THE LEGAL PROFESSION IN MALAYSIA

The history of the legal profession in Malaysia

by

Sheila Ramalingam*

Assoc. Prof. Dr. Johan Shamsuddin bin Hj Sabaruddin**

Dr. Saroja a/p Dhanapal***

The legal profession in Malaysia is a fused profession i.e. there is no division between solicitors and barristers as in England. Malaysian lawyers take on both functions and this is why a practicing lawyer is called an advocate and solicitor in West Malaysia.[1] Historically, both members of the Bar and Bench were almost entirely trained and educated in English law so that far greater weight was placed on English law and jurisprudence than were at times warranted.[2] The first lawyers were known as “law agents” or “advocates and attorneys” and categorised as special and general agents.[3] According to James William Norton Kyshe Esq., who served as court registrar at the Straits Settlements Court at Malacca, the first person admitted to the rolls as a law agent was John Hewitt whose date of admission was 4 November 1808, and his qualification was “attorney of the Court of Kings Bench”. [4]

A body which resembles the Malaysian Bar today was established as early as 1914 through the enforcement of the Advocates and Solicitors Ordinance 1914.[5] The ordinance aimed to regulate legal practitioners in
the Federated Malay States. It was later replaced by the *Advocates and Solicitors Ordinance 1940*.\(^6\) Johor had its own enactment, i.e. the *Advocates and Solicitors Enactment of Johor (Johore (Cap. 104))*.\(^7\) Advocates and solicitors in the Straits Settlements were regulated by the *Advocates and Solicitors Ordinance of the Straits Settlements (Straits Settlements) (Cap. 62)*.\(^8\) After the Japanese occupation, all the ordinances and enactments were replaced by one ordinance which was a legislative instrument of the Malayan Union termed as Legislation No. 4 of 1947,\(^9\) i.e. the *Advocates and Solicitors Ordinance 1947* which applied throughout the Federation, i.e. West Malaysia, which was then known as the Malayan Union consisting of Settlements and States.\(^10\) The 1947 Ordinance was enacted by the Governor of the Malayan Union in accordance with provisions of *Section 85 of the Malayan Union Order-in-Council 1946*. It expressly repealed the *Advocates and Solicitors Enactment of the Federated Malay States 1940*, the *Advocates and Solicitors Enactment of Johore* and the *Advocates and Solicitors Ordinance of the Straits Settlements*. The 1947 Ordinance established the first independent and self-governing Bar Council covering Malaya,\(^11\) and dealt with the admission and enrolment of advocates and solicitors,\(^12\) and the control of practitioners such as through disciplinary proceedings.\(^13\) It sought to combine and bring all private legal practitioners in West Malaysia under one legal regime.\(^14\) With the attainment of independence in 1957, the growth in the number of local lawyers and the establishment of the first Malaysian law school at the University of Malaya, the 1947 Ordinance was then replaced with the *Legal Profession Act 1976*\(^15\) which came into effect on 1 June 1977. On
1 January 1971, the door officially closed on non-resident lawyers practicing in Malaysia.\[16\] This led to the immediate exodus of about 63 Singaporean practitioners from Malaysia on 31 December 1970, which was the deadline issued by the Malaysian Government for all non-resident (principally Singaporean) lawyers to cease practicing in Malaysia.\[17\]

The *Legal Profession Act 1976* is stated to apply throughout Malaysia. However, this is not the case because lawyers in Sabah and Sarawak have their own respective legislation governing the legal profession in those states, namely the *Advocates Ordinance in Sabah* and the *Advocates Ordinance in Sarawak*. They also have their own law association and society which is not part of the Malaysian Bar or the Bar Council of Malaysia. Hence, although the *Legal Profession Act 1976* states that the Act applies throughout Malaysia; in reality, since even before the independence of Malaya in 1957, the legal profession in West Malaysia, Sabah and Sarawak had always been kept separate, and continues to be so even after the formation of Malaysia.

**Legislation on Legal Profession in Malaysia**

*Part IV of the Malaysia Act 1963* on Transitional and Temporary provisions, among others, provides for the continuation and effect of the laws existing in Sabah and Sarawak prior to Malaysia Day. The laws of Sabah and Sarawak as existing on Malaysia Day shall be treated as Federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature.\[18\] This includes the *Advocates
Ordinance of Sabah and the Advocates Ordinance of Sarawak. Currently different legislations on the legal profession apply in West Malaysia, Sabah and Sarawak respectively, as set out in Table 1 below:

Table 1

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>West Malaysia</th>
<th>Sabah</th>
<th>Sarawak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal profession</td>
<td>Legal Profession Act 1976</td>
<td>Advocates Ordinance 1953</td>
<td>Advocates Ordinance 1953</td>
</tr>
</tbody>
</table>

(i) Legal Profession Act 1976 (Act 166)

From the wordings contained in the Act itself, it becomes apparent that the Act was meant to cover the entire legal profession across Malaysia. For example, the preamble states that it is an Act to consolidate the law relating to the legal profession in Malaysia. Section 2 provides that the Act shall apply throughout Malaysia but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make, and such an order shall be published in the Gazette. Section 152(2) provides that the Advocates Ordinance of Sabah and the Advocates Ordinance of Sarawak shall be repealed upon the coming into force of this Act in Sabah and Sarawak. Unfortunately till to date, no such order has been made for the applicability of the Act to Sabah or Sarawak; hence the Act is only applicable to West Malaysia since 1 June 1977. Nevertheless, there appears to be little doubt on the
intention of Parliament in 1976 that the Act is to apply throughout Malaysia.

*Part II of the Act* provides for the Legal Profession Qualifying Board\(^{[19]}\) whose function is primarily to prescribe the qualifications required for the entry of any person (other than qualified persons within the meaning of *Section 3*) with a view to his admission as an advocate and solicitor. *Section 10 of the Act* provides that one can be admitted as an advocate and solicitor at the discretion of the High Court when he is (a) a qualified person, or (b) an articled clerk who has complied with *Section 25 of the Act*. *Section 3 of the Act* defines ‘qualified person’ as (a) a person who has passed the final examination for the law degree in the University of Malaya, University of Malaya in Singapore, the University of Singapore or the National University of Singapore.\(^{[20]}\) *Section 11 of the Act* further explains that a qualified person must be a person who (a) has attained the age of eighteen years, (b) is of good character, (c) is a citizen of Malaysia or who holds a permanent resident status in Malaysia, (d) has served the period of pupillage, and (e) is exempted or passed the Bahasa Malaysia Qualifying Examination.

The period of pupillage is generally for 9 months,\(^{[21]}\) although there are circumstances that allows exemption from and qualification for pupillage.\(^{[22]}\) A pupil shall serve under an advocate and solicitor who is and has been in active practice in Malaysia for a total of not less than seven years immediately preceding the date of commencement of his pupillage.\(^{[23]}\) The Bar Council may also allow a qualified person to serve different parts of his pupillage with different masters.\(^{[24]}\) The petition for
admission shall be verified by affidavit exhibiting all documents relevant
to the admission,[25] including documentary evidence that the petitioner
has passed or is exempted from the Bahasa Malaysia Qualifying
Examination.[26] The Attorney General, the Bar Council or any State Bar
Committee may object to any petition,[27] and any person may enter a
caveat against the admission of a petitioner.[28] Section 18 of the Act
provides for the application of ad-hoc admission by any person who has, in
the opinion of the Court, special qualifications or experience of a
nature not available amongst advocates and solicitors in Malaysia, such
as the admission of a Queen’s Counsel of England. Part IIA of the Act
empowers the Attorney General to issue Special Admission Certificates
to any person who in his opinion, fits the prescribed requirements.
Sections 20 to 25 of the Act deals with articled clerks, i.e. persons who
have entered into articles with an advocate and solicitor.

