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2012/2013

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### Editorial Committee

Info Johore Bar 2012/2013

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## From the Johore Bar Chair

### "WINDS OF CHANGE"



S. Gunasegaran

Life is often said to be a continuous progression from one state of being to another. Things are always changing or evolving, though we may not always be aware of it at the time of its occurrence. Change is inevitable. It is the only constant in life. And perhaps is what sustains and guarantees our very existence. The great English playwright and novelist W. Somerset Maugham (1874-1965) spoke of the significance of change as follows: *"If change is of the essence of existence one would have thought it only sensible to make it the premise of our philosophy."*

Changes have also been taking place within the legal profession. Although we take great pride and delight in belonging to an ancient and honorable profession, and for long have imposed upon ourselves a very strict code of conduct as a means to preserve the dignity of the profession, in recent times we have taken a slightly liberal approach towards things, so as to keep up with the changing times and to serve the members and the public better. The relaxation of the onerous rules pertaining to professional publicity and the introduction of the Publicity Rules of 2001 is one such instance. The legal profession has also discarded its long-held disdain of alternative employment and has started allowing its members to take up occupations that are not incompatible with the dignity of the profession on a part-time basis. Now it is looking at permitting small legal firms to share premises and possibly office staff. The list goes on.

In an effort to maintain and to upgrade the professional standards of our members, a resolution was passed at the Annual General Meeting of the Malaysian Bar in March this year, to provide for a scheme of mandatory Continuing Professional Development for all members of the profession. This means a return to learning for all of us.

Further, in line with the objective of the General Agreement on Trade in Services (GATS) entered into in 1995 by the World Trade Organization (WTO), of which Malaysia is a member, to extend the multilateral trading system to the service sector, Dewan Rakyat on 13<sup>th</sup> June 2012 passed the Legal Profession (Amendment) Bill 2012, providing for foreign law firms to be established in Malaysia and for local law firms to employ foreign lawyers, to practice in the "permitted practice areas." Although the term "permitted practice areas" has not been defined, it is envisaged that International Islamic Financial services would be one of them.

If that is not enough, the litigation landscape in the country is set to undergo a major transformation this year with the following changes:

(a) the amendments to the Criminal Procedure Code, enforced w.e.f. 1<sup>st</sup> June 2012, providing, inter alia, for pre-trial case management in criminal cases and for plea bargaining;

(b) the proposed introduction of the Rules of Court 2012 on 1<sup>st</sup> August 2012, to replace the existing Rules of the High Court 1980 and the Subordinate Courts Rules 1980, providing for a common code of procedure for both the High Court and the Subordinate Courts, and the inclusion of several new and radical provisions such as the powers given to the court during the pre-trial case management stage to direct and control proceedings by giving various directions, including limiting the number of expert witnesses; and

(c) the enforcement of the amendments to the Subordinate Courts Act 1948, in tandem with the Rules of Court 2012, enhancing the jurisdiction of the subordinate courts, and in particular, the powers of the Sessions Court to grant injunctions, specific performance, etc.

It is also clear that in the days ahead the courts would increasingly resort to mediation, either as an alternative or an adjunct to litigation, to dispose of cases. This would be done by invoking the powers conferred upon the court by Order 34 of the Rules of Court 2012 (dealing with Pre-trial Case Management). A pilot project to introduce automatic mediation in accident cases in the Johor Bahru courts has already been introduced w.e.f. 1<sup>st</sup> June 2012. It is understood that this would soon be extended nationwide for all accident cases, through a Practice Direction to be issued by the Judiciary. One can only surmise that eventually mediation would be applicable to all civil cases in the country.

These changes have been driven by the wisdom acquired as a result of our long experience in doing things that tells us that the existing way of doing things is flawed, inadequate and outdated and that we must find a better way to do them. To quote Alfred Edward Perlma (1902-1983), an American railroad executive, *"After you've done a thing the same way for two years, look it over carefully. After five years, look at it with suspicion. After ten years, throw it away and start all over."*

The profession must move forward by embracing these changes and preparing itself to face the challenge that lie ahead. Both the Bar Council and the Johore Bar Committee have planned a number of events to assist our members in this endeavor. I urge members of the Johore Bar to seize the opportunity and profit from them.

S. GUNASEGARAN  
Chairman  
Johore Bar Committee