FIRST THREE MONTHS OF TOMMY THOMAS AS ATTORNEY GENERAL

By
Tun Abdul Hamid Mohamad

Tommy Thomas assumed office as Attorney General (AG) on June 4, 2018 amidst cheers that he is a "constitutional law expert and civil litigator"; "an excellent choice for his expertise in the law and understanding of human issues" - Herald (Malaysian Catholic Church newspaper); "he holds an enormous amount of experience, making him a (way) more-than qualified candidate for the job" – Esquire; "committed, charismatic and vocal" – Esquire; the first member of the Bar: first non-Malay (Indian) and non-Muslim (Christian) and a lot more, to be so appointed since Merdeka.

The inference is that, at last, after more than half a century, a person of real calibre has been appointed and only after the fall of the UMNO (Malay) dominated federal government. The other inference is that all former AGs who were Malays, Muslims and from the Judicial and Legal Service, to put it mildly, were less qualified.

Three weeks later (June 25, 2018) I wrote the article "Is the new AG choosing his briefs like a private lawyer?" This article was written after he made the statement that his stand was the same as that of the Bar Council that the post of AG and Public Prosecutor (PP) should be separate and that his priority was as the legal advisor to the government. In "Should the post of AG and PP be separate? (July 12, 2018; NST July 15, 2018, I wrote *"Even if we separate the two posts, in my view, generally speaking, for the post of PP, an officer of the JLS is a more suitable candidate. I have no second choice."*

I pointed out that, until the Constitution and the Criminal Procedure Code (CPC) are amended, he is both AG and PP. That is what he is paid for. There is no question of him only doing the AGs work and not PPs. I also pointed out that AGs like Tan Sri Abu Talib, Tan Sri Mohtar Abdullah and Tan Sri Gani Patail always led the prosecution in high profile, public interest cases.

Lim Guan Eng's Case

On July 30, 2018 The New Straits Times reported the High Court Penang had fixed Sept 3 for the Attorney-General's Chambers to decide on whether to proceed or drop the corruption case against former Penang Chief Minister Lim Guan Eng and businesswoman Phang Li Koon.

"The defence counsels for both Lim and Phang...had each made a representation to the new Attorney-General (AG) for the case to be dropped...", the report continued.

"We have asked the AG to consider withdrawing the charges." Ramkarpal was quoted to have said.

On August 2, 2018 Tommy Thomas issued a statement that he would not be involved in the decision whether or not to further prosecute Lim Guan Eng. We came to know later that he had appointed Dato' Mohamad Hanafiah Zakaria (Dato'

Hanafiah) Head of the Appellate and Trial Division of the AGC, I believe, the new name for the division I was heading thirty years earlier, to do the job for him. As head of a division, in the AGC hierarchy, he is on the third layer, with AG on the first later, the Solicitors General on the second layer.

Do you think he does not know that Tommy Thomas was the counsel for Lim Guan Eng in that case immediately before his appointment as AG? Do you think he does not know that Lim Guan Eng is the Minister of Finance? Do you think he does not know that that if Lim Guan Eng is convicted, most probably he will lose his job? Do you think he does not know that Tommy Thomas was the DAP's candidate for AG? Do you think he would not perceive, rightly or wrongly, what they would expect from Tommy Thomas? Do you think he would not perceive, rightly or wrongly, the decision Tommy Thomas would prefer? Do you think he does not know that his promotion depends on Tommy Thomas?

Even if Tommy Thomas does not sign the letter to withdraw the charges, on whose behalf does Dato' Hanafiah sign it?

On September 3, 2019, the New Straits Times Online reported that the Penang High Court had granted a discharge amounting to an acquittal on Lim Guan Eng and Phang Li Koon over their corruption charges.

"This followed an application made by Deputy Public Prosecutor Datuk Masri Mohd Daud to the court, based on a representation sent by the defence to the Attorney-General to withdraw the case, on July 6.