The Registrar of the High Court shall keep a Roll of advocates and
solicitors with the dates of their respective admission[29] and is
empowered to issue practicing certificates.[30] The Registrar also keeps an
annual register known as the Register of Practitioners.[31] The Sijil
Annual is issued by the Bar Council on an application by an advocate and
solicitor who intends to practice, and has complied with all the statutory
requirements.[32] The Bar Council is entrusted to maintain a register of
firm names under which advocates and solicitors practise.[33] No person
shall practise as an advocate and solicitor unless his name is on the Roll
and he has a valid practicing certificate.[34] An advocate and solicitor has
the exclusive right to appear and plead in all Courts of Justice in
Malaysia according to the law in force in those Courts, and as between themselves shall have the same rights and privileges without differentiation.\[^{35}\] No unauthorised person (i.e. someone whose name is not on the Roll and/or who does not have a valid practicing certificate) may act as an advocate and solicitor\[^{36}\] except in instances provided in Section 38 of the Act.\[^{37}\]

*Part V of the Act* deals with the establishment of the Malaysian Bar and the Bar Council. The Malaysian Bar shall be a body corporate with perpetual succession and a common seal, with power to sue and be sued and to acquire and dispose of property.\[^{38}\] The main object 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”.\[^{39}\] Every advocate and solicitor shall become a member of the Malaysian Bar and shall remain a member for as long as he has a valid practicing certificate.\[^{40}\] The Bar Council was established with the main objective of properly managing the affairs and performance of the Malaysian Bar,\[^{41}\] and its constitution, members, powers and meetings are all set out in detail in *Sections 47 through 66 of the Act*. *Sections 68 through 75 of the Act* deals with the constitution of members, powers and meetings of State Bar Committees. A member of the State Bar is deemed to be practicing in a State if he ordinarily practices in that State.\[^{42}\]

*Part VI of the Act* deals with professional practice, etiquette, conduct and discipline of advocates and solicitors and clerks.\[^{43}\] In this regard, the Bar Council has the power to make rules to regulate all aspects of legal practice.\[^{44}\] *Part VII of the Act* deals with disciplinary proceedings. The
Disciplinary Board[^45] is empowered to mete out punishments on advocates and solicitors who are guilty of any misconduct[^46] which include striking off the Roll, suspension from practice for any period not exceeding five years, paying a fine not exceeding RM50,000.00 or being reprimanded or censured. The Disciplinary Board consists of a Chairman appointed by the Chief Judge after consultation with the Bar Council, and shall be a Judge or retired Judge of the High Court, Court of Appeal or Federal Court or any other person qualified as such; the President of the Malaysian Bar and 15 practicing members of the Malaysian Bar of not less than 15 years’ standing who are appointed by the Chief Judge after consultation with the Bar Council[^47] When a complaint[^48] is lodged with the Disciplinary Board, it may dismiss the complaint for lack of merit, or appoint a Disciplinary Committee to formally investigate the complaint, or deal with the complaint forthwith by imposing an appropriate penalty.[^49] The Disciplinary Committee consists of three members: two advocates and solicitors of not less than ten years standing and one lay person[^50] appointed from the list of the Disciplinary Committee Panel.[^51] The Disciplinary Committee is tasked with thoroughly investigating a complaint against an advocate and solicitor[^52] and reporting its findings to the Disciplinary Board[^53] which shall be the final decision maker on the outcome of the complaint.[^54] An aggrieved person may appeal against the decision of the Disciplinary Board to the High Court, Court of Appeal and the Federal Court.[^55]

*Part VIII of the Act* regulates the remuneration of advocates and solicitors both with regard to non-contentious matters[^56] as well as contentious
matters;[57] whilst Part IX of the Act deals with the recovery and taxation of costs by an advocate and solicitor vis-à-vis his client.[58] Two Funds are established under the Act. The first is the Compensation Fund,[59] which is used, among others, to compensate persons aggrieved by an act of dishonesty by an advocate and solicitor or any clerk or servant of an advocate and solicitor.[60] The second is the Discipline Fund[61] which is used to, among others, defray all costs, charges and expenses for disciplinary proceedings.[62] All payments of fees, fine, costs, penalty are to be paid into this Fund.[63] The new Part IVA of the Act[64] allows international partnerships, qualified foreign law firms and registered foreign lawyers to practice in Malaysia under certain circumstances.

(ii) Advocates Ordinance 1953 (Sabah)

The Advocates Ordinance 1953 of Sabah was extensively amended in 2017.[65] The first thing to note about the Sabah Ordinance is that all reference to Sabah in the Ordinance includes the Federal Territory of Labuan.[66] Apart from that, the more salient features of the amended Ordinance is the establishment of the Sabah Law Society as a statutory body, disciplinary proceedings against advocates by the newly established Disciplinary Board, and the provision for international partnerships, qualified foreign law firms and registration of foreign lawyers.

The qualifications for admission as an advocate in Sabah are that (a) he is a member of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland; (b) he is a solicitor of the Supreme Court in England,
Northern Ireland or the Republic of Ireland or a Solicitor in Scotland; (c) he has been conferred any of the degrees specified in the First Schedule;\[67\] (d) he has been awarded a Certificate of Legal Practice by the Qualifying Board established under the *Legal Profession Act 1976*; or (e) he has been admitted to practice as a legal practitioner by a Supreme Court or High Court exercising jurisdiction in any place within any territory within the Commonwealth.\[68\] Admission to the profession in Sabah also requires completion of pupillage, not for nine months, but for 12 months\[69\] except where a pupil has obtained a post-graduate certificate in law from the University of Malaya or the National University of Singapore; in which case his period of pupillage is only 6 months.\[70\] Generally the 12 months pupillage period is to take place in the State of Sabah itself, either in the Judicial and Legal Service in Sabah, or as a pupil of the State Attorney-General of Sabah.\[71\] However, the Ordinance also allows for a pupil to read in chambers of an advocate who has been lawfully practicing in some part of Malaysia for a period of not less than seven years immediately preceding the commencement of pupillage.\[72\] Therefore, a pupil may do part of his reading in chambers in West Malaysia (for a maximum period of 9 months), and part of it in Sabah. The Chief Judge may exempt the whole or part of the pupillage in certain circumstances,\[73\] and a person may serve different parts of his period of pupillage with different advocates.\[74\]

Once all these requirements are fulfilled, there is then the requirement to satisfy the Chief Judge that (a) he is not disbarred, struck off the Roll or suspended from practice, and that he is not subject to any pending
disciplinary proceedings, and that he has not been convicted and not subject to pending criminal proceedings involving dishonesty in any territory within the Commonwealth; (b) he is not an undischarged bankrupt or subject to any bankruptcy proceedings within the Commonwealth; and (c) he has Sabah connections.\(^7\) A person is deemed to have Sabah connections if he (a) was born in Sabah or the Federal Territory of Labuan; (b) is ordinarily resident in Sabah for a continuous period of five years or more; or (c) domiciled in Sabah.\(^6\) An eligible person may apply to the Chief Judge for admission as an advocate, annexing proof of his qualifications and eligibility, and two recent testimonials as to his good character, which are also to be submitted respectively to the State Attorney-General and the Sabah Law Society.\(^7\) The Chief Judge may order the admission of an applicant, and the Registrar shall enter the applicant’s name on the Roll.\(^8\)

The Registrar shall maintain a Roll of advocates with the dates of their respective admission, which shall be published at least once a year in the *Sabah Government Gazette*\(^7\) and is empowered to issue practicing certificates.\(^8\) The Registrar also keeps an annual register known as the Register of Advocates.\(^8\) The Annual Certificate is issued by the Law Society upon an application by an advocate who intends to practice and has complied with all statutory requirements.\(^8\) The Law Society also has the duty to maintain a register of firm names under which advocates practise.\(^8\) An advocate may only practice in Sabah with a valid certificate of practise issued by the Registrar of the High Court.\(^8\) However, *ad hoc* certificates to practise may be issued in certain
Advocates shall take precedence as between themselves according to the date their names are inscribed on the Roll, but the Attorney-General and Solicitor-General of Malaysia as well as the State Attorney-General shall in that order take precedence over all other advocates. No person shall practise as an advocate unless his name is on the Roll and he has a valid practicing certificate. No unauthorised person (i.e. someone whose name is not on the Roll and/or who does not have a valid practicing certificate) may act as an advocate except in instances provided in Section 16(2) and (3) of the Ordinance.

Parts III and VI of the Ordinance provides for the establishment of the Sabah Law Society, a body corporate with perpetual succession and a common seal, with power to sue and be sued and to acquire and dispose of property. The main object of the Law Society is to “uphold the cause of justice without regard to its own interests or that of its members uninfluenced by fear or favour”. Every advocate shall become a member of the Law Society and shall remain a member for as long as he has a valid practicing certificate. There is established an Executive Committee that is tasked with the management of the Law Society and its funds, and its constitution, members, powers and meetings are all set out in detail in Sections 13D through 13P of the Ordinance. The Law Society, in consultation with the State Attorney General, also has the power to make rules on professional indemnity and any other rules, in particular to regulate the practice, etiquette and accounts of the profession in Sabah and for fixing or taxing costs between solicitor and
client. The Advocates’ Remuneration Rules 1988 regulates the remuneration of advocates only with regard to non-contentious matters.

