

**Response by Chief Justice Sundaresh Menon**

**Opening of the Legal Year 2013 and  
Welcome Reference for the Chief Justice**

**Friday, 4 January 2013**

Mr Attorney,

Mr Lok Vi Ming SC, President of the Law Society of Singapore,

Members of the Bar,

Ladies and Gentlemen:

1. On behalf of the Judiciary, it gives me great pleasure to welcome you all to this morning's ceremony. There are a number of guests I would especially like to mention. First, I am delighted that Mrs David Marshall is with us today. Jean Marshall's husband was one of Singapore's greatest advocates ever. He left an indelible mark on the profession and was a historical figure in his own right. I am also delighted to welcome Professor Tan Sook Yee, the former Dean of the Faculty of Law of the National University of Singapore and widow of Mr Tan Boon Teik. Boon Teik was the longest-serving Attorney-General of independent Singapore, having held that office for 25 years at a critical time in our history. Boon Teik passed away last year. His many achievements and contributions have been noted in a number of tributes.
2. I am also grateful to the Chief Registrar of the Supreme Court of Brunei, Pengiran Hajah Rostaina binte Pengiran Haji Duraman, and our guests from Malaysia, Brunei and Hong Kong representing their respective professional associations, for taking the trouble to travel here for this morning's proceedings. We also have in our midst other guests from Singapore and abroad including, in particular, the Honourable James Spigelman, who retired in 2011 as the Chief

Justice of the Supreme Court of New South Wales. It is my pleasure to welcome you all.

3. Mr Attorney and Mr Lok, thank you for your extremely kind and generous words. I do not in the least pretend that they are deserved. It is, of course, an immense privilege to be entrusted with the responsibility of leading the Judiciary and, by extension, the legal community. And I am assured by and grateful for the pledges of support and commitment you have each extended. In the weeks following the announcement at the end of August last year that I would succeed Chief Justice Chan Sek Keong, I also had the opportunity to meet many stakeholders and I very much appreciate the time each of them took and the many ideas that they offered. The challenge now is to make something worthwhile out of all this goodwill. In the final analysis, perhaps more stock should be placed on what is said at the end of one's tenure than at the beginning.

### **Felicitations**

4. Mr Attorney, you succeeded me as the Attorney-General on 25 June 2012. The range of issues faced by the Attorney-General, the quality and dedication of the officers serving in the Legal Service and the opportunity to make a positive difference all combine to make it a truly unique calling. You bring the experience of more than 25 years practising with distinction at the highest levels of the Commercial Bar as well as almost three illustrious years on the Supreme Court Bench. I know that with this wealth of experience, your sense of compassion, your warm heart and your commitment to do the right thing, you will do your utmost for the honourable discharge of this critical office.
5. Mr Lok, we had not the faintest inkling when we entered Law School together as students more than 30 years ago, that we would one day be speaking in these circumstances, and that too in the company of a third member of our class and now the Senior Minister of State for Law and Education, Ms Indranee Rajah. You have taken over from Mr Wong Meng Meng SC, in what has famously

been described as the “least enviable legal job in town”.<sup>1</sup> Notwithstanding the challenges it will undoubtedly bring, the Presidency will afford you a valuable platform from which to serve our community by providing leadership on a number of issues that are of importance to the practising profession and to our wider society.

6. Let me offer my heartfelt congratulations to each of you, and also, pledge my support for the worthwhile work you will be doing.

### **Farewells**

7. Mr Attorney, you spoke about the momentous changes in Singapore’s legal landscape. In this context, I would like to acknowledge Justice Philip Pillai, who retired from the Supreme Court last December. Justice Pillai had been the Vice Dean of the Faculty of Law during my student days and was instrumental in persuading me to go into private practice upon my graduation. We later became partners at Shook Lin & Bok and I was delighted to have had the opportunity to serve with him in the Supreme Court. I congratulate him on four successful decades in the law and wish him a fulfilling retirement.
8. I have spoken previously on the retirement of Chief Justice Chan Sek Keong and the immense legacy he leaves behind.<sup>2</sup> Today, I reiterate my heartfelt gratitude to him as well as my greatest respect and affection; and I repeat my wishes that he will have a long, active and very happy retirement.

