CHAPTER 24

ATTORNEY GENERAL: ROLE AND POWERS[1]

24.1 ATTORNEY GENERAL

The Attorney General is the principal legal adviser to the Government of Malaysia on matters of law and legal opinion. He is appointed by the Yang di-Pertuan Agong (YDPA) on the advice of the Prime Minister from among a person who is qualified to be a judge of the Federal Court.[2] Article 123 of the Federal Constitution provides that a person is qualified to be appointed as a Federal Court judge if for the ten years preceding his appointment, he has been an advocate, a member of the judicial and legal service of the Federation or of the legal service of a state, or sometimes one and sometimes another. The Attorney General shall hold office during the pleasure of the Yang di-Pertuan Agong and shall not be removed from office except on the like grounds and in the like manner as a judge of the Federal Court.[3]

His role and resposibilities is to advise the Yang di-Pertuan Agong (YDPA) or the cabinet or any minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the YDPA or the Cabinet, and to discharge the functions conferred on him by the Constitution or any other written law.[4] Article 145 of the Federal Constitution gives

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1 This Chapter is contributed by Ashgar Ali Ali Mohamed and Muzaffar Syah Mellow.

2 See art. 145(1) of the Federal Constitution.

3 See the Federal Constitution, art. 145(5), (6). For the removal of a judge of the Federal Court, see art. 125.

4 Article 145(2) of the Federal Constitution.

ample power to the Attorney General to represent the government and any body or person performing any functions under the Constitution.[5]

In *Datuk Haji Harun Haji Idris v. Public Prosecutor*,[6] Suffian LP cited with approval the following observation by Lord Denning MR in *AG ex rel McWhirter v. IBA*,[7] that "It is well settled that in our constitution in matters which concern the public at large the Attorney General is the guardian of the public interest. Although he is a member of the government of the day, it is his duty to represent the public interest with complete objectivity and detachment. He must act independently of any external pressure from whatever quarter it may come. As guardian of the public interest, the Attorney General has a special duty in regard to the enforcement of the law."[8] The Attorney General is also the guardian of public rights and is therefore competent to bring a 'relator action'[9] to restrain interference with a public right or to abate a public nuisance or to compel the performance of a public duty.[10]

5 *Tun Dato' Haji Mohamed Salleh Abas v. Tan Sri Dato' Abdul Hamid Omar & Ors* [1988] 2 CLJ 739, SC.

6 [1976] 1 LNS 19, [1977] 2 MLJ 155 at 168, FC.

7 [1963] QB 629. See also *Government of Malaysia v. Lim Kit Siang* [1988] 1 CLJ 219, SC.

8 For the definition of 'public interest' see *A Ragunathan v. PP* [1982] CLJ 25, [1982] CLJ Rep 63 at p. 68, [1982] 1 MLJ 139 at p. 141-142; *Kanawagi a/l Seperumaniam v. Dato' Abdul Hamid bin Mohamad* [2004] 5 MLJ 495.

9 A 'relator action' is a situation where the public wishing to enforce a right which belongs to the public, apply to join the Attorney General in the proceedings for the purpose of enforcing that public right. If the Attorney General agrees to do so, the action is said to be brought by the Attorney General 'at the relation of ' the member of the public concerned and the action is known as a 'relator action'. See 'Relator Actions' at http:// www.attorneygeneral.ie/ag/agrelator.html

10 See Attorney-General at and by the Relation of Pesurohjaya Ibu Kota (Commissioner of the Federal Capital), *Kuala Lumpur v. Wan Kam Fong & Ors* [1967] 1 LNS 7. See also 'The Independence of the Attorney General and the Public Interest' by YBhg Tan Sri Abdul Gani Patail, Attorney General Of Malaysia delivered at the International Malaysia Law Conference 2012 on 28 September 2012. The full paper is athttp://www.agc.gov.my/pdf/ speech/international%20 malaysia%20law%20 conference%202012_independence%20of%20attorney%20general%20&%20 public%20interest_20092012.pdf

The Attorney General is the alter ego of the Public Prosecutor and *vice versa*. Section 376(1) of the Criminal Procedure Code (CPC) defines 'Attorney General' to mean the Public Prosecutor. Further, s. 3 of the Interpretation Acts 1948 and 1967 (Act 388) (Consolidated and Revised 1989) defines 'Public Prosecutor' as the 'Attorney General, and includes (within the scope of his authority) a Deputy Public Prosecutor appointed under any written law relating to criminal procedure and a person authorised by any such law to act as or exercise all or any of the powers of the Public Prosecutor or a Deputy Public Prosecutor.' In the performance of his duties, the Attorney General shall have the right of audience in any court or tribunal in Malaysia.

24.2 SOLICITOR GENERAL

The Solicitor General is the second-ranked officer after the Attorney General. The Solicitor General is empowered to perform any of the functions that can be performed by the Attorney General when the latter is not able to perform his/her duties. This is provided under s. 40A of the Eleventh Schedule to the Federal Constitution. The section provides:

> (1) Unless in any written law it is otherwise expressly provided, the Solicitor General may perform any of the duties and may exercise any of the powers of the Attorney General.
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> (2) Where the Yang di-Pertuan Agong or any other person has lawfully delegated his powers to the Attorney General such delegation shall, unless otherwise expressly provided, be deemed to be delegation of powers to both the Attorney General and the Solicitor General.

Further, s. 376(2) of the CPC provides: 'The Solicitor-General shall have all powers of a Deputy Public Prosecutor and shall act as Public Prosecutor in case of the absence or inability to act of the Attorney General.' In *Leong Kok Huat v. Public Prosecutor*,[11] it was stated

11 [1998] 4 CLJ 106.

inter alia, that the fact that the Attorney General may not be in his office because he has to perform his official duty elsewhere in Malaysia does not mean that 'he was being away from work' or connote 'absence' in the context of the legislative intention of s. 376(2) of the CPC. In the aforesaid circumstances, the Solicitor General cannot exercise any of the Attorney General's powers as entrenched in art. 145 of the Federal Constitution. In *Leong Kok Huat*'s case, the court referred to the Canadian case of *Cooper v. Croll*,[12] where it was stated that the word 'absence' should be construed in its widest sense and as in this case, the mayor was 'in the city' at the time of a meeting of the municipal council; thus, his absence was not established.

