LAPORAN

PASUKAN PETUGAS KHAS

SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU BERTAJUK

"MY STORY: JUSTICE IN THE WILDERNESS" TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA

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FOREWORD
YB DATO SRI DR. HAJI WAN JUNAIDI BIN TUANKU JAAFAR MINISTER IN THE PRIME MINISTER'S DEPARTMENT (PARLIAMENT & LAW)

Assalamualaikum Warahmatullahi Wabarakatuh dan Salam Keluarga Malaysia,

The Cabinet on the 22nd December 2021 had agreed with the establishment, membership and terms of reference of a Special Task Force (STF) to investigate allegations in the book written by former Attorney General, Tan Sri Tommy Thomas, entitled "My Story: Justice in the Wilderness".

Since its launch on 30th January 2021, this book received mixed reactions from various parties due to its contents that touched on sensitive issues like the judiciary, legal services, administration in the civil service and many high-profile cases. The government agreed that this STF will carefully examine and investigate the various allegations mentioned in the book and will provide recommendations to the government on the way forward.

The Special Task Force was established to "fact find" on the allegations mentioned in this book. The STF had identified allegations, carried out analysis on its observations and finally submitted recommendations through this Report to the Government.

I would like to congratulate the Chairman and members of this Special Task Force:

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(1) Dato Sri Fong Joo Chung

(2) Datuk Seri Panglima Haji Hashim bin Paijan

(3) Dato' Dr. Junaidah binti Kamarruddin

(4) Dato' Jagjit Singh a/l Bant Singh

(5) Dato' Shaharudin bin Datuk Haji Ali

(6) Encik Balaguru a/l Karuppiah

(7) Puan Farah Adura binti Hj Hamidi

(8) Tuan Haji Mohd Najib bin Surip

for their commitment and dedication in successfully conducting all consultations with various stakeholders and examining all related documents and to finally prepare this Report for the government.

I am also very grateful for the commitment given by the various stakeholders who had assisted the Special Task Force in carrying out their duty.

I believe that the recommendations in this report will assist the government in making sound decisions regarding the allegations in this book. I also hope that the findings in this report will shed light to many questions and mixed reactions received when this book was first published.

Thank you.

PREFACE

YBHG. DATO SRI FONG JOO CHUNG CHAIRMAN OF THE SPECIAL TASK FORCE TO INVESTIGATE INTO THE ALLEGATIONS IN THE BOOK ENTITLED "MY STORY: JUSTICE IN THE WILDERNESS" WRITTEN BY FORMER ATTORNEY GENERAL, TAN SRI TOMMY THOMAS

Salam Sejahtera, Salam Keluarga Malaysia,

The Special Task Force would like to thank the Right Honourable Prime Minister of Malaysia, YAB Dato' Sri Ismail Sabri bin Yaakob, YB Dato Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar, Minister in the Prime Minister's Department (Parliament and Law) and the Cabinet for their trust and confidence given to this STF.

The STF understood that careful analysis of the book "My Story: Justice in the Wilderness" written by former Attorney General Tan Sri Tommy Thomas was required to enable us to identify and extract allegations mentioned in the book. The analysis required the participation of various stakeholders who could verify the veracity of its contents. Throughout the eight months the STF conducted 19 consultations with various parties and stakeholders, examined documents and obtained written feedback to scrutinize and verify the allegations made in the book.

The STF was not spared from challenges as there were parties who were not willing to appear before the STF or to provide information or even provide written feedback to the STF. This however, did not deter the STF from conducting a thorough, independent and comprehensive investigation on the allegations identified in the book.

The STF would like to record its sincere appreciation to all stakeholders who came forward to assist the STF this include the Attorney General's Chambers (AGC), the Royal Malaysian Police (PDRM), the Ministry of Finance, the Ministry of Foreign Affairs, the various government agencies and individuals. The STF would also like to thank the secretariat from the Legal Affairs Division of the Prime Minister's Department for their hard work, dedication and patience in working closely with the STF throughout these eight (8) months.

The STF hopes the findings and the recommendations in this Report will assist the government in taking the necessary steps forward with regards to the allegations in this book.

Thank you.

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EXECUTIVE SUMMARY

In this Report, the Special Task Force sets out its analysis, findings and recommendations relating to those passages in Tan Sri Tommy Thomas's Book which the Special Task Force considers having warranted investigations pursuant to the mandate given by the Cabinet on 22nd December 2021.

In the course of the investigations which began on 23rd December 2021 until 22nd August 2022 the Special Task Force held consultative discussions with individuals and parties whom the Special Task Force considered as interested parties, stakeholders, government agencies or persons who could provide the Special Task Force with relevant information and documents including police reports made against Tan Sri Tommy Thomas relating to his allegations in his book. In all, there were 19 consultative discussion sessions involving 15 individuals and parties. The report of these consultative discussions and the documents obtained by the Special Task Force are in the appendixes to the Report.

However, Tan Sri Tommy Thomas in a letter dated 5th January 2022 to the Chairman of the Special Task Force questioned the appointment of the Special Task Force and stated that he would not cooperate with the Special Task Force. Therefore, the Special Task Force was unable to verify with Tan Sri Tommy Thomas' statements made by him in his book or those made by individuals on Tan Sri Tommy Thomas during consultative sessions with the Special Task Force.

The Special Task Force investigated 19 allegations contained in the Book. After further deliberations, there are 4 main issues which are:

I. Judiciary;
II. Disclosure of Government's Information and Secrets;
III. Unauthorised Actions, Abuse of Power and Professional Negligence; and
IV. Seditious Statements.

From our analysis and observations into these allegations and the information and documents made available to us, it is our view that:

a) There have been possible infringement of the following laws and regulations:

(i) Section 124I and 203A of Penal Code;
(ii) Section 23 of Malaysian Anti-Corruption Commission Act 2009;
(iii) Section 8 of Official Secrets Act 1972;
(iv) Section 4 of Sedition Act 1948; and
(v) Government Regulations, Procedures and Circulars.

b) Executive interference in the appointment of judges and its effect on judicial independence generally;

c) Unauthorised disclosure of government information and official secrets; and

d) Abuse of power, action taken in excess of authority and professional negligence.

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In the light of the investigations and findings, we make the following recommendations for the Government's consideration:

1) Investigations be conducted with regard to the possible offences that may have been committed by Tan Sri Tommy Thomas;

2) To eliminate public perception of executive interference in the judiciary or lack of judicial independence, the following measures be put in place:

   a. amendment to section 5(f) of the Judicial Appointment Commission (JAC) Act 2009 so that the appointment of the four eminent persons of JAC be made by the Yang di-Pertuan Agong on the advice of the Chief Justice;

   b. the Prime Minister should strictly adhere to section 2 of the JAC Act to defend the independence of judiciary;

   c. that the Legal and Judicial Service Commission be segregated to two independent bodies. One body, dealing with the appointment, promotion, transfer of judicial officers to be placed under the Office of the Chief Registrar of the Federal Court. The other body, to deal with the appointment, promotion, transfer of the legal officers to be placed under the Office of the Attorney General;

   d. The Office of the Attorney General should be separated from that of the Public Prosecutor; and

3) There should be guidelines to govern the exercise of powers by an Attorney General to appoint external lawyers to represent the Government in civil cases and to prosecute offences, so that the

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exercise of such powers could be carried out transparently with integrity and not arbitrarily.

GENERAL OBSERVATION

Tan Sri Tommy Thomas was appointed as the Attorney General from the Bar. Though he is legally qualified to be appointed as the Attorney General, he lacked the experience and management skills to head or be in charge of a large Government Department like the Attorney General Chambers with over 2,000 legal officers and many supporting staffs. Although Tan Sri Tommy Thomas was critical of what he perceived as lack of experience of legal officers in certain areas of the law and their lack of commitment in their work, he did not take or initiate any measures to remedy these shortcomings, the only measure he took was to appoint external lawyers of his choice at the Federal Government's expense.

ACKNOWLEDGEMENT

Finally, the Special Task Force wishes to express its appreciation to the Government for the opportunity to serve in this Special Task Force, to YB Dato Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar, Minister in the Prime Minister's Department (Law and Parliament) and to all the members of the Secretariat for their support and dedication.

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LIST OF ACRONYMS

Acronym	Description
AALCO	Asian African Legal Consultative Organization
AG	Attorney General
AGC	Attorney General's Chambers
AIAC	Asian International Arbitration Centre
ASEAN	The Association of Southeast Asian Nations
BB	Boonsom Boonyanit
BHEUU	Bahagian Hal Ehwal Undang-Undang, Jabatan Perdana Menteri
BKPP	Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan
CPPB	China Petroleum Pipeline Bureau
DOJ	Department of Justice, United State of America
DPP	Deputy Public Prosecutor
DR	Delegated Regulation EU 2019/807
DSR	Datuk Sundra Rajoo
EC	Election Commision of Malaysia
EU	European Union
EXCO	Executive Committee
FC	Federal Constitution
GE	General Election
GHG	Greenhouse Gas
GOM	Government of Malaysia
ILUC	Indirect Land Use Change
IP	Investigation Paper
ISCC	International Sustainability & Carbon Certification
JAC	Judicial Appointments Commission
JALSOA	Judicial and Legal Service Officers' Association
JBG	Jabatan Bantuan Guaman
JPM	Jabatan Perdana Menteri
JR	Judicial Review
JSC	Judicial Service Commission

KLCRA	Kuala Lumpur Regional Centre of Arbitration
LP	Lord President
LSC	Legal Service Commission
MACC	Malaysia Anti-Corruption Commission
MBF	MBF Holding Berhad
MDI	Malaysian Department Insolvency
MITI	Ministry of International Trade and Industry
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MPIC	Ministry of Plantation Industries and Commodities
MPOB	Malaysia Palm Oil Board
MPOC	Malaysian Palm Oil Council
MPP	Multi Pipeline Contracts
MSPO	Malaysian Sustainable Palm Oil
NFCC	National Anti-Financial Crime Centre (NFCC)
PAS	Parti Islam Se Malaysia
PDA	Petroleum Development Act
PDRM	Polis Diraja Malaysia
PMO	Prime Minister Office
PORIM	Palm Oil Research Institute of Malaysia
POWR	Palm Oil War Room
PP	Public Prosecutor
PSC	Public Service Commission
QC	Queen's Council
RCI	Royal Commission of Inquiry
RED II	Renewable Energy Directive 2018/2001/EU
RSPO	Roundtable On Sustainable Palm Oil
SC	Securities Commission
SIRD	Strategic Information Research Development Centre
SPR	Suruhanjaya Pilihanraya Malaysia
SRC	SRC International Sdn.Bhd
SSER	Suria Strategic Energy Resources Sdn.Bhd
STF	Special Task Force
SUHAKAM	Suruhanjaya Hak Asasi Manusia

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TSTT	Tan Sri Tommy Thomas
UMNO	United Malays National Organisation
VP	Vinayak Prabhakar Pradhan
WTO	World Trade Organisation
YA	Yang Arif
YAA	Yang Amat Arif
YBGK	Yayasan Bantuan Guaman Kebangsaan
YDPA	Yang di-Pertuan Agong

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GLOSSARY

Terms	Description
De Minimis	Trifling; minimal. So ignificant that a court may overlook in deciding an issue or a case.
Ex Facie	On the face of it; evidently; apparently. Refer to a defect appearing from document itself without further inquiry.
In personam	A lawsuit seeking a judgment to be enforceable specifically against an individual person.
In rem	A lawsuit against an item of property, not against a person (in personam).
Inter alia	Among other things.
Per se	Of, in, or by itself, standing alone without reference to additional facts.
Praecipe	Written motion/request seeking some court action especially trial setting/ an entry of judgement.
Prima Facie	A fact presumed to be true unless it is disproved.
Pro Bono	The designation given to the free legal work done by an attorney for indigent clients and religious, charitable, and other non-profit entities.
Sub Judice	'under judicial consideration'. The legislation governing contempt of court controls publication of such matter.
Ultra Vires	Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law.

CHAPTER 1
INTRODUCTION

1.1. On or about 30th January 2022, Tan Sri Tommy Thomas's (TSTT) book entitled *"My Story: Justice in the Wilderness"* (the Book) hit the bookstores nationwide. There was a public uproar, some questioning the propriety of his allegations, statements or disclosures (jointly referred to as "disclosures") in the Book. In the days following the launch of the Book to the public, some 244 reports were lodged by various individuals and groups against TSTT and the Book.

1.2. The Book was published by Strategic Information Research Development Centre (SIRD), described in the Book as an independent publishing house founded in January 2000.

1.3. The author, made it known in the preface—

> *In the days leading to my appointment of Attorney General I have decided that I would maintain a diary of my time in office for publication. Soon after taking office that option was ruled out as it would be piecemeal and disjointed. It would not serve as a narrative. Nevertheless, throughout the twenty -one months I served as chief legal advisor to the Prime Minister and his administration I was alert to the possibility of ultimately recording my experience.*[1](Emphasis added).

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1 See: page ix of the Book

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He further wrote—

> ***<u>Mine is the first insider's account by a Pakatan Harapan official</u>*** *on the achievements, disappointments, missed opportunities and failures of the first non-Barisan Nasional administration in the sixty-year history of independent Malaysia. Although history and politics are discussed, this book is not intended to be a history of our times. Rather, it is a <u>personal odyssey, a quest for justice.</u>*[2] (Emphasis added).

1.4. Therefore, apart from those chapters in the Book touching on TSTT's personal and family history, his practice as a lawyer, his involvement in the Bar Council, the Book contains Government information and communications between him and the Government and Ministers, which occurred immediately before he was officially appointed Attorney General and during the period when he was serving as the Attorney General of Malaysia.

2. ESTABLISHMENT OF THE SPECIAL TASK FORCE

2.1. The Cabinet decided to establish a Special Task Force (STF) on **8th October 2021**, with the purpose of undertaking a preliminary study of all the disclosures made public by TSTT in the Book.

[2] See: page x of the Book

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2.2. On **22nd December 2021** the Cabinet approved the proposed Terms of Reference and Membership of the STF. The Terms of Reference set by the Cabinet are clear. The STF's role is principally that of a **fact-finding** body and to undertake an in-depth review and analysis of the entire book.

3. MEMBERSHIP OF THE SPECIAL TASK FORCE

3.1. The members of the STF are—

(1) Dato Sri Fong Joo Chung - **Chairman**
(2) Datuk Seri Panglima Haji Hashim bin Paijan
(3) Dato' Dr. Junaidah binti Kamarruddin
(4) Dato' Jagjit Singh a/l Bant Singh
(5) Dato' Shaharudin bin Datuk Haji Ali
(6) Encik Balaguru a/l Karuppiah
(7) Puan Farah Adura binti Hj Hamidi
(8) Tuan Haji Mohd Najib bin Surip

3.2. **Terms of Reference**

In brief, the Cabinet set out the STF's Terms of Reference as follows:

(1) to **identify the allegations** disclosed in the book *"My Story: Justice in the Wilderness"*;

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(2) to **check the allegations** made in the book with interested parties such as Polis Diraja Malaysia and the Attorney General's Chambers;

(3) to **hold consultative sessions** with the interested parties to secure further information in respect of each allegation in the book;

(4) to **analyse the findings** from such consultative sessions and to **examine the allegations** made in the book;

(5) to present an **interim report** within 3 months in respect of all findings made arising from allegations made in the book to Monitoring Committee, to be reviewed by Minister in Prime Minister's Department (Parliament and Law);

(6) to **improve the content of the report** and the **recommendations** made therein based on the presentations before the Monitoring Committee; and

(7) to make a **final report** consisting of the **findings made, analysis** therein and **recommendations** in connection with each allegation made by Tan Sri Tommy Thomas for consideration of the Cabinet.

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4. WORK DONE BY THE SPECIAL TASK FORCE

4.1. Soon after the formation of the STF, the STF held no less than 37 deliberation sessions. The STF had identified the key areas in the Book that required investigations and which had sparked public controversy.

4.2. The STF has reviewed statements given by relevant persons acquainted with the matters disclosed by the author, examined documents submitted and provided by them and deliberated on issues surrounding such disclosures, tested them against the available information.

4.3. The STF had, on 18th April 2022, published an Interim Report outlining the investigations carried out by the STF. The Interim Report listed out 19 allegations that were disclosed in the Book and that which required further investigations.

4.4. This is the STF's final Report and it has incorporated in detail all the work done by the STF from the 23rd December 2021 until 25th August 2022 including the investigations and evaluation of the 19 allegations that were identified in the Book. Recommendations where necessary have also been proposed in this Report.

5. PROCEEDINGS AND DELIBERATIONS

These Proceedings and Reports Classified as Official Secrets

5.1. Meetings were conducted regularly. The Minutes of the proceedings were prepared by the Secretariat and were endorsed at the start of each STF's meeting. In view of our given role, we are aware that the minutes of our meetings and our deliberations would be sensitive in nature and must be continued to be classified as official secrets by the Cabinet.

5.2. Following are the number of meetings conducted leading up to this Final Report:

(1) 23rd December 2021;

(2) 10th – 12th January 2022;

(3) 19th January 2022;

(4) 26th – 27th January 2022;

(5) 10th – 11th February 2022;

(6) 21st – 23rd February 2022;

(7) 28th February 2022;

(8) 18th March 2022;

(9) 6th – 7th April 2022;

(10) 12th April 2022;

(11) 5th August 2022; and

(12) 25th August 2022.

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Consultative Discussions/Interview Sessions with Stakeholders

5.3. The STF has successfully conducted a series of consultative discussions with interested parties (*pihak-pihak berkepentingan*) including persons whom the STF considered to be acquainted with the facts under scrutiny, for the purposes of obtaining or gathering relevant facts with regards to the events disclosed in the Book.

5.4. The following parties or persons have come forward to assist the STF and the STF expresses our gratitude to them:

(1) Office of the Chief Registrar of the Federal Court;

(2) Attorney General's Chambers (AGC);

(3) Royal Malaysian Police (PDRM);

(4) Judicial Appointments Commission (JAC);

(5) Ministry of Plantation Industries and Commodities (MPIC);

(6) Ministry of Finance – Tax Division (MOF);

(7) Ministry of Foreign Affairs (MOFA);

(8) National Anti-Financial Crime Centre (NFCC);

(9) Former State Legal Advisor of Selangor;

(10) Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan (BKPP), Jabatan Perdana Menteri;

(11) Mr. M. Puravelan, Advocate & Solicitor;

(12) Judicial and Legal Service Officers' Association (JALSOA);

(13) Ms. Ann Khong, former Special Officer to TSTT;

(14) Mr. Aaron Chelliah, former Deputy Public Prosecutor for Goldman Sachs's case

The Reports on the Consultative Discussion are as **Appendix 1.**

6. THE SPECIAL TASK FORCE'S METHODOLOGY

6.1. Our first task was to read the Book as a whole and then to specifically identify those parts of the Book which we think justifies our further scrutiny. This task has been completed.

6.2. Secondly, we were to identify all disclosures made by the author in the Book whereby the truth or accuracy of such statements or disclosures would, in our view, require verification. This is especially so when there could be a possibility that half-truths were made out as the whole truth. This too has been completed.

6.3. We have thoroughly verified the various disclosures in the Book and considered the ramifications thereof. This exercise has taken us to consider various constitutional points including an analysis of the legal or regulatory settings affecting both the substantive and administrative powers of the Attorney General (AG), which we consider are relevant.

7. OVERVIEW

7.1. It is the finding of the STF that some disclosures or allegations or statements made by the author in the Book are misconceived, distorted and misleading. There is cogent basis for the STF to conclude that there are

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disclosures made by TSTT that merit investigations by the relevant Government enforcement agencies.

8. ANGLE OF SCRUTINY

8.1. The disclosures made by TSTT in the Book were also examined to determine whether or not such disclosures or the very publication of the Book itself have—

(1) potentially violated or contravened any laws or regulations applicable to the office of the AG;

(2) disclosed potential abuse of power by the author and whether he had, in the circumstances, exceeded his constitutional, legal or statutory powers (express or implied authority) as the AG;

(3) disclosed that he had indulged or caused to indulge himself in matters to which the Federal Constitution made no provision permitting or authorizing his participation of or involvement as AG;

(4) disclosed, serious conflict of interest situation by the author when he was the AG; and

(5) disclosed any breach of professional ethics or professional conduct by the author particularly when he was wearing two hats when he was the AG, one as a senior member of the Malaysian Bar and an advocate and solicitor of the High Court on one hand, and the AG and Public Prosecutor, on the other.

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9. NO POWER TO COMPEL

9.1. It must be noted the STF was not established under the Commissions of Enquiry Act 1950 [*Act 119*]. This means we do not have the requisite power to compel or call upon any persons, body or organization to provide information, facts or documents to enable us to carry out our functions.

9.2. Be that as it may, we are pleased that we have been assisted by the above persons as mentioned in paragraph 5.4, to shed light on some of the disclosures in the Book.

10. TAN SRI TOMMY THOMAS' REFUSAL TO ASSIST THE SPECIAL TASK FORCE

10.1. TSTT addressed a letter dated 5th January 2022 to the Chairman of the STF stating categorically that he would neither cooperate nor participate in the proceedings of the STF. He also questioned the establishment and legitimacy of the STF. A copy of his letter dated 5th January 2022 is attached herein as **Appendix 2.**

10.2. In our view, TSTT seemed to have assumed that the STF was formed by the Cabinet to investigate the exercise of his prosecutorial discretion when he was the Public Prosecutor. His letter was premised on his own assumption that the STF was formed to investigate the exercise of his discretion as Public Prosecutor under Article 145(3) of the Federal

Constitution to initiate, conduct or discontinue proceedings of criminal nature.

10.3. His view is unfounded. He appeared to have misunderstood the role and duty of the STF. Firstly, under no circumstances the STF would act as a substitute for a proper criminal investigation by the police or Malaysian Anti-Corruption Commission (MACC).

10.4. The investigative power was and always will be vested in the enforcement agencies under the relevant laws. The enforcement agencies may of course refer to our report as a basis to initiate a specific direction in their investigation but that is entirely at their discretion.

10.5. Secondly, we are not investigating TSTT. We are investigating the contents of the Book as disclosed by him, and whether such disclosures reveal, *prima facie* any breach of the law.

10.6. Thirdly, the role of the STF, in accordance with its Terms of Reference, is to analyze and scrutinize the disclosures made by TSTT in his Book, to make recommendations to the Government where such disclosures provide sufficient grounds for the enforcement agencies to further investigate and to take such action as may be appropriate.

11. THE BAR COUNCIL'S REFUSAL TO PARTICIPATE

11.1. The Bar Council of Malaysia was invited by us to give their perspective on some of the matters disclosed in the Book, particularly in relation to appointment of Judges, alleged lack of competence in commercial law at the Court of Appeal and professional ethics. However, we regret that the Bar Council of Malaysia, through its Secretary, stated that they were not keen to participate, in that they were not able to confirm or comment on the allegations made by TSTT in the Book. A copy of the letter dated 21st February 2022 is attached herein as **Appendix 3.**

12. LETTER FROM DATUK SUNDRA RAJOO (DSR)

12.1. The STF received a letter dated 5th January 2022 from DSR, who resigned as Director of the Asian International Arbitration Centre (AIAC) on the 20 November 2018 following his arrest by the Malaysian Anti-Corruption Commission (MACC). Subsequently, the STF received another letter dated 4th July 2022. Both the letters are attached here respectively as **Appendix 4 and Appendix 5.**

12.2. In both letters, DSR made various allegations against TSTT particularly with regards to the criminal proceedings instituted against him despite his claim for legal immunity from criminal actions which he was entitled to enjoy under the Host Country Agreement under which he was appointed as Director of the AIAC.

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12.3. The STF have duly and fully considered DSR's said letters and all its attachments but did not consider it appropriate or necessary to call DSR to meet the STF.

12.4. The STF has been made aware of the on-going litigations where issues relating to *ad hoc* appointment of lead prosecutors and the decision to prosecute in several high-profile criminal cases, including the decision by TSTT to prosecute Datuk Sundra Rajoo. These matters are still live issues. There is pending before the court a civil action for damages against the Government by DSR. The STF is of the view that the issues raised in these ongoing litigations before the Courts are best left for determination by the courts, otherwise our deliberations regarding the same might be construed as an unjustified interference with ongoing proceedings.

13. THE BOOK "MY STORY - JUSTICE IN THE WILDERNESS"

13.1. While one may write an autobiography or memoir, one must exercise care not to breach laws relating to the protection of government secrets and government information, and confidentiality of communication with senior members of the administration. This is particularly so for a sensitive government post such as the AG.

13.2. The Book, was published after TSTT's resignation as Attorney General, and when he was still a member of the Malaysian Bar[3]. However, the disclosures in the Book, particularly in Chapters 26 to 49 relate to—

(1) events occurring during his tenure of office as AG;

(2) cases, claims and other matters involving the Government or its companies like the 1MDB which were handled by external lawyers appointed by TSTT;

(3) communications between him as AG and the Rulers, Prime Minister and the Chief Justice in the course of the discharge of his duties as AG; and

(4) his assessment of the competency and capabilities of law officers in the AGC whilst he was AG.

13.3. Consequently, what was disclosed by TSTT had not only resulted in police reports being lodged against the Book but also public statements by parties affected by the disclosures in the Book—

(1) Media Release issued by Judicial and Legal Service Officers' Association (JALSOA) dated 3rd February 2021[4] stating—

"It is improper for Tan Sri Tommy Thomas to question the ability, capability and capacity of Legal Officers who were

[3] See: Appendix 6

[4] See: Appendix 7

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under his supervision in the short period of time let alone to ridicule specific Legal Officers by name in his book."

(2) the article captioned "*Tommy Thomas' book an insult to law profession, says AG*" published in the Malaysian Reserve on 5th February 2021, the relevant parts read as follows:

"The publication of the book has raised reactions from various parties which touched and questioned the capabilities and competencies of the legal officer at the AG's Chamber (AGC).

"The content in the book has given negative impact, especially from the public's view, hence affecting the morale of the legal officers. Besides, I think it is an insult to the legal institution," Idris said.

(3) a public statement by M. Puravelan[5], an Advocate and Solicitor who appeared as counsel for the Tribunal for alleged misconduct by ex-Election Commissioners for the 14th General Election (GE14), as reported in The Malaysian Insight dated 1st February 2021. The relevant part read as follows:

"My written opening submission before the tribal was given to Tommy 4 days before the tribunal convened. MY position clearly

5 See: Appendix 8

spelt out that the issue was academic," Puravalen said in the letter.

He said paragraphs 19 to 21 "set it out categorically, adding that digital time stamping evidence of all correspondence to Thomas would be available in the Attorney-General's Chambers files.

He added that Thomas had summoned a meeting in his house on the eve of the tribunal sitting on a Sunday evening with his special officer Ann Khong, a federal counsel and a lawyer.

"Tommy made it clear I was not to represent the Attorney-General's Chambers the next day. He said I was merely an officer appointed to assist the tribunal. This was despite the fact he had appointed me by fiat!

"All intitulements involving the AGC in my submissions were removed that night in the presence of his officers," he said, adding the record of proceedings will reflect that a Federal Counsel addressed the tribunal on Thomas' behalf the next day,

"This was specifically clarified by the quorum," he said.

"The question of disobedience does not arise. My position in law has been vindicated by the tribunal despite his unsuccessful

attempts to persuade the tribunal," Puravalen said, ending the piece with a warning about Pandora's Box.

14. DUTIES, FUNCTIONS AND POWERS OF THE ATTORNEY GENERAL

14.1. The position of the Attorney General is considered a high ranking civil service position which was established under article 145 of the Federal Constitution. Based on the above constitutional provisions, the duties and powers of the Attorney General are—

(1) to advise the Yang di-Pertuan Agong or the Cabinet on **legal matters and such duties of a <u>legal character</u>** as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong or the Cabinet;

(2) to discharge the functions conferred upon him by or under this Constitution or any written law; and

(3) to exercise, at his discretion, the power to institute, conduct or discontinue any proceedings for an offence other than an offence before a Shariah Court, a Native Court or a court martial.

14.2. No function or duties or responsibilities of a Minister or member of the Cabinet, conferred by any written law, had been assigned or delegated or vested in the Attorney General. This means he has no ministerial functions, duties of responsibilities and is not the administrative Head of any Ministry. He is Head of the Attorney General's Chambers and according to JALSOA,

the Attorney-General is 'Head of Service to Legal Officers in the Judicial and Legal Service'.

14.3. Since Tan Sri Tommy Thomas accepted the appointment offered to him vide the Letter of Appointment[6] and he is bound by the terms and conditions stated in his Letter of Appointment amongst which is the following:

> *"Dalam tempoh kontrak ini, tuan adalah setiap masa tertakluk kepada Perintah-Perintah Am, Peraturan-Peraturan Kewangan, Pekeliling-Pekeliling Perkhidmatan dan Undang-Undang yang dikuatkuasakan dari semasa ke semasa."*

14.4. As Public Prosecutor he has by reason of Article 145(3) of the Constitution, the power exercisable at his discretion to institute, conduct and discontinue proceedings to prosecute any criminal offence. The exercise of this power may be subject to judicial review in the light of the decision of the Federal Court in ***Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri & Ors*** (2021) 5 MLJ 209 at p. 247 where the Apex Court ruled as follows:

> *"[112] Article 145(3) of the FC provides the AG/PP with a wide discretion to institute, conduct or discontinue any proceeding for a criminal offence. This wide discretion means the AG/PP has sole and exclusive discretion in that only he/she can exercise that power. However, the AG/PP does not have absolute or unfettered*

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[6] See: Appendix 9

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discretion under Article 145(3). As alluded to in the preceding discussion and following from it, it is our judgment that in appropriate, rare and exceptional cases, such discretion is amenable to judicial review."

14.5. It must the pointed out that the above case arose from the decision of TSTT to prosecute the Appellant, Sundra Rajoo, and in relation to this decision to prosecute, the Federal Court held (at p.250):

"[122] The evidence on record led to no other conclusion but that the second respondent knew or ought to have known that the appellant was covered by the scope of his functional immunity. Despite this, the second respondent had obviously made up his mind to charge the appellant. One clear and direct indication of this is the second respondent's issuance of a consent to prosecute the third respondent in spite of the letter from the Secretary General of AALCO of even date indicating that the first and second respondents have already requested independently for an ad hoc waiver of immunity which requests were vigorously denied."

14.6. This decision shows that even during the time when TSTT was the Attorney General and Public Prosecutor, the exercise of his prosecutorial powers may, in a case like Sundra Rajoo's, be subject to challenge by way of judicial review. It must be pointed out also that the Public Prosecutor has, constitutionally, no powers to unilaterally investigate any offence or reports

lodged with the Police or any other agencies, such as the Securities Commission (SC) relating to the commission of a criminal offence.

14.7. As regards to the performance of his duties as a legal advisor under Article 145 of the Federal Constitution and as Head of the Attorney-General's Chambers, he is, by reason of the terms of his contract of service, bound by the relevant laws and regulations stipulated therein and set out above. Further, he must discharge such advisory functions professionally, as explained by Tan Sri Datuk Haji Abdul Kadir Yusuf, a first Malaysian to hold the Office Attorney General Malaysia in his Article "**The Office of Attorney General, Malaysia [1977] 2 MLJ ms xvi** as follows:

"Clause (2) of Article 145 sets out the advisory duties of the Attorney General towards the Yang di-Pertuan Agong, the Cabinet and the individual Ministers, in legal matters. In the performance of these duties the Attorney General acts in a professional capacity; the fact that he may hold office in a political party, or be a Minister of the Government, or be elected from a particular constituency, could not and should not raise any conflict of interests and sway his decisions as a professional legal adviser, because he would serve his party, his Government, and his constituents best by ***maintaining an objective professional approach*** *designed to uphold the Constitution and the laws of the country. It is the quality and the strength of character of the holder of the office that would be more significant than*

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considerations of the existence or non-existence of political affiliations.(emphasize added).

14.8. This Clause also confers on the Attorney General the duty of discharging all other functions that may be conferred on him by or under the Constitution or any other written law. In performing such statutory functions too, the Attorney General will be expected to act in a professional capacity in strict compliance with the requirements of the law which confers such functions on him.

14.9. Additionally, an Attorney General is also vested with powers and privileges under certain federal laws such as—

(1) Section 24 of the Government Proceedings Act 1956 to appoint advocate to act or represent the Government or public officers in any civil proceedings;

(2) Sections 376(3) and 379 of the Criminal Procedure Code to appoint *ad hoc* prosecutors;

(3) Sections 28A and 28D of the Legal Profession Act, 1976 to issue special licence to practice and make orders (subsidiary legislations) respectively;

(4) Article 145(3A) of the Federal Constitution to determine in which courts and the venue where any criminal case instituted by him under Article 145(3) may be tried in or to be transferred to another court; and

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(5) In the performance of his duties as Attorney General he has the right of audience in and shall take precedence over all other persons, in any courts in the Federation: Article 145(4).

14.10. The Attorney General is the Head of Service of Attorney General's Chambers. The AGC has to refer to BHEUU, JPM on policy matters and appointments to the AIAC. The AG, under the Judicial Appointments Commission Act 2009 [Act 695] and the relevant constitutional provisions, is not empowered to be involved in the appointment of judges of the superior courts. However, he is a member of the Legal and Judicial Service Commission established under Article 138 of the Federal Constitution pertaining to the appointment of both judicial and legal officers.

15. ISSUES AND ALLEGATIONS

15.1. At present there are 19 allegations identified by the STF as follows:

(1) Forum Shopping;

(2) Judges Being Overly Close to Executive or Beholden to the Executive;

(3) Appointing the Successor to Chief Justice Tun Raus;

(4) Independence of the Judiciary Tarnished; and

(5) Judges appointed from Legal and Judicial Service are Incompetent in Commercial Law.

(6) Disclosure of Communication with The Prime Minister and Yang di-Pertuan Agong.

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(7) Disclosures of Meeting with Pardons Board Members.

(8) Disclosure of 1MDB Case Details.

(9) Disclosure in Suria Strategic Energy Resources Sdn. Bhd. (SSER).

(10) Disclosure of Multi Pipeline Contracts (MPP).

(11) Disclosure on 1MDB Case - 1MDB, SRC, Goldman Sachs Related Cases.

(12) Whether the Allegations and Statements in the Book are Seditious.

(13) Disclosure of Information in Equanimity's Case.

(14) Disclosure of Information on Goldman Sachs' Case.

(15) Disclosure of Information Relating to European Union (EU) Discriminatory Practice.

(16) Disclosure Relating to Datuk Sundra Rajoo and the Appointment of Vinayak Pradhan as Director of AIAC.

(17) Tribunal Proceedings against Election Commission Members.

(18) Boonsom Boonyanit – Questionable Case Settlement.

(19) Whether Appointment of External Lawyers by TSTT for Various Work Assignments were Required and in Accordance with Law.

15.2. The STF after further deliberations, has categorized the allegations into four (4) broad issues as follows:

(1) Judiciary;

(2) Disclosure of Government information and secrets;

(3) Unauthorised actions, abuse of power and professional negligence; and

(4) Seditious statements.

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CHAPTER 2

JUDICIARY

2.1. EXECUTIVE INTERFERENCE IN THE APPOINTMENT OF JUDGES

i. In his Book, the former Attorney General Tan Sri Tommy Thomas (TSTT) made the following allegations:

(a) *Chief Justice Raus was perceived in Bar circles as a strong loyalist to Prime Minister Najib Razak. Indeed, none of us could recall any occasion where a Federal Court in which Chief Justice Raus was a panel member had ruled against UMNO or Najib.*[7]

(b) *Hence, when I assumed office on 6th June 2018, the continued tenure of the two highest judicial officers in the land required my immediate attention. I wrote an opinion to the Prime Minister, advising him that since both judges had tendered their resignations in writing, the government was not bound to accept their last date of 31st July, which was chosen by them unilaterally for their own convenience. I further advised that the government should accept their resignations with immediate effect, rather than waiting for 31st July. The Prime Minister agreed. The resignations were then brought forward to early July 2018.*[8]

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[7] See: page 336 of the Book

[8] See: page 337 of the Book

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(c) *I was pleasantly surprised during my discussion with the Prime Minister as to Chief Justice Raus's successor, when he mentioned Tan Sri Richard Malanjum. Tun had heard good things about Richard Malanjum.* ***We also agreed*** *on the other three appointments caused by the retirement of Raus and Zulkefli. Tan Sri Dato' Sri Ahmad Maarop was promoted from Chief Judge of Malaya to President of the Court of Appeal, Tan Sri Zaharah Ibrahim became Chief Judge of Malaya and Tan Sri David Wong Dak Wah, the Chief Judge of Sabah and Sarawak.*[9]

(d) *The Prime Minister and I discussed filling the four offices as all the incumbents would be retiring within a year of each other.*[10]

(e) ***It was agreed*** *there was only one candidate who satisfied the tests: Justice Tan Sri Tengku Maimun Tuan Mat.* ***I shared with the Prime Minister*** *my experiences of appearances before her as a judicial commissioner and judge of the High Court, and subsequently, in the Court of Appeal and the Federal Court. Justice Rohana Yusuf was the stand out candidate for the President of the Court of Appeal. Justice Dato' Abang Iskandar Abang Hashim was essentially the only contender for the office of the Chief Judge of Sabah and Sarawak. Justice Tan Sri Dato' Sri Azahar Mohamed was chosen as Chief Judge of Malaya. Tun*

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9 See: page 338 of the Book

10 See: page 342 of the Book

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was happy that the two senior-most appointments would be women, jokingly saying even PAS would not object.[11]

(f) *I paid a courtesy call to Chief Justice Tengku Maimum soon thereafter. She warmly received me in her spacious chamber in the Palace of Justice in Putrajaya.* ***I showed the names of the <u>Prime Minister's choices</u>*** *for the other three names. She was happy with each of them, saying that she could work with them, and that they could work together as an effective team.*[12]

ii. TSTT did not wish to engage with the STF. The STF is unable to seek from him confirmation on the accuracy of what he had alleged in the above passages. Hence, to evaluate what had been written by TSTT, the STF sought the assistance of the Secretary of the Judicial Appointments Committee (JAC) and the Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan (BKPP), which is the agency that submits the names of the selected candidates for senior judicial appointments for approval by the Yang di-Pertuan Agong and the Conference of Rulers.

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11 See: page 342 of the Book

12 See: page 342 of the Book

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2.1.1. The Special Task Force's Consultations

i. From the STF's interview with the Secretary of the JAC and the Timbalan Ketua Setiausaha BKKP, and their report submitted to the STF, the following facts emerged:

(a) On 13th June 2018 YAA Tun Mohamed Raus Sharif in his capacity as Chief Justice wrote to the Prime Minister to inform him that JAC has selected the following candidates for appointment:

(i) YA Tan Sri Dato' Sri Azahar bin Mohamed as Chief Justice;

(ii) YA Dato' Rohana binti Yusuf as President of Court of Appeal;

(iii) YA Dato' Abdul Rahman bin Sebli as Chief Judge of Sabah and Sarawak.

(b) On 18th Jun 2018, BKPP received a letter of approval from the Prime Minister on the proposed appointment:

(i) YAA Tan Sri Datuk Seri Panglima Richard Malanjum as Chief Justice;

(ii) YAA Tan Sri Datuk Sri Ahmad bin Haji Maarop as President Court of Appeal;

(iii) YA Tan Sri Zaharah binti Ibrahim as Chief Judge of High Court in Malaya; and

(iv) YA Datuk David Wong Dak Wah as Chief Judge of High Court in Sabah and Sarawak.

(c) On 10th July, 2018, the Prime Minister advised the Yang di-Pertuan Agong that—

(i) the resignation of YAA Tun Mohamed Raus Sharif as Chief Justice and Tan Sri Zulkefli Ahmad Makinudin as President of Court of Appeal respectively shall be from 10th July 2018;

(ii) the appointment of Tan Sri Richard Malanjum as Chief Justice, Tan Sri Ahmad Maarop as President of Court of Appeal, Tan Sri Zaharah as Chief Judge of Malaya and Datuk David Wong as Chief Judge of Sabah and Sarawak would take effect from 11th July 2018 after consultation with the Conference of Rulers on 10th and 11th July 2018.

(d) On 11th July 2018, the Yang di-Pertuan Agong gave his consent to the resignation of YAA Tun Mohamed Raus Sharif and Tan Sri Zulkefli Ahmad Makinudin to take effect on the 10th July 2018.

(e) On 12th July 2018, the Chief Secretary sent a letter to the Chief Justice of the appointments of the Judges named in subparagraph (c) above from 11th July 2018.

ii. On the appointment of the 4 Judges of the Superior Courts in 2019, the following are the relevant material facts:

(a) On 18th March 2019, BKPP received a letter of approval from the Prime Minister on the proposed appointment of:

(i) YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop as Chief Justice;

(ii) YAA Datuk Seri Panglima David Wong Dak Wah as President of the Court of Appeal;

(iii) YA Dato' Tengku Maimun binti Tuan Mat as Chief Judge of High Court in Malaya;

(iv) YA Dato' Abang Iskandar bin Abang Hashim as Chief Judge of High Court in Sabah and Sarawak.

[Note: These appointees were selected by the JAC on 17th January 2019.]

(b) After the Paper for the Conference of Rulers of the above appointments was prepared, on 21st March 2019, there was an instruction from the Chief Secretary to withdraw and cancel the Paper.

(c) On 5th April 2019, a letter from Chief Justice Tan Sri Richard Malanjum to the Prime Minister submitting 2 additional candidates for each judicial position:

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(A) **Chief Justice**

(i) YA Dato' Tengku Maimum binti Tuan Mat;

(ii) YA Tan Sri Dato' Sri Azahar bin Mohamed.

(B) **President of Court of Appeal**

(i) YA Tan Sri Dato' Sri Azahar bin Mohamed;

(ii) YA Dato' Rohana binti Yusuf.

(C) **Chief Judge of the High Court in Malaya**

(i) YA Dato' Rohana binti Yusuf;

(ii) YA Tan Sri Dato' Sri Azahar bin Mohamed.

[Note: The above names were selected at a JAC meeting held on 5th April 2019.]

(d) On 8th April 2019, BKPP received a letter from the Prime Minister with new proposal for appointment as follows:

(i) YA Dato' Tengku Maimum binti Tuan Mat for Chief Justice;

(ii) YA Dato' Rohana binti Yusuf for President of Court of Appeal;

(iii) YA Dato' Abang Iskandar bin Abang Hashim for Chief Judge Malaya.

iii. BKPP prepared a Paper for submission to the Conference of Rulers for the appointment of YAA Dato' Rohana binti Yusuf as President of Court of Appeal. The Conference of Rulers was held on 30th – 31st October 2019.

iv. On 21st November 2019, the Chief Secretary wrote to the Chief Justice that YAA Dato' Rohana binti Yusuf was appointed President of Court of Appeal with effect from 25th November 2019.

v. Although the JAC at its meeting selected YA Dato Rohana binti Yusuf and YA Tan Sri Dato' Sri Azahar bin Mohamed for the position of Chief Judge of the High Court in Malaya and this selection was conveyed to the Prime Minister by the then Chief Justice on 5th April 2019, a letter was received by BKPP that the Prime Minister agreed to a new proposal for the appointment of YA Dato' Abang Iskandar bin Abang Hashim as Chief Judge of Malaya.

vi. Prime Minister took upon himself to choose YA Dato' Abang Iskandar bin Abang Hashim to be the Chief Judge of Malaya. His choice differs from the JAC's list of selected candidates. If the Prime Minister did not agree to the candidate selected by the JAC to fill the post of Chief Judge of Malaya, he should have complied with sections 26 and 27 of the JAC Act to ask for the additional name but not to nominate the name himself.

vii. On 24th May 2019, BKPP sought confirmation from JAC whether the nomination of the candidate for Chief Judge of High Court in Malaya fulfilled the requirements of Article 122B(3) of the Federal Constitution.

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viii. JAC confirmed on 30th May 2019 that the provisions of Article 122B(3) had been complied with in regard to the nomination of YA Tan Sri Dato' Sri Azhar bin Mohamed as Chief Judge of Malaya. He was qualified to be so appointed. BKPP then submitted the Paper to the Conference of Rulers on 29th May 2019 for the consent of the Yang di-Pertuan Agong to appoint the abovenamed as Chief Judge of Malaya.

ix. On the 1st August 2019, the Chief Secretary notified the Chief Justice of the Federal Court that YA Tan Sri Dato' Sri Azhar bin Mohamed has been appointed by YDPA as the Chief Judge of Malaya.

x. On 12th September 2019, BKKP received letter from the Chief Secretary's office that the Prime Minister had agreed to the appointment of YA Dato' Abang Iskandar bin Abang Hashim as Chief Judge of the High Court in Sabah and Sarawak as well as the certificate from the Chief Judge of Sabah and Sarawak that the requirement of Article 122B(3) of Federal Constitution have been followed.

xi. Certificates were received from the Chief Minister of Sabah and Chief Minister of Sarawak on 4th October 2019 and 8th October 2019 respectively that in accordance with Article 122B(3) that they have been consulted on the candidate for appointment as Chief Judge of Sabah and Sarawak.

xii. The documentation for this appointment was submitted to the Conference of Rulers which met on 30th - 31st October 2019. On 21st November 2019, the Chief Secretary informed the Chief Justice that YA

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Dato' Abang Iskandar bin Abang Hashim would be the Chief Judge of the High Court in Sabah and Sarawak with effect from 20th February 2020.

2.1.2. Evaluation of Allegations

i. The allegations in the Book as set out on page 338 as produced above are substantially confirmed by the report from the JAC submitted to the STF as summarized in the paragraph above.

ii. In essence, the names of the persons appointed to the highest judicial offices in July 2018, namely Tan Sri Richard Malanjum as Chief Justice, Tan Sri Ahmad Maarop as President of Court of Appeal, Tan Sri Zaharah binti Ibrahim as Chief Judge Malaya and Datuk David Wong Dak Wah as Chief Judge, Sabah and Sarawak were exactly the names **privately agreed between the Prime Minister and Tan Sri Tommy Thomas** as stated at page 338 of the Book. These names differ from the names selected by the JAC at its meeting held on 24th May 2018 and conveyed to the Prime Minister by the then Chief Justice on 13th June 2018, namely—

(a) YA Tan Sri Dato' Sri Azahar bin Mohammed as Chief Justice;

(b) YA Rohana binti Yusuf as President of Court of Appeal; and

(c) YA Dato Abdul Rahman bin Sebli as Chief Judge of Sabah and Sarawak.

[At that time Tan Sri Ahmad Maarop was already Chief Judge of High Court of Malaya].

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2.1.3. Process for Appointment of Judges

i. The process of appointment of Judges to the superior courts is clearly set out in Article 122B of the Federal Constitution after a selection of the candidates for appointment has been made by the Judicial Appointments Commission as provided in Part IV of the JAC Act.

ii. Article 122B of the Federal Constitution, in so far as relevant for evaluation of the allegations in the Book, provides as follows:

> **Appointment of judges of the Federal Court, Court of Appeal and High Courts.**
>
> *(1) The Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Judges of the High Courts and (subject to Article 122C) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.*

iii. Before tendering his advice as to the appointment under Clause (1) of a Judge other than the Chief Justice of the Federal Court, the Prime Minister shall consult the Chief Justice.

iv. Before tendering his advice as to the appointment of the Chief Judge of a High Court, the Prime Minister shall consult the Chief Judge of each of

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the High Courts and **if the appointment is to the High Court in Sabah and Sarawak, the Chief Minister of each of the States of Sabah and Sarawak.**

v. Article 122B(1) to (3) do not provide the mode or process for such consultation. However, in December 2007 after the circulation of a video clip where an advocate and solicitor, Dato' V.K Lingam speaking over the phone to Tun Ahmad Fairuz bin Dato Sheikh Abdul Halim the then Chief Justice, on matters relating to the appointment of Judges and other matters, a Commission of Enquiry was set up to determine, *inter alia*, the authenticity of the video clip and identify the speaker and the person he was talking to and the persons mentioned in the conversation. The Commission not only established the identity of the speaker and the person he was talking to but also the subject matter of the conversation was on the appointment of Judges mentioned by the speaker, Dato V K Lingam. The following pertinent recommendation was made by the Commission:

"The Commission find sufficient cause to invoke the Sedition Act, 1948, the Legal Profession Act, 1976, the Official Secrets Act,1972 and the Penal Code against various individuals mentioned in the video clip which we have elaborated in the Report. We do not discount the possibility of other laws being contravened. We leave it to the Attorney General Malaysia and the Malaysian Bar Council, to take appropriate actions against the personalities implicated. Additionally, ***we are proposing to the Government for the necessary reforms including the establishment of a Judicial Appointments Commission."*** (Emphasis added).

vi. The Government accepted the said Commission's recommendation and enacted the Judicial Appointments Commission Act 2009 which came into force on 2nd February 2009 vide P.U.(B) 43/2009. The long title to the Act reads:

> *"An Act to provide for the establishment of the Judicial Appointments Commission in relation to the appointments of Judges of the superior courts, to set out the powers and functions of the Commission, **to uphold the continued independence of the judiciary,** to provide for matters connected therewith or incidental thereto."* (Emphasis added).

vii. Section 2 of the JAC Act requires the Prime Minister to uphold the independence of the Judiciary. This section reads:

> *"2. The Prime Minister **must uphold the continued independence of the Judiciary** and **must** have regard to–*
>
> *(a) the need to defend that independence;*
>
> *(b) the need for the judiciary to have the support necessary to enable them to exercise their functions;*
>
> *(c) the need for public interest to be properly represented in regard to matters relating to the judiciary, the administration of justice and related matters."*

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viii. It is thus clear that the Act was passed, upon the recommendation of the said Commission, to institute a process for the selection and appointment of the Judges of the superior courts so that the continued independence of the Judiciary can be upheld and so that the Prime Minister can uphold such continued independence of the Judicial arm of the Government. It can be said that the Executive arm and the Legislative arm have enacted this Act to preserve and safeguard the independence of the Judiciary. Interference from persons or parties who are not members of the JAC in the selection of candidates for appointments to high judicial offices is not allowed.

ix. The principal function and power of the JAC is **"to select suitably qualified persons who merit appointment as judges of the superior court for the Prime Minister's consideration"**.

x. The Prime Minister does not have the power to select candidates for the appointment of Judges of the superior courts, as shown by the provisions of sections 26, 27 and 28 of the JAC Act which read:

"Report on recommendation

26(1) After making its selection, the Commission shall submit to the Prime Minister a report which shall:

(a) state who has been selected by the Commission to be recommended for appointment to the office concerned;

(b) state the reasons for such selection; and

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(c) contain any other information the Commission deems necessary to bring to the knowledge of the Prime Minister;

(2) After submitting the report, the Commission shall provide any further information as may be required by the Prime Minister.

Request for further selection by the Prime Minister

27. 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 Court of Appeal, the Chief Judge of the High Court in Malaya, the Chief Judge of the High Court in Sabah and Sarawak, the 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.

Tender of advice

28. Where the Prime Minister has accepted any of the persons ***recommended*** *by the Commission, he may proceed to tender his advice in accordance with Article 122B of the Federal Constitution."*

xi. From the above provisions in the JAC Act, the Prime Minister having the statutory obligation to uphold the continued independence of the Judiciary:

(a) **does not select candidates** for the appointment to the highest Judicial offices;

(b) the advice he tenders to the Yang di-Pertuan Agong on the appointment to these high judicial offices must be based on the selection and recommendation made by the JAC; and

(c) **the Attorney General is not a member of the JAC** and has no right or power under the JAC Act or Article 122B of the Federal Constitution, to select or recommend to the Prime Minister, or be consulted on, any candidate for the appointment to the high judicial offices. The Attorney General's advice is not constitutionally required to enable the Prime Minister to tender his advice to the Yang di-Pertuan Agong for appointment of judges.

xii. Since TSTT said that he is the "Chief Legal Advisor" to the Prime Minister, it must be his bounden duty to advise the Prime Minister to act according to Article 122B(1), (2) and (3) of the Federal Constitution and comply with sections 26, 27 and 28 of the JAC Act in order to uphold the continued independence of the Judiciary. He himself must also not act in a manner that is not expressly provided for in Article 122B or the JAC Act.

2.1.4. Analysis and Recommendations on Issue of Executive Interference

i. The STF has analysed the allegations in the TSTT Book relating to the Judicial appointments made in 2018 that is, shortly after TSTT assumed office as Attorney general and in 2019 when Tan Sri Richard Malanjum retired as the Chief Justice.

ii. According to TSTT shortly after his appointment as Attorney General, ***"… the continued tenure of the two highest judicial officers in the land required my immediate attention."***. TSTT added—

> *I wrote an opinion to the Prime Minister, advising him that since both judges had tendered their resignations in writing, the government was not bound to accept their last date of 31st July, which was chosen by them unilaterally for their own convenience. I further advised that the government should accept their resignations with immediate effect, rather than waiting for 31st July. The Prime Minister agreed. Their resignations were then brought forward to early July 2018.*[13]

iii. According to TSTT, the Prime Minister heard "good things about Richard Malanjum". The then Prime Minister has never denied this statement in TSTT's Book. No mention was made where the Prime Minister had heard

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[13] See: page 337 of the Book

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good things about Tan Sri Richard Malanjum. It must be assumed that these "good things" were not from the JAC as there is no evidence that the JAC had recommended, under section 26 of the JAC Act, to the Prime Minister the appointment of Tan Sri Richard Malanjum as Chief Justice.

iv. TSTT also wrote that "we", meaning the then Prime Minister and himself, agreed on "*the other three appointments caused by the 'retirement' of Raus and Zulkefli. Tan Sri Dato' Sri Ahmad Maarop was promoted from Chief Judge of Malaya to President of the Court of Appeal, Tan Sri Zaharah Ibrahim became the Chief Judge of Malaya and Tan Sri David Wong Dak Wah, the Chief Judge of Sabah and Sarawak.*"[14]

v. It must be pointed out that all the names of persons appointed to the Office of Chief Justice, President of Court of Appeal and Chief Judge of Sabah and Sarawak following the resignation of Tun Raus Sharif and Tan Sri Zulkefli Ahmad Makinudin **differ from the candidates submitted to fill the said posts by the JAC** at its meeting held on 24th May 2018. The decision of JAC was conveyed by letter from the then Chief Justice on 13th June 2018 to the Prime Minister.

14 See: page 338 of the Book

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The following are the names of candidates selected by JAC:

(a) YA Tan Sri Dato' Sri Azahar bin Mohamed as Chief Justice of Federal Court (instead Tan Sri Richard Malanjum was appointed);

(b) YA Dato Rohana binti Yusuf as President Court of Appeal (instead Tan Sri Ahmad Maarop was appointed);

(c) YA Dato' Abdul Rahman bin Sebli as Chief Judge of High Court in Sabah and Sarawak (instead Datuk David Wong Dak Wah was appointed).

vi. If the Prime Minister disagreed with the above selection and recommendation of the JAC, pursuant to section 27 of JAC Act, he should have requested for more names for each of the vacant judicial positions. There is no evidence before the STF that he had made such a request. Instead, from the report of BKPP, the names submitted by the Prime Minister when he tendered his advice to the Yang di-Pertuan Agong under Article 122B were the names discussed and agreed upon between the Prime Minister and the Attorney General.

vii. In regard to the appointment of Tan Sri David Wong Dak Wah as Chief Judge of the High Court in Sabah and Sarawak, the facts disclosed to the STF by BKPP and JAC do not show that there was any consultation with the Chief Ministers of Sabah and Sarawak regarding his appointment as mandatorily required under Article 122B(3) of the Federal Constitution. This omission is glaring when compared to the facts disclosed which showed that

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in the appointment of Dato' Abang Iskandar bin Abang Hashim as Chief Judge, Sabah and Sarawak in 2019 (to succeed Tan Sri David Wong), confirmation were received from the Chief Minister, Sabah and Chief Minister of Sarawak on 4.10.2019 and 8.10.2019 that they have been consulted in accordance with Article 122B(3) of the Federal Constitution. The failure to consult the 2 Chief Ministers under Article 122B(3) of the Federal Constitution on the appointment of Tan Sri David Wong as Chief Judge of Sabah and Sarawak is a violation of the Constitution which clearly TSTT as Attorney General had not advised the Prime Minister to comply with.

viii. What is troubling is that TSTT pointed out in the Book that *"it must have been embarrassing for Chief Justice Raus and Justice Zulkefli to meet Tun Dr Mahathir, who was a litigant before their court seeking their removal from office."*[15] Assuming that this statement was true it would give rise to a perception in the minds of right-thinking people that the 2 top Judges had to leave because Tun Dr Mahathir was a litigant before their court and their removal was in the interests of the Prime Minister.

ix. To uphold the continued independence of the Judiciary, which is the declared objective of the JAC, the process of selection and recommendation for appointment of Judges of the superior courts as laid down in Part IV of the JAC Act must be followed by the Prime Minister who should not by-pass the process and advise the Yang di-Pertuan Agong on whom to appoint

15 See: page 337 of the Book

based on the Prime Minister's discussion with the Attorney General who must have no part to play in judicial appointments as—

(a) he himself appears in Court and must not be seen to have a say in who should be Judges before whom he appears;

(b) his officers and subordinates have to appear before the Judges; and

(c) to eradicate perception entertained by legal practitioners about what TSTT described as "close relationship" or "familiarity" between the Attorney General and senior Judges.

x. In the premises, the STF proposes the Government considers amendment to the JAC Act that would prohibit the Prime Minister from advising His Majesty on the appointment of any person to judicial offices in the superior courts, who is not selected and recommended by the JAC. To enhance continued judicial independence which may be perceived to have been compromised by having four (4) "eminent" members of the JAC appointed by the Prime Minister as the Prime Minister could play a role in the selection process through his four (4) appointees. The STF therefore, proposes that these four (4) eminent persons should be appointed by the Yang di-Pertuan Agong after consulting the persons or organisations mentioned in section 5(1)(f) of the JAC Act.

2.2. FORUM SHOPPING

i. TSTT in his book mentioned the following:

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… It was immediately clear to me: this was the most blatant example of choosing a judge. Forum shopping. Obviously, MBF were not confident of their chances of succeeding before Justice Vohrah, but were confident before Justice Low…[16]

By this time, some in the Bar knew that Eusoff Chin had a special relationship with V.K. Lingam, who succeeded in all his matters before the Chief Justice. The judiciary was factionalised, and Eusoff Chin played favourites. Justice Low Hop Bing was a particular 'pet'.[17]

ii. TSTT added—

All our interlocutory applications were dismissed by Justice R.K. Nathan, who was assigned to hear the five suits. This judge was also a member of the favoured group of the Chief Justice.[18]

Years later, a Royal Commission of Enquiry into 'judge fixing' and appointments by Chief Justice Fairuz and V.K. Lingam, received much evidence about wrong-doings in the Eusoff Chin era.[19]

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[16] See: page 164 of the Book
[17] See: page 165 of the Book
[18] See: page 167 of the Book
[19] See: page 169 of the Book

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Hence, the six years when Eusoff Chin was Chief Justice was without doubt the worst period of the judiciary in our nation's history.[20]

iii. The STF had investigated this matter and is of the view that what was mentioned by TSTT had already been disclosed through a Royal Commission of Inquiry (RCI) that was set up during the tenure of Datuk Seri Abdullah Ahmad Badawi as Prime Minister in 2008.

iv. The members of the RCI were as follows:

(i) Tan Sri Haidar Mohamed Noor, Former Chief Justice of Malaya;
(ii) Tan Sri Steve Shim Lip Kiong, Former Chief Judge of Sabah and Sarawak;
(iii) Puan Sri Zaitun Zawiyah Puteh, Former Solicitor General;
(v) Dato' Mahadev Shankar, Former Court of Appeal Judge; and
(v) Prof Emeritus, Khoo Kay Kim.

v. The RCI investigated amongst others, the issue of "forum shopping" and the misconduct of VK Lingam and the senior judges. The said video clip was also reviewed and the RCI recommended that the then Prime Minister Tun Dr Mahathir Mohamad and five (5) others involved should be investigated for their role in the selection of judges to hear certain cases. The five (5) senior judges are former Chief Justice Tun Ahmad Fairuz Sheikh

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20 See: page 169 of the Book

Abdul Halim and Tun Eusoff Chin, Datuk VK Lingam, former Minister in the Prime Minister's Department Tengku Adnan Tengku Mansor and businessman Tan Sri Vincent Tan. The RCI recommended that they be investigated under the Sedition Act 1948, Official Secrets Act 1972 and the Penal Code for obstructing the justice system.

vi. The STF is fully mindful that TSTT is trying to point out the obvious and there is no doubt truth behind the decline in public confidence towards the Justice System at that time, especially after the disclosure done by the RCI on the two (2) Chief Justices that confirmed the practice of "forum shopping" in the Judiciary at that time.

vii. There were weaknesses in the Judiciary in providing a transparent process that existed from the 1970's until 2000. The RCI confirmed that one who filed a case in the court might be decide which court he wanted his case to be heard.

viii. The question that was posed by the STF is, whether the judicial system could still be manipulated whereby one party could still choose the court or judge for his case?

ix. The STF upon investigating this matter is satisfied that forum shopping no longer exist after the introduction of the e-Filing system in 2011. The filing of cases via the e-Filing system can only be done through an online platform which is open to all solicitors, and the assignment of judges to hear cases is done automatically through the computerised system.

x. This has been confirmed by the Chief Registrar of the Federal Court during his meeting with the STF. According to him, after the introduction of the e-Filing system, forum shopping has been eliminated because assignment of cases to courts and judges is done under this system. With this system, there is no possibility of human intervention in the allocation of cases for hearing in the various courts.

xi. Similar systems are also being used in Singapore and some other countries to avoid forum shopping and to ensure transparency and fairness in the distribution of court cases for hearing once they are filed.

2.3. JUDGES BEING OVERLY CLOSE TO THE EXECUTIVE OR BEHOLDEN TO THE EXECUTIVE

i. TSTT devoted one whole chapter on the Judiciary in his book, *My Story: Justice in the Wilderness*. On the easy relationship between the Attorney General and his officers with the judiciary he wrote at page 120 of the Book, *"Justice Eusoffe informed me that from the time, Abu Talib succeeded Salleh as Solicitor General (becoming Attorney General later), Abu Talib would constantly seek Justice Eusoffe's advice and assistance. I was stunned that the Attorney General had a private line, a back-channel, to communicate with a sitting judge before whom the Attorney General would frequently appear.*

ii. At pages 338 to 340 of his Book, TSTT, wrote as follows:

Over the years, and certainly after 1990, with Tun Hamid Omar as Lord President, it was apparent to me that the AGC lawyers, because of their familiarity with members of the judiciary, seemed to enjoy the ears of the Bench more than private practitioners. In the subordinate courts, one would be a DPP on a Monday, and transferred to be a magistrate on a Friday, likewise, in the session court. The transfer could also be in the opposite direction. They were all members of the Judicial and Legal Services fraternity. That was the genesis of the call by some in the Bar as long ago as the 1990s for the separation of the judicial services from the legal services. This call preceded the discussion to separate the office of the Public Prosecutor from that of the AG. I supported both proposals very early on. Even if there were no practical ramifications from the links between the judicial and legal services, the perception that they were close was unhealthy. Litigants in the private sector and their lawyers from the Bar often left a courtroom with an uneasy feeling that their opponent, the State, represented by a DPP or a federal counsel, had an advantage because of such familiarity. Such attitude was accentuated if they lost their case to the state. In the long run, if such a feeling persisted and became widespread, it would diminish public confidence in the administration of justice. Equality of treatment and a level playing field are vital

objectives of a good legal system, not just between parties but also between counsel.

Another troubling feature from the time of former AG Tan Sri Abu Talib Othman was the easy relationship between the AG and some judges. One conspicuous link (told to me by Justice Eusoffe) was that between Abu Talib and the former Chief Justice of Malaya Tan Sri Hashim Yeop Abdullah Sani. The latter served in the High Court and the Supreme Court. He was also close to Salleh Abas and Hamid Omar. In the 1988 Judicial Crisis, Hashim showed his card, aligning himself with Hamid, and betraying Salleh Abas, despite them praying together in chambers. Abu Talib was particularly close to Hashim Yeop. I have already mentioned that Abu Talib used to seek legal advice from Justice Eusoffe Abdoolcader before the 1988 Judicial Crisis. It was shocking for a lawyer, even if he was the AG, to seek legal advice from a sitting judge, before whom the lawyer regularly appeared. Such chumminess, privately cultivated, influences decision making. Personal chemistry is critical in judging, and such closeness in unfair.

The practice worsened with Abu Talib's successor. Tan Sri Mokhtar Abdullah was the AG who prosecuted Anwar Ibrahim in two trials after Anwar's dismissal from office in 1998. The first trial judge was Datuk Seri Augustine Paul, then serving as a judicial commissioner in Malacca. Justice Datuk K.C. Vohrah was the

resident judge in the criminal court in the Kuala Lumpur High Court trial where Anwar was to be prosecuted. Justice Vohrah was noted for his independence and integrity. He was transferred out, to be replaced by Justine Augustine. That sealed Anwar's fate. The friendship between AG Mokhtar and Justice Augustine was an open secret. Justice Augustine presided over a kangaroo court, blatantly partisan in favour of the prosecution and against the defence. He sentenced Zainur Zakaria, one of Anwar's lawyers, to six months jail for contempt of court. The notorious mattress was paraded in court. Every independent legal organisation that studied the trial condemned its conduct and verdict. The second trial was also presided over a judge perceived to be sympathetic to the prosecution. Justice Datuk Arifin Jaka was close to Chief Justice Eusoff Chin, who had handpicked him. Although his conduct of the second trial did not descend to the depths of the first, it was heavily criticised. The Federal Court finally allowed Anwar's appeal.

When the prosecution got away with "blue murder" in such cases of national importance and public interest, the perception that the AG was too close with the Bench was not just shared by barristers frequenting the courts, but also by the public and the media. Certainly, by the time GE14 was on the horizon, such perception worsened with AG Appandi Ali's handling of the 1MDB scandal. He was appointed by Prime Minister Najib Razak to ensure that nothing relating to 1MDB would reach the courts. Obviously,

Appandi Ali was never going to prosecute Najib. On the contrary, he cleared the Prime Minister. When the Bar challenged the Attorney General's decision not to prosecute Najib on the 1MDB fraud, the Bar's case did not even pass the leave stage. The strength of the Bar's case, both on the law and on the facts, was overwhelming. Conversely, the Public Prosecutor's arguments were weak and misconceived. Yet, the prosecutor succeeded.

2.4. ALLEGATIONS ON THE COURT OF APPEAL

i. The STF found that the statements by TSTT in the Book at page 344, that judges from legal and judicial service are incompetent in commercial law very strange and calls into question the true intentions of TSTT and by making these statements he has put the judiciary into unnecessary embarrassment. TSTT wrote as follows:

Perhaps the weakest area of the law insofar as the Court of Appeal is concerned is commercial law….. A minimum qualification for a good commercial judge, whether in the High Court or appellate courts, is experience and expertise, which can only be gained by an active practice, preferably as a barrister. Corporate solicitors also bring useful experience, because they would have worked with their clients in structuring, designing and negotiating deals, and drafting agreements. Having worked in the AGC for a few months, and particularly dealing with Malaysia's lopsided contracts and 1MDB matters, I saw first-

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hand the lack of experience and expertise in things commercial in chambers. There was absolutely no interest in business matters among the numerous AGC officers I personally encountered. When our officers become judges, it was too much to expect them to understand commercial law in the way their brother judges in London, Melbourne, Hong Kong or Singapore did.

But Justice Richard Malanjum's tenure was just too brief for him to act on my solution to the problem: the appointment from the Bar of ***at least three practitioners with strong commercial law background straight to the Court of Appeal****. I broached the solution with Tengku Maimun during my second attendance in her chambers. She was supportive, stating that she would put forward my proposal to the JAC. A few weeks later, the Chief Justice telephoned to say that the JAC's policy was that every appointee to higher judiciary must first serve as a judicial commissioner and then judge of the High Court.* ***The only solution was for me to seek the agreement of the Prime Minister to make the three appointments.*** *I mentioned the problem to Tun, who had separately and independently been told of the paucity of commercial law judges on the Bench, Tun agreed, but suggested that we should defer such appointments.*

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2.4.1. Evaluation of the allegations

ii. The STF investigations reveal that these statements are not reflective of the true position. In fact, the general body of the Bar Council has released a media statement on this issue. The then President of the Malaysian Bar, Salim Bashir disputed the allegations by TSTT in a Press Statement issued on 9th February 2019[21] and published by *Bernama* wherein he said that "many judges who were now in the top stratum of the Judiciary have started their career in the AGC. These Judges were also capable of writing excellent judgments and had precise legal knowledge on par with other judges who served as lawyers before."

iii. Similarly, the present Attorney General, Tan Sri Idrus bin Harun speaking to the media had said that "the book was written based on a shallow understanding of how the civil service functions, probably due to Thomas' short-stint at the AG Chambers".[22]

iv. According to TSTT, there was "paucity of commercial law judges on the Bench" and that the Court of Appeal's weakest area is in commercial law and the solution was to appoint practitioners with a strong background in commercial law. The Bar Council when asked by STF via letter whether the Council had written to the Chief Justice about the alleged weakness of the Court of Appeal, declined to response[23]. TSTT in the Book did not show that

[21] See: Appendix 10

[22] See: Appendix 11

[23] See: Appendix 3

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the Bar Council has asked him to raise this issue or to appoint at least three members of the Bar to the Bench of the Court of Appeal to address or resolve this alleged problem. There appears to have been no consultation between TSTT and the Bar on who were the 3 persons he proposed to the Chief Justice, Tengku Maimun to be appointed directly to the Court of Appeal to overcome the perceived problem of the weakness of the Court of Appeal in the area of commercial law.

v. At page 344 of the Book, it is worth noting that TSTT's conduct in discussing the appointment of practitioners from the Bar with strong commercial backgrounds straight to the Court of Appeal with the Chief Justice necessarily shows that TSTT had powerful vested interests in the appointment of judges and had been knowingly putting partisan pressure on the Chief Justice to try to influence the appointment of judges to the Court of Appeal. For ease of reference–

> *But Justice Richard Malanjum's tenure was just too brief for him to act on my solution to the problem: the appointment from the Bar of at least three practitioners with strong commercial law background straight to the Court of Appeal. I broached the solution with Tengku Maimun during my second attendance in her chambers. She was supportive, stating that she would put forward my proposal to the JAC. A few weeks later, the Chief Justice telephoned to say that the JAC's policy was that every appointee to higher judiciary must first serve as a judicial commissioner and then judge of the High Court. The only*

solution was for me to seek the agreement of the Prime Minister to make the three appointments.

vi. It is evident from the above passage of the Book that TSTT had taken a personal interest in the appointment of judges, including submitting three names of members of the Bar for the direct appointment to the Court of Appeal. TSTT as the then Attorney General should not have discussed and/or get involved in any matter concerning the appointment of judges at all as this is essentially the statutory function of the JAC.

vii. The Chief Justice had rightly, after having consulted the JAC, decided not to entertain TSTT's proposal. TSTT ought not to even put forward his candidates for judicial appointments to the Chief Justice.

viii. After that, TSTT approached the Prime Minister. This is what he said:

The only solution was for me to seek the agreement of the Prime Minister to make the three appointments. I mentioned the problem to Tun, who had separately and independently been told of the paucity of commercial law judges on the Bench. Tun agreed, but suggested that we should defer such appointments.[24]

ix. What TSTT did after he was rebuffed by the Chief Justice was to attempt to use political or executive influence to have his proposed

[24] See: page 344 of the Book

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candidates appointed to the Court of Appeal. Such action is contrary to what is provided in the JAC Act which requires the Prime Minister to uphold the continued independence of the judiciary (see section 2 of the JAC Act). TSTT as Attorney General has failed in his duty to advise the Prime Minister that he had no power to select candidates for judicial appointment. Instead he wanted the Prime Minister to do his bidding in a manner contrary to the law pertaining to selection and appointment of judges.

2.5. SUMMARY OF ALLEGATIONS

i. All the above allegations insinuate that because of the seemingly close relationship between the AG and some senior members of the Judiciary, members of the Bar and generally the public or litigants, "leave the courtroom with an uneasy feeling that their opponent, the State, represented by DPP or a federal counsel, had an advantage because of such familiarity."

ii. TSTT also alleged that a few past Attorney Generals were close to certain senior Judges from whom they even sought legal advice. He alleged that a Judge (Justice Augustine Paul), who presided over the prosecution of Datuk Seri Anwar Ibrahim in the first sodomy case, was close to the Attorney General and he presided over a "*kangaroo court*[25]". In the second sodomy case, the Judge, Justice Ariffin Jaka, was close

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25 See: page 340 of the Book

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to the then Chief Justice, Tun Eusoff Chin, who handpicked him to try Datuk Seri Anwar Ibrahim.

iii. In relation to the appointment of Tan Sri Apandi Ali as Attorney General, TSTT insinuates that his appointment was to ensure that nothing relating to 1MDB would reach the Courts, and when the AG's decision not to prosecute the former Prime Minister, Datuk Seri Najib Razak was challenged in court by the Malaysian Bar. Despite the Bar's case, according to TSTT was overwhelming, it was not allowed to proceed.

iv. It is alleged that the "*prosecution got away with 'blue murder' in such cases of national importance and public interests*"[26]. The perception that the AG was closed to the Bench was not only shared by barristers frequenting the courts, but also by the public or the media.

v. TSTT said under the present system, "*in the subordinate courts one could be a DPP to be a magistrate on a Friday, likewise, in the sessions court. The transfer could also be in the opposite direction.*"[27]

2.6. OBSERVATIONS

i. Since TSTT did not wish to assist the STF in its investigations into the said allegations made by him, and likewise the Bar Council also did not want

[26] See: page 340 of the Book

[27] See: page 338 of the Book

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to meet the STF, these allegations are unsubstantiated. TSTT did not provide any proof or material evidence to substantiate what he alleged was the "familiarity" between the previous Attorney Generals and the senior members of the Judiciary named by him, nearly all of them have passed away. Some of the allegations such as what was told to him by Justice Eusoffe, who had passed away cannot be confirmed as what is alleged by TSTT is obviously hearsay or mere conjecture.

ii. However, having regard to the nature of the allegations, they undoubtedly tarnished the institution of the Judiciary and called into question the fairness or correctness of the decisions in cases decided by the Courts. The STF considers these unsubstantiated allegations ought not have been made by a person who not only had held high office of Attorney General but also who had been a senior member of the Bar.

iii. After deliberating on the chapter on the Judiciary in the Book, the STF found that there is no culpable substance in what is said on pages 338, 339, 345 and 346 of the Book. TSTT was merely relating his personal experience and making his personal observations. Some of the matters had been raised in Parliament. The Malaysian Bar was and still is at the forefront in championing the fundamental concept of independence of the judiciary, one of the pillars of the rule of law. The issue about the independence of the judiciary has been widely reported, discussed and debated in this country.

iv. On the issue of public perception that the current system whereby DPPs and Federal Counsels can also be appointed Sessions Court Judges

and Magistrates and vice versa that the State, represented by DPPs and Federal Counsels, had the unfair advantage which members of the Bar do not have, TSTT did not provide any specific instances of bias or lack of impartiality had been manifested in any judgment delivered by former DPPs or Federal counsels favouring the State or their former colleagues at the AGC.

v. In fact, TSTT must have known that this issue had been raised and settled both by the High Court and the Federal Court in the case of ***Cheak Yoke Thong v Public Prosecutor*** **(1984) 1 LNS 29 (HC) and (1984) 2 MLJ 119 (FC)**[28]. At the High Court, Hashim Yeop A. Sani J (as he then was) held:

> *"Finally, what is the 'system' which counsel said they fear would produce a likelihood of bias? The judicial and legal service is one of the public services mentioned in Article 132(1) of the Federal Constitution. The authority which exercises jurisdiction over officers of the service in matters of promotions and discipline is the Judicial and Legal Service Commission established under Article 138 of the Constitution of which the Attorney General is only a member. There is nothing in law to say the Attorney General is the head of the service; in fact, he cannot be by virtue of Article 138 of the Constitution. An officer who belongs to the judicial and legal service but he may serve*

[28] There was no Court of Appeal at that time.

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in various different capacities in the Judicial Department and the Legal Department. As normal in the administrative set up of the public service each Department has its own head. The Attorney General is not the head of the Judicial Department. Thus, looking at the legal and administrative framework governing the service I do not think the facts here warrant a conclusion of a real likelihood of bias. If such a conclusion is made it is not the sort of conclusion which in my opinion right thinking persons armed with the proper information and advice would entertain."

vi. For the record, the facts in the above case were that the Applicant/Accused made an application to the Court to disqualify the Magistrate hearing his case on the grounds that he belonged to a service in which the Attorney General is the head and as Public Prosecutor, having supervision and control of judicial officers including the Magistrate.

vii. At the Federal Court[29], Salleh Abas LP delivering the Judgement of the Court held:

"*First, whether Cheak's fear of the possibility of the Magistrate being bias, whether the fear is justified or not is*

[29] *Cheak Yoke Thong v Public Prosecutor* (1984) 2 MLJ 119 (FC)

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a sufficient reason for the Magistrate to disqualify himself from hearing the case. Secondly, whether the assumption upon which the question is framed in that the Attorney-General is "having control of the Magistrate's service, is factually and legally correct". As to the first issue, surely no one could have come to court and seek for the dismissal of the case against him or for the trial by another tribunal just because he said the adjudicating officer would be bias against him. On this ground alone, the application should be turned down. His fear alone is not sufficient. He must, however, show by evidence that the adjudicating officer or tribunal is in fact biased or is likely to be so."

viii. In the context of the current law on bias reference is made to a case decided by the Federal Court after TSTT became the Attorney General. The Federal Court in ***Bar Council Malaysia v Tun Dato' Seri Ariffin Zakaria & Ors* (2018) 10 CLJ 129 at p.138 - 140** held there are 2 categories of bias namely (a) direct interest and (b) real possibility of bias.

ix. As a person who had practised law for over 4 decades, TSTT must be deemed to be aware of the decisions in the above cases. However, if the current Judicial and Legal Service do give rise to adverse perception with regard to the integrity of the administration of justice, TSTT did not, during his term in the office, propose any solutions to allay

fears that the system has its shortcomings in the manner described in his Book.

2.7. RECOMMENDATIONS

2.7.1. Reforming the Judicial and Legal Service

i. In carrying out its task, the STF has considered Article 132(1)(b) of the Federal Constitution that provides that the Judicial and Legal Service shall be one service and are interchangeable. There is one Judicial and Legal Service Commission that is established under Article 138 of the Federal Constitution. This Commission exercises jurisdiction over judicial and legal officers in all matters governing the members' appointment, confirmation, promotion and discipline action. Being a fused administration, both judicial and legal officers belong to the same service, with transfers between the legal officers in the Attorney General's Chambers, the Government departments and the Judiciary being a habitual practice.

ii. Though there may be a public perception that a conflict of interest occurs when the Attorney General has the control and supervision over the judicial officers of the Subordinate Courts the courts have consistently decided that there is insufficient evidence to show direct interest or real possibility of bias simply because the Judicial and Legal officers are from the same Commission.

iii. In *Maleb bin Su v Public Prosecutor* [1984] 1 MLJ 311[1984] 1 MLJ 313, an application was made that the magistrate should be disqualified from hearing the proceedings on the ground that he is attached to the Judicial and Legal Service in which the Attorney General is the head of the service. It was alleged that since the Attorney General has the supervision and control over the judicial officers, there is a likelihood of bias. Hashim Yeop A Sani FJ held–

> *"… The judicial and legal service is one of the public services mentioned in Art 132 cl (1) of the Federal Constitution. The authority which exercises jurisdiction over the officers of the service in matters of promotions and discipline is the Judicial and Legal Service Commission established under Art 138 of the Constitution of which the Attorney General is only a member. There is nothing in law to say that the Attorney General is head of the service; in fact, he cannot be by virtue of Art 138 of the Constitution. An officer belongs to the Judicial and Legal Service but he may serve in various different capacities in the Judicial Department and Legal Department. As normal in the administrative set-up of the public service each department has its own head. And the Attorney General is not the head of the Judicial Department. Thus, looking at the legal and administrative framework governing the service … the facts here warrant a conclusion of real likelihood of bias".*

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iv. Be that as it may, the STF is fully mindful that over the years, there have been many calls to separate the Judicial and Legal Service. In 2016, the then Chief Justice Tun Arifin Zakaria proposed to separate the Judicial and Legal Service of the subordinate courts from the Attorney General's Chambers and said that the proposal would strengthen the judicial independence and bolster public confidence in the judiciary. The STF is of the view that the separation of the Judicial and Legal Service would allow for greater specialisation in the judicial and legal branches in the future. In coming to this conclusion, the STF had carried out a study on the Singapore's Judicial and Legal Service.

2.7.2. Singapore's Judicial and Legal Service

i. Singapore had, until very recently, a very similar judicial and legal service to that in Malaysia. The fundamental structure of the Judicial and Legal Service was established via the Singapore 1959 Constitution.

ii. It had practiced an "integrated" legal system where a single Legal Service Commission (LSC) oversaw officers deployed to both the judicial and legal branches. The LSC was headed by the Chief Justice and comprised of the Attorney-General, the Chairman of the Public Service Commission (PSC), and other members.

iii. On 3rd November 2021 the Singapore Parliament approved the split of judicial and legal services in Singapore. The split was to allow for greater specialisation in the judicial and legal branches and to prepare for future

challenges. It approved the creation of the Judicial Service Commission (JSC). (Refer: The Straits Times Singapore, 3rd November 2021). The constitutional amendments on the split of the judicial and legal service came into force on 1st January 2022.

iv. With the split the JSC is now led by the Chief Justice, while the LSC is headed by the Attorney-General. The Public Service Commission Chairman is the vice-president of both the commissions.

v. Consequently, the JSC shall oversee judicial officers such as State Courts judges and assistant registrars in the Supreme Court. The LSC will oversee the legal service officers such as prosecutors, law drafters and government legal advisers.

vi. Having considered the Judicial and Legal Service the STF is of the opinion that a separation of the judicial and legal service would strengthen judicial independence and would instill greater public confidence in the judiciary and the administration of justice. The STF therefore proposes that the Judicial and Legal Service Commission be split into the Judicial Service Commission and the Legal Service Commission similar to that in Singapore.

vii. Section 5(1)(f) of the JAC Act should be amended in line with Article 138(2)(c) of the Federal Constitution relating to the appointment of members of legal and judicial services whereby the members are appointed by YDPA acting on the advice of the Chief Justice and not of the Prime Minister. Also, in line with the expressed provision of section 2 of JAC Act that states that

the Prime Minister must uphold the independence of the judiciary and therefore should not be involved in the appointment of 4 eminent persons as members of the JAC.

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CHAPTER 3

DISCLOSURE OF GOVERNMENT INFORMATION AND SECRETS

3.1. DISCLOSURE OF OFFICIAL COMMUNICATION

i. In the Preface to his Book, TSTT made it known that he wanted to write a Book that would provide a narrative of his experience as the Attorney General of Malaysia.

ii. Such a Book would necessarily contain information, facts and documents obtained by him or which came into his possession whilst serving as Attorney-General.

iii. As Attorney General he is part of the Government and one of its public officers. TSTT is therefore bound by the relevant laws and regulations which safeguard Government or official information and secrets from disclosure to the public, save and except in the circumstances allowed under these laws and regulations. There is no evidence that TSTT was exempted from compliance with the such laws and regulations. In fact, as Attorney General he has the duty to see that these laws and regulations are duly obeyed or complied with.

iv. Prior to his appointment, TSTT was a senior member of the Malaysian Bar and has been in practice for more than 40 years. There is legitimate expectation that he would continue to observe and respect confidentiality of communication between a lawyer and his client and treat such

communication as privilege from disclosure unless with the consent of the client. Once he is appointed as Attorney General, he is, as pointed out by himself, the Chief Legal Officer of the Government, and as such he ought to comply with the standard and tradition of the Bar by not disclosing information or communication between him and his "clients" who is the Government, YDPA and the Ministers whom he is the legal advisor.

v. Amongst the laws and regulations to protect confidentiality of Government or official information and documents include—

(a) Section 203A of the Penal Code [Act 574];

(b) Section 8 of the Official Secrets Acts 1972 [Act 88];and

(c) Bab 4 Arahan Keselamatan 2017.

vi. The STF, upon examination of the Book, found that the following passages of the Book manifest disclosure of government information, facts and documents. These include communications and discussions between him and the Yang di-Pertuan Agong and Rulers, between him and the Prime Minister, between him and the Chief Justice, proceedings in the Pardon Board and negotiations between the Government over disputes relating to contracts such as the "pipeline contracts". The relevant passages in the Book are—

(a) *About a week after Tun assumed the Prime Ministership for the second time, I was asked to see him at the Prime Minister's Office. Tun stated that he was appointing me Attorney General,*

but he was meeting resistance from the Yang di-Pertuan Agong. Tun said that he was adamant to see my appointment through, and I was to leave the matter with him. I thanked Tun for his trust and confidence in me. It was agreed that until the matter was resolved, I would remain silent. This was final confirmation of my appointment. I was delighted. I shared the news with my wife, daughters and my mum. I also informed my partners. Everyone understood the importance of confidentiality for the time being.[30]

(b) *Although, an AG is the principal lawyer to the Prime Minister, the AG is also the legal adviser to the Agong. The Sultan of Kelantan, Sultan Muhammad V, was the Agong at the time of my appointment. Mention has already been made that the Agong objected to my appointment. But when Prime Minister Tun Mahathir stood his ground, His Majesty appointed me. Shortly after I took office, an emissary from the Palace arranged a meeting for me to pay respects to His Majesty. The meeting between the Agong, the emissary and myself was most pleasant. His Majesty as charm personified. The Agong went out of his way to say there was nothing personal about the objections to my appointment. Since the Agong did not know me, the King sought the views of some lawyers. They were all negative. When His Majesty named them, I replied that there*

30 See: page 231 of the Book

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was animosity between us. Jealousy characterises the profession, and I was a victim of envy.[31]

(c) *During the coffee break, I had a few moments with the Yang di-Pertuan Agong. It had already been announced that His Majesty had decided to interview all 222 Members of Parliament elected to the Dewan Rakyat to ascertain their choice for the next Prime Minister. Each had to bring a Statutory Declaration signed before a Commissioner for Oaths containing his or her intention. I informed His Majesty that the only correct and proper method of ascertaining the confidence of any person who sought the office of the Prime Minister was on the floor of the Dewan Rakyat at the conclusion of a debate and vote.*[32]

(d) *At 5.00 pm I met Interim Prime Minister Tun Dr Mahathir at the Prime Minister's Office. I did not ask, and Tun did not initiate any discussion on the three decisions that he had taken the previous day, which had placed the nation in its worst constitutional and political crisis in recent decades. A self-inflicted wound. Using a sporting analogy: an own-goal of massive significance. Instead, Tun informed me that he had met the leaders of all the political parties on both sides of the divide that morning. They unanimously wanted him to remain as Prime Minister. I immediately asked: all 222 Members of Parliament? Tun*

[31] See: page 330 of the Book

[32] See: page 474 of the Book

responded in the affirmative. He elaborated. Tun had told each leader that he should submit to Tun the names of his supporters whom he wished to be in the Cabinet. The cabinet would comprise ministers from all the parties: hence, it would be a unity government. But Tun went on to tell me that he told each leader that Tun might not select him into the cabinet. Hence party positions would not matter for cabinet appointments. Tun would have a complete free hand. He said that he had told both Anwar Ibrahim and Lim Guan Eng that they might not be selected for the new cabinet. [33]

(e) *The first meeting in Kuala Lumpur with the CPPB took place on 30th October 2018. SSER was represented by senior lawyers from the AGC, external counsel, technical consultants and pipeline specialists seconded from Petronas. The CPPB were represented by an equally large contingent team of negotiators. Negotiations with the CPPB stretched for months. Both sides met on eight occasions. At the insistence of SSER, all the meetings were held in Kuala Lumpur at its office premises. Negotiations were arduous and complicated. It alternated between cordial and polite to tense and heated. SSER's basic approach to the negotiations was that CPPB should be fairly compensated for work done. This position was made known to CPPB at the inception of negotiations. SSER had no intention*

33 See: page 475 of the Book

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to renege on its contractual payment obligations. This is an important point to state, because SSER is an entity wholly owned by the Minister of Finance, and therefore Malaysia's international credit standing and reputation is at stake.

SSER wanted CPPB to show proof of work done by them pursuant to the contracts. This request had to be made, as Grant Thornton, the appointed manager of SSER was unable to find much record, whether physical or electronic, to establish the amount of work actually undertaken by CPPB. There was an enduring inability on the part of CPPB to meet this most basic request from SSER. Each time CPPB returned to the negotiating table, they were unable to produce documents to prove they had done the work which they claimed they had undertaken. It was impossible to negotiate for a settlement as long as CPPB was not able to establish a base line claim. During the initial stages of negotiations tempers flared. CPPB seemed genuinely aggrieved by the repeated demands for documents to prove the work done by them. SSER was consistent and persistent in its demand in this regard. It had no choice. Any settlement had to be be rooted on work established to be done and not work claimed to be done.[34]

34 See: page 327 and 328 of the Book

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(f) *Shortly after Tun Dr Mahathir became Prime Minister after the GE14 victory, I wrote to Tun about the manner in which an increase of cash payments to the oil-producing states, Sabah, Sarawak, Terengganu and Kelantan could be achieved. It was as easy as pie. The Prime Minister, in the exercise of his powers, under the PDA, would issue a direction in writing that cash payments must be increased to 20% (or any other figure) from a particular date. Petronas would be obliged in law to comply. The necessary documentation like supplementary agreements could subsequently be drafted and signed by all the states and Petronas. The mechanism to increase was easy to achieve in law. Whether there was a political will to do so was a different matter. After my appointment, I raised the issue with the Prime Minister, who responded that it would be part of a package of items to be discussed and agreed upon with the Borneo states. Tun wished to adopt a holistic approach.*[35]

(g) *The Prime Minister chaired the executive committee (EXCO). Its membership included a few cabinet ministers, senior civil servants from both sides and the Chief Ministers of the Borneo states. I was a member. The EXCO met about six times over the course of 2019. It was the decision-making committee, to which the other committees were subordinate. I attended all the meetings, which were conducted in a give-and-take manner*

35 See: page 363 and 364 of the Book

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with every attendee sincere in wishing to resolve outstanding issues of contention. The objective of reaching consensus was evident. The Minister for Legal Affairs in the PMO, V.K. Liew and I were appointed joint chairmen of the Constitutional Committee, which was the intermediate committee. Membership was dominated by officers who were legally trained. The AG of both states were members. At my request, V.K. Liew chaired our meetings. We too had about half a dozen meetings. Discussions among lawyers tended to be more heated than the EXCO meetings. Legal points were debated at this committee, but as often happens, little agreement was reached. Each party stood its ground on points of law. But they were conducted on a cordial basis. The third committee was the technical committee, comprising senior officials from Putrajaya and the states. They were tasked to agree on as many aspects as was possible, without escalation to the other committees. The AGC was represented by its officers. This committee was also responsible for drafting the MA63 Report, reflecting deliberations and decisions of the three committees that constitute the MA63 Constitutional Committee.[36]

(h) *Many in the Bar and among the NGOs were hoping for the Federal Constitution to be amended to increase the retirement age of the Chief Justice, and the other three office-holders from*

[36] See: page 364 and 365 of the Book

sixty-six to seventy. It was also vigorously pursued by the Judicial Appointments Committee. Superficially, they had a cogent argument: Chief justice Richard Malanjum, because he was twice overlooked, only had about ten months as the Head of the judiciary. I was against any constitutional amendment to raise the age of retirement for judges. The Bar had objected to an extension of three years and two years to the Chief Justice and President of the Court of Appeal. Admittedly, the Najib regime did not go about achieving it in the correct way, by amending the constitution. Nonetheless, it would have been difficult for the legal profession to support an extension of four years for the Chief Justice, when there were so many objections just months before for three years for his predecessor. Proponents for extension realised that just extending the office of the Chief Justice would be unacceptable. Hence, they suggested all the four office-holders. In my opinion, that would have been unconstitutional, because such an amendment would violate Article 8 of our Constitution: fundamental right of equality. All the judges of the superior courts, (some one-hundred-and-twenty of them) had to be treated in a like manner. They should have equal privileges and rights. If four of them retired at seventy, and the vast majority at sixty-six, it would be unconstitutional. Raising the age for all judges to seventy or any other age would also have serious financial consequences. That option was wholly unacceptable.

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When I broached the subject with the Prime Minister, he responded by saying that he had heard about such a desire on the part of certain quarters. I gave him my reservations. Tun was pragmatic: he was not confident of securing the requisite two-thirds majority in parliament. That ended the discussion.[37]

(i) *His Majesty, the Agong opened the Pardons Board meeting by making brief remarks. The applications were then discussed. Typically, there would be about a dozen cases for the board to deliberate upon in each session. After an officer assisting the board summarised the facts of the first case, I was asked by His Majesty to give an opinion. My opening words were that this was the AGC's opinion. The Agong immediately stated that he was not interested to hear the institutional opinion of chambers, but wished to hear my personal view as AG. I was pleasantly surprised, replying that I would be happy to give my personal input on each and every case. His Majesty smiled approvingly. As each case was called, following the agenda, I gave my views on the application. A discussion followed in each case, to which all contributed. None of the members seemed inhibited. I certainly was not. His Majesty wonderfully disarmed us all, and we candidly chipped in. A vote was unnecessary. It was always by consensus.*[38]

[37] See: page 342 of the Book

[38] See: page 332 and 333 of the Book

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3.2 OBSERVATION AND ANALYSIS OF OFFICIAL COMMUNICATION

i. All the above passages relate to communications between TSTT, YDPA and the Prime Minister just before he was officially appointed as the Attorney General or during his tenure as Attorney General. They involved communication that could affect negotiations between the Federal Government and third parties who had contractual disputes with the Government as well as between the Federal Government and the states of Sabah and Sarawak with regard to matters relating to the implementation of Malaysia Agreement 1963.

ii. It must be pointed out that the disclosures as mentioned above also relate to proceedings in the Pardons Board and the Cabinet Committee and the various sub committees on MA63 and its proceedings that are classified as "Secret". In relation to the negotiation on the pipeline contracts, the disclosures not only affect negotiations that were on going even after he resigned. As noted by TSTT any settlement could affect relations with China. In fact, TSTT acknowledged in his Book, "***Realistically, any final settlement with CPPB will have to be politically-driven, as there are diplomatic and economic implications. China is a major trading partner of Malaysia. Although negotiations have been strictly confined to legal and contractual issues, both parties are always cognisant of the political implications of any position taken at the negotiating table.***"[39] (Emphasis added).

[39] See: page 328 of the Book

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iii. The disclosures also expose TSTT's lack of integrity in failing to maintain confidentiality of communication especially when the Prime Minister has expressly told him that what was said to him with regard to the objection by certain quarters to his appointment of AG should be kept confidential. It would have been improper to make such disclosure to insinuate that the YDPA was against his appointment. At that point in time, TSTT was not yet appointed AG. However, his conversation with the Prime Minister was expressly intended to be confidential. As a senior member of the Bar, the rule of ethics would have been applicable to him. This would require him to uphold the confidentiality of the conversation.

3.3. RELATED LAWS AND DIRECTIVES

i. Upon careful analysis of the above disclosures in the Book, The STF is of the view that several laws and regulations could have been violated by the author, that includes the following:

Section 203A of the Penal Code which reads,

(1) Whoever discloses any information or matter which has been obtained by him in the performance of his duties or the excise of his function under any written law shall be punished with fine of not more than one million ringgit or with imprisonment for a term which may extended to one year, or with both.

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ii. Since the disclosures relate to information and communication obtained by him in the performance of his duty as AG, *prima facie* an offence under section 203A could have been committed, and the STF is of the view that there is basis for investigation into this possible offence.

iii. Some of the disclosures relate to the proceedings in the Pardons Board and Cabinet Committee for implementation of MA63 which have been classified as "Secret", The STF is of the view that there is basis for investigation into commission of offences under section 8(1)(d) and section 8(1)(e) items (i) (ii) (iii) and (iv) of the Official Secrets Act 1972 [Act 88] which stipulates the following:

Wrongful communication, etc., of official secret

8. (1) If any person having in his possession or control any ***official secret*** *or any secret official code word, countersign or password which:*

(d) has been entrusted in confidence to him by any public officer; or

(e) he has made or obtained, or to which he has had access, owing to his position as a person who holds or has held office in the public service, or as a person who holds, or has held a contract made on behalf of the Government, or as a person who is or has been employed by or under a person who holds or has held such an office or contract, does any of the following:

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(i) communicates directly or indirectly any such information or thing to any foreign country other than any foreign country to which he is duly authorized to communicate it, or any person other than a person to whom he is duly authorized to communicate it or to whom it is his duty to communicate it;

(ii) uses any such official secret or thing as aforesaid for the benefit of any foreign country other than any foreign country for whose benefit he is duly authorized to use it, or in any other manner prejudicial to the safety or interests of Malaysia;

(iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such official secret or thing,

he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

iv. TSTT was appointed as the Attorney General and is a Civil Servant and is therefore bound by the regulations that protects information and

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official documents handled by him. The following are the instructions that he is bound to follow:

i) ***Arahan Keselamatan (Semakan dan Pindaan 2017) Bab 4 Keselamatan Rahsia Rasmi, X Pelepasan Rahsia Rasmi***

Perenggan 111 *– Keperluan mungkin timbul dari semasa ke semasa untuk menyampaikan rahsia rasmi kepada orang yang bukan dalam perkhidmatan awam samada secara lisan atau atas prinsip "lihat dan kembalikan". Penyampaian rahsia rasmi sedemikian mungkin melibatkan risiko keselamatan dan dalam keadaan itu pegawai-pegawai awam berkenaan dikehendaki:*

a) menentukan bahawa rahsia rasmi yang minimum sahaja disampaikan;

b) menentukan menerusi saluran-saluran keselamatan bahawa penerima rahsia rasmi boleh dipercayai dan diberi kesedaran diatas keadaan rahsia rasmi itu dan kepentingan menjaganya; dan

c) menentukan bahawa penerima mempunyai persediaan yang cukup untuk menyimpannya dengan selamat.

ii) ***Perenggan 112*** *– Apa-apa rahsia rasmi termasuk bagi tujuan siaran kepada orang ramai hanya boleh disampaikan kepada pihak media massa dengan kebenaran Ketua Jabatan tertakluk kepada*

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syarat-syarat yang ditetapkan. Sebelum sesuatu rahsia rasmi disampaikan kepada pihak media massa untuk tujuan siaran kepada orang ramai, ia hendaklah dikelaskan semula terlebih dahulu mengikut peraturan di perenggan 87 dan 88.

iii) Arahan Keselamatan (Semakan dan Pindaan 2017), Lampiran 'C' ***Perakuan untuk ditandatangani oleh Pegawai Awam Berkaitan dengan Akta Rahsia Rasmi 1972 (Akta 88) apabila beliau berkhidmat sebagai penjawat awam;*** *seperti berikut:*

Adalah saya dengan ini mengaku bahawa perhatian saya telah ditarik kepada peruntukan-peruntukan Akta Rahsia Rasmi 1972 [Akta 88] dan bahawa saya faham dengan sepenuhnya akan segala yang dimaksudkan adalah Akta itu. Khususnya saya faham dengan sepenuhnya akan segala yang dimaksudkan dalam Akta ini. Khususnya saya faham bahawa menyampaikan, menggunakan, atau menyimpan dengan salah dan tidak menjaga dengan cara yang berpatutan sesuatu rahsia rasmi dan suratan rasmi atau apa-apa tingkah laku yang membahayakan keselamatan atau kerahsiaan sesuatu rahsia rasmi adalah menjadi satu kesalahan di bawah seksyen 8 Akta tersebut, yang boleh dihukum dengan penjara selama tempoh tidak kurang daripada satu tahun tetapi tidak lebih daripada tujuh tahun.

Saya faham bahawa segala rahsia rasmi dan suratan rasmi yang saya perolehi dalam perkhidmatan Seri Paduka Baginda Yang di-

Pertuan Agong atau perkhidmatan mana-mana Kerajaan dalam Malaysia, adalah milik Kerajaan dan tidak akan membocorkan, menyiarkan, atau menyampaikan, sama ada secara lisan atau dengan bertulis, kepada sesiapa jua dalam apa-apa bentuk, kecuali pada masa menjalankan kewajipan-kewajipan rasmi saya, sama ada dalam masa atau selepas perkhidmatan saya dengan Seri Paduka Baginda Yang di-Pertuan Agong atau mana-mana Kerajaan dalam Malaysia dengan tidak terlebih dahulu mendapat kebenaran bertulis pihak berkuasa yang berkenaan. Saya berjanji dan mengaku akan menandatangani satu akuan selanjutnya bagi maksud ini apabila meninggalkan Perkhidmatan Kerajaan.

iv) Arahan Keselamatan (Semakan dan Pindaan 2017) Lampiran 'D'

Perakuan untuk ditandatangani oleh Pegawai Awam apabila meninggalkan Perkhidmatan Kerajaan Berkaitan dengan Akta Rahsia Rasmi 1972 (Akta 88) apabila beliau berhenti sebagai penjawat awam: *seperti berikut*

Perhatian saya telah ditarik kepada peruntukan-peruntukan Akta Rahsia Rasmi 1972 [Akta 88] dan saya faham dengan sepenuhnya akan segala yang dimaksudkan dalam Akta ini. Khususnya saya faham bahawa menyampaikan, menggunakan atau menyampaikan dengan salah dan tidak menjaga dengan cara yang berpatutan sesuatu rahsia rasmi dan suratan rasmi atau apa-apa tingkah laku

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yang membahayakan keselamatan atau kerahsiaan sesuatu rahsia rasmi adalah menjadi suatu kesalahan di bawah seksyen 8 Akta tersebut, yang boleh dihukum dengan penjara selama tempoh tidak kurang daripada satu tahun tetapi tidak lebih daripada tujuh tahun.

Dengan ini menjadi satu kesalahan di bawah Akta tersebut bagi saya menyampaikan dengan tiada kebenaran apa-apa rahsia rasmi atau suratan rasmi kepada mana-mana orang lain, sama ada atau tidak orang itu memegang jawatan dalam perkhidmatan Seri Paduka Baginda Yang di-Pertuan Agong atau mana-mana Kerajaan Malaysia, dan samada di Malaysia atau di luar negara, sebelum dan selepas saya berhenti memegang jawatan dalam perkhidmatan dengan Seri Paduka Baginda Yang di-Pertuan Agong atau dengan mana-mana Kerajaan dalam Malaysia.

Saya mengaku bahawa tidak lagi ada dalam miik saya atau kawalan saya apa-apa perkataan kod rasmi, isyarat timbal, atau kata laluan rasmi yang rahsia, atau apa-apa benda, suratan atau maklumat, anak kunci, lencana, alat meteri, atau cap atau yang dipunyai, atau diguna, dibuat atau diadakan oleh mana-mana jabatan Kerajaan atau oleh mana-mana pihak berkuasa diplomat yang dilantik oleh atau yang bertindak di bawah kuasa Kerajaan Malaysia atau Seri Paduka Baginda yang tidak dibenarkan berada dalam milikan atau kawalan saya.

3.4. RECOMMENDATIONS

The relevant enforcement agencies are suggested to further investigate the possibility of the following offences being committed:

(i) Section 203A of the Penal Code; and
(ii) Section 8 of the Official Secrets Act 1972.

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CHAPTER 4

UNAUTHORISED ACTIONS, ABUSE OF POWER AND PROFESSIONAL NEGLIGENCE

4.1. ACTING IN EXCESS OF AUTHORITY IN THE EQUANIMITY'S CASE

i. In the Book, TSTT wrote on the arrest, the institution of legal proceedings in the Admiralty Court to declare 1MDB, and its two wholly owned 1MDB subsidiaries, namely 1MDB Energy Holdings Sdn. Bhd. and 1MDB Global Investment Limited, as the legal and/or beneficial owner of the vessel "Equanimity" ("the Equanimity"), the acceptance of an offer from Genting to buy the vessel below the price fixed by the Court and for an Order for the sale of the vessel.

ii. From the narrative written by TSTT in the book, the Equanimity was arrested by Indonesian Authorities and detained in Bali, Indonesia. The Indonesian Authorities had no objection to the Equanimity been handed over to Malaysia. "After all, our moneys were used to purchase the Equanimity, and thus belonged to us in equity. However, the Equanimity was also one of the assets sought by the US Department of Justice in relation to its investigation and recovery action on what is known as "the 1MDB case". TSTT sought the United States Department of Justice's (DOJ) confirmation that it has no objection to the said vessel been handed over to Malaysia. The vessel docked at Pulau Indah, Port Klang on 7th August 2018.

iii. The Vessel, a superyacht, was 'heavily escorted by Indonesian marine police vessels from Bali Island to Batam Island, after which the superyacht was handed over to the Malaysian Navy at the border".

iv. TSTT said that he "took the necessary steps" to sell the Equanimity. He wrote—

(a) *I discovered that no one in the AGC had any experience in shipping and maritime matters. They had neither arrested ships nor opposed arrests. AGC lawyers had never had an opportunity to appear before the Admiralty Courts. I turned to Malaysia's leading shipping law barrister, Sitpah Selvaratnam. She was my partner in Skrine & Co., where both of us began our legal careers, and in our small firm which we established in 2000. She was excited by the good news from Indonesia, and happy to lead the team.*[40]

(b) *In order to invoke Admiralty jurisdiction, our legal team had filed a writ of summons and an application for a Warrant of Arrest in the Kuala Lumpur High Court. Because of the complexity of the matter, I had appointed Joseph & Partners, a leading shipping firm, as Malaysia's solicitors. As counsel, I also appointed Ong Chee Kwan and Jeremy Joseph, both stars in the shipping fraternity. From the AGC, Alice Loke, Senior Federal Counsel,*

40 See: page 290 of the Book

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attended court from time to time or sent a colleague. Rahayu, who had much shipping experience in the Bar, was also a member of our legal team. Counsel, led by Sitpah Selvaratnam, appeared before Justice Khadijah Idris, the Admiralty judge. The court issued the Warrant of Arrest.[41]

(c) *20th August, 2018 was the last date for the owner of the Equanimity to enter appearance. None was filed in court. Thus, Jho Low was not interested in a legal challenge, despite all the press hullabaloo.*

On 24th August, 2018, the Admiralty Court granted an order for sale pendente lite, that allowed the Equanimity to be sold pending the disposal of the ownership claim. The rationale was to avert the Equanimity from further deterioration that would reduce its sale value.

The sale was to be conducted by way of public tender, subject to the Sheriff's terms and conditions of sale, with the appraised value of the vessel to be kept confidential, without disclosure to the prospective buyers and market throughout the sale process.[42]

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41 See: page 292 of the Book

42 See: page 294 and 295 of the Book

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(d) *On 19 October, 2018, judgment in default of appearance was entered against the Equanimity. It was adjudged that 1MDB Energy Limited was the legal and beneficial owner of 46.3% of shares in the Equanimity, and the balance 53.57% was owned by 1MDB Global Investment Limited. Both were wholly owned subsidiaries of 1MDB. Thus, Malaysian ownership was recognized by the court.*[43]

(e) *The open tender for the judicial sale of the Equanimity closed on 28th November, 2018. Sealed offers received were opened by the Sheriff the next day. Unfortunately, none of the bids were above the expedited sale value of the Equanimity, as appraised by Winterbottom. The sale was aborted.*[44]

(f) *On 13 December, 2018, on our application, the Admiralty Court ordered the Equanimity to be sold by way of private treaty or private direct sale at a price higher or equal to the appraised value. This marked the beginning of the Second Phase Judicial Sale of the Equanimity. The cut-off date for the second phase was 31st March 2019.*[45]

(g) *With the dateline of 31st March 2019, I had to take some action. I thought a direct approach to Genting Bhd, who are experienced*

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[43] See: page 295 and 296 of the Book

[44] See: page 296 of the Book

[45] See: page 296 of the Book

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in the cruise business, would be fruitful. Through an intermediary, I asked to see Tan Sri Lim Kok Thay, the principal director and shareholder of Genting, and son of the founder. I had never met Tan Sri Lim, our path had never crossed. Tan Sri visited my residence on 20th March 2019. The intermediary was present. Over tea, the three of us chatted. After about twenty minutes, I brought up the subject. Tan Sri Lim immediately agreed to purchase the yacht. I told him the guide price fixed by the Court was US$130 million, which fact he knew, hence, an offer from Genting must be sufficiently close to that guide price or even higher. Tan Sri Lim said that the highest he could go was US$126 million. I immediately accepted.[46]

(h) *On the 3rd April 2019, the Admiralty Court approved the acceptance of Genting's offer to purchase the Equanimity on the Sheriff's terms and conditions. I issued a media release on the same day.*

The US$126 million purchase price was paid by Genting by the end of April 2019.[47]

[46] See: page 297 of the Book

[47] See: page 297 and 298 of the Book

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4.1.1. Observation and Analysis

i. TSTT has not disputed the above quoted passages in the Book. None of the legal officers who appeared before the STF disputed any of the statements included in the above narrative.

ii. From the above narrative, it is undisputed that the Equanimity was already, since the end of February, 2018, under arrest and custody by Indonesian Authorities who had agreed, with no objection from the US Department of Justice (DOJ), to be handed over to Malaysia. The Vessel was indeed handed to the control of the Malaysian Navy in early August, 2018. There was a need to have her formally arrested by obtaining a Warrant of Arrest against her whilst the claim over ownership over the Equanimity by 1MDB and its 2 subsidiaries can be adjudicated in the Admiralty Court. At that stage, TSTT as AG or the presumptive legal and beneficial owners of the Vessel, must have evidence, from either the DOJ (who visited the AGC) or our own MACC or "specialist AGC officers on money laundering", as he was able to declare at the onset of the Chapter in his Book on "Equanimity", *The most notoriously extravagant asset purchased by Jho Low using monies belonging to 1MBD, that practically fell into our laps, was the super luxurious yacht Equanimity (page 289).*

iii. At that stage, when the Equanimity was handed over to the Malaysian Navy in Malaysian waters it was for TSTT, assuming he had the authority to act for 1MDB and the 2 subsidiaries, in addition to the Government of Malaysia, to institute proceedings to secure ownership of the vessel by

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1MBD Group and the Government of Malaysia. He said, *Money laundering laws received a boost after 9/11 when the Americans put pressure on the international community to have them in place to combat international terrorism. But the Money Laundering Act is silent on arresting ships and selling them by way of court order. Hence, it was going to be the shipping law that we should rely upon. (page 291)*

iv. Under our shipping law (or admiralty law), this would entail invoking the jurisdiction of the Admiralty Court by filing an Admiralty writ and an application for a warrant of arrest. The rules governing Admiralty proceedings are clearly spelt out in Order 70 of the Rules of Court 2012. Any legal officer or law practitioner who wants to commence an Admiralty action either *in rem* (i.e. against a vessel) or *in personam* (i.e like in a normal action against specific person(s) have rights or ownership over the vessel), can refer and apply the rules in this Order and the Forms prescribed thereunder, and proceed accordingly.

v. TSTT had obviously no difficulty in preparing the Admiralty Writ and Statement of Claim and to plead for the following reliefs:

(a) A Declaration that the IMBD Group was the legal and beneficial Owners of the Vessel and/or part Owners thereof in proportion to their respective shares therein, to the extent of the monies and/or property of the 1MDB Group used by or on behalf of the Defendant to purchase the vessel from Oceano;

(b) an Order for the Sale of the Vessel;

(c) an Order for the distribution of the proceeds of the sale of the Vessel to 1MDB Group in accordance with, and to the extent of, their Ownership of the Vessel.

vi. The procedure and process for the issuance of a Warrant of Arrest are clearly spelt out in Order 70 r.4 of the Rules of Court 2012. There should be no difficulty for any legal officer or law practitioner to comprehend what needs to be done to secure a Warrant of Arrest including what an affidavit in support of the issuance of the Warrant of Arrest should contain [O.70 r.4(6) & (7)].

vii. Order 70 r.5 provides that a person who wants to prevent an arrest may lodge a Caveat against arrest by filing at the High Court Registry a *Praecipe* in Form 149 with undertaking by him or his solicitor to enter appearance to the action and to provide bail in the amount specified in the *praecipe* or to pay the amount so specified into Court. The Caveat against the arrest would be entered in the caveat book.

viii. Before the Admiralty Writ and the application for warrant of arrest were filed, a search by TSTT or any AGC officer on the Caveat book in the High Court Registry, would have revealed whether or not a Caveat against arrest had been lodged by Jho Low or the alleged owner of the Equanimity at the material time (Equanimity Cayman Ltd) as, according to TSTT, the arrest of the vessel "attracted global attention." If Jho Low or Equanimity Cayman Ltd had wished to prevent the arrest of the vessel and challenge the Claim by 1MDB Group and the Government of Malaysia, they would have entered Caveat against arrest in accordance with Order 70 r.4. The fact they did not

do so, is strong indication they are not resisting the arrest, thus ensuring the inevitable arrest of the Equanimity (which is already in Malaysian authorities and under watch by Malaysian authorities at the inner harbour of the Boustead Cruise Centre in Port Klang) by way of a warrant of arrest issued by the Admiralty Court. It is also a clear indication they are not likely to resist the claim by 1MBD Group and the Government of Malaysia. For this reason alone, the appointment of external counsel said by TSTT to be specialist in shipping laws would have been considered unnecessary as the claim by 1MDB Group and the Government of Malaysia over ownership of the Vessel was not likely to be disputed as it turned out to be the case.

ix. TSTT said there was "no one in the AGC who had any experience in shipping and maritime matters. They had neither arrested a ship nor opposed arrest". The STF must assume that this statement included him (TSTT) who was head and part of the AGC. It is incredible that TSTT as an advocate and solicitor of over 40 years standing before his appointment as AG, also had no experience in arresting a vessel or is unable to comprehend Order 70 of the Rules of Court 2012 which laid out very clearly the procedure for commencement of an admiralty action and to secure a warrant of arrest against a Vessel. This gives rise to a reasonable inference that he was more keen to engage private lawyers, including a former partner in private practice, to handle this matter for 1MDB Group and the Government of Malaysia rather than to let himself or the officers form his Chambers, under his guidance, to carry out the conduct of the legal proceedings relating to the arrest and sale of the Equanimity in accordance with the procedures so clearly set out in Order 70 Rules of Court, 2012 and armed with the facts obtained from DOJ,

MACC and "specialist officers in AGC on money laundering" in support of the cause of action.

x. TSTT said that "because of the complexity of the matter" he appointed Joseph & Partners, a leading shipping firm, as Malaysia's solicitors. "*As Counsel, I also appointed Ong Chee Kwan and Jeremy Joseph both stars in the shipping fraternity.*"[48]

xi. Is this really a complex matter? The claim is for a declaration that 1MDB Group is the legal and beneficial owners of Equanimity. It was grounded on the basis that the money used to acquire the Vessel from Oceano came from the 1MDB Group. So, the vessel was held by the registered entity Equanimity Cayman Ltd on a "constructive trust" for 1MDB Group and the Malaysian Government to whom the GLCs belonged. It is a claim based on establishing facts to show the money trail used for the acquisition of the Vessel by Equinity Cayman Ltd. There might have been ample evidence of this based on investigations carried out by DOJ and MACC. Once this factual foundation is established, it is a question of law whether the doctrine of constructive trust applies. This type of case is not a rarity and does not depend on what he described as "shipping law". The law reports are full of such types of cases. It cannot be true to say that no one in the AGC (which includes himself) have knowledge of the applicable principles related to the equitable doctrine of constructive trust. TSTT has not explained in the Book why this was a "complex" case beyond what he

[48] See: page 292 of the Book

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said that "shipping law" (whatever that means) is to be relied upon. Hence, the assertion by TSTT that this is a complex case cannot be justified in law and in fact.

xii. The STF wishes to emphasize this is **not** a complex admiralty case like—

(i) admiralty action involving a collision between vessels and damage to the vessels resulted, when in such situation Order 70 r. 17 Rules of Court 2012 requires the filing of "Preliminary Acts" which would require marine or navigational experts to prepare having to the particulars or details required to be incorporated in the Preliminary Acts;

(ii) a claim under the Merchant Shipping (Oil Pollution) Act, 1994 where expert evidence would normally be required and Order 70 rule 2A required special processes to be complied with;

(iii) salvage claim which again require expert evidence and may involve intricate laws relating to salvage of ships; or

(iv) claims under marine insurance either for loss of ships or cargoes.

xiii. But a claim to ownership of Equanimity grounded on the fact that the moneys from 1MDB Group was used by Equity Cayman Ltd to buy the vessel from Oceano and the well-established doctrine of "constructive trust" cannot

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be considered so complex that no one (including the AG himself) cannot handle and need the appointment of two sets of external lawyers, Sitpah Selvaratnam, Joseph & Partners plus his special officer, Rahayu (who had much shipping experience in the Bar) who is a member of his Chambers, to represent the 1MDB Group and the Government of Malaysia in a case where the indications from the onset of proceedings upon a search in the Caveat Book would indicate that Jho Low and Equanimity Cayman Ltd are not likely to dispute. Indeed, the fact that he acknowledged that his special officer, Rahayu had much shipping experience completely undermined his assertion that no one in AGC (including himself) "had an opportunity to appear before Admiralty Courts."

xiv. Based on the available evidence, it is the STF's findings that TSTT's **immediate** acceptance of the offer from Tan Sri Lim Kok Thay of US$126 million to buy the Equanimity (which is below the price fixed by the Admiralty Court for a Judicial Sale) was made by TSTT without reference to the "legal and beneficial owner" of the Equanimity viz the 1MDB Group and the ultimate shareholder of 1MDB which on the record is the Minister of Finance Incorporation. Neither was reference made to the National Anti-financial Crime Centre (NFCC) which was a body handling properties seized from financial crimes. Significantly, the acceptance of the Genting offer was not made conditional upon approval by the Admiralty Court as this is a judicial sale which need the endorsement of that Court. On the basis of what is written, it would appear that the acceptance of the Genting offer of US$126 million was a unilateral decision of TSTT himself. This begs the question whether TSTT as an AG has the authority to immediately accept the said

offer without referring the offer to 1MDB and its shareholder for consideration and approval?

xv. Besides, the STF's investigation reveals that at about the same time, there was a judicial review application by Genting Berhad against the Minister of Finance (Permohonan Bagi Semakan Kehakiman No. WA-25-397-12/2018) seeking an order of the Court to quash a decision of the Minister of Finance to cancel the tax incentive approved by the Minister vide letter dated 17th December 2014 and a declaration that the terms of the tax incentive approved for the applicant through the said letter, including Genting Berhad's income from its various business activities as derived from one business source for the purpose of claiming the tax incentive granted in 2014, be reinstated. The Minister of Finance through the AGC had resisted Genting Berhad's application and had prepared an affidavit in the opposition.

xvi. However, when the sale of the Equanimity to Genting Berhad was approved by the MOT Court, the application by Genting was withdrawn and the Minister of Finance by letter dated 4th July 2019[49] agreed to restore the original decision of the Minister, whereby the investment incentive can be claimed against of all income of Genting which is stated to be derived from one source.

49 See: Appendix 12

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4.1.2. Recommendations

The STF recommends as follows:

(i) That an investigation be carry out on whether TSTT had the authority to accept the offer from Genting to sell the Equanimity below the price fixed by the MOT court without reference to 1MDB and its subsidiaries who are the owners of the vessel and without reference to the National Anti-Financial Crime Centre (NFCC) which was established to handle the recovery of the assets belonging to 1MDB.

(ii) An investigation should be launched to established whether there is a link between the sale of the vessel and the withdrawal of the above-mentioned court case and the reinstatement of the tax incentive given to Genting in 2014 thereby resulting in loss of revenue to the Government of Malaysia and a corresponding monetary gain to Genting.

4.2. DISCLOSURE OF INFORMATION ON GOLDMAN SACHS' CASE

i. TSTT at page 304 said as follows:

I requested my former partner, Ganesan Nethi, to assist with the securities law and bond issuance aspects for which he was uniquely qualified, having completed a specialist Master's

degree in securities regulation at Georgetown University, Washington, D.C., with a focus on market offences in securities and derivatives.

Ganesan prepared the first drafts of all the charges against Goldman Sachs and attended all meetings with Goldman Sachs…

ii. The revelation by TSTT gives rise to the following questions:

(1) was the selection of his former partner made in a transparent manner?

(2) were the government procedures followed?

(3) did the appointment involve government's funds?

(4) was the appointment approved according to procedures?

(5) could official information be released to his former partner contrary to section 203A of the Penal Code? Did the disclosure to 'his friends' compromised classified information?

(6) if the subject matter assigned to his former partner, Ganesan, consisted of information contained in investigation papers, the police should investigate this matter.

4.2.1. Observation and Analysis

i. Satisfied with the explanation from the AGC's officers the STF is of the view that though TSTT may not have acted outside his constitutional or

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statutory powers in appointing private lawyers to handle the legal assignments but his decision to appoint Ganesan Nethi (Ganesan), who is TSTT's former partner to assist in the Goldman Sachs in relation to the securities law and bond issuance aspects is questionable.

ii. The implication of TSTT's decision to appoint Ganesan a former partner of TSTT to assist in the Goldman Sachs in relation to the securities law and bond issuance aspects and to draft charges against the wrongdoers is potentially open to judicial scrutiny by the courts and/or amendable to judicial review. Refer: ***Sundra Rajoo Nadarajah v. Menteri Luar Negeri, Malaysia & Ors*** [2021] 6 CLJ 199 and ***Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal*** [2019] 4 CLJ 561.

4.2.2. Is there a Conflict of Interest in the Appointment of Ganesan?

i. As has been pointed out, Ganesan was appointed by TSTT amongst others to assist with the securities law and bond issuance aspects with a focus on market offences in securities and derivatives. Ganesan according to the Book prepared the first drafts of all the charges against Goldman Sachs.

ii. The Book has disclosed that TSTT and Ganesan were former Partners. In view of their relationship as former Partners Ganesan and TSTT may fall within the definition of "associates" under the MACC Act. As such, there may be a conflict of interest for TSTT to appoint Ganesan to carry out the assignment on Goldman Sachs.

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iii. Even if Ganesan offered his services on a *pro bono* or the fact that he was not paid is immaterial. This is because gratuity is very widely defined in the Malaysian Anti-Corruption Commission (MACC) Act 2009 and includes any form of intangible gratuity or benefits. Though the services provided by Ganesan may have been provided on a discounted or even on a *pro bono* basis, it cannot be denied that Ganesan had benefitted by way of intangible gratuity. After the experience of handling the legal functions at the Goldman Sachs he can promote and market himself as a securities and bond market expert.

iv. In short, the STF is of the view that there may be a conflict-of-interest in appointing Ganesan to handle the Goldman Sachs matter. TSTT should have exempted himself from appointing or entrusting any legal work to Ganesan.

v. TSTT at page 303 wrote:

I was not surprised that despite the worldwide publicity about the involvement of Goldman Sachs in the issuance by 1MDB of three bonds, the SC had never maintained a file, and was never interested to investigate.

I subsequently appointed Kiran Kaur, who was heading SC's investigations department to investigate all possible breaches of Malaysia's securities laws by Goldman Sachs. She selected a few colleagues, and they worked with my Special Officer, Rahayu

Mumazaini, who had experience in bond litigation in the Bar. The SC has the necessary legal power to interview any person on any potential violation of securities laws.

vi. TSTT at page 304 wrote:

Finally, I requested my former partner, Ganesan Nethi, to assist with the securities law and bond issuance aspects for which he was uniquely qualified, having completed a specialist Master's degree in securities regulation at Georgetown University, Washington, D.C., with a focus on market offences in securities and derivatives. Ganesan had also passed the New York bar examinations. Additionally, both Ganesan and I had, over the course of the previous ten years, acted in numerous civil enforcement litigation matters undertaken for the SC for fraud, rigging and insider trading in Malaysia, and in the Pesaka and Aldwich bond litigations. ***Ganesan prepared the first drafts of all the charges against Goldman Sachs and attended all meetings with Goldman Sachs, while our expert assisted with calculations of Malaysia's losses and provided invaluable insights into Goldman Sachs' structure, and in particular the steps which would have been taken in each of the three bond issuances. Both the expert (who has requested anonymity) and Ganesan devoted substantial amounts of their time and effort over the next one-and-a-half***

years, eschewing all fees and working on a strictly pro bono basis. (Emphasis added).

vii. What was written in the above-mentioned passages in the Book that the investigation into 1MDB was initiated by TSTT and the involvement by Ganesan in drafting the charges against Goldman Sachs was confirmed by Aaron Chelliah, formerly of AGC and now with the Securities Commission (SC), to the STF. These disclosures show the unauthorised encroachment by TSTT into investigating powers of the enforcement agencies like SC.

4.2.3.Did Ganesan actually handled the Goldman Sachs task or who actually carried out the job?

i. It is questionable what role or duties and functions Ganesan actually handled in the Goldman Sachs assignment.

ii. Were the AGC officers not competent enough to read the files relating to capital market offences and draft the relevant charges? Aaron Chelliah who appeared before the STF has confirmed that the DPPs are more than competent to handle any criminal prosecution including preparation of charges relating to capital market offences. He further added that what was prepared by Ganesan was akin to a statement of claim rather than criminal charges. Aaron, who himself was a DPP and initially involved in the prosecution of the Goldman Sachs, also confirmed that the charges were

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subsequently prepared by the investigating officers of the SC and approved by the DPPs at the AGC.

4.2.4. Recommendations

i. Having considered the close relationship between TSTT and Ganesan, the STF is of the view that there appears to be a conflict of interest by TSTT in appointing Ganesan to handle the Goldman Sachs assignments. STF accordingly cannot confirm that the appointment of Ganesan, TSTT's former partner was made in a transparent manner. The STF proposed that MACC investigate the appointment of Ganesan as to whether there was conflict of interest.

ii. The STF also cannot conclude that government procedures had been followed in Ganesan's appointment by TSTT. The STF is also not privy whether Ganesan was paid for his services and if paid how much was paid from the government's fund.

iii. The STF would propose that further investigations by the authorities be carried out as to whether official information was released to Ganesan and still in his possession contrary to section 8 of the Official Secrets Act and/or section 203A of the Penal Code. If the subject matter assigned to TSTT's former partner, Ganesan, consisted of information contained in investigation papers, the police should investigate this matter.

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iv. What was most demoralizing to the AGC's officers was that despite there being qualified, competent and experienced legal officers at the AGC who could handle the legal assignments, TSTT proceeded to appoint lawyers like Ganesan and credited him. They complained that this practice is very unhealthy to the morale and development of the officers at the AGC. The STF agrees that this complaint is justified and that the alleged lack of qualified and competent legal officers has been used as the pretext to appoint private lawyers.

4.3. DISCLOSURE OF INFORMATION AND APPOINTMENT OF PRIVATE LAWYERS IN SURIA STRATEGIC ENERGY RESOURCES SDN BHD (SSER)

i. In his book, *My Story: Justice in the Wilderness*, TSTT wrote as follows:

> *I appointed two leading lawyers from the Commercial Bar to advice SSER and the MOF on the two SSER contracts.* ***Raj Navaratnam*** *is an international arbitration and disputes specialist, while* ***Lim Cheng Bock*** *is a commercial solicitor of vast experience and expertise.*
>
> *Both lawyers advised that the terms of the contracts were substantially one-sided, favouring the Chinese counter-party.*[50]

[50] See: page 325 of the Book

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ii. Besides that, TSTT has also made extensive disclosure of information on the Suria Strategic Energy Resources Sdn. Bhd. (SSER). Much of this information was obtained in TSTT's capacity as an AG and would not have been available had TSTT not served as the AG.

4.3.1. Observation and Analysis

i. TSTT had appointed external lawyers apart from AGC officers to represent the government in trials. In the case of the SSER case, two (2) external lawyers were appointed to represent the government and there were no justifications given for their appointment.

ii. TSTT only mentioned that the appointment of external lawyers in the SSER case was because of the following reasons. "***Raj Navaratnam** is an international arbitration and disputes specialist, while **Lim Cheng Bock** is a commercial solicitor of vast experience and expertise.*"[51]

iii. The issue to be considered by the STF is whether TSTT had followed government regulations in the appointment of external lawyers. The feedback received from the AGC on the 27th January 2022[52] explained the following:

(a) The appointment of TSTT as the Attorney General was done via a letter signed by Dato' Zainal Abidin bin Ahmad who was the

[51] See: page 325 of the Book

[52] See: Appendix 1 on Report of Consultative Discussion of AGC

Secretary of the Judicial and Legal Services Commission (SPKP) in line with Clause (3) Article 138. TSTT was appointed at the grade of Turus 1 on a contractual basis via “Agreement on the Appointment of Legal Officer” for a period of two (2) years effective 4th June 2018, TSTT is therefore a Civil Servant.

(b) Item 10, Annexure A of the agreement stipulates that TSTT is bound by the General Order, Treasury Instructions, Civil Service Circulars including Civil Service Regulations namely *Peraturan-peraturan Penjawat Awam (Kelakuan dan Tatatertib) 1993 [P.U. (A) 395/1993] dan P.U. (A) 1/2012* and other related laws during his tenure as Attorney General.

iv. The representative from the AGC confirms the following:

(a) The importance for the Attorney General to obtain views prior to advising or making a decision on matters within his job scope and jurisdiction has been spelt out by Tan Sri Datuk Haji Abdul Kadir Yusof in an article entitled “The Office of Attorney General, Malaysia”. In this article he had mentioned a speech by Sir Hartley Shawcross, former Attorney General of the United Kingdom in the House of Commons. This principle was applied by Tan Sri Datuk Haji Abdul Kadir Yusof in the context of appointing external lawyers in handling legal matters. The advice to the YDPA and the Cabinet should be done by the Attorney General himself professionally and independently without

influence and pressure from others. This is in line with article 145(2) of the Federal Constitution where the Attorney General is the chief legal advisor to the YDPA and the Cabinet.

(b) The Attorney General has powers under Section 24(3) Government Proceedings Act 1956 to appoint any external lawyers to represent the government in any Civil cases by or against the Federal Government or Federal Government Officers.

(c) The Attorney General as a Public Prosecutor has the discretion to appoint external lawyers as Deputy Public Prosecutors under Section 376(3) Criminal Procedures Code if the lawyers are deemed "fit and proper person".

(d) Besides, the Attorney General may also appoint external lawyers with written approval (Fiat) from the Public Prosecutor to prosecute, investigate or to attend criminal appeals or special legal matters by the Public Prosecutor under Section 379 of the Criminal Procedures Code. The external lawyer is considered a Civil Servant when undertaking these duties.

(e) In relation to the payment to external lawyers appointed as Deputy Public Prosecutors, all payments will be made from public funds approved by the Minister of Finance in accordance to Section 379 Criminal Procedures Code.

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(f) All payments to external officials appointed by TSTT was done from *B11 Perkhidmatan Am Perbendaharaan, Butiran 010100 Perkhidmatan Penyediaan Khas melalui perenggan 5.6 (a) Tatacara Pengurusan Akaun Perkhidmatan Penyelidikan Khas.* The Attorney General as the Controlling Officer may procure consultants including external lawyers.

(g) There will be a contract prepared for each appointment which will specifically mention the payment amount. The amount spent on external lawyers during the tenure of TSTT as Attorney General amounted to RM3,534,892.20.

(h) All claims and service payment will be validated by the Heads of Department before the claims were forwarded to TSTT to approve in his capacity as Controlling Officer.

v. The STF is of the view that although TSTT had complied with government regulations in the appointment of external lawyers, but the question of the need to appoint external lawyers was never answered. The STF therefore recommends that the government investigates the appointment of external lawyers in the Suria Strategic Energy Resources Sdn. Bhd. (SSER) case.

4.4. EXCESS OF AUTHORITY IN THE EU PALM OIL DISCRIMINATORY REGULATION

i. In his book, *My Story: Justice in the Wilderness*, TSTT wrote about the discriminatory measures and laws put in place by the European Union (EU) against Malaysian palm oil. After a "cursory" study on EU laws on this matter, and having "received instructions from our officers' familiar with the matter", his "instinct pointed to blatant discrimination against Malaysia, which any decent legal system would not countenance."

ii. After giving his preliminary and tentative view to the then Prime Minister, Tun Dr Mahathir, in mid-2019, that Malaysia has a "sound case to challenge the legality of the EU laws before the World Trade Organization, which is the agreed forum to resolve such disputes" he was told by the Prime Minister at the "usual post-Cabinet meeting" which he attended, the Cabinet had agreed to "pursue a legal challenge against the EU, and he was **in charge of preparing our case."**

iii. TSTT then wrote: *The following morning I telephoned the Minister, Teresa Kok, to ask her to chair a meeting of all stakeholders at the Ministry of Primary Industries. I said I will bring a legal team. She agreed, and the meeting was "promptly fixed*[53]. The legal team which TSTT constituted comprised Dato' Yeo Yang Poh, Sitpah Selvaratnam, Dhinesh Baskaran, Cheng Mai and Fahri Azzat. He said their selection was based on "**their**

[53] See: page 369 of the Book

familiarity with business and scientific issues." Additionally, he formed a team of five lawyers from the International Affairs Division of AGC led by its Head, Haliza Aini Othman and included his special officer, Ann Khong Hui Li.

iv. By a letter dated 29th July 2022, after the 5 members of the Malaysian Bar had been appointed to the Legal Team, TSTT justified their appointment on different grounds, namely: "Further the exorbitant costs of foreign lawyers' charge **is a relevant factor. Finally, one is not convinced with their loyalty to the national cause. It may be that as the hearing approaches in 2020 or 2021 we may wish to appoint foreign lawyers to be in the Team.**"

v. Ten lawyers accompanied TSTT to the meeting at the Ministry chaired by the Minister. Also present were **dozens of stakeholders and civil servants from various ministries and agencies.** After a lengthy presentation by a bureaucrat, TSTT mentioned what briefly was his understanding of the legal issues and invited other lawyers present to elaborate. To TSTT's perception, the civil servants and their "guests" from various governmental bodies were not happy with his approach and his appointment of the five lawyers from the Bar. He learnt that the Ministry has appointed a European firm which had a presence in Belgium who were apparently specialists on WTO law. TSTT responded by saying that "*since this was a Malaysian case involving Malaysians working in the oil palm*

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industry it was critical that our lawyers be involved. Not only would they be cheaper, they would loyally serve the nation's interests."[54]

vi. After obtaining approval for funding from the Minister of Finance to proceed with the preparation of the case, TSTT decided to "prepare for the EU case differently. Essentially, with little or no input from the ministry and their statutory bodies". He contacted the "captains of the industry" to assist and the Members of the private Bar interviewed officers from the palm oil companies to acquire facts and the estates and produced a "masterly analysis from the factual and legal viewpoints." An executive summary of the analysis and lengthy opinion were sent by TSTT to the Prime Minister who according to TSTT "*Tun did not micro manage. Rather, he left it to that person to get on with the task at hand. Never once in the EU Palm Oil dispute did the Prime Minister question my tactics or strategy.*"[55]

vii. By October 2019, the legal team recommended to TSTT that foreign lawyers should join the team. TSTT agreed and wrote: *With no disrespect to the European lawyers previously used by the ministry, I had little confidence in their competence to undertake a case for Malaysia. I decided to turn to Toby Landau QC. He had successfully argued against IPIC for Malaysia's case before the Court of Appeal of England. Landau was one of the great commercial barristers in the world and had chalked up experience in WTO cases. Toby suggested a junior in his London Chambers who was a WTO*

[54] See: page 370 of the Book

[55] See: page 372 of the Book

specialist join the team. I agreed [56]. Since the costs of foreign lawyers were exorbitant and their "loyalty to the national cause" was not unquestionable, why did he proceed to appoint them without first ascertaining their fees and their loyalty to the national cause.

viii. The Ministry of Primary Industries, the ministry responsible for Malaysian palm oil industry, and relevant stakeholders, made many attempts in 2018 and early 2019 to engage their EU counterparts. Their efforts to persuade the EU of the overwhelming benefits of Malaysian sustainable palm oil and to allay EU's concerns on environmental issues fell on deaf ears.

Separately, Indonesia, the world's largest producer of palm oil, had initiated its own challenge against the EU regarding RED II and the DR on the WTO platform. Indonesia was also aggrieved by the discriminatory nature of the EU measures against palm oil. Indonesia filed its request for consultations with the WTO against EU in December 2019, alleging that the EU measures were inter alia in violation of the EU's obligations under WTO agreements. ***That was the first and necessary step in the litigation process under WTO.*** [57]

ix. TSTT said that Malaysia requested to join the consultations initiated by the Indonesians as Malaysia intended to mount a similar challenge

[56] See: page 372 of the Book

[57] See: page 375 of the Book

against the EU. The consultations between Indonesia and EU were held in February 2020 where Malaysia and other palm oil producing countries, like Thailand, Costa Rica, Guatemala and Columbia also attended in support of the Indonesian challenge. *I instructed a small delegation from our legal team to attend the Indonesian consultations in Geneva. The Team was led by Haliza, and also included Ann Khong and Cheng Mai. Each member of the delegation informed me of the benefit in personally attending the consultations, and the insights they derived*[58]. What is written above is inconsistent with what TSTT said in his letter dated **12th December 2019** to the then Minister for Primary Industry. In that letter TSTT included a letter requesting for Consultation with EU under the Articles in the Rules and procedures for settlement of disputes and other WTO Agreements relating to Trade Disputes. Why was not this request for settlement submitted in December 2019. Has the request for consultation been made, it could have been made at the same time as the Indonesian Request for Consultation which was made in December 2019.

x. TSTT resigned as Attorney General at the end of February 2020. From the facts gathered by the STF, the legal team that he put in place to challenge the WTO on EU discriminatory laws, including Toby Landau QC, ceased to act for Malaysia. All that happened up to the time TSTT resigned was "*We set in motion the genesis of a WTO challenge.*"[59]

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58 See: page 375 of the Book

59 See: page 375 of the Book

4.4.1. Observation and Analysis

i. The narrative produced above must be deemed to be true. TSTT never came to STF to make any corrections to what he had written on this subject matter.

ii. What is obvious from the above narrative is that TSTT knew that before a legal challenge by Malaysia can be mounted at the WTO against EU for breach of WTO agreements, the WTO process requires consultation between Malaysia and the EU as in the case of Indonesia's challenge which Malaysia attended with the small delegation appointed by him. The process does not allow for a direct filing and hearing of Malaysia's case before WTO or its appellate body.

iii. The WTO dispute settlement process can be found on the WTO website and is attached hereto as **Appendix 13.** It is expected at the onset in mid July 2019 when the then Prime Minister asked TSTT to be in charge of the challenge against the EU, he, with the assistance of his own legal officers, would or should have found out the WTO process by accessing its website. The WTO dispute settlement process involves 3 main stages—

(a) consultation between the parties;

(b) adjudication by the panels and, if applicable by the appellate body, and

(c) the implementation of a ruling.

iv. As stated by TSTT himself it is not like "*Preparing a civil case: from taking instructions, settling pleadings, researching the law, drafting witness statements, marshalling documents and preparing oral and written submissions were familiar to me*. So, he decided to prepare the case differently, *Essentially without any or little input from the ministry and their statutory bodies*."[60]

v. Nevertheless, TSTT considered it necessary, after being asked to take charge of Malaysia's challenge against EU, to assemble a team of five lawyers from the Bar because of their familiarity with business and scientific issues but not because of their familiarity or experience with the WTO dispute settlement process which starts with the consultation process, a non-adversarial process. Nowhere in the narrative was there any indication that the legal team assembled by him had set about pursuing Malaysia's case for the first step in the WTO challenge process - that of consultation between Malaysia and EU at the WTO even those the draft request for such consultation was ready by 12th December 2019. The Indonesian seemed to have been properly prepared with their case for consultation submitted in December 2019 and the actual consultation taking place just 2 months later in February 2020. No wonder, the delegation, that included Cheng Mai a member of the Malaysian Bar, sent by TSTT to attend the Indonesian Consultation in Geneva reportedly told him "... of the benefit in personally attending the consultations, and the insights they derived". Such benefit and insights could have been provided at the onset by consulting the European

60 See: page 371 of the Book

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lawyers appointed by the Ministry who would have been well versed in such WTO laws and legal process. But having appointed his own legal team, he said at the meeting chaired by the Minister, he was "not impressed" by the lawyers in Brussel appointed by the Ministry. But he could only anticipate in the letter sent by him to Minister Teresa Kok that the "Preliminary Framework for First Submission to be finalized and ready by early next year" even though he said in an earlier letter dated 29th July 2019 to Prime Minister "I was recently instructed by Minister Teresa Kok of the decision of the Cabinet to institute such a challenge, **and to do it on an urgent basis".**[61]

vi. What was obvious from the narrative was that once he was told by Tun Mahathir to take charge of Malaysia's legal challenge against the EU's discriminating regulations against Malaysian palm oil, his immediate focus was to appoint 5 lawyers from the Bar (who did not have any experience of dealing with either EU laws or undertaking any legal challenge to the WTO or involved in any consultation process under EU) and in so doing to dismiss or side-line the firm of lawyers in Brussels, appointed by the Ministry. He was more interested in appointing local lawyers and later Toby Landau QC, an arbitration specialist with the firm of Duxton Hill in Singapore. All the external lawyers appointed by TSTT ceased to act for Malaysia once he resigned as AG and the fees incurred in hiring them have been a waste of public funds especially as the work or opinion do not appear to be useful in the eventual submission of Malaysia's case to the WTO.

61 See: Appendix 14

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vii. TSTT was the chief legal advisor to the Government. It is expected that he should diligently look after the Government's legal interests and in so going display the professionalism, care, skill and knowledge of a competent Advocate. After all, he was appointed AG from the Bar.

viii. **Lack of professionalism**: When he was asked by the then Prime Minister to take charge of Malaysia's challenge against EU's discriminatory laws against Malaysian palm oil, he was fully aware that the World Trade Organization (WTO) was to be the forum for resolving such dispute. In other words, it is a trade dispute as the discriminating laws were, "*inter alia*, a violation of EU's obligations under the WTO agreements" governing free trade. He ought to have ensured that whether action that Malaysia takes in its challenge must comply with the process of consultation carried out under the WTO dispute resolution framework and the challenge should in his own words "to do it on an urgent basis". The Indonesian case challenging the EU's discriminating laws and trade practices relating to palm oil from Indonesia is an example where compliance with processes and urgency was taken to the WTO before Malaysia's challenge.

ix. TSTT had admitted that preparing for such a challenge is not like preparing for an ordinary civil case. Yet, he at the very onset appointed 5 lawyers from the Malaysian Bar who have no previous experience of handling trade disputes before WTO (at least TSTT did not vouch in his Book any of the 5 lawyers had such previous experience or expertise). From the narrative it was clear he proceeded on the basis of preparing a case for filing for hearing by the WTO like commencement of a civil suit in a Court of Law.

From his narrative his principal motivation was to handpick 5 members of the Bar and appoint them to form a legal Team even before the briefing from the Ministry having jurisdiction over Palm Oil and the under agencies such as the Malaysian Palm Oil Board - MPOB (established under the Malaysian Palm Oil Board Act, 1998 to promote and develop the palm oil industry) or the Palm Oil Research Institute of Malaysia (PORIM).

x. TSTT realized that the EU's case against Malaysian oil palm is not based upon law *per se*, but trade protectionism (to protect EU's own vegetable oil production) and allegation of deforestation in Malaysia meaning that "our palm oil comes from land with high biodiversity value, high carbon stocks or peat land and environmental issues related to climate change." As how in preparing Malaysia's case against the EU he decided to have no or little input from the Ministries and its agencies such as Palm Oil Research Institute (which has been undertaking research in the cultivation of oil palm especially in peat soils) and MPOB which is the promoter of palm oil in the global market.

xi. In the Book, TSTT wrote:

(a) *Malaysia is the second largest palm oil producer in the world, with the palm oil industry contributing immensely to our nation's economic growth. World demand for palm oil has grown significantly over the decades, due to its versatility, affordability and quality. Such a competitive product inevitably aroused envy and hostility, particularly from Europe's rape*

seed oil interests. It is well known that the agriculture sector in the EU is a powerful lobby group, especially in France. That lobby has taken concerted efforts to vilify palm oil as the major cause of deforestation and the habitat-loss of our orangutans. The EU's agenda in pursuing this course of action is disguised as an environmental concern. But in reality, it is driven by a desire to protect the EU's own vegetable oil production. In other words: protectionism.[62]

(b) *By January 2018, the European Parliament had singled out palm oil-based biofuels to be excluded from EU's renewable energy targets. In December 2018, the EU introduced a revised Renewable Energy Directive 2018/2001/EU (RED II), and in March 2019, the complementary Delegated Regulation (EU) 2019/807 (DR). The ostensible purpose was to exclude any feedstock deemed a high Indirect Land Use Change (ILUC) risk. The rationale for these laws was that high ILUC-risk crops were responsible for significant expansion of its production area into high carbon stock lands such as forests, thus causing significant increase in greenhouse gas (GHG) emissions.*

The DR introduced an arbitrary formula for ILUC-risk and applied some questionable data to the formula, which, when

62 See: page 372 and 373 of the Book

taken together, had the effect of identifying palm oil as the only feedstock crop with a purportedly high ILUC-risk. It was as if the formula and the selected data had been reversed-engineered to solely exclude palm oil, which coincidentally and conveniently reflected the European Parliament's true intention from the beginning.[63]

(c) *Further, despite being held out by the EU as being premised on environmental concerns, RED II and the DR completely disregarded Malaysia's production of sustainable palm oil, which adheres to high standards of environmental protection. Our sustainable palm oil is duly certified under internationally recognized schemes, such as the RSPO (Roundtable on Sustainable Palm Oil) and ISCC (International Sustainability & Carbon Certification), as well as the national certification scheme of the MSPO (Malaysian Sustainable Palm Oil) operated by the Malaysian Palm Oil Certification Council. For example, since 2008 criteria for certification under ISCC include stringent requirements that the palm oil does not come from land with high biodiversity value, high carbon stock or peat lands. Yet, these efforts come to naught under RED II and DR.*[64]

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[63] See: page 373 of the Book

[64] See: page 374 of the Book

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xii. From the chronology of action taken by the Ministry on the discriminatory EU laws and practices discussions between Malaysia and EU over this issue had been taken place since 2017, and even a "Palm Oil War Room" (POWR) was set up to monitor the latest development of EU RED II regulations and the POWR comprised of other related government ministries and agencies including MPOB, the Malaysian Palm Oil Council (MPOC), the Ministry of Foreign Affairs and Ministry of International Trade and Industry (MITI). For TSTT to say that he proceeded to prepare for the "EU case differently, without any or little input from the ministry and their statutory bodies' is not only disrespectful to the Ministry, and the statutory bodies concerned but the case was prepared without their input and the benefit the earlier representations made by the Ministry on behalf of Malaysia to the EU and the advice given by the Ministry's European lawyers, Paolo R. Vergano.

xiii. What is obvious is that TSTT was unhappy with the Ministry which did not like his appointment of the 5 lawyers from the Bar and bringing them to the meeting chaired by the Ministry. On account of this, he retaliated by preparing the case for the challenge to the EU, without or little input from the Ministry which has jurisdiction of palm oil and the issues surrounding the discrimination of this commodity by the EU. TSTT arbitrarily took over the function of the Ministry and made his own decision as to how he wanted the EU challenge to be handled essential through the 5 lawyers he appointed and an arbitration specialist, Toby Landau who has no track record of handling trade dispute settlement at the WTO.

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4.4.3. Recommendation

i. The STF recommends that the role of the Attorney General should be confined to advisory nature and shall offer legal advice based on what is sought by the Government and its ministries and agencies. Equally important is that the Attorney General should act on the instruction of the Government, its ministries and agencies. The Attorney General as the legal advisor should not take over the function and responsibility of any ministry of Government agency or the portfolio of any minister.

4.5. ABUSE OF AUTHORITY IN THE CASE OF DATUK SUNDRA RAJOO (DSR) AND THE APPOINTMENT OF VINAYAK PRADHAN (VP) AS DIRECTOR OF AIAC

i. The allegations on pages 391, 392, 393, 394, 395, 396, 397 and 398 involved two (2) issues, namely—

(a) the prosecution of Datuk Sundra Rajoo (DSR) for corruption offences despite pleas by him and Asian-African Legal Consultative Organisation (AALCO) that he enjoyed immunity from prosecution under the Host Country Agreement for the setting up of Asia International Arbitration Centre (AIAC) in Malaysia, and TSTT's demand for his resignation. These matters have been determined by the Federal Court and are currently subject to a case filed by DSR against the

Government relating to misfeasance committed by TSTT in prosecuting him. The STF would recommend that these issues be resolved by the Court.

