

## **BAR REPRESENTATIVE REPORT 2015/2016**

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The Bar Council had a very busy year with a lot of pressing problems knocking at its door every day. I will not be able to pen all the workings of the Bar Council here. There are far too many issues and most of them are confidential and I am bound by it.

At a glance, these are the most pertinent issues discussed for the whole of 2015.

### **1) Rule of Law and Rule by Law (an extract from an article by our President Steven Thiru:-**

10 June 2015 marked the 800<sup>th</sup> anniversary of the sealing of the Magna Carta. It is a document that heralded the demise of the divine rule of kings in England. The Magna Carta emphatically declared, inter alia, that:

39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

40. To no one will we sell, to no one deny or delay right or justice.

It is ironic then that even as the Magna Carta is celebrated and extolled, the rule of law in Malaysia is today in peril, perhaps as never before in our history as a nation. In the past months of 2015, we have seen crippling assaults on the rule of law. There are widespread concerns that Malaysia is steadily eschewing the rule of law and tilting towards **rule by law**.

### **Misuse of Arrest and Investigative Powers by the Police:-**

As at 30 May 2015, about 200 persons have been arrested for various alleged offences under the Sedition Act 1948, Peaceful Assembly Act 2012, Penal Code, and Communications and Multimedia Act 1998. They include members of parliament, politicians, social activists, journalist, students, minors and Members of the Malaysian Bar. The reasons of their arrest have been questionable and the conduct of the police leaves much to be desired.

The misuse by the police of their investigative powers is inimical to the right to life and liberty guaranteed by Article 5 of the Federal Constitution, and the rights to freedom of speech, freedom of association and freedom of assembly enshrined in Article 10 of the Federal Constitution. These constitutional liberties are founded on the rule of law and cannot be ignored by the police with impunity.

### **Prevention of Terrorism Act 2015 – The Revival of the ISA?**

We then saw the Prevention of Terrorism Act 2015 (“POTA”) rushed through the Dewan Rakyat and passes in the early hours of 7 April 2015. There was barely 14 hours of debate on this draconian law that purports to deal with counter-terrorisms, which is an intractable and complex matter. POTA was subsequently passed by the Dewan Negara on 24 April 2015 despite concerns over the undue haste in which the Dewan Rakyat dealt with it.

POTA is clearly an attempt by the Government to resurrect the Internal Security Act 1960 (“ISA”) as well as the Restricted Residence Act 1933, Banishment Act 1959, and Emergency

(Public Order and Prevention of Crime) Ordinance 1969. It may be recalled that these legislation were repealed in 2012.

The concern that POTA is a revival of the ISA is borne out by the fact that we already have sufficient laws to deal with the threat of terrorism. These are found in the Penal Code and Security Offences (Special Measures) Act 2012 (“SOSMA”). POTA has therefore clearly been passed to restore detention without trial, as previously under the ISA, and to target persons other than terrorists, which was also the case with the ISA.

Phil Robertson, Deputy Director of Human Rights Watch Asia Division, has described POTA as “... a legal zombie returned from the grave of the discredited and abusive Internal Security Act. By proposing this legislation, the Malaysia government is signalling its willingness to return to Malaysia’s past policies of repression.”

### **Amendments to the Sedition Act 1948**

The amendments to the Sedition Act 1948 were passed by the Dewan Rakyat on 10 April 2015 and by the Dewan Negara on 28 April 2015. This represents a complete and unabashed renegeing of the promise made by the Government on 11 July 2012 that the Sedition Act 1948 would be repealed and replaced by a proposed National Harmony Act.

The Sedition Act 1948 is an archaic colonial law that was designed to stifle dissent and seriously curtail the freedom of speech. It is a law that appears to have received a new lease of life after it was slated for repeal by the Government. Today we are faced with an amended version of the law that is far more drastic and oppressive.

The amendments to the Sedition Act 1948 reinforce the concern that the limits to freedom of speech and expression in Malaysia is today to be determined by those who are not open to adverse comments or contrary ideas, or who are easily offended or angered. This nurtures an environment of intemperance and intolerance, and is inimical to maturity and progress in our society.

Despite the amendments, the offence of sedition remains ill-defined and open to abuse. Intention or the motive of the suspect is still irrelevant and is not a defence to the charge. Thus, sedition remains a strict liability offence. Oral sedition need not be corroborated and therefore the offence can be prosecuted on the mere say-so of one accuser.