In Sabah, advocates shall have the exclusive right to practise in Sabah and to appear and plead in the Federal Court or Court of Appeal when sitting in Sabah or when sitting in any other part of Malaysia hearing a cause or matter originating from the High Court or any subordinate court in Sabah, and in the High Court and in all courts in Sabah subordinate thereto in which advocates may appear, and as between themselves shall have the same rights and privileges without differentiation. The Attorney-General of the Federation and the State Attorney-General are given the same rights and privileges as are enjoyed by the Attorney-General in the Courts in England; and apart from the State Attorney-General, all advocates with the rank of Queen’s Counsel can perform the functions of an advocate only and not that of a solicitor. A person who is an advocate in Sarawak or an advocate and solicitor in West Malaysia may appear and plead before the Federal Court or Court of Appeal when sitting in Sabah (a) when the Federal Court or Court of Appeal is exercising its original jurisdiction, if he is representing the Federal or State Government; if the Sarawak advocate is representing a person normally resident in Sarawak; or if the West Malaysian advocate and solicitor is representing a person normally resident in West Malaysia; and (b) when the Federal Court or Court of Appeal is exercising its appellate jurisdiction, if the cause of action or the subject matter of the appeal was tried in Sarawak and the advocate appearing is a Sarawak advocate; and
in West Malaysia, the advocate and solicitor appearing is a West Malaysian advocate and solicitor.\textsuperscript{97}

\textit{Part V of the Ordinance} deals with disciplinary proceedings. \textit{Section 12A of the Ordinance} establishes a Disciplinary Board which consist of the Chairman appointed by the Chief Judge after consultation with the Law Society, being a retired Judge of the High Court, Court of Appeal or Federal Court and any other person with such qualifications, the President of the Law Society (or the Vice-President of the Law Society as his alternate), and eight advocates of not less than seven years’ standing appointed by the Chief Judge in consultation with the Law Society.\textsuperscript{98} These members are appointed for a term of two years\textsuperscript{99} which may be extended for another period of two years.\textsuperscript{100} The Disciplinary Board is empowered to mete out punishments on advocates who are guilty of any misconduct,\textsuperscript{101} which include striking off the Roll, suspension from practice for any period not exceeding five years, paying a fine not exceeding RM50,000.00, being reprimanded or censured or having costs awarded against him.\textsuperscript{102} Disciplinary proceedings extend to foreign law firms as well as to pupils.\textsuperscript{103} A complaint against an advocate may be made by any person, including by any Court (including the Industrial and Syariah Courts), Judge, State Attorney-General or the Law Society, and must be made to the Disciplinary Board.\textsuperscript{104} No complaint against an advocate shall be inquired into by the Disciplinary Board after the expiration of six years from the date when the right of action to bring the action accrued, except in the case of fraud.\textsuperscript{105} When a complaint is lodged with the Disciplinary Board, it shall serve on the advocate a copy
of the complaint and a notice to appear before and be heard by it.\textsuperscript{[106]} The Disciplinary Board has the power to procure all evidence and examine any person as a witness, including issuing subpoenas which may be enforced as if it is a subpoena issued by a civil High Court.\textsuperscript{[107]} Any person who fails to produce to the Disciplinary Board the required evidence or information commits an offence and is liable on conviction to a fine not exceeding RM2,000.00 or to imprisonment not exceeding three months or both.\textsuperscript{[108]} The Disciplinary Board may proceed with an inquiry in the absence of any person who fails to attend the inquiry despite being summoned to do so.\textsuperscript{[109]}

Upon conclusion of an inquiry, the Disciplinary Board may dismiss the complaint for lack of sufficient gravity, or find that the misconduct merits no more than a reprimand or a censure, or find that the misconduct is of sufficient gravity to warrant more serious punishments, including suspension or striking off the Roll.\textsuperscript{[110]} In addition to its order of penalty or punishment, the Disciplinary Board may also make an order of restitution against an advocate.\textsuperscript{[111]} An aggrieved person may appeal against the final decision of the Disciplinary Board to the High Court, the Court of Appeal and the Federal Court in that order, and the Law Society may intervene at any state of any appeal.\textsuperscript{[112]} The Disciplinary Board may make rules to regulate its own procedures, and such rules will only take effect upon publication in the \textit{Sabah State Gazette}.\textsuperscript{[113]} A Discipline Fund is established to among others, defray the all costs, charges and expenses for disciplinary proceedings.\textsuperscript{[114]} All payments of fees, fine, costs, and penalties are to be paid into this Fund.\textsuperscript{[115]} The Ordinance establishes a
Compensation Fund which is used, among others, to compensate persons aggrieved by an act of dishonesty by an advocate and solicitor or any clerk or servant of an advocate and solicitor.\cite{116} Prior to the amendments to the Ordinance in 2017, there was an Inquiry Committee set up under the *Advocates’ (Inquiry Committee) Rules 1988* to enquire into complaints against advocates. These rules have now been superseded with the establishment of the Disciplinary Board under the Ordinance.

*Part VII of the Ordinance* allows international partnerships, qualified foreign law firms and registered foreign lawyers to practise in Sabah in certain circumstances.

(iii) **Advocates Ordinance 1953 (Sarawak)**

As in Sabah, the qualifications for admission as an advocate in Sarawak are that (a) he is a member of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland; (b) he is a solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland or a Solicitor in Scotland; (c) he has been conferred any of the degrees specified in the Schedule;\cite{117} (d) he has been awarded a Certificate of Legal Practice by the Qualifying Board established under the *Legal Profession Act 1976*; or (e) he has been admitted to practise as a legal practitioner by a Supreme Court or High Court exercising jurisdiction in any place within any territory within the Commonwealth.\cite{118} Admission to the profession in Sarawak also requires completion of pupillage for 12 months\cite{119} except where a pupil has obtained a post-graduate certificate in law from the University of Malaya or the National University of
Singapore; in which case his period of pupillage is only 6 months.\footnote{120} Generally the 12 months pupillage period is to take place in the State of Sarawak itself, either as a Magistrate of the First Class in the State of Sarawak, or as a pupil of the State Attorney-General.\footnote{121} However, the Ordinance also allow for a pupil to read in chambers of an advocate who has been lawfully practicing in some part of Malaysia for a period of not less than five years immediately preceding the commencement of pupillage.\footnote{122} Therefore, just as in Sabah, a pupil may do part of his reading in chambers in West Malaysia, and part of it in Sarawak. The Chief Judge may exempt the whole or part of the pupillage period in certain circumstances.\footnote{123}

Once all these requirements are fulfilled, there is then the requirement to satisfy the Chief Judge that (a) he is not disbarred, struck off the Roll or suspended from practice, and that he is not subject to any pending disciplinary proceedings, and that he has not been convicted and not subject to pending criminal proceedings involving dishonesty in any territory within the Commonwealth; (b) he is not an undischarged bankrupt or subject to any bankruptcy proceedings within the Commonwealth; and (c) he has Sarawak connections.\footnote{124} A person is deemed to have Sarawak connections if he (a) was born in Sarawak; (b) is ordinarily resident in Sarawak for a continuous period of five years or more; or (c) domiciled in Sarawak.\footnote{125} An eligible person may apply to the Chief Judge for admission as an advocate, annexing proof of his qualifications and eligibility, and two recent testimonials as to his good character, which are also to be submitted to the State Attorney-General.
and the Advocates’ Association of Sarawak. The Chief Judge may order the admission of an applicant, and the Registrar shall enter the applicant’s name on the Roll. The Registrar of the High Court in Kuching shall keep a roll of advocates for the issue of practicing certificates in Sarawak.

In Sarawak, advocates shall have the exclusive right to practise in Sarawak and to appear and plead in the Federal Court in Sarawak and in the High Court and in all courts in Sarawak subordinate thereto in which advocates may appear, and as between themselves shall have the same rights and privileges without differentiation. The Attorney-General of the Federation and the State Attorney-General are given the same rights and privileges as are enjoyed by the Attorney-General in the Courts in England; and apart from the State Attorney-General, all advocates with the rank of Queen’s Counsel can perform the functions of an advocate only and not that of a solicitor. A person who is an advocate in Sabah or an advocate and solicitor in West Malaysia may appear and plead before the Federal Court when sitting in Sarawak (a) when the Federal Court is exercising its original jurisdiction, if he is representing the Federal or State Government; if the Sabah advocate is representing a person normally resident in Sabah; or if the West Malaysian advocate and solicitor is representing a person normally resident in West Malaysia; and (b) when the Federal Court is exercising its appellate jurisdiction, if the cause of action or the subject matter of the appeal was tried in Sabah and the advocate appearing is a Sabah advocate; and in West Malaysia, the
advocate and solicitor appearing is a West Malaysian advocate and solicitor.\textsuperscript{132}