(b) the appointment of Vinayak Prabhakar Pradhan (VP) as the acting Director and later as Director of AIAC. STF recommends that this matter may be investigated further to determine whether TSTT exceeded his powers as AG in procuring the appointment of VP, whom he described as a friend and former partner in Skrine & Co., as Acting Director and Director especially as under the Host Country Agreement the AG has no role to play in making such appointments and the AIAC is under the portfolio of the Minister in the Prime Minister's Department (Law and Parliament).

ii. The STF spent a considerable amount of time to consider, review, investigate and analyze the allegations and statements made by TSTT in Chapter 41 of his Book in particular events, statements and allegations relating to the AIAC and leading to the arrest, detention and prosecution of DSR, the then Director of AIAC and the subsequent appointment of VP as the Acting Director and Director of AIAC.

iii. First, the brief background of Kuala Lumpur Regional Centre for Arbitration (KLRCA) and AIAC. KLRCA was established in 1978. The Government of Malaysia had entered into a Host Country Agreement with an organization called the AALCO. Malaysia, as the host country, provided the

headquarters in Kuala Lumpur and finances to run the KLRCA. The fifth director of KLRCA, DSR was appointed in March 2010. His contract was renewed three times and was to expire in February 2019. When the Host Country Agreement came up for renewal in 2011, at DSR's prompting, diplomatic privilege protection for his office was introduced for the first time. Such immunity extended to the Director, "*to acts and things done in the capacity of AIAC director*"[65]. In 2018 KLRCA was re-branded as AIAC.

iv. The following statements and allegations in TSTT's Book are relevant relating to the AIAC leading to the arrest, detention and prosecution of DSR and the subsequent appointment of VP as the Director of AIAC:

(a) *Shortly after I took office, I received an anonymous letter addressed to the MACC and copied to several government senior officials such as the Inspector-General of Police, the Foreign Minister and myself. It was also widely circulated to the Bar. Sundra Rajoo was implicated in a series of alleged corrupt practices involving the use of public funds to garner the support and goodwill of past and present ministers to get his term extended. The letter described in great detail numerous incidents where AIAC funds were allegedly used for expensive drinks, feast and drinks, luxurious hotel stays etc.*[66]

[65] See: page 392 of the Book
[66] See: page 392 of the Book

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(b) *The MACC, as required by law, launched an investigation into Sundra Rajoo's alleged misconduct. The MACC requested for documents and questioned AIAC staff members. They conducted themselves professionally in their raid, having regard to the AIAC's immunity as an international organization. But the MACC took the views if laws were broken and criminal offences committed, the AIAC had to open up their books and records.*[67]

(c) *The MACC arrested Sundra Rajoo on 20th November 2018 when he arrived at KLIA. After a night in the MACC lockup, the following morning Sundra Rajoo was brought to the Magistrate's Court in Putrajaya. He was released subsequently by the court.*

I straight away telephoned the MACC officer. He briefed me that the MACC had a solid case against Sundra Rajoo, and would be submitting the Investigation Papers shortly. I told Ann to call the lawyer to demand his client's resignation to be texted to her within half an hour, failing which I would dismiss him as Director. Sundra Rajoo sent a handwritten note of his resignation as the AIAC director within the specified time to Ann Khong. I told Ann to pass the message to Sundra Rajoo that under no circumstances could he remain as director after the poison letter, and his arrest. The AIAC's reputation would be damaged, and I had to act promptly to protect it.

67 See: page 392 and 393 of the Book

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I then telephoned Datuk V.K. Liew, the Minister in the Prime Minister Department (law) to inform him of Sundra Rajoo's arrest, the investigations and MACC intention to charge Sundra Rajoo. I also conveyed to the Minister that I would act on my own on behalf of the government to take all necessary steps with regards to the next appointment of the AIAC's director, because the minister had been named in the poison letter. I advised the minister that he would therefore have a conflict of interest.[68]

(d) *Thereafter, I telephoned the secretary general of the AALCO, Professor Dr Kennedy Gastorn. He was in Tanzania. I informed him of that day's developments, and of the urgency to appoint a director to ensure continuity in the AIAC's leadership. I proposed Vinayak Pradhan. He was well-suited for the position, professional and of unimpeachable integrity and good standing in the arbitration world. Vinayak was the past president of the Chartered Institute of Arbitrators (UK), a member of the Permanent Court of Arbitrators in the Hague, a consultant at Skrine, and an arbitrator for decades. I informed Gastorn that I had not spoken to Vinayak, but was confident of securing his agreement. Gastorn agreed with my decision, He said he knew Vinayak, and agreed that he would be an ideal choice.*[69]

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[68] See: page 393 of the Book

[69] See: page 393 and 394 of the Book

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(e) *Next, the most difficult aspect; to convince Vinayak to do national service. I had known Vinayak from our Victoria Institution days. He was my senior. He had been school captain and cricket captain. He read law at the University of Singapore. He was the doyen of the Arbitration Bar, having practiced there for some forty years. In fact, he was approached to be director in 2009, which he declined. Sundra Rajoo was only offered the post after Vinayak had turned it down. But Vinayak was at the height of his career, earning millions in the commercial bar. I had to make a few telephone calls to him that day. He finally agreed in the afternoon. All these actions were taken within eight hours. Soon after, I issued a Media Release on 20th November 2018, announcing his appointment as acting director of the AIAC.*[70]

(f) *The formalization process was eventually completed in May 2019, with Vinayak appointed by the cabinet for a term of two years from 21st November 2018 to 20th November 2020, with an option to renew for one further term, in line with international standards.*

In early 2019, the MACC submitted its Investigation Papers to me. The MACC recommended a string of charges against Sundra Rajoo on separate corruption deals. All the recommended charges were referred to in the poison pen letter.

[70] See: page 394 of the Book

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Some of the recommendations were trivial in nature: applying the de minimis principle, I did not take any action. I decided to charge Sundra Rajoo on three charges relating to the sale and purchase of books using AIAC funds to the value of approximately RM1 million. He was charged in the Sessions Court, Kuala Lumpur.

While the criminal proceedings against him were pending, Sundra Rajoo in March 2019, filed an application in the Kuala Lumpur High Court to seek leave to commence judicial review proceedings. He was seeking an order to stop the Public Prosecutor from instituting any charge against him. He also sought a declaration stating that he had immunity from possible arrest and prosecution for any acts he may have committed during his tenure as AIAC director.

The High Court refused him leave, which was overturned on appeal. This matter was returned to the High Court to consider his application on its merits. The High Court granted him immunity. The prosecution's appeal was allowed by the Court of Appeal. Sundra Rajoo's leave application to the Federal Court is pending. Meanwhile, the criminal trial against him has been put on hold, pending the disposal by the Federal Court of his immunity application. Much judicial time has been wasted.[71]

[71] See: page 395 of the Book

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(g) *In my opinion, the defence of immunity that Sundra Rajoo relies upon can and should only be brought in a criminal trial. After all, it serves as an absolute defence, and he will be acquitted without defence being called if the trial judge determines that his legal argument has merits. Sundra Rajoo should not be allowed to raise the same issue in collateral civil proceedings. In any event, if there is one entranched principle of criminal law and procedure in Malaysia, settled by all our appellate courts in countless cases, it is the fundamental principle that the public prosecutor's decision to charge a person is beyond judicial scrutiny. That indeed is the position in most, if not all, common law jurisdictions. There are many reasons for this legal conclusion. Public policy also dictates this result. It would thus be a dangerous precedent to the criminal jurisprudence developed in Malaysia for at least a century, if Sundra Rajoo is allowed to challenge my decision to prosecute him. The floodgates will certainly open thereafter. But most fundamentally, the immunity doctrine that Sundra Rajoo relies on has no application to the facts of his case. Sundra is a Malaysian citizen, The alleged crimes, for which he is charged with, were committed in Malaysia while he was employed in Kuala Lumpur. He is being tried in the ordinary courts of the land under Malaysia's criminal laws. The doctrine of immunity, by definition, is for foreign national resident in Malaysia. It only*

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protects diplomats who serve their nations in another country. Immunity is not from legal culpability.[72]

(h) *In 1961, the Vienna Convention on Diplomatic Privileges was passed. Malaysia acceded to the Vienna Convention. Our parliamentary passed the Diplomatic Privileges Act, 1961. It was followed by the International Organisation (Privileges and Immunity) Act 1992. But these Acts of Parliament cannot apply to a Malaysian citizen committing crimes in Malaysia, while working in Malaysia. They can only be triggered when a Malaysian citizen works for our embassy in a foreign country, or is a senior employee employed by, say, the United Nations in New York. Hence, in my opinion, Sundra Rajoo is not entitled to seek immunity from our courts.*[73]

(i) *Even our Rulers do not enjoy sovereign immunity in Malaysia. After the Special Court was established, the nine Rulers can be sued in the Special Courts, indeed some cases have already been determined in the Special Court. They can also be tried for criminal offences in court. If Sundra Rajoo is correct, he will be the sole Malaysian citizen who cannot be sued or charged in our courts. Stated this way, it cannot possibly be right. It is a fallacious argument.*

[72] See: page 395 and 396 of the Book

[73] See: page 396 and 397 of the Book

The AALCO director, Gastorn, visited me at the AGC a few weeks after Vinayak's appointment as acting director. The meeting was cordial. I told him that I would be recommending Vinayak to be confirmed in his position which was a decision for the cabinet to make. Gastorn had already visited Vinayak at the office of the AIAC that morning. He was full of praise for Vinayak's leadership in difficult circumstances. Hence, I was surprised to learn of the hostile posture that Gastorn subsequently adopted in opposing Vinayak's confirmation. Members of the arbitration fraternity, which is small and close-knit, were not surprised because they were aware of the apparent close links between Sundra Rajoo and Gastorn, established over time.

Gastorn even took the unprecedented step of writing to the Judge in the High Court hearing Sundra Rajoo's judicial review application.[74]

(j) *When Sundra Rajoo raised the immunity argument in his judicial review proceedings, I sought a briefing from the desk officers in the AGC, the Law Ministry and the Foreign Ministry. The KLRCA and the AIAC came bureaucratically under the supervision of chambers and the two ministries. I was surprised to learn that despite the combined efforts of civil servants in the two ministries and our agency, Sundra Rajoo's file was not complete. The*

[74] See: page 397 of the Book

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officers claimed that Sundra Rajoo had an excellent personal relationship with my predecessors and the Law Ministers. Sundra Rajoo shunned the desk officers, and would always go above their heads, directly to the Minister or the AG. Sundra Rajoo was seeking a third extension, which would have entitled him to serve for twelve years in total. The Law Minister, V.K. Liew, mentioned this to my surprise shortly after I took office.[75]

(k) *I had independently decided that the Afro-Asian link did not confer any benefits to Malaysia, half-a-century after it had been formalised.*

Sadly, Vinayak passed away a few days later. He had done an outstanding job to restore the reputation of an organization badly damaged by the poison pen letter concerning the previous director, Sundra Rajoo's arrest and detention, and finally my decision to charge him for corruption related offences. Vinayak was at the cusp of taking AIAC to greater heights by severing agreements with AALCO and placing Malaysia as a leading arbitration centre in this part of the World.[76]

v. Since TSTT had stated his intent not to cooperate or participate in the deliberations of the STF, the STF is unable to seek his confirmation on the accuracy of the statements and allegations listed in paragraph 4 above and

[75] See: page 397 and 398 of the Book

[76] See: page 398 of the Book

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other information and evidence obtained from the various sources by the STF.

vi. STF had amongst others, invited Ms Michelle of AIAC and Ann Khong to seek confirmations and clarifications on the statements and allegations by TSTT in particular relating to the AIAC leading to the appointment of VP as the Director of AIAC. But Ms Michele too had refused and/or failed to appear before us. Ann Khong did appear before the STF and assisted in the proceedings.

4.5.1. DSR'S Letters

i. The STF had also received a lengthy letter dated 5th January 2022[77] together with its attachments from DSR and another letter dated 4th July 2022[78]. Since the SFC had been made aware of a pending civil suit by DSR against the GOM which includes claims for unlawful arrest, detention, forced resignation as a Director of AIAC and malicious prosecution, the STF decided not to engage with DSR to avoid any interference with the ongoing civil claims. Nonetheless, the STF had considered both the letters dated 5th January 2022 and 4th July 2022 and the attachments from DSR. DSR explained as follows:

(a) DSR was a High Officer within the meaning of the Kuala Lumpur Regional Centre for Arbitration Regulations 1996

[77] See: Appendix 4
[78] See: Appendix 5

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(AIAC Regulations) made pursuant to the International Organizations (Privileges and Immunities) Act 1992. Accordingly, he was conferred privileges and immunities as are accorded to a diplomatic agent in respect of acts and things done in his capacity as the High Officer. Pursuant to the Schedule to the Diplomatic Privileges (Vienna Convention) Act 1966 [Act 636], he could not be made liable "to any form or arrest or detention" in respect of acts and things done in his capacity as High Officer. He is also immune from criminal prosecution in respect of such acts;

(b) Sometime in October 2018, a poison pen letter disparaging DSR as the Director of AIAC was sent to Dato Sri Mohd Shukri Abdul, then Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC) and copied to several persons including TSTT;

(c) DSR claims that the Poison Pen Letter is wholly untrue and that he has filed a claim for defamation in the High Court of Malaya in Shah Alam against the author and publisher of the Poison Pen Letter in December 2021;

(d) On 20.11.2018 at around 6pm upon DSR's return from Zurich, Switzerland at the Kuala Lumpur International Airport (KLIA), he was arrested by MACC officers. He was handcuffed and detained at the MACC's detention centre at Putrajaya. This

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was despite DSR notifying the MACC officers that he was immune from arrest and detention and that he was a High Officer under the AIAC Regulation, Act 485 and Act 636;

(e) On 21.11.2018 at about 9 am, he was produced before the Magistrate's Court Putrajaya for an application for remand of seven days (Remand Application). After the Remand Application was stood down, DSR's lawyer, Philip Koh spoke over the telephone to Ann Khong, TSTT's Special Officer. Philip Koh thereafter informed DSR that Ann Khong after speaking to TSTT communicated the following:

(i) That DSR was to resign immediately from the position as Director of the AIAC. He was to write a resignation letter and send a photo snapshot of the resignation to Ann Khong;

(ii) If DSR did not so resign, he would be sacked from his position by the Government of Malaysia; and

(iii) His resignation would deter further action being taken against him.

(f) DSR understood further action being taken against him as a reference to an intended criminal prosecution. Given the circumstances and the tremendous pressure by reason of the

intimidation DSR resigned under duress (forced resignation). A photo snapshot of his resignation letter was forwarded to Ann Khong by Philip Koh. It is pertinent to note that the forced resignation is a finding of fact subsequently made by the High Court Judge, YA Mariana Yahya on 31.12.2019 in her judgment;

(g) Notwithstanding the forced resignation, the MACC officer proceeded with the Remand Application and sought for a 7 days' remand. DSR's and AIAC's counsels argued that he had immunity from criminal proceedings. The Magistrate dismissed the Remand Application;

(h) Whilst the Remand Application was going on, soon after the photo of DSR's resignation letter was sent to Ann Khong, TSTT issued a media release to announce that VP was appointed as the Acting Director of AIAC with immediate effect (Media Release);

(i) According to DSR, the issuance of the Media Release revealed a concerted effort on the part of TSTT to have him replaced as the Director of the AIAC with VP, a close friend of TSTT since the announcement was almost immediately after the forced resignation was sent to Ann Khong and whilst the Remand Application was stood down. The Star had reported the Media Release by TSTT at 12.13 noon on 21st November 2018;

(j) The Media Release was issued by TSTT as the AG and not the Minister in the Prime Minister's Department in charge of legal affairs who was in the ordinary course responsible for the AIAC;

(k) Further, the Media Release stated that H.E Professor Dr Kennedy Gastorn, as the Secretary General of AALCO, "supports" these actions. However, according to DSR there is an affidavit affirmed by Dr Gastorn that he was never consulted about his forced removal;

(l) TSTT had clearly usurped the powers of the late Datuk Liew Vui Keong, who was the then Minister of Law, by carrying out the functions of a Minister under the Ministerial Functions Act 1969 by purporting to appoint VP;

(m) On 5th March 2019 DSR applied for leave to commence Judicial Review proceedings against the AG, GOM and others at the High Court Kuala Lumpur (JR Application) which amongst others, sought a declaration that he was immune from criminal proceedings as a former High Officer. The leave hearing of the JR Application was fixed on 26th March 2019;

(n) On 22nd March 2019, TSTT signed the consent for 3 charges against DSR for criminal breach of trust in respect of the

alleged wrongful use of AIAC monies for the purchase of copies of a book entitled "Law, Practice and Procedure of Arbitration" (2nd edition, 2016, Lexis Nexis) authored by DSR (the Charges);

(o) On the same day (22nd March 2019), the AALCO Secretary-General sent a letter to Minister of Foreign Affairs rejecting the GOM's request to waive the immunity under Article III of the 2013 Host Country Agreement and the Supplementary Agreement from the criminal jurisdiction of Malaysia;

(p) On 25th March 2019, the DPP purported to charge DSR with the Charges at the Kuala Lumpur Sessions Court (Criminal Proceedings). When the charges were instituted, TSTT and the DPP knew that DSR had immunity from criminal proceedings. The charges themselves expressly stated that the acts complained of relates to things done by DSR as a Director of AIAC;

(q) The leave for the JR Application was dismissed by the High Court on 26th March 2019. Immediately after that, the charges were instituted against DSR at the Kuala Lumpur Sessions Court. DSR pleaded not guilty to the charges and claimed immunity;

(r) On 25th March 2019, the Court of Appeal overturned the dismissal of the JR Application leave and sent it back to the High Court to be heard on its merits;

(s) On 31st December 2019, the High Court allowed the JR Application which included a certiorari order to quash the 3 Charges. The High Court found that DSR was immune from criminal proceedings in respect of acts or things done in his capacity as a Director of AIAC. The High Court had also examined the 3 charges based on affidavit evidence and found that the 3 charges were not credible as the purchase of the books for AIAC's promotional purposes was approved by AALCO and the royalties earned were returned to AIAC. The High Court had also made findings of fact that DSR was forced to resign as the Director of AIAC;

(t) Despite the High Court decision to quash the 3 charges, the DPP insisted that the proceedings continue. The actions of the DPP on the instructions of TSTT were a deliberate defiance of the High Court decision. The Sessions Court however, disagreed with the DPP and dismissed the 3 charges;

(u) The High Court decision was finally affirmed by the Federal Court on 30th April 2021. The Federal Court decided that DSR had at all material times enjoyed immunity from criminal proceedings as a former High Officer. The Federal Court in

Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209 decided that:

(a) TSTT was aware that DSR had the necessary immunity;

(b) That the charges were baseless as the purchase of the book was done officially for the purposes of promoting arbitration in Malaysia and having the sanction from AALCO; and

(c) That DSR did not enjoy any form of gratification as a result of AIAC's purchase of the Book;

(v) In short, TSTT had persecuted DSR by using his prosecutorial powers as the then Public Prosecutor to—

(i) procure his forced resignation as the Director of AIAC in 2018. This is also a finding of fact of YA Mariana Yahya in ***Sundra Rajoo a/l Nadarajah v Menteri Hal Ehwal Luar Negeri, Malaysia & Ors*** [2020] 10 MLJ 583;

(ii) gave his consent to charge despite knowing that DSR had the necessary immunity;

(iii) TSTT had acted in concert with VP to appoint VP as the then Acting Director of AIAC. In appointing VP as the then acting Director TSTT had usurped the powers of the

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Minister of Law, Liew Vui Keong, in contravention of the Ministerial Functions Act 1969;

(iv) TSTT was fully aware that DSR had immunity as a High Officer. He had requested for a waiver of the said immunity from AALCO to proffer charges against him for things done in the capacity as the Director of the AIAC. However, AALCO refused since the charges relates to the work done in the capacity of the Director of AIAC; and

(v) TSTT then acted in concert with VP to purport to lift DSR's immunity and to persecute him. VP had purported to give the waiver of the immunity despite knowing that he has no such powers.

ii. The STF had also perused both the judgements of the High Court and the Federal Court in ***Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri & Ors*** (2021) 5 MLJ 209. The salient facts stated in both the judgements are as has been explained by DSR in his letter dated 5th January 2022.

iii. Having perused the confirmations, clarifications, information and the evidence from various sources and which have substantially confirmed the statements and allegations made by TSTT, the STF relies on the following facts:

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(a) VP, was a Partner/Consultant at Skrine & Co and was involved extensively in arbitration since the early 1980s;

(b) TSTT had known VP from his Victoria Institution days, was TSTT's senior, been a school captain and cricket captain and subsequently together with VP at Skrine & Co;

(c) TSTT had received an anonymous letter implicating DSR in a series of alleged corrupt practices;

(d) MACC had launched an investigation into DSR's alleged misconduct;

(e) MACC arrested DSR on 20th November 2018 upon his arrival at KLIA and spent a night at the MACC lockup. Next morning, he was produced before the Magistrate's court whereupon the remand application was dismissed and he was released by the court;

(f) TSTT had telephoned the MACC officer and was told that MACC had a solid case against DSR;

(g) TSTT instructed Ann Khong to demand a resignation letter from DSR's lawyer failing which he would dismiss DSR as a Director;

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(h) DSR had sent a handwritten note of his resignation as a Director of AIAC to Ann Khong;

(i) TSTT acting unilaterally on the poison pen letter informed Datuk V.K. Liew, the Minister in the Prime Minister Department (Law) of his disqualification with regards to the next appointment of the AIAC's director because the Minister had been named in the poison pen letter and would therefore be in conflict of interest;

(j) Within a record time of 8 hours (presumably of DSR's arrest) TSTT had issued a Press Statement on 20th November 2018 of the appointment of VP as the Acting Director of AIAC;

(k) In May 2019 Cabinet approved the appointment of VP as the Director of AIAC. The Cabinet Paper were prepared by TSTT and submitted to the Cabinet through the Minister of Foreign Affairs. The Cabinet Paper was circulated to amongst others, the Minister in Prime Minister's Department (Law) for Comments;

(l) In early 2019 DSR was charged in Kuala Lumpur Sessions Court on 3 charges relating to sale and purchase of books using AIAC funds;

(m) In March 2019, DSR applied for leave to file judicial review proceedings to stop the Prosecutor from instituting any charge against him. He sought a declaration that he had immunity from

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possible arrest and prosecution for any acts during his tenure as AIAC director. The High Court refused leave but was overturned on appeal;

(n) The High Court granted immunity to DSR. The Prosecution's appeal was allowed by the Court of Appeal. The Federal Court allowed DSR's appeal.

iv. The above facts give rise to the following issues:

(a) Whether the arrest, detention and prosecution of DSR is lawful in the light of him enjoying diplomatic privilege for acts and things done in the capacity of AIAC Director? In other words, was there any abuse of powers or that TSTT had exceeded his constitutional, legal or statutory powers or authority as the Public Prosecutor? In short, was DSR maliciously prosecuted?

(b) Was the appointment of VP as the Acting Director and subsequently the Director of AIAC lawful and in accordance with the Ministerial Functions Act 1969? In other words, was there any abuse of powers or that TSTT had exceeded his constitutional, legal or statutory powers or authority as the Attorney General; and

(c) Given the close relationship between VP and TSTT was there any conflict of interest on the part of TSTT in the appointment of VP as the Acting Director and subsequently the Director of AIAC? In other words, was there an abuse of power in the appointment of VP, an offence under the Malaysian Anti-Corruption Act 2009?

4.5.2. Was the Arrest, Detention and Prosecution of DSR Lawful or Was DSR Maliciously Prosecuted?

i. In a malicious prosecution case, whether civil or criminal, against the Government of Malaysia, which includes TSTT as the then AG/Public Prosecutor, the Plaintiff, DSR bears the onus of proof that the institution of prosecution was without reasonable or probable cause and with malice. In ***Abrath v North Eastern Railway Co***: HL 15 Mar 1886 per Brett MR–

> *It is not enough for the plaintiff to show, in order to support the claim which he has made, that he was innocent of the charge upon which he was tried. He has to show that the prosecution was instituted against him by the defendant without any reasonable or probable cause and with a malicious intention in the mind of the defendants, that is, not with the mere intention of carrying the law into effect, but with an intention which was wrongful in point of fact. It has been decided over and over*

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again that all these points must be established by the plaintiffs, and that the burden of each of them lies upon the plaintiff.

ii. Acquittal, withdrawal of charges, dismissal of proceedings alone cannot be the basis of a successful claim for malicious prosecution. It is noted that when DSR was charged, TSTT was acting within his powers under Article 145(3) of the Federal Constitution and s. 376 of the Criminal Procedure Code. This is because the AG and Public Prosecutor is not separated in this country and therefore, it is open to abuse of power.

iii. The criminal charges against DSR were eventually stayed pending judicial review of the then AG's discretion pursuant to Article 145(3) of the Federal Constitution and the determination on the question of immunity granted to DSR under International Organisations (Privileges and Immunities) Act 1992 [Act 485]. The questions of law in respect of the immunity under Act 485 and AG's discretion were answered in the affirmative by the Federal Court on 9th June 2021, rendering the three charges against DSR null and void.

iv. The Federal Court decided that the decision of TSTT to prefer the criminal charges against DSR, despite being fully aware of the latter's legal immunity status, was tainted with illegality and, as such, amenable to judicial review and ought to be quashed.

v. Since then DSR has mounted a malicious prosecution civil suit against the GOM and TSTT. For the malicious prosecution civil suit, it is for DSR to

prove it and the GOM to defend it. Be that as it may, it is not denied, there is *prima facie* evidence on the wrongdoings by TSTT which have caused great injustice to DSR.

vi. As has been pointed out earlier the STF has been made aware of an ongoing civil action by DSR including claims for malicious prosecution against the Government of Malaysia. Amongst others, he has alleged that he was unlawfully arrested, detained, forced to resign as a Director of AIAC and subsequently unlawfully prosecuted for offences under the Malaysian Anti-Corruption Commission Act 2009 despite enjoying diplomatic privilege for acts and things done in the capacity of AIAC Director. Having deliberated and considered this issue the STF decided that the issues relating to the ongoing civil proceedings be best left to be decided by the Court to avoid any interference with the ongoing litigation before the Courts. This is despite there being *prima facie* evidence of TSTT's wrongdoings against DSR to replace DSR with TSTT's close childhood friend and a friend who TSTT is much indebted to, VP.

vii. In passing the STF must point out that, if there is credible evidence to show that TSTT had acted maliciously against DSR the GOM may sue TSTT under tort of misfeasance in public office. Refer: ***Tony Pua Kiam Wee v Government of Malaysia & Datuk Seri Najib bin Tun Haji Abdul Razak*** 01(i)-44-11/2018(W), where the Federal Court held–

> *The Federal Court held that Najib Razak can be sued for alleged misfeasance in public office as it ruled that a Prime*

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Minister or any other Minister are public officers within Section 5 of the Act as there was no express legislative intent in either the Federal Constitution or the Interpretation Acts which alters and substitutes the common law tort of misfeasance in public office. The Court remitted the matter to the High Court for trial.

4.5.3. Was the Termination of DSR as the Director and the Appointment of VP as the Acting Director and Subsequently the Director of AIAC in Accordance with the Ministerial Functions Act 1969?

A. *Ministerial Functions Act 1969 – Whose function is it to appoint or terminate the services of Director of AIAC?*

i. On 21st November 2018, the late VP was appointed by the Government as AIAC's Acting Director. The Government subsequently confirmed VP's appointment as AIAC's Director on 8th May 2019. The crux of the issue here is that whether TSTT has the power to appoint VP as the Acting AIAC's director and his role in orchestrating VP's appointment and confirmation as the Director of AIAC.

ii. Based on the AALCO Agreement, in particular Article IV on the Administration of the Centre, it states that the Centre shall be administered by a Director who shall be a national of Malaysia and shall be appointed by the Host Government in consultation with the Secretary-General of the Organization.

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iii. It follows that, by reference to the Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019], which are made under the Ministerial Functions Act 1969 the Minister in the Prime Minister's Office (Parliament and Law) is in-charge of—

(a) Bahagian Hal Ehwal Undang-Undang (BHEUU);

(b) Jabatan Bantuan Guaman (JBG);

(c) Jabatan Insolvensi Malaysia (MDI);

(d) Suruhanjaya Hak Asasi Manusia (SUHAKAM);

(e) Yayasan Bantuan Guaman Kebangsaan (YBGK);

(f) Pusat Timbangtara Antarabangsa Asia (AIAC).

iv. In other words, the functions and powers relating to the affairs of AIAC vest with the Minister in the Prime Minister's Office (Parliament and Law). This is clearly set out in the Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019]. It is also very clear that under the Ministerial Functions Act 1969 and more specifically the Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019] the Attorney General or the Public Prosecutor has no business to interfere into the affairs of the AIAC. Very simply, TSTT or any Attorney General or the Public Prosecutor does not have the functions and powers to appoint the Director or Acting Director of AIAC. The AG derives his powers from the Minister and not the other way round.

B. *Was there a wrongful termination of the services of DSR as the Director of AIAC by TSTT?*

i. TSTT at page 393 of the Book said as follows:

> ***I note of his resignation as the AIAC director within the specified time to Ann Khong. I told Ann to pass the message to Sundra Rajoo that under no circumstances could he remain as director after the poison letter, and his arrest.*** *The AIAC's reputation would be damaged, and I had to act promptly to protect it.*

ii. What is most telling from the above passage in TSTT's Book is that TSTT single handed acted forcefully against DSR merely relying on the poison pen letter. Is it lawful for TSTT to threaten DSR to resign as a Director of AIAC failing which he would dismiss him as the Director of AIAC? It is abundantly clear that under the Ministerial Functions Act 1969 TSTT has no power whatsoever to terminate the services of the Director of AIAC. The power lies with the Minister and not the Attorney General. In any event, DSR is merely implicated in the poison pen letter. He is merely a suspect. He has not been investigated fully and charged in court for the allegations in the poison pen letter.

iii. Accordingly, TSTT getting DSR to resign or be dismissed as a Director of AIAC is premature at this stage. DSR is innocent until found guilty. One can only infer that TSTT had ulterior motives to remove DSR as the Director of AIAC and to replace him with his most trusted school childhood friend VP. In other words, it is a form of gratitude and reward by TSTT to his long-trusted

friend, VP. In short DSR's forced resignation was unlawfully orchestrated by TSTT and that TSTT had contravened the Ministerial Functions Act 1969 and in particular the Federal Government Order 2019 [P.U. (A) 132/2019].

C. Did TSTT contravene the law in appointing VP as the Acting Director of AIAC?

i. Having considered the Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019] the STF is of the opinion that the events leading towards and the official statement released on 21st November 2018, announcing and confirming the appointment of VP as the Acting Director of AIAC on 23rd November 2019 was illegal, null and void. The official statement/media release was issued by the then AG (TSTT) and not the Minister in the Prime Minister's Office (Parliament and Law) who was in the ordinary course responsible for the AIAC. This official statement/media release was *ex facie* proof of the appointment by TSTT.

ii. Besides that, the then AG had acted in concert with his special officer Ann Kong threatening to dismiss and/or demanding DSR's immediate resignation.

iii. In short TSTT was not discharging the functions conferred on him by the Federal Constitution or any written law and therefore he had clearly acted outside the boundaries of his jurisdiction and *ultra vires* Article 145 of the Federal Constitution. TSTT had also abused his power and had malicious

intent to influence and direct investigation against DSR and/or demanding his resignation coercively with threat.

iv. Accordingly, TSTT by appointing VP as the Acting Director of AIAC and subsequently as the Director of AIAC has usurped the functions and powers of the Minister in the Prime Minister's Office (Parliament and Law). It must also be pointed out that the subsequent appointment of VP by the Minister of Foreign Affairs is also not in accordance with the Ministerial Functions Act 1969 more specifically Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019] as the function rest with the Minister in the Prime Minister's Office (Parliament and Law) and not with the Minister of Foreign Affairs.

v. The STF had carried out an investigation on the removal of DSR as the Director of AIAC and that was followed by the appointment of VP first as the Acting Director of AIAC and subsequently as the Director of AIAC. STF had invited Senior Officers from the Ministry of Foreign Affairs (Wisma Putra) for a consultation session. STF was shocked to learn how TSTT manipulated the tabling of the Cabinet Paper on the appointment of VP as the Director of AIAC using the Ministry of Foreign Affairs instead of Minister in the Prime Minister's Office (Parliament and Law) to achieve his goal. This can be seen from the following:

(a) a letter dated 8th February 2019 from TSTT addressed directly to the Minister of Foreign Affairs, YB Dato' Saifuddin Abdullah who according to TSTT is acting in the capacity of the Minister

responsible for declaring an organisation as an international organisation and the granting of privileges and immunities to international organisations, including AIAC.

(b) the letter had enclosed the draft Cabinet Paper on the proposed appointment of VP as the Director of the AIAC for the Minister's consideration for circulation and thereafter the tabling in Cabinet.

(c) Memorandum Jemaah Menteri dated 3rd May 2019 was tabled at the Jemaah Menteri for the appointment of VP as the Director of AIAC. What is most unusual is that despite the Ministers of the Federal Government Order 2019 [P.U. (A) 132/2019] BHEUU of Jabatan Perdana Menteri, who is responsible for the functions of AIAC had agreed that the appointment of VP as the Director of AIAC be implemented by Minister of Foreign Affairs who is responsible for declaring an organisation as an international organisation and the granting of privileges and immunities to international organisations. BHEUU also agreed that the function of the appointment of Director of AIAC be taken over by the Ministry of Foreign Affairs.

(d) Be that as it may that the function of the appointment of VP Director of AIAC be taken over by the Ministry of Foreign Affairs but the payment of salaries to VP shall be under the exclusive jurisdiction of Bahagian Kewangan Jabatan Perdana Menteri and not the Ministry of Foreign Affairs.

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(e) What is most pertinent to point out is that nothing is disclosed in TSTT's letter dated 8th February 2019 and the Memorandum Jemaah Menteri dated 3rd May 2019 of TSTT's close friendship or associateship between VP and TSTT despite statements and/or comments in the Memorandum Jemaah Menteri dated 3rd May 2019 emphasising 'prosedur dan proses dalam pelantikan Pengarah AIAC perlulah telus dan bebas dari sebarang "*conflict of interest*".'

(f) on 8th May 2019 pursuant with the Memorandum Jemaah Menteri dated 3rd May 2019, the Jemaah Menteri approved the appointment of VP as the Director of AIAC.

vi. The appointment of VP as the Acting Director and subsequently the Director by TSTT can be seen from the following passages of TSTT's Book:

I told Ann to pass the message to Sundra Rajoo that under no circumstances could he remain as director after the poison letter, and his arrest. ***The AIAC's reputation would be damaged, and I had to act promptly to protect it.*** (page 393).

Thereafter, I telephoned the secretary general of the AALCO, Professor Dr Kennedy Gastorn. He was in Tanzania. I informed him of that day's developments, and of the urgency

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to appoint a director to ensure continuity in the AIAC's leadership. ***I proposed Vinayak Pradhan.*** *He was well-suited for the position, professional and of unimpeachable integrity and good standing in the arbitration world. Vinayak was the past president of the Chartered Institute of Arbitrators (UK), a member of the Permanent Court of Arbitrators in the Hague, a consultant at Skrine, and an arbitrator for decades. I informed Gastorn that I had not spoken to Vinayak, but was confident of securing his agreement. Gastorn agreed with my decision, He said he knew Vinayak, and agreed that he would be an ideal choice* (page 393-394);

Next, the most difficult aspect, to convince Vinayak to do national service. I had known Vinayak from our Victoria Institution days. He was my senior. He had been school captain and cricket captain. He read law at the University of Singapore. He was the doyen of the Arbitration Bar, having practiced there for some forty years. In fact, he was approached to be director in 2009, which he declined, Sundra Rajoo was only offered the post after Vinayak had turned it down. But Vinayak was at the height of his career, earning millions in the commercial bar. ***I had to make a few telephone calls to him that day. He finally agreed in the afternoon. All these actions were taken within eight hours. Soon after, I issued a Media Release on 20th November 2018,***

announcing his appointment as acting director of the AIAC. (page 394)

D. *Whether TSTT has wrongly disqualified Datuk V.K. Liew, the Minister in the Prime Minister's Office (Parliament and Law) from the functions under the Ministerial Functions Act 1969 - Perintah Menteri-Menteri Kerajaan Persekutuan* [P.U. (A) 132/2019]?

i. At page 393 TSTT said as follows:

> *I then telephoned Datuk V.K. Liew, the Minister in the Prime Minister Department (law) to inform him of Sundra Rajoo's arrest, the investigations and MACC intention to charge Sundra Rajoo.* ***I also conveyed to the Minister that I would act on my own on behalf of the government to take all necessary steps with regards to the next appointment of the AIAC's director, because the minister had been named in the poison letter. I advised the minister that he would therefore have a conflict of interests*** (page 393)

ii. The above passage proves that TSTT had unilaterally abused his legal advisory and prosecutorial powers in deciding as an investigator, prosecutor and judge in getting Datuk V.K. Liew, the Minister in the Prime Minister's Office (Parliament and Law) disqualified from the functions under the Ministerial Functions Act 1969. TSTT merely acted on a poison pen letter. Datuk V.K. Liew was

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not even charged, prosecuted and found guilty against any offence in the allegations made in the poison pen letter. TSTT has obviously acted against the cardinal rule of law that a person is innocent until found guilty. Most importantly, investigations against DSR were not even completed and DSR charged for any offence.

iii. In short, the STF is of the view that TSTT had acted unlawfully and contravened the Perintah Menteri-Menteri Kerajaan Persekutuan [P.U. (A) 132/2019].

5.4.5. Was There Any Conflict of Interest on the Part of TSTT in the Appointment of VP as the Acting Director and Subsequently the Director of AIAC?

i. Throughout the Book there is overwhelming evidence to show the close and cozy relationship between TSTT and VP. Their relationship started from their secondary schooling days. According to TSTT, *I had known Vinayak from our Victoria Institution days. He was my senior. He had been school captain and cricket captain.*[79]

ii. Based on what was written in the Book, it is admitted that VP and TSTT were good friends. Instances that show the close relationship between TSTT and VP may be seen from the following facts disclosed in the Book:

[79] See: page 394 of the Book

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(a) TSTT had known VP from Victoria Institution days;

(b) VP was the school captain in 1968 and both TSTT and VP had played cricket together;

(c) TSTT had telephoned VP to do chambering at Skrine & Co and VP had asked TSTT to write to VP's attention at Skrine;

(d) At the interview at Skrine & Co, VP took TSTT to see John Skrine and after the interview VP took TSTT to meet some of the partners at Skrine & Co;

(e) Later VP took TSTT for lunch at the Royal Selangor Club;

(f) Subsequently when TSTT was accepted as a chambering student VP advised and guided TSTT;

(g) VP had encouraged and facilitated TSTT to be acquainted with Deborah Barker, daughter of the Law Minister of Singapore E.W Barker;

(h) TSTT informed VP of his moving to Vancouver, Canada and as VP was his most supportive partner at Skrine & Co.; and

(9) After 2 years in Canada, TSTT telephoned VP to ask if he could return to Skrine & Co.

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iii. The STF has considered the following provisions in the Malaysian Anti-Corruption Act 2009 which are relevant to conflict of interest and abuse of power:

Bribery of officer of public body

21. *Any person who offers to an officer of any public body, or* *being an officer of any public body solicits or accepts, any gratification as an inducement or a reward for—*

the officer voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to the public body;

the officer performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;

the officer aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or

the officer showing or forbearing to show any favour or disfavour in his capacity as such officer, commits an offence, notwithstanding that the officer did not have the

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<u>power, right or opportunity so to do, show or forbear, or accepted the gratification without intending so to do, show or forbear, or did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the affairs of the public body</u>.

Offence of using office or position for gratification

23. *(1) Any officer of a public body* ***<u>who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.</u>***

(2) For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, <u>to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly</u>.

(3) For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a state shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eighth Schedule to the Federal Constitution or the equivalent

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provision in the constitution or Laws of the Constitution of that State.

iv. This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

v. The issue here is whether TSTT had used his office or position for gratification, in that he made a decision or took action on the appointment of VP in which he was interested in and had close relationship with. TSTT's direct involvement and orchestration in procuring the resignation of DSR and the appointment of VP clearly shows that these were sufficient circumstances for him to be regarded in law to have used his position/office/public position and power for the advantage of his close associate, VP. The close association between himself and VP only further proves that the immediate appointment of VP and the swift resignation of DSR were not free of conflict of interest in the decision-making process.

vi. The haste at which action was taken against DSR in terminating him as a Director of AIAC merely acting on a poison pen letter and appointing VP as the Acting Director of AIAC in place of DSR within 8 hours only gives rise to the irresistible inference that TSTT had ulterior motives in terminating the services of DSR and to reward VP as the Director of AIAC. There is clear abuse of powers and conflict of interest on the part of TSTT.

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5.4.6. Recommendations

i. Having considered the close association between TSTT and VP as TSTT himself has clearly disclosed in the Book, the STF is of the view that there is a very clear conflict of interest on the part of TSTT in appointing VP as the Acting Director and subsequently the Director of AIAC. In rewarding VP the position of the Director of AIAC, TSTT had disregarded the law, practice and procedures including pushing aside Datuk V.K. Liew, the Minister in the Prime Minister Department (Law) and **usurped the powers of the Minister** and more importantly contravened the Ministerial Functions Act 1969 - Perintah Menteri-Menteri Kerajaan Persekutuan [P.U. (A) 132/2019] as the function for the appointment and/or removal of the Director of AIAC rest with the Minister in the Prime Minister's Office (Parliament and Law) and not with the Minister of Foreign Affairs. The STF is of the view that TSTT had even misled the Minister of Foreign Affairs and subsequently the Jemaah Menteri in the appointment of VP as the Director of the AIAC in contravention of Perintah Menteri-Menteri Kerajaan Persekutuan [P.U. (A) 132/2019].

ii. Having analyzed the issues and the evidence before the STF, the STF realized that TSTT had abused the powers and conflict of interest simply because both the legal advisory powers and the prosecutorial powers are vested in him. The STF will not be surprised that TSTT had used his prosecutorial powers to threaten Datuk V.K. Liew and DSR of the criminal charges to enable him to terminate the services of DSR as the Director of AIAC in his overzealousness to appoint VP as the Director of AIAC.

iii. The STF is also of the opinion that TSTT had allowed the usage of the rampant abuse of his powers to achieve his end goals because he knew that armed with the prosecutorial powers no person can threaten to prosecute him on any of his decisions so long as he is the Attorney General and the Public Prosecutor.

iv. The STF accordingly call for the separation of powers of the Public Prosecutor and that of the Attorney General. The STF is fully mindful of the statement by Lord Acton, a British historian of the late nineteenth and early twentieth centuries, "Power tends to corrupt; absolute power corrupts absolutely." Accordingly, the STF propose that all criminal matters be handled by a newly created Director of Prosecution's Office that is independent from the Attorney General's Office.

4.6. ELECTION COMMISSIONERS TRIBUNALISED

Disclaimer

Dato' Shaharudin Ali dan Encik Balaguru A/L Karuppiah telah memaklumkan kepada PPK bahawa mereka telah terlibat sebagai peguambela dan peguamcara di dalam kes Tribunal terhadap Ahli-ahli Suruhanjaya Pilihan Raya (SPR). Tambahan, mereka telah mewakili Ahli-ahli SPR dalam Tribunal tersebut. Mereka telah melihat dan boleh mengesahkan dokumen-dokumen kes Tribunal tersebut sekiranya dirujuk dalam mesyuarat PPK.

Oleh itu, mereka tidak akan mengambil bahagian dalam perbincangan isu yang melibatkan kes Tribunal terhadap Ahli-ahli SPR.

i. In the Book, TSTT wrote that:

(a) *Bersih's campaign for free and fair elections targeted the EC's handling of general elections in 2008, 2013 and 2018. The massive fraudulent activities which marred all these elections were heavily documented. Bersih's repeated calls for reform of the EC fell on deaf ears, until the Pakatan Harapan administration was voted into office in May 2018.*[80]

(b) *In August, 2018, Bersih wrote to the incoming Prime Minister, Tun Dr Mahathir, highlighting the severity of misconduct surrounding GE14, with a request to look into allegations of widespread electoral misconduct and fraud directed and perpetuated from the top by members of EC. Bersih, which had closely monitored the entire conduct of GE14 listed ten areas of electoral misconduct by members of the EC prior to and during GE14.*

(i) *Unconstitutional and hasty redrawing of electoral boundaries through malapportionment and gerrymandering.*

80 See: page 383 of the Book

(ii) Failure to clean up electoral roll, failure to prevent phantom voters and manipulation of voter registration.

(iii) Setting GE14 polling day on a weekday mid-week, as an obstacle to inconvenience voters and discourage voter turnout.

(iv) Setting the bare minimum campaign period of eleven days, resulting in postal vote delays.

(v) Arbitrary additional conditions imposed on campaign material at the last minute.

(vi) Manipulation and prevention of meaningful international and local election observation.

(vii) Arbitrary disqualification and prevention of election candidates from being nominated.

(viii) Irregularities in the conduct of advance voting.

(ix) Irregularities on polling day, including problems with ballot papers, impersonation and phantom voters, difficulties in access to ballot stations, heads of polling stations refusing to issue Form 14 to confirm results counted, amongst others.

(x) *Failure to recommend or take action against election offences, including corruption, vote buying, treating and gifting, misuse of government resources, despite being in the position of caretaker government, making racial and religious remarks during campaigning, campaigning on election day, etc.*[81]

(c) *The Prime Minister forwarded Bersih's letter to me. I replied to Tun, advising that these were serious allegations, which could not be brushed aside. Tun was familiar with the shenanigans of the EC, and therefore had the background knowledge for the specific Bersih complaints. I advised Tun that a Tribunal should be established under Article 125(3) of the Federal Constitution. Details of the charges and the procedure were outlined in my letter to the Prime Minister. Tun agreed, and left the implementation to me.*[82]

(d) According to TSTT, because the case required "expertise in the law and practices of election", he appointed Datuk Mohd Yusuf bin Haji Zainal Abiden, former Solicitor General II, to lead the legal Team, assisted by M Puravalen, an experienced trial lawyer from the Bar" and an "election expert" named Lim Wei Jit. Other members of the legal team included two officers from the Chambers' Civil Division with his special officer, Ann Khong

[81] See: page 383 and 384 of the Book

[82] See: page 384 of the Book

acting as the coordinating officer. However, after agreeing to his appointment, Datuk Mohd Yusuf resigned without assigning any reason.

(e) With the assistance of the Solicitor General, TSTT managed to have the following retired Federal Court Judges agreeing to accept appointment to be members of the Tribunal established under Article 135. They are: Tan Sri Steve Shim Lip Kiong, Tan Sri Zaleha binti Zahari, Tan Sri Suriyadi bin Halim Omar, Tan Sri Jeffrey Tan Kok Wha and Datuk Prasad Sandoshan Abraham.

(f) In mid October, 2018, the newly appointed Chairman of EC, Datuk Azhar Azizan Harun issued a media release that 5 of the remaining EC Commissioners (the Chairman of the EC having resigned on 1st July 2018), had shortened their tenure of office, and would leave office by 1st January 2019. Their letters to shorten their term as Commissioners were dated 28th November 2018 to the Yang di-Pertuan Agong. The remaining Commissioner, Mr. K. Bala Singham intended to complete his term. The EC Chairman visited TSTT and asked whether TSTT still wished to proceed to remove them as they had agreed to leave by 1st January, 2019. TSTT replied in the affirmative, although the EC Chairman was content in letting them leave by their own volition. TSTT was not prepared to do so."

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(g) The Prime Minister advised the Yang di-Pertuan Agong on 29th November 2018, and His Majesty agreed, to the formation of the Tribunal on 5th December 2018, and the 5 retired Federal Court Judges were appointed members of the Tribunal which only convened on 28th January 2019, i.e after the remaining Commissioners ceased to hold office.

(h) At page 386 of his Book, TSTT wrote as follows:

I was fully cognisant of the position that the six EC members, through their lawyers, would take on the first morning of proceedings before the tribunal. They would argue that the matter had become moot or academic, because their resignations had taken effect. They were no longer in office, and therefore did not have to be removed. This was wholly predictable and foreseeable. Accordingly, the four members of the legal team visited my home the evening prior to the hearing before the tribunal. I gave my reasons as to why this was an overly simplistic representation of a complex matter. More significantly, I instructed Puravalen and the three lawyers the position they should take. Neither Puravalen nor any of the others questioned my decision. None stated that they did not understand my instructions or would refuse to carry them out. My plain and clear instructions were to Puravalen, as lead counsel

and spokesman, to submit that the tribunal should hear the complaints on their merits, regardless of the resignations.

During the tribunal's first meeting on 28th January 2019, our lead counsel, Puravalen, in response to the tribunal's question, "is this academic?" replied in the affirmative. This shocked the other three members of our team. The Tribunal adjourned to decide this preliminary issue. I was horrified when I heard Puravalen's response to the question posed by the tribunal. He had disobeyed my direct instructions. Lawyers act on the instructions of their clients. When express instructions are given by a client to a lawyer, the latter must carry them out. Unless, of course it is an illegal order. The only option open to a lawyer who is terribly uncomfortable with lawful instruction from his client is to resign. Puravalen, as a member of the Bar for some thirty-five years, was aware of this basic aspect of the lawyer/client relationship. I immediately terminated his services.

(i) Dissatisfied with the said response from Mr Puravalen, TSTT himself appeared before Tribunal and argues that:

(i) The Tribunal was established by the Yang di-Pertuan Agong under the Federal Constitution with 2 distinct mandates, namely to investigate the acts and omissions of

the EC Members for which that have been charged; and if satisfied to recommend to His Majesty the appropriate action to be taken against them including their removal from office.

(ii) their acts and omissions or misconduct "could not be immune from scrutiny simply because they had resigned;

(iii) there was a distinction between a removal from office and resignation, as "evident in the financial implications such as entitlements to pension and other benefits that would accure on the EC members on resignation, but may not be payable if they were removed" and

(iv) members of EC are appointed by the Yang di-Pertuan Agong to ensure public confidence in the democratic and constitutional framework of the country's electoral system. As such the EC members are not "insulate from accountability for acts that were contrary to their duties and functions as commissioners." TSTT argues that the establishment of the Tribunal was consented by His Majesty on 5th December 2018 after all 6 Commissioners' resignation was accepted. This showed that His Majesty "was satisfied that there was constitutional obligation to form this Tribunal to investigate the EC members' misconduct in office. A precedent must be set to serve as

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an example to future members of EC, and all others appointed to positions of trust in public office".

(j) The Tribunal by a majority of 3-2 decided that the proceedings were academic and an "exercise in futility". In delivering the majority view, Tan Sri Steve Shim, said:

"In the final analysis, the fundamental question is this: Is it in the public or national interest to spend so much time, energy and expense in going through the whole cumbersome and objective exercise merely to seek the removal of six officers when they have already removed themselves, whether voluntarily or otherwise, from the EC."

He ruled that the answer is obvious.' The Reports (majority and minority) are annexed hereto as **Appendix 15.**

(k) TSTT was obviously unhappy with the Tribunal's majority decision not to proceed with what the majority viewed as "an exercise in futility". He added: "Mishandling general elections for decades by successive Election Commissions had been the norm. A strong recommendation by the tribunal on the gravity of the thirteen charges, and a finding that the six members were guilty of all, or substantially all the charges, would serve as an excellent reminder to future Election Commissioners that they could be called to account for their actions and omissions. The majority washed their hands on purely technical and procedural

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grounds did not do justice to the letter or spirit of the constitutional accountability of the holders of important officers of state. It was a wasted opportunity."

4.6.1.Observation and Analysis

i. To begin with, it seems obvious that TSTT had a personal interest in the complaints made in Bersih's letter to the Prime Minister on the alleged misdeeds of the Election Commission. He wrote at page 193 of his Book:

"Free and fair elections have not been held in Malaysia for decades. Gerrymandering and voter manipulation have been the order of the day. Hence, Bersih's rallying cry that the GE13 and GE 14 should be conducted freely and fairly received the support of millions of Malaysians."

ii. At page 217 of his book TSTT wrote *Bersih organized rallies questioning the freeness and fairness of our electoral process. Thousands attended peacefully. I went to all the rallies.*

iii. Based on the above disclosure by TSTT about his personal views of the "freeness and fairness" of Elections which were conducted by the EC, and his attendance at Bersih's rallies is proof of his lack of impartiality, and his conflict of interests – his personal views that the electoral process was not free or fair to the extent that he personally took part in Bersih's rallies and his public duty as the AG to ensure justice is administered fairly and in

accordance with the law. In this case, as TSTT deems it is his duty to advise the Prime Minister on the seriousness of the charges against the 6 commissioners, he ought to have declared his personal interests in the complaints by Bersih so that the Prime Minister can decide whether in the interests of justice TSTT should remain involved in handling Bersih's complaints against the Election Commission or entrust the duties to the Solicitor General or some other qualified persons.

iv. To an impartial and reasonable person reading what has been written by TSTT in his book he was in pursuit of personal vendetta against the Commissioners rendering any process or proceedings initiated by him liable to be challenged under basic principles embodied in the rules of natural justice. Thus, even when the majority of ex Federal Court Judges ruled that the proceedings would be waste of time, energy and expense as the commissioners charged had left office on their own volition or otherwise, TSTT's comments on their decision shows that he regretted the commissioners were not punished for what he was convinced was their misconduct. TSTT had from the onset till finish had the preconceived view of the Commissioners' guilt which should have disqualified him from initiating the Tribunal proceedings.

v. That TSTT was adamant about pursuing with the formation of a Tribunal to hear charges of misconduct made by Bersih, was manifested by the fact that the then Minister in the Prime Minister's Department responsible for Law (being the Minister responsible for the EC), made a statement in Parliament on 23rd October 2018 that 4 of the Commissioners had agreed to

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vacate their office by 1st January 2019, and therefore, no Tribunal would be set up. Yet TSTT persisted in advising the Prime Minister that such a Tribunal be established. His stand contradicts that of the Minister whose portfolio covers the EC.

vi. TSTT in taking the position that the proceedings of the Tribunal were not academic notwithstanding the affected Commissioners had relinquished office by the time the proceedings started in late January 2019 was in direct contradiction with the position taken by him and his Chambers in ***Bar Council Malaysia v Tun Dato' Seri Ariffin Zakaria & Ors*** (2018) 10 CLJ 129 at page137. The issue in that case relates to the constitutional validity of the Appointment of Tun Raus Md Sharif and Tan Sri Zulkefli Ahmad Makinudin as Chief Justice and President of Court of Appeal respectively. They relinquished their respective positions before the hearing of the case in the Federal Court which took place after TSTT was appointed AG. The Federal Court in its Judgment said:

> *[20] However, senior federal counsel Suzana Atan of the Attorney-General's Chambers (AGC) argued that there is no necessity for the Federal Court to deliver a judgment, since the 2nd and 3rd Respondents have both relinquished their positions.*

The Federal Court then added:

> *[63] We agree with the Attorney General's Chambers that the issues in the motion were academic and that the judgment need*

not be issued by this court. We reiterate the view that it is not the function of this court to decide on hypothetical questions which do not impact the parties before them.

The Federal Court reasoned:

Shorn of legal rhetoric, the fundamental purpose of the application was to ensure that the second and third respondents whose appointments have been alleged to be unconstitutional was to be removed from the position, or for them to vacate their position.

vii. It is to be pointed out that under Article 114(3) of the Federal Constitution "shall not be removed from office except on the like grounds and in the like manner as a Judge of the Federal Court. Under Article 125(3) a Tribunal would be appointed where a Judge of the federal Court is to be removed for any of the grounds stated therein. If the punishment for the misconduct, such as breach of code of ethics, but the Judge does not, in the view of the Chief Justice, warrant a dismissal, the matter would be referred under Article 125(3A) by the Chief Justice to "a body constituted under federal law to deal with such breach". Therefore, where a Tribunal is appointed by the Yang di-Pertuan Agong under Article 125(3) read with Article 114(3) in relation to EC Commissioners, it is because the actions or omissions or conduct of the Commissioners warrant their dismissal or removal from office. Once they ceased to hold office, the purpose of setting up a Tribunal to have them removed is no longer justified or necessary.

Accordingly, the proceedings before the Tribunal becomes academic or an exercise in futility for reasons given by the Federal Court in the *Bar Council case* (supra).

viii. In arguing that the Tribunal should continue with its proceedings though the Commissioners accused of wrongdoing had ceased to hold office, TSTT ought to have drawn the Tribunal's decision of the Federal Court *in the Bar Council case* (supra) and he should respect that decision and accepted the fact that the proceedings before the Tribunal had become academic and to continue with the proceedings would be a waste of time, energy and public funds.

ix. If the resignation of persons holding high judicial offices rendered the challenge to their appointments academic and the apex court not willing to enquire into the alleged illegality of their appointments, TSTT's position at the Tribunal that the relinquishment by the Commissioners concerned of their office, does not render the proceedings before the Tribunal academic or an exercise in futility, was highly untenable and testify to the fact that he wanted to pursue the case against the Commissioners at any costs.

x. All the above facts are a clear manifestation of abuse of powers in the pursuit of TSTT's personal grievances against the EC and its commissioners and in support of Bersih's allegations of misconduct and lack of fairness in the conduct of elections in Malaysia.

xi. There is further evidence in the inconsistency of TSTT's decision on this matter. The Chairman of EC Tan Sri Hashim Abdullah resigned on 1st July 2018. He was appointed Chairman 24th January 2016 and was head of the EC during GE 14 where the misconduct were allegedly committed by the EC. Yet, he was never charged for misconduct. If, according to TT, EC commissioners should be "tribunalised" even after they had left office, why wasn't the Chairman himself also likewise "tribunalised"? Is this not an example of selective prosecution?

xii. In regard to the action taken by TSTT when he was the Attorney General, against the EC Commissioners, he had pursue it with vigour evidently because they were complaints made against them by Bersih and he supported Bersih's complaints against the EC because in his view Elections in this country had neither been free nor fair. The decision he made on the 13 charges to be framed the Commissioners, to advise the Prime Minister on the settling up of the Tribunal and his stand that the proceedings before the Tribunal were not academic are quite clearly tainted with bias or lack impartiality and have the hallmarks of abuse of powers.

xiii. Although he has resigned from office and disciplinary action may not be taken against him by the Government, but the Government may be exposed to being sued by the affected Commissioners on the grounds that there was misfeasance in public office committed by TSTT as in the Datuk Sundra Rajoo case.

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4.6.2. Recommendation

i. The STF is of the view that TSTT should have declared his personal interest and involvement in BERSIH's activities and campaigns to the Prime Minister when he was asked by the Prime Minister to study the letter from BERSIH which lead to the appointment of the Tribunal to investigate into the charges made against the EC Commissioners by BERSIH. TSTT should not have been involved in any decision whether any actions should be taken against the EC Commissioners as he has already prejudged them by stating that there was no free and fair election in Malaysia conducted by them.

ii. Although he is no longer the Attorney General, and disciplinary actions cannot be taken against him as he is no longer in public service, it should be recorded that his action in relation to the episode on the formation of the Tribunal and his decision to continue with the proceeding in the Tribunal, notwithstanding the Commissioners having vacated their office before the Tribunal began hearing their case, was improper and unethical and seen to be in pursuit of a personal agenda.

4.7. PROFESSIONAL NEGLIGENCE IN HANDLING BOONSOM BOONYANIT (BB) SETTLEMENT

i. In his Book, Tan Sri Tommy Thomas (TSTT) wrote on his Book in the settlement of the claims by the Estate of Boonsom Boonyanit ("BB") under the Agreement for the Promotion and Protection of Investments in ASEAN 1987 ("the ASEAN Agreement") for alleged loss of landed property acquired

or inherited in 1967 by BB due to a decision of the Federal Court in the case of Adorna Properties Sdn Bhd v Boonsom Boonyanit (2001) 2CLJ 133.This case was subsequently overruled by another panel of the Federal Court in Tan Ying Hong v Tan Sian Sian & Ors (2010) 2 CLJ 269.

ii. In his Book at pages 419 and 420, TSTT wrote, inter alia, as follows:

(a) *Boonsom Boonyanit had owned substantial lands in Penang **in the 1960s**. She was the victim of a fraudulent scheme perpetrated in the late 1980s by a woman who effectively stole her name, professed to be a Thai national, and purported to act as the owner of Boonyanit's land. The fraudster sold the land to a third party, Adorna Properties Sdn Bhd, by forging Boonyanit's signature on documents transferring the land to Adorna. The purchase agreement was signed in 1988, and the lands were transferred to Adorna in 1989.*

Once the real Boonyanit uncovered the fraudulent transfer of her property, she challenged the sale and the registration of title that followed it in the Malaysian courts. It was not disputed that her signature had been forged. Boonyanit pursued the Malaysian litigation, culminating in the decision of the Federal Court, which held that Adorna had acquired title to the properties, despite the fraudulent transfer.

Boonyanit died in 2000. Her estate claimed that the Federal Court decision contravened the operation of Malaysia's Torren's system and the country's Land Code, and it reversed settled law in Malaysia. The estate asked the Federal Court to reconsider its decision in a revision application. It refused, leaving Adorna to develop the property "to a significant profit".[83]

(b) *In 1987, the ASEAN countries had executed the ASEAN Agreement for the Promotion and Protection of Investments. It is in the nature of an Investment Treaty: in this case, multi-lateral. A Thai citizen who invested in property in Malaysia which had been misappropriated from the investor/owner and did not receive justice from the courts of Malaysia, is deemed an 'investor' within the meaning of the 1987 ASEAN Agreement. Boonsom thereby was clothed with the necessary legal standing to bring a claim against Malaysia.*

Her estate issued a notice of dispute to the Malaysian Government in July 2017. My predecessor's advice to the previous administration, that negotiations should be held to settle the claim, was accepted by the cabinet. Negotiations had begun, and were pending when I took office. I continued the policy of the previous AG. Negotiations pressed ahead. When I was satisfied that the estate of Boonsom, through its Malaysian counsel,

[83] See: page 419 of the Book

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Mohan Kanagasabai, had reduced its originally high claim to a reasonable one, I advised the Prime Minister that we should settle. The Prime Minister tabled the matter at the cabinet, which accepted my opinion. Because of confidential obligations, the sum paid by Malaysia to the estate cannot be disclosed. The matter was amicably settled within a few months of my taking office.

If an amicable settlement had not been reached, Malaysia would have had to defend the indefensible before an international panel of arbitrators.[84]

4.7.1. Other Facts Uncovered

i. The STF had, on inspection of documents at the Attorney-General's Chambers revealed that upon settlement of the case, a Deed of Settlement was executed between the Malaysian Government and the Estate of BB;

ii. The Deed of Settlement was signed by TSTT on behalf of the Malaysian Government; and

iii. Attached to the Deed of Settlement was a Letter of Administration issued by a Court in Bangkok.

84 See: page 420 of the Book

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4.7.2. Observations and Analysis

i. From the above passages from the Book and the additional facts uncovered by the STF, the followings questions need to be examined and have been considered by STF:

(a) Whether the landed property acquired by BB in Penang in the 1960s comes within the "protection" or ambit of the ASEAN Agreement?

(b) If yes.

(i) Whether the person making the claim on behalf of the Estate of BB has the legal capacity to do so on the basis of the Letters of Administration issued by Court in Bangkok;

(ii) Whether TSTT as attorney general was or had been authorized to sign the Deed of Settlement having regard to section 3 of the Government Contracts Act?

(c) If there was no settlement would Malaysia be "defending the indefensible" that is, Malaysia has no defence at all?

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4.7.3. Is the Landed Property Acquired in the 1960s Protected under the ASEAN Agreement?

i. In considering this issue the following findings of facts by the Penang High Court in ***Boonsom Banyanit v Adorna Properties Sdn Bhd* (1995) 4 CLJ 45** are not disputed by BB before the Court of Appeal or Federal Court:

(a) The Landed Properties known as Lots 3606 and 3607 Mukim 18, Tanjung Bungah, Penang were acquired by her and she was registered as proprietor of the land at the Penang Land Registry on **18th January 1967.**

(b) At the time of acquisition, she was a Thai national.

(c) In or around 1989, a person holding a Thai passport no. 033852, bearing the name of Mrs Boonsoom Boonayit fraudulently transferred her said land to Adorna Properties Sdn Bhd who claimed to have acquired the land as a "bona fide" purchaser.

(d) She was unable to recover the said landed property because the Federal Court ultimately ruled that Adorna Properties Sdn. Bhd. had acquired good title to the land;

(e) The person who fraudulently transferred her land away was never found or traced. So, she has no legal recourse against the fraudster or the "bona fide" purchaser.

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(f) BB passed away in 2000, and a claim was made by her Estate against the Government of Malaysia under Letters of Administration issued by a Court in Bangkok. The claim was initiated in July 2017 vide a letter from a firm of solicitor in London.

ii. On the basis of the above undisputed facts, the 2 parcels of land were acquired in January 1967 and the reported Judgement of the Penang High Court did not show that before or subsequent to the ASEAN Agreement coming into force in 1987, that the "investment" in the land by BB was ever "specifically approved in writing and registered by the host country" (Malaysia).

iii. Article II Clause 3 of the ASEAN Agreement reads:

> ***This Agreement shall ALSO apply to investments made PRIOR to its entry into force <u>PROVIDED THAT SUCH INVESTMENTS ARE SPECIFICALLY APPROVED IN WRITING AND REGISTERED BY THE HOST COUNTRY and upon such conditions as it deems fit for the purpose of the Agreement subsequent to its entry into force.</u>*** *(Emphasis added).*

iv. Therefore, on the basis of the findings of the High Court in Penang, this is a pre–ASEAN Agreement "investment" not approved and registered

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by Malaysia "for the purpose of the Agreement" and as such not within the ambit of the ASEAN Agreement. Accordingly, no claim made under the ASEAN Agreement by BB or after her demise, by or in the name of her Estate should have been entertained at all.

4.7.4. Had The Person Holding Purportedly a Letter of Administration Issued By a Court in Bangkok the Legal Capacity to make the Claim under the ASEAN Agreement Against the Malaysian Government?

i. The Letter of Administration was annexed to the Deed of Settlement. It was issued by a Court in Bangkok.

ii. Under Part IV of the Malaysian Probate and Administration Act,1959 the Court in this country can only re-seal a Grant of Probate issued by a Court in a Commonwealth Country. Thailand is not a Commonwealth Country. So, Letters of Administration issued in Thailand cannot be re-sealed by the Courts in Malaysia which do not therefore recognise such Letters of Administration.

iii. So the Letters of Administration issued by the Bangkok Court which cannot be re-sealed in Malaysia, does not cloth the holder of the Thai Letters of Administration with a legal capacity to administer BB's Estate in Malaysia and/or make a claim on the Estate's behalf against the Government of Malaysia.

iv. BB died in Thailand and was a Thai citizen. Under O.71 rule 25 of the Rules of Court 2012, there ought to be an application made to the Registrar of the High Court by a person entrusted with administration of BB's Estate by the court in the country of her *domicle* (Thailand) at the time of her demise. Until the Registrar issued a Letter of Administration for the Estate of BB in Malaysia, no person is clothed with legal authority to handle the affairs of her Estate in Malaysia, including taking action to recover damages for loss of property.

v. Accordingly, the Letters of Administration issued in Thailand ought not to have been used by the holder thereof to sign the Deed of Settlement. That person has no legal capacity to do so in Malaysia. The AGC has no legal authority to waive the legal requirement that the Letter of Administration must be issued by Malaysian Court to enable the holder of the Letter of Administration to deal with the affairs of the Estate of BB.

4.7.5.Whether TSTT as AG Has the Legal Authority to Sign the Deed of Settlement?

i. The Deed of Settlement is clearly in the nature of an agreement or contract between the Estate of BB and Malaysian Government to settle the Estate's claim in consideration of the Malaysian Government paying the agreed sum.

ii. As a government contract, the signing of the Deed of Settlement must comply with section 3 of the Government Contracts Act, 1949 which reads:

> ***All** contracts made in Malaysia on behalf of the Government **shall if reduced in writing,** be made in the name of the Government of Malaysia and may be signed by **the Minister or any public officer authorized in writing by the Minister,** either specifically or in a particular case, or generally for all contracts below a certain value in his department or otherwise specified in the authorization.*

iii. The AGC has not shown STF any authorization in writing issued under the said Act for TSTT, as Attorney General (a public officer), to sign the deed of settlement.

iv. Further, the STF has also not been made aware of any such written authorization issued by a Minister (including the Prime Minister) for TSTT to sign the Deed of Settlement. Significantly TSTT did not mention in the Book that there was such written authorization for him to sign the Deed of Settlement.

4.7.6. Did Malaysia Have Defence if there is no Settlement

i. TSTT argued in his Book that if there was no settlement Malaysia would be "defending the indefensible".

ii. In the light of the matters stated above, it is crystal clear that the claim by BB does not come within the ambit of the ASEAN Agreement. This defence is clearly and strongly defensible and ought to succeed on the basis of the undisputed facts that the land was acquired pre–ASEAN Agreement and not specially approved and registered by Malaysia as the host country for the purpose of the ASEAN Agreement.

iii. Additionally, the fraud perpetuated against BB was done by a person holding a THAI passport and could be a Thai national. The alleged loss was not actually caused by a national of the host country. Therefore, why should Malaysia be liable for the unlawful act committed by a Thai national against another in Malaysia?

4.7.7. Recommendation

i. The STF concluded that there were strong elements of negligence by TSTT in the handling of this case. His decision did not take into account that Malaysia has a strong arguable case for the reasons stated in the paragraphs above.

ii. His decision was based on his wrong assumption that Malaysia had an "indefensible defence" and probably the **fact that the local solicitor for BB's Estate was the husband of his ex-partner in his law firm.**

iii. The Government may consider whether it should pursue appropriate remedy under the tort of negligence against TSTT.

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4.8. WHETHER APPOINTMENT OF EXTERNAL LAWYERS BY THE AUTHOR FOR VARIOUS WORK ASSIGNMENTS WERE REGULAR AND IN ACCORDANCE WITH LAW

i. The STF observed that TSTT has mentioned in the Book the appointment of external lawyers to represent the government during his tenure as the Attorney General. This situation has not happened in the history of the Civil Service, where so many external lawyers were appointed as the AG to advise on legal matters and/or to represent the government in cases. The external lawyers appointed by TSTT and mentioned in his book are as follows:

(1) Sitpah Selvaratnam

(2) Mohanadass Kanagasabai

(3) Toby Landau QC

(4) Luke Parson QC

(5) Tan, Rajah & Cheah – law firm based in Singapore

(6) Kendall Brill & Kelly, a law firm based in Los Angeles

(7) Ong Chee Kwan from Joseph & Partners

(8) Jeremy Joseph from Joseph & Partners

(9) Raj Navaratnam

(10) Lim Cheng Bock

(11) Gurdial Nijar

(12) G. Ragumaren

(13) D.P Naban of Lee Hishammudin Allen & Gledhill

(14) Dato' Yeo Yang Poh

(15) Dhinesh Baskaran

(16) Cheng Mai

(17) Fahri Azzat

(18) M. Puravalen

(19) Datuk Mohd Yusof bin Haji Zainal Abiden

(20) Dr Cyrus Das

(21) Zainur Zakaria

(22) Yoong Sin Min from Shook Lin & Bok

(23) Eversheds LLP

ii. The STF, had reviewed the procedures in appointing external lawyers to manage various cases for the government of Malaysia.

4.8.1 Observation and Analysis

i. In 2010 the Public Services Department issued a circular - *Pekeliling Perkhidmatan Bilangan 6 Tahun 2010 - Penetapan Ketua Perkhidmatan Bagi Skim Perkhidmatan Yang Sedang Berkuat Kuasa Dalam Perkhidmatan Awam Persekutuan.*

ii. This circular clearly outlines the function of the Head of Service for all scheme of services in the Federal government which includes the Attorney General as a Head of Service for the Legal Service, legal officers and Legal Assistants) (Appendix B of the Circular)[85].

[85] See: Appendix 16

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iii. The Attorney General is responsible to undertake the following four (4) main functions as a Head of the Attorney General's Chambers:

(a) planning and managing the human resources including manpower planning, staffing and improving the scheme of service;

(b) handling personnel and service matters;

(c) planning and implementing training plans; and

(d) planning and implementing career development programmes.

iv. The appointment of external lawyers by TSTT is not in accordance with the government procedure that a Head of Service of the Legal Services need adhere to. The external lawyers were appointed to advise / represent the government in high profile cases which allows them access to highly confidential documents and information.

v. The position of an Attorney General is an elite position amongst the Head of Service in the Civil Service. The functions and powers of an Attorney General is stipulated in Article 145 of the Federal Constitution. It is expected that even after the end of an Attorney General's tenure, he would maintain certain standards of ethics and decorum as a former Attorney General. As such, a memoir of this kind written by a former Attorney General mostly containing information without justification and evidence is inappropriate.

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vi. The writing of this memoir may be considered highly contentious, sensitive and inappropriate coming from a former Attorney General. The example of a sensitive quote is as follows:

> *I realised that lawyers from the AG's Chambers acting for the government did not have the same commitment, passion and drive to succeed as their counterparts in the Bar.*[86]

vii. The allegations by TSTT in his book where he was highly critical on the competence and ability of the Legal Officers in his Scheme of Service who are directly under his responsibility, shows his own weakness in improving the competence and ability of these officers.

viii. TSTT, as a Head of the Legal Service ought to suggest how this shortcoming can be overcome at the same time improve the knowledge, skills and ability of Legal Officers for better career prospects. A good leader would be a source of inspiration and motivation to his subordinates to further develop themselves in their respective fields of interest.

ix. TSTT had side-lined his Legal Officers by saying they are incompetent and inexperienced and as a result appointed external lawyers whom he considered top notch to advice / represent the government in many high profile cases has been seen as demoralizing and demotivating his own Legal Service.

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[86] See: page 236 of the Book

4.8.2 Recommendation

i. The STF is of the view that the powers conferred on the Attorney General/Public Prosecutor to appoint lawyers to act for the Government or to prosecute offences should be regulated by guidelines to ensure transparency, integrity and elimination of conflict of interest. The STF proposes that the appointment of lawyers in civil and criminal cases should be made by the AG at the request of the Head of the Division handling such cases because the need for having expertise from outside the AGC should be determined by the Head of the Division. The choice of external lawyers to be appointed should be made with consultation of the Head of the Division to ensure that the lawyers so appointed can work effectively with the legal officers in that Division having responsibility over such cases. In this way there would be transfer of knowledge, expertise and skill from the external lawyers to the relevant officers in the AGC.

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CHAPTER 5

SEDITIOUS STATEMENTS

5.1. SEDITIOUS ALLEGATIONS

i. 25 police reports have been made related to section 4(1) Seditious Act 1948 by political parties, NGOs and individuals pertaining to the following allegations in the Book:

> *So why did **hundreds of Malay youths brandishing parangs, krises and knives turn on their fellow citizens, the Chinese, and to a lesser extent, the Indians, on the evening of Tuesday, May 13th 1969?** The evidence points to a coup by Tun Razak, the Deputy Prime Minister and UMNO's Deputy President. Although Tun Razak had served as a deputy to Tunku for some twelve years after Merdeka, he was anxious to take-over.*[87]

> *Harun Idris was **quickly and quietly re-appointed** Menteri Besar of Selangor, although he did not have the support of majority of the members of the Selangor State Legislative Assembly. That did not matter, and the opposition did not dare*

[87] See: page 28 of the Book

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to nominate any rival candidate. ***Harun had a motive and benefitted from the riots.***[88]

ii. Having considered the allegations the STF is *prima facie* of the view that the allegations may have seditious tendencies of incitement that is to promote feelings of ill-will and hostility between different races of the population of Malaysia. The STF propose that these allegations be investigated diligently by the police.

iii. The above statements may give rise to offences under the following provisions:

(1) Section 4 of the Seditious Act 1948;

(2) Section 8A of the Printing Presses and Publications Act 1984; and

(3) Section 124I of the Penal Code.

5.2. POLICE REPORTS

i. A total of 244 police reports were made against TSTT[89] upon the release of the Book. Judicial and Legal Service Officers' Association (JALSOA), an association of the legal and judicial officers that rarely makes

88 See: page 29 of the Book

89 See: Appendix 1 on Report of Consultative Discussion with PDRM

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press statements had also swiftly issued a Media Release[90] which carried the following statement:

> *"It is improper for Tan Sri Tommy Thomas to question the ability, capability and capacity of Legal Officers who were under his supervision in the short period of time, let alone to ridicule specific Legal Officers by name in his book."*

ii. A team of police officers led by Supt. Junainah who are involved in the investigation into the police reports made against TSTT pertaining to the Book appeared before the STF on 26th January 2022. They explained as follows:

a) Copies of the Book were first put on sale in the MPH and Popular bookstores on 30th January 2022;

b) The first Police Report against TSTT in relation to the Book was made by Dato' Mohamad Hanafiah Bin Zakaria, the former Solicitor General, AGC on 2nd February 2022. He alleged that he had been criminally defamed by TSTT in his Book;

c) A total of 244 police reports were made against TSTT throughout Malaysia except in the state of Sarawak by the following categories of persons:

(i) Individuals - 51 reports;

(ii) NGO's - 11 reports;

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90 See: Appendix 7

(iii) Political parties/members - 141 reports;

(iv) Lawyers - 8 reports;

(v) Government officers - 29 reports;

d) A police report was also lodged on 26th February 2022 by SAC Ahmad Dzaffir Bin Mohd Yussof alleging *sub judice* in relation to some of the ongoing cases in court;

e) Four Investigation Papers (IPs) were opened against TSTT as follows:

(i) One IP was opened for investigations under section 4(1) of the Sedition Act for incitement in relation to the police reports made by the Secretary General of UMNO, Datuk Seri Haji Ahmad Bin Maslan and 25 others;

(ii) One IP was opened for investigations under section 500 of the Penal Code for criminal defamation in relation to the police report made by Dato' Mohamad Hanafiah Bin Zakaria, the former Solicitor General, AGC;

(iii) One IP was opened for investigations under section 500 of the Penal Code for criminal defamation in relation to the police report made by Tan Sri Mohamed Apandi bin Ali, the former Attorney General of Malaysia;

(iv) One IP was opened for investigations under section 8 of the Official Secrets Act 1972 and s. 203A of the Penal Code for the police reports made by Tan Sri Mohamed

Apandi bin Ali, the former Attorney General of Malaysia and 217 others.

f) According to the investigation team the IPs have been referred to the Public Prosecutor's office on 6th October 2021 and the DPP's office has instructed the police to carry out further investigations and to resubmit the IPs upon completion of their investigations.

5.3. POSSIBLE OFFENCES

i. The relevant provisions of the law on seditious statements under the Sedition Act 1948 are as follows:

Seditious tendency

3. (1) A "seditious tendency" is a tendency—

(a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

(b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

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(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

(d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;

(e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia; or

(f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.

(2) Notwithstanding anything in subsection (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency—

(a) to show that any Ruler has been misled or mistaken in any of his measures;

(b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph

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(1) *(f)* otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

(c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)*(f)*—

(i) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will and enmity between different races or classes of the population of the Federation,

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.

(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious

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words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

Offences

4. (1) Any person who—

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) imports any seditious publication,

shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial

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shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

ii. Section 3(1) provides that to render the words uttered as having a seditious tendency it is sufficient if the words impugned have a tendency—

(1) to raise discontent or disaffection amongst the inhabitants of Malaysia;

(2) a tendency to promote feelings of ill-will and hostility between the different races in Malaysia; or

(3) a tendency to question any matter, right, status or position established or protected by the provision of Article 152 of the Federal Constitution.

iii. In ***Public Prosecutor v Ooi Kee Saik & Ors*** [1971] 2 MLJ 108 at 111, Raja Azlan Shah J (as he then was) has this to say on the matter—

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In my view what the prosecution have to prove and all that the prosecution have to prove is that the words complained of, or words equivalent in substance to those words, were spoken by accused No. 1 at the dinner party. Once that is proved the accused will be conclusively presumed to have intended the natural consequences of his verbal acts, and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in section 3(1) of the Act. It is immaterial whether or not the words complained of could have the effect of producing or did in fact produce any of the consequences enumerated in the section. It is also immaterial whether the impugned words were true or false. (See Queen Empress v Ambra Prasad). And it is not open to the accused to say that he did not intend his words to bear the meaning which they naturally bear (See Maniben v Emperor).

iv. As regards the responsibility of deciding whether the words are seditious, Raja Azlan Shah J said this at page 112—

"A line must therefore be drawn between the right to freedom of speech and sedition. In this country the court draws the line. The question arises: where is the line to be drawn; when does free political criticism end and sedition begin? In my view, the right to free speech ceases at the point where it comes within the mischief of section 3 of the Sedition Act. The dividing line between lawful criticism of Government and sedition is this —

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if upon reading the impugned speech as a whole the court finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe. But if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of paragraph (a) of section 3(1) of the Act. In other context the word 'disaffection' might have a different meaning, but in the context of the Sedition Act it means more than political criticism; it means the absence of affection, disloyalty, enmity and hostility.

… it is for the court to decide and, as such, the question of corroboration does not arise. In my view, section 6(1) of the Sedition Act which provides that no person shall be convicted of an offence under section 4 on the uncorroborated testimony of one witness, refers to the actus reus. Thus, in the present case, the fact that the Accused made the impugned speech must be corroborated, but no corroboration is required on the mens rea, since the intention of the Accused is immaterial by virtue of subsection 3(3) of the Act. Thus, it is immaterial whether the Accused's intention or motive was honourable or evil when making the speech."

If the natural consequences of the impugned speech is apt to produce conflict and discord amongst the people or to create

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race hatred, the speech transgresses paragraphs (d) and (e) of section 3(1). Again paragraph (f) of section 3(1) comes into play if the impugned speech has reference to question any of the four sensitive issues — citizenship, national language, special rights of the Malays and the sovereignty of the Rulers".

v. The relevant offences under the Penal Code are as follows:

(i) **Activity detrimental to parliamentary democracy**

124B. Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years

(ii) **Printing, sale, etc., of documents and publication**

124D. Whoever, by any means, directly or indirectly, prints, publicises, sells, issues, circulates or reproduces any document or publication detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to fifteen years.

(iii) **Dissemination of false reports**

S. 124I. Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by any other means including electronic means spreads false reports or **makes false statements likely to cause public alarm**, shall be punished with imprisonment for a term which may extend to five years.

vi. The relevant offences under the Printing Presses and Publications Act 1984 are as follows:

Offence to publish false news

8A. (1) Where in any publication there is **maliciously published any false news**, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

(2) For the purposes of this section, malice shall be presumed in default of evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.

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(3) No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

5.4. RECOMMENDATIONS

i. It is recommended that the police investigate TSTT for offences of inciting and publishing seditious statements under the sections 3 and 4(1) of Sedition Act 1948, section 8A of the Printing Presses and Publications Act 1984 and section 124I of the Penal Code. The mere fact that the Secretary General of UMNO, Datuk Seri Haji Ahmad Bin Maslan and 25 political parties and others have come forward to make police reports is *prima facie* proof that the statements made by TSTT has a tendency of not only to promote feelings of ill-will and hostility between the different races in Malaysia but also has the tendency of stirring up hatred, contempt or disaffection against the Government.

ii. Alternatively, it is recommended that TSTT be investigated for writing in the Book false statements that are likely to cause public alarm, an offence under section 124I of the Penal Code or for maliciously publishing false news, an offence under section 8A(1) of the Printing Presses and Publications Act 1984.

iii. The STF realised that TSTT had allowed the rampant abuse of his powers even after his term in office of the AG to achieve his end goals and

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by producing the Book because he knew that he was armed with the prosecutorial powers and no person can threaten to prosecute him on any of his decisions. Accordingly, the STF recommends that the legal advisory powers and the prosecutorial powers be vested in two separate legal entities in order to avoid any abuse of such powers in the future.

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CHAPTER 6

SUMMARY OF OBSERVATION

6.1. TSTT was a member of the Malaysian Bar, having been in private legal practice for over 40 years before his appointment as Attorney General of Malaysia on 6th June 2018. Upon his appointment, he decided to record his "experience in office" in a narrative form. In a Preface to his Book, TSTT wrote:

> *"In the days leading to the announcement of my appointment as Attorney General I decided that I would maintain a diary of my time in office for publication. Soon after taking office that option was ruled out as it would be piecemeal and disjointed.* ***It would not serve as narrative.*** *Nonetheless, throughout the twenty months that I served as the chief legal advisor to the Prime Minister and his administration I was alerted to the possibility of* ***ultimately recording my experience.*** *The decision was made by me when the Covid-19 lockdown took effect on 18 March, 2020. Being "imprisoned" at home for some six weeks propelled me to put pen to paper* ***to narrate my experience in office."***[91]

6.2. Thus, it is not surprising that his Book is about himself, his practice as a lawyer, his involvement in the Bar Council, his involvement in activities relating to what he described as free and fair elections in Malaysia, his views

[91] The Book was writing after TSTT left office but the idea or intention of writing his narrative was conceived upon him taking office.

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and assessment on the Judiciary and the Senior Judges, the cases he handled whilst holding the office of AG for the Government including the settlement of some of these cases like the claim by Boonsom Boonyanit and the sale of the vessel, Equanimity to the Genting Group, how he exercised his constitutional powers of prosecution and in the appointment of lawyers both from the local Bar and overseas to handle or advise on Government related cases, and his involvement in demanding the resignation of the Director of the Asian International Arbitration Centre (AIAC) and the selection and appointment of a new Director, and the setting up of a Tribunal to remove the members of the Election Commission.

6.3. What was written in the Book attracted public interest and concern, resulting in 244 reports been lodged with the Police against him and/or the contents of the Book. This Report is not influenced by these Police reports although the STF would be making recommendations for investigations into potential offences that may, according to what is disclosed in the Book, have been committed by TSTT when he was serving as Attorney General.

6.4. What TSTT wrote had been thoroughly scrutinized, investigated, and evaluated by the STF. Pursuant thereto, the STF made various findings, observations and analysis and after careful examination of the 19 allegations which have been listed in the earlier sections of this Report, the STF has come to the following conclusions:

(1) that TSTT had involved himself in the appointment of senior members of the superior courts whereas under the Federal

Constitution and the Judicial Appointments Act, 2019 (JAC 2019), there is no role for an Attorney General (who appears in Court like his other legal officers and members of the Bar) to play in the appointment of Judges to the superior courts. In the circumstances, the active involvement of the Attorney General in the judicial appointments could create a perception of the close affinity between the AG and his officers with the Judiciary, a situation which he himself expressed concern in his Book;

(2) that he attempted to have 3 members of the Bar, selected by himself, for direct appointment to the Court of Appeal, on the pretext that Court's "weakness" was the lack of Judges with 'commercial experience' (see page 344 of the Book) – a view not shared by the Bar Council and the present Attorney General.

(3) TSTT revived stale allegations of "forum shopping" to tarnish the image of the Judiciary, which could erode public confidence in our judicial system, even though he must have known from his experience in the Bar before his appointment, that the current electronic filing system, as explained by the Chief Registrar of the Federal Court (who came to assist the STF in its deliberations), the assignment of Judges and Courts to hear cases would be done under this electronic filing system. No mention was made in his Book about the current electronic filing system, thus giving an impression to a reader of his Book that the unhealthy practice of so-called "judge shopping" is still prevalent;

(4) there had been unauthorized disclosures of government information and official secrets including the publication in his Book of such information obtained whilst holding office as AG, without the requisite authorization, and an investigation ought to be carried into the infringement of various laws and Government regulations by TSTT in the publication of such information and official secrets;

(5) there had been instances of abuse of authority, as highlighted in this Report, particularly in the exercise of statutory powers[92] to appoint external lawyers (many of those appointed were close friends or former partners of his such as Sitpah Selvaratnam and her husband) to represent the Government in cases or disputes with third parties or to prosecute offences. His purported justification was that there was lack of experience amongst his officers in the AGC to handle certain matters which he deemed complicated. But, there was also lack of **transparency and integrity** in the manner in which the external lawyers were selected or appointed and his discharge of the lawyers (in Brussels) appointed by the Ministry of Primary Industry for Malaysia's challenge against the EU's discriminatory laws on Palm Oil, was **arbitrary** and upon the **untenable pretext** that foreign lawyers are more expensive than local lawyers who would

[92] Section 24(3) of Government Proceedings Act and section 376(3) and 379 of the Criminal Procedure Code.

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"loyally serve the national interest[93]" – he himself subsequently appointed a foreign lawyer, Toby Landau QC and another junior barrister, for this Malaysian EU Palm Oil dispute to be taken up to the WTO;

(6) additionally, there had been non-compliance with Government Regulations and Circulars governing the procurement of services of external lawyers and in the settlement of cases relating to the sale of the Equanimity and the claim by the estate of Boonsom Boonyanit under the ASEAN Agreement for promotion and protection of investment 1987;

(7) there could have been **professional negligence or lack of duty of care,** on his part in the settlement of the Boonsom Boonyanit's claim made by her Estate under the Asean Agreement for the Promotion and Protection of Investments, 1987. It is obvious from the plain terms of the said Agreement that the Lots 3606 and 3607 Mukim 18 Town of Tanjung Bungah, Penang which her Estate claimed to have been lost through fraud committed by a person who held a Thai passport and could not be traced, was acquired in 1967 before the said Agreement came into force and was never registered with the Malaysia Government as an investment protected by the said Agreement. Additionally, no Letter of Administration was issued to the Estate in Malaysia and the Letter

93 See: page 370 of the Book. Ironically all the local lawyers appointed by TSTT left their assignment when TSTT resigned from office as AG.

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of Administration issued by a Court in Bangkok was not capable of registration in the Malaysia Courts under the Probate of Administration Act, 1959. The person purportedly claiming for the Estate is not clothed with legal authority under Malaysia law to make such a claim against the Government of Malaysia. Also, it is unclear from the materials examined by the STF whether TSTT was authorized to execute the Deed of Settlement with the Estate, on behalf of the Government of Malaysia under section 3 of the Government Contracts Act. **The Government's interests were not adequately safeguarded by its chief legal advisor in this settlement.**

(8) since TSTT, a senior practicing lawyer, was appointed from the Malaysian Bar, **the legitimate expectations** of the Government and public was that the **standard of ethics and professional conduct** of the Malaysian Bar (as prescribed in the Legal Profession (Practice and Etiquette) Rules 1978 [PU(A) 369/1978] would be duly observed and maintained by him. His revelation in his Book of conversations between him and the then Prime Minister, regarding his appointment, but intended to be confidential, before he took office as AG, and his revelations of his conversation with the Chief Justice during a courtesy call on her, must be viewed as breach of confidence and unethical behaviour; and

(9) despite his criticisms and complaints in his Book, on the lack of expertise or commitment of legal officers in the Attorney General's Chambers, his Book does not reveal what action or measures he had taken or initiated, if at all, to address what he perceived to be lack of experience or expertise in certain areas or to motivate officers to show greater commitments in their work. His only apparent measure to address these shortcomings in the AGC was to appoint external lawyers of his own choice at the Government's expense.

CHAPTER 7

RECOMMENDATIONS

The STF makes the following recommendations[94] to the government:

(1) The relevant enforcement Agencies should investigate the possibility of the following offences being committed:

(i) Sections 124I and 203A of the Penal Code;
(ii) Section 4 of the Sedition Act 1948
(iii) Section 8 of the Official Secrets Act 1972;
(iv) Section 23 Malaysian Anti-Corruption Commission (MACC) Act 2009.

(2) The STF recommends that the Auditor General's Office and related government agencies conduct an audit and appropriate investigation on the Attorney General's Chambers to determine if there were any misconduct by TSTT when he was the Attorney General. This investigation should focus on among others but not limited to the prosecution of high-profile cases, appointment of external lawyers and the setting up of the Election Commission Tribunal. This is to also determine if there are any circulars and/or instructions that were not adhered to in his position as a Public Officer.

[94] See: Appendix 17 on Mr. Balaguru's disclaimer

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(3) On the allegations of executive interference in the Judiciary and selective prosecution which were mentioned in TSTT's book, the STF recommends the Government to take the following steps:

(a) Amendment to be made to Section 5(1)(f) of the Judicial Appointments Commission Act 2009, so that the appointment of four (4) eminent persons would be similar to the appointment of the members of the Judicial and Legal Services Commission under Article 138 (c) of the Federal Constitution whereby such appointment is made by the Yang di-Pertuan Agong on the advice of the Chief Justice and not the Prime Minister. This would remove any semblance of executive involvement in appointment to bodies responsible for the selection and appointment of judges and judicial officers;

(b) Changes to be made to the Judicial and Legal Services Commission so that the administration of the judicial service and the powers to appoint Judicial Officers would be vested with Chief Registrar of the Federal Court and not with the Attorney General. The Attorney General should not be involved in the appointment of Judicial Officers, especially superior court Judges.

(c) The STF recommends the separation of the functions and responsibilities of the Attorney General and Public Prosecutor. The functions and responsibilities of an Attorney General is to advise the YDPA and the government on legal matters. The

Office of the Public Prosecutor ought to be an independent entity separated from the Attorney General. In this way, the prosecutorial powers would not be under the control of the Attorney General and free from any form of interference from the Executive. It is recommended the functions of the Public Prosecutor should be as follows:

(i) Determine if a case can be prosecuted;

(ii) To formulate guidelines for determination on whether the investigation papers establish a case that would lead to the conviction of an accused person;

(iii) Determine the appropriate charges and to advise the related enforcement agencies on investigation;

(iv) Prepare charges and to conduct the prosecution of those charges and to decide whether any charge against an accused person should be withdrawn;

(v) To make representation to the Court on the appropriate sentence or punishment to be imposed when a person is found guilty of an offence; and

(vi) To advise the YDPA and the Rulers and the Pardons Board with regard to the exercise of the royal prerogative of granting pardon or commutation of sentences.

(4) The STF recommends the establishment of a separate Judicial Academy and Legal Academy to continuously strengthen and upgrade

the technical knowledge and know-how of existing officers in the Judicial and Legal Services. These measures would further reinforce the separation of the Judicial and Legal Service.

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CHAPTER 8

CONCLUSION

The STF has comprehensively reviewed, in accordance with the terms of reference, all allegations made by TSTT in his book, "My Story: Justice in the Wilderness". This Report provides a clear analysis on those allegations which are considered to be material, to determine the implications of the publication in the Book, and whether their disclosures have breached any law or regulations and where necessary make recommendations on appropriate actions to be taken by the Government or other relevant agencies.

However, due to the fact that the STF is unlike the Royal Commission of Enquiry established under Commission of Enquiry Act 1950, lacks the necessary authority to compel attendance of witnesses and the production of documentary evidence, the STF has to rely on the cooperation of various government agencies and persons having knowledge or interest in the allegations made in the Book.

Nevertheless, despite these limitations, the STF was able to carry out its mandate in accordance with the terms of reference and to make recommendation to the Government, with the view to improving the system of administration of justice, providing for better transparency and integrity in the procurement of professional services of external lawyers and to make investigation into matters where there have been a breach of laws and regulations regarding the disclosure of Government's information and

secrets in the Book and the standard of ethics and integrity expected of an Attorney General particularly if he is appointed directly from the Bar.

The STF wishes to place on record our sincere appreciation to YAB Dato Sri Ismail Sabri bin Yaakob, Prime Minister and YB Dato Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar, Minister in the Prime Minister's Department (Parliament & Law), for the confidence and support provided in establishing this STF to undertake and complete the task. The STF would also like to thank the secretariat for their dedication and support in making this task a success.

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CHAPTER 9

PERAKUAN PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU BERTAJUK *"MY STORY: JUSTICE IN THE WILDERNESS"* TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA

Kami, ahli Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan dalam Buku Bertajuk *"My Story: Justice in the Wilderness"* Tulisan YBhg. Tan Sri Tommy Thomas, Bekas Peguam Negara bersetuju dan memperakukan bahawa laporan ini disediakan, disemak dan dimuktamadkan pada 28 Ogos 2022 berdasarkan analisa daripada penelitian dokumentasi serta sesi konsultasi dan perbincangan secara kolektif.

____

(Dato Sri Fong Joo Chung)
Pengerusi Pasukan Petugas Khas

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(Datuk Seri Panglima Hashim bin Paijan)
Ahli Pasukan Petugas Khas

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(Dato' Jagjit Singh a/l Bant Singh)

Ahli Pasukan Petugas Khas

(Dato' Dr. Junaidah binti Kamarruddin)

Ahli Pasukan Petugas Khas

(Dato' Shaharudin bin Datuk Haji Ali)

Ahli Pasukan Petugas Khas

Mohd Ridzuan bin Amri 21-09-2022 09:28:31

(Balaguru a/l Karuppiah)

Ahli Pasukan Petugas Khas

(Farah Adura binti Haji Hamidi)

Ahli Pasukan Petugas Khas

(Mohd Najib bin Surip)

Ahli Pasukan Petugas Khas

LAPORAN SESI KONSULTASI

PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU BERTAJUK "MY STORY: JUSTICE IN THE WILDERNESS" TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA

SESI KONSULTASI DENGAN SURUHANJAYA PELANTIKAN KEHAKIMAN (12 JANUARI 2022)

1. Pada 12 Januari 2022, PPK telah mengadakan sesi konsultasi pertama dengan Suruhanjaya Pelantikan Kehakiman (SPK). Maklum balas daripada SPK adalah seperti di **Lampiran A**.

SESI KONSULTASI DENGAN SURUHANJAYA PELANTIKAN KEHAKIMAN (10 FEBRUARI 2022)

2. Pada 10 Februari 2022, PPK telah mengadakan sesi konsultasi kedua dengan Suruhanjaya Pelantikan Kehakiman (SPK) dan butiran perbincangan adalah seperti berikut:

(i) Semua maklum balas bertulis yang dikemukakan oleh pihak SPK telah dibincangkan dengan YAA Ketua Hakim Negara;

(ii) Berdasarkan rekod SPK, tarikh peletakan jawatan YABhg. Tun Raus Sharif adalah sama dengan tarikh peletakan jawatan YBhg. Tan Sri Zulkefli Ahmad Makinudin iaitu pada 10 Julai 2018;

(iii) Mesyuarat pemilihan telah diadakan semasa Mesyuarat SPK Bil. 5/2018 pada 24 Mei 2018 yang dipengerusikan oleh YABhg. Tun Raus Sharif bagi memilih Ketua Hakim Negara dan Presiden Mahkamah Rayuan yang akan dikosongkan oleh penyandang-penyandang bagi jawatan tersebut serta bagi menggantikan penyandang Hakim Besar Sabah dan Sarawak yang akan bersara pada 13 Oktober 2018;

(iv) Pihak SPK ada membuat laporan kepada YAB Perdana Menteri. Namun begitu, YAB Perdana Menteri tidak meminta pemilihan lanjut dilaksanakan seperti terkandung dalam Seksyen 27 Akta Suruhanjaya Pelantikan Kehakiman 2009;

(v) Pelantikan hakim Mahkamah Atasan yang dibuat oleh SPK adalah berdasarkan Perkara 122B (2), (3) dan (4) Perlembagaan Persekutuan;

(vi) Keputusan rundingan itu didedahkan kepada SPK sebelum diangkat kepada Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan, Jabatan Perdana Menteri (BKPP) untuk perkenan Yang di-Pertuan Agong;

(vii) Selepas pertukaran kerajaan pada tahun 2018, terdapat perubahan keahlian SPK melibatkan pelantikan oleh YAB Perdana Menteri di bawah Seksyen 5(f), Akta Suruhanjaya Pelantikan Kehakiman 2009. Tempoh pelantikan empat tokoh terkemuka (*eminent persons*) ditamatkan lebih awal. Namun begitu, SPK tidak dimaklumkan mengenai sebab penamatan berkenaan;

(viii) Sekiranya Peguam Negara atau mana-mana individu ingin mencadangkan calon untuk dilantik ke jawatan Pesuruhjaya Kehakiman atau Hakim, cadangan berkenaan tidak perlu dikemukakan kepada SPK, tetapi pemohon sendiri perlu memohon melalui SPK;

(ix) Sekiranya YAB Perdana Menteri mahu mencadangkan mana-mana-mana individu untuk dilantik ke jawatan sama, beliau boleh berbuat demikian di bawah Seksyen 27 Akta Suruhanjaya Pelantikan Kehakiman 2009 yang memperuntukkan Perdana Menteri boleh, selepas menerima laporan di bawah Seksyen 26, meminta dua nama lagi untuk dipilih dan disyorkan bagi pertimbangannya berkenaan dengan apa-apa kekosongan ke jawatan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya, Hakim Besar Sabah dan Sarawak, Hakim Mahkamah Persekutuan dan Mahkamah Rayuan, dan Suruhanjaya hendaklah, dengan seberapa segera yang dapat dilaksanakan, mematuhi permintaan itu mengikut proses pemilihan sebagaimana yang ditetapkan dalam peraturan-peraturan yang dibuat di bawah Akta 695;

(x) YBhg. Tan Sri Tommy Thomas semasa memegang jawatan Peguam Negara tidak pernah mengadakan mesyuarat dengan

pihak SPK tetapi pernah membuat komunikasi secara rasmi pada sesi kunjungan hormat Peguam Negara ke atas YAA Ketua Hakim Negara pada 1 Oktober 2019;

(xi) Pada sesi tersebut, YBhg. Tan Sri Tommy Thomas ada mencadangkan tiga nama untuk dilantik sebagai Hakim Mahkamah Rayuan kepada SPK dan pencalonan ini dibincangkan dalam Mesyuarat SPK Bil. 10/2019 pada 10 Oktober 2019;

(xii) Dua daripada nama dicadangkan YBhg. Tan Sri Tommy Thomas pernah memohon untuk dilantik sebagai Pesuruhjaya Kehakiman. Walau bagaimanapun kedua-dua nama tersebut tidak berjaya dalam sesi temu duga oleh SPK. Pihak SPK tidak dimaklumkan sebab mengapa dua calon berkenaan tidak berjaya dalam sesi temu duga itu;

(xiii) Berdasarkan rekod SPK, Jabatan Peguam Negara tiada menulis secara rasmi kepada SPK mengenai isu pelantikan dan kedudukan Tan Sri Zaharah Ibrahim sebagai Hakim Besar Malaya;

(xiv) Merujuk kepada upacara angkat sumpah jawatan Ketua Hakim Negara yang melibatkan YAA Tan Sri Richard Malanjum pada waktu malam, SPK memaklumkan bahawa urusan Istiadat Pengurniaan Surat Cara Pelantikan dan Angkat Sumpah bagi Jawatan telah ditetapkan oleh Pejabat Datuk Pengelola Bijaya Diraja, Istana Negara;

(xv) Pihak Jabatan Peguam Negara akan dirujuk berhubung hal ehwal pentadbiran dan perundangan SPK;

(xvi) Semua dokumen berkaitan pelantikan di bawah SPK termasuk minit mesyuarat dilindungi di bawah Akta Rahsia Rasmi 1972 dan prosedur berkaitan perlindungan dokumen di bawah Akta ini dilaksanakan oleh pihak SPK;

(xvii) Berhubung isu pelantikan badan kehakiman yang tidak melalui proses pemilihan dan pelantikan sewajarnya seperti digariskan oleh Akta 695, SPK menjelaskan bahawa perlantikan tersebut adalah teratur dan mengikut Perkara 122B Perlembagaan Persekutuan yang memperuntukkan bahawa "Ketua Hakim

Negara, Presiden Mahkamah Rayuan dan Hakim - Hakim Besar Mahkamah Tinggi dan (tertakluk kepada Perkara 122C), hakim hakim yang lain Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah-Mahkamah Tinggi hendaklah dilantik oleh Yang di-Pertuan Agong, yang bertindak atas nasihat Perdana Menteri, selepas berunding dengan Majlis Raja Raja;

(xviii) Merujuk kepada perkara di perenggan (xvii), pelantikan YAA Tun Tengku Maimun binti Tuan Mat, YAA Tan Sri Rohana binti Yusuf, YAA Tan Sri Dato' Sri Azahar bin Mohamed dan YAA Tan Sri Dato' Abang Iskandar bin Abang Hashim telah melalui proses sewajarnya;

(xix) Seksyen 24 Akta 695 memperuntukkan bahawa pengerusi ganti boleh mempengerusikan mesyuarat pemilihan bagi pelantikan Hakim Mahkamah Tinggi sahaja;

(xx) Mesyuarat pemilihan dan pelantikan Ketua Hakim Negara yang baharu perlu diadakan sebelum Ketua Hakim Negara semasa itu bersara. Berkaitan kes YAA Tun Raus, beliau sempat mempengerusikan mesyuarat untuk pemilihan penggantinya;

(xxi) Merujuk kepada maklum balas BKPP, sekiranya Perdana Menteri tidak bersetuju dengan tiga nama yang disyorkan oleh SPK, Perdana Menteri perlu mengemukakan dua lagi nama;

(xxii) Pihak BKPP menerima surat daripada Perdana Menteri mencalonkan empat nama lain yang menyatakan nama-nama tersebut telah dipilih oleh SPK pada mesyuarat bertarikh 17 Januari 2019;

(xxiii) Bagi proses pelantikan hakim sebelum penubuhan SPK, nama calon hakim akan dikemukakan kepada Peguam Negara. Namun begitu, selepas penubuhan SPK, tiada keperluan untuk merujuk nama calon ini kepada Peguam Negara;

(xxiv) Pasukan Petugas Khas perlu meneliti sama ada terdapat campur tangan Kerajaan dalam isu pelantikan hakim ini kerana berdasarkan maklum balas BKPP, pencalonan nama tersebut telah ditukarkan sebelum diangkat untuk diputuskan;

(xxv) BKPP mempunyai akses kepada maklumat yang lebih tepat kerana pihaknya berada lebih dekat dengan Perdana Menteri dan Ketua Setiausaha Negara;

(xxvi) Pasukan Petugas Khas boleh memberi cadangan untuk memperkasa SPK. Buat masa kini, belum terdapat apa-apa cadangan untuk memperkasa SPK. Namun begitu, terdapat cadangan untuk menyemak sub peraturan bagi proses pemilihan hakim di bawah Akta 695; dan

(xxvii) Pasukan Petugas Khas akan mencadangkan dalam Laporan Interim yang akan disediakan untuk memastikan tiada sebarang campur tangan dalam urusan pelantikan hakim. Syor ini juga akan dikemukakan kepada pihak SPK.

SESI KONSULTASI DENGAN JABATAN PEGUAM NEGARA (12 JANUARI 2022)

3. Pada 12 Januari 2022, PPK telah mengadakan sesi konsultasi pertama dengan Jabatan Peguam Negara (AGC). Maklum balas daripada AGC adalah seperti di **Lampiran B**.

SESI KONSULTASI DENGAN JABATAN PEGUAM NEGARA (27 JANUARI 2022)

4. Pada 27 Januari 2022, PPK telah mengadakan sesi konsultasi kedua dengan Jabatan Peguam Negara (AGC) dan maklumat lanjut perbincangan adalah seperti berikut:

(i) Berdasarkan kontrak pelantikan, YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara, beliau merupakan seorang penjawat awam dan juga sebagai Ketua Perkhidmatan;

(ii) Perkhidmatan yang diberikan oleh Sitpah Selvaratnam selaku peguam luar yang dilantik oleh AGC adalah secara *pro-bono*;

(iii) AGC tidak mempunyai rekod dan perincian pelantikan serta perkhidmatan individu-individu yang dilantik oleh YBhg. Tan Sri Tommy Thomas. Namun begitu, secara keseluruhan pembayaran yang dibuat kepada peguam-peguam luar bagi

tempoh YBhg. Tan Sri Tommy Thomas bertugas sebagai Peguam Negara adalah berjumlah RM3.5 juta;

(iv) Pada masa ini, tiada garis panduan khusus bagi pelantikan peguam luar di bawah kuasa-kuasa Peguam Negara atau di bawah Kanun Tatacara Jenayah. Namun begitu, pertimbangan yang biasanya diguna pakai adalah bersesuaian dan berkebolehan untuk melaksanakan tugas;

(v) Kadar bayaran yang dibuat kepada peguam luar adalah berdasarkan keputusan YBhg. Tan Sri Tommy Thomas sendiri selaku Peguam Negara. Tiada jawatankuasa yang ditubuhkan atau dirujuk berkaitan urusan ini;

(vi) PPK akan mengesyorkan kepada Jemaah Menteri pada masa akan datang sekiranya Peguam Negara ingin membuat pelantikan peguam luar, perlu ada proses tapisan dan tidak boleh dibuat secara *ad-hoc basis*. Sebagai contoh mengenai kes sawit, di mana MPIC melantik peguam dari Kesatuan Eropah (EU) tetapi YBhg. Tan Sri Tommy Thomas melantik Toby Landau, QC;

(vii) Terdapat dua peringkat mengenai isu sawit dengan EU. Selepas YBhg. Tan Sri Tommy Thomas melantik Toby Landau, beliau turut melantik lima peguam daripada Badan Peguam Malaysia. Namun begitu, peguam-peguam berkenaan meletak jawatan selepas YBhg. Tan Sri Tommy Thomas melepaskan jawatan sebagai Peguam Negara;

(viii) Selepas itu, perkhidmatan dua peguam asing juga telah ditamatkan oleh AGC. Kes berkaitan EU itu telah dikendalikan semula oleh pihak MPIC;

(ix) Pegawai-pegawai daripada Bahagian Hal Ehwal Antarabangsa, AGC terlibat dalam membantu YBhg. Tan Sri Tommy Thomas dalam urusan kes sawit dengan EU;

(x) AGC mendapati terdapat perbezaan yang ketara bagi proses pelantikan peguam luar semasa dan sebelum pelantikan YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara. Sebelumnya, pelantikan peguam luar hanya dibuat pada kes yang sangat diperlukan untuk kepakaran tertentu sahaja;

(xi) YBhg. Tan Sri Tommy Thomas menyatakan dalam bukunya bahawa pegawai di AGC tidak kompeten. Namun begitu, berdasarkan semakan AGC, semua pegawai yang dinilainya mendapat markah melebihi 90 peratus. Ini jelas bercanggah dengan dakwaannya;

(xii) Berkaitan dengan konflik berkepentingan, YBhg. Tan Sri Tommy Thomas telah menasihati kerajaan dan mengesyorkan jumlah bayaran pampasan yang dibuat bagi kes Boonsom Boonyanit, di mana pada masa yang sama, peguam kes Boonsom Boonyanit adalah suami rakan kongsi firma guaman YBhg. Tan Sri Tommy Thomas iaitu Sitpah Selvaratnam. Walau bagaimanapun, peguam berkenaan telah terlibat dengan kes tersebut sebelum pelantikan YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara;

(xiii) Berdasarkan kepada rekod di AGC, bayaran pampasan (*ex-gratia*) yang dibuat adalah berjumlah USD8 juta tetapi jumlah yang dipersetujui sebelumnya adalah pada anggaran USD7 juta berbanding jumlah yang dituntut berpandukan kepada *ASEAN Agreement for the Promotion and Protection of Investments* (1987) sebanyak USD20 juta; dan

(xiv) AGC telah membuat bayaran pampasan sebanyak USD8 setelah mendapat kelulusan Jemaah Menteri.

SESI KONSULTASI DENGAN JABATAN PEGUAM NEGARA (11 FEBRUARI 2022)

5. Pada 11 Februari 2022, PPK telah mengadakan sesi konsultasi ketiga dengan Jabatan Peguam Negara (AGC) seperti berikut:

(i) AGC bersetuju bahawa prinsipal yang sama seperti yang dinyatakan oleh YBhg. Tan Sri Datuk Haji Abdul Kadir Yusof dalam artikel bertajuk "*The Office of Attorney General Malaysia*" mengenai peranan Peguam Negara menurut Fasal (1) Perkara 145, Perlembagaan Persekutuan masih terpakai sehingga kini;

(ii) YBhg. Tan Sri Tommy Thomas dalam surat yang dikemukakan kepada Pengerusi Pasukan Petugas Khas menyebut tentang *absolute discretion* dan perkara ini perlu diperjelaskan berdasarkan prinsip yang dinyatakan oleh mantan Peguam Negara Pertama seperti di atas;

(iii) Merujuk kepada kontrak pelantikan YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara, terdapat kluasa yang menyatakan bahawa beliau perlu mematuhi Perintah Am, Peraturan Kewangan dan Pekeliling Perkhidmatan serta undang-undang yang berkuat kuasa dari semasa ke semasa. Proses pelantikan beliau adalah mematuhi Perlembagaan Persekutuan;

(iv) AGC tidak bersetuju dengan kenyataan YBhg. Tan Sri Tommy Thomas yang menyatakan pegawai di AGC tidak berkepakaran dalam bidang-bidang tertentu seperti perkapalan;

(v) Penahanan Kapal Equanimity difailkan oleh 1MDB dan pihak Kerajaan hanya bertindak sebagai pihak nominal (bukan plaintif utama). Justeru pihak AGC percaya bahawa pelantikan peguam luar yang dibuat oleh YBhg. Tan Sri Tommy Thomas ke atas kes ini disebabkan defendan kes ini ialah 1MDB;

(vi) AGC tidak mempunyai sebarang *cause papers* berkenaan penjualan Kapal Equanimity. Bahagian Sivil, AGC hanya terlibat dalam proses permohonan untuk menahan kapal ini;

(vii) Penjualan Kapal Equanimity dikatakan mempunyai hubung kait dengan kes saman Genting Berhad terhadap Menteri Kewangan Malaysia. Kes ini dikendalikan oleh Bahagian Sivil, AGC di mana pihaknya mewakili Kementerian Kewangan. Pihak Genting Berhad telah menggugurkan kes ini. Pihak AGC tidak mempunyai maklumat sama ada pihak Genting telah membayar cukai kepada Kerajaan cukai atau tidak selepas kes ini digugurkan;

(viii) Merujuk kepada maklum balas NFCC melalui sesi temu bual dengan pihaknya sebelum ini, terdapat jawatankuasa yang ditubuhkan bagi pelupusan aset milik 1MDB. Namun begitu, pihaknya tidak dimaklumkan mengenai penjualan kapal Equanimity;

(ix) Tan Sri Tommy Thomas dilihat terlibat dalam proses pelantikan hakim. Semakan dengan pihak BKPP dan SPK mendapati adanya penglibatan beliau dalam proses ini. Persoalannya adakah Peguam Negara boleh campur tangan dalam urusan ini;

(x) Berdasarkan semakan pihak AGC, P.U.(A) 2009 dibuat di bawah Akta Suruhanjaya Pelantikan Kehakiman 2009. Perkara ini adalah mengenai prosedur permohonan kepada pihak SPK;

(xi) Mengenai isu ASEAN Triti, pihak AGC memaklumkan Triti ini tidak perlu diratifikasi di peringkat ASEAN. Di bawah Perjanjian Timbang Tara Pelaburan, Malaysia telah bersetuju sekiranya terdapat isu, ia boleh dibawa kepada pihak timbang tara bagi sebarang pertikaian. Dalam kes ini, wanita Thai tersebut tidak dikategorikan sebagai pelabur dan kes ini tidak dianggap sebagai pelaburan, maka terdapat keputusan ketika itu untuk tidak meneruskan kes ini; dan

(xii) Kos untuk membawa kes ini ke pertikaian pelaburan antarabangsa adalah tinggi. Justeru pihak AGC berpandangan keputusan untuk membuat pembayaran ex-*gratia* kepada wanita Thai tersebut yang dibuat oleh Peguam Negara terdahulu, YBhg. Tan Sri Apandi Ali dan seterusnya selesaikan oleh YBhg. Tan Sri Tommy Thomas adalah disebabkan oleh kos tersebut.

<u>SESI KONSULTASI DENGAN JABATAN PEGUAM NEGARA (22 FEBRUARI 2022)</u>

6. Pada 22 Februari 2022, PPK telah mengadakan sesi konsultasi keempat dengan Jabatan Peguam Negara (AGC) seperti berikut:

(i) Merujuk kepada kes Bonsoom Boonyanit, pihak AGC menjelaskan bahawa kes ini tidak melibatkan pelaburan kerana pembelian tanah tersebut dibuat untuk tujuan persaraan;

(ii) Bagi membolehkan kes dibawa ke Triti Pelaburan ASEAN, sesuatu pelaburan mesti didaftarkan terlebih dahulu. Berdasarkan rekod, tanah milik Boonsom Boonyanit tidak didaftarkan sebagai pelaburan berdaftar berdasarkan kepada Artikel 2, Para 3, Triti Pelaburan ASEAN 1987;

(iii) Kedua-dua Peguam Negara sebelum ini (YBhg. Tan Sri Apandi Ali dan YBhg. Tan Sri Tommy Thomas) telah dimaklumkan dan mengambil maklum bahawa kes ini tidak melibatkan pelaburan yang didaftarkan;

(iv) Pembayaran *ex-gratia* berjumlah USD8 juta telah dipersetujui kerana kos bagi membawa kes ini ke pihak timbang tara akan melibatkan kos yang lebih tinggi. Jumlah pembayaran tersebut juga telah diluluskan oleh Mesyuarat Jemaah Menteri;

(v) Dalam Kertas Jemaah Menteri tersebut juga ada dimaklumkan jumlah *ex-gratia* yang akan dibayar dan Kabinet juga telah dimaklumkan bahawa kes ini adalah tidak dikategorikan sebagai pelaburan di bawah Triti ini;

(vi) Semasa YBhg. Tan Sri Apandi Ali menjadi Peguam Negara, pembayaran *ex-gratia* ini masih dalam proses perbincangan dan belum ada persetujuan khusus untuk pembayaran;

(vii) Perbincangan diteruskan semasa YBhg. Tan Sri Tommy Thomas menjadi Peguam Negara dan perkara ini seterusnya dibawa untuk kelulusan Jemaah Menteri;

(viii) Pada tahun 2018, kes ini diteruskan dengan perbincangan bersama peguam di London di mana pihak AGC telah mendapat persetujuan YBhg. Tan Sri Tommy Thomas untuk membincangkan mengenai pembayaran kepada wanita Thai tersebut bersama peguam luar dan peguam dari London. Antara peguam yang terlibat dalam koresponden pihak AGC adalah ialah Encik Mohan Kanagasabai dan firma guaman Addleshaw Goddard;

(ix) Berhubung dengan kes tuntutan Kesultanan Sulu, AGC telah mengesyorkan kepada YBhg. Tan Sri Tommy Thomas untuk sebuah firma guaman dilantik bagi menguruskan kes tuntutan di Sepanyol dan YBhg. Tan Sri Tommy Thomas telah bersetuju untuk melantik firma tersebut. Namun, kemudiannya melantik syarikat firma guaman Sepanyol yang lain bagi mengambil alih kes berkenaan. Kes ini masih dikendalikan oleh firma tersebut di Sepanyol. Maklumat lanjut mengenai kes tidak dapat didedahkan oleh pihak AGC kerana kes masih berlangsung;

(x) PPK memaklumkan bahawa isu ini penting untuk dimasukkan ke dalam laporan interim yang akan disediakan; dan

(xi) Maklum balas adalah seperti di **Lampiran C**.

SESI KONSULTASI DENGAN PEJABAT KETUA PENDAFTAR MAHKAMAH PERSEKUTUAN (26 JANUARI 2022)

7. Pada 26 Januari 2022, PPK telah mengadakan sesi konsultasi dengan Pejabat Ketua Pendaftar Mahkamah Persekutuan (PKPMP) dan perbincangan adalah seperti berikut:

(i) Terdapat dakwaan mengenai amalan *judge shopping* dalam buku "My Story: Justice in the Wilderness". Namun begitu, kebanyakan dakwaan berkenaan adalah bersifat sejarah dan berasaskan kepada kes-kes lama. Sehubungan itu, PPK telah memohon maklum balas daripada PKPMP sama ada terdapat sebarang aduan kes-kes terkini berhubung dakwaan seperti ini dan mekanisme yang dilaksanakan oleh PKPMP untuk mengatasi sebarang kemungkinan amalan seperti ini berlaku;

(ii) PKPMP memaklumkan bahawa amalan *judge shopping* tidak mungkin berlaku pada ketika ini memandangkan pemilihan hakim untuk mengendalikan kes menggunakan sistem dalam talian dikenali sebagai *e-Filing*;

(iii) Manakala di Mahkamah Persekutuan pula, sistem yang digunapakai adalah *balloting system*;

(iv) Komen YBhg. Tan Sri Tommy Thomas mengenai afidavit hakim YBhg. Datuk Dr. Hamid Sultan Abu Backer juga wajar

diteliti oleh PPK memandangkan ia memberikan persepsi sekumpulan hakim telah mempengaruhi Perdana Menteri pada ketika itu, YAB Tun Dr Mahathir Mohamad untuk menghentikan usaha mewujudkan Suruhanjaya Siasatan Diraja (RCI) berhubung dakwaan dalam afidavit berkenaan. Persepsi seperti ini adalah membimbangkan kerana ia memberikan imej negatif terhadap badan kehakiman negara;

(v) Buku tulisan YBhg. Tan Sri Tommy Thomas turut membangkitkan persoalan mengenai hubungan erat pegawai di Jabatan Peguam Negara dengan badan kehakiman sehingga menimbulkan persepsi bahawa hubungan berkenaan mampu mempengaruhi perjalanan perbicaraan;

(vi) PKPMP berpandangan setakat ini tidak wujud sebarang kecenderungan yang membawa kepada konflik berkepentingan melibatkan hubungan pegawai Jabatan Peguam Negara dan pegawai badan kehakiman;

(vii) PPK memohon PKPMP untuk mengemukakan maklumat lengkap berhubung sistem *e-Filing* dan pelaksanaan *balloting system* di Mahkamah Persekutuan;

(viii) Memandangkan terdapat banyak perkara yang dibangkitkan oleh PPK adalah berkenaan sistem kehakiman negara, maka PKPMP mencadangkan supaya PPK menulis permohonan rasmi kepada pejabat Ketua Hakim Negara untuk mendapatkan maklumat lanjut;

(ix) PPK akan mempertimbangkan untuk mengadakan pertemuan ataupun menulis surat kepada Ketua Hakim Negara bagi memastikan dakwaan-dakwaan dalam buku YBhg. Tan Sri Tommy Thomas yang disifatkan mencalar imej badan kehakiman dapat dijawab dengan tepat dan seterusnya memberikan tanggapan positif daripada orang awam; dan

(x) PKPMP juga akan merujuk kepada Ketua Hakim Negara sebelum mengemukakan sebarang maklum balas kepada PPK.

SESI KONSULTASI DENGAN PEJABAT KETUA PENDAFTAR MAHKAMAH PERSEKUTUAN (21 FEBRUARI 2022)

8. Pada 21 Februari 2022, PPK telah mengadakan sesi konsultasi kedua dengan Pejabat Ketua Pendaftar Mahkamah Persekutuan (PKPMP) dan perincian perbincangan seperti berikut:

(i) Pejabat Ketua Pendaftar Mahkamah Persekutuan telah menyemak rekod rayuan bagi kes Boonsom Boonyanit v. Adorna Properties Sdn. Bhd. Namun begitu, disebabkan ia merupakan kes lama yang berlaku pada tahun 1995, maka rekod berkenaan telah dilupuskan di mana sistem perekodan fail pada ketika itu dilakukan secara manual dan tidak menggunakan sistem seperti kini. Namun begitu, pihak PKPMP bersedia untuk menyemak rekod di Mahkamah Persekutuan dan akan mengemukakan dokumen tersebut kepada pihak urus setia;

(ii) Berhubung dengan isu penjualan kapal mewah, Equanimity, pihak PKPMP telah membekalkan semua dokumen diperlukan PPK kepada pihak urus setia iaitu "*cause papers*" dan nota prosiding; dan

(iii) Berdasarkan kepada permintaan daripada PPK, PKPMP bersedia untuk menyemak rekod pendaftaran semula YBhg. Tan Sri Tommy Thomas sebagai peguam bela dan peguam cara selepas beliau meletakkan jawatan sebagai Peguam Negara. Maklumat berkenaan akan dimaklumkan kepada urus setia.

SESI KONSULTASI DENGAN POLIS DIRAJA MALAYSIA (26 JANUARI 2022)

9. Pada 26 Januari 2022, PPK telah mengadakan sesi konsultasi dengan Polis Diraja Malaysia (PDRM) dan maklumat lanjut adalah seperti berikut:

(i) PDRM menjelaskan bahawa terdapat 244 laporan polis telah diterima berkaitan buku "My Story: Justice in the Wilderness" bagi tempoh 2 hingga 28 Februari 2021 di mana daripada 244 laporan berkenaan, empat kertas siasatan telah dibuka dan

baki 240 laporan polis yang selebihnya telah diklasifikasikan sebagai Rujuk Lain-Lain Repot (RLR) kerana laporan polis yang dibuat melibatkan isu dan fakta kes yang sama;

(ii) Terdapat dua kertas siasatan di bawah Seksyen 500 Kanun Keseksaan, satu kertas siasatan di bawah Seksyen 4(1) Akta Hasutan manakala dua kertas siasatan dibuka di bawah Seksyen 8 Akta Rahsia Rasmi dan Seksyen 203A Kanun Keseksaan;

(iii) Berdasarkan siasatan PDRM buku tersebut telah dilancarkan pada 30 Januari 2021 dan telah diedarkan di MPH dan Popular;

(iv) Senarai aduan daripada keseluruhan laporan polis berkenaan melibatkan 51 individu, 11 badan bukan kerajaan (NGO), 141 parti politik, 8 pihak peguam dan 29 daripada kakitangan awam yang mana aduan tersebut diterima daripada seluruh negara kecuali Sarawak;

(v) Aspek siasatan yang diteliti oleh PDRM dalam semua kertas siasatan yang dibuka merangkumi elemen menjatuhkan reputasi pengadu, gangguan terhadap siasatan dan pendakwaan kes yang sedang berjalan di mahkamah, pendedahan maklumat terperingkat rasmi dan hasutan;

(vi) Seramai 15 saksi telah dipanggil untuk memberi keterangan;

(vii) Sehingga kini, pendakwaan masih belum dilaksanakan dan pihak polis telah diminta oleh Jabatan Peguam Negara untuk melengkapkan siasatan; dan

(viii) Maklum balas adalah seperti di **Lampiran D**.

SESI KONSULTASI DENGAN PUSAT PENCEGAHAN JENAYAH KEWANGAN NASIONAL (26 JANUARI 2022)

10. Pada 26 Januari 2022, PPK telah mengadakan sesi konsultasi dengan Pusat Pencegahan Jenayah Kewangan Nasional (NFCC) dan perincian perbincangan adalah seperti berikut:

(i) NFCC merupakan agensi kerajaan yang memantau dan mengurus berkaitan pemerolehan semula aset khususnya dalam kes-kes jenayah kewangan termasuklah kes 1MDB;

(ii) Selain isu berkaitan kapal layar mewah Equanimity, Tan Sri Tommy Thomas dilihat memainkan peranan dalam menetapkan penjualan aset sebuah pesawat yang dikaitkan dengan skandal 1MDB iaitu Bombardier Global 5000;

(iii) Pada asasnya, NFCC telah menjalankan analisis terhadap harga bersesuaian untuk jualan pesawat berkenaan. Melalui siasatan yang dibuat dengan mengambil kira maklumat teknikal dan perbincangan bersama-sama pembeli berpotensi, pesawat berkenaan mempunyai nilai jualan munasabah pada harga USD7 juta;

(iv) Namun begitu, apabila perkara berkenaan diuruskan kemudiannya oleh YBhg. Tan Sri Tommy Thomas, pesawat berkenaan hanya terjual pada harga kira-kira USD300 ribu dan kerajaan mengutip hasil sekitar USD100 ribu;

(v) Proses penyelesaian kes dan pelupusan aset berkaitan skandal 1MDB bukan suatu hal yang mudah dan ia perlu dilaksanakan berasaskan kepada peraturan, prosedur dan proses yang wajar. Namun begitu, dalam aspek ini YBhg. Tan Sri Tommy Thomas dilihat cenderung mengambil tindakan berseorangan dan jarang sekali mengadakan perbincangan bersama-sama pihak berkenaan seperti Kementerian Kewangan dan Lembaga Pengarah 1MDB. Malah pegawai-pegawai berkaitan di Jabatan Peguam Negara juga tidak dilibatkan dalam perbincangan mengenai urusniaga penjualan aset rampasan ini;

(vi) Dalam urusan berkaitan pelupusan aset 1MDB terdapat satu jawatankuasa khas dikenali sebagai Pasukan Penjejakan Aset 1MDB ditubuhkan untuk membincangkan hal-hal berkaitan. Pasukan ini ditubuhkan pada penghujung tahun 2018 sebelum NFCC diwujudkan. Pasukan ini dianggotai oleh wakil daripada Jabatan Peguam Negara, PDRM, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) dan Kementerian Kewangan. Pada ketika ini, NFCC merupakan sekretariat kepada pasukan ini;

(vii) Namun begitu, aspek penentuan harga tidak dibuat oleh pasukan ini, namun perbincangan lebih terarah kepada strategi pemerolehan semula aset yang menggunakan kepakaran risikan PDRM dan SPRM;

(viii) Dari sudut dokumentasi, pihak pasukan ada membuat pembentangan kepada YAB Perdana Menteri mengenai perkembangan semasa pemerolehan semula aset serta potensi berhubung aset-aset yang boleh diperolehi;

(ix) Pasukan ini turut meneliti usaha penyelesaian berkaitan skandal 1MDB misalnya pembayaran pihak Goldman Sachs berjumlah USD2.5 bilion;

(x) Pada 2 November 2021 dan 21 Januari 2022, pasukan ini ada membuat pembentangan kepada YAB Perdana Menteri dan antara perkara yang dibincangkan termasuklah berkaitan status rundingan berkaitan di Abu Dhabi;

(xi) PPK akan meneliti peraturan dan prosedur pengurusan pelupusan aset yang dirampas oleh kerajaan atau bagi pihak kerajaan, khususnya dalam kes berkaitan kapal mewah Equanimity. Penelitian ini penting bagi melihat sama ada tindakan yang dibuat oleh YBhg. Tan Sri Tommy Thomas khususnya dalam rundingan dengan pihak Genting Berhad bagi membeli kapal berkenaan adalah mengikut peraturan dan prosedur berkaitan. Malah tindakan YBhg. Tan Sri Tommy Thomas menetapkan harga jualan lebih rendah berbanding diputuskan mahkamah juga boleh menimbulkan persoalan;

(xii) Memandangkan YBhg. Tan Sri Tommy Thomas merupakan seorang penjawat awam ketika menjawat jawatan Peguam Negara, maka pekeliling berkaitan pengurusan aset yang dikeluarkan oleh Kementerian Kewangan turut terpakai terhadap beliau;

(xiii) Harga jualan minimum kapal ini telah ditetapkan oleh mahkamah sebanyak USD130 juta, namun YBhg. Tan Sri Tommy Thomas telah menguruskan penjualannya secara bersendirian dengan pihak Genting Berhad dengan harga lebih rendah iaitu USD126 juta. Berdasarkan amalan biasa, sewajarnya YBhg. Tan Sri Tommy Thomas tidak akan terus

bersetuju dengan tawaran pembelian berkenaan, sebaliknya perlu berbincang dengan dan mendapatkan pandangan pihak berkepentingan lain dan persetujuan mahkamah untuk harga jualan baharu. Namun begitu perkara ini tidak dilaksanakan;

(xiv) PPK memohon NFCC membekalkan salinan permohonan yang dikemukakan ke mahkamah berhubung penjualan aset ini. Selain itu, NFCC juga dimohon mengemukakan perisytiharan jualan bagi Equanimity untuk semakan lanjut PPK;

(xv) Selain itu, PPK juga berhasrat meneliti dengan lebih mendalam isu pelantikan peguam luar yang dilantik oleh YBhg. Tan Sri Tommy Thomas untuk mengendalikan isu berkaitan pelupusan aset 1MDB ini. Penelitian ini boleh dilihat dari sudut keabsahan pelantikan kerana seorang Peguam Negara tidak mempunyai kuasa untuk melantik peguam luar untuk bertindak bagi pihak badan berkanun atau syarikat berkaitan kerajaan (GLC); dan

(xvi) Maklum balas adalah seperti di **Lampiran E**.

SESI KONSULTASI DENGAN KEMENTERIAN PERUSAHAAN PERLADANGAN DAN KOMODITI (27 JANUARI 2022)

11. Pada 27 Januari 2022, PPK telah mengadakan sesi konsultasi dengan Kementerian Perusahaan Perladangan dan Komoditi (MPIC) seperti berikut:

(i) Tiada kertas Jemaah Menteri yang dibentangkan untuk Malaysia mengambil tindakan undang-undang ke atas Kesatuan Eropah (EU) berhubung isu diskriminasi sawit sehingga Julai 2020;

(ii) Ketua Setiausaha Kementerian (KSU) MPIC tidak menghadiri Mesyuarat Pasca Kabinet yang membincangkan isu ini kerana mesyuarat yang dirujuk dalam buku adalah Mesyuarat Pasca Kabinet di Jabatan Perdana Menteri;

(iii) Apabila EU memperkenalkan pindaan terhadap hala tuju tenaga yang boleh diperbaharui (RED II) pada Disember 2018 yang menyebabkan diskriminasi terhadap minyak sawit, MPIC telah mengemukakan maklum balas mengenai perkara

tersebut melalui platform konsultasi EU-Malaysia secara dalam talian dan menghadiri bengkel di Brussels, Belgium pada Mac 2019. Selepas itu, tiada maklum balas lanjut yang dikemukakan oleh MPIC kepada pihak EU;

(iv) Merujuk kepada dokumen representasi 40 muka surat yang telah dihantar (secara dalam talian dan salinan fizikal) oleh MPIC kepada pihak EU melalui platform konsultasi EU-Malaysia (mengenai kelapa sawit), salinan dokumen tersebut juga telah diberikan kepada YBhg. Tan Sri Tommy Thomas;

(v) Paulo R. Vergano dari syarikat yang berpengkalan di Brussels merupakan firma peguam luar (EU) yang dilantik sebagai konsultan bagi membantu dalam penyediaan dokumen 40 muka surat yang dinyatakan dalam buku ini;

(vi) Pihak MPIC telah mengemukakan dokumen 40 muka surat tersebut kepada pasukan yang ditubuhkan oleh YBhg. Tan Sri Tommy Thomas di Jabatan Peguam Negara dan MPIC percaya bahawa kandungan laporan tersebut telah diguna pakai dalam dokumen 60 muka surat yang dinyatakan disediakan oleh pasukan YBhg. Tan Sri Tommy Thomas yang dibawa ke *World Trade Organisation (WTO)*;

(vii) YBhg. Tan Sri Tommy Thomas dalam bukunya ada menyatakan beliau mengadakan perbincangan dengan pemain industri sawit Malaysia Tan Sri Lee Oi Hian dari Kuala Lumpur Kepong Berhad, Dato' Carl Bek-Nielsen dari United Plantations dan Datuk Franki Dass dari Sime Darby. MPIC memaklumkan bahawa pemain industri tersebut adalah pihak yang sentiasa dirujuk dalam sesi libat urus MPIC dan pihak industri. Di samping itu, ada antara pemain industri ini merupakan Ahli Lembaga Pengarah bagi Lembaga Minyak Sawit Malaysia (MPOB); dan

(viii) YBhg. Tan Sri Tommy Thomas juga telah menghantar pasukannya untuk menghadiri sesi konsultasi Indonesia-EU di Geneva, Switzerland. Sesi konsultasi ini turut dihadiri oleh MPIC dan MITI.

SESI KONSULTASI DENGAN MANTAN PENASIHAT UNDANG-UNDANG NEGERI SELANGOR (27 JANUARI 2022)

12. Pada 27 Januari 2022, PPK telah mengadakan sesi konsultasi dengan mantan Penasihat Undang-Undang (PUU) Negeri Selangor dan perbincangan adalah seperti berikut:

(i) Prosiding dalam Lembaga Pengampunan diklasifikasikan sebagai rahsia rasmi. Semua maklumat yang dibincangkan semasa Mesyuarat Lembaga Pengampunan tidak boleh didedahkan;

(ii) Urus setia Lembaga Pengampunan dengan kebenaran Pengerusi boleh memutuskan untuk maklumat yang dibincangkan dalam Mesyuarat Lembaga Pengampunan boleh didedahkan kepada umum;

(iii) Terdapat kenyataan media yang dikeluarkan oleh Sultan Selangor mengenai jenayah seksual terhadap kanak-kanak;

(iv) Kenyataan media tersebut mengandungi perkara yang dibincangkan dalam Mesyuarat Lembaga Pengampunan yang dihasratkan untuk dimaklumkan kepada masyarakat dan telah dipersetujui oleh Sultan Selangor;

(v) Mantan PUU Negeri Selangor tidak maklum mengenai laporan polis yang dibuat terhadap kandungan khusus buku ini yang berkaitan komunikasi Sultan Selangor dan YBhg. Tan Sri Tommy Thomas;

(vi) Namun, beliau maklum mengenai laporan polis secara umum berkenaan kandungan buku tersebut dan kertas siasatan yang telah dibuka dan siasatan masih dijalankan; dan

(vii) Mantan PUU Negeri Selangor telah mengesahkan bahawa beliau telah diarahkan oleh Sultan Selangor untuk menyediakan kenyataan media ketika menjadi PUU Negeri Selangor.

SESI KONSULTASI DENGAN BAHAGIAN KABINET, PERLEMBAGAAN DAN PERHUBUNGAN ANTARA KERAJAAN, JABATAN PERDANA MENTERI (27 JANUARI 2022)

13. Pada 27 Januari 2022, PPK telah mengadakan sesi konsultasi dengan Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan, Jabatan Perdana Menteri (BKPP) dan perincian perbincangan adalah seperti berikut:

(i) BKPP merupakan bahagian terlibat secara langsung dalam pelantikan hakim. BKPP bertindak selaku pengantara antara SPK dan Istana Negara;

(ii) Proses pelantikan hakim di BKPP bermula apabila pihaknya menerima nama calon-calon hakim dari Pejabat Perdana Menteri. Seterusnya, BKPP akan menyediakan surat kepada Yang di-Pertuan Agong (YDPA) untuk persetujuan Majlis Raja-Raja. Keputusan tersebut yang kemudiaannya akan disampaikan oleh BKPP kepada SPK;

(iii) Berdasarkan kepada Perkara 122B Perlembagaan Persekutuan, Perdana Menteri perlu membuat rundingan dengan beberapa pihak berhubung pelantikan hakim;

(iv) Selain itu, BKPP akan memohon ulasan Peguam Negara. Namun, amalan ini tidak lagi dipraktikkan sekarang. Perkara ini hanya dibuat sebelum tahun 2019;

(v) Pada tahun 2018, YAA Tun Richard Malanjum dilantik sebagai Ketua Hakim Negara, YAA Tan Sri Zaharah Ibrahim dilantik sebagai Hakim Besar Malaya, YAA Tan Sri David Wong dilantik sebagai Hakim Besar Sabah dan Sarawak dan YAA Tan Sri Ahmad Maarop dilantik sebagai Presiden Mahkamah Rayuan. BKPP akan menyemak tarikh Majlis Raja-Raja bersetuju dengan pelantikan ini serta tarikh dan masa majlis angkat sumpah dijalankan;

(vi) BKPP memaklumkan instrumen pelantikan hakim disediakan oleh SPK. BKPP juga tidak terlibat dengan sesi rundingan YAB Perdana Menteri bersama hakim-hakim dan Ketua Menteri Sabah dan Sarawak; dan

(vii) Maklum balas adalah seperti di **Lampiran F**.

SESI KONSULTASI DENGAN BAHAGIAN CUKAI, KEMENTERIAN KEWANGAN DAN JABATAN PEGUAM NEGARA MENGENAI KES SEMAKAN KEHAKIMAN BERHUBUNG ISU PERCUKAIAN MELIBATKAN GENTING MALAYSIA BERHAD (21 FEBRUARI 2022)

14. Pada 21 Februari 2022, PPK telah mengadakan sesi konsultasi dengan Bahagian Cukai, Kementerian Kewangan (MOF) dan Jabatan Peguam Negara (AGC) mengenai kes semakan kehakiman berhubung isu percukaian melibatkan Genting Malaysia Berhad (GMB) dan perbincangan adalah seperti berikut:

    (i) GMB telah membuat permohonan insentif percukaian kepada MOF pada 5 September 2014. Permohonan berkenaan telah diluluskan oleh MOF pada 17 Disember 2014, di mana kelulusan tersebut adalah di bawah Pakej Insentif Percukaian Projek Hotel dan Pelancongan Bersepadu di bawah Koridor Ekonomi Pantai Timur (ECER);

    (ii) Pengecualian cukai ini adalah sehingga 100 peratus melibatkan perbelanjaan modal bagi tempoh 10 tahun seperti termaktub di bawah Seksyen 127 Akta Cukai Pendapatan 1967. GMB juga telah diluluskan pengecualian cukai yang boleh ditolak sehingga 70 peratus daripada keseluruhan pendapatan berkanun syarikat dan dianggap sebagai '*one business source*' yang diperolehi daripada aktiviti bersepadu. Penilaian dibuat berdasarkan hasrat MOF bahawa pendapatan daripada '*one business source*' hanya daripada aktiviti yang diluluskan iaitu berkaitan projek pelancongan bersepadu yang mengandungi komponen hotel, taman tema dan lain-lain infrastruktur berkaitan serta tidak termasuk aktiviti perjudian;

    (iii) Pada 25 November 2016, GMB telah mengemukakan rayuan untuk membuat pindaan pada nama hotel dan pelanjutan tarikh siap projek dari 31 Disember 2021 kepada 31 Disember 2023. GMB juga telah memohon kepada MOF untuk membuat pindaan terhadap jumlah perbelanjaan modal. Pindaan ini seterusnya melibatkan senarai aset serta melibatkan syarat-syarat yang telah dikenakan sebelum ini. Permohonan ini telah diluluskan pada 28 Disember 2017. Berdasarkan kepada surat kelulusan tersebut, MOF telah meluluskan pengecualian cukai yang boleh ditolak sehingga 70 peratus daripada keseluruhan pendapatan berkanun yang diperolehi daripada aktiviti bersepadu. GMB turut dikenakan syarat iaitu perlu menyimpan

akaun berasingan untuk aktiviti yang diluluskan pengecualian cukai pendapatan;

(iv) Pada tahun 2018, GMB telah mengadakan pertemuan dengan MOF dan mahu mengekalkan 70 peratus pengecualian cukai yang telah diberikan sebelum ini adalah termasuk sektor perjudian. Pada 28 September 2018, rayuan berkenaan tidak diluluskan dan pada 24 Disember 2018, pihak GMB telah mengemukakan semakan kehakiman berkenaan;

(v) MOF telah memberi respons terhadap semakan kehakiman berkenaan pada 6 Mei 2019 apabila Menteri Kewangan menandatangani afidavit berkaitan. Pada 24 Mei 2019, GMB telah mengeluarkan surat menarik balik semakan kehakiman. MOF telah mengeluarkan surat berhubung penyelesaian luar mahkamah berkenaan pada 28 Jun 2019. Berdasarkan kepada penyelesaian berkenaan, MOF menetapkan perbelanjaan modal yang boleh ditolak ialah RM4.8 bilion berbanding RM6.98 bilion;

(vi) Melalui surat bertarikh 24 Mei 2019 itu, GMB telah menyatakan persetujuan untuk menghadkan tuntutan insentif berkenaan kepada hanya RM4.8 bilion;

(vii) Bahagian Cukai, MOF tidak mempunyai apa-apa pengetahuan kaitan kes ini dengan pembelian kapal mewah, Equanimity dan Bahagian ini hanya menguruskan aspek berkaitan projek Genting World Resort di Genting Highland sahaja dan tidak terlibat dalam sebarang urusan entiti Genting yang lain;

(viii) Notis berhubung penarikan balik kes semakan kehakiman berkenaan dikeluarkan pada 20 September 2019. Jabatan Peguam Negara tidak terlibat dalam penyelesaian antara MOF dan GMB;

(ix) Jabatan Peguam Negara hanya terlibat menghadirkan diri dalam proses semakan kehakiman berkenaan dan ia diluluskan pada Januari 2019. Sehubungan itu, afidavit balasan perlu dikemukakan pada Mei 2019. Namun begitu, afidavit berkenaan tidak dikemukakan, walaupun telah disediakan kerana kes berkenaan ditarik balik dan diselesaikan secara luar mahkamah;

(x) Jabatan Peguam Negara tidak mempunyai pengetahuan mengenai pihak yang mengarahkan notis penarikan kes berkenaan dikeluarkan. Tiada sebarang rundingan atau perbincangan telah diadakan antara Jabatan Peguam Negara dan MOF berhubung perkara ini. Adalah menjadi kebiasaan untuk sesebuah kementerian tidak melibatkan Jabatan Peguam Negara apabila membincangkan mengenai penyelesaian sesuatu kes; dan

(xi) Bahagian Guaman, Jabatan Peguam Negara juga tidak mempunyai apa-apa maklumat berhubung penglibatan langsung YBhg. Tan Sri Tommy Thomas dalam perkara ini.

SESI KONSULTASI DENGAN ENCIK M. PURAVALEN (21 FEBRUARI 2022)

15. Pada 21 Februari 2022, PPK telah mengadakan sesi konsultasi dengan Encik M. Puravalen dan perincian adalah seperti berikut:

(i) PPK menjelaskan bahawa tujuan Encik M. Puravalen dipanggil adalah untuk membantu memberikan pengesahan fakta yang jelas berhubung isu berkaitan tribunal Suruhanjaya Pilihan Raya (SPR) dan pihak PPK berhasrat menggunakan maklumat dalam kenyataan media yang telah dikeluarkan oleh beliau sebagai respons terhadap penerbitan buku YBhg. Tan Sri Tommy Thomas sebagai sebahagian daripada kandungan laporan PPK;

(ii) Encik M. Puravalen tidak mempunyai masalah dengan cadangan pihak PPK seperti di perenggan (i) memandangkan kenyataan media berkenaan tidak berstatus sulit atau rahsia serta boleh didapati di domain awam;

(iii) Secara kronologinya, pelantikan Encik M. Puravalen untuk mengendalikan kes berhubung tribunal ini bermula dengan cadangan YBhg. Tan Sri Tommy Thomas sendiri. Encik M. Puravalen dalam responsnya terhadap cadangan berkenaan memaklumkan bahawa beliau tidak mempunyai kepakaran untuk mengendalikan kes berhubung perundangan sivil dan pilihan raya. Sehubungan itu, beliau bercadang untuk

membawa bersama-sama Datuk Yusof Zainal Abidin, bekas peguamcara di Jabatan Peguam Negara untuk terlibat dalam pasukan ini;

(iv) YBhg. Datuk Yusof menyertai pasukan berkenaan, walaupun pada asalnya ia tidak dipersetujui oleh YBhg. Tan Sri Tommy Thomas. YBhg. Datuk Yusof mahu diberikan kebebasan dalam melaksanakan tugas dan tidak mahu YBhg. Tan Sri Tommy Thomas campur tangan;

(v) Setelah beberapa siri mesyuarat diadakan, YBhg. Datuk Yusof merasa tidak selesa dengan tingkah laku Tan Sri Tommy Thomas yang bersifat *'condescending'*. Malah walaupun dikatakan wujud aduan berhubung salah laku ahli SPR berkenaan, namun tiada siasatan lanjut dilakukan untuk mengumpul bukti berkaitan;

(vi) YBhg. Tan Sri Tommy Thomas tetap mahu meneruskan tribunal berkenaan, walaupun Pengerusi SPR pada ketika itu, YBhg. Tan Sri Azhar Azizan Harun telah menerima perletakan jawatan itu dan Yang di-Pertuan Agong juga telah memperakukannya. Malah Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) pada waktu itu, YBhg. Datuk Liew Vui Keong juga telah menyatakan bahawa tribunal berkenaan tidak perlu diteruskan memandangkan perletakan jawatan telah berlaku;

(vii) YBhg. Tan Sri Azhar Azizan Harun kemudiannya telah menghubungi YBhg. Tan Sri Tommy Thomas untuk berbincang mengenai perkara ini, namun YBhg. Tan Sri Tommy Thomas meminta agar YBhg. Tan Sri Azhar Azizan Harun tidak campur tangan, memandangkan perkara ini di bawah bidang kuasa Peguam Negara;

(viii) Dokumen berhubung pendakwaan dalam tribunal ini telah dikemukakan pihak Encik M. Puravalen kira-kira 6 hari sebelum prosiding berlangsung. Dalam dokumen berkenaan Encik M. Puravalen telah menyatakan secara jelas bahawa prosiding ini adalah akademik;

(ix) Satu pra-persidangan secara tertutup telah diadakan melibatkan Encik M. Puravalen dan lima hakim Mahkamah

Persekutuan yang menjadi panel kepada tribunal ini. Majoriti hakim dalam pra-persidangan berkenaan memutuskan bahawa kes ini adalah akademik dan meminta Encik M. Puravalen untuk meneliti kembali aspek perundangan yang berkaitan dengan baik. Hakim-hakim yang memutuskan sedemikian ialah YBhg. Tan Sri Suriyadi Halim Omar, YBhg. Tan Sri Zaleha Zahari dan YBhg. Tan Sri Steve Shim;

(x) Sehari sebelum tribunal bersidang, YBhg. Tan Sri Tommy Thomas telah memanggil Encik M. Puravalen ke rumah beliau. Pertemuan berkenaan turut disertai oleh pegawai khas, YBhg. Tan Sri Tommy Thomas, Ann Khong, peguam, Lim Wei Jiet dan peguam kanan di Jabatan Peguam Negara, Puan Kogilambigai Muthusamy;

(xi) Dalam pertemuan itu, Encik M. Puravalen telah meminta untuk YBhg. Tan Sri Tommy Thomas mempertimbangkan semula pandangannya berhubung penubuhan tribunal berkenaan dan memaklumkan perkara berkenaan kepada Perdana Menteri, namun ia tidak dipersetujui. YBhg. Tan Sri Tommy Thomas malah meminta Encik M. Puravalen untuk tidak menjadi wakil kepada Peguam Negara dan rakyat Malaysia dalam kes ini;

(xii) Encik M. Puravalen menjelaskan bahawa tugasnya adalah untuk menegakkan undang-undang dan bukannya berkhidmat untuk YBhg. Tan Sri Tommy Thomas dan beliau berpegang kepada pandangan bahawa penubuhan tribunal berkenaan adalah akademik;

(xiii) Encik M. Puravalen dilantik pada 12 Oktober 2018 secara *pro bono* dan berdasarkan surat pelantikan, beliau mempunyai kebebasan untuk melaksanakan tanggungjawab yang telah ditetapkan. Secara asasnya, tugas Encik M. Puravalen adalah tugas-tugas normal seperti menyediakan bukti, membuat persiapan kes dan membentangkannya di hadapan tribunal. Selain itu, Peguam Negara telah membatalkan pelantikan Encik M. Puravalen tanpa menyatakan sebabnya;

(xiv) Encik M. Puravalen memaklumkan bahawa beliau mempunyai bukti mencukupi untuk menyanggah kenyataan dibuat YBhg. Tan Sri Tommy Thomas dalam bukunya dan semua bukti beliau telah didokumenkan; dan

(xv) Encik M. Puravalen tidak mempunyai akses serta tidak menyimpan rekod prosiding tribunal berkenaan. PPK juga memaklumkan masih tidak menerima dokumen berkenaan.

