



INTERVIEW WITH RAGUNATH KESAVAN, PRESIDENT OF THE BAR COUNCIL OF MALAYSIA

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Interview conducted by panel members Shona Leppanen-Gibson (SLG), Vicknaraj Thanarajah (VT), and Wai Kiong Chan (WKC)

SLG: The Malaysian Bar Council has a reputation for taking a keen interest in the principles that uphold the democratic process in Malaysia. Do you see new media as having a significant impact on Malaysian society?

RK: Well, definitely. Look at what has happened – I mean I always look at March 8th, last year's election as a watershed in terms of what has happened in Malaysia particularly. I think, for whatever's happened and what's changing and things like that, I think new media had a big role to play in creating the paradigm shift of how people looked at Malaysian politics. So in that sense, yes, a significant impact on Malaysian society.

WKC: The Malaysian Bar Council website was one of the first websites that hosted news articles and media clips from various sources. What was the purpose of this and has it altered the role of the Bar Council?

RK: Well I think that when we set up the website the main aim was to communicate with the members. But I think in that sense we didn't expect the popularity in terms of number of hits we've



had on the website. And I think we have evolved from merely providing the kind of communication to members to trying to be the first to sort of deliver the news, not only of what's happening in Malaysia, but news of what's happening all over the world. We try to link it with rule of law, we try to link it with justice, things like that, so in that sense we try to make it as interactive as possible. And in terms of whether it has altered the role of the Bar Council, well, in terms of profile, yes. In fact the Bar Council website is very popular

anytime we go overseas, any of the law societies they say it is the first website they click on to find out in the morning what is happening (in Malaysia).

VT: Mr Ragnath Kesavan, what is your perspectives on new media freedom and censorship?

RK: Well when you talk about new media I think that because of how it has evolved, I don't think that censorship is ever possible in the sense of what we're used to in Malaysia. Media freedom, responsibility – it becomes an area where eventually I think it will be self regulating. It is very very

difficult to have any form of censorship, so generally I think the explosion of blogs and websites and alternative media – there is a huge lot of information available out there and I think survival – some of the websites may not survive. I think eventually it is a question of how reliable you are and how accurate you are and how transparent you are and I think that is the key word for survival in new media.

SLG: In your view, is the influence of new media on the political system significant? Has it altered the dynamics of the relationship between politicians and citizens?

RK: In a Malaysian context yes. We always had this – the Malaysian political landscape had always been shaped by mainstream media. Mainstream media had always sort of – whether it was TV, or radio or newspapers – for a very long time the only information you could get in Malaysia was through the mainstream media. And when there was this explosion of new media, many laws became obsolete in the sense that the printing presses and publications act, any form of censorship, and then you had even the sedition act you know, all kinds of things to do with new media. In a sense I think the government was actually struggling to cope with new media. We had a situation where you know it was a question of trying to use the mainstream media to block off new media. But I think eventually the realisation is that if you can't beat them join them. So they've also tried to hook onto new media. But the problem is also the explosion of news which has come out – not all of it is accurate, not all of it is true, but a lot of it is opinions, reviews, you have – especially now, you have opposition views so you can get them quite easily, quite freely in the new media. So in that sense the change in the political system, there is a need to be more accountable. Things which are raised in the blogs, new media – the politicians have had to deny or to explain their position in the mainstream media as well. So huge significance in terms of what has happened and what is the role of new media in Malaysia. What we have never had, we now have with an explosion of information available.

WKC: What is your perspective on the Bill of Guarantees under the CMA 1998?

RK: Well in a sense I don't think there is any significant impact. There is an attempt to clamp down but it's extremely difficult to monitor, extremely difficult to censor and it is also very difficult to take legal action in any form, legal action against bloggers. So because it seems to exist in a completely different world and in terms of the courts are struggling, the prosecution is struggling – I mean even if you have someone who actually abuses new media, we have not really had any cases that have been successfully prosecuted yet. It is very new as well here in Malaysia. So the general rules... the general rules of evidence, the general rules relating to even publication and things like that, it's not that easy for the prosecutors. So the legal status – the government has adopted this position that we have to keep the Internet free, there's little or very little censorship. The reason being we have to promote Malaysia as a centre for trade, commerce and business environment and things like that. So I think it is very difficult to go backwards so these guarantees under the CMA and things like that so far they have been playing it safe. Again I think the Malaysian perspective is a bit different. Although you have fairly high Internet penetration, it is a very urban phenomenon. So again if you look at even the March 8th election and things like that, there's a huge rural support for the Government. So you don't have that much access to the Internet in the rural area. So in a sense there I think there is a bit of a – for the Government again– what to do? Do you want to put so much emphasis on new media when the mainstream media and the old media seems to work as

well? Television again one of the largest in terms of penetration, in places like Sabah and Sarawak with their huge rural populations. So in that sense I don't think that they seem to understand the impact of it. They are not equipped to understand what the impact of it is.

VT: Just to digress again. The Bill of Guarantees is stated – under both it is actually stated under the Communications and Multimedia Act 1998 and also under the schedule of the Communications and Multimedia Act 1998. Guarantee number seven specifically speaks about non-censorship of the Internet. Now, although it is not legislation as such but it is still a guarantee by the Government. Do you see, what is your opinion if – on the Bill of Guarantee as a legal document? Is it a guarantee from the Government? What's its status? Do you think – if the government delegates on this guarantee what is the consequences, if any?

