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Our Ref: RS/BC/1/2019

8th March, 2019

Secretary of the Malaysian Bar

Malaysian Bar Council,
No.13, 15 & 17, Leboh Pasar Besar
50050 Kuala Lumpur



BY HAND

ACKNOWLEDGEMENT

Dear Sir,

Re: MOTION REGARDING PROPORTIONATE REPRESENTATION OF MEMBERS OF THE BAR IN THE BAR COUNCIL

I refer to the Notice of the Annual General Meeting of the Malaysian Bar dated 14.2.2019 sent via Malaysian Bar Circular No.025/2019.

Pursuant to Section 64(6) of the Legal Profession Act 1976, I propose to move the enclosed motion at the 73rd Annual General Meeting of the Malaysian Bar on 16th March, 2019.

Thank You,

Yours sincerely,

RAVINDER SINGH DHALLIWAL
Partner

Motion Regarding Proportionate Representation of Members of the Bar in the Bar Council.

Proposed by Ravinder Singh Dhaliwal

The Law

- 1) Recognising that the Legal Profession Act 1976 (“LPA”), at Section 42(1) states that the purpose of the Malaysian Bar shall be -
 - (a) to **uphold the cause of justice** without regard to its own interests or that of its members, **uninfluenced by fear or favour**;
 - (e) to represent, protect and **assist members or of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession** in Malaysia.
- 2) Recognising the principle of ‘Equality’ -
 - a. Montesquieu, said, ‘The love of democracy is that of equality.’ He was the father of the concept of ‘One person, one vote’. The concept of equality is all pervasive.
 - b. The Venice Commission is the Council of Europe’s advisory body on constitutional matters. In 2002, it published guidelines how constituencies ought to be delineated in national elections. It recommended that, first,

“There shall be equal voting power and seats must be evenly distributed between the constituencies.”
 - c. The **Reid Commission**¹ was set up in 1957 to create a lasting template – one that would become the legal and ethical engine of the new Malaysia. The Reid Commission – which worked on the principle of equality – drew its principles from *Montesquieu*.

1. See Enclosure 1, paragraphs 72 to 76

- d. The Commission recommended how national elections should be conducted. It recommended that the formula for the fair distribution of constituencies between each state ought to be 'on the basis of population and the electorate'.
 - e. It did this by creating the '**Electoral Quota**' or '**EQ**'.
 - f. The Reid commission recommended that 'electoral quota' was the number obtained by dividing the population of the Federation by the number of constituencies.
- 3) Recognising section 70(7) of the LPA provides:
- a. that at the State Bar elections:-

 '... shall elect one member of the State Bar to represent the State Bar on the Bar Council'.
 - b. This inadequate formula was **enacted 42 years ago**. The dynamics of the Bar have changed with time over the years. If the Bar continues to perpetuate this formula, this would breach the equality provision of Article 8(1) of the Constitution, which states:
 - i. All persons are equal before the law and entitled to the equal protection of the law;
 - ii. Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of [the]... carrying on of any trade, business, profession, vocation or employment.

4) Recognising Section 50. of the LPA : Annual Election of Bar Council

Sec 50(2): **The Bar Council shall fix and publish during the first week of November** in every year and notify every member of the Malaysian Bar by letter of ...

(a). ..

(b). **the number of persons for whom each member is entitled to vote;**

The Problem

5) Noting that the composition of the Bar Council comprises 38 Bar members: [sec. 47(2) of the LPA]. The **38** positions are:-

a. The Immediate Past President and Vice President are automatically members of the next Council year. **(2 members)**

b. The next 24 seats are filled by the Chairperson and Bar Representative of the 12 states who are elected at the state bar's annual general meetings: [sec. 47(1)(b) read with sec. 70(7)]. **(24 Members);**

c. "Members elected pursuant to sec. 50(2)(b)," The number of Bar Council seats which Bar Council fixes under sec. 50(2)(b) which reads:

"Section 50. Annual Election of Bar Council

50(2) The Bar Council shall fix and publish during the first week of November in every year and notify every member of the Malaysian Bar by letter of –

(b) the number of persons for whom each member is entitled to vote;

- d. Every year, the BC fixes that number of seats at 12 members who are elected via Ballot Paper: [Section 49]. These are the national elections under of the LPA. **(2 members)**;
 - e. This means without amendment of the LPA the Bar Council can increase the number of seats in the Bar Council;
- 6) Noting that by a resolution in 1985(15th March 1985- 39th Bar Council AGM) this house already approved a motion to this effect was approved and carried,

- a. That resolution approved in Malaysian Bar AGM No. 39 reads as follows:

Motion 5:

(i) to provide for the number of representatives elected by each State Bar as its representatives to the Bar Council to be proportionate to the number of members in each State Bar; and

(ii) to provide for the number of members to be elected to each State Bar Committee to be proportionate to the number of members in that State Bar.