24.3 DEPUTY PUBLIC PROSECUTORS

The Deputy Public Prosecutors may also exercise all or any of the rights and powers vested in or exercisable by the Public Prosecutor except those rights and powers which are to be exercised by the Public Prosecutor personally. Section 376(3) of the CPC provides that 'The Public Prosecutor may appoint fit and proper persons to be Deputy Public Prosecutors who shall be under the general control and direction of the Public Prosecutor and may exercise all or any of the rights and powers vested in or exercisable by the Public Prosecutor by or under this Code or any other written law except any rights or powers expressed to be exercisable by the Public Prosecutor personally and he may designate any of such Deputy Public Prosecutors as Senior Deputy Public Prosecutors.' Further s. 376(3A) provides that 'the Public Prosecutor may appoint fit and proper persons to be Assistant Public Prosecutors who shall be under the general control and direction of the Public Prosecutor and, subject to such limitations or restrictions as may be specified by the Public Prosecutor, shall have all the powers of a Deputy Public Prosecutor.'

12 [1940] 1 DLR 610.

In *PP v. Dato' Seri Anwar Ibrahim*,[13] Tan Sri Mohammad Shafee bin Abdullah, an advocate and solicitor, was appointment under s. 376(3) of the CPC as Deputy Public Prosecutor to lead the prosecution team in their appeal at the Court of Appeal against the acquittal of the respondent over his sodomy charge. In an attempt to disqualify Tan Sri Shafee from appearing in the appeal or acting as counsel on behalf of the Public Prosecutor, the respondent alleged *inter alia*, that the appointment of Tan Sri Shafee was a nullity. In dismissing the application and holding that the appointment was valid and lawful, the Court of Appeal held:

> By virtue of s. 376(3), the PP may appoint fit and proper persons to be DPPs, and a DPP so appointed may exercise all or any of the rights and powers vested under the law unless the law expressly states that such power had to be exercised by him personally. Under s. 379, by fiat of the PP, an advocate may be employed by the Government to conduct criminal prosecution or inquiry or to appear in any criminal appeal on point of law reserved to the PP.[14]

Again in *Muhammad Shafee Md Abdullah v. PP*,[15] application was made for an order that Datuk Seri Gopal Sri Ram be disqualified from continuing to act as a Senior Deputy Public Prosecutor and/or to appear on behalf of the Public Prosecutor in *Public Prosecutor v. Muhammad Shafee Bin Md Abdullah* Case No. WA-62R-43-09/2018, a criminal case involving offences of money laundering. The Public Prosecutor is represented by Gopal Sri Ram, an advocate and solicitor and a former Federal Court Judge who has been appointed a Senior Deputy Public Prosecutor under s. 376(3) of the Criminal Procedure Code. It was held, *inter alia*, that 's. 376(3) of the Criminal Procedure Code does not contain anything which limits the powers of the Public Prosecutor to only appoint legal officers under the Judicial and Legal Service Community as Deputy Public Prosecutor or designate them as Senior Deputy Public Prosecutor. It also empowers Public Prosecutor to appoint non-legal officers as Deputy Public Prosecutor.'

13 [2014] 1 CLJ 354, CA.

14 See also *Repco Holdings v. Public Prosecutor* [1997] 4 CLJ 740.

15 [2019] 1 LNS 844.

24.4 FEDERAL COUNSEL IN CIVIL MATTERS

In civil matters, s. 24(3) of the Government Proceedings Act 1956 (Revised 1988) (Act 359) provides for the appearance of law officers as follows: 'An advocate and solicitor of the High Court duly retained by the Attorney General in the case of civil proceedings by or against the Federal Government or a Federal officer, or by the Legal Adviser, or, in the case of the States of Sabah and Sarawak, by the State Attorney General in the case of civil proceedings by or against the Government of a State or a State officer, may appear as advocate on behalf of such Government or officer in such proceedings.' For example, in the Civil Division of Attorney General Chamber, the Senior Federal Counsel and Federal Counsel from this Division are engaged to perform the roles and functions of the Attorney General, namely, represent the Government in all civil proceedings, in matters of public interest, represent the Attorney General in petitions for admissions as advocates and solicitors pursuant to the Legal Profession Act 1976, process applications for Special Admission Certificates and Certificates of Renewal under Part IIA of the Legal Profession Act 1976 as well as represent the Attorney General in cases concerning public, religious, social or charitable trust.[16]

24.5 WHETHER ATTORNEY GENERAL SUPERVISES AND CONTROLS JUDICIAL OFFICERS?

It is noteworthy that in *Maleb Su v. Public Prosecutor*,[17] it was stated *inter alia*, that in order to set aside the decision made by the Magistrate on the alleged grounds of biasness there must be a real likelihood of biasness on the part of the Magistrate and that reasonable suspicion of biasness is insufficient. As in the above case, the fact that as the Attorney General has supervision and control of the judicial officers is insufficient to support the allegation that there is a likelihood of biasness. In this case, an application was made to disqualify the Magistrate from hearing

16 Official Portal of Attorney General's Chambers of Malaysia, http://www.agc.gov.my, as viewed on 1 June 2014.

17 [1984] 1 CLJ 378.

the case on the ground that the Magistrate belonged to a service in which the Attorney General is the head of the service. It was alleged that since the Attorney General was also the Public Prosecutor and has supervision and control over the judicial officers, there was a likelihood of bias. In other words, the applicant feared that the Magistrate would be biased because he is a member of the Judicial and Legal Service, of which the Attorney General is the head. In dismissing the application, Hashim Yeop A Sani FJ stated:

> The judicial and legal service is one of the public services mentioned in Art 132 cl (1) of the Federal Constitution. The authority which exercises jurisdiction over the officers of the service in matters of promotions and discipline is the Judicial and Legal Service Commission established under Art 138 of the Constitution of which the Attorney General is only a member. There is nothing in law to say that the Attorney General is head of the service; in fact he cannot be by virtue of Art 138 of the Constitution. An officer belongs to the judicial and legal service but he may serve in various different capacities in the Judicial Department and Legal Department. As normal in the administrative set-up of the public service each department has its own head. And the Attorney General is not the head of the Judicial Department. Thus, looking at the legal and administrative framework governing the service ... the facts here warrant a conclusion of real likelihood of bias.