RK: Well I don't think they would because I think it is just so difficult and it is not practical at all to censor or control. There was an attempt to shut down *Malaysia Today* for a short while. I think immediately it was revoked and allowed to operate. The problem is that the backlash from any form of censorship will be I think too difficult for the government to handle. It is not worth the effort. The idea should be that if you have any form of misinformation or untruths I think the position should be too actually counter it by explaining the position rather than cutting off any source of misinformation. The problem is that you may shut down one site another site will just reopen again and most of these sites are hosted overseas. So you have a problem with that. So I don't think in a sense the Bill of Guarantees sort of guarantees the non-censorship of Internet. And I think we have reached a stage where in Malaysia it is going to be very difficult to digress so I don't think it is going to happen.

VT: How has the Bar Council used new media to organise its activities in particular lobbying activities such as the marches and the Walk for Justice which was renowned even in Australia?

RK: Well I think in terms of new media what we have is – of course is very basic use of new media and Internet. We hardly ever send out any circulars or hard copies any more – one is cost, the other is speed. In fact about seventy percent of our members are actually online or have Internet access. Or Internet access as in Internet access in their office so it is there in real time, in that sense. So in terms of costs it's very helpful, in terms of access to members, again, it's very helpful, and I think we have also technology in terms of SMS through the Internet and things like that which has been very helpful. So most of our activities which require mobilisation we do it through the Internet and of course the website. So it has been very helpful.

SLG: What are your perspectives on social networking applications and sites, from a legal standpoint such as Facebook, Twitter, blogging etc? We are looking for your observations, your insights into how with they interact with the law in particular.

RK: Quite an interesting question I think. I think last week in an English court where someone had actually blogged spoken about – this was a police officer talking about his experience and things and the issue was one of privacy, did the privacy laws actually apply to someone who blogs? Interestingly the decision of the English courts was no, once you blog, it's public information and you lose your right to privacy. So I think what's important to understand is that social networking applications are great, Facebook, Twitter and things like that – I think you must also understand it comes with a responsibility. You put up photographs you put up – there's a lot of information where

things can be abused by third parties as well. So I think there has been an explosion of such social networking applications, I think there is a little bit of... I think we should sort of educate our citizens to understand what it means as well. What happens I think – once we put it up, it's there forever. You are in a relationship you put up this photograph, five years later you are no longer in that relationship, you are angry and upset, but it's still there, things like that, is one. You may actually expose yourself to a suit for instance. We don't know when we blog, we write, it is so easy to send out an email or a blog information or whatever it is criticising or condemning someone, so those are issues that individually people have to deal with. But in terms of access, in terms of what we are actually doing in Malaysia, the opposition politicians have been very good with Twitter, with blogging, even Facebook. They have no other way to reach out to their constituents for instance. It is a cheap, fast, efficient way of communicating with them. But in terms of legal issues well, the same issues would arise – if you are a responsible person, you know what to write, what not to write. So I think it's a concern more for teenagers perhaps, for people who give out too much information on blogs or Facebook. So that's the main concern I have.

WKC: In terms of the legal industry, has new media shaped the manner in which lawyers communicate and the environment in which they operate?

RK: If you talk about new media and how business – the legal business operates, lawyers have always been very conservative. Even when you email lawyers on official business, lawyers are have been very very conservative. There are issues as to whether email is acceptable. Of course it is but issues of to what extent. Can you give an undertaking by email, things like that, no signature and so on. So they are very very conservative when it comes to new media and how the legal industry actually works. But again you don't ever send hard copies when you are negotiating with the other side. Hard copies are hardly ever used, or even fax. It's all by email. So to and fro whether you are overseas or wherever you are. It's again the use of Internet. We are way, way behind the other professions, and I think we have to catch up. That's the way forward. And because it's so cost effective in terms of when you're dealing with clients and things like that. And even with Skype and Google and things like that, so I think that's the way forward. The younger ones are very apt, very good, very conversant with the new media. But the older ones are struggling a little. But in terms of the Malaysian bar looking at the demography of usage of the Internet, like the Bar Council, we have 36 members, we have a group called the Google Group. Most communications are done through this group. And in fact the senior ones are quite fast to respond. It's the middle ones that seem to have problems with it. But I don't think we have a choice. It is the only way forward.

VT: Taking into account the results of the 12th General Elections in 2008 and its new media participants do you think the Malaysian government is likely to introduce measures to curb or limit the effects of new media on the political process?

RK: I don't think so. It's not that they don't want to. I think they want to control it because they have always wanted to it control this aspect of Malaysian life. I don't think it can happen, purely because of what we are used to. We have been exposed to so much information, and it is very difficult to claw back what you have given is one. Secondly even if you want to, tactically it is quite difficult to scale down or limit unless of course you are looking at a country like Burma perhaps or China. And with the international trade that will bring out businesses and things like that. I don't think any form of limit or curbs can happen with new media. And I think the only way forward is for



Mr Ragu Kesavan with the NMIC Project Team

them to join in as well. And it is great for developing countries like Malaysia in that sense, because there is greater accountability now. You have alternative media available. If you don't have space in mainstream media you can reach out to alternative media. The issue is the level of penetration. If you have at the moment perhaps I would say a very conservative in terms of electorate. 25 to 30 per cent rely on new media. 60 or 70 per cent still rely on traditional mainstream media, newspapers,

television, things like that, and of course your political rallies and things like that. I don't think it will happen, but if it does again, of course our position has been any form of media censorship is against freedom of expression. Well I am quite optimistic that what has happened over the last four or five years is going to be very difficult to hold back, so I don't think it will happen.

VT: In the unlikely chance it does occur, what is your stance as the President of the Malaysian Bar Council?

K: Well, it would be very sad day for the country, and I think our position has always been very clear. Any form of censorship is against freedom of expression, freedom of speech, things like that. There are enough civil laws like defamation etc to deal with these issues, there's even criminal law. So there is no necessity to get any form of limit or curb on the new media. But again of course we would object vociferously.

VT: Thank you very much