



Malik Imtiaz Sarwar

# The new brooms

By Malik Imtiaz Sarwar

We have a new team heading the judiciary. Congratulations to Chief Justice Tan Sri Ariffin Zakaria, President of the Court of Appeal Tan Sri Md Raus Sharif and Chief Judge of Malaya Tan Sri Zulkefli Ahmad Makinudin. They are all men with many years of experience in the judicial and legal services.

They are also men who, having started their careers as judges in the High Court, have had the opportunity to gain invaluable insights into not only the mechanics of being a judge, but also the workings of the High Court, the Court of Appeal and the Federal Court. I believe they are fully equipped to deal with the challenge of managing one of the most important institutions of the nation and wish them well in their endeavour.

It is my hope that these three judges and their colleague, Chief Judge Sabah and Sarawak Tan Sri Richard Malanjum, see in this "changing of the guard" the opportunity that presents itself to make major inroads into restoring public confidence in the judiciary and seize it. For this to happen, however, they must acknowledge, even if only to themselves, that public confidence is not as high as it ought to be and as it was in the late 1980s, and that steps need be taken to address the situation.

In some quarters, there are those who, admittedly somewhat cynically, suggest that although in the early days of the new appointments there will be some attempt to play to the gallery, such efforts will soon fade into obscurity. Frankly, our experience at the Bar hints at the possibility. Since I was admitted to the Bar, I have seen five chief justices come and go. Each one came in with promises and assurances. And although each of them left an indelible mark on the judiciary and the administration of justice, I cannot say that the legacy they left behind was always in the interests of that august institution or the nation.

The appointment of Tun Hamid Omar as lord president was controversial; he chaired the tribunal that impeached Tun Salleh Abas. Tun Hamid retired amid allegations of impropriety. Tun Eusoff Chin retired amid controversy with the now infamous holiday in New Zealand darkening the cloud hanging over the institution.

Although Tun Dzaidin Abdullah acknowledged that public confidence was at an all-time low when he was appointed, I cannot say that the institution radically improved under his stewardship. Tun Ahmad Fairuz, who succeeded Tun Dzaidin, is now most remembered for his telephone conversation with Datuk V K Lingam and the subsequent Royal Commission of Inquiry it gave rise to. I do not think the judiciary has recovered from the impact of what came to light during the hearings of the commission.

Tun Abdul Hamid Mohamad was chief for too short a period to introduce meaningful reforms, although he is fondly remembered for having introduced the slogan "Buat Kerja" (the implications of which were disturbing).

The appointment of Tun Zaki Azmi raised many eyebrows. He was parachuted into the Federal Court in September 2007, appointed the president of the Court of Appeal in December that year and became the chief justice in October 2008. In all of this, more senior judges were bypassed, a state of affairs that caused consternation in view of declarations that only experienced judges with proven track records would be promoted.

Tun Zaki also came with personal baggage that impacted, as much as he may have tried to downplay its significance. His previous role as Umno legal adviser did not assist in furthering the cause of restoring public confidence, more so for the fact that it was during his tenure that some of the most controversial constitutional cases came before the court, in particular the Perak challenges.

I have described these matters only to underscore one point. Being a top judge puts a person under close scrutiny. As much as he or she may not wish to create impressions that impact the institution, it will occur. This is more so for the obvious truth that leadership is, most often, by example.

The question for the team currently heading the judiciary is this: What example do they want to set for the judges who serve under them? If they wish for judges of the Malaysian courts at all levels to be conscious of their duties as judges, they will have to take steps to instill in them an awareness of those duties. As leaders, these judges must set the tone and approach each case they deal with in a manner consistent with the highest standards of the Bench and Bar.

They must at all times act judiciously, arming themselves with the requisite knowledge to make just decisions. They must at all times display temperament that will inspire in each and every litigant a belief that whatever the outcome of a particular case, he has been given a fair hearing.

I say this only because as things stand, one could not fault a casual observer for walking away from a hearing in the superior courts with the impression that some judges are rude, arrogant and not interested in hearing counsel, descend into the arena and are just not very clever. It is obvious that such behaviour can in no way inspire public confidence.

It is not enough to acknowledge in private that all is not well. Things can be done. The judiciary has some autonomy over appointment and promotions. This power should be invoked to the fullest extent to bring in the best people for the job. The institution is armed with the powers to self-regulate, that is what the Code of Ethics was introduced for, and as a drastic measure, the Federal Constitution allows the impeachment of judges.

These powers should be wielded to stamp out any suggestions of impropriety and to address doubts about corruption and influence peddling. Even if such conduct is not actually occurring, it is damaging that there are quarters that believe it is. This is a cancer that will eat away at the institution and ultimately overwhelm it.

There is much more that can be said but space limits me. The essential point is that reforms can take many forms. And although key performance indicators and modernising the judiciary through the introduction of new technology go some way in making the institution more efficient, it is ultimately the values of the judges that determine how well the institution performs. The reform agenda must start with those values. Difficult questions have to be asked and even more difficult decisions made. The fact that the nation is watching cannot be stressed enough.

It is in this context that the revelations concerning plagiarism on the part of a senior judge must be viewed. The matter cannot be left to Parliament alone. It is a matter for the judiciary.

Regrettably, the institution has not taken a position and has not clarified whether it proposes to investigate the allegations and what it plans to do meanwhile. This indecisiveness offers very little comfort and, conversely; if perpetuated will stoke doubts about the commitment of the institution to the core values of the administration of justice. The judiciary needs to act.

After all don't new brooms sweep clean?

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**Quotable Quote:**

***“Love is a strange thing. Sometimes, we do things out of love. What triggers love? What makes us do strange things when we are in love?”***

***- Y.A. Justice Datuk Abd Rahim Uda  
(Source New Straits Times, 12 October 2011)***



**Y.A. Datuk  
Abd Rahim Uda**