In *Cheak Yoke Thong v. Public Prosecutor*,[18] a question of law was referred to the defunct Federal Court as follows: 'Whether the fear on the applicant's part that the learned Magistrate being a member of the Judicial and Legal Service of which the Attorney-General is the highest ranking officer, having control of the learned Magistrate's career in the said service was reasonable to hold that there could be bias or there was reasonable suspicion of bias whereby it was reasonable to say that in these circumstances justice may not seem to be done.' In answering the question posed in the negative, the court noted that the fear of the applicant as above cannot be a sufficient reason for the Magistrate to disqualify himself from hearing the case. The applicant must show by evidence that the adjudicating officer or the tribunal was in fact biased

18 [1984] 2 CLJ 83, FC.

or is likely to be so. It was further stated that it was factually or legally incorrect to say that the Attorney General has control of the learned Magistrate's service.

The court also noted that the Magistrates are appointed by the Ruler of the State, or in the case of Federal Territory by Yang di-Pertuan Agong, on the advice of the Chief Justice.[19] Further, the transfer of Magistrates from one judicial post to another judicial post is completely under the authority of the Chief Justice, while a transfer from a judicial post to a legal post is a matter of consultation and agreement between the Chief Justice and the Attorney General. Besides the above, their promotion in the Service is the function of the Judicial and Legal Service Commission and is subject to the confidential report of the Judge of the State where the Magistrate is currently or previously posted and also subject to the recommendations by the Chief Justice. It would be worthwhile reproducing the observation by Salleh Abas LP as follows:

> The Attorney-General today is a civil servant. He belongs to the Judicial and Legal Service and being the highest paid officer in the Service it is natural that he assumes the leadership in the Service and is thus referred to as head of the Service for better or for worse. But this fact alone does not create an 'inherent or legal bias' ... to disqualify [magistrate] from hearing ... case. Whether one likes it or not the present position of the Attorney-General in the system of criminal justice is perfectly in accord with the law and the Constitution. Being a member of the Judicial and Legal Service, the Attorney-General is a civil servant, and holds office - just as other officers and Magistrates do - during pleasure of the Yang di-Pertuan Agong, meaning his appointment is terminable by the Yang di-Pertuan Agong and his service is terminable by the Commission subject to the safeguards provided for in the Constitution. These facts are all the legal and constitutional realities and we cannot see how a situation which is firmly established by law and the Constitution can be said to be a legal bias.

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19 See ss. 78 and 79 of the Subordinate Courts Act 1948 (Revised 1972) (Act 92). It must be noted that currently the Malaysian Judiciary is headed by the Chief Justice of the Federal Court (formerly called the Lord President). The President heads the Court of Appeal whilst two Chief Judges head the High Court in Malaya and the High Court in Sabah and Sarawak.

24.6 ATTORNEY GENERAL'S DEPARTMENT

The Attorney General's Chambers (AGC) are divided into several divisions as follows:

Advisory Division: To provide legal advice to the Yang di-Pertuan Agong, the Cabinet and any Minister on any legal matters. To attend Parliament when in session to provide any assistance of a legal nature as may be required.

Civil Division: The Division's primary objective is to ensure that all civil claims brought by and against the Government of Malaysia are conducted diligently and efficiently in accordance with law and justice. A Senior Federal Counsel / Federal Counsel is authorised to appear in any civil proceedings by or against the Government as advocated and authorised to make such appearances, take such actions and make such applications in respect of such proceedings on behalf of the Government.

Drafting Division: To ensure that the Bills drafted for tabling in Parliament are consistent with the Federal Constitution and are in accordance with legislative drafting norms. To ensure that the subsidiary legislation drafted is not *ultra vires* with any of the Acts/ Ordinances and to ensure that it is in accordance with legislative drafting norms.

Prosecution Division: To give advice and instructions to all related law enforcement agencies and to conduct prosecutions in accordance with criminal procedures with an objective to protect public interest by ensuring that criminals are punished in accordance with the law. To conduct prosecutions in the ordinary courts of law (civil courts).

International Affairs Division: To protect and improve Malaysia's rights and interests in the international arena. To give legal advice and views to the Malaysian government in accordance with the international law and principles taking into account the policy of the Malaysian government, public interest and domestic laws. To ensure that Malaysia's international obligation under any agreements, treaties and conventions which have been signed, agreed upon, ratified or participated by Malaysian government are carried out in accordance with the Malaysian laws and policies.

Law Review And Law Reform Division: To reprint and update all laws of Malaysia and its subsidiary legislations. Another important function performed by this Division is preparing the order for extension and modification of laws applicable in West Malaysia to Sabah and Sarawak. To make research to identify archaic law, anomalies in various laws, obsolete and unnecessary statutes that need to be repealed, duplicate statutes that need to be consolidated and amalgamated, and generally to simplify and modernise the laws.

Management Division: The primary objective of the Management Division is to provide support services in terms of human resource, administration, finance and a conducive working environment so as to ensure that the Chambers' objectives and policies are implemented smoothly and efficiently. The functions carried out by the Management Division are numerous and inclusive of activities pertaining to Human Resource Management, Financial Management, General Administration and ICT Management.[20]

24.7 POWERS OF THE ATTORNEY GENERAL IN CRIMINAL CASES

Pursuant to the CPC, when an offence has been committed, the victim may lodge a police report in accordance with the Code. Section 107 of the CPC provides that a police officer is duty bound to receive any information in relation to any offence committed anywhere in Malaysia. The information, which is also known as the 'first information report', is also the basis upon which the police will commence their investigation.[21]

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20 Official Portal of Attorney General's Chambers of Malaysia, http://www.agc.gov.my, as viewed on 1 June 2014.

21 In *Public Prosecutor v. Mohamad Musa Amarullah* [2002] 1 CLJ 366, Kamalanathan J held that the first information report, which is the first recorded information to the police with regard to a particular offence, forms the basis to commence a full throttled investigation. An accused must, as of right, be given a copy of this first information report.

The police would conduct the investigation in accordance with the procedures laid down in the CPC. Upon completing the investigation, the report will then be submitted to the Attorney General's chambers. The investigation report will set forth the names of the parties, nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case. The Attorney General will then determine whether to institute and conduct criminal proceedings and prosecutions.