### **The Quest to Improve**

9. When Chief Justice Chan spoke at his Welcome Reference in 2006, he said that he drew confidence to face the “daunting responsibilities” that come with this appointment, among other things, from “the motivation of any responsible

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<sup>1</sup> Response of Chief Justice Chan Sek Keong, at the Opening of Legal Year 2011 (7 January 2011)

<sup>2</sup> Speech of Judge of Appeal Sundaresh Menon, at the launch of “The Law in His Hands: A Tribute to Chief Justice Chan Sek Keong” (5 November 2012)

public office holder to leave to his successor a legacy better than the one he has inherited.”<sup>3</sup>

10. There is profound truth in this. Chief Justice Wee Chong Jin laid the foundations for an independent Judiciary, so essential to the establishment of the rule of law in a new nation. His successor, Chief Justice Yong Pung How, took the administration of justice to the next level with sweeping reforms that conquered the delays and cleared the backlog of cases that had come to bedevil the Judiciary. And Chief Justice Chan led the Judiciary to even greater heights, with his profound contributions to our jurisprudence and his particular devotion to the ideal that justice be dispensed efficiently, and also humanely. It is on the shoulders of these giants that I stand, as I set out to bequeath to my eventual successor an even stronger institution.
11. This is a supremely worthwhile quest because law is foundational to society. Far from restricting liberty, law assures it. By law, we establish order, and order is key to liberty. In the preface to the 1915 edition of “Robert’s Rules of Order Revised”, a work on the law applicable to meetings, the author observes:<sup>4</sup>

Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty.

12. The legal profession, led by the Judiciary, is the custodian of the sacred trust to uphold the rule of law. Its essence is the assurance that no one is above the law; that everyone is answerable to it; that corruption will not be tolerated; that every citizen should have the greatest equality of opportunity; and that the ideals of our national pledge should be pursued by each citizen exerting his personal efforts and relying on the strength of his abilities, not on his race, language or religion. This has been the hallmark of our nation’s soul throughout its independent existence. My own story authenticates this. My late father landed on these shores 60 years ago with nothing but the clothes he wore, a spare set in

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<sup>3</sup> Response of Chief Justice Chan Sek Keong, at the Welcome Reference for the Chief Justice (22 April 2006)

<sup>4</sup> Henry M Robert, *Robert’s Rules of Order Revised* (Wildside Press, 1915) at pp 13-14

his bag and a very modest amount of money. He came seeking a better future for his offspring but it would have been beyond his wildest and most audacious dreams to imagine that his son would one day be the Chief Justice. Yet it has come to pass and only because of our national commitment to the rule of law and equal opportunity. As a real beneficiary of this commitment, I am heavily invested in it. We have much to be grateful for as a people and it is vital that we remain rooted to these notions which are embodied in the Constitution and encapsulated in the judicial oath of office.

### **Subordinate Courts**

13. But we must guard against the danger of relegating these ideals to the realm of the theoretical. The real subject of these ideals is the common citizen who depends on the legal framework and the integrity and commitment of those entrusted with its administration for the assurance of fairness. The vast majority of those who encounter the law do so primarily at what we refer to as the Subordinate Courts. It is an unfortunate appellation, as it may be construed to suggest that the work of that arm of the Judiciary is somehow unimportant. Nothing could be further from the truth. It is there that the core business of dispensing justice is carried out on a daily basis. *That* is our engine room, managing an annual case load in the region of 350,000 cases. The quest to ensure that access to meaningful justice is a realistic end for all Singaporeans must start there.
  
14. The Chief District Judge Tan Siong Thye and his management team have excelled in leading the Subordinate Courts. Beyond the notable achievement of clearing 80% of criminal cases within six months and 90% of civil and family cases within 18 months, they have instilled a culture of seeking to minimise the burden of those who must interface with the judicial system. When I visited the Subordinate Courts recently, I was impressed by the many innovations in place and it is unsurprising and commendable that these efforts have been recognised in a number of national and international awards. But the quest to improve demands that we consider how we can enhance the efforts of the Subordinate

Courts to meet their objective of delivering justice to the average Singaporean. Four specific areas have been identified.