SESI KONSULTASI DENGAN PERSATUAN PEGAWAI PERKHIDMATAN KEHAKIMAN DAN PERUNDANGAN (23 FEBRUARI 2022)

16. Pada 23 Februari 2022, PPK telah mengadakan sesi konsultasi dengan Persatuan Pegawai Perkhidmatan Kehakiman dan Perundangan (JALSOA) dan perbincangan lanjut seperti berikut:

(i) Tiada laporan polis dibuat oleh JALSOA mengenai tuduhan yang dibuat dalam buku ini. JALSOA juga tidak mempertimbangkan untuk membawa isu ini kepada badan disiplin Majlis Peguam;

(ii) JALSOA pada ketika itu mendapat sokongan daripada Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang), YB Datuk Takiyuddin Hassan;

(iii) Semasa YBhg. Tan Sri Tommy Thomas berkhidmat sebagai Peguam Negara, JALSOA ada membuat kunjungan hormat ke atas beliau. YBhg. Tan Sri Tommy Thomas juga ada menghadiri majlis sosial yang dianjurkan oleh JALSOA seperti jamuan hari raya;

(iv) YBhg. Tan Sri Tommy Thomas dan Ketua Pendaftar Mahkamah Persekutuan merupakan penasihat bersama JALSOA;

(v) JALSOA pernah membangkitkan mengenai pelantikan peguam luar kepada YBhg. Tan Sri Tommy Thomas pada satu sesi dialog. JALSOA pada ketika itu memaklumkan bahawa AGC ialah "firma guaman terbesar" di Malaysia, berpengalaman dan mampu mengendalikan kes-kes di mahkamah. Justeru, pelantikan peguam luar bagi mengendalikan kes-kes yang diuruskan oleh AGC sebelum ini dilihat tidak signifikan; dan

(vi) Selepas JALSOA membuat kenyataan media berhubung dakwaan dalam buku tersebut, tiada kenyataan susulan dibuat. JALSOA terus menerima sokongan daripada ahli-ahlinya yang turut menyangkal kenyataan dalam buku tersebut.

SESI KONSULTASI DENGAN BEKAS TIMBALAN PENDAKWA RAYA, SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA DAN KEMENTERIAN LUAR NEGERI (23 FEBRUARI 2022)

17. Pada 23 Februari 2022, PPK telah mengadakan sesi konsultasi dengan bekas Timbalan Pendakwa Raya, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) dan Kementerian Luar Negeri (KLN) mengenai pelantikan Pengarah *Asian International Arbitration Centre* (AIAC) dan perbincangan adalah seperti berikut:

(i) Pihak pendakwaan (di SPRM) tidak maklum akan penahanan YBhg. Datuk Sundra Rajoo. Kertas siasatan yang dihantar kepada Peguam Negara juga dihantar terus oleh pegawai penyiasat yang mengendalikan kes ini dan tidak dalam makluman pasukan pendakwaan SPRM;

(ii) Ketika menguruskan kes ini, pihak pendakwaan (di SPRM) maklum bahawa terdapat permohonan semakan kehakiman bagi kes ini. Namun begitu, kes ini diminta untuk diteruskan;

(iii) Selepas keputusan kes semakan kehakiman oleh Mahkamah Persekutuan, YBhg. Datuk Sundra Rajoo menerima imuniti penuh. Tiga pertuduhan dalam prosiding jenayah ke atas beliau telah digugurkan;

(iv) Merujuk kepada kes YBhg. Datuk Sundra Rajoo v. Menteri Luar Negeri, Peguam Negara ada membuat permohonan kepada *Asian African Legal Consultative Organization (AALCO)* untuk mengetepikan imuniti ke atas YBhg. Datuk Sundra Rajoo. Pihak pendakwaaan diminta untuk membuat semakan ke atas perkara ini;

(v) Tiada instrumen/undang-undang yang menyatakan *Asian International Arbitration Centre (AIAC)* perlu melaporkan kepada Peguam Negara termasuklah Arahan Fungsi Menteri;

(vi) AGC tidak terlibat dengan pemilihan dan pelantikan Pengarah AIAC, pihaknya cuma terlibat dalam menyediakan kontrak pelantikan. Pelantikan dibuat oleh Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) melalui Bahagian Hal Ehwal Undang-Undang (BHEUU);

(vii) Sekiranya YB Menteri dikatakan mempunyai konflik dan tidak boleh melantik Pengerusi AIAC, urusan pelantikan tersebut tidak boleh diambil alih oleh Peguam Negara. Malah Kertas Memorandum Jemaah Menteri berhubung pelantikan Pengarah AIAC juga tidak boleh ditandatangani oleh Peguam Negara;

(viii) Merujuk kepada pelantikan Encik Vinayak Pradhan sebagai Pengerusi AIAC yang baru menggantikan YBhg. Datuk Sundra Rajoo, YB Menteri Luar Negeri pada ketika itu telah menerima surat daripada YBhg. Tan Sri Tommy Thomas meminta beliau untuk membentangkan Kertas Memorandum Jemaah Menteri bagi pelantikan Encik Vinayak Pradhan atas justifikasi AIAC adalah sebuah organisasi antarabangsa; dan

(ix) Kertas Jemaah Menteri tersebut telah disediakan oleh AGC dan ditandatangani oleh YB Menteri Luar Negeri untuk diangkat ke Mesyuarat Jemaah Menteri. Sebelum itu, KLN tidak pernah terlibat dalam urusan pelantikan Pengarah AIAC.

SESI KONSULTASI DENGAN PUAN ANN KHONG HUI LI (6 APRIL 2022)

18. Pada 6 April 2022, PPK telah mengadakan sesi konsultasi dengan Puan Ann Khong Hui Li dan perbincangan adalah seperti berikut:

(i) Puan Ann Khong berkhidmat sebagai pegawai khas kepada Tan Sri Tommy Thomas sejak 1 Ogos 2018 sehingga Tan Sri Tommy Thomas meletakkan jawatan sebagai Peguam Negara pada 28 Februari 2020. Puan Ann Khong memulakan tugas sebagai Peguam Persekutuan pada bulan Oktober 2012 dan dilantik secara kontrak di bawah gred L41. Beliau pernah berkhidmat di Bahagian Penyemakan dan Pembaharuan Undang-Undang, Kumpulan Pegawai Pelbagai Disiplin, Kementerian Pertanian dan Industri Makanan dan Bahagian

Sivil. Puan Ann Khong meletakkan jawatan dan meninggalkan perkhidmatan awam pada tahun 2021 pada gred L44;

(ii) Puan Ann Khong mengesahkan bahawa peletakan jawatan beliau dalam perkhidmatan awam tidak mempunyai kaitan dengan peranannya sebagai pegawai khas Tan Sri Tommy Thomas atau isu-isu yang berkaitan dengannya;

(iii) Pengerusi Tribunal Suruhanjaya Pilihan Raya (SPR) Tan Sri Steve Shim dalam suratnya kepada Yang di-Pertuan Agong turut menyatakan penghargaan terhadap Puan Ann Khong di atas segala usahanya menguruskan aspek logistik bagi memastikan prosiding tribunal berjalan lancar. Namun begitu, surat berkenaan tidak menyebutkan peranan Puan Ann Khong sebagai setiausaha kepada tribunal, sehubungan itu, PPK memerlukan maklumat berhubung pihak yang membuat pelantikan beliau;

(iv) Merujuk kepada perenggan (iii), Puan Ann Khong memaklumkan beliau menguruskan pelbagai perkara berkaitan aspek pengurusan tribunal termasuk logistik, perekodan minit, transkrip dan menyediakan surat-surat yang berkaitan. Setiap kali prosiding berlangsung, Puan Ann Khong akan membekalkan semua ahli tribunal dengan rekod transkrip berkaitan. Puan Ann Khong turut mengesahkan bahawa terdapat percubaan untuk menyingkirkan beliau daripada menjalankan tugas-tugas sebagai setiausaha tribunal, namun begitu Pengerusi Tribunal, Tan Sri Steve Shim memutuskan untuk membiarkan beliau terus menjalankan tugas. Pada permulaan penubuhan tribunal, Peguam Negara ketika itu, Tan Sri Tommy Thomas melantik beliau sebagai pegawai penyelaras, kemudian pihak tribunal memutuskan untuk beliau kekal melaksanakan tanggungjawab yang telah ditetapkan;

(v) Puan Ann Khong mengesahkan kepada PPK bahawa beliau merupakan individu yang bertanggungjawab merekodkan minit dan transkrip bagi prosiding tribunal berkenaan. Minit dan transkrip itu kemudiannya diserahkan kepada pihak Jabatan Peguam Negara dan pihak fail berkaitan prosiding ini sepatutnya ada di Jabatan Peguam Negara;

(vi) Puan Ann Khong mengesahkan bahawa nota dan minit bagi prosiding ini kemungkinan besar turut dimiliki oleh pihak media dan peguam yang berada sepanjang prosiding berlangsung kerana kedua-dua pihak ini juga turut merakam prosiding berkenaan;

(vii) Puan Ann Khong mengesahkan bahawa beliau terlibat dalam penubuhan tribunal ini berdasarkan kepada sesetengah perkara yang diarahkan khususnya berkaitan isu logistik dan pengurusan tribunal. Namun begitu, terdapat juga pegawai-pegawai lain di Jabatan Peguam Negara yang terlibat iaitu Puan M. Kogilambigai dan Puan Mazlifah Ayob. Namun begitu, Puan Mazlifah tidak menyertai pasukan ketika prosiding berlangsung pertama kali;

(viii) Puan Ann Khong mengesahkan beliau berada bersama-sama Encik M. Puravalen bertemu Tan Sri Tommy Thomas pada malam sebelum mesyuarat tribunal atas kapasiti sebagai pegawai penyelaras;

(ix) Puan Ann Khong mengesahkan bahawa beliau tidak menyedari mengenai kenyataan bekas Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) di Dewan Rakyat pada 22 Oktober 2018, mendiang Datuk Liew Vui Keong bahawa kerajaan tidak berhasrat untuk menubuhkan tribunal ini. Puan Ann Khong juga menyatakan beliau tidak tahu mengapa Tan Sri Tommy Thomas tetap meneruskan penubuhan tribunal itu;

(x) Puan Ann Khong mengesahkan bahawa beliau melihat surat yang diutuskan oleh badan bukan kerajaan, BERSIH kepada Perdana Menteri pada ketika itu, Tun Dr Mahathir Mohamad berhubung isu ahli-ahli SPR, namun tidak mengingati arahan pertama yang diberikan kepada beliau;

(xi) Puan Ann Khong memaklumkan bahawa sebagai seorang pegawai khas, kebiasaannya jika terdapat apa-apa isu yang perlu diteliti, beliau dan pasukan akan mengumpulkan fakta serta undang-undang yang relevan. Setelah itu, undang-undang yang berkaitan akan diteliti, ditafsir dan diaplikasikan. Berdasarkan kepada proses berkenaan, Peguam Negara akan membuat keputusan perundangan, ia bukan keputusan bersifat

saintifik kerana dalam aspek perundangan terdapat "grey area" dan tiada hitam-putih yang nyata. Adalah tidak sesuai untuk perkara di sebalik keputusan perundangan seorang Peguam Negara itu diteliti kerana Peguam Negara bertindak mengikut lingkungan kuasanya sendiri;

(xii) Puan Ann Khong mengesahkan bahawa beliau tidak dapat mengingati sebarang arahan Jemaah Menteri terhadap Tan Sri Tommy Thomas untuk meneruskan penubuhan tribunal berkenaan;

(xiii) Puan Ann Khong mengesahkan bahawa terdapat pegawai-pegawai di Jabatan Peguam Negara yang dianggap pakar untuk meneliti kes-kes umum berkaitan pilihan raya, tetapi bukan kes yang spesifik seperti isu tribunal ini;

(xiv) Puan Ann Khong mengesahkan beliau tidak tahu mengenai tahap kepakaran Lim Wei Jiet, salah seorang anggota pasukan tribunal dalam undang-undang pilihan raya;

(xv) Berkaitan kes melibatkan peletakan jawatan pengarah *Asian International Arbitration Centre (AIAC)*, Datuk Sundra Rajoo, Puan Ann Khong mengesahkan bahawa peguam kepada Datuk Sundra Rajoo, Philip Koh ada menghubungi beliau melalui talian di telefon bimbit berhubung penahanan Datuk Sundra Rajoo oleh Suruhanjaya Pencegahan Rasuah Malaysia (SPRM). Puan Ann Khong menjelaskan bahawa beliau dan Philip mengenali antara satu sama lain dan merupakan alumni King's College di London;

(xvi) Puan Ann Khong mengesahkan bahawa selepas menerima panggilan berkenaan beliau memaklumkannya kepada Tan Sri Tommy Thomas yang kemudiannya berhubung sendiri dengan pihak SPRM;

(xvii) Puan Ann Khong menjelaskan bahawa Tan Sri Tommy Thomas tidak pernah mengarahkannya untuk melibatkan diri dalam siasatan yang dijalankan oleh SPRM. Beliau hanya menyampaikan pesanan Philip Koh kepada Tan Sri Tommy Thomas dan saya memaklumkan kepada Philip Koh mengenai saranan Tan Sri Tommy Thomas supaya Datuk Sundra Rajoo melepaskan jawatannya bagi memelihara reputasi AIAC;

(xviii) Puan Ann Khong menjelaskan pernah melihat surat layang berkaitan kes melibatkan Datuk Sundra Rajoo. Surat berkenaan dialamatkan kepada Ketua Pesuruhjaya SPRM ketika itu, Dato' Sri Mohamad Shukri Abdull dan disalinkan kepada beberapa pihak termasuk Tan Sri Tommy Thomas selaku Peguam Negara;

(xix) Puan Ann Khong turut mengesahkan bahawa beliau tidak terlibat dalam penyediaan kertas Mesyuarat Jemaah Menteri berhubung pelantikan Vinayak Pradhan. Puan Ann Khong hanya berhubung dengan Vinayak bagi mendapatkan maklumat-maklumat berhubung proses pelantikan beliau sahaja;

(xx) Puan Ann Khong mengesahkan bahawa beliau terlibat membantu menyediakan kenyataan media berhubung pelantikan Vinayak Pradhan pada 21 November 2018;

(xxi) Puan Ann Khong juga mengesahkan tidak terlibat dalam sebarang komunikasi melibatkan Setiausaha Agung Asian-African Legal Consultative Organization (AALCO), Dr. Kennedy Gastorn. Namun begitu, beliau ada memberikan maklumat perhubungan Tan Sri Tommy Thomas apabila diminta oleh Philip Koh yang memaklumkan Dr. Gastorn mahu menghubungi Tan Sri Tommy Thomas;

(xxii) Puan Ann Khong memaklumkan bahawa kertas siasatan SPRM mengenai kes Datuk Sundra Rajoo tidak melalui beliau kerana berdasarkan amalan biasa, ia akan dihantar kepada pihak pendakwa raya dan Peguam Negara secara terus;

(xxiii) Puan Ann Khong turut mengesahkan bahawa beliau tidak terlibat dalam sebarang komunikasi dengan Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) pada ketika itu, Datuk Liew Vui Keong berhubung peletakan jawatan Datuk Sundra Rajoo dan pelantikan Vinayak Pradhan;

(xxiv) Puan Ann Khong mengesahkan bahawa terdapat komunikasi e-mel antara Tan Sri Tommy Thomas dan Dr. Kennedy Gastorn berhubung pelantikan Vinayak Pradhan, namun beliau tidak ada perincian terhadap e-mel berkenaan kerana tidak

mempunyai akses terhadap akaun e-mel Tan Sri Tommy Thomas;

(xxv) Puan Ann Khong berpandangan bahawa pelantikan Pengarah AIAC tidak memerlukan persetujuan AALCO, sebaliknya ia hanya memerlukan rundingan bersama-sama pihak AALCO;

(xxvi) Puan Ann Khong mengesahkan bahawa beliau tidak menyedari mengenai cabaran undang-undang terhadap pelantikan Vinayak Pradhan di Mahkamah Tinggi, afidavit Dr. Kennedy Gastorn dan surat bantahan terhadap afidavit berkenaan daripada pihak AIAC yang ditandatangani oleh Michelle Sunita Kummar;

(xxvii) PPK memaklumkan bahawa Mahkamah Tinggi memutuskan tidak mempunyai kuasa untuk menentukan sesuatu perkara berkaitan triti antarabangsa;

(xxviii) Puan Ann Khong mengesahkan bahawa Dr. Kennedy Gastorn pada mulanya gembira dan tidak mempunyai sebarang masalah dengan pelantikan Vinayak Pradhan, namun selepas beberapa ketika, pandangan beliau berubah dan menyatakan pihak Jabatan Peguam Negara melaksanakan pelantikan pemangku pengarah dan bukannya pengarah berjawatan tetap, selain mendakwa pihak Jabatan Peguam Negara tidak melakukan konsultasi yang teratur. Pada pandangan Puan Ann Khong, Vinayak perlu dilantik sebagai pemangku terlebih dahulu kerana pelantikan beliau memerlukan pengesahan Jemaah Menteri dan terdapat proses serta prosedur yang perlu dipatuhi. Kemungkinan besar terdapat salah faham dari sudut komunikasi melibatkan kedua-dua pihak;

(xxix) Puan Ann Khong menjelaskan bahawa sepanjang pengetahuannya, peguam-peguam luar yang dilantik Tan Sri Tommy Thomas tidak membawa keluar fail-fail kes yang dikendalikan mereka. Namun Puan Ann Khong mengesahkan tidak mengetahui mengenai situasi yang dilalui peguam Sitpah Selvaratnam yang mengendalikan kes berkaitan rampasan kapal mewah, Equanimity. Namun beliau menyatakan sepanjang menjadi pegawai khas kepada Tan Sri Tommy Thomas, pelantikan peguam luar ini dibuat secara

teratur termasuk mempunyai surat pelantikan dan syarat yang perlu dipatuhi termasuk aspek kerahsiaan maklumat;

(xxx) Puan Ann Khong tidak dapat mengesahkan mengapa terdapat dokumen berkaitan boleh berada di tangan pihak ketiga dan peguam luar, namun begitu menyatakan arahan umum berkaitan penjagaan kerahsiaan maklumat sentiasa diutamakan;

(xxxi) Berkaitan isu diskriminasi Kesatuan Eropah (EU) terhadap minyak sawit, Puan Ann Khong mengesahkan beliau merupakan salah seorang daripada pegawai Jabatan Peguam Negara yang dihantar ke Geneva, Switzerland untuk mengikuti representasi Indonesia di Pertubuhan Perdagangan Dunia (WTO). Secara umumnya, menurut Puan Ann Khong, pasukan peguam di Jabatan Peguam Negara telah bersedia untuk membawa kes berkenaan ke WTO, namun ia memerlukan kelulusan Jemaah Menteri. Sehubungan itu, delegasi Jabatan Peguam Negara berada di WTO untuk meneliti proses, prosedur dan bentuk hujahan yang berlangsung semasa representasi pihak Indonesia. Pasukan peguam ada menyediakan laporan, namun Puan Ann Khong tidak dapat memastikan sama ada ia adalah secara lisan atau bertulis;

(xxxii) Puan Ann Khong memaklumkan Tan Sri Tommy Thomas berpuas hati dengan laporan yang dikemukakan dan terus melaksanakan usaha-usaha penting bagi menguruskan kes berkenaan secara teratur di WTO;

(xxxiii) Puan Ann Khong berpandangan, wakil Kementerian Perusahaan Perladangan dan Komoditi (KPPK) tidak turut serta dalam lawatan berkenaan kerana lawatan itu lebih kepada meneliti aspek perundangan. Ketika di Geneva, delegasi turut dibantu oleh pihak Lembaga Minyak Sawit Malaysia (MPOB) dan Misi Tetap Malaysia ke Geneva. Sebelum hadir ke sana, delegasi juga telah melakukan persiapan termasuk meneliti aspek teknikal dan bertemu dengan kelompok industri. Sehubungan itu, kerja-kerja pencarian fakta telah selesai dilakukan;

(xxxiv) Puan Ann Khong menjelaskan bahawa Tan Sri Tommy Thomas membatalkan pelantikan peguam dari Belgium yang

sebelum ini telah berhubung dengan MPIC kerana disifatkan sebagai berkos tinggi dan urusan minyak sawit adalah urusan tempatan. Sehubungan itu, dapat dilihat pada peringkat awal sesi konsultasi banyak melibatkan kelompok industri dan jalinan kerjasama antara peguam luar tempatan dan pegawai di Jabatan Peguam Negara. Selepas kes ini disiapkan, Jabatan Peguam Negara mendekati Toby Landau yang disifatkan sebagai antara peguam terkenal dan utama di London;

(xxxv) PPK mencadangkan untuk pelantikan Toby Landau diteliti memandangkan kepakaran beliau adalah dalam aspek arbitrasi dan bukannya undang-undang anti-persaingan dan diskriminasi minyak sawit;

(xxxvi) Puan Ann Khong mencadangkan perkara di perenggan (xxxv) disemak dengan pihak pengurusan Jabatan Peguam Negara, namun Puan Ann menjelaskan terdapat diskaun yang signifikan diberikan terhadap caj perkhidmatan peguam berkenaan;

(xxxvii) Pihak PPK menjelaskan bahawa tindakan mengetepikan peguam dari Belgium itu telah mengecewakan pihak MPIC; dan

(xxxviii) PPK menjelaskan kepada Puan Ann Khong bahawa sesi konsultasi ini adalah rahsia dan memohon untuk butirannya tidak didedahkan kepada umum.

SESI KONSULTASI DENGAN ENCIK AARON CHELLIAH, PENOLONG PENGURUS DI JABATAN PENDAKWAAN DAN PENGUATKUASAAN SIVIL, SURUHANJAYA SEKURITI (5 OGOS 2022)

19. Pada 5 Ogos 2022, PPK telah mengadakan sesi konsultasi dengan Encik Aaron Chelliah, Penolong Pengurus di Jabatan Pendakwaan dan Penguatkuasaan Sivil, Suruhanjaya Sekuriti dan butiran lanjut perbincangan adalah seperti berikut:

(i) PPK menjelaskan bahawa berdasarkan kepada penelitian di muka surat 303, bab 32 buku *My Story: Justice in the Wilderness*, nama Encik Aaron Chelliah telah disebut sebagai

terlibat sebagai sebahagian daripada ahli pasukan siasatan isu pelanggaran undang-undang sekuriti berkenaan Goldman Sachs, khususnya dalam isu mengenai 1MDB serta tindakan Suruhanjaya Sekuriti dalam perkara ini. Sehubungan itu, PPK berhasrat mengadakan sesi konsultasi ini bagi mendapatkan maklumat berkaitan mengenai isu ini;

(ii) Encik Aaron Chelliah berkhidmat sebagai Timbalan Pendakwa Raya di Jabatan Peguam Negara dari April 2017 hingga Oktober 2019 dan berkhidmat di Suruhanjaya Sekuriti dari Oktober 2019 hingga kini;

(iii) Encik Aaron Chelliah tidak mempunyai sebarang pengetahuan mengenai sama ada Suruhanjaya Sekuriti tidak pernah memulakan sebarang penyiasatan terhadap isu ini sehingga Tan Sri Tommy Thomas mencampuri perkara ini. Ketika Encik Aaron Chelliah menyertai pasukan penyiasatan berkenaan, pasukan ini sudah pun dibentuk dan sebarang perkara sebelum pembentukan pasukan ini adalah di luar pengetahuan Encik Aaron Chelliah;

(iv) Encik Aaron Chelliah tidak tahu dan tidak dapat mengesahkan sama ada penyiasatan berhubung perkara ini telah dimulakan Tan Sri Tommy Thomas seperti yang dimaklumkan dalam buku *My Story: Justice in the Wilderness*;

(v) Encik Aaron Chelliah tidak tahu dan tidak dapat mengesahkan sama ada menjadi sesuatu yang normal untuk seseorang Peguam Negara memulakan penyiasatan berhubung kesalahan mengenai sekuriti atau pasaran modal. Beliau juga memaklumkan pada masa beliau merupakan seorang pegawai pendakwaan yang terlalu muda dalam perkhidmatan ketika di Jabatan Peguam Negara. Beliau berada pada gred L41. Ketika ini di Suruhanjaya Sekuriti, gred jawatan beliau boleh disamakan dengan L44. Sepanjang pengetahuannya dan berkaitan dengan kes-kes yang pernah dikendalikan beliau, Encik Aaron Chelliah tidak pernah mendengar seseorang Peguam Negara memulakan sesuatu penyiasatan dan ia sesuatu yang jarang didengar dan dihadapinya. Disebabkan tempoh perkhidmatannya yang terlalu muda, beliau tidak mengetahui jika isu seperti ini pernah muncul melibatkan Peguam Negara terdahulu;

(vi) Encik Aaron Chelliah tidak tahu dan tidak dapat mengesahkan mengenai sebarang aduan yang dikemukakan kepada Suruhanjaya Sekuriti berhubung pelanggaran undang-undang sekuriti oleh firma Goldman Sachs;

(vii) Encik Aaron Chelliah tidak dapat mengingati dan tidak pasti sama ada pernah melihat apa-apa laporan polis atau laporan kepada Suruhanjaya Sekuriti yang dibuat oleh mana-mana individu berhubung pelanggaran undang-undang oleh firma Goldman Sachs;

(viii) Encik Aaron Chelliah bersetuju bahawa Suruhanjaya Sekuriti adalah badan yang bertanggungjawab untuk melakukan siasatan seperti termaktub di bawah undang-undang. Namun begitu, jika siasatan berkenaan melibatkan kesalahan jenayah, maka input dan panduan daripada Jabatan Peguam Negara turut dilibatkan. Dalam keadaan normal, input dan panduan daripada Jabatan Peguam Negara akan dilibatkan setelah kertas siasatan dikemukakan kepada Jabatan berkenaan;

(ix) Encik Aaron Chelliah mengesahkan tidak melihat sebarang kertas siasatan diserahkan kepada AGC memandangkan beliau terlibat dalam pasukan ini setelah pertuduhan siap didraf;

(x) Encik Aaron Chelliah menyatakan Encik Ganesan Nethi telah menyediakan apa yang sepatutnya sebagai draf pertuduhan, namun ia setelah dibaca lebih kepada pernyataan tuntutan (*statement of claim*). Terdapat draf pertuduhan yang disediakan oleh pegawai Suruhanjaya Sekuriti terlibat dan ia kelihatan sebagai pertuduhan jenayah;

(xi) Pertuduhan terhadap Goldman Sachs di mahkamah telah disediakan oleh Jabatan Peguam Negara berdasarkan kepada input Suruhanjaya Sekuriti dan Encik Ganesan Nethi. Pertuduhan ini kemudiannya didaftarkan di mahkamah;

(xii) Encik Aaron Chelliah mengesahkan dirinya terlibat dalam proses penyediaan draf pertuduhan berkenaan;

(xiii) Encik Aaron Chelliah menyatakan apabila sesuatu siasatan selesai dilaksanakan oleh Suruhanjaya Sekuriti, Jabatan

Pendakwaan dan Penguatkuasaan Sivil di Suruhanjaya ini akan menyediakan cadangan draf pertuduhan;

(xiv) Encik Aaron Chelliah menyatakan setakat pengetahuannya, Jabatan Peguam Negara tidak mempunyai kuasa penyiasatan;

(xv) Dalam keadaan biasa, jika Jabatan Peguam Negara mahu sesuatu perkara itu disiasat, maka arahan akan diberikan kepada Suruhanjaya Sekuriti untuk menjalankan siasatan dan pihak Suruhanjaya akan menyiasat secara bebas;

(xvi) PPK tidak mempunyai masalah mengenai pertuduhan terhadap Goldman Sachs, namun PPK mahu membuat penentuan berasaskan fakta mengenai perkara sebenar yang berlaku agar wujud ketekalan untuk sentiasa menjunjung prinsip kedaulatan undang-undang dan pengasingan terhadap kuasa penyiasatan serta pendakwaan memandangkan buku *My Story: Justice in the Wilderness* telah membangkitkan mengenai isu pendakwaan terpilih;

(xvii) Encik Aaron Chelliah tidak tahu dan tidak dapat mengesahkan mengenai bayaran yang diterima oleh Encik Ganesan Nethi untuk perkhidmatannya;

(xviii) Encik Aaron Chelliah mengesahkan bahawa Encik Ganesan Nethi hadir dalam beberapa mesyuarat melibatkan Jabatan Peguam Negara, namun tidak tahu dan tidak dapat mengesahkan sebarang maklumat perhubungan seperti surat atau e-mel melibatkan Encik Ganesan Nethi dan Jabatan Peguam Negara;

(xix) Encik Aaron Chelliah juga tidak tahu dan tidak dapat mengesahkan sebarang mesyuarat dengan pihak Goldman Sachs yang dihadiri oleh Encik Ganesan Nethi;

(xx) Encik Aaron Chelliah mengesahkan bahawa dalam pengetahuannya, Tan Sri Tommy Thomas mahu melibatkan Goldman Sachs dalam rundingan dan perbincangan mengenai penyelesaian berkaitan penglibatan firma ini dalam kes 1MDB, namun dari sudut kepentingan peribadi ia tidak diketahui dan tidak dapat disahkan;

(xxi) Encik Aaron Chelliah mengesahkan seperti yang sering difahami, Suruhanjaya Sekuriti merupakan pihak yang bertanggungjawab melakukan siasatan. Namun begitu, satu perkara berbeza dalam isu ini ialah penglibatan Encik Ganesan Nethi, selain daripada itu tugas penyiasatan adalah di tangan Suruhanjaya Sekuriti;

(xxii) Encik Aaron Chelliah mengesahkan kandungan fail siasatan Suruhanjaya Sekuriti adalah dalam kategori sulit atau rahsia. Namun begitu, Encik Aaron Chelliah tidak tahu dan tidak dapat membuat pengesahan sama ada pendedahan kertas siasatan berkenaan kepada Encik Ganesan Nethi berpotensi menjadi satu kesalahan kerana Encik Aaron Chelliah tidak mengetahui mengenai asas-asas pertimbangan dalam pelantikan Encik Ganesan Nethi dan tidak mengetahui sama ada terdapat apa-apa pengecualian diberikan;

(xxiii) Encik Aaron Chelliah juga tidak mengetahui dan tidak dapat mengesahkan mengenai apa-apa perjanjian yang wujud mengenai pelantikan Encik Ganesan Nethi;

(xxiv) Encik Aaron Chelliah tidak mengetahui atau dapat mengesahkan sama ada Encik Ganesan Nethi ada menandatangani sebarang dokumen berkaitan pemeliharaan kerahsiaan sepanjang tempoh menjalankan tugas; dan

(xxv) Encik Aaron Chelliah tidak mengetahui atau dapat mengesahkan tahap perhubungan Tan Sri Tommy Thomas dan Encik Ganesan Nethi dan kemungkinan mereka hanya bekas rakan sekerja.

LAMPIRAN 1

MAKLUMAT PELANTIKAN HAKIM MAHKAMAH ATASAN

(i) Prosedur pemilihan dan pelantikan Hakim-Hakim, serta sama ada Perdana Menteri dan Peguam Negara mempunyai sebarang peranan dalam prosedur tersebut:-

1. Prosedur pemilihan bagi hakim-hakim Mahkamah Atasan berbeza bagi pelantikan Pesuruhjaya Kehakiman, Hakim Mahkamah Tinggi, Hakim Mahkamah Rayuan/ Hakim Mahkamah Persekutuan, Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak/Hakim Besar Mahkamah Tinggi di Malaya/Presiden Mahkamah Rayuan/Ketua Hakim Negara berdasarkan Perkara 122AB dan 122B Perlembagaan Persekutuan, Seksyen 22 hingga 29 Akta Suruhanjaya Pelantikan Kehakiman (Akta 695) dan Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009.

2. Peraturan 4 Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009 memperuntukkan bahawa bagi kekosongan jawatan di Mahkamah Tinggi:-

   a. mana-mana orang berkelayakan boleh memohon kepada SPK supaya dipilih bagi pelantikan sebagai Hakim Mahkamah Tinggi;
   b. dalam hal yang berkelayakan yang merupakan seorang pegawai yang sedang berkhidmat dalam perkhidmatan kehakiman dan perundangan, permohonan itu hendaklah dikemukakan kepada SPK melalui **ketua jabatan**; dan

c. Ketua jabatan hendaklah mengemukakan permohonan itu kepada SPK berserta denagn maklumat perkhidmatan yang berkaitan dan pernyataan sama ada dia menyokong permohonan itu atau selainnya.

3. Peraturan 5 Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009 memperuntukkan bahawa bagi kekosongan jawatan di Mahkamah Persekutuan dan Mahkamah Rayuan, orang yang berikut boleh mencadangkan nama kepada SPK bagi pemilihan:-

a. Ketua Hakim Negara yang akan bersara, bagi kekosongan jawatan Ketua Hakim Negara;
b. Ketua Hakim Negara dan Presiden Mahkamah Rayuan yang akan bersara, bagi kekosongan jawatan Presiden Mahkamah Rayuan;
c. Ketua Hakim Negara dan Hakim Besar Mahkamah Tinggi di Malaya yang akan bersara atau Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak yang akan bersara, mengikut mana-mana yang berkenaan, bagi kekosongan jawatan Hakim Besar Mahkamah Tinggi di Malaya atau Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak;
d. Ketua Hakim Negara, bagi kekosongan jawatan hakim Mahkamah Persekutuan; dan
e. Ketua Hakim Negara dan Presiden Mahkamah Rayuan, bagi kekosongan jawatan hakim Mahkamah Rayuan.

4. Bagi pelantikan **Pesuruhjaya Kehakiman**, berdasarkan Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009, permohonan adalah terbuka sepanjang tahun. Permohonan

akan dipertimbangkan apabila Suruhanjaya Pelantikan Kehakiman (SPK) mengenalpasti keperluan untuk melantik Pesuruhajaya Kehakiman. Urus setia Suruhanjaya akan menghantar nama-nama pemohon untuk tapisan SPRM, PDRM, SSM MdI dan LHDN. Bermula 20 Jun 2019 nama-nama pemohon akan dihantar kepada Majlis Peguam Malaysia/Persatuan Undang-Undang Sabah/Persatuan Peguam Bela Sarawak dan Peguam Negara Persekutuan bagi membolehkan pihak-pihak berkepentingan memberikan pandangan dan ulasan tanpa menjejaskan ketelusan dan integriti proses pemilihan hakim-hakim mahkamah atasan selaras dengan tujuan penubuhan Suruhanjaya Pelantikan Kehakiman itu sendiri. Seterusnya, urus setia akan menyediakan kertas pertimbangan bagi Mesyuarat Pra-Pemilihan berdasarkan kriteria pemilihan mengikut seksyen 23 Akta 695. Senarai nama calon akan disenarai pendek untuk ditemuduga oleh panel yang terdiri daripada anggota Suruhanjaya Pelantikan Kehakiman. Setelah proses temuduga selesai, Mesyuarat Pemilihan akan diadakan untuk memilih calon-calon yang layak dicadangkan untuk dilantik sebagai Pesuruhjaya Kehakiman mengikut seksyen 24 Akta 695. **Kemudian, urus setia akan menyediakan laporan tentang syor yang ditandatangai oleh Pengerusi SPK kepada Perdana Menteri mengikut seksyen 26 Akta 695. Perdana Menteri boleh meminta apa-apa maklumat lanjut selepas laporan dikemukakan. Seterusnya, apabila Perdana Menteri telah menerima nama-nama yang disyorkan oleh SPK, beliau seterusnya akan memberikan nasihatnya kepada Seri Paduka Baginda Yang di-Pertuan Agong mengikut Perkara 122AB Perlembagaan Persekutuan untuk diperkenankan.** Secara ringkasnya, proses pelantikan Pesuruhjaya Kehakiman adalah seperti di dalam **Lampiran 1**.

5. Bagi pelantikan **hakim-hakim Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah Tinggi**, proses pemilihan dibuat apabila

terdapat kekosongan bagi sesuatu mahkamah. Berdasarkan subseksyen 23(2) Akta 695, dalam mesyuarat pemilihan, SPK hendaklah menggunakan proses pemilihan sebagaimana yang ditetapkan oleh Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009 dan:-

a. Memilih tidak kurang daripada 3 orang bagi setiap kekosongan jawatan di Mahkamah Tinggi; atau
b. Memilih tidak kurang dua orang bagi setiap kekosongan jawatan jika kekosongan adalah bagi hakim Mahkamah Atasan selain Mahkamah Tinggi.

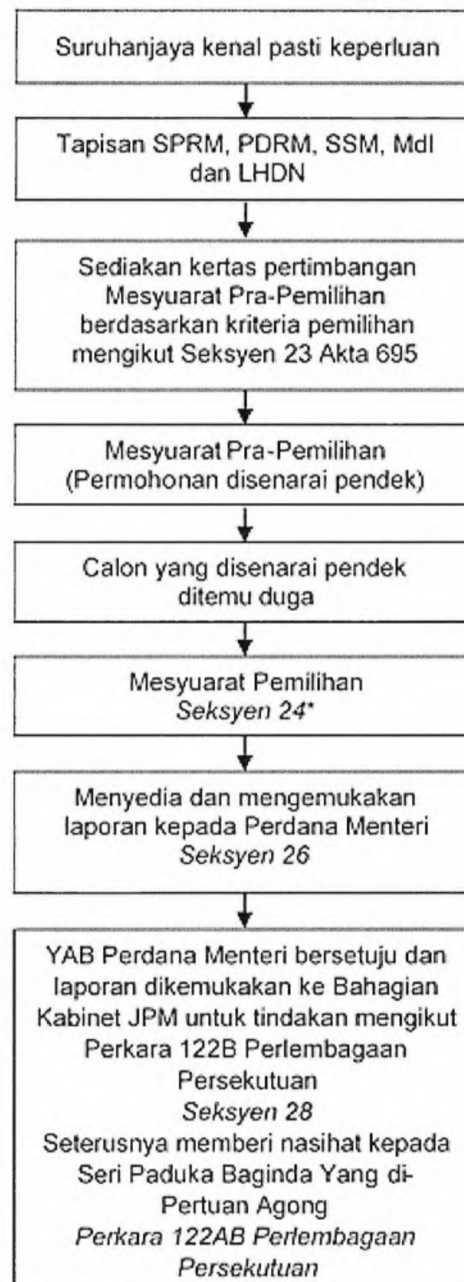
6. Proses pelantikan Ketua Hakim Negara Mahkamah Persekutuan, Presiden Mahkamah Rayuan, Hakim Besar Mahkamah Tinggi di Malaya, Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, hakim-hakim Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah Tinggi diringkaskan seperti di **Lampiran 2**.

7. Secara keseluruhannya, penglibatan Perdana Menteri dalam proses pelantikan hakim Mahkamah Atasan adalah di peringkat persetujuan sebelum diangkat untuk mendapat perkenan Seri Paduka Baginda Yang di-Pertuan Agong selepas berunding dengan Majlis Raja-Raja (kecuaali bagi jawatan Pesuruhjaya Kehakiman – tidak perlu berunding dengan Majlis Raja-Raja).

8. Manakala Peguam Negara tidak terlibat dalam pelantikan hakim-hakim Mahkamah Atasan kecuali menyokong atau tidak menyokong sesuatu permohonan sebagai Pesuruhjaya Kehakiman daripada Pegawai Kehakiman dan Perundangan.

Lampiran 1

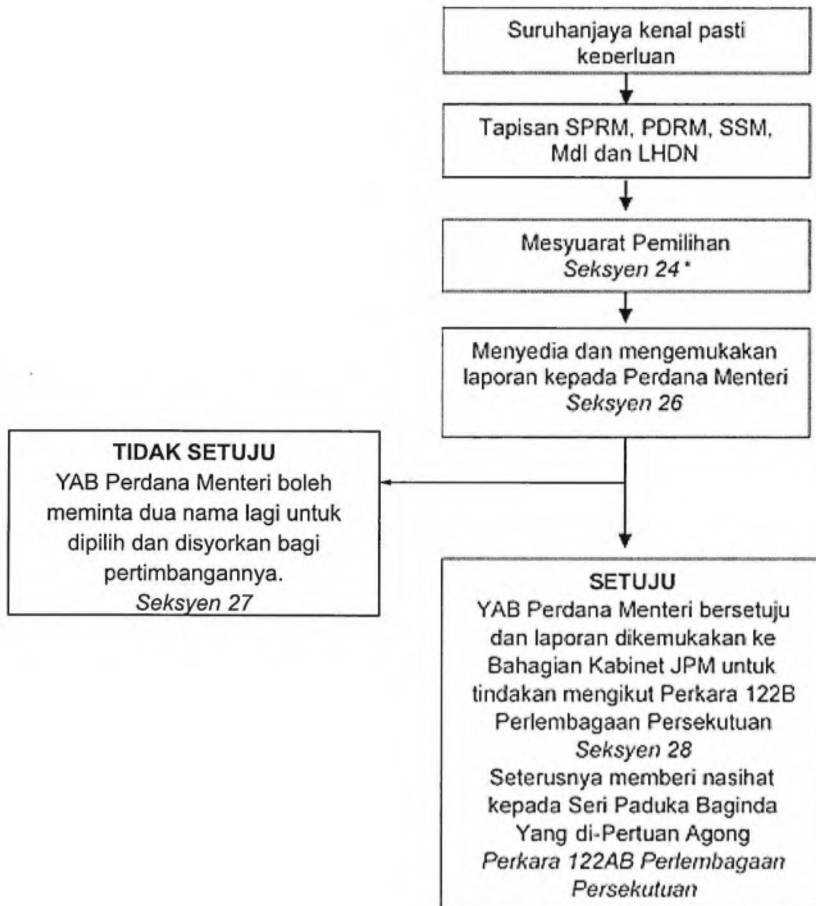
PROSES PELANTIKAN PESURUHJAYA KEHAKIMAN



Lampiran 2

PROSES PELANTIKAN HAKIM MAHKAMAH ATASAN

(SELAIN PESURUHJAYA KEHAKIMAN)



(ii) Prosedur pelanjutan tempoh perkhidmatan untuk Hakim-Hakim yang telah bersara:-

1. Fasal (1) Perkara 125 Perlembagaan Persekutuan memperuntukkan bahawa seseorang hakim Mahkamah Persekutuan hendaklah memegang jawatan sehingga dia mencapai umur 66 tahun atau sehingga suatu masa kemudiannya yang diluluskan oleh Yang di-Pertuan Agong, tetapi masa itu tidak boleh kemudian daripada 6 bulan selepas dia mencapai umur 66 tahun.

2. Proses bagi pelanjutan tempoh perkhidmatan hakim yang telah mencapai 66 tahun adalah seperti berikut:-

   a. SPK mengenal pasti hakim-hakim yang akan mencapai umur 66 tahun dan memaklumkan di dalam Mesyuarat SPK;
   b. Mesyuarat SPK akan memutuskan sama ada untuk disyorkan pelanjutan bagi hakim tersebut;
   c. sekiranya mesyuarat bersetuju, laporan syor akan dikemukakan kepada Perdana Menteri untuk pelanjutan perkhidmatan hakim tersebut sehingga 6 bulan maksimum bagi seseorang hakim;
   d. sekiranya Perdana Menteri bersetuju, beliau akan menasihati Yang di-Pertuan Agong untuk diperkenankan pelanjutan perkhidmatan hakim tersebut.

3. Fasal (1A) Perkara 122 Perlembagaan Persekutuan memperuntukkan bahawa walau apa pun apa-apa jua yang terkandung dalam Perlembagaan ini, Yang di-Pertuan Agong yang bertindak atas nasihat Ketua Hakim Negara Mahkamah Persekutuan, boleh melantik mana-mana orang yang telah memegang jawatan kehakiman yang

tinggi di Malaysia untuk menjadi hakim tambahan bagi Mahkamah Persekutuan bagi apa-apa maksud atau bagi apa-apa tempoh masa yang ditentukan olehnya dengan syarat bahawa tiada hakim tambahan yang sedemikian menjadi tidak layak untuk memegang jawatan oleh sebab dia telah mencapai umur enam puluh enam tahun.

(iii) Senarai Hakim sepanjang tempoh perkhidmatan YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara, termasuk Hakim yang diberi pelanjutan tempoh perkhidmatan (jika ada) berserta tempoh perkhidmatan kesemua Hakim tersebut.

RUJUK LAMPIRAN 3

MAKLUMBALAS DAN INPUT TAMBAHAN JABATAN PEGUAM NEGARA UNTUK SESI TEMU BUAL PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU MY STORY: JUSTICE IN THE WILDERNESS TULISAN TAN SRI TOMMY THOMAS BEKAS PEGUAM NEGARA DENGAN JABATAN PEGUAM NEGARA (AGC)

27 JANUARI 2022

SESI TEMU BUAL PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU MY STORY: JUSTICE IN THE WILDERNESS TULISAN TAN SRI TOMMY THOMAS BEKAS PEGUAM NEGARA DENGAN JABATAN PEGUAM NEGARA (AGC)

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
1.	Apakah status perkhidmatan Peguam Negara berpandukan kepada Perlembagaan Persekutuan? Adakah beliau merupakan penjawat awam? (Rujukan terhadap Perkara 132(4)(b) Perlembagaan Persekutuan) Sekiranya Peguam Negara itu bukan penjawat awam, Apakah peraturan-peraturan kerajaan yang terpakai ke atas beliau, khususnya ke atas perkara-perkara seperti berikut: (a) tatakelakuan dan disiplin; (b) perolehan perkhidmatan (khidmat guaman dari sektor swasta); dan (c) pelupusan dan penyitaan aset yang dirampas bagi pihak kerajaan.	**<u>Pelantikan Peguam Negara sebagai Pegawai Awam</u>** 1. Fasal (1) Perkara 144 Perlembagaan Persekutuan memperuntukkan kuasa kepada sesuatu Suruhanjaya Perkhidmatan untuk melantik, mengesahkan, memasukkan ke dalam perjawatan tetap atau perjawatan berpencen, menaikkan pangkat, menukarkan dan menjalankan kawalan tatatertib ke atas anggota-anggota perkhidmatan atau perkhidmatan-perkhidmatan yang diliputi oleh bidang kuasanya. Fasal (1) Perkara 144 Perlembagaan Persekutuan memperuntukkan seperti yang berikut: "***Functions of Service Commissions*** ***144.*** *(1) Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends.".* 2. Fasal (1) Perkara 138 Perlembagaan Persekutuan selanjutnya memperuntukkan mengenai pembentukan Suruhanjaya Perkhidmatan Kehakiman dan Perundangan ("SPKP") yang kuasanya meliputi semua anggota perkhidmatan kehakiman dan perundangan. Fasal (3) Perkara 138 Perlembagaan Persekutuan turut memperuntukkan bahawa setiausaha Suruhanjaya Perkhidmatan Awam juga merupakan setiausaha

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
	Adakah Tan Sri Tommy Thomas turut menikmati ganjaran persaraan termasuk pencen dan ganjaran-ganjaran lain?	SPKP. Fasal (1) dan (3) Perkara 138 Perlembagaan Persekutuan memperuntukkan seperti yang berikut: "***Judicial and Legal Service Commission*** ***138.*** *(1) There shall be a Judicial and Legal Service Commission, whose jurisdiction shall extend to all members of the judicial and legal service.* *(2) ...* *(3) The person who is secretary to the Public Services Commission shall be secretary also to the Judicial and Legal Service Commission.*". 3. Perlembagaan Persekutuan tidak memperuntukan suatu tafsiran khusus berhubung dengan terma "pegawai awam" (public officer). Sungguhpun begitu, Mahkamah Rayuan di dalam kes ***Tun Dr Mahathir Mohamad & Ors*** **v** ***Datuk Seri Mohd Najib Tun Hj Abdul Razak*** **[2018] 4 CLJ 361** telah memutuskan bahawa seorang pegawai awam atau "public officer" dalam konteks Perlembagaan Persekutuan itu adalah merujuk kepada anggota "perkhidmatan awam". Pentafsiran ini adalah selaras dengan tafsiran yang telah diperuntukkan bagi terma "public officer" yang dibaca bersekali dengan tafsiran bagi terma "public office" dan "public services" di dalam Akta Tafsiran 1948 dan 1967 [*Akta 388*] seperti yang berikut: *"public officer" means a person lawfully holding, acting in or exercising the functions of a public office;"* *"public office" means an office in any of the public services;"*

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		"public services" means the public services mentioned in Article 132(1) of the Federal Constitution;". 4. Seterusnya, peraturan yang terpakai bagi maksud pelantikan, kenaikan pangkat dan penamatan perkhidmatan seorang pegawai awam adalah dinyatakan di bawah Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012 [*P.U. (A) 1/2012*]. Peraturan tersebut dibuat di bawah Fasal (2) Perkara 132 Perlembagaan Persekutuan yang menyatakan seperti berikut: "***Public services*** ***132.** (1) ...* *(2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph (g) of Clause (1) may be regulated by federal law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State law and, subject to the provisions of any such law, by the Ruler or Yang di-Pertua Negeri of that State.".* 5. Perenggan (a) – (h) Fasal (1) Perkara 132 Perlembagaan Persekutuan telah menyenaraikan perkhidmatan-perkhidmatan yang terjumlah sebagai suatu perkhidmatan awam, termasuklah perkhidmatan kehakiman dan perundangan (perenggan (b) Fasal (1) Perkara 132 Perlembagaan Persekutuan). Oleh yang demikian, mana-mana orang yang merupakan anggota kepada mana-mana perkhidmatan awam yang disenaraikan di

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		dalam perenggan (a) – (h) Fasal (1) Perkara 132 Perlembagaan Persekutuan tersebut adalah seorang pegawai awam dalam konteks Perlembagaan Persekutuan. 6. Peraturan 4 P.U.(A) 1/2012 memperuntukkan tafsiran "pegawai", "pelantikan" dan "Suruhanjaya" seperti yang berikut: *" "pegawai" ertinya semua kategori pegawai yang sedang berkhidmat yang dilantik oleh Suruhanjaya secara tetap, sementara atau **kontrak**;".* *"pelantikan" ertinya pelantikan ke dalam perkhidmatan awam oleh Suruhanjaya secara tetap, sementara atau **kontrak**, termasuklah pelantikan kali pertama dan pelantikan seseorang pegawai yang sedang berkhidmat dalam mana-mana skim perkhidmatan;* *"Suruhanjaya" ertinya Suruhanjaya Perkhidmatan Awam, Suruhanjaya Perkhidmatan Kehakiman dan Perundangan, Suruhanjaya Pasukan Polis atau Suruhanjaya Perkhidmatan Pelajaran, mengikut mana-mana yang berkenaan.".* 7. Bagi pelantikan secara kontrak, dasar dan prosedur pelantikan pegawai kontrak adalah di bawah bidang kuasa Ketua Pengarah Perkhidmatan Awam (KPPA) menurut peraturan 58 P.U. (A) 1/2012 seperti yang berikut: ***"Pelantikan pegawai kontrak*** *58. (1) Walau apa pun Bahagian II, Suruhanjaya boleh melantik seseorang pegawai secara **kontrak**.*

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		*(2) Dasar dan tatacara pelantikan bagi pegawai secara **kontrak** hendaklah ditentukan oleh Ketua Pengarah Perkhidmatan Awam.".* 8. Sehubungan dengan itu, satu Pekeliling Perkhidmatan telah dikeluarkan oleh KPPA iaitu Pekeliling Perkhidmatan Bil. 2 Tahun 2008 ("PP 2/2008") mengenai Dasar dan Prosedur Pelantikan Secara Kontrak (*Contract of Service*). 9. Bagi maksud pelantikan YBhg. Tan Sri Tommy Thomas ("YBhg TSTT") sebagai Peguam Negara, rujukan telah dibuat kepada instrumen pelantikan beliau yang berkenaan. Berdasarkan dokumen yang dikemukakan, pelantikan YBhg. TSTT oleh Yang di-Pertuan Agong ("YDPA") menurut Fasal (1) Perkara 145 Perlembagaan Persekutuan telah dilaksanakan melalui instrumen yang berikut: (i) Dokumen Perkenan Yang di-Pertuan Agong akan nasihat YAB Perdana Menteri berhubung lantikan YBhg. TSTT sebagai Peguam Negara dan syarat-syarat lantikan beliau bertarikh 4 Jun 2018 dan 27 Jun 2018 masing-masing; (ii) Persetujuan Pelantikan secara Kontrak sebagai Peguam Negara oleh YBhg. TSTT bertarikh 12 Jun 2018; dan (iii) Perjanjian Pelantikan Secara Kontrak Peguam Negara antara Kerajaan Malaysia dengan YBhg. TSTT Sebagai Pegawai Undang-Undang bertarikh 4 Jun 2018 selama dua (2) tahun ("Perjanjian Lantikan Kontrak YBhg TSTT").

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		10. Adalah diperhatikan bahawa melalui Perjanjian Lantikan Kontrak tersebut, YBhg. TSTT telah dilantik sebagai "pegawai undang-undang". Ini adalah jelas berdasarkan beberapa peruntukan dalam Perjanjian Lantikan Kontrak YBhg TSTT seperti berikut: *"1. The Government shall, from 4th June 2018, employ the Officer and the Officer shall serve the Government <u>as a legal officer</u> who holds the office of the Attorney General in accordance with the terms and conditions hereinafter appearing.* *2. Subject to this Agreement, the terms and conditions including the period of service of the Officer (hereinafter referred to as the Period of Service") shall be the same as that of the Attorney General as determined by the Yang di-Pertuan Agong as in Annexure A ("hereinafter referred to as the "Terms and Conditions to the Attorney General").* *3. Pursuant thereto, any extension of the Period of Service of the Officer <u>as the legal officer</u> is subject to continuation of appointment of the Officer as the Attorney General.* ... *5. During the Period of Service, the Officer <u>being the legal officer</u> shall receive salary, allowances and benefits in accordance with the Terms and Conditions as the Attorney General.* *6. Termination of the Officer <u>as the legal officer</u>, is subject to termination of service of the Officer as the Attorney General that will be made in accordance with the Terms and Conditions as the Attorney General".*

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		Perenggan 10 Annexure A Perjanjian Lantikan Kontrak YBhg TSTT: *"10. During the Period of Service, <u>the Officer shall be subject to</u> the General Orders, financial regulations, service circulars and laws enforceable from time to time.".* 11. Berhubung dengan isu pelantikan YBhg. TSTT tersebut juga, rujukan telah dibuat kepada pandangan terdahulu Bahagian Penasihat kepada Ketua Sekretariat Pejabat Peguam Negara dan Pengarah BPEN melalui Memo Dalaman bertarikh 9 Disember 2015 berhubung dengan pelantikan secara kontrak YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali sebagai Pegawai Undang-Undang Gred Turus I Bil 1/2015 sebagai panduan. Berdasarkan pandangan tersebut, YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali telah dilantik secara "*contract of service*" berdasarkan P.U.(A)1/2012 dan PP 2/2008 sebagai pegawai undang-undang kontrak dan susulan itu, beliau adalah tertakluk kepada peraturan dan pekeliling tersebut. Melalui pandangan tersebut juga, KPPA boleh membuat pertimbangan untuk menetapkan syarat-syarat berhubung dengan gaji, elaun, kemudahan, bayaran ganjaran kontrak kepada YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali atas pelantikannya sebagai pegawai undang-undang kontrak disandarkan kepada terma dan syarat saraan sebagai Peguam Negara. 12. Merujuk kepada pelantikan mantan Peguam Negara dalam isu yang berbangkit ini iaitu YBhg. TSTT, adalah didapati pelantikan tersebut telah dibuat oleh Kerajaan Malaysia yang ditandatangani oleh YBhg. Dato' Zainal Abidin bin Ahmad yang merupakan Setiausaha Suruhanjaya Perkhidmatan Kehakiman dan Perundangan ("SPKP") sebagaimana yang diperuntukkan di bawah Fasal (3) Perkara 138 PP. Pelantikannya sebagai Peguam Negara/Pegawai Undang-Undang Gred Utama Turus I secara kontrak

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		dibuat melalui *Agreement on the Appointment of Legal Officer* ("Perjanjian") bagi tempoh dua (2) tahun mulai daripada 4 Jun 2018. 13. Berdasarkan Perjanjian tersebut, didapati syarat-syarat, obligasi dan hak yang diperuntukkan adalah bertujuan untuk menjadikan YBhg. TSTT sebagai pegawai awam. Dalam hal ini, **YBhg. TSTT telah dilantik menurut Fasal (1) Perkara 145 Perlembagaan Persekutuan dan pada masa yang sama juga merupakan Ketua Perkhidmatan** di bawah butiran 107 Lampiran B kepada Pekeliling Perkhidmatan Bilangan 6 Tahun 2010: Penetapan Ketua Perkhidmatan Bagi Skim Perkhidmatan Yang Sedang Berkuat Kuasa Dalam Perkhidmatan Awam Persekutuan ("PP Bil.6/2010") yang mempunyai kawalan ke atas Skim Perkhidmatan Pegawai Undang-Undang yang juga merupakan pegawai awam di bawah perenggan *(b)* Fasal (1) Perkara 132 Perlembagaan Persekutuan. 14. Hasrat atau tujuan Perjanjian tersebut untuk meletakkan status YBhg. TSTT sebagai pegawai awam boleh dilihat berdasarkan peruntukan-peruntukan yang dinyatakan dalam *Annexure A* kepada Perjanjian tersebut seperti di perenggan 2 Perjanjian yang juga adalah tertakluk kepada PP Bil.2/2008 yang memperuntukkan seperti berikut: *"Period of Service* *Subject to this Agreement, the terms and conditions including the period of service of the Officer (hereinafter referred to as the "Period of Service") shall be the same as that of the Attorney General as determined by the Yang di-Pertuan Agong as in Annexure A ("hereinafter referred to as the "Terms and Conditions of the Attorney General").*

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		15. Butiran 10 *Annexure A* tersebut juga telah memperuntukkan bahawa YBhg. TSTT adalah tertakluk kepada Perintah-Perintah Am, peraturan-peraturan kewangan, pekeliling-pekeliling perkhidmatan termasuklah Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 [*P.U.(A) 395/1993*] dan P.U.(A) 1/2012 serta undang-undang yang berkuat kuasa sepanjang tempoh kontrak. Manakala berhubung dengan penamatan kontrak sebagai Peguam Negara pula, butiran 9 *Annexure A* telah memperuntukkan kontrak perkhidmatan beliau hendaklah disifatkan telah ditamatkan pada hari yang sama dengan penamatannya sebagai Peguam Negara mengikut Fasal (5) Perkara 145 Perlembagaan Persekutuan. 16. Peruntukan ini adalah selaras dengan kedudukan yang diputuskan dalam kes **Government of Malaysia v. Rosalind Oh Lee Pek Inn** [1973] 1 MLJ 222 seperti yang berikut: *"I should add that the contract between a public servant such as the plaintiff and the government is of a very special kind, for as was stated by Ramaswami J at p. 1894 when delivering the judgment of the Indian Supreme Court in Roshan Lal v. Union of India AIA [1967] SC 1889:* *It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government ... The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties.".*

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		17. Sehubungan dengan itu, dirumuskan bahawa pelantikan YBhg. TSTT merupakan pelantikan secara *contract of service* sebagaimana yang diperuntukkan di bawah PP Bil.2/2008 dan turut dirumuskan bahawa beliau adalah seorang pegawai awam sebagaimana yang ditafsirkan di bawah peraturan 4 P.U. (A) 1/2012. 18. Selain itu, dalam menjalankan tugas atas kapasiti pegawai awam, YBhg. TSTT akan terdedah kepada maklumat-maklumat berkenaan dengan hal ehwal Kerajaan termasuk maklumat-maklumat terperingkat. Oleh itu, YBhg. TSTT juga adalah tertakluk kepada syarat berkenaan dengan membuat akuan berkanun, menandatangani surat aku janji dan lulus tapisan keselamatan di bawah peraturan 20 dan 21 P.U.(A) 1/2012 dan menandatangani 'Perakuan untuk Ditandatangani oleh Pegawai Awam Berkenaan dengan Akta Rahsia Rasmi 1972 [*Akta 88*]'. 19. Dalam hal ini, selain kontrak perkhidmatan, YBhg. TSTT juga telah menandatangani perakuan di bawah Akta 88 yang telah dirujuk di atas. 20. Berhubung dengan perolehan perkhidmatan, sebagai pegawai awam, YBhg. TSTT adalah tertakluk kepada peruntukan di bawah Akta Tatacara Kewangan 1957 [*Akta 61*], Arahan Perbendaharaan, Pekeliling Perbendaharaan serta peraturan dan prosedur kewangan sedia ada yang berkuat kuasa dari semasa ke semasa. 21. Selanjutnya, isu berhubung dengan pelupusan dan penyitaan aset yang dirampas bagi pihak kerajaan pula, YBhg. TSTT sebagai pegawai awam juga adalah tertakluk kepada undang-undang bertulis dan peraturan-peraturan yang berkenaan dengan hal perkara tersebut.

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		22. Berdasarkan peruntukan undang-undang dan penjelasan di atas, YBhg. TSTT adalah merupakan seorang pegawai awam dan tertakluk kepada Perintah-Perintah Am, peraturan-peraturan kewangan, pekeliling-pekeliling perkhidmatan dan undang-undang sedia ada yang masih berkuat kuasa sepanjang tempoh perkhidmatan menurut Perjanjian tersebut. 23. YBhg. TSTT juga adalah tidak layak untuk menerima pencen kerana dilantik secara kontrak dan bukan pegawai awam yang layak diberikan taraf berpencen berdasarkan peruntukan seksyen 7 dan seksyen 8 Akta Pencen [*Akta 227*]. 24. Secara prinsip, YBhg. TSTT layak menerima bayaran ganjaran dan wang tunai sebagai gantian bagi cuti rehat (GCR) dengan syarat YBhg. TSTT menyempurnakan perkhidmatan dengan memuaskan. Dalam hal ini, BPEN telah merujuk kepada Jabatan Perkhidmatan Awam dan dimaklumkan bahawa selaras dengan PP 2/2008 yang memperuntukkan bahawa pegawai awam yang meletak jawatan atas apa sebab sekalipun tidak layak dibayar ganjaran kecuali peletakan jawatan kerana mendapat tawaran pelantikan dalam sektor awam atau ditawarkan kursus pra-perkhidmatan tertakluk pegawai awam tersebut telah menamatkan perkhidmatan dengan memuaskan. Sehubungan dengan itu, YBhg. TSTT tidak layak dibayar ganjaran kerana meletak jawatan seperti mana yang dinyatakan dalam pekeliling tersebut.

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2.	Apakah kuasa yang ada pada Peguam Negara atas kapasitinya sebagai penasihat undang-undang kepada Yang di-Pertuan Agong, YAB Perdana Menteri, Kabinet dan Kerajaan secara umumnya, seperti yang terkandung di bawah Perkara 145(2) Perlembagaan Persekutuan? Secara khususnya soalan ini turut bersesuaian untuk dirujuk kepada isu berkaitan Kementerian Perusahaan Perladangan dan Komoditi yang dijelaskan dalam buku Tan Sri Tommy Thomas pada muka surat 369, 370, 371 dan 372.	1. Peranan dan kewajipan Peguam Negara adalah sebagaimana yang termaktub di bawah Perkara 145 Perlembagaan Persekutuan dan undang-undang bertulis yang lain. Secara khususnya, Fasal (2) dan (3) Perkara 145 Perlembagaan Persekutuan memperuntukkan seperti berikut: *"(2) It shall be the duty of the Attorney General to advise the Yang di-Pertuan Agong or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong or the Cabinet, and to discharge the functions conferred on him by or under this Constitution or any other written law.* *(3) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.".* 2. Dalam membincangkan peranan dan kewajipan Peguam Negara di bawah Fasal (2) Perkara 145 Perlembagaan Persekutuan, Hakim Ahmad Kamal Md Shahid di dalam kes ***Khairuddin Abu Hassan*** v ***Idris Harun Dalam Kapasiti Sebagai Peguam Negara Malaysia*** [2021] 1 LNS 858, memutuskan bahawa: *"[32] Clearly, the duty of the Respondent under Article 145(2) of the FC is only to advise. The Federal Court speaking through Raus Sharif FCJ (as he then was) in Members of the Commission of Enquiry on the Video Clip Recording of Images of A Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v. Tun Dato'*

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim [2011] 6 MLJ 490; [2012] 1 CLJ 805; [2012] 2 MLRA 197 had outlined the applicable principles with regards to the decision, action or omission that must have adversely affected a person as enunciated through Order 53 rule 2(4) of the ROC 2012 as follows: *(i) to fall within the ambit of Order 53 rule 2(4) of the ROC 2012, a decision "must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy" (paragraph 26);* *(ii) the decision must have the effect of directly affecting the Applicant's legal rights (paragraph 28-29). It must be a "legal and binding decision" (paragraph 38);* *(iii) a mere finding or recommendation, which is not binding on anybody and has no legal effect on the right of a subject, is not amenable to judicial review (paragraph 27, 39);* *(iv) where the impugned acts are not decisions that affect the rights of the Applicants, the application should be dismissed at leave stage. It is not necessary to grant leave to determine the issue at the substantive hearing (paragraph 40).*

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		[33]Article 145(2) of the FC was further discussed in Messrs Tai Choi Yu & Co, Advocates (suing as a firm and Tai Choi Yu as sole proprietor) v. Arif in bin Zakaria & Anor [2020] 2 CLJ 508; [2020] 5 MLJ 207 at 215 where Stephen Chung JCA (as he then was) delivering judgment of the court held that: *[16]"...Under art 145(2) of the Federal Constitution ('the Constitution'), it shall be the duty of the AG to perform such other duties of a legal character and to discharge the functions conferred on him by or under the Constitution or any written law.".* [Penekanan ditambah] 3. Di dalam kes ***Public Prosecutor*** **v** ***Zainuddin*** [1986] 2 MLJ 100 Tun Salleh Abas dalam penghakimannya pula ada menyatakan seperti berikut: *"The law and in giving the Attorney General an exclusive power respecting direction and control over criminal matters expect him to exercise it honestly and professionally. The law gives him a complete trust in that the exercise of this power is his and his alone and that his decision is not open to any judicial review. If he is a Minister of the Government he is answerable to Parliament and to his cabinet colleagues, and if he is not, the Government will answer for him in Parliament, whilst he himself will be answerable to the Government, and if he is a civil servant he will be answerable also to the Judicial and Legal Service Commission, though anomalously he is a member of it. Members of the public expect that he exercises his power bona fide and professionally in that when he prefers a charge against an individual he does so because public interest*

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		demands that prosecution should be initiated and when he refrains from charging an individual or discontinues a prosecution already initiated he also acts upon the dictate of public interest.". [Penekanan ditambah] 4. Tan Sri Datuk Haji Abdul Kadir Yusof di dalam Artikel bertajuk **"The Office of Attorney General, Malaysia" [1977] 2 MLJ msxvi** turut menjelaskan peranan Peguam Negara dalam konteks Fasal (2) Perkara 145 Perlembagaan Persekutuan untuk melaksanakan tanggungjawab tersebut secara professional dan mengikut lunas undang-undang yang sewajarnya seperti berikut: *"Clause (2) of Article 145 sets out the advisory duties of the Attorney General towards the Yang di-Pertuan Agong, the Cabinet and the individual Ministers, in legal matters. In the performance of these duties the Attorney General acts in a professional capacity; the fact that he may hold office in a political party, or be a Minister of the Government, or be elected from a particular constituency, could not and should not raise any conflict of interests and sway his decisions as a professional legal adviser, because he would serve his party, his Government, and his constituents best by maintaining an objective professional approach designed to uphold the Constitution and the laws of the country. It is the quality and the strength of character of the holder of the office that would be more significant than considerations if the existence or non-existence of political affiliations.* *This Clause also confers on the Attorney General the duty of discharging all other functions that may be conferred on him by or under the Constitution or any other*

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		written law. In performing such statutory functions too, the Attorney General will be expected to act in a professional capacity in strict accordance and in strict compliance with the requirements of the law which confers these functions on him.". 5. Secara ringkasnya, Fasal (2) Perkara 145 Perlembagaan Persekutuan merupakan punca kuasa utama Peguam Negara sebagai penasihat dalam hal ehwal perundangan atau apa-apa perkara yang bersifat undang-undang, kepada YDPA atau Jemaah Menteri. Dalam melaksanakan kewajipan tersebut, Peguam Negara hendaklah melaksanakannya secara professional, *bona fide* dan berlandaskan peruntukan undang-undang yang sewajarnya. 6. Bagi mencapai matlamat itu, Peguam Negara bolehlah mengambil apa-apa tindakan bagi memastikan apa-apa nasihat yang hendak dan akan diberikan kepada YDPA dan Jemaah Menteri itu merupakan suatu nasihat yang tepat dan terbaik termasuklah mendapatkan apa-apa pandangan dan input daripada pihak ketiga yang dirasakan sesuai dan mempunyai pengetahuan khusus dalam bidang tertentu. Tindakan sedemikian adalah dibenarkan sekiranya ia adalah bagi membantu Peguam Negara dalam memastikan apa-apa nasihat yang akan diberikan oleh Peguam Negara itu kelak adalah suatu nasihat yang bukan sahaja tepat dari segi undang-undang tetapi juga menyeluruh dan berkesan.

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		7. Perihal keperluan atau tindakan Peguam Negara untuk mendapatkan pandangan sebelum memberi nasihat atau membuat keputusan di dalam bidang kuasanya ini ada disentuh oleh Tan Sri Datuk Haji Abdul Kadir Yusof di dalam Artikel **bertajuk "The Office of Attorney General, Malaysia"** di muka surat xx di mana beliau telah memetik ucapan Sir Hartley Shawcross, bekas Peguam Negara United Kingdom di dalam House of Commons seperti berikut: *"...In order to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the Government; and indeed; as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what that decision ought to be. The responsibility for the eventual decision rests with the Attorney General, and he is not to be put, and is not put, under pressure by his colleagues in the matter.* *Nor, of course, can the Attorney General shift his responsibility for making the decision onto the shoulders of his colleagues. If political considerations which, in the broad sense that I have indicated, affect the government in the abstract arise, it's the Attorney General, applying his judicial mind who has to be the sole judge of those consideration.".* [Penekanan ditambah]

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		8. Dengan mengunapakai prinsip yang dipetik oleh Tan Sri Datuk Haji Abdul Kadir Yusof di dalam Artikel di atas, dan mengaplikasikannya dalam konteks isu pelantikan peguam swasta/ luar bagi maksud pengendalian isu perundangan berkaitan EU Palm Oil sebagaimana yang ditulis oleh YBhg. TSTT di dalam buku beliau bertajuk *"My Story : Justice in the Wilderness"* (mukasurat 369 – 372), selagi mana nasihat muktamad yang diberikan kepada YDPA dan Jemaah Menteri bagi maksud perkara tersebut dilaksanakan oleh Peguam Negara sendiri secara professional dan bebas tanpa adanya pengaruh atau tekanan daripada mana-mana pihak, maka kewajipan beliau (Peguam Negara) sebagai penasihat utama dalam hal ehwal undang-undang sebagaimana yang diperuntukkan di bawah Fasal (2) Perkara 145 Perlembagaan Persekutuan telah dilaksanakan secara teratur. 9. Isu berkaitan Kementerian Perusahaan Perladangan dan Komoditi yang dijelaskan dalam buku YBhg. TSTT pada muka surat 369, 370, 371 dan 372, boleh dirujuk kepada maklumbalas pada Soalan Nombor 9.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
3.	Sejauh manakah batas imuniti dan kebebasan sebagai Pendakwa Raya berpandukan kepada Perkara 145 Perlembagaan Persekutuan?	1. Secara amnya, Fasal (3) Perkara 145 Perlembagaan Persekutuan memperuntukkan bahawa Peguam Negara hendaklah mempunyai kuasa yang boleh dijalankan menurut budi bicaranya, untuk memulakan, menjalankan atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan, selain prosiding di hadapan mahkamah Syariah, mahkamah anak negeri atau mahkamah tentera. 2. Dalam konteks kesalahan jenayah, Fasal (3) Perkara 145 Perlembagaan Persekutuan perlu dibaca bersama subseksyen 376(1) Kanun Tatacara Jenayah ("KTJ") yang memperuntukkan seperti berikut: *"376(1) The Attorney General shall be the Public Prosecutor and shall have the control and direction of all criminal prosecutions and proceedings under this Code.".* 3. Oleh yang demikian, berdasarkan kepada Fasal (3) Perkara 145 Perlembagaan Persekutuan yang dibaca bersama dengan subseksyen 376(1) KTJ, Peguam Negara selaku Pendakwa Raya mempunyai kuasa budi bicara yang luas dalam memutuskan soal memulakan, menjalankan atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan jenayah dan pelaksanaan kuasa budi bicara tersebut tidak boleh dipertikaikan walaupun melalui kaedah semakan kehakiman (not amenable to judicial review) . Pentafsiran ini disokong oleh penghakiman kes-kes berikut:

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		a) ***Long Bin Samat & Ors*** v ***PP*** [1974] 2 MLJ 152 *"1] The Public Prosecutor is given wide discretion over the control and direction of all criminal proceedings and can in particular decide to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court; "* *"In our view, this clause from the supreme law clearly gives the Attorney General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue...";* b) ***Johnson Tan Han Seng*** v ***PP*** [1977] 2 MLJ 66 *"...They deliberately wrote article 145(3) into our constitution, which reads:* *"The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a native court or a court-martial."*

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		The language of this provision is very wide, for it includes the word "discretion" which means liberty of deciding as one thinks fit. In view of the deliberate decision of our constitution-makers to write this provision into our constitution I do not think that it can be said that it must be read subject to article 8. Rather, in my view, the contrary: article 8 it is that must be read subject to article 145(3)."; c) ***REPCO Holdings Bhd*** **v** ***Public Prosecutor*** [1997] 3 MLJ 681 *"...the exercise of discretion by the Attorney General in the context of art 145(3) is put beyond judicial review. In other words, the exercise by the Attorney General of his discretion, in one way or another, under art 145(3), cannot be questioned in the courts by way of certiorari, declaration or other judicial review proceedings.* *I think that the proposition is not only good law but good policy. For, were it otherwise, upon each occasion that the Attorney General decides not to institute or conduct or discontinue a particular criminal proceedings, he will be called upon to a court of law the reasons for his decision It will then be the court and not the Attorney General who will be exercising the power under art 145(3) FC. That was surely not the intent on our founding fathers who framed our Constitution for us.";* dan

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		d) ***Karpal Singh & Anor*** v ***PP*** [1991] 2 MLJ 554 *"...For our immediate purpose we wish to refer to art 145(3) of the Constitution which states that the Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before Syariah Court etc. ... The discretion vested in the Attorney General is unfettered and cannot be challenged and substituted by that of the court's"* 4. Namun begitu, pentafsiran terhadap pelaksanaan kuasa budi bicara Peguam Negara di bawah Fasal (3) Perkara 145 Perlembagaan Persekutuan sedemikian telah dikemaskini menerusi penghakiman Mahkamah Persekutuan di dalam kes ***Sundra Rajoo a/l Nadarajah*** v ***Menteri Luar Negeri, Malaysia & Ors*** [2021] 5 MLJ 209 seperti berikut: *"[112] Article 145(3) of the FC provides the AG/PP with a wide discretion to institute, conduct or discontinue any proceeding for a criminal offence. This wide discretion means the AG/PP has sole and exclusive discretion in that only he/she can exercise such power. However, the AG/PP does not have absolute or unfettered discretion under art 145(3). As alluded to in the preceding discussion and following from it, it is our judgment that in appropriate, rare and exceptional cases, such discretion is amenable to judicial review.*

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		[113] In all challenges against the decisions of the AG/PP exercising his powers under art 145(3) of the FC, the position is that his decisions are cloaked with the presumption of legality. The onerous burden lies on the challenging party to overcome the strong presumption of legality with compelling prima facie evidence of grounds to review the AG/PP's decision within the recognised reasons for judicial review. *Any such challenge had to pass a two-step threshold which had to be satisfied at the leave stage of the judicial review application.* *[115] Firstly, the burden of proof lies on the applicant. The applicant will have to show that he has a legal basis to challenge the decision of the AG/PP. This refers to the traditional grounds of judicial review and other bases implicitly recognised by the earlier judgments on this subject, including but not limited to:* • *illegality;* • *procedural impropriety (eg breach of the rules of natural justice);* • *irrationality (considering irrelevant considerations or ignoring relevant and material considerations); and* • *mala fides.* *[116] Once the above legal grounds or any of them are clearly set out, the applicant will then have to adduce compelling and prima facie proof that the decision or omission of the AG/PP falls within those grounds or any one of them. In other words, the courts are to presume, having regard to the doctrine of separation of powers, that all or any of the grounds were not made out unless the*

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		evidence singularly leads to the inevitable conclusion that they have been made. It is only after that threshold is crossed that the AG/PP bears the burden to justify his actions or inactions to the court. *[7] ...The assessment of the law and the facts would depend on the unique circumstances of each, and every case regard being had to the doctrine of separation of powers. In making that factual assessment, the court had to be satisfied that judicial review was the only method of redress available to the litigant. In other words, if the court was satisfied that the arguments centred on the substantive criminal process then the appropriate forum would be the criminal court and not any other court.".* 5. Secara ringkasnya, Mahkamah Persekutuan di dalam penghakimannya menjelaskan bahawa walaupun Fasal (3) Perkara 145 Perlembagaan Persekutuanmemberikan kuasa budi bicara yang luas kepada Peguam Negara dalam memulakan, menjalankan atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan, namun kuasa budi bicara tersebut bukanlah suatu kuasa mutlak dan boleh dicabar dalam keadaan-keadaan yang bersesuaian (appropriate circumstances) dengan menggunakan ujian '*Two-step threshold*". 6. Oleh yang demikian, berdasarkan kepada keputusan terkini Mahkamah Persekutuan di dalam kes ***Sundra Rajoo a/l Nadarajah*** v ***Menteri Luar Negeri, Malaysia & Ors*** tersebut, pelaksanaan kuasa budi bicara Peguam Negara di bawah Fasal (3) Perkara 145 Perlembagaan Persekutuan adalah tidak mutlak dan boleh disemak oleh Mahkamah. Namun, kuasa Mahkamah dalam menyemak pelaksanaan kuasa budi bicara tersebut hendaklah dilaksanakan hanya dalam keadaan-keadaan yang

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		bersesuaian (*appropriate circumstances*) dan tertakluk kepada prinsip-prinsip yang telah dinyatakan di dalam kes tersebut.
4.	Berpandukan kepada Perkara 122(b) Perlembagaan Persekutuan dan Akta Suruhanjaya Pelantikan Kehakiman 2009, adakah Peguam Negara mempunyai apa-apa peranan dalam aspek pemilihan dan pelantikan hakim? Sekiranya ada, sejauh manakah peranan berkenaan boleh dilaksanakan oleh Peguam Negara?	1. YBhg. TSTT melalui penulisan bukunya *"My Story: Justice in the Wilderness"* antara lain mendakwa bahawa terdapat penglibatan secara langsung oleh beliau dan campur tangan politik dalam badan kehakiman berhubung dengan pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah dan Sarawak. Dakwaan tersebut dinyatakan dalam buku tersebut di muka surat 342 – 343 seperti yang berikut: "***The Prime Minister and I discussed filling the four offices as all the incumbents would be retiring within a year of each other***. *Having regularly appeared in the courts, I was familiar with all the judges of the Federal Court. The apex court would naturally be the soured of the appointments. Effectively all the members of the apex court were in contention. Seniority was not relevant. Our criteria were integrity, competence, temperament, independence and a proven track record on written judgments. As head of the Apex court, the Chief Justice must lead in the development of the law. The Chief Justice must also be ever vigilant to protect and preserve the supreme law of the land, the Federal Constitution. Hence, sound knowledge of constitutional law was vital.* ***It was agreed there was only one candidate who satisfied the tests: Justice Tan Sri Tengku Maimun Tuan Mat***. *I shared with the Prime Minister my experience of appearances before her as a Judicial Commissioner and Judge of the High Court, and subsequently, in the Court of Appeal and Federal Court.*

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		Justice Rohana was the stand out candidate for President of the Court of Appeal. Justice Dato' Abang Iskandar Abang Hashim was essentially the only contender for the office of the Chief Judge of Sabah and Sarawak. Justice Tan Sri Dato' Azahar Mohamed was chosen as Chief Judge of Malaya*. Tun was happy that the two senior-most appointments would be women, jokingly saying even PAS would not object. I informed Tun that not only would Justice Tengku Maimun be the first woman Chief Justice of Malaysia, she would probably be the first in the entire Muslim world. I also said that I could not think of a single country where the top two positions are women.* ***Finally, it was agreed that all the four names should be submitted together by Tun to the Conference of Rulers, although their appointments would be staggered over the course of about ten months****. Forward planning for important offices of the state promotes good decision-making.* *...* *I paid a courtesy call to Chief Justice Tengku Maimun soon thereafter. She warmly received me in her spacious chambers in the Palace of Justice in Putrajaya.* ***I showed the names of the Prime Minister's choices for the other three names. She was happy with each of them, saying that she could work with them, and that they would work together as an effective team****...*" 2. Bagi maksud pelantikan Ketua Hakim Negara Mahkamah Persekutuan, Presiden Mahkamah Rayuan dan Hakim-Hakim Besar Mahkamah Tinggi dan hakim-hakim yang lain Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah Tinggi, Fasal (1) – (4) Perkara 122B Perlembagaan Persekutuan memperuntukkan seperti berikut:

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		" 122B(1) The Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts and (subject to Article 122C) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers. *(2) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice of the Federal Court, the Prime Minister shall consult the Chief Justice.* *(3) Before tendering his advice as to the appointment under Clause (1) of the Chief Judge of a High Court, the Prime Minister shall consult the Chief Judge of each of the High Courts and, if the appointment is to the High Court in Sabah and Sarawak, the Chief Minister of each of the States of Sabah and Sarawak.* *(4) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice, President or a Chief Judge, the Prime Minister shall consult, if the appointment is to the Federal Court, the Chief Justice of the Federal Court, if the appointment is to the Court of Appeal, the President of the Court of Appeal and, if the appointment is to one of the High Courts, the Chief Judge of that Court.* *...."*

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		3. Secara amnya, pelantikan Ketua Hakim Negara Mahkamah Persekutuan, Presiden Mahkamah Rayuan dan Hakim-Hakim Besar Mahkamah Tinggi dan hakim-hakim yang lain Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah Tinggi hendaklah dibuat oleh YDPA, yang bertindak atas nasihat Perdana Menteri, selepas berunding dengan Majlis Raja-Raja. Sebelum memberikan nasihatnya kepada YDPA berhubung pelantikan tertentu, Perdana Menteri adalah terikat dari segi undang-undang untuk merundingi pihak-pihak yang disebut secara khusus di dalam Fasal (2) – (4) Perkara 122B Perlembagaan Persekutuan tersebut. 4. Bagi maksud pelantikan Pesuruhjaya Kehakiman pula, Fasal (1) Perkara 122AB Perlembagaan Persekutuan turut memperuntukkan bahawa kuasa untuk melantik Pesuruhjaya Kehakiman hendaklah dilaksanakan oleh YDPA yang bertindak atas nasihat Perdana Menteri selepas berunding dengan Ketua Hakim Negara Mahkamah Persekutuan seperti berikut: *"122AB(1) For the despatch of business of the High Court in Malaya and the High Court in Sabah and Sarawak, the Yang di-Pertuan Agong acting on the advice of the Prime Minister, after consulting the Chief Justice of the Federal Court, may by order appoint to be judicial commissioner for such period or such purposes as may be specified in the order any person qualified for appointment as a judge of a High Court; and the person so appointed shall have power to perform such functions of a judge of the High Court as appear to him to require to be performed; and anything done by him when acting in accordance with his appointment shall have the same validity and effect as if done by a judge of that Court, and in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a judge of that Court.".*

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		5. Bagi maksud ini, suatu Suruhanjaya Pelantikan Kehakiman ("JAC") telah ditubuhkan di bawah seksyen 4 Akta Suruhanjaya Pelantikan Kehakiman 2009 [*Akta 695*] dan berperanan antara lain untuk memilih orang berkelayakan yang sesuai yang wajar dilantik sebagai hakim Mahkamah Persekutuan, Mahkamah Rayuan, Mahkamah Tinggi di Malaya dan Mahkamah Tinggi di Sabah dan Sarawak untuk pertimbangan Perdana Menteri. Seksyen 5 Akta 695 seterusnya menyenaraikan anggota-anggota JAC hendaklah terdiri daripada yang berikut: (a) Ketua Hakim Negara Mahkamah Persekutuan yang hendaklah menjadi Pengerusi; (b) Presiden Mahkamah Rayuan; (c) Hakim Besar Mahkamah Tinggi di Malaya; (d) Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak; (e) seorang hakim Mahkamah Persekutuan yang hendaklah dilantik oleh Perdana Menteri; dan (f) empat orang yang terkemuka, <u>yang bukan merupakan anggota eksekutif atau perkhidmatan awam lain, yang dilantik oleh Perdana Menteri selepas berunding dengan</u> Majlis Peguam Malaysia, Persatuan Undang-Undang Sabah, Persatuan Peguam Bela Sarawak, <u>Peguam Negara Persekutuan</u>, Peguam Besar perkhidmatan perundangan Negeri atau mana-mana badan berkaitan yang lain.

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		6. Seksyen 30 Akta 695 seterusnya memberi kuasa kepada Perdana Menteri, atas syor JAC, untuk membuat peraturan-peraturan bagi maksud melaksanakan atau menguatkuasakan peruntukan Akta 695 tersebut, termasuk peraturan-peraturan berhubungan dengan proses dan kaedah pemilihan yang hendaklah digunakan oleh JAC dalam membuat pemilihan dan syornya di bawah Akta 695 ini. Bagi maksud ini, Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009 [P.U(A)209/ 2009] telah digubal. 7. Subperaturan 4 P.U(A) 209/2009 seterusnya memperuntukkan seperti berikut: *"4(1) Mana-mana orang berkelayakan boleh memohon kepada Suruhanjaya supaya dipilih bagi pelantikan sebagai hakim Mahkamah Tinggi.* *(2) Dalam hal orang berkelayakan yang merupakan seorang pegawai yang sedang berkhidmat dalam perkhidmatan kehakiman dan perundangan, permohonan itu hendaklah dikemukakan kepada Suruhanjaya melalui ketua jabatan.* *(3) Ketua jabatan hendaklah mengemukakan permohonan itu kepada Suruhanjaya beserta dengan maklumat perkhidmatan yang berkaitan dan pernyataan sama ada dia menyokong permohonan itu atau selainnya.".* 8. Terma "ketua jabatan" telah ditafsirkan di bawah peraturan 2 P.U(A) 209/2009 sebagai merujuk kepada Peguam Negara Malaysia atau Ketua Pendaftar Mahkamah Persekutuan, mengikut mana yang berkenaan.

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		9. Oleh yang demikian, berdasarkan kepada peruntukan-peruntukan di dalam Perlembagaan Persekutuan, Akta 695 dan P.U(A) 209/2009, Peguam Negara tidak mempunyai peranan statutori secara langsung dalam soal penentuan pelantikan hakim-hakim. Namun, peranan atau penglibatan Peguam Negara ini adalah secara tidak langsung dan bersifat pentadbiran seperti berikut: (i) Peguam Negara adalah berhak dari segi undang-undang untuk dirundingi dalam pelantikan empat orang anggota JAC yang dilantik oleh Perdana Menteri di bawah perenggan 5(1)(f) Akta 695; (ii) Peguam Negara mempunyai kuasa untuk menyokong atau tidak menyokong suatu permohonan untuk dipilih sebagai Hakim Mahkamah Tinggi daripada seorang pegawai yang sedang berkhidmat dalam perkhidmatan perundangan di bawah seliaan Jabatan Peguam Negara selaras dengan subperaturan 4(2) dan (3) P.U(A) 209/2009.

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5.	Di bawah *Criminal Procedure Code (CPC)* dan Akta Prosiding Kerajaan 1956, Tan Sri Tommy Thomas sebagai Peguam Negara atau Pendakwa Raya boleh melantik peguam luar untuk mewakili kerajaan atau melaksanakan pendakwaan. Berpandukan kepada keadaan ini, adakah terdapat sebarang peraturan atau SOP untuk proses pelantikan tersebut dan pengendalian aspek yuran dan bayaran terhadap peguam luar ini? Di samping itu, adakah terdapat sebarang had yang dikenakan terhadap yuran dan bayaran ini? Berasaskan kepada soalan berkenaan, berapakah peruntukan yang telah digunakan untuk membayar peguam luar sepanjang tempoh perkhidmatan Tan Sri Tommy Thomas sebagai Peguam Negara?	1. Berkenaan Akta Prosiding Kerajaan 1956, Peguam Negara mempunyai kuasa di bawah seksyen 24(3) Akta untuk melantik mana-mana peguam bela dan peguam cara untuk mewakili Kerajaan Persekutuan dalam apa-apa kes sivil oleh atau terhadap Kerajaan Persekutuan atau pegawai awam persekutuan. 2. Peguam Negara selaku Pendakwa Raya mempunyai budibicara untuk melantik seorang peguam luar sebagai Timbalan Pendakwa Raya di bawah Seksyen 376(3) Kanun Prosedur Jenayah sekiranya peguam luar tersebut seorang yang layak (fit and proper person). 3. Selain daripada perlantikan di bawah seksyen 376(3) Kanun Tatacara Jenayah, Peguam Negara selaku Pendakwa Raya boleh melantik peguam luar dengan kebenaran bertulis (fiat) daripada Pendakwa Raya bagi menjalankan pendakwaan atau siasatan jenayah atau hadir dalam sebarang rayuan jenayah atau perkara undang-undang yang dikhaskan bagi pihak Pendakwa Raya di bawah seksyen 379 Kanun Tatacara Jenayah. Semasa menjalankan pendakwaan, siasatan, hadir untuk rayuan jenayah atau perkara undang-undang yang dikhaskan, peguam luar itu hendaklah disifatkan sebagai 'penjawat awam'. 4. Berhubung dengan aspek yuran dan bayaran kepada peguam luar yang dilantik sebagai Timbalan Pendakwa Raya, peguam luar tersebut akan dibayar daripada wang awam seberapa banyak bayaran seperti yang dipersetujui oleh Menteri Kewangan menurut seksyen 379 Kanun Tatacara Jenayah.

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	Selanjutnya adakah terdapat sebarang jawatankuasa yang bertindak meluluskan pembayaran bagi perkhidmatan yang disebutkan dalam soalan-soalan di atas atau adakah wujud apa-apa proses berkaitan yang menguruskan perolehan seperti ini? Sebagai contoh dalam isu pelantikan peguam terkemuka, David Pannick untuk menangani kes berkaitan timbang tara, walaupun Tan Sri Tommy Thomas sendiri mengakui bahawa peguam berkenaan bukan pakar dalam bidang timbang tara. Caj yang dikenakan oleh peguam ini juga sudah tentunya tinggi. Adakah dalam hal seperti ini Tan Sri Tommy Thomas telah melangkaui bidang tugasnya? Berasaskan kepada isu ini, adakah terdapat apa-apa garis panduan semasa yang digunakan oleh Jabatan Peguam Negara untuk menguruskan hal-hal berkaitan dengan pelantikan peguam luar bagi mewakili kerajaan, termasuk dari segi kontrak dan pembayaran yuran?	5. Urusan pembayaran yuran perkhidmatan pegawai-pegawai luar yang dilantik oleh YBhg. TSTT dibuat melalui peruntukan Maksud B11 – Perkhidmatan Am Perbendaharaan, Butiran 010100 Perkhidmatan Penyelidikan Khas AGC melalui perenggan 5.6(a) Tatacara Pengurusan Akaun Perkhidmatan Penyelidikan Khas ini, Peguam Negara selaku Pegawai Pengawal pada akaun boleh membuat perolehan perkhidmatan perunding termasuklah perkhidmatan peguam luar. 6. Bagi setiap peguam luar yang dilantik, YBhg. TSTT menyediakan kontrak pelantikan yang menyatakan secara spesifik amaun yuran yang perlu dibayar kepada setiap peguam yang dilantik. 7. Sepanjang tempoh perkhidmatan YBhg. TSTT sebagai Peguam Negara, jumlah peruntukan yang telah digunakan bagi tujuan ini berjumlah RM3,534,892.20. 8. Semua urusan tuntutan yuran perkhidmatan oleh peguam-peguam luar disahkan terlebih dahulu oleh Ketua-Ketua Bahagian yang terlibat sebelum tuntutan tersebut dikemukakan kepada Tan Sri Tommy Thomas selaku Pegawai Pengawal bagi tujuan pembayaran. **<u>Perlantikan David Pannick berkaitan kes melibatkan 1MDB dan International Petroleum Investment Corporation (IPIC)</u>** 9. Cadangan untuk melantik David Pannick (*aka* Baron Pannick, QC) berkaitan kes melibatkan 1MDB dan International Petroleum Investment Corporation (IPIC) telah diangkat oleh YBhg. TSTT kepada Menteri Kewangan melalui surat bertarikh 12 November 2018. Kes ini bukan sahaja melibatkan prosiding timbangtara, tetapi lebih tertumpu kepada prosiding mahkamah di hadapan Mahkamah Tinggi England dan Wales

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	Selanjutnya, adakah wujud kemungkinan untuk perincian kontrak pelantikan peguam luar semasa era Tommy Thomas didedahkan untuk pengetahuan Pasukan Petugas Khas? Khususnya bagi mengetahui implikasi kewangan yang ditanggung oleh kerajaan.	berhubung dengan isu *setting aside* suatu *consent award* timbangtara di London Court of Arbitration. 10. Kelayakan David Pannick telah dibentangkan dalam surat tersebut yang antara lainnya menyebut tentang kemahiran advokasi beliau yang kuat, reputasi yang tinggi serta keluasan bidang praktis beliau selaku barrister yang terkemuka di UK dalam kes-kes yang melibatkan kepentingan awam, dengan juga mengambil kira pelantikan beliau akan menarik publisiti yang positif untuk pihak Malaysia dalam kes *high-profile* 1MDB tersebut. 11. Dalam surat bertarikh 12 November 2018 juga, YBhg. TSTT memaklumkan bahawa David Pannick telah bersetuju untuk memberi diskaun yang agak besar terhadap *legal fees* beliau dan tidak mengenakan caj *brief fee* yang lazimnya berjumlah sekitar ratusan ribu pound sterling. 12. Cadangan lantikan tersebut telah diluluskan oleh Kementerian Kewangan melalui surat dari Pejabat Menteri Kewangan bertarikh 15 November 2018 dan dimaklumkan kepada Lembaga Pengarah 1MDB.

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6.	Berkaitan dengan aspek pelantikan peguam luar oleh Jabatan Peguam Negara, adakah terdapat sebarang peruntukan peraturan bagi memastikan peguam luar yang dilantik ini tidak mendedahkan apa-apa maklumat kes kepada pihak lain selepas kontrak berhubung pengendalian sesuatu kes itu telah tamat? Adakah pegawai-pegawai seperti *Legal Assistant dan Chambering Student* di firma peguam-peguam yang dilantik ini menandatangani boring OSA? Apakah tindakan yang boleh diambil jika pelanggaran perkara seperti ini berlaku? Berhubung dengan pelantikan peguam luar ini, adakah wujud sebarang keadaan yang bertentangan dengan konflik berkepentingan (*Conflict of interest*)? Seterusnya, adakah terdapat justifikasi yang kuat terhadap setiap pelantikan ini?	1. Peguam luar yang dilantik sebagai Timbalan Pendakwa Raya untuk mengendalikan sesuatu kes jenayah tertakluk kepada Akta Rahsia Rasmi 1972 dan bertanggungjawab memelihara kerahsiaan dokumen atau maklumat terperingkat berkaitan sesuatu kes yang dikendalikan oleh beliau. 2. Mengenai pendedahan maklumat kes oleh peguam luar kepada pihak lain selepas pengendalian sesuatu kes tamat, siasatan hendaklah dijalankan oleh pihak polis di bawah Akta Rahsia Rasmi 1972 atau undang-undang yang berkaitan bagi menentukan sama ada pendedahan maklumat kes kepada pihak lain selepas kontrak berhubung pengendalian kes tamat melanggar mana-mana peruntukan di bawah Akta Rahsia Rasmi 1972 atau mana-mana undang-undang bertulis. Selepas kertas siasatan lengkap dikemukakan, Jabatan Peguam Negara akan meneliti sama ada wujud sebarang kesalahan di bawah Akta Rahsia Rasmi 1972 atau mana-mana undang-undang bertulis dan membuat keputusan untuk mendakwa mana-mana pihak yang melakukan kesalahan tersebut. 3. Sama ada pegawai-pegawai seperti Legal Assistant dan Chambering Student di firma-firma guaman yang dilantik oleh peguam luar telah menandatangani Borang OSA atau tidak, Jabatan tiada maklumat mengenai perkara tersebut. 4. Perlantikan mana-mana peguam luar sebagai Timbalan Pendakwa Raya merupakan budibicara mutlak Peguam Negara selaku Pendakwa Raya di bawah seksyen 376(3) Kanun Tatacara Jenayah. Sebagai contoh, Datuk Seri Gopal Sri Ram, bekas hakim Mahkamah Persekutuan dan seorang peguambela dan peguamcara dilantik sebagai Timbalan Kanan Pendakwa Raya mengendalikan kes 1MDB-Tanore terhadap Dato' Sri

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	STF memohon agar kontrak diantara Kerajaan dengan peguam luar ini dikongsi dengan STF Selanjutnya, bagaimanakah dengan aspek pengurusan fail melibatkan kes-kes yang dikendalikan oleh peguam luar ini termasuk penyimpanan dan perekodannya? Adakah fail-fail ini dikembalikan semula untuk simpanan Jabatan Peguam Negara selepas kes diselesaikan? Adakah Tan Sri Tommy Thomas sebagai ketua jabatan di Jabatan Peguam Negara dilantik sebagai pegawai pengelas di bawah Seksyen 2(b) Akta Rahsia Rasmi? Adakah terdapat pegawai-pegawai lain di Jabatan Peguam Negara yang dilantik bagi tujuan sama? Adakah pihak Jabatan Peguam Negara melaksanakan proses untuk memeringkatkan dokumen-dokumen berkaitan yang dibangkitkan dalam soalan-	Mohd Najib bin Abdul Razak berdasarkan pengetahuan dan pengalaman luas beliau dalam undang-undang jenayah. 5. Perlantikan peguam luar sebagai Timbalan Pendakwa Raya tidak mendatangkan apa-apa konflik kepentingan kerana suatu kes jenayah yang dikendalikan oleh peguam luar tidak melibatkan beliau sebagai saksi atau kepentingan peribadi dalam suatu kes jenayah yang dikendalikan oleh beliau selaku Timbalan Pendakwa Raya. 6. Mengenai pengurusan fail melibatkan kes-kes yang dikendalikan oleh peguam luar, peguam luar yang mengendalikan kes jenayah tidak diberikan fail kes kecuali akses kepada dokumen dan eksibit berkaitan kes yang dikendalikan oleh mereka. Dokumen dan eksibit dikembalikan kepada Timbalan Pendakwa Raya yang menjaga fail kes untuk simpanan Jabatan ini. Selain daripada itu, peguam luar mempunyai akses kepada rekod rayuan bagi tujuan pengendalian rayuan kes yang dikendalikan oleh peguam luar tersebut di Mahkamah Rayuan. 7. YBhg. Tan Sri Tommy Thomas merupakan pegawai yang telah dilantik sebagai Pegawai Pengelas di bawah seksyen 2(b) Akta Rahsia Rasmi 1972 oleh Perdana Menteri ketika itu YAB Tun Dr. Mahathir Mohamad.

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	soalan di atas untuk dikelaskan dan dilindungi di bawah Akta Rahsia Rasmi?	
7.	Semasa Tan Sri Tommy Thomas berkhidmat sebagai Peguam Negara, adakah beliau melaksanakan apa-apa bentuk penilaian prestasi ke atas pegawai-pegawainya? Khususnya kepada pegawai-pegawai yang dinyatakan dalam buku berkenaan sebagai tidak kompeten. Sekiranya beliau melaksanakan apa-apa bentuk penilaian prestasi, adakah beliau dengan jelas menyuarakan rasa tidak senang dengan tahap kompetensi pegawai-pegawai berkenaan dalam laporan prestasi itu?	1. YBhg. Tan Sri Tommy Thomas telah melaksanakan penilaian prestasi pegawai-pegawai di bawah seliaan beliau. Berdasarkan pemarkahan yang diberikan bagi prestasi 2018 dan 2019, semua pegawai di bawah seliaan beliau mendapat markah melebihi 90%. 2. Pelaksanaan penilaian adalah berdasarkan pekeliling berkaitan Laporan Nilaian Prestasi Tahunan (LNPT) dan *Key Performance Indicator* (KPI) seperti berikut: **KPI** (a) Surat Jabatan Perkhidmatan Awam (JPA rujukan JPA(BK)(S)226/7/40(4) bertarikh 10 April 2015; dan (b) Surat JPA rujukan JPA(BK)(S)236/7/69-2(23) bertarikh 30 Januari 2018. **LNPT** (a) Pekeliling Perkhidmatan Sumber Manusia – Sistem Pengurusan Prestasi Pegawai Perkhidmatan Awam Malaysia; (b) Pekeliling Perkhidmatan Bilangan 4 Tahun 2002: Pelaksanaan Sistem Saraan Malaysia Bagi Anggota Perkhidmatan Awam Persekutuan, Lampiran A2 - Panduan Pelaksanaan Sistem Penilaian Prestasi Pegawai Perkhidmatan Awam;

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		(c) Pekeliling Perkhidmatan Bilangan 4 Tahun 2002: Pelaksanaan Sistem Saraan Malaysia Bagi Anggota Perkhidmatan Awam Persekutuan, Lampiran A3 - Panduan Penyediaan Sasaran Kerja Tahunan; dan (d) Surat Pekeliling Perkhidmatan Bilangan 2 Tahun 2009: Pemantapan Pengurusan Sistem Penilaian Prestasi Pegawai Perkhidmatan Awam.

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8.	Dalam bukunya, Tan Sri Tommy Thomas menyatakan terdapat sejumlah bayaran telah dibuat sebagai pampasan melibatkan kes hartanah, Boonsom Boonyanit. Jumlah bayaran berkenaan tidak dapat diketahui atas sebab-sebab ia dikatakan sulit. Peguam kepada Boonsom ialah Encik Mohan, persoalannya adakah Encik Mohan ini mempunyai kaitan dengan Puan Sitpah Selvaratnam, rakan kongsi di firma guaman Tan Sri Tommy Thomas. Sehubungan itu, aspek konflik berkepentingan (*conflict of interest*) wajar diteliti dalam kes ini. Berdasarkan kepada kes ini, siapakah yang bertanggungjawab menentukan jumlah pampasan yang perlu dibayar oleh kerajaan Malaysia kepada Boonsom? Adakah ia dilakukan secara bersendirian oleh Tan Sri Tommy Thomas, jawatankuasa tertentu yang ditubuhkan di peringkat Jabatan Peguam Negara atau pegawai yang mengendalikan kes ini memberi nasihat kepada beliau?	1. Pada 2 Ogos 2017 Messrs. Addleshaw Goddard (firma guaman dari London) dan Messrs. Mohanandass (firma guaman tempatan) yang mewaklili estet Boonsom Boonyanit (simati seorang warganegara Thailand) telah mengemukakan notis pertikaian (Notice of Dispute) bertarikh 31 Julai 2017 kepada Perdana Menteri Malaysia, Menteri Luar Negeri dan Peguam Negara terhadap Kerajaan Malaysia di bawah ASEAN Agreement for the Promotion and Protection of Investments 1987 ("triti") bagi menuntut gantirugi atas pelaburan hartanah yang dimiliki beliau di Malaysia setelah hartanah milik beliau telah dipindah milik secara fraud kepada pihak ketiga. Mohan Kanagasabai yang mewakili estet simati merupakan suami kepada Puan Sitpah Selvaratnam, rakan kongsi firma guaman YBhg. TSTT. 2. Selepas YBhg. TSTT dilantik sebagai Peguam Negara, beliau telah meneruskan rundingan bagi pihak Kerajaan Malaysia dengan peguam-peguam yang dilantik oleh estet simati dan bersetuju dengan cadangan penyelesaian yang dikemukakan. Lanjutan daripada itu kedua-dua pihak telah menyelesaikan tuntutan dan sejumlah pampasan telah dibayar oleh Kerajaan Malaysia. 3. Jumlah pampasan kepada Boonsom Boonyamit telah dipersetujui di peringkat pengurusan tertinggi Jabatan Peguam Negara dan kemudiannya diluluskan oleh Jemaah Menteri pada 20 September 2018.

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9.	Berkaitan dengan isu EU dan "Oil Palm", Tan Sri Tommy Thomas menyatakan dalam bukunya bahawa terdapat beberapa orang peguam luar yang telah dilantik dan yang telah ikut beliau untuk perjumpaan dengan pihak berkepentingan. Adakah bayaran dibuat kepada peguam-peguam ini ? Apakah hasil perjumpaan Tan Sri Tommy Thomas dengan pihak berkepentingan ini ? Apakah hasil cadangan Kerajaan pada masa itu dalam kes EU dan "palm oil" ini ?	**Bayaran kepada peguam yang dilantik mewakili Kerajaan Malaysia bagi tujuan penyediaan tindakan undang-undang ke atas Kesatuan Eropah (*European Union* – EU) di Pertubuhan Perdagangan Dunia (*World Trade Organization* –WTO** 1. Tan Sri Tommy Thomas, mantan Peguam Negara, melalui surat pelantikan bertarikh 29 Julai 2019, telah melantik lima (5) orang peguam daripada Badan Peguam Malaysia yang berkuat kuasa pada 24 Julai 2019 iaitu: (a) Dato' Yeo Yang Poh; (b) Puan Sitpah Selvaratnam; (c) Encik Dinesh Bhaskaran; (d) Cik Cheng Mai; dan (e) Encik Fahri Azzat. 2. Berdasarkan surat pelantikan tersebut, lima (5) orang peguam tersebut dilantik oleh Tan Sri Tommy Thomas di bawah subseksyen 24(3) Akta Prosiding Kerajaan 1956 [Akta 359] untuk membantu Jabatan Peguam Negara dalam mewakili Kerajaan Malaysia bagi tujuan penyediaan tindakan undang-undang ke atas Kesatuan Eropah (*European Union* – EU) di Pertubuhan Perdagangan Dunia (*World Trade Organization* –WTO). 3. Bayaran sebanyak **RM468,611.16** telah dibuat oleh Jabatan Peguam Negara kepada empat (4) orang peguam tersebut pada 24 Januari 2020 bagi perkhidmatan mereka dari bulan Julai 2019 sehingga Disember 2019, kecuali Puan Sitpah Selvaratnam yang telah bersetuju untuk membantu Jabatan Peguam Negara secara *pro bono basis*.

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		4. Bayaran disbursement sebanyak **RM23,425.94** yang dituntut oleh Cik Cheng Mai bagi kehadiran beliau dalam sesi konsultasi antara Indonesia dengan EU pada 19 Februari 2020 di WTO, Geneva telah dibuat oleh Jabatan Peguam Negara pada 3 April 2020. **<u>Hasil perjumpaan Tan Sri Tommy Thomas dengan pihak berkepentingan ini</u>** 5. Mesyuarat *Malaysia's Legal Taskforce on the EU Red II Matter No. 1/2019* telah diadakan pada 26 Julai 2019 di Kementerian Industri Utama (sekarang dikenali sebagai Kementerian Perusahaan Perladangan dan Komoditi) dan dipengerusikan oleh Tan Sri Tommy Thomas. Mesyuarat tersebut dihadiri oleh wakil-wakil daripada: (a) Jabatan Peguam Negara; (b) Kementerian Perusahaan Perladangan dan Komoditi; (c) Kementerian Luar Negeri; (d) Kementerian Perdagangan Antarabangsa dan Industri, (e) Lembaga Minyak Sawit Malaysia (MPOB); (f) Majlis Minyak Sawit Malaysia (MPOC); (g) Institut Penyelidikan Perhutanan Malaysia (FRIM); (h) *Council of Palm Oil Producing Countries* (CPOPC); (i) FGV Holdings Berhad; (j) Sime Darby Plantation Berhad; (k) *Malaysian Palm Oil Association* (MPOA); dan (l) semua peguam tersebut kecuali Puan Sitpah Selvaratnam dan Encik Dhinesh Bhaskaran.

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		6. Dalam Mesyuarat tersebut, Tan Sri Tommy Thomas telah memaklumkan antara lain, bahawa sasaran pasukan petugas undang-undang (*legal taskforce*) adalah untuk memulakan tindakan undang-undang terhadap EU di WTO pada 31 Disember 2019. 7. Dalam hal ini, satu Pasukan Khas yang diketuai oleh Tan Sri Tommy Thomas dan dianggotai oleh pakar-pakar perundangan dari Jabatan Peguam Negara dan peguam-peguam yang dilantik oleh Tan Sri Tommy Thomas, serta pakar-pakar teknikal dan saintifik daripada Kementerian Perusahaan Perladangan dan Komoditi, MPOB dan MPOC akan bekerjasama dalam hal-hal berkaitan perundangan dan penyediaan dokumentasi bagi tindakan undang-undang terhadap EU di WTO. Selanjutnya, kerja-kerja awalan dan penyediaan dokumen telah dilaksanakan oleh Pasukan Khas. 8. Perkara-perkara berhubung dengan penubuhan Pasukan Khas, pelantikan peguam-peguam tersebut dan tindakan yang diambil oleh Pasukan Khas telah dimaklumkan oleh Tan Sri Tommy Thomas kepada YAB Tun Dr. Mahathir Mohamad, mantan Perdana Menteri, YB Lim Guan Eng, mantan Menteri Kewangan dan YB Teresa Kok, mantan Menteri Industri Utama melalui surat masing-masing bertarikh 29 Julai 2019, 19 Ogos 2019 dan 12 Disember 2019. 9. Susulan daripada peletakan jawatan Tan Sri Tommy Thomas pada bulan Februari 2020, semua peguam tersebut telah secara rasminya meletakkan jawatan masing-masing pada awal Mac 2020. Hal ini telah turut menyebabkan proses pemfailan kes Malaysia di WTO tergendala.

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		<u>Hasil cadangan Kerajaan pada masa itu dalam kes EU dan *"palm oil"*:</u> 10. Memorandum daripada Perdana Menteri dan Menteri Perusahaan Perladangan dan Komoditi mengenai Tindakan Undang-Undang ke atas Kesatuan Eropah bagi Isu Diskriminasi Industri Minyak Sawit Negara Melalui Mekanisme Penyelesaian Pertikaian di bawah Pertubuhan Perdagangan Dunia telah dibentangkan dalam Mesyuarat Jemaah Menteri pada 1 Julai 2020. 11. Keputusan Jemaah Menteri pada 1 Julai 2020 adalah seperti yang berikut: a. Kerajaan akan mengambil tindakan undang-undang ke atas Kesatuan Eropah (EU) bagi isu diskriminasi industri minyak sawit negara melalui Mekanisme Penyelesaian Pertikaian atau *Dispute Settlement* Mechanism (DSM) di bawah Pertubuhan Perdagangan Dunia (WTO); b. supaya Malaysia menjadi pihak ketiga atau *third party* bagi kes berkaitan isu diskriminasi industri minyak sawit yang telah difailkan oleh Indonesia melalui DSM di bawah WTO (kes DS593); dan c. Kerajaan bersetuju dengan pelantikan firma/pakar perundangan asing bagi mewakili Malaysia melalui DSM di bawah WTO dalam kes Malaysia terhadap EU dan Malaysia sebagai pihak ketiga dalam kes DS593.

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		<u>Nota: Status tindakan undang-undang oleh Malaysia ke atas EU bagi isu diskriminasi industri minyak sawit negara melalui Mekanisme Penyelesaian Pertikaian atau Dispute Settlement Mechanism (DSM) di bawah WTO</u> 12. Malaysia memulakan prosiding penyelesaian pertikaian terhadap EU dengan mengemukakan permintaan untuk perundingan (*request for consultations*) dengan EU pada 15 Januari 2021. Prosiding ini telah diberikan nombor kes DS600 oleh WTO. 13. Perundingan telah diadakan pada 17 Mac 2021 untuk mencapai penyelesaian yang dipersetujui bersama oleh Malaysia dan EU. Namun, perundingan tersebut tidak berjaya mencapai apa-apa penyelesaian yang dipersetujui bersama. Oleh itu, Malaysia, telah mengemukakan permintaan untuk penubuhan panel dalam DS600 kepada *Dispute Settlement Body* WTO (DSB) pada 15 April 2021. Pada 28 Mei 2021, DSB telah meluluskan permohonan Malaysia untuk menubuhkan panel dalam DS600. 14. Pada 29 Julai 2021, Ketua Pengarah WTO telah membentuk Panel untuk DS600 yang terdiri daripada tiga (3) orang ahli panel iaitu Mr. Manzoor Ahmad (Pengerusi Panel), Ms. Sarah Paterson dan Mr. Arie Reich. 15. Malaysia telah memfailkan *First Written Submission* kepada Panel DS600 pada 15 Oktober 2021. Seterusnya, EU telah memfailkan *First Written Submission* pada 30 November 2021. 16. Kedua-dua pihak dijangka untuk memfailkan *Second Written Submission* masing-masing pada akhir bulan Februari atau awal Mac 2022.

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		17. Selanjutnya, mesyuarat substantif antara Panel DS600, Malaysia dan EU dijangka akan diadakan secara atas talian pada akhir Mac atau awal April 2022, tertakluk kepada keputusan WTO dengan mengambil kira perkembangan penularan wabak COVID-19 dari semasa ke semasa.
10.	Mengenai kes berkaitan Tribunal Suruhanjaya Pilihan Raya, mengikut Tan Sri Tommy Thomas dalam bukunya (muka surat 382), beliau telah mempersembahkan instrumen pelantikan Pengerusi Tribunal kepada Yang di-Pertuan Agong kerana YAB Perdana Menteri ketika itu, menyerahkan semuanya kepada beliau untuk melaksanakannya. Sehubungan itu, Pasukan Petugas Khas berhasrat mendapatkan tarikh instrumen berkenaan daripada Jabatan Peguam Negara kerana ia mempunyai hubungan rapat dengan kenyataan dibuat YB Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) pada ketika itu di parlimen pada 22 Oktober 2018 bahawa	1. Kenyataan bahawa YBhg. TSTT dalam bukunya (muka surat 382), beliau telah mempersembahkan instrumen pelantikan Pengerusi Tribunal kepada Yang di-Pertuan Agong kerana YAB Perdana Menteri ketika itu, menyerahkan semuanya kepada beliau untuk melaksanakannya adalah tidak benar. 2. YBhg. TSTT selaku Peguam Negara telah menasihati YAB Tun Dr. Mahathir Mohamad (ketka itu) mengenai keperluan sebuah tribunal untuk menyiasat aduan salah laku ahli-ahli Suruhanjaya Pilihan Raya (SPR) berkaitan PRU Ke-14 dan Tun Dr. Mahathir bersetuju dengan cadangan tersebut. Petikan buku Tommy Thomas, My Story: Justice in the Wilderness di mukasurat 384: ".. *I advised Tun that a tribunal shall be established under Article 125(3) of the Federal Constitution. Details of the charges and the procedures were outlined in my letter to the Prime Minister. Tun agreed, and left the implementation to me.*" 3. Tun Dr. Mahathir Mohamad, Perdana Menteri (ketika itu) telah mengemukakan cadangan kepada Yang di-Pertuan Agong pada 29 November 2018 dan pada 5 Disember 2018 Yang di-Pertuan Agong telah bersetuju menubuhkan tribunal untuk menyiasat dakwaan salah laku ahli-ahli Suruhanjaya Pilihan Raya (SPR) berkaitan PRU-14. Di mukasurat 385 "*...The Prime Minister gave his written advice on 29th*

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	tidak wujud keperluan untuk mendirikan tribunal berkenaan memandangkan ahli-ahli Suruhanjaya Pilihan Raya yang berkenaan telah meletakkan jawatan.	*November 2018, and the Yang di-Pertuan Agong agreed on 5th December 2018, to the formation of a tribunal, pursuant to Articles 114(3) and 125(3) of the Federal Constitution. The five retired judges were appointed to the tribunal, under the chairmanship of Tan Sri Steve Shim."*
	Berdasarkan kepada fakta, Yang di-Pertuan Agong telah bersetuju untuk ahli-ahli ini memendekkan tempoh perkhidmatan mereka.	4. Oleh yang demikian, adalah jelas bahawa cadangan untuk menubuhkan tribunal bagi menyiasat dakwaan salah laku ahli-ahli Suruhanjaya Pilihan Raya (SPR) berkaitan PRU-14 telah dikemukakan oleh Tun Dr. Mahathir Mohamad Perdana Menteri (ketika itu) dan bukannya YBhg. TSTT.
	Adakah Tan Sri Tommy Thomas sebagai Peguam Negara pada ketika itu, sedar mengenai kenyataan yang dibuat oleh YB Menteri yang berkenaan?	5. Berhubung soalan sama ada YBhg. TSTT pada ketika itu sedar mengenai kenyataan yang dibuat oleh YB. Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang) di parlimen pada 22 Oktober 2018 bahawa tidak wujud keperluan untuk mendirikan tribunal berkenaan memandangkan ahli-ahli Suruhanjaya Pilihan Raya yang berkenaan telah meletakkan jawatan memandangkan perkara tersebut telah dibincang secara umum di media massa. Walaupun tidak secara langsung menjawab kenyataan yang dikeluarkan oleh YB Menteri pada 22 Oktober 2018, YBhg. TSTT telah mengeluarkan kenyataan media bertarikh 30 Januari 2019, antara lainnya memberi justifikasi ke atas isu awalan yang dibangkitkan oeh Pengerusi Tribunal berkaitan prosiding tribunal tersebut yang bersifat akademik memandangkan anggota-anggota SPR yang disiasat telah meletak jawatan dan berkuatkuasa pada 1 Januari 2019. Dalam kenyataan media yang sama, YBhg. TSTT menyerahkan perkara tersebut diputuskan oleh Tribunal dan terpulang kepada Tribunal untuk membuat syor kepada DYMM Yang di-Pertuan Agong.

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11.	Kerajaan turut disaman dalam saman sivil yang dikemukakan mengenai kes berkaitan Sundra Rajoo, bekas Pengarah AIAC. Apakah tindakan pembelaan kerajaan terhadap saman berkenaan? Berkaitan kes yang sama, adakah terdapat sebarang rekod termasuk kelulusan berhubung pelantikan Vinayakh Pradhan sebagai Pengerusi AIAC menggantikan Sundra Rajoo?	**<u>Saman Sivil Sundra Rajoo a/l Nadarajah</u>** 1. Melalui Writ Saman No. WA-21NCvC-187-10/2021, Sundra Rajoo telah menyaman Tan Sri Tommy Thomas (Mantan Peguam Negara), Pegawai-Pegawai SPRM, SPRM dan Kerajaan Malaysia. 2. Pihak Defendan telah memfailkan permohonan untuk membatalkan Writ Saman dan Pernyataan Tuntutan Plaintif atas alasan-alasan: (a) tidak mendedahkan kausa tindakan yang munasabah; (b) mengaibkan, remeh dan menyusahkan; (c) menjejaskan, menghalang atau melengahkan perbicaraan tindakan dengan adil, jika ada; (d) tindakan tersebut adalah penyalahgunaan proses Mahkamah; (e) pendakwaan adalah kuasa budi bicara Pendakwa Raya di bawah Perkara 145(3) Perlembagaan Persekutuan; dan (f) segala siasatan yang dijalankan oleh pihak SPRM adalah mengikut peruntukan undang-undang yang berkuatkuasa pada setiap masa material.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		Pelantikan Vinayakh Pradhan sebagai Pengerusi AIAC 1. Pelantikan Encik Vinayak P. Pradhan telah dilantik sebagai Pengarah AIAC bagi tempoh 2 tahun bermula 21 November 2018 hingga 20 November 2020 melalui kelulusan Jemaah Menteri bertarikh 8 Mei 2019. Selepas mendapat kelulusan Jemaah Menteri, satu perjanjian pelantikan ditandatangani antara Kerajaan Malaysia dan Encik Vinayak P. Pradhan pada 20 Jun 2019 bagi menggantikan YBhg. Datuk Sundra Rajoo a/l Nadarajah.
12.	Adakah jika di masa hadapan, Pasukan Petugas Khas ini berdepan dengan tindakan undang-undang daripada pihak-pihak berkaitan, adakah Jabatan Peguam Negara akan mengambil tindakan pembelaan yang bersesuaian?	Setakat ini tiada sebarang keputusan/pendirian dibuat oleh Jabatan Peguam Negara untuk memfailkan pembelaan jika terdapat mana-mana pihak mencabar kesahan dan tindakan yang dilakukan oleh Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku "My Story: Justice in the Wilderness" Tulisan YBhg. TSTT. Sekiranya terdapat tindakan undang-undang diambil terhadap Pasukan Petugas Khas Siasatan tersebut Perkara 145 Perlembagaan Persekutuan memberi kuasa kepada Peguam Negara untuk mewakili Kerajaan dan mana-mana badan yang ditubuhkan atau melaksanakan apa-apa fungsi di bawah Perlembagaan Persekutuan.

Disediakan oleh:
Sekretariat Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku "My Story: Justice in the Wilderness" Tulisan YBhg. Tan Sri Tommy Thomas
13 Jan 2022

INPUT TAMBAHAN UNTUK SESI KONSULTASI PASUKAN PETUGAS KHAS (PPK) SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU MY STORY: JUSTICE IN THE WILDERNESS TULISAN TAN SRI TOMMY THOMAS BEKAS PEGUAM NEGARA DENGAN JABATAN PEGUAM NEGARA (AGC)

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
1.	"UMNO was upset that I had charged their president, Najib Razak, and their deputy president Ahmad Zahid Hamidi for corruption related offences. Other UMNO personalities like Tengku Adnan Mansor and Tan Sri Mohd Isa Samad were also charged. So was Musa Aman. All these decisions were personally taken by me, What did not interest UMNO bloggers was that in each and every of these cases, the IPs were prepared by the MACC, and passed to me, with recommendations to charge. I independently studied thepapers, and having satisfied myself that we had a realistic prospect of securing a conviction, decided to charge." (m/s 449)	Pandangan AGC berhubung isu *bias* dan *subjudice*, di mana YBhg. Tan Sri Tommy Thomas pernah memberikan komen di media berhubung kes ini.	1. Keputusan untuk mendakwa Dato' Sri Mohd Najib bin Razak, Dato' Seri Ahmad Zahid Hamidi dan lain-lain personaliti UMNO seperti Tengku Adnan bin Tengku Mansor, Musa Aman dan Tan Sri Mohd Isa bin Abdul Samad merupakan budibicara mutlak YBhg. Tan Sri Tommy Thomas selaku Pendakwa Raya di bawah Perkara 145(3) Perlembagaan Persekutuan setelah beliau berpuas hati terdapat keterangan yang mencukupi terhadap individu-individu tersebut bagi tujuan memperolehi sabitan di mahkamah. 2. Ulasan yang diberikan oleh beliau berhubung keputusan untuk mendakwa individu-individu tersebut di mahkamah tidak terjumlah kepada subjudice atau bias (berat sebelah) kepada mana-mana pihak atau suatu tindakan yang boleh mempengaruhi keputusan hakim yang mengendalikan perbicaraan kes-kes tersebut.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
2.	"I then telephoned Datuk V.K. Liew, the Minister in the Prime Minister Department (law) to inform him of Sundra Rajoo's arrest, the investigations and MACC intention to charge Sundra Rajoo, I also conveyed to the Minister that I would act on my own on behalf of the government to take all necessary steps with regards to the next appointment of the AIAC's director, because the minister had been named in the poison letter. I advised theminister that he would therefore have a conflict of interest." (m/s 393)	- Bagaimanakah AGC menguruskan kes Sundra Rajoo - Pandangan AGC berhubung pelantikan Vinayak Pradhan sebagai Pengarah AIAC, adakah sekiranya terdapat *conflict of interest* bagi YB Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-Undang), Peguam Negara boleh mengambil peranan dalam urusan pelantikan Pengarah AIAC	Rujuk jawapan kepada soalan 11 dalam Lampiran Sesi Temu Bual.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
3.	"One case I decided to discontinue involved a prosecution managed by the Securities Commission relating to insider trading, Upon reading representations from lawyers representing an accused facing charges underthe Capital Markets and Services Act, 2007, explanations were sought from the Securities Commission and our DPPs. It emerged that the prosecution's case rested solely on the frequency on the phone calls from an insider in a company with valuable inside information (the tipper) to the external party (the tippee). The tippee had bought and sold shares on the Bursa, and made a profit on his transactions. The prosecution by the Securities Commission was for the use of insider information to engage in insider trading for profit. The contents of their telephone conversation however were not known. I tookthe view that on such sparse evidence, the defence would not be called. The prosecution had no realistic prospect of success. I withdrew the charges." (m/s 407)	Maklumat mengenai *"insider trading"* yang telah didakwa dan ditarik balik semasa YBhg. Tan Sri Tommy Thomas menjadi Peguam Negara.	1. Datuk Vincent Leong Jee Wai (Tertuduh 1), Pengarah Urusan Maxbiz Corporation Berhad telah didakwa di mahkamah sesyen Kuala Lumpur atas kesalahan *insider trading* di bawah seksyen 188(3)(a) Akta Pasaran Modal dan Perkhidmatan 2007 kerana menyampaikan maklumat yang tidak boleh didapati secara umum dan maklumat itu mempunyai kesan material ke atas harga atau nilai sekuriti saham syarikat kepada Datuk Andrew Leong Wye Keong (Tertuduh 2). 2. Tertuduh 2 pula didakwa di mahkamah sesyen Kuala Lumpur atas kesalahan *insider trading* di bawah seksyen 188 (2)(a) Akta Pasaran Modal dan Perkhidmatan 2007 apabila melupuskan pegangan saham syarikat Maxbiz Corporation Berhad berdasarkan maklumat dalaman yang diperolehi daripada Tertuduh 1. Kedua-dua kesalahan tersebut boleh dihukum di bawah seksyen 188(4) Akta yang sama, hukuman penjara tidak melebihi 10 tahun dan denda tidk kurang daripada RM1.0 juta.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
			3. Kedua-dua peguam yang mewakili Tertuduh 1 dan Tertuduh2 telah menulis representasi bertarikh 7 September 2018 dan 28 September 2018 masing-masing. 4. YBhg. TSTT telah meneliti representasi yang dikemukakan oleh peguam bagi kedua-dua tertuduh masing-masing dan memutuskan kedua-dua kes telah ditarik balik berdasarkan alasan-alasan yang dinyatakan di mukasurat 407 buku *Mystory: Justice In the wilderness* tersebut. Keputusan YBhg. TSTT tersebut telah dimaklumkan melalui surat bertarikh 5 Oktober 2018 kepada kedua-dua peguam yang mewakili kedua-dua Tertuduh masing-masing.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
4.	"Another case which I recall speaking about to the prosecution head concerned the suspicious circumstances of the death of the owner and CEO of Cradle Fund, Nazrin Hassan. The versions of the widow and her two sons,that the upstairs rooms of their home caught fire, killing the former husband, and the father of the boys, did not seem credible. What was incredible was their explanation as to the cause of the fire. According to them, his mobile phone had burst into flames. Their maid quickly left their home, and returned to Indonesia before the police could take her statement. Further suspicion." (m/s 409/410) "What strengthened the case of foul play was the result of a second autopsy that was ordered by the court a few weeks after the victim was buried. Familymembers of the deceased had applied to court for orders that the body be exhumed and a second autopsy carried out. The widow objected. The court granted the orders. The totality of evidence pointed towards	- Pandangan AGC mengenai isu *subjudice* - Status terkini kes	1. Keputusan untuk mendakwa Samirah binti Muzaffar, dua anak lelaki beliau bersama pembantu rumah (masih bebas) merupakan budibicara mutlak YBhg. Tan Sri Tommy Thomas selaku Pendakwa Raya di bawah Perkara 145(3) Perlembagaan Persekutuan setelah beliau berpuas hati terdapat keterangan yang mencukupi bagi pendakwaan dimulakan terhadap individu-individu tersebut. 2. YBhg. Tan Sri Tommy Thomas membuat keputusan menuduh individu-individu tersebut setelah mengambil kira semua keterangan saksi-saksi dan keterangan dokumentari yang diperolehi hasil daripada siasatan yang teah dijalankan termasuk teori berkaitan kematian simati, Nazrin bin Hassan, CEO Crade Fund Sdn Bhd yang dikemukakan oleh isteri dan dua orang anak lelaki tiri simati.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
	murder. That was the recommendation of our prosecutors. I charged the widow and sonsfor murder. The trial is pending in High Court at the time of writing." (m/s 410)		3. YBhg. Tan Sri Tommy Thomas menjelaskan asas pendakwaan yang dibuat terhadap isteri simati, dua anak lelaki simati dan seorang pembantu rumah (masih bebas) di mana mereka telah didakwa kerana membunuh simati di bawah seksyen 302 Kanun Keseksaan. 4. Kes terhadap individu-individu tersebut masih dalam peringkat perbicaraan di Mahkamah Tinggi Shah Alam. Seramai 13 orang saksi telah dipanggil. Kes masih diperingkat pendakwaan di mana kes ditetapkan untuk sambung bicara pada 27.1.2022, 7.2.2022 hingga 9.2.2022.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
5.	"Paul Yong, a State Assemblyman from DAP and a member of the Executive Committee of the State Government of Perak was accused in 2019 of raping his maid. The investigations, supported by medical evidence, pointed to rape. I charged Paul Yong with that offence, At the time of writing, his case is pending in the Sessions Court in Ipoh." (m/s 410)	- Pandangan AGC mengenai isu *subjudice* - Status terkini kes	1. Keputusan untuk mendakwa YB. Tronoh, Yong Choo Kiong (dikenali sebagai "Paul Yong") merupakan budibicara mutlak YBhg. Tan Sri Tommy Thomas selaku Pendakwa Raya di bawah Perkara 145(3) Perlembagaan Persekutuan setelah beliau berpuas hati terdapat keterangan yang mencukupi bagi pendakwaan dimulakan terhadap Paul Yong. 2. Ulasan yang diberikan oleh beliau berhubung keputusan untuk mendakwa Paul Yong tidak terjumlah kepada subjudice atau bias (berat sebelah) kepada mana-mana pihak atau boleh mempengaruhi keputusan yang akan dibuat oleh hakim yang mengendalikan perbicaraan kes-kes tersebut. 3. Paul Yong telah didakwa di bawah seksyen 376 Kanun Keseksaan kerana merogol pembantu rumah beliau. Beliau didakwa di Mahkamah Sesyen Jenayah 1 Ipoh pada 23.8.2019. Kes beliau telah dipindah ke Mahkamah Tinggi Ipoh pada 21.12.2020.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
			Seramai 23 orang saksi telah dipanggil. Di akhir kes pendakwaan, beliau telah diarah membela diri. Kes ditetapkan untuk sambung bicara di peringkat pembelaan pada 15 dan 16 Februari 2022.
6.	Election Commissioners Tribunalised (m/s 382-390)	- Maklumat mengenai penubuhan tribunal - Laporan keputusan tribunal	Jabatan Peguam Negara mencadangkan maklum balas diperoleh daripada Suruhanjaya Pilihan Raya.
7.	Boonsom Boonyanit (m/s 419-421)	- *"Precedent case"* untuk pembayaran di bawah *"ASEAN Agreement for the Promotion and Protection of Investments"* - Pembayaran dibuat kepada *estate* Boonsom Boonyanit ataupun peguam *estate* Boonsom Boonyanit.	1. Jabatan Peguam Negara tiada maklumat berkenaan *"Precedent case"* untuk pembayaran di bawah *"ASEAN Agreement for thePromotion and Protection of Investments"* 2. Pembayaran telah dibuat kepada peguam *estate* Boonsom Boonyanit.

BIL.	PERKARA YANG DIBANGKITKAN DALAM BUKU	MAKLUMAT YANG DIPERLUKAN OLEH PPK	MAKLUM BALAS (AGC)
8.	Pelantikan Rahayu Mumazaini sebagai pegawai khas	Surat dan kontrak pelantikan Rahayu Mumazaini	AGC melalui surat bertarikh 13 Ogos 2018 kepada Suruhanjaya Perkhidmatan Kehakiman dan Perundangan (SPKP) telah memohon kelulusan pelantikan Rahayu Mumazaini ("Pegawai") sebagai pegawai khas kepada Peguam Negara. SPKP melalui surat bertarikh 12 September 2018 telah meluluskan pelantikan Pegawai secara kontrak. SPKP melalui surat bertarikh 14 September 2018 juga telah mengemukakan syarat-syarat pelantikan kontrak Pegawai. Pegawai telah setuju terima pelantikan pada 18 September 2018. Mesyuarat SPKP ke-138 bertarikh 5 Oktober 2018 selanjutnya telah mengesahkan pelantikan kontrak Pegawai tersebut.

Disediakan oleh:
Sekretariat
Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku "My Story: Justice in the Wilderness" Tulisan YBhg. Tan Sri Tommy Thomas
Susulan mesyuarat bertarikh 19 Januari 2022

SESI TEMU BUAL PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU *MY STORY: JUSTICE IN THE WILDERNESS* TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA DENGAN SURUHANJAYA PELANTIKAN KEHAKIMAN (SPK)

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
1.	Berdasarkan kepada rekod SPK, bilakah tarikh peletakan jawatan Tun Raus Sharif? Adakah ia sama dengan tarikh peletakan jawatan bekas Presiden Mahkamah Rayuan, Tan Sri Zulkefli Ahmad Makinudin?	Tarikh peletakan jawatan YABhg. Tun Raus Sharif adalah pada 10 Julai 2018 sama dengan tarikh peletakan jawatan YBhg. Tan Sri Zulkefli bin Ahmad Makinuddin.
2.	Sebelum meletakkan jawatan, adakah Tun Raus Sharif yang juga merupakan Pengerusi Suruhanjaya Pelantikan Kehakiman mengadakan apa-apa mesyuarat SPK untuk memilih calon bagi mengisi jawatan Ketua Hakim Negara, Hakim Mahkamah Rayuan atau mana-mana jawatan yang kosong pada ketika itu?	Mesyuarat Pemilihan telah diadakan semasa Mesyuarat SPK Bil. 5/208 pada 24 Mei 2018 yang dipengerusikan oleh YABhg. Tun Raus Sharif bagi memilih Ketua Hakim Negara dan Presiden Mahkamah Rayuan yang akan dikosongkan oleh penyandang-penyandang bagi jawatan tersebut serta bagi menggantikan penyandang Hakim Besar Mahkamah Tinggi Sabah dan Sarawak yang akan bersara pada 13 Oktober 2018.
3.	Sekiranya 'ya' (merujuk kepada soalan nombor 2.), adakah pihak Suruhanjaya membuat laporan kepada YAB Perdana Menteri seperti terkandung dalam Seksyen 26, Akta Suruhanjaya Pelantikan Kehakiman 2009?	Ya, ada.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
4.	Sekiranya 'ya' (merujuk kepada soalan nombor 3.), adakah YAB Perdana Menteri meminta pemilihan lanjut dilaksanakan seperti terkandung dalam Seksyen 27 Akta Suruhanjaya Pelantikan Kehakiman 2009?	Tidak.
5.	Merujuk kepada Artikel 122B (2), (3) dan (4), Perlembagaan Persekutuan, terdapat keperluan untuk perundingan dilaksanakan antara YAB Perdana Menteri, Ketua Hakim Negara dan Hakim-Hakim di negeri lain. Manakala dalam aspek pelantikan Hakim Besar Mahkamah Tinggi Sabah dan Sarawak, perundingan turut melibatkan Ketua Menteri Sabah dan Ketua Menteri Sarawak. Berasaskan kepada praktis dan prosedur, adakah rundingan bersifat mandatori berpandukan kepada Perlembagaan Persekutuan ini perlu dilaksanakan sebelum pemilihan hakim dibuat?	Ya, pelantikan hakim Mahkamah Atasan yang dibuat oleh SPK adalah berdasarkan Artikel 122B (2), (3) dan (4) yang memperuntukkan :- "(2) Sebelum memberikan nasihatnya di bawah Fasal (1) tentang pelantikan seseorang hakim, selain Ketua Hakim Negara Mahkamah Persekutuan, Perdana Menteri hendaklah berunding dengan Ketua Hakim Negara; (3) Sebelum memberikan nasihatnya di bawah Fasal (1) tentang pelantikan Hakim Besar Mahkamah Tinggi, Perdana Menteri hendaklah berunding dengan Hakim Besar setiap Mahkamah Tinggi dan, jika pelantikan itu ialah pelantikan ke Mahkamah Tinggi di Sabah dan Sarawak, Perdana Menteri hendaklah berunding dengan Ketua Menteri bagi setiap Negeri Sabah dan Sarawak; dan (4) Sebelum memberikan nasihatnya di bawah Fasal (1) tentang pelantikan seseorang hakim selain Ketua Hakim Negara, Presiden atau seseorang Hakim Besar, Perdana Menteri hendaklah berunding dengan Ketua Hakim Negara Mahkamah Persekutuan, jika pelantikan itu ialah pelantikan ke Mahkamah Persekutuan, dengan Presiden Mahkamah

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
		Rayuan, jika pelantikan itu ialah pelantikan ke Mahkamah Rayuan dan, jika pelantikan itu ialah pelantikan ke mana-mana satu Mahkamah Tinggi, dengan Hakim Besar Mahkamah itu.
6.	Sekiranya rundingan yang diperuntukkan di bawah Perlembagaan Persekutuan ini dilaksanakan, adakah terdapat keperluan untuk hasil rundingan itu didedahkan kepada SPK semasa proses pemilihan seperti digariskan oleh Bahagian IV, Akta Suruhanjaya Pelantikan Kehakiman 2009?	Keputusan rundingan itu didedahkan kepada SPK sebelum diangkat kepada Bahagian Kabinet, Perlembagaan dan Perhubungan Antara Kerajaan untuk perkenan Yang di-Pertuan Agong.
7.	Selepas pertukaran Kerajaan pada tahun 2018, terdapat perubahan keahlian SPK melibatkan pelantikan oleh YAB Perdana Menteri di bawah Seksyen 5(f), Akta Suruhanjaya Pelantikan Kehakiman 2009. Adakah 4 tokoh terkemuka (eminent persons) ini diminta untuk meletakkan jawatan atau mereka meletakkan jawatan secara sukarela termasuk menghantar surat peletakan jawatan atau tempoh pelantikan mereka ditamatkan lebih awal? Sekiranya pelantikan mereka ditamatkan lebih awal, adakah SPK telah dimaklumkan mengenai sebab penamatan berkenaan?	 Tempoh pelantikan mereka ditamatkan lebih awal. Tidak.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
8.	Sekiranya Peguam Negara atau mana-mana individu ingin mencadangkan calon untuk dilantik ke jawatan Pesuruhjaya Kehakiman atau Hakim, adakah cadangan berkenaan perlu dikemukakan kepada SPK dan Pengerusinya atau ia boleh dikemukakan secara terus kepada YAB Perdana Menteri? Sekiranya YAB Perdana Menteri mahu mencadangkan mana-mana individu untuk dilantik ke jawatan sama, adakah beliau perlu mengemukakan cadangan berkenaan kepada SPK seperti yang diperuntukkan di bawah Seksyen 26, 27 dan 28 Akta Suruhanjaya Pelantikan Kehakiman 2009?	Tidak perlu dikemukakan kepada SPK tetapi pemohon sendiri perlu memohon melalui SPK. Seksyen 27 Akta Suruhanjaya Pelantikan Kehakiman 2009 memperuntukkan Perdana Menteri boleh, selepas menerima laporan di bawah seksyen 26, meminta dua nama lagi untuk dipilih dan disyorkan bagi pertimbangannya berkenaan dengan apa-apa kekosongan ke jawatan Ketua Hakim Negara Mahkamah Persekutuan, Presiden Mahkamah Rayuan, Hakim Besar Mahkamah Tinggi di Malaya, Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, Hakim Mahkamah Persekutuan dan Mahkamah Rayuan, dan Suruhanjaya hendaklah, dengan seberapa segera yang dapat dilaksanakan, mematuhi permintaan itu mengikut proses pemilihan sebagaimana yang ditetapkan dalam peraturan-peraturan yang dibuat di bawah Akta 695.
9.	Adakah bekas Peguam Negara Tan Sri Tommy Thomas pernah mengadakan mesyuarat dengan pihak SPK atau mempunyai sebarang komunikasi secara rasmi dengan pihak SPK?	Mesyuarat – Tiada. Komunikasi secara rasmi – Sesi Kunjung Hormat Peguam Negara ke atas YAA Ketua Hakim Negara pada 1 Oktober 2019.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
10.	Berdasarkan maklumat yang dikemukakan Tan Sri Tommy Thomas dalam bukunya, beliau telah mencadangkan tiga nama untuk dilantik sebagai Hakim Mahkamah Rayuan. Adakah cadangan berkaitan dengan tiga calon ini dikemukakan Tan Sri Tommy Thomas kepada SPK.	Ada dikemukakan dan dibincangkan di dalam Mesyuarat SPK Bil. 10/2019 pada 10 Oktober 2019.
11.	Adakah terdapat mana-mana nama dalam kalangan ahli Majlis Peguam (Bar Council) yang dicadangkan pelantikannya ke Mahkamah Rayuan oleh Tan Sri Tommy Thomas, pernah memohon untuk dilantik sebagai Pesuruhjaya Kehakiman? Sekiranya ya, adakah permohonan daripada individu berkenaan telah diluluskan oleh SPK dan dipilih untuk pelantikan?	Dua daripada nama yang dicadangkan pernah memohon untuk dilantik sebagai Pesuruhjaya Kehakiman. Walau bagaimanapun, kedua-dua nama tersebut telah tidak berjaya dalam sesi temu duga oleh SPK.
12.	Adakah Tan Sri Tommy Thomas pernah mencalonkan mana-mana nama kepada pihak SPK untuk dilantik? Sekiranya ada, adakah pencalonan berkenaan menggunakan saluran rasmi beliau sebagai Peguam Negara? (misalnya surat atau memo dengan kepala surat Jabatan Peguam Negara). Selain itu, jika nama-nama berkenaan telah dilantik, bolehkah di kemudian waktu, Tan Sri Tommy Thomas mendedahkan bahawa beliau bertanggungjawab mencalonkan nama-nama berkenaan?	Ada. Pencalonan dikemukakan semasa Sesi Kunjung Hormat Peguam Negara ke atas YAA Ketua Hakim Negara pada 1 Oktober 2019. Tidak dilantik.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
13.	Apakah definisi tokoh terkemuka (eminent person) yang boleh mencadangkan pelantikan dan adakah Tan Sri Tommy Thomas tergolong dalam kategori ini?	Subsekyen 5(1) Akta 695 memperuntukkan bahawa empat orang yang terkemuka (*eminent person*), yang bukan merupakan anggota eksekutif atau perkhidmatan awam lain, yang dilantik oleh Perdana Menteri selepas berunding dengan Majlis Peguam Malaysia, Persatuan Undang-Undang Sabah, Persatuan Peguam Bela Sarawak, Peguam Negara Persekutuan, Peguam Besar perkhidmatan perundangan Negeri atau mana-mana badan berkaitan yang lain. Oleh yang demikian, orang yang terkemuka (*eminent person*) yang diperuntukkan di dalam subperaturan 5(2), Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan Dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009 adalah merujuk kepada seksyen 5(1)(f) Akta 695.
	Selanjutnya, pernahkah SPK menerima cadangan pelantikan daripada pihak lain?	Tiada.
14.	Merujuk kepada peranggan 41 laporan kes Majlis Peguam v. Tun Dato' Sri Arifin Zakaria, telah menyatakan bahawa dakwaan yang dibawa oleh Jabatan Peguam Negara mengenai Hakim Tan Sri Zaharah Ibrahim yang berada dalam keadaan konflik perlu dipandang serius. Berdasarkan laporan ini, Jabatan Peguam Negara (ketika di bawah seliaan Tan Sri Tommy Thomas) seolah-olah membangkitkan isu mengenai pelantikan Tan Sri Zaharah Ibrahim sebagai Hakim Besar Malaya.	

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
	Berpandukan kepada keadaan ini, adakah Jabatan Peguam Negara ada menulis secara rasmi kepada SPK mengenai isu pelantikan dan kedudukan Tan Sri Zaharah Ibrahim?	Berdasarkan rekod, tiada.
15.	Dalam bukunya, Tan Sri Tommy Thomas ada menyentuh mengenai upacara angkat sumpah jawatan Ketua Hakim Negara di hadapan Yang di-Pertuan Agong dan kemungkinan besar ia merujuk kepada upacara melibatkan Tan Sri Richard Malanjum pada waktu malam serta dianggap bukan seperti kebiasaan. Sehubungan itu, adakah pihak SPK sedar mengenai sebab mengapa upacara ini diadakan pada waktu malam?	Tarikh dan masa Istiadat Pengurniaan Suratcara Pelantikan dan Angkat Sumpah bagi Jawatan ditetapkan oleh Pejabat Datuk Pengelola Bijaya Diraja, Istana Negara.
16.	Adakah pernah terdapat komunikasi antara barisan Peguam Negara terdahulu dengan pihak SPK?	Ada. Pihak Jabatan Peguam Negara akan dirujuk berhubung hal ehwal pentadbiran dan perundangan SPK.
17.	Apakah proses pelantikan hakim secara umum dan bagaimanakah SPK berperanan dalam proses pelantikan ini?	Proses pelantikan hakim secara umum adalah seperti **Lampiran 1** dan Lampiran **2**.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
	Apabila keputusan pelantikan telah dilaksanakan, apakah proses penyaluran keputusan itu dibuat sebelum ia dipersembahkan kepada Yang di-Pertuan Agong? Bagaimanakah Ahli-ahli SPK menentukan pelantikan hakim? (kriteria dan sebagainya). Adakah dokumen-dokumen berkaitan pelantikan di bawah SPK termasuk minit mesyuarat dilindungi di bawah Akta Rahsia Rasmi 1972? Selanjutnya, adakah prosedur berkaitan perlindungan dokumen di bawah Akta ini dilaksanakan oleh pihak SPK?	Ya, seperti yang diperuntukkan oleh seksyen 32 Akta 695 dan prosedur berkaitan perlindungan dokumen di bawah Akta ini dilaksanakan oleh pihak SPK.
18.	Berdasarkan kepada rekod SPK, sejak Akta Suruhanjaya Pelantikan Kehakiman 2009 berkuat kuasa, adakah terdapat pelantikan badan kehakiman yang dibuat oleh Yang di-Pertuan Agong tidak melalui proses pemilihan dan pelantikan sewajarnya seperti digariskan oleh Akta ini atau dalam erti kata lain melangkaui tatacara SPK?	Ada. Walaupun pelantikan tersebut tidak melalui proses pemilihan dan pelantikan sewajarnya seperti digariskan oleh Akta 695, perlantikan tersebut adalah teratur mengikut Perkara 122B Perlembagaan Persekutuan yang memperuntukkan bahawa "Ketua Hakim Negara, Presiden Mahkamah Rayuan dan Hakim-Hakim Besar Mahkamah Tinggi dan (tertakluk kepada Perkara 122C), hakim-hakim yang lain Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah-Mahkamah Tinggi hendaklah dilantik oleh Yang di-Pertuan Agong, yang bertindak atas nasihat Perdana Menteri, selepas berunding dengan Majlis Raja-Raja."