Masri had applied for a discharge not amounting to an acquittal.

Lim's lead counsel, Ramkarpal Singh, and Phang's lead counsel, Datuk V. Sithambaram, had requested for a full acquittal.

Judge Datuk Hadhariah Syed Ismail, in her judgment, agreed with the counsels that the charges "cannot be hanging over the head of the accused indefinitely."

She stressed that there must be "finality."

She said a total of 25 witnesses had been called and the case was last heard in March.

"The court cannot be slow. After six months, the prosecution has not proceeded with the matter. We do not conduct cases on instalments. There must be a stop. No commas.

"The charge cannot be left hanging over the head of the accused indefinitely. We cannot be waiting for another six months for the case to proceed.

"I cannot agree with the prosecution's application because by doing so the court cannot close the case file. That cannot be the case. If we want to proceed, then we should proceed from A to Z.

"So after studying the whole case, and the long duration to get the decision, the court orders both accused to be discharged amounting to an acquittal," she said."

I think I have to pause here and clarify the various terms used, particularly, after Dato' Hanafiah came out with the Latin term *nolle prosequi,* which not many people know how to pronounce, let alone know the meaning.

The terms that have been used are "withdrawing the charges", "dropping the case," "offering no further evidence" and "to enter *nolle prosequi* (where Public Prosecutor does not propose further to prosecute the accused)." For our present purpose, it is sufficient to say that they mean the same thing as Dato' Hanafiah said, i.e. "where Public Prosecutor does not propose further to prosecute the accused".

The Criminal Procedure Code (CPC) provides thus:

"254. *(1) At any stage of any trial, before the delivery of judgment, the Public Prosecutor may, if he thinks fit, inform the Court that he will not further prosecute the accused upon the charge and thereupon all proceedings on the charge against the accused shall be stayed and the accused shall be discharged of and from the same."*

(2) .....

(3) Such discharge shall not amount to an acquittal unless the Court so directs."

The difference between a discharge amounting to an acquittal (DAA) and a discharge not amounting to an acquittal (DNAA) is that:

i. In a DAA, the case comes to an end.

ii. In a DNAA, the case remains on the court register as pending, but no date is fixed for the next appearance. However, the prosecution may request the court for a new date to continue with the prosecution. The order is made, for example, where a witness cannot be traced after a few postponements but the prosecution still wants to proceed with the case.

In a case where the prosecution informs the court that it does not intend to prosecute further, the practice is for the court to make an order of DAA. The reason is that, it was the prosecution that brought the accused to court and charged him. Later, the prosecution decided that it did not want to proceed with the prosecution. Why should the case remain on the court register as a part-heard case and why should the charge be kept hanging on the accused's head indefinitely?

In Public Prosecutor v. Syed Abdul Bahari Shahabuddin [1975] 1 LNS 137, it was held:

"(1) unless there are good grounds to the contrary a discharge under section 254 of the Criminal Procedure Code should amount to an acquittal. Good grounds would arise where the prosecution is unable to proceed for the time being but can satisfy the court that the temporary impediment is not insurmountable and that it will proceed within a reasonable time."

See also <u>Koh Teck Chai v. Public Prosecutor</u> [1967] 1 LNS 72 and Tan Chow Cheang (2018) 6 CLJ 452 (CA)

Then came the MACC's press release that it was "very shocked" *("amat terkejut*") to hear the news that Lim Guan Eng Guan was acquitted "after the prosecution had withdrawn the case".

"The MACC would like to stress that the decision was made by the Attorney General's office and not the MACC," the statement says.

This is another first. Never in the Malaysian legal history was there an open clash between the two government departments. This happens after the MACC had been cleansed of "BN men" by the PH government. So, do not blame "the inside job of BN men". The truth is there are many sensible and dedicated officers there.

