

NINTH PARLIAMENT OF SINGAPORE

First Session

REPORT OF THE SELECT COMMITTEE ON THE
ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

[BILL NO. 18/98]

Presented to Parliament on

10th February, 1999

COMPOSITION OF THE SELECT COMMITTEE

The Administration of Muslim Law (Amendment) Bill [Bill No. 18/98] was committed to the Select Committee by resolution of Parliament on 30th June 1998. The Committee consisted of:

Mr Speaker (Mr Tan Soo Khoon) (*Chairman*)

Mr Abdullah Tarmugi, Minister for Community Development and Minister-in-charge of Muslim Affairs

Mr Ahmad Mohd Magad

Mr Mohamad Maidin B P M, Parliamentary Secretary, Ministry of Education

Encik Sidek bin Saniff, Senior Minister of State, Ministry of the Environment

Dr Yaacob Ibrahim, Parliamentary Secretary, Ministry of Communications

Encik Yatiman Yusof, Senior Parliamentary Secretary, Ministry of Information and the Arts

Mr Zainul Abidin Rasheed, Senior Parliamentary Secretary, Ministry of Foreign Affairs

Mr Zulkifli Bin Baharudin

Committee Clerk: Mr P. O. Ram

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**REPORT OF THE SELECT COMMITTEE ON THE
ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL
(BILL NO 18/98)**

The Select Committee, to whom the Administration of Muslim Law (Amendment) Bill (Bill No 18/98) was committed, has agreed to the following report:

Introduction

1 On 30th June 1998, Parliament by resolution committed the Administration of Muslim Law (Amendment) Bill to this Committee. In accordance with Standing Order 76 (Advertisement when the Bill was committed to a Select Committee), an advertisement inviting written representations on the Administration of Muslim Law (Amendment) Bill was published in the *Berita Harian*, *Lianhe Zaobao*, *Tamil Murasu* and *The Straits Times* of 13th July 98. Publicity to the invitation was also given in a press release. Written representations could be submitted in Malay, Chinese, Tamil or English. The closing date was 3rd August 98.

Written Representations Received

2 The Committee received a total of 31 written representations. These have been numbered as Paper Nos. 1 - 31. Two papers, Paper Nos. 30 and 31, which were received after the closing date were accepted by the Committee. A listing of the representations is in Appendix II.

Meetings of the Committee

3 The Committee held 4 meetings, 2 of which (26th October and 27th October 1998) were held to hear oral evidence.

Representors who gave Oral Evidence

4 Seven representors were invited to give oral evidence. They represent a cross section of the submissions received. The representors were:

Name	Paper No.
(1) Mr Supardi Sujak	2
(2) The Law Society of Singapore	4
(3) Persekutuan Seruan Islam Singapura (Jamiyah)	8
(4) Persatuan Guru-Guru Agama Singapura (Pergas)	9
(5) Young Women Muslim Association	10
(6) Mr Hj Hussien bin Abdul Latiff	18
(7) Ms Noor Aisha Abdul Rahman	28

The written submissions of these seven representors are at Appendix III. The Minutes of Evidence taken are in Appendix IV.

Representations to be Published

5 To reflect the wide range of views received, the Committee decided to publish 4 other written representations in this Report. They are:-

Name	Paper No.
(1) Maljis Pusat	7
(2) Association of Muslim Professionals	19
(3) Mr Rujok Pandi	21
(4) Ms Enon Mansor	22

Their written representations are at Appendix V.

The Committee's Views on the Main Issues Raised

6 In considering the amendments to the Administration of Muslim Law (Amendment) Bill, the Committee took into account the written submissions and oral evidence of the 7 representors, and the views of Members of Parliament expressed in the debates on the Second Reading of the Bill. This Report sets out the Committee's views on the main issues raised.

(A) General Issues

(1) Allowing Civil Courts to Hear Ancillary Matters on Divorce

7 18 out of 31 representations received either had reservations about or were against the amendment providing explicitly for the Civil Courts to hear matters ancillary to Muslim divorces. Only 4 representors supported it. The main reasons given by those who opposed or had reservations on the amendment were:

- (i) that it dilutes the status and powers of the Syariah Court;
- (ii) that more Muslims would turn to the Civil Courts when they should be going to the Syariah Court; and
- (iii) that the Civil Law applied by the Civil Courts may contradict Syariah law.

8 The Committee notes that under the Bill, none of the powers of the Syariah Court will be diluted or removed by the amendment. On the contrary, the Syariah Court will be given more powers as its leave would be required by parties for the commencement or continuation of proceedings in the Civil Courts involving matters relating to disposition or division of property on divorce or custody of children.

9 The Committee feels that Muslims should continue to enjoy the same right of access to the Civil Courts as non-Muslims except for matters affecting status (e.g. divorce and marriage) which is governed wholly by Muslim law. There may be good reasons why a party wishes to resolve certain issues in the Civil Courts instead of the Syariah Court, and this option should remain open to them. Also, conflict of laws and other related legal issues may arise which the Syariah Court is not equipped to handle. For example, in disputes over property, the legal claim could involve third parties who are non-Muslims. Another example will be cases involving property or parties overseas. In the *Zecha* case, for example, the jurisdiction of the Syariah Court was put into question by a US Court's decision. In the case, the judge made an order preventing either party from having the case heard in a religious court in Singapore.

10 As for conflict of laws, the Committee has not found any cause for concern over the ancillary matters allowed to be heard by the Civil Courts under the amendment. In consultation with the Attorney General's Chambers (AGC), the Courts, the Syariah Court and MUIS, the Committee found that there are only slight differences in basic principles between the 2 systems of law. In disputes over the custody of Muslim children, where there was particular concern expressed by some representors, the Committee found that there are no differences in basic principles between Syariah law and the Guardianship of Infants Act (GIA) as the welfare of the child is the paramount consideration in both cases. In any case, should a Civil Court have to consider the application of principles of religious law, it can seek advice from the Legal Committee of MUIS under section 32(4) of the AMLA.

11 Other representors suggested that instead of the amendments relating to the granting of leave being incorporated in the AMLA, the relevant sections (i.e. new sections 35A and 35B) should be removed and be incorporated in the Supreme Court of Judicature Act (SCJA) only. The representors felt incorporating these new sections in the AMLA gives the impression that it is the AMLA that empowers the Civil Courts to settle ancillary issues. The Committee feels that the provisions need to remain in the AMLA so as to make transparent the system for applying for leave to commence or continue civil proceedings and the staying of these proceedings.

12 However, to allay the fears and concerns expressed by some representors, the Committee agrees that there should be sufficient safeguards to ensure that couples who opt to go to the Civil Courts have made an informed choice. Under the Bill, any person wishing to go to the Civil Courts to settle matters relating to disposition or division of property on divorce or custody of children has to seek leave of the Syariah Court if his or her partner disagrees to do so. Any party aggrieved by the Syariah Court's decision not to grant leave can appeal to the Appeal Board for a final decision on the matter. This legal process gives the couple ample opportunity to understand the implications of their decisions.

13 However, no such safeguard exists for couples who, by mutual consent, choose to go to the Civil Courts to settle, for example, a dispute over the custody of a Muslim child. The Committee therefore recommends that such couples be required to be counseled by the Syariah Court. If they still insist, despite being counseled, they may proceed to have their case dealt with by the Civil Courts.

(2) Strengthening the Syariah Court

14 Many suggestions were received on improving the operations of the Syariah Court. The Syariah Court currently handles divorce proceedings and all ancillary matters relating thereto except maintenance of wife and children during marriage and maintenance of children after divorce. Because the Syariah Court lacks resources to deal with these maintenance matters, and the fact that redress is available under the Women's Charter, Muslim women have resorted to the Civil Courts to resolve their maintenance matters. Cases are also often heard long after divorce applications have been made. To improve the Syariah Court's ability to dispose of cases, the Select Committee recommends:

- (i) the appointment of a Senior President Syariah Court;
- (ii) the appointment of ad hoc Presidents of Syariah Court (to exercise the powers of the President on a case by case basis); and
- (iii) the appointment of a Registrar, Syariah Court.

15 A Senior President gives certainty as to who among the Presidents is the head of the Syariah Court and who can issue practice directions, court procedures, review legislation and be overall responsible for the directions of the Syariah Court. The panel of ad hoc Presidents will help cut down the present backlog of cases. Having a Registrar will help to relieve the non-substantive legal work of the Presidents. The Committee supports the move by the Minister for Community Development to review other administrative measures, procedures and manpower needs in the light of the Committee's recommendations, to enhance the efficiency of the Syariah Court.

(B) Specific Issues

(1) Incorporating the Women's Charter Principles for Disposition or Division of Matrimonial Property on Divorce

16 Several representors opined that the Syariah Court should not be bound by the principles in section 112 of the Women's Charter, relating to the disposition or division of matrimonial property on divorce. The current Bill provides that the Syariah Court applies these principles only in so far as they are consistent with Muslim law. The representations nevertheless reflect the religious sensitivity of those who feel that an explicit mention in the AMLA of the application of principles of the Women's Charter implies that Syariah law did not have these principles. The Committee recommends that the principles in section 112 of the Women's Charter that are consistent with Syariah law be explicitly incorporated into the AMLA.

(2) Nullity of Marriage

17 A representor cited a recent case in the Syariah Court where an issue arose as to whether a man could apply to nullify his marriage, and whether the Syariah

Court has jurisdiction to deal with ancillary matters arising from nullification of marriage. The Syariah Court has all along treated applications of nullification of marriage by men and the ancillary matters arising from nullification as being under its jurisdiction. The present AMLA however is not explicit on these matters, and seems to only allow women to apply for nullification of marriage. Under Islam, a man can do so if his spouse renounces the religion or if the marriage was not solemnised according to the strict Syariah requirements. To avoid any doubt, the Committee recommends that the Bill be amended to give explicit powers to the Syariah Court to hear an application by a man to nullify his marriage and to deal with ancillary issues arising from nullity of marriage in accordance with Syariah law.

(3) Wakafs

18 All wakafs are vested in MUIS under the existing AMLA. A representor suggested that the onus to register Muslim trusts or wakafs with MUIS be placed on the trustees of the wakafs. MUIS agrees with the suggestion. It is impossible for MUIS to know the existence of wakafs unless informed by the trustees. MUIS has on several occasions taken proceedings in court to recover wakaf properties disposed of by their trustees. The Committee recommends that the Bill be amended to make registration of wakafs mandatory.

(4) Non-compliance with Maintenance Orders

19 It was suggested that the Bill should include a fine for non-compliance of maintenance orders made by the Syariah Court. Other representors felt that it would be more meaningful to have civil measures such as attachment order instead of imprisonment or making the default a criminal offence. The Committee feels that imposing a fine on a defaulter does not help the aggrieved party, as in most cases the defaulter is unlikely to be able to pay. The provision for imprisonment is a sufficient general deterrent to would-be offenders. An attachment order or garnishee order to recover monies due to the wife from the defaulter is more apt. The Committee notes that this is already provided for under the Women's Charter, which would be applicable for the enforcement of orders of the Syariah Court by the District Courts.

(5) Leave from Appeal Board

20 Some representors felt that there is uncertainty as to which of the paragraphs (a) or (g) in the new section 55(l), is applicable for making an appeal to the Appeal Board against the decisions of the Syariah Court on the disposition or division of property on divorce. These paragraphs deal with the grounds for appeal to the Appeal Board. The Committee therefore recommends that a new paragraph be added to state explicitly that all decisions of the Syariah Court relating to the disposition or division of property on divorce or nullification of marriage are appealable.

(6) Appeal-Time Limit

21 There was a suggestion that the one-month limitation to appeal to the Appeal Board in the existing AMLA be restored. AGC has clarified that it is more appropriate to deal with this in the Rules. The Committee agrees and recommends that time limits for appeals should be provided for in the Rules to allow for future adjustments.

(7) Extending Protection to the Appeal Board

22 A representor suggested protecting the members of the Appeal Board from being sued. The present Bill only protects officers and members of the Syariah Court. The Committee agrees with the representor and recommends that the Bill be amended to extend the same protection to members of the Appeal Board.

(8) Definition of "Married Woman"

23 A representor suggested that the AMLA should state explicitly that a married woman upon whom talak has been pronounced can still have recourse to the AMLA. The Committee notes that a married woman on whom talak is pronounced is still a married woman as the divorce has not been registered. However, to remove any doubt, the Committee recommends that the term "married woman" in sections 47 to 49 be defined to state explicitly that it includes a woman against whom a talak has been pronounced by her husband.

(9) Role of Hakams or Arbitrators

24 Some representors felt that the role of Hakams or Arbitrators appointed under section 50 of the AMLA should be made clear. The Committee notes that under Syariah law, Hakams should try to effect reconciliation. If this is not possible, they should recommend to the Court to decree a divorce but should not decide on ancillary matters. Their decisions must also be referred to the President of the Syariah Court who may accept or reject it. The Committee recommends that the role of the Hakams be clarified in the Rules.

(10) Extending the President of Singapore's Powers to Make Rules

25 Some representors recommended making Rules of the Court to clarify the administration of justice. The Committee notes that the Syariah Court needs Rules for the administration of justice. It recommends that section 145(2) of the AMLA be amended to empower the President to make Rules relating to the procedure and practice of the Syariah Court and the Appeal Board and powers of the Registrar of the Syariah Court, etc.

(11) Regulating Haj Services and Goods, and Halal Matters

26 A representor suggested that those acting as guides for pilgrims should be qualified religious teachers so that those pilgrims are properly advised on the

performance of haj rites. The Committee agrees and recommends that this be taken up in the Rules. There was also a suggestion that the Travel Agents Act be amended to require any travel agent, if it wants to provide haj services, to seek MUIS's approval. The Committee feels that there is no need to amend the Travel Agents Act, as the amendments on the regulation of haj services are adequate.

27 A representor suggested giving MUIS the authority to control the use of the words "halal", "Islam" and "Muslim" in the names of companies, signboards and food outlets. The Committee is of the view that the amendments are sufficient in that they give MUIS exclusive control over the issuance of halal certificates, and prohibit the unauthorized use of specified halal certification marks.

Text of Amendments to the Bill

28 The amendments to the Administration of Muslim Law (Amendment) Bill which the Committee recommends are incorporated in the reprint of the Bill, which is annexed to this Report as Appendix I.

Appendix I

Reprint of the Administration of Muslim Law (Amendment) Bill

[Bill No. 18/98] as amended by the Select Committee

A BILL

intituled

An Act to amend the Administration of Muslim Law Act (Chapter 3 of the 1985 Revised Edition) and to make related amendments to the Subordinate Courts Act (Chapter 321 of the 1985 Revised Edition) and the Supreme Court of Judicature Act (Chapter 322 of the 1985 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Administration of Muslim Law (Amendment) Act 1999 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Amendment of section 2

2. Section 2 of the Administration of Muslim Law Act (referred to in this Act as the principal Act) is amended -

- (a) by inserting, immediately after the definition of "Fund", the following definitions:

""Haj" means a pilgrimage in accordance with the Muslim law;

"halal", in relation to any product, service or activity, means the requirements of the Muslim law are complied with in the production, processing, marketing, display or carrying out, as the case may be, of that product, service or activity;

"halal certificate", in relation to any product, service or activity, means a certificate to the effect that the requirements of the Muslim law are complied with in the production, processing, marketing, display or carrying out, as the case may be, of that product, service or activity;;

- (b) by inserting, immediately after the definition of "Registrar", the following definitions:

""specified halal certification mark" means any certification mark specified under section 88A (4);

"wakaf" means the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable;; and

- (c) by inserting, immediately after the word "for" in the second line of the definitions of "wakaf 'am" and "wakaf khas", the word "pious,".

Repeal and re-enactment of section 3

3. Section 3 of the principal Act is repealed and the following section substituted therefor:

"Establishment and functions of Majlis

3.-(1) As from the commencement of the Administration of Muslim Law (Amendment) Act 1999, the Majlis Ugama Islam, Singapura, shall continue in existence.

(2) It shall be the function and duty of the Majlis -

- (a) to advise the President of Singapore in matters relating to the Muslim religion in Singapore;
- (b) to administer matters relating to the Muslim religion and Muslims in Singapore including any matter relating to the Haj or halal certification;
- (c) to administer all Muslim endowments and funds vested in it under any written law or trust;
- (d) to administer the collection of zakat and fitrah and other charitable contributions for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with this Act;
- (e) to administer all mosques and Muslim religious schools in Singapore; and
- (f) to carry out such other functions and duties as are conferred upon the Majlis by or under this Act or any other written law."

Amendment of section 5

4. Section 5 of the principal Act is amended by inserting, immediately after subsection (3), the following subsections:

"(4) The Majlis may, with the approval of the Minister, form or participate in the formation of any company, or enter into any joint venture or partnership, to carry out any of the purposes of this Act.

(5) The Majlis may do such other acts as appear to the Majlis to be incidental or necessary to the discharge of its functions and duties under this Act."

Amendment of section 7

5. Section 7 of the principal Act is amended by inserting, immediately after subsection (6), the following subsection:

"(7) If the President dies or has his appointment revoked or otherwise vacates his office before the expiry of the term for which he has been appointed, a temporary President may be appointed by the President of Singapore for such period as the President of Singapore may determine to carry out the functions and duties of the President."

Repeal and re-enactment of section 26

6. Section 26 of the principal Act is repealed and the following section substituted therefor:

"Delegation of powers

26.-(1) The Majlis may, subject to such conditions and 5
restrictions as the Majlis may impose, delegate to any member or
committee of the Majlis or any person all or any of its functions
and powers vested by or under this Act or any other written law,
not being judicial or quasi-judicial powers.

(2) For the purposes of this section, the powers conferred 10
on the Majlis by sections 32 and 33 shall be deemed to be
quasi-judicial.

(3) Any function or power delegated under subsection (1)
may be exercised or performed by such member, committee or 15
person in the name and on behalf of the Majlis.

(4) It shall be the duty of every member, committee or person
to whom any power of the Majlis has been delegated to inform
the Majlis of all acts and things done by him or it in pursuance of
the delegation.

(5) The Majlis may continue to exercise a power conferred on 20
it or perform a function under this Act or any other written law
notwithstanding the delegation of such power or function under
this section."

New sections 34A and 34B

7. The principal Act is amended by inserting, immediately after 25
section 34, the following sections:

"Appointment of presidents and ad-hoc presidents

34A.-(1) The President of Singapore may appoint one or
more presidents of the Court and may designate one of the 30
presidents to be the senior president of the Court.

(2) Every proceeding in the Syariah Court and all business
arising thereout shall, except as otherwise provided by any
written law, be heard and disposed of before a president of
the Court.

(3) The distribution of business among the presidents of the Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the senior president of the Court.

5 (4) In order to facilitate the disposal of business in the Syariah Court, the President of Singapore may appoint one or more ad-hoc presidents of the Court for such period or periods as the President thinks fit.

10 (5) An ad-hoc president may, in such case as the senior president of the Court may specify, exercise all the powers and perform the functions of a president of the Court.

(6) Anything done by an ad-hoc president acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a president of the Court.

15 (7) The senior president of the Court may from time to time issue such directions relating to the practice of the Court as he thinks fit.

Appointment of registrar

20 **34B.-(1)** The President of Singapore may appoint a registrar of the Court.

(2) The registrar of the Court shall have such powers and duties as may be prescribed under this Act."

Amendment of section 35

8. Section 35 of the principal Act is amended -

- 25 (a) by deleting the words "and shall be presided over by a president to be appointed by the President of Singapore" in subsection (1); and
- (b) by inserting, immediately after the word "shall" in the first line of subsection (2), the words "have jurisdiction to".

New sections 35A and 35B

9. The principal Act is amended by inserting, immediately after section 35, the following sections:

"Leave to commence or to continue civil proceedings involving disposition or division of property on divorce or custody of children 5

35A.-(1) Any person who, on or after the commencement of proceedings for divorce in the Court or after the making of a decree or order for divorce by the Court or on or after the registration of a divorce under section 102, intends to commence 10 civil proceedings in any court involving any matter relating to the disposition or division of property on divorce or custody of any child where the parties are Muslims or were married under the provisions of the Muslim law, shall apply to the Court for leave to commence the civil proceedings. 15

(2) Where proceedings for divorce are commenced in the Court or a decree or order for divorce is made by the Court or a divorce is registered under section 102 after civil proceedings between the same parties are commenced in any court involving any matter relating to the custody of any child, any party who 20 intends to continue the civil proceedings shall apply to the Court for leave to continue the civil proceedings.

(3) The Court shall not grant leave to commence the civil proceedings under subsection (1) or to continue the civil proceedings under subsection (2) unless the Court is satisfied 25 that every party who will be affected by such leave has been notified of the application at least 7 days before the grant of such leave.

(4) The Court shall, if it grants the application for leave under subsection (1) or (2), issue a commencement certificate or a 30 continuation certificate, respectively, to the applicant -

- (a) not later than 21 days after granting such leave; or
- (b) where an appeal against the grant of such leave has been made under section 55, when the decision of the Court to grant such leave has been confirmed on appeal or the 35 appeal has been discontinued.

(5) This section shall not apply if the parties to the civil proceedings -

(a) mentioned in subsection (1) consent to the commencement of the civil proceedings in any court or mentioned in subsection (2) consent to the continuation of such proceedings; and

(b) mentioned in subsection (1) or (2) have obtained a certificate of attendance issued under subsection (7).

(6) Parties mentioned in subsection (1) or (2) shall, before commencing or continuing (as the case may be) the civil proceedings by consent, attend counselling provided by such person as the Court may appoint.

(7) The Court shall, after any party has been counselled under subsection (6), issue a certificate of attendance to that party.

Stay of proceedings involving certain matters

35B.-(1) The Court shall stay proceedings before it -

(a) involving any matter in respect of which it has issued a certificate under section 35A (4), upon issuing the certificate;

(b) involving any matter relating to maintenance of any wife during the subsistence of the marriage, if it comes to the knowledge of the Court that civil proceedings relating to maintenance of the wife have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;

(c) involving any matter relating to the maintenance of any child of the parties, if it comes to the knowledge of the Court that civil proceedings relating to the maintenance of the child have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;

(d) to which section 35A (1) would apply apart from section 35A (5), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been commenced in any court by the consent of the parties; or

(e) to which section 35A (2) would apply apart from section 35A (5), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been continued in any court by the consent of the parties. 5

(2) Where leave granted by the Court under section 35A is reversed on appeal under section 55, the Court may restore any proceedings which have been stayed under subsection (1) (a).

(3) Nothing in this section shall prevent the Court from exercising its powers under sections 51 (2) and 52 (1), (2) and (3) (a) and (b).". 10

Repeal of section 39

10. Section 39 of the principal Act is repealed.

Amendment of section 47

11. Section 47 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection: 15

"(5) For the purposes of this section and sections 48 and 49, "married woman" includes a woman against whom a talak has been pronounced by her husband.".

Amendment of section 49

12. Section 49 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

"(6) Subsections (1) (g) to (5) shall apply, with the necessary modifications, to a married man as they apply to a married woman.".

Amendment of section 51

13. Section 51 of the principal Act is amended by inserting, immediately after subsection (3), the following subsections:

"(4) The Court may vary or rescind any order made under this section on the application of the person in whose favour or against whom the order was made where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances. 30

(5) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months."

5 Amendment of section 52

14. Section 52 of the principal Act is amended by deleting subsections (3) and (4) and substituting the following subsections:

"(3) The Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered whether before or after the commencement of the Administration of Muslim Law (Amendment) Act 1999 under section 102, on the application of any party, make such orders as it thinks fit with respect to -

- (a) the payment of emas kahwin to the wife;
- (b) the payment of a consolatory gift or mutaah to the wife;
- (c) the custody, maintenance and education of the minor children of the parties; and
- (d) the disposition or division of property on divorce or nullification of marriage.

(4) The Court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

(5) Any order under this section may be made upon such terms and subject to such conditions (if any) as the Court thinks fit.

(6) The Court may, on the application of any interested person, vary or rescind any order made under this section where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.

(7) In making any order under subsection (3) (d), the Court shall have power to order the disposition or division between the parties of any property or the sale of any such property and the division between the parties of the proceeds of such sale in such proportions as the Court thinks just and equitable.

(8) It shall be the duty of the Court in deciding whether to exercise its powers under subsection (7) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property; 5
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage; 10
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party; 15
- (e) any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party; 20
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; 25
- (h) the income, earning, capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (i) the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future; 30
- (j) the standard of living enjoyed by the family before the breakdown of the marriage;
- (k) the age of each party and the duration of the marriage; 35
- (l) any physical or mental disability of either of the parties; and

(m) the value to either of the parties of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

5 (9) For the purposes of subsection (7), the Court may in particular, but without limiting the generality of subsections (4), (5) and (6), make any one or more of the following orders:

(a) an order for the sale of any property or any part thereof, and for the division, vesting or settlement of the proceeds;

10 (b) an order vesting any property owned by both parties jointly in both the parties in common in such shares as the Court considers just and equitable;

15 (c) an order vesting any property or any part thereof in either party;

(d) an order for any property, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;

20 (e) an order postponing the sale or vesting of any share in any property, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

25 (f) an order granting to either party, for such period and on such terms as the Court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party; and

30 (g) an order for the payment of a sum of money by one party to the other party.

(10) Where, under any order made under this section, one party is or may become liable to pay to the other party a sum of money, the Court may direct that the money shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions as the Court thinks fit.

(11) Where, pursuant to this section, the Court makes an order for the sale of any property and for the division,

application or settlement of the proceeds, the Court may appoint a person to sell the property and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the asset is vested. 5

(12) Where the Court, by any order under this section, appoints a person (including the registrar or other officer of the Court) to act as a trustee or to sell any property and to divide, apply and settle the proceeds thereof, the Court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his costs and expenses. 10

(13) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months. 15

(14) For the purposes of this section, "property" means -

- (a) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and 20
- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.". 25

Repeal and re-enactment of section 53 and new sections 53A and 53B

15. Section 53 of the principal Act is repealed and the following sections substituted therefor: 30

"Enforcement of orders

53.-(1) The Court may, for every breach of an order made under section 51 or 52, direct the amount or the value of the property due to be levied in the manner provided for levying fines imposed by a Magistrate's Court. 35

(2) For the purposes of enforcement of any order made under this Part, any party interested may apply for the order to be registered in a District Court in accordance with the Rules of Court and the District Court shall register the order in accordance with the Rules of Court.

(3) From the date of registration of an order under subsection (2), the order shall be of the same force and effect, and all proceedings may be taken on the order, for the purposes of enforcement as if it had been an order originally obtained in the District Court which shall have power to enforce it accordingly.

(4) A District Court shall have jurisdiction to enforce any order in accordance with subsection (3) regardless of the monetary amount involved.

(5) In enforcing a custody order registered under subsection (2), a District Court may exercise the powers conferred on the High Court by section 14 of the Guardianship of Infants Act (Cap. 122) except that the reference to the sheriff in that section shall be read as a reference to a bailiff for the purposes of this subsection.

Execution of deed or indorsement of negotiable instrument

53A.-(1) If a judgment or order of the Court is for the execution of a deed, or signing of a document, or for the indorsement of a negotiable instrument, and the party ordered to execute, sign or indorse such instrument is absent, or neglects or refuses to do so, any party interested in having the same executed, signed or indorsed, may prepare a deed, document or indorsement of the instrument in accordance with the terms of the judgment or order, and tender the same to the Court for execution upon the proper stamp, if any is required by law.

(2) The signature thereof by the registrar or any president of the Court shall have the same effect as the execution, signing or indorsement thereof by the party ordered to execute.

(3) Nothing in this section shall be taken to abridge the powers of a court under section 53.

(4) This section and sections 51 (4) and (5), 52 (6) and (13) and 53 shall also apply to any judgment or order of the Court

made before the commencement of the Administration of Muslim Law (Amendment) Act 1999.

Costs

53B. The Court may, in its discretion, order any party to pay any costs of any proceedings under this Part, including travelling and subsistence expenses of the parties and witnesses, and shall itself assess the amount of any costs so ordered to be paid." 5

Amendment of section 55

16. Section 55 of the principal Act is amended -

(a) by deleting subsections (1), (2) and (3) and substituting the following subsections:

"(1) An appeal shall lie to an Appeal Board constituted under this section from any decision of the Court -

(a) by any person aggrieved by the decision if the amount in issue on appeal is not less than \$450; 15

(b) in all cases involving any decision as to personal status, by any person aggrieved by the decision;

(c) in all cases relating to maintenance, by any person aggrieved by the decision;

(d) in all cases relating to custody of minor children, by any person aggrieved by the decision; 20

(e) in all cases relating to the disposition or division of property on divorce or nullification of marriage, by any party aggrieved by the decision;

(f) to grant or refuse leave to commence or to continue civil proceedings under section 35A, by the other party in the civil proceedings; or 25

(g) in any other case, with the leave of the Appeal Board.

(2) No appeal under subsection (1) (a), (b), (c), (d) or (e) shall lie against a decision of the Court by consent except with the leave of the Appeal Board."; 30

(b) by deleting the word "annually" in the second line of subsection (4) and substituting the words "at least once in every 2 years"; 35

- (c) by inserting, immediately after the words "subsection (1)" in the third line of subsection (5), the words "or (2)"; and
- (d) by inserting, immediately after the word "retrial" at the end of subsection (6), the words ", or award costs if it thinks fit".

5 **New sections 56A and 56B**

17. The principal Act is amended by inserting, immediately after section 56, the following sections:

"Decision of Court and Appeal Board to be final

10 56A. Subject to the provisions of this Act, any decision of the Court or the Appeal Board shall be final and conclusive, and no decision or order of the Court or the Appeal Board shall be challenged, appealed against, reviewed, quashed or called into question in any court and shall not be subject to certiorari, prohibition, mandamus or injunction in any court on any
15 account.

Protection of members of Court or Appeal Board, etc.

20 **56B.-(1)** A member of the Court or an Appeal Board, or the registrar of the Court, shall not be liable to be sued for any act done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, if he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

25 (2) No officer of the Court or any other person expressly authorised by the Court charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the Court shall be liable to be sued for the execution of or attempting to execute the writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect
30 execution, unless he knowingly acted in excess of the authority conferred upon him by the writ, summons, warrant, order, notice or other mandatory process.

35 (3) The officer or other person referred to in subsection (2) shall not be deemed to have acted knowingly in excess of his authority merely by reason of the existence of a dispute as to the ownership of any property seized under any writ or order of execution."

Repeal and re-enactment of sections 64, 65 and 66

18. Sections 64, 65 and 66 of the principal Act are repealed and the following sections substituted therefor:

"Annual report

64. The Majlis shall, as soon as practicable after the end of 5
each financial year, submit to the Minister an annual report on
the activities of the Majlis during the preceding financial year.

Financial provisions relating to trust, wakaf, nazar and mosque

65. The financial provisions set out in the Third Schedule shall
apply to all mosques and all properties, investments and assets 10
vested in the Majlis subject to any trust, wakaf or nazar which do
not form part of the Fund.

Registration of wakafs

66.-(1) Every wakaf, whether created before or after the
commencement of this Act, shall be registered at the office of 15
the Majlis.

(2) Application for registration shall be made by the
mutawalli of the wakaf.

(3) An application for registration shall be made in such form
and manner as the Majlis may require and shall contain the 20
following particulars:

- (a) a description of the wakaf properties sufficient for the
identification of the properties;
- (b) the gross annual income from the wakaf properties;
- (c) the amount of rates and taxes annually payable in 25
respect of the wakaf properties;
- (d) an estimate of the expenses annually incurred in the
realisation to the income of the wakaf properties;
- (e) the amount set apart under the wakaf for -
 - (i) the salary of the mutawalli and allowances to 30
the individuals;
 - (ii) purely religious purposes;
 - (iii) charitable purposes; and
 - (iv) pious and any other purposes; and

(f) any other particulars required by the Majlis.

5 (4) Every application shall be accompanied by a copy of the wakaf deed, or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakaf.

(5) The Majlis may require the applicant to supply any further particulars or information that the Majlis may consider necessary.

10 (6) On receipt of an application for registration, the Majlis may, before the registration of the wakaf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars in the application.

15 (7) When an application is made by any person other than the person managing the wakaf property, the Majlis shall, before registering the wakaf, give notice of the application to the person managing the wakaf property and shall hear him if he desires to be heard.

20 (8) In the case of wakafs created before the date of commencement of the Administration of Muslim Law (Amendment) Act 1999, every application for registration shall be made within 6 months from that date; and in the case of wakafs created after that date, within 6 months from the date of the creation of the wakaf.

25 (9) The Majlis shall maintain a register of wakafs in such manner as the Majlis may think fit, including in electronic form in a computer, in which shall be entered such particulars as the Majlis may from time to time determine.

30 (10) The Majlis may itself cause a wakaf to be registered or may at any time amend the register of wakafs.

(11) Any mutawalli of a wakaf who fails to -

- (a) apply for the registration of the wakaf;
- (b) furnish statements of particulars as required under this section;
- 35 (c) supply information or particulars as required by the Majlis;

- (d) allow inspection of wakaf properties, accounts, records or deeds and documents relating to the wakaf;
- (e) deliver possession of any wakaf property, if ordered by the Majlis;
- (f) carry out the directions of the Majlis; or 5
- (g) do any other act which he is lawfully required to do by or under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing 10 offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(12) The Majlis may, with the approval of the Minister, make rules to provide -

- (a) for the preparation of annual statements of accounts, 15 reports and returns by the mutawalli of wakafs and for their submission to the Majlis;
- (b) for the payment of fees for the inspection of, and extraction from, the register of wakafs; and
- (c) generally for giving full effect to or for carrying out the 20 purposes of this section."

Amendment of section 67

19. Section 67 of the principal Act is amended -

- (a) by deleting the word "December" in the second line of subsection (1) and substituting the word "October"; and 25
- (b) by deleting the words "30th June" in the third line of subsection (2) and substituting the words "31st March".

Amendment of section 69

20. Section 69 of the principal Act is amended by deleting 30 subsections (2) and (3).

Amendment of section 87

21. Section 87 of the principal Act is amended by inserting, immediately after subsection (6), the following subsection:

5 "(7) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes of this section."

New Part VA

22. The principal Act is amended by inserting, immediately after Part V, the following Part:

"PART VA

10 HALAL AND HAJ MATTERS

Halal certificates

15 88A.-(1) The Majlis may issue halal certificates in relation to any product, service or activity and regulate the holders of such certificates to ensure that the requirements of the Muslim law are complied with in the production, processing, marketing or display of that product, the provision of that service or the carrying out of that activity.

 (2) An application for a halal certificate shall be in such form as the Majlis may require.

20 (3) The Majlis may, in issuing a halal certificate, impose such condition as it thinks fit and may at any time vary, remove or add to such condition.

25 (4) The Majlis may, by notification in the *Gazette*, specify any certification mark of the Majlis for use in relation to any product, service or activity in respect of which it has issued a halal certificate under subsection (1).

 (5) Any person who, without the approval of the Majlis -

30 (a) issues a halal certificate in relation to any product, service or activity; or

 (b) uses any specified halal certification mark or any colourable imitation thereof,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(6) The Majlis may, in granting approval to any person to issue any halal certificate or to use any specified halal certification mark, impose such condition as it thinks fit and may at any time vary, remove or add to such condition.

(7) The Majlis may revoke or suspend its approval granted to any person to issue any halal certificate or to use any specified halal certification mark if the person fails to comply with any condition imposed under subsection (6).

(8) Any person aggrieved by any decision of the Majlis made under this section may appeal to the Minister whose decision shall be final.

(9) For the purposes of this Act, "product" includes food and foodstuffs.

Regulation of Haj services and goods

88B. The Majlis may regulate any person providing goods or services for the purposes of the Haj -

- (a) to ensure that the requirements of the Muslim law are complied with in relation to the provision of those goods or services;
- (b) to safeguard the safety and welfare of persons to whom those goods or services are provided; and
- (c) to promote the proper administration of any matter relating to the Haj.

Rules to regulate halal and Haj matters

88C.-(1) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes and provisions of this Part.

(2) Without prejudice to the generality of subsection (1), the Majlis may, with the approval of the Minister, make rules for or in respect of the following matters:

- (a) to regulate the use and issue of halal certificates and the use of specified halal certification marks;
- (b) to require travel agents to obtain the approval of the Majlis to provide goods or services for the purposes of the Haj and to provide for the withdrawal of such approval in certain circumstances;

(c) to require travel agents providing goods or services for the purposes of the Haj to maintain accounts for clients' money received in respect of those goods or services and to regulate the particulars, report and other information to be kept and furnished in relation to such accounts;

(d) to regulate the number of persons to whom travel agents may provide goods or services for the purposes of the Haj;

(e) to provide that any contravention or failure to comply with any of such rules shall be an offence punishable with a fine not exceeding \$10,000 or with imprisonment for a term not exceeding 12 months or with both; and

(f) to prescribe fees and charges for the purposes of this Part.

(3) For the purposes of this section, "travel agent" means a person who holds a licence granted under the Travel Agents Act (Cap. 334).".

Amendment of section 102

23. Section 102 of the principal Act is amended by deleting subsection (3) and substituting the following subsection:

"(3) A Kadi shall not register any divorce or revocation of divorce unless he is satisfied after inquiry -

(a) that the parties have consented to the registration thereof; and

(b) in the case of registration of a divorce -

(i) that all payments of emas kahwin, any consolatory gift or mutaah and any maintenance for the wife for the period of her iddah have been paid in full; and

(ii) that the parties have no minor children and no matrimonial home.".

Amendment of section 139

24. Section 139 (1) of the principal Act is amended -

- (a) by deleting "\$500" in the fifth line and substituting "2,000"; and
- (b) by deleting the words "6 months" in the last line and substituting the words "12 months".

Amendment of section 145

25. Section 145 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

"(2) Without prejudice to the generality of subsection (1), the power to make rules shall include -

- (a) regulating and prescribing the procedure and practice of the Syariah Court and the Appeal Board, including the manner of service of summons;
- (b) prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a president of the Syariah Court may be transacted or exercised by the registrar of the Syariah Court (including provisions for and concerning appeals from decisions of the registrar of the Syariah Court); and
- (c) prescribing the fees to be charged by the Syariah Court, the Appeal Board, and by the Registrar, Kadis and Naib Kadis and the incidence and application of such fees."

Amendment of First Schedule

26. The First Schedule to the principal Act is amended by inserting, immediately after paragraph 13, the following paragraphs:

"14. The financial year of the Majlis shall begin on 1st January and end on 31st December in each year.

15. This Schedule shall apply to the accounts of the General Endowment Fund, the Mosque Building and Mendaki Fund and such other accounts as the Minister may, by notification in the *Gazette*, specify."

New Third Schedule

27. The principal Act is amended by inserting, immediately after the Second Schedule, the following Schedule:

"THIRD SCHEDULE

Section 65

FINANCIAL PROVISIONS RELATING TO TRUST, WAKAF, NAZAR AND MOSQUE

1. The trustees, mutawallis or management board of any trust, wakaf, nazar or mosque to which this Schedule applies, as the case may be, shall -

(a) keep or cause to be kept proper accounts and records of its transactions and affairs; and

(b) after the close of each financial year prepare financial statements in respect of the trust, wakaf, nazar or mosque for that year.

2. The financial statements shall, as soon as possible after the close of each financial year but not later than 6 months after the close of the financial year, be submitted to a meeting of the Majlis.

3. The accounts shall, before their submission to the Majlis under paragraph 2, be audited by an auditor to be appointed by the Majlis and approved by the Minister.

4. A person shall not be qualified for appointment as an auditor under paragraph 3 unless he is an approved company auditor under the Companies Act (Cap. 50).

5. The remuneration of the auditor shall be paid out of the funds of the trust, wakaf, nazar or mosque, as the case may be.

6. The Majlis and the auditor or their authorised representatives shall be entitled at all reasonable times to full and free access to all accounting and other records relating, directly or indirectly, to the financial transactions of the trust, wakaf, nazar or mosque, as the case may be, and may make copies of or extracts from any such accounting and other records.

7. The auditor shall in his report state -

(a) whether the financial statements show fairly the financial transactions and the state of affairs of the trust, wakaf, nazar or mosque, as the case may be;

(b) whether proper accounting and other records have been kept, including records of all assets of the trust, wakaf, nazar or mosque, as the case may be, whether purchased, donated or otherwise;

(c) whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the trust, wakaf, nazar or mosque, as the case may be, during the financial year were in accordance with the provisions of this Act; and

(d) such other matters arising from the audit as he considers necessary.

8. The Majlis and the auditor or their authorised representatives may require any person to furnish them with such information in the possession of that person or to which that person has access as the Majlis or the auditor considers necessary for the purposes of their functions under this Act. 5

9. Any person who fails, without reasonable excuse, to comply with any requirement of the Majlis or the auditor under paragraph 8 or who otherwise hinders, obstructs or delays the Majlis or the auditor in the performance of their duties or the exercise of their powers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000. 10

10. The Secretary of the Majlis shall, within one month after the meeting of the Majlis referred to in paragraph 2, submit a copy of the audited financial statements, together with a copy of the auditor's report, to the Minister; and in the case of any mosque, the Majlis shall also cause a copy of the same to be exhibited at the mosque. 15

11. The financial year of any trust, wakaf, nazar or mosque to which this Schedule applies shall begin on 1st January and end on 31st December in each year."

Related amendments to Act and other written laws 20

28.-(1) The principal Act is amended -

- (a) by deleting the word "the" in the fifth line of section 41 (1) and substituting the word "any";
- (b) by deleting the words "the President" in the following provisions and substituting in each case the words "any president": 25
Sections 99 (4), 101 (4), 143 (2) and 144;
- (c) by deleting the words "presiding officer" in the following provisions and substituting in each case the word "registrar": 30
Sections 36 (2) and 49 (5);
- (d) by inserting, immediately after the word "divorce", in section 35 (2) (d) and (3) (line 5), the words "or nullification of marriage"; and
- (e) by deleting the words "The President" in section 100 (3) and (4) and substituting in each case the words "Any president". 35

(2) The enactments mentioned in the Schedule shall have effect subject to the amendments to the extent therein specified.

Savings

29.-(1) Subject to subsection (2), nothing in section 9 or 28 (2) shall affect any proceedings involving matters relating to maintenance, disposition or division of property on divorce or the custody of children, where the parties are Muslims or were married under the provisions of the Muslim law -

- 10

(2) Section 35B (1) (b) and (c) of the principal Act shall also apply to civil proceedings commenced before the appointed day.

(3) Section 16 (a) shall not apply to any decision of the Syariah Court made before the appointed day and section 55 (1), (2) and (3) of the principal Act in force before that day shall apply to any such decision as if this Act had not been enacted.

(4) In this section, "appointed day" means the date of commencement of this Act.

THE SCHEDULE

20

Section 23 (2)

RELATED AMENDMENTS

First column

Secondcolumn

(1) Subordinate Courts
Act (Cap. 321)

25 Section 19 Delete subsection (4) and substitute the following
 subsections:

30

THE SCHEDULE - *continued*

First column

Second column

(4A) A District Court's jurisdiction to hear and try any civil proceeding which comes within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act (Cap. 3) shall be the same as if section 17A of the Supreme Court of Judicature Act (Cap. 322) applies to the District Court with the modification that any reference therein to the High Court shall be read as a reference to a District Court."

New section 45

Insert, immediately after section 44, the following section:

"Execution of deed or indorsement of negotiable instrument

45.-(1) If a judgment or order of a District Court is for the execution of a deed, or signing of a document, or for the indorsement of a negotiable instrument, and the party ordered to execute, sign or indorse such instrument is absent, or neglects or refuses to do so, any party interested in having the same executed, signed, or indorsed, may prepare a deed, or document, or indorsement of the instrument in accordance with the terms of the judgment or order, and tender the same to a District Court for execution upon the proper stamp, if any is required by law, and the signature thereof by the registrar, by order of the District Court, shall have the same effect as the execution, signing or indorsement thereof by the party ordered to execute.

(2) Nothing in this section shall be held to abridge the powers of a District Court to proceed by attachment against any person neglecting or refusing to execute, sign or indorse any such instrument."

(2) Supreme Court of
Judicature Act
(Cap. 322)

(a) Section 16

Delete subsection (2).

40

THE SCHEDULE -continued

First column
(b) New
section 17A

Second column
Insert, immediately after section 17, the following
section:

**"Civil jurisdiction - concurrent jurisdiction with
Syariah Court in certain matters**

17A.-(1) Notwithstanding sections 16 and 17,
the High Court shall have no jurisdiction to hear
and try any civil proceedings involving matters
which come within the jurisdiction of the Syariah
Court under section 35 (2) (a), (b) or (c) of the
Administration of Muslim Law Act (Cap. 3) in
which all the parties are Muslims or where the
parties were married under the provisions of the
Muslim law.

(2) Notwithstanding that such matters come
within the jurisdiction of the Syariah Court under
section 35 (2) (d) or (e), 51 or 52 (3) (c) or (d) of the
Administration of Muslim Law Act, the High Court
shall have jurisdiction as is vested in it by any
written law to hear and try any civil proceedings
involving matters relating to -

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on
divorce.

(3) Where civil proceedings involving any matter
referred to in subsection (2) (b) or (c) and involving
parties who are Muslims or were married under the
provisions of the Muslim law are commenced in the
High Court, the High Court shall stay the civil
proceedings -

- (a) involving any matter referred to in
subsection (2) (b) or (c), if the civil -
proceedings are commenced on or after
the commencement of proceedings for
divorce in the Syariah Court or after the
making of a decree or order for divorce
by the Syariah Court or on or after the
registration of any divorce under section
102 of the Administration of Muslim Law
Act (Cap. 3) between the same parties,

THE SCHEDULE - *continued*

First column

Second column

unless a Syariah Court commencement certificate in respect of the civil proceedings has been filed with the High Court; 5

- (b) involving any matter referred to in subsection (2) (b), if proceedings for divorce are commenced in the Syariah Court or a decree or order for divorce is made by the Syariah Court or a divorce is registered under section 102 of the Administration of Muslim Law Act between the same parties after the commencement of the civil proceedings, unless a Syariah Court continuation certificate in respect of the civil proceedings has been filed with the High Court. 10 15

(4) For the purposes of subsection (3), where the proceedings in the Syariah Court are commenced on the same day as the civil proceedings in the High Court, the proceedings in the Syariah Court shall be deemed to have been commenced before the civil proceedings. 20 25

(5) Subsection (3) (a) shall not apply if the civil proceedings referred to therein are commenced in the High Court by the consent of the parties to the proceedings and the certificates of attendance of the parties issued under section 35A (7) of the Administration of Muslim Law Act have been filed in accordance with the Rules of Court. 30

(6) Subsection (3) (b) shall not apply if the civil proceedings referred to therein are continued by the consent of the parties to the proceedings and the certificates of attendance of the parties issued under section 35A (7) of the Administration of Muslim Law Act have been filed in accordance with the Rules of Court. 35

(7) For the avoidance of any doubt, the High Court, in exercising its jurisdiction or powers under subsection (2), shall apply the civil law. 40

THE SCHEDULE -continued

First column

Second column

(8) Notwithstanding section 3 (2) of the Women's Charter (Cap. 353), section 112 Of that Act shall apply to the High Court in the exercise of its jurisdiction or powers under subsection (2) (c).

(9) In this section -

"Syariah Court" means the Syariah Court constituted under the Administration of Muslim Law Act (Cap. 3);

"Syariah Court commencement certificate" means a commencement certificate issued by the Syariah Court under section 35A (4) of the Administration of Muslim Law Act;

"Syariah Court continuation certificate" means a continuation certificate issued by the Syariah Court under section 35A (4) of the Administration of Muslim Law Act."

**LIST OF INDIVIDUALS AND ORGANISATIONS
FROM WHOM WRITTEN REPRESENTATIONS WERE RECEIVED
BY THE SELECT COMMITTEE**

Those marked * were invited to appear before the Committee

<i>Paper No.</i>	<i>Representor</i>
1	Prophet Muhammad Birthday Memorial Scholarship Fund Board
2*	Mr Supardi Sujak
3	Mr Azmi Bin Abdul Samad
4*	The Law Society of Singapore
5	Singapore National Front
6	The Arab Association of Singapore
7	Majlis Pusat
8*	Persekutuan Seruan Islam Singapura
9*	Persatuan Guru-Guru Agama Singapura
10*	Young Women Muslim Association
11	Mr Mohd Yuni Bin Awi
12	South Indian Jamiathul Ulama
13	Federation of Indian Muslims
14	PAP Women's Wing Executive Committee
15	Ms Nargis Banu
16	Persatuan Islam (Singapura)
17	Fellowship of Muslim Students Association
18*	Mr Hj Hussien Bin Abdul Latiff
19	Association of Muslim Professionals
20	Dr Hussin Mutalib

<i>Paper No.</i>	<i>Representor</i>
21	Mr Rujok Pandi
22	Ms Enon Mansor (and two others)
23	Ms Khatijah Shaik Abu Bakar
24	Mr Mohamad Hafiz B Hassan
25	Mr Zainuddin bin Mohd Ismail
26	Mr Ibrahim bin Ariff
27	Mr Ayoob Yacoob Angullia
28*	Ms Noor Aisha Abdul Rahman
29	Ms Rohani Bte Hussein
30	Mr Mohd Murat Md Aris
31	Ms Salbiah Bte Awang (and two others)

WRITTEN REPRESENTATIONS

<i>Paper No.</i>	<i>Representors</i>	<i>Pages</i>
2	Mr Supardi Sujak	B 1-2
4	The Law Society of Singapore	B 3-18
7	Majlis Pusat	B 19-27
8	Persekutuan Seruan Islam Singapura	B 28-36
9	Persatuan Guru-Guru Agama Singapura	B 37-62
10	Young Women Muslim Association	B 63-64
18	Tuan Hj Hussien Bin Abdul Latiff	B 65-73
19	Association of Muslim Professionals	B 74-87
21	Mr Rujok Pandi	B 88-92
22	Ms Enon Mansor (<i>and two others</i>)	B 93-100
28	Ms Noor Aisha Abdul Rahman	B 101-107

Paper 2

From: Mr Supardi Sujak
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Dated: 31 July 1998

Received: 31 July 1998

ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

Introduction

The government has taken step to improve the position, status and jurisdiction of the Syariah Court by introducing this amendment Bill. With this amendment, improvement in the administration and status of the Syariah Court will enable it to dispense justice, at least as well as the civil courts.

The amendment among others contains mainly changes to strengthen two key institutions, the Syariah Court and the Islamic Religious Council or MUIS. A key change is a provision to allow Muslim divorce matters such as the settlement of matrimonial property and custody to be heard in the civil courts, giving the courts concurrent jurisdiction with the Syariah Court. While the civil courts base their decisions mainly on the legislation and the common law, the basis of the decisions of the Syariah Court is the Holy Qur'an and the Sunnah although references may also be made for guidance to legislation and the decisions of the courts.

Will the Concurrent Jurisdiction Dilute the Powers of the Syariah Court

The community has given their thoughts on this issue. Questions were raised among others, on the intention of the Bill in diluting the power of the Syariah Court. Comments were also made among others, that this amendment is a situation of "quick fixing" at resolving short term expedient needs such as clearing the backlog of Syariah Court cases. I think the central issue has been overlooked, thereby giving rise to different interpretation and understanding of the real situation as well as its problem.

This is not an issue of administrative efficiency of the Syariah Court. It is also not to create an opening to interfere in Muslim matters. However, it is selectively an issue that requires a practical solution and coming to grips with the problem. The problem of knowing the importance and urgency in coping with Muslim post-divorce matters - only changes must be made, for the benefit of the community at large. Therefore, the amendment will provide the Syariah Court real effectiveness and capabilities to function and cope with the overgrowing numbers of post-divorce cases.

The amendment has its intention of taking a long term view in upgrading the status of Syariah Court and developing the Syariah Court into a full-fledged court with the ability to handle cases effectively. It will also give more choice for Muslims to turn to the

civil courts in specific areas for resolution. Prior to this amendment, it is not surprising that the Muslims had gone to the civil courts to seek redress in matters like matrimonial property, maintenance and custody. This is something that we should be aware of as it highlights an alternative avenue to seek a better way for post divorce resolution. This better way is where the amendment will take care of it. Hence the amendment does not take away any of the function and jurisdiction of the Syariah Court, but it restores the Muslims' rightful access to civil courts, without this avenue, it will only provide another creation of backlog of cases.

A point to consider, if the resolution of post divorce cases can be resolved quickly, effectively and less painful, is it not the best way out. Are the present backlog cases in Syariah Court an indication of any future prospect for a quicker resolution? Although the Syariah Court has power under the AMLA to resolve maintenance disputes, the large number of claims and insufficient manpower have resulted in delays in handling such cases. So what's the option left?

It is time now we review the powers and practices of the Syariah Court and introduce changes to expedite the handling of Muslim post divorce cases, especially those involving maintenance claims. In addition, with the amendment, the power of the court's president would be enhanced, giving him the power to transfer matrimonial assets of disputing divorced couples, and this is definitely not a way to interpret as diluting the status and reduced the power of Syariah Court. Instead, it is a new beginning where eventually will pave way to further streamlining and strengthening the jurisdiction and improved system of the Syariah Court. Eventually, the concurrent jurisdiction of civil courts and Syariah Court will no longer be needed. As for now, the concurrent jurisdiction is the best solution - it guarantees quicker resolution.

Conclusion

The proposed legislation will not dilute the Islamic law, but in actual fact, provides provision of choice to Muslims, while at the same time, preserve the salience of that law. No doubt there are lots of concerns and reservations amongst the community over the amendment to the laws. For example, an average Muslim is often made to believe that a concurrent jurisdiction means the imposition of common law and jettisoning of all Islamic principles. This is not true. Islamic law is much more progressive and any common civil code is bound to contain many features of Islamic law.

Put it this way, since the time of the Prophet, he expected that some cases may face a judgement which may not have a specific solution in the Qur'an and Sunnah, and the judgement has to use his own discretion and judgement *ijtihad*, which is naturally guided by the spirit of Syariah and its general principles. Such a juristic discretion *ijtihad* may have to be generalised and codified in a state law, and not be left to judiciary personal differences.

Therefore, the amendment is in line with the fundamental of Islamic teachings as well as it enhances the status of the Syariah Court that will consequently strengthen the position of the Syariah Courts in the near future and this will benefit the Muslim community at large, especially so as we enter the new century.

Paper 4

From: The Law Society of Singapore
1 Colombo Court #08-29/30,
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Dated: 1 August 1998

Received: 1 August 1998

ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

INTRODUCTION

1. The above Amendments were read for the first time on 20 April 1998 in Bill No. 18/98. The Muslim Law Practice Committee ("MLC") has since studied the said Amendments and submitted a Report entitled "Some Views On The Proposed Amendments To The Administration of Muslim Law (Amendment) Bill" dated 23 June 1998 which was forwarded to the Honourable Minister-in-charge of Muslim Affairs.

2. The said Bill has been put to a Select Committee. The MLC has prepared this paper for submission to the Select Committee. This paper is a collective effort of the MLC which consists of the following members:

- (a) Ahmad Khalis bin Abdul Ghani (Chairman)
- (b) Ahmad Nizam Abbas (Vice-Chairman)
- (c) Anamah Tan
- (d) Halijah Mohamad
- (e) Sahul Hameed s/o Katuva
- (f) Mohd Lutfi bin Hussin
- (g) Noor Lila binte Abdul Hamid
- (h) Sheik Mustafa bin Abu Hassan
- (i) Alwiya binte Hanafi
- (j) Abdul Rohim bin Sarip
- (k) Faridah Eryani binte Pairin
- (l) Mirza Khaleel Namazie
- (m) Abdul Rahman bin Mohd Salleh.

3. The MLC acknowledges that it has received much input from fellow practitioners in the Syariah Court ("the Court"), the names of whom are too numerous to

mention in this paper. To these friends we are grateful.

4. This paper is based mainly on the MLC's report dated 23 June 1998. Our views have not changed fundamentally. However, in this paper we take the opportunity to clarify and further explain certain points, especially those relating to "Concurrent Jurisdiction" and Powers of the Court. For ease of reference we annex hereto a Bundle of Authorities' which are cited in this paper.

Proposed Section 35 (1)

5. The inclusion of the proposed Section 35 (1A) and (1B) allows the President of Singapore to appoint more than one president of the Syariah Court ("the Court") who have equal power, authority and jurisdiction. The principal Act states that the Court shall be "presided over by a president to be appointed by the President of Singapore" (emphasis ours). This amendment is intended to clear any doubts that there could be more than one president of the Court to cater for changing needs. In fact there are at present two presidents.

5A. In this regard, we urge that serious consideration be given to the appointment of Registrars for the Court. The need for a Registrar is more pressing in view of the added judicial duties envisaged by the amendments especially those relating to post divorce applications, enforcement of orders and other applications that may be dispensed with in Chambers. May we suggest a simple provision immediately after Section 35 (1B) to read:

"35 (1C) There shall be a Registrar of the Syariah Court to be appointed by the President of Singapore."

Proposed amendment to Section 35 (2)

6. The first line of the principal Act reads:

"The Court shall determine and hear all actions ...". The amendment seeks to make it read:

"The Court **shall have jurisdiction** to determine and hear all actions..."

The aim of this amendment seems to confirm the presently held view that Section 35 (2) confers jurisdiction on the Court. The inclusion of the word "jurisdiction" seeks to eliminate any doubt.

Proposed Section 35A

7. The scope of the proposed Section 35A covers two issues namely:

- (a) division and disposition of property on divorce
- (b) custody of children.

* Not reproduced.

8. Broadly speaking, the scheme of the amendment is as follows:

- (a) upon proceeding in the Court, parties may not commence civil proceedings at any court relating to the above issues unless there is leave of the Court or consent of both parties
- (b) where such civil proceedings have been commenced prior to proceedings in the Court, then such proceedings may not continue unless there is leave of the Court or by consent of both parties.

"Preservation of the Status Quo": A Clarification

9.-(1) It has been widely publicised in the media that the proposed Section 35A merely seeks to restore a previous legal position. A brochure issued by MUIS in Warita (Bilangan 116) states that:

"The choice to go to the Civil Courts was always open to Muslim couples under the AMLA and the Women's Charter. But recently the Civil Courts refused to hear cases relating to "harta sepencharian" and custody of children because it decided that they come under the power of the Syariah Court" (translation ours).

An article appearing in the Straits Times on 1 June 1998 delivered the same message. The same article quoted the Minister as saying that prior to the 1996 case of *Lathibaby Bevi*, Muslims had already gone to the civil courts to seek redress in matters like matrimonial property, maintenance and custody.

The impression given is that concurrent jurisdiction over such matters had always been with us, albeit in an unofficial form. It also implies that the Amendments seek to restore, by way of legislative clarification, the previous (i.e. prior to *Lathibaby Bevi*) position that "the choice to go to the Civil Courts was always open to Muslim couples...". The MLC is of the view that there may be a dangerous over-simplification of the actual situation here. A closer study is useful, especially on the following aspects:

- (a) the reasons for Muslim parties referring matters to the civil Court
- (b) whether they had unfettered right to refer to civil courts
- (c) the laws that apply to the matters that were referred to the civil court.

Custody

9.-(3) A cursory reading of the principal Act shows that the issue of custody does not come under the "jurisdiction provision" of Section 35 (2). Instead it comes under the "powers" provision of Section 52. An issue arose as to whether the Court has jurisdiction over custody matters where parties are Muslims or were married under Muslim law. If it does, then by virtue of Section 16 of the Supreme Court of Judicature Act ("SCJA"), the High Court does not have jurisdiction.

10. Due to this ambiguity in the principal Act, the High Court has been called upon to rule on this point on numerous occasions. Invariably, parties who apply to the High Court to decide on custody matters are driven by one or more of three motivations:

- (a) seeming advantage to one's cause
- (b) speed and expediency - especially relating to interim applications (in the Court, custody matters are heard in the main trial which normally would be fixed at least a year after issuance of summons; parties who need urgent recourse in the interim e.g. where one party refuses to grant the other access while waiting for trial, would find the Court lacking in this respect; it is only in recent months that the Court began to hear interim applications; even then its refusal to hear some interim applications show the need for clearer legislation in this respect)
- (c) facilities to enforce judgments.

In *Muhd Munir v Noor Hidah and others* [1991] 1 MLJ 276, Chan Sek Keong J (as he then was), addressed the issue of conflict of jurisdiction between the Court and the civil Courts in custody matters. He ruled that the **High Court would only have jurisdiction in a custody application if the Syariah Court itself has no occasion to exercise its powers to make custody orders under Section 52 (3) (c) of the principal Act. Where there is no divorce application**, the High Court would have jurisdiction to hear an application for custody of Muslim children under the Guardianship of Infants Act ("GIA"), because the Court could not exercise its power to do so.

In spite of the decision in *Muhd Munir*, based on anecdotal evidence the High Court had, prior to *Lathibaby Bevi*, on several occasions granted orders in respect of custody of children of Muslim marriage, even when there has been an order on the same issue made by the Syariah Court. However none of these decisions has been reported in the Law reports, and the basis for the High Court granting such orders remain uncertain. As such they do not constitute sound legal authority. Thus it is not quite correct to say that even prior to *Lathibaby Bevi* Muslim parties or parties married under Muslim law could refer custody disputes to the civil court.

11. Then came the decisions of Justice Kan Ting Chiu in *Hafiani bte Abdul Karim* [1996] 1 SLR and Justice G.P. Selvam in *Lathibaby Bevi v Abdul Mustapha* [1997] 3 SLR 1038. Both Judges held that where the Court has made a custody order in a divorce proceeding under Section 52 (3) of the principal Act, any application to vary the order should be decided in the Court. Justice Selvam emphatically stated:

".. this is the current status of the law and ... the High Court cannot interfere with it".

Both cases decided that where there have been proceedings in the Court, then the Court has jurisdiction over the said custody matter; thus the civil court's jurisdiction is excluded. The decision also implies that civil proceedings may be instituted so long as there are no proceedings in the Court. Once proceedings are commenced in the Court, then the Court assumes jurisdiction over the matter to the exclusion of other courts.

12. The proposed amendments seem to confirm the principle in *Lathibaby Bevi*. Moreover the civil courts have always held that it has jurisdiction to hear such custody applications if both parties consent to the matter being heard there. The amendments

however introduce a new avenue for reference to the civil court - where one party objects to referring custody issue to the civil court, the other party may seek leave from the Court. Such leave allows the said custody matter to be heard in the civil court. This avenue was not available before. The amendments also seek to tidy things up further by the mechanism of issuing commencement or discontinuance certificates.

13. Interestingly, the amendments create a door to civil jurisdiction. This door has a double lock. The Court has both keys - it may grant leave to commence or continue such civil proceedings. In addition, each party holds one key - civil proceedings may be commenced or continued by consent of both. This door is not clearly available at present. The desirability of having this door will be discussed below.

Division and disposition of property

14. As regards disposition of property, this issue comes squarely under the "jurisdiction" provision i.e. Section 35 (2). This means that at present, and previously, the **civil courts do not have jurisdiction** to hear applications relating to division of matrimonial assets of Muslim parties or parties married under Muslim law. However, in the past some Muslim parties did apply to the civil courts for division of matrimonial assets. The impression given by the publicity surrounding the amendments was that these parties had a choice of forum. However a closer study shows this to be incorrect.

15. There are three distinct types of such cases -

(1) Divorce before Kathi

In this category, divorces were obtained by consent. At times parties did not refer the issue of matrimonial assets to the Kathi. If they later face disputes relating to matrimonial assets, they were unable to refer the same to the Kathi because the Kathi has no power to hear such disputes under the principal Act. The parties are also unable to refer such disputes to the Court because under the principal Act the Court has no jurisdiction thereon (see *Madiyah Binte Aran*). Having no other alternative, they apply to the civil court for redress.

(2) Arrangement by consent in the Court

Some parties who have proceeded in the Court agreed to defer the issue of matrimonial assets to be settled between themselves outside Court. At times, although the divorce issue was settled, the matrimonial assets issue was not. The parties could not refer such disputes to the Court as there was no longer a divorce proceeding in the Court. This position seems to comply with a decision of the Appeal Board in interpreting Section 35 of the principal Act. In the circumstances, such parties have no other recourse but to apply to the civil court.

It would be noted that when the aforesaid disputes were referred to the civil court, the civil court decided the matters, if it agreed to hear the matter in the first place, on principles of property law. The considerations to sever assets under property law do differ from those under family law, not to mention "harta sepencharian".

(3) Enforcement of orders

The third category comprises cases where one party seeks to enforce an order of the Court by invoking Section 14 (1) of the SCJA (i.e. for an order that the Registrar may sign documents on behalf of an errant party; such a power was not available in the Court).

As regards the 2nd and 3rd categories above, the High Court made different decisions on whether it has jurisdiction on the issue. Anecdotal evidence show that **while some High Court Judges heard such applications, others had refused** (read Section 35 (2) of the principal Act together with Section 16 of the SCJA). It culminated in a decision by the Court of Appeal in *Salijah bte Ab Latief v Irwan bin Abdullah Teo* in which the Court of Appeal held that it **does not have jurisdiction to hear the issue of division or disposition of property** as such. (In that case, however, the Court of appeal did grant the applicant her remedy on the basis that the Court's order had conferred on the applicant an equitable interest; the Court of Appeal then held that it has jurisdiction to hear and grant equitable remedy applications. This is an example of a remedy granted under property law and not family law).

16.-(1) Thus the scenario envisaged by the amendments is different from the position prior to or after Salijah's case. In all three categories, the civil court had not made any decision based on matrimonial assets considerations. The amendments however clearly allows the civil court to hear the issue of division of property upon divorce and decide it as such.

(2) The fact that the amendments do not "restore the status of the civil courts" as shown above is important to appreciate. This is because if one of the most widely publicised and basic premises for the amendments is that it "restore(s) the status of the civil courts" whereas that is not correct, then the rationale for the amendments is placed on a questionable footing.

