



ANNUAL BAR AND YOUNG BAR CONFERENCE 2016

Closing keynote: President of the Malaysian Bar, Steven Thiruneelakandan

Good afternoon Madam Chairperson, distinguished members of the Bar of England and Wales, Ladies and Gentlemen.

1. I am deeply honoured to speak to you today at the close of the Annual Bar and Young Bar Conference 2016. This is a singular privilege bestowed on the Malaysian Bar, and a salutary recognition for us in our 69 years as an independent bar.
2. On a personal note, I first came to the United Kingdom about 28 years ago as an under-graduate in law at the University of Leicester. Stepping out of my country on a great adventure, England was everything I expected and more. I had a very memorable time and I am grateful for the solid foundation in the law, and in life that I received. I then read for the Bar in London and was called to Middle Temple. I have since practised at the Malaysian Bar for over 25 years. I must admit that when I left in 1991, I could never have imagined that I would one day return as the President of the Malaysian Bar to deliver a keynote address at such a prestigious event as the annual conference of the Bar of England and Wales.
3. This invitation has come at a crucial time for the Malaysian Bar. We are currently facing an unprecedented threat to our independence in the form of proposals to amend our governing law, the Legal Profession Act 1976. The proposals include the appointment of government representatives to sit in the Bar Council, a radical overhaul of our process for electing Bar Council Members and Office Bearers, and a drastic increase in the quorum requirements for our General Meetings.¹
4. As a self-regulating statutory body, one of the key functions of the Malaysian Bar is *“to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour.”*² We regard this as our Rule of Law mandate, and the fount of our societal role in all public interest matters.

5. In the discharge of our statutory duties and more so as an independent bar, the Malaysian Bar has always been in the forefront of defending the rule of law, fundamental liberties, the independence of the judiciary and promoting access to justice . Our steadfast and fierce commitment to the Rule of Law has been an irritation to some within the corridors of power, and is undoubtedly the motivation behind the proposed amendments.
6. The proposals are a frontal assault on the independence of the Malaysian Bar, and an undisguised attempt to interfere with our internal management and administration. If these proposals lead to amendments to the Act, our independence would be significantly weakened, and we could suffer paralysis in the performance of our statutory functions .
7. I wish here to place on record, the Malaysian Bar's gratitude to the Bar of England and Wales, who together with about 20 other leading international law associations and national Bar organisations, have resolutely and unequivocally spoken up in support of, and in solidarity with, the Malaysian Bar. This chorus of condemnation of the attack on us has reinforced the importance of the independence of the bar, as a universal principle of the Rule of Law and a hallmark of a free society³ .
8. I am also pleased to report that on 29 October 2016, the Malaysian Bar will receive the UIA (*Union Internationale des Avocats* or the International Association of Lawyers) inaugural Rule of Law Award in recognition of our "*strong and unfailing commitment to the defence and promotion of human rights and the rule of law.*"⁴ We share this Award with all defenders of the Rule of Law within the legal profession the world-over . We are thankful to the UIA and the Award will further strengthen our resolve to repel the unmasked attack on our independence.

Reflections on the Conference and the way forward

9. I wish to congratulate the organisers on this very successful and thought provoking Conference. The theme, "*Raising the Bar: Innovation and Global Opportunity for a Forward Thinking Profession*" brings to the fore the unceasing tensions faced by the Bar due to economic, political, and internal pressures. It is a theme that has global resonance in this age of borderless legal services. The underlying challenge for the profession to venture out of comfort zones and to confront new challenges in the law, without undermining or forfeiting core values , is clearly the intended back-drop .
10. The scope of this Conference has offered a platform for discourse on the need for the profession to be future-proof whilst embracing available opportunities. In this regard, the 18 specialist sessions covered a whole host of issues that the modern legal

profession wrestles with on a daily basis. The spectre of distinct specialism is implicit. The days when legal practitioners could do a bit of everything, or confine themselves to their own areas of practice, are no more. The need to specialise, and the worldwide trend towards increased specialisation, is a very real challenge for all legal professionals.