Section 376(1) of the CPC provides that the Public Prosecutor has the control and direction of all criminal prosecutions and proceedings under the Code. Further, the powers of the Attorney General is explained in art. 145(3) of the Federal Constitution as follows: 'The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah Court, a native court or a court-martial.' In *Gu Kien Lee v. Ketua Polis Daerah Kota Kinabalu & Anor*,[22] it was stated *inter alia*, that 'the power of the police is to investigate, not to decide whether any person is or is not to be prosecuted for any crime or, for that matter, to decide whether a police report discloses a civil or a criminal matter. That power lies with the Attorney General acting in his capacity as public prosecutor as provided in art. 145(3) of the Federal Constitution read together with s. 376(1) of the CPC.'

The word 'institute' in art. 145(3) refers to a commencement of criminal proceedings and prosecutions.[23] A prosecution is instituted when an accused is called upon to plead to a charge.[24] A power to institute criminal proceedings includes a power to prefer a less serious charge when the evidence discloses a graver offence. Such power also allows

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22 [2012] 2 CLJ 317.

23 See *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors* [1976] 1 LNS 180; *Public Prosecutor v. Lim Shui Wang & Ors* [1979] 1 MLJ 65 at 67, SC.

24 See *Perumal v. Public Prosecutor* [1970] 1 LNS 101, FC.

the Attorney General not to prefer charges at all. The discretion vested in the Attorney General under the Federal Constitution art. 145(3) is unfettered and cannot be challenged and substituted by the courts.[25]

In *Long bin Samat & Ors v. Public Prosecutor*,[26] the Federal Court, in interpreting cl. (3) of art. 145 stated:

> In our view, this clause from the supreme law clearly gives the Attorney General very wide discretion over the control and direction of all criminal prosecutions. Not only may he institute and conduct any proceedings for an offence, he may also discontinue criminal proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue ... Still less then would the court have power to compel him to enhance a charge when he is content to go on with a charge of a less serious nature.[27]

25 See *Karpal Singh & Anor v. Public Prosecutor* [1991] 2 CLJ 1458, [1991] 1 CLJ Rep 183 at p. 191, SC; *Datuk Yong Teck Lee & Ors v. Public Prosecutor* [1996] 2 CLJ 413 at p. 426, [1996] 2 MLJ 68 at 78, CA; *Public Prosecutor v. Ini Abong & Ors* [2009] 1 CLJ 526; *Raja Petra Raja Kamaruddin lwn. Pendakwa Raya* [2009] 4 CLJ 543.

26 [1974] 1 LNS 80, FC.

27 Per Suffian LP, at p. 158. See also *Lye Pong Fong v. Public Prosecutor* [1998] 1 LNS 327, [1998] 6 MLJ 304 at 311; *Public Prosecutor v. Au Seh Chun* [1998] 3 BLJ 56, [1998] 3 CLJ Supp 56 at p. 60, [1998] 6 MLJ 179 at p. 183; *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors* [1976] 1 LNS 180; *Mohd Rafizi Ramli v. PP* [2014] 4 CLJ 1, CA. The court in *Public Prosecutor v. Lee Tin Bau* [1984] 1 LNS 56, emphasised on the discretion of the Attorney General in his capacity as the Public Prosecutor to decide on what charges to institute against anyone found in possession of firearms and ammunition. In *Mat Shuhaimi Shafiei v. PP* [2014] 5 CLJ 22 it was stated that 'the Attorney-General has the sole discretion of determining criminal prosecutions in this country and it is not open to this court to interfere or question the discretion exercised by the Attorney-General. If the appellant is aggrieved that he is charged under s. 4(1)(c) of the Sedition Act 1948, he should channel his complaint to the Attorney-General who would then decide whether to continue or discontinue with the criminal proceeding against him.'

As from the above, the Attorney General has a choice of the penal statutes under which to charge an accused and institute proceedings for an offence. In fact, the Attorney General is permitted to take into account the public interest when deciding what charge or charges to prefer against an accused. Hence, the Attorney General can prefer to charge the accused with the lesser serious offence such as voluntarily causing hurt contrary to s. 324 of the Penal Code instead of an offence of voluntarily causing grievous hurt contrary to s. 326 of the Penal Code, when the evidence would have justified him to proceed under s. 326. Again, in drug cases, even if an accused is arrested under the Drug Dependants (Treatment and Rehabilitation) Act 1983 (Act 283), this will not bar the Public Prosecutor from charging the accused under the Dangerous Drugs Act 1952 (Revised 1980) (Act 234).[28] This is because the control and direction of all criminal prosecutions and proceedings is vested in the hands of the Public Prosecutor.

In *Johnson Tan Han Seng v. Public Prosecutor*,[29] the appellants had been convicted and sentenced to death under s. 57 of the now repealed Internal Security Act 1960 for unlawful possession of firearms. The appellants argued *inter alia*, that the Attorney General had discriminated them as persons alleged to be in possession of firearms or ammunition and charging them with different offences and that there had been a breach of art. 8 of the Federal Constitution.[30] In dismissing the appeals, the Federal Court held:

> Here we are asked to determine a different question, namely whether the Attorney General may discriminate as between the three persons in the example given, or must he charge all three persons under the same statute. I am of the opinion that he may discriminate without contravening article 8.

28 See *Public Prosecutor v. Chan Kam Leong* [1989] 1 CLJ 805.

29 [1977] 1 LNS 38, FC.

30 Article 8 provides, *inter alia*, that all persons are equal before the law and entitled to the equal protection of the law.

> A may have had a licence to possess his gun but delayed to renew it. It would have been proper for the Attorney General to charge him simply under the Arms Act. B on the other hand never had a licence and has a criminal record. Must he also be charged under the Arms Act? I think that in today's conditions, when hardly a week goes by without some one being robbed by armed men, probably the Attorney General would be accused of failing in his duty if he did not charge him under Act 37. C also may not have had a licence and may have had a very black record and have killed various people and terrorised witnesses so that few people are willing to come forward to report, let alone give evidence in open court against him. Should he also be charged only under the Arms Act simply because A is charged under that Act or under Act 37 like B or under ISA? I think that the choice is entirely the Attorney General's.[31]

Further, in *Karpal Singh a/l Ram Singh v. Pendakwa Raya*,[32] it was stated that the Attorney General cannot name any particular magistrate, president or judge to try an accused nor direct that a court should convict or impose a particular sentence; but apart from this, he has a very wide discretion under the CPC and the Constitution. Further, there is no law that imposes any time frame on the Attorney General to decide whether or not to prosecute the alleged offender once the investigation is completed.[33] Anybody who has a complaint against the Attorney General for exercising his discretion in any particular way should direct it not to the courts but elsewhere. That being the case, being the guardian of the public whose principal concern is to maintain

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31 Per Suffian LP.

