



## Agenda and Motions

### Extraordinary General Meeting of the Malaysian Bar (“EGM”) (27 May 2022)

**Date:** 27 May 2022 (Friday)  
**Time:** 3:00 pm  
**Venue:** Dewan San Choon, Level 2, Wisma MCA, Jalan Ampang,  
50450 Kuala Lumpur

The agenda for the EGM is as follows:

- (1) To consider the following motions proposed in accordance with section 65(5) of the Legal Profession Act 1976 (“LPA”):
  - (1.1) “Motion on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary”, proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on behalf of the Bar Council, dated 19 May 2022 (**pages 3 to 16**);
  - (1.2) “Motion to Call for Consultation with the Chief Justice Before Any Investigation of a Sitting Superior Court Judge by the Malaysian Anti-Corruption Commission”, proposed by A.P.Puthan a/l Perumal and Vijiandran a/l Kassej, dated 9 May 2022 (**pages 17 to 20**);
  - (1.3) “Motion to Strengthen the Independence of the Malaysian Judiciary and Related Matters”, proposed by Charles Hector, Kevin De Rozario and Tabian Tahir, dated 15 May 2022 (**pages 21 to 37**);
  - (1.4) “Motion to Restore the Administration of Justice in Malaysia, Including the End of Use of ‘Deals’ to End Criminal Prosecution and Protect Law-Breakers”, proposed by Charles Hector, Kevin De Rozario and Tabian Tahir, dated 15 May 2022 (**pages 38 to 44**);
  - (1.5) “Motion to Congratulate the Appointment of Tun Richard Malanjum as Ombudsman of the United Nations Security Council”, proposed by S.I Rajah, dated 17 May 2022 (**pages 45 to 47**);
  - (1.6) “Motion re MACC Investigation of a High Court Judge Without Referring Their Cause for the Investigation to the Chief Justice”, proposed by A. Kanesalingam, dated 18 May 2022 (**page 48**); and

(1.7) “Motion to Call Upon Parliament to Take All Necessary Steps to Push for an Amendment of the Members of Parliament (Remuneration) Act 1980”, proposed by Muhammad Rafique bin Rashid Ali, dated 18 May 2022 (**pages 49 to 51**); and

(2) Any other matters.

**Anand Raj**  
**Secretary**  
**Malaysian Bar**

**23 May 2022**



**Majlis Peguam  
Bar Council Malaysia**

DC/CFN/T/8/2022

19 May 2022

**Amud Raj**  
Secretary of the Malaysian Bar  
Bar Council  
Wisma Badan Peguam Malaysia  
2 Leboh Pasar Besar  
50050 KUALA LUMPUR

**Motion 1.1**



*By Hand*

Dear Secretary of the Malaysian Bar,

**Submission of Motion for the Extraordinary General Meeting of the Malaysian Bar on 27 May 2022, entitled "Motion on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary"**

I refer to the above-captioned matter.

Please find enclosed a "Motion on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary", which I wish to move on behalf of the Bar Council, at the Extraordinary General Meeting of the Malaysian Bar on 27 May 2022.

Thank you.

Yours faithfully,

**Karen Cheah Yee Lynn**  
Chairman  
Bar Council

C:\Sinh\New\Desktop\2022\DC/CFN/T/8/2022.docx

**“Motion on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary”, proposed by Karen Cheah Yee Lynn (Chairman, Bar Council), on Behalf of the Bar Council, dated 19 May 2022**

- (1) **WHEREAS** judicial power and judicial independence are fundamental and sacrosanct to the principle of separation of powers that stands as one of the basic structures enshrined in the Federal Constitution.
- (2) **WHEREAS** public confidence in the Judiciary is the hallmark of a mature and effective democratic government under the Federal Constitution.
- (3) **WHEREAS** the Malaysian Bar has consistently defended the independence of the Judiciary and public confidence in the Judiciary as part of its statutory obligation to uphold the cause of justice without regard to its own interests or that of its Members, uninfluenced by fear or favour under section 42(1) of the Legal Profession Act 1976.
- (4) **WHEREAS** on 20 April 2022, Raja Petra Kamarudin (“RPK”) published an article entitled “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account” on a website known as *Malaysia Today*.<sup>1</sup>
- (5) **WHEREAS** on 23 April 2022, the Chief Commissioner of the Malaysian Anti-Corruption Commission (“MACC”), Tan Sri Azam Baki, openly announced that the MACC has commenced an investigation into a Court of Appeal Judge, and named Justice Dato’ Mohd Nazlan bin Mohd Ghazali (“Justice Dato’ Nazlan”) publicly, over an allegation of unexplained monies in his bank account.<sup>2</sup>
- (6) **WHEREAS** on 25 April 2022, the President of the Malaysian Bar issued a press release entitled “The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”.<sup>3</sup>
- (7) **WHEREAS** on 28 April 2022, the MACC issued a press release entitled “The MACC Is Empowered to Investigate Officers of Public Body”, taking the position that it can investigate Justice Dato’ Nazlan based on section 3 of the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act”).<sup>4</sup>
- (8) **RECOGNISING** that Judges of the High Court, Court of Appeal, and Federal Court (“Superior Court Judges”) are not above the law and must be made accountable for crimes they commit and that law enforcement agencies must be allowed to carry out their respective tasks in accordance with the law and the Federal Constitution.

---

<sup>1</sup> “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account”, *Malaysia Today*, 19 April 2022. A copy of this article is found in Annexure A of this motion.

<sup>2</sup> “MACC: Nazlan under probe”, *The Star*, 23 April 2022. A copy of this article is found in Annexure B of this motion.

<sup>3</sup> “Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”, Malaysian Bar, 24 April 2022. A copy of the press release is found in Annexure C of this motion.

<sup>4</sup> “Press Statement | The MACC Is Empowered to Investigate Officers of Public Body”, Malaysian Anti-Corruption Commission, 28 April 2022. A copy of the press statement is found in Annexure D of this motion.

- (9) **RECOGNISING** that any investigation of Superior Court Judges by law enforcement agencies must be done in a manner that does not erode judicial independence and public confidence in the Judiciary and its independence.
- (10) **RECOGNISING** that any complaint against Superior Court Judges and its investigation by law enforcement agencies under the purview of the Executive, if given undue and unwarranted publicity, will have a far-reaching impact on Superior Court Judges and the independence of the Judiciary, and the public confidence repositied in the Judiciary.
- (11) **RECOGNISING** that the Judiciary as an institution, and the Superior Court Judges carrying out their judicial duties must be protected from intimidation, harassment and frivolous investigation, particularly in cases that go against the Executive, considering that the Executive forms a large category of litigants in a position to misuse its powers against Superior Court Judges.
- (12) **RECOGNISING** that the purpose behind Article 125 of the Federal Constitution was *inter alia*, to clothe Superior Court Judges with the security of tenure and judicial independence.
- (13) **RECOGNISING** that the framework put in place by the Federal Constitution requires that any complaint of misbehaviour against Superior Court Judges must first be brought to the attention of the Chief Justice in order for the judicial mechanism under the Judges’ Code of Ethics 2009 against such complaints to be exhausted first before any investigation by law enforcement agencies can proceed.
- (13.1) Article 125(3) of the Federal Constitution was amended on 24 June 1994 by way of the Constitution (Amendment) Act 1994 to introduce the provision for enacting the Judges’ Code of Ethics 2009 (“Code”). The purpose of this amendment was:
- (a) to allow for a written code to spell out what amounts to misbehaviour. The amendment was suggested by Superior Court Judges themselves with a view to improving the effectiveness of the administration of justice;
  - (b) to uphold judicial independence, public confidence in the Judiciary, and the separation of powers; and
  - (c) intended to empower the Chief Justice to be the first port of call where complaints of misbehaviour against judges are concerned.
- (13.2) The Code expressly prescribes that the only authority empowered to receive complaints is the Chief Justice under section 12 of the Code, where all complaints must be made in writing.
- (13.3) The Code regulates both the personal and judicial conduct of judges, under section 2(1) of the Code.
- (13.4) Part III of the Code provides for a wide range of provisions concerning the requisite standards to be upheld and prohibitions, and must necessarily include

the commission of crime (if any), in line with the definition of the word “misbehaviour” as previously used in Article 125(3) of the Federal Constitution.

(14) **WHEREAS** the unwarranted manner in which MACC openly and publicly announced that it has commenced an investigation against Justice Dato’ Nazlan and that it has powers to carry out investigations against Superior Court Judges under the MACC Act, in nonconformity of the specific process prescribed by Article 125 of the Federal Constitution and read in line with Article 132 of the Federal Constitution, is highly questionable and calculated to undermine public confidence in the independence and integrity of the Judiciary.

(14.1) The MACC Act must be read subject to the Federal Constitution, and the exercise of Executive powers under Article 80 of the Federal Constitution must also be read harmoniously with other provisions in the Federal Constitution — including the separation of powers and independence of the Judiciary — which are firmly entrenched in Article 4 and Part IX of the Federal Constitution.

(14.2) This would guarantee that the independence of the Judiciary and the perception of such independence are maintained, and which would entail the following:

(a) Any law enforcement agency that has been notified of an allegation of a crime committed by a Superior Court Judge must make a complaint in writing to the Chief Justice first, as stipulated under the Code.

(b) The Chief Justice would then have to form the view whether the complaint is frivolous or requires further investigation.

(c) Where it is a commission of a crime, especially corruption, that would warrant the setting up of a tribunal under Article 125(4) of the Federal Constitution.

(d) The Yang di-Pertuan Agong then suspends the Superior Court Judge from the exercise of judicial functions under Article 125(5) of the Federal Constitution.

(e) The law enforcement agency can then commence investigation against the Superior Court Judge as he/she would no longer be sitting as a Superior Court Judge — so as to preserve the integrity of the current cases heard by the Judge in question, thereby protecting the independence of the Judiciary as an institution. The results of the investigation can be placed before the tribunal appointed under Article 125(4) of the Federal Constitution to assist the tribunal.

(f) In the event that the tribunal forms the view that there is sufficient material to show that the Superior Court Judge did commit a crime, it can recommend the removal of that Superior Court Judge.

(g) It would then be for the Public Prosecutor to initiate criminal proceedings against that person.

(14.3) This mechanism would ensure that the independence of the Judiciary and the public perception of such independence are maintained at all material times. Any other reading would permit, and easily so, the Executive to misuse its powers in exerting pressure on the Judiciary. The threat of criminal investigations into a sitting Superior Court Judge would have the effect of instilling fear in judges of criminal repercussions in rendering judgments that are not favourable to the Executive, thus encroaching into their independence of thought and discretion as judges.