15. The first is family justice – an area of paramount interest to all Singaporeans. The Minister for Law and I have discussed this and we have agreed that an inter-agency group be established, consisting of some Supreme Court Judges, Family Court Judges and representatives from the Ministry of Law and the Ministry of Social and Family Development, to work with academics and family law practitioners to consider possible reforms. The family is the basic unit in our society and every breakdown is traumatic. The reforms should be aimed at reducing the acrimony inherent in family disputes to the greatest extent possible. Without in any way limiting the outcomes that may emerge out of the work of the inter-agency group, the following changes might be considered:
  - (a) A radical shift towards a much greater emphasis on counselling and mediation aimed at the consensual resolution of the majority of family disputes;
  - (b) Instituting a profession of family justice practitioners who need not be lawyers but would be trained in elements of family law and more importantly, in counselling, psychology, mediation and conciliation. Such practitioners would be sensitive to the trauma faced by those caught in a family break-up and be committed to helping them to work their way through it;
  - (c) Even with these efforts, it will remain necessary to seek an outcome from the Courts in many cases. Although we have already evolved many practices to reduce the contentiousness that commonly infects these proceedings, the fact remains that our system of litigation is an adversarial one. It is time to consider why we should not move to an inquisitorial system in the field of family justice, where the Judge leads the process of establishing what happened and designing solutions geared towards providing appropriate closure; and

- (d) Finally, the possibility of establishing a separate Family Justice Court dealing with the entire suite of family justice issues.
16. This will require a substantial effort and the inter-agency group will be established soon to study and report on these matters in the course of this year.
  17. Secondly, I have asked the Chief District Judge to simplify the procedural rules for smaller civil cases. Around 89% of writs filed in the Civil Justice Division involve sums of \$60,000 or less. This is the jurisdictional limit of the Magistrates' Courts. The Rules of Court prescribe a single regime that assumes every case will be prepared for trial in the same manner without regard to the monetary value in dispute. This is untenable. Steps have already been taken to reduce the expense of trying these cases and the Chief District Judge and his team will seek further ways to reduce the cost of litigating these matters, with greater emphasis on consensual outcomes, and, failing that, by developing simpler and faster processes.
  18. In criminal justice, Mr Attorney, you have spoken of measures you have either continued or initiated with a view to achieving some of these same objectives. I am delighted that you have persevered in the effort to collaborate closely with the Criminal Bar. I look forward to your joint projects coming to fruition. I also welcome the news that the Pamphlet of Rights, an initiative that emerged from a dialogue I had with the Criminal Bar when I was the Attorney-General, will soon be issued. In this area also, the Chief District Judge and his team will seek ways to simplify the procedures for less serious cases. He will consult your Chambers and the Bar before making recommendations.
  19. Lastly, I have asked the Chief District Judge to consider how we can enhance the standing of his Courts. This, after all, is where most Singaporeans encounter the judicial system. The Chief District Judge has proposed a number of changes, including renaming his Courts as the State Courts of Justice, and to provide that Judges wear robes in open Court. He has also raised the need for more resources to ensure that all these initiatives can be effectively implemented.

20. I will work closely with him to carefully evaluate all the detailed proposals as these are developed in the coming months with a view to their realisation. We will be guided by the prime objective of securing the ends of fair, accessible and customised justice for all.