32 [2012] MLJU 752.

33 *Zulkiflee SM Anwar Ulhaque & Anor v. Arikrishna Apparau & Ors* [2013] 1 LNS 1264, CA.

the rule of law, the Attorney General is expected to act honestly and professionally. If he fails to discharge his public duties professionally, the public would be able to show their disapproval.

Although the Constitution gives absolute power to the Attorney General whether to charge a person or not, nevertheless the public 'expects him to exercise his powers fairly, honestly and professionally.'[34] In *Public Prosecutor v. Zainuddin Sulaiman & Anor*,[35] Salleh Abas LP stated:

> 'The law and Constitution in giving the Attorney-General an exclusive power respecting direction and control over criminal matters expect him to exercise it honestly and professionally. The law gives him a complete trust in that the exercise of this power is his and his alone and that his decision is not open to any judicial review. If he is a Minister of the Government he is answerable to Parliament and to his cabinet colleagues, and if he is not, the Government will answer for him in Parliament, whilst he himself will be answerable to the Government, and if he is a civil servant he will be answerable also to the Judicial and Legal Service Commission, though anomalously he is a member of it. Members of the public expect that he exercises his power *bona fide* and professionally in that when he prefers a charge against an individual he does so because public interest demands that prosecution should be initiated and when he refrains from charging an individual or discontinues a prosecution already initiated he also acts upon the dictate of public interest.'[36]

34 Per Shaik Daud JCA in *Tan Sri Abdul Rahim Mohd Noor v. Public Prosecutor* [2001] 4 CLJ 9, CA.

35 [1986] 1 CLJ 468, SC.

36 In *Sundra Rajoo Nadarajah v. Menteri Hal Ehwal Luar Negara, Malaysia & Ors* [2019] 8 CLJ 422, it was held, *inter alia*, that the Attorney General had the unfettered discretion to charge the applicant for criminal offence which this court had no legal power to interfere.

24.8 POWER TO CONDUCT CRIMINAL PROCEEDINGS

As noted earlier, art. 145(3) of the Federal Constitution conferred the power to conduct criminal proceedings unto the Attorney General. The word 'conduct' here refers to the conduct of prosecutions in court. In *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors*,[37] it was stated *inter alia*, that the term 'to conduct' in the above article conveys the idea of leading and guiding, that is to say, a person who conducts a prosecution determines all important questions of policy involved in the course of a trial and the attitude to be adopted by the prosecution towards material objections raised or demands made by the accused with respect to the evidence. Again, in *Repco Holdings Bhd v. Public Prosecutor*,[38] Gopal Sri Ram JCA to the phrase 'institute, conduct and discontinue' in art. 145(3) of the Federal Constitution, said:

> It will be seen at once, from a reading of the plain language of art. 145(3), that the supreme law, namely the Federal Constitution, has committed to the hands of the Attorney General the sole power, exercisable at his discretion, to institute, conduct and discontinue criminal proceedings. The phrase 'institute, conduct or discontinue' was considered by Abdoolcader J (as he then was) in Public Prosecutor v. Datuk Hj Harun bin Hj Idris & Ors [1976] 1 LNS 180, [1976] 2 MLJ 116 at 119. Of the expression 'conduct' his Lordship stated:
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> > 'Conduct' in art. 145(3) cannot but refer to the conduct of prosecutions in court, as it indeed appears *ipsissimis verbis* in s. 377 of the Code. And 'control and direction' in s. 376(i) of the Code is in respect of all criminal prosecutions and proceedings, and not of criminal procedure or the jurisdiction of the courts.
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> > 'Conduct' of criminal prosecutions and proceedings in art. 145(3) cannot connote the regulation of criminal procedure or of the jurisdiction of the courts or the power or discretion to do so. Any contrary contention would in effect in my view be tantamount to the suggestion of the Public Prosecutor arrogating to himself the

37 See *Public Prosecutor v. Datuk Harun bin Haji Idris & Ors* [1976] 1 LNS 180.

38 [1997] 4 CLJ 740.

> legislative powers vested in Parliament under Item 4 and in particular paragraph (b) thereof List I (Federal List) in the Ninth Schedule to the Constitution, with perhaps also the not inconceptible resultant intrusion or at least a more than peripheral incursion into the sphere of art. 121(1) of the Constitution which provides that the judicial power of the Federation is vested in two High Courts and in such inferior courts as may be provided by federal law namely, the Subordinate Courts Act 1948 which specifies the subordinate courts and their respective civil and criminal jurisdiction.
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> Pursuing its signification, 'to conduct' means 'to lead, guide, manage' (*In re Bhupalli Malliah* AIR [1959] AP 477; *Pride of Derby v. British Celanese Ltd* [1953] 1 Ch 149, at p 167 per Lord Evershed, MR). It conveys the idea of leading and guiding, that is to say, the person who conducts the prosecution determines all important questions of policy involved in the courts of the trial and the attitude to be adopted by the prosecution towards material objections raised or demands made by the accused with respect to the evidence.

Abdoolcader J's interpretation of the phrase 'institute, conduct or discontinue' was approved and applied by the Federal Court in *Public Prosecutor v. Lim Shui Wang & Ors* [1978] 1 LNS 155.

> ... The only authority that is constitutionally entitled to conduct prosecutions is the Attorney General as Public Prosecutor. The adjectival vehicle contained in s. 376 and subsequent sections of the Criminal Procedure Code put this beyond doubt.[39]

As art. 145(3) of the Federal Constitution conferred on the Attorney General the exclusive authority to conduct prosecutions, it must follow that no other authority may be lawfully empowered to exercise that function. Gopal Sri Ram JCA, in *Repco Holdings Bhd*, referred to *Long Samat & Ors v. Public Prosecutor*[40] and *Johnson Tan Hang Seng v. Public Prosecutor*,[41] and stated:

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39 *Ibid*, at pp. 746-747.