An advocate may only practise in Sarawak with a valid certificate of practise issued by the Registrar of the High Court.\textsuperscript{133} However, \textit{ad hoc} certificates to practise may be issued in certain circumstances.\textsuperscript{134} Advocates shall take precedence as between themselves according to the date their names are inscribed on the Roll, but the Attorney-General and Solicitor-General of Malaysia as well as the State Attorney-General shall in that order take precedence over all other advocates.\textsuperscript{135}

An advocate may be struck off the Roll, suspended, fined not exceeding RM5,000.00, censured or awarded costs to or against him for any of the misconduct specified in the Ordinance.\textsuperscript{136} The High Court may, upon an application supported with evidence, strike out or suspend an advocate from practicing in Sarawak if the advocate is also an advocate and solicitor in West Malaysia or Sabah, and had also been struck off the Roll or suspended in those places.\textsuperscript{137} Disciplinary proceedings against an advocate is commenced by an application to a Judge in Chambers, who will issue a rule to the advocate to show cause why action should not be taken against him.\textsuperscript{138} An aggrieved advocate may appeal to the Federal Court.\textsuperscript{139} There is an Inquiry Committee whose members are appointed by the Chief Judge, consisting of a Chairman, Secretary, the President of the Advocates’ Association of Sarawak and 12 other advocates of not less than 15 years standing with valid practicing certificates and such other persons with legal background or qualified to be admitted to the Rolls.\textsuperscript{140} The Inquiry Committee may dismiss a complaint outright or
form a Panel to further investigate the complaint.\textsuperscript{[141]} The Panel is appointed by the Chairman of the Inquiry Committee and consists of three members, the Chairman of whom shall be a member of the Inquiry Committee.\textsuperscript{[142]} After investigations,\textsuperscript{[143]} the Panel shall submit a report to the Inquiry Committee.\textsuperscript{[144]} The Inquiry Committee shall consider the report and either dismiss the complaint or make an application under Section 13 of the Ordinance to the High Court.\textsuperscript{[145]} Therefore in Sarawak, disciplinary proceedings of an advocate is not self-regulated but dependent upon the Court, unlike West Malaysia and Sabah.

Agreements for remuneration of an advocate’s services must be in writing to be valid\textsuperscript{[146]} and may be challenged in Court.\textsuperscript{[147]} An advocate cannot by contract exclude his liability for negligence or any other liability as an advocate.\textsuperscript{[148]} Any person not entitled to practise in Sarawak may not act as an advocate except in instances provided in the Ordinance.\textsuperscript{[149]} The Chief Judge, with the concurrence of the State Attorney-General, may make rules regulating the legal profession in Sarawak\textsuperscript{[150]} such as, among others, the practice and etiquette, accounts, disciplinary proceedings and establishing an Inquiry Committee.

Table 2 is a summary of the provisions of the legislations on the legal profession respectively in West Malaysia, Sabah and Sarawak:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|}
\hline
\textbf{Subject matter} & \textbf{West Malaysia} & \textbf{Sabah} & \textbf{Sarawak} \\
\hline
\end{tabular}
\end{table}
<table>
<thead>
<tr>
<th>Designation</th>
<th>Advocate and solicitor</th>
<th>Advocate</th>
<th>Advocate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Only an advocate who has the rank of Queen’s Counsel cannot be a solicitor).</td>
<td>(Only an advocate who has the rank of Queen’s Counsel cannot be a solicitor).</td>
<td></td>
</tr>
</tbody>
</table>

| Legal Profession Qualifying Board | To prescribe the qualifications required for the entry of any person with a view to his admission as an advocate and solicitor | Recognises Certificate of Legal Practice issued by the Board. | Recognises Certificate of Legal Practice issued by the Board. |

<table>
<thead>
<tr>
<th>Admission as advocate (and solicitor)</th>
<th>(i) Qualified person:</th>
<th>Qualified person (either one of the following):</th>
<th>Qualified person (either one of the following):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>· Law degree</td>
<td>· Member of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland</td>
<td>· Member of the Bar of England, Scotland, Northern Ireland or the Republic of Ireland</td>
</tr>
<tr>
<td></td>
<td>· At least 18 years old</td>
<td>· Solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland</td>
<td>· Solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland</td>
</tr>
<tr>
<td></td>
<td>· Good character</td>
<td>· Law degree</td>
<td>· Law degree</td>
</tr>
<tr>
<td></td>
<td>· Citizen or permanent resident of Malaysia</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>· Completed pupillage</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>· Exempted or passed Bahasa Malaysia Qualifying Examination</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject matter</td>
<td>West Malaysia</td>
<td>Sabah</td>
<td>Sarawak</td>
</tr>
<tr>
<td>----------------</td>
<td>---------------</td>
<td>-------</td>
<td>---------</td>
</tr>
</tbody>
</table>
| Pupillage      | 9 months under an advocate and solicitor in active practice not less than 7 years in Malaysia | (i) 12 months in (either one of the following):  
- Judicial and Legal service in Sabah  
- State Attorney General office in Sabah  
- Under an advocate in active practice not less than 7 years in Malaysia  
(ii) 6 months if obtained a post-graduate certificate | (i) 12 months in (either one of the following):  
- Magistrate of First Class in Sarawak  
- State Attorney General office in Sarawak  
- Under an advocate in active practice not less than 5 years in Malaysia  
(ii) 6 months if obtained a post-graduate certificate |
<table>
<thead>
<tr>
<th>Period of pupillage may be shortened by Bar Council in certain circumstances.</th>
<th>Period of pupillage may be shortened by Chief Judge in certain circumstances.</th>
<th>Period of pupillage may be shortened by Chief Judge in certain circumstances.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can serve different parts of pupillage with different masters.</td>
<td>Can serve different parts of pupillage with different masters.</td>
<td>Can serve different parts of pupillage with different masters.</td>
</tr>
</tbody>
</table>

### Ad-hoc admission
- Allowed in certain instances by way of application
- Attorney General may issue Special Admission Certificates
- Allowed in certain instances by way of application
- Allowed in certain instances by way of application

### Articled clerks
- Provided for
- Not provided for
- Not provided for

### Subject matter
<table>
<thead>
<tr>
<th>West Malaysia</th>
<th>Sabah</th>
<th>Sarawak</th>
</tr>
</thead>
</table>

### Procedure for admission
- Petition and affidavit.
- Attorney General, Bar
- Petition to Chief Judge with proof of qualifications and
- Petition to Chief Judge with proof of qualifications and
Council and State Bar Committee may object to petition.

- Any person may enter a caveat against the admission.

<table>
<thead>
<tr>
<th>Practice of advocates</th>
<th>Registrar of High Court keeps a</th>
<th>Registrar of High Court keeps a</th>
<th>Registrar of High Court in</th>
</tr>
</thead>
</table>

eligibility:

- he is not disbarred, suspended or subject to disciplinary or criminal proceedings
- he is not undischarged bankrupt
- he has Sabah connections i.e. born in Sabah, ordinarily resident in Sabah for a continuous period of 5 years or more, or domiciled in Sabah
- 2 recent testimonials on good character
- All this also to be submitted to State Attorney General and Sabah Law Society

eligibility:

- he is not disbarred, suspended or subject to disciplinary or criminal proceedings
- he is not undischarged bankrupt
- he has Sarawak connections i.e. born in Sarawak, ordinarily resident in Sarawak for a continuous period of 5 years or more, or domiciled in Sarawak
- 2 recent testimonials on good character
- All this also to be submitted to State Attorney General and Advocates’ Association of Sarawak
<table>
<thead>
<tr>
<th>(and solicitors)</th>
<th>Roll and Register of Practitioners, and issues practicing certificates annually</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Bar Council issues Sijil Annual to advocates and solicitors intending to practise and maintains register of firm names</td>
</tr>
<tr>
<td></td>
<td>Roll and Register of Advocates, and issues practicing certificates annually</td>
</tr>
<tr>
<td></td>
<td>• Sabah Law Society issues Annual Certificate to advocates intending to practise and maintains register of firm names</td>
</tr>
<tr>
<td></td>
<td>Kuching keeps a Roll and Register of Advocates, and issues practicing certificates annually</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unauthorised persons</th>
<th>Only persons whose name is on the Roll and has a valid practicing certificate can practice as an advocate and solicitor.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Only persons whose name is on the Roll and has a valid practicing certificate can practice as an advocate.</td>
</tr>
<tr>
<td></td>
<td>Only persons with a valid practicing certificate can practice as an advocate.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>West Malaysia</th>
<th>Sabah</th>
<th>Sarawak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right of advocate (and solicitor)</td>
<td>Right to appear in all Courts in Malaysia</td>
<td>• Exclusive right to practise in Sabah and to appear and plead in the Federal Court or Court of Appeal when sitting in Sabah or when sitting in any other part of Malaysia hearing a cause or</td>
<td>• Exclusive right to practise in Sarawak and to appear and plead in the Federal Court, High Court and in all courts in Sarawak.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Attorney General and State</td>
</tr>
<tr>
<td>International partnerships, foreign law firms and foreign lawyers</td>
<td>Provided for; similar to Advocates Ordinance 1953 (Sabah)</td>
<td>Provided for; similar to Legal Profession Act 1976</td>
<td>Not provided for</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>

| Governing body | Establishment of 2 statutory bodies:  
- Malaysian Bar (consisting of all practicing advocates and solicitors) | Establishment of 1 statutory body, the Sabah Law Society (consisting of all practicing advocates). | Not provided for. The Advocates’ Association of Sarawak is a society, not a statutory body. |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject matter</td>
<td>West Malaysia</td>
<td>Sabah</td>
<td>Sarawak</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Conduct of advocates (and solicitors)     | • Provides for the professional practice, etiquette, conduct and discipline of advocates and solicitors.  

