Integrity

“ Integrity, justice, courage, temperance and prudence—these are virtues that constitute the moral character of a good professional, indeed that of a good man.

Integrity is a fundamental requirement of justice. Without integrity there can be no rule of law.

It is the responsibility of every lawyer not only to have integrity but to strenuously ensure that the dishonest and corrupt do not have a place in our system of law and justice. ”

—HRH Sultan Azlan Shah
The New Millennium: Challenges and Responsibilities

“ The views of the Conference of Rulers are, strictly speaking, given to the Prime Minister. It is then for him to consider these views before he makes the final recommendation to the Yang di-Pertuan Agong. Only when such a procedure is followed can the Conference of Rulers play an effective role in the ‘advising’ process. ”

—HRH Sultan Azlan Shah
The Role of Constitutional Rulers and The Judiciary: Revisited

POSTSCRIPT

The Role of Constitutional Rulers and The Judiciary *Revisited*

References were made in *Supremacy of Law in Malaysia*;[1] *Checks and Balances in a Constitutional Democracy*;[2] and *The Role of Constitutional Rulers*,[3] to the following matters:

(1) the position of the Yang di-Pertuan Agong and the Rulers with regard to Royal Assent of Bills passed by Parliament, or the State Legislative Assemblies;
(2) the requirement for consent or consultation of the Conference of Rulers on certain matters under the Constitution;
(3) the status of the judiciary; and
(4) constitutional amendments.

In this chapter, I wish to make a few general observations on each of these matters, especially in the light of certain developments that have taken place since I first expressed my views on them.

Rulers and Royal Assent

Under the Merdeka Constitution, a Bill passed by Parliament only became law when it was assented to by the Yang di-Pertuan Agong.[4] Similarly, at the State level, a Bill passed by the State Legislative Assembly became law when assented to by the Ruler concerned.

In 1983, a Bill was introduced in Parliament to amend this Constitutional procedure. Under this Bill, it was initially proposed that new provisions be made in the Federal and State Constitutions whereby a Bill, if not assented to by the Yang di-Pertuan Agong or the Ruler concerned within 15 days, will be "deemed" to have been assented to by the Yang di-Pertuan Agong or the Ruler concerned.

Further, in an attempt to amend Article 150 of the Constitution, dealing with the Proclamation of Emergency by the Yang di-Pertuan Agong, the 1983 Bill also made certain provisions: It was proposed that a Proclamation of Emergency should only be issued by the Yang di-Pertuan Agong when "the *Prime Minister* is satisfied that a grave emergency exists …". The amendment, therefore, proposed to substitute the "satisfaction" of the Yang di-Pertuan Agong with that of the Prime Minister.

The reasons for these proposed amendments to the Constitution were unclear. However, the Conference of Rulers was of the view that these amendments made significant changes "affecting … the Rulers" and as such, the consent of the Conference of Rulers had first to be obtained as required under Article 38(4) of the Federal Constitution. The then Yang di-Pertuan Agong (Sultan of Pahang), when presented with the Bill, refused, on the advice of the Rulers, to assent to the Bill.

What ensued subsequently were lengthy negotiations between the Rulers and the Government. The views that I had expressed in my article on *The Role of Constitutional Rulers*, especially as to the right of the Rulers to refuse Royal Assent,[5] was widely published and publicised. As one writer had put it:

> National attention was focused on the article, "The Role of Constitutional Rulers" written by [Raja Tun Azlan Shah (as he then was)] …[6]

Happily, the stalemate was resolved, and a major constitutional crisis was averted. The Rulers and the Government struck a compromise. The outcome: A new Bill was introduced in Parliament by the Government, and under this Bill, the Yang di-Pertuan Agong shall "within 30 days assent to the Bill", or "return the Bill (other than a Money Bill)" to Parliament with a statement of the reasons for his objection to the Bill. Parliament would then consider the objections, and if after consideration, the Bill was again passed by Parliament, it would be sent to the Yang di-Pertuan Agong for assent. In such a situation, the Yang di-Pertuan Agong "shall assent to the Bill within thirty days after the [reconsidered Bill] is presented to him".[7]

The proposed amendments to the Eighth Schedule of the Constitution relating to the assent by a Ruler of Bills passed by the State Legislative Assembly were withdrawn. Likewise the amendment to Article 150 was also withdrawn.[8]

Regrettably, what was thought to be an amicable resolution of the issues, however, did not last for long. As will be seen below, some of the same issues were resurrected in 1993.