40 [1974] 1 LNS 80.

41 [1977] 1 LNS 38.

> The importance of the proposition formulated by the learned Lord President in these two cases is that, as a matter of public law, the exercise of discretion by the Attorney-General in the context of art. 145(3) is put beyond judicial review. In other words, the exercise by the Attorney- General of his discretion, in one way or another, under under art. 145(3) cannot be questioned in the courts by way of *certiorari*, declaration or other judicial review proceedings.
>
> I think that the proposition is not only good law but good policy. For, were it otherwise, upon each occasion that the Attorney-General decides not to institute or to conduct or discontinue a particular criminal proceeding, he will be called upon to account to a court of law the reasons for his decision. It will then be the court and not the Attorney-General who will be exercising the power under art. 145(3). That was surely not the intent on our founding fathers who framed our Constitution for us.

It must be added that s. 377 of the CPC further lists out those persons who are competent to conduct criminal prosecutions with the authorisation in writing of the Public Prosecutor. The section provides:

> Every criminal prosecution before any court and every inquiry before a Magistrate shall, subject to the following sections, be conducted –
>
> (a) by the Public Prosecutor, a Senior Deputy Public Prosecutor, a Deputy Public Prosecutor or an Assistant Public Prosecutor;
>
> (b) subject to the control and direction of the Public Prosecutor, by the following persons who are authorised in writing by the Public Prosecutor:
>
> (1) an advocate;
>
> (2) a police officer not below the rank of Inspector;
>
> (3) an officer of any Government department;
>
> (4) an officer of any local authority;
>
> (5) an officer of any statutory authority or body; or
>
> (6) any person employed or retained by any local authority or any statutory authority or body.

In *PP v. Cang Ceng Transport Co*,[42] it was held that the proceeding in this case was a nullity because the Road Transport Department (JPJ) officers who initiated the proceedings under s. 19(1)(b)(vi) of the Commercial Vehicles Licensing Board Act 1987 (Act) in the name of JPJ did not produce any written authority to the learned magistrate to prove that they are fit and proper person appointed by the public prosecutor to prosecute. By virtue of s. 45 of the Act read with art. 145(3) of the Federal Constitution and s. 376(3A) of the CPC, the prosecution in the court below in the name of the JPJ and without the written appointment under ss. 376(3A) and 377(b) of the CPC by the Public Prosecutor renders the prosecution of the respondent a nullity and void *ab initio*.

Further, there are certain offences that require the consent of the Public Prosecutor before prosecutions for those offences may be instituted. 'Consent' may be defined as 'an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side.'[43] For example, an offence under s. 39B of the Dangerous Drugs Act 1952 requires the consent of the Public Prosecutor. In particular, s. 39B(3) of that Act provides that a prosecution for the offence of trafficking in dangerous drugs under s. 39B will not be instituted except by or with the consent of the Public Prosecutor. Again, art. 183 of the Federal Constitution provides that no action, civil or criminal, shall be instituted against the YDPA or the Ruler of a State in respect of anything done or omitted to be done by him in his personal capacity except with the consent of the Attorney General personally.[44]

42 [2012] 7 CLJ 292.

43 See *Abdul Hamid v. Public Prosecutor* [1956] 1 LNS 3.

44 See also *Standard Chartered Bank Malaysia Bhd v. Duli Yang Maha Mulia Tuanku Ja'afar Ibni Almarhum Tuanku Abdul Rahman, Yang Di Pertuan Besar Negeri Sembilan Darul Khusus & Another Case* [2009] 3 CLJ 709; *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor* [2003] 1 CLJ 801; *Faridah Begum Bte Abdullah v. Sultan Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'ayatuddin Al Mu'adzam Shah (Sued In His Personal Capacity)* [1996] 2 CLJ 159.

It is worthy to note that any proceedings by or against the YDPA or the Ruler of a State in his personal capacity shall be brought in the Special Court for Rulers. The Special Court shall have exclusive jurisdiction to try all offences committed in the Federation by the YDPA or the Ruler of a State and all civil cases by or against the YDPA or the Ruler of a State notwithstanding where the cause of action arose. The consent of the Public Prosecutor may be given orally or in writing. Where the Public Prosecutor or a Deputy Public Prosecutor prosecutes, there is an implied consent to the prosecution.[45]

The central issue in *Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal*[46] was whether the court could review a decision of the Attorney General in granting or refusing consent pursuant to s. 9(1) of the Government Proceedings Act 1956. In relation to the above, Mohd Zawawi Salleh FCJ, delivering the judgment of the court stated: "We would like to reiterate the important pronouncement in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case*... In this case, the Federal Court emphatically declared that the power of judicial review 'cannot be changed or altered by Parliament by way of a constitutional amendment'. The court further stated, 'The power of judicial review is essential to the constitutional role of the courts, and inherent in basic structure of the constitution'. The Federal Court's reassertion of constitutional judicial power and its status as superior court meant that the power of the AG to grant or refuse consent under s. 9(1) of Act 359 is amenable to judicial review."

45 See *Perumal v. Public Prosecutor* [1970] 1 LNS 101, FC.

46 [2019] 4 CLJ 561, FC.

24.9 POWER TO DISCONTINUE CRIMINAL PROCEEDINGS

The power of the Public Prosecutor to discontinue proceedings could arise due to several factors, for example when there is lack of evidence, the evidence is fatally flawed or the accused has died, among others. The power to discontinue proceedings under art. 145(3) of the Federal Constitution should be read together with s. 254 of the CPC under which the Public Prosecutor may decline to prosecute further at any stage of the trial before the delivery of judgment. The power to discontinue proceedings is similar to the power to stay proceedings. This is technically known as *nolle prosequi* (unwilling to pursue). The exercise of such power is not subject to control by the courts.[47] In *Perselvam Munusamy v. PP*,[48] Mohd Zaki Abdul Wahab JC stated:

> Once a case has been instituted or conducted, the sole discretion lies with the Public Prosecutor to determine whether the case should be proceeded or discontinued. It also follows that the victim of crime or the complainant will have no say in determining whether a case should be proceeded or discontinued. What the victim or the complainant could do is to take their wishes to the Public Prosecutor and it is entirely up to the Public Prosecutor to exercise its discretion whether to withdraw the charge(s) against the accused. This is consistent with the general tenor of the role of the Public Prosecutor *vis-a-vis* the criminal jurisprudence whereby a criminal offence strikes at the victim as well as members of the public at large. Thus to sum up, it is my considered view that a wish of the victim is not the ultimate decider of guilt or otherwise of the accused. More so in the present case where the reasons for the victim's wish became apparent.

