

JOHORE BAR REPRESENTATIVE'S REPORT



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As the Bar Representative of the Johore Bar 2020/2021, I am honored to share this report with you. Due to the Covid-19 pandemic, 2020/2021 was a very challenging year. Our members faced many challenges with the unprecedented new norms.

At the commencement of 2020/2021 term, the Johore Bar Committee graciously invited me to attend all their monthly meetings.

Attendance and participation at Bar Council Meetings, governmental and non-governmental agencies meetings

Besides the Bar Council meetings which are usually on the first or second Saturday of the month, I also served in the following Bar Council sub-committees:

1. Co-Chair of the Child Rights Committee;
2. Deputy Chair of the Professional Standards and Development Committee; and
3. Committee member of the Courts Liaison Committee.

In carrying out my work in the above committees, I attended several meetings with government agencies and non-governmental organisations held in the course of the year namely:

- (1) the Opening of the Legal Year 2020 at the Putrajaya International Convention Centre (PICC) Putrajaya on 10 January 2020.
- (2) the Bar Council meeting with YB Puan Hannah Yeoh, government departments and other stakeholders on child rights issues at Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (KPWKM) on 18 February 2020.
- (3) the Bar Council Constitutional Law Committee and Human Rights Committee meeting held in collaboration with the United States Embassy on 21 August 2020 to discuss the United States 2019 Human Rights Report on Malaysia.

- (4) an informal online discussion on the effects of emergency on Children with YB Azalina Othman Said (Timbalan Yang dipertua Dewan Rakyat) and other stateholders on 20 January 2021.

Some of the major issues and/or changes which took place during the 2020/2021 term are as follows:

(1) **The Annual Subscription**

After considering the provisions of the Legal Profession Act 1976 (“LPA”), the Bar Council reduced the annual subscription and either waived completely or reduced some of the levies for 2020.

As an initiative to ease the financial burden faced by members during Covid-19 pandemic, the Bar Council decided to reduce the total payment from RM1080.00 to RM730.00 for 2020 wherein members enjoyed a total saving of RM350.00. Particulars of the breakdown is as follows:

No	Payments Required under the Legal Profession Act 1976 (“LPA”)	Amount (RM) in 2019	Amount (RM) in 2020
(1)	Annual Subscription — Section 46(1) of the LPA	450	350
(2)	Building Fund (Levy) — Section 46(3) of the LPA	250	120
(3)	Legal Aid Fund (Levy) — Section 46(3) of the LPA	100	100
(4)	LawCare Fund (Levy) — Section 46(3) of the LPA	100	0
(5)	Sports Fund (Levy) — Section 46(3) of the LPA	20	0
(6)	Compensation Fund (Contribution) — Section 80(2) of the LPA	100	100
(7)	Discipline Fund (Prescribed Fee) — Section 29(1)(c) of the LPA	60	60
	TOTAL	1,080	730

(2) **The Legal Profession Bill 2020**

The Bar Council submitted their inputs to the draft Legal Profession Bill to the Attorney General’s Chambers (AGC) on 9 January 2019 and thereafter, Bar Council and AGC had several discussions in 2019 and 2020. The Judiciary was also engaged for their feedback.

After the Bar Council reviewed the cabinet paper, AGC forwarded a copy of the latest version of the Bill and explanatory statement to the Bill in Bahasa Malaysia and English.

To avoid further delay, the Bar Council decided on 21 November 2020 that the amendments to the LPA 1976 are to proceed by way of an Amendment Bill instead of a new Bill. A virtual meeting was held on 22 December 2020 during which the (Amendment) Bill was discussed.

(3) Initiative to Broadening the Scope of Lawcare Fund

The Bar Council previously adopted a strict approach for LawCare fund in respect of applications from members who are suffering from medical illness and facing financial hardship based on the 36 critical illnesses guidelines. The Bar Council is now working to broaden the scope of the Lawcare Fund for the welfare of members subject to supporting documents/information to be furnished by applicants in the Lawcare Fund Application Form.

(4) New initiative - Counseling Services for Members of the Bar

As an initiative to assist members with mental health issues, the Bar Council has signed a Memorandum of Understanding with Malaysian Board of Counselors on 8 January 2021 to provide 5 free sessions of counseling per year at the Bar Council's expense. All personal data and information of the members who seek the counseling service from registered panel counselors will be kept confidential by the Board of Counselors and will not be disclosed to the Bar Council.

(5) Opening of Legal Year 2020

The Malaysian Bar, the Judiciary and the Attorney General's Chambers participated in the Opening of the Legal Year 2020 Ceremonial proceedings.