The 1993 amendments

In 1993, the Government again introduced a Bill in Parliament that affected the rights and privileges of the Rulers. By far, this was the most radical piece of legislation affecting the Rulers that has been introduced since Independence. The Bill proposed to take away from the Rulers the immunities that the they had always enjoyed. The 1993 Bill again attempted to take away the rights of the Yang di-Pertuan Agong and the Rulers to withhold assent to a Bill. One other amendment that the Bill attempted to make was to restrict the exercise of the discretion of the Yang di-Pertuan Agong and the Rulers in certain matters under the Federal and State Constitutions.

The Rulers initially refused to accept these amendments, especially so since no prior consent of the Conference of Rulers, as required under Article 38(4), had been obtained before it was passed by Parliament. There was then a major constitutional impasse. However, this was subsequently resolved. What happened subsequently has now been well documented.[9]

I need not delve into the details, as most of you are familiar with the entire episode. Suffice to say, the status of the Rulers was fundamentally affected. The effect: the Rulers' immunities were taken away, and a Special Court was established to hear cases affecting the Rulers.[10]

As to the rights of the Yang di-Pertuan Agong and the Rulers regarding Royal Assent, the 1993 amendments achieved what was not fully accomplished by the 1983 amendments. The Constitution was amended in 1993 to provide that "The Yang di-Pertuan Agong shall within thirty days after a Bill is presented to him assent to

the Bill … If a Bill is not assented to by the Yang di-Pertuan Agong within the [thirty days] … it shall become law …"[11]

A similar amendment was also introduced to the Eighth Schedule to the Constitution. Under this amendment, all State Constitutions shall contain provisions that provide that the Ruler shall assent to a Bill passed by the State Legislative Assembly within 30 days. Like the position of a Bill submitted to the Yang di-Pertuan Agong, if any Ruler were to refuse assent within this period, the Bill shall become law.[12]

As stated earlier, one further change that the 1993 amendments brought about was the removal of the discretionary powers of the Yang di-Pertuan Agong and the Rulers on certain matters under the Federal and State Constitutions. A new Article 40(1A) was inserted into the Federal Constitution. This provides as follows:

> In the exercise of his function under this Constitution or federal law, where the Yang di-Pertuan Agong is to act in accordance with advice, on advice, or after considering advice, the Yang di-Pertuan Agong shall accept and act in accordance with such advice.

At the State level, the Eighth Schedule was amended to include a new section 1A. This read as follows:

> In the exercise of his functions under the Constitution of this State or any law or as a member of the Conference of Rulers, where the Ruler is to act in accordance with advice or on advice, the Ruler shall accept and act in accordance with such advice.

Consent and consultation of the Conference of Rulers

The Federal Constitution expressly provides that on certain matters, the Conference of Rulers is to play an important role in the constitutional process. It must be remembered that the Merdeka Constitution was formulated with the participation of the Malay Rulers, and as such a constitutional role was prescribed to them. Furthermore, when the Reid Commission made its Report, the Commission was of the view that the Rulers, collectively to be known as the Conference of Rulers, should serve as a check and balance in some of the constitutional processes under the Federal Constitution. For this purpose, in several important matters under the Constitution, it was provided that the Conference of Rulers was to participate in the process.

The Federal Constitution expressly provides that on certain matters, the Conference of Rulers is to play an important role in the constitutional process. They should serve as a check and balance in some of the constitutional processes.

