleged offences, the alleged offences of forgery and preparing false declaration by undervaluing the airways bills (as stated in the preferred Malaysian charges) must be allegedly done by the appellant himself in US and not by anyone or anywhere else outside its territorial jurisdiction.

Raus Sharif PCA further held that the appellant in this case could not be extradited for the charges preferred against him especially when the corresponding offences stated in the charges were offences *with no extra territorial application under section 4 of the Penal Code vis-a-vis* they were not extraditable offences. Both the Sessions Court and the High Court had misapplied the facts and the applicable laws on their finding on the issue of dual criminality. The dual criminality requirement as provided under the Extradition Act and the Extradition Treaty were not complied with in respect of the preferred offences advanced by the respondents.

Jeffrey Tan Kok Wha FCJ in his concurring judgment stated that the litmus test is the corresponding offence in Malaysia, from the aspect of the alleged criminal conduct and the jurisdiction to punish. The jurisdiction of the requesting state is relevant where there is a corresponding offence in Malaysia. But otherwise, it will not serve any purpose to delve into the jurisdiction of the requesting state, in the absence of a corresponding offence in Malaysia. The authorities cited on the *'effect approach'* as well as the *'continuing approach'* to show the jurisdiction of the requesting state, were not helpful at all to resolve the issue of the corresponding offences in Malaysia. His Lordship further observed that Article 2(5) of the Treaty provides that where there is no corresponding extraterritorial jurisdiction, the requested state may refuse extradition. Further, under the Extradition Act, an extradition offence is subject to the proviso that *"in the case of an extraterritorial offence, it is so punishable under the laws of Malaysia if it took place in corresponding circumstances outside Malaysia."* In the light of Article 2(5) and said proviso, it was clear that extradition offences had not been made out.

CRIMINAL LAW / EVIDENCE

(4) BUNYA JALONG v. PP [2015] 5 CLJ 893

[Coram: Abdul Wahab Patail, Linton Albert and Zakaria Sam JJCA]

The appellant, a 56-year old man, was alleged to have raped a 15-year old minor (PW4) in a hotel room on four separate occasions and was in consequences, charged with four counts of rape under sections 376(1) and 376(2)(d) of the Penal Code. It was not in dispute that PW4 had subsequently given birth to a child and that DNA evidence showed that it was the appellant who had fathered the child. The defence contended that no penile penetration had occurred in all the incidents. According to the appellant, he and PW4 had touched and rubbed each other's private organs and upon ejaculation he and PW4 had inserted their semen-laden fingers into her vagina. An obstetrics and gynaecology specialist, PW8, (a prosecution witness) testified that there was a possibility that conception could occur even without sexual intercourse as long as semen bearing spermatozoa is introduced into the vagina and there was no need for any supervised medical process. The Sessions Court held that a beyond reasonable doubt case had been proved against the appellant. The appellant was convicted and sentenced to a total of 15 years imprisonment and 11 strokes of whipping. The High Court affirmed the conviction and sentence. The appellant then appealed to the Court of Appeal.

Decision:

The Court of Appeal allowed the appeal. **Abdul Wahab Patail JCA** held that although PW8 had confirmed that fertilisation was possible by the delivery of fresh semen by fingers, the delivery of fresh semen by fingers was purely a supposition and would remain so if there was no testimony as to delivery by fingers. However, when the appellant testified that fingers had been used to rub and introduce freshly ejaculated semen, the possibility of fertilisation by such means was no longer a mere supposition. There was then evidence to be considered as to whether the testimony had or had not raised a reasonable doubt. His Lordship also ruled that upon a maximum evaluation of the evidence, the supposition that fertilisation had occurred by the introduction or delivery of semen by fingers was no longer *'not in the least probable'*

A courtroom in the Kuala Lumpur Court Complex

but became a reasonable doubt. This is because, to the testimony of PW8 (that the appellant's version was possible), there was added the testimony of the appellant that fingers had actually been used.

Abdul Wahab Patail JCA further held that reviewing the case as a whole, it was clearly a case that the defence of the appellant was put to the prosecution witnesses. The prosecution had notice of the defence. A material prosecution witness PW8 testified that fertilisation of ova by introduction of fresh semen by fingers was possible. No steps were taken to call a more experienced doctor to give evidence to explain away the testimony of PW8. There is no excuse on the record for not obtaining expert evidence that could be called to counter it. The court was left with one inference, that the prosecution accepted the confirmation by PW8.

CRIMINAL LAW / CRIMINAL PROCEDURE

AZMI OSMAN v. PP & ANOTHER APPEAL [2015] 9 CLJ 845

[Coram: Balia Yusof Wahi, Rohana Yusuf and Abang Iskandar JJCA]

The appellant, a Police Superintendent in the Secret Societies, Gambling and Vice Division of the Royal Malaysian Police, was suspended pursuant to an investigation under the Prevention of Corruption Act 1997. Investigations revealed that the appellant had an unknown source of income of about RM9,481,414.18 and he was subsequently charged at the Sessions Court on four charges of money laundering under section 4 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA). Initially, the Sessions Court Judge acquitted the appellant without calling for his defence. The prosecution then appealed to the High Court. The High Court Judge 1 allowed the appeal and ordered the accused to enter his defence. At the end of the defence case, the Sessions Court Judge convicted and sentenced the appellant on all the four charges. The Sessions Court also ordered a third party notice under section 61 of the AMLATFA be issued in respect of the forfeiture of the seized property. The appellant then appealed against the conviction and sentence. The High Court Judge 2 had acquitted and discharged the appellant and held that the High Court Judge 1 ought not to order the appellant to enter his defence. Both the prosecution and the appellant appealed to the Court of Appeal. The prosecution appealed against the order of acquittal by the High Court Judge 2 and the accused against the High Court's decision on notice issued under section 61 of the AMLATFA.

Decision:

The Court of Appeal allowed the appeal by the prosecution and dismissed the appeal by the appellant. **Abang Iskandar JCA** held that the High Court's jurisdiction is coordinate among its judges, inherent in that concept is the fact that a High Court Judge cannot overrule another High Court Judge who had made a decision at some crucial stage of proceedings in the same case. It was further observed that the High Court Judge 2 had erred when he disturbed the findings of the earlier High Court Judge 1 who ordered the accused to enter his defence. In this case, the role of the High Court Judge 2 was limited to determining whether the defence had raised a reasonable doubt.

Abang Iskandar JCA also ruled that the offence, as defined under section 3 of the AMLATFA is aimed at any person who knowingly engages in proceeds of an unlawful activity. Under section 4(1)(a) of the AMLATFA, it is not necessary that he must first be convicted with the predicated serious offence from which the proceeds were derived. Although the monthly income of the accused was banked into his CIMB account, millions were credited into his Maybank accounts in a steady stream of transactions. The accused ought to have reason to believe that the amounts were illegal proceeds or that for the same reason, he was given ample notice on account of the numerous transactions involving his Maybank accounts and yet he had wilfully turned a blind eye as to their sources or origin. An inference can be made *via* para. (bb) to the definition of money laundering under section 3 of the AMLATFA that such conduct on the part of the accused, without any reasonable excuse, in not taking steps to ascertain whether the monies that went into his accounts at Maybank, were proceeds of an unlawful activity. His Lordship further observed that the accused had been proven to have accepted bribes from persons who were involved in illegal gambling. He had been receiving proceeds from illegal gambling activity in exchange for him giving protection for them, from enforcement action against them by the police. Therefore, there existed grounds for the accused to reasonably believe that the monies he received and banked into his Maybank accounts were proceeds from unlawful activity. At the same time, the monies were also

corrupt monies, being bribes given to him by the gambling operators. It follows therefore that the convictions entered against the accused on all the four charges were safe to be affirmed. Hence, the order of acquittal and discharge of the accused on all the four charges by the High Court Judge 2 at the end of the prosecution case was set aside and the conviction entered against the accused by the Sessions Court Judge was reinstated.

Abang Iskandar JCA then held that the act of issuing the notice under section 61 of the AMLATFA is only a procedural step in ensuring that no genuine third parties' rights are improperly denied. His Lordship further held that in the case herein, there was no forfeiture order that had been made by the Sessions Court Judge and there was basis for her to issue the statutory notice in order to facilitate the process pertaining to the eventual forfeiture of the seized properties which were the subject matter of the offence. As such, the appeal of the accused in respect of the issuance of the notice under section 61 of the AMLATFA was premature and the appeal by the accused against the order on section 61 notice was, therefore, dismissed.

DISCLAIMER:

The summaries above only highlight some salient aspects of the law covered in those decisions. Readers are advised to refer in any event to the respective reported judgment for completeness.

Fort Margherita was built in 1879 during the reign of Charles Brooke to protect Kuching from the pirates. It was turned into a Police Museum in 1971.

APPENDIX A

(MALAYA)

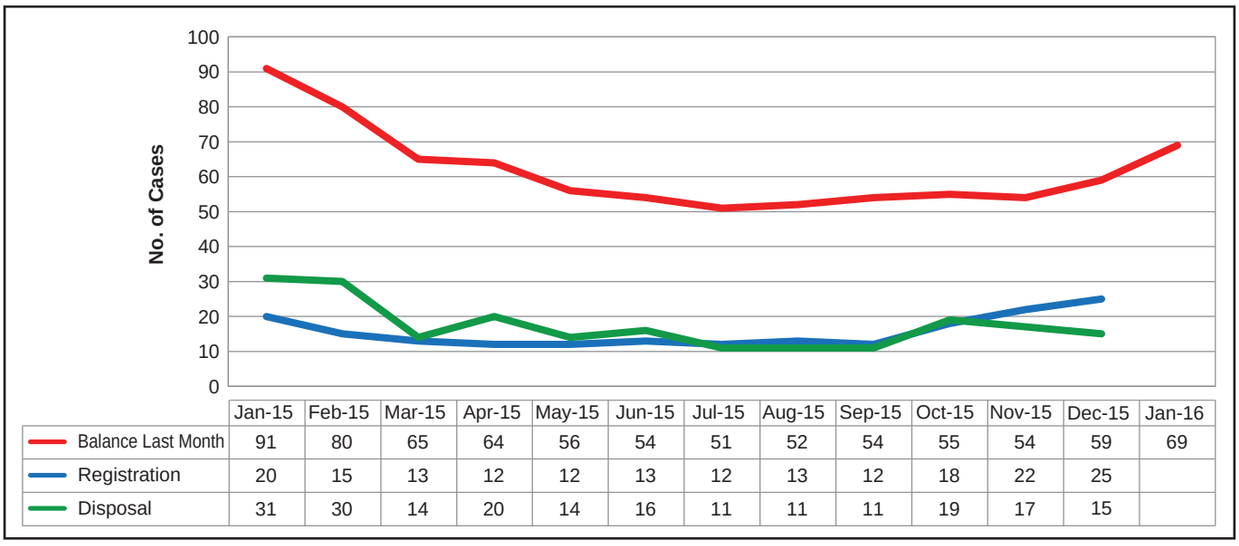
1. PERLIS

1.1 IN THE HIGH COURT AT KANGAR – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kangar for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 187 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 209 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Kangar is 272 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	91	80	65	64	56	54	51	52	54	55	54	59	69
Registration	20	15	13	12	12	13	12	13	12	18	22	25	
Disposal	31	30	14	20	14	16	11	11	11	19	17	15	

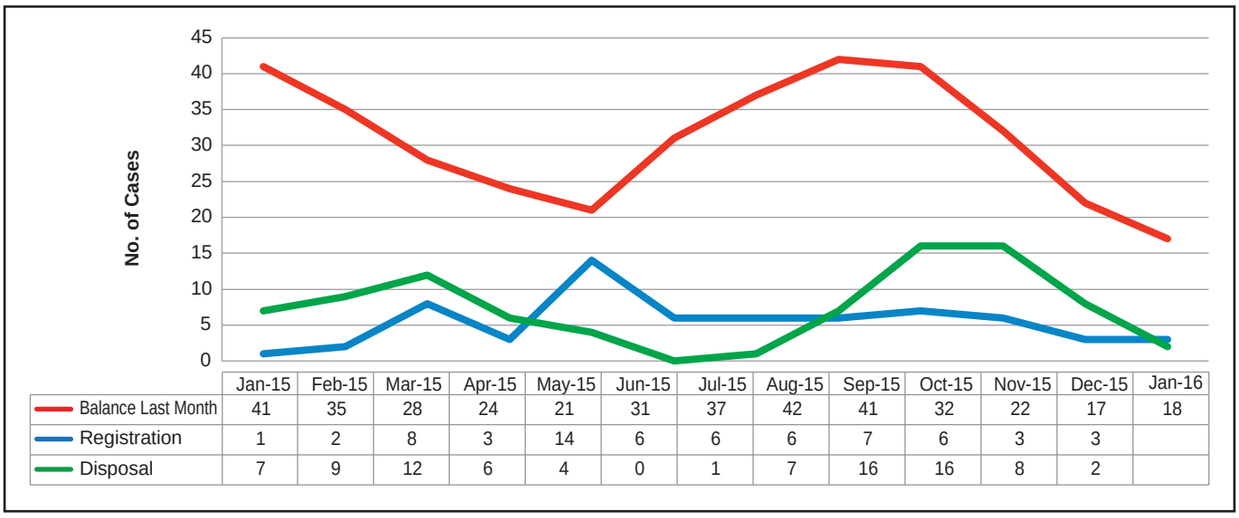
PENDING CASES
IN THE HIGH COURT AT KANGAR (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																										
2010																										
2011																										
2012																										
2013												2									1					3
2014												1									24					25
2015	1			2			14	2			3	10			14		10			2	176	1	1	8		244
TOTAL	**1**			**2**			**14**	**2**			**3**	**13**			**14**		**10**			**2**	**201**	**1**	**1**	**8**		**272**

1.2 IN THE HIGH COURT AT KANGAR – CRIMINAL

For criminal cases in the year 2015, a total number of 65 cases including appeals and trials were registered and 88 cases were disposed of, leaving a balance of 18 cases pending.

TRACKING CHART
IN THE HIGH COURT AT KANGAR (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	41	35	28	24	21	31	37	42	41	32	22	17	18
Registration	1	2	8	3	14	6	6	6	7	6	3	3	
Disposal	7	9	12	6	4	0	1	7	16	16	8	2	

PENDING CASES
IN THE HIGH COURT AT KANGAR (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2009																													
2010																													
2011																													
2012																													
2013																													
2014																													
2015	6	3						3							4												2		18
TOTAL	6	3						3							4												2		18

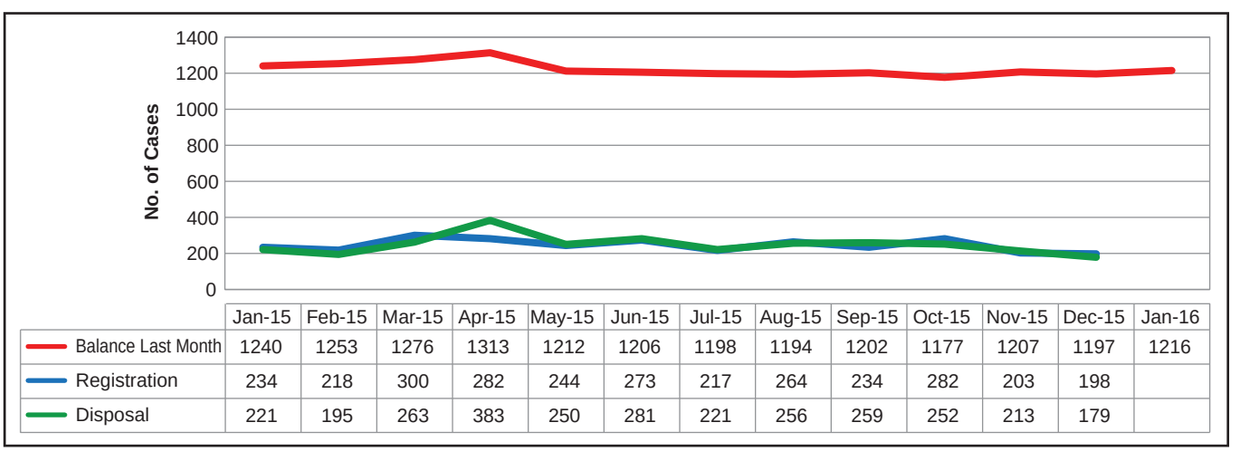
2. KEDAH

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 2015. For the period from January to December 2015, the total number of civil cases registered was 2949 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2973 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Alor Setar is 3180 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1240	1253	1276	1313	1212	1206	1198	1194	1202	1177	1207	1197	1216
Registration	234	218	300	282	244	273	217	264	234	282	203	198	
Disposal	221	195	263	383	250	281	221	256	259	252	213	179	

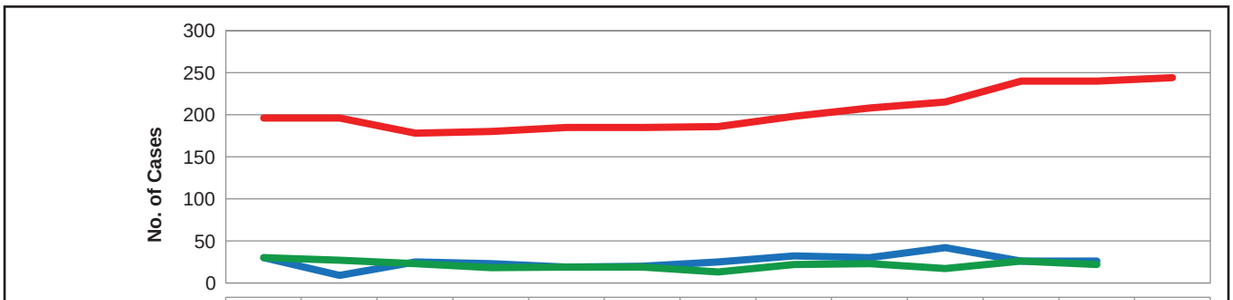
PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2008																									
2009																									
2010												1													1
2011												1													1
2012											1	1		1											3
2013												5		2							2				9
2014		9	2	7			329				7	19			4		1			1	517				896
2015	27	52	17	43		1	190	1	3	3	19	62		1	286		19	1		19	1440	3	2	81		2270
TOTAL	27	61	19	50		1	519	1	3	3	27	89		4	290		20	1		20	1959	3	2	81		3180

2.2 IN THE HIGH COURT AT ALOR SETAR – CRIMINAL

For criminal cases in the year 2015, a total number of 307 cases including appeals and trials were registered and 259 cases were disposed of, leaving a balance of 244 cases pending.