• Bar Council empowered to take control of property and accounts of advocate and solicitor in certain instances | • Law Society in consultation with State Attorney General may make rules on professional practice, etiquette, conduct and accounts of advocates.  

• Law Society empowered to take control of property and accounts of advocate in certain instances | Chief Judge with concurrence of State Attorney General may make rules on legal profession in Sarawak such as practice and etiquette, accounts and disciplinary proceedings. |
| Remuneration of advocates (and solicitors) | Provides for remuneration of advocates and solicitors for non-contentious and contentious matters. | Provides for remuneration of advocates only for non-contentious matters. | • Agreements for remuneration must be in writing.  

• Advocate cannot exclude liability |
<table>
<thead>
<tr>
<th>Funds</th>
<th>(i) Compensation Fund</th>
<th>(i) Compensation Fund</th>
<th>Not provided for.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>▪ to compensate aggrieved persons for any dishonest act done by advocates and solicitors or their clerks or servants</td>
<td>▪ to compensate aggrieved persons for any dishonest act done by advocates and solicitors or their clerks or servants</td>
<td></td>
</tr>
<tr>
<td>(ii) Discipline Fund</td>
<td>▪ to defray all costs, charges and expenses for disciplinary proceedings</td>
<td>▪ to defray all costs, charges and expenses for disciplinary proceedings</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ all payments of fees, fines, costs, penalty to be paid into this Fund.</td>
<td>▪ all payments of fees, fines, costs, penalty to be paid into this Fund.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>West Malaysia</th>
<th>Sabah</th>
<th>Sarawak</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disciplinary proceedings</td>
<td>Disciplinary Board</td>
<td>Disciplinary Board</td>
<td>Inquiry Committee</td>
</tr>
<tr>
<td></td>
<td>Members:</td>
<td>Members:</td>
<td>Members (all appointed by the Chief Judge):</td>
</tr>
<tr>
<td></td>
<td>• Chairman</td>
<td>• Chairman</td>
<td>• Chairman</td>
</tr>
<tr>
<td></td>
<td>appointed by Chief Judge after consultation with the Bar Council, being</td>
<td>appointed by Chief Judge in consultation with Law Society, being</td>
<td>Secretary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judge or retired Judge of the High Court, Court of Appeal or Federal Court.</td>
<td>retired Judge of High Court, Court of Appeal or Federal Court.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• President of Malaysian Bar</td>
<td>• President of Law Society</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 15 practicing members of the Malaysian Bar of not less than 15 year’s standing appointed by Chief Judge after consultation with Bar Council</td>
<td>• 8 advocates not less than 7 years standing appointed by Chief Judge in consultation with Law Society.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Complaint may be:**

- Dismissed outright
- Referred to Disciplinary Committee for full investigation
- Summarily dealt with

**Disciplinary Committee**

**Members:**

- 2 advocates and solicitors of not less than 10 years standing

**Complaint:**

- Must be brought within 6 years
- Disciplinary Board has power to procure all evidence and testimonies including issuing subpoenas
- Complaint may be:
  - Dismissed
  - Misconduct merits only reprimand or censure

**Members:**

- President of Advocates’ Association of Sarawak
- 12 advocates of not less than 15 years standing with valid practicing certificates
- Such other persons with legal background

**Complaint may be:**

- Dismissed outright
- Form a Panel to further investigate

**Panel**

- Appointed by Chairman of Inquiry Committee
- Consists of 3 members, the Chairman to be a member of Inquiry Committee
- After investigations, Panel to submit report to Inquiry
A unified legal profession?

Generally, the Malaysian Bar and the Bar Council of West Malaysia are in favour of a unified Bar, having raised the issue with the Attorney-General’s Chambers as well as the Ministry of International Trade and
Industry that East Malaysia consider “a gradual process of liberalization with limited or restricted areas of practice”. Even the wordings of Section 2 of the Legal Profession Act 1976 provides that the Act shall apply throughout Malaysia “but shall only be made applicable to Sabah and Sarawak with such modifications as the Yang di-Pertuan Agong may by order make”. This gives the impression that the Legal Profession Act 1976 was always meant to be applicable to the whole of Malaysia one day. However, the East Malaysian lawyers have been generally opposing this move quite strenuously. They have always been in favour of separate bars for Sabah and Sarawak respectively, their main fear being the influx of lawyers from West Malaysia to East Malaysia.

With regard to the legislations on the legal profession in West Malaysia (Legal Profession Act 1976), Sabah (Advocates Ordinance 1953) and Sarawak (Advocates Ordinance Sarawak), there are many overlapping provisions between these legislation that can easily be made to have uniform applicability throughout Malaysia. For example, the designation of lawyers. In Malaysia the legal profession is a fused profession unlike the United Kingdom where there is a separation in the duties between barristers and solicitors. Lawyers in Malaysia are both advocates and solicitors. In Sabah and Sarawak, it is provided that only advocates with the rank of Queen’s Counsel may not be a solicitor. This means that advocates who are not ranked as Queen’s Counsel may be both advocates and solicitors. The rank of Queen’s Counsel is arguably no longer relevant to Malaysian lawyers especially after the severance of all ties to the Privy Council. Therefore, the more accurate designation for a lawyer
in Malaysia would be “advocate and solicitor” and not “advocate” as it is still used in East Malaysia.

Another area that can easily be streamlined is pupillage. The period of pupillage and the standing of the advocate and solicitor who is the pupil-master could be made the same in East and West Malaysia without much difficulty or dissent. For international partnerships, foreign law firms and foreign lawyers, there are similar legal provisions for these in West Malaysia and Sabah, but not in Sarawak. However, these provisions could easily be made applicable to Sarawak. In West Malaysia there are provisions relating to articled clerks. This is outdated and no longer applicable today and may therefore be ignored altogether. Lastly, the remuneration for advocates and solicitors for both contentious and non-contentious matters could easily be streamlined and be set out in full in one legislation so that not only members of the profession, but also members of the public can gauge the amount of legal fees necessary when they engage the services of a lawyer. As for Funds, West Malaysia and Sabah already have the Discipline and Compensation Fund, so there is no perceptible problem for Sarawak to also set up similar funds.

And this is where the similarities stop and we venture into unchartered territory. Any discussion on the possibility of unifying the legal profession between East and West Malaysia must begin with Article 161B of the Federal Constitution. Article 161B says that any amendments conferring a right to practice before a court in Sabah or Sarawak (including in the Federal Court or Court of Appeal when hearing appeals arising from Sabah or Sarawak or when hearing proceedings under
Article 128 arising from a matter originating in Sabah or Sarawak) on persons not previously having the right, shall not come into operation until adopted by the States by way of enactment of the Legislature.

In greater clarification of Article 161B, three distinct amendments were made to the Advocates Ordinances in Sabah and Sarawak: (i) the 1989 amendments on residence qualification; (ii) the 2017 amendments on the establishment of the Sabah Law Society and Disciplinary Board in Sabah; and (iii) the 2017 amendments on the right of lawyers in Sabah which, it is submitted, makes it clear beyond doubt that Sabah and Sarawak do not wish to have a unified Bar, and Parliament is in favour of this. This article will now discuss these three areas in greater detail in the paragraphs below.

(i) Residence Qualification

Sabah and Sarawak have already acknowledged the existence and functions of the Legal Profession Qualifying Board. Qualifications to enter into the legal profession are mostly the same between East and West Malaysia except for two things. The first is that in West Malaysia, there is a need to pass or be exempted from the Bahasa Malaysia Qualifying Examination; in East Malaysia this is not a requirement. In this regard, the Bar Council has been advocating for a Common Bar Course and Examination (CBE) since the 1980’s as a single entry point to the legal profession for both local and foreign law graduates, a common evaluation system. The reason for this is there is a general view that the quality and standard of lawyers has declined, including “abysmal
language skill especially the command of English”. This issue has recently been in the forefront again. But despite this, till to date no decision has been taken on the CBE and the situation remains the same.