### **The Rule of Law Campaign**

On 10 April 2015, the Malaysian Bar, the Advocates’ Association of Sarawak and the Sabah Law Association issued a joint statement on POTA titled “Detention without Trial is Oppressive and Unjust, and Violates the Rule of Law”.

On 17 April 2015, the three Bars issued another joint statement on the amendments to the Sedition Act 1948 titled “Amendments to the Sedition Act 1948 are Draconian, Militate Against the Freedom of Speech and Expression, and Interfere with the Independence of the Judiciary”.

On 23 April 2015, the three Bars wrote to President of the Dewan Negara to express our reservations over POTA and the amendments to the Sedition Act 1948, where we jointly urged the Dewan Negara to reject these laws.

2) **Press Statements (December 2014 – October 2015)**

	<b>Title</b>	<b>Date</b>
(1)	Respect the Rights and Dignity of Asylum Seekers and Refugees, and Eliminate Human Trafficking and Migrant Smuggling	20 June 2015
(2)	Harmony and Unity in Our School Cannot be Achieved by the Curtailment of Rights	24 June 2015
(3)	Rein In Overzealous Dress Code Enforcement and Reject Clothing or Moral Policing	4 July 2015
(4)	Conduct Independent Investigation into disclosures Relating to 1MDB Comprehensively and with Integrity	9 July 2015
(5)	At the Crossroads of the Rule of Law: Malaysia Must Confront Challenges to International and Domestic Justice Now	16 July 2015
(6)	Untimely and Unwarranted Upgrade in the Trafficking in Persons Report Companies the Fight Against Human Trafficking	22 July 2015
(7)	Interference into 1MDB Investigations Shields Wrongdoers and Conceals Wrongdoing	28 July 2015
(8)	Appointment of New Attorney General of Malaysia	29 July 2015
(9)	Comprehensive Reform to the MACC Needed to Strengthen the Fight Against Corruption in Malaysia	31 July 2015
(10)	Parliament Must Not Countenance Any Delay or Interference in PAC's Investigation into 1MDB	2 Aug 2015
(11)	Let the MACC Investigate Without Impediment, and Allow the truth to Emerge	7 Aug 2015
(12)	Respect and Facilities – and Not Deter – the Right to Assemble Peaceably and Without Arms	22 Aug 2015
(13)	Section 124B of the Penal Code Must Not be Used to Curb Freedom of Assembly	28 Aug 2015
(14)	Malaysian Bar Expresses its Condolences on the Untimely Demise of Anthony Kevin Morais, and Calls for a Full Investigation	17 Sept 2015
(15)	Reject the Racism and Violence that Occurred on 16 September 2015	21 Sept 2015
(16)	SOSMA Must Not be Misused to Silence Critics of 1MDB	2 Oct 2015
(17)	The Police Must Not Misuse SOSMA, and Must Not Ignore the Solicitor-Client Relationship	9 Oct 2015
(18)	Respect the Rule of Law and Release Dato' Sri Khairuddin and Matthias Chang	15 Oct 2015

- 3) The Bar Council also on 12 September 2015 convened an EGM to adopt a resolution by our President on 1MDB issue. It was resolved as follows:-

**THEREFORE**, it is hereby resolved that:

- a. The Malaysian Bar condemns the interference with, and the subversion of, the cause and administration of justice, and the investigation and inquiry into the allegations of financial impropriety concerning 1MDB and its related companies, and the transfer of MYR42 million from SRC, both into the Prime Minister's personal bank accounts.
- b. The Malaysian Bar condemns the abrupt removal of Tan Sri Gani; the crippling of the PAC; and the harassment, intimidation and oppression of investigating officers or personnel of the AGC, MACC, BNM, and the Special Branch of the PDRM.

