

**CEREMONIAL SITTING TO CELEBRATE THE APPOINTMENT OF
THE CHIEF JUSTICE, DATO' TENGKU MAIMUN BINTI TUAN MAT**

17TH MAY 2019

PALACE OF JUSTICE

ADDRESS BY THE ATTORNEY GENERAL

I am delighted to represent the Government of Malaysia and our people at this event of unparalleled significance in our nation's history – the celebration of the elevation of the first Lady Chief Justice.

I acknowledge the bold and imaginative choice of the Prime Minister, whose advice was accepted by the Yang di-Pertuan Agong, after consulting the Conference of Rulers. The universal acclaim of, not only the Bench and the Bar, but our larger society, is the best testament of widespread acceptance of Your Ladyship's appointment.

In one sense, Your Ladyship's elevation has nothing to do with gender, and everything to do with your integrity, independence, intelligence, diligence and temperament.

In another sense, it is recognition, however late, of the critical role played by women in the administration of justice. Women dominate law faculties and form a majority of the practising Bar. In my Chambers, three-

quarters of our lawyers are women. Thus, Chief Justice, your appointment must be celebrated as the ultimate triumph for the better half of our society with regard to all matters pertaining to the law.

Your Ladyship joins a glittering array of women who occupy or have occupied the highest judicial office in their country, including Baroness Brenda Hale, President of the Supreme Court of the United Kingdom, Beverley McLachlin, Chief Justice of the Supreme Court of Canada, Susan Kiefel, Chief Justice of the High Court of Australia and Sian Elias and Helen Winkelmann, Chief Justices of New Zealand. Just as each of them have adorned the legal constellation in their county, and indeed the common law world, Your Ladyship will earn a similar accolade in years to come.

Judges sit daily in judgement, resolving disputes between citizen and corporation or between citizen and state agency: by no means an easy task. At the conclusion of a hearing, which is expected to be conducted fairly, a judge has to do what the rest of mankind seeks to avoid: make decisions. Sitting in public and having to give reasons for their decisions adds further pressure. Finally, courts have no influence or say in the disputes that come before them; neither can they refuse to hear

them. And as Chief Justice, Your Ladyship will offer leadership in all these matters of the judicial process that one takes for granted.

If this is not difficult enough, high standards of behaviour are expected of them at all times. Sir Winston Churchill commented in 1954 on their standards of conduct:

“A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted. They have to present a continuous aspect of dignity and conduct... The judges have to maintain... a far more rigorous standard than is required from any other class that I know of in this Realm.”¹

The traditional demands on the judiciary, the increasing expectations of members of the public and lawyers of judges and the 21st century challenges of the online world have resulted in sustained pressure coming to bear upon the judicial office.

¹ 525 H.C. Deb. 1062-1063 (23rd March 1954). Cited in *Judges on Trial* by Shimon Shetreet (1976), page 323.

In this contemporary world, Your Ladyship's unmatched abilities would steer the judicial ship in safe and calm waters. Let me briefly comment on these qualities.

First, unimpeachable integrity. Your Ladyship's honesty, including intellectual honesty, has never been questioned. This virtue should not be compromised because it goes to the root of your character. Better not to be a judge, than to be one without integrity.

Secondly, that Your Ladyship is independent. Independence is not limited to conduct; it includes an independent attitude of mind.

Thirdly, the excellent judicial temperament that Your Ladyship has shown on the Bench. Newly appointed judicial commissioners should observe how Your Ladyship dispenses justice in a patient, sober and not garrulous manner.

Because the *raison d'etre* of the office is decision making, fourthly, judges must be decisive. A judge must be able to reach a reasoned conclusion on the matter in dispute before him or her quickly, which in the days of full written submissions is rightly expected. Reserving judgment is inevitable; he or she must, however, endeavour to give reasons for the decision as quickly as possible, and generally within 4 to 6 weeks after

the conclusion of the hearing. A judge must always remember that the most important person in the litigation process is the losing party, who must be given cogent and sufficient reasons why he was unsuccessful. In these aspects of the judicial process, Your Ladyship has been exemplary, and hopefully other judges will endeavour to match the speed of decision-making that Your Ladyship is noted for.

Finally, courage. A judge must act without fear or favour. The law must be applied even if the heavens fall. A historical illustration comes to mind. Lord Atkin had to face tremendous resentment at a personal level from his peers when it became known in 1941 that he was going to dissent in *Liversidge v. Anderson*. What is often forgotten is the courage displayed by Lord Atkin in matters pertaining to the liberty of the individual during the dim and early days of the Second World War when victory over Hitler was not a definite possibility. Atkin's resolute boldness in dark times (even at the risk of being shunned by friends and colleagues) should offer encouragement to all judges who are faced with the prospect of taking unpopular decisions.

Ultimately, whether our judiciary is regarded as independent will not only depend on its constitution and its legal system, but to a larger measure on the personality and character of our judges. Judicial decision

making is influenced, consciously and subconsciously, by the human qualities and idiosyncrasies of those who sit in judgment. Thus, the identity of the judge, character, moral fiber, integrity, courage, thinking process and the values he or she brings to the Bench are of crucial importance in determining the decision he or she makes, and the content and quality of the judgment delivered. As Harold Laski remarked a century ago: *'I wish that people could be persuaded to realize that judges are human beings; it would be a great help to jurisprudence'*.²

For the first 30 years after Merdeka, the Malaysian judiciary enjoyed a high reputation. Judges like Lord Presidents Tun Suffian, Raja Azlan Shah (as His Majesty was then known) and Justice Eusoffe Abdoolcader were rated as luminaries, not only by lawyers and academics in Malaysia, but by their counterparts outside our shores. Theirs was a well-earned international reputation. I suggest that the principal reason why Malaysian judges were held in high esteem during this period was because they were invariably making right, correct or proper decisions, according to the evidence and the law.

² In a letter dated 30th May 1926 to Justice O.W. Holmes of the US Supreme Court. Cited in the *Holmes Laski Letters* edited by Mark deWolfe Howe (1963).

If the Malaysian judiciary intends to recover its glory and regain judicial credibility, there is only one way of doing so. Judges must always endeavor to make the right decisions, without fear or favour, and regardless of the personality of the party or the accused before them. If Malaysian judges can reach the correct decisions regularly and consistently over a substantial period of time, one can state with certainty that the confidence, initially of informed legal opinion and, subsequently, that of the public in general, will return. Under Your Ladyship's leadership, this journey will begin, and will be strongly influenced by your personal example. Thus, the glory days of the 1970's and 1980's will return.

I am confident of the positive contributions Your Ladyship will make to the apex Court, the development of our jurisprudence and our public life. I wish you well in your service as our new Chief Justice.

Much obliged.

Tommy Thomas