The second difference is that in order to be admitted as an advocate and solicitor in Sabah or Sarawak, one must have “Sabah connections” or “Sarawak connections”. Section 2 of the Advocates Ordinances of Sabah and Sarawak defines “Sabah connections” and “Sarawak connections” as a person who was born in Sabah or Sarawak, is ordinarily resident in Sabah or Sarawak for a continuous period of five years or more, or domiciled in Sabah or Sarawak. This in effect means that generally, advocates and solicitors from West Malaysia cannot practice in Sabah and Sarawak. At the moment, the only way a lawyer from West Malaysia can practice in East Malaysia is by way of an ad hoc admission to practice in specific cases.

It has been held that when considering an application for admission under the Advocates Ordinance of Sabah, the immigration status of the applicant ought to be disregarded as being irrelevant. Hence, on an application for admission to the Sabah or Sarawak Bar, the only pertinent question before the court (with regard to the residence qualification) is whether the applicant has been resident in those States for the period prescribed in the Ordinances prior to admission. It does not matter whether the applicant’s work permit to practice law in those States is for a limited duration. One important factor to note is that the residence qualification for admission under the pre-amended Section 4 of both Advocates Ordinances of Sabah and Sarawak is that the applicant has
been normally resident in Sabah or Sarawak for a period of six months immediately preceding his application for admission. This prompted the Federal Court in Re Abdul Razak bin Rouse\textsuperscript{[163]} to make the following observation:

“With respect, we think the learned judge misconstrued the expression “as permanent and continuous as anything can be in the world” otherwise he would not have raised the question of a certificate of permanent stay. If this is the position, then virtually no Malaysian of non-Sabah origin would ever be able to get admission to the Sabah Bar at all. This cannot be the objective of the Advocates Ordinance (Cap 2)....

While it is true that the amendment to the Advocates Ordinance in 1960 was meant to protect the interests of local advocates, it is equally clear that such amendment was never meant to obstruct the admission of an aspiring Malaysian applicant provided he is able to comply with the provisions of the said Ordinance...

There is something to be said for imposing residential qualification. Despite some measure of uniformity in legislation since Malaysia, the laws of Sabah and Sarawak are in many aspects still different from those of Semenanjung Malaysia because of conditions peculiar to the two States. This difference will slowly but surely be harmonized. The residential qualification of six months, as we understand it, is merely to ensure that an aspiring applicant from outside the State is not thrown into the hurly-burly of active
practice before he has had an opportunity of familiarizing himself with the local laws and conditions…”

However, in 1989, the Advocates Ordinances of Sabah and Sarawak were amended, and the residence qualification stipulated that an applicant had to have “Sabah connections” or “Sarawak connections” in order to be admitted to the Bar pursuant to Section 4 of both Ordinances. Under Section 2 of both Ordinances, “Sabah connections” and “Sarawak connections” were amended and is now defined as “ordinarily resident in Sabah or Sarawak for a continuous period of five years or more”.

Both Advocates Ordinances in Sabah and Sarawak were declared as Federal law in 1965. Being Federal law, any amendments made to these Ordinances would have to be passed by Parliament at Federal level, and not just by the State Legislative Assemblies at State level. Hence, despite the observations by the Federal Court in Re Abdul Razak bin Rouse, the intention of Parliament and more importantly, the intentions of the people of Sabah and Sarawak are clear. The residence qualification is meant to impede West Malaysian lawyers from practicing in Sabah and Sarawak.

In this regard, Section 11(1)(c) of the Legal Profession Act 1976 states that for admission as an advocate and solicitor to plead and appear in all courts of justice in Malaysia, a ‘qualified’ person shall be either a Federal citizen or a permanent resident in Malaysia. Further, Section 35(1) of the Legal Profession Act 1976 provides that advocates and solicitors have the right to appear and plead in all courts of justice in
Malaysia which, presumably, includes the courts in Sabah and Sarawak. Therefore, if the Legal Profession Act 1976 was extended to Sabah and Sarawak, it is submitted that these provisions would abrogate the residence qualification for admission in the High Court in Sabah and Sarawak, which is contrary to the intention of Parliament and the wishes of the people of Sabah and Sarawak.

(ii) Governing body and disciplinary proceedings

In West Malaysia there is a statutory body known as the Malaysian Bar and its administrative arm known as the Bar Council. In Sabah, as a result of the amendments made to the Advocates Ordinance in 2017,[168] there is now also a statutory body known as the Sabah Law Society. These statutory bodies regulate the legal profession in terms of professional practice, etiquette, conduct and discipline, and will in consultation with the Attorney General or the State Attorney General respectively, make rules on these issues. In Sarawak there is the Advocates’ Association of Sarawak which is a society, not a statutory body. Therefore, it is the Chief Judge and the State Attorney General who makes the rules governing the legal profession. In West Malaysia and Sabah, the Bar Council and the Sabah Law Society issues the Sijil Annual or Annual Certificates to all lawyers who wish to practice. There is no such concept of a Sijil Annual in Sarawak.

All practicing advocates and solicitors in West Malaysia are deemed to be members of the Malaysian Bar; all practicing advocates in Sabah are deemed to be the members of the Sabah Law Society. Whereas the
Advocates Association of Sarawak is a society under the *Societies Act 1966*. Membership of the Advocates Association of Sarawak is open to all advocates who have been called to the Bar of the High Court in Sabah and Sarawak and who are ordinarily resident and practicing in Sarawak, but it is not mandatory for an advocate in Sarawak to become a member of the Advocates Association of Sarawak. Being a society, it will have to comply with all the requirements prescribed under the *Societies Act 1966*, otherwise they run the risk of being de-registered, or being declared unlawful by the Minister of Home Affairs. Therefore, unlike the Malaysian Bar and the Sabah Law Society, it is difficult for the Advocates Association of Sarawak to maintain its independence and fight without fear or favour since they have to tread lightly especially on matters involving the Government of Malaysia lest they are de-registered or declared unlawful.

In West Malaysia and Sabah, the disciplining of lawyers is undertaken by a board known as the Disciplinary Board which consist mainly of senior members of the Bar. Therefore, the (un)professional conduct of an impugned lawyer is judged by peers. Whereas in Sarawak, although there is an Inquiry Committee set up to investigate complaints against advocates, in the event of a meritorious complaint, an application must be made to court for appropriate sanctions to be meted out against the errant advocate. To summarize, lawyers in West Malaysia and Sabah are tried by peers; lawyers in Sarawak are tried by the Court.

For disciplinary proceedings that have been litigated in the courts in West Malaysia, the Courts have consistently held that they will not interfere
with matters of professional discipline except in very rare instances; see for example Keith Sellar v. Lee Kwang And Tennakoon V Lee Kwang[^170] and Majlis Peguam v. Dato' Seri Dr Muhammad Shafee bin Abdullah.[^171] In Gana Muthusamy v. Tetuan LM Ong & Co,[^172] the Court of Appeal held as follows:[^173]

“It is primarily for members of the Bar to decide what amounts to conduct unbecoming of an advocate and solicitor in particular circumstances, according to standards established by members of that honourable profession. Courts must necessarily exercise caution when entertaining an appeal in which the central question is whether a particular conduct is unprofessional and cases meriting curial interference will be rare. Otherwise it will be the court and not the profession that will determine the yardstick of professional behaviour. We would, in this context, express our agreement with the following passage in the Guide to the Professional Conduct of Solicitors issued by the Council of the Law Society in 1974, quoted by the learned judges of the High Court in their judgment:

One of the hallmarks of a developed profession is that it should lay down and maintain standards of professional conduct for its members based upon the best thinking of those members as to what constitutes proper conduct for a member of that profession.”
Therefore, it would be best if Sarawak followed West Malaysia and Sabah to self-regulate its disciplinary proceedings rather than leaving it to the Courts.

Having said that, once again, the amendments made to the *Advocates Ordinance in Sabah* in 2017 in establishing the Sabah Law Society which elevates its status from a society to a statutory body, as well as in establishing its own Disciplinary Board, evinces a clear intention that the lawyers in Sabah wish to have their own statutory body to govern their affairs, and their own self-regulating disciplinary mechanism which is distinct and separate from West Malaysia and Sarawak. Therefore once again, we see a strong intention of Parliament and hence the people of Sabah to maintain a separate and distinct Bar for the state.

