

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

**INTEGRITY IN MALAYSIAN CONSTRUCTION INDUSTRY: THE
DILEMMA**

Abdul Mu'iz Abdul Razak (a)*

*Corresponding author

(a) Faculty of Law, Universiti Teknologi MARA Shah Alam 40450 Shah Alam Selangor Malaysia,
muizrazakmr@gmail.com, +603 5544 4142

Abstract

This paper aims to delve into the reality of integrity-related issues and challenges among construction industry players from the legal perspective. A doctrinal analysis is employed in order to ascertain what are the integrity-related issues befalling the construction industry players and their legal ramifications. Furthermore, construction law cases will be analyzed to provide examples where integrity issues of the construction industry community are taken before the court to be determined. The purpose of this study is to identify what are the solutions available, either legal or otherwise, to address the dilemma of the lacking of integrity-driven motivation among the construction industry players in performing their duties under the construction contract and that this analysis would assist the players in understanding their situations. This paper concludes with a recommendation to adopt good practices in carrying out their obligations, specifically to abide by ethical principles in order to create a harmonious construction industry with an emphasis on integrity.

© 2018 Published by Future Academy www.FutureAcademy.org.UK

Keywords: Integrity, construction industry, construction industry community, legal, ethical principles, good practices.



1. Introduction

In the context Malaysian construction industry, when the parties to the contract has their own interest to fulfil, either based on the contractual terms or otherwise, there must be exist some sort of an overriding notion, which the parties should abide by to ensure smooth ongoing of the construction project and to guarantee that the parties to the contract hold to their end of the contract by regularly and diligently proceed with the contractual provisions. This overriding notion is important for the end product of the construction contract to be materialised according to the construction programme schedule. The overriding notion that will be emphasised would be notion of integrity.

The Malaysian construction industry atmosphere are tainted with the dogma that there is a dearth of integrity among the construction industry players (Hamzah, Wang, & Yap, 2010), which covers unethical behaviours and lacking of actions based on good faith for the ultimate aim of payment. From the start of tender, during the duration of the contract, during the defect liability period and all the way towards the end of the contract, at every stage of the construction project, there would be matters, which affects the integrity of the players. Even on matters of payment, the lack of integrity among the parties to the construction contract has, evidently, made the process to be unbearably hard.

Lacking of integrity among the industry players would include, among others, dishonesty in contracting in general. However, there is a judicial tide in acknowledging that the party to a contract who were affected by the dishonesty of the other party may be entitled to damages (Carter & Courtney, 2016). Since dishonesty is within the umbrella of unethical behaviours, this would ultimately contribute to the proposition that integrity is actionable per se. Further, some parts of the world has started to acknowledge that there must be an effective mechanism in controlling the extend of which a party to the contract may exercise their discretion unilaterally in the formation and the performance of the contract, and this mechanism boils down to the application of good faith and honest behaviour of the parties through the implication of terms (Hooley, 2013). The notion of good faith should not, however, be construed to also apply to agreements to negotiate in good faith as this kind of agreements, in whatever label is not enforceable in the first place (Trakman & Sharma, 2014). Construction industry players might want to invoke good faith provisions in upholding integrity during the negotiation processes but this should not hinder its application in the performance of the contract once it has fallen through.

Then there is the problem where the lack of integrity evidently through unethical conduct of the parties to a construction contract leads directly to colossal monetary loss and in some cases, even to loss of lives. The latter is evident in 1998 Highland Tower incident where Tower 1 collapsed and claimed the lives of 48 innocent souls (*Steven Phoa Cheng Loon v Highland Properties Sdn Bhd*, 2000). There are several cases brought before the courts in Malaysia to address the notion of integrity, in various form i.e. ethical principles. The construction industry is considered to be an industry with a tainted image in that there are many negative perceptions attached to it (Wan Ahmad & Abd Ghadas, 2012). Then there are the unethical practices, which is in direct opposite to the notion of integrity, which was contended to have a direct causal link to the poor quality of works for the end-product user (Hamzah, Wang, & Yap, 2010). However, there is a vacuum of literary works with regard to what are the integrity-related issues among the construction industry players and what can be done to address those issues. The objective of this paper

is to address this particular vacuum and to address the issues that plagued the image of Malaysian Construction Industry with regard to the expectation of integrity on the part of the players.

