

THE 8TH MALAYSIAN LAW CONFERENCE  
MERLIN HOTEL, KUALA LUMPUR

14 NOVEMBER 1985

The President of The Bar Council, Mr. Ronald Khoo; Distinguished Participants; Ladies and Gentlemen;

At the outset let me congratulate you on the holding of this conference. A law conference is a place where the legal profession can focus its attention on the state of the laws and the legal system. Laws are not static and do not exist in a vacuum. They are created to serve and accommodate the wide and differing needs of society. Discussion and deliberation on these laws and their application is essential not only to ensure that the purposes for which these laws were passed would be served but also the functions for which they were created could be carried out. Your law conferences also provide an opportunity for the exchange of ideas which would be useful in formulating new laws to meet the changing needs of our society and the dynamic demands of the nation.

2. I note that one of the themes of your conference is the structure of the legal system. I am sure this will attract much debate. I am sure too that like me, you will wish that more light than heat would be generated.

3. Justice and the Rule of Law are meaningless unless there exists a legal system which can efficiently and effectively transform philosophy into action, which can take social intent and make it social reality. We are very fortunate that our judiciary is straight and honest. We are fortunate that it is independent of the executive. In most courts in too many countries, a man is considered guilty until he is proven INFLUENTIAL. We are fortunate in having, on the Bench, men of high professional competence and high moral integrity.

4. On the other hand, we have some obvious though by no means unique flaws. Our 'due process of law' is so slow at times that one might refer to it as the 'overdue process of law'. Justice delayed is justice denied and justice overly delayed is injustice perpetrated. It is no excuse to say that the law's delay is a universal phenomenon. We should seek to do better. The delay cannot be attributed exclusively to the Bench. The blame has to be shared by both sides. Dilatoriness is a crime. Deliberate frustration of the law by whatever means can only lead to injustice in the long run.

5. Every legal system can work effectively and efficiently only if all the players play according to both the written and the unspoken rules of the game. Cooperation, not collusion of course, amongst all the practitioners of our system of justice, certainly between those in the legal and judicial service and the Bar, is of clear importance. It goes without saying that the principal players in the system must respect one another and understand each other's problems. In law as in other segments of society, there is no place for arrogance. Arrogance is a sign of weakness, not strength. It is the hallmark of insecurity, not of character. Let me add that arrogance is by no means the monopoly of those in positions of authority. Very often an imagined power or influence manifests itself in arrogance.

6. To be engaged in public recrimination, to go into public combat armed to the teeth with intemperate language, is not to show sobriety, or to be fair, or to be mature or to be constructive. In Malaysian society one does not spit in the eye of a man and then expect him to change his mind or to yield to your "superior" wisdom. This is Malaysia. The philosophy and the values are not the same as those of the countries we borrow our systems from. If we observe carefully those countries, we cannot but observe that they are very liberal only when others have to pay. The moment they have to pay the price then suddenly other arguments super-cede.

Ladies and Gentlemen.

7. Allow me to turn to another theme: professionalism, exploitation and honesty. I notice that one of the topics for this conference is the question of contingency fees. Some may prefer that lawyers talk of service first and fees second. Be that as it may, the startling fact is that there has yet to be a public conference on the quality of legal service provided by this country's lawyers or questions related to competence amongst lawyers. Some day you might be interested to hold a discussion on whether lawyers discharge their functions fully as prescribed under the Legal Profession Act 1976.

8. A lawyer is a professional man. The implication of being a 'professional man' is that he is highly skilled, has a strong sense of social responsibility and an exceptional commitment to the interest of his client. Whereas Parliament has deemed it necessary to legislate on a wide range of matters to protect the consumer from the tradesman, professionals are still left to regulate themselves. It is said that it is better that they regulate themselves because lay persons cannot understand fully what professionals do and cannot evaluate the judgements that professionals make. If ordinary members of society truly cannot fully understand the practices of professionals, then perhaps the professionals themselves

should set the standards that will serve and measure up to the public interest.

9. The premise of self-regulation is that professionals can be relied upon to set standards of excellence, to monitor levels of competence, to establish fair prices for professional service, to spread and enforce the appropriate ethical and moral rules and to form an effective disciplinary body. They are expected to set up review programmes to make sure that the public is not exploited. In short, professionals regulate themselves with two objectives: to ensure all is well within the profession and that the profession does advance the public interest. It is up to you to ask of yourselves what has happened to professional self-regulation -before others do so. It is upto you to ask whether the objectives have been met - before others do so.

10. I am afraid that in general, Malaysian professionals have not quite succeeded in maintaining the high standards expected of them. The professional bodies have had much greater success with ensuring a close-shop union, a monopoly. As such the members interests are superior to the interest of the public and indeed the nation. A situation of short-supply is maintained so that demands will always exceed supply. Any monopoly in such a situation is able to dictate terms. So it is not surprising that professional bodies have been able to ensure the highest standards of living for their members. Almost without exception, Malaysia's professionals are the rich of Malaysian society, so much so that every newly arrived practitioner expects to shoot to the top of the income ladder and every Malaysian assumes that this should naturally be so. In many many countries this is not so at all.

