



Cyrus Das, President of the Malaysian Bar Council

CLA joins IBA and others to Study and Report on Malaysian Legal System

A joint delegation to study and report on aspects of Malaysia's justice system is being planned by the CLA, the International Bar Association, International Commission of Jurists, and Union Internationale des Avocats.

"The mission will examine, in particular, the independence of the legal profession and judiciary," says a December 23 letter to Malaysian Prime Minister, Dr. Mahathir bin Mohamed. The letter is signed by the presidents of all four organisations.

The delegation plans to visit Kuala Lumpur within the next few months to visit senior lawyers, judges, public prosecutors, officials of the Bar Council, government ministers and officials and representatives of non-governmental organisations. It will also visit courts and prisons.

Interviews have been requested with the Prime Minister, Attorney General and Chief Justice.

The delegation will report from a professional and independent standpoint using as yardsticks various international covenants to which Malaysia is a party.

CLA council member Cyrus Das is president of the Malaysian Bar Council. "The mission will have the

full support of the Bar Council and of Cyrus himself as President, including help in arranging meetings," says CLA President Rodney Hansen QC.

Allegations of corruption and of manipulation of the judiciary by commercial interests have circulated widely in recent times. There are also concerns about recent constitutional amendments, laws shifting power over the courts to the legislative and executive branches, and about the Internal Security Act, which allows for prolonged detention without trial and without the right of judicial review.

Anwar Corruption trial: A Lawyer's Account

In September 1998 Malaysia's former Deputy Prime Minister, Datuk Seri Anwar Ibrahim was charged with four counts of committing corrupt practice by directing police to obtain statements from two witnesses, denying sexual misconduct by him. (Charges of sodomy and having an affair with the wife of one of his officials were dropped as the prosecution closed its case.) The trial continues at press time, with developments regularly in the news. Kuala Lumpur lawyer Jerald Allen Gomez, a 1994 alumnus of the Commonwealth Exchange Program, files this lawyer's-eye-view of the proceedings.

Anwar's defence is basically that the charges are part of a conspiracy to remove him from political office. Some highlights of the trail thus far:

- On October 5, Anwar's bail application was refused on the ground that if released, he might tamper with witnesses.
- Defence counsel Zainur Zakaria, a past president of the Malaysian Bar Council, was cited for contempt for filing an application to disqualify two of the prosecutors. The application alleged their involvement in attempting to procure by questionable means evidence against Anwar

from one of his friends. The application was supported by an affidavit sworn by Anwar. Notwithstanding that his only role was in filing the application, Zainur was held in contempt and sentenced to three months in jail when he refused to withdraw the affidavit and apologise. The President of the Court of Appeal in an emergency sitting granted an interim stay of execution and an appeal against the trial judge's decision has been filed.

- On the 21st day of the trial, the prosecution's main witness, Azizan Abu Bakar, caused a stir when he told the court under cross-examination that he would not have visited Anwar from 1992 to 1997 if Anwar had in fact sodomized him. The question was repeated in both English and the national language and the witness again confirmed his answer. Counsel continued cross-examination until the judge suggested that the proper course would be to apply formally to impeach the witness. Two days later, defence counsel applied to commence impeachment proceedings against the witness and the judge assented. However, the next day in the midst of the proceedings, the judge reconsidered his decision and terminated the impeachment proceedings.
- Defence counsel have not been allowed to establish conspiracy by cross-examining on issues pertaining to Anwar's dismissal from his positions as Deputy Prime Minister and Finance Minister.

In related cases:

- Two of Anwar's alleged sexual partners, who pleaded guilty to charges of being sodomized by Anwar and were sentenced to six months each, have now reversed

their stance. They claim they were coerced into making such pleas and that they did not appoint the lawyers who represented them at the first instance. Their appeals are pending before the High Court. They have both filed affidavits detailing police brutality.

