

## Court of Appeal rejects Dr M's bid to dismiss two forex RCI members

MalaysiaKini.com

13 December, 2017

The Court of Appeal has unanimously dismissed Pakatan Harapan chairperson Dr Mahathir Mohamad's leave application to remove two members from the Royal Commission of Inquiry (RCI) on Bank Negara's foreign exchange (forex) losses.

"This appeal has several legal impediments that even if a writ (of leave) is given, the appellant would not be able to surmount it. The appeal is dismissed and the High Court decision is upheld," Justice Mohd Zawawi Salleh said today.

However, Justice Zawawi did not elaborate on the legal impediments he stated in his oral judgment.

He was chairing a three-member panel that presided on today's hearing. Other members of the panel were Justice Abdul Rahman Sebli and Justice Abdul Karim Abdul Jalil.

Mahathir's counsel Mohd Haniff Khatri Abdulla sought for the cost to be set at "two-point-six thousand" as a "symbolic gesture". However, the judges granted senior federal counsel Alice Loke's request for RM10,000 instead.

Mahathir is seeking RCI panel members Mohd Sidek Hassan and Saw Choo Boon's removal on grounds that they were members of the taskforce that recommended the formation of the RCI, and that their involvement in the RCI would violate the principles of natural justice.

Among others, his application for a judicial review called for a *mandamus* order compelling the Malaysian government to advise the Yang di-Pertuan Agong to dismiss them.

Previously on Aug 17, Kuala Lumpur High Court judge Azizah Nawawi [dismissed](#) the leave application for judicial review, saying that Sidek and Saw's appointments cannot be challenged in court.

She also added that a *mandamus* order can only be issued against a public officer.

Mahathir had failed in a bid to seek an [injunction](#) to stop the RCI proceedings when the Court of Appeal ruled on Aug 18 that it is in the public interest for the RCI to continue.

The RCI began on Aug 21, and a report of its findings was tabled in parliament on Nov 30.

At the beginning of today's hearing, Zawawi asked the parties if the case is still a "live issue" since the RCI has already tabled its report, and said that this issue needs to be settled before the other points can be raised.

Haniff argued that although the case pertains to the composition of the panel, the court could rule that Sidek and Saw's appointments were null and void, which would mean that their report is also null and void. Hence, the judicial review could have real consequences rather than mere academic exercise.

Loke, however, insisted that proceedings with judicial reviews would be an academic exercise because the RCI had already completed its function, and hence the leave application should be dismissed.

Zawawi then agreed for other points to be raised in the leave application.

Haniff then argued, among others, that Section 4 of the Commissions of Enquiry Act 1950 allows the Yang di-Pertuan Agong to replace an RCI commissioner if the person resigns, desires to be discharged, refuses or becomes incapable of acting.

This means that RCI members can, in fact, recuse themselves or inform the Yang di-Pertuan Agong that they could not perform their duties, he said.

Loke meanwhile reiterated that a judicial review would be an academic exercise as it is already too late to challenge the composition of the RCI.

Moreover, Article 40 of the Federal Constitution states that the Yang Dipertuan Agong shall act in accordance to the advice of the cabinet or a minister acting under the cabinet's authority, rather than the "Government of Malaysia" named as a respondent in Mahathir's suit, she said.

Even if the cabinet had been named as a respondent, they cannot be compelled by a *mandamus* order as they are not public officers, she said.

**Copyright © 1999-2016 Mkini Dotcom Sdn. Bhd**

Source: <https://www.malaysiakini.com/news/405287>