TRACKING CHART
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	196	196	178	180	185	185	186	198	208	215	240	240	244
Registration	30	9	25	23	19	20	25	32	30	42	26	26	
Disposal	30	27	23	18	19	19	13	22	23	17	26	22	

PENDING CASES
IN THE HIGH COURT AT ALOR SETAR (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012																													
2013	8			1												2		4												15
2014	7			1			3									12								2						25
2015	29	19		3	1		32	14		5	1			5		49		11	1			1		3				30		204
TOTAL	44	19		5	1		35	14		5	1			5		63		15	1			1		5				30		244

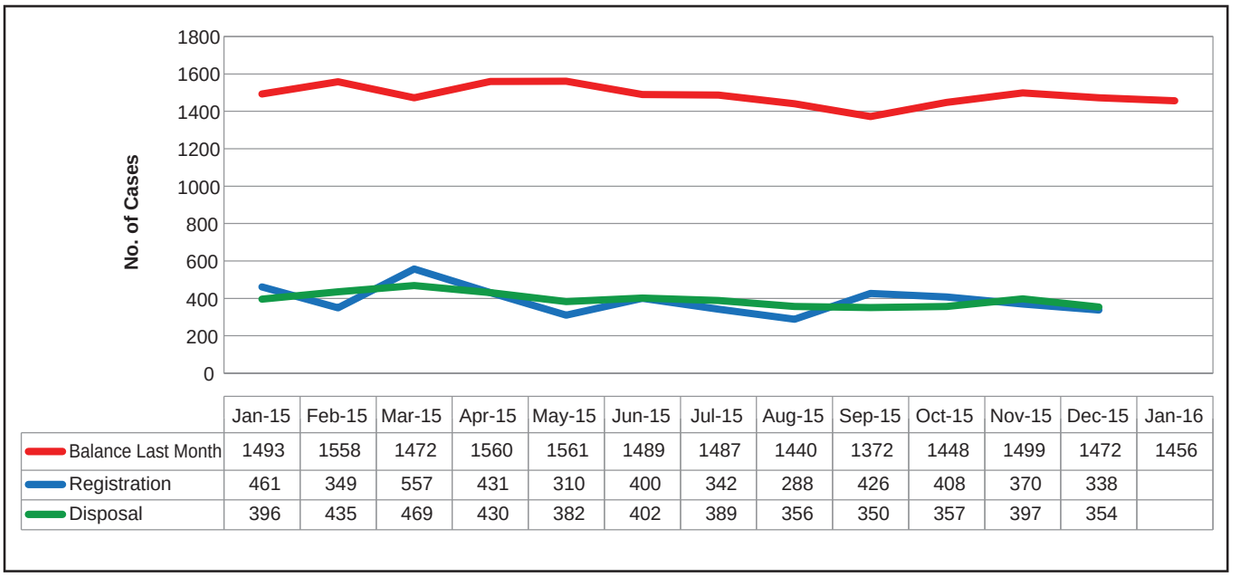
3. PULAU PINANG

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 2015. For the period from January to December 2015, the total number of civil cases registered was 4680 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 4717 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Georgetown is 4474 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1493	1558	1472	1560	1561	1489	1487	1440	1372	1448	1499	1472	1456
Registration	461	349	557	431	310	400	342	288	426	408	370	338	
Disposal	396	435	469	430	382	402	389	356	350	357	397	354	

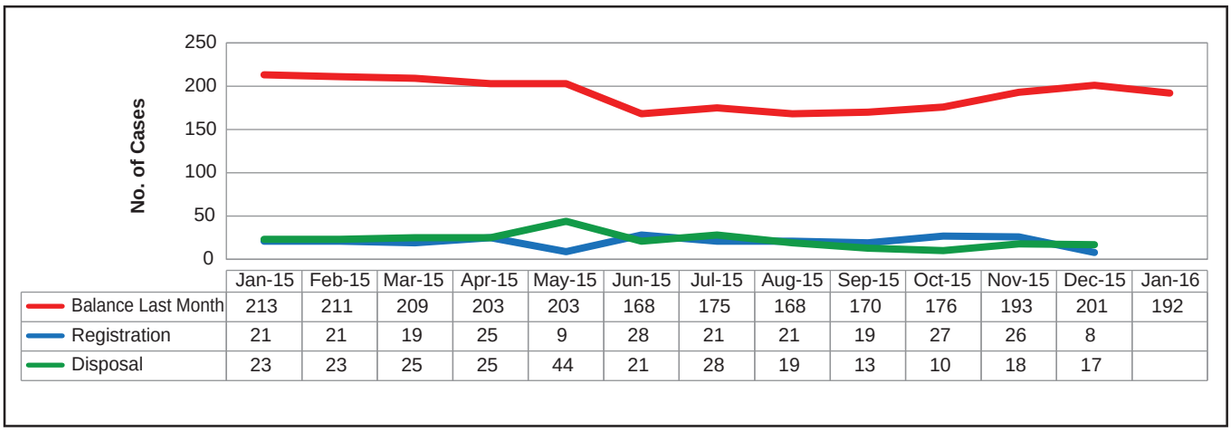
PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
1997												1													1
2004												1													1
2007												1								1					2
2008												2						1							3
2009												5													5
2010												7								3					10
2011												8					1								9
2012				4							4	13			1										22
2013				12			8					33		4			1				7			3		68
2014		3	1	11			92				10	60		10	11		11			4	564	12	21	23		833
2015	22	54	37	51		3	25	8	7		18	175		12	369		51	4		45	2156	126	132	225		3520
TOTAL	22	57	38	78		3	125	8	7		32	306		26	381		64	5		53	2727	138	153	251		4474

3.2 IN THE HIGH COURT AT GEORGETOWN – CRIMINAL

For criminal cases in the year 2015, a total number of 245 cases including appeals and trials were registered and 266 cases were disposed of, leaving a balance of 192 cases pending.

TRACKING CHART
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	213	211	209	203	203	168	175	168	170	176	193	201	192
Registration	21	21	19	25	9	28	21	21	19	27	26	8	
Disposal	23	23	25	25	44	21	28	19	13	10	18	17	

PENDING CASES
IN THE HIGH COURT AT GEORGETOWN (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	43	45	46	
2009																													
2010																													
2011																													
2012																2		1						1						4
2013							5	1		3						2		1												12
2014	4						3			2				2		22		1												34
2015	40		1		1		45			5			4	5		24		11										6		142
TOTAL	44		1		1		53	1		10			4	7		50		14						1				6		192

4. PERAK

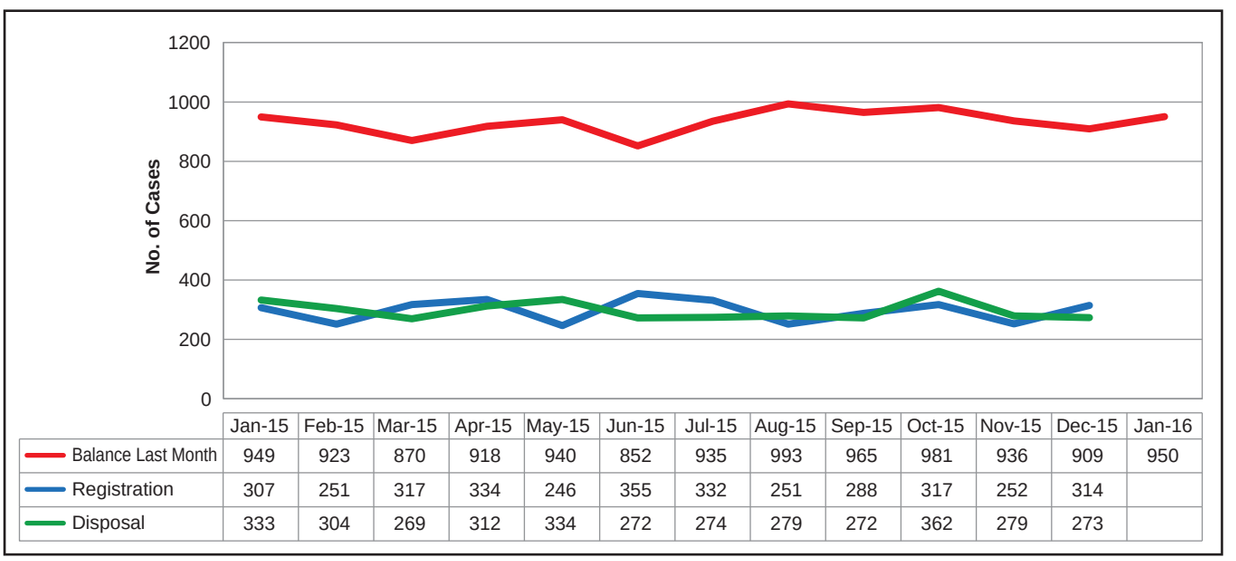
4.1 IN THE HIGH COURT AT IPOH – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Ipoh for the year 2015.

For the period from January to December 2015, the total number of civil cases registered was 3564 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 3563 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in High Court at Ipoh is 2724 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	949	923	870	918	940	852	935	993	965	981	936	909	950
Registration	307	251	317	334	246	355	332	251	288	317	252	314	
Disposal	333	304	269	312	334	272	274	279	272	362	279	273	

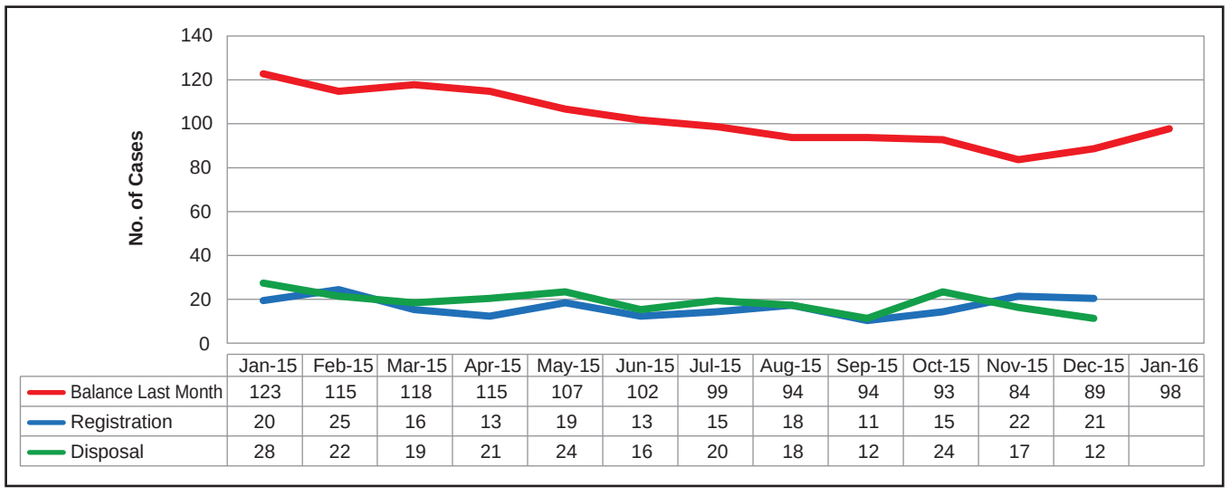
PENDING CASES
IN THE HIGH COURT AT IPOH (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																									TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2007												1														1
2010																										
2011												4														4
2012																								1		1
2013																										
2014		1		5			5				1	13			14					2	62			2		105
2015	2	49	4	40			63	4	4		3	81	2	5	313	56	21			27	1600	22	90	227		2613
TOTAL	2	50	4	45			68	4	4		4	99	2	5	327	56	21			29	1662	22	90	230		2724

4.2 IN THE HIGH COURT AT IPOH – CRIMINAL

For criminal cases in the year 2015, a total number of 208 cases including appeals and trials were registered and 233 cases were disposed of, leaving a balance of 98 cases pending.

TRACKING CHART
IN THE HIGH COURT AT IPOH (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	123	115	118	115	107	102	99	94	94	93	84	89	98
Registration	20	25	16	13	19	13	15	18	11	15	22	21	
Disposal	28	22	19	21	24	16	20	18	12	24	17	12	

PENDING CASES
IN THE HIGH COURT AT IPOH (CRIMINAL)
AS AT 31 DECEMBER 2015

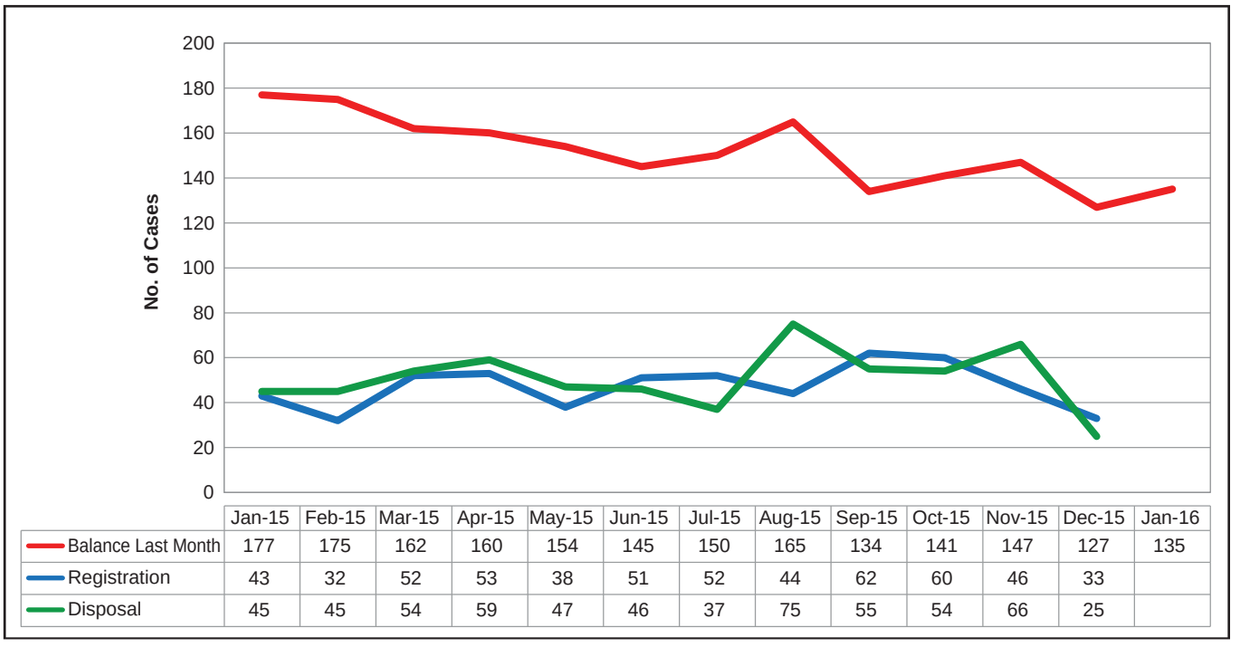
YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																			1											1
2011																														
2012																		2												2
2013																														
2014	1	1								1								2						1						6
2015	21	15		4			10	6		7				6	3	8		4								1		4		89
TOTAL	22	16		4			10	6		8				6	3	8		8	1					1		1		4		98

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 2015. For the period from January to December 2015, the total number of civil cases registered was 566 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 608 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in High Court at Taiping is 466 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	177	175	162	160	154	145	150	165	134	141	147	127	135
Registration	43	32	52	53	38	51	52	44	62	60	46	33	
Disposal	45	45	54	59	47	46	37	75	55	54	66	25	

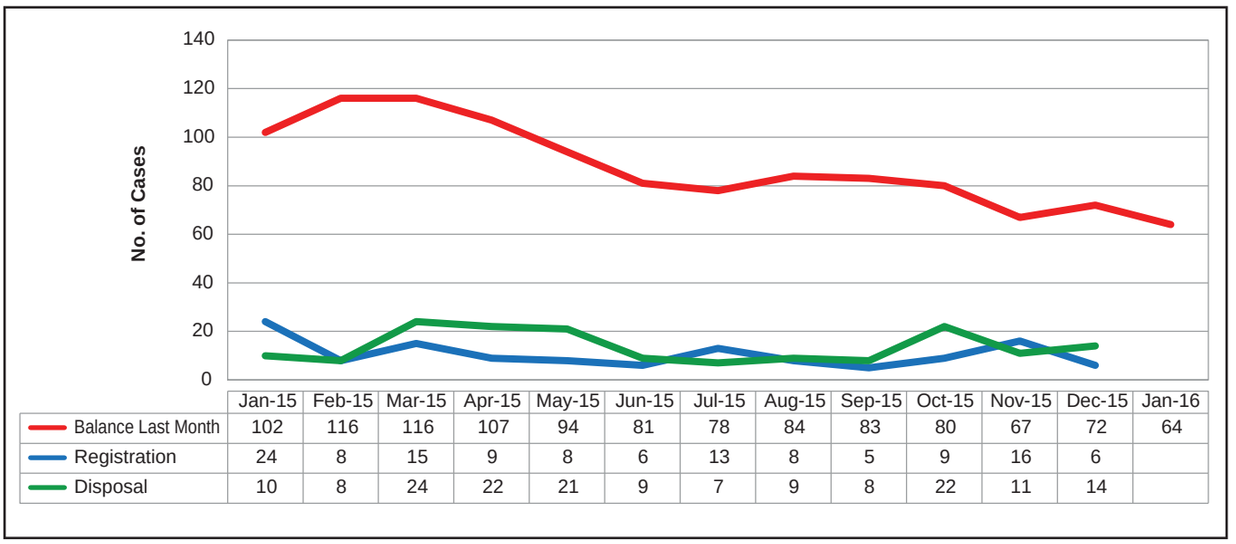
PENDING CASES
IN THE HIGH COURT AT TAIPING (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011												2													2
2012																									
2013																					2				2
2014							1				5	1									35			1		43
2015		8	1	7			4	1		1		5			58		3			1	268	12	14	36		419
TOTAL		8	1	7			5	1		1	5	8			58		3			1	305	12	14	37		466

4.4 IN THE HIGH COURT AT TAIPING – CRIMINAL

For criminal cases in the year 2015, a total of number of 127 cases including appeals and trials were registered and 165 cases were disposed of, leaving a balance of 64 cases pending.

TRACKING CHART
IN THE HIGH COURT AT TAIPING (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	102	116	116	107	94	81	78	84	83	80	67	72	64
Registration	24	8	15	9	8	6	13	8	5	9	16	6	
Disposal	10	8	24	22	21	9	7	9	8	22	11	14	

PENDING CASES
IN THE HIGH COURT AT TAIPING (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012							1											1												2
2013																	1	3						1						5
2014																9		4				1								14
2015	5	13		4			7	1		1			1		1	6		3								1				43
TOTAL	5	13		4			8	1		1			1		1	15	1	11				1		1		1				64

5. KUALA LUMPUR

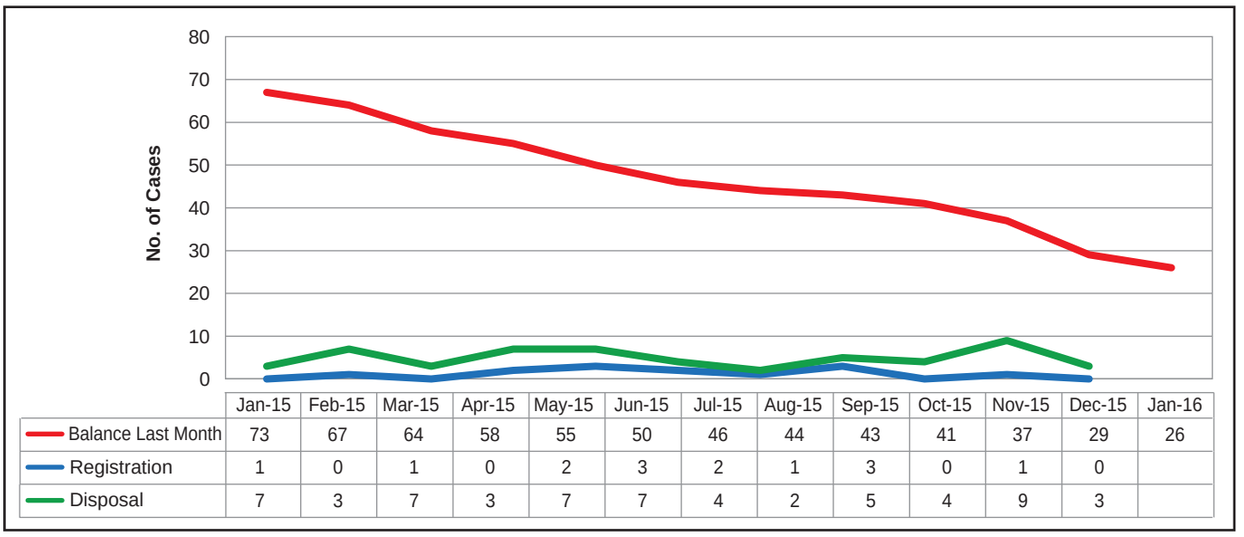
5.1 IN THE HIGH COURT AT KUALA LUMPUR – CIVIL DIVISION

Old Civil Court (OCvC)

The tracking chart below shows the disposal of OCvC cases in the Civil Division in the High Court at Kuala Lumpur for the year 2015. For the period from January to December 2015, the total number of OCvC cases disposed of was 61 (excluding cases for Code 29, 31 and 32) throughout 2015.