- c. The Malaysian Bar demands that the Malaysian Government immediately advise the Yang di-Pertuan Agong to establish a Royal Commission of Inquiry (“RCI”), which should comprise members who are independent, impartial and of unimpeachable integrity, to inquire into and investigate:
  - i. The allegations of financial impropriety concerning 1MDB and its related companies;
  - ii. The transfer of MYR2.6 billion into the Prime Minister’s personal bank accounts; and
  - iii. The flow of MYR42 million public, its findings and recommendations, including any further action that needs to be taken.
- d. The Malaysian Bar notes that several members of the administration are advocates and solicitors of the High Court of Malaya, and the Malaysian Bar reminds such members of the administration that, whether in active practice or not, all advocates and solicitors are expected at all times to protect and further the rule of law and to uphold justice. The Malaysian Bar further remind such members of the administration that the failure to maintain the core values of the legal profession would render them liable to disciplinary action under the Legal Profession Act 1976.
- e. The Malaysian Bar mandates the Bar Council to take any and all steps that it deems appropriate in order to affirm and preserve the rule of law, to uphold the Federal Constitution, and to protect the administration of justice, including but not limited to, instituting a legal suit(s) against any person(s) responsible for the interference with, impediment to, or obstruction or perversion of, the administration of justice, and the investigation into:
  - i. The allegations of financial impropriety concerning 1MDB and its related companies;
  - ii. The transfer of MYR2.6 billion into the Prime Minister’s personal bank accounts; and
  - iii. The flow of MYR42 billion from SRC into the Prime Minister’s personal bank accounts.

4) **SOLICITORS RUMINATION ORDER (SRO) – WHETHER IT IS BREACH OF THE CEMPETITION ACT.**

The Bar Council has set up a task force to look into this. There are conflicting view on this and opinions of legal experts are being obtained to form an opinion as to the Bar’s stand if there is a legal challenge by the Malaysian Competition Commission (MYCC).

5) **NOTICE REGARDING BAR COUNCIL CIRCULARS AND E-BLASTS**

It is mandatory now for all members of the Bar to provide BC with their email addresses. The Bar Council Secretariat issues approximately 30 circulars and e-blasts each month. Based on our records, there is still a large number of Members who are not on our e-mail mailing list, and hence not receiving the Bar Council circulars and e-blasts. In order to be added to our e-mail mailing list and to register for full access to the website, please send an email to us at [webreg@malaysianbar.org.my](mailto:webreg@malaysianbar.org.my) or contact us by telephone at 03-20502021.

6) **REINTRODUCING/REVIVING JURY TRIALS IN MALAYSIA FOR CAPITAL PUNISHMENT CASES.**

There is a proposal by the former AG to reintroduce the Jury system for capital punishment. The Bar council is preparing a position paper on this issue. Basically we are in principle supporting the AG's proposal.

7) **GOODS AND SERVICES TAX (GST) ACT 2014**

State Bars are not legal entities under the LPA. This position is affirmed by the case of the Bar Committee of Pahang v Joseph Au Kong Weng [1979] 2 MLJ 297 in respect of which the Court ruled that only the Malaysian Bar has the locus standi to sue and be sued. So, the Malaysian Bar and the State Bars are one entity, hence, the Malaysian Bar and the State Bars must take a uniform position at both the national and the State level. State Bars have been advised not to do anything relating to GST, independently for BC as this may jeopardize the Malaysian Bar's tax position. BC will apply for State Bars to be treated as 'branches' for the purpose of GST. Towards this, teams from BC's Finance Dept have visited all State Bars during March 2015 to assess their financial practices and conduct a brief check on how accounts and finance are managed at the State bar level. A briefing to all State Bar and LAC representatives was held on 18 Mar 2015. A session on the practical accounting issues post-GST was conducted by BC's external consultant.

8) **Guidelines for petition for Admission**

**Conditions:-**

- (i) A Master cannot move the Petition for Admission of his own pupil.
- (ii) No Advocates and Solicitor can move the Petition for Admission of a pupil who has read in Chambers of the Firm in which he is a Partner or an Assistant.
- (iii) Only Advocates and Solicitors with not less than seven (7) years standing can move a Petition for Admission.
- (iv) Only an Advocates and Solicitor with a valid practicing certificate and who has at least 7 years' standing shall robe a pupil upon admission to the bar by the Presiding Judge (Ruling 10.04(3) of the Rulings of the Bar Council Malaysia)

**Procedure**

- (i) All Petitioners must be dressed with a black coat, collar and bibs. Pupils appearing in Court are required to observe the relevant Court Attire. Bar Council will not hesitate to object to the Petitioner's call if the Petitioner fails to comply with the dress code.
- (ii) Petitioners have to sit behind the Advocates and solicitors moving the Petition.
- (iii) Before making the Order for Admission, the Judge will call the Petitioner to rise, wear the gown, and then approach the front Bar Table, whereupon the Judge will make the appropriate Orders.
- (iv) After the Order has been made, the Petitioner will sit at the Bar Table beside the Advocates and Solicitor who moved the Petition.

