

*Reference Proceedings for Almarhum  
Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah*

Federal Court, Palace of Justice, Putrajaya  
19 November 2014

## Tribute by Christopher Leong

President, Malaysian Bar

**H**is Royal Highness Almarhum Sultan Azlan Muhibbuddin Shah: The Man, the Judge, a Monarch rained in Law.

The eminence of the assemblage this morning is testimony to the high standing and regard to which Almarhum Sultan Azlan Muhibbuddin Shah is held as a judge and as the fifth Lord President of the Federal Court. There have been reference proceedings in the past for former judges for whom the bells tolled. However, the last occasion on which we congregated for a reference proceeding with respect to a former Lord President of the Federal Court was one in honour of the late Tun Mohamed Suffian Hashim, the fourth Lord President, held at the Federal Court on 16 March 2001.

Reference proceedings are an important and meaningful occasion. The three branches of the legal community—those concerned with the administration of justice, namely, the Judiciary, the Attorney General's Chambers and the Bar—gather to collectively honour a departed member of our community.



In this regard, we have just heard from The Honourable Attorney General, Tan Sri Abdul Gani Patail, and I wish to associate myself with what has been so eloquently said. Permit me with My Lordship's leave to add to that recitation.

My Lord Chief Justice,

Almarhum was born in the small tin-mining town of Batu Gajah, Perak on 19 April 1928. Although a prince, his childhood was by all accounts very much like the childhood of many children of Perak of that time, comprising of the simple pleasures, challenges and invaluable experiences one encounters in early life, namely, a good schooling, active participation in sports and the making of lasting and meaningful friendships, little suspecting what destiny had in store for him. The prince would grow to be a man, a judge and a monarch trained in law, whose acumen, intellect and stature would have a profound impact on a nation yet to be conceived.

The then prince is remembered by his childhood friends and schoolmates as an "all-rounder". Almarhum was Head Boy of his school—the then Government English School—and an ardent and accomplished sportsman representing the Silver State in hockey. He went on to read law at the University of Nottingham (my alma mater), and was subsequently admitted in 1954 as an Utter Barrister to the Honourable Society of Lincoln's Inn.

By his own account, Almarhum chose law because he was not good in mathematics and science but liked languages, in particular English for its flexibility in the context of legal interpretation. We are the richer for that choice.

My Lord,

Almarhum Sultan Azlan Muhibbuddin Shah served on the Bench at a time referred to by many as the “Golden Age” of our judiciary with judicial giants in the persons of Lord President Tun Mohamed Suffian Hashim, Justice Tan Sri Ong Hock Thye, Justice Tan Sri Ong Hock Sim, Justice Tan Sri Wan Suleiman bin Pawan Teh, Justice Tan Sri Eusoffe Abdoolcader to name but a few. Amidst such esteemed and formidable jurists, His Royal Highness shone and was a great judicial luminary in his own right. The annals of our judicial history bear testimony to this.

At the elevation ceremony of Almarhum Sultan Azlan Shah as judge of the High Court of Malaya in 1965, elevation speeches by the Attorney General and the Chairman of the Bar Council was the tradition of the day. On that memorable occasion, my distinguished predecessor, the late RR Chelliah, the then Chairman of the Bar Council, said as follows:

My Lord Raja Azlan Shah, years ago the administration of justice was exclusively in the hands of men of royal birth. Through the years this heavy burden was gradually



passed on to men learned in the law. But your Lordship has the rare distinction of having both these admirable qualifications, the requirements of the past as well as the present ...

That occasion was also noteworthy for being the first occasion on which more than one judge was elevated. The other judge elevated on that day was Justice Dato' SM Yong. The gentleman representing and speaking on behalf of the Attorney General was Wan Suleiman bin Pawan Teh, who was later elevated to the Bench and rose to be a judge of the Federal Court during the tenure of Almarhum as Lord President.

RR Chelliah went on to press for what would become characteristic of hearings before Almarhum:

Having appeared in these courts from time to time as counsel, your Lordships know what counsel's prayer is. Your Lordships know that it is not that he should win his case but that he should be given a pleasant hearing and a reasonable opportunity to present his client's case fully and fairly. We are confident that before your Lordships counsel's prayer would always be answered.

Almarhum replied with humility that he would rely on the Bar to assist him in the days to come and hoped that members of the Bar would not flinch in their duty.

The late RR Chelliah and the members of the Bar and Attorney General's Chambers would find that their prayer was often answered.

As a judge, Almarhum conducted proceedings with decorum. He was patient and courteous even when counsel was longwinded, as I am informed some counsel are prone to be, and accorded counsel due regard.

The demeanor of Almarhum was perhaps best described as dispassionately interested and inscrutable as a sphinx. Seldom would one hear of complaint, with each counsel satisfied that they had been heard and confident that they had won the day.

