



The Role of Bar Associations in Supporting Pro Bono - The Malaysian Bar Experience

Christopher Leong
President
Malaysian Bar



The Malaysian Bar has for decades been at the forefront of defending the rule of law, the independence of the judiciary and the legal profession, the Federal Constitution, fundamental liberties, promoting law reform and legal aid for the poor



s42 LEGAL PROFESSION ACT 1976

- (1) The purpose of the Malaysian Bar shall be –**
- (a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour; ...**
 - (d) where requested to do so, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia; ...**
 - (g) to protect and assist the public in all matters touching ancillary or incidental to the law;**
 - (h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;...**



Part I: Pro Bono – Legal Aid



The Malaysian Bar Legal Aid



Pro Bono – How Legal Aid Began

1965: At the 19th AGM, motion moved to implement free legal aid scheme for persons detained under the Internal Security Act.

1978 – 1980: Electronic industry in Penang attracted influx of workers from rural areas. No worker's union. Industrial relations problems. Social workers appealed to Penang lawyers for help

1980 – 1982: A group of lawyers, paralegals and university lecturers formed the Penang Legal Advisory Centre

1982: Several KL lawyers set up legal aid office in a small room in Industrial Court building with RM34,000 grant from Asia Foundation

1983: Legal Aid Scheme born. Mandatory for all pupils to attend at a Legal Aid Centre for at least 14 days during his/her pupillage

1995: Malaysian Bar passed a resolution requiring every lawyer to take up one legal aid case



Bar Council Legal Aid Centres (BC LAC)

15 BC LACs established, at least one in every state in Peninsula Malaysia

Two of which are located at:

- 1. Taylor's University - 2011**
- 2. National University of Malaysia - 2013**

Annual Budget: RM1.6 million

RM100 annual levy on every Member of the Bar

No of Volunteer Lawyers: approx 1,300

Cases Handled (2007 – 2012): 140,254



**Our Penang
Legal Aid Centre
Mobile Van**



Bar Council Legal Aid Centres (BC LAC)

- For civil and criminal cases
- For Malaysian citizens and non-citizens
- Means test
 - monthly income of not more than RM650 (single) or RM900 (married couple), nett of all monthly expenses;
 - motorcycle worth not more than RM4,500;
 - home worth not more than RM45,000;
 - car worth not more than RM20,000;
 - savings of not more than RM5,000.
- No merits test





Functions of the Bar Council Legal Aid Centre

FREE

Legal advice, representation & legal intervention for civil and criminal matters

Assistance in mitigation of sentences, remand proceedings and bail applications



LEARN

Awareness and educates public on their rights





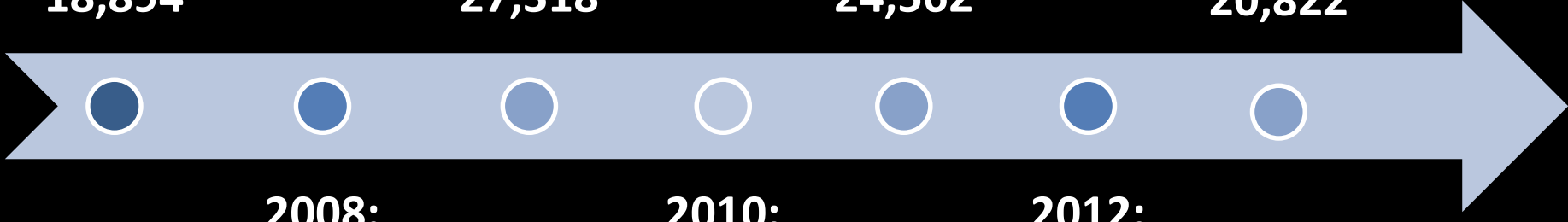
Cases handled by Bar Council Legal Aid Centre

- Criminal offences
- Housing/Tenancy issues
- Labour/Employment
- Public interest cases – urgent arrest team
- Immigration issues (passport, identity cards)
- Family law matters
- Syariah cases
- Domestic violence
- Migrant/refugees issues



No of cases handled:

