

TOMMY THOMAS: UNMASKING THE REAL AG

A. Only Concerned About His Personal Reputation, Image and Interests as the Attorney General (AG) and not as the Head of the Department and Head of Legal and Judicial Services

1. AG Thomas was more concerned about protecting his own personal reputation and image rather than exercising his duties and responsibilities as the AG of the Head of the Attorney General's Chambers (AGC) and the Head of Judicial and Legal Service. An impartial AG would provide advice based on the rule of law and guided by the Federal Constitution (the Supreme Law of Malaysia). However, with AG Thomas, his behaviour depicts that of a private sector lawyer whereby his opinions were generally motivated by the needs of the clients and his ultimate goal is the remuneration (in the form of reputation). He has openly shown the element of bias and political stand in his conduct (including written opinions, public interviews and press releases).

2. On 27 June 2019, during a meeting with all the States and Ministries Legal Advisors (which were also attended by Top and Senior Management of the AGC) AG Thomas had openly declared that he was a political appointee and that he is the AG for the Pakatan Harapan

Government. He openly expressed that he has no interest with the matters concerning the States that are governed by other political parties (Kelantan, Terengganu, Pahang, Sarawak and Perlis). All attendees were shocked and baffled with such statements. This is because AGC officers are constantly reminded that their duties and responsibilities are discharged without fear and favour. Without a single doubt, AGC officers who are also public officers must display loyalty to the Government of the day. Such loyalty should not compromise the rule of law and the principle of fairness and justice to all. The roles and responsibilities of the AG/Public Prosecutor (PP) and his officers are constantly monitored by the general public.

3. In the same meeting, he verbally instructed the Legal Advisors from the Ministries and the Pakatan Harapan states to refer directly to him with regard to the appointment of lawyers (whether local or foreign). This is pursuant to his powers under Criminal Procedure Code [Act 593] and the Government Proceeding Act 1956 [Act 359]. It has been observed that more often than not, most of the appointed local lawyers are his acquaintances e.g. Sitpah Selvaratam for the Equanimity Case, Robert Lazar for the DBKL's land issues, Mohanandas (Sitpah's husband) for the Bonsoon Bunyamit arbitration settlement who are either recommended or directly appointed by him.

Demoralizing of AGC Officers

4. There were occasions whereby he signed off written opinions to the Ministers, clearly stating that the said opinion was done on the advice of the Chambers. By doing so, it deemed that he signed off in his capacity as a third party instead of an AG.

5. There are also several instances where he verbally accused experienced senior legal officers of misleading/wrongly advising him due to the different opinions presented by the senior legal officers. For example, in the case of whether Malaysia to accede to the Rome Statute, he presented his own personal opinion to the Government instead of presenting AGC opinions based on the existing rules of laws encapsulated in the Federal Constitution (FC).

6. In the same meeting dated 27 June 2019, he openly chided the performances of all the legal officers located at the Ministries and States to be incompetent and not committed in discharging their duties. In this regard, he also made a comparison between AGC Officers and private sector lawyers. He said that AGC officers only serve one (1) client, (i.e. the Government) as opposed to private sector lawyers who have to work hard to find, serve and retain their clients.

7. AG Thomas, as the Head of Department failed to understand the multi-faceted duties and responsibilities of the AGC officers located in various Divisions and Ministries where they are juggling with multi taskings. For example, legal officers in the Ministries are simultaneously expected to conduct both criminal and civil cases, provide legal opinions and drafting of laws and regulations. Even if the legal officer is placed in one particular division in the Headquarters, he/she is expected to take on a number of matters (including administrative matters) simultaneously. Therefore, when AG Thomas commented that AGC officers are lacking in skills and specialization the said AGC officers feel demoralised as they have devoted their time and effort in protecting the Government's interest/to bring justice to the victims in a criminal proceeding. His passing remarks show ignorance on his part where there were instances the AGC officers have sacrificed their lives, health, personal time and marriages in the name of public service.

8. It is rather inappropriate for AG Thomas to make such remarks when there have been numerous cases, both criminal and civil, whereby AGC officers have obtained favourable judgments for the Government and the criminal victims.

