

3.0. The trends facing the Malaysian legal profession

3.0 The need for research

There has been a lot of interest among Malaysian lawyers about globalization and its effects on the Malaysian legal profession.

Like all nations, globalization has affected Malaysia and its various institutions including the legal profession and the judiciary. The legal profession has been destabilized with General Agreement on Tariff and Trade (GATT) opening the global markets for trade and General Agreement on Trade in Services (GATS) deliberating on the opening of the service markets. This was acknowledged by .Kuthubal Zaman, the present chairman of the Malaysian Bar Council. In his talk in 2004, he discussed the effects of globalization on the Malaysian legal profession. The Malaysian Bar Council is already deliberating on a number of issues including allowing foreign lawyers to practise in Malaysia, restructuring legal education , adopting new practice models like MDP's and Legal Corporations and liberalizing some of its rules to improve lawyers' competitiveness.

This research aims at studying the effects of globalization on the legal profession in Malaysia as there has been no known comprehensive research done on it.

3.1 What is known

Raymond Tang (2002) noted that globalization has destabilized the legal profession. According to the data provided by the Malaysian Bar Council, about 1000 lawyers are annually being admitted to the Malaysian Bar since 2000. This reflects an increase in the number of lawyers joining the Malaysian Bar. However, the actual number of lawyers entering private practice after 2000 has fallen to about 750. The number of lawyers entering private practice has decreased, although there has been an increase in the

membership of the Bar. In addition to this, an increasing number of lawyers are retiring from private practice. No data is available on the number of lawyers retiring from legal practice or the reasons for this. But according to reliable sources, the reason for the decline is that private practice is no longer attractive as it was before. The Singapore Straits Times Report dated 2nd December 2002 noted that many young lawyers in Singapore are leaving private practice for other areas of legal work as private practice is too taxing and unattractive. Similar observations were made in Hong Kong by Raymond Tang (2002) and numerous Bar Association reports, including the American Bar Association (ABA) Report 2001, have highlighted this problem too.

The legal professions of advanced nations, like the USA are overcoming these challenges by reforming legal education and encouraging lawyers to diversify into new areas of practice and liberalizing the rules of the profession for lawyers to remain competitive. The reforms adopted by the various legal professions varied from jurisdiction to jurisdiction according to their specific needs. Meanwhile, the Malaysian legal profession is just beginning to respond to these challenges, thus, making this research study timely.

3.2 The Problems Associated With the Adoption of New Concepts

According to J.J.Spigelman (2000), the legal profession has lawyers and the public as its constituents. Both are indispensably linked to each other, but the rules of the profession place the interest of the public above the business interest of lawyers. This imposes limitations for the liberalization of the rules of the profession to make lawyers more competitive in the open market.

Lawyers have a fixed mind-set about the traditions of the profession. According to Raymond Tang (2002) it is difficult to change this mind set to adopt reforms to the traditional legal culture. Thus, encouraging lawyers to adopt competitive strategies to

Dissertation - The Malaysian Legal Profession & Globalization

© 2006 Devasenathy Pathy Rajah of www.TheCyberLaw.net

diversify into new areas of the legal practice and adopt information technology as a tool of the profession, is difficult.

Further, according to Richard Susskind (2000), lawyers have developed a 'non-information sharing culture' and are unwilling to share their knowledge with their colleagues in the profession because of the fear of competition. This is another problem restricting the improvement of the legal culture and transforming the legal profession into a modern one.

3.3 What is not known

Rigidity of the rules of the Malaysian legal profession is affecting the competitiveness of Malaysian lawyers in the globalize environment. To address this problem it is necessary to come to the grip of critical issues that need to be analysed and answered. These critical issues are now being addressed by the following research questions that form the core aspect of this research study.

1. Can Malaysian lawyers be prevented from joining Multi-Discipline Practice in order to protect the core values of the legal profession?
2. What needs to be done to the rules of the legal profession on advertisement and legal marketing so as to enhance and promote the legal services locally and globally?
3. What structural reforms have to be made to the legal profession's business models so that local lawyers can compete on an equal footing with foreign lawyers?
4. What new branches of the law should lawyers specialize in to enhance their future?
5. What has to be done to upgrade legal education for future lawyers to remain competitive?

6. To what extent has globalization and information technology affected the competitiveness of the Malaysian legal professions?

4.0 Research methodology

4.1 The Research Instrument

The respondents for this study are Malaysian lawyers. Lawyers are busy people with very little time to spare. In view of this, it was decided that the researcher himself, in his capacity as a member of the legal profession, interview the respondents in order to get the best possible co-operation. The survey questions were tested for its clarity with a few selected respondents before the final set of questionnaire was drafted for use. Each question in the interview questionnaire had multiple-choice answers.

4.2 Research Participants

The study was exploratory in nature. With no known empirical data on the demography of the members of the legal profession, the respondents were chosen at random from the States of Penang, Kedah and Perlis, assisted by the Malaysian legal directory 2002/ 2003.

Of the respondents chosen, 23 % are civil and commercial lawyers with more than 20 years of legal experience, 33 % are civil and commercial lawyers with 7 to 19 years of legal experience, and 34 % are civil and commercial lawyers with 7 and less years of legal experience, while 10 % of the respondents are lawyers specializing in criminal law.

A total of 120 respondents were identified but only 52 respondents could ultimately be interviewed due to time constraint. Each respondent took an average of 30 minutes to an hour to complete the interview. The survey began in late July 2004 but was only completed in early October 2004.

4.3 Research Process

The interviews were pre-arranged and most of the respondents agreed to be interviewed in the court premises after they had completed their court work. The confidentiality of the information provided by the respondents was assured before they acknowledged in writing their consent to be interviewed. The interview process was well received by the respondents while the answers were recorded by the researcher personally.

4.4 Analysis of Data

Each of the 92 questions in the survey form was provided, with a choice of five answers, with instructions to choose one. At the end of the interview process the answers were analyzed, and for each of the 92 questions, the total number of respondents choosing a particular answer from the given five options was recorded and converted into percentages that were then tabulated into tables for easy reference. The tables can be found in the appendix.

4.5 Survey questionnaire

The questionnaire was aimed at obtaining the views of the respondents on the trends affecting the legal profession and on the reforms needed to transform the profession into a modern one.

The questionnaire used for the study comprised of 92 questions in 5 sections with the sections as follows:

Dissertation - The Malaysian Legal Profession & Globalization

© 2006 Devasenathy Pathy Rajah of www.TheCyberLaw.net

Section 1: Information on the bio-data of the respondents.

Section 2: Information about the respondents firm / legal department.

Section 3: Joining Multi-Discipline Practice and its effects on the legal profession.

Section 4: Issues pertaining to legal marketing and advertisement.

Section 5: General issues relating to legal education, new practice models and the relationship between globalization on legal competency.

All rights reserved. No part of this document may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopying, recording, faxing, e-mailing, posting online, or by any information storage and retrieval system, without written permission from Devasenathy Pathy Rajah of www.TheCyberLaw.net