We have seen that Article 38 of the Federal Constitution makes express provisions for the role to be played by the Conference on certain matters. For example, Article 38(2) provides as follows:

> The Conference of Rulers shall exercise its function of–
>
> (a) electing, in accordance with the provisions of the Third Schedule, the Yang di-Pertuan Agong and Timbalan Yang di-Pertuan Agong;
>
> (b) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole;

(c) consenting or withholding consent to any law and making or giving advice on any appointment which under this Constitution requires the consent of the Conference or is to be made by or after consultation with the Conference;
(d) appointing members of the Special Court under Clause (1) of Article 182;
(e) granting pardons, reprieves and respites, or of remitting, suspending or commuting sentences, under Clause (12) of Article 42,

and may deliberate on questions of national policy (for example changes in immigration policy) and any other matter that it thinks fit.

Furthermore, it is provided by Article 38(4) that no law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers. Similarly, Article 38(5) provides that:

> The Conference of Rulers shall be consulted before any change in policy affecting administrative action under Article 153 [relating to special privileges of the Malays and natives of Sabah and Sarawak] is made.

I wish to make some observations here on only one aspect of the role of the Conference of Rulers that in recent years has caused some concern. This relates to the role of the Conference of Rulers in "making or giving advice on any appointment" as provided for under Article 38(2)(c).

The Constitution provides that in the appointment of certain key posts under the Federal Constitution, the Conference of Rulers will be involved in the appointment process. Sometimes different

terms are employed in the Constitution to describe the precise role to be played by the Conference of Rulers. For example under Article 105(1) the Auditor General shall be appointed "after consultation with the Conference of Rulers"; similarly with the appointment of the Election Commission (Article 114).

Article 122B also provides that the appointment of the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judges of the two High Courts, all judges of the Federal Court, Court of Appeal, and the High Courts, shall be made "after consulting the Conference of Rulers".

Though the actual deliberations of the Conference of Rulers are generally secret, certain of these appointment processes were in the public eye after the decision of the Court of Appeal in *In the Matter of an Oral Application by Dato' Seri Anwar bin Ibrahim to Disqualify a Judge of the Court of Appeal.*[13]

The facts of the case as reported in *The Malayan Law Journal* are as follows:

> During the course of the hearing of the appeal before the Court of Appeal, the appellant requested for permission to address the court himself. The appellant claimed that in his capacity as the Deputy Prime Minister, he had represented the Prime Minister to the Conference of Rulers in which the appointment of Mokhtar Sidin J (as he then was) to the bench of the Court of Appeal was in question, as the Conference of Rulers were not in agreement with the Prime Minister's advice with regard to the appointment. In light of that, the appellant made an oral application to disqualify Mokhtar Sidin JCA from the quorum hearing the present appeal on the ground that there might be a likelihood of bias on the judge's part.

Without making any detailed study as to the scope of Article 122B, nor as to the rationale behind it, Lamin PCA, in a very brief judgment came to the following conclusions on this important area of constitutional law:

> The intention of this Article [122B(1)] is clear, ie the Yang di-Pertuan Agong must act on the advice of the Prime Minister. *However, the Yang di-Pertuan Agong is required to consult the Conference of Rulers before making the appointment.* To consult means to refer a matter for advice, opinion or views.[14]

He added:

> To "consult" does not mean to "consent". The Constitution uses the words "consent" and "consult" separately. For example the word "consent" is used in Article 159(5) of the Constitution which states that the amendment to certain provisions of the Constitution cannot be passed by Parliament without the "consent" of the Conference of Rulers.[15]

On the role of the Conference of Rulers specifically on the appointment of judges, Lamin PCA declared:

> So in the matter of the appointment of judges, when the Yang di-Pertuan Agong *consults* the Conference of Rulers, he does not seek its "consent". He merely consults. *So when the Conference of Rulers gives its advice, opinion or views, the question is, is the Yang di-Pertuan Agong bound to accept?* Clearly he is not. He may consider the advice or opinion given but he is not bound by it. But Article 40(1A)[16] of the Constitution provides specifically as to whose advice the Yang di-Pertuan Agong must act upon … Clearly