15. **WHEREAS** such investigation and non-conformity to specific process could hinder the ability of judges to perform their duties with complete independence without fear or favour.
16. **WHEREAS** such investigation would give the perception that the Judiciary can be suborned to the Executive by means of such investigations perceived as valid under the law.
17. **RECOGNISING** that the undue and unwarranted manner in which MACC publicly announced an investigation and named the judge, has the effect of undermining public confidence in the Judiciary and is clearly an attack on the independence of the Judiciary.
18. **RECOGNISING** that the Judiciary cannot step into the public arena to defend itself.
19. **RECOGNISING** that the Malaysian Bar plays a crucial and complementary role to the Judiciary in the administration of justice and must support the independence of the Judiciary which is essential to our democratic system, rule of law, our legal profession, and the nation.

**IT IS HEREBY RESOLVED THAT:**

- (1) The Malaysian Bar condemns, in the strongest possible terms, the unprecedented manner in which the Malaysian Anti-Corruption Commission (“MACC”) has publicly announced the commencement of criminal investigation of a Superior Court Judge, and disclosed the name of the judge to the public for an indefinite period and without proper closure, which is tantamount to an act of intimidation against the Judiciary;
- (2) The Malaysian Bar condemns, in the strongest possible terms, the investigation by the MACC of Justice Dato’ Mohd Nazlan bin Mohd Ghazali (“Justice Dato’ Nazlan”) without conforming to the mechanism under Article 125 of the Federal Constitution, which interferes in the independence of the Judiciary, breaches the fundamental principle of separation of powers, and is wholly unconstitutional.
- (3) The Malaysian Bar shall, therefore, take immediate and necessary steps as deemed appropriate by the Bar Council to challenge the constitutionality of the investigation commenced by the MACC of Justice Dato’ Nazlan, as stated in the preamble to this motion, and/or to organise and lead a peaceful protest at a time and venue as the Bar

Council deems suitable, and/or to advocate legislative reform to protect the independence of the Judiciary from interference by the Executive and to uphold public confidence in the Judiciary.

- (4) The Malaysian Bar calls upon the Attorney General, being the guardian of public interest, to take all necessary steps to protect the institution of the Judiciary and the sacrosanct principle of independence of Judiciary from such intimidation and interference.



## Judge Mohd Nazlan being investigated for unexplained RM1 million in his bank account

[malaysia-today.net/2022/04/19/judge-mohd-nazlan-being-investigated-for-unexplained-rm1-million-in-his-bank-account](https://malaysia-today.net/2022/04/19/judge-mohd-nazlan-being-investigated-for-unexplained-rm1-million-in-his-bank-account)

April 19, 2022

**It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?**

### NO HOLDS BARRED

#### Raja Petra Kamarudin

It looks like the controversy surrounding the judge in Najib Tun Razak’s SRC International case, Mohd Nazlan Mohd Ghazali, is not just about his undeclared conflict of interest. There is now the investigation regarding the unexplained RM1,036,127.40 that has suspiciously appeared in his Maybank account number XXXXXXXXX0433.

This money came in during the time Nazlan was the group general counsel and company secretary of Maybank. And it is suspected that it is tied to the decision Maybank made to create SRC International.

### **1MDB’s minutes of meeting reveals that the proposal to form SRC came from Maybank and not from Najib, as judge Nazlan stated in his written judgement on why he finds Najib guilty**

In his judgement, Nazlan said Najib created SRC as a means to steal 1MDB’s money. Now it has been revealed that the proposal to form SRC came from Maybank and not from Najib. And this is recorded in 1MDB’s minutes of the meeting.

Hence Nazlan’s judgement is flawed. And the fact that Nazlan used this excuse as one of the reasons to find Najib guilty raises the allegation of a flawed trial, not only marred by Nazlan’s conflict of interest but also by the grounds as to why he finds Najib guilty.

It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?

The timing of the “services rendered” fee makes it impossible to deny any conflict of interest. The date coincides with the date of 1MDB’s RM6.17 billion loan and the decision 1MDB made on the acquisition of Tanjung Energy Holdings Sdn Bhd.

### **Judge Nazlan was very much part of the 1MDB money heist involving Jho Low, Jasmine Loo, Terence Geh and Tim Leissner**

Also involved in this exercise are Jho Low, Jasmine Loo, Terence Geh and Tim Leissner, all who are implicated in the 1MDB money heist. And Nazlan was very much part of this gang of thieves.

Nazlan should not only be disqualified from hearing the SRC case, but the trial should be declared a mistrial and Nazlan should be arrested and charged for corruption.

Why is Nazlan not being called up by the MACC to explain the RM2 million he received from Jho Low? It looks like Nazlan committed conflict of interest not only in Najib's SRC trial but also in the decision to create SRC, and the decision regarding the RM6.17 billion loan and the acquisition of Tanjung Energy Holdings Sdn Bhd.

Tunggu apa lagi, MACC?

## MACC: Nazlan under probe

---

 [thestar.com.my/news/nation/2022/04/23/macc-nazlan-under-probe](https://thestar.com.my/news/nation/2022/04/23/macc-nazlan-under-probe)

23 April 2022

PUTRAJAYA: Court of Appeal judge Datuk Mohd Nazlan Mohd Ghazali (pic) is being investigated over allegations of unexplained money in his account.

Confirming this, Malaysian Anti-Corruption Commission chief commissioner Tan Sri Azam Baki said an investigation paper had been opened after reports were lodged.

“Yes, we have started our investigation. The procedure is to investigate when a report has been officially lodged.

“We opened an investigation paper because there were reports lodged, not because claims were made on portals or social media,” he told The Star.

Mohd Nazlan was the judge who convicted former prime minister Datuk Seri Najib Razak over the misappropriation of RM42mil of SRC International Sdn Bhd funds.

However, Azam declined to reveal if his officers would be looking for documents or would summon individuals for questioning.

“The investigation is still in the early stage. My officers will decide during the course of investigation,” he said.

StarPicks

### **DRIVING IOIPG’S VISION FORWARD WITH TRUST**

---

An article dated April 20 published by the blog Malaysia Today claimed that Mohd Nazlan is being investigated for an unexplained RM1mil in his account.

The article alleged that the money came in during the time Mohd Nazlan was the group general counsel and company secretary of Maybank.

Mohd Nazlan lodged a police report against the blog on Thursday, denying the accusations which he said were malicious, baseless and aimed at tarnishing his credibility as a judge.

In a statement, the Office of the Chief Registrar of the Federal Court of Malaysia said a police report was lodged so that investigations could be carried out under Section 500 of the Penal Code and Section 233 of the Communications and Multimedia Act, and other related provisions.

## Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice

[malaysianbar.org.my/article/news/press-statements/press-statements/press-release-the-malaysian-bar-stands-with-and-supports-malaysian-judges-who-are-independent-and-with-integrity-respect-and-uphold-the-integrity-of-the-judiciary-as-an-integral-institution-in-the-administration-of-justice](https://malaysianbar.org.my/article/news/press-statements/press-statements/press-release-the-malaysian-bar-stands-with-and-supports-malaysian-judges-who-are-independent-and-with-integrity-respect-and-uphold-the-integrity-of-the-judiciary-as-an-integral-institution-in-the-administration-of-justice)

Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice 25 Apr 2022 1:38 pm

The Malaysian Bar is appalled with the turn of events that the Malaysian Anti-Corruption Commission (“MACC”) has commenced an investigation into YA Dato’ Mohd Nazlan Mohd Ghazali, JCA (“YA Dato’ Nazlan”). It is not apparent to the public, who lodged the report, or when such a report was lodged. What is obvious to the Malaysian Bar is that there should be no double standards by the authorities in approaching the same issue — and on this basis we demand equivalent investigations to be carried out by the police on the report lodged by YA Dato’ Nazlan on the allegations raised in statements issued by Raja Petra Kamarudin on his blog, *Malaysia Today*, dated 20 April 2022.

Quite apart from such double standards, the Malaysian Bar notes that the Office of the Chief Registrar of the Federal Court had also announced that the post contained false, baseless and malicious accusations to, amongst other things, interfere with the due administration of justice.

Let it be known that the Judiciary is an institution of the highest value for both political and economic stability in every country. It is an indispensable condition for the existence of the rule of law that the Judiciary be independent and impartial, and must always be perceived to be so. The Judiciary as an institution and judges individually are conferred with certain constitutional guarantees to insulate them from political and other influence and pressure in order to secure their independence and impartiality.

There is a justifiable reason for this necessity. Since the events of 1988 in Malaysia, the independence and impartiality of the Judiciary has been a source of concern. Thankfully, our current Chief Justice had restored confidence in the Judiciary and beyond that, overhauled the system to make it not just efficient, but credible and with integrity — maintaining the order in which the rule of law plays so crucial within our democratic nation.

The Malaysian Bar fully supports the efforts of the Chief Justice in maintaining the independence of the Judiciary. We fully recognise that all Judges must have the proper space to discharge their judicial duties in a manner apparent to all, and that the judicial process and decision is independent, free of any interference, considered, reasoned,

honest; and above all that, justice must be seen to be done. It is on this basis that the Malaysian Bar is unable to support this negative and rash perception being pushed by irresponsible parties, and urge that such misconception be arrested immediately; otherwise another crisis of confidence will re-emerge in the independence and impartiality of the Judiciary and the administration of justice in the country.

The Malaysian Bar further states that the MACC investigation violates the doctrine of separation of powers and also undermines the independence of the Judiciary, and is unconstitutional. There are mechanisms in place to deal with this issue, and pending the determination in such an issue, any attempts by irresponsible parties can be seen as stabbing public confidence in the Judiciary. Article 125 of the Federal Constitution provides a specific pathway that allows for complaints of judicial misconduct to be addressed in a manner that ensures continued public confidence in the Judiciary.

Such purported investigations by MACC will have an impact on the Judiciary as it undermines the rule of law and creates intimidation and a climate of fear. This perpetuates insecurity and suspicion amongst our citizenry of the Judiciary, and does not augur well for the growth and maturity of our nation. The mere possibility of such an investigation by MACC, let alone an actual investigation, would undermine, and be perceived as undermining, judicial independence. A public perception could arise that the judges make decisions that ensure they are not made the subject of investigations by the enforcement authorities, which are publicly perceived as being under the control of the Government. It could further be perceived that in arriving at such misconceived perceptions that judges are therefore compelled to take steps to ensure that they do not antagonise the Government. This would be a disservice to the faith we have in our rule of law and our democratic nation.

Without that necessary confidence instilled in the Judiciary as an institution, the system of administration of justice cannot command the respect and acceptance which are essential to its effective operation in our administration of justice.

The Malaysian Bar is fully aware that the Judiciary is not in any position to take steps to protect itself by involving itself in a trial by media or any form of public controversy, and that there is therefore a need by the Malaysian Bar to protect the dignity and integrity of the courts and the Judiciary as a whole, considering the nature of the office has always been defenceless to criticisms or wild allegations made by irresponsible parties. We have seen such wild attempts to hurt lawyers, members of the public, as well as the Judiciary as an institution, and now, specific judges.