Proposer: Selangor and Federal Territory Bar Committee

Resolution:

It was agreed that the matter be dealt with by the in-coming Bar Council.

- b. We don't believe that the Bar Council has come back to members since 1985 with any proposal on that resolution.

7) The Bar Council today:

- a. For 11 years (up to 2018) the Bar membership has increased exponentially: from 12,594 members to 18,915. This is an increase of 50.2%. This current method of election is 'unequal' and a 'disproportionate'.
- b. In 2018, **72%** of the members of the Bar came from the **Kuala Lumpur Bar and Selangor Bar**. However the number of KL and Selangor Bar members in the **Council only make up 39.5% of the Council**. (See the Table-1 below)

Table-1

No.	State	No. of Lawyers	Nationally (%)	Representation in BC (%)	Disparity
1.	W .PERSEKUTUAN	8,217	43.4%	29%	-14.4%
2.	SELANGOR	5,597	29.6%	7.9%	-21.7%
3.	JOHORE	2,051	10.8%	7.9%	-2.9%
4.	PENANG	1,808	9.6%	7.9%	-1.7%
5.	PERAK	1,071	5.7%	5.3%	-0.4%
6.	MALACCA	734	3.9%	5.3%	+1.4%
7.	KEDAH	731	3.9%	5.3%	+1.4%
8.	NEG. SEMBILAN	676	3.6%	5.3%	+1.7%
9.	KELANTAN	673	3.6%	5.3%	+1.7%
10.	PAHANG	571	3%	5.3%	+2.3%
11.	TERENGGANU	411	2.2%	5.3%	+3.1%
12.	PERLIS	61	0.3%	5.3%	+5.0%

Explanation of table:

The table is based on figures obtained from the Bar Council Website in 2018.

“Numbers of Lawyer” in each state includes dual membership.

“Nationally” means across the Peninsular (%) is the percentage of lawyers in each state

“Representation in Bar Council (%)” - suggest the percentage of that states membership in the Bar Council including members elected across the Peninsular in 2018.

“Disparity” explains the percentage of over or under representation. Negative (-) suggests that the said state is under represented and positive (+) suggest the state is over represented in the Bar Council.

- c. The consequence of this disparity is that when the BC – as it is currently constituted – determines issues involving the two largest state bars of the country, the deciding votes lies – disproportionately – in the hands of the other 10 State Bars. This situation should not continue. It prejudices the interest of members in Kuala Lumpur and Selangor Bar.

The Solutions

8). Interim Solution

- a. Based on the Bar Council national elections from 2014/2015 to 2017/2018 and 2019/2020 (5 years), for positions 13 to 18, at least 3 positions were won by Kuala Lumpur and 1 by a Selangor Member.
- b. The interim solution is for the Bar Council **to increase the nationally elected members by 6 members** (totalling 18 nationally elected candidates) then the average increase in representation of the Kuala Lumpur and Selangor Bar statistically should be 10.5% (Based on 2013-2017 election results) annually, totalling roughly 50% of the Council. **(NOTE: this is still disproportionate)**
- c. This expedient yet stopgap measure will not require an amendment to the LPA (Section 50) and the Bar Council is authorised to make this change.

9). Long Term Solution:

- a. The **long term solution** which will require an amendment to the LPA.
- b. **Applying the Reid Commission's EQ (Electoral Quota) Formula**

If we apply this formula to the Malaysian Bar based on the most recent figures from the Bar Council website:

To get what the EQ of the Malaysian Bar, divide the total population of lawyers (18,915 – *in 2018*) by the number of states (12). That equals **1,576** (*we have rounded the same up from 1,576.25*). That is the EQ for Peninsula.

c. Working the formula using the EQ

We start by agreeing that any **state that has 1,576 or less lawyers receives one State Bar Representative**. (Some states have as little as 61 in a State. We grant that State one seat for 'State Rep' seat. This is an advantage to the State. We take no issue).

Any state that has more than 1,576 members will receive a number of Representatives equivalent to its EQ.

Calculation

$$\frac{\text{Membership}}{\text{No. of States}} = \text{Average}$$

$$\frac{\text{State Membership}}{\text{Average}} = \text{EQ}$$

E.Q. (Electoral Quota)	No. of Representatives
0.01 – 1.50	1
1.51 – 2.50	2
2.51 – 3.50	3
3.51 – 4.50	4
4.51 – 5.50	5
5.51 – 6.50	6
6.51 – 7.50	7
7.51 – 8.50	8

d. Results of using this Formula.