11. To be fair, I think we should discount the more creative epithets the members of those angry and probably envious members of the public resort to. Nevertheless there are genuine grievances arising out of shoddy and poor service, unprofessional soliciting, the commercialisation of law, lack of competence. We are all aware that ignorance of the law is no excuse. Some lawyers obviously believe that ignorance of the law should be no excuse for refraining from practicing it.

12. I believe that in any discussion on professionalism mention must be made of the importance of honesty and trustworthiness. At its most innocuous, shortchanging a client, not giving off your best, is a form of dishonesty. It is a moral if not a legal crime. In the practise of law, dishonesty is the more pernicious, the more vicious, because very often lives are involved and futures are at risk. I know that your task is made no easier by the presence of less than honest clients. Many simply want a

lawyer to tell him HOW to do what he wants to do, not someone who can advise on what he can or cannot do. Professionals cannot stand aloof, completely unsullied by the dirt of societal corruption, untouched by the tide of social dishonesty that surrounds them. But they must try. And because of their position and their work in society, I believe that the penalty for less than honest lawyers must be more severe than for their businessman counterpart.

13. Professionals are supposed to be objective and impartial. Both will be lost when a professional becomes emotionally involved. As a doctor, I know that we normally excuse ourselves from treating our children and those most closely related to us. We must assume that our judgement will be affected.

14. The same applies to lawyers. They should not be emotionally involved with their clients. Their own beliefs and feelings must be held in check and must be divorced from those of their clients. Otherwise the clients will only become subjects for the propagation or establishment of their lawyer's own beliefs. When that happens the clients interest becomes secondary and chances are that he will pay the price for the fame or notoriety of his lawyer. I might add that of late we are seeing quite a few of this.

Ladies and Gentlemen.

15. A democracy may simply be defined as government of the people, by the people and for the people. But simplicity of definition does not lead to simplicity of implementation. Indeed except for very tiny states, direct government by the people is quite impossible. So not only must there be a system of representation, but there must also be specialisation of function and dispersal of power. Even then democracy cannot be expected to work properly. The tendency towards anarchy arising from a multiplicity of democratic forces must be countered by sufficient authority being vested in the organ called Government. Clearly a democracy is anything but simple.

16. Of late new centres of power have erupted. Pressure groups of one kind or another have emerged which not only challenge the existing authorities but arrogate to them selves powers that are not legitimately theirs. If nothing else the disruptive capacities of these pressure groups are quite considerable.

17. The reaction of the legitimate authorities to the disruptive challenges to their authority is either to become progressively repressive or to retreat from their responsibility. The latter will result in anarchy which in turn will

attract forces keen on a seizure of power. Once this happens the usurper will discard democracy and resort to repression in order to stay in power. Either way disruptive challenges to authority in a democracy will lead to repression and the death of democracy.

18. We have seen this happen in too many countries to be ignorant of this course of events. It behoves us to think of these dangers. If a democracy is to survive, the limits of the freedoms granted must be observed judiciously. The division and the balance of power between the legislative, the executive and the judiciary must be observed. Free speech and a free press do not mean unlimited licence. Minorities too do not have unlimited rights. Pressure groups must know when to stop.

19. If these are understood and observed then democracy will survive. If irresponsible challenges directed at duly constituted authority leads to continuous and harmful disruptions, then democracy would be endangered. Once democracy is destroyed, its restoration will be very costly indeed for society. Indeed it may never be fully restored.

Ladies and Gentlemen.

20. There is just one more area that I feel a need to address. Laws are enacted because a need has to be met. Because legislators and their legal advisors are not perfect, so are the laws they enact. The spirit or the purpose of the law are therefore more important than the letter. But unfortunately it is the letter of the law which is given more importance. And so it is with the provision for injunctions.

21. There is a case for injunctions when an irretrievable injustice is to be prevented. But injunctions are not meant to frustrate the law or to frustrate what is right and legal. Yet we see today innumerable examples of the last minute injunction calculated to frustrate legitimate acts. On a technicality individuals have been able to hold to ransom huge organisations with members numbering hundreds of thousands or even a million. And the ransom has to be paid. Which of course prompts others to try the same. In the final analysis this application of a right results in injustice to a great number of unsuspecting victims. Is this what the law is meant to do?

22. The provision for injunction is right and necessary but like all laws it is not to be abused. To do so would put the law into disrepute and the price to pay for that is horrendous.

Ladies and Gentlemen.

23. I wish you success in your deliberations and I have much pleasure now in declaring this Law Conference open.