

Candidates Watch Campaign – Replies
Christopher Leong

Question 1

In not more than 80 words, please provide a brief introduction about yourself and how you perceive yourself as a legal practitioner.

I read economics and philosophy at Monash University, Melbourne, Australia and subsequently read law at the University of Nottingham, England. I was called as an Utter Barrister of the Honourable Society of Lincoln's Inn in 1989. I was admitted and enrolled as an advocate and solicitor of the High Court of Malaya in 1990. I undertook my pupillage in Messrs. Chooi & Company, and am now serving as its managing partner. I perceive myself as a lawyer still practising and striving to be as good an advocate as I can be.

Question 2

Which committee would you seek to chair and what are your aspirations and intentions for the said committee during your tenure? If you do not intend to chair a committee, please state your reasons for the same and tell us what do you intend to achieve during your tenure as a Council Member?

If re-elected to the Bar Council, I hope to be able to chair the Arbitration & Alternative Dispute Resolution Committee or the Sports Committee. With regard to the former, I hope to be able to promote Malaysia as an arbitration destination. This is not a new initiative as the current committee is in fact working in this direction. The efforts to highlight and grow Malaysia as an arbitration venue of regional standing are being given new impetus by relevant arbitration organisations in Malaysia, the government and stakeholders. This is in recognition of legal services being an important contributory sector in the Malaysian economy. In my view, this is an essential part of improving confidence in our overall dispute resolution capacity and quality (which includes our courts), which would in turn serve to enhance Malaysia as an attractive business destination.

In the alternative, I hope to chair the Sports Committee. It may not be seen as a heavy or intellectual portfolio; nevertheless, it is an important component of the Malaysian Bar. It is always important in our ever shrinking global village to establish and maintain good people to people interaction and relations not only amongst our members but also with our colleagues at other Bars. Sports has always been one avenue of promoting this. It stands us in good stead in numerous situations, and contributes to the overall branding of the Malaysian Bar. It is not without some measure of pride we should recognise that the Malaysian Bar is amongst the better known and regarded Bars regionally and

internationally. This is as a result of the work undertaken by the Malaysian Bar, and the consistently forthright positions it has undertaken and expressed in the past, as well as the relationships built through the years.

I have in the past served as a chairperson of 5 different committees. I have usually served 2 to 3 years in any particular committee. This is to ensure that there is a renewal or refreshing of ideas and initiatives by succeeding chairpersons, and also permit me exposure to a wider spectrum of the workings and undertakings of the Bar. Hence, my interest in taking on a new challenge and the opportunity to learn.

Question 3

The issue of setting a term limit for members serving the Bar Council has attracted many supporters as well as detractors. Do you think that there should be a term limit for members to be in the Bar Council? Please provide reasons for your answer.

I agree that there are pros and cons in setting a term limit for members serving on the Bar Council. As I understand it, the advantage of such a term limit would be to ensure that members do not overstay their utility. I agree with the principle that only members who are willing and able, and who possess the requisite abilities, to actively and conscientiously contribute should serve on the Bar Council. The danger or disadvantage in setting a numerical limit to years/terms of service, however, is that it does not serve as a barometer for performance. It is indiscriminate. The productive and unproductive members of Council are turfed out at the same time. This would serve against the interests of the Bar, bearing in mind the following additional factors:-

- Any such limitation as to years or terms of service would not be applied uniformly across the board as the members of Council coming from the various States are determined and regulated differently from the 12 who are elected by national ballot. Thus, it is in one sense indiscriminate in removing both good and bad, and at the same time it is discriminatory in that it only applies to 12 out of 36 members of Council.
- Removing or disqualifying candidates/members from further serving on the Council does not in itself ensure quality replacements.

I know of some senior or longer serving members of Council whose work and contributions on Council have been and are valuable and at times critical/essential. It would be regrettable that we are deprived of their continued service by a numerical or empirical measure.