The Chief Justice of Malaya Tan Sri Tengku Maimun Tuan Mat in her speech stated that in embracing technology and its advancements, the E-Court system is to be expanded to all locations throughout Peninsular Malaysia. Additionally, E-services such as the E-lelong system are to be made available to all High Courts in Malaya this year, subject to funding. Finally, E-Review case management is to be undertaken by the court registrars and counsel online, using the e-Court platform and an electronic bail system which enables a bailor to make the bail payment online will be made available.

(6) Session Court Judges to hear family matters

In order to enable the High Court judges to focus on the more contentious matters, the Judiciary invoked section 2 of the Law Reform (Marriage and Divorce) Act 1976 which empowered the Yang di-Pertuan Agong on the advice of the Chief Judge to confer upon any Sessions Court Judge, the jurisdiction to deal with any matter under the Act. Currently, Sessions Court Judges are hearing only non-contentious family law matters.

(7) Remote Communication Technology

Pursuant to amendments to the Rules of Court 2012, Rules of Court of Appeal 1994, Rules of the Federal Court 1995 and the Courts of Judicature Act 1964 on 15 December 2020, the court may direct any proceeding to be conducted through a remote communication technology in the Federal Court, Court of Appeal, High Courts and Subordinate Courts. The e-Appellate system has also been implemented by the Judiciary.

The Bar Council had expressed concerns and reservations on Proposed Implementation of e-Bicara System at the High Courts to the CJM on 21 September 2020. The Bar Council was informed by the CR's office on 21 October 2020 that for now the proposed implementation of the e-Bicara system will only involve the hearing of the civil and criminal appeals.

The Bar Council launched a 'Tech Aid Directory' in August 2020 providing information of Members who are IT-savvy to assist fellow Members with the technology-related aspects of the e-Appellate system. Members can utilize the Virtual Hearing Facilities installed at the Bar Council and the Johore State Bar.

(8) Measures taken during Covid -19 pandemic

The Bar Council had from time to time sought clarification with the Ministry of International Trade and Industry (“MITI”) and the Legal Affairs Division under The Prime Minister's Department (“BHEUU”) on the Standard Operating Procedures (SOPs) and issued circulars to guide our Members on the aspects of legal practice during the COVID-19 pandemic, regularly updated members on the government SOPs for law firms, operations of Courts and government agencies.

To assist members facing financial difficulties, the Bar Council had issued circulars on the collated information relating to credit facilities available under the Specific Relief Facility (“SRF”) provided by Bank Negara Malaysia (“BNM”), which were offered by a number of financial institutions. The Bar Council also notified Members to apply for government’s incentives such as the wage subsidy programme to lessen their financial burden.

At the same time, the Bar Council also waived some Bar Council Rulings to facilitate legal practice during pandemic as follows:

- (a) suspended the mandatory legal aid programme for pupils (Ruling 10.06); and
- (b) waived operating hours of legal firm at least 5 days a week (Ruling 7.01(6) and availability of fax services during office hours (Ruling 7.05) during the period that the Movement Control Order is in effect.

On 6.4.2020, the Bar Council allowed additional exceptions to enable electronic payment by way of online banking service under Rule 8(4)(c) of the Solicitors’ Account Rules under written instructions of a client or in accordance with the terms of a written agreement made between a client and a counterparty:

- (a) Payments due to any Joint Management Body/Management Corporation for service charges, sinking fund, quit rent, water, special fund (refurbishment) including any arrears, interest and penalty (where applicable);
- (b) Apportioned outgoings payable to a vendor or purchaser in a transaction or the solicitors representing the vendor or purchaser, as the case may be, for quit rent, assessment, sewerage, utilities (TNB, water, broadband), service charges, sinking fund, special fund (refurbishment) including any arrears, interest and penalty (where applicable);
- (c) Commission payable to an authorised third party such as an agent;
- (d) Land premiums;
- (e) Legal fees or professional charges, disbursements and official fees including payments to foreign agents/legal firms/companies for work carried out or to be carried out in relation to a subject matter in Malaysia or a country outside Malaysia;
- (f) Administrative fee, interest and other charges payable to a developer;
- (g) Fee or charges payable to a liquidator;
- (h) All outgoings, deposits, payments, expenses, cost and fees that are customary or usual in relation to a sale and purchase, lease or tenancy or any other dealing in property;
- (i) Due release of stakeholder’s sum(s) such as purchase price, rental or real property gains tax refund;

- (j) E-filing payments, court deposit/fee for execution and any payment to court; and
- (k) Payments in relation to or in connection with or arising from dealings in a cross-border transaction and/or with an international client.

(9) Mediation Programme

Pusat Mediasi COVID-19 (“PMC-19”), a specialized mediation centre was set up by the Malaysian Government via BHEUU in line with the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 (“COVID Act”) to resolve disputes due to the inability of parties to perform certain contractual obligations as a result of the restrictions that have been imposed due to the Covid-19 pandemic. In November 2020, the Malaysian Bar entered into an agreement with the Government of Malaysia to implement and manage PMC-19, including the appointment of accredited mediators from the Bar Council’s Malaysian Mediation Centre’s (“MMC”) panel.