As at 31.12.2015, the total number of OCvC cases pending in the Civil Division in the High Court at Kuala Lumpur is 26 cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	73	67	64	58	55	50	46	44	43	41	37	29	26
Registration	1	0	1	0	2	3	2	1	3	0	1	0	
Disposal	7	3	7	3	7	7	4	2	5	4	9	3	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (OCvC)
AS AT 31 DECEMBER 2015

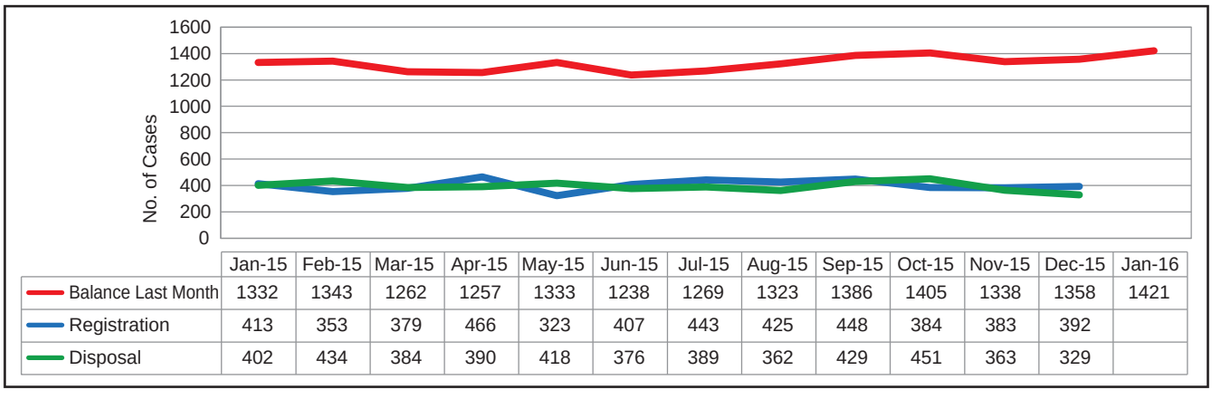
YEAR	CODES																									TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2002																										
2005																										
2006																										
2007												1														1
2008												3		2												5
2009											2	9		4	1											16
2010												4														4
TOTAL											2	17		6	1											26

New Civil Court (NCvC)

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 2015. For the period from January to December 2015, the total number of civil cases registered was 4816 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 4727 cases throughout 2015.

As at 31.12.2015, the total number of NCvC cases pending in the High Court at Kuala Lumpur is 1621 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCVC)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1332	1343	1262	1257	1333	1238	1269	1323	1386	1405	1338	1358	1421
Registration	413	353	379	466	323	407	443	425	448	384	383	392	
Disposal	402	434	384	390	418	376	389	362	429	451	363	329	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCVC)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2011											1	3		1												5
2012											3	13		3												19
2013											8	27		9												44
2014				1			1				17	111		13	3							2				148
2015	34	30	77	93			20				53	394		69	437							107	91			1405
TOTAL	**34**	**30**	**77**	**94**			**21**				**82**	**548**		**95**	**440**							**109**	**91**			**1621**

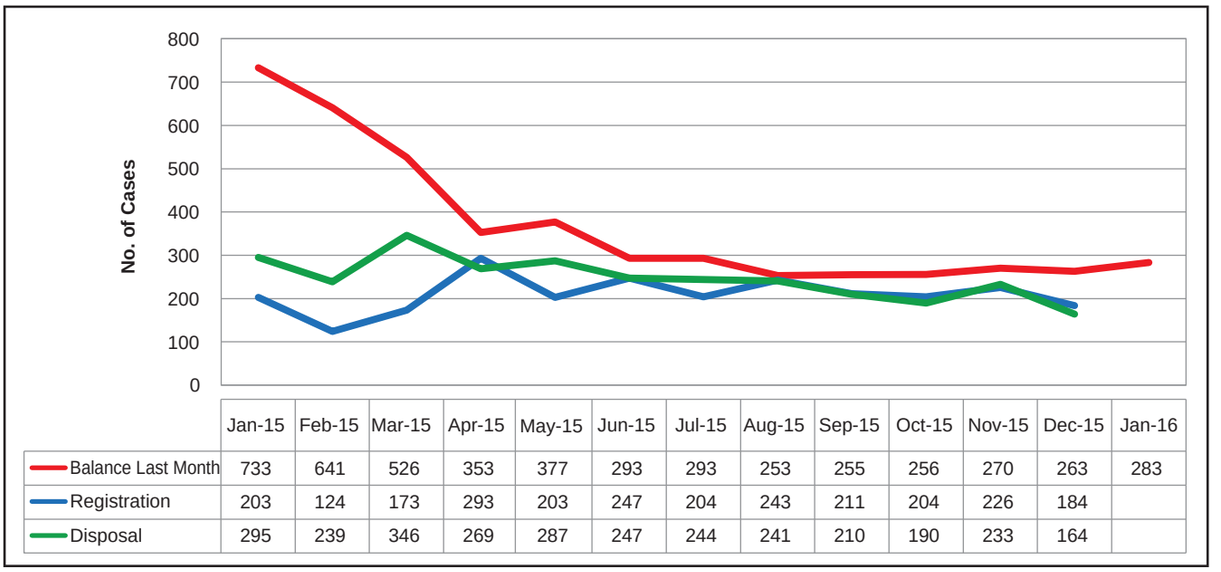
KUALA LUMPUR

Family Court

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 2015. For the period from January to December 2015, the total number of civil cases registered was 2515. The High Court has managed to dispose of 2965 cases throughout 2015.

As at 31.12.2015, the total number of Family Court cases pending in the Civil Division in the High Court at Kuala Lumpur is 283 cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	733	641	526	353	377	293	293	253	255	256	270	263	283
Registration	203	124	173	293	203	247	204	243	211	204	226	184	
Disposal	295	239	346	269	287	247	244	241	210	190	233	164	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (FAMILY)
AS AT 31 DECEMBER 2015

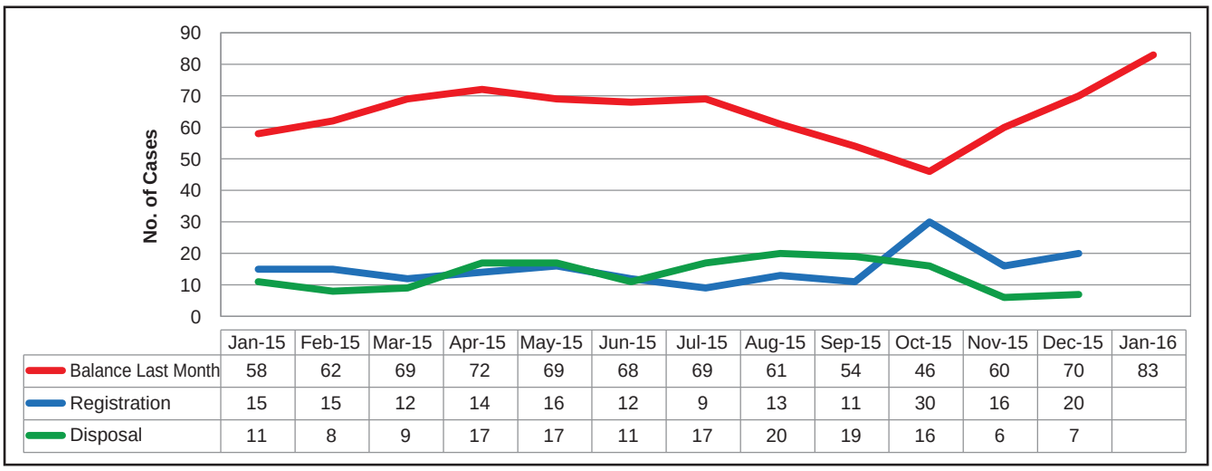
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011																								1		1
2012																										
2013																								3		3
2014															1									9		10
2015												1			48									213	7	269
TOTAL												1			49									226	7	283

Construction Court

The tracking chart below shows the registration and disposal of Construction Court cases in the Civil Division in the High Court at Kuala Lumpur for the year 2015. For the period from January to December 2015, the total cases registered were 183. The High Court has managed to dispose of 158 cases throughout 2015.

As at 31.12.2015, the total number of construction cases pending in the Civil Division in the High Court at Kuala Lumpur is 83 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	58	62	69	72	69	68	69	61	54	46	60	70	83
Registration	15	15	12	14	16	12	9	13	11	30	16	20	
Disposal	11	8	9	17	17	11	17	20	19	16	6	7	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (CONSTRUCTION)
AS AT 31 DECEMBER 2015

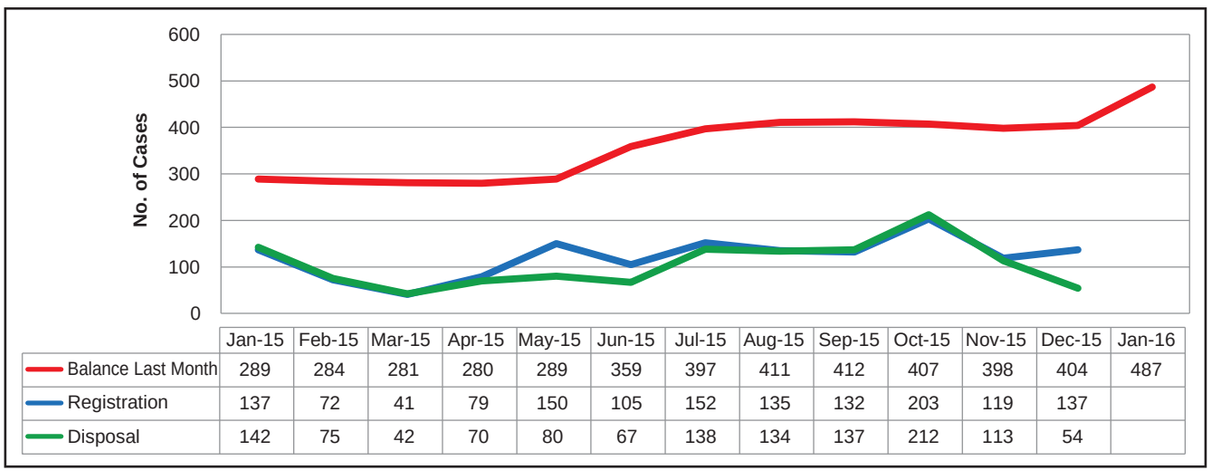
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011																									
2012																									
2013											1	1													2
2014											1	8													9
2015			10	3							6	33			6	14									72
TOTAL			10	3							8	42			6	14									83

5.2 IN THE HIGH COURT AT KUALA LUMPUR – APPELLATE AND SPECIAL POWERS DIVISION

The tracking chart below shows the registration and disposal of cases in the Appellate and Special Powers Division in the High Court at Kuala Lumpur for the year 2015. For the period from January to December 2015, the total number of cases registered was 1462. The High Court has managed to dispose of 1264 cases throughout 2015.

As at 31.12.2015, the total number of cases pending in the Appellate and Special Powers Division in the High Court at Kuala Lumpur is 487 cases as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	289	284	281	280	289	359	397	411	412	407	398	404	487
Registration	137	72	41	79	150	105	152	135	132	203	119	137	
Disposal	142	75	42	70	80	67	138	134	137	212	113	54	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (APPELLATE & SPECIAL POWERS)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2007									1								1									2
2008																	1									1
2009																										
2010																	1									1
2011																										
2012																	3									3
2013						3									1		11									15
2014						5			4						2		66									77
2015						5		9	33						36		305									388
TOTAL						13		9	38						39		388									487

5.3 IN THE HIGH COURT AT KUALA LUMPUR – COMMERCIAL DIVISION

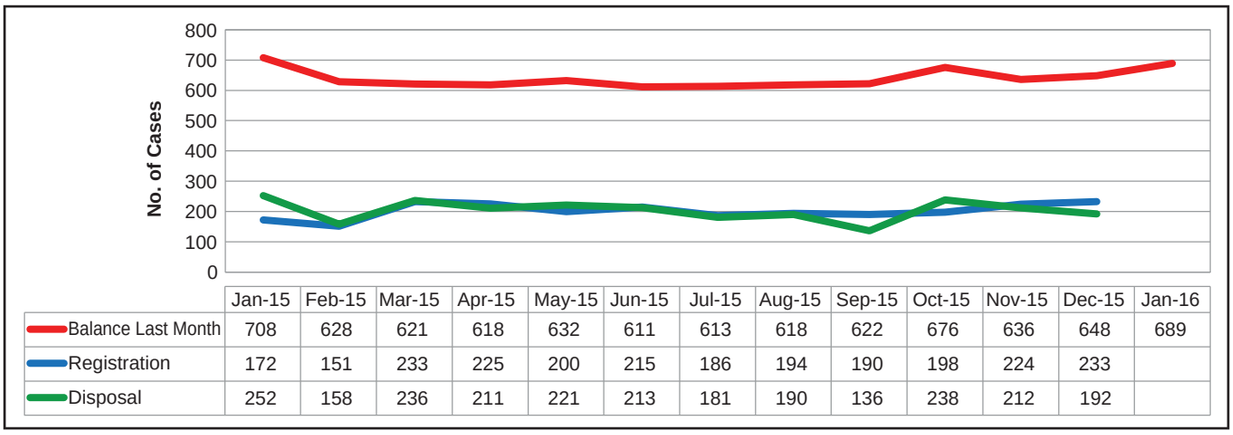
New Commercial Court (NCC)

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 2015.

For the period from January to December 2015, the total number of NCC cases registered was 2421. The High Court has managed to dispose of 2440 cases throughout 2015.

As at 31.12.2015, the total number of NCC cases pending in the High Court at Kuala Lumpur is 689 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	708	628	621	618	632	611	613	618	622	676	636	648	689
Registration	172	151	233	225	200	215	186	194	190	198	224	233	
Disposal	252	158	236	211	221	213	181	190	136	238	212	192	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (NCC)
AS AT 31 DECEMBER 2015

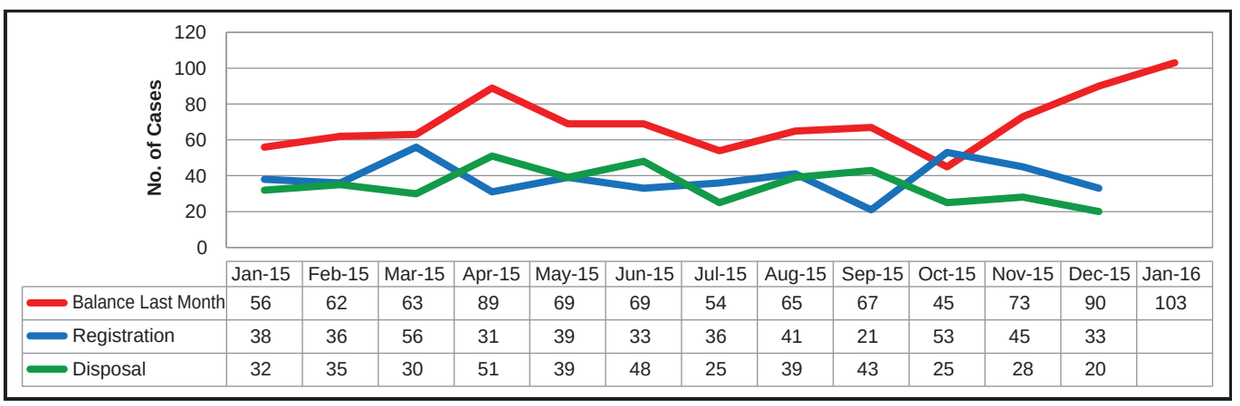
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010												1													1
2011												4													4
2012												9													9
2013												12			1					1					14
2014											1	39			1			1							42
2015	12	9	49	26								168			115			13		227					619
TOTAL	12	9	49	26							1	233			117			14		228					689

Muamalat Court

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 2015. For the period from January to December 2015, the total number of Muamalat cases registered was 462. The High Court has managed to dispose of 415 cases throughout 2015.

As at 31.12.2015, the total number of Muamalat cases pending in the High Court at Kuala Lumpur is 103 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	56	62	63	89	69	69	54	65	67	45	73	90	103
Registration	38	36	56	31	39	33	36	41	21	53	45	33	
Disposal	32	35	30	51	39	48	25	39	43	25	28	20	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (MUAMALAT)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011																									
2012																									
2013																									
2014																									
2015	1		3	2									39			58									103
TOTAL	1		3	2									39			58									103

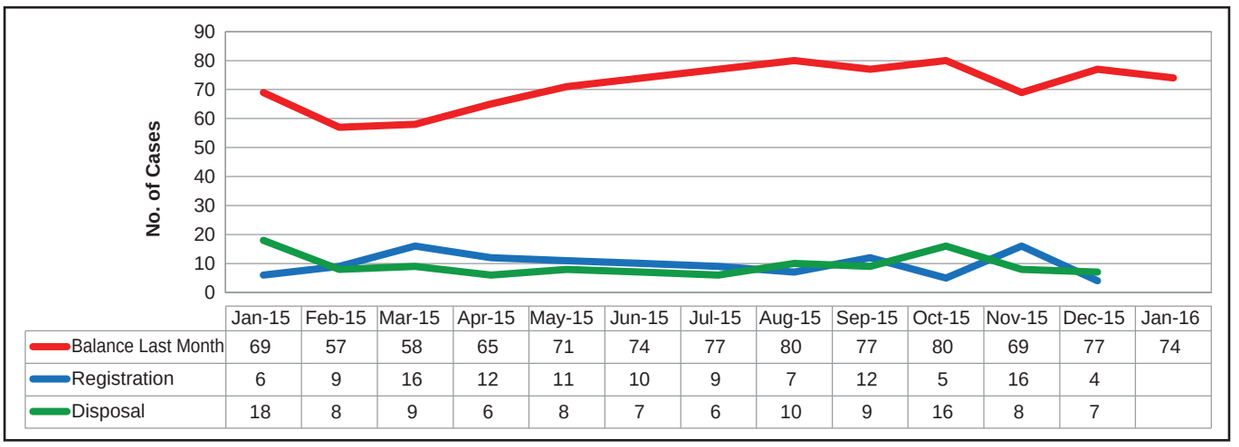
Intellectual Property Court

The tracking chart below shows the registration and disposal of intellectual property cases in the Commercial Division in the High Court at Kuala Lumpur for the year 2015.

For the period from January to December 2015, the total number of civil cases registered was 117. The High Court has managed to dispose of 112 cases throughout 2015.

