

OPENING REMARKS BY
TUN TENGKU MAIMUN BINTI TUAN MAT,
THE CHIEF JUSTICE OF MALAYSIA
INDUCTION PROGRAMME FOR JUDICIAL COMMISSIONERS
29 MARCH 2021, PALACE OF JUSTICE, PUTRAJAYA

YAA-YAA & YA sister and brother judges,

YA-YA Dato-Dato, tuan-tuan dan puan-puan, newly appointed judicial commissioners and participants of the Induction Programme,

En. Qalam Zainudin bin Sani,
Secretary, Judicial Appointments Commission,

Ladies and gentlemen,

Assalamualaikum wbt and a very good morning.

[1] May I take this opportunity to first and foremost extend my warmest and heartiest congratulations to each and every one of you on your appointment as a Judicial Commissioner.

[2] Being appointed as a Judicial Commissioner is an honour indeed. You are just one step away from becoming a full-fledged High Court judge. More than 2,400 years ago, Socrates described the qualities of a good judge as follows: “Four things belong to a judge: to hear courteously; to answer wisely; to consider soberly and to decide impartially”. In the context of our country, if I may add the fifth quality as described by former

Chief Justice Tun Dzaiddin Abdullah: “to discount whatever prejudices, whether they relate to race, religion or politics.”.

[3] I am happy to note that we have a good mix of appointees from the Judicial and Legal Service and from the Bar. I am confident that your diverse backgrounds and experiences will enhance the productivity, efficiency and the overall image of the Judiciary. Your appointments are a testament to your competence and wide knowledge of the law.

[4] As a lawyer, Deputy Public Prosecutor or Senior Federal Counsel, your duty was to advance and develop your client’s case in the best possible way to secure the best outcome for the client. In that regard, you were only concerned with one version or one aspect of the case, namely the version or aspect that is favourable to your client. You would do your utmost to persuade or to convince the Bench to agree with your point of view. A judge’s duty, on the other hand is to consider, balance and weigh the conflicting versions and arguments. Balancing and weighing in itself, is difficult and challenging as compared to just advancing one side of the argument when you were on the other side of the Bench. Thus, contrary to what most people think, a judge’s work is onerous. Indeed, listening to the parties itself requires patience and the right judicial temperament.

[5] In the context of a civil litigation, you maintain a pivotal role in managing the development or progress of the case and the sequence of addressing and resolving issues, as well as a general managerial role with a view to ensuring that the cases proceed as efficiently and justly as possible (see Geoffrey C. Hazard Jr & Angelo Dondi, ‘Responsibilities of

Judges and Advocates in Civil and Common Law: Some Lingering Misconceptions Concerning Civil Lawsuits', Yale Law School 2006).

[6] As judges, you must also strive to ascertain the truth in all cases which come before you. In order to find out the truth, you are entitled to question the witnesses to clarify points that are unclear in their testimony. You must not, however, take over the examination in chief or cross-examination of witnesses. You must refrain from questioning in a manner and to an extent which gives the impression that you are no longer impartial. You should not engage in prolonged questioning of witnesses. If you do intervene to an excessive extent in a trial, that will eliminate or impair your ability to assess the evidence or to adjudicate upon the case independently and impartially .

[7] In conducting criminal cases, may I draw your attention to the words of the then Chief Justice of Canada, the Right Honourable Beverly McLachlin:

“There is an obvious tension between the rights that are essential to a fair criminal trial, and the expectation that may sometimes arise on the part of the complainants. And the criminal law must navigate this tension. But it can only do so effectively if all sides have realistic expectations about what the criminal process can and cannot do. Complainants and witnesses need to understand what is required of them in a trial and what they can realistically expect from it. No one has a right to a particular verdict, but only to a fair trial on the evidence.”.

[8] May I also remind you of the judgment of the Supreme Court in *Krishnan v Public Prosecutor* [1987] 1 MLJ 292:

“It is one of the basic rules of justice that however heinous a crime a person is accused of, whatever the rank of the person who testifies against him, he can only be convicted on evidence produced, according to the stringent requirements of the law ... it does not mean that a person accused of one of the most serious crime known to our law is not entitled to equal protection before the law and one of those items of protection to which he is entitled is that his guilt must be proved in accordance with or in the manner required by law. Anything less will not be enough.”.

[9] And as said by the Federal Court in *PCP Construction Sdn Bhd v Leap Modulation Sdn Bhd* [2019] 6 CLJ 1:

“The courts of justice are the bulwark of a nation. The independence, impartiality and integrity of judges are thus critically important in the administration of justice. Alexander Hamilton famously recognised, in the doctrine of separation of powers, that the legislature controls money, the executive controls force and the judiciary controls nothing. It is on public confidence that the Judiciary depends, for the general acceptance of its judicial decisions, by both citizens and the government. The public conforms to the decisions of the judiciary because they respect the concept of judicial power and the judges who exercise such power. ...”.

[10] Hence, it is paramount that you do not destroy the foundation of the judiciary by paying scant regard to the concept of judicial power. The trust and confidence of the people in the judicial system to deliver impartial justice comprises the very foundation of the judiciary. You should remain independent and decide cases without fear or favour and without any pressure from any quarters, whether internal or external. You should always act with dignity and perform your duties to the highest standards to uphold and maintain the integrity of your office. You have to decide a matter before you impartially by giving all parties an opportunity to be heard and by treating them fairly. If you have personal knowledge of the disputed facts or connections to either of the parties or an interest in the outcome, you should refrain from determining that matter.