11. Lord Neuberger recently spoke of the tendency towards the so-called silos within the profession as a result of increased specialisation and of *“the risk of producing lawyers with a rather narrow focus, and the law becoming incoherent and complicated.”*⁵ A related concern is one of over-specialisation, or sub-specialisation. It has been said that lawyers must *“keep an eye on the overall unity of the law”*,⁶ to overcome the risk of conceptual differences that are unsound in law.⁷ However, specialisation is inevitable and undeniably invaluable. Today, it is certainly the result of the ever-growing volume and complexity of the law in almost all fields.⁸
12. There is abundant legal specialisation in academia, which has arguably contributed to better trained lawyers. Further, dedicated law reports and journals are replete, and that has had a significant impact on all areas of legal practice. In almost all Commonwealth jurisdictions, specialist courts have been created in areas such as Intellectual Property and Environmental law, and for specific criminal offences involving corruption and cybercrimes. Thus, the wave of specialisation and the demand for specialist practitioners will continue unabated. It is nevertheless necessary to be alive to concerns on the quality of lawyering, and to guard against haphazard developments in the law, which would ultimately be counter-productive to the administration of justice.
13. I want to now turn to the first afternoon sub-plenary session on Brexit, which I am sure was an enthralling session. The consequences of the economic and political tsunami unleashed by the historic referendum on 23 June 2016 are undoubtedly far-reaching. The Brexit debate rages on, and with the looming and on-going legal challenges, perhaps the last word on Brexit is yet to be spoken. The jury on Brexit, as it were, is still out.
14. On a lighter note, for us in Malaysia, Brexit came at a time when our attention was on another important event – the Euro 2016. Many Malaysians are ardent fans of English Premier League clubs, and are amongst the long-suffering fans of England. As you were coming to terms with the aftermath of Brexit, we were focussed on the exploits of Messrs. Rashford, Sturridge, Kane and Hart. The unexpected humbling in the hands of Iceland was in many ways a hammer-blow to us, as Brexit was to many of you.

15. Brexit has brought into sharp focus the whole question of the feasibility and effectiveness of regionalism, in the context of an economic community. In this regard, Malaysia is a member of the regional organisation, ASEAN, or the Association of Southeast Asian Nations. ASEAN is the third largest populace in the world after China and India. Between 2007 and 2015, ASEAN's trade grew by US\$700 billion. In 2015, the collective ASEAN economy was valued at US\$2.4 trillion, making it the 3rd largest in Asia, and the 6th largest in the world.
16. 31st December 2015 was a watershed moment for ASEAN, as the ASEAN Economic Community ("AEC") was established. The AEC heralds a new highly integrated and cohesive political, social, economic and cultural power bloc. It envisions a regional market that allows for the free movement of goods, services, labour, investment and capital *inter-se* across the 10 ASEAN member states.
17. The Malaysian Bar recently considered the implications of the AEC at our biennial conference, the International Malaysia Law Conference or IMLC 2016.⁹ The conference, themed "*Challenges of an ASEAN Community: Rule of Law, Business, and Being People-Oriented*", dealt with the evolving and vibrant legal and business environments in ASEAN. IMLC 2016 was aimed at encouraging Malaysian lawyers to look beyond our domestic borders, and to actively pursue the abundant possibilities in ASEAN member nations.
18. The AEC is poised to boost the expansion of domestic markets within ASEAN, and promote the creation of regional businesses. This will require a more liberalised environment for improved and high quality legal services. The AEC thus presents an enticing opportunity for all lawyers to capitalise on a newly expanded market. While Brexit may have exposed the fault-lines of regionalism, AEC promises another viable model with enormous potential. Further, if Brexit signals the close of a chapter for the legal profession here, perhaps the AEC could be the beginning of a new one, and it should not be ignored.
19. I now come to the other sub-plenary session concerning the digital courts. The advent of electronic court systems has changed the face of our profession. The move towards modernising the delivery of access to justice by the courts, through the innovative use of technology has yielded dividends as well as challenges. The expeditious and systematic disposal of cases, and the enhanced organisation and working practices of the courts, cannot be denied. The Bar, and the judiciary has had to rapidly adapt to these changes. While these innovations should not be feared, we must approach them with due care and attention, in the public interest.

