

UPHOLDING JUSTICE WITHOUT FEAR OR FAVOUR: A CALL FOR MUTUAL PROFESSIONALISM BETWEEN BENCH AND BAR

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ABSTRACT

This article critically examines the evolving dynamics of professionalism between the Malaysian Bar and Judiciary in light of contemporary courtroom practices. Quoting from an eBook by Andrew Harding and Amanda Whiting – "... Malaysian lawyers have developed and sustained a capacity to support and defend the core legal values of the rule of law, the independence of judiciary and the integrity of the constitution and of constitutional government, AND to speak and act, sometimes vigorously, in defence of civil and political rights."¹ This article is written based on a review of the statutory provisions, judicial commentary and personal experience of lawyers within the courtrooms. It is hoped that the discussion here will highlight how institutional relationships between the Malaysian Bar and the Judiciary can either strengthen or weaken the integrity of legal advocacy. The principle of "upholding justice without fear or favour" is explored not merely as a statutory formulation but as a continuing and operative expectation by lawyers in their capacity as independent officers of justice. Amidst increasing procedural rigidity, evolving judicial trends and growing burdens faced by legal practitioners, this article attempts to argue for a recalibration of courtroom decorum that preserves space for respectful dissent and principled advocacy. It is further contended that judicial perspectives must evolve and shift to meet the realities of citizens' views and those faced by legal practitioners; and this can only be meaningful where there is institutional empathy. In advancing this discussion, this

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¹ Andrew James Harding and Amanda Whiting, "Custodians of Civil Liberties and Justice in Malaysia: The Malaysian Bar and the Moderate State," in *Fates of Political Liberalism in the British Post-Colony: The Politics of the Legal Complex*, ed. Terence C. Halliday and Lucien Karpik (Cambridge: Cambridge University Press, 2012), 247.

article seeks to encourage continued dialogue on legal ethics, judicial accountability and the resilience of Malaysia's legal system.²

Keywords: judiciary, legal profession, legal ethics, judicial accountability, Malaysian lawyers

² Bawany Chinapan, Registered and Licensed Counsellor, "Behind the Briefcase: Mental Health Challenges for Lawyers," PRAKTIS, accessed January 1, 2026, <https://www.praktis.com.my/all-articles/behind-the-briefcase-mental-health-challenges-for>.

INTRODUCTION

The administration of justice does not rest solely upon the judiciary, but also with legal practitioners in their capacity as officers of the court. In the Malaysian legal system, this relationship between the Bench and Bar is not merely one of courtesy but is rather a formalised and reciprocal responsibility that is recognised by law in the administration of justice for the country. In his article entitled “The Role of the Malaysian Bar – Its Struggles and Achievement” the late Mr. S. Balarajah expressed as follows:

“The major role and struggles of the Bar have been to stand up against what it perceives to be unjust laws voice concerns on human rights issues and stand up to defend the judiciary for it believes that without a strong Bar you cannot have an independent judiciary. And the Bar also fought all attempts that seeks to deprive it of its self-government and independence in upholding justice and managing itself.”³

Section 42(1)(a) of the Legal Profession Act embeds this shared statutory imperative by mandating that the Malaysian Bar shall “uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour”.⁴

This provision imposes upon the Malaysian Bar - and by extension, legal practitioners - a statutory duty and obligation that transcends mere advocacy for clients, by focusing on a call of loyalty to the rule of law and broader public interest. Dato` Ambiga Sreenavesan in her write-up for the Bar Council entitled “The Role of Lawyers in the Administrative of Justice” expressly pointed out:

“Those in power must recognise that safeguarding the independence of the Bar is as important as safeguarding the independence of the Judiciary.

³ S. Balarajah, “The Role of the Malaysian Bar: Its Struggles & Achievements,” *INSAF, The Journal of The Malaysian Bar* Vol XXXIV No 2, (2005): 23–26, <https://johorebar.org.my/wp-content/uploads/2015/01/Page-23-26-The-Role-of-The-Malaysian-Bar-Its-Struggles-Achievements-by-S.-Balarajah.pdf>.

⁴ *Legal Profession Act 1976* (Act 166) s. 42(1)(a).