(10) Petitions for admission

The Bar Council had expressed concerns on the postponement of the hearing of petitions to be admitted as an Advocate and Solicitor of the High Court of Malaya due to the COVID-19 pandemic. The Chief Justice, YAA Tun Tengku Maimun binti Tuan Mat heeded the concerns raised by the Bar Council and agreed to conduct admission hearings online. Thereafter, the Office of the Chief Registrar of the Federal Court of Malaysia issued a notification that the hearing of petitions for admission as an advocate and solicitor of the High Court of Malaya via video conferencing (subject to the petitioner’s application) will be expanded to all High Courts of Malaya starting from 1 February 2021.

(11) Mandatory Continuing Professional Development (CPD) Scheme

Starting from 1 July 2020, the CPD Scheme has entered Cycle #5. This current cycle is to continue until 30 June 2022. As of 10 February 2020:

- (i) 359 accredited events, were organised by BC, State Bar Committees, Legal Aid Centres, and Advocacy Training. All ATC for 2020 has been cancelled. Out of 359 accredited events, the CPD Department has received 253 attendance lists, where the recorded data shows that 9,659 Members and 5,090 Pupils had attended these events.
- (ii) No CPD Camps have been organized in 2020 due to the COVID-19 pandemic. The CPD Department has started to re-organise CPD Camps under the name CPD Camps Live starting from Jan 2021. 4 CPD Camps were conducted online which were attended by 65 Members and 94 Pupils.
- (iii) 25 CPD Live events were conducted between 1 July 2020 and 2 December 2020, which were attended by a total of 1,966 Members and 794 Pupils.
- (iv) CPD on Demand has 56 courses (153 videos) in 25 categories. There are currently 6,244 users, and the videos in total have accumulated a whopping 26,495 views.

(12) The Common Bar Course (CBC)

After two decades, the Legal Profession Qualifying Board, Malaysia (LPQB) and all other stakeholders including public universities are in agreement that it is time for a revamp of the Certificate in Legal Practice (CLP).

The draft Legal Profession Bill includes amendments to the composition, powers and functions of LPQB, with the goal of adopting the CBC to replace the CLP.

On 10 September 2020, The President of Bar Council who is also the Co-Chairperson of CBC had a special meeting with all stakeholders including the local universities, MMU, Brickfields Asia College and LPQB to discuss the core structure and mechanism of CBC.

The Bar Council is now working on the Legal Professional Practical Course (LPPC) to revamp the current 9 months Pupillage System. The LPPC will serve as a stop-gap measure until the CBC has been put in place.

(13) Court Assigned Counsel

The Court of Appeal ("COA") and Prisons are requesting NLAC and YBGK Committee for YBGK lawyers to represent appellants at the Court of Appeal (COA) level.

In order to handle the appeal cases at the COA level, the YBGK Committee and Criminal Law Committee collaborated and organised YBGK training for Court assigned counsels on 2 December 2020.

(14) Proposal To Increase The Fee For Court Assigned Cases

The Bar Council met with the Judiciary on 10 September 2020 and pushed for an increase the court assigned counsel fee by 50%. The Judiciary is agreeable to the proposed increase subject to the approval of the four OBs of the Judiciary and the Ministry of Finance (MOF)'s approval.

(15) Sexual Harassment

The Bar Council is drafting a ruling to address Harassment (inclusive of Sexual Harassment) at the Bar. The Bar Council is also working on a Sexual Harassment Complaints Mechanism.

(16) Waiver of Fees for Conveyancing Matters

The Bar Council Guidelines on Waiver of Fees for Conveyancing Matters dated 12 February 2007 is hereby replaced by the Revised Guidelines on Waiver of Fees for Conveyancing Matters which shall take effect on 1 March 2021.

(17) Watching brief / Intervention

The Bar Council continued to hold watching brief or applied to intervene in proceedings involving matters of public interest, members' interest, rule of law and Constitution.

(18) Malaysian Bar's Lifetime Achievement Award for 2020 (MBLAA)

The Bar Council agreed to the setting up of the MBLAA Selection Committee 2021 to be chaired by Dato' Seri M Ramachelvam.

(19) Other matters under review

The Bar Council is conducting a survey on the remuneration of pupils and young lawyers in West Malaysia.

Reminder:

75th AGM OF THE MALAYSIAN BAR has been fixed on **Saturday, 13 March 2021 at 10:00 a.m.**

THANK YOU.

Dated this 19th February 2021.



SANTHI BALACHANDRAN
Johore Bar Representative 2020/21