20. The Malaysian judiciary embarked on our very own e-Court project in 2010, and it was ominously announced by the then-Chief Justice, echoing the Borg from Star Trek, that *"resistance is futile"*.¹⁰ The e-filing system was introduced , together with a case and queue management system to track and manage the scheduling of cases, and a court recording and transcription system that provides for real-time recording of proceedings. This has resulted in a marked reduction of the backlog of cases. Delays and adjournments are no longer a common thing in our courts.¹¹
21. The significant impact that innovative technology has had and continues to have on the legal profession is crucial. Earlier this year, Professor Richard Susskind, the renowned legal futurologist, postulated that the legal profession has in fact five years to reinvent itself, in light of the *"massive technological advances"* set to reshape legal practice.¹² Professor Susskind foresees a bleak future for lawyers who are not prepared to reinvent themselves.
22. Technology is certainly changing the way we practise law, and we are looking at a heavily computerised future.¹³ Innovations such as artificial intelligence that will be able to diagnose and respond to clients' legal problems, discovery software that will reduce time and cost, as well as data analytics that could analyse factual patterns, may well shake the current pillars of the legal profession , and possibly cause the displacement of lawyers.¹⁴ We must not be oblivious to these disruptions that are fast engulfing us , and must be prepared to handle them.
23. I next turn to the Young Bar Conference, which looked at the challenges faced by young barristers in the developing legal world. It is indeed commendable that there was a dedicated session to deal with the concerns, and even anxieties, of young lawyers. It was Oscar Wilde who said, *"The old believe everything: the middle-aged suspect everything: the young know everything."*¹⁵
24. Be that as it may, it is the duty of the Bar to ensure that the new entrants to the profession are equally, if not more robustly, equipped to meet the aspirations of the rapidly evolving profession. The legendary Indian lawyer Motilal Setalvad once lamented , *"The profession has as a whole undoubtedly expanded and gathered very able recruits... But it has lost the ideals of public service which it once possessed, and is almost wholly centered on self-advancement. Standards of professional conduct have woefully fallen ..."*¹⁶ We fail in our duty if we were to permit the next generation of the Bar to fall short of the impeccable standards and quality that we have inherited, and if we allow the hallowed ideals of the legal profession to be lost or diluted.
25. The Malaysian Bar has recently implemented a staggered mandatory Continuing Professional Development ("CPD") scheme, which commenced with the first group

comprising our pupils and members up to 5 years in practice. The scheme is intended to extend to the whole Bar in the near future. For the purposes of the scheme, we have provided access to immersion training on basic and practical aspects of the law at a subsidised rate, as well as established an online training platform called “CPD on Demand” that enables access to online training videos. We have also just launched a free subscription-based online magazine called “Legal Craft & Such” done in collaboration with Thomson Reuters, which will give access to all things CPD.

26. The Young Bar must also keep alive the spirit of *pro bono* provision of legal services for the vulnerable and marginalised in society, and answer our calling to be a voice for the voiceless. This is in the best traditions of the Bar, and is a vital aspect of access to justice and the upholding of the Rule of Law. In this connection, many young Members of the Malaysian Bar participate in our Government-funded legal aid scheme, known as the National Legal Aid Foundation, for the legal representation of accused persons in criminal matters. Our lawyers are paid a nominal sum for their services. It is notable that between April 2012 and December 2015, a total of 535,986 cases had been undertaken, which is a remarkable average of 142,903 cases per year, or 11,908 cases per month! The scheme complements the Malaysian Bar’s proud pioneering and self-funded legal aid services for all legal matters established in 1983.
27. The Young Bar will have its own share of existing and new challenges. One challenge, that transcends time, is that of the commercialisation of legal practice. It is “undeniable that as the practice of law and the world of commerce have increased in complexity and sophistication, so too have challenges to professional ethics.”¹⁷The advent of mega-firms , the all-consuming billable hours , the rise of litigation funding and the attendant relaxation or abolition of the rules against maintenance and champerty, patently expose the conflict between professional duties and the pursuit of profit.¹⁸
28. The Young Bar must ensure that professional duties and ethical values are not sacrificed on the altar of fiscal yield. Lord Bingham’s reminder that lawyers should be professionals of unquestionable integrity, probity and trustworthiness, and “*who could be trusted to the ends of the earth*”¹⁹ is without qualification and indeed timeless, for all of us at the Bar.