However, it was astutely, and perhaps a little cheekily, observed by Tun Mohamed Suffian Hashim that:

At work on the Bench he was a good and patient listener, seldom interrupted or asked questions and thereby gave the impression of agreeing to what was being said. It was a good way of curbing prolix counsel, for the experienced judge knows that with some counsel the more you try to steer them away from tedious repetition and irrelevancies the more persistent and garrulous they become; all the while you are thinking of the reserved judgments still to be pondered and written and the long list of trials and appeals to be disposed of. It was only after Raja Tun Azlan



Shah had delivered judgment that counsel realised to his dismay that the Lord President's reticence meant that he was only listening, but not necessarily agreeing.

My Lord,

During his tenure as a High Court Judge, Federal Court Judge, Chief Justice of Malaya and as Lord President, Almarhum had the unique distinction of having some 280 of his judgments reported in the *Malayan Law Journal*. As was the case with the judges of his time, Almarhum was masterful with language in speech and script, and his judgments are exemplified by clarity and precision.

Almarhum was a strong believer in the supremacy of the Federal Constitution, the doctrine of the separation of powers, the independence of the judiciary, and the Rule of Law. His views on these are well articulated for he spoke and wrote of them in his public addresses and written judgments with conviction and passion.

Almarhum recognised Malaysia as a constitutional democracy, with a constitutional monarch bound by the Rule of Law. His judgments encapsulated the values of the man, the judge, the King. Many of these judgments remain relevant authorities and continue to be referred to as *loci classici*. Almarhum's famous judgment in the case of *Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* with its often quoted passage, "Unfettered discretion is a contradiction in terms ... Every

legal power must have legal limits, otherwise there is dictatorship”, is a case in point.

On the supremacy of the Federal Constitution and separation of powers, in delivering the judgment in *Loh Kooi Choon v Government of Malaysia*, Almarhum said:

The Constitution is not a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that the individual has certain fundamental rights upon which not even the power of the State may encroach. The second is the distribution of sovereign power between the States and the Federation ... The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of government, compendiously expressed in modern terms that we are a government of laws, not of men.

And again at the Official Opening of the Malaysian Bar’s 12th Malaysian Law Conference 2003, Almarhum reiterated:

It is fundamental in this regard that the Federal Constitution is the supreme law of the land and constitutes the grundnorm to which all other laws are subject.

Almarhum always had warm and respectful regard for the Bar. He was not only supportive of the Malaysian



Bar, but also saw the Bar as vital in the administration of justice, as defenders of the Rule of Law and guardians of the Federal Constitution. In speaking to law students in the United Kingdom in 1986 on the duty of members of the Malaysian Bar, Almarhum emphasised:

It is therefore your duty, having been trained as lawyers to ensure that at all times the supremacy of the Malaysian Constitution is maintained. No matter how expedient it may be to anyone in power to follow a certain course of action, at no time should any action be taken which is inconsistent with the provisions of the Constitution, or I may add, against the spirit of the Constitution.

It is your duty, as expressly provided for in the Legal Profession Act to uphold the cause of justice without regard to your own interests, uninfluenced by fear or favour.

Almarhum would have been pleased to know that the Malaysian Bar today continues to uphold that tradition and duty in this, its 67th year.

In 1986, at the time of Almarhum's speech, I was reading law at the University of Nottingham. I had the honour of meeting Almarhum when he paid a visit to the university and graciously took the time to meet with Malaysian students. About 30 years earlier, Almarhum himself walked the halls of that same university as a law undergraduate. His words served as an inspiration for us



as aspiring lawyers and future members of the Malaysian Bar. It is therefore a personal honour and privilege for me to appear some 28 years later on this solemn occasion to pay tribute.

It may interest fellow alumni of the University of Nottingham to know that it was Almarhum who mooted the idea of the University of Nottingham Graduates Association (Malaysia), which led to the association's establishment in 1990. Almarhum served as its Royal Patron.

Almarhum took a keen interest in the development and welfare of Malaysian students. He would make time in his schedule for meetings with them and frequently spoke with students in Malaysia and abroad. He would engage in discussion on a broad spectrum of matters so as to pique, stimulate and broaden their minds. This encompassed subjects or topics such as challenges faced by law students, legal education and training, legal ethics, the duty to society, the duty to uphold the Rule of Law, the supremacy of the Federal Constitution, fundamental liberties, the changing legal landscape, systems of government, Anglo-Malaysian relations, technological advances in Malaysia and so forth.

Almarhum was the Royal Patron of The Malaysian Students' Law Society in the United Kingdom and Eire, and The British Graduates Association of Malaysia. The higher institutions of learning have also benefited from Almarhum's contributions.