The Malaysian Bar is greatly averse to any investigation by MACC which may set the terms of an unsavoury precedent, and no doubt have an adverse effect in the future process undertaken by our authorities in similar circumstances against the Judiciary or individual judges – since these circumstances appear to be more frequent nowadays when one hides behind the comfort of cyberspace. The continued attempts to cut into the credibility of our respected institutions should be curbed immediately. We call for a

circumspect approach by our authorities; that they do not fall to the temptation of irresponsible noise made by keyboard warriors. Cull the easy approach, for the greater good of our nation.

**Karen Cheah Yee Lynn**  
**President**  
**Malaysian Bar**

**24 April 2022**

Address : **Strategic Communication Division  
Level 18, Block C,  
Head Quarters  
Malaysian Anti-Corruption Commission,  
No. 2, Lebu Wawasan, Presint 7,  
62250 Putrajaya**  
Tel. : **03-8870 0015**  
Email : [komunikasi@sprm.gov.my](mailto:komunikasi@sprm.gov.my)  
Web : [www.sprm.gov.my](http://www.sprm.gov.my)  
Twitter : [twitter.com/SPRMMalaysia](https://twitter.com/SPRMMalaysia)  
Facebook: [facebook.com/sprm.benci.rasuah](https://facebook.com/sprm.benci.rasuah)  
Youtube : [www.youtube.com/odvmacc](http://www.youtube.com/odvmacc)

# **PRESS STATEMENT MALAYSIAN ANTI- CORRUPTION COMMISSION**

## **THE MACC IS EMPOWERED TO INVESTIGATE OFFICERS OF PUBLIC BODY**

THE Malaysian Anti-Corruption Commission (MACC) would like to clarify the issue of the investigation of a judge which was raised by some parties and has received public attention recently.

Based on procedures, the Commission is responsible for verifying and investigating any official reports or complaints that have been made to the MACC involving matters under its jurisdiction.

The MACC has been empowered to investigate corruption cases under the MACC Act 2009 including investigations against officers of public body as defined in Section 3 of the Act as follows:

“Officer of a Public Body” means any person who is a member, an officer, an employee or servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds.”

In line with the principle of separation of powers, once the investigation process is completed, the investigation paper will be submitted to the Attorney General’s Chambers to be decided on whether to prosecute or otherwise.

The MACC also has a record of investigating judges where investigation papers are then submitted to the Attorney General's Chambers for assessment.

Regarding the investigation against the said judge, the MACC received a complaint on 15 March 2022 followed by two more complaints on 23 and 27 April 2022. This investigation is still in its initial phase and is of public interest. It should be clarified that when an investigation is conducted on any individual, it does not mean that the individual has committed an offense.

In this regard, the MACC requests the public to provide space for the investigation process to be carried out in accordance with the law.

**THE MALAYSIAN ANTI-CORRUPTION COMMISSION  
PUTRAJAYA**

**28TH APRIL 2022**



**Motion 1.2**

A.P.Puthan s/l Perumal (BC/A/1325)

12, Jalan 4/47C, Seksyen 4,  
46050 Petaling Jaya, Selangor.

9<sup>th</sup> May 2022

Email: [puthan2357@gmail.com](mailto:puthan2357@gmail.com)

H/p: 016-6924906

---

Secretary

Malaysian Bar

Bar Council Malaysia

Wisma Badan Peguam Malaysia

3, Lebuh Pasar Besar

50050 Kuala Lumpur

Attention: Mr. Anand Raj

Re: Motion to be considered at Malaysian Bar EGM on 27<sup>th</sup> May 2022

Pursuant to Section 65(5) of the LPA 1976, I hereby append a motion to be considered at the EGM on 27<sup>th</sup> May 2022 entitled : "Motion to call for consultation with the Chief Justice before any investigation of a sitting superior court judge by the Malaysian Anti-Corruption Commission".

Thank you

Yours faithfully,

.....

A.P.Puthan s/l Perumal

(BC/A/1325)



**Motion to call for consultation with the Chief Justice before any investigation of a sitting superior court judge by the Malaysian Anti-Corruption Commission**

**WHEREAS:-**

The Bar Council is aware that corruption in the judicial system is a problem in most countries and there is a need for laws and systems to discipline and dismiss corrupt officials. However, if misused, anti-corruption strategies can become effective tools for undermining judicial independence and intimidating independent-minded judges that the authorities find bothersome.

**WHEREAS:-**

Section 29 (3) of the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act” ) states that:-

*(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under subsection (1) or information otherwise received by him, he shall cause an investigation to be carried out and for such purpose may exercise all the powers of investigation provided for under this Act and the Criminal Procedure Code.*

**WHEREAS:-**

Section 12 of the Judge’s Code of Ethics 2009 prescribed pursuant to Article 125(3B) of the Federal Constitution states:-

*“Any complaint against a judge who is alleged to have committed a breach of any provisions of this Code shall be made in writing to the Chief Justice of the Federal Court.”*

**WHEREAS:-**

In 1991, in the Supreme Court of India case of *K.Veerawami vs.Union of India and others*, 1991 (3) SCC 655 , it was held:-

*59..... Any complaint against a Judge and its investigation by the CBI, if given publicity will have a far reaching impact on the Judge and the litigant public. The need therefore, is a judicious use of taking action under the Act. Care should be taken that honest and fearless judges are not harassed.*

*60. ....Secondly, the Chief Justice being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence it is necessary that the Chief Justice of India is not kept out of the picture of any criminal case contemplated against a Judge. ....We therefore, direct that no criminal case shall be registered under [Section 154](#), Cr. P.C. against Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter.*

**THEREFORE IT IS HEREBY RESOLVED THAT -**

- a. We must address corruption without undermining judicial independence.
- b. To this end, Section 29(3) of the MACC Act 2009 must be read harmoniously and holistically with the constitutionally derived Section 12 of the Judge's Code of Ethics 2009 in relation to any contemplated investigation by the MACC of a sitting superior court judge in the discharge of his duty or in his capacity as holder of such judicial office.

- c. No investigation of a sitting superior court judge must be carried out by the Malaysian Anti-Corruption Commission without prior consultation with the Chief Justice.

Proposed by :

A.P.Puthan a/l Perumal (BC/A/1325)

Vijiandran a/l Kassey (BC/V/152)

**Motion 1.3**

Charles Hector Fernandez  
Lot 3585, Kampung Lubuk Layang,  
Batu 3, Jalan Mentakab,  
28000 Temerloh, Pahang

15 May 2022

Attention:-

**Anand Raj**  
**Secretary**  
**Malaysian Bar**  
**Bar Council Malaysia,**  
**Wisma Badan Peguam Malaysia,**  
**2 Leboh Pasar Besar,**  
**50050 Kuala Lumpur, Malaysia**

**RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR EGM**

Pursuant to section 64(6) of the Legal Profession Act 1976 (“LPA”), please find enclosed motion entitled,

**Motion to strengthen the Independence of the Malaysian Judiciary and related matters**

to be considered during the upcoming EGM.

In solidarity,



Charles Hector (BC/C/712) on behalf of the Proposers

Charles Hector – BC/C/712

Kevin De Rozario – BC/K/521

Tabian Tahir – BC/T/652

## **Motion to strengthen the Independence of the Malaysian Judiciary and related matters**

1. On 26/9/2007, the Malaysian Bar had its first 'Walk for Justice', which saw the participation of some 2,000 lawyers and others. The action of the Bar was in response to emergence of a video clip showing a discussion between a lawyer and a senior judge, which raised concerns about the process of appointment and selection of judges. This raised concern about the independence of the Malaysian Judiciary. The Bar called for, amongst others, the setting up of a Judicial Appointment Commission.
2. In Malaysia, when it comes to the selection and appointment of judges, even elevations and the choosing of the Chief Justice, ...the Federal Constitution, as it is now, gives absolute power to the Prime Minister. The King have no choice but to act on the advice of the Prime Minister.
3. Thereafter, the government enacted the Judicial Appointments Commission Act 2009, which came into force in February 2009. Section 21(1)(a), amongst others, state that '....The functions of the Commission are-(a) to select suitably qualified persons who merit appointment as judges of the superior court for the Prime Minister's consideration;...' In short, the Commission submits its recommendation to the Prime Minister, who still have the final decision making power.
4. Section 27 states, 'The Prime Minister may, after receiving the report under section 26, request for two more names to be selected and recommended for his consideration with respect to any vacancy to the office of the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak, judges of the Federal Court and the Court of Appeal, and the Commission shall, as soon as may be practicable, comply with the request in accordance with the selection process as prescribed in the regulations made under this Act.'
5. It is best that the Federal Constitution be amended to ensure that the King directly acts on the advice of the Judicial Appointments Commission. The role of the Prime Minister must be excluded.
6. In the recent speech on 27/4/2022, the Chief Justice Tun Tengku Maimun binti Tuan Mat, amongst others, said, '... Saya juga ingin merakamkan ucapan terima kasih kepada YAB Perdana Menteri, Dato' Sri Ismail Sabri bin Yaakob kerana telah menerima nama-nama yang dicadangkan oleh Suruhanjaya Pelantikan Kehakiman....' It can be taken that the current Prime Minister accepted fully the recommendations of the Judicial Appointments Commission on this occasion, but concern arises as to whether the same will always happen with regard to this Prime Minister, and/or other future Prime Ministers. Will the PM accept the recommendation as submitted, or will he/she simply choose someone on the reserve list or some other. Of greatest concern is when the appointment is concerning the Chief Justice and the other leaders of the Judiciary.

7. The Prime Minister, at the end of the day is the 'leader' of the Executive branch of government. It is best for the independence of the Judiciary, that the Prime Minister and/or Cabinet does not have any power in the choice or elevation of any member of the Judiciary.

#### **Recent Events of allegations against a Judge**

8. Recently, there has been allegations made against a High Court judge who heard and convicted the accused, whose case is presently on appeal to the Federal Court. There is a belief amongst some, that this 'attack' may be baseless and/or done with mala fide, with, amongst others, the intent of raising doubts on the independence of the judge and his judgment. It raises doubts as to whether external factors may have affected the judge's handling of the case, and his/her final decision. The allegations, to date, has not yet been determined to be true or otherwise. The said judge seems to have denied the allegations
9. In the Malaysian administration of criminal justice, there is a right to 2 appeals, hence the needed check and balance to ensure the correctness of the decision of judge in the court of first instance. In this particular case, on Dec 7 2021 , a three-member Court of Appeal panel unanimously upheld the High Court's verdict of guilty on all seven charges as well as the sentence meted out.
10. It is the norm that Appellate Courts, in making their decision will thoroughly peruse all documents, notes of proceedings and not simply the grounds of judgment before coming to a decision.
11. In Malaysia, there is also RECUSAL – where a judge, believing that he may not be able to hear and decide a case fairly and as required by a judge may elect to recuse himself/herself. Likewise, any parties of the proceedings have the right to apply that the judge recuses himself/herself.
12. After the allegations surfaced, the said judge and the Chief Registrar of the Federal Court did file police reports, and in so doing, it can be said that they have submitted themselves to the ordinary process of the administration of justice, where investigation is done by the relevant law enforcement body/ies, and decisions to prosecute is done by the prosecutors.
13. After the Malaysian Anti-Corruption Commission (MACC) announced that they will investigate matter, the Malaysian Bar and others responded.
14. The Malaysian Bar, vide statement dated 24/4/2022, said '...that the MACC investigation violates the doctrine of separation of powers and also undermines the independence of the Judiciary, and is unconstitutional...'
15. SUHAKAM, vide its statement dated 26/4/2022, '...questions the motive of MACC in launching the investigation and is of the view that MACC's proposed investigation will set a negative and dangerous precedent that may undermine the Judiciary as an institution and as one of the pillars of a democratic Government... SUHAKAM calls upon the MACC to stop all investigations against YA Dato' Nazlan, immediately...'