2. Problem Statement

The repulse of the Courts to actions of the construction industry players, which lacked in integrity are abundant, however very little has been done to ensure that the cases are not repeated. The disregard to principles of integrity and ethical conducts in the construction industry is further aggravated when there is a scarcity of sources in Malaysia with regard to ethical principles to be applied to construction industry players. Current legislations in Malaysia do not put much emphasis on the regulations of conducts of the industry players to ensure ethical practices and observance to integrity. While the main reference to what the obligations of the construction parties is the contract itself, attempt has been made to include observance to good faith, which is part of the notion of integrity, in the written instrument. However, this is not always the case since the parties may opt out of the good faith clause and ultimately it will not be binding upon them. Promulgation of code of ethics for contractors by Construction Industry Development Board Malaysia served little to no purpose as there is no enforcement mechanism provided and that the code only applies to contractors.

3. Research Questions

This paper aims to delve into integrity-related issues and challenges that are plaguing the Malaysian construction industry and to provide recommendations for the industry players to practice ethical practices which at par to the notion of integrity. Hence the first research question is what are the integrity-related issues in the construction industry and the subsequent legal ramifications in the event there are infringements of the notions of integrity? The second research question revolves around the proposals and suggestions that can be employed by the construction industry players to ensure more ethically driven professionals, which uphold the principles of integrity in the Malaysian construction industry.

4. Purpose of the Study

The purpose of the study is to provide recommendations as to how to overcome integrity-related issues that are plaguing the Malaysian construction industry and to advance suggestions to industry regulators and players on how to be more ethically-driven in upholding principles of integrity.

5. Research Methods

This paper is characterized as a legal research paper and the approach undertaken to both collect the data and to conduct analysis on the data collected is mainly through library and case law research. Therefore, a doctrinal approach is employed to identify the integrity-related issues in the Malaysian construction industry scene. Since “integrity-related issues” is a wide context, steps will be taken to ensure that the focus of this research paper would be confined to a branch of the principle of integrity, i.e. ethical conducts. The same approach will be undertaken to analyse what conducts are considered as being unethical from the perspective of the construction industry.

Data will be collected from legislations, court decisions as well as government regulations and policies with regard to what amounts as unethical conduct in Malaysian construction industry, which would in turn be considered as lacking in integrity. While this is being done, analysis will also be made as to the legal ramifications of acting unethically in the course of the construction contract.

This paper will also analyse data collected from different jurisdictions on a comparative basis to discuss the application of principles of integrity, specifically ethical practices, in construction contracting. Reference will be made to the each jurisdictions available court cases, legislations and a variety of standard form contracts.

6. Findings

It is to be noted on the outset that integrity-related issues among construction industry players are to be understood as conducts, which are considered as being unethical and this may come in many forms as will be discussed throughout this chapter. Focus of the analysis shall also be based on the how ethical conducts among the construction professionals are considered as part of the notion of integrity.

The Malaysian construction industry is marred with the perception of unethical conducts among the professionals of the industry (Hamzah et al., 2010). Hamzah, et al. (2010) further concluded that there is a direct causal link between the unethical conducts and the poor quality of the end product, which will lead to monetary losses. Hamzah et al. (2010) conducted surveys in the construction industry and from the results of the survey, they finalised five key conducts, which were mentioned most as being unethical:

1. Under bidding, bid shopping and bid cutting;
2. Bribery and corruption;
3. Negligence;
4. Front loading and claims game; and
5. Payment game.

At this juncture, it is noted by Hamzah et al. (2010) regarding how under bidding is the main cause of poor quality of work. It is explained by using an example in public projects where the lowest bidder is often awarded with the project. Nevertheless, it is generally understood that the lowest bidder is not necessarily being the best contractor to conduct the project. With regard to corruption and bribery among the professionals, either being in the government or the private sector, it is noted that these practices are considered as common. This is highly ineffective as the bribed professionals or personnel would be able to surpass rules and regulations in place to acquire anything, which is in line with their interests and benefits. Example can be made when there should be complains about the type of bricks used, when lower grade bricks, which is often cheaper, are used despite what is provided in the construction contract is a higher grade of bricks to be used. This will lead to the poor quality of work for the end product and not to mention a possible breach of contract! However, since the personnel in charged have been bribed, the matter is swept under the carpet and forgotten. With all these present in the construction project, it will lead directly to the poor quality of work and this will subsequently lead to the decline in the end user's confidence in the product (Hamzah et al., 2010), which will often lead to years of claims and litigation process. Bribery and corruption among the contracting parties are rampant which prompted