47 See *Poh Cho Ching v. Public Prosecutor* [1981] CLJ Rep 229.

48 [2012] 1 LNS 787.

If the Public Prosecutor discontinues an action against an accused by informing the court that he will not proceed to prosecute the accused on the charge, the practice which has been consistently adopted by the court is to discharge and acquit the accused.[49] Unless some very good ground is shown, it would not be right to leave an individual for an indefinite period with a charge hanging over him.[50]

24.10 ATTORNEY GENERAL TO REPRESENT JUDGES SUED IN PERSONAL CAPACITY

When a judge is sued in his personal capacity the Attorney General shall represent the said judge. For example, in *Indah Desa Saujana Corporation Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor*,[51] a civil suit was filed against the High Court judge. One of the issues raised was whether the Attorney General was legally bound to represent the judge in such case. In seeking to prevent the Attorney General or his officers from representing the first defendant, plaintiff submitted *inter alia*, that the first defendant's acts were not while sitting in the course of a case as a judge. On the other hand, learned Senior Federal Counsel contended that the decision of the court below was correct as the Attorney General was, under art. 145 of the Federal Constitution, bound, and in the interest of the administration of justice, to represent a judge who performed functions under the Federal Constitution. In support of their argument, the learned Federal Counsel referred to the case of *Tun Dato' Hj Mohamed Salleh Abas v. Tan Sri Dato' Abdul Hamid Omar & Ors*.[52] In *James Foong*'s case, it was held *inter alia*, that

49 See *K Abdul Rasheed v. Public Prosecutor, Ah Chak Arnold v. Public Prosecutor* [1985] 1 LNS 54.

50 See *Koh Teck Chai v. Public Prosecutor* [1967] 1 LNS 72. See also Mohd Munzil Bin Muhamad, 'Article 145(3) of The Federal Constitution: A Formidable Discretion' [2010] 1 LNS(A) i.

51 [2008] 1 CLJ 651, CA.

52 [1988] 2 CLJ 739; [1988] 1 CLJ (Rep) 294, SC.

the Attorney General is a public officer under the Federal Constitution and art. 145 of the Federal Constitution, when properly read, gives ample power to the Attorney General to represent the government and any body or persons performing any functions under the Constitution and this necessarily includes the judges.

24.11 ATTORNEY GENERAL REPRESENTED GOVERNMENT AT INTERNATIONAL COURT OF JUSTICE AND TRIBUNALS

The Attorney General also has appeared in many civil cases at the international adjudication bodies on behalf of the government and this includes the International Court of Justice and International Tribunals. For example, Tan Sri Abdul Gani Patail,[53] the former Attorney General had appeared and submitted before the International Tribunal for the Law of the Sea (ITLOS) in September 2003, regarding the 'Case Concerning Land Reclamation by Singapore in and around the Straits of Johor between Malaysia and Singapore (Request for provisional measures)' in which ITLOS had delivered its Order on 8 October 2003.[54] Further, the Attorney General had appeared before the Tribunal of the International Centre for Settlement of Investment Disputes (ICSID) regarding the case of Malaysian Historical Salvadors Sdn Bhd against The Government of Malaysia in May 2006.[55] In November 2007, the Attorney General had appeared and submitted before the International Court of Justice in The Hague regarding the 'Case Concerning Sovereignty over Pedra Branca/ Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore).'[56]

53 Honourable Tan Sri Abdul Gani Patail is the eighth Attorney General of Malaysia and his appointment was effective since 1 January 2002.

54 See https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_12/Order.08.10.03. E.pdf

55 See http://italaw.com/documents/MHSMemorial-on-Jurisdcition.pdf

56 See http://www.icj-cij.org/docket/files/130/14492.pdf

24.12 PROSECUTORIAL IMMUNITY

The issue whether the Attorney General and his deputies enjoy absolute prosecutorial immunity or whether the immunity can be lifted in appropriate circumstance was recently deliberated in *Rosli bin Dahlan v. Tan Sri Abdul Gani Patail & Ors*.[57] In the above case, it was argued on behalf of the defendants that no civil action can be maintained against the 1st, 4th, 5th, and 6th defendants in respect of the exercise of their prosecutorial discretion even if the alleged actions were not in accordance to law or was coloured or tainted by lack of good faith or was done due to personal spite or when there was abuse of the prosecutorial discretion. In other words, the above defendants enjoyed absolute prosecutorial immunity in respect of the exercise of their prosecutorial discretion and power. The Court however, noted that the exercise of prosecutorial discretion is subject to judicial scrutiny under certain circumstances for example, when there is a clear violation of the established statutory or constitutional rights. In particular, Vazeer Alam Mydin Meera JC stated:

> if the Attorney General as the custodian of prosecutorial power exercises his prosecutorial discretion for other than its constitutional purpose or exercises it based on some irrelevant consideration or exercises his discretion unlawfully or the prosecutorial power is abused for some improper purpose, then that decision can become justiciable and the courts have a duty to render assistance to an individual who has been aggrieved by that decision.

On the issue of prosecutorial absolute immunity, the learned Judge referred to the approach in the selected common law jurisdictions namely, Singapore,[58] Canada,[59] England[60] and India.[61] In the above

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57 [2014] 1 LNS 616. See also Prosecutorial immunity: a review of *Rosli Dahlan v. Tan Sri Abdul Gani Bin Patail & Ors* [2015] 1 MLJ xcvii.

