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The Honorable Tun Dato' Seri Zaki Tun Azmi, Chief Justice of Malaysia



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On 23 February 2011, we were given the opportunity to interview The Honorable Tun Dato' Seri Zaki Tun Azmi for the *IPBA Journal*.

Interviewed by Caroline Berube*
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Interviewed by Dhinesh Bhaskaran
Partner, Shearn Delamore & Co

Q: Thank you very much for taking time out of your busy schedule for this interview. I would like to begin by asking about your motivation to become a lawyer and to read law?

A: My father was a lawyer who became a judge and subsequently, the third Lord President of Malaysia (Chief Justice). I wanted to do economics but my father insisted that I read law. Besides practising law, a bachelor of law can also be treated as a general qualification. If I was not able to get a job, I could still open a small office and run a law practice. I have no regrets about this decision. I really enjoyed being in private practice for 22 years before accepting the judgeship.

Q: What are the most important qualities that a good lawyer should possess?

A: Honesty and integrity. These are the very important elements that every lawyer should possess and are essential to gain the public's trust. Public trust is important, since the public entrusts lawyers with their properties and possessions. For corporate lawyers, knowledge about business is also very important, but honesty and integrity is paramount.

Q: What are the most important qualities that a good judge should possess?

A: Judges, just as with lawyers, should possess the qualities of honesty and integrity – these are qualities expected from every judge by the public. I would like to quote from my late father who said: "The parties appearing before the judge expect to be given a fair and full hearing, and not a biased hearing." A judge is expected to be patient and honest and to make fair make decisions to the best of his abilities. Recently, there was a case where a lady was suing for damages because she had suffered, but no lawyer wanted to act on her behalf because the record of appeal was incomplete.

* Caroline Berube is currently serving as the Vice-Chair of the Inter-Pacific Bar Association's Publications Committee.

Although we ultimately had to dismiss the action due to an incomplete record, we listened to her patiently and hope she felt like she was given a fair hearing in the end.

Q: Given that fact-finding is an important skill that judges must use to render judgments, do you have any advice on how lawyers who hope to become judges can improve this skill?

A: In my opinion, an experienced litigation lawyer should be able to evaluate the facts presented by both parties and genuinely come to a conclusion approximating the decision of the judge. A good litigator must assess the facts so that he or she can plan his or her strategy accordingly. My advice for young lawyers who wish to improve their fact-finding skills is to develop these through their own experiences. This skill is not something you can read from the books, it is something that needs to be improved through experience.

Q: In the United States, which is a country with many minority communities, the judiciary includes judges from such minority communities. In Malaysia, which is a nation with a multi-racial population, is there a focus placed on ensuring that minority communities are represented in the judiciary?

A: Malaysia is a country with a diverse population. Our population is divided into different languages, cultures, food, apparel and a lot more. We have the Malays, the Chinese, the Indians and also the native population from Sabah and Sarawak. We have been living peacefully together for many years. Therefore, we believe it is important that these communities are represented in the judiciary, and we try to retain the same proportion of these

communities in the judiciary in our appointment of judges.

One of the problems that I am facing is getting good lawyers from private practice to join us. Most of our judges are promoted from judicial and legal services, such as magistrates and session court judges. The majority of these are Malay and only a small number from the services are non-Malay. Although our judges are now relatively well-paid, one of the difficulties we face when inviting non-Malay practitioners in private practice to join the judiciary is that there are not many good lawyers willing to leave their lucrative private practice to become a judge. When I set up a panel to sit in the Federal Court, we do our best to have judges from different communities. However, since we do not have enough judges from various communities, we cannot achieve this structure each time. We will continue our efforts to ensure that minority communities are represented in the judiciary, but I am proud to say that we have not received any complaints from the Bar saying that our judges' decisions are based on religion, race or language. The primary goal is to ensure that we appoint competent and fair judges to hear the trial or appeal.

Q: I understand that until recently, the Malaysian Judiciary faced some challenges from its administrative system, such as a backlog of cases etc. However, I was also informed that you have transformed the entire system in a remarkably short period of time. Can you expand on the changes that were made, and how you were able to implement these so quickly?