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
	Berkaitan dengan ini, adakah pelantikan membabitkan Tun Tengku Maimun Tuan Mat, Tan Sri Rohana Yusuf dan, Tan Sri Azahar Mohamed dan Tan Sri Abang Iskandar Abang Hashim telah melalui proses sewajarnya?	Ya, pelantikan YAA Tun Tengku Maimun binti Tuan Mat, YAA Tan Sri Rohana binti Yusuf, YAA Tan Sri Dato' Sri Azahar bin Mohamed dan YAA Tan Sri Dato' Abang Iskandar bin Abang Hashim adalah melalui proses sewajarnya.
19.	Berdasarkan kepada senario jika seseorang Ketua Hakim Negara merangkap Pengerusi SPK telah bersara dan dalam sesetengah keadaan yang memerlukan, adakah Mesyuarat SPK, misalnya mengenai pelantikan hakim boleh dipengerusikan oleh seorang pengerusi ganti? Berasaskan kepada soalan di atas, adakah mesyuarat pemilihan dan pelantikan Ketua Hakim Negara yang baharu perlu diadakan sebelum Ketua Hakim Negara semasa itu bersara? SPK diketuai Ketua Hakim. Apabila Ketua Hakim Negara bersara dan tiada pengerusi, boleh kah ada pengerusi ganti?	Seksyen 24 Akta 695 memperuntukkan bahawa pengerusi ganti boleh mempengerusikan mesyuarat pemilihan bagi pelantikan Hakim Mahkamah Tinggi sahaja. Perlu. Boleh. Seksyen 8 Akta 695 memperuntukkan:- (1) Presiden Mahkamah Rayuan hendaklah bertindak sebagai Pengerusi Suruhanjaya selama tempoh apabila— (a) jawatan Pengerusi menjadi kosong; (b) Pengerusi tidak hadir bertugas atau tidak ada di Malaysia; atau (c) Pengerusi, kerana apa-apa sebab lain, tidak berupaya melaksanakan fungsinya.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (SPK)
		(2) Presiden Mahkamah Rayuan hendaklah, selama tempoh dia melaksanakan fungsi Pengerusi di bawah seksyen ini, disifatkan sebagai Pengerusi Suruhanjaya.
	Dalam kes berkaitan Tun Raus, sempatkah beliau mempengerusikan mesyuarat untuk menentukan penggantinya?	Ya.

Disediakan oleh:
Pejabat Setiausaha
Suruhanjaya Pelantikan Kehakiman

Disediakan untuk:
Sekretariat
Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku "My Story: Justice in the Wilderness"
Tulisan YBhg. Tan Sri Tommy Thomas
13 Jan 2022

RAHSIA

Lampiran 3

URUSAN PELANTIKAN HAKIM MAHKAMAH ATASAN (4 JUN 2018 SEHINGGA 28 FEBRUARI 2020)

BIL.	NAMA HAKIM	JAWATAN	TARIKH LANTIKAN
1.	YAA Tan Sri Datuk Seri Panglima Richard Malanjum	Ketua Hakim Negara	11.07.2018
2.	YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop	Presiden Mahkamah Rayuan	11.07.2018
3.	YAA Tan Sri Zaharah binti Ibrahim	Hakim Besar Malaya	17.07.2018
4.	YAA Datuk Wong Dak Wah	Hakim Besar Sabah dan Sarawak	11.07.2018
5.	YA Dato' Sri Tun Abd Majid bin Dato' Haji Tun Hamzah	Pesuruhjaya Kehakiman	01.08.2020 (sambung perkhidmatan 2 tahun sehingga 31.07.2020)
6.	YA Dato' Azmi bin Abdullah	Pesuruhjaya Kehakiman	01.08.2020 (sambung perkhidmatan 2 tahun sehingga 31.07.2020)
7.	YAA Tan Sri Datuk Seri Panglima Richard Malanjum	Ketua Hakim Negara	13.10.2018 (sambung 6 bulan sehingga 12.04.2019)
8.	YAA Tan Sri Zaharah binti Ibrahim	Hakim Besar Malaya	17.11.2018 (sambung 6 bulan sehingga 16.05.2019)
9.	YA Dato' Tengku Maimun binti Tuan Mat	Hakim Mahkamah Persekutuan	26.11.2018
10.	YA Dato' Abang Iskandar bin Abang Hashim	Hakim Mahkamah Persekutuan	26.11.2018
11.	YA Tan Sri Idrus bin Harun	Hakim Mahkamah Persekutuan	26.11.2018
12.	YA Datuk Nallini Pathmanathan	Hakim Mahkamah Persekutuan	26.11.2018
13.	YA Datuk Lau Bee Lan	Hakim Mahkamah Rayuan	26.11.2018
14.	YA Dato' Mohamad Zabidin bin Mohd Diah	Hakim Mahkamah Rayuan	26.11.2018
15.	YA Datuk Yew Jen Kie	Hakim Mahkamah Rayuan	26.11.2018
16.	YA Datuk Nor Bee binti Ariffin	Hakim Mahkamah Rayuan	26.11.2018
17.	YA Dato' Has Zanah binti Mehat	Hakim Mahkamah Rayuan	26.11.2018
18.	YA Tan Sri Dato' Sri Ramly bin Haji Ali	Hakim Mahkamah Persekutuan	24.02.2019 (sambung 6 bulan sehingga 23.08.2019)
19.	YA Dato' Faizah binti Jamaludin	Pesuruhjaya Kehakiman	01.03.2019 (sambung 6 bulan sehingga 28.02.2021)

BIL.	NAMA HAKIM	JAWATAN	TARIKH LANTIKAN
20.	YA Puan Rohani binti Ismail	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
21.	YA Tuan Dean Wayne Daly	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
22.	YA Dato' Ahmad Kamal bin Md. Shahid	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
23.	YA Tuan Anselm Charles Fernandis	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
24.	YA Dato' Ahmad Shahrir bin Mohd Salleh	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
25.	YA Puan Celestina Stuel Galid	Pesuruhjaya Kehakiman	27.03.2019 (sambung perkhidmatan 2 tahun sehingga 26.03.2021)
26.	YA Dato' Rozana binti Ali Yusoff	Hakim Mahkamah Tinggi	10.04.2019
27.	YA Tuan Abu Bakar bin Katar	Hakim Mahkamah Tinggi	10.04.2019
28.	YA Puan Hayatul Akmal binti Abdul Aziz	Hakim Mahkamah Tinggi	10.04.2019
29.	YA Dato' Faizah binti Jamaludin	Hakim Mahkamah Tinggi	10.04.2019
30.	YA Dato' Ahmad Kamal bin Md. Shahid	Hakim Mahkamah Tinggi	10.04.2019
31.	YA Puan Wong Chee Lin	Hakim Mahkamah Tinggi	10.04.2019
32.	YA Tuan Darryl Goon Siew Chye	Hakim Mahkamah Tinggi	10.04.2019
33.	YA Tuan Ismail bin Ibrahim	Hakim Mahkamah Tinggi	10.04.2019
34.	YA Tuan Dean Wayne Daly	Hakim Mahkamah Tinggi	10.04.2019
35.	YA Puan Celestina Stuel Galid	Hakim Mahkamah Tinggi	10.04.2019
36.	YA Dato' Alizatul Khair binti Osman Khairuddin	Hakim Mahkamah Persekutuan	22.04.2019 (sambung 6 bulan sehingga 21.10.2019)
37.	YAA Dato' Tengku Maimun binti Tuan Mat	Ketua Hakim Negara	02.05.2019
38.	YA Dato' Sri Latifah binti Mohd Tahar	Pesuruhjaya Kehakiman	03.05.2019
39.	YA Dato' Amarjeet Singh a/l Serjit Singh	Pesuruhjaya Kehakiman	03.05.2019
40.	YA Tuan Awg Armadajaya bin Awg Mahmud	Pesuruhjaya Kehakiman	03.05.2019

BIL.	NAMA HAKIM	JAWATAN	TARIKH LANTIKAN
41.	YA Datuk Duncan Sikodol	Pesuruhjaya Kehakiman	03.05.2019
42.	YA Tuan Muniandy Kannyappan	Pesuruhjaya Kehakiman	03.05.2019
43.	YA Dr. Shahnaz Sulaiman	Pesuruhjaya Kehakiman	03.05.2019
44.	YA Puan Evrol Mariette Peters	Pesuruhjaya Kehakiman	03.05.2019
45.	YA Tuan Christopher Chin Soo Yin	Pesuruhjaya Kehakiman	03.05.2019
46.	YA Tuan Ong Chee Kwan	Pesuruhjaya Kehakiman	03.05.2019
47.	YA Puan Maidzuara binti Mohammed	Pesuruhjaya Kehakiman	03.05.2019
48.	YA Tuan Mohd Radzi bin Abdul Hamid	Pesuruhjaya Kehakiman	03.05.2019
49.	YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop	Presiden Mahkamah Rayuan	25.05.2019 (sambung 6 bulan sehingga 24.11.2019)
50.	YAA Tan Sri Dato' Sri Azahar bin Mohamed	Hakim Besar Malaya	08.08.2019
51.	YA Datuk Vernon Ong Lam Kiat	Hakim Mahkamah Persekutuan	08.08.2019
52.	YA Dato' Abdul Rahman bin Sebli	Hakim Mahkamah Persekutuan	08.08.2019
53.	YA Dato' Lee Swee Seng	Hakim Mahkamah Rayuan	08.08.2019
54.	YA Datuk Hajah Azizah binti Haji Nawawi	Hakim Mahkamah Rayuan	08.08.2019
55.	YA Datuk Vazeer Alam bin Mydin Meera	Hakim Mahkamah Rayuan	08.08.2019
56.	YA Tuan Ravinthran a/l N. Paramaguru	Hakim Mahkamah Rayuan	08.08.2019
57.	YA Dato' Roslan bin Haji Abu Bakar	Hakim Mahkamah Tinggi	08.08.2019
58.	YA Dato' Abdul Wahab bin Mohamed	Hakim Mahkamah Tinggi	08.08.2019
59.	YA Dato' Hassan bin Abdul Ghani	Hakim Mahkamah Tinggi	08.08.2019
60.	YA Puan Chan Jit Li	Hakim Mahkamah Tinggi	08.08.2019
61.	YA Dato' Muhammad Jamil bin Hussin	Hakim Mahkamah Tinggi	08.08.2019
62.	YA Dato' Wan Ahmad Farid bin Wan Salleh	Hakim Mahkamah Tinggi	08.08.2019
63.	YA Datuk Khadijah binti Idris	Hakim Mahkamah Tinggi	08.08.2019

BIL.	NAMA HAKIM	JAWATAN	TARIKH LANTIKAN
64.	YAA Datuk Seri Panglima David Wong Dak Wah	Hakim Besar Sabah dan Sarawak	20.08.2019 (sambung 6 bulan sehingga 19.02.2019)
65.	YA Datuk Haji Aslam bin Zainuddin	Pesuruhjaya Kehakiman	28.11.2019
66.	YA Dato' Norsharidah binti Áwang	Pesuruhjaya Kehakiman	28.11.2019
67.	YA Dato' Julie Lack	Pesuruhjaya Kehakiman	28.11.2019
68.	YA Dato' Fredrick Indran X.A. Nicholas	Pesuruhjaya Kehakiman	28.11.2019
69.	YA Tuan Wong Siong Tung	Pesuruhjaya Kehakiman	28.11.2019
70.	YA Tuan Khairil Azmi bin Haji Mohamad Hasbie	Pesuruhjaya Kehakiman	28.11.2019
71.	YA Tuan Leonard David Shim	Pesuruhjaya Kehakiman	28.11.2019
72.	YA Tuan Nadzarin bin Wok Nordin	Pesuruhjaya Kehakiman	28.11.2019
73.	YA Tuan George Varughese	Pesuruhjaya Kehakiman	28.11.2019
74.	YA Tuan Quay Chew Soon	Pesuruhjaya Kehakiman	28.11.2019
75.	YA Tuan Wong Hok Chong	Pesuruhjaya Kehakiman	28.11.2019
76.	YA Tuan Atan Mustaffa Yussof Ahmad	Pesuruhjaya Kehakiman	28.11.2019
77.	YA Tuan Anand Ponnudurai	Pesuruhjaya Kehakiman	28.11.2019
78.	YAA Dato' Rohana binti Yusuf	Presiden Mahkamah Rayuan	05.12.2019
79.	YA Puan Sri Dato' Zaleha binti Yusof	Hakim Mahkamah Persekutuan	05.12.2019
80.	YA Dato' Zabariah binti Mohd. Yusof	Hakim Mahkamah Persekutuan	05.12.2019
81.	YA Datuk Hasnah binti Dato' Mohammed Hashim	Hakim Mahkamah Persekutuan	05.12.2019
82.	YA Dato' Hadhariah binti Syed Ismail	Hakim Mahkamah Rayuan	05.12.2019
83.	YA Dato' Abu Bakar bin Jais	Hakim Mahkamah Rayuan	05.12.2019
84.	YA Tuan Nantha Balan a/l E.S. Moorthy	Hakim Mahkamah Rayuan	05.12.2019
85.	YA Dato' Sri Tun Abd Majid bin Dato' Haji Tun Hamzah	Hakim Mahkamah Tinggi	05.12.2019
86.	YA Dato' Azmi bin Abdullah	Hakim Mahkamah Tinggi	05.12.2019

BIL.	NAMA HAKIM	JAWATAN	TARIKH LANTIKAN
87.	YA Dato' Rohana binti Abd Malek	Pesuruhjaya Kehakiman	03.01.2020
88.	YA Tuan Tee Geok Hock	Pesuruhjaya Kehakiman	03.01.2020
89.	YAA Dato' Abang Iskandar bin Abang Hashim	Hakim Besar Sabah & Sarawak	25.02.2020

SESI TEMU BUAL PASUKAN PETUGAS KHAS SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU *"MY STORY: JUSTICE IN THE WILDERNESS"* TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA DENGAN JABATAN PEGUAM NEGARA PADA 22 FEBRUARI 2022

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
Isu Tuntutan Kes Boonsom Boonyanit di bawah *ASEAN Agreement for the Promotion and Protection of Investments 1987*		
1.	Merujuk kepada isu Boonsoon Boonyanit, pihak AGC ada menyatakan bahawa kes ini adalah bukan pelaburan. Bolehkan dijelaskan kenapa ia tidak dikategorikan sebagai pelaburan?	**<u>JABATAN PEGUAM NEGARA:</u>** Pemilikan hartanah oleh pihak Penuntut hanya layak dilindungi di bawah ASEAN Agreement for the Promotion and Protection of Investment 1987 (AIA 1987) atau ASEAN Comprehensive Investment Agreement 2009 (ACIA) sekiranya ia diluluskan dan didaftarkan oleh pihak berkuasa yang berkenaan. Dalam hal ini, tiada bukti pelaburan tersebut telah diluluskan dan didaftarkan oleh pihak berkuasa yang berkenaan. Ini adalah mengikut Artikel II perenggan 1 di bawah AIA 1987 dan juga Artikel 3 dan Artikel 4 di bawah ACIA.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
2.	Berdasarkan kes, tanah tersebut didaftar atas milikan Boonsom Boonyanit pada tahun 1967 dan Triti tersebut ditandatangani pada tahun 1987, adakah Triti tersebut kuatkuasa secara retrospektif?	**<u>JABATAN PEGUAM NEGARA:</u>** Mengikut Artikel II perenggan 3 di bawah AIA 1987, pelaburan yang dibuat sebelum AIA 1987 berkuat kuasa boleh dilindungi di bawah AIA 1987 dan ACIA sekiranya diluluskan dan didaftarkan untuk mendapat perlindungan daripada Kerajaan Malaysia. Walaupun pembelian Tanah tersebut oleh Boonsom Boonyanit dibuat dalam tahun 1967 iaitu sebelum kewujudan AIA 1987, pelabur layak dilindungi di bawah AIA 1987 dan ACIA sekiranya ia diluluskan dan didaftarkan oleh pihak berkuasa yang berkenaan selepas AIA 1987 berkuat kuasa. Dalam hal ini, tiada bukti pelaburan tersebut telah diluluskan dan didaftarkan oleh pihak berkuasa yang berkenaan.
3.	Adakah kedua-dua Peguam Negara sebelum ini maklum dan mengambil kira bahawa kes ini tidak melibatkan pelaburan	**<u>JABATAN PEGUAM NEGARA:</u>**

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
	yang didaftarkan? Sekiranya ya, apakah justifikasi Kerajaan bersetuju untuk membayar *ex-gratia* tersebut?	Kedua-dua Peguam Negara sebelum ini maklum dan mengambil kira bahawa kes ini tidak melibatkan pelaburan yang didaftar. AGC berpendapat bahawa walaupun terdapat hujahan kukuh bagi pihak Kerajaan tetapi terdapat juga risiko keputusan tribunal tidak memihak kepada Kerajaan. Memandangkan kos meneruskan prosiding timbang tara adalah sangat tinggi adalah lebih baik bagi Kerajaan menyelesaikan kes ini di luar prosiding timbang tara dengan merunding pembayaran secara *ex-gratia*. Dalam hal ini, AGC telah meneliti kos bagi prosiding timbang tara antarabangsa dan juga kos bagi melantik peguam luar bagi mewakili Kerajaan adalah sangat tinggi. Maklumat bagi kos-kos tersebut telah dikemukakan untuk pertimbangan Jemaah Menteri. (a) <u>Kos Timbang Tara Antarabangsa</u>

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		• Berdasarkan Artikel X AIA 1987, satu pihak kepada pertikaian itu boleh mengemukakan pertikaian tersebut kepada ICSID, KLRCA atau PCA. • Berdasarkan kemungkinan ini Kerajaan telah membuat kajian kos timbang tara antarabangsa yang akan ditanggung oleh Kerajaan Malaysia sekiranya Penuntut meneruskan prosiding timbang tara antarabangsa. Kos yang terlibat adalah seperti berikut: (i) fi peguam antarabangsa bagi mewakili Kerajaan Malaysia dalam kes timbang tara antarabangsa; (ii) fi penimbang tara yang dilantik oleh Kerajaan Malaysia serta separuh daripada bayaran untuk penimbang tara ketiga;

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		(iii) kos untuk prosiding timbang tara yang melibatkan kos kemudahan timbang tara dan perkhidmatan staf; (iv) fi penilai bebas bagi penilaian Tanah tersebut; dan (v) kos logistik bagi pihak yang perlu hadir prosiding timbang tara iaitu pegawai AGC, peguam antarabangsa dan saksi-saksi yang perlu dipanggil untuk memberi keterangan. • Secara kasar, anggaran kos tersebut adalah sebanyak **USD7,808,563.** • Memandangkan kos tersebut adalah tinggi dan risiko yang bakal dihadapi, maka Jabatan Peguam Negara telah mencadangkan untuk menyelesaikan pertikaian ini diselesaikan di luar timbang tara antarabangsa.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		(b) Anggaran jumlah tuntutan Penuntut yang mungkin perlu dibayar oleh Kerajaan Malaysia sekiranya keputusan tidak memihak kepada Kerajaan • Jabatan Penilaian dan Perkhidmatan Harta telah menilai Tanah tersebut berserta bangunan pada nilaian RM252.2 juta (USD63 juta pada kadar tukaran mata wang asing RM4) dan nilai Tanah tersebut sahaja pada nilaian RM26 juta (USD6.5 juta pada kadar tukaran mata wang asing RM4 pada masa itu). • Penuntut juga telah mengemukakan satu laporan penilaian awal daripada penilai antarabangsa iaitu *Versant Partners* yang telah menilai jumlah kerugian yang ditanggung oleh Penuntut akibat kehilangan Tanah tersebut sebanyak USD45-65 juta.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
4.	Merujuk kepada kes ini, terdapat surat daripada peguam dari London kepada YAB Perdana Menteri dan Peguam Negara berhubung tuntutan Boonsom Boonyanit. Adalah dimaklumkan rundingan telah dimulakan pada masa YBhg. Tan Sri Apandi Ali, siapakah peguam Boonsom Boonyanit yang terlibat dengan rundingan tersebut pada masa itu.	**<u>JABATAN PEGUAM NEGARA:</u>** Mengikut notis pertikaian yang diterima, peguam Boonsom Boonyanit adalah seperti berikut: (i) Sarah Vasani Addleshaw Goddard LLP (ii) Samuel Wordsworth QC Essex Court Chambers (iii) Lucas Bastin Essex Court Chambers (iv) Mohanadass Kanagasabai Mohanadass Partnership
5.	Adakah terdapat sebarang keputusan Kerajaan bagi jumlah *ex-gratia* yang dibayar dan adakah Kabinet dimaklumkan bahawa dalam kes tersebut adalah tidak dikategorikan sebagai pelaburan di bawah Triti ini?	**<u>JABATAN PEGUAM NEGARA:</u>** 1) Adakah terdapat sebarang keputusan Kerajaan bagi jumlah *ex-gratia* yang dibayar? • Jemaah Menteri telah bersetuju dengan jumlah *ex-gratia* yang perlu dibayar.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		2) Adakah Kabinet dimaklumkan bahawa dalam kes tersebut adalah tidak dikategorikan sebagai pelaburan di bawah Triti ini? • Memorandum Jemaah Menteri telah memaklumkan bahawa pemilikan tanah tersebut tidak dikategorikan sebagai pelaburan di bawah AIA 1987.
6.	Semasa YBhg. Tan Sri Apandi Ali menjadi Peguam Negara, adakah terdapat sebarang dokumen yang dipersetujui untuk pembayaran pampasan ini atau hanya melibatkan proses perbincangan?	**JABATAN PEGUAM NEGARA:** YBhg. Tan Sri Apandi Ali telah dimaklumkan melalui memo Bahagian ini bertarikh 7 March 2018 dan bersetuju untuk memulakan perbincangan berkenaan pembayaran pampasan.
7.	Adakah perbincangan diteruskan semasa YBhg. Tan Sri Tommy Thomas menjadi Peguam Negara atau perkara ini dibawa terus untuk kelulusan Jemaah Menteri? Adakah terdapat minit mesyuarat, nota perbincangan atau pengesahan untuk keputusan dibuat?	**JABATAN PEGUAM NEGARA:** Perbincangan telah diteruskan semasa YBhg. Tan Sri Tommy Thomas menjadi Peguam Negara dan kemudiannya dibawa untuk pertimbangan Jemaah Menteri.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
8.	Adakah pihak AGC mempunyai rekod sama ada surat atau sebarang komunikasi yang hantar oleh YBhg. Tan Sri Tommy Thomas kepada peguam-peguam Boonsom Boonyanit (termasuk peguam di London dan peguam tempatan) yang terlibat dalam kes ini?	**JABATAN PEGUAM NEGARA:** Tiada rekod yang menunjukkan surat atau sebarang komunikasi yang dihantar oleh YBhg. Tan Sri Tommy Thomas kepada peguam-peguam Boonsom Boonyanit di dalam fail.
9.	Adakah Encik Mohandas, peguam tempatan yang mewakili Boonsoon Boonyanit pernah hadir ke AGC bagi membincangkan kes ini?	**JABATAN PEGUAM NEGARA:** Tiada maklumat berkenaan perkara ini di dalam fail.
10.	Siapakah peguam-peguam luar yang terlibat dalam kes IPIC di AGC?	IPIC TEAM
11.	Berdasarkan buku tersebut, En Mohandas adalah antara peguam yang dilantik oleh Kerajaan bagi mengendalikan kes IPIC. Apakah terma pelantikan Encik Mohandas untuk mewakili Kerajaan Malaysia dalam kes IPIC?	IPIC TEAM

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
12.	Pihak AGC memaklumkan kos bagi membawa kes ini ke timbang tara adalah lebih mahal daripada jumlah pembayaran *ex-gratia* USD8 juta. Siapakah yang tentukan kos timbang tara?	**JABATAN PEGUAM NEGARA:** Anggaran kos timbang tara telah dibuat berdasarkan perkara-perkara berikut: (i) fi peguam antarabangsa bagi mewakili Kerajaan Malaysia dalam kes timbang tara antarabangsa; (ii) fi penimbang tara yang dilantik oleh Kerajaan Malaysia serta separuh daripada bayaran untuk penimbang tara ketiga; (iii) kos untuk prosiding timbang tara yang melibatkan kos kemudahan timbang tara dan perkhidmatan staf; (iv) fi penilai bebas bagi penilaian Tanah tersebut; dan (v) kos logistik bagi pihak yang perlu hadir prosiding timbang tara iaitu pegawai AGC, peguam antarabangsa dan saksi-saksi yang perlu dipanggil untuk memberi keterangan.
13.	Mengandaikan Kerajaan membuat bayaran pampasan dengan nilai sebenar (berdasarkan penilaian semasa oleh Jabatan	**JABATAN PEGUAM NEGARA:**

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
	Penilaian dan Perkhidmatan Harta (JPPH)), adakah kos akan melebihi USD8juta?	Mengikut penilaian Jabatan Penilaian dan Perkhidmatan Harta, penilaian tanah beserta bangunan adalah pada RM252.2 juta pada masa itu.
Isu kes tuntutan waris Kesultanan Sulu		
1.	Surat pelantikan, terma rujukan dan bayaran kepada Elaine Yap	**JABATAN PEGUAM NEGARA:** Surat lantikan Cik Elaine Yap adalah diklasifikasikan sebagai RAHSIA. Secara ringkasnya terma rujukan Cik Elaine Yap adalah seperti berikut: (i) menyediakan kertas kausa bagi permohonan di Mahkamah Tinggi Sabah; (ii) hadir sebagai peguam bersama-sama dengan Peguam Kanan Persekutuan di Mahkamah Tinggi Sabah; (iii) menjaga kerahsiaan kes ini dan tertakluk kepada Akta Rahsia Rasmi 1972;

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		(iv) boleh mendapatkan pertolongan peguam lain di Malaysia yang dipercayai oleh Cik Elaine Yap, tertakluk kepada persetujuan bertulis terlebih dahulu daripada Peguam Negara. Kadar yang ditetapkan bagi Cik Elaine Yap adalah sebanyak RM1,500 sejam bagi perkhidmatan yang diberikan.
2.	Adakah terdapat surat pelantikan kepada Sitpah bagi kes ini. Sekiranya ada apakah terma rujukan dan bayaran.	**JABATAN PEGUAM NEGARA:** Tiada surat pelantikan atau maklumat di dalam fail.
3.	Apakah justifikasi pemilihan Elaine Yap? Apakah dokumen yang telah disediakan oleh Elaine Yap?	**JABATAN PEGUAM NEGARA**: Bahagian Hal Ehwal Antarabangsa tidak dimaklumkan mengenai sebab atau justifikasi pemilihan Cik Elaine Yap sebagai seorang peguam bagi kes ini.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		Bahagian ini tiada maklumat rasmi mengenai dokumen yang disediakan oleh Cik Elaine Yap.
4.	Maklumat mengenai pelantikan 2 firma guaman dan peguam Sepanyol dalam kes ini	**JABATAN PEGUAM NEGARA:** 2 firma guaman Sepanyol telah dilantik bagi menasihati dan membantu Kerajaan memfailkan tindakan bagi kes ini. Pelantikan kedua-dua firma guaman ini adalah mengikut prosedur Kerajaan.
5.	Maklumat mengenai komunikasi dengan firma dan peguam Sepanyol serta status terkini	**JABATAN PEGUAM NEGARA:** Memandangkan tindakan-tindakan yang dibawa oleh Kerajaan Malaysia bagi kes ini masih berjalan, tiada maklumat yang dapat diberikan mengenai kes tersebut. Kementerian Luar Negeri dan Jabatan Peguam Negara sentiasa memaklumkan kepada Jemaah Menteri mengenai status terkini kes tersebut.

BIL.	SOALAN PASUKAN PETUGAS KHAS	MAKLUM BALAS (AGC)
		Jabatan Peguam Negara berkomunikasi secara terus dengan firma guaman tersebut.
6.	Apakah status terkini kes tuntutan ini	**JABATAN PEGUAM NEGARA:** Memandangkan tindakan-tindakan yang dibawa oleh Kerajaan Malaysia bagi kes ini masih berjalan, tiada maklumat yang dapat diberikan mengenai kes tersebut.

Disediakan oleh:
Sekretariat
Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku "My Story: Justice in the Wilderness" Tulisan YBhg. Tan Sri Tommy Thomas
Mesyuarat PPK Bil. 6 pada 21-23 Februari 2022

SESI KONSULTASI BERSAMA POLIS DIRAJA MALAYSIA (PDRM)

<table>
<tr><th>BIL.</th><th>SOALAN/ISU BERBANGKIT</th><th>MAKLUM BALAS</th></tr>
<tr><td>1.</td><td>Merujuk kepada perenggan 4(a) surat BHEUU kepada pihak PDRM bertarikh 17 Januari 2022, bolehkah pihak polis memberi pecahan klasifikasi laporan polis yang telah diterima?</td><td>Phak polis telah menerima sebanyak 244 laporan polis, daripada jumlah tersebut, 4 laporan telah dibuka kertas siasatan. Manakala 240 laporan lagi telah diklasifikasikan sebagai ROR (refer to other reports). Laporan pertama telah dibuat pada 2 Februari 2021 dan laporan terakhir adalah pada 28 Februari 2021. Klasifikasi kesalahan adalah seperti berikut:
<table>
<tr><th>Kesalahan</th><th>Jumlah Laporan/Kertas Siasatan (KS)</th></tr>
<tr><td>Seksyen 500 Kanun Keseksaan</td><td>2 KS dibuka melibatkan 2 laporan polis.</td></tr>
<tr><td>Seksyen 4(1) Akta Hasutan 1948</td><td>1 KS dibuka melibatkan 25 laporan polis.</td></tr>
<tr><td>Seksyen 203(A) Kanun Keseksaan dan Seksyen 8 Akta Rahsia Rasmi 1972</td><td>2 KS dibuka melibatkan 217 laporan polis.</td></tr>
</table></td></tr>
<tr><td>2.</td><td>Bilakan buku tersebut dilancarkan?</td><td>Cetakan pertama buku tersebut adalah pada 30 Januari 2021 sehingga 3 Februari 2021. Edaran buku dibuat di kedai buku MPH dan POPULAR.</td></tr>
<tr><td>3.</td><td>Di manakah laporan-laporan polis tersebut dibuat?</td><td>Laporan-laporan polis mengenai buku tersebut dibuat di seluruh negara kecuali negeri Sarawak.</td></tr>
<tr><td>4.</td><td>Bilakah jumlah laporan polis paling banyak diterima?</td><td>Laporan polis paling banyak diterima pada 2 Februari hingga 8 Februari 2021. Kemudian pada 26 Februari 2021, 1 laporan polis diterima dan 2 laporan polis yang terakhir pada 28 Februari 2021.</td></tr>
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<table>
<tr><th>BIL.</th><th>SOALAN/ISU BERBANGKIT</th><th>MAKLUM BALAS</th></tr>
<tr><td>5.</td><td>Senaraikan nama pengadu untuk laporan-laporan polis.</td><td>Laporan polis oleh:
<table><tr><td>Individu/Orang awam</td><td>51</td></tr><tr><td>NGO</td><td>11</td></tr><tr><td>Wakil Parti Politik</td><td>141</td></tr><tr><td>Peguam</td><td>8</td></tr><tr><td>Kakitangan Kerajaan</td><td>29</td></tr></table></td></tr>
<tr><td>6.</td><td>Apa perbezaan KS di bawah Pegawai Penyiasat ASP Mohd Khairul Riduan dengan KS di bawah Pegawai Penyiasat ASP Ee Hup Leong?</td><td>KS di bawah Pegawai Penyiasat ASP Mohd Khairul Riduan yang dibuat oleh YBhg. Tan Sri Apandi Ali melibatkan seksyen 500 Kanun Keseksaan, seksyen 203(4) Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi 1972. KS ini merangkumi keseluruhan buku, manakala KS di bawah Pegawai Penyiasat ASP Ee Hup Leong melibatkan bahagian PDRM. KS ini dibuat oleh pengadu dan isu yang berbeza.</td></tr>
<tr><td colspan="3">KERTAS SIASATAN PERTAMA
No. Repot : Cyberjaya/598/21
Tarikh : 2/2/2021
Kertas siasatan : Sepang/JSJ/KS/123/21
Klasifikasi : Seksyen 500 Kanun Keseksaan
Pengadu : Dato' Mohamad Hanafiah Bin Zakaria (Bekas Peguamcara Peguamnegara III)
Pegawai Penyiasat : ASP Wan Azrizul Nizam</td></tr>
<tr><td>7.</td><td>Secara amnya, apakah hasil siasatan?</td><td>Bagi KS pertama, ia dibuka di bawah seksyen 500 Kanun Keseksaan oleh pengadu Dato' Hanafiah, bekas Timbalan Pendakwa Raya. Ia berkaitan isu mengenai kredibilitinya, di mana dalam kandungan buku ini, penulis mendakwa pengadu tidak berkemampuan untuk mengetuai dan menyelia pasukan pendakwaan tersebut dan lebih selesa menjalankan kerja pentadbiran pejabat, Pengadu telah terkesan dengan kandungan buku tersebut. Perenggan yang dimaksudkan adalah pada muka surat 248 buku tersebut, iaitu perenggan penyediaan dan persediaan pasukan</td></tr>
</table>

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
		pendakwaan dalam kes pendakwa raya lawan Dato' Seri Najib: kes SRC. Ketika itu, pengadu merupakan Ketua Bahagian Perbicaraan.
8.	Apakah konklusi siasatan? Berapakah orang saksi dipanggil bagi membantu siasatan?	15 orang saksi, termasuk pengadu (A1) dan YBhg. Tan Sri Tommy Thomas (B1). Kesemua kertas siasatan yang dibuka telah dirujuk kepada Jabatan Peguam Negara pada 8 Mac 2021 dan dikembalikan semula pada 16 Oktober 2021 dengan arahan untuk melengkapkan siasatan.
9.	Apakah cadangan Pegawai Penyiasat?	Pegawai Penyiasat mencadangkan YBhg. Tan Sri Tommy Thomas dituduh di bawah seksyen 500 Kanun Keseksaan, selepas siasatan mendapati kenyataan B1 adalah berunsur fitnah.
10.	Adakah kesemua 244 laporan polis diklasifikasikan sebagai no further action (NFA) atau masih aktif?	Kesemua 244 laporan polis masih aktif. Tiada laporan polis dikelaskan sebagai NFA, 240 laporan tersebut telah dikelaskan di bawah ROR.
11.	Ketika laporan polis dibuat, adakah pihak polis telah membacakan semula petikan/kenyataan dalam buku kepada pengadu bagi memastikan dakwaan tersebut disebut dalam buku?	Pihak polis akan melihat apakah kanduangan laporan tersebut oleh pengadu. Seterusnya polis akan merujuk kepada buku tersebut dan juga *due diligence*, memandangkan terdapat beberapa kandungan dalam buku tersebut tidak boleh didedahkan kerana masih dalam peringkat siasatan.
12.	Seksyen 11 Kanun Tatacara Jenayah menyebut 2 dosen orang awam telah diminta untuk membantu pihak polis berkaitan sebarang pengetahuan jenayah yang berlaku. Walau bagaimanapun, seksyen 500 Kanun Keseksaan, seksyen 203(4) Kanun Keseksaan	Pihak polis melihat laporan-laporan polis dibuat adalah oleh individu yang terkesan, seperti Dato' Hanafiah dan Tan Sri Apandi Ali. Oleh sebab itu, laporan-laporan berkenaan dikelaskan di bawah seksyen 500 Kanun Keseksaan. Pihak polis tidak melihat laporan awam, per say tetapi melihat siapakah yang membuat laporan polis tersebut serta siapakah pihak yang terkesan. Laporan orang awam telah dikelaskan sebagai ROR. Polis juga ada membuat laporan polis kerana ada kandungan dalam buku tersebut mengandungi bab-bab siasatan yang tidak wajar dibukukan atau dipertontonkan untuk bacaan awam.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
	dan seksyen 8 Akta Rahsia Rasmi 1972 tidak termasuk dalam seksyen 11 Kanun Tatacara Jenayah. Ada sebarang komen?	
KERTAS SIASATAN KEDUA **No. Repot : Jinjang/2002/21** **Tarikh : 4/2/2021** **Kertas siasatan : Sentul/JSJ/KS/469/21** **Klasifikasi : Seksyen 8 Akta Rahsia Rasmi 1972** **Seksyen 203A Kanun Keseksaan** **Seksyen 500 Kanun Keseksaan** **Pengadu : Tan Sri Dato' Seri Hj Mohamad Apandi** **Pegawai penyiasat : ASP Mohd Khairul Riduan Bin Khairudin**		
13.	Berapakah laporan polis yang bersangkut dengan kertas siasatan ini?	Laporan polis yang dibuat oleh pengadu dan 25 lagi laporan polis yang diRORkan kepada kertas siasatan yang dibuka menjadikan keseluruhan laporan polis sebanyak 26 laporan. Dalam laporannya, pengadu mendakwa terdapat 17 kesalahan yang dikesan dalam buku tersebut. Terdapat kesalahan fitnah terhadap pengadu (seksyen 500 Kanun Keseksaan) dan terdapat juga kesalahan di bawah seksyen 203A Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi. **A. Laporan berkaitan kesalahan di bawah seksyen 500 Kanun Keseksaan:** i. Muka surat 199, perenggan 2,3 dan 4. Pengadu mengatakan YBhg. Tan Sri Tommy Thomas menyatakan pengadu dilantik sebagai Peguam Negara semata-mata untuk melepaskan YBhg. Dato' Sri Najib Razak berkait kes 1MDB. ii. Muka surat 224, perenggan akhir dan muka surat 225, perenggan 1. Juga menyatakan pengadu dilantik sebagai Peguam Negara untuk melindungi YBhg. Dato' Sri Najib Razak berkait kes 1MDB.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
		B. Laporan berkaitan kesalahan di bawah seksyen 203A Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi: i. Muka surat 190, perenggan 2,3 dan 4 pendedahan berkaitan Encik Noorbahri Baharuddin. ii. Muka surat 266, perenggan 3 dan muka surat 267, perenggan 2 pendedahan berkaitan Jho Low. iii. Muka surat 320, perenggan 1, 2, 4 dan muka surat 321, perenggan 2,3 dan 4 pendedahan berhubung Goldman Sachs dan 1MDB. iv. Muka surat 330, perenggan 2 dan muka surat 331, perenggan 2 yang mendedahkan mengenai perbincangan penulis dengan YDPA berkaitan pelantikannya sebagai Peguam Negara. v. Muka surat 366, perenggan 2,3 dan muka surat 367, perenggan 1 iaitu pendedahan pembayaran oleh Petronas berkenaan hasil minyak kepada Kerajaan Malaysia dan Kerajaan Negeri Sarawak. vi. Muka surat 382 yang mendedahkan penulis mempertikaikan keputusan tribunal Suruhanjaya Pilihanraya yang memutuskan tidak meneruskan siasatan terhadap ahli-ahli Suruhanjaya. vii. Muka surat 409, perenggan 3 dan muka surat 410, perenggan 2 mengenai pandangannya berhubung kes kematian Nazrin Hassan, Ketua Pegawai Eksekutif Cradle Fund. Kes tersebut masih lagi dalam perbicaraan Mahkamah. viii. Muka surat 447, perenggan 2 menyentuh isu perkauman dengan menyatakan terdapat bantahan terhadap pelantikan penulis sebagai Peguam Negara berdasarkan kaum dan agama. ix. Muka surat 451, perenggan 2 dan muka surat 452, perenggan 2 dan 3 mendedahkan mengenai beberapa orang Menteri iaitu Dato' Saifuddin Abdullah dan Senator Waytha Moorthy yang menyokong pengiktirafan undang-undang untuk Rome Statute.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
		x. Muka surat 453, perenggan 2,3 muka surat 454, perenggan 2,3,4 dan muka surat 455 perenggan 2 yang mendedahkan hasil perbincangan dan syor beliau kepada Tun Dr. Mahahir berhubung kes Zakir Naik serta butir perbincangan bersama Pesuruhjaya Tinggi India di Malaysia. xi. Muka surat 459, perenggan 2 dan muka surat 460 perenggan 2 yang mempertikaikan keputusan yang dibuat oleh Mahkamah Koroner berkaitan punca kematian ahli Bomba, Muhammad Adib. xii. Muka surat 469, perenggan 2,3 dan 4 yang menyentuh isu LTTE, mendedahkan apa yang terkandung dalam kertas siasatan LTTE dan mendedahkan mengapa penulis menarik balik pertuduhan ke atas LTTE. xiii. Muka surat 472, perenggan 2, muka surat 473, perenggan 4 dan muka surat 474 perenggan 1 berkaitan peletakan jawatan Tun Dr. Mahathir dan penulis mendedahkan nasihat beliau kepada Menteri kabinet semasa peletakan jawatan Tun Dr. Mahahir sebagai Perdana Menteri. Kertas siasatan ini telah dirujuk kepada Jabatan Peguam Negara. Tiada apa-apa cadangan dari Pegawai Penyiasat, hanya meminta pandangan dan nasihat Jabatan Peguam Negara untuk siasatan selanjutnya.
14.	Daripada keseluruhan laporan dan siasatan yang dibuat, berapa yang dikelaskan bawah seksyen 500 Kanun Keseksaan, seksyen 203A Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi? Ada siasatan yang membuktikan kesalahan-kesalahan tersebut di bawah Akta Rahsia Rasmi?	Di bawah seksyen 500 Kanun Keseksaan ada 3 isu, manakala selebihnya di bawah seksyen 203A Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi. Di bawah Akta Rahsia Rasmi, polis mendapati terdapat 2 isu berkaitan Lembaga Pengampunan, iaitu Lembaga Pengampunan Johor untuk kes banduan Mexico dan Lembaga Pengampunan Wilayah Persekutuan untuk kes banduan Al-Maunah. Tiada laporan polis dibuat berhubung isu-isu ini tetapi pihak polis tetap melakukan siasatan. Kes Lembaga Pengampunan Johor belum selesai kerana belum merakam percakapan dari SUK Negeri Johor manakala bagi Lembaga Pengampunan Wilayah Persekutuan telah selesai dan tiada kesalahan ditemui kerana perkara yang dinyatakan dalam buku telah didedahkan kepada umum.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
15.	Adakah pihak polis telah mendapatkan pembuktian dokumen di bawah Akta Rahsia Rasmi dari agensi berkaitan, penulis sendiri, termasuk di premis penulis?	Pihak polis telah mengumpulkan dokumen-dokumen berkaitan bagi membuktikan dakwaan dari Jabatan Peguam Negara, perpustakaan, termasuk dokumen Lembaga Pengampunan Johor. Ada dokumen yang masih tidak lengkap tetapi pihak polis akan dapatkan pandangan daripada Jabatan Peguam Negara. Pihak polis juga telah ke pejabat penulis tetapi tidak menjumpa apa-apa dokumen Kerajaan.
16.	Adakah pihak polis menemui surat pelantikan penulis sebagai Peguam Negara dan adakah penulis dikira sebagai penjawat awam?	Ya, pihak polis menjumpai surat pelantikan tersebut dan ya, penulis merupakan penjawat awam.
KERTAS SIASATAN KETIGA **No. Repot : Chow kit/1073/21** **Tarikh : 5/2/2021** **Kertas siasatan : DangWangi/JSJ/KS/324/21** **Klasifikasi : Seksyen 4(1) Akta Hasutan 1948** **Pengadu : Dato' Sri YB Ahmad Mazlan, Setiausaha Agung UMNO** **Pegawai penyiasat : ASP Jefri Faizal Bin Jimmy Sham**		
17.	Terangkan mengenai kertas siasatan ketiga yang dibuka oleh pihak polis.	Kertas siasatan ketiga dibuka berdasarkan laporan polis yang dibuat oleh Dato' Sri YB Ahmad Mazlan, selaku Setiausaha Agung UMNO. Pihak polis menerima 25 laporan polis yang dibuat oleh Ketua-ketua Bahagian dan Cawangan UMNO di seluruh Malaysia dan diRORkan kepada laporan polis oleh YB Ahmad Mazlan. Kertas siasatan ketiga ini dibuka berdasarkan 2 isu iaitu: i. Berkaitan peristiwa 13 Mei 1969 yang pengadu merasakan petikan pada muka surat 28, perenggan 2 dan muka surat 29 perenggan 2, cenderung ke arah menghasut dan mewujudkan permusuhan antara kaum.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
		ii. Petikan pada muka surat 32 perenggan 2 yang menyebut mengenai wakil Cawangan Khas Polis menyusup masuk ke Kawasan sekolah Victoria Institution dan pengetua sekolah tersebut yang mengamalkan meritokrasi.
18.	Adakah terdapat sebarang laporan polis dibuat berkaitan petikan pada muka surat 449, perenggan akhir yang menyebut: "…The majority of the members of the PH cabinet were Malay. Yet the perceived insecurity. It was as if millions of people belonging to the majority race could not sleep soundly because a Chinese was Finance Minister, and an Indian, Attorney General."	Tiada.
19.	Apakah hasil siasatan pihak polis dan adakah terdapat sebarang elemen hasutan dijumpai?	Tiada cadangan daripada Pegawai Penyiasat dan pihak polis telah minta pandangan Jabatan Peguam Negara. Kertas siasatan telah dikembalikan untuk tindakan siasatan lanjut. Pihak polis juga telah merakam percakapan dengan pakar sejarah untuk mengupas isu ini. Pakar sejarah berpandangan tulisan buku ini lebih kepada pandangan dan interpretasi dari pembaca buku (laporan) MAGERAN. Penulis juga memaklumkan dia menulis berdasarkan buku (laporan) MAGERAN yang didapati dari perpustakaan.
KERTAS SIASATAN KEEMPAT **No. Repot : Tun H.S. Lee/4775/21** **Tarikh : 26/2/2021** **Kertas siasatan : Dang Wangi/JSJ/KS/549/21**		

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
Klasifikasi : Seksyen 8 Akta Rahsia Rasmi 1972 Seksyen 203A Kanun Keseksaan Pengadu : SAC Ahmad Dzaffir Bin Mohd Yussof Pegawai penyiasat : ASP Ee Hup Leong		
20.	Mengapa kertas siasatan ini dibuka dan apakah hasil siasatan ini?	Kertas siasatan ini dibuka disebabkan oleh laporan daripada SAC Ahmad Dzaffir. Pengadu telah membuat laporan ini kerana mendapati ada kes-kes yang ditulis dalam buku ini merupakan kes-kesyang belum selesai, dalam proses perbicaraan, proses rayuan, tindakan sivil dan dalam kajian Jabatan Peguam Negara. Pendedahan dalam buku tersebut terjumlah kepada menganggu proses pendakwaan dan perbicaraan dan pembocoran maklumat. Terdapat 9 isu dalam siasatan dan laporan polis yang dibuat. Isu 1: Cawangan Khas menyeludup masuk ke dalam Sekolah Victoria Institution pada muka surat 32, perenggan 2. Pihak polis telah merakam pecakapan 23 orang saksi, termasuk bekas Ketua Polis Negara. Saksi menafikan berita tersebut dan memaklumkan bahawa perkara tersebut lebih kepada khabar angin selepas peristiwa 13 Mei 1969. Isu 2: Penggunaan gas pemedih mata. Penulis telah mempertikaikan kewajaran tindakan pihak polis melepaskan gas pemedih mata ke arah peserta perarakan BERSIH. Rakaman percakapan saksi iaitu pegawai FRU mendapati pegawai mengikut SOP dan arahan tetap KPN dan FRU. Pertikaian tersebut merupakan pendapat penulis sahaja. Isu 3: Kes 1MDB pada muka surat 266, perenggan 3 dan muka surat 267, perenggan 2. Pegawai penyiasat bagi kes tersebut mendapati pendedahan dalam buku tersebut adalah fakta kes yang diketahui umum (public domain). Isu 4: Kes Altantuya pada muka surat 404, perenggan 2. Penulis mendakwa telah mengarahkan seorang Timbalan Pendakwa Raya (tidak didedahkan siapa) ke Sydney, Australia untuk menemubual Sirul. Pegawai penyiasat kes tersebut memaklumkan apa yang didedahkan oleh

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
		penulis dalam buku tersebut adalah berdasarkan akuan bersumpah yang dikeluarkan oleh Azilah dan bukan hasil siasatan kes tersebut. Isu 5: Isu pembunuhan Kim Jong-Nam pada muka surat 408, perenggan 2. Penulis mendakwa telah menggugurkan pertuduhan membunuh oleh wanita Indonesia dan Vietnam. Pegawai penyiasat kes memaklumkan bahawa kes ini telah digugurkan. Maka apa yang disebut dalam buku tidak menganggu kes ini. Isu 6: Kes kematian Nora Anne pada muka surat 409, perenggan 2. Petikan ini juga tidak menganggu kes kerana kes telah selesai. Isu 7: Kes kematian Ketua Pegawai Eksekutif Cradle Fund, Nazrin Hassan pada muka surat 409. Kes ini masih berjalan di Mahkamah Tinggi Shah Alam. Pegawai penyiasat kes ini memaklumkan bahawa pendedahan dalam buku ini menganggu dan menimbulkan prejudis kes (*subjudice*). Isu 8: Kes kematian Muhammad Adib pada muka surat 456 hingga 460. Penulis mempertikaikan keputusan Mahkamah Koroner. Pegawai penyiasat kes memaklumkan apa yang didedahkan dalam buku merupakan fakta kes yang diketahui umum. Isu 9: Kes LTTE pada muka surat 456 hingga 469. Kes ini telah digugurkan. Percakapan pegawai penyiasat kes juga telah diambil dan pegawai penyiasat memaklumkan pendedahan tersebut tidak memberi apa-apa kesan.
21.	Berdasarkan keseluruhan siasatan yang dibuat oleh pihak polis, adakah terdapat apa-apa kesalahan yang dibuktikan di bawah kesalahan seksyen 203A Kanun Keseksaan?	Bagi kes LTTE, penulis dengan kapasiti sebagai Peguam Negara telah membuat ulasan untuk menggugurkan pertuduhan kes tersebut, itu (kesalahan) yang paling jelas. Untuk kes Kim Jong-Nam, penulis juga ada menyatakan alasan untuk mengugurkan pertuduhan dua wanita berkenaan. Untuk kes Cradle Fund juga, penulis telah menyatakan pandangan beliau terhadap kes berkenaan.

BIL.	SOALAN/ISU BERBANGKIT	MAKLUM BALAS
22.	Adakah sebarang pertuduhan dibuat di bawah seksyen 203A Kanun Keseksaan atau seksyen 233 Akta Komunikasi dan Mutimedia 1998?	Tiada.
23.	Adakah terdapat agensi lain yang membuat siasatan mengenai dakwaan dalam buku ini?	Semakan pihak polis bersama Kementerian Dalam Negeri mendapati tiada agensi lain yang membuat siasatan ke atas dakwaan dalam buku ini.

Disediakan oleh,

Sekretariat Pasukan Petugas Khas
BHEUU, JPM

Tommy Thomas – My Story: Justice in the Wilderness

MAKLUMAT LANJUT BERHUBUNG 244 REPOT POLIS YANG DITERIMA OLEH POLIS DIRAJA MALAYSIA (PDRM) BERKAITAN DAKWAAN-DAKWAAN DALAM BUKU "MY STORY: JUSTICE IN THE WILDERNESS" TULISAN YBHG. TAN SRI TOMMY THOMAS.

S1. Klasifikasi kesemua 244 repot polis yang diterima berdasarkan siasatan kesalahan. Contohnya, berapa banyak repot polis yang diterima bagi kealahan seksyen 500 Kanun Keseksaan, berapa banyak repot polis bagi kesalahan seksyen 203A Kanun Keseksaan.

J1. Sebanyak 244 repot polis yang diterima dan telah dipecahkan kepada 4 seksyen kesalahan. Pecahan repot polis adalah seperti berikut:

1.1. Seksyen 500 Kanun Keseksaan - 2 repot polis (2 kertas siasatan)
1.2. Seksyen 4(1) Akta Hasutan 1948 - 25 repot polis (1 kertas siasatan)
1.3. Seksyen 203A Kanun Keseksaan & Seksyen 8 Akta Rahsia Rasmi 1972 - 217 repot polis (2 kertas siasatan)

S2. Tempoh masa 244 repot polis yang diterima:

J2. Repot polis yang pertama diterima pada 2 Februari 2021 dan disiasat dibawah seksyen 500 Kanun Keseksaan (Cyberjaya/598/2021) manakala repot polis yang terakhir diterima adalah pada 26 Februari 2021 dan disiasat di bawah seksyen 203A Kanun Keseksaan dan seksyen 8 Akta Rahsia Rasmi 1972 (THSL/4775/2021). Buku "My Story: Justice in the Wliderness" dilancarkan pada 30 Januari 2021.

S3. Senarai nama pengadu yang membuat 244 repot polis tersebut:

J3. Seperti di lampiran.

S4. Maklumat perihal siasatan terhadap repot polis tersebut:

J4. Sebanyak 4 kertas siasatan telah dibuka. Butiran kertas siasatan adalah seperti berikut:

4.1. No. repot : Cyberjaya/598/2021
No. kertas siasatan : Sepang/JSJ/KS/123/2021
Tarikh/masa : 2 Februari 2021 @ 2042hrs
Pegawai penyiasat : ASP Wan Azirul Nizam bin Che Wan Aziz
Pengadu : YBhg. Dato' Mohamad Hanafiah bin Zakaria
Jumlah saksi : 15 saksi termasuk pengadu.
Status siasatan : Masih dalam siasatan

	Syor/cadangan	: Tiada. Hanya memohon pandangan dan nasihat daripada Jabatan Peguam Negara.
4.2.	No. repot	: Jinjang/2002/2021
	No. kertas siasatan	: Sentul/JSJ/KS/469/2021
	Tarikh/masa	: 4 Februari 2021 @ 1428hrs
	Pegawai penyiasat	: ASP Mohd Khairul Ridzuan bin Khiruddin
	Pengadu	: YBhg. Tan Sri Dato' Sri Haji Mohamed Apandi bin Ali
	Jumlah saksi	: 38 saksi termasuk pengadu.
	Status siasatan	: Masih dalam siasatan
	Syor/cadangan	: Tiada. Hanya memohon pandangan dan nasihat daripada Jabatan Peguam Negara.
4.3.	No. repot	: Chow Kit/1073/2021
	No. kertas siasatan	: Dang Wangi/JSJ/KS/324/2021
	Tarikh/masa	: 5 Februari 2021 @ 1721hrs
	Pegawai penyiasat	: ASP Jefri Faizal bin Jimi Sham
	Pengadu	: YBhg. Dato' Sri Ahmad bin Maslan
	Jumlah saksi	: 37 saksi termasuk pengadu.
	Status siasatan	: Masih dalam siasatan
	Syor/cadangan	: Tiada. Hanya memohon pandangan dan nasihat daripada Jabatan Peguam Negara.
4.4.	No. repot	: THSL/4775/2021
	No. kertas siasatan	: Dang Wangi/JSJ/KS/873/2021
	Tarikh/masa	: 26 Februari 2021 @ 1751hrs
	Pegawai penyiasat	: ASP Ee Hup Leong
	Pengadu	: YDH SAC Ahmad Dzafir bin Mohd Yussof
	Jumlah saksi	: 23 saksi termasuk pengadu.
	Status siasatan	: Masih dalam siasatan
	Syor/cadangan	: Tiada. Hanya memohon pandangan dan nasihat daripada Jabatan Peguam Negara.

4.5. Nama saspek : YBhg. Tan Sri Tommy Thomas
Rakaman percakapan: 3 & 4 Mac 2021
Tempat : Ibu Pejabat PDRM Bukit Aman, Kuala Lumpur.

S5. Maklumat berhubung pendakwaan:

J5. Kertas siasatan telah dirujuk ke Jabatan Peguam Negara pada 8 Mac 2021 untuk memohon pandangan dan nasihat bagi membantu siasatan. Tiada cadangan atau arahan untuk mendakwa mana-mana pihak setakat ini.

S6. Adakah terdapat agensi penguatkuasa dari Jabatan/Agensi lain yang menjalankan siasatan mengenai buku tersebut?

J6. Tiada.

S7. Adakah terdapat apa-apa maklumat lain yang hendak dimaklumkan kepada Pasukan Petugas Khas yang relevan kepada siasatan berhubungan dengan buku tersebut?

J7. Tiada.

PERKARA-PERKARA UNTUK MAKLUMBALAS KEPADA PASUKAN PETUGAS KHAS (PPK) SIASATAN KE ATAS DAKWAAN-DAKWAAN DALAM BUKU MY STORY: JUSTICE IN THE WILDERNESS TULISAN TAN SRI TOMMY THOMAS BEKAS PEGUAM NEGARA

BIL.	SOALAN/ISU YANG DIBANGKITKAN OLEH PPK
2.	a) Maklumat mengenai prosedur/tatacara/proses dalam "recovery" dan "disposal" asset 1MDB b) Keputusan Kerajaan mengenai "recovery" dan "disposal" asset 1MDB c) Maklumat mengenai pasukan petugas khas penjejakan aset 1MDB (peranan pasukan/jawatankuasa dan rekod penjualan/lelongan) d) Pemakaian Tatacara Pelupusan Aset Alih Kerajaan kepada kes aset 1MDB
	MAKLUM BALAS NFCC
	a) Secara amnya, objektif pemulihan aset 1MDB adalah bagi memaksimakan hasil yang diterima Kerajaan, akan tetapi ia bergantung kepada proses yang dilaksanakan oleh agensi luar negara yang melaksanakan penyitaan, pelucuthakan dan pelupusan aset 1MDB yang berada di luar negara. Sebagai contoh, aset yang dilucut hak oleh United States's Department of Justice (USDOJ) telah dilupuskan mengikut tatacara dan proses mereka dan hasilnya telah dikembalikan kepada Kerajaan Malaysia setelah ditolak kos yang berkaitan. Prosedur/tatacara/proses pelupusan aset yang telah dilucut hak kepada Kerajaan adalah tertakluk kepada peraturan dan pekeliling Perbendaharaan Malaysia. b) Sebarang usul mengenai pemulihan aset 1MDB perlu dibincangkan di dalam Pasukan Penjejakan Aset 1MDB (PPA1M) yang dianggotai oleh wakil agensi yang berkaitan sebelum dikemukakan kepada YAB Perdana Menteri untuk persetujuan bagi tindakan lanjut. c) YAB Perdana Menteri telah bersetuju dengan penubuhan PPA1M pada 19 Jun 2019 berdasarkan peranan yang dinyatakan di dalam surat kepada YAB Perdana Menteri (sila rujuk **Lampiran I** dan **II**). Tiada penjualan atau lelongan aset yang dilaksanakan oleh PPA1M berdasarkan mandat yang diberikan oleh Kerajaan. Sebarang penjualan dan pelupusan bagi aset 1MDB yang dipulihkan adalah tertakluk kepada proses dan prosedur yang dilaksanakan oleh agensi penguat kuasa yang menjalankan siasatan atau mengambil tindakan penguatkuasaan.

	d) Sebarang pelupusan berkaitan aset 1MDB yang dilaksanakan oleh agensi penguat kuasa yang berkenaan adalah tertakluk kepada Pekeliling Perbendaharaan Malaysia KP 2.6/2013 – Tatacara Pengurusan Aset Alih Kerajaan : Pelupusan (sila rujuk **Lampiran III**).

Pusat Pencegahan Jenayah Kewangan Nasional
Jabatan Perdana Menteri
14 Februari 2022

PASUKAN PENJEJAKAN ASET 1MDB

TERMA RUJUKAN

Punca Kuasa

1. YAB Perdana Menteri bersetuju dengan penubuhan dan pelantikan ahli Pasukan Penjejakan Aset 1MDB (Pasukan) [Surat dari Pejabat Perdana Menteri Malaysia bertarikh 26 Jun 2019 adalah dirujuk].

Objektif Penubuhan

2. Menyediakan satu platform bagi perbincangan dan tindakan secara bersepadu di kalangan agensi penguatkuasaan yang berkaitan bagi tujuan:

   a) menjejak dana dan aset yang telah dipindahkan, disembunyikan atau diseleweng melalui syarikat 1MDB dan syarikat sekutu; dan

   b) membantu mendapatkan semula aset-aset berkenaan.

Tugas dan Tanggungjawab

3. Pusat Pencegahan Jenayah Kewangan Nasional [*National Anti-Financial Crime Centre* (NFCC)] dipertanggungjawabkan untuk menerajui penyelarasan aktiviti Pasukan.

4. Tugas dan tanggungjawab utama Pasukan adalah seperti berikut:

   a) Mengenalpasti transaksi kewangan dan dana syarikat kumpulan 1MDB dan sekutunya yang diseleweng;

   b) Berkongsi maklumat yang berkaitan dengan ahli pasukan;

   c) Mengatur strategi, pendekatan serta alternatif bagi memperoleh aset hasil dari penyelewengan oleh individu dan syarikat yang terlibat;

   d) Membentuk rangkaian kerjasama dengan agensi penguatkuasa luar negara yang berkaitan;

   e) Memastikan tindakan yang diambil mengikut prosedur dan peruntukan undang-undang; dan

   f) Memastikan kedaulatan dan kerahsiaan maklumat dan tindakan pelaksanaan tugas Pasukan.

Struktur Pelaporan

5. Pasukan bertanggungjawab melapor kepada YAB Perdana Menteri.

Keahlian

6. **Ahli Tetap:**

a) Tan Sri Abu Kassim bin Mohamed, Ketua Pengarah, GIACC (selaku Pengerusi);

b) Dato' Seri Abdul Hamid bin Bador, Ketua Polis Negara;

c) Puan Latheefa Beebi Koya, Ketua Pesuruhjaya, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM);

d) Dato' Seri Haji Mustafar bin Haji Ali, Ketua Eksekutif NFCC;

e) Dato' Asri bin Hamidon, Timbalan Ketua Setiausaha Perbendaharaan (Pelaburan), Kementerian Kewangan Malaysia;

f) Datuk Seri Azam bin Baki, Timbalan Ketua Persuruhjaya (Operasi), (SPRM);

g) Dato' Sani bin Ab. Hamid, Timbalan Ketua Eksekutif NFCC;

h) Dato' Khalil Azlan bin Chik, Ketua Pasukan Siasatan Pengubahan Wang Haram, Urusetia KPN, Polis Diraja Malaysia (PDRM);

i) Tuan Muhammad Saifuddin bin Hashim Musaimi, Ketua Unit Jenayah Pengubahan Wang Haram dan Pelucuthakan Hasil Jenayah, Jabatan Peguam Negara (AGC) atau Tuan Husmarudin bin Husin, Timbalan Pendakwa Raya, AGC;

j) Tuan Abdul Rahman bin Abu Bakar, Pengarah, Jabatan Perisikan Kewangan dan Penguatkuasaan, Bank Negara Malaysia (BNM); dan

k) Tuan Mohamed Zamri bin Zainal Abidin, Pengarah AMLFOP, SPRM.

Kekerapan Mesyuarat

7. Kekerapan mesyuarat dan kehadiran mesyuarat adalah seperti berikut:

a) Kekerapan mesyuarat adalah minima 1 (satu) kali dalam masa 1 (satu) bulan; dan

b) Kehadiran ahli pasukan atau pegawai yang dilantik menggantikan ahli tersebut.

Komitmen

8. Setiap ahli Pasukan komited dan bertanggungjawab untuk:

   a) Menghadiri setiap mesyuarat yang telah ditetapkan;

   b) Berkongsi maklumat dan statistik berkaitan untuk menyokong keputusan bagi tindakan yang dipersetujui;

   c) Menyumbang dalam mana-mana bidang lain yang memerlukan kepakaran dan penglibatan pegawai masing-masing; dan

   d) Memelihara kerahsiaan maklumat yang dikongsi.

Peruntukan Kewangan

9. Sebarang kos berkaitan usaha penjejakan dan membawa pulang aset 1MDB akan dibiayai dari nilai aset yang berjaya dibawa pulang.

Sekretariat Pasukan

10. Pegawai berikut dilantik sebagai Ahli Sekretariat Pasukan bagi membantu pengurusan perjalanan mesyuarat dan aktiviti Pasukan;

    a) Mohamad Zakie bin Abu Hassan, NFCC

    b) Syed Nagib bin Syed Mohamed, NFCC

11. Alamat sekretariat adalah seperti berikut:

    National Anti-Financial Crime Centre (NFCC)
    Aras 4, Blok D5, Kompleks D
    Pusat Pentadbiran Kerajaan Persekutuan
    62545 Putrajaya
    No. Telefon: 03-8886 6235
    No. Emel: zakie@jpm.gov.my;
    nagib@jpm.gov.my

Tempoh dan pembubaran

12. Pasukan ini ditubuhkan berkuatkuasa mulai 19 Jun 2019.

13. Pasukan ini hanya boleh dibubar dengan persetujuan YAB Perdana Menteri.

LAPORAN MENGENAI DAKWAAN-DAKWAAN DALAM BUKU BERTAJUK *"MY STORY: JUSTICE IN THE WILDERNESS"* TULISAN YBHG. TAN SRI TOMMY THOMAS, BEKAS PEGUAM NEGARA BERKAITAN PROSES PELANTIKAN HAKIM YANG DIURUSKAN OLEH BKPP, JPM

1. PELANTIKAN YAA TUN RICHARD MALANJUM SEBAGAI KETUA HAKIM NEGARA:

(i) tarikh Majlis Raja-Raja (MRR)
[10 – 12 Julai 2018]

(ii) tarikh penerimaan Nasihat MRR oleh BKPP, JPM
[12 Julai 2018]

Kronologi Pelantikan YAA Tun Richard Malanjum sebagai Ketua Hakim Negara

Jadual 1

BIL	PERKARA	TARIKH
1.	Surat YAA Tun Raus, Ketua Hakim Negara kepada YAB Perdana Menteri mengemukakan calon-calon bagi jawatan-jawatan berikut untuk pertimbangan YAB Perdana Menteri: • YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Ketua Hakim Negara • YA Dato Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan • YA Dato' Abdul Rahman bin Sebli sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak. Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 24 Mei 2018.	13 Jun 2018
2.	BKPP, JPM menerima surat persetujuan YAB Perdana Menteri terhadap cadangan pelantikan: • YAA Tan Sri Datuk Seri Panglima Richard Malanjum sebagai Ketua Hakim Negara	18 Jun 2018

BIL	PERKARA	TARIKH
	• YAA Tan Sri Datuk Sri Ahmad bin Haji Maarop sebagai Presiden Mahkamah Rayuan • YA Tan Sri Zaharah binti Ibrahim sebagai Hakim Besar Mahkamah Tinggi di Malaya • YA Datuk David Wong Dak Wah sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak.	
3.	Kertas-Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan-pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di **perkara 2** dikemukakan untuk perkenan Yang di-Pertuan Agong (YDPA) supaya pelantikan-pelantikan tersebut dirundingi dengan Majlis Raja-Raja	20 Jun 2018
4.	Kertas-Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan-pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di **perkara 2** diperkenan oleh YDPA	22 Jun 2018
5.	Kertas-Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan-pelantikan seperti di perkara 2 dikemukakan ke Pejabat Penyimpan Mohor Besar Raja-Raja	27 Jun 2018
6.	Warkah PM – YDPA memohon perkara-perkara berikut: • Peletakan jawatan YAA Tun Raus sebagai Ketua Hakim Negara dan YAA Tan Sri Dato' Sri Zulkefli bin Ahmad Makinudin sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai tarikh yang diperkenan oleh YDPA dan bukannya pada 31 Julai 2018. • supaya pelantikan YAA Tan Sri Datuk Seri Panglima Richard Malanjum sebagai	6 Julai 2018

BIL	PERKARA	TARIKH
	Ketua Hakim Negara, YAA Tan Sri Datuk Sri Ahmad bin Haji Maarop sebagai Presiden Mahkamah Rayuan, YA Tan Sri Zaharah binti Ibrahim sebagai Hakim Besar Mahkamah Tinggi di Malaya dan YA Datuk David Wong Dak Wah sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 15 Julai 2018 setelah dirundingi dengan MRR pada 10 dan 11 Julai 2018. • supaya YAA Tan Sri Datuk Seri Panglima Richard Malanjum, Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak dan YAA Tan Sri Datuk Sri Ahmad bin Haji Maarop, Hakim Besar Mahkamah Tinggi di Malaya masing-masing menjalankan tugas sebagai Ketua Hakim Negara dan Presiden Mahkamah Rayuan berkuat kuasa mulai tarikh perkenan YDPA ke atas peletakan jawatan YAA Tun Raus sebagai Ketua Hakim Negara dan YAA Tan Sri Dato' Sri Zulkefli bin Ahmad Makinudin sebagai Presiden Mahkamah Rayuan sehingga 14 Julai 2018.	
7.	KDYMM SPB YDPA XV Sultan Muhammad V menitahkan supaya perkara-perkara yang dipohon oleh YAB Perdana Menteri seperti di perkara 6 dibawa masuk ke Mesyuarat Majlis Raja-Raja ke 249 pada 11 dan 12 Julai 2018 untuk dirundingi.	6 Julai 2018
8.	YAB Perdana Menteri menasihati YDPA supaya: • tarikh peletakan jawatan YAA Tun Raus sebagai Ketua Hakim Negara dan YAA Tan Sri Dato' Sri Zulkefli bin Ahmad Makinudin sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 10 Julai 2018 • pelantikan YAA Tan Sri Datuk Seri Panglima Richard Malanjum sebagai Ketua Hakim Negara, YAA Tan Sri Datuk Sri Ahmad bin Haji Maarop sebagai	10 Julai 2018

BIL	PERKARA	TARIKH
	Presiden Mahkamah Rayuan, YA Tan Sri Zaharah binti Ibrahim sebagai Hakim Besar Mahkamah Tinggi di Malaya dan YA Datuk David Wong Dak Wah sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 11 Julai 2018 setelah dirundingi dengan MRR pada 10 dan 11 Julai 2018.	
9.	YDPA memberi perkenan terhadap tarikh peletakan jawatan YAA Tun Raus sebagai Ketua Hakim Negara dan YAA Tan Sri Dato' Sri Zulkefli bin Ahmad Makinudin sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 10 Julai 2018	11 Julai 2018
10.	Nasihat Majlis Raja-Raja berkenaan dengan pelantikan YAA Tan Sri Datuk Seri Panglima Richard Malanjum sebagai Ketua Hakim Negara berkuatkuasa mulai 11 Julai 2018	12 Julai 2018
11.	Nasihat Majlis Raja-Raja berkenaan dengan pelantikan Tan Sri Datuk Sri Ahmad bin Haji Maarop sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 11 Julai 2018	12 Julai 2018
12.	Nasihat Majlis Raja-Raja berkenaan dengan pelantikan YA Tan Sri Zaharah binti Ibrahim sebagai Hakim Besar Mahkamah Tinggi di Malaya berkuatkuasa mulai 11 Julai 2018	12 Julai 2018
13.	Nasihat Majlis Raja-Raja berkenaan dengan pelantikan Datuk David Wong Dak Wah sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 11 Julai 2018	12 Julai 2018
14.	Surat Ketua Setiausaha Negara – Ketua Hakim Negara memaklumkan pelantikan	12 Julai 2018

2. PELANTIKAN 4 HAKIM MAHKAMAH ATASAN PADA TAHUN 2019

(i) Kronologi pelantikan hakim mahkamah atasan pada tahun 2019.
[Rujuk Jadual 2 hingga 5]

(ii) Adakah pelantikan 4 hakim mahkamah atasan pada tahun 2019 melalui SPK?
[Ya, rujuk Jadual 2 hingga 5]

(iii) Adakah pelantikan 4 hakim mahkamah atasan dirundingi dalam MRR yang sama?
[Tidak, rujuk Jadual 2 hingga 5]

- YAA Tun Tengku Maimun binti Tuan Mat (KHN) [secara berutus]
- YAA Tan Sri Dato' Sri Azahar bin Mohamed (HBMM) [4 Julai 2019]
- YAA Dato' Rohana binti Yusuf (PMR) dan YAA Dato' Abang Iskandar bin Abang Hashim (HBSS) [30 & 31 Oktober 2019]

(iv) YAA Tun Tengku Maimun binti Tuan Mat mengangkat sumpah sebagai Ketua Hakim Negara di hadapan YDPA pada waktu malam?
[Soalan ini perlu dirujuk kepada SPK kerana BKPP tidak bertanggungjawab terhadap proses mengangkat sumpah oleh Hakim-hakim]

(A) Kronologi Pelantikan YAA Tun Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara (menggantikan YAA Tun Richard Malanjum yang tamat perkhidmatan pada 13 April 2019)

Jadual 2

BIL	PERKARA	TARIKH
1.	BKPP, JPM menerima surat persetujuan YAB Perdana Menteri terhadap cadangan pelantikan: • YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop sebagai Ketua Hakim Negara • YAA Datuk Seri Panglima David Wong Dak Wah sebagai Presiden Mahkamah Rayuan • YA Dato' Tengku Maimun binti Tuan Mat sebagai Hakim Besar Mahkamah Tinggi di Malaya • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak. Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 17 Januari 2019	18 Mac 2019
2.	Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di perkara 2 dikemukakan untuk perkenan Yang di-Pertuan Agong (YDPA) supaya pelantikan-pelantikan tersebut dirundingi dengan Majlis Raja-Raja	19 Mac 2019
3.	Terima arahan daripada YBhg. Ketua Setiausaha Negara supaya Kertas MRR mengenai pelantikan di perkara 2 ditarik semula dan dibatalkan	21 Mac 2019
4.	Surat YAA Tan Sri Richard Malanjum, Ketua Hakim Negara kepada YAB Perdana Menteri mengemukakan 2 calon tambahan bagi jawatan-jawatan berikut untuk pertimbangan YAB Perdana Menteri.: **Ketua Hakim Negara** 1. YA Dato' Tengku Maimun binti Tuan Mat 2. YA Tan Sri Dato' Sri Azahar bin Mohamed	5 April 2019

BIL	PERKARA	TARIKH
	Presiden Mahkamah Rayuan 1. YA Tan Sri Dato' Sri Azahar bin Mohamed 2. YA Dato Rohana binti Yusuf **Hakim Besar Mahkamah Tinggi di Malaya** 1. YA Dato Rohana binti Yusuf 2. YA Tan Sri Dato' Sri Azahar bin Mohamed Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 5 April 2019	
5.	BKPP, JPM terima surat persetujuan YAB Perdana Menteri terhadap cadangan baharu pelantikan: • YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara • YA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Malaya	8 April 2019
6.	BKPP, JPM mengemukakan Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara kepada Istana Negara untuk perkenan YDPA	10 April 2019
7.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara diperkenan oleh YDPA	12 April 2019
8.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara dikemukakan ke Pejabat Penyimpan Mohor Besar Raja-Raja.	12 April 2019
9.	Kertas ini dirundingi dengan Majlis Raja-Raja secara berutus	

BIL	PERKARA	TARIKH
10.	Nasihat Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara berkuatkuasa mulai tarikh perkenan YDPA	30 April 2019
11.	Tarikh perkenan YDPA terhadap pelantikan YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara	2 Mei 2019
12.	Surat pelantikan sebagai Ketua Hakim Negara yang ditandatangani oleh Ketua Setiausaha Negara	2 Mei 2019

(B) Kronologi Pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan (menggantikan YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop yang tamat perkhidmatan pada 24 November 2019)

Jadual 3

BIL	PERKARA	TARIKH
1.	BKPP, JPM menerima surat persetujuan YAB Perdana Menteri terhadap cadangan pelantikan: • YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop sebagai Ketua Hakim Negara • YAA Datuk Seri Panglima David Wong Dak Wah sebagai Presiden Mahkamah Rayuan • YA Dato' Tengku Maimun binti Tuan Mat sebagai Hakim Besar Mahkamah Tinggi di Malaya • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak. Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 17 Januari 2019	18 Mac 2019
2.	Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di perkara 2 dikemukakan untuk perkenan Yang di-Pertuan Agong (YDPA) supaya pelantikan-pelantikan tersebut dirundingi dengan Majlis Raja-Raja	19 Mac 2019
3.	Terima arahan daripada YBhg. Ketua Setiausaha Negara supaya Kertas MRR mengenai pelantikan di perkara 2 ditarik semula dan dibatalkan	21 Mac 2019
4.	Surat YAA Tan Sri Richard Malanjum, Ketua Hakim Negara kepada YAB Perdana Menteri mengemukakan 2 calon tambahan bagi jawatan-jawatan berikut untuk pertimbangan YAB Perdana Menteri.: **Ketua Hakim Negara** 1. YA Dato' Tengku Maimun binti Tuan Mat 2. YA Tan Sri Dato' Sri Azahar bin Mohamed	5 April 2019

BIL	PERKARA	TARIKH
	Presiden Mahkamah Rayuan 1. YA Tan Sri Dato' Sri Azahar bin Mohamed 2. YA Dato Rohana binti Yusuf **Hakim Besar Mahkamah Tinggi di Malaya** 1. YA Dato Rohana binti Yusuf 2. YA Tan Sri Dato' Sri Azahar bin Mohamed Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 5 April 2019	
5.	BKPP, JPM terima surat persetujuan YAB Perdana Menteri terhadap cadangan baharu pelantikan: • YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara • YA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Malaya	8 April 2019
6.	BKPP, JPM mengemukakan Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan kepada Istana Negara untuk perkenan YDPA	22 Julai 2019
7.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan diperkenan oleh YDPA	26 Julai 2019
8.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan dikemukakan ke Pejabat Penyimpan Mohor Besar Raja-Raja.	2 Ogos 2019
9.	MRR	30 – 31 Oktober 2019

BIL	PERKARA	TARIKH
10.	BKPP, JPM terima Nasihat Majlis Raja-Raja dari Pejabat Penyimpan Mohor Besar Raja-Raja mengenai pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 25 November 2019	12 November 2019
11.	BKPP, JPM memohon perkenan YDPA terhadap pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 25 November 2019	14 November 2019
12.	YDPA memberi perkenan terhadap pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 25 November 2019	18 November 2019
13.	Surat Ketua Setiausaha Negara – Ketua Hakim Negara memaklumkan pelantikan YAA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan berkuatkuasa mulai 25 November 2019	21 November 2019

(C) Kronologi Pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya (menggantikan YAA Tan Sri Zaharah binti Ibrahim yang tamat perkhidmatan pada 16 Mei 2019)

Jadual 4

BIL	PERKARA	TARIKH
1.	BKPP, JPM menerima surat persetujuan YAB Perdana Menteri terhadap cadangan pelantikan: • YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop sebagai Ketua Hakim Negara • YAA Datuk Seri Panglima David Wong Dak Wah sebagai Presiden Mahkamah Rayuan • YA Dato' Tengku Maimun binti Tuan Mat sebagai Hakim Besar Mahkamah Tinggi di Malaya • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak. Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 17 Januari 2019	18 Mac 2019
2.	Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di perkara 2 dikemukakan untuk perkenan Yang di-Pertuan Agong (YDPA) supaya pelantikan-pelantikan tersebut dirundingi dengan Majlis Raja-Raja	19 Mac 2019
3.	Terima arahan daripada YBhg. Ketua Setiausaha Negara supaya Kertas MRR mengenai pelantikan di perkara 2 ditarik semula dan dibatalkan	21 Mac 2019
4.	Surat YAA Tan Sri Richard Malanjum, Ketua Hakim Negara kepada YAB Perdana Menteri mengemukakan 2 calon tambahan bagi jawatan-jawatan berikut untuk pertimbangan YAB Perdana Menteri.:	5 April 2019

BIL	PERKARA	TARIKH
	Ketua Hakim Negara 1. YA Dato' Tengku Maimun binti Tuan Mat 2. YA Tan Sri Dato' Sri Azahar bin Mohamed **Presiden Mahkamah Rayuan** 1. YA Tan Sri Dato' Sri Azahar bin Mohamed 2. YA Dato Rohana binti Yusuf **Hakim Besar Mahkamah Tinggi di Malaya** 1. YA Dato Rohana binti Yusuf 2. YA Tan Sri Dato' Sri Azahar bin Mohamed Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 5 April 2019	
5.	BKPP, JPM terima surat persetujuan YAB Perdana Menteri terhadap cadangan baharu pelantikan: • YA Dato' Tengku Maimun binti Tuan Mat sebagai Ketua Hakim Negara • YA Dato' Rohana binti Yusuf sebagai Presiden Mahkamah Rayuan • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Malaya	8 April 2019
6.	BKPP, JPM terima pemakluman daripada SPK mengenai keputusan YAB Perdana Menteri yang bersetuju dengan pencalonan Ketua Hakim Negara untuk melantik YA Tan Sri Dato' Sri Azahar bin Mohamed, berbeza dengan keputusan YAB PM pada 8 April 2019, iaitu untuk melantik YA Dato' Abang Iskandar bin Abang Hashim Hakim Besar Mahkamah Tinggi di Malaya	21 Mei 2019
7.	BKPP, JPM mohon pengesahan daripada SPK sama ada calon Hakim Besar Mahkamah Tinggi di Malaya yang diperakukan oleh SPK telah memenuhi peruntukan Perkara 122B(3) Perlembagaan Persekutuan	24 Mei 2019
8.	BKPP, JPM mengemukakan Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed	29 Mei 2019

BIL	PERKARA	TARIKH
	sebagai Hakim Besar Mahkamah Tinggi di Malakepada Istana Negara untuk perkenan YDPA	
9.	Pengesahan SPK mengenai peruntukan perkara 122B(3) Perlembagaan Persekutuan telah dipenuhi	30 Mei 2019
10.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya diperkenan oleh YDPA	31 Mei 2019
11.	MRR	4 Julai 2019
12.	Terima Nasihat Majlis Raja-Raja dari Pejabat Penyimpan Mohor Besar Raja-Raja mengenai pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya	10 Julai 2019
13.	BKPP, JPM memohon perkenan YDPA terhadap pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya	16 Julai 2019
14.	YDPA memberi perkenan terhadap pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya	26 Julai 2019
15.	Surat Ketua Setiausaha Negara – Ketua Hakim Negara memaklumkan pelantikan YA Tan Sri Dato' Sri Azahar bin Mohamed sebagai Hakim Besar Mahkamah Tinggi di Malaya	1 Ogos 2019

(D) Kronologi Pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak (menggantikan YAA Datuk Seri Panglima David Wong Dak Wah yang tamat perkhidmatan pada 19 Februari 2020)

Jadual 5

BIL	PERKARA	TARIKH
1.	BKPP, JPM menerima surat persetujuan YAB Perdana Menteri terhadap cadangan pelantikan: • YAA Tan Sri Dato' Sri Ahmad bin Haji Maarop sebagai Ketua Hakim Negara • YAA Datuk Seri Panglima David Wong Dak Wah sebagai Presiden Mahkamah Rayuan • YA Dato' Tengku Maimun binti Tuan Mat sebagai Hakim Besar Mahkamah Tinggi di Malaya • YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak. Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 17 Januari 2019	18 Mac 2019
2.	Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan Ketua Hakim Negara, Presiden Mahkamah Rayuan, Hakim Besar Malaya dan Hakim Besar Sabah Sarawak seperti di perkara 2 dikemukakan untuk perkenan Yang di-Pertuan Agong (YDPA) supaya pelantikan-pelantikan tersebut dirundingi dengan Majlis Raja-Raja	19 Mac 2019
3.	Terima arahan daripada YBhg. Ketua Setiausaha Negara supaya Kertas MRR mengenai pelantikan di perkara 2 ditarik semula dan dibatalkan	21 Mac 2019

BIL	PERKARA	TARIKH
4.	Surat YAA Tan Sri Richard Malanjum, Ketua Hakim Negara kepada YAB Perdana Menteri mengemukakan 2 calon tambahan bagi jawatan-jawatan berikut untuk pertimbangan YAB Perdana Menteri.: **Ketua Hakim Negara** 1. YA Dato' Tengku Maimun binti Tuan Mat 2. YA Tan Sri Dato' Sri Azahar bin Mohamed **Presiden Mahkamah Rayuan** 1. YA Tan Sri Dato' Sri Azahar bin Mohamed 2. YA Dato Rohana binti Yusuf **Hakim Besar Mahkamah Tinggi di Malaya** 1. YA Dato Rohana binti Yusuf 2. YA Tan Sri Dato' Sri Azahar bin Mohamed Nama-nama tersebut dipilih oleh Suruhanjaya Pelantikan Kehakiman dalam mesyuarat bertarikh 5 April 2019	5 April 2019
5.	Surat Ketua Hakim Negara selaku Pengerusi SPK kepada YAB Perdana Menteri mengesyor dan mencadangkan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak selaras dengan keputusan mesyuarat SPK pada 22 Ogos 2019	4 September 2019
6.	Surat BKPP, JPM kepada Ketua Setiausaha Sulit YAB Perdana Menteri memohon pengesahan rundingan YAB PM bersama Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak serta dengan Hakim Besar Mahkamah Tinggi di Malaya selaras dengan Perkara 122B(3) Perlembagaan Persekutuan	10 September 2019
7.	BKPP, JPM menerima surat daripada Pejabat Ketua Setiausaha Negara berhubung persetujuan YAB PM melantik YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak serta perakuan oleh YAA Datuk Seri Panglima David Wong Dak Wah, Hakim Besar Mahkamah Tinggi di Sabah dan	12 September 2019

BIL	PERKARA	TARIKH
	Sarawak selaras dengan peruntukan Perkara 122B(3) Perlembagaan Persekutuan.	
8.	BKPP, JPM menerima surat daripada Pejabat Ketua Setiausaha Negara berhubung persetujuan YAB PM melantik YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak serta perakuan oleh YAA Tan Sri Dato' Sri Azahar bin Mohamed, Hakim Besar Mahkamah Tinggi di Malaya selaras dengan peruntukan Perkara 122B(3) Perlembagaan Persekutuan	17 September 2019
9.	BKPP, JPM mengemukakan Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak kepada Istana Negara untuk perkenan YDPA	30 September 2019
10.	Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak diperkenan oleh YDPA	4 Oktober 2019
11.	Perakuan oleh Ketua Menteri Sabah selaras dengan peruntukan Perkara 122B(3) Perlembagaan Persekutuan	4 Oktober 2019
12.	BKPP, JPM mengemukakan Kertas Untuk Merundingi Majlis Raja-Raja berkenaan dengan pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak kepada Pejabat Penyimpan Mohor Besar Raja-Raja	4 Oktober 2019
13.	Perakuan oleh Ketua Menteri Sarawak selaras dengan peruntukan Perkara 122B(3) Perlembagaan Persekutuan	8 Oktober 2019
14.	MRR	30 – 31 Oktober 2019

BIL	PERKARA	TARIKH
15.	BKPP, JPM menerima Nasihat Majlis Raja-Raja dari Pejabat Penyimpan Mohor Besar Raja-Raja mengenai pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 20 Februari 2020	12 November 2019
16.	BKPP, JPM memohon perkenan YDPA terhadap pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 20 Februari 2020	14 November 2019
17.	YDPA memberi perkenan terhadap pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 20 Februari 2020	18 November 2019
18.	Surat Ketua Setiausaha Negara – Ketua Hakim Negara memaklumkan pelantikan YA Dato' Abang Iskandar bin Abang Hashim sebagai Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak berkuatkuasa mulai 20 Februari 2020	21 November 2019

3. PROSES PELANTIKAN HAKIM-HAKIM SEBELUM PENUBUHAN SPK, SEBELUM TAHUN 2019 DAN SEMASA MENGIKUT REKOD BKPP, JPM

BIL	SEBELUM PENUBUHAN SPK	SEBELUM TAHUN 2019	SEMASA
1.	BKPP, JPM terima nama daripada Pejabat Perdana Menteri untuk dilantik sebagai hakim.	Suruhanjaya Pelantikan Kehakiman (SPK) memaklumkan BKPP, JPM tentang persetujuan YAB Perdana Menteri terhadap pencalonan SPK bagi pelantikan hakim-hakim Mahkamah atasan	Suruhanjaya Pelantikan Kehakiman (SPK) memaklumkan BKPP, JPM tentang persetujuan YAB Perdana Menteri terhadap pencalonan SPK bagi pelantikan hakim-hakim Mahkamah atasan
2.	BKPP, JPM mendapatkan tapisan daripada Polis Diraja Malaysia, Badan Pencegah Rasuah, Suruhanjaya Syarikat Malaysia, Jabatan Insolvensi dan pandangan Peguam Negara.	Tapisan dilaksanakan oleh SPK. BKPP memohon ulasan Peguam Negara mengenai kesesuaian calon-calon yang dikemukakan oleh SPK. Sekiranya terdapat ketidaksesuaian, laporan tersebut akan dikemukakan kepada YAB Perdana Menteri	Tapisan dilaksanakan oleh SPK
2.	Sekiranya tiada laporan negatif dan semua syarat-syarat dipenuhi, Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan ini disediakan dan seterusnya mendapatkan perkenan Seri Paduka Baginda Yang di-Pertuan Agong supaya pelantikan hakim-hakim mahkamah atasan tersebut dirundingi dengan Majlis Raja-Raja	BKPP, JPM menyediakan Kertas Majlis Raja-Raja (MRR) dan seterusnya mendapatkan perkenan Seri Paduka Baginda Yang di-Pertuan Agong supaya pelantikan hakim-hakim Mahkamah atasan tersebut dirundingi dengan Majlis Raja-Raja	BKPP, JPM menyediakan Kertas Majlis Raja-Raja (MRR) dan seterusnya mendapatkan perkenan Seri Paduka Baginda Yang di-Pertuan Agong supaya pelantikan hakim-hakim Mahkamah atasan tersebut dirundingi dengan Majlis Raja-Raja
3.	Setelah diperkenan, Kertas MRR ditandatangani YBhg. Ketua Setiausaha Negara Kertas MRR dihantar ke Pejabat Penyimpan Mohor untuk dirundingi dengan Majlis Raja-Raja.	Setelah diperkenan, Kertas MRR ditandatangani YBhg. Ketua Setiausaha Negara Kertas MRR dihantar ke Pejabat Penyimpan Mohor untuk dirundingi dengan Majlis Raja-Raja.	Setelah diperkenan, Kertas MRR ditandatangani YBhg. Ketua Setiausaha Negara Kertas MRR dihantar ke Pejabat Penyimpan Mohor untuk dirundingi dengan Majlis Raja-Raja.
4.	Setelah dirundingi, Pejabat Penyimpan Mohor mengeluarkan naskhah Nasihat Majlis Raja-Raja berkenaan pelantikan hakim-hakim mahkamah atasan tersebut.	Setelah dirundingi, Pejabat Penyimpan Mohor mengeluarkan naskhah Nasihat Majlis Raja-Raja berkenaan pelantikan hakim-hakim Mahkamah atasan tersebut.	Setelah dirundingi, Pejabat Penyimpan Mohor mengeluarkan naskhah Nasihat Majlis Raja-Raja berkenaan pelantikan hakim-hakim Mahkamah atasan tersebut.

BIL	SEBELUM PENUBUHAN SPK	SEBELUM TAHUN 2019	SEMASA
5.	Mendapatkan perkenan Yang di-Pertuan Agong bagi pelantikan hakim-hakim mahkamah atasan tersebut.	Mendapatkan perkenan Yang di-Pertuan Agong bagi pelantikan hakim-hakim mahkamah atasan tersebut.	Mendapatkan perkenan Yang di-Pertuan Agong bagi pelantikan hakim-hakim mahkamah atasan tersebut.
6.	Setelah diperkenankan oleh Yang di-Pertuan Agong, maklumkan kepada Ketua Hakim Negara akan pelantikan tersebut untuk tindakan selanjutnya	Surat YBhg. Ketua Setiausaha Negara kepada YAA Ketua Hakim Negara memaklumkan perkenan pelantikan.	Surat YBhg. Ketua Setiausaha Negara kepada YAA Ketua Hakim Negara memaklumkan perkenan pelantikan.
7.	Sediakan Kenyataan Akhbar oleh YAB Perdana Menteri.	-	-

4. PROSES KONSULTASI YANG DIJALANKAN OLEH BKPP MENGENAI PELANTIKAN HAKIM

Perkara 122B(1) Perlembagaan Persekutuan

BKPP menyediakan Kertas Untuk Merundingi Majlis Raja-Raja mengenai pelantikan hakim-hakim di mana kertas tersebut diperkenankan oleh Yang di-Pertuan Agong untuk dirundingi dengan Majlis Raja-Raja selaras dengan peruntukan Perkara 122B(1) Perlembagaan Persekutuan

5. PERANAN PEGUAM NEGARA DALAM PELANTIKAN HAKIM

Mengikut lazimnya, ulasan Peguam Negara dipohon terhadap cadangan pelantikan hakim-hakim sebelum YAB Perdana Menteri membuat keputusan mengenainya. Proses ini adalah untuk mengenalpasti kesesuaian calon untuk dilantik ke jawatan yang dicalonkan. Ulasan tersebut akan dikemukakan kepada YAB Perdana Menteri sekiranya terdapat apa-apa halangan dari segi prestasi calon tersebut di jawatan sedia ada.

PEJABAT PERDANA MENTERI MALAYSIA
PRIME MINISTER'S OFFICE
Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 PUTRAJAYA

Tel. : 603-8000 8000
Faks (Fax) : 603-8888 3444
Laman Web (Web) : www.pmo.gov.my

PPM.600-3/2/53 (16)
26 Jun 2019
22 Syawal 1440 H

YBhg Tan Sri Abu Kassim bin Mohamed
Ketua Pengarah
Pusat Governans, Intergriti dan Anti-Rasuah Nasional
Jabatan Perdana Menteri
Aras 3, Blok Barat, Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62520 Putrajaya

YBhg Tan Sri,

PENUBUHAN DAN PELANTIKAN PASUKAN PENJEJAKAN ASET *1MALAYSIA DEVELOPMENT BERHAD (1MDB)*

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Adalah dimaklumkan bahawa YAB Perdana Menteri telah meneliti dan mengambil maklum akan isi kandungan surat YBhg Tan Sri mengenai perkara di atas bertarikh 20 Jun 2019.

3. Oleh itu YAB Perdana Menteri bersetuju dengan penubuhan Pasukan Penjejakan Aset 1MDB seperti yang dicadangkan itu.

4. Bersama-sama ini dikembalikan surat tersebut yang mengandungi minit YAB Perdana Menteri bertarikh 19 Jun 2019 untuk tindakan YBhg Tan Sri selanjutnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,

DATUK BADARIAH ARSHAD
Ketua Setiausaha Sulit
Kepada YAB Perdana Menteri

KETUA PENGARAH
PUSAT GOVERNANS, INTEGRITI DAN ANTIRASUAH NASIONAL (GIACC)
Jabatan Perdana Menteri
Aras 3, Blok Barat, Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya
MALAYSIA

Tel : 603-8872 7140
Faks : 603-8890 5440
E-mel : giacc@jpm.gov.my

GIACC.S:600-1/1/2(18)
20 Jun 2019

YAB Tun Dr. Mahathir Bin Mohamad
Perdana Menteri
Pejabat Perdana Menteri,
Blok Utama, Bangunan Perdana Putra,
Pusat Pentadbiran Kerajaan Persekutuan,
62502 PUTRAJAYA.

Dato Sri ... cts ...

TAN SRI ABU KASSIM BIN MOHAMED
Ketua Pengarah (GIACC)

Yang Amat Berhormat Tun,

PENUBUHAN DAN PELANTIKAN PASUKAN PENJEJAKAN ASET 1MALAYSIA DEVELOPMENT BERHAD (1MDB)

Dengan hormat dan penuh takzim saya ingin menarik perhatian YAB Tun berhubung perkara di atas.

2. Sebagaimana yang YAB Tun sedia maklum, pada 21 Mei 2018 Pasukan Petugas Khas 1MDB (*Task Force 1MDB*) telah ditubuhkan bagi mengambil tindakan siasatan ke atas kesalahan-kesalahan dilakukan oleh individu dan entiti yang terlibat di dalam skandal 1MDB dan seterusnya mendakwa mereka di Mahkamah. Pasukan ini dianggotai oleh Suruhanjaya Pencegahan Rasuah Malaysia (SPRM), Polis DiRaja Malaysia (PDRM), Bank Negara Malaysia (BNM), Jabatan Peguam Negara (AGC) dipengerusikan bersama oleh Tan Sri Abdul Gani Patail, Tan Sri Abu Kassim Mohamed, Dato' Sri Mohd Shukri Abdull dan Datuk Seri Abdul Hamid Bador. Dalam proses siasatan yang dijalankan, pasukan ini telah mengambil tindakan pembekuan akaun-akaun terlibat, analisa kewangan dan permohonan *Mutual Legal Assistance* daripada Singapura, Amerika Syarikat, Perancis, Switzerland dan Netherland bagi tujuan pembuktian kes dan seterusnya pendakwaan ke atas individu-individu yang terlibat.

3. Untuk makluman YAB Tun, sehingga kini dianggarkan aset berjumlah RM8.8 bilion **(rujuk Lampiran 1)** yang telah dikenalpasti di beberapa negara seperti Singapura, Amerika Syarikat, Perancis, Switzerland dan sejumlah **RM27.6 bilion** baki aset yang memerlukan penjejakan di pelbagai negara lain seperti Barbados, Jerman, Hong Kong, UAE dan lain-lain lagi **(rujuk Lampiran 2 dan 3).**

4. Sehubungan dengan itu, usaha bersepadu untuk menjejak dan mengutip kembali aset-aset 1MDB adalah sangat diperlukan dan dicadangkan agar penubuhan satu **Pasukan Penjejakan Aset 1MDB** diwujudkan bagi tujuan tersebut. Pasukan ini akan berfungsi untuk menjejaki dana dan harta yang telah dipindahkan, mendapatkan semula dana dan aset-aset tersebut, memeterai kerjasama dan bantuan daripada penguatkuasa dan agensi luar negara sehingga proses pembekuan dan pemulangan aset serta pendakwaan dibuat **(rujuk Lampiran 4).**

5. Dicadangkan Pasukan Penjejakan Aset 1MDB berkenaan dianggotai oleh SPRM, PDRM dan BNM dengan diketuai oleh National Financial Crime Centre (NFCC), selaku penyelaras pasukan dalam menjalankan usaha penjejakan secara bersepadu dan mengutip kembali aset-aset 1MDB yang berada di luar negara. Turut dicadang agar dilantik seorang pegawai daripada Jabatan Peguam Negara (AGC), selaku Penasihat Undang-Undang kepada pasukan ini **(rujuk Lampiran 4).**

6. Dilampirkan senarai nama ahli Pasukan Penjejakan Aset 1MDB seperti di **Lampiran A.**

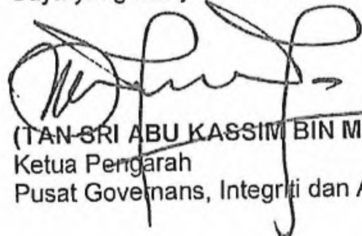
7. Sehubungan dengan itu, dipohon pertimbangan dan persetujuan YAB Tun ke atas penubuhan Pasukan Penjejakan Aset 1MDB ini yang akan memberi fokus menjejak dan mengutip semula aset-aset 1MDB yang masih berada di luar negara.

Kerjasama dan pertimbangan YAB Tun terhadap perkara ini amat dihargai.

Sekian, terima kasih

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah



(TAN SRI ABU KASSIM BIN MOHAMED)
Ketua Pengarah
Pusat Governans, Integriti dan Anti Rasuah Nasional (GIACC)

Dipersetujui dengan penubuhan Pasukan

18/6/19

PERDANA MENTERI
MALAYSIA

LAMPIRAN A

SENARAI NAMA AHLI PASUKAN PENJEJAKAN ASET 1MDB

BIL	NAMA	JABATAN
1	Tan Sri Abu Kassim Bin Mohamed	GIACC
2	Dato' Seri Abdul Hamid Bin Bador	PDRM
3	Dato' Seri Haji Mustafar Bin Haji Ali	NFCC
4	Datuk Seri Azam bin Baki	SPRM
5	Dato' Sani Bin Ab Hamid	NFCC
6	Dato' Khalil Azlan Bin Chik	PDRM
7	Tuan Mohamad Zamri Bin Zainul Abidin	SPRM
8	Tuan Muhammad Saifuddin Bin Hashim Musaimi atau Tuan Husmarudin Bin Husin	AGC
9	Encik Abdul Rahman Bin Abu Bakar	BNM

PEJABAT PERDANA MENTERI MALAYSIA
PRIME MINISTER'S OFFICE
Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
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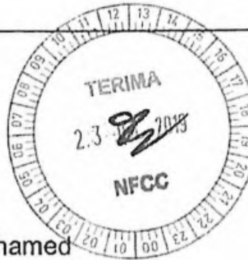


PPM.600-3/2/26 JLD. 2 (93)
16 Julai 2019

YBhg Tan Sri Abu Kassim Bin Mohamed
Ketua Pengarah
Pusat Governans, Integriti dan Antirasuah Nasional (GIACC)
Jabatan Perdana Menteri
Aras 3, Blok Barat, Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 PUTRAJAYA

YBhg Tan Sri,

PELANTIKAN AHLI TAMBAHAN KEPADA PASUKAN PENJEJAKAN ASET *1MALAYSIA DEVELOPMENT BERHAD (1MDB)*

Merujuk kepada surat YBhg Tan Sri dengan nombor rujukan: GIACC.S:600-1/1/2(20) bertarikh 11 Julai 2019.

2. Dimaklumkan bahawa YAB Perdana Menteri bersetuju dengan pelantikan ahli tambahan kepada Pasukan Penjejakan Aset *1Malaysia Development (1MDB)* bagi menyempurnakan tugasan yang telah dirancang. Senarai nama ahli pasukan yang telah dipersetujui YAB Perdana Menteri adalah seperti di **Lampiran A** surat YBhg Tan Sri.

3. Disertakan di sini surat YBhg Tan Sri berserta dengan minit persetujuan daripada YAB Perdana Menteri untuk rujukan serta tindakan YBhg Tan Sri selanjutnya.

Sekian dimaklumkan, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,

(DATUK BADARIAH ARSHAD)
Ketua Setiausaha Sulit
kepada YAB Perdana Menteri

TAN SRI ABU KASSIM BIN MOHAMED
Ketua Pengarah (GIACC)

KETUA PENGARAH
PUSAT GOVERNANS, INTEGRITI DAN ANTIRASUAH NASIONAL (GIACC)
Jabatan Perdana Menteri
Aras 3, Blok Barat, Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya
MALAYSIA

Tel : 603-8872 7140
Faks : 603-8890 5440
E-mel : giacc@jpm.gov.my

GIACC.S:600-1/1/2(20)
11 Julai 2019

YAB Tun Dr. Mahathir Bin Mohamad
Perdana Menteri
Pejabat Perdana Menteri,
Blok Utama, Bangunan Perdana Putra,
Pusat Pentadbiran Kerajaan Persekutuan,
62502 PUTRAJAYA.

Yang Amat Berhormat Tun,

PELANTIKAN AHLI TAMBAHAN KEPADA PASUKAN PENJEJAKAN ASET 1MALAYSIA DEVELOPMENT BERHAD (1MDB)

Dengan hormat dan penuh takzim saya ingin menarik perhatian YAB Tun berhubung perkara di atas.

2. Sebagaimana kelulusan YAB Tun bertarikh 19 Jun 2019, Pasukan Penjejakan Aset 1MDB ditubuhkan bagi melaksanakan usaha bersepadu pelbagai agensi untuk menjejak dan mengutip kembali aset-aset 1MDB yang telah dipindahkan, disembunyikan atau diselewengkan oleh individu-individu dan entiti-entiti yang terlibat. Ahli pasukan dicadangkan terdiri dari pegawai kanan Polis Diraja Malaysia, Suruhanjaya Pencegahan Rasuah Malaysia dan Bank Negara Malaysia dengan diketuai oleh National Financial Crime Centre (NFCC).

3. Bagi menyempurnakan tugasan yang dirancang oleh Pasukan ini, kami mencadangkan penambahan ahli kepada pasukan untuk termasuk pegawai kanan Kementerian Kewangan (senarai ahli pasukan adalah seperti di **Lampiran A**).

4. Dipohon pertimbangan dan persetujuan YAB Tun ke atas pelantikan ahli tambahan kepada Pasukan Penjejakan Aset 1MDB.

Sekian, terima kasih

"BERKHIDMAT UNTUK NEGARA"

SETUJU / ~~TIDAK SETUJU~~

(TUN DR MAHATHIR MOHAMAD)
Perdana Menteri Malaysia

Saya yang menjalankan amanah,

(TAN SRI ABU KASSIM BIN MOHAMED)

LAMPIRAN A

SENARAI NAMA AHLI PASUKAN PENJEJAKAN ASET 1MDB

BIL	NAMA	JABATAN / AGENSI
1	Tan Sri Abu Kassim Bin Mohamed	GIACC
2	Dato' Seri Abdul Hamid Bin Bador	PDRM
3	Puan Latheefa Beebi Koya	SPRM
4	Dato' Seri Haji Mustafar Bin Haji Ali	NFCC
5	Datuk Seri Azam Bin Baki	SPRM
6	Dato' Asri bin Hamidon	MOF
7	Dato' Sani Bin Ab Hamid	NFCC
8	Dato' Khalil Azlan Bin Chik	PDRM
9	Tuan Mohamad Zamri Bin Zainul Abidin	SPRM
10	Tuan Muhammad Saifuddin Bin Hashim Musaimi atau Tuan Husmarudin Bin Husin	AGC
11	Encik Abdul Rahman Bin Abu Bakar	BNM
12	Encik Mohamad Zakie Bin Abu Hassan	NFCC

Nota:

AGC	- Jabatan Peguam Negara
GIACC	- Pusat Governans, Integriti dan Anti-Rasuah
BNM	- Bank Negara Malaysia
MOF	- Kementerian Kewangan Malaysia
NFCC	- Pusat Pencegahan Jenayah Kewangan Nasional
PDRM	- Polis Diraja Malaysia
SPRM	- Suruhanjaya Pencegahan Rasuah Malaysia

APPENDIX 2

101 Chambers
Level 3, Block B
The Five @ KPD
Jalan Dungun,
Damansara Heights
50490 Kuala Lumpur

5 January 2022

Datuk Seri Fong Joo Chung
Chairman of Special Task Force
Legal Affairs Division (BHEUU)
Prime Minister's Department
4th-8th Floor, Legal Affairs Division Building
Presint 3, Federal Government Administrative Centre
62692 Putrajaya

BY HAND

Dear Datuk Seri,

RE: SPECIAL TASK FORCE INVESTIGATING THE BOOK *'MY STORY : JUSTICE IN THE WILDERNESS'*

I refer to recent media reports that a 'Special Task Force', under your Chairmanship, was set up purportedly to investigate "*several allegations*" in my book titled 'My Story : Justice in the Wilderness'. News reports also state that the Task Force held its first meeting on 23 December 2021, and that it would be submitting its findings and recommendations to the Cabinet within 6 months of its appointment. The terms of reference however were not made public, to the best of my knowledge.

2. I assume that the Task Force intends to scrutinise prosecutorial decisions taken by me whilst I occupied the office of the Attorney General. These decisions were explained in my book, and these explanations have in turn caused political controversy.

3. However, the office of the Attorney General is constitutional. The Attorney General is appointed by the Yang Di-Pertuan Agong pursuant to Article 145(1) of the Federal Constitution, on the advice of the Prime Minister. Under Article 145(3), the Attorney General, as Public Prosecutor (PP), is empowered at his or her discretion to institute, conduct, or discontinue any proceedings for an offence, save for proceedings before a Syariah Court, a native court, or a court-martial.

4. The PP's discretion has developed over centuries in England and has been adopted throughout the Commonwealth. It thus existed in Malaysia prior to Merdeka. The Federal Constitution elevated such discretion to a constitutional status. An entire body of case law has developed since Merdeka, with the Courts consistently and uniformly holding that the PP's discretion, pursuant to Article 145(3), is not justiciable.

5. Further, in operational matters relating to specific, individual cases, the PP, even when he was a Member of Parliament in periods after Merdeka, was not accountable to Parliament or to the media. The PP is also not accountable to the Cabinet or others in the Executive branch with regard to prosecutorial decisions.

6. The discretion whether to charge (and what charges to prefer) only becomes exercisable after the PP is presented with Investigation Papers submitted by investigating agencies such as the Police and the Malaysian Anti-Corruption Commission. The PP has no control or power over the investigation process itself, which is meant to be independently carried out by such independent agencies. The PP's office does not carry out any investigation into any alleged crime. Due to the large number of criminal charges brought across Malaysia, the vast majority of the decisions to prosecute are undertaken by some 600 Deputy Public Prosecutors stationed across Malaysia. These decisions are made without any involvement of the PP. The system is decentralised for purposes of efficiency and necessity.

7. Thus the settled and entrenched position of the office of the PP when I assumed the role in June 2018 was that the prosecutorial discretion of the PP as enshrined in the constitution was not subject to interrogation by the three branches of Government. That remains the position today. By extension, the prosecutorial

discretion is also not open to scrutiny by governmental bodies including your Task Force.

8. Additionally, the very establishment and existence of your Task Force, with respect, is without any legal basis or precedent. Indeed, it is ultra vires, unlike, say, an appointment by the Yang Di-Pertuan Agong under the Commissions of Enquiry Act, 1950.

9. Additionally, you were a former Attorney General of Sarawak and junior in rank to the Attorney General of Malaysia. I am therefore not being judged by my peers. Likewise the two practitioners in your Task Force who are junior to me with regard to our respective calls to the Bar. The Task Force smacks of the notorious Hamid Omar tribunal whose members were all junior in standing to Lord President Tun Salleh Abas.

10. Finally, your Task Force sets a dangerous precedent by putting at risk the independence of the office of the Attorney General. I have to protect the incumbent and future Attorney Generals, and all officers of the Attorney General's Chambers who must be able to take prosecutorial decisions in the best interests of the Malaysian people whom they serve without fear or favor; my participation in your Task Force would legitimise its unconstitutional purpose and set a dangerous precedent that will prejudice them all. That would be inimical to the public interest.

11. For these reasons I do not intend to cooperate or participate in your deliberations.

12. Since this matter is of vital public importance, I shall be releasing this letter shortly to the media.

Yours faithfully,

Tan Sri Tommy Thomas

101 Chambers
Level 3, Block B
The Five @ KPD
Jalan Dungun,
Damansara Heights
50490 Kuala Lumpur

5 Januari 2022

Datuk Seri Fong Joo Chung
Pengerusi Pasukan Petugas Khas
Bahagian Hal Ehwal Undang-Undang (BHEUU)
Jabatan Perdana Menteri
Aras 4-8, Bangunan Hal Ehwal Undang-Undang
Presint 3, Pusat Pentadbiran Kerajaan Persekutuan
62692 Putrajaya

SECARA TANGAN

Datuk Seri,

PER: PASUKAN PETUGAS KHAS MENYIASAT BUKU '*MY STORY : JUSTICE IN THE WILDERNESS*'

Saya merujuk kepada laporan media terkini bahawa sebuah 'Pasukan Petugas Khas' ('*Special Task Force*'), di bawah Pengerusian anda, ditubuhkan kononya untuk menyiasat "beberapa dakwaan" (*several allegations*) di dalam buku saya bertajuk 'My Story : Justice in the Wilderness'. Laporan berita juga menyatakan bahawa Pasukan Khas ini telah mengadakan mesyuarat pertamanya pada 23 Disember 2021, dan akan mengemukakan penemuan dan cadangannya kepada Kabinet dalam tempoh 6 bulan selepas pelantikannya. Walaubagaimanapun, terma rujukannya tidak didedahkan kepada umum, sepanjang pengetahuan saya.

2. Saya menganggap bahawa Pasukan Khas ingin meneliti keputusan-keputusan saya untuk menuduh semasa saya memegang jawatan Peguam Negara. Keputusan-keputusan ini telahpun dijelaskan di dalam buku saya, dan penjelasan ini seterusnya mengakibatkan kontroversi bersifat politik.

3. Akan tetapi, jawatan Peguam Negara adalah dibawah perlembagaan. Peguam Negara dilantik oleh Yang Di-Pertuan Agong menurut Artikel 145(1) Perlembagaan Persekutuan, atas nasihat Perdana Menteri. Berdasarkan Artikel 145(3), Peguam Negara, sebagai Pendakwa Raya, diberi kuasa atas budibicaranya untuk memulakan, menjalankan, atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan, selain prosiding di hadapan mahkamah Syariah, mahkamah anak negeri, atau mahkamah tentera.

4. Budibicara Pendakwa Raya telah dibangunkan selama berabad-abad di England dan telah diterima pakai serata Komanwel. Ia wujud di Malaysia sebelum Merdeka. Perlembagaan Persekutuan telah menaikkan taraf budibcara tersebut kepada status berperlembagaan. Keseluruhan badan kes undang-undang telah dikembangkan selepas Merdeka, dengan Mahkamah-mahkamah secara konsisten dan seragam menentukan bahawa budibacara Pendakwa Raya, menurut Artikel 145(3), tidak boleh dipertikaikan.

5. Selanjutnya, dalam perkara-perkara operasi berkenaan kes-kes spesifik dan berindividu, Pendakwa Raya, walaupun jika beliau adalah seorang Ahli Parlimen dalam tempoh-tempoh selepas Merdeka, tidak perlu bertanggungjawab kepada Parlimen atau kepada media. Pendakwa Raya juga tidak bertanggungjawab kepada Kabinet atau yang lain dalam bahagian Eksekutif berkenaan keputusan mengenai pendakwaan-pendakwaan.

6. Budibicara untuk menuduh (dan tuduhan apa yang dipilih) hanya digunakan selepas Pendakwa Raya diberi Kertas-kertas Siasatan yang diserahkan oleh agensi-agensi penyiasatan seperti Polis dan Suruhanjaya Pencegahan Rasuah Malaysia. Pendakwa Raya tidak mempunyai kawalan atau kuasa atas proses penyiasatan, yang sepatutnya dibuat secara bebas oleh agensi-agensi yang bebas tersebut. Pejabat Pendakwa Raya tidak menjalankan apa-apa penyiasatan kepada apa-apa jenayah yang didakwa. Oleh kerana tuduhan-tuduhan yang dibawa di seluruh Malaysia yang berbilangan besar, sebahagian besar keputusan untuk menuduh dibuat oleh kira-kira 600 Timbalan Pendakwa Raya (DPP) yang ditugaskan di keseluruhan Malaysia. Keputusan-keputusan ini dibuat tanpa penglibatan Pendakwa Raya. Sistem tersebut terdesentralisasi untuk tujuan kecekapan dan keperluan.

7. Oleh demikian, kedudukan pejabat Pendakwa Raya yang tetap dan berakar umbi apabila saya memegang jawatan pada Jun 2018 adalah bahawa budi bicara Pendakwa Raya untuk menuduh yang berpelembagaan tidak tertakluk kepada interogasi oleh ketiga-tiga cabang Kerajaan. Ini merupakan kedudukannya hari ini juga. Secara sambungan, budibicara untuk menuduh tidak tertakluk kepada penelitian oleh badan-badan kerjaan termasuk Pasukan Khas tersebut.

8. Tambahan, penubuhan dan kewujudan Pasukan Khas anda, dengan hormatnya, adalah tanpa sebarang asas undang-undang atau preseden. Sesungguhnya, ia adalah ultra vires, tidak seperti, katakan, perlantikkan oleh Yang Di-Pertuan Agong dibawah Akta Suruhanjaya Siasatan, 1950.

9. Tambahan lagi, anda adalah bekas Peguam Besar Negeri Sarawak dan berkedudukan bawah kepada Peguam Negara Malaysia. Oleh itu saya tidak dihakimi oleh sebaya saya. Begitu juga dua pengamal undang-undang dalam Pasukan Khas anda yang lebih muda kepada saya berkenaan panggilan kami masing-masing kepada Badan Peguam. Pasukan Khas serupa tribunal Hamid Omar terkenal yang anggotanya adalah semua lebih muda dalam kedudukan kepada Tuan Presiden Tun Salleh Abas.

10. Akhirnya, Pasukan Khas ini menetapkan suatu preseden yang berbahaya dengan meletakkan risiko kepada kebebasan jawatan Peguam Negara. Saya perlu melindungi penyandang dan bakal Peguam-peguam Negara, dan semua pegawai-pegawai Jabatan Peguam Negara yang mesti boleh mengambil keputusan menuduh demi kepentingan terbaik rakyat Malaysia yang mereka berkhidmat kepada, tanpa ketakutan atau pilih kasih; penyertaan saya dalam Pasukan Khas akan mengesahkan tujuannya yang tidak berpelembagaan dan akan menetapkan preseden berbahaya yang akan memudaratkan kesemua mereka. Ini bercanggahan dengan kepentingan awam.

11. Bagi sebab-sebab tersebut saya tidak berniat berkerjasama atau mengambil bahagian dalam pertimbangan-pertimbangan anda.

12. Oleh kerana perkara ini mempunyai kepentingan awam yang ketara, saya akan melepaskan surat ini kepada media dengan sebentar lagi.

Yang benar,

Tan Sri Tommy Thomas

RAHSIA

APPENDIX 3

Majlis Peguam
Bar Council Malaysia

www.malaysianbar.org.my

Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2050 2019
Email : council@malaysianbar.org.my

BC/CEN/M/52/2022

21 Februari 2022

Encik Abdul Aziz bin Mohd Johdi
Bahagian Hal Ehwal Undang-Undang,
Jabatan Perdana Menteri,
Aras 4-7, Bangunan Hal Ehwal Undang-Undang,
Presint 3, Pusat Pentadbiran Kerajaan Persekutuan,
62692 Putrajaya.

Secara e-mel: ***aziz.johdi@bheuu.gov.my; norafidah.gusili@bheuu.gov.my***

Tuan,

Per: Permohonan Maklum Balas Berhubung Perkara-Perkara Yang Dinyatakan Dalam Buku "*My Story: Justice in the Wilderness*" Tulisan YBhg. Tan Sri Tommy Thomas, Bekas Peguam Negara

Salam sejahtera daripada Badan Peguam Malaysia.

2. Dengan segala hormatnya kami merujuk kepada perkara di atas dan surat Tuan yang bertarikh 16 Februari 2022.

3. Pihak kami mengambil maklum bahawa maklum balas seperti yang dipohon dalam surat tersebut adalah berkaitan dengan kandungan "*My Story: Justice in the Wilderness*" yang ditulis oleh Tan Sri Tommy Thomas dan dakwaan serta kenyataan dalam buku tersebut.

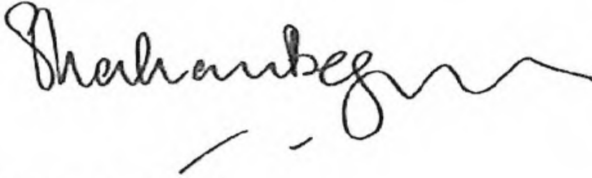
4. Adalah dimaklumkan bahawa pihak kami tidak berada dalam kedudukan untuk mengesahkan atau memberikan ulasan berkenaan dengan apa-apa dakwaan dan kenyataan dalam buku tersebut.

RAHSIA

5. Sehubungan itu, pihak kami tidak dapat memberikan maklum balas kepada, atau mengambil bahagian dalam, penyelidikan Pasukan Petugas Khas terhadap buku tersebut, termasuk sesi konsultasi yang telah ditetapkan pada 22 Februari 2022.

Sekian, terima kasih.

Yang benar,



Shahareen Begum
Setiausaha
Badan Peguam Malaysia

s.k

YBrs. Dr Punitha Silivarajoo
Pengarah (Seksyen Dasar & Penyelidikan)
Pejabat Menteri
Bahagian Hal Ehwal Undang-Undang
Aras 4-8, Presint 3
Pusat Pentadbiran Kerajaan Persekutuan
62692 Putrajaya ***Secara e-mel:*** *punitha.silivarajoo@bheuu.gov.my*

RAHSIA

SUNDRA RAJOO

Datuk Sundra Rajoo, PJN
Chartered Arbitrator (CIArb);
Certified International ADR Practitioner (AIADR);
B.Sc (HBP) Hons (USM); LLB Hons (London), CLP;
MPhil in Law (Manchester); Hon LLD (Leeds Beckett);
Grad Dip in Architecture (TCAE);
Grad Dip in Urban and Regional Planning (TSIT);
M.Sc in Construction Law and Arbitration (LMU);
Dip in International Commercial Arbitration (CIArb);
FPAM, APPM, FMIArb, FAIADR, FCIArb, FSIArb, FICA; FRIGS, MAE, FCABE;

Tarikh : 5.1.2022
Ruj Kami :
Ruj Anda : Sila nasihat

PERSENDIRIAN DAN SULIT
SECARA TEGAS UNTUK MATA PASUKAN SIASATAN KHAS UNTUK MENYIASAT DAKWAAN DALAM "MY STORY: JUSTICE IN THE WILDERNESS"

Sekretariat kepada Pasukan Siasatan Khas
dalam menyiasat dakwaan di dalam
"My Story: Justice In The Wilderness" ("Special Task Force")
c/o Bahagian Hal Ehwal Undang-Undang, JPM ("BHEUU")
Jalan Tun Abdul Razak,
Presint 3 Pusat Pentadbiran Kerajaan Persekutuan,
62692 Putrajaya, Wilayah Persekutuan Putrajaya
u/p: Dr. Punitha Silivarajoo

MELALUI TANGAN

Salam Sejahtera Tuan,

TAN SRI TOMMY "MY STORY: JUSTICE IN THE WILDERNESS"

1. Saya merujuk kepada perkara di atas.

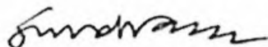
2. Saya melampirkan dua set dokumen seperti berikut untuk perhatian Puan Punitha Silivarajoo sebagai Sekretariat Bahagian Hal Ehwal Undang-Undang ("**BHEUU**"):

   a. Surat bertarikh 5.1.2022 bersama penterjemahannya dalam Bahasa Inggeris; dan

   b. Lampiran A sehingga K.

3. Salinan maya dokumen-dokumen di atas boleh diperolehi dari pautan https://bit.ly/3mZJb9U. Pautan tersebut akan luput pada 14.1.2022 dan kata laluan adalah webmaster@bheuu.gov.my tanpa kurungan.

Yang Benar



Datuk Sundra Rajoo

Sundra Rajoo
No 28 • Lorong Setia Bistari 3 • Bukit Damansara • 50490 Kuala Lumpur • Malaysia
T: 03-20962228 • F: 03-20962323 • E: info@sundrarajoo.com • sundra@sundrarajoo.com

RAHSIA

SUNDRA RAJOO

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FPAM, APPM, FMIArb, FAIADR, FCIArb, FSIArb, FICA; FRIGS, MAE, FCABE;

Tarikh : 5.1.2022
Ruj Kami :
Ruj Anda : Sila nasihat

PERSENDIRIAN DAN SULIT
SECARA TEGAS UNTUK MATA PASUKAN SIASATAN KHAS UNTUK MENYIASAT DAKWAAN DALAM "MY STORY: JUSTICE IN THE WILDERNESS"

Datuk Seri Fong Joo Chong
Pengerusi Pasukan Siasatan Khas
Untuk Menyiasat Dakwaan
"My Story: Justice In The Wilderness" ("**Pasukan Siastan Khas**")
c/o No. 25, Bampflyde Road, 93200 Kuching, Sarawak

MELALUI KOURIER

Salam Sejahtera Tuan,

TAN SRI TOMMY "MY STORY: JUSTICE IN THE WILDERNESS"

1. Saya merujuk kepada perkara di atas dan mesyuarat pertama Pasukan Siasatan Khas pada 23.12.2021 di Hotel Hilton KL Sentral ("**Mesyuarat Pertama Pasukan Siasatan Khas**") sepertimana di laporkan di laman web Bahagian Hal Ehwal Undang-Undang ("**BHEUU**").

2. Tan Sri Tommy "My Story: Justice In The Wilderness" ("**Buku Tommy**") adalah "*memoir terang*" dan naratif "*pengalamannya di pejabat undang-undang tertinggi di negara ini dalam buku yang sangat peribadi ini*". Bagaimanapun, dia telah menamakan saya secara jelas dari muka surat 391 hingga 399 / bab 41 di mana dia telah membuat beberapa dakwaan fitnah terhadap saya.

3. Selanjutnya, bab yang sama gagal untuk menyerlahkan fakta bahawa dia telah menganiaya saya dengan menggunakan kuasa pendakwaannya sebagai Pendakwa Raya ketika itu iaitu untuk mendapatkan peletakan jawatan paksa saya sebagai Pengarah Pusat Timbang Tara Antarabangsa Asia ("**AIAC**") pada 2018 dan kemudian memberikan persetujuannya untuk mendakwa saya walaupun mengetahui bahawa saya mempunyai imuniti.

4. Surat ini berfungsi untuk membantu Pasukan Siasatan Khas membentangkan penemuan mereka kepada Kabinet Kerajaan Malaysia mengikut terma rujukan mereka. Saya bersedia menerima sebarang jemputan daripada Pasukan Siasatan Khas untuk memberikan bukti viva voce dan/atau dokumen tambahan jika perlu.

Ringkasan Eksekutif

5. Tan Sri Tommy telah memaksa saya meletak jawatan. Ini adalah penemuan fakta YA Mariana Yahya dalam ***Sundra Rajoo a/l Nadarajah v Menteri Hal Ehwal Luar Negeri, Malaysia & Ors [2020] 10 MLJ 583.***

Sundra Rajoo
No 28 • Lorong Setia Bistari 3 • Bukit Damansara • 50490 Kuala Lumpur • Malaysia
T: 03-20962228 • F: 03-20962323 • E: info@sundrarajoo.com • sundra@sundrarajoo.com

6. Tan Sri Tommy juga bertindak bersama-sama dengan mendiang Vinayak Pradhan untuk melantik Vinayak Pradhan sebagai pemangku Pengarah AIAC ketika itu.

7. Dalam melantik mendiang Vinayak Pradhan sebagai pemangku Pengarah AIAC ketika itu, Tan Sri Tommy telah merampas kuasa menteri undang-undang ketika itu, mendiang Encik Liew Vui Keong, dengan melanggar Akta Fungsi-Fungsi Menteri 1969.

8. Tan Sri Tommy sedar bahawa saya mempunyai imuniti sebagai Pegawai Tinggi dan bekas Pegawai Tinggi. Walau bagaimanapun, beliau telah meminta penepian kekebalan tersebut daripada Pertubuhan Perundingan Undang-undang Asia Afrika ("**AALCO**") untuk mengemukakan pertuduhan terhadap saya atas perkara yang dilakukan atas kapasiti saya sebagai Pengarah AIAC. Namun demikian, AALCO enggan memberikan penepian kerana tuduhan-tuduhan adalah berkaitan dengan kerja yang dilakukan oleh saya atas kapasiti Pengarah AIAC.

9. Tan Sri Tommy kemudiannya bertindak secara bersama-sama dengan Vinayak Pradhan dengan kononnya untuk mengangkat imuniti saya dan menganiaya saya. Vinayak Pradhan kononnya telah memberi penepian imuniti saya walaupun mengetahui bahawa dia tidak mempunyai kuasa sedemikian.

10. Tan Sri Tommy kemudiannya mengemukakan tiga pertuduhan tidak berasas terhadap saya untuk pembelian buku saya oleh AIAC, "Law, Practice and Procedure of Arbitration" (edisi ke-2, 2016, Lexis Nexis), walaupun mengetahui bahawa saya mempunyai imuniti sebagai bekas High High Pegawai dan bahawa ia telah dilakukan secara rasmi untuk tujuan mempromosikan timbang tara di Malaysia dan mendapat kebenaran daripada AALCO. Mahkamah Persekutuan di ***Sundra Rajoo a/l Nadarajah lwn Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209*** dalam panel tujuh juga telah sebulat suara menyatakan bahawa:

    a. Tan Sri Tommy sedar bahawa saya mempunyai imuniti.

    b. Bahawa tuduhan-tuduhan tersebut tidak berasas kerana pembelian buku tersebut dilakukan secara rasmi untuk tujuan mempromosikan timbang tara di Malaysia dan mendapat sanksi daripada AALCO.

    c. Bahawa saya tidak menikmati sebarang bentuk suapan akibat AIAC membeli buku saya.

11. Walaupun YA Mariana Yahya dalam ***Sundra Rajoo a/l Nadarajah lwn Menteri Hal Ehwal Luar Negeri, Malaysia & Ors [2020] 10 MLJ 583*** telah mengumumkan bahawa ketiga-tiga pertuduhan itu telah dibatalkan pada 31.12.2019, Tan Sri Tommy masih meminta timbalan pendakwa raya meneruskan pertuduhan-pertuduhan terhadap saya di mahkamah sesyen.

12. Mahkamah Tinggi dan Mahkamah Persekutuan juga telah membuat penemuan fakta bahawa pembelian buku-buku itu telah diluluskan oleh AALCO untuk tujuan

publisiti untuk AIAC dan royalti buku-buku yang diterbitkan oleh Lexis Nexis telah saya dermakan semula kepada AIAC. Ringkasnya, Mahkamah Tinggi dan Mahkamah Persekutuan mendapati bahawa tiada suapan hasil daripada pembelian buku saya oleh AIAC.

13. Tan Sri Tommy juga telah bertindak bersama-sama dengan Vinayak Pradhan untuk menghalang saya daripada masuk ke AIAC untuk menjalankan timbang tara dengan mengeluarkan kononnya perintah tetap sebagai peguam negara kepada AIAC walaupun pada hakikatnya dia tidak mempunyai kuasa untuk berbuat demikian.

Pendahuluan

14. Saya adalah Pengarah AIAC dari tahun 2010 sehingga peletakan jawatan paksaan saya pada 2018.

    a. Pegawai Tinggi dalam tafsiran Peraturan-Peraturan Pusat Timbang Tara Serantau Kuala Lumpur 1996 ("**Peraturan-Peraturan AIAC**") yang dibuat di bawah Akta Organisasi Antarabangsa (Keistimewaan dan Kekebalan) 1992 ("**Akta 485**").

    b. Saya telah diberikan keistimewaan dan kekebalan seperti yang diberikan kepada seseorang ejen diplomatik berkenaan dengan tindakan dan perkara yang dilaksanakan dalam kapasitinya sebagai Pegawai Tinggi.

    c. Menurut Jadual kepada Akta Keistimewaan Diplomatik (Konvensyen Vienna) 1966 (Semakan 2004) ("**Akta 636**"), saya tidak boleh dipertanggungjawabkan dengan "sebarang bentuk tangkapan atau tahanan" berkenaan dengan tindakan dan perkara yang dilaksanakan dalam kapasitinya sebagai Pegawai Tinggi. Saya juga adalah kebal dari pendakwaan jenayah berkenaan dengan tindakan-tindakan tersebut.

Surat Layang

15. Pada bulan Oktober 2018, surat pena beracun yang memperlekehkan saya sebagai Pengarah AIAC ketika itu telah dikeluarkan kepada Dato Sri Mohd Shukri Abdul (ketika itu Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia ("**SPRM**")) dan disalin kepada orang berikut:

    a. Tommy Thomas (ketika itu Peguam Negara);

    b. Mohamad Fuzi Harun (ketika itu Ketua Polis Diraja Malaysia);

    c. George Varughese (ketika itu presiden of the Majlis Peguam);

    d. Dato' Saifuddin Abdullah (ketika itu Menteri Luar Negara ("**MOFA**"));

    e. Datuk Jalil Marzuki (ketika itu Ketua Pengarah BHEUU);

f. Datuk Seri Mohd Zuki bin Ali (ketika itu penolong Ketua Setiausaha kepada Kerajaan Malaysia);

g. H.E Professor Dr Kennedy Gastorn (ketika itu Setiausaha Agong AALCO);

h. Malaysiakini; dan

i. Sekretariat Enterprise Promotion Centres Pte Ltd.

Sesalinan surat layang tersebut ("**Surat Layang**") adalah dilampirkan di dalam surat ini sebagai "**Lampiran A**".

16. Surat Layang yang sama turut dirujuk di bab 41 dalam Buku Tommy.

17. Pada permulaannya, izinkan saya menyatakan perkara berikut berkaitan dengan Surat Layang tersebut:

    a. Surat Layang tersebut adalah tidak benar sama sekali dan saya telah memfailkan tuntutan fitnah di Mahkamah Tinggi Malaya di Shah Alam terhadap pengarang dan penerbit Surat Pena Beracun pada Disember 2021.

    b. Walaupun Surat Layang tidak ditandatangani, pada 19.11.2018 @ 1200 tengah hari, SPRM telah meneruskan untuk mengemukakan kandungan Surat Layang sebagai aduan menurut seksyen 29(5) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 melalui salah seorang kakitangannya, Mohd Adrian Zaiman Bin Zainiar ("**Aduan SPRM**").

       Saya melampirkan sesalinan Aduan SPRM sebagai "**Lampiran B**" untuk rujukan anda.

    c. Mohd Adrian Zaiman bin Zainiar tidak pernah diambil bekerja oleh saya mahupun AIAC sebagai kakitangan mereka. Saya juga percaya Mohd Adrian Zaiman juga merupakan sebahagian daripada konspirasi 12 yang lain termasuk Tan Sri Tommy dan Dato Sri Shukri supaya saya dikenakan pendakwaan.

<u>Serbuan Salah ke atas AIAC, Penangkapan Salah terhadap Saya dan Permohonan Reman Salah</u>

18. Tidak lama selepas Aduan SPRM dibuat, AIAC telah diserbu pada waktu petang pada hari yang sama (19.11.2018). Saya ketika itu berada di Zurich, Switzerland atas urusan rasmi sebagai Timbalan Pengerusi Dewan Pengadilan FIFA.

    a. Serbuan ini menyalahi Perjanjian Tuan Rumah 2013 antara AALCO dan Kerajaa Malaysia tersebut tersebut. Perjanjian tersebut, antara lain, menjamin bahawa premis-premis AIAC, harta-hartanya, aset-asetnya dan arkib-arkibnya dan semua dokumen kepunyaannya atau disimpan olehnya tidak boleh dicabul di bawah Perkara III(2).

b. AALCO menulis surat pada hari yang sama kepada Dato' Sri Shukri untuk membantah serbuan itu kerana ia melanggar Perjanjian Tuan Rumah 2013. Saya sertakan salinan surat tersebut sebagai "**Lampiran C**" untuk rujukan anda.

c. AIAC juga melantik seorang peguam, Encik Philip Koh, untuk berurusan dengan SPRM bagi pihak AIAC mengenai sebarang perkara lanjut mengenai serbuan itu.

d. Saya dimaklumkan oleh Encik Philip Koh tentang serbuan itu dan kemungkinan saya disiasat sekembalinya saya.

e. Pada ketika ini, sebagai langkah berjaga-jaga, saya menghubungi peguam saya, Encik Cheow Wee, untuk memaklumkannya tentang kemungkinan SPRM menyiasat saya sekembalinya saya.

19. Setelah saya kembali dari Zurich, Switzerland di Lapangan Terbang Antarabangsa Kuala Lumpur ("**KLIA**") pada 20.11.2018 sekitar jam 6.30 petang, saya telah didatangi oleh dua pegawai SPRM.

    a. Saya telah didatangi oleh mereka sebelum saya dapat memasuki kawasan ketibaan. Saya telah dibawa ke kawasan Imigresen.

    b. Pegawai-pegawai MACC menangkap saya sekitar jam 8 malam ("**Penangkapan**" tersebut) dan digari selepas saya diproses oleh imigresen. Saya kemudian dibawa ke pusat tahanan SPRM di Putrajaya dan ditahan di sana semalaman dan dinafikan hak terhadap wakil undang-undang.

    c. Ini berlaku walaupun saya memberitahu pegawai-pegawai MACC tentang kekebalannya dan bahawa saya adalah seorang Pegawai Tinggi di bawah maksud Peraturan-Peraturan AIAC, Akta 485, Akta 636. Saya adalah kebal daripada penangkapan dan penahanan.

    d. Isteri saya hadir di lapangan terbang untuk menjemput saya. Dia menunggu saya di kawasan ketibaan. Setelah beberapa lama menunggu, dia menghubungi En. Cheow Wee dan memberitahunya bahawa saya tidak meninggalkan kawasan keluar lapangan terbang ke kawasan ketibaan.

    e. En. Cheow Wee memberitahu isteri saya bahawa dia pasti telah ditangkap dan kemungkinan besar akan dihadapkan ke hadapan Majistret di kompleks mahkamah Putrajaya untuk permohonan reman.

20. Pada 21.11.2018, saya telah dihadapkan dengan bergari di hadapan Majistret Khir Nizam Jemari di Mahkamah Majistret Putrajaya ("**Majistret Terpelajar**") pada atau sekitar jam 9 pagi bagi permohonan oleh pegawai MACC untuk mereman saya dalam tahanan SPRM selama 7 hari ("**Permohonan Reman**" tersebut).

21. Permohonan Reman tersebut dipanggil untuk didengar sekitar jam 9 pagi pada 21.11.2018. En. Philip Koh dan En. Kamraj hadir sebagai peguam-peguam AIAC. En. Cheow Wee juga telah hadir.

22. Semasa Permohonan Reman tersebut dipanggil, saya ditempatkan di bilik saksi. Pegawai-pegawai MACC memohon agar prosiding ditangguhkan seketika atas alasan bahawa terdapat perkembangan ke atas isu mengenai kekebalan diplomatik. Mereka menyatakan bahawa mereka memerlukan masa untuk mendapatkan arahan daripada pihak atasannya. Saya kemudian dibenarkan bertemu dengan En. Philip Koh dan En. Cheow Wee dalam bilik saksi.

23. Setelah Permohonan Reman tersebut ditangguhkan seketika:

    a. Ann Khong telah menghubungi En. Philip Koh melalui telefon. En. Philip Koh telah memaklumkan kepada Plaintif bahawa semasa perbualan tersebut, Ann Khong telah menyampaikan perkara berikut yang mana menurutnya dibuat bagi pihak Tan Sri Tommy:

        i. Bahawa saya perlu segera melepaskan jawatannya sebagai Pengarah AIAC. Saya perlu menulis surat perletakan jawatan dan mengirim gambar perletakan jawatannya kepada Ann Khong.

        ii. Sekiranya saya tidak meletak jawatan, saya akan dipecat dari kedudukannya oleh Kerajaan Malaysia.

    b. Peletakan jawatan saya akan mengelak tindakan selanjutnya diambil terhadap saya. Saya memahami ini sebagai rujukan kepada satu pendakwaan jenayah.

    c. Memandangkan keadaan dan tekanan yang kuat ke atas Plaintif disebabkan oleh intimidasi yang dijelaskan di atas, Plaintif meletakkan jawatan atas paksaan ("**Pengunduran Paksa**" tersebut). Gambar surat perletakkan jawatan telah dihantar kepada Ann Khong oleh En. Philip Koh.

    d. Pengunduran Paksa saya adalah penemuan fakta yang dibuat oleh YA Mariana Yahya pada 31.12.2019 dalam perenggan 14 penghakimannya.

       Saya melampirkan sesalinan penghakiman Yang Arif bertarikh 31.12.2019 sebagai "**Lampiran D**" untuk rujukan anda dan menarik perhatian anda kepada penghakiman Yang Arif di perenggan 14.

24. Walaupun demikian, pada jam 11 pagi, Pegawai-Pegawai MACC memohon supaya prosiding dipanggil semula dan meneruskan dengan Permohonan Reman tersebut dan meminta tempoh reman selama 7. Peguam saya dan peguam-peguam AIAC berhujah bahawa Plaintif mempunyai kekebalan dari prosiding jenayah.

25. Majistret Terpelajar menolak Permohonan Reman tersebut. Ini mestilah berdasarkan kekebalan saya memandangkan peguamnya tidak membangkitkan

perkara-perkara lain. SPRM tidak membuat rayuan atau memohon semakan terhadap keputusan ini.

Siaran Media, Pelantikan Vinayak Pradhan dan Penganiayaan Selanjutnya

26. Sementara perbicaraan reman sedang berlangsung, selepas gambar surat perletakkan jawatan saya dihantar kepada Ann Khong, Tan Sri Tommy mengeluarkan siaran media bagi pengumumkan bahawa En. Vinayak Pradhan, yang kini telah meninggal dunia, telah dilantik sebagai Pemangku Pengarah AIAC ("**Mendiang Pemangku Pengarah**" tersebut) secara serta merta ("**Siaran Media**" tersebut).

    Saya melampirkan sesalinan Siaran Media tersebut sebagai "**Lampiran E**" kepada surat ini.

27. Terbitan Siaran Media mendedahkan usaha bersepadu Tan Sri Tommy untuk menggantikan saya sebagai Pengarah AIAC dengan mendiang Vinayak Pradhan, rakan rapat Tan Sri Tommy ketika itu.

    a. Ia diumumkan hampir serta-merta selepas Perletakan Jawatan Paksa sementara Permohonan Reman telah dibatalkan.

    b. Saya juga menyatakan bahawa sebuah akhbar tempatan The Star telah melaporkan Siaran Media oleh Tan Sri Tommy pada 12.13 tengah hari pada 21.11.2018 di laman webnya sebagai "*AG: Vinayak Pradhan appointed acting director of Asian International Arbitration Centre*" dalam pautan https:// www.thestar.com.my/news/nation/2018/11/21/ag-vinayak-pradhan-appointed-acting-director-of-asian-international-arbitration-centre.

       Saya melampirkan sesalinan laman web tersebut sebagai "**Lampiran F**" kepada surat ini

    c. Siaran Media itu dikeluarkan oleh Tan Sri Tommy sebagai Peguam Negara ("**AG**") dan bukannya menteri di Jabatan Perdana Menteri yang bertanggungjawab ke atas hal ehwal undang-undang yang berada dalam kursus biasa yang bertanggungjawab ke atas AIAC.

    d. Siaran Media menyatakan bahawa TYT Profesor Dr Kennedy Gastorn, sebagai setiausaha agung AALCO, "menyokong" tindakan ini. Walau bagaimanapun, Dr Gastorn tidak pernah dirujuk mengenai Pengunduran Paksa saya.

       Saya melampirkan salinan afidavit TYT Profesor Dr Kennedy Gastorn tanpa ekshibits yang mengesahkan pernyataan di atas sebagai "**Lampiran G**" kepada surat ini.

28. Pada ketika ini, Tan Sri Tommy jelas telah merampas kuasa mendiang Encik Liew Vui Keong, yang merupakan menteri undang-undang ketika itu, dengan menjalankan fungsi seorang Menteri di bawah Akta Fungsi-Fungsi Menteri 1969

dengan kononnya melantik Encik Vinayak Pradhan tanpa sebarang asas undang-undang dan/atau fakta.

29. Saya juga ingin menekankan kepada Pasukan Siasatan Khas bahawa seksyen 2 dan 3 Akta Fungsi-Fungsi Menteri 1969 telah memperuntukkan secara jelas bahawa kuasa pemindahan fungsi seorang menteri adalah terletak semata-matanya kepada Yang Di-Pertuan Agong. Saya menghasilkan semula seksyen 2 dan 3 Akta tersebut dengan penekanan saya dalam huruf tebal dan garis bawah untuk pembinaan anda:

> *2 Fungsi dan nama jawatan Menteri*
>
> ***(1) Yang di-Pertuan Agong boleh melalui perintah dalam Warta memberitahu-***
>
> *(a) bahawa seseorang Menteri telah diberi apa-apa fungsi atau telah dipertanggungkan dengan apa-apa tanggungjawab mengenai sesuatu jabatan atau perkara yang tertentu atau bahawa sesuatu fungsi* ***atau tanggungjawab yang tersebut itu telah dipindahkan kepada seorang Menteri yang lain****;*
>
> *(b) bahawa suatu nama jawatan telah diberikan kepada seseorang Menteri (kecuali Perdana Menteri) atau bahawa nama jawatan yang tersebut itu telah diubah.*
>
> *(2) Sesuatu perintah yang dibuat oleh Yang di-Pertuan Agong di bawah seksyen ini-*
>
> ***(a) boleh mengadakan peruntukan mengenai pemindahan apa-apa harta, hak atau tanggungan yang dipegang, dinikmati atau dilakukan oleh mana-mana Menteri berhubung dengan apa-apa fungsi yang diberikan atau dipindahkan itu; dan***
>
> *(b) boleh mengandungi apa-apa peruntukan lain yang perlu dan suai manfaat untuk memberi kesan kepada perintah itu..*
>
> *3 Natijah pemindahan fungsi dan perubahan nama jawatan*
>
> ***Jika sesuatu perintah dibuat oleh Yang di-Pertuan Agong di bawah seksyen 2 sesuatu yang dimulakan,*** *atau yang dibuat sebelum perintah itu mula berkuat kuasa oleh atau di bawah kuasa Menteri yang fungsi dan tanggungjawabnya telah dipindahkan atau yang nama jawatannya itu diubah boleh diteruskan atau diselesaikan oleh Menteri itu..*

30. Perlu diingat setakat ini bahawa tidak ada warta sedemikian yang dikeluarkan oleh Yang di-Pertuan Agong dalam memindahkan kuasa daripada mendiang Liew Vui Keong kepada Tan Sri Tommy dalam pelantikan mendiang Vinayak Pradhan sebagai pemangku Pengarah AIAC.

31. Selanjutnya, pada 23.11.2018, Tan Sri Tommy mengeluarkan perintah tetap kepada AIAC dan Mendiang Pemangku Pengarah di mana kesannya adalah untuk melarang Plaintif memasuki AIAC untuk melakukan sebarang timbang tara ("**Perintah Tetap Dikatakan**" tersebut).

32. Tan Sri Tommy tidak mempunyai kuasa untuk mengeluarkan arahan sedemikian secara sah. Dalam kononnya untuk berbuat demikian, Tan Sri Tommy telah menyalahgunakan jawatannya sebagai AG untuk menimbulkan tanggapan bahawa dia begitu diberi kuasa. Saya juga menyatakan bahawa saya telah mengarahkan peguam saya untuk membantah pengeluaran Perintah Tetap Dikatakan ini. Salinan surat tersebut adalah seperti dilampirkan dalam surat ini sebagai "**Lampiran H**" untuk rujukan anda.

33. Dengan cara ini, Tan Sri Tommy telah melarang saya secara salah daripada bertindak sebagai penimbang tara dalam timbang tara yang akan dijalankan di AIAC. Ini adalah walaupun AIAC tersedia untuk kegunaan sedemikian kepada semua penimbang tara, domestik dan antarabangsa, dan juga hakikat bahawa saya kemudiannya terlibat dalam timbang tara yang berterusan di AIAC.

34. Sebagai akibatnya, saya telah terhalang dari akses kepada dokumen-dokumen timbang tara yang telah disimpannya di AIAC. Oleh itu, saya terpaksa mendapatkan salinan dokumen-dokumen tersebut dari penimbang tara bersama atau dari peguam yang terlibat dalam timbang tara tersebut.

35. Dengan melarang saya menggunakan kemudahan-kemudahan di AIAC, saya tidak mempunyai pilihan selain menjalankan perbicaraan-perbicaraan timbang tara di pejabatnya di No. 28-1, Medan Setia 2, Plaza Damansara, Bukit Damansara, Kuala Lumpur Wilayah Persekutuan 50490, bilik-bilik mesyuarat Majlis Peguam dan bilik-bilik mesyuarat peguam-peguam litigasi di pejabat-pejabat mereka. Saya juga terpaksa mendedahkan dan menjelaskan keadaan berkenaan pengeluaran Perintah Tetap Dikatakan tersebut kepada penimbang tara-penimbang tara bersama, peguam-peguam dan pihak-pihak yang terlibat dalam timbang tara tersebut.

<u>Permohonan Semakan Kehakiman</u>

36. Memandangkan perkara yang berlaku selepas peletakan jawatan saya secara paksa sebagai Pengarah AIAC, saya semakin bimbang bahawa Tan Sri Tommy dan SPRM tidak mengambil kira imuniti saya dan sedang mencari untuk mendakwa saya secara terpilih.