> therefore the Yang di-Pertuan Agong must act upon the advice of the Prime Minister.[17]

He then concluded:

> So in the context of Article 122B(1) of the Constitution, where the Prime Minister has advised that a person be appointed a judge and if the Conference of Rulers *does not agree or withholds its views or delays the giving of its advice* with or without reasons, legally the Prime Minister can insist that the appointment be proceeded with.[18]

It is pertinent for me to point out that the above views expressed by Lamin PCA on the role of the Conference of Rulers in the appointment process of judges is, of course, merely obiter dicta, since the main issue before the court was the disqualification of the judge. Whilst this is not a proper forum for me to discuss in detail the correct constitutional role of the Conference of Rulers in the appointment process, I would, however, like to make a few general comments:

(1) It must be stressed that in most cases, it is the executive, namely the Prime Minister, who actually nominates candidates for these important constitutional positions. In some cases, besides the Conference of Rulers, the Prime Minister is also required to consult or seek the views of other parties before the nomination. In the appointment of judges, for example he must "consult" the Chief Justice, and in some cases the President of the Court of Appeal, or the two Chief Judges. In the case of the appointment of the Inspector General of Police, or the Deputy Inspector General of Police, the recommendation of the Police Service Commission is required.[19]

(2) Secondly, only after complying with the prescribed constitutional process should the Prime Minister submit the names of the candidates to the Yang di-Pertuan Agong, who will then make the final appointments. In such cases, especially since the constitutional amendments in 1993, it is generally said that the Yang di-Pertuan Agong has no discretion on the matter, but must accept the nomination as submitted by the Prime Minister.[20]

> To say that appointments can be made even if the "Conference of Rulers ... withholds its views or delays the giving of its advice" clearly goes against the grain and spirit of the Constitution. The entire process of consultation with the Conference of Rulers cannot simply be relegated to a mere formality.

(3) Whatever strict legal distinction may exist between the terms "consult" and "consent" (or even "advise"), the role played by the Conference of Rulers cannot be diminished by drawing such slight distinction in terminology.[21]

To say that appointments can be made even if the "Conference of Rulers ... withholds its views or delays the giving of its advice" [22] clearly goes against the grain and spirit of the Constitution.

The entire process of consultation with the Conference of Rulers cannot simply be relegated to a mere formality. The key words here, as stated in Article 38(2)(c), are "giving advice on any appointment".

This is a constitutional role that was contemplated by the drafters of the Constitution—a role of checks and balances

that ensures the appointment of the best persons to important constitutional positions. It was also clearly intended to prevent any abuses of power by not giving the appointing authority the sole discretion in the appointment process of key positions under the Constitution.

(4) Lamin PCA's statement that in the appointment of judges, only the views of the Prime Minister are important, even if no views are expressed by the Conference (either because it had withheld its views for further consideration, or delayed the giving of its advice), seems to suggest that the Prime Minister may also dispense with the requirement under the Constitution to seek the views of the Chief Justice.[23]

Just as the Prime Minister is duty-bound to consult the Chief Justice, he is equally bound to consult the Conference of Rulers. In such cases, the Prime Minister must consider the views expressed by both the Chief Justice and the Conference of Rulers.

Clearly, this cannot be the correct interpretation. Just as the Prime Minister is duty-bound to consult the Chief Justice, he is equally bound to consult the Conference of Rulers. In such cases, the Prime Minister must consider the views expressed by both the Chief Justice and the Conference of Rulers. Only after a careful consideration of both their views should the Prime Minister make a final selection. Otherwise, the Prime Minister will have a free hand as to whom he can appoint, without an effective mechanism of checks and balances. So any negative views expressed by the parties (the Chief Justice or the Conference of Rulers) on a particular

candidate must be taken seriously. The Prime Minister is duty-bound to give serious consideration to such advice.

Furthermore, it is generally accepted as good practice that whenever an appointing body receives from another independent and respected body an adverse report on a candidate, such advice should be given serious consideration. In most cases, the advice will provide sufficient and compelling reasons as to why the candidate should not be appointed to the post. If this procedure were complied with, the appointing authority will be in a position to avoid any accusations of bias or favouritism. This mechanism, thus, protects the appointing authority from any allegations of impropriety.

