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# Sultan tells judiciary to buck up

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## KUALA LUMPUR:

Acknowledging that there has been some degree of "disquiet" over the state of the judiciary in recent years, Sultan Azlan Shah of Perak has called on judges to discharge their duties "impartially, confidently and competently".

The former Lord President said yesterday there is a need to restore public confidence in the judiciary.

"In 2004, I had stated that it grieved me, having been a member of the judiciary, whenever I heard of allegations against the judiciary and the erosion of public confidence in the judiciary," he said in his opening address at the 14th Malaysian Law Conference.

The theme of the three-day conference "50 Years of Merdeka". "Recently, there have been even more disturbing events relating to the judiciary reported in the press.

"We also have witnessed the unprecedented act of a former Court of Appeal judge writing his post-retirement book of erroneous and questionable judgments delivered by our higher courts in a chapter under the heading 'When justice is not administered according to law'. There are also other serious criticisms (in the book entitled *The Judiciary at the Crossroads*)," he said, referring to the book by Justice N.H. Chan.

Raja Azlan, who was Lord President (now called Chief Justice) from 1982-84, said he found it necessary to speak at length on issues regarding the judiciary "because it is my earnest hope that the Malaysian judiciary will regain the public's confidence and it will once again be held in the high esteem as it once was held".

## Independent judiciary and public perception

He said the Malaysian judiciary was once the pride of the region.

"We were then second to none and the judgments of our courts were quoted confidently in other common law jurisdictions.

"Admittedly society is more complex today, and the task of the judges may be a more difficult than

what it was before, but the values I speak of are universal and eternal."

Raja Azlan said without a reputable judiciary - equipped with all the attributes of real independence - there cannot be rule of law.

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

He said the principal quality a judiciary must possess is impartiality.

"Impartiality also means that judges are not only free from influence of external forces, but also of one another. No judge, however senior, can dictate to his brethren as to how a decision should be arrived at."

He emphasised that a judge must be a person of unquestionable integrity, who brings an unbiased mind to the task.

"Like Caesar's wife. He should be above suspicion."

He said public confidence in the judiciary is based on four principles:

- » an independent judiciary;
- » impartial adjudication;
- » fairness trial; and
- » the integrity of the adjudicator.

"There was no reason why judges, with the assured security of tenure they enjoy under the constitution, should not discharge their duties impartially, confidently and competently," Raja Azlan said.

He called upon judges "to be both independent and competent".

"In these days, judges must be ever mindful that the loss of independence can come from many sources, and not just from the executive.

"Therefore, judges must piously resist the lure of socialising with business personages and other well-connected people.

"They may discover at their peril that they have compromised themselves in the cases that come



Sultan Azlan Shah and Bar Council Chairwoman Ambiga Sreenevasan in conversation.

before them with the unedifying spectacle of recusal application."

Raja Azlan pointed out that nothing destroys the public or business community's confidence in the judiciary more than the belief that the judge was biased when he decided on a case, or that the judge would not be independent where powerful individuals or corporations are the litigants before them.

"Confidence in the judiciary may also be eroded where the business community perceives incompetence in decision-making.

"A judgment in a banking or commercial transaction that is contrary to established norms or which is incomprehensible in its reasoning is bound to give rise to suspicion and loss of confidence."

He said if there is no competent judiciary to decide on complex commercial disputes, Malaysia's attempts to be a leading financial and commercial centre will fail.

He said it is important that foreign investors have faith in the competence and integrity of the judiciary, and suggested that Malaysia set up a commercial court.

Raja Azlan also said judges must be mindful of Malaysia's multi-racial and multi-religious

society when making decisions.

"Our founding fathers accommodated this diversity into our constitution that is reflected in the social contract, and saw this diversity as strength," he said.

## Judges for all Malaysians

"Judging in a diverse society is not an easy task. Judges in many parts of the world face similar difficulties ... Judges in Malaysia must be ever mindful that they are appointed judges for all Malaysians."

Citing the late former Lord President Tun Mohamed Suffian Hashim, he said judges must be sensitive to the feelings of all parties, irrespective of race, religion or creed.

## Delayed justice

While acknowledging that judging is an arduous task, Raja Azlan said any incompetence would lead to delayed judgments and backlog in cases.

He cited a law report he read last week, about a medical negligence case involving the death of a lawyer which took 23 years to reach the Court of Appeal.

"Similarly, there have been reports that some judges have taken years to write their grounds

of judgments involving accused persons who had been convicted and languishing in death row. Surely, such a situation cannot be tolerated in any progressive nation."

## The conduct of lawyers

Describing the relationship between the Bench and the Bar as symbiotic, Raja Azlan said there cannot be an independent judiciary without an independent Bar.

"The Bar and its leadership must ensure there is a high standard of integrity and ethics among its members. A Bar that is riddled with bad practices cannot assist the administration of justice."

He said the relationship between judges and lawyers must be "proper and correct".

"Judges are supposed to be no respecters of persons who appear before them. This rule applies not only to litigants but also to lawyers. It's not just a matter of prudence and good practice, but fundamentally one of ethics."

He noted that there have been allegations against some lawyers who are in clear dereliction of their responsibilities. "They have either misled the courts, or attempted to choose the judges or courts for their cases to be heard so as to obtain a favourable decision in their client's favour. This is a serious interference with the administration of justice and the process of the court."

## Nazri's response

In an immediate response, Minister in the Prime Minister's Department Datuk Seri Mohamad Nazri Abdul Aziz said the government respected Raja Azlan's views.

"We respect the opinions. The government has its perception [about the state of judiciary], but we listen," said the de facto law minister, who was at the conference.

"I agree the public [must have confidence in the judiciary]. But what is the public? The public means a thousand people or the whole nation?" he asked.

Asked if the government will consider Raja Azlan's suggestions, he said the government will look into them, particularly on setting up a specialised commercial court.