

**A STUDY OF THE NEED FOR AN INDEPENDENT JUDICIAL
NOMINATION COMMISSION IN MALAYSIA**

By

Anati Binti Kisahi (2006200866)
Farah Juliana Binti Mohamad Anuar (2006885135)
Sharifah Binti Razali (2006200748)

Submitted in Partial Fulfillment of the Requirements
for the Bachelor in Legal Studies (Hons)

**Universiti Teknologi MARA
Faculty of Law**

October 2008

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others

ACKNOWLEDGEMENT

This research project has been carried out by a team which has included Anati Binti Kisahi, Farah Juliana Binti Mohamad Anuar and Sharifah Binti Razali.

First and foremost, we would like to thank Allah the Almighty as for His blessings we finally manage to complete this paper on the need to establish an independent Judicial Nomination Commission in Malaysia.

We would also like to document our gratification to our respected renowned supervisor, Professor Dr. Shad Saleem Faruqi, the Senior Professor of Law at the Universiti Teknologi Mara Malaysia for his tremendous kindness and cooperation in guiding us at every single stage of completing this paper.

We wish to explain our thanks to Legal Research and Methodology Lecturer, Pn. Su' Aida Dato' Haji Safe'i for her continuous support and guidance to us.

Last but not least, we are grateful to our wonderful parents who support us without fail throughout our lives.

Thank you. May Allah bless all of you.

ABSTRACT

This paper is basically a study that determines the need to have a constitutional reform in order to establish an independent Judicial Nomination Commission in Malaysia. As stated in Chapter One, this study is conducted due to the great criticisms leveled against the present judiciary as well as the judicial appointment system. Therefore, the need to establish the independent Judicial Nomination Commission is measured by analyzing whether or not the present judiciary as well as the judicial appointment system provided by Article 122B of the Federal Constitution is in fact muddled with problems. All the quandaries have been laid down in Chapter Two of this paper and it is submitted that the judiciary and the present system of judicial appointments are cluttered with problems that range from politicized judicial appointment, non credible judges, backlog cases and even extends to great failure to write judgments and deferred. Chapter Three examines the models of independent judicial appointment commission of other countries such as the Judicial Appointments Commission of England and Wales, Northern Ireland Judicial Appointments Commission, Judicial Appointments Board for Scotland and South African Judicial Service Commission while the feasibility of adopting such models are concluded in Chapter Four of the paper. It is submitted that there is none of the models that can be adopted as a whole. In order to ensure the effectiveness of the proposed independent Judicial Nomination Commission, it is observed that it needs to be a mixture of the featured examined models.

TABLE OF CONTENTS

Contents	Page(s)
Acknowledgement	ii
Abstract	iii
Table of Contents	iv
List of Cases	vii

CHAPTER ONE: INTRODUCTION

1.0 Introduction	1
1.1 Problem Statement	4
1.2 Objective of the Study	6
1.3 Literature Review	6
1.4 Methodology	10
1.5 Limitation	10
1.6 Significance of Study	11
1.7 Provisional plan of research	12

CHAPTER TWO:

WEAKNESSES OF THE JUDICIARY & QUALITIES AND ABILITIES OF JUDGES

2.0 Introduction	13
2.1 Weaknesses of the Judiciary	15
2.1.1 Tun Salleh Abbas' Controversial Dismissal	15
2.1.2 Backlog Cases	18
2.1.3 Judges' Scandals	18
2.1.4 Judges' Credibility in Question	19
2.2 Qualities and Abilities of Judges	27
2.3 Conclusion	30

**CHAPTER THREE:
OVERSEAS' MODELS OF INDEPENDENT JUDICIAL
COMMISSION**

3.0 Introduction	31
3.1 Judicial Appointments Commission (England and Wales)	31
3.2 Judicial Appointments Board for Scotland	34
3.2.1 Background	34
3.2.2 Membership	35
3.2.3 Principles Relating to the Board of Judicial Appointments for Scotland	35
3.2.4 Judiciary and Courts (Scotland) Bill Place the Judicial Appointments Board on a Statutory Basis	37
3.3 Northern Ireland Judicial Appointments Commission	39
3.3.1 Background	39
3.3.2 Composition of the Northern Ireland Judicial Appointments Commission	39
3.3.3 Functions of the Northern Ireland Judicial Appointments Commission	40
3.4 South African Judicial Service Commission	40
3.4.1 Background	40
3.4.2 Composition of the Judicial Service Commission	41
3.4.3 Functions of the Judicial Service Commission	42
3.4.4 The Work of the Judicial Service Commission	43
3.4.5 The Process of Appointing Judges	44
3.4.6 The Advantages of the Judicial Service Commission	44
3.5 Conclusion	45

**CHAPTER FOUR:
CONCLUSION AND RECOMMENDATION**

4.0 Introduction	46
4.0.1 Prime Minister's Wide Power	46
4.0.2 Backlog Cases	46