Justice PN Bhagwati, a former Chief Justice of India, eloquently said that:

“Those that fight zealously for the independence of the judiciary must surely know that is not enough. We need to be equally zealous to fight for the independence of the Bar. To those who said ‘hands off the judiciary’ I add ‘hands off the Bar.’”⁵

The statutory command in the Legal Profession Act 1976 is not merely aspirational or symbolic because it carries practical and ethical weight in relation to the rule of law and the fight for justice, both of which are universal in nature. It requires a counsel to act with independence by resisting both external pressures and internal incentives that might compromise impartiality to the universal principle of rule of law and justice. Upholding justice in this manner often demands moral courage - speaking firmly where silence might be safer, or advancing a lawful argument even when it may be unpopular with the court or the wider society. The principle also requires lawyers to reject any conduct that would undermine the fairness or integrity of court proceedings.

The importance of this duty was brought into sharp focus recently by the current Chief Justice of Malaysia, YAA Datuk Wan Ahmad Farid Wan Salleh, Within days of assuming office, His Lordship publicly reaffirmed that the duty to act “without fear or favour” is not merely a hallmark of judicial independence, but also a non-negotiable expectation for the legal profession. His Lordship’s remarks underscored that a functional legal system depends as much on fearless and principled advocacy as it does on impartial adjudication.⁶

⁵ Ambiga Sreenevasan, “The Role of Lawyers in the Administration of Justice,” Malaysian Bar, accessed January 1, 2026, <https://www.malaysianbar.org.my/article/news/legal-and-general-news/members-opinions/the-role-of-lawyers-in-the-administration-of-justice>.

⁶ Ida Lim, “New Chief Justice: I Can’t Erase My History, but I Vow to Protect Judicial Independence,” *Malay Mail*, August 6, 2025, <https://www.malaymail.com/news/malaysia/2025/08/06/new-chief-justice-i-cant-erase-my-history-but-i-vow-to-protect-judicial-independence/186679>.

While the phrase “without fear or favour” is frequently invoked in many speeches across various sectors, its true force lies in its application in the daily administration of justice; for it is in the day-to-day conduct of hearings, case management and client representation that the principle is truly tested. This phrase must apply equally to both the Bench and the Bar, not merely as a practical safeguard or defensive exercise, but as a professional discipline which ensures that the courtroom remains a space where all forms of constitutional and legal rights can be asserted, arguments advanced and justice pursued without intimidation, prejudice or undue deference.

LAWYERS AS OFFICERS IN THE ADMINISTRATION OF JUSTICE

In the discharge of their statutory functions, lawyers are not merely private agents acting solely on behalf of paying clients. They hold a dual role; as advocates representing their clients irrespective of the cause, and as officers of the court whose paramount duty is to the administration of justice.⁷ This status carries with it a clear legal mandate rooted in Section 42(1)(a) of the Legal Profession Act 1976 and reinforced by the ethical framework set out in the Legal Profession (Practice and Etiquette) Rules 1978. Read holistically, these legislative instruments affirm that a lawyer’s loyalty to justice must prevail, even where it conflicts with the immediate interest of a client.

A lawyer’s role as an officer in the administration of justice also carries a constitutional dimension. Article 5(3) of the Federal Constitution reinforces this constitutional role by ensuring that personal liberty is not merely asserted in the abstract but protected through immediate procedural safeguards at the point of arrest. Where a person is arrested, the Constitution requires that the arrestee be informed “as soon as may be” of the grounds of arrest and “shall be allowed to consult and be defended by a legal practitioner of his choice.”. This constitutional guarantee positions legal counsel as an essential safeguard against arbitrary detention and investigative abuse. Through counsel, the arrested person is able to understand the basis of

⁷ Legal Profession (Practice and Etiquette) Rules 1978 (Malaysia).

the arrest, obtain advice on legal rights and prepare an effective defence that will reinforce the administration of justice at its earliest stage.

The phrase “as soon as may be” has consistently been understood to mean as soon as possible or within the shortest practicable time. This interpretation underscores that the procedural protections contained in Article 5(3) are not optional courtesies but constitutional commands. Article 8 of the Federal Constitution further enshrines equality before the law, a principle that cannot be meaningfully realised without advocates who are willing to invoke and defend such rights in court⁸. This responsibility requires lawyers not merely to follow the cab-rank principle but to advance legal arguments firmly and ethically, without undue deference to authority, particularly where those arguments challenge entrenched power or seek to vindicate fundamental rights.

Consistent with this obligation, professional ethics in Malaysia reflect a cab-rank-type duty. Rule 2 of the Legal Profession (Practice and Etiquette) Rules 1978 requires an advocate and solicitor to give advice on, or accept, a brief in the courts in which they practise for a proper professional fee, subject only to “special circumstances” justifying refusal. The rule of law depends not on passive acquiescence but on the willingness of lawyers to articulate principled dissent, including scrutinising procedural irregularities, while holding all stakeholders within the State accountable to the same legal standards.