As the first Chairman of the Advisory Board of the MACC, I know Dato' Mohd Shukri Abdull, the present Chief Commissioner. He is a dedicated and honest officer, indeed there are many like him there. I salute MACC for issuing the statement. Perhaps Dato' Mohd Shukri is beginning to think that he should have remained in retirement, after all.

This was followed by Tun Dr. Mahathir's comments, made in Brunei Darussalam. He said*, "They (MACC) have a right to be shocked. If they want to be shocked, they can be shocked. I am also shocked."*

Asked to comment on the decision, Dr Mahathir said that he had never in the past questioned the decision of the court.

"If the court makes a decision which to me is wrong, I also never comment (tegur) on it.

"This decision is made by the court so we have to accept it," he said. (The Star Online September 3, 2018)

According to the video recording of the press conference he also said, *"If they (MACC) are not happy, they can appeal."*

Listening to the way he answered the questions, clearly, he was trying to belittle the reporter who asked him the question. May be from the way the question was asked, the focus was shifted to the court for acquitting Lim Guan Eng instead of to AG for not further prosecuting the case. The truth is that the judge had no choice but to discharge Lim Guan Eng, with or without acquittal, because the prosecution was not going to prosecute him further.

Secondly, regarding his response that if the MACC is not happy, the MACC could appeal, he was manifestly wrong whether or not there was a full trial. The MACC is not a party to the case. MACC's job is only to investigate.

Tun Dr Mahathir could be excused for not knowing the technicality as he is not a lawyer but he should have stopped at saying *"I too was shocked."* He could have added*," If you want to know more, ask the AG."*

On September 4, 2018 Dato' Hanafiah, the Head, Appellate and Trial Division issued a press release. He made the following points:

1. *"....the Hon. Attorney General had no hand in the decision to enter nolle prosequi (where Public Prosecutor does not propose further to prosecute the accused) on the charges against Lim Guan Eng and Phang Li Koon".*

2. He was *"....tasked to decide on the representations made by both Lim Guan Eng and Phang Li Koon's case as I had not participated in any way with the case earlier. Accordingly I was able to consider the matter with a fresh perspective."*

3. *"Having given the said task, I have perused the evidence that has been investigated by MACC and the evidence that have been adduced and tested under cross examination thus far, I concluded that as a result of the cross-examination of the prosecution witnesses who has testified so far, the evidence supporting the first charge under Section 23 of the MACC Act and under Section 165 of the Penal Code has been substantially weakened. This conclusion was arrived in light of fresh evidence that have arisen during the cross-examination of prosecution witnesses.*

4. *"Having made the above findings, I opined that I would not be fulfilling my duties as Deputy Public Prosecutor to let the case continue knowing full well that that the case against ..... would not succeed at the end of the prosecution case. Hence, I decided for the prosecution to enter nolle prosequi against both....(of them)....in accordance with Section 254 of the Criminal Procedure Code.*

5. *He further said, "....I wish to stress that I have decided the representations without any influence from any quarters.... based on available evidence and governing law, which I did, without fear or favour."*

My preliminary comments are, first, I do not believe that this press release was issued without the approval, including the wording, by the AG.

Secondly, and I direct these questions to Tommy Thomas: If Lim Guan Eng were not a PH Minister of Finance, would he have tasked Dato' Hanafiah to study the case with the view not to further prosecute Lim Guan Eng? If only Phang Li Koon was charged, would he have done the same? If there was no representation by counsel for Lim Guan Eng, would he have done the same?

We now come to Dato' Hanafiah. I have no comments on paragraphs 1, 2 and 5. Paragraphs 3 and 4 may be taken together.

My questions to Dato' Hanafiah are: Even before he was tasked to study the case by AG, did the lead DPP, at least, not brief him, from time to time, how the case was

proceeding? Being such an important case, did he not call the lead DPP, from time to time to know about the case? Did the lead DPP of the case not inform him of the effects of the cross-examination and the discovery of fresh evidence and discussed with him how to overcome it?