58 See *Law Society of Singapore v. Tan Guan Huat Neo Phyllis* [2007] SGHC 207; [2008] 2 SLR 239 (CA).

59 See *Nelles v. Ontario* [1989] SCJ No 86 (SCC).

60 See *Riches v. Director of Public Prosecutions* [1973] 2 All ER 935, CA.

61 See *Common Cause, A Registered Society v. Union of India* 1996 AIR SC 3538.

mentioned jurisdictions there is no absolute prosecutorial immunity and thus under exceptional circumstances, a person aggrieved by the prosecutor's decision due to the alleged misuse or abuse of power may seek private law remedies in courts such as malicious prosecution and misfeasance in public office. In particular, the learned Judge stated:

> These case authorities, both local and from foreign common law jurisdictions, further show that the notion of unfettered exercise of power or discretion by public officials is not consonant with the rule of law and there is a clear move to make public officers accountable for their action, for it is generally accepted that accountability promotes the rule of law. In this regard, the notion of absolute prosecutorial immunity for the Public Prosecutor and his Deputies, who are public officers, is anathema to the modern day notions of accountability and the rule of law. This is in keeping with developments in modern jurisprudence, as can be seen from the cases cited above, that absolute immunity for public officials has no place in a progressive democratic society and is contrary to the rule of law. It must be gain said that in a legal system where the rule of law is central, no one is above the law.

Reference was also made to s. 6 of the Government Proceedings Act, 1956 and s. 72 of the Malaysian Anti-Corruption Commission Act 2009 that limits liability for public servants and the government. These provisions according to the learned Judge were nowhere near absolute immunity. In particular, Vazeer Alam Mydin Meera JC stated:

> So, it can be quite clearly seen that whenever the legislature provided for statutory immunity from legal proceedings for public officers, it has always come with a rider, and that rider was the requirement of good faith in the exercise of that public officer's powers or discretion. The shield was never an absolute one. At this stage of the proceedings, the court is only concerned with whether facts are pleaded with sufficient particulars to give rise to such remedies and it would then have to go to trial for the Plaintiff to establish his case. Therefore, I am unable to accept the defendant's counsel's contention that the claim against the 1st, 3rd and 4th defendants are unsustainable by reason of absolute prosecutorial immunity.

Thus, based on the case of *Rosli Dahlan* above, the public prosecutor and his deputies do not enjoy absolute prosecutorial immunity. They can be subject to civil liability in respect of claims of abuse of prosecutorial power, malicious prosecution, or misfeasance in public office, or where the prosecutorial discretion had been exercised with malice or for improper purpose, among others.

Aside from the above, it is also noteworthy that although the judges,[62] deputy registrars[63] and other officers of the civil courts such as sheriff, bailiff and all others persons who execute the lawful orders or warrants issued by a judge, are accorded statutory immunity by s. 14 of the Courts of Judicature Act 1964, however such immunity is not absolute. The immunity is subject to the requirement that the above mentioned persons in the exercise of their judicial duties and functions must act in good faith. Under certain circumstances however, the judicial immunity can be pierced for example, when the judicial officer had acted *mala fides*, *ultra vires* or without jurisdiction.[64] The purpose

62 See *Indah Desa Saujana Corporation Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor* [2008] 1 CLJ 651, CA; [2005] 4 CLJ 925, HC; *Hodan-R Sdn Bhd v. Dato' Mohd Hishamudin Hj Mohd Yunus* [2007] 2 CLJ 701; *Takang Timber Sdn Bhd v. The Government of Sarawak & Anor* [1998] 3 CLJ SUPP 413.

63 See *Law Hock Hua & Anor v. Timbalan Pendaftar Mahkamah Tinggi Kuala Lumpur & Anor* [2006] 4 CLJ 300 where it was held that the first defendant, i.e. the Deputy Registrar, was also protected by s. 14 of the CJA.

64 See *Penolong Kanan Pendaftar Mahkamah Tinggi Johor Bahru v. Tan Beng Sooi* [1997] 2 CLJ 409; *Thilagavathy Durairajoo v. Penolong Kanan Pendaftar* [2002] 1 LNS 148; *Tai Choi Yu v. Ian Chin Hon Chong* [2002] 2 CLJ 259. The concept of judicial immunity at common law and statutory law was aptly explained by Low Hop Bing JCA in *Indah Desa Saujana Corporation Sdn Bhd & Ors v. James Foong Cheng Yuen & Anor* [2008] 1 CLJ 651, 675-680, CA.

of s. 14 is not to protect the personal interest of a judge but rather to protect the public interest in an independent and impartial justice system.[65] In *Law Hock Hua & Anor v. Timbalan Pendaftar Mahkamah Tinggi Kuala Lumpur & Anor*,[66] Rohana Yusuf JC stated:

> [The] ... basis for judicial immunity is rooted in the need to protect the public but not a need to protect judges. Amongst the most important tribute that judges owe to the public are objectivity, independence and impartiality. Thus, any innovative legal argument invoked against these attributes must be carefully scrutinised. It must be so, in order to ensure the public that a presiding judge is discharging his duty without having to worry, or that his decision would not be based on a dispassionate appreciation of the facts and law related to the dispute. Otherwise, he may be affected by thoughts as to which party would pose a threat of litigation.

24.13 CONCLUSION

The Attorney-General is the principal legal adviser to the Government of Malaysia on matters of law and legal opinion. His role and responsibilities is to advise the Yang di-Pertuan Agong (YDPA) or the cabinet or any minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him, and to discharge the functions conferred on him by the Constitution or any other written law. Section 376(1) of the Criminal Procedure Code provides that the Public Prosecutor has the control and direction of all criminal prosecutions and proceedings under the Code. Further, the powers of the Attorney General is explained in art. 145(3) of the Federal Constitution. The Attorney General has a choice

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65 See *Tee Yam v. Timbalan Menteri, Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2005] 6 CLJ 550.

66 [2006] 4 CLJ 300.

of the penal statutes under which to charge an accused and institute proceedings for an offence. In fact, the Attorney General is permitted to take into account the public interest when deciding what charge or charges to prefer against an accused. It must be added that where crime has been committed, the police would conduct the investigation in accordance with the procedures laid down in the Criminal Procedure Code. Upon completing the investigation, the investigation report will then be submitted to the Attorney General's chambers who will then determine whether the evidence are overwhelming to institute and conduct criminal proceedings and prosecutions. In short, in criminal matters, the Attorney General act independently and does not receive or take direction and instruction from the Government. That being the case, being the guardian of the public whose principal concern is to maintain the rule of law, the Attorney General is expected to act honestly and professionally. If he fails to discharge his public duties professionally, the public would be able to show their disapproval. The public expects the Attorney General to exercise his powers fairly, honestly and professionally.