### **The Legal Profession**

21. Just as the bulk of the judicial case load is at the Subordinate Courts, so it is with the professional work of lawyers. Lawyers practising individually or in small firms do much of this work. I came to know some of them in my work as the Attorney-General and found several who best embody the ideals of lawyering. They do their bit for the poor and the marginalised, and bear a disproportionate load of the *pro bono* initiatives of the profession, as your statistics bear out, Mr Lok. I am deeply grateful to these practitioners. Their engagement contributed greatly to the richness of my work then, as I am sure it will to yours, Mr Attorney. In the brief time I have been in the Court of Appeal, I have, at times, also seen the quality of submissions and the seriousness of purpose that these practitioners are capable of. This now needs to be extended across the board so that it becomes the norm. There are three specific points I would like to highlight.
22. The first is in relation to continuing legal education and professional development. This was introduced in April last year starting with young lawyers of up to five years' standing. We have had a promising start, and by the end of last year, more than 90% had fulfilled the requirements in so far as participation in accredited CPD<sup>5</sup> activities is concerned. I urge the Bar to embrace the numerous opportunities for learning that will be provided, including some superb offerings from the Singapore Academy of Law ("the Academy"). Take pride in your vocation as lawyers, and the commitment to upgrade yourselves through continuing education will naturally follow.

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<sup>5</sup> Continuing Professional Development



23. Secondly, the Bar's first duty is to the Court. There are many aspects to this, but the duty to ensure one is well and diligently prepared, courteous and cooperative must rank among the more fundamental ones as you, Mr Lok, have observed. As we embark on a number of changes in the administration of justice, it is paramount that you approach these in the right spirit and cooperate with us in these efforts. In the run-up to my appointment, I met a group of practitioners from the small law firms. This proved to be an animated session that went on longer than any of the other sessions. I took away several ideas and I encourage the more senior of these practitioners to take the lead in continuing the conversation about what else can be done to further raise standards with a view to realising their fullest potential.
24. Thirdly, let me touch on *pro bono* initiatives. I think the profession can justifiably be proud of the work that has been done in this area, particularly in the last decade. The Pro Bono Promotion Committee set up by the Ministry of Law has been and will remain instrumental in charting strategic plans for the growth of these efforts. We can expect more when Justice Rajah's group completes its work and reports on ways to best ensure the availability of community legal services to those who need it. Whatever form the measures to ensure such availability may finally take, I ask the profession to rest assured that these will not undermine the immensely valuable efforts of those who are already putting their heart and soul into volunteering for the cause of ensuring access to justice. The sole practitioners and small law firms have been especially generous with their time in *pro bono* cases and initiatives, and it is time for the large commercial law firms and the Senior Counsel to share the load to a greater extent. This should entail more participation in cases as well as more generous financial support. Each year, the Law Society raises funds for *pro bono* initiatives through a golf game. This year, the Attorney-General invited the larger local and international firms to commit to a medium-term pledge so as to establish a pipeline of predictable funding for this critical effort. The response so far has been underwhelming. Lawyers have a vital responsibility to ensure that there is access to justice. From those to whom much has been given, much will be expected. And as we move towards an increasingly integrated legal profession consisting of both the local and

international law firms, I echo your hope and expectation, Mr Lok, that the latter will also do their fair share and contribute to these initiatives.

25. Before leaving the subject of lawyers, let me refer briefly to some work I started last year when I was the Attorney-General, chairing a Committee to explore possible changes to the regulatory framework that governs lawyers. This affects international lawyers working in Singapore, as well as local law firms wanting to internationalise. The Committee also studied the possible use of alternative business structures in legal practice. The Committee will complete its work shortly and submit its report which will address a number of these issues and propose a new framework to assure a level playing field for all lawyers based here.

### **Legal Service**

26. Mr Attorney, you have spoken about your work as the Chief Legal Advisor and Counsel to the Government. Your greatest help in this respect will come from the corps of Legal Service Officers who work in your Chambers, and in the Ministries and the Statutory Boards. I am familiar with their quality and dedication. I commend your commitment to continue the emphasis on their training and development. Officers in the Legal Service play a critical role in fearlessly upholding the rule of law. During his Welcome Reference in 1990, Chief Justice Yong spoke of his desire to groom the best officers for appointment to the Supreme Court Bench.<sup>6</sup> This is a sound aspiration for those who have chosen to invest a lifetime in the public service and I will welcome anything you do to better prepare the best officers for this.