As at 31.12.2015, the total number of Intellectual Property cases pending in the Commercial Division in the High Court at Kuala Lumpur is 74 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	69	57	58	65	71	74	77	80	77	80	69	77	74
Registration	6	9	16	12	11	10	9	7	12	5	16	4	
Disposal	18	8	9	6	8	7	6	10	9	16	8	7	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (INTELLECTUAL PROPERTY)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011																									
2012												1													1
2013												1													1
2014												14													14
2015												43			15										58
TOTAL												59			15										74

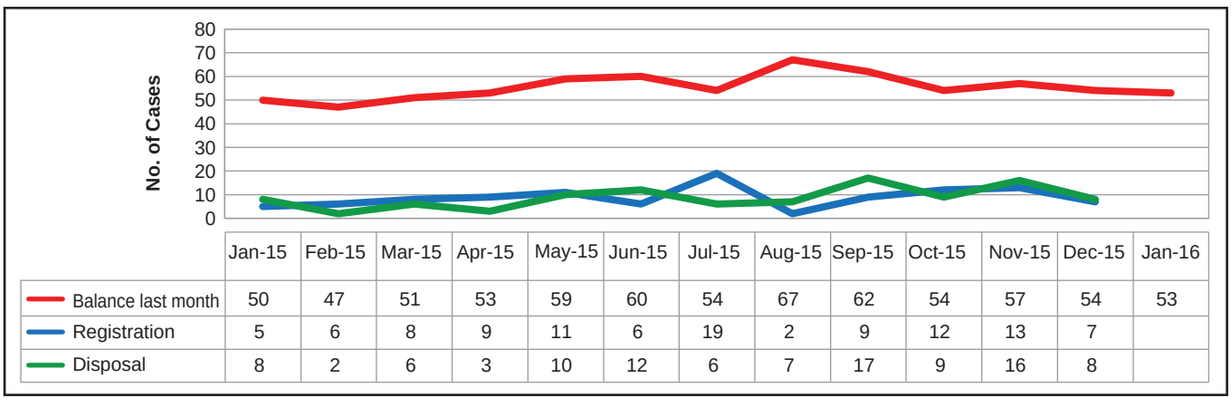
Admiralty Court

The tracking chart below shows the registration and disposal of admiralty cases in the High Court at Kuala Lumpur for the year 2015.

For the period from January to December 2015, the total admiralty cases registered was 107. The High Court has managed to dispose of 104 cases throughout 2015.

As at 31.12.2015, the total number of admiralty cases pending 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 (ADMIRALTY)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance last month	50	47	51	53	59	60	54	67	62	54	57	54	53
Registration	5	6	8	9	11	6	19	2	9	12	13	7	
Disposal	8	2	6	3	10	12	6	7	17	9	16	8	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (ADMIRALTY)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																										
2010																										
2011																										
2012																										
2013																			2							2
2014																			14							14
2015															5				32							37
TOTAL															5				48							53

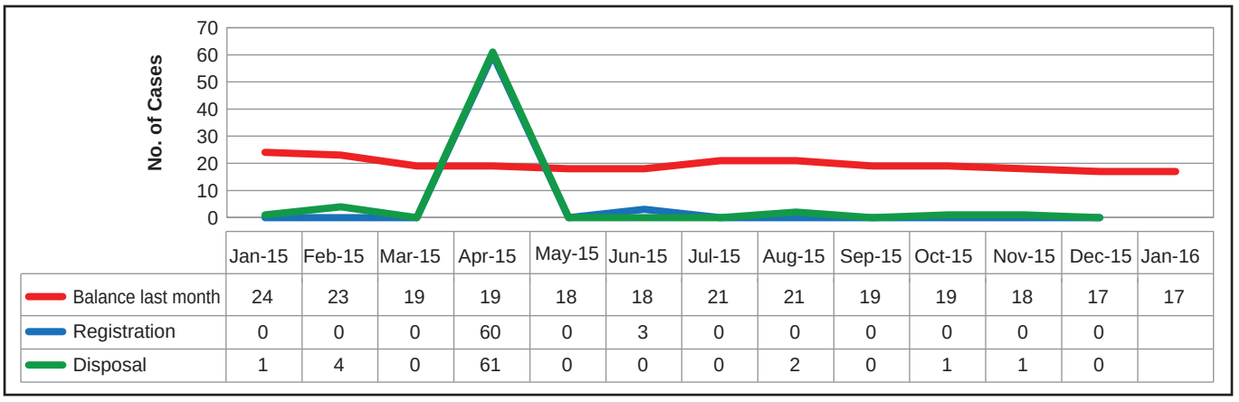
Old Commercial Court (OCC)

The tracking chart below shows the registration and disposal of OCC cases at High Court at Kuala Lumpur for the year 2015.

For the period from January to December 2015, The High Court has managed to dispose of 70 cases throughout 2015.

As at 31.12.2015, the total number of OCC cases pending in the High Court at Kuala Lumpur is 17 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (OCC)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance last month	24	23	19	19	18	18	21	21	19	19	18	17	17
Registration	0	0	0	60	0	3	0	0	0	0	0	0	
Disposal	1	4	0	61	0	0	0	2	0	1	1	0	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (OCC)
AS AT 31 DECEMBER 2015

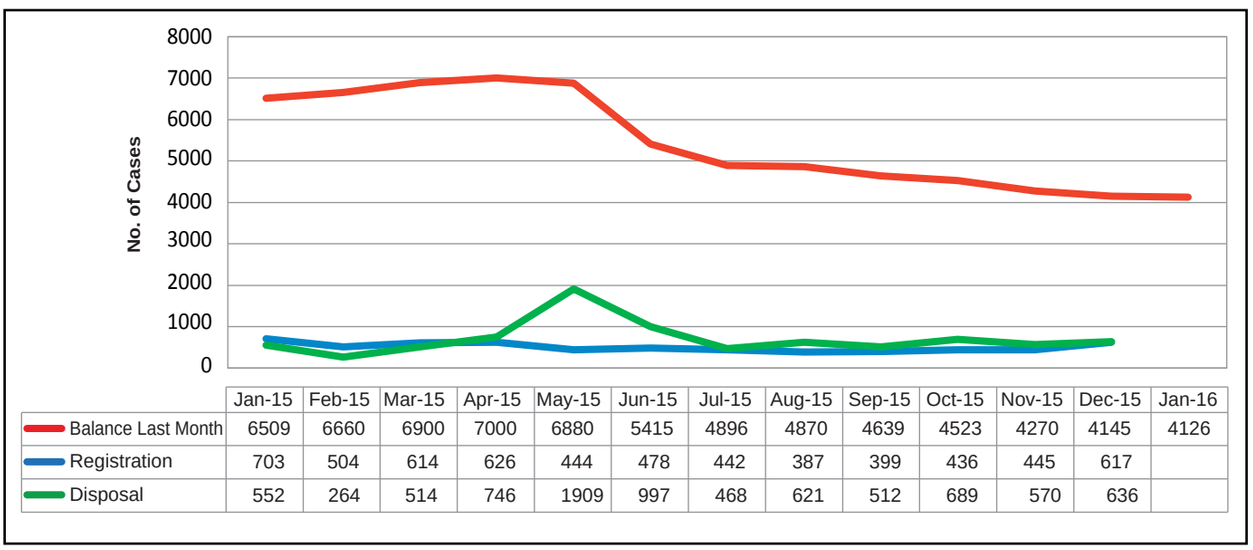
YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
1998												1														1
1999																										
2000																										
2001																										
2002																										
2003												1														1
2004																										
2005												2														2
2006												1														1
2007												1														1
2008												4								1						5
2009												4			1			1								6
TOTAL												14			1			1		1						17

Bankruptcy Division

The tracking chart below shows the registration and disposal of bankruptcy cases in the High Court at Kuala Lumpur for the year 2015. For the period from January to December 2015, the total number of bankruptcy cases registered was 6095. The High Court has managed to dispose of 8478 cases throughout 2015.

As at 31.12.2015, the total number of bankruptcy cases pending in the High Court at Kuala Lumpur is 4126 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	6509	6660	6900	7000	6880	5415	4896	4870	4639	4523	4270	4145	4126
Registration	703	504	614	626	444	478	442	387	399	436	445	617	
Disposal	552	264	514	746	1909	997	468	621	512	689	570	636	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (BANKRUPTCY)
AS AT 31 December 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22M	23	24	24M	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011																					1					1
2012																					1					1
2013																					7					7
2014																					367					367
2015																					3750					3750
TOTAL																					4126					4126

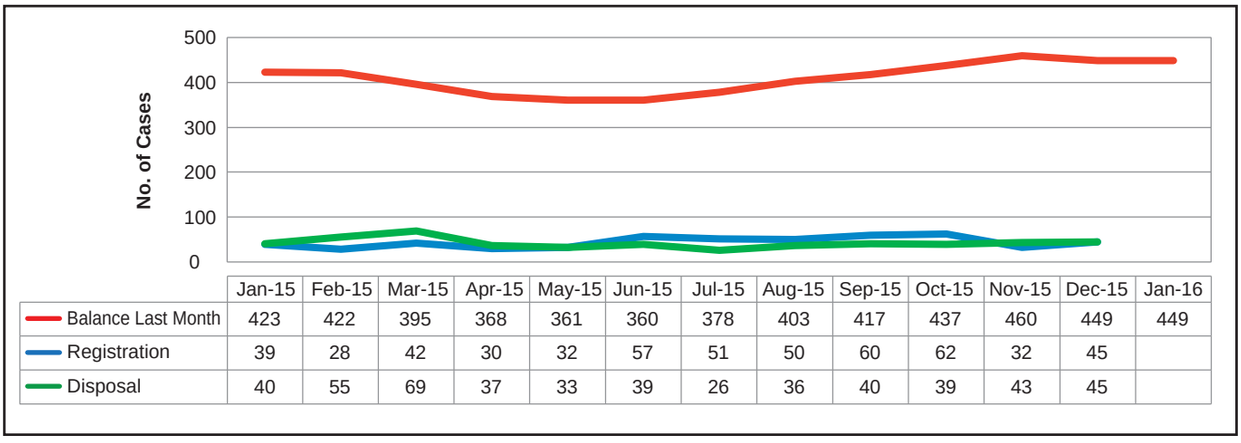
5.4 IN THE HIGH COURT AT KUALA LUMPUR – CRIMINAL DIVISION

The tracking chart below shows the registration and disposal of criminal cases in the High Court at Kuala Lumpur for the year 2015.

For the period from January to December 2015, the total number of criminal cases registered was 528. The High Court has managed to dispose of 502 cases throughout 2015.

As at 31.12.2015, the total number of criminal cases pending in the High Court at Kuala Lumpur is 449 as reflected in the pending cases list below.

TRACKING CHART
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	423	422	395	368	361	360	378	403	417	437	460	449	449
Registration	39	28	42	30	32	57	51	50	60	62	32	45	
Disposal	40	55	69	37	33	39	26	36	40	39	43	45	

PENDING CASES
IN THE HIGH COURT AT KUALA LUMPUR (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2006																								1					1
2009							1																						1
2010								2										1											3
2011							6	1							1	1													9
2012							10							1	1	1						1							14
2013							26	2		1					2	2		2				2						4		41
2014	4						30	2	1	6	1			1	3	19		4	1			7		2				7		88
2015	35	33	1	9			61	25	14	7		1		6	25	41		10								5		15	5	293
TOTAL	39	33	1	9			134	32	15	14	1	1		8	32	64		17	1			10		2		5		26	5	449

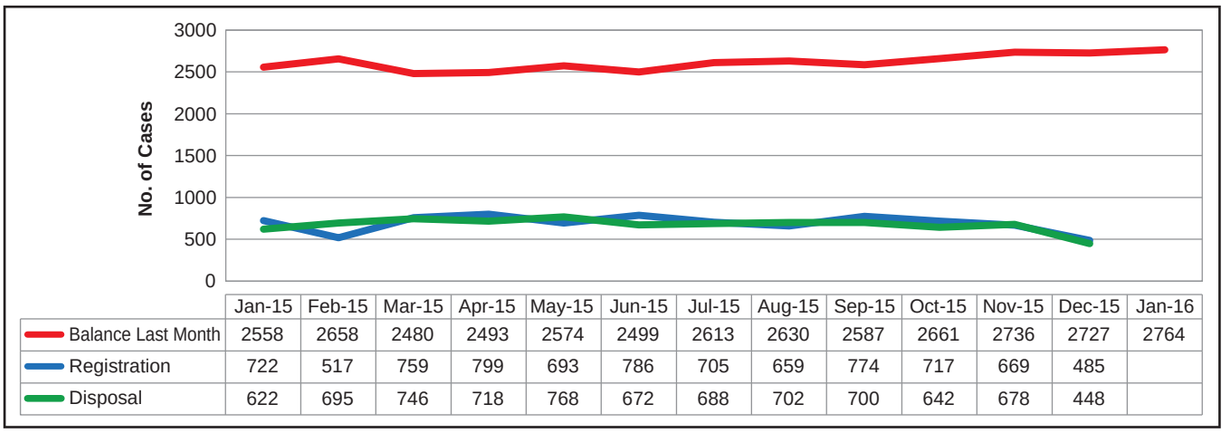
6. SELANGOR

6.1 IN THE HIGH COURT AT SHAH ALAM – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Shah Alam for year the 2015. For the period from January to December 2015, the total number of civil cases registered was 8285 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 8079 throughout 2015.

As at 31.12.2015, the total number of civil cases pending in High Court at Shah Alam is 8745 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	2558	2658	2480	2493	2574	2499	2613	2630	2587	2661	2736	2727	2764
Registration	722	517	759	799	693	786	705	659	774	717	669	485	
Disposal	622	695	746	718	768	672	688	702	700	642	678	448	

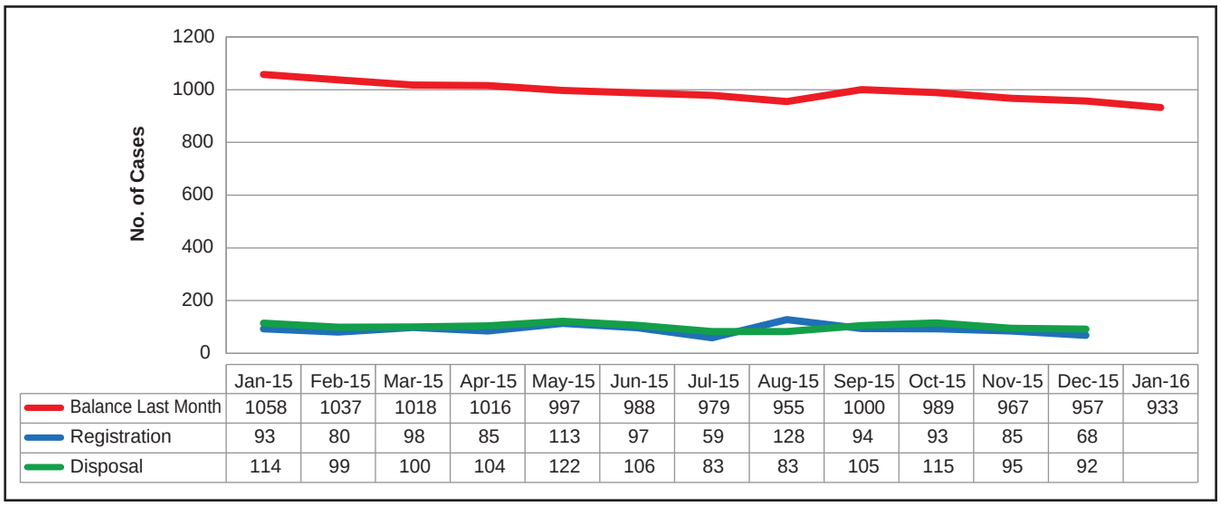
PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2001												1													1
2002							2																		2
2003																									
2004																	1								1
2005												1													1
2006															1										1
2007							2				2														4
2008											1	3													4
2009												3			1					1					5
2010											1														1
2011												3													3
2012							19				2	9		1			5								36
2013				15			3				4	30		3	1		2						1		59
2014	1	2	11	41			7	1			6	110		4	22		6			1	60	1	2	12		287
2015	50	76	99	190			115	13	3		34	412		13	763		42	1		175	5791	71	56	434	2	8340
TOTAL	51	78	110	246			148	14	3		50	572		21	788		56	1		177	5851	72	58	447	2	8745

6.2 IN THE HIGH COURT AT SHAH ALAM – CRIMINAL

For criminal cases in the year 2015, a total number of 2151 cases including appeals and trials were registered and 1218 cases were disposed of, leaving a balance of 933 cases pending.

TRACKING CHART
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1058	1037	1018	1016	997	988	979	955	1000	989	967	957	933
Registration	93	80	98	85	113	97	59	128	94	93	85	68	
Disposal	114	99	100	104	122	106	83	83	105	115	95	92	

PENDING CASES
IN THE HIGH COURT AT SHAH ALAM (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																										TOTAL
	41			41A			42			42A			43	44		39B		302		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	
2008																											
2009																		2									2
2010							1			2						1											4
2011							1			1						2		1									5
2012	6						9			8						20		4			1			1			49
2013	1			1			22	2		8						44		11		2		1		5			97
2014	8			1			45	6		8						89		46		7		2		5			217
2015	44	66	3	5	1		119	39	2	5	1		7	25	10	134	2	38		7		1		17	1	32		559
TOTAL	59	66	3	7	1		197	47	2	32	1		7	25	10	290	2	102		16	1	4		28	1	32		933

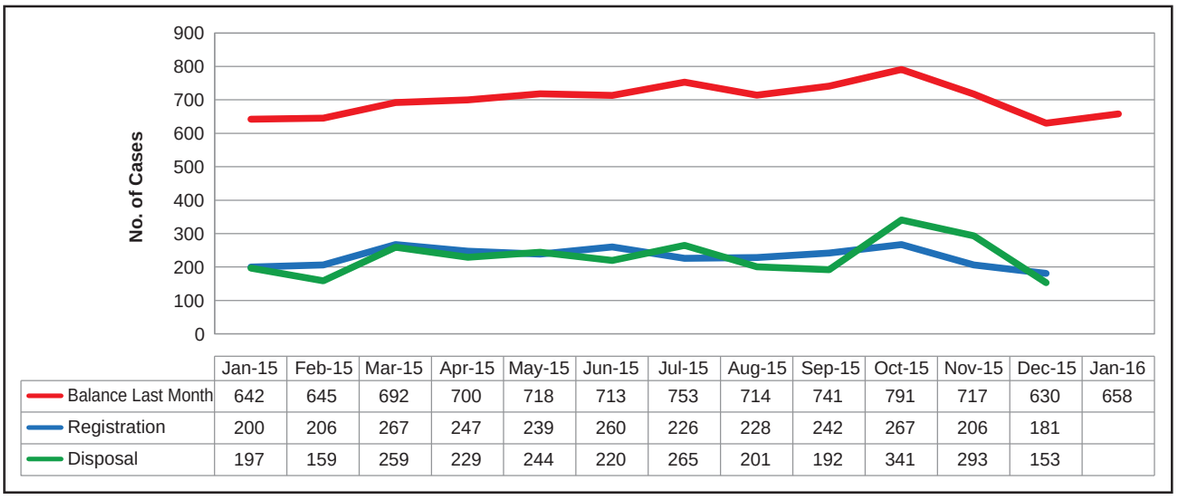
7. NEGERI SEMBILAN

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 2015. For the period from January to December 2015, the total number of civil cases registered was 2769 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2753 cases throughout 2015.

