

OPENING OF THE LEGAL YEAR 2010

By

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May it please your honours, Chief Justice, President of the Court of Appeal, Chief Judge of Malaya and Chief Judge of Sabah and Sarawak, Judges of the superior courts and Judicial Commissioners; distinguished members of the Bar, fellow officers of the judicial and legal service, ladies and gentlemen.

At the outset, I would like to thank the Honourable Chief Justice for giving me this opportunity to speak on this august occasion and to address such a learned audience with the aspiration that the new legal year 2010 will bring us much yield and success.

The year 2009 has indeed been an eventful year for the Attorney General's Chambers (AGC). A number of divisions of the AGC have moved to the new building at Presint 4, Putrajaya which has better facilities and wider space to cater for the increase in the number of legal officers. Now, the AGC has two other new divisions namely the Appellate and Trial Division and the Research Division. The formation of these new divisions will help to handle the increasing work load, to deal with the complex legal issues, and also to meet the higher demands of the public. The AGC is an important arm in the administration of justice. It is imperative that the AGC continues to wage war

against injustice. Hence, we maintain and act in absolute fairness and adhere to law and procedures in bringing a criminal to justice.

It is the government's aspiration to develop its human capital and to create a highly professional and responsive public sector. Human intellectual capital has become one of the defining factors in sustaining AGC's performance and output. Testimony to this is:

- the graduation of more than ten Chambers' officers in the Masters of Laws in Prosecutions Programme 2009, which is a three year *e-learning* training programme conducted by the University of Wollongong, Australia in collaboration with the Judicial and Legal Training Institute (ILKAP) as the facilitator and moderator;
- the graduation of eleven Chambers' officers in the Masters of Law in Administration of Islamic Law from the International Islamic University;
- the successful completion by fourteen legal officers in the International Legal English Certificate (ILEC) awarded by the University of Cambridge; and

- the successful participation of many Chambers' officers in courses covering a wide range of topics including advocacy, constitutional law, outer space law, international maritime law, company law, construction contract and international trade law conducted by highly competent local and foreign experts.

For those officers who were unable to attend the training programmes, AGC has uploaded the course materials of the said training programmes into its intranet system with a view to learning.

AGC also believes in improving its service delivery. Living and working in this age of innovation, technology has created and simplified many work processes thus expediting its delivery service to its clients. A living example of this is the applications for Notary Public which can now be done online.

The AGC is set for the challenges of 2010. AGC supports the moves of the courts to expedite trial processes. However, clearing backlog of cases does not only mean building more courts and employing more judicial officers. It should be the whole legal process of legislation and rules.

In this regard, the Key Performance Indicator (KPI) is surely an important tool to ensure that the objective of the judiciary which includes the clearing of the backlog is achieved. The rigorous implementation of the KPI by the Honourable Chief Justice and his team of Honourable judges have now bore fruits with the successful results of achieving a high disposal rate of cases. Judges, lawyers, deputy public prosecutors and federal counsel are working conscientiously and tirelessly not to postpone cases but to proceed with their hearing. Such concerted efforts had led to the reduction in the waiting period for parties involved in cases which is most welcomed by the public.

On this note, all legal minded people are together in unison to achieve the same results - that justice be done as expeditiously as possible and to the satisfaction of the parties involved. The general public expects that cases be heard and completed within a reasonable time. It is certainly unfair if a suspected criminal has to wait for years before his case is heard, and eventually he is found not guilty. This is especially so when the suspected criminal is unable to post bail due to financial reasons or because he was charged with an offence where no bail is allowed. Similarly, the victim of a crime will be most unhappy if he has to wait for a long period of time to obtain justice.

Despite the positive results of the rigorous implementation of the KPI, one has to be mindful that there can be the possibility of injustice taking place if the implementation is over zealous such as when a judge ordering a trial to proceed even though a lawyer or a deputy public prosecutor who conducts the case is very ill, or a judge ordering a case, which was earlier fixed on another date, to be brought forward for trial without sufficient notice to the lawyer or deputy public prosecutor.

With regard to the expeditious disposal of cases, AGC is also looking into the possibility of enacting legislations providing for criminal case management, pre-trial conference and plea bargaining which can contribute to the speedy resolution of cases as clamoured for by the public.

Steps have also been taken to increase the number of deputy public prosecutors and federal counsel to meet with the increasing number of courts. DPPs are also stationed in the subordinate courts so as to enable cases to proceed swiftly without any hitches.

I am happy to say that in relation to the cases referred to the DPPs, most have been dealt with promptly and in an efficient and professional manner.

Some of the cases being handled currently are potentially the most explosive this country has seen. Those cases involve a multitude of documents and their evidence tends to complicated corporate structures and transactions. Such cases require the consideration of a multi-disciplinary team which include lawyers, accountants, financial analysts and experienced investigators. It takes time to properly consider and appreciate these cases and in this regard, the DPP may see the case from an angle or aspect different from the investigation agencies.

The investigation agencies are committed to investigating crimes and referring the results of the investigation to my Chambers in a timely fashion. In many cases the DPP is involved in advising the Royal Malaysian Police (PDRM) or Malaysian Anti-Corruption Commission (MACC) during the course of the investigation, as to possible areas of criminality. Ultimately, the PDRM and MACC must refer a brief of evidence to the DPP before we can take action. Once the brief is received, the DPP conducts an objective, reasoned analysis of the case and evaluates the strengths and weaknesses of any evidence. The DPP may point out further areas where investigation is required. Accordingly, as with any case, there will be a process of interaction between the DPP and investigation agencies in order that the case may be

put in a way that complies with the principles of fairness and justice and the considerations set out in our prosecution policy.