"Concurrent jurisdiction"

17. The creation of the door to civil courts in relation to custody and disposition of property issues has been dubbed as the "concurrent jurisdiction" element in the Amendment. There are two conflicting views on this:

(1) *No to concurrent jurisdiction*

- (a) the Court should provide one-stop service;
- (b) concurrent jurisdiction encourages forum shopping;
- (c) it creates unnecessary uncertainty over the criteria to be applied in deciding whether leave should be granted to commence or continue civil proceeding;
- (d) it opens up a door to a new area of potential dispute and consequently further unnecessary litigation;
- (e) it may create anomalous decisions as different principles would be applied by different courts in similar cases, whereas certainty in the law is desirable;

- (f) it would be repugnant for a Muslim to be ordered by the Court to have matters arising out of his Muslim marriage be adjudicated by a civil court;
- (g) it facilitates dichotomy of ancillary issues which is not conducive towards "global basis" orders which are generally preferred;
- (h) it hinders development of the Court and Muslim law;
- (i) as explained in the preceding paragraphs, Muslim parties or parties married under Muslim law resorted to the civil courts to resolve custody or matrimonial assets disputes due to the lack of mechanism, power or jurisdiction in the Court; the more proper solution is to beef up the aforesaid aspects of the Court;
- (j) the Court must hear applications for leave once one party wishes to continue or commence proceedings in the civil court; this is added responsibility; rather than deciding on whether or not to give leave, the Court might as well decide on the substantive matter itself since judicial time is taken up anyway;
- (k) while the factors taken into account by the Court may be similar to those in the civil court, these factors may be applied differently; similar factors do not equate similar approach and application; for instance, in Muslim law the usual approach is that in respect of division of matrimonial assets, the share of a non-contributing wife starts at $\frac{1}{3}$, while there is no such starting point in civil law.

(2) *Yes to concurrent jurisdiction*

- (a) it provides parties with alternative avenue to resolve their dispute;
- (b) the civil court may complement the Court in the resolution of technically very complicated disputes which the Court may find itself quite unequipped to adjudicate;
- (c) it streamlines Family Law in Singapore;
- (d) it fills a present need due to insufficient manpower and resources in the Court.

Proposed Section 35 (4)

18. The proposed Section 35 (4) (a) states that the Court, if it grants leave, shall issue a commencement or discontinuance certificate within 21 days after granting such leave; or where an appeal against the grant of such leave is made under Section 55 when the appeal has been decided. It seems that in this respect an appellant has to present his appeal within 21 days. Section 55 (2) of the principal Act provides that appeals must be presented within one month, but this provision is sought to be deleted by the Amendment (see Clause 12 of the Amendments). The deletion of the present Section 55 (2) takes away the rule as regards time by which appeals shall be presented. This rule needs to be preserved somehow, either in a new Section or in the Muslim Marriage and Divorce Rules ("the Rules").

Proposed Section 35B

19. This section deals with stay of proceedings in the Court in relation to the "concurrent jurisdiction" scheme. Firstly, it provides that in the event the Court issues a commencement or continuance certificate under Section 35A, or where civil proceedings involving the same matter have been commenced by consent of both parties, then the Court shall stay proceedings before it. This is to prevent duplicity of proceedings.

20. Secondly, this Section also deals with maintenance of the wife and children. It provides that if any civil proceedings are commenced in relation to maintenance of the wife and/or children, then the Court shall stay proceedings before it.

On Maintenance

21. The present Section 35 (2) (e) does provide that the Court has jurisdiction to hear *inter alia* disputes relating to maintenance. However, by virtue of Section 3 (1) and (2) of the Women's Charter, Muslim parties are not precluded from bringing maintenance disputes to civil courts. As a matter of expediency and practice, the civil courts have always accepted applications by Muslim women for their or their children's maintenance; in fact there seemed to have been a tacit approval from the Syariah Court for this. A very plausible reason why the Court did quite readily relinquish its jurisdiction in this regard is because it scarcely has any manpower or facilities to effectively hear and enforce maintenance cases.

22. Another push factor is that in respect of maintenance, factors relevant under Muslim law would not be too different from those under the Women's Charter. But the overriding factor really has been expediency; it was better for parties to have some kind of speedy resolution of maintenance issues, albeit under the Women's Charter, than for them to undergo a very slow process in the Court which may take years to resolve. By its very nature, maintenance issues normally require urgent and immediate resolution.

23. Moreover, if parties were to have maintenance issues resolved in the Court, the end result could be a paper judgment. This was because the Court does not have the powers possessed by the civil courts which are essential to enforce maintenance orders such as powers to make Attachment or Garnishee Orders.

24. For many years now, the issue of maintenance invariably has been resolved in the civil courts. The proposed Amendment seems to make this position official. It does more - it seeks to avoid any possible doubt on the question of jurisdiction. At present, while Section 35 (2) (e) confers jurisdiction on the Court, Section 3 (1) and (2) of the Women's Charter confers jurisdiction on the civil courts. Thus the proposed Section 35B makes it clear that once civil proceedings are commenced, the Syariah Court shall stay proceedings before it involving the same matter.

25. Although the proposed Section 35B may be intended to officialise the status quo, this begs the question **whether the status quo is desirable in the first place**. Here again, as in the case with custody and disposition of property, there are two conflicting views. In general the "yes" and "no" factors mentioned in paragraph 17 above also apply here with the necessary changes being made.

25A. There is a view that in the event the scheme under the proposed Section 35B is accepted, then there should be a provision to the effect that if a party has commenced maintenance proceedings in the Court, then he should not be allowed to subsequently commence maintenance proceedings in another court, and *vice versa*. This is to prevent forum shopping.

The proposed amendment to Section 51

Section 51 (4)

26. The proposed subsection (4) is in principle very welcome. At present, there is no clear provision which allows the Court to vary or rescind its orders. Aggrieved parties were hitherto rendered helpless. Subsection (4) overcomes this setback. Having stated that, we feel that the power of the Court to vary or rescind its orders should not be restricted to cases of misrepresentation, mistake of fact or material change only. Perhaps it could be expanded to include situations where the **Court deems there is good and sufficient cause** to do so. Yet there is a view that the aforesaid may be too wide and it is wiser to specify the instances e.g. non est factum, duress, fraud and undue influence.

Section 51 (5)

27. Subsection (5) could be intended to confer on the Court greater enforcement powers. However, this may have been overdone because this proposed amendment creates a criminal offence out of a default which originates from a civil action. There is view that a defaulter may be committed for contempt without being made a criminal. Even under the Women's Charter, the only penal sanction available is for wilful breach of a protection or expedited order. The punishment prescribed therein is a fine or imprisonment.

28. On the other hand, there is little harm if prosecutorial sanctions are available. Indeed, although matrimonial disputes are civil matters between parties, there are wider implications involving public morals. This includes the issue of non-compliance of orders made with a view to support the survival of post-divorce families. As such criminal prosecution is justifiable in appropriate cases.

29. It seems that the proposed subsection (5) gives the innocent party a short-cut to enforcement. Where one party defaults on a Court order, the innocent party need not commence contempt proceedings with its attendant procedures in the Court. The latter need only to report the matter of the non-compliance to the Police who would then, upon being seized with the reasonable suspicion of an offence being committed, be bound to proceed and prosecute.

30. At present, there is no provision for the enforcement of orders made under Section 51 which deals mainly with maintenance for the wife during marriage and *iddah*. The proposed subsection (5) addresses this shortcoming, not by giving the Court powers to enforce its orders but by making it a penal offence. Though much could be said about enforcing orders by way of threat of punishment, the more meaningful remedy lies in the "civil" measures such as attachment, charging and other orders.

31. The question that arises here is - why beef up enforcement provision under Section 51 which deals only with maintenance when the jurisdiction is substantially taken away? (see proposed Section 35B).

Proposed Amendments to Section 52

Section 52 (3)

32. The principal Act deals with the powers of the Court to make orders at any stage of the proceedings. These orders relate to payment of *maskahwin*, payment of *iddah* and *mutaah*, custody maintenance and education of children, and disposition and division of property. These orders relate to those proceedings in the Court itself.

33. There have been cases where parties got their divorce effected by a Kadi under Section 102. In many of these cases, ancilliary issues such as custody of children and disposition of property were not addressed and recorded as part of the divorce arrangement. Problems arose when parties were not able to sort out these outstanding issues by themselves. Parties could not refer these matters back to the Kadi because a reading of the relevant provisions in the principal Act show that after the divorce the Kadi became *functus officio*. Neither could parties refer these matters to the Court because the present Section 52 suggests that the powers of the Court are restricted to making orders in respect of proceedings in the Court itself and do not include divorces by Kadi. A recent High Court decision confirms this: *Hartinah Sahlan v Mohd Jumaat* [Academy Digest Issue 9/981].

34. The proposed Amendment to the main paragraph of Section 52 (3) overcomes this problem. It specifically gives the Court powers to make orders in respect of divorces by Kadi under Section 102 in addition to its original powers, whether or not such divorces were registered before the commencement of the Amendments. This aspect of the Amendments is certainly most welcome.

Power to make other Orders

35. Since practice has shown that there is a tendency to read the principal Act strictly when it comes to determining the Court's powers, we recommend inserting into Section 52 (3) the power to make other suitable orders. We do not have an exhaustive list at present; however an example of an order which should be inserted as Section 52 (3) (e) would be the payment of redemption money in cases of divorce by *khuluk*.

Proposed Section 52 (6)

36. The proposed Amendment here seeks to incorporate the principles of disposition and division of property under section 112 of the Women's Charter into the principal Act, with the "safety" proviso that the Court shall apply them so far as they are consistent with Muslim law. The effect of this Amendment is to give clear guidelines to the Court and to parties as to their rights over matrimonial property.

37. In the last few years, the Appeal Board has been called to decide on appeals involving disposition of property. By and large, it seems that the Appeal Board has already applied the principles under section 112 of the Women's Charter in so far as they are consistent with Muslim law, although the Board did not specifically refer to the said Section 112 in its decisions.

38. The proviso that the principles applied must be consistent with Muslim law is necessary. There are differences between Muslim law and Women's Charter in this respect. For instance, non-payment of *iddah* and *mutaah* has been held to affect the wife's share in the matrimonial flat (see *Appeal Board Case No. 14/95*); whereas *iddah* and *mutaah* are factors that do not even exist under the Women's Charter.

Proposed Section 52 (7)

39. The Amendment seeks to enable the Court to vary or rescind its orders made under Section 52 (3). That it enables the Court to do so is an improvement over the present situation where it is not clear whether the Court has such powers. Nonetheless we see little reason why the proposed power does not include power to rescind or vary orders relating to disposition and division of property.

40. Further, as we have stated above in our comments on the proposed Section 51 (4), the Court's' power to vary or rescind should not be restricted to cases of misrepresentation, mistake and material change only. Our comments as stated in paragraph 26 above similarly apply here.

Proposed Section 52 (8)

41. The proposed subsection (8) seeks to make non-compliance of an order of the Court under Section 52 a criminal offence. The desirability or otherwise of this has been dealt with at paragraphs 27 to 30 above. Similar considerations apply here.

Proposed Section 53

42. The main body of the present Section 53 is retained in the proposed Section 53 (1) with the exception of the power of the Court to mete out imprisonment sentence; this has been left out. The proposed subsections (2) to (5) deal with an additional avenue for parties to enforce orders made by the Court under Sections 51 and 52. The basic scheme here is that the order of the Court may be registered in a District Court upon which the order shall have the same force and effect as if it had originally been an order of the District Court. This means that all the powers of enforcement possessed by the District Court shall become available to the aggrieved party.

43. In so far as the proposed Amendments herein provide the means for aggrieved parties to seek enforcement of the Court's orders, the Amendment is a very helpful and positive measure. Parties may now appear in Court feeling well assured that its orders could be enforced now that the enforcement machinery of the District Court is made available. The Court's orders would be taken more seriously than before and justice be administered more effectively.

Enforcement in the Syariah Court, or civil courts, or both?

44. Nevertheless there is a view that the relevant machinery available in the District Court should be made available in the Syariah Court. This would enable the Court to provide a **one-stop adjudication service**. Otherwise, if all the amendments were to be passed, then it is possible for one case to be decided as follows:

- issue of divorce, *iddah* and *mutaah* in the Court;
- issue of custody and matrimonial assets in the Family Court;
- enforcement of orders in the District Court.

45. It is against the best interest of administration of justice that parties have to hop from one court to another to resolve one case. It is preferable that one case be handled by the same court from beginning to end. This would enable such a court to be appraised of all relevant factors in the case at any point in time.

46. It appears that costs and other administrative considerations may have been the reasons for not allocating to the Court the full enforcement machinery otherwise available in the civil courts. The approach taken by the Amendments seems to be that the Court's orders can be enforced by using what is already available rather than having to create another similar structure, provided that there is minimal interference on the substantive Muslim law as such.

47. The stronger view in the MLC is that although this approach may be cost effective in the short and medium term, in the long run it is more desirable for the Court to develop its own enforcement machinery for the reasons that have been mentioned above.

48. As it stands, however, the Amendments do not go that far. In the event that the scheme under the proposed Section 53 is accepted, there is merit in the opinion that as regards *iddah* and *mutaah*, it is better to have enforcement in the Family Court under the provisions of the Women's Charter than in the District Court. This is because the former court has the power to order the more appropriate remedies such as Garnishee, Attachment as well as imprisonment.

48A. Moreover, it is felt that we should avoid having dual enforcement processes one in the Court (see the proposed Sections 53 (1) and 53A) and another in the civil court (see the proposed Sections 51 (4), 52 (8) and 53 (2), (3), (4) and (5)). This is to avoid confusion. It also enhances simplicity and certainty.

49. On the other hand, there is an opposing view which stands for retaining for the Court whatever enforcement power it has. The main concern of proponents of this view is two-fold. Firstly, that by retaining its powers symbolically the Court states that it does not wish to relinquish its enforcement powers. Secondly, proceedings in the Court have always been cheaper.

Proposed Section 53A

50. The proposed Section 53A enables the president of the Court to execute documents where a party who is ordered to do so is absent or neglects or refuses to do so. This power is crucial to ensure smooth enforcement of orders pertaining to disposition of property. No such power is available under the present Act. It will bury completely the problem in Salijah's case. It is indeed most welcome.

Proposed Section 53B

51. This section gives the Court power to order costs in its discretion. Although there is no specific provision regarding power to award costs in the present Act, the Rules does mention that the Court may award costs. The proposed Section seeks to remove any doubts that such a power exists. It also seems to signal that this power would be exercised more diligently if that has not been the case. Again, the MLC welcomes this Amendment.

Proposed Amendment of Section 55

52. This section deals with appeals. The existing Section 55 presents two main problems. Firstly, it is not very clear whether the proviso in Section 55 (1) (a) applies to sub-subsection (iii) only or to (1), (ii) and (iii). Secondly, it is currently unclear whether there can be any appeal against orders made by consent. The proposed Amendment solves these problems.

53. It would now be clear that there are five issues which entitle a dissatisfied party to an automatic right of appeal. All other cases, and orders made by consent, are not appealable except with the leave of the Appeal Board. It is also noted that appeals against custody orders is to be made automatic; at present leave of the Board is required.

54. Although the proposed new Section 55 is very laudable, we humbly suggest that there should be clear and specific provision for automatic right of appeal against decisions on disposition and division of property. As the Amendment stands, such appeals may arguably come under the proposed Section 55 (1) (a) which relates to decisions where "the amount in issue on appeal is not less than \$450.00". But this may mean that the appellant may have to show that in his appeal in respect of division of property, the net difference claimed is more than \$450.00 before the appeal may proceed. If this ambiguity could be avoided, then it should be done.

55. As we have noted above, the rule providing for the one-month limit to file appeals is removed by the Amendment. Perhaps the matter of the period by which an appeal may be presented would be addressed by amending the Rules shortly. In any event, such period should take into account the period by which the Court issues certificates under the proposed Section 35A.

Proposed Section 56A

56. As it is, the status of the Court is akin to that of an industrial tribunal, not so much a superior court. If so, then it is always arguable that the Supreme Court would have residual jurisdiction to review decisions of the Court or the Appeal Board in spite of Section 16 of the SCJA. The proposed new Section 56A clearly stipulates that

decisions or orders of the Court and Appeal Board shall not be open to such review challenge or questioned in any way by any other court.

Proposed Section 56B

57. This section seeks to grant immunity to members and officers of the Court in the discharge of their duty. In respect of Section 56B (1), it is not clear who is a "member" of the Court. Further description need be made, perhaps in the Interpretation section.

58. We are not too sure why this section is phrased the way it is. It is our humble view that perhaps it is better to adopt the wording of Section 79 (1) of the SCJA.

AREAS THAT NEED TO BE LOOKED INTO

Jurisdiction

59. Arising from the issues raised in the light of the Amendments, certain areas need to be looked into. We find that there are no proposed specific provisions on the Court having or not jurisdiction involving:

- (1) dissolution and nullity of foreign marriages; and
- (2) custody and access of children.

59A. There is also the issue with regard to parties who after having married under the Women's Charter, later became Muslims and "re-married" under Muslim Law. In the event of their divorce, it would be adjudicated in the Court. But what happens to the civil marriage? At present there is no clear provision that deals with this issue. Perhaps there could be mechanism that provides for an automatic dissolution of the civil marriage either upon "re-marriage" under Muslim law or upon a divorce in the Court. We appreciate that further study is called for in this regard.

59B. As regards the status of *hakams* in Section 50, there is a strong view that the powers of the *hakams* be circumscribed to issues relating to divorce, *iddah* and *mutaah* only. It is felt that matters relating to custody and access, and division of matrimonial assets may require highly legal considerations which most *hakams* may not be comfortable to deal with. These latter issues should be referred to the president for adjudication.

59C. The MLC is also of the view that for clarification of doubt, the decision by the Court to appoint hakam shall be deemed to be a finding that a case of *taklik* has not been made out. This means that such a decision is appealable.

Powers

60. It also appears that there are no specific provisions spelling out the powers of the Court to make orders or issue injunctions (whether interim or final) in the following areas:

- (2) to secure orders on financial arrangements;
- (3) to restrict bringing of children out of jurisdiction (see Section 12 (3), (4) and (5) as well as Section 131 of the Women's Charter);
- (4) to decide on ancillary issues pursuant to nullity of marriage;
- (5) to decide on custody and access of illegitimate and adopted children (this may be done by adding "including illegitimate and adopted children" after the word "children" in Section 52 (3));
- (6) to call for welfare report (see section 130 of the Women's Charter);
- (7) to appoint amicus curiae;
- (8) to set aside an order made in the absence of one party and re-hear the matter;
- (9) to hear and decide applications for dissolution and nullity of marriage by men;
- (10) to issue Practice Directions;
- (11) to hear interim custody and access issues (this may be done by amending Section 52 (3) by inserting the words "including interim orders" following the phrase "make such orders");
- (12) to set aside and prevent dispositions intended to defeat claims for maintenance or division of matrimonial assets;
- (13) adjudicate disputes or claims relating to division of property where a divorce has been obtained in a foreign country and no such claim has been made thereon.

Validity of Foreign Marriage

61.-(1) There is a view that the Court should have jurisdiction to rule on the validity of a Muslim marriage solemnised overseas which are not registerable in the Registry of Muslim Marriages. At present, the practice seems to be that such marriages could be registered by both parties in the ROMM provided that the ROMM is satisfied that the requirements of Muslim law have been complied with. The decision of the ROMM is subject to appeal.

(2) However, there have been cases where one party to such a marriage applies for a divorce in the Court. The present practice is that the Court would not hear the application unless the marriage is first registered in the ROMM. But that party may be unable to do so either because the other party is not available or may even dispute the validity of the said marriage. As such the first party is left in a limbo - not considered married and at the same time not considered divorced. The situation is unimaginable if there are children involved.

(3) We are of the view that in such cases, the issue of the validity of the marriage should be adjudicated in the Syariah Court. Provisions should be made into the principal Act to reflect this additional jurisdiction of the Court.

Rules

62. As stated earlier, some of the amendments call for drafting of new Rules. In this connection; we humbly urge that Rules relating to the following areas be made urgently to meet current pressing needs:

- (a) substituted service of documents;
- (b) service of documents outside Singapore;
- (c) dispensation of service;
- (d) service on Counsel;
- (e) on the use and misuse of Affidavits;
- (f) setting aside judgments obtained in default of appearance;
- (g) discovery and inspection of documents;
- (h) system of pleadings.

These rules are necessary in view of the need to have a more efficient and transparent judicial system in the Court.

Conclusion

63. As a whole the Amendments are a welcome relief. It addresses and overcomes a number of shortcomings that have been bugging the Court. A number of ambiguous provisions are being clarified.

64. However, the way the Amendments remedy certain shortcomings may not be the best solution in the long term. We generally feel that the way forward is to envisage a Syariah Court that is self-sufficient and not one which has to rely on other structures to enforce its orders or to expedite the resolution of certain issues. The case for a one-stop adjudication centre is too strong to ignore.

65. In this connection, perhaps there is much more to be said about improving the legislative and administrative aspects pertaining to the Syariah Court. These are however beyond the purview of this report which deals mainly with the legal issues directly related to the Amendments.

66. It is necessary to reiterate that in the light of the Amendments, there will be a need to review the Rules and make appropriate changes thereto. Perhaps that would provide the opportunity not only to align the Rules to suit the Amendments, but also to have a more comprehensive revision aimed at updating and developing the same.

Dated this 30th day of July 1998.

AHMAD KHALIS ABDUL GHANI
Chairman, MLC.

Paper 7

From: Majlis Pusat
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Dated: 21 July 1998

Received: 1 August 1998

MAJLIS PUSAT'S STATEMENT ON AMLA (AMENDMENT) BILL

1. Introduction

- 1.1 Majlis Pusat whilst welcoming the actions taken to amend AMLA and the honourable intention behind the changes proposed, is of the view that this be done cautiously as the changes impinge on Islam and have significant impact on the Muslim community's two most cherished institutions - MUIS and the Syariah Court. Majlis Pusat therefore applauds the decision to refer the AMLA (Amendment) Bill to a Select Committee.
- 1.2 To aid the process of *musyawarah*, Majlis Pusat through its Executive Committee and its Sub-Committee on Current Affairs held discussions on this subject. It also sought feedback from other organisations who are affiliated members of Majlis Pusat as well as from concerned individuals. This paper is presented to the Select Committee for perusal and it is Majlis Pusat's hope that it will be of help in the Committee's deliberations.

2. Proposed Amendments to MUIS

- 2.1 Majlis Pusat is in agreement to the proposed amendments pertaining to MUIS. It believes that the amendments would significantly enhance the ability of MUIS to function effectively.

2.2 *Power of MUIS in Haj matters*

Majlis Pusat would like to make one relevant comment on this subject:

It has been alleged that unqualified persons have at times acted as guides (on Haj rites) and had provided wrong advice to pilgrims in performing the Haj rites.

Complete compliance of the "Manasik" (rites) is vital in performing the Haj. We are of the opinion that it is appropriate to give the Majlis (MUIS) the power to regulate religious teachers and Haj guides (on Haj rites) so as to ensure that only properly qualified persons can act as such guides.

Ref: Clause 17 of proposed Bill, section 88B

"The Majlis may regulate any person providing goods or services for the purposes of the Haj -

(a) to ensure that the requirements of Muslim law are complied with in relation to the provision of those goods or services;"

The above clause may have taken care of the concern expressed above. However, Majlis Pusat feel that the clause could be further strengthened by the inclusion of the following additional phrase into (a) thus:

".. including the licensing of person(s) acting as guide(s) [on Haj rites] for the pilgrims to ensure that they are duly qualified. "

Please note that the above clause is not intended to apply to pilgrim officers and assistants whose functions do not include giving advice on Haj rites.

3. Proposed Amendments to the Syariah Court

3.1 Positive aspects of the proposed Amendment

Majlis Pusat acknowledges that there are several key aspects of the proposed Amendment to the Syariah Court which are positive, such as:

- (a) giving the Syariah Court President more powers to enforce his orders such as in the transfer of matrimonial property to former spouses as ordered by the court;
- (b) increasing the quantum of fines and jail sentences for offenders; and
- (c) increasing the number of presidents that can be appointed.

3.2 Concurrent jurisdiction to Civil Courts and Syariah Court

Majlis Pusat acknowledged that there is a pressing need to find quick and effective ways to resolve the large backlog of cases before the Syariah Court. Conferring concurrent jurisdiction to Civil Courts and Syariah Court in matters involving disposition or division of property and/or custody of children on divorce is one way. It is only making official what has been in practice (until it was declared illegal). Majlis Pusat, however, is not totally convinced that the solution thus offered, is really the best way to promote further development of the Syariah Court especially if concurrent jurisdiction is intended to remain a permanent feature in our judiciary system. Conferring rights to Civil Courts in matters which should rightly be under the jurisdiction of the Syariah Court and tolerating past practices are two different things altogether. The conferring of concurrent jurisdiction to Civil Courts should not be viewed as mere formalities. It is a substantive fundamental change. Majlis Pusat will provide its views on this subject later on.

3.3 *Arguments put forth in support of concurrent jurisdiction*

Protagonists of concurrent jurisdiction cited the following arguments to support their case:

- (a) The amendments, if accepted, would merely restore the status quo ante;
- (b) It will help to clear the backlog of 2,000 or more cases that is pending before the Syariah Court; and
- (c) The Bill's provision would generally beef up the Syariah Court mainly through shared resources with the Civil Courts.

As it appears, these arguments are cogent and the protagonists find it ironic that the proposal was met with considerable apprehension among Muslim organisations and individuals. Here, an understanding of a Muslim perspective on Syariah law which he believes embraces his every action, could help explain the reason for the concern.

3.4 *Muslim Perspective of Syariah Law*

It is important to understand that Islam is unlike any other religion. It has a comprehensive system of law and edicts, called Syariah (Muslim Law) which embraces every human (Muslims) actions. The administration of Muslim law is carried out by *kadis* (judges). A *kadi* must be a Muslim adult, learned in Muslim law and of virtuous (as defined by Muslim) character. Where difficult questions of law arise, it is normal procedure to refer the matter to qualified jurist for his opinion or alternatively for a collective opinion (if it is a council). Such a jurist is called a *Mufti* and his ruling on a legal issue is a *fatwa*.

One does not become a Muslim simply by birth or conversion. A Muslim must practice his religion and he must be willing to be subjected to Muslim law, which he believes is derived from the *Qu'ran* and *Sunnah* (deeds of the Prophet Muhammad, peace be upon him). Judging from transcripts of the debates that took place before Parliament when the Muslim Bill was introduced in 1956 and later the AMLA Bill in 1965, the above point was clearly appreciated and understood. A Muslim, who practises his religion, would be more comfortable if his case is heard before a Syariah Court, in the presence of the *kadi* whom he believes is competent in Muslim law and is of upright character. He has greater tendency to respect and accept the rulings of the Court because he believes that it is in accordance with Islam and so *Allah* pleases. If his case was put before a civil court, two questions may arise in his mind:

- (a) Is the judge in the Civil Court qualified to hear and resolve issues involving Muslims?; and
- (b) Will the ruling be in accordance with Muslim law?

3.5 **Majlis Pusat's Views**

The amendments if accepted would merely restore the status quo ante

It is true that in the past, Muslims had resorted to Civil Courts for settlement of post-divorce matters until the High Court ruled that it had no jurisdiction over such matters. Thus, the argument put forth that the proposed amendment merely restores the *status quo ante*. Are we saying that all past rulings made in the High Court were illegal and now that it has come to light, the proposed Amendment merely sought to give jurisdiction to the Civil Courts which it never had in the first place? Can we conclude that by restoring to the former position, it will be all right and that Muslims would be happy? Majlis Pusat do not believe that this is so. The majority of Muslims did not really follow the progress and development of Syariah Court since AMLA was passed more than 30 years ago. Recent controversial cases, such as Madam Salijah's, exposed to the majority of Muslims the shortcomings of the Syariah Court, namely its lack of power of enforcement and its inadequate resources. This led to the belief among Muslims that the development of the Syariah Court has been neglected. Furthermore, we need to analyse why Muslims needed to resort to Civil Courts in the first place. This is due to none other than the reasons mentioned above (lack of power for enforcement and inadequate resources). The proposed Bill accords us the opportunity to correct what was wrong and not to create the possibility of further misgivings to Muslims with the proposed concurrent jurisdiction. Let us tackle the root causes and not just the symptoms.

3.6 *It will help to clear the backlog of cases that is pending before the Syariah Court*

Before this issue is addressed by the proposed Amendment, we should ask: why the large number of backlog in the first place? It is reasonable to anticipate that the increased complexities of life in Singapore would result in higher rate of divorces, Muslim marriages included. It is also reasonable to anticipate that as Muslim women become more educated, they will be less willing to accept a *fait accompli* in an unhappy marriage. It is also reasonable to anticipate that the number of Muslim marriages and divorces would increase as the general population of Singapore increases. Our contention is that the increase in number of cases could have been anticipated and the resources of the Syariah Court concurrently expanded. Therefore, the proposed concurrent jurisdiction should be temporary in nature to tackle the present "emergency" (*dharurat*) of backlog of cases. It would not be acceptable for this state of emergency to be prolonged longer than necessary. In other words, there is no necessity to maintain concurrent jurisdiction to Civil Courts and Syariah Court permanently. Once again, let us tackle the root causes and not just the symptoms.

3.7 *The Bill's provision would generally beef up the Syariah Court*

Majlis Pusat's argument is similar to what was put forth in 3.6. Beefing up of the Syariah Court should have been a natural process of the Court's development

had this not been neglected and that the situation is temporary provided there is the will to expand the resources of the Syariah Court.

Ref: Clause 8 of proposed Bill, new sections 35A and 35B, clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322) new section 17A

Proposals:

3.8 Based on the above arguments, Majlis Pusat would like to propose:

- (a) that a clause be inserted in the appropriate section(s) which clearly states that all provisions relating to concurrent jurisdiction in the proposed Bill are only temporary with a maximum period of seven years from the date the proposed Bill comes into operation. The period proposed is sufficient to clear all backlogs and to enable the Syariah Court to develop into a full court that is able to handle all cases fully under its jurisdiction; or

Ref: Clause 7 of proposed Bill, amended new section 1 (A), section 34 of the Principal Act

- (b) to delete all provisions relating to concurrent jurisdiction in the proposed Bill, and to repeal Section 34 in the Principal Act with: *"the President of Singapore may by notification in the Gazette constitute a number of Syariah courts for Singapore (referred to in this Part as the Courts)"*.

This will then allow for the formation of a number of Syariah Courts to tackle the backlog with each court handling specific issues. With the increasing number over the years of qualified religious teachers and scholars that have graduated from Mecca, Medina, Al Azhar University in Cairo and the International Islamic University in Malaysia and also the number of Muslim lawyers and legal officers that are now available, the pre-existing shortage of qualified manpower is no longer a problem. It is a question of whether the relevant Ministry would be willing to tap the available expertise and to recognise their qualifications.

3.9 Other Concerns

Clash of rulings

Majlis Pusat is of the view that the proposed Amendment does not clearly resolve the issue of clash of rulings between the Syariah Court and Civil Courts. If there is divergence in rulings, which ruling shall apply?

If a *fatwa* is issued by the Mufti on a matter which is subsequently transferred to the Civil Court will that ruling be binding on the Civil Court? It appears from past cases that this may not be so! The proposed Amendment does not seem to clearly state that if there is a clash of rulings between civil law and Muslim law, Muslim law shall prevail as the litigants are Muslims and the case involves Muslim matters.

Ref: Clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322) new section 17A

Proposal:

- 3.10 If all references to concurrent jurisdiction to Civil Courts and Syariah Court are not deleted from the proposed Bill, Majlis Pusat would like to propose that a clause be inserted in appropriate section(s) of the proposed Bill which clearly states that Syariah law shall take precedence if there is a clash of rulings between the Syariah Court and the Civil Courts as the litigants are Muslims and the case involves Muslim matters.

It also proposed that if all references to concurrent jurisdiction are not deleted from the proposed Bill, then the following words "*taking into account that such laws are not in divergence with Muslim law*" should be inserted in the third line after the words "civil law" in clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322) new section 17A (7).

- 3.11 *Application of Women's Charter in resolution of post-divorce matters*

Majlis Pusat is also concerned with the possibility of Civil Courts applying the provisions of the Women's Charter (except those that are consistent with Syariah law) in the resolution of post-divorce matters involving Muslims. Certain points in the Women's Charter are in conflict with Muslim law. The proposed Amendment must make it clear that where there is conflict between the provisions of the Women's Charter and Muslim law, the latter shall prevail.

Ref: Clause 10 of proposed Bill, amendment of section 52 (6). Clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322) new section 17A

Proposal:

- 3.12 Majlis Pusat therefore wishes to propose that a clause be inserted in appropriate section(s) of the proposed Bill that clearly states that the Syariah Court shall not be bound by the Women's Charter but shall always have the discretion to apply them if it deems necessary.

It also proposed to replace the word "shall" with "may" in the second line of Clause 10 of proposed Bill, amendment of section 52 (6).

If all references to concurrent jurisdiction to Civil Courts and Syariah Court are not deleted from the proposed Bill, Majlis Pusat proposed that the following words "*taking into account that such laws are not in divergence with Muslim law*" be inserted in line 3 after the words ". . . shall apply" in the new section 17A (8) in clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322)

3.13 *Honourable MP Hawazi Daipi "Friend of the Court" suggestion*

Honourable MP Hawazi Daipi's suggestion that Civil Courts appoint a "Friend of the Court" to assist them in clarifying aspects of Muslim law relevant to Muslim post-divorce matters seems to be well received.

Majlis Pusat congratulate the honourable MP for coming up with the noble idea. However, it would like to highlight a few points:

- (a) That the need to appoint a "Friend of the Court" (who must be qualified in Islamic jurisprudence) to assist the Civil Courts only serves to confirm the fear that divergence of ruling with the Syariah Court is possible;
- (b) It implies that the judges presiding in Civil Courts are not competent to hear cases involving Muslims under AMLA. This is contrary to the belief that the person who exercises the authority to adjudicate must possess the necessary qualifications; and
- (c) The role is purely advisory and the Civil Courts are not bound by it, unless the proposed Bill can provide otherwise.

Ref. Clause 7 of proposed Bill, section 35, subsection 1A. Clause 23 (2) (read with the schedule) Supreme Court of Judicature Act (Cap. 322) new section 17A

Proposal:

- 3.14 Majlis Pusat would like to propose that a clause be inserted in appropriate section(s) of the proposed Bill such as in section 35, subsection 1A and in new section 17A of the Supreme Court of Judicature Act (Cap. 322) which clearly states that judges presiding over a case involving Muslim matters under AMLA should be properly qualified in Islamic jurisprudence.

3.15 *Leave to commence or to continue civil proceedings*

Application for leave to commence civil proceedings is to be made to the Syariah Court. This provision is intended to safeguard against situations where a party would prefer to go to civil court instead of the Syariah Court because he feels that it is advantageous to his case. Even though the power to grant this lies with the Syariah Court, in practice the Syariah Court could be under pressure to grant leave upon appeal due to the existing backlog and lack of resources. Unless the resources of the Syariah Court are increased, the President of the court would likely be forced to bow to public pressure thus rendering this provision ineffective.

- 3.16 Majlis Pusat would like to urge the relevant Ministry to look into increasing the resources of the Syariah Court urgently so that it can function effectively without having to grant leave to commence civil proceedings arising from its inability to cope.

3.17 *Leave to commence civil proceedings not necessary if parties consent*

Majlis Pusat would like to propose that this "escape" provision be deleted as the AMLA is intended to regulate Muslim religious affairs. This provision clearly diminishes the power of the Syariah Court and allows its proceedings to be taken for granted. The proposed Amendment should cover the loophole that was taken advantage of in the past (until the High Court ruled against it). It should not now try to legitimise what was in fact an error and should instead concentrate on developing the Syariah Court.

Ref. Clause 8 of proposed Bill, new sections 35A and 35B

Proposal:

3.18 In view of foregoing, Majlis Pusat would like to propose:

- (a) that clause 8, new section 35A (5) be deleted and any other reference to this provision anywhere else in the proposed Amendment be similarly deleted; or
- (b) that a provision which requires consenting parties to go through an advisory process under the administration of the Syariah Court be incorporated in the proposed Amendment. The objective of this exercise is to provide religious counselling to consenting parties to carefully consider their intention to bring their case before a Civil Court.

3.19 *Status of the Syariah Court*

Majlis Pusat would like to urge the relevant Ministry to look into the possibility of enhancing the status of the Syariah Court to a full court similar to what has been done for the Family Court.

3.20 *Advisory Council of Muslim Scholars and Legal Experts*

Majlis Pusat would like to propose that the proposed Amendment look into the formation of a council to be made up of qualified Muslim religious scholars and prominent lawyers well versed in Muslim and civil laws and court procedures. The members of this council shall be appointed by the President of Singapore. As an example, it can be made up of three prominent Muslim religious scholars and two lawyers. The role of the council is to look through any amendments on AMLA and give its learned opinion and suggestions before any bill is submitted for the first reading. This additional process would go a long way in convincing the Muslim public that the spirit of consensus building is alive and thriving in Singapore and that expert religious and legal opinions have been sought prior to proposing changes to the AMLA Bill.

4. Conclusion

- 4.1 Majlis Pusat would like to urge those accorded with the responsibility and the power to influence to take this opportunity to ensure that the proposed Amendment would benefit the Muslim community in the long run. The aspiration of Muslims to be subjected fully to Syariah law may never be possible in a secular state but whatever has been provided for under AMLA should never be diluted but strengthened.

In conclusion, Majlis Pusat trust that its feedback will be seen as helpful to this process and not as a hindrance.

JA'AFAR BIN SIDIN
Secretary- General,
Majlis Pusat

Paper 8

From: Persekutuan Seruan Islam Singapura
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Dated: 31 July 1998

Received: 1 August 1998

ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

[BILL NO. 18/98]

On behalf of the Muslim Missionary Society Singapore, we wish to express our appreciation to the Government, for referring the above Bill to a Select Committee, thus giving the opportunity to the Muslims to express their views and participate in the deliberations in the Select Committee on matters of crucial importance to the Muslim community of Singapore.

As a caring and concerned Muslim organisation, which has been in existence since 1932, we are of the view, that it is expedient for us to make our representation to the Select Committee on the Administration of Muslim Law (Amendment) Bill No. 18/98, in response to the advertisement, published in the press of 13 July 1998, inviting views from the public.

We are of the view, that the purpose of the Amendment Bill, is to meet the long standing aspirations of the Muslim community, that the activities, facilities and services which are available as a consequence of the promulgation of the Administration of Muslim Law Act in 1966, need to be reinforced and brought up to the level of excellence, particularly in the case of the Syariah Court.

In this vein, we would like to stress the following areas:

- (a) Enhancement of the status of the Mufti - the highest authority in Islamic jurisprudence - the Presidents of the Syariah Court and the members of the Appeal Board. This can be brought about by a stringent selection of highly educated, adequately exposed and dynamic people.
- (b) Enhancing administrative facilities of the Syariah Court, particularly as the Syariah, when properly administered in the particular context of Family Law, is a problem-solving methodology for Muslims.
- (c) Making immediate preparations for the Syariah Court and a newly constituted Syariah Appeal Court, to handle exclusively those cases regarding maintenance, custody, division of property, which the proposed Amendment Bill, if passed by Parliament, would make it possible to be handled either by

the Civil Courts and/or the Syariah Court. This is absolutely necessary to maintain the dignity, stature and standing of the Syariah Court. We are confident that there are adequate numbers of professionals, scholars, retired lawyers or judicial administrators with knowledge in the essential areas who can be employed.

- (d) We are emphatic that the Majlis Ugama Islam Singapura (MUIS) should focus on its original scope, rather than diversify into other areas such as the direct running of companies and businesses, which are not in tune with the overall objectives in setting up MUIS.

The following, specifically, are the aspects of the Bill and the Principal Act which we would like to bring to the attention of the Select Committee.

Administration of **Muslim Law (Amendment) Bill [Bill No. 18/98]**

1. Section 3 (1) of the Bill, on page 2, reads:

"As from the commencement of the Administration of Muslim Law (Amendment) Act 1998, the Majlis Ugama Islam Singapura, shall continue to be in existence."

As there is no issue on this matter of continuing existence, we propose a simpler wording:

"Section 3 (1) There shall be a Majlis Ugama Islam, Singapura."

2. Section 3 (2) of the Bill, on page 2, reads:

"It shall be the function and duty of the Majlis ..."

Obviously the Majlis has a plurality of functions and duties. Accordingly we suggest these words be changed to read:

"The functions and duties of the Majlis shall be ..."

3. Section 3 (2) (b) of the Bill, on page 3, reads:

"to administer matters relating to the Muslim religion and Muslims in Singapore, including any matter relating to the Haj or halal certification;"

We propose the words "and Muslims in Singapore" in this section be deleted as they can be interpreted too loosely and too widely. MUIS was set up to administer matters concerning the Islamic religion and not to administer the affairs of the Muslim of Singapore which involve his inclinations in politics, business, finance, economics, secular education, social affairs, etc. To administer matters relating to Muslims in Singapore is therefore a departure from the original focus which reflects section 153 of the Constitution.

4. Section 3 (2) (e) of the Bill, on page 3, reads:

"to administer all mosques and Muslim religious schools in Singapore".

We suggest the wording in section 3 (2) (e) be changed to read:

"3 (2) (e) to oversee and co-ordinate the administration of mosques and Muslim religious schools in Singapore".

The mosques and Muslim religious schools in Singapore are run by their own respective committees. MUIS should not run or administer mosques or Muslim religious schools in Singapore directly, but it can introduce standardised curriculum through its co-ordinating and supervisory functions. It can and does provide guidelines for *khutbah* (Friday sermons) or run training programmes and the like.

5. Section 5 (4) of the Bill, on page 3, reads:

"5 (4) The Majlis may, with the approval of the Minister, form or participate in the formation of any company, or enter into any joint venture or partnership, to carry out any of the purposes of the Act."

We would like to reiterate our view that MUIS should not depart from its original scope, which in itself is onerous and extremely important, dealing as it does with the administration of Muslim religion in Singapore. To move into an entirely different area, i.e. running businesses directly and using the monies and properties that the Majlis holds in trust for the benefit of the Muslim community of Singapore, including *zakat harta*, *zakat fitrah*, *sadaqah*, *waqf* and *Baitul Mal* is a very risky move, fraught with tremendous insecurity and sensitivity, involving as it does, wealth which the Muslim community considers to be of special religious significance. Accordingly we would like to state that we are, in principle, not in opposition to the investment of proper funds but we would like to register our reservations if MUIS runs business enterprises directly, e.g. the running of pilgrimage companies, the procurement of sheep and cattle for *Qurban* or the building of mosques. This is best done by private enterprises or well-organised Non-Government Organisations (NGOs) who can be given assistance in this regard. The time is for decentralisation, privatisation and farming out of activities not the reverse. This policy would encourage more established NGOs to play a more meaningful and constructive role.

Furthermore, investments should only be in non-risky areas such as government bonds or other secure alternatives.

6. Section 5 (5) of the Bill, on page 3, reads:

"The Majlis may do such other acts as appear to the Majlis to be incidental or necessary to the discharge of its functions and duties under this Act."

It is our view, that the wording in this section 5 (5) is couched in subjective terms enabling "administrative discretion" in a very crucial area. This apparently bars judicial review of crucial administrative decisions affecting individuals or the public.

We would suggest section 5 (5) be deleted.

7. Section 26 (1) in the Bill, on page 4, states:

"The Majlis, may subject to such conditions and restrictions as the Majlis may impose, delegate to any member or committee of the Majlis or any person all or any of its functions or powers vested by or under this Act or any other written law not being judicial or quasi-judicial powers."

We find that the word "all" after the wording "any person" in line 5, would make it possible for the Majlis to delegate all of its functions and powers to any person. The word "any" in the Bill suffices. We propose the words "all or" in line 5 be deleted and section 26 (1) be substituted with the following:

"The Majlis, may by resolution and subject to such conditions and restrictions as the Majlis may impose, delegate to any member or committee of the Majlis or any person any of its functions and powers vested by or under this Act or any other written law not being judicial or quasi-judicial powers."

8. In line with our view that the Syariah Court should have exclusive jurisdiction with regard to cases which should rightfully invoke Islamic law we do not agree with the new sections 35A and 35B which deal with "Leave to commence or to continue civil proceedings involving disposition or division of property on divorce or custody of children".

This has been stated to be only a temporary measure but it dilutes the status and dignity of the Syariah Court. Moreover the perspectives between the Syariah and the civil courts differ on matters such as custody or matrimonial property.

The secular courts would look at the question of custody from the point of view stated in section 3 of the Guardianship of Infants Act, Cap. 122.

"Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father".

Muslim scholars concur regarding the qualifications required for a female custodian which are her being sane, chaste and trustworthy, her not being an adulteress, a dancer, an imbibor of wine or oblivious to child care. These conditions also apply if the custodian is a man. Where the mother is not handicapped by such qualifications, the earliest custody is the right of the mother by consensus of all the Muslim schools of law although there is a difference of opinion regarding the period after which it expires. This apparently contradicts the above quoted clause of the Guardianship of Infants Act which states "nor shall the mother be deemed to have any claim superior to that of the father".

Furthermore the age of being a minor is different in secular law than in Syariah law. There are other differences which would crop up and cause serious problems of conflict of laws.

Furthermore there are religious aspects of welfare which a secular court may not consider important but which are important from the Syariah point of view.

9. Section 35 (A) of the Bill, on page 4, reads:

"The President of Singapore may appoint one or more presidents of the Court."

Section 35 (1B) of the Bill, on page 4, reads:

"All presidents of the Court shall have in all respects equal power, authority and jurisdiction."

Presidents of the Court have to possess that outstanding character, the legal acumen, the knowledge of the Islamic Family Law and understanding of local administrative laws and conventions. This is a qualification which cannot be compromised.

We strongly recommend the appointment of Syariah Judicial Commissioners with limited, albeit renewable tenures and a Head of the Syariah Court. Like the Presidents, the Syariah Judicial Commissioners can be appointed from among existing senior lawyers or retired judicial officers who are familiar with Islamic Family Law. While the other Presidents have in all respects equal power, authority and jurisdiction, it is the Head, who, while not directing them in their judicial pronouncements, ensures that the Syariah Court is a conduit for justice. He ensures that judicially the administration of the courts is effective and efficient. He is also in charge of the assignment of cases. He arranges for their on-going training, both sabbatical and on-the-job, and provides guidance and judicial support for their important office.

Singapore is not bereft of such people and it is only in the very last resort, that we should employ people from abroad. After all we are searching for the very best talents for Singapore.

10. We would like to propose additional section 35 (1C), (1D) and (1E) reading:

"(1C) The President of Singapore may appoint one or more Syariah Judicial Commissioners for a stipulated tenure".

"(1D) All Syariah Judicial Commissioners shall have equal power, authority and jurisdiction".

"(1E) The President of Singapore may appoint a person qualified in Syariah Law and of suitable attainment as the Head of the Syariah Court."

11. Section 51 (5) of the Bill, page 9, reads:

"Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months."

We are of the view that in the interest of natural justice, discretion for a custodial sentence or a fine or both for offences in the Act should be clearly delineated. Furthermore it is important that the maximum ceiling for the fine be clearly indicated. We have left the maximum quantum of the fine to be determined by the authorities.

Accordingly we propose section 51 be amended to read:

"(5) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months or shall be liable to a fine not exceeding \$... or both."

12. Section 52 (3) (b) of the Bill, on page 7 reads:

"the payment of a consolatory gift or *mutaah* to the wife."

The word "*mutaah*" in subsection (3) (b) of section 52 is to Islamic Family Law what "alimony" is to the secular family law system. It is a facility of tremendous importance and potential which the translation "consolatory gift" does not do justice to. "*Mutaah*" for a divorced woman should be properly construed and administered if it is not to be interpreted as a paltry and token gift. It is an obligation and not a gift.

We suggest the words "a consolatory gift or" be deleted and section 52 (3) (b) to read as follows:

"52 (3) (b) the payment of an equitable *mutaah* to the wife." 13.

Section 55 (1) of the Bill, on page 10, reads:

"An Appeal shall lie to an Appeal Board constituted under this section from any decision of the Court ...".

We are of the view that the Appeal Board be constituted as a Syariah Appeal Court. It is incongruous that the image of the Appeal Board be lower than that of the Syariah Court or that it is reconstituted from time to time. It has to be of a permanent nature with permanent Judicial Officers.

We therefore suggest that wherever the words "Appeal Board" appear in the (Amendment) Bill No. 18/98 or in the principal Act these words should be substituted with the words "Syariah Appeal Court".

We would like to propose changes to the following sections of the principal Act which are relatively untouched by the Bill.

14. 30.-(1) The President of Singapore may, after consultation with the Majlis appoint a fit and proper person to be the Mufti of Singapore. Such appointment shall be notified in the *Gazette*.

(2) The Mufti shall be ex officio a member of the Majlis.

31.-(1) There shall be a Legal Committee of the Majlis, consisting of the Mufti, two other fit and proper members of the Majlis and not more than two other fit and proper Muslims who are not members of the Majlis.

(2) The members of the Legal Committee other than the Mufti, shall be appointed by the President of Singapore on the advice of the Majlis for such period as he thinks fit and a notification of every such appointment shall be published in the *Gazette*.

(3) The Mufti shall be chairman of the Legal Committee and the President of Singapore may appoint another person recommended by the Majlis to be chairman in the absence of the Mufti.

(4) The Chairman and two other members of the Legal Committee, one of whom shall not be a member of the Majlis shall form a quorum.

(5) Subject to the provisions of the Act, the Legal Committee may regulate its own procedure.

(6) The members of the Legal Committee shall be deemed to be public servants for the purposes of the Penal Code.

Section 33 (1) Subject to this section, the Majlis and the Legal Committee in issuing any ruling shall ordinarily follow the tenets of the Shafi'i school of law;

Provided that the Majlis or the Legal Committee considers that the following of the tenets of the Shafi'i school of law will be opposed to the public interest the Majlis may follow the tenets of any of the other accepted schools of Muslim law as maybe considered appropriate, but in any such ruling the provisions and principles to be followed shall be set out in full detail and with all necessary explanations.

(2) In any case where the ruling or opinion of the Majlis or the Legal Committee is requested in relation to the tenets of a particular school of Muslim law the Majlis or the Legal Committee shall give its ruling or opinion in accordance with the tenets of that particular school of Muslim law.

In our opinion, with a view to project a contemporary interpretation of Islamic Law, it would be practical to have a less conservative approach. It is important for the public interest that we have recourse to the interpretations of all the well-known schools of Muslim Law, wherever necessary or even any other scholarly interpretation based directly on the Quran and the Hadis.

Our opinion is that the office of the Mufti, while not infallible, represents the highest scholarship. Furthermore the Mufti is a juriconsult who provides *fatwas* on important issues. This is an office of continuing research and networking with the best minds of the world of religion.

Accordingly we propose that there should be a Deputy Mufti, who too should be paid for the *Baitul Mal*.

We feel that the term "Legal Committee" may give a different connotation to the intent of the Majlis. It assists in the work of the Darul Ifta or the Office of the Mufti. It delves into matters of higher *filth* considerations. It is more appropriately called the Fatwa Committee. This committee co-opt experts from other areas because a multi-disciplinary or trans-disciplinary backing may be essential to back certain *fatwas* or a particular area of research.

We propose the following changes to section 30, section 31 and section 33:

30.-(1) The President of Singapore may, after consultation with the Majlis, appoint a Mufti and a Deputy Mufti of Singapore. The salaries of the Mufti and the Deputy Mufti shall be paid from the *Baitul Mal*. Such appointments shall be notified in the *Gazette*.

(2) The Mufti shall be ex officio a member of the Majlis.

31.-(1) There shall be a Fatwa Committee of the Majlis, consisting of the Mufti, the Deputy Mufti, two other fit and proper members of Majlis and not more than two other qualified Muslims who are not members of the Majlis.

(2) The members of the Fatwa Committee, other than the Mufti and the Deputy Mufti, shall be appointed by the President of Singapore on the advice of the Majlis for such period as he thinks fit and a notification of every such appointment shall be published in the *Gazette*.

(3) Unless determined otherwise for certain sittings of the Fatwa Committee the Mufti shall be the chairman of the Fatwa Committee. In his absence the Deputy Mufti shall be the Chairman.

(4) Unless determined otherwise for certain sittings of the Fatwa Committee the chairman and two other members of the Fatwa Committee one of whom shall not be a member of the Majlis shall form a quorum.

(5) Subject to the provisions of the Act, the Fatwa Committee may regulate its own procedure.

(6) The members of the Fatwa Committee shall be deemed to be public servants for the purposes of the Penal Code.

33.-(1) Subject to this section, the Majlis and the Fatwa Committee in issuing any ruling shall follow an interpretation based on the Quran and the Hadis except where in a given case the interpretation based on any accepted school of law is called for.

Provided that where Majlis or the Fatwa committee considers that the adherence to the interpretation of a particular school of law will not be appropriate in a given case, the Majlis may follow the interpretation of any other school of Muslim law or any other interpretation based on the Quran and Hadis.

15. We have another recommendation:

Section 114 reads:

"114.-(1) In deciding questions of succession and inheritance in the Muslim Law, the court shall be at liberty to accept as proof of the Muslim Law any definite statement on the Muslim Law made in all or any of the following books:

- (a) The English translation of the Quran by A. Yusuf Ali or Marmaduke Pickthall;
- (b) Mohammedan Law, by Syed Ameer Ali;
- (c) Minhaj et Talibin by Nawawi, translated by E.C. Howard from the French translation of Van den Berg;
- (d) Digest of Mohammadan Law, by Neil B.E. Baille;
- (e) Anglo-Muhammadan Law by Sir Roland Knyvet Wilson, 6th Edition Revised by A. Yusuf Ali;
- (f) Outlines of Muhammadan Law, by F.B. Tyabji.

(2) The Minister may on the advice of the Majlis by notification in the *Gazette* vary or add to the list of books set out in subsection (1)".

We feel that it is about time that books by contemporary scholars should be accepted by the Syariah Court not only in the areas mentioned above but in other matters as well.

For a start, as an addition to the above-mentioned list of books, we recommend the very well-researched, contemporary compendium of Muslim Family Law, namely "A Code of Muslim Personal Law" by Dr. Tanzilur Rahman, a former High Court and Syariah Bench judge of Pakistan. It is through familiarising ourselves with contemporary scholarship in the area of Muslim Family Law that we can upgrade our understanding of this most crucial area and empower ourselves with pragmatic interpretations based on the Quran and Sunnah.

We are prepared to appear before the Select Committee. Our very best wishes to all members of the Select Committee for a fruitful deliberation. Thank you very much.

Yours respectfully,

ABU BAKAR MAIDIN
President,
Muslim Missionary Society Singapore.

YAHYA SYED
Chairman,
Jamiyah AMLA Bill Review Committee.

Paper 9

From: Persatuan Guru-Guru Agama Singapura
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Dated: 1 August 1998

Received: 1 August 1998

RESPONSE BY PERGAS (SINGAPORE RELIGIOUS TEACHERS ASSOCIATION) ON ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

Introduction

We are pleased with the efforts of the Minister concerned to amend the AMLA (Administration of Muslim Law Act), with the stated objective of improving the effectiveness of the various institutions under the Act, as well as remove whatever constraints which have appeared due to unavoidable circumstances as Singapore progresses, thereby ensuring that the Act remains relevant.

General comment

As Muslims, the imperative to observe the Syariah laws must be well understood by every Muslim. We are grateful that although Singapore may not be an Islamic state, the AMLA was enacted to preserve the Muslims' right to practice our religion. Thus we feel that whatever powers already stipulated within it should be preserved as much as possible and any efforts to improve its clauses should not diminish nor weaken the overall position of the various institutions. As the amendment would become law when passed by the Parliament of Singapore, implications of each amendment must be critically evaluated, especially by Muslims as these will have a direct bearing on our lives. Our comments should not be misconstrued as being adversarial to the Law of Singapore but rather as upholding the democratic right to religious freedom, cherished under our State Constitution. PERGAS' role to define Islamic teachings would be to remind all Muslims as to their duties as Muslims and to assist the Parliament to understand the aspirations of every Muslim so that they can make an informed decision on the Bill in question.

Recognition

We do recognize and indeed grateful that in the proposed amendment, there are aspects which benefit us Muslims and that we are indeed grateful for the thoughtfulness of the proposal, namely:

- (a) the proposal to allow the President of Singapore to appoint more than one President of the Syariah Court;
- (b) the proposal to confer power to the President of the Syariah Court to execute (sign) the housing deeds on behalf of the party who refused to obey the judgement ordered by the Court;
- (c) the proposal to increase in the penalty for those guilty of committing the offence of "teaching false doctrines", fines from S\$500 to S\$2,000 and the jail term, from 6 months to 12 months.

Our main concern, and which we strongly oppose is:

PART 1

MAIN OBJECTION

(a)"conferring the civil court concurrent jurisdiction with the Syariah Court in civil proceedings involving matters relating to maintenance, custody of children and disposition or division of property on divorce".

Our reasons/justification

We believe that the spirit from which AMLA was borne is to allow Muslims to administer the Islamic laws in matters of personal practices, marriage and family especially with the glaring establishment of such institutions as the MUIS and the Syariah Court. As it is, there are even aspects of the AMLA which, although defined under the AMLA but are still administered by the civil courts viz. "Part IX - Offences".

Although we understand the reasons given by the Minister concerned, that the concurrency arrangement is meant to ensure that with this option for cases to be heard in the civil court is to alleviate the 'back-log' presently faced by the Syariah Court, we are not convinced that this is the only possible option. The Minister has yet to show us that every other avenues have been tried and failed before resorting to this 'sharing the exclusive powers'. After persuing the issue, we are of the view that the proposed "concurrency arrangement" will inadvertently decrease the Syariah Court's remaining exclusive powers of jurisdiction because these must be shared with the civil court. We note too that although arrangement of conferring such jurisdiction to the Civil Court has to meet certain 'checks', these checks are not but flawed that can have serious consequences from the Islamic religious point of view. The problem cited by the Minister is purely administrative which can be solved without the need for opening the floodgate of "dissent" amongst Muslim towards accepting the Syariah Rulings. Such dissent (refusing in following Syariah Ruling) is viewed by Islam as a great wrong (*mun-kar*).

PART 1
DETAIL RESPONSE

Below are our response, suggestions, comments and justifications - detailing clause-by-clause of the proposed amendment:

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>section 34</p> <p>34.-The President of Singapore may by notification in the <i>Gazette</i> constitute a Syariah Court for Singapore (referred to in this Part as the Court).</p>	Nil	<p>To repeal section 34 with:</p> <p>34.-The President of Singapore may by notification in the <i>Gazette</i> constitute as many Syariah Courts as he thinks fit for Singapore (referred to in this Part as the Court).</p>	<p>(a) The prerogative of the President of Singapore, under this section, to set up only one Syariah Court should be extended to several Syariah Courts. Each Court can then handle specific issues e.g. maintenance, custody of children or division of property upon divorce and offences under AMLA etc. To have many presidents to only one Syariah Court, as the amendment intends, would be inadequate. "To have more than one captain to only one ship is not efficient as compared to several captains, each with their own ship".</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>section 35</p> <p>35.-(1) The Court shall have jurisdiction throughout Singapore and shall be presided over by a President to be appointed by the President of Singapore.</p> <p>(2) The court shall hear and determine all actions and proceedings in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law and which involve disputes relating to -</p> <p>(a) marriage;</p> <p>(b) divorces known as fasakh, cerai taklik, khuluk and talak;</p> <p>(c) betrothal, nullity of marriage or judicial separation;</p> <p>(d) the disposition or division of property on divorce; or</p> <p>(e) the payment of emas kahwin, maintenance and consolatory gifts or mutaah.</p>	<p>section 35 (Clause 8 of the Bill) (additional insertions)</p> <p>(a) by inserting, immediately after subsection (1), the following subsections: "(1A) The President of Singapore may appoint one or more presidents of the Court. "(1B) All presidents of the Court shall have in all respects equal power, authority and jurisdiction." and</p> <p>(b) by inserting, immediately after the word "shall" in the first line of subsection (2), the words "have jurisdiction to".</p>	<p>We can accept the clause with the following additions.</p> <p>To insert after the word "... of the Court." The following "Such person or persons appointed should be a qualified Muslim scholar, well-versed in Islamic jurisprudence and able to read and understand from the primary Islamic sources (in the classical Arabic)." (We append Schedule 'A' as an advice for the selection of the Syariah court presidents)</p>	<p>(b) Our concern is that, to be appointed presidents of the Syariah court, the candidates' qualification and competency in Syariah law should be an indispensable consideration. Even though some may feel that any competent magistrate from the district court could possibly qualify, we beg to differ. The fact that AMLA exists is because we in Singapore, recognize the special and distinct position of the Syariah vis-a-vis the civil legal system. And to have a president without Syariah qualification is, we feel, grossly disrespectful to the intention of the AMLA itself.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
(3) In all questions regarding betrothal, marriage, dissolution of marriage, including talak, khuluk and fasakh, nullity of marriage or judicial separation, the appointment of hakam, the disposition or division of property on divorce, the payment of emas kahwin and consolatory gifts or mutaah and the payment of maintenance on divorce the rule of decision where the parties are Muslims or were married under the provisions of the Muslim law shall, subject to the provisions of this Act, be the Muslim law, as varied where applicable by Malay custom.			

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<i>Nil</i>	<p>section 35A (additional subsection)</p> <p>"Leave to commence or to continue civil proceedings involving disposition or division of property on divorce or custody of children.</p> <p>35A.-(1) Any person who, on or after the commencement of proceedings for divorce in the Court or after the making of a decree or order for divorce under section 102, intends to commence civil proceedings in any court involving any matter relating to the disposition or division of property on divorce or custody of any child where the parties are Muslims or were married under the provisions of the Muslim law shall apply to the Court for leave to commence the civil proceedings.</p> <p>(2) Where proceedings for divorce are commenced in the court or a decree or order for divorce is made by the Court or a divorce is registered under section 102 after civil proceedings between the same parties are commenced in any court involving any matter relating to the custody of any child, any party who intends to continue the civil proceedings shall apply to the Court for leave to continue the civil proceedings.</p>	<p>We are strongly opposed to all the clause in sections 35A and also the subsequent 35B.</p>	<p>Our objection is that this amendment will take away the exclusive jurisdiction of the Syariah Court in relation to matters relating to:</p> <ul style="list-style-type: none"> (i) the custody of the child; and (ii) the disposition or division of property on divorce. <p>To have this amendment would be surrendering the jurisdiction of the Syariah Court. If the reasons for the Muslims making the application to be heard as a civil proceedings is to seek legal rulings other than, or even contrary to, the Syariah - then this amendment would seem to undermine the applicability of the Syariah law for Muslims.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>(3) The Court shall not grant leave to commence the civil proceedings under subsection (1) or to continue the civil proceedings under subsection (2) unless the Court is satisfied that every party who will be affected by such leave had been notified of the application at least 7 days before the grant of such leave.</p> <p>(4) The Court shall, if it grants the application for leave under subsection (1) or (2), issue a commencement certificate, respectively, to the applicant-</p> <ul style="list-style-type: none"> (a) not later than 21 days after granting such leave; or (b) where an appeal against the grant of such leave has been made under section 55, when the decision of the Court to grant such leave has been confirmed on appeal or appeal has been discontinued. <p>(5) This section shall not apply if the parties to the civil proceedings mentioned in subsection (1) consent to the commencement of the civil proceedings in any court or mentioned in subsection (2) consent to the continuation of such proceedings.</p>		<p>And if the reason for the amendment is because of the backlog which presently the Syariah Court is unable to clear, whereas the civil courts have sufficient machinery to take on, then the problem is purely administrative which can be solved without the need for opening the floodgate of "dissent" amongst Muslim towards accepting the Syariah rulings. Such dissent (refusing in following Syariah ruling) is viewed by Islam as a great wrong. From the Islamic legal perspective (a maxim): "removal of wrong doings (dar-u al-mafaasid) takes precedence over (muqad-diman 'ala) introducing new benefits (jal-bu-al masaa-liH)". Thus we would like to assert that the application of the Syariah Ruling on such matters has greater precedence, if not the only ruling, for Muslims.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
Nil	<p>Stay of proceedings involving certain matters</p> <p>35B.-(1) The Court shall stay proceedings before it -</p> <p>(a) involving any matter in respect of which it has issued a certificate under section 35A (4), upon issuing the certificate;</p> <p>(b) involving any matter relating to maintenance of any wife during subsistence of the marriage, if it comes to the knowledge of the Court that civil proceedings relating maintenance of the wife have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;</p> <p>(c) involving any matter relating to the maintenance of any child of the parties, if it comes to the knowledge of the Court that civil proceedings relating to the</p>	<p>We are strongly opposed to all the clause section 35B and also the previous 35A.</p>	<p>We have to reiterate our contention that steps must be taken to ensure that Syariah Court's proceedings are not taken for granted by litigants who are "<i>Muslims and who are married under the provision of the Muslim law</i>". As Muslims, we must assert that the application of the Syariah ruling on such matters has greater precedence, if not the only ruling, for all Muslims. The very fact there is AMLA would support our contention and bear testimony to the constitutional spirit that Muslims should be given their rights to apply their own religious rulings. We are aware of the loophole for them in the past (i.e. up to the present), that as Singapore citizen, they could also seek indulgence through the Civil Court regarding their cases which, in some instance may have led to conflict of jurisdictions between the Civil and Syariah Courts.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>maintenance of the child have been commenced in any court between the same parties before, on or after the commencement of the proceedings before it;</p> <p>(d) to which section 35A (1) would apply apart from section 35A (5), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been commenced in any court by the consent of the parties; or</p> <p>(e) to which section 35A (2) would apply apart from section 35A (5), if it comes to the knowledge of the Court that civil proceedings involving the same matter between the same parties have been continued in any court by the consent of the parties.</p>		<p>Therefore it would seem obvious that it is the loophole which has to be plugged. If the consideration or reason for the amendment here is to avoid "<i>multiplicity of actions</i>", then, rightly it should be the Civil Courts that must comply with this section regarding "<i>stay of proceedings</i>". It should be the Civil Courts that should respect procedures (such as the marriage itself) started under the AMLA, by Muslims would necessarily come within the jurisdiction of the Syariah Court.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>35B.-(2) Where leave granted by the Court under section 35A is reversed on appeal under section 55. The Court may restore any proceedings which have been stayed under section (1) (a).</p> <p>35B.-(3) Nothing in this section shall prevent the Court from exercising its powers under sections 51 (2) and 52 (1), (2) and (3) (a) and (b).</p>	<p>We are strongly opposed to this clause section 35B and also the previous 35A.</p>	<p>We understand that because in the above amendment section 35A and 35B, it has obviously blurred and diminished the powers of the Syariah Court, the clause section 35B (3) has to be inserted to re-demarcate and re-specify the Syariah Court's residual powers. Thus directly it reaffirms our fear that this amendment will take away the jurisdiction and reduces the powers of the Syariah Court.</p> <p>Also it is obvious in the last phrase "... its powers under sections 51 (2) and 52 (1) and (3) (a) and (b)." which this clause redefined, the Syariah Court has indeed lost substantial powers because the original section 51 (3) also contains subsection (c) and (d) which read as follows:</p> <ul style="list-style-type: none"> (c) the custody, maintenance and education of the minor children of the parties; (d) the disposition or division of property on divorce.