Leggat J. in *Yam Seng Pte Ltd v International Trade Corp Ltd* (2013) to further affirm that dishonesty in contracting is actionable as well as ruled that the party in a contract who were affected by the dishonest conduct of the other party may claim for damages determined along the lines of the contractual rules (Carter & Courtney, 2016).

In the case of *Bumimetro Construction Sdn Bhd v Lee Kok Hwa & Anor and another suit* (2015), the court had the opportunity to address one of the conducts that were highlighted by Hamzah, et al. (2010), which is bribery and corruption. The defendants alleged that the contract between them and Bumimetro is tainted with illegality and seek to strike it down. Bumimetro, on the other hand maintained that the contract was a genuine brokerage contract in which it was agreed that it will pay the defendants a sum of RM3million on the basis of commission if the latter is able to secure the former a RM193million subcontract with a third party. The payments are agreed to be disbursed to the defendants in 3 stages. The first stage, a sum of RM250 000 to be paid when the defendants set up meeting with the third party; the second stage of the payment of RM1.5million when the defendants issue a personal cheque of RM1.5million as a guarantee; and the balance of RM1.25million when Bumimetro received a letter of award for the subcontract as the third stage. Bumimetro made the first two payments however it was later discovered that the third party had no intention to directly award the subcontract to Bumimetro and that the defendant's RM1.5million guarantee cheque is bad for payment as it is a post-dated guarantee cheque. The main issue in this case is whether the badly drawn contract by the parties, which was drafted by lay persons without any legal input, was a genuine brokerage contract or it is a sham dealing to enable payment to be made by Bumimetro to the defendants to secure a construction contract with a third party.

The court found several questionable features of the "brokerage contract" in that apart from it not being legally drafted, the payment that was made is considered to be front-loaded in the sense that the bulk of the payment is to be made even before the securing of the subcontract and that the amount received and ought to be received is notably high compared to the risks assumed by the parties. The court also found that the defendants are in no way in position to give undertaking or guarantee in securing the subcontract, which made the court to conclude that there is a likelihood that the defendants were arrangers and to arrange for the payment of bribe and that the payments under the final agreement is considered to be wholly or at least partly an inducement in ensuring the subcontract by the third party is awarded to Bumimetro. The court is, however, careful in construing the "brokerage contract" as a sham tainted with illegality as the degree of probability that must be achieved is significantly higher than the regular civil standard of proof of on the balance of probabilities.

Brokerage contract is not uncommon in the construction industry whereby contractors would seek assistance of brokers and agents in facilitating negotiations of construction contract involving substantial amounts. At this early stage of construction project, construction industry players must caution itself against arrangement where fees are usually paid for services rendered, but the fees are sometimes used to disguise bribes whereby the court may find that the agreement to be a sham tainted with illegality. There are yet proper regulations and procedures available in Malaysian jurisdiction to oversee the mechanism of "facilitation" or "brokerage" fees despite attempts have been made in other construction industry jurisdiction to legalise this arrangement. While there are no precise regulations, there must be emphasis of

honesty in carrying out responsibilities, which includes rejection of any form of payment, or unethical practice in the procurement process of a construction contract.

Honesty being part of the notion good faith in contracting is in accordance with the notion of integrity. Understandably, there is a general organizing principle in performing contractual obligation (Hunt, 2015), despite this proposition might come under fire by contractual parties accused of being unethical and lacking of integrity. The move to the imply such term of integrity in whatever form, the most notable being the terms of good faith, is often under attack with the rationale that the parties to a contract *already agreed* with the rights and obligation that should be flowing out of the written instrument finalized and signed between the parties. There is a strong proposition in Australia that in implication of a good faith term, there must be a clear expression of the content of such term at the time of the creation of the contract, and this must be made known to the parties of the contract (Carter & Courtney, 2016).