16. Hence, the question arises as how allegations(and/or reports) that judges had committed crimes and/or other wrongdoings ought to be dealt with in Malaysia.
17. Article 125 of the Federal Constitution states, amongst others, ‘...(3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the Yang di-Pertuan Agong that a judge of the Federal Court ought to be removed on the ground of any breach of any provision of the code of ethics prescribed under Clause (3B) or on the ground of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office, the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office....(3A) Where a judge has committed a breach of any provisions of the code of ethics prescribed under Clause (3B) but the Chief Justice is of the opinion that the breach does not warrant the judge being referred to a tribunal appointed under Clause (4), the Chief Justice may refer the judge to a body constituted under federal law to deal with such breach.
18. The applicable Code of Ethics today is the Judges Code of Ethics 2009, made on 24/6/2009 by command of Tan Sri Mohd Sidek bin Hj Hassan (Secretary to the Cabinet), sadly is not comprehensive and certainly does not deal with allegations of crimes committed by judges. There is also still no requirement to even report persons/occasions of attempted bribes or attempted interference with the judge’s carrying out of his/her judicial functions. Reform needed here.

**How past allegations of judicial misconduct dealt with?**

19. It is also important to see what happened when past allegations of crime and/or misconduct was raised against judges. Noteworthy, are the allegations raised by then Court of Appeal Judge Hamid Sultan, and also by the writings of lawyer Arun Kasi. What happened was that there was a failure to investigate the alleged wrongdoings, and those that ‘whistle-blowed’ or highlighted ended up being ‘penalized’. Arun Kasi was found guilty of contempt, and was sentenced to 30 days’ imprisonment and a fine of RM40,000 and, in default of the fine, a further 30 days’ imprisonment. Judge Hamid Sultan ended up being suspended until the day he retired.
20. When those allegations arose, SUHAKAM was reported stating ‘...The Human Rights Commission of Malaysia (Suhakam) has called for the speedy set up of a Royal Commission of Inquiry (RCI) into allegations of judicial misconduct contained in an affidavit filed by an Appeals Court judge last year.The affidavit was filed by Court of Appeal judge Datuk Dr Hamid Sultan Abu Backer in February 2019, and quickly went viral."The allegations made in the aforementioned affidavit, if proven to be true, are serious violations of human rights and liberties guaranteed in the Federal Constitution, in particular equality before the law and equal protection of the law for all," said Suhakam...’(Star, 14/9/2020)
21. The Malaysian Bar, vide media statement by the President dated 15/4/2019, said, amongst others, ‘...The Malaysian Bar has repeatedly called for the establishment of the RCI since August 2018, when the allegations of judicial impropriety first surfaced during Justice Datuk Dr Haji



Hamid Sultan bin Abu Backer's presentation as a analyst at the Malaysian Bar's International Malaysia Law Conference 2018. A Member of the Malaysian Bar subsequently made further allegations. We reiterate our call to the Government to act decisively to establish the RCI, without delay, to not only investigate the serious assertions of judicial misconduct but also to recommend holistic and comprehensive reforms to improve and strengthen the institution of the Judiciary. A thorough and immediate investigation needs to be undertaken to ascertain the facts and the extent of any interference in the ability of judges to make impartial decisions, as well as to put in place measures to ensure that no manner of coercion, influence or threat is ever brought to bear on any judge. The Malaysian Bar is mindful that the sanctity of the independence and integrity of the Judiciary is essential, and of the utmost importance for upholding the rule of law and instilling public confidence. It must not be allowed to be tarnished...'

### **Criticism and allegations against judges**

22. It is important to note the words of the Chief Justice in a speech 27/4/2022, where amongst others, she said,

*[12] Judges are by no means immune to public criticism and accountability to those they serve. We are all subject to scrutiny. That is why we write judgments so that they can be read, analysed, discussed and debated. In fact, the whole system of appeal is based on judges' awareness of their own fallibility. Hence, citizens including politicians are, to a certain extent, free to criticise the Judiciary. However, that does not mean that it is open to citizens including politicians to level unfounded and scurrilous attacks against the Judiciary or a particular judge to further their own end... [14] When a need arises for the Judiciary to be criticised, this should be done in a manner that is constructive and does not undermine its independence and public confidence in the Judiciary. No one should sow the seeds of doubts among the public concerning the integrity of the Judiciary or judges. ....[16] Under no circumstances, should we falter. The integrity of the justice system and the independence of the Judiciary can never be compromised under any circumstances. Come what may, we must remain strong and resilient and be steadfast in upholding the Rule of Law. Whilst we cannot control the words or actions of some quarters who are bent on tarnishing or destroying the image of the Judiciary, it is within our control to ensure that no one meddles in our affairs. In other words, there can be no interference in the Judiciary if we judges do not allow that to happen....[17] And, interference will not happen so long as cases are decided without fear or favour, without ill-will or motive, without any external or internal pressure and without regard to personalities.*

23. It is clear that the right to highlight possible misconduct and crimes committed by judges and/or the judiciary is not undermined. The request is simply that criticism be done in a constructive manner, and to confront this, judges '...must remain strong and resilient and be steadfast in upholding the Rule of Law..', and '...cases are decided without fear or favour, without ill-will or motive, without any external or internal pressure and without regard to personalities...'.

24. Allegations now have been made about a particular judge, and the first question is whether it is true or false. The second question reasonably would be whether it interfered in any way the functions and duties of the judge hearing and deciding in that particular case.

25. It may be good to consider criminalizing the making of false statements about judges with a mala fide intention to undermine the integrity of the judge, the judgment and/or the judicial process. Highlighting or raising possible misconducts and/or crimes of judges with no mala fide should, however, not be criminalized.

26. In K Veeraswami vs Union Of India And Others (1991), a five-judge Bench of the Indian Supreme Court ruled that in case of an allegation of corruption against a judge of the Supreme Court, the President would order an investigation in consultation with the CJI and, if the allegation is against the CJI himself, the President would consult other judges and act on their advice.

27. However, from our Malaysian experience, this idea of consulting or getting the consent of the Chief Justice before criminal investigation is commenced may not be a good idea, as we have had in our past Chief Justices who have been found wanting by including the Malaysian Bar. It may be unwise to include the Chief Justice in deciding whether a judge be investigated or not.

28. The rule of law demands judicial accountability. Accountability makes the exercise of power more efficient and effective. The British constitutional theorist A V Dicey wrote that “no man is above the law [and] every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals”. Legal equality is the cardinal principle of the rule of law, and everyone including judges, must respect it.

29. Identifying and weeding out of judges that have committed crimes and other wrongdoings may in fact be most important to ensuring and maintaining public confidence in the Malaysian judiciary. Sweeping allegations, without a proper investigation and finding, is a practice that may be more hurtful to the public confidence of judges and the judiciary.

### **Reforms needed to extend the independence of the Judiciary in Malaysia**

30. For the protection of the independence of the judiciary, certain safeguards like security of tenure are needed. Unfortunately, this safeguard is removed when it comes to Judicial Commissioners, which came into being post 1988 Judicial Crisis, amongst others, vide Constitution (Amendment) Act 1994, which introduced new Article 122AB. Appointment of judicial commissioner. Judicial Commissioners, being ‘contract’ judges may (or may not) later be appointed as Judges – and this impacts of the independence of the Judiciary. All qualified persons should be directly appointed as Judges, with all the necessary safeguards including security of tenure until the age of retirement.

31. Safeguards protecting the independence of the Judiciary is currently only for High Court judges and above, and noting the increased jurisdiction accorded to Session Court judges, it is only reasonable that these safeguards now be extended to cover Session Court judges, Magistrates and other judicial

officers like Registrars, that they all should come under the Judiciary – not the Executive or some other Commissions.

**Therefore, it is resolved**

- A. That the Malaysian Bar continues to uphold the principle of the independence of the Judiciary;**
- B. That the Federal Constitution be amended that removes the Prime Minister’s powers in the selection, appointment and elevation of judges. The King should exercise powers of appointment of members of the judiciary on the advice of the independent Judicial Appointments Commission;**
- C. That Legal equality is the cardinal principle of the rule of law, and everyone including judges, must respect it, and be subject to equal treatment in the administration of criminal justice;**
- D. That the safeguards and protection to ensure the independence of the Judiciary be extended to Session Court Judges, Magistrates and other judicial officers involved in the administration of justice in courts;**
- E. That the act of making unfounded, false or baseless allegations of crime and misconduct against judges, with mala fide to undermine the credibility and the independence of judges and/or courts be criminalized;**
- F. That a Royal Commission of Inquiry, as promised by the Malaysian government, following the allegations raised by the then Court of Appeal judge Hamid Sultan and others be immediately formed to investigate assertions of judicial misconduct but also to recommend holistic and comprehensive reforms to improve and strengthen the institution of the Judiciary.**

PROPOSED BY:-

Charles Hector – BC/C/712

Kevin De Rozario – BC/K/521

Tabian Tahir – BC/T/652

**Addendum to the Resolution:-**

*a. Ucapan Ketua Hakim Negara Pada Majlis Mengangkat Sumpah Jawatan Dan Taat Setia Hakim Mahkamah Tinggi Pada 27.04.2022*

- b. *SUHAKAM Press Statement No. 4-2022\_SUHAKAM is Deeply Distressed and Concerned Over the MACC Investigation Against YA Dato' Mohd Nazlan Mohd Ghazali*
- c. *Malaysian Bar Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice 25 Apr 2022*
- d. *Star Report - RCI into allegations of judicial misconduct must be set up quickly, says Suhakam (Star, 14/9/2020)*
- e. *Malaysian Bar Press Release | Implement Decision to Set Up RCI into the Judiciary Without Further Delay 15 Apr 2019*
- f. *Malaysian Bar's Memorandum Mengenai Krisis Terbaharu Yang Melibatkan Badan Kehakiman (BM and English) signed by Ambiga Sreenevasan, President of the Malaysian Bar, dated 26/9/2007 that was submitted following the Walk for Justice in 2007*

###Addendums:-

A. **UCAPAN KETUA HAKIM NEGARA PADA MAJLIS MENGANGKAT SUMPAH JAWATAN DAN TAAT SETIA HAKIM MAHKAMAH TINGGI PADA 27.04.2022**

YAA Tan Sri Rohana binti Yusuf, Presiden Mahkamah Rayuan;

YAA Tan Sri Dato' Sri Azahar bin Mohamed, Hakim Besar Malaya

YAA Tan Sri Dato' Abang Iskandar bin Abang Hashim, Hakim Besar Sabah & Sarawak;

YA Hakim-hakim Mahkamah Persekutuan, dan Mahkamah Rayuan;

YBhg. Datuk Stephen Chung Hian Guan dan YBhg. Dato' Prof. Madya Dr. Johan Shamsuddin Bin Dato' Haji Sabaruddin, Anggota-anggota Suruhanjaya Pelantikan Kehakiman;

Yg Berusaha Puan Karen Cheah Yee Lynn, Presiden Majlis Peguam Malaysia

Yg Berusaha Puan Hasbi binti Hasan, Ketua Pendaftar Mahkamah Persekutuan Malaysia;

Yg Berusaha Encik Qalam Zainuddin bin Sani, Setiausaha Suruhanjaya Pelantikan Kehakiman;

Para tetamu, pegawai-pegawai kehakiman, wakil-wakil media, tuan-tuan dan puan-puan yang dihormati sekalian,

Assalaamualaikum wbt dan salam sejahtera.