Therefore, in this regard, it is generally difficult to rationalise why a Prime Minister would not want to consider, or even abide by the views of nine Rulers and four Governors who constitute the Conference of Rulers. These are independent persons, with vast experiences, and with no vested interest in the nominated candidates. Their duty is to fulfil their constitutional role in ensuring that only the best and most suited candidates are selected for the posts.

(5) Finally, the statements made by Lamin PCA in this case seem to suggest that the Conference of Rulers gives its advice directly (and only) to the Yang di-Pertuan Agong, and not to the Prime Minister.

In practice, this is not the case.

The Prime Minister submits the names of the candidates to the Conference of Rulers. The Conference then submits its views to the Prime Minister before he tenders his advice to the Yang

di-Pertuan Agong. Therefore, the views of the Conference are, strictly speaking, given to the Prime Minister. It is then for him to consider these views before he makes the final recommendation to the Yang di-Pertuan Agong. Only when such a procedure is followed can the Conference of Rulers play an effective role in the "advising" process.

To suggest that their advice is given directly to the Yang di-Pertuan Agong will render this entire constitutional process meaningless, since, when the Prime Minister submits the name to the Yang di-Pertuan Agong, the Yang di-Pertuan Agong is duty-bound, under Article 40(1A), to accept the advice of the Prime Minister.

Judiciary

Public confidence in the judiciary

When reviewing the state of the Malaysian judiciary after 25 years of independence, Tun Mohamed Suffian said:

> ***Judiciary Still Unpoliticised:*** … since Independence … it [the judiciary] has remained completely unpoliticised … The judiciary … in determining the disputes that come before them is under a duty to do so impartially without fear or favour and the Constitution forbids the executive and the legislature from telling them how a case should be decided. In fairness to the executive and the legislature, it must be said that they have never at any time tried to influence the judiciary.[24]

I, too, on several occasions before, have expressed the same view. In 1987, I observed: "I believe that our judiciary has proved

worthy of the trust the founding fathers of the Constitution saw fit, in their wisdom, to confer upon the Bench." [25]

During the period when I was on the Bench, there were fewer judges (in 1983, there were 36 Federal and High Court Judges), and we wrote judgments on all important cases that we decided upon. These were all reported in the only local law journal then, *The Malayan Law Journal*.

Sadly, over the past few years there has been some disquiet about the judiciary. Several articles have been written, and many opinions expressed, both internationally and locally, that the independence of our judiciary has been compromised. It has been said that there has been an erosion of public confidence in our judiciary.[26]

Concerns have been expressed that some judges were not writing judgments, or that there were long delays in obtaining decisions or hearing dates in certain instances. Further, the conduct of certain judges was being questioned in public. Allegations of "forum shopping" prompted a Court of Appeal Judge to say: "Something is rotten in the state of Denmark",[27] an obvious reference to Denmark House, the building which houses the law courts. Some lawyers complained of excessive awards of damages for defamation cases, and the liberal use by some judges of contempt of court charges. In the appeal to the Federal Court in the now infamous *Ayer Molek* case,[28] even the panel of judges who sat to hear the case was unconstitutionally constituted.

Professor Wu Min Aun in his article, "Judiciary at the Crossroads",[29] explains some of the events that led to the so-called erosion of public confidence in the judiciary:

Public confidence in the judiciary started to slide when the executive commenced its attack as a result of several decisions which went against the government. Political rhetoric surrounding the amendments to Article 121 of the Federal Constitution merely exacerbated it. It deteriorated further when the Lord President and two Supreme Court Judges were dismissed.

Whether these allegations are true, is not for me to say. However, having been a member of the judiciary for many years, it grieves me when I hear of such allegations. Since Independence, the early judges had always cherished the notion of an independent judiciary and had built the judiciary as a strong and independent organ of government. The public had full confidence in the judiciary and accepted any decision then made without any question. Unfortunately, the same does not appear to be the case in recent years.