- (v) If the Judge gives the usual advice then the Petitioner will remain standing at the front Bar Table.
- (vi) Only with the leave of the Judge, will a Petitioner be permitted to address the Court.

## 9) **LAWCARE- WE CARE**

I am also the Chairman for the LawCare committee.

The primary objective of LawCare is to provide financial assistance to Members of the bar of their families in cases of illness, disability or death.

Members contribute RM100 to the LawCare Fund annually. Part of this sum is paid as premium to the LawCare Group terms Life (“GTL”) Insurance Policy while the balance is maintained in the LawCare Fund.

Bar Council renewed the GTL Insurance Policy with AIA Bhd with effect from 1 July 2015, with the annual insurance premium maintained at RM50 per Member of the Bar.

### **Benefit under LawCare**

In the event of a Member’s death, RM40,000 is paid to the Member’s beneficiary, trustee or nominee, and an additional sum of RM2,000 is paid for funeral expenses. Members who suffer from terminal illness may, upon compliance with the guidelines, claim the sum of RM40,000 immediately.

In case where a Member suffers from a total or partial permanent disability, RM40,000 (or a percentage of this sum) is paid to the Member.

In both instances, RM30,000 (and the additional RM2,000) is paid from the insurance policy, and the remaining RM10,000 is paid from the LawCare fund. However, the insurance policy only covers Members up to 70 years of age. Therefore, in the event of death or disability befalling Members above 70 years of age, the full sum is paid from the LawCare fund.

In addition, where a Member below the age of 70 passes away while abroad, the member’s family is entitled to claim towards the repatriation expenses immediately, to the extent of his or her maximum eligibility under the insurance policy and the LawCare Fund.

LawCare also assists the family of a deceased Member: where a beneficiary has been nominated, RM10,000 from the LawCare Fund shall be paid immediately to the nominee. The LawCare Committee also considers compassionate payment in circumstances where members suffer terminal illness (eg cancer) on a case-by-cases basis.

Thank you everyone for giving me this opportunity to serve the Bar Council. I have learned a lot on the workings of the Bar Council and it has been a very enriching experience, which I will cherish forever.

Thank you.

(sgd)

**SURINDAR SINGH A/L CHAIN SINGH**

Chairperson

Perak Bar Representative to the Bar Council

(2015/2016)

## **PROFESSIONAL DEVELOPMENT & ADR SUB-COMMITTEE**

The Committee organized the following talks and workshops in 2015 :

<b>No</b>	<b>Talks/Workshops</b>	<b>Date</b>	<b>Speaker</b>
1	Companies-How To Protect Company's IP Assets (T3/17042015/PRB/PRB152236/2)	17.04.2015	(1) Mr. Noel J Akers (2) Ms. Hemalatha Parasa Ramulu
2	7 Tips for an Effective Negotiation (T3/07052015/PRB/PRB152246/2)	07.05.2015	Mr . Amir Bahari
3	Criminal Advocacy (T3/14052015/PRB/PRB152267/2)	14.05.2015	YA Puan Noorin Binti Badaruddin
4	Family Law : Grounds for Divorce and Basic Procedure (T3/04062015/PRB/PRB152307/3)	04.06.2015	Pushpa Ratnam
5	Adoption, Guardianship, Custody, Access and Maintenance (T3/07082015/BC/PRB153020/1)	07.08.2015	(1) Minderjit Kaur (2) Honey Tan Lay Ean
6	Promoting Greater Police Accountability in Malaysia (T3/25082015/BC/PRB153049/2)	25.08.2015	(1) Mr. Steven Thiru (2) Mr. Yap Swee Seng (3) Ms. Mohanarani Rasaiya
7	Conducting A Coroner's Inquest (T3/18092015/PRB/PRB153079/2)	18.09.2015	Ravi Nekoo
8	Safer Malaysia Symposium "Towards a Safer Malaysia" (T3/19092015/BC/PRB153074/3)	19.09.2015	(1) Richard Wee Thiam Seng (2) Daren Lai Xuenwei (3) Sarah Kembali (4) Marcus Low Chee Hoong (5) Mark Soh Hock Meng (6) Dave Avran (7) Thomas Fann
9	Advocacy Training Course (T2/0506122015/PSDCATC/PRK153068/12)	5-6.12.2015	Advocacy Training Committee
10	Criminal Trial Advocacy	27.01.2016	Ravi Nekoo

Another year had come to pass and we did our best to organize talks which were requested by the members and also which we thought would be beneficial to the members in their daily work. WE are still trying to source a speaker on GST in Property Transactions which is a much asked about topic and we hope to have it soon.

