

OPENING OF THE LEGAL YEAR

Speech by the Attorney General

Friday, 11th January 2019

When the history of Malaysia is written, scholars will regard the outcome of the 14th General Elections on 9th May 2018 as a landmark event, a turning point in the nation's evolution into a truly functioning democracy.

Our voters defied the expectations of the world and Malaysia itself to peacefully propel Pakatan Harapan to power, thereby ending 61 years of uninterrupted one-party rule. When 2018 began, it seemed much more likely that Malaysia would continue to be dragged downwards by the weight of corruption and kleptocracy, squandering its potential and becoming the "Zimbabwe" of South East Asia. Democracy saved us. The voters were our great heroes. A new Malaysia was declared.

The scale and magnitude of the change, which occurred at the ballot box, has the potential to be revolutionary, albeit peaceful. The desire and demand for change was so widespread and deeply felt by millions of Malaysians that if the expectations of our citizens are to be satisfied, reform in many areas of public life have to be radically and speedily

implemented. The phenomenon “New Malaysia” is already the subject of conferences and seminars, and the publication of contemporaneous journalistic essays, which represent the first draft of history.

The Malaysian accomplishment has been lauded regionally and globally. Across continents, populism has in recent years seen the rise of right wing authoritarian leaders catering to the whims of the majorities in their societies. Bucking that trend, Malaysians voted rationally and with common sense. Our efforts have been recognised globally: thus, the respectable publication “The Economist” in its annual survey rated Malaysia as one of the three countries that improved the most in 2018.

THE ADMINISTRATION OF JUSTICE

The opening of the New Legal Year provides a fitting opportunity for all of us who are at the forefront of the administration of justice to ask ourselves how we can contribute to the cause of justice in 2019 and beyond, having regard to the expectations of Malaysians as expressed by their ballot last May. There is absolutely no doubt that one of the key factors leading to the defeat of the Najib Razak administration was the perception of the ordinary man in the street that the then Prime Minister and his close associates were above the law, notwithstanding the glaring

injustices “inter alia” occasioned by the 1MDB scandal. The double standards applied by law enforcers undermined public confidence in our legal institutions.

The administration of justice has not been immune from the cancer of corruption which spread in the conditions created by the former government. The scandals that involved judges, lawyers, prosecutors and litigants for at least 3 decades since the Judicial Crisis of 1988 are too well known, and no reminders are required for this morning’s audience. What must be clear is that from henceforth the new government will not tolerate any interference or obstruction of the administration of justice. The full force of the law will be applied against wrongdoers. If the Malaysian legal system is to regain the lustre that it enjoyed during the halcyon days of Lord President Suffian, Lord President Raja Azlan Shah (as His Majesty was then known as) and Justice Eusoffe Abdoolcader, the stream of justice must not be polluted.

Hence, the paramount duty on all of us gathered here this morning, whether as representatives of the judicial branch, or the public sector lawyers acting for the executive branch of government or members of the private Bar, is to publicly undertake and pledge to each other, and to the nation, our intention, dedication and commitment to disassociate

ourselves with the acts and omissions of the past decades which have brought disgrace to our legal system, and to begin a new journey to promote justice and reject injustice. In other words, the law must be liberated from the shackles of injustice and allowed to flower, as was the intention when our Merdeka voyage began in 1957 and 1963.

JUDICIARY

Judges of the superior courts are constitutionally required to “take and subscribe” the oath of office. Two aspects of that oath of office should be their focus in the coming years. First, that they “preserve, protect and defend” the Constitution. Judges must take seriously their constitutional duty as the neutral, impartial and independent arbiter in disputes between the state and the individual. Any self-imposed reluctance, whether conscious or otherwise, to rule against the state when the law so requires or to hold laws passed by the legislature to be unconstitutional must be disregarded by judges.

Secondly, that they will faithfully discharge their judicial duties to the best of their ability. To honour that responsibility, which will affect their entire office and all their cases (and not just those limited to constitutional matters), judges must be proficient and knowledgeable of the law.

Proficiency and competency are demonstrated daily by the efficiency of decision-making, the quality of written grounds and the correctness of decisions. Temperament and integrity are fundamental to judging. The consumers of the courts, that is, the litigants, whether individuals, trade unions, multinational companies or bankrupts, desire justice, not speed or statistics. If their case takes time, the courts must respond reasonably and fairly. Counsel should not be rushed nor bullied. Lay litigants must be treated with respect and patience.