From the legal perspective, it is appreciated that there is a growing acceptance of integrity in the form of ethical norms to be practiced in the construction industry. There is an incline in court cases where unethical conducts of the players in the industry are the direct cause of monetary losses and tragedy that claimed innocent lives. In *Steven Phoa Cheng Loon v Highland Properties* (2000) or otherwise known as the “Highland Tower” case, the court had the opportunity to denounce the deplorable lack of ethical conducts of the professionals involved. In Highland Tower case, it involved a development of tower projects consisting of three blocks of apartments with a steep hill adjacent to the towers and a stream flowing around the vicinity. On one tragic day of 11 December 1993, Tower 1 collapsed and claimed the lives of 48 occupants. Tower 2 and 3 were then immediately vacated, which caused major monetary losses to the occupants. Several serious legal issues were raised before the court, among others is with regard to the negligence of the first defendant to completely implement the approved drainage plan that should have been the solution to the flow of stream. This is because the court found that the root cause of the collapse was the presence of water in the foundational structure, which failed to accommodate the lateral load and leads directly to the destabilization of the slope. Should the first defendant acted and conducted the project as accordance to the approved drainage plan, the disaster would be able to be avoided. The approved drainage plan was found to be implemented up to only 10% out of the whole plan, despite the defendants reported to the authorities that the approved drainage plan was complied with and implemented *entirely*. This is a wanton act of blatant disregard to the approved plan on top of the fact that the defendants made fraudulent misrepresentation as to the status of compliance of the approved plan. The accomplices to this unethical conduct consisted of the developer, the engineer and the architect, who also claimed to have a licence to practice as an architect when in fact it remained to be bogus. Evidently, this is in direct opposite of what ethical norms would require and hence to be concluded to be lacking of integrity on behalf of the professionals in the construction project.

Further, it is obvious from the facts of the case that the sole motivation for the defendant to disregard the approved plan and the subsequent false notice of compliance was for prospective financial gains. This has prompted James Foong to hold as follows:

I have reiterated my strong sentiments against this type of attitude of professionals whose only considerations is to guard and secure their own interest rather than their duties and obligations to those closely affected and the public on which much faith and reliance are

placed on them to carry out their professional duties. I need not elaborate further except to remind this defendant that he has to live out the rest of his life knowing truly well that he had contributed to the tragedy of Highland Towers (*Steven Phoa Cheng Loon v Highland Properties*, 2000).

It can be deduced from the words of the then James Foong about the repulse and the overall inclination of the courts in addressing the unethical conduct of construction professionals of this degree, which directly lead to the death of the occupants and in most cases, caused the end-product user some serious safety issues.

It is pertinent to emphasize the following unethical conducts of the defendants; firstly, with regard to the third defendant, as the engineer, His Honour is of the opinion that the third defendant should have exercised care in relation to the design and construct of the foundational structure as to accommodate lateral load while taking steps to guarantee the stability of the slope adjacent to the towers. Failure of the third defendant to do as required as the engineer and to exercise care is an obvious breach of his duty to the plaintiffs. Secondly, there is a clear breach of duty of care towards the plaintiffs when the second defendant, the architect, deliberately disregards the approved drainage plan. Furthermore, there is evidence in the case that he had conspired with the first and the second defendant to obtain certifications pertaining to the implementation of the approved drainage plan, to certify compliance to the plan. The architect stated “how can I stop my boss from doing anything” and “though I know I put great danger on everyone but (I) have no choice (for I have) to earn a living” are clear evidences of wanton disregard to ethical norms and ultimately to what conducts against integrity are (*Steven Phoa Cheng Loon v Highland Properties*, 2000). These instances are clear violations of the defendants’ duty of care as construction professionals, which they owe to the plaintiffs as they purchased the apartment units on the goodwill of the defendants that the apartment building is safe to be occupied and particularly so when the approved drainage plan was so fundamental to the safety of the occupants of the building.