A: Since I joined the judiciary, I have been fortunate enough to work with a team of very qualified individuals, such as Tan Sri Arifin

Table 1: Overall Registration, Disposal, and Pending Cases

Court	B/F from 2008	CIVIL CASES			B/F from 2008	CRIMINAL CASES		
		Pending 2009 (as at 1 Jan 2010)	Pending 2010 (as at 1 Jan 2011)	Pending 2011 (as at 1 May 2011)		Pending 2009 (as at 1 Jan 2010)	Pending 2010 (as at 1 Jan 2011)	Pending 2011 (as at 1 May 2011)
High Court	95,523	44,873	33,639	28,254	4544	3514	3313	3738
Sessions Court	94,554	61,659	47,841	46,546	8750	9377	7992	6997
Magistrates Court	156,053	71,681	66,791	54,198	665,221	53,087	28,920	22,882

Zakaria, the Chief Judge of Malaya, and others who contribute helpful ideas and assist with this on-going project.

When the project was first introduced, we managed to reduce the outstanding High Court civil cases in 2008 from 95,283 cases to 28,254 cases (see Table 1). Generally, our courts have cleared most of the backlog and we are looking at the aging cases now so that the old cases can be

disposed of earlier.

Apart from that, there is one very interesting aspect that I would like to share. In September 2009, we introduced the new Commercial Courts in Kuala Lumpur. All the commercial cases in the High Court have to be registered through the new Commercial Courts. Two judges were appointed for this new court, and the cases are heard in the new Commercial Court within a period of nine months,

Table 2: New Commercial Courts (Pending According to Month)

	Monthly Registration	NCC : MONTHLY PENDING																					
		2009				2010								2011									
		Sep	Oct	Nov	Dec	Jan	Feb	Mac	Apr	My	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mac	Apr		
2009	Sep	289	282	252	174	114	88	76	39	26	15	4	4	4	3	2	2	1	0	0	0	0	
	Oct	389		372	334	259	131	99	77	48	32	15	5	3	1	1	1	1	1	0	0	0	
	Nov	328			306	277	237	103	74	53	34	12	5	3	2	2	0	0	0	0	0	0	
	Dec	363				342	308	266	145	90	57	40	19	11	5	3	1	1	0	0	0	0	
2010	Jan	289				285	255	168	127	105	76	62	41	31	17	10	9	8	8	6	5		
	Feb	299					287	252	160	139	88	70	62	37	26	22	14	8	7	5	3		
	Mac	426						412	355	273	201	161	136	87	58	41	29	13	10	9	8		
	Apr	370							356	336	241	170	125	85	52	39	30	16	5	2	2		
	May	367								348	308	232	168	124	84	59	40	29	21	15	14		
	Jun	361									341	296	235	148	108	86	54	37	26	18	8		
	July	345										327	265	199	119	90	67	50	39	29	16		
	Aug	352											339	306	210	116	84	61	48	42	35		
	Sep	317												288	227	127	86	51	26	13	5		
	Oct	345													315	254	163	94	52	26	8		
	Nov	357														327	274	148	104	71	45		
	Dec	369															360	293	172	98	59		
2011	Jan	336															329	259	135	78			
	Feb	222																215	149	78			
	Mac	362																	340	234			
	Apr	315																			292		
TOTAL		6801																				CURRENT PENDING CASES:	890

although there are a few cases that have taken up to one year. For example, of the 289 cases that were registered in September 2009, only three remained in September the following year (see Table 2). Most (98%) of the 1369 cases registered were either withdrawn, settled or received judgment in default etc (see Figure 1).

The judges and the registrars monitor the registered cases very closely. If a plaintiff fails to serve the defendant after three months, they will be called-up and asked why. We are also very strict with the calendar deadlines – once we fix the case for hearing, the date is set. In fact, the Bar complained that we are overly strict with regard to postponements, but I do not agree, and it seems that many lawyers are quite happy with the way the judges deal with postponements.

While we are disposing of the new commercial cases in the new Commercial Court, the old commercial cases will continue to be disposed of as well. By March 2011, which was only a year and a half from the introduction of the new Commercial Courts, we had cleared most of the cases in the old commercial courts (see Figure 2).

In light of the successful results achieved in the new Commercial Courts in Kuala Lumpur, we are now introducing this system to all of the other states throughout the country. Our target is for all cases to be current by the end of this year. This means that all civil cases in the High Court will be disposed of within nine months to one year, Session Court within nine months, and the Magistrates' Court within six months. For criminal cases, it is slightly different because every criminal case must be heard at a full trial with witnesses.

In addition to the new courts, we have

increased the appointment of judges and have also introduced a computerised system, whereby any hearing in open court is now recorded by way of an audio-visual recording. Previously, judges had to take down notes, which greatly slowed the hearing process. However, with the new system, this is no longer an issue, and we eventually aim to have all our courts go paperless. We have also restructured the work management for our support team. We have organised our files in a proper order so that even if the employee-on-duty is on leave, others will be able to locate the files.