Independence of the Bar

29. I conclude by returning to the importance of the independence of the bar. Our campaign to oppose the proposed amendments is called “Hands off the Malaysian Bar”. In the course of it, we have been reminded of some cardinal principles that are at the core of the independence of the bar.

30. For all lawyers, the independence of the bar is critical to the fearless and fair discharge of our duties. The administration of justice requires courageous and upright advocates, and one of the most valuable assets of the advocate *“is complete independence and integrity”*.²⁰
31. The membership of an independent bar association is equally vital to support an independent profession of independent lawyers. It has been observed that *“A lawyer’s membership of a liberal profession and the authority deriving from membership of an independent bar association helps to maintain his or her independence.”*²¹
32. It further falls upon Bar associations to advise and comment on legislation touching on the legal, personal and property rights of the citizen and their liberties. Indeed, no organisation is better placed to discharge this function than the Bar. This function cannot be discharged meaningfully unless the Bar is independent, and is free to comment, without fear of reprisal or penalty.²²
33. An independent Bar is therefore the right of every citizen, and is essential for citizens’ right to access to justice.²³ It is to the independent Bar that the citizen looks, *“for guidance on what the law is, what the law should be, and what the law must never be.”*²⁴
34. It is also indubitable that an independent, effective and competent legal profession is fundamental to the independence of the judiciary.²⁵ Lord Steyn said, *“It is to the judiciary that the citizen must look for protection from abuses by the Executive, and for a vindication of his right against the state. But without an independent Bar, ... the judiciary would be unequal in its task ...”*.²⁶ It has also been accepted that, *“... a strong Bar, and a strong judiciary are a sine qua non for the maintenance of the rule of law.”*²⁷
35. Finally, an independent legal profession is vital to the economic progress and development of a nation. Unless investors are confident that they may resort to an independent and non-aligned Bar for advice and representation in their disputes with any party, no matter how powerful or well-connected they may be, investors’ confidence is likely to deteriorate.²⁸ Thus, an independent Bar is not just *“an adjunct grafted onto the commerce of society, but an essential element in its development.”*²⁹
36. I trust these time honoured principles remain sacrosanct for all of us and serve to further fortify our commitment to protect and defend the independence of the Bar.

37. Once again , I congratulate the organisers for the success of this event and I now formally close the Annual Bar and Young Bar Conference 2016. Thank you.

Steven Thiruneelakandan

President

Malaysian Bar

15 October 2016

¹ The quorum requirement of 500 Members for our General Meetings in Section 67 of the Legal Profession Act 1976 is to be increased to 25% or 4,000 Members, whichever is less.

² Legal Profession Act 1976, section 42(1)(a).

³ “The independence of the Bar from the state in all its pervasive manifestations is one of the as a hallmark of a free society...” (*AG of Canada v Law Society of British Columbia* [1982] 2 SCR 307 at p. 335 per Estey J).

⁴ Letter from the President of Union Internationale des Avocats: Rule of Law Award, Dated 19 September 2016 (http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/letter_from_the_president_of_union_internationale_des_avocats_%7C_rule_of_law_award_and_uia_annual_congress.html).

⁵ Lord Neuberger, Conference of the Bar Councils of Northern Ireland and Ireland, Belfast, The Future of the Bar, 20 June 2014, p. 14.

⁶ Rabinder Singh, “The Unity of Law – or the Dangers of Over-Specialisation” (2014) 23(1) *Journal of the Commonwealth Lawyers’ Association* 20-25, p. 20.