Having perused the investigation papers and the notes of evidence and discovering the weakness of the prosecution's case arising from the cross-examination and the discovery of the fresh evidence, did he call the lead DPP and the MACC officers and discuss the possibility of redressing it by looking for fresh evidence to rebut the fresh evidence to be adduced by the defence; the possibility of challenging the admissibility of the defence's fresh evidence and the possibility of recalling and calling additional witnesses. After all, the prosecution has not closed its case.

Dato' Hanafiah was never in court. He did not observe the demeanours of the witnesses, instead he merely read the notes of evidence up to that stage and "*opined that I would not be fulfilling my duties as Deputy Public Prosecutor to let the case continue knowing full well that that the case against Lim Guan Eng..... would not succeed at the end of the prosecution case."* Considering the circumstances under which he was asked to study the case because of the application by Lim Guam Eng's counsel not to further prosecute the case, it looks as if he was merely looking for an excuse not to further prosecute Lim Guan Eng.

At the very least, he should have stated the evidence of the relevant part under examination-in-chief, the evidence under cross-examination and under re-examination and stated his reasons why he said it had *"been substantially weakened".* The test should have been whether the cross-emanation had caused irreparable damage to the prosecution's case, taking into account the evidence of all prosecution witnesses. Did he consider whether it could be repaired?

In any event, the prosecution had not closed its case yet. Why not proceed and let the court decide at the end of the prosecution's case? Was he afraid that the court would call for the defence?

According to Dato' Hanafiah, he merely requested for a discharge not amounting to an acquittal. Was he uncertain about the decision not to further prosecute or was he merely making a safe decision, the middle may, that he could not be blamed and his career would not be jeopardised? If the court orders a DAA, the court will be blamed while Lim Guan Eng, DAP and PH would be happy and the AG would not feel uncomfortable when meeting Lim Guan Eng?

If the prosecution is really serious that it only wanted a discharge not amounting to an acquittal, it should appeal against the order. Or, is it very happy with the result since it got more than what it openly asked for and could blame the court for it?

Clearly, from the day he was given the task, Dato' Hanafiah was under pressure even if from August 2 , 2018 to September 3 , 2018 he did not meet Tommy Thomas and Tommy Thomas did not say anything to him. Under the circumstance, he knew he had to decide not to further prosecute Lim Guan Eng and he had to find a reason for it. So, he came out with reason that he found the prosecution's case had

weakened after the cross-examination and the discovery of new evidence! I feel sorry for him.

I also feel sorry for Datuk Hadhariah, the Judge, who gets the blame for doing something right from the court's perspective.

It would not be complete without reverting to the statements made by Bersih and the Bar Council.

On September 5, 2018, the Star Online reported a statement issued by Bersih 0.2.

"With the sudden acquittal of Lim after Pakatan came into power, another concern arises whether the decision has been made due to external interference, especially from the Executive," it said in a statement on Wednesday (Sept 5).

Bersih added that the MACC must be made a constitutional body, with the appointment of its members being made transparently.

"This would ensure the anti-corruption body is free from external interference and does not become a tool of persecution against political enemies," it said.

....

High Court judge Justice Hadhariah Syed Ismail acquitted both accused and decided the charges be dropped despite the prosecution only proposing a discharge not amounting to an acquittal."

The first paragraph should be read with the fourth paragraph which will read as follows: *The decision by Justice Hadariah to acquit the accused when the prosecution had only asked for a DNAA has raised concern whether it was due to external interference, especially from the Executive.*

A few points arise here:

1. The focus has been shifted to the court, not the AG.

2. It alleges that there might be judicial interference, especially by the Executive. Bear in mind that **the executive now is the PH Government.** Is Bersih suggesting that, in just three months, the PH Government has started to interfere with the Judiciary?

3. The part played by AG (PP) who does not want to further prosecute the case which necessitated the discharge of the accused, whether DAA or DNAA, is not mentioned except that the AG (PP) only wanted a DNAA.