James Foong J had another occasion to address the appalling attitude of construction industry players in *Perunding Alam Bina Sdn Bhd v Errol Oh* (1998) where His Honour opined that while it is understandable that the developer has the ultimate say as to whether to proceed with the approved amended plan or otherwise, however, if there is evidence of illegitimate disregard of the law, the architect has a duty to report it to the authorities, failure of doing so would be considered to be unprofessional and thus, lacking of integrity. The law is to be followed, although at the risk of being discharged by the client because the “architectural profession will suffer irreparable damage if allowed to continue with such mentality.” The consideration of the construction industry players to deepen their pockets without regard to the law in order to secure clients are taken to be unethical and lacking of integrity when in fact regard must be held to act in accordance to the law and the regulations while ensuring the prospective construction project comply with the approved plans.

Reference is further made to practices within the construction industry, which is in direct opposite to the tenets of ethics and that of integrity. In *Bina Jaya Mantap Sdn Bhd v Institute of Technology Petronas Sdn Bhd* (2014) where the applicant applied to the court for an injunction to restrain the defendant principal from cashing out the bank guarantee. Mary Lim J acknowledged the position of unconscionability as being a distinct ground to restrain a call for payment under performance bond (bank

guarantee). There were allegations of unethical conducts, which the plaintiff forwarded before the court to be considered as being unconscionable to restrain the call of the bank guarantee. When the plaintiff in this case terminated the contract, the defendant had taken several steps, which are considered to be unethical, to afford the defendant with the opportunity to make the call on the bank guarantee. Mary Lim J held that the series of conduct by the defendant supported the contention that the defendant had been unconscionable in calling the bank guarantee. The lack of integrity and the unethical conduct of the defendant in the present case served as the basis for the court to conclude that injunction to restrain the call of the bank guarantee should be granted. This ultimately supports the proposition that considerations of ethical standards are embedded and expected from the players of the construction industry and the courts are inclined to make judgments based on those ethical standards.

Unconscionability on behalf of the principal to call on the bank guarantee can evidently be considered to be something that lacks in integrity. In *Sumatec Engineering and Construction Sdn Bhd v Malaysian Refining Company Sdn Bhd* (2012), the Federal Court endorsed the approach taken by the Court of Appeal where, among others, it is acknowledged that “the concept of unconscionability involves unfairness, as distinct from dishonesty and fraud, or conduct so reprehensible or lacking in good faith that a court of conscience would either restrain the party or refuse to assist the party.” From here, it can be deduced that when the principal acted unfairly against the contractor in calling the bank guarantee, he is said to be lacking in integrity as moral fairness are also part of principles which make up what integrity is. Not to mention with regard to the notion of good faith, which if found to be lacking, it would ultimately be considered as lacking in integrity. This particular instance of practice in the construction industry clearly signifies an example of integrity-related issue among the players of the industry.

6.1. Dealing with integrity-related issues in Malaysian construction industry: Recommendations

In 1994, the Malaysian Parliament enacted the Construction Industry Development Board Act (the Act) with a view of setting up a statutory body that is the Construction Industry Development Board (CIDB) to oversee and manage the local construction industry. The Act establishes the Board to promote and stimulate development, improvement and expansion of the construction industry, which is provided for in the Malaysian Construction Industry Master Plan (CIMP) 2006-2015. Among the many visions of CIMP is to address the issue of the construction industry being tainted with negative perceptions (Wan Ahmad & Abd Ghadas, 2012). CIMP's second strategic thrust is with regards to the strengthening the image of the construction industry and thus, there is an understanding that code of ethics should be made, which the Board is given the responsibilities to develop.

CIDB Code of Ethics provided that the contractor's code of ethics is a set of ethical and moral behavior's that is accepted as standard practice among contractors to encourage and enhance professionalism, integrity and accountability and it comes into force on the 1st of August 2008. It is provided that the contractor's ethical standards should be based on six principles, which are:

1. Honesty in carrying out responsibility;
2. Compliance with the laws and regulations;
3. Respect for individual and society;

4. Importance of quality, skills and standards;
5. Importance of safety and health; and
6. Importance of environmental preservation.

It should be noted at this juncture that, these general principles are easier outlined than done because in theory, these principles may contribute to the growth of practices of integrity in the construction industry, however, in practice, these are hard to come by. The code of ethics did not provide with any method of compliance or enforcement, which further contributed to the dilemma. What is provided is only that the “construction contractors ... is required to *appreciate* and *adapt* the code...” This guideline served little to no purpose to regulate the conducts of construction industry players as not only it provided no enforcement mechanisms, it is also in the form of general principles which *appreciation* and *adaptation* would very much depending on the willingness of the parties to the construction contract to give emphasis to them or otherwise. This is because the instrument that would prescribe the duties and obligations of the industry players in a construction project would be the contract itself. Hence, unless the parties to the construction contract *appreciate* and *adapt* the Code of Ethics by incorporating such duties and obligations to act ethically in the written instrument, then the formulating of the Code of Ethics would be futile.