Since Perlis has 61 members, it is less than the EQ of 1,576: it shall receive one State Representative.

Selangor has 5,500 members. Divide that by 1,576. That results in 3.55. So Selangor should get four State Representatives (because it's EQ is more than 3.5). (Please see the Table-2 below)

Table-2

State	No. of Lawyers	National %	State EQ	State Reps	Chair	Total % represn
WILAYAH PERSEKUTUAN	8,217	43.4%	5.21	5 (11.8%)	1(2.3%)	14.1%
SELANGOR	5,597	29.6%	3.55	4 (9.3%)	1(2.3%)	11.6%
JOHORE	2,051	10.8%	1.3	1 (2.3%)	1(2.3%)	4.6%
PENANG	1,808	9.6%	1.15	1 (2.3%)	1(2.3%)	4.6%
PERAK	1,071	5.7%	0.68	1 (2.3%)	1(2.3%)	4.6%
MALACCA	734	3.9%	0.47	1 (2.3%)	1(2.3%)	4.6%
KEDAH	731	3.9%	0.46	1 (2.3%)	1(2.3%)	4.6%
NEGERI SEMBILAN	676	3.6%	0.43	1 (2.3%)	1(2.3%)	4.6%
KELANTAN	673	3.6%	0.43	1 (2.3%)	1(2.3%)	4.6%
PAHANG	571	3.0%	0.36	1 (2.3%)	1(2.3%)	4.6%
TERENGGANU	411	2.2%	0.26	1 (2.3%)	1(2.3%)	4.6%
PERLIS	61	0.3%	0.04	1 (2.3%)	1(2.3%)	4.6%

Percentage based on 43 Council Member (not including the President & Vice President)

Above figures are before the 12 nationally elected members at included.

That should bring the total number of State Representatives to 19.
This would be a fair and proportionate distribution.

- e. **Mr GK Ganesan** in his article "***Are Bar Council Elections Based on Equality?***,"² proposes that the LPA should be amended to reflect the Proportionate Representation System.

² <https://www.gkg.legal/are-bar-council-elections-based-on-equality/>

Resolution

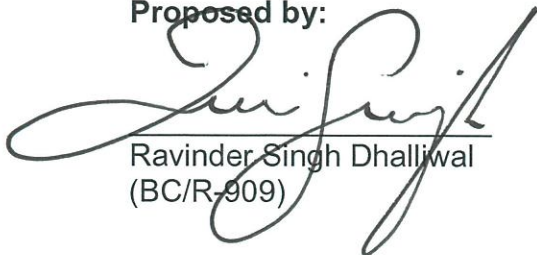
THEREFORE IT IS HEREBY RESOLVED THAT:-

- (1) Pending any amendment to the LPA, under its powers in sec.50(2)(b) of the LPA, the Bar Council be directed immediately to increase the number of nationally elected candidates [under Section 49 read with Sec 50(2)(b) of the LPA] from **12 to 18 members** for the Bar Council elections

AND

- (2) The Bar Council establishes immediately a Pro-Tem Proportionate Representation Committee; and that
 - 2.1) the Committee shall to provide for a system that will ensure that the number of representatives elected by each State Bar Committee as its representatives to the Bar Council be proportionate to the number of members in each State Bar, and in proportion to the total number of advocates and solicitors in the Malaysian Bar ('Proportionate Representation System');
 - 2.2) the Committee shall recommend proposals to implement Proportionate Representation System for elections for membership to the Bar Council by August of 2019;
 - 2.3) the Committee shall propose amendments to the LPA, especially ss.49, 50(2)(b) and 70(7) of the LPA to implement the Proportionate Representation for elections to the Bar Council and
 - 2.4) the outcome of this study and the decision of the Bar Council, together with the proposed amendments to the relevant provisions in the LPA be conveyed to the members of the Bar within August of 2019.

Proposed by:



Ravinder Singh Dhaliwal
(BC/R-909)

Seconded by:

1. Harleen Kaur a/p Tarjeet Singh BC/H-685
2. Shashi Devan a/l Thalmalingam BC/S-2493
3. Loi Yap Loong BC/L-2076
4. Foong Cheng Leong BC/F-358
5. Vivian Kuan Hui Xian BC/V-298
6. Louis Liaw Vern Xien BC/L-2510
7. Alvin Oh Seong Yew - BC/A-1844
8. Collin Arvind Andrew BC/C-1444
9. Vivekananda A/L Sukumaran BC/V-278
10. Sharmila Ravindran BC/S-1692
11. Rajsurian Pillai a/l Chellappa Pillai BC/R-1148
12. Saravana Kumar a/l Segaran BC/S-2019
13. Amrit Pal Singh A/L Jaginder Singh BC/A-808