In discharging these responsibilities, counsels are ethically bound to speak with both courage and accuracy, even where their submissions may be unpopular. The right to be heard is not a personal privilege but a necessary safeguard for justice itself. When advocates are silenced - either explicitly or through a hostile court room environment or discouraging legal precedent - the integrity of the adversarial process is compromised. The Federal Court in *Zainur Zakaria v Public Prosecutor* recognised that a lawyer must be permitted to raise *bona fide* objections in the interests of justice without fear of punitive repercussions from the Bench. This decision underscores that judicial disagreement with counsel’s argument must not, and cannot, be treated as misconduct *per se*.⁹

⁸ Federal Constitution of Malaysia, Arts. 5 & 8.

⁹ *Zainur Zakaria v Public Prosecutor* [2001] 3 MLJ 604

Yet, several recent observations of courtroom practice in Malaysia suggest that this professional ideal sometimes encounters significant obstacles in practice. Young practitioners in particular may, in advancing such arguments, face judicial impatience that risks crossing the line into intimidation.

While firm case management is necessary for efficiency in the administration of justice, the use of excessive or unnecessary harshness - particularly towards inexperienced lawyers - can have lasting consequences. It may discourage full and fearless advocacy, foster habits of self-censorship and ultimately cultivate a generation of practitioners who are more concerned with avoiding personal censure than with advancing principled legal arguments. While it may be suggested that such an outcome could serve certain institutional interests, it is not the writer's view that this is the intention of the Bench.

Nevertheless, even an unintentionally created culture would run contrary to the statutory vision of an independent and fearless Bar. The adversarial system is premised on the notion that truth and justice emerge from the contest of competing arguments, each presented without inhibition, save for the limits imposed by law and ethics. When the ability of legal counsel to speak freely is constrained by fear - whether of judicial disapproval or reputational harm - the contest is diminished and the quality of justice itself is placed at risk. Ensuring that lawyers are able to operate in an environment where their voices are heard and treated with respect, even when their submissions are ultimately rejected, is therefore a foundational requirement for the preservation of the rule of law in Malaysia.

MUTUAL RESPECT IN THE COURTROOM

Professionalism in the courtroom is not a unilateral duty imposed solely upon the Bar; rather, it is a reciprocal obligation that binds both the Bench and the Bar in equal measure. The respect accorded to the judiciary by advocates must be matched by the respect the judiciary extends to those appearing before it. To demand courtesy and deference from counsel while exercising judicial authority without regard for the same principles is to risk eroding the very legitimacy upon which that authority rests. As custodians of justice, both the Bench and the Bar are

integral to the administration of law and justice. Neither exists to serve the personal interests of the other; instead, each serves the higher calling of the legal system, including the public whose confidence sustains it.

Judicial authority derives its moral weight from the perception that it is exercised with humility, courtesy and restraint. While the judicial office is conferred with significant procedural and coercive powers, these must be exercised within the parameters of judicial ethics as reflected in the Judges' Code of Ethics 2009.¹⁰ Enacted pursuant to Article 125 of the Federal Constitution and effective from 1 July 2009, it outlines standards of judicial conduct, including the maintenance of integrity and independence, the avoidance of conflicts of interest, limitations on extrajudicial activities and procedures for handling complaints and disciplinary matters.

International instruments, such as the Bangalore Principles of Judicial Conduct similarly emphasise that the exercise of judicial authority must avoid even the appearance of bias, undue hostility or the personalisation of proceedings.¹¹

As such, judicial interventions should serve as guidance rather than intimidation. The role of a judge in an adversarial system is to ensure that the contest of arguments is fair and lawful, and directed towards a just outcome. While this necessarily encompasses case management and the enforcement of procedural compliance, it does not justify a demeanour that suppresses legitimate advocacy. Words spoken from the Bench carry amplified weight; what may appear to a judge as a passing remark may profoundly affect a lawyer's confidence, especially those in the formative years of their careers.

The manner in which legal proceedings are conducted has a direct impact on the quality of advocacy. A courtroom environment that is collegial yet disciplined and respectful yet firm, not only facilitates efficient proceedings but also enhances the quality of advocacy and positively contributes to the professional development of advocates. For young lawyers, such an environment serves as a vital

¹⁰ Kod Etika Hakim 2009 (Judges' Code of Ethics 2009).