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
			<p><i>Point of caution</i></p> <p>We strongly object to the removal of such powers from the Syariah Court and bestowing it to the Civil Courts to adjudicate in such matters. The negative implications to Muslims, to our family institution and to our community towards moulding our lives in accordance with Islamic dictates will definitely be serious. The "trade-off" (compromise) cannot be condoned.</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
Nil	<p>section 51 (Clause 9 of the Bill) (additional subsections)</p> <p>"(4) The Court may vary or rescind any order made under this section on the application of the person in whose favour or against whom order was made where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.</p> <p>(5) Any person who fails to comply with an order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months."</p>	<p>We are agreeable to this clause.</p>	<p>As it gives power to the Syariah Court to vary or rescind orders for maintenance for married woman or women who have been divorced in certain circumstances and to create the offence of failing to comply with orders of the Syariah Court under that section.</p> <p>Note that as section (5) stipulates penalty for failure of compliance to the Court's order. It would be even better if the Minister-in-charge takes steps to empower the Syariah Court so that it too can enforce them on its own. The capability for the Syariah Court to enforce its orders would be more meaningful than just giving power to issue the orders but without it being able to enforce them (which, by the way, has led to the present situation where litigants sought out the civil courts indulgence).</p> <p>Thus the need to expanding staffing and other infrastructure of the Syariah Court would be more relevant and urgent.</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>52.-(1) The Court shall have power to inquire into and adjudicate upon claims by married women or women who have been divorced for payment of her <i>emas kahwin</i>.</p> <p>(2) A woman who has been divorced by her husband may apply to the Court for consolatory gift or <i>mutaah</i> and the Court may after hearing the parties order payment of such sum as may be just and in accordance with the Muslim law.</p> <p>(3) In any application for divorce the Court may, at any stage of the proceedings or after a decree or order has been made, make such orders as it thinks fit with respect to -</p> <p>(a) the payment of <i>emas kahwin</i> to the wife;</p> <p>(b) the payment of a consolatory gift or <i>mutaah</i> to the wife;</p>	<p>section 52 (Clause 10 of the Bill)</p> <p>(a) by deleting subsection (3) and substituting the following subsection: "(3) The Court may, at any stage of the proceedings for divorce or after making a decree or order for divorce, or after any divorce has been registered whether before or after the commencement of the Administration of Muslim Law (Amendment) Act 1998 under section 102, on the application of any party, make such orders as it thinks fit with respect to -</p> <p>(a) the payment of <i>emas kahwin</i> to the wife;</p> <p>(b) the payment of a consolatory gift or <i>mutaah</i> to the wife;</p> <p>(c) the custody, maintenance and education of the minor children of the parties; and</p>	<p>We are agreeable to this clause except for subsection (6) which we object since the previous subsection states "... as it thinks just and equitable" has allowed the Syariah Court the prerogative to apply them.</p> <p>To rephrase subsection (6) thus: "The court may exercise its discretion to adopt any part of the rulings of the High Court in making an order, including subsection (2) to (10) of the Women's Charter (Cap. 353).</p>	<p>We do not want the Syariah Court to be bound by the Women's Charter but that it should always have the discretion to apply them if it deems necessary. Although the entire clause widens the scope of section 52, we are concerned that there may still be possibility of its ruling being over-ruled whenever it differs with that adopted by the High Court especially where the Women's Charter is applicable. The qualifying statement in (6) above "so far as they are consistent with the Muslim law" we feel is still not conclusive as it only excuses the Syariah Court from using the decisions made by the High Court, but the word "shall apply" binds the Syariah Court to it.</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>(c) the custody, maintenance and education of the minor children of the parties; and</p> <p>(d) the disposition or division of property on divorce .</p> <p>(4) The procedure and forms of process in suits under this section shall be as prescribed by rules made under section 145.</p>	<p>(d) the disposition or division of property on divorce"; and</p> <p>(b) by inserting, immediately after subsection (4), the following subsections:</p> <p>"(5) In making any order under subsection (3) (d), the Court shall have power to order the disposition or division of the property in such proportions as it thinks just and equitable.</p> <p>(6) Subsections (2) to (10) of section 112 of the Women's Charter (Cap. 353) shall apply, with the necessary modifications, to the Court in making an order under subsection (3) (d) in like manner as those subsections apply to the High Court so far as they are consistent with the Muslim law.</p>	<p>Correspondingly, we are strongly opposed to the proposal in the accompanying schedule for the amendment of the "Supreme Court of Judicature Act (Cap. 322) New section 17A - sections (2) up to (9)."</p> <p>As for 17A – section (1) we are agreeable subject to inclusion of the additional jurisdiction and thus should read as follows:</p> <p>17A.- (1) Notwithstanding sections 16 and 17, the High Court shall have no jurisdiction to hear and try civil proceedings involving matters which come within the jurisdiction of the Syariah Court under section 35 (2) (a), (b), (c), (d), (e) or (f) of the Administration of Muslim Law Act (Cap. 3) in which all parties are Muslims or where the parties were married under the provisions of the Muslim law.</p>	<p>We note that when the amendment touches upon the jurisdiction of the High Court it makes very clear (bold) intention and reserves its right to apply civil law, and thereafter binds itself to the Women's Charter. We should note with caution that in clause 17A (7) and (8) of the present amendment which state:</p> <p>(7) For the avoidance of any doubt, the High Court in exercising its jurisdiction or powers under subsection (2) shall apply the civil law.</p> <p>(8) Notwithstanding section 3 (2) of the Women's Charter (Cap. 353), section 112 of that Act shall apply to the High Court in the exercise of its jurisdiction or powers under subsection (2) (c).</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>(7) The Court may, on the application of any interested person, vary or rescind any order made under subsection (3) (a), (b) or (c) where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances.</p> <p>(8) Any person who fails to comply with an - order of the Court made under this section shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 6 months."</p>		<p><i>Point of caution</i> With such bold statement, by concurrency, we feel that functions and the role of the Syariah Court will be diluted, further undermining its position. Especially when some ignorant Muslims may think that because the AMLA has explicitly endorsed the concurrency arrangement, it is permissible to alternatively seek the High Court's indulgence.</p> <p>The obvious implication of this amendment is actually the extending of the Civil law (especially in matters of custody and division of wealth) to Muslims - and not so much extending the powers of the Syariah Court.</p> <p>Also, we are to note that once we give up any prerogatives within AMLA, it will be very difficult to reinstate it back later whenever we see the need for it again (because it will require passage through Parliament again).</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>53. If any person fails or neglects to comply with an order of the Court made under section 52 the Court may for every breach of the order direct the amount or the value of the property due to be levied in the manner provided for levying fines imposed by a Magistrate's court or may sentence him to imprisonment for a term not exceeding 6 months.</p>	<p>section 53 (Clause 11 of the Bill)</p> <p>53.-(1) The Court may, for every breach of an order made under sections 51 and 52, direct the amount or the value of the property due to be levied in the manner provided for levying fines imposed by a Magistrate's Court.</p> <p>(2) For the purposes of enforcement of any order made under this part, any party interested may apply for the order to be registered in a District Court in accordance with the Rules of Court and the District Court shall register the order in accordance with the Rules of Court.</p> <p>(3) From the date of registration of an order under subsection (2), the order shall be of the same force and effect, and all proceedings may be taken on the order, for the purposes of enforcement as if it had been an order originally obtained in the District Court which shall have power to enforce it accordingly.</p> <p>(4) A District Court shall have jurisdiction to enforce any order in accordance with subsection (3) regardless of the monetary amount involved.</p>	<p>This can be accepted for the time being.</p> <p>This can be accepted for the time being.</p> <p>This can be accepted for the time being.</p> <p>This can be accepted for the time being.</p>	<p>Although we are agreeable to this clause as it gives effect to orders of the Syariah Court, yet we would rather the Minister-in-charge seeks to give power for enforcement to the Syariah Court and not the District Court.</p> <p>Our worry is when rules other than the Muslim Law may be invoked as the District Court may exercise its prerogative to apply them. This (especially (5)) could further erode the application of the Syariah Laws amongst Muslims because the position of the Syariah Court vis-à-vis District Court becomes lowered as this clause not only empowers the prerogative of the High Court but obviously, (as the clause "may exercise ... Section 14 of the Guardianship of Infants Act (Cap. 122)...") intended to confer the litigants the application of rulings based on other than the Syariah (despite of their both being Muslims, and having contracted their</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>(5) In enforcing a custody order registered under subsection (2), a District Court may exercise the powers conferred on the High Court by section 14 of the Guardianship of Infants Act (Cap. 122) except that the reference to the sheriff in that section shall read as a reference to a bailiff for the purposes of this subsection.</p> <p>53 A.-(1) If a judgment or order of the Court is for the execution of a deed, or signing of a document, or for the endorsement of a negotiable instrument, and the party ordered to execute, sign or indorse such instrument is - absent, or neglects or refuses to do so, any party interested in having the same executed, signed or indorsed, may prepare a deed, document or endorsement of the instrument in accordance with the terms of the judgment or order, and tender the same to the Court for execution upon the proper stamp, if any is required by law.</p> <p>(2) The signature thereof by any president of the Court shall have the same effect as the execution, signing or endorsement thereof by the party ordered to execute.</p>	<p>This can be accepted for the time being,</p> <p>This is acceptable.</p> <p>This is acceptable.</p>	<p>marriage in accordance with the Muslim laws). Thus from this it is inferred that the amendment may give the District Court powers to over-rule the decisions reached by the Syariah Court.</p> <p><i>Alternative</i> If the reason for the amendment is the problem that the Syariah Court's present inability to enforce its orders and decisions because of constraints (e.g. staffing etc.) it does not justify the giving away of its own prerogatives, seeing that it stands at par with the Civil Courts. The Minister-in-charge could, instead of seeking this amendment, look towards beefing up the Syariah Court's ability by other administrative means.</p> <p>If administrative assistance of the Civil Court is necessary, Syariah units could be set up in those courts without the need to surrender the Syariah Court's prerogatives, too much.</p>

<i>Original - (repealed)</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
	<p>(3) Nothing in this section shall be taken to abridge the powers of a court under section 53.</p> <p>(4) This section and sections 51 (4) and (5), 52 (7) and (8) and 53 shall also apply to any judgment or order of the Court made before the commencement of the Administration of Muslim Law (Amendment) Act 1998.</p> <p>Costs</p> <p>53B. The Court may, in its discretion, order any party to pay any costs of any proceedings under this Part, including travelling and subsistence expenses of the parties and witnesses, and shall itself assess the amount of any costs so ordered to be paid.".</p>	<p>This is acceptable.</p> <p>This is acceptable.</p> <p>This is acceptable.</p>	<p>If one argues (i.e. by invoking rules for emergency "dharurah") that because of the present circumstances (i.e. the Syariah Court cannot cope with its cases at hand) thus it opens a way to adopting the available alternative (i.e. turning to the civil courts' indulgence), even if we are to agree to it, we must qualify that such agreement must always be seen as temporary - and we are still required to remove that constraint. From Islamic legal perspective (maxim): "whatever is allowed due to constraint (<i>wamaa-ubii-Ha lidw-dwaruu-rati</i>) is only allowed according to the existence of that constraint (<i>yu-qad-daru bi-qad-rihaa</i>)"</p> <p>Thus, it would have been closer to the Islamic spirit to strengthen the role and capabilities of Syariah Court rather than this "concurrent" arrangement (with its attending conditions) which, in our opinion, dilutes and weakens the Syariah Court.</p>

As to amendment of section 55 and new sections 56A and 56B, we find it agreeable.

PART 2

MAIN CONTENTION

(b) the absence of the Syariah Court's power to try cases under "Offences"

Our reasons/justification

Although we are happy and welcome the proposed increase in the fines under the offence: "teaching of false doctrines" from a fine of S\$500 to S\$2,000 and the jail term from 6 months to 12 months, as this reflects the spirit on which the clause on offences were constituted, we note that this is still being tried in the Civil Courts. The reasons why this was so could be due to the infancy of the Syariah Court at the time of legislating the AMLA.

Thus we are of the view that the Minister would extend the spirit for which this PART IX - OFFENCE clause was drawn by also ensuring that in its application, the full measure by giving the Syariah court jurisdiction to hear and try these "Offences" instead of in the Civil Court.

Below are our response, suggestions, comments and justifications - detailing clause-by-clause of the proposed amendment:

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
129. Subject to this Act, this Part shall only apply to Muslims.	Nil	<p>To add after clause 129.</p> <p>129. Subject to this Act, this Part shall only apply to Muslims.</p> <p>The following enabling clause:</p> <p>"The Syariah Court shall have the power to hear all cases under this section."</p> <p>Also to add to section 52:</p> <p>"The Syariah Court shall have the power to prosecute all offences as mentioned in PART IX - OFFENCES of the AMLA."</p>	<p>To ensure consistency between the spirit of the law with the execution of its intention, let only the Syariah Court to try such cases and not the District Court. And this is not only with regard to offence for teaching false doctrine but all of PART IX - OFFENCES. We note that the Syariah Court has not been empowered to try offences under this section" which covers, <i>inter alia</i> ". . cohabitation outside marriage; enticing unmarried woman; neglect or failure to report conversion; false doctrine; etc."</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<p>Section 139</p> <p>139.-(1) Whoever shall teach or publicly expound any doctrine or perform any ceremony or act relating to the Muslim religion in any manner contrary to the Muslim law shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 6 months or to both.</p>	<p>Section 139 (Clause 19 of the Bill)</p> <p>(a) by deleting "\$500" in the fifth line and substituting "\$2,000"; and (b) by deleting the words "6 months" in the last line and substituting the words "12 months".</p>	<p>And to section 35 (jurisdiction of the Court), after item (e) to add: (f) to hear and try cases under PART IX - OFFENCES.</p> <p>This is acceptable.</p>	<p>Granted that the intention of the amendment under clause 19 of the Bill, is to raise the maximum quantum of punishment for such offence. Our concern is that the amendment should also ensure that the implementation of the sentencing itself should also reflect the seriousness of the offence. As the clause does not specify any minimum mandatory sentence, it is up to the judge's discretion. If a case involving say "cohabitation outside marriage, teaching false doctrine or enticing unmarried women" is tried in the District Court and the offender found guilty, the judge (being non-Syariah judge) may not see the seriousness of the offence (from the Islamic perspective).</p>

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
			<p>And he may only impose a fine of mere \$10.00, as sentencing is the prerogative of the District Judge. We fear that the seriousness of the offence could be lost thereby rendering such offences without any deterrent.</p> <p>This is because despite of the stated clause in the AMLA, we note that Syariah Court has not been able to carry out its intended role and function under this clause. If the excuse for inability is due to lack of manpower, staffing or other necessary enactment, we hope the Minister-in-charge of Muslim Affairs could use the opportunity of this amendment to consider removal of such impotency of the Court so that the status of the Syariah Court is not diminished in the eyes of Muslims, and the intended objective of the clause met.</p>

PART 3

MAIN CONCERN

(c) *"the powers of the Majlis Ugama Islam Singapura (MUIS) in Haj matters"*

Our reasons/justification

As an Islamic body to oversee the Haj pilgrims, MUIS must be clearly empowered and fulfill her responsibility to ensure the validity of the rituals performed by these pilgrims. Without this added clause, we fear that the main issue of the rites of Haj itself may be neglected over other issues and be left to unqualified or unaccredited persons.

Below are our response, suggestions, comments and justifications - detailing clause-by-clause of the proposed amendment:

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
<i>Nil</i>	<p>88B. The Majlis may regulate any person providing goods or services for the purposes of the Haj -</p> <p>(a) to ensure that the requirements of the Muslim law are complied with in relation to the provision of those goods or services;</p> <p>(b) to safeguard the safety and welfare of the persons to whom those goods or services are provided; and</p> <p>(c) to promote the proper administration of any matter relating to the Haj.</p>	<p>We are agreeable to the clause subject to inclusion of an additional phrase to (a) thus:</p> <p>"... including ensuring that those who act as guide for the pilgrims are qualified religious teachers."</p>	<p>We are very concerned that unqualified persons may be acting as the religious teachers and Haj guides. The proper compliance of the "Manasik" (rites) is vital for the Haj to be acceptable. From past experience, we note that certain irresponsible people have issued verdicts which are contrary to the teachings in Islam regarding the matter. We would like MUIS to be serious in ensuring such abuses are checked.</p>

PART 5
MAIN CONCERN

(d) *"the choice of President of the MUIS (Islamic Religious Council) is to be nominated by the Muslims"*

Our reasons/justification

As the main body to co-ordinate all Islamic affairs of the Muslims, MUIS' leadership must clearly reflect such aspiration by removing all possible doubts as to its leadership. As it is, leadership which the community do not participate in choosing will continue to drive a wedge of distrust amongst certain quarters in the community towards MUIS. Efforts to unify the Muslims is an essential Islamic teaching and every effort must be done to remove possible obstacles for its achievement.

Below are our suggestions, comments and justifications - detailing clause-by-clause of the proposed amendment:

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
7.-(1) The Majlis shall consist of - (a) a President to be appointed by the President of Singapore;	Nil	Repeal Section 7 (1) of subsection (a) and substitute it with: 7.-(1) The Majlis shall consist of - (a) a President to be appointed by the President of Singapore from a list of nominees recommended by the Muslim community through consensus (syura) of their representatives sitting in the Council.	The principle of mutual consultation (syura) is a very important principle in Islam. The very name 'Majlis' (Council) reflects this aspiration. Thus the right of the Muslim community to be consulted in the matter of appointment of the President is very important. The original section 7 (1) (a) has generally given the impression to the Muslim community that leadership of MUIS is 'imposed', and this may lead to undue difficulty for bringing the Muslim community to work closer with MUIS. Since MUIS' inception, there have been many lay Muslims who questioned the

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
			accountability and commitment of such appointed persons thereby retarding the aspiration to make MUIS as the institution of and for all the Muslim community in Singapore. It would further help if the salary of the President of MUIS be paid directly from the 'Baitulmal'.

PART 6 MAIN CONCERN

(e) *"to enhance /he independence of the Syariah Court and her image and standing as a Court of Law"*

Our reasons/justification

As in the civil court, the perception of the independence of the judiciary is very important. Our proposal should never be construed as implying that Syariah Court is less independent, but more of increasing the esteem for which every court should be held in the eyes of the people concerned.

Below are our suggestions, comments and justifications-detailing clause-by-clause of the proposed amendment:

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
Nil	Nil	(a) The term "President" of the Syariah Court to be changed to "Syariah Judge".	This is to prevent misperception leading to the people not according the proper respect due to this august institution.

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
Nil	Nil	(b) To ensure the full and thorough training which every judge of the Syariah Court, both on the administrative matters of a court as well as Syar'rie legal matters; procedures and etiquette required for officers of an Islamic Court; etc.	This will further enhance the Syariah Court's image and standing.
Nil	Nil	<p>(d) the term and definition of maintenance should be extended to include providing maintenance to all dependents viz. parents, grandparents, siblings, unmarried female relations etc.... that falls under the rule of "responsibilities of guardianship in Islam".</p> <p>Thus for this (d) we propose that "Section 35 (2) - Jurisdiction" should include an additional subsection immediately after subsection (e), with the following subsection:</p> <p>(f) the payment of maintenance to dependents.</p>	This will expand Syariah Court's potential to address many social issues faced by Muslims based on the Islamic teachings. It becomes meaningful when the rights of a male Muslim to more share of inheritance to also commensurate with his expected responsibilities. And the Syariah Court can be effective in ensuring such social obligations are complied.

<i>Original Section</i>	<i>Amendment</i>	<i>Our Proposal</i>	<i>Justification</i>
		<p>And section 52, to delete subsection (1) and substituting it with:</p> <p>(1) The Court shall have power to inquire into and adjudicate upon claims by any dependents for payment of maintenance according to Muslim Law, and claims of married women or women who have been divorced for payments of her emas kahwin.</p>	

Paper 10

From: Young Women Muslim Association
[Persatuan Pemuda Islam Singapura]
Block 1, Eunus Crescent #01-2509
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Dated: 1 August 1998

Received: 3 August 1998

YWMA's VIEWS ON THE PROPOSED AMENDMENTS TO ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

1. We present the views of the Young Women Muslim Association (YWMA) regarding the proposed amendments to the Administration of Muslim Law Act (AMLA) specifically on matters pertaining to the Syariah Court.

2. Being one of the voluntary welfare organisations that provides counselling service at the Syariah Court, YWMA is aware of the problem of backlog cases pending decision at the Syariah Court. We share the concern that the situation is critical. The solution, we believe, must not just be expeditious but also an effective one.

3. We support the proposed amendments on the execution power, proxy power of the court to sign documents on post-divorce matters and the introduction of the third president. In our view, these changes are necessary systems support to enable Syariah Court to settle the post-divorce matters of the cases.

4. However, the proposed amendment to introduce the concurrent jurisdiction to civil court has implications that is a cause for concern for the Malay/Muslim community. Allowing concurrent jurisdiction to civil court on post-divorce matters will imply -

- (a) different judgments arising from understandably two different value systems adopted by the two courts; and
- (b) different pace of handling the cases by the two courts due to the different status and resources accorded to them.

5. The present Syariah Court is not equivalent in standing compared to the Civil Court and is not equipped with manpower and resources accorded to a court. With the availability of option for concurrent jurisdiction to Civil Court, the inclination of the community will be towards a system that is capable of prompt service i.e. the Civil Court and instead of a system that is grounded in Islam i.e. Syariah Court. YWMA is concerned about this implied message given to the Muslim community. We believe that it is our communal responsibility to safeguard the community's practice of Islam. Also, we are of the view that a practice if not acceptable in principle, should not be institutionalised even if it is a current practice.

6. At the core of the proposed amendments is the issue of managing Muslim divorces which we believe requires a holistic perspective. From the legal aspect, this would mean a Syariah judicial system that would be able to handle cases effectively and efficiently from start to finish. From the social point of view, there is a need to enhance social services that would address the breakdown of Muslim marriages and its effects. Commitment from the authorities in terms of direction and provision of resources towards the successful implementation of the concerns at the different levels is pertinent.

7. In response to the proposed amendments, we would like to recommend the following:

Long Term -Measure: A Full-Fledged Syariah Court

It is our aspiration that a full-fledged Syariah court be in place as a long term measure. The Syariah Court should be empowered with clear mandate and jurisdiction; boosted with sufficient and qualified resources to function independently in its own judicial system.

Short Term Measures

While the long term Syariah judicial system is being considered, we suggest that short term measures be carried out to clear the backlog of cases.

- (a) to appoint suitably qualified judges trained in Syariah law (local or overseas);
- (b) to use mediation as an alternative process to settle post-divorce matters; and
- (c) to increase manpower resources as a stop-gap measure to assist in the administrative work of the court.

8. In conclusion, we agree to the adoption of the three proposed amendments, namely, the execution power, proxy power of the court to sign documents on post divorce matters and the introduction of the third president but not in favour with the proposed amendment of granting concurrent jurisdiction to civil court. However we recommend some short term measures to address the problem of backlog of cases. In the long run, we see the possibility of two separate judicial systems i.e. the civil vis-à-vis Syariah co-existing in multi-cultural Singapore.

Paper 18

From: Tuan Hj Hussien Bin Abdul Latiff
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Dated: 3 August 1998

Received: 3 August 1998

COMMENTS AND SUGGESTIONS TO THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL PERTAINING TO THE SYARIAH COURT ONLY

A. Under the Amendment Bill

1. *Section 35A (2)*

(a) *Comments*

The section should extend to disposition or division of property as cases involving the same are still being referred to the High Court in particular for cases of divorces before a Kadi. Some of these cases may be outstanding at the time when this Amendment Bill is passed by Parliament as an Act.

(b) *Suggestions*

To insert, **"or disposition or division of property on divorce" immediately after the phrase "any child"**.

2. *Section 35A (4)*

(a) *Comments*

Appeal should not be allowed as this will unnecessarily prolong the divorce case at the Syariah Court. At present it takes nearly a year or more for the appeal to be heard in the Appeal Board.

(b) *Suggestions*

- (i) Subsection (4) is to be deleted and subsection (5) to be renumbered as subsection (4).
- (ii) There should be a policy made that Syariah Court should not so easily allow a case be sent to the High Court to be heard.

3. *Section 35A (6)*

(a) *Comments*

The consent must be signed and filed in the Court within one (1) month before the proceeding commences or continues to avoid marriage couple

entering an agreement before or after marriage at the time when divorce is not envisaged, to exclude the Syariah Court's jurisdiction.

(b) *Suggestions*

To add **"such consent must be signed and filed in Court within one (1) month before the proceeding commences or continues as the case may be" after last word "proceedings"**.

4. *Section 35B (2)*

(a) *Comments*

Since section 35A (4) is to be deleted therefore section 35B (2) is redundant.

(b) *Suggestions*

Section 35B (2) to be deleted and subsection (3) shall be renumbered as subsection (2).

5. *Section 52 (3) (a)*

(a) *Comments*

The payment of "Hantaran" must be included in this subsection as payment of "Hantaran" is part and parcel of the Malay custom or "adat" in a Malay Muslim marriage.

(b) *Suggestions*

(i) To add the phrase **"and/or Hantaran"** immediately after the phrase "Emas kahwin".

(ii) To add under section 2 the following:

"Hantaran" which means "the sum agreed by the bridegroom to be paid to the bride on or before the solemnisation of their marriage".

6. *Section 52 (b)*

(a) *Comments*

(i) This section contradicts section 119 of the AMLA which provides that property of a woman before marriage belonged solely to her and also contradicts sections 120 of the AMLA as under the latter provision whatever wages and earning from profession or trade and any property acquired through her skills, inheritance, legacy, gift purchase or other wise as well as all savings and investments acquired thereof belonged solely to the wife. This section further contradicts section 124 of the AMLA which provides that a person cannot acquire interest in the property of his/her spouse on marriage.

(ii) This section also conflicts with the Syariah Law concept of **Harta Sepencarian**.

(b) *Suggestions*

This section should be amended to read:

"Subsections (2) to (10) of section 112 of the Women's Charter (Chapter 353) may be referred to by the Court in making an order under subsection (3) (d) so far as they are consistent with the Muslim Law".

7. *Section 55*

(a) *Comments*

With regard to subsection (1) (a), there are apparently two (2) conflicting decisions of the Appeal Board and these are:

- (i) Disposition and division of matrimonial property falls under this section 55 (1) (a) and not subsection (f) (existing section 55 (1) (b)) as such there is no need to apply for leave from the Board except if it is a Consent Order then leave is required under subsection (2) (existing section 55 (1)); and
- (ii) Section 55 (1) (a) is strictly for *issues involving monies the amount of which should not exceed \$450* such as Nafkah, Nafkah Iddah, Muta'ah, Mas Kahwin and others. Such being the case, disposition and division of matrimonial property falls under section 55 (1) (f) (existing section 55 (1) (b)). Since disposition and division of matrimonial property falls under this section, to this end, leave of the Board is therefore required if one is to file an appeal. In this way, the provision of section 55 (1) i.e. no appeal against Consent Order without leave of the Board, does not apply.

(b) *Suggestions*

- (i) If Parliament intends to include disposition and distribution of matrimonial property under subsection 55 (1) (a), then it is suggested that the following phrase **"or in respect of distribution and division of property on divorce"** to be added immediately before the semi-colon (;).
- (ii) However, if Parliament intends to include disposition and division of property on divorce under subsection 55 (1) (f) then the following phrase, **"in respect of distribution and division of property on divorce or"** to be added immediately before the phrase "in any other case".
Note: Subsection (3) apparently is missing.

8. *The Schedule -Section 17A (2) (a)*

(a) *Comments*

- (i) Under Islamic Law and the present AMLA, a divorced wife or wife in "Nusus" is not entitled to maintenance except that a divorced wife is entitled to maintenance for the Iddah period (compulsory waiting period) and also to further maintenance in exceptional cases such as in cases where the husband divorced the wife to shirk his financial

responsibility to the wife who is infirm, incapacitated, senile, insane, sickly etc.

- (ii) The Civil Law does not give credence to the aspects of a "Nusus" wife nor does it take into consideration divorce by the utterance of "Talaq" where a Certificate of Divorce has yet to be issued by the Syariah Court.

(b) *Suggestions*

To add the following provision in the last part of subsection (2):

"Provided always that the Court shall be guided by the Muslim Law in respect of maintenance for any muslim wife, to this end the Court may request the Syariah Court to verify whether the parties are divorced under Muslim Law where the divorce proceeding is still pending at the Syariah Court. In such cases, the Court shall stay the proceeding for maintenance for the wife pending the said Syariah Court's verification".

9. *The Schedule - Section 17A (5) (b)*

(a) *Comments*

- (i) The consents may be made before and after the marriage (before divorce is envisaged) hence effectively ousted the Syariah Court's jurisdiction on these two (2) matters.
- (ii) It may happen that after the High Court decided on the custody and matrimonial property:
 - (1) The parties decided to reconcile. Hence the whole legal process at the High Court comes to nothing.
 - (2) The wife is only interested in the custody of the child and distribution and division of the matrimonial property. Once these are done in the High Court, she may not commence or even continue proceeding in the Syariah Court for divorce as she has no ground to ask for one (1) under "Taliq" or "Fasakh". In this way too, she escapes from "Tebus Talaq". If the husband then initiates the divorce, she will then pounce on him and claim for "Nafkah Iddah" and "Muta'ah".
- (iii) Similarly, the husband who after High Court's decisions have been made in his favour in respect of both matters, refuse to commence or continue proceeding at the Syariah Court. In this way, he avoids paying Muta'ah and Nafkah Iddah to the wife. However, once the wife filed for divorce, he then files claim for "Tebus Talaq".
- (iv) Similar restrictions on Consent as abovementioned be added here.

(b) *Suggestions*

(i) To add:

"provided that the decision(s) of the High Court under this provision shall be null and void if the parties or/anyone of them failed to commence divorce proceeding at the Syariah Court within one (1) month of the date of the Order or discontinued the divorce proceeding at the Syariah Court at any time after the date of the Order as the case may be", at the end of the provision of subsection (5) before the full-stop (.).

(ii) To add:

"provided that the decision(s) of the High Court under this provision shall be null and void if the parties or/anyone of them discontinued the divorce proceeding at the Syariah Court at any time after the date of the Order", at the end of the provision of subsection (6) before the full-stop (.).

(iii) To add a new subsection which is to read as follows:

"The Consent under subsections (5) and (6) must be signed and filed in the High Court within one (1) month before the divorce proceeding commences or continues as the case may be".

The proposed subsections (7), (8) and (9) to be renumbered in view of the above proposal.

B. Under the Existing AMLA

1. *Section 47 (1)*

(a) *Comments*

- (i) The woman applicant may be effectively divorced under Muslim Law as where her husband has uttered the "talak" outside the Court. In this way she is not a "married woman" as required under this provision.
- (ii) There is no provision for "married man" to commence divorce proceeding in Syariah Court.

(b) *Suggestions*

Subsection (1) should be amended to read as follows:

"A person who is married under the provision of the Muslim Law may commence proceeding at the Syariah Court for a divorce or to register a divorce or an intended divorce as the case may be".

2. *Section 47 (4)*

(a) *Comments*

In cases where the wife is the guilty party, the Hakam appointed by the husband shall not on his behalf utter the talak without first ascertaining the amount of redemption to be paid to the husband. In practice, Hakam, in some cases, uttered the talak without redemption and therefore the husband is denied his lawful right to redemption.

(b) *Suggestions*

To add the following phrase immediately before the full-stop (.):

"and in such situation the Hakam shall determine the khuluk to be paid by the wife".

3. *Section 48*

(a) *Comments*

(i) The condition or taliq **"leave the wife for a continuous period of 4 months or more, intentionally or unintentionally;"** as found in the marriage certificate should be restricted to cases where it is done without the wife's consent. Otherwise, husband who is stationed overseas or pursuing his education may be caught by this condition.

(ii) The Court has in all occasions interpreted the phrase **"Commit any action that causes injury to her body"** in the taliq as actual bodily injury in that there must be a cut or wound. Hence even if the spouse proves that she is battered "blue and black" these will not suffice as there is no cut or wound.

(b) *Suggestions*

(i) In relation to the above (1), the phrase **"without the consent of the wife"** is to be added immediately before the semi-colon (;).

(ii) Replace the phrase as abovementioned in (2) with **"Commit any assault to the wife which in the opinion of the Court is serious or substantial"**.

4. *Section 49 (1)*

(a) *Comments*

(i) Under Muslim Law, a married man is also entitled to be divorced by fasakh.

(ii) Existing subsections (2), (3), (4) and (5) to be renumbered and the phrases "husband of the woman" and "woman" to be amended accordingly.

(b) *Suggestions*

A new subsection (2) shall be inserted and which reads as follows:

- "(a) **A married man shall be entitled to apply to the Court for and obtain a decree of fasakh as against his spouse on any of the grounds stated under subsection (1) (b), (c), (e) and (g).**
- (b) **A married man shall be entitled to apply to the Court for and obtain a decree of fasakh if his spouse is prevented either physically or mentally from performing sexual intercourse.**
- (c) **With regard to a married man reference hereinafter in this section to "husband of the woman" and "woman" shall respectively mean "wife of the man" and "man"."**

5. *Section 50*

(a) *Comments*

- (i) In most cases, Hakams also decide on ancillary matters apart from divorce. This should not be the case as they are not fully apprised of the full facts and evidence of the case to make decisions on harta sepencarian, custody and others.
- (ii) There is also uncertainty as whether the Hakam's position is alike that of the President of the Syariah Court hence they can utter the talak or decide on the type of divorce without the approval of the Court.

(b) *Suggestions*

To insert new provisions which read as follows:

- "(6) **The Hakams shall only decide on the issue of divorce and in no event shall they decide on ancillary matters to the divorce.**
- (7) **All decisions of the Hakams in relation to the issue of divorce must be referred to the President of Syariah Court who may accept or reject it as the case may be."**

6. *Section 52 (1)*

Please refer to my comments and suggestion under section 52 (3) above.

7. *Section 112*

(a) *Comments*

- (i) Joint tenancy in property and nomination made in CPF are not recognised under Muslim Law.

- (ii) Most muslims will follow the Muslim Law of Inheritance in respect of the two subject matters. However, there are a few who took advantage of the situation by refusing to adhere to the Muslim law and as such gain tremendous benefits to themselves at the expense of the other beneficiaries who are entitled to inherit under the deceased's estate in Muslim law of Inheritance.
- (iii) There should be provision to prevent the few from abusing the anomaly existing between the Muslim Law and the Civil Law.

(b) *Suggestions*

- (i) To insert the following provisions:

"(4) Where two or more Muslims hold property, movable or immovable, and one of them dies, in respect of the deceased muslim, his interest at the time of his death shall be that of a tenant in common.

(5) A Muslim can only make nomination in respect of his CPF monies by way of a Hiba approved by MUIS."

- (ii) To insert the definition of Hiba under section 2 which read as follows:

"Hiba means a gift by a Muslim to another which takes effect before his death."

8. *Sections 145 and 146*

(a) *Comments*

The existing By-law created under these sections which governs the procedure of the Syariah Court needs to be totally revamped as the present procedure is totally unacceptable and causes undue delay to the system. Unfortunately, I do not see nor hear of any proposal to amend the By-law. This being the case, I could not give my comments and suggestions for the same.

Conclusion

1. The Amendment Bill can be accepted for the following reasons:

- (a) Muslim couples can take advantage of the speedier system of the High Court to resolve their problems in relation to the custody and/or harta sepencarian.
- (b) where the above two issues are settled amicably between the parties, the High Court should be the forum to record these settlement as it is more speedier.
- (c) As to the concern that the marriage couple may at the outset of their marriage enter into an agreement or consent to oust the Syariah Court's jurisdiction in respect of the two subject matters as abovementioned, this concern can be laid to rest by amending the proposed provision to prevent such occurrence.

(d) As to the concern that the parties may reconcile or abandon the proceeding at the Syariah Court after the High Court has adjudicated on the two subject matters as abovementioned, this too can be laid to rest by amending the proposed provision to prevent such occurrence.

2. My greatest fear, however, knowing fully well that judges make decisions based on law and not sentiment, if decision of the High Court contradicted the Muslim law, for example, giving custody of a Muslim child to a mother, in particular a convert, who is now an apostate. In such situation, are the muslims in Singapore, as a whole, mature enough to accept this decision or are they going to resort to violence alike that of Maria Hertogh's time and in so doing obliterating all those years of efforts, pains and achievements which to date have made Singapore what it is now and which we are proud of. If this is the case, it is like turning the hands of the clock backward, it will take again many years of efforts, pains and suffering before we can achieve what we have proudly achieved today. The harmony of our multi-racial society is just like a bridge spanning across a sea. The bridge is a link-up of four segments and if one gives way, the whole bridge will collapse into the sea. It will take years to build the bridge again.

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Paper 19

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ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

Executive Summary

The Administration of Muslim Law Act (AMLA) provides a machinery for the application of Islamic Laws (Syariah) on Muslims with regard to marriage and divorce (through the Syariah Court) and the administration of matters related to Islam (through the Islamic Religious Council). The existence of this Act is important to Singapore as it is a living symbol of the freedom to practice one's religion and AMLA has contributed to a harmonious relationship between communities.

The exclusive application of Syariah in such personal law matters and the existence of institutions like the Syariah Court and the Islamic Religious Council (MUIS) are a valuable heritage of the community.

They must be continually strengthened. The community must satisfy itself that the proposed AMLA (Amendment) Bill will further strengthen MUIS and the Syariah Court.

The Syariah Court today is in a less than desirable state due to its work processes, lack of resources and deficiencies in AMLA.

Improvements to the Syariah Court should be done at two fronts:

- within the legal framework (i.e. amendments to AMLA);
- outside the legal framework (i.e. operations of the Court).

The improvements on these two fronts must be simultaneously carried out as both are needed to achieve an efficacious Syariah Court System. The benefits of the proposed Amendment Bill could only be fully felt if the operations of the Court are improved.

Recommendations

(I) Amendments to AMLA that concern the Syariah Court

- (a) When the "Enhancement Test" is applied, it is generally found that many of the amendments overcome the weaknesses of the Syariah Court or confer more powers on it. These amendments are well received and should be accepted.
- (b) The amendments that give concurrent jurisdiction to Civil Courts *to hear* applications from Muslims on custody, maintenance and division of matrimonial assets issues (i.e. the proposed new sections 35A and 35B) do not enhance the position of the Syariah Court as the "dispenser of justice" to Muslims in the resolution of these post-divorce matters. They are therefore not accepted and should be excluded from the Amendment Bill.
- (c) However, the amendment to give concurrent jurisdiction to the District Courts *to enforce* the Syariah Court's orders is supported and should be accepted.

(II) Operations of the Syariah Court

A. Improve the work processes by

- (a) removing intake counselling as a function of the Court and establish a network of Designated Intake Counselling Agencies (DICA) to perform this "social role"; and
- (b) upgrading the pre-trial conference (PTC) to be an effective mediation machinery.

B. Strengthen the resources of the Syariah Court by

- (a) conducting a review of the manpower and the physical facilities to beef up the Syariah Court's manpower and facilities. The deployment of staff and provision of facilities at the Family Court should be used as a benchmark.

However, immediate steps should be taken *now* to

- (b) engage a third President;
- (c) appoint a Registrar to hear interim applications; and
- (d) engage two full-time mediators for the mediation process in PTC.

C. Time-Frame

The strengthening of the court's processes and the beefing up of its resources should be completed within a time-frame of preferably one year.

Concurrent Jurisdiction

The proposed amendments that come under special scrutiny are those that give concurrent jurisdiction to the Civil Courts to hear applications on division of matrimonial assets, custody and maintenance. AMP proposes that the amendments to give concurrent jurisdiction to the Civil Court in these *post-divorce* matters be dropped. They are:

- (a) Division of matrimonial assets - has always been in the hands of the Syariah Court which has clear guidelines to resolve it. Jurisdiction to divide matrimonial assets should lie exclusively with the Syariah Court. Concurrent jurisdiction would be retrogressive to the development of the Syariah Court.
- (b) Custody of children - exclusive jurisdiction over custody applications should lie with the Syariah Court to avoid any possible conflict in cases where the faith of a party becomes an issue.
- (c) Maintenance - exclusive jurisdiction to hear maintenance applications should be carried out by the Syariah Court to ensure that all judgments passed are consistent with the spirit of Syariah.

However, AMP supports that concurrent jurisdiction be given to the District Courts to enforce the orders of the Syariah Court.

Further Recommendation

The association proposes that the existing overlap between AMLA and the Guardianship of Infants Act (GIA) as well as the Women's Charter over custody and maintenance applications be rectified by amending the latter two Acts to give precedence to the Syariah Court to hear such applications from Muslims as part of their *post-divorce* settlements. The amendments to GIA and Women's Charter that are proposed should only be initiated after the Syariah Court has been adequately strengthened to deal with all post-divorce issues.

AMLA - Heritage of the past

1. The administration of Muslim law was historically an area in which civil authority had not intruded. The Muslims had, since colonial times, retained legal jurisdiction over personal law matters. It was through the years that several Acts were legislated to address problems that inevitably arose due to discrepancies between Islamic law and English law. As Singapore was a British colony, English laws applied generally in cases except personal law matters.

2. Generally, the enactment of these Acts was intended to ensure increased coordination, wherever possible, between Islamic and English laws. The other purpose was to clearly define the areas of life in which Islamic law was exclusively applicable and providing for a more effective administration of Islamic law. The Muslim Ordinance of 1957 was such an example. It led to the formation of the Syariah Court in 1959 to coordinate the administration of Muslim marriage and divorce.

3. Prior to the establishment of the Syariah Court, a Mohammedan Advisory Board was established in 1915. Its role was to advise the colonial government on matters related to Islam and Malay custom. It was initially chaired by a senior European civil servant. It was only after 1946 that Muslims made up the entire Advisory Board. The Board was instrumental in promoting legislation for the administration of Muslim law.

4. It was then widely felt within the Singapore Muslim community that the earlier Acts did not provide adequate mechanisms for promoting a more effective administration and application of Muslim law. As a consequence, shortly after independence in 1965, Parliament passed the Administration of Muslim Law Act (AMLA) in 1966 thus providing for the creation of a Majlis Ugama Islam Singapura (MUIS) in 1968. While AMLA did not purport to set out Islamic law, it offered a machinery for the more efficacious application of that law.

5. Given this historical backdrop, it is clear that the exclusive application of Syariah in personal law matters and the existence of institutions like the Syariah Court as well as a Mohammedan Advisory Board are a valuable heritage of the community. They had been in existence long before Singapore's independence and they continued to exist in post-independent Singapore (although the Mohammedan Advisory Board evolved to become MUIS). The continued presence of the Syariah Court and MUIS are viewed as being important for the preservation of harmonious relations between the many different ethnic groups in Singapore. These are the two institutions that serve as living symbols of the promise to freedom of religion as provided for in the Constitution of Singapore. The community must therefore ensure that they are continually strengthened to ensure their continued effectiveness.

State of the Syariah Court Today

6. The Syariah Court manages matters that are related to, among others, the divorce of Muslims. Each year, about 1,800 Muslim marriages end up in divorce. This is equivalent to about one divorce for every four Muslim marriages in Singapore. Besides the above figure, there is an average of 600 cases brought forward from the preceding

year. Thus, the total workload of the Court is about 2,400 cases a year (not taking into account the number of complaints lodged but in which proceedings were not pursued).

7. The high incidence of divorce is not new. It has existed for years. However, the Syariah Court did not manage to keep pace to clear the high number of cases that went to the Court. A backlog develops and the problem still persists.

8. Three factors contribute to the backlog. They are related to procedures, resources and the present AMLA.

9. At present, a Muslim couple who has registered for divorce has to undergo a lengthy process. They have to go through an intake counselling that aims to save the marriage. It may take up to three months before the first counselling session is conducted. Usually, three such counselling sessions are conducted, each scheduled one month apart. If this fails to bring the couple back together, a summons for divorce is issued. A pre-trial conference (PTC) is then conducted, a process which could take up to four months. If the PTC does not result in an amicable settlement, it will take another six to nine months before the case is heard by the Court. The whole process may take up to one and a half years before the actual hearing. In the meantime, more divorce cases are referred to the Court, thus adding to its load.

10. The purpose of intake counselling is to encourage the parties in conflict to "cool off" and hopefully reconcile. This would avoid a break-up of the marriage, a situation which is abhorred in Islam. This is also motivated by the aspiration of the community to reduce the number of divorces. The objective of the PTC is to try to get the parties to settle the ancillary matters, like custody of children, maintenance and division of assets, so as to avoid the need for a full hearing and hence saves the Court's time. However, feedback from practicing lawyers indicates that the benefits of the PTC process have yet to be exploited.

11. Even though the number of cases that are handled by the Court today does not seem to reduce (and the existence of the backlog exacerbates the situation), it is recognised that the present Syariah Court is better organised and managed compared to the past. There is resolve on the part of its officers to give the best possible service to the Muslim public. This is appreciated.

12. The Syariah Court is seriously handicapped by its limitations of resources. It has a complement of thirteen full-time officers (two Presidents, one administrative officer, three social workers, six clerks and a process server). This staff strength does not seem to be equitable given the workload of the Court in having to handle about 2,400 cases each year (not taking into account the number of complaints lodged but in which proceedings were not pursued). A quick comparison with the Family Court indicates that the Syariah Court is grossly under-manned.

13. It is therefore not surprising that the Syariah Court is in a less than desirable state. A management review that looks at its work processes and its manpower capabilities is certainly needed to improve the Court's capacity to manage more cases and bear a bigger scope of functions.

14. Besides the above operational constraints, the Syariah Court also faces problems that stem from several deficiencies found in the existing AMLA. For example, the powers of the Kadi as provided under AMLA now are not defined. While they can decree divorces, they have, at the same time, been deciding on ancillary matters like the custody of children, division of matrimonial assets and maintenance issues although technically they are not empowered to make such orders. Another deficiency of the existing AMLA is that the Syariah Court now has no powers to sign documents in the disposal or transfer of assets. This is the unfortunate case of *Salijah vs Abdullah Teo* where the ex-husband refused to transfer the property. Furthermore, the Syariah Court has no machinery now to enforce its orders although the present AMLA has given it powers to do so. In other words, the Syariah Court has the powers but it cannot exercise its enforcement powers due to its own limitations.

Improvements to Syariah Court

15. Improvements to Syariah Court must be done at two fronts viz.:

- (a) within the legal framework i.e. improvements to AMLA; and
- (b) outside the legal framework i.e. improvements to the operations of the Court with regard to work processes and resource allocation.

16. Although AMP recognises that the amendments to AMLA are urgently needed, the measures to improve the Court's operations and strengthen its resources must similarly be urgently taken.

Improvements within Legal Framework - The AMLA Amendments

17. The amendments to AMLA that concern the Syariah Court were evaluated by applying the "enhancement test". This means that each amendment is "tested" to ascertain whether it will enhance the powers and standing of the Syariah Court in its function to dispense justice. If it does, then the amendment is acceptable. By adopting this approach, *AMP forms the view that, generally speaking, most of the proposed amendments have enhanced the position of the Syariah Court. They address current weaknesses within the court system or they confer more powers to the Court. These amendments are therefore well received.*

18. An example is section 18 of the Amendment Bill (Amendment to section 102 of the principal Act) which defines the powers of the Kadi. They could, after the amendments, only register divorce in cases where there are no issues of custody or no matrimonial assets to be divided. With the proposed amendments, if a dispute relating to post-divorce issues should arise between the couple after the conclusion of the divorce by Kadi, the Syariah Court has the power to re-open the case. The proposed amendments also ensure that divorces where such ancillary matters exist can only be registered with the Syariah Court. This would enable such post-divorce matters to be more effectively settled through the Court process.

19. Another amendment that receives support is that the decision of the Syariah Court and its Appeal Board could not be challenged in the Civil Court. This would guarantee the integrity and enhance the respect for the Syariah Court.

20. Furthermore, according to sections 9 and 10 of the Amendment Bill, the insertion of subsection (4) under section 51 and subsection (7) under section 52 (b), now gives the Syariah Court the powers to amend or rescind its Court Order. Such powers will be useful in situations where fresh evidence that come to light could be taken into account.

21. The most welcome changes are found in section 11 of the Amendment Bill that introduces a new section 53A providing proxy powers to the President of the Syariah Court to sign documents in the disposal or transfer of assets when one party refuses to do so; in the new section 53 (2) which allows any party to apply to the District Courts to enforce Syariah Court orders; and in section 7 of the Amendment Bill which amends section 35 to provide for the appointment of more Presidents of the Syariah Court.

Improvements to Operation of Syariah Court

22. The efficacy of the Syariah Court system will require measures beyond improvements to AMLA. There is an urgent need to improve the operations of the Court. *AMP'S position is, that the improvements to work processes and the effort to beef up resources of the Court must be immediately initiated and a time-frame of preferably one year be set to complete this review.*

23. Let us look at the Courts' processes. They consist of:

- (a) intake counselling - its objective is to attempt to avoid the impending divorce;
- (b) issue of divorce summons - it signals the start of the divorce proceedings;
- (c) Pre-Trial Conference (PTC) - its aim is to try to get the couple to agree on an amicable settlement of post-divorce matters like custody, maintenance and division of assets. If this can be achieved, the court hearing merely ratifies the settlement. If a settlement cannot be achieved at PTC, then the case will be referred to the court for a hearing;
- (d) Court hearing - the President of the Syariah Court will make a judgment on the case based on the merits of the contesting parties' representations; and
- (e) enforcement - its objective is to enforce the court orders.

24. It is felt that the above processes could be divided into two categories. They are those that are substantive and should constitute the principal functions of the Syariah Court. These are processes that involve the application of Syariah laws to dispense justice. They are the issuance of divorce summons (b), the administration of PTC (c), and the court hearing (d). The Syariah Court must focus its attention on these principal functions which must be efficiently and effectively performed. The second category consists of intake counselling (a) and the enforcement process (e). These are felt to be the non-substantive functions of the Syariah Court.

25. AMP's position is that the substantive or principal functions of the Syariah Court must cover the complete process for all divorce cases including the settlement of all post-divorce matters. This means that divorcing Muslim couples should have all their matters resolved at the Syariah Court without the need to resort to the Civil Courts. In short, AMP proposes that the new sections 35A and 35B that the Amendment Bill intends to introduce (which explicitly gives concurrent jurisdiction to Civil Courts to hear applications of post-divorce matters) be excluded.

26. The Syariah Court must be strengthened to give it the necessary powers to develop into a full-fledged "dispenser of justice" for all matters related to Muslim divorces including post-divorce matters. Several steps could be taken to strengthen the Court viz.:

- (a) the Syariah Court should cease to conduct intake counselling as stated in (a) above. The Court's resources deployed so far on counselling could be gainfully re-deployed within the Court structure to achieve its principal functions as in (b), (c) and (d).

AMP is of the view that intake counselling, which normally takes about six months, should not be part of the function of the Syariah Court. The role of the Syariah Court as stated above must be focused only on the dispensation of justice. Intake counselling, which serves the social objective of preventing the divorce and hence minimises the divorce rate of the community, should be the purview of community social organisations. The Syariah Court should only come into the picture (after the intake counselling) when divorce becomes inevitable and justice must be dispensed.

MCD with the assistance of MUIS could designate several community organisations and mosques as intake counselling agencies. The prevention of divorce and the prevention of family break-up is an important agenda of many such organisations.

In AMP's proposal, a party or a couple who lodge a complaint with the Syariah Court will be referred by the Court to the designated intake counselling agency (DICA), which should be given not more than three months to counsel the couple. At the end of three months or earlier (if the DICA deems it pressing enough to expedite the divorce process and resolve post-divorce matters), the Syariah Court should immediately issue the divorce summons. The PTC should then commence. Hopefully, an amicable settlement of post-divorce matters can be reached at the PTC stage.

The big advantage of farming out intake counselling to DICA is that there is the human touch of community counsellors. The success rate of avoiding divorce could be higher. There is already a precedence for the Syariah Court to assign community organisations to conduct this intake counselling.

- (b) upgrade the PTC to become an effective mediation machinery by deploying full-time qualified mediators. The potential benefits of the

mediation process could then be fully harnessed. This would speed up the process of administering justice and save valuable court's time and resources. An increase in the Court's efficiency could also result as more cases could be heard and resolved. For this to be achieved, at least two full-time mediators should be immediately employed. They could be either lawyers in private practice or officers in the legal service who should be oriented to be familiar with the provisions in the Syariah with regard to custody, maintenance and division of assets.

- (c) immediately conduct a review of manpower and physical facilities needed for the Syariah Court by using the staff deployment and facilities of the Family Court as a benchmark. While this review is being done, an interim measure of engaging at least a third President and a Registrar (a new post) should be immediately taken. The role of the Registrar is to enable the Syariah Court to hear interim applications.

27. The final part of the Court's process is the enforcement of court orders. *AMP views that the amendment to extend jurisdiction to the District Court so that Syariah Court orders could be enforced in the District Court i.e. the new section 53 of the Principal Act, is good and should be accepted.* It agrees with the argument that Muslims should use the elaborate and efficient system of enforcement that is already existing in the District Court system.

AMP's Concerns - Concurrent Jurisdiction

28. The proposed amendments that come under special scrutiny are those that give concurrent jurisdiction to the Civil Courts to hear applications on custody, maintenance and division of assets, i.e. sections 35A and 35B.

29. It has been explained that providing concurrent jurisdiction to the Civil Courts preserves/opens another avenue for Muslims to settle such post-divorce matters. This will significantly speed up the process of administering justice in such matters and contribute to the expedient clearance of cases. The workload of the Syariah Court could be lessened.

30. It has also been argued that concurrent jurisdiction should not be objectionable as the Muslims have been all along resorting to the Civil Courts to resolve their disputes on post-divorce matters. The amendments serve to institutionalise an established practice and provide a legal framework for its continuation.

31. We are concerned with the above rationale for concurrent jurisdiction as we believe that the Syariah Court's processes should be improved and that it should be given more resources to clear cases expeditiously.

32. As Muslims, we are subjected to the Syariah laws in matters that AMLA has jurisdiction over. These include the resolution of post-divorce matters such as custody, division of matrimonial assets and maintenance. Therefore, it is important for the Syariah Court to have adequate resources, efficient processes and the necessary powers to be an effective forum of adjudication for Muslims. Let us now look at the details.

Division of Matrimonial Assets

33. This matter has always been in the hands of the Syariah Court. Under normal circumstances, Muslim couples never resort to Civil Court to resolve this. At present, Muslim parties in conflict only resorted to the High Court to resolve disputes relating to the division of matrimonial assets as a consequence of divorce by Kadi or where one party refuses to obey the orders of the Syariah Court. In such cases, the President of the Syariah Court is limited by the clause that disqualifies him from hearing the case unless there is a divorce proceeding before him. The proposed amendments now allow for the Syariah Court to re-open such cases to hear post-divorce issues. It is also known that at present, the Syariah Court is able to manage cases pertaining to the division of matrimonial assets. Clear guidelines to facilitate its decision-making process are in place to achieve this favourable state. The Civil Court thus should not be given concurrent jurisdiction in this area.

34. *AMP proposes that the jurisdiction to divide matrimonial assets lies exclusively within the province of the Syariah Court. Let the status quo remain. If concurrent jurisdiction is introduced, it would be retrogressive to the development of the Syariah Court. Such an amendment that results in the erosion of an existing provision of AMLA should be dropped.* Here again, we have applied the "enhancement test".

Custody of Children

35. It is true that Muslims, besides having their custody matters heard in the Syariah Court (as part of the divorce proceedings), have been resorting to the Civil Courts to settle custody issues. In this situation, they subject themselves to the Guardianship of Infants Act (GIA). Under the GIA, the custody of children is decided on the principle that the welfare of the child is important. This principle is generally consistent with the Syariah.

36. There is therefore an overlap between the GIA and AMLA. The GIA is an old piece of legislation. The reason to explain why Muslims are also included in the GIA is not clear. Similarly, it is not clear why Muslims in divorce cases were not excluded from GIA when AMLA came into effect.

37. *As is the case for division of assets, AMP proposes that the amendment to provide concurrent jurisdiction to the Civil Courts to hear custody applications in all divorce cases involving Muslims be similarly dropped. The exclusive jurisdiction over such custody applications should lie in the hands of the Syariah Court.*

38. Although, as alluded to earlier, there appears on the surface to be no conflict between the GIA and AMLA, the uneasy situation may arise when the faith of one party becomes an issue. It is recognised that the faith of a party is a factor which will be considered by the Civil Court. However, in the Syariah Court, the apostacy of a party is a paramount consideration in the custody of the child.

39. The reason for Muslims resorting to the Civil Courts when they can resolve custody issues in the Syariah Court lies in the slowness of the Syariah Court to dispense justice in this area. The Syariah Court will only commence proceedings on the custody

issue only after the divorce summons is issued. This could be about one year after the divorce summons is issued. As is often the case, the couple in conflict will tussle over the custody of their children. They, therefore, cannot wait for the one year (or thereabout) to resolve the custody of their children as this state of uncertainty will not be healthy for the innocent children. Couples will then, understandably resort to the Civil Courts.

40. AMP has proposed that the divorce summons be issued immediately after the intake counselling (which should be limited to three months) has been conducted and a reconciliation cannot be achieved. Thereafter, the pre-trial conference (PTC) which ought to be an effective mediation process (with the deployment of qualified full-time mediators) could begin to achieve the amicable settlement of all post-divorce matters including custody issues. AMP is confident that this revamped system will result in a more expeditious resolution of custody issues and will not cause hardship to the parties and children concerned.

41. It would be correct for the Syariah Court to have exclusive jurisdiction over custody issues in the spirit of the "dispenser of justice" and the "administrator of Syariah laws". In this regard, *AMP proposes that as soon as the Syariah Court is strengthened with more resources (which are equitable when compared to the Family Court) and as soon as an effective mediation system and an efficient network of DICA are well in place, the GIA should be amended so that Muslim couples are excluded from its ambit as the Syariah Court will hear custody applications from Muslims as part of their divorce proceedings.*

Maintenance

42. Maintenance issues have, all along, been heard in the Civil Court, i.e. Family Court. Muslims prefer this avenue since the Syariah Court, unlike the Family Court, has never exercised its powers to enforce its orders., It is a known fact that presently parties do not commence maintenance applications in the Syariah Court.

43. The Family Court has the advantage of resources to enforce orders. It has the complete machinery to issue a warrant of arrest, take action to bring the errant party to court, administer a bailiff system and follow-through to execute the sentence of the court.

44. With the Amendment Bill, the powers of the Syariah Court to enforce its orders become stronger because the orders can then be registered in the District Court for enforcement.

45. *AMP, in line with its position, that the application of Syariah laws and the dispensation of justice in post-divorce matters, be exclusively carried out by the Syariah Court, proposes that the amendment to give concurrent jurisdiction to the Civil Court to hear maintenance applications be dropped. The Syariah Court should only hear such matters.* This is to ensure that all judgments passed are consistent with the spirit of the Syariah. Conflicts could arise due to the following reasons:

- (a) The Family Court does not recognise that the utterance of the "talak" by the husband is enough to make a divorce effective, thereby freeing the husband from maintaining his wife. However, in the Civil Court, without

the proof of the divorce certificate, the couple is still considered husband and wife. Therefore the husband is required to continue to maintain his wife beyond the customary three months payment of iddah.

- (b) The Family Court does not also recognise the concept of "nusyuz". This happens when the wife disobeys the good orders of the husband. If this is the case, the wife, according to the Syariah, is not entitled to maintenance for herself. Such a factor is not a consideration in the Family Court.
- (c) In relation to the above, in Islam, it is the husband's absolute duty to maintain his wife and children regardless of the fact that the wife is an income earner. This obligation serves to balance the right of the husband to deny the wife maintenance in the event of "nusyuz", as explained above. However, in civil law, if the wife is working, she has a duty to contribute to the children's maintenance. Maintenance for herself will also be correspondingly reduced taking into account her income or earning capacity.

46. *Similar to its "qualified" proposal in paragraph 41 above, on custody, AMP proposes that the Women's Charter be amended to exclude Muslims from applying to the Family Court for maintenance for wife or children, as part of their divorce proceedings.*

Enforcement of Syariah Court Orders

47. *While AMP proposes that the concurrent jurisdiction to the Civil Court in post-divorce matters be dropped, it supports the concurrent jurisdiction given to the District Courts for enforcing Syariah Court orders.* Simply put, AMP views that the Civil Court should not hear applications on post-divorce matters. The Civil (District) Court should, however, assist the Syariah Court by enforcing the Syariah Court's orders. This is similar to the case where orders made by the Maintenance of Parents Tribunal and the Small Claims Tribunal are enforced in the District Courts.

Conclusion

48. In summary, AMP welcomes the proposed AMLA (Amendment) Bill as many of the amendments would overcome the weaknesses of the Syariah Court and would confer more powers to it. AMP accepts these amendments. The amendment to give concurrent jurisdiction to the Civil Courts so that Syariah Court orders can be enforced in the District Courts is also supported.

49. However, the other amendments that give concurrent jurisdiction to the Civil Courts to hear applications for post-divorce matters are unacceptable. For the division of assets, the present practice where Syariah Court hears all cases should continue. Similarly, all cases for maintenance and custody of children in divorce cases should be heard in the Syariah Court. In other words, the proposed sections 35A and 35B which the Amendment Bill intends to introduce should be excluded.

50. It is recognised that the strengthening of the Syariah Court cannot be accomplished in a short period. However, a time-frame must be set. AMP proposes a time-frame of preferably one year for the Syariah Court to be strengthened so that it

becomes capable of coping with all its workload and expanded principal functions of dispensing justice. The measures to improve the Court's processes and beef up its resources should be taken at the same time as the amendments to AMLA.

51. AMP proposes that the overlap between AMLA and the GIA as well as the Women's Charter over custody and maintenance applications (as part of divorce proceedings) be rectified by amending the latter Acts to give precedence to the Syariah Court to hear such applications from Muslims. This would close the avenue, now available, for Muslims to resort to the Civil Courts in resolving such post-divorce matters. However, it should only be done after the Syariah Court has been adequately strengthened to deal with all custody and maintenance applications. By then, Muslims should be well-served by an efficacious Syariah Court system. This is the Syariah Court that the Muslims will take pride in.

Paper 21

From: Mr Rujok Pandi
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Dated: 2 August 1998

Received: 3 August 1998

THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL 1998

I have followed closely with much interest, the debates, views and the perceived controversies if the Bill were to be passed in its present form and wish to pen my humble thoughts and opinion on the Amendments which I will discuss them at length in the foregoing paragraphs.

Concurrent Jurisdiction

Much controversies have actually arose because the Bill allowed for concurrent jurisdiction between the Civil Court and the Syariah Court to decide on the ancillary issues arising from Muslims' divorce. The Bill provides for both the Courts to decide on the custody and the disposition/division of the matrimonial property of the couples on divorce. In the case of the Civil Court however, the parties affected can only use the Civil Court's forum if they consent. If not, matters will be heard in the Syariah Court. The party who wants to bring the matter to the civil court's forum must apply for leave from the Syariah Court. The decision of the Syariah Court whether to grant or refuse leave is appealable. The Appeal Board constituted under section 55 of the AMLA will hear any appeal arising from the decision of the Syariah Court to grant or refuse leave and its decision is final.

This mechanism of appeal process drafted in the Bill will ensure that the process of justice is transparent and the decision of the Syariah Court's Judge can be called to question. I understand that in cases where parties are in disagreement over the choice of forum it is unlikely that the Syariah Court will grant leave, as to do so, would tantamount to the Syariah Court surrendering its inherent power and jurisdiction to hear the case. Moreover from hukum syarak the Syariee's Judge may be transgressing the holy teachings of Islam which makes it clear that Muslim matters must be dealt with by Muslim Judges. We must however also know the limitations of the Syariah Court. It may be called upon to deal with matters which may be complicated and may involve cross border cases. For example, a father who has absconded with the child to a third country leaving the mother in the lurch. Has Syariah Court the capacity and reciprocal arrangements with other countries for processes like summons etc. to be served to ensure that it satisfies the process of justice before hearing the case and for its judgment to be executed? Apart from the machinery, with due respect to the current Presidents, can they deal with matters of such complexities? Certainly, it is the aspirations of the Muslim community to see Syariah Court being equipped to handle such matters. Until it becomes

a reality, I do not see the provision as being offensive. It is for the Syariah Court's Judge to deem it necessary to allow for leave for the matter to be heard in the Civil Court if in his considered opinion it is best to allow for it to be so, in the interest of justice. It may well also happen in the case of property claims of respondent held in trust in a third country etc. I feel we should allow jurisprudence to develop over time on this and not allow our emotions to cloud the good intentions of the arrangements. Why have a paper judgment of the Syariah Court or for that matter allow a case which I have cited above to be dragged and go into protracted hearings which may last for years because of the inadequacies of the system in the Syariah Court? Justice must be speedily dispensed with. Imagine the advantages, for example a father who runs away with a child has over time, to influence the child emotionally over the question of custody. Is this fair to the petitioner who has to wait in pain to see light at the end of the tunnel?