The Use of Profanity Language and Gestures in Civil Service

9. AG Thomas has been using profanity words like “bugger” and “f**ker” which are often hurled at AGC officers; such words were also used as verbal expressions of his views on situations/cases. He also illustrate the word ‘f**k’ by showing inappropriate hand gestures before AGC officers. Such practice is not adopted in public service as it is deemed as sexual harassment and against social etiquettes. With this, AGC officers no longer know how to show their respect to AG Thomas.

B. Conduct of the Kleptocracy Cases

SRC Trial

10. The preparation of the SRC case were initially spearheaded jointly by Dato’ Mohamad Hanafiah Zakaria (Solicitor General III) and Datuk Haji Sulaiman Abdullah. However, prior to the start of the SRC trial, AG Thomas removed both Dato’ Hanafiah and Datuk Sulaiman and replaced with Dato’ V. Sithambaram (an experienced criminal lawyer) who was appointed as an ad-hoc DPP.

11. During the SRC Trial, AG Thomas did not really play an active role in the prosecution case. Although he does occasionally attend court hearings, the feedback by the SRC Team is that his presence was more disruptive than constructive for the prosecution. Apparently, he raised unnecessary questions which disrupt the flow of thoughts and arguments by the SRC team.

12. It was also alleged that he verbally embarrassed Sithambaram (in the presence of SRC team) not to argue with him as he is the AG.

13. During the recent bomb hoax incident at the court (25 July 2019), AG Thomas received information by the police of the existence of the bomb. Instead of alerting the court and the team, AG Thomas took off! This action is seen to be selfish as the team and the court were only alerted later on the bomb threat when they were asked to evacuate the court.

MACC investigations on Tan Sri Apandi

14. Despite knowing that Dato' Sri Gopal Sri Ram has stopped the MACC investigation on Tan Sri Apandi Ali, AG Thomas did not take any action upon receipt of such information. As a result, Tan Sri Apandi got back his passport to enable him to travel to UK to attend his son's call to

the Bar of England & Wales in July 2019. His inaction may have been the cause for the former MACC Chief to step down by shortening his contract tenure. Should there not be an investigation on this matter?

C. The Unjust Removal of Dato' Mohamad Hanafiah Zakaria as the Solicitor General III (SG III) with the Demotion to Senior Research Officer at Judicial, Legal Training Institute under the Prime Minister's Office

15. When AG Thomas first reported for duty as AG on 6 June 2018, AGC had two (2) Solicitor Generals –

- a. YM Datuk Engku Nor Faizah binti Engku Atek as Solicitor General, responsible to oversee management (comprising the Management Division), Legislation Sector (comprising of the Drafting Division and Law Reform and Revision Division) and Advisory Sector (comprising the Advisory Division, International Affairs Division and Research Division); and
- b. Datin Paduka Zauyah Be binti T. Loth Khan, Solicitor General II (SG II), responsible to oversee the litigation sector (comprising the Prosecution Division, A&T and Civil Division)).

16. On 7 July 2018 (Thursday), AG Thomas held a town hall session with the AGC officers. During his Q&A session, Dato' Hanafiah who was at that time a Member (Prosecution) of the Expert Council (Multi Discipline) raised his concerns to AG Thomas:

- a. prior to his posting in the Expert Council, he was the Deputy Head (Operation) of Prosecution for almost ten (10) years;
- b. although the designation description as an "expert" sounds glamorous, but in actual fact, he was put in "cold storage" by the former AG, Tan Sri Apandi Ali since December 2015 who never bother to give reasons for the sideline;
- c. he suspected it was because when Tan Sri Apandi was the Federal Court Judge, he had sought assistance (through his intermediaries) in three cases involving his (Tan Sri Apandi) friends and relative. However, upon reviewing the files and based on facts and law, Dato' Hanafiah was unable to assist Tan Sri Apandi. To this, Tan Sri Apandi had passed a warning to Dato' Hanafiah through someone "*wait, when he appear before me*";

- d. there were also anonymous letters alleging him to have cash of RM 200,000,000.00 and also owned expensive cars which is yet to be proven;
- e. despite being an expert in prosecution matters, he was only tasked to handle MH17 and MH370;
- f. he sought AG Thomas on the status of the Expert Council team and further requested AG Thomas to rectify the injustice and unfairness that was caused to him and his team by Tan Sri Apandi; and
- g. he was not seeking for any position in AGC but merely asking to be given prosecution work as this has been his forte for the past twenty-nine (29) years out of his thirty three (33) years in the Judicial and Legal Service.