37. Sehubungan dengan itu, pada 05.03.2019 saya memohon kebenaran untuk memulakan prosiding semakan kehakiman terhadap Peguam Negara, MOFA, SPRM dan Kerajaan Malaysia ("**Responden-Responden SK**" tersebut) di Mahkamah Tinggi Malaya di Kuala Lumpur ("**Permohonan SK**" tersebut).

    a. Saya meminta, antara lain, pengisytiharan bahawa dia kebal dari prosiding jenayah sebagai bekas Pegawai Tinggi.

b. Saya juga memohon perintah larangan untuk melarang penangkapan, pertuduhan dan permulaan prosiding undang-undang terhadap saya di Malaysia yang melanggar imuniti saya sebagai bekas Pegawai Tinggi.

c. Perbicaraan kebenaran Permohonan JR telah ditetapkan pada 26.03.2019.

d. Peguamcara saya menyampaikan kertas kausa Permohonan JR di Jabatan Peguam Negara ("**AGC**") pada 07.03.2019.

e. Pada 13.03.2019, peguamcara saya menulis surat kepada Ketua Pendakwaan di AGC dan meminta supaya sebarang kemungkinan pendakwaan terhadap saya dihentikan sementara menunggu pelupusan Permohonan JR.

f. Pada 20.03.2019, AGC telah menjawab dan menolak permintaan saya.

3 Pertuduhan-Pertuduhan Tidak Berasas

38. Pada 22.03.2019, saya berada di Sungai Petani, Kedah untuk majlis keagamaan yang dijadualkan pada 25.03.2019. Saya bercadang untuk pulang semula ke Kuala Lumpur pada 25.03.2019 untuk menghadiri pendengaran cuti Permohonan JR pada 26.03.2019.

39. Pada hari itu (22.03.2019), Tan Sri Tommy menandatangani persetujuan untuk tiga pertuduhan terhadap saya kerana pecah amanah jenayah berkenaan dengan dakwaan menggunakan wang AIAC secara salah untuk pembelian salinan buku bertajuk ""Law, Practice and Procedure of Arbitration" (edisi ke-2, 2016, Lexis Nexis) yang dikarang oleh saya ("**3 Pertuduhan**"). Tan Sri Tommy sedar bahawa saya telah memfailkan Permohonan JR.

Sesalinan persetujuan Tan Sri Tommy untuk mendakwa dilampirkan pada surat ini sebagai "**Lampiran I**".

40. Pada hari yang sama (22.03.2019), Setiausaha Agung AALCO menghantar surat kepada MOFA yang menolak permintaan Kerajaan Malaysia untuk mengetepikan imuniti saya di bawah Perkara III Perjanjian Negara Tuan Rumah 2013 dan Perjanjian Tambahan daripada bidang kuasa jenayah Malaysia ("**Penolakan Penepian AALCO**" tersebut).

41. Pada waktu lewat 22.03.2019, sekumpulan pegawai SPRM mengepung rumah saya di No. 28 dan 30, Lorong Setiabistari 3, Bukit Damansara, 50490, Kuala Lumpur ("**Kediaman**") mulai jam lewat 22.03.2019 sehingga awal pagi 23.03.2019.

a. Pada masa itu, kakak, anak saudara, anak perempuan dan pembantu rumah saya berada di rumah. Kehadiran pegawai-pegawai SPRM pada malam 22.03.2019 hingga 23.03.2019 telah menyebabkan mereka berada dalam ketakutan dan keresahan.

b. SPRM juga telah menghantar beberapa mesej teks kepada isteri saya, Datin Vanitha Annamalai, mengganggu dan menakut-nakutkan kepadanya bahawa SPRM akan mengeluarkan waran tangkap untuk saya jika saya tidak hadir ke mahkamah pada 25.03.2019.

c. Saya bagaimanapun tidak dapat hadir pada 25.03.2019 kerana mengalami jangkitan mata semasa berada di Sungai Petani dan terpaksa mendapatkan rawatan perubatan di sana. Saya mengarahkan peguam saya, Encik K Shanmuga, untuk hadir sebagai amicus curiae pada 25.03.2019.

42. Pada 25.03.2019, timbalan pendakwa raya mendakwa saya dengan 3 Pertuduhan di Mahkamah Sesyen Kuala Lumpur ("**Prosiding Jenayah**").

43. Apabila 3 Pertuduhan dikemukakan, Tan Sri Tommy dan timbalan pendakwa raya mengetahui bahawa saya mempunyai kekebalan daripada prosiding jenayah. 3 Pertuduhan itu sendiri dengan jelas menyatakan bahawa perbuatan yang diadukan berkaitan dengan perkara yang dilakukan oleh saya sebagai Pengarah AIAC.

44. Tan Sri Tommy dan timbalan pendakwa raya juga mengetahui bahawa pendengaran kebenaran untuk Permohonan JR adalah pada hari berikutnya.

45. Timbalan pendakwa raya kemudian meminta waran tangkap terhadap saya tetapi Hakim Mahkamah Sesyen enggan mengeluarkannya. Mahkamah Sesyen kemudian menetapkan kes untuk dibicarakan pada hari berikutnya selepas perbicaraan kebenaran Permohonan JR. Semakan keputusan ini segera diminta di Mahkamah Tinggi. Mahkamah Tinggi menangguhkan semakan untuk perbicaraan kebenaran Permohonan JR diputuskan dahulu.

46. Kebenaran untuk Permohonan JR telah ditolak oleh Mahkamah Tinggi pada 26.03.2019. Sejurus selepas itu, 3 Pertuduhan itu dikemukakan semula terhadap saya di Mahkamah Sesyen Kuala Lumpur.

47. Saya mengaku tidak bersalah terhadap 3 Pertuduhan tanpa menjejaskan kekebalan saya. Saya terpaksa membayar ikat jamin dan menyerahkan passport saya.

48. Akibat saya menyerahkan pasport saya, saya tidak mempunyai pilihan selain menangguhkan dan menyusun semula semua kerja timbang tara antarabangsanya kerana dia tidak dapat pergi ke luar negara. Saya juga mengalami proses yang menyusahkan untuk mengeluarkan pasportnya sekiranya dia ingin keluar dari Malaysia.

<u>Keputusan Permohonan Semakan Kehakiman – Mahkamah Tinggi dan Mahkamah Persekutuan</u>

49. Pada 25.03.2019, Mahkamah Rayuan telah membatalkan penolakan kebenaran Permohonan JR dan menghantarnya semula ke Mahkamah Tinggi untuk didengar atas meritnya.

50. Pada 31.12.2019, Mahkamah Tinggi membenarkan Permohonan JR ("**Keputusan HC**").

51. Pada peringkat ini, saya telah meminda Permohonan JR untuk mendapatkan perintah certiorari untuk membatalkan 3 Pertuduhan.

52. Mahkamah Tinggi mendapati bahawa saya, dan masih, kebal daripada prosiding jenayah berkenaan dengan perbuatan atau perkara yang dilakukan atas kapasitinya sebagai Pengarah AIAC.

53. Mahkamah Tinggi juga telah meneliti 3 Pertuduhan berdasarkan bukti afidavit dan mendapati 3 Pertuduhan tersebut tidak boleh dipercayai kerana pembelian buku untuk tujuan promosi AIAC telah diluluskan oleh AALCO dan royalti yang saya perolehi telah dikembalikan kepada AIAC. Mahkamah Tinggi juga telah membuat penemuan fakta bahawa saya terpaksa meletakkan jawatan sebagai Pengarah AIAC pada hari Perbicaraan Reman.

54. Mahkamah Tinggi meneruskan, antara lain, membatalkan 3 Pertuduhan.

55. Sehubungan itu, saya menyatakan bahawa perkara di atas adalah dalam afidavit saya dalam Permohonan JR. Tan Sri Tommy dan Responden JR tidak mempertikaikan fakta di atas, termasuk Pengunduran Paksa.

    Sesalinan afidavit-afidavit yang relevan tanpa ekshibit dalam Permohonan JR adalah dilampirkan di dalam surat ini sebagai "**Lampiran J**" untuk rujukan anda.

56. Pada 22.01.2020, saya telah hadir ke Mahkamah Sesyen untuk sebutan bagi Prosiding Jenayah.

57. Walaupun Keputusan HC telah membatalkan 3 Pertuduhan, timbalan pendakwa raya menegaskan bahawa prosiding diteruskan.

58. Tindakan timbalan pendakwa raya atas arahan Tan Sri Tommy adalah secara sengaja mengingkari Keputusan HC.

59. Mahkamah Sesyen tidak bersetuju dengan Zaki dan membatalkan 3 Pertuduhan.

60. Keputusan HC akhirnya disahkan oleh Mahkamah Persekutuan pada 30.04.2021. Mahkamah Persekutuan membuat kesimpulan bahawa saya pada setiap masa material menikmati imuniti daripada prosiding jenayah sebagai bekas Pegawai Tinggi. Mahkamah Persekutuan juga membuat kesimpulan bahawa Tan Sri Tommy tahu perkara ini berlaku. Mahkamah Persekutuan di ***Sundra Rajoo a/l Nadarajah lwn Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209*** dalam panel tujuh juga telah sebulat suara menyatakan bahawa:

    a. Tan Sri Tommy sedar bahawa saya mempunyai imuniti.

b. Bahawa tuduhan-tuduhan tersebut tidak berasas kerana pembelian buku tersebut dilakukan secara rasmi untuk tujuan mempromosikan timbang tara di Malaysia dan mendapat sanksi daripada AALCO.

c. Bahawa saya tidak menikmati sebarang bentuk suapan akibat AIAC membeli buku saya.

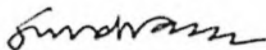
Saya sertakan satu salinan alasan bertulis Mahkamah Persekutuan sebagai "**Lampiran K**" untuk rujukan anda.

61. Mahkamah Tinggi dan Mahkamah Persekutuan juga telah membuat penemuan fakta bahawa pembelian buku-buku itu telah diluluskan oleh AALCO untuk tujuan publisiti untuk AIAC dan royalti buku-buku yang diterbitkan oleh Lexis Nexis telah saya dermakan semula kepada AIAC. Ringkasnya, Mahkamah Tinggi dan Mahkamah Persekutuan mendapati bahawa tiada suapan hasil daripada pembelian buku saya oleh AIAC.

Kesimpulan

62. Saya harap perkara di atas adalah memadai buat sementara waktu. Sekiranya anda memerlukan sebarang maklumat lanjut, sila jangan teragak-agak untuk menghubungi saya.

Yang Benar



Datuk Sundra Rajoo

sk. Sekretariat kepada Pasukan Siasatan Khas
dalam menyiasat dakwaan di dalam
"My Story: Justice In The Wilderness" ("Special Task Force")
c/o Bahagian Hal Ehwal Undang-Undang, JPM ("BHEUU")
Jalan Tun Abdul Razak,
Presint 3 Pusat Pentadbiran Kerajaan Persekutuan,
62692 Putrajaya, Wilayah Persekutuan Putrajaya
u/p: Dr. Punitha Silivarajoo

MELALUI TANGAN

PENTERJEMAHAN / TRANSLATION

SUNDRA RAJOO

Datuk Sundra Rajoo, PJN
Chartered Arbitrator (CIArb);
Certified International ADR Practitioner (AIADR);
B.Sc (HBP) Hons (USM); LLB Hons (London), CLP;
MPhil in Law (Manchester); Hon LLD (Leeds Beckett);
Grad Dip in Architecture (TCAE);
Grad Dip in Urban and Regional Planning (TSIT);
M.Sc in Construction Law and Arbitration (LMU);
Dip in International Commercial Arbitration (CIArb);
FPAM, APPM, FMIArb, FAIADR, FCIArb, FSIArb, FICA; FRIGS, MAE, FCABE;

Date : 5.1.2022
Our ref :
Your ref : Please advise

PRIVATE AND CONFIDENTIAL
STRICTLY FOR THE EYES OF THE SPECIAL TASK FORCE INVESTIGATING ALLEGATIONS IN "MY STORY: JUSTICE IN THE WILDERNESS"

Datuk Seri Fong Joo Chong
The Chairman of The Special Task Force
Investigating Allegations In
"My Story: Justice In The Wilderness" ("**Special Task Force**")
c/o No. 25, Bampflyde Road, 93200 Kuching, Sarawak

BY COURIER

Dear Sirs,

TAN SRI TOMMY'S "MY STORY: JUSTICE IN THE WILDERNESS"

1. I refer to the above subject matter and the first meeting of the Special Task Force on the 23.12.2021 at Hilton Hotel KL Sentral ("**First Meeting of the Special Task Force**") as reported on Bahagian Hal Ehwal Undang-Undang's ("**BHEUU**") website.

2. Tan Sri Tommy's "My Story: Justice In The Wilderness" ("**Tommy's Book**") is a "*candid memoir*" and a narrative of "*his experience in the highest legal office in the land in this highly personal book*". However, he had explicitly named me from pages 391 to 399 / chapter 41 where he had made several defamatory allegations against me.

3. Further, the same chapter failed to highlight the fact that he had persecuted me by using his prosecutorial powers as the then Public Prosecutor viz. to procure my forced resignation as the then Director of Asian International Arbitration Centre ("**AIAC**") in 2018 and then gave his consent to charge me despite knowing that I have immunity.

4. This letter serves to assist the Special Task Force in presenting their findings to the Cabinet of Government of Malaysia in accordance with their terms of reference. I would be willing to accept any invitation from the Special Task Force to provide viva voce evidence or additional documentary evidence if need be.

Executive Summary

5. Tan Sri Tommy had forced my resignation. This is a finding of fact of YA Mariana Yahya in ***Sundra Rajoo a/l Nadarajah v Menteri Hal Ehwal Luar Negeri, Malaysia & Ors [2020] 10 MLJ 583.***

6. Tan Sri Tommy had also acted in concert with the late Vinayak Pradhan to appoint Vinayak Pradhan as the then acting Director of AIAC.

7. In appointing the late Vinayak Pradhan as the then acting Director of AIAC, Tan Sri Tommy had usurped the powers of the then minister of law, the late Mr. Liew Vui Keong, in contravention of the Ministerial Functions Act 1969.

8. Tan Sri Tommy was aware that I had immunity as a High Officer and a former High Officer. Notwithstanding that, he had requested for a waiver of the said immunity from Asian-African Legal Consultative Organisation ("**AALCO**") to proffer charges against me for things done in my capacity as the Director of the AIAC. However, AALCO refused to give the waiver as the charges relates to the work done by me in the capacity of the Director of AIAC.

9. Tan Sri Tommy then acted in concert with Vinayak Pradhan to purport to lift my immunity and to persecute me. Vinayak Pradhan had purport to give the waiver of my immunity despite knowing that he has no such powers.

10. Tan Sri Tommy then proceeded to proffer three baseless charges against me for AIAC's purchase of my book, "Law, Practice and Procedure of Arbitration" (2nd edition, 2016, Lexis Nexis), despite knowing that I have immunity as a former High Officer and that it was done officially for the purposes of promoting arbitration in Malaysia and having the sanction from AALCO. The Federal Court in ***Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209*** in a panel of seven had also unanimously pronounced that:

    a. Tan Sri Tommy was aware that I have immunity.

    b. That the charges were baseless as the purchase of the book was done officially for the purposes of promoting arbitration in Malaysia and having the sanction from AALCO.

    c. That I do not enjoy any form of gratification as a result of AIAC's purchase of my book.

11. Notwithstanding YA Mariana Yahya in ***Sundra Rajoo a/l Nadarajah v Menteri Hal Ehwal Luar Negeri, Malaysia & Ors [2020] 10 MLJ 583*** had pronounced that the three charges were quashed on 31.12.2019, he had asked the deputy public prosecutor to proceed with the charges against me in the sessions court.

12. The High Court and the Federal Court had also made a finding of fact that the purchase of the books were approved by AALCO for publicity purposes for the AIAC and the royalties of the books published by Lexis Nexis were donated back by me to the AIAC. In short, the High Court and the Federal Court found that there was no gratification as a result of AIAC's purchase of my books.

13. Tan Sri Tommy had also acted in concert with Vinayak Pradhan to prevent me from coming into the AIAC to conduct arbitrations by him as the Attorney General issuing a purported standing order to the AIAC despite the fact that he has no powers to do so.

Introduction

14. I was the then Director of the AIAC from year 2010 until my forced resignation in 2018.

    a. I was a High Officer within the meaning of the Kuala Lumpur Regional Centre for Arbitration Regulations 1996 ("**AIAC Regulations**") made pursuant to the International Organizations (Privileges and Immunities) Act 1992 ("**Act 485**").

    b. I was conferred like privileges and immunities as are accorded to a diplomatic agent in respect of acts and things done in his capacity as the High Officer.

    c. Pursuant to the Schedule to the Diplomatic Privileges (Vienna Convention) Act 1966 (Revised 2004) ("**Act 636**"), I could not be made liable "to any form or arrest or detention" in respect of acts and things done in my capacity as High Officer. I was also immune from criminal prosecution in respect of such acts.

Poison Pen Letter

15. Sometime in October 2018, a poison pen letter disparaging me as the then Director of AIAC was issued to Dato Sri Mohd Shukri Abdul (then Chief Commissioner of the Malaysian Anti-Corruption Commission ("**MACC**")) and copied to the following persons:

    a. Tommy Thomas (then Attorney General);

    b. Mohamad Fuzi Harun (then Inspector General of the Royal Police Force);

    c. George Varughese (then president of the Bar Council);

    d. Dato' Saifuddin Abdullah (then Minister of Foreign Affairs ("**MOFA**"));

    e. Datuk Jalil Marzuki (then Director General of BHEUU);

    f. Datuk Seri Mohd Zuki bin Ali (then assistant Chief Secretary to the Government of Malaysia);

    g. H.E Professor Dr Kennedy Gastorn (then Secretary General of AALCO);

    h. Malaysiakini; and

    i. The secretariat of Enterprise Promotion Centres Pte Ltd.

    A copy of the said poison pen letter ("**Poison Pen Letter**") is enclosed to this letter as "**Appendix A**".

16. The same Poison Pen Letter was referred to in chapter 41 of Tommy's Book.

RAHSIA

17. At the outset, allow me to state the following in relation to the said Poison Pen Letter:

    a. The Poison Pen Letter is wholly untrue and I have filed a claim for defamation in the High Court of Malaya in Shah Alam against the author and publisher of the Poison Pen Letter in December 2021.

    b. Despite the Poison Pen Letter was unsigned, on 19.11.2018 @ 1200 hrs, the Malaysian Anti-Corruption Commission ("**MACC**") had proceeded to lodge the contents of the Poison Pen Letter as a complaint pursuant to section 29(5) of the Malaysian Anti-Corruption Commission Act 2009 via one of its staff, Mohd Adrian Zaiman Bin Zainiar ("**MACC Complaint**").

       I enclose a copy of the MACC Complaint as "**Appendix B**" for your reference.

    c. Mohd Adrian Zaiman bin Zainiar was never employed by me nor the AIAC as their staff. I also believed that Mohd Adrian Zaiman was also part of a conspiracy of 12 others including Tan Sri Tommy and Dato Sri Shukri to have me subject to prosecution.

Wrongful Raid on the AIAC, Wrongful Arrest against Me and the Wrongful Remand Application

18. Shortly after the MACC Complaint was lodge, the AIAC was raided in the evening on the same day (19.11.2018). I was then in Zurich, Switzerland on official business as the Deputy Chairman of FIFA Adjudicatory Chamber.

    a. This raid contravened the 2013 Host Agreement between AALCO and the Government of Malaysia. The said agreement, amongst others, guarantees that the premises of the AIAC, its property, assets and archives and all documents belonging to it or held by it shall be inviolable under Article III(2).

    b. AALCO wrote a letter on the same day to Dato' Sri Shukri to protest against the raid as it violates the 2013 Host Agreement. I append a copy of the said letter as "**Appendix C"** for your reference.

    c. AIAC also appointed a lawyer, Mr Philip Koh, to deal with the MACC on behalf of AIAC on any further matters concerning the raid.

    d. I was informed by Mr Philip Koh of the raid and the possibility of me being investigated upon my return.

    e. At this point, as a matter of precaution, I contacted my lawyer, Mr Cheow Wee, to alert him of the possibility of MACC investigating me upon my return.

19. Upon my return from Zurich, Switzerland at the Kuala Lumpur International Airport ("**KLIA**") on 20.11.2018 around 6 pm, I was approached by two MACC officers.

a. I was approached by them before I could enter the arrival area. I was brought to the immigration area.

b. The MACC officers arrested me at about 8pm ("**Arrest**") and was handcuffed after I have been processed by immigration. I was then taken to the MACC's detention facility at Putrajaya and kept in custody there overnight while being denied access to legal representation.

c. This was notwithstanding me notifying the MACC officers of my immunity in law and that I was a High Officer under the meaning of the AIAC Regulation, Act 485 and Act 636. I was such immune from arrest and detention.

d. My wife was present at the airport to pick me up. She was waiting for me at the arrival area. After having waited for some time, my wife contacted Mr Cheow Wee and told him that I did not leave the airport exit area to the arrival area.

e. Mr Cheow Wee informed my wife that I must have been arrested and would most likely be produced before a Magistrate in the Putrajaya court complex for a remand application.

20. On 21.11.2018, I was produced in handcuffs before Magistrate Khir Nizam Jemari at the Magistrate's Court Putrajaya ("**Learned Magistrate**") on or about 9 am for an application by the MACC officer to remand me at the custody of the MACC for seven days (the "**Remand Application**").

21. The Remand Application was called up for hearing at about 9 am on 21.11.2018. Mr Philip Koh and Mr. Kamraj were present as AIAC's lawyers. Mr Cheow Wee was also present.

22. When the Remand Application was called up, I was placed in the witness room. The MACC officers applied for the matter to be stood down on the basis that there were developments on issues concerning diplomatic immunity. They said that they needed time to obtain instructions from their superiors. I was then allowed to meet with Mr Philip Koh and Mr Cheow Wee in the witness room.

23. After the Remand Application was stood down:

a. Ann Khong spoke to Mr Philip Koh over the telephone. Mr Philip Koh informed me that during that conversation, Ann Khong had communicated the following which she said she was doing on behalf of Tan Sri Tommy:

i. That I was to immediately resign from my position as Director of the AIAC. I was to write a resignation and send a photo of my resignation to Ann Khong.

ii. If I did not so resign, I would be sacked from my position by the Government of Malaysia.

b. My resignation would deter further action being taken against me. I understood this as a reference to an intended criminal prosecution.

c. Given the circumstances and the tremendous pressure I was under by reason of the intimidation described above, I resigned under duress (the "**Forced Resignation**"). A photo of my resignation letter was forwarded to Ann Khong by Mr Philip Koh.

d. My Forced Resignation is a finding of fact made by the learned YA Mariana Yahya on 31.12.2019 in paragraph 14 of her judgment.

I enclose a copy of her ladyship's judgment dated 31.12.2019 as "**Appendix D**" for your reference and draw your attention to her ladyship's judgment at paragraph 14.

24. Notwithstanding, at 11am, the MACC officer asked for the matter to be called up again and proceeded with the Remand Application and sought for a 7-day remand period. My counsel and AIAC's counsels argued that I had immunity from criminal proceedings.

25. The Learned Magistrate denied the Remand Application. This must have been on the basis of my immunity as my counsel had not raised any other matters. The MACC did not appeal or seek a revision of this decision.

<u>Media Release, Vinayak Pradhan's Appointment and Further Persecution</u>

26. Whilst the Remand Application was going on, soon after the photo of my resignation letter was sent to Ann Khong, Tan Sri Tommy issued a media release to announce that Mr Vinayak Pradhan, since deceased, was appointed as the Acting Director of AIAC ("**the Late Acting Director**") with immediate effect ("**Media Release**").

I enclose a copy of the Media Release as "**Appendix E**" in this letter.

27. The issuance of the Media Release revealed a concerted effort on the part of Tan Sri Tommy to have me replaced as the Director of the AIAC with the late Vinayak Pradhan, a close friend of Tan Sri Tommy at that time.

a. It was announced almost immediately after the Forced Resignation whilst the Remand Application was stood down.

b. I also state that a local newspaper the Star had reported the Media Release by Tan Sri Tommy at 12.13 afternoon at 21.11.2018 at its website as "AG: Vinayak Pradhan appointed acting director of Asian International Arbitration Centre" in the link https://www.thestar.com.my/news/nation/2018/11/21/ag-vinayak-pradhan-appointed-acting-director-of-asian-international-arbitration-centre.

I enclose a copy of the said website as "**Appendix F**" to this letter.

c. The Media Release was issued by Tan Sri Tommy as the Attorney-General ("**AG**") and not the minister in the Prime Minister Department in charge of legal affairs who was in the ordinary course responsible for the AIAC.

d. The Media Release stated that HE Professor Dr Kennedy Gastorn, as the secretary general of AALCO, "supports" these actions. However, Dr Gastorn was never consulted about my Forced Removal.

I append a copy of HE Professor Dr Kennedy Gastorn's affidavit *sans* exhibits affirming on the above statement as "**Appendix G**" to this letter.

28. At this juncture, Tan Sri Tommy had clearly usurped the powers of the late Mr. Liew Vui Keong, who was the then minister of law, by carrying out the functions of a Minister under the Ministerial Functions Act 1969 by purporting to appoint Mr. Vinayak Pradhan without any basis in law and/or fact.

29. I wish to also highlight to the Special Task Force that sections 2 and 3 of the Ministerial Functions Act 1969 had provided explicitly that the power to transfer of functions of a minister is vested solely in the Yang Di-Pertuan Agong. I reproduce section 2 and 3 of the said Act with my emphasis in bold and underline for your edification:

2 Functions, styles and titles of Ministers

(1) The Yang di-Pertuan Agong may by order notify in the Gazette*-*

(a) that a Minister has been conferred with any functions or has been charged with any responsibility in respect of a particular department or subject ***or that any transfer, to any other Minister, of any of the functions or responsibility referred to has been made****;*

(b) that any style or title has been assigned to any Ministers (except the Prime Minister) or that any change in any style and title referred to has been made.

(2) An order made by the Yang di-Pertuan Agong under this section-

(a) ***may provide for the transfer of any property, rights or liabilities held, enjoyed or incurred by any Minister in connection with any functions conferred or transferred****; and*

(b) may contain such other provisions as may be necessary or expedient for the purpose of giving effect to the order.

3 Effect of transfer of functions and change of style and title

Where an order is made by the Yang di-Pertuan Agong under section 2 anything commenced*, or done before the order came into force by or under the authority of the Minister whose functions and*

responsibility have been transferred or whose style or title is changed may be continued or completed by that Minister.

30. It is worth noting thus far that there is no such gazette issued by the Yang di-Pertuan Agong in transferring the powers from the late Liew Vui Keong to Tan Sri Tommy in the appointment of the late Vinayak Pradhan as the acting Director of AIAC.

31. Further, on 23.11.2018, Tan Sri Tommy issued a purported standing order to the AIAC and the Late Acting Director the effect of which was to prohibit me from entering the AIAC to conduct any arbitrations (the "**Purported Standing Order**").

32. Tan Sri Tommy did not have the power to validly issue any such direction. In purporting to do so, Tan Sri Tommy had misused his office as the AG to create the impression that he was so empowered. I also state that I had instructed my lawyers to protest the issuance of this Purported Standing Order. A copy of the said letter is as enclosed in this letter as "**Appendix H**" for your reference.

33. In this way, Tan Sri Tommy had wrongfully prohibited me from acting as an arbitrator in arbitrations that were to be conducted at the AIAC. This was despite the AIAC being available for such use to all arbitrators, domestic and international, and also the fact that I was then involved in ongoing arbitrations at the AIAC.

34. As a further consequence, I was prohibited from accessing arbitral documents that I had kept at the AIAC. I was thus forced to obtain copies of such documents from co-arbitrators or from counsel involved in the said arbitrations

35. By barring me from utilizing the facilities of AIAC, I had no choice but to conduct arbitral hearings at my office at No. 28-1, Medan Setia 2, Plaza Damansara, Bukit Damansara, Kuala Lumpur Wilayah Persekutuan 50490, the Bar Council hearing rooms and litigants' lawyers meeting rooms at their offices. I was also forced to reveal and explain the circumstances surrounding the issuance of the Purported Standing Order to co-arbitrators, counsel and the parties involved in the said arbitrations.

<u>Judicial Review Application</u>

36. In light of the matters that took place after my forced resignation as the Director of the AIAC, I grew concerned that Tan Sri Tommy and the MACC did not have any regard for my immunity and were looking to selectively prosecute me.

37. In light of this, on 05.03.2019 I have applied for leave to commence judicial review proceedings against the AG, MOFA, MACC and the Government of Malaysia (the "**JR Respondents**") in the High Court of Malaya in Kuala Lumpur (the "**JR Application**").

    a. I have sought, amongst others, a declaration that I was immune from criminal proceedings as a former High Officer.

b. I also sought for an order of prohibition to prohibit my arrest, charge and the commencement of legal proceedings against me in Malaysia that was violative of my immunity as a former High Officer.

c. The leave hearing of the JR Application was fixed on 26.03.2019.

d. My solicitors served the JR Application cause papers on the Attorney-General Chambers ("**AGC**") on 07.03.2019.

e. On 13.03.2019, my solicitors wrote to the Head of the Prosecution in the AGC and requested that any potential prosecution against me be stayed pending the disposal of the JR Application.

f. On 20.03.2019, AGC responded and denied my request.

3 Baseless Charges

38. On 22.03.2019, I was at Sungai Petani, Kedah for a religious ceremony scheduled on 25.03.2019. I planned to come back to Kuala Lumpur on 25.03.2019 to attend the leave hearing of the JR Application on the 26.03.2019.

39. On that day (22.03.2019), Tan Sri Tommy signed the consent for three charges against me for criminal breach of trust in respect of the alleged wrongful use of AIAC monies for the purchase of copies of a book entitled "Law, Practice and Procedure of Arbitration" (2nd edition, 2016, Lexis Nexis) authored by me (the "**3 Charges**"). Tan Sri Tommy was aware that I had filed the JR Application.

A copy of Tan Sri Tommy's consent to charge is appended to this letter as "**Appendix I**".

40. On the same day (22.03.2019), the AALCO Secretary-General sent a letter to MOFA rejecting the Government of Malaysia's request to waive my immunity under Article III of the 2013 Host Country Agreement and the Supplementary Agreement from the criminal jurisdiction of Malaysia (the "**AALCO Waiver Rejection**").

41. During the late hours of 22.03.2019, a group MACC officers surrounded the my house at No. 28 and 30, Lorong Setiabistari 3, Bukit Damansara, 50490, Kuala Lumpur (the "**Residence**") from the late hours of 22.03.2019 until the early morning of 23.03.2019.

a. At that material time, my sister, nephew, daughter and my domestic workers were at home. The presence of the MACC officers on the eve of 22.03.2019 to 23.03.2019 had caused them to be in fear and in anxiety.

b. The MACC had also sent multiple text messages to my wife, Datin Vanitha Annamalai, harassing and intimating to her that the MACC would issue an arrest warrant for me if I did not attend court on the 25.03.2019.

c. I however could not attend on 25.03.2019 as I had an eye infection while in Sungai Petani and had to seek medical attention there. I instructed my lawyer, Mr K Shanmuga, to appear as amicus curiae on 25.03.2019.

42. On 25.03.2019, the deputy public prosecutor purported to charge me with the 3 Charges in the Kuala Lumpur Sessions Court ("**Criminal Proceedings**").

43. When the 3 Charges were proferred, Tan Sri Tommy and deputy public prosecutor knew that I had immunity from criminal proceedings. The 3 Charges themselves expressly stated that the acts complained of relates to things done by me as a Director of AIAC.

44. Tan Sri Tommy and the deputy public prosecutor also knew that the leave hearing for the JR Application was on the next day.

45. The deputy public prosecutor then sought a warrant of arrest against me but the Sessions Court Judge refused to issue it. The Sessions Court then fixed the case for hearing the next day after the JR Application leave hearing. A revision of this decision was immediately sought in the High Court. The High Court deferred the revision for the JR Application leave hearing to conclude first.

46. The leave for the JR Application was dismissed by the High Court on 26.03.2019. Immediately after that, the 3 Charges were proffered again against me in the Kuala Lumpur Sessions Court.

47. I pleaded not guilty to the 3 Charges without prejudice to my immunity. I was constrained to post bail and surrender my passport.

48. As a result of me surrendering my passport, I was left with no choice but to postpone and rearrange all his international arbitration works as he was unable to travel out of the country. I was also subjected to cumbersome process to have his passport released back in the event if he wants to travel out of Malaysia.

<u>The Judicial Review Application Outcome – High Court and Federal Court</u>

49. On 25.03.2019, the Court of Appeal overturned the dismissal of the JR Application leave and sent it back to the High Court to be heard on its merits.

50. On 31.12.2019, the High Court allowed the JR Application ("**HC Decision**").

51. By this stage, I had amended the JR Application seeking for a certiorari order to quash the 3 Charges.

52. The High Court found that I was, and still is, immune from criminal proceedings in respect of acts or things done in his capacity as a Director of AIAC.

53. The High Court had also examined the 3 Charges based on affidavit evidence and found that the 3 Charges were not credible as the purchase of the books for AIAC's promotional purposes was approved by AALCO and the royalties earned by me were returned to the AIAC. The High Court had also made findings of fact

that I was forced to resign as the Director of AIAC on the day of the Remand Hearing.

54. The High Court proceeded to, amongst others, quash the 3 Charges.

55. Pertinently, I state that the foregoing matters in my affidavits in the JR Application. Tan Sri Tommy and the JR Respondents did not credibly dispute the facts above, including the Forced Resignation.

A copy of the relevant affidavits *sans* exhibits in the JR Application is enclosed in this letter as "**Appendix J**" for your reference.

56. On 22.01.2020, I appeared before the Sessions Court for a mention for the Criminal Proceeding.

57. Despite the HC Decision having quashed the 3 Charges, the deputy public prosecutor insisted that the proceedings continue.

58. The actions of the deputy public prosecutor on the instructions of Tan Sri Tommy were a deliberate defiance of the HC Decision.

59. The Sessions Court disagreed with the deputy public prosecutor and quashed the 3 Charges.

60. The HC Decision was eventually affirmed by the Federal Court on 30.04.2021. The Federal Court concluded that the I had at all material times enjoyed immunity from criminal proceedings as a former High Officer. The Federal Court in ***Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209*** in a panel of seven had also unanimously pronounced that:

    a. Tan Sri Tommy was aware that I have immunity.

    b. That the charges were baseless as the purchase of the book was done officially for the purposes of promoting arbitration in Malaysia and having the sanction from AALCO.

    c. That I do not enjoy any form of gratification as a result of AIAC's purchase of my book.

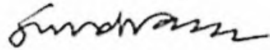
I enclose a copy of the Federal Court written grounds as "**Appendix K**" for your reference.

61. The High Court and the Federal Court had also made a finding of fact that the purchase of the books were approved by AALCO for publicity purposes for the AIAC and the royalties of the books published by Lexis Nexis were donated back by me to the AIAC. In short, the High Court and the Federal Court found that there was no gratification as a result of AIAC's purchase of my books.

Conclusion

62. I hope the above is sufficient for the time being. Should you need any further information, please do not hesitate to contact me.

Yours Sincerely



Datuk Sundra Rajoo

cc. **The Secretariat of The Special Task Force**
Investigating Allegations In
"My Story: Justice In The Wilderness" ("Special Task Force")
c/o Bahagian Hal Ehwal Undang-Undang, JPM ("BHEUU")
Jalan Tun Abdul Razak,
Presint 3 Pusat Pentadbiran Kerajaan Persekutuan, **BY HAND**
62692 Putrajaya, Wilayah Persekutuan Putrajaya
Attn: Dr. Punitha Silivarajoo

LAMPIRAN A / APPENDIX A

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3AA.

1st October 2018

Dato' Sri Mohd Shukri Abdul
MACC Headquarters
No. 2 Lebuh Wawasan,
Presint 7, 62250 Putrajaya.

Suruhanjaya Pencegahan Rasuah Malaysia
- 8 OCT 2018
Pejabat Ketua Pesuruhjaya

R1,
Tindakan.

MOHAMAD ZAMRI ... BIN TALIB
Ketua Pegawai Khas
Pejabat Ketua Pesuruhjaya
Suruhanjaya Pencegahan Rasuah Malaysia

Dear Sirs,

CORRUPT PRACTICES AND ABUSE OF POWER BY THE DIRECTOR OF THE ASIAN INTERNATIONAL ARBITRATION CENTRE.

We refer to the above matter. For your kind information this complaint in an anonymous complaint against the Director of the Asian International Arbitration Centre (Malaysia) (AIAC), Datuk Professor Sundra Rajoo.

The Asian International Arbitration Centre (Malaysia) is an international organisation under the auspices of the Asian African Legal Consultative Organisation. It in establish in Malaysia and fully recognised as an international organisation and is fully accorded with immunities and privileges under the International Organisation (Immunities & Privileges) Act 1992. The immunity and privileges awarded to the centre extends to the Director and all its foreign professional staff.

While the centre is under the purview of the Asian African Legal Consultative Organisation, the appointment of the Director of the AIAC was vested with the Government of Malaysia. It is to be noted that Datuk Sundra Rajoo's initial contract ended in February in 2016, he had run the centre on its own, without any mandate or authorisation not the renewal of his contract. This went on until he was granted a back dated contract in 2017.

In order to obtain his contract Datuk Sundra Rajoo, had then extended several personal favours and had unlawfully used the funds granted by the Malaysian Government to in order to obtain the favour of the then Law Minister Dato' Sri Azalina Othman Said to obtain his contract. The terms of his contract were also made extremely one sided in favour of Datuk Professor Sundra Rajoo.

Such personal favours include the payment for the expenses incurred by the then Law Minister Dato' Sri Azalina Othman Said, which include the following:

1) Hotel stays and dining at the Majestic Hotel, including alcoholic beverages running in thousands from the period of 2016/2017
2) Expenses in term of car rental and flight tickets for her officers for personal trips guised as official trips to UK.

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3) A gift of champagne bottle worth RM5,000 paid by the AIAC from Datuk Sundra Rajoo to Dato' Sri Azalina Binti Othman Said.

4) Payment for the Special Officers Danesh Chandran and Thiyagu Ganesan for air ticket and travels expenses for trips not related to AIAC.

5) Lavish luxurious dining and alcoholic beverages for the Special Officers Danesh Chandaran and Thiyagu

6) Payment and bearing of cost for the Legal Profession Blueprint Committee, Consultative Organisation, which is not related to the AIAC resulting in abuse of funds.

7) Paying the salary of the staff of the Ministers Office under the pretext of being the AIAC staff.

In furtherance to the above, Datuk Professor Sundra Rajoo's Contract granted by the then Law Minister will come to an end in February 2019. In lobbying for the extension of his contract beyond February 2019, Datuk Professor Sundra Rajoo has abuse the fund granted for the development of the AIAC and has used them to grant certain personal favours to the current Law Minister, Liew Vui Keong, which includes:

1) Leased car (Honda Civic) and driver for the personal use of the Minister's child studying in Kuala Lumpur.
2) Several hotel stays in St Regis Kuala Lumpur for the use of the Minister's family visiting from Sabah
3) Renting of a luxury car for the use of the Minister upon his appointment.

Datuk Professor Sundra Rajoo is also using his connection with the current law minister to evade repercussions as a result of the Datuk Professor Sundra Rajoo's actions which are in excess of his authority and abuse of his immunity. This includes to evade investigation as stipulates by the Court of Appeal Judge YA Datuk Hamid Sultan Bin Abu Bakcer in his dissenting judgment in the case of Lead Modulation Sdn Bhd v PCP Construction Sdn Bhd (Civil Appeal No.: W-02(C)(A)-505-03/2017.

Datuk Professor Sundra Rajoo has also to his whims and fancies. Under his instruction n the AIAC has erected and electronic billboard for the purposes of advertisement for the purposes of generating income for the Centre. This is in violation of the status of the Bangunan Sulaiman as a heritage building. Datuk Professor Sundra Rajoo has also been advised by a certain Mr Gan from Ledtronics Sdn Bhd to bribe the officers of DBKL for the approval. While now receiving backlash for the installation of the electronic billboard, Datuk Professor Sundra Rajoo is attempting to use the influence of the current Law Minister to interfere in the investigation and obstruct justice and meddle with the affairs of DBKL form taking further action on the matter.

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In addition to the above, Datuk Professor Sundra Rajoo also abuses his position as the appointing authority under the Arbitration Act and the Construction Industry Payment and Adjudication Act. He is known to appoint only his friends and well wishers as arbitrators. While newcomers are placed in a list where they usually receive cases with dispute amounts of under RM 500,000, Datin Vanitha Annamalai, his wife, is often given matters above RM2,000,000.00 as the amount is dispute determines the amount of fees imposed by the adjudicator. He has abused his power to ensure Datin Vanitha passes the adjudication examination and rigged for her to be failed for the first time so as to appear that there was not interference from him. While there is a guideline that and adjudicator must have at least 7 years of experience, he has now enrolled his daughter, Nisha Kamilla Sundra Rajoo and empanelled her as an adjudicator, despite of her not having 7 years of experience in the construction industry and is only a chambering student in Raja Daryl & Loh.

While he was appointed as the President of the Chartered Institute of Arbitrators in the year 2016, Datuk Professor Sundra Rajoo also was reimbursed by the Chartered Institute of Arbitrators for all expenses, particularly travels, incurred by him in carrying out his duties as President. Datuk Professor Sundra Rajoo has also made the same claim, in duplicate, to the AIAC. While there was only one set of expenses incurred by him, he was made the claim for the same expenses to both the Chartered Institute of Arbitrators and to the Asian International Arbitration Centre. It is believed that because of these claims, throughout 2016, he has profited over RM 1 million of these claims. ✓ double claim

Datuk Professor Sundra Rajoo also has used the funds of the AIAC to purchase the books written buy him. These books are distributed indiscriminately and for free to almost everyone. It is given out free at conferences indoor to widen its circulation, as he in return gets the royalty for the sales of these book.

The level of corruption runs deep in the AIAC. The following people are fully aware and had worked in close relationship with Datuk Professor Sundra Rajoo in carrying out all his instruction on the abuse of funds and authority by Datuk Professor Sundra Rajoo. These are the key people who would be able to furnish further information and uncover further scandals going on at the AIAC:

1) Smrithi Ramesh : promoted from Counsel to Deputy Director having receive five times promotion in the period of 3 years and a salary package of RM 22,000 and an annual bonus of 5 months amounting to RM 110,000. She is privy to all information pertaining to the corruption in AIAC by Datuk Professor Sundrarajoo. She is an accomplice to all Sundra Rajoo corruption and abuse of power.
2) Carol Yee : The Personal Assistant who had carried out many transactions for Datuk Professor Sundra Rajoo. Paid a salary of RM 9,000 and handsome annual bonuses to keep all of his activities quiet.

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3) Jun Yong : Former Head of Finance who carried out many of Datuk Sundra's Rajoo's illegal activity and helped him dispose many evidence of such conduct particularly of the double claims as the President of Chartered Institute of Arbitrators. He has since resigned from the AIAC.
4) Huganeswaran Veerasagram : Privy to many information of all illegal activities between Datuk Professor Sundra Rajoo and the former law minister, Dato Sri Azlina binti Othman Said. Has since left the AIAC but was paid a handsome annual bonus to keep his mouth shut.
5) Dinsh Kummar : current Head of Finance, privy to all illegal transaction carried out by Datuk Professor Sundra Rajoo.
6) Danaindran Rajendran who assisted in leasing a car and hiring a driver using the AIAC funds for the personal use of the minister's son.

We hope for a truthful and thorough investigation to be carried out to this effect.

Thank you.

cc.

1. Yang Berbahagia Tuan Tommy Thomas
45, Persiaran Perdana, Presint 4
62100 Putrajaya
Wilayah Persekutuan Putrajaya

2. Tan Sri Dato' Sri Mohamad Fuzi Harun
Ibu Pejabat Polis Diraja Malaysia
Jalan Bukit Aman
Tasik Perdana
50560 Kuala Lumpur

3. Mr. George Varughese
President of the Malaysian Bar
D-38-03, 3 Two Square, No 2 Jalan 19/1
Petaling Jaya
Selangor, Malaysia
46200

4. YB Dato'Saifuddin Abdullah
Ministry of Foreign Affairs
Wisma Putra1, Jalan Wisma Putra, Presint 2,
62100 Putrajaya, Wilayah Persekutuan

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Putrajaya, Malaysia.

5. Yg Bhg Datuk Jalil Marzuki
Ketua Pengarah
Bahagian Hal Ehwal Undang Undang
Aras 4-8, Bangunan Hal Ehwal Undang-Undang,
Presint 3, Pusat Pentadbiran Kerajaan Persekutuan,
62692 Wilayah Persekutuan Putrajaya.

6. YBhg. Datuk Seri Mohd Zuki bin Ali
Timbalan Ketua Setiausaha Kanan
Pejabat Timbalan Ketua Setiausaha Kanan
Pengurusan Atasan
Jabatan Perdana Menteri
Blok B8, Kompleks Jabatan Perdana Menteri
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya

7. H.E Professor Dr. Kennedy Gastorn
Asian African Legal Consultative Organisation
29 C, Rizal Marg, Diplomatic Enclave
(Behind Jesus & Mary College) Chanakyapuri
New Delhi 110021.

8. Malaysiakini Dotcom Sdn Bhd
PJ 51, 9, Jalan 51/205a Off,
Jalan Tandang, PJS 51,
46050 Petaling Jaya,
Selangor, Malaysia

9. The Secretariat
c/o Enterprise Promotion Centres Pte Ltd
1003 Bukit Merah Central,
#02-10 Inno. Centre,
Singapore 159836

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LAMPIRAN B / APPENDIX B

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11 (AAA)

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
SALINAN ADUAN
(Seksyen 29 (5) Akta Suruhanjaya Pencegahan Rasuah 2009)

Muka : 1

Pejabat Suruhanjaya Pencegahan Rasuah Malaysia : IBU PEJABAT SPRM PUTRAJAYA

No. Aduan: 0418/ 2018 | **Tarikh dan Waktu Aduan:** 19.11.2018 @ 1200 HRS

Nama Pengadu: MOHD ADRIAN ZAIMAN BIN ZAINIAR

No. Kad Pengenalan: 890314-13-6021 | **No. Pasport:** - | **Umur:** 29 THN

Bangsa: MELAYU | **Warganegara:** MALAYSIA | **Pekerjaan:** PEGAWAI SPRM

Alamat Kediaman: IBU PEJABAT SPRM, NO 2, LEBUH WAWASAN, PRESINT 7
62250 PUTRAJAYA

Aduan ditulis oleh: SENDIRI

Bahasa yang digunakan oleh pengadu: BAHASA MELAYU

Ditaip oleh MOHD ADRIAN ZAIMAN 890314-13-6021

Nama Jurubahasa: -

Daripada Bahasa: - | **Kepada Bahasa:** -

Pengadu Berkata:

MAKLUMAT DITERIMA MENGATAKAN PADA TAHUN 2016 SEHINGGA 2018, DISYAKI DATUK SUNDRA RAJOO, PENGARAH ASIAN INTERNATIONAL ARBITRATION CENTRE (AIAC) TELAH MELAKUKAN RASUAH DAN MENYALAHGUNAKAN KUASA SEBAGAI PENGARAH AIAC SEPERTI BERIKUT:

1. MERASUAH BEKAS MENTERI JPM IAITU DATO SRI AZALINA OTHMAN SAID DAN MENTERI JPM LIEW VUI KEONG UNTUK MENDAPATKAN FAEDAH PENYAMBUNGAN KONTRAK SEBAGAI PENGARAH AIAC;
2. MELANTIK ISTERI BELIAU IAITU DATIN VANITHA ANNAMALAI BAGI KES TIMBANG TARA BERNILAI RM 2,000,000.00 KE ATAS;
3. MEMBUAT TUNTUTAN PERJALANAN BERNILAI HAMPIR RM 1,000,000.00 TERHADAP CHARTERED INSTITUTE OF ARBITRATION (CIA) DAN AIAC BAGI PERJALANAN YANG SAMA;
4. MEMPEROLEH ROYALTI PENJUALAN MELALUI ARAHAN PEROLEHAN BUKU TULISAN BELIAU SENDIRI MENGGUNAKAN DANA AIAC.

ADUAN INI DIBUAT BAGI MENJALANKAN SIASATAN DIBAWAH SEKSYEN 16(b)(A) ASPRM 2009

T.T
MOHD ADRIAN ZAIMAN BIN ZAINIAR
890314-13-6021

JANGAN TULIS DI BAWAH GARISAN INI

* Potong yang tidak berkaitan.
PERINGATAN: Aduan yang ditulis hendaklah dibacakan kepada pengadu dan aduan tersebut hendaklah ditandatangani oleh pengadu.

ADUAN INI HENDAKLAH DIRAHSIAKAN

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LAMPIRAN C / APPENDIX C

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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION (AALCO)

Secretariat
29-C, Rizal Marg, Diplomatic Enclave,
Chanakyapuri, New Delhi - 110021 (INDIA)
Tel. : +91 11-26117641, 26117642
Recp. : +91 11-24197000
Fax : +91 11-26117640
E-mail : mail@aalco.int
Website : www.aalco.int

Ref: No 306/ 2018/Arb.Centre/AALCO

19th November 2018

To,
Datuk Seri Mohd Shukri Abdull
Chief Commissioner
MACC Headquarters
No 2, Lebuh Wawasan
Presint 8, 62250
Putrajaya
Email: kp@sprm.gov.my

Dear Sir,

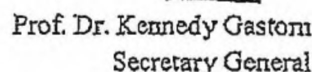
I am the Secretary General of the Asian African Legal Consultative Organisation and write with regard to a matter of concern. I am presently in Arusha for an AALCO forum in which Asian International Arbitration Centre is also participating. As an international institution established under the aegis of AALCO and in consonance with a host country agreement with the Government of Malaysia, the AIAC is guaranteed privileges and immunities to protect the functioning of the organisation towards promoting and facilitating international commercial dispute settlement in Asia and Africa. All audited reports and transparency are in place and it is duly submitted to AALCO and the Government of Malaysia pursuant to the provisions of the Host Country Agreement.

The AIAC has been making great progress in the recent years. I am informed that there is now an ongoing investigation and I write to request that the confidentiality and immunities granted to the organization be preserved as any violation will affect the credibility of the international organization, be contrary to international provisions and also affect Malaysia as a safe seat. As such I request you to follow proper channels in ensuring the integrity of the international organisation is maintained and no confidentiality is breached in the process of the ongoing investigation.

I look forward to working together with the Government of Malaysia and also promoting dispute resolution in Asia.

Thank you.

Yours sincerely,



Prof. Dr. Kennedy Gastorn
Secretary General

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LAMPIRAN D / APPENDIX D

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A **Sundra Rajoo a/l Nadarajah v Menteri Hal Ehwal Luar Negeri, Malaysia & Ors**

B HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA 25–108–03 OF 2019
MARIANA YAHYA J
6 MARCH 2020

C *Administrative Law — Judicial review — Application for leave — Applicant sought to assert immunity from any suit or legal process in respect of acts done in capacity as director of Asian International Arbitration Centre (Malaysia) — hether applicant entitled for immunity — Whether immunity could be waived — Whether decision of second respondent amenable to judicial review* D *— International Organizations (Privileges and Immunities) Act 1992 ss 4(1)(b)(ii) & 4(7)*

This was the applicant's application for judicial review under O 53 r 2 of the Rules of Court 2012 to seek declaratory and related relief to assert his E immunity from any suit or legal process in respect of acts done in his capacity as the director of the Asian International Arbitration Centre (Malaysia) ('AIAC') from 1 March 2010 to 21 November 2018. The AIAC was established in 1978 by an exchange of diplomatic letters. The first formal agreement was entered between the Government of Malaysia ('the fourth respondent') and the F Asian-African Legal Consultative Organization ('AALCO') on 29 July 1981. The latest agreement currently in force was the agreement dated 26 March 2013 ('the 2013 Host Country Agreement'). The office of the director and the AIAC came under the auspices of the AALCO, and the 2013 Host Country Agreement required the fourth respondent to treat the AIAC as an G international organisation and its premises and activities inviolable. The AIAC was raided on 19 November 2018 and documents were seized from the office. On the next day, the applicant was arrested by the Malaysia Anti-Corruption Commission ('the third respondent'). The applicant was brought to the magistrate's court, where the prosecutor applied for a seven days remand order. H However, the application was dismissed inter alia because of the applicant's immunity. No appeal was filed by the third respondent against that order. This provided the foundation for judicial review in the High Court as the applicant submitted all of this, was in breach of the law, and a breach of the 2013 Host Country Agreement despite that those immunities provided under the law. At I the same time, the Minister of Foreign Affairs of the Government of Malaysia ('the first respondent') and the Attorney General of Malaysia ('the second respondent') sought waivers of the applicant's immunity but refused by AALCO. The second respondent nonetheless proceeded with charges against the applicant a day before the leave application for judicial review was set for

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hearing. The leave application was refused by the learned High Court judge. Dissatisfied, the applicant filed an appeal to the Court of Appeal on the said decision. The High Court's decision was unanimously overturned by the Court of Appeal which granted leave to the applicant to apply for judicial review and remitted the case to High Court to hear the substantive application before a different judge, which was now before this court.

Held, allowing the application:

(1) From the plain reading of s 4(7) of International Organizations (Privileges and Immunities) Act 1992 ('Act 485'), generally there was no immunity to be accorded to the High Officer or officer of an international organization if he was a citizen of Malaysia except in respect of 'acts and things done in his capacity as such an officer'. Since the applicant was a Malaysian citizen and both parties ie the fourth respondent and AALCO agreed to be bound by the provisions in the 2013 Host Country Agreement which was subjected to Act 485, therefore the privileges or immunities in the Second and Fourth Schedules were still applicable provided the acts or things done was in his capacity as such an officer. Pursuant to s 4(1)(b)(ii) of Act 485, the applicant still enjoyed immunities as provided under Part II of the Schedule. In addition to that, the applicant in his amended statement only sought for a declaration as a former High Officer and thus parties were bound by their pleadings. The wording in Part I and Part II of the Second Schedule of Act 485 had been crafted and distinguished from one another. This showed that the Parliament intended to differentiate the immunities enjoy by the High Officer and former High Officer. The immunity that guaranteed by Part II of the Second Schedule Act 485 was that the applicant was immune from suit and other legal process in respect of acts and things done in his capacity as such an officer. Legal process meant civil and criminal process. If Parliament had intended to exclude the immunity from criminal process then it had to be specifically spelled out in Part II of the Second Schedule of Act 485. The limits of immunities provided for a former High Officer was very clear that he was immune from suit and other legal process in respect of acts and things done in his capacity as such an officer unlike a High Officer who enjoyed privileges and immunities as were accorded to a diplomatic agent (see paras 59, 60–62, 67–68 & 71).

(2) The immunity was never cancelled or challenged, thus the immunity conferred on the applicant remained. The applicant was the representatives of the international organization under the auspices of the AALCO. The respondents recognize the privileges and immunities of the applicant. The respondents' request for a waiver of the applicant's immunity was rejected by AALCO. In such circumstances, the applicant's immunity provided under Second Schedule of Act 485 was

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still maintained till to date. All the terms/articles in the 2013 Host Country Agreement must be honoured by the parties including the fourth respondent. There was evidence from AALCO through its letter which condoned that the acts and things done which formed the charges levelled against the applicant were in fact done in the applicant's capacity as such an officer. The court could not simply disregard such evidence as it was from the organization which had the sole power to waive the immunity given to the applicant under the 2013 Host Country Agreement. Further, the evidence that the applicant had never took the profit from the sales of the book and that he had refunded the same to the AIAC was never rebutted by the respondents (see paras 73–79).

(3) A discretionary power vested in the second respondent, whether by way of statute or prerogative was subjected to legal limits. The second respondent as a public officer must act according to law. The second respondent's discretionary power to prefer charges against the applicant under the criminal jurisdiction of the state must be subjected to the privileges and immunities conferred upon and vested with the applicant in the various domestic laws and regulations (see paras 85–86).

(4) No explanation had been given as to why the second and the third respondents could not wait until the AALCO's Secretary General had responded to their letters seeking waiver, nor why they could not await the determination of the judicial review application. The judicial review was in respect of not only the decision of the public prosecutor, but also 'things done in the exercise of a public function' by the first, second and third respondents. The applicant had come to the right court to determine if the executive branch of government had acted beyond its powers (see paras 88 & 90).

[Bahasa Malaysia summary

Ini adalah permohonan pemohon untuk semakan kehakiman di bawah A 53 k 2 Kaedah-Kaedah Mahkamah 2012 untuk memohon relif pengisytiharan dan yang berkaitan untuk menegaskan kekebalannya dari apa-apa tuntutan atau proses undang-undang berkenaan dengan tindakan yang dilakukan atas kemampuannya sebagai pengarah Pusat Timbang Tara Antarabangsa Asia (Malaysia) ('AIAC') dari 1 Mac 2010 hingga 21 November 2018. AIAC ditubuhkan pada tahun 1978 dengan pertukaran surat diplomatik. Perjanjian formal pertama telah dimeterai antara Kerajaan Malaysia ('responden keempat') dan Jawatankuasa Perundingan Undang-Undang Asia-Afrika ('AALCO') pada 29 Julai 1981. Perjanjian terbaru yang sedang berkuat kuasa adalah perjanjian bertarikh 26 Mac 2013 ('Perjanjian Negara Tuan Rumah 2013'). Pejabat pengarah dan AIAC berada di bawah naungan AALCO, dan Perjanjian Negara Tuan Rumah 2013 mewajibkan responden keempat untuk memperlakukan AIAC sebagai organisasi antarabangsa dan premis dan kegiatannya tidak dapat dilanggar. AIAC diserbu pada 19 November 2018 dan

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dokumen dirampas dari pejabat. Pada keesokan harinya, pemohon ditangkap oleh Suruhanjaya Pencegahan Rasuah Malaysia ('responden ketiga'). Pemohon dibawa ke mahkamah majistret, di mana pihak pendakwaan memohon perintah tahanan reman selama tujuh hari. Bagaimanapun, permohonan itu ditolak antara lain kerana kekebalan pemohon. Tidak ada rayuan yang diajukan oleh responden ketiga terhadap perintah itu. Ini memberikan asas untuk semakan kehakiman di Mahkamah Tinggi kerana pemohon mengemukakan bahaw semua ini, melanggar undang-undang, dan melanggar Perjanjian Negara Tuan Rumah 2013 walaupun kekebalan itu diperuntukkan di bawah undang-undang. Pada masa yang sama, Menteri Luar Negeri Kerajaan Malaysia ('responden pertama') dan Peguam Negara Malaysia ('responden kedua') meminta pengecualian kekebalan pemohon tetapi ditolak oleh AALCO. Walau bagaimanapun, responden kedua meneruskan tuduhan terhadap pemohon sehari sebelum permohonan kebenaran untuk semakan kehakiman ditetapkan untuk didengar. Permohonan kebenaran ditolak oleh hakim Mahkamah Tinggi yang bijaksana. Tidak berpuas hati, pemohon memfailkan rayuan ke Mahkamah Rayuan atas keputusan tersebut. Keputusan Mahkamah Tinggi dibatalkan sebulat suara oleh Mahkamah Rayuan yang memberikan kebenaran kepada pemohon untuk memohon semakan kehakiman dan menyerahkan kes itu ke Mahkamah Tinggi untuk mendengar permohonan substantif di hadapan hakim yang berbeza, yang sekarang dihadapkan ke mahkamah ini.

Diputuskan, membenarkan permohonan:

(1) Daripada pembacaan secara jelas s 4(7) Akta Organisasi Antarabangsa (Keistimewaan dan Kekebalan) 1992 ('Akta 485'), secara umum tidak ada kekebalan yang akan diberikan kepada Pegawai Tinggi atau pegawai organisasi antarabangsa jika beliau adalah warganegara Malaysia kecuali berkenaan dengan 'tindakan dan perkara yang dilakukan mengikut kemampuannya sebagai pegawai itu'. Oleh kerana pemohon adalah warganegara Malaysia dan kedua-dua pihak iaitu responden keempat dan AALCO bersetuju untuk terikat dengan peruntukan dalam Perjanjian Negara Tuan Rumah 2013 yang tertakluk kepada Akta 485, oleh itu hak istimewa atau kekebalan dalam Jadual Kedua dan Keempat masih terpakai dengan syarat tindakan atau perkara yang dilakukan adalah mengikut kemampuannya sebagai pegawai itu. Berdasarkan s 4(1)(b)(ii) Akta 485, pemohon masih menikmati kekebalan seperti yang diperuntukkan di bawah Bahagian II Jadual. Selain itu, pemohon dalam pernyataannya yang dipinda hanya meminta pengisytiharan sebagai bekas Pegawai Tinggi dan dengan itu pihak-pihak terikat dengan pliding mereka. Perkataan dalam Bahagian I dan Bahagian II Jadual Kedua Akta 485 telah dibuat dan dibezakan antara satu sama lain. Ini menunjukkan bahawa Parlimen bertujuan untuk membezakan kekebalan yang dinikmati oleh Pegawai Tinggi dan bekas Pegawai Tinggi. Kekebalan

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A yang dijamin oleh Bahagian II Akta Jadual Kedua 485 adalah bahawa pemohon kebal dari guaman dan proses undang-undang lain berkenaan dengan tindakan dan perkara yang dilakukan sesuai dengan kemampuannya sebagai pegawai. Proses undang-undang bermaksud proses sivil dan jenayah. Sekiranya Parlimen berniat mengecualikan B kekebalan dari proses jenayah, maka itu harus dijelaskan secara khusus dalam Bahagian II Jadual Kedua Akta 485. Batasan kekebalan yang diperuntukkan bagi seorang bekas Pegawai Tinggi sangat jelas bahawa dia kebal dari tindakan guaman dan proses undang-undang lain berkenaan dengan tindakan dan perkara yang dilakukan sesuai dengan C kemampuannya sebagai pegawai tidak seperti Pegawai Tinggi yang menikmati hak istimewa dan kekebalan sebagaimana yang diberikan kepada ejen diplomatik (lihat perenggan 59, 60–62, 67–68 & 71).

(2) Kekebalan tidak pernah dibatalkan atau dicabar, oleh itu kekebalan yang D diberikan kepada pemohon tetap ada. Pemohon adalah wakil organisasi antarabangsa di bawah naungan AALCO. Responden menyedari hak istimewa dan kekebalan pemohon. Permintaan responden untuk pengecualian kekebalan pemohon ditolak oleh AALCO. Dalam keadaan seperti itu, kekebalan pemohon yang diperuntukkan di bawah Jadual E Kedua Akta 485 masih dikekalkan hingga kini. Semua terma/artikel dalam Perjanjian Negara Tuan Rumah 2013 mesti dipatuhi oleh pihak-pihak termasuk responden keempat. Terdapat bukti dari AALCO melalui suratnya yang membenarkan bahawa tindakan dan perkara yang dilakukan yang membentuk tuduhan yang dikenakan terhadap F pemohon sebenarnya dilakukan atas kemampuan pemohon sebagai pegawai. Mahkamah tidak boleh dengan mudah mengabaikan bukti yang ada dari organisasi yang mempunyai satu-satunya kuasa untuk mengetepikan kekebalan yang diberikan kepada pemohon berdasarkan Perjanjian Negara Tuan Rumah 2013. Selanjutnya, bukti bahawa G pemohon tidak pernah mengambil keuntungan dari penjualan buku dan bahawa dia telah mengembalikan yang sama kepada AIAC tidak pernah dibantah oleh responden (lihat perenggan 73–79).

(3) Kuasa budi bicara yang diberikan oleh responden kedua, sama ada H melalui undang-undang atau hak prerogatif dikenakan batasan undang-undang. Responden kedua sebagai pegawai awam mesti bertindak mengikut undang-undang. Kuasa budi bicara responden kedua untuk memilih tuduhan terhadap pemohon di bawah bidang kuasa jenayah negara mesti tertakluk kepada hak istimewa dan kekebalan I yang diberikan dan diberikan kepada pemohon dalam berbagai undang-undang dan peraturan domestik (lihat perenggan 85–86).

(4) Tidak ada penjelasan mengenai mengapa responden kedua dan ketiga tidak boleh menunggu sehingga Setiausaha Agung AALCO menjawab surat mereka memohon pengecualian, atau mengapa mereka tidak boleh

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menunggu penentuan permohonan semakan kehakiman. Semakan kehakiman bukan hanya berkaitan dengan keputusan pihak pendakwaan, tetapi juga 'hal-hal yang dilakukan dalam menjalankan fungsi awam' oleh responden pertama, kedua dan ketiga. Pemohon telah datang ke mahkamah yang betul untuk menentukan jika bahagian eksekutif kerajaan telah bertindak di luar kuasanya (lihat perenggan 88 & 90).]

Cases referred to

Dato' Seri Anwar Ibrahim v Mohamad Hanafiah bin Hj Zakaria & Ors [2010] 2 MLJ 271, HC (refd)
Islamic Financial Services Board v Puan Marlin Fairol bt Mohd Faroque and Anor [2010] MLJU 653; [2010] 8 CLJ 173, HC (refd)
Long bin Samat v PP [1974] 2 MLJ 152, FC (refd)
Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur [2013] 6 MLJ 468; [2013] 8 CLJ 890, CA (refd)
Mohit v The Director of Public Prosecutions of Mauritius [2006] 1 WLR 3343, PC (refd)
Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443, FC (refd)
Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lembah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)
R Rama Chandran v Industrial Court Malaysia & Anor [1997] 1 MLJ 145; [1997] 1 CLJ 147, FC (refd)
Regional Centre for Arbitration v Ooi Beng Choo & Anor Civil Appeal No W-01–160 of 1998 (unreported), CA (refd)
Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (refd)
Tan Seet Eng v Attorney General and another matter [2016] 1 SLR 779, CA (refd)

Legislation referred to

Diplomatic Privileges (Vienna Convention) Act 1966 Schedule
Federal Constitution art 145(3)
Industrial Relations Act 1967
International Organizations (Privileges and Immunities) Act 1992 ss 2, 4(1)(b)(i), (1)(b)(ii), (7), 8A, 8A(1), (2), 4(7), Second Schedule, Fourth Schedule
Islamic Financial Services Board Act 2002 s 7, Schedule
Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996
Malaysian Anti-Corruption Commission Act 2009
Rules of Court 2012 O 53 r 2, 2(4)

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A *K Shanmuga (Abdul Shukor Ahmad, Baljit Singh, Ankit Singh and Dinesh Kumar with him) (Kanaselingam & Co) for the applicant.*
Narkunavathy Sundaresan (Natra Idris and Suzana Atan with him) (Senior Federal Counsel, Attorney's General Chambers) for the respondents.

B **Mariana Yahya J:**

INTRODUCTION

C [1] This is the applicant's application for judicial review under O 53 r 2 of the Rules of Court 2012 to seek declaratory and related relief to assert his immunity from any suit or legal process in respect of acts done in his capacity as the Director of the Asian International Arbitration Centre (Malaysia) ('AIAC') (formerly known as the Kuala Lumpur Regional Centre for D Arbitration). Vide the amendment statement (encl 32), the applicant sought for the following reliefs:

(a) a declaration that the applicant has immunity as a former High Officer being the Director of the Asian International Arbitration Centre ('the centre') for acts done within his capacity as High Officer;

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(b) a declaration that on a proper interpretation of Act 485, the applicant's immunity as a former high officer cannot be waived;

(c) a declaration that in any event a director, acting director or any other officer of the centre or otherwise has no power to waive the applicant's F immunity;

(d) an order of certiorari to remove into the High Court and quashed forthwith all the existing criminal charges brought against the applicant in Kuala Lumpur Sessions Court No WA-62R-15–03 of 2019;

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(e) an order of prohibition preventing the second respondent from laying any charge or bringing any proceedings or continuing the proceedings in WA-62R-15–03 of 2019 or any other proceedings in any court in Malaysia against the applicant with regard to anything done by the H applicant in his capacity as Director of the Centre, and more specifically with regard to any acts or omissions by the applicant during his term of office as Director of the Centre in relation to the property, funds or documents of the centre or otherwise howsoever in relation to the affairs of the centre;

I (f) an order of prohibition preventing the third respondent from arresting, detaining, issuing any warrant or other order or otherwise bringing any judicial proceedings whatsoever against the applicant with regard to anything done by the applicant in his capacity as Director of the Centre, and more specifically with regard to any acts or omissions by the

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applicant during his term of office as Director of the Centre in relation to the property, funds or documents of the centre or otherwise howsoever in relation to the affairs of the centre;

(g) an order of certiorari to remove into the High Court and quash forthwith any document purporting to waive the applicant's immunity; and

(h) such further or other relief as is considered just by this honourable court.

SALIENT FACTS

[2] The applicant is a Malaysian citizen who served as Director of the Asian International Arbitration Centre (Malaysia) (formerly known as the Kuala Lumpur Regional Centre for Arbitration) ('the centre' or 'the AIAC') from 1 March 2010 to 21 November 2018.

[3] The first respondent is the Minister of Foreign Affairs of the Government of Malaysia, the second respondent is the Attorney General of Malaysia and the third respondent is a statutory body established under the Malaysian Anti-Corruption Commission Act 2009 ('Act 694').

[4] The centre was established in 1978 by an exchange of diplomatic letters. Later, the first formal agreement known as the Agreement Between Government of Malaysia and the Asian-African Legal Consultative Committee Relating to the Regional Centre for Arbitration in Kuala Lumpur was entered between the fourth respondent and the Asian-African Legal Consultative Organization ('AALCO') on 29 July 1981 ('the 1981 host country agreement').

[5] The latest agreement currently in force is the agreement Between Government of Malaysia and the Asian-African Legal Consultative Committee Relating to the Regional Centre for Arbitration in Kuala Lumpur dated 26 March 2013 ('the 2013 host agreement'), as varied purely in relation to change of name of the Kuala Lumpur Regional Centre for Arbitration ('KLRCA') to AIAC vide the supplementary agreement entered between the fourth respondent and AALCO in 2018 ('the 2018 supplementary agreement'). The office of the Director and the AIAC comes under the auspices of AALCO, and the 2013 host country agreement requires the fourth respondent to treat the AIAC as an international organisation and its premises and activities inviolable.

[6] The AIAC was raided on 19 November 2018 and documents were seized from the office. On the next day, the applicant was arrested by the third respondent at the Kuala Lumpur International Airport. The applicant was brought to the magistrate's court, where the prosecutor applied for a seven days remand order. However, the learned magistrate dismissed the remand

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A application, inter alia, because of the applicant's immunity. No appeal was filed by the third respondent against that order.

[7] Thus, this provides the foundation for judicial review as the applicant submitted all of this, was in breach of the law, and a breach of the 2013 host B country agreement despite that those immunities provided under the law.

[8] On 6 March 2019, the applicant filed an application for leave for judicial review in the High Court to assert his immunity from suit and other legal C process. The leave application was fixed for hearing on Tuesday, 26 March 2019. At the same time, the first respondent and the second respondent sought waivers of the applicant's immunity.

[9] AALCO replied to their letters via a letter dated 22 March 2019 refusing D to waive the applicant's immunity which had now enjoyed by him. The second respondent nonetheless proceeded with the charges against the applicant.

[10] On 22 March 2019, the second respondent gave consent to prosecute the applicant despite refusal of waiver of immunity and this pending judicial E review application.

[11] The prosecution proceeded to file three criminal charges against the applicant in Kuala Lumpur Sessions Court a day before the leave application F for judicial review was set for hearing ie on 25 March 2019.

[12] The applicant was accused of criminal breach of trust because he allegedly authorised monies belonging to AIAC to be spent to purchase a book authored by him and published by publishing company, Lexis Nexis. The G books that were purchased were then distributed by the AIAC as part of AIAC's promotional activity.

[13] The applicant claimed that AALCO was aware of this promotional activity and the applicant has agreed to pay the royalties earned by him from H those books to be donated back to the AIAC at all material times.

[14] The leave application was refused on 26 March 2019 by the learned High Court judge. Dissatisfied with the High Court's decision, the applicant I filed an appeal to the Court of Appeal on the said decision. The High Court's decision was unanimously overturned by the Court of Appeal which granted leave to the applicant to apply for judicial review and remitted the case to High Court to hear the substantive application before a different judge, which is now before me.

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[15] The crux of the applicant's case for judicial review is as follows:

(a) whether the second respondent as the state authority is bound in law by the international regime of privileges and immunities which have been incorporated in and are part of our domestic laws; and

(b) as the 'Director' of AIAC, pursuant to the International Organizations (Privileges and Immunities) Act 1992 ('Act 485'), the applicant is conferred the status of a 'High Officer.' As a high officer, he enjoyed the like privileges as a 'diplomatic agent' within the meaning of the Diplomatic Privileges (Vienna Convention) Act 1966 ('Act 636'). Now, as a former high officer, the applicant is conferred by law 'immunity from suit and from other legal process in respect of acts and things done in his capacity as such an officer'.

THE APPLICANT'S SUBMISSIONS

AALCO letter

[16] It is the applicant's submission that AALCO has issued three letters to the respondents refusing to waive the applicant's immunity and protesting and disassociating themselves from the criminal charges. The first letter was sent to the first respondent on 22 March 2019 and the two other letters were addressed to the second respondent on 3 April 2019 and on 10 July 2019 respectively.

[17] The applicant further submmited that in these three letters, AALCO gave a reasoned rejection to the request for a waiver of the applicant's immunity. AALCO had also expressed their strong protest and surprise at the second respondent's decision to prosecute the applicant notwithstanding his immunity under the law and AALCO's refusal to grant a waiver of the said immunity. Despite that, none of the AALCO letters were replied by the respondents.

Privileges and immunities conferred upon and vested with the applicant

[18] The privileges and immunities conferred upon and vested with the applicant by virtue of him being the former Director of AIAC stems from the following statutes and international agreements, namely:

(a) International Organizations (Privileges and Immunities) Act 1992 ('Act 485'); and

(b) Diplomatic Privileges (Vienna Convention) Act 1966 ('Act 636');

(c) Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996 ('the 1996 Regulations') as amended by the Kuala Lumpur Regional Centre for Arbitration (Privileges and

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A Immunities) (Amendment) Regulations 2011 ('2011 Regulations'); and

(d) the host country agreement between the Government of Malaysia and the Asian-African Legal Consultative Organization dated 26 March 2013 relating to the Regional Centre for Arbitration in Kuala Lumpur ('the 2013 host country agreement').
B

[19] The 2013 host country agreement in article III, para 6, states that the Director of the centre, if he is a citizen of Malaysia, shall be entitled to such privileges and immunities as determined by the Minister pursuant to Act 485.
C

[20] Section 4(1)(b)(i) and (1)(b)(ii) of Act 485 states that the Minister may by regulations confer upon a person who is, or is performing the duties of, a high officer (or has ceased to so act) the immunities specified in Parts I and II and of the Second Schedule.
D

[21] Immunity was conferred on the applicant by the 2011 Regulations, the relevant parts of which state as follows:

> 1A. 'High Officer' means the person for the time being holding the post of the
E Director of the Kuala Lumpur Regional Centre for Arbitration.'
>
> ...
>
> 3A(2). A High Officer, if he is a citizen of Malaysia, shall only be entitled to the privileges and immunities in respect of acts and things done in his capacity as the High Officer.
F

[22] Section 2 of Act 485 also provides the following definitions:

(a) 'diplomatic agent' has the same meaning assigned to it by the Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636); and
G
(b) 'high officer' means a person who holds, or is performing the duties of, an office prescribed by regulations to be a high officer in an international organisation.

H **[23]** Act 636 incorporates certain Articles of the Vienna Convention on Diplomatic Relation into domestic law in the Schedule:

(a) article 1(e) states that a 'diplomatic agent is the 'head of the mission or a member of the diplomatic staff of the mission';

I (b) article 29 states that the person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity; and

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(c) article 31(1) guarantees that a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state.

[24] Therefore, the applicant contended that as the former director and high officer of the International Organization ('AIAC'), the applicant had the status of a diplomatic agent. He is conferred and vested with immunity from suit and from other legal process in respect of things done in his capacity as high officer even from criminal jurisdiction.

[25] The counsel for the applicant quoted the case of *Islamic Financial Services Board v Puan Marlin Fairol bt Mohd Faroque and Anor* [2010] MLJU 653; [2010] 8 CLJ 173, HC Ariff Yusof J (as His Lordship then was) considered the application by the Islamic Financial Services Board ('IFSB') for judicial review to quash the award of the Industrial Court. The court held at paras 40–44 that the words 'legal process' are couched in very wide terms, to include proceedings in a proper court of law, but they do not exclude other forms of lawful process. Accordingly, proceedings before the Industrial Court were held to be caught by the immunity and the Industrial Court's award was quashed.

[26] A similar conclusion was reached by the Court of Appeal in respect of the AIAC itself in the case of *Regional Centre for Arbitration v Ooi Beng Choo & Anor* (unreported, Civil Appeal No W-01–160 of 1998, Court of Appeal decision dated 2 August 1999) where the Court of Appeal held that the Regional Centre for Arbitration is immune from suit and legal process which includes a reference to the Industrial Court of a complain of a dismissal under the Industrial Relations Act 1967.

Issue of waiver of immunity

[27] The counsel for the applicant further submitted that issues pertaining to waiver of immunites and privileges are governed by s 8A of Act 485.

[28] It was argued that on a proper interpretation of the statute, the applicant's immunity cannot be waived at all, as he is not a 'representative, official or expert' of either AALCO or the AIAC. Even if his immunity can be waived, the power to do so is vested in AALCO. In fact, the respondents, through the first respondent, had already sent a letter to AALCO requesting for a waiver of the applicant's immunity. This request however was rejected by AALCO's Secretary General by his letter dated 22 March 2019.

[29] Therefore, the applicant contended that the respondents recognised the privileges and immunities of the applicant and the respondents took the

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A position that before the applicant's privileges and immunities can be removed, they would have to be waived by AALCO. In this matter, AALCO has decided not to waive the applicant's immunity.

Immunity is not lost even if action are for personal benefit

B

[30] Section 8A of Act 485 sets out the circumstances in which the privileges and immunities under Act 485 can and should be waived, and the considerations that ought to apply. Section 8A(1) begins the section by pointing out that the privileges and immunities conferred by Act 485 are C granted in the interest of the international organisation and not for the personal benefit of the individuals. It is in this context that the words 'not for the personal benefit' of the individual concerned is used.

D [31] The applicant further contended that the applicant is not limited by the words 'not for his personal benefit'.Things can still be done within his capacity as High Officer of the AIAC even if he derived personal benefit from those actions.

E [32] In the present case, AALCO has categorically protested the bringing of charges against the applicant. AALCO obviously take the view that the purchase and distribution of a book on international arbitration, authored by the applicant, and widely regarded not only as the leading textbook on arbitration law in Malaysia but also as a valuable contribution internationally F to arbitration law, cannot be anything but an activity in furtherance of the interest of AALCO and the AIAC.

[33] The objectives of the AIAC is to 'promote the growth and effective functioning of national arbitration institutions' and 'to promote the wider use G and application of the UNCITRAL Arbitration Rules of 1976 within the Asian and Pacific Region' and with one of its functions to 'promote international commercial arbitration in the region served by it' (see cl 1, 1981 host country agreement). There is no authority which states that the immunity of diplomatic officers for acts done in their official capacity are suddenly excluded H just because those actions also benefit them personally.

Issue of whether public prosecutor's decision is amenable to judicial review

[34] It is submitted that based on the decision in *Peguam Negara Malaysia v* I *Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443, the discretionary power vested in the second respondent, whether by way of statute or prerogative, is subject to legal limits. The second respondent as a public officer must act according to the law.

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[35] The Federal Court in *Chin Chee Kow's* case at paras 81–82 also referred to the cases of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 and *Pengarah Tanah dan Galian Wilayah Persekutuan v Sri Lembah Enterprise Sdn Bhd* [1979] 1 MLJ 135 for the established principles that:

(a) the power of judicial review is essential to the constitutional role of the courts, and inherent in the basic structure of our Federal Constitution; and

(b) every legal power must have legal limits and that every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard so that the courts can see that these great powers and influence are exercised in accordance with law. Public bodies must be compelled to observe the law.

[36] Therefore, based on the authorities above and the legal principles highlighted, the applicant further submitted that the second respondent's discretionary power to prefer charges against the applicant under the criminal jurisdiction of the state must be subject to the privileges and immunities conferred upon and vested with the applicant in the various domestic laws and regulations referred to above. Hence the actions of the respondents are without jurisdiction and in breach of the law.

The respondents' submissions

Immunity

[37] The respondents averred that the immunity afforded to the applicant is not a blanket immunity. The unequivocal wordings of Part II of the Second Schedule to Act 485 make it patently clear that the privileges and immunities granted to the applicant, as former high officer, is limited to acts and things done in his capacity as such an officer.

[38] It is the respondents' submission that the applicant is not a diplomatic agent. The scope of his immunity is as provided in Part II of the Second Schedule to Act 485, and nothing more. He is not a diplomatic agent and therefore the privileges and immunities provided under Act 636 does not apply to the applicant.

[39] It is further submitted that the exercise of that prosecutorial power is not justiciable. Therefore the court should decline the applicant's invitation to review the second respondent's decision to initiate criminal proceedings against

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A the applicant. Having regard to all the facts and circumstances including the provisions relating to the applicant's immunity, the applicant is not immune from the criminal charges preferred against him.

B **[40]** The respondents further argued that the question of whether the applicant is immune or not, can only be determined when the evidence in support of the criminal charges is adduced in the sessions court.

The second respondent's prosecutorial powers are not amenable to judicial review

C **[41]** The respondents emphasised that according to art 145(3) of the Federal Constitution which confers the prosecutorial powers to the second respondent reads:

> D The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court martial.

Thus, the decision of the second respondent to institute, conduct or discontinue criminal proceedings is not justiciable or amenable to judicial review.

E

[42] To support the respondents' contention, several cases have been referred by the respondents which are as follows:

F (a) *Long bin Samat v Public Prosecutor* [1974] 2 MLJ 152 (FC) wherein Suffian LP held at p 158:

> G In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue. (For the position in England, please see Viscount Dilhorne's speech at pages 32–3 in *Smedleys Ltd v Breed* [1974] 2 All ER 21). Still less then would the court have power to compel him to enhance a charge when he is content to go on with a charge of a less serious nature. H
>
> I Anyone who is dissatisfied with the Attorney-general's decision not to prosecute, or not to go on with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not in the courts.

(b) *Dato' Seri Anwar Ibrahim v Mohamad Hanafiah bin Hj Zakaria & Ors* [2010] 2 MLJ 271 (HC) at p 283, it was held that:

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> [21] Further, I agree with senior federal counsel that the civil court exercising its administrative law function is not the proper forum to review a written statement issued for the purpose of a trial pending in the criminal court. It is an abuse of process to seek the aid of the civil court to review the written statement and to direct the first respondent to issue a new written statement. The civil court has no jurisdiction to review any act of the public prosecutor undertaken in the discharge of his obligations under the CPC. Any challenge ought to be raised in the criminal court exercising its criminal jurisdiction (*Government of Malaysia v Lim Kit Siang; United Engineers (M) Bhd v Lim Kit Siang* [1988] 2 MLJ 12). To allow this application would mean the civil court interfering with the jurisdiction of the criminal court (*Tan Sri Eric Chia v Attorney General* [2005] 4 MLJ 433).

[43] The respondents averred that the plethora of cases decided by the appellate and apex courts have consistently held that the second respondent's prosecutorial power under the Federal Constitution is non-justiciable for a myriad of reasons including policy consideration and separation of powers. There is no valid reason for this court to depart from this principle. The applicant has not given this court any reason to justify such a move.

[44] The respondents also urged this court to decline the applicant's invitation to mould him a new relief by the charges brought against him.

FINDINGS OF COURT

The law in relation to judicial review

[45] It is trite law that in judicial review application, the decision of inferior tribunal may be reviewed by the court on the grounds of 'illegality', 'irrationality' and 'procedural impropriety' which permits this court to scrutinise the decision not only for process but also for substance of the case as illustrated by the Federal Court in *R Rama Chandran v Industrial Court Malaysia & Anor* [1997] 1 MLJ 145 at pp 186–187; [1997] 1 CLJ 147 at pp 171–172 (FC) Edgar Joseph Jr FCJ in his judgment had said this:

> In allowing the appeal on the grounds aforesaid, it is self-evident that we had reviewed the award of the Industrial Court for substance as well as process. First of all, I should like to examine the legal basis upon which we had done so, and it is this topic which I shall now address, before I turn to consider the question of whether we have power to grant remedies by way of consequential orders, referred to in the second paragraph of this judgment.
>
> It is often said that judicial review is concerned not with the decision but the decision-making process. (See, eg *Chief Constable of North Wales v Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the Courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which

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A he has been subjected. Put differently, in the words of Lord

> *Diplock in Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of *procedural impropriety.*

B But, Lord Diplock's other grounds for impugning a decision susceptible to judicial review make it abundantly clear *that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the Courts to scrutinise such decisions not only for process, but also for substance.* (Emphasis added.)

C **[46]** The court also refers to the case of *Menteri Dalam Negeri & Ors v Titular Roman Catholic Archbishop of Kuala Lumpur* [2013] 6 MLJ 468; [2013] 8 CLJ 890 wherein the Court of Appeal held that (which has been affirmed by the Federal Court):

> [69] ... the decision maker must consider matters required to be considered and D disregard irrelevant collateral matters and the decision must be within the perimeters of the statutory powers given to the decision maker on the matter. It goes without saying therefore if the decision is made in compliance with these principles and requirements such decision cannot be said to be unreasonable and is unassailable. *But if the exercise of the discretion is made in contravention of any law or* E *that the decision maker has taken into consideration irrelevant matters or that the decision maker has acted in excess of powers conferred upon him in respect of the matter which he decided or that the decision militates against the object of the statute, then the court can intervene and strike down the decision as unreasonable and unlawful.* (Emphasis added.)

F

[47] There are two main issues that need to be dealt with by this court in the present case namely issues on the applicant's immunity and whether the decision of the second respondent is amendable to judicial review. Before elaborating further, it is essential to refer to the legal G documentations/statutes/regulations concerning this present case.

[48] Firstly, the 2013 host country agreement entered between the fourth respondent and AALCO for the establishment of KLRCA. Bear in mind that this 2013 host agreement was entered by the abovenamed parties on 26 March H 2013. Subsequently, on 7 February 2018, both parties entered into a supplementary agreement in which, among others, renamed KLRCA as AIAC.

[49] It is pertinent to note that with regard to the immunity clause, the 2013 host country agreement had specifically made a reference to the Act 485. In I 2011, ie two years before the signing of the 2013 host country agreement took place, Act 485 has been amended to insert certain clauses which came into operation on 16 September 2011.

[50] Act 485, amongst others, empowers the Minister to make regulation

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pertaining to privileges and immunities of certain international organisations and persons. Hence, the 1996 Regulations has been enacted. The said 1996 Regulations was amended in 2011 to insert certain clauses pertaining to immunity. A reference also has been made to Act 636 in determining the extension of the applicant's immunity against the alleged commission of crime charged against him.

Immunity

[51] It is undisputed fact that the applicant has been appointed as the Director of the Centre from 1 March 2010 until his resignation on 21 November 2018. The crux of the applicant's application here hinges on the applicant's immunity pursuant to Second Schedule of Act 485 which mentioned the immunities conferred to the high officer and former high officer.

[52] The applicant contended that he is entitled to claim immunity against the charges preferred against him being the fact that he was the Director of the Centre ie a high officer of an international organisation as defined under the said 2011 Regulations. As such, pursuant to the 2013 host country agreement and the said 2011 Regulations, the immunity conferred under Second Schedule of Act 485 is applicable to him.

[53] However, the real question to be decided by the court is what type of immunity that should be conferred to the applicant and to what extent such immunities are applicable. This is because Act 485 has specifically differentiated the immunities given to the high officer and former high officer in which the former enjoy the same immunities as given to the diplomatic agents whilst the latter enjoy immunities from suit and other legal process in respect of acts and things done in his capacity as such an officer.

[54] The applicant claimed that since the commission of the alleged offences took place while he is still the High Officer of the Centre, then he should be entitled to immunity as accorded to the diplomatic agent. On the other hand, the respondents averred that the applicant only entitled for immunity given to the former high officer due to the fact that he was charged after he tendered his resignation and no longer hold the post as the Director of the Centre.

[55] To answer this question, the court must take a closer look at the 2013 host country agreement as well as the relevant statutes and regulations. Under article III para 6 of the 2013 host country agreement, it is clearly stated as follows:

> 6. The Director of the Centre, *if he is a citizen of Malaysia, shall be entitled to such*

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A *privileges and immunities as determined by the Minister pursuant to Act 485.* (Emphasis added.)

[56] It is to be noted that under s 4(7) of Act 485 it is expressly stated that:

B 7. A high officer or an officer of an international organization who is a Malaysian citizen is not entitled under this section to any of the privileges or immunities in the Second and Fourth Schedules respectively, except in respect of acts and things done in his capacity as such an officer.

C [57] Second Schedule of Act 485 spells out the immunities conferred to the high officer and former high officer as follows:

Second Schedule [Section 4]

Part I

D PRIVILEGES AND IMMUNITIES

OF HIGH OFFICER OF

INTERNATIONAL

ORGANIZATION

E 'The like privileges and immunities (including privileges and immunities in respect of a spouse and children under the age of twenty-one years) as are accorded to a diplomatic agent.'

Part II

F IMMUNITIES OF FORMER HIGH OFFICER OF INTERNATIONAL ORGANIZATION

Immunity from suit and from other legal process in respect of acts and things done in his capacity as such an officer.

G

[58] Regulation 3A of the Regulations 2011 provides as follows:

3A(1) A High Officer, if he is not a citizen of Malaysia shall have the privileges and immunities as specified in Part 1 of the Second Schedule to the Act.

H (2) *A High Officer, if he is a citizen of Malaysia, shall only be entitled to the privileges and immunities in respect of acts and things done in his capacity as the High Officer.*

(3) *A former High Officer shall have the immunities specified in Part II of the Second Schedule to the Act.* (Emphasis added.)

I [59] As mentioned earlier, the signing of the 2013 host country agreement took place after Act 485 has been amended in 2011 which includes amongst others, the insertion of s 4(7) above. Further, Regulation 3A of the 2011 Regulations must be read together with the provisions under the parent Act ie Act 485. Thus, in order to determine whether the applicant is entitled for

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immunity or otherwise, the provisions under the 2013 host country agreement and the 2011 Regulations should be read together with Act 485, in particular s 4(7) of Act 485. From the plain reading of s 4(7) of Act 485, generally there is no immunity to be accorded to the high officer or officer of an international organisation if he is a citizen of Malaysia except in respect of 'acts and things done in his capacity as such an officer'.

[60] As such, since the applicant is a Malaysian citizen and both parties ie the fourth respondent and AALCO agreed to be bound by the provisions in the 2013 host country agreement which is subjected to Act 485 (in particular s 4(7)), therefore the privileges or immunities in the Second and Fourth Schedules are still applicable provided the acts or things done was in his capacity as such an officer.

[61] It is undisputed fact that the applicant was a director of AIAC at the time he was arrested (ie 20 November 2018) and thereafter was forced to resign as director on 21 November 2018. The applicant then became a former high officer after his resignation. Pursuant to s 4(1)(b)(ii) of Act 485, the applicant still enjoy immunities as provided under Part II of the Schedule.

[62] In addition to that, the applicant in his amended statement only sought for a declaration as a former high officer and thus parties are bound by their pleadings. Further, the applicant contended that in the event that he is not be accorded with the immunity as a high officer, but definitely he is entitled for immunity accorded as a former high officer as provided under Part II, Second Schedule of Act 485. The respondents on the other hand contended that the immunity accorded to the former high officer is not as the same as what has been accorded to the high officer ie a qualified immunities which does not exempt him from criminal prosecution.

[63] The reasoning behind this is because the scope and extent of immunities given to the high officer is the same as enjoy by the diplomatic agent. Under s 2 of Act 485, diplomatic agent has been defined as '... assigned to it by the Diplomatic Privileges (Vienna Convention) Act 1966 (Act 636)'.

[64] Article 31 of Act 636 provides immunities for diplomatic agent as follows:

> Article 31
>
> 11. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of —
>
> (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the

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sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

B

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

21. A diplomatic agent is not obliged to give evidence as a witness.

C

31. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a),(b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

D

41. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State. On the contrary, the immunities given to the former High Officer only to the extent that he is immune from suit or other legal process.

E

[65] On the contrary, the immunities given to the former high officer only to the extent that he is immune from suit or other legal process. On this point, the applicant argued that other legal process also includes criminal jurisdiction/process. To rebut the applicant's contention, the respondents invited the court to look into the Hansard of the Parliament during the second reading of Act 485 and submitted that such immunity does not give him the exemption from criminal jurisdiction.

F

[66] After careful reading of the Hansard with caution that it is only for guidance and not binding to the court, the intention of the Parliament in enacting Act 485 is not to give absolute immunity to all officers or staff of an international organisation except for the high officer only. This can be taken from the reply by the Deputy Minister as follows:

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Ingin saya tekankan di sini bahawasanya, ini pun dibangkitkan oleh Ahli Yang Berhormat dari Parit Sulong tentang masalah-masalah pengintipan (spying), subversif dan sebagainya. Walaupun kita memberi keistimewaan dan kekebalan kepada orang yang tertentu tetapi tidaklah pada keseluruhannya ataupun seluas-luasnya seperti yang dianggapkan oleh Ahli Yang Berhormat yang berkenaan. Contohnya, setiap keistimewaan dan kekebalan itu kita buat mengikut perjanjian dan hubungan kita dengan negara yang berkenaan ataupun agensi-agensi antarabangsa yang berkenaan. Walaupun disenaraikan dalam Rang Undang-undang ini berbagai-bagai keistimewaan dan kekebalan tetapi tidak semuanya diberi secara umum begitu sahaja tetapi mengikut negara yang tertentu ataupun agensi yang tertentu. Kita hanya reciprocate apa yang kita dapat oleh negara yang berkenaan, tidak kurang dan tidak lebih daripada itu, *malah biasanya pegawai yang tertinggi sahaja yang mendapat kebanyakan keistimewaan dan*

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kekebalan yang tertentu. Pegawai-pegawai atau kakitangan yang lain tidak mendapat keseluruhannya keistimewaan dan kekebalan kerana mereka tertakluk kepada undang-undang jenayah negara kita. (Emphasis added.)

[67] What can be implied from the above is that, generally, only the high officer will enjoy most of the immunities. That is why the court believed that the wording in Part I and Part II of the Second Schedule of Act 485 has been crafted and distinguished from one another. This shows that the Parliament intended to differentiate the immunities enjoy by the high officer and former high officer. The Parliament even had separated the Second Schedule of Act 485 into two parts namely Part I which deals with immunities accorded to high officer and Part II which deals with immunities accorded to former high officer. For the court not to appreciate the distinctive approach taken by the Parliament to distinguish the two, it will disregard the true intention of the Parliament.

[68] The immunity that guaranteed by Part II of the Second Schedule Act 485 is that the applicant is immune from suit and other legal process in respect of acts and things done in his capacity as such an officer. The court refers to *Stroud's JUDICIAL DICTIONARY of Word and Phrases* (5th Ed, Vol 4) by London Sweet & Maxwell Limited 1986 the word 'process' means:

> *PROCESS (2)*— 'Process' is the doing of something in a proceeding in a civil or criminal court, and that which may be done without the aid of a court is not a 'process'.

[69] In the case of *Islamic Financial Services Board*, the Islamic Financial Services Board contended that it was an international organisation, vested with privileges and immunities under s 7 of the Islamic Financial Services Board Act 2002 ('the IFSB Act'), reg 2 and the Schedule to the IFSB Act which, inter alia, provided 'immunity from suit and other legal process'.

[70] In the same case, Ariff Yusof J (as His Lordship then was) held (at paras 40–44) that the words 'legal process' are couched in a very wide terms, to include proceedings in a proper court of law, but they do not exclude other forms of lawful process. Accordingly, proceedings before the Industrial Court were held to be caught by the immunity and the Industrial Court's award was quashed.

[71] I agree with the applicant's learned counsel submission that legal process means civil and criminal process. I am of the view that if Parliament has intended to exclude the immunity from criminal process then it has to be specifically spelled out in Part II of the Second Schedule of Act 485. It is also my considered view that the limits of immunities provided for a former high officer is very clear that he is immune from suit and other legal process in respect of

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A acts and things done in his capacity as such an officer unlike a high officer who enjoy privileges and immunities as are accorded to a diplomatic agent.

ISSUE OF WAIVER OF IMMUNITY

B [72] The question is whether the immunity can be waived and if it is so who then has the power to waive such immunity. Coming back to the 2013 host country agreement itself, there is nowhere in the agreement provides an avenue for any party to request for a waiver of immunity. According to article IX of the same, any difference or dispute between parties shall be settled amicably C through mutual consultation and/or negotiations between parties without reference to any third party or international tribunal. Furthermore, article VIII gives each party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole D or in part, the implementation of this agreement which suspension shall take effect immediately after notification has been given to the party through diplomatic channels.

[73] In the present case, the court is of the view that the immunity was never E cancelled or challenged, thus the immunity conferred on the applicant remains. The issue of waiver of privileges and immunities is covered by s 8A of Act 485. It provides as follows;

8A Proper use of privileges and immunities

F (1) The privileges and immunities conferred under this Act are granted in the interests of the international organization and overseas organization and not for the personal benefit of the individuals.

(2) The appropriate authority of the respective international organization and overseas organization shall have the right and the duty to waive the privileges and G immunities of any of its representatives, officials or experts in any case where, in its opinion, such privileges and immunities would impede the course of justice and could be waived without prejudice to the interest of the organization and overseas organization.

H [74] This court is of the view that the applicant was the representatives of the international organisation under the auspices of the AALCO. As can be seen in article IV(1) of the 2013 host country agreement, the centre shall be administered by a Director who shall be a national of Malaysia and shall be appointed by the host government in consultation with the Secretary-General I of the Organisation.

[75] Section 8A(2) provides the power to waive the privileges and immunities lies with the authority of the respective international organisation and overseas organisation that is AALCO. The respondents through the first

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respondent had already sent a letter to AALCO requesting for a waiver of the applicant's immunity and the request was rejected by AALCO's Secretary General by his letter dated 22 March 2019. AALCO's decision was not to waive the said immunity. The court refers to paras 51–52 of the said letter and stated as follows:

> AALCO's Position
>
> 51. In the premises, and for the time being, I have no other options but to respectfully refuse the agreement of AALCO to waive Datuk Sundra Rajoo s/o Nadarajah's immunities as the former High Officer of AIAC under Article III(6) of the Host Country Agreement from criminal jurisdiction of Malaysia.
>
> 52. All AALCO's rights, privileges and immunities are reserved.

(Applicant's fourth affidavit, encl 14, exh NS1, p 10, paras 51–52)

[76] This court agreed with the applicant's submission that the respondents recognise the privileges and immunities of the applicant. The respondents took the position that before the applicant's privileges and immunities can be removed, they would have to be waived by AALCO and AALCO has decided not to waive the applicant's immunity. In such circumstances, the applicant's immunity provided under Second Schedule of Act 485 is still maintained till to date.

[77] On this issue, the court is of the considered opinion that it is trite law that parties are bound by the terms of the agreement that has been entered mutually. In other word, all the terms/articles in the said 2013 host country agreement must be honoured by the parties including the fourth respondent. It is expressly stated in article I para 3 of the 2013 host country agreement that the host government shall respect the independent functioning of the centre whereas article IX of the same agreement also clearly stated that any dispute between the parties shall be settled amicably through mutual consultation and/or negotiations between the parties, without reference to any third party or international tribunal.

[78] The 2013 host country agreement also provide specific clause of immunities conferred to the high officer which must be read together with Act 485. With regard to the applicant's immunity as far as s 4(7) of Act 485 is concerned, there is evidence from AALCO through its letter which condoned that the acts and things done which formed the charges levelled against the applicant were in fact done in the applicant's capacity as such an officer. The court cannot simply disregard such evidence as it is from the organisation which has the sole power to waive the immunity given to the applicant under the 2013 host country agreement.

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A [79] Another point raised by the respondents is that the applicant cannot claimed the immunities conferred upon him under Act 485 due to the fact that the alleged acts and things in question was done for his personal benefit and not for the benefit of the centre as provided under s 8A of Act 485. To rebut this proposition taken by the respondents, the applicant argued that he never took B the profit from the sales of his book which were purchased by the centre and had in fact refund the same to the centre. Unfortunately, this evidence was never rebutted by the respondents.

C ISSUE WHETHER THE PUBLIC PROSECUTOR'S DECISION IS AMENDABLE TO JUDICIAL REVIEW

[80] Article 145(3) of the Federal Constitution gives unfettered discretion to the second respondent to institute, conduct or discontinue any proceedings for D criminal offence. Article 145(3) expressly provides as follow:

> (3) The Attorney General shall have power, *exercisable at his discretion*, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial. (Emphasis added.)

E **[81]** The Singapore Court of Appeal in *Tan Seet Eng v Attorney General and another matter* [2016] 1 SLR 779, held:

> [2] This is not new law. The underlying principle was aptly stated by Wee Chong Jin CJ almost three decades ago in *Chng Suan Tze v Minister for Home Affairs* [1988] 2 F SLR(R) 525 ('Chng Suan Tze') at [86]:
>
>> [T]he notion of a subjective or unfettered discretion is contrary to the rule of law. *All power has legal limits and the rule of law demands that the courts should be able to examine the exercise of discretionary power. If therefore the Executive in exercising its discretion under an Act of Parliament has exceeded the four corners within which* G *Parliament has decided it can exercise its discretion, such an exercise of discretion would be ultra vires the Act and a court of law must be able to hold it to be so.* ... It must be clear therefore that the boundaries of the decision maker's jurisdiction as conferred by an Act of Parliament is a question solely for the courts to decide. ... Further, it is ... no answer to refer to accountability to Parliament as an alternative safeguard. ... (Emphasis added.)

H

[82] Further, the court refers to the recent Federal Court's decision in the case of *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* I where the Federal Court had referred to and applied several authorities from various jurisdictions which shows that the public prosecutor's discretion to bring prosecutions is not something that is outside the scope of judicial review. The Federal Court held that:

> (1) *The AG's power* to give consent or otherwise under Section 9(1) of the

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Government Proceedings Act 1956 *was not absolute and was subject to legal limits. Unfettered discretion was contradictory to the rule of law.* A

(2) ...

(3) *The court could not agree with the contention that the orthodox common law immunity from judicial review of the AG's prerogative powers* laid down in B *Gouriet v Union of Post Office Workers* [1978] AC 435 was still good law in view of the House of Lord's decision in Council of *Civil Servoce Unions v Minister for Civil Service* [1985] AC 374. *This latter landmark decision moved the courts from a position of deciding whether prerogative power existed to decide if they were being carried out lawfully.* The judgment of Gouriet's C case was a reflection of past judicial refusal to enquire into the way in which a prerogative power has been exercised. *With the progressive development of judicial review, the courts have been more willing to review the exercise of discretionary power, whether derived from statute or a prerogative power.* The present position was that the AG was no longer regarded as the D sole guardian of what was public interest, which was a central principle in the decision in Gouriet's case. (Emphasis added.)

[83] The Federal Court in *Chin Chee Kow*'s case also referred to a Privy Council case of *Mohit v The Director of Public Prosecutions of Mauritius* [2006] E 1 WLR 3343 where the Privy Council held at p 3349 that:

> There is no doubt that the Director's decision to institute and undertake or take over criminal proceedings against any suspect, to discontinue any such proceedings in any manners is an administrative decision and such could be liable to be reviewed by the courts. F

And at p 3350:

> Recognition of a right to challenge the DPP's decision does not involve the courts in substituting their own administrative decision for his: where grounds for G challenging the DPP's decision are made out, it involves the courts in requiring the decision to be made in (as the case may be) a lawful, proper or rational manner.

And finally, at p 3353:

H

> *If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. It is unnecessary to discuss what exceptions there may be to this rule,* which now represents the ordinary if not the invariable rule. Thus the Board should approach the present issue on the assumption that the powers conferred on the DPP by section 72(3) of the Constitution are subject to judicial review, whatever the standard of review may be, I unless there is some compelling reason to infer that such an assumption is excluded. What compelling reason is there in a case such as this? (Emphasis added.)

[84] The Federal Court also referred the case of *Semenyih Jaya Sdn Bhd v*

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A *Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 (FC) for the established principles that the power of judicial review is essential to the constitutional role of the courts, and inherent in the basic structure of the Federal Constitution. Every legal power must have legal limits and that every discretion cannot be free from legal restraint; where it is wrongly exercised, it B becomes the duty of the courts to intervene. When government departments and public authorities have such great powers and influence, this is a most important safeguard so that the courts can see that these great powers and influence are exercised in accordance with law. Public bodies must be compelled to observe the law. There is no exception to the second respondent C as public officer must act the same.

[85] This court agree with the applicant's counsel submission that the real basis of the decision in *Chin Chee Kow*'s case is that a discretionary power vested in the second respondent, whether by way of statute or prerogative is subject to D legal limits. The second respondent as a public officer must act according to law.

[86] Based on the authorities above and the legal principles highlighted, this E court is of the opinion that the second respondent's discretionary power to prefer charges against the applicant under the criminal jurisdiction of the state must be subject to the privileges and immunities conferred upon and vested with the applicant in the various domestic laws and regulations referred to above.

F

WHETHER THIS COURT IS THE RIGHT FORUM FOR JUDICIAL REVIEW

[87] It is the submission of the respondents that the question of whether the G applicant is immune or not, can only be determined when the evidence in support of the criminal charges is adduced in the sessions court. The court refers to O 53 r 2(4) of the Rules of Court 2012 provides that:

> Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the H application.

[88] The applicant averred that despite the applicant being arrested and investigated in November, and despite the application for judicial review being filed in early March, the respondents only began taking steps to bring charges I against the applicant late on Friday evening and over the weekend before the leave application was due to be heard on Tuesday morning. No explanation had been given as to why the second respondent and the third respondent could not wait until the AALCO's Secretary General had responded to their letters seeking waiver, nor why they could not await the determination of the judicial

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review application. As rightly pointed out by the learned applicant's counsel that this judicial review is in respect of not only the decision of the public prosecutor, but also 'things done in the exercise of a public function' by the first respondent, the third respondent and the second respondent.

[89] Further in the *Islamic Financial Services Board*'s case, the court held at para 16, p 181 that:

> [16] An issue on jurisdiction of this nature, namely immunity from suit of from legal process, is a question of law which properly speaking should be taken at the outset and without needing to hear the merits of any particular application or suit. Logically, if there is a blanket immunity for any tribunal to even proceed to hear, that tribunal should decline this preliminary issue without proceeding any further on the merits.

The *Islamic Financial Services Board*'s case hold that the question of immunity was a legal question to be determined that did not require a trial.

[90] The applicant in this case alleged that the respondents are acting in excess of their jurisdiction and this court is thus being asked to exercise its supervisory jurisdiction, acting as a constitutional body, to review the actions of the Executive branch of government. Based on the facts of the case, this court is of the considered view that the applicant has come to the right court to determine if the Executive branch of government has acted beyond its powers.

CONCLUSION

[91] After having considered the applicant's application and submissions of the parties, it is the finding of this court that:

(a) the applicant was a director of AIAC and now a former High Officer of the AIAC;

(b) the applicant is conferred by law 'immunity from suit and from other legal process' in respect of acts and things done in his capacity as such officer as provided under Part II of the Second Schedule of Act 485;

(c) other legal process means civil and criminal process;

(d) the second respondent's decision is amendable to judicial review;

(e) the second respondent's discretionary power to prefer charges against the applicant under the criminal jurisdiction of the state must be subject to the privileges and immunities conferred upon and vested with the applicant in the various domestic laws and regulations; and

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A (f) the applicant is immune from any legal process and the criminal action taken against him by the respondents is contravene with Act 485 and is therefore unlawful, irrational and void and thus should be quashed.

[92] Accordingly, the court allowed the applicant's application for judicial B review and ordered no costs.

Application allowed.

Reported by Ahmad Ismail Illman Mohd Razali

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LAMPIRAN E / APPENDIX E

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JABATAN PEGUAM NEGARA, MALAYSIA (AGC)
ATTORNEY GENERAL'S CHAMBERS, MALAYSIA (AGC)
No. 45, Persiaran Perdana
Presint 4
62100 PUTRAJAYA
MALAYSIA

Tel: 03-8872 2000
Faks (Fax): 03-8890 5670
Laman Web (Web): www.agc.gov.my

MEDIA RELEASE

Asian International Arbitration Centre (Malaysia) ("AIAC")

I am pleased to announce the appointment with immediate effect of Mr. Vinayak Pradhan as the Acting Director of the AIAC following the resignation of Datuk Professor Sundra Rajoo, whom I wish to thank for his 9-year leadership of AIAC.

Vinayak Pradhan is the doyen of arbitration in Malaysia and recognised the world over for his ability, experience and leadership in the field of arbitration.

As past President of the Chartered Institute of Arbitrators, United Kingdom, his international credentials in the arbitration community are undoubtedly world class. Paying tribute to Pradhan at his award ceremony as "Malaysian Arbitrator of the Year 2016", the Honourable Chief Justice Sundaresh Menon of Singapore, described him as an "*outstanding arbitrator*", "*one of the greatest lawyers from our part of the world*", and as "*among the very finest*" of arbitrators that he had the opportunity of appearing before. Pradhan's achievements include appointments as:

- Commissioner with the United Nations Compensation Commission
- Member of Permanent Court of Arbitrators, the Hague

- Member of the Court of Arbitration for Sport, Lausanne
- Vice Chair of the ICC Commission on Arbitration
- Fellow of the International Academy of Construction Lawyers
- Member of the Advisory Board of AIAC

Pradhan was called to the Malaysian Bar in 1974, having secured his LL.B. from the University of Singapore. He is a Consultant to Skrine.

Prof. Dr. Kennedy Gastorn, Secretary General of the Asian-African Legal Consultative Organization (AALCO), which is also involved in the activities of AIAC, supports our decisions.

Having personally known Pradhan for decades, I can vouch for his unimpeachable integrity which will enhance the standing of AIAC in the domestic and international arenas. I am confident he will lead AIAC to lofty heights.

Tommy Thomas
Attorney General
21st November 2018

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LAMPIRAN F / APPENDIX F

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AG: Vinayak Pradhan appointed acting director of Asian International Arbitration Centre

By JO TIMBUONG

NATION Premium

Wednesday, 21 Nov 2018 12:13 PM MYT

PETALING JAYA: Vinayak Pradhan (*pic*) has been appointed the acting director of the Asian International Arbitration Centre (AIAC) following the resignation of Datuk Prof Dr Sundra Rajoo.

In a statement on Wednesday (Nov 21), Attorney General Tommy Thomas said he has known Vinayak for decades and can vouch for his integrity and will enhance the standing of the AIAC in the domestic and international arena.

"I am confident he will lead AIAC to lofty heights," he said.

He said Vinayak, who was called to the Malaysian Bar in 1974 after earning his Bachelor of Laws degree from the University of Singapore, is recognised worldwide for his experience in the arbitration field.

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He also thanked Prof Sundra for leading the AIAC for the past nine years.

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Prof Sundra resigned from his post as the Malaysian Anti-Corruption Commission (MACC) investigates him for alleged corrupt practices.

His lawyer, Philip Koh, earlier told The Malaysian Insight that Prof Sundra did so to protect the institution's good name.

The alleged corrupt practices came to light after the MACC received an anonymous letter that claimed that Prof Sundra had used government funds to obtain favours from past and present ministers to extend his contract.

It is learned that the letter was also addressed to other top government officials including Attorney General Tommy Thomas, Inspector-General of Police Tan Sri Mohamad Fuzi Harun, Foreign Minister Datuk Saifuddin Abdullah and Malaysian Bar president George Varughese.

The portal also reported that MACC had applied for Prof Sundra to be remanded for seven days but the Putrajaya Magistrate's Court rejected this he was a senior officer protected under the International Organisations (Privileges and Immunities) Act 1992.

Prof Sundra was released without any condition.

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LAMPIRAN G / APPENDIX G

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IN THE HIGH COURT OF MALAYA
WILAYAH PERSEKUTUAN, KUALA LUMPUR, MALAYSIA
SUIT NO. WA-21NCvC-187-10/2021

BETWEEN

SUNDRA RAJOO A/L NADARAJAH ... PLAINTIFF

AND

THOMAS THOMAS @ MOHAN
A/L K. THOMAS & OTHERS ... DEFENDANTS

AFFIDAVIT

I, **Professor Dr. Kennedy Gastorn (Passport No. AD008146)**, a citizen of United Republic of Tanzania, of full age and capacity, in the occupation as the Secretary-General of African-Asian Legal Consultative Organisation ("**AALCO**"), having place of office at 29-C, Rizal Marg, Diplomatic Enclave, Chanakyapuri, New Delhi 110021, India, do hereby sincerely and solemnly affirm and say as follows:-

1. I am the Secretary General of AALCO. The facts deposed to herein are within my personal knowledge and/or derived from my records which I have full and unrestricted access, save and except where stated to the contrary, in which case they are true to the best of my information and belief.

2. I have been approached by Messrs. Cheok Ng Lee Law Chambers of Ara Damansara, Selangor, Malaysia ("**Plaintiff's Solicitors**") to affirm on the matters herein below. I have been extended a copy of the affidavit in support by the first Defendant dated 5.11.2021 ("**D1's AIS**") and a copy of the the Plaintiff's affidavit in reply ("**P's AIR**")

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dated 3.12.2021. Now produced and shown to me marked as "**K-1**" is a copy of the D1's AIS and the P's AIR without exhibits.

3. I state that by affirming this affidavit shall not in any way be taken as waiver of any immunities and privileges that AALCO and myself entitled to enjoy and shall not in any way be taken as submission to the jurisdiction of the High Court of Malaya or any other courts in Malaysia.

4. I refer to paragraph 32 of D1's AIS:

4.1 The first Defendant did telephone me to consult on the appointment of the late Vinayak Pradhan as the Acting Director of Asian International Arbitraiton Centre ("**AIAC**").

4.2 However, I was shocked to learn from the first Defendant that the Plaintiff was arrested and tendered his resignation.

4.3 I was never consulted on the Plaintiff's arrest and his forced resignation prior to the said telephone conversation with the first Defendant. I subsequently learned of the Plaintiff's circumstances and the manner he was forced to resign.

4.4 I state that the consultation for the appointment of Mr. Vinayak Pradhan as Acting Director of the AIAC was extraordinary and unexpected. I was verbally consulted in the appointment of Mr. Vinayak Pradhan on 21.11.2018 instead of by way of correspondences.

4.5 I state the historical precedent of consultation in the appointment of a Director of AIAC is by way of correspondences.

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Now produced and shown to me marked as ***K-2*** is a copy of the consultation of Professor Datuk Sundra Rajoo as the Director of AIAC by the Government of Malaysia on 7.1.2013 to the then Secretary-General of AALCO.

4.6 I state that I accepted the manner and form of consultation on 21.11.2018 and the appointment of Mr. Vinayak Pradhan as Acting Director as an emergency and temporary stop-gap measure to steer transition of AIAC. The consultation was neither for appointing nor confirming Mr. Vinayak Pradhan as the Director. It was limited for purposes of temporary appointment.

4.7 It has also come to my attention in early November 2019 that the extraordinary manner of the consultation and appointment of Mr. Vinayak Pradhan as Acting Director arises from the forced resignation of the then Director of AIAC, Professor Datuk Sundra Rajoo s/o Nadarajah.

4.8 The extraordinary nature of Mr. Vinayak's consultation with AALCO as Acting Director of AIAC, the failure to consult with AALCO on Mr. Vinayak's purported Directorship of AIAC and the forced resignation of Professor Datuk Sundra Rajoo was reiterated in my letter to Hon Datuk Liew Vui Keong on 5.11.2019.

Now produced and shown to me marked as ***K-3*** is a copy of my letter to Hon. Datuk Liew Vui Keong on 5.11.2019.

4.9 I state that I have no choice as the situation was presented to me by the first Defendant. Should I have been briefed of the manner and circumstances of the Plaintiff's arrest and forced resignation, I would have decided differently.

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5. I refer to paragraph 36 of D1's AIS.

5.1 A few months after the late Vinayak Pradhan was appointed as the Acting Director of AIAC, he had vacated the position as Acting Director on 8.5.2019 and purports to be the Director of AIAC.

5.2 By virtue of my letter dated 20.11.2019 in exhibit **K-4**, I confirmed that the late Mr. Vinayak Pradhan's position as the Acting Director of AIAC was terminated as of 8.5.2019.

5.3 I state that to date of this affidavit, AALCO was never consulted by the Government of Malaysia for the appointment of Mr. Vinayak Pradhan as the Director or the re-appointment as the Acting Director of AIAC after my letter dated 20.11.2019.

5.4 I state that there are no replies from any of the parties in this suit to my letter dated 20.11.2019.

5.5 I confirm that AALCO recognises Mr. Vinayak Pradhan is the Acting Director of AIAC from 21.11.2018 until 7.5.2019 only.

5.6 I state that Mr. Vinayak Pradhan is no longer recognised as the Acting Director of AIAC as of 8.5.2019 by AALCO.

5.7 I state that Mr. Vinayak Pradhan was never a Director of AIAC. On 10.7.2019, by way of letter on behalf of AALCO [**see exhibit "K-5"**], I have asked him to stop using the word "Director" in all his correspondences to AALCO and to the public at large.

5.8 I disagree that I was satisfied or happy with the late Vinayak Pradhan's leadership by virtue of my letters in exhibits **K-3** to **K-5.**

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6. I refer to paragraph 59 of D1's AIS.

6.1 I state that the first Defendant wrote to me on 25.2.2019 to seek AALCO's confirmation that the Plaintiff's "*immunity in respect of criminal charges relating to the misuse of AIAC's funds is waived by AALCO*" [**see exhibit "K-6"**].

6.2 The first Defendant had also intimated to me by way of an email dated 12.3.2019 that the late Vinayak Pradhan had agreed to waive the Plaintiff's immunity on 25.2.2019 by way of an email on 12.3.2019 [**see exhibit "K-7"**]. Further, the first Defendant states in the said email that he "*takes the position that immunity, having been waived by the relevant authority, means criminal proceedings may now be taken against Sundra Rajoo under the ordinary criminal laws of this country in our ordinary courts as they apply to all citizens and residents of Malaysia*", to which, I have denied via my emails dated 13.3.2019 [**see also exhibit "K-7"**].

6.3 I also state that AALCO had given a reasoned rejection on waiving the Plaintiff's immunity on 22.3.2019 [**see exhibit "K-8"**]. The same letter was copied to the first Defendant's office.

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6.4 Accordingly, paragraph 36 and 59 of D1's AIS are denied. The first Defendant was fully aware and has knowledge of the attempts to waive the Plaintiff's immunity as well as AALCO's position on the investigations by MACC considering exhibits **K-4 to K-8**.

To an affidavit by a deponent]
Prof. Dr. Kennedy Gastorn]
(Passport No. AD008146)]
Sworn on the 14th day]
Of December 2021 at New Delhi, India
Translation not needed]

Before me,

....
Notary Public

ATTESTED
NOTARY GOVT. OF INDIA
NEW DELHI
14 DEC 2021

VALID OUTSIDE INDIA

This Affidavit is filed by Messrs Cheok Ng Lee Law Chambers, solicitors for the Plaintiff, who has an address for service at Common Ground, Unit D-03, F01-08, 1st Floor, Citta Mall, Ara Damansara, 47301 PJ, Selangor (*This is a virtual office. Please read our notice at www.cnl.partners/n with this document*)
[Ref. 2021.111 Tel. +603 8084 1969]

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LAMPIRAN H / APPENDIX H

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Shanmuga K

From: Khong Hui Li <khong.hl@agc.gov.my>
Sent: Friday, 23 November, 2018 12:17 PM
To: Danaindran Rajendran
Cc: Vinayak Pradhan; Smrithi Ramesh
Subject: Standing Order on Access to AIAC - Professor Datuk Sundra Rajoo

Dear Mr. Danaindran,

In the light of the ongoing investigations by MACC into Datuk Sundra Rajoo, and his resignation as AIAC Director, I am writing to confirm a standing order from the Attorney General, that Sundra Rajoo is prohibited from access to AIAC, including physical and digital access to documents, archives, emails and the secretariat.

An exception to this prohibition is made for all arbitration hearings that have scheduled prior to Sundra Rajoo's arrest on 20th November 2018. In the interest of protecting AIAC as an institution, scheduled hearings that involve Sundra Rajoo as arbitrator may proceed as planned. However, care must be taken by AIAC to ensure that his access is limited to the confines of the hearing room and related documents therein. No document is to be removed from the hearing room upon completion of the hearing.

Since the Minister in the Prime Minister's Department (Law), Datuk VK Liew, is conflicted in this matter which fact has been personally conveyed to him by AG, the AG has taken charge and is in consultation with AALCO. As such, all matters relating to the AIAC are to be referred solely to the AG.

Thank you.

ANN KHONG HUI LI
Pegawai Khas Peguam Negara
Jabatan Peguam Negara.
Special Officer to the Attorney General
Attorney General's Chambers.
Office: 03-8872 2491 | Email: khong.hl@agc.gov.my

KERAHSIAAN MAKLUMAT KERAJAAN TANGGUNGJAWAB BERSAMA

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KANESALINGAM & CO.

Advocates & Solicitors ♦ Notary Public ♦ Trade Marks Agent
Peguambela & Peguamcara ♦ Notari Awam ♦ Ejen Cap Dagang

A. Kanesalingam
V. Jeya Kumar
K. Shanmuga

Jonas Lee Fook Khong
Noor Nasyrah Binti Samir
Dinesh Kumar

Our Ref: 2019S/SR/1013(Hy)

Your Ref:

2 April 2019

Y. BHG TUAN TOMMY THOMAS
PEGUAM NEGARA MALAYSIA
Kamar Peguam Negara,
No. 45, Persiaran Perdana,
Presint 4,
Pusat Pentadbiran Kerajaan Persekutuan,
62100 PUTRAJAYA

URGENT

Fax (8890 5609), Emel,
& Pos Berdaftar

Yang Berbahagia Tuan Peguam Negara,

PER: PENGGUNAAN PREMIS AIAC OLEH DATUK SUNDRA RAJOO NADARAJAH

Dengan izin, kami mohon meneruskan dalam Bahasa Inggeris.

1. We act for Datuk Sundra Rajoo Nadarajah of 28, Lorong Setia Bistari 3, Bukit Damansara, 50490 Kuala Lumpur.

2. As Tuan knows, our client is a chartered arbitrator and the former Director of the Asian International Arbitration Centre (Malaysia). Tuan will recall that our client is currently challenging *inter alia* your decision as Public Prosecutor to bring charges against him despite his immunity in KL High Court Judicial Review No. WA-25-108-03/2019 (now on appeal in Civil Appeal No. W-01(A)-161-03/2019).

3. We write, without prejudice to our client's contentions in the on-going Court proceedings involving him, on a related matter regarding our client being prohibited from access to the AIAC facilities to earn a livelihood as an arbitrator.

4. We have been informed by the AIAC that this prohibition is purportedly in compliance with directions by Tuan conveyed to the AIAC by your Special Officer by an email dated 23.11.2018.

   4.1. Enclosed please find an email we have received from the AIAC's Head of Operations, enclosing the email from Tuan's Special Officer dated 23.11.2018. A copy of our letter under reply by the email is also enclosed.

   4.2. By that email, we note that Tuan purported to issue a standing instruction to the AIAC to bar our client from access to the AIAC except to attend at hearings that had already been scheduled where he is an arbitrator.

   ("the said standing instruction").

5. With respect, our client disagrees with the validity of the Attorney General of Malaysia issuing instructions to the AIAC as to the manner in which it uses its facilities.

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6. Nevertheless, and without prejudice to that objection, we write to ask whether Tuan will kindly revoke the said standing instruction or, in the alternative, modify the same to allow parties to continue to book the AIAC facilities where our client is an arbitrator and to allow our client to use the AIAC facilities as any other arbitrator.

7. We write to Tuan directly as suggested by the AIAC in their email to us and because, from the emails, the AIAC appears to be acting under Tuan's direct instructions and supervision.

8. We note that the facilities of the AIAC for arbitration hearings are available and open to all for bookings, subject to availability and the payment of the appropriate fee.

9. Our client instructs us that his sole means of livelihood is as an arbitrator, where almost all his arbitrations in Malaysia are held at the AIAC premises. We are instructed that parties are ordinariliy permitted to use the AIAC facilities for arbitration hearings as a matter of course.

10. We are further instructed that our client has several other arbitrations due in the next few weeks and months, where the facilities of the AIAC were intended to be used by the parties.

11. In the circumstances, we would be grateful therefore for Tuan's immediate confirmation by return that

    11.1. the said standing instruction will be cancelled,

    11.2. parties to arbitral proceedings where our client is an arbitrator will be permitted to book the facilities of the AIAC for the purposes of the hearing and related activities, and

    11.3. our client will be entitled to use the facilities of the AIAC as any other arbitrator.

Sekian, terima kasih.

Yang benar,

[K.SHANMUGA]
Direct Email: shan@kanesalingam.com

c.c.

1. H. E. PROFESSOR KENNEDY GARSTON
   Secretary-General,
   Asian African Legal Consultative Organization,
   29C, Rizal Marg, Diplomatic Enclave,
   (Behind Jesus & Mary College),
   Chanakyapuri, New Delhi 110021,
   INDIA

   Email & Courier

2. ACTING DIRECTOR
ASIAN INTERNATIONAL ARBITRATION CENTRE (MALAYSIA)
Bangunan Sulaiman,
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur

Attention: Mr Vinayak Pradhan / Mr R Danaindran

3. Client

1842
卡内慈林甘律师楼
KANESALINGAM & CO.
Advocates & Solicitors ♦ Notary Public ♦ Trade Marks Agent
Peguambela & Peguamcara ♦ Notari Awam ♦ Ejen Cap Dagang

A. Kanesalingam
V. Jeya Kumar
K. Shanmuga

Jonas Lee Fook Khong
Noor Nasyrah Binti Samir
Dinesh Kumar

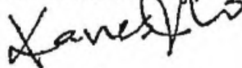
Our Ref: 2019S/SR/1013(Hy)

Your Ref:

11th April 2019

ACTING DIRECTOR
ASIAN INTERNATIONAL ARBITRATION CENTRE (MALAYSIA)
Bangunan Sulaiman,
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur

By Fax (2271 1010)
& Registered Post



FAXED
11 APR 2019
BY:...................

Dear Sir,

RE: COMPLAINT BY DATUK SUNDRA RAJOO NADARAJAH

We refer to the above matter. We also refer to our letter to you dated 1.4.2019 and the email received from your Mr Danaindran Rajendran on 1.4.2019.

We note that there is currently a standing instruction to prevent parties from booking the facilities of the AIAC if our client is the arbitrator, which our client contends is a breach of the AIAC's governing statutes, the 2013 Host Country Agreement and the terms and conditions for booking of the AIAC's facilities.

We have not received any response on our client's request for the cancellation of the standing instruction. We would be grateful therefore for your immediate confirmation by return that this standing instruction has been cancelled as our client has several other pending arbitrations due in the next few weeks and months, where the facilities of the AIAC were intended to be used by the parties.

In this regard, our client reserves all his rights.

Yours faithfully,

[KS/DK]

c.c.
1. H. E. PROFESSOR KENNEDY GARSTON
Secretary-General,
Asian African Legal Consultative Organization,
29C, Rizal Marg, Diplomatic Enclave,,
Chanakyapuri, New Delhi 110021,
INDIA

Email & Courier

2. Client

UNIT 3.3, LEVEL 3, WISMA BANDAR • 18, JALAN TUANKU ABDUL RAHMAN • 50100 KUALA LUMPUR.
T: +603.2698.9699 • F: +603.2698.9799 • E: legal@kanesalingam.com • W: www.kanesalingam.com

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73 185

卡內瑟林甘律師樓

KANESALINGAM & CO.

Advocates & Solicitors • Notary Public • Trade Marks Agent
Peguambela & Peguamcara • Notari Awam • Ejen Cap Dagang

A. Kanesalingam
V. Jeya Kumar
K. Shanmuga

Jonas Lee Fook Khong
Noor Nasyrah Binti Samir
Dinesh Kumar

Our Ref: 2019S/SR/1013(Hy)

Your Ref:

11th April 2019

Y. BHG TUAN TOMMY THOMAS
PEGUAM NEGARA MALAYSIA
Kamar Peguam Negara,
No. 45, Persiaran Perdana,
Presint 4,
Pusat Pentadbiran Kerajaan Persekutuan,
62100 PUTRAJAYA

MUSTAHAK

Faks (8890 5609)
& Pos Berdaftar

Yang Berbahagia Tuan Peguam Negara,

PER: PENGGUNAAN PREMIS AIAC OLEH DATUK SUNDRA RAJOO NADARAJAH

Dengan izin, kami pohon meneruskan dalam Bahasa Inggeris.

1. We refer to our letter to Tuan dated 2.4.2019.

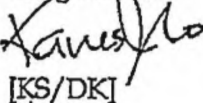
2. We note that there is currently a standing instruction from Tuan to prevent parties from booking the facilities of the AIAC if our client is the arbitrator, which our client contends is a breach of the AIAC's governing statutes, the 2013 Host Country Agreement and the terms and conditions for booking of the AIAC's facilities.

3. We have not received any response from Tuan on our client's request for the cancellation of the standing instruction. We would be grateful therefore for Tuan's immediate confirmation by return that this standing instruction has been cancelled as our client has several other pending arbitrations due in the next few weeks and months, where the facilities of the AIAC were intended to be used by the parties.

4. In this regard, our client reserves all his rights.

Sekian, terima kasih.

Yang benar,



[KS/DK]

c.c.

1. H. E. PROFESSOR KENNEDY GARSTON
Secretary-General,
Asian African Legal Consultative Organization,
29C, Rizal Marg, Diplomatic Enclave,
(Behind Jesus & Mary College),
Chanakyapuri, New Delhi 110021,
INDIA

Email & poslaju

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2. ACTING DIRECTOR
ASIAN INTERNATIONAL ARBITRATION CENTRE (MALAYSIA)
Bangunan Sulaiman,
Jalan Sultan Hishamuddin,
50000 Kuala Lumpur
Attention: Mr Vinayak Pradhan / Mr R Danaindran

By Fax/Post
(2271 1010)

3. Client

LAMPIRAN I / APPENDIX I

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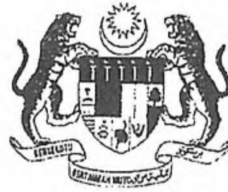
77



AKTA SURUHANJAYA PENCEGAHAN RASUAH 2009
[*AKTA 694*]

IZIN UNTUK MENDAKWA DI BAWAH SEKSYEN 58

PADA menjalankan kuasa yang diberikan di bawah seksyen 58 Akta Suruhanjaya Pencegahan Rasuah, 2009 [*Akta 694*] dan subseksyen 376(1) Kanun Tatacara Jenayah [*Akta 593*], saya, **TOMMY THOMAS**, Pendakwa Raya, dengan ini memberi izin bagi pendakwaaan terhadap **SUNDRA RAJOO A/L NADARAJAH [No. K/P : 560103-04-5451]** atas **tiga (3)** kesalahan di bawah **seksyen 409 Kanun Keseksaan** yang dikatakan telah dilakukan sebagaimana yang dinyatakan di Lampiran.

Bertarikh pada 22 Mac 2019

(TOMMY THOMAS)
PENDAKWA RAYA MALAYSIA

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LAMPIRAN

1. Dari 8 Disember 2016 sehingga 30 Jun 2017, di pejabat Asian International Arbitration Centre (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di dalam Wilayah Persekutuan Kuala Lumpur.

2. Dari 1 Mac 2017 sehingga 29 Disember 2017, di pejabat Asian International Arbitration Centre (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di dalam Wilayah Persekutuan Kuala Lumpur.

3. Dari 24 Januari 2018 sehingga 17 Ogos 2018, di pejabat Asian International Arbitration Centre (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di dalam Wilayah Persekutuan Kuala Lumpur.

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PENDAKWARAYA

LWN

SUNDRA RAJOO A/L NADARAJAH (NO. K/P: 560103-04-5451)

PERTUDUHAN PERTAMA

Bahawa kamu, antara 8 Disember 2016 dan 30 Jun 2017, di pejabat *Asian International Arbitration Centre* (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di Wilayah Persekutuan Kuala Lumpur, sebagai ejen, iaitu Pengarah AIAC dan dalam kapasiti tersebut telah diamanahkan dengan penguasaan ke atas dana AIAC, telah melakukan suatu kesalahan pecah amanah jenayah berkaitan harta tersebut berjumlah RM 89,700.00 dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 409 Kanun Keseksaan.

Hukuman di bawah seksyen 409 Kanun Keseksaan:

Hendaklah diseksa dengan penjara selama tempoh tidak kurang dari dua tahun dan tidak lebih dari dua puluh tahun, dan dengan sebat, dan bolehlah juga dikenakan denda.

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PENDAKWARAYA

LWN

SUNDRA RAJOO A/L NADARAJAH (NO. K/P: 560103-04-5451)

PERTUDUHAN KEDUA

Bahawa kamu, antara 1 Mac 2017 dan 29 Disember 2017, di pejabat *Asian International Arbitration Centre* (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di Wilayah Persekutuan Kuala Lumpur, sebagai ejen, iaitu Pengarah AIAC dan dalam kapasiti tersebut telah diamanahkan dengan penguasaan ke atas dana AIAC, telah melakukan suatu kesalahan pecah amanah jenayah berkaitan harta tersebut berjumlah RM 621,172.50.00 dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 409 Kanun Keseksaan.

Hukuman di bawah seksyen 409 Kanun Keseksaan:
Hendaklah diseksa dengan penjara selama tempoh tidak kurang dari dua tahun dan tidak lebih dari dua puluh tahun, dan dengan sebat, dan bolehlah juga dikenakan denda.

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PENDAKWARAYA

LWN

SUNDRA RAJOO A/L NADARAJAH (NO. K/P: 560103-04-5451)

PERTUDUHAN KETIGA

Bahawa kamu, antara 24 Januari 2018 dan 17 Ogos 2018, di pejabat *Asian International Arbitration Centre* (AIAC), Bangunan Sulaiman, Jalan Sultan Hishamuddin, di Wilayah Persekutuan Kuala Lumpur, sebagai ejen, iaitu Pengarah AIAC dan dalam kapasiti tersebut telah diamanahkan dengan penguasaan ke atas dana AIAC, telah melakukan suatu kesalahan pecah amanah jenayah berkaitan harta tersebut berjumlah RM 300, 495.00 dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 409 Kanun Keseksaan.

Hukuman di bawah seksyen 409 Kanun Keseksaan:

Hendaklah diseksa dengan penjara selama tempoh tidak kurang dari dua tahun dan tidak lebih dari dua puluh tahun, dan dengan sebat, dan bolehlah juga dikenakan denda.

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LAMPIRAN J / APPENDIX J

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TSA048.................... x 1
Jumlah RM****************************16.00

Diikrarkan pada: 4 MAR 2019
Difailkan pada: 5 MAR 2019
Bagi pihak Pemohon

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)

PERMOHONAN SEMAKAN KEHAKIMAN NO. ________________

ANTARA

SUNDRA RAJOO A/L NADARAJAH ... Pemohon

DAN

1. MENTERI HAL EHWAL LUAR NEGERI, MALAYSIA
2. PEGUAM NEGARA MALAYSIA
3. SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
4. KERAJAAN MALAYSIA ... Responden-Responden

AFIDAVIT SOKONGAN

(TANPA MENGETEPIKAN HAK KEKEBALAN)

Saya, **SUNDRA RAJOO A/L NADARAJAH** (No. K/P: 560103-04-5451), seorang warganegara Malaysia yang cukup umur yang tinggal di No. 28, Lorong Setiabistari 3, Bukit Damansara, 50490 Kuala Lumpur, sesungguhnya menyatakan dan mengikrarkan seperti yang berikut:-

1. Saya adalah Pemohon yang dinamakan di atas. Kandungan afidavit ini adalah daripada pengetahuan peribadi saya, dan adalah benar.

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2. Saya mengambil prosiding-prosiding ini dan mengikrarkan afidavit ini tanpa mengetepikan kekebalan saya sebagai mantan Pegawai Tinggi sebagai mantan Pengarah Pusat Timbang Tara Antarabangsa Asia (Malaysia), dan tanpa akur kepada bidang kuasa.

Latar Belakang

3. Saya seorang arkitek berdaftar, Perancang Bandar yang berdaftar, *fellow* bagi Chartered Institute of Arbitrators dan Peguambela dan Peguamcara Mahkamah Tinggi Malaya (walaupun saya tidak beramal sebagai seorang peguam). Saya melampirkan sesalinan *resume* penuh saya yang menunjukkan kelayakan saya yang ditanda sebagai **Ekshibit SR-1**.

4. Saya telah dilantik pada tahun 1.3.2010 dan berkhidmat sebagai Pengarah Asian International Arbitration Centre (Malaysia) (dahulu dikenali sebagai Kuala Lumpur Regional Centre for Arbitration) ("**Pusat**" atau "**AIAC**") sehingga saya terpaksa oleh kerana dures untuk meletakkan jawatan pada 21.11.2018. Sesalinan Kontrak Perkhidmatan terbaru saya yang ditandatangani oleh Menteri di Jabatan Perdana Menteri yang bertanggungjawab atas urusan undang-undang pada masa itu dan saya, dengan surat iringan, dilampirkan dan ditanda sebagai **Ekshibit SR-2**.

5. Saya mengikrarkan Afidavit ini untuk menyokong permohonan untuk semakan kehakiman untuk menegaskan kekebalan dan keistimewaan yang diberikan kepada saya sebagai Pegawai Tinggi di bawah Perjanjian Negara Tuan Rumah 2013, Peraturan-peraturan Pusat Timbang Tara Serantau Kuala Lumpur (Keistimewaan dan Kekebalan) 1996 ("**Peraturan-peraturan 1996**") menurut kepada Akta Organisasi Antarabangsa (Kekebalan dan Keistimewaan) 1992

("**Akta 485**"), di mana kekebalan itu sedang diancam oleh Responden-responden.

6. Saya memohon kebenaran untuk merujuk kepada Pernyataan dalam perkara ini yang dibuat menurut Aturan 53 kaedah 3(2) Kaedah-kaedah Mahkamah 2012 dan saya mengesahkan kandungannya. Saya akan bergantung pada Pernyataan untuk menyokong tuntutan saya untuk semakan kehakiman dan relif deklaratori dalam perkara ini.

Pusat

7. Saya melampirkan satu jadual yang menyatakan kronologi peristiwa-peristiwa yang membawa kepada penubuhan Pusat, Perjanjian-perjanjian dan undang-undang yang mentadbir operasi Pusat sebagai **Ekshibit SR-3** yang disediakan bagi tujuan bicara reman (yang dijelaskan di bawah).

8. Secara ringkasnya, AIAC ditubuhkan di bawah naungan Asian African Legal Consultative Organization ("**AALCO**"), sebuah organisasi antarabangsa yang terdiri daripada 47 negara dari Asia dan Afrika untuk mempromosikan dan meneydiakan timbang tara antarabangsa di rantau Asia dan Afrika. Saya melampirkan satu penerangan tentang pengenalan AIAC dan hubungannya dengan AALCO yang direproduksikan daripada laman web AIAC sebagai **Ekshibit SR-4**.

9. Responden Ke-4 Kerajaan Malaysia memasuki pelbagai perjanjian dengan AALCO untuk membolehkan Pusat untuk menjalankan fungsinya secara berkesan dan bebas.

9.1. Saya melampirkan Perjanjian Negara Tuan Rumah 1981 dan Perjanjian Negara Tuan Rumah 1989 yang dimasuk oleh Responden Ke-4 dan AALCO sebagai **Ekshibit SR-5**.

9.2. Saya melampirkan sesalinan Perjanjian Negara Tuan Rumah 2013 yang dimasuk oleh Responden Ke-4 dan AALCO pada 26.3.2013, dan Perjanjian Tambahan 2018 yang menamakan Pusat sebagai AIAC daripada KLRCA sebagai **Ekshibit SR-6**. Perjanjian Negara Tuan Rumah 2013 ini secara automatik dilanjutkan 5 tahun selepas tamat tempoh pada tahun 2018. Saya dinasihati oleh peguamcara saya dan saya sesungguhnya percaya bahawa antara peruntukan-peruntukan lain Artikel 3(6) Perjanjian Negara Tuan Rumah 2013 memperuntukkan kekebalan dan keistimewaan yang diberikan kepada saya sebagai Pengarah Pusat.

10. Seperti yang saya nyatakan di atas, saya buat pertama kali dilantik sebagai Pengarah Pusat pada 1.3.2010. Saya menegaskan bahawa pengiktirafan ("*stature*") Pusat di dunia komersial, dan perkembangan reputasi dan prestijnya, dan kepopularan Pusat yang semakin meningkat sebagai tempat timbang tara, adalah terutamanya disebabkan oleh usaha saya sepanjang lebih daripada 8 tahun 8 bulan sebagai ketua Pusat.

10.1. Sebelum penjawatan saya, Pusat adalah secara keseluruhan bergantung pada Kerajaan Malaysia untuk dana, dan terletak di premis-premis yang tidak memadai.

10.2. Saya berunding dengan kerajaan dan menyelia penempatan semula Pusat ke premis-premis semasa di sebuah bangunan warisan yang

terkenal, pengubahsuaiannya untuk memberikan kemudahan timbang tara yang bertaraf kelas dunia, dan aktiviti-aktivitinya yang telah menarik semakin banyak timbang tara komersil ke Malaysia.

10.3. Bersama degan sebuah pasukan yang saya himpunkan, saya menjalankan pemasaran yang luas mengenai perkhidmatan Pusat secara tempatan dan antarabangsa; dan memperkenalkan cara baru dan memperkembangkan cara-cara Resolusi Pertikaian Alternatif (ADR) seperti adjudikasi, mediasi, timbang tara sukan, timbang tara perjanjian pelaburan dan resolusi pertikaian nama domain. Pusat telah menjalankan pembinaan kapasiti untuk rantau Asia dan Afrika dengan mengadakan kursus, seminar, persidangan, moot, ceramah dan banyak lagi aktiviti lain untuk memperkukuhkan peranan Pusat, dan justeru itu peranan Malaysia sebagai hab yang inovatif, inklusif dan aktif untuk resolusi pertikaian yang bersaing dengan Singapura dan Hong Kong.

10.4. Pusat juga memasuki lebih daripada 50 perjanjian kerjasama dengan Organisasi Antarabangsa seperti Bank Dunia, Pusat Antarabangsa untuk Penyelesaian Pertikaian Pelaburan (ICSID), Mahkamah Kekal Timbang Tara di Hague (PCA), Mahkamah Timbang Tara untuk Sukan (CAS), Institut dan Universiti timbang tara dan ADR lain untuk membentuk sinergi, menggalak penggunaan kemudahan Pusat, mempromosikan penggunaan kemudahan Malaysia dan AIAC, dan memperbaik pertukaran maklumat dan dengan itu perwujudan struktur benefisial yang bersesama.

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10.5. Tambahan pula, banyak timbang tara setempat termasuk timbang tara triti pelaburan, adjudikasi, dan bentuk ADR lain seperti mediasi, dan resolusi pertikaian nama domain juga telah dijalankan di Pusat melalui perjanjian bersama. Daripada hanya 22 kes timbang tara ditadbir dari 1978 hingga 2010, nombor kes yang ditadbir oleh Pusat berkembang kepada jumlah yang lebih daripada 2,700 kes dari 2010 hingga 2018.

10.6. Saya menegaskan bahawa oleh sebab usaha saya, Pusat dapat menjana amaun pendapatan yang substansial secara bersendirian selain daripada peruntukan yang diberikan kepadanya oleh Kerajaan Malaysia. Saya melampirkan Laporan Tahunan Pusat 2017, versi terkini yang sedia ada di laman web Pusat, untuk menunjukkan beberapa aktiviti yang dijalankan oleh Pusat sebagai **Ekshibit SR-7**.

10.7. Saya berhasrat untuk meminta Mahkamah ini untuk penzahiran demi mengarahkan Responden-responden untuk menunjukkan akaun-akaun Pusat yang diaudit, yang berada di dalam kepunyaan mereka, untuk menunjukkan bahawa Pusat hanya mula menjana pendapatannya yang substansial beberapa tahun selepas perlantikan saya.

Penghakiman Menentang Leap Modulation dan Surat Layang

11. Di sekitar bulan Julai 2018, penghakiman menentang Yang Arif Datuk hamid Sultan bin Abu Backer telah mengeluaarkan penghakiman menentang yang bertarikh 3.7.2018 ("Penghakiman Menentang") dalam kes *Leap Modulation Sdn Bhd v PCP Construction Sdn Bhd And Another Appeal* [2018] MYCA 203 yang kini dilaporkan antara lainnya di [2019] 1 MLJ 334. Penghakiman Menentang membuat alegasi-alegasi yang amat serius terhadap Pusat, yang

bertanya mengenai peranannya dalam perlantikan adjudicator-adjudikator di Malaysia menurut Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012, walaupun Pusat bukan pihak dalam tindakan tersebut.

11.1. Sesalinan Alasan Penghakiman yang mengandungi kedua-dua penghakiman majority dan Penghakiman Menentang, seperti yang diterbitkan oleh laman web Penghakiman Malaysia (di www.judgments.my) dilampirkan dan ditanda sebagai **Ekshibit SR-8**.

11.2. Saya menerima banyak pertanyaan dan aduan berkenaan dengan Penghakiman Menentang, dan selepas berunding dengan AALCO, satu permohonan dibuat oleh Pusat untuk mencelah dalam prosiding-prosidinng di hadapan Mahkamah Persekutuan untuk mendapatkan satu perintah untuk memadam ("*expunge*") bahagian Penghakiman Menentang tersebut yang menjejaskan reputasi Pusat secara tidak adil. Saya telah mengikrarkan satu afidavit menyatakan sebab dan alasan untuk menyokong permohonan itu. Sesalinan afidavit sokongan saya dilampirkan dan ditanda sebagai **Ekshibit SR-9**.

11.3. Ulasan-ulasan yang dibuat oleh Yang Arif Hakim yang bijaksana dalam Penghakiman Menentang adalah, saya sesungguhnya percaya, dibuat dengan usahanya sendiri dan sama sekali tanpa notis kepada mana-mana pihak kepada Pertikaian atau Pusat, adalah tekaan ("*conjectural*"), tidak berkenaan dengan fakta-fakta dalam pertikaian di hadapan Yang Arif, dan tanpa memberi sebarang peluang kepada Pusat atau Peguam Negara pada masa yang material untuk didengar sebelum ulasan-ulasan tersebut dibuat.

11.4. Peguamcara Pusat memaklumkan saya pada masa itu dan saya sesungguhnya percaya bahawa kertas-kertas kausa permohonan AIAC untuk mencelah dan memadam ulasan-ulasan yang boleh dibantah ("*objectionable*") telah disampaikan kepada Jabatan Peguam Negara dan juga Majlis Peguam Malaysia. Saya ingat bahawa Majlis Peguam Malaysia mengesahkan melalui surat kepada Pusat bahawa ia akan hadir di bicara Mahkamah Persekutuan untuk menjalankan arahan memerhati ("*watching brief*"). Selanjutnya saya juga ingat daripada maklumat yang diberikan oleh peguamcara Pusat pada masa itu bahawa Cawangan Malaysia Chartered Institute of Arbitrators dan Society of Construction Law dibenarkan untuk hadir sebagai peguam pemerhati di bicara Mahkamah Persekutuan walaupun Majlis Peguam dan Jabatan Peguam Negara tidak hadir di bicara. Vinayak Pradhan telah mengetuai pasukan undang-undang yang mewakili Pusat semasa bicara di Mahkamah Persekutuan.

11.5. Peguamcara yang mewakili Pusat di bicara melaporkan kembali kepada saya bahawa permohonan Pusat untuk memadam perenggan-perenggan Penghakiman Menentang Yang Arif Hakim yang Mulia yang boleh dibantah dibenarkan secara sebulat suara oleh panel Mahkamah Persekutuan (di mana peguam bagi kdua-dua pihak yang terlibat dalam kes tidak membantah) dan perenggan-perenggan Penghakiman Menentang yang relevan telah dipadamkan oleh Mahkamah Persekutuan.