4. The issue whether, considering the surrounding circumstances, it was a proper exercise of discretion by the AG or not, totally escapes attention.

It calls for MACC to be made a constitutional body. "*This would ensure the anti-corruption body is free from external interference and does not become a tool of*

persecution against political enemies". Is Bersih also blaming the MACC for what had happened? If, according to Bersih, the Judiciary, which is not only a constitutional body, but one of the three branches of the government, could be interfered by the Executive, will making MACC a constitutional body make any difference?

Is the statement quoted in the last paragraph only refers to this case which was commenced when BN was in power or a general statement applicable to both governments? Even if, as asserted by Bersih, MACC is "*a tool of persecution against political enemies",* I do not believe that making it a constitutional body will solve the problem. Human factor counts.

On September 7, 2018 the New Straits Times Online reported:

"The Bar Council has described the prosecution's decision to withdraw corruption charges against Lim Guan Eng as "not shocking."

In a statement, its president George Varughese said it is the absolute prerogative of the Public Prosecutor to drop charges at any stage of a trial, before the delivery of judgment.

He said this was provided under Section 254 of the Criminal Procedure Code.
....

"Further the Deputy Public Prosecutor has since explained that it was his considered opinion that there is insufficient evidence to succeed at the end of the prosecution case."

That statement, coming from the Bar Council, **in this case**, is not at all surprising. Further, it merely restates the law without referring to the facts surrounding it and takes the easy way out to support the decision by the prosecution not to further prosecute Lim Guan Eng by saying that Dato' Hanafiah had "*explained that it was his considered opinion that there is insufficient evidence to succeed at the end of the prosecution case"*. How far is the Bar Council prepared to go to support the first AG from the Bar? The Bar Council's integrity and "independence" is also at stake.

As I am concluding this part I received a copy of Utusan Malaysia dated September 7, 2018 with the title, on the first page *"Tidak pernah tarik balik kes sedang berjalan – Abu Talib". (Never withdrew case still proceeding").*

Tan Sri Abu Talib was reported to have said, *".....when I was AG I never withdrew a case which was still proceeding in the midst of a trial." (sedang berjalan dan dalam perbicaraan.)*

"If I wanted to withdraw, I would explain to the police and those who had investigated the case, inform them reasonable grounds for withdrawing because those who investigated should be respected." (My translation.)

Tan Sri Abu Talib was AG for 13 years during Tun Dr. Mahathir's BN era. He was a member of the Judicial and Legal Service throughout his career. He was the best prosecutor Malaysia had ever produced. He knows what he is talking about.

Najib's cases

The CBT and abuse of power case

On July 3rd, 2018 The Edge Market reported, *"Newly-appointed Attorney-General (AG) Tommy Thomas is expected to lead the prosecution team when former Prime Minister Datuk Seri Najib Razak is charged in court tomorrow."* As long as I can remember, there had never been such a press report before. It is as if a celebrity, the greatest of all prosecutors in the Malaysian legal history would be making his first appearance in court.

He appeared in court on the following day (July 4, 2018), the day Najib was charged. Anyone familiar with criminal trials knows that on that day, the case is fixed for mention. What it means is that the charges will be read to the accused person by the court interpreter and he will be asked whether he pleads guilty or claims trial. If, as happened in this case, Najib claimed trial, another date or dates would be fixed for the trial.

All the AG has to do on the first mention date is to introduce himself and his team as well as the counsel for the accused person; inform the court whether he objects to bail being granted; if not how much and give his free dates for the trial. In this case he asked for more time to prepare his case causing Najib's counsel, Tan Sri Shafee Abdullah, who had spent his whole life doing criminal cases, first as a DPP and later as defence counsel, to remark that, usually, it is the defence counsel who would ask for time as he is taken by surprise while the prosecution should be ready with the trial when charging a person.