### **Supreme Court**

27. Turning to the Supreme Court, I am happy to say that through the efforts of previous Chief Justices and the Registrars, it is in very good shape. I must give particular credit to the Registrar and his team of outstanding judicial as well as

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<sup>6</sup> "Welcome reference for the Honourable the Chief Justice Mr Justice Yong Pung How" [1991] 1 MLJ i at iv.

non-legally trained supporting officers for their commitment and diligence. It is they who ensure the smooth running of the Court. They have been immensely helpful to me in every way and I am very grateful to each of them. Thanks to their efforts and the work of the Judges, I am happy to report that we remain in the happy situation of not having a backlog of cases to contend with; we continue to meet our rigorous key performance indicator of clearing 85% of all writ actions within 18 months. Appeals are disposed of timeously, and judgments have become more learned over time, if also somewhat longer.

28. There are nonetheless some priorities that we will work on initially. First, on the electronic front, eLitigation was previewed last October, and the first electronic filing phase for cases at the Supreme Court was launched just two days ago. We have set the standard internationally in this area for some years and I am confident that eLitigation will come to be seen as yet another pivotal point in the use of technology by the Supreme Court. The eLitigation system brings the use of electronic tools in litigation to a higher level, by introducing a suite of changes targeted at reducing inefficiencies. By allowing lawyers to obtain online access to case files, it will reduce their dependence on physical files and allow them to conduct searches electronically regardless of where they might be. An extensive review of the procedural rules and processes has also been undertaken to do away with many unnecessary procedural steps and to more effectively utilise information that has already been filed in Court. These shortcuts, integrated within eLitigation, will ease some of the burden for all users by enabling Court documents to be generated electronically from information that already resides in the system.
29. Next, there are the issues arising from the discovery process when working with electronic documents. The Practice Directions on electronic discovery provide a set of procedures for the discovery of such documents. They encourage the exchange of electronic documents in their native electronic format and establish standards for adapting discovery principles to new media. The Courts have also delivered a number of decisions which interpret these Practice Directions. To facilitate the acceptance and implementation of these changes, a Call for Collaboration was issued last year by the Singapore Academy of Law, with the

support of the Infocomm Development Authority of Singapore, the Supreme Court, the Subordinate Courts, the Attorney-General's Chambers and the Law Society. The successful bidder will make available, to all lawyers at a subsidised rate, a cloud-based document review platform for conducting electronic discovery through LawNet. They will also establish a capacity building programme for lawyers and paralegals.

30. The key driver for these two initiatives is the push to enhance the productivity of lawyers. The Courts have streamlined the procedural rules and processes with the launch of eLitigation. The challenge now is for the Bar to embrace the use of technology and adopt efficient practices. With the right skills, lawyers will be able to make use of the full range of electronic tools to search, tag and manage documents. This, together with the streamlined procedural rules and the case management features that are embedded within eLitigation, will help to alleviate the potentially disproportionate and prohibitive expense associated with reviewing large numbers of documents manually.
  
31. The third major priority will be to review our case management processes. The most fundamental change will be the shift to a modified docket system of litigation in the High Court. Cases will be assigned, at an early stage, to specific Judges and Registrars who will manage and prepare them for trial. We stand to derive many advantages from this. Judges would have been involved in dealing with the interlocutory processes along the way and will be fully familiar with the case by the time it is fixed for trial. Judges will also ensure by active management that cases are disposed of efficiently, and that adjournments and the disruption of having matters part-heard are minimised, if not avoided. This will also enable a degree of judicial specialisation with each Judge being assigned to specific lists. We will also change aspects of *ex parte* processes; and review our approach to costs awards so as to incentivise appropriate behaviour in litigation.
  
32. In the Court of Appeal, we will also see some changes in the coming months. Among them will be measures to do away with excessive prolixity in written Cases with the introduction of page limits; as well as a greater degree of case

management by requiring counsel to provide specific information at an early stage so that the issues are distilled and adequate time is allocated for oral arguments. Lead Counsel should not be surprised if I ask to see them some weeks before the hearings in order to better customise the time allocation for cases. This may require a change of practice and mindset, as senior lawyers will need to review the case and the associated documents at an earlier stage than might hitherto have been the practice. Where difficult and important issues of law arise, the Court of Appeal may more readily appoint *amicus curiae* and where appropriate, they may be drawn from the ranks of our academics.