As at 31 December 2015, the total number of civil cases pending in the High Court at Seremban is 4436 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	642	645	692	700	718	713	753	714	741	791	717	630	658
Registration	200	206	267	247	239	260	226	228	242	267	206	181	
Disposal	197	159	259	229	244	220	265	201	192	341	293	153	

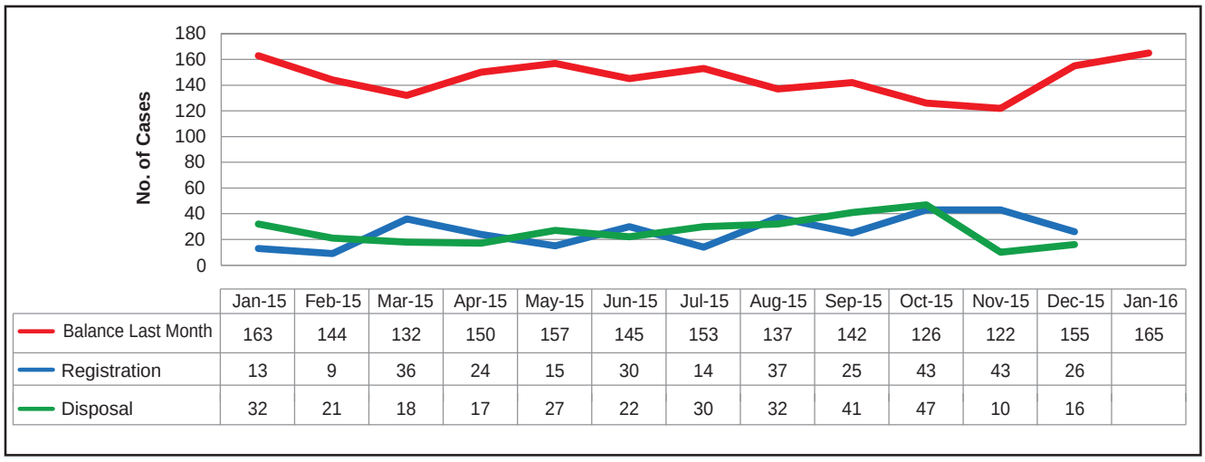
PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CIVIL)
AS AT 31 December 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	37	
	A	B	A	B																						
2007												1													1
2010																									
2011																									
2012												2													2
2013												2									1428				1430
2014							9					6			1						1054			3	1076
2015	2	6	8	54			55	5	1	1	2	62		3	302		7			4	1116	82	98	115	7	1927
TOTAL	2	6	8	54			64	5	1	1	2	73		3	303		7			4	3598	82	98	118	7	4436

7.2 IN THE HIGH COURT AT SEREMBAN – CRIMINAL

For criminal cases in the year 2015, a total number of 315 cases including appeals and trials were registered and 313 cases were disposed of, leaving a balance of 165 cases pending.

TRACKING CHART
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	163	144	132	150	157	145	153	137	142	126	122	155	165
Registration	13	9	36	24	15	30	14	37	25	43	43	26	
Disposal	32	21	18	17	27	22	30	32	41	47	10	16	

PENDING CASES
IN THE HIGH COURT AT SEREMBAN (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012																													
2013																													
2014	1	1					6	4		4	1					2		4						1						24
2015	21	22		3	3		43	14		3	1		2	5		7		11								6				141
TOTAL	22	23		3	3		49	18		7	2		2	5		9		15						1		6				165

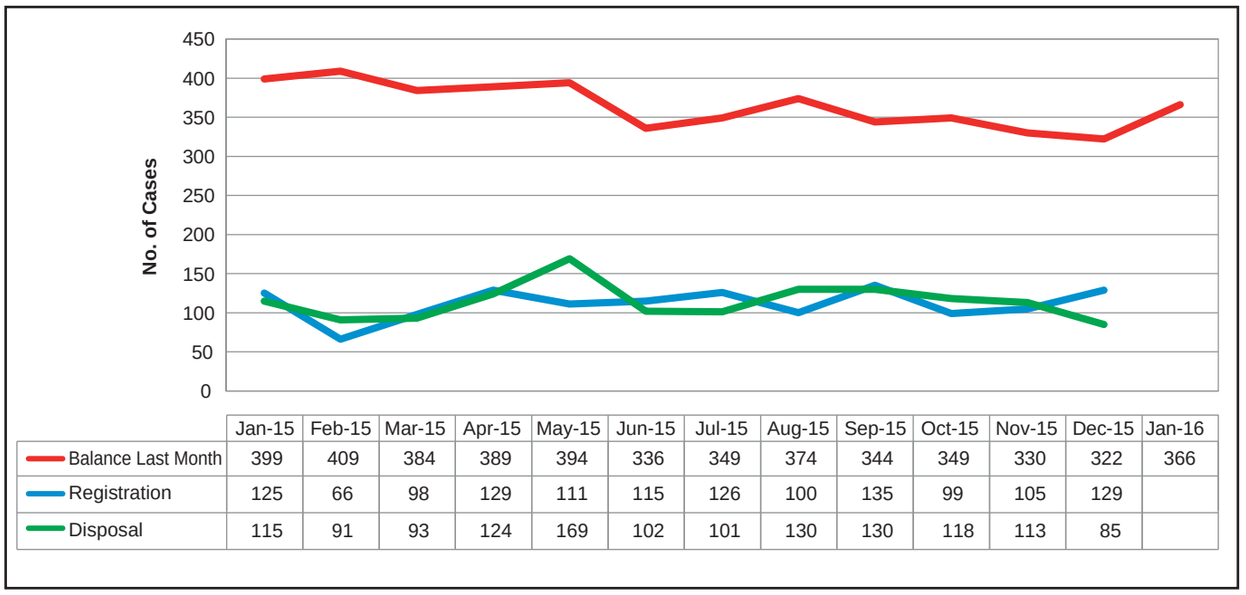
8. MALACCA

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 2015. For the period from January to December 2015, the total number of civil cases registered was 1338 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1241 cases throughout 2015.

As at 31 December 2015, the total number of civil cases pending in the High Court at Malacca is 1294 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	399	409	384	389	394	336	349	374	344	349	330	322	366
Registration	125	66	98	129	111	115	126	100	135	99	105	129	
Disposal	115	91	93	124	169	102	101	130	130	118	113	85	

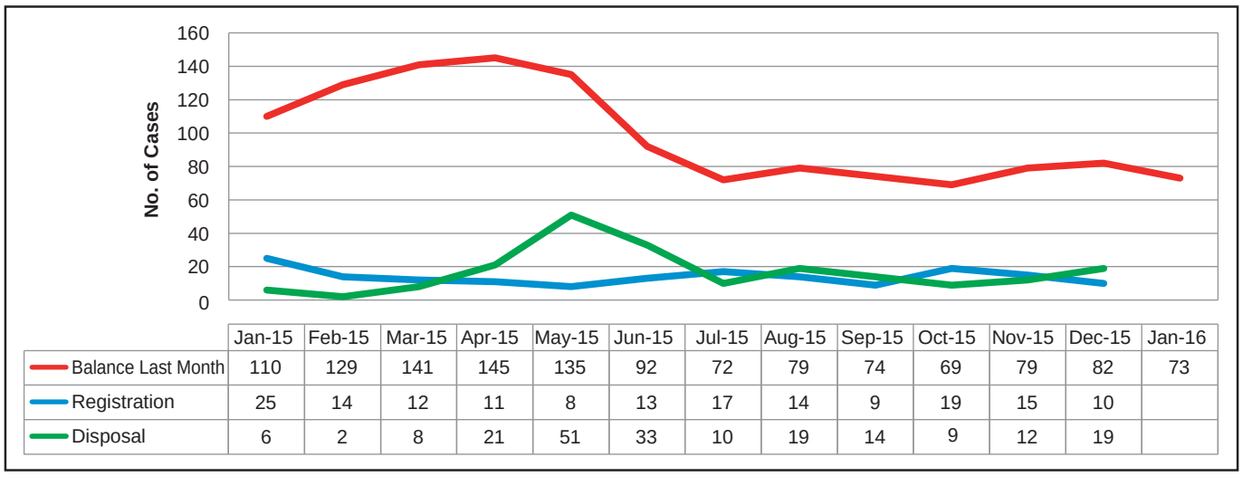
PENDING CASES
IN THE HIGH COURT AT MALACCA (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010												1													1
2011												2													2
2012												2													2
2013												2													2
2014				1			9				2	3			1						107			1		124
2015	5	11	7	32			8	6	1	6	5	55			116	13	5			20	789	11	21	52		1163
TOTAL	5	11	7	33			17	6	1	6	7	65			117	13	5			20	896	11	21	53		1294

8.2 IN THE HIGH COURT AT MALACCA - CRIMINAL

For Criminal Cases in the year 2015, a total number of 167 cases including appeals and trials were registered and 204 cases were disposed of, leaving a balance of 73 cases pending.

TRACKING CHART
IN THE HIGH COURT AT MALACCA (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	110	129	141	145	135	92	72	79	74	69	79	82	73
Registration	25	14	12	11	8	13	17	14	9	19	15	10	
Disposal	6	2	8	21	51	33	10	19	14	9	12	19	

PENDING CASES
IN THE HIGH COURT AT MALACCA (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012																													
2013							1	1																					2
2014								1								1		3											5
2015	22	9					11	7		1					2	9		5											66
TOTAL	22	9					12	9		1					2	10		8											73

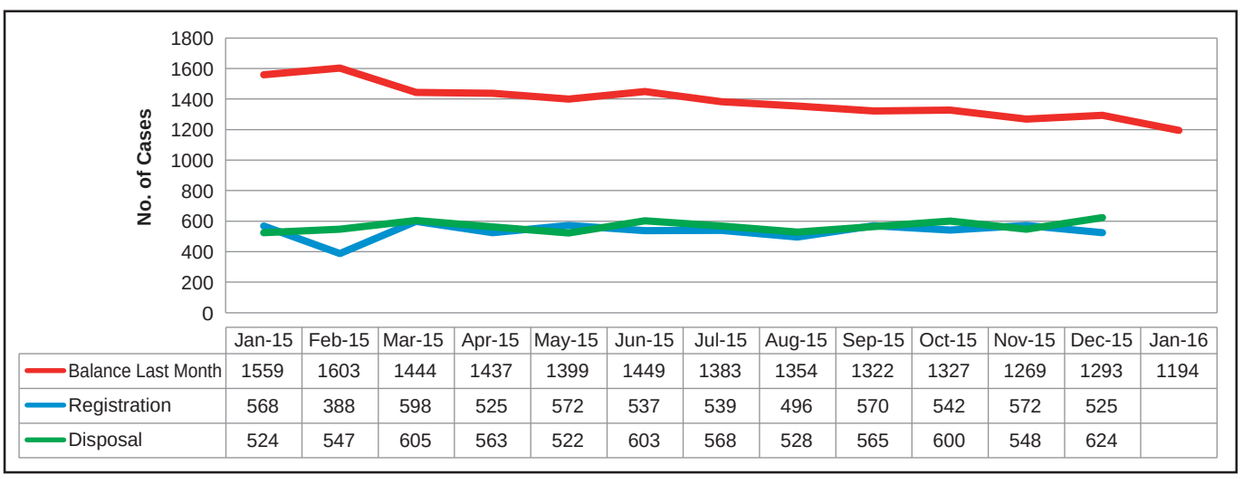
9. JOHOR

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 2015. For the period from January to December 2015, the total number of civil cases registered was 6432 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 6797 cases throughout 2015.

As at 31 December 2015, the total number of civil cases pending in the High Court at Johor Bahru is 3930 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
JANUARY – DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1559	1603	1444	1437	1399	1449	1383	1354	1322	1327	1269	1293	1194
Registration	568	388	598	525	572	537	539	496	570	542	572	525	
Disposal	524	547	605	563	522	603	568	528	565	600	548	624	

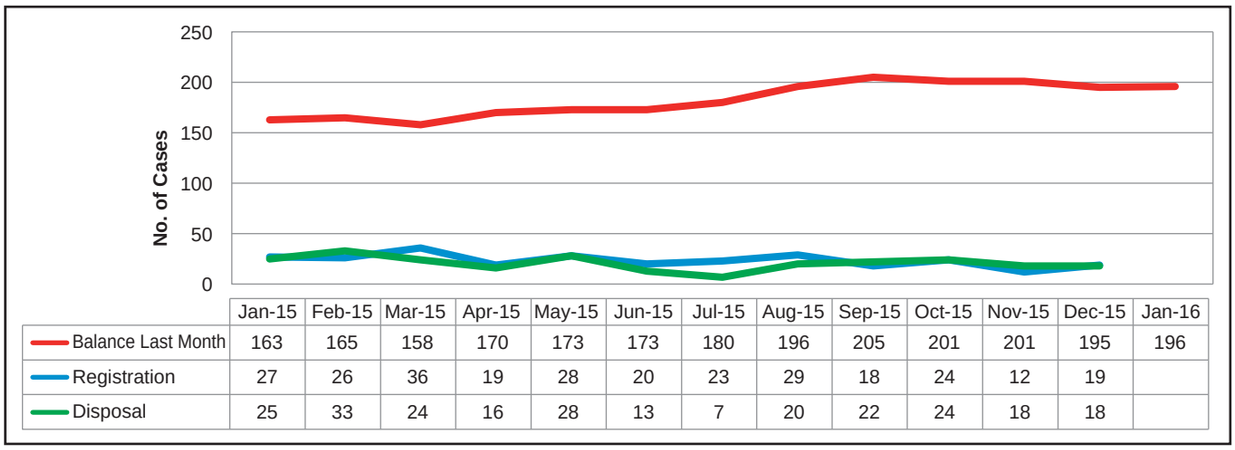
PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
1995												1													1
2009												1													1
2010																									
2011														1											1
2012												1		1											2
2013							8					5		2				1							16
2014				1			121				6	25		4	2						83			3		245
2015	5	12	13	46			80	3	3	9	9	106		14	411		23	3		57	2587	35	31	217		3664
TOTAL	**5**	**12**	**13**	**47**			**209**	**3**	**3**	**9**	**15**	**139**		**22**	**413**		**23**	**4**		**57**	**2670**	**35**	**31**	**220**		**3930**

9.2 IN THE HIGH COURT AT JOHOR BAHRU – CRIMINAL

For criminal cases in the year 2015, a total number of 281 cases including appeal and trials were registered and 248 cases were disposed of, leaving a balance of 196 cases pending.

TRACKING CHART
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
JANUARY –DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	163	165	158	170	173	173	180	196	205	201	201	195	196
Registration	27	26	36	19	28	20	23	29	18	24	12	19	
Disposal	25	33	24	16	28	13	7	20	22	24	18	18	

PENDING CASES
IN THE HIGH COURT AT JOHOR BAHRU (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012																													
2013							1	4		2						7		2						2						18
2014	1	1						2			4					13		8	1								1			31
2015	14	26	1		1		9	45	1		5	1		4		24		11						2		3				147
TOTAL	15	27	1		1		10	51	1	2	9	1		4		44		21	1					4		3	1			196

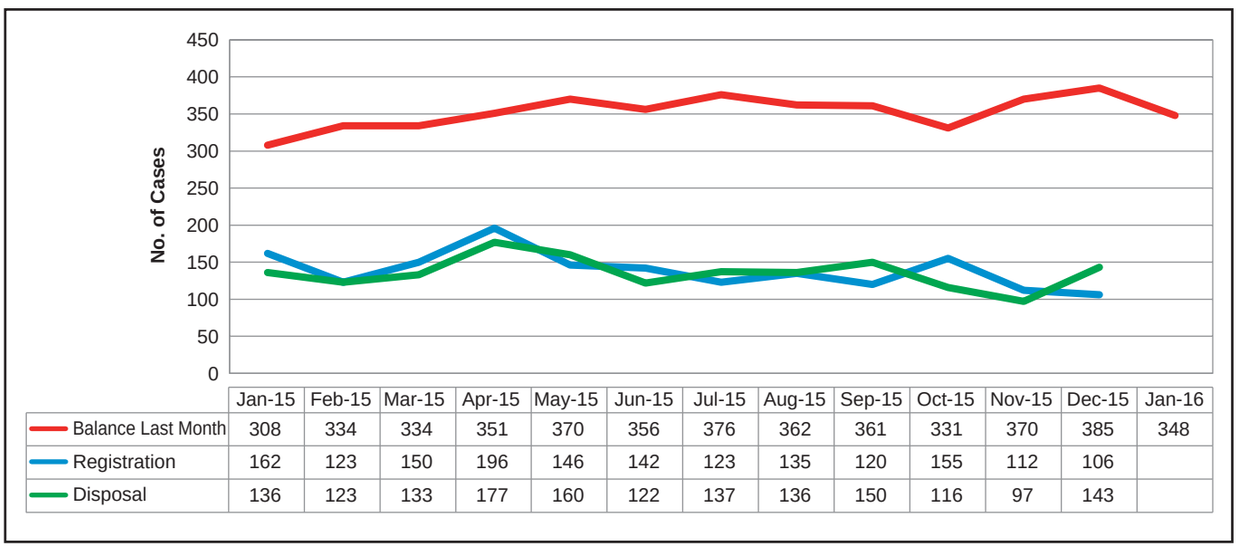
9. JOHOR

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 Johor Bahru for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 1670 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1630 cases throughout 2015.

As at 31 December 2015, the total number of civil cases pending in the High Court at Johor Bahru is 1349 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	308	334	334	351	370	356	376	362	361	331	370	385	348
Registration	162	123	150	196	146	142	123	135	120	155	112	106	
Disposal	136	123	133	177	160	122	137	136	150	116	97	143	

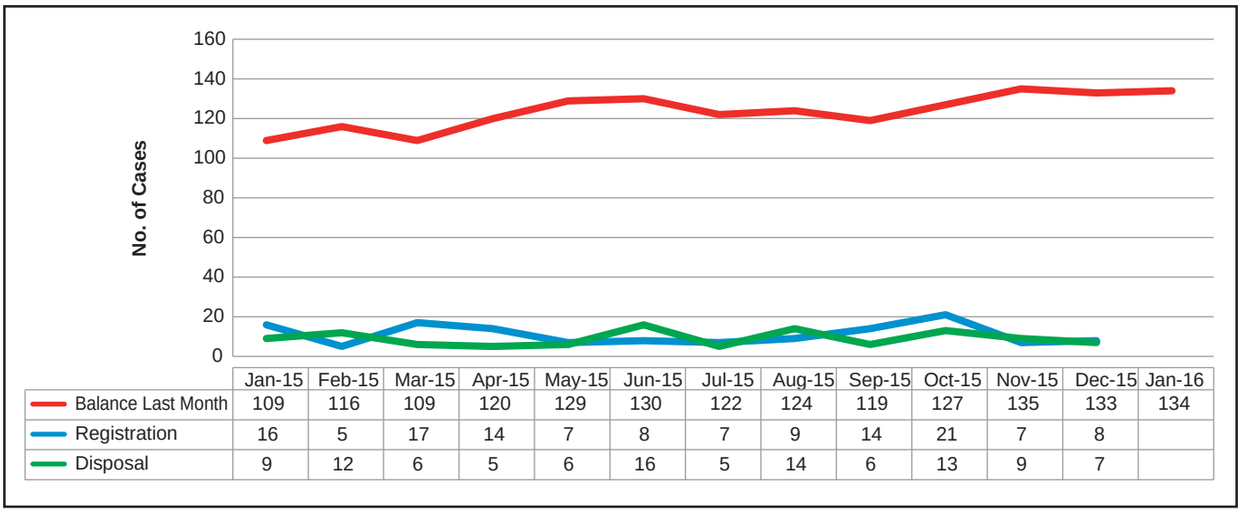
PENDING CASES
IN THE HIGH COURT AT MUAR (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009																									
2010																									
2011												1													1
2012												3													3
2013												8									19				27
2014							1					14									158	2	2	1	178
2015	3	12	3	15			61		2		8	69		4	88					3	746	37	37	50	2	1140
TOTAL	3	12	3	15			62		2		8	95		4	88					3	923	39	39	51	2	1349

9.4 IN THE HIGH COURT AT MUAR – CRIMINAL

For criminal cases in the year 2015, a total number of 133 cases including appeals and trials were registered and 108 cases were disposed of, leaving a balance of 134 cases pending.