12. Sebelum bicara Mahkamah Persekutuan, pada atau di sekitar awal Oktober 2018, sepucuk surat layang dituju kepada Ketua Pesuruhjaya Responden Ke-3 yang bertarikh 28.9.2018 telah disebar disebarkan secara luas melalui emel dan aplikasi media social whatsapp antara golongan peguam di Malaysia. Saya melampirkan sesalinan dokumen yang dihantar kepada saya oleh beberapa orang rakan saya sebagai **Ekshibit SR-10** ("surat layang"). Alegasi-alegasi dalam surat layang itu bahawa saya telah bertindak secara tidak betul sama adalah sekali tidak benar, tidak berasas dan tidak boleh diterima.

Serbuan oleh Responden Ke-3

13. Tidak lama kemudian, satu serbuan telah dijalankan oleh Responden Ke-3 pada 19.11.2018 di Pusat. Pada masa itu saya berada di luar negara di Zurich, Switzerland untuk urusan rasmi dalam kapasiti saya sebagai Timbalan Pengerusi Kamar Adjudikatori untuk Jawatankuasa Etika, FIFA, badan antarabangsa yang mentadbir dunia bola sepak. Saya ditangkap pada 20.11.2018 semasa saya kembali di Lapangan Terbang Antarabangsa Kuala Lumpur oleh pegawai-pegawai Responden Ke-3, dan ditahan semalaman tanpa sebarang dakwaan dikenakan di atas saya.

14. Saya telah membantah kerana menegaskan bahawa Peraturan 3A Peraturan-peraturan Pusat Timbang Tara Serantau Kuala Lumpur (Keistimewaan dan Kekebalan) 1996 ("**Peraturan-peraturan 1996**"), yang diperkenalkan oleh Peraturan-peraturan Pusat Timbang Tara Serantau Kuala Lumpur (Keistimewaan dan Kekebalan) (Pindaan) 2011 [P.U.(A) 400/2011] ("**Peraturan-Peraturan Pindaan 2011**"), memberikan kekebalan dan keistimewaan bukan sahaja kepada Pusat tetapi juga saya sebagai Pegawai

Tinggi, seperti yang diperuntukkan di bawah Bahagian 1 Jadual 2 Akta Organisasi Antarabangsa (Kekebalan dan Keistimewaan) 1992 ("**Akta 485**"), berkenaan dengan semua tindakan dan perkara yang dilakukan dalam kapasiti saya sebagai Pegawai Tinggi.

15. Setakat yang saya tahu, Responden-responden tidak mengeluarkan sebarang notis terlebih dahulu atau mendapatkan keizinan daripada saya atau Pusat atau AALCO sebelum menjalankan serbuan pada 19.11.2018 walaupun kekebalan dan keistimewaan diberikan kepada Pusat sebagai organisasi antarabangsa di bawah Perjanjian Negara Tuan Rumah 2013. Saya sedar tentang serbuan daripada berita online dan daripada mesej-mesej daripada rakan-rakan sekerja saya di Pusat, kerana pada masa itu saya sedang berada di perjalanan dari Zurich.

16. Adalah dilapor kepada saya secara kontemporaneous oleh peguam-peguam AIAC, Tetuan Mah-Kamariyah & Philip Koh bahawa mereka sampai di premis-premis AIAC pada 19.11.2018 semasa serbuan, menegaskan kekebalan AIAC dan membantah terhadap tindakan Responden Ke-3. Mereka tidak dilayan oleh Responden Ke-3 yang teruskan serbuan mereka. Saya juga diberitahu bahawa Setiausaha Agung AALCO juga membantah secara bertulis melalui surat yang bertarikh 19.11.2019 kepada Responden Ke-3 yang menegaskan kekebalan dan keistimewaan AIAC dan menasihati Responden Ke-3 untuk mengikut protokol yang sewajarnya. Surat AALCO kepada Responden Ke-3 disalin kepada Menteri di Jabatan Perdana Menteri yang bertanggungjawab dengan Urusan Undang-undang dan kepada Pusat dilampirkan dan ditanda sebagai

Eskhibit SR-11. Sekali lagi, ini telah diabaikan oleh Responden Ke-3 dan Responden Ke-4 Kerajaan Malaysia.

17. Seterusnya Responden Ke-3 memanggil peguam AIAC Philip Koh untuk memberikan satu pernyataan kepada Responden Ke-3 pada 20.11.2018 tentang penegasan AIAC mengenai kekebalan dan keistimewaan di bawah Perjanjian Negara Tuan Rumah, Akta 485 dan di bawah Undang-undang Antarabangsa. Saya diberitahu oleh Philip Koh pada masa itu dan saya sesungguhnya percaya beliau memberikan notis kepada Responden Ke-3 bahawa Responden Ke-3 tiada bidangkuasa atas AIAC sebagai organisasi antarabangsa yang terletak di Malaysia. Surat kuasa AIAC yang bertarikh 21.11.2019 yang melantik Tetuan Mah-Kamariyah & Philip Koh dilampirkan dan ditanda sebagai **Ekshibit SR-12**.

18. Saya juga diberitahu pada masa itu bahawa peguamcara Pusta juga telah menghubungi Responden Ke-2 melalui Jabatan Peguam Negara, kedua-dua pada 19hb dan 20hb November 2018 untuk menyampaikan perkara yang sama, dan telah dimaklumkan bahawa ia akan disampaikan kepada pengurusan Jabatan Peguam Negara.

19. Saya sebelum ini memberitahu secara tidak formal beberapa orang yang telah menghubungi saya, termasuk Vinayak Pradhan (iaitu Pemangku Pengarah Pusat buat masa ini, dan pada masa itu seorang Ahli kepada Lembaga Penasihat Pusat), bahawa saya bersedia untuk memberikan sebarang bantuan kepada pihak berkuasa Malaysia dalam had Perjanjian Negara Tuan Rumah 2013 dan dengan syarat bahawa ia tidak menjejaskan operasi Pusat yang berhubung dengan alegasi-alegasi tidak berasas dalam surat layang.

20. Walau bagaimanapun, saya ditangkap secara tidak sopan ("*unceremoniously*") di Lapangan Antarabangsa Kuala Lumpur pada 20.11.2018 (seperti yang dinyatakan sebelum ini) apabila saya sampai di Malaysia. Ini dilakukan walaupun penegasan saya kepada pegawai tangkapan dan penegasan peguam saya kepada pegawai tangkapan kemudiannya di Ibu Pejabat SPRM tentang kekebalan dan keistimewaan di bawah Perjanjian Negara Tuan Rumah 2013, Akta 485 dan Undang-undang Antarabangsa. Kekebalan dan keistimewaan saya diabaikan oleh Responden Ke-3 walaupun ia disampaikan setelah saya menegas ia dibuat kepada pengurusan tinggi Responden Ke-3. Seterusnya saya ditahan semalaman di lokap Responden Ke-3 tanpa sebarang dakwaan dikenakan ke atas saya. Saya juga dinafikan peluang untuk berunding dengan peguam saya pada masa itu.

21. Pada pagi seterusnya, saya dibawa ke Mahkamah Majistret Putrajaya di mana saya diberitahu bahawa Responden Ke-3 ingin mereman saya untuk 7 hari. Semasa saya diiringi ke bilik mahkamah, peguam AIAC Philip Koh memberitahu saya bahawa beliau sedang bertelefon dengan seorang kakitangan Jabatan Peguam Negara. Saya diberitahu bahawa atas arahan Peguam Negara, saya diberikan amaran terakhir untuk sama ada meletakkan jawatan atau dipecat oleh Responden Ke-4. Saya juga diberikan gambaran bahawa sekiranya saya meletakkan jawatan, tiada tindakan selanjutnya akan diambil terhadap saya dan Pusat. Oleh itu, saya meletakkan jawatan saya sebagai Pengarah AIAC di bawah dures yang kuat kerana saya tiada pilihan lain selain daripada perletakan jawatan untuk mempelihara Pusat dan saya daripada tangkapan, gangguan dan prosiding-prosiding kehakiman yang sewenang-wenangya. Sesalinan surat peletakan jawatan yang ditulis dengan

tangan (di mana sekeping gambar yang telah diminta telah diambil dan dihantar kepada pejabat Jabatan Peguam Negara pada masa sendiri itu) dan emel saya kepada Setiausaha Agung AALCO, melapor kepada beliau tentang siri peristiwa yang telah berlaku, dilampirkan secara bersama dan ditanda sebagai **Ekshibit SR-13**.

22. Pada pagi yang sama, dan saya sesungguhnya percaya apabila bicara reman sedang berjalan, Vinayak Pradhan telah dilantik sebagai Pemangku Pengarah Pusat berkuatkuasa serta merta. Sesalinan kenyataan media oleh Responde Ke-2 yang mengumumkan perlantikan beliau dilampirkan dan ditanda sebagai **Ekshibit SR-14**.

22.1. Dalam kenyataan medianya berhubung dengan perlantikan Vinayak Pradhan, Responden Ke-2 mengucapkan terima kasih kepada saya atas kepimpinan saya selama 9 tahun di Pusat.

22.2. Vinayak Pradhan ialah seorang peguam dan seorang penimbang tara yang bertauliah. Beliau ialah seorang ahli kepada Lembaga Penasihat Pusat untuk beberapa tahun. Saya sesungguhnya percaya bahawa Vinayak Pradhan ialah seorang kawan karib Responden Ke-2, dan kedua-dua mereka selama bertahun-tahun telah bekerja dan seterusnya menjadi rakan kongsi di firma undang-undnag yang sama, iaitu Tetuan Skrine.

22.3. Vinayak Pradhan dan saya sering bersaing secara professional untuk pelbagai kedudukan yang berprestij dalam pelbagai pertubuhan atau organisasi antarabangsa sepanjang tahun-tahun yang kami kenali satu sama lain. Kami kedua-duanya telah menjadi Pengerusi untuk

Chartered Institute Arbitrators United Kingdom, dan juga memegang jawatan Pengerusi bagi Cawangan Malaysia Chartered Institute of Arbitrators.

22.4. Saya sentiasa berasa bahawa ramai peguam kanan, termasuk Responden Ke-2 dan Vinayak Pradhan, menganggap saya sebagai satu tahap di bawah mereka kerana latarbelakang professional awal saya sebagai seorang Arkitek dan Perancang Bandar dan kemasukan saya ke Perundangan pada peringkat lewat dalam kehidupan saya

23. Kenyataan media oleh Responden Ke-2 adalah luar biasa dan telah direncanakan ("*premeditated*").

23.1. Yang pertama, ia diumumkan teramat segera pada waktu pagi 21.11.2018 sendiri dan semasa bicara reman sedang berjalan.

23.2. Kenyataan media dikeluarkan oleh Responden Ke-2, Peguam Negara, dan tidak, oleh Menteri di Jabatan Perdana Menteri yang bertanggungjawab atas urusan undang-undang (iaitu Datuk Liew Vui Keong pada masa ini).

23.3. Akhirnya, ia menyatakan bahawa Profesor Dr Kennedy Gastorn, Setiausaha Agung AALCO "*menyokong*" tindakan-tindakan ini. Saya diberitahu secara boleh diharap dan saya sesungguhnya percaya bahawa Dr Gastorn tidak dirujuk ("*consulted*") sebelum keputusan untuk menangkap dan menahan saya dibuat, sebelum keputusan untuk mengugut saya dengan kepecatan jika saya tidak meletakkan

jawatan, dan sebelum keputusan untuk melantik En Vinayak Pradhan dibuat. Beliau telah, seperti yang saya diberitahu dan saya sesungguhnya percaya, dikemukakan dengan tindakan-tindakan ini secara *fait accompli.*

Reman

24. Saya dibawa ke hadapan Majistret Tuan Hakim Khir Nizam Jemari di Mahkamah Putrajaya pada waktu pagi 21.11.2018 untuk permohonan untuk mereman saya kepada jagaan Responden Ke-3 selama 7 hari.

    24.1. Walaupun saya ialah mantan Pegawai Tinggi dan dipelihara oleh kekebalan, Pegawai Pendakwaan yang dilantik oleh Responden Ke-3, Tuan Fadhly Zamir ingin mendapatkan perintah reman untuk 7 hari walaupun saya telah memberikan jaminan saya untuk bekerjasama sepenuhnya dengan siasatan.

    24.2. Sesungguhnya, saya menegaskan bahawa secara menipu dan bukan dengan niat baik, pegawai pendakwaan bagi Responden Ke-3 berhujah bahawa saya tidak lagi tidak dipelihara oleh kekebalan kerana saya telah meletakkan jawatan daripada kedudukan saya sebagai Pengarah AIAC, walaupun Jadual Ke-4 Akta 485 secara nyatanya memberikan Mantan Pegawai Tinggi kekebalan. Jelasnya bahawa arahan dan atau amaran terakhir bagi saya untuk meletakkan jawatan dengan segeranya sebelum prosiding reman dibuat dengan motif tersembunyi dan niat untuk menggunakan hujahan bahawa saya tidak lagi dipelihara dan dilindungi dengan kekebalan akibat perletakan jawatan.

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25. Peguam saya, dan peguam Pusat, kedua-dua mereka membantah penangkapan saya dan sebarang reman yang selanjutnya dengan alasan bahawa:

25.1. sebagai seorang mantan Pegawai Tinggi, saya mempunyai kekebalan sepenuhnya daripada penangkapan dan reman; dan

25.2. Responden Ke-3 tiada kuasa untuk menyiasat perkara-perkara yang berkenaan dengan Pusat yang merupakan sebuah organisasi antarabangsa yang diberikan kekebalan oleh statut dan undang-undang antarabangsa, dan bukan sebuah badan awam dalam maksud Akta Suruhanjaya Anti Rasuah Malaysia 2009.

26. Majistret menolak permohonan reman dan memerintahkan saya dilepaskan, yang mana saya sesungguhnya percaya maksudnya beliau telah menerima hujahan-hujahan peguam saya dan peguam Pusat. Saya tidak menerima sebarang notis rayuan terhadap keputusan ini daripada Responden Pertama, peguamcara-peguamcara terdahulu saya atau sebelum ini yang membantu saya dalam prosiding-prosiding jenayah juga tidak memaklumkan saya bahawa mereka telah menerima notis rayuan. Nota Prosiding pada hari itu diberikan kepada saya oleh peguamcara yang hadir dilampirkan dan ditanda sebagai **Ekshibit SR-15**.

Perintah-perintah SPRM

27. Walaupun keputusan telah oleh Mahkamah, saya turut menerima satu "perintah" daripada Responden Ke-3 untuk menghadirkan diri saya di Ibu Pejabat Responden Ke-3 pada 22.11.2019 untuk membantu dengan siasatan.

Saya mengambil keputusan untuk membantu dengan inkuiri, tetapi peguamcara saya mengeluarkan sepucuk surat kepada Ketua Pesuruhjaya Responden Ke-3 untuk menegaskan kedudukan saya sekali lagi bahawa kehadiran saya di pejabat Responden Ke-3 tidak patut dianggap sebagai mengetepikan kekebalan saya sebagai Pegawai Tinggi di bawah undang-undang.

27.1. Sesalinan kesemua Perintah daripada Responden Ke-3 yang saya ada dilampirkan dan ditanda sebagai **Ekshibit SR-16**.

27.2. Surat daripada salah seorang peguamcara saya pada masa itu Tan Sri Abdul Gani Patail kepada Ketua Pesuruhjaya Responden Ke-3 yang bertarikh 23.11.2018 dilampirkan dan ditanda sebagai **Ekshibit SR-17**.

28. Oleh itu saya hadir di hadapan pegawai-pegwai Responden Ke-3 berjumlah 6 kali selama 6 hari, dan setiap hari saya menyatakan secara terang bahawa kehadiran saya dalam apa jua keadaan bukannya diniatkan sebagai mengetepikan kekebalan saya.

29. Berkenaan dengan tuduhan, alegasi dan arahan siasatan di mana saya telah dipersoalkan terutamanya tentang perbelanjaan kewangan Pusat, saya menegaskan bahawa perbelanjaan yang dipersoalkan adalah berada di dalam mandat dan kuasa saya untuk dibelanjakan dalam kapasiti rasmi saya sebagai Pengarah. Saya menegaskan bahawa wang ini dimiliki oleh Pusat dan di bawah penyeliaan dan kawalan muktamad AALCO. Saya mempunyai autoriti, mandate dan budi bicara untuk membelanjakan wang tersebut untuk kepentingan terbaik Pusat sebagai sebuah Organisasi Antarabangsa *vis-à-vis* Negara Tuan Rumah, Malaysia.

30. Saya menegaskan bahawa selepas geran diberikan oleh Responden Ke-4 Kerajaan Malaysia menurut Perjanjian Negara Tuan Rumah 2013, geran tersebut bersama dengan semua dana lain Pusat dimiliki oleh Pusat untuk dibelanjakan oleh saya sebagai Pegawai Tinggi dan pasukan saya di bawah penyeliaan AALCO.

30.1. Ini diperuntukkan dalam Artikel IV(2) Perjanjian Negara Tuan Rumah 2013 yang menyatakan bahawa Responden Ke-4 hendaklah terus

"untuk menyediakan sebuah premis yang sesuai untuk Pusat dan memberikan geran tahunan untuk tujuan operasi Pusat termasuk yang berikut:

i) Kos operasi Pusat;
ii) Pembelian perabot, peralatan, alat tulis, telefon, faks dll pejabat;
iii) Kos seminar dan perundingan yang akan dijalankan di Malaysia di bawah naungan Pusat.

(to make available a suitable premise for the Centre and to make an annual grant for the purposes of the functioning of the Centre including the following:

i) Operating costs of the Centre;

ii) Purchase of office furniture, equipment, stationery, telephones, faxes etc.;

iii) Costs of seminars and conferences which are to be conducted in Malaysia under the auspices of the Centre)."

30.2. Artikel IV(3) seterusnya memperuntukkan bahawa Pengarah Pusat hendaklah menghantar Laporan Tahunan tentang aktiviti-aktiviti Pusat kepada Setiausaha Agung AALCO dan jabatan Kerajaan Tuan Rumah yang berkenaan. Apabila ini dibaca bersama Artikel IX yang menyatakan

penyelesaian pertikaian, yang memerlukan Kerajaan Malaysia dan AALCO untuk menyelesaikan secara damai atas sebarang perbezaan atau pertikaian mengenai antara lain implementasi atau pemakaian mana-mana peruntukan Perjanjian Negara Tuan Rumah 2013. Saya sesungguhnya percaya bahawa bukanlah niat pihak-pihak bagi Perjanjian Negara Tuan Rumah 2013 bahawa Pengarah akan perlu menghadapi penangkapan, penahanan dan pendakwaan jenayah untuk cara bagaimana beliau menggunakan dana Pusat.

31. Dalam tempoh semasa saya sedang bekerjasama dengan Responden Ke-3 untuk inkuiri mereka, saya menerima sepucuk surat yang bertarikh 27.11.2018 yang ditanda sebagai rahsia rasmi daripada Responden Pertama kepada Pemangku Pengarah Pusat yang meminta penepian kekebalan saya. Beberapa hari kemudian, saya menerima sepucuk surat yang bertarikh 29.11.2018 daripada Pemangku Pengarah kepada Responden Pertama dengan sesalinan kepada saya.

31.1. Saya melampirkan sesalinan surat Pemangku Pengarah yang ditanda sebagai **Ekshibti SR-18** yang menolak permintaan penepian.

31.2. Saya dinasihati oleh peguam saya pada masa itu bahawa Pemangku Pengarah tiada kuasa untuk mengetepikan kekebalan saya dan alasannya dalam surat tersebut adalah tidak betul. Walau bagaimanapun, oleh sebab beliau telah menolak permintaan, saya tidak diterkilan ("*aggrieved*") oleh tindakannya.

32. Saya diberitahu bahawa Responden-responden telah cuba, dan masih lagi cuba, untuk mendapatkan penepian kekebalan daripada Setiausaha Agung

AALCO dan daripada Pemangku Pengarah Pusat. Saya sesungguhnya percaya bahawa Responden Ke-2 sedang cuba mendakwa saya untuk tindakan-tindakan yang telah saya lakukan dalam kapasiti saya sebagai Pengarah Pusat dan dalam tempoh saya sebagai Pegawai Tinggi.

33. Responden-responden sedang cuba mendapatkan penepian di bawah seksyen 8A Akta 485, walaupun mereka, saya sesungguhnya percaya bahawa, adalah sedar sepenuhnya bahawa seksyen 8A tidak dilanjutkan kepada saya sebagai Pegawai Tinggi, tetapi hanya membenarkan pihak berkuasa organisasi antarabangsa yang berkenaan yang sewajarnya untuk mengetepikan kekebalan "*represemtatives, officials and experts*".

34. Responden-responden juga secara tidak adilnya mengeluarkan saya daripada surat-surat dengan AALCO dan Pusat, akibatnya meninggalkan saya dalam kegelapan tentang tindakan-tindakan yang tidak sah di sisi undang-undang yang diambil oleh mereka. Saya mempunyai sebahagian maklumat daripada emel-emel dan komunikasi telefon dengan Setiausaha Agung AALCO, Profesor Kennedy Gastorn, dan daripada surat-surat yang dia menyalin kepada saya apabila membalas kepada Responden-responden. Contohnya, saya melampirkan surat balasan yang bertarikh 17.12.2018 yang ditanda sebagai **Ekshibit SR-19** yang dikeluarkan oleh Setiausaha Agung AALCO kepada Responden Ke-2 yang disalin kepada saya untuk memaklumkan Responden Pertama beliau "sedang meneliti dengan segera" apa yang saya sesungguhnya percaya adalah satu permintaan untuk penepian kekebalan. Nampaknya bahawa Responden Pertama telah menghantar surat-surat serupa kepada Setiausaha Agung AALCO dan Pemangku Pengarah Pusat tetapi hany

menghantar salinan-salinan suratnya dengan Setiausaha Agung kepada saya pada masa itu. Sejak itu saya tidak menerima sebarang surat selanjutnya daripada pihak-pihak walaupun saya diberitahu secara pastinya mengenai percubaan-percubaan diteruskan untuk mendapatkan penepian ini.

35. Saya menyatakan sekali lagi bahawa saya sesungguhnya percaya bahawa sebagai mantan Pegawai Tinggi, saya terus menikmati kekebalan dan keistimewaan yang diberikan kepada saya oleh undang-undang bagi tindakan yang saya lakukan dalam tempoh jawatan saya. Saya melampirkan sesalinan surat yang dikeluarkan oleh peguamcara saya pada masa itu Tetuan Cheow Wee & Mai kepada Responden Ke-2 yang bertarikh 28.11.2018 sebagai **Ekshibit SR-20**.

36. AALCO telah, melalui Setiausaha Agung, Profesor Kennedy Gastorn, membantah terhadap pelanggaran Perjanjian Negara Tuan Rumah 2013 oleh Responden-responden dalam menjalankan siasatan. AALCO telah menulis kepada Ketua Pesuruhjaya Responden Ke-3 untuk menyatakan bahawa AIAC dijamin kekebalan dan keistimewaan sebagai sebuah organisasi antarabangsa berdasarkan Perjanjian Negara Tuan Rumah 2013, dan meminta Responden-responden untuk mengikuti proses yang sewajarnya tanpa melanggar sebarang peraturan kerahsiaan untuk memelihara integriti Pusat dalam siasatan yang sedang dijalankan. Surat yang dikeluarkan oleh Setiausaha Agung AALCO kepada Ketua Pesuruhjaya SPRM yang bertarikh 19.11.2018 dirujuk kepada dalam perenggan 16 dan dilampirkan sebagai Ekshibit SR-11.

Penepian yang tidak sah di sisi undang-undang

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37. Walau bagaimanapun, daripada maklumat yang diberikan kepada saya di mana yang saya sesungguhnya percaya adalah betul, saya sesungguhnya percaya dan saya menegaskan bahawa Vinayak Pradhan sebagai Pemangku Pengarah Pusat telah pada atau sekitar 22.2.2019 berupa untuk mengetepikan kekebalan saya sejak tarikh perlantikan saya pada tahun 2010, dan kekebalan Pusat yang terhad bagi tujuan untuk mengakses dokumen-dokumen dan maklumat yang berhubung dengan prosiding-prosiding terhadap saya. Saya menegaskan bahawa ini adalah tidak sah di sisi undang-undang, tidak munasabah, dan tanpa sebarang asas di sisi undang-undang.

38. Dalam apa jua keadaan, saya menegaskan bahawa sama ada Pengarah, Pemangku Pengarah atau sesiapa di Pusat atau Responden-responden bukanlah pihak berkuasa yang sewajarnya untuk mengetepikan kekebalan saya, jikalaupun ia boleh dibuat di bawah undang-undang (yang saya nafi).

39. Selepas penepian yang tidak sah di sisi undang-undang yang berupa dikeluarkan oleh Pemangku Pengarah, saya diberitahu bahawa Responden-responden melalui Responden Ke-2 sekali lagi meminta AALCO dan Setiausaha Agungnya untuk bersetuju dengan penepian ini, supaya dakwaan jenayah boleh dikenakan terhadap saya bagi cara saya menjalankan tugas saya sebagai Pengarah Pusat.

40. Sekiranya saya didakwa, saya sesungguhnya percaya ini akan menyebabkan kemudaratan yang tidak dapat diperbaiki terhadap reputasi dan kedudukan saya, terhadap reputasi dan kedudukan Pusat, dan terhadap kedudukan dan reputasi antarabangsa Malaysia bagi mempertahankan undang-undang

antarabangsa dan kekebalan dan keistimewaan diplomat-diplomat dan orang lain di bawah undang-undang antarabangsa.

Berat sebelah yang berkemungkinan amat besar

41. Selanjutnya, saya menegaskan, dengan hormatnya, bahawa terdapat bahaya yang berkemungkinan amat besar adanya sikap berat sebelah melawani saya dalam tindakan Pemangku Pengarah Pusat dan Responden-responden, kerana keadaan di mana hubungan saya dengan beliau dan Responden Ke-2 yang bersaingan dan tidak tenang ("*contentious and tumultous*") selama bertahun-tahun.

42. Saya menegaskan bahawa saya diperalatkan sebagai peralatan ("*pawn*") oleh Responden-responden, yang cuba mendendakan saya kerana saya dilantik oleh pentadbiran dahulu, yang diundi keluar dalam Pilihan Raya Ke-14 yang bersejarah pada 9.5.2018 yang menyebabkan satu perubahan di pentadbiran Persekutuan untuk kali yang pertama dalam sejarah Malaysia. Saya sesungguhnya percaya bahawa saya disasarkan hanya kerana saya dilantik oleh pentadbiran dahulu, dan pentadbiran baru ingin melantik seorang yang baru untuk bertanggungjawab atas Pusat.

Keadaan yang tidak rasional

43. Cara yang dilakukan oleh Responden-responden untuk menangkap saya, publisiti antarabangsa dan tempatan yang luas dan penghinaan media terhadap saya, adalah tidak rasional sama sekali. Ia telah menjejaskan saya secara professional dan peribadi dengan teruknya. Saya perlu meletakkan jawatan daripada Kamar Adjudikatori untuk Jawatankuasa Etika, FIFA dan

prospek masa depan saya untuk meneruskan kerja dalam timbang tara telah tergelincir sepenuhnya. Penangkapan saya, serbuan di Pusat, dan cubaan selanjutnya oleh Responden-responden untuk mengetepikan kekebalan saya dan untuk mendakwa saya secara salahnya untuk tindakan saya yang dilakukan dalam kapasiti saya sebagai Pengarah Pusat adalah, saya sesungguhnya percaya bahawa, menyebabkan keyakinan kepada Pusat dan Malaysia sebagai pusat untuk timbang tara komersil, telah dibahayakan secara teruknya. Selanjutnya, ia telah membangkitkan keprihatinan antara kalangan diplomatik dalam kebimbangan di mana Pegawai Tinggi sesebuah organisasi antarabangsa telah ditangkap dan ditahan secara tidak sopan.

44. Saya menegaskan bahawa kekebalan yang diberikan kepada warganegara sebuah negara yang bertanggungajawab untuk organisasi antarabangsa secara tepatnya supaya negara yang berkenaan tidak boleh menakutkan atau mengganggu warganegara tersebut, dan selanjutnya merosakkan kepentingan organisasi antarabangsa. Di sini, AALCO mempunyai alasan-alasan yang munasabah untuk takut bahawa tindakan Malaysia akan merosot aktiviti-aktiviti mereka di seluruh Afrika dan Asia, di mana mereka mengendalikan 4 pusat timbang tara serantau yang lain (walaupun hanya satu di Malaysia). Ia telahpun menggoyang keyakinan pengguna dan pelabur pada Pusat, dan merosakkan reputasi Pusat dan Malaysia dan tidak dapat dipulihkan lagi.

45. Patut juga diambil kira bahawa akaun Pusat telah diaudit sepanjang tahun-tahun ini. Juruaudit telah sama sekali tidak membuat apa-apa syarat kepada akaun diaudit yang telah diserahkan kepada AALCO dan pelbagai pihak di dalam Kerajaan Malaysia tiap-tiap tahun.

Kesimpulan

Oleh itu, dengan hormatnya saya meminta kebenaran untuk memohon semakan kehakiman dan selepas itu pengisytiharan dan perintah-perintah substantif yang saya minta untuk mempertahankan kekebalan dan integriti kerja Pusat dan kedudukan saya sebagai mantan Pegawai Tingginya.

Diikrarkan oleh deponent yang dinamakan di atas Sundra Rajoo a/l Nadarajah pada 04 MAR 2019 di Kuala Lumpur }

Di hadapan saya

PESURUHJAYA SUMPAH MALAYSIA
No: W671
RAMATHILAGAM A/P T RAMASAMY
01-01-2019 - 31-12-2021

PESURUHJAYA SUMPAH

Tingkat 5 Wisma Harwant
Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur

Afidavit sokongan ini difailkan bagi pihak Pemohon yang dinamakan di atas oleh peguamcaranya Kanesaligam & Co. yang mempunyai alamat penyampaian di Unit 3.3, Level 3, Wisma Bandar, 18, Jalan Tuanku Abdul Rahman, 50100 Kuala Lumpur.
Tel:03 2698 9199
Faks:03 2698 9799
Emel: shan@kanesalingam.com
[Ruj: 2019S/SR/1013(Hy)(1000-1130)]

English Translation: Affidavit in Support

(Without Waiver of Immunity)

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

(APPELLATE AND SPECIAL POWERS DIVISION)

APPLICATION FOR JUDICIAL REVIEW NO.

BETWEEN

SUNDRA RAJOO NADARAJAH ... Applicant

AND

1. ATTORNEY GENERAL OF MALAYSIA
2. MINISTER OF FOREIGN AFFAIRS, MALAYSIA
3. MALAYSIAN ANTI-CORRUPTION COMMISSION
4. GOVERNMENT OF MALAYSIA ... Respondents

AFFIDAVIT IN SUPPORT

(WITHOUT WAIVER OF IMMUNITY)

I, **SUNDRA RAJOO NADARAJAH** (NRIC No. 560103-04-5451), a Malaysian citizen of full age of No. 28, Lorong Setiabistari 3, Bukit Damansara, 50490 Kuala Lumpur, do verily state and affirm as follows: -

1. I am the Applicant named above. The contents of this affidavit are from my personal knowledge, and are true.

2. I take these proceedings and affirm this affidavit without in any waiving my immunity as a former High Officer, being the former Director of the Asian International Arbitration Centre (Malaysia).

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Background

3. I am a registered Architect, registered Town Planner, Chartered Arbitrator, a Fellow of the Chartered Institute of Arbitrators, and an Advocate and Solicitor of the High Court in Malaya (though not practising as such). Enclosed is a copy of my full resume showing my qualifications marked as **Exhibit SR-1**.

4. I was appointed on 1.3.2010 and served as the Director of the Asian International Arbitration Centre (Malaysia) (formerly known as the Kuala Lumpur Regional Centre for Arbitration) ("**the Centre**" or **AIAC**") until I was forced to resign by duress on 21.11.2018. A copy of my latest Contract for Services signed by the Minister in the Prime Minister's Department in charge of legal affairs at that time and I, and the covering letter, are attached and marked as **Exhibit SR-2**.

5. I affirm this Affidavit to support my application for judicial review to assert the immunities and privileges conferred on me as the High Officer under the 2013 Host Country Agreement and/or the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996 ("**the 1996 Regulations**") made pursuant to the International Organizations (Privileges and Immunities) Act 1992 ("**Act 485**"), which immunity is being threatened by the Respondents.

6. I crave leave to refer to the Statement in this matter which is made in accordance with Order 53 rule 3(2) of the Rules of Court 2012 and I verify its contents. I shall rely on the Statement to support my claim for judicial review and declaratory relief in this matter.

The Centre

7. Enclosed marked as **Exhibit SR-3** is a table setting out the chronology of the events leading to the establishment of the Centre, and the Agreements and legislation governing the operation of the Centre, which was prepared for the remand hearing (explained below).

8. Briefly, the AIAC was established under the auspices of the Asian African Legal Consultative Organization ("**AALCO**"), an international organisation made up of 47 countries from Asia and Africa, to promote and provide for international arbitration in the Asian and African regions. Enclosed marked as the **Exhibit SR-4** is an explanation of the introduction of the AIAC and its relationship with AALCO which is reproduced from the website of AIAC.

9. The 4th Respondent, Government of Malaysia entered into various agreements with AALCO to enable the Centre to discharge its functions effectively and independently.

 9.1. Enclosed marked as **Exhibit SR- 5** is the 1981 Host Country Agreement and the 1989 Host Country Agreement entered into between the 4th Respondent and AALCO.

 9.2. Enclosed marked as **Exhibit SR- 6** is a copy of the 2013 Host Agreement entered into between the 4th Respondent and the AALCO on 26.3.2013, and the 2018 Supplementary Agreement renaming the Centre AIAC from KLRCA. The 2013 Host Country Agreement was automatically extended for a further 5 years on its expiry in 2018. I am advised by my solicitors and I verily believe that , amongst other clauses, Article 3(6) of the 2013 Host Agreement provides for the immunities and privileges accorded to me as the Director of the Centre.

10. As I pointed out above, I was first appointed Director of the Centre on 1.3.2010. I contend that the stature of the Centre in the commercial world, and the growth of its reputation and prestige, and the increasing popularity of the Centre as an arbitral venue, have been principally due to my efforts during my approximately 8 years 8 months at the helm of the Centre.

10.1. Prior to my tenure, the Centre was entirely dependent on the 4th Respondent, Government of Malaysia for funds, and was housed in inadequate premises.

10.2. I negotiated with the 4th Respondent and oversaw the relocation of the Centre to its present premises in a prominent heritage building, its renovation to offer world class arbitral facilities, and enhancing its activities that have attracted more and more commercial arbitrations to Malaysia.

10.3. Together with a team that I assembled, I did extensive marketing of the Centre's services both locally and internationally; introduced new and expanded methods of Alternate Dispute Resolution like adjudication, mediation, sports arbitration, investment treaty arbitrations and domain name dispute resolution. The Centre has carried out capacity building for the Asian and African regions by holding courses, seminars, conferences, moots, talks and many other activities to reinforce the Centre's, and therefore Malaysia's role, as an innovative, inclusive and active hub for dispute resolution in competition with Singapore and Hong Kong.

10.4. The Centre also entered into over 50 cooperation agreements with International Organisations like the World Bank, International Centre

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for Settlement of Investment Disputes (ICSID), the Permanent Court of Arbitration in the Hague (PCA), the Court of Arbitration for Sports (CAS), other arbitral and Alternative Dispute Resolution (ADR) Institutions and Universities to create synergies, to encourage the use of the Centre's facilities, the promotion of the use of Malaysian and AIAC facilities, and to improve the exchange of information and thereby creating mutually beneficial structures.

10.5. In addition, many local arbitrations including investment treaty arbitrations, adjudications, other forms of ADR like mediation, and domain name dispute resolutions were also conducted at the Centre by mutual agreement. From approximately 22 administered arbitration cases in total from 1978 to 2010, the number of cases administered by the Centre grew to a total of over 2,700 cases from 2010 to 2018.

10.6. I contend that due to my efforts, the Centre is able to generate a substantial amount of its own income apart from the grants provided to it by the 4th Respondent, Government of Malaysia. I enclose the 2017 Annual Report of the Centre, being the latest available on the website of the Centre, to show some of the activities carried out by the Centre marked as **Exhibit SR-7**.

10.7. I intend to ask this Court for discovery to direct the Respondents to produce the audited accounts of the Centre, which are in their possession, in order to show that the Centre only began to generate its own substantial revenue some years after my appointment.

Leap Modulation Dissenting Judgment and Poison Pen Letter

11. Sometime in July 2018, His Lordship Yang Arif Datuk Hamid Sultan bin Abu Backer issued a dissenting judgment dated 3rd July 2018 ("the Dissenting Judgment") in the case of *Leap Modulation Sdn Bhd v PCP Construction Sdn Bhd And Another Appeal* [2018] MYCA 203 now reported among others at [2019] 1 MLJ 334 . The Dissenting Judgment made very serious allegations against the Centre, querying its role in appointing adjudicators in Malaysia pursuant to the Construction Industry Payment and Adjudication Act 2012, although the Centre was not a party in that action.

11.1. A copy of the entire Grounds of Judgment, containing both the majority judgment and the Dissenting Judgment, as published by the online website Malaysian Judgment (at www.judgments.my) is enclosed and marked as **Exhibit SR-8.**

11.2. I received many inquiries and complaints regarding the Dissenting Judgment, and in consultation with AALCO, an application was made by the Centre to intervene in proceedings before the Federal Court in order to seek an order to expunge those parts of the Dissenting Judgment which unfairly maligned the Centre's reputation. I had affirmed an affidavit setting out the reasons and the grounds in support of the application. A copy of my affidavit in support is enclosed marked as **Exhibit SR-9.**

11.3. The comments by the learned Judge in the Dissenting Judgment were, I verily believe, made of his own motion and completely without notice either to the parties to the dispute or to the Centre, were conjectural, had no relation to the facts in dispute before His Lordship, and without

giving any opportunity at all to the Centre or to the Attorney General at that material time to be heard before the comments were made.

11.4. The Centre's solicitors informed me at the time and I verily believe that the cause papers of AIAC's application to intervene and to expunge the objectionable comments was served on the Attorney General Chambers and also the Bar Council of Malaysia. I recall that the Bar Council of Malaysia confirmed by letter to Centre that it will be present at the Federal Court hearing for a watching brief. I further recall from information supplied by the Centre's then solicitors that the Chartered Institute of Arbitrators Malaysia Branch and the Society of Construction Law was allowed to hold a watching brief in the Federal Court hearing, although the Bar Council and AGC were not present at the hearing. Vinayak Pradhan was the counsel who led the legal team which represented the Centre at the Federal Court hearing.

11.5. The Centre's solicitors at that time who appeared on our behalf at the hearing reported back to me that the Centre's application to expunge the objectionable paragraphs of the Honourable Judge's Dissenting Judgment was allowed unanimously by the Federal Court (where even counsel for the two parties involved in the case did not object) and the relevant provisions of the Dissenting Judgment were duly expunged by the Federal Court.

12. Prior to the Federal Court hearing, on or about early October 2018, a poison pen letter addressed to the Chief Commissioner of the 3rd Respondent dated 28.9.2018 was widely circulated by email and through the social media application WhatsApp amongst the legal fraternity in Malaysia. I enclose a

copy of the document that was sent to me by multiple friends of mine marked as **Exhibit SR-10** ("the poison pen letter"). The allegations of in the poison pen letter that I had acted improperly are wholly untrue, unfounded and without basis.

Raid by 3rd Respondent

13. Shortly thereafter, a raid was conducted by the 3rd Respondent on 19.11.2018 on the Centre. At that time, I way in in Zurich, Switzerland on official business in my capacity as the Deputy Chairman of the Adjudicatory Chamber, Ethics Committee of FIFA, the international governing body for world football. I was arrested on 20.11.2018 on my return at the Kuala Lumpur International Airport by officers of the 3rd Respondent, and detained overnight without any charge being preferred against me.

14. I protested as I contend that Regulation 3A of the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) Regulations 1996 (**"the 1996 Regulations"**), introduced by the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) (Amendment) Regulations 2011 [P.U.(A) 400/2011] (**"the 2011 Amendment Regulations"**), confers immunities and privileges on not only the Centre but also to me as the High Officer, as provided under Part 1 of the 2nd Schedule of International Organizations (Privileges and Immunities) Act 1992 (**"Act 485"**), in respect of all acts and things done in my capacity as High Officer.

15. As far as I know, the Respondents did not issue any prior notice or obtain any consent from me or the Centre or AALCO before conducting the raid on 19.11.2018 despite the immunities and privileges accorded to the Centre as an international organization under the 2013 Host Country Agreement. I learnt

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about the raid from online news reports and from messages from my colleagues at the Centre, as I was at that time on my way back from Zurich.

16. It was reported back to me contemporaneously by the AIAC lawyers, Messrs Mah-Kamariyah & Philip Koh that they arrived at AIAC premises on 19th November 2018 during a raid conducted by officers of the MACC the 3rd Respondent herein, and asserted AIAC's immunities and protested against the MACC actions. They were ignored by the 3rd Respondent who continued their raid. I was also informed that the AALCO Secretary General also protested in writing vide a letter dated 19th November 2018 to the 3rd Respondent invoking AIAC's immunities and privileges and advised MACC to follow the proper protocols. AALCO's letter to 3rd Respondent which was copied to the Minister in the Prime Minister's Department in charge of Legal Affairs and the Centre is attached and marked as **Exhibit SR-11**. This was again ignored by 3rd Respondent and 4th Respondent Government of Malaysia.

17. I was then informed that the 3rd Respondent then summoned the AIAC lawyer Philip Koh to provide a statement to 3rd Respondent on 20.11.2018 about AIAC's assertion of immunities and privileges under the Host Country Agreement, Act 485 and under international law. I was informed by Philip Koh at that time and I verily believe that he put the 3rd Respondent on notice that the 3rd Respondent does not have jurisdiction over AIAC being an international organisation located in Malaysia. AIAC's authorisation letter dated 21.11.2019 appointing Messrs Mah-Kamariyah & Philip Koh is attached and marked as **Exhibit SR-12.**

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18. I was also informed at that time that the Centre's solicitors had also contacted the 2nd Respondent through the Attorney General's Chambers, both on the 19th and 20th November 2018 to convey the same, and was informed that his contentions would be conveyed to the AGC management.

19. I had previously indicated informally to various persons who had contacted me, including Vinayak Pradhan (who is currently the Acting Director of the Centre, and who was at that time a member of the Advisory Board of the Centre), that I was ready to provide any assistance to the Malaysian authorities within the limits of the 2013 Host Country Agreement and provided it did not jeopardize the operations of the Centre in relation to the baseless allegations in the poison pen letter.

20. As stated earlier, I was nevertheless unceremoniously arrested at the Kuala Lumpur International Airport on 20.11.2018 (as set out above) when I landed in Malaysia. This was despite my assertion to the arresting officer and my lawyer's assertion to the arresting officer later at the 3rd Respondent's head office of my immunities and privileges under the 2013 Host Country Agreement, Act 485 and international law. My invocation of immunities and privileges was ignored by the officers of the 3rd Respondent despite it being conveyed at my insistence to the higher management of the 3rd Respondent. I was then held overnight at the 3rd Respondent's lock-up without any charge preferred against me. I was also denied the opportunity to consult my lawyers during that time.

21. The next morning, I was brought to the Putrajaya Magistrate's Court where I was told that the 3rd Respondent was seeking to remand me for 7 days. As I was escorted into the court room, AIAC's lawyer Philip Koh informed me that

he was on the mobile phone with a member of staff of the Attorney General's Chambers. I was informed that upon the instruction of the Attorney General, I was being given an ultimatum to either resign or be sacked by the 4th Respondent, Government of Malaysia. I was also given the impression that if I resigned, no further action would be taken against me and the Centre. Therefore, I tendered my resignation as the Director of AIAC under severe duress as I was left with no choice but to resign in order to protect the Centre and myself from arbitrary arrest, interference and judicial proceedings. A copy of my hand written resignation letter (where a picture of the same was required to be taken and sent to the Attorney General's Chambers officer there and then) and my email to the Secretary General of AALCO, reporting to him on the series of incidents, are enclosed collectively and marked as **Exhibit SR-13**.

22. That very same morning, and I verily believe while the remand hearing was proceeding, Vinayak Pradhan was appointed as Acting Director of the Centre with immediate effect. A copy of the 2nd Respondent's media release announcing his appointment is enclosed and marked as **Exhibit SR-14**.

22.1. In his media release regarding Vinayak Pradhan's appointment, the 2nd Respondent thanked me for my 9-year leadership of the Centre.

22.2. Vinayak Pradhan is a lawyer and chartered arbitrator. He was a member of the Advisory Board of the Centre for some years. I verily believe Vinayak Pradhan is a close friend of the 2nd Respondent, and both of them were for many years employed and then became partners in the same law firm, that is Messrs Skrine.

22.3. Vinayak Pradhan has been in professional competition for various prestigious positions in various international societies or organizations over the many years we have known each other. We were both former Presidents of the Chartered Institute of Arbitrators United Kingdom and we both also held office as the Chairman of the Chartered Institute of Arbitrators Malaysian Branch.

22.4. I have always felt that many senior lawyers, including the 2nd Respondent and Vinayak Pradhan, considered me one level below them given my initial professional background as an Architect and Town Planner and my coming to the law later in life.

23. The media release by the 2nd Respondent is unusual and premeditated.

23.1. For one, it was announced extremely quickly in the morning of 21.11.2018 itself while the remand hearing was going.

23.2. The media release is by the 2nd Respondent, the Attorney-General, and not by the Minister in the Prime Minister's Department in charge of legal affairs (who is currently Datuk Liew Vui Keong).

23.3. Finally, it states that Professor Dr Kennedy Gastorn, the Secretary-General of AALCO "*supports*" these actions. I am reliably informed and I verily believe that Dr Gastorn was not consulted prior to the decision to arrest and detain me, prior to the decision to threaten me with dismissal if I do not resign, and prior to the decision to appoint Vinayak Pradhan. He was, I am informed and I verily believe, presented with these actions as a *fait accompli*.

Remand

24. I was produced before Magistrate Tuan Hakim Khir Nizam Jemari at the Magistrate's Court Putrajaya in the morning of 21.11.2018 for an application to remand me into the custody of the 3rd Respondent for 7 days.

24.1. Even though I was a former High Officer and protected by immunity, the Prosecuting Officer appointed by the 3rd Respondent, Tuan Fadhly Zamir sought a remand order for 7 days despite my assurance to cooperate fully with the investigation.

24.2. Indeed, I contend that in deceit and in the absence of good faith, the prosecuting officer for the 3rd Respondent argued that I was no longer protected by the immunity since I had resigned from my position as the Director of AIAC, even though the 4th Schedule of Act 485 clearly provides a former High Officer with immunity. It was obvious therefore that the instruction and or ultimatum for me to resign immediately before the remand proceeding was made with the ulterior motive or intent to canvass an argument that I was no longer clothed and protected by the immunity by reason of the resignation.

25. My counsel, and the counsel for the Centre, both objected to my arrest and any further remand on the grounds that:

25.1. as a former High Officer, I have complete immunity from arrest and remand; and

25.2. the 3rd Respondent has no authority to investigate matters relating to the Centre which is an international organization conferred immunity by statute and international law, and not a public body within the meaning of the Malaysian Anti-Corruption Commission Act 2009.

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26. The Magistrate dismissed the remand application and ordered my release, which I verily believe means he accepted the arguments by my counsel and the counsel for the Centre. I have not received any notice of appeal against this decision from the 1st Respondent, nor have my former or previous solicitors assisting me in respect of criminal proceedings informed me that they have received such a notice of appeal. The notes of the proceedings on that day provided to me by the solicitors who appeared is attached and marked as **Exhibit SR-15**.

MACC Orders

27. Despite this ruling, I then received an "order" from the 3rd Respondent to produce myself at the MACC Headquarters on 22.11.2019 to assist with investigations. I decided to assist with inquiries, but my solicitors issued a letter to the Chief Commissioner of the 3rd Respondent to reaffirm my position that my presence at the 3rd Respondent's office ought not to be construed as a waiver of my immunity as a High Officer under the law.

27.1. A copy of all the Orders from the MACC that I have retained is enclosed marked as **Exhibit SR-16**.

27.2. The letter from one of my then lawyers Tan Sri Abdul Gani Patail to the Chief Commissioner of the 3rd Respondent dated 23.11.2018 is attached and marked as **Exhibit SR-17**.

28. I therefore attended before the officers of the 3rd Respondent a total of 6 times over 6 days, and each day made clear that my attendance was not in any way meant as a waiver of my immunity.

29. In relation to the accusations, allegations and the direction of the investigation wherein I was questioned primarily on the expenditure of Centre's monies, I aver that the impugned expenditure were all within my mandate and authority to incur in my official capacity as Director. I aver that these monies belong to the Centre and under the ultimate supervision and control of AALCO. I have the authority, mandate and discretion to incur expenditure in the best interest of the Centre as an International Organisation vis-a-vis its Host Country, Malaysia.

30. I contend that upon the grant being made by the 4th Respondent Government of Malaysia in accordance with the 2013 Host Country Agreement, that grant together with all other funds of the Centre belongs to Centre to be expended by me as High Officer and my team under the supervision of AALCO.

30.1. This is provided for in Article IV(2) of the 2013 Host Country Agreement which states that the Government of Malaysia shall continue

"to make available a suitable premise for the Centre and to make an annual grant for the purposes of the functioning of the Centre including the following:

i) Operating costs of the Centre;

ii) Purchase of office furniture, equipment, stationery, telephones, faxes etc.;

iii) Costs of seminars and conferences which are to be conducted in Malaysia under the auspices of the Centre."

30.2. Article IV(3) then goes on to provide that the Director of the Centre shall send Annual Reports on the activities of the Centre to the Secretary General of AALCO and the appropriate department of the Host Government. When read together with Article IX on settlement of disputes, which requires the Government of Malaysia and AALCO to settle amicably any difference or dispute concerning amongst other things the implementation or application of any provision of the 2013 Host Country Agreement. I verily believe that it was never the intention of the parties of the 2013 Host Country Agreement that the Director would ever have to face arrest, detention and criminal charges for the manner in which he administers the funds of the Centre.

31. In the period while I was cooperating with the MACC in their inquiries, I received a letter dated 27.11.2018 marked as an official secret from the 1st Respondent to the Acting Director of the Centre requesting a waiver of my immunity. A few days later, I received a letter dated 29.11.2018 from the Acting Director to the 1st Respondent with a copy to me.

31.1. I enclose a copy of the Acting Director's letter marked as **Ekshibit SR-18** declining the request for the waiver.

31.2. I was advised by my lawyers at that time that the Acting Director had no power to waive my immunity and his reasoning in the said letter was incorrect. However, since he had declined the request, I was not aggrieved by his act.

32. I have been informed that the Respondents have tried, and are continuing to try, to obtain a waiver of my immunity from the Secretary-General of AALCO and from the Acting Director of the Centre. I verily believe that the 2nd

Respondent is seeking to prefer charges against me for acts and things done by me in my capacity as Director of the Centre and during my tenure as High Officer.

33. The Respondents are seeking a waiver under section 8A of Act 485, even though they are, I verily believe, fully aware that section 8A does not apply to me as a High Officer, but only permits the appropriate authority of the relevant international organization to waive immunities of "representatives, officials and experts".

34. The Respondents are also unfairly excluding me from the correspondence with AALCO and the Centre, thus leaving me in the dark about the unlawful actions they are taking. I have snippets of information from emails and telephone conversations with the Secretary General of AALCO, Professor Kennedy Gastorn, and from letters that he copies me to when replying to the Respondents. For instance, I attach marked as **Exhibit SR-19** the reply letter dated 17.12.2018 issued by the Secretary General of AALCO to the 2nd Respondent which was copied to me informing the 1st Respondent he was "urgently examining" what I verily believe was a request for a waiver of immunity. It appears that the 1st Respondent sent similar letters to the Secretary General of AALCO and the Acting Director of the Centre but only sent copies of his correspondence with the Acting Director to me at that time. Since then I have not received any further correspondence from the parties although I am reliably informed that attempts continue to get this waiver.

35. I state again that as a former High Officer, I continue to enjoy the immunities and privileges given to me by the law for acts done during my term of office.

Enclosed marked as **Exhibit SR-20** is a copy of a letter issued by my then solicitors Messrs Cheow Wee & Mai to the 2nd Respondent dated 28.11.2018.

36. AALCO has, through its Secretary General, Professor Kennedy Gastorn, protested the breach of the 2013 Host Country Agreement by the Respondents in conducting the investigation. AALCO has written to the Chief Commissioner of the 3rd Respondent to state that AIAC is guaranteed immunities and privileges as an international organization based on the 2013 Host Country Agreement, and appealed to the Respondents to follow the due process without breaching any confidentiality rules to protect the integrity of the Centre in the ongoing investigation. The letter issued by the Secretary General of the AALCO to the Chief Commissioner of the 3rd Respondent dated 19.11.2018 is referred to in paragraph 16 and attached as Exhibit SR-11.

Unlawful waiver

37. Nevertheless, from information provided to me which I verily believe to be true, I verily believe and aver that Vinayak Pradhan as the Acting Director of the Centre has purported on or about 22nd February 2019 to waive my immunity since the date of my appointment in 2010, and the immunity of the Centre for the limited purposes of accessing documents and information relating to proceedings against me. I contend that this is unlawful, unreasonable, and without any basis in law.

38. In any event, I contend that neither the Director, the Acting Director nor any other person in the Centre nor any of the the Respondents are the appropriate authority to waive my immunity, even if it could be done under the law (which I deny).

39. After the unlawful waiver purportedly issued by the Acting Director, I am informed that the Respondents through the 2nd Respondent Attorney General has again requested AALCO and its Secretary-General to agree to this waiver, in order to bring criminal charges against me for the way in which I carried out my duties as Director of the Centre.

40. If I am charged, I verily believe this will cause irreparable harm to my reputation and standing, to the reputation and standing of the Centre, and to Malaysia's international standing and reputation for upholding international law and the immunities and privileges of diplomats and other persons under international law.

Real danger of bias

41. Further, I contend, with respect, that there is a real danger of bias against me in the actions by the current Acting Director of the Centre and the Respondents, in light of the circumstances of my often contentious and even tumultuous relationship with the Acting Director and the 2nd Respondent over the years.

42. I contend that I am being used as a pawn by the Respondents, who are seeking to punish me since I was appointed by the previous administration, who were voted out during the momentous 14th General Elections on 9th May 2018 which saw a change in the Federal administration for the first time in Malaysia's history. I verily believe that I am being unfairly targeted because I was appointed by the previous administration.

Irrationality

43. The manner the Respondents proceeded to arrest me, and the attendant widespread international and domestic publicity and media humiliation of me, was wholly irrational. It has damaged me considerably, both professionally and personally. I have had to resign from the Adjudicatory Chamber of the Ethics Committee, FIFA and my future prospects to continue working in arbitration has been totally derailed. My arrest, the raid on the Centre, and the continued attempts by the Respondents to waive my immunity and to wrongfully charge me for my actions done when in my capacity as Director of the Centre is, I verily believe, causing confidence in the Centre and in Malaysia as a centre for commercial arbitration, to be severely jeopardized. Further, it is causing concern among diplomatic circles about the cavalier manner in which an international organization's High Officer was unceremoniously arrested and detained.

44. I aver that immunity is conferred on citizens of a country who are in charge of international organizations precisely so that the country in question cannot intimidate or harass that citizen, and thereby harm the interests of the international organization. Here, AALCO has reasonable grounds to fear that Malaysia's actions will impinge on their activities throughout Africa and Asia, where they operate 4 other regional centres for arbitration (though there is only 1 in Malaysia). It has already shaken users' and investors' confidence in the Centre, and irreparably harmed the reputation of the Centre and Malaysia.

45. It is also noteworthy that the Centre's accounts have been audited all these years. At no point has the auditor made any qualifications to the audited accounts, which have been submitted to AALCO and various parties within the Government of Malaysia each year.

Conclusion

In the circumstances, I respectfully ask for leave to apply for judicial review and thereafter for the substantive declarations and orders I seek in order to preserve the immunity and integrity of the work of the Centre and my position as its former High Officer.

Affirmed by the deponent named above Sundra Rajoo a/l Nadarajah on 04 MAR 2019 at Kuala Lumpur }

Before me

COMMISSIONER FOR OATHS

Tingkat 5 Wisma Harwant
Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur

This affidavit in support is filed on behalf of the Applicant named above by his solicitors Kanesalingam & Co. whose address for service is at Unit 3.3, Level 3, Wisma Bandar, 18, Jalan Tuanku Abdul Rahman, 50100 Kuala Lumpur.
Tel:03 2698 9199
Fax:03 2698 9799
Email: shan@kanesalingam.com
[Ref: 2019S/SR/1013(Hy)(1000-1130)]

WA-25-108-03/2019

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DALAM MAHKAMAH MALAYA DI KUALA LUMPUR
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)
PERMOHONAN SEMAKAN KEHAKIMAN NO: WA-25-108-03/2019

Dalam perkara berkaitan dengan keputusan Kerajaan Malaysia melalui Menteri-menteri, Peguam Negara dan pegawai-pegawainya atau ejen-ejennya untuk selanjutnya menangkap, menahan, mendakwa atau mengambil prosiding-prosiding kehakiman terhadap mantan Pegawai Tinggi Datuk Sundra Rajoo a/l Nadarajah tanpa mengira kekebalannya

Dan

Dalam perkara satu penepian yang berupa diberikan secara salah pada atau sekirata 22.2.2019 oleh Pemangku Pengarah Pusat Timbang Tara Antarabangsa Asia (Malaysia) berkenaan dengan kekebalan Datuk Sundra Rajoo a/l Nadarajah

Dan

Dalam perkara berkaitan dengan usaha-usaha Kerajaan Malaysia menerusi Menteri-menteri, Peguam Negara dan pegawai-pegawainya atau ejen-ejennya untuk mendapatkan penepian kekebalan matan Pengarah dan Pegawai Tinggi Pusat Timbang Tara Antarabangsa Asia (Malaysia) Datuk Sundra Rajoo a/l Nadarajah

Dan

Dalam perkara berkaitan dengan perenggan 1 Jadual Pertama Akta Mahkamah Kehakiman 1964 dan A.53 dan Aturan 15 K.16 Kaedah-Kaedah Mahkamah 2012

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ANTARA

SUNDRA RAJOO A/L NADARAJAH ... PEMOHON

DAN

1. MENTERI HAL EHWAL LUAR NEGERI MALAYSIA

2. PEGUAM NEGARA MALAYSIA

3. SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA

4. KERAJAAN MALAYSIA ... RESPONDEN-RESPONDEN

AFIDAVIT RESPONDEN-RESPONDEN

Saya, **TOMMY THOMAS** (KP No: 520521-10-5991) seorang warganegara Malaysia dan cukup umur yang beralamat pejabat di Jabatan Peguam Negara Malaysia, No. 45, Persiaran Perdana, Presint 4, 62100 Putrajaya dengan sesungguhnya berikrar dan menyatakan seperti berikut:

1. Saya adalah Responden Ke-2 dalam tindakan ini dan diberi kuasa sepenuhnya untuk mengikrarkan afidavit ini bagi pihak kesemua Responden.

2. Fakta-fakta yang dideposkan di sini adalah benar mengikut pengetahuan peribadi saya dan berdasarkan rekod dan dokumen dalam simpanan Responden-Responden yang mana saya mempunyai akses sepenuhnya kecuali dinyatakan sebaliknya.

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3. Saya memohon kebenaran Mahkamah yang Mulia ini untuk merujuk kepada –

(i) Borang 109 bertarikh 5.3.2019 **[Permohonan untuk Kebenaran]**;

(ii) Perintah Mahkamah Rayuan bertarikh 23.5.2019;

(iii) Borang 110 bertarikh 24.5.2019 **[Permohonan Substantif]**;

(iv) Afidavit Sokongan yang diikrarkan pada 4.3.2019 **[Afidavit Permohon 1]**;

(v) Afidavit Tambahan yang diikrarkan pada 21.3.2019 **[Afidavit Permohon 2]**;

(vi) Afidavit Ke-3 Pemohon yang diikrarkan pada 22.3.2019 **[Afidavit Pemohon 3]**;

(vii) Afidavit Ke-4 Pemohon yang diikrarkan oleh Noor Nasyrah binti Samir pada 25.3.2019 **[Afidavit Pemohon 4]**;

(viii) Afidavit Ke-5 Pemohon yang diikrarkan pada 28.6.2019 **[Afidavit Pemohon 5]**; dan

(ix) Pernyataan Terpinda berdasarkan A.53 k.3(2) Kaedah-Kaedah Mahkamah 2012 bertarikh 21.8.2019 **[Pernyataan]**.

4. Saya sesungguhnya percaya dan menyatakan bahawa Pemohon memohon Semakan Kehakiman terhadap keputusan saya untuk mengenakan dakwaan jenayah terhadap Pemohon atas alasan Pemohon mempunyai kekebalan selaku mantan Pegawai Tinggi Pusat Timbangtara Antarabangsa Asia (Malaysia) **[AIAC]**. Dalam konteks tersebut, Pemohon memohon suatu pengisytiharaan bahawa Pemohon mempunyai kekebalan bagi tindakan-tindakan yang dilaku dalam kapasiti tersebut.

5. Saya sesungguhnya percaya dan menyatakan bahawa fakta-fakta relevan yang tidak dipertikaikan untuk Permohonan Substantif ini adalah bahawa –

(i) Pemohon telah ditahan oleh pihak Responden Ke-3 pada 20.11.2018;

(ii) Pemohon telah meletak jawatannya sebagai Pegawai Tertinggi AIAC pada 21.11.2018;

(iii) Pemohon telah failkan Permohonan untuk Kebenaran pada 5.3.2019;

(iv) saya telah memberi izin untuk mendakwa Pemohon pada 22.3.2019 **[Eksibit SR-29 Afidavit Pemohon 5]**;

(v) Permohonan untuk Kebenaran telah ditolak oleh Mahkamah Tinggi pada 26.3.2019 dan Pemohon telah failkan rayuan terhadap keputusan tersebut ke Mahkamah Rayuan;

(vi) Pemohon telah dikenakan 3 pertuduhan jenayah di bawah seksyen 409 Kanun Keseksaan di Mahkamah Sesyen Kuala Lumpur pada 26.3.2019 **[Eksibit SR-28 Afidavit Pemohon 5]** dan Pemohon minta kesemua pertuduhan tersebut dibicarakan;

(vii) rayuan Pemohon terhadap keputusan Mahkamah Tinggi bertarikh 26.3.2019 telah dibenarkan dan Pemohon diberi kebenaran memohon Semakan Kehakiman pada 23.5.2019;

(viii) Pemohon telah failkan Permohonan Substantif pada 24.5.2019; dan

(ix) prosiding jenayah terhadap Pemohon masih belum dibicarakan.

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6. Saya sesungguhnya percaya dan menyatakan bahawa Kamar saya telah membantah kepada Permohonan untuk Kebenaran atas 2 alasan; iaitu –

(i) kuasa budi bicara Peguam Negara untuk memulakan atau menjalankan prosiding bagi sesuatu kesalahan adalah di bawah Perkara 145(3) Perlembagaan Persekutuan dan kuasa tersebut tidak tertakluk kepada Semakan Kehakiman dan tidak boleh dicabar di mana-mana Mahkamah; dan

(ii) isu berkenaan kekebalan Pemohon hendaklah dibangkitkan di Mahkamah Sesyen di mana Pemohon dikenakan pertuduhan jenayah tersebut.

7. Saya sesungguhnya percaya dan menyatakan bahawa Responden-Responden membantah kepada Permohonan Substantif ini atas isu-isu yang sama ~~yang~~ dan isu-isu ini melibatkan persoalan undang-undang dan bukannya fakta.

8. Saya menafikan dakwaan-dakwaan yang terkandung dalam perenggan-perenggan 3.20, 3.25, 3.32, 3.33, 3.36, 4.10, 4.14 dan 4.15 dalam Pernyataan.

9. Saya menafikan dakwaan-dakwaan yang terkandung dalam perenggan-perenggan 21, 23, 24.2, 32, 33, 34, 41, 42, 43 dan 44 Afidavit Pemohon 1.

10. Saya menafikan dakwaan-dakwaan yang terkandung dalam perenggan-perenggan 7, 9, 10, 11 dan 12 Afidavit Pemohon 3.

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11. Saya menafikan dakwaan-dakwaan yang terkandung dalam perenggan-perenggan 13, 20, 21, 23, 26 dan 27 Afidavit Pemohon 5.

12. Saya sesungguhnya percaya dan menyatakan bahawa –

(i) dalam apa keadaanpun, isu berkenaan kekebalan Pemohon adalah suatu isu yang sepatutnya dan secara ekslusif dibangkitkan di Mahkamah Sesyen di mana Pemohon dikenakan pertuduhan jenayah tersebut;

(ii) sekiranya Mahkamah Sesyen menerima hujahan Pemohon akan kekebalannya, ia berupa suatu pembelaan mutlak kepada Pemohon dalam prosiding jenayah tersebut; dan

(iii) ia akan menjadikan prosiding ini suatu penyalahgunaan proses Mahkamah yang Mulia ini.

13. Saya sesungguhnya percaya dan menyatakan bahawa –

(i) apa-apa dakwaan terhadap Pemangku Pengarah atau Pengarah AIAC semasa tidak relevan kerana beliau bukan pihak dalam tindakan ini; dan

(ii) tiada sebarang dakwaan salahlaku di pihak Responden Pertama dalam mana-mana suratcara Pemohon.

14. Saya sesungguhnya percaya dan menyatakan bahawa pernyataan-pernyataan lain dalam Pernyataan, Afidavit Pemohon 1, Afidavit Pemohon 2, Afidavit Pemohon 3, Afidavit Pemohon 4 dan Afidavit Pemohon 5 adalah pernyataan-pernyataan kosong, dakwaan-dakwaan yang tiada asas, pengemukaan isi kandungan dokumen-dokumen yang telahpun dieksibitkan, rumusan dan tanggapan Pemohon sendiri akan kandungan dokumen-dokumen tersebut yang tidak relevan untuk memutuskan permohonan ini.

15. Berdasarkan alasan-alasan di atas, saya dengan rendah diri memohon agar permohonan ini ditolak.

Diikrarkan oleh	)
TOMMY THOMAS	)
pada 12 SEP 2019	)
pukul 11.40 pagi / ~~petang~~	)
di Putrajaya	)

Di hadapan saya,

PESURUHJAYA SUMPAH
A-W 467
FAZLINA BINTI JAMALUDIN
JABATAN PEGUAM NEGARA
1/3/2019 - 30/6/2021
MALAYSIA

....
Pesuruhjaya Sumpah

AFIDAVIT RESPONDEN-RESPONDEN ini diikrarkan pada 12 SEP 2019 dan difailkan pada 12 SEP 2019 oleh Peguam Kanan Persekutuan untuk and bagi pihak Responden yang mempunyai alamat penyampaiannya di Jabatan Peguam Negara (Bahagian Guaman), No.45, Persiaran Perdana, Presint 4, 62100 PUTRAJAYA.

[PN/WKL/HQ/11/30/2019]

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AFIDAVIT KE-6 PEMOHON
Diikrarkan pada 3 0 SEP 2019
Difailkan pada 3 0 SEP 2019
Bagi pihak Pemohon

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BIDANGKUASA RAYUAN DAN KUASA-KUASA KHAS)
PERMOHONAN SEMAKAN KEHAKIMAN NO. WA-25-108-03/2019

ANTARA

SUNDRA RAJOO A/L NADARAJAH ... Pemohon

DAN

1. MENTERI HAL EHWAL LUAR NEGERI, MALAYSIA
2. PEGUAM NEGARA MALAYSIA
3. SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
4. KERAJAAN MALAYSIA ... Responden-Responden

AFIDAVIT KE-6 PEMOHON
(TANPA MENGETEPIKAN HAK KEKEBALAN)

Saya, **SUNDRA RAJOO A/L NADARAJAH** (No. K/P: 560103-04-5451), seorang warganegara Malaysia dan merupakan seorang penimbang tara yang cukup umur yang tinggal di No. 28, Lorong Setiabistari 3, Bukit Damansara, 50490 Kuala sesungguhnya menyatakan dan mengikrarkan seperti yang berikut: -

1. Saya merupakan Pemohon yang dinamakan di atas. Kandungan afidavit ini adalah daripada pengetahuan peribadi saya, dan adalah benar.

2. Saya mengambil prosiding-prosiding ini dan mengikrarkan afidavit ini tanpa mengetepikan kekebalan saya sepertimana diperuntukkan di bawah undang-undang sebagai mantan Pegawai Tinggi dan sebagai mantan Pengarah Pusat Timbang Tara Antarabangsa Asia (Malaysia) ("**AIAC**").

3. Saya memohon kebenaran untuk merujuk kepada kertas-kertas kausa berikut yang telah difailkan di dalam prosiding ini:

   a) Borang 109 yang telah difailkan pada 5.3.2019,

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b) Borang 110 yang telah difailkan pada 24.5.2019,

c) Afidavit Sokongan saya yang telah diikrarkan pada 4.3.2019

d) Afidavit Tambahan saya yang telah diikrarkan pada 21.3.2019

e) Afidavit No.3 saya yang telah diikrarkan pada 22.3.2019

f) Afidavit yang telah diikrarkan oleh Noor Nasyrah binti Samir pada 25.3.2019

g) Afidavit No.5 saya yang telah diikrarkan pada 28.6.2019

h) Pernyataan Terpinda menurut Aturan 53 Kaedah 3(2) Kaedah-Kaedah Mahkamah 2012 bertarikh 21.8.2019.

i) Afidavit Responden-Responden yang telah diikrarkan oleh Tommy Thomas pada 12.9.2019 ("**Afidavit Responden-Responden tersebut**").

4. Saya mengikrarkan Afidavit ini sebagai jawapan kepada Afidavit Responden-Responden tersebut.

5. Walaupun saya mengikrarkan afidavit ini sebagai jawapan kepada Afidavit Responden-Responden tersebut, saya tidak berhasrat untuk dianggap sebagai mengakui apa-apa pernyataan yang tidak dinafikan dengan nyata. Saya juga akan bergantung kepada hujahan-hujahan oleh peguam saya terhadap alegasi-alegasi dalam Afidavit Responden-Responden tersebut yang tidak konsisten dengan keterangan dokumentari, tidak boleh dipercayai atau tidak boleh digunapakai sebagai keterangan.

6. Pertama sekali, saya menegaskan bahawa avermen-avermen dalam Afidavit Responden-Responden hanya merupakan satu penafian semata-mata. Responden telah gagal untuk memberikan maklumat terperinci, dan menjawab kepada alegasi-alegasi spesifik yang dibangkitkan di dalam kelima-lima affidavit terdahulu saya yang telah difailkan di dalam prosiding-prosiding ini. Saya mengulangi semula dan berpegang kepada semua kandungan affidavit-afidavit terdahulu saya.

7. Saya merujuk secara spesifik kepada perenggan 5(vi) Afidavit Responden-Responden tersebut dan menyatakan bahawa walaupun saya menuntut

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perbicaraan ke atas 3 pertuduhan jenayah yang tidak berasas terhadap saya, saya telah menyatakan bahawa saya berbuat sedemikian tanpa prejudis terhadap kekebalan saya.

8. Saya juga merujuk secara spesifik kepada perenggan 5(ix) Afidavit Responden-Responden tersebut dan menafikan dakwaan Responden-Responden bahawa prosiding jenayah terhadap saya belum dimulakan.
   a) Saya telah dikenakan tuduhan secara salah di sisi undang-undang, walaupun dengan tuntutan kekebalan saya.
   b) Bukti-bukti dalam bentuk dokumen-dokumen yang mempunyai keistimewaan dan tidak boleh dicabuli ("privileged and inviolable documents") milik AIAC dan AALCO telah disampaikan kepada peguamcara saya.
   c) Saya telah membantah kepada pengemukakan dokumen-dokumen tersebut disebabkan ia melanggar Perjanjian Tuan Rumah yang telah ditandatangani oleh Kerajaan Malaysia dan AALCO.
   d) AALCO juga telah membantah dengan tegas pengemukakan dokumen-dokumen tersebut melalui surat terkini mereka yang bertarikh 10.7.2019, kandungannya yang akan diterangkan kemudian di dalam affidavit ini.

9. Saya juga telah mengarahkan peguamcara saya untuk memfailkan satu permohonan penangguhan prosiding jenayah sehingga pendengaran dan pelupusan prosiding di hadapan Mahkamah Yang Mulia ini. Permohonan penangguhan tersebut telah ditetapkan untuk keputusan pada 30.9.2019. Saya mengulangi semula bahawa prosiding jenayah terhadap saya yang sedang berlangsung tersebut adalah bercanggah dengan undang-undang Malaysia dan perjanjian antarabangsa dengan AALCO.

10. Saya merujuk kepada perenggan 6 (ii), 7 dan 12 Afidavit Responden-Responden tersebut dan saya telah dinasihati oleh peguamcara saya dan saya sesungguhnya percaya bahawa isu kekebalan saya haruslah ditentukan oleh Mahkamah Yang Mulia ini dan bukannya di dalam prosiding jenayah. Permohonan semakan kehakiman saya yang menuntut pelbagai relif, termasuk satu deklarasi terhadap isu kekebalan saya telah difailkan terlebih

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dahulu sebelum 3 pertuduhan jenayah yang tidak berasas tersebut dibawa terhadap saya. Saya menegaskan bahawa tindakan membawa pertuduhan terhadap saya tersebut telah melanggar kekebalan saya. Oleh itu, adalah tidak munasabah untuk saya membangkitkan isu kekebalan saya di dalam prosiding jenayah yang tidak sah tersebut. Mahkamah Yang Mulia ini adalah satu-satunya forum dimana isu-isu keesahan pertuduhan tersebut dan prosidingnya selanjutnya dapat dipertimbangkan.

11. Saya merujuk kepada perenggan 8 sehingga 11 dan 14 Afidavit Responden-Responden tersebut dan menegaskan bahawa perenggan-perenggan tersebut hanyalah satu penafian oleh Responden-Responden semata-mata, tanpa memberikan apa-apa maklumat terperinci dan tanpa memberikan sebarang bukti untuk menyokongnya. Avermen-avermen yang dinafikan oleh Responden-Responden tersebut adalah berdasarkan pengetahuan peribadi saya atau telah dimaklumkan oleh peguamcara saya yang hadir sepanjang peristiwa tersebut.

12. Saya sesungguhnya percaya bahawa Responden-Responden juga tidak menjawab kandungan 2 surat AALCO yang dilampirkan di dalam afidavit terdahulu saya (Surat Pertama AALCO bertarikh 22.3.2019 yang diekshibitkan di dalam Ekshibit NS-1 afidavit peguamcara saya dan Surat Kedua AALCO bertarikh 3.4.2019 diekshibitkan di dalam Ekshibit SR-40 Afidavit Kelima saya).

13. Kedua-dua surat AALCO ini adalah penting dalam menyokong pendirian AALCO bahawa mereka tidak bersetuju untuk mengetepikan kekebalan AIAC dan kekebalan saya sebagai seorang Mantan Pegawai Tinggi. AALCO juga melalui surat-surat ini telah membantah dengan tegas dan menjauhkan diri daripada pertuduhan jenayah yang dibawa terhadap saya, dan juga daripada sebarang keputusan yang dibuat oleh Pemangku Pengarah AIAC dalam mengetepikan kekebalan dan keistimewaan terhadap saya.

14. Saya menegaskan bahawa Responden telah gagal atau dengan sengaja enggan mengemukakan surat terkini yang telah diisu oleh Setiausaha Agung AALCO pada 10.7.2019 kepada Peguam Negara Malaysia iaitu deponen

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Afidavit Responden-Responden tersebut **("surat ketiga AALCO")**. Sesalinan surat ketiga AALCO dilampirkan dan ditandakan sebagai **Ekshibit SR-47**.

a) Dengan surat ketiga AALCO tersebut, AALCO mengesahkan bahawa mereka mengetahui tentang pembelian dan pengagihan Buku saya (yang merupakan perkara subjek bagi pertuduhan-pertuduhan jenayah tersebut) sebagai sebahagian daripada aktiviti promosi AIAC. Bahagian yang relevan di dalam surat tersebut diulangi di bawah:

> *"4.On 25 March 2019, you informed me that charges were instituted against Datuk Prof. Sundra Rajoo on the basis of MACC's investigation. In my letter to you of 3 April 2019, I objected to the charges against Datuk Prof. Sundra Rajoo on the basis of immunities granted to him under the Host Country Agreement as the charges related to promotion activity of the AIAC through purchase and distribution of his book "Law, Practice and Procedure in Arbitration" of 2016. It covered services and arbitral regimes of the AIAC, among others.* ***AALCO was aware, participated and supported such promotion activities as it greatly enhanced the position of the AIAC in the international arbitral community. Needless to mention that he donated all royalties received from the purchase of the books by the AIAC back to the AIAC."***
>
> [Emphasis supplied]

b) AALCO juga telah membantah dengan sekeras-kerasnya pengemukakan dokumen-dokumen milik AIAC atau AALCO dalam prosiding jenayah yang yang mana mempunyai keistimewaan dan tidak boleh dicabul ("privileged and inviolable") di bawah Perjanjian Tuan Rumah. AALCO seterusnya telah meminta satu akujanji dan jaminan daripada Peguam Negara bahawa langkah serta-merta diambil untuk memastikan dokumen-dokumen tersebut dikendalikan dengan cara-cara yang dicadangkan oleh AALCO. Bahagian yang relevan di dalam surat tersebut diulangi di bawah:

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"5. At the same time, I also recorded my concern that the Malaysian Government in these charges may likely use numerous information, documents and materials that are meant to be inviolable under the Host Country Agreement. I added that:

"AALCO categorically does not consent archives, documents and or information, or copies of any of the above in any form, belonging to, or held by, the AIAC to be used and or produced before the Sessions Court in Kuala Lumpur or any other court, and requests the same archives, documents and or information and their copies if already given to the prosecutors, be returned to the AIAC immediately."

6. *AALCO has been copied a correspondence from Datuk Baljit Singh Sidhu, addressed to the Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Legal and Prosecution Division, dated 3 May 2019 relating to the SESSION COURT 9 KUALA LUMPUR CASE NO. WA-62R-15-03/2019 PP V SUNDRA RAJOO A/L NADARAJAH.*

7. *According to this correspondence, the Prosecution has produced a set of 15 documents belonging to the Asian International Arbitration Centre (AIAC) and or Asian-African Legal Consultative Organization (AALCO) to the court in this case in breach of Article III(2) of the Host Country Agreement between AALCO and the Government of Malaysia in the context of my correspondences on the same to you, or copied to you, of 22 March 2019 and 3 April 2019.*

8. *Since AALCO has no itemised list of documents in the hands*

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of MACC, it is unable to effectively and independently investigate and verify some of the existing allegations and cannot confirm if the documents produced before the court, are the same documents seized during MACC's raid or extracted from the AIAC during MACC's investigations.

9. Consistent with the Host Country Agreement, and in view of the above, AALCO hereby seeks your undertaking and or assurances, at your earliest, that:

(a) all documents and data seized by MACC during the raid to the AIAC and subsequent investigations at the AIAC which belongs to, or were held by, the AIAC be immediately sealed and returned or delivered into the custody of the AIAC;
(b) any and all documents and data disclosed or transmitted to MACC by the AIAC be immediately sealed and returned or delivered into the custody of the AIAC;
(c) any and all copies of documents and data seized by, or disclosed to, MACC shall be destroyed beyond recovery; and
(d) all documents and data seized by MACC during the raid to the AIAC and subsequent investigations at the AIAC which belongs to, or were held by, the AIAC shall not be used and or produced before the Sessions Court in Kuala Lumpur or any other court."

15. Dalam menjawab perenggan 13 (i) Afidavit Responden-Responden tersebut, saya menegaskan bahawa Pemangku Pengarah AIAC tidak dinamakan sebagai parti di dalam prosiding ini kerana kekebalan beliau. Walaubagaimanapun, saya telah mencadangkan dalam pernyataan saya supaya notis prosiding semakan kehakiman turut diberikan kepada beliau.

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a) Responden-Responden di dalam affidavit mereka telah mengakui secara tersirat bahawa Pemangku Pengarah AIAC sememangnya dikatakan telah mengetepikan kekebalan saya yang telah membenarkan pertuduhan jenayah dibawa terhadap saya.

b) Perkara ini juga terbukti di dalam Afidavit Jawapan SPRM yang telah diikrarkan oleh Hasmizzy bin Md Hasim pada 23.8.2019 yang telah difailkan di dalam prosiding jenayah. Sesalinan Afidavit tersebut dilampirkan dan ditandakan sebagai **Ekshibit SR-48**. Bahagian yang relevan di dalam affidavit tersebut diulangi di bawah:

> *"11. Merujuk kepada perenggan 11 Afidavit Sokongan Pemohon, saya telah dinasihatkan oleh Timbalan Pendakwa Raya untuk mengatakan bahawa saya mempunyai pengetahuan tentang fakta bahawa Pemangku Pengarah AIAC telah mengenepikan imuniti Pemohon namun saya tiada pengetahuan berkenaan Pemangku Pengarah AIAC tidak diberi kuasa untuk memberikan pengenepian tersebut dan meminta Pemohon membuktikannya"*

c) Saya menegaskan bahawa Pemangku Pengarah tidak mempunyai kuasa untuk mengetepikan kekebalan saya yang mana telah membawa kepada 3 pertuduhan jenayah yang tidak berasas terhadap saya tanpa mengambilkira kekebalan saya sebagai seorang mantan Pegawai Tinggi. Disebabkan pengetepian kekebalan saya berasal daripada Pemangku Pengarah tersebut sedangkan beliau sememangnya tahu bahawa AALCO sendiri telah enggan mengetepikan kekebalan saya walaupun dengan permintaan Responden-Responden, Pemangku Pengarah akan menghadapi akibat daripada tindakannya jika terbukti bahawa beliau telah bertindak melebihi kuasanya.

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16. Oleh itu, saya memohon untuk satu deklarasi-deklarasi dan perintah-perintah substantif yang dinyatakan di dalam permohonan, dan sebarang perintah lain yang dianggap adil oleh Mahkamah Yang Mulia ini, untuk menjaga kekebalan dan integriti kerja Asian International Arbitration Centre (Malaysia) (sebelum ini dikenali sebagai Kuala Lumpur Regional Centre for Arbitration) dan jawatan saya sebagai mantan Pegawai Tingginya.

Diikrarkan oleh deponen yang }
dinamakan di atas }
Sundra Rajoo a/l Nadarajah }
pada 30 SEP 2019 }
di KUALA LUMPUR

Di hadapan saya

Pesuruhjaya Sumpah

Afidavit oleh Sundra Rajoo a/l Nadarajah ini diikrarkan pada 30 SEP 2019 dan difailkan pada 30 SEP 2019 bagi pihak Pemohon yang dinamakan di atas oleh peguamcaranya Kanesalingam & Co. yang mempunyai alamat penyampaian di Unit 3.3, Level 3, Wisma Bandar, 18, Jalan Tuanku Abdul Rahman, 50100 Kuala Lumpur.
[Ref: 2019S/SR/1013(Hy)(1000-1130)]
Tel:03 2698 9199
Fax:03 2698 9799
Email: shan@kanesalingam.com /dinesh@kanesalingam.com

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English Translation

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(APPELLATE AND SPECIAL POWERS DIVISION)
APPLICATION FOR JUDICIAL REVIEW NO. WA-25-108-03/2019

BETWEEN

SUNDRA RAJOO A/L NADARAJAH ... Applicant

AND

1. MINISTER OF FOREIGN AFFAIRS, MALAYSIA
2. ATTORNEY GENERAL OF MALAYSIA
3. MALAYSIAN ANTI-CORRUPTION COMMISSION
4. GOVERNMENT OF MALAYSIA ... Respondents

APPLICANT'S 6TH AFFIDAVIT
(WITHOUT WAIVER OF IMMUNITY)

I, **SUNDRA RAJOO A/L NADARAJAH** (NRIC No. 560103-04-5451), a Malaysian citizen and an arbitrator of full age of No. 28, Lorong Setiabistari 3, Bukit Damansara, 50490 Kuala Lumpur, do verily state and affirm as follows: -

1. I am the Applicant named above. The contents of this affidavit are from my personal knowledge, and are true.

2. I take these proceedings and affirm this affidavit without in any way waiving my immunity provided by law as a former High Officer, being the former Director of the Asian International Arbitration Centre (Malaysia) ("**AIAC**").

3. I crave leave to refer to the following cause paper filed in this proceeding:

   a) Form 109 dated on 5.3.2019,
   b) Form 110 dated 24.5.2019,
   c) my Affidavit in Support affirmed on 4.3.2019
   d) my Supplementary Affidavit affirmed on 21.3.2019
   e) my Affidavit No.3 affirmed on 22.3.2019
   f) affidavit affirmed by Noor Nasyrah binti Samir on 25.3.2019
   g) my Affidavit No.5 affirmed on 28.6.2019

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h) the Amended Statement pursuant to Order 53 Rule 3(2) Rules of Court 2012 dated 21.8.2019.

i) Respondents' Affidavit affirmed by Tommy Thomas on 12.9.2019 ("**the Respondents' Affidavit**").

4. I affirm this affidavit in reply to the Respondents' Affidavit.

5. Although I make this affidavit in reply to the same, I do not wish to be thought of as having admitted any statement if it is not expressly denied. I will also be relying on submissions by my lawyers as to the allegations in the affidavit under reply which are inconsistent with the documentary evidence, incredible, irrelevant or inadmissible as evidence.

6. At the outset, I contend that the averments in the Respondents' Affidavit are merely bare denials. The Respondents have failed to condescend to particulars, and to reply to the specific allegations raised in my previous 5 affidavits filed in these proceedings. I reiterate the contents of all my previous affidavits and stand by them.

7. I specifically refer to paragraph 5(vi) of the Respondents' affidavit and state that although I claimed trial to the 3 groundless charges against me, I stated that I did so without prejudice to my immunity.

8. I also specifically refer to paragraph 5(ix) of the Respondents' affidavit and deny the claim by the Respondents that the criminal proceedings against me have not commenced.

a) I have been unlawfully charged, despite my claim of immunity.

b) Evidences in the form of privileged and inviolable documents belonging to the AIAC and AALCO have been delivered to my solicitors.

c) I have objected to such production as they are in breach of the Host Country Agreement signed by the Government of Malaysia and AALCO.

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d) AALCO has also strongly protested to such production of documents vide their recent letter dated 10.7.2019, the contents of which will be explained further below in this affidavit.

9. I have also instructed my solicitors to file an application for stay of the criminal proceedings until the hearing and disposal of the current proceeding before this Honorable Court. The stay application is fixed for decision on 30.9.2019. I reiterate that the ongoing criminal proceeding against me is a breach of Malaysian law and the international agreement with AALCO.

10. I refer to paragraphs 6 (ii), 7 and 12 of the Respondents' Affidavit and I am advised by my solicitors and I verily believe that the issue of my immunity must be determined by this Honourable Court and not in the criminal proceedings. My application for judicial review seeking various reliefs, including a declaration on the issue of my immunity was filed much earlier than the 3 groundless charges brought against me. I contend that the very act of charging me is a breach of my immunity. Thus, it makes no sense for me to raise the issue of my immunity in the criminal proceedings which are void. This Honourable Court is the only forum in which the issues of legality of the charge and the subsequent proceedings can be considered.

11. I refer to paragraphs 8 to 11 and 14 of the Respondents' Affidavit and contend that these are merely bare denials by the Respondents, without condescending to particulars and without providing any evidence in support. The averments denied by the Respondents are based on my own personal knowledge or informed by my solicitors who were present during the course of events.

12. I verily believe that the Respondents have also not addressed or replied to the contents of the 2 AALCO letters produced in my previous affidavits (the First AALCO letter dated 22.3.2019 appears in Exhibit NS-1 of my solicitors' affidavit and the 2nd AALCO letter dated 3.4.2019 is exhibited at Exhibit SR-40 of my 5th Affidavit).

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13. These 2 AALCO letters were instrumental in putting forth AALCO's stance that they do not agree to the waiver of immunity of both AIAC and me as a Former High Officer. AALCO also through these letters strongly protested and dissociated from the criminal charges brought against me, and from any purported decision made by the current Acting Director of AIAC in waiving the immunity and privileges against me.

14. I contend that the Respondents have failed or wilfully abstained also from disclosing a recent letter issued by the Secretary General of AALCO on 10.7.2019 to the Attorney General of Malaysia i.e. the deponent of the affidavit under reply **("the 3rd AALCO Letter")**. A copy of the 3rd AALCO letter is enclosed as **Exhibit SR-47.**

    a) By the 3rd AALCO Letter, AALCO confirms that they were fully aware of the purchase and distribution of my Book (which is the subject matter of the criminal charges) as part of the promotional activity of the AIAC. The relevant portion of the said letter is reproduced below:

> *"4.On 25 March 2019, you informed me that charges were instituted against Datuk Prof. Sundra Rajoo on the basis of MACC's investigation. In my letter to you of 3 April 2019, I objected to the charges against Datuk Prof. Sundra Rajoo on the basis of immunities granted to him under the Host Country Agreement as the charges related to promotion activity of the AIAC through purchase and distribution of his book "Law, Practice and Procedure in Arbitration" of 2016. It covered services and arbitral regimes of the AIAC, among others.* ***AALCO was aware, participated and supported such promotion activities as it greatly enhanced the position of the AIAC in the international arbitral community. Needless to mention that he donated all royalties received from the purchase of the books by the AIAC back to the AIAC."***
>
> [Emphasis supplied]

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b) AALCO also strongly objected to the production of documents belonging to either AIAC or AALCO in the criminal proceedings which are both privileged and inviolable under the Host Country Agreement. AALCO therefore requested an undertaking and assurance from the Attorney General that immediate measures be taken to ensure the said documents are dealt with in ways as suggested by AALCO. The relevant portion of the said letter is reproduced below:

> *"5. At the same time, I also recorded my concern that the Malaysian Government in these charges may likely use numerous information, documents and materials that are meant to be inviolable under the Host Country Agreement. I added that:*
>
> > *"AALCO categorically does not consent archives, documents and or information, or copies of any of the above in any form, belonging to, or held by, the AIAC to be used and or produced before the Sessions Court in Kuala Lumpur or any other court, and requests the same archives, documents and or information and their copies if already given to the prosecutors, be returned to the AIAC immediately."*
>
> *6. AALCO has been copied a correspondence from Datuk Baljit Singh Sidhu, addressed to the Deputy Public Prosecutor, Malaysian Anti-Corruption Commission, Legal and Prosecution Division, dated 3 May 2019 relating to the SESSION COURT 9 KUALA LUMPUR CASE NO. WA-62R-15-03/2019 PP V SUNDRA RAJOO A/L NADARAJAH.*
>
> *7. According to this correspondence, the Prosecution has produced a set of 15 documents belonging to the Asian*

International Arbitration Centre (AIAC) and or Asian-African Legal Consultative Organization (AALCO) to the court in this case in breach of Article III(2) of the Host Country Agreement between AALCO and the Government of Malaysia in the context of my correspondences on the same to you, or copied to you, of 22 March 2019 and 3 April 2019.

8. *Since AALCO has no itemised list of documents in the hands of MACC, it is unable to effectively and independently investigate and verify some of the existing allegations and cannot confirm if the documents produced before the court, are the same documents seized during MACC's raid or extracted from the AIAC during MACC's investigations.*

9. *Consistent with the Host Country Agreement, and in view of the above, AALCO hereby seeks your undertaking and or assurances, at your earliest, that:*

   (a) all documents and data seized by MACC during the raid to the AIAC and subsequent investigations at the AIAC which belongs to, or were held by, the AIAC be immediately sealed and returned or delivered into the custody of the AIAC;

   (b) any and all documents and data disclosed or transmitted to MACC by the AIAC be immediately sealed and returned or delivered into the custody of the AIAC;

   (c) any and all copies of documents and data seized by, or disclosed to, MACC shall be destroyed beyond recovery; and

   (d) all documents and data seized by MACC during the raid to the AIAC and subsequent investigations at the AIAC which belongs to, or were held by, the AIAC shall not be used and or

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produced before the Sessions Court in Kuala Lumpur or any other court."

15. In specific reply to paragraph 13 (i) of the Respondents' Affidavit, I contend that the Acting Director of AIAC was not named a party in these proceedings due to the immunity possessed by him. However, I had suggested that the notice of judicial review proceedings be given to him in my statement.

    a) The Respondents in the Respondents' Affidavit have implicitly admitted that the Acting Director of AIAC had indeed purported to grant a waiver of my immunity which allowed the criminal charges to be brought against me.

    b) This is also evidenced in the MACC's Affidavit in Reply affirmed by Hasmizzy bin Md Hasim on 23.8.2019 filed in the criminal proceedings. A copy of the said Affidavit is enclosed and marked as **Exhibit SR-48**. The relevant portion of the affidavit in the national language is reproduced below:

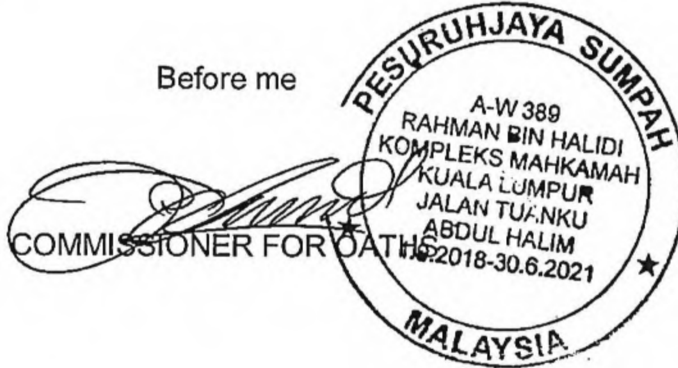
       "11. Merujuk kepada perenggan 11 Afidavit Sokongan Pemohon, saya telah dinasihatkan oleh Timbalan Pendakwa Raya untuk mengatakan bahawa saya mempunyai pengetahuan tentang fakta bahawa Pemangku Pengarah AIAC telah mengenepikan imuniti Pemohon namun saya tiada pengetahuan berkenaan Pemangku Pengarah AIAC tidak diberi kuasa untuk memberikan pengenepian tersebut dan meminta Pemohon membuktikannya"

    c) I contend that the Acting Director was not empowered to give such a waiver which has now led to the 3 groundless charges against me notwithstanding my immunity as a former High Officer. As the waiver of my immunity originated from the Acting Director despite him knowing full well that AALCO themselves have refused to grant any such waiver despite request from the Respondents, the Acting Director will have to face the consequences of his action if proved that he has acted in excess of his powers.

16. In the premises, I respectfully ask for the substantive declarations and orders as set out in the application, and such other orders as is considered just by this Honourable Court in the circumstances of this case, in order to preserve the immunity and integrity of the work of the Asian International Arbitration Centre (Malaysia) (formerly known as the Kuala Lumpur Regional Centre for Arbitration) and my position as its former High Officer.

Affirmed by the deponent named above }
Sundra Rajoo a/l Nadarajah }
on 3 0 SEP 2019 }
at KUALA LUMPUR }

Before me



COMMISSIONER FOR OATHS

This Affidavit by Sundra Rajoo a/l Nadarajah is affirmed on 3 0 SEP 2019 and filed on 3 0 SEP 2019 behalf of the Applicant named above by his solicitors Kanesalingam & Co. whose address for service is at Unit 3.3, Level 3, Wisma Bandar, 18, Jalan Tuanku Abdul Rahman, 50100 Kuala Lumpur.
[Ref: 2019S/SR/1013(Hy)(1000-1130)]
Tel:03 2698 9199
Fax:03 2698 9799
Email: shan@kanesalingam.com /dinesh@kanesalingam.com

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LAMPIRAN K / APPENDIX K

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A **Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors**

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-38-12 OF 2020(W)
TENGKU MAIMUN CHIEF JUSTICE, ROHANA YUSUF PCA, ZAWAWI SALLEH, ZALEHA YUSOF, ZABARIAH YUSUF, HARMINDAR SINGH AND RHODZARIAH BUJANG FCJJ
C 9 JUNE 2021

International Law — Immunities — Immunity from prosecution — Whether former Director ('appellant') of Asian International Arbitration Centre ('the Centre') was immune from criminal prosecution for acts done while he was Director D *— Whether purpose of granting immunity was not for appellant's personal benefit but to protect independence and integrity of the Centre and international organisation under which it was formed — Whether attorney general's decision to prefer criminal charges against appellant for acts done while he was in office was mala fide and contravened statute that conferred immunity on appellant* E *— Whether criminal charges against appellant were therefore nullities — Whether appellant adopted right mode in applying for judicial review before High Court to quash the charges — Whether appellant had no other recourse to legal redress before any other court — Whether subordinate criminal court where appellant was charged could not resolve the matter — Whether suggestion that* F *court should have determined appellant's immunity status at trial was absurd not only because charges were nullities but trial would have threatened independence of the very organisations the immunity was intended to protect — Whether attorney general's discretion to institute criminal proceedings under art 145(3) of the Federal Constitution was not absolute or unfettered but could be challenged by judicial* G *review in an appropriate, rare and exceptional case*

The appellant was a former director of the Asian International Arbitration Centre ('the Centre') — formerly known as the Kuala Lumpur Regional Centre for Arbitration — which was established under the auspices of the H Asian-African Legal Consultative Organisation ('AALCO'), an international organisation comprising 47 member states from across the region. The Centre was established pursuant to an agreement between AALCO and the Government of Malaysia ('the Host Country Agreement') under which it was agreed, inter alia, that the Malaysian Government would allocate grants to the I Centre from time to time and accord various privileges and immunities both to the Centre and its staff to allow it to function as an independent arbitral institution. To provide for such privileges and immunities, regulations were made pursuant to the International Organisations (Privileges and Immunities) Act 1992 ('Act 485'). Those regulations were later amended by the Kuala

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Lumpur Regional Centre for Arbitration (Privileges and Immunities) (Amendment) Regulations 2011. The combined effect of Act 485 and the aforesaid Regulations read together was to afford the appellant as a former Director of the Centre immunity from suit 'and from other legal process' in respect of acts and things he had done in his capacity as the Director. During his tenure as Director of the Centre, the appellant had authored a book on the law, practice and procedure of arbitration, copies of which were bought by the Centre for distribution as part of its promotional activities. AALCO knew about the matter and supported it. The appellant had donated to the Centre all royalties he received from the sale of the book. Acting on information received, the third respondent ('MACC') investigated the matter and subsequently obtained the consent of the second respondent ('the AG') to charge the appellant in the sessions court on three counts of committing criminal breach of trust while he was Director of the Centre. The consent to prosecute was given despite the Secretary-General of AALCO notifying the AG, as well as the first and fourth respondents, that he could not accede to an ad-hoc waiver of the appellant's immunity to allow him to be prosecuted. The Secretary-General had declined the waiver inter alia on the ground that allowing it would also cause the immunity of AALCO and the Centre to be waived as documents, information and archival material belonging to and in the possession of the Centre — and which were deemed to be inviolable under the Host Country Agreement — might have had to be produced at the appellant's trial to support either the prosecution's or the appellant's case and such a move would adversely affect AALCO's and the Centre's independence and integrity. The Secretary-General pointed out that the privileges and immunities accorded to the Centre and its staff was not for the appellant's personal benefit but for the benefit of AALCO and the Centre. The appellant applied to the High Court by way of judicial review for declarations recognising his immunity from prosecution and for orders of prohibition to stop his prosecution by the AG and the MACC. The High Court allowed the appellant's application and granted all the reliefs sought after deciding that: (a) the words 'and from other legal process' in Part II of the Second Schedule of Act 485 included criminal proceedings; and (b) the AG's decision to prosecute the appellant was amenable to judicial review. The Court of Appeal reversed the High Court's decision holding that: (i) Act 485 did not accord the appellant 'complete immunity' from criminal prosecution; (ii) the appellant's immunity status should properly be determined in a trial in the criminal court and not by way of judicial review; (iii) the AG's decision to prosecute the appellant was an exercise of unfettered discretion and was not amenable to judicial review. The Federal Court granted the appellant leave to appeal on the following questions of law: (A) whether the words 'immunity from suit or from other legal process' in Part II of the Second Schedule of Act 485 included criminal proceedings; (B) whether the immunity granted to various persons under Act 485 was limited by s 8A(1) thereof only to acts and things done that were not for their personal benefit and whether such persons could be prosecuted when their immunity had not been waived

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A by the appropriate authority of the international organisation; (C) whether in appropriate circumstances the AG's discretion to institute, conduct and discontinue criminal proceedings under art 145(3) of the Federal Constitution was amenable to judicial review; and (D) whether in judicial review proceedings, the High Court had jurisdiction and power in appropriate cases to B quash criminal charges laid by the public prosecutor and to issue orders of prohibition against proceedings in subordinate courts.

Held, unanimously allowing the appeal, upholding the High Court's verdict but restoring only the declaration that the appellant had immunity as a former C Director of the Centre for acts done within his official capacity; answering the first and third leave questions in the affirmative, the second leave question in the negative and declining to answer the fourth leave question:

(1) The appellant had acted within the scope of his functions such that he D was entitled to the immunity sought. His functional immunity included immunity from criminal proceedings and the question of 'personal benefit' under s 8A(1) of Act 485 did not arise because the appellant had acted in his capacity as Director of the Centre and, as such, the immunity was to safeguard the interests of the Centre and AALCO. In other words, E the immunity was not to benefit him but to respect the integrity and independence of AALCO and the Centre under the terms of the Host Country Agreement (see para 66).

(2) The purpose of granting immunities and privileges under the Host F Country Agreement, as ratified by Act 485, was to protect and preserve the inviolability of the Centre, its documents and its archives as well as the integrity and independence of the Centre and AALCO and not for the personal benefit of the appellant. That purpose remained the same whether the nature of the proceedings against the appellant in his official G capacity as a former High Officer was civil or criminal. Since criminal proceedings were not excluded in the Host Country Agreement or in Act 485, the term 'and from other legal process' in Part II of the Second Schedule to Act 485 ought to be construed as including criminal proceedings. Such a construction was in line with the fourth respondent's H international law obligations. If the material provisions of Act 485 were read any other way, it would expose Malaysia to a violation of international law on immunities and privileges (see paras 59–63).

(3) The Court of Appeal's view that the appellant was not entitled to 'complete immunity' was irrelevant. The appellant did not claim I complete immunity. Under regs 3A(2) and (3) of the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) (Amendment) Regulations 2011 read with Part II of the Second Schedule to Act 485, a High Officer who was a Malaysian citizen and a former High Officer (whether Malaysian citizen or not) was only entitled

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to immunity in respect of acts and things done in their capacity as High Officer, ie, functional immunity (see paras 20, 51 & 65).

(4) The suggestion that the appellant's functional immunity ought to be determined at trial in the criminal court or that his immunity ought to be treated as a 'statutory defence' was legally unsustainable as doing so would defeat the very purpose of the immunity. The trial process and interlocutory processes, such as discovery (in civil cases), had the effect of sidestepping the inviolability of archives and documents and hence would defeat the very purpose of the immunity or, in this appeal, the very legislative intent of Act 485. As expressed by the Secretary-General of AALCO in his letter, prosecuting the appellant was likely to whittle down the Centre's and AALCO's immunity status and breach the inviolability of their records, documents, archives and general process. This, in turn, would risk jeopardising the independence and immunity of both those institutions. Whenever immunity was claimed, certificates produced by the relevant authorities (especially the UNSG or other international bodies) were conclusive of that fact. If immunity was absolute, the production of the certificates would be the end of the matter. If the immunity was functional, then affidavit evidence (which the court should presume to be true) should be considered in limine litis to ascertain whether the conduct or omission of the official in question was within the scope of his functions. If they were, then they were cloaked with immunity (see paras 61 & 76–77).

(5) The High Court was the proper forum to determine by way of judicial review whether the charges against the appellant were nullities as the issue was not capable of being resolved in a criminal court, much less before a subordinate court. The appellant could not avail himself of any other form of legal redress in any other court. He had correctly identified illegality as a ground for judicial review and had adduced compelling prima facie evidence to show that the AG had acted in contravention of the law — specifically Act 485 — in exercising his powers under art 145(3) of the Federal Constitution, thus rendering the criminal charges against the appellant null and void. The AG was unable to rebut the allegations and the presumption of legality of his exercise of discretion under art 145(3) was successfully overcome (see paras 82–83, 121& 123–124).

(6) The AG/PP did not have absolute or unfettered discretion under art 145(3) of the Federal Constitution to institute, conduct or discontinue any proceeding for a criminal offence. In appropriate, rare and exceptional cases, such discretion was amenable to judicial review. The evidence in the instant case led to no other conclusion but that the AG/PP knew or ought to have known that the appellant was covered by the scope of his functional immunity. Despite this, the AG/PP decided to

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A charge the appellant. A clear and direct indication of this was the AG/PP's issuance of his consent to prosecute the appellant in spite of the letter from the Secretary-General of AALCO of even date indicating that the first and second respondents had separately requested for an ad hoc waiver of the appellant's immunity and those requests were denied (see B paras 112 & 122).

(7) In all challenges against the decisions of the AG/PP in exercising his powers under art 145(3) of the FC, the position was that his decisions were cloaked with the presumption of legality. The challenging party had C the burden to overcome that presumption with compelling prima facie evidence of grounds to review the AG's/PP's decision within the recognised reasons for judicial review. Any such challenge had to pass a two-step threshold which had to be satisfied at the leave stage of the judicial review application. The applicant first had to show a legal basis D for challenging the decision. This referred to the traditional grounds for judicial review and other bases implicitly recognised by earlier judgments on this subject, including but not limited to illegality, procedural impropriety, irrationality and mala fides. Once the above legal grounds or any one of them were clearly set out, the applicant then would have to E adduce compelling prima facie proof that the impugned decision fell within those grounds or any one of them. The courts had to presume, having regard to the doctrine of separation of powers that all or any of the grounds were not made out unless the evidence singularly led to the inevitable conclusion that they had been made out. It was only after that F threshold was crossed that the AG/PP bore the burden of justifying his actions or inactions to the court. The assessment of the law and the facts would depend on the unique circumstances of each and every case regard being had to the doctrine of separation of powers. In making that factual assessment, the court had to be satisfied that judicial review was the only G method of redress available to the litigant. In other words, if the court was satisfied that the arguments centred on the substantive criminal process then the appropriate forum would be the criminal court and not any other court (see paras 113–118).

H **[Bahasa Malaysia summary**

Perayu adalah bekas pengarah Pusat Timbang Tara Antarabangsa Asia ('Pusat tersebut') — sebelumnya dikenali sebagai Pusat Timbang Tara Serantau Kuala Lumpur — yang ditubuhkan di bawah naungan Pertubuhan Perundingan Undang-Undang Asia-Afrika ('AALCO'), sebuah organisasi antarabangsa yang I merangkumi 47 negara anggota dari seluruh rantau ini. Pusat tersebut ditubuhkan berdasarkan perjanjian antara AALCO dan Kerajaan Malaysia ('Perjanjian Negara Tuan Rumah') di mana ianya telah dipersetujui, antara lain, bahawa Kerajaan Malaysia akan memperuntukkan geran kepada Pusat tersebut dari semasa ke semasa dan membenarkan pelbagai hak istimewa dan kekebalan

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kedua-duanya terhadap Pusat tersebut dan kakitangannya untuk membolehkannya berfungsi sebagai sebuah institusi timbang tara bebas. Dalam membenarkan hak istimewa dan kekebalan tersebut, peraturan dibuat berdasarkan Akta Organisasi Antarabangsa (Keistimewa dan Kekebalan) 1992 ('Akta 485'). Peraturan tersebut kemudiannya dipinda oleh Peraturan-Peraturan Pusat Timbang Tara Serantau Kuala Lumpur (Keistimewaan dan Kekebalan) (Pindaan) 2011. Kesan penggabungan Akta 485 dan Peraturan tersebut yang dibaca bersama adalah untuk memberikan perayu sebagai mantan Pengarah Pusat tersebut kekebalan dari tindakan dan daripada 'sebarang proses undang-undang lain' berkenaan dengan tindakan dan perkara-perkara yang telah dilakukannya atas kapasiti sebagai Pengarah. Selama menjadi Pengarah Pusat tersebut, perayu telah mengarang sebuah buku mengenai undang-undang, amalan dan prosedur timbang tara, salinannya yang mana telah dibeli oleh Pusat tersebut untuk diedarkan sebagai sebahagian daripada kegiatan promosi. AALCO mempunyai pengetahuan mengenai perkara tersebut dan menyokongnya. Perayu telah menyumbang kepada Pusat tersebut kesemua royalti yang diterimanya hasil dariapda jualan buku tersebut. Bertindak berdasarkan maklumat yang diterima, responden ketiga ('SPRM') menyiasat perkara tersebut dan kemudian mendapat persetujuan responden kedua ('AG') untuk menuduh perayu di mahkamah sesyen atas tiga pertuduhan melakukan pecah amanah ketika beliau adalah Pengarah Pusat tersebut. Persetujuan untuk mendakwa telah dibenarkan walaupun Setiausaha Agung AALCO memaklumkan kepada AG, serta responden pertama dan keempat, bahawa beliau tidak dapat menerima pelucutan hak ad-hoc terhadap kekebalan perayu untuk membolehkannya didakwa. Setiausaha Agung telah menolak pelucutan hak tersebut dengan alasan bahawa membenarkannya akan menyebabkan kekebalan AALCO dan Pusat tersebut sama sekali dilucutkan hak kerana dokumen, maklumat dan bahan arkib yang kepunyaan dan dalam milikan Pusat tersebut — dan yang dianggap tidak boleh dilanggar di bawah Perjanjian Negara Tuan Rumah — mungkin akan dikemukakan pada perbicaraan perayu untuk menyokong kes pendakwaan atau kes perayu dan tindakan tersebut akan memberi kesan kepada kebebasan dan integriti AALCO dan Pusat tersebut. Setiausaha Agung menegaskan bahawa hak keistimewa dan kekebalan yang diberikan kepada Pusat dan kakitangannya bukan untuk kepentingan peribadi perayu tetapi untuk kepentingan AALCO dan Pusat tersebut. Perayu memohon kepada Mahkamah Tinggi melalui semakan kehakiman untuk deklarasi yang mengakui kekebalannya dari pendakwaan dan perintah larangan untuk menghentikan pendakwaannya oleh Peguam Negara dan SPRM. Mahkamah Tinggi membenarkan permohonan perayu dan membenarkan kesemua relif yang dipohon setelah memutuskan bahawa: (a) kata-kata 'dan dari sebarang proses undang-undang lain' dalam Bahagian II Jadual Kedua Akta 485 termasuk prosiding jenayah; dan (b) keputusan Peguam Negara untuk mendakwa perayu dapat dipinda oleh semakan kehakiman. Mahkamah Rayuan mengakas keputusan Mahkamah Tinggi dengan memutuskan bahawa: (i) Akta 485 tidak memberikan

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A 'kekebalan penuh' kepada perayu dari pendakwaan jenayah; dan (ii) status kekebalan perayu harus ditentukan secara teratur melalui perbicaraan di mahkamah jenayah dan bukannya melalui semakan kehakiman; (iii) keputusan peguam negara untuk mendakwa perayu adalah tindakan secara budi bicara yang tidak terikat dan tidak boleh dpinda oleh semakan B kehakiman. Mahkamah Persekutuan membenarkan kebenaran kepada perayu untuk merayu atas persoalan undang-undang berikut: (A) sama ada kata-kata 'kekebalan dari tindakan atau dari sebarang proses undang-undang lain' dalam Bahagian II Jadual Kedua Akta 485 termasuk prosiding jenayah; (B) sama ada kekebalan yang diberikan kepada pelbagai orang di bawah Akta 485 dihalang C oleh s 8A(1) hanya untuk tindakan dan perkara yang dilakukan yang bukan demi kepentingan peribadi mereka dan sama ada orang tersebut boleh didakwa apabila kekebalan mereka tidak dilucutkan oleh pihak berkuasa organisasi antarabangsa yang sesuai; (C) sama ada dalam keadaan yang sesuai budi bicara Peguam Negara untuk memulakan, menjalankan dan menghentikan prosiding D jenayah di bawah perkara 145(3) Perlembagaan Persekutuan dapat dipinda oleh semakan kehakiman; dan (D) sama ada dalam prosiding semakan kehakiman, Mahkamah Tinggi mempunyai bidang kuasa dan kuasa dalam kes-kes yang sesuai untuk menolak tuduhan jenayah yang dikemukakan oleh pendakwa raya dan mengeluarkan perintah larangan terhadap prosiding di E mahkamah bawahan.

Diputuskan, dengan sebulat suara membenarkan rayuan, mengekalkan keputusan Mahkamah Tinggi tetapi hanya mengembalikan deklarasi bahawa perayu mempunyai kekebalan sebagai mantan Pengarah Pusat untuk tindakan F yang dilakukan dalam kapasiti rasminya; menjawab persoalan kebenaran pertama dan ketiga secara afirmatif, persoalan kebenaran kedua secara negatif dan enggan menjawab persoalan kebenaran keempat:

(1) Perayu telah bertindak dalam skop fungsinya sehingga beliau berhak atas G kekebalan yang dipohon. Kekebalannya berfungsi antaranya termasuk kekebalan dari prosiding jenayah dan persoalan 'kepentingan peribadi' di bawah s 8A(1) Akta 485 tidak timbul kerana perayu telah bertindak atas kapasitinya sebagai Pengarah Pusat dan, oleh yang demikian, kekebalan tersebut adalah untuk menjaga kepentingan Pusat dan AALCO. Dengan H kata lain, kekebalan tersebut bukan untuk memberikan manfaat kepada beliau tetapi untuk menghormati integriti dan kebebasan AALCO dan Pusat berdasarkan syarat-syarat Perjanjian Negara Tuan Rumah (lihat perenggan 66).

(2) Tujuan pemberian kekebalan dan hak keistimewa di bawah Perjanjian I Negara Tuan Rumah, sebagaimana diratifikasi oleh Akta 485, adalah untuk melindungi dan memelihara kekebalan Pusat, dokumen dan arkibnya serta integriti dan kebebasan Pusat tersebut dan AALCO dan bukan untuk kepentingan peribadi perayu. Tujuannya tetap sama sama ada sifat prosiding terhadap perayu dalam jawatan rasminya sebagai

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bekas Pegawai Tinggi adalah sivil atau jenayah. Oleh kerana prosiding jenayah tidak dikecualikan dalam Perjanjian Negara Tuan Rumah atau dalam Akta 485, istilah 'dan dari proses undang-undang lain' di Bahagian II Jadual Kedua Akta 485 harus ditafsirkan sebagai termasuk proses jenayah. Penggubalan sedemikian sejajar dengan tanggungjawab undang-undang antarabangsa responden keempat. Sekiranya peruntukan material Akta 485 dibaca dengan cara lain, ia akan menyebabkan Malaysia terdedah kepada pelanggaran undang-undang antarabangsa mengenai kekebalan dan hak keistimewaan (lihat perenggan 59–63).

(3) Pandangan Mahkamah Rayuan bahawa perayu tidak berhak untuk 'kekebalan penuh' adalah tidak wajar. Perayu tidak menuntut kekebalan penih. Di bawah peraturan 3A(2) dan (3) Peraturan-Peraturan Pusat Timbang Tara Serantau Kuala Lumpur (Keistimewaan Dan Kekebalan) (Pindaan) 2011 dibaca bersama Bahagian II Jadual Kedua Akta 485, seorang Pegawai Tinggi yang merupakan warganegara Malaysia dan seorang bekas Pegawai Tinggi (sama ada warganegara Malaysia atau tidak) hanya berhak mendapat kekebalan berkenaan dengan tindakan dan perkara yang dilakukan berdasarkan kapasiti mereka sebagai Pegawai Tinggi, iaitu kekebalan berfungsi (lihat perenggan 20, 51 & 65).

(4) Cadangan bahawa kekebalan berfungsi perayu harus ditentukan semasa perbicaraan di mahkamah jenayah atau bahawa kekebalannya harus dianggap sebagai 'pembelaan berkanun' tidak dapat dipertahankan secara undang-undang kerana dengan berbuat demikian akan mengalahkan tujuan kekebalan tersebut. Proses prbicaraan dan proses interlokutori, seperti penzahiran (dalam kes-kes sivil), mempunyai kesan menolak kekebalan arkib dan dokumen dan dengan itu akan mengalahkan tujuan kekebalan atau, dalam rayuan ini, niat penggubalan Akta 485. Seperti yang dinyatakan oleh Setiausaha Agung AALCO dalam suratnya, mendakwa perayu akan cenderung mengurangkan status kekebalan Pusat tersebut dan AALCO dan melanggar rekod, dokumen, arkib dan proses am mereka. Ini, seterusnya, akan memberikan risiko menjejaskan kebebasan dan kekebalan kedua-dua institusi tersebut. Setiap kali kekebalan dituntut, sijil yang dikeluarkan oleh pihak berkuasa berkenaan (terutama UNSG atau badan antarabangsa lain) dapat membuktikan fakta tersebut. Sekiranya kekebalan adalah mutlak, pengeluaran sijil akan memuktamadkan perkara tersebut. Sekiranya kekebalan tersebut adalah fungsi, maka keterangan afidavit (yang seharusnya dianggap benar oleh mahkamah) harus dipertimbangkan dalam limine litis demi memastikan sama ada tingkah laku atau pengecualian pegawai yang dipersoal berada dalam skop fungsinya. Sekiranya mereka berada, maka mereka dipakai dengan kekebalan (lihat perenggan 61 & 76–77).

(5) Mahkamah Tinggi adalah forum yang tepat untuk menentukan melalui

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A semakan kehakiman apakah tuduhan terhadap perayu adalah terbatal kerana isu tersebut tidak dapat diselesaikan di mahkamah jenayah, apatah lagi di hadapan mahkamah bawahan. Perayu tidak dapat menggunakan bentuk tindakan perundangan lain di mahkamah lain. Beliau telah dengan tepat mengenal pasti ketidaksahan sebagai alasan B untuk semakan kehakiman dan telah mengemukakan keterangan prima facie yang mantap untuk menunjukkan bahawa Peguam Negara telah bertindak bertentangan dengan undang-undang — khususnya Akta 485 — dalam menjalankan kuasanya di bawah perkara 145(3) Perlembagaan Persekutuan, sehingga menjadikan pertuduhan jenayah terhadap perayu C tidak sah dan terbatal. Peguam Negara tidak dapat membantah dakwaan tersebut dan anggapan kesahan penggunaan budi bicaranya di bawah perkara 145(3) telah berjaya diatasi (lihat perengan 82–83, 121 & 123–124).

D (6) AG/PP tidak mempunyai budi bicara mutlak atau tidak terbatas di bawah perkara 145(3) Perlembagaan Persekutuan untuk memulakan, menjalankan atau menghentikan sebarang prosiding bagi kesalahan jenayah. Dalam kes-kes yang wajar, jarang dan luar biasa, budi bicara tersebut dapat dipinda oleh semakan kehakiman. Keterangan dalam kes E semasa tidak membawa kesimpulan yang lain melainkan bahawa AG/PP mempunyai pengetahuan atau semestinya mengetahui bahawa perayu dilindungi oleh skop kekebalan berfungsinya. Walaupun begitu, AG/PP memutuskan untuk mendakwa perayu. Petunjuk yang jelas dan langsung mengenai ini adalah pengeluaran persetujuan AG/PP untuk mendakwa F perayu walaupun terdapat surat dari Setiausaha Jeneral AALCO pada tarikh tersebut menunjukkan bahawa responden pertama dan kedua secara berasingan telah meminta pelucutan hak ad hoc kekebalan perayu dan permintaan tersebut ditolak (lihat perenggan 112 & 122).

(7) Dalam kesemua bantahan terhadap keputusan AG/PP dalam G menjalankan kuasanya di bawah perkara 145(3) Perlembagaan Persekutuan, kedudukannya adalah bahawa keputusan beliau ditutup dengan anggapan kesahan. Pihak yang mencabar mempunyai beban untuk mengatasi anggapan tersebut dengan keterangan alas an prima facie yang mantap untuk menyemak keputusan AG/PP dalam alasan H yang diakui untuk semakan kehakiman. Sebarang bantahan harus melepasi ambang dua langkah yang harus dipenuhi pada peringkat kebenaran untuk permohonan semakan kehakiman. Pemohon terlebih dahulu harus menunjukkan asas undang-undang untuk mencabar keputusan tersebut. Ini merujuk kepada alasan asli bagi semakan I kehakiman dan asas-asas lain yang secara harfiah mengakui oleh penghakiman sebelumnya mengenai perkara ini, termasuklah tetapi tidak terbatas pada ketidaksahan, ketidaktepatan prosedur, ketidakwajaran dan mala fide. Setelah alasan undang-undang di atas atau salah satu daripadanya dinyatakan dengan jelas, pemohon kemudian

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harus mengemukakan keterangan prima facie yang meyakinkan bahawa keputusan yang dipersoal tersebut termasuk dalam alasan yang dinyatakan atau salah satu daripadanya. Mahkamah harus menganggap, dengan mengambil kira doktrin pengasingan kuasa bahawa kesemua atau salah satu alasan tidak dapat dibuktikan kecuali keterangan tersebut secara tunggal membawa kepada kesimpulan yang tidak dapat dielakkan bahawa ianya telah dibuktikan. Hanya setelah ambang batas tersebut dicapai, AG/PP mempunyai beban untuk membuktikan tindakan atau ketiadaan tindakannya kepada mahkamah. Penilaian undang-undang dan fakta adalah bergantung pada keadaan unik setiap kes yang berkaitan dengan doktrin pengasingan kuasa. Dalam membuat penilaian fakta tersebut, mahkamah harus berpuas hati bahawa semakan kehakiman adalah satu-satunya kaedah penyelesaian yang tersedia bagi pihak yang memfailkan tuntutan. Dengan kata lain, sekiranya mahkamah berpuas hati bahawa penghujahan tertumpu pada proses jenayah substantif, maka forum yang sesuai adalah mahkamah jenayah dan bukannya mahkamah lain (lihat perenggan 113–118).]

Cases referred to

Bato Bagi & Ors v Kerajaan Negeri Sarawak and another appeal [2011] 6 MLJ 297; [2011] 8 CLJ 766, FC (refd)
Canadian Security Intelligence Service Act (Canada), Re [2008] 4 FCR 230; 2008 FC 301, FC (refd)
Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, HL (refd)
Dato' Param Cumaraswamy v MBf Capital Bhd & Anor [1997] 3 MLJ 824, CA (overd)
MBf Capital Bhd & Anor v Dato' Param Cumaraswamy [1997] 3 MLJ 300, HC (refd)
Johnson Tan Han Seng v PP; Soon Seng Sia Heng v PP; PP v Chea Soon Hoong; Teh Cheng Poh v PP [1977] 2 MLJ 66, FC (refd)
Karpal Singh & Anor v PP [1991] 2 MLJ 544, SC (refd)
Khurts Bat v Investigating Judge of the Federal Court of Germany [2012] 3 WLR 180, QBD (refd)
Lim Kit Siang v Dato Seri Dr Mahathir Mohamad [1987] 1 MLJ 383, SC (refd)
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Minister for Immigration and Ethnic Affairs v Teoh (1995) 128 ALR 353, HC (refd)
PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals [2021] 2 MLJ 60; [2021] 2 CLJ 441, FC (refd)
Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal [2019] 3 MLJ 443, FC (refd)
PP v Narongne Sookpavit & Ors [1987] 2 MLJ 100 (refd)
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A *R (on the application of Pepushi) v Crown Prosecution Service* [2004] EWHC 798 (Admin), QBD (refd)
R (on the application of S) & Anr v Oxford Magistrates Court & Anr [2015] EWHC 2868 (Admin). QBD (refd)
R v DPP, ex p C [1995] 1 Cr App Rep 136, QBD (refd)
B *R v Hape* [2007] 2 SCR 292, SC (refd)
Ramalingam Ravinthran v Attorney-General [2012] 2 SLR 49, CA (folld)
Regina v Director of Public Prosecutions, ex parte Kebilene and others [2000] 2 AC 326, HL (refd)
C *Regina (Bermingham and others) v Director of the Serious Fraud Office; Bermingham and others v Government of the United States of America and another* [2007] 2 WLR 635, QBD (refd)
Repco Holdings Bhd v PP [1997] 3 MLJ 681, HC (refd)
Salomon v Commissioners of Customs and Excise [1966] 3 All ER 871, CA (refd)
D *Sharma v Brown-Antoine and others* [2007] 1 WLR 780, PC (refd)
Teh Cheng Poh v PP [1979] 1 MLJ 50, PC (refd)

Legislation referred to

Courts of Judicature Act 1964 Schedule, para 1
E Constitution of the Republic of Singapore [SG] art 35(8)
Criminal Procedure Code s 173(g)
Diplomatic Privileges (Vienna Convention) Act 1966
Federal Constitution art 145(3)
International Organizations (Privileges and Immunities) Act 1992 s 8A(1),
F First Schedule, Second Schedule, Part II
International Organizations (Privileges and Immunities) Regulations 1996 regs 2, 3, 3A(1), (2), (3)
Penal Code s 409

G *Malik Imtiaz (Shanmuga Kanesalingam, Abdul Shukor Ahmad, Baljit Singh Sidhu, Khoo Suk Chyi, Dinesh Kumar Paramasivam and Surendra Ananth with him) (Kanesalingam) for the appellant.*
Narkunavathy Sundareson (Kogilambigai and Noor Atiqah Zainal Abidin with her) (Attorney General's Chambers) for the respondent.

H

Tengku Maimun Chief Justice (delivering judgment of the court):

INTRODUCTION

I [1] The appellant is the former director of the Asian International Arbitration Centre ('AIAC') or as it was formerly known, the Kuala Lumpur Regional Centre for Arbitration or 'KLRCA'. AIAC was established under the auspices of the Asian-African Legal Consultative Organization ('AALCO').

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[2] The first respondent is the Minister of Foreign Affairs, the second respondent is the Attorney General of Malaysia ('AG'), the third respondent is the Malaysian Anti-Corruption Commission ('MACC') and the fourth respondent is the Government of Malaysia.

[3] This appeal primarily concerned the question of legal immunity. On the one hand, the appellant claimed statutory legal immunity from 'legal processes' which he construed to include criminal proceedings. On the other hand, the respondents, particularly the second respondent acting in the capacity of public prosecutor ('PP') claimed immunity from judicial scrutiny against his decision to prosecute the appellant.

[4] Upon hearing parties and upon careful reflection, we were constrained to allow the appeal. We now provide the grounds for our decision.

THE SALIENT FACTS

[5] The facts of the appeal, which are largely uncontentious, were adequately set out in the submissions of parties and the documents in the appeal record. We respectfully adopt and restate them as follows, subject to some modifications.

[6] The present appeal arose from three charges preferred against the appellant before the Sessions Court Kuala Lumpur. The charges were in relation to allegations of criminal breach of trust under s 409 of the Penal Code. Of note, the charges expressly alleged that the offences were committed by the appellant in his capacity as 'the Director of AIAC'.

[7] The appellant had authored a treatise entitled *Law, Practice and Procedure of Arbitration* (2nd Ed, LexisNexis, 2016). The alleged offences were in respect of the appellant having had dominion over AIAC funds and having used them to purchase copies of his books for AIAC.

[8] The appellant promptly responded to these allegations in a statement taken from him by the third respondent. The appellant's response was that the copies of his book were purchased with a view to promote and market AIAC, that AIAC benefited from an author's discount, that the monies were all paid to the international publishing house and that all and any royalties earned by the appellant were channelled back to AIAC. The appellant also claimed that AIAC and AALCO were fully aware of the transactions and had approved them for the purposes mentioned, to wit, promotional and marketing activities on behalf of AIAC.

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A [9] The appellant claimed that due to certain events which took place after 19 November 2018, he was led to believe that he was to be prosecuted. Fearing that the respondents would not respect his legal immunity status, the appellant filed an application for judicial review to seek, among others, declaratory and prohibitory reliefs to give effect to his legal immunity status and to stop all or B any criminal proceedings in that regard.

[10] The hearing for leave to commence judicial review was fixed for hearing on 26 March 2019 and the AG's Chambers were duly notified of this on 7 March 2019. Materially, the AG's Chambers wrote back to the appellant's C solicitors vide letter dated 20 March 2019 informing that they were aware that leave was to be heard on 26 March 2019 but that they believed such application was totally irrelevant to any eventual prosecution of the appellant.

D [11] A letter dated 22 March 2019 written by His Excellency Professor Dr Kennedy Gastorn (Secretary General of AALCO) to the first respondent indicated that the first respondent had written to the Secretary General of AALCO seeking a waiver of the appellant's immunity. The letter also indicated that the second respondent had been corresponding with the Secretary General E via email on the subject of criminal proceedings against the appellant with the request for an ad hoc waiver of immunity.

[12] In that letter dated 22 March 2019, the Secretary General of AALCO provided a detailed account on the extent of the first, second and fourth F respondents' request for waiver and His Excellency's reasons for refusing to accede to the said request. For ease of reference, the relevant contents of the letter are reproduced below:

> 4. The Attorney General of Malaysia later, in his email to me of 25 February 2019, G clarified that:
>
> 4.1. The waiver being sought is only in respect of the criminal proceedings related to Sundra Rajoo, not the AIAC.
>
> 4.2. The request is for an ad hoc waiver, with no permanent amendments made to the Host Country Agreement between AALCO and the Government of Malaysia.
>
> H 4.3. The Host Country Agreement is governed by the laws of Malaysia, (including Act 485), and in line with principles of public international law, and therefore the signatory requesting for the immunity can certainly withdraw any immunities which it has requested. Sundra Rajoo, being a former high officer, having helmed I leadership for almost a decade, is a representative of the organization within the meaning of section 8A(2) of Act 485.
>
> 4.4 Section 8A(1) of the Act states that privileges and immunities are for the benefit of AIAC, and not for the personal benefit of Sundra Rajoo.
>
> ...

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45. Pursuant to 4.1 above, I am not sure how the immunity of Datuk Sundra Rajoo, as a former High Officer of the AIAC, for acts done in official capacity, can realistically be granted without directly or indirectly waiving also immunity of AALCO or the AIAC especially for its archives and documents supposed to be inviolable under Article III(2) of the Host Country Agreement? Article III(2) of the Host Country Agreement serve the legitimate purpose of protecting the independence of AALCO and AIAC, which is crucial for the effective performance of their functions. Prosecution and or defense of the alledegly (sic) misappropriation of AIAC's funds against Datuk Sundra Rajoo will be substantiated by documents and or information in AIAC's possession. Yet, none is certain as to which and how many documents will be needed once the trial begins. So, waiving immunity under Art. III(6) also entails waiving immunity under Art. III(2) of the Host Country Agreement to the satisfaction of both, the prosecution and defense sides in the case. A waiver of this nature will likely disrupt activities of AALCO and it may be a 'pandora box' which I am afraid to open in the interests of AALCO.

...

[13] In a subsequent letter dated 10 July 2019, the Secretary General of AALCO again wrote to the second respondent informing him that the transactions which became the subject of the charges were known to AALCO and/or AIAC and that they were fully endorsed as such:

On 25 March 2019, you informed me that charges were instituted against Datuk Prof Sundra Rajoo on the basis of MACC's investigations. In my letter to you of 3 April 2019, I objected to the charges against Datuk Prof Sundra Rajoo on the basis of immunities granted to him under the Host Country Agreement as the charges related to promotion activity of the AIAC through purchase and distribution of his book 'Law, Practice and Procedure in Arbitration' of 2016. It covered services and arbitral regimes of the AIAC, among others. AALCO was aware, participated and supported such promotion activities as it greatly enhanced the position of the AIAC in the international arbitral community. Needless to mention that he donated all royalties received from the purchase of the books by the AIAC back to the AIAC.

[14] Despite the Secretary General's letter dated 22 March 2019, and the impending hearing of the application for leave to commence judicial review, on 22 March 2019 itself the second respondent had already issued to the third respondent his consent to prosecute the appellant. If we understand the appellant's submissions correctly, the second respondent had already made up his mind about charging the appellant notwithstanding the outcome of AALCO's decision on whether or not to waive the appellant's immunity.

[15] In any case, the appellant's application for leave to commence judicial review proceedings against the three charges was eventually dismissed. On appeal, the Court of Appeal held that the appellant had met the threshold for leave. The Court of Appeal reversed the High Court and the matter was

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A remitted to the High Court for hearing of the substantive application before a different judge. The substantive judicial review application was heard and decided on 31 December 2019 pending which the criminal proceedings in the sessions court were stayed. The application for judicial review was allowed by the High Court. Aggrieved, the respondents appealed to the Court of Appeal.
B The appeal was allowed.

THE MATERIAL PROVISIONS

[16] Before summarising the decisions of the courts below, we think it is
C necessary to first reproduce the legal provisions which were material to the question of the appellant's legal immunity. The relevant statute is the International Organizations (Privileges and Immunities) Act 1992 ('Act 485'). In this judgment, our references to 'sections' or 'Schedules' are to the 'sections' or 'Schedules' of Act 485, unless expressed otherwise.
D

[17] The material provisions of Act 485 are:

Section 2

'high officer' means a person who holds, or is performing the duties of, an office
E prescribed by regulations to be a high office in an international organization;

...

Section 4

(1) Subject to this section, and to subsections 11(3), 11(4) and 11(5), the Minister may by regulations either with or without restrictions or to the extent or subject to
F the conditions prescribed by such regulations —

...

(b) confer —

G (i) upon a person who is, or is performing the duties of, a high officer all or any of the privileges and immunities specified in Part I of the Second Schedule; and

(ii) upon a person who has ceased to be, or perform the duties of, a high officer the immunities specified in Part II of the Second Schedule;

H ...

(7) A high officer or an officer of an international organization who is a Malaysian citizen is not entitled under this section to any of the privileges or immunities in the Second and Fourth Schedules respectively, except in respect of acts and things done in his capacity as such an officer.

I Section 8A

(1) The privileges and immunities conferred under this Act are granted in the interests of the international organization and overseas organization and not for the personal benefit of the individuals.

(2) The appropriate authority of the respective international organization and

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overseas organization shall have the right and the duty to waive the privileges and immunities of any of its representatives, officials or experts in any case where, in its opinion, such privileges and immunities would impede the course of justice and could be waived without prejudice to the interests of the international organization and overseas organization.

(3) The international organization and overseas organization shall co-operate at all times with the appropriate authorities in Malaysia to —

(a) facilitate the proper administration of justice;

(b) secure the compliance of all domestic legislation; and

(c) prevent the occurrence of any abuse in connection with the privileges and immunities conferred under this Act.

SECOND SCHEDULE

(Section 4)

PART I

PRIVILEGES AND IMMUNITIES OF HIGH OFFICER OF INTERNATIONAL ORGANIZATION

The like privileges and immunities (including privileges and immunities in respect of spouse and children under the age of twenty-one years) as are accorded to a diplomatic agent.

PART II

IMMUNITIES OF FORMER HIGH OFFICER OF INTERNATIONAL ORGANIZATION

Immunity from suit and from other legal process in respect of acts and things done in his capacity as such an officer.

[18] Acting under the International Organizations (Privileges and Immunities) Regulations 1996 ('1996 Regulations'), the first respondent vide reg 2 expressly declared that KLRCA is an international organization, and in reg 3, conferred privileges and immunities to KLRCA as per the First Schedule.

[19] The 1996 Regulations were enacted to give effect to the 'Agreement between the Government of Malaysia and the Asian-African Legal Consultative Organization Relating to the Regional Centre for Arbitration in Kuala Lumpur' ('Host Country Agreement').

[20] The 1996 Regulations were amended vide the Kuala Lumpur Regional Centre for Arbitration (Privileges and Immunities) (Amendment) Regulations 2011 ('2011 Regulations'). The 2011 Regulations inserted the following important provisions material to the present appeal:

Regulation 1A

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A 'High Officer' means the person for the time being holding the post of Director of Kuala Lumpur Regional Centre for Arbitration.

...

Regulation 3A

B (1) A High Officer, if he is not a citizen of Malaysia, shall have the privileges and immunities as specified in Part I of the Second Schedule to the Act.

(2) A High Officer, if he is a citizen of Malaysia, shall only be entitled to the privileges and immunities in respect of acts and things done in his capacity as the High Officer.

C (3) A former High Officer shall have the immunities specified in Part II of the Second Schedule to the Act.

[21] The appellant claimed that the immunity that he had was essentially D derived from Part II of the Second Schedule, namely immunity from suit and from other legal process in respect of acts and things done in his capacity as such an officer.

[22] The respondents accepted and the courts below proceeded on the basis E that the appellant was entitled to immunity but they differed as to whether the scope of that immunity included immunity from criminal proceedings.

PROCEEDINGS IN THE HIGH COURT

F [23] Principally, the appellant sought the following substantive reliefs:

(1) A declaration that the appellant has immunity as a former High Officer being the Director of the Asian International Arbitration Centre ('the Centre') for acts done within his official capacity;

G (2) A declaration that on a proper interpretation of Act 485, the appellant's immunity as a former High Officer cannot be waived;

(3) A declaration that in any event a Director, Acting Director or any other officer of the Centre or otherwise has no power to waive the appellant's immunity;

H (4) An order of prohibition preventing the second respondent from laying any charge or bringing any proceedings in any court in Malaysia against the appellant with regard to anything done by the appellant in his capacity as Director of the Centre, and more specifically with regard to any acts or omissions by the appellant during his term of office as Director of the I Centre in relation to the property, funds or documents of the Centre or otherwise howsoever in relation to the affairs of the Centre.

(5) An order of prohibition preventing the third respondent from arresting, detaining, issuing any warrant or other order or otherwise bringing any judicial proceedings whatsoever against the appellant with regard to

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anything done by the appellant in his capacity as Director of the Centre, and more specifically with regard to any acts or omissions by the appellant during his term of office as Director of the Centre in relation to the property, funds or documents of the Centre or otherwise howsoever in relation to the affairs of the Centre;

(6) An order of certiorari to remove into the High Court and quash forthwith any document purporting to waive the appellant's immunity; and

(7) Such further or other relief as is considered just by the Court.

[24] As mentioned earlier, after hearing the substantive judicial review application, the High Court found in favour of the appellant. An order was granted in terms of all the prayers sought.

[25] On the immunity issue, the High Court, after considering various authorities, agreed with the appellant that the words 'and from other legal process' in Part II of the Second Schedule were capable of a wide construction to include criminal proceedings. The learned judge opined that if Parliament had intended to exclude criminal proceedings, it should have said so clearly.

[26] On the question of whether the second respondent's decision to institute the charges was amenable to judicial review, the learned judge opined that the High Court was the appropriate forum to determine the legality of the conduct of a public body exercising public law powers and that this was an appropriate case for it to invoke its supervisory jurisdiction. Mariana Yahya J (now JCA) held that:

> [90] The applicant in this case alleged that the respondents are acting in excess of their jurisdiction and this court is thus being asked to exercise its supervisory jurisdiction, acting as a constitutional body, to review the actions of the executive branch of Government. Based on the facts of the case, this court is of the considered view that the applicant has come to the right court to determine if the executive branch of Government has acted beyond its powers.

PROCEEDINGS AT THE COURT OF APPEAL

[27] The Court of Appeal agreed with the High Court that the words 'and from other legal process' in Part II of the Second Schedule include criminal proceedings. However, for three principal reasons, the Court of Appeal reversed the decision of the High Court.

[28] Firstly, the Court of Appeal opined that while the appellant was entitled to immunity, he was not entitled to 'complete immunity'. The Court of Appeal found thus:

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89. In this connection, the respondent (Sundra Rajoo) being a former High Officer of AIAC, cannot have the benefit of complete immunity from criminal jurisdiction under Act 485. In our opinion, such result can only be achieved in a treaty by express Agreement, with the effect that it cannot be achieved by implication. In our view, parties to the 2013 Host Agreement did not intend to provide complete exemption from criminal jurisdiction to be a condition of the Agreement, to a former high officer.

...

92. For these reasons, in our view, the presence of section 4(1) read together with Part II of the Second Schedule and section 4(7) of Act 485, is sufficient to reveal the clear intention of Parliament to enact that a former High Officer, shall only be entitled to immunity from criminal prosecution in respect of acts done by him in his capacity as a High Officer.

93. For these reasons, it is implausible to suggest that the legislation intended to accord complete immunity from criminal proceeding to a former High Officer who is a Malaysian citizen like the respondent in his case. That would in our view amount to altering the scope of Act 485.

[29] Secondly, the Court of Appeal held that the proper forum to determine the appellant's immunity status was the criminal court and not the High Court in the exercise of its supervisory jurisdiction. In support of that proposition, the Court of Appeal relied on, among others, its prior decision in *Dato' Param Cumaraswamy v MBf Capital Bhd & Anor* [1997] 3 MLJ 824('MBf Capital'). In essence, the Court of Appeal held that the matter ought to have proceeded to trial in the criminal court and that the appellant was entitled to invoke his immunity as a 'statutory defence' there (see paras 109–110, Court of Appeal judgment).

[30] Thirdly, the Court of Appeal held that in any event the decisions of the second respondent, even though they are decisions of an Executive body, are premised on unfettered discretion and based on decided cases on the subject, such decisions are completely unamenable to judicial review no matter the circumstances.

LEAVE QUESTIONS

[31] The appellant was granted leave to appeal to this court on the following questions of law ('questions'):

Question 1

Whether the words 'immunity from suit or from other legal process' in the Second Schedule of International Organizations (Privileges and Immunities) Act 1992 ('Act 485') includes criminal proceedings?

Question 2

Whether the immunity granted to various persons pursuant to Act 485:

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2.1 are limited by the words of section 8A(1) of Act 485 only to acts and things done that are not for their personal benefit; and

2.2 accordingly, whether charges can be laid against such persons notwithstanding the absence of a waiver by the appropriate authority of the international organization?

Question 3

Whether the exercise of the Attorney General's discretion pursuant to Article 145(3) of the Federal Constitution is amenable to judicial review in appropriate circumstances?

Question 4

Whether the High Court in judicial review proceedings has the jurisdiction and power, in appropriate cases,

4.1 to grant relief including to quash criminal charges laid by the Public Prosecutor, and

4.2 to issue orders of prohibition against proceedings in subordinate courts.'

OUR DECISION/ANALYSIS

Questions 1 and 2 — Legal immunity

[32] We shall, in this judgment, first deal with the question of whether the appellant was entitled to legal immunity from criminal jurisdiction as claimed. In our view, the question could be further broken down into the following subquestions:

(a) first, do the words 'and from other legal process' in Part II of the Second Schedule include 'criminal proceedings';

(b) second, assuming the answer is 'yes', was the appellant within the scope of the provision on immunity in Part II of the Second Schedule; and

(c) if so, did s 8A(1) have the effect of qualifying or diminishing the extent of the immunity conferred on the appellant?

Principles of statutory construction of domestic legislation dealing with public international law issues

[33] The crux of the submission made by learned senior federal counsel ('SFC') appears to be that the impugned words must be read down to exclude criminal proceedings by virtue of the specific phraseologies adopted by Parliament throughout Act 485 and having regard to the various schemes of privileges/immunities enacted by it in Act 485 and other related written laws.

[34] Learned SFC highlighted how different Acts of Parliament expressly confer immunity from criminal process and jurisdiction whereas Act 485 does

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A not. And, even if Act 485 did purport to confer immunity from criminal proceedings, the Act used different wordings in different parts to suggest different implications. The appellant, according to learned SFC, is only immune from 'legal process' whereas other parts of the Act (which are inapplicable to the appellant) use words such as 'legal process of every kind'. B Learned SFC therefore submitted that unless Parliament quite clearly provides for immunity from criminal proceedings, Act 485 cannot be construed as conferring such immunity.

C **[35]** With respect to learned SFC, we were unable to agree with her. The method of construction that she advanced is but one settled cannon of statutory interpretation. It is correct to say that where Parliament uses one method of phraseology in one part and another in some other part, the words could be construed to mean different things. However, that method is not D conclusive in determining legislative intent. Statutory construction is not an exact science. When exercising their interpretive role, the courts must be cautious to construe legislation by having regard to their overall purpose and the subject upon which they touch.

E **[36]** For example, we have held in *PJD Regency Sdn Bhd v Tribunal Tuntutan Pembeli Rumah & Anor and other appeals* [2021] 2 MLJ 60; [2021] 2 CLJ 441 at para 36, that courts will not interpret social legislation literally if the consequence of such an interpretation would be to diminish the protective effect of such legislation. In short, different rules might be applied depending F on the subject matter and statute under interpretation.

[37] In the present appeal, we were asked to interpret a law passed by Parliament concerning the Federation of Malaysia's compliance with international law. Act 485 serves to ratify an international agreement governed G by international law, in this context, the Host Country Agreement. Further, the law on immunity (whether in connection with diplomatic officials or international organisations) significantly impacts Malaysia's international relations.

H **[38]** This much is clear from learned SFC's submission — that short of clearly excluding immunity in respect of criminal proceedings, Parliament has left the words 'and from other legal process' vague and ambiguous. We were therefore left with the question on how the courts are to construe legislation dealing specifically with public international law issues. The High Court and I the Court of Appeal were ad idem that 'any other legal process' includes criminal proceedings and we found no reason to depart from their concurrent findings. However, our approach in this regard slightly differed from the High Court and the Court of Appeal in the construction of the impugned words 'and from legal process'.

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[39] The general proposition in construing statutes in a system that observes the dualist concept of international law is that international law will not apply in Malaysia unless expressly ratified and domesticated by Parliament (see for example *Bato Bagi & Ors v Kerajaan Negeri Sarawak and another appeal* [2011] 6 MLJ 297; [2011] 8 CLJ 766).

[40] In construing ambiguous domestic law, if there are at least two possible interpretations, that is, one which puts the State in breach of its international law obligations and the other which does not — the courts ought to prefer the approach which secures the State's compliance with international law. One strong authority for this proposition is the following dictum of Diplock LJ (as he then was) in *Salomon v Commissioners of Customs and Excise* [1966] 3 All ER 871 at pp 875–876:

> If the terms of the legislation are not clear, however, but are reasonably capable of more than one meaning, *the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations*; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred. Thus, in case of lack of clarity in the words used in the legislation, the terms of the treaty are relevant to enable the court to make its choice between the possible meanings of these words by applying this presumption. (Emphasis added.)

[41] The above passage applies in relation to cross-references to treaty obligations which is what the Host Country Agreement essentially is. To that extent the passage applies to the present appeal (see also the judgment of the High Court of Australia which endorses the same method of interpretation in *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 128 ALR 353).

[42] The approach taken by the Federal Court of Ottawa in *Re Canadian Security Intelligence Service Act (Canada)* [2008] 4 FCR 230; 2008 FC 301 ('CSISA') also commended itself to us. In that case, the relevant enforcement agency had applied to the court for a warrant to sanction extraterritorial investigations (the exact details of the locations are redacted). The law under which the application for warrant was made was silent as to whether the court can order a warrant to be executed beyond Canada's borders. The court held, in essence, that while the law was silent as to whether it could order an issuance of a warrant beyond, the court was not prepared to read the statute in a way which would essentially condone the State's violation of the customary international law concept of territorial integrity.

[43] The following dictum of LeBel J of the Supreme Court of Canada in *R v Hape* [2007] 2 SCR 292 ('Hape') is also on point, at p 323:

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A It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result. R Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed B 2002), at p 422, explains that the presumption has two aspects. First, the legislature is presumed to act in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community. In deciding between possible interpretations, courts will avoid a construction that would place C Canada in breach of those obligations. The second aspect is that the legislature is presumed to comply with the values and principles of customary and conventional international law. Those values and principles form part of the context in which statutes are enacted, and courts will therefore prefer a construction that reflects them.

D

[44] The above judgments of Canadian courts though not binding on us are highly persuasive because they concern the same subject decided in a country with a legal system similar to ours. The reasoning of *Hape* as applied in *CSISA*, in our view, also resonates with the general position of customary international E conduct codified in article 4(1) of the articles on the Responsibility of States for Internationally Wrongful Acts 2001 ('ARSIWA 2001') which provides:

The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, *judicial* or any other functions, whatever position it holds in the organization of the State, and F whatever its character as an organ of the central Government or of a territorial unit of the State. (Emphasis added.)

[45] The point is that if domestic legislation directly conflicts with G international law, then the courts of a dualist system must give priority to domestic law over international law. Any breach of the international law would be as a result of the conduct of the Legislative and Executive arms of Government. However, where the legislation is ambiguous and capable of an interpretation which favours international law, the courts ought not to put the H State or the other branches of Government in a position which would render them in breach of international law whether it be conventional international law (treaty law) or customary international law.

[46] An example of a case where the Judiciary was compelled to give effect to I unambiguous domestic legislation over customary international law is *Public Prosecutor v Narongne Sookpavit & Ors* [1987] 2 MLJ 100 (at pp 105–106). The present appeal is not such a case.

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[47] Based on the foregoing principles, the question we were required to ask ourselves was whether interpreting the vague and ambiguous provisions of Act 485 in the manner suggested by the respondents would be inconsistent with public international law.