17. AG Thomas then appointed Dato' Hanafiah to head the Appellate and Trial Division (A&T Division) on 2 July 2019 and he was entrusted to lead the SRC team as well as the set up of Special Unit to deal with kleptocracy related cases.

18. When Datin Paduka Zauyah contract expired in September 2018, initially, AG Thomas wanted to promote Dato' Hanafiah as the SG II to replace Datin Paduka Zauyah. However, this did not materialise; instead, there was a change in the organizational structure whereby –

- a. YM Datuk SG's portfolio was reduced to only overseeing the Legislative Sector and Administrative Division;
- b. Datuk Siti Zainab Omar (former Head of Advisory Division) was promoted as the Solicitor General II (SG II) to oversee Advisory Sector with retrospective effect on 1 October 2018; and
- c. Dato' Hanafiah was promoted as Solicitor General III (SG III) to oversee the Litigation Sector on 7 November 2018. SG III was a new post duly created for the purpose of handling SRC and 1MDB cases.

19. Subsequently, pursuant to the Government's instructions, Datuk Haji Sulaiman and Dato' Sri Gopal Sri Ram were appointed as Senior DPPs to conduct the SRC and 1MDB cases respectively.

20. Initially, Dato' Hanafiah and AG Thomas enjoyed a good working relationship. Subsequently when Dato' Hanafiah was removed from the SRC team and AG Thomas instructed Dato' Hanafiah to handle matters/cases in the office, their working relationship was still good. AG

Thomas instructed Dato' Hanafiah not to disturb him and Manoj (Head of Prosecution) as they have to fully spend time on the preparation for the SRC trial.

21. However, things started to change when people around them could sense that there was tension between AG Thomas and Dato' Hanafiah. AG Thomas stopped calling Dato' Hanafiah to his office for discussions. Instead, Mr. Manoj Kurup (Head of Prosecution) was frequently called to brief/discuss on prosecution matters.

22. The relationship worsened when Dato' Hanafiah, in exercising the authority that was granted to him under the existing Public Prosecutor Directives –

- a. decided to grant a Discharge Not Amounting to Acquittal (DNAA) in the murder case of PP v S. Ambika (the Adelina Sao's case). Dato' Hanafiah's decision was made based on the recommendations submitted by the DPP having conduct of the case and the Penang State Prosecution Director i.e. to grant DNAA on murder charge. When the decision was made to charge accused, it was made without the benefit of the post mortem report and the statement of the doctors. The report and statement of the doctors showed that

the cause of death has nothing to do with the act of the accused;
and

- b. granted DNAA on a family feud involving the late Tan Sri Lim Gong Tong of which Dato' Hanafiah concurred with the recommendation by the DPP having conduct of the case and also the Selangor Prosecution Director and it was based upon the merits of the case as stated in the IP. Simply put, the accused has the right to lodge a police report for the police to investigate if he suspected an offence was been committed. The earlier decision to charge was made by a junior DPP and without fully appreciate the law and facts.

23. It was obvious that AG Thomas was unhappy with the decisions made by Dato' Hanafiah. However, Dato' Hanafiah was never given the opportunity to explain himself. Instead, AG Thomas preferred to discuss the Adelina Sao's case with Datuk Siti Zainab (who has limited experience in prosecution work). Until today, Dato' Hanafiah's decision in both these cases remained intact.

24. Realizing that there was a strained in the working relationship and taking into consideration that Dato' Hanafiah has only about a year in service before his mandatory retirement due on 13 August 2020, Dato'

Hanafiah had indicated to Mr. Noor Huzaila bin Abdul Majid, Head of Management that he is willing to be transferred out from headquarters to a post befitting his current position. With his transfer, Dato' Hanafiah hope that AG Thomas and DPPs will have harmonious working relationship.

25. Further, regardless of AG Thomas's lack of trust towards Dato' Hanafiah, Dato' Hanafiah continued to carry out his duties diligently and to the best of his abilities. For example, Dato' Hanafiah has successfully maintained the judgment in two Federal Court Cases that was heard in Kuching, Sarawak on 24 July 2019 (the same day AG Thomas signed Dato Hanafiah's transfer order) where the Federal Court upheld and affirmed the conviction and sentence. This was reported in the Borneo Post and Utusan Borneo.