A judiciary may only be said to be independent if it commands the confidence of the public. Statements made as to its independence by the judges, or even the politicians, do not measure public confidence in the judiciary. At the end of the day, it is this public perception that ultimately matters.

Whatever the situation, a judiciary may only be said to be independent if it commands the confidence of the public—the very public it seeks to serve. After all, statements made as to its independence by the judges, or even the politicians, do not measure public confidence in the judiciary. At the end of the day, it is this public perception that ultimately matters.

It is my earnest hope that the Malaysian judiciary will regain the public's confidence, and that it will once again be held in the same esteem as it once was held. In democratic countries, it is an independent judiciary that brings pride to the nation. Members of the executive and the legislature come and go, but an independent judiciary remain steadfast forever, fulfilling the aspirations and ideals of the people. In the judiciary, people place their trust and hope.

Judicial power

For an effective system of checks and balances to be in place, the three organs of government must be vested in three different constitutional bodies. Under the Malaysian Constitution, the executive organ is vested in the Yang di-Pertuan Agong and the Cabinet,[30] and the legislative powers in Parliament.[31]

For an effective system of checks and balances to be in place, the three organs of government must be vested in three different constitutional bodies.

In the lecture on *Checks and Balances in a Constitutional Democracy*, delivered in 1987, I spoke of the vesting of the judicial power in the judiciary. I also referred to the Supreme Court decision in *Public Prosecutor v Dato' Yap Peng*.[32] I now wish to state briefly some developments relating to judicial powers in Malaysia.

Article 121(1) of the Federal Constitution provided as follows:

> Subject to Clause (2) the judicial power of the Federation shall be vested in two High Courts of co-ordinate jurisdiction and status, namely—
> (a) one in the States of Malaya ... and
> (b) one in the States of Sabah and Sarawak ...
> and in such inferior courts as may be provided by federal law ...

The scope of judicial powers was considered in detail in the Federal Court case of *Public Prosecutor v Dato' Yap Peng*. In that case, the validity of section 418A of the Criminal Procedure Code was challenged on the ground that it contravened Article 121 of the Constitution. In gist, this section provided that the Public Prosecutor may, at any time before a decision was given by a subordinate court, issue a certificate requiring the subordinate court to transfer a case from the subordinate court to the High Court, without the subordinate court first holding a preliminary inquiry.

By a majority of three to two (Salleh Abas LP and Hashim Yeop Sani SCJ dissenting) the Supreme Court held that section 418A of the Criminal Procedure Code was void as being an infringement of Article 121 of the Constitution. Abdoolcader SCJ[33] delivered the leading majority judgment. He said in his judgment that, "any other view would ... result in relegating the provisions of Article 121 vesting ... judicial power ... in the curial entities specified to no more than ... a munificent bequest in a pauper's will." [34]

Soon after this decision was delivered, the Federal Constitution was amended in 1988 by the Constitution (Amendment) Act 1988.[35] Article 121 was amended so as to take away the judicial power from the two High Courts. It was further provided that "the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law".[36]

The precise reasons for this amendment remain unclear. But the consequences may be severe. With this amendment, it would appear that the judicial power is no longer vested in the courts, and more importantly, the High Courts have been stripped of their inherent jurisdiction. Their powers are now only to be derived from any federal law that may be passed by Parliament.

The effect of this change may have far-reaching consequences on the separation of powers doctrine under the Federal Constitution. In commenting on this amendment, the International Commission of Jurist, based in Geneva had this to say:

> The formulation of [Article] 121 of the Constitution makes the High Courts' jurisdiction and powers dependent upon federal law, ie the court has no constitutionally entrenched original jurisdiction. This undermines the separation of powers and presents a subtle form of influence over the exercise of judicial power. This makes the operation of the High Court dependent upon the legislature and is a threat to the structural independence of the judiciary.[37]

Though it may be said that despite this amendment, following the Privy Council decision in *Liyanage v R*,[38] which I referred to in my lecture,[39] the judicial power still vests in the judiciary, it is my hope that Article 121 will be reviewed to reinstate the position as it was before the amendment in 1988.

