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THE judiciary is really on a roll - it hasn't been out of the news for weeks now.

Just as excitement was dying down over choice remarks made by two High Court judges in earlier weeks, the Federal Court delivered a judgment which yanked the law of contempt right off its ultra-conservative path.

Last Wednesday, the Federal Court acquitted lawyer Zainur Zakaria of contempt for filing a controversial application for Datuk Seri Anwar Ibrahim.

The three judges - Tan Sri Steve Shim, Datuk Abdul Malek Ahmad and Datuk Haidar Mohd Noor - won accolades, not just for the decision but for setting a new direction for the law of contempt.

It's particularly significant as the Federal Court is the highest court in the country and the direction which it takes is generally that which legal developments follow.

Over the last few years, judicial use of contempt powers had caused a raging controversy, with no end in sight. A number of lawyers had been cited, threats were being issued more frequently and the result was an atmosphere of uncertainty and fear.

Minister in the Prime Minister's Department Datuk Dr Rais Yatim said it all when he opened his speech at a seminar on contempt last year with:

"It is my fervent hope that none of us here this morning will be held for contempt, given the very wide scope and latitude that contempt encompasses under the present law."

It was a joke which hit the right note with his audience, though apparently not with a judge who reportedly later commented unfavourably on it.

Things became so sticky that the Bar Council, a fervent believer in judicial independence, came out with a proposed law to redefine judges' discretion in contempt powers.

That was sent to the Government for its consideration in 1999.

But with one fell swoop, the Federal Court has now turned things right around.

A senior lawyer, who declined to be named, says the judiciary has sent out the right signal.

Former Bar president R.R. Chelvarajah, who was in the thick of things when the contempt controversy was at its height, says "a fresh wind is blowing".

As oft-said, this development is really to the credit of Chief Justice Tan Sri Mohamed Dzaiddin Abdullah who had swiftly provided a fresh style of leadership when he took office last December.

At that time, he had clearly enunciated his stand on contempt.

"We must acknowledge that our fallibility is always on public display, so we should not be too sensitive and should be slow to wield the big stick of contempt," he had said.

It was this statement which set out the new judicial policy on contempt.

As Chelvarajah says, the change at the top has set the right tone.

Lawyer Jerald Gomez, who was instrumental in drafting the council's Contempt of Court Act, says he believes that judges now act without fear or favour.

"Dzaidin is a man of integrity," he says.

The new openness has done wonders for judicial independence and has also done a great deal to regain the confidence of the public.

In fact, senior lawyer Muhammad Shafee Abdullah, who represented journalist Murray Hiebert in contempt proceedings in 1998, thinks that Hiebert would have won his case if it was heard today.

"Hiebert's case came about during dangerous times. It's a new judiciary now with a lot of promise for hope and justice," he says.

(Hiebert served three months in jail after losing his case.)

On its merits, the Federal Court decision was also welcomed by lawyers for setting out the position with regard to applications filed by lawyers.

It upholds the right of citizens to file applications without fear of being cited for contempt if the judge feels that the application is baseless.

"If it is baseless, the judge should just dismiss it with costs," says the senior lawyer who did not want to be named.

Chelvarajah says the Federal Court has re-emphasised the principle that any litigant or accused person has the right to bring to the court's attention all relevant facts.

"It is the function of the court to evaluate such allegations; the lawyer is not abusing the legal system," he says.

The only hitch, so to speak, is a qualification stated by Haidar in his judgment - that the lawyer must reasonably satisfy himself that there are adequate grounds for the application.

It is not enough for the lawyer to merely act on client's instructions.

To Gomez, this places an onerous duty on the lawyer. After all, he says, there are other means of dealing with frivolous applications. They can be struck out with costs. In extreme cases, the lawyer can be referred to the Disciplinary Board.

The Federal Court's clarification of contempt procedures was also welcomed. In this respect, Abdul Malek had chosen particularly strong words to describe what he called a "blatant disregard of rules of procedures".

Shafee, who sees this as a timely reminder, describes the current contempt procedures as "messy", simply because Malaysia had been following the messy developments in English law.

He welcomes the court's stand that there must be a specific charge and a chance for the alleged contemnor to defend himself. "It's just like any other criminal proceeding," he says.

In any case, Gomez thinks that even though a judicial solution is now in sight, it doesn't detract from the need for a legislative solution, i.e., a law on contempt.

At present, the law is vague. It gives the courts the power to punish for contempt but does not spell out what it is and how it is to be punished.

"If we have to depend on personalities, and if there is a change later, we might be back to square one.

"But if we put a mechanism into place now, the rights and interests of the public are protected," he says.

That was the reason why India enacted a law in 1971 and Britain in 1981.

On another note, Shafee says while he welcomes the Federal Court's decision "which is correct in every way", he is nevertheless concerned.

He says the judiciary is going through a "very fragile stage" as it is recovering from the previous lack of public confidence, and judges should thus be very careful to be "clinical" in their judgments.

"In all cases, they should avoid making sharp statements on collateral matters or personalities in a case, as this might invoke doubt on whether our current judiciary is anti-Government or truly independent," he says.

Shafee says it's not only the people who must have confidence in the judiciary but also the Government.

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