It is recommended that there must be an amendment to be made to CIDB's code of ethics, and ensuring that is binding upon the construction industry players. This is possible because CIDB, as a statutory body, may promulgate their own rules and regulations, which are applicable on the construction industry players and the rules and regulations will have the force of a subsidiary legislation. This authority for CIDB to make subsidiary legislation targeting the industry players is provided in Section 33F of the Construction Industry Development Board Act 1994. Evidently, the legal provision authorizing CIDB is already in place, it is now up to the Board to consider promulgating such provisions as subsidiary legislation.

Another issue with CIDB code of ethics is the fact that it only concerns contractors, hence what about other professionals and also the principal in the construction industry? Should they then act wantonly without regard to what is considered as ethical? The code of ethics should thus be extended to other professionals in the construction industry atmosphere as well as the principal on the basis that the principal are also part of the construction contract. The code of ethics should thus, be reviewed to encompass a more detailed duty as well as method of enforcement.

Another recommendation that can be forwarded is actually embedded in the case laws. Example can be made to *Sumatec Engineering and Construction v Malaysian Refining Company Sdn Bhd* (2012) where the Federal Court endorsed that unconscionability is a distinct ground to restrain the beneficiary in calling a bank guarantee. This is because unconscionability involved the notion of unfairness and conducts so reprehensible that it lacked good faith. Hence, it can be deduced from this case that to call on the bank guarantee, the defendant or the principal must act in good faith and through conduct which is conscionable, even though no such duty to act conscionably or in good faith is prescribed for in PAM Contract 2006. Despite that there is no enforcement mechanism provided in CIDB Code of Ethics,

reliance can be made to the case laws where the courts upheld the notions of integrity in the form of ethical conduct. The duty is thus *already* provided in the judicial decisions.

Comparatively, in Australia, the Federal Parliament enacted the Building Code, which encompasses the ethical standards that would help in enhancing the integrity of Australian construction industry. This is manifestly required because our local construction industry is still in dire need of a streamlined standard, which has the force of law. If the code of ethics were only to be *appreciated* and *adapted* without any method of enforcement, then the promulgation of the code would eventually be counter-productive.

Reference can also be made to the newly enforced Standard Form Contract AS11000 in Australia, which provided for the obligation to act in good faith in plain wording. This is in accordance with *Coal Cliff Collieries Pty Ltd and Anor v Sijehama Pty Ltd and Anor* (1991) where the court requires that for an obligation to materialise, there must be an express provision in the contract pertaining to that obligation.

This approach may be taken into consideration in the Malaysian construction industry scene whereby the negotiating parties would provide for the obligation to be ethical and to act in good faith in the written instrument, this practice would ultimately contribute to the enhancement of integrity of the construction industry players. This particular provision will contractually bind the parties and will have the force of law. Such clauses should be provided in standard form contracts available in the local construction industry and must be proscribed from being opted-out. Such proscription would ensure that the parties who employed any available standard form contract would not be able to opt-out of the ethical clauses, therefore, failure to uphold the principles of integrity would mean breach of contract.

7. Conclusion

The judicial tide after the tragedy of the Highland Towers is that there is a general incline towards advocating the standards of ethical conduct, which would encompass none other than, the tenets of integrity. Integrity among the players in Malaysian construction industry plays a significant role to ensure that the industry is not marred with negative perception. The cases that have been discussed are all in agreement with one common theme, in that, integrity, in whatever form, is expected from the construction industry players. This is emphasised in the promulgation of CIDB's code of ethics. It is unfortunate, however, that the generality of the code are non-descriptive of the exact obligations of the construction industry players as well as there is a lack of enforcement mechanisms. Up to date, there have yet been any cases in court to show the effect of non-compliance with the code of ethics, despite the proposed applicability to all contractors.