Guardianship of Infants Act

Similarly, I do understand that outside divorce Muslims can choose to settle their ancillary matters in the Civil Court. This is because the Guardianship of Infants Act does not preclude Muslims. If they consent, they can settle their custody issue before applying for a divorce. Muslims who consent have chosen the Civil Court route for reasons best known to them. In all probability because they do not have any dispute and are able to part amicably, the interest and welfare of their children are of utmost consideration, they must have discussed seriously between them or with their children, the care arrangements for their children. Is this averse to be brought to the Civil Court? Some Muslims, I understand are apprehensive of bringing their matters to the Syariah Court because of the application of strict Islamic principles. For example, a mother, who for example understands her shortcomings and want her child who is below 7 years of age to be looked after by the husband upon divorce, may find that this may be unacceptable to the Syariah Court as hukum syarak will demand that the child should be raised by the maternal grandmother to the exclusion of the father. Here I am talking of perceived strict application of Islamic law although in practice, I am not able to comment. This is however reinforced in me when I read newspaper excerpts of Muslim lawyers who have failed to educate the Muslim public that there are exceptions to rule. This kind of position taken by Muslim lawyers has actually fueled controversies that are raging where ignorant and simpletons jumping onto the bandwagon, to make judgments of the situation with their own limited knowledge. Or is the apprehension because of the long waiting time for the matter to be heard in the Syariah Court?

Murtad or Renouncing the Religion

Let me touch on the issue of 'murtad' or where a divorcing party renounces or leaves Islam as his religion and how the Amendment Bill, in my humble opinion has strengthened the Syariah Court's position over the right to hear such a matter. Prior to the amendment or the current position as it is, a person can make an application to the Civil Court for custody of his minor child/children under the Guardianship of Infants Act (GIA) prior to instituting divorce. As GIA applies to all situation and there is no divorce proceedings in the Syariah Court, the Civil Court has the jurisdiction/power to hear the matter. However, with the Bill, what it needs is for the other party to apply for a summons to begin divorce proceedings in the Syariah Court and the Civil Court will not hear the matter unless there is leave given by the Syariah Court. Isn't the Bill addressing

concerns by Muslims as it tantamounts to a check being imposed on the Civil Court from hearing such a case unless applicant is given certificate of leave from the Syariah Court? Are we not strengthening Syariah Court's claims over the matter? The concurrent jurisdiction is a recognition of the Syariah Court's existence and power to deal with Muslim family matters which has been clarified and made explicit. This is necessary as in a situation that I had mentioned above, the Civil Court is faced with a dilemma to rule whether it has the power to deal with such a matter which in my opinion it should have. This is because at the time of application made in the Civil Court, there is no divorce proceedings in the Syariah Court. As the Syariah Court has jurisdiction over custody only if there is a divorce application before it, the Syariah Court therefore cannot claim jurisdiction over the matter.

One last point that I wish to make is let us not blow out of proportion this issue of 'murtad' over the generally positive clauses in the amendments which is a relief to many who have got Syariah Court's orders but found that they were not able to enforce it. Where are the gestures of the Muslim lawyers to pool resources in helping them to bring issues like getting the proxy powers of the Registrar of the High Court to execute deeds/instruments for cases that have waited for several years. It would appear that only those that are able to pay for disbursement/legal fees are able to get out of their quandary.

For cases who renounced the religion, Syariah Court would be the only forum to hear their matter as there is an operating provision in the existing AMLA to bring Muslims and those who were married under the Muslim law under AMLA. The ancillary issues will also be decided by the Syariah Court. It is inconceivable for the party who is a Muslim to agree to the Civil Court to hear such a matter. The next question is, what would happen if the civil court by agreement makes a custody order and very much later the custodial parent renounced the religion. In such a situation in the first place, the Civil Court will decide whether to vary the order on account of this when there is an application before the Civil Court? The question foremost to ask would be (a) Where is the non-custodial parent all this while? (b) Assuming the child has all the while been staying with the father, has the mother been seeing his child during the access period to forge a relationship and did he see to it that the child gets religious guidance? Was she a role model and was there any kind of attachment between the child and mother? Is the child able to make a decision to discern who is the better parent? There are many questions to answer. The analogy I am trying to make is, if the non-custodial parent had not bothered at all about the child and the child has no emotional bonding with her, should the child be given to her on account that she is a Muslim but never a good Muslim and a role model? Each case is unique and has to be treated according to its merits and in total. Would there be a fundamental difference if the case is heard in the Syariah Court? What choice do Syariah Court have to implement strict Islamic law to uproot the child and place him with say the maternal grandmother who is a reluctant caregiver? What happened if the child gives her problems? What is the best care arrangements for the child taking into consideration all these factors including the religious upbringing of the child? These are questions best answered by Judges who have to deal with each and every case, weigh it carefully and make the appropriate decision. There is no cut and dry answer to such a problem. Let us not be sidetracked by all these unnecessary debates on such a matter.

Divorce before Kadhi - section 102

If it is envisaged the Civil Court should not deal with Muslim cases, why is section 102 of AMLA in its present form allow for Muslims to register their divorce before a Kadhi and settle their ancillary issues in the Civil Court if there is a dispute over these matters. This is because they are unable to bring these issues to the Syariah court itself because of the limitations imposed by section 52 of AMLA. Why had the Syariah Court itself allowed for this to take place when they were besieged with a tremendous backlog of cases if it is against the religion?

The question to ask is whether we will see more cases going to the Civil Court with the Bill? My gut feeling is if the Syariah Court is improved, it can speedily deal with each and every case, makes interim orders, its orders can be enforced, it is less formal and cater to the needs of the Muslims in terms of the language use and is less expensive, why should couples want to revert to the Civil Court on the issue of custody and property when they still need to settle their divorce and issue of *iddah* and *mutaah* in the Syariah Court. Inspire of the limitations of the Court, Muslim couples have been going to the Syariah Court. Shouldn't we see more use of the Syariah Court's forum after the amendment? After all, there is no possibility of Muslims getting a divorce before a Kadhi with the amendments if they have ancillary issues like custody and division of matrimonial property. These cases have actually contributed to the cases dealt with in the Civil court in the past.

Overall Impression of Bill

There are many positive clauses in the Bill which should be welcomed and which when passed should strengthen the operations of the Syariah Court:

- the proxy power given to the President to execute deeds/documents on behalf of defaulting party who has failed or refused to do so as well as the power to award cost.
- the decision of the Syariah Court/Appeal Board is final and cannot be called to question. This would completely stop Muslims from applying to the Civil Court to review/put aside Syariah court's orders.
- the ability of the Syariah Court to vary/amend or rescind its orders where there are changing circumstances.
- Kadhi can only register a divorce where the parties do not have any minor children nor matrimonial property and can pay *iddah mutaah* upfront.
- More than 1 President can be appointed.
- Syariah Court orders can be registered with the Civil Court for enforcement.

I support the Bill as it really helps to address the problems that have been plaguing the Syariah Court for a very long time but would also like to see a model that could be developed for Syariah Court to evolve as a unique institution in a secular society like us. We should work towards this in the long run. I do not see anything repugnant in the Bill or it diminishing the power of the Syariah Court. On the contrary, it helps to entrench the Syariah Court's position.

Alternative

If the Muslim community is cynical or apprehensive that the Bill will dilute the powers of the Syariah Court or feels that Muslim intra-family matters should be dealt with by Muslim Judges as required under "hukum syarak" and rejects the good intention of the Bill, we could do away with the provisions in the Bill which they feel are repugnant and Syariah Court can still allow a way for Muslims to go to the Civil Court by consent if they wish to, by registering their divorce before a Kadhi. After all, the Chief Justice in his judgment on Madiyah's case has ruled that the Civil Court has the power to deal with ancillary issues of Kadhi's divorce. There may well be that cases where the Syariah Court itself feels that their interest is best served in the Civil Court because of expertise and machinery. In such cases, Syariah Court would have to force itself to develop to handle such matters by appointing amicus curiae and appointing Civil trained Muslim Judges. This is inevitable. Syariah Court needs Civil trained Muslim Judges as it is applying civil procedures and it certainly cannot be within the realm of Syariee trained Judges to handle. At best they complement each other.

I do not wish to be called upon for a discussion on my submission.

Yours faithfully

RUJOK PANDI

Paper 22

From: Ms Enon Mansor (*and two others*)
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Dated: 1 August 1998
Received: 3 August 1998

SUBMISSION TO THE SELECT COMMITTEE ON THE PROPOSED AMENDMENT TO THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

1. Executive Summary

1.1 Our submission is concerning the proposed amendments of AMLA concerning the Syariah Court only, which shall be referred to in this submission as:

- (a) concurrent jurisdiction (section 35A and the related section 35B);
- (b) appointment of more than one President of Syariah Court (section 35 (IA));
- (c) enforcement order (section 51 (4), (5) and section 53);
- (d) settlement of 'cerai kadi' (section 52 (3)); and
- (e) proxy power to the President (section 53A).

1.2 By adopting the amendments (c), (d) and (e), Parliament would have instituted missing clauses of the original AMLA, whose absence have hitherto stifled the Syariah Court in enforcing its verdicts. With these amendments, the Syariah Court is now:

- (a) empowered to discipline contemptuous cases;
- (b) accorded *complete* jurisdiction over its 'cerai kadi' cases; and
- (c) authorised to deal resolutely against errant cases in property-related tussles.

It is logical and necessary to amend an Act in order to resolve its inadequacies. In so doing, these proposed amendments would empower the Court to administer justice, and to do so expeditiously, too. For this we commend the Minister-in-charge of Muslim Affairs for his efforts.

1.3 Amendment (b) potentially allows the Court to increase its resources in facing increasing cases. However, the wording of the amendment (Section 35 (1B)) which provides for "all presidents of the Court shall have in all respects equal powers, authority and jurisdiction" will give rise to leadership and authority problems in the Court's administration. However, since we believe that many other submissions will discuss this amendment, we will not discuss this issue.

- 1.4 We focus on the "concurrent jurisdiction" amendment, which does not flow smoothly with the thinking behind amendments (b) to (d). While the latter works to empower the Syariah Court, this amendment potentially weakens the same Court.
- 1.5 More importantly, this amendment is introduced to resolve a certain "backlog" problem induced purely by administrative inadequacies of the Court. *The logic of amending an Act to resolve administrative inadequacies is flawed.* Administrative inadequacies should be resolved by administrative means.
- 1.6 Thus this particular amendment should be dropped and instead a thorough study be initiated to pin-point the root causes of the Court's current inability to fully administer justice to divorcing Muslim couples expeditiously.

2. Proposed section 35A (Concurrent Jurisdiction)

- 2.1 It seemed that the underlying reason for this amendment is to clear the backlog of cases in the Syariah Court. The Minister-in-charge of Muslim Affairs and other Malay MPs have been variously reported to explain that the amendment is meant to:

(a) help the Syariah Court in clearing its backlog of cases;

Apart from this main reason, they have also explained that the amendment is meant to:

- (b) legalise the status quo of Muslims going to civil courts to settle custody and property tussles;
- (c) give Muslim couples the freedom to choose their preferred way of settling divorce related disputes; and
- (d) be a temporary measure which will help clear the backlog.

2.2 *To help the Syariah Court in clearing its backlog of cases*

2.2.1 The MCD Annual Report shows an accumulation of cases pending at the counselling and court level. On the other hand we can also note that there has been no staff increase since 1995. Please refer to Appendices A and B. (*Note: It would be helpful to have more data on the case load situations so that we can accurately diagnose where, when and why the backlog happens*).

2.2.2 But despite the lack of quantitative data for analysis, the following facts are well-known among the social services fraternity:

- (a) many of those who register at Syariah Court (especially prior to 1998) will get to see their counsellors in 3-6 months' time;
- (b) in 1996, the Syariah Court sought assistance from the Association of Muslim Professionals (AMP) to help clear backlog at counselling stage;

- (c) in 1997, the Syariah Court sought assistance from the Young Women Muslim Association Single Parent Family Service (YWMA) to help clear backlog at counselling stage;
- (d) in 1998, Syariah Court sought assistance from Muslim organisations to clear counselling and mediation backlog;
- (e) in a Berita Harian report dated 21 April 1998, a reporter mentioned that when the Minister was interviewed two years ago he had acknowledged the understaffing at the Syariah Court.

"Dalam satu wawancara den gan Berita Harian dua tahun lalu, ... Encik Abdullah Tarmugi, berkata sekyen itu tidak pernah dikuatkua sakan kerana beberapa sebab, termasuk kurang kakitangan dan masalah perlaksanaan."

For some reasons, the Syariah Court has not been adequately supported to carry out its responsibilities, thus creating the backlog. This inadequacy in manpower support must be addressed in order to solve the problem of backlog instead of introducing concurrent jurisdiction into the Act.

- 2.2.3 Concurrent jurisdiction will not reduce the number of cases being managed by Syariah Court. All ROMM-registered couples seeking divorce, have to be attended to by Syariah Court (e.g. if there are 1,000 couples who seek divorce, Syariah Court has to attend to all these couples, regardless if they have sought redress in civil court). At best, it may reduce the workload of the Syariah Court, if mutually agreeable couples choose to settle custody and property issue in the civil court and this reduction of workload may prove to be marginal.
- 2.2.4 It is imperative to note that the introduction of concurrent jurisdiction was not substantiated by overwhelming data showing a large preference by divorcing Muslims to settle their cases in Civil Court. Instead, it was substantiated by a few "landmark" cases widely publicised by the Press. And even such landmark cases concern issue of 'enforcement'. The feedback that we get from Muslim lawyers is that Muslim couples go to civil court to 'enforce' their divorce settlement.
- 2.2.5 Even if, for the sake of argument, the reduction of workload was to be substantial, concurrent jurisdiction does not actually help the Syariah Court to reduce its backlog cases.
 - (a) The reduction of workload to the Syariah Court means an increase in workload to the civil court. The ability of the civil court to handle the strain caused by concurrent jurisdiction has been neglectfully taken for granted. Presumably, the civil court can strengthen its resources to cope with the potential increase of workload.

- (b) This presumption is unacceptable, because in the same strain of argument, the same possibility of strengthening the Syariah Court's resources must also be presumed. In fact it should not even be presumed but be assured by Parliament in the spirit of Articles 152 and 153 of the Constitution of Singapore.
- (c) Thus, "passing the buck" to the Civil Court does not *help* the Syariah Court in clearing its backlog, instead it *deprives* the Syariah Court from the resources it needs to clear its current backlog of cases on its own.
- (d) In so doing, Parliament would be evading the real root causes of backlog in the Syariah Court; enjoying a short-term gain of speeding up Muslim divorce cases, while risking potential principal difficulties and problems due to a mix of jurisdictions.

2.2.6 In conclusion, true assistance would be given to the Syariah Court in expediting its cases by strengthening the Syariah Court resources in terms of adequate manpower supply and training, instead of concurrent jurisdiction as the problem is caused by inadequate administrative support instead of inadequacies of the original Act.

2.3 *To legalise the status quo of Muslims going to civil courts to settle custody and property tussles*

2.3.1 We understand that this is to legalise the current option (which is a 'gray area' whether civil court has the jurisdiction to do so - refer to section 16 of the Supreme Court of Judicature Act) open to ROMM-registered couples who wish to settle some post-divorce issues at the civil court. From our knowledge, there are largely three common reasons why people go to civil court to settle their post-divorce issues:

- (a) due to the inadequacy of the AMLA e.g. in the areas of 'proxy' power, weakness of enforcement of the Syariah Court orders and Syariah Court's no jurisdiction over couples divorced by 'cerai kadi'.
- (b) Syariah Court does not 'attend' to their request concerning maintenance even though it is provided for in the AMLA (refer to section 35 (2) (e)); and
- (c) for speed in the settlement of their post-divorce issue.

The inadequacy of the AMLA as stated in 2.3.1 (a) would be successfully overcome if the other proposed amendments for Syariah Court as stated in our paragraph 1.1 (c), (d) and (e) are adopted.

2.3.2 The current practice stated in 2.3.1 (b) is that the Syariah Court refers all cases of maintenance to the Family Court, as it does not have the manpower and the administrative system to attend to it. To the extent that a misconception even develops among some counsellors that the Syariah Court cannot deal with maintenance.

On the contrary section 35 (2) (e) provides for it. In line with our paragraph 2.2 above, all due resources must be given to the Syariah Court to eliminate this malpractice.

- 2.3.3 All real reasons for the need of Muslims to resort to the civil court having been addressed, we are disturbed by the reason to legalise concurrent jurisdiction on the grounds that "Muslims are doing it all the while, any way"

This is tantamount to legalising a situation just because it is prevalent in the society. Surely, this logic is unacceptable.

The decision to legalise this avenue should be made by members of society who are more well-educated and well-informed and based on considerations over the repercussions of subjecting members of the public to two fully operational forms of law. Which brings us to the next publicised reason behind concurrent jurisdiction in our paragraph 2.4.

- 2.4 *To give Muslim couples the freedom to choose their preferred way of settling divorce related disputes*

- 2.4.1 Muslims in Singapore have the choice on how to contract their marriage - be it through a Muslim or civil marriage. But once they have *chosen* to marry through the Islamic system, all matters relating to marriage and divorce should be settled using the same system. The same thing should be expected of couple who married through civil system. Conflicts are bound to happen when two laws preside over the same matter.

- 2.4.2 Living in a minority Muslim society, we are fully aware and do not expect full application of the Islamic Syariah in Singapore. In fact we are appreciative that the AMLA provision is "immortalised" in the Constitution. And in appreciation of this provision made by the State, leaders of the community have the duty to ensure that all Muslims appreciate this provision of the State by complying fully with all Syariah laws operable in Singapore.

- 2.4.3 We appreciate the Minister's intention of providing Muslims with effective means of settling their lives. However, the apparent gain in speeding up divorce settlements may open up new unforeseen problems arising from double standard being applied to settle marriages and divorces among Muslims. The appropriate measure is to ensure that Muslims be given the resources and expertise to fully administer these issues.

- 2.4.4 Using the Minister's analogy about drowning swimmers who must be given help from competent life-savers. Concurrent jurisdiction is tantamount to offering drowning swimmers in the 'Syariah swimming pool' the services of competent life-savers in the 'civil swimming pool'. This will further burden the drowning swimmers. A more logical solution is to equip the life-savers of the Syariah swimming pool with adequate life-saving facilities so that drowners in their own pool can be judiciously

and expeditiously saved. It is the responsibility of the Government to do so.

2.5 *To be a temporary measure which will help clear the backlog*

2.5.1 If concurrent jurisdiction is seen as a short-term measure one way to go around it is to state the time-frame whereby it would be valid (that is if it is accepted in the first place). We know that this sounds like an illogical proposition, because any act of legislature should be drafted with a long-term use. Therefore, the amendment cannot be presented as a temporary measure.

3. Conclusion

3.1 Our paper hopes to share our view that the proposed amendment to the AMLA - section 35A (and the related 35B) should be repealed, as the root cause of the problem is not concerning legislature matter.

3.2 The backlog in Syariah Court's cases is an administrative and management issue and therefore needs to be rectified at that level.

3.3 Further to our conclusion and arguments concerning concurrent jurisdiction, we would like to contribute the following ideas that we hope will assist in the functioning of Syariah Court; which has to be seriously looked into regardless whether concurrent jurisdiction is passed in Parliament.

(a) Urgently look into the situation at Syariah Court. We recommend setting-up a multi-disciplinary committee consisting of social workers, lawyers etc. Some of the macro issues, that need to be considered are:

- Review and assess the function of the Court, reasons of backlog and implement the suggestion to improve the situation. We understand that the Court has an unwritten role 'to reduce divorce rate'. This, we believe, has an impact on how they administer and what they see their functions to be.
- A review and recommendation of its manpower needs vis-a-vis the case-load in Syariah Court. (Please note that we need to look at counselling, mediation and court level). There must be a sense of urgency and hereafter specific recommendations, actions to clear the backlog expeditiously.
- How come there is no action taken to increase the manpower of Syariah Court when the Minister himself had acknowledged that Syariah Court problem in enforcement was due to lack of manpower, as far back as two years ago? To us, this is a very serious issue vis-a-vis the functioning of civil servants.

(b) Review and study the implication and possibility that Syariah Court be under Ministry of Law. We opined that the Ministry of Law would have the knowledge, expertise and logistic support in the managing and operation of a court system.

CASELOAD OF SYARIAH COURT (1990-1997)*

	1990	1991	1992	1993+	1994/95	1996/97
<i>Counselling Level</i>						
(a) Reconciled/Settled cases	1,153	1,222	1,101	1,203	1,383	1,592
(b) Divorce by mutual consent	577	651	577	342	-	-
(c) Refer to Court	478	528	681	1,004	862	1,532
(d) Pending	934	831	814	764	1,067	1,194
Total	3,142	3,232	3,173	3,313	3,312	4,318

	1990	1991	1992	1993	1994/95	1996/97
<i>Court Level</i>						
(a) Number of divorce registered	-	-	-	882	1,138	1,118
(b) Reconciled	-	-	-	202	-	-
(c) Pending	-	-	-	816	559	775
Total	-	-	-	1,900	1,697	1,893

*Abstract from MCD Annual Report.

+ "... with the second President, the percentage of cases pending were reduced by 20%". MCD Annual Report 1993, page 45.

STAFF STRENGTH OF SYARIAH COURT (1990-31ST JULY 1988)*

	1990	1991	1992	1993	1994	1995	1996†	1997†	1998†
(a) President	1	1	2	2	2	2	2	2	2
(b) Kadhi	1	1	1	1	1	—	—	—	—
(c) Administrator	1	1	1	1	1	1	1	1	1
(d) Counsellors	2	2	2	2	2	3	3	3	3
(e) Court Clerk (mediator)	1	1	1	1	1	2	2	2	2
(f) Clerical support	3	3	3	3	3	4	4	4	4
(g) Notice server	1	1	1	1	1	1	1	1	1
(h) Policeman	1	1	1	1	1	1	1	1	1
Total	11	11	12	12	12	14	14	14	14

*Information on staff strength is not available in the Annual Report. Data is gathered from interviewing those who had been in one way or another been connected to the Court, thus there might be a margin of error of '+ or - 1/2 staff'.

†For the years 1996, 1997 and 1998 Syariah Court has sought the assistance of Muslim organisations to clear their backlog in counselling. In 1998 it also received help from MENDAKI to clear the backlog in mediation.

Paper 28

From: Ms Noor Aisha Abdul Rahman
44 Jalan Kemuning
Singapore 769766

Dated: 3 August 1998

Received: 3 August 1998

SUBMISSION BY NOOR AISHA BTE ABDUL RAHMAN TO THE PARLIAMENTARY SELECT COMMITTEE ON THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL

Issues in the proposed amendments

Concurrent Jurisdiction

The proposed section 35 (1) and (2) in effect allows Muslim parties or those married under the provisions of Muslim law who have commenced divorce proceedings in the Syariah Court or who have obtained a Kathi divorce, the choice of commencing or continuing proceedings in any court pertaining to the issues of the disposition of matrimonial property and custody. Civil proceedings pertaining to issues of custody and disposition of matrimonial property which have been commenced prior to divorce proceedings in the Syariah Court, may not continue unless with leave of the Court or the consent of both parties. Where Syariah Court divorce proceeding has begun, parties may not begin civil proceedings in any court unless leave of the Court is obtained or with the consent of both parties.

Presently under existing law such a choice does not exist. The exception to this rule applies to divorce obtained before a Kathi. In the recent case of *Madiyah bte Atan v Samsuddin bin Budin* [OS No. 1072/96] the Court of Appeal ruled that since a kathi divorce falls outside the jurisdiction of the Syariah Court, the High Court has jurisdiction to determine ancillary matters of divorce.

The proposed section would be useful in the following circumstances:

- (a) where both parties are determined to resolve their dispute on ancillary matters in the Civil Court for reasons best known to them. This has all the while been allowed by the Syariah Court itself until the decision of *Lathibaby v Abdul Mustapha* [1997] 3 SLR 1038 where the High Court ruled that where there have been divorce proceedings in the Syariah Court, the Court has jurisdiction over the matter of custody;
- (b) where the issues involve complex points of law. Instances include disposition of property where the property in question lies outside Singapore. In such cases the Syariah Court given its present powers may be unable to dispose of the property effectively. In matters of custody problems usually occur

where one or both parties is a foreign national. Over the years, the Syariah Court has seen a steady rise in such cases which is expected to increase as Singaporeans become more global. At present, the Syariah Court's power to serve summons does not extend beyond Malaysia; and

(c) where equitable and civil remedies are only available in the civil courts.

The fact that the Syariah Court has all this while allowed the civil courts to hear and determine these ancillary claims clearly indicates that it is not inconsistent with Islamic teachings to do so. To suggest otherwise is to imply that the current administrators of Muslim law are themselves allowing unIslamic practices. The proposed amendment in fact creates a safeguard by ensuring that the continuation or commencement of proceedings in the civil courts must be approved by the Syariah Court.

Furthermore it is pertinent to note that the AMLA itself has allowed for ancillary issues of divorce to be determined by mutual consent. Although the agreement between parties takes place at the Syariah Court, the settlement need not necessarily be based on rules applied by the Syariah Court. Agreements are ratified so long as these are based on mutual consent. The same goes with variation of consent order agreements.

The proposed amendment pertaining to the Syariah Court's discretion to issue certificates for leave to commence or continue civil proceedings does not include any criteria which is necessary in assisting the President to exercise his discretion judicially. Such criteria would also serve as guide for litigants and their counsel to assess whether their application may be accepted or otherwise. It may also serve to prevent frivolous applications. In determining the criteria, it would be necessary to take into account the reasons for allowing jurisdiction to be extended to the civil courts to hear the matter.

Where the decision to commence or continue proceedings in the civil courts is based on the consent of both parties, the amendment should include a provision for voluntary counselling to be carried out either by the Syariah Court or Majlis with the objective of informing parties the consequences of their decision.

Maintenance

On the question of maintenance, the proposed section 35B makes it clear that once civil proceedings have commenced, the Syariah Court shall stay proceedings before it in the same matter. There is however no corresponding provision to the effect that once proceedings begin in the Syariah Court, the civil courts will stay proceedings. This gap must be addressed in order to avoid duplicity and conflict of laws as well as abuse of the legal process. Such a situation may arise where a wife who is dissatisfied with a Syariah Court maintenance order may then seek an application in the civil court for another.

Under existing law the jurisdiction of the Syariah Court over maintenance of wives is not accompanied by power accorded to the Court to enforce its orders. This may be a contributive factor which led Muslim wives to obtain maintenance orders from the civil court. (Apart from this, it has long been acknowledged that there is no inconsistency between the principles of law applied with that of Islam. Coupled with these is the efficiency and professionalism of the civil court in dealing with maintenance disputes).

The proposed section 51 (5) seeks to fill the void by conferring upon the Court the power to convict a person to imprisonment for a term not exceeding six months. However, it does not empower the Court to enforce its own orders as such. The major shortcoming of the provision is that it allows the defaulter to be kept in prison where his future earning power would be reduced. One would think that maintenance would be better achieved with civil remedies which would allow wives to get to the actual source of income. In this respect the remedies available in the Women's Charter particularly attachment earnings and garnishee orders are more apt and useful. Without appropriate remedies the amendment pays no more than lip service to the question of maintenance.

Furthermore the section does not distinguish between a contumacious and financially incapable defaulter. If, imprisonment, being the extreme punishment by deprivation of liberty is to be inflicted, appropriate standards of proof should be strictly observed. The test for non-compliance like that of willful refusal or culpable neglect must be applied before committing someone to prison.

Section 51. (4) which allows the Court to vary or rescind its orders where none previously existed is a sound one. This is particularly so in view of changing needs and circumstances. Given that maintenance is usually achieved by consent, some of the factors that operate to vitiate consent should also be stipulated. These may include fraud, duress or undue pressure, or that the respondent did not understand the consequences of the agreement.

Kathi Divorce

The newly proposed section 52 (3) which accords the Court power to make ancillary orders pursuant to a Kathi divorce raises some problems. Since the case of Rahmat bin Selamat and Rozika bte Nabiwullah, the Court has rejected applications to enforce agreements made before a kathi on the ground that kathi divorces fell outside the jurisdiction of the Court. Recourse to the civil courts was rejected until the judgment of the Court of Appeal in Madiah's case. In that case the Appeal Court chaired by CJ Yong Pung How held that the High Court's jurisdiction to enforce agreements presided before a kathi is not ousted since a kathi divorce fell outside the jurisdiction of the Syariah Court. The new amendment which was drafted prior to the Appeal Board's decision was intended to resolve the state of the law prior to the Appeal Court's decision. Its intended retrospective effect also sought to allow parties who have obtained their kathi divorce prior to the amendment to have their disputes settled by the Syariah Court.

The problem which arises is the potential conflict of jurisdiction between the High Court and the Syariah Court over ancillary matters arising from *cerai kathi*. If the proposed amendment is passed it would mean that an application can be made by a party to the Syariah Court to make orders pursuant to a *cerai kathi* while his ex-spouse by virtue of the judgment established at case law may bring the matter before the High Court.

One way of overcoming this problem is by confining the power of the Syariah Court to make orders pursuant to a kathi divorce to issues of *mutaah* and *nafkah eddah* only. These matters are in a way unique to Muslim law of divorce and has not been dealt with

by the High Court. Confining these issues to the Syariah Court may serve to avoid a potential conflict of jurisdiction. With these issues of custody and the division of matrimonial property can only be heard in the High Court.

Section 102 (3) (b) (ii) attempts to limit the application of kathi divorces to cases where the parties have no minor children and no matrimonial home. There is no justifiable reason to restrict avenues for such divorce. Kathi divorce which is essentially a divorce by mutual consent is recognised in Islam as a way of terminating a marriage amicably with the minimum of rancor. It also allows parties to settle their ancillary matters outside the adversarial court system and the role of kathi is simply to register the divorce.

Section 52 (6) which proposes to bind the Syariah Court to apply principles stipulated in subsections (2) to (10) of section 112 of the Women's Charter so long as these are consistent with Muslim law is not prejudicial to the interests of the Muslims. The principles are useful in that they provide guidelines to the Court to assist it in the judicial exercise of its powers where none hitherto existed.

Variation of orders

The criteria mentioned in the proposed section 52 (7) which seeks to guide the Court in allowing a variation or rescission of its order pertaining to the payment of:

- (a) maskahwin;
- (b) mutaah; and
- (c) custody,

maintenance and education of the minor children of the parties should be extended to include other factors such as coercion, undue influence, duress, fraud etc. These factors are often mentioned as grounds for appeal against consent order agreements. They have also been utilised by the Board of Appeal in determining whether consent is vitiated. Considering that a substantial number of Court orders are based on consent, these factors should be taken into account.

It is also agreed that the proposed power to vary an order under section 52 (7) should not extend to the issue of division of matrimonial property. Parties after a divorce are entitled to reorder their lives on the presumption that the agreement made by the Court stays. It may be indeed unsettling and lead to unwarranted intrusion into the lives of the parties if years divorce, the Court could reopen the issue of how the matrimonial assets were divided.

Property

The proposed amendment to section 55 does not clearly stipulate under which subsection appeals against disposition and division of property lie. Under existing law there have been a number of conflicting Appeal Board's decisions pertaining to this issue [See 019A/96, 031A196, 15/96, 029A/96, 024A/96]. The problem essentially revolves around the question of whether such appeals fall under the definition of "amount in

issue" in section 55 (1) (a) (i) or whether it falls under 55 (1) (b) i.e. "in any other case if the Appeal Board shall give leave to appeal".

Although modified, the new section does not resolve this specific issue. The significance of the distinction is that where leave is not necessary, the appellant has an automatic right of appeal. The same right is not extended in the latter case since the appeal can only be heard after leave is granted. The major basis for the difference in interpretation among other considerations is the argument that the disposition of property normally involves the value of the subject matter rather than the amount at issue. Orders pertaining to property also commonly do not involve monetary transactions as with the case where the order involves transfer of rights in the property. In view of inconsistent rulings of the Appeal Board whose decisions are final and the fact that the matter involves the important question of the right of recourse to judicial review, the amendments should address the problem accordingly.

Both sections of the proposed amendment i.e. 55 (1) (j) and 55 (2) requires leave of the Appeal Board in certain matters for appeal. However, there are no criteria stipulated which provide guidance to the Board as well as litigants as to when leave may be granted. Furthermore, considering that differences of opinions exist on these matters, it is all the more necessary to list these conditions in order to avoid inconsistency and uncertainties. These may include the condition expressed by an Appeal Board decision to the effect that:

- (a) prima facie it can be shown that justice would require an appellate investigation of the case. Such a situation arises when the case involves:
 - (i) a serious and important issue of law;
 - (ii) the applicant can demonstrate a prima facie case;
 - (iii) the question in the case is one of general principle upon which further argument and a decision of a higher tribunal would be to public advantage [No. 001A/96, 007A196, 013A/96].
- (b) where the order of the Court is based on a consent order agreement, the criteria for leave to appeal should include factors which may vitiate consent such as fraud, coercion, duress or undue influence.

Issues not addressed in the Amendments

Mediation

A significant issue which has not been addressed pertains to in-court mediation. Although more than 50% of the cases are "settled" at mediation, neither in the AMLA nor in the Muslim Marriage and Divorce Rules are the appointment, powers and conduct of mediators regulated. Furthermore the procedures involved in in-Court mediation are also unregulated. Yet it is through mediation that issues pertaining to property, custody, *nafkah eddah* and *mutaah* are negotiated. Unlike some other judicial systems where checks are provided to ensure that settlement by consent is arrived at fairly, no such safeguards can be said to exist in the Syariah Court. In New Zealand for instance, family mediation requires a Judge to chair the mediation sessions. Agreements made by consent must also be ratified by a lawyer unless the parties themselves waive this consideration.

There are also countries which regulate the privacy of information disclosed during mediation so that these could not be brought as evidence in Court should mediation fail to achieve settlement.

Over the years there have been a steady number of cases of non-compliance which involve parties who have obtained their divorce by way of a consent order agreement. Some have also attempted to vary or rescind their consent orders. Furthermore, appeals against decisions by consent have also seen a rise. In such cases, it is often alleged by the appellant that he was ill informed or ill advised by the mediator, that he knew not the consequences of the agreement and that principles of law were told to them as if these were immutable.

The matter is all the more serious given the fact that generally judicial approach reveals a cautious attitude towards reviewing or setting aside appeals based on consent. As the decision of the Board in cases [No. 15/96, 024A/96, 029A/96] maintains, it "must take this position in respect of consent orders in order to protect its integrity and that of the Syariah Court and the Kathi and prevent abuse of the process. There must be some finality to matters which can only serve to enhance the administration of justice under the AMLA". It is not disputed that such should be the attitude of the Board. However, it is all the more imperative that those who administer mediation from which finality of agreements is to be presumed, must be sufficiently versed in the law and be bound by rules determining their power for which they are answerable.

The importance of this consideration is all the more pertinent given the fact that the right of judicial review of consent order agreement is restricted simply because the agreement is supposed to be based on consent. Under existing law, a proviso in section 55 bars appeals against decisions by consent. Although the proposed section 55 (2) removes this proviso, it nevertheless requires the parties to obtain leave to appeal. The right to appeal is hence not automatic.

The problem of mediation is also interwoven with the proposed amendments regulating enforcement. The power of the Court to mete out imprisonment sentences and the ability of a party to enforce these in the District Court though important to the standing and image of the Court, however requires it at the same time to ensure that sufficient and clear legal rules and principles which regulate the power of their officers including mediators exist and are followed as these have bearing on the determination of settlements. If these have not been adequately provided, it would be grossly unfair for the Court to penalize those who fail to comply with its orders for reasons which can be reasonably attributed to their weaknesses.

In addition to regulating in-Court mediation, the new legislation should also regulate matters pertaining to alternative dispute settlement involving Muslim parties. Mediation on ancillary issues upon divorce outside the Court system allows an alternative to the generally adversarial, costly and time consuming divorce process. As Singapore is promoting the resolution of civil disputes through Alternative Dispute Resolution (ADR), we foresee greater use of community ADR in settling matrimonial cases. The use of ADR which is intended among other things to take the load of an overburdened court system is relevant to the Syariah Court.

AMLA should be prepared to make legislative provisions which can effectively allow matrimonial disputes to be handled by ADR. The Syariah Court must be able to forge a legal link with ADR by recognising these agreements as if made by way of in-Court mediation.

Appointment of welfare officers

One of the major problems in determining custody is the absence of the support of a professional team of child experts and welfare officers who given their expertise can provide information that would assist the judge to evaluate more objectively and adequately which parent is to be given custody of the child. Such support is particularly crucial in contested custody cases in which the ability of both parties to parent their child is undoubted.

In many other legal systems welfare officers who conduct inquiry in divorce are a common feature in child placement cases. Great care goes in preparing the Child Contested Custody Report by these officers. Section 129 of the Women's Charter provides that when considering questions relating to the custody of any child, the court shall, in whenever it is practicable, take the advice of some person, whether or not a public officer, who is trained or experienced in child welfare but shall not be bound to follow such advice. No such corresponding provision exists in the AMLA. This should be provided in the proposed amendment.

Counselling

The Syariah Court makes counselling mandatory prior to divorce proceeding. Yet this is not provided in the AMLA. Counselling delays the divorce process for a minimum of three interviews are required stretching between four to six months. To some extent, counselling holds back cases to be heard by the Court. It is proposed that counselling be regulated. It is also proposed that there is no necessity for counselling to be carried out in Court. So long as the parties can show that they have attended counselling before an approved counsellor, divorce proceeding can take place without requiring counselling by the Court.

MINUTES OF EVIDENCE

<i>Representors</i>	<i>Pages</i>	<i>Columns</i>
Mr Supardi Sujak	C 2-6	3-12
Ms Noor Aisha Abdul Rahman	C 7-20	13-40
Tuan Hj Hussien Bin Abdul Latiff	C 21-35	41-70
<i>Representing the Law Society of Singapore:</i>		
Mr Ahmad Khalis B Abdul Ghani, Chairperson, Muslim Law Practice Committee (MLPC)	C 36-60	71-120
Mr Ahmad Nizam B Abbas, Vice-Chairman, MLPC		
Mr Sahul Hameed s/o Kattuva, Committee Member, MLPC		
Mr Abdul Rahman Saleh, Committee Member, MLPC		
<i>Representing Persekutuan Seruan Islam Singapura:</i>		
Mr Mohd Yuni bin Awi, Vice-President III	C 61-75	121-50
Mr Yahya Syed, Committee Member		
Mr Junaini Manin, Committee Member		
Mr Zainuddin bin Mohd Ismail, Executive Director (Special Assignments)		
<i>Representing Persatuan Guru-Guru Agama Singapura:</i>		
Mr Abu Bakar bin Hashim, President	C 76-91	151-82
Mr Mohammad Hannan bin Hassan, Hon Secretary		
Mr Mohamad Fatris bin Bakaram, Assistant Secretary		
Mr Zhulkeflee bin Hj Ismail, Executive Officer		
<i>Representing the Young Women Muslim Association:</i>		
Ms Fatimah Azimullah, President	C 92-106	183-212
Mr Sakina Yusuf Kagda, Deputy President		
Mr Fauziah Soeratman, Honorary Secretary		
Ms Siti Sohanah Kasmani, Head, Single Parent Family Service		

**SELECT COMMITTEE ON
THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL**

Monday, 26th October 1998

2.15 p.m.

PRESENT:

Mr Speaker (*in the Chair*)

Mr Abdullah Tarmugi

Dr Yaacob Ibrahim

Mr Ahmad Mohd. Magad

Encik Yatiman Yusof

Mr Mohamad Maidin B P M

Mr Zainul Abidin Rasheed

Encik Sidek bin Saniff

Mr Zulkifli Bin Baharudin

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, Deputy Secretary (Policy)

Mr Tong Min Way, Director (Corporate Services)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head, Civil Division

Ms Chiu Hse Yu, State Counsel, Legislation Division

Majlis Ugama Islam Singapura:

Tuan Hj Maarof bin Hj Salleh, President

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Deputy Director (Finance and Business Development)

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

MINUTES OF EVIDENCE

3

26 OCTOBER 1998

4

Paper No. 2 - Mr Supardi Sujak, Blk 508 Pasir Ris Street 52, #07-171, Singapore 510508, was examined.

Chairman

1. Good afternoon. For the record, could you state your name and address? - (*Mr Supardi Sujak*) My name is Supardi Sujak. I live at Blk 508 Pasir Ris Street 52, #07- 171, Singapore 510508.

Chairman] On behalf of the Select Committee, I would like to thank you for your written submission to the Select Committee on the Administration of Muslim Law (Amendment) Bill. We have invited you here this afternoon to clarify certain matters which you have raised. I will start first with the Minister. Mr Tarmugi.

Mr Abdullah Tarmugi

2. Thank you, Mr Chairman. I would also like to thank Mr Supardi Sujak for sending in his representation. I notice that you agree with the proposed amendments to AMLA. Do you agree that the provision for concurrent jurisdiction does not really dilute the powers of the Syariah Court? You did also say that in your representation? - (*Mr Supardi Sujak*) Yes, I agree to that statement.

3. Could you elaborate on this point? - (*Mr Supardi Sujak*) Basically, the factor that we need to look into is not so much as to whether the power of the Syariah Court will be diluted or whether there is an interference with the Civil Court. What is important is that this Bill will in a way help to solve the problem of a great number of Muslim post divorce

cases in Singapore. If we do not do any thing about it, we will have a lot of social problems when the cases will grow in number as time passes by. I would like to quote some figures. In 1966, in just one year, most of the Muslim divorce cases were females in the age range of 30 to 34 years and their marriages ended up just slightly after five years. These people must be taken care of, in the sense that they have the right to carry on with their life rather than to wait for the Syariah Court to settle their cases. In that respect, the amendment Bill actually helps to quicken the process of post divorce resolution.

4. In other words, you are saying that this in fact gives a choice for the Muslims to turn to the Civil Court? - (*Mr Supardi Sujak*) Yes, it is a choice.

5. Why do you think this element of choice is so important in Singapore given the kind of society that we have? - (*Mr Supardi Sujak*) For example, when a couple faces divorce, normally the female will suffer the most. If we do not do something about ending a post-divorce resolution as quickly as possible, this female divorcee will be worse off because she has no channel to seek justice. And if the system is as per status quo, things will not be fair to them. In actual fact, with these amendments, they are given the right to quicken the process of post-divorce resolution and, at the same time, carry on with their life. Especially for the females who are 30-35 years old, I think they cannot carry on with life unless their

divorce case has been settled. So these amendments will answer to that question.

6. Given what you have just said, and taking the amendments as a whole, do you share the concerns expressed by some quarters that this will in fact drive more Muslims to go to the Civil Courts rather than to the Syariah Court? - *(Mr Supardi Sujak)* Actually, the choice of going to the Civil Court or Syariah Court is an individual one. It is just that we are giving them an option. If they can wait, they have all the time in the world, they can seek justice at the Syariah Court. But if the divorce is so painful, why must they delay? So the only avenue is through this Amendment Bill that allows them to go to the Civil Court. It is just like travelling in an expressway. You can just travel in the normal way, but because of bottlenecks, we build expressways. So you can use the expressway, which is quicker, or you can just travel in the normal way. The situation is just like that. The choice is yours.

7. Mr Supardi, you have not really addressed my question. My question is: do you agree with the concern that this will in fact drive more Muslims to the Civil Courts rather than to the Syariah Court? - *(Mr Supardi Sujak)* Yes. If the process of post-divorce resolution is available and it is quicker, a lot of them will do so. Generally, it will drive them to proceed to the Civil Court for post-divorce cases.

8. If that is the case, do you agree with the argument that this will in fact reduce the power of the Syariah Court? - *(Mr Supardi Sujak)* This is an opinion. It will not dilute the power of the Syariah Court. In fact, it is an extension of the

Syariah Court, in the sense that if you want to settle your post-divorce cases quickly, you can proceed to the Civil Court. You also have to look at them as citizens as a whole, and not because they are Muslims they have to go to the Syariah Court. So it is a matter of giving them a choice. The power of the Syariah Court is in fact enhanced because there is an extension to the present system and it is something that will enhance the status of the Syariah Court. So it will never dilute the power of the Syariah Court.

9. One last question, Mr Supardi. Some people maintain that making it explicit in AMLA that a Muslim can go to the Civil Courts, in certain circumstances, is in fact surrendering the exclusive jurisdiction of the Syariah Court to the Civil Courts, but it would be less objectionable if concurrency is practised but not mentioned in AMLA. Do you agree with the sentiment? - *(Mr Supardi Sujak)* When you implement a law, you have to be very clear-cut. You either have a concurrent jurisdiction of both the Syariah Court and the Civil Court which will do good to the status of the court, or faces some effect that would be to the disadvantage of the Syariah Court. In that aspect, we have to make it clear that the power will be maintained by the Syariah Court. What is proposed is that it allows an extension. It has nothing to do with the power of the courts, In fact, with that extension, the power of the Syariah Court has been enhanced. Why? Because it helps in clearing up all the backlogs of cases and subsequent post divorce cases.

10. Therefore, are you in effect saying that the amendments in fact clarify the

Mr Abdullah Tarmugi (cont.)

jurisdiction and powers of the Syariah Court and also the Civil Courts? - *(Mr Supardi Sujak)* Yes. This is not an issue of diluting the power of the Syariah Court. It is more about giving an extension and be more effective. The power is individual, on its own, for either the Syariah Court or the Civil Courts.

Encik Mohamad Maidin B P M

11. Can I ask for your view? Do you foresee the possibility that, after some-time, when some of these cases are handled by the Civil Courts, it will in effect lighten some of the load of the Syariah Court for a while? This will give them some time to tackle some of their procedural matters and other needs in order to catch up. After some time, is there a possibility that they could be running at a smoother pace and faster than in the past? - *(Mr Supardi Sujak)* Yes. Once you have built up the structure and mechanism, the process will develop on its own. Basically, I would like to touch on the reason why we need to have such a jurisdiction at this point in time. If you want to start off something, there must be a beginning point. Whatever the reservation, this is the best way. After most of the backlog cases have been handled effectively, by virtue of the jurisdiction of the court, we will come to realise that such an effort is something that we will appreciate. Subsequently, when things go back to normal, we may want to have another amendment, in the sense of making it a permanent feature. However, we must ensure that it will never dilute even one percent of the power of the Syariah Court.

12. Given this breathing space, assuming we do not know what the Syariah Court will do, but they will do things in order to improve and speed up the process of handling cases, I would have thought that after some time they would be able to cope with more cases and therefore the smooth running of the Syariah Court would be an attraction even to Muslims to settle their cases there. Given that possible scenario, do you think the preference would be completely to go to the Civil Court or they would also go to the Syariah Court given the improvements made? - *(Mr Supardi Sujak)* They will go to the Syariah Court, given that scenario. That is positive.

Dr Yaacob Ibrahim

13. I would like to get your opinion on some concerns raised by the public. As you have mentioned in your representation, this is the way to deal with an administrative problem. You also mentioned just now that, with time, once this is overcome, the Syariah Court can therefore look into how it can actually strengthen itself. Are you of the opinion that it is not necessary now to look into the strengthening of the Syariah Court as some members of the public have already voiced? - *(Mr Supardi Sujak)* The strengthening of the power of the Syariah Court takes into effect with the jurisdiction of the Civil Court. That is the ingredient of strengthening the Syariah Court. Basically, what we are doing is that we are going to build a mechanism to strengthen it and to piggyback the Civil Court to clear up all the backlogs of cases. If we do not do that, people like Mdm Salijah and so on will have to sit and wait "until the cows come home", and their

cases will never be solved. So I agree with your statement.

14. What you are saying is, therefore, this amendment is strengthening the Syariah Court by linking it closer to the Civil Court and defining some of the boundaries of the civil court and the Syariah Court? - *(Mr Supardi Sujak)* Yes.

15. But that would not answer some of the concerns by the public where we need substantial strengthening, not just administratively? - *(Mr Supardi Sujak)* I think the public's interpretation is that if you allow the Civil Court to interfere with the Syariah Court, it is like going against the Islamic teaching. But actually there is also another interpretation. What we are doing now is to piggy-back the Civil Court to help out in the cases - is also a process called *ijtihad*, which is a discretion that has to be made over time, because we cannot follow the olden century that whatever you are doing is out of boundary. So you have to keep up with the momentum by having the discretion, which is something that had been encouraged by the Prophet Muhammad.

16. A final question? - *(Mr Supardi Sujak)* Mr Chairman, if you may allow me, I would like to quote that whatever we are doing is in line with the Islamic teaching.

Chairman

17. What would you like to quote? - *(Mr Supardi Sujak)* Basically, what we are doing is just like an incident that happened many, many centuries ago. If the Prophet approved some of the independent decisions made by leaders,

which may not have the terms of law in the Qur'an or the Sunnah, it is a case such as this that is in line with such approval, I quote: "When Muad was appointed ruler of Yemen, the Prophet was reported to have asked him as to how he would decide matters coming up before him. "I would judge matters according to the book of God," said Muad. "But if the book of God contains nothing to guide you, then I will add on the precedents of the Prophet of God. But if the precedent fails, then I will assert to form my own judgement without hesitation." So, basically, as we progress, certain things that may appear to divert the originality of the teaching has to be looked into from an overall view.

Encik Sidek bin Saniff

18. I think the word we heard just now was probably *ijtihad*. Discretion? - *(Mr Supardi Sujak)* Yes, *ijtihad*

19. The person is not Muad but Muaz? - *(Mr Supardi Sujak)* Sorry for my pronunciation, Sir.

Dr Yaacob Ibrahim

20. I would like to return to the question of choice because it figures very strongly in your representation. Do you think that, as you have pointed out in your representation, this gives a choice to the Muslims? Is this choice very important to you as a member of the Muslim community? - *(Mr Supardi Sujak)* Not only as a member of the Muslim society but also as an individual, the choice is there. You have to be aware of it. I think the choice has to be made known or highlighted to the Muslim

Dr Yaacob Ibrahim (cont.)

community who may not be able to understand that choice. It is not so much as having the case settled in the Civil Court. But it is a choice that needs to be made because the situation permits it to do so.

Mr Ahmad Mohd Magad

21. In your representation, you noted that concurrent jurisdiction will one day no longer be needed. In suggesting this, is this actually an expectation on your part that some day the Syariah Court would have been beefed up or strengthened to a point such that we can phase out concurrent jurisdiction? - *(Mr Supardi Sujak)* Yes, that is right. I agree with your statement totally.

Mr Zainul Abidin Rasheed

22. Mr Chairman, if I may follow up on Mr Ahmad's point that eventually the concurrent jurisdiction of Syariah Court and Civil Court will no longer be needed. How do you see this in terms of time frame? Do you have an idea how long you like to see this possibility? - *(Mr Supardi Sujak)* Actually it depends on how many Muslim divorce cases we have every year. So if there are less cases, the backlog will be smaller. So I am not sure about the time-frame, but what I know is that as long as the number of divorce cases is increasing and as long as we can use the assistance of the Civil Court to settle these cases, I think the issue of time-frame is secondary. It will come naturally over the years.

23. You mean the time-frame is not that critical? - *(Mr Supardi Sujak)* The

time-frame is not that critical as long as the courts resolve the post-divorce cases as quickly as possible, because that is the whole issue as it involves pain and hurt in some of the couples, if we prolong the case.

24. Mr Chairman, one more question. Do you see any possible problems that may crop up with both the Civil and Syariah Courts handling divorce? Have you given thought to possible problem areas? - *(Mr Supardi Sujak)* Yes, definitely. For that matter, I would suggest maybe to have a Syariah law expert, judge or lawyer to be on hand to give his opinion. Maybe that could be a coordinating factor to resolve some of the problems that will happen. When you have two partnerships, definitely things may go haywire. So we need to have some coordinating individuals. As I said, maybe someone who is quite proficient in the Syariah law, just to give opinion on certain matters.

Chairman

25. Are there any more questions? If there are none, on behalf of the Committee, I would like to thank you for coming here this afternoon. In a few days' time, the transcript of today's meeting will be sent to you. I would like to ask you to have a look at it and see if you have any amendments, but do not add any thing which has not been dealt with today. And I will ask you to return it to us as soon as you have gone through it. May I also remind you not to publish the evidence given or the documents presented to the Select Committee or extracts of such documents before the Select Committee has presented its report to Parliament. Thank you very much? - *(Mr Supardi Sujak)* Thank you.

(The witness withdrew.)

Paper No. 28 - Ms Noor Aisha Abdul Rahman, No. 44 Jalan Kemuning, Singapore 769766, was examined.

Chairman

26. Good afternoon, please be seated. On behalf of the Select Committee, I would like to thank you for the written submission to the Select Committee on the Administration of Muslim Law (Amendment) Bill. We have invited you here this afternoon to clarify certain matters which were raised by you in your submission. May I just, for the record, ask you to state your name and address? - *(Ms Noor Aisha Abdul Rahman)* I am Noor Aisha bte Abdul Rahman. My address is No. 44 Jalan Kemuning.

Chairman] Mr Tarmugi.

Mr Abdullah Tarmugi

27. Thank you, Mr Chairman. I note in your representation, Ms Noor Aisha, that you are generally in support of the proposed amendments to the AMLA. There are some concerns from some quarters of the community that these amendments, especially that of concurrent jurisdiction, will, in fact, diminish the exclusive jurisdiction of Syariah Court. Do you agree with the sentiment? - *(Ms Noor Aisha Abdul Rahman)* I do not think so.

28. Could you elaborate on this? - *(Ms Noor Aisha Abdul Rahman)* I do not see how it will diminish the exclusive jurisdiction of the Syariah Court because prior to this proposed Bill, there have already been many cases dealt with by the

High Court involving issues of custody and the enforcement of matrimonial property. I mean litigants and counsel have brought many of these cases to the High Court to be dealt with anyway.

29. Are these powers or jurisdiction of the Civil Courts being extended in any way by the amendments? - *(Ms Noor Aisha Abdul Rahman)* In a way it has been in the sense that now what happens is that the Bill is giving a choice to parties who mutually consent to bring certain ancillary issues to be dealt in the High Court, without any approval from the Syariah Court.

30. But that has already been the case, is it not? With both parties' consent, they can do so? - *(Ms Noor Aisha Abdul Rahman)* Not really. Currently, the position at law is that even if both parties consent, so long as a divorce proceeding is in force in the Syariah Court, the parties cannot bring the matter to the High Court. So our existing law is such. Now the Bill, in a way, amends that because it allows them to bring it there at any stage of the divorce process. So it has extended the right. It has given power to people who mutually consent to do that. In that sense, it has extended the rights available to parties under existing law.

31. Are you referring to especially cases of division of matrimonial property? - *(Ms Noor Aisha Abdul Rahman)* Yes, as well as custody.

Mr Abdullah Tarmugi (cont.)

32. But in the case of division of matrimonial property, I thought the position was that where both parties consent, they could go to Civil Court. But the Civil Court will proceed by using property law instead of dealing with it as division of matrimonial property? - *(Ms Noor Aisha Abdul Rahman)* For matters to do with enforcement of property orders arising out of a divorce, they will not use general property law, but they will allow it by way of the equitable remedy of a mandatory injunction. Your question is whether the proposed amendment extends that right, is it not?

33. To extend the jurisdiction of the Civil Courts, as some quarters have expressed. There is a worry. Because the amendments, quite apart from diminishing the power of the Syariah Court, also extend the powers of the Civil Courts. That is the contention of those who are against the Bill? - *(Ms Noor Aisha Abdul Rahman)* As far as the enforcement of property is concerned, it has not, in the sense that even prior to the proposed Bill, the Court of Appeal has decided that enforcement of property can be done by way of a mandatory injunction in the High Court. So this, in a way, reinstates the position. But as far as custody is concerned, it has, because of a High Court ruling which has been put into effect now, making it impossible for parties who have begun divorce proceedings in the Syariah Court to bring the matter to the High Court for settlement. So with this Bill, parties can do that now, if both of them consent to it, or if the Syariah Court grants leave.

34. Which case are you referring to? - *(Ms Noor Aisha Abdul Rahman)* Lathibaby's case. As far as custody is concerned and as far as Syariah Court practice is concerned, it has allowed parties to bring the matter to the Civil Court before Lathibaby's case was decided. We have done it. Lathibaby's case decided that once divorce proceedings begin in the Syariah Court, the High Court jurisdiction is ousted. So you cannot bring the proceedings in the High Court anymore once divorce proceedings begin in the Syariah Court. That means that if you want to settle your custody dispute in the High Court before the divorce proceedings are carried out in the Syariah Court, you can do that, but not once a summons has been issued. So, in a way, this Bill extends that right, because it allows the parties now to do that, if both of them consent to it. And it also allows the court to grant leave to allow the parties to do so if they want to. If one of them wants to, he or she can apply to the court for leave to either commence or continue the proceedings.

Encik Yatiman Yusof

35. In your earlier statement, you said that by formalising the Civil Court in our proposed Bill, it has enhanced the Civil Court's role in the divorce but at the same time in your opening statement, you said that the position of the Syariah Court will not be undermined by this amendment. You do not see a conflict in your statement there? - *(Ms Noor Aisha Abdul Rahman)* I do not see a conflict in it because when you talk about exclusive jurisdiction, it has never been exclusive even before this amendment, except that

now it has been extended. So prior to this also, the Syariah Court did not really have exclusive jurisdiction in the sense that, in practice, this was still decided by the Civil Court, except that the proposed Bill now extends that further.

36. Judging from the reaction or the comments in the media, how long would you say that this mutual non-exclusivity arrangement could continue? - (*Ms Noor Aisha Abdul Rahman*) Can you repeat, please?

37. In the newspapers, we have had reports about the unhappiness of this concurrent jurisdiction. But you said that the arrangement could continue. How long do you think it could continue? - (*Ms Noor Aisha Abdul Rahman*) For as long as the people want it to continue.

Dr Yaacob Ibrahim

38. You mentioned just now that the practice of the Syariah Court referring cases to the High Court has been in existence and, in your submission, you said that this reflects that the Syariah Court is confident that the Civil Court is able to do justice to the cases. Can you just give us some instances where you think civil remedies which are meted out could actually form the basis of judgement for Syariah cases? - (*Ms Noor Aisha Abdul Rahman*) In my submission, I did not actually say that. I said that there may be reasons why people would want to bring their matter to the Civil Court, if given a choice. And I said in my submission that these are best known to the parties themselves. But at this point, I feel that I can state several reasons why

people would want to do that. One case would be where they feel that the matter would be dealt with more quickly than the Syariah Court, given the fact that the Syariah Court is highly understaffed. At present, it takes about eight to nine months before they can resolve their matter in a trial. This is just from the time the case is referred to the Court from PTC. From the stage a summons is issued, it takes about 10 months now. So I think some people would want to bring it to the Civil Court so that they can resolve their matter more quickly. The other reason is that there are also some judgements passed by the Syariah Court which they feel may have adverse effects on them.

39. Such as? - (*Ms Noor Aisha Abdul Rahman*) For example, as far as property division is concerned, there may be cases whereby fault of a party towards the breakdown of the marriage would be taken into account in determining the division of property. And there are also cases where a party has been deprived entirely of a share in the matrimonial home if he or she has been found to have contributed solely to the breakdown of the marriage, whereas if the matter is brought to the Civil Court, I do not think the governing principles that apply include fault.

40. So if that is the case, would that not give credence to the claim that this would basically erode the jurisdiction of the Syariah Court for such cases? - (*Ms Noor Aisha Abdul Rahman*) When I mentioned those cases, I must also clarify that these are not unanimous decisions. There are also judges who have not taken fault into account. So in that sense, I cannot say that the jurisdiction of the Court would be eroded as such. It is just

Ms Noor Aisha Abdul Rahman (cont.)

that individual parties who are aware of certain decisions might want to bring the matter there if they feel that, similarly judged, they would be put in an adverse situation.

41. The other point that you made is whether we should issue certificates for leave provision. If I read it correctly, it is to make it more transparent by including the criteria for leave. This has also been raised by some members of the public, including myself in Parliament. But do you think this is best left to the courts to develop a jurisprudence over time rather than restricting it at this point in time? - *(Ms Noor Aisha Abdul Rahman)* But that presupposes a very enlightened judiciary and enlightened judges to run the system. It is always better to have precise and adequate guiding principles at least, because it makes it easier for the judge to focus on the law. Also having all these clearly stipulated will allow litigants to know what the law is.

42. In your opinion of the experience of the Syariah Court in the past when they allowed cases to go to the High Court, were they enlightened or other

wise? - *(Ms Noor Aisha Abdul Rahman)*

No. I think you can clarify this with the President of the Court. But normally, in allowing such applications, no reasons are given. I see their justification as basically a practical one. It reduces workload, if more are heard there. So the exercise of discretion is not based on other non-practical considerations.

43. With this interest in AMLA, do you not agree that, henceforth, people

will be more sensitive to the kind of decisions that the Syariah Court will take in granting leave and, over time, that itself would develop into a body of law in which future judges can use? Would that be a better process of evolution, do you think? - *(Ms Noor Aisha Abdul Rahman)* I think so. I would agree with that.

44. One final question. On your comment about variation of orders, you suggested that it should be extended to include circumstances where factors, such as coercion, undue influence, duress, are mentioned. So you want to widen it? Should not these be left to the court to decide? - *(Ms Noor Aisha Abdul Rahman)* Again, it is actually the same considerations that made me suggest that conditions under which leave should be granted should be precisely stipulated. It is basically the same consideration that if you have these principles laid down, it is very much easier for the judge and clear for litigants who want to bring up the matter, hence preventing frivolous appeals.

45. But you do agree with me just now that if we leave the process to evolve - ? - *(Ms Noor Aisha Abdul Rahman)* No. Dr Yaacob, the point is that some of these factors which I raised are actually the result of judicial decisions. The Appeal Board has decided to include these conditions in determining whether variation should or should not be allowed. But it is very much dependent on the judge's ability. So it is better for the law to declare what has actually been decided as rules, in judicial decision making. This process is a common development of laws. It is inevitable that

sometimes legislation may precede judicial decisions. But it is also good for judicial decisions to be based on laws. So the two should go hand-in-hand and, if it is possible, it should be allowed.

46. But you are comfortable with the fact that we may want to let it be and, over time, let it evolve and when the time is ripe, we may want to put it into law those rulings in which the judges would have made? - (*Ms Noor Aisha Abdul Rahman*) Yes.

Dr Yaacob Ibrahim] Thank you.

Mr Zulkifli bin Baharuddin

47. Ms Noor Aisha, you earlier articulated that some people may prefer to go to the Civil Court in order to get speedier decisions. But at the same time, you are aware that leave of the Syariah Court is required even if both parties consent to it? - (*Ms Noor Aisha Abdul Rahman*) No, not when both parties consent. Under the proposed law, if both parties consent, they can just bring the matter there. It is only when one of the parties objects that leave of the court has to be obtained.

48. My question is: do you prefer that a complete choice is given to them or would you prefer that, at some point in time, both parties would at least have gone to Syariah Court to ensure that at least the Muslims in Singapore would have had to go to Syariah Court to ensure that certain Islamic decisions can be imposed? - (*Ms Noor Aisha Abdul Rahman*) I think we need to clarify at this point that the choice given to parties only

relates to ancillary matters. The divorce itself has to be carried out by the court which means that they still have to go to the Syariah Court first to get a divorce. When they do that, it means that there is still contact with the Syariah Court and the Syariah Court is the court that will determine the validity or otherwise of the divorce. So I suggested in my proposal that if this causes alarm or some sensitivity in the community, that either the Syariah Court or the Majlis provide some kind of counselling to them, should they want to be counselled. But we must also assume that people understand the consequences of their action and there is a limit that the law can do to make people aware of themselves being Muslims. We are assuming that people are not aware of that. The law cannot regulate everything. There must be a limit to imposition on private choices of people. We must respect their choices. So the only safe guard which I can think of is voluntary counselling. In just as much as I think counselling is currently provided for those who want to marry a non-Muslim under civil law, in the same way, such counselling should be provided to those who want to bring ancillary issues to the High Court so that people understand the consequences of their actions.

49. When you said "voluntarily counselled" before they take their ancillary matters to another court, for example, are you referring, given the choice to go for counselling, to the parties involved? Or if they do not want to go for counselling, leave it to them? - (*Ms Noor Aisha Abdul Rahman*) Yes. But I think I should add one more point which I have omitted in the written submission. When I talked about "voluntary counselling", I think it

Ms Noor Aisha Abdul Rahman (cont.)

would take time. If it comes through, it will take time for the court to arrange counselling sessions. As far as custody matters are concerned, something must be done to hasten the process of counselling, if counselling is made necessary, because where children are involved, their sense of time is very different and prolonging the whole thing by asking parents to be counselled, etc, may affect the children adversely, especially if it involves change of custodial arrangements.

50. You perhaps are aware that quite a large section of the community feels that, before somebody goes to the Civil Court or even on ancillary matters, every attempt should be made in counselling, perhaps in some quarters made mandatory, before they seek justice elsewhere because it means that, to some quarters, the Syariah Court has not been able to perform what should have been done for Muslim Singaporeans. What do you think of that? - (*Ms Noor Aisha Abdul Rahman*) The concern is with the institution, whether the court has done enough or not. I think at the end of the day, the overriding consideration should be whether justice is served quickly, promptly and well and has catered to the interest of the parties. So if there are avenues that allow matters to be decided on principles which are not in conflict with Islam, we should allow that. And as far as custody and division of properties are concerned, I personally believe that there is no conflict as far as the guiding principles are concerned. My concern is not so much whether it is the Syariah Court or the Civil Court that will look

into the matter, but how far justice can be served to the parties concerned. And I think anyone of you who has spent time at the Syariah Court will know that this is what the parties want at the end of the day.