TRACKING CHART
IN THE HIGH COURT AT MUAR (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	109	116	109	120	129	130	122	124	119	127	135	133	134
Registration	16	5	17	14	7	8	7	9	14	21	7	8	
Disposal	9	12	6	5	6	16	5	14	6	13	9	7	

PENDING CASES
IN THE HIGH COURT AT MUAR (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																1														1
2012																1										1				2
2013																6		6				3				4				19
2014	1						4	10							1	6		9								8				39
2015	12	11		4	1		7	8		1				8	4	9		5								3				73
TOTAL	13	11		4	1		11	18		1				8	5	23		20				3				16				134

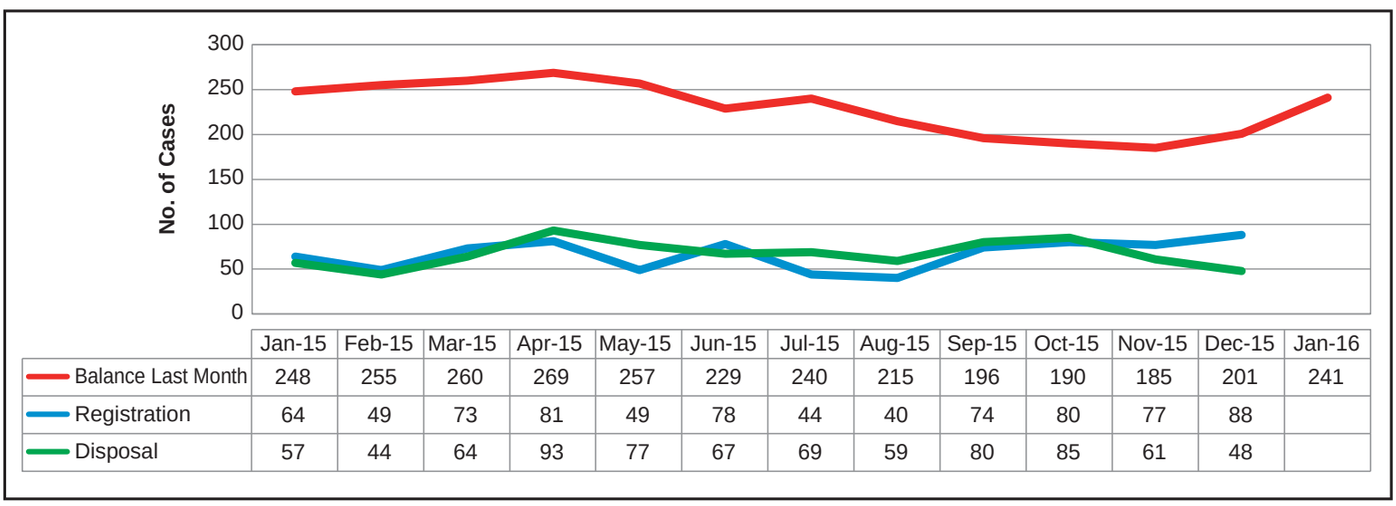
10. PAHANG

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 2015. For the period from January to December 2015, the total number of civil cases registered was 797 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 804 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Kuantan is 1245 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	248	255	260	269	257	229	240	215	196	190	185	201	241
Registration	64	49	73	81	49	78	44	40	74	80	77	88	
Disposal	57	44	64	93	77	67	69	59	80	85	61	48	

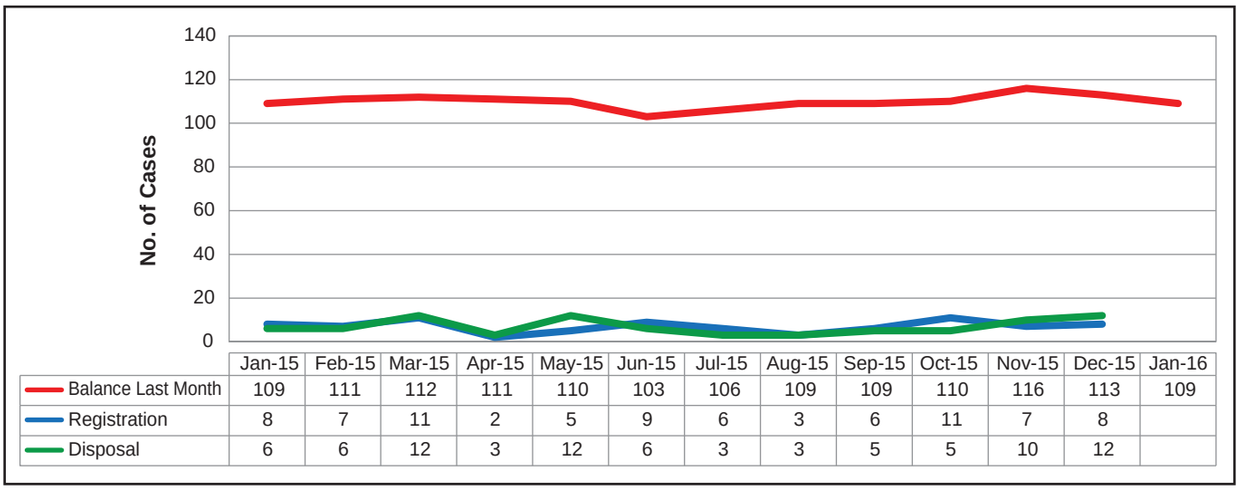
PENDING CASES
IN THE HIGH COURT AT KUANTAN (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2008											1															1
2009																										
2010																										
2011												1														1
2012			1									4			1											6
2013												2														2
2014												12			1						86					99
2015	20	1	1	25			4	5		1	1	37			66	3				11	897	7	14	43		1136
TOTAL	20	1	2	25			4	5		1	2	56			68	3				11	983	7	14	43		1245

10.2 IN THE HIGH COURT AT KUANTAN - CRIMINAL

For criminal cases in the year 2015, a total number of 83 cases including appeals and trials were registered and 83 cases were disposed of leaving a balance of 109 cases pending.

TRACKING CHART
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	109	111	112	111	110	103	106	109	109	110	116	113	109
Registration	8	7	11	2	5	9	6	3	6	11	7	8	
Disposal	6	6	12	3	12	6	3	3	5	5	10	12	

PENDING CASES
IN THE HIGH COURT AT KUANTAN (CRIMINAL)
AS AT 31 DECEMBER 2015

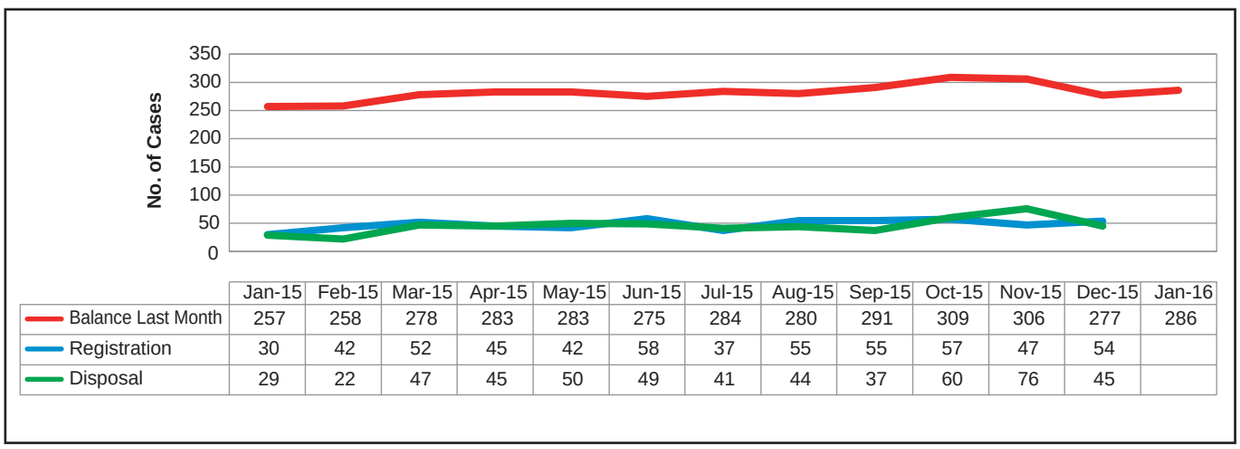
YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																														
2011																														
2012																														
2013																		2												2
2014	2						67											2												71
2015	11	6			1	1	4			1	1				2	6		2								1				36
TOTAL	13	6			1	1	71			1	1				2	6		6								1				109

10.3 IN THE HIGH COURT AT TEMERLOH– CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Temerloh for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 495 excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 487 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in High Court at Temerloh is 169 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	257	258	278	283	283	275	284	280	291	309	306	277	286
Registration	30	42	52	45	42	58	37	55	55	57	47	54	
Disposal	29	22	47	45	50	49	41	44	37	60	76	45	

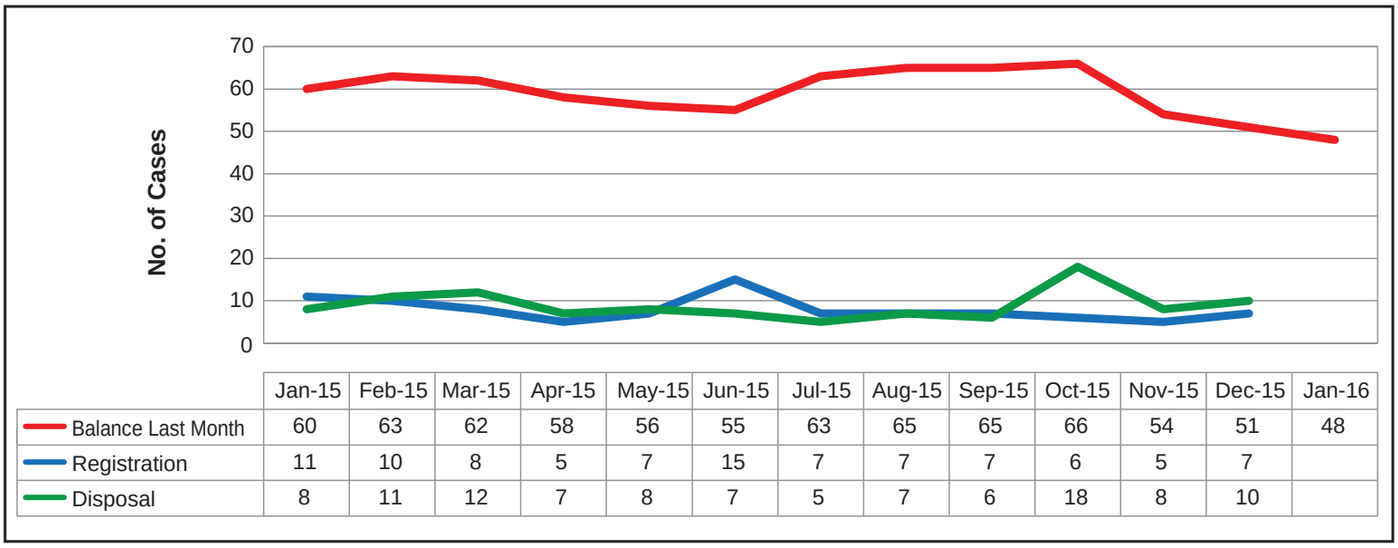
PENDING CASES
IN THE HIGH COURT AT TEMERLOH(CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																							TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	
	A	B	A	B																					
2009																								
2010																								
2011												3												**3**
2012												1												**1**
2013												2												**23**
2014												2				1					80				**119**
2015		3	7	16			29	2	3			10		2	30						505	13	15	58	**753**
TOTAL		**3**	**7**	**16**			**29**	**2**	**3**			**18**		**2**	**30**	**1**					**585**	**13**	**15**	**58**	**899**

10.4 IN THE HIGH COURT AT TEMERLOH– CRIMINAL

For criminal cases in the year 2015, a total number of 95 cases including appeals and trials were registered and 107 cases had been disposed of, leaving a balance of 48 cases pending.

TRACKING CHART
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	60	63	62	58	56	55	63	65	65	66	54	51	48
Registration	11	10	8	5	7	15	7	7	7	6	5	7	
Disposal	8	11	12	7	8	7	5	7	6	18	8	10	

PENDING CASES
IN THE HIGH COURT AT TEMERLOH (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																1													1
2012																													
2013																1													1
2014																		3											3
2015	7	7					3	11								5		7								3				43
TOTAL	7	7					3	11								7		10								3				48

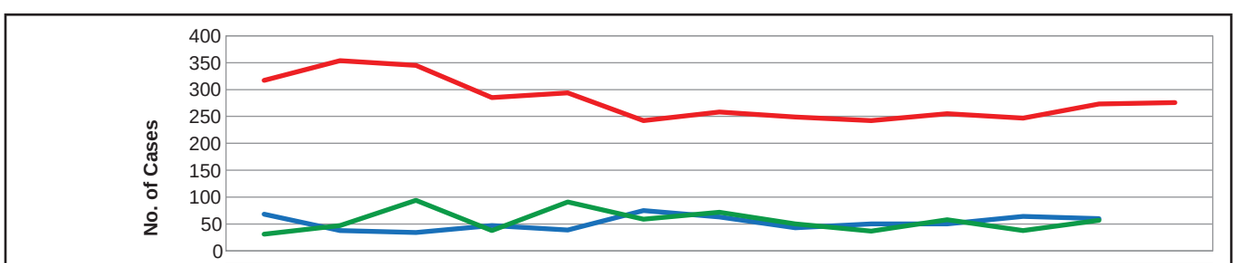
11. TERENGGANU

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 2015. For the period from January to December 2015, the total number of civil cases registered was 623 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 661 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Kuala Terengganu is 813 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	317	354	345	285	294	242	258	249	242	255	247	273	276
Registration	68	38	34	47	39	75	63	43	50	50	64	60	
Disposal	31	47	94	38	91	59	72	50	37	58	38	57	

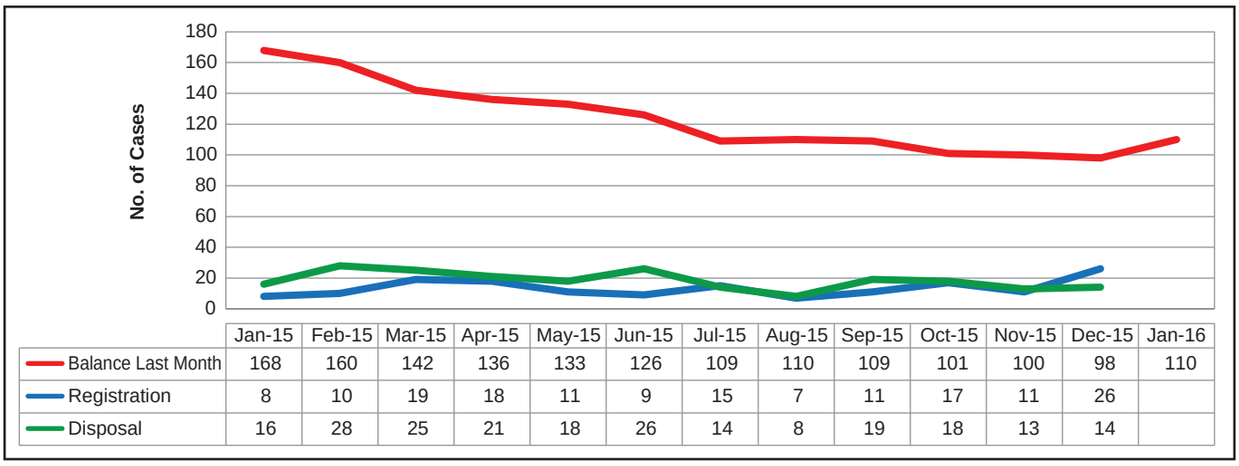
PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																										TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	37	38	
	A	B	A	B																								
2009																											
2010																											
2011																	1										1
2012																											
2013												1															1
2014							11				4	8									12						8	43
2015	4	17	3	19			43	2	1	5	7	38			51		3			9	515	8	2	3			38	768
TOTAL	4	17	3	19			54	2	1	5	11	47			51		4			9	527	8	2	3			46	813

11.2 IN THE HIGH COURT AT KUALA TERANGGANU – CRIMINAL

For criminal cases in the year 2015, a total number of 162 cases including appeals and trials were registered and 220 cases were disposed of, leaving a balance of 110 cases pending.

TRACKING CHART
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	168	160	142	136	133	126	109	110	109	101	100	98	110
Registration	8	10	19	18	11	9	15	7	11	17	11	26	
Disposal	16	28	25	21	18	26	14	8	19	18	13	14	

PENDING CASES
IN THE HIGH COURT AT KUALA TERENGGANU (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2010																													
2011																													
2012																													
2013																													
2014	5						2									7		1												15
2015	25	26		7	2		10	11		1					1	8		3				1								95
TOTAL	30	26		7	2		12	11		1					1	15		4				1								110

12. KELANTAN

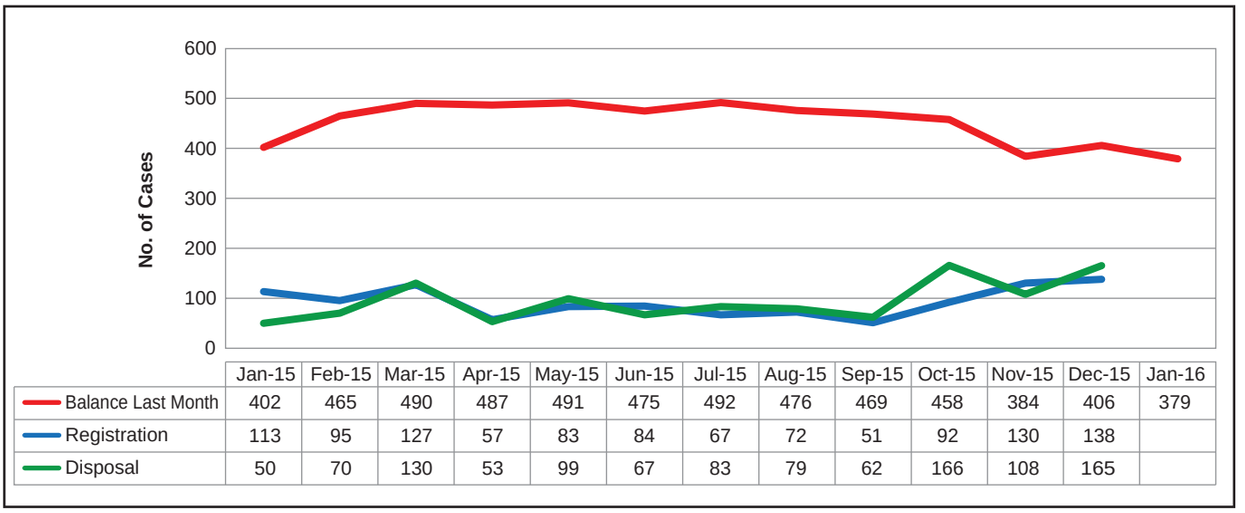
12.1 IN THE HIGH COURT AT KOTA BAHRU – CIVIL

The tracking chart below shows the registration and disposal of cases in the High Court at Kota Bharu for the year 2015.

