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## Buzz over political A-G appointment

Carolyn Hong

HAVING seen how brisk and even brusque Attorney-General Tan Sri Mohtar Abdullah can be, a Bar Council member was quite taken aback by his exuberance at a dialogue three weeks ago.

"He was really in top form, very cheerful, extremely cordial," says the lawyer who speculated that Mohtar must be hugging some good news to his chest.

Of course, his speculation ran along the lines of the A-G's tenure which is supposed to end this month, though Mohtar could very well be in high spirits over an upcoming vacation.

Then, out of the blue, came Utusan Malaysia's report last week that an impending Cabinet reshuffle will see the re-emergence of a Law Minister who would also be the A-G. The report quoted sources.

The next day, the Prime Minister gave a vague answer but Datuk Seri Dr Mahathir Mohamad has never been known to announce Cabinet appointments informally.

Minister in the Prime Minister's Department Datuk Dr Rais Yatim, who is in charge of law, insists he knows nothing about it.

Some others say it's merely an idea which is being studied.

The idea of an A-G who is a political appointee, or popularly referred to as a political A-G, has been whizzing around since last year, specifically since Rais entered Cabinet in December.

"The interest may have started because we have a Minister who is qualified to become A-G, who is active in taking up legal issues and is vocal," says former Bar president R.R. Chelvarajah who had hit it off well with Rais.

The Federal Constitution states that an A-G must be a person qualified to be a judge of the Federal Court, i.e. a lawyer of at least 10 years' experience, whether in private practice or government service.

The field is narrowed down to a few, Rais among them, but the net can be cast wider.

The Minister A-G may not even be a politician, he might be a professional. The Cabinet already has one such person, the Education Minister.

Or the A-G can be given Ministerial status with a seat in Parliament but without the right to vote, as suggested by retired Supreme Court judge Tan Sri Harun Hashim in one of his Benchmark articles.

A high-profiled lawyer has, however, dismissed the news report as "exuberant" talk by those who would like to see the strong-willed Rais in the powerful post.

Perhaps so, as the talk has been re-surfacing very persistently since last December, so much so that Harun had devoted two articles to it. He seems to like the idea.

"An A-G who is also a Cabinet minister will have more clout ... than a civil servant can ever hope to have, however professionally eminent," he writes.

Chelvarajah says it will streamline the role of the A-G who is the legal adviser to the Government and Cabinet, and resolve some of the overlapping roles of the Minister and A-G.

But to him and many others, the most attractive feature of a political A-G is that he becomes answerable to Parliament and faces the grilling he can expect from the Opposition bench, many of whom are also lawyers.

He can then defend his decisions, particularly pertinent at this time when he has been much attacked over the various high-profile prosecutions, instead of suffering in silence.

"This is as it should be in a parliamentary democracy.

"Even the Prime Minister is accountable to Parliament for what he or the Government does," says Harun.

Right now, there's only the unsatisfactory method of having the Minister reply on his behalf to questions from the House.

Other than that, his decisions cannot be questioned, not even in court.

In fact, there has been judicial warnings that questioning of prosecution decisions, or claims of selective prosecution, may even amount to sedition.

As Harun says in his inimitable style, he is "not answerable to anybody except God".

Lawyer Datuk Param Kumaraswamy, who is United Nations special rapporteur on the independence of judges and lawyers, is warm to the idea of an A-G in Parliament.

But he says, and many agree, that if this is so, the A-G should no longer hold the vast prosecution powers conferred by the Constitution.

These should shift to an independent office to avoid conflict of interest and the impression of political influence, in keeping with the 1990 UN Guidelines on the Role of Prosecutors which require them to be wholly impartial.

Lawyer Raja Aziz Addruse agrees, saying that even with the present set-up, there has been much public criticism.

The lawyers say this independent office should be headed by a senior civil servant from the Judicial and Legal Service, who has charge of all prosecutors - from the police to deputy public prosecutors.

It is independent but the A-G retains supervision and the right to intervene in appropriate cases. He is answerable to Parliament for prosecution decisions.

This is, of course, not a novel idea at all. England, the "motherland" of the Malaysian legal system, has had such a system since the 19th century.

So too, many other Commonwealth countries which usually style the office as the Director of Public Prosecutions.

Param says a 1995 Namibian case had shed light on how the two offices relate to each other.

The Namibian A-G is a political appointee who is a minister and member of Cabinet, while the Prosecutor-General is a civil servant.

They had clashed when the Prosecutor-General refused to withdraw a charge as instructed by the A-G.

The Supreme Court ruled that the A-G cannot instruct the Prosecutor-General on prosecution decisions but is to be kept informed on matters of public interest so he can be answerable in Parliament.

"I would be keen to see a public debate on this," says Param.

Mohtar himself is said to be quite amiable to having an open discussion.

Another lawyer suggests that if no independent prosecution office is created, the Solicitor-General might stand in the gap. But this wouldn't be ideal.

Param, who was Bar Council secretary when the Law Minister was also A-G, admits that there weren't really many problems at that time even though there was no separate prosecution office.

But he quickly adds that the circumstances of the 1970s are naturally quite different from those of today. The A-G then was Tan Sri Abdul Kadir Yusof.

Kadir was actually a civil servant A-G before he retired and joined the

Cabinet, first as Senator and then as an elected MP.

Subsequently, the law portfolio was added to the A-G's post.

Tan Sri Hamzah Abu Samah later took over the dual post. The A-G's post later went to a civil servant, Tan Sri Abu Talib Othman, when the Law Ministry was abolished in 1980.

Mohtar succeeded Abu Talib in 1993. As to the future of the A-G's post or his tenure, Mohtar is not saying though it is already widely speculated that his term will stretch to the end of the year.

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