¹¹ United Nations Office on Drugs and Crime (UNODC), *Commentary on the Bangalore Principles of Judicial Conduct* (Vienna: United Nations Office on Drugs and Crime (UNODC), 2007).

training ground in which they can learn to navigate the complexities of litigation while developing resilience and professional maturity. Conversely, an environment marked by hostility or public humiliation risks producing advocates who are hesitant and reluctant to challenge authority, even where the law or facts require it.

This reciprocity of respect should not to be regarded as diluting the authority of the Bench, nor as excusing lapses in advocacy. Rather, it recognises that the dignity of the court is best preserved when both the Bench and Bar engage with mutual civility in furtherance of the development of legal jurisprudence. It follows that a constructive collaboration among key stakeholders in the legal community, together with the public at large, requires that: (i) the judge maintains control of the proceedings in a manner that reflects impartiality and a genuine openness to hearing all parties; and (ii) the advocates discharge their professional duties within the court system by presenting arguments honestly, in compliance with procedural rules, and with due deference to judicial rulings even when where there is disagreement on points of law.

When mutual respect is practised, the broader justice system stands to benefit. Proceedings are more likely to remain focused on substantive issues rather than descending into personal exchanges. Public confidence in the judiciary is strengthened when proceedings are conducted with professionalism and decorum by both the Bench and the Bar. In such an environment, the principle of upholding justice without fear or favour is not merely aspirational but is realised in practice, thereby reinforcing the rule of law in both perception and reality.

LEGAL PRACTICE AMIDST EVOLVING REALITIES

The landscape of legal practice in Malaysia is undergoing a profound transformation, driven by economic and technological shifts that have altered both the nature of advocacy and the daily realities of legal work. Statistical trends indicate that a substantial proportion of practitioners operate as sole proprietors or within small partnerships, often without the institutional resources, administrative support and economies of scale that characterise larger law firms. This decentralisation of

practice has redistributed the burden of legal work in ways that strain the professional capacity of individual advocates.

Today's practitioners are expected not only to research, draft and argue cases, but also to undertake administrative and logistical responsibilities that were once delegated to court clerks. These expanded roles require skills and time well beyond the traditional conception of courtroom advocacy, thus placing additional strain on practitioners' professional and personal resources.

Economic pressures further compound these operational demands. Inflationary trends and the rising cost of living in urban and semi-urban areas have narrowed profit margins for many firms, particularly those offering lower-fee services in order to remain relevant and competitive in a saturated market. At the same time client expectations - shaped by the proliferation of online legal information and the commodification of certain legal services - have intensified, with greater demand for rapid turnaround times and flexible communication, often without a corresponding increase in fees. The result is a profession in which financial stability is increasingly difficult to maintain without significant personal sacrifice.

Technological changes present both opportunities and challenges. Digitalisation and artificial intelligence have the potential to streamline legal research and case preparation; however, they also require ongoing investment in technology and the continuous upskilling to ensure proficiency in emerging tools. For sole practitioners, these demands can be disproportionately burdensome, as the costs must be borne without the benefit of shared infrastructure.

Work-life balance and mental well-being have become pressing concerns in discussions on the sustainability of the legal profession. The blurring of boundaries between professional and personal time - exacerbated by mobile technology and constant client accessibility - has heightened the risk of burnout, particularly for those managing both professional responsibilities and caregiving roles. Although the mental health implications of these developments are increasingly recognised by the Malaysian Bar, they also underscore the need for

complementary judicial awareness in the conduct of day-to-day courtroom practice.¹²

WHEN THE COURTROOM SILENCES THE BAR: A PRACTITIONER'S REFLECTION

There are courtroom environments in Malaysia in which members of the legal profession have consistently observed that the integrity of legal advocacy is undermined. In such settings, judges may assert control over proceedings in a manner that, rather than permitting counsel to fully articulate submissions, involves frequent interruptions delivered in an unprofessional tone, resembling a hierarchical dynamic in which the lawyer's voice is subordinated to displays of authority.

These dynamics are particularly pronounced where the advocate is young or visibly junior. Many junior lawyers, even those who are well-prepared, find themselves prematurely silenced before they are able to fully develop a point. The result is not merely a dent in professional confidence, but the entrenchment of a courtroom culture that discourages meaningful engagement and suppresses independent thought. The long-term consequences are detrimental not only to individual lawyers but also to the development of jurisprudence.