[1] Terlebih dahulu marilah kita memanjatkan kesyukuran kepada Allah swt kerana dengan izin dan limpah kurniaNya jua, dapat kita bersama-sama hadir di Majlis Angkat Sumpah Jawatan dan Taat Setia Hakim Mahkamah Tinggi pada petang ini.

[2] Bagi pihak Badan Kehakiman Malaysia, saya ingin menjunjung kasih atas limpah perkenan Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong, Al-Sultan Abdullah Ri'ayatuddin Al-Mustain Billah Shah Ibni Almarhum Sultan Haji Ahmad Shah al-Mustain Billah atas pelantikan:

(i) YA Dato' Sri Latifah binti Haji Mohd Tahar;

(ii) YA Dato' Amarjeet Singh a/l Serjit Singh;

(iii) YA Datuk Duncan bin Sikodol;

(iv) YA Tuan Muniandy a/l Kannyappan;

(v) YA Dr. Shahnaz binti Sulaiman;

(vi) YA Puan Evrol Mariette Peters;

(vii) YA Tuan Christopher Chin Soo Yin;

(viii) YA Tuan Ong Chee Kwan;

(ix) YA Tuan Mohd Radzi bin Abdul Hamid;

(x) YA Datuk Haji Aslam bin Zainuddin;

(xi) YA Dato' Julie Lack;

(xii) YA Tuan Wong Siong Tung;

(xiii) YA Tuan Leonard David Shim;

(xiv) YA Tuan Nadzarin bin Wok Nordin;

(xv) YA Tuan Quay Chew Soon;

(xvi) YA Tuan Atan Mustaffa Yussof Ahmad; dan

(xvii) YA Tuan Anand Ponnudurai,

sebagai Hakim-Hakim Mahkamah Tinggi.

[3] Saya juga ingin merakamkan ucapan terima kasih kepada YAB Perdana Menteri, Dato' Sri Ismail Sabri bin Yaakob kerana telah menerima nama-nama yang dicadangkan oleh Suruhanjaya Pelantikan Kehakiman.

[4] Pada kesempatan ini, saya bagi pihak Badan Kehakiman ingin mengucapkan setinggi-tinggi tahniah dan syabas kepada YA-YA Hakim Mahkamah Tinggi atas pelantikan ini, yang sudah tentunya menjadi detik bersejarah dalam kerjaya YA-YA.

[5] YA-YA baru sahaja mengangkat sumpah Jawatan dan Taat Setia. Terdapat tiga intipati penting yang terkandung dalam Sumpah Jawatan tersebut, iaitu:

(i) untuk menjalankan kewajipan-kewajipan dengan jujur;

(ii) untuk menumpahkan taat setia kepada Malaysia; dan

(iii) untuk memelihara, melindungi dan mempertahankan Perlembagaannya.

[6] Sesungguhnya, sumpah dan ikrar yang telah dilafazkan itu bukan sekadar suatu formaliti atau ritual tetapi adalah ikrar yang besar maknanya yang perlu dihayati dan dijadikan panduan oleh YA-YA dalam melaksanakan tugas seharian.

YAA-YAA, YA-YA, Tuan-Tuan dan Puan-Puan

[7] Pelantikan Hakim Mahkamah Tinggi pada hari ini adalah berdasarkan prestasi yang telah dinilai oleh Suruhanjaya Pelantikan Kehakiman mengikut kriteria-kriteria yang ditetapkan di bawah Akta Suruhanjaya Pelantikan Kehakiman 2009.

[8] Kriteria-kriteria ini termasuklah integriti, kompetensi, mempunyai peribadi moral yang baik, tidak berat sebelah, ketegasan, kebolehan membuat penghakiman tepat pada masanya, kerajinan dan kebolehan untuk menguruskan kes dengan baik. Kriteria yang lain yang dipertimbangkan ialah tidak mempunyai lebih daripada tiga (3) penghakiman yang belum ditulis melebihi tempoh masa yang ditetapkan.

[9] Saya mengambil peluang ini untuk mengingatkan YA-YA bahawa pengesahan dan pelantikan YA-YA sebagai Hakim Mahkamah Tinggi pada hari ini bukanlah bermaksud YA-YA tidak lagi perlu tekun dalam melaksanakan tugas harian atau tidak lagi perlu menjaga tatakelakuan seperti ketika YA-YA belum disahkan atau dilantik sebagai Hakim Mahkamah Tinggi. Sebaliknya, dengan pengesahan ini, tugas dan tanggungjawab YA-YA kini adalah lebih besar untuk menjaga tatakelakuan selaras dengan Kod Etika Hakim 2009 dan untuk mendengar serta memutuskan kes-kes berlandaskan prinsip undang-undang yang betul dan mantap.

[10] Saya juga ingin mengingatkan YA-YA bahawa satu aspek penting tugas kehakiman ialah untuk menyediakan alasan penghakiman bagi kes-kes yang telah diputuskan. Memberi sebab atau alasan bagi keputusan yang dicapai adalah sama penting jika tidak lebih penting daripada membuat keputusan itu sendiri. Sehubungan dengan itu, YA-YA perlu menyediakan alasan penghakiman dalam tempoh masa

yang munasabah jikapun ia tidak dapat disediakan dalam tempoh masa yang ditetapkan. Ini kerana, perbicaraan rayuan di Mahkamah Rayuan tidak dapat berjalan dengan lancar tanpa alasan penghakiman daripada Mahkamah Tinggi. Begitu juga rayuan di Mahkamah Persekutuan tidak dapat berjalan dengan lancar tanpa alasan penghakiman daripada Mahkamah Rayuan.

Hadirin yang saya hormati,

[11] Kebelakangan ini, mahkamah berhadapan dengan kes-kes berprofil tinggi dan melibatkan kepentingan awam. Adalah menjadi lumrah bagi kita para hakim untuk menerima kritikan dan tohmahan daripada pihak yang terkilan dengan keputusan-keputusan mahkamah

apalagi bagi kes-kes berkepentingan awam. Namun, apayang berlaku dalam beberapa hari ini yang membabitkan tohmahan terhadap hakim dan Badan Kehakiman, pada pandangan saya, agak keterlaluan.

[12] Judges are by no means immune to public criticism and accountability to those they serve. We are all subject to scrutiny. That is why we write judgments so that they can be read, analysed, discussed and debated. In fact, the whole system of appeal is based on judges' awareness of their own fallibility. Hence, citizens including politicians are, to a certain extent, free to criticise the Judiciary. However, that does not mean that it is open to citizens including politicians to level unfounded and scurrilous attacks against the Judiciary or a particular judge to further their own end.

[13] It is important to emphasise that the Judiciary is the last line of defence in a constitutional democracy and there must never be a suspicion that the Judiciary is captured.

[14] When a need arises for the Judiciary to be criticised, this should be done in a manner that is constructive and does not undermine its independence and public confidence in the Judiciary. No one should sow the seeds of doubts among the public concerning the integrity of the Judiciary or judges.

[15] Walau apapun, saya menyeru YA-YA agar tidak berputus asa dan lemah semangat dalam melaksanakan tugas selaras dengan prinsip undang-undang.

[16] Under no circumstances, should we falter. The integrity of the justice system and the independence of the Judiciary can never be compromised under any circumstances. Come what may, we must remain strong and resilient and be steadfast in upholding the Rule of Law. Whilst we cannot control the words or actions of some quarters who are bent on tarnishing or destroying the image of the Judiciary, it is within our control to ensure that no one meddles in our affairs. In other words, there can be no interference in the Judiciary if we judges do not allow that to happen.

[17] And, interference will not happen so long as cases are decided without fear or favour, without ill-will or motive, without any external or internal pressure and without regard to personalities. Public or popular views, do not matter. Cases are decided based on evidence led in court and based on established principles of law including the stare decisis. Whatever allegations and tribulations that confront us, these principles must be adhered to. Only if we adhere to these paramount principles are we worthy of being called judges.

[18] Justeru, kita hendaklah sentiasa berpegang kepada prinsip-prinsip yang disebutkan tadi, kerana itulah yang akan menentukan atau mencerminkan kejujuran kita dalam menjalankan kewajipan kehakiman dan juga menentukan Badan Kehakiman terus teguh dan dihormati.

[19] Akhir kata, saya sekali lagi mengucapkan tahniah dan syabas kepada YA-YA Hakim Mahkamah Tinggi yang baru dilantik pada petang ini. Saya percaya pelantikan ini menjadi suatu kebanggaan buat YA-YA dan keluarga. Semoga pelantikan ini menjadi pendorong kepada YA-YA untuk terus berbakti dan berkhidmat dengan penuh dedikasi dan kejujuran.

[20] Saya juga mendoakan agar YAA-YAA dan YA-YA semuanya dikurniakan kesihatan yang baik dan diberi kekuatan untuk terus melaksanakan tugas menegakkan keadilan dan memartabatkan Badan Kehakiman.

Sekian, Wabillahi taufik wal hidayah, wassalamu alaikum warahmatullahi wabarakatuh.

Source: Malaysian Judiciary Website

#### **B. Press Statement No. 4-2022\_SUHAKAM is Deeply Distressed and Concerned Over the MACC Investigation Against YA Dato' Mohd Nazlan Mohd Ghazali**

**April 26, 2022**

PRESS STATEMENT

KUALA LUMPUR (26 APRIL 2022) – The Human Rights Commission of Malaysia (SUHAKAM) is deeply distressed and concerned over the recent news that the Malaysian Anti-Corruption Commission (MACC) will commence an investigation into a report of an allegation of corruption against YA Dato' Mohd Nazlan Mohd Ghazali, JCA (“YA Dato' Nazlan”), an action that is unconstitutional and unprecedented by MACC, given that there are specific provisions under the Federal Constitution, to deal with allegations of wrong doing against superior court judges.