When handling the case, the DPP has an objective role to meet, which is to prosecute in a fair, proper and responsible manner. **However, for justice to prevail in these cases, the stakeholders would have to exercise patience and understanding.** Hence, here is a need to resist the public pressure for quick disposal. The public expectation that corporate entrepreneurs face the court and be dealt with appropriately is understandable. Nevertheless, we must be careful to ensure that the prosecution response is an adequate and proper one. Among other things, this means that charges must not be laid prematurely in the hope that any gaps in the evidence can be closed as the case proceeds to trial. This is a tendency which must be avoided. Indeed to bring charges which must then be withdrawn because of evidentiary difficulties would, in my mind, be counterproductive if not irresponsible. Short term frustration because of a perceived lack of action will never be an adequate justification for premature action. As with any prosecution we conduct, the interests of justice and fairness is paramount.

Public confidence is fundamental to the administration of the system of criminal justice. A low level of public confidence leads to disrespect and dissatisfaction with those responsible for the administration of the system. The political debate surrounding dissatisfaction over the criminal justice system has become prominent over the past decade. Given the centrality of public confidence, it is not surprising that there has been intense interest in measuring, understanding and addressing this issue.

The criminal justice system thus needs to be understood as a multidimensional construct with distinct differences in levels of confidence between the judiciary, the Bar and AGC. I do not wish to see a decline in public confidence in any of these three components, as the public views us as interrelated and not distinct. I must impress here that the best way to maintain confidence in the criminal justice system is to enhance the perception that we are all working together to deliver justice.

With the mounting number of complex cases that the judges are expected to dispose of speedily and yet ensuring that justice is not compromised, it is commendable that the courts have now taken measures to address the matter very seriously especially in the past year in particular with regard to

case management giving emphasis on 'accuracy' 'timeliness' and 'efficiency', bearing in mind that the objective of justice is to ensure that the individual's rights are guaranteed.

Notwithstanding the efforts and cooperation between the Judiciary, the Bar and AGC in disposing many difficult cases, my Chambers is still concerned that there still exists backlog of cases pending in Court, the cause of which is due to a myriad of factors, many of which are beyond our control. Whatever the reasons may be, as much as possible, justice should never be delayed.

I must say that apart from ensuring the expeditious disposal of cases to ensure justice, we should also look beyond statistics and figures, and consider human issues. When it comes to dealing with issues of life and death, or which affect the liberty of a person, appropriate consideration must be given to all relevant factors to attain justice. The noble aim of setting targets for the disposal of cases must be balanced with the requirement that justice must not suffer.

In the wake of this constraints, the Honourable Chief Justice has to be commended as he has been diligent to promote justice and expedite the

disposal of cases since he came to office, giving due regard to the rights and interests of the parties involved with the court's processes.

Hence, the judiciary, the Bar and Chambers must come together with one vision and one aim, and join hands to create a conducive working environment towards attaining justice. There can be more consultation to smoothen whatever hiccups that may appear from time to time in our pursuit for justice.

In implementing this important tool, judges must always balance carefully the maxim "**justice delayed is justice denied**", with the maxim "**justice hurried is justice buried**".

Indeed, HRH Sultan Azlan Shah had stated that "***Efforts must constantly be made to speed up the disposition of cases. Litigants have the legitimate expectations to not only a just resolution of their affairs but also an expeditious resolution. It is the responsibility of lawyers, be they***

members of the Bar, or the legal and judicial service, to help meet this expectation of society.”¹

On this note, it cannot be over emphasized that the concept of justice is grounded on the basic principles of equality, fairness, and rule of law. AGC is committed to promoting the rule of law and ensuring justice be given to all people whatever their race, religion or class. AGC in carrying out its duties is well aware of the maxim “***justice should not only be done, but should manifestly and undoubtedly be seen to be done***”, and hence the explanations issued by AGC from time to time on cases handled by it so that the public would not have misconceptions of biasness.

Evidence need to be carefully evaluated and all of us involved in the process are indeed subject to the laws. We are duty bound to be fair to all people regardless of their background. It binds my conscience, as it binds the conscience of every judge and every lawyer in the performance of his duties to uphold justice. HRH Sultan Azlan Shah had once said -

¹ HRH Sultan Azlan Shah, *The New Millennium: Challenges and Responsibilities* (Universiti Kebangsaan Malaysia, Bangi, Selangor, 23 August 1997),

“Integrity, justice, courage, temperance and prudence – these are virtues that constitute the moral character of a good professional, indeed that of a good man. Integrity is a fundamental requirement of justice. Without integrity there can be no rule of law. It is the responsibility of every lawyer not only to have integrity but to strenuously ensure that the dishonest and corrupt do not have a place in our system of law and justice.”²

I must add that an important consideration is the aptitude and ability to take on and perform the task at hand as professionals and with quality.

My parting words on this auspicious day is that the Judiciary, the Bar and my Chambers as institutions established to promote justice should work in one accord to preserve, protect, and promote justice through the rule of law, and fulfil the aspirations of the public for a just society governed by the rule of law.

On this note, I wish to congratulate once again the Honourable Chief Justice and his team on such excellent work in the name of justice. No matter how the work is done, or whatever be the method of implementing the work, it is

² ibid

the end that is important to promote justice. We must send a message to the public that with the start of the new legal year 2010, these three components of justice - the Judiciary, the Bar and the AGC echo the same aspiration, desire and vision to uphold the rule of law.

As Mahatma Ghandi had stated - *“There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts”* and *“Truth never damages a cause that is just.”*

Thank you.