Among the many positions Almarhum held were Pro-Chancellor of Science University of Malaysia, Chairman of the Higher Education Advisory Council and Chancellor of University of Malaya. These are just a few of Almarhum's many positions and contributions.

My Lord,

Almarhum Sultan Azlan Muhibbuddin Shah has the distinction of being the only person to have held two of the highest constitutional offices in Malaysia. He was head of the Judiciary as the Lord President of the Federal Court of Malaysia from 1982 to 1984 and he was the Duli Yang Maha Mulia Yang di-Pertuan Agong from 1989 to 1994.

Almarhum was well respected not only in Malaysia but also in the Commonwealth. As the Right Honourable Lord Steyn, the Lord of Appeal in Ordinary of the House of Lords, had occasion to say:

His Royal Highness is both a distinguished jurist and an eminent former judge whose valuable contribution to the law is widely known beyond the frontiers of this country.

Even as Almarhum ascended the throne, the values held as a judge remained evident in the King. On being installed as the Ninth Yang di-Pertuan Agong of Malaysia on 26 April 1989, Almarhum Sultan Azlan Shah pledged "to rule Malaysia with utmost justice based on the Laws and

the Constitution of the nation ... to stand for justice and peace of the Nation”.

His passion and concern for justice and the Rule of Law never left him. He continued to speak on the importance and role of an independent judiciary.

In delivering the Opening Address at the Malaysian Bar’s 14th Malaysian Law Conference in 2007, Almarhum said,

In matters concerning the judiciary, it is the public perception of the judiciary that ultimately matters. A judiciary loses its value and service to the community if there is no public confidence in its decision-making.

Almarhum was of the view that public confidence in the judiciary may only be enjoyed when there are four criteria present in the judiciary, namely: independence, impartiality, fairness and unquestionable integrity. Recognising that, he said:

Admittedly society is more complex today and the task of judges may be more difficult than what it was before, but the values I speak of are universal and eternal. There is no reason why judges with the assured security in tenure they enjoy under the Constitution should not discharge their duties impartially, confidently and competently.



Almarhum went on to say:

There is one further important point that I feel compelled to say. This deals with a judge's quality in decision-making. We in Malaysia live in a multi-cultural and multi-religious society. Our founding fathers accommodated this diversity into our Constitution that is reflected in the social contract, and saw this diversity as strength.

Judging in a diverse society is not an easy task. Judges in many parts of the world face similar difficulties. Those of you who were present at the lecture delivered by Justice Albie Sachs at the Second Tun Hussein Onn Lecture last week will know how the Constitutional Court of South Africa, as the guardian of the constitution, wrestle to arrive at a just decision when dealing with the issues relating to diversity or discrimination.

Judges in Malaysia must be ever mindful that they are appointed judges for all Malaysians. They must be sensitive to the feelings of all parties, irrespective of race, religion or creed, and be careful not to bring a predisposed mind to an issue before them that is capable of being misconstrued by the watching public or segments of them.

Almarhum's words were never more apt than if they were spoken today.

My Lord,

I am conscious that I have taken longer than the time allocated to me, and as my predecessor RR Chelliah had prayed for 49 years ago, I am grateful that I have been accorded a pleasant hearing and an opportunity to be heard.

However, I respectfully submit and concede that it is nigh impossible for me to speak on and cover the vast accomplishments of Almarhum Sultan Azlan Muhibbuddin Shah even if I were permitted to address Yang Amat Arif for the rest of the day.

I have made frequent references to and quoted from the speeches and judgments of Almarhum. More than my words could, these reveal the quality and depth of his thoughts and pronouncements which continue to be relevant and applicable to pertinent issues and society today.

In the recognition that we pay today, I do not purport to exalt Almarhum to be infallible in his many pronouncements or deeds for that would be to ascribe a godly quality to a man though he may be judge or King. It is not infallibility that we seek to honour by proceedings such as these. Rather, we pay tribute in recognition of the many and varied accomplishments and contributions made over time. These have left an indelible mark and impact on the legal profession, the judiciary and Malaysia. This is what brings us in the legal community together this morning.



Almarhum Sultan Azlan Shah will be remembered with deep appreciation and affection.

Yang Amat Arif,

Saya dengan hormatnya memohon supaya rekod prosiding ini diabadikan dalam arkib Mahkamah ini dan salinannya disampaikan kepada keluarga Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah.

Ampun Tuanku,

Sekian sahaja sembah ucapan patik.

Patik sekali lagi, bagi pihak Bar Malaysia, merafak sembah menjunjung setinggi-tinggi kasih di atas limpah perkenan Duli-duli Tuanku sudi berangkat mencemar duli ke Majlis Memperingati Almarhum Sultan Azlan Muhibbuddin Shah Al-Maghfur-Lah pada pagi ini.

Ampun Tuanku. 🕌