Article 125(3A) of the Federal Constitution provides that where a superior court judge has allegedly committed a breach of any of the provisions of the Code of Ethics and the Chief Justice is of the opinion that the breach does not warrant the superior court judge to be referred to a tribunal for removal from office pursuant to Clause (4), then the Chief Justice can refer the matter to the Judges' Ethics Committee established pursuant to the Judges' Ethics Committee Act 2010 [Act 703]. SUHAKAM subscribes to and supports the principle of separation of powers to ensure the integrity and independence of the Judiciary is protected and to avoid any interference and political pressure against any member of the Judiciary at any time.

SUHAKAM questions the motive of MACC in launching the investigation and is of the view that MACC's proposed investigation will set a negative and dangerous precedent that may undermine the Judiciary as



an institution and as one of the pillars of a democratic Government. This may also open the floodgate to frivolous and vexatious charges and abuse of process by enforcement agencies against the Judiciary.

SUHAKAM supports the view that all judges must have the proper space to discharge their judicial duties in a manner apparent to all, and that the judicial process and decision is independent, free of any interference, considered, reasoned and honest. Above all that, it is vital for justice not only to be seen to be done but must be done according to the law.

Accordingly, SUHAKAM calls upon the MACC to stop all investigations against YA Dato' Nazlan, immediately.

-END-

Human Rights Commission of Malaysia (SUHAKAM)

26 April 2022

Media queries: Contact Mrs. Norashikin Hamzah at 03-2612 5687 / 019-621 5336 or [shikin@suhakam.org.my](mailto:shikin@suhakam.org.my) - Source: SUHAKAM website

**C. Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice 25 Apr 2022 1:38 pm**

The Malaysian Bar is appalled with the turn of events that the Malaysian Anti-Corruption Commission (“MACC”) has commenced an investigation into YA Dato’ Mohd Nazlan Mohd Ghazali, JCA (“YA Dato’ Nazlan”). It is not apparent to the public, who lodged the report, or when such a report was lodged. What is obvious to the Malaysian Bar is that there should be no double standards by the authorities in approaching the same issue — and on this basis we demand equivalent investigations to be carried out by the police on the report lodged by YA Dato’ Nazlan on the allegations raised in statements issued by Raja Petra Kamarudin on his blog, Malaysia Today, dated 20 April 2022.

Quite apart from such double standards, the Malaysian Bar notes that the Office of the Chief Registrar of the Federal Court had also announced that the post contained false, baseless and malicious accusations to, amongst other things, interfere with the due administration of justice.

Let it be known that the Judiciary is an institution of the highest value for both political and economic stability in every country. It is an indispensable condition for the existence of the rule of law that the Judiciary be independent and impartial, and must always be perceived to be so. The Judiciary as an institution and judges individually are conferred with certain constitutional guarantees to insulate them from political and other influence and pressure in order to secure their independence and impartiality.

There is a justifiable reason for this necessity. Since the events of 1988 in Malaysia, the independence and impartiality of the Judiciary has been a source of concern. Thankfully, our current Chief Justice had restored confidence in the Judiciary and beyond that, overhauled the system to make it not just efficient, but credible and with integrity — maintaining the order in which the rule of law plays so crucial within our democratic nation.

The Malaysian Bar fully supports the efforts of the Chief Justice in maintaining the independence of the Judiciary. We fully recognise that all Judges must have the proper space to discharge their judicial duties in a manner apparent to all, and that the judicial process and decision is independent, free of any interference, considered, reasoned, honest; and above all that, justice must be seen to be done. It is on this basis that the Malaysian Bar is unable to support this negative and rash perception being pushed by irresponsible parties, and urge that such misconception be arrested immediately; otherwise another crisis of confidence will re-emerge in the independence and impartiality of the Judiciary and the administration of justice in the country.

The Malaysian Bar further states that the MACC investigation violates the doctrine of separation of powers and also undermines the independence of the Judiciary, and is unconstitutional. There are mechanisms in place to deal with this issue, and pending the determination in such an issue, any attempts by irresponsible parties can be seen as stabbing public confidence in the Judiciary. Article 125 of the Federal Constitution provides a specific pathway that allows for complaints of judicial misconduct to be addressed in a manner that ensures continued public confidence in the Judiciary.

Such purported investigations by MACC will have an impact on the Judiciary as it undermines the rule of law and creates intimidation and a climate of fear. This perpetuates insecurity and suspicion amongst our citizenry of the Judiciary, and does not augur well for the growth and maturity of our nation. The mere possibility of such an investigation by MACC, let alone an actual investigation, would undermine, and be perceived as undermining, judicial independence. A public perception could arise that the judges make decisions that ensure they are not made the subject of investigations by the enforcement authorities, which are publicly perceived as being under the control of the Government. It could further be perceived that in arriving at such misconceived perceptions that judges are therefore enforced to take steps to ensure that they do not antagonise the Government. This would be a disservice to the faith we have in our rule of law and our democratic nation.

Without that necessary confidence instilled in the Judiciary as an institution, the system of administration of justice cannot command the respect and acceptance which are essential to its effective operation in our administration of justice.

The Malaysian Bar is fully aware that the Judiciary is not in any position to take steps to protect itself by involving itself in a trial by media or any form of public controversy, and that there is therefore a need by the Malaysian Bar to protect the dignity and integrity of the courts and the Judiciary as a whole, considering the nature of the office has always been defenceless to criticisms or wild allegations made by irresponsible parties. We have seen such wild attempts to hurt lawyers, members of the public, as well as the Judiciary as an institution, and now, specific judges.

The Malaysian Bar is greatly averse to any investigation by MACC which may set the terms of an unsavoury precedent, and no doubt have an adverse effect in the future process undertaken by our authorities in similar circumstances against the Judiciary or individual judges — since these circumstances appear to be more frequent nowadays when one hides behind the comfort of cyberspace. The continued attempts to cut into the credibility of our respected institutions should be curbed immediately. We call for a circumspect approach by our authorities; that they do not fall to the temptation of irresponsible noise made by keyboard warriors. Cull the easy approach, for the greater good of our nation.

Karen Cheah Yee Lynn  
President  
Malaysian Bar  
24 April 2022

Source: Malaysian Bar Website

#### **D. RCI into allegations of judicial misconduct must be set up quickly, says Suhakam (Star, 14/9/2020)**

By SIRA HABIBU

Nation, Monday, 14 Sep 2020 6:10 PM MYT

PETALING JAYA: The Human Rights Commission of Malaysia (Suhakam) has called for the speedy set up of a Royal Commission of Inquiry (RCI) into allegations of judicial misconduct contained in an affidavit filed by an Appeals Court judge last year.

The affidavit was filed by Court of Appeal judge Datuk Dr Hamid Sultan Abu Backer in February 2019, and quickly went viral.

"The allegations made in the aforementioned affidavit, if proven to be true, are serious violations of human rights and liberties guaranteed in the Federal Constitution, in particular equality before the law and equal protection of the law for all," said Suhakam.

Suhakam said that the then Pakatan Harapan government had in February last year, the same month the affidavit was filed, announced that it would establish an RCI to look into the allegations.

"To date, there seems to be no further developments on either the establishment of the RCI or the investigation of the allegations made in the affidavit.

"Suhakam hopes that the RCI will be established immediately without any further delay in order to restore the public's trust and confidence in the country's justice system and protect the independence of the judiciary," it said in a statement Monday (Sept 14).

The commission added that the judiciary was a fundamental pillar of a democratic state, and therefore its independence and integrity were critical to ensure the public's trust and confidence in fair and impartial justice for all in the country.

The 65-page affidavit was filed in support of lawyer Sangeet Kaur Deo's court application seeking a declaration that the then chief justice Richard Malanjum had allegedly failed in his duty to complete investigations into two widely publicised cases of purported judicial interference. - [Star, 14/9/2020](#)

### **E. Press Release | Implement Decision to Set Up RCI into the Judiciary Without Further Delay 15 Apr 2019 9:24 pm**

The Malaysian Bar views with great concern the considerable amount of time that the Government seems to be taking to set up the Royal Commission of Inquiry ("RCI") to investigate the grave allegations of judicial interference and judicial misconduct.

Fifty-three days have passed since 21 February 2019, when the Prime Minister, Tun Dr Mahathir Mohamad, first announced that the Government would form an RCI to look into the allegations. Since then, there has been (to our knowledge) no news regarding the implementation of that decision. The RCI's composition and terms of reference have yet to be announced.

The Malaysian Bar has repeatedly called for the establishment of the RCI since August 2018, when the allegations of judicial impropriety first surfaced during Justice Datuk Dr Haji Hamid Sultan bin Abu Backer's presentation as a panellist at the Malaysian Bar's International Malaysia Law Conference 2018. A Member of the Malaysian Bar subsequently made further allegations.

We reiterate our call to the Government to act decisively to establish the RCI, without delay, to not only investigate the serious assertions of judicial misconduct but also to recommend holistic and comprehensive reforms to improve and strengthen the institution of the Judiciary.

A thorough and immediate investigation needs to be undertaken to ascertain the facts and the extent of any interference in the ability of judges to make impartial decisions, as well as to put in place measures to ensure that no manner of coercion, influence or threat is ever brought to bear on any judge.

The Malaysian Bar is mindful that the sanctity of the independence and integrity of the Judiciary is essential, and of the utmost importance for upholding the rule of law and instilling public confidence. It must not be allowed to be tarnished. A fair and effective administration of justice — and unshakeable public confidence in the dispensation of justice — depends on it.

The Malaysian Bar strongly urges the Government to set up the RCI without further delay.

Abdul Fareed Abdul Gafoor  
President  
Malaysian Bar

15 April 2019

Source: Malaysian Bar Website

F. **Malaysian Bar's Memorandum Mengenai Krisis Terbaharu Yang Melibatkan Badan Kehakiman (BM and English)** signed by Ambiga Sreenevasan, President of the Malaysian Bar, dated 26/9/2007 that was submitted following the Walk for Justice in 2007 – *REQUEST THE BC to insert this memorandum, which is in the possession of the Bar.*

**Motion 1.4**

Charles Hector Fernandez  
Lot 3585, Kampung Lubuk Layang,  
Batu 3, Jalan Mentakab,  
28000 Temerloh, Pahang

15 May 2022

Attention:-

Anand Raj  
Secretary  
Malaysian Bar  
Bar Council Malaysia,  
Wisma Badan Peguam Malaysia,  
2 Leboh Pasar Besar,  
50050 Kuala Lumpur, Malaysia

RE: MOTION TO BE CONSIDERED AT THE MALAYSIAN BAR EGM

Pursuant to section 64(6) of the Legal Profession Act 1976 (“LPA”), please find enclosed motion entitled,

**Motion to restore the administration of justice in Malaysia, including the end of use of ‘deals’  
to end criminal prosecution and protect law-breakers**

to be considered during the upcoming EGM.

