

SUB-COMMITTEE REPORTS

BAR REPRESENTATIVE



Rajpal Singh

Bar Representative: Rajpal Singh

This term, the Selangor Bar Chairman was appointed as Chairman of the LawCare Committee and I was appointed as the Chairman of the Criminal Law Committee and the Deputy Chairperson of the National Legal Aid Committee.

The Bar Council (BC) this year was involved in many activities and dealt with various issues concerning members of the Bar. Some of the significant activities and issues are as follows:-

1) International Malaysia Law Conference 2012 (“IMLC 2012”)

The International Malaysia Law Conference (“IMLC”) 2012 was conducted from 26 to 28 September 2012 at the Kuala Lumpur Convention Centre (KLCC). The theme for the conference was “Asian Perspectives, Global Viewpoints”.

The conference explores the impact of law on business, society and government in the global arena, through keynote addresses, plenary sessions and inspirational talks featuring globally-renowned speakers and delegates.

2) 4th LAWASIA Family Law Conference

The 4th LAWASIA Family Law Conference was held in Penang on 13 and 14 July 2012, with the support of the Penang Bar Committee and the Malaysian Bar. The theme for the conference is “The New Global Family: Emerging Trends and Challenges to Family Practice”.

The conference was aimed to enable participants from across the globe to share and ultimately benefit from each other’s knowledge and experience on topics as varied as family agreements, the dual system of civil and Syariah family laws, elder issues, juvenile justice, alternate dispute resolution, as well as child protection issues.

3) Yayasan Bantuan Guaman Kebangsaan (“YBGK”)

YBGK began operations on 2 Apr 2012. The introduction of YBGK denotes a fundamental change in the way the criminal justice system of Malaysia operates, with law enforcement agencies, the Judiciary and Bar Council working together to improve access to justice for Malaysians upon arrest and when they are charged in court.

The assistance and support of Members of the Bar are crucial to ensure that YBGK operates effectively. Members are urged to register to do YBGK work.

4) Bar Council Memorandum on Proposed Measures on the Implementation of the Subordinate Courts (Amendment) Act 2010.

Bar Council submitted its “Memorandum on electronic filing: Current issues and concerns” to the Chief Justice on 10 Feb 2012. The memorandum sets out some of the issues and problems that remain outstanding in respect of the implementation of the electronic filing system.

Subsequently, Bar Council representatives (including eight Bar Council members) met with the Chief Justice on 29 Feb 2012 to discuss the matters raised in the memorandum.

5) Department of Statistics’ Quarterly Services Producer Price Survey (Legal Services)

It has been brought to the attention of the Bar Council that the Department of Statistics has, under the Statistics Act 1965 (Revised 1989), issued a notice to certain law firms requesting that they provide information pertaining to the amount of fees they charge for specific services. Failure to comply with the notice would subject a law firm to a fine not exceeding RM500. In the event of a continuing offence, a further fine not exceeding RM500 per day would be imposed after conviction.

Bar Council takes the position that legal firms cannot release accurate information regarding the amount of fees charged without disclosing confidential details as to the specific services provided, and disclosure of such confidential information would be a breach of the client-solicitor confidentiality rule.

Further, the method of charging fees by a solicitor (apart from instances where scale fees are applicable) may be a “trade secret”, which the Statistics Act itself seeks to exclude.

6) Proposed amendments to Solicitors' Account Rules 1990

Bar Council has formulated proposed amendments to the Solicitors' Account Rules 1990, pertaining to rule 7 (signatories for client account), rule 8 (withdrawal of money from client account) and rule 11 (maintenance of account books).

7) Withdrawal of Bar Council from Balai Ikhtisas Malaysia ("BIM") (Malaysian Professional Centre)

Bar Council has decided to withdraw from being a member of BIM, as Bar Council is dissatisfied with the manner in which BIM is being managed, including BIM's non-compliance with the resolution adopted at its recent Extraordinary General Meeting.

8) E-Learning programme for Continuing Professional Development ("CPD") Scheme.

Bar Council is collaborating with Malaysian Current Law Journal to develop an e-learning programme that will allow Members to earn CPD points through web-based (online) seminars known as "webinars".

9) Malaysian Bar Receives United Nations Malaysia Organisation of the Year Award 2012

On the occasion of the 2012 United Nations ("UN") Day on 24 Oct 2012, the Malaysian Bar was conferred the UN Malaysia Organisation of the Year Award 2012 at a ceremony at the Renaissance Hotel, Kuala Lumpur.