For the period from January to December 2015, the total number of civil cases registered was 1003 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 1059 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Kota Bharu is 1373 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	402	465	490	487	491	475	492	476	469	458	384	406	379
Registration	113	95	127	57	83	84	67	72	51	92	130	138	
Disposal	50	70	130	53	99	67	83	79	62	166	108	165	

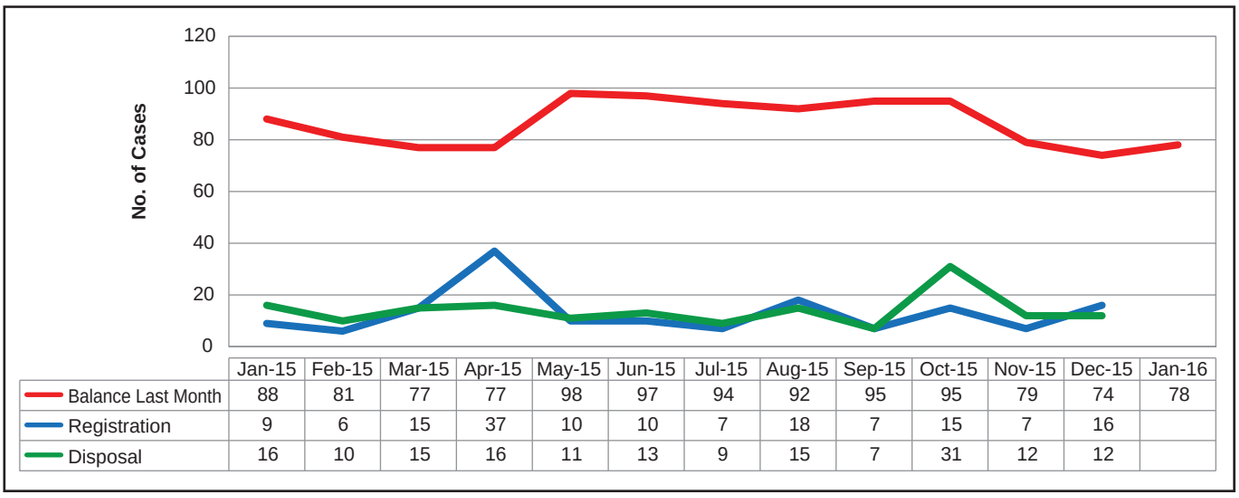
PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2006																										
2007							1																			1
2008							4																			4
2009																										
2010												1														1
2011												1					1									2
2012															1											1
2013							7					1			1						4					13
2014							13	1			1	12		1							80					108
2015	2	11	4	12			90		4	10	4	38	4	1	130		6			8	909	1		9		1243
TOTAL	2	11	4	12			115	1	4	10	5	53	4	2	132		7			8	993	1		9		1373

12.2 IN THE HIGH COURT AT KOTA BAHRU – CRIMINAL

For criminal cases in the year 2015, a total number of 145 cases including appeals and trials were registered and 153 cases were disposed of, leaving a balance of 78 cases pending.

TRACKING CHART
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	88	81	77	77	98	97	94	92	95	95	79	74	78
Registration	9	6	15	37	10	10	7	18	7	15	7	16	
Disposal	16	10	15	16	11	13	9	15	7	31	12	12	

PENDING CASES
IN THE HIGH COURT AT KOTA BHARU (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																														TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2011																															
2012																															
2013							2	1																							3
2014							7				2																				9
2015	15	10		1			15	10					4		2	7		1									1				66
TOTAL	15	10		1			24	11			2		4		2	7		1									1				78

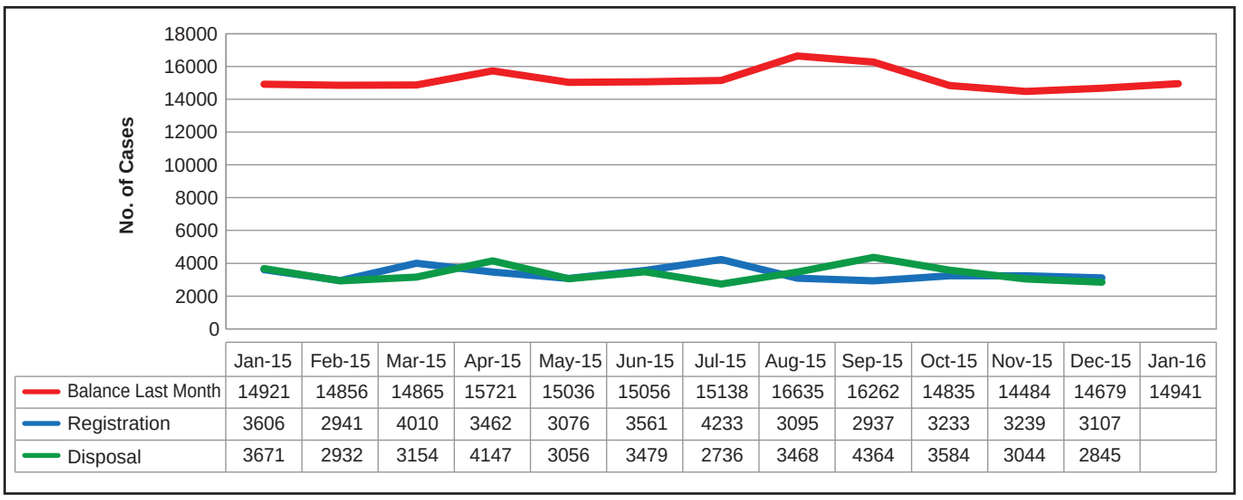
13. THE SESSIONS COURT IN PENINSULAR MALAYSIA

13.1 SESSIONS COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Peninsular Malaysia for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 40500 (excluding cases for Code 56). The Sessions Court has managed to dispose of 40480 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in Sessions Court in Peninsular Malaysia is 15391 cases as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	14921	14856	14865	15721	15036	15056	15138	16635	16262	14835	14484	14679	14941
Registration	3606	2941	4010	3462	3076	3561	4233	3095	2937	3233	3239	3107	
Disposal	3671	2932	3154	4147	3056	3479	2736	3468	4364	3584	3044	2845	

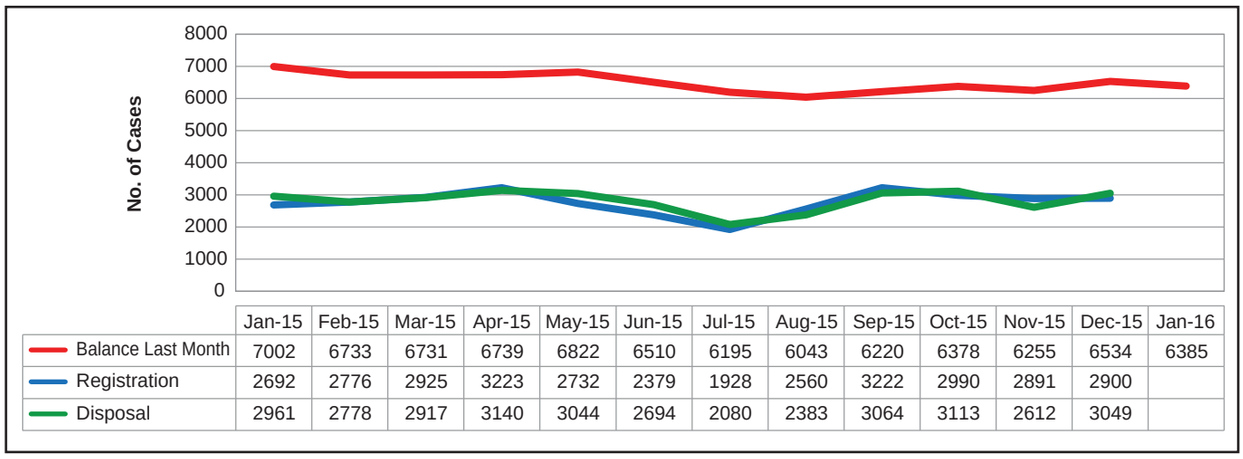
PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2000		1							1
2005									
2007									
2008		1	1						2
2009		1							1
2010		2							2
2011		9							9
2012		10	4						14
2013	7	48	68						123
2014	20	393	905	3		32			1353
2015	276	4417	8359	109		418		307	13886
TOTAL	**303**	**4882**	**9337**	**112**		**450**		**307**	**15391**

13.2 SESSIONS COURT – CRIMINAL

For criminal cases in the year 2015, a total of 33218 criminal cases were registered (excluding Code 64 and 65) and 33835 criminal cases were disposed of, leaving a balance of 6385 cases pending.

TRACKING CHART
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	7002	6733	6731	6739	6822	6510	6195	6043	6220	6378	6255	6534	6385
Registration	2692	2776	2925	3223	2732	2379	1928	2560	3222	2990	2891	2900	
Disposal	2961	2778	2917	3140	3044	2694	2080	2383	3064	3113	2612	3049	

PENDING CASES
IN THE SESSIONS COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
1999									1							1
2002																
2004																
2005																
2007									3							3
2008								1								1
2009																
2010									3							3
2011	1			3	1	4		1	173	2	5	1	5			196
2012	1		8			19			37	5						70
2013			22			18	2	7	16	241	35		2			343
2014			22		23		4	51		753	39		16		28	934
2015		1	63		89		155	32		4040	503		168		580	5631
TOTAL	2	1	115	3	113	41	161	92	233	5041	582	1	191		606	7182

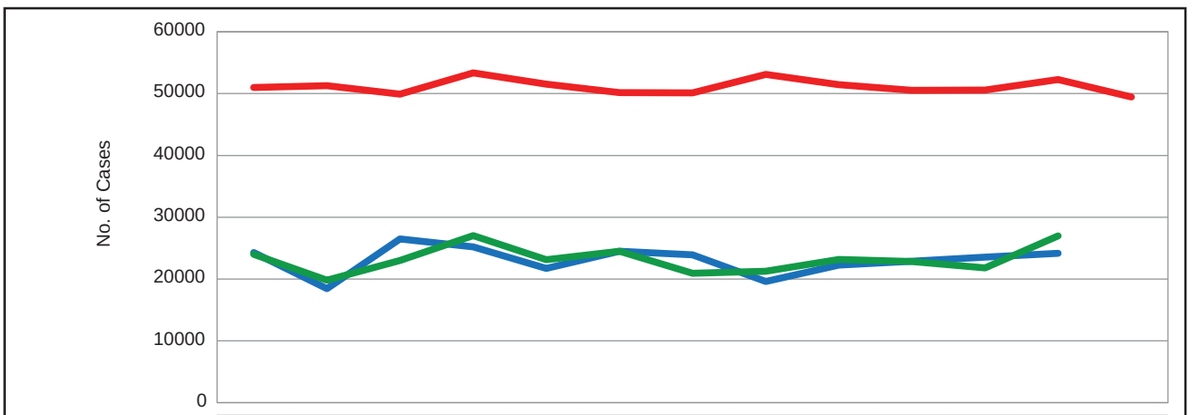
14. MAGISTRATES COURT IN PENINSULAR MALAYSIA

14.1 MAGISTRATES COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Peninsular Malaysia for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 163201 (excluding cases for Code 76). The Magistrates Court has managed to dispose of 159947 cases throughout 2015.

As at 31.12.2015, the total number of civil cases pending in the Magistrates Court in Peninsular Malaysia is 52543 as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	51001	51284	49899	53367	51538	50142	50124	53101	51439	50532	50562	52288	49449
Registration	24295	18440	26485	25200	21727	24484	23915	19591	22245	22865	23525	24153	
Disposal	24012	19825	23017	27029	23123	24502	20938	21253	23152	22835	21799	26992	

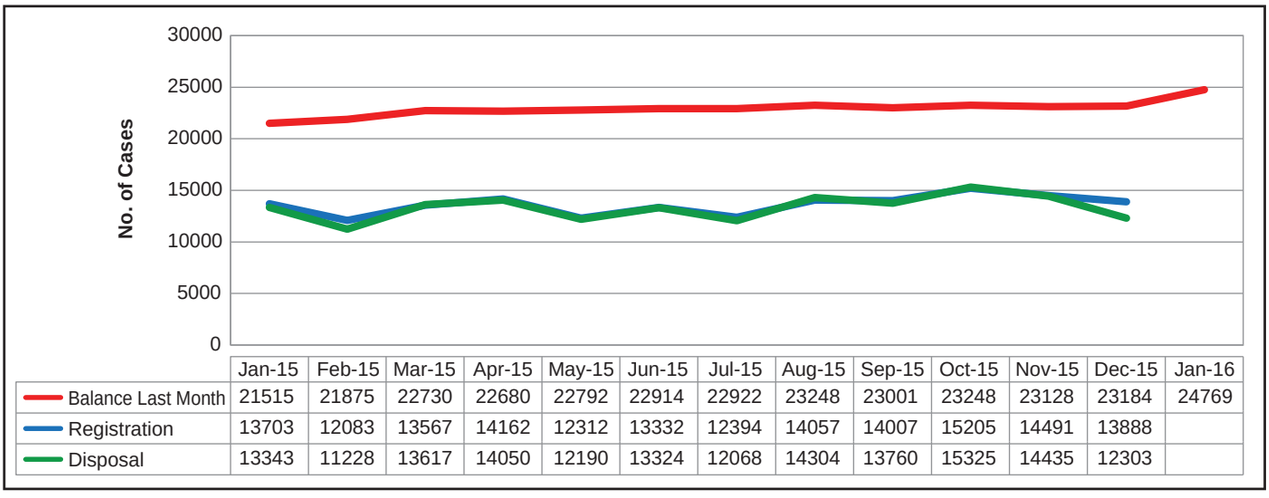
PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES									TOTAL
	71	72	72A	73	74	75	76	77	78	
2004		1								1
2012		1								1
2013	1	9		18						28
2014	36	213		733	1		93	2		1078
2015	7375	23993		16022	760		3001	283	1	51435
TOTAL	7412	24217		16773	761		3094	285	1	52543

14.2 MAGISTRATES COURT – CRIMINAL

For criminal cases in the year 2015, a total of 163201 criminal cases were registered (excluding cases for Code 86, 87, 88 and 89) and 159947 cases were disposed of, leaving a balance of 24769 cases pending.

TRACKING CHART
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	21515	21875	22730	22680	22792	22914	22922	23248	23001	23248	23128	23184	24769
Registration	13703	12083	13567	14162	12312	13332	12394	14057	14007	15205	14491	13888	
Disposal	13343	11228	13617	14050	12190	13324	12068	14304	13760	15325	14435	12303	

PENDING CASES
IN THE MAGISTRATES COURT IN PENINSULAR MALAYSIA (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2010																
2011																
2012				3	1		9					3639		1		**3653**
2013				5	2		43						4		1	**55**
2014	16			78		1	653			26	22	7404	557		1	**8758**
2015	917		1	464	21150	26			5	940	407	356791	31339		355	**412395**
TOTAL	**933**		**1**	**550**	**21153**	**27**	**705**		**5**	**966**	**429**	**367834**	**31900**	**1**	**357**	**424861**

APPENDIX B

(SABAH & SARAWAK)

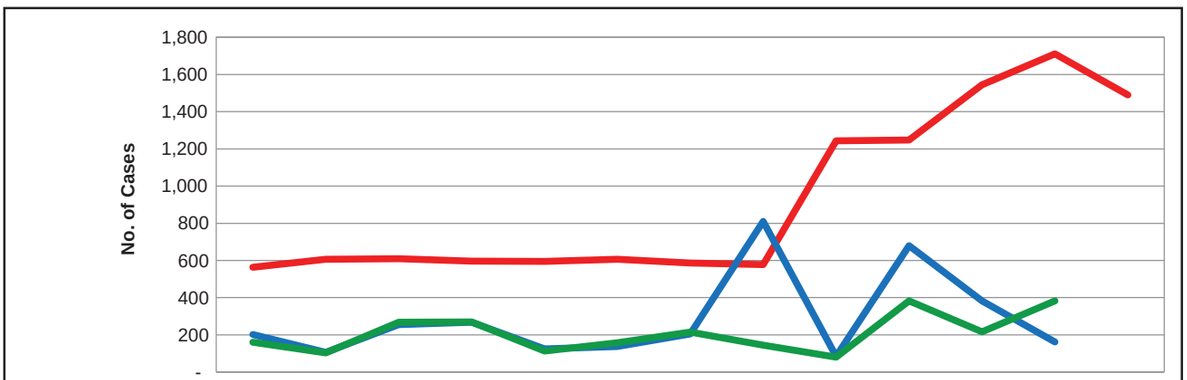
1. SABAH

1.1 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 2015. For the period from January to December 2015, the total number of civil cases registered was 3415 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 2489 cases throughout the year 2015.

As at 31.12.2015, the total number of civil cases pending in the High Court at Sabah is 3032 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	564	606	609	596	595	606	587	577	1243	1247	1544	1711	1490
Registration	202	106	255	268	124	138	205	810	84	679	383	161	
Disposal	160	103	268	269	113	157	215	144	80	382	216	382	

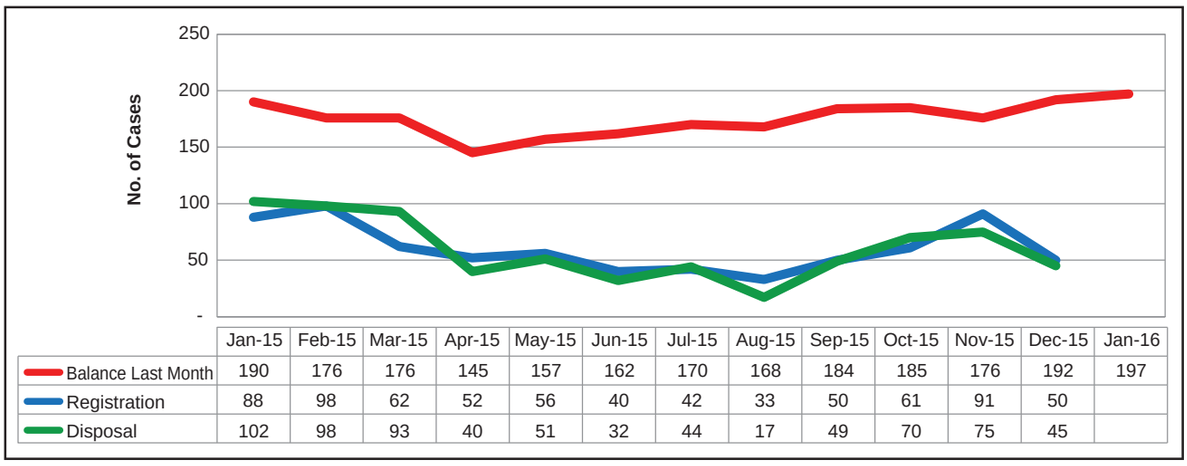
PENDING CASES
IN THE HIGH COURT AT SABAH (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2002												1														1
2008												1														1
2009												1														1
2010												3									1					4
2011											3	7														10
2012												13			1					2						16
2013					1						3	21			4						1					30
2014				4	2						1	53			8			1		3	95			1	1	169
2015	3	4	13	26	946	1	2		1	3	12	151		3	86		3		3	20	1444	13	20	79	7	2840
TOTAL	3	4	13	30	949	1	2		1	3	19	251		3	99		3	1	3	25	1541	13	20	80	8	3072

1.2 IN THE HIGH COURT AT SABAH – CRIMINAL

For criminal cases in the year 2015, a total number of 723 cases including appeals and trials were registered and 716 cases were disposed of, leaving a balance of 197 cases pending.