The purpose of this study is aimed to provide recommendations to overcome integrity-related issues in the construction industry. This is achieved by firstly identifying what are the integrity-related issues in the construction industry and their legal ramifications. By looking at the existing positions in addressing the issues and taking an example from a standard form contract in Australia, the recommendations provided includes: firstly, making necessary amendments in the promulgation of the CIDB's Code of Ethics; secondly, provide for legislation of statutory provisions with emphasis on the principles of integrity; and thirdly provide for standard form contract to prescribe duty of integrity and proscribe such clauses to be opted out.

This study, however, do not touch on the perception of industry players for the proposal of the inclusion of duty of integrity, the overall application of the Code of Ethics and the general etiquette of the players in the industry. Thus, it is proposed that a further study to be conducted in the future to address this particular gap in this area.

Admittedly, the discussions with regard to the integrity in the Malaysian construction industry scene, albeit has been going for a very long time, are still in the first few steps to be addressed legally. The construction industry is no exception to the attachment of the notion of integrity in the relationship of the parties to the contract. This is to remedy the tainted image of the industry before it become irremediable. Conclusively, the notion of integrity has the characteristics to serve as a valid and productive mechanism to address several issues in the construction industry, not only their image.

Acknowledgments

The writer would like to express his gratitude to UUM ILC 2017 for organising this conference. The writer would like to express his deepest appreciation to Faculty of Law, UiTM Shah Alam for the assistance in preparing this paper. The writer would like to thank his family and close friends, colleagues at the Faculty of Law, librarians at Perpustakaan Undang Undang, Perpustakaan Tun Abdul Razak, UiTM and all who directly or indirectly assisted in preparing this paper.

References

- Bina Jaya Mantap Sdn Bhd v Institute of Technology Petronas Sdn Bhd*, 11 Malayan Law Journal 352 (High Court Kuala Lumpur February 4, 2014).
- Bumimetro Construction Sdn Bhd v Lee Kok Hwa & Anor and another suit*, 7 Malayan Law Journal 36 (High Court Shah Alam June 11, 2014).
- Cliff Collieries Pty Ltd and Anor v Sijehama Pty Ltd and Anor*, 24 New South Wales Law Report 1 (New South Wales Court of Appeal July 5, 1991).
- Carter, J. W., & Courtney, W. (2016). Good faith in contracts: is there an implied promise to act honestly? *Cambridge Law Journal*, 75(3), 608. doi.org/10.1017/S0008197316000507
- Construction Industry Development Board Act* (1994) (Malaysia).
- Construction Industry Development Board, *Kod Etika Kontraktor (Contractor Code of Ethics)* (1 August 2008) Construction Industry Development Board, Circular No.3/2008, 2.1. Retrieved from www.cidb.gov.my
- Hamzah, A., Wang, C., & Yap, X. W. (2010). How professional ethics impact construction quality: Perception and evidence in a fast developing economy. *Scientific Research and Essays*, 5(23), 3742–3749.
- Hooley, R. (2013). Controlling contractual discretion. *The Cambridge Law Journal*, 72(1), 65. doi.org/10.1017/S0008197313000019
- Hunt, C. D. L. (2015). Good faith performance in Canadian contract law. *Cambridge Law Journal*, 74(1), 4. doi.org/10.1017/S0008197315000112
- Perunding Alam Bina Sdn Bhd v Errol Oh & Ors*, 6 Malayan Law Journal 101 (High Court Kuala Lumpur August 15, 1998).
- Steven Phoa Cheng Loon & Ors v Highland Properties Sdn Bhd & Ors*, 4 Malayan Law Journal 200 (High Court Kuala Lumpur August 11, 2000).
- Sumatec Engineering and Construction Sdn Bhd v Malaysian Refining Company Sdn Bhd*, 4 Malayan Law Journal 1 (Federal Court Putrajaya February 29, 2012).
- Trakman, L. E., & Sharma, K. (2014). The binding force of agreements to negotiate in good faith. *Cambridge Law Journal*, 73(3), 598–628. doi.org/10.1017/S000819731400083X
- Wan Ahmad, W. I., & Abd Ghadas, Z. A. (2012). Self-regulation in Malaysia: An appraisal. *Malayan Law Journal Articles*, 3, 1–12.