The mandatory CPD system will hopefully be carried through at the AGM this year which we believe will create more interest in the talks compared to the lukewarm response which we sometimes get at the talks which are organized.

For the first time we were able to carry out the Advocacy Training Course in Perak which we are sure immensely benefitted those who attended. We thank the Advocacy Training Committee of the Bar Council for their dedication and commitment to make it happen.

Almost all the talks were held at the Perak Bar Secretariat free of charge with sumptuous refreshments served after the talk. We hope that members of the Perak Bar will seize the opportunity to attend future talks to enhance their legal knowledge besides updating themselves on the latest technology that can be useful to solicitors as well as legal firms.

I would like to place on record my sincere thanks and appreciation to all those who had assisted in one way or another in making the above talks possible.

(sgd)

**VARPAL S SAGOO**

Chairperson

Professional Development & ADR Sub-Committee

2015/2016

# **PERAK BAR DEVELOPMENT & LIBRARY SUB-COMMITTEE REPORT**

**CHAIRMAN: VIVEKANANDAN AMS PERIASAMY**

## **PERAK BAR DEVELOPMENT REPORT**

The Perak Bar Development sub-committee started the Inaugural Perak Bar Law Lectures on the 16<sup>th</sup> November, 2013. During this term, the Inaugural Law lectures were planned to be held in January, 2016. However due to inavailabilities of the earlier proposed speakers which included a speaker from the Victorian Bar, we have now re-scheduled our Annual Law Lectures to sometime in June, 2016.

Since the signing of the Memorandum of Co-operation between the Perak Bar and the Victorian Bar of Australia on 16<sup>th</sup> November, 2013, I had visited the Victorian Bar in Melbourne, Australia in March 2014 and our Committee Member Mr. Balakrishna Balaravi visited some of the Victorian Bar members in December, 2015, to keep our co-operation active. I am in constant touch with Mr. William Lye the Chairman of the Asia Pacific section of the Victorian Bar's Commercial Practice who is very excited with wanting to establish the Asia Pacific Centre of Learning for Arbitration and Mediation which is to be set up in Ipoh with their teaching support.

Unfortunately, the proposed centre of learning could not proceed with full force until we get the state to alienate the land which we have applied for. We are however considering other methods to move this forward.

The Perak Bar presented its case to the Perak State Authorities to obtain a piece of state land measuring about 1.4 acres adjacent to the Syariah Court at Maxwell Road, Ipoh in March, 2012. Further to the said application we presented our request for the state land in a document called "Perak Bar's Proposed Centre of Learning and Syariah Legal Aid" and it was handed over personally to YAB Menteri Besar of Perak on 16<sup>th</sup> November, 2013.

We also brought up the land application issue with various reminders to the relevant authorities since 2014 but sadly we are yet to receive a positive response but we are still following up with hope.

## **LIBRARY REPORT**

I am pleased to report that in 2015, we have continued with the purchase of Malaysian Law Review Reports for High Court and the Appellate Courts and also for Employment law reports together with the online subscription for 2015 and 2016, which we believe will be of great use to our Practitioners. The Perak Bar Committee has continued with the usual subscription of various other text books, Law Reports and Journals.

We have also recently ordered some new text books on various topics from M/S. Marsden Law Book Sdn. Bhd. at a good discounted price to update our library.

We hope our members will make good use of our library as it is more streamlined and convenient to use with the modern renovation and amenities.

I would like to record my sincere thanks and appreciation to the Chairman and the Perak Committee Members for their support and assistance. I also wish to thank Miss Kariam Kaur and Cik Nur Aziela Bt. Zamri for their usual hard work and dedication towards the Perak Bar activities.

Thank you.

(sgd)

**VIVEKANANDAN AMS PERIASAMY**

Chairperson

Perak Bar Development & Library Sub-committee

2015/2016