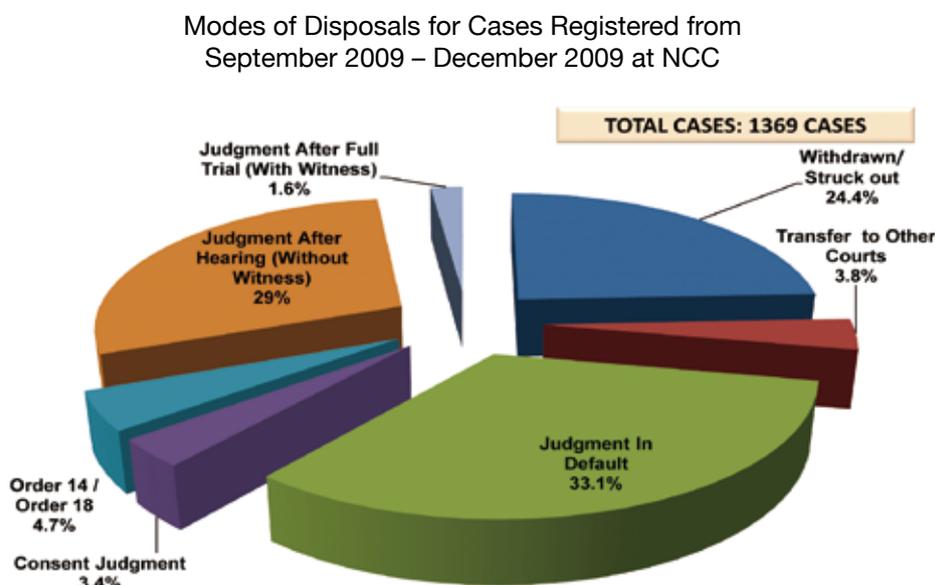
We also provide training to the judges on a regular basis, which has greatly improved the quality of judgments. For criminal cases, we are working closely with the police force to make sure that the cases are ready for trial.

As a part of case management, we went through every individual file to check their status. We realised that a large number of the files could be closed because the case had expired, been withdrawn, or the parties had reached a settlement. Hence, the court must be active in checking the status of cases. In doing so, we have appointed senior judges as Managing Judges to monitor the courts.

Another important point to note is that we now encourage mediation led by judges. Through mediation, we have even been able to close some files from the Court of Appeal and the Federal Court.

By implementing all these changes at the same time, we have greatly reduced the backlog of cases. No doubt all these changes require a lot of my time and commitment, but I am very pleased with what we have been able to achieve so far.

Figure 1: Modes of Disposal of Cases



Q: Your background is really a combination of judicial and legal services, private practice with exposure to the corporate world, so on and so forth. How has your varied background assisted you in dealing with the problem?

A: My role here is primarily management, and I have gained experience in this from my 22 years in the private practice. I was on the boards of publicly-listed companies and I have chaired the boards of audit committees and other management committees. My management approach, which I share with my fellow judges, is that: “One cannot manage a shop if he does not know what he has in his inventory.” This was why we took the effort to go through the files individually. I am proud to say that most of the judges who are assisting me in the management have adapted to my management style very quickly. Tan Sri Arifin often contributes constructive management ideas.

Q: We have seen an unprecedented level of accessibility to the judiciary by members of the public in terms of complaints or issues they may have. They can even find the email addresses of judges on the judiciary website. How do you think increasing public access has improved the administration of justice in Malaysia?

A: With this feature, we can attend to complaints

and take immediate action. For example, Tan Sri Arifin received a handwritten complaint that was faxed to his office saying that no other judges were willing to hear a case while the judge-in-charge was away. Tan Sri Arifin took immediate action and that case was heard before the end of the day. We believe public access to the judiciary is very important and we take all complaints we receive very seriously, no matter how big or small the complaint. Our goal is to resolve the problem before it gets out of control.

Q: As this interview will be published in the *IPBA Journal*, do you have any specific message for IPBA members?

A: The IPBA is a proven organisation which will foster a closer rapport amongst lawyers within the Asia-Pacific region. This will lead to the development of laws, as lawyers and judges will learn from each other regarding the laws of neighbouring and regional countries. As business becomes increasingly global, the good practices of the judiciary of one country should be imitated by others. We can see how England has developed its common law by introducing, consciously or otherwise, civil law principles. Malaysia too should look at developments in other countries, such as the good aspects of Japanese law, and incorporate these into Malaysian law where appropriate.

Figure 2: Chart of Pending Cases at the Old Commercial Courts