In solidarity,

Charles Hector (BC/C/712) on behalf of the Proposers

Charles Hector – BC/C/712  
Kevin De Rozario – BC/K/521  
Tabian Tahir – BC/T/652

## **Motion to restore the administration of justice in Malaysia, including the end of use of 'deals' to end criminal prosecution and protect law-breakers**

1. The Malaysian Bar is committed ‘...(a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour...’
2. In recent times, there has been growing concern with the administration of criminal justice in Malaysia, that includes the decisions made to not prosecute and/or to discontinue prosecution, including by reason of ‘agreements’ and even the offer of compounds, even after the accused had already been charged in court for serious offences.
3. The effect of an offer of compound, and its acceptance and payment is the ending of investigation with a view of prosecution.
4. It makes a mockery of the laws that Parliament made, which sets out crimes and the punishment if convicted, if the State/Executive, Minister or some officer/s including the Public Prosecutor can simply by offering compounds end investigations/prosecutions – hence enabling the possibility of the guilty to avoid trial, conviction and even being sentenced according to law.
5. Some of these laws, in Malaysia, generally stipulate only the maximum compound value, but not even the minimum, which means one could even be offered a compound of RM1, and the powers to decide on the quantum of compounds is exercisable by the executive or administration, and not the judiciary.
6. What offences can be compounded in Malaysia today is also shocking? In the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, section 92 (1) states that ‘...The competent authority or relevant enforcement agency, as the case may be, may, with the consent of the Public Prosecutor, compound **any offence under this Act or under regulations made under this Act**, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding fifty per centum of the amount of the maximum fine for that offence, including the daily fine, if any, in the case of a continuing offence, to which that person would have been liable if he had been convicted of the offence, within such time as may be specified in its written offer...’. Many other laws that deal with serious crimes also provide for compounds.
7. A perusal of the origin of compounds for crime can be seen by reference to our own Criminal Procedure Code, whereby it is important to note that it was **for lesser offences and it required the agreement of the victim**, not the prosecutor, or the Minister or any other public officer that was instrumental. The court’s permission is also key, not the Public Prosecutors or any other.
8. In India, Section 320 of the Criminal Procedure Code deals with compounding of offences. These are less serious in nature and are of two different types as mentioned under S. 320 in two different tables: **1. Compounding without the permission of the Court**– Examples of these offences include adultery, causing hurt, defamation criminal trespass. **2. Court permission is**

**required before compounding** – Examples of such offences are theft, voluntarily causing grievous hurt, assault on a woman with intention to outrage her modesty, dishonest misappropriation of property amongst others, criminal breach of trust.

9. Likewise, in Malaysia Section 260 of the Criminal Procedure **Code have** similar provisions.
10. The point to note is that generally lesser offences are compoundable, but not more serious offences. The second point to note is **who has the power to offer compound – it is the VICTIM. If the matter is already in court, then not just the intention of the victim is needed, but also the consent of the court.** The Public Prosecutor or the executive/administration really has no power to decide on who is to be offered compound, and who not to.
11. Section 260(1) reads ‘The offences punishable under the Penal Code described in the first two columns of Part A may, when no prosecution for such offence is actually pending, be compounded by the person mentioned in the third column of Part A; or when a prosecution for such offence is actually pending, be compounded by the person with the consent of the Court before which the case is pending.’
12. However, what has happened in Malaysia, is that the power to offer compounds seems to be transferred from the victims and the courts, to the executive or administration, being the Minister, public officers responsible and sometimes requiring the consent of the Public Prosecutor. This change leads to a dangerous situation, and the powers to compound, more so without judiciary’s involvement, can lead to injustice and abuse of executive and/or administrative powers which not only undermines existing laws, but leads to differential treatment of certain classes of ‘criminals’.
13. Compounding a felony was an offence under the common law of England and was classified as a misdemeanor. It consisted of a prosecutor or victim of an offence accepting anything of value under an agreement not to prosecute, or to hamper the prosecution of, a felony. Compounding has been abolished in England and Wales, in Northern Ireland, in the Republic of Ireland, and in New South Wales.
14. Likewise, in Malaysia, in light of recent happenings, the administrative abuse of compounds to undermine the administration of criminal justice, to not just protect certain categories of possible criminals – which in some cases, ends with the ‘gift’ of acquittal, resulting in the bar to future prosecution of an offence, even if new evidence arises, or the views of the public prosecutor changes.
15. Judges, reasonably, should not acquit, but only grant a discharge not amounting to acquittal if and when the prosecution decides to discontinue proceedings mid-stream. Conviction or acquittal should be decisions of courts only after a total evaluation of evidence after a full trial, and not simply because a current prosecutor decides to discontinue proceedings for whatever reasons – which likely may at the material time hold the position of not wanting to charge the accused for the same crime.



16. Discovery of new evidence or a change of the public prosecutor may lead to a change of mind, but an premature acquittal without a full consideration of all evidence, is a bar that allows a criminal to escape the consequences of his/her breaking the law.
17. We remember that a former Public Prosecutor decided that then Prime Minister Najib did no crime and hence ought not be charged. The position changed when a new Public Prosecutor came into the picture. If Najib, had been charged, and the former prosecutor had discontinued proceedings and Najib obtained an acquittal, it would have been most unjust, as today Najib already stands convicted, and even the Court of Appeal has affirmed the conviction and sentence.

### **Conduct of the Public Prosecutor and/or prosecutors**

18. Article 145(3) of the Federal Constitution confers the attorney general, as the public prosecutor, with exclusive power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, but recent decisions to discontinue proceedings, in some cases resulting in acquittals by the court is disturbing. It must be pointed out that the power to acquit is solely with the courts and judges
19. The point has been made before that the Attorney General, being also the government's lawyer, makes it difficult, if not impossible for him/her to carry out the role and duties of a Public Prosecutor independently and professionally. It becomes 'complicated' if he, as Public Prosecutor, is put in a position where he has to charge a sitting Prime Minister, Minister or persons connected. As 'government lawyer', he may be distracted by other factors like recoveries of monies, good relationship with certain States/Corporations/persons, etc which ought not be a consideration of a public prosecutor, who is simply focused on the administration of criminal justice. Calls have been made for Malaysia to have a Public Prosecutor, different from the Attorney General.
20. Recent cases have given rise to the perception that possible criminals, can avoid trials, possible convictions and sentences by the courts for crimes they committed simply by the return of some of their ill-gotten gains and/or payments of a relatively insignificant compound. For this, in exchange they obtain withdrawal of an ongoing prosecution against them, and may even be additionally gifted with an acquittal by court.
21. **'It is indefensible and outrageous to allow an accused person to buy himself out of a serious criminal offence. It is an abuse of process that would bring the administration of justice into disrepute.'**, so said former Malaysian Bar Presidents Zainur Zakaria, Kuthubul Zaman, Yeo Yang Poh, Ambiga Sreenevasan, Rangunath Kesavan, Lim Chee Wee, Christopher Leong and Steven Thiru in a statement reported on 29/5/2020.

### **Some Recent Cases**

22. In the case of the Pontian Member of Parliament, he was charged for an offence under Section 113(1)(a) of the Income Tax Act 1967, which '...on conviction, be liable to a fine of not less than one thousand ringgit and not more than ten thousand ringgit and shall pay a special penalty of double the amount of tax which has been undercharged in consequence of the incorrect return or incorrect information or which would have been undercharged if the return or information had been accepted as correct...'. Section 4(1)(a) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 shall on conviction be liable to imprisonment for a term not exceeding fifteen years and shall also be liable to a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million ringgit, whichever is the higher.
23. For giving false statements to the Malaysian Anti-Corruption Commission (MACC) when questioned by MACC, he was charged under Section 32(8)c) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, Section 32 (8) Any person who-....(c) **furnishes to an investigating officer any information or statement that is false or misleading in any material particular**...commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both, and, in the case of a continuing offence, shall in addition be liable to a fine not exceeding three thousand ringgit for each day or part thereof during which the offence continues to be committed.
24. Serba Dinamik Holdings Bhd (“Serba Dinamik”) - In December 2021, four Serba Dinamik officers were charged in court for submitting a false statement to Bursa Malaysia, which is an offence under section 369(a)(B) of the Capital Markets and Services Act 2007 (“CMSA”).<sup>1</sup> Under section 369(a)(B) of CMSA, if convicted, a person faces an imprisonment term not exceeding 10 years and shall also be liable to a fine not exceeding RM3 million. However, in April 2022, the Securities Commission Malaysia (“SC”) with the written consent of the Public Prosecutor, and pursuant to its powers under Section 373(1) of CMSA, **compounded Serba Dinamik and its accused officers** for a sum of RM3 million each. The Vice President of Accounts & Finance, Muhammad Hafiz Othman, was also compounded an additional RM1 million for **falsifying the accounting records of Serba Dinamik’s subsidiary**.
25. One of the core objectives of securities regulations is to foster a fair market system, thereby instilling confidence in investors and shielding the market from systemic risks. To achieve this, regulators who are exercising their statutory duties must be given the liberty to enforce law and regulations against wrongdoers.
26. **Riza Aziz** was facing five charges under Section 4(1) of the Anti-Money Laundering, Anti-Terrorism Financing Act 2001 (Act 613). It was alleged that he had received monies totalling US\$248m linked to 1MDB between April 2011 and December 2012. He pleaded not guilty to the charges. If convicted of any of the five charges, he could have been imprisoned for a maximum of five years, or liable for a fine not exceeding RM5m, or both. Our former Bar Presidents, in a statement said, that ‘The decision of the attorney general to agree to a discharge not amounting

to an acquittal in the prosecution of Riza Aziz for alleged money laundering offences is perplexing.’

27. Criminal charges against Goldman Sachs and its two Asian subsidiaries were withdrawn by the Attorney General’s Chambers (AGC) today for their involvement in the 1Malaysia Development Bhd (1MDB) scandal. It was reported on July 24 that Goldman Sachs had agreed to a settlement with Malaysia amounting to close to US\$4 billion. High Court Judge Justice Mohamed Zaini Mazlan allowed the prosecution’s application for Goldman Sachs and its Singapore and Hong Kong subsidiaries to be granted a discharge and acquitted of all 12 charges against the three entities. (Edge Markets, 4/9/2020).
28. The administration of justice, the administration of criminal justice and the Rule of Law is at risk, and what has been happening has an impact on public perception of the administration of justice in Malaysia, and the Malaysian Bar who upholds the cause of justice without fear and favor is compelled to act.
29. Our laws governing compound must be reformed, restoring the rights to compound to the victim, and that too for the less serious offences. Certain offences, considered serious, will not cause prosecution to end simply because the victims want to.
30. When a person accepts an offer of compound, it must be recorded as an admission of guilt – for otherwise, the simple payment of compounds for repeated offences of the same kind will lead a sad state of affairs. The amount of the compound cannot be left to the arbitrary determination of the executive; it may require a judicial determination. In short, the law governing compounds must be reformed. The law governing ‘deals’, other than compounds, that ends investigation and/or prosecution must also be reviewed and reformed.