26. On 25 July 2019, the day that Dato' Hanafiah was given the transfer order to Judicial and Legal Service Training Institute as Senior Research Officer effective 1 August 2019 (this is a non-existent post specifically created to cater for such transfer), AG Thomas informed Dato' Hanafiah that he was told in confidence that a police report and MACC report were simultaneously lodged against Dato' Hanafiah in exercising his duties as SG III. He further told Dato' Hanafiah that to send him to the courts as the Judicial Commissioner would be very wrong as he does not want the

Judiciary to question him *“How can you send him to us when you know that he is under investigation.”*. However, based on reliable sources, apparently there were no recent MACC reports lodged against Dato’ Hanafiah and there were no on-going MACC investigations on Dato’ Hanafiah.

27. Further, AG Thomas told Dato’ Hanafiah that *“there are no similar complains on other SGs, Dato’ Amarjeet Singh (former Head of Civil Division) or anybody else. There are 1200 people here, why was it only against you?”*. However, AG Thomas’s statement is inaccurate as there was an anonymous email dated 12 September 2018 sent to AG Thomas and copied to certain AGC’s top management on the allegations made against SG and SG II with details as follows–

a. on Datuk Engku, SG –

- i. that she got promoted fast because of her relationship with Datuk Azailiza (former Solicitor General) and because Tan Sri Apandi received advice from Datuk Engku and with assistance of Tan Sri Dzulklifli and Awang Armadajaya to remove Datuk Azailiza because both Apandi and Azailiza are from different camps;
- ii. they got rid of Gani’s camp by transferring supposedly *“Gani camp’s”* officers (including Dato’ Hanafiah) out from the main

post, could storage them and retain those who are harmless to Apandi and strengthened Apandi's camp;

- iii. despite recovering from stroke, she continued to work because sources revealed that her family financial is not stable and she is earning money for the family. Her husband who is a doctor, opened a dialysis centre that may be failing and she is said to be a guarantor for the loan related to the centre.

b. on Datuk Siti Zainab, SG II –

- i. that she is an ambitious lady who is capable of doing anything to achieve her dreams and that she is a person of many faces whom cannot be trusted where she is said to have backstabbed Tan Sri Gani, Tan Sri Apandi and Datin Paduka Zauyah;
- ii. she got a lot of connections in particular with Rosmah Mansor through Bustari Yusof who was said the mastermind behind the Pan Borneo Sarawak project. She personally attends the meetings relating to Pan Borneo Sarawak but she seldom attends meetings relating to Pan Borneo Sabah project;

- iii. she is a member of Jawatankuasa Kerja Tanah Persekutuan where she was alleged to have received land as a “present”;
- iv. as a member of the KWAP member, she may have participated in the scandals in Malaysia;

28. Despite such allegations made against Datuk Engku and Datuk Siti Zainab, AG Thomas did not take any action and continued to trust them. To say that there are no other allegations/complains/reports made against the other officers in AGC is absurd. As public officers of the court, there are bound to be people, be it lawyers, NGOs or general public are unhappy or would disagree with the actions/decisions made by AGC officers.

29. For AG Thomas to say that the reason he is transferring Dato' Hanafiah due to the “so-called on-going investigations” by the police and MACC is bias towards Dato' Hanafiah. Obviously, there is some form of double standard practiced by AG Thomas towards Dato' Hanafiah. Based on previous practice, whenever there are allegations an IP is opened either by the police or MACC, the AG as the Head of Department/Head of Service would have been alerted in order to take the necessary pre-emptive measures where the affected officers will be transferred to posts

in another sectors without jeopardizing their current status and preserving their reputation and dignity, pending the outcome of the police/MACC investigations. As the adage says “a person is innocent until proven guilty”. Even the Deputy MACC Chief, Datuk Seri Azam Baki and the former and current IGPs have reports lodged against them, however they do not seem to be affected by such reports.

30. Further, AG Thomas’s statement to Dato’ Hanafiah that “there have been a lot of allegations” from the Bar (Bar Council) that Dato’ Hanafiah was “too friendly with the members of the Bar, Shafee in particular and all kind of allegations of dishonesty” is uncalled for. AG Thomas himself during the meeting on 27 June 2019 had informed the meeting that he has a wide network of friends, acquaintances, contacts etc which include lawyers, businessmen and journalists. Can this be construed that he is also “too friendly” with these people and thus, compromising his position as the AG? Wouldn’t the issue of “dishonesty” crop up too?