Notes

1. Chapter 1, above.
2. Chapter 5, above.
3. Chapter 10, above.
4. Article 66(4).
5. See chapter 10, page 272, above.
6. HP Lee, *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press, 1995, at page 28.
7. See Constitution (Amendment) Act 1984, Act A584.
8. See generally, HP Lee, 'The Malaysian Constitutional Crisis: King, Rulers and Royal Assent', *Lawasia*, 22-44. This article was reprinted in (1986) *INSAF* (Journal of the Malaysian Bar) and in Trindade & Lee (eds), *The Constitution of Malaysia: Further Perspectives and Developments*, Oxford University Press, 1986.
9. See, HP Lee, "Hereditary Rulers and Legal Immunities in Malaysia" (1993) *University of Tasmania Law Review* (Law School Centenary Volume: Constitutional Issues) 323-336.
10. See Constitution (Amendment) Act 1993, Act A848.
11. See now Article 66(4) and (4A) of the Federal Constitution.
12. See section 2A of the Eighth Schedule.
13. [2000] 2 MLJ 481, CA.
14. Ibid at 484. Emphasis added.
15. Ibid.
16. See page 389, above.
17. [2000] 2 MLJ 481 at 484. Emphasis added.
18. Ibid. Emphasis added.
19. Article 140(4).
20. See Article 40(1A).

21. As to the principles governing the interpretation of the Constitution, see the views which I expressed in *Dato Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, FC, at 32.

22. Per Lamin PCA in *In the Matter of an Oral Application by Dato' Seri Anwar bin Ibrahim to Disqualify a Judge of the Court of Appeal* [2000] 2 MLJ 481 at 484.

23. Article 122B also provides that the Prime Minister, before tendering his advice to the Yang di-Pertuan Agong, shall "consult" the Chief Justice.

24. Tun Mohamed Suffian, "The Judiciary—During the First Twenty Years of Independence", in Suffian, Lee & Trindade, *The Constitution of Malaysia: Its Development 1957-1977*, at page 241.

25. Chapter 2, at page 43, above.

26. See generally: Harding, AJ "The 1988 Constitutional Crisis in Malaysia", (1990) 39 *International and Comparative Law Quarterly*, 54; Wu Min Aun, "Judiciary at the Crossroads", in *Public Law in Contemporary Malaysia*, Longman, Petaling Jaya (Malaysia), 1999.

27. Per NH Chan in *Ayer Molek Rubber Co Bhd v Insas Bhd* [1995] 2 MLJ 734, CA, at 744.

28. *Insas Bhd & Anor v Ayer Molek Rubber Co Bhd & Ors* [1995] 2 MLJ 833, FC.

29. Above, note 26.
See also:
HP Lee, "The Judiciary Under Siege", in *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press, 1995, pages 43-85 (Foreword by Justice Michael Kirby). This article was first published as "A Fragile Bastion Under Siege—The 1988 Convulsion in the Malaysian Judiciary", (1990) 17 *Melbourne Law Review* 386-417;
RH Hickling, "The Malaysian Judiciary in Crisis", (1989) *Public Law* 20;
FA Trindade, "The Removal of the Malaysian Judges", (1990) 106 *Law Quarterly Review* 51;

(Note 29 cont'd)
Malaysia: Assault on the Judiciary, 1990, New York, Lawyers Committee for Human Rights.

30. Article 39.

31. Article 66.

32. [1987] 2 MLJ 311, SC.

33. With whom Lee Hun Hoe CJ concurred. Azmi SCJ gave a separate concurring judgment.

34. [1987] 2 MLJ 311 at 319.

35. Act A704, with effect from 10 June 1988.

36. Article 121(1).

37. *Report on Malaysia*, *International Commission of Jurist*, 13 August 2001.

38. [1966] 1 All ER 650, PC.

39. See chapter 5, at pages 105–106, above.