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Constitutional crisis looms

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M'sian Bar may challenge top judges' extension of service

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KUALA LUMPUR: The top two judges in Malaysia have been dragged into a constitutional crisis through no fault of their own.

Chief Justice Tan Sri Md Raus Sharif and Court of Appeal (PCA) president Tan Sri Zulkefli Ahmad Makinudin, two respected personalities in their field, could face a challenge from the Malaysian Bar today if they continue in their posts after their official retirement.

Raus and Zulkefli turned 66 on Feb 4 and March 28, respectively, and were already on a six-month extension of service before they were appointed to their current positions on April 1.

While Raus' extension ends today, Zulkefli's will end on Sept 27.

The controversy erupted when the Prime Minister's Office (PMO) announced on July 7 that the two men would be appointed as "additional" judges under Article 122 (1A) of the Federal Constitution (three years for Raus and two years for Zulkefli) when their extensions expire so they could continue to serve in their positions.

The PMO statement added that on his last day as head of the judiciary on March 30, former CJ Tun Arifin Zakaria suggested the appointments to the Yang di-Pertuan Agong.

However, legal observers argue that "additional" judges were previously appointed after they retired and did not take up such high posts.

The public will know tomorrow whether Raus accepts the appointment by the King, acting on the advice of the Prime Minister after consultation with the Conference of Rulers, as



Highly respected: Raus (left) and Zulkefli.

the King will have to swear him in as an additional judge and again as CJ.

The Bar is holding an extraordinary general meeting (EGM) today to consider two motions on the constitutionality of the new appointments. At least 500 members have to be present for the EGM to proceed.

"The Malaysian Bar does not question the abilities, capabilities or suitability of the current CJ and PCA.

"However, their tenures do, and must, come to an end on Aug 3 and Sept 27, respectively, and they cannot continue to hold those positions thereafter," Bar president George Varughese stated in his motion.

He said the appointments did not fall within the purpose of appointing "additional" judges, adding that allowing them to remain as CJ and PCA would "lead to the inference that there is a dearth of appropriate candidates among the eminent current members of the Federal Court, who are suitable and have the necessary abilities and capabilities".

The controversy turns on the interpretation of Articles 122(1) on the composition of the Federal Court; 122(1A) on the King appointing additional judges on the advice of

the CJ; and 122(B).

Senior lawyer Tan Sri Muhammad Shafee Abdullah was reported to have said that the appointments were constitutional.

Former Attorney-General Tan Sri Abu Talib Othman, when asked whether the appointments were valid, said: "It is arguable. My view is that such appointments for the post of CJ and PCA are contrary to the intent and spirit of the amendment to Article 122(1A) which allows for appointing additional judges."

A former CJ who did not want to be named would only say: "It is not clear-cut."

The public is eager to know the outcome of the Bar's EGM as a previously announced Bar forum on the same topic scheduled for last night was cancelled.

The Bar president's explanation that the forum was too close to the EGM and that all the council staff were involved in preparations for the meeting did not go down well.

They were hoping to watch two senior Bar members with renowned advocacy skills - former Federal Court judge Datuk Seri Gopal Sri Ram and Muhammad Shafee - debate.

The "sparring" between Gopal - a practising lawyer before he was appointed directly to the Court of Appeal - and Muhammad Shafee would have given the public first-hand information from both sides of the coin and the opportunity to ask questions of the two constitutional law experts.

Raus and Zulkefli, who have the distinction of being from the first batch of law graduates from Universiti Malaya, have been involved in improving the administration of the courts for some years now.

They did not need to be placed between a rock and a hard place at this stage of their career.