51. But you are confident that our Civil Court can administer justice and still not be grossly inconsistent with Syariah Court? - (*Ms Noor Aisha Abdul Rahman*) Yes. If you want me to elaborate, if it is to do with the division of property, the guiding principles, as defined in the Women's Charter, are no different from our concept of *harta sepencarian*. If you look at all the Muslim Family Law enactments in the various states of Malaysia, Kedah, Perlis, it is the same guiding principles: indirect contribution, direct contribution of the parties to the accumulation of family wealth during the subsistence of a marriage and those are the main considerations in determining the division of property at the end of the day. As far as custody is concerned, the overriding principle in the Civil Court is the welfare of the child similar to the principle adopted in the Syariah Court. In its application, the Courts have to take into account the religious factor. For that matter, I must also say that I have come across Syariah Court decisions whereby sometimes joint custody is accorded to both parties, father and mother of a child, even though one of the parties has actually abjured Islam because the Court feels that it is in the best interest of the child. But of course custody arrangements as the judgements will tell you, are never absolute. At that point of time, even though one of them has become a non-Muslim, they will look at the entire

circumstances as a whole before they decide on the matter. So religion is an important consideration even in the Syariah Court. But it is not always the determining factor.

Encik Yatiman Yusof

52. I am attracted by your comment about this joint custody ruled by the Syariah Court. Do you remember specifically which case was that? - *(Ms Noor Aisha Abdul Rahman)* Yes. There is a case which I remember. But I have to clarify also that in this particular case, the joint custody was determined by the mutual consent of both parties, that means, both of them agreed that they will jointly have custody over the child in question. There was an attempt by the father later to vary that order. But the court was quite reluctant to do that because the father was not able to show that the mother has influenced the child to follow ways which were unIslamic. But the court did say that should such evidence occur, he should try to bring the matter again to the Syariah Court to vary the order. It took into account that the child was also living with the mother and the maternal grandmother who were non-Muslims and to break that bond with the mother, because the child was still very young, would not be in the best interest of the child. So it is very hard for the Court to just take religion and decide that as a determining factor.

53. Did the Court explain what was the basis for the decision? - *(Ms Noor Aisha Abdul Rahman)* Yes. The basis of the decision implies that everything must be taken into consideration as a whole.

54. And that includes the welfare of the child? That was taken into consideration? - *(Ms Noor Aisha Abdul Rahman)* Yes. There is also another case, something to that effect.

Mr Mohamad Maidin

55. Ms Noor Aisah, I understand that you are now doing a research, specifically on Muslim divorce. Is that so? - *(Ms Noor Aisha Abdul Rahman)* Yes.

56. What is the topic? - *(Ms Noor Aisha Abdul Rahman)* It has something to do with the problems in administering divorce in the Syariah Court.

57. Based on your studies, could you share with us whether this amendment to the Bill is helpful to Muslim couples having divorce problems or who want to resolve the case speedily and, as you said, justly? - *(Ms Noor Aisha Abdul Rahman)* Yes. That is why I am in support of it.

58. Would it also be fair to say that part of the problem, based on your studies, is related to the condition on what was available in the Syariah Court in the past? Would you be able to say that? - *(Ms Noor Aisha Abdul Rahman)* In terms of manpower, yes. It has a lot to do with that. But I think that is not the only consideration because you can put many more people in the Syariah Court but there is something which I think more resources cannot buy. One is our legal tradition which is not very developed, partly because it is not taught as a subject. Lawyers do not learn Muslim divorce law in the university. Hence they generally do

Mr Mohamad Maidin (cont.)

not cite it in their submissions to the judges which makes it very difficult for the judges also because they have to do the research. It would be easier if they were greatly assisted by counsel. But because it is not a "taught" tradition, it has become very difficult. It has also a lot to do with the quality, training and background of the judges.

59. There are two aspects of the problem. One is the court itself and how it is run. The other is the social problem within the Malay/Muslim community. Is there any indication in your research that the problem is quite overwhelming in terms of the number and percentage of divorce? - *(Ms Noor Aisha Abdul Rahman)* Yes. It has been on the rise. But so is the case with non-Muslims.

60. But will it be fair to say that the Syariah Court, with what they have, is not in a position to cope with all these cases? Is it too many, compared to what they have? - *(Ms Noor Aisha Abdul Rahman)* At every stage of the divorce process, there is a shortage of staff. Counselling delays the divorce process by several months. In fact, when I first did my research, practitioners had to wait for a year or more just to get an appointment to be counselled and that is not even the beginning of the divorce process yet. There are now changes. There are at least three counsellors there. Of course, it is still not enough. If you look at the latest figures, there are still pending cases by the hundreds waiting just to be counselled. When they go on to the next stage of the divorce process, which is the court process itself, it takes another few

months. There is obviously a shortage at every stage and those awaiting trials are the worst. Fortunately, about 80% of the cases are settled prior to a trial. This means, those cases awaiting trials for seven to eight months now are quite few, about 20%. The problem is also at that point, just before the trial, what we call the pre-trial conference, ie, the mediation stage. And it is not just the number of staff. There is a lack of adequate and competent mediators whose functions have not been regulated at all by the law. It is not because of any shortcomings in the law as such. The existing AMLA was enacted in 1968. It was long before pre-trial conference was institutionalised and made mandatory. The divorce process has actually developed after the coming about of the law and as such it has not been able to regulate the process and the powers of the mediators. In my submission, I raised this to be a very important part of the divorce process in the Syariah Court which has not been tackled by the Bill at all, considering the fact that 80% of the cases are settled there. Something must be done there and actually it involves a lot of work because you have to study legislation of other legal systems and all the safeguards necessary for people before they determine what the outcome of the ancillary matters would be prior to the trial, if they do not want their case to proceed to trial. I must also point out that in pre-trial conference, if the parties agree with all the ancillary matters at that point of their divorce process, and if subsequently, they become unhappy and want to vary it or change it, the Appeal Board, in past decisions, has not been very open to receiving their applications because of the fact that they are based on consent. If PTC is not

regulated, parties' recourse to redress through the Appeal Board may be very restricted and the proposed Bill has not changed that position. That part has to be really looked into, considering the fact that 80% of the cases are settled there.

61. This is your PTC. Considering the situation there, I assume you clearly saw the need for a lot of improvements. In the process, I see AMLA as an attempt to improve the Syariah Court, to strengthen it and hopefully they will be successful. Meanwhile, you also said that giving a clear opportunity for Muslims to go to the Civil Court is a great help to those in need of such service. Have you come to that conclusion because there are so many problems in the Syariah Court today or you see it as a good alternative to solving these matrimonial problems? Which one is greater? - (*Ms Noor Aisha Abdul Rahman*) In a way, it is both, because cases are brought there as it is more difficult to get the matter resolved quickly in the Syariah Court and also, as I said before, they feel certain matters can be decided in their interest there.

62. I understand earlier that you also mentioned that whatever the background is, you believe justice as served in the Civil Court is also good for Muslims and it is not contrary to Islamic values and teachings generally. Have you discussed such matters before with people who have strong religious background? May I know how you come to that conclusion? - (*Ms Noor Aisha Abdul Rahman*) Throughout the process of my research there, I have had very good contacts with the Presidents of the Court and I think they are very religious people. If they

have no objections to the entire process and they have allowed the matter to be heard there, whether out of practical considerations or otherwise, the fact that they have allowed it is something which we must take into account, given the fact that we appoint them as Presidents because we think they have good religious background. Also, there are other provisions in the AMLA itself, for example, Kathi divorces which fall outside the Court's jurisdiction. The ancillary matters of Kathi divorces were never regulated by the AMLA and if you take into consideration the fact that the people who proposed AMLA were very influential Muslim personalities whose commitment to Islam was never doubted, you cannot then say that these people see the conflict and did not do anything about it. Furthermore, the fact that 80% of the cases which are settled before a trial are done by mutual consent reveal very little strict application of Muslim law, except for the principle that Islam recognises that decisions made by parties who mutually agree on a particular decision must be respected, if it is not in conflict with its values.

63. Based on your research, you are, as a Muslim, quite satisfied that justice, whether it is from the Syariah Court or the Civil Court, can be considered Islamic in that sense? - (*Ms Noor Aisha Abdul Rahman*) Yes, as far as these ancillary claims are concerned.

Dr Yaacob Ibrahim

64. On the points you raised regarding the need for mediation, the need to look into the various aspects of the

Dr Yaacob Ibrahim (cont.)

process, I think that is agreeable. It is something we can consider because 80% of the cases are resolved during the PTC, and if we can do something about it, that will be good. I want to come back to your earlier point that you gave which was the lack of a legal tradition. Many have argued that having this provision would actually work counter to that tradition because you allow cases to go to the Civil Court. Even though you personally agree that both Civil and Syariah Courts will, on balance, come up with justice that is similar, the development of a legal tradition would be hindered. Would that not be the case? - *(Ms Noor Aisha Abdul Rahman)* I do not see how it would be hindered.

65. Because the cases will be considered as civil cases, not Syariah cases? *(Ms Noor Aisha Abdul Rahman)* I know. But then it does not stop the Syariah Court judges and the people who practise in the Syariah Court from developing the law.

66. But the counter argument would be: why not strengthen the Syariah Court now, give it all the resources, hear all the cases so that it can develop a legal tradition. How would you answer to that claim? - *(Ms Noor Aisha Abdul Rahman)* If you look at the existing practice where most of the cases today are heard in the Syariah Court, that by itself does not guarantee that the law would be developed. So it has got nothing to do with the issue should some of the cases be heard by the High Court and some heard by the Syariah Court.

67. In other words, the development of a legal tradition has nothing to do with whether the cases are heard either in Syariah Court or Civil Court. It is actually outside the Courts, is it not? - *(Ms Noor Aisha Abdul Rahman)* Yes. It has got to do with the commitment of the people towards improving the law.

Mr Zulkifli Bin Baharudin

68. You mentioned quite a few issues with regard to competency and complexity of the ancillary matters especially on divorce. Yet you seem to feel that in order to make a decision less adversarial, more conciliatory perhaps, Kathis should be given the authority to handle ancillary matters. Can you elaborate on how you come to that conclusion? - *(Ms Noor Aisha Abdul Rahman)* Actually, I did not say that. Maybe I should explain the Kathi divorce. Kathi divorce falls outside the jurisdiction of the Syariah Court. That means, unlike Syariah Court divorce which is contested and you have to go through certain procedures, you have to send a summons to the defendant, etc, this is not done in a Kathi divorce. It is just basically a registration of a divorce, where both parties mutually agree to a divorce in an amicable way. The ancillary matters of Kathi divorce are left completely out of the existing AMLA, which means parties who have got any problems pertaining to any agreements made before a Kathi would have to bring the matter to the Civil Court. What I said was that, at present, the Syariah Court, under the proposed Bill, wants to restrict Kathi divorces only to cases where there are no children involved and there is no matrimonial property at issue. That does not

make much sense to me because *Kathi* divorce is a specific kind of divorce which is recognised in Islam. It is also praised as a good form of divorce because it is non-adversarial. There is no proceeding of a divorce as such. By imposing these two conditions, it limits the application of this kind of divorce. The reason why they want to impose conditions is because they do not want parties to settle the ancillary matters in the High Court. But now that it is allowed by the Court of Appeal, they should just remove those conditions. Furthermore, since by virtue of the Bill, the ancillary issues to a *cerai kathi* can be heard in the Syariah Court, there is no need for the imposition of these conditions. They imposed these conditions previously because of a certain decision of the Appeal Board which made it necessary for these people to go to the High Court. But if the Bill allows also the Syariah Court to deal with these matters, there is no reason why conditions have to be imposed to limit its application. If people choose to settle their marriage in an amicable way, we should allow it.

Mr Abdullah Tarmugi

69. In reply to Mr Maidin's question, you seem to imply that you prefer the existing system, ie, that both the Syariah Court and the Civil Court have concurrent jurisdiction. How would you respond to views which instead suggest that perhaps all custody and property cases should be dealt with by the Syariah Court which concern Muslims? All these cases which concern Muslims should be dealt with by the Syariah Court? -

(*Ms Noor Aisha Abdul Rahman*) In that case, effectively, there is no substance in the Bill.

70. No, I mean those who are totally opposed to the Bill. I am sure you know there are people who are totally opposed to the Bill. They say that what we are doing is, in fact, diminishing the jurisdiction of the Syariah Court and we are also opening the floodgate to possibilities of judgments contrary to Muslim law and to Muslim sensitivities. Therefore, to prevent all this, some people have proposed that all custody cases especially be dealt with by the Syariah Court? - (*Ms Noor Aisha Abdul Rahman*) Ideally, of course, everything should come under one roof. It is not just custody and division of property. It should be maintenance for wives and children. Every thing should come under the Syariah Court. It makes it so much easier for everybody. But given all the constraints and, as I said, it is not just a matter of money, resources or more manpower, but other factors also, like legal tradition and history. To me, the best alternative is this.

71. Quite apart from the constraints that you mentioned, are there not also other elements, for example, involvement of third parties who are non-Muslims which could make a decision by the Syariah Court very difficult when it comes to handling third parties who are non-Muslims? - (*Ms Noor Aisha Abdul Rahman*) Can you repeat your question, please?

72. One of the reasons why concurrency of jurisdiction of the Civil Court is beneficial is that there may be instances

Mr Abdullah Tarmugi (cont.)

where you really need the expertise available in the Civil Court and also the general law of the land, especially when it pertains to laws which involve other countries, and cases where you have third party interests involved who are non-Muslims. Therefore, it would be really difficult to have all custody, maintenance and property cases to be dealt with by the Syariah Court. How do you feel about this? - *(Ms Noor Aisha Abdul Rahman)* If you look at the existing remedies available in the court, even with the proposed Bill, it may not effectively cover many cases of such nature that you have mentioned, especially, like you say, if there is property overseas. There have been a number of such problems creeping into the Syariah Court. The court itself may have no jurisdiction to look into these matters. The fact is that a summons can only be served to as far as the Malaysian states. In terms of equitable remedies, if you look at the First Schedule in the Supreme Court of Judicature Act, all the various remedies that the High Court has are definitely not the same as what the Syariah Court has. So there will definitely be many instances of such cases like custody of children whose parents are foreigners. This will lead to problems later as to how far the court's power and jurisdiction extends to hear the cases. These are also reasons why in such cases, a party may want to bring the matter up to the High Court.

73. Therefore, even though you consider it ideal that all such cases could go to the Syariah Court, it is really not practical to have all these cases heard in the Syariah Court? - *(Ms Noor Aisha*

Abdul Rahman) Yes, given the limitations of the remedies, including equitable remedies. The High Court can invoke many kinds of injunctions and even interim orders pertaining to land, pending the final outcome of a divorce. Many of these interim orders have been made by the High Court which the Syariah Court does not make. Equitable remedies are more easily used in the High Court than in the Syariah Court. Even though in Islam, jurisprudentially, we do have the concept of the public good, the idea of *maslahah*, it has not been developed contextually. This principle in our tradition has not been utilised generally in the cases before the court. It is not to say that Islamic principles based on Islamic tradition do not have these equitable rules which the court can invoke but the point is that it has not been used and it has not been developed. On the contrary, the English tradition of equitable remedies have been incorporated as part and parcel of the system. It is easier for them to use it.

Mr Mohamad Maidin

74. Mr Chairman, to follow up on the same point, do I understand from your research and conclusion that justice for the Muslims here with regard to marriage and dissolution of marriage is best served by having this linkage between the Syariah Court and the Civil Court, which otherwise they would not have been fully served? - *(Ms Noor Aisha Abdul Rahman)* Yes.

75. Did you come to that conclusion in view of all the constraints? - *(Ms Noor Aisha Abdul Rahman)* Yes.

76. In other words, whatever term that is used, without concurrent jurisdiction or linkage, the needs and the requirements of the Muslims in Singapore may not be completely served? - (*Ms Noor Aisha Abdul Rahman*) Yes.

77. Therefore, having this is important? - (*Ms Noor Aisha Abdul Rahman*) Yes.

Mr Yatiman Yusof

78. Mr Chairman, to follow up, this may not be a fair imposition on you. If you are a lawyer taking a case where both avenues of the Syariah and the Civil Courts were open, which avenue will you choose? - (*Ms Noor Aisha Abdul Rahman*) I think it depends very much on the circumstances of the case. I am not a practising lawyer. But if I were to be put in such a situation, it depends on the complexity of the case. If I think that it falls within the normal type of cases that the Syariah Court deals with, of course, I would opt for the Syariah Court. I think they have got enough of experience to be able to deal with all these cases. But where it involves complexities and where remedies that you want are not easily available there, then I would have to consider bringing the matter to the High Court.

Mr Zaimul Abidin Rasheed

79. Actually, I like your very high level of confidence on the neutrality of the two in terms of meting out justice. But at the same time, I think you also acknowledge that there could be

problems and that is why you are proposing that there can be counselling, although on a voluntary basis. And I think you alluded to one possible problem in the case of custody when you have mixed parentage of mixed religion. That is one possible area, which has also been expressed as an area of concern by some quarters. Do you see that problem as serious? Despite that problem, do you think that in fact this is still the best way out in view of the other problems that we have to face? And in the light of that, would you actually call for compulsory counselling rather than voluntary counselling? So that some of these people who are concerned about this, they know that they have taken care of their obligation. It is their religious obligation so that they will not be accused, as you say, that because they allow the two systems to continue, it means as though they are condoning unIslamic practices? - (*Ms Noor Aisha Abdul Rahman*) There are several assumptions to all your questions. The first being that when I suggested voluntary counselling, it was not based on the fact that I am skeptical that certain decisions may be decided detrimental to Muslim interest in the High Court. It is just that because of the alarm that has been raised in the community, the dissatisfaction that we have received in terms of feedback so far from talking to people, if that is what they want, then we should give it to them. But it has got nothing to do with my confidence in the system not deciding things according to the interest of Muslim children or anything like that. The reason why I suggested it was basically to satisfy the group of people who are not happy with what is proposed.

MINUTES OF EVIDENCE

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Mr Zaimul Abidin Rasheed (cont.)

80. So it does not matter whether it is voluntary or compulsory then? - *(Ms Noor Aisha Abdul Rahman)* Yes.

81. Because you are doing it for different reasons, not because you feel that fear of a conflict or system can be overcome by the counselling method? - *(Ms Noor Aisha Abdul Rahman)* Yes.

82. So that religious personalities do not have to feel guilty of not exercising their obligations? - *(Ms Noor Aisha Abdul Rahman)* Yes. The other point I want to say is that the example that you have given as far as custody is concerned is very remote. Maybe it is the percentage of the cases where it involves non-Muslims or rather a Muslim who has abjured Islam. And even then, you must remember that the Bill provides some safeguards for those people. Because if you distrust your husband or your wife who has abandoned the religion, then you should not opt to go to the High Court. If you do not have confidence in your ex-spouses to raise your child as a Muslim, why go to the High Court then if you think that judgment passed would be adverse to the interest of the child? The Bill allows you that option because it says that only if both of you consent, then the matter can be heard in the High Court. As long as one of you objects, the Syariah

Court can still intervene in the matter and not give leave.

83. Just to confirm with you, what you are saying, in fact, is not only you know but it is very unlikely because of that safeguard that both must agree before it can go to the High Court? - *(Ms Noor Aisha Abdul Rahman)* Yes.

84. That should serve as an assurance to the community? - *(Ms Noor Aisha Abdul Rahman)* Yes. And counselling is an added safeguard.

Chairman

85. If there are no more questions, I would like to thank you for coming today to assist us. We will send you a transcript of the discussion in a few days' time. Can I ask you to go through the transcript and return it to us with amendments if there are any? I would also like to remind you that you are not to publish the evidence given or the document which you have presented to the Select Committee until the Select Committee has presented its Report to Parliament? - *(Ms Noor Aisha Abdul Rahman)* All right.

86. Thank you very much? - *(Ms Noor Aisha Abdul Rahman)* Thank you. I hope I have been of some help.

(The witness withdrew.)

Paper No. 18 - Tuan Hj Hussien Bin Abdul Latiff, #04-00 P.K.M. Building, 218F Changi Road, Singapore 419737, was examined.

Chairman

87. Good afternoon. For the record, could you state your name, your address and your occupation? - *(Tuan Hj Hussien Bin Abdul Latiff)* My name is Hussien Bin Abdul Latiff. I am an advocate and solicitor of the High Court of Singapore. My office address is 218-F Changi Road, #04-00 P.K.M. Building, Singapore 419737.

Chairman] Thank you for the written submission that you have sent to the Select Committee on the Administration of Muslim Law (Amendment) Bill. We have invited you here this afternoon to clarify certain matters which you have raised. Can we start first with Mr Zulkifli?

Mr Zulkifli Bin Baharudin

88. Thank you Tuan Hj Hussien for coming here. My first question is: do you think the amendments to AMLA, considering your experience, will help in strengthening the Syariah Court in dealing more effectively with divorce cases and ancillary matters? - *(Tuan Hj Hussien)* In my personal view, I think the proposed AMLA can help in solving about 25% of the problem that we are facing now in the Syariah Court. It is not 100%. I would like to see more in this.

89. Perhaps, would you like to elaborate what are the areas that you are expressing concern that the present

amendments may not be sufficient? - *(Tuan Hj Hussien)* I think, first, if we have a proper person as the President of the Syariah Court, 50% of the problems in the Syariah Court will be tackled. What I mean by "proper person" is a person who is not only in practice but also has experience in Syariah matters. I think 50% of the problems we face in the Syariah Court can be tackled, if not, more than that. That is one part. The second part is that in the proposed Bill, many of the areas on the practice and procedures have not been dealt with, and that is very important. If we can tackle that part, maybe another 35% of the problems can be tackled. Lastly, the proposed Bill did not take into consideration a lot of loopholes in the existing AMLA, and I have just brought out some of those loopholes in my proposal. These have to be covered up. If we have these three areas covered up, I think we can have a very good AMLA that we can use for the future, maybe 30 to 40 years from now.

90. Among your first concern was the people administering AMLA. Are you talking about numbers in dealing with the cases? You did mention specifically about qualifications. Would you like to give specific examples as to why you come to that conclusion? - *(Tuan Hj Hussien)* In the first place, even if you have one person who is well-versed in the practice and in Syariah matters, that will do. What we have now, with due respect to the President of the Syariah Court we have now, he is trained in the Islamic religious areas, but not on advocacy and

Tuan Hj Hussien (cont.)

solicitors. When it comes to enforcement, procedures and formats, he has difficulties. Even in the interpretation of AMLA, which is in English, he has problems.

91. Can you give specific suggestions in overcoming some of the problems that you face?. You give very general suggestions. Do you have any specific suggestions and what are the problems you face? - *(Tuan Hj Hussien)* If we have a President who is well-versed in the practice and procedures, apart from Syariah matters, you have cases where you do not need to wait for a long time for a hearing, like enforcement of a court order, or a custody matter to be dealt with in five or six months' time. All these ancillary matters can be done in chambers. Why is there this necessity to have a hearing? There are many matters that can be handled in chambers but we have to take dates for hearing and wait up to eight months. I do not see the practicality of this. In the civil procedure, the lawyer prepares the summons but the Syariah Court prepares the summons and the reasons for divorce. The summons states some things and in the trial it can be a different thing. There are so many things that can be done if we have a proper President who is also well-versed in the practice and procedures.

Encik Yatiman Yusof

92. I share your concern about the type of President who would sit in the Syariah Court. But under current arrangement they are graduates from the

Azhar University or universities similar to Azhar. They are trained in Islamic jurisprudence first. Lawyers involved in taking up the cases are generally trained by our local university and they are well versed with the Singapore civil law. So do you propose to have, what you define as the desirable President of the Syariah Court, so that he is well trained in Islamic jurisprudence as well as fully capable of functioning as a Judge and is equal to other judges? - *(Tuan Hj Hussien)* They must be qualified in both areas. You may send them for a course. You may get the law graduates from the University of Singapore, and after they have practised for some years, send them for a course in Islamic studies. I have got a Master in Syariah. There is no problem in the study of Syariah. So you have both areas. You know what is going on. If you are good in one area and not good in the other area, you will have problems in running the court in that manner. You must be qualified in both areas.

93. My follow up question is this. You have identified three major areas, namely, the proper person as President, the need to have more practical and more effective procedures in the court, and to close all the possible loopholes. But you also come up with many proposals in your submission. Could you identify the five most important proposals to overcome the three major problems? - *(Tuan Hj Hussien)* I think all the things I have brought up are important. But I will give you one example. Look at the present AMLA. A married woman can commence divorce action in the Syariah Court. What about married men? There is no provision for married men. Yet the court allows married men to commence

proceedings in the Syariah Court. That is one very big obvious loophole. There is no provision for married men and they say a married woman can commence proceedings in the Syariah Court. Do you know that sometimes the man just utters the divorce outside the court? In Islamic law, when a man has uttered the divorce outside the court, it is already effective. The Syariah Court only just gives it a legal stamping when it comes for trial. If that happens, when the lady goes to court, she is not a married woman. She is a divorced woman. The provision cannot apply. Out of 10 cases, there may be three divorce cases outside the court. I have brought this point up here. This is one example where the loophole has to be plugged.

Mr Zainul Abidin Rasheed

94. I thought that position is being corrected as far as Singapore is concerned - correct me if I am wrong - that divorce outside Kathi, in fact, now is no more acceptable, but it must be brought to the Syariah Court. You said divorce by Kathi outside the Court? - (*Tuan Hj Hussien*) No, I just said divorce by *Talaq*.

95. So it will be brought to court. I do not know whether that principle would apply? - (*Tuan Hj Hussien*) It does not. Let us say, a woman is divorced by the husband at home today, which is by *Talaq* on 26th October, and Syariah Court proceedings will commence in 1^{1/2} years, and that is the earliest, ie, in December 1999. That woman is effectively divorced. At the hearing date, the Syariah Court will say, "All right. We have said that the woman was divorced on 26th October

1998." So effectively the woman's status is a divorced woman, not a married woman, when she made the application. It is not that she is divorced in December 1999.

Encik Yatiman Yusof

96. I think your observation is a reflection of the manner in which the administration of divorce is implemented here. But that does not mean that when the woman goes to court, she is already a divorced person. Otherwise, the court will have no *locus standi* to listen to the divorce case. But the fact that the court has the legal basis to hear the case is clear enough to say that the court can and has the jurisdiction to hear the case? - (*Tuan Hj Hussien*) I beg to differ. I brought this point up on appeal before the past President, Abu Bakar Hashim. The point I brought up was that a married man has brought up an action for divorce where there is no provision. That question was not answered at all. It is not a question of a wrong, being accepted makes it right. There is no way. If there is no provision in the Act, you cannot do it. If a woman is divorced, she is divorced. You cannot allow her to bring a petition when she is divorced. When is she divorced? Divorce is taken into consideration under Islamic law, not the secular law. The Islamic law says that when *Talaq* is uttered, she is divorced.

97. Do I understand you, Tuan Hj Hussien, that the moment *Talaq* is expressed by the husband, the court will have to take up the case immediately so as to avoid any unnecessary inconvenience? - (*Tuan Hj Hussien*) That is a very good point.

Encik Yatiman Yusof (cont.)

98. Would that be practical? - *(Tuan Hj Hussien)* Yes, that is a very good point. In the secular court or the Civil Court, it handles the divorce first and ancillary matters are dealt with in chambers. Why do I say this is very important? A man has uttered the divorce. For example, today is 26th October 1998, the case in Syariah Court will come up in December 1999. Meanwhile, the woman will go to the Family Court and ask for maintenance. By right, she is already divorced. But the Civil Court says, "Look, there is no divorce certificate. We will accept that she is still a married woman." Then in December 1999, the Syariah Court says the woman was divorced on 26th October 1998. Can you see the anomaly there? There is a problem here. That is why in my proposal I say that when this matter comes up, the Family Court should adjourn the matter or refer the matter to the Syariah Court and ask them to adjudicate quickly on the status of the woman, because *Talaq* has already been uttered. Definitely, she cannot stay together with her husband.

99. My question is: would that be practical? - *(Tuan Hj Hussien)* If you have a proper President, yes.

100. As I understand it, you say that in the civil law involving non-Muslims, there is a procedural matter in which if a divorce case is taken, there will be a period when the Judge decides whether the decree nisi is made absolute or not. In between that period, maintenance can be fought for. But the woman has yet to be divorced. Isn't there a similar gap? Except, in Islam, you believe that when

Talaq is uttered, the woman is divorced, therefore they should not live under one roof or stay in one room. But the procedural requirement is that you cannot have the hearing immediately on utterance of divorce? - *(Tuan Hj Hussien)* I do not agree with that. If you have a proper President, it can be done. Secondly, it is different from the three months' decree nisi absolute. It is different. We have *iddah*, a period of three months, yes, after divorce. But the maintenance for *iddah* is much, much smaller than compared to the Family Court, a different thing at all. And divorced women are taking advantage because of the delay in the proceedings to whack the husband in the Family Court. It is very unfair. If we have somewhere you can stop this injustice, I think it is good to stop it.

101. Can I take you to another comment that you raised in your submission? You suggested in your submission that the payment of "*hantaran*" must be included as part of the area in which the Court must make a ruling. Can you give us the reason why it is so? - *(Tuan Hj Hussien)* In my experience in Syariah Court, they always allow the "*mas kahwin*" to be claimed. But "*hantaran*", because it is not provided in the AMLA, therefore there is ambiguity here where a woman can claim for "*hantaran*". I believe "*hantaran*" should be allowed to be claimed. If the man has agreed to pay a certain sum for "*hantaran*", and it is not paid, then there is a right, which is a legal right, where a woman should be allowed to claim when she is divorced. If we allow claim on "*mas kahwin*", why not "*hantaran*"?

102. Are you not aware, Tuan Hj Hussien, that the status of "*hantaran*" is completely different from "*mas kahwin*" in the eyes of Islam? - (Tuan Hj Hussien) Yes. "*Mas kahwin*" is obligatory, I know that. But "*hantaran*", once it is given, it is a legal obligation. Why should we not allow it to be claimed? There is valid agreement.

103. I think what Tuan Hj is suggesting here is to include "*hantaran*" in "*mas kahwin*". But by doing so, are you not really blurring the line between what is required by Islam and what is the cultural practice of different communities? - (Tuan Hj Hussien) When you talk about Islam, you are talking about Syariah law. One of the sources of Syariah law is *adat*, accreditation or custom, and "*hantaran*" has been accepted as a custom and has been absorbed by Syariah law, and it becomes Syariah law. It is not a cultural thing now.

104. Are you not aware of the saying: *adat bersandar ugama ada lah yang dipakai* and *ugama tidak mesti bersandarkan adat*? - (Tuan Hj Hussien) I beg to differ. Because from my Islamic training, one of the sources of Islam, Syariah law is *adat*, which is absorbed by Syariah law. Like *harta sepencarian* that we are based, that is an *adat*, *adat temenggong*, absorbed by Syariah law and becomes part of Syariah law. *Harta Sepencarian* is an *adat temenggong*.

105. So you are suggesting among the Minangkabau society that *adat buapak (Pepatih)* should be practised as an Islamic law? - (Tuan Hj Hussien) As long as it is one of the conditions of the *adat*, it must not go against Islamic

principle. If it does not go against Islamic principle, then you can absorb it. Like I give you a *mutaah*.

106. Isn't that statement agreed with what I said that *adat bersandar ugama* is *adat yang dipakai*? - (Tuan Hj Hussien) I do not understand.

107. That means, a tradition that is based on religion is the one that we should follow, that is acceptable? - (Tuan Hj Hussien) Yes. But I do not understand much about the Malay statement. Sorry, I may have misunderstood the Malay statement there.

Dr Yaacob Ibrahim

108. If I may move to a different point. In your submission, towards your conclusion, you mentioned your greatest fear is the fact that Judges may make decisions which are based on law and not sentiment in the custody cases where you feel this incongruence, so to speak, may arise. How do you therefore answer to the request from some members of the public that custody cases should be given entirely to the Syariah Court, and not be given an option for the couple to proceed to Civil Court? - (Tuan Hj Hussien) There we have the problem again, back to square one. Syariah Court will only listen to custody matters together at a divorce hearing. As I said, if you are separated from your wife and children and she has the children today, 26 October, you have to wait for December 1999 -

109. Notwithstanding that case, there are some concerns raised by members of the Muslim public that this current

Dr Yaacob Ibrahim (cont.)

amendment of allowing the couples to proceed to the Civil Court may lead to certain decisions which are not in congruence with Islamic law, especially custody cases. And you have expressed that as the greatest fear. Some members have suggested that we make the amendment much clearer by saying that custody cases must all be tackled by Syariah Court? - *(Tuan Hj Hussien)* I agree. I am for it.

110. You are for it? - *(Tuan Hj Hussien)* Yes, but we have a problem here. The problem is if you are separated from your wife and your children today, and she does not allow you to see the children until the hearing comes up in December 1999, where do you want to go?

111. I understand the specific cases, as you mentioned. But, in principle, what you are saying, therefore, is that the amendment before us today has to be amended to allow all custody cases to be heard by Syariah Court. Is that what you are saying? - *(Tuan Hj Hussien)* Not only that. If you have a proper President -

112. Notwithstanding that. I just want to understand your question? - *(Tuan Hj Hussien)* Yes, I agree with you.

113. Which means that you do not agree with the current amendment? - *(Tuan Hj Hussien)* I do not understand. My point is that before we can take your point that every custody matter be given to Syariah Court, we must correct this procedure.

114. Fair enough? - *(Tuan Hj Hussien)* If this is corrected, yes, I am for it.

115. If that correction that you have suggested is not being done, but we have this amendment in place to allow couples to go to the Civil Court to proceed, will that be agreeable? - *(Tuan Hj Hussien)* I will go for it.

116. You will go for it? - *(Tuan Hj Hussien)* Yes.

Dr Yaacob Ibrahim] Thank you.

Mr Ahmad Mohd Magad

117. Tuan Hj Hussien, you are probably aware of the fact that many Muslims have expressed concern about this issue of concurrent jurisdiction. What is your opinion? What is your feeling about this concurrent jurisdiction? - *(Tuan Hj Hussien)* First thing, I was very happy to hear it is a temporary measure that is being said by the Hon. Minister. That is very good. It is a temporary thing until we sort out the problem. But it cannot be in the long term. If our people are mature, and we are going in that area, then I think it should be all right. But do you want to test the ground? You don't know. You may have another *Nadrah* case. There is a danger. But if our people are mature, like the way we are facing the CIO problem, the way we are facing the problem in Malaysia, I am very happy. What about this thing? Now there are a lot of inter-marriages, and one of the proposals in the Bill says that, "Look, you can oust the jurisdiction of the Syariah Court." So before they marry, the

woman, who is a non-Muslim, will say, "Darling, sign this first, that if anything happens, we don't go to Syariah Court. For property and custody, we go here." So most of those cases of custody, you can see, and their lawyers will teach them to do this, and they will all go to High Court. Assuming the married woman, after being separated from her husband, she is an apostate. This is not taken into consideration in the High Court. And they give the custody to the woman. Will the Malay/Muslim society be mature enough to accept this? That is my fear. If they are, okay. If not, we have a big problem here.

118. You mentioned earlier on, if it is temporary, it is okay? - *(Tuan Hj Hussien)* Yes.

119. But, on the other hand, you also acknowledged the fact that there are inter-marriages and in the context of living in a plural, multi-racial, cosmopolitan society here in Singapore, do you think it would be pragmatic for us in the long run to just confine ourselves to the Syariah Court as opposed to an indefinite concurrent jurisdiction, so that difficult cases, especially involving foreign inter-marriages, properties, and so on, could be adequately addressed? - *(Tuan Hj Hussien)* I think in the long run, we have to give back the jurisdiction to the Syariah Court. It is unfair to overload the High Court. They have a lot of their work and if you download Syariah Court to them, it is unfair. We can handle our area. It is no problem. But get a proper person up there, amend the law, and then we go for it. That is my view.

120. But the only reason why we have this amendment Bill is because of the

constraints that we have in the Syariah Court? - *(Tuan Hj Hussien)* I agree. That is why I say temporary measure is okay. We can accept this, no problem.

121. What about the other points that I mentioned - inter-marriages involving foreign nationals and properties that may be held in the various countries? - *(Tuan Hj Hussien)* If we have a properly qualified person in the Syariah Court and we have the AMLA properly strengthened, I do not see any problem. I think we can handle it on the side.

Mr Zulkifli Bin Baharudin

122. You earlier mentioned that there are provisions in AMLA where the parties can oust the jurisdiction of the Syariah Court? - *(Tuan Hj Hussien)* Yes.

123. Can you draw conclusion - ? - *(Tuan Hj Hussien)* That is consent.

Mr Zulkifli Bin Baharudin] Can you draw reference to a specific provision that mentioned that?

Encik Yatiman Yusof

124. It is section 35A? - *(Tuan Hj Hussien)* I am referring to my reference bundle.

Mr Zulkifli Bin Baharudin

125. Can you just name the specific provision to say why you come to that conclusion? - *(Tuan Hj Hussien)* Look at my reference bundle on page 6. If you

Tuan Hj Hussien (cont.)

look into the submission bundle, it is proposal No. 3, that is on page 2.

Chairman

126. Could you just make the point? - *(Tuan Hj Hussien)* Section 35A(5) says: "This section shall not apply if the parties to the civil proceedings mentioned in subsection (1) consent to the commencement of the civil proceedings in any court or mentioned in subsection (2) consent to the continuation of such proceedings." So if both parties consented that the case should be brought to the High Court, then the Syariah Court cannot interfere, because both parties have agreed. But you did not state when the consent should be made. So before they get married, they can go into the consent agreement. Before marriage, the woman will say, "Darling, let's sign this first before we get married." So they sign. And when it comes to divorce, where will they go? They go to the High Court.

Mr Zulkifli Bin Baharudin

127. Two points, Sir. First point is that I think there is no specific provision to say you can oust the jurisdiction of the Syariah Court. Second point, can I ask you why you come to the conclusion that Muslims can decide amongst themselves not to have Syariah jurisdiction on them should one day they get divorced? Or do you think it is in the interest of public policy? Is it illegal to have such a provision in the first place? - *(Tuan Hj Hussien)* No. What I am saying in my proposal is not that I am against it. I am

not against it. But we have to put a restriction. You want to consent, all right, fair enough, but one month before you file your proceeding. So before marriage, or just after marriage, divorce never even comes into mind, you make the agreement. To me, that is not correct. But you think you want to bring it to High Court, one month before the action is filed in the High Court. That is why I said, "such consent must be signed and filed in court within one month before the proceeding commences or continues, as the case may be." This effectively stops them from going into this kind of agreement before even a divorce is envisaged.

Encik Yatiman Yusof

128. As a practising lawyer, in your view, the action taken to cast aside the court of law, is it not null and void? - *(Tuan Hj Hussien)* We ourselves have put in "if both parties consent to it". We ourselves give it a legal stamping that if both parties make an agreement consenting action to be brought to the High Court and this agreement is made before or during marriage and divorce is not envisaged, that agreement binds both parties. If the husband says, "No, no. I want to bring it to Syariah Court.", the wife may say, "Look, there is a consent agreement signed between you and me before a lawyer." There is an agreement. That is why I want to stop this. You may want to have a consent in one month when you see there is a problem and divorce is coming up. Yes, you may make the consent. When divorce is not envisaged, you do not do the consent. So we do not encourage divorce in this manner when people start thinking about

divorce when they are just married or before their marriage.

129. Have you also asked for Islamic legal opinion on the plausibility of this arrangement? - (*Tuan Hj Hussien*) If we want to go on Islamic law, I think we should not have all this. Just leave it to the Syariah Court.

130. No, no. What do you think of this agreement in the eyes of Islam? Would Islam condone this kind of agreement? - (*Tuan Hj Hussien*) This is very difficult to answer. I will try to answer. In the first place, if we have a proper forum and the forum is fast and effective, I think it is wrong to bring it to the High Court. But when we have an existing forum which is very slow and people will suffer while waiting for justice to be dispensed with -

Mr Abdullah Tarmugi Can I interrupt? I think it is pointless to repeat the point again. Please answer the question instead of coming back again to the weaknesses of the Syariah Court, especially on the President.

Encik Yatiman Yusof

131. My question is that, in the eyes of Islam, isn't such act *haram*, forbidden? - (*Tuan Hj Hussien*) I am not sure about that.

Encik Yatiman Yusoff Thank you.

Encik Sidek Saniff

132. Is it possible that before a couple get married, ask them not to do

what you said just now? Instead, maybe they should find some agreement where they can preserve, especially custody of the kids? - (*Tuan Hj Hussien*) From my experience, especially inter-marriages, if it involves women of another race or religion and they convert to Islam, they will always not feel confident with the Syariah Court but they are more confident with the High Court. And this is our problem. So they may go for it.

133. The Minister has asked you not to keep on mentioning about Makamah Syariah. Let us look at it positively. When they get married, surely both of them love each other and they embrace Islam. So instead of denying them their prerogative or denying whatever they want to do which is against Islam, can the Makamah Syariah, for instance, ask them not to do such thing but say, "You love each other, you are both Muslims. If ever you want to make an agreement, it is an agreement where the welfare of the kids especially is taken care of. Your kids should be Muslims."? Can we create such an agreement to counter what you have experienced thus far? - (*Tuan Hj Hussien*) I think that is more for the Registrar of Muslim Marriages. The Kadi of ROMM has to explain or counsel them about this point. But I do not know whether that will work.

134. Would that solve the problem that you mentioned just now? - (*Tuan Hj Hussien*) I think we have yet to see. But I am still confident that if we put this addition in the provision, that will stop them from all this.

Mr Zainul A bidin Rasheed

135. Since you keep repeating about this proper President of Syariah, if you look back the last few years, you will recognise the improvements that have come to the Syariah Court. I think as a practising lawyer, you must have noticed that too. There were several steps that have been taken to improve in terms of training of the President and the number of Presidents and other areas. The point I am trying to make is that there is no perfect system as of now. Not many countries could practise the full Syariah. Even in Malaysia and Indonesia, the biggest Muslim country, do not have this system, but we are in the process of evolution. So do you see this process of evolution as natural, as% something we have to be pragmatic about? And on that note, the fact that you have accepted these amendments shows also your pragmatic approach towards this system and the need for us to slowly but steadily evolve on this. Would you like to comment on it? - *(Tuan Hj Hussien)* I come here not to oppose the amendments. I am for it. But I come here to share my views so that we can improve AMLA. It is not that I am ramming it down. I am for it and I have mentioned just now but our hon. Minister does not want me to repeat. The evolution is very slow in the Syariah Court. But the evolution can be pushed to a higher momentum. As I see it, again, if you put a person who has experience in both areas there, you do not even need so many amendments. If you have a proper person there, it would be better.

136. But in terms of numbers, you may have one person who is trained in both areas. Then you will say, you will

need two, you will need three. So this will take time and these are the processes which we are going through and I think the Minister has mentioned in and outside Parliament the conscious efforts being taken by MUIS and the Government to improve the situation. If we are rushing it, we may also create different problems? - *(Tuan Hj Hussien)* I am not asking the Government to rush. I just say that you need to get one proper person there. So many things can be solved and this is a consensus among my fellow practitioners, ie, have somebody who is qualified in both areas up there. So many things can be sorted out without the need to go for new proposals in the Bill. We can sort it out. But when you talk in a different language with the one up there, it is very difficult.

137. One final question. Back to the question of greatest fear, do you think there are enough safeguards to avoid that situation which, as you said, may lead even to a Maria Hertogh case where we cannot really be sure of the people's maturity? Is the present safeguard of having both parties to agree before they proceed to Civil Court not enough? - *(Tuan Hj Hussien)* On the safeguard, yes, I agree. But what we are facing is the sentiment of the people. That is what we are afraid. And to make it worse, there are certain verses in the Quran which may also be used against this concurrent jurisdiction. Then we may have problems. So it is the sentiment that we are afraid. If they are mature, without sentiment, it is okay. It is the sentiment that we are afraid of.

138. I take it that you are pragmatic and mature. How would you counter that

kind of sentiment? - *(Tuan Hj Hussien)* So far, I am very happy with the way we are dealing with the current problem with Malaysia and we Malays have stood tall, especially the Senior Minister's book when we published it. On the CIO, we stand with our heads high. We are not carried away by their sentiments. That shows we are different, we are independent, we are pragmatic. That has nothing to do with religion. But when we face religious problems, are we going to be like that? That is the main problem that I do not know how to look at it.

Encik Yatiman Yusoff

139. Tuan Haji Hussien, as a practitioner and quite well-versed with the dualistic nature of the Muslim law and the civil law in Singapore, given the multi-racial backdrop of Singapore, multi-religious society, do you see the possibility of this religious sentiment creeping into us and therefore you need better safeguards than what the Bill is providing? - *(Tuan Hj Hussien)* I personally believe from my own training in Islamic studies that the burning ember of the clergy is never, never extinguished. I believe that if ever a wind blows, this ember will grow into a fire like Taleban and that is what I am afraid of. The clergy may be quiet but that ember is not extinguished. So that can be a problem.

140. In other words, you are saying that despite these decades of multi-racial living together in Singapore, the threat of this possibility is still there? - *(Tuan Hj Hussien)* Yes.

141. And the way the Bill seeks to minimise this may not be able to avoid the possibility of such happening? - *(Tuan Hj Hussien)* When we come to religious factors, from my own studies, I think this will involve the clergy. When you involve the clergy, the way they think and the way we, who are secularly trained, think is different. And you will see that no matter what happens they would like to revert to the old society of Islam. They will go for that and that is a danger that you can see even today. This is not extinguished totally.

Encik Yatiman Yusoff If that is your view, what do you think is the remedy?

Mr Zainul Abidin Rasheed

142. I need to correct that impression. When you said that the clergy needs to revert to the old Islam, Islam at its height also has got pluralism and tolerance. You were talking about people who were going narrowly into danger zone? - *(Tuan Hj Hussien)* That is why I mentioned Taleban. They will ask the women not to go to schools. There are people like that in the clergy.

143. But of course you are ruling that out from happening in Singapore? - *(Tuan Hj Hussien)* I did once speak to Mr Chan Soo Sen. I told him that this ember is never going to be extinguished. What we have to do is to make sure it does not glow.

144. May I repeat my question now? What do you think is the legal remedy to this potential problem? - *(Tuan Hi Hussien)* It is very difficult for me to

Tuan Hj Hussien (cont.)

suggest how to handle this situation because when the time comes, when it is tested, then you can see. If it is not tested, we would not know.

Mr Zulkifli bin Baharuddin

145. You supported the Bill and, among other things, you said that it will allow for speedier resolution of divorce. But at the same time, you are calling for appeals not to be given so easily and therefore a policy that the Syariah Court should not easily allow cases to go to the High Court. Do you see a contradiction there? - *(Tuan Hj Hussien)* No. That is not the way to interpret. My proposal is not to allow appeal from the Syariah Court decision. Let me explain, and with due respect to the Minister, I have to come back to this point again. For a divorce to complete in the Syariah Court it would take about 1 1/2 years. Appeal would take another one year. So 2 1/2 years. If you allow an appeal against the decision of the Syariah Court not to be brought to the High Court, it would take another six months. So altogether a divorce case would take about three years or more. That is why I propose that once the Syariah Court has made a decision, it should not bring the case to the High Court. It is finalised, no appeal. So do not waste time.

146. Would you accept the fact that an appeal is a basic right and principle of the legal process? - *(Tuan Hj Hussien)* You do not know that, in divorce, people

can be very vindictive. If the husband does not want to divorce her, he can play this game.

147. Why would you want to deny the right of appeal of an individual? - *(Titan Hj Hussien)* There is a proper appeal against the decision of the Syariah Court. But in this appeal, whether it should be brought to High Court or not, we should not allow it. It will again delay a divorce case. We already have this problem.

Mr Mohamad Maidin

148. I would like to know how long you have been practising as a lawyer in the Civil Court? - *(Tuan Hj Hussien)* Since 1983.

149. About 15 years? - *(Tuan Hj Hussien)* Yes.

150. From your experience, can you give us your views about our system of justice in Singapore (the Civil Court, High Court and Supreme Court, etc) and whether the system that we have is good enough to be accepted by Muslims? Are there serious contradictions that our judicial system is not good enough for Muslims? - *(Tuan Hj Hussien)* Before I did my study in Islamic law, I had that kind of opinion. But when I studied the Islamic law, I found a system which is not equal but better than the English system. I would tell you today that if we implement the Syariah Court system properly, it can be equal, if not, better than the English system. Many of the laws adopted by the English law such as custody are taken from Islamic law. This is what I know from my study.

151. Even those that are practised in Singapore? - (*Tuan Hj Hussien*) In Singapore, we are still far away because our Syariah law practice is mixed up with the civil law. For example, the law of evidence used in Syariah is a Civil law. The enforcement and format are civil law. So, we have a mixture which should not be the case. It should strictly be Syariah.

152. My question is whether the civil law of the land here is generally in line with Islamic justice? I am not just talking specifically about family law as a whole. Do you see them as serious contradictions or are they compatible? - (*Tuan Hj Hussien*) If you want to talk about this, there are a lot of things where I can discuss the differences. For example, the court procedures we have here are not the same as the Syariah Court. The law that is applied and the consideration are also not the same. Basically, there is a difference of about 80-85% with the Syariah law.

Encik Yatiman Yusof

153. Mr Maidin's question is that the law can be different, the procedures can be different, but whether they are compatible with Islamic law and the civil law, and whether justice is served? - (*Tuan Hj Hussien*) We will look at justice. Where you do not follow the stated law in Syariah, you follow a civil law. I will give an example. In civil law, you can go for a divorce for adultery. Under Islamic law, you cannot. That is why you do not have a divorce provision for adultery. Adultery means execution. And to prove

adultery, you must have four male witnesses who must be Muslims who saw the penetration. That is why there is no record of this kind of evidence being forwarded in Court. Or on confession of the person who did it, then you can do it. In civil law, it is different. With a PI report, you can convict that person for adultery. This is one situation. Another situation is that an apostate must not get custody of the children. But in High Court, they do not bother about that. They look at who is the best mother or parent, and they decide. But that part they miss out. There are many differences. We have *Hudud* law in Islamic law but we do not have it here. *Hudud*, in the sense like cutting the hand. Therefore, if we want justice, if this is the way that Syariah wants it, the law is like that, we have to follow. We cannot have justice and we follow another set of law which is not acceptable to Syariah. This is the problem.

Mr Mohamad Maidin

154. An earlier representor who came here was of the view that without the Civil Court in Singapore supporting and taking on some of the cases from Syariah Court, justice, as she understands it, may not be fully served for the needs of the Muslims? - (*Tuan Hj Hussien*) I agree, with due respect to the Minister, that the delay will cause the injustice.

155. In other words, the Civil Court can play a part? - (*Tuan Hj Hussien*) As long as it does not go against the Syariah law, we can accept that.

Encik Yatiman Yusof

156. In that vein, the question of who serves the notice to the person involved and how this is being done is a secondary matter because the Syariah Court and Civil Court are both serving justice for the Muslims. They complement each other under current arrangements? - *(Tuan Hj Hussien)* My point is that if you want to amend the Act, let us amend in toto. We do not follow the High Court system. We follow our system. Coming back to the service of notice, let us have our system, not their system. Although it may not be of much difference, if you want to be Syariah, let us be Syariah. That is what I ask for. But if we cannot, and this measure is only temporary, I can accept it. I have no problem. But in the long run, we must come back to it.

Mr Zainul Abidin Rasheed

157. From your experience, for Muslim cases that have gone to Civil Court, how many or what percentage had suffered injustice? - *(Tuan Hj Hussien)* Civil proceeding is very fast. When you file a petition at the Civil Court, within one or two months, it will be cleared for divorce and another month for ancillary matters.

158. From your experience, for those who have gone to the Civil Court to handle their cases, have they suffered any injustice? - *(Tuan Hj Hussien)* I have heard no complaints so far. Are you referring to the non-Muslims or the Muslims?

159. The Muslims who have gone to the Civil Court? - *(Tuan Hj Hussien)* There were certain cases I had experienced where there may be unhappiness. I will bring up one case in point. In this case, the wife, an apostate, had custody of the child. We went to High Court and in my enthusiasm I wrote to the Mufti for support and he gave me a letter of support that the child should be given to the Muslim mother. I filed it with the High Court judge and I got a dressing down from him. He said that he was not bound by that letter. He asked why I had brought that letter in. In other words, he did not consider the Islamic aspect of this case. In the end, the case was adjourned and we went outside. Fortunately, the other lawyer was also a Muslim and so we talked. I managed to persuade him to agree to give the child to the father. On that, we consented with the judgment. I believe that if we had gone through the trial, the mother would have custody of the child.

160. That comes back to the point about your greatest fear about the case of apostates. How far in between are such cases? Do you say that the majority of cases are cases where in fact justice would be neutral? And if it is a case of apostates, it is very rare. If it is rare, then there are safeguards, and both parties must agree before they can be brought to Civil Court. We feel there is a safeguard there? - *(Tuan Hj Hussien)* I agree with you that there is a safeguard. But what I want is for the safeguard to be tightened. They cannot consent before marriage or after marriage when divorce is not even thought of. If they want this consent to be made, when a divorce is coming, then

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they must consent. That is fair, and I agree. We do not encourage them from the outset to go into this kind of agreement. I propose a certain phrase to be included there to stop this practice.

Chairman

161. If there are no other questions, I would like to thank Tuan Haji Hussien for coming this afternoon to assist us. We will be sending you a transcript of the proceedings. Please

return to us with amendments, if any. I just want to remind you that before the Select Committee has presented its Report to Parliament, you are not to publish any of the submissions you have submitted or any documents you may have presented to us. Thank you very much? *-(Tuan Hj Hussien)* Mr Chairman, can I just distribute the index to my submission?

Chairman] You can just hand it over to the Clerk. Thank you.

(The witness withdrew.)

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Paper 4 - The following representatives of the Law Society of Singapore, 1 Colombo Court, #08-29/30, Singapore 0617, were examined:

Mr Ahmad Khalis B Abdul Ghani, Chairperson, Muslim Law Practice Committee (MLPC)

Mr Ahmad Nizam B Abbas, Vice-Chairman, MLPC

Mr Sahul Hameed s/o Kattuva, Committee Member, MLPC

Mr Abdul Rahman Saleh, Committee Member, MLPC

Chairman

162. Good afternoon. For the record, could you please state your names and your addresses? - (*Mr Ahmad Khalis B Abdul Ghani*) Good afternoon everyone. My name is Ahmad Khalis Bin Abdul Ghani. My address is 185 Sunbird Road, Singapore 487224. (*Mr Shahul Hameed s/o Kattuva*) Good afternoon everyone. My name is Shahul Hameed, 17 Waringin Walk, Singapore. (*Mr Abdul Rahman Saleh*) Good afternoon, Mr Chairman, Sir, and every one. My name is Abdul Rahman bin Mohd Saleh, Block 192 Bishan Street 13, #09-495, Singapore 570192. (*Mr Ahmad Nizam B Abbas*) Good afternoon, Sir. My name is Ahmad Nizam Abbas. I reside at Block 665 Jalan Damai, #02-103, Singapore 410665. Sir, for the record, we are all from the Law Society of Singapore.

Chairman] First of all, my apologies for making you wait as we took a bit longer with the previous witnesses. Thank you for your written submission to the Select Committee on the Administration of Muslim Law (Amendment) Bill. We have

invited you here this afternoon in order that we can clarify some of the points made in your submission. Would you like to start, Mr Tarmugi?

Mr Abdullah Tarmugi

163. Thank you, Mr Chairman. First, I would also like to thank the Muslim Law Practice Committee for sending in their very considered representation. One general question which I would like to ask the committee is this: As practitioners, do members of the committee agree that the provisions on concurrency clarifies the confusion surrounding the jurisdiction of the Syariah Court and also the Civil Court thus far? - (*Mr Ahmad Khalis*) Sir, in as far as it clarifies the position, yes, it does in many areas. In fact, to our mind, in the several areas where we thought there has also been confusion, the Bill seems to address and clarify them. The question, of course, is whether the manner in which it is clarified is desirable. But that is a different question.

164. On balance, therefore, does the committee view the concurrency of jurisdiction as acceptable as it is, acceptable

with modifications or totally unacceptable? - (*Mr Sahul Hameed*) Our answer to this question is two-fold. First, no; second, yes. We have given our reasons. May I refer to page 8 of our submission. We have enumerated 11 reasons why we are not in favour of the concurrent jurisdiction.

Mr Abdullah Tarmugi] Can I interrupt you, Mr Sahul? I understand that you did give your reasons for and against concurrent jurisdiction, but these are neither here nor there. On balance and in your considered opinion, how do you view the concurrent jurisdiction? Is it acceptable as it is, acceptable with modifications or totally unacceptable? I understand that you have given both the pros and cons. But in my view, it is undecided either one way or other. I just want to know your considered opinion. On balance, how do you view the concurrent jurisdiction?

Mr Sidek bin Saniff

165. Mr Chairman, I read both arguments very thoroughly on "No to concurrent jurisdiction" and "Yes to concurrent jurisdiction". The Minister has put three options. But my gut feeling is that it boils down that you are slightly against it? - (*Mr Ahmad Khalis*) Sir, this is a spot question. The problem is that the committee found that, as human beings, different individuals had different stands and we thought that it was best to reflect the differences in our paper. A number of us were strongly against the whole idea of concurrent jurisdiction, and the reasons were as given. Yet, there were a number of us who also felt that it is okay. Although there may be only three or four

reasons, they felt very strongly about these reasons and they felt that it should be quite all right. I am afraid we did not quite discuss whether there should be modifications as such. So we thought that it was important for us to reflect the differences in the views within the committee itself. I am afraid we do not have one unified stand on this. (*Mr Sahul Hameed*) If I may add to that, there are three specific areas where we thought that it may not be desirable to incorporate section 112 of the Women's Charter into our AMLA. (1) The *nafkah iddah* which means maintenance for *iddah* and *mutaah* or *saguhati* where a Muslim husband gives consolatory gift upon divorce to the wife, taken into consideration by the Appeal Board as affecting the division of the matrimonial property in the Muslim law. Whereas in the Civil Court, they have no such concept or idea. (2) Following the Rokiah case in the Court of Appeal of Malaysia, our Appeal Court now grants indirect contribution made by a housewife who has slogged for the husband to enable him to work for the family and bring in income, etc, etc, if she had devoted for the family and looked after the house and cared for the welfare of the family, one third division would be given to her irrespective of the fact that she did not contribute a single cent for the acquisition of the assets. (3) Whereas in section 112 of the Women's Charter, there is no such thing. They do not have a specific quantum. In Muslim law or in the Appeal Court, they start with the one-third point.

Mr Abdullah Tarmugi

166. Can I interrupt you on that point? I am informed by the Syariah

Mr Abdullah Tarmugi (cont.)

Court that in Muslim law, there is no such thing and it is not determined that one third is Syariah law. It is just a practice because of one *kathi* who started it and it was followed. It is not stipulated in Islamic law that it should be one-third? - (*Mr Sahul Hameed*) In practice, they accept it. Let me go on to the third point which I was specifying. It is the concept of jointly acquired assets. We follow what we call *harta sepencharian*, in Malay. It is jointly acquired property. And this was defined in Zainoon's case. All Muslim practitioners know Zainoon's case, where they say that the concept of "jointly acquired assets" means any asset which has been acquired after the marriage would be considered as *harta sepencharian*, jointly acquired assets. Whereas under section 112 of the Women's Charter, there is no such concept. These are the three specific areas where we felt there would be some sort of dilution.

167. We will consider the suggestions from the Committee, but let me go on to another question. Again, it is a more general question. There have been fears in the community that these amendments would, in fact, dilute the jurisdiction and power of the Syariah Court. And in doing so, it would, in fact, be driving Muslims to the Civil Court instead of to the Syariah Court. What do you think about this view? - (*Mr Ahmad Nizam*) Sir, I have been asked this question a few times over the last several months.

168. So you have rehearsed it? - (*Mr Ahmad Nizam*) No, I have not rehearsed the answers. The typical

response that I gave is that I think there is a real fear out there on this. Because one of the most often quoted reasons why we need the amendments in the Bill is that the Syariah Court in its present state needs quite massive improvements - it can be a very sensitive issue here - in terms of the way it runs itself and in the way it is practising. The point is this. If we have concurrent jurisdiction and we start off with a few and it multiplies, and more and more Muslim parties go to the High Court, we might have this increased perception that the Syariah Court is incapable of running or making sure that its own system is in such fine order that there is no reason for the Muslim couples to go to the other forum. When we do that of course, I cannot prophesise there is this fear that the standing of the Syariah Court might be diluted. But that is the basis for the fear.

169. Do you share these views? I understand you say that this is the feeling on the ground. We also have the same feedback. But do you share these fears, being a practitioner yourself and having been conversant in both systems, ie, the Civil Court as well as the Syariah Court? - (*Mr Ahmad Nizam*) From the bottom of my heart, I actually do.

170. For the same reasons? - (*Mr Ahmad Nizam*) Yes. Because this is actually a good time for us to look back now and I have tried to see why, in the past, parties go to the High Court. I think we need to understand that. Number one, when it comes to custody order. The usual scenario you get is that they have filed their divorce application in the Syariah Court and it would take at least a year or more for the cases to be heard.

In the meantime, what happens if one party uses force or blatantly denies access to the other party? There is a provision actually in the Muslim Marriage and Divorce Rules for interim applications to be heard. Unfortunately, it is not being done as it should. That is why people have gone to the High Court and that is why they use the Guardianship of Infants Act. That is one. And then, for example, we have got the famous Salijah's case on enforcement of order. The bottom line among practitioners here is we felt that what was missing was the proxy power. Fine, you incorporate it in the AMLA as it is today. So that would have stopped that enforcement problem. But instead of stopping, there is now this added step of concurrent jurisdiction. Thirdly, custody, Salijah's case and *cerai* by *kathi*. There was this scenario also where parties have been divorced and registered before a *kathi*. It is registered before a *kathi*. And we know that according to the terms of the present AMLA that by so doing, they are not able to invoke the jurisdiction of the Syariah Court. So they, have got no choice.

171.. But that is changed? - (Mr Ahmad Nizam) With the new amendments, yes, it is changed. So there are three loopholes that all the practitioners have been looking at over these years, first, the custody aspect; second, the enforcement of the order to sell or transfer the property; and, third, where parties having been divorced or Registered before a *kathi*, they cannot go back to the Syariah Court. Now they can. So what I am asking is: then why this extra step of a concurrent jurisdiction clause?

172. You do agree from the very first question I asked just now that it clarifies the confusion between the jurisdiction of the Syariah Court and the Civil Court. And in fact, as I. have said quite a few times too, I notice that you challenged in your representation that it is really not restating status quo. I disagree on that. Anyway; you have resolved the confusion. You are, in fact, merely restating the status quo, from what I gather, and you have strengthened other aspects of the loopholes or so-called weaknesses. Would not all these, taken as a whole, indeed strengthen the Syariah Court? - (Mr Abdul Rahman Saleh) May I respond to that? I think what Mr Ahmad Nizam said cannot be underemphasised. There are three key proposed amendments, apart from the concurrent jurisdiction provision. The three key amendments, ie, first, to give greater teeth to the Syariah Court's enforcement; second, to enable parties to come back to the Syariah Court for those who were divorced by mutual consent before a *kathi*; and, third, for the proxy power of signing default papers and all that. These three amendments, for those of us who disagree with the concurrent jurisdiction proposal, are sufficient to plug these loopholes. So when you have concurrent jurisdiction, you are actually adding an extra step. If those proposals are implemented, we are looking into developing a whole new case law when the Syariah Court should or should not give leave to parties to go to the Civil Court.

173. Do you not think that would strengthen the Syariah Court's powers? - (Mr Abdul Rahman Saleh) If it is necessary, yes. But is it necessary now? If you plug those three loopholes with

Mr Abdul Rahman SaLeh (cont.)

those three key amendments, you do not need this extra step. Because I think the Syariah Court at present has enough to grapple with. There are enough areas to develop and look into without having to deal with an additional area which, in the view of some of us, may be dispensed with.

174. But that is another case? - (*Mr Abdul Rahman Saleh*) No. This is similar to putting a bar to divorce petitions being filed within three years under the Women's Charter. You have got to get leave of the court to file your divorce petition. So it is actually another whole area of law that is developed over the years. We are looking into something which is very new, about giving parties leave to go to another court. It is a whole new ball game. We do not know where we are going to go. We do not know how the Syariah Court is going to develop. Of course, it is good practice if you go into it. But I think there are enough problems and issues to look into without having to deal with this particular one.

175. I think we must proceed on the assumption that the improvement to the Syariah Court will carry on, as I have mentioned openly. This will indeed be speeded up and pursued. Looking at the whole matter in perspective, therefore, would you think that whatever we have done, all the amendments that we have put in place so far, including the leave of the Syariah Court for Muslim couples to go to the Civil Court, would indeed strengthen the Syariah Court than what it was previously? - (*Mr Sahul Hameed*) Let me answer this question, Minister.

The existing problems had been addressed through this amendment. It is well and good. By so doing, we have created a side effect, a ramification. What is it? We have created a feeling. That feeling is this. The Syariah Court is going to be a Court just for divorce and grant *nafkah*, *iddah* and *mutaah*. That is all. The rest of the powers are vested either in the High Court or in the District Court. You commence one divorce proceeding in the Syariah Court. You go to the District Court for enforcement. With regard to property you go to the High Court. You have to go court hopping from one court to another. That is one part of it. Therefore, what would be the effect of the Syariah Court? The Syariah Court will be just a court which is just going to pronounce *talaks* and issue *nafkah*, *iddah* and *mutaah* orders. That is all. In what way can we remedy the situation? We want a Syariah Court that is fully fledged in all its aspects and as equal to, if not, better than the Civil Courts, and the President who is going to man the Syariah Court is one who can hear the case courteously, answer the questions wisely, deliberate the evidence soberly and can decide impartially. Once you can bring up all these together, then concurrent jurisdiction will be complete.