(iii) **Right of lawyers**

Under the *Legal Profession Act 1976*, all advocates and solicitors have the right to appear and plead in all Courts in Malaysia. In Sabah, advocates have the exclusive right to practice in Sabah and to appear and plead in the Federal Court or Court of Appeal when sitting in Sabah or when sitting in any other part of Malaysia hearing a cause or matter originating from the High Court or subordinate courts in Sabah. Whereas in Sarawak, advocates have the exclusive right to practise in Sarawak and to appear and plead in the Federal Court, High Court and in all courts in Sarawak.

In Sabah, the wordings in the *Advocates Ordinance* have been amended so that there is now no doubt, where the matter originated from Sabah,
only a lawyer from Sabah can appear in the appeal from that matter to the Court of Appeal and the Federal Court, regardless of where the appellate courts are physically sitting.\[^{175}\] In Sarawak, although the wordings in the Advocates Ordinance are ambiguous,\[^{176}\] there is the Federal Court case of *Datuk Hj Mohammad Tufail bin Mahmud & Ors v. Dato’ Ting Check Sii*\[^{177}\] which makes the situation similar to the position in Sabah as it stands now. In this case, there were two issues before the Federal Court: (i) whether an advocate and solicitor from Peninsular Malaysia is entitled to appear as counsel in an appeal to be heard in Putrajaya arising from a matter originating from the High Court in Sabah and Sarawak at Kuching; and (ii) whether an advocate from Sarawak is entitled to appear as counsel in an appeal to be heard in Putrajaya arising from the High Court in Sarawak and Sabah at Kuching. The original matters in the High Court in Sabah and Sarawak at Kuching were an oppression petition and a winding-up petition. Both petitions were dismissed by the High Court. At the Court of Appeal, the respondent was represented by Tommy Thomas, advocate and solicitor of the High Court in Malaya, leading other advocates from Sarawak. The appellant objected to Tommy Thomas representing the respondent. The Court of Appeal unanimously held that Tommy Thomas had the right to appear at the Court of Appeal when it sits in Putrajaya. The appellants obtained leave to appeal to the Federal Court.

The relevant provision to be interpreted by the Federal Court was *Section 8 of the Advocates Ordinance of Sarawak* which provides as follows:
“8.(1) Subject to subsection (2) and to section 9, advocates shall have the exclusive right to practice in Sarawak and to appear and plead in the Federal Court in Sarawak and the High Court, and in all courts in Sarawak subordinate thereto in which advocates may appear, and, as between themselves, shall have the same rights and privileges without differentiation...”

The Federal Court was of the view that although the “Federal Court in Sarawak” limited the practice of Sarawak lawyers to the geographical borders of that State:

“...In our opinion, it would have been more appropriate to use the words “in respect of matters arising in Sarawak”. That is how we perceive it to be. Probably the Attorney-General’s Chambers would take heed and make the necessary legislative recommendations for Sabah and Sarawak, which could eventually strengthen the position we are embarking upon now.”[178]

The Federal Court also ruled that since the Legal Profession Act 1976 had not been extended to Sabah and Sarawak, Section 35 thereof had no application in the present case. Therefore, the Federal Court ruled that (i) an advocate and solicitor from West Malaysia is not entitled to appear as counsel in an appeal to be heard in Putrajaya arising from a matter originating from the High Court in Sabah and Sarawak; and (ii) an advocate from Sarawak is entitled to appear as counsel in an appeal to be heard in Putrajaya arising from a matter originating from the High Court in Sabah and Sarawak.
Therefore, it is now clear that only persons with Sabah connections are allowed to practice in Sabah including Labuan notwithstanding that it is a Federal Territory. Similarly, only persons with Sarawak connections are allowed to practice in Sarawak.

**Conclusion**

As mentioned before, both the *Advocates Ordinances in Sabah and Sarawak* were declared as Federal law in 1965.\[^{179}\] Being Federal law, any amendments made to these Ordinances would have to be passed by Parliament at Federal level, and not just by the State Legislative Assemblies at State level. Hence, the intention of Parliament and more importantly, the intentions of the people of Sabah and Sarawak are clear. While at the first instance by virtue of *Section 2 of the Legal Profession Act 1976* the intention may be for the legal profession to be unified throughout Malaysia, recent events have shown that this is far from the case, and that East Malaysian lawyers have evinced a clear intention to keep the profession separated between West Malaysia, Sabah and Sarawak. This is evident from the amendments on the residence qualification which makes it abundantly clear that only those who have ‘Sabah or Sarawak connections’ may practice in those States respectively. In addition, the recent amendments made to the *Advocates Ordinance of Sabah* which among others, established the Sabah Law Society, a statutory body to regulate and govern advocates practicing in Sabah; as well as a Disciplinary Board to govern the discipline of advocates in Sabah, also clearly show that generally, the people in Sabah at least, prefer autonomy over the legal profession in Sabah.\[^{180}\]
This also being a later act of Parliament, shows the intention of Parliament and the people of East Malaysia. In *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan*,[181] the Federal Court in interpreting an amendment to *Section 59A of the Immigration Act 1959/63*, applied with approval the decision of the Privy Council in *DR Fraser And Company, Limited v. Minister of National Revenue* [1949] AC 24 which held as follows:

“When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately.”[182]

Hence, it would be difficult to unify the legal profession between East and West Malaysia for the time being. There is a division in the right of audience of lawyers appearing in the subordinate courts and in the High Courts in West Malaysia, Sabah and Sarawak and a similar division in the Court of Appeal and the Federal Court by virtue of the amendments to *Section 8 of the Advocates Ordinance of Sabah* and by virtue of the Federal Court case of *Datuk Hj Mohammad Tufail bin Mahmud & Ors v. Dato’ Ting Check Sii*,[183] notwithstanding that there is only one Court of Appeal and one Federal Court for the whole of Malaysia.

It is hoped that in time to come the legal profession can be unified throughout the country for smoother administration of justice and for clients, easier access to lawyers of their choice.

* PhD research article undertaken at Faculty of Law, University of Malaya.
** Dean, Faculty of Law, University of Malaya.

*** Senior Lecturer, Faculty of Law, University of Malaya.

Endnotes:


[4] Ibid.


[8] Ibid.


[17] Ibid.

[18] Section 73(3) of the Malaysia Act 1963.

[19] See in particular Sections 4 to 9 of the Legal Profession Act 1976. Section 26 of the Act allows any person aggrieved with any decision of the Board to apply to a Judge for a review of that decision.

[20] ‘Qualified persons’ is interpreted under Section 3 of the Legal Profession Act 1976 as, among others, possessing qualifications from institutions notified in the Gazette. The Portal of the Legal Profession Qualifying Board of Malaysia at http://www.lpqb.org.my/index.php?option=com_content&view=article&id=131&Itemid=77 lists down the institutions to include University of Malaya (UM), National University of Malaysia (UKM), International Islamic University Malaysia (IIUM), MARA University of Technology (UiTM), University Utara Malaysia (UUM) and Multimedia University (MMU). It also includes some universities in Singapore,
Australia, New Zealand and the United Kingdom, coupled with the requirement of passing the Certificate in Legal Practice (CLP).


[22] See Sections 13(3) and (4) and (5) of the Legal Profession Act 1976.

[23] See Section 13(1) of the Legal Profession Act 1976. The Bar Council may, however, on special grounds allow a pupil to serve under an advocate and solicitor of less than seven years’ standing (see the proviso to Section 13(1) of the Legal Profession Act 1976).


[26] Section 15(3)(g) of the Legal Profession Act 1976.

[27] Section 16 of the Legal Profession Act 1976. There is a right of appeal to the Federal Court under Section 19 of the Legal Profession Act 1976.


[29] Section 28(a) of the Legal Profession Act 1976.


[34] Section 36 of the Legal Profession Act 1976.


[37] See also Section 37(2B) of the Legal Profession Act 1976 with regard to foreign lawyers and Section 37A of the Legal Profession Act 1976 with regard to arbitral proceedings.

[38] Section 41 of the Legal Profession Act 1976.


[40] Section 43 of the Legal Profession Act 1976.


[42] Section 68(2) of the Legal Profession Act 1976.

[43] See generally Sections 81 to 84 and 86 to 87 of the Legal Profession Act 1976 which deals generally with the conduct of advocates and solicitors.


[47] Section 93(3) of the Legal Profession Act 1976.

[49] Section 100 of the Legal Profession Act 1976. See also Section 103A of the Legal Profession Act 1976.

[50] Section 103A(2) of the Legal Profession Act 1976.

[51] Sections 95 and 96 of the Legal Profession Act 1976.


[54] Section 103D of the Legal Profession Act 1976.


[56] Sections 112 to 115 of the Legal Profession Act 1976; see also the Solicitors’ Remuneration Order 2005.