[11] Indeed, these are amongst the duties enumerated in the Judges' Code of Ethics 2009 such as the duty of a judge to uphold the integrity and independence of the judiciary, to avoid impropriety in judicial activities, to perform judicial duties fairly and efficiently and to minimise risk of conflict arising from extra-judicial activities.

[12] We all understand what judicial independence and impartiality entails. Integrity, however is sometimes seen in a very narrow perspective, i.e. whether or not a judge is corrupt and corruption is generally viewed from the monetary aspect. As identified in the Bangalore Principles of Judicial Conduct, integrity encompasses all concepts that refer to the ability of the judicial system or an individual member of the judiciary to not only resist corruption, but to fully respect the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence.

[13] While the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak and I are responsible for policy matters and are responsible in ensuring that judges comply with such policies, we do not, in any circumstance direct or dictate your decision. You have complete independence to decide the cases before you, according to the law and the facts. It is my hope that in arriving at every decision in every case, you would keep in mind the various aspects of integrity I mentioned earlier.

[14] This Induction Program is crucial to introduce you to the various aspects of your judicial work. I have no doubt that you are an expert in some areas of the law, but as a judge, you need to be familiar with all areas. The Training Committee led by YA Dato Seri Mohd. Zawawi bin Salleh have tried their level best to design the training module as comprehensively as possible, which hopefully will guide you, in the initial phase of your appointment. And for that, I wish to record my gratitude and appreciation to the Training Committee and to all facilitators involved in this Induction Programme.

[15] In discharging your judicial duties, you do not have the privilege of choosing which cases you want to adjudicate and which cases you do not. You are required to adjudicate all cases that come before you and you are therefore bound to hear cases which attract public attention and/or cases which involve public figures. Judging these cases particularly, is not for the faint-hearted, because for these kinds of cases, no matter your impartiality, your decision will not be received impartially nor viewed objectively. More often than not, your decision will be viewed with intense sentiments.

[16] Nevertheless, you should not be unduly concerned with what others may say about your decision be it the executive, the legislative branch, people on the street or even your own peers –. You must remain steadfast in upholding the Rule of Law. It is common to hear judges being labelled as a ‘conservative’ or a ‘liberal’ judge. As far as I am concerned, only one label matters namely, an ‘impartial’ judge. In that regard, you should only be concerned with the law, not any other extraneous matters. In other words, nothing should deter you from rendering legally correct decisions. THAT, after all, is your duty – nothing more nothing less. Any implication that may arise from your decision – social or political – is outside your domain. That belongs to the domain of the executive and legislative branches.

[17] Integral to your judicial duty is writing grounds of judgment. As can be gleaned from decided cases, there are several reasons why it is important to write grounds of judgment. First, writing grounds would lead to an increased care in dealing with submissions and analysis of evidence, giving rise to sounder decisions. Second, providing grounds would ensure that parties knew why they had won or lost, and from a broader perspective, the legal profession and the community might also have a legitimate interest in knowing these reasons as it enables them to ascertain the basis upon which like cases would probably be decided in the future. Third, it would ensure that the appellate court has the proper material to understand and do justice to the decisions made at first instance. Fourth, providing grounds would serve as a means of curbing arbitrariness and is in fact important for accountability and transparency in the judicial system. Failure to provide reasons may affect the legitimacy of the decision (see *Thong Ah Fat v PP* [2012] 1 SLR 676).

[18] I wish to emphasise that a good judgment is not necessarily a long judgment, so long as it is a speaking judgment in the sense that it covers all pertinent points which require the court's determination. Perhaps it is useful to be reminded of the words of Lord Neuberger, the former President of the Supreme Court of United Kingdom who has regularly spoken on the need to depart from the long-standing tradition of long wordy judgments. According to Lord Neuberger, long judgments are sometimes valuable, but often they are vanity judgments, and that such judgments are at best, a waste of time and space, and at worst, cause confusion and uncertainty.

[19] You should avoid making findings on points which parties are not at variance or points which do not form issues before the court. The reason is simply because ours is an adversarial system, which requires us to only decide on matters in dispute, not matters on which parties are on common ground or have no quarrel. Of course you should also avoid making unnecessary remarks or comments against parties, counsel or DPP, either in your grounds of judgment or orally on the Bench. The point here is that, when you are on the Bench, you should listen more and talk less. If you need to speak, you should never ever by your words, demean any of the parties before you.

[20] The times we are living in are indeed challenging. The provisions of our Federal Constitution are being stretched and tested to the limits and it is in times like this that the Judiciary must remain impartial and ever ready to deliver justice according to the Rule of Law. I have no doubt that you will all rise to the occasion.

[21] On that note, I welcome you to the Judiciary and I wish you all the very best. Whether you were formerly a practising lawyer, a judicial officer, DPP or SFC, I hope you will quickly adapt to to the Superior Court Bench and to acquiring judging skills. May Allah guide you and every one of us and may He ease all our affairs. I look forward to you joining me in taking the Malaysian Judiciary to greater heights.

Thank you.