Construction of the words 'and from other legal process' and whether the appellant was functionally immune to criminal proceedings

[48] The purpose of immunity in international law, in the context of diplomatic officials is to respect the sovereign independence and territorial integrity of the sending state. Interfering with the official, who is taken to represent that state, is a violation of the sacred customary principle of non-intervention. Similar observations can be made in respect of international organisations.

[49] In our context, we take particular note of articles I and III of the Host Country Agreement which specifically require that the fourth respondent respect the independence of AIAC and the inviolability of its property, assets and archives. Parliament honoured this agreement by enacting into the First and Second Schedules the relevant privileges and immunities.

[50] High Officers who are not Malaysian citizens enjoy an elevated status of immunity which makes sense having regard to the fact that they, being citizens or officials from other states, might also attract sovereign immunity or immunity *ratione personae* if they are deemed diplomatic agents. This is by virtue of the fact that as per reg 3A(1) of the 2011 Regulations, High Officers who are not Malaysian citizens enjoy an immunity status akin to a diplomatic agent as per Part I of the Second Schedule of Act 485.

[51] Pursuant to reg 3A(2), High Officers who are Malaysian citizens enjoy a lesser degree of immunity, limited only to acts or things done in their capacity as High Officer (functional immunity). Under reg 3A(3), former High Officers (whether Malaysian citizens or not) continue to enjoy functional immunity.

[52] The respondents suggested that the appellant, being a Malaysian citizen, cannot be deemed to be immune from the criminal jurisdiction of the courts in his home state, Malaysia.

[53] During the course of our own research, there appears to be some authority for that assertion in the judgment of the Queen's Bench Division in *Khurts Bat v Investigating Judge of the Federal Court of Germany* [2012] 3 WLR 180 ('Khurts Bat').

[54] *Khurts Bat* concerned an appeal against an extradition order made by

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A the District Court against the defendant, the Head of the Office of National Security of Mongolia. There was at the time, an outstanding international warrant of arrest against the defendant due to allegations against him for certain crimes such as kidnapping which took place in Berlin, Germany. The defendant was to be extradited to Germany from the United Kingdom to B answer to those allegations. In opposing the application for extradition, the defendant took up on appeal (among other issues), the argument that he was entitled to functional immunity under customary international law as he was sent on a special mission by the Government of Mongolia. The learned judges of the Queen's Bench held that there was no customary rule suggesting that he C was functionally immune to criminal proceedings. Moses LJ observed:

> 100. I have to acknowledge that the evidence of state practice is not all one way. The ICTY recognised the immunity in question in *Prosecutor v Blaskic* (1997) 110 ILR 607. Sir Elihu relied strongly on *McElhinney v Williams* (1995) 104 ILR 691. But that was a civil case in which the defendant claimed damages for an alleged assault D by a British soldier guarding a checkpoint. It does not, in my view, assist in relation to the issue in question.
>
> 101. For those reasons, I conclude there is no customary international law which affords this defendant immunity ratione materiae and I dismiss his appeal on that E ground.

[55] While the law expounded by the Queen's Bench Division in *Khurts Bat* appeared to support the respondents' submission that the appellant, a Malaysian, is not immune from criminal proceedings in his home-country, we F considered the authority inconclusive. Firstly, the observation by Moses LJ (with which Foskett J agreed), was in respect of the absence of a clear rule of customary international law on functional immunity from criminal proceedings. That is not the case here because the appellant claims immunity under statute ratifying the immunities and privileges agreed to by the fourth G respondent under treaty.

[56] Secondly, international law itself is not entirely clear on the subject. As one learned author, Sir James Crawford notes in *Brownlie's Principles of International Law* (8th Ed, Oxford University Press, 2012) at p 499:

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> Whether and when state immunity will apply in domestic criminal proceedings is a complex question. In theory it should not matter for the purposes of immunity under international law if the conduct is classified by the forum state as civil or criminal. The European Convention impliedly endorses the absolute immunity of the state from foreign criminal jurisdiction. The UN Convention and the domestic I statutes arguably implicitly allow a distinction on the basis of domestic characterization of *the act by excluding criminal proceedings from their scope.*
>
> The scope of immunity from foreign criminal jurisdiction is yet to be conclusively determined. *Customary international law in principle extends immunity ratione materiae to acts of state officials undertaken in their official capacity; but there is practice*

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> *supporting an exception if the act was committed in the territory of the forum state.*. (Emphasis added.)

[57] The learned author's views appear to be premised on the distinction between absolute immunity (State immunity or immunity *ratione personae*) and functional immunity or immunity *ratione materiae*. But, what is clear is that international law is undecided on this issue. To illustrate, reference is made to the following extract from 'Sixth report on immunity of State officials from foreign criminal jurisdiction' by Special Rapporteur Concepción Escobar Hernández (12 June 2018, A/CN.4/722):

> 67. However, as already argued in the Special Rapporteur's second report, in practice it is possible to find various kinds of acts of an authority of the forum State which may have an impact on the foreign official and the immunity from foreign criminal jurisdiction that he or she possesses. These acts may be divided into three groups:
>
> ...
>
> 68. The answer to the question whether these acts are affected by immunity from foreign criminal jurisdiction cannot be as simple and automatic as that relating to the acts discussed in the previous paragraphs. On the contrary, whether or not these acts are affected by immunity will depend on various issues which must be considered one by one, namely: (a) the distinction between immunity from jurisdiction and inviolability; (b) *the separation between the person of the official and the assets the seizure of which is sought*; and (c) the binding and coercive nature of the measure and its influence on the foreign official's exercise of his or her functions. All these factors must also be considered in the light of the distinction between immunity *ratione personae* and immunity *ratione materiae*. (Emphasis added.)

[58] In the present appeal, whatever be the position in customary international law, the point remained that the fourth respondent had entered into the Host Country Agreement which is a binding international agreement incorporated by way of legislation through Act 485. Taking heed from the Special Rapporteur's report, in interpreting the words 'legal process', this court also had to consider the conventional international law purpose of the immunity, which in this case, was to safeguard the independence of AIAC and AALCO.

[59] Learned SFC also referred us to the Diplomatic Privileges (Vienna Convention) Act 1966 ('Act 636') which seeks to ratify the Vienna Convention on Diplomatic Relations. She submitted that Act 636, unlike Act 485 expressly provides for instances of immunity for criminal proceedings. In our view, her submission speaks directly to our point that Parliament in ratifying the Vienna Convention on Diplomatic Relations expressly catered for the difference between immunity from civil and criminal proceedings whether *ratione personae* or *ratione materiae*. However, in concluding the Host Country

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A Agreement and others like it, and by ratifying them through Act 485, Parliament did not choose to exclude criminal proceedings.

[60] It is pertinent to state that we were guided by the general aim of the purpose of the immunity which was granted, to wit, to protect and preserve the B inviolability of AIAC, its documents and its archives. Where the Malaysian former High Officer acts in his official capacity, the purpose of conferring that immunity remains the same whether the nature of the proceedings against him are civil or criminal unless the Host Country Agreement or Act 485 provided C otherwise.

[61] In point of fact, the letter of the Secretary General of AALCO dated 22 March 2019 is a clear indication of why such immunity under Act 485 is necessary. Prosecuting the appellant was likely to whittle down the AIAC and D AALCO's immunity status and would breach the inviolability of their records, documents, archives and general process of both institutions. This in turn would likely run the risk of jeopardising the independence and the immunity of both those institutions. We failed to see how the fact that this concerned a criminal case mitigated the effect of the purpose of the immunity. The risk of E breach of confidentiality is the same whether the proceedings are criminal or civil.

[62] The relevant provisions of Act 485 which includes 'legal process' therefore ought to be reasonably construed to include criminal proceedings in F line with the fourth respondent's international law obligations unless Parliament clearly expressed the contrary intention. If the material provisions of Act 485 were read any other way, this court would take the risk of exposing Malaysia to a violation of international law on immunities and privileges.

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[63] Further, it was our view that s 8A(1) supports, rather than detracts from this conclusion. In our understanding of the section, it clarifies the rationale for extending criminal immunity to the appellant in his official capacity as it protects the integrity and independence of the AIAC and AALCO under the H terms of the Host Country Agreement. It is for the benefit of those entities and not for the appellant's personal benefit. This correlates to the Special Rapporteur's report cited earlier which suggests that courts should also have regard to 'the separation between the person of the official and the assets the seizure of which is sought'.

I

[64] Suffice it to say at this stage that where the court is unsure whether the law confers immunity in respect of criminal proceedings or not, the court ought to err on the side of caution. In the present appeal, the appellant

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successfully established in fact and in law that his immunity status extended to criminal proceedings by the words 'and from other legal process' in the Second Schedule, Part II.

[65] We therefore agreed with the appellant that the Court of Appeal misdirected itself on the law. Part II of the Second Schedule unequivocally confers on former High Officers what is known in public international law as 'functional immunity' or immunity *ratione materiae* as opposed to absolute (or complete) immunity otherwise referred to as immunity *ratione personae*. The three charges quite clearly alleged that the appellant committed the criminal acts in his capacity as Director of AIAC. In fact and in law, at the time he was presented with the three charges, the appellant was a 'former High Officer' entitling him to functional immunity. In our view, the Court of Appeal's conclusion was incongruous because on the one hand it held that 'legal process' in Part II of the Second Schedule includes criminal proceedings but on the other hand the appellant was not entitled to it because he was not completely immune. We noted that the appellant did not claim 'complete immunity', hence the distinction made by the Court of Appeal was irrelevant.

The appropriate forum

[66] To reiterate, we found that the appellant acted within the scope of his function such that he is entitled to the immunity sought, that the appellant's functional immunity included immunity from criminal proceedings and that the question of 'personal benefit' under s 8A(1) of Act 485 did not arise because the appellant acted in his capacity as Director of AIAC and as such the immunity was to safeguard the interests of AIAC and AALCO. In other words, the immunity was not to benefit him but to respect the integrity and independence of AALCO and AIAC under the terms of the Host Country Agreement.

[67] The only question remaining at this stage is whether the sessions court was the appropriate forum or the only forum at which the appellant's immunity could have been determined.

[68] The respondents submitted, in support of the Court of Appeal's reasoning, that the matter, involving issues of fact, should effectively have been tested in the criminal court. The Court of Appeal even suggested that the appellant should be entitled to invoke immunity as a 'statutory defence'. If these suggestions are understood correctly, they suggest that the appellant and any other person claiming functional immunity ought to be subject to full trial to prove evidentially that he acted within the scope of his functional immunity.

[69] The respondents relied on several authorities. In particular, learned SFC

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relied on the judgment of the Court of Appeal in *MBf Capital*. In that case, the defendant, Dato' Param Cumaraswamy was sued for defamation for some comments he made that were published in the International Commercial Litigation Magazine under the caption 'Malaysian Justice on Trial'. The defendant applied to strike out the suit for the reason that those allegedly defamatory remarks were made during the course of his mission as Special Rapporteur on the independence of judges and lawyers which attracted functional immunity. In support of his claim to immunity, the defendant produced certificates from the Minister of Foreign Affairs and the Secretary General of the United Nations ('UNSG') stating his immunity.

[70] Zainun Ali JC (as she then was), whose judgment is reported in *MBf Capital Bhd & Anor v Dato' Param Cumaraswamy* [1997] 3 MLJ 300, held that those certificates were inconclusive to prove the fact that the defendant had made the alleged remarks within the scope of his functions. The High Court accordingly held that whether or not the defendant was protected by his immunity would have to be determined after full trial. Her Ladyship observed as follows, at p 316:

> In the circumstances, I am unable to hold that the defendant was absolutely protected by the immunity he claimed.
>
> That did not mean however, that the defendant was estopped from adducing further evidence at trial to support his claim.
>
> If — at the end of the trial of the plaintiffs' action, after taking all evidence from the parties — I come to the conclusion that immunity attached to the defendant, the defendant may succeed at that stage.

[71] The judgment was affirmed on appeal to the Court of Appeal (see *Dato' Param Cumaraswamy v MBf Capital Bhd & Anor* [1997] 3 MLJ 824) where Gopal Sri Ram JCA (as he then was), held at p 851:

> In our judgment, the defendant has failed to demonstrate that the learned judicial commissioner has committed an error that warrants appellate interference. She asked herself the right questions, took into account all relevant considerations and directed herself correctly on the applicable law. Above all, the order she made has not resulted in any injustice to the defendant. There has been no ruling against immunity, the judicial commissioner taking much care to leave that issue open to be decided at the trial of the action. *The defendant is entitled, at the conclusion of the trial, to a verdict in his favour in the event he establishes his claim to immunity on the facts.*. (Emphasis added.)

[72] With respect, what had escaped the attention of learned SFC was the fact that the matter of *Dato' Param Cumaraswamy* was eventually brought to the International Court of Justice ('ICJ') for an Advisory Opinion through a resolution passed by the United Nations Economic and Social Council which

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was communicated to the ICJ by way of a note from the UNSG. The ICJ considered written statements from numerous sources namely the UNSG, Costa Rica, Germany, Greece, Italy, Malaysia, Sweden, the United Kingdom and the United States of America. The ICJ eventually delivered its Advisory Opinion on 29 April 1999 in *Difference Relating to Immunity from Legal Process of a Special Rapporteur of The Commission on Human Rights* [1999] ICJ Rep 62 ('Re Param Cumaraswamy').

[73] Most importantly, the advisory opinion reflects that the ICJ:

> 2. *Calls upon* the Government of Malaysia to ensure that all judgements and proceedings in this matter in the *Malaysian courts* are stayed pending receipt of the advisory opinion of the International Court of Justice, which shall be accepted as decisive by the parties.

[74] With that firmly in mind, this court was minded to pay due regard to the advisory opinion of the ICJ. Substantively, the ICJ held that the Malaysian courts had essentially violated international law by failing to consider Dato' Param Cumaraswamy's immunity status in a summary manner. The ICJ made the following observation:

> 63. Section 22 (b) of the General Convention explicitly states that experts on mission shall be accorded immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their mission. By necessary implication, questions of immunity are therefore preliminary issues which must be expeditiously decided *in limine litis*. This is a generally recognized principle of procedural law, and Malaysia was under an obligation to respect it. The Malaysian courts did not rule *in limine litis* on the immunity of the Special Rapporteur (see paragraph 17 above), thereby nullifying the essence of the immunity rule contained in Section 22(b). Moreover, costs were taxed to Mr. Cumaraswamy while the question of immunity was still unresolved. As indicated above, the conduct of an organ of a State — even an organ independent of the executive power — must be regarded as an act of that State. Consequently, Malaysia did not act in accordance with its obligations under international law.

[75] In our view, the judgment of the ICJ is correct and in light of it, *MBf Capital* cannot, with respect, be sustained as representing the current state of the law. It and any authorities which followed it or decided along similar lines are in the same vein no longer good law.

[76] In every case where immunity is claimed, certificates produced by the relevant authorities (especially the UNSG or other international bodies) are conclusive of that fact. If immunity is absolute (*ratione personae*) the production of the certificates would be the end of the matter. If the immunity is *ratione materiae* (functional) then affidavit evidence (which the court should presume to be true) should be considered *in limine litis* to ascertain whether the

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conduct or omission of the official in question was within the scope of his functions. If they were, then they are cloaked with immunity.

[77] In any event, we did not think that it is sound judicial policy to suggest that functional immunity can be determined at trial or be treated as a 'statutory defence' because doing so would be to defeat the very purpose of immunity. The trial process and interlocutory processes such as discovery (in civil cases) have the effect of sidestepping the inviolability of archives and documents and hence defeat the purposes of immunity or in this appeal, the very legislative intent of Act 485. In our considered view, this is a complete answer to the otherwise legally unsustainable suggestion that the appellant's immunity can and ought to be determined at trial in the criminal court or that his immunity ought to be treated as a 'statutory defence'.

[78] This brings us to the related submission of the respondents that judicial review of the charges in the High Court was unnecessary in light of s 173(g) of the Criminal Procedure Code ('the CPC').

[79] Learned SFC submitted that if the sessions court found that the appellant's immunity applies, the court could have discharged the charges on the basis that they were 'groundless'. In this way, judicial review was unnecessary and this is quite apart from the further argument of the respondents that it is impossible.

[80] In response, learned counsel for the appellant submitted that the respondents' submission on s 173(g) of the CPC is not an answer to the issue. He argued that s 173(g) of the CPC presupposes that the charges were in the first place legally valid but deemed groundless based on decided principles. In the present case, he submitted, the charges are a nullity and it is only the superior courts that can legally review and quash the charges by virtue of their inherent powers of judicial review.

[81] With respect, we agreed with the appellant. The decision of the Supreme Court in *Karpal Singh & Anor v Public Prosecutor* [1991] 2 MLJ 544 ('Karpal Singh') provided a complete answer to the issue. At pp 548–549, Abdul Hamid Omar LP said:

> ... There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of the record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt

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such a case. It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area.

[82] The decision of the second respondent to prefer charges against any person is an executive one. The core purpose of judicial review within the scheme of our constitutionally ordained regime of separation of powers generally presupposes that the Judiciary is constitutionally and inherently obligated to review the Executive's and/or Legislative's unlawful action or inaction. It is therefore fitting and appropriate that where it is alleged that the charge is a nullity, the proper forum to decide the question is the High Court acting within its supervisory jurisdiction.

[83] As such, it was correct in principle for the appellant to initiate judicial review proceedings as the issue was not capable of resolution in a criminal court much less before a subordinate court. We were therefore unable to agree with the submission of the respondents or the reasoning of the Court of Appeal which suggested otherwise.

[84] Before we conclude the discussion on this issue, we would like to address the fears expressed by learned SFC in her submission that such judicial review would become a routine tactic in criminal cases, placing another obstacle in the path of prosecution. Concerns were also expressed about the danger of bringing unmeritorious and tactical applications that have more to do with tripping up prosecution than a genuine desire to vindicate an accused's entitlement to a trial in accordance with the law. There will be 'tsunami' of such applications and they would engulf and inundate the courts.

[85] Further, it was contended that the process to seek judicial review would cause delay for a criminal trial, which might put the accused into a worse position, especially when such application is dismissed or leave to appeal is granted.

[86] With respect, we disagree. We are mindful of the necessity to ensure that the use of judicial review as delaying tactic does not become routine as it might if judicial review of decision to prosecute become commonplace. We consider the civil courts already have, based on established principles, the capacity to deal with such applications before them and the competency to prevent abuse of the courts' process. Experience in other jurisdictions showed that the High Court would rarely intervene in relation to prosecutorial decision-making process. This power to intervene has been expressed in a number of different, but consistent ways, by the courts:

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A (a) 'sparingly exercised' (*R v DPP, ex p C* [1995] 1 Cr App Rep 136 at p 140);

(b) 'very rare indeed' (*R (on the application of Pepushi) v Crown Prosecution Service* [2004] EWHC 798 (Admin) at para 49;

B (c) 'very rarely' (*Regina (Bermingham and others) v Director of the Serious Fraud Office; Bermingham and others v Government of the United States of America and another* [2007] 2 WLR 635 at para 63); and

(d) 'only in very rare cases' (*R (on the application of S) & Anr v Oxford*
C *Magistrates Court & Anr* [2015] EWHC 2868 (Admin) at para 15.

[87] It is clear that save in wholly exceptional circumstances, the proper course to take is to challenge the decision to prosecute in the criminal courts.

D **[88]** Having said that, we hasten to add that the decision by the AG/PP to prosecute can have enormous consequences for the accused person, the injured party and society at large. For an accused in particular, the consequences of being charged include the irretrievable loss of reputation, distress and disruption of work and family relations. If the law has been misunderstood or
E misapplied by the AG/PP, as apparent in the present appeal, the appellant ought to be given an opportunity to have such discretion reviewed by way of judicial review. Further, the court has the responsibility to prevent the criminal justice system from being arbitrarily used against an individual and to prevent
F an innocent person from going through a criminal proceedings if the AG/PP had failed to exercise his discretion in accordance with law to prosecute. To allow a matter without merit to be pursued through criminal court would have huge impact on the accused's life and career and would cause unnecessary expenditure of time and effort and would place extra costs on the public purse.

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[89] In an appropriate and exceptional cases, it would be better to quash the decision to prosecute before the criminal proceedings commence so that unnecessary suffering of the accused caused by improper prosecution can be minimised.

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[90] In the circumstances, we answered question 1 in the affirmative and question 2 (as a whole) in the negative.

I *Questions 3 and 4 — The AG/PP's powers to institute, conduct and discontinue proceedings under art 145(3) of the FC and their amenability to judicial review*

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The law

[91] The respondents argued that based on decided cases, the discretion of the second respondent to institute, conduct and discontinue proceedings in court under art 145(3) of the FC is unfettered and entirely unamenable to judicial review. The gist of the argument centres on public policy concerns based on high authorities.

[92] The appellant put up a measured response. Learned counsel took pains to emphasise that he was not making the case that the second respondent's powers under art 145(3) are amenable to judicial review in the same way that other executive bodies are. Learned counsel stressed that the focal point of question 3 is in the words 'appropriate circumstances'. He traversed various cases indicating an inherent tension by the courts to balance discretion grounded on public policy with the concept of accountability, separation of powers and Rule of Law. He also submitted that there is nothing in art 145(3) or any law passed by Parliament constitutionally or statutorily insulating the second respondent from judicial review. The existing policy on judicial review was entirely a creature of the common law.

[93] Learned counsel for the appellant took us through a wealth of cases in the Commonwealth countries as regards their treatment of the powers of their respective attorney general. He also pointed out to us key passages from historical documents such as the Reid Commission Report on the extent of powers envisaged for the second respondent during the drafting stages of our FC. As much as we were grateful to counsel and his team for the extent of their research, we were satisfied that the facts of the present case did not require us to leap to such lengths to resolve question 3. We shall refer to foreign case law for guidance only where necessary.

[94] The public policy concern that the respondents advanced is adequately captured by Gopal Sri Ram JCA (sitting in the High Court) in *Repco Holdings Bhd v Public Prosecutor* [1997] 3 MLJ 681 at p 689:

> The importance of the propositions formulated by the learned Lord President in these two cases is that, as a matter of public law, the exercise of discretion by the Attorney General in the context of art 145(3) is put beyond judicial review. In other words, the exercise by the Attorney General of his discretion, in one way or another, under art 145(3), cannot be questioned in the courts by way of certiorari, declaration or other judicial review proceedings.
>
> I think that the proposition is not only good law but good policy. For, were it otherwise, upon each occasion that the Attorney General decides not to institute or conduct or discontinue a particular criminal proceedings, he will be called upon to a court of law the reasons for his decision. It will then be the court and not the

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A Attorney General who will be exercising the power under art 145(3). That was surely not the intent on our founding fathers who framed our Constitution for us.

[95] There is much wisdom in the above observation. For instance, in an ordinary case, the AG/PP charges someone but the court for some reason B decides that he should not have done so. Or if it were the other way around: the AG/PP decides not to prefer a charge against someone for whatever reason yet the court decides otherwise and compels him to do so. An overzealous Judiciary which imposes no fetter upon its own powers of review vis a vis the C discretionary powers of the AG/PP runs the risk of arrogating the executive power of the second respondent to the court.

[96] The AG/PP by constitutional design has access to the police, investigation papers and other core decisive material which ultimately factor D into his decision to charge or not to charge a person or to otherwise discontinue proceedings. The AG/PP is the guardian of public interest and so he factors not just the law and legal principles but also matters relevant to public policy and national security. The courts, also by constitutional design, do not have the same benefit. Such design is inherent in the mechanism of our adversarial E system which is grounded or rooted in the doctrine of separation of powers. Some degree of judicial deference to Executive discretion of the AG/PP is necessary so as not to stymie our justice system.

[97] Deference does not however translate to complete surrender. Ours is a F system built on constitutional supremacy where accountability, separation of powers and Rule of Law take centre stage. Much headway has been made in our constitutional jurisprudence to curate the fine balance between policy considerations on the one side, and the adjudication and supervision of the legality of State action by the judicial branch — on the other. This gradual shift G from unfettered discretion to restricted supervision is apparent from the judgment of this court in *Peguam Negara Malaysia v Chin Chee Kow (as secretary of Persatuan Kebajikan dan Amal Liam Hood Thong Chor Seng Thuan) and another appeal* [2019] 3 MLJ 443 ('Chin Chee Kow').

H **[98]** Apart from *Chin Chee Kow*, the other cases material to this appeal are:

(a) *Long bin Samat & Ors v Public Prosecutor* [1974] 2 MLJ 152 ('Long bin Samat');

(b) *Johnson Tan Han Seng v Public Prosecutor; Soon Seng Sia Heng v Public* I *Prosecutor; Public Prosecutor v Chea Soon Hoong; Teh Cheng Poh v Public Prosecutor* [1977] 2 MLJ 66 ('Johnson Tan');

(c) *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 ('Teh Cheng Poh');

(d) *Public Prosecutor v Zainuddin & Anor* [1986] 2 MLJ 100 ('Zainuddin');

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(e) *Karpal Singh*; and

(f) *Repco Holdings*.

[99] The appellant submitted that in all the above cases, while the courts have appeared to unanimously hold that the powers of the AG/PP are unfettered and unamenable to judicial review, there appears to be a lesser observed dicta suggesting that the AG/PP's powers are reviewable in certain cases. For the purposes of this judgment, we did not think it was necessary to delve into the minutiae to piece together passage by passage these supposed 'contradictions'. We found two dicta to be precisely on point.

[100] The first is the earlier cited passage from the judgment of the Supreme Court in *Karpal Singh*. There, the court suggested that where charges are a nullity, the decisions of the AG/PP are reviewable as the only form of legal redress.

[101] The second is the passage from *Zainuddin* which ought to be read in the context of the earlier decision of the Privy Council in *Teh Cheng Poh* and a later decision in *Lim Kit Siang v Dato Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383 ('Lim Kit Siang'). In *Zainuddin*, Salleh Abas LP observed, at p 103, that:

> The law and Constitution in giving the Attorney-General an exclusive power respecting direction and control over criminal matters expect him to exercise it honestly and professionally. The law gives him a complete trust in that the exercise of this power is his and his alone and that his decision is not open to any judicial review. If he is a Minister of the Government he is answerable to Parliament and to his cabinet colleagues, and if he is not, the Government will answer for him in Parliament, whilst he himself will be answerable to the Government, and if he is a civil servant he will be answerable also to the Judicial and Legal Service Commission, though anomalously he is a member of it. Members of the public expect that he exercises his power bona fide and professionally in that when he prefers a charge against an individual he does so because public interest demands that prosecution should be initiated and when he refrains from charging an individual or discontinues a prosecution already initiated he also acts upon the dictate of public interest.

[102] At first blush, the passage suggests that the AG/PP's powers are entirely unreviewable. Yet, the court unanimously stated that the AG/PP is required to act bona fide in the exercise of his discretion and that he is subject to scrutiny but within the political process. In our view, the passage must be assessed in context and this is where the decisions in *Teh Cheng Poh* and *Lim Kit Siang* are relevant.

[103] In *Teh Cheng Poh*, Lord Diplock observed as follows at p 56:

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> There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. All that equality before the law requires, *is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration.* (Emphasis added.)

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[104] *Teh Cheng Poh* was decided in 1978 but the same learned judge Lord Diplock, in 1984, delivered the leading speech in *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 ('CCSU') where His Lordship restated the classic grounds of judicial review, to wit, illegality, irrationality, procedural impropriety and proportionality. At pp 410–411 of *CCSU*, Lord Diplock described his understanding of what 'irrationality' and 'procedural impropriety' mean. He loosely described the former to mean considering irrelevant considerations or leaving out relevant considerations and the latter to mean the violation of the rules of natural justice — encapsulating its twin pillars — the rule against bias (*nemo judex in causa sua*) and the right to be heard (*audi alteram partem*). If we analyse *Teh Cheng Poh* in light of the same judge's decision in *CCSU*, it would appear that if the traditional requirements of judicial review are met, the AG/PP's powers are reviewable to that extent (subject to certain qualifications stated further below).

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[105] And thus, *Zainuddin* must be read down to harmonise it with the prior decision in *Teh Cheng Poh*. Salleh Abas LP, the same judge who decided *Lim Kit Siang* roughly a year after *Zainuddin*, observed thus at pp 386–387:

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> When we speak of government it must be remembered that this comprises three branches, namely, the legislature, the executive and the judiciary. The courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review — a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of judges over legislators but of the Constitution over both. The courts are the final arbiter between the individual and the State and between individuals inter se, and in performing their constitutional role they must of necessity and strictly in accordance with the Constitution and the law be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. If that role of the judiciary is appreciated then it will be seen that the courts have a duty to perform in accordance with the oath taken by judges to uphold the Constitution and act within the provisions of and in accordance with the law.

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[106] Salleh Abas LP who wrote the judgment in *Lim Kit Siang* was surely aware of his prior judgment in *Zainuddin* and before that, *Teh Cheng Poh*. Reading the passage in *Zainuddin* harmoniously with *Teh Cheng Poh* (decided prior) and *Lim Kit Siang* (decided right after), it is clear that it was not the articulation of those cases that the AG/PP's exercise of power should be absolutely immune from judicial review and scrutiny.

[107] It appears that the High Court based its decision to review the second respondent's discretion in this case on the decision of this court in *Chin Chee Kow*. The ratio of the judgment is disclosed in the following dictum of Mohd Zawawi Salleh FCJ:

> [83] We hasten to add that unfettered discretion is contradictory to the rule of law. Therefore, the AG's power to give consent or otherwise under s 9(1) of Act 359 is not absolute and is subject to legal limits.

[108] The Court of Appeal rejected the High Court's reading of *Chin Chee Kow* for the reason that the discretion in that case was a statutory one and not a constitutional one under art 145(3) of the FC. With respect, we found no basis for such distinction. The ratio of *Chin Chee Kow* though decided on the basis of statutory discretion does not posit the proposition that constitutional discretion remains unreviewable. At the end of the day, discretion, whether statutorily or constitutionally prescribed, involves the exercise of powers of the same constitutional entity (the AG/PP) in the same Executive capacity and thus brings it squarely within the compass of judicial review.

[109] That said, we accept that at stake in all review cases is the notion that the courts must be cautious not to run awry of the fine dividing line of the doctrine of separation of powers. In this regard, while the AG/PP's powers are reviewable, the AG/PP's discretion under art 145(3) of the FC, as a matter of policy, remains subject to a higher threshold of scrutiny. The following passage of Chan Sek Keong CJ in *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ('Ramalingam') offers some guidance:

> 44 In view of the co-equal status of the two aforesaid constitutional powers, the separation of powers doctrine requires the courts not to interfere with the exercise of the prosecutorial discretion unless it has been exercised unlawfully. The prosecutorial power is part of the executive power, although, under existing constitutional practice, it is independently exercised by the Attorney-General as the Public Prosecutor. *In view of his high office, the courts should proceed on the basis that when the Attorney-General initiates a prosecution against an offender (regardless of whether he was acting alone or in concert with other offenders), the Attorney-General does so in accordance with the law. In other words, the courts should presume that the Attorney-General's prosecutorial decisions are constitutional or lawful until they are shown to be otherwise.* (Emphasis added.)

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A [110] Thus, the Singapore Courts too have departed from the notion that AG/PP's powers are unreviewable but they had taken the stance that the review process be subject to higher standards. In constructing that standard, they have decided that the doctrine of presumption of constitutionality applicable to Acts of Parliament are equally and analogously applicable to the decisions of B the AG/PP under art 35(8) of the Singapore Constitution which is *in pari materia* with art 145(3) of our FC. That means that the decisions/discretions of the AG/PP are subject to a 'higher standard of review'.

[111] This left us with the residual question as to what that 'higher standard C of review' means. Again, the Singapore Court of Appeal's judgment in *Ramalingam* offers some guidance:

> 71. Given that there are many legitimate reasons for the Prosecution to differentiate between the charges brought against different offenders involved in the same D criminal enterprise, such differentiation per se does not necessarily mean that the Prosecution has not given unbiased consideration to the offender or offenders in question, or that the Prosecution has taken into account irrelevant considerations. Put another way, such differentiation, without more, does not raise an inference of breach of Art 12(1). Rather, in the absence of prima facie evidence to the contrary, the inference would be that the Prosecution has based its differentiation on relevant E considerations. This conclusion does not mean that an aggrieved offender can never prove a case of unlawful discrimination. Such a case may be self-evident on the facts of a particular case (for example, where a less culpable offender is charged with a more serious offence while his more culpable co-offender is charged with a less serious offence, when there are no other facts to show a lawful differentiation F between their respective charges).

[112] Article 145(3) of the FC provides the AG/PP with a wide discretion to institute, conduct or discontinue any proceeding for a criminal offence. This wide discretion means the AG/PP has sole and exclusive discretion in that only G he/she can exercise such power. However, the AG/PP does not have absolute or unfettered discretion under art 145(3). As alluded to in the preceding discussion and following from it, it is our judgment that in appropriate, rare and exceptional cases, such discretion is amenable to judicial review.

H [113] In all challenges against the decisions of the AG/PP exercising his powers under art 145(3) of the FC, the position is that his decisions are cloaked with the presumption of legality. The onerous burden lies on the challenging party to overcome the strong presumption of legality with compelling prima facie evidence of grounds to review the AG/PP's decision within the recognised I reasons for judicial review.

[114] Based on the foregoing authorities, it can be surmised that any challenge must therefore pass a two-step threshold which must be satisfied at the leave stage of any application for judicial review.

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[115] Firstly, the burden of proof lies on the applicant. The applicant will have to show that he has a legal basis to challenge the decision of the AG/PP. This refers to the traditional grounds of judicial review and other bases implicitly recognised by the earlier judgments on this subject, including but not limited to:

(a) illegality;

(b) procedural impropriety (eg breach of the rules of natural justice);

(c) irrationality (considering irrelevant considerations or ignoring relevant and material considerations); and

(d) mala fides.

[116] Once the above legal grounds or any of them are clearly set out, the applicant will then have to adduce compelling and prima facie proof that the decision or omission of the AG/PP falls within those grounds or any one of them. In other words, the courts are to presume, having regard to the doctrine of separation of powers, that all or any of the grounds were *not* made out unless the evidence singularly leads to the inevitable conclusion that they have been made. It is only after that threshold is crossed that the AG/PP bears the burden to justify his actions or inactions to the court. *Ramalingam* at paras 27–28 is instructive:

> 27. That the burden of proof lies on the offender in this regard is a wholly trite proposition that is reflected in s 103(1) of the Evidence Act, which states that '[w]hoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist'. In constitutional challenges to the prosecutorial discretion based on an alleged breach of one or more of the fundamental liberties enshrined in the Constitution, it is only when enough evidence is adduced to show a prima facie breach that the evidential burden will be shifted to the Attorney-General to justify his prosecutorial decision.
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> 28. However, once the offender shows, on the evidence before the court, that there is a prima facie breach of a fundamental liberty (ie, that the Prosecution has a case to answer), the Prosecution will indeed be required to justify its prosecutorial decision to the court. If it fails to do so, it will be found to be in breach of the fundamental liberty concerned. At that stage, the Prosecution will not be able to rely on its discretion under Art 35(8) of the Constitution, without more, as a justification for its prosecutorial decision.

[117] Needless to say, the assessment of the law and the facts will depend on the unique circumstances of each and every case. We state again at the risk of repetition that the assessment in each and every case must be made having regard to the doctrine of separation of powers.

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A [118] Further, in making that factual assessment, the court must also be satisfied that judicial review is the only method of redress available to the litigant. Put another way, if the court is satisfied that the arguments centre around the substantive criminal process then the appropriate forum would be the criminal court and not any other court. See for example the speech of Lord B Hobhouse in *Regina v Director of Public Prosecutions, ex parte Kebilene and others* [2000] 2 AC 326 at p 394:

> If the substance of what it is sought to review is the answer to some issue between the prosecution and defence arising during a trial on indictment, that issue may not be C made the subject of judicial review proceedings.

[119] In this regard, the Privy Council's decision in *Sharma v Brown-Antoine and others* [2007] 1 WLR 780 ('Sharma') has set out a good guidance to be considered in determining whether a decision to prosecute can be reviewed. In D this case, the Privy Council conducted an extensive review of the common law cases and held that (as gathered from the head notes):

(a) although a decision to prosecute was in principle susceptible to judicial review on the ground of interference with the prosecutor's independent E judgment, such relief would in practice be granted extremely rarely;

(b) in considering whether to grant leave for judicial review, the court had to be satisfied not only that the claim had a realistic prospect of success but also that the complaint could not adequately be resolved within the F criminal process itself, either at the trial or by way of application to stay the criminal proceedings as an abuse of process;

(c) the court's power to stay criminal proceedings for abuse of process should be interpreted widely enough to embrace an application challenging a decision to prosecute on the ground that it was politically G motivated or influenced; and

(d) since, in all the circumstances, all the issues could best be investigated and resolve in a single set of criminal proceedings, permission for judicial review ought not to have been granted.

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[120] The Privy Council decision in *Sharma* has been echoed in many of the recent pronouncement of the courts of the Commonwealth countries.

Application of the law to the facts

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[121] On the facts of the present appeal, we were satisfied that the appellant correctly identified illegality as a ground for judicial review. More specifically, the appellant adduced cogent documentary evidence to the effect that the

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second respondent acted in contravention of the law in exercising his powers under art 145(3) of the FC — specifically — in breach of Act 485 — rendering the charges null and void.

[122] The evidence on record led to no other conclusion but that the second respondent knew or ought to have known that the appellant was covered by the scope of his functional immunity. Despite this, the second respondent had obviously made up his mind to charge the appellant. One clear and direct indication of this is the second respondent's issuance of his consent to prosecute the appellant to the third respondent in spite of the letter from the Secretary General of AALCO of even date indicating that the first and second respondents had already requested independently for an ad hoc waiver of immunity which requests were vigorously denied.

[123] On the factual matrix of this appeal, where the legal issue of immunity and jurisdiction can be determined ex facie, we were satisfied that this was a proper and appropriate case to be determined by judicial review and that the appellant could not avail himself of any other form of legal redress in any other court.

[124] Hence, we found that the appellant had satisfied the two-step test. He identified illegality, the correct ground for review, and adduced compelling prima facie evidence to sustain that allegation. The second respondent was unable to rebut those allegations and the presumption of legality over the second respondent's exercise of discretion under art 145(3) was successfully overcome. In those narrow circumstances, we allowed the appeal.

[125] As such we answered question 3 in the affirmative with particular emphasis on the words 'appropriate circumstances'. Our answer to question 3 in the affirmative meant that it was not necessary to answer question 4. The fact that the AG/PP's powers are amenable to judicial review in appropriate circumstances means that the court is fully empowered to issue the corresponding appropriate remedy provided for by para 1 of the Schedule to the Courts of Judicature Act 1964 and inherent in its supervisory jurisdiction to meet the justice of the case.

CONCLUSION

[126] For the aforesaid reasons, we found that the High Court had correctly ascertained the applicable law and properly applied it to the facts. It followed that we did not agree with the Court of Appeal and we accordingly unanimously allowed the appeal.

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A [127] On the reliefs however, we were minded to only restore the order of the High Court to the extent that it allowed prayer 1 of the judicial review application, which reads:

> A declaration that the appellant has immunity as a former High Officer being the Director of the Asian International Arbitration Centre ('the Centre') for acts done within his official capacity.

B

[128] For convenience, we reproduce the Questions and our corresponding answers, as follows:

C Question 1:

Whether the words 'immunity from suit or from other legal process' in the Second Schedule of International Organizations (Privileges and Immunities) Act 1992 ('Act 485') includes criminal proceedings?

D *Answer: Affirmative.*

Question 2:

Whether the immunity granted to various persons pursuant to Act 485:

E 2.1 are limited by the words of section 8A(1) of Act 485 only to acts and things done that are not for their personal benefit; and

2.2 accordingly, whether charges can be laid against such persons notwithstanding the absence of the international organization?

F *Answer: As a whole, negative.*

Question 3:

Whether the exercise of the Attorney General's discretion pursuant to art 145(3) of the Federal Constitution is amenable to judicial review in appropriate circumstances?

G

Answer: Affirmative, with particular emphasis on the words 'appropriate circumstances'.

H Question 4

Whether the High Court in judicial review proceedings has the jurisdiction and power, in appropriate cases:

4.1 to grant relief including to quash criminal charge laid by the public prosecutor; and

I

4.2 to issue orders of prohibition against proceedings in subordinate courts.

Not necessary to answer.

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[129] We made no order as to costs for the reason that this case concerned public interest.

Appeal allowed.

Reported by Ashok Kumar

A B C D E F G H I

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SUNDRA RAJOO

Datuk Sundra Rajoo, PJN
Chartered Arbitrator (CIArb);
Certified International ADR Practitioner (AIADR);
B.Sc (HBP) Hons (USM); LLB Hons (London), CLP;
MPhil in Law (Manchester); Hon LLD (Leeds Beckett);
Grad Dip in Architecture (TCAE);
Grad Dip in Urban and Regional Planning (TSIT);
M.Sc in Construction Law and Arbitration (LMU);
Dip in International Commercial Arbitration (CIArb);
FPAM, APPM, FMIArb, FAIADR, FCIArb, FSIArb, FICA; FRIGS, MAE, FCABE;

Tarikh : 4.7.2022
Ruj Kami :
Ruj Anda : Sila nasihat

PERSENDIRIAN DAN SULIT
SECARA TEGAS UNTUK MATA PASUKAN SIASATAN KHAS UNTUK MENYIASAT DAKWAAN DALAM "MY STORY: JUSTICE IN THE WILDERNESS"

TANPA PREJUDIS
MELALUI TANGAN

Datuk Seri Fong Joo Chong
Pengerusi Pasukan Siasatan Khas
Untuk Menyiasat Dakwaan
"My Story: Justice In The Wilderness" ("**Pasukan Siastan Khas**")
c/o No. 25, Bampflyde Road, 93200 Kuching, Sarawak

Salam Sejahtera Datuk Seri,

TAN SRI TOMMY "MY STORY: JUSTICE IN THE WILDERNESS"

1. Dengan segala hormatnya, saya merujuk perkara di atas. Surat ini turut telah disertakan dengan penterjemahan Bahasa Inggeris di perenggan kemudian untuk kesenangan pembaca-pembaca.

   With all due respect, I refer to the above subject matter. This letter is also accompanied with English Language translation in the following paragraph for the convenience of the readers.

2. Berdasarkan laporan media, saya difahamkan bahawa Pasukan Siasatan Khas telah menyediakan satu Laporan Interim.

   Reading from the media, I understand that the Special Task Force has come out with an Interim Report.

3. Sebagai orang yang terkilan akibat daripada tindakan Tan Sri Tommy, saya telah menulis kepada Pasukan Siasatan Khas dan juga menawarkan diri untuk hadir ke Pasukan Siasatan Khas untuk membantu dalam prosidingnya.

   As an aggrieved person of Tan Sri Tommy's actions, I have written to the Special Task Force and have also volunteered to appear before the Special Task Force to assist in its proceedings.

4. Walau bagaimanapun, saya tidak menerima sebarang maklum balas mahupun jemputan untuk hadir sebelum Pasukan Siasatan Khas.

   However, I have not received any response nor invitation to appear before the Special Task Force.

5. Saya ingin menjelaskan mengapa saya telah memfailkan saman sivil dengan

Sundra Rajoo
No 28 • Lorong Setia Bistari 3 • Bukit Damansara • 50490 Kuala Lumpur • Malaysia
T: 03-20962228 • F: 03-20962323 • E: info@sundrarajoo.com • sundra@sundrarajoo.com

RAHSIA

menamakan Kerajaan Malaysia sebagai salah satu pihak. Sebab utamanya ialah terdapat had masa untuk 3 tahun daripada kausa tindakan yang berakhir pada 19 November 2021. Selain itu, Kerajaan Malaysia bertanggungjawab secara vikarious bagi perkara yang dibangkitkan dalam saman saya. Jika saya tidak menamakan Kerajaan Malaysia, seluruh tindakan saya akan ditolak. Saya turut menegas bahawa tindakan saya adalah terutamanya terhadap Tan Sri Tommy Thomas yang merupakan pelaku tort utama dalam menggunakan jentera Kerajaan untuk menganiaya saya.

I wish to explain why I have filed a civil suit naming the Government of Malaysia as one of the parties. The main reasons being there was a limitation bar of 3 years from the cause of action which ended on the 19th November 2021. Also, the Government of Malaysia is vicarious liable for the matters raised in my suit. If I have not named the Government of Malaysia, my whole action would have been dismissed. I hasten to add that my action is primarily against Tan Sri Tommy Thomas who was main perpetrator of the torts and used Government machinery to persecute me.

6. Saya ingin menegaskan bahawa pemahaman saya tentang terma rujukan Pasukan Siastan Khas seperti yang dilaporkan secara meluas dalam media adalah untuk melihat dakwaan yang dibuat oleh Tan Sri Tommy Thomas dalam bukunya "Tan Sri Tommy "My story: Justice in the Wilderness". Secara khususnya, saya merujuk kepada Bab 41 beliau, muka surat 391 hingga 399 mengenai Pusat Timbang Tara Antarabangsa Asia (AIAC), menamakan saya secara khusus sebagai orang yang diambil tindakan termasuk penangkapan haram, gangguan dan pendakwaan berniat jahat dengan objektif tunggal untuk menghapuskan saya sebagai Pengarah dan menggantikannya dengan rakan rapat dan sekutu Tan Sri Tommy Thomas, En. Vinayak Pradhan dengan latar belakang konflik kepentingan di pihak Tan Sri Tommy Thomas dan En. Vinayak Pradhan.

I wish to point out that my understanding of the terms of reference of the Special Task Force as reported extensively in the media is to look into the allegations made by Tan Sri Tommy Thomas in his book "Tan Sri Tommy "My story: Justice in the Wilderness". In particular, I refer to his Chapter 41, pages 391 to 399 on the Asian International Arbitration Centre (AIAC), naming me specifically as a person on whom action was taken including an illegal arrest, harassment and malicious prosecution with the sole objective of removing me as the Director and replacing with Tan Sri Tommy Thomas' close friend and associate, Mr. Vinayak Pradhan against a background of conflict of interests on the part of Tan Sri Tommy Thomas and Mr. Vinayak Pradhan.

7. Dengan segala hormatnya, saya ingin menekankan bahawa Pasukan Siastan Khas akan gagal dalam tugasnya jika ia tidak mendengar penjelasan dan klarifikasi saya, menyiasat dan mengeluarkan cadangan mengenai Bab 41 tersebut, muka surat 391 hingga 399 mengenai saya sebagai watak utama Timbang Tara Antarabangsa Asia Pusat (AIAC) buku Tan Sri Tommy Thomas.

With all due respect, I wish to highlight that the Special Task Force shall be failing in its duty if it does not hear my explanation and clarification,

Sundra Rajoo
No 28 • Lorong Setia Bistari 3 • Bukit Damansara • 50490 Kuala Lumpur • Malaysia
T: 03-20962228 • F: 03-20962323 • E: info@sundrarajoo.com • sundra@sundrarajoo.com

investigate and come out with recommendations on the said Chapter 41, pages 391 to 399 in relation to me as the main character on the Asian International Arbitration Centre (AIAC) of Tan Sri Tommy Thomas's book.

8. Saya juga ingin menekankan bahawa jika Pasukan Siastan Khas mendengar pendapat saya dan membuat laporan yang adil, seimbang dan terperinci kepada Kerajaan Malaysia, ada kemungkinan bahawa saman sivil saya akan diselesaikan secara baik. Lebih-lebih lagi, apabila Kerajaan Malaysia menyedari bahawa saya sebenarnya adalah mangsa kepada semua salah laku Tan Sri Tommy Thomas.

   I also wish to highlight that if the Special Task Force does hear me out and put up a fair, balanced and detailed report to the Government of Malaysia, there is every possibility that my civil suit will be resolved amicably. More so, when the Government of Malaysia realizes that I am actually the victim of all the wrong doings by Tan Sri Tommy Thomas.

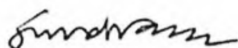
9. Walaupun saya tidak mahu menamakan Kerajaan Malaysia sebagai pihak dalam prosiding sivil saya, saya tidak mempunyai pilihan yang sah selain menamakannya sebagai parti. Saya sentiasa menyokong Kerajaan selama bertahun-tahun dalam perkhidmatan awam dan negara.

   As much as I did not wish to name the Government of Malaysia as a party to my civil proceedings, I was left with no lawful choice but to name it as a party. I have always supported the Government in my many years in public and national service.

10. Saya dengan rendah hati merakamkan penghargaan dan pertimbangan baik saya terhadap Pasukan Siasatan Khas untuk menerima permintaan saya.

   I humbly record my appreciation and kind consideration of the Special Task Force to kindly held my request.

Thank you so much and sincerely,



(Datuk Sundra Rajoo)

cc. **The Secretariat of The Special Task Force**
Investigating Allegations In
"My Story: Justice In The Wilderness" ("Special Task Force")
c/o Bahagian Hal Ehwal Undang-Undang, JPM ("BHEUU"),
Jalan Tun Abdul Razak, Presint 3 Pusat Pentadbiran Kerajaan Persekutuan,
62692 Putrajaya, Wilayah Persekutuan Putrajaya
Attn: Dr. Punitha Silivarajoo

Sundra Rajoo
No 28 • Lorong Setia Bistari 3 • Bukit Damansara • 50490 Kuala Lumpur • Malaysia
T: 03-20962228 • F: 03-20962323 • E: info@sundrarajoo.com • sundra@sundrarajoo.com

From: Wan Aima Nadzihah Binti Wan Sulaiman
Sent: Tuesday, 22 February, 2022 1:15 PM
To: 'shahida.sahimi@bheuu.gov.my' <shahida.sahimi@bheuu.gov.my>
Cc: Datuk Ahmad Terrirudin bin Mohd Salleh <terrirudin@kehakiman.gov.my>
Subject: PERMOHONAN SALINAN DOKUMEN BERKAITAN PROSIDING ADMIRALTI KES EQUANIMITY DAN KES BOONSOM BOONYANIT v. ADORNA PROPERTIES SDN. BHD.

PEJABAT KETUA PENDAFTAR
Office of the Chief Registrar
MAHKAMAH PERSEKUTUAN MALAYSIA
Federal Court of Malaysia

ISTANA KEHAKIMAN
PRESINT 3
62506 PUTRAJAYA
Laman Web http://www.kehakiman.gov.my

Telefon : 03-8880 3500
Emel : cr@kehakiman.gov.my

Puan,

Dengan hormatnya saya merujuk perkara di atas dan sesi konsultansi bersama Pasukan Petugas Khas pada 21 Februari 2022 adalah berkaitan.

2. Adalah saya diarahkan oleh YBhg. Datuk Ahmad Terrirudin bin Mohd Salleh, Ketua Pendaftar Mahkamah Persekutuan Malaysia untuk mengemukakan maklumat-maklumat yang diperlukan oleh Pasukan Petugas Khas seperti yang berikut:

a. pautan bagi *Cause Papers* dan Nota Prosiding bagi Kes Equanimity: https://drive.google.com/drive/folders/1NGJn1bRR9Lf7ULa5QoZX9svQX7J8XP3Q?usp=sharing; dan
b. tarikh YBhg. Tan Sri Tommy Thomas beramal semula sebagai Peguam Bela dan Peguam Cara ialah pada **16 Jun 2020**.

3. Selanjutnya, berhubung dengan pengemukaan rekod rayuan Mahkamah Persekutuan bagi kes Boonsom Boonyanyit, perkara ini masih dalam tindakan Pejabat ini dan apa-apa perkembangan akan dimaklumkan kepada pihak Puan kelak.

4. Dikemukakan maklumat-maklumat di atas untuk perhatian dan tindakan pihak Puan selanjutnya.

Sekian, terima kasih.

"WAWASAN KEMAKMURAN BERSAMA 2030"

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,

WAN AIMA NADZIHAH WAN SULAIMAN

Ketua Unit Penyelidikan

PKPMP

GO GREEN-PAPERLESS — Sila pertimbangkan alam sekitar sebelum mencetak e-mel ini

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[Quoted text hidden]

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PERSATUAN PEGAWAI-PEGAWAI PERKHIDMATAN KEHAKIMAN DAN PERUNDANGAN
***JUDICIAL AND LEGAL SERVICE OFFICERS' ASSOCIATION* (JALSOA)**

KENYATAAN MEDIA

BUKU "MY STORY: JUSTICE IN THE WILDERNESS" PENULISAN TAN SRI TOMMY THOMAS

JALSOA dengan ini menyatakan bantahan tegas atas penulisan Tan Sri Tommy Thomas dalam buku tersebut. Kandungan buku tersebut menceritakan kisah hidup dan perjalanan kerjaya beliau sebagai Peguam Negara sepanjang masa material selama 21 bulan yang disebut oleh beliau sebagai "*the chief legal advisor to the Prime Minister and his administration*".

Sebagai Peguam Negara, Tan Sri Tommy Thomas juga adalah Ketua Perkhidmatan kepada Pegawai Undang-Undang dalam Skim Perkhidmatan Kehakiman dan Perundangan, namun kenyataan-kenyataan beliau menunjukkan beliau telah salah arah dan salah tanggapan mengenai peranan Pegawai Undang-Undang dalam skim perkhidmatan ini.

Tan Sri Tommy Thomas menggelar Pegawai Undang-Undang di Jabatan Peguam Negara sebagai peguam kerajaan yang hanya menunggu gaji bulanan dan

menantikan pencen selepas persaraan serta menjalankan kerja pentadbiran. Kenyataan ini adalah bersifat jahat malah menghina Pegawai Undang-Undang secara keseluruhannya. JALSOA amat terkilan dan terjejas dengan kenyataan beliau tersebut.

Pegawai Undang-Undang sama ada yang ditempatkan di Jabatan Peguam Negara mahupun di Mahkamah sentiasa menjalankan amanah yang dipertanggungjawabkan kepada mereka menurut peruntukan undang-undang tanpa mengira siapakah Peguam Negara atau Kerajaan yang memerintah.

Cabaran, dugaan dan tekanan dalam tugasan seorang Pegawai Undang-Undang memberi implikasi bukan kepada mana-mana individu dan pelanggan tetapi memberi kesan kepada kepentingan negara dan kepentingan awam dalam menegakkan kedaulatan undang-undang. Kami tidak bekerja untuk mengejar populariti individu, malahan dasar kerahsiaan, integriti dan profesionalisme yang ditekankan di dalam perkhidmatan awam sentiasa melatari setiap tindakan dan tatakerja Pegawai Undang-Undang.

Tan Sri Tommy Thomas tidak wajar mempertikaikan kemampuan, keupayaan dan kebolehan Pegawai Undang-Undang di bawah seliaan beliau dalam tempoh yang singkat apatah lagi menyebut dengan jelas nama Pegawai Undang-Undang dalam bukunya dengan cemuhan.

Pegawai Undang-Undang yang mempunyai kelayakan dan kelulusan akademik yang setaraf dengan peguam swasta hadir mewakili Kerajaan dan berjuang dalam pertikaian pihak-pihak di Mahkamah termasuk pertikaian dan rundingan antarabangsa demi kepentingan negara. Pandangan Tan Sri Tommy Thomas amat tidak bertamadun dan mencerminkan kedangkalan pemikirannya. Apa-apa jua perasaan tidak puas hati beliau semasa berurusan dengan Pegawai Undang-Undang tidak wajar dan tidak patut dicoretkan untuk tatapan umum. Persepsi tersebut adalah ciptaan Tan Sri Tommy Thomas sendiri atas kegagalannya dalam menerajui Jabatan Peguam Negara serta memahami pentadbiran perkhidmatan awam.

JALSOA berpendirian bahawa Tan Sri Tommy Thomas sewajarnya menjaga kehormatan dan nama baik Peguam Negara yang pernah disandang beliau, serta institusi perkhidmatan perundangan dalam perkhidmatan awam sebagaimana yang diperuntukkan dalam Perlembagaan Persekutuan.

JAWATANKUASA EKSEKUTIF JALSOA
3 FEBRUARI 2021

PERSATUAN PEGAWAI-PEGAWAI PERKHIDMATAN KEHAKIMAN DAN PERUNDANGAN
JUDICIAL AND LEGAL SERVICE OFFICERS' ASSOCIATION (JALSOA)

MEDIA RELEASE

THE BOOK "MY STORY: JUSTICE IN THE WILDERNESS" WRITTEN BY TAN SRI TOMMY THOMAS

JALSOA expresses its strong objection to Tan Sri Tommy Thomas' writings in his book. The book illustrates his life and career path throughout his 21-month long tenure as the Attorney General which he refers to as "the chief legal advisor to the Prime Minister and his administration".

As the Attorney General, Tan Sri Tommy Thomas was also the Head of Service to Legal Officers in the Judicial and Legal Service Scheme. However, his statements indicate that he has misconstrued and misconceived the role of Legal Officers in the Judicial and Legal Service Scheme.

Tan Sri Tommy Thomas labels Legal Officers at the Attorney General's Chambers as government lawyers who merely wait for their monthly salaries and post-retirement pensions, and perform administrative tasks. This

statement is malicious in nature and insults the Legal Officers as a whole. JALSOA is deeply aggrieved and affected by his statement.

Legal Officers whether serving at the Attorney General's Chambers or Courts always perform the duties entrusted to them pursuant to the provisions of the law regardless of who the Attorney General or the ruling Government is.

The challenges, trials and pressures faced by a Legal Officer in performing his duties do not affect any individual or client but impact national and public interest in upholding the rule of law. We do not work to gain personal popularity but our emphasis is to uphold the principles of secrecy, integrity and professionalism in the public service which are the core of our actions and work ethics as Legal Officers.

It is improper for Tan Sri Tommy Thomas to question the ability, capability and capacity of Legal Officers who were under his supervision in the short period of time, let alone to ridicule specific Legal Officers by name in his book.

Legal Officers who possess competency and academic qualifications which are on par with private lawyers appear to represent the Government and "fight" in Court disputes including international disputes and negotiations in the interest of the nation. Tan Sri Tommy Thomas' views are uncivilised and reflect the shallowness of his thinking. It is improper and inappropriate for him to reveal

any feelings of dissatisfaction faced while dealing with Legal Officers for public scrutiny. The perception is Tan Sri Tommy Thomas' own creation due to his failure in effectively leading the Attorney General's Chambers and in understanding the administration of public service.

JALSOA is of the view that Tan Sri Tommy Thomas should have safeguarded the dignity and good name of the office of the Attorney General that he once held, and the legal service institution of the public service that are provided in the Federal Constitution.

JALSOA EXECUTIVE COMMITTEE
3 FEBRUARY 2021

THE MALAYSIAN INSIGHT

RAHSIA

No disobedience in EC tribunal case, lawyer tells ex-A-G

Updated 1 year ago · Published on 1 Feb 2021 11:08PM · 2 Comments

: tribunal convenes to hear charges of misconduct against six former election commissioners in the 2018 general election, on February 28, 2019. – The ..alaysian Insight file pic, February 1, 2021.

LAWYER M. Puravalen tonight disputed Tommy Thomas' version of events in a 2019 Election Commission (EC) tribunal, insisting he was not disobedient to the former attorney-general in submitting the case was academic.

"One should not open Pandora's Box," he wrote in an "Open Letter to Tommy Thomas".

The letter was released to the press to address circumstances that led to Puravalen's termination as the conducting officer for the tribunal adjudicating the case of six EC commissioners accused of misconduct.

The senior lawyer is the second person to dispute chapters in Thomas' book, My Story: Justice in the Wilderness that went on sale over the weekend.

RAHSIA

RAHSIA

"My written opening submission before the tribal was given to Tommy 4 days before the tribunal convened. MY position clearly spelt out that the issue was academic," Puravalen said in the letter.

He said paragraphs 19 to 21 "set it out categorically, adding that digital time stamping evidence of all correspondence to Thomas would be available in the Attorney-General's Chambers files.

He added that Thomas had summoned a meeting in his house on the eve of the tribunal sitting on a Sunday evening with his special officer Ann Khong, a federal counsel and a lawyer.

"Tommy made it clear I was not to represent the Attorney-General's Chambers the next day. He said I was merely an officer appointed to assist the tribunal. This was despite the fact he had appointed me by fiat!

"All intitulements involving the AGC in my submissions were removed that night in the presence of his officers," he said, adding the record of proceedings will reflect that a Federal Counsel addressed the tribunal on Thomas' behalf the next day,

"This was specifically clarified by the quorum," he said.

"The question of disobedience does not arise. My position in law has been vindicated by the tribunal despite his unsuccessful attempts to persuade the tribunal," Puravalen said, ending the piece with a warning about Pandora's Box.

In his book, Thomas said Puravalen had disobeyed his instruction at the tribunal meeting on January 28, 2019 and was immediately terminated for it.

A tribunal was set up in 2018 to hear charges of misconduct against former EC deputy chairman Othman Mahmood and commissioners Md Yusop Mansor, Abdul Aziz Khalidin, Sulaiman Narawi, Leo Chong Cheong and K. Bala Singam.

They were charged with misconduct despite resigning a day before the tribunal was announced. Former EC chairman Hashim Abdullah was not charged as he had resigned before the king gave his consent for the tribunal to be set up.

Thirteen charges were instituted against the six for their role in preparing the controversial redelineation report and the manner in which the May 9, 2018 general election was conducted.

Their lawyers said their clients should not be tried as the king had accepted their resignations. They also argued that Thomas did not issue suspension letters against the six after approval was given for a tribunal to be set up.

The tribunal voted 3-2 not to go ahead with proceedings after hearing submissions from all sides. – February 1, 2021.

RAHSIA

APPENDIX 9

TIMBALAN KETUA SETIAUSAHA (KABINET)
BAHAGIAN KABINET, PERLEMBAGAAN DAN
PERHUBUNGAN ANTARA KERAJAAN
JABATAN PERDANA MENTERI
ARAS 4 TIMUR, BANGUNAN PERDANA PUTRA
62502 PUTRAJAYA
MALAYSIA

Tel : 603-8872 4002
Faks : 603-8888 3320
Portal Rasmi : www.kabinet.gov.my

RAHSIA

Rujukan Kami : BKPP.R.700-3/6/2 Jld. 3
Tarikh : 14 Januari 2022

YBhg. Datuk Haji Mohd Rabin bin Basir
Ketua Pengarah,
Bahagian Hal Ehwal Undang-Undang,
Jabatan Perdana Menteri
Aras 7, Bangunan Hal Ehwal Undang-Undang,
Presint 3,
62692 PUTRAJAYA.

YBhg. Datuk,

PERMOHONAN MENDAPATKAN SALINAN SURAT DAN KONTRAK PELANTIKAN YBHG. TAN SRI TOMMY THOMAS SEBAGAI PEGUAM NEGARA

Dengan hormatnya perkara di atas dirujuk.

2. Bersama-sama ini dikemukakan sesalinan surat pelantikan serta syarat-syarat pelantikan secara kontrak YBhg. Tan Sri Tommy Thomas sebagai Peguam Negara untuk tempoh 2 tahun mulai 4 Jun 2018 hingga 3 Jun 2020 untuk tindakan lanjut pihak YBhg. Datuk.

3. Pihak YBhg. Datuk dipohon mengambil perhatian bahawa pengendalian dokumen terperingkat ini tertakluk kepada peraturan dan arahan keselamatan mengenai tatacara pengurusan dokumen terperingkat dan Akta Rahsia Rasmi.

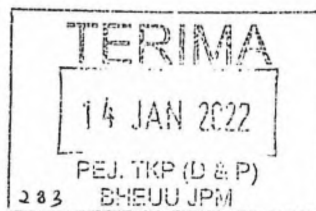
Sekian, terima kasih.

"WAWASAN KEMAKMURAN BERSAMA 2030"
"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,

(DATUK DR. FARIZAH BINTI AHMAD)

P(D)
tindakan selaras dokumen terperingkat.
14/1



Shahidah
tindakan utk Ahli PPU.
P(D) 17/1

s.k.:

YBhg. Tan Sri Dato' Seri Mohd Zuki bin Ali
Ketua Setiausaha Negara

KETUA SETIAUSAHA NEGARA
MALAYSIA
Jabatan Perdana Menteri
Aras 4 Blok Timur, Bangunan Perdana Putra
Pusat Pentadbiran Kerajaan Persekutuan
62502 Putrajaya

Telefon : 8888 1480
8888 3381
Faks : 8888 3382

RAHSIA

PM(BK)R.10232/4 Jld.4

7 Jun 2018

Tuan Thomas Thomas @ Mohan a/l K. Thomas
Peguam Negara.

Dear Sir,

Syarat-syarat Pelantikan Secara Kontrak Sebagai Peguam Negara

---

Dengan hormatnya perkara di atas adalah dirujuk.

2. Mengikut Perkara 145(5) Perlembagaan Persekutuan, Peguam Negara "hendaklah menerima apa-apa saraan yang ditentukan oleh Yang di-Pertuan Agong".

3. Sehubungan ini Kerajaan telah bersetuju dengan syarat-syarat kontrak tuan sebagai Peguam Negara seperti di Lampiran untuk disembah perkenan Seri Paduka Baginda Yang di-Pertuan Agong.

4. Sukacita sekiranya tuan dapat memaklumkan sama ada bersetuju dengan syarat-syarat kontrak tersebut sebelum ia dikemukakan untuk perkenan Seri Paduka Baginda Yang di-Pertuan Agong.

Yang ikhlas,

(DR. ALI BIN HAMSA)

LAMPIRAN

RAHSIA

CADANGAN SYARAT-SYARAT PELANTIKAN SECARA KONTRAK TUAN THOMAS THOMAS @ MOHAN A/L K. THOMAS SEBAGAI PEGUAM NEGARA, JABATAN PEGUAM NEGARA JABATAN PERDANA MENTERI PEGAWAI UNDANG-UNDANG GRED UTAMA TURUS I

1.	**Jawatan**	Peguam Negara Jabatan Peguam Negara Jabatan Perdana Menteri Pegawai Undang-Undang Gred Utama Turus I
2.	**Taraf dan Tempoh Perkhidmatan**	Secara kontrak untuk tempoh **dua (2) tahun** mulai 4 Jun 2018 hingga 3 Jun 2020.
3.	**Gaji/ Tanggagaji**	Dalam tempoh kontrak ini, tuan akan dibayar gaji secara Khas Untuk Penyandang (KUP) sebanyak RM31,338.00.
4.	**Elaun-elaun dan Kemudahan Lain**	Tuan akan dibayar elaun dan kemudahan-kemudahan seperti berikut: a) Imbuhan Tetap Keraian (KUP) : RM5,600.00 sebulan b) Imbuhan Tetap Perumahan (KUP) : RM4,000.00 sebulan c) Elaun Khas Peguam Negara (KUP) : RM10,000.00 sebulan d) Bayaran Bantuan Pembantu Rumah (KUP) : RM2,800.00 sebulan e) Bantuan Bayaran Menyelenggara Rumah : RM250.00 sebulan f) Tambang percuma ke luar negeri sekali dalam tempoh setiap tiga (3) tahun tempoh kontrak. Tambang bagi perjalanan ini tidak boleh melebihi tambang penerbangan Kuala Lumpur ke London pergi dan balik serta mengikut syarat-syarat / peraturan-peraturan lain di dalam Pekeliling

Perkhidmatan Bil. 5 Tahun 2015 dan/atau pekeliling-pekeling berkaitan yang dikeluarkan Kerajaan dari semasa ke semasa.

g) Kemudahan-kemudahan lain mengikut Gred Utama Turus I

5. **Cuti Rehat**

Tuan layak mendapat cuti rehat sebanyak 25 hari setahun di dalam tempoh perkhidmatan kontrak ini mengikut Pekeliling Perkhidmatan Bil. 11 Tahun 2015 atau pekeliling / peraturan lain yang berkuatkuasa dari semasa ke semasa.

6. **Pemberian Wang Tunai Sebagai Gantian Bagi Cuti Rehat Yang Tidak Dapat Dihabiskan**

Tertakluk kepada arahan Kerajaan dari semasa ke semasa, apabila tuan atas sebab kepentingan perkhidmatan tidak dapat mengambil cuti rehatnya yang tuan layak di bawah atau mengikut kontrak ini, tuan layak diberi wang tunai sebagai gantian. Kelayakan itu hendaklah tertakluk kepada terma dan syarat sebagaimana yang ditetapkan dalam Surat Pekeliling Perkhidmatan Bilangan 17 Tahun 2008, Surat Pekeliling Bilangan 2 Tahun 2016 atau arahan lain Kerajaan yang dikeluarkan dari semasa ke semasa.

7. **Rawatan Perubatan Percuma Di Luar Negeri**

Tuan layak mendapat apa-apa rawatan percuma di luar Negeri mengikut Pekeliling Perkhidmatan Bil. 21 Tahun 2009 atau pekeliling Kerajaan yang dikeluarkan dari semasa ke semasa.

8. **Ganjaran**

Ganjaran hanya akan dibayar dengan syarat tuan menyempurnakan perkhidmatan kontrak ini dengan memuaskan. Pengiraan ganjaran berdasarkan formula berikut:

Mencarum kepada KWSP

(17.5% - caruman majikan dalam KWSP) X (gaji akhir X jumlah genap bulan perkhidmatan) – (jumlah faedah ke atas caruman majikan dalam KWSP).

Tidak mencarum kepada KWSP

(17.5% X gaji akhir X jumlah genap bulan perkhidmatan).

9.	Penamatan Perkhidmatan	Tuan disifatkan tamat Perkhidmatan pada hari yang sama dengan penamatan sebagai Peguam Negara mengikut Perkara 145(5) Perlembagaan Persekutuan.
10.	Pematuhan kepada Peraturan Yang Berkuatkuasa	Dalam tempoh kontrak ini, tuan adalah setiap masa tertakluk kepada Perintah-Perintah Am, Peraturan-Peraturan Kewangan, Pekeliling-Pekeling Perkhidmatan dan Undang-Undang yang dikuatkuasakan dari semasa ke semasa.

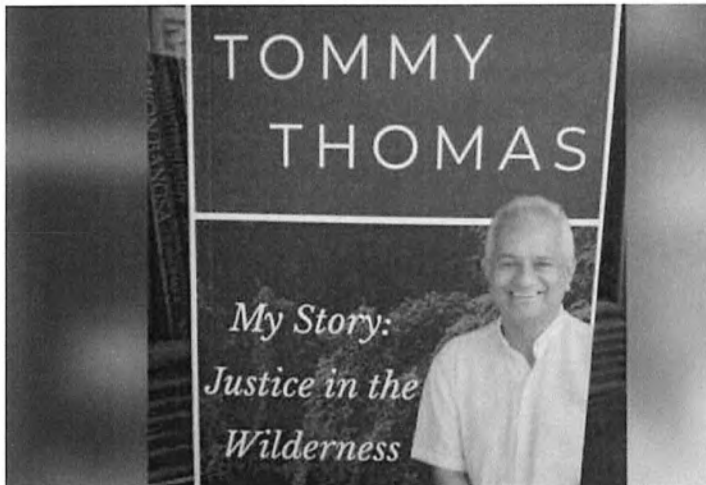
astro AWANI

TERKINI ENGLISH MALAYSIA VIDEO DUNIA POLITIK HIBUR

Tommy Thomas' book contains inaccurate info about AGC officers - Malaysian Bar

Bernama

Februari 9, 2021 21:07 MYT



Its president, Salim Bashir, in a statement today, said what were stated in the book, 'My Story: Justice in the Wilderness' by Thomas were his own views and did not represent the opinions of the Malaysian Bar.

KUALA LUMPUR: The Malaysian Bar believed that the information shared by former Attorney-General Tan Sri Tommy Thomas in his memoir on the alleged incompetence in the attitude, commitment and dedication of Attorney-General's Chambers (AGC) officers were inaccurate.

Its president, Salim Bashir, in a statement today, said what were stated in the book, 'My Story: Justice in the Wilderness' by Thomas were his own views and did not represent the opinions of the Malaysian Bar.

He said the Malaysian Bar had good professional relations with various levels and divisions in the AGC and the professionalism of the officers in the department was very good and commendable.

As such, he said the Malaysian Bar was of the opinion that it was inaccurate to label the whole AGC machinery as incompetent, lack desire for progress and not competitive compared to lawyers in the private sector.

"The level of competence demonstrated by the AGC officers, especially the deputy public prosecutors and federal counsels in handling a case is something to be proud of and it shows an excellent level of capability on par with private lawyers," he said.

Salim said if Thomas wanted to criticise the AGC, he should have done while he was in service, or at least offer a more constructive criticism now that he has resigned.

ADVERTISING

He said, although admittedly there were several shortcomings among the officers, it was normal in every organisation, either in the public or the private sector.

"We cannot make a general summary of the attitude of the officers and lawyers in the AGC.

"We (Malaysian Bar) believe many of AGC officers are capable of dealing with and prepared to accept constructive criticisms which aimed at improving themselves," he said.

Salim said that many judges who were now in the top stratum of the judiciary had started their career in the AGC.

These judges were also capable of writing excellent judgement and had precise legal knowledge on par with those of other judges who had served as lawyers before, he said.

Thomas, 69, was appointed as Attorney-General to replace Tan Sri Mohamed Apandi Ali on June 4, 2018, when Tun Dr Mahathir Mohamad became the country's 7th Prime Minister.

However, he decided to step down on Feb 28, 2020, about four months before his contract ended in June 2020.

As of last Sunday, the police had received 134 reports nationwide and had opened three investigation papers on the content of Thomas' book which allegedly insulted various quarters.

Among those who had lodged police reports after Thomas launched his book were Mohamed Apandi and former solicitor-general III Datuk Mohamad Hanafiah Zakaria.

-- BERNAMA

APPENDIX 11

PEGUAM NEGARA
MALAYSIA

YBhg. Dato' Sri / Datuk / Dato' / To' Puan / Datin / Tuan / Puan,

Dengan hormatnya saya merujuk perkara yang tersebut di atas.

2. Saya percaya bahawa YBhg. Dato' Sri / Datuk / Dato' / To' Puan / Datin / Tuan / Puan telah pun mengetahui buku yang ditulis oleh YBhg. Tan Sri Tommy Thomas, mantan Peguam Negara, yang berjudul "My Story: Justice in the Wilderness". Penerbitan buku ini telah menimbulkan pelbagai reaksi daripada pelbagai pihak yang antaranya menyentuh dan mempersoalkan kebolehpercayaan dan kekompetenan pegawai undang-undang Jabatan Peguam Negara. Kandungan buku ini telah memberikan impak yang negatif khususnya daripada kaca mata orang luar dan ia secara langsung telah memberikan kesan kepada moral dan semangat pegawai undang-undang. Selain itu, pada hemat saya ia merupakan suatu penghinaan ketara kepada institusi perundangan kita, yang amat kita hormati dan sanjungi.

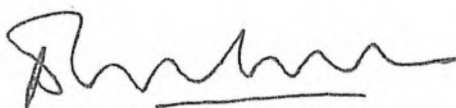
3. Sebelum saya memegang jawatan sebagai Peguam Negara, saya telah berkhidmat dalam Perkhidmatan Kehakiman dan Perundangan selama hampir 35 tahun dan telah menjawat jawatan Peguam Cara Negara sebelum dilantik sebagai Hakim Mahkamah Rayuan pada tahun 2014. Oleh yang demikian, saya tiada keraguan mengenai kebolehan, kemahiran, komitmen dan dedikasi pegawai undang-undang dalam memikul tanggungjawab dan melaksanakan tugas yang diamanahkan dengan adil dan saksama tanpa gentar atau pilih kasih (*without fear or favour*). Malah saya amat berbangga sejak buku tersebut dikeluarkan, pegawai Jabatan ini telah memperoleh keputusan kes berprofil tinggi yang memihak kepada Kerajaan. Ini jelas menunjukkan kebolehan dan keupayaan pegawai undang-undang dalam mengendalikan kes-kes mahkamah adalah setanding dengan, malah lebih baik daripada, peguam swasta.

4. Saya juga sedia maklum tentang pegawai undang-undang yang sentiasa bekerja di bawah tekanan yang tinggi dalam keterdesakan waktu bagi tugas-tugas yang amat mencabar sehingga sering bekerja di luar waktu pejabat, termasuk cuti hujung minggu dan mengorbankan masa untuk bersama-sama dengan keluarga semata-mata untuk memberikan keutamaan kepada tugas yang diamanahkan demi kepentingan negara. Tidak dapat dinafikan bahawa komitmen dan pengorbanan yang diberikan oleh YBhg. Dato' Sri / Datuk / Dato' / To' Puan / Datin / Tuan / Puan tidak boleh dinilaikan dengan wang ringgit. Oleh itu, saya ingin menekankan dan memberikan jaminan bahawa saya tidak terpengaruh dengan kandungan buku tersebut yang jelas menunjukkan pemikiran yang dangkal daripada pengalaman yang singkat oleh orang yang tidak memahami tentang institusi perkhidmatan awam terutamanya Jabatan Peguam Negara dan fungsi Peguam Negara itu sendiri.

5. Sebagai Peguam Negara, menjadi kewajipan utama saya di bawah Perlembagaan Persekutuan untuk menasihati Yang di-Pertuan Agong, Jemaah Menteri atau mana-mana Menteri mengenai perkara undang-undang bagi melindungi kepentingan negara dan mendaulatkan undang-undang. Bagi pegawai undang-undang pula, mereka perlu melaksanakan tugas berdasarkan rukun undang-undang dengan penuh kesetiaan kepada Raja dan negara.

6. Saya amat berbangga dengan kebolehan, kemahiran, komitmen dan dedikasi pegawai-pegawai saya yang telah menunjukkan prestasi dan pencapaian yang cemerlang dalam menangani isu dan cabaran yang dihadapi oleh negara pada masa kini yang amat kompleks dan kritikal. Oleh itu, saya menyeru YBhg. Dato' Sri / Datuk / Dato' / To' Puan / Datin / Tuan / Puan untuk mengekalkan prestasi kerja yang cemerlang dan terus memacu Jabatan Peguam Negara ke arah kejayaan seiring dengan aspirasi "Bertekad Menegakkan Keadilan".

Sekian, terima kasih.



(TAN SRI IDRUS BIN HARUN)
4/2/2021

RAHSIA

KEMENTERIAN KEWANGAN MALAYSIA
KOMPLEKS KEMENTERIAN KEWANGAN
NO. 5, PERSIARAN PERDANA, PRESINT 2
PUSAT PENTADBIRAN KERAJAAN PERSEKUTUAN
62592 PUTRAJAYA

Tel. : 03-8000 8000
Faks: : 03-8882 3893
: 03-8882 3894
Web : www.treasury.gov.my

APPENDIX 12

MOF.TAX(S)700-2/7/181(5)
4 Julai 2019

SALINAN FAIL

YBhg. Tan Sri Lim Kok Thay
Pengerusi
Genting Malaysia Berhad
Tingkat 24, Wisma Genting
Jalan Sultan Ismail
50250 KUALA LUMPUR

Faks: 03 – 6105 2527

YBhg. Tan Sri,

Permohonan Genting Malaysia Berhad (GMB) Untuk Mengekalkan Kelulusan Insentif Cukai Bagi Projek Pelancongan Bersepadu Genting (GITP)

Adalah saya diarah merujuk kepada surat YBhg. Tan Sri ruj. GENM/FIN/2019/002 bertarikh 24 Mei 2019 mengenai perkara di atas.

2. Adalah dimaklumkan bahawa permohonan Genting Malaysia Berhad telah diluluskan oleh YB Menteri Kewangan untuk mengekalkan kelulusan sebagaimana surat Kementerian Kewangan bil. 0.8823/19543(5) bertarikh 17 Disember 2014 iaitu pengecualian cukai ini boleh ditolak sehingga 70% daripada keseluruhan pendapatan berkanun syarikat dan dianggap sebagai '*one business source*'.

3. Kelulusan di perenggan 2 di atas adalah tertakluk kepada syarat perbelanjaan modal yang layak dihadkan setakat RM4.8 bilion sepanjang tempoh galakan untuk ditolak dengan pendapatan berkanun syarikat. Sekiranya perbelanjaan modal ini melebihi daripada amaun tersebut, lebihan perbelanjaan modal tersebut tidak layak untuk menuntut insentif cukai yang telah diluluskan.

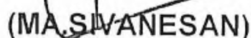
4. Dengan kelulusan ini, surat Kementerian Kewangan bil. 0.8823/19543(SK.1)(5) bertarikh 28 Disember 2017 adalah **ditarik balik dan dibatalkan** tertakluk kepada pihak Genting Malaysia Berhad menarik balik semakan kehakiman No: WA-25-397-12/2018 terhadap Kerajaan secara rasmi di mahkamah.

5. Kerajaan berhak pada setiap masa mengubah, membatal atau menambah mana-mana kelulusan dan syarat berdasarkan polisi semasa dengan mengemukakan surat makluman kepada pihak Genting Malaysia Berhad.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menjalankan amanah,



(MA.SIVANESAN)
Setiausaha Bahagian Cukai,
b.p Ketua Setiausaha Perbendaharaan.

RAHSIA

s.k

Ketua Pegawai Eksekutif/Ketua Pengarah Hasil Dalam Negeri
Ibu Pejabat Lembaga Hasil Dalam Negeri Malaysia
Wisma Hasil Aras 17
Persiaran Rimba Permai, Cyber 8
63000 CYBERJAYA
[u.p: Puan Salamatunnajan Binti Besah,
Pengarah Jabatan Dasar Percukaian]

Tel: 03-8313 8811
Faks: 03-8313 7811

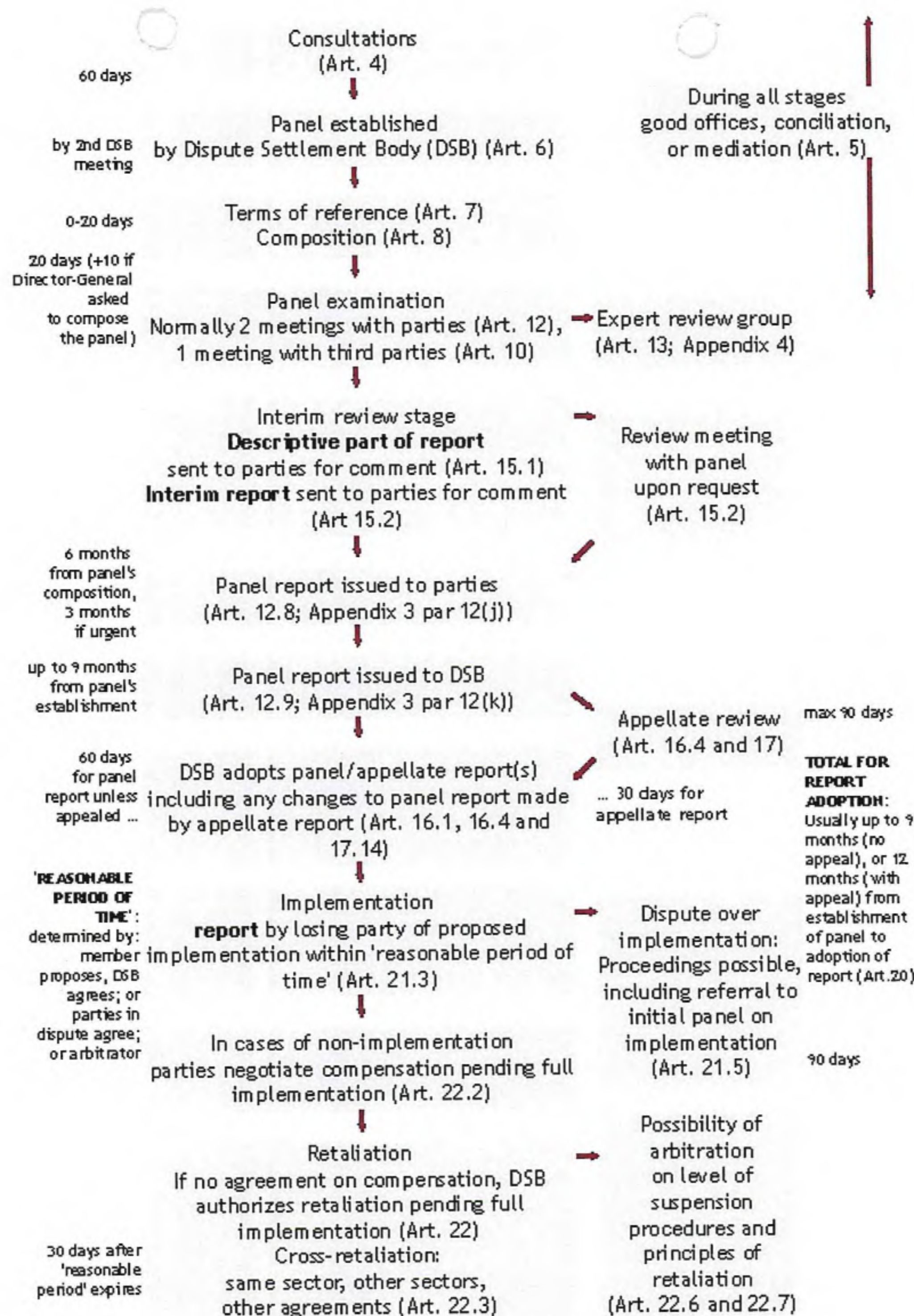
Encik Baidzawi Che Mat
Ketua Pegawai Eksekutif
Majlis Pembangunan Wilayah Ekonomi Pantai Timur
Aras 22, Menara 3
Menara Kembar PETRONAS
Kuala Lumpur City Center
50088 KUALA LUMPUR

Faks: 03-20350150

EDARAN DALAMAN

- KSP
- TKSP(D)
- PK MK
- Peguam Cara Perbendaharaan
  - Dikemukakan untuk perhatian dan makluman pihak puan jua.

APPENDIX 13



PEGUAM NEGARA MALAYSIA
ATTORNEY GENERAL MALAYSIA
Jabatan Peguam Negara, Malaysia (AGC)
Attorney General's Chambers, Malaysia (AGC)
No. 45, Persiaran Perdana
Presint 4
62100 PUTRAJAYA
MALAYSIA

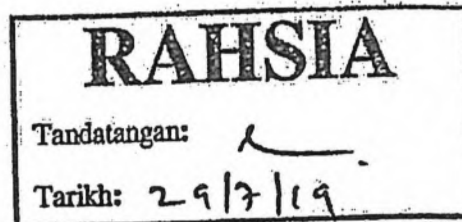
Tel.: 03-8872 2011
Faks (Fax): 03-8890 5609
Laman Web (Web): www.agc.gov.my

RAHSIA

Our Ref. : PN(R)152/6005/56
Date : 29th July 2019

BY HAND

YAB Tun Dr. Mahathir Mohamad
Prime Minister Malaysia
Level 5, Prime Minister's Office
Bangunan Perdana Putra
62502 PUTRAJAYA



Dear YAB Tun,

Re: Malaysia's Legal Challenge to EU Palm Oil Ban

I am writing to report to Tun on the current status of the legal challenge to be initiated as to the validity of the EU palm oil ban, specifically against the European Commission's Delegated Act for a total ban of palm oil biofuel by the year 2030.

I was recently instructed by Minister Teresa Kok of the decision of the Cabinet to institute such a challenge, and to do it on an urgent basis.

With this in mind, we are working towards filing the necessary legal papers by the end of this year.

In order to comply with this timeline, it was decided at the first meeting held on 17th July 2019 and chaired by Minister, that 2 teams will be immediately formed to prepare the case for Malaysia.

(i) A legal team comprising more than 10 lawyers from this Chambers and Ministries and 5 practitioners from the Malaysian Bar who have been selected on the basis of their commercial and arbitration expertise, experience and integrity. I can vouch for each of the 5 candidates:

- Dato' Yeo Yang Poh
- Sitpah Selvaratnam
- Dhinesh Bhaskaran
- Cheng Mai
- Fahri Azzat

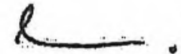
The decision to use foreign lawyers (as suggested by some of the Ministries) has been deferred. Our experience with the seizure and sale of the Equanimity yacht has demonstrated that we have local lawyers from the Malaysian Bar who are qualified for any legal tasks. Further, the exorbitant costs that foreign lawyers charge is a relevant factor. Finally, one is not convinced with their loyalty to the national cause. It may be that as the hearing approaches in 2020 or 2021 we may wish to appoint foreign barristers to join the team.

(ii) A Task Force comprising technical and scientific experts from various Ministries, related agencies and industry players in the private sector. This Task Force will provide the legal team with facts, data and expert opinion to support Malaysia's case.

The two teams had their first meetings on 25th and 26th July respectively. At this stage of the preparation, the teams have been reminded of the need to treat this matter with the strictest confidentiality. I shall be happy to discuss this matter with Tun at your convenience, and shall report on progress from time to time.

Warm regards.

Yours sincerely,



Tommy Thomas
Attorney General

c.c.:

YB Puan Teresa Kok Suh Sim
Minister of Primary Industries
Ministry of Primary Industries
No.15, Aras 13, Persiaran Perdana
Presint 2
62654 PUTRAJAYA

REPORT

OF

THE TRIBUNAL ON ELECTORAL MISCONDUCT ESTABLISHED UNDER ARTICLES 114(3), 125(3) AND (4) OF THE FEDERAL CONSTITUTION

MAJORITY DECISION

A. Tan Sri Datuk Amar Steve Shim Lip Kiong – Chairman
B. Tan Sri Zaleha binti Zahari
C. Tan Sri Datuk Suriyadi bin Halim Omar

Annexure J

I will now deliver my decision.

Preliminary Issue

The preliminary issue before us can be simply stated i.e. whether the subject matter before the Tribunal has become academic. There are divergent views on this. We heard the submissions from the Attorney General (AG) and Counsel for the 6 Election Commissioners (Commissioners) on the matter. We then reserved our decision accordingly.

Factual background

In addressing the issues raised in submissions, it would help to relate briefly the factual background involved. This case could be said to have its genesis when the Prime Minister (PM) received certain complaints from Bersih 2.0 relating to various electoral misconduct allegedly committed by EC Commissioners prior to and / or in connection with the 14th General Elections (GE). The PM then referred the said complaints to the AG for verification, etc. Thereafter, on the advice of the AG, the PM forwarded a Representation to the Yang di-Pertuan Agong (YDPA) to appoint a tribunal pursuant to Articles 114(3) and 125(3)&(4) of the Federal Constitution (FC). A panel of 5 retired Judges of the Federal Court was then appointed as members of the said Tribunal.

Before the appointment of the Tribunal, the 6 Commissioners accused of misconduct had already tendered their resignations which were accepted by the YDPA. The said resignations took effect after the appointment of the Tribunal. However, at the time this Tribunal convened its first hearing on 28th January 2019, the 6 Commissioners had already left the EC conceivably on or about 1st January 2019, the effective date of their resignations. The Tribunal, as stated, is appointed pursuant to Articles 114(3) & 125(3)&(4) of the FC. Article 114(3) reads:

> *"(3) A member of the Election Commission shall cease to hold office on attaining the age of sixty-six years or on becoming disqualified under Clause (4) and may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong, but shall not be removed from office except on the like grounds and in the like manner as a judge of the Federal Court"*

And Article 125(3)&(4) read:

> "*(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.*
>
> *(4) The tribunal appointed under Clause (3) shall consist of not less than five persons who hold or have held office as judge of the Federal Court, the Court of Appeal or a High Court, or, if it appears to the Yang di-Pertuan Agong expedient to make such appointment, persons who hold or have held equivalent office in any other part of the Commonwealth, and shall be presided over by the member first in the following order, namely, the Chief Justice of the Federal Court, the President and the Chief Judges according to their precedence among themselves, and other members according to the order of their appointment to an office qualifying them for membership (the older coming before the younger of two members with appointments of the same date).*"

The AG has submitted that the scope of the Tribunal consists of 2 mandates. They are as follows:-

> "*(i) to investigate acts or omissions before and on polling day, on the part of the EC members with regard to the preparation and conduct of the 14th General Elections, in order to determine whether they amount to misconduct, and*
>
> *(ii) if so satisfied, to make recommendation to his Majesty on the appropriate action to be taken against them including their removal from office.*"

In using the words *"appropriate action"* under the 2nd mandate, the AG is submitting that the Tribunal could make other types of recommendation other than removal. In short, the recommendation is not to be restricted to only removal. In my view, the remit conferred upon the Tribunal is specific and restrictive. It seeks explicitly the removal of the 6 Commissioners if the Tribunal were to find them guilty of misconduct. This is evident in the Representation dated 29.11.2018 made by the PM and approved by the Deputy YDPA on 5.12.2018, the relevant part of which states:

> *"Bagi memecat mereka daripada jawatan di bawah Perkara 114(3) dan 125(3) Perlembagaan Persekutuan, DYMM Tuanku hendaklah melantik suatu Tribunal yang terdiri daripada tidak kurang daripada lima orang yang memegang atau pernah memegang jawatan sebagai hakim Mahkamah Persekutuan, dan merujukkan representasi ini kepada Tribunal tersebut untuk menyiasat dan melaporkan dapatannya kepada DYMM Tuanku. DYMM Tuanku boleh, atas syor Tribunal itu, memecat anggota-anggota Suruhanjaya Pilihan Raya tersebut daripada jawatan."*

This is further reinforced in the words used in the Appointment Letter dated 13.12.2018 from the AG *"that the 6 members ought to be removed from office pursuant to Articles 114(3) & 125(3) of the Federal Constitution."* It is noted that the above Articles read conjunctively relate essentially to the issue of removal. It is clear that the only course of action available to the Tribunal is to recommend removal if the 6 Commissioners were found guilty of misconduct. For the reasons stated, the 2nd mandate formulated by the AG is therefore misplaced. That mandate should be formulated thus:- *"if so satisfied, to make recommendation to YDPA for the removal of the 6 Commissioners concerned."*

Collateral Issues

In the course of their submissions, Counsel for the Commissioners have raised a number of collateral issues relating essentially to the constitutionality of the Tribunal. It has been submitted that the appointment of the Tribunal was not sanctioned by the Cabinet. The simple answer to this is that there is sufficient evidence to show that the Tribunal was appointed by YDPA at the request or representation of the PM, who must, as a matter of course, be acting on behalf of the Cabinet. That is in accordance with political convention. It could also be a matter of political expediency. It is further submitted that the Tribunal has to be presided by a serving judge in compliance with that part of Article 125(4) which states: *"...and shall be presided over by the member first in the following order, namely, the Chief Justice of the Federal Court, the President and the Chief Judges..."* I take the view that the cited provision only applies to a situation where either the PM or the Chief Justice seeks to tribunalise a Judge of the Federal Court with the view to his or her removal. This is evident on a natural and reasonable construction of Article 125(3)&(4) of the FC. It should not be construed to apply *mutatis mutandis* to Election Commissioners. Another collateral issue raised is the submission that none of the 6 Commissioners had actually resigned but instead had their respective services shortened. Reliance is made to the relevant letters they submitted to YDPA for approval. One such letter states:

> *"Patik mewakili diri sendiri dan SPR ingin memohon sembah maklum ke hadapan KDYMM Seri Paduka Baginda Tuanku mengenai hasrat patik untuk memendekkan tempoh perkhidmatan patik sebagai Timbalan Pengerusi SPR."*

The words cited above indicate clearly an intention to shorten his service in the EC. The same expressions are used by all the other Commissioners concerned. Mr. Sri Murugan, Counsel for Dato' Balasingam contends that the expressions *"resign"* and *"shortening of service"* are different; that because they have expressly used the words *"shortening of service"*, they have not in fact resigned. However, he has not submitted on the effect or effects arising therefrom. In fact, the common stand taken by the other Counsel including the AG is that the effect or effects are the same. This is hardly surprising given the absence of any statutory interpretation. The tendency then is to fall back on the Dictionary meaning of the word *"resign"*. The International Dictionary (The New Collins)

describes the word *"resign"* as giving up tenure of a job, office, etc. The Cambridge Dictionary describes the term as giving up a job or position by telling the employer that he or she is leaving. In the context of this case, the term *"shortening of service"* is merely another way of expressing a desire to discontinue serving the full term as a member of the EC. In short, he wants to resign. That being the case, there has been compliance with the provision in Article 114(3) of the FC.

Main Issue

Apart from the collateral issues aforesaid, the main focus in the submissions of Counsel for the 6 Commissioners is directed to the plea that since the said Commissioners had already left the EC (either by *"ceasing to hold office"* or *"shortening their service")* at the material time, it would merely be an academic exercise for the Tribunal to proceed with hearing the merits. As such, they submit that the Tribunal should decline hearing the merits, citing in support cases such as *Sun Life Assurance Company of Canada v Jervis [1944] AC 111 (HL); Metramac Corp Sdn Bhd v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113 (FCt) and Bar Council Malaysia v Tun Dato' Seri Arifin Bin Zakaria & 3 Ors [Rujukan Sivil No.:06(f)-1-01-2018(W) (FCt).*

AG's Position

The AG has taken the position that the Tribunal should proceed to deal with the misconduct charges against the 6 Commissioners notwithstanding their resignations. He submits that the acts or omissions of the 6 Commissioners could not *"be immune from scrutiny and investigation of this Tribunal simply because they have resigned."* According to him, their resignations *"were clearly a deliberate move to frustrate efforts of the Tribunal and to avoid the ignominy of being removed with all its attendant consequences."* He further submits that the issues under consideration involve a public authority, the EC, which is an independent institution of great significance; that the Tribunal would have the opportunity of performing its historical function and thereby contributing to the development of electoral guidelines or precedents for possible governmental action in the future.

In canvasing that the subject matter before the Tribunal is not academic, the AG has drawn attention to the so-called *"Salem exception"* propounded by the *House of Lords in R v Secretary of State for the Home Department, ex parte Salem [1999] 2 All ER 42 [HL]* which I will deal with momentarily. In the meantime, let me state what the general principle is. That can be found in the leading case of *Sun Life Assurance case (supra)* wherein Viscount Simon L.C. said *inter alia*:

> *"The difficulty is that the terms put on the appellants by the Court of Appeal are such as to make it a matter of complete indifference to the respondent whether the appellants win or lose. The respondent will be in exactly the same position in either case. He has nothing to fight for, because he has already got everything that he can possibly get, however the appeal turns out, and cannot be deprived of it. I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties."*

And the meaning of *"academic"* was elaborated by the Federal Court in the *Metramac case (supra)*.

> *"The test, therefore, in deciding whether an appeal has become academic is to determine whether there is in existence a matter in actual controversy between the parties which will affect them in some way. If the answer to the question is in the affirmative the appeal cannot be said to have become academic. This test has found favour with a plethora of local cases such as Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147; Datuk Syed Kechik bin Syed Mohamed & Anor v Board of Trustees of the Sabah Foundation & Ors [1997] 1 MLJ 257 and Raphael Pura v Insas Bhd & Anor [2003] 1 MLJ 513."*

However, like all general principles, there are exceptions. In this case, the exception relates to issues of public law. This is propounded by Lord Slynn in *R v Secretary of State for the Home Department (supra)* wherein he said *inter alia*:

> *"I accept... that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the Sun Life case and Ainsbury v Millington (and the reference to the latter in r 42 of the Practice Directions Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties of the case. The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so."*

Conclusion

I accept that in matters of public law, our courts are perhaps more amenable, in the exercise of their discretion, to apply the *"Salem exception"*. Still, the caveat of Lord Slynn in the *Salem case* should be noted when he said *"that the discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties, should not be heard, unless there is a good reason in the public interest for doing so."* The call for caution by Lord Slynn is understandable given the potential danger of stretching the *"Salem exception"* beyond its limits thereby opening the floodgates to abuses and uncertainties. Lord Slynn also stated that in applying the *"Salem exception"*, there should be a good reason in the public interest for doing so. He gave the following examples:

"...when a discrete point of statutory construction arises which does not involve the detailed considerations of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

He then went on to state that although a question of statutory construction did arise, the facts before him were by no means straightforward and the determination of the subject matter would depend on the factual context. This is exactly the situation we are faced with in our case. The 13 charges against the 6 Commissioners would involve detailed consideration of the facts. Witnesses would have to be called. Documents would have to be produced etc. It is the first case of its kind before any Tribunal. Quite obviously, the facts are by no means straightforward and the determination of the said charges must depend on the factual matrix therein.

In the final analysis, the fundamental question before us is this. Is it in the public interest or indeed the national interest to expend so much time, energy and expense in going through potentially the whole cumbersome and protracted exercise merely to seek the removal of the 6 Commissioners when they have already removed themselves (whether voluntarily or otherwise) from the EC? The answer, in my view, is obvious. On the facts and circumstances, I find there is no good reason in the public interest to apply the *"Salem exception".* The general principle as propounded by the House of Lords in *Sun Life Assurance (supra)* should apply. The Tribunal should decline hearing the merits as there is no matter in actual controversy between the parties as the Government has effectively achieved its ultimate purpose of removing the 6 Commissioners from the EC. To proceed otherwise would be an exercise in futility.

Tan Sri Datuk Amar Steve L. K. Shim

I next call upon Tan Sri Zaleha Binti Zahari to deliver her decision.

Tan Sri Zaleha Binti Zahari "I concur with the views and conclusions of Tan Sri Steve L. K. Shim."

And last, I call upon Tan Sri Datuk Suriyadi Bin Halim Omar to deliver his decision.

Tan Sri Datuk Suriyadi Bin Halim Omar "I too concur with the views and conclusions of Tan Sri Steve L. K. Shim."

If I may now briefly summarize the case. This Tribunal was constituted by order of the Yang di-Pertuan Agong (PDPA) on 5th December 2018 pursuant to Articles 114(3) & 125(3&4) of the Federal Constitution. When the Tribunal convened on 28th January 2019, it was required to resolve a significant preliminary issue, namely, whether the subject-matter before it had become academic following the resignations or departures of the 6 Election Commissioners. We heard submissions from the Attorney-General (AG) as well as Counsel for the said Commissioners over a protracted period of several days. After careful consideration, the Tribunal members, as you have heard, have come to their respective decisions which are not unanimous.

The majority decisions are those from Tan Sri Steve L. K. Shim, Tan Sri Zaleha Binti Zahari and Tan Sri Datuk Suriyadi Bin Halim Omar while the minority decisions are those from Tan Sri Jeffrey Tan Kok Hwa and Datuk Dr. Prasad Sandosham Abraham. In effect, the majority decisions can be postulated and encapsulated in the conclusion expressed by Tan Sri Steve L. K. Shim as follows:

"In the final analysis, the fundamental question before us is this. Is it in the public interest or indeed the national interest to expend so much time, energy and expense in going through potentially the whole cumbersome and protracted exercise merely to seek the removal of the 6 Commissioners when they have already removed themselves (whether voluntarily or otherwise) from the EC? The answer, in my view, is obvious. On the facts and circumstances, I find there is no good reason in the public interest to apply the ***"Salem exception"****. The general principle as propounded by the House of Lords in* ***Sun Life Assurance (supra)*** *should apply. The Tribunal should decline hearing the merits as there is no matter in actual controversy between the parties as the Government has effectively achieved its ultimate purpose of removing the 6 Commissioners from the EC. To proceed otherwise would be an exercise in futility."*

Given the decisions of the Tribunal members, the next step is to present our report to the relevant authorities for their consideration and action. With that, we have officially come to the end of the proceedings. We like to thank the Honorable AG and all the Counsel representing the 6 Election Commissioners for their cooperation and assistance in the proceedings. We would also like to thank Ms. Ann Khong and her team for arranging all the logistics. We will now adjourn.

Tan Sri Datuk Amar Steve L. K. Shim

[1999] 2 All ER 42 [HL]

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R v Secretary of State for the Home Dept, ex parte Salem

a

HOUSE OF LORDS

LORD SLYNN OF HADLEY, LORD MACKAY OF CLASHFERN, LORD JAUNCEY OF TULLICHETTLE, LORD STEYN AND LORD CLYDE

b

18 JANUARY, 11 FEBRUARY 1999

House of Lords – Appeal – Appeal when outcome merely academic – Lis affecting rights and obligations of parties no longer in existence by time of appeal – Whether House of Lords should nevertheless hear and determine appeal because it involved an issue of public law involving public authority.

c

S, a Libyan national, arrived in the United Kingdom in April 1997 and claimed political asylum. He was granted temporary admission and awarded income support and related benefits under reg 70[a] of the Income Support (General) Regulations 1987 and the Social Security Contributions and Benefits Act 1992. In May 1997 a Home Office memorandum recorded that asylum had been refused. Sometime before 5 September 1997 the Home Office informed the Benefits Agency that S's claim had been recorded as determined, thereby causing the Agency to cease payment of benefit. Despite that, the Home Office subsequently asked S's solicitors for further evidence to enable the Secretary of State to determine the application. In November 1997 S was informed by the Agency that his income support had been stopped because his application for asylum had been refused, but it was not until May 1998 that he was informed of that refusal by the Home Office. He appealed to an immigration adjudicator and also applied for judicial review of the Secretary of State's decision to notify the Agency that his application for asylum had been refused. That application was eventually dismissed by the Court of Appeal, and S appealed to the House of Lords. Before the appeal was heard, he was granted refugee status by the immigration adjudicator. The question arose whether the House should hear the appeal because it raised an issue of general importance, namely the time at which a claim for asylum was 'determined' by the Secretary of State within the meaning of reg 70 of the 1987 regulations, even though the outcome of the appeal was academic.

d e f g

Held – The House of Lords had a discretion to hear an appeal in a cause where there was an issue of public law involving a public authority even though by the time the appeal was due to be heard there was no longer a lis to be decided directly affecting the rights and obligations of the parties as between themselves. However, the House would exercise that discretion with caution and would not hear appeals if the result would be academic between the parties unless there was good reason in the public interest for doing so, eg where there was a discrete point of statutory construction not involving a detailed consideration of the facts and where it was likely that the issue would have to be resolved in the near future because a large number of similar cases existed or were anticipated. Although S's case raised a question of statutory construction, the facts were not straightforward

h j

a Reg 70, so far as material, is set out in p 44 *c d*, post

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a and in other cases the issue of when a determination was made by the Secretary of State within the meaning of reg 70 of the 1987 regulations could depend on the precise factual context of each case. The unusual facts of S's case did not provide a good basis for the matter to be decided as a general principle when the particular lis had gone, and the appeal would therefore be dismissed (see p 47 *c* to *f* and p 48 *a* to *f*, post).

b *R v Dartmoor Prison Board of Visitors, ex p Smith* [1986] 2 All ER 651 and *Abdi v Secretary of State for the Home Dept* [1996] 1 All ER 641 considered.

Sun Life Assurance Co of Canada v Jervis [1944] 1 All ER 469 and *Ainsbury v Millington* [1987] 1 All ER 929 distinguished.

Notes

c For restriction on appeals where there has ceased to be a live issue see 37 *Halsbury's Laws* (4th edn) para 682.

For the Social Security Contributions and Benefits Act 1992, see 40 *Halsbury's Statutes* (4th edn) (1997 reissue) 269.

Cases referred to in opinions

d *Abdi v Secretary of State for the Home Dept* [1996] 1 All ER 641, [1996] 1 WLR 298, HL.

Ainsbury v Millington [1987] 1 All ER 929, [1987] 1 WLR 379, HL.

R v Dartmoor Prison Board of Visitors, ex p Smith [1986] 2 All ER 651, [1987] QB 106, [1986] 3 WLR 61, CA.

e *R v Secretary of State for the Home Dept, ex p Bawa* (27 October 1997, unreported), QBD.

R v Secretary of State for the Home Dept, ex p Karaoui (1997) Times, 27 March, QBD.

Sun Life Assurance Co of Canada v Jervis [1944] 1 All ER 469, [1944] AC 111, HL.

Appeal

f Fathi Saleh Salem appealed with leave granted by the Appeal Committee on 29 June 1998 against the decision of the Court of Appeal (Brooke LJ and Sir John Balcombe; Hobhouse LJ dissenting) ([1999] 2 WLR 1) delivered on 6 March 1998 dismissing his application for judicial review to quash the Secretary of State's decision notifying the Benefits Agency of the Department of Social Security that his application for asylum had been recorded as determined. The facts are set out g in the opinion of Lord Slynn of Hadley.

Nicholas Blake QC and *Stephanie Harrison* (instructed by *Tyndallwoods*, Birmingham) for the applicant.

David Pannick QC and *Neil Garnham* (instructed by the *Treasury Solicitor*) for the h Secretary of State.

Their Lordships took time for consideration.

11 February 1999. The following opinions were delivered.

j

LORD SLYNN OF HADLEY. My Lords, s 123 of the Social Security Contributions and Benefits Act 1992 (formerly s 20 of the Social Security Act 1986) provides for certain 'income-related benefits' including 'income support' and 'housing benefit'. Different conditions of entitlement are prescribed for each, including for the former that a person is 'in Great Britain' (s 124(1)). Regulations may be made pursuant to sub-s 137(2)(a) 'as to

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circumstances in which a person is to be treated as being or not being in Great Britain'. *a*

The Income Support (General) Regulations 1987, SI 1987/1967 (made pursuant to the 1986 Act), and continued in force as amended provide in reg 21 and Sch 7 (para 17) for the applicable amounts in special cases including that of a 'person from abroad'. In para (3)(j) of reg 21, a person otherwise in para 3(a) to (i) who submits a claim for asylum which is not finally determined is a person from abroad. Special arrangements are made in urgent cases by reg 70 including those for certain asylum seekers. *b*

By reg 2 of the Income Support (General) Amendment No 3 Regulations 1993, SI 1993/1679, there is inserted in reg 70:

> '(3A) For the purposes of this paragraph, a person—(a) becomes an asylum seeker when he has submitted a claim for asylum to the Secretary of State that it would be contrary to the United Kingdom's obligations under [the Convention and Protocol relating to the Status of Refugees (1951) (Cmd 9171) and (1967) (Cmnd 3906)] for him to be removed from, or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made; and (b) ceases to be an asylum seeker when his claim is recorded by the Secretary of State as having been finally determined or abandoned.' *c* *d*

Regulation 70(3A)(b) was amended by reg 8(3)(d) of the Social Security (Persons From Abroad) Miscellaneous Amendments Regulations 1996, SI 1996/30 to read: *e*

> '...ceases to be an asylum seeker—(i) in the case of a claim which, on or after 5th February 1996, is recorded by the Secretary of State as having been determined (other than on appeal) or abandoned, on the date on which it is so recorded, or (ii) in the case of a claim for asylum which is recorded as determined before 5th February 1996 ...' *f*

By reg 3 of the Income Support and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1996, SI 1996/2431:

> 'After regulation 21 of the [1987 regulations] there shall be inserted the following regulation—"*Treatment of Refugees* 21ZA.—(1) Where a person has submitted a claim for asylum and is notified that he has been recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees ... as extended by Article (2) of the Protocol ... he shall cease to be a person from abroad for the purposes of regulation 21 (special cases) and Schedule 7 (applicable amounts in special cases) from the date he is so recorded."' *g* *h*

The applicant is a Libyan national, who arrived in the United Kingdom on 17 April 1997 and claimed asylum pursuant to reg 70(3A)(a), as inserted, of the 1987 regulations. He was granted temporary admission and on 17 April 1997 was awarded income support and related benefits in accordance with that regulation. *j*

On 7 May 1997 the Home Office recorded on an internal file, without telling the applicant: 'Asylum has been refused on 7 May 1997 and the claim is hereby recorded as having been determined.'

Following a request to make further representations, arrangements were made for an interview and the memorandum of 7 May was redated 10 July 1997. On 18 August 1997 the Immigration Service informed the applicant's solicitors that

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a the representations were being considered and on a date before 5 September 1997 the Home Office informed the Benefits Agency that the applicant's claim had been recorded as determined within the meaning of reg 70(3A)(b). Benefit was no longer paid. On 12 September 1997 the Home Office asked the applicant's solicitors if further evidence was available 'in order for the Secretary of State [for the Home Department] to fully consider his asylum application'.

b On 5 November 1997 the applicant was told by the Benefits Agency that his income support had been stopped because the Home Office had informed them that he had been refused asylum. Between August 1997 and March 1998 further representations were made and the applicant was interviewed on 15 January 1998. On 15 May 1998 the Immigration and Nationality Directorate informed the appellant that the Secretary of State had refused the applicant's c request for political asylum.

Tucker J having refused leave to move for judicial review, the application was renewed before the Court of Appeal ([1999] 2 WLR 1), which decided to hear the substantive application. The Court of Appeal by a majority (Brooke LJ and Sir John Balcombe; Hobhouse LJ dissenting) dismissed the application on d 6 March 1998.

On 5 January 1999 the Treasury Solicitor informed the Judicial Office of your Lordships' House that on 12 December 1998, following an appeal to a special adjudicator, the applicant was granted refugee status and that reg 21ZA, as inserted, of the 1987 regulations operated, so that back-payment of benefits (from e the date when they ceased to be paid until the date when refugee status was granted) fell to be paid at the urgent case rate applicable to a 'person from abroad' under regs 70 and 71. They contended that the appeal was accordingly academic. The applicant replied that even though income support would be paid, there remained an issue as to whether housing benefit (which ceased to be paid between December 1997 and July 1998) would be paid by the relevant local f authority. It was not clear that he would succeed, not having pursued a claim for housing benefit at that stage, and the matter ought to be dealt with on the present appeal, even though the claim had not been made to the local authority and the Housing Benefit Review Board. The applicant also contended that costs might be an issue and that his reputation had suffered from comments in the Court of g Appeal and the use of his case in a White Paper on Asylum and Immigration published in July 1998, Fairer, Faster and Firmer (Cm 4018), as an example of what happens if someone who does not give a full and accurate account on arrival in the United Kingdom claims income support.

Your Lordships asked for a summary of submissions from the parties as to h which matters were still in issue. When the case was called on, it was accepted by the applicant: (a) that his whole claim as to income support would be satisfied; (b) that by 15 January 1999 it was agreed that he would be paid the housing benefit he claimed; (c) that as a result of these factors, his reputation was fully vindicated; (d) that the parties agreed there should be no order as to costs save as j to legal aid taxation of the applicant's costs; and (e) that accordingly there was no live issue relating to the applicant's position.

Mr Blake QC, however, contended that the appeal should continue since, even if there was no longer a live issue between the parties, there was a question of general public importance as to when it can be said that an asylum claim is 'determined' by the Secretary of State so that an applicant ceases to be an asylum seeker.

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In *Sun Life Assurance Co of Canada v Jervis* [1944] 1 All ER 469 at 470–471, [1944] AC 111 at 113–114 Viscount Simon LC said:

> 'I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way ... I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.'

In *Ainsbury v Millington* [1987] 1 All ER 929 at 930–931, [1987] 1 WLR 379 at 381 Lord Bridge of Harwich, with whom the other members of the House agreed, said:

> 'In the instant case neither party can have any interest at all in the outcome of the appeal. Their joint tenancy of property which was the subject matter of the dispute no longer exists. Thus, even if the House thought that the judge and the Court of Appeal had been wrong to decline jurisdiction, there would be no order which could now be made to give effect to that view. It has always been a fundamental feature of our judicial system that the courts decide disputes between the parties before them; they do not pronounce on abstract questions of law when there is no dispute to be resolved. Different considerations may arise in relation to what are called "friendly actions" and conceivably in relation to proceedings instituted specifically as a test case. The instant case does not fall within either of those categories. Again litigation may sometimes be properly continued for the sole purpose of resolving an issue as to costs when all other matters in dispute have been resolved.'

These cases, however, concern disputes between parties as to private rights—in the *Sun Life* case as to the terms of an insurance policy, in *Ainsbury v Millington* as to the parties' rights to the occupation of property initially held under a joint tenancy.

However, in *R v Dartmoor Prison Board of Visitors, ex p Smith* [1986] 2 All ER 651, [1987] QB 106 where a prisoner was charged with an offence under the Prison Rules 1964, SI 1964/388 (as amended), of doing gross personal violence to a prison officer, it was found by the board of visitors that there was no case to answer, but it was directed that a lesser offence of assault be preferred. On judicial review, the judge held that that direction was made without jurisdiction and prohibited the board from inquiring into the assault charge. The prisoner was no longer at risk from further disciplinary proceedings. Despite opposition from the prisoner, the Court of Appeal ruled:

> 'It seemed to all the members of this court that the fact that [the prisoner] was no longer at risk of further disciplinary proceedings did not deprive the court of jurisdiction to hear this appeal; that there were in it questions of general public interest; and that, even if [the prisoner] is rightly to be regarded as having no interest in the outcome, the court should, in the exercise of its discretion, hear the appeal on the merits.' (See [1986] 2 All ER 651 at 655, [1987] QB 106 at 115.)

In *Abdi v Secretary of State for the Home Dept* [1996] 1 All ER 641, [1996] 1 WLR 298 two Somalian nationals were refused asylum when they sought to challenge a decision rejecting their claim that to be sent to Spain would be contrary to the

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a United Kingdom's obligations under the Convention relating to the Status of Refugees (Geneva, 28 July 1951; TS 39 (1954) Cmd 9171). I said:

> 'Following the applications for judicial review the Secretary of State agreed to review their cases on the merits so that the outcome of these appeals will not directly affect the applicants. The appeals do, however, raise what b counsel for the Secretary of State in the Court of Appeal accepted (per Steyn LJ) was a question of fundamental importance and a very difficult case.' (See [1996] 1 All ER 641 at 645, [1996] 1 WLR 298 at 302.)

Your Lordships heard the appeal.

My Lords, I accept, as both counsel agree, that in a cause where there is an issue c involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the *Sun Life* case and *Ainsbury v Millington* (and the reference to the latter in r 42 of the Practice Directions d Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.

The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing e so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.

I do not consider that this is such a case. In the first place, although a question f of statutory construction does arise, the facts are by no means straightforward and in other cases the problem of when a determination is made may depend on the precise factual context of each case. In this very case, the first issue is expressed to arise 'On the facts of this case'; the second issue concerns the question whether the Secretary of State had any discretion to record and rescind his decision and whether the discretion was exercised rationally and fairly in the g instant case.

In the second place, Mr Pannick QC, on the basis of instructions from both the Home Office and the Department of Health and Social Security told us that only in a few cases has this question arisen. In *R v Secretary of State for the Home Dept, ex p Karaoui* (11 March 1997, unreported) the issue was whether there was a h record; the determination was quashed because there was no record. In *R v Secretary of State for the Home Dept, ex p Bawa* (27 October 1997, unreported) the claim was accepted by the Home Office after the trial judge's decision. In two other cases, applications are being made for judicial review, but leave has not yet been given. The unusual facts of the present case do not seem to provide a good j basis for the matter to be raised as a general principle, the particular lis having gone.

This was not brought as a test case and in my view these factors outweigh any possible advantages for the Legal Aid Board in dealing with this case, which has proceeded so far.

Moreover, pursuant to the White Paper published in 1998, it may be that the procedures to be followed will be reconsidered.

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I would accordingly dismiss this appeal with no order as to costs save that there be legal aid taxation of the applicant's costs. a

LORD MACKAY OF CLASHFERN. My Lords, I have had the privilege of reading in draft the speech of my noble and learned friend Lord Slynn of Hadley. I agree with him that this appeal should be dismissed on the terms he has proposed, for the reasons he has given. b

LORD JAUNCEY OF TULLICHETTLE. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Slynn of Hadley. For the reasons he has given I agree with him that this appeal should be dismissed on the terms he has proposed.

c

LORD STEYN. My Lords, for the reasons contained in the speech of my noble and learned friend Lord Slynn of Hadley, I would also make the order which he proposes.

LORD CLYDE. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Slynn of Hadley. For the reasons he has given I would also make the order which he proposes. d

Appeal dismissed.

Celia Fox Barrister. e

g

h

j

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[1944] AC 111 [HL]

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H. L. (E.)*

1944

Mar. 7, 8.

SUN LIFE ASSURANCE COMPANY OF CANADA . . . . APPELLANTS;

AND

JERVIS . . . . RESPONDENT.

Appeal—House of Lords—Competence—Leave to appeal—Terms—Appellants' undertaking to pay costs in House of Lords in any event and not to ask for return of sum paid by order of Court of Appeal—Administration of Justice (Appeals) Act, 1934 (24 & 25 *Geo.* 5, *c.* 40), *s.* 1.

It is an essential quality of an appeal fit to be disposed of by the House of Lords that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.

Leave to appeal to the House of Lords given by the Court of Appeal was made subject to an undertaking by the appellants " to pay the costs as between solicitor and client in the House of " Lords in any event and not to ask for the return of any money " ordered to be paid by this order " :—

Held, that since there was no issue to be decided between the parties, the House should decline to hear the appeal.

APPEAL from the Court of Appeal.

The facts, stated by VISCOUNT SIMON L.C., were as follows; An action was brought by the respondent to settle his rights under an endowment policy of life assurance issued to him by the appellants in December, 1929. Before he effected the insurance the respondent received from the appellants a document which purported to describe the benefits which he would receive, but which, he contended, held out as results to flow from the insurance benefits greater than the policy itself provided. The respondent's action was for rectification of the policy to make its terms equivalent to the document mentioned, and the Court of Appeal (Scott and Goddard L.JJ., Luxmoore L.J. dissenting), affirming the decision of Atkinson J., upheld the respondent's contention and decided that the policy should be rectified and that an additional sum was due to him. The appellants applied to the Court of Appeal for leave to appeal to the House of Lords and the Court of Appeal granted leave on terms which were included in the order of the court and which were as follows: " On the defendants " undertaking to pay the costs as between solicitor and client

**Present :* VISCOUNT SIMON L.C., LORD ATKIN, LORD THANKERTON, LORD RUSSELL of KILLOWEN and LORD PORTER.

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"in the House of Lords in any event and not to ask for the "return of any money ordered to be paid by this order."

VISCOUNT SIMON L.C. intimated that since, under the terms of the leave to appeal given to the appellants, they had no monetary interest in the result of the appeal, the House wished to hear argument on the question whether the appeal was competent.

Pritt K.C., Slade K.C. and *Anthony Gordon* for the appellants. The House ought to determine this appeal. It is true that the courts will not entertain a purely hypothetical case or a feigned issue and that they will not answer a question which is merely academic, but in this case the litigation was fought out at arm's length. There was no negotiation between the parties, but the appellants were anxious to give the respondent the most generous possible terms in relation to this appeal. It is not the law that the courts will not entertain litigation unless the parties may derive a financial advantage from it. Money is not the only thing in the world, and it would make a difference to the respondent to know that he had established a legal right to the remedy he claims. There is, however, a real issue to be decided whether or not he is owed the money in question on the basis of certain documents. The matter depends wholly on those documents and the decision would govern a large number of cases. There is no record, in workmen's compensation cases or elsewhere, of leave to appeal being granted on conditions which so fully protected the respondent, but it has never been held that such conditions could not be imposed or that the House should not hear an appeal in circumstances such as these. The courts will not entertain a purely hypothetical case: *Glasgow Navigation Co.* v. *Iron Ore Co.* (1) and *Tindall* v. *Wright* (2), but they will entertain a "friendly action": *Powell* v. *Kempton Park Racecourse Co., Ld.* (3), *Thorne* v. *Motor Trade Association* (4). In any event, however, on the strict terms of the order of the Court of Appeal, the respondent is interested in the result of these proceedings. It states that the respondents undertake "not to ask for the return of any "money ordered to be paid by this order." If, as is the case,

(1) [1910] A. C. 293.
(2) (1922) 127 L. T. 149.
(3) [1899] A. C. 143, 152, 157, 189.
(4) [1937] A. C. 797, 800, 813.

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the money had not been paid under that order and the House of Lords allowed the appeal, the respondent would not thereafter be entitled in law to recover it since he had failed to do so under the order of the Court of Appeal while it was subsisting. That is the position in law, although, of course, the appellants would not take advantage of it. Finally, if it be held, contrary to the appellants' contention, that the terms of the conditions constitute an absolute bar to the appeal and do not leave the matter in the discretion of the House, the Court of Appeal should be given an opportunity to revise the order and repair the mistake. If the court, in giving leave to appeal, imposes such terms as destroy the right of appeal, the order is a nullity. Alternatively, if the House considers that the mistake cannot be remedied, the appellants ask leave to withdraw the appeal.

C. Henderson K.C. and *Winning* for the respondent, having stated that the respondent had no financial interest in the result of the appeal, were not called on to argue.

VISCOUNT SIMON L.C. My Lords, in my opinion, the House should decline to hear this appeal on the ground that there is no issue before us to be decided between the parties. The difficulty is that the terms put on the appellants by the Court of Appeal are such as to make it a matter of complete indifference to the respondent whether the appellants win or lose. The respondent will be in exactly the same position in either case. He has nothing to fight for, because he has already got everything that he can possibly get, however the appeal turns out, and cannot be deprived of it. I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties. What is sometimes called a " friendly action " is not necessarily open to this objection, either in the first court or on appeal, for the respective parties in such an action are arguing for different results and the winner gains something which he would not gain if he lost, but the

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objection here is that, if the appeal fails, the respondent gains nothing at all from his success.

No doubt, the appellants are concerned to obtain, if they can, a favourable decision from this House because they fear that other cases may arise under similar documents in which others who have taken out policies of endowment assurance with them will rely on the decision of the Court of Appeal, but if the appellants desire to have the view of the House of Lords on the issue on which the Court of Appeal has pronounced, their proper and more convenient course is to await a further claim and to bring that claim, if necessary, up to the House of Lords with a party on the record whose interest it is to resist the appeal. The research which has been given to the matter does not discover any previous decision in which the House of Lords has undertaken, on the petition of an unsuccessful appellant, to review the decision below when the opposite party has been finally settled with, and I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.

This decision is by no means designed to discourage, in suitable cases, the putting of an unsuccessful litigant "on terms" as a condition of his being given leave to appeal from the Court of Appeal to this House. Terms requiring that, in view of the position of the successful party, the appellant should undertake to ask for no costs in this House, or even should undertake to meet the costs of both sides in any event, may be perfectly proper. Again, cases may sometimes arise where the term is imposed that the respondent shall keep, at any rate, a portion of his damages whatever the result of the appeal, but what is objectionable is that the terms for leave to appeal should be so framed as to take away from the respondent any interest in the result of the appeal whatever.

To avoid possible misunderstanding I had better add that a stricter rule has been applied in the case of appeals to the Court of Appeal. In that case the appeal is (generally speaking) as of right, and when that is the case the Court of Appeal has laid it down that it is improper for the judge of first instance to compel persons to pay moneys in any event, which moneys it may subsequently be held by a higher court that they were under no legal duty to pay at all: see *Bloor* v. *Liverpool*

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Derricking and Carrying Co., Ld. (1), per Slesser L.J., following *Doyle* v. *White City Stadium Ld.* (2). However that may be, those were cases where the defeated party was entitled to appeal as of right, whereas appeals to this House are by leave, and, therefore, conditions may within limits be put on the defeated party who seeks to appeal to the House of Lords. The Administration of Justice (Appeals) Act, 1934, which provides that there shall be no appeal to this House unless leave is given either by the Court of Appeal or by the House itself, does not in terms assert that, whatever conditions are imposed by the Court of Appeal when giving leave, the House of Lords must hear the case, and there is nothing contrary to the statute in holding that the House should not hear argument on this appeal, having regard to the conditions imposed by the Court of Appeal which have deprived the matter before us of the quality of a live issue in this litigation. It is not necessary to lay down a rule for all cases. It is enough to say that, in my opinion, if the appellants had not applied to withdraw this appeal, this appeal should be dismissed. As it is, I move that the appellants' application be granted, and leave to be given for this appeal to be withdrawn. The appellants will, of course, pay the costs in this House as between solicitor and client in accordance with their undertaking.

LORD ATKIN. My Lords, I agree.

LORD THANKERTON. My Lords, I also agree.

LORD RUSSELL OF KILLOWEN. My Lords, I also agree.

LORD PORTER. My Lords, I do also.

Leave given for appeal to be withdrawn.

Solicitors for appellants: *Freshfields, Leese & Munns.*
Solicitors for respondent: *Maude & Tunnicliffe for James Young, Grimsby.*

(1) (1936) 56 Ll. L. Rep. 39, 43. (2) [1935] 1 K. B. 110.

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[2006] 4 MLJ 113 [FC]

A

Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd

B

FEDERAL COURT (PUTRAJAYA) — CIVIL APPLICATION NO 08–166 OF 2005(W)

AHMAD FAIRUZ CHIEF JUSTICE, PS GILL, ALAUDDIN, RICHARD MALANJUM AND AUGUSTINE PAUL FCJJ

18 APRIL 2006

C

Civil Procedure — Appeal — Right of appeal — Whether order appealable — Whether order made under s 44(1) of Courts of Judicature Act 1964 appealable — Whether only order decided by the High Court on merits were appealable — Whether appeal had become academic, test to be applied

D

Civil Procedure — Judicial precedent — Court of Appeal — Doctrine of binding precedent — Whether Court of Appeal necessarily follow Federal Court judgment although wrongly decided

E

Metramac Corp Sdn Bhd ('the applicant') was the defendant in an action initiated against them by Fawziah Holdings Sdn Bhd ('the respondent'). The respondent's claim was for, inter alia, alleged loss of advertising rights and loss of income earned by the applicant from future contracts performed by the applicant. On 21 October 2003, the High Court found the applicant liable to the respondent for loss of advertising rights. Both the parties appealed to the Court of Appeal. In the meanwhile, the respondent had filed a motion in the Court of Appeal under s 44(1) of the Courts of Judicature Act 1964 ('s 44(1)') seeking, inter alia, for an order that the respondent be restrained from disposing its assets to frustrate the appellant's claim against the respondent. The Court of Appeal allowed the order on 25 October 2005. The applicant, being dissatisfied, filed a motion for leave to appeal to the Federal Court against the order. The Court of Appeal delivered its judgment on the substantive appeal on 12 January 2006 allowing the respondent's appeal.

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The hearing before this court was the motion for leave to appeal against the orders made on 25 October 2005. Learned counsel for the respondent raised a preliminary objection to the effect that as the orders had been dissolved, there was no longer any dispute between the parties and the appeal was therefore academic. In his reply, learned counsel for the applicant contended that the dissolution of the orders did not render the appeal academic as they still affect his clients. He said that if his appeal was allowed it would have a bearing, inter alia, on the undertaking in damages given by the respondent.

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The next matter for consideration was whether the orders made by the Court of Appeal on 25 October 2005 under s 44(1) were appealable under s 96(a). The issue was whether s 96(a) should be construed restrictively on policy considerations to

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limit the right of appeal to the Federal Court to only a judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court on the merits. The Court of Appeal had ruled that an order made under s 44(1) was made in the exercise of the original jurisdiction of the Court of Appeal and therefore appealable.

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Held, granting leave to appeal:

(1) The test in deciding whether an appeal has become academic is to determine whether there is in existence a matter in actual controversy between the parties which will affect them in some way. If the answer to the question is in the affirmative, the appeal cannot be said to have become academic (see para 9). If the present appeal was ruled to be academic, it would seriously affect the undertaking in damages given by the respondent. It followed that the fact that the orders had been dissolved could not render the appeal academic (see paras 10 & 11).

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(2) What has been legislated to be appealable under s 96(a) are judgments or orders of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction subject to fulfillment of the prescribed conditions (see para 36). It is clear that the word 'any' in s 96(a) makes it applicable to every judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction. The judgments or orders of the Court of Appeal against which there can be an appeal are unqualified provided that they are in respect of any matter decided by the High Court. There is no requirement that the judgments or orders must be ones that have been decided by the High Court on the merits. The language of s 96(a) is plain enough to include matters decided by the Court of Appeal provided they are in respect of a matter decided by the High Court. The use of the words 'in respect of' in s 96(a) makes it clear that what is required is that there must be some connection or relation between the judgment or order of the Court of Appeal and the civil cause or matter decided by the High Court in the exercise of its original jurisdiction (see para 52).

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(3) The wide language employed in s 96(a) together with the internal mechanism contained in it makes it patent that it is the legislative intent to exclude a restrictive interpretation of the section (see para 52). Thus any restriction imposed on the right of appeal provided by s 96(a) in the absence of express words or necessary implication would defeat its object. It follows that any attempt to confine s 96(a) to only judgments or orders decided by the High Court on the merits cannot be justified. Therefore, the motion filed by the applicant for leave to appeal against the orders made by the Court of Appeal on 25 October 2005 was thus regular and competent (see para 53).

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(4) Gopal Sri Ram JCA at the Court of Appeal was therefore correct in saying that *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 and *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65 were wrongly decided. Unfortunately, he was not the right authority permitted by

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A law to express such an opinion. As both cases were judgments of the Federal Court, he was bound to follow them whether he agreed with them or not (see para 54).

[Bahasa Malaysia summary

B

Metramac Corp Sdn Bhd ('pemohon') adalah defendan dalam satu tindakan yang dimulakan terhadap mereka oleh Fawziah Holdings Sdn Bhd ('responden'). Tuntutan responden adalah untuk, antara lain, kehilangan hak pengiklanan dan kehilangan mata pencarian yang dikatakan oleh pemohon untuk kontrak-kontrak masa hadapan yang dilaksanakan oleh pemohon. Pada 21 Oktober 2003, Mahkamah Tinggi mendapati pemohon bertanggungjawab kepada responden untuk kehilangan hak-hak pengiklanan. Kedua-dua pihak telah merayu ke Mahkamah Rayuan. Sementara itu, responden telah memfailkan satu usul di Mahkamah Rayuan di bawah s 44(1) Akta Mahkamah Kehakiman 1964 ('s 44(1)') memohon, antara lain, untuk satu perintah bahawa responden disekat daripada menjual aset-asetnya untuk mengecewakan tuntutan perayu terhadap responden. Mahkamah Rayuan telah membenarkan perintah itu pada 25 Oktober 2005. Pemohon, berasa tidak puas hati, telah memfailkan satu usul untuk kebenaran merayu ke Mahkamah Persekutuan terhadap perintah itu. Mahkamah Rayuan telah menyampaikan penghakimannya berhubung rayuan substantif tersebut pada 12 Januari 2006 membenarkan rayuan responden.

Perbicaraan di hadapan mahkamah ini adalah usul untuk kebenaran merayu terhadap perintah-perintah yang dibuat pada 25 Oktober. Peguam yang bijaksana bagi pihak responden telah menimbulkan satu bantahan awal di mana memandangkan perintah-perintah tersebut telah dibatalkan, tiada lagi apa-apa pertikaian antara pihak-pihak dan rayuan tersebut menjadi akademik. Dalam jawapannya, peguam yang bijaksana bagi pihak pemohon menegaskan bahawa pembatalan perintah-perintah tersebut tidak menjadikan rayuan itu akademik kerana ia masih boleh menjejaskan anak guamnya. Beliau mengatakan bahawa jika rayuannya dibenarkan ia akan mempunyai kaitan, antara lain, kepada akujanji dalam ganti rugi yang diberikan oleh responden.

Perkara lain untuk dipertimbangkan adalah sama ada perintah-perintah tersebut yang dibuat oleh Mahkamah Rayuan pada 25 Oktober 2005 di bawah s 44(1) boleh dirayu di bawah s 96(a). Persoalannya adalah sama ada s 96(a) patut ditafsirkan secara terbatas berdasarkan pertimbangan polisi untuk mengehadkan hak-hak rayuan ke Mahkamah Persekutuan kepada satu penghakiman atau perintah Mahkamah Rayuan berkaitan apa-apa kausa atau perkara sivil yang diputuskan oleh Mahkamah Tinggi berdasarkan merit. Mahkamah Rayuan telah memutuskan bahawa satu perintah yang dibuat di bawah s 44(1) telah dibuat menggunakan bidang kuasa asal Mahkamah Rayuan dan oleh itu boleh dirayu.

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Diputuskan, memberikan kebenaran untuk merayu:

(1) Ujian untuk memutuskan sama ada satu rayuan itu telah menjadi akademik adalah untuk menentukan sama ada wujud satu kontroversi antara pihak-pihak yang akan menjejaskannya dalam apa cara. Jika jawapan kepada persoalan itu

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adalah positif, rayuan itu tidak boleh dikatakan telah menjadi akademik (lihat perenggan 9). Jika rayuan semasa telah diputuskan sebagai akademik, ia akan menjejaskan akujanji dalam ganti rugi yang diberikan oleh responden. Oleh itu fakta bahawa perintah-perintah tersebut telah dibatalkan tidak menjadikan rayuan itu akademik (lihat perenggan 10 & 11). A

(2) Apa yang telah digubal sebagai boleh dirayu di bawah s 96(a) adalah penghakiman atau perintah Mahkamah Rayuan berkaitan apa-apa kausa atau perkara sivil yang diputuskan oleh Mahkamah Tinggi dalam menggunakan bidang kuasa asalnya tertakluk kepada penyempurnaan syarat-syarat yang ditetapkan (lihat perenggan 36). Adalah jelas bahawa perkataan 'any' dalam s 96(a) membuat ia boleh dirayu kepada setiap penghakiman Mahkamah Rayuan berkaitan apa-apa kausa atau perkara sivil yang diputuskan oleh Mahkamah Tinggi menggunakan bidang kuasa asalnya. Penghakiman atau perintah Mahkamah Rayuan terhadap mana terdapat rayuan tidak layak dengan syarat ia berkaitan apa-apa perkara yang telah diputuskan oleh Mahkamah Tinggi. Tiada keperluan bahawa penghakiman atau perintah itu suatu yang telah diputuskan oleh Mahkamah Tinggi berdasarkan merit. Bahasa s 96(a) adalah jelas untuk merangkumi perkara-perkara yang diputuskan oleh Mahkamah Rayuan dengan syarat ia berkaitan suatu perkara yang telah diputuskan oleh Mahkamah Tinggi. Penggunaan perkataan 'in respect of' dalam s 96(a) menjadikan ia jelas bahawa apa yang dikehendaki adalah perlunya ada kaitan antara penghakiman atau perintah Mahkamah Rayuan dan kausa atau perkara sivil yang diputuskan oleh Mahkamah Tinggi dalam menggunakan bidang kuasa asalnya (lihat perenggan 52). B C D E

(3) Bahasa yang luas digunakan dalam s 96(a) bersama mekanisme dalaman yang terkandung dalamnya menjadikannya jelas bahawa ia adalah niat badan penggubal untuk mengecualikan satu pentafsiran terbatas seksyen itu (lihat perenggan 52). Oleh itu apa-apa sekatan yang dikenakan atas hak untuk merayu yang diperuntukkan oleh s 96(a) dalam ketiadaan perkataan nyata atau implikasi yang perlu akan menggagalkan objektifnya. Oleh itu apa-apa percubaan untuk menyekat s 96(a) kepada hanya penghakiman atau perintah yang diputuskan oleh Mahkamah Tinggi berdasarkan merit tidak boleh dijustifikasikan. Oleh itu, usul yang difailkan oleh pemohon untuk kebenaran merayu terhadap perintah-perintah yang dibuat oleh Mahkamah Rayuan pada 25 Oktober 2005 adalah menurut aturan dan kompeten (lihat perenggan 53). F G

(4) Gopal Sri Ram HMR di Mahkamah Rayuan adalah betul apabila mengatakan bahawa *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 dan *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65 telah diputuskan dengan salah. Bagaimanapun, beliau tidak mempunyai kuasa yang betul yang dibenarkan oleh undang-undang untuk menyatakan pendapat sedemikian. Oleh kerana kedua-dua kes tersebut adalah penghakiman Mahkamah Persekutuan, beliau terikat untuk mengikutnya sama ada beliau bersetuju atau tidak dengannya (lihat perenggan 54).] H I

Notes

For cases on Court of Appeal, judicial precedent, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 3827–3828.

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A For cases on right of appeal, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 1293–1306.

Cases referred to

Aerlinte Eireann Teoranta v Canada (Minister of Transport) (1990) 68 DLR (4th) 220 (refd)
B *Ainsbury v Millington* [1987] 1 All ER 929 (refd)
Albon v Pyke (1842) 4 M & G 421 (refd)
Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 (refd)
C *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549 (refd)
Capital Insurance Bhd v Aishah bte Abdul Manap & Anor [2000] 4 MLJ 65 (folld)
Cassell & Co Ltd v Broome & Anor [1972] 1 All ER 801 (refd)
Chinery, Ex parte (1884) 12 QBD 342 (refd)
Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors [1999] 1 MLJ 257 (refd)
D *Food Corp of India v Antelizo Shipping Corp* [1988] 2 All ER 513 (refd)
Goh Teng Hoon & Ors v Choi Hon Ching [1987] 1 MLJ 95 (refd)
Graham v Campbell (1878) 7 Ch D 490 (refd)
Housing of the Working Classes Act 1890, Re; ex p Stevenson (1892) 1 QB 609 (refd)
Lam Kong Co Ltd v Thong Guan Co Pte Ltd [2000] 4 MLJ 1 (folld)
E *Laxmana Rao v China* AIR 1980 Andh Pra 191 (refd)
Lee v Showmen's Guild of Great Britain [1952] 1 All ER 1175 (refd)
Madhav Rao Scindia v Union of India AIR 1971 SC 530 (refd)
Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147 (refd)
F *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39 (refd)
Nathu Prasad v Singhai Kepurchand 1976 Jab LJ 340 (refd)
Newby v Harrison (1861) 3 De GF & J 287 (refd)
Periasamy s/o Sinnappen v PP [1996] 2 MLJ 557 (refd)
Prosunno Coomar Paul v Koylash Chunder Paul 8 WR 428 (refd)
R v Secretary of State for Health & Ors [2001] 1 WLR 127 (refd)
G *Ram Narain v State of UP* AIR 1957 SC 18 (refd)
Raphael Pura v Insas Bhd & Anor [2003] 1 MLJ 513 (refd)
Ross v Buxton (1888) WN 55 (refd)
Sejahratul Dursina @ Chomel bte Abdullah v Kerajaan Malaysia [2006] 1 MLJ 403 (refd)
H *Sockalinga Mudaliar v Eliathamby & Anor* [1952] MLJ 77 (refd)
Sun Life Assurance Co of Canada v Jervis [1944] 1 All ER 469 (refd)
Ushers Brewery Ltd v PS King & Co [1971] 2 All ER 468 (refd)
Vacker & Sons Ltd v London Society of Compositors [1913] AC 117 (refd)

I **Legislation referred to**

Courts of Judicature Act 1964 ss 3, 44(1), (2), 68(1)(a), 96(a)
Rules of the High Court 1980 Form 87(c)

Appeal from: Civil Appeal No W–02–1009 of 2003 (Court of Appeal, Putrajaya)

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A

Dato' Muhammad Shafee Abdullah (S Sivaneindiren, Kaushalya Rajathurai, Jeffrey John, Teh Eng Lay, Tiffany Lim, Peter Skelchy and Chan Kwai Chuan with him) (Cheah Teh & Su) for the applicant.

Dato' Dr Cyrus Das (Benjamin Dawson, Steven Thiru, David Mathew, Koh San Tee and Noraisyah Abu Bakar with him) (Noraisyah & Co) for the respondent.

B

Augustine Paul FCJ (delivering judgment of the court):

[1] Metramac Corporation Sdn Bhd ('the applicant') is the Defendant in an action initiated against them by Fawziah Holdings Sdn Bhd ('the respondent') vide Kuala Lumpur High Court Civil Suit No D5–22–110 of 1995. The respondent's claim is for, inter alia, alleged loss of advertising rights and loss of income earned by the applicant from future contracts performed by the applicant. The applicant filed a counterclaim seeking, inter alia, various orders to declare null and void the agreements upon which the respondent's claim was premised. On 21 October 2003, the High Court found the applicant liable to the respondent for the loss of advertising rights. However, damages were to be assessed by taking into consideration the advertising rights that may possibly exist under the replacement concession agreement. All other claims of the applicant were dismissed. The respondent's claim for loss of future contracts was also dismissed as being void for uncertainty.

C D E

[2] Both the parties appealed to the Court of Appeal. The applicant's appeal was registered as Civil Appeal No W–02–1013 of 2003 and the respondent's appeal as Civil Appeal No W–02–1009 of 2003. The appeals were heard together on 30 August 2005 by a panel consisting of Gopal Sri Ram JCA, Hashim Yusoff JCA and Zulkefli Makinudin JCA. Judgment was reserved to a date to be fixed.

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[3] In the meanwhile, the respondent had filed a motion in the Court of Appeal seeking, inter alia, the following orders pursuant to s 44(1) of the Courts of Judicature Act 1964 ('s 44(1)'):

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(a) an order that the respondent and/or its directors, servants and/or agents or whosoever otherwise be restrained from disposing, conveying and/or dealing with the assets of the respondent in any manner that would frustrate, prejudice and/or defeat the appellant's claim against the respondent;

(b) alternatively, an order that the respondent set aside a sum of RM165m in a joint account of the Appellant and the respondent to satisfy the judgment that may be obtained in the appeal.

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[4] The motion was heard on 25 October 2005 before Gopal Sri Ram JCA, James Foong JCA and Zulkefli Makinudin JCA who granted the following orders:

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(a) that the respondent be and are hereby restrained whether by their servants or agents or howsoever otherwise from disposing of or dissipating any of their assets within the jurisdiction, including monies which they may receive hereafter up to a limit of RM100m until further order;

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A (b) that costs herein is to follow the event of the appeal;

(c) that the penal notice under Form 87(c) of the Rules of the High Court 1980 be endorsed unto this order.

B [5] The applicant, being dissatisfied, filed a motion for leave to appeal to the Federal Court against the orders on 21 November 2005. It was originally fixed for hearing on 22 February 2006 and was adjourned to 6 March 2006 to enable the respondent to file an affidavit in reply.

C [6] The Court of Appeal delivered its judgment on the substantive appeal on 12 January 2006 allowing the respondent's appeal in Civil Appeal No W–02–1009 of 2003 and dismissing the applicant's appeal in Civil Appeal No W–02–1013 of 2003. The applicant filed two motions. One was in the Federal Court for leave to appeal against both the orders and the other was in the Court of Appeal for a stay of execution of the orders made on 12 January 2006. The respondent then filed a D motion to, inter alia, increase the sum upon which the injunction applied to RM200m. The respondent also applied for particulars and the appointment of an external monitoring accountant. The application was heard by the Court of Appeal on 23 February 2006. On 1 March 2006, the court granted a conditional stay on the following terms:

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(a) stay of execution and enforcement of the order and judgment dated 12 January 2006 made in the Court of Appeal pursuant to Civil Appeal No W–02–1009 of 2003 is hereby granted pending the disposal of the applicant/Respondent's application for leave to appeal to the Federal Court subject to the following terms:

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(i) that the applicant/respondent set aside a sum of RM50m in a joint account of the appellant and the applicant/respondent within one month from 1 March 2006 and/or before 4pm on 31 March 2006;

G (ii) that the applicant/respondent do forward to the appellant within 14 days from the date of the order, an affidavit affirmed by any one of its directors which contains full details of all assets or interest of the applicant/respondent as at 25 October 2005 and the date of this order, whether movable asset or immovable asset, whether tangible asset or intangible asset, whether within or outside jurisdiction of this honourable H court, in the name of the applicant/respondent, the applicant/respondent's agents and/or nominees, whether solely owned or jointly owned by the applicant/respondent including but not limited to:

(1) the precise nature of the relevant asset and interest in question;

I (2) where the relevant asset and interest in question is located;

(3) who is the legal and/or beneficial owner of the relevant asset and interest in question;

(4) whether the owner of the relevant asset and interest in question holds ownership of that asset and interest as nominee and/or for the benefit

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of any other party and if it is, the name, address and full particulars of the principal or the beneficiary of that asset or interest; A

(5) whether there is any mortgage, charge, security or any encumbrance on the asset or interest in question;

(6) whether there is any claimant to the asset or interest in question; B

(7) full details of all dealings with the aforesaid assets between 25 October 2005 and the date of this order.

(b) costs of this application in encl (46a) be costs in the cause;

(c) parties are at liberty to apply. C

The orders made on 25 October 2005 were also dissolved.

[7] The hearing before us is the motion for leave to appeal against the orders made on 25 October 2005. Learned counsel for the respondent raised a preliminary objection to the effect that as the orders have been dissolved there is no longer any dispute between the parties and the appeal is therefore academic. He added that there can be no appeal over matters that have been discarded or dissolved. He then said that as there must be an order in existence for the purpose of an appeal under s 96(a) of the Courts of Judicature Act 1964 ('s 96(a)') this court has no jurisdiction to proceed with the appeal. However, he conceded that the orders in question were valid from 25 October 2005 to 1 March 2006. In support of his argument he referred to cases such as *Sun Life Assurance Co of Canada v Jervis* [1944] 1 All ER 469; *Ainsbury v Millington* [1987] 1 All ER 929; *Food Corp of India v Antelizo Shipping Corp* [1988] 2 All ER 513 and *R v Secretary of State for Health & Ors* [2001] 1 WLR 127. In his reply, learned counsel for the applicant contended that the dissolution of the orders does not render the appeal academic as they still affect his clients. He said that if his appeal is allowed it will have a bearing, inter alia, on the undertaking in damages given by the respondent. D E F

[8] In dealing with the circumstances in which an appeal will be rendered academic and thereby not appealable, Viscount Simon LC said in *Sun Life Assurance Co of Canada v Jervis* [1944] 1 All ER 469 at pp 470–471: G

> I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellant hopes to get decided in its favour without in any way affecting the position between the parties. ... ... I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue. H

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[9] The test, therefore, in deciding whether an appeal has become academic is to determine whether there is in existence a matter in actual controversy between the parties which will affect them in some way. If the answer to the question is in the affirmative the appeal cannot be said to have become academic. This test has found

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A favour with a plethora of local cases such as *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh* [1992] 1 MLJ 147; *Datuk Syed Kechik bin Syed Mohamed & Anor v Board of Trustees of the Sabah Foundation & Ors* [1997] 1 MLJ 257 and *Raphael Pura v Insas Bhd & Anor* [2003] 1 MLJ 513.