176. You mentioned, if I may use the word "shortcomings" of the President. As I said, we will be looking into that. We will be adding more Presidents to the court and we will be looking into the qualifications of the President. We will definitely be improving the manpower of the Court, in terms of the President downwards. In terms of forum, if the feeling of the Muslim community is that, as Muslims, they should go to the Syariah

Court instead of the High Court, then I do not see there is any fear of Muslims going in droves to the High Court, even with this amendment. If the contention that it is true that the Muslim community wants the Syariah Court only and not wanting to go to the Civil Court, then there is no worry. But there is, as you say, this sentiment and perception on the ground that, by doing so, we are in fact diminishing the powers of the Syariah Court and opening the floodgates for Muslims to go to the Civil Courts, whereas in fact what we are doing is that we are strengthening the Syariah Court, and also in the usual run of cases, proceedings in the Syariah Court are much cheaper than in the High Court. So I would have thought that given all these elements and reasoning, people would, we think, come back to the Syariah Court instead of leaving the Syariah Court to go to the Civil Court? - (*Mr Ahmad Khalis*) If the question is whether all these amendments will strengthen the Syariah Court, I think the short answer is yes. It is like, if I am hungry now, at dinner time, you give me biscuits and the question is, is that food good, I will say yes. But actually at dinner time, I would like rice and fish. So although I appreciate the biscuits which would keep me full for some time, actually my dinner should rightfully be something else. I think that is the issue. In respect of the desirability of concurrent jurisdiction, it seems to us that perhaps it may be a question of how do we go about improving the administration of law in the Syariah Court.

177. In a way, it is regrettable that the words "concurrent jurisdiction" seem to give the idea that we are giving away

something to the Civil Courts which, in fact, is not true. This has been in existence all along. As I said earlier, right from the start, and you agree, what really is happening is that we are only clarifying the confusion that has been in existence between the jurisdiction of the Syariah Court and the Civil Courts all this while. So there is really no change at all, if I may put it that way, between what has been in existence sometime ago and now? - (*Mr Ahmad Khalis*) The reason is this. If you look at the provisions in the AMLA regarding the Syariah Court, it seems to us that the scheme of things is that where we have a marriage under Muslim law, the Muslim law regime applies to the substantive divorce matter as well as the ancillary issues. That seems to be the philosophy. So it applies to custody matters as well as division of matrimonial assets. In our view at least, there was no door, as such, actually. We know you disagree, Sir. But in our view, there was no door to the Civil Courts. Where there had been doors, I think it was forced on to the Civil Courts because the Muslims have no choice but to get certain things done. If our way forward, Sir, is to improve on the administration, the philosophy is correct. In fact it has already been handled by a number of provisions here. As Mr Ahmad Nizam has pointed out, now we have more powers in the Syariah Court, such as enforcement powers and the power to vary, hear interim orders and so on, which is fine. Then comes the question: why do we need concurrent jurisdiction? It does not seem to be in line with the position that we would enhance the position and status and the administration of Muslim law in the Syariah Court.

Mr Ahmad Khalis (cont.)

There seems to be an anomaly there. So although there is not much objection as to why we should not have it, the earlier question is, why should we have it.

Encik Mohamad Maidin

178. Related to this matter, I just want to get my mind clear about the Civil Courts and the Syariah Court. Whoever runs it, in the end, I wonder if we are actually discussing what we or many Muslims would refer to as "Islamic" justice. In other words, justice that runs in line with the spirit of Islam. Justice is Islamic justice. I think you have got the point. The question is, based on your experience as lawyers, and the system of justice that we have in Singapore, would you have the confidence that the system would be able to provide justice which is good enough for Muslims and good enough for us to believe that what is just and what is fair is Islamic too, regardless of whether it is right in the Syariah Court or the Civil Court, not just for matrimonial matters. Have you seen any case that is held in a Civil Court that runs completely contrary to Islamic justice? I do not know whether you have discussed this and can you share with us your views? Because, in the end, it is not which forum you use, but which one can dispense justice that is acceptable to us as Muslims? - (*Mr Sahul Hameed*) Let me answer this question. Frankly speaking, we have not come across any case decided by the Civil Courts which is completely in contrast with the Islamic principles of justice. As we know, the Islamic jurisprudence is based upon a just

and fair system. It will be just and fair to everyone. I think the same system is applicable in the Civil Courts. They use the words "just and equitable". Even in section 112, and now our new section 51, we use the words "just and equitable". That means you have to be fair. Even our Quran, *Al-bakarah*, we say, if you divorce your wife, divorce her with equity. The principle of equity, that means just and fair, has been propagated throughout the length and breadth of Islamic jurisprudence. So we do not think there is oblique contrast between the civil justice administered by the Civil Courts and the justice that is administered in the Syariah Court. Of course, we are quite happy that the present problems have now been solved so that the Muslim women who have been so worried will now be happy. At least, the President of the Syariah Court can sign the transfer documents. At the same time, what we have addressed you is that we want a Syariah Court that is fully fledged and well equipped so that the purpose of creating a Syariah Court for Muslims can be achieved at long last without having to refer to any other Court. This is the Syariah Court for Muslims. You go there, it is self-sufficient in every aspect. You do not want them to go to any other courts. If you are going to do the concurrent jurisprudence for the time being, yes, because we do not have the machinery of the Syariah Court, so we use concurrent jurisdiction. But in the long run, we must aim, or motivate our selves, to have a Syariah Court for Muslims which is self-sufficient in every aspect of life both in the enforcement of justice and at the same time jurisdiction in everything. That is what we want.

(*Mr Ahmad Khalis*) I would like to add to Mr Sahul Hameed's point. There may not be a contrast as such between Islamic justice and common law justice. But in our discussion we find that there can be differences in decisions pertaining to cases with the same facts because of differences in weightages given to different factors in each case. So there can be differences. But to say that A is unjust or unacceptable in Islam but very acceptable in common law, I think there are very few cases in that respect as far as family law is concerned. But what is, more important is really to understand that once we have a regime, then we should follow the regime so that it is consistent. If I can give an example. A party marries under Muslim law and at the solemnisation of their marriage, he would be told that if he fails to maintain his wife for three months, it is one *talak*, ie, the concept of *taliq*, which may not exist, of course, under common law. The duties of a wife and the rights of a husband under Muslim law may differ from that in common law. As such, it gives rise to different rights during divorce. So if we allow parties to start off a marriage under the Muslim law regime, for instance, yet at the same time, if they divorce, we allow them to go under different regimes, we fear that these inconsistencies may cause problems in the sense that we start off with having certain rights and responsibilities but actually end up realising that what a person has done is not commensurate with certain rights at the end of the day. So these are some of the concerns.

179. I understand. I appreciate the views you have given. What we have understood is basically, whether it is Civil Court or Syariah Court, both systems

fight for justice and dispense justice to the people. At the end of the day, there will be these two questions. One part of it is: do you want to go to Syariah Court completely or do you want an alternative which is provided for you? Or another one that deprives you of that alternative. I mean, as a matter of choice for its citizens. And, finally, whether you go to Syariah Court or Civil Court, everyone would want the case to be tried fairly and the conclusion is what we call justice. So whether we argue for the strengthening of Syariah Court, whether we think this Bill is giving too much to Civil Court in terms of powers and all that, although actually it did not, I believe there are some safeguards. Many of us do not know what it would be like in 15, 20 years down the road, as you mentioned. But at the end of the day, we should ask, and I would like to be sure, whichever system the people' decide to choose, Syariah or Civil Courts, whether we would get justice that we want. I want to know whether you would, as lawyers, be able to reassure this Committee, and hopefully the public, that the two systems are good enough to dispense justice for Muslims in Singapore? - (*Mr Ahmad Khalis*) From our experience, the fact that we have stayed in practice shows that we do have a high degree of faith in both the systems. Otherwise, probably we would have stopped practising, as we cannot live with it. We believe that the problem is not so much the substantive law as such, but in certain areas of administration which we think are addressed by many of the provisions in the amendments. Maybe someone else would like to add. (*Mr Abdul Rahman Saleh*) Mr Chairman, Sir, I think we have to go back to the rationale of this Bill. The rationale is that

Mr Abdul Rahman Saleh (cont.)

there were certain areas which were deficient. And one of the major areas of deficiency is that for parties who have registered a divorce by a Kadi, they can not go back to the Syariah Court. Although some of us feel that they can, that is the interpretation that has been given to section 52 of the present Act. So there is no choice but to go to the High Court. When they go to the High Court, the property is divided not according to matrimonial law but according to property law, which means that we follow English concepts of trust and equity. So to say that the Bill is seeking to restore the previous position is not entirely accurate. That is one major loop hole.

Mr Abdullah Tarmugi

180. I disagree with that? - (*Mr Abdul Rahman Saleh*) The other major area of deficiency is custody. Arising from certain decisions of the Appeal Board a few years back, there was this state of uncertainty, whether or not once the Syariah Court has made an order for custody, parties can go back for variation. There were earlier decisions which say that you can. But there was a significant 1993 or 1994 decision which says that you cannot. And let me give you the facts of the case. In that case, the wife was a Punjabi who was converted to Islam to get married. They were divorced. Custody was given to her. She renounced Islam. So the father applied to get back custody of the child. Because the Muslim law is very clear, once the parent who has custody of the child renounces Islam, it

goes to the other parent. The Appeal Board says, "Sorry, you can't. You have got to go to the High Court, because there is no more divorce proceeding pending in the Syariah Court." Because of that, there was a line of cases which compelled people to go to the High Court to seek orders for custody. And, in fact, we have a few situations where the Syariah Court has made an order that one parent has custody and the High Court, maybe one or two years later, made a different order. I think I shared one case with my learned friend, Mr Hameed. I have an existing Syariah Court order which says that one parent has got custody and he has got a High Court order to say the other parent has got custody. So which order prevails? So that is one area of deficiency. The third major area of deficiency is enforcement. The only enforcement which is given to the Syariah Court at present is committal. The chap defaults, you put him in jail, up to six months. But that does not solve the problem. And the problem becomes acute when it comes to division of property, when there is an order for transfers or for sale of the property. Prior to *Salijah's* case, the High Court, in my opinion, has been closing one eye. They have been giving orders, getting a Registrar to be appointed, to sign papers on behalf of the defaulting party. But strictly in law, *Salijah's* case, at first instance, was correct. So now, like I said, we come back to what Ahmad Nizam has said earlier. There are three key provisions in the Act which plug all these three loopholes. There is really no need for concurrent jurisdiction. In the long term, people may not go back to the High Court in droves. But it is natural for people to gravitate towards a more

expedient forum. And we cannot deny that whatever improvements we can make to the Syariah Court now, unless you pack the Syariah Court now with five or six Presidents and you give it double or triple the manpower that it has now, and double the space, double the clerical staff, there is no way that the Syariah Court can match the Civil Courts in terms of efficiency and expediency. So for expedient purposes, people will gravitate to the High Court. In the long run, what we fear is that it will diminish the standing of the Syariah Court to the extent that it becomes a Registry of Divorces. That is our real fear. The amendments are well and fine if they plug problems which currently exist. But why seek potential problems by having an unnecessary step in the proceedings? I think the Syariah Court, even if you have a third President or a fourth President, will have its hands full trying to clear its backlog. But when you have these continuous applications for leave to go to the Civil Courts, you are creating more litigation in the Syariah Court. That is going to tie up the President's time when it could be more effectively used in disposing of substantive issues. The time that can be taken in resolving those kinds of issues, whether a party should be allowed to go to the Civil Courts, can be better utilised by deciding whether a child should be kept within jurisdiction, whether certain matrimonial assets should be restrained from being moved out of the country, because, like it or not, I think Muslims are getting more and more affluent. We are getting more and more cases involving half million dollar properties. So there is always a danger that one party absconds with assets at the

expense of the other party just because we cannot get a hearing within a few weeks.

181. So, if that is the case, if your worry is delay and the adding of more work to the Syariah Court, in my view, I think this is something which we can look into and resolve. But do you not think that there is merit in having some concurrency, especially for certain cases whereby it involves third party interest, for example, who are non-Muslims? And also, for example, it involves foreign law, overseas properties, and things like that. Do you not think that access to the Civil Court in these particular *instances*, or there could be other instances, that kind of examples, which could be best handled by the Civil Court rather than the Syariah Court? Therefore, we should leave it open? - (Mr Abdul Rahman Saleh) I think if we take that approach, then indirectly we may be undermining the Syariah Court. The Syariah Court has to develop one way or the other. And the only way a court develops is to tackle cases, difficult or otherwise. It is always open to the Court to appoint *amicus curiae* to assist the Court in any difficult issue of law or to seek an opinion from experienced counsel or even perhaps from overseas. But to give it to another court to decide a complicated issue, I think may in certain cases amount to abdication of that court's responsibility. So I agree, yes, certain cases of complexity involving extra-territorial issues may be beyond the Syariah Court at present. But the only way to develop is to tackle it. There are other ways of tackling such issues without giving the responsibility to another court.

182. This will be looked into. As I said, the improvements will be looked into. But I am not agreeable with what you say - that it is, in fact, abdicating the jurisdiction of Syariah Court when the jurisdiction was not there in the first place. So how can you abdicate something which is not there? But which can be improved, we can look forward. I do not know, maybe five years, 10 years, we can still try and develop Syariah Court to its fullest extent, and the way you want it to be. But in the meantime, right now, we have all these problems which have to be tackled quickly, which have to complement the efforts of Syariah Court. Do you not think therefore that this concurrency is useful? - *(Mr Sahul Hameed)* Can I answer this question? When he used the word "abdicate", he is not referring to jurisdiction per se, that means, stipulated by AMLA, but it is the case law decided by the High Court, like *Salijah's* case, Lathibaby's case, Mohd Munir's case - these were the ones which were unwritten law decided by the High Court, and that kind of jurisdiction is already there. Now

you are using this concurrent jurisdiction. That is why he used the word "abdicate".

183. No, I thought we were referring to cases, not *Salijah's*, with properties outside the country, third-party interests, who are non-Muslims, etc? - *(Mr Abdul Rahman Saleh)* I was referring to complex cases which, I think, was one of the things being contemplated by the provisions on concurrent jurisdiction. But my view is that complex cases must be taken on by the Syariah Court and there are other tools which can assist the Syariah Court, other than giving that particular case to another court. *(Mr Ahmad Khalis)* If I may add, Sir.

Chairman

184. Order. I propose to take the adjournment now and we will resume our hearing again tomorrow. I believe the other Members still have questions for the witnesses and I would like to request that we resume the hearing again with you tomorrow at 1.45 pm. So we will meet you again tomorrow at 1.45 pm? - *(Mr Sahul Hameed)* Very well.

(The witnesses withdrew.)

**SELECT COMMITTEE ON
THE ADMINISTRATION OF MUSLIM LAW (AMENDMENT) BILL**

Tuesday, 27th October 1998

1.45 p.m.

PRESENT:

Mr Speaker (*in the Chair*)

Mr Abdullah Tarmugi

Dr Yaacob Ibrahim

Mr Ahmad Mohd. Magad

Encik Yatiman Yusof

Mr Mohamad Maidin B P M

Mr Zainul Abidin Rasheed

Encik Sidek bin Saniff

Mr Zulkifli Bin Baharudin

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, Deputy Secretary (Policy)

Mr Tong Min Way, Director (Corporate Services)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head, Civil Division

Ms Chiu Hse Yu, State Counsel, Legislation Division

Majlis Ugama Islam Singapura:

Tuan Hj Maarof bin Hj Salleh, President

Mr Syed Haroon Aljunied, Secretary

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Deputy Director (Finance and Business Development)

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

Paper No. 4 - The following representatives from the Law Society of Singapore, 1 Colombo Court #08-29/30, Singapore 0617, were further examined:

Mr Ahmad Khalis B Abdul Ghani, Chairperson, Muslim Law Practice Committee (MLPC)

Mr Ahmad Nizam B Abbas, Vice-Chairman, MLPC

Mr Sahul Hameed s/o Kattuva, Committee Member, MLPC

Mr Abdul Rahman Saleh, Committee Member, MLPC

Chairman

185. Good afternoon. Please be seated? - *(Mr Ahmad Nizam)* Good afternoon.

Chairman] We will continue with where we left off yesterday. And once again, may I thank all of you for coming here again this afternoon to assist us. Who would like to commence? Mr Sidek Saniff.

Encik Sidek bin Saniff

186. Mr Chairman, Sir, yesterday, you maintained the position that there should be a separate court, the Syariah Court by itself and the Civil Court by itself, with reasons given by you. If that is what you believe, how far can we go under Syariah and where do you think we should stop? - *(Mr Ahmad Khalis)* Sir, at present, I think section 55 of AMLA has marked the lines quite clearly that in so far as matters relating to the issue of validity of divorce and issues ancillary to the divorce like payments of *iddah*, *mutaah* and custody of children, and so on, they should be adjudicated according

to Muslim law. Sir, I believe the lines are already drawn. Our view is that we follow those lines, and we do not go beyond that.

187. In other words, you stop only at Family Law? - *(Mr Ahmad Khalis)* At the present moment, yes. In any event, it is beyond the scope of our group to discuss whether or not we should expand the lines. So we have always been looking at the lines as already drawn.

188. If that is the case, what is your greatest reservation of the concurrency of the law? For instance, you mentioned in page 7, paragraph 16(2), that "the amendments do not restore the status of the civil courts". What do you mean by that? - *(Mr Ahmad Khalis)* Sir, our paragraph 16 is in relation to our appreciation of the reasons given for having the concurrent jurisdiction. Among the reasons given, as we understand it from papers and publications, was that it is to restore the situation prior to the case of *Salijah*. It was apparent in *Salijah's* case that the High Court does not have jurisdiction to adjudicate division of matrimonial assets where parties were married under Muslim law. So it seems to imply

that one of the reasons for the amendments is to restore the position before that, which is to say, before *Salijah's* case, the High Court can adjudicate such cases. What we are trying to say is that, even before *Salijah's* case, that was not the position because it was unclear. Courts have given different decisions on this point.

189. Even though different High Court judges have made different decisions until *Salijah* and *Lathibaby's* cases, these avenues were open to all Muslims? - (*Mr Ahmad Khalis*) No, Sir. Because there have been situations where parties applied to the High Court but these applications were turned down. Because some judges felt that the High Court did not have jurisdiction to try such matters. So it was not quite right to say that the avenue was open.

190. But do you not think that now the people have a choice and it is a choice that a multi-racial and pragmatic Government should apply to everybody? - (*Mr Ahmad Khalis*) Sir, the fact that a choice is given may be good in itself. But then we have to weigh that against the other shortcomings that may arise.

191. Such as? - (*Mr Ahmad Khalis*) One shortcoming that we were quite concerned about is the question of not having one court to adjudicate all matters. The concept of having one court, a one service court, where all matters from the beginning to the end could be settled, is rather important to us, especially when it comes to matters involving matrimonial assets and matrimonial issues. The reason is that, quite often, when a court has to decide a matrimonial

matter, even if it is on one small point, it would be very good for the court to have in its view and in its files knowledge of all matters relating to the case.

Dr Yaacob Ibrahim

192. Can I seek clarification, Mr Chairman? Are you saying that, under the current amendments, a Muslim couple cannot seek a resolution of their divorce and any ancillary matter with the Syariah Court? - (*Mr Ahmad Khalis*) Sorry. Do you mean under the current amendments?

193. With these amendments in place, a Muslim couple, if I understand it correctly, would be able to seek a resolution of his or her divorce completely in the Syariah Court if he or she chooses to do so? - (*Mr Ahmad Khalis*) Yes, they can.

Mr Abdullah Tarmugi

194. Mr Chairman, if I can come back to the previous question posed by Mr Sidek Saniff, ie, you challenged the statement that the amendments actually reinstated the status quo ante before *Salijah's* case and you said that it is not really true, simply because there were instances where some courts refused access by Muslims. But does that detract from the fact that Muslims were able to go to the courts because different High Court judges decide differently? It still does not detract from the fact that Muslims were able to go to the High Court? - (*Mr Ahmad NiZam*) Can I just take this question then? You are right, Sir, when you said that Muslims could

Mr Ahmad Nizam (cont.)

go there. But, now, let us put things in perspective. We had already discussed yesterday why they went to the High Court. The important thing to appreciate, Sir, is this. We must distinguish between the substance and the form. Merely going to the Civil Court to hear on a matter regarding the matrimonial asset does not mean that the High Court, when it decided on those cases, has decided according to matrimonial property division law. And that is what Mr Rahman explained yesterday. The treatment was different. And we have this recent case - I think all of us are aware - of *Madiyah bte Atan* and *Amrun bin Ahmad* where they were tried before a Kadi. Because they could not go to the Syariah Court, they went to the High Court. So in terms of form, they could go to the High Court. But what happened then? In this *Amrun bin Ahmad's* case, the wife did not pay anything towards the matrimonial flat. So the declaration was that the husband could take the entire flat, leaving nothing for the wife. That is what we are concerned about. And that is why we said previously that, yes, in form, it may have appeared that parties did have a choice to go to the Syariah Court. But what choice was it? It was not a real choice as if they went there and got their cases adjudicated according to the roles that each had played in the family.

195. I was not going into the details of the cases or the substance of the cases you mentioned. It was merely to say that we want to make sure that the choice is left open to Muslims to the High Court. And do you not agree that the amendments that we have made, as I mentioned

yesterday, do clarify the confusion that had been happening even before *Salijah's* case? - (*Mr Abdul Rahman Saleh*) Mr Chairman, Sir, to respond to that, even without the present provisions on concurrent jurisdiction, a Muslim couple can still go to the High Court and apply for the property to be divided under property law. So we do not need this provision. The proposals do not restore that position as far as it is concerned. What the proposal in fact do is to create an extra avenue which was not there before. Applications to High Court for division under property law have always existed for both Muslims and non-Muslims. So in that sense, the amendments do not restore that. It remains even now. What we are concerned about is that matters regarding matrimonial property is being brought to the High Court and being divided, not according to Family Law, but under property law, and having English concepts of trust and equity being applied when those concepts do not necessarily coincide with concepts of contributions by spouses within a Muslim marriage. That is what we are concerned about. And it may in the long term lead to a divergence of case law so that, on the face of it, you have similar facts but different results, and that is not good. Because I think as far as we lawyers are concerned, we like certainty in the law. We want to be able to advise our clients what is the position.

196. But do you not think that, according to the amendments, in the Supreme Court of Judicature Act (SCJA), whenever such cases go to the civil courts now, the cases should not be dealt as property cases, but usage of the

Women's Charter provisions, which is closer to what is going to be used by the Syariah Court? - (*Mr Abdul Rahman Saleh*) Our reading of the Bill does not provide for that.

197. As in section 17 (a) of SCJA? - (*Mr Abdul Khalis*) Sir, I understand your point. In as far as the Bill is concerned, firstly, it does clarify the position. Secondly, yes, it now clarifies that the law applicable in the civil court will be matrimonial property law as opposed to the normal property law. A small concern here is that there can still be differences. We are not trying to split hairs here. But I think we all should be aware that there are differences. The concept of payment of *iddah* and *mutaah*, for instance, is relevant in the Syariah Court. But it will not be relevant in the Civil Court. So there can be differences. To our mind, I think the greater concern is, again, the need for having two courts, or even opening a door to another court for that matter. It seems to us that to be able to tell a party that all you need to do is to go to the Syariah Court, this is where you start and this is where you leave off, it is much simpler for the public and parties. (*Mr Sahul Hameed*) Mr Chairman, Sir, can I just add on to what Mr Ahmad Khalis has just said. Why do we not approach this issue from this question? Why do we have a Syariah Court for Muslims? A separate court for Muslims. Why do we not start from that question? The idea of setting up a separate court for Muslims is to administer Syariah law, basically speaking, as modified by Malay customs. If you want to have a Muslim court for Muslims in Singapore, which is the High Court here, then why do we not modify a bit? We can have a Muslim

court which is full-fledged in all aspects of it. Why do we have to go to other courts for remedies which we ourselves can provide for? And that is the point we are suggesting.

198. And do you think that can be done overnight, Mr Sahul? - (*Mr Sahul Hameed*) It takes time. But we have to develop it. But if you take away all these, then we do not need the Syariah Court. They have to go through this experience like any other courts. Let them go through this experience and they will have a full-fledged court through experience. It is a trial and error method.

Encik Yatiman Yusof

199. Mr Chairman, in the Law Society's presentation and comment yesterday and the arguments that the Society put forward very forcefully today, the Society has expressed its preference for an all-encompassing and, to borrow Mr Sahul Hameed's term, a "separate Syariah Court" for the Muslims in Singapore. My question is: given the constraints existing in a multi-racial Singapore, its history, legal tradition, the manpower and training available currently in this country, do you think it is possible, and it is to our interest, to have this kind of court, and if so, when? You are saying that it is not now. You are saying that it should be evolved. But you are also saying that we must start from different premises instead of using the concurrent jurisdiction premises? - (*Mr Sahul Hameed*) A short answer would be that it is up to the party who is going to provide the funds to run the Syariah Court. If they have got sufficient

Mr Sahul Hameed (cont.)

funds now, they can do it and implement it. We entirely leave it to the Minister to look into it.

200. Is it not true that funds are not the only factor because there are also social realities binding a multi-racial society in Singapore where the element of exclusivity for one society may be desirable, but for a multi-racial society, it could be a long-term problem? What is your comment? - *(Mr Ahmad Khalis)* Actually, it is quite a big problem because it is unfortunate that the terms of reference of the Law Sub-Committee is very much legal in nature. So it is a bit difficult for us to make comments of a political nature as such. But I suppose since the question is asked, we take some liberty to give some comments. Sir, before 1957, there was no Syariah Court. Yet we deemed it fit to have a Syariah Court. So the fact that we have a Syariah Court or that we draw lines within which Muslim law shall apply to Muslims is not itself counter-productive to the multi-racial nature of Singapore. In fact, it does help in the sense that we are sure that at least certain laws and traditions of a certain community can exist and can exist peacefully because lines are drawn to make things clear. So to that effect, where the amendments clarify issues it is very, very helpful because the lines make things clear. We are not questioning the lines here today, Sir, but we are seeking to suggest that if the lines are already drawn, let us just improve and concentrate on improving the administration of the laws within those lines. The fact that we have asked,

for instance, that the Syariah Court be given enforcement powers is not to extend the line but we are saying, let us improve what is inside the line. The line is not expanded as such. I believe that if the Syariah Court is made to have the sole responsibility of adjudicating Muslim divorce matters, it would only serve to put the Muslim community and administration of Muslim law in good light and that the country as a whole would be able to better appreciate Muslim law. To some extent, if the law is good but the administration is not, then not only would it give a wrong impression, it would also be counter productive to our understanding of laws and cultures. I do not believe, Sir, with due respect, that strengthening the Syariah Court as such would be counter productive to our situation as a multi-racial country. That answers the question in respect of social reality and exclusivity. It is not exclusive as such because we are only talking about family matters. May I just add a bit on some of the comments made earlier. I agree with the Minister that now may not be the time for the Syariah Court to go full-fledged and the question is how. Among the concerns of us here, if he feels that it is not time now, then do we have an idea of how long we need to do it. That would allay quite a lot of our reservations. Finally, I do hope that all of us are aware that there are views in our committee as well as our profession for concurrent jurisdiction. Let there be no impression that all of us are against concurrent jurisdiction. There are people who say it is perfectly all right. This is the way forward. But it so happens that most of us here today are not so much for concurrent jurisdiction as such.

Mr Mohamad Maidin

201. Mr Chairman, I just want to follow up on the same issue. In your submission under "Yes to concurrent jurisdiction", you mentioned four points. Firstly, it provides parties with alternatives. Secondly, the Civil Court can complement the Syariah Court especially with regard to complicated cases which it finds itself unequipped to handle. Thirdly, it streamlines Family Law in Singapore and, lastly, it fills a present need due to insufficient manpower and resources in the Court. At the same time, on the cons against concurrent jurisdiction, you mentioned that a more proper solution is to beef up the Syariah Court to provide it with the mechanism or powers to deal with ancillary issues if these are the causes for Muslims resorting to Civil Court. I see a slight difference there. In other words, while we say yes, it is good to have the Civil Court to support, at the same time, we are saying here, let us find ways to stop Muslims from resorting to Civil Court for whatever justice they seek. Would you like to comment on that before I ask the next question? - *(Mr Ahmad Khalis)* Paragraph 17 is actually quite reflective of the split in views in the committee. We have given about 11 reasons and we have duly stated them against the 11 reasons, and four reasons for it. But I have to state here that the numbers do not mean strength. You may have four reasons but they may be more compelling. At the end of the day, when we balance the two points, generally speaking, we feel that perhaps the better way forward is to beef up the mechanism in the Syariah Court. But if you have to weigh that against the current position, I am afraid we are not in a position to

really comment or suggest what needs to be done to the Syariah Court now or whether we should have concurrent jurisdiction now and 10 years down the road, we should not have it. That is a bit beyond us.

202. May I ask the next question whether this proposal which is forwarded here is an idea of your own or has there been any example from other countries whereby we have a community or a nation of, let us say, 10-15% of Muslim minority which probably have a full-fledged Syariah Court which we can look into and use as an example? Are you aware of such examples? - *(Mr Ahmad Khalis)* In fact, we started our discussions by being thankful that ours is one rare country where a minority of about 15% has a fairly full-fledged Syariah Court. It is quite difficult actually to find another country with a population of 15% Muslim minority with a court like ours or better than ours. The short answer to that is no. As we make comparisons with the Syariah Courts of other multi-racial countries, we do bear in mind that the Singapore context may be different from the Malaysians, the Thais or the Sri Lankan context.

203. So this idea is based on our own experience in Singapore and how we can move forward from here? - *(Mr Ahmad Khalis)* Yes, very much so, but with some inspirations from improvements made in courts in certain other countries which we feel that we can do something about here in Singapore.

204. Can I ask if these certain other countries are basically Muslim majority

Mr Mohamad Maidin (cont.)

countries? - (*Mr Ahmad Khalis*) Yes, states in Malaysia.

205. Can I go back to the main points of what we are discussing here? I want to be clear about two things. One is that this amendment provides the usual legal and judicial facilities of Muslim law as provided by Syariah Court. In other words, Muslims who want the services of the Syariah Court will continue to get it and under this amendment, the Syariah Court should be improved and strengthened. Is that agreeable? - (*Mr Sahul Hameed*) Let me answer this. What we fear now is whether they are going to get the service is a question mark. The simple reason is that once you open the doors of the Civil Courts, ie. the District Court or High Court for enforcement or for other proceedings, they will go there for expediency and speed. Speed is most important because clients want to have the matter finished within one or two months. They may want an interim order for the child because they are not getting any access to the child. If you apply to the Syariah Court, you will have to wait for a long time. The option is that they will rush to Civil Court because of its speed. They will go to Civil Court for speedy disposal and expediency. If this is going to happen, and at the same time the Syariah Court remains as it is with the backlog, and the Muslims continue to get the same service, it may not be good. That is our fear.

206. Do you think, with this linkage between Syariah and the Civil Courts where some cases can be referred to Civil

Court, it will take away some of the backlogs to be settled with more expediency and giving some breathing space to the Syariah Court to handle whatever cases they have and therefore catch up? With some efforts and amendments made to strengthen the Syariah Court they could probably be doing their work faster? - (*Mr Sahul Hameed*) You have given an avenue to go to Civil Court. But at the same time, you have overburdened the Syariah Court with other matters, such as application for leave whether to continue or stay with the Syariah Court. At the same time; you have some avenue, but you are burdening the Syariah Court also. Everybody will apply to the Syariah Court that they want to go to Civil Court. But the others may not want, so they have to make an application. So the Syariah Court has to decide. Then they have to issue a certificate within 21 days to stay the proceedings. If the Syariah Court is not overburdened with any other procedural applications, then what you have stated may be correct. It may relieve the Syariah Court.

207. I want to go back to your point earlier that it is better that we refer every family dispute to Syariah Court. That will be a bigger burden to the Syariah Court than this situation where we have link ages to the Civil Court. If we go back and let everyone go to Syariah Court, then their backlog will never end. How do we handle this? - (*Mr Abdul Rahman Saleh*) Sir, the short answer to that is we have to give the Syariah Court whatever resources and powers it requires. I can remember the time when the Syariah Court did not even have a photocopier when I started practice back in Pearl's Hill. To be blunt, the Syariah Court is not

being accorded the status which a judicial institution should be accorded, and the real fear among us is that this is the thin edge of the wedge where you gradually erode the standing of the Syariah Court and there comes a day when we find that there is no need for the Syariah Court and you have maybe a Syariah division within the Family Court. Some of us would agree with that, but the point is the present proposals on concurrent jurisdiction, while they seek to relieve the Syariah Court of certain burdens, do not address the real issue. The real issue is that the Syariah Court is not provided with the proper facilities and manpower. I can understand that there are certain shortcomings. You cannot just get the people. That may be a valid concern. But we cannot run away from the point that the Syariah Court is not equipped. If these measures are short term measures to improve the Syariah Court's administration, I agree. To be fair to my other friends on the committee who support concurrent jurisdiction, the amendments, as they stand, would go quite a long way towards relieving the Syariah Court. Make no mistake about that. It would relieve the Syariah Court of a substantial burden of its case load at present. It would: We are concerned about the long term. To elaborate on the pros of concurrent jurisdiction, I must do justice to my fellow committee members. I think there may be a case to be made for comprehensive family law in Singapore. Section 112 of the Women's Charter and the Muslim concept of *harta sepencarian* are not that far apart. There are a lot of common factors. But as pointed out by my colleagues, the weightage of the relevant individual factors and the approach in applying those factors or principles are

different. But then again, it might be good in the long term to develop one family law for the whole of Singapore, for Muslims or non-Muslims, so that whether you go to the Syariah Court or the Civil Court, you get the same result. There are certain other difficulties which you may have to deal with when it comes to custody, because there are different principles involved. But then again, in custody, the paramount consideration is the welfare of the child and that underlies both systems of law. These are the valid points in favour of concurrent jurisdiction. One final word on concurrent jurisdiction and when people apply for leave. If one party is supposedly disgruntled or is refused leave, the party appeals. This causes a delay in the actual proceedings on custody or matrimonial property. If concurrent jurisdiction is to be implemented, this has to be addressed. How do we compensate for the delay? I think there will be appeals to the Appeal Board against grant or refusal of leave to go to the Civil Court.

208. One of your members raised fears that Muslims are likely to go to the Civil Court in droves. That is how you put it. Can I ask you to give your view on whether Muslims in Singapore are beginning to abandon their own Islamic law or syariah law? Do you see that trend happening? Because, from past experience, I would say that the number of people who decided to go to the Civil Court was few. Unless there is a trend which is likely to make Muslims disregard syariah law, my understanding has always been that Muslims, when it comes to family law, are quite conservative. Their first choice has always been syariah law. It is only when they find it necessary that

Mr Mohamad Maidin (cont.)

they would go to the Civil Court for what ever reason or for the case to be settled speedily or because of complication of the issue. That has happened in the past. Can you comment on that? - (*Mr Ahmad Nizam*) Sir, I am going to answer this question based on my own experience as a practising lawyer. Why was it that certain clients say that they want to go to the Civil Court in the past? The reason why I want to establish this is because you talk about choice. From my experience, the reason why those men or women who chose to go to the Civil Court to take up an application under the Guardianship of Infants Act is because they had no choice and they could not wait for the Syariah Court to hear their case in a year or two years' time. That is one reason. Second, when it comes to the house, they are divorced by way of a *kathi*, but there is no forum or no occasion for them to go back to the Syariah Court now. That is why they have to go to the Civil Court. So this concept of making a choice is actually because they are compelled to go to the Civil Court. They have got no choice. But if these amendments are passed, they have a choice. It is no longer a case of their backs against the wall. They had no choice and that is why they went to the Civil Court. But when they go, from the bottom of my heart, I do not think that they are compromising any faith or even Islamic law. It is because they have no choice. But now the scenario that you have painted is a bit different. Now we put your faith to the test because we are now giving you a choice. So I wish to clarify that small point.

Dr Yaacob Ibrahim

209. The impression you gave and this was also mentioned by the learned counsel, Mr Abdul Rahman Saleh, yesterday that Muslims would go in droves? - (*Mr Abdul Rahman Saleh*) No, I did not say that. Maybe it was Mr Hameed.

Dr Yaacob Ibrahim] My note says "in droves".

Chairman] Dr Yaacob, what is your question?

Dr Yaacob Ibrahim

210. Based on what Mr Ahmad Nizam has mentioned, the choice has not changed. In the past, Muslim couples proceed to civil courts because of certain inefficiencies of the Syariah Court. Now they will still do so if they want quick justice as that has always been the driving force. I think all of us in this room agree with Mr Ahmad Khalis that we would like to see a Syariah Court that can function fully and dispense justice to Muslims in terms of family law. I do not think we have a disagreement on that. But we also recognise that there are a lot of current deficiencies that we have to address. So the issue of safeguards that we have in place, the leave that you mentioned, it is agreed that that would cause delays. But if we reduce the load, as mentioned by Encik Maidin, it will give more time to the Syariah Court to address some of these issues. Do you think it is not possible with the current amendments that the Syariah Court can also develop if we make sure that the mechanisms are

rectified and the manpower issues are addressed? Would it not be possible? - *(Mr Abdul Rahman Saleh)* Provided certain safeguards are put in place and leave must not be readily given to go to the Civil Court. That is very important. Secondly, whether you like it or not, I think more manpower must be given to the Syariah Court. Even with the present amendments and the removal of some of the burdens by the Civil Court, we must beef up the Syariah Court physically. Thirdly, there must be some kind of a formal registry system. I think the time has come for us to have a Registry. I think there is a pressing need for a Registrar because all of us see the poor President of the Syariah Court has to decide on whether substituted service should be allowed and people coming to get him to sign cheques and all that. This is taking away a lot of valuable judicial time. You need a Registrar to attend to all these matters and you need someone who can decide whether a particular case deserves an early date or whether a particular application deserves an urgent hearing before the President, even on a Saturday, if possible. Yes, I think they will, to answer your question.

211. At the Second Reading of the Bill, the Minister promised in Parliament that he would look into beefing up man power and on the issue of a Registrar or someone who can actually help the President in terms of clearing up the cases. There was even a suggestion of having a green lane where cases which are quite simple can be dealt with quickly. When these improvements are put in place and with these amendments, there is a strong possibility that the Syariah

Court could develop and improve? - *(Mr Abdul Rahman Saleh)* Certainly, yes.

Mr Yatiman Yusof

212. I have one question and I am afraid this question may be judgmental. But since we have spent a lot of time looking at the pros and cons of concurrent jurisdiction and a Syariah Court that stands on its own, in your considered view, on balance, is the amendment on the right track? Are we on the right direction? - *(Mr Ahmad Khakis)* We more or less anticipated this question and we unanimously agreed that we do not like to answer this question. Sir, I think we have more or less stated at the conclusion of our paper that, looked upon as a whole, the amendment is a welcome relief, something which we are all waiting for. Our concerns are those matters relating to concurrent jurisdiction. If safeguards are in place, then concurrent jurisdiction or otherwise, so long as the Syariah Court is able to perform its job well, then the community will go to the better forum, as what they see. That is all that I have to say.

213. That is what we are hoping too? - *(Mr Sahul Hameed)* With your kind indulgence, on balance, it appears that the present amendments are well and good for the time being, provided the following amendments are incorporated. (1) We have to provide, for the interim, certain rules for the preservation of property by interim injunctions. It is simply because we have got a lot of foreigners who are marrying local Muslim ladies after their conversion. They own

Mr Sahul Hameed (cont.)

properties or HDB flats for that matter which are worth a minimum of half a million dollars. Private flats are worth more than that. Normally, they want to be joint tenants. That means they want 50:50 share. Immediately after the *talak* or divorce pronouncement, we must preserve the property before they scoot off to their own country and so on. We must provide for this interim injunction and preservation of the property. (2) What the Syariah Court is now faced with is the custody matter and the interim applications. This is very important. If the parents are denied access, they come and cry before us. They say, "I haven't seen my child for one week." Some of them were so emotional. They shed tears before me. They say, "Is there any way that the Syariah Court can do something for me?"

Mr Abdullah Tarmugi

214. Before me too? - (*Mr Sahul Hameed*) Because they are so emotional. They do not see their children for days. So we have to make interim applications. We must provide for this immediately. There is a need for this. And, of course, we have to look into the appointment of a Registrar, which will take off the burden of the President of the Syariah Court. Also, what we have to do here is this. Because of the foreigners and marriages taking place in foreign countries, we do not have clear-cut provisions whether people who were married in a foreign country can come to Singapore and commence an action. This is not addressed in the present Bill. We have to provide for

this. There are many other points which we have outlined under "Powers" in paragraph 60. If you have the time to look into that, if you can incorporate that into the amendments, of course, it is well and good, not to mention the rules which provide for a clear-cut pleading system. A pleading system must be provided for. We must also provide Practice Directions so that the Syariah Court and the lawyers know what to do exactly in a particular case and what is the procedure to follow. It is just like the Civil Court where there are streamlined procedures. With that, we think the present amendments are just nice.

215. Thank you, Mr Sahul. I am glad that you have made those clarifications. I have made a commitment publicly that we will improve the Syariah Court, both in terms of manpower and also in terms of procedures. And I am glad the committee has submitted a whole list of items and they will certainly be looked into. I am glad that we ended up this way. Because yesterday, when we started, I thought we started off quite far apart. I am glad that along the way, somehow we are coming closer now. In fact, I am happy that Mr Abdul Rahman agreed that even with concurrent jurisdiction and given the improvements to Syariah Court, etc, indeed the Syariah Court can develop. But you started differently yesterday. You said that somehow with this concurrent jurisdiction, it is very difficult? - (*Mr Abdul Rahman Saleh*) I was wearing the other hat yesterday.

216. I am glad that it ended this way. As I said, I think we ought to give concurrent jurisdiction a try and certainly

not forgetting that at the back of our mind that we want to improve the Syariah Court and make it into a first-class institution. That is in our mind and that is also in your mind. I think it will also be good if lawyers can help us. When I say lawyers can help us, it is because you say that if we put this concurrent jurisdiction provision in the Act, people will go in droves to the Civil Court. We also heard previously that sometimes our own lawyers say that because of the speed and convenience, "let us forget about the Syariah Court and let us go to the High Court." If we feel that we want to make a commitment that Syariah Court should be the one and the Syariah Court should be supported and beefed up, then when ever there are cases, I think it would be good for our lawyers to advise their clients to go to Syariah Court. It is an option instead of taking the easy way and going to the High Court. With that, I would like to end my own questioning. I am very thankful for your contributions. You have given us some good insights which we will be considering? - (*Mr Sahul Hameed*) Sir, just one last point. The words "concurrent jurisdiction" may be a misnomer. A better terminology would be "optional jurisdiction". That means an option is given to a Muslim whether to go to the Syariah Court or the High Court. A concurrent jurisdiction would give all those religious minded people some misgivings.

Mr Abdullah Tarmugi] I am glad that Mr Sahul raised that point because it was precisely on this point that we among ourselves had also argued. Perhaps the word "concurrent" puts everyone off. It conjures up some idea that the Civil

Court now does not have it and you confer this jurisdiction, which is really not the case. That is why I started off the whole argument by asking whether, for want of a better word, "concurrent jurisdiction" has really clarified the whole situation. I was trying to find another word, but I really do not know. Perhaps you could help me. Maybe "optional" is one. But certainly I agree with you that the word "concurrent" somehow conjures up that picture.

Encik Sidek bin Saniff

217. I would like to echo the sentiments made by the Minister. I would like to see concurrent jurisdiction as a challenge for lawyers like you, a challenge in a very unique Singapore where you have non-Muslims sitting together. You can evolve something cogent and this is what tolerance is all about. This is what Singapore is about. Not long ago we had non-Muslims who were very conversant in the protection of our Muslim laws, two great men who were non-Muslims and their work has been used by Muslims who want to do their tutelage or their Ph.D. I am quite sure that it is with the same spirit among our lawyers here, Muslims and non-Muslims, that concurrent jurisdiction will be a very unique situation for us Singaporeans. It may be an example where you cannot find it anywhere else. So we put our respect and hope in you lawyers, Muslims and non-Muslims, in Singapore. Thank you so much? - (*Mr Ahmad Nizam*) On this note may I just speak on behalf of the Council of the Law Society? We would like to place on record our gratitude and appreciation

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Mr Ahmad Nizam (cont.)

Chairman

for allowing us to appear before the Select Committee. We will take into account the words of the Minister and Minister of State and all the other learned MPs, and a special word to the President of the Syariah Court, because we see him sitting in the corner there having to put up with all these comments by us. There is nothing personal intended. I think I speak on behalf of the whole Committee in spite of all that was said over the last two days, we have actually been quite impressed by the improvements over the last few years. There has been a marked improvement and we have to put that on record. That is all.

218. On behalf of the Select Committee, I would like to express our gratitude to all of you for coming here today and yesterday, and for your invaluable contributions. In a few days' time, we will be sending you a transcript of the discussions, both yesterday's and today's. Can I ask you to go through the transcript and return it to us with amendments, if there are any. Before you leave, I would like to remind you that you are not to publish any of the evidence or any of the documents that you have submitted to us until after the Select Committee has submitted its Report to Parliament. Thank you once again? - *(Witnesses)* Thank you.

(The witnesses withdrew.)

MINUTES OF EVIDENCE

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27 OCTOBER 1998

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Paper No. 8 - The following representatives of Persekutuan Seruan Islam Singapura [Muslim Missionary Society Singapore] Islamic Centre Jamiyah Singapore, 31 Lorong 12 Geylang, Singapore 399006, were examined:

Mr Mohd. Yuni bin Awi, Vice-President

Mr Yahya Syed, Committee Member

Mr Junaini Manin, Committee Member

Mr Zainuddin bin Mohd. Ismail, Executive Director (Special Duties)

Chairman

219. Good afternoon. Please be seated. On behalf of the Committee, thank you for your submission to the Select Committee on the Administration of Muslim Law (Amendment) Bill. We have invited you here this afternoon to clarify certain matters. For the record, could you please state your names and your addresses and the positions that you hold in your organisation? - *(Mr Zainuddin bin Mohd. Ismail)* My name is Zainuddin bin Mohd. Ismail. I am the Executive Director (Special Duties) of the Muslim Missionary Society Singapore. I live at Block 428, Tampines Street 41 #10-479, Singapore 520428. *(Mr Junaini Manin)* I am Junaini Manin. I am a practising lawyer in my own firm. I live at Block 104, Aljunied Crescent #03-237, Singapore 380104. *(Mr Yahya Syed)* My name is Yahya Syed. I am Chairman of the Jamiyah Legal Clinic and I am also a Member of the Executive Committee of Jamiyah. I am a lawyer by profession. I live at 26 Maria Avenue, Singapore 456757. *(Mr Mohd. Yuni bin Awi)* My name is Mohd. Yuni bin Awi. I am-the Vice-President of the Muslim

Missionary Society Singapore and I am a Senior Administrative Officer by occupation. I live at Block 44, Sims Drive #03-171, Singapore 380044.

Chairman] Thank you. Mr Yatiman, would you like to start?

Encik Yatiman Yusof

220. First of all, I would like to thank Jamiyah for sending a delegation to the Select Committee hearing. Jamiyah, in its comment on section 5(4) appears that it is not in favour of MUIS involving itself in business because of the risks involved. I would like to ask two questions: First, what kind of business do you have in mind and, second, is the requirement for approval from a Minister, in this case the Minister-in-charge of Muslim Affairs, not a sufficient safeguard? - *(Mr Yahya Syed)* Hon. Chairman, hon. Minister and hon. Members of the Select Committee, I would like to respond to the hon. Member's query in respect of section 5(4) of the Amendment Bill whereby it is stated that we have reservations in MUIS getting involved in business. First of all, we have to look at the historical and

Mr Yahya Syed (cont.)

traditional role of MUIS. I think it was set up, by virtue of the Constitution, by the present Senior Minister who was then the Prime Minister of Singapore way back in 1968. The traditional role of MUIS then was one of administrator and coordinator to oversee the religious affairs of Muslims in Singapore. No doubt, it has expanded its role to one of getting involved in property and others. We in Jamiyah feel that getting involved on a corporate level in business would be too risky. Encik Yatiman asked just now whether getting the approval of the Minister was not a good safeguard. But here it is a question when one gets involved in investments. It is a vicious world of business. The standard of prudence is very important. I am not saying that the officials in MUIS would not be that prudent but I think you need somebody who is actually conversant and an authority in that respect to advise MUIS. You need a man who has at least the economic standing or is a financial analyst. And getting involved in business should not be the role of MUIS because the other NGOs should get involved or other Muslim institutions should also get involved. There was one incident, and I think it was MENDAKI which was trying to get involved into business and all that, but it turned out to be a futile attempt -

Mr Abdullah Tarmugi

221. If I can interrupt. I do not think MENDAKI has got anything to do with this? - (*Mr Yahya Syed*) I am just giving an example.

222. I think it is not fair. I do not think you ought to use that? - (*Mr Yahya Syed*) Okay. I am sorry about that. What I am trying to say is that we in Jamiyah feel that it is risky in the sense that you need proper personnel to advise and coordinate if you are going to get involved in business.

Encik Yatiman Yusoff We would like to assure you that whichever business that MUIS is involved, there would be a multiple check and balance to make sure that the risk is minimal. There are areas where MUIS would have to get involved such as wakaf. If you do not develop the place, you would be accused of wasting the resources. We would like to move away from this. Can I ask you a second question?

Mr Abdullah Tarmugi

223. Before you ask him your second question, if I could give some background to this, Mr Yahya. You infer that in any venture you need expertise, you need knowledge. In fact, it was precisely because of this that I suggested that MUIS corporatise the business functions of MUIS instead of its staff doing it. Let me give some background. At present, for example, development of wakaf property is done by MUIS staff. Why should MUIS be doing this? It is precisely because of what you said that MUIS should not be going into all this. It was precisely because of this fear that I say, "Why not you hive off this part towards a business body where you have qualified people and professionals running it so that MUIS is divorced from it." So that is the rationale for setting up business. It

was not because MUIS wants to do all the business there is in the community. It is not MUIS going into business. But what the Amendment Bill is proposing is for MUIS to hive-off the business interest to a separate entity from MUIS itself. So I think it is in consonance with your feeling that MUIS itself should not go into business and that is my feeling too. Secondly, as mentioned by Mr Yatiman, any decision for MUIS wanting to go into business or any other form of investment would have to come to me. And you know I am a very prudent and very cautious person in that sense. So, rest assured that MUIS will not willy-nilly go into any business or try to steal business from others. Far from it. Indeed, we will be very, very cautious. We understand that we are holding public money, and we are very conscious that we are in trust. So, if you need any assurance, I can assure you that MUIS, if it wants to go into business at all, we will be very, very careful in looking at the prospects of the business or investments, and we will be very, very careful in going into that business, and I will be the one to approve any venture that MUIS goes into. Again, MUIS will not be doing it directly but through a separate body. I hope that clarifies all this? - (Mr Yahya Syed) Thank you, Hon. Minister. I think my colleague here, Encik Zainuddin would like to reply.

Mr Zainul Abidin Rasheed

224. Mr Chairman, if I may be allowed, it is on the same line, on the question of business. I always have great respect for Jamiyah. If you look at Jamiyah in the 60's, you mentioned that

MUIS was set up in 1968, and compare Jamiyah of today, you see a very different Jamiyah. Jamiyah was started as a missionary group. It has gone into social welfare and even business, in terms of its activities which I thought was a fair and natural progression in the context of Singapore. And if you look at the kind of responsibilities that MUIS has been undertaking in terms of *wakaf*, *haj*, *halal* matters, it needs a more professionally corporatised approach towards handling business, not like running a travel company, but regulating *haj*; not running *halal* restaurant, but regulating *halal* certification. So that is a different approach and perspective of our corporatisation of business. And if you look at *wakaf*, where before we may have *wakaf* properties valued at \$300,000 but now \$2 million, \$ million, even \$10 million. So that is why, in fact, there is a need for MUIS to be more professional and taking a corporatised approach towards doing business. So I share the Minister's sentiment that while we go into business, we will also be very prudent and very careful? - (Mr Zainuddin) Mr Chairman, I just want to emphasise what we have written down here: "we are, in principle, not in opposition to the investment of proper funds but we would like to register our reservations if MUIS runs business enterprises directly". Since the Minister has given the caveat that it would be "farmed out" to companies which are set up, then, I think that should be okay. But with regard to the development of *wakaf* properties, I think somewhere it was stated it was about \$ 55 million. Maybe before the current downturn, that was the figure given. But are you saying that you are developing *wakaf* only from the financial or economic perspectives, because *wakaf* lands constitute the land bank of the

Mr Zainuddin (cont.)

Muslim community? If you are just looking at it from just a purely financial perspective, do you not think that there are other needs of the Muslim community that can be best served by the *wakaf*?

Mr Zainul Abidin Rasheed] Mr Chairman, how you are going to utilise *wakaf* properties is a different issue altogether. But having *wakaf* properties, how to ensure that we optimise and maximise them from the commercial point of view is what is meant by corporatisation of the role of MUIS. But whether we should factor in other needs (social and cultural), I think that also has been taken into consideration by MUIS.

Encik Yatiman Yusof

225. Mr Chairman, may I move to the next question? - *(Mr Yahya Syed)* Maybe I could concur with what the Hon. Minister said. I believe that, as my colleague here says, if there is going to be a separate entity to run these things on a corporate level, divorcing themselves from MUIS per se, I think it is appropriate in that sense. I am not running down the MUIS officials. Please, I am not saying that. But I am saying that for these *wakaf* and *baitul mal* funds, in fact, I think the trust entrusted is greater than any form of donation from the community. Here the test is you need greater prudence and management. I agree with what the Hon. Minister is saying. If it is farmed out to another entity completely run by professionals, I will agree to that, Hon. Minister.

226. In your comment on section 3(2)(e), Jamiyah is of the view that MUIS should not run or administer the mosques and religious schools and suggested that the word "administer" be changed to "to oversee the mosques and religious schools". My question is: would you think that the situation surrounding the administration, curriculum, management of the mosque and accounting and also improvement in the curriculum of *madrasahs* were the result of MUIS' involvement in making sure that the mosques and *madrasahs* move ahead and reach a higher level of expectation? - *(Mr Yahya Syed)* I think my colleague, Encik Yuni, would like to respond to that. *(Mr Mohd Yuni)* Hon. Mr Chairman and Members of the Select Committee, first of all, I would like to say that the Government is to be commended for providing opportunities of education and employment, giving them equal chance of getting good employment and leading a decent life. While the Government can look after the physical needs and health of the population, it needs to have religious leaders and institutions to provide the spiritual needs and health of the nation, so that we have a well balanced and healthy society. I believe that is the situation now. We have *madrasahs* in Singapore and they are full-time. There are five *madrasahs*. If you like me to name them, I would, but I think you all know. All these *madrasahs* are progressively upgrading their educational system so as to enable their qualified students to proceed to Islamic universities overseas for higher Islamic studies and in order to enable their students to compete with state based schools, the *madrasahs* are placing greater emphasis on secular subjects

like English, Mathematics and Science, enabling many of them to sit for PSLE, 'O', Pre-U level examinations. This is a very good situation with the *madrasahs*. The *madrasahs* which have been in existence for many years have been enjoying autonomy in their management. This raises a pertinent question as to why not let the *madrasahs* continue enjoying this autonomy, particularly when the trends nowadays are decentralisation of functions.

227. Can I follow up with a question? You are saying that what MUIS has been doing to *madrasahs* is good, that it has improved the curriculum and the administration, helped them with their accounting procedures, everything, including the mosques. So does this not contradict the call that we should have more autonomy? In other words, doing things that you like to do in the way that you like to choose to do. Is that not a contradiction, involvement versus autonomy? - (Mr Mohd Yuni) But, Mr Chairman, according to the amendment, MUIS has to administer the functions of the *madrasahs*. For, I think, the last 30 years, the *madrasahs* have been running the management without the involvement of MUIS. They have got some sort of autonomy. They are on their own. What they are doing now, they are coming up. In other words, you have shown that they have the capacity and capability of running a management by their own management committee. So if MUIS is going to oversee, then it augurs well for the *madrasahs* because with the help of the MUIS in providing the funding and the curriculum, it will upgrade the standard of education in *madrasahs*. It will be well. But if the administration

involves the control over the management, then the management committee or the *madrasah* will not have the autonomy that they have been enjoying for the last 30 years. The question of improvement is a very good thing if MUIS can help in that way. But the management in the *madrasah*, on their own, is already coming up.

228. Do you not agree that the improvement of any institution, whether mosque or *madrasah*, requires fresh ideas and approach, superior system, strong philosophy, clear-cut vision, and all these elements can only be made possible through a centralised approach, rather than allowing a small group of people to come up with different decisions or approaches. But most important is that the product of the *madrasah* should be able to meet the requirement of the working environment, so that we minimise the wastage of manpower. So all these requirements and ideas can only be made possible through involvement and administration of certain groups, rather than allowing continuously, what you term as autonomy on the part of *madrasahs* and mosques. What is your comment on that? - (Mr Zainuddin) Mr Chairman, can I just reply to what Mr Yatiman has just said? Centralisation, as far as public administration is concerned, normally means bureaucracy and standardisation of ideas, and that is why these days, the trend is towards more and more autonomy. Government schools are being given more and more autonomy and we are going in the reverse direction. We allow people living around the proposed mosques to run mosque building fund committees. They have gone that far and they have shown their ability.

Mr Zainuddin (cont.)

But when it comes to running of mosques and *madrasahs*, we want to administer these mosques and *madrasahs*. I think this goes against the trend in the modern world. Mr Chairman, when MUIS gives guidelines on standardised curriculum or gives some kind of funding or channel certain ideas, that does not mean that MUIS is managing the mosques and *madrasahs*. Even standardising of *khutbah*, for example, it may appear expedient to do so in the future, but really may retard creativity.

Mr Abdullah Tarmugi] I think there is some misunderstanding here. As mentioned earlier by Mr Yuni and also yourself, mosques and *madrasah* have their own management committees. They have their own mosque building committees, and MUIS has been working along with them. But these are not specified in AMLA, and they are not clear that MUIS really has got something to do with all this. You have got the wrong idea in the sense that you think that MUIS will be taking over, centrally, the administration of these mosques and *madrasahs*. In effect, it is not. What is actually happening is that MUIS has been, as you say, standardising the curriculum, improving the quality of *ustaz* and things like that. MUIS has no intention of taking over the management of the mosques at the local level. In other words, MUIS is not going to do away with the mosque management committees. MUIS is not going to do away with the trustees or with the management committees of the *madrasahs*. It is not going to do any of those things. I do not think, in fact, MUIS ought to do those things.

I do not think MUIS has got the manpower to do all these things. And as you said, I do not think MUIS ought to be putting its fingers into so many puddings. So the intention really is not to centralise, as the word has been used by Mr Yuni and yourself. Far from it. The intention is to streamline and certainly the mosque management committees and the *madrasah* committees will exist on their own. They will carry on and we are going to help them develop. That is the whole intention. MUIS has got no intention of taking over the management nor centralising the authority over mosques and *madrasahs*.

Mr Zulkifli Bin Baharudin

229. I will just ask a quick question? - (*Mr Yahya Syed*) If I could, Mr Zulkifli, I would like to reply to what Mr Zainul was saying about Jamiyah going towards that direction. Jamiyah was expanding from the traditional role and all that.

Encik Yatiman Yusof

230. We have moved away? - (*Mr Yahya Syed*) Maybe I could just reply to that, if I could be allowed. Why Jamiyah? Because we in Jamiyah feel we need to reply.

Mr Zainul Abidin Rasheed

231. I did not ask why Jamiyah has gone in that direction? - (*Mr Yahya Syed*) Sorry. Jamiyah has moved towards that direction. The reason being that -

Encik Yatiman Yusof

232. Mr Zainul gave an example of how Jamiyah has managed to upgrade itself through the years, isn't it? - (*Mr Yahya Syed*) Correct. We have done that in the sense that we were only dependent on donations and on the good spiritedness of members of the community, the Muslim and non-Muslim community. But we cannot be depending on them all the while. So we have got to work for what we want to achieve. By reason of that, we have got the economic infrastructure now. The other thing is that our hon. Minister was mentioning about MUIS overseeing the *madrasahs* and mosques. Yes, we feel that the *madrasahs* are an autonomous entity of their own. I think MUIS can complement and render assistance, whenever appropriate.

Mr Abdullah Tarmugi

233. This is good? - (*Mr Yahya Syed*) But this is something that has been going on for 30-over years. Suddenly, somebody comes from the back and says, "You can't do this." It could be disruptive. It could be obstructive and each *madrasah* will feel that they have been tied down. They do not have a free hand to do this and to do that. That I think is the fear. If the fear could be removed, I think what the Minister is intending to do could be accepted. At least, MUIS knows how to conduct its role in complementing and reinforcing the curriculum of the *madrasah* education. I think that can be accepted as far as Jamiyah stands. That is all, Mr Chairman.

Mr Zulkifli bin Baharudin

234. I have three short questions. I think the education of Muslim children in Singapore is indeed a mammoth task facing all of us here. Would you not agree that it is the collective leadership of Muslims in Singapore who has the responsibility to ensure that Muslim children do well in their education, both secular and religious? Would you answer that question? - (*Mr Yahya Syed*) I think that is obvious.

235. Can I just move on to the next question? Should we fail as a community to meet the rising challenge and aspirations of the Muslim community, especially the children, would the community not then look up to the Muslim leadership and say that they have failed? If that really happens, would the Muslim population consequently look up to the Muslim leadership as a source of blame and look up to them to take corrective measures? - (*Mr Yahya Syed*) Here, failure or success is dependent on the choice taken by the parents of each child. And for collective leadership, Mr Zulkifli is saying here that you fall back on the leadership if we fail. As Muslim parents, I think the majority of us feel that it is our incumbent duty and not to fall back and blame somebody else. I do not think that will be the approach. But I feel that if I have decided to send my children to a *madrasah*, and suddenly it turns out that my children do not make good in life in future, that is the choice I, as a Muslim parent, have taken and I have got to live with it.

Mr Zainul Abidin Rasheed

236. Mr Chairman, I think Mr Yahya has not really understood the point of the question. If you look at the present situation, whenever there are problems at *madrasah* level, for example, fingers are pointed at MUIS, meaning MUIS has to take responsibility even for the quality of *madrasah* education in Singapore. While I agree with you that the bottom line is the parents' decision, overall, as a community, as *madrasah* is a concept, political and MUIS leadership must also be held responsible. And that is how the Malay community looks at it and that is why in fact there is a need for MUIS to play an active role. If you look at *madrasahs* in the early days, yes, they were like family-run *madrasahs*. But if you look at Aljunied now, for example, where we raised something like \$14 million through the help of MUIS assistance, through the help of Ministers' involvement and other parties, it becomes a community project. It is no longer a family project for *madrasahs* and thus the need for MUIS to take that longer role. Would you not agree with that? - *(Mr Yahya Syed)* Definitely, I have to agree. That is why I use the words "complement" and "reinforcement", and assistance rendered, whenever possible. *(Mr Zainuddin)* Mr Chairman, MUIS is the overseer and a sort of resource for the *madrasahs* and mosques. Of course, they have that ability to ensure the direction that mosques and *madrasahs* are taking. Because as an overseer, you are responsible for such things. As explained by the Minister, it is not a question of centralisation, but of empowering the *madrasahs* and the mosques.

237. Maybe, Mr Chairman, the question here is how you interpret the word "administer"? And as the Minister has explained, it is basically what we are doing now and it is appreciated by *madrasahs* themselves. The mosques appreciate that, *madrasahs* appreciate that and I cannot understand why Jamiyah is quarrelling over that? - *(Mr Yahya Syed)* No. Jamiyah is not quarrelling. But we feel that when the policy of the Government is to decentralise things and to farm out things and we have autonomous schools, independent schools and all that, suddenly you are coming to *madrasahs* and you want to go back to the old style. Why cannot *madrasah* be an autonomous body by themselves and be guided by MUIS? And I think if a set of curriculum or by-rules or regulations are inserted in the Administration of Muslim Law Act to give statutory powers to MUIS to oversee or administer, as you call it, that will be appropriate. But let the *madrasah* itself run autonomously. But if there is mismanagement of that institution, then MUIS can go in and step into the arena of this *madrasah*. That is Jamiyah's view.

Mr Zulkifli bin Baharudin

238. I just like to take the third point following from your explanation. It is precisely because MUIS and the collective leadership are so concerned that a very scarce and very important resource, which is our children, who may otherwise fail that the purpose here is not to allow them to fail but to take every possible measure to make sure they do not fail. It is precisely because of that that there are enabling provisions in the Bill to make sure that as much resources can be galvanised to make

sure that failure does not take place. When failure does take place, there is no choice. We cannot come back to where we are today. And precisely because of that, we need to have provisions to ensure, not control, but at least some accountability, but accountability does come with responsibilities. Do you not agree with that? - *(Mr Yahya Syed)* Definitely, it is agreeable. But here, Encik Zulkifli, if there is no failure, there is no success. You cannot be successful all throughout. This is the challenge that you take in life. You cannot straightaway programme your children and say, "You must succeed all through." I think that is not the idea here. Our children have got to be nurtured left and right, and to come out as "streetwise" persons and be able to adapt to changes, whenever possible and applicable. That is the way. But I think failure here is a stepping stone to success. We should not look at failure as one that we should just lock it in the cabinet, or whatever it is. I think failure here is a step to success.

239. I think my point was that the enabling provisions in the Bill would allow us a better chance of success by removing potential obstacles because we cannot afford that? - *(Mr Zainuddin)* Mr Chairman, can I just say a few things. I think both sides are actually saying the same thing but using different words, and there is some ambiguity about the meaning of the word "administer".

Chairman

240. I think we move on. Mr Magad? - *(Mr Zainuddin)* We just want the *madrassahs* and the mosques to be empowered.

Chairman] Mr Ahmad Magad, you have the floor.

