

Press Release: Move towards transparent and accountable investigations

Contributed by Ragunath Kesavan
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We refer to Syed Nadzri's column in today's New Straits Times, entitled "When common sense goes out the window", in respect of the High Court's recent ruling that the Malaysian Anti-Corruption Commission can only question witnesses between 8.30am and 5.30pm.

The Malaysian Bar is of the view that the interpretation of the High Court's decision that is articulated in that editorial is inaccurate.

We restate our position on this matter, as expressed in our press release dated 30 November 2009, which includes the following principles.

Witnesses who aid law enforcement agencies in investigations should surely, at a minimum, be accorded the same protection and rights as accused persons.

However, there is a fundamental distinction between witnesses and accused persons, which must be highlighted. Accused persons can be remanded because they are implicated in the alleged offence, whereas witnesses are integral in assisting the investigation and prosecution process. It is essential that witnesses, whose testimonies are important in court hearings, not face any actual or perceived intimidation, pressure or coercion during the interrogation process.

The High Court decision relates to the MACC's practice of compelling witnesses to appear and be questioned, including for long periods of time that stretch beyond office hours, with no option for them to decline. We reiterate that if witnesses volunteer to be interrogated outside of office hours, and attend the interview with their legal counsel, any allegation of impropriety or abuse would be immediately dispelled.

Such respect for the Constitutionally-enshrined right to counsel of one's choice, and adherence to the High Court ruling, will, in the long run, promote transparency and accountability. Furthermore, witnesses would be encouraged to be forthcoming in assisting with investigations, as they would have no reason to fear the interrogation process or dread being unduly detained for long and unreasonable hours.

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