B [10] There can be no dispute that if the appeal is ruled to be academic it will seriously affect the undertaking in damages given by the respondent. In *Ushers Brewery Ltd v PS King & Co* [1971] 2 All ER 468, Plowman J said that it is established law that an enquiry as to the damages to be assessed will not be ordered until either the plaintiff has failed on the merits at the trial or it is shown that the C injunction ought not to have been granted in the first instance. He then referred to *Newby v Harrison* (1861) 3 De GF & J 287 and *Graham v Campbell* (1878) 7 Ch D 490 where the plaintiff failed at the trial and an enquiry was ordered and to *Ross v Buxton* (1888) WN 55 where an enquiry was ordered on the ground that the injunction was improperly obtained. In commenting on the proper time at which an D enquiry as to damages must be held he said at p 473:

> No case was cited to me where the enquiry was ordered before the question whether the injunction was rightly granted had been disposed of.

E [11] And at p 474:

> In the present case it would not in my judgment be appropriate to order an enquiry now, even though I am dissolving the injunction, because it has not been established that the injunction ought not to have been granted in the first instance.

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[12] It is therefore clear that it is the appeal that will determine whether the orders ought not to have been granted in the first instance in order to enable the applicant to proceed further with the issue of the undertaking for damages. It follows that the fact that the orders have been dissolved cannot render the appeal academic.

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[13] The corollary is that the preliminary objection raised by the respondent is devoid of any merit whatsoever and has only to be stated to be rejected. Accordingly, we dismissed it.

H [14] The next matter for consideration is whether the orders made by the Court of Appeal on 25 October 2005 under s 44(1) are appealable under s 96(a). It is the contention of the applicant that they are appealable and in support advanced a well-researched and cogent argument. The respondent, who had initially contended that the orders are not appealable, changed its mind at the resumed hearing and said I that they are appealable and, accordingly, had no objections to the motion for leave. That did not absolve us of the responsibility of delving deeper into the issues raised as they involve a question of jurisdiction. It is settled law that consent cannot confer jurisdiction where it does not exist. The question of the appealability of the orders made on 25 October 2005 thus requires a determination by this court notwithstanding the stand taken by the respondent.

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[15] The appealability of the orders made on 25 October 2005 became the subject matter of argument, perhaps, due to the stand taken by Gopal Sri Ram JCA with whom Zulkefli Makinudin JCA agreed on the nature of the jurisdiction pursuant to which the orders were made under s 44(1). James Foong JCA expressed his own views. Their judgments are reported as Fawziah Holdings Sdn Bhd v Metramac Corp Sdn Bhd [2006] 1 MLJ 435. Gopal Sri Ram JCA said at pp 440–441:

> We are here exercising our original jurisdiction under s 44 of the Courts of Judicature Act 1964 ('CJA'). See *Silver Concept Sdn Bhd v Brisdale Rasa Development Sdn Bhd* [2002] 4 MLJ 113. I am aware that in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1, Dzaiddin FCJ remarked by way of obiter that: 'It is trite that the Court of Appeal today no longer has any original jurisdiction'. That, with respect, is too wide and is an incorrect observation. It overlooks the actual wording of s 44 which reads:
>
> (1) In any proceeding pending before the Court of Appeal any direction incidental thereto not involving the decision of the proceedings, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs, and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a judge of the Court of Appeal.
>
> (2) Every application under sub-s (1) shall be deemed to be a proceeding in the Court of Appeal.
>
> (3) Every order made under sub-s (1) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the court.
>
> It is important to notice that s 44(1) uses the words 'in any proceeding'. It does not say 'in any appeal'. Parliament has gone on to clarify the position in the second subsection which deems an application under s 44(1) to be a proceeding. And s 3 CJA defines 'proceeding' to mean any proceeding whatsoever of a civil or criminal nature and 'includes an application at any stage of a proceeding'. So, when this court makes an order under CJA s 44(1) it does not deal with the appeal proper at all. Hence it is a original jurisdiction, albeit a very limited one.
>
> ...
>
> Take this very case. The appeals by both sides have been heard and judgment reserved. All that remains is the giving of the decision and reasons for it. There is therefore no appeal pending before this court. We are asked to act under s 44 to grant interim protection between now and the date on which our decision will come. That, with respect is an invitation to exercise original jurisdiction and we can exercise it because of s 44.
>
> Since we are not exercising appellate jurisdiction in respect of a matter that originated in the High Court, an appeal to the Federal Court is not available. Similarly, there is no appeal from a decision of this court refusing leave to appeal. See *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549. It may have been different if we had been exercising our appellate jurisdiction in respect of a matter that originated in the High Court. In that event an appeal to the Federal Court would, in my respectful view, be competent despite the decisions in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 and *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65. This is because doubt has been cast over these cases by the majority judgments in *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385. Also, because, in my respectful view, both Lam Kong and Capital Insurance were wrongly decided and the dissent of Chong Siew Fai CJ (Sabah & Sarawak) in *Lam Kong* is correct.

[16] James Foong JCA said at pp 444–445:

> I have read the draft judgment of my learned brother, Justice Gopal Sri Ram. Though we both agreed to the conclusion arrived at and the material part of the contents therein, I am

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A not in favour of the approach adopted in respect of how the Court of Appeal's jurisdiction is secured in dealing with this application of the appellant before us.

By the doctrine of 'stare decisis' the common law in this country has developed much in line with that inherited from the mother of common law — England. This means that the ratio decidendi from a judgment or decision of a more superior court is binding on all later courts B under the system of judicial precedent. This is trite law.

I therefore feel that the Federal Court's decision in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 and *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65, in declaring that the Court of Appeal has no original jurisdiction, save and except, in the limited scope granted under s 44 of the Courts of Judicature Act to deal with C 'any proceedings pending before the Court of Appeal' is binding on this court. The dissenting view of Chong Siew Fai (CJ Sabah & Sarawak) in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* over this point cannot be accepted as the correct state of law over the majority judgment of two other Federal Court judges who sat on that case.

In this instant case, I am of the view that since there is a pending proceeding before of this D court where the decision in the appeal proper has yet to be delivered, though the appeal was argued, this court is clothe with jurisdiction to hear this notice of motion brought by the appellant for our consideration.

By this provision, I approached this motion and arrived at the conclusion which is similar to those of my other two brother judges in ordering the defendant be restrained from E disposing or dissipating its assets up to RM100 million.

[17] It is first necessary to determine the nature of the jurisdiction under which the orders were made pursuant to s 44(1) before embarking on a consideration of their appealability. In ruling that an order made under s 44(1) is one that is made in the F exercise of the original jurisdiction of the Court of Appeal, Gopal Sri Ram JCA noted that s 44(1) uses the word 'in any proceeding' and not 'in any appeal'. He then referred to the definition of 'proceeding' in s 3 of the Courts of Judicature Act 1964 ('s 3') and to s 44(2) which provides that every application under sub-s (1) shall be deemed to be a proceeding in the Court of Appeal. He then construed the word G 'proceeding' in s 44(1) as a reference to the motion filed by the respondent. The conclusion of Gopal Sri Ram JCA is that since an order made under s 44(1) does not deal with the appeal proper at all it amounts to one made in the exercise of the original jurisdiction of the Court of Appeal. This raises the question of whether the 'proceeding' in this case for the purpose of s 44(1) contemplates the motion itself H which is deemed to be a proceeding by s 44(2) or the appeal proper which is also a proceeding. It cannot be both but has to be one or the other. In determining the proper construction to be accorded to the word 'proceeding' in s 44(1) it must be observed that the meaning of a word given in an Act of Parliament cannot be blindly and slavishly applied each time it appears in the Act. This is made manifestly patent I by section 3 itself which, like other definition provisions, makes the definitions provided applicable ' … … … unless the context otherwise requires … … … '. Thus, as SK Das J said in *Ram Narain v State of UP* AIR 1957 SC 18 at p 23:

> The meanings of words and expressions used in an Act must take their colour from the context in which they appear. … …

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[18] In *Laxmana Rao v China* AIR 1980 Andh Pra 191, it was held that the meaning given to a particular expression by the definition clause is always subject to the context. The context in which the word is used may therefore render the meaning prescribed inapplicable. A

[19] The propriety of the process of reasoning adopted by the majority in the Court of Appeal in arriving at its conclusion that the word 'proceeding' in s 44(1) refers to the motion will become apparent if s 44(1) is read cautiously as a whole and with a proper appreciation of the meaning of the words 'pending' and 'hearing' in the section. *Black's Law Dictionary* (6th Ed) defines the word 'pending' as: B

> Awaiting an occurrence or conclusion of action, period of continuance or indeterminacy. Thus, an action or suit is 'pending' from its inception until the rendition of final judgment. C

[20] As Thomson J (as he then was) said in *Sockalinga Mudaliar v Eliathamby & Anor* [1952] MLJ 77 at p 78:

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> ... I would adopt the following passage from Stroud's *Judicial Dictionary* (2nd Ed, p 1445):
>
> A legal proceeding is 'pending' as soon as commenced ... ... and until it is concluded, ie so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein.

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[21] Further reference may be made to *Goh Teng Hoon & Ors v Choi Hon Ching* [1987] 1 MLJ 95 where Sinnathuray J said at p 96:

> It would appear that there is no reported authority directly to the point on the word 'pending' in respect of an appeal from one court to another. Some assistance is to be had in Stroud's *Judicial Dictionary* on the meaning given to the word 'pending'. The first illustration explains that 'a legal proceeding is pending as soon as commenced, and until it is concluded, ie so long as the court having original cognizance of it can make an order on the matters in issue, or to be dealt with, therein'. It seems to me that a clear distinction has to be made between an appeal from a judgment and those other steps taken by way of execution of the judgment. On this, there is another illustration in Stroud's *Judicial Dictionary*: F G
>
> As to what is a cause or proceeding 'pending' within Judicature Act 1873, now Judicature Act 1925, a cause is 'pending' even after final judgment, so long as such judgment remains unsatisfied ... ...
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> H
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> In this context, I agree with Mr Liu for the respondent that garnishee proceedings are pending proceedings just as execution by way of writs are also pending proceedings.

[22] In commenting on the scope of the word 'hearing' Abdul Hamid Mohamad FCJ in writing for a five-member panel of this court said in *Sejahratul Dursina @ Chomel bte Abdullah v Kerajaan Malaysia* [2006] 1 MLJ 403 at p 412: I

> First, we do not think that we should or could separate the date of hearing from the date of decision. The date fixed for a decision in fact forms part of the hearing. As always

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A happens, even on the date fixed for decision, counsel still seek, and are usually allowed, unless the request is unreasonable, to make further submissions or to clarify a fact or to bring to the court's attention of a newly discovered authority or, as in this case, to inform the court of the latest development. The hearing of an application certainly includes the decision thereof.

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[23] Having ascertained the meaning of the words 'pending' and 'hearing', it is now necessary to consider the orders that may be made under s 44(1). They are:

(a) any direction incidental thereto (that is to say, the proceeding) not involving the decision of the proceeding;

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(b) any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding;

(c) any order for security for costs; and

D (d) for the dismissal of a proceeding for default in furnishing security so ordered.

[24] Items (c) and (d) listed above are not relevant. In item (a), the order made must be one that does not involve the decision of the proceeding and in item (b) the order made must be one that is only pending the hearing of the proceeding. E Thus, the order made must be one that does not involve the decision of the proceeding or which is interim in nature pending the hearing of the proceeding. In other words, the proceeding itself must still be pending when orders in respect of it are made. It is only then that a matter will qualify as a 'proceeding' for the purpose of s 44(1). In this case, the orders made on 25 October 2005 involved a decision of the motion itself after it was heard resulting in it being disposed of. Thus, the orders F made cannot be said to be incidental or interim in nature in respect of the motion filed by the respondent as required by s 44(1) for the simple reason that it had been heard and decided and it was no longer a proceeding pending any hearing. Gopal Sri Ram JCA said that the fact that the appeal has been heard leaving only the giving of the decision meant that there is no appeal pending and that the making of an order G under s 44(1) pending the decision is therefore an exercise of original jurisdiction. The validity of this conclusion would depend on whether the appeal proper was a proceeding pending in the Court of Appeal when it had been heard with only the decision to be given. As stated earlier, the word 'pending' refers to a case from its inception till its conclusion while the word 'hearing' includes the decision on it. It is H thus abundantly clear that at the time the motion was heard the appeal proper was still pending in the Court of Appeal as, at that time, no decision had been given on it. The motion cannot therefore qualify as a 'proceeding' for the purpose of s 44(1) though, as provided by s 44(2), it is a proceeding in the Court of Appeal. The pending proceeding for the purpose of s 44(1) is nothing else but the appeal I itself. The conclusion of Gopal Sri Ram JCA based on an erroneous interpretation of the words 'pending' and 'hearing' must thus collapse as of necessity. Since the orders were made in relation to the pending appeal, the question of the existence of any original jurisdiction cannot and does not arise at all. The substratum of the argument of Gopal Sri Ram JCA that the orders were made in the exercise of the original jurisdiction of the Court as they do not deal with the appeal cannot therefore stand.

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As a matter of fact, this question has been lucidly explained by Mohamed Dzaiddin FCJ (as he then was) in *Lam Kong Co Ltd v Thong Guan Co Ptd Ltd* [2000] 4 MLJ 1 at p 15:

> It is trite that the Court of Appeal today no longer has any original jurisdiction after the repeal of ss 45–49 of the Act by the Courts of Judicature (Amendment) Act 1994 (Act A886). What remains is its criminal and civil appellate jurisdiction.

[25] Unfortunately, this view was summarily rejected by Gopal Sri Ram JCA. It is perhaps appropriate for us to reiterate that the Court of Appeal possesses only appellate jurisdiction.

[26] It is now apposite to consider whether the orders made on 25 October 2005 are appealable under s 96(a). The judgments of this court in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1, *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65 and *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385 show that they are not appealable. In order to appreciate the validity of the judgments in these cases, it is necessary to consider with care the language employed in s 96(a) which reads as follows:

> 96. Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court —
>
> (a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage;

[27] Thus, what has been legislated to be appealable are judgments or orders of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction subject to fulfillment of the prescribed conditions. The critical issue for deliberation is whether this is restricted only to matters in which the High Court has made a decision or whether it also extends to decisions made by the Court of Appeal on matters arising from the decision of the High Court. This issue was considered by this court in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1. As Chong Siew Fai CJ (Sabah & Sarawak) said in his dissenting judgment at pp 10–11:

> One of the issues was that even assuming the accused had accepted a sum of Rs2400, could the receipt of that sum be held, in law, to be a premium in respect of the grant of a lease? Delivering the judgment of the court, Mahajan CJ made the following observation on the expression 'in respect of' (at p 498):
>
> > 'In respect of' means in its plain meaning 'connected with or attributable to', and therefore it is not necessary that there must be a simultaneous receipt by the landlord with the grant of the lease. So long as 'some connection' is established between the grant of the lease and the receipt of the premium by the landlord, the provisions of the section would be satisfied.

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A In the Australian case of *Trustees, Executors and Agency Co Ltd v Reilly* (1941) VLR 110 (facts therein are not relevant for our purpose) Mann CJ explained the words 'in respect of' thus (at p 111):

> The words 'in respect of' are difficult of definition, but they have the widest possible meaning of any expression intended to convey some connection or relation between the B two subject-matters to which the words refer.

To my mind the explanations of Mann CJ and Mahajan CJ in the above two cases aptly describe the ordinary meaning of the words 'in respect of'. Guided by the explanations, the words 'in respect of' in s 96(a) of the Act means, in my view, that there must be some connection or relation between the judgment or order of the Court of Appeal and the civil C cause or matter decided by the High Court in the exercise of its original jurisdiction. Applying the above construction of the three words to the case presently under appeal, the question is: Is there a connection or relation between the order of the Court of Appeal striking out the applicant's notice of appeal on the basis (which the applicant disputed) that leave to appeal was necessary but not obtained and the High Court's decision granting the relief sought in the action arising out of which the present appeal before us was brought. D The High Court's decision is in respect of a 'civil cause decided by the High Court in the exercise of its original jurisdiction.' Hence, in my view, there clearly is an undisputable connection or relation between the said order of the Court of Appeal and the decision of the trial judge in the High Court.

It follows that s 96(a) of the Act is applicable in that the decision of the Court of Appeal E made on 28 May 1998 in striking out the applicant's notice of appeal is appealable subject, of course, to leave of the Federal Court being granted.

[28] Mohamed Dzaiddin FCJ (as he then was) in delivering the majority judgment said at pp 16–17:

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> So a question that arises is whether the instant application for leave to appeal is from the judgment or order of the Court of Appeal in respect of a civil cause or matter decided by the High Court. Clearly, the application is founded on the judgment of the Court of Appeal in a pending appeal made on an application by the respondent to strike out the applicant's notice of appeal on the ground that it was filed without leave of the Court of Appeal as G required by s 68(1)(a) of the Act. In short, the instant application is not against the judgment of the Court of Appeal in respect of a civil cause or matter decided by the High Court on the merits.

It is to be noted that Parliament has thought fit to impose conditions in respect of right of appeal from the Court of Appeal to the Federal Court under s 96(a) of the Act. The conditions are that leave of the Federal Court must be obtained and the matters that H are appealable are from any judgment or order of the Court of Appeal in respect of any cause or matter decided by the High Court in the exercise of its original jurisdiction. On the true construction of s 96(a), we form the view that the judgment or order of the Court of Appeal to appeal from must be in respect of a cause or matter decided by the High Court on the merits and not in respect of interlocutory judgment or order decided by the Court of Appeal upon the hearing of an application made to it in a pending appeal before it. Unless there I is an express provision that an appeal shall lie from the Court of Appeal to this court from its interlocutory judgment or order in respect of a matter pending appeal before it, by necessary intendment of s 96(a) the interlocutory judgment or order of the Court of Appeal is not appealable and does not come within the meaning of s 96(a) of the Act.

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[29] And at p 18:

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> In our view, based on the above statement of principles and in the context of s 96(a) of the Act, it is laudable, as a matter of policy, to restrict the right of appeal from the Court of Appeal to the Federal Court with leave only to cases where the judgment or order of the Court of Appeal is in respect of any civil cause or matter decided by the High Court on the merits. If a decision of the Court of Appeal made on a motion in a pending appeal is appealable, then the result would be that there would be two appeals in every case 'in which, following the ordinary course of things, there would only be one'. Hence, the policy of requiring leave to appeal under s 96(a) to act as a 'filter' against unnecessary appeals would be defeated.

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[30] The majority judgment was followed by this court in *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65 and *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra Bhd* [2002] 1 MLJ 385.

[31] In *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1, Chong Siew Fai CJ (Sabah & Sarawak) took the view that the judgment or order of the Court of Appeal sought to be appealed against must be one which is in respect of a civil cause or matter decided by the High Court. However, Mohamed Dzaiddin FCJ (as he then was) in speaking for the majority said that the judgment or order sought to be appealed against must be one that is in respect of a cause or matter decided by the High Court on the merits and not one in respect of interlocutory judgments or orders decided by the Court of Appeal upon the hearing of an application made to it in a pending appeal. He arrived at this conclusion based on his interpretation of s 96(a) and on policy considerations to restrict the right of appeal from the Court of Appeal to the Federal Court as in *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549. The approach adopted raises two issues for consideration.

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[32] As both the issues relate to the construction of a statutory provision dealing with the jurisdiction of courts, it is appropriate to consider them against the background of rules of interpretation peculiar to them. Reference must first be made to the statement of Tindal CJ in *Albon v Pyke* (1842) 4 M & G 421 when he said, in dealing with the jurisdiction of superior courts, at p 424:

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> The general rule undoubtedly is that the jurisdiction of superior courts is not taken away except by express words or necessary implication.

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[33] As the *Principles of Statutory Interpretation* (6th Ed) by G P Singh says at pp 445–446:

> As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed

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[34] In *Prosunno Coomar Paul v Koylash Chunder Paul* 8 WR 428 Peacock CJ said at p 436:

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> The jurisdiction of the ordinary Courts of Judicature is not to be taken away by putting a construction upon an Act of the Legislature which does not clearly say that it was the intention of the Legislature to deprive such courts of their jurisdiction.

[35] Thus when the language used in a statute is clear effect must be given to it. As Higgins J said in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at pp 161–162:

> The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.

[36] The primary duty of the court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention (see *Nathu Prasad v Singhai Kepurchand* 1976 Jab LJ 340). Thus the duty of the court, and its only duty, is to expound the language of a statute in accordance with the settled rules of construction and has nothing to do with the policy of any statute which it may be called upon to interpret (see *Vacker & Sons Ltd v London Society of Compositors* [1913] AC 117; *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39). The rule that the exclusion of jurisdiction of civil courts is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred, to insist for free access to the courts of general jurisdiction of the state (see *Lee v Showmen's Guild of Great Britain* [1952] 1 All ER 1175; *Madhav Rao Scindia v Union of India* AIR 1971 SC 530).

[37] The first question that requires to be addressed is: Can s 96(a) be construed restrictively on policy considerations to limit the right of appeal to the Federal Court to only a judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court on the merits? In *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549, several English authorities were relied on to rule on such considerations that there can be no appeal on a refusal to grant leave to appeal. One of the cases is *Re Housing of the Working Classes Act 1890; ex p Stevenson* (1892) 1 QB 609 where it was held that the object of the requirement of obtaining leave to appeal '… … … was to prevent frivolous and needless appeals. If, from an order refusing leave to appeal, there may be an appeal, the result will be that, in attempting to prevent needless and frivolous appeals, the legislature will have introduced a new series of appeals with regard to the leave to appeal. Suppose, for the sake of argument, that in this case the claimant's grounds for wishing to appeal are frivolous; if the contention on his behalf is correct, he could appeal from the judge at chambers to the Divisional Court, from the Divisional Court to this court, and from this court to the House of Lords on the question whether he shall be allowed to appeal. It appears to me that that would be an absurd result in the case of a provision the object of which is to prevent frivolous and needless appeals' (per Fry LJ at p 612). It is thus abundantly clear that the purpose of making a refusal of leave to appeal final is to ensure that the object of obtaining leave to appeal is not defeated. The purpose of

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s 68(1)(a) is to prohibit appeals except with the leave of the Court of Appeal. To permit an appeal from a refusal of leave to appeal would defeat the object of s 68(1)(a) in preventing frivolous and unnecessary appeals. Bearing in mind the object of s 68(1)(a), it is necessary to make a decision of the Court of Appeal refusing leave final by necessary implication. That was the basis of the judgment in *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549 with which we agree. However, the motion before us is not in a similar position as it is an application that can be made only in this court. The reliance on policy considerations in the construction of s 96(a) as in the case of s 68(1)(a) cannot therefore be supported; it can only be resorted to as done in *Auto Dunia Sdn Bhd v Wong Sai Fatt & Ors* [1995] 2 MLJ 549 to render a refusal of leave to appeal final and not to construe a statutory provision rigidly against its plain meaning to reduce the number of cases where leave to appeal may be granted. Such an approach would militate against the rules relating to the construction of statutory provisions dealing with the jurisdiction of superior courts.

[38] The resultant question that requires to be addressed is whether the language of s 96(a) itself permits a restrictive construction. It must be observed that unlike s 68(1)(a), s 96(a) allows appeals from any judgment or order subject to fulfillment of the requirement stipulated therein. It is necessary to ascertain the meaning of the words 'judgment', 'order' and 'any' in s 96(a) in order to appreciate its proper scope. In commenting on the relationship between the words 'judgment' and 'order', Cotton LJ said in *Ex parte Chinery* (1884) 12 QBD 342 at p 345:

> Now, in legal language, and in Acts of Parliament, as well as with regard to the rights of the parties, there is a well-known distinction between a 'judgment' and an 'order'. No doubt the Orders under the Judicature Act provide that every order may be enforced in the same manner as a judgment, but still judgments and orders are kept entirely distinct.

[39] Black's *Law Dictionary* (6th Ed) defines a 'judgment' as:

> The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination. The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceeding. *Towley v King Arthur Rings, Inc* 40 NY 2d 129, 386 NYS 2d 80, 351 NE 2d 728, 730.

[40] Ramanatha Aiyar's *Advanced Law Lexicon* (3rd Ed) defines an 'order' as:

> An order is a decision made during the progress of the cause, either prior or subsequent to final judgment, settling some point of practice or some point collateral to the main issue presented by the pleadings, and necessary to be disposed of before such issue can be passed upon by the court, or necessary to be determined in carrying into execution of the final judgment.

[41] A judgment is therefore a final determination of the rights of parties while an order is an interlocutory order made in relation to the judgment. They are therefore

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A two separate and distinct concepts qualified only by the use of the word 'any' in s 96(a). Bindra's *Interpretation of Statutes* (9th Ed) in commenting on the word 'any' says at p 1469:

> 'Any' is a word which excludes limitation or qualification. It connotes wide generality.

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[42] In *Aerlinte Eireann Teoranta v Canada (Minister of Transport)* (1990) 68 DLR (4th) 220, Heald JA said at p 225:

> In summary, then, the appellants' initial submission is to the effect that airlines can only be charged for airport facilities and services which they actually use. I am unable to agree with this submission. The trial judge carefully examined the language used in s 5 and concluded that the word 'any' as used in s 5 should be interpreted to mean 'all', 'each and every' or 'whichever'. He added (AB vol 19, p 3409): 'Thus 'at any airport' in s 5 includes among others the meaning 'at each and every, or whichever, airport' at which the Minister provides every and all, or whichever, facilities and services.' I agree with the conclusion of the trial judge.

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[43] It is clear that the word 'any' in s 96(a) makes it applicable to every judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction. The judgments or orders of the Court of Appeal against which there can be an appeal are unqualified provided that they are in respect of any matter decided by the High Court. There is no requirement that the judgments or orders must be ones that have been decided by the High Court on the merits. The language of s 96(a) is plain enough to include matters decided by the Court of Appeal provided they are in respect of a matter decided by the High Court. The use of the words 'in respect of' in s 96(a) makes it clear that what is required is that there must be some connection or relation between the judgment or order of the Court of Appeal and the civil cause or matter decided by the High Court in the exercise of its original jurisdiction as explained by Chong Siew Fai CJ (Sabah dan Sarawak). That is the plain meaning of s 96(a) and, accordingly, it must be construed in that sense. The fact that there can be no departure from the clear words of s 96(a) to restrict the number of appeals to this court is supported by the section itself which contains its own requirement to control the nature of cases where leave to appeal may be granted. The object of this requirement is to prevent frivolous and unnecessary appeals. The internal mechanism provided in s 96(a) is that the proposed appeal must involve a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage. If this requirement is not satisfied leave to appeal will not be granted (see *Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors* [1999] 1 MLJ 257). It must be noted that there is no similar provision in s 68(1)(a). The wide language employed in s 96(a) together with the internal mechanism contained in it make it patent that it is the legislative intent to exclude a restrictive interpretation of the section.

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[44] Thus, any restriction imposed on the right of appeal provided by s 96(a) in the absence of express words or necessary implication would defeat its object. It follows that any attempt to confine s 96(a) to only judgments or orders decided by the High Court on the merits cannot be justified. We are therefore, and with respect, unable

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to subscribe to the interpretation accorded to s 96(a) by Mohamed Dzaiddin FCJ (as he then was). On the contrary, the dissenting judgment of Chong Siew Fai CJ (Sabah and Sarawak) is consistent with the language and spirit of s 96(a). Thus the majority judgment in *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 cannot be sustained and, consequently, is not good law. The motion filed by the applicant for leave to appeal against the orders made by the Court of Appeal on 25 October 2005 is thus regular and competent.

[45] Gopal Sri Ram JCA is therefore correct in saying that *Lam Kong Co Ltd v Thong Guan Co Pte Ltd* [2000] 4 MLJ 1 and *Capital Insurance Bhd v Aishah bte Abdul Manap & Anor* [2000] 4 MLJ 65 were wrongly decided. Unfortunately, he is not the right authority permitted by law to express such an opinion. As both cases are judgments of the Federal Court, he is bound to follow them whether he agrees with them or not. The stand taken by him is in blatant disregard of the doctrine of stare decisis particularly when the need to comply with this fundamental rule of the common law was brought to his attention by James Foong JCA in his separate judgment. In order to appreciate the importance of adhering to the doctrine of stare decisis useful references may be made to *Cassell & Co Ltd v Broome & Anor* [1972] 1 All ER 801 where Lord Hailsham said at p 809:

> The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young v Bristol Aeroplane Co Ltd* [1944] 2 All ER 293 offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom. Even this House, since it has taken freedom to review its own decisions, will do so cautiously. That this is so is apparent from the terms of the declaration of 1966 itself where Lord Gardiner LC said:
>
> > Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

[46] Gopal Sri Ram JCA himself, in recognising the importance of conforming with the doctrine of stare decisis, said in *Periasamy s/o Sinnappen v Public Prosecutor* [1996] 2 MLJ 557 at p 582:

> Lastly, the learned appellate judge did not sufficiently address his mind to the decision in *Khoo Hi Chiang*. We find the cavalier fashion in which he approached the judgment of a five-member bench of the Supreme Court in a case which was an authority binding upon him to be quite appalling. We are convinced that the learned appellate judge ought not to have brushed it aside as he did.
>
> We may add that it does not augur well for judicial discipline when a High Court judge treats the decision of the Supreme Court with little or no respect in disobedience to the well-entrenched doctrine of stare decisis.
>
> We trust that the occasion will never arise again when we have to remind High Court judges that they are bound by all judgments of this court and of the Federal Court and they must, despite any misgivings a judge may entertain as to the correctness of a particular judgment of either court, apply the law as stated therein.

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A [47] We can only add that the castigation of a judge of the High Court for not respecting the doctrine of stare decisis must apply with greater force to a judge of the Court of Appeal.

B [48] We allowed the motion for leave to appeal in terms of paragraph 6(b), (c) and (d) in encl 12 with costs to be costs in the cause.

Leave to appeal allowed.

C Reported by Loo Lai Mee

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MINORITY DECISION

D. Tan Sri Jeffrey Tan Kok Wha

Annexure K

Tribunal Appointed Pursuant to
Article 114(3) of the Federal Constitution

Has this proceeding become academic?

It is an undeniable fact that all Respondents ceased to hold office as Members of the Election Commission (EC) on 1.1.2019, be it by resignation with effect on 1.1.2019 or by contraction of their term of office to 1.1.2019.

But before 1.1.2019, when the Respondents, according to their respective "letters of resignation", would cease to hold office as Members of the EC, on 5.12.2018, His Majesty The Yang di-Pertuan Agong, pursuant to Article 114(3) of the Federal Constitution, assented to the appointment of this Tribunal to "mengendalikan prosiding berhubong dengan salah laku anggota-anggota Suruhan Pilihan Raya". On 5.12.2018, this Tribunal was appointed to "menyiasat" 13 cases of alleged misconduct by the Respondents before and during the General Election of 2018 and to "melaporkan dapatannya kepada DYMM Tuanku". The mandate to this Tribunal reads:

(a) Menyiasat tindakan anggota Suruhanjaya Pilihan Raya, sebelum dan pada hari mengundi 9 Mei 2018, berkenaan persiapan dan pelaksaan Pilihan

Raya Umum Ke-14, bagi menentukan sama ada terdapat salah laku; dan

(b) Sekiranya berpuas hati sebegitu untuk membuat syor kepada Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong tentang tindakan yang boleh diambil terhadap mereka, termasuklah pemecatan dripada jawatan.

When this Tribunal convened its first sitting in the presence of parties and learned counsel on 28.1.2019, all parties including learned counsel who appeared for the Honourable Attorney General (AG) submitted or otherwise agreed that this proceeding against the Respondents has been rendered academic by reason of the fact, so it was submitted, that the Respondents were no longer Members of the EC when these proceedings commenced and therefore could no longer be removed as Members of the EC. The logic was that the prior resignation of the Respondents had disarmed the operation of Article 114(3) read together with Article 125(3) of the Federal Constitution, and that, since the Respondents were no longer members of the EC, no useful purpose would be served by this proceeding to remove the Respondents as members of the EC.

This Tribunal adjourned this proceeding to 28.2.2019. But when this proceeding resumed on 28.2.2019, the Honourable

AG personally appeared and informed this Tribunal that learned counsel who appeared for him on 28.1.2019 had no instructions, indeed acted against instructions, when he submitted that this proceeding has been rendered academic. The Honourable AG retracted all earlier submission made on his behalf and submitted that this proceeding has not been rendered academic by the resignation of the Respondents. On whether this proceeding has been rendered academic, the Honourable AG cited R v Secretary of the Home Depart., ex parte Salem [1999] AC 450, where the House of Lords held at 456 per Lord Slynn who delivered the unanimous decision, that the House of Lords has a discretion to hear an appeal in a cause where there is an issue of public law involving a public authority even though by the time the appeal was due to be heard there is no longer a lis to be decided directly affecting the rights and obligations of the parties as between themselves.

> "My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the Sun Life case and Ainsbury v Millington (and the reference to the latter in r 42 of the Practice Directions Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case." (Emphasis added)

In the next paragraph, Lord Slynn cautioned against a too ready exercise of that discretion:

> "The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future." (Emphasis added).

The Honourable AG next cited Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors (Persatuan Peguam-peguam Muslim Malaysia, pencelah) and another case [2018] MLJU 1288, where the Federal Court adopted *Salem* and held that "One limited exception to the general rule is in relation to questions of public law". At [59], the Federal Court attributed *Salem* at 456 to have said:

> "... in a cause where there is an issue involving a public authority as to a question of public law, their Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which directly affect the rights and obligations of the parties inter se. However the discretion to hear disputes must be exercised with caution, and academic appeals should not be heard "in the public interest for doing so."

But with respect, the Federal Court [59] omitted to quote *Salem* at 456 in full. The Federal Court omitted to cite the above underlined portion, where the House of Lords pertinently held that "the decisions in *Sun Life* and *Ainsbury v Millington* must be read accordingly as limited to disputes concerning private law rights between the parties to the case". *Sun Life* and *Ainsbury v Millington* only apply to disputes concerning private law rights between the parties to the case. But the Federal Court in *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors* overlooked that distinction.

There was one other slip-up. At [59], the Federal Court held that Lord Slynn at 456 said that "the discretion to hear disputes must be exercised with caution, and academic appeals should not be heard "in the public interest for doing so." (Emphasis added) But Lord Slynn at 456 was not correctly quoted. What Lord Slynn actually said at 456 was that 'The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so ... ", which means that an academic appeal should be heard where there is good reason in the public interest for doing so. Lord Slynn did not say that "academic appeals should not be heard in the public interest for doing so", which connotes the opposite of what Lord Slynn at 456 actually said. What Lord Slynn said at 456 was that

an academic appeal should be heard where there is good reason in the public interest to do so.

In any event, that exception to the general rule was accepted in *Bar Council Malaysia v Tun Dato' Seri Arifin bin Zakaria & Ors* at [59], albeit that the Federal Court held on the facts that the matter before it was not within public law matters.

This exception to the general rule was upheld in 2 earlier decisions of the Federal Court. In Spind Malaysia Sdn Bhd v Justrade Marketing Sdn Bhd & Anor [2018] 4 MLJ 34, Raus Sharif CJ, delivering the judgment of the court, said:

> "The general rule is not without exceptions. In R v Secretary of State for the Home Dept, ex parte Salem [1999] AC 450 at p 456, the House of Lords exercised discretion to hear an appeal on a question of public law, even though by the time of the appeal there is no longer an issue which will directly affect the rights and obligations of the parties. More recently, in the case of Kerajaan Malaysia v Mudek Sdn Bhd [2017] 5 MLJ 133 at para [2], the fact that the parties have reached an amicable settlement before the appeal was heard did not preclude this court from answering the questions posed, in order to correct and clarify the position of the law stated in the judgment of the Court of Appeal".

In Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors v Arasa Kumaran [2006] 6 MLJ 689, an appeal against the grant of a writ of habeas corpus, learned counsel raised a preliminary objection to the effect that the appeal must

be dismissed as it had become academic following the making of the second detention order against the respondent. The Federal Court per Augustine Paul FCJ delivering the judgment of the court first cited Lord Slynn at 456, then applied the exception, in the course of which thus enunciated on public law:

> "[6] The matter before us is not one concerning private law rights. It involves a public authority and the issues submitted on relate to questions of public law. The proper interpretation to be accorded to s 3(3)(a) and (b) of the 1969 Ordinance is of tremendous significance and it will not involve a consideration of the facts of the case. The question of the applicability of the ratio decidendi of Mohd Faizal bin Haris to the 1969 Ordinance is of greater importance. These are issues that will affect existing cases and will arise in the future if they are not resolved as soon as possible. They must therefore be settled. The Canadian Courts have heard appeals after the release of detainees in order to settle important points of law (see Re Marshall and the Queen (1984) 13 CCC (3d) 73 (Ont HC); Cardinal v Director of Kent Institution (1985) 2 SCR 643; Morin v National Special Handling Unit Review Committee (1985) 2 SCR 62). We were therefore of the view that public interest requires this appeal to be heard."

Salem was also applied by the Court of Appeal (see Yap Kiam @ Yap Sin Tian (suing as Chairman of the United Chinese School Committees' Association Malaysia (Dong Zong), and also on behalf of other committee members except the named defendants) v Poh Chin Chuan (suing as Secretary General of United Chinese School Committees' Association Malaysia (Dong

Zong)) & Ors and another appeal [2016] 6 MLJ 685; PP V Ottavio Quattrocchi [2003] 3 MLJ 123).

Adopted and or applied, *Salem* is part of our common law. Hence, in a cause or matter "where there is an issue involving a public authority as to a question of public law", there is discretion to hear the cause or matter, even "if there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se", where there is good reason in the public interest to hear and determine the cause or matter.

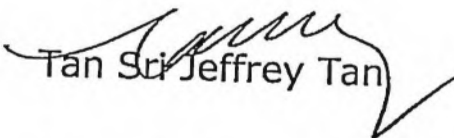
The instant matter is obviously not one that concerns private law rights. The instant matter concerns (i) the Federal Constitution and the primary constitutional body that governs the conduct of free and fair elections, (ii) the conduct of members of that constitutional body before and during the General Elections of 2018 as to whether they, by their alleged conduct as set out in the 13 charges, had discharged their constitutional functions and duties to ensure that the General Elections of 2018 was free and fair, or had obstructed and or acted against the conduct of free and fair elections, and (iii) the conduct of the Respondents as to whether they, by their alleged conduct as set out in the 13 charges, had promoted or undermined public confidence in the EC and the elective process. The instant matter is clearly within the domain of public law which is that part of law which governs relationships between individuals and the government, and those

relationships between individuals which are of direct concern to society. "Public law (i) is the body of law dealing with the relations between private individual and the government, and with the structure and operation of the government itself; constitutional law, criminal law, and administrative law taken together, (ii) a statue affecting the general public" (Black's Law Dictionary 8th Edition at 1267). Metramac Corp Sdn Bhd (formerly known as Syarikat Teratai KG Sdn Bhd) v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113, an appeal which concerned private law rights and where the Federal Court followed the test in *Sun Life* to determine whether an appeal has become academic, could not apply to the instant matter which involves the official acts of members of a public authority and public law (per Lord Slynn at 456).

"That this proceeding has become academic" could not be raised. But even if it could, it would not seem this matter has become academic in the *Sun Life* sense that a determination of the matter would not affect the Respondents or in the *Ainsbury v Millington* sense that neither party would have an interest in the outcome of this matter. *De facto*, the Respondents are no longer in office by reason of voluntary cessation. But *de jure*, the Respondents had not been removed from office. "Voluntary cessation of office" is not "removal from office". This matter is not academic. And a determination of this matter could affect the Respondents, as voluntary cessation with entitlement to benefits

upon resignation could turn to involuntary cessation without entitlement to such benefits.

As this matter involves the official acts of the members of a public authority and public law, this Tribunal has the discretion to hear and determine the matter on the merits, regardless of whether the matter is or is not academic in the *Sun Life* sense or in the *Ainsbury v Millington* sense. And there is only good reason in the public, nope national interest, to hear and determine the matter for the good of the nation. At stake is the democratic process of the nation. The fact that the Respondents had voluntarily vacated their office should not be a bar to the determination of this matter.


Tan Sri Jeffrey Tan

Dated 24th May 2019

MINORITY DECISION

E. Datuk Dr. Prasad Sandosham Abraham

Annexure L

MY DECISION ON THE PRELIMINARY POINT

The facts leading up to the setting up of this August Tribunal, have been alluded to in the majority decision of this Tribunal written by our Chairman, Tan Sri Datuk Amar Steve L.K. Shim. The chronology of events have also been set out in the chronology set out in the Bundle delivered by the Rt. Hon. Attorney General (AG) and Counsel for the former Election Commissioners respectively. As I propose to depart from the reasoning of the majority, as to whether the subject matter before the Tribunal has been rendered academic, I will again resort to some of the facts in the course of my grounds. We are dealing with this question as a preliminary issue and arguments and submissions have been presented on that basis.

A point to note is that on the first convened sitting of the Tribunal on 28.1.2019, counsel appointed by the AG had made concessions that the proceedings had been rendered academic due to the fact that the Election Commissioners were no longer in office as at the date of the convening of the Tribunal, and as such, there is no longer the issue of them being removed as per the terms of reference to the Tribunal. This was also the stand taken by Counsel for all the Election Commissioners respectively. However, on the second convened sitting of the Tribunal on 28.2.2018, the AG appeared in person and submitted that the learned counsel who had appeared on 28.1.2019 had purported to act against his express instructions in making that concession. Under the circumstances, the AG retracted all earlier concessions made as to the proceeding being rendered academic and submitted that contrary thereto, these proceedings were not rendered academic and the Tribunal was seised with jurisdiction to

proceed accordingly. I am of the opinion that with regard to issues of constitutional and public law, particularly in this case, where there exists the issue of the construction and applicability of the relevant provision(s) of the Federal Constitution and in such a matter of great public interest, parties are not bound by any such concessions which are subject to legal interpretation and construction.

FACTS

(1) In Tab 1 of the chronology of events of the AG, the Rt. Hon. Prime Minister instructs the AG to review the complaint of Bersih on 14.8.2018.

(2) On 18.10.2018 a media release was issued by five (5) of the former six (6) Commissioners to shorten their term of office to cease holding office on the 1.1.2019. The contents of the media statement are self-explanatory (Tab 2).

(3) On 18.10.2018, the five (5) former Election Commissioners (Respondents) wrote to his Majesty the Yang Di Pertuan Agong (YDPA) for the shortening of their tenure of office, which was supposed to end on 13.4.2024 to 1.1.2019, on the grounds stated therein.

(4) The YDPA agreed on 26.10.2018.

(5) The remaining former Election Commissioner's shortening of tenure of office was also agreed to by YDPA on 26.10.2019.

(6) YDPA agreed to the formation of the Tribunal pursuant to Article 114(3) and 125(3) of the Federal Constitution on 5.12.2018. Despite YDPA agreeing to the interim suspension of the former Election Commissioners, that was never affected.

(7) The Federal Constitution in particular 114(3), provides that an Election Commissioner shall serve to 66 years, or resign or be removed. There is no provision for the shortening of tenure of office. However, YDPA had consented to the same and as such it was a "fait accompli".

(8) The YDPA had in fact despite an absence of a relevant provision in the Federal Constitution accepted the early voluntary **retirement** of the former Election Commissioners. This was an early voluntary retirement on their part and not a resignation. Counsel for the former Election Commissioners respectively stress that and the AG really had nothing much to say to resile from that position. The voluntary retirement of the Respondents means that they have fulfilled all their requirements during tenure of office and to be eligible to continue to receive benefits thereafter (if applicable). Resignation on the other hand, has a consequence of unilaterally and voluntarily leaving the position, meaning there was a severance of continuing benefits. Removal is a termination of the post, not entitling one to any benefits. Since the Respondents have submitted shortening of tenure, which tantamounts to early retirement, they have been deemed to have served their full tenure, albeit a shortened one as accepted by YDPA.

(9) When the Tribunal was constituted on 5.12.2018, the Respondents were still holding office and the Tribunal was seised on an issue that was alive, i.e. the application of Article 125(3) of the Federal Constitution (FC).

(10) Article 125(3) of the FC states and I set out the relevant provisions, "***If the Prime Minister represents to the Yang Di Pertuan Agong that ....ought to be removed on the ground of .... or any other cause, ... 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 .... from office***".

(11) When YDPA referred the representation to the Tribunal, the Respondents were still in office. YDPA is taken to be aware of their early retirement which was consented to by YDPA. The investigation of the representations to the Tribunal must be proceeded with and if found guilty of misconduct, recommend their removal but YDPA may decline to do so. To my mind, the dichotomy of approach as required under the FC is the representations must be investigated as the Tribunal was constituted whilst the Respondents were still in office. Hypothetically speaking before the completion of the investigation, if early retirement as in this case kicked in, can proceedings be said to be academic? Certainly not. In my view, whilst the consequence is removal, the investigation of the representations is equally important, and this is why YDPA is given a discretion whether to accept this Tribunal's recommendations or not.

(12) The procedure for the removal of the Respondents is the same as the removal of judges under the FC. I refer to the views expressed by the Supreme Court in Tun Dato Haji Mohamed Salleh bin Abas v. Tan Sri Dato Abdul Hamid bin Omar & Ors [1988] 3 MLJ 149, and in particular the judgment of Hashim Yeop Sani SCJ(as he then was) at page 151 of the report, para B left hand column and I quote,

"***The functions of the tribunal appointed under art 125(3) of the Constitution is to inquire and investigate*** on the representation and then report to the Yang di-Pertuan Agong with any recommendation it may make. The tribunal is a body which investigates and does not decide. It is performing a constitutional function. The tribunal should not therefore be restrained from performing its constitutional function."

(13) The question being raised is since the Respondents have taken early retirement, which was agreed to by YDPA, how can there be a removal from office! I first looked to the practice of removal of Judges in the Commonwealth and found that in the Republic of South Africa it is analogous to ours. There, proceedings for removal or as it is referred to there as impeachment allows such proceedings to survive early retirement and/or retirement. For instance, in the impeachment proceedings against Judge NJ Motata, the tribunal decided to impeach him and recommend his removal after his retirement. Enclosed is the shortened Report of the Judicial Conduct Tribunal in Re: Judge NJ Motata ***delivered on 12.4.2018***. Judge NJ Motata had ***retired in 2017***.

(14) I refer to the Article published by the Helen Suzman Foundation entitled "Judging the Judges" and the relevant portions have been highlighted. The juridical basis for proceeding despite retirement would be that the finding of misconduct can lead YDPA to treat the Respondents' vacation of office as a removal which would lead to consequences in respect of their financial entitlements. The Respondents may have retired but also on record because of the finding of the Tribunal, the consequence would be that the Respondents would be known as Election Commissioners that were dismissed from office if the recommendation of the Tribunal is accepted by YDPA. In the referred article, there is shown tribunal proceedings pending against several Judges in South Africa after their retirement.

(15) Whilst a removal from office will not have any effect on the Election Commissioners serving again as such, the removal will lead to a loss of all their benefits as they would no longer be Election Commissioners who had taken early retirement being entitled to such benefits. There lies the issue which is still alive and that can be dealt with under Article 125(3) of FC. The juridical basis for this is that the YDPA can deem the Respondents leaving office as a removal.

(16) I agree the approach might be different in several Common Law jurisdictions, however Counsel for the Respondents respectively and the AG really did not focus on this point which is the crux of the issue. Of course parties are at liberty to revisit this issue later but suffice to say that enough material has been disclosed to negate the contention that proceedings before the tribunal are academic.

(17) Article 125(3) of the FC, in particular relation to constitutional officers like the Respondents and the treatment of representations made under that Article is a voyage in unchartered waters. The principle of disciplinary proceedings and enquiries surviving voluntary retirement is the issue to be dealt with here. In regulations dealing with public officers, preservation of rights to proceed against these public officers have been maintained.

For instance, disciplinary proceedings in our public service seem to incorporate this principle of disciplinary proceedings and enquiries surviving a voluntary retirement albeit governed by statute and regulations. See for instance Section 10 of the Pensions Act 1980, Act 227 and I quote:-

"Compulsory retirement

10. (1) Subject to subsections (2), (3) and (4), an officer shall retire from the public service on attaining the age of sixty years.

(2) Where an officer attains the compulsory age of retirement of fifty-five, fifty-six, fifty-eight or sixty years, as the case may be, and a criminal or disciplinary proceeding which may result in his conviction or dismissal is not concluded, his service shall be deemed to have been extended beyond any of that age, as the case may be, but on no-pay leave until his case is determined."

In my view, it is an issue as to whether this principle will be applicable in our present case, rendering the present Tribunal proceedings relevant.

(18) The present Respondents are public officers exercising constitutional functions. In my view, why should it be different for them. A clear message should be sent out i.e. voluntary retirement will not shelter anyone from the consequences of misconduct whilst in office.

(19) I also make reference to the recommendations and the opinion of my learned brother Tan Sri Jeffery Tan. I agree in the main with YA Tan Sri's dissecting analysis of Salem's case and would accept the principles set out in Salem's case would be applicable here particularly in the area of public and constitutional law.

(20) In conclusion, I find there are compelling reasons for the Tribunal to proceed to investigate the matter as public interest calls for it. In addition, I refer to Article 114(2) of the FC which I now set out - ***"In appointing members of the Election Commission the Yang di-Pertuan Agong shall have regard to the importance of securing an Election Commission which enjoys public confidence"***, which is a constitutional injunction.

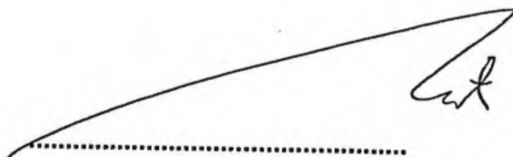
I refer to the opening address delivered at the 14th Malaysian Law Conference in October 2007 on the topic "50 Years of Constitutionalism and the Rule of Law by HRH the late Sultan Azlan Shah, Sultan of Perak Darul Ridzuan and I quote,

"We must ever be mindful that written constitutions are mere parchments pieces. It is important that there must be, in the hearts and minds of those who are entrusted to administer and

uphold the Constitution, a belief in the values and principles that animate the august document." This pellucid observation by his late Royal Highness is one that I fully subscribe to.

(21) When allegations have been made against the Respondents of a serious nature, as reflected in the mandate given to the Tribunal, if we take the approach to dismiss proceedings merely on the basis of a preliminary point, it will not bode well for public confidence in the Election Commission and the election process. It will thus have to be decided by YDPA based on the Tribunal's investigations and recommendations as to whether the Respondents' removal is warranted to safeguard the integrity of the Election Commission.

(22) I would therefore dismiss the preliminary point and rule there are live issues to be determined and recommend the Tribunal proceed with its deliberations forthwith.



DATUK DR. PRASAD SANDOSHAM ABRAHAM

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MALAYSIAN REPORTS

Tun Dato Haji Mohamed Salleh bin Abas v Tan Sri Dato Abdul Hamid bin Omar & Ors

SUPREME COURT (KUALA LUMPUR) – CIVIL APPLICATION NO 26 OF 1988
HASHIM YEOP A SANI AND HARUN SCJJ, MOHAMED YUSOFF, GUNN CHIT TUAN AND ANUAR JJ
21 AND 22 JULY 1988

Constitutional Law – Application to set aside ex parte order restraining tribunal appointed under art 125(3) of the Federal Constitution from submitting its report – Jurisdiction of Supreme Court – Whether Attorney General entitled to represent the tribunal in the application – Whether tribunal amenable to order of prohibition – Federal Constitution, arts 125(3), (5), & 145

Civil Procedure – Jurisdiction of Supreme Court – Application to set aside ex parte order of Supreme Court – Application to intervene – Courts of Judicature Act 1964

Administrative Law – Whether order of prohibition lies against tribunal set up under art 125(3) of the Constitution – Rules of the High Court 1980, O 92 r 4 – Rules of the Supreme Court 1980, r 4

In this case a tribunal had been set up under art 125(3) to inquire into and make recommendations concerning Tun Dato Haji Salleh Abas to His Majesty the Yang di-Pertuan Agong. The Supreme Court had on 2 July 1988 made an ex parte order restraining the tribunal from submitting any recommendations, report or advice respecting the inquiry to His Majesty the Yang di-Pertuan Agong (see Appendix on p 151). The Attorney General applied by motion to set aside the order on the ground that the making of the said order was wrong in law in the circumstances of the case. Another ground was relied on in this notice of motion but the Attorney General did not proceed with the ground as there was an originating summons for a declaration on the interpretation of ss 38 and 39 of the Courts of Judicature Act 1964 which were referred to in that ground. Two applications were also dealt with by the court. The first was by the five Supreme Court judges who sat in the Supreme Court which issued the ex parte order and who had been suspended and their application was for leave to intervene in the proceeding. The second application was by Tun Haji Mohamed Salleh Abas to strike out the notice of motion of the Attorney General as the tribunal is intended to be independent of the government.

Held: (1) As the basis of the application to intervene, namely, what interpretation should be given to ss 38 and 39 of the Courts of Judicature Act 1964, is no longer in issue, leave to intervene by the five judges was refused. In any event the jurisdiction of the court to allow intervention is entirely discretionary and since the tribunal which is yet to be appointed to inquire into their cases is not a court of law, this is not a proper case to allow leave to intervene.

(2) The Attorney General is a public officer under the Constitution. He was required by the rules of procedure of the tribunal to assist the tribunal. Article 145 of the Constitution property read gives ample power to the Attorney General to represent the government and any body or person performing any functions under the Constitution.

A (3) The Supreme Court is principally an appellate court with appellate jurisdiction and it had no jurisdiction to entertain the application to restrain the tribunal in the case as there was no pending appeal.

(4) The functions of the tribunal appointed under art 125(3) of the Constitution is to inquire and investigate on the representation and then report to the Yang di-Pertuan Agong B with any recommendation it may make. The tribunal is a body which investigates and does not decide. It is performing a constitutional function. The tribunal should not therefore be restrained from performing its constitutional function.

(5) The members of the tribunal are appointees of the Yang di-Pertuan Agong. It is clear from the language of art 125 that the Yang di-Pertuan Agong is entitled to the report of C the tribunal. To restrain the tribunal from submitting their report is in effect to restrain the Yang di-Pertuan Agong from receiving the report.

(6) The restraining order is therefore bad in law, invalid and unenforceable as against the Yang di-Pertuan Agong and the tribunal.

D

Cases referred to

1 *Re Ong Eng Guan* [1959] MLJ 92 (refd)
2 *Re Chua Ho Ann* [1963] MLJ 193 (refd)
3 *Haji Salleh bin Jafaruddin* v *Datuk Celestine Ujang & Ors* [1986] 2 MLJ 412 (refd)
4 *Sim Kie Chon* v *Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385 (refd)
E 5 *Superintendent of Pudu Prison & Ors* v *Sim Kie Chon* [1986] 1 MLJ 494 (refd)
6 *Election Commission, Malaysia* v *Abdul Fatah bin Haji Haron* [1987] 2 MLJ 716 (refd)
7 *Re Royal Commission on Thomas* [1980] 1 NZLR 602 (not folld)
8 *Assa Singh* v *Menteri Besar, Johore* [1969] 2 MLJ 30 (folld)

F

Legislation referred to

Courts of Judicature Act 1964
Federal Constitution arts 122(2)(c), 125(3), (5), 145
Rules of the Supreme Court 1980 r 4
Rules of the High Court 1980 O 92 r 4

G *Raja Abdul Aziz Addruse* (*CV Das, P Royan, V George, T Thomas, Z Zakaria* and *D Goon* with him) for the applicant/respondent.

C Abraham (*W Abraham* and *R Lazar* with him) for the interveners.

Tan Sri Abu Talib bin Othman, Attorney General (*T Selventhiranathan*, Senior Federal Counsel with him) for the respondents/applicants.

H

Cur Adv Vult

Hashim Yeop A Sani SCJ (delivering the judgment of the court): The Attorney General, Malaysia, applied by way of notice of motion dated 11 July 1988 to set aside an ex parte order dated 2 July 1988 restraining the tribunal I appointed under art 125(3) of the Federal Constitution from submitting any recommendations, report or advice respecting the inquiry into the representation concerning Tun Dato Haji Mohamed Salleh bin Abas to His Majesty the Yang di-Pertuan Agong until further order. In the notice of motion the grounds relied on for the application were:

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(1) that the Supreme Court had no jurisdiction to make the aforesaid order by reason of the fact that the court sat without the direction of the Chief Justice (Malaya), who was then and still is exercising the powers of the Lord President, as required by s 39(1) of the Courts of Judicature Act 1964; and/or

(2) the making of the aforesaid order was wrong in law in any event in the circumstances of the case.

At the outset of the hearing of the notice of motion, the learned Attorney General informed the court that in view of the fact that there is an originating summons in the High Court asking for a declaration on the interpretation of ss 38 and 39 of the Courts of Judicature Act 1964, he was not proceeding on the first ground but would rely solely on the second ground.

Before we dealt with the notice of motion of the learned Attorney General we had earlier in the proceeding dismissed two applications. The first application was by the five Supreme Court judges who sat in the Supreme Court which issued the ex parte order referred to and who are now suspended by the Yang di-Pertuan Agong under art 125(5) of the Constitution pending reference of the representation made against them to the tribunal to be appointed. Their application was for leave to intervene in the proceeding on the ground that the issues to be determined in the notice of motion of the Attorney General are 'identical' with the issues to be considered by the tribunal yet to be appointed. We refused leave to intervene because the basis of their application to intervene, namely, what interpretation should be given to ss 38 and 39 of the Courts of Judicature Act, is no longer an issue to be decided in this proceeding after the Attorney General stated that he was not proceeding with ground one of his application.

Apart from the fact that the basis of the application to intervene having been removed we also noted that the jurisdiction of the court to allow intervention is entirely discretionary and in our opinion since the tribunal which is yet to be appointed is not a court of law, this is not therefore a proper case to allow leave to intervene.

The second application we refused was the application to strike out the notice of motion of the Attorney General. This application was made by Tun Haji Mohamed Salleh bin Abas who obtained the ex parte order in question on 2 July 1988. The grounds relied on to strike out the notice of motion of the Attorney General were, firstly, that the tribunal constituted under art 125(3) of the Constitution is intended to be independent of the government and therefore the Attorney General is not entitled to represent the members of the tribunal; and, secondly, that the Attorney General had in fact participated in the proceedings of the tribunal representing the government and therefore it is now not competent for him to represent the members of the tribunal. Our short answer to that is that the Attorney General is a public officer under the Constitution. He was required by the rules of procedure of the tribunal to assist the tribunal. Article 145 of the Constitution properly read gives ample power to the Attorney General to represent the government and any body or person performing any functions under the Constitution.

Finally we came to the main notice of motion. The Attorney General submitted that there are two grounds why the ex parte order dated 2 July 1988 was wrong in law. The first ground was that the Supreme Court had no original jurisdiction to entertain applications of that nature since there was no pending appeal before the Supreme Court. The jurisdictions of the Supreme Court are set out in the Constitution and the Courts of Judicature Act 1964. It has no original jurisdiction save in hearing applications in respect of pending appeals. The Attorney General referred to the certified true copies of the notes of proceedings kept by the five Supreme Court judges concerned to show that all of them regarded the application before them as 'Supreme Court Civil Application No 26 of 1988' and only in respect of one certified true copy of the record of the proceeding were the words 'appellate jurisdiction' mentioned.

The second ground of the Attorney General to say that the ex parte order dated 2 July 1988 was wrong in law was that it has been the consistent view of the highest court in this country that a tribunal or body performing constitutional functions under the Constitution should not be prevented from performing their functions and that a body which merely acts as an investigating or advisory body is not amenable to an order of prohibition. He referred to *Re Ong Eng Guan*,[1] *Re Chua Ho Ann*,[2] *Hj Salleh bin Jafaruddin* v *Datuk Celestine Ujang & Ors*,[3] *Sim Kie Chon* v *Superintendent of Pudu Prison & Ors*,[4] *Superintendent of Pudu Prison & Ors* v *Sim Kie Chon*[5] and *Election Commission, Malaysia* v *Abdul Fatah bin Haji Haron*.[6]

Raja Abdul Aziz, on the other hand, relied largely on authorities from foreign jurisdictions, for example *Re Royal Commission on Thomas* case,[7] for the view that the supervisory powers of the courts can be extended even to royal commissions. Raja Abdul Aziz would also seem to rely heavily on r 4 of the Rules of the Supreme Court 1980, involving O 92 r 4 of the Rules of the High Court 1980, as conferring jurisdiction to prevent injustice.

Our unanimous view is as follows.

The Supreme Court is principally an appellate court with appellate jurisdiction (see *Assa Singh* v *Mentri Besar, Johore*[8]) An amendment was made to art 121(2)(c) of the Federal Constitution effective from 1 January 1985. But no substantive law has been passed by Parliament to confer other powers than those already found in the Courts of Judicature Act 1964. Therefore there has been no real change since the *Assa Singh* case.[8]

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The really vital issue here, however, is whether an interim order in the nature that we have before us now should have been made at all. To resolve that we have to go back to basic principles.

The functions of the tribunal appointed under art 125(3) of the Constitution is to inquire and investigate on the representation and then report to the Yang di-Pertuan Agong with any recommendation it may make. The tribunal is a body which investigates and does not decide. It is performing a constitutional function. The tribunal should not therefore be restrained from performing its constitutional function.

Finally, the members of the tribunal are appointees of the Yang di-Pertuan Agong. From the language of art 125 it is clear that the Yang di-Pertuan Agong is entittled to the report of the tribunal. To restrain the tribunal from submitting their report is in effect to restrain His Majesty from receiving the report.

On the above grounds it is our view that the restraining order is therefore bad in law, invalid and unenforceable as against the Yang di-Pertuan Agong and the tribunal.

Order accordingly.

Solicitors: *Shook Lin & Bok*; *Shearn Delamore & Co.*

Reported by *Prof Ahmad Ibrahim*

Appendix

Tun Dato Haji Mohamed Salleh bin Abas v Tan Sri Dato Abdul Hamid bin Omar & Ors

SUPREME COURT (KUALA LUMPUR) – CIVIL APPLICATION NO 26 OF 1988
WAN SULEIMAN, SEAH, MOHAMED AZMI, ABDOOLCADER AND WAN HAMZAH SCJJ
2 JULY 1988

ORDER

This ex parte notice of motion coming on for disposal this day in the presence of Raja Aziz Addruse of counsel for the appellant applicant *and upon hearing* counsel as aforesaid *it is ordered* that the tribunal appointed under art 125(3) of the Federal Constitution be restrained from submitting any recommendations report or advice respecting the enquiry into the matter of the applicant Tun Dato Haji Mohamed Salleh bin Abas to His Majesty the Yang Di-Pertuan Agong until further order.

Given under my hand and the seal of the court this 2nd day of July 1988.

Tan Sri Datuk Wan Suleiman bin Pawan Teh
Supreme Court Judge
Supreme Court, Malaysia
Kuala Lumpur

A

Lim Yak Hua v Eastern & Oriental Hotel (1951) Sdn Bhd

HIGH COURT (PENANG) – CIVIL SUIT NO 23-7-87
EDGAR JOSEPH JR J
14 JULY 1988

B *Contract – Deposit paid under contract of sale and purchase – Non-completion of contract – Return of deposit – Interest – Date from which interest to be calculated*

In this case, the plaintiff had agreed to purchase an apartment in a multi-storey block and had paid the total sum of $183,900 towards the purchase price. The construction of the building C could not be proceeded with due to substructural failure. The plaintiff claimed the return of deposit and interest thereon. It was agreed by the defendant that interest was payable at the rate of 8% pa from the date of accrual of action, that is, 1 January 1986 until date of judgment and thereafter interest at the same rate until realization. The plaintiff contended that interest at the rate of 8% was also payable from the date of each D of the payments of the deposit to the date of judgment and thereafter interest at the same rate on the aggregate of such sums until realization. The dispute was thus limited to the sole question: What is the pre-judgment period in respect of which interest at the agreed rate of 8% was payable?

Held: (1) The principle underlying the award of interest is not E to compensate a plaintiff for any damage done, but for him being kept out of his money.

(2) In an action for recovery of the deposit paid under a contract of sale and purchase, the court has a discretion as to whether or not to allow interest and from what date it should be calculated. Where the non-completion is the fault of the vendor and such fault existed at the date of the contract, as for exam- F ple, not having any title, interest will be allowed from the date of payment as a rule.

(3) In this case the defendant had accepted the opinion of their experts as to the substructural failure most probably on 1 July 1983. The defendant, however, did not inform the plaintiff of this until 16 October 1984 and was therefore guilty of inordinate delay and so to this extent was at fault.

G (4) In the exercise of the court's discretion, interest would be awarded at the agreed rate of 8% pa on the aggregate of the sums deposited from 1 July 1983 until date of judgment and thereafter pursuant to O 42 r 12 of the Rules of the High Court 1980 at the same rate until realization.

Cases referred to

H
1. *The London, Chatham & Dover Railway* v *The South Eastern Railway Co* [1893] AC 429 (folld)
2. *Murtadza bin Mohamed Hassan* v *Chong Swee Pian* [1980] 1 MLJ 216 (refd)
3. *Macdonald* v *Marson* (1913) 33 NZLR 248; 16 NZGLR 330 (refd)
4. *Re Hargreaves & Thompson's Contract* (1886) 32 Ch D 454 (refd)
5. *Turner* v *Marriott* (1867) LR 3 Eq 744 (refd)
6. *Day* v *Singleton* (1899) 2 Ch 320 (refd)
7. *Carlish* v *Salt* [1906] 1 Ch 335 (refd)
8. *Re Bryant & Barningham's Contract* (1890) 44 Ch D 218 (refd)
9. *Weston* v *Savage* (1878-79) 10 Ch D 736 (refd)
10. *Skinner* v *James Syphonic Visible Measures Ltd* (1927) 28 SR NSW 20; 44 WN 156 refd)

I

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REPORT OF THE JUDICIAL CONDUCT TRIBUNAL

IN RE: JUDGE NJ MOTATA

A. INTRODUCTION

1. The Judicial Conduct Tribunal ("Tribunal") appointed in terms of section 19 of the Judicial Service Commission Act, No. 9 of 1994 ("the JSC Act") hereby presents its report on its investigation of the complaints lodged with the Judicial Service Commission ("Commission") against Judge N J Motata ("the Judge").

2. These complaints arise from an incident which occurred shortly after midnight on 17th January 2007 and the manner in which the Judge conducted his defence at the subsequent trial.

3. Briefly the facts and circumstances appear from the trial record are the following: shortly after midnight on 17 January 2007 the Judge was driving his motor vehicle, a Jaguar, on Gleneagles Road, Hurlingham, Johannesburg. This is a public road to which entry was restricted by a boom gate at a point approximately 60 metres from 20 Gleneagles Road. The Judge attempted to execute a U-turn and in the process, he reversed his vehicle through the pre-cast boundary wall of the property at 20 Gleneagles Road, owned by Mr Baird. The property was occupied at the time by Mr Lucky Melk. It appears that Mr Baird arrived at the

scene. The essence of Mr Pretorius' complaint related to the manner in which the Judge conducted his defence at the trial as being inconsistent with the ethics of a judicial officer.

7. These complaints were referred to the Judicial Conduct Committee of the Commission ("the Committee"). In its deliberations the Committee expressed the view that the conduct complained of (against the Judge) if found to have been committed (by the Judge) constitutes gross misconduct. The Committee made the point that, viewed out of context, a conviction for driving under the influence may not constitute gross misconduct, and that a judge may plead not guilty thereto like anyone else. However, a judge may not testify falsely, or in cross-examination put a false or misleading statement to a witness or the court. This is a rule that applies to all officers of the court. A judge bears an even higher duty.

8. With regard to the complaint lodged by AfriForum, the Committee concluded that the complaint, if established, will *prima facie* indicate gross misconduct by the Judge. In arriving at this decision, the Committee considered, amongst others, the following factors:

8.1. The Judge crashed his car into a wall of a house owned by Mr Baird and the remarks complained of were made in the context of that incident.

8.2. It is common cause that the trial court found that the statements complained of were indeed made. This finding was confirmed on Appeal, and there was no reasonable explanation from the Judge.

8.3. The Judge has been convicted of driving a motor vehicle under the influence of intoxicating liquor.

8.4. There are no further Appeal proceedings that are pending.

In the light of the above, of the Committee, in terms of section 16(4)(b) of the JSC Act, recommended to the Commission that the complaint against the Judge be investigated by a Tribunal.

9. The Tribunal convened timeously. However, due to various intervening court proceedings the Tribunal was required to postpone its activities pending the final determination of such proceedings.

10. On 17 January 2018 the Tribunal convened at the Offices of the Chief Justice to commence the investigation.

B. THE TERMS OF REFERENCE OF THE TRIBUNAL

11. The Tribunal's written Terms of Reference are annexed hereto as Annexure A. The salient provisions are as follows:

"PURPOSE

3. *The Tribunal is appointed to investigate and report on the complaints lodged with the Judicial Service Commission (Commission) by AfriForum and Advocate G C Pretorius SC (complainants), against Judge N J Motata of the North Gauteng High Court (respondent). The complaints arose from an incident that occurred on 06 January 2007 when the respondent was involved in a motor vehicle accident on Gleneagles Road in Hurlingham, Johannesburg, in which he crashed into a wall belonging to Mr Baird. The essence of the complaint by AfriForum is that the respondent, whilst at the scene of the said accident, allegedly made some racist remarks against Mr Baird, such as "No boer is going to undermine me . . . this used to be a white man's land, even if they have more land. . . South Africa belongs to us. We are ruling South Africa." These utterances were later confirmed in Court to have indeed been made. AfriForum contended that these statements made by the respondents constituted gross misconduct.*

4. *Advocate Pretorius' complaint relates to the manner in which the respondent pleaded to the charges he faced at his criminal trial in which he denied that he was driving a motor vehicle under the influence of alcohol and that he conducted his defence in a manner inconsistent with the ethics of judicial office. The complainant averred that it is one thing for an accused person to put the State to the proof of its case, but it is an entirely different matter for a Judge to publicly state a fact that he knows is false, build a defence on such an untruth and then accuse witnesses of manipulating evidence and being racist. ...*

6. *The Tribunal shall investigate and make findings and report on:*

   6.1 *whether the statements made by the respondent at the scene of the accident can be classified as racist;*

   6.2 *If so, whether these statements made by the respondent at the scene of the accident render him guilty of gross misconduct, as contemplated in Section 177 of the Constitution; and*

> *6.3 whether the manner in which the respondent conducted his defence during his criminal trial is inconsistent with the ethics of the judicial office, thereby rendering him guilty of gross misconduct, as contemplated in Section 177 of the Constitution."*

C. PROCEEDINGS BEFORE THE TRIBUNAL

12. Ms Thenga, the evidence leader, had prepared a charge sheet setting out the charges which in her opinion the Judge should answer to.

13. At the commencement Advocate Skosana, who represented the Judge at the hearing, objected to the contents of the charge sheet. The main thrust of Advocate Skosana's objection was that the charge sheet contained allegations which were outside the Tribunal's Terms of Reference. (The objection is discussed and dealt with from page 4 to page 10 of the Transcript of the proceedings before the Tribunal ("the Transcript")). The Tribunal assured Advocate Skosana that, insofar as portions of the charge sheet may be inconsistent with the terms of reference, they would be disregarded, and the Tribunal would stay within the confines of the terms of reference in its investigations, report and recommendations to the Commission. Advocate Skosana agreed to the Tribunal going forward on this basis.

D. THE EVIDENCE

14. It was common cause at the commencement of the proceedings that the Tribunal was bound by the findings of fact and law made by the trial court which convicted the Judge of driving under the influence of alcohol and the findings of the court on appeal. All parties were in agreement that the record of criminal proceedings ("the trial record") and appeal record were a true reflection of the proceedings in those courts.

15. Notwithstanding this, it was open to the parties to present evidence before the Tribunal. On 17 January 2018, the Tribunal proceeded to hear evidence from three witnesses: Mr Kriel (on behalf of AfriForum), Mr Pretorius (an advocate at the Johannesburg Bar) and Judge Motata.

16. It is common cause that the trial court found that the Judge uttered the following words at the scene of the incident [1]: -

> " "<u>MR MOTATA</u>: *Yes, but you know all of you, let me tell you most of us this is our world, it is not the world of the boers. Even if they can have big bodies, South Africa is ours.*
>
> <u>WITNESS 1:</u> *But sir, the problems is you drove into his wall.*
>
> <u>MR MOTATA:</u> *Even if I can drive into it I will pay it. It is not a problem that I can pay for the wall but he must not criticize me. There is no boer who will criticize me, (indistinct) what he thinks.*
>
> <u>WITNESS 1:</u> *But Mr you of the law person.*

---

[1] Exhibit 'C' of trial record.

<u>MR MOTATA:</u> Yes I am the man of the law, I am saying if I knocked his wall ... (intervenes).

<u>WITNESS 1:</u> Do you know the law of ... (intervenes).

<u>MR MOTATA:</u> Yes I know the law. Let me go to the law. I do not care about him. Yes he must not look at me as a black man. Let me go before the law. That is how much I owe him for the wall which I broke down.

<u>WITNESS 1:</u> But then it is not good to insult him.

<u>MR MOTATA:</u> Fuck him, fuck him, he must not insult me. I say fuck him. Anybody who insults me, I say fuck you."

17. Mr Baird was vigorously cross-examined over a number of days and the trial court found him to be a credible witness.

18. Mr Baird was the main focus of the Judge's defence. In the heads of argument presented to the trial court on the Judge's behalf, it was submitted that Mr Baird was biased, unreliable, dishonest and above all that he was a racist. In the course of the trial, it was put to Mr Baird that the Judge would deny that he was drunk or under the influence at the time when the incident occurred at Gleneagles Road.

19. It is against this background that the three complaints against the Judge have to be examined.

(a) Viva voce evidence before the Tribunal

(i) Mr Kriel

19. Mr Kriel, who testified on behalf of the complainant AfriForum, explained why the remarks made by the Judge at the scene should be regarded as racist. In his evidence he stated the following [2]:

> " *In accepting the above quoted utterances, we are of the following view: The word "boer" and even if they have big bodies" is meant to depict in an absolute sense white people, as being inherently racist, bullyish and of a specific physical appearance, have no regard to other persons. They are unsophisticated, un-repented, the ever-oppressor and an unethical immoral person, unworthy of recognition to show any regard to whatsoever. To define in one brush people based on their ethnicity in a particular way is unfortunate and based specifically on race.*
>
> *Furthermore, with reference to "boers", Judge Motata stated that this is our world, not the world of the boers, thereby commenting his view that white people are not part of South Africa, not to be recognised as equal citizens and should therefore be disregarded as a whole.*
>
> *Judge Motata further states "they must not criticise me. There is no boer who will criticise me". Again, regardless of his conduct, which is deplorable to say the least, he is not to be criticised by a white person and he actually removes [the right] of the person to criticise, simply because of who that person is. Throughout the exchange Judge Motata repeatedly swore at Mr Baird and use the "f" word in all its*

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[2] At pages 17 & 18 of the transcript.

forms, adjective and adverb and known and repeatedly insulted Mr Baird by saying the "f" word.

I think this is relevant, because it creates the context, even though there is an objection to the word being put in the charge sheet. I think it's relative towards an attitude of this regard based on race. The repeated use of the "f" word is of our view consistent with his apparent disdain towards the so-called boers, as stated above, being unwanted people in South Africa.

I reiterate, this rant of Judge Motata was solely based upon colour of the skin of Mr Baird, nothing else whatsoever. We believe there is no evidence to suggest any racism or provocation on the part

of Mr Baird or that Mr Baird was luring Judge Motata to make these degrading statements."

20. Under cross-examination by Advocate Skosana it was put to Mr Kriel that the remarks that the Judge made were because of him being provoked by what Mr Baird had said at the scene. That is to say it was alleged that Mr Baird had referred to the Judge "as a drunken kaffir".

21. Advocate Skosana put it to Mr Kriel that:

"There are just two aspects, which relate to merely the version of the respondent. Mr Kriel, I just want to put it to you or give you the version of Judge Motata that he will say later and testify later that on that day he was provoked and mainly the provocation was caused by the fact that he had been there with a certain Mr Melk, the tenant, and they were waiting for Mr Baird and when Mr Baird arrived, the first thing that he did, he took the key of his car.

So, that was part of the cause for the provocation, and in any event, as I have referred to the record, the ministry (sic) had found that he was indeed provoked. Do you want to comment on that?" [3]

22. It was further suggested:

"... and the second part, which is related, is that pursuant to that provocation, he then said these words, which he was saying to them, directed at the police officers who were there who were black. He was not talking to Mr Baird, hence he spoke in Sesotho." [4]

23. The other salient points of Mr Kriel's evidence were that:

- There is a concern that those appearing before the judge would be judged according to who they are, rather than on the merits of their cases.

- These utterances caused them (members of AfriForum) to believe that the Judge is "prejudiced on a racial basis".

(ii) Mr Pretorius

24. Mr Pretorius, an Advocate at the Johannesburg Bar complained that the manner in which the Judge advanced his defence at the criminal trial was inconsistent with the ethics of a judicial officer. Mr Pretorius contended that the Judge had denied he was under the influence of alcohol whilst driving his motor vehicle and that this denial was dishonestly advanced in the face of overwhelming

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3 At page 38 of the transcript.

4 At page 38 and 39 of the transcript.

evidence which clearly demonstrated that the Judge was indeed under the influence of alcohol.

25. In his testimony before the Tribunal Mr Pretorius elaborated on his complaint and referred to correspondence between him and the Committee and the Commission:

"All I want to add to my original written complaint is that I have yet to meet anyone who does not regard the Judge's conduct as wholly inappropriate and incompatible with the office of a Judge. His conduct not only caused the office to be the object of ridicule, but his false denial that he was drunk strikes at the heart of the judiciary's integrity. It is one thing for an accused person to put the state to the proof of its case. It's entirely a different position for a Judge to publicly state a fact which he knows is false, build a defence on such an untruth and then accuse witnesses of manipulating evidence and being racist." [5]

26. According to Mr Pretorius the Judge should be disqualified from being a judge on the basis only that he is mentioned in Juta's Digest of African Law, 4 March 2011, at page 4 as a convicted accused.

27. The other salient points of Mr Pretorius's evidence were that:

- The Judge's public protestations that he was not drunk contradict the finding by both the trial court and the appeal court that he had in fact been drunk.

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[5] At page 44 of the transcript.

- What was put to the state witnesses was that the Judge was not drunk or under the influence of alcohol and he would testify to that effect. However, he never took the stand.

28. It is to be noted that the Judge never responded in writing to Mr Pretorius' complaint.

(iii) Judge Motata

29. The Judge in his evidence responded to aspects of Mr Pretorius' complaint and explained why the defence was conducted in the manner as it appears in the trial record.

30. When asked by his counsel, Advocate Skosana:

> " *Now, I just want to, perhaps let's start as a point. What did you tell your counsel when you were consulting about this?*
>
> *Judge Motata: I told him that I don't consider myself drunk, because I had only 2 glasses of wine and that's below the limit.*" [6]

31. The Judge's stance before the Tribunal was that he did not consider himself to be under the influence of alcohol because he had only two glasses of wine that evening between 7 and 11pm. The Judge explained that when the incident occurred at Gleneagles Road he "did not consider himself to have been drunk". It was this belief that caused him to instruct his counsel at the trial, Mr Dorfling,

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[6] At page 89 of the transcript.

to put to the court "the accused will deny being drunk or under the influence at the time of driving his motor car".

32. It was explained on behalf of the Judge that although counsel had been instructed that he would deny being under the influence of alcohol, how the defence would be conducted was left largely for counsel to determine. It was contended that it was perfectly permissible for the Judge to have conducted his defence in the manner in which he did.

33. In this regard, it was argued on behalf of the Judge, that he could not have stopped counsel from putting incorrect versions to a witness because earlier in the trial the Magistrate had remonstrated with him for communicating with his counsel and he felt constrained to keep quiet as a consequence.

34. In argument it was submitted on behalf of the Judge that the word "boer" is neutral. Whether the word could be considered racist is dependent upon the context in which it was used. At the time when the Judge used the word it was not addressed to Mr Baird but to the police officers at the scene. The Judge was speaking in SeTswana and therefore in this context his remarks were not racist.

35. When counsel was asked, why then did the Judge raise the question of race, if he was not speaking to Mr Baird? It was submitted that the word "boer" is neutral. The word on its own does not have racial connotations. It had to be placed in context and it is the context which determines whether the use of the word "boer" is racial or not. In this matter the word was spoken in SeTswana, it was not

addressed to Mr Baird but to the traffic officers that were at the scene. It was therefore contended that the remarks though vulgar were not racist.

36. It was suggested to Advocate Skosana that there was no necessity for the Judge to make reference to Mr Baird's race. In response it was submitted that the Judge had been demeaned and angered by Mr Baird's conduct and what the Judge meant to convey by the remarks he made was "no white person is going to treat me like this."

37. In response to questions about whether the Judicial Code of Ethics ("the Code") which was issued on 18 October 2012 was applicable to his conduct, the Judge felt this was not applicable to him, as by this stage he had already been placed on long leave.

E. Discussion of the Evidence

(a) Intoxication

38. Even though the trial court found the Judge was under the influence of alcohol and this was confirmed on appeal, the Judge maintained that he had only had two glasses of wine to drink between the hours of 7 and 11pm. He maintained the stance that he did not consider himself to be under the influence of alcohol. All the evidence before the Tribunal points to the fact that the Judge was indeed intoxicated.

(b) ***Vulgarity***

39. It is patent from the trial record that the utterances made by the Judge were replete with vulgarity. This in addition to the other considerations may well have in influence in determining whether the Judge is a fit and proper person to continue as a judicial officer.

(c) Racist language

40. Although under the influence of alcohol, something which the Judge denies, and assuming in his favour that he had been provoked by Mr Baird, the remarks made by the Judge in the context of what had occurred were gratuitous, unjustified and divisive. At the time when the Judge made the remarks complained of, the police were on the scene. It is the Judge's stance that he addressed these remarks to the police at the scene. This is not the apparent source of his alleged provocation. The Judge was uncooperative and did not comply with the instructions given to him by the police officers. He addressed the remarks and his utterances to the police officers in SeSotho/SeTswana. It appears that the Judge was attempting to gain the sympathy of the police officers and alienate them from Mr Baird. It is for this reason that the Judge's remarks can be regarded as self-serving.

41. '*Racism*' is defined in the Merriman Dictionary as '*a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race*'.

42. The utterances made by the Judge, exhibit the traits set out in this definition. The first statement "no boer is going to undermine me" refers to a specific group of

people, the white Afrikaners. In essence the Judge believes that this group of people is not qualified to criticise or undermine him (or is not worthy to do so). In this sense he used race as a primary determinant for who he would accept criticism from. His attempts to isolate the term "leburu" as the standard term of reference to this group of people, does not take his case any further. The statement must be considered in the context in which he uttered it. His general conduct and other statements form that context.

43. Other statements made by the Judge, such as: "this used to be a white man's land ... South Africa belongs to us ... this is our world (country) ... not the world (country) of the boers ... even if they have more land/bodies ... [and that] the police officers should not support the white man" become a racially charged theme which the Judge chose to use in dealing with the situation in which he found himself. The use of the sensitive issue of the South African land which "used to be owned by the white Afrikaners and now is ours" also shows a deliberate racially motivated strategy chosen by the Judge to get the police officers on his side and to alienate Mr Baird.

44. It was contended on the Judge's behalf that the Tribunal proceedings are only concerned with the allegedly racist words quoted above and not any other words that appear in the transcript of the criminal trial. This however cannot be correct, given that the terms of reference, for example, "allegedly made racist remarks against Mr Baird, <u>such as</u> *"No boer is going to undermine me ..."* (emphasis added). It is evident that the quoted words were merely quoted as an example.

What is important is the investigation and consideration of the Judge's conduct at the scene of the accident.

(d) Provocation

45. The Judge justified his conduct and utterances and it was argued before us on the basis that Mr Baird had provoked and angered him by insulting him (calling him a "drunken k…") and taking his car keys from him.

46. While the trial court found that he was provoked, it did not set out the provocative conduct. However, the Judge's evidence that he was provoked into making these utterances by being insulted is not borne out by the record. And the fact that at no stage in the exchange of 'pleadings' in these judicial conduct proceedings did the Judge mention that he was provoked by the use of the "k word".

47. But even if he had been provoked, that does not justify his conduct of manipulating race to isolate Mr Baird and to get the police on his side. Further, if he was provoked by Mr Baird he would have, in all likelihood directed his response to Mr Baird and not to the police officers. In this sense, his defence that he was responding to provocation does not make sense. Even if he was provoked, perhaps by the fact that his car keys were taken from him, restraint is an essential trait in the character of a judicial officer. His reaction far exceeded the provocation.

(e) Whether such racism constitutes gross misconduct?

48. Our Constitution protects South African citizens against racism and guarantees their right to dignity. Our judges are custodians of these rights. Post-apartheid, our courts have consistently decried persistent racist conduct and affirmed the right of all South African citizens to dignity. Racist conduct on the part of a judge therefore strikes at the heart of judicial integrity and impartiality, particularly against the background of South Africa's apartheid history. Accordingly, racist conduct on the part of a judge constitutes gross misconduct.

49. It is so that the Code was promulgated in 2012 when the Judge was on special leave, having been so placed in relation with this matter. However, the promulgation of the Code essentially codified ethical and legal norms that had been in existence prior to 2012. The further contention by the Judge that the incident happened in his private time and that he should be judged as a private citizen is wrong. Even before the promulgation of the Code, South African Judges had been guided by ethical considerations in and outside the performance of judicial duties.

50. The test for whether conduct constitutes gross misconduct is an objective one.

51. Section 177 of the Constitution was in existence long before the enactment of the Code, stipulating gross misconduct as a ground for removal of a judge. Sentiments which preceded the promulgation of the Code included the following:

"To fulfil [its] Constitutional Role the judiciary needs public acceptance of its moral authority and integrity, the real source of its power. Accordingly the Constitution commands all state organs to assist and protect the independence,

impartiality, dignity, and accessibility of the judiciary. But it is even more important that judges at all times seek to maintain, protect and enhance the status of the judiciary. To that end they should be sensitive to the ethical rules which govern their activities and behaviour both on and off the bench." [7]

52. In its preamble, the Code refers to the necessity for the judiciary to conform to ethical standards that are generally accepted, more particularly, as set out in the Bangalore Principles of Judicial Conduct (2001) and as revised at the Hague (2002).

53. It will be evident from the passages quoted that impartiality, dignity and acting without favour or prejudice are key elements underpinning our courts and judicial conduct. Conduct which militates against such attributes must amount to gross misconduct because such conduct would undermine these key values and attributes necessary to ensure Judicial Authority. [8]

(f) Dishonesty in the conduct of the criminal trial is inconsistent with the ethics of the judicial office

54. As already stated, the essence of Mr Pretorius's complaint is that the manner in which the Judge conducted his defence during his criminal trial is inconsistent with the ethics of a judicial officer, thereby rendering him guilty of gross

[7] Judicial Ethics in South Africa – Issued by the Chief Justice, the President of the Constitutional Court and the Judges President of the different High Courts and the Labour Appeal Court, and the President of the Land Claims Court, March 2000: (http://www.sundaytimes.co.za/2000/04/16/ politics/pol16.htmy

[8] See Section 165(2) of the Constitution.

misconduct. In his response to this complaint, the Judge stated that he did not consider himself to be drunk. Hence he instructed his counsel to put to the witness (Mr Baird): "The accused will deny being drunk or under the influence at the time of driving his motor car."

55. This response by the Judge does not address the issue as to whether the manner in which he conducted his defence is inconsistent with the ethics of a judicial officer. The question that arises in regard to this issue is did the Judge intentionally advance a defence which he knew to be untrue? It may well be that at the time when the incident occurred and shortly thereafter, the Judge may well not have considered himself to be under the influence of alcohol. However, the material time is not when the incident occurred, but rather when the Judge was conducting his defence. By then, not only did he have available to him all the evidence and statements made by the witnesses who were present, but he had also had the time to reflect on his conduct as well. This is the stage at which it must be determined whether the manner in which he conducted his defence is inconsistent with a Judge's ethical duty.

56. Before instructing counsel, the Judge must have considered *inter alia*, the evidence not only of Mr Baird but the evidence of both the visual and audio recordings made at the locality at the time of the incident. No doubt, the Judge together with his legal representatives must have considered the evidence of witnesses other than Mr Baird as well. All the admissible evidence which would be placed before the court which the Judge had access to before he pleaded, must

have made it clear that a denial of intoxication was against all prevailing evidence and could not be true. The response by the Judge that he had no control over questions put by his counsel to state witnesses cannot be sustained. That being so, the conclusion to be drawn is that the Judge knowingly conducted a defence which he knew lacked integrity.

57. The office of a Judge is a very respectable office. So, must be those who hold it. A Judge's conduct, in and out of court, should not dishonour that high office. Impeccable moral and ethical standing is a crucial hallmark of such a public office. The criminal trial of Judge Motata has placed his conduct squarely within the public domain. A question to be asked is what would be the attitude of an ordinary person, let alone a person of Afrikaner descent, if she/he is to be tried before Judge Motata?

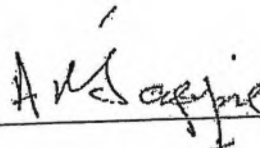
F. CONCLUSION

58. This Tribunal has come to the conclusion that Judge Motata's conduct at the scene of his motor accident and the remarks he made were racist and thus impinge on and are prejudicial to the impartiality and dignity of the courts.

59. Similarly, the lack of integrity in the manner in which Judge Motata allowed his defence to be conducted at his trial, in our view is incompatible with or unbecoming of the holding of judicial office.

60. As to whether the provisions of section 177(1)(a) of the Constitution is to be invoked, the question to be asked is if Judge Motata is to retain the office of a judicial officer, would this negatively affect the public confidence in the justice system? If the answer is in the affirmative, as we suggest it is, then in the discharge of our mandate we recommend to the Judicial Service Commission that the provisions of section 177(1)(a) of the Constitution be invoked in this instance.

Dated this 12th day of April 2018.



Chairperson of the Judicial Conduct Tribunal

RAHSIA

HELENSUZMAN
FOUNDATION

Judging the Judges

Jade Weiner | May 10, 2018

(3)

This Brief considers circumstances in which judges can be impeached for gross misconduct specifically considering the case of Judge Nkola Motata

INTRODUCTION

This brief will evaluate at the Constitution's mechanisms for judicial impeachment, and consider specific instances where this section 177 provision has been invoked. In particular, the brief will review the case of Judge Motata and the implications of his actions. A central question, here, would relate to whether or not the inherent bias of his racist remarks taint his judgments already handed down?

JUDICIAL APPOINTMENT AND IMPEACHMENT

The Constitution of the Republic of South Africa Act 8 of 106 ("Constitution") prescribes the appointment of judicial officers in section 174. Requirements include, being a South African citizen, having the necessary qualifications and most importantly, for the purposes of this brief, a fit and proper person. What exactly constitutes a fit and proper person is not defined or described in legislation or regulations. Case law has shed some light on the accepted meaning in the context of public officials and legal officers. However, the standard applied is not absolute and prescriptive. It is commonly accepted that in order to be "fit and proper" a person must show integrity, reliability and honesty. In 1998 the late Chief Justice Ismail Mahomed introduced the guidelines to elaborate on the section 174 requirements, included in these is the necessity for the applicant to be a person of integrity. "There can be absolutely no question but that an untruthful person is not a fit and proper person..."[1] [http://www.MY-AWSOME-SITE.com/#_ftn1]

Before a Judge is appointed, he or she must go through rigorous interviews by the Judicial Service Commission ("JSC").[2] [http://www.MY-AWSOME-SITE.com/#_ftn2] The members of the JSC carry a significant constitutional obligation to recommend fit and proper candidates for judicial office.[3] [http://www.MY-AWSOME-SITE.com/#_ftn3] Further, section 174(8) of the Constitution provides that before judicial officers begin to perform their functions, they must take an oath, or affirm, in accordance with paragraph 6(1) of Schedule 2, that they "will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law." We see from the above that judicial appointment is stringently contingent upon the candidate being independent, impartial and fair, with a commitment to constitutional values.[4] [http://www.MY-AWSOME-SITE.com/#_ftn4]

The Judicial Service Commission Act 9 of 1994 ("JSC Act") contains the Code of Judicial Conduct ("Code") which serves as the standard of judicial conduct. Judges must adhere to this Code and any wilful or grossly negligent breach of the Code may amount to misconduct which will lead to disciplinary action in terms of section 14 of the JSC Act.

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Relevant articles of the Code that apply to the Motata case include:
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- Article 4(a): a Judge must uphold the integrity of the judiciary.
- Article 5(1): a Judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office. "A Judge behaves in his or her professional and private life in a manner that enhances public trust in, or respect for, the judiciary and the judicial system."
- Article 7: a Judge must at all times (a) personally avoid and dissociate him- or herself from comments or conduct by persons'subject to his or her control, that are racist, sexist or otherwise manifest discrimination.

Section 177 of the Constitution governs the removal of a Judge. A Judge may be removed on grounds which include incapacity, gross incompetence, or gross misconduct.

As per the 2010 amendments to JSC Act, the JSC's Judicial Conduct Committee ("Committee") comprises of the Chief Justice (the Chairperson of the Committee), the Deputy Chief Justice and four Judges designated by the Chief Justice. The Chairperson of the Committee will refer a complaint for investigation or recommend to the full JSC that a tribunal investigate the complaint against a Judge. If the Committee decides that the conduct may warrant impeachment, then a Judicial Conduct Tribunal ("Tribunal") will be convened and, based on the Tribunal's report, the JSC will decide whether the criteria for impeachment are met.[5] [http://www.MY-AWSOME-SITE.com/#_ftn5] If the Tribunal finds that the Judge should be impeached, it will then refer the finding to the National Assembly. The National Assembly must have a two thirds majority vote[6] [http://www.MY-AWSOME-SITE.com/#_ftn6] for impeachment, at which point the Judge is formally removed from office by the President. If the National Assembly does not vote in favour of impeachment the Judge may still be sanctioned for lesser misconduct. Such punitive measures include an order for an apology, a reprimand, counselling or training.

THE TRIBUNAL IN ACTION

At the time of writing, seven judges whose cases have dragged on for an inordinate amount of time, face impeachment. Noteworthy cases include the Judge Hlope saga, the Judge Jansen matter and, most recently, the Judge Motata case.

In 2016, the Constitutional Court dismissed an appeal from the Supreme Court of Appeal that ordered the continuance of an investigation by the Judicial Conduct Tribunal in relation to charges of misconduct against Western Cape Judge President John Hlophe. Hlophe was accused of trying to influence two Constitutional Court judges in 2008. The matter still remains unresolved.

Judge Mabel Jansen was accused of making racist remarks in 2015 on a Facebook post. The Judge resigned after the JSC decided that she would have to face the Tribunal.

In 2007, Judge Nkola Motata drunkenly drove his car into a wall. At the scene of the crime, the Judge began to hurl racist remarks at a state witness and two female Metro Police officers. Beyond this, the Judge conducted his defence at the trial dishonestly. In 2018, the Tribunal finally heard the case of two complaints of gross misconduct arising from the crash. The Tribunal's 12 April 2018 report held that the drunk driving conviction for which Motata was charged, was not enough to trigger a finding of gross misconduct. The Tribunal focused on i) how he defended himself in his criminal trial and ii) the charge of racism. The Judge instructed his defence lawyer to present the case that he was not drunk. The tribunal concluded that the Judge had conducted a defence which he knew to lack integrity. Further, the Tribunal held that the comment "No boer is going to undermine me... this used to be a white man's land, even if they have more land... South Africa

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belongs to us. We are ruling South Africa" was in fact racist and constituted gross misconduct. The Tribunal has made the recommendation to the JSC that section 177(1)(a) of the Constitution be invoked, which would result in the Judge being impeached if the National Assembly so decides.

EFFECTIVENESS OF THE COMMISSION AND TRIBUNAL

The effectiveness of such complaint, investigative and impeachment procedures is questionable. At the time of writing this brief, seven Judges are facing the Tribunal including Judges Ferdi Preller (retired), Ntsikelelo Poswa (medically boarded), George Webster (retired) and Moses Mavundla (still at work) for long-outstanding judgments. Free State Judge Shamin Ebrahim (medically boarded) faces a complaint for failing to disclose her interests as required under the JSC Act regulations. Only the case of Judge Jansen, on account of her resignation, has been resolved.

A contributory reason for the delay is that some of the incidents resulting in the Tribunal consideration occurred before the 2010 JSC Amendment Act. It was argued that the cases that pre-dated the amended procedure must be dealt with, not by the Tribunal, but by the entire JSC - as was the procedure before the amendment was affected. Constitutional Court Justices Bess Nkabinde and Chris Jafta challenged the amendment on a technical basis because it breached the separation of powers doctrine.[7] [http://www.MY-AWSOME-SITE.com/#_ftn7] The Supreme Court of Appeal dismissed the appeal from the Gauteng Local Division of the High Court, Johannesburg which had dismissed the challenge. The dismissal of the appeal to the Constitutional Court brought the matter to finality. The decision removes uncertainty surrounding the constitutionality of the amendment and unblocks the obstruction preventing the Tribunal doing its work. It is hoped that, granted this progress, the consideration of matters will become more expeditious. It is an alarming abuse of public funds to pay these Judges for special leave if their cases are delayed for a long time. Until he retired last year, Judge Motata was on special leave — at a cost of R14-million to taxpayers.[8] [http://www.MY-AWSOME-SITE.com/#_ftn8]

Since Judges are appointed for life, the consequences of impeachment are still a threat even if they have retired.

THE IMPORTANCE OF IMPARTIALITY

It is interesting to note the problems of jury bias, including that of racism, in countries such as the United States. Racism is a punishable offense, and a person convicted of a hate crime, which includes a crime motivated by racism, can be convicted of a felony – a crime punishable by a prison sentence of more than one year. If a person is convicted of or is subject to felony charges they may not serve as a member of a jury. A jury must be free from overt racial prejudice. In terms of the South African situation where a Judge is the only person responsible for adjudicating a case, it is even more pertinent that such induvial must not exhibit racial prejudice.

In addition to the obvious prejudices inherent in a racist judgment, the misconduct goes further to taint judicial credibility. "Judicial misconduct undermines the esteem with which society holds the judiciary, and can only weaken the willingness of the public to accept judicial decisions. This is why it is critical that we hold judges to the highest ethical standards and come down hard if they fail to meet these standards. When misconduct occurs, judicial disciplinary procedures must be credible, effective and swiftly implemented".[9] [http://www.MY-AWSOME-SITE.com/#_ftn9] Other than disciplinary procedures against the Judge, what are the consequences for the judgments already handed down? Are these judgments irreparably tainted? Should they be reviewed or even set aside?

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CONCLUSION

OYAL HIGHNESS

Sultan
lan Shah

Tribute

We must ever be mindful that written constitutions are mere parchment pieces.

It is important that there must be, in the hearts and minds of those who are entrusted to administer and uphold the Constitution, a belief in the values and principles that animate the august document.

Text of Opening Address delivered at the 14th Malaysian Law Conference, Kuala Lumpur Convention Centre, 29 October 2007.

Fifty Years of Constitutionalism and the Rule of Law

His Royal Highness Sultan Azlan Shah
Sultan of Perak Darul Ridzuan

This year marks the 50th year of our nation's Independence. It is also the 50th year of our Merdeka Constitution.

Malaysia and its people have every reason to celebrate this joyous occasion as the country prospers as a constitutional democracy with a constitutional monarchy in the form as established by the Merdeka Constitution in 1957.

Not all countries that achieved their freedom at the end of the colonial period are today able to celebrate their independence with pride. Some are under military rule, whilst others have had their institutions undermined or even abolished.

The 50th anniversary of our Independence is therefore an appropriate moment for all of us to reflect upon the strength of our constitutional system. As we rejoice in our success, it is important to be alert to the pitfalls of failure if proper regard is not given to our constitutional mechanisms.

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We must ever be mindful that written constitutions are mere parchment pieces. It is important that there must be, in the hearts and minds of those who are entrusted to administer and uphold the Constitution, a belief in the values and principles that animate the august document.

I had occasion to observe when sitting in the Federal Court in 1977 that "the Constitution is not a mere collection of pious platitudes". I spoke then of the three essential features of our Constitution. I said:

> 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.[1]

The prescription that "we are a government of laws, not of men" describes the basic principle that runs through our entire Constitution—the principle of the Rule of Law.

The Rule of Law is the defining feature of democratic government. In delivering the 11th Tunku Abdul Rahman

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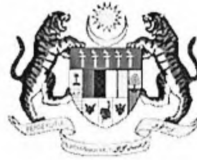
APPENDIX 16

JPA(BPO)(S)215/65 Klt.8 s.k4 (128)   No. Siri :



KERAJAAN MALAYSIA

PEKELILING PERKHIDMATAN BILANGAN 6 TAHUN 2010

PENETAPAN KETUA PERKHIDMATAN BAGI SKIM PERKHIDMATAN YANG SEDANG BERKUAT KUASA DALAM PERKHIDMATAN AWAM PERSEKUTUAN

TUJUAN

1. Pekeliling perkhidmatan ini bertujuan untuk memaklumkan keputusan kerajaan mengenai penetapan Ketua Perkhidmatan bagi 243 skim perkhidmatan yang sedang berkuat kuasa dalam Perkhidmatan Awam Persekutuan.

LATAR BELAKANG

2. Pada masa ini terdapat 243 skim perkhidmatan diwujudkan perjawatannya dalam Perkhidmatan Awam Persekutuan (PAP). Daripada jumlah tersebut, sebanyak 26 skim perkhidmatan telah ditetapkan Ketua Perkhidmatan melalui Pekeliling Perkhidmatan, Surat Pekeliling Perkhidmatan atau Surat Ketua Pengarah Perkhidmatan Awam manakala baki 217 skim perkhidmatan tidak ditetapkan Ketua Perkhidmatannya. Peranan sebagai Ketua Perkhidmatan bagi skim perkhidmatan yang telah ditetapkan Ketua Perkhidmatan dilaksanakan oleh Ketua Perkhidmatan masing-masing manakala peranan Ketua Perkhidmatan bagi skim

perkhidmatan yang tidak ditetapkan Ketua Perkhidmatan dilaksana berdasarkan skop fungsi agensi ataupun Ketua Jabatan masing-masing.

3. Penetapan Ketua Perkhidmatan ini merupakan salah satu langkah kerajaan untuk menambah baik peluang kemajuan kerjaya dan mobiliti pegawai di samping melengkapkan pengetahuan serta kemahiran yang relevan dengan kepelbagaian persekitaran dan keperluan perkhidmatan. Selain itu, penetapan Ketua Perkhidmatan yang khusus akan membolehkan Ketua Perkhidmatan memainkan peranan dengan lebih efektif dan perkhidmatan pegawai dapat diuruskan secara holistik.

KETUA PERKHIDMATAN YANG BAHARU

4. Dengan berkuatkuasanya pekeliling perkhidmatan ini, kuat kuasa penetapan Ketua Perkhidmatan bagi 26 skim perkhidmatan seperti di **Lampiran A** adalah kekal mengikut Ketua Perkhidmatan melalui Pekeliling Perkhidmatan, Surat Pekeliling Perkhidmatan atau Surat Ketua Pengarah Perkhidmatan Awam yang telah dikeluarkan sebelum ini **kecuali** skim perkhidmatan Pembantu Pengurusan Murid, Pembantu Tadbir (Perkeranian/Operasi), Pegawai Khidmat Pelanggan dan Pembantu Tadbir (Kewangan) di Kementerian Pelajaran Malaysia yang telah ditetapkan Ketua Pengarah Pelajaran Malaysia sebagai Ketua Perkhidmatan baharu. Ketua Perkhidmatan bagi 217 skim perkhidmatan lain yang sedang berkuat kuasa dalam Perkhidmatan Awam Persekutuan adalah seperti di **Lampiran B**.

PERANAN KETUA PERKHIDMATAN

5. Ketua Perkhidmatan adalah dipertanggungjawabkan untuk melaksana empat (4) fungsi utama seperti berikut:

(a) perancangan **keperluan sumber manusia**, pengurusan **perjawatan dan penambahbaikan skim perkhidmatan**;

(b) pengendalian **urusan personel dan perkhidmatan**;

(c) perancangan dan pelaksanaan **pelan latihan**; dan

(d) perancangan dan pelaksanaan **program kemajuan kerjaya**.

KAEDAH PELAKSANAAN

6. Dengan pelaksanaan penetapan Ketua Perkhidmatan ini, pegawai dalam 26 skim perkhidmatan di **Lampiran A tidak layak** diberi opsyen pertukaran perkhidmatan kecuali pegawai di dalam skim perkhidmatan Pembantu Pengurusan Murid, Pembantu Tadbir (Perkeranian/Operasi), Pegawai Khidmat Pelanggan dan Pembantu Tadbir (Kewangan) yang terdapat di Kementerian Pelajaran Malaysia sebagaimana dinyatakan di **Perenggan 4**.

7. Semua pegawai yang berada dalam 217 skim perkhidmatan di **Lampiran B layak** diberi opsyen pertukaran perkhidmatan untuk memilih Ketua Perkhidmatan baharu **kecuali** pegawai yang berada di bawah Ketua Perkhidmatan yang sama dengan Ketua Perkhidmatan baharu.

8. Pegawai yang menolak opsyen tidak boleh bertukar ke jabatan lain dan akan terus kekal di bawah Ketua Jabatan masing-masing secara Khas Untuk Penyandang (KUP) sehingga meninggalkan perkhidmatan. Semua jawatan pegawai yang terlibat dengan opsyen pertukaran perkhidmatan dan jawatan kenaikan pangkat akan dijadikan jawatan kader Ketua Perkhidmatan yang baharu termasuk pewujudan jawatan baharu. Jawatan tersebut tidak boleh digunakan bagi tujuan kenaikan pangkat pegawai yang telah menolak opsyen.

9. Opsyen pertukaran perkhidmatan ini tidak akan melibatkan sebarang perubahan ke atas skim perkhidmatan, gred dan kekananan pegawai. Pegawai akan menerima gaji yang sama dengan gaji akhir yang diterima sebelum pertukaran perkhidmatan.

10. Mulai tarikh kuat kuasa pekeliling perkhidmatan ini, semua urusan pengisian jawatan hendaklah dilaksanakan oleh Ketua Perkhidmatan baharu.

PEMBERIAN OPSYEN

11. Tawaran opsyen ini hanya diberi kepada pegawai yang bertaraf tetap, termasuk mereka yang masih dalam tempoh percubaan serta telah menerima opsyen Sistem Saraan Malaysia.

12. Tawaran opsyen ini juga hendaklah diberi kepada mereka yang berada dalam keadaan berikut:

(a) dipinjamkan atau ditukarkan sementara;

(b) sedang bercuti;

(c) tidak hadir bertugas semasa opsyen dikeluarkan dan berkuat kuasa;

(d) sedang dalam proses tindakan tatatertib; dan

(e) sedang menjalani hukuman tatatertib selain daripada hukuman buang kerja.

13. Pegawai yang sedang dalam proses tindakan tatatertib, jika sabit kesalahannya dan dijatuhi hukuman buang kerja dalam tempoh opsyen, maka tawaran opsyen tersebut dengan sendirinya terbatal.

14. Pegawai yang terlibat diberi tempoh 30 hari mulai dari tarikh surat tawaran dikeluarkan untuk membuat pilihan sama ada menerima atau menolak tawaran ini. Pegawai yang menolak opsyen **atau** tidak membuat pilihan **atau** membuat pilihan bersyarat **atau** gagal mengembalikan borang opsyen tanpa sebarang sebab yang munasabah dianggap sebagai tidak bersetuju dengan tawaran pertukaran perkhidmatan ini. Pegawai akan kekal di bawah Ketua Jabatan masing-masing secara KUP. Pilihan yang dibuat adalah **muktamad.**

15. Sekiranya surat tawaran opsyen tidak dapat disampaikan, termasuk kepada pegawai yang berada dalam keadaan seperti di **Perenggan 12** atas sebab yang munasabah, Pihak Berkuasa Melantik boleh menawarkan surat tawaran opsyen dengan memberi tempoh yang sama (30 hari) untuk membolehkan pegawai membuat pilihan, walaupun tempoh opsyen asal telah tamat.

KAEDAH PELAKSANAAN OPSYEN

16. Dalam melaksanakan urusan ini, Pihak Berkuasa Melantik, Ketua Jabatan/Perkhidmatan dan pegawai yang terlibat hendaklah mematuhi kaedah pelaksanaan opsyen yang ditetapkan seperti berikut:

(a) **Pihak Berkuasa Melantik**

Menawarkan opsyen pertukaran perkhidmatan kepada pegawai yang terlibat melalui Ketua Jabatan setelah mendapat butiran nama pegawai yang terlibat daripada Ketua Jabatan/ Perkhidmatan.

(b) **Ketua Jabatan**

(i) mengemukakan senarai nama pegawai yang terlibat dalam urusan pertukaran perkhidmatan seperti di **Perenggan 6 dan 7** kepada Pihak Berkuasa Melantik;

(ii) menyampaikan surat tawaran opsyen kepada pegawai terlibat dan memberi penjelasan yang terperinci mengenai opsyen serta implikasi keputusan yang dibuat;

(iii) mengumpul borang opsyen yang telah lengkap diisi dan menyerahkannya kembali kepada Pihak Berkuasa Melantik serta mengemukakan sesalinan kepada Ketua Perkhidmatan yang baharu;

(iv) mengemas kini kenyataan perkhidmatan dan kenyataan cuti pegawai yang terlibat;

(v) menghubungi Bahagian Pembangunan Organisasi (BPO), Jabatan Perkhidmatan Awam (JPA) bagi urusan perubahan senarai perjawatan mewujudkan jawatan secara KUP bagi pegawai yang menolak opsyen; dan

(vi) melaksanakan pekeliling perkhidmatan ini dalam tempoh enam (6) bulan dari tarikh ianya diedarkan dan melaporkan kepada BPO, JPA mengenai status pelaksanaan pekeliling perkhidmatan ini.

(c) **Pegawai Yang Ditawarkan Opsyen**

(i) membaca dengan teliti dan memahami opsyen sebelum membuat keputusan. Jika terdapat sebarang keraguan, pegawai hendaklah merujuk kepada Ketua Jabatan/Perkhidmatan untuk mendapatkan penjelasan selanjutnya. Sebarang opsyen yang dibuat adalah **muktamad**;

(ii) melengkapkan **dua (2) salinan** borang tawaran opsyen seperti di **Lampiran C** iaitu satu (1) salinan disimpan oleh Ketua Jabatan manakala satu (1) lagi salinan untuk pegawai berkenaan; dan

(iii) membuat pilihan sama ada menerima atau menolak tawaran opsyen ini dan mengembalikan borang tawaran opsyen dalam tempoh tiga puluh (30) hari mulai tarikh surat tawaran opsyen.

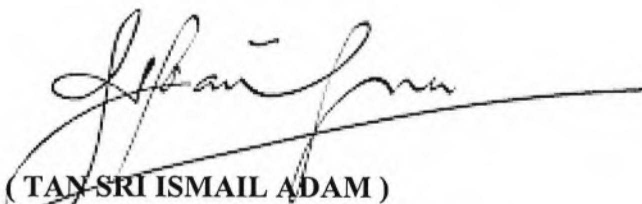
PENILAIAN TAHAP KECEKAPAN

17. Keputusan Penilaian Tahap Kecekapan (PTK) terdahulu pegawai yang ditukar perkhidmatan ke Ketua Perkhidmatan baharu boleh dipertimbangkan oleh Lembaga Penilaian Kompetensi yang berkenaan untuk dinilai setara jika kompetensi kedua-dua skim perkhidmatan adalah sama atau tidak jauh berbeza. Sekiranya dipersetujui, kelulusan PTK di dalam skim perkhidmatan asal boleh diguna pakai untuk dipertimbangkan pemberian Anjakan Gaji dan/ atau kenaikan pangkat berdasarkan peraturan yang berkuat kuasa.

TARIKH KUAT KUASA

18. Pekeliling perkhidmatan ini berkuat kuasa mulai **1 Julai 2010**.

"BERKHIDMAT UNTUK NEGARA"



(TAN SRI ISMAIL ADAM)
Ketua Pengarah Perkhidmatan Awam
Malaysia

JABATAN PERKHIDMATAN AWAM
MALAYSIA

29 Jun 2010

Setiausaha Suruhanjaya Perkhidmatan
Semua Ketua Setiausaha Kementerian
Semua Ketua Jabatan Persekutuan

SENARAI KETUA PERKHIDMATAN YANG DITETAPKAN MELALUI PEKELILING PERKHIDMATAN (PP)/ SURAT PEKELILING PERKHIDMATAN (SPP)/ SURAT KETUA PENGARAH PERKHIDMATAN AWAM (KPPA)

BIL	NAMA SKIM PERKHIDMATAN	PEKELILING PERKHIDMATAN/ SURAT PEKELILING PERKHIDMATAN/ SURAT KPPA	KETUA PERKHIDMATAN SEDIA ADA	KETUA PERKHIDMATAN BAHARU
1	Pegawai Perkhidmatan Pendidikan Siswazah	PP Bilangan 1 Tahun 1977	Ketua Pengarah Pelajaran Malaysia	Kekal
2	Pegawai Perkhidmatan Pendidikan Lepasan Diploma			
3	Pembantu Tadbir (Kewangan)	PP Bilangan 1 Tahun 2001	Ketua Pengarah Perkhidmatan Awam Ketua Setiausaha Kementerian Pertahanan Malaysia (Kementerian Pertahanan Malaysia sahaja) Ketua Setiausaha Kementerian Kesihatan Malaysia (Kementerian Kesihatan Malaysia sahaja)	Kekal
			Ketua Setiausaha Kementerian Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)	Ketua Pengarah Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)
			Ketua Setiausaha Kementerian Dalam Negeri (Polis Diraja Malaysia sahaja)	Ketua Pengarah Perkhidmatan Awam (Surat JPA(BPO)(S)215/65 /Klt.8 s.k4(81) bertarikh 17 Februari 2010)
4	Pembantu Pengurusan Murid	PP Bilangan 9 Tahun 2003	Ketua Setiausaha Kementerian Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja) Ketua Jabatan masing-masing	Ketua Pengarah Pelajaran Malaysia
5	Pegawai Syariah	PP Bilangan 10 Tahun 2003	Ketua Pengarah/Ketua Hakim Syarie Jabatan Kehakiman Syariah Malaysia	Kekal
6	Penolong Pegawai Syariah			
7	Pembantu Syariah			

BIL	NAMA SKIM PERKHIDMATAN	PEKELILING PERKHIDMATAN/ SURAT PEKELILING PERKHIDMATAN/ SURAT KPPA	KETUA PERKHIDMATAN SEDIA ADA	KETUA PERKHIDMATAN BAHARU
8	Pembantu Pemuliharaan	PP Bilangan 2 Tahun 2005	Ketua Pengarah Arkib Negara Malaysia	Kekal
9	Pegawai Khidmat Pelanggan	PP Bilangan 7 Tahun 2005	Ketua Pengarah Perkhidmatan Awam Ketua Setiausaha Kementerian Pertahanan Malaysia (Kementerian Pertahanan Malaysia sahaja) Ketua Setiausaha Kementerian Kesihatan Malaysia (Kementerian Kesihatan Malaysia sahaja)	Kekal
			Ketua Setiausaha Kementerian Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)	Ketua Pengarah Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)
			Ketua Setiausaha Kementerian Dalam Negeri (Polis Diraja Malaysia sahaja)	Ketua Pengarah Perkhidmatan Awam (Surat JPA(BPO)(S)215/65 /Klt.8 s.k4(81) bertarikh 17 Februari 2010)
10	Pegawai Antidadah	PP Bilangan 15 Tahun 2005	Ketua Setiausaha Kementerian Dalam Negeri	Kekal
11	Penolong Pegawai Antidadah			
12	Pembantu Antidadah			
13	Penolong Arkitek Landskap	PP Bilangan 24 Tahun 2005	Ketua Pengarah Jabatan Landskap Negara	Kekal
14	Juruteknik Landskap			

BIL	NAMA SKIM PERKHIDMATAN	PEKELILING PERKHIDMATAN/ SURAT PEKELILING PERKHIDMATAN/ SURAT KPPA	KETUA PERKHIDMATAN SEDIA ADA	KETUA PERKHIDMATAN BAHARU
15	Pegawai Psikologi	PP Bilangan 11 Tahun 2006	Ketua Pengarah Perkhidmatan Awam Ketua Pengarah Kesihatan (Kementerian Kesihatan Malaysia sahaja)	Kekal
16	Penolong Pegawai Psikologi			
17	Pegawai Teknologi Maklumat	SPP Bilangan 3 Tahun 2007	Ketua Pengarah Perkhidmatan Awam	Kekal
18	Penolong Pegawai Teknologi Maklumat			
19	Juruteknik Komputer			
20	Pembantu Pegawai Latihan Vokasional/Penolong Pegawai Latihan Vokasional/Pegawai Latihan Vokasional			
21	Pembantu Setiausaha Pejabat/Setiausaha Pejabat			
22	Pegawai Tadbir dan Diplomatik			
23	Penolong Pegawai Tadbir	SPP Bilangan 3 Tahun 2007	Ketua Pengarah Perkhidmatan Awam Ketua Setiausaha Kementerian Pertahanan Malaysia (Kementerian Pertahanan Malaysia sahaja) Ketua Setiausaha Kementerian Kesihatan Malaysia (Kementerian Kesihatan Malaysia sahaja)	Kekal
24	Pegawai Pendidikan Pengajian Tinggi	PP Bilangan 33 Tahun 2007	Ketua Pengarah Jabatan Pengajian Politeknik dan Kolej Komuniti	Ketua Pengarah Jabatan Pengajian Politeknik (nama baru)

BIL	NAMA SKIM PERKHIDMATAN	PEKELILING PERKHIDMATAN/ SURAT PEKELILING PERKHIDMATAN/ SURAT KPPA	KETUA PERKHIDMATAN SEDIA ADA	KETUA PERKHIDMATAN BAHARU
25	Penolong Pegawai Siasatan/Pegawai Siasatan	PP Bilangan 25 Tahun 2008	Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia	Kekal
26	Pembantu Tadbir (Perkeranian/Operasi)	PP Bilangan 6 Tahun 2009	Ketua Pengarah Perkhidmatan Awam Ketua Setiausaha Kementerian Pertahanan Malaysia (Kementerian Pertahanan Malaysia sahaja) Ketua Setiausaha Kementerian Kesihatan Malaysia (Kementerian Kesihatan Malaysia sahaja)	Kekal
			Ketua Setiausaha Kementerian Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)	Ketua Pengarah Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)
			Ketua Setiausaha Kementerian Dalam Negeri (Polis Diraja Malaysia sahaja)	Ketua Pengarah Perkhidmatan Awam (Surat JPA(BPO)(S)215/65 /Klt.8 s.k4(81) bertarikh 17 Februari 2010)

SENARAI KETUA PERKHIDMATAN BAGI SKIM PERKHIDMATAN YANG SEDANG BERKUATKUASA DALAM PERKHIDMATAN AWAM PERSEKUTUAN

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
1	Juruterbang/ Pemeriksa Juruterbang	Ketua Pengarah Penerbangan Awam
2	Pemeriksa Kapal Terbang	
3	Pembantu Teknik Kapal Terbang	
4	Pegawai Kawalan Trafik Udara	
5	Penolong Pegawai Kawalan Trafik Udara	
6	Pembantu Kawalan Trafik Udara	
7	Pegawai Laut	Ketua Pengarah Laut Malaysia
8	Penolong Pegawai Laut	
9	Pembantu Laut	Ketua Pengarah Laut Malaysia Ketua Pengarah Taman Laut (Jabatan Taman Laut Malaysia sahaja)
10	Pemeriksa Kereta Motor	Ketua Pengarah Pengangkutan Jalan Malaysia
11	Penerbit Rancangan	Ketua Pengarah Penyiaran Malaysia
12	Ahli Muzik	Ketua Setiausaha Kementerian Penerangan, Komunikasi & Kebudayaan
13	Artis Budaya	
14	Ahli Fotografi	
15	Pegawai Kebudayaan	
16	Pereka	
17	Jurusolek	Ketua Pengarah Penyiaran Malaysia
18	Pegawai Galian	Ketua Pengarah Mineral & Geosains
19	Penolong Pegawai Galian	
20	Pembantu Galian	
21	Pegawai Kimia Bumi	
22	Pegawai Kaji Bumi (Geofizik/Kaji Bumi)	
23	Penolong Pegawai Kimia Bumi	
24	Pembantu Kaji Bumi	
25	Pegawai Meteorologi	Ketua Pengarah Meteorologi
26	Penolong Pegawai Meteorologi	
27	Pembantu Meteorologi	
28	Pegawai Kawalan Alam Sekitar	Ketua Pengarah Alam Sekitar
29	Penolong Pegawai Kawalan Alam Sekitar	
30	Pegawai Sains	Ketua Perkhidmatan mengikut bidang seperti di **Lampiran B1**
31	Penolong Pegawai Sains	
32	Pembantu Makmal	

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
33	Pegawai Teknologi Makanan	Ketua Pengarah Kesihatan
34	Penolong Pegawai Teknologi Makanan	
35	Pegawai Penyediaan Makanan	
36	Penolong Pegawai Penyediaan Makanan	
37	Pegawai Makmal Filem	Ketua Pengarah Filem Negara
38	Penolong Pegawai Makmal Filem	
39	Pembantu Makmal Filem	
40	Guru Bahasa	Ketua Jabatan masing-masing
41	Pegawai Ehwal Ekonomi	Ketua Jabatan masing-masing
42	Pembantu Ehwal Ekonomi	
43	Pegawai Latihan	Ketua Setiausaha Kementerian Belia & Sukan
44	Penolong Pegawai Latihan	
45	Pembantu Pegawai Latihan	
46	Perangkawan	Ketua Perangkawan Malaysia
47	Penolong Pegawai Perangkaan	
48	Pembantu Perangkaan	
49	Pengajar Kraf	Ketua Setiausaha Kementerian Kemajuan Luar Bandar & Wilayah
50	Pegawai Pertanian	Ketua Pengarah Pertanian
51	Penolong Pegawai Pertanian	
52	Pembantu Pertanian	
53	Pegawai Perikanan	Ketua Pengarah Perikanan Malaysia Ketua Pengarah Taman Laut (Jabatan Taman Laut Malaysia sahaja)
54	Penolong Pegawai Perikanan	
55	Pembantu Perikanan	
56	Pegawai Veterinar	Ketua Pengarah Perkhidmatan Veterinar
57	Penolong Pegawai Veterinar	
58	Pembantu Veterinar	
59	Pemelihara Hutan	Ketua Pengarah Perhutanan Semenanjung Malaysia
60	Penolong Pemelihara Hutan	
61	Renjer Hutan	
62	Pengajar Membalak	
63	Pengawas Hutan	
64	Pegawai Hidupan Liar	Ketua Pengarah Perlindungan Hidupan Liar & Taman Negara
65	Penolong Pegawai Hidupan Liar	
66	Pembantu Hidupan Liar	
67	Pembantu Hidupan Liar Rendah	
68	Arkitek	Ketua Pengarah Kerja Raya
69	Penolong Pegawai Senibina	
70	Pelukis Pelan	

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
71	Arkitek Landskap	Ketua Pengarah Jabatan Landskap Negara
72	Jurutera	Ketua Perkhidmatan mengikut bidang seperti di **Lampiran B1**
73	Penolong Jurutera	
74	Juruteknik	
75	Juruukur Bahan	Ketua Pengarah Kerja Raya
76	Penolong Juruukur Bahan	
77	Jurukartografi	Ketua Pengarah Ukur & Pemetaan
78	Juruukur	
79	Pembantu Teknik Ukur	
80	Juruteknik Ukur	
81	Juruukur Bangunan	Ketua Pengarah Kerja Raya
82	Pembantu Teknik Ukur Bangunan	
83	Pegawai Perancang Bandar dan Desa	Ketua Pengarah Perancang Bandar & Desa
84	Penolong Pegawai Perancang Bandar dan Desa	
85	Juruteknik Perancang Bandar dan Desa	
86	Pemeriksa Kilang dan Jentera	Ketua Pengarah Keselamatan & Kesihatan Pekerjaan
87	Penolong Pemeriksa Kilang dan Jentera	
88	Pembantu Pemeriksa Kilang dan Jentera	
89	Penguasa Bomba	Ketua Pengarah Bomba & Penyelamat
90	Penolong Penguasa Bomba	
91	Pegawai Bomba	
92	Pegawai Keselamatan	Ketua Pengarah Keselamatan Kerajaan
93	Penolong Pegawai Keselamatan	
94	Pembantu Keselamatan	
95	Pengawal Keselamatan	
96	Pegawai Pertahanan Awam	Ketua Pengarah Pertahanan Awam
97	Penolong Pegawai Pertahanan Awam	
98	Pembantu Pertahanan Awam	
99	Penguasa Penjara	Ketua Pengarah Penjara
100	Penolong Penguasa Penjara	
101	Pegawai Penjara	
102	Penolong Penguasa Imigresen/ Penguasa Imigresen	Ketua Pengarah Imigresen
103	Pegawai Imigresen	
104	Penolong Pegawai Pendaftaran/ Pegawai Pendaftaran	Ketua Pengarah Pendaftaran
105	Pembantu Pendaftaran	
106	Pegawai Perhubungan Preman	Ketua Setiausaha Kementerian Pertahanan Malaysia

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
107	Pegawai Undang-undang	Peguam Negara
108	Pembantu Undang-undang	Peguam Negara Ketua Pendaftar Mahkamah Persekutuan (Mahkamah sahaja) Ketua Pengarah Bahagian Hal Ehwal Undang-undang (Bahagian Hal Ehwal Undang-undang sahaja)
109	Pembantu Tadbir (Undang-undang)	Ketua Pendaftar Mahkamah Persekutuan
110	Jurubahasa	
111	Pegawai Tadbir	Ketua Jabatan masing-masing
112	Pegawai Penerbitan	Ketua Pengarah Penerangan Malaysia
113	Penolong Pegawai Penerbitan	
114	Pembantu Penerbitan	
115	Pegawai Penguatkuasa	Ketua Setiausaha Kementerian Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Ketua Pengarah Pengangkutan Jalan Malaysia (Jabatan Pengangkutan Jalan Malaysia & Lembaga Perlesenan Kenderaan Perdagangan sahaja) Ketua Setiausaha Kementerian Dalam Negeri (Kementerian Dalam Negeri sahaja) Ketua Pengarah Perkhidmatan Veterinar (Jabatan Perkhidmatan Veterinar sahaja) Ketua Setiausaha Kementerian Pertanian & Industri Asas Tani (Kementerian Pertanian dan Industri Asas Tani sahaja)
116	Penolong Pegawai Penguatkuasa	
117	Pembantu Penguatkuasa	
118	Jurubahasa Serentak	Ketua Pentadbir Parlimen
119	Pegawai Penyelidik Sosial	Ketua Jabatan masing-masing
120	Penolong Pegawai Penyelidik Sosial	
121	Pembantu Penyelidik Sosial	
122	Pengurus Asrama	
123	Penolong Pengurus Asrama	
124	Penyelia Asrama	
125	Bentara Mesyuarat	Ketua Pentadbir Parlimen
126	Penolong Pegawai Tanah (Semenanjung Malaysia)	Ketua Pengarah Tanah & Galian
127	Pemeriksa Cap Jari	Ketua Setiausaha Kementerian Dalam Negeri
128	Juruaudio Visual	Ketua Pengarah Penerangan Malaysia
129	Operator Wayarles	Ketua Pengarah Perikanan Malaysia
130	Penyelia Jurupakaian	Ketua Pengarah Penyiaran Malaysia
131	Peniup Kaca	Ketua Jabatan masing-masing

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
132	Operator Kamera Offset/ Pembuat Plet	Ketua Pengarah Penerangan
133	Penolong Operator Kamera	
134	Tukang Masak	Ketua Jabatan masing-masing
135	Bentara Parlimen	Ketua Pentadbir Parlimen
136	Penghantar Notis	Ketua Jabatan masing-masing
137	Pembantu Kamera/ Pemandu	Ketua Pengarah Penyiaran Malaysia
138	Pembantu Am Pejabat	Ketua Jabatan masing-masing
139	Pegawai Penyelidik	
140	Penolong Pegawai Penyelidik	
141	Pembantu Penyelidik	
142	Penjaga Jentera Elektrik	Ketua Setiausaha Kementerian Kerja Raya
143	Tukang K1	Ketua Jabatan masing-masing
144	Tukang K2	Ketua Setiausaha Kementerian Kerja Raya
145	Tukang K3	Ketua Pengarah Pelajaran Malaysia (Kementerian Pelajaran Malaysia sahaja)
146	Operator Loji	Ketua Jabatan masing-masing
147	Pekerja Awam Khas	
148	Pemandu Kenderaan	
149	Pekerja Awam	
150	Pegawai Hal Ehwal Islam	Ketua Pengarah Jabatan Kemajuan Islam Malaysia
151	Penolong Pegawai Hal Ehwal Islam	
152	Pembantu Hal Ehwal Islam	
153	Pegawai Arkib	Ketua Pengarah Arkib Negara Malaysia
154	Penolong Pegawai Arkib	
155	Pembantu Arkib	
156	Kurator	Ketua Setiausaha Kementerian Penerangan, Komunikasi & Kebudayaan
157	Penolong Kurator	
158	Pembantu Muzium	
159	Pustakawan	Ketua Pengarah Perpustakaan Negara
160	Penolong Pegawai Perpustakaan	
161	Pembantu Perpustakaan	
162	Pegawai Pembangunan Masyarakat	Ketua Pengarah Kebajikan Masyarakat Ketua Setiausaha Kementerian Kemajuan Luar Bandar & Wilayah (Kementerian Kemajuan Luar Bandar & Wilayah dan Jabatan di bawahnya sahaja) Ketua Pengarah Perpaduan Negara dan Integrasi Nasional (Jabatan Perpaduan Negara dan Integrasi Nasional sahaja) Ketua Pengarah Kesihatan (Kementerian Kesihatan Malaysia sahaja)

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
163	Penolong Pegawai Pembangunan Masyarakat	Ketua Pengarah Kebajikan Masyarakat Ketua Setiausaha Kementerian Kemajuan Luar Bandar & Wilayah (Kementerian Kemajuan Luar Bandar & Wilayah dan Jabatan di bawahnya sahaja) Ketua Pengarah Perpaduan Negara dan Integrasi Nasional (Jabatan Perpaduan Negara dan Integrasi Nasional sahaja)
164	Pembantu Pembangunan Masyarakat	
165	Pegawai Belia dan Sukan	Ketua Setiausaha Kementerian Belia & Sukan
166	Penolong Pegawai Belia dan Sukan	
167	Pembantu Belia dan Sukan	
168	Pegawai Perhubungan Perusahaan	Ketua Setiausaha Kementerian Sumber Manusia
169	Penolong Pegawai Perhubungan Perusahaan	
170	Pembantu Perhubungan Perusahaan	
171	Pegawai Penerangan	Ketua Pengarah Penerangan Malaysia Ketua Pengarah Kesihatan (Kementerian Kesihatan Malaysia sahaja)
172	Penolong Pegawai Penerangan	Ketua Pengarah Penerangan Malaysia
173	Pembantu Penerangan	
174	Penolong Pegawai Kesatria	Ketua Setiausaha Kementerian Belia & Sukan
175	Pembantu Kesatria	
176	Pegawai Perubatan	Ketua Pengarah Kesihatan
177	Penolong Pegawai Perubatan	
178	Pegawai Optometri	
179	Pegawai Pergigian	
180	Juruteknologi Pergigian	
181	Pembantu Pembedahan Pergigian	
182	Pegawai Farmasi	
183	Penolong Pegawai Farmasi	
184	Pegawai Pemulihan Perubatan	
185	Pengajar	
186	Pegawai Dietetik	
187	Penolong Pegawai Kesihatan Persekitaran/Pegawai Kesihatan Persekitaran	
188	Juru X-Ray	
189	Jurupulih Perubatan	
190	Jururawat	
191	Jururawat Pergigian	
192	Jururawat Masyarakat	
193	Juruteknologi Makmal Perubatan	
194	Juruteknik Perubatan	
195	Pembantu Kesihatan Awam	

BIL	NAMA SKIM PERKHIDMATAN	KETUA PERKHIDMATAN
196	Atendan Kesihatan	Ketua Setiausaha Kementerian Kesihatan Malaysia
197	Akauntan	Akauntan Negara
198	Penolong Akauntan	
199	Pembantu Akauntan	
200	Pegawai Penilaian	Ketua Pengarah Penilaian
201	Penolong Pegawai Penilaian	
202	Pembantu Penilaian	
203	Juruaudit	Ketua Audit Negara
204	Penolong Juruaudit	
205	Pembantu Juruaudit	
206	Penguasa Kastam	Ketua Pengarah Kastam
207	Penolong Penguasa Kastam	
208	Pembantu Penguasa Kastam	
209	Pegawai Aktuari	Ketua Setiausaha Kementerian Kewangan Malaysia
210	Pegawai Penguatkuasa Maritim	Ketua Pengarah Agensi Penguatkuasaan Maritim Malaysia
211	Pegawai Lain-Lain Pangkat Penguatkuasa Maritim	
212	Pegawai Kanan Polis	Ketua Polis Negara
213	Pegawai Rendah Polis dan Konstabel	
214	Pegawai Rendah Polis dan Konstabel Orang Asli	
215	Pegawai Rendah Polis dan Konstabel Sokongan	
216	Pegawai Angkatan Tetap, Angkatan Tentera Malaysia	Panglima Angkatan Tentera
217	Askar Laskar Angkatan Tetap, Angkatan Tentera Malaysia	

KETUA PERKHIDMATAN MENGIKUT BIDANG PENGKHUSUSAN

Bil.	Skim Perkhidmatan	Bidang Pengkhususan	Ketua Perkhidmatan
1	Pegawai Sains	(a) Kesihatan (i) Fizik (ii) Kaji Kuman (iii) Kaji Serangga (iv) Kimia Hayat (v) Zat Makanan (vi) Genetik (vii) Embriologi (viii) Forensik (ix) Biomedikal	Ketua Pengarah Kesihatan
		(b) Nuklear	Ketua Pengarah Lembaga Pelesenan Tenaga Atom
		(c) Kimia	Ketua Pengarah Jabatan Kimia Malaysia
		(d) Sains, Teknologi dan Inovasi	Ketua Setiausaha Kementerian Sains, Teknologi dan Inovasi Ketua Pengarah Jabatan Standard Malaysia (Jabatan Standard Malaysia sahaja) Ketua Pengarah Agensi Angkasa Negara (Agensi Angkasa Negara sahaja)
		(e) Lain-lain	Ketua Jabatan masing-masing
2	Penolong Pegawai Sains	(a) Kesihatan (i) Fizik (ii) Kaji Kuman (iii) Kaji Serangga (iv) Kimia Hayat (v) Zat Makanan (vi) Genetik (vii) Embriologi (viii) Forensik (ix) Biomedikal	Ketua Pengarah Kesihatan
		(b) Nuklear	Ketua Pengarah Lembaga Pelesenan Tenaga Atom Ketua Pengarah Agensi Nuklear Malaysia (Agensi Nuklear Malaysia sahaja)

Bil.	Skim Perkhidmatan	Bidang Pengkhususan	Ketua Perkhidmatan
		(c) Kimia	Ketua Pengarah Jabatan Kimia Malaysia
		(d) Sains, Teknologi dan Inovasi	Ketua Setiausaha Kementerian Sains, Teknologi dan Inovasi Ketua Pengarah Jabatan Standard Malaysia (Jabatan Standard Malaysia sahaja) Ketua Pengarah Agensi Angkasa Negara (Agensi Angkasa Negara sahaja)
		(e) Lain-lain	Ketua Jabatan masing-masing
3	Pembantu Makmal	(a) Nuklear	Ketua Pengarah Lembaga Pelesenan Tenaga Atom Ketua Pengarah Agensi Nuklear Malaysia (Agensi Nuklear Malaysia sahaja)
		(b) Kimia	Ketua Pengarah Jabatan Kimia Malaysia
		(c) Sains, Teknologi dan Inovasi	Ketua Setiausaha Kementerian Sains, Teknologi dan Inovasi Ketua Pengarah Jabatan Standard Malaysia (Jabatan Standard Malaysia sahaja) Ketua Pengarah Agensi Angkasa Negara (Agensi Angkasa Negara sahaja)
		(d) Pengajian Tinggi	Ketua Setiausaha Kementerian Pengajian Tinggi
		(e) Pelajaran	Ketua Pengarah Pelajaran Malaysia
		(f) Lain-lain	Ketua Jabatan masing-masing
4	Jurutera	(a) Kesihatan (i) Awam (ii) Kesihatan Umum (iii) Elektronik (iv) Elektrikal (v) Jentera (vi) Mekanikal (vii) Biomedikal	Ketua Pengarah Kesihatan

Bil.	Skim Perkhidmatan	Bidang Pengkhususan	Ketua Perkhidmatan
		(b) Pengairan dan Saliran (i) Awam – *sumber air, hidrologi, sungai, pantai, saliran mesra alam, pengairan, saliran pertanian, banjir, rekabentuk, pembinaan dan penyelenggaraan bangunan dan jambatan, kejuruteraan struktur, geoteknik, jalan (termasuk ladang dan luar bandar), hidraulik, empangan dan teknologi bahan binaan*; (ii) Mekanikal – *sumber air, hidraulik, sistem automasi/SCADA/ telemetrik, pengorekan dan penggerudian air tanah, bangunan dan mekatronik; dan* (iii) Elektrikal – *kuasa, elektronik (perhubungan, komunikasi/ radar), sistem automasi/SCADA/ telemetrik, penjimatan tenaga elektrik, sumber tenaga asli, perkakasan dan pepasangan*	Ketua Pengarah Pengairan dan Saliran
		(c) Kerja raya (i) Awam (ii) Elektrikal (iii) Mekanikal	Ketua Pengarah Kerja Raya
		(d) Komunikasi dan Multimedia	Ketua Pengarah Penyiaran Malaysia
		(e) Pembetungan	Ketua Setiausaha Kementerian Tenaga, Teknologi Hijau dan Air
		(f) Automotif	Ketua Pengarah Pengangkutan Jalan Malaysia
		(g) Pengurusan Sisa Pepejal	Ketua Setiausaha Kementerian Perumahan dan Kerajaan Tempatan
		(h) Penerbangan Awam	Ketua Pengarah Penerbangan Awam (Jabatan Penerbangan Awam sahaja)

Bil.	Skim Perkhidmatan	Bidang Pengkhususan	Ketua Perkhidmatan
5.	Penolong Jurutera	(a) Kesihatan (i) Awam (ii) Kesihatan Umum (iii) Elektronik (iv) Elektrikal (v) Mekanikal	Ketua Pengarah Kesihatan
		(b) Pengairan dan Saliran (i) Awam – *sumber air, hidrologi, sungai, pantai, saliran mesra alam, pengairan, saliran pertanian, banjir, rekabentuk, pembinaan dan penyelenggaraan bangunan dan jambatan, kejuruteraan struktur, geoteknik, jalan (termasuk ladang dan luar bandar), hidraulik, empangan dan teknologi bahan binaan*; (ii) Mekanikal – *sumber air, hidraulik, sistem automasi/SCADA/ telemetrik, pengorekan dan penggerudian air tanah, bangunan dan mekatronik; dan* (iii) Elektrikal – *kuasa, elektronik (perhubungan, komunikasi/ radar), system automasi/SCADA/ telemetrik, penjimatan tenaga elektrik, sumber tenaga asli, perkakasan dan pepasangan*	Ketua Pengarah Pengairan dan Saliran
		(c) Kerja raya (i) Awam (ii) Elektrikal (iii) Mekanikal	Ketua Pengarah Kerja Raya
		(d) Komunikasi dan Multimedia	Ketua Pengarah Penyiaran Malaysia
		(e) Pembetungan	Ketua Setiausaha Kementerian Tenaga, Teknologi Hijau dan Air
		(f) Automotif	Ketua Pengarah Pengangkutan Jalan Malaysia
		(g) Pengurusan Sisa Pepejal	Ketua Setiausaha Kementerian Perumahan dan Kerajaan Tempatan

Bil.	Skim Perkhidmatan	Bidang Pengkhususan	Ketua Perkhidmatan
		(h) Penerbangan Awam	Ketua Pengarah Penerbangan Awam (Jabatan Penerbangan Awam sahaja)
6.	Juruteknik	(a) Kesihatan (i) Awam (ii) Elektrikal (iii) Mekanikal (iv) Perubatan	Ketua Pengarah Kesihatan
		(b) Pengairan dan Saliran (i) Awam – *sumber air, hidrologi, sungai, pantai, saliran mesra alam, pengairan, saliran pertanian, banjir, rekabentuk, pembinaan dan penyelenggaraan bangunan dan jambatan, kejuruteraan struktur, geoteknik, jalan (termasuk ladang dan luar bandar), hidraulik, empangan dan teknologi bahan binaan;* (ii) Mekanikal – *sumber air, hidraulik, sistem automasi/SCADA/ Telemetrik, Pengorekan dan penggerudian air tanah, bangunan dan mekatronik; dan* (iii) Elektrikal – *kuasa, elektronik (perhubungan, komunikasi/ radar), sistem automasi/SCADA/ Telemetrik, penjimatan tenaga elektrik, sumber tenaga asli, perkakasan dan pepasangan*	Ketua Pengarah Pengairan dan Saliran
		(c) Kerja raya (i) Awam (ii) Elektrikal (iii) Mekanikal	Ketua Pengarah Kerja Raya
		(d) Komunikasi dan Multimedia	Ketua Pengarah Penyiaran Malaysia
		(e) Pembetungan	Ketua Setiausaha Kementerian Tenaga, Teknologi Hijau dan Air
		(f) Automotif	Ketua Pengarah Pengangkutan Jalan Malaysia

 LAMPIRAN C

BORANG OPSYEN PERTUKARAN KETUA PERKHIDMATAN

Kepada:

(Nama Pihak Berkuasa Melantik)

Melalui:

(Nama Ketua Jabatan/Jabatan Asal)

Tuan,

OPSYEN PERTUKARAN KETUA PERKHIDMATAN DARIPADA (KETUA PERKHIDMATAN SEDIA ADA) KEPADA (KETUA PERKHIDMATAN BAHARU)

Berhubung dengan surat tuan bil. .... bertarikh ....

mengenai perkara di atas, maka saya dengan ini membuat pilihan seperti berikut:

* ☐ (a) **Bersetuju** dengan pertukaran Ketua Perkhidmatan daripada (Ketua Perkhidmatan sedia ada) kepada (Ketua Perkhidmatan baharu);

ATAU

* ☐ (b) **Tidak bersetuju** dengan pertukaran Ketua Perkhidmatan daripada (Ketua Perkhidmatan sedia ada) kepada (Ketua Perkhidmatan baharu) dan dengan ini kekal berada di bawah Ketua Jabatan sedia ada secara Khas Untuk Penyandang.

2. Saya sesungguhnya faham akan kandungan surat tawaran ini dan implikasi opsyen ini dan saya sesungguhnya mengetahui bahawa pilihan yang telah saya buat adalah **muktamad.**

Tandatangan : ....

Nama Penuh : ....

No. Kad Pengenalan : ....

Jawatan/Skim Perkhidmatan : ....

Alamat : ....

....

....

Tarikh : ....

Di hadapan :

....

SAKSI * *

(Tandatangan dan Cop Jawatan)

Nama Penuh : ....

No. Kad Pengenalan : ....

Jawatan : ....

Alamat : ....

....

....

Tarikh : ....

---

* Tandakan (✓) dalam salah satu petak berkenaan.

* * Ketua Jabatan atau Pegawai dalam Kumpulan Pengurusan dan Profesional.

Surat Akuan Penerimaan Borang Opsyen

Kepada : ....

....

....

(Nama dan Alamat Ketua Jabatan)

Dengan ini saya mengaku menerima borang opsyen tuan/puan melalui surat bil. .... bertarikh ....

Tandatangan : ....

Nama Penuh : ....

No. Kad Pengenalan : ....

Jawatan : ....

Tarikh : ....

APPENDIX 17

MR. BALAGURU'S COMMENT ON THE REPORT

No.	Comment	Notes
1.	Please include a Secretariat **letter to Bar Council,** that will be integrity and good governance to show what Bar Council was responding to.	Appendix
2.	Letter from MOF to Genting. Urusetia please add note that I disclaim involvement in discussion about **Genting tax affairs.**	Disclaimer
3.	**Letter to Bar Council**. 6 PPK members agreed. 1 didn't as to the contents of Letter to Bar Council	Disclaimer
4.	Urusetia so as not to disturb the majority decision and interpretation of clause marked in pink, I will state here for my own record that I understand the clause to mean Government agencies only. Any referral to non government agencies is not provided for, if you take the paragraph following the 'dsb...'	TOR (2), (3)
5.	On **Equanimity**, my views again it's minority is that reading the chapter in the book, the Government was represented by AGC in Shah Alam High Court, the Government was nominal Plaintiff. The lawyers mentioned there in the chapter didn't represent the Government therefore it is not correct to say that TT acts caused great expense to the Federal government. The appointment of lawyers and payments to them by the 1MDB group is a matter between 1MDB and the lawyers. Therefore any comments are speculation and not supported by consultative sessions. The arrest of the ship couldn't have been done by people who don't own or lay a claim to ownership of the vessel. When the suit was filed in the High Court Shah Alam, nobody anticipated a walk over for the Plaintiffs. All fees of lawyers involved are paid by the owners of the vessel. Whether it's too much or too little is entirely between lawyers and clients and the PPK shouldn't comment. It's subjective. These are my views in Equanimity and I disassociate myself from any discussion or publication in the PPK report as to Genting tax matters with the purchase of Equanimity. That is the view from 6 to 1. I say it's not relevant..and calling for Genting tax information is abuse of PPK power. If this report is published or somebody goes to court to have the report declassified, please get ready to answer to Genting why their tax file was discussed.	Disclaimer

No.	Comment	Notes
6.	As for **external lawyers**, there are 2 lawyers appointed for prosecution of SRC and 1MDB offenses the fact that present AG did not discharge Gopal Sri Ram and Sithambaram supports TT that no one in AGC can handle the prosecution of DSNR,and not even the present Public Prosecutor V. Sithambaram fees continued to be paid at great expense by Federal government, same phrase used in conclusion of Equanimity write up.	
7.	I have no comments to Boonsum write up.	
8.	As for **EC tribunalised**, it is the Chairman's opinion, which I don't subscribe to, that I am in conflict . So I have no comments	Disclaimer
9.	The fact that this PPK was formed at great financial expense to the Federal government is because incumbent AG and AGC officers didn't see what 6 to 1 members of the PPK put out a list of possible infringement of some statutes by TT. The failure of the Government's number one Legal officer to act when the book was published leaves much to be desired. A minority view on competency.	

25 August 2022:

Mr. Balaguru has left the meeting at 10.15am

JABATAN PERDANA MENTERI
BAHAGIAN HAL EHWAL UNDANG-UNDANG

[MUKA SURAT INI SENGAJA DIKOSONGKAN]

Mohd Ridzuan bin Amri 21-09-2022 09:28:31

3251/2022

DARIPADA : BAHAGIAN KABINET, PERLEMBAGAAN DAN PERHUBUNGAN ANTARA KERAJAAN JABATAN PERDANA MENTERI

KEPADA : MENTERI PERUMAHAN DAN KERAJAAN TEMPATAN (DATO' SRI REEZAL MERICAN BIN NAINA MERICAN)

JADUAL SALINAN TERKAWAL

Tarikh / Masa	Bil. Rujukan	Perkara
28-09-2022 11:02:32	M565/2022 - Lampiran	Laporan Pasukan Petugas Khas Siasatan Ke Atas Dakwaan-Dakwaan Dalam Buku Bertajuk “My Story: Justice In The Wilderness” Tulisan YBhg. Tan Sri Tommy Thomas, Bekas Peguam Negara

Muat Turun Oleh : Encik Mohd Ridzuan bin Amri