This begs the question, by what measure is the performance of a Council member assessed? It is my view that the primary function of the members on Bar Council is to address, deliberate and decide on matters of policy and direction,

which is, to lead the Malaysia Bar - in good times and bad. It is the function of the various committees of the Bar Council to undertake the projects of the Bar. Bearing this in mind, one could be a hard worker and excellent as a member of a committee but may not necessarily be a good Bar councillor. In addition to diligence (that is, putting in the hours and effort), we should have councillors who not only contribute actively in debates, discussions and decisions but who also have the requisite intellect, experience and wisdom to effectively do so. One has to be active and effective. There is no question that a member of the Bar Council ought to be both a good leader as well as a hard worker, but being a hard worker alone should be insufficient. Thus, setting a term limit (as attractive as it sounds) may not be the panacea to the problem. Although it would limit the term of ineffective members but it also deprives us of effective and excellent councillors, whilst at the same time it would not serve to ensure that newly elected members would serve to be better or more effective replacements. There is currently no one perfect solution that I can think of. Perhaps the answer still lies in how to educate and provide sufficient information to the voters to enable a more informed voting process.

Question 4

Based on feedback received, many Young Lawyers are leaving the profession because of perceived deteriorating working conditions at the Bar. What are your views about the working conditions that Young Lawyers are being subjected to and how would you seek to improve these conditions?

I wish at the outset to be candid and state that I am not familiar with the working conditions for young lawyers in the various parts of Malaysia. I am aware that there have been some complaints with regard to the salary and remuneration benefits for lawyers; however, I believe that this is by and large a function of economics and the economy. Lawyers are generally paid better if the firm they are in is doing well, and the inverse would be true.

I have practiced law in the same firm for the last 20 years, and we constantly strive to match market conditions (pay, bonus, leave, amenities in the office for lawyers etc), and thus may not be well placed to comment about conditions elsewhere as I do not know the specifics. I am however also aware that we are losing a fair number of our Malaysian lawyers to overseas markets as these markets offer better employment terms/conditions, for example, higher salaries, better benefits and exposure to better work.

I believe that one factor for this discrepancy or difference is that on a macro level, it appears that Malaysia is not competitive enough, and does not attract the businesses and investments that would generate the income and types of work that would allow for a general growth across the board of our lawyers and law firms. In this regard, I believe that we would soon have to accept the inevitable,

namely, that our legal profession would be liberalised to permit foreign law firms to practice in Malaysia. This would hopefully have similar results to Singapore in that standards are raised by virtue of market forces in terms of the type of work, the standards of the profession and the working conditions (including salaries and working amenities). In this regard, I was the chairperson of the GATS Committee (now known as the Trade in Legal Services Committee) of the Bar Council for the previous 3 years, and am currently continuing to serve as a committee member, dealing with and negotiating terms with the government and AGC in respect of the liberalisation of the Malaysian legal profession.

Further, I know that lawyers generally work long hours. Unfortunately, this is not unique to Malaysia or to the legal profession. My friends and colleagues in Singapore, Hong Kong and London complain about the same things I complain about. Working hard and working long hours appear to be a universal burden. However, I agree that working conditions should be conducive, and remuneration commensurate with such burdens. Again, I believe that it would be impossible to direct individual employers to make appropriate provisions to lawyers, and this would hopefully be dictated by the advent of standards being inevitably raised with the entry of foreign firms bringing along their standards to the Malaysian market.

Question 5

The Johor Bar and the Penang Bar have recently held EGMs, *inter alia*, to obtain feedback in relation to the Fast Track System implemented by the judiciary which places emphasis on a Key Performance Index (“KPI”). Has the quality of justice dispensed by the Courts suffered as a result of the KPI that has been put into place? What would you do to improve the situation?

First of all, one cannot argue against the need for an efficient and expeditious judicial process. It is a requirement of any judicial system that professes a wish to deliver timely justice. I am in support of this. For purposes of the administration process, and I stress that it is purely for this purpose, an empirical measure in the form of KPIs is a usual and useful management tool to ascertain how efficiently or inefficiently cases are handled. This is a quantitative measure of the administrative process of the judicial system, and should not be confused for a qualitative verdict.

I have been privy to complaints about how the initiative to improve the administrative process has led to instances of injustice and has adversely affected the quality of the justice. This was in part a result of some lawyers and judges not being able to smoothly cope and adapt to the changes, partly due to some of the changes not working out as envisaged and required changes in themselves, partly due to misunderstandings of what the changes permitted (example, request for adjournments on valid grounds should always be

permitted), and unfortunately sometimes due to a refusal to accept and therefore adapt to the changes. There have been instances of lawyers and judges being under tremendous stress which resulted in mistakes being made and occasioning injustice in such cases. The quality of justice dispensed in such instances suffered as a result.