On August 31, 2018, about six months before the date fixed for the trial (about eight months if we were to calculate from the date Najib was charged), the AG issued a media release saying that his responsibilities as AG took precedence and he was unable to devote time to the case. (August 31st is the Merdeka day and a public holiday. Was he working in office while the parade was going on down below along the Boulevard? I pity him if he was).
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"I have come to the realisation that I cannot combine these onerous commitments with the simultaneous preparation and conduct of a seven-week trial in PP v Najib Razak, fixed to commence on February 12, 2019 and completing on March 29, 2019," he said.

He would therefore use his discretion under Section 379 of the Criminal Procedure Code and appoint Sulaiman Abdullah, a former President of the Bar Council, to lead the prosecution instead, he said.

This is another first scored by Tommy Thomas. Never in the legal history of Malaysia did an AG admit he was unable to cope with the demands of the work as an AG that he had to appoint a private lawyer to do the prosecution of a case. Or, is he

chickening out because he had no experience in prosecution and this case is certainly not the kind of case for anyone to learn to prosecute? In any event, he was given eight month to prepare for the case while, at the same time, doing other works. No DPP gets eight months or even one month's free in order to prepare for a case.

A young DPP has the advantage of being junior and, therefore, excusable if he makes mistakes. He also has the advantage of having a senior DPP to depend on. An AG is the PP. He is the No.1 prosecutor. He cannot be seen to be ignorant, inexperience, incapable or to make stupid mistakes publicly in such a high profile case, what more with counsel like Shafee on the opposite side. So, it is better for him "to step aside".

That is the reality. It proves the point I made earlier that no private lawyer, no matter how prominent, had seen investigation papers or had any experience prosecuting. For that reason an AG appointed from the Judicial and Legal Service has an advantage.

In any event, he has missed the chance to prove himself as a capable prosecutor, if he is, in the most important and most controversial case in the Malaysian legal history that will be remembered for a long time. Hopefully, he will not be remembered as the AG who had chickened out from prosecuting the former Prime Minister.

Coming to Sulaiman Abdullah, we know that he was defence counsel in a number of high profile criminal cases. But, he still lacks experience in leading evidence for the prosecution in a criminal trial. Is he going to leave that part of the job to the experienced DPPs from the Attorney General's Chambers (AGC) who would be assisting him and taking over the submissions, which, undoubtedly, he could do well? Indeed, Tommy Thomas could do the same.

Hopefully, Sulaiman's health can withstand the pressure of a prolonged trial. We pray for his good health.

<u>The 1MDB case</u>

Tommy Thomas also scored another first when he appointed Dato' Sri Gopal Sri Ram as DPP to study the investigation papers of 1MDB case and, it necessarily follows, to advise him whether there is a prima facie case to charge Najib. Remember that decision to charge or not is his discretion, based on evidence before him that he had studied to form his opinion, not of what someone tells him.

In such an important case, one would expect the AG himself to study the papers, assisted by the officers and make the decision himself. Even if he does not, his officers who have spent a decade or more doing the same job, could be relied on instead of appointing someone from outside, who had not even seen investigation papers all his life.

In any event, since Tommy Thomas is not even going to read the investigation papers, clearly, it follows that he will not be doing the prosecution. So, most likely, he will appoint another member of the Bar, may be Gopal Sri Ram himself, to

prosecute. Is that what he meant by he will give top priority to 1MDB case when he was appointed?

In appointing Sulaiman and Gopal Sri Ram to do the work of the prosecutor, Tommy Thomas has also demoralised the whole of the Appellate and Prosecution division, indeed the whole of the AGC. It is as if he has no confidence in his officers who had been doing the work for decades. It is as if they are incompetent. That too will be the perception of the public.

Equanimity case

Earlier, Tommy Thomas had appointed Sitpath Selvaratnam, a lawyer from his former law firm, whom he described as *"one of Malaysia's best leading shipping lawyers"* to handle the Equanimity case in court.