#### **Therefore, we resolve**

- A. That Malaysian laws that allow for compound, must be reviewed and reformed permitting compounds only for lesser offences and never for serious offences like corruption, abuse of power of public officers and members of administration, crimes affecting public listed companies and others;
- B. That the decision to offer compounds rests with the victims, with the consent of the Judiciary, and no more be in the hands of the Executive, Ministers, public officers and/or the Public Prosecutors;
- C. That offences capable of being compounded, and the amounts shall be determined by Parliament, and no longer determined solely by the Minister or some other;
- D. That the law prevents an accused person to buy himself out of a serious criminal offence by means of monies, ‘deals’ or other influences, and that “(1) All persons are equal before the law and entitled to the equal protection of the law.”(Article 8, Federal Constitution);

- E. That Malaysia shall not make 'deals' to discontinue investigation/prosecution in cases where Malaysian laws are broken, especially criminal cases. 'Deals' and settlements should be confined to civil disputes.
- F. That Malaysia do the needed reforms to ensure that the Public Prosecutor is different/separate from the Attorney General, with the needed safeguard to ensure that the Public Prosecutor is able to carry out his/her duties independently and professionally in the administration of criminal justice in Malaysia;
- G. That Malaysia Bar protest the rot of the administration of criminal justice and Rule of Law in Malaysia, including considering a peaceful assembly and/or a 'Walk of Justice' to highlight the various problems to all, and to compel the Malaysian government to speedily do the needed reforms to restore public perception of the administration of justice and the Rule of Law in Malaysia.

PROPOSED BY:-

Charles Hector – BC/C/712

Kevin De Rozario – BC/K/521

Tabian Tahir – BC/T/652

**S.I. RAJAH** A.M.N., B.S.L., P.L.S.

(Barrister at Law - Inner Temple (London))

PG Diploma in Syariah Law & Practice (IIUM), MBA (UPM), MCIM (UK), MMJM (MAL)

Chartered Marketer (UK) FCIM (UK)

Date: 17 May 2022

BY EMAIL

[motions@malaysianbar.org.my](mailto:motions@malaysianbar.org.my)

**Mr. Anand Raj**

Secretary

Bar Council Malaysia

Wisma Badan Peguam Malaysia

2, Leboh Pasar Besar,

50050 Kuala Lumpur

Dear Sir,

**Extraordinary General Meeting of the Malaysian Bar (27 May 2022)**

Pursuant to the Notice issued in the Circular No: 117/2022 and pursuant to the Section 65(5) of the LPA, I hereby forward herewith the soft copy of the Motion (in Microsoft Word format) to you as the Secretary of Malaysian Bar via email.

This is in compliance with the said rule, that this Notice must be sent not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing which I have complied.

To substantiate my credentials, I enclosed herewith the relevant copies of the documents.

Thanking you.

Yours faithfully,



(S.I. Rajah)

**Motion for the day is as follows:**

I, S.I Rajah, Bar Council Membership No: B/C/I/6 do hereby move this motion at this EGM to call upon the Members of the Bar Council to congratulate the appointment of Tun Richard Malanjum as Ombudsman of the United Nation Security Council which appointment was made by the Secretary General of United Nation, António Guterres on 28 January 2022. By virtue of this appointment, Tun Richard Malanjum has uplifted and strengthen the integrity and the credibility of our Judiciary.

Signed by,

(S.I Rajah)

Dated on 17 May 2022

Motion is proposed by Mr. S.I Rajah @ Inderajah - Bar Council Membership No: BC/I/6

Motion is seconded by Mr. Ho Peng Kwang - Bar Council Membership No: BC/H/218

**Brief Profile of Tun Richard Malanjum**

Tun Richard Malanjum (born 13 October 1952) is a Malaysian jurist and lawyer who served as the ninth Chief Justice of Malaysia and fourth Chief Judge of Sabah and Sarawak. Before joining the judicial service, he was a practicing lawyer and was the president of the Sabah Law Association, the bar association for the state of Sabah and he has currently gone back to his practice under the firm of Sitiwin & Jintoni with his fellow colleagues Charlene Siim C. Jintoni & Fulton Mark Sitiwin in Kota Kinabalu, Sabah.

Tun Richard Malanjum had his early education in Tuaran, Penampang District, Sabah and completed his secondary education in La Salle Secondary School, Kota Kinabalu. After obtaining his Bachelor of Law Degree from University in London in 1975, he furthered his studies in London and completed his Bar at Law Degree and was called to the English Bar by the Honorable Society of Grays Inn and subsequently in the year 1975

*(pto)*

he was called to the Malaysian Bar. Having served in various capacities, he became the Chief Justice of Malaysia, the highest judicial officer in Malaysia on 11 July 2018 and retired as Chief Justice on 13 April 2019 having reached the mandatory retirement age. Very recently this year on 28 January 2022, he was appointed as Ombudsman by the Secretary General of the United Nations Security Council, António Guterres. He took his official function on 14 February 2022.

**Motion 1.6**

Date: 18<sup>th</sup> May 2022

**SECRETARY**

Bar Council  
Wisma Badan Peguam Malaysia  
2 Leboh Pasar Besar  
50050 Kuala Lumpur  
Malaysia



**Re: Motion for EGM**

This House considers unconstitutional the publication by the Malaysian Anti-Corruption Commission of the fact that they are investigating a High Court Judge without referring their cause for the investigation to the Chief Justice to consider the allegations in the light of Article 125 of the Federal Constitution.

This House further considers as a cause for concern various safeguards under the Federal Constitution and our democratic system of government being whittled down over the years such as: -

the removal of the requirement for local council elections in 1965 thereby giving more power to the State and Federal Government to administer local authority funds;

the removal of the jury system in 1995 giving the responsibility of making findings of fact to a single High Court or Sessions Court Judge or Magistrate; and

the removal of the power of the Dewan Rakyat to approve the allocation of money acquired from our entire oil resources.

Providing in the Federal Constitution power to the Chief Justice appointed on the recommendation of the Prime Minister power under Article 125(3A) to refer a High Court Judge to the MACC.

  
K. KANESALINGAM



**Motion 1.7**

***Law Practice of Rafique***  
***Advocates & Solicitors***

**Partners**

**Muhammad Rafique Rashid Ali LL.B (Hons) (IIU)**  
**Farah Adeeba Mohamed Ashraf LL.B (Hons) (IIU)**

Unit 13A-17, Tingkat 14, Plaza Azalea,  
Persiaran Bandaraya, Seksyen 14,  
40000 Shah Alam, Selangor Darul Ehsan.  
Tel: 03-55241250  
Email: rafique2009@gmail.com  
(please quote our reference when replying)

**Associates**

**Akif Bin Rusli LL.B (Hons) (MMU)**  
**Nurmustanir bin Md Nor LL.B (Hons) (IIU)**

---

Your Reference:

Our Reference:

**THE SECRETARY**  
**Bar Council of Malaysia**  
Wisma Badan Peguam Malaysia  
2 Leboh Pasar Besar  
50050Kuala Lumpur,

**18<sup>th</sup> May 2022**

**Via E-mail Only**  
council@malaysianbar.org.my  
motions@malaysianbar.org.my

Dear Sirs,

**RE: MOTION TO BE CONSIDERED AT THE EXTRAORDINARY MEETING OF THE  
MALAYSIAN BAR (27 May 2022)**

---

I refer to the above matter.

Please find attached herewith the Motion I wish to have discussed and debated during the EGM scheduled for 27<sup>th</sup> May 2022.

Kindly do the needful.

Thank You.

Yours faithfully,

Muhammad Rafique bin Rashid Ali  
BC/M/1204  
Advocate and Solicitor of the High Court of Malaya

## PROPOSED MOTION FOR EGM BAR COUNCIL 2022

WHEREAS Section 21 of the First Schedule of Members of Parliament (Remuneration) Act 1980 (Act 237) provides:

### Benefits for former Prime Ministers

21. (1) A person who ceases to hold the office of Prime Minister, or a person who had previously held the office of Prime Minister before the date of the coming into force of this Act, shall be entitled to such allowances and privileges at such rates and on such terms and conditions as may be determined by the Cabinet from time to time.

(2) The determination by the Cabinet pursuant to subparagraph (1) shall apply mutatis mutandis to the allowances, benefits and privileges payable or conferred under subparagraphs 2(c), (d), and (e) of the Tunku Abdul Rahman Putra Al Haj Pension Act 1971 as if they were conferred under subparagraph (1).

AND WHEREAS Section 2 of Tunku Abdul Rahman Putra Al-Haj Pension Act 1971 (Act 22) provides:

2. Notwithstanding the Members of Parliament (Remuneration) Act 1980 [Act 237] or any other law pertaining to the pensions and gratuities of Members of the Administration, Y.T.M. Tunku Abdul Rahman Putra Al-Haj shall, on his retirement from the office of Prime Minister of Malaysia, be entitled to the following pension and privileges:

- (a) a tax free gratuity of RM200,000;
- (b) a pension of four thousand ringgit shall be payable monthly on the first day of each month;
- (c) a furnished residence shall be provided and maintained free of charge;
- (d) a government motor-car and a driver shall be provided; and
- (e) a secretary, a clerk-cum-stenographer, a security officer and an office boy shall also be provided at current government rates.

AND WHEREAS Datuk Seri Najib bin Tun Abdul Razak who is now a convict following a conviction by the Kuala Lumpur High Court in the SRC Case which was subsequently affirmed by the Court of Appeal, is still being accorded privileges as former Prime Minister of Malaysia including but not limited to police outriders, and thereby sending a wrong signal to the whole public that a convict could still be accorded privileges despite his conviction.

AND WHEREAS there has been a huge outcry from members of the public on what is perceived as double standards not only for Datuk Seri Najib Razak but also for those from political or influential backgrounds.

**Therefore, it is hereby proposed that:**

1. The Bar Council calls upon Parliament to take all necessary steps to push for an amendment of the Members of Parliament (Remuneration) Act 1980 to ensure that all privileges are either suspended and/or stripped of pending full disposal of any criminal proceeding instituted against any Member of Parliament so long as the said Member has not managed to overturn a conviction against him/her.
2. The Bar Council calls upon the Cabinet to immediately suspend all privileges accorded to Datuk Seri Najib Razak as former Prime Minister pending the final disposal of his appeal in the SRC case.

**Proposer:**



Muhammad Rafique bin Rashid Ali

BC/M/1204

Advocate and Solicitor of the High Court of Malaya

*This page is intentionally left blank*