31. It is sad to see that Dato’ Hanafiah, who is well respected by AGC officers, the courts, enforcement agencies and members of the Bar Council (particularly those who have worked with him throughout his career) has been denied the right to be heard. Dato’ Hanafiah is known to be a man who takes his job very seriously and would consider cases

based on merits and the law. He is also firm on his decisions and will not be swayed easily by external factors.

D. Ignorance Towards Prosecution Work Processes

32. Due to AG Thomas's unhappiness with Dato' Hanafiah's decision in the Adelina Sao's case, AG Thomas issued the Public Prosecutor Directive No: 2/2019 (PP Directive 2/2019) instructing that any criminal representations for the reduction of charge or discontinuance of prosecution should be referred to Dato' Hanafiah who will then submit recommendations to the Datuk Engku (who has no experience in prosecution work at all) and Datuk Siti Zainab for concurrence.

33. Prior to PP Directive 2/2019, DPPs (regardless of grades) were authorized to make decisions on any legal representations submitted by the defence lawyers in accordance with the limit of authority granted to them, depending on the nature of the offences and sentences. Similar authorities were also granted to the various States Head of Prosecution, Head of Prosecution and Deputy Heads of Prosecution to consider such legal representations. Only in exceptional circumstances (cases pertaining public interests, high profile cases and classified cases) were referred to obtain Dato' Hanafiah and AG Thomas's decisions. Such

arrangements were to enable immediate decisions to be made by DPPs so as to ensure a conviction can be secured.

34. However, with the PP Directive 2/2019, which was effective on 3 May 2019, had created a “bottle neck” in clearing all the legal representations, which resulted in delay and eventually a miscarriage of justice. Due to the new ruling, there have been cases which were thrown out by the Courts for lack of evidence. If representations had been acted upon expeditiously, the DPPs handling the case could have secured a conviction, albeit at a reduced charge and the rights of the victims are protected. Example, there was a case in Sarawak recently where the accused was charged under s39B of the Dangerous Drugs Act whereby the defence counsel offered for the accused to plead guilty but because Datuk Engku (SG) and Datuk Siti Zainab (SG II) were late in giving their concurrence on the recommendation made by Dato’ Hanafiah (SG III) that was given way earlier, has caused the Court to throw the case out without calling for defence. Ironically, the decision made by Datuk Engku and Datuk Siti Zainab to concur with the recommendation made by Dato’ Hanafiah was made on the same day the Court threw the case out. Is it a mere coincidence? If both Datuk Engku and Datuk Siti Zainab had acted swiftly, a conviction could have been secured. Is justice served when such crucial decisions are left in the hands of these two ladies who have little

or no experiences at all in dealing with prosecution matters? For instance, it was reported in New Straits Times on Thursday, March 11 2007 at page 6, Prime News entitled "*Judge ticks off state legal adviser*" where Datuk Engku who was then the state Legal Advisor was reprimanded by the Datuk V.T. Singham (the then High Court Judge) for not appearing in court since she assumed office three (3) years from October 2004. Could this incident be the cause of her being transferred back to AGC Headquarters as the Deputy Parliamentary Draftsman effective from 1 June 2007?

35. Although AG Thomas is well-known as a commercial lawyer, it is publicly known that he has little experience in conducting criminal cases. Instead of being guided by very experienced DPPs, AG Thomas chose to be influenced by NGOs and private sector lawyers who have little to none knowledge of how prosecution is being conducted in AGC or how AGC functions generally.

E. Weak Display of Leadership Qualities

36. AG Thomas does not have a calm and firm disposition which ought to be demonstrated by AGs like Tan Sri Abdul Talib and Tan Sri Gani. Instead, he is easily agitated and tends to react rashly without much consideration of its ramifications to him, the Department and the Government as a whole.

37. Sadly, he does not portray good leadership qualities to AGC officers and the public when he failed to admit his errors in judgments. Instead, he tries to shift the blames to others beneath him, especially to those who are not “in the same boat with him”. E.g. Adib’s inquest.

38. His lack of good leadership qualities and his weak management in handling criticisms has put AGC in the bad light in the eyes of the public. This has caused the public to lose faith in the credibility and integrity of AGC as the “guardian of justice”.