⁷ *Ibid.*, p. 23.

⁸ Lord Neuberger, above n 5, pp. 14-15.

⁹ Held in Kuala Lumpur, Malaysia from the 21 to 23 September 2016.

¹⁰ Justice Arifin Zakaria, Chief Justice, Federal Court of Malaysia, “International Seminar on ICT Implementation in Courts: Review of ICT Implementation Mechanism in Judiciary of Malaysia” presented at the Grand Bukhara Hotel, Bukhara, Uzbekistan on 18 September 2013.

¹¹ As at June 2015, Malaysia’s Quality of Judicial Processes Index score, out of a total of 18, was 12.0, 4.4 points higher than the regional (East Asia & Pacific) average of 7.6 (in contrast to the United Kingdom at 15.0). The Quality of Judicial Processes Index measures whether each economy has adopted a series of good practices in its court system in four areas: court structure and proceedings, case management, court automation, and alternative dispute resolution. (Source: <http://www.doingbusiness.org/data/exploretopics/enforcing-contracts>)

¹² “Susskind: ‘you have five years to reinvent the legal profession’” (27 April 2016) *The Law Society Gazette* (<http://www.lawgazette.co.uk/law/susskind-you-have-five-years-to-reinvent-the-legal-profession/5054990.fullarticle>).

¹³ Indranee Rajah SC, Senior Minister of State for Law, *Lawyers in the Future of Us* (12 January 2016).

¹⁴ *Ibid.*

¹⁵ Merlin Holland (ed), *The Wit of Oscar Wilde* (1997) p. 47.

¹⁶ Motilal C. Setalvad, *My Life: Law and other things* (1970) p. 622.

¹⁷ *Ibid.*, p. 35.

¹⁸ T F Bathurst, “Commercialisation of Legal Practice: Conflict Ab Initio, Conflict De Futuro” (2012) 21(2) *Journal of the Commonwealth Lawyers’ Association* 35-39, p. 37.

¹⁹ *Bolton v The Law Society* [1994] 1 WLR 512 at 519; as quoted in David Neuberger, “The Ethics of Professionalism in the 21st Century” (2010) 19(1) *Journal of the Commonwealth Lawyers’ Association* 17-23, at p. 21.

²⁰ Chagla CJ, in his *Autobiography* (1978) at pp. 70 and 72-73; Peter Slinn, *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach: Proceedings of the Latimer House Joint Colloquium, June 1998* (1999) p. 84.

²¹ Structuring bar associations to ensure an impartial and independent legal system (Speech given by Margery Nicoll, Deputy Secretary-General and Director, International, Law Council of Australia and Chair, Bar Issues Commission, International Bar Association at the Iranian Bar Conference 2015, on 24 July 2015).

²² Memorandum on the Independence of the Bar and the Legal Profession in Malaysia (1996) XXV No 3 INSAF 1-13, p. 9.

²³ Commonwealth Lawyers Association, Feedback for the UN Special Rapporteur on the Independence of Judges and Lawyers, jointly issued by Dr Karen Brewer, Secretary General, Commonwealth Magistrates’ and Judges’ Association, and Mrs Katherine Eden-Haig, Secretary General and CEO, Commonwealth Lawyers Association, 10 June 2016.

²⁴ United Nations Award Malaysia 2012: Citation for the Malaysian Bar, 24 October 2012 (http://www.unicef.org/malaysia/2012_UN_Malaysia_Award_-_Citation_for_Bar_Council.pdf).

²⁵ Commonwealth Lawyers Association, above n 23.

²⁶ The Role of Bar Associations in Society Speech by Lord Steyn, 13th October 1998.

²⁷ Mahajan CJ of the Indian Supreme Court in an address in 1954; see, R Sarkar, *Modern Advocacy* (1985) p. 83; Peter Slinn, above n 20.

²⁸ Memorandum on the Independence of the Bar and the Legal Profession in Malaysia, above n 22.

²⁹ *Ibid.*, per Lord Alexander of Weedon QC.