No doubt all of these must be addressed and redressed. In doing so, the question we should first ask is whether we want the reforms in the administration process of the courts. If we do, and I for one do, then we must work towards making it work as opposed to making it fail. To do this, we should have in place and maintain continuous dialogue with the Judiciary to expeditiously attend to all complaints, shortcomings and failings. I do not believe that the answer lies in reversing the reforms or abandoning it. This reform cannot ultimately succeed if it is advanced only by one side. It requires all stakeholders, in particular the Judiciary and the Bar, working towards the same objective. By the same token, the Judiciary must work with the Bar to attend to any of its feed backs and complaints as and when arising. Any measure of success achieved thus far is a result of this.

The above is about the case by case problems, and the quality of justice done or not done. There is a larger picture; namely, it is not enough to have an efficient administrative court process. We should have, and Malaysians deserve, a superlative justice system dispensing quality judgments. KPIs being a quantitative measure cannot be taken as a measure of the quality of our Judiciary and of its judgments. KPIs only speak to the administrative process. I however cannot think of an immediate solution. The problem is a result of factors going beyond the Judiciary and the Bar per se. It is a result of the many decades of our education policies and the sidelining of a meritocracy system. One possible medium term solution is that we have to advocate and push for a Common Bar Exam – this would hopefully raise the standards within our own ranks, which lends to better assistance rendered by counsel in court to the Judges. With this, there should in due course be more appointments to the Bench from the Bar.

Question 6

Do you think the Solicitor's Remuneration Order (SRO) has achieved the objectives it was put in place for? Do you think more should be done by the Bar Council to ensure adherence to the SRO or alternatively, should the SRO be done away with all together?

I do not believe that the SRO has achieved its objectives. Currently, it is my opinion that the SRO has served only to punish the honest lawyers and has arguably profited those who honour the provisions of the SRO more by its breach than compliance. The SRO has been there for a long time, however, it is only beneficial and fair if it is adhered to by everyone. The Conveyancing and SRO

Enforcement committees have visited and re-visited the issues pertaining to this many times over many years. The Bar Council has done likewise. It is my view that the measures taken thus far have not been successful. It is also my view that this is not because the relevant committees have not been doing their best. It is because honesty should be a self regulating virtue and it is extremely difficult to monitor and enforce compliance without implementing draconian measures. Since I am not in favour of draconian and intrusive measures, as these would of themselves open up issues of invasion, privilege etc, I am of the view that it is time for the Malaysian Bar to revisit it position on this. If the SRO is incapable of being honestly observed or effectively enforced, then we should in fairness do away with it.

Question 7

What are your views on the failure of the Attorney-General to bring charges against the individuals named by the Royal Commission of Inquiry in their findings on the leaked video-clips *vis a vis* judicial appointments? What action do you propose the Bar Council take?

I am of the view that the AG should take action against the several individuals named and stated in the report of the Royal Commission to have mis-conducted themselves. Without going into a lengthy legal discourse of the basis for any such action, I just wish to state that one possible action is for criminal defamation. My understanding of this is that criminal defamation is a charge brought by the AG in the public interest to protect the reputation and integrity of public institutions. This is different from civil defamation where the action is by an individual for relief against those who have sought to defame him/her. There is precedent for such an action. The infamous video in question shows a person allegedly stating, amongst other things, that in effect members of the judiciary are jostling for positions and titles, there are polarised teams within the judiciary, and implied suggestions of other mis-conduct (as found by the Royal Commission) by judges. The Commissioners found that the tape is authentic. Several former members of the judiciary attended as witnesses and gave evidence that what was said in the tapes by the person on the phone about them were all untrue. If this is so, then there is a possible case for criminal defamation as the reputation and integrity of judges, and which directly impacts upon the standing of the Judiciary at that time, may have been tarnished. Public confidence in the Judiciary could arguably have been undermined. All of this would be determined at the trial of the charge. The person charged with this offence would be faced with all these same judges being produced at the trial to deny the truth of what was taped as being said and ascribed to them.

The Bar Council has been meeting with the relevant authorities to convince them to take action, including for contempt of court. In this regard, the Judiciary could of its own motion institute contempt proceedings. I do not at this juncture purport to usurp or pre-judge the judicial process by saying offences have been

committed, however, these matters ought to be brought to court for determination.