Mr Ahmad Mohd Magad

241. Thank you, Mr Chairman. Just one simple point. In your representation, you objected to the addition of new sections 35A and 35B suggesting that these dilute the status of the Syariah Court. You suggested that the basis of judgement between the Syariah and Civil Courts differs on matters relating to custody and matrimonial property. You also cited that the Civil Courts would look at the issue of custody from the point of view of the Guardianship of Infants Act (Chapter 122) which makes no mention of religious consideration. Do you agree that where parties decide to opt for the Civil Courts by mutual consent, they would have considered all these implications and therefore are unlikely to surface sensitive issues? And the second point is: do you seriously think that the Civil Courts do not at all consider a child's religious background as a factor in deciding on the custody issue? - *(Mr Yahya Syed)* Mr Chairman, the issue of custody for Muslim children is totally different from the concept of the Guardianship of Infants Act. Under the Guardianship of Infants Act, each parent has got equal rights. Whereas in Islamic law for children, they call it the principle of *mumaiyiz*. *Mumaiyiz* means that a child who is under seven years of age rightfully belongs to the mother unless otherwise stated that the mother is incompetent or incapable by virtue of etc, etc. The conduct of the mother and her disposition come into question. Whereas in the Civil Court, you do not look into that.

Mr Ahmad Mohd Magad (cont.)

242. I beg to differ from that opinion in that there are precedents which prove that the courts do take into consideration the religious background of parents before deciding on the custody issue? - (*Mr Yahya Syed*) It is only minimal because, under the Guardianship of Infants Act (GIA), the paramount interest of the welfare of the children is considered and this is the criterion adopted by the Civil Court.

243. That is the premise of the GIA. But that does not mean that the issue of the religious background of a child is totally ignored in deciding upon the custody issue? - (*Mr Yahya Syed*) We are not merely talking about the religious background. The religion of the Muslim children and the religion of the Christian children are different. We are talking about the principle of *mumaiyiz*. Can I elaborate a bit on the principle of *mumaiyiz*. By this concept any Muslim child that is under seven years of age will be given as of right to the mother. That is the yardstick or the principle. Whereas in the civil law, under the Guardianship of Infants Act, either party has got equal rights. But most of the time, it goes to the mother unless otherwise stated. When the child reaches the age of seven, the child can be called upon to decide whether to follow the father or the mother. The choice is given. Whereas in the Civil Court, you can examine the child, whether the child wishes to go to the mother or father, although the paramount consideration of the welfare of the child is taken into account. So I think here it differs. That is my humble opinion. It differs in the sense that

Muslim children here, generally as of right, are normally given to the mother unless the mother, as I said, becomes incompetent by virtue of her conduct or disposition. No doubt, I agree with Mr Ahmad Magad that the Civil Courts do take into consideration on a minor scale the religion of the child, whether the child is attending a religious school or *madrasah*, and the fear that the child will not continue with the religious obligation or religious education. But principally, the child who is *mumaiyiz* must go to the mother in Islam.

244. I appreciate your agreement that you see the fact that the Civil Courts do take this into consideration? - (*Mr Yahya Syed*) But on a very minimal level.

Mr Ahmad Magad] Thank you.

Encik Yatiman Yusof

245. Mr Chairman, Encik Yahya Syed believes that the best solution to be made available to Muslims is for them to be given the right of choice. In this case, referring to the concurrent jurisdiction and the fact that there are two channels open, in your view, being a Muslim, if you have problems on custody, is it not your preference to go to the Syariah Court first rather than the Civil Court? - (*Mr Yahya Syed*) Encik Yatiman, I am a bit divided here as a Muslim parent and as a practitioner. As a practitioner, I would encourage speedier machinery to be obtained for the interest of my clients, but also taking into account the religious connotations and sentiments in the matter.

246. If you are a lawyer taking up a case of a child below seven years, a *mumaiyiz*, would you go to Syariah Court as the first choice before Civil Court? - (*Mr Yahya Syed*) As a practitioner, as I said, I want to achieve the speediest machinery available. Definitely as a lawyer, which is now being practised, I have to admit that we go to the Civil Court under the Guardianship of Infants Act.

247. Even at the risk that under the GIA the custody of the child will fall on the party that will not be desirous of you as a Muslim? - (*Mr Yahya Syed*) It all depends. Most of the time when we go to the Civil Court, and normally on custody matters, it ends up with the originating summons not contested. Normally one party feels that the mother should have the consent. The issue will come up when there is bad blood between the parties. That becomes hotly contested. Sad to say, you have an institution like Syariah Court here but you have another institution, the civil jurisdiction. And as a practitioner, as Encik Yatiman asked, I want a speedier resolution of my client's case and to the best I could achieve. Why Muslim couples go to the Civil Court to seek custody under the Guardianship of Infants Act is because, first of all, the capacity of the Civil Court for enforcement or committal purposes, on which the Syariah Court is very reluctant. Even as of late, it is very reluctant to do. If the Syariah Court has the capacity and the powers of enforcement or committal as the Civil Court, as a Muslim parent, I would definitely go to the Syariah Court. That you could be rest assured.

248. In view of your comments here, is it correct for me to conclude that you view the presence of this option for Civil Court or Syariah Court as a plus rather than a minus? - (*Mr Yahya Syed*) To be honest with you, Encik Yatiman, we would like, as a practitioner, to deal with Islamic matters in the Syariah Court, if possible. Here again, sad to say, you have an institution established since 1968. If I am not mistaken, as Mr Ahmad Magad has said, upgrade that institution, at least it will shine as an example to others. We have the resources.

249. My question is that under current circumstances, would you think the presence of the two choices is a plus to the Muslim community? - (*Mr Junaini Manin*) Mr Yatiman, let us see the practical problem about custody matters. A client comes to me and complains that she wants a divorce. She says she wants the custody of the child. I cannot go back to the Syariah Court because the Syariah Court will only decide on the custody upon divorce and that will take about one or two years later. If I want a custody expeditiously done, I must go to the Civil Court or the Family Court to do it, and I can get the hearing date within one or two months. In fact, the final order will be granted within one or two months. We have got no choice but to go to the Family Court to resolve the custody matter as soon as possible because the divorce is pending and there will be some acrimonies between the husband and wife. So it has to be done now and before the divorce is being heard. That is why we never go to Syariah Court because of the delay in the matter.

Encik Yatiman Yusof (cont.)

250. Another important element in this Bill in relation to this concurrent jurisdiction is the choice either to go to the Civil Court or the Syariah Court. It is fully in the hands of the Muslims involved? - *(Mr Yahya Syed)* If the Syariah Court has the same powers as the Family Court, we would go to the Syariah Court. *(Mr Zainuddin)* Mr Chairman, all things being equal, we would definitely go for the Syariah Court. Unfortunately, the Syariah Court suffers from a lot of deficiencies. Another thing about the secular courts is that, unlike the judicial officers or judges in the Syariah Court, the judicial officers of the secular courts may not value the religious/spiritual education. Secondly, we are all too familiar, if I can say so, with due respect to the judicial officers, with the individuality of the judicial officers in the secular courts. Whereas in the Syariah Court, they come more or less from the same religious and theological background. The judicial officers would have to depend upon the custody reports which are furnished by the Ministry of Community Development, to a large extent. What would be the outcome of a custody case is really not very ascertainable. In the Syariah Court, we know that they will decide on religious principles, so there is that element of ambiguity as far as how decisions are arrived at in secular courts are concerned.

251. You said that given the capability of the Syariah Court is equal, the choice would be obvious. I think you are aware that the Minister in his remarks in Parliament has given the commitment that parallel to this amendment, there

would be serious efforts done to boost up the capability and efficiency of the Syariah Court. In your view, projecting down the road, would there be a greater inclination to channel cases to the Syariah Court, following this improvement and amendment? - *(Mr Zainuddin)* Certainly. If the Syariah Court also follows this theme of excellence, which is also a familiar theme in Islam, and in Singapore, and if the Syariah Court is really empowered in the ways which we have detailed to some extent in our paper, certainly, theologically speaking, from the religious perspective, the Muslims would have to go to the Syariah Court. I do not think that they have a choice in that matter.

252. One last question, Mr Chairman. In your representation, you suggested that the Legal Committee should be changed to a Fatwa Committee. My question is: are you aware that apart from making decisions on Fatwa, the Legal Committee also performs other advisory functions? - *(Mr Zainuddin)* For the members of the public, when they see the words "Legal Committee", they think that it has got something to do with only law. By virtue of the fact that the Mufti, if I am not mistaken, is the Chairman of the Legal Committee, one assumes that they only delve into considerations of *fiqh* in Islamic law. From public relations view the general community must understand nomenclatures. I think that it should be a Fatwa Committee which is headed by a Mufti.

253. But do you think that having a Fatwa Committee named after the Legal Committee, you will then conscribe the functions of the Legal Committee now,

which is also performing an advisory role, a non-Fatwa role? - (*Mr Zainuddin*) Can you just elaborate on that?

254. Sometimes, when the Government or somebody wants to organise certain things, they ask for some advice. This Committee can give advice, not necessarily coming up with a ruling. That advice is also the function of this Legal Committee. Its job is not just to issue rulings? - (*Mr Zainuddin*) But you are saying that it has got nothing to do with theology and *fiqh*, rulings. Then I do not see how is it that a theologian is the Chairman of such a committee.

255. When you seek the views on matters concerning a religion, you can ask for views but not necessarily on rulings? - (*Mr Zainuddin*) But I think these really are not very substantive matters.

Mr Zainul Abidin Rasheed

256. Mr Chairman, I do not know whether this is substantive or not. In your representation, you said that it is absolutely necessary to maintain the dignity, stature and standing of the Syariah Court. You also asked for a newly constituted Syariah Appeal Court. I thought that there is already an appellate mechanism from the decision of the Syariah Court, ie, there is already a body seen as doing such. Are you actually suggesting that the Appeal Board should be changed to Syariah Appeal Court? - (*Mr Yahya Syed*) The terminology you use "Appeal Board" only refers to bodies like the Industrial Arbitration Court. The terminology itself may sound inferior to the Syariah Court.

The Syariah Court has the terminology of "Court" whereas the appellate jurisdiction of the Syariah Court is "Board". It is a question of terminology. The other thing is that Mr Zainul said that we have the appropriate mechanism available.

257. Appellate? - (*Mr Yahya Syed*) Appellate mechanism available. Being a practitioner for quite a number of years, from Syariah Court, even Civil Court and back to the Appeal Board, the way I look at it, the constituted members of the Appeal Board at the moment now are quite a handful. Among them are lawyers and *ulamas*. Most of the time, the lawyers will assist the Chairman of the Appeal Board. We feel that you should have a more permanent body where you can select from those legal practitioners who are practising in Syariah Court of at least 10 years' standing who have exposure and experience. For example, in the nomination and appointment of the Senior Counsel, the learned Chief Justice has stated that a minimum of 12 years' standing as a practitioner is a requirement. The reason is that by then, a legal practitioner would be more or less all-rounded and exposed.

258. You are emphasising the point about the lack of resources. That is the nub of the whole problem. We have a Syariah Court and we have problems coping with the kind of issues which we face and that is why in fact the proposal for this concurrent or optional jurisdiction. Do you see that, while you may have a vision of Syariah Court fully empowered and fully able to take care of the whole situation, this is not the time but just the need for this alternative or optional jurisdiction. Do you see that as

Mr Zainul Abidin Rasheed (cont.)

a logical step? - (*Mr Yahya Syed*) This concurrent jurisdiction is in fact in practice at the moment, because of its speedier resolution and the mechanism involved in the Civil Court. But, Encik Yatiman, given the same structure of the Syariah Court with that of the Civil Court, my colleague here had replied that we would prefer to go to Syariah Court. What Mr Zainul is trying to say is that it is more transitory in nature for the time being, maybe to assist the Syariah Court to clear the backlog. To be honest with you, I feel that for certain cases, as a practitioner, I would not go to the Civil Court, even for custody cases, for the simple reason that expenses and legal fees are involved. The fee that a solicitor charges is according to his standing and capability. For an ordinary Muslim couple, let us say, who are able to make ends meet, I would rather go to the Syariah Court. I do not want to incur unnecessary burden of expenses based on the cost of the solicitor and the cost of filing documents in the Civil Court. Whereas in the Syariah Court, it is minimal except for the charge for the notes of evidence which is more than the Civil Court. I feel that even though I have to wait for a year, I have to advise my client to go through that process. But if the parties cannot live and tolerate each other and there is bad blood at every corner, I will take the case to the Civil Court, sometimes even at the expense of the practitioner.

259. That is a welcome choice that is being provided for the Muslim community? - (*Mr Yahya Syed*) Correct. What I am trying to say, Encik Zainul, is that

you have a mechanism of the appellate jurisdiction. Let us change the Syariah Appeal Board to Syariah Court of Appeal and give that institution a status. The other thing is to build up Syariah Court for the short-term. Maybe the Minister can more or less give us a time frame of one year, two years. At least, the community at large will know and say, "Oh, this is for the short-term, only two years." Once the Syariah Court has been upgraded, the full infrastructure and the mechanism are in place, we will go.

260. I think there are people who want it immediately, but we have to be realistic with the kind of resources that we have and we will see how it evolves, rather than trying to talk about time frame now? - (*Mr Yahya Syed*) With respect, I think the Government has the resources, to be honest. We are always gearing for par excellence. I think this is one of the ways we have to go. I think it stands out, an Islamic institution in the midst of a secular community. It really stands out as an example. To be honest with you, if we have that, I think the government of the day itself should be proud of that institution. This is the way I look at it, rather than leaving Syariah Court to deal with divorce per se. (*Mr Junaini Manin*) To add to that, Mr Chairman, the problem with concurrent jurisdiction is that there will be multiple decisions - Civil Court decisions and Syariah Court decisions. These two decisions are based on different considerations. Decisions of the Syariah Court are mostly based on the *Koran*, *sunnah* and *ijma*, whereas the decisions of the Civil Court are based on different considerations like case laws and decided cases.

261. I know what you are getting at. Can I ask you, from your experience, how many of the cases you have handled where you see this divergence in terms of the justice meted out? - *(Mr Junaini Manin)* If you ask me as a practitioner, most of them are custody cases. I will divert most of the custody cases to the Family Court. So I do not have experience of custody cases in the Syariah Court. *(Mr Yahya Syed)* Encik Zainul, from my experience, as I said, it depends on the financial standing and capacity of the client. There are custody cases handled, and determined by the Syariah Court. It has been done. As I said, for the time being, if you look at the multiple orders the Syariah Court did not give an order. There are provisions for interim orders on the custody of children pending divorce. They have looked into and even heard cases before the actual divorce per se. I think it is all right in that sense that you have the options. Unfortunately, as I said, we go to the Civil Court not because we like it. The other thing is that if both parties agree to go to the Civil Court to have the case heard, say, on a custody matter and then suddenly half way, one party says, "No, I decide to go to Syariah Court". Or vice versa, the case is handled by the Syariah Court, but half way through they decide to go to the Civil Court. First of all, you must have consent. If you do not have consent, then you have to obtain leave of the Court and leave may not be granted. This is another problem we will encounter. *(Mr Zainuddin)* Mr Chairman, can I just say a few words? How temporary is this concurrent jurisdiction? How long are

we having this concurrent jurisdiction? I know, for example, the Criminal Law (Temporary Provisions) Act has been temporary for a very long time.

Chairman

262. The point has already been made by Mr Zainul Abidin. Are there any more questions? - *(Mr Mohd Yuni)* Mr Chairman, with your permission, may I say something about the legal committee of MUIS?

263. Although we will not be taking questions on the other points, you have my assurance that the Committee will consider all the matters which you have raised in your submission when it makes its deliberations? - *(Mr Mohd Yuni)* Thank you.

264. On behalf of the Committee, I would like to thank the four of you for coming here to assist us today. In a few days' time, we will be sending you a transcript of the discussions. Can I ask you to look through the transcript and return it to us with any correction if there are any? I would like to remind you that you are not to publish the evidence that you have given to us nor publish any of the documents that you have submitted to the Select Committee until the Committee has presented its Report to Parliament. Thank you very much? - *(Mr Yahya Syed)* Hon. Chairman, Hon. Minister and Members, we thank you for giving us the opportunity to be heard in this Committee. Thank you so much.

(The witnesses withdrew.)

MINUTES OF EVIDENCE

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27 OCTOBER 1998

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Paper 9 - The following representatives of the Persatuan Guru-Guru Agama Singapura, Playfair School, Playfair Road/Burn Road, Singapore 369971, were examined:

Hj Abu Bakar bin Hashim, President.

Mr Mohammad Hannan bin Hassan, Hon. Secretary.

Mr Mohamad Fatris bin Bakaram, Assistant Secretary.

Mr Zhulkeflee bin Hj Ismail, Executive Officer (Planning & Research).

Mr Mohammed Mustafa, Simultaneous Interpreter, Parliament, and Mr Bashir Bin M M Basalamah, assisted in the interpretation.

Chairman

265. Good afternoon. Please be seated. On behalf of the Select Committee, thank you for your submission and we have invited you here this afternoon in order to put certain questions to you to clarify certain points that you have raised. Can I first ask you to give us your names, your addresses and the positions you hold in your organisation, for the record? - (*Hj Abu Bakar bin Hashim*) I am Hj Abu Bakar bin Hashim. I am staying at Block 302, #02-309, Woodlands Street 31, Singapore 730302. I am the President of the Persatuan Guru Guru Agama Singapura (PERGAS). (*Mr Mohammad Hannan bin Hassan*) My name is Mohammad Hannan bin Hassan. I am staying at Block 287, Tampines Street 22, #05-370, Singapore 520287. I am the Honorary Secretary of PERGAS. (*Mr Mohamad Fatris bin Bakaram*) I am Mohamad Fatris Bakaram, Assistant Secretary of PERGAS. I am staying at Block 710, #12-53, Woodlands Drive 70, Singapore 730710. (*Mr Zhulkeflee bin Hj*

Ismail) My name is Zhulkeflee Hj Ismail. I am the Executive Officer (Planning and Research) for PERGAS. I am staying at Block 716 Bedok Reservoir Road, #04-4504, Singapore 470716.

Chairman] Thank you. Encik Sidek Saniff, would you like to start?

Mr Sidek bin Saniff

266. Mr Chairman, first, let me say how happy I am to read your submission which is quite thorough. There are certain fundamental issues involved here and there about Islam. I would just like to go first to the lighter part of your submission. This is at page 8 of your paper, at the 12th line from the top, you stated, "We are aware of the loophole for them in the past ... that as Singapore citizens, they could also seek indulgence through the Civil Court regarding their cases..." I presume the word "them" refers to Muslims who have either initiated or agreed to bring proceedings to the Civil Court? - (*Mr Zhulkeflee*) That is right.

267. Were these people compelled by anyone to go to the Civil Court? - (*Mr Zhulkeflee*) There is no compulsion for them but there is an avenue open for them because of the lack of power within the Syariah Court's jurisdiction.

268. In other words, they are not being dragged or forced to go to the Civil Court. So these persons were therefore exercising their freedom of choice. Would you agree? - (*Mr Zhulkeflee*) Yes.

269. Should Government deny choices which are available to a person, especially in a multi-racial and multi-religious society of ours? - (*Mr Zhulkeflee*) There is no question about who is compelling whom. Our concern is basically, if there is a provision for the Muslims to seek legal injunctions under the syariah, then we should have provided it under the Syariah Court itself. If there is a lack of it within the Syariah Court, we would rather that the Syariah Court be given that power to settle that issue so that there is no cross over into the Civil Court.

270. That would be ideal? - (*Mr Zhulkeflee*) Yes. That is right.

271. But in the meantime, as a secular Government, do you think it would be fair for the Government to allow them to go to the Civil Court? - (*Hj Abu Bakar*) The purpose of AMLA was for Muslims and those who were married under Muslim law. If we allow matters relating to Muslims to be considered in another court, we are allowing them to do some thing which is against the religious law. For example, in AMLA, there is no provision for the claim for maintenance.

272. My earlier question is that it is true that all of us must go to the Syariah Court. When there are people who wish to go to the Civil Court, we cannot stop them? - (*Hj Abu Bakar*) They went there because they were ignorant that there are laws contrary to Islamic law.

273. Those who do not know can be advised or counselled. As a secular Government, is it proper for the Government to curtail the rights of any individual? The rights of the individual have to be considered and we should leave it to the individual? - (*Hj Abu Bakar*) In my opinion, if there is no provision in AMLA, then it is up to the individual to seek redress in other provisions. However, if it is provided for by AMLA, then they should not go to other courts. For example, in the relevant law on wills, Muslims are allowed to make a will. In AMLA, only in terms of inheritance and other matters, if a Muslim wants to go to a Civil Court to obtain his right under civil law with regard to wills, no one can prevent him from doing so. For example, a Muslim makes a will on his property which is more than one-third. According to Muslim law and based on AMLA, he cannot do so. If he makes a will saying that he wants to be cremated when he dies, the Syariah Court or the people concerned about AMLA cannot stop him. This has happened where a Muslim makes a will that when he dies, his body be cremated. No provision in AMLA can prevent him. Because that is his right under the law on wills. If there is a provision under AMLA, the Muslim must submit to AMLA. He cannot go elsewhere. As an example, maintenance under AMLA can only be claimed when there is a suit for divorce. Prior to

Hj Abu Bakar (cont.)

divorce, AMLA has no power. So they are free to go wherever they want. Pergas feels that what we want is when there is a provision in AMLA they should not liberalise it. Thus, allowing them to go wherever they want to go, even though there is a provision already in AMLA because AMLA provisions are to be used for Muslims and those who are married under Islamic law.

Encik Sidek Saniff] My question has been answered by Mr Zhulkeflee.

Mr Zainul Abidin Rasheed

274. You have said that as far as possible the provisions under the Syariah Court or AMLA should not be reduced. With these new provisions, does it mean that the powers of the Syariah Court will be reduced? If so, in what respects? - *(Hj Abu Bakar)* It means that if the power is shared it is automatically reduced, for example, under AMLA, the division of property on divorce. The powers will be with the Syariah Court. But if the powers can also be dealt with by the other courts, the power of the Syariah Court will be reduced.

275. By saying that the power is shared, meaning that the Syariah Court still has the power, it is up to the Muslims to use that power. It does not stop the Muslims from using the powers of the Syariah Court. Is it true? - *(Hj Abu Bakar)* Among the Muslims, their religious knowledge may be lacking and they may be given information that in matters other than divorce, they can

make an agreement to go to another court and in the end the Syariah Court will only be a court for divorce.

276. I would like to go back to your views earlier that because of a lack of religious knowledge, some of them might go to the Civil Courts. Is this a presumption or is it a fact because I think there are also Muslims who know about Islamic law but they still choose to go to the Civil Courts for other reasons. And we can talk about the reasons later but at least they know that there is also a possibility for such cases to be brought to the Civil Courts without finding themselves in conflict with the Islamic law. We can also see from your experience how many cases have been handled by the Civil Courts which are clearly in conflict with the Islamic law? - *(Hj Abu Bakar)* We can give an example of deviant teachings that have never been brought before a Civil Court although the provisions exist in AMLA, because the powers are given to the Civil Courts. So far, we have never heard of cases of deviant teaching being brought to the Civil Court. But there have been cases of cohabitation that have been brought to the Civil Courts and hearings conducted and eventually after the parties had conducted thorough investigations, it was found that the parties concerned were guilty and the fine was only \$0. I think that was an insult. It is against the law.

277. But that does not concern our amendments? - *(Hj Abu Bakar)* We are talking about concurrent powers. Concurrent powers, as we said, is a power granted to another party although the power originally resides in the Syariah Court. So we are reducing the powers of

the Syariah Court and giving it to the Civil Courts.

278. But there are other views that these amendments are actually going to strengthen the powers of the Syariah Court because the powers under AMLA is going to be strengthened. Just look at the present powers of the Syariah Court? - (*Hj Abu Bakar*) Would you please give an example?

279. For example, the power of enforcement? - (*Hj Abu Bakar*) But that is not a concurrent power, but an additional power, which we agree to. Our contention is on the concurrent power.

280. In other words, the Syariah Court's powers and resources will be strengthened. Our Minister has also given an assurance that MUIS and the Government will take steps to strengthen the powers of the Syariah Court. In other words, the position of the Syariah Court, in terms of power and staff strength and so on, will be strengthened. So we cannot doubt that there will be efforts to strengthen the Syariah Court. Do you agree? - (*Hj Abu Bakar*) I do not agree. It has been 40 years since the Syariah Court has been set up. Based on these amendments, with concurrent power, it will undermine the Syariah Court. But on the other matters which Pergas has agreed, such as powers to sign and so on, Pergas supports those powers. But we do not agree with the amendment on concurrent powers.

281. So there are two points. The Syariah Court would be strengthened. That is supported by Pergas but concurrent power will undermine the Syariah

Court. If the needs of the Syariah Court can be overcome and the problems of the Syariah Court can be overcome overnight, we can strengthen the Syariah Court. You said that it took 40 years, maybe 20 to 30 years. We can say that changes, in terms of enforcement and resources, have been done of late and it produces results. Although improvements can be done as much as we want, are they going to fulfil the aspirations and the needs of the society at the moment? - (*Hj Abu Bakar*) We must see the reasons for giving these concurrent powers and based on what I have noted, these reasons are not strong. The reasons given are not convincing for giving concurrent powers, particularly when we see the text of the speech. At a glance, it appears that the Court is overburdened by maintenance cases. On the other hand, maintenance cases have nothing to do with the Syariah Court with regard to the 2,000-over cases.

Mr Abdullah Tarmugi

282. The reason is because of the concurrent powers? - (*Hj Abu Bakar*) Actually there are no concurrent powers. These maintenance cases mentioned are under the powers of the Civil Courts. There is no power in the Syariah Court at all. So if you look at AMLA, the Syariah Court is not given the power to decide on maintenance cases before they make an application for divorce.

Mr Zainul Abidin Rasheed

283. If we do not have concurrent powers, if we do not transfer the powers of the Syariah Court to the Civil Courts,

Mr Zainul Abidin Rasheed (cont.)

will the Syariah Court be able to handle?
- (*Hj Abu Bakar*) There is no such law in AMLA.

284. The first step will be to make it concurrent? - (*Hj Abu Bakar*) By giving these powers to the Syariah Court to decide on maintenance powers before divorce?

285. No? - (*Hj Abu Bakar*) So why not concurrent powers there?

Mr Abdullah Tarmugi

286. It is to reinstate the status quo before the Salijah's case. I mentioned that very clearly in Parliament. One of the reasons when I said we may need this concurrent jurisdiction is simply because there is a backlog of cases, otherwise there will be a deluge of cases going to the Syariah Court. The other reason, which is perhaps not clear, is that there are cases where we think that it would be better dealt with in the High Court. For example, you have third party interests who are non-Muslims, for example, as in the *Zecha* case, where you have foreign laws coming into the act or foreign property being involved. These are avenues where you can go to the Civil Courts. As of now, there is a whole lot of confusion when people can go to which court and you notice that sometimes one High Court judge says yes, and another High Court judge says no. So the reason for all this concurrent jurisdiction is to regularise and clarify the issues, with an exception that you have an additional lock being held by the Syariah Court, ie,

Syariah Court must give leave. And with out the Syariah Court's leave, they cannot go to the Civil Court, except with both parties' consent. That is the situation now. So there is no giving up what the Syariah Court has got or giving extra what the Civil Court has not got? - (*Hj Abu Bakar*) Mr Zhulkeflee will be talking about the backlog of cases. When you talk about backlog of cases, how many are there actually?

287. Backlog is backlog of cases in the Syariah Court right now. The point is that there is a backlog, and as ex-President of Syariah Court, I think you know there was a backlog. The reason why the hearing would take so long was simply because there was a backlog? - (*Hj Abu Bakar*) If there is a backlog of 2,000 cases, or even 1,000 cases, and the Syariah Court has been in existence for 40 years, when there were actually 20 to 30 cases annually, which is normal, after 20 years, there will be 600 cases, then that would be the right time to look for a solution to get more staff. I believe for 600 cases, the Syariah Court has been playing an effective role with only one President of the Syariah Court. So the question of backlog does not arise.

Dr Yaacob Ibrahim

288. Ustaz, please let me reiterate the purpose of the Amendments, that is, to strengthen and validate the status of the Syariah Court and the Civil Court. And that it has been up to the Muslim couple to choose. At the same time, we want to strengthen the Syariah Court, and hence the key to the Civil Court is now given to the Syariah Court. When

they want to go to the Civil Court, they have to seek leave of the Syariah Court. Similarly, we also like to counsel couples who agree to go to the Civil Court. We believe all Muslims in Singapore want to go to Syariah Court. So is this a good thing, while we strengthen the Syariah Court by enhancing its human resources, the processes, and so on? And one day we can further strengthen it. But at the moment, if we have this amendment of strengthening the Syariah Court, is it a good idea? - (*Mr Zhulkeflee*) Can I respond? The desire is there, but the problem is the solution proposed to the Muslim community must take into account their position in Islam. The reason given as justification, let us say, in 1996, there were 2,000 Malay couples filing maintenance applications in the Family Court, that has nothing to do with the powers in the Syariah Court. Justification (stated) therefore is a separate issue altogether. If you want the maintenance to be handled by the Syariah Court, which I think it should be appropriate, because they involve Muslims, the division of maintenance according to Islamic law will be best handled by those who are handling the Syariah matters.

289. I do not think there is a disagreement that it is best handled by the Syariah Court because of the completeness of the case and what you have mentioned so far? - (*Mr Zhulkeflee*) But our objection is that by bringing this justification and then concluding it by saying the Syariah Court will not be able to cope with all these cases, I think that is misleading.

Mr Zainul Abidin Rasheed

290. I think it is a question of what we are talking about. Are we talking about a vision? Are we talking about a reality? If you are talking about what we want as an ideal state, we would not disagree with you. But we have been through, as *ustaz* said, 40 years, which, in fact, for the last 20 to 35 years, it is fairly stagnant. But for the last 10-15 years, we have been improving, and this improvement is a process towards that ideal or position we want to achieve. But before we do that, what do we do with the problems we have on hand? So are you saying that this is a measure, which is an option, we are giving to our fellow Muslims, but provided it is not contradictory to Islamic practice? I think that is a concern which a lot of people have. Do we have the safe guards for those concerns? - (*Hj Abu Bakar*) I do not see now what is really the problem faced by the Syariah Court. Is it by mentioning these 2,000 maintenance cases up to June this year? Is this a good reason? I do not think that is a good reason for us to have this law, because this has nothing to do with Syariah Court at all.

291. Whether the reason is valid or not is subjective? - (*Hj Abu Bakar*) We must look at the reality, whether the 2,000 cases were handled by the Syariah Court, because the last words there said, "Syariah Court would not be able to cope with all these cases".

Mr Abdullah Tarmugi] Would not be able to cope with these cases had these cases come to Syariah Court.

Mr Zainul Abidin Rasheed

292. Yes? - (*Mr Zhulkeflee*) But that is not the issue yet, you see. No doubt, there is a problem. Let us, first and foremost, understand the problem. Our worry in the proposal is that the Syariah Court would have to give up its exclusive jurisdiction. That is our main contention.

Dr Yaacob Ibrahim

293. That is not true? - (*Mr Zhulkeflee*) If you say, "exclusive jurisdiction", that means once you force them to share -

294. No, we are not forcing? - (*Mr Zhulkeflee*) No, what I mean is once -

295. Mr Zhulkeflee, would you allow me -? - (*Mr Zhulkeflee*) Presently -

Chairman

296. Order, order. Can we have some order? Can we have one person speaking at a time? All right, I will allow you to finish your point, then I will ask Dr Yaacob to respond? - (*Mr Zhulkeflee*) By using the term "exclusive", it means that the power rests with one party. That is my understanding of the word. If you disagree with me, you can correct me. Presently, there is exclusive power within the Syariah Court, certain power which is exclusive to the Syariah Court. Agree?

Dr Yaacob Ibrahim

297. Yes? - (*Mr Zhulkeflee*) So these powers, if by passing this law now,

you have to say that this particular power is no more exclusive because it has to be shared concurrently.

298. Mr Chairman, if I may, what the amendment seeks to do is to restore what was the status quo before some of the cases that were heard before the High Court that led to some confusion. Muslim couples were going to the High Court to deal with basically custody and disposal of properties. The power of Syariah Court is still exclusive. If, for example, you are dealt in the Syariah Court by the current provisions and you deal with the Syariah Court entirely, both divorce and post-divorce matters, your case will reside with the Syariah Court exclusively. And Syariah Court now will have the powers to rescind or vary orders which it did not have before, As what Encik Zainul was trying to say, it is basically a strengthening of the Syariah Court, which means there is exclusivity. But at the same time, as raised by Cikgu Sidek, that choice, which was available before the *Lathibaby's* and *Salijah's* cases, has been restored. So it is up to Muslim couples to decide. There is no giving away of powers to the Civil Courts as we understand it. No, there is no giving away? - (*Mr Zhulkeflee*) As we understand it, the case is that when AMLA was passed, there was real intention of providing for the Muslims avenues to settle all their family matters under the Syariah. That is actually the real status. But now by this -

Dr Yaacob Ibrahim] But that has not changed, Mr Zhulkeflee.

Mr Abdullah Tarmugi] It has not been, taken away.

Dr Yaacob Ibrahim

299. It has not been taken away? - *(Mr Zhulkeflee)* This is where we are concerned that with this proposal it (Syariah Court) would have given up so-called exclusive jurisdiction because there is now -

300. I disagree with the term that you used. I share your concern that if this door, so to speak, is restored, there may be some concern that Syariah Court would diminish. As some parties have said, people would just go to the Civil Court because of expediency? - *(Mr Zhulkeflee)* To suggest that the Muslims should be given other choice in matters where his religious laws adequately and exclusively provide, what do you think of that? To us, it is a display of intolerance for the religion itself. Supposing you know that as Muslims we eat certain kind of food, to provide some other menu without taking into consideration whether that menu may actually -

301. But you are not forced to eat it, you have a choice? - *(Mr Zhulkeflee)* But then again, to present it in the same table means that you do not try to understand us.

302. I believe the restoration of the status quo of the Civil Courts, as the right of choice to the Muslims as citizens of a Singapore society where they are members of a multi-racial society, is important. But, ultimately, you must agree, Mr Zhulkeflee, it is up to the wisdom of the Muslim couple to decide how best they want to do it. Certainly, it would be in our interest to encourage them to have their cases dealt with by the

Syariah Court. Do you not agree? - *(Mr Zhulkeflee)* We are saying that by providing it now, as we understand it, there are loopholes. And you say people can just make the choice? If it is our concern to provide for the Muslims to follow, in matters of their family law, the religion which dictates for them. If that is actually their understanding, then we should provide as best as we can. So granted our objection, maybe you may ask, what is actually the solution? We may suggest a couple actually, for example, by empowering the Syariah Court with powers to effectively carry out its task at meting out justice, in accordance with Islamic family law, which we feel is still not adequate because it has been neglected. As *Ustaz Bakar* says, for nearly 40 years, we only have one judge. That is one. And if -

Mr Abdullah Tarmugi

303. Correction. *[Interjections]*? - *(Hj Abu Bakar)* After how many years?

Encik Yatiman Yusof] After 35 years, not 25 years. Syariah Court started, I think, in 1958.

Mr Abdullah Tarmugi] I do not think we want to go into that. *[Interjections]*.

Chairman

304. Can we have some order? I will allow Mr Zhulkeflee to finish. Can you continue? - *(Mr Zhulkeflee)* If lack of manpower is a concern, why can we not employ Islamic judicial experts from those retired Court Presidents, local Islamic scholars, or even from overseas?

Mr Zhulkeflee (cont.)

That would actually be better, I would say, in tackling the issue, because we do not want to just simply do it. Okay, since you cannot do it, give it to some other -

Mr Abdullah Tarmugi] Can I interject on that point about trying to employ other judges? I have tried - I am telling you here now - to employ a judge from Malaysia, who used to be a Singaporean. Let me say that he is very well qualified. We sounded him out. He wanted a salary which is very high; he wanted a house; he wanted a car, which is very difficult for us to fulfil. So it is not that we have not tried. We have even tried to get lawyers to sit at night to judge cases in Syariah Court. But no one was forthcoming.

Encik Yatiman Yusof

305. Mr Chairman, I would like to make a correction. Earlier, Tuan Abu Bakar said that the Syariah Court has not improved for the past 40 years under AMLA. I think AMLA is less than 40 years. That is point No. 1. No. 2, I would like to ask PERGAS whether there exists in any country in this world where the circumstances are similar to Singapore, where the Muslims form about 15% of its population and the kind of exclusive Islamic jurisdiction that PERGAS perceives, we should and must have? - (*Hj Abu Bakar*) The question is in terms of legal powers. It has existed since 1880. So the question is -

306. My question was: in which part of the world where the Muslims form 15% of the total population has a court,

a Syariah Court, that is so exclusive as PERGAS envisages. Can you give an example? - (*Hj Abu Bakar*) In terms of example, I think Singapore is a country that has given opportunity for Muslims to administer, eg, the Majlis Ugama Islam. If you want to look for a country where there are only 15% Muslims, and there is a religious council, you cannot find that.

307. So you agree that Singapore is unique in terms of giving room and at the same time also emphasises the importance of Syariah law among Muslims? - (*Hj Abu Bakar*) We do not deny that.

308. Do you believe that in this atmosphere of multi-racial society, the political atmosphere in a different historical experience and legal process that we have in Singapore, we have come up with a system that we hope can evolve and can fulfil and meet the desires of Muslims. Is there such a potential? - (*Hj Abu Bakar*) Yes, there is such a potential. (*Mr Zhulkeflee*) It would be to the credit of Singapore actually and showing to the world that indeed this nation practises religious tolerance with this provision. We agree. That is, when the Syariah Court for Muslims really becomes effective. Our concern is, to allow its role and powers to diminish, directly or indirectly, would only invite suspicion. This is our concern, I think, you all share.

309. I share your concern. But my next question is that all these that we all have went through a long period of evolution where cases are developed, precedents and traditions are built. From there you have a law evolving. So the

same applies to evolution of a court. I want to ask you this question whether you agree that while we share this vision of having more effective, all encompassing Syariah Court to deal with the problem that the Singaporean Muslims face, there is a need for us to have a proper evolution, and a proper evolution takes time? - (*Mr Zhulkeflee*) Yes, I agree. But then, again, the suggestion on how this should be done by starting off with the concurrency jurisdiction itself -

310. If you agree on that, Cik Zhulkeflee, the presence of concurrent jurisdiction is one step to which we hope one day every Muslim facing problems of divorce will opt for Syariah Court when Syariah Court is being strengthened through manpower, provided with research capability, efficiency in enforcement as well as in disposing of cases. So all this capability cannot be developed overnight and it needs time. Do you not agree with that? - (*Mr Zhulkeflee*) Yes. But then again, as I said, we have to look into what is actually already provided for the Muslims, strengthen it rather than ignore it, and use another forum. We do not want this concurrency. Let us see the potential of what Syariah has and then develop it to the fullest. This is what we want and hope.

Mr Zainul Abidin Rasheed] I think we agree on that.

Encik Yatiman Yusof

311. Mr Chairman, judging from the response from PERGAS, I can see very clearly that we are not splitting hairs on

the kind of Syariah Court we all want to have in future. What I am asking now is: is it possible to have this kind of Syariah Court which we share, as ideal to us, created in a short time? I seek for more understanding that we need time to evolve, because if you create it overnight without the required capability, you create bigger problems, because expectations will go very high and then you are landed with thousands of cases on your lap and you cannot process them, then the image of Muslims is very much affected. Do you not think so? - (*Mr Zhulkeflee*) But by allowing concurrency, you are actually setting a precedent. Actually the argument of the Appeal Court is that there should be a clear separation of jurisdiction between the two courts. That is the concern so that there should not be encroaching of jurisdiction. Therefore, by allowing concurrency, you are now starting on something that cases can be -

Dr Yaacob Ibrahim] May I interject? I think we are going over the same point. But the point is, prior to all this, Muslim couples could also have gone to the Civil Court simply to seek redress for post divorce matters. We are in total agreement with you, in terms of the vision and the desire, that we want to have a Syariah Court which is full-fledged to deal with family cases. But where we differ is that, at least for the Members of Parliament who are present here today, we believe that, taken together - I would not call it concurrent because even the Minister is not comfortable - optional jurisdiction, whereby Muslim couples have a choice to go to the Civil Court and all the other amendments that we have in place plus the promise that the Minister has said in

Dr Yaacob Ibrahim (cont.)

Parliament that he would look into how to strengthen the Syariah Court, in terms of its mechanism and manpower, we are confident that the Syariah Court will develop into what you want. So you have to see that in totality. So this window is just one among many other things that we are putting together. And we do not believe that - this is my own personal belief - this will diminish the Syariah Court. In fact, it will strengthen it.

Mr Zainul Abidin Rasheed] Mr Chairman, maybe that is a point worth emphasising and elaborating. If you look at this word "concurrent", it may have confused a lot of people. If you look at the strengthening of the Syariah Court, in fact, we are giving only an optional window for only a certain aspect of ancillary activity. But whereas when it comes to divorce, basically Syariah Court, and in fact we are strengthening many areas. I think that needs to be clarified and we do not create any misunderstanding. The other point I would just like to add on is that, if you look at Malaysia, which is supposed to be ahead of us, only last month, there was a case where in fact the Syariah Court had to send the case to the Civil Court because Syariah Court did not have the powers. It just shows that even in Malaysia, this process of evolution is a reality. And this was only about a month ago. A case which was sent to the Syariah Court on *the pembayar harta* was thrown to the Civil Court because Syariah Court said they do not have the powers to do that. And this is Malaysia. So what more in Singapore. We are going through this process of evolution. So we take it step by step. We realise that, as

Muslims, we have a responsibility also, but bearing in mind the realities of what we face today. What do you think of that?

Encik Sidek Saniff

312. Mr Zainul was taking the example of a plural society in Malaysia. If you look at Egypt, for example, Egypt has been in existence for hundreds of years and until today, it only has Family Law. All other laws are laws taken from France, from the West. As such, a group which we can call conservative are unhappy with the situation and wants everything to be Islamic at one go. So here we have a country where almost 100% of the population are Muslims and, of the hundreds of years of history, can only confine themselves to just Family Law. We are living in a multi-racial country and we are a minority, as you said yourself. In 1968 we had AMLA and after 30 years, we are taking another step to improve it. So now, the Government has been looking at things without looking at the differences in terms of race, and so on. And we have in Islam ideas of justice and equity and humanity (*ihsan*). So do we not see this step as a positive one, especially at the end of the day, it is up to the Syariah Court to decide whether or not to allow a person to go to the Civil Court? So we can see this as a positive extension in our effort to move towards an area where you want, and I believe everyone of my colleagues wants, and we can see that theirs (Egypt) with a history of hundreds of years whilst we are doing this in a matter of 30 years. And the other laws are being done by themselves. You might say that Egypt cannot be used as an example. What I want to

say here is, situations and conditions dictate measures to be taken in each of these countries, eg, if we look at Egypt, if we picture Jordan too, we look at Saudi Arabia, Iran, Iraq, Indonesia, Malaysia and, perhaps, Brunei and we look at us in the sense of comfort in finding a balance, I think this can be achieved. But what measures can we take towards that aim? How fast can we move? Therefore, we can see the bigger picture in there and where we stand in that bigger picture among the peoples of the world in our move within these 30 years, and this is a country with more than 100-300 years of history? - (*Hj Abu Bakar*) Can I answer? The example given, ie, Egypt where the Family Law has its own court and other than the Family Law, the rest are handled by the civil court. Singapore too, in terms of Family Law, has been handed over to the Syariah Court. Now, what we are concerned with is the powers given to the Syariah Court will be given also to the other courts. This is not done in the countries mentioned. No other country has done so. It is not done in Egypt, it is not done in Jordan, nor in the countries mentioned. So I ask why is Singapore doing this. It must not be done because the power given in Egypt is Family Law. This is a result of colonials who broke up the law. We are also doing it. So in Singapore, since 1880, the colonials have imposed Family Law for Muslims. But now that we are independent, I think we should not be having this law which had been created since 1956 to be amended and given a new direction on the basis of lame excuses.

313. We should not change it to another direction even though the

Syariah Court in itself is being strengthened with powers? - (*Hj Abu Bakar*) If both powers are agreeable, what strengthening is there? What power is there in the court?

314. It has happened before where the power was temporarily revoked, right? - (*Hj Abu Bakar*) Which case are you referring to? Can you mention it because these two cases were rejected? These cases have been brought to the Syariah Court and that is why they were rejected by the High Court. Previously, cases throughout the Civil Court are cases which have not been brought to Syariah Court. That is all. So the High Court was acting reasonably because in every law the provision is for certain people. I will give you an example. Let us say I save some money in CPF. I must abide by the CPF law. I cannot say that I must apply another civil law. My account, for example, I cannot withdraw the money at any time because I must comply with CPF law. At the same time, when you have AMLA, it is specifically for Muslims and those who are married under Islamic law, it applies specifically to Muslims. We should not transfer it to another law.

315. Yes, you are saying the right thing and we understand that. What we are saying is that we are giving an avenue for Muslims. And secondly, we know at the beginning there will be problems. We have decisions made in Syariah Court and we have decisions made in the Civil Court. But I hope the possibility is that, whether they are Muslims or non-Muslims, especially their lawyers, they will make this as a unique exercise to us. So perhaps you might want to know how

Encik Sidek Saniff (cont)

we could study to the highest level all the reference books by non-Muslims being used by Muslims other than books by Muslims themselves. These are books of research written by non-Muslims and used by Muslims widely? - (*Hj Abu Bakar*) What about interpretation of the law? We are talking about the law.

316. I mean they have the experience there and the experience can be applied by Muslims studying in that area to further delve into their work. Can we not envisage that if two lawyers both know sensitive matters, let time be the healer, let time evolve the problem, there will come a time when you will find a convergence that can be readily accepted by all of us. Is this not a first step to that? - (*Hj Abu Bakar*) I think in terms of the law, there is no way we can look to the non-Muslims for their experience but in other areas, science, and so on, we can of course apply them. But in terms of jurisprudence, we cannot apply it.

317. It is not about jurisprudence. It is about Quran and *Hadis* (tradition). There is a Dutch Orientalist by the name of Wensinck who was a Professor of Arabic at Leiden - the centre of Orientalism in Holland. He worked out the idea that a "concordance of the principal collections of Hadith should be prepared with a view to facilitating reference work among Western scholars, who were working on the different aspects of Islam". Wensinck died before the outbreak of World War II, but this work was continued by Professor Mensing. This book was named Concordance and Indices of Islamic Traditions. The book

facilitates the referral to Hadith with special attention to Hadith reported by Bukhari, Muslim, Tirmizi, Ibnu Majah, An-Nasai, Abu Daud, Musnad Ad-Darami, Muwatta' Imam Malik and Musnad Ahmad ibn Hambal. This was done by a non-Muslim and that the Mufti said it has been a source of study by Muslims themselves. Perhaps he was not given the enlightenment by Allah but can we not say, with our Islamic sense of tolerance to widen our understanding. into an area where I think will make us a unique community and, I believe, other lawyers, other judges will appreciate in this relation the tolerance that we have? For example, in terms of marriage, adultery which requires four witnesses, and subsequently they will know and learn from us and there will be a time they will be skilful as us and hopefully there will emerge new Wensincks beneficial to us. Is this a hope or just a dream? Can we not study in detail so that there will be no contradictions, as we also wish to maintain harmony as advocated strongly by Islam? I do not think there are any non-Muslims who want to tarnish our Islamic faith especially in this small country? - (*Mr Mohammad Hannan*) Are we saying that there is a possibility that our judges, after knowing it, will carry it out? One aspect, as I see, is that these scholars or academicians took upon themselves these materials as research materials only, to which I do not deny. But they are not obliged by their research materials. The fact is that Wensinck did not accept Islam and did not carry it out but only as a matter of research. As an analogy stated by Wensinck about judges in Court, do they know about all these things? But then, they are not obliged to apply it in

Court. So what is the point here that you want to emphasise?

318. I am trying to bring us to a day ahead of us where in maintaining the harmony, purity and tolerance of the religion in the country, which is secular, that is of concern to us, and we are concerned about the country, we are moving step by step. I believe that not just judges but even our lawyers are very positive. They want to see the sensitivity is preserved. Is it not a stage where we can move forward? - *(Mr Mohammad Hannan)* Is it not the status now in creating a sense of tolerance?

Chairman] I think we have discussed a lot on this point. We will move on to something else. Mr Maidin.

Mr Mohamad Maidin

319. I observe that the basic starting point of the discussion was, I am not sure, correctly put. Can I go back to the basics first before we misunderstand each other? The aspirations seem to be the same but the discussion seems to be moving in different directions. Can I reiterate here that the Amendment Bill does not remove any of the Syariah Court's jurisdiction or powers. Basically, I am afraid that there will be misunderstanding on the same point. The first basic point I would like to put forward is that the power of the Syariah Court is not being changed, removed or set aside. Indeed, we can say that it has remained intact. I would like to put across this point. These points about divorce, all things about Muslims, will continue to be applied by the Syariah Court. When there

is a divorce, all ancillary claims will be made through the Syariah Court. It will still be so, except on one point. In certain cases after the divorce, they can seek the Syariah Court to allow these matters to be decided by the Civil Court which can only happen if the two parties agree that upon the matter reaching that stage, it will be brought to the Civil Court. This can only happen if the Syariah Court itself gives leave that this case which had originated in the Syariah Court be decided in the Civil Court? - *(Mr Zhulkeflee)* If both parties agree, we do not need the Syariah Court's leave. So the power is gone!

320. If the case originates from the Syariah Court, the role of the Syariah Court has not changed. Indeed, if there are amendments, they would strengthen the Syariah Court? - *(Mr Zhulkeflee)* The change we are now talking about is that even if both parties agree, they should not go there. Even if they go there, they will go on their own. That means there is no ruling as yet to stop them. Let us say we have a tree and the fruits fall outside the area and passers-by pick up the fruits, that is actually wrong. But since we could not disallow it, we just let it be. But this concurrent jurisdiction is like placing a signboard "Whoever wants to take the fruits can do so." We do not want that!

Mr Mohamad Maidin] My understanding is that whoever has brought a case before the Syariah Court for divorce and so on, the case would go on to the Syariah Court. This will not change. I hope we understand this. Generally, Muslims will remain in that position but when it comes to a stage when there is a

Mr Mohamad Maidin (cont.)

conflict between two persons, the avenue is open for them whether to go to the Syariah Court or the Civil Court. Although this process is allowed in AMLA, it is a restricted process as far as the transfer to the Civil Court is concerned.

Dr Yaacob Ibrahim] What Mr Zhulkeflee raised, which was valid, was that the current amendment says that if both parties consent, you do not need to apply for leave. In fact, many of us in this room raised this as a concern during the Second Reading of the Bill in Parliament, and there have been some requests that maybe, even at this point, we do not allow them.

Mr Abdullah Tarmugi] Can I interrupt? Even when both parties consent, it existed previously also. There is no change at all.

Dr Yaacob Ibrahim

321. There is no change at all. But my point is that some of us are concerned that even if this is allowed, we could at least counsel them. There have been requests from some members of the public to counsel couples, and we are willing to consider that to allay the fear that you have mentioned just now. Instead of just giving them free choice, let us counsel them first. So there is a possibility of amending this particular amendment to allow for some counselling to take place before a couple decide. This is something which we are considering? - *(Mr Mohammad Hannan)* Will that

not add another additional backlog to the Syariah Court? Assuming that we have got 2,000 cases of backlog and judges have got to look into leaves, do you see that as an additional backlog?

322. But as Ustaz Abu Bakar said, there was no backlog in Syariah Court? - *(Mr Mohammad Hannan)* I am saying that assuming there are 2,000 backlog cases. Now you are saying that the Mahkamah has got to give leave. That will be an additional burden to the Syariah Court.

323. It has been raised by some members of the legal fraternity also that this will add to the litigation period. But from our own understanding, this will not add a lot of time. In fact, in most instances, counselling will be very fast. Personally, from my own understanding, this will not add a significant amount of time in terms of the processing time? - *(Hj Abu Bakar)* Can I give my view on what Mr Mohamad Maidin said just now that the current process has not changed and there would only be changes when they have not settled the matter in the Syariah Court and want to bring the matter to the Civil Court, in other words, the matter has been brought to the Syariah Court, as it is happening now, but after they have gone to the Syariah Court, they want to move to the Civil Court. That is what I explained. Is it true that what you said has now changed?

Mr Mohamad Maidin

324. What I said is that the role of the Syariah Court on the power of making decisions has not changed. What is given

here is that in certain matters that have been brought to the Syariah Court and not settled, and either party feels that the matter is better resolved by another avenue or option, if at that stage, there are outstanding issues, other than divorce, there are claims made in the Syariah Court, these claims relating to divorce brought before the Syariah Court will be decided by the Syariah Court under its powers. Beyond that, if either party is of the view that he or she wants certain matters to be brought before the Civil Court, he or she will have to seek leave of the Syariah Court. Thus, I do not see that the role of the Syariah Court will be undermined or reduced. Instead, the role and function will be enhanced? - (Mr Zhulkeflee) Suppose both parties agree that the matter on custody be brought to the Civil Court, the problem is that the Civil Court will apply the Women's Charter, thereby overriding all other provisions. This is as under the supplementary amendments to the Supreme Court of Judicature Act. If it has been decided upon that if one of the parties renounces Islam (the one given custody), the Syariah Court will have no power to decide on that matter any more. What happens then? If we look at this, the Syariah Court, knowing the danger, will not grant leave, knowing what the outcome can be. You are giving them a choice, knowing fully well their constraints. That is not being fair!

325. We said earlier that the power is with the Syariah Court whether or not to give leave and perhaps besides giving leave, there is counselling? - (Mr Zhulkeflee) Can you allow them to go to the Civil Court for custody? When the Syariah Court will say that if it gives the power, it will lose its power in the future? Are we going to allow that? Of course, if the judge is a true follower of Islam, he will say no. However, the backlog will increase and you will then blame the Syariah Court. The issue of relieving the backlog is not really tackled.

Chairman

326. I think we have gone through this point at great length and I would like to ask if Members have any new points to make. If there are no further questions, on behalf of the Committee, I would like to thank you gentlemen for coming here this afternoon to assist us. We will send you a transcript of the discussion in a few days' time. Can I ask you to go through the transcript and send it back, to us with your amendments, if there are any. In the meantime, I would like to remind you not to publish any of the evidence that you have submitted to us nor any of the documents that you have presented to this Committee. Thank you very much? - (Witnesses) Thank you.

(The witnesses withdrew.)

Paper 10 - The following representatives of the Young Women Muslim Association, Block 1 Eunus Crescent, #01-2509, Singapore 400001, were examined:

Ms Fatimah Azimullah, President.

Ms Sakina Yusuf Kagda, Deputy President.

Ms Fauziah Soeratman, Hon. Secretary.

Ms Siti Sohanah Kasmani, Head, Single Parent Family Service.

Chairman

327. Good afternoon. Please be seated. For the record, could I ask you to state your names, your addresses and the positions you occupy in the organisation that you represent? - (*Ms Fatimah Azimullah*) I am Fatimah Azimullah of Block 36, Chai Chee Avenue, #08-151, Singapore 461036. I am the President of the Young Women Muslim Association (YWMA). (*Ms Sakina Yusuf Kagda*) Good afternoon. My name is Sakina Yusuf Kagda. I reside at 66 Frankel Avenue, Singapore 458193. I am the Deputy President of YWMA. (*Ms Fauziah Soeratman*) My name is Fauziah Soeratman. My address is 5A Jalan Ismail, Singapore 419254. I am the Honorary Secretary of YWMA. (*Ms Siti Sohanah Kasmani*) I am Siti Sohanah Kasmani, residing at 70 Kalidasa Avenue, Singapore 789418. I am the Head of YWMA Single Parent Family Service.

Chairman] First of all, may I apologise to you for making you wait so long as we took a bit longer time with the previous witnesses. Thank you for your submission to the Select Committee and for coming here this afternoon to assist us. We have

invited you here in order to clarify some of the points you have raised in your submission. Would you like to start, Mr Zulkifli.

Mr Zulkifli bin Baharudin

328. On behalf of the rest, I would like to express my thanks for giving us your representation. First, I would like to ask whether you feel that the amendments to AMLA can now strengthen the Syariah Court and the provisions can help enhance the interest of Muslim families in resolving some of their disputes with regard to divorce and other ancillary matters. What is your view on this? - (*Ms Fatimah Azimullah*) First and foremost, I wish to express my thanks and thanks also from the Young Women Muslim Association to the Select Committee for giving us this opportunity to come and give our views with regard to the proposed amendments. We hope that our views will be taken into consideration because as a Muslim women association, we are deeply concerned with the problems of women whose marriages have failed. And we have had the opportunity of working with these women and we understand their problems and

empathise with them. Most of the proposed amendments are agreeable with us, except for the concurrent jurisdiction section. Here I would also record our appreciation to the Minister-in-charge of Muslim Affairs and Community Development for the work put into the proposed amendments that have been put forth to enhance the powers of the Syariah Court. We believe that these amendments will certainly benefit the Muslim community. But with regard to concurrent jurisdiction, I think we do not agree with that. The other panel members may want to add to that. (*Ms Siti Sohanah Kasmani*) In our experience, we have helped single women, particularly divorced women, through our Single Parent Family Service at Ubi Avenue, working and giving help to them, the problems that result in their hardship are quite a few. One would be the cases of *cerai kathi* where there was no enforcement available before the proposed amendments. There was also this issue about no enforcement for any court orders that were given out by the Syariah Court. And also the likes of the Salijah's case where the Syariah Court did not actually have the power to transfer the property. In such cases, we saw a lot of hardship in these women and we feel that these amendments would help Syariah Court to assist these women. This has been our experience.

329. Generally, you are in support of the amendments. But you have raised one specific problem and that is your concern on different judgments if the Syariah Court and the Civil Court were to handle similar cases. From your practical experience, what are the problems that you have faced in this regard and what

suggestions do you have in resolving issues like these, since you raised the concern? - (*Ms Fatimah Azimullah*) As Muslims, we live by the syariah. The Government also understands that Muslims need to have a special administration in the syariah laws. The principles behind these two judicial systems are different. A matter can be settled in the Syariah Court or in the Civil Court but we are afraid that the judgments may not be the same. That is our concern. Even if they are the same, we still would want to have our judgment from the Syariah Court and not from the Civil Court. My other colleagues can also add in. (*Ms Sakina Yusuf Kagda*) May I be allowed to say a few words on this? With these amendments, we feel that the system is enhanced, which is what the Muslim women have been crying for. We are talking from the viewpoint of the women. We feel very strongly that there is no necessity for the concurrent jurisdiction as proposed in the amendments under new sections 35A and 35B and its related part in section 52(5). We feel very strongly that if concurrent jurisdiction is allowed, then Muslim women together with their counsel would proceed to the Civil Court to get judgment on custody and maintenance of children and division of the matrimonial property. What will happen is that the law in the Civil Court is not in conformity with the syariah law. In syariah law, women are taken care of in certain ways in their custody matters of the children which is different from the Civil Court. The Syariah Court will apply syariah law on the custody of children, maintenance matters and in the division of the matrimonial properties. It is a totally different school altogether. If the civil law is applied, then we feel that the

Ms Sakina Yusuf Kagda (cont.)

syariah law will be at a disadvantage. The Muslim women will also be at a disadvantage.

330. Are you not convinced or persuaded that at the moment any Muslim couple should and can go to the Syariah Court and get whatever resolution they want and yet we have cases that involve third parties and which involve other intricacies; foreign ownership, for example, of properties? Perhaps the Civil Court will be the more appropriate forum to deal with such cases. For example, in a custody case, the Civil Court would have the paramount interest of the child in mind. Would you agree with that? - *(Ms Fauziah Soeratman)* I just want to say that we are against the avenue open to Muslims to go to the Civil Court when we, as professed Muslims, are guided by the syariah law. That is our basis. So we feel that the syariah law should be upheld in Singapore. First, we do not see why we have to resort to the Civil Court to handle our matters, because, after all, the High Court itself has acknowledged that it has no right to interfere with Muslim justice. That is the first thing. Secondly, by opening this avenue for Muslims to go forum shopping, they seem to have a choice in choosing which one. We think that this would run counter to the very rationale behind the creation of the Syariah Court. Of course, as I have mentioned earlier, there would be differing judgments because of the principles behind syariah law and the civil law. Syariah law, as you know, is based on revealed knowledge, the *Koran* and *sunnah*, which cannot be changed. This is

different from civil law where it changes according to current needs.

Mr Zainul Abidin Rasheed

331. Surely you do not see them moving from syariah law to civil law like they are going shopping, just casually decide where to go and what to choose. Even in terms of Islamic law, we know that there is one syariah. But if we look all over the Muslim world, you will find different interpretations, different enforcement and applications. In Singapore, Malaysia, Brunei, Indonesia and the Middle East, you see differences? - *(Ms Fauziah Soeratman)* We understand that.

Mr Zainul Abidin Rasheed In this instance, we are not saying that there is no facility. The Syariah Court is given the powers to attend to all these matters. But you also allude to the kind of problems we now have in terms of coping with the situation. Can we, for example, overnight just handle all the situations we want to handle by having the Syariah Court the way you want it or shall we do it in phases? Do you see this optional jurisdiction or optional window as an interim measure towards the ideal situation?

Mr Yatiman Yusof

332. I just want to ask a related question because Ms Fauziah emphasised the position that as Muslims, they should be entitled to syariah law. My question is: to what extent should syariah law be implemented? Because my colleague here has explained that in some countries,

there are different levels of implementation of the syariah law. In your view, what is the limit that syariah law should be applied in Singapore? In its absolute terms or up to what level? - (Ms Fauziah Soeratman) We understand that there is a difference or a variation in the application of Syariah law in different countries. The fact is that right now we have our Syariah Court that the Muslims can go to. Why do we need to open another avenue for the Muslims when we clearly know that the Civil Court will have judgments based on a value system that is different from Islam?

333. My question is: to what extent do you think, in the context of Singapore, that syariah law can be implemented? Would it include criminal, for example? - (Ms Sakina Yusuf Kagda) At the moment, we are here to represent our objection to concurrent jurisdiction. Our concern on concurrent jurisdiction is that it will have implications on Muslim women and the rights of the children.

Dr Yaacob Ibrahim

334. Can I just take the point that Ms Fauziah raised just now? She said that the Syariah law should be upheld. Are you aware that with the amendments, the Syariah Court is strengthened? A couple can stay in Syariah Court and get syariah law to be applied to all their ancillary matters. That option is retained and is strengthened. At the same time, the window that Encik Zainul spoke about, the optional window is just to restore what was available before the cases of Salijah, Lathibaby and Madiah as an option. Also, if a couple disagrees and

wants to go forum shopping, as you say, to the Civil Court, they have to seek leave from the Syariah Court President. That is the strengthening of the Syariah Court, where the Syariah Court President will have the right to say, "No, you do not go to the Civil Court. You remain in the Syariah Court." Do you not see that as a positive rather than a negative step? - (Ms Fauziah Soeratman) Sir, at this stage too, we do not see this concurrent jurisdiction and approval required from the President of the Syariah Court to allow couples to seek redress in the Civil Court as a solution to the case of backlogs. We do not see it as that. Maybe my colleague, Siti Sohana, can give us the background as to why we came to this conclusion. (Ms Siti Sohanah Kasmani) Before that, may I just add that in my experience with these women, I have never got any indication that they preferred the Civil Court or civil law. They accept syariah law. I think the proposed amendments would help these women, the availability of enforcement in *cerai kathi* cases and all that. I think with concurrent jurisdiction, the problem of backlog will still be there. Because the cases will still have to go through the whole process in the Syariah Court. So it will not reduce significantly the backlog that the Syariah Court is facing at the counselling or at the Court level. In that sense, it is not addressing the backlog problem.

335. Just to reiterate what the Minister mentioned at the Second Reading of the Bill, we have to look at the amendments in toto with all the other amendments that are being proposed, in addition to what he has promised us in Parliament, that is, we will look into the strengthening of the Syariah Court in

Dr Yaacob Ibrahim (cont)

terms of resources, manpower and processes. So I think Encik Zainul's point is that at the end of the day, we are doing a couple of things at one go. Taken in total, this is the evolution that we think is best suited, given our current state of affairs in Singapore. We share your concern. But at the same time, we feel that we should not close this window but open it cautiously giving an additional key to the Syariah Court President. So you have to see things in total rather than taking it at one piece. That is the approach that we would recommend? - *(Ms Fatimah Azimullah)* As a lay person, when I was asked, "where would you go? Civil Court or Syariah Court?" I did not know the implications and I have to thank the Minister that he gave us the opportunity to study the implications deeper. For me, I would have said straightaway that I would go to the Civil Court, knowing it is a more powerful and expeditious court. But after getting into discussions with some learned friends, I see the implications. If you give the people the option to go to either the Syariah Court or the Civil Court, the lay people would not know the implications, and they may want to go to the court which can process whatever problems they have and settle them quickly.

336. Would they not be advised by their lawyers? - *(Ms Fatimah Azimullah)* Yes, their lawyers also. *(Ms Fauziah Soeratman)* That is my point. Because right now most of our lawyers are trained in civil law. There is the likelihood that they would advise their clients to go to the Civil Court

where the resources and machinery are there. The entire supportive machinery is there.

Mr Zainul Abidin Rasheed

337. On the contrary. In fact, most of the lawyers would prefer to go to the Syariah Court? - *(Ms Fauziah Soeratman)* They would go to the Civil Court because they know the civil law and it is a familiar territory. Whereas in Syariah Court, most of them do not know Syariah law, and they would be fumbling about.

338. That is not what the Law Society representatives told us just now. Mr Chairman, if I may just proceed. In fact, I am reassured by Ms Fatimah's contribution. You feel that if more and more Muslims know, then they would naturally go to the Syariah Court. That means your concerns are somewhat allayed. But for those who are not informed, we realise that there are certain contradictions between Islamic law and civil law. But from experience, we were told, in the majority of cases, the justice meted out is neutral, it does not contradict. When it does not contradict but it facilitates and makes it more expeditious, it is also justice to handle cases fast. One of the injustices people have told us is that because it took so long that injustice creeps in. So if the Civil Courts can handle it, without contradicting the Islamic law, would you see any objection there? - *(Ms Fatimah Azimullah)* As a Muslim, I would object to it. Because now you are giving the enforcement power to the Syariah Court, that is a step towards strengthening the Syariah Court. So if

you say work in phases, this is the first phase, and we will see how things move after that. We do not have to open that extra option to allow couples to go to the Civil Court because you may get people in droves going to the Civil Court to settle their ancillary matters and the Syariah Court will just be a registry for divorces.