Judicial independence must not be at the expense of judicial accountability. Public scrutiny of the behaviour of judges and the correctness of their decisions will be sustained in the on-line world that we find ourselves in.

THE ATTORNEY GENERAL'S CHAMBERS

I must frankly acknowledge that many of the ills that mar our legal landscape were caused by the actions and omissions of the professional class of lawyers who are employed on a full-time basis at taxpayers' cost by the executive branch to serve the interests of their one client, the government. Whether one refers to the drafting of bad or oppressive laws, the instituting of politically motivated prosecutions against persons who

are not popular with the executive, the putting forward of specious or untenable arguments in order to succeed in litigation or the giving of poor advice to politicians and civil servants, the Chambers that I now represent must take its fair share of responsibility.

The corporate profile of AGC on its website describes us as “A Word Class Public Legal Organisation”. Our mission is “to uphold the law and safeguard the interest of the nation by providing legal advice and service of the highest quality, efficiently, fairly and equitably in accordance with the Constitution and the Laws.”

The task of the AGC from henceforth is to act on the lofty ideals of our mission. Our actions must match our online promises. Professionalism of the highest standard must be combined with honesty, industry and a true commitment to the rule of law.

THE BAR

Section 42 of the Legal Profession Act, 1976 sets out the objects and purposes of the Malaysian Bar. Foremost among its statutory purposes is the duty conferred expressly on the Malaysian Bar, as a collective body, “to uphold the cause of justice without regard to its own

interests or that of its members, uninfluenced by fear or favour". An implicit duty falls upon each of the 18,000 members of the Bar to likewise uphold the cause of justice.

Such a statutory duty, without parallel in any of our Acts of Parliament, and indeed without much parallel in the written laws of other jurisdictions, is so noble in its emphasis on justice, without regard to the cost to the legal profession or an individual member, that it can also serve as the lodestar for the judiciary and the AGC. Hence, a magistrate or DPP should uphold the cause of justice without regard to his or her own interest, uninfluenced by fear or favour.

Members of the Bar must raise their standards, whether as counsel or as solicitors performing non-litigation services. Private practitioners must understand that the legal profession is not a business or simply another occupation. You are members of an honourable profession, and must always act honourably. Lawyers must act honestly and ethically. As holders of trust monies belonging to your clients or others, you must always act prudently and with probity. Finally, the Bar must continue to be the public voice in the pursuit of justice in order to comply with the requirements of Section 42, and must always act consistent with that standard.

ACADEMIA

Attention must be turned to the students and teachers of law, even if they are not at the forefront of the administration of justice.

The standard of legal education, and tertiary education in general, has woefully declined in Malaysia. Education has become a business. The number of universities offering law degrees has mushroomed. In the fee driven university race to the bottom, the quality of entrants and educators has been increasingly sacrificed. Quantity at the expense of quality!

The fundamental question for our educators is: what are the essential skills that every law graduate should have? Law students must be able to understand the law, analyse complex scenarios and interpret and apply the law to solve problems. They must be able to communicate their analysis clearly and concisely in writing or orally. These skills must be combined with a strong sense of professional responsibility and a guiding ethical compass.

In addition to the teaching of substantive law, universities should foster the development of professional skills such as drafting and an understanding of ethics and professional responsibility. Students should be exposed to the practice of pro bono.

As to the academic staff, the issue has been an absolute failure to critically analyse judgements of the courts, poor legislation, black sheep in the Bar and so forth which have plagued the administration of justice in the past decades. Your academic voice has been muted, if not silenced, when such blemishes occur. Academics must play their role as public intellectuals if the administration of justice is to improve.

CONCLUSION

In Malaysia, and in particular in 2019, we are blessed that we live in a settled democracy governed by the rule of law. As legal professionals and guardians of the rule of law, it is the responsibility and duty of all of us gathered here today to contribute to the improvement of administration of justice in this nation.

President John F. Kennedy made a most eloquent call to citizens to serve their nation when he declared these memorable words at his inauguration in 1961: -

“Ask not what your country can do for you - ask what you can do for your country”

This too should be the clarion call to all of us as we begin the justice journey in the New Dawn in the Malaysia of 2019.

Thank you.

Tommy Thomas