TRACKING CHART
IN THE HIGH COURT AT SABAH (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	190	176	176	145	157	162	170	168	184	185	176	192	197
Registration	88	98	62	52	56	40	42	33	50	61	91	50	
Disposal	102	98	93	40	51	32	44	17	49	70	75	45	

PENDING CASES
IN THE HIGH COURT AT SABAH (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																													TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	45		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2009																														
2010																														
2011																														
2012																														
2013																		3										29		32
2014	1	2					3				5					5		7												23
2015	23	10	2		2	1	30	13	6	1	7	3	1	3	1	18		19								2				142
TOTAL	24	12	2		2	1	33	13	6	1	12	3	1	3	1	23		29								2		29		197

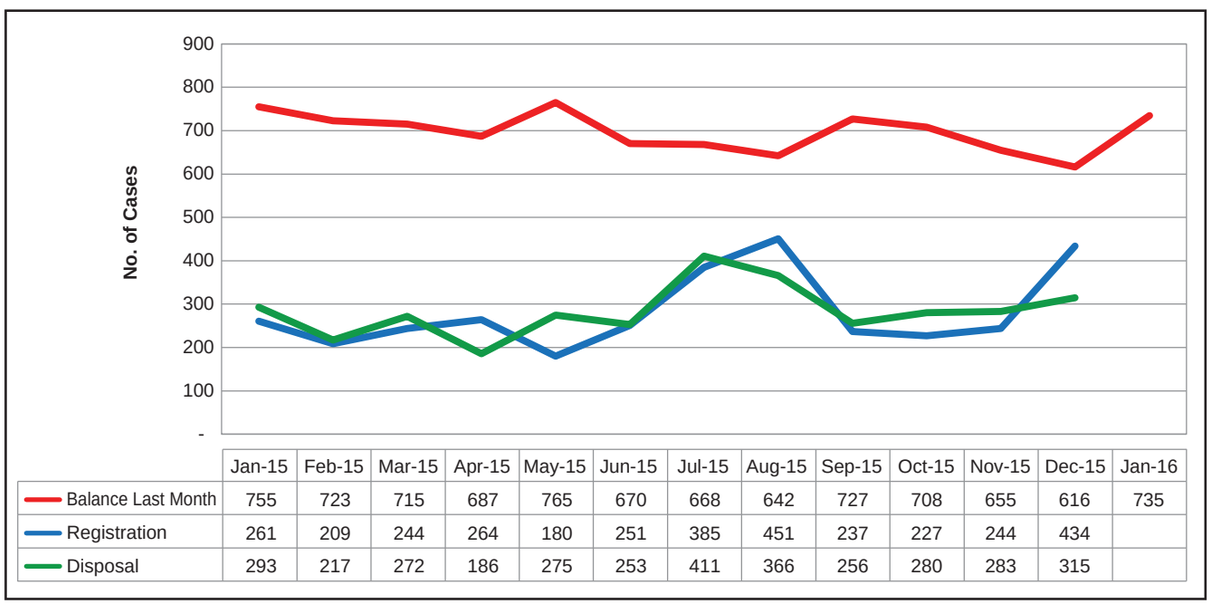
2. SARAWAK

2.1 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 2015. For the period from January to December 2015, the total number of civil cases registered was 3387 (excluding cases for Code 29, 31 and 32). The High Court has managed to dispose of 3407 cases throughout the year 2015.

As at 31.12.02015, the total number of civil cases pending in the High Court at Sarawak is 1569 as reflected in the pending cases below.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	755	723	715	687	765	670	668	642	727	708	655	616	735
Registration	261	209	244	264	180	251	385	451	237	227	244	434	
Disposal	293	217	272	186	275	253	411	366	256	280	283	315	

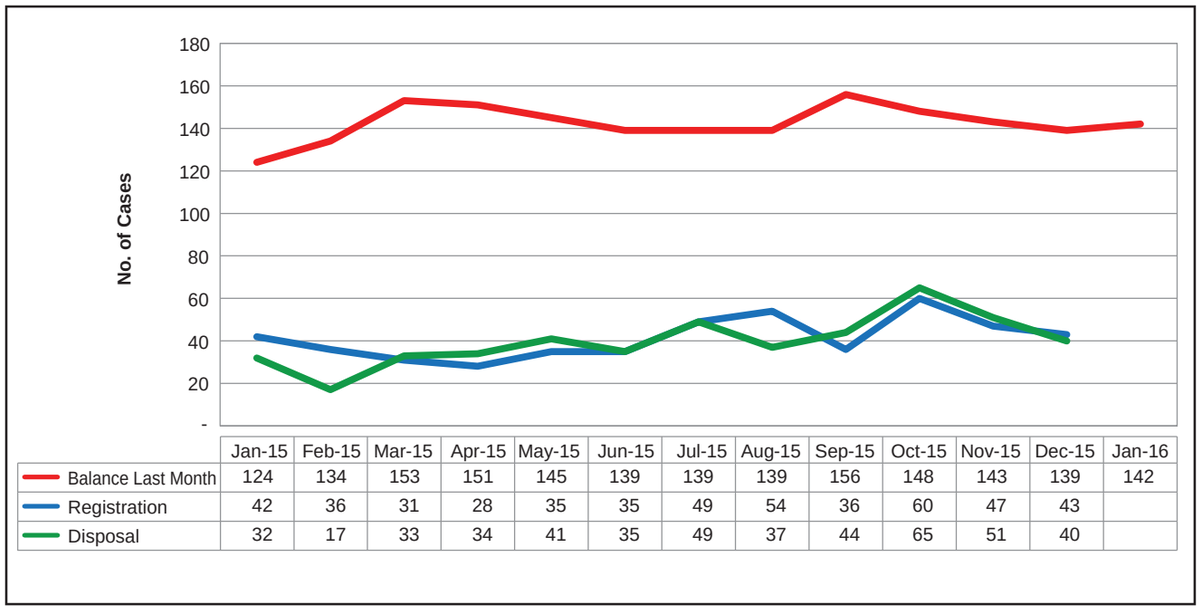
PENDING CASES
IN THE HIGH COURT AT SARAWAK (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES																								TOTAL
	11		12		13	14	15	16	17	18	21	22	22A	23	24	24A	25	26	27	28	29	31	32	33	34	
	A	B	A	B																						
2009											1	3														4
2010												1														1
2011								1																		1
2012								2				4			1											7
2013								1			1	27			7									1	1	38
2014				1	1		3				7	42		1	12				4					9		80
2015	4	5	6	21	11	3	19	5			39	97		10	136		1		4	6	834			235	1	1438
TOTAL	**4**	**5**	**6**	**22**	**12**	**3**	**22**	**9**			**48**	**174**		**11**	**156**		**1**		**8**	**6**	**834**			**245**	**2**	**1569**

2.2 IN THE HIGH COURT AT SARAWAK – CRIMINAL

For criminal cases in the year 2015, a total number of 496 cases including appeals and trials were registered and 478 cases were disposed of, leaving a balance of 142 cases pending.

TRACKING CHART
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	124	134	153	151	145	139	139	139	156	148	143	139	142
Registration	42	36	31	28	35	35	49	54	36	60	47	43	
Disposal	32	17	33	34	41	35	49	37	44	65	51	40	

PENDING CASES
IN THE HIGH COURT AT SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES																												TOTAL
	41			41A			42			42A			43	44		39B		302		396		KIDNAP		F/ARMS		OTHERS		SOSMA		
	A/C	S	Ors	A/C	S	Ors	A/C	S	Ors	A/C	S	46		Hbc	Ors	45	46	45	46	45	46	45	46	45	46	45	46	45	46	
2009																														
2010																														
2011																														
2012																		1												1
2013																1		3												4
2014	2	2														4		2												10
2015	18	31	3		13	1	4	13	4	2	1		2		1	13	1	17									2				127
TOTAL	20	33	3		13	1	4	13	4	2	1		2		1	18	1	23									2				142

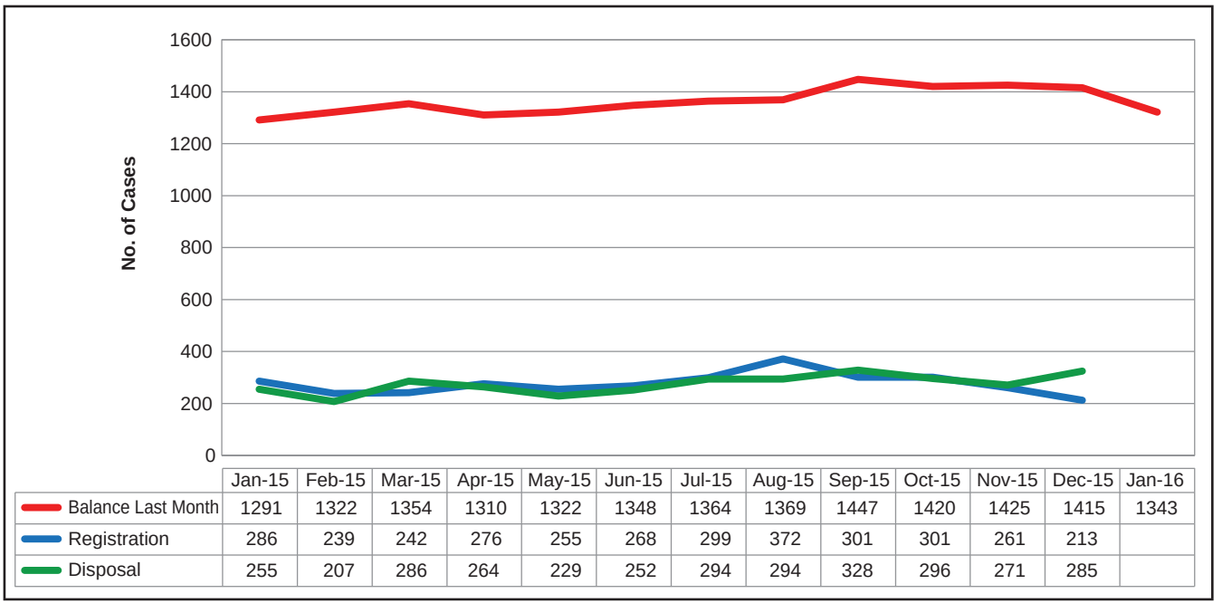
3. THE SESSIONS COURT IN SABAH AND SARAWAK

3.1 SESSIONS COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Sessions Court in Sabah and Sarawak for the year 2015. For the period from January to December 2015, the total number of civil cases registered was 3313 (excluding cases for Code 56). The Sessions Court has managed to dispose of 3255 cases throughout the year 2015.

As at 31 December 2015, the total number of civil cases pending in Sessions Court in Sabah and Sarawak is 1343 cases as reflected in the pending cases below.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	1291	1322	1354	1310	1322	1348	1364	1369	1447	1420	1425	1415	1343
Registration	286	239	242	276	255	268	299	372	301	301	261	213	
Disposal	255	207	286	264	229	252	294	294	328	296	271	285	

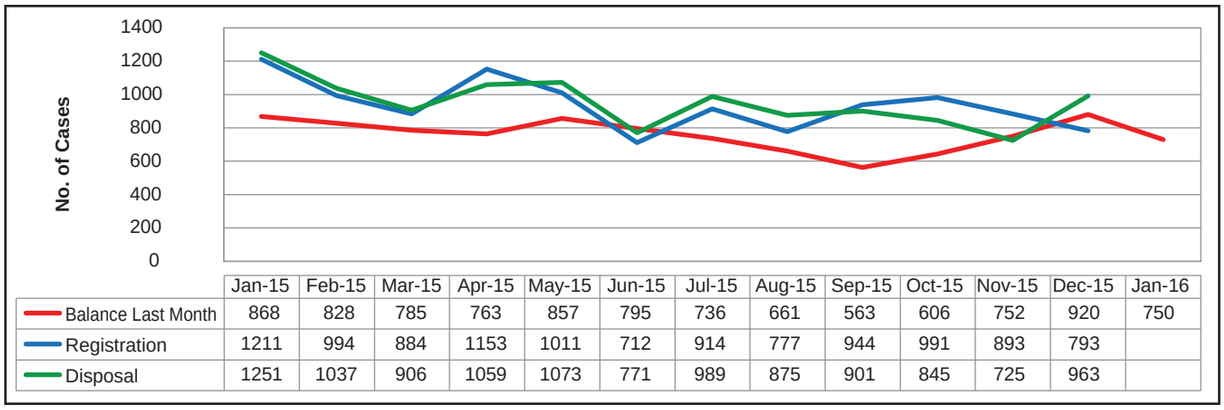
PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES								TOTAL
	51	52	53	54	55	56	57	58	
2011			1						1
2012		2							2
2013	1	7	6			1			15
2014	2	45	58	3		3			111
2015	70	662	479	7		40			1258
TOTAL	**73**	**716**	**544**	**10**		**44**			**1387**

3.2 SESSIONS COURT – CRIMINAL

For criminal cases in the year 2015, a total of 11227 criminal cases were registered (excluding cases for Code 64 and 65) and 11394 criminal cases were disposed of, leaving a balance of 701 cases pending.

TRACKING CHART
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	868	828	785	763	857	795	736	661	563	606	752	920	750
Registration	1211	994	884	1153	1011	712	914	777	944	991	893	793	
Disposal	1251	1037	906	1059	1073	771	989	875	901	845	725	963	

PENDING CASES
IN THE SESSIONS COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES															TOTAL
	61					62					63		64		65	
	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Violent Crimes	J (Street Crimes)	Corrupt	Comm	Ors	Ors	Comm	Ors	Comm		
2011																
2012				1												1
2013			1		4			1	1	1			1			9
2014		1	7		1	10	5	1		13	3		2			43
2015	2		13	1	5	174	36	6	5	337	121		18		3	721
TOTAL	2	1	21	2	10	184	41	8	6	351	124		21		3	774

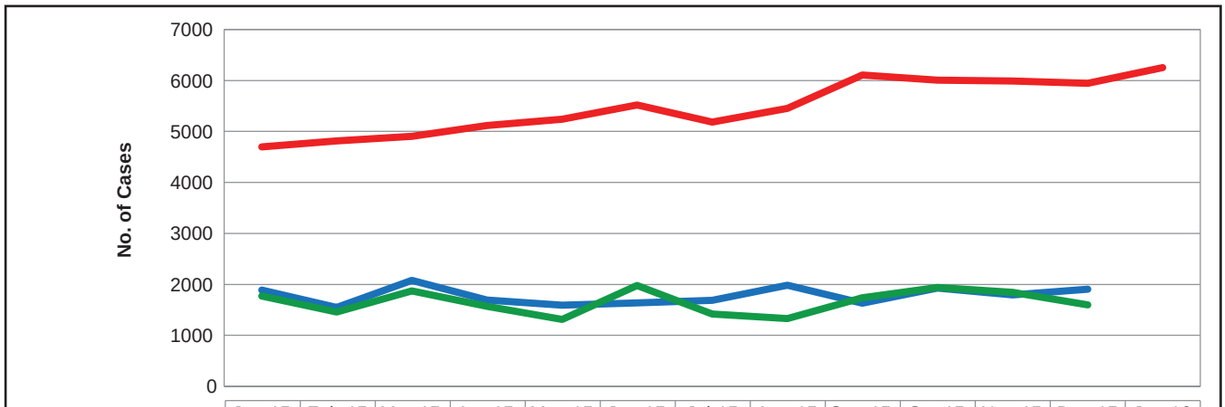
4. MAGISTRATES COURT IN SABAH AND SARAWAK.

4.1 MAGISTRATES COURT – CIVIL

The tracking chart below shows the registration and disposal of cases in the Magistrates Court in Sabah and Sarawak for the year 2015. For the period from January to December 2015 the total number of civil cases registered was 21365 (excluding cases for Code 76). The Magistrates Court has managed to dispose of 19806 cases throughout the year 2015.

As at 31 December 2015, the total number of civil cases pending in the Magistrates Court in Sabah and Sarawak is 6248 as reflected in the pending cases below.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	4695	4814	4904	5114	5239	5520	5183	5450	6108	6004	5992	5944	6248
Registration	1888	1547	2080	1693	1591	1639	1684	1985	1632	1925	1794	1903	
Disposal	1769	1457	1870	1568	1310	1976	1417	1327	1736	1937	1842	1603	

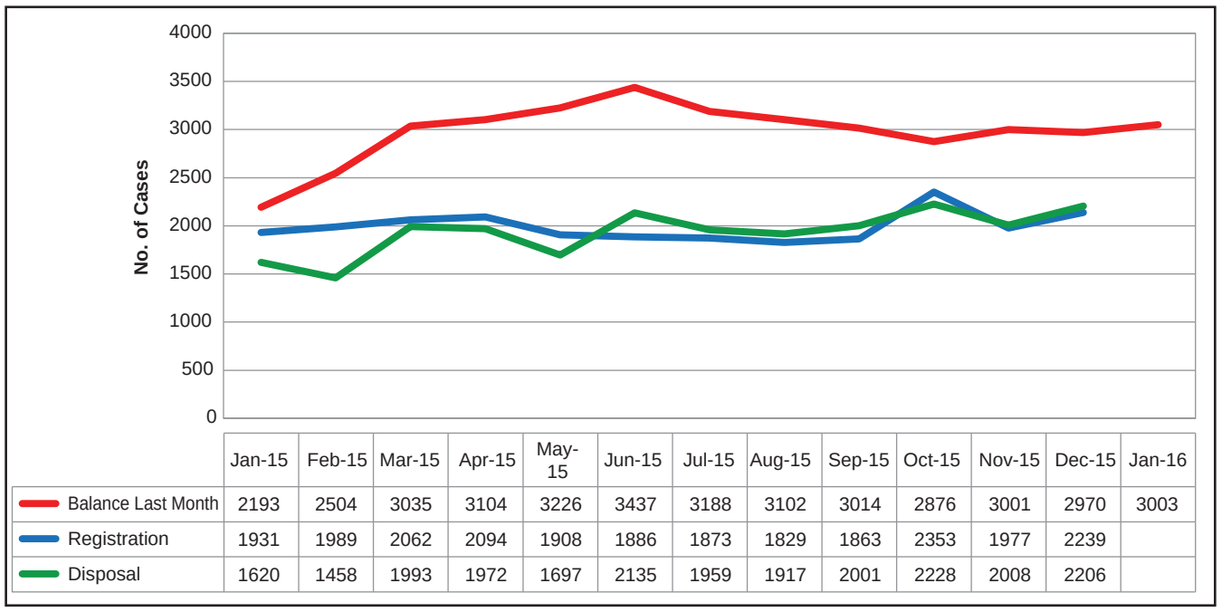
PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CIVIL)
AS AT 31 DECEMBER 2015

YEAR	CODES										TOTAL
	71	72	72A	73	74	75	76	77	78	79	
2010		1									1
2011											
2012		1									1
2013		2									2
2014	2	16		6			8			18	50
2015	1256	3374		91	140		623	66	12	1263	6825
TOTAL	1258	3394		97	140		631	66	12	1281	6879

4.2 MAGISTRATES COURT – CRIMINAL

For Criminal Cases in the year 2015, a total of 24004 criminal cases were registered (excluding cases for Code 86, 87, 88 and 89) and 23194 cases were disposed of, leaving a balance of 3003 cases pending.

TRACKING CHART
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
JANUARY-DECEMBER 2015



	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16
Balance Last Month	2193	2504	3035	3104	3226	3437	3188	3102	3014	2876	3001	2970	3003
Registration	1931	1989	2062	2094	1908	1886	1873	1829	1863	2353	1977	2239	
Disposal	1620	1458	1993	1972	1697	2135	1959	1917	2001	2228	2008	2206	

PENDING CASES
IN THE MAGISTRATES COURT IN SABAH AND SARAWAK (CRIMINAL)
AS AT 31 DECEMBER 2015

YEAR	CODES															TOTAL
	81	82			83			84			85	86	87	88	89	
		VC	J	Ors	VC	J	Ors	VC	J	Ors						
2010																
2011														1		1
2012									1							1
2013							2									2
2014				1			15					3				19
2015	23			51	14	3	2701			163	29	13390	2417		104	18895
TOTAL	23			52	14	3	2718		1	163	29	13393	2417	1	104	18918

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