The Malaysian Bar received the award in recognition of how, "throughout its 66-year existence, it has admirably fulfilled its role as guardian of the rule of law, and defender of human rights and the public interest, in Malaysia". The Bar was described as "an organization that through its cumulative work best exemplifies a commitment to democracy in the country".

In the citation for the Malaysian Bar, read out by Kamal Malhotra, UN Resident Coordinator, Malaysia, the Bar was described as an organisation "undeterred by threats, and allegations of political bias", and as having "continuously and unhesitatingly taken a stand in favour of human rights, fundamental freedoms and civil liberties, greater constitutionalism, access to justice, and an independent Bench and Bar".

It was also stated that, "One aspect of the Malaysian Bar's work that sets it distinctively apart from many other law associations is its robust defence of democracy and human rights — particularly civil and political rights — and its intolerance of discrimination."

As the Chairperson of Bar Council's Criminal Law Committee, permit me to report the Committee's various initiatives and endeavours which also affect Criminal Law Practitioners from Selangor Bar.

These are as follows:-

A) **Amendments to the Criminal Procedure Code 2010, Evidence (Amendment) (No. 2) Act 2012 and Security Offences (Special Measures) Act 2012**

A special Ad Hoc Committee was set up to draft a Memorandum on the amendments to the Criminal Procedure Code 2010, Evidence (Amendment) (No. 2) Act 2012, Security Offences (Special Measures) Act 2012 and the Penal Code. The Deputy Chairperson of the Criminal Law Committee and myself were actively involved in this Ad Hoc Committee asking the Government to re-evaluate its stand on these amendments.

B) **The setting up of 'Sentencing Council' in Malaysia**

On request from Bar Council, the Criminal Law Committee is working on establishing a 'Sentencing Council' in Malaysia with a view to promote greater consistency for sentencing in criminal trials. Once established, the Sentencing Council will introduce guidelines on sentencing for the Judiciary. This will assist to increase public understanding and awareness of sentencing. Such a system is already in place in United Kingdom.

To this end, the Criminal Law Committee is currently preparing a paper on the advantages and disadvantages of establishing a sentencing council in Malaysia. Efforts are being made to invite experts from the Victorian Sentencing Council, namely Professor Arie Frieberg and Karen Gelb to conduct a workshop.

C) **Meeting with the Prison Department**

The Criminal Law Committee held a meeting with the Director of the Prison Department at the Kajang Prison's Headquarters on 22 November 2012 at 2.30 p.m. The objective of this meeting was to highlight the problems faced by criminal law practitioners when visiting clients in Prison.

Amongst issues raised by the Committee during the said meeting were:-

- Lawyers be allowed to visit clients on Saturdays
 - The Malaysian Prison Department *vide* letter dated 31.12.2012 had granted permission to members of the Bar to meet clients who are in remand on Saturdays subject to certain criteria's. This takes effect on 12.1.2013.
- Impracticality of the '3 day notice' for lawyers to meet their clients, mainly remand prisoners. The Criminal Law Committee gave examples of how matters

are postponed and re-scheduled within the same week for remand cases. As such, the break in between would not allow lawyers to meet their clients due to the '3 day notice'.

- The Criminal Committee asked for these facilities to be made available:-
 - More meeting rooms to accommodate lawyers;
 - Air-conditioned room due to the long hours of meetings;
 - More chairs to be provided for meeting.
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D) Independent Police Complaints and Misconduct Commission (IPCMC)

The Criminal Law Committee also drafted a memorandum on the advantages of having an Independent Police Complaint and Misconduct Commission (IPCMC) and the shortfall in the present Enforcement Agency Integrity Commission (EAIC). The Criminal Law Committee is promoting the need to establish the IPCMC through the enactment of the proposed IPCMC BILL 2005. The Criminal Law Committee encourages the setting up of the IPCMC which will address and combat the escalating complaints on the police force's conduct and actions in executing its duties.

E) Research on Cost Transcripts

Key members of the Criminal Law Committee have prepared a paper on the 'Costs of Transcripts' for criminal trials in comparison with other jurisdictions in this region where the cost of transcripts in criminal cases is borne by the government. The Criminal Law Committee is pursuing this matter with the Chief Justice's Office.

There were 10 Bar Council monthly meetings and 2 Special Meetings up to time of this report. The attendance record for the same is as follows:-

Kanarasan Ghandinesen : 7

Rajpal Singh : 10

I have enjoyed the experience and opportunity to serve the Bar this term, for which I thank the members of Selangor Bar.

I wish to thank the Chairman and my colleagues in the Committee for all the support and encouragement and the secretariat staff for all the assistance rendered during the term.

Report submitted by:

Rajpal Singh
Selangor Bar Representative to the Bar Council 2012/2013