339. We are laughing at the choice of word "droves" because somebody used the same word. But seriously, do you see that happening if there is this concurrent jurisdiction, that there will be these droves of Muslims going to the Civil Court? We are not talking about divorce because most of the matters are still going to Syariah, maybe only certain ancillary matters go to the Civil Court. Ask your self why are people going to the Civil Court now? There are 2,000 or so backlog cases. Why are they going to the Civil Court now? What is the problem? Is it because they reject Islamic law? Or is it because they want justice meted out expeditiously, as long as it does not contradict Islamic law? If you understand that problem, then we ask ourselves, how are we going to overcome that problem? Can we overcome that problem overnight by just fulfilling what you want in terms of Syariah Court? Can it be done? I think the Minister has explained that we have taken steps to improve the Syariah Court over the years and we will continue to improve it and we hope that they will come to the Syariah Court. In fact, the Syariah Court will be able to handle most of the cases in our Courts. Do you see these droves of people rushing to the Civil Court because of this concurrent jurisdiction? - (*Ms Sakina Yusuf*) As Dr Yaacob Ibrahim has said, if you open a small window, there is a saying that if

you give an inch, they put in a foot. They will not come in droves but generally that is what will happen because that is the easier way out for the sake of expediency. We have seen the suffering of the women and children when the delay occurs in a broken marriage. It is unbearable and we can understand their need for expediency. But that is not the reason to go to the Civil Court and get a judgment because, as I said, we will open a little window and word will get around that you can get a quicker judgment at the Civil Court and you get bogged down at the Syariah Court. What will happen is that more and more people will, with the advice of their counsel, go to the Civil Court, and we will find that the Civil Court is handling most of these cases, and the powers of the Syariah Court can be eroded in time. We feel that very strongly. Is that what we want? We do not want that. On Mr Zainul Abidin Rasheed's question that the judgment will still conform to the Syariah law, we beg to differ. On certain circumstances, it may not be, even with the friend of the Court. So that is what we are very concerned about, that the judgment may vary according to the circumstances and it may not meet the needs of the custody of the child because of many factors, such as nurturing of the child and the inheritance law. There are different sets of Syariah law in awarding custody. It does not have to go to the mother or father. There is the kinship factor that is also involved in it. There are many other factors. Similarly, for the division of matrimonial properties. I think all our Members of Parliament are aware of all these differences in the Syariah law as well as the civil law. That is our concern.

Dr Yaacob Ibrahim) We share your concern.

Mr Abdullah Tarmugi

340. Ms Sakina, we are just as concerned as you are. In fact, when we proposed the amendments, we have these concerns in mind. We empathise with the problems of the Muslim community. We, of all people, want to make it easier for the community, and not make it harder. Let us take the analogy of the window just now, which Dr Yaacob mentioned. You said we would open a window. In fact, we are not opening a window. The window has been there all the time. Indeed, with the provision of asking for leave from the President of the Syariah Court, we are in fact closing one leaf of the window, if I can put it that way. Secondly, there is a choice for a Muslim, whether he wants to go to the Syariah Court or Civil Court, and we leave that choice open. If you maintain that Muslims want to be judged by Muslim law, and they want to go to the Syariah Court, then the choice for the Muslims is obvious. Therefore, whether you have concurrent jurisdiction or not, if a Muslim insists on wanting to seek redress on the Muslim law, then he will naturally go to the Syariah Court. Why did people go to the High Court previously, or even up to now, is because, as you said, of speedier resolution, and they have much more facilities, etc. Indeed, if you can get a speedier resolution, why should you want to stop it, especially in terms of maintenance. You can imagine the problem that a single wife has got to go through, if the maintenance comes late and enforcement is slow. I am sure Sohanah

knows the difference or the problems that they entail. So if they want this route, then as legislators and leaders, we cannot really stop them. But it is their choice. So it is not as if we are opening a window and say, "Look, there is a window open now. You all go to that window." We have not. In fact, that is the reason why we institute the provision of getting leave from the President of the Syariah Court before they can go to the Civil Court if one of them disagrees, unless both parties consent, of course. Even now, if both parties consent, they can still go. So if your worry is that both parties consent, then perhaps something ought to be done. But that is another issue altogether. But with regard to concurrent jurisdiction, there is really no force and the choice is given to the Muslims. As I said, if it is the aspiration of the Muslim community that they want to be judged by the Syariah Court, then they should go to the Syariah Court. We do not see the opening of a floodgate, as it were, and worse, if it is in droves, but certainly not even in streams. That is how we look at the whole situation. Certainly, we empathise with the feelings of the Muslim community? - (*Ms Siti Sohanah*) Why Muslim women go to the High Court or the Civil Court at this point in time is because there is no provision in the Syariah Court. So they really do not have a choice. If they want to get help for enforcement on these cases that I have said, *cerai kathi* cases and enforcement on the court orders, transfer, there is no provision. So they really have no choice but to go and seek recourse in the High Court. But with the proposed amendments, we think that there is no necessity for concurrent jurisdiction because it will help the women. The amendments will help the women

because now the Syariah Court is given the powers to handle those cases. That is why we feel that we still can have the Syariah Court to handle these women, given the powers that have been enhanced in the Syariah Court now.

Encik Mohamad Maidin

341. What you are talking about is that a brand name and a product are different. What you want really is justice for the women? - (*Ms Siti Sohanah*) Muslim justice.

342. Yes, Islamic justice. In spirit, Islamic. My question is whether you have any reason to feel that the enforcement being accorded by a District Court or High Court makes it unIslamic? - (*Ms Siti Sohanah*) The enforcement is actually helping the cases.

343. It should bring about what you call justice? - (*Ms Siti Sohanah*) Justice, not necessarily Islamic justice? - (*Ms Fauziah Soeratman*) We feel that the reason why Muslim women would turn to the Civil Court would be expediency. That is justice too. We note that it is important. But equally important, if not more important, is that the judgments are based on Islamic principles. That is our concern. With the enhanced powers given to the Syariah Court now, as proposed in the amendments, we feel that the Court is in a position to preside over cases which previously were at a limbo. The cases did not know where to go. So they had to resort to the Civil Court. What we are saying is this: Give us time. Let us not go and open this avenue. Give us time to work this out. Monitor the situation, and

at the same time also put in resources, as what the Minister has assured us, so that we can truly instil pride and confidence in the Syariah Court.

Dr Yaacob Ibrahim

344. I agree to all that. If, in as much as you request time from us, we would also like to request time from you, to allow optional jurisdiction as an option to see how it evolves, because we are of the opinion -? - (*Ms Fauziah Soeratman*) Why do we need to do it when we were not given the chance? Let Syariah Court handle it with these enhanced powers. Let the community see how good Syariah Court is now with the enhanced powers that are given, instead of opening another leeway, another window.

Dr Yaacob Ibrahim] But as the Minister has rightly pointed out, we are not opening up another leeway. The leeway has always been there

Mr Abdullah Tarmugi] We are closing one leaf.

Dr Yaacob Ibrahim

345. We are closing one leaf. That is the point. We are actually tightening it and I think there is a misperception out there that all of a sudden, we are going to open up this floodgate. We are going over the same point, Fauziah. But at the end of the day, be rest assured that all of us share your concern. I think Encik Maidin pointed out just now that, yes, there will be some concerns that when they go to the Civil Court, maybe Islamic justice

Dr Yaacob Ibrahim (cont.)

may not be meted out. But from what we have been informed, most of the cases decided in the Civil Court do not differ so much from Syariah Court because they are quite straightforward. I understand that. So, therefore, we tighten it by having this leave that you have to apply. And there is even some suggestion now, even if both couples consent, let us counsel them first. Some have suggested that. So I think we share your concern. That is the thing that we want to do. In as much as you want us to give you a chance, we also want you to give the system a chance to explore this option, to evolve and see how it goes? - *(Ms Fauziah Soeratman)* We find that it is rather difficult to accept that. We have just introduced these enhanced powers to the Syariah Court. So why not leave the situation as it is? Should the need arise later, then we will consider, bring it up again, and we will see where the problem is, we will solve it, rather than put everything and -

Mr Zainul Abidin Rasheed

346. But what you are suggesting is actually to give enhanced powers to Syariah Court and the present position is status quo, ie, people can still go to Civil Court, and they are doing it now? - *(Ms Fauziah Soeratman)* Yes, but you do not have to institutionalise it.

347. So your concern is that we are institutionalising it? - *(Ms Fauziah Soeratman)* Yes.

348. But by not institutionalising it, in fact, we end up with a situation

where sometimes the Court says no; sometimes, yes. It is quite embarrassing? - *(Ms Fauziah Soeratman)* It is really embarrassing because at that point in time, Syariah Court was not given the powers.

Mr Zainul Abidin Rasheed] Even if you give Syariah Court the full powers, can you imagine the problems? We solve one problem, but we create a different problem. Can the Syariah Court do all it can now or should it do if given all the powers? I think that is the kind of problem we foresee and that is why we want a transition. We hope, in fact, with time, the problem will be overcome.

Encik Yatiman Yusoff] Mr Chairman, I think there is a misperception here. If we give the Syariah Court the enhanced power, it does not mean that the enhanced power comes naturally with enhanced capability and capacity. When we talk about the case that goes through Syariah Court, maybe if you talk about increasing its capacity, you may have to increase three or four times in terms of manpower. But manpower by itself cannot solve the problem because you need the system, you need the skills. System and skills are developed over time and over a certain period. I think, as Cik Sohanah had learned from her counseling experiences that you have to acquire the skill, and the acquisition of skill will result in increased capacity, which will take time. Therefore, in the meantime what do we do? So I think this opening of one window provides a small outlet, if the Muslims choose to go there. And, mind you, it is not just one key, there are

two keys. The first key is held in the hands of Muslims themselves. They make the choice. The second key is in the hands of the Syariah Court Judge who will either give the consent for leave of absence or reject it. So, I think, on balance, there is enough check and balance done on their part to make sure that it would not result in Muslims choosing Civil Court over the Syariah Court. But, I think, all in all, patience is required on every part.

Mr Ahmad Mohd Magad

349. If I may add, Mr Chairman, with your permission, to what Mr Yatiman has just said. Competence is another issue that has to be taken into consideration and borne in mind. We live in a multi-racial, metropolitan environment where there are cases of inter-marriages, marriages with foreigners, and so on. In fact, if you take a look at the historical cases, the prominent cases, like *Salijah, Fahim vs Sasaki*, these are all complex cases which are beyond the competence of the Syariah Court to handle. So by giving this so-called concurrent or optional jurisdiction, you would then be able to have such cases competently handled by the Civil Courts? - (*Ms Fauziah Soeratman*) In the meantime, what are you going to do with the Syariah Court? We are glad that these cases came up because then we see the inadequacies. Let us prop it up. Let us support the system rather than open another door. You are saying it is an easier way out and at the same time it is a dilution of the Syariah Court. That is what we are saying. Because, as we have stated earlier

on, these two courts have different standing, they have different status, they have different resources and they are not of the same footing. So you are telling the general public to make a choice. To us, it is injustice too, because to make a wise choice and decision, they must be well informed.

Mr Abdullah Tarmugi

350. Why is it injustice? - (*Ms Fauziah Soeratman*) As a lay person, you do not have enough information.

351. Fauziah, if I were a lay person, for example, if I am a lady, I have got a divorce proceeding, do I go to the Act and see where I can go to? No, I go to my lawyer. And it is my lawyer who advises me. That lawyer, as we have heard the Muslim lawyers committee just now, they were all for Syariah Court. In fact, if they want to, they could go to Syariah Court, which means, rightly so, the Muslim lawyer would advise the person, "You go to Syariah Court." So it is not a question of our opening a door and I say, "Ah! There is a door open! I go." It is not the case. You are looking at it from the perspective of a well-informed person or even a lawyer. But, as I said, as a lay person, if I were a woman, I have got problems, if I want to go to a court, I do not go to the court straight, neither do I go and look at the AMLA. I go to see my lawyer, and my lawyer advises me. And what my lawyer advises me is what I said in there? - (*Ms Sakina Yusuf*) But we have spoken to a lawyer friend of ours and she said, for the sake of expediency, with all these problems, they would advise us to go to the Civil Court, if that

Ms Sakina Yusuf (cont.)

avenue is open. But we feel very strongly that in the Syariah law, the rights of the women are firmly entrenched and they are -

Mr Abdullah Tarmugi] Ms Sakina, can I interrupt there? That avenue is open even now. It is not a question of the avenue being closed and the avenue being open. That is my point.

Dr Yaacob Ibrahim

352. Even without this amendment, Muslim couples can go? - (*Ms Sakina Yusuf*) But the lay persons will feel that they want to go to the Civil Court, even with the help of their counsel, their lawyers. And we feel very strongly that in the Civil Court, the Muslim women will not get their just rights because in Islam, the women's rights are very strong, they are all laid out very well in marriage, custody and maintenance of the children, and we feel very strongly about that. We keep on going over that again and again.

Mr Mohamad Maidin

353. I agree with you. It is an important point you made? - (*Ms Sakina Yusuf*) I am sorry. But that is what we feel very strongly about. As Dr Yaacob just now mentioned, you go to the Civil Court and most of them, you said, most of them, not all, are dealt with according to the Syariah law, so you go there. But we feel that even if one injustice occurs, it is no justice.

354. I would like to ask your view regarding the question of justice, if you do not mind. I believe PPIS, as an organisation, also believes seeking justice for women. That is one of the reasons you are here. You mentioned earlier about Syariah law as our guide to seek justice. In the end, it is all a question of justice. A speedy resolution of cases is also part of justice. In other words, while we discuss this, while listening to your view, I have also heard indirectly some members saying that the Syariah Court has done a lot of injustices because so many cases have been delayed. In other words, you have also said in the name of justice and Syariah expediency of justice, the Civil Court has done a lot more justice to our women because they can do things faster. My question is: Syariah law is our guide to seek justice, but must justice come only from a court called Syariah Court? Can the same justice that we want, that you want, also come from what we call the Civil Court? Justice that is Islamic in spirit, justice that we seek through Syariah Court? - (*Ms Fauziah Soeratman*) That is what we are concerned too. How can we ensure that the judgement handled at the Civil Court is based on the Islamic spirit, as what you said? We are concerned about that too. Because unless there is an assurance that will happen, we are strongly against this idea of concurrent jurisdiction.

355. That is why I mentioned we should not differentiate brand name and product. In the end, the product is justice. I can ask you the same question: can you assure me that if I go to a Syariah Court, what I get is Islamic justice? I cannot. I cannot give you the same assurance. I am not demanding that you give me an

assurance. I am asking you that question, because there is no guarantee that justice that comes out from a court called the Syariah Court is justice that Islam wants. Do you get what I mean? - (*Ms Fauziah Soeratman*) I do not quite get it. Unless you are saying that expediency is part of justice, as what you have mentioned. Is that the contention? Are you saying that expediency is part of justice? You see it as that?

Mr Mohamad Maidin] The question is we cannot be assured that what decision made in a Syariah Court is also justice as what Islam wants or classifies as just. There is no guarantee. Your question is: can I guarantee a decision made in the Civil Court is just? You can apply the same question to Syariah Court. It is an attempt to seek justice.

Dr Yaacob Ibrahim] At the end of the day, I suppose the concern that we share with you can also be applied to the Syariah Court or any other court for that matter because these are judgements made by human. For that reason, you have a Court of Appeal, because people may disagree that justice has not been meted out and they appeal to a higher body, to basically change. So, at the end of the day, even if you disagree, for example, with the decision in the Civil Court, you can still appeal. And the Civil Court can rescind its power as much as the Syariah Court can rescind its power now under this amendment.

Mr Abdullah Tarmugi

356. I think we have digressed a little bit. But let me assure PPIS that we are

just as concerned as you are actually. As I said, I made my commitment in public that we will continue to improve the Syariah Court, in terms of manpower, in terms of procedures, in terms of equipment, and that will be carried out. In fact, I think, several people have told us that Syariah Court has indeed improved in terms of the way they deal with cases in a shorter time now. But let me add another point about this concurrency. I am sorry I have to use the word concurrency, but that is about the only word which is available now. "Option" could be another one. The other reason which, I think, is not widely publicised is why concurrency is needed is that our society is getting more complex, in terms of property cases, for example, on division of matrimonial property. As you know, there may be third party concerns, you have POSB, you have CPF, you even have third parties who are non-Muslims. I am not too sure whether Syariah Court is equipped to handle all these funds. Secondly, there are also other issues where they concern properties overseas. Again, the AMLA, as of now, and also the expertise of Syariah Court as of now, cannot handle those cases. There are also other cases where they involve laws of other countries, which again Syariah Court would not be able to handle. And we do not really know what other issues could arise, because of the complexity of the society now where issues will concern the Muslims, both as couples and also in families. So we thought there may be cases, and if there are such cases, where Syariah Court cannot handle them, then what happens? Of course, the ultimate ideal is for Syariah Court to be beefed up so much that it can handle all and every of such cases. I would be the happiest

Mr Abdullah Tarmugi (cont.)

person if that can be done. Certainly that cannot be achieved overnight. Certainly not in two months, three months, four months, or even a year. So, as Yaacob said, give us some time. It will take time. I am sure you will appreciate that this will take time. It is not only a question of putting another President or putting another mediator, or 10 mediators. It is a question also of building up tradition. Case work, procedures and also rules have got to evolve along the way. In the meantime, what do we do? Do we sit still and let things go on as it is now? Or do we have this concurrency option where it could relieve or ease matters a bit when people want to go there. In Islam, there is no coercion. If after advice, they still want to go there, we really cannot do anything. In Islam, as I said, we cannot coerce them to go to Syariah Court and seek their redress. That is the situation as of now actually. Do not go away with the idea that we are introducing these amendments and, that is it, and nothing will be done to boost the Syariah Court to a point where it could be upgraded to a much better, efficient and all encompassing institution than it is now? - *(Ms Fatimah Azimullah)* At the moment, everybody, as citizens of Singapore, we still have recourse to the Civil Court. Even Muslims know it. So you do not have to put that in. There is no necessity.

357. There is another reason to it. Although the door is there, people can have recourse to the Civil Courts. You must have noticed and read through the cases that different High Court judges decide differently. So there is a lot of

confusion on the ground even now. The reason why we want to make this optional is to clarify the whole confusion that exists in the Civil Courts now so that we know for certain what the Civil Courts can do and what the Syariah Court can do, and how and when Muslims can go to the Civil Courts. It is all clarified? - *(Ms Fatimah Azimullah)* I think it will be clarified when the enforcement and proxy powers are enacted.

358. As I said, you are only talking of those cases which have come up. There are other smaller cases which we do not know. As I said, it is there. I do not see why just because we put it there, there fore, everyone will automatically, just like lemmings, go to that place. It may not necessarily be so. As I said, if the aspiration of the community is that they want to go to the Syariah Court, then I do not see why, just because there is an opening, they will zero in for that opening. Unless your assumption is wrong, ie, that it is really not the aspiration of the Muslim community to want to be judged by the Syariah Court and that they want to seek the most expedient avenue or institution to seek redress, You may be right that if the Muslims want the Syariah Court to judge their cases, then, as I said, it is incumbent upon the Muslim himself or herself to decide consciously whether to go to the Syariah Court and not to go to the Civil Court just because there is an opening now. As I said, the opening is not only for this reason. There are other reasons also. As I said, our community is becoming so complex. We do not want to arrive at a stage whereby we proceed, we carry on as we have now until such time when these problems arise and then, again, I am called upon to make changes

and I have to set up another Select Committee! It takes another two or three years to settle the issues. I think that is wrong. So we thought we put everything in place and, at the same time, improve Syariah Court. At least for now and the coming years, things could settle down a bit. In the meantime, we improve the Syariah Court and strengthen it. And we believe that, with all the other amendments, the Syariah Court will indeed be strengthened. I think you would agree that with all the things put together, Syariah Court will indeed be strengthened? - (*Ms Fatimah Azimullah*) We agree with the Minister, Sir. But at the same time, we feel that when it comes to expediency, as you say expediency is also justice. From what I see, the waiting time for divorces will still be long unless the administration of the Syariah Court, ie, the resources and all that are necessary are put in place.

Mr Abdullah Tarmugi] At the risk of repeating myself, I have said that I will put in place resources, in terms of manpower, equipment and even procedures. This is something which a lot of people do not know and, that is, in terms of procedures, it has got to be streamlined. I have got to send a staff of the Syariah Court to learn certain procedures on enforcement, how even to serve summons, how to relate and liaise with the police and the District Court. This will take time. And if I could do it overnight, I would not have to face this problem of answering why I want to introduce concurrent jurisdiction. But the fact is that this must take time. At the risk of repeating it again, I said that I will improve and boost up the capacity and capability of the Syariah

Court. Until such time, and hopefully the time will come when people do not need to go to the High Court. That is your ideal, that is also my ideal, and that is also our wish.

Chairman

359. I think we have been repeating the same points again? - (*Ms Fatimah Azimullah*) I think we see the change and the improvements in the Syariah Court. We do see that and we acknowledge that. We commend the Minister for all the work he has done. But we still say that with the enactment of enforcement and proxy power, we should give the Syariah Court the opportunity to grow and see how things go. Because if you say it is temporary, it will take years before we take that out. So if it is going to be temporary, why put in at all?

Mr Zainul Abidin Rasheed] We agree with that, but we rather have a safety net.

Chairman

360. Your point has been made and you have the last word? - (*Ms Sakina Yusuf*) Mr Chairman, Sir, may I beg your indulgence to just say a few words in conclusion from my Association?

361. Yes, a few quick words? - (*Ms Sakina Yusuf*) Allow me to express my Association's thanks to all Members here and we, as representatives of the Association, feel that under the Minister's leadership, the Muslims will progress and will be able to live comfortably with the Syariah laws. He has shown

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Ms Sakina Yusuf (cont.)

this by tabling the amendments to the AMLA. We are extremely happy except for our reservations on a small section, that is, the concurrent jurisdiction and its related amendments. We hope that the hon. Minister will take our views which we have come here to give very sincerely and earnestly and which we feel is our *fardu kifayah*. We hope he does so. We will have a clear conscience, believe us, to live this life and in the hereafter. Thank you very much.

362. As I said, you have the last word on this. Thank you very much for coming here this afternoon to assist us in our work and we will send you a transcript of the discussion in a few days' time. Can I ask you to go through the transcript and make amendments, if there are any, and return it to us? I would like to also remind you not to publish your submission or any of the documents that you have submitted to us until the Select Committee has presented its Report to Parliament. Thank you very much? -
(*Ms Fatimah Azimullah*) Thank you.

(The witnesses withdrew.)

MINUTES OF PROCEEDINGS

1st Meeting

Monday, 21st September 1998

2.30 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoo) (*in the Chair*)

Mr Abdullah Tarmugi

Mr Ahmad Mohd Magad

Encik Sidek bin Saniff

Dr Yaacob Ibrahim

Encik Yatiman Yusof

Mr Zainul Abidin Rasheed

Mr Zulkifli Bin Baharudin

Absent:

Mr Mohamad Maidin B P M

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, Deputy Secretary (Policy)

Mr Tong Min Way, Director (Corporate Services)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head Civil Division

Mrs Joyce Chao, State Counsel, Legislation Division

Majlis Ugama Islam Singapura:

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Deputy Director (Finance and Business Development)

Mr Syed Ahmad Syed Mohd, Dakwah officer

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

-
1. The Committee deliberated.
 2. *Agreed* that officials from the Ministry of Community Development, Attorney General's Chambers, Majlis Ugama Islam Singapura and Syariah Court be admitted to the meetings of the Committee.
 3. Written representations received were considered.
 4. *Agreed* -
 - (a) that the written representations received late be accepted for consideration;
 - (b) that the following representors be invited to give oral evidence:
 - (i) Mr Supardi Sujak (Paper No. 2);
 - (ii) The Law Society of Singapore (Paper No. 4);
 - (iii) Persekutuan Seruan Islam Singapura (Paper No. 8);
 - (iv) Persatuan Guru-Guru Agama Singapura (Paper No. 9);
 - (v) Young Women Muslim Association (Paper No. 10);
 - (vi) Tuan Hj Hussien Bin Abdul Latiff (Paper No. 18); and
 - (vii) Ms Noor Aisha Abdul Rahman (Paper No. 28).
 - (c) that not more than four representatives be invited to represent each representor;
 - (d) that Paper Nos 2, 4, 7, 8, 9, 10, 18, 19, 21, 22 and 28 be printed in the Report of the Committee;
 - (e) that the Committee do meet again on Monday, 26 October 1998 and Tuesday, 27 October 1998 at 2.15 pm to hear oral evidence.

Adjourned till 2.15 p.m.
on Monday, 26 October 1998

2nd Meeting

Monday, 26th October 1998

2.15 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr Ahmad Mohd Magad

Mr Mohamad Maidin B P M

Encik Sidek bin Saniff

Dr Yaacob Ibrahim

Encik Yatiman Yusof

Mr Zainul Abidin Rasheed

Mr Zulkifli Bin Baharudin

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, Deputy Secretary (Policy)

Mr Tong Min Way, Director (Corporate Services)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head Civil Division

Ms Chiu Hse Yu, State Counsel, Legislation Division

Majlis Ugama Islam Singapura:

Tuan Hj Maarof bin Hj Salleh, President

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Deputy Director (Finance and Business Development)

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

1. The Committee deliberated.
2. Mr Supardi Sujak (Paper No. 2) was examined.
3. Ms Noor Aisha Abdul Rahman (Paper No. 28) was examined.
4. Tuan Hj Hussien Bin Abdul Latiff (Paper No. 18) was examined.
5. Mr Ahmad Khalis B Abdul Ghani, Chairperson; Mr Ahmad Nizam B Abbas, Vice-Chairman; Mr Sahul Hameed s/o Kattuva and Mr Abdul Rahman Saleh, Committee Members, Muslim Law Practice Committee of the Law Society of Singapore (Paper No. 4) were examined.
6. The Committee further deliberated.

Adjourned till 1.45 p.m.
on Tuesday, 27 October 1998

3rd Meeting

Tuesday, 27th October 1998

1.45 p.m.

Present:

Mr Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr Ahmad Mohd Magad

Mr Mohamad Maidin B P M

Encik Sidek bin Saniff

Dr Yaacob Ibrahim

Encik Yatiman Yusof

Mr Zainul Abidin Rasheed

Mr Zulkifli Bin Baharudin

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, Deputy Secretary (Policy)

Mr Tong Min Way, Director (Corporate Services)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head Civil Division

Mrs Joyce Chao, State Counsel, Legislation Division

Majlis Ugama Islam Singapura:

Mr Syed Haroon Aljunied Secretary

Mr Mohd Effendi Basri, Deputy Director (Finance and Business Development)

Mr Syed Ahmad Syed Mohd, Dakwah officer

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

1. The Committee deliberated.

2. Mr Ahmad Khalis B Abdul Ghani, Chairperson; Mr Ahmad Nizam B Abbas, Vice-Chairman; Mr Sahul Hameed s/o Kattuva and Mr Abdul Rahman Saleh, Committee Members, Muslim Law Practice Committee of the Law Society of Singapore (Paper No. 4) were further examined.

3. Mr Mohd Yuni bin Awi, Vice-President III; Mr Yahya Syed, Committee Member; Mr Junaini Manin, Committee Member; and Mr Zainuddin bin Mohd Ismail, Executive Director (Special Assignments), of Persekutuan Seruan Islam Singapura (Paper No. 8) were examined.

4. Mr Abu Bakar bin Hashim, President; Mr Mohammad Hannan bin Hassan, Hon. Secretary; Mr Mohamad Fatris bin Bakaram, Assistant Secretary; and Mr Zhulkeflee bin Hj Ismail, Executive Officer, of Persatuan Guru-Guru Agama Singapura (Paper No. 9) were examined.

5. Ms Fatimah Azimullah, President; Ms Sakina Yusuf Kagda, Deputy President; Ms Fauziah Soeratman, Hon. Secretary; and Ms Siti Sohanah Kasmani, Head, Single Parent Family Service, of Young Women Muslim Association (Paper No.10) were examined.

6. The Committee further deliberated.

Adjourned to a date to be fixed

4th Meeting

Monday, 1st February 1999

2.15 pm

Present:

Mr Speaker (Mr Tan Soo Khoon) (*in the Chair*)

Mr Abdullah Tarmugi

Mr Ahmad Mohd Magad

Encik Sidek bin Saniff

Dr Yaacob Ibrahim

Absent:

Mr Mohamad Maidin B P M

In Attendance:

Ministry of Community Development:

Mr Lim Soo Ping, 2 Deputy Secretary

Mr Tong Min Way, Director (Social Support)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head, Civil Division

Majlis Ugama Islam Singapura:

Tuan Hj Maarof bin Hj Salleh, President

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Acting Divisional Director
(Finance and Business Development)

Mr Zakaria Buang, Manager of Public Affairs

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

1 Bill considered clause by clause.

Clause 1 agreed to.

Clause 2:

Amendments made -

- (1) in page 2, line 20, by leaving out "definition", and inserting "definitions"; and
- (2) in page 2, after line 22, by inserting-
 ""wakaf" means the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable;"; and
- (c) by inserting, immediately after the word "for" in the second line of the definitions of "wakaf 'am" and "wakaf khas", the word "pious,".". (Mr Abdullah Tarmugi).

Consequential amendment made, in page 2, line 18, by leaving out "and".

Clause 2, as amended, agreed to.

Clause 3:

Amendment made, in page 3, lines 8 and 9, by leaving out "in Singapore". (Mr Abdullah Tarmugi)

Clause 3, as amended, agreed to.

Clauses 4 to 6 inclusive agreed to.

Clause 7:

Amendment made, in page 4, by leaving out lines 26 to 31, and inserting-

- "(a) by deleting the words "and shall be presided over by a president to be appointed by the President of Singapore" in subsection (1); and". (Mr Abdullah Tarmugi).

Clause 7, as amended, agreed to.

Clause 8:

Amendments made -

(1) in page 6, line 2, after "proceedings", by inserting "-(a)"; and.

(2) in page 6, line 5, by leaving out the full-stop and inserting -

and

(b) mentioned in subsection (1) or (2) have obtained a certificate of attendance issued under subsection (7).

(6) Parties mentioned in subsection (1) or (2) shall, before commencing or continuing (as the case may be) the civil proceedings by consent, attend counselling provided by such person as the Court may appoint.

(7) The Court shall, after any party has been counselled under subsection (6), issue a certificate of attendance to that party.". (Mr Abdullah Tarmugi).

Clause 8, as amended, agreed to.

Clause 9 agreed to.

Clause 10:

Amendments made –

(1) in page 7, line 15, by leaving out "(a) by deleting subsection (3)", and inserting "by deleting subsections (3) and (4)";

(2) in page 7, line 18, after "divorce", by inserting "or nullity of marriage";

(3) in page 7, line 30, after "divorce", by inserting "or nullification of marriage";

(4) in page 7, after line 30, by inserting-

"(4) The Court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

(5) Any order under this section may be made upon such terms and subject to such conditions (if any) as the Court thinks fit.".

(5) in page 7, by leaving out line 31 to line 6 in page 8;.

(6) in page 8, line 9, by leaving out "subsection (3)(a), (b) or (c)", and inserting "this section";

(7) in page 8, after line 12, by inserting-

"(7) In making any order under subsection (3)(d), the Court shall have power to order the disposition or division between the parties of any property or the sale of any such property and the division between the

parties of the proceeds of such sale in such proportions as the Court thinks just and equitable.

(8) It shall be the duty of the Court in deciding whether to exercise its powers under subsection (7) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business;
- (h) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (i) the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future;
- (j) the standard of living enjoyed by the family before the breakdown of the marriage;
- (k) the age of each party and the duration of the marriage;
- (l) any physical or mental disability of either of the parties; and
- (m) the value to either of the parties of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(9) For the purposes of subsection (7), the Court may in particular, but without limiting the generality of subsections (4), (5) and (6), make any one or more of the following orders:

- (a) an order for the sale of any property or any part thereof, and for the division, vesting or settlement of the proceeds;
- (b) an order vesting any property owned by both parties jointly in both the parties in common in such shares as the Court considers just and equitable;
- (c) an order vesting any property or any part thereof in either party;
- (d) an order for any property, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;
- (e) an order postponing the sale or vesting of any share in any property, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;
- (f) an order granting to either party, for such period and on such terms as the Court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party; and
- (g) an order for the payment of a sum of money by one party to the other party.

(10) Where, under any order made under this section, one party is or may become liable to pay to the other party a sum of money, the Court may direct that the money shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions as the Court thinks fit.

(11) Where, pursuant to this section, the Court makes an order for the sale of any property and for the division, application or settlement of the proceeds, the Court may appoint a person to sell the property and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the asset is vested.

(12) Where the Court, by any order under this section, appoints a person (including the registrar or other officer of the Court) to act as a trustee or to sell any property and to divide, apply and settle the proceeds thereof, the Court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his costs and expenses."; and.

(8) in page 8, after line 16, by inserting

"(14) For the purposes of this section, "property" means -

- (a) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and
- (b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.". (Mr Abdullah Tarmugi).

Consequential amendments made -

- (a) in page 7, line 14, by leaving out "-";
- (b) in page 7, line 16, by leaving out "subsection", and inserting "subsections";
- (c) in page 7, line 30, by leaving out "; and";
- (d) in page 8, line 7, by leaving out "(7)", and inserting "(6)"; and
- (e) in page 8, line 13, by leaving out "(8)", and inserting "(13)".

Clause 10, as amended, agreed to.

Clause 11:

Amendments made –

- (1) in page 9, line 17, after "by", by inserting "the registrar or"; and
- (2) in page 9, line 22, by leaving out "(7) and (8)", and inserting "(6) and (13)".

Clause 11, as amended, agreed to.

Clause 12:

Amendment made in page 10, after line 10, by inserting-

"(e) in all cases relating to the disposition or division of property on divorce or nullification of marriage, by any party aggrieved by the decision;".
(Mr Abdullah Tarmugi).

Consequential amendment made, in page 10, lines 11 and 14, by re-lettering paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

Clause 12, as amended, agreed to.

Clause 13:

Amendments made -

- (1) in page 11, line 3, by leaving out "and officers of Court", and inserting "of Court or Appeal Board, etc."; and
- (2) in page 11, line 4: after "Court", by inserting "or an Appeal Board, or the registrar of the Court,". (Mr Abdullah Tarmugi).

Clause 13, as amended, agreed to.

Clause 14:

Amendment made, in page 11, after line 35, by inserting -

"Registration of wakafs

66.-(1) Every wakaf, whether created before or after the commencement of this Act, shall be registered at the office of the Majlis.

(2) Application for registration shall be made by the mutawalli of the wakaf.

(3) An application for registration shall be made in such form and manner as the Majlis may require and shall contain the following particulars:

- (a) a description of the wakaf properties sufficient for the identification of the properties;
- (b) the gross annual income from the wakaf properties;
- (c) the amount of rates and taxes annually payable in respect of the wakaf properties;
- (d) an estimate of the expenses annually incurred in the realisation to the income of the wakaf properties;
- (e) the amount set apart under the wakaf for -
 - (i) the salary of the mutawalli and allowances to the individuals;
 - (ii) purely religious purposes;
 - (iii) charitable purposes; and
 - (iv) pious and any other purposes; and
- (f) any other particulars required by the Majlis.

(4) Every application shall be accompanied by a copy of the wakaf deed, or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakaf.

(5) The Majlis may require the applicant to supply any further particulars or information that the Majlis may consider necessary.

(6) On receipt of an application for registration, the Majlis may, before the registration of the wakaf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars in the application.

(7) When an application is made by any person other than the person managing the wakaf property, the Majlis shall, before registering the wakaf, give notice of the application to the person managing the wakaf property and shall hear him if he desires to be heard.

(8) In the case of wakafs created before the date of commencement of the Administration of Muslim Law (Amendment) Act 1999, every application for registration shall be made within 6 months from that date; and in the case of wakafs created after that date, within 6 months from the date of the creation of the wakaf.

(9) The Majlis shall maintain a register of wakafs in such manner as the Majlis may think fit, including in electronic form in a computer, in which shall be entered such particulars as the Majlis may from time to time determine.

(10) The Majlis may itself cause a wakaf to be registered or may at any time amend the register of wakafs.

(11) Any mutawalli of a wakaf who fails to -

- (a) apply for the registration of the wakaf;
- (b) furnish statements of particulars as required under this section;
- (c) supply information or particulars as required by the Majlis;
- (d) allow inspection of wakaf properties, accounts, records or deeds and documents relating to the wakaf;
- (e) deliver possession of any wakaf property, if ordered by the Majlis;
- (e) carry out the directions of the Majlis; or
- (g) do any other act which he is lawfully required to do by or under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a continuing offence, to a further fine not exceeding \$0 for every day or part thereof during which the offence continues after conviction.

(12) The Majlis may, with the approval of the Minister, make rules to provide –

- (a) for the preparation of annual statements of accounts, reports and returns by the mutawalli of wakafs and for their submission to the Majlis;
- (b) for the payment of fees for the inspection of, and extraction from, the register of wakafs; and
- (c) generally for giving full effect to or for carrying out the purposes of this section.".". (Mr Abdullah Tarmugi).

Clause 14, as amended, agreed to.

Clauses 15 and 16 agreed to.

Clause 17:

Amendment made, in page 13, after line 16, by inserting –

"(9) For the purposes of this Act, "product" includes food and foodstuffs." (Mr Abdullah Tarmugi).

Clause 17, as amended, agreed to.

Clauses 18 and 19 agreed to.

Clause 20:

Amendment made, in page 15, line 8, by leaving out from "20." to the end of line 10, and inserting-

" Section 145 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

"(2) Without prejudice to the generality of subsection (1), the power to make rules shall include –

- (a) regulating and prescribing the procedure and practice of the Syariah Court and the Appeal Board, including the manner of service of summons;
- (b) prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a president of the Syariah Court may be transacted or exercised by the registrar of the Syariah Court (including provisions for and concerning appeals from decisions of the registrar of the Syariah Court); and
- (c) prescribing the fees to be charged by the Syariah Court, the Appeal Board, and by the Registrar, Kadis and Naib Kadis and

the incidence and application of such fees.".(Mr Abdullah Tarmugi).

Clause 20, as amended, agreed to.

Clauses 21 and 22 agreed to.

Clause 23:

Amendment made, in page 17, after line 11, by inserting –

"(c) by deleting the words "presiding officer" in the following provisions and substituting in each case the word "registrar":

Sections 36(2) and 49(5);

(d) by inserting, immediately after the word "divorce", in section 35(2)(d) and (3) (line 5), the words "or nullification of marriage"; and". (Mr Abdullah Tarmugi).

Consequential amendments made,

(1) in page 17, line 11, by leaving out "and" where it secondly occurs; and

(2) in page 17, line 12, by re-lettering paragraph (c) as paragraph (e).

Clause 23, as amended, agreed to.

Clause 24 agreed to.

The Schedule:

Amendment made, in page 20, line 39 and line 42, after "proceedings", by inserting "and the certificates of attendance of the parties issued under section 35A(7) of the Administration of Muslim Law Act have been filed in accordance with the Rules of Court". (Mr Abdullah Tarmugi).

The Schedule, as amended, agreed to.

New clause (A) brought up and read the first time:-

"New sections 34A and 34B

(A). The principal Act is amended by inserting, immediately after section 34, the following sections:

"Appointment of presidents and ad-hoc presidents

34A.-(1) The President of Singapore may appoint one or more presidents of the Court and may designate one of the presidents to be the senior president of the Court.

(2) Every proceeding in the Syariah Court and all business arising thereout shall, except as otherwise provided by any written law, be heard and disposed of before a president of the Court.

(3) The distribution of business among the presidents of the Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the senior president of the Court.

(4) In order to facilitate the disposal of business in the Syariah Court, the President of Singapore may appoint one or more ad-hoc presidents of the Court for such period or periods as the President thinks fit.

(5) An ad-hoc president may, in such case as the senior president of the Court may specify, exercise all the powers and, perform the functions of a president of the Court.

(6) Anything done by an ad-hoc president acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a president of the Court.

(7) The senior president of the Court may from time to time issue such directions relating to the practice of the Court as he thinks fit.

Appointment of registrar

34B.-(1) The President of Singapore may appoint a registrar of the Court.

(2) The registrar of the Court shall have such powers and duties as may be prescribed under this Act.". (Mr Abdullah Tarmugi)

New clause (A) read a second time and added to the Bill as clause 7.

New clause (B) brought up and read the first time:-

"Repeal of section 39

(B) Section 39 of the principal Act is repealed. (Mr Abdullah Tarmugi).

New clause (B) read a second time and added to the Bill as clause 10.

New clause (C) immediately after new clause (B):

New clause (C) brought up and read the first time.

"Amendment of section 47

(C) Section 47 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection:

"(5) For the purposes of this section and sections 48 and 49, "married woman" includes a woman against whom a talak has been pronounced by her husband.". (Mr Abdullah Tarmugi).

New clause (C) read a second time and added to the Bill as clause 11.

New clause (D) immediately after new clause (C).

New clause (D) brought up and read the first time :-

"Amendment of section 49

(D) Section 49 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

"(6) Subsections (1)(g) to (5) shall apply, with the necessary modifications, to a married man as they apply to a married woman.". (Mr Abdullah Tarmugi).

New clause (D) read a second time and added to the Bill as clause 12.

New clause (E) brought up and read the first time.

"Amendment of section 87

(E) Section 87 of the principal Act is amended by inserting, immediately after subsection (6), the following subsection:

"(7) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes of this section.". (Mr Abdullah Tarmugi).

New clause (E) read a second time and added to the Bill as clause 21.

Consequential amendments made to :-

(1) the numbering of clauses;

(2) the cross references to "section 8 or 23(2)" and "section 12(a)" in clause 24,

consequent on the addition of the 5 new clauses; and

(3) the citation year "1998" to "1999".

Bill to be reported.

REPORT

2 The Chairman's Report brought up, and read the first time.

3 Resolved, "That the Chairman's Report be read a second time, paragraph by paragraph."

Paragraphs 1 to 28 inclusive read and agreed to.

4 Resolved, "That this Report be the Report of the Committee to Parliament."

5 Agreed that the Chairman do present the Report to Parliament when printed copies thereof are available for distribution to Members of Parliament.

Adjourned sine die.

Monday, 1st February 1999

Official Report

Consideration of Bill (clause by clause)

CONTENTS

Clause 1 agreed to

Clauses 2 and 3, as amended, agreed to

Clauses 4 to 6 inclusive agreed to

Clauses 7 and 8, as amended, agreed to

Clause 9 agreed to

Clauses 10 to 14 inclusive, as amended, agreed to

Clauses 15 and 16 agreed to

Clause 17, as amended, agreed to

Clauses 18 and 19 agreed to

Clause 20, as amended, agreed to

Clauses 21 and 22 agreed to

Clause 23, as amended, agreed to

Clause 24 agreed to

The Schedule, as amended, agreed to

New Clauses (A) to (E) agreed to

Bill to be reported

Report agreed to

Official Report

Consideration of Bill (clause by clause)

Monday, 1st February, 1999

The Committee met at 2.15 pm

PRESENT:

Mr Speaker (Mr Tan Soo Khoo (East Coast)).

Mr Abdullah Tarmugi, Minister for Community Development and Minister-in-charge of Muslim Affairs.

Mr Ahmad Mohd. Magad (Pasir Ris).

Encik Sidek bin Saniff (Aljunied), Senior Minister of State, Ministry of the Environment.

Dr Yaacob Ibrahim (Jalan Besar), Parliamentary Secretary to the Minister for Communications.

Encik Yatiman Yusof (Tampines), Senior Parliamentary Secretary to the Minister for Information and the Arts.

Mr Zainul Abidin Rasheed, Senior Parliamentary Secretary to the Minister for Foreign Affairs.

Mr Zulkifli Bin Baharudin (Nominated Member).

ABSENT:

Mr Mohamad Maidin B P M (Marine Parade), Parliamentary Secretary to the Minister for Education.

In attendance:

Ministry of Community Development:

Mr Lim Soo Ping, 2 Deputy Secretary

Mr Tong Min Way, Director (Social Support)

Attorney-General's Chambers:

Mr Ter Kim Cheu, Head, Legislation Division

Mr Jeffrey Chan Wah Teck, Head, Civil Division

Majlis Ugama Islam Singapura:

Hj Maarof b Hj Salleh, President

Mr Syed Haroon Aljunied, Secretary

Mr Mohd Effendi Basri, Acting Divisional Director (Finance and Business Development)

Mr Zakaria Buang, Manager of Public Affairs

Syariah Court:

Tuan Hj Sallim Jasman, President

Mr Abdul Razak Maricar, Administrator

[Mr Speaker in the Chamber]

The Chairman: I call the meeting to order. Today we have to consider the Bill clause by clause and the Report of the Committee to Parliament. The first item of business is to consider the Bill clause by clause. A notice of amendments to the Bill has been received from the Minister for Community Development and Minister-in-charge of Muslim Affairs and it has been circulated to Members.

Clause 1 agreed to stand part of the Bill.

Clause 2 - (Amendment of section 2)

Mr Abdullah Tarmugi: Mr Speaker, Sir, where I have more than one amendment to a clause may I have your leave to move all the amendments together and follow up with giving the reasons for each amendment?

The Chairman: Yes, you may.

Mr Abdullah Tarmugi: Sir, I beg to move,

(1) In page 2, line 20, to leave out "definition", and insert "definitions".

(2) In page 2, after line 22, to insert

""wakaf' means the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable;"; and

- (c) by inserting, immediately after the word "for" in the second line of the definitions of "wakaf à m" and "wakaf khas", the word "pious,"."

These are technical drafting amendments, which are necessary as a result of the insertion of new clauses.

Amendments agreed to.

Consequential amendment made:

In page 2, line 18, to leave out "and".

Clause 2, as amended, agreed to stand part of the Bill.

Clause 3 - (Repeal and re-enactment of section 3)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 3, lines 8 and 9, to leave out "in Singapore".

The reason for this is that MUIS also extends assistance to Muslims outside Singapore.

Amendment agreed to.

Clause 3, as amended, agreed to stand part of the Bill.

Clauses 4 to 6 inclusive agreed to stand part of the Bill.

Clause 7- (Amendment of section 35)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 4, to leave out lines 26 to 31, and insert

"(a) by deleting the words "and shall be presided over by a president appointed by the President of Singapore" in subsection (1); and".

This is a technical drafting amendment, which is necessary as a result of the insertion of new provisions.

Amendment agreed to.

Clause 7, as amended, agreed to stand part of the Bill.

Clause 8 - (New sections 35A and 35B)

Mr Abdullah Tarmugi: Sir, I beg to move,

(1) In page 6, line 2, after "proceedings", to insert "- (a)".

(2) In page 6, line 5, to leave out the full-stop and insert-

“; and

(b) mentioned in subsection (1) or (2) have obtained a certificate of attendance issued under subsection (7).

(6) Parties mentioned in subsection (1) or (2) shall, before commencing or continuing (as the case may be) the civil proceedings by consent, attend counselling provided by such person as the Court may appoint.

(7) The Court shall, after any party has been counselled under subsection (6), issue a certificate of attendance to that party."

There are reservations with regard to Muslim couples going to the Civil Courts by mutual consent to settle matters relating to the disposition or division of property on divorce or custody of children. Several representatives and Malay MPs suggested that these couples be counselled on the implications of their decision. This will help them to make an informed choice. Amendment (1) is a technical drafting amendment while amendment (2) will provide for these couples to be counselled and for the Syariah Court to issue a certificate of attendance.

Amendments agreed to.

Clause 8, as amended, agreed to stand part of the Bill.

Clause 9 agreed to stand part of the Bill.

Clause 10- (Amendment of section 52)

Mr Abdullah Tarmugi: Sir, I beg to move,

(1) In page 7, line 15, to leave out "(a) by deleting subsection (3)", and insert "by deleting subsections (3) and (4)".

(2) In page 7, line 18, after "divorce", to insert "or nullity of marriage".

(3) In page 7, line 30, after "divorce", to insert "or nullification of marriage".

(4) In page 7, after line 30, to insert-

"(4) The Court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

(5) Any order under this section may be made upon such terms and subject to such conditions (if any) as the Court thinks fit.".

(5) In page 7, to leave out line 31 to line 6 in page 8.

(6) In page 8, line 9, to leave out "subsection (3)(a), (b) or (c)", and insert "this section".

(7) In page 8, after line 12, to insert-

"(7) In making any order under subsection (3)(d), the Court shall have power to order the disposition or division between the parties of any property or the sale of any such property and the division between the parties of the proceeds of such sale in such proportions as the Court thinks just and equitable.

(8) It shall be the duty of the Court in deciding whether to exercise its powers under subsection (7) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the property;
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
- (c) the needs of the children (if any) of the marriage;
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;
- (e) any agreement between the parties with respect to the ownership and division of the property made in contemplation of divorce;
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;

- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business;
- (h) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (i) the financial needs, obligations and responsibilities which each of the parties has or is likely to have in the foreseeable future;
- (j) the standard of living enjoyed by the family before the breakdown of the marriage;
- (k) the age of each party and the duration of the marriage;
- (l) any physical or mental disability of either of the parties; and
- (m) the value to either of the parties of any benefit (such as a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(9) For the purposes of subsection (7), the Court may in particular, but without limiting the generality of subsections (4), (5) and (6), make any one or more of the following orders:

- (a) an order for the sale of any property or any part thereof, and for the division, vesting or settlement of the proceeds;
- (b) an order vesting any property owned by both parties jointly in both the parties in common in such shares as the Court considers just and equitable;
- (c) an order vesting any property or any part thereof in either party;
- (d) an order for any property, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;
- (e) an order postponing the sale or vesting of any share in any property, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

(f) an order granting to either party, for such period and on such terms as the Court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party; and

(g) an order for the payment of a sum of money by one party to the other party.

(10) Where, under any order made under this section, one party is or may become liable to pay to the other party a sum of money, the Court may direct that the money shall be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions as the Court thinks fit.

(11) Where, pursuant to this section, the Court makes an order for the sale of any property and for the division, application or settlement of the proceeds, the Court may appoint a person to sell the property and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed shall have the same force and validity as if it had been executed by the person in whom the asset is vested.

(12) Where the Court, by any order under this section, appoints a person (including the registrar or other officer of the Court) to act as a trustee or to sell any property and to divide, apply and settle the proceeds thereof, the Court may make provision in that order for the payment of remuneration to that person and for the reimbursement of his costs and expenses."

(8) In page 8, after line 16, to insert

"(14) For the purposes of this section, "property" means

(a) any asset acquired before the marriage by one party or both parties to the marriage which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage."

Amendment (1) is a technical drafting amendment.

Concern has been expressed that there is no explicit provision in the AMLA for the Syariah Court to make orders on ancillary issues arising out of nullification of

marriage. To avoid uncertainty, amendments (2) and (3) seek to clarify that the Court has powers to make such orders.

Section 112 of the Women's Charter deals with the principles for disposition or division of matrimonial property. The original clause provides that the Syariah Court will apply the principles of section 112 so far as they are consistent with the Muslim law. This was to clarify the guiding principles on which the Court would make decisions on property. There is a concern that any mention of the application of principles of the Women's Charter in the AMLA implies that the Syariah law did not have these principles existing before. There is also concern that the Court will be bound by the principles, despite the saving provision. It is important that the Muslim community be assured that the use of the principles is acceptable. With this in mind Amendments (4), (5) and (6) seek to directly enumerate in the AMLA those principles from section 112 of the Women's Charter that are consistent with Syariah law.

Amendments agreed to.

Consequential amendments made:

- (a) In page 7, line 14, to leave out "-".
- (b) In page 7, line 16, to leave out "subsection", and insert "subsections".
- (c) In page 7, line 30, to leave out "'"; and".
- (d) In page 8, line 7, to leave out "(7)", and insert "(6)".
- (e) In page 8, line 13, to leave out "(8)", and insert "(13)".

Clause 10, as amended, agreed to stand part of the Bill.

Clause 11 - (Repeal and re-enactment of section 53 and new sections 53A and 53B)

Mr Abdullah Tarmugi: Sir, I beg to move,

- (1) In page 9, line 17, after "by", to insert "the registrar or".
- (2) In page 9, line 22, to leave out "(7) and (8)", and insert "(6) and (13)".

In line with the provision for the appointment of the Registrar of the Syariah Court, Amendment (1) provides that the Registrar may also sign the documents pertaining to the disposition or division of property on behalf of the defaulting party.

Amendment (2) is a technical drafting amendment consequential to the incorporation of the principles of section 112 of the Women's Charter into the AMLA.

Amendments agreed to.

Clause 11, as amended, agreed to stand part of the Bill.

Clause 12- (Amendment of section 55)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 10, after line 10, to insert-

"(e) in all cases relating to the disposition or division of property on divorce or nullification of marriage, by any party aggrieved by the decision;"

Some representors have indicated that there is confusion over which limbs of the new section 55(1), that is, whether subsection (a) or (g) will apply for appeal against the decision of the President, Syariah Court on disposition or division of property.

The amendment clarifies that leave of the Appeal Board is not required for appeals against decisions on disposition or division of property and custody.

Amendment agreed to.

Consequential amendments made:

In page 10, lines 11 and 14, to re-letter paragraphs (e) and (f) as paragraphs (f) and (g), respectively.

Clause 12, as amended, agreed to stand part of the Bill.

Clause 13 - (New sections 56A and 56B)

Mr Abdullah Tarmugi: Sir, I beg to move,

(1) In page 11, line 3, to leave out "and officers of Court", and insert "of Court or Appeal Board, etc."

(2) In page 11, line 4, after "Court", to insert "or an Appeal Board, or the registrar of the Court,"

Presently, members and officers of the Syariah Court are protected from being sued. The amendment extends the protection to the Appeal Board of MUIS.

Amendments agreed to.

Clause 13, as amended, agreed to stand part of the Bill.

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 11, after line 35, to insert-

"Registration of wakafs

66.-(1) Every wakaf, whether created before or after the commencement of this Act, shall be registered at the office of the Majlis.

(2) Application for registration shall be made by the mutawalli of the wakaf.

(3) An application for registration shall be made in such form and manner as the Majlis may require and shall contain the following particulars:

- (a) a description of the wakaf properties sufficient for the identification of the properties;
- (b) the gross annual income from the wakaf properties;
- (c) the amount of rates and taxes annually payable in respect of the wakaf properties;
- (d) an estimate of the expenses annually incurred in the realisation to the income of the wakaf properties;
- (e) the amount set apart under the wakaf for
 - (i) the salary of the mutawalli and allowances to the individuals;
 - (ii) purely religious purposes;
 - (iii) charitable purposes; and
 - (iv) pious and any other purposes; and
- (f) any other particulars required by the Majlis.

(4) Every application shall be accompanied by a copy of the wakaf deed, or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant, of the origin, nature and objects of the wakaf.

(5) The Majlis may require the applicant to supply any further particulars or information that the Majlis may consider necessary.

(6) On receipt of an application for registration, the Majlis may, before the registration of the wakaf, make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars in the application.

(7) When an application is made by any person other than the person managing the wakaf property, the Majlis shall, before registering the wakaf, give notice of the application to the person managing the wakaf property and shall hear him if he desires to be heard.

(8) In the case of wakafs created before the date of commencement of the Administration of Muslim Law (Amendment) Act 1999, every application for registration shall be made within 6 months from that date; and in the case of wakafs created after that date, within 6 months from the date of the creation of the wakaf.

(9) The Majlis shall maintain a register of wakafs in such manner as the Majlis may think fit, including in electronic form in a computer, in which shall be entered such particulars as the Majlis may from time to time determine.

(10) The Majlis may itself cause a wakaf to be registered or may at any time amend the register of wakafs.

(11) Any mutawalli of a wakaf who fails to

- (a) apply for the registration of the wakaf;
- (b) furnish statements of particulars as required under this section;
- (c) supply information or particulars as required by the Majlis;
- (d) allow inspection of wakaf properties, accounts, records or deeds and documents relating to the wakaf;
- (e) deliver possession of any wakaf property, if ordered by the Majlis;
- (f) carry out the directions of the Majlis; or
- (g) do any other act which he is lawfully required to do by or under this section,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$,000 or to imprisonment for a term not exceeding 12 months or

to both and, in the case of a continuing offence, to a further fine not exceeding \$0 for every day or part thereof during which the offence continues after conviction.

(12) The Majlis may, with the approval of the Minister, make rules to provide -

- (a) for the preparation of annual statements of accounts, reports and returns by the mutawalli of wakafs and for their submission to the Majlis;
- (b) for the payment of fees for the inspection of, and extraction from, the register of wakafs; and
- (c) generally for giving full effect to or for carrying out the purposes of this section."."

Wakafs are Muslim dedications and all wakafs are vested in MUIS under the existing AMLA. It is impossible for MUIS to know the existence of all wakafs unless the trustees so inform MUIS. MUIS has had to take proceedings in court to recover wakaf properties disposed of by their trustees. The amendment will prevent costly litigation and protect innocent buyers of wakaf properties. The amendment will make the registration of wakafs mandatory. The penalties for non-compliance are similar to those in the Charities Act.

Amendment agreed to.

Clause 14, as amended, agreed to stand part of the Bill.

Clauses 15 and 16 inclusive agreed to stand part of the Bill.

Clause 17- (New Part VA)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 13, after line 16, to insert-

"(9) For the purposes of this Act, "product" includes food and foodstuffs."

This is a technical amendment. The amendment clarifies that "product" includes food and foodstuffs.

Amendment agreed to.

Clause 17, as amended, agreed to stand part of the Bill.

Clauses 18 and 19 agreed to stand part of the Bill.

Clause 20 - (Amendment of section 145)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 15, line 8, to leave out from "20." to the end of line 10, and to insert -

"Section 145 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

"(2) Without prejudice to the generality of subsection (1), the power to make rules shall include -

- (a) regulating and prescribing the procedure and practice of the Syariah Court and the Appeal Board, including the manner of service of summons;
- (b) prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a president of the Syariah Court may be transacted or exercised by the registrar of the Syariah Court (including provisions for and concerning appeals from decisions of the registrar of the Syariah Court); and
- (c) prescribing the fees to be charged by the Syariah Court, the Appeal Board, and by the Registrar, Kadis and Naib Kadis and the incidence and application of such fees."."

The amendment is intended to clarify that the President of Singapore's powers to make rules covers those rules relating to the procedures and practice of the Syariah Court and the Appeal Board, the powers of the Registrar of the Syariah Court and the prescription of fees by the Appeal Board.

Amendment agreed to.

Clause 20, as amended, agreed to stand part of the Bill.

Clauses 21 and 22 agreed to stand part of the Bill.

Clause 23 - (Related amendments to Act and other written laws)

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 17, after line 11, to insert-

"(c) by deleting the words "presiding officer" in the following provisions and substituting in each case the word "registrar":

Sections 36(2) and 49(5);

- (d) by inserting, immediately after the word "divorce", in section 35(2)(d) and (3) (line 5), the words "or nullification of marriage"; and".

These are technical amendments to incorporate the appointment of a Registrar of the Syariah Court and the powers of the Court to deal with ancillary issues arising from nullity of marriage.

Amendment agreed to.

Consequential amendments made:

(1) In page 17, line 11, to leave out "and" where it secondly occurs.

(2) In page 17, line 12, to re-letter paragraph (c) as paragraph (e).

Clause 23, as amended, agreed to stand part of the Bill.

Clause 24 agreed to stand part of the Bill.

The Schedule

Mr Abdullah Tarmugi: Sir, I beg to move,

In page 20, line 39 and line 42, after "proceedings", to insert "and the certificates of attendance of the parties issued under section 35A(7) of the Administration of Muslim Law Act have been filed in accordance with the Rules of Court".

The amendment to THE SCHEDULE is a technical one to make it consistent with clause 8 which requires couples, who opt to go to the Civil Courts by mutual consent, to attend counselling.

Amendment agreed to.

The Schedule, as amended, agreed to stand part of the Bill.

New Clause (A) -

"New sections 34A and 34B

(A). The principal Act is amended by inserting, immediately after section 34, the following sections:

"Appointment of presidents and ad-hoc presidents

34A.-(1) The President of Singapore may appoint one or more presidents of the Court and may designate one of the presidents to be the senior president of the Court.

(2) Every proceeding in the Syariah Court and all business arising thereout shall, except as otherwise provided by any written law, be heard and disposed of before a president of the Court.

(3) The distribution of business among the presidents of the Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the senior president of the Court.

(4) In order to facilitate the disposal of business in the Syariah Court, the President of Singapore may appoint one or more ad-hoc presidents of the Court for such period or periods as the President thinks fit.

(5) An ad-hoc president may, in such case as the senior president of the Court may specify, exercise all the powers and perform the functions of a president of the Court.

(6) Anything done by an ad-hoc president acting in accordance with the terms of his appointment shall have the same validity and effect as if done by a president of the Court.

(7) The senior president of the Court may from time to time issue such directions relating to the practice of the Court as he thinks fit.

Appointment of registrar

34B.-(1) The President of Singapore may appoint a registrar of the Court.

(2) The registrar of the Court shall have such powers and duties as may be prescribed under this Act." - *[Mr Abdullah Tarmugi.]*

Brought up and read the First time.

Mr Abdullah Tarmugi: Sir, I beg to move, "That the clause be read a Second time."

Clause (A) seeks to further strengthen the Syariah Court by allowing for the appointment of a Senior President amongst the Presidents of the Court, ad-hoc Presidents and a Registrar.

The Senior President will be the head of the Court and will be in charge of such functions like issuing practice directions, court procedures, review of legislation and be overall responsible for the directions of the court. The panel of ad-hoc Presidents will help cut down the backlog of court hearings. A Registrar will help support the additional workload arising from the Bill by taking on the non-substantive legal work of the Presidents.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (A) will be inserted immediately after clause 6.

New Clause (B) -

"Repeal of section 39

(B) Section 39 of the principal Act is repealed." - *[Mr Abdullah Tarmugi.]*

Brought up and read the First time.

Mr Abdullah Tarmugi: Sir, I beg to move, "That the clause be read a Second time."

New Clause (B) seeks to repeal section 39 of the principal Act which deals with the service of summons so that it can be incorporated into the Rules instead.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (B) will be inserted immediately after clause 8.

New Clause (C) -

Amendment of section 47

(C) Section 47 of the principal Act is amended by inserting, immediately after subsection (4), the following subsection:

"(5) For the purposes of this section and sections 48 and 49, "married woman" includes a woman against whom a talak has been pronounced by her husband." - *[Mr Abdullah Tarmugi.]*

Brought up and read the First time.

Mr Abdullah Tarmugi: Sir, I beg to move, "That the clause be read a Second time."

There is doubt whether a married woman on whom talak has been pronounced, can apply to the Court for a divorce. The Syariah Court is of the view that a married woman on whom talak is pronounced is still a married woman as the divorce has not been registered. The clause is to make clear that the term "married woman" applies to such a woman. This allows her recourse to apply for a divorce under sections 47 to 49 of the AMLA.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (C) will be inserted immediately after new clause (B).

New Clause (D) -

Amendment of section 49

(D) Section 49 of the principal Act is amended by inserting, immediately after subsection (5), the following subsection:

"(6) Subsections (1)(g) to (5) shall apply, with the necessary modifications, to a married man as they apply to a married woman."." -
[*Mr Abdullah Tarmugi.*]

Brought up and read the First time.

Mr Abdullah Tarmugi: Sir, I beg to move, "That the clause be read a Second time."

Under Muslim law, a married man can apply to nullify his marriage if his spouse renounces the religion or when it is found that the marriage had not been solemnised according to the strict requirements of Syariah law. Clause (D) enables a man in such situations as allowed by Syariah law to apply for a divorce by fasakh.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (D) will be inserted immediately after new clause (C).

New Clause (E) -

"Amendment of section 87

(E) Section 87 of the principal Act is amended by inserting, immediately after subsection (6), the following subsection:

"(7) The Majlis may, with the approval of the Minister, make rules for carrying out the purposes of this section."." - (*Mr Abdullah Tarmugi.*)

Brought up and read the First time.

Mr Abdullah Tarmugi: Sir, I beg to move, "That the clause be read a Second time."

The amendment seeks to allow the Majlis Ugama Islam Singapura to better administer religious schools or madrasahs by making rules.

Question put, and agreed to.

Clause read a Second time and added to the Bill.

The Chairman: The new clause (E) will be inserted immediately after clause 16.

All the consequential amendments related, firstly, to all amended clauses; secondly, to the numbering of clauses consequent on the addition of five new clauses; and, thirdly, amendments to be made to the cross references to "section 8 or 23(2)" and "section 12(a)" in clause 24 will be made.

The citation year "1998" will be changed to "1999" wherever it occurs in the Bill.

Bill to be reported.

REPORT

The Chairman: We shall now consider the report of the Committee to Parliament. Copies of the Chairman's draft report have been circulated to Members.

Is it agreed that the Chairman's draft report be accepted as a basis of discussion?

Hon. Members *indicated assent.*

Draft Report, proposed by the Chairman, brought up, and read the First time.

Question put, and resolved,

That the draft Report, proposed by the Chairman, be read a Second time, paragraph by paragraph.

Paragraphs 1 to 9 inclusive read and agreed to stand part of the Report.

Paragraph 10 -

Encik Yatiman Yusof: Sir, I beg to move,

"In page iii, paragraph 10; fourth line, the words "is little or no difference" be replaced with the words "are only slight differences".

Mr Abdullah Tarmugi: In other words, there are only slight differences.

Amendment agreed to.

Paragraph 10, as amended, agreed to stand part of the Report.

Paragraphs 11 to 28 inclusive read and agreed to stand part of the Report.

Question put, and resolved,

That this Report be the Report of the Committee to Parliament.

The Chairman: Is it agreed that the Chairman present the Report to Parliament when printed copies are available for distribution to Members?

Hon. Members *indicated assent.*

The Chairman: Thank you, gentlemen. The Committee is now *functus officio*.

Committee adjourned at 2.42 pm.