33. The last major priority I want to mention pertains to the tremendous opportunity that I believe exists for the profession in Singapore to service a wider region. We have seen the great success of the efforts to promote Singapore as a hub for international arbitration. Much of this work emanates from abroad, but parties have chosen to arbitrate here. There are many factors that account for this and it is time to take fuller advantage of them. I have discussed the matter with the Minister for Law and we have agreed that Justice V K Rajah, together with the Senior Minister of State for Law, should lead a group that will include other Judges of the Supreme Court as well as representatives from the Ministry of Law and other stakeholders to study the viability of developing a framework for the establishment of the Singapore International Commercial Court. From my preliminary consultations, it appears there will be strong interest in this from the community of legal corporations operating throughout Asia. This promises to be an exciting and important step in our efforts to grow the legal services sector and to expand the scope for us to internationalise and export Singapore law. I look forward to the detailed recommendations of the working group that will soon be established.

### **Singapore Academy of Law**

34. Let me turn to the Academy. This year marks its 25<sup>th</sup> anniversary and several activities have been lined up to commemorate this. Later today, we will launch the 25<sup>th</sup> anniversary logo and a microsite detailing the Silver Jubilee programme. A number of conferences have been lined up as the Academy

continues to brand itself as a premier provider of world-class conferences bringing together thought-leaders from Singapore and elsewhere. Among the most outstanding of these is a joint conference of the Academy and the Chancery Bar Association of England and Wales that will be held in April this year and will bring together some of the most illustrious practitioners and thinkers from here and England to speak on “Finance, Property and Business Litigation in a Changing World”. In July, the Academy will provide the public with an insight into the law with a week-long series of law seminars, free legal clinics and an exhibition on our legal history. And in October, a charity concert is planned to showcase the profession’s talents while raising funds for the Yellow Ribbon Project. I look forward to the active participation of the membership in these events.

35. Beyond this, I think it is timely for us to consider ways of ensuring that the Academy remains relevant and vital to its members as we face the future together. I have accordingly asked that a dialogue be convened with the key stakeholders to this end.
36. Finally, the Academy will also introduce a new and improved LawNet portal by the end of this year. The most innovative features will include the facility for members to make and store their personalised annotations on the resources they use. Using personalised identification data, members will have permanent and secured access to their own library of annotations and in keeping with the times, they will be able to access LawNet using their tablet devices.

### **Appointment of Senior Counsel**

37. I have reached that stage of the proceedings when it falls upon me to announce the appointment of Senior Counsel. This year, we have appointed two advocates as Senior Counsel. As they join the highest ranks of the Bar, it will be incumbent on them to meet the expectations that come with this. They are Mr Narayanan Sreenivasan and Mr Lionel Yee. On behalf of the Judiciary, I congratulate them on their appointments.

## **Conclusion**

38. This brings me to the close of this morning's proceedings. I return at this stage to the quest I have mentioned, to persist in the effort to make things even better than they already are. This is a quest that must unite all of us in the legal community. If the law is foundational to society, then we, who are the servants of the law, must constantly reflect on how we can make it more responsive to the needs of our evolving society. We must ensure that we do not price the law out of the reach of the average Singaporean; that we are guided by our care and concern for those whose lot it is to come face to face with the law; and that we do not allow the law to become the preserve of the rarefied few as a result of systems, processes and outputs that seem obscure or even confounding to the reasonably informed lay person.
  
39. I have been blessed with a superb Bench and I have been assured by the commitments that I have received from all those I have spoken to. The Courts will remain responsive to the needs of our citizens by working to ensure the fair and efficient administration of justice. We will continue to upgrade our processes and also our skills. We look forward to corresponding efforts from the entire profession. If we work hard together in pursuit of these goals, we will enhance the quality of justice for all who may have occasion to seek recourse from the Courts and that would be a most worthwhile objective.
  
40. I thank you for your presence and I wish you all a very happy and successful new year.