- Anwar has filed a civil suit for unlawful dismissal. His counsel, Karpal Singh, has raised a preliminary objection to the court's jurisdiction. He submits that the presiding judge unlawfully directed the civil registry to transfer the case to his court from the court where the case was initially registered. Under the Courts of Judicature Act, only the Chief Judge has the power to transfer a case.

Grants Announced for Young Delegates to Kuala Lumpur Conference

Young lawyers in least developed and developing Commonwealth countries are eligible for full and partial grants to allow them to attend and speak at the 12th Commonwealth Law Conference in Kuala Lumpur in September.

Candidates must be:

- less than 35 years of age at September 1, 1999
- admitted to practise law in a Commonwealth jurisdiction, no earlier than September 1, 1994
- able to demonstrate that they are currently making an important contribution to the advancement of the legal profession at the local, regional or Commonwealth level, and
- sufficiently fluent in English to follow and make presentations at the conference.

Each application must be supported by a letter from the candidate's local or national law society or bar association, or equivalent. Application forms are available at national law societies and bar associations or from the CLA secretariat.

Preference will be given to candidates from Bangladesh, Gambia, Kiribati, Lesotho, Malawi, Maldives, Mozambique, Sierra Leone, Solomon Islands, Tuvalu, Uganda, United Republic of Tanzania, Vanuatu and Zambia.



Rodney Hansen QC

President's Message: KL Conference Update

By Rodney Hansen QC

I have just returned from a visit to Kuala Lumpur, the venue for the 12th Commonwealth Law Conference in September 1999. The Anwar trial is the main topic of conversation, displaced only briefly by the bombing of Iraq and President Clinton's impeachment. The newspapers carry verbatim accounts of the trial and give fresh insights into the challenges faced by the Bar in Malaysia. If the count of adverse judicial rulings is any guide, either Anwar's defence team is grossly incompetent or one must look for other explanations.

Coupled with this are the sentences of imprisonment (one, a

staggering six months) recently passed on two of Malaysia's most senior and respected advocates for contempt of Court. One of them is Anwar's senior counsel—his offence, failing to apologise for tendering an affidavit in support of a defence motion which had an exhibit allegedly containing falsehoods. If that constitutes contempt, there would be few trial lawyers who would not face the risk of unpaid leave for doing their duty to their clients.

These events are deeply worrying to the Malaysian Bar. There can be few more potent threats to the independence of the Bar—and the administration of justice generally—than for lawyers to face the fear of retribution for acting in the best interests of their clients.

Despite these distractions the Malaysian Bar Council continues planning for the Conference. I visited the proposed venue, the magnificent Sunway Lagoon Convention Centre. If the quality of the venue and the enthusiasm and commitment of the organisers is any indication, delegates can look forward to a memorable conference.

Attendance at the conference will demonstrate tangible support for Malaysian lawyers at a time when they face some of their greatest challenges.

CALENDAR

1999

- Mar 22-24** Asia Pacific Regional Conference, IBA, Manila
tel (44) 171 629 1206 fax (44) 171 409 0456
- Apr 7-10** West Africa Regional Conference, IBA, Accra, Ghana
- May 13-14** Eastern European Regional Conference, IBA
Prague, Czech Republic
- June 24-26** Sentencing and Society, Centre for Sentencing Research,
University of Strathclyde Law School, Glasgow
tel (44) 141 548 3738 fax (44) 141 553 1456
email neil@law.strath.ac.uk
- July 8-10** Law Society of Scotland, 50th Anniversary Conference
Edinburgh
tel (44) 131 226 7411 Fax (44) 131 225 2934
- Sept 13-16** 12th Commonwealth Law Conference, Kuala Lumpur
tel (60) 3 291 1366 fax (60) 3 291 2439
email cateu@bar.po.my
- Oct 10-15** 9th International Anti-Corruption Conference
Durban South Africa
tel(27) 11 339 7253 fax (27) 11 403 4332
email tisa@wn.apc.org <http://www.transparency.de>

2001

- Sept TBA** 13th Commonwealth Law Conference,
Harare, Zimbabwe