This silencing carries significant systemic implications. The principle of *audi alteram partem* (the right to be heard) is not confined to litigants alone; it extends to their legal representatives. When lawyers are denied a fair and uninterrupted opportunity to make submissions, it is not only their dignity that is compromised, but so is the client's constitutional right to a fair hearing. A lack of judicial temperance may affect the justice in a case as critical facts or legal arguments may be truncated or not advanced at all.

It is worth emphasising that maintaining courtroom discipline and professionalism is a legitimate judicial function. However, this function must be exercised in a manner that guides rather than intimidates. The courtroom should remain a space where reasoned argument is encouraged - even if ultimately rejected - so that the

¹² Malaysian Bar Council. "Counselling Services Programme for Members of the Bar." *Malaysian Bar*, March 25, 2025.

adversarial process may operate as intended for the attainment of justice through structured debate, rather than silence induced by intimidation.

What the profession needs is the cultivation of a judicial culture that understands and appreciates the difference between authority and authoritarianism. This distinction is particularly important in nurturing the next generation of advocates, who will shape the future of the Malaysian Bar. The legal system is strengthened when lawyers are able to speak with confidence and are accorded respect, even in the course of principled disagreement.

INSTITUTIONAL RESPONSE AND RECOGNITION OF MENTAL HEALTH

The Malaysian Bar has taken commendable and necessary steps in recognising mental health as a professional concern rather than a personal failing. Programmes aimed at promoting psychological well-being, stress management and peer support among lawyers reflect a progressive and holistic understanding of the challenges inherent in legal practice. However, these efforts address only one side of the institutional equation. Mental health within the legal profession is not solely the responsibility of individual lawyers or the Bar Council; it is also shaped by the culture and conduct of the judiciary.¹³

The psychological environment of a courtroom plays a significant role in either strengthening or eroding the confidence, composure and resilience of advocates. It may inflict lasting psychological stress and contribute to patterns of withdrawal and self-censorship. Over time, this may inhibit not only personal development but the growth of the Bar as a whole, as lawyers come to prioritise the avoidance of confrontation over principled advocacy.¹⁴

In this context, judicial temperament is not a matter of style or personality; it is an ethical and institutional obligation. The Bench must recognise that emotional intelligence and psychological awareness are not signs of judicial weakness, but essential attributes of effective and

¹³ Bawany Chinapan, Registered and Licensed Counsellor, “Behind the Briefcase: Mental Health Challenges for Lawyers.”

principled adjudication. The courtroom is not only a forum for dispute resolution, but also a training ground for future leaders of the legal profession. Where judges exercise restraint in criticism while allowing space for constructive engagement, they not only preserve the dignity of proceedings but also contribute to a healthier, more confident and more competent legal community.

Therefore, mental health advocacy cannot be left solely with the Bar. The judiciary must also play an active role by embedding psychological awareness within its institutional framework. This includes acknowledging the emotional dynamics of courtroom interactions reviewing relevant codes of conduct and performance evaluation mechanisms. Most critically, the judiciary must ensure that psychological stability and emotional intelligence are treated as essential considerations in the appointment, confirmation and promotion of judges. While legal knowledge and procedural expertise are vital, they are insufficient on their own. Judges who are unable to regulate their emotional responses or who use the courtroom as a platform for personal dominance pose risks not only to individual lawyers but also to public confidence in the administration of justice.

The appointment of judges who exhibit balanced temperament, humility and sound interpersonal judgment must therefore be regarded as a core element of judicial reform. Just as lawyers are evaluated for their fitness to practise, so too must members of the Bench be assessed for their capacity to uphold justice - not only through sound reasoning, but also through conduct that reflects the gravity and human impact of their office. The Judicial Appointments Commission Act 2009 (Act 695), which established the Judicial Appointments Commission to identify and recommend suitably qualified candidates for appointment as judges of the superior courts for the Prime Minister's consideration, is expressly framed as a mechanism to uphold the continued independence of the judiciary.

CONCLUSION

The phrase “to uphold justice without fear or favour” must therefore be more than just a ceremonial utterance; it must govern the behaviour of every participant in the legal process.

Respect within the legal system is not merely hierarchical; it must be mutual. Lawyers are expected to act and speak with honesty, diligence and respect. Judges, in turn, must guide and manage proceedings with fairness, empathy and decorum. Only through such reciprocal professionalism can Malaysia's legal institutions, within the broader administration of justice system, earn and sustain public trust and confidence.