[57] Sections 116 to 121 of the Legal Profession Act 1976.


[60] Section 80(8) of the Legal Profession Act 1976.

[61] See Section 103(H) of the Legal Profession Act 1976.


[63] Section 103HI of the Legal Profession Act 1976.

[64] Inserted pursuant to the Legal Profession (Amendment) Act 2012 (Act A1444) which came into force on 20 September 2012. See also the Amendment of Section 4 in the Legal Profession (Amendment) Act 2012 (Amendment) 2013 (Act A1455) which came into force on 1 November 2013.
[65] Via Act A1528 which came into force on 1 July 2017.

[66] See the definition of “Sabah” in Section 2(1) of the Advocates Ordinance 1953 (Sabah).

[67] The First Schedule to Advocates Ordinance 1953 in Sabah lists the Bachelor of Laws degrees from eight universities which are University of Malaya, Universiti Kebangsaan Malaysia, Institut Teknologi MARA, Universiti Teknologi MARA, International Islamic University, National University of Singapore, Universiti Utara Malaysia and the Multimedia University, as well as an Advanced Diploma in Law from Institut Teknologi MARA.

[68] See Section 4(1) of the Advocates Ordinance 1953 (Sabah).

[69] Section 4(1A) of the Advocates Ordinance 1953 (Sabah).

[70] Section 4(1A)(b) of the Advocates Ordinance 1953 (Sabah).

[71] Section 4(1A) of the Advocates Ordinance 1953 (Sabah).

[72] Ibid.

[73] Section 4(1B) of the Advocates Ordinance 1953 (Sabah).

[74] Section 4(1C) of the Advocates Ordinance 1953 (Sabah).

[75] Section 4(2) of the Advocates Ordinance 1953 (Sabah).

[76] Section 2(2) of the Advocates Ordinance 1953 (Sabah).

[77] Section 5 of the Advocates Ordinance 1953 (Sabah).

[78] Section 6 of the Advocates Ordinance 1953 (Sabah).

[79] Section 7 of the Advocates Ordinance 1953 (Sabah).
[80] Sections 9 and 9A of the Advocates Ordinance 1953 (Sabah).

[81] Section 9B of the Advocates Ordinance 1953 (Sabah).

[82] See Sections 7C, 7D and 7E of the Advocates Ordinance 1953 (Sabah).

[83] Section 7F of the Advocates Ordinance 1953 (Sabah).

[84] Section 9 of the Advocates Ordinance 1953 (Sabah).

[85] See Section 10 of the Advocates Ordinance 1953 (Sabah).

[86] Section 11 of the Advocates Ordinance 1953 (Sabah).

[87] Section 15(1) of the Advocates Ordinance 1953 (Sabah).

[88] Section 16(1) of the Advocates Ordinance 1953 (Sabah).

[89] Sections 7A and 7B of the Advocates Ordinance 1953 (Sabah).

[90] Section 13A of the Advocates Ordinance 1953 (Sabah).

[91] Section 13B of the Advocates Ordinance 1953 (Sabah).

[92] Section 13D of the Advocates Ordinance 1953 (Sabah).

[93] Section 16D of the Advocates Ordinance 1953 (Sabah).


[95] Section 8(1) of the Advocates Ordinance 1953 (Sabah).

[96] Ibid.
Section 8(2) of the Advocates Ordinance 1953 (Sabah).

Section 12A(2) of the Advocates Ordinance 1953 (Sabah).

Section 12A(3) of the Advocates Ordinance 1953 (Sabah).

Section 12A(4) of the Advocates Ordinance 1953 (Sabah).

Section 12B(3) and (4) of the Advocates Ordinance 1953 (Sabah).

Section 12B(2) of the Advocates Ordinance 1953 (Sabah).

Section 12B(5), (6) and (7) and Section 12M of the Advocates Ordinance 1953 (Sabah).

Section 12C(1), (2) and (3) of the Advocates Ordinance 1953 (Sabah).

Section 12C(4) of the Advocates Ordinance 1953 (Sabah).

Section 12D of the Advocates Ordinance 1953 (Sabah).

Section 12E(1), (2), (3) and (4) of the Advocates Ordinance 1953 (Sabah).

Section 12E(5) of the Advocates Ordinance 1953 (Sabah).

Section 12F of the Advocates Ordinance 1953 (Sabah).

Section 12G(1) of the Advocates Ordinance 1953 (Sabah).

Section 12G(2) of the Advocates Ordinance 1953 (Sabah).

Section 12H of the Advocates Ordinance 1953 (Sabah).

Section 12I of the Advocates Ordinance 1953 (Sabah).

Section 12J of the Advocates Ordinance 1953 (Sabah).

Section 12K of the Advocates Ordinance 1953 (Sabah).
See Section 16E of the Advocates Ordinance 1953 (Sabah).

The Schedule to the Advocates Ordinance 1953 in Sarawak lists the Bachelor of Laws degrees from eight universities which are University of Malaya, Universiti Kebangsaan Malaysia, Institut Teknologi MARA, Universiti Teknologi MARA, International Islamic University, National University of Singapore, Universiti Utara Malaysia and the Multimedia University, as well as an Advanced Diploma in Law from Institut Teknologi MARA.

See Section 4(1) of the Advocates Ordinance 1953 (Sarawak).

Section 4(1A) of the Advocates Ordinance 1953 (Sarawak).

Section 4(1A)(b) of the Advocates Ordinance 1953 (Sarawak).

Section 4(1A) of the Advocates Ordinance 1953 (Sarawak).

Ibid.

Section 4(1B) of the Advocates Ordinance 1953 (Sarawak).

Section 4(2) of the Advocates Ordinance 1953 (Sarawak).

Section 2(2) of the Advocates Ordinance 1953 (Sarawak).

Section 5 of the Advocates Ordinance 1953 (Sarawak).

Section 6 of the Advocates Ordinance 1953 (Sarawak).

Section 7 of the Advocates Ordinance 1953 (Sarawak).

Section 3 of the Advocates Ordinance 1953 (Sarawak).

Section 8(1) of the Advocates Ordinance 1953 (Sarawak).

Ibid.
[132] Section 8(2) of the Advocates Ordinance 1953 (Sarawak).

[133] Section 9 of the Advocates Ordinance 1953 (Sarawak).

[134] See Section 10 of the Advocates Ordinance 1953 (Sarawak).

[135] Section 11 of the Advocates Ordinance 1953 (Sarawak).

[136] Section 12 of the Advocates Ordinance 1953 (Sarawak).

[137] Section 12A of the Advocates Ordinance 1953 (Sarawak).

[138] Section 13 of the Advocates Ordinance 1953 (Sarawak).

[139] Section 14 of the Advocates Ordinance 1953 (Sarawak).

[140] Section 4 of the Advocates (Inquiry Committee) Rules 2014.

[141] Section 8 of the Advocates (Inquiry Committee) Rules 2014.

[142] Section 9(1) of the Advocates (Inquiry Committee) Rules 2014.

[143] Section 10 of the Advocates (Inquiry Committee) Rules 2014.


[146] Section 15(1) of the Advocates Ordinance 1953 (Sarawak).

[147] Section 15(2) of the Advocates Ordinance 1953 (Sarawak).

[148] Section 15(4) of the Advocates Ordinance 1953 (Sarawak).

[149] Section 16 of the Advocates Ordinance 1953 (Sarawak).

[150] Section 17 of the Advocates Ordinance 1953 (Sarawak).


[153] Ibid.

[154] See the second proviso in Section 8(1) of the Advocates Ordinance 1953 (Sabah) and Section 8(1)(b) of the Advocates Ordinance 1953 (Sarawak).


[158] Section 4 of the Advocates Ordinance of Sabah.

[159] Section 4 of the Advocates Ordinance of Sarawak.

[160] See Section 10(c) of the Advocates Ordinances of Sabah and Sarawak.


[162] Ibid.


[166] [1974] 2 MLJ 164, at page 167.


[168] Act A1528 which came into effect on 1 July 2017.


[170] [1980] 1 LNS 36.

[171] [2016] 8 CLJ 749, (Federal Court) at paragraph 29, page 763.

[172] [1998] 4 CLJ 878.


[174] See Section 35.

[175] Section 8(1) of the Advocates Ordinance of Sabah as amended by Act A1528 which came into effect on 1 July 2017.

[176] See Section 8 of the Advocates Ordinance of Sarawak.

[177] [2009] 4 CLJ 449, FC at 455, paragraph 14.

[178] At page 461, paragraph 43.


[181] [2002] 3 MLJ 72.


[183] [2009] 4 CLJ 449, FC at 455, paragraph 14.