I admit I do not have the full facts before me. However, I wonder whether it was a correct thing to do. This is a criminal case and not a civil case. Being a civil litigator himself and never a DPP, he was thinking as a civil lawyer. So, he appointed Ms Sitpath. She may be the best shipping lawyer in the country, but her expertise may not be relevant. She is a civil lawyer. This is a criminal case.

Why resort to civil procedure of arresting a ship which is a method of enforcement of a civil judgment to recover a debt? This is a criminal case. If the yacht is believed to be the subject matter of a criminal offence, why not use the criminal procedure to seize it in the same way as the millions of ringgits of cash, jewellery and hundreds of handbags were seized from Najib's and Rosmah's house and apartment? Both the CPC and the Malaysian Anti-Corruption Act, 2009 contain provisions for the purpose.

Remember that in a civil litigation, the losing party has to pay cost. There are no costs in criminal proceedings.

Withdrawal of charges against PH lawmakers and supporters

On the other hand, Tommy Thomas had done a positive act of "withdrawing charges" (that is what newspapers reported) against PH MPs, State Assemblymen, former State Assemblyman and supporters. Hassan Karim, Member of Parliament (MP) for Pasir Gudang; Thomas Su Keong Siong, MP for Kampar; R Sivarasa, MP for Sungai Buloh and N Surendran, former MP for Padang Serai all of whom are PH MPs, PH State Assemblymen or former PH Assemblyman.

He also dropped charges against PH supporters Syarul Ema Rena Abu Samah, popularly known as "Ratu Naga" and political cartoonist Zulkiflee Anwar Haque, better known as Zunar. They were charged with offences under the Sedition Act, Communications and Multimedia Commission Act, and the Peaceful Assembly Act.- Freemalaysiatoday 10 08 2018.

There could be other cases as well which escape my attention.

Sarawak v Petronas case

Tommy Thomas also did not intervene on behalf of the federal government in a civil suit by Petronas against Sarawak Government over petroleum issue. That suit involves constitutional issues on the relationship between federal and state governments and the validity of a federal law, the Petroleum Development Act, 1974 (Act 144), which the AG should defend.

Case involving the Shariah Advisory Council, Bank Negara

Neither did he intervene in the hearing of a nine-member panel of the Federal Court to decide on the question whether a ruling of the Shariah Advisory Council of Bank Negara (as well as of the Securities Commission) on shariah issues bind the court. That case too involves constitutional issues as well as the validity of the provisions of federal laws. Is it because he has already made up his mind that the impugned provisions are unconstitutional, opening the gate for non-Muslim judges to rule what is prohibited *(haram*) and what is not, which ruling will be binding on Muslims. The net effect is that non-Muslim judges will be issuing fatwas on shariah which will be binding on Muslims!

Conclusion

So far, Tommy Thomas is better known for what he does not do or does not want to do instead of what he does, and they are:

1. Appointing a member of the Bar to handle the Equanimity case in court.

2. Not leading the prosecution in Najib's case and, instead, appointing a member of the Bar for the purpose;

3. Appointing a member of the Bar to study the investigation papers in 1MDB case against Najib.

4. Refusing to provide legal advice or assistance to the Election Commission and, it follows, other Commissions and institutions established by the government;

5. Not intervening on behalf of the federal government in a civil suit by Petronas against Sarawak Government over petroleum issue.

6. Not intervening in the hearing of a nine-member panel of the Federal Court to decide on the question whether a ruling of the Shariah Advisory Council of Bank Negara (as well as of the Securities Commission) on shariah issues bind the court.

7. Withdrawing charges against PH MPs, State Assemblymen, former State Assemblyman and supporters.

8. Not to further prosecute Lim Guan Eng.

However, he succeeded in persuading three members of the Bar to do his work free of charge. We can only thank those lawyers for their sacrifice. Would they be prepared to do the same if the accused were a PH government minister?

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