2007:	2009:	2011:	2013:
18,894	27,318	24,562	20,822



2008:	2010:	2012:
26,527	21,572	21,381

PART II: State-Sponsored Legal Aid

National Legal Aid Foundation (NLAf)



2008

Out of 108,000 criminal cases heard in Magistrate Courts in Malaysia, 80% of the defendants were unrepresented

2009

BC proposed to the Government of Malaysia to set up NLAf

2011

Launched by Prime Minister on 25 April 2011

2011

Commenced operations 2 April 2012. Handling all types of criminal offences, excluding death penalty cases

Govt funding

2011 : RM5m ; 2012 : RM10m ; 2013: RM20m

Apr 12 – Aug 14

240,839 cases handled / avg 8,304 per month

No of criminal trials completed under NLAf

2012 : 51 cases

2013 : 513 cases



NLAF Board of Directors



Tan Sri Abdul Gani Patail
Attorney General of Malaysia
Chairman



Christopher Leong Sau Foo
President of Malaysian Bar
Vice Chairman



**Tan Sri Dr. Mohd Irwan
Serigar b. Abdullah**
Treasury Secretary-General



Dato' Haji Ismail bin Ibrahim
Director General
Legal Affairs Division



**Dato' Norani bt. Hj.
Mohd Hashim**
Director General of Social Welfare



Puan Siti Zawahir binti Mohamed
Director General
Legal Aid Department



Musa bin Awang
Syarie Lawyer



G.B.B Nandy@Gaanesh
President
Sabah Law Association



Khairil Azmi
President
Advocates of Sarawak Association



Services Provided by NLAFF

Free legal aid and advice for all types of criminal offences, excluding death penalty cases.

Arrest

The police or other enforcement agencies will inform YBGK by fax to represent the arrested person subject to section 28A of Criminal Procedure Code or the arrested person employs his/her own lawyer.

Remand

YBGK will represent the arrested person during the remand application before the Magistrate.

Charged/Bail/Mitigation

YBGK will represent the accused during charged and when applying for bail/mitigation.

Hearing/Appeal

YBGK will represent the accused during hearing/appeal subject to means test.



Conditions for Legal Aid Through NLAF

Legal aid and advice in criminal matters: – arrest, remand hearing, charge and bail application

No charge for all Malaysian citizens

Non-citizens are not eligible

Means test to receive representation at the hearing stage:

- 1. Earns below RM 25,000 per annum – No charge**
- 2. Earns above RM 25,000 but below RM 36,000 per annum
(Charged nominal fees to be determined by the NLAF)**
- 3. Depending on the means test, those accused of all types of criminal offences can qualify to receive legal aid, except those who are charged with capital offences**
- 4. No merits of case test**



Committees of the Bar Council

Public Interest

Human Rights Committee

Constitutional Law Committee

National Legal Aid Committee

Migrants, Refugees & Immigration Affairs Committee

Committee on Orang Asli Rights

Environment & Climate Change Committee

Task Force on Corruption

Safer Malaysia Committee

Committee on Judicial Matters

Criminal Law Committee



Safer Malaysia Committee

Runs the Safer Malaysia project with the aim to connect people with security administrators and to get all to cooperate for a safer Malaysia.



Organises

- Safer Malaysia workshops
- Dialogues with authorities, especially the Police
- Nationwide roadshow about the newly amended Prevention of Crime Act



Constitutional Law Committee

Runs the ongoing MyConstitution campaign to educate and empower citizens, and to create greater awareness of the Federal Constitution.

- Produced public service video advertisements
- Organised symposiums, workshops dialogues, forums and lectures
- Published a series of pocket-sized guides to the Federal Constitution called the Rakyat Guides
- Perlembagaanku mobile app, in both Android and iPhone



Committee on Orang Asli Rights

Assist the Orang Asli community, particularly with respect to their customary land rights and their rights as indigenous peoples

- Organise workshops to equip advocates and solicitors with the fundamentals of the law and practice on native customary rights claims
- Present papers on Orang Asli rights at conferences
- Visit Orang Asli settlements to advise them of their rights
- Pro bono litigation





Part V: Pro Bono Representation –Public Interest Cases

1998

The Reformasi Trials

Two mass trials of 177 and 132 defendants, fixed for 3 months on the trot, volunteer lawyers of whom 95% were civil lawyers, 2 days crash course on criminal trials and voir dire. Obtained 99% acquittals – 4 out of 309 convicted.

EGM Resolution: 10th Oct 1998

The Bar unanimously condemned the ISA characterizing detention without trial as “obnoxious” and an assault upon “fundamental human rights, basic democratic principles and the rule of law.”



Part VI Pro Bono – Rapid Response Legal Team



Provide urgent legal representation for arrested persons

On standby. Despatched to police stations in anticipation of mass arrests



Part VII: Pro Bono Advocacy - Law Reform



Repealed / Amended in 2012

**The Essential (Security Cases) Regulations 1975 (ESCAR)
“Downing of tools” protest**

Internal Security Act 1960

Restricted Residence Act 1933

Banishment Act 1959

S27 Police Act 1967

Printing Presses and Publications Act 1984

**Sedition Act 1948 (promised to be repealed & replaced by National
Harmony Act)**

Peaceful Assembly Act 2012 – collaborated with and protested against

Judicial Appointment Commission Act 2009



Continuous Advocacy

Coroner's Court

Companies Bill

LGBT

Law Reform Commission

Repeal of Mandatory Death Penalty

Amendments to the Indigenous People's Act



7 UN Conventions Yet to be Ratified

The International Covenant on Economic, Social & Cultural Rights (ICESCR)

The International Covenant on Civil and Political Rights (ICCPR)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The International Convention on the Protection of the Rights of all migrant Workers and Members of their Families (MWC)

The United Convention Relating to the Status of Refugees 1951

The United Nations Convention on the Elimination of all Forms of Racial Discrimination (CERD)

Rome Statute

Pro Bono Advocacy - Law Reform



**08th Feb
1958**

- Protested and condemned preliminary inquiry in camera
- Undesirable that anything savouring of “secret courts” or “secret proceedings” should exist
- Practice was immediately discontinued

**26th Oct
1958**

- Protested against Public Order (Preservation) Bill
- Gist of protest being extensive powers given even to junior police officers
- The Bill was nevertheless passed but BC reserving the right to write to the draughtsman on possible abuses

**22nd July
1965**

- EGM to protest against Court of Judicature (Amendment) Bill to limit the rights of appeal to the Privy Council
- Bill never got through Second Reading
- Matter resurrected in 1968 and the Bar again protested
- Bill again was withdrawn
- Abolishment of right to appeal to PC was eventually done in stages: 1975, 1978 and 1985

Pro Bono Advocacy - Law Reform

“Downing of Tools”



1975

The Essential (Security Cases) Regulations 1975 (ESCAR) Protests

EGM Resolution: 18th Oct 1977

“...all members of the Bar of the States of Malaya be advised not to appear in trials under the Essential (Security Cases) (Amendment) Regulations 1975 whether retained or assigned from henceforth as these Regulations are repressive and against the rule of law – provided that those who have been retained prior to 19th October 1977 may either discharge themselves or refund any fees collected or complete their brief.”



Pro Bono Advocacy - Law Reform

LAWYERS: DON'T USE LAW TO RESCUE DEMOCRACY

KUALA LUMPUR, Tues — The Bar Council of Malaysia told the Government today not to use the legal machinery to "destroy democracy".

"It ought not to be forgotten that there are more ways than one to destroy democracy and all that stands for. The Communist and other subversive elements have their methods — the illegal and unconstitutional method."

It said in a memorandum protesting proposed amendments to the Constitution.

The memorandum, which is addressed to MPs, protested against proposed amendments to Article 140 which

will give the Yang Di-Pertuan Agong the power to dissolve the emergency if he feels that a certain event is related to public security.

It said, now, when an emergency can only be declared "after" such an event has occurred, the amendment would make it possible for the King to declare it without any real cause.

Under such an emergency, the King can promulgate Ordinances which have the force of law.

It said that the Government had shown itself to be indifferent over the last few years to its obligation to maintain the rights of individuals over the law.

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Some of the lawyers sitting at the Parliament gallery yesterday evening, their arms raised to protest the proposed amendments to the Constitution.

KEEPING IN TOUCH WITH THE NEEDS OF SOCIETY

KUALA LUMPUR, Tues — The Bar Council urged the Government today to "withstand" the proposed changes to the Societies Act.

The Council pointed out that the Societies Act is a very important piece of legislation which has been in force since 1954.

It said that the Bar Council had been in touch with the needs of society through its various committees and sub-committees.

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FRU MEN CALLED IN

FRU FROM PAGE ONE

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The lawyers waiting for their colleagues before attempting to enter the compound.

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PROTESTERS

CONGRATULATIONS to the Bar Council for getting out of their air-conditioned rooms and descending from their ivory tower to demonstrate for fundamental liberties and human rights in this country.

In my wildest dreams I would have never thought of the day when our lawyers would participate in a demonstration. In their wigs and black gowns they have always looked too respectable and dignified to actually take part in a demonstration and that, too, in a drizzle.

But on April 7, the lawyers actually stood on the roadside and in the rain, distributing their memorandum to MPs arriving at the Dewan Rakyat for the debate on the Societies (Amendment) Bill.

And 10 of them went into the lobby of the House to distribute the memorandum there as well.

It warmed the cockles of the heart of all those proud lovers of this country. The lawyers did it with a sense of pride and the country salute you.

Let me explain. In the past, the Bar Council had been headed by people who held office as chairman for too long and as a result got stale in office and in a sense got themselves isolated from the man in the street.

But with the passage of the Legal Profession Act, a new generation of lawyers took over and the chairmanship was limited to two years. This was a change for the better.

Haliz Aziz Adnan took over as chairman at the time and he was succeeded by a number of lawyers who were attuned to the needs of the profession and of the people of this country.

These men include Datuk Abdullah bin Datuk Abdul Rahman, the younger brother of the late Tun Dr Ismail, Mr Justice V.C. George, now a member of the High Court, the chairman now is Mr G.T.S. Sidiq.

Since late 1974 the lawyers, especially the Bar Council, have taken an interest in issues which affected the people where before they would not touch such issues with a barge-pole. Then they began to speak out loud

... the battle for democracy goes on and we look to the members of the legal profession to be in the vanguard of the fight ...

The people of the country salute the Bar Council. Continue the good fight!

● old and young, as represented by the Young Christian Workers and the Selangor Chamber of Commerce.

● the laity and the religious leaders, as represented by the National University Association and the Ulimas Associations of Malaysia and Penang.

● the humble workers and the professional, as represented by the Malaysian Trades Union Congress and the Professional Council of Malaysia.

● Above all was the Bar Council. All opposed the Bill.

The Government also fills that much of the opposition to the Bill is due to ignorance and some of the protesters being led by the nose.

With due deference to the Government I would suggest that even a legal summary like the Lord President would hesitate to say that the members of the Bar Council are ignorant of any Bill that the Government brings to the Dewan Rakyat.

Blind obedience was not for Datuk Mohamad Sophe. It was not surprising that in 1973 he was not picked as a candidate.

Meanwhile the battle for democracy in this country goes on and we



By TAN SRI DR TAN CHEE KHOO

Without Fear or Favour

Beides, the members of the Universal Kelebangsan Staff Association are not exactly a body of nincompoops. They are experts in their own respective fields, and I dare say that they are quite capable of comprehending.

ONE REFRESHING FEATURE OF THE WHOLE SORRY EPISODE IS THE BRAVE STAND TAKEN BY DATUK SENI BIN ABDUL RAHMAN.

He spoke out of parliamentary democracy and made a plea for the removal of the more objectionable clauses not to accommodate the opposition, but for democracy in this country and for the people of Malaysia.

New nobility can accuse Datuk Senai Abdul Rahman of being sentimental. He has been a special general of Umno itself and a Minister. Alas, now that he is a lowly backbencher, his views and advice have been brushed aside.

Datuk Senai remains one of another brave member of the ruling party he was not afraid to speak with his mind even when he was in conflict with the stand of the Government.

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Meanwhile the battle for democracy in this country goes on and we

MIC: It's erosion of rights

PENANG, Tues — The Green Section Branch of the MIC here has sent a telegram to the Minister of Home Affairs "strongly protesting against the proposed amendments to the Societies Act."

The branch said the amendments that it considered "the erosion of rights and liberties affecting the Malaysian Constitution."

Chairman S.Franco Xavier said this will promote greater understanding and

co-operation between the Government and the people, and help to build a united and democratic society as outlined in the Malaysian Constitution and the Rukunegara.

Mr Xavier said the branch also felt the need to maintain an open dialogue with all matters affecting the country.

The Government should keep the changes open whereby individuals, societies and associations can maintain an open dialogue with all matters affecting the country.

The proposed amendments, which would give the Registrar of Societies sweeping powers and take away the right to appeal against his decisions in the courts, are scheduled to be debated tomorrow by the Dewan Rakyat.

1981 The Society Act 1966 (Amendment) 1981 Protests

convening a "national society" and have the registration committee of the Registrar of Societies.

bottom of the opportunity of hearing view that it is right and proper that they should have.

ments to the Constitution are conferring on the Government a real one.

He said the proposed amendments should first be referred to the Select Committee of Parliament, where all interested parties could express their views.

"This would give the Government an opportunity to get a more

clear picture of the views of the people, and help to build a united and democratic society as outlined in the Malaysian Constitution and the Rukunegara.

The branch called on the Government not to use Parliament to legislate laws that did not have the support of the people.

"Loyalty, goodwill and harmony cannot be brought about by legislation," he said.

fundamental rights.

ment Bill than this Opposition has come from.

the Bar Council cannot comprehend it is in a relatively simple Bill like the Societies (Amendment) Bill and the fine print therein, who can?

In the meantime the people of our country should be kept informed. Continue the good fight.



1988 Judicial Crisis: An “Apology” by the Malaysian Government

17th April 2008:

- Prime Minister Tun Abdullah Hj Ahmad Badawi paid tribute to the six Supreme Court judges who were sacked in 1988 and said, “the Government wanted to recognise their commitment towards upholding justice and to acknowledge the pain and loss they have endured.”
- Abdullah also announced goodwill ex-gratia payments to the judges:

“I do not presume to equate your contributions, pain and loss with mere currency, but I hope that you could accept this as a heartfelt and sincere gesture to men what has been.”

The Lingam Tape & Walk for Justice 2007



Walk for Freedom 2011 & Peaceful Assembly Act 2012



Peaceful Assembly Bill:
SET UP
PARLIAMENTARY SELECT COMMITTEE

Part VIII: Pro Bono – Monitoring & Fact-Finding Missions



**Royal Commission to Enhance the Operation
& Management of the Royal Malaysia Police (May 2005)**

**Commission of Enquiry of the Video Clip Recording of
Images of a Person Purported to be an Advocate &
Solicitor speaking on the Telephone on Matters Regarding
the Appointment of Judges
(May 2008)**

**Royal Commission of Enquiry into the Death of
Teoh Beng Hock (22 June 2011)**



Pro Bono – Monitoring & Fact-Finding Missions

1

Fact-Finding Mission to Pakistan: Attack on the Judiciary in Pakistan (15 Aug 2008)



2

Visit to Fiji by LAWASIA Observer Mission in March 2007. Abrogation of the Constitution and Removal of Judges in the 2006 Fiji Military Coup





Pro Bono – Monitoring & Fact-Finding Missions

3

508 Rally (08.05.2013) Observation by Malaysian Bar Monitors





Pro Bono – Monitoring & Fact-Finding Missions

508 Rally (08.05.2013)

Observation by Malaysian Bar Monitors





Collaboration & Consultation

Human Rights Commission of Malaysia (SUHAKAM)



Judicial Appointment Commission (est. 02 Feb 2009)

Government, Government Agencies, etc



Attorney General's Chambers Malaysia: Working Groups

Criminal Law

Civil Law

Law Reform

Liberalisation of Legal Services

I-CeLLS: Government think tank for legal research

THANK YOU



NO FEAR